TITLE: FEDERAL REGISTER.

REEL NO: 1 of 11

VOLUME: 50 Issues: 126-135
Pages: 26,961-28,756

DATE: July 1 - 15, 1985

PUBLICATION NO: 2575

NOTES: Includes:
INDEX
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VOL
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Volume 50—Numbers 1-251
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federal register

January-December 1985

ANNUAL

Index

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(ISSN 0097-6326)

INDEX

VOL

50

1985

UMI

Volume 50—Numbers 1-251
Pages 1-53480

federal register

January-December 1985
ANNUAL

Index

INDEX
VOL
50
1985

THIS INDEX is based on a consolidation of contents entries appearing in the January–December issues of the FEDERAL REGISTER together with broad subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the FEDERAL REGISTER where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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Melanie Y. Williams is Chief Editor of the Federal Register Index, assisted by Maxine L. Hill. The Index is prepared under the direction of Martha B. Girard, assisted by Ruth Pontius.

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TABLE OF CONTENTS

Entries / 1
Privacy Act Publications / 153
Guide to Freedom of Information Indexes / 155
Federal Register Pages and Dates / 161

UMI

FEDERAL REGISTER INDEX, January-December 1985 ANNUAL

ACCIDENTS

See Consumer Product Safety Commission.
Mine Safety and Health Administration.
National Transportation Safety Board.
Research and Special Programs Administration.

ACTION

RULES
Grants and contracts; refunding application denial, 42023

PROPOSED RULES
Grants and contracts; refunding application denial, 10998
Regulatory agenda, 17774, 44636

NOTICES
Agency information collection activities under OMB review, 6222, 38698
Foster grandparent and senior companion programs; income eligibility levels, 16725
Grants; availability, etc.:
MiniGrant program, 31402
Senior companion program, 13406
Special volunteer programs, 5283
Young volunteers in ACTION program, 4547
Meetings:
National Voluntary Service Advisory Council, 5651, 36908
Senior Executive Service:
Bonus awards schedule, 45644
Performance Review Board; membership, 45644
VISTA program guidelines, 30982
Proposed, 15944

ACTUARIES, JOINT BOARD FOR ENROLLMENT

NOTICES
Meetings:
Actuarial Examinations Advisory Committee, 7842, 15002, 23087, 32326, 49884

ADDITIVES

See Environmental Protection Agency.
Food and Drug Administration.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

See Federal Register, Administrative Committee.

ADMINISTRATIVE CONFERENCE OF UNITED STATES

RULES
Recommendations:
Administrative practice and procedure, 28363
Immigration proceedings, administrative review, 52893
Negotiated rulemaking procedures, 52893
Statements:
Hearing procedures for resolution of scientific issues, 52893

PROPOSED RULES
Recommendations:
Environmental laws enforcement; public and private coordination, 13608
Immigration proceedings; administrative and judicial review, 42712

NOTICES
Equal Access to Justice Act; agency implementation; proposed revisions; inquiry, 46250
Federal Administrative Procedure Sourcebook; publication, 28601
Meetings:
Adjudication Committee, 13056, 49085
Administration Committee, 4548, 23045, 46325
Governmental Processes Committee, 3579, 8350, 15200, 40986
Governmental Tort Claims Committee, 15200, 19220, 23045, 46325
Judicial Review Committee, 23045, 40574, 45136
Plenary Session, 23169, 23819
Regulation Committee, 15768, 23045
Rulemaking Committee, 10090, 15768, 41920
Uniform Rules of Agency Procedures Select Committee, 8350
Regulatory analysis of agency rules; draft recommendation; inquiry, 14273

ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

NOTICES
Meetings:
Board of Certification, U.S. Courts of Appeals, Circuit Executive, 41181
Spanish/English certification examination for court interpreters, 11524

ADVERTISING

See Alcohol, Tobacco and Firearms Bureau.
Federal Trade Commission.
Food and Drug Administration.

ADVISORY COMMITTEE ON FEDERAL PAY

See Federal Pay, Advisory Committee.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

See Historic Preservation, Advisory Council.

AFRICAN DEVELOPMENT FOUNDATION

RULES
Conflict of interests, 28934
Freedom of Information Act; implementation, 28932
Official seal; adoption, 18634
Organization and functions, 18860

PROPOSED RULES
Conflict of interests, 18878
Freedom of Information Act; implementation, 18678

NOTICES
Meetings:
Advisory Council, 8754, 15465, 43749
Meetings; Sunshine Act, 4936, 15035, 21688, 41782

AGED

See ACTION.
Health and Human Services Department.
Health Care Financing Administration.
Human Development Services Office.
National Institutes of Health.
Social Security Administration.

AGENCY FOR INTERNATIONAL DEVELOPMENT

RULES
Acquisition regulations, 16085, 23711, 25712, 38657, 40528, 50301, 51395, 52780
Competition in contracting, etc. --
Interim, 16086
Interim rule affirmed, 33052
Correction, 53325
Interim, 40976
Debarment, suspension, and ineligibility, 39994
Federal claims collection, 38521
Freedom of Information Act; implementation, 16700
Nondiscrimination:
Age discrimination in federally-assisted programs; correction, 8108
Personnel regulations; employment in Foreign Service; CFR Part removed, 8108

PROPOSED RULES
Acquisition regulations, 32240, 41367
Debarment, suspension, and ineligibility, 15584
Federal claims collection, 25720
Regulatory agenda, 17898, 44748

NOTICES
Agency information collection activities under OMB review, 6262, 23845, 26275, 43801
Authority delegations:
Assistant to Administrator for Management, 13677, 23842, 23843, 23844

AID

Associate Assistant to Administrator for Management, 23843, 23844
Commodity Management Office, Director, 23844
Contract Management Office, Director, 23843, 23844
Egypt; Mission Director, 8404, 10115
Government Property Resources Division, Chief, 23845
Italy, Lebanon, and Portugal; Representatives, 30888
Jordan, Morocco, Tunisia, and Yemen; Mission Directors, 30886
Latin America and Caribbean Regions, 7405, 14167, 18324, 46706
Mission Directors et al., 23843, 51754
Near East; Assistant Administrator, 8404, 11018
Oman; Representative, 30887
Procurement Executive, 23842
Committees; establishment, renewals, terminations, etc.:
Research Advisory Committee, 2737
Voluntary Foreign Aid Advisory Committee, 2737
Foreign assistance determinations:
Costa Rica, 48271
Housing guaranty programs:
Argentina, 36925
Chile, 36925
Costa Rica, 5824, 36925
Dominican Republic, 36925
Ecuador, 36925
India, 36926
Ivory Coast, 36925
Jamaica, 36925
Mauritius, 34206
Panama, 1284
Peru, 36925
Sri Lanka, 48141
Meetings:
International Food and Agricultural Development Board, 4921, 6262, 10547, 14033, 20301, 25338, 29282, 31927, 41963, 48845
Research Advisory Committee, 14776, 31784, 48142
Voluntary Foreign Aid Advisory Committee, 8799, 21369, 33649, 48142
Procurement:
Commercial or industrial activities, performance; review schedule (OMB A-76 implementation), 14167

AGRICULTURAL COMMODITIES AND PROGRAMS

See Agricultural Marketing Service.
Agricultural Stabilization and Conservation Service.
Agricultural Trade and Export Policy National Commission.
Agriculture Department.
Animal and Plant Health Inspection Service.
Commodity Credit Corporation.
Farm Credit Administration.
Federal Crop Insurance Corporation.
Federal Grain Inspection Service.
Food and Drug Administration.
Food Safety and Inspection Service.

AGRICULTURAL MARKETING SERVICE

See also Packers and Stockyards Administration.
RULES
Almonds grown in California, 12219, 16451, 19161, 24174, 24175, 30263, 35767, 47707
Avocados, imported, 21031, 21033, 28556
Avocados grown in Florida, 21031, 21033, 28556, 32553
Carrots and beets, canned; grade standards, 26140
Celery grown in Florida, 34675
Cherries grown in Michigan et al., 24899, 27213, 32843
Cotton:
American Pima cotton; grade standards, 25197
Classification under cotton futures legislation, 10929, 47706
Research and promotion, 10929
Supplemental assessment, 30131
Cranberries grown in Massachusetts et al., 23107
Cucumbers, greenhouse; grade standards, 36041
Correction, 37163
Dairy products; grading, inspection, and standards:
Dry buttermilk, 3
Milk and cream, etc., 34670
Dairy promotion program:
Referenda procedures, etc., 9982
Research and promotion order; continuation, 37642
Egg and egg products inspection and grading:
Fees and charges, increase; interim, 3735
Interim rule affirmed, 10749
Reporting and recordkeeping requirements, 23269
Filberts/hazelnuts grown in Oregon and Washington, 2539, 2955, 48371
Grapes, imported, 18849, 32161
Grapes grown in California, 18849, 24761, 32161
Grapes (Tokay), imported, 32554
Grapes (Tokay) grown in California, 32554
Honey, extracted; grade standards, 15861
Hops of domestic production, 27814
CFR Part removed, 26977
Kiwifruit; grade standards; interim, 40185
Correction, 40961
Kiwifruit grown in California, 4854, 36567, 41660
Lemons grown in California and Arizona, 428, 1206, 1829, 2661, 3498, 4634, 5365, 6890, 7291, 8317, 9610, 10500, 11497, 12516, 13545, 14369, 15537, 16451, 18979, 19667, 20739, 21581, 23261, 24170, 24899, 25695, 26690, 27813, 28372, 28555, 29628
Limes grown in Florida, 15097, 18849, 20888, 23664
Marketing orders; expenses and rates of assessment, 5, 231, 28373, 31341, 37343, 41659, 49831
Meats, prepared meats, and meat products; grading, certification, and standards:
Fee increase, 27571
Interim, 11814
Product control authority, 14365
Melons grown in Texas, 10206, 26979
Milk marketing orders:
Central Illinois, 31705, 33022
Eastern Colorado, 37640
Eastern Ohio-Western Pennsylvania, 36865
Eastern South Dakota, 34078
Great Basin, 5061, 29637
Iowa, 37505, 41660
Middle Atlantic, 16452, 45595, 49674
Nebraska-Western Iowa, 35079
New Orleans-Mississippi, 11991
New York-New Jersey, 45595, 49674
Oregon-Washington, 21581, 32690
Southern Illinois, 12218, 18459, 33022, 46627, 52435
Southern Michigan, 24611, 27412
Southwest Plains, 18460, 24176, 37638, 37639
Southwestern Idaho-Eastern Oregon, 36043
St. Louis-Ozarks, 8318
Texas, 12765
Nectarines, peaches, and plums grown in California, 12217
Nectarines grown in California, 27813, 39073
Olives grown in California, 2539, 33021
Onions, Bermuda-granex-grano; grade standards, 7031
Onions grown in Idaho and Oregon, 50157
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 3497, 7573, 13761, 23894, 45087
Oranges, imported, 45088
Oranges and grapefruit grown in Texas, 45088
Oranges (navel) grown in Arizona and California, 5, 1039, 1429, 2274, 2661, 3314, 3737, 3879, 4853, 4957, 5733, 19519, 34076, 48174, 49343, 50759, 51667, 52213, 53259
Oranges (Valencia) grown in Arizona and California, 1429, 5733, 12515, 13309, 18815, 19519, 20085, 20887, 21795, 23393, 24760, 25413, 25906, 27411, 27928, 28898, 30262, 30801, 31705, 32690, 33714, 34674, 35767, 37171, 37505, 37638, 37833, 38777, 50759
Papayas grown in Hawaii, 1438, 1439, 31585
Peaches (clingstone), canned; grade standards, 26965
Peaches grown in Georgia, 19321
Peaches grown in Washington, 27411, 34675
Pears, plums, and peaches grown in California, 27813, 39073, 40961
Pears (Beurre D'Anjou, etc.) grown in Oregon, Washington, and California; interim rule affirmed, 7908
Perishable Agricultural Commodities Act:
Statutory trust; correction, 428
Potato research and promotion plan:
Potato Board Administrative Committee membership, 25198
Poultry and rabbit products grading:
Fees and charges, increase; interim, 3735
Interim rule affirmed, 10749
Reporting and recordkeeping requirements, 23269
Raisins, imported, 45807
Raisins produced from grapes grown in California, 1830, 3879, 14209, 16693, 18631, 23895, 33911, 35769, 40475, 40476, 50158
Spearmint oil produced in Far West, 41479
Sweetpotatoes, canned; grade standards, 10199
Tobacco inspection:
Farmville, VA; auction market approval; referendum results, 41127
Fees and charges for permissive inspection, 45805

UMI

Flue-Cured Tobacco Advisory Committee; additional representative and alternate; interim, 45806
Valdosta-Hahira, GA, auction market approval; referendum results, 15537
Tomato juice; grade standards, 29635
Tomatoes grown in Florida, 3738
Warehouse regulations:
Federal licensed warehouses; transfer of regulations to Agricultural Stabilization and Conservation Service, 1813

PROPOSED RULES
Almonds grown in California, 11510, 21853, 25994, 32083, 39706, 40562
Avocados, imported, 15430
Avocados grown in Florida, 15430, 37669
Carrots and beets, canned; grade standards, 15568
Correction, 19183
Celery grown in Florida, 28210
Cotton:
American Pima cotton; grade standards, 16264
Classification under cotton futures legislation, 37378
Research and promotion --
Regulatory review, 2575
Supplemental assessment, 25425
Cranberries grown in Massachusetts et al., 12812
Cucumbers, greenhouse; grade standards, 27004
Dairy products; grading, inspection, and standards:
Milk and cream, etc., 7923
Dairy promotion program:
Referendum order, 14390
Egg marketing order, 51344
Correction, 52332
Filberts/hazelnuts grown in Oregon and Washington, 5995, 40200, 42537
Grapes, imported, 13609
Grapes grown in California, 13609
Grapes (Tokay), imported, 30489
Grapes (Tokay) grown in California, 30489
Honey research, promotion, and consumer information order, 26942
Correction, 28404
Kiwifruit; grade standards, 37379
Withdrawn, 40200
Kiwifruit grown in California, 835, 27288, 31635, 35828
Lemons grown in California and Arizona, 28105, 31850, 35238
Lettuce grown in Texas, 50171
Limes grown in Florida, 9452, 19535, 37669
Livestock; grading, certification, and standards:
Carcass beef--
Extension of time, 2055, 10236
Withdrawn, 38006
Slaughter cattle--
Extension of time, 2055, 10236
Withdrawn, 38006
Meats, prepared meats, and meat products; grading, certification, and standards:
Carcass beef--
Extension of time, 2055, 10236
Withdrawn, 38006
Certificate forms, changes, 37663
Fees; criteria for service charges, 11816
Slaughter cattle--
Extension of time, 2055, 10236
Withdrawn, 38006
Melons grown in Texas, 3797
Milk marketing orders:
Alabama-West Florida, 9038, 12817, 23021, 33761, 39133
Central Arkansas, 9038, 12817
Central Illinois, 26576, 30203
Chicago Regional, 280, 10236
Eastern Colorado, 33976, 50622
Eastern Ohio-Western Pennsylvania, 30204
Eastern South Dakota, 31605
Fort Smith, AR, 9038, 12817, 39017
Georgia, 9038, 12817, 23021, 33761, 39133, 46441
Great Basin, 815, 25249, 50159, 50794
Greater Louisiana, 23021, 33761, 39133
Hawaii, 32426, 39711, 40982, 50622
Iowa, 32084, 38007
Louisville-Lexington-Evansville, 9038, 12817, 23021, 33761, 39133
Memphis, TN, 9038, 12817, 23021, 33761, 39133
Middle Atlantic, 4694, 9637, 12813, 14110, 32716
Nashville, TN, 9038, 12817, 23021, 33761, 39133
Nebraska-Western Iowa, 32227
New Orleans-Mississippi, 2678, 9654, 23021, 33761, 39133
New York-New Jersey, 9637, 11374, 14110, 32716
Ohio Valley, 43719
Oregon-Washington, 1540, 18495, 27972, 48776
Paducah, KY, 23021, 33761, 39133
Southeastern Florida, 23021, 33761, 39133
Southern Illinois, 13976, 15432, 30203, 34491, 42549, 49395
Southern Michigan, 18677, 24779
Southwest Plains, 13977, 21268, 33974, 33975, 39017
Southwestern Idaho-Eastern Oregon, 32085, 35829
Tampa Bay, 23021, 33761, 39133
Tennessee Valley, 9038, 12817, 23021, 33761, 39133
Texas, 9661, 11880
Upper Florida, 23021, 33761, 39133
Milk marketing orders; all areas; amendments, 11171
Extension of time, 13976
Withdrawn, 27003
Nectarines grown in California, 3531, 30855
Onions grown in Idaho and Oregon, 40981
Oranges (navel) grown in Arizona and California, 7605, 29405, 31723, 39132
Oranges (Valencia) grown in Arizona and California, 29405, 31723
Papayas grown in Hawaii, 23312, 46773
Peaches (clingstone), canned; grade standards, 15160
Correction, 18865
Pears, plums, and peaches grown in California, 3531, 30855, 35828
Pears (Beurre D'Anjou, etc.) grown in Oregon, Washington, and California, 24531
Potato research and promotion plan:
Potato Board Administrative Committee membership, 19026
Potatoes, Irish; import regulations, 50621
Potatoes, peeled; grade standards, 36094
Potatoes grown in Idaho and Oregon, 47226
Poultry and rabbit products grading:
Poultry, voluntary standards and grades, 43204
Correction, 45829, 48220
Extension of time, 50310
Raisins, imported, 28585, 35564
Raisins produced from grapes grown in California, 9037, 30200, 36436, 38772, 45627
Spearmint oil produced in Far West, 33973
Tobacco inspection:
Farmville, VA; auction market approval; referendum, 27288
Fees and charges for permissive inspection, 32712
Valdosta-Hahira, GA; auction market approval; referendum, 10501
Tomato juice; grade standards, 10970
Correction, 13042
Tomatoes, fresh; grade standards, 30199
Correction, 30429
Extension of time, 38662
Withdrawn, 47551
Tomatoes grown in Florida, 51872
Vegetables grown in Texas, 5593, 33748, 48422

NOTICES
Committees; establishment, renewals, terminations, etc.:
Instrument Standards for Cotton Advisory Committee, 1252
Meetings:
Flue-Cured Tobacco Advisory Committee, 14957, 23169, 37559
Hop Marketing Advisory Board, 2072
Instrument Standards for Cotton Advisory Committee, 32457
Plant Variety Protection Advisory Board, 34729
Tobacco Inspection Services National Advisory Committee, 5803, 13258, 20249
Memorandum of understanding:
Drug, pesticide, and environmental contaminent residues in foods, 2304
Milk manufacturing requirements for State adoption, 7936, 34726
Peanuts:
Expenses and rate of assessment, 23321
Quality regulations and indemnification, 28430
Tobacco inspection and price supports:
Payne, Richard C., et al.; hearing on application, 11219
Wheat and wheat foods; research and nutrition education:
1985 FY revised budget, 2768
1986 FY budget, 18619

AGRICULTURAL RESEARCH SERVICE

RULES
User fees; microbial patent cultures, 5365

NOTICES
Meetings:
National Arboretum Advisory Council, 34522

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

RULES
Conservation and environmental programs:
Materials and services available to eligible producers; procedures removed, 4634

Dairy indemnity payment program, 34449
Freedom of Information Act; implementation; address change, etc., 53259
Marketing quotas and acreage allotments:
Feed grain, rice, cotton, and wheat--
Interim, 25691, 33911
Interim rule affirmed, 11145, 43377
Peanuts, 31585
Tobacco, 4493
Special programs:
Water bank program, 7742
Warehouse regulations:
Federally licensed grain warehouses; inspection fees, 34075
Correction, 35535
Federally licensed warehouses; transfer of regulations from Agricultural Marketing Service, 1813

PROPOSED RULES
Conservation and environmental programs:
Maximum payment limitation purposes, eligibility; procedures, 40980
Marketing quotas and acreage allotments:
Feed grain, rice, cotton, and wheat, 26215
Warehouse regulations:
Cotton warehouses; inspection fees, 39129
Federally licensed grain warehouses; inspection fees, 26776

NOTICES
Feed grain donations:
Blackfeet Indian Reservation, MT, 23265, 40042
Cheyenne River Sioux Indian Reservation, SD, 41541
Crow Indian Reservation, MT, 47570
Fort Belknap Indian Reservation, MT, 23265, 46325
Fort Berthold Indian Reservation, ND, 23265, 49737
Fort Peck Indian Reservation, MT, 23265, 41371
Lower Brule Sioux Indian Reservation, SD, 46147
Northern Cheyenne Indian Reservation, MT, 45137
Pine Ridge Indian Reservation, SD, 38561
Rocky Boys Indian Reservation, MT, 23265, 46325
Rosebud Sioux Indian Reservation, SD, 46326
Standing Rock Sioux Indian Reservation, ND and SD, 46326
Loan and purchase programs:
Soybeans, 33987
Marketing quotas and acreage allotments:
Cotton, upland, 41541
Tobacco, 4548, 19765, 21478, 24258, 27329, 42067, 47414, 47415, 48814, 51438
Wheat, 15466, 23744, 33807
Meetings:
National Conservation Review Group, 36123
Procurement:
Commercial activities, performance; cost comparison studies schedule (OMB A-76 implementation), 30819
Commercial or industrial activities, performance; review schedule (OMB A-76 implementation), 7203
Warehouses, licensed; list availability, 10823

AGRICULTURAL TRADE AND EXPORT POLICY NATIONAL COMMISSION

NOTICES
Meetings, 1009, 5409, 7973, 10327, 15006, 20577, 24922, 29284, 33652, 38596, 43819, 51438

AGRICULTURE DEPARTMENT

See also Agricultural Marketing Service.
Agricultural Research Service.
Agricultural Stabilization and Conservation Service.
Animal and Plant Health Inspection Service.
Commodity Credit Corporation.
Cooperative State Research Service.
Farmers Home Administration.
Federal Crop Insurance Corporation.
Federal Grain Inspection Service.
Food and Nutrition Service.
Food Safety and Inspection Service.
Foreign Agricultural Service.
Forest Service.
Human Nutrition Information Service.
Packers and Stockyards Administration.
Rural Electrification Administration.
Soil Conservation Service.
Statistical Reporting Service.

RULES
Acquisition regulations; interim rule affirmed, 14196
Agricultural commodities; financing of sales and export; ocean freight charges on foreign vessels; interim, 2949
Federal assistance regulations, uniform:
Audit requirements for State and local governments; interim, 28759
Federal claims collection; interim, 7721
4-H Club name and emblem; use and clarification, etc., 31582
Import quotas and fees:
Dairy products import licenses; fee assessment, 30261
Sugar to be re-exported in refined form, 36037
Sugar--
Allocations, 49919
Market stabilization price calculation; interim, 36040
Transfer of regulations to Foreign Agricultural Service, 47703, 47704
Intergovernmental review of agency programs and activities, 1040, 14088, 16056, 24612, 47034, 48741
Law enforcement authorities, 13759
Nondiscrimination in federally-assisted programs and activities, 25687
Organization, functions, and authority delegations:
Administrator, Transportation Office, 45087
Assistant Secretary for Marketing and Inspection Services et al., 29367
Forest Service Chief; coastal zone management assistance, 7906
Transportation Office, 30411

PROPOSED RULES
Federal claims collection, 38821
Grants and cooperative agreements to further research, extension, and teaching programs; competitive award process, 15433
Import quotas and fees:
Dairy products import licenses; fee assessment, 20220
Regulatory agenda, 17076, 43956
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712

NOTICES
Agency information collection activities under OMB review, 1096, 2303, 3579, 4250, 5111, 6023, 7936, 9098, 10090, 11219, 12060, 13257, 14125, 16117, 18541, 20249, 21104, 23045, 23744, 24661, 25284, 26391, 27471, 28111, 28962, 30215, 30985, 31900, 32748, 33806, 34882, 36123, 37016, 37887, 38870, 40209, 41181, 42067, 42972, 45136, 46147, 47085, 47786, 48814, 49737, 50648, 52974
Biotechnology regulation, coordinated framework; inquiry:
Correction, 4003
Extension of time, 13301
Committees; establishment, renewals, terminations, etc.:
Agricultural Export Enhancement Advisory Group, 29710
Agriculture Structure Planning Advisory Committee, 33087
Equal Opportunity Citizens' Advisory Committee, 24003
Joint Nutrition Monitoring Evaluation Committee, 53170
National Arboretum Advisory Council, 53170
Trade Agricultural Advisory Committees, 7622
Cooperative agreements:
Agricultural development projects of developing countries; request for proposals from U.S. universities, 50187
American Beekeeping Federation, 49433
California State University Foundation, 51271
University of California, 47786
University of Maryland, 47786
Virginia State University et al., 51724
Emergency declarations:
Gypsy moth, 16725
Mediterranean fruit fly, 16117
Rangeland grasshopper and Mormon cricket, 27836
Grants; availability, etc.:
Competitive research grants program, 2522, 16524, 37478
Small business innovation research program, 32605
Special research grants program, 982
Import quotas and fees:
Meat import limitations; quarterly estimates, 12593, 27033, 40042
Sugar--
Market stabilization determination, 40042

Quarterly adjustment, 6222
Quarterly determinations, 299, 13257
Quota increase, 9303
Quota system review, 35588
Quota year modification, 2303, 37887, 42198
Intergovernmental review of agency programs and activities, 33087
Meetings:
Agribusiness Promotion Council, 35107
Agricultural Research and Extension Users National Advisory Board, 15200, 28601
Agriculture Structure Planning Advisory Committee, 33087, 35274
Equal Opportunity Citizens' Advisory Committee, 25435, 26598
Human Nutrition Board of Scientific Counselors, 4715, 48448
Meat and Poultry Inspection National Advisory Committee, 33806
National Plant Genetic Resources Board, 14275, 34522
Science and Education Research Grants Program Policy Advisory Committee, 14275, 34726
Science and Education Research Grants Program Technical Advisory Committee, 6368, 6369, 14956, 14957, 21104, 21477, 21478, 23321, 26019, 26813, 29710
Privacy Act:
Computer matching programs, 34522, 51723
Systems of records, 869, 25284, 25727, 34522, 50814
Program payments; income tax exclusion; primary purpose determination:
California forest improvement program, 15465
Minnesota Soil and Water Conservation Board cost-share program, 37017
Mississippi forest resource development program, 15465
South Carolina forest renewal program, 45924
Wellton-Mohawk Irrigation and Drainage District irrigation improvement program, AZ, 27835
Senior Executive Service:
Performance Review Board; membership, 10292, 24922, 28601, 42198, 43427

AIR FORCE DEPARTMENT

RULES
Claims and litigation:
Licensing government-owned inventions, 20563
Military personnel:
Medical, dental, and veterinary care from civilian sources; CFR Part removed, 49688
Military justice; CFR Part removed, 47048
Personnel review boards:
Military records correction; application procedures, 36426
Privacy Act; implementation, 40197
Public relations:
Rewards for recovery of lost Air Force property; CFR Part removed, 49688
PROPOSED RULES
Acquisition regulations, 49708
Privacy Act; implementation, 30283
NOTICES
Active military service and discharge determinations:
Airlift International in Vietnam Conflict, Slick Airways Division, 51449
Coast and Geodetic Survey vessel personnel, World War II, 7365
Merchant Seaman, World War II, et al., 46332
Occupational therapists, World War II, 4254
Stevedore Superintendents, Army Transportation Corps, 31411
Agency information collection activities under OMB review, 3851, 3952, 8653, 10530, 14004, 15774, 16732, 23351, 24285, 25293, 32760, 34172, 43606, 45648
Aircraft (F-16); foreign currency agreement requirement; inquiry, 13847
Aircraft wheels and brakes acquisition; joint logistics/systems command study; inquiry, 11234
Environmental statements; availability, etc.:
Groom Mountain Range, NV, 6030
Ground wave emergency network, 36464, 45144
Lake Louise, AK, 49595
Military housing project, San Pedro, CA, 47246
Moody Air Force Base, GA, 4569
North Alkali Lake, OR, 18284
Over-the-horizon backscatter Alaskan radar system, 49440
Vandenberg Air Force Base, CA, 41724
Westover Air Force Base, MA, 12360, 34890
Winnersville Weapons Range, GA, 29470
Meetings:
Academy Board of Visitors, 7365, 39160
Air Force Reserve Officer Training Corps Advisory Committee, 19067
Air University Board of Visitors, 4996, 4997
Community College Advisory Committee, 14003
Community College Board of Visitors, 37022
Electronic Security Command Advisory Group, 5292
Historical Program Advisory Committee, 41933
Scientific Advisory Board, 1263, 1616, 3828, 3953, 5292, 6376, 7098, 7365, 9115, 9308, 9485, 10298, 11009, 11010, 12360, 13410, 13646, 14278, 15475, 15954, 16532, 18284, 20121, 21486, 23352, 23494, 23495, 27042, 27650, 28244, 31759, 32254, 32883, 33395, 33817, 35114, 38024, 38157, 38572, 39161, 40212, 41382, 42753, 45144, 45849, 46332, 46691, 47098, 47583, 48624, 50192, 50827, 53184
Privacy Act; systems of records, 326, 24672, 25737, 46477, 50337
Procurement:
Contracts--
Activities for possible conversion evaluated, 5808, 26402, 46332
Long lead definitization and limitation of government liability; inquiry, 46476
Senior Executive Service:
Performance Review Boards; membership, 32883

AIRCRAFT, AIR CARRIERS, AIRPORTS

See Air Force Department.
Civil Aeronautics Board.
Federal Aviation Administration.
National Transportation Safety Board.
Transportation Department.

ALASKA NATURAL GAS TRANSPORTATION SYSTEM, OFFICE OF FEDERAL INSPECTOR

NOTICES
Alaska segment:
Pipeline design criteria manual, 15804
Stipulation 1.6.1 plan approval, 15804

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

NOTICES
Alcohol abuse and alcoholism; national plan development; inquiry, 15490
Committees; establishment, renewals, terminations, etc.:
Alcohol, Drug Abuse, and Mental Health Advisory Board, 30295
Rape Prevention and Control Advisory Committee, 38035
Grants and cooperative agreements:
Acquired Immunodeficiency Syndrome (AIDS); alcohol, drug abuse, and mental health aspects, 52561
Alcohol-related performance effects and traumatic injury, 38716
Alcoholism treatment; matching clients to treatments, 38716
Alzheimer's disease; research on family stress and care of victims, 23829, 24946
American Indian mental health research and development center, 2088
Children of alcoholics research, 38716
Mental health problems in disaster victims assessment, 23517
Mental health service systems, studying methods research, 24325
Mutual support approaches with bereaved populations, prevention research, 23829
New investigator research awards for alcohol research, 38716
Research scientist development and award programs, 37287
Meetings; advisory committees:
February, 4594, 7230
March, 7230
April, 13660
May, 15980
June, 20131, 23830
September, 34755, 36677
October, 39041, 40450, 40895
November, 43005
December, 47844
January, 53398

Peer review appeals system; establishment, 28260

ALCOHOL, TOBACCO AND FIREARMS BUREAU

RULES

Alcohol, tobacco, and other excise taxes:
  Excise tax return, Form 5000.24; implementation, 51386
Alcohol; viticultural area designations:
  Central Coast, CA, 43128
  Cumberland Valley, MD and PA, 29967
  Long Island, NY, 20409
  Madera, CA, 2782
  Martha's Vineyard, MA, 255
  Mesilla Valley, NM and TX, 6161
  Mimbres Valley, NM, 48078
  North Yuba, CA, 30818
  Northern Sonoma, CA, 20560, 21440
  Sonoma Mountain, CA, 2978
  South Coast, CA, 48083
Alcoholic beverages:
  Distilled Spirits Tax Revision Act of 1979, etc.; implementation, 8456
    Correction, 23410, 23949
  Distilled spirits--
    Containers, stamp requirement repeal, 23949
    Tax rate increase and floor stocks tax, 34116, 39099
  Excise taxes; products manufactured in Puerto Rico and Virgin Islands; definition, 15886
  Still manufacturers; occupational and commodity taxes, 23680
    Correction, 28572, 30821
  Wine, distilled spirits, and malt beverages; saccharin disclosure in labeling, 51851
  Wine bottlers, 758, 27819
  Wine labeling and advertising--
    Appellations of origin, etc., 759
    Geographic brand names, 51849
Cigars, cigarettes, etc.:
  Excise taxes; products manufactured in Puerto Rico and Virgin Islands; definition, 15886
Denatured alcohol and rum and tax-free alcohol; distribution and use, 9152, 20098
Editorial amendments, nomenclature changes, compliance dates, etc., 12532
Explosives, commerce:
  License and permit procedures, 10496
Firearms and ammunition, commerce:
  Firearms acquisition and disposition record format; CFR correction, 11692
  Importation of articles on U.S. munitions import list, etc., 42157
    Correction, 46647
  Importation of firearms classified as curios or relics and penalty, seizure, and forfeiture provisions, 14380
  License and permit procedures, 10496
  Reporting and recordkeeping requirements, 26702
    Correction, 35081
  State laws and published ordinances; incorporation by reference, 40523
National Firearms Act firearms; identifying forms and certification procedures revised, 41680

PROPOSED RULES

Alcohol; viticultural area designations:
  Cumberland Valley, MD and PA, 8142
  Lodi, CA, 28409
  Mimbres Valley, NM, 5775
  North Yuba, CA, 12038
  Northern Neck, VA, 37692
  Ozark Mountain, AR, MO, and OK, 37696
  South Coast, CA, 15588
  Temecula, CA, 41364
Alcoholic beverages:
  Beer labeling requirements; principal place of business, 41701
  Distilled spirit plants--
    Reporting taxes due to governments of Puerto Rico and Virgin Islands on bulk distilled spirits, 6200
    Spirits or distilled spirits; definition, 51408
  Distilled spirits; reduced proof; labeling and advertising; extension of time, 4236
  Excise taxes on rum imported to U.S.; formula for distribution to Puerto Rico and Virgin Islands, 6203
  Labeling and advertising; definition of natural withdrawn, 960
  Wine, distilled spirits, and malt beverages; sulfiting agents disclosure in labeling, 26001
    Extension of time, 34166
  Wine, juice, and distilling materials; materials and processes for production and treatment; extension of time, 2832
  Wine labeling and advertising; State law application for viticultural area appellation, 19384
Regulatory agenda, 17623, 44493

NOTICES

Alcoholic beverages:
  Display and retailer advertising specialties; dollar limitations, 12106
Commerce in explosives:
  Explosive materials list, 50378
Firearms; granting of relief, 1026, 23374
Organization, functions, and authority delegations:
  Firearms and Explosives Division, Chief, et al., 2880
Senior Executive Service:
  Performance Review Board; membership, 18957

ALIENS

See Employment and Training Administration.
Immigration and Naturalization Service.
Internal Revenue Service.
State Department.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

RULES

Animal welfare standards; marine mammals; CFR correction, 16457
Exportation and importation of animals and animal products:
  African swine fever--
    Disease status change for Belgium, 10752, 28900
    Import restriction exemptions, 52760
  Bird quarantine facilities; approval, denied, or withdrawn, 7036
  Carcasses of birds and poultry, etc., imported from Great Britain--
    Interim, 7327
    Interim rule affirmed, 28560
  Cattle from Canada, 30413
  Cheese importation; interim, 20389
    Correction, 24187
  Embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses, 43560
  Harry S Truman Animal Import Center; quarantine space for cattle; application deadline, etc., 1207
    Correction, 5969
  Honolulu, HI; designated port--
    Interim, 27929
    Interim; correction, 29205
    Interim rule affirmed, 40328
  Horses from countries affected with CEM--
    Accompanying certificates; interim, 40801
    Approved States; interim, 49028, 49344
    Australia; restrictions removed, 14919
    Treatment and specimen collection supervision, 23790
    West Germany, United Kingdom, Ireland, and France; testing requirements, 40477
  Reservation of space for animal and bird quarantine, 28557
  Semen of ruminants or swine from countries with rinderpest or foot-in-mouth disease; interim rule affirmed, 16458
    Correction, 19323
  Sheep and goats from Canada, 27928
  St. Petersburg-Clearwater, FL; designated limited port--
    Interim, 1040
    Interim rule affirmed, 13309
  Swine, pork, and pork products imported from--
    Great Britain, 7328, 24612
    Norway, 16694
Honeybees and honeybee semen; importation, 25688
Interstate transportation of animals and animal products (quarantine):
  Brucellosis, 5547, 11499
    State and area classifications; interim, 9991, 10493, 13546, 15410, 23393, 23937, 23938, 40799, 45808
    State and area classifications; interim rule affirmed, 19163, 28899, 39076, 39650
  Cattle and swine, individual identification devices, 45985
  Equine infectious anemia; official testing laboratories; procedures for denying and withdrawing approval, 30412
  Lethal avian influenza--
    CFR Part removed, 21419, 38969
    Interim, 5225
  Pesticide approval--
    Ciodrin, 429
    Coumaphos (Co-Ral), 430
  Pseudorabies, 42145, 47346
  Texas (splenetic) fever in cattle--
    Interim, 21795
    Interim rule affirmed, 38505
  Tuberculosis; State and area designations, 49922, 51835
Livestock and poultry disease control:
  Bovine tuberculosis indemnity; interim, 40962
  Brucellosis, 47035

Interim, 19162
Interim rule affirmed, 11992, 33513
Organization, functions, and authority delegations:
Central Regional Office, Veterinary Services, 53258
Information Systems and Communications Division, 47205
Legislative and Public Affairs Staff, 32159
Plant Protection and Quarantine, Deputy Administrator, 2660
Western Regional Office, Veterinary Services, 31341
Overtime services relating to imports and exports:
Commuted traveltime allowances, 2955, 40186, 47529
Work at laboratories, border ports, ocean ports, and airports, 721, 722
Correction, 4625
Phytosanitary export certificates; list of area offices, etc.; interim rule affirmed, 14691
Plant-related quarantine, domestic:
Africanized honey bee; interim, 33507
Citrus canker, Florida, 51228
Interim, 9261
Interim rule affirmed, 23893
Interim rule certification, 9785
Citrus canker; interim, 25903
Ethylene dibromide (EDB); approval removed, 9786
European larch canker--
Interim, 7032
Interim rule affirmed, 13178, 20887
Fire ant, imported--
Interim, 34447
Interim rule affirmed, 48551
Golden nematode--
Interim, 13178
Interim rule affirmed, 25905
Gypsy moth; interim, 12215, 13537
Hawaiian fruits and vegetables; papayas; interim rule affirmed, 8317
Honey bee tracheal mite, 4851, 15532
Mediterranean fruit fly--
Interim, 19313, 34673
Interim rule affirmed, 12763, 48551
Mexican fruit fly; interim rule affirmed, 14087
Oriental fruit fly--
Interim, 13965, 43117, 48161
Interim rule affirmed, 28366
Pink bollworm--
Interim, 12215
Interim rule affirmed, 25687
Witchweed--
Interim, 16209
Interim rule affirmed, 33513
Plant-related quarantine, foreign:
Ethylene dibromide (EDB); approval removed, 9786
Correction, 10750
Interim, 37637
Exotic bee diseases and parasites, 24171
Grapefruits, oranges, and tangerines from Mexico; interim rule affirmed, 14691
Khapra beetle, 8704
Interim rule affirmed, 8703
Unshu oranges from Japan; interim, 35533
Poultry improvement:
Disease control, 19897
Swine health protection:
Enforcement; State status; removal of Arkansas and Louisiana--
Interim, 18632
Interim rule affirmed, 30414
Viruses, serums, toxins, etc.:
Bacterial and virus vaccines; standard requirements revision, 23791
Biological products, production requirements, etc.; expiration date and reprocessing, 24901
Feline calicivirus vaccine, etc.; standard requirements, 431
Effective date corrected, 5063
Live virus vaccines; standard requirements, 1041
Packaging and labeling requirements, 46416
Rabies vaccines; packaging, labeling, and standard requirements, 20085
Standard requirements; revision, 21798
Tetanus toxoid and antitoxin; standard requirement revision, 24904
Unlicensed products in licensed establishments, 50761
Vaccines prepared using cells and ingredients of animal origin; testing requirements, 439
Correction, 3316

PROPOSED RULES

Exportation and importation of animals and animal products:
African swine fever; import restriction exemptions, 26782
Correction, 27973
Extension of time, 30857
Birds originating in United States, 18865
Comment period reopened, 25081
Withdrawn, 33705
Cattle from Canada, 11374
Tuberculosis test requirements, 49702
Embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses--
Comment period reopened, 1863
Hearing, 13042
Horses from countries affected with CEM--
Australia; restrictions removed, 5999
Treatment and specimen collection supervision, 7181
West Germany, United Kingdom, Ireland, and France; testing requirements, 21070
Origin health certificates, 26780
Comment period reopened, 32085
Poultry hatching eggs; importation, 45918
Rinderpest and foot-and-mouth disease; disease status change for Chile, 46443
Sheep and goats from Canada, 11376
Swine, pork, and pork products imported from Norway, 7926
Interstate transportation of animals and animal products (quarantine):
Brucellosis, 37201
Comment period reopened, 48602
State and area classifications, 53332
Cattle and swine, individual identification devices, 15166
Equine infectious anemia; official testing laboratories; procedures for denying and withdrawing approval, 23137, 46079
Owner-shipper statement accompanying cattle, 53330
Paratuberculosis, 37673
Comment period reopened, 49937
Pseudorabies, 14931, 33548
Extension of time, 23138
Tuberculosis; State and area designations, 35564, 39711
Livestock and poultry disease control:
Brucellosis, 14246, 46077
Plant-related quarantine, domestic:
Africanized honey bee, 52929
Browntail moth, 43406
Citrus canker, Florida, 26326
Honey bee tracheal mite, 7162
Sharwil avocados from Hawaii, 47551
Comment period reopened and hearings, 52782
Plant-related quarantine, foreign:
Mangoes from Belize, 19158
Comment period reopened, 23815
Poultry improvement:
Disease control, 2684
General Conference Committee of National Poultry Improvement Plan; meeting, 47555
Veterinarian accreditation, suspension, etc.:
Accreditation of veterinarians, 26780
Comment period reopened, 32085
Viruses, serums, toxins, etc.:
Biological products, production requirements, etc.; expiration date and processing, 1230
Packaging and labeling requirements, 7182
Unlicensed products in licensed establishments, 7927

NOTICES

Animal welfare lists:
Horse protection--
Certified designated qualified person (DQP) programs and licensed DQP's, 1096, 3582
Exhibitors, auctioneers, etc.; disqualification, 10090
Brucellosis prevention; approved stockyards list, 41984
Environmental statements; availability, etc.:
Gypsy moth suppression and eradication projects, 12593, 14000, 14126, 15594, 43430
Southwest boll weevil eradication program, 35848
Trifly eradication in Hawaii, 3580, 48448
Exportation and importation of animals and animal products:
Bird quarantine facilities; applications for selection approval, 3580
Hog cholera and other swine diseases prevention; approved stockyards list, 42646
Meetings:
Swine Health Protection Advisory Committee, 5803
Privileged or confidential business information, protection; policy statement, 38561

ANIMALS

See Animal and Plant Health Inspection Service.
Fish and Wildlife Service.
Land Management Bureau.
National Oceanic and Atmospheric Administration.

ANTITRUST

See Antitrust Division.
Federal Trade Commission.

ANTITRUST DIVISION

NOTICES

Competitive impact statements and proposed consent judgments:
- Alcan Aluminum Ltd. et al., 363
- Alexander & Baldwin, Inc., et al., 42786
- Allied Corp., 34019
- American Airlines, Inc., and Robert L. Crandall, 30020, 41232
- Anthony J. Bertucci Construction Co., Inc., et al., 13679
- ASARCO Inc., 34208
- Baxter Travenol Laboratories, Inc., et al., 50857
- Borg-Warner Corp. et al., 13678
- Calmar, Inc., et al., 27068
- Cannon Mills Co., 37594
- Cooper Industries, 11019
- Dempster Brothers, Inc., 20954
- Emhart Industries, Inc., et al., 8405
- First National Supermarkets, Inc., et al., 36162
- International Business Machines Corp. et al., 6263
- J.P. Stevens & Co., Inc., 36500
- John Barth, Inc., et al., 11255, 25635
- Marshall & Ilsley Corp. et al., 37595
- Mead Corp., 41240
- Mortgage Conference of New York et al., 35335
- National Finance Adjusters, Inc., 555
- Newell Companies, Inc., 14175, 27369
- Parker Hannifin Corp., 41239
- R.C. Cobb, Inc., et al., 4921
- Radio Corp. of America, 24056, 24057
- Rocky Mountain Motor Tariff Bureau, Inc., 24058, 36500
- Springs Industries, Inc., 37595
- Standard Oil Co. (New Jersey) et al. (Exxon Corp.), 13685
- Victor Talking Machine Co., 24057
- Volkswagen of America, Inc., et al., 30029
- Waste Management, Inc., et al., 6273
- Yoder Brothers, Inc., 41428

National cooperative research notifications:
- Adirondack Lakes Survey Corp., 5443
- Agrigenetics Corp., 5443
- Applied Information Technologies Corp., 41232
- Battelle Memorial Institute, 49141
- Bell Communications Research, Inc., et al., 4280, 11762, 26849, 26850, 31785, 36162, 50857
- Bethlehem Steel Corp. et al., 4281
- Center for Advanced Television Studies, 4819
- Computer Aided Manufacturing-International, Inc., 3425
- Deet Joint Research Venture, 42786
- Eaton Corp. et al., 4928
- Empire State Electric Energy Research Corp., 5443
- Exxon Production Research Co. et al., 2632
- Geothermal Drilling Organization, 43801
- Intel Corp. et al., 50864
- International Partners in Glass Research, 14175
- Kaiser Aluminum & Chemical Corp. et al., 20014
- Merrell Dow Pharmaceuticals Inc. et al., 7006
- Microelectronics & Computer Technology Corp., 2633, 15989
- Motor Vehicle Manufacturers Association of the United States, 5444, 5445, 5446, 5447, 5448, 5449, 5450
- NAHB Research Foundation, 41428
- Oncogen Ltd. Partnership, 18326
- Plastics Recycling Foundation, Inc., 20954, 41232
- Portland Cement Association, 5015, 14175, 37594, 47292, 52568
- Pump Research and Development Committee, 47292
- Semiconductor Research Corp., 4281, 26850, 52568
- Software Productivity Consortium, 2633, 20954, 42786
- Uninet Research & Development Co., 8406
- United Technologies Corp. et al., 13684
- West Virginia University/Industry Cooperative Research Center, 51488

Vertical restraints guidelines, 6263

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

RULES

Organization and procedure, 1032
Correction, 2284
Privacy Act; implementation, 3904

PROPOSED RULES

Nondiscrimination on basis of handicap in federally-conducted programs and activities, 9686
Regulatory agenda, 17778, 44640

NOTICES

Meetings, 19063, 36459, 46471, 48619
Privacy Act; systems of records, 3942

ARCTIC RESEARCH COMMISSION

NOTICES

Meetings, 11923, 25615, 37257, 46472, 47085

ARMED FORCES

See Air Force Department.
Arms Control and Disarmament Agency.
Army Department.
Civil Aeronautics Board.
Defense Communications Agency.
Defense Contract Audit Agency.
Defense Department.
Defense Intelligence Agency.
Defense Logistics Agency.
Defense Nuclear Agency.
Navy Department.
Selective Service System.

ARMS CONTROL AND DISARMAMENT AGENCY

RULES

Organization and functions, 11995

NOTICES

Committees; establishment, renewals, terminations, etc.:
- General Advisory Committee, 1903

Meetings:
- General Advisory Committee, 137, 5285, 12061, 33808

Senior Executive Service:
- Performance Review Board; membership, 49085

Visiting scholars program, 2842, 42071

ARMY DEPARTMENT

See also Engineers Corps.

RULES

Army Discharge Review Board, 33035
Civilian marksmanship:
- CFR Part removed, 7546
- Interim, 13771
- Interim rule affirmed, 20209

Facilities engineering, natural resources-land, forest and wildlife management; CFR Part removed, 28573
Facilities engineering and pest management program; CFR Part removed, 28573
Family support, child custody, and paternity, 52447
Freedom of Information Act; implementation, 11857, 47730
Privacy Act; implementation, 932, 42163
Real property:
- Real estate handbook, 47731

PROPOSED RULES

Civilian marksmanship, 7547
Military reservations and national cemeteries:
- Arlington National Cemetery; donation of tributes, 50315

NOTICES

Agency information collection activities under OMB review, 3953, 8654, 16733, 19436, 23352, 25748, 34173, 40438, 42586, 43765, 46487
Environmental statements; availability, etc.:
- Binary munition chemical component (QL) production, 21645
- Binary munition precursor chemical (QL) production, 2706, 12853
- Chemical agent demilitarization facilities; Anniston Army Depot, AL, et al., 14004
- Chemical agent monitor, 2847
- M55 rocket stockpile assessment plan, 3008
- Nonlethal binary precursor, methyl phosphonic difluoride (DF) production, 21926

Meetings:
- Armed Forces Epidemiological Board, 34539
- Armed Forces Institute of Pathology Scientific Advisory Board, 26601
- Command and General Staff College Advisory Committee, 51743
- Historical Advisory Committee, 30727
- Medical Research and Development Advisory Committee, 5808, 7868, 9485, 10832, 19564
- Military personal property symposium, 4728, 15955, 28005, 35289
- Rifle Practice Promotion National Board, 46332, 47583, 48244
- ROTC Affairs Advisory Panel, 24018, 45648
- Science Board, 1103, 2847, 3588, 4254, 4880, 5292, 5808, 5809, 6235, 6980, 7627, 8762, 9309, 10298, 10299, 11010, 12361, 12362, 12363, 13646, 13647, 14961, 15955, 16733, 16734, 18285, 18286, 19067, 19564, 19778, 19779, 21486, 21487, 21644, 21645,

24285, 24560, 25117, 25820, 26244, 27841, 28035, 28247, 28348, 28443, 28970, 31217, 31218, 31648, 32761, 33395, 33817, 38157, 40518, 43434, 46155, 47247, 47795, 48624, 52993
Training and Doctrine Command; artificial intelligence and robotics symposium, 29249
U.S. Military Academy, Board of Visitors, 11751, 38702, 47583
Military traffic management:
Alaska; intrastate rate solicitation household goods carriers; inquiry, 10530
Armed Guard Surveillance Service; requirements, etc., 38702
Carrier evaluation and reporting system (CERS) cut-off scoring date, 4728
Carrier industry participation in joint military astray freight program, 25446
Claims forms; through Government bill of lading procurement program, 39029
Commercial transportation emergency notification; toll-free hotline telephone number, 18285
Freight carriers disqualification and non-use procedures, 26601, 29470, 37397
Freight rate acquisition programs; motor carrier rates and services, standard rules and class rate solicitations, 18285
Household goods and unaccompanied baggage; through Government bill of lading program; inquiry, 3830
Household goods carrier industry; intrastate rate acquisition program, 27333
Household goods shipments between selected military installations; allocated traffic testing; inquiry, 28248
International through government bill of lading; rates acquisition procedures, 41382
Inquiry, 9881, 14005
Loss or damage to household goods; memorandum of understanding, 2706
New driver identification requirement for shipments under a transportation protective service, 31217
Rate filing procedures; domestic interstate personal property shipments, 15955
Rate tender annotation application revision, 9485
Transportation protective service; security requirements upgrading, 43271
Transportation services; tenders, rates, and charges; procedural changes, 522
Unaccompanied baggage--
Direct procurement method; rate solicitation, 3830
International program; procurement solicitation, 27482
Patent licenses, exclusive:
Biosearch Medical Products Inc., 10833
Figgie International Inc., 21333
Neurotherapeutics Corp., 23353
Procurement:
Commercial activities, performance; cost studies (OMB A-76 implementation), 49091
Senior Executive Service:
Performance Review Boards; membership, 28244, 28969, 30290

ARTS AND HUMANITIES, NATIONAL FOUNDATION

See National Foundation on Arts and Humanities.

BANKS, BANKING

See Comptroller of Currency.
Export-Import Bank.
Farm Credit Administration.
Farmers Home Administration.
Federal Deposit Insurance Corporation.
Federal Home Loan Bank Board.
Federal Reserve System.
National Credit Union Administration.

BIOLOGICAL PRODUCTS

See Animal and Plant Health Inspection Service.
Food and Drug Administration.

BLIND AND OTHER SEVERELY HANDICAPPED, COMMITTEE FOR PURCHASE FROM

NOTICES

Agency information collection activities under OMB review, 20578, 23172
Procurement list, 1985; additions and deletions, 521, 522, 2704, 4725, 6374, 6375, 8357, 10528, 12604, 12605, 14411, 15473, 16530, 16531, 19776, 19777, 20824, 21486, 23172, 24018, 26028, 26029, 26824, 27650, 29468, 29469, 30218, 30219, 30727, 31407, 31408, 33094, 35287, 35288, 36463, 37264, 37396, 37397, 38876, 39160, 40991
Procurement list, 1986:
Additions and deletions, 42751, 42752, 45647, 47245, 49090, 49439, 49983, 50936, 50937, 52991
Establishment, 41810, 45143, 47245

BONNEVILLE POWER ADMINISTRATION

NOTICES

Bonneville Acquisition Guide and Power Assistance Instructions; availability, 32473
Environmental statements; availability, etc.:
Direct service industries options, 8363
Eugene-Medford transmission line, OR, 46814
Long-term power contracts, 9116, 38158
Model conservation standards; new energy-efficient homes, construction, 50193
Usk Loop Project, WA, 45651
Fish and wildlife consultation procedures, 23173
Impact aid policy, 12962
Model conservation standards; recommended surcharge; proposed policy and inquiry, 11818
Nonfirm energy sales:
Consumer alternate fuel loads; final policy, 12363
Pacific Northwest-Pacific Southwest Intertie access policy:
Firm displacement rate, proposed; inquiry, 37722
Interim; termination delay, 6379, 19781
Near term, 26827
Wholesale power rates:
Direct-service industrial customers--
Industrial incentive rate, 4733, 14280, 30875, 40993
Variable industrial power rate, 51577

BOYCOTTS

See International Trade Administration.
Treasury Department.

BRIDGES

See Coast Guard.
Engineers Corps.
Federal Highway Administration.

CANADA AND UNITED STATES-INTERNATIONAL JOINT COMMISSION

NOTICES

Flathead River; water quality and quantity report; hearings and inquiry, 24844
Osoyoos Lake; control works for regulating water levels; hearings, 35166

CANAL ZONE

See Panama Canal Commission.

CENSUS BUREAU

RULES

Foreign trade statistics; Shipper's Export Declarations:
Data requirements, etc., 23400
Filing requirements, etc., 13016
Population and income estimates, challenge procedures:
Publication, 28767
Recording of hearings, 18989
Seal; CFR Part redesignated, 23947
Special services and studies:
Age search and citizenship information, fee structure, 23403

PROPOSED RULES

Population and income estimates, challenge procedures; publication, 11708

NOTICES

Block boundary suggestion project, 1990 census; establishment, 16329
Committees; establishment, renewals, terminations, etc.:
Advisory committees for the 1990 census, 16118
Meetings:
Agriculture Statistics Advisory Committee, 18544, 43749
American Economic Association Advisory Committee et al., 13260, 42742
Senior Executive Service:
Performance Review Board; membership, 41920
Surveys, determinations, etc.:
Company organization; multiestablishment companies, 12843, 24923
Manufacturing industries; annual, 35277, 51440
Retail sales and inventories; annual, 42574, 52810
Service industries; annual, 1606, 49593
Single-establishment employers, 50819
Wholesale trade; annual, 45849, 51442

Urbanized areas; designation between decennial censuses, 35279, 48237
Voting age population, 1984; estimates, 14407

CENTERS FOR DISEASE CONTROL

NOTICES
Advisory committee reports; availability, 12083, 13422, 26624
Asbestos removal control technology assessment, etc.; NIOSH meeting, 7836, 11247
Asymmetric lifting; musculoskeletal injuries identification; NIOSH meeting, 29268
Breathing apparatus, positive-pressure closed-circuit self-contained; NIOSH/MSHA testing and certification; application acceptance, 47456
Calculation of permissible load limits for repetitive lifting tasks, and pulmonary hypersensitivity of industrial agents; NIOSH meeting, 33108
Cardiovascular fetotoxicity and functional teratogenesis; NIOSH meeting, 27491
Committees; establishment, renewals, terminations, etc.:
  Mine Health Research Advisory Committee (NIOSH), 30762
Cooperative agreements:
  California Department of Health Services, 34551
  Indiana State Board of Health, 34551
  Massachusetts Institute of Technology, 12407
  North Carolina University, 12406
  Pennsylvania Department of Health, 33639, 42095
  San Francisco Department of Health et al., 35866
Crystalline silica, improved methods for analysis; NIOSH meeting, 1275
1,3-Dichloropropene; secondary data on use and health effects; NIOSH inquiry, 4913, 7388
Falling solids, dust control; NIOSH meeting, 53199
Fenthion use by veterinarians and allied personnel; inquiry, 4913
Grants and cooperative agreements:
  Acquired Immunodeficiency Syndrome (AIDS)--
    Alternate testing sites to perform human T-lymphotropic virus-type III (HTLV-III) antibody testing, 9909, 12406
    Community-based demonstration and innovative projects for prevention and risk reduction, etc., 30298
    Human T-lymphotropic virus-type III (HTLV-III) transmission studies, 16556, 30295, 31776
    Surveillance and associated epidemiologic investigations, 25325, 27850
  Behavioral risk factor surveillance systems; premature death, 21353
  Biossays for detecting toxic substances; development and application screening, 26411
  Blood lead screening program, interim, for children around Bunker Hill lead and zinc smelter in Idaho, 31245
  Calcium fluoride use; demonstration program, 4913
  Community preventative health services; model standards implementation, 23517
  Environmental health chemistry; research and training program development, 19584
  Family and intimate homicide and assaults, 19473
  Health promotion/disease prevention study approach, 15226
  International health research and research training program, 23518
  National prevention strategies on leading work-related diseases and injuries, 48495
  Occupational safety and health--
    Education programs, 2089
    Public health departments; capacity building, 25467
    Research and demonstration projects, 12407
    Small and special emphasis research career award grants, 33851
  Physician-office laboratories through training; State capacity building in improving performance and utilization, 23518, 26845
  Preventive health services; childhood immunization, 45166
  Preventive medicine practitioners preparation, 5010
  Sexually transmitted diseases--
    Preventive health services, 26624
    Professional education project, 18738, 24580, 28474, 31429, 43792
  Smoking and reproductive health, 31432
  State of art in public health; project examination, formulate policy options related to future roles, etc., 23518
  State-based diabetes control program, 20010, 24580
  Surveillance cooperative agreements between NIOSH and States, 8787
  Teen suicide deaths; two apparent clusters in Texas communities, 19473
  Toxic waste sites on reproductive outcomes; exposure effects, 28260
  Tuberculosis control programs, 3840, 7231
  Workplace health hazard evaluations, 11757
Health care industries-low back stress-epidemiologic study, etc.; NIOSH meeting, 5815, 42094
Leading work-related diseases and injuries prevention; national symposium; NIOSH meeting, 13082
Meetings:
  Computer applications in project areas, 40451
  Diabetic sentinel health events, surveillance systems, 9718
  Human diploid cell measles vaccine and vaccination of infants, 47845
  Immunization Conference, 9717
  Immunization Practices Advisory Committee, 890, 11758, 37913
  Measles elimination from United States, impediments, 46516
  Medical management of pregnant persons with diabetes treated in maternal and child health programs, 28124
  Mine Health Research Advisory Committee (NIOSH), 346, 2619, 14457, 26624, 40451
  National Dental Disease Prevention Conference, 4599
  Pediatric screening for lead poisoning and iron proficiency utilizing protoporphyrin assays, 35867
  Scientific Counselors Board (NIOSH), 20502, 40451, 48496
  Tuberculosis, future research; prospects and priorities for eradication of disease, 9718, 11758
Neurotoxicity from exposure to heavy metals; NIOSH meeting, 38211
Nitroglycerin; epidemiologic studies of exposed workers, 7836
Occupational asthma; etiologic agents and disease mechanisms; NIOSH meeting, 43290
Procurement:
  Commercial or industrial activities, performance; review schedule (OMB A-76 implementation), 31245
Sentinel health event follow-back project; NIOSH meeting, 11758
Vessel sanitation inspection program; inquiry, 27490

CENTRAL INTELLIGENCE AGENCY

RULES
Security protective service, 19154
  Correction, 23805

NOTICES
Privacy Act; systems of records, 50332
Retirees health insurance coverage plan; information availability, 49872

CHEMICALS

See Drug Enforcement Administration.
Environmental Protection Agency.
Food and Drug Administration.
Occupational Safety and Health Administration.
Research and Special Programs Administration.

CHILD SUPPORT ENFORCEMENT OFFICE

RULES
Program audit and penalty procedures, 40120
  Correction, 49392
Program standards operation:
  Aid to families with dependent children (AFDC); treatment of assigned support payments received directly and retained by AFDC applicants or recipients, 34693
State plan requirements:
  Aid to families with dependent children (AFDC); treatment of assigned support payments received directly and retained by AFDC applicants or recipients, 34693
  Child support enforcement program procedures, 19608
    Correction, 23958, 31719
  Medical support enforcement, 41887
    Correction, 45114

NOTICES
Grants; availability, etc.:
  Research and demonstration projects, 4273

Interstate child support processes, 24581
Organization, functions, and authority delegations, 11573, 41410
Privacy Act; systems of records, 3412

CHILDREN, CHILD PROTECTION

See ACTION.
Child Support Enforcement Office.
Education Department.
Food and Nutrition Service.
Human Development Services Office.
Juvenile Justice and Delinquency Prevention Office.
Social Security Administration.

CITIZENSHIP AND NATURALIZATION

See Immigration and Naturalization Service.
State Department.

CIVIL AERONAUTICS BOARD

RULES
Editorial Note: CAB ceased to exist on December 31, 1984, and remaining agency functions were transferred in part to the Transportation Department. (See 50 FR 451, January 4, 1985)
Accounts and reports for certificated air carriers; uniform system:
Large air carriers; reporting and recordkeeping requirements, 232
Small aircraft operations; reporting and recordkeeping requirements, 10
Air carriers:
Stock ownership; reporting and recordkeeping requirements; CFR Parts removed, 453
Air taxi operators:
Small aircraft operations; reporting and recordkeeping requirements, 14
Conflict of interests; CFR Part removed, 455
Domestic cargo transportation:
All-cargo transportation, 453
Economic and procedural regulations, etc.:
Transfer to Transportation Department, etc., 451
Correction, 1209
National Environmental Policy Act; implementation; CFR Part removed, 454
Organization, functions, and authority delegations:
Information Management Division, Chief, Office of Comptroller; financial data release, 22
Policy statements:
Unrealistic or deceptive scheduling; air taxis, 455
Sunshine Act; implementation; CFR Part removed, 454

PROPOSED RULES
Accounts and reports for certificated air carriers; uniform system:
Reporting and recordkeeping requirements, 101
Air carriers:
Essential air transportation to freely associated States, 95
Procedural regulations:
Consumer protection for scheduled-service tours; proceeding terminated, 482
Free and reduced rate transportation; proceeding terminated, 480
Termination, suspension, and reductions of service; proceeding terminated, 481

NOTICES
Agency information collection activities under OMB review, 520
All-cargo air service certificate petitions; Transamerica Airlines, Inc., 520
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 519

CIVIL RIGHTS

See Civil Rights Commission.
Education Department.
Equal Employment Opportunity Commission.
Federal Contract Compliance Programs Office.
Health and Human Services Department.
Housing and Urban Development Department.
Justice Department.

CIVIL RIGHTS COMMISSION

RULES
Organization and functions, 16261

NOTICES
Affirmative action; consultation/hearing, 4995
Handicapped newborns, protection; hearing, 10897
Housing discrimination; consultation/hearing, 41372
Meetings; State advisory committees:
Alabama, 20250, 32457, 46327
Alaska, 28440, 47571
Arizona, 11923, 31402, 35589, 48620
Arkansas, 7094, 13056, 21915, 36642, 48237
California, 6369, 10091, 18896, 26814, 35589, 43431
Colorado, 6369, 13056, 15595, 26814, 30865, 36908, 50187
Connecticut, 6370, 21323, 32457, 39157, 49738
Delaware, 10517, 18896, 35589, 46677
District of Columbia, 10091
Florida, 13642, 18896, 21323, 40987
Georgia, 6370, 7361, 14740, 15595, 16528, 23751, 37559, 47085
Hawaii, 7939, 16528, 18897, 30865, 43431
Idaho, 13642, 16528, 20250, 26814, 40987
Illinois, 3582, 7094, 14740, 20250, 24662, 28963, 33088, 38018, 42972, 48620, 51573
Indiana, 4553, 18896, 26815, 32457, 45847, 45848
Iowa, 4553, 10517, 20577, 35849, 40043, 53171
Kansas, 4553, 10091, 23324, 39158, 51573, 53350
Kentucky, 13056, 13642, 15595, 20577, 33613, 36908, 42972
Louisiana, 10517, 20577, 34882
Maine, 29456, 37257, 45446
Maryland, 7940, 16528, 18896, 21916, 39158, 42973, 51573, 53171
Massachusetts, 4553, 10517, 21916, 23482, 34523, 49738
Michigan, 4553, 10517, 33613, 45644, 52810
Minnesota, 5111, 20250, 25435, 39158, 47571
Mississippi, 3582, 14740, 14741, 23751, 28963, 45644, 45848
Missouri, 7940, 11923, 20250, 25435, 41719, 53350
Montana, 4553, 13057, 23751, 24663, 34883, 45446, 51573
Nebraska, 6370, 18897, 28440, 40043, 53350
Nevada, 7094, 14741, 26815, 30865, 33089, 42973, 53172
New Hampshire, 14741, 32751, 43431, 52810
New Jersey, 6370, 18897, 27836, 36908, 38018, 43432
New Mexico, 7094, 14741, 20577, 28962, 45645
New York, 6370, 18897, 24663, 26815, 30865, 49739
North Carolina, 7094, 14741, 21916, 38018, 46677
North Dakota, 7094, 18897, 21323, 37559, 50187
Ohio, 14741, 16528, 20250, 26815, 36643, 42973, 53350
Oklahoma, 6370, 23751, 34883
Oregon, 6371, 28440
Pennsylvania, 13642, 14742, 21916, 52810
Rhode Island, 6371, 27999, 32751, 39158, 49739, 53172
South Carolina, 6371, 11924, 20251, 41719
South Dakota, 6371, 13057, 24663, 38871, 45848, 50188
Tennessee, 3582, 5111, 11924, 14742, 15595, 21323, 31402
Texas, 7940, 14742, 16528, 21323, 42973
Utah, 3582, 5651, 6371, 14742, 21916, 34729, 45848, 49739
Vermont, 2307, 29456, 41719, 51573
Virginia, 7095, 7940, 16529, 31402, 37257, 41719
Washington, 23751, 36643, 43432
West Virginia, 10091, 20578, 21917, 34523, 47571
Wisconsin, 6371, 23324, 30865, 38018, 43431, 48620, 50188, 53350
Wyoming, 7940, 18897, 29456, 37257
Meetings; Sunshine Act, 915, 6094, 8433, 14073, 19516, 24342, 28059, 41618, 46724, 50036
Senior Executive Service:
Performance Review Board; membership, 40043, 49593

COAL

See Economic Regulatory Administration.
Geological Survey.
Land Management Bureau.
Mine Safety and Health Administration.
Minerals Management Service.
Surface Mining Reclamation and Enforcement Office.

COAST GUARD

RULES
Administrative practice and procedure:
Written warnings by boarding officers for failure of vessels to carry copy of rules, 10761
Anchorage regulations:
Authority citation; update, 18635
Illinois, 27580, 29224
Louisiana, 1849, 25710, 26988, 30269
Michigan, 24193

New York, 43386
Puerto Rico, 5580
Wisconsin, 15742, 49843
Boating safety:
Certification, safe loading and flotation standards; clarification, 18636
Boundary lines, 25229
Casualty reporting requirements; OCS activities and deepwater ports, 14215
Dangerous cargoes:
Bulk liquid hazardous waste cargoes; compatibility of cargoes and operational requirements, 33037
Correction, 38529
Self-propelled foreign flag vessels carrying hazardous liquids and bulk liquefied gases; compliance procedures, 8730
Correction, 15895
Self-propelled vessels carrying hazardous liquids; safety requirements, 21166
Correction, 26996
Districts, marine inspection zones, and captain of port zones:
Boundary realignments, 33920
Drawbridge operations:
Alabama, 37355, 41684
Authority citation; update, 18635
California, 38523
Connecticut, 13318, 21604, 26560, 26709
Florida, 2546, 19932, 20759, 23304, 24195, 25072, 29670, 29671, 29672, 32864, 38000, 41345, 51246
Georgia, 25072, 51246
Kansas, 47390
Louisiana, 1212, 1849, 7585, 7586, 19526, 23303, 23305, 24194, 37175, 38001, 40832, 43133, 46647, 50163, 52773
Maryland, 18479
Mississippi, 27582, 46647
Missouri, 47390
Navigable waterways of U.S.; reorganization, 20758, 26559, 26710, 31176, 43387
New Jersey, 2785, 6168, 26709, 26989, 27582, 30269
New York, 2545, 7047, 26708
North Carolina, 14702
Opening signal; editorial amendment, 11365
Oregon, 25221, 31591
South Carolina, 11694, 31367, 32562, 37174, 51246
Texas, 15742, 19527
Washington, 2786, 10228, 25960, 30270, 31591, 49550
Fire protection regulations; discharge rate of fire extinguishing carbon dioxide in cargo spaces, 15750
Great Lakes pilotage:
Rates increase, etc., 7177
Lifesaving equipment:
Exposure suits; mobile offshore drilling units; correction, 3904
Hybrid inflatable personal flotation devices (PFD's); interim, 33923
Load lines:
River service dry cargo barges (Great Lakes), 19532
Manning of vessels:
Licensing of pilots, 26106
Marine engineering:
Power and heating boilers; acceptance of ASME inspection and symbol stamps, 9428
Marine safety reporting program, 23688, 23693
Merchant marine officers and seamen:
Licensing of pilots, 26106
Effective date corrected, 30274
Interim, 52329
Military personnel:
Discharge Review Board; establishment and operation, 41494
Enlistment of personnel, 13317
Navigation aids:
Light list volumes; update, 50903
Loran description deletion, 14213
Pollution:
Deepwater port liability fund, 32966
Tank vessels carrying oil in bulk; segregated ballast, dedicated clean ballast, and crude oil washing, 11622
Correction, 12800
Decision record availability, 24766
Final rule affirmed, 32409
Waste reception facilities requirements; interim, 36768
Ports and waterways safety:
Authority citation; update, 18635
Baltimore Harbor, MD; safety zone, 23809, 46284
Biscayne Bay, Lummus Island, Miami, FL; safety zone, 32864
Calcasieu Channel and Industrial Canal, Calcasieu River, Lake Charles, LA; safety zone, 31592
Cape Fear River, Sunny Point and Wilmington, NC; safety zone, 32865
Chelsea River, Boston, MA; safety zone, 26560
Chesapeake Bay and tributaries, MD; ice navigation season, 3904, 12251
Coronado Roads, San Diego, CA; safety zone, 50164
Corpus Christi Ship Channel, TX; safety zone, 15743, 19933
Detroit River, Detroit, MI; safety zone, 25961
Gulf of Mexico; shipping safety fairways, 21261, 24766
Intracoastal Waterway, Ft. Lauderdale, FL; safety zone, 29225
Isthmus Cove, Santa Catalina, CA; regulated navigation area, 27583
Kaneohe Bay, Oahu, HI; safety zone, 41345
Kodiak Harbor, Kodiak Island, AK; safety zone, 21260
Lake Champlain, Burlington Harbor, VT; safety zone, 24766
Lake Worth Inlet, FL; safety zone, 4508, 7587
Louisiana Offshore Oil Port; shipping safety fairways, 26989
Louisville, KY; safety zone, 15419
Mamala Bay, Oahu, HI; safety zone, 41346
Mobile River, AL; safety zone, 19528
Naval Submarine Base Kings Bay, GA; security zone, 41685, 48404
New York Harbor; safety zone, 23306
Ohio River; safety zone, 8110, 11695
Port Everglades entrance channel, Fort Lauderdale, FL; safety zone, 39665
Rickenbacker Causeway Bridge, Biscayne Bay, Miami, FL; safety zone, 40832
Safety and security zones, etc.; list of temporary rules, 4860, 14701, 30702, 45403
San Clemente Island, CA; safety zone, 15420, 38001
San Diego Bay, CA--
Safety zone, 7587, 14703, 38002
Security zone, 48403, 48404, 49844, 52327
San Francisco Bay, CA; safety zone, 32061, 41347
San Pedro Bay, Los Angeles, CA; safety zone, 23306
Santa Cruz Island, CA; safety zone, 9426, 35555
Savannah River, Savannah, GA; security zone, 49043, 49044
Tennessee-Tombigbee Waterway, Columbus Lake, etc.; safety zone, 19528
Trent River, New Bern, NC; safety zone, 21261
Upper Chesapeake Bay, MD; safety zone, 15744
Upper Mississippi River; regulated navigation area, 6169
Ports and waterways safety and waterfront facilities:
Radioactive materials, 8612
Correction, 9426, 11503
Practice and procedure:
Marine investigation; actions against seamen's licenses, certificates, or documents, 32179
Correction, 35228
Regattas and marine parades:
Air Show and Boat Parade, 35554
Armstrong Chamber of Commerce Regatta, 32860
Authority citation; update, 16230
Barnegat Bay Air Brook Classic, 27579
Beaver County River Regatta, 32861
Bluewater Race of Champions, 36576
Budweiser Unlimited Hydroplane Regatta, 23807
Budweiser Western State Championships, 25573
Bullhead City Boat Drags, 25574
Burlington Triathlon, 35552
Busch World Championship Grand Prix Races, 31590
California Cup Race, 21259
Cape May Classic, 23302
Charleston Sternwheel Regatta, 35085
Clarkston, Washington, Limited Hydroplane Races, 24191, 26359
Cleveland National Air Show, 32059
Connecticut River Raft Race, 29223
Duluth Harbor Fireworks Display, 25071
Elizabeth River Independence Day Celebration, 25960
Elizabeth River Power Boat Race, 24765
Empire State Regatta, 15418
Energy Spells Progress Air Show, 19931
Fort Smith United Way Great Raft Race IX, 35553
Fourth of July Coney Island Air Show, 24764
Fourth of July Fireworks Display, Toledo/Maumee River, 23808
Frostbite Regatta, 32862
Gallipolis 2nd Annual Regatta, 33921
Gateway Powerboat Regatta, 30700
Grand Prix, Niagara River, 24193
Great Chattanooga Raft Race, 20566
Great Ohio River Flatboat Race, 31714
Harvard-Yale Regatta, 23806
Havre De Grace Power Boat Regatta, 32862
Head of Connecticut Regatta, 37998
International Freedom Festival Fireworks Display, 23805

Kennewick, Washington, Columbia Unlimited Hydroplane Races, 25070
Kentucky Derby Festival Steamboat Race, 16700
KHMO National Tom and Becky Raft Race, 23301
La Paz Regatta, 42525
Labor Day Fireworks Display, 32059
Lake Havasu City Triathlon, 40829
Lake Havasu Classic, 48086
Lake Havasu Water Ski Shows, 25574
Lawrenceville Community Day Festival, 35085
London Bridge Days Ski Show, 40830
Long Island Gran Prix, 38983
Madison Fall Regatta, 37999
Memorial Day Weekend Coney Island Air Show, 19526
Memphis in May Canoe and Kayak Race, 14214
National Sweepstakes Regatta, 30701
New Jersey Offshore Grand Prix, 28573
Night in Venice Boat Parade, 29221
NJBA Regatta, 40831
Norfolk Harborfest, 20416
O.P.A. Classic, 24192
Parker Enduro, 7585
Parker Mini-Boat Enduro, 42526
Parker Thanksgiving Regatta, 48086
San Diego Crew Classic, 12799, 14215
Savanna Festival Championships, 32863
Scorpion 100 Powerboat Race, 33922
Seattle Opening Day Yacht Parade and Crew Race, 15741
Seattle Seafair Budweiser APBA Gold Cup Race, 21603
Seattle Seafair Triathon, 26708
Southern California December Boat Parades, 48402
Spirit of America Offshore Grand Prix, 32060
Stroh Signature Classic, 29222
Stroh Thunderfest, 23808
Toledo Formula I Grand Prix, 30268
Tri-State Fair Powerboat Races, 16701, 20909

Reporting and recordkeeping requirements, 25572
Subdivision and stability:
  United States Code authorities; updates of references, 1524
Vessel documentation and measurement:
  Tonnage measurement, 40008
  Vessels sold at sea, 7596

PROPOSED RULES

Anchorage regulations:
  Florida, 859, 1869, 7078, 14723, 21310
  Illinois, 12835, 15460
  Louisiana, 8640, 14940, 51708
  Massachusetts, 25268
  Michigan, 12837, 27622, 31732
  New York, 27623, 28596
  Vermont, 31197
  Wisconsin, 37237
Boating safety:
  Hybrid inflatable personal flotation devices (PFD's), 21862
  Safe powering standard; new classification for sport boats; advance notice, 11383
    Extension of time, 21311
Bridge lighting and signal standards; retroreflectors, daymarks, fog signals, vertical clearance gauges, etc., 4529
  Correction, 6208
Dangerous cargoes:
  Bulk liquefied gases carried on self-propelled vessels; safety standards, 10264
    Correction, 15591
  Bulk liquid hazardous waste cargoes; compatibility of cargoes and operational requirements, 1550
  Internal examination and hydrostatic testing of pressure vessel cargo tanks on barges; advance notice, 49563
Drawbridge operations:
  Alabama, 25721, 27990, 48099
  Connecticut, 11382, 21627
  Florida, 1069, 4528, 9288, 11736, 13835, 16721, 19955, 20918, 23316, 24238, 25587, 27026, 27991, 36630, 37384, 40871, 46674, 50808
  Georgia, 27026
  Louisiana, 122, 860, 861, 27029, 27624, 27832, 29236, 30284, 31627, 34497, 38548, 43257
  Massachusetts, 30285
  Michigan, 41704
  Mississippi, 14258, 34497
  New Jersey, 10251, 13389, 16720, 26808, 43134, 45436
  North Carolina, 15461, 24239
  Oregon, 9289
  South Carolina, 26809, 27026, 41366
  Texas, 2590, 3807
  Washington, 9289, 10250, 40407
Equipment, construction, and materials; specifications and approval:
  Lifesaving equipment--
    Independent laboratory inspection, 4544, 16318
    Inflatable liferafts, stability, 1558, 27628, 36639
Lifesaving equipment:
  Inflatable life jackets and hybrid personal flotation devices (PFD's), 21878
    Correction, 25274
  Thermal protective aids, 40036
Manning of vessels:
  Licensing of maritime personnel, 43316
  Licensing of pilots, 26117
    Extension of time, 38557
Marine engineering:
  Vessel piping systems; technical requirement clarification, etc., 1072
    Extension of time, 11397
  Vital system automation of commercial vessels, 38608
Merchant marine officers and seamen:
  Automatic radar plotting aids (ARPA); training; advance notice, 43258
  Certification of seamen; advance notice, 4875
    Extension of time, 23318
  Licensing of maritime personnel, 43316
    Hearings, 43374, 52806
  Licensing of officers and operators for mobile offshore drilling units, 43366
    Hearings, 43374, 52806
  Licensing of pilots, 26117
    Extension of time, 38557
Military personnel:
  Discharge Review Board; establishment and operation, 3922
    Extension of time, 20460
Mobile offshore drilling unit operating manual requirements, 39734
Mobile offshore drilling unit requirements; revision; advance notice, 11741
  Extension of time, 20460
Navigation aids:
  Electronic private aids to navigation; radar beacons (racons) exception, 50179
Navigation rules:
  COLREGS demarcation lines, 38013
Organization, functions, and authority delegations:
  United States classification societies; advance notice, 40413
Outer Continental Shelf activities:
  Advance notice, 9290
    Correction, 10252
    Extension of time, 20445
  Hybrid inflatable personal flotation devices (PFD's), 21862
Passenger vessels:
  Small vessel standards--
    Advance notice; meeting, 13837
    Comment period reopened and extended, 26593
Pollution:
  Oil and hazardous substances; discharge reporting requirements, 38139
Ports and waterways safety:
  Boston, MA; port access routes, 45436
  Gulf of Mexico; port access routes, 9682
  Isthmus Cove, Santa Catalina, CA; regulated navigation area, 7613
  Ketchikan Harbor, AK; safety zone, 41705
  Kodiak Harbor, Kodiak Island, AK; safety zone, 12838
  New York; port access routes, 50925
  San Diego Bay, CA; security zone, 48434
  Santa Barbara Channel, Point Arguello, CA; port access routes, 49861, 52534
  Santa Cruz Island, CA; safety zone, 31198
  Tampa Bay, FL; port access routes, 50806
  Tampa Bay, Hillsborough Bay, and approaches, FL; safety zone, 46780
  Vessel traffic management; Houston-Galveston area; vessel traffic service; establishment; withdrawn, 51709
Regattas and marine parades:
  Barnegat Bay Air Brook Classic, 16313
  Bullhead City Boat Drags, 18692
  California Cup Race, 14257
  Clarkston, Washington, Limited Hydroplane Races, 14722
  Cleveland National Air Show, 25091
  Connecticut River Raft Race, 20444
  Coronado 4th of July Fireworks Display, 19954, 20445, 20460
  Harvard-Yale Regatta, 16314
  Kennewick, Washington, Columbia Unlimited Hydroplane Races, 15760
  Lake Havasu Classic, 36628
  Lake Havasu Water Ski Shows, 18691
  Liberty Cup Regatta, 21308
  Marina Bay 100, 20443
  Miller High Life Thunderboat Regatta, 26806
  National Sweepstakes Regatta, 24783
  New Jersey Offshore Grand Prix, 21625
  Newport to Ensenada Race, 12573
  Night in Venice Boat Parade, 16315
  NJBA Regatta, 26807
  O.P.A. Classic, 15459
  Ohio River Days Championship (River Days), 18690
  Ohio River Festival Regatta, 18689
  Parker Thanksgiving Regatta, 36629
  Pittsburgh Three Rivers Regatta, 18688
  Seattle Opening Day Yacht Parade and Crew Race, 9681

Seattle Seafair Budweiser APBA Gold Cup Race, 12337
Seattle Seafair Triathon, 20802
Spirit of America Offshore Grand Prix, 25092
Subdivision and stability:
Bulk cargoes; damage stability and flooding protection for Great Lakes vessels, 46315
Correction, 47238
Tank vessels:
Accommodations, rails and guards, anchors, etc.; requirements; conforming amendments, etc., 39729
Vessel documentation and measurement:
Hailing port marking, etc. –
Extension of time, 4877
Withdrawn, 47411
Tonnage measurement, 10803

NOTICES
Bridges, proposed construction:
Charleston, SC, 43307
Midway Creek, SC, 16768
Oak Island Canal, SC, 16769
Committees; establishment, renewals, terminations, etc.:
Chemical Transportation Advisory Committee, 40943
Coast Guard Academy Advisory Committee, 39067
Lower Mississippi River Waterway Safety Advisory Committee, 29293
National Boating Safety Advisory Council, 26651
New York Harbor Traffic Management Advisory Committee, 29293
Rules of Road Advisory Council, 50247
Towing Safety Advisory Committee, 11474, 12433
Equipment, construction, and materials approval; list, 9343, 25146, 31268, 39060, 39798
House flag and funnel mark registration for American Overseas Marine Corp., 6301
International Convention on Load Line exemption; Crowley Maritime Corp., 5722
Meetings:
Coast Guard Academy Advisory Committee, 13908, 41779
Houston/Galveston Navigation Safety Advisory Committee, 1293, 7024, 25145, 25146, 25645, 38603, 41435, 47495
Lower Mississippi River Waterway Safety Advisory Committee, 12433, 14331, 19601, 23373, 51327
Marine transportation of oil field wastes, 30325, 34572
National Boating Safety Advisory Council, 15522, 15523, 41779, 41780
Rules of Road Advisory Council, 16379, 40466, 47496
Ship Structure Committee, 18760
Towing Safety Advisory Committee, 5722, 20158, 37612, 46380, 47496
National Environmental Policy Act; implementation, 32944
Organization and functions:
Marine Safety Center establishment, 25644
Merchant Marine Technical Branches consolidation, 25644
Port access route studies:
Alaska, 10877
Vessel plan review, inspection, and tonnage measurement by American Bureau of Shipping; inquiry, 20022

COMMERCE DEPARTMENT

See also Census Bureau.
Economic Analysis Bureau.
Economic Development Administration.
Foreign-Trade Zones Board.
International Trade Administration.
Minority Business Development Agency.
National Bureau of Standards.
National Oceanic and Atmospheric Administration.
National Technical Information Service.
National Telecommunications and Information Administration.
Patent and Trademark Office.
Travel and Tourism Administration.

RULES
Acquisition regulations:
Competition in contracting requirements; interim, 19361
Audit requirements for State and local governments; interim, 30418
Conflict of interests:
Conduct standards; position requiring statements of employment and financial interests, 2276
Disciplinary actions concerning post-employment violations; correction, 928
Endangered Species Act; exemption application process, 8122
Productivity, technology, and innovation:
Inventions, Government-owned; licensing, 9801
Metric conversion policy for Federal agencies, 27577

PROPOSED RULES
Acquisition regulations:
Competition in contracting requirements, etc., 38677
Productivity, technology, and innovation:
Patent licensing; rights to inventions made by non-profit organizations and small businesses using Federal funding, 13524
Regulatory agenda, 17114, 43988
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712

NOTICES
Advisory committees; report on closed meetings; availability, 16117
Agency information collection activities under OMB review, 1606, 3370, 3371, 3822, 4879, 5111, 5112, 6225, 6226, 8354, 10293, 11526, 11745, 12353, 13259, 13260, 14126, 15204, 15205, 16328, 19425, 20251, 20816, 21917, 23751, 24003, 24004, 24922, 25286, 25287, 25728, 28230, 29242, 30726, 31402, 31403, 32606, 33089, 34170, 34523, 36123, 36124, 36125, 38019, 39742, 39743, 40426, 40577, 40883, 41920, 45925, 46327, 46677, 47571, 47572, 49436, 50929, 50930, 51574, 52979
Committees; establishment, renewals, terminations, etc.:
Exporters' Textile Advisory Committee, 9812
Federal Coal Export Commission, 48449
Frequency Managment Advisory Council, 15205
Importers and Retailers' Textile Advisory Committee, 9812
Management-Labor Textile Advisory Committee, 9812
Population Statistics Advisory Committee et al., 138
Meetings:
Economic Advisory Board, 2072, 30492
National Technology Medal Nomination Evaluation Committee, 11002
Privacy Act; systems of records, 9099, 25729
Procurement:
Commercial activities, performance; inventory and review schedule (OMB A-76 implementation), 19426
Productivity, technology, and innovation:
Meteorological services and supporting research; metric system use, 26393
Senior Executive Service:
Performance Review Board; membership, 39026, 43262, 46472

COMMERCIAL SPACE TRANSPORTATION OFFICE

PROPOSED RULES
Third-party liability insurance for commercial space launch activities; advance notice, 19280

COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

See Executive, Legislative, and Judicial Salaries Commission.

COMMISSION ON FINE ARTS

See Fine Arts Commission.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

See Blind and Other Severely Handicapped, Committee for Purchase from.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

See Textile Agreements Implementation Committee.

COMMODITY CREDIT CORPORATION

RULES
Export programs:
Export credit sales program, 13966
Intermediate credit export sales program for breeding animals, 13967
Loan and purchase programs:
Cotton, 26978, 52214
Warehouse approval standards, 16453, 36568
Grain, 42509
Grain, etc.; warehouse approval standards, 29639
Grain; special producer storage loan program–
Interim, 16221
Interim rule affirmed, 30925
Honey, 4635
Mohair, 47031
Peanuts, 2541, 10750, 50280

Processed agricultural commodities, extracted honey, and bulk oils; storage warehouses standards, 42511
Shorn wool and unshorn lambs (pulled wool)--
Interim, 34079
Interim; correction, 35772
Sugar beets and sugarcane, 27413, 37171
Tobacco, 4493, 7574
Suspension and debarment, 12766

PROPOSED RULES
Loan and purchase programs:
Cotton, 38008
Cotton; warehouse approval standards, 29693
Grain, 26778
Grain, etc.; warehouse approval standards, 16504, 48094
Processed agricultural commodities, extracted honey, and bulk oils; storage warehouses standards, 19026
Suspension and debarment, 2578
Correction, 3533

NOTICES
Contract fees, annual:
Cotton storage agreement; inquiry, 33987
Grain and rice storage agreement, uniform--
Determination, 32749
Inquiry, 16526
Export enhancement program; agricultural commodities as a bonus to U.S. exporters; availability and inquiry, 23750
Loan and purchase programs:
Cotton, 1899, 3820, 41541
Feed grain, 1892
Honey, 7359
Milk price support program, 13258, 27647, 31206
Peanuts, 4550, 5409, 21105, 47239
Pulled wool and mohair, 26813
Rice, 1896
Soybeans, 36458
Sugar beets and sugarcane, 33989, 42740
Tobacco price support levels, 15200, 15202, 37557, 40882, 42067, 47415, 51438
Meetings; Sunshine Act, 1295, 35176, 36953

COMMODITY FUTURES TRADING COMMISSION

RULES
Agricultural option pilot program; cash and forward contracts and trade options; distinguishing characteristics; interpretation, 39656
Contract market enforcement:
Floor broker registration requirements, 23666
Contract market rule enforcement and financial reviews; schedule of fees, 928
Contract market rule review procedures, 30135, 30140
Correction, 31839
Domestic exchange-traded commodity options:
Contract market designations; extension, 35213
Non-agricultural options contracts; pilot program expansion, 45811
Effective date, 51671
Option traders; commercial categories, 51385
Federal claims collection, 5383
Futures commission merchants:
Customer margin funds, 36049
Futures commission merchants and introducing brokers; risk disclosure, 5380
Leverage transactions, 36405
Correction, 37519, 40963
Interim, 22
Correction, 2283
Interpretation, 11656
Organization, functions, and authority delegations:
Director, Economic Analysis Division--
Contract market designation applications; publication, 47531
Special calls, issuance, 47530
Practice rules, and organization, functions, and authority delegations:
Opinions Section, Chief, et al.; appellate enforcement procedures, 33515
Registration:
Associated person or floor broker (Form 8-R), etc.; forms revision, 28907
Commodity pool operators; exclusion for otherwise regulated persons, etc., 15868
Correction, 18858
Floor brokers--
Registration expiration date, 3506
Registration expiration date deferred, 45101
National Futures Association registration proceedings review, 39080
Reparation proceedings:
Interest calculations on reparation awards, 19910, 40330
Correction, 41678
Subpoenas or other court demands; information disclosure and employee testimony, 11149
Correction, 15413

PROPOSED RULES
Commodity option transactions; margin requirements; guidelines, 31625
Extension of time, 39133, 45831
Correction, 46674
Contract markets, futures commission merchants, and clearing members and traders; reporting and recordkeeping requirements, 30450
Contract markets and clearing associations; default and bankruptcy requirements; advance notice, 31623
Extension of time, 39133, 45831
Correction, 46674
Customer protection rules:
Predispute attorneys' fee agreements, 50805
Domestic exchange-traded commodity options:
Commodities option pilot program; expansion, 14718
Non-agricultural options contracts; pilot programs revisions, 35247
Freedom of Information Act; implementation, 45833
Futures commission merchants and introducing brokers; minimum financial requirements, 31612
Comment period reopened, 49859
Correction, 32578
Extension of time, 39133, 45831
Correction, 46674
Leverage transactions, 102
Physical commodities (dealer and trade options); grant, offer, and sale; advance notice, 10786
Registration:
Floor brokers; rulemaking petition, 36104
National Futures Association registration proceedings review, 32737
Regulatory agenda, 18020, 44876
Regulatory flexibility plan for periodic review of rules; amendment, 41696
Reparation proceedings:
Interest calculations on reparation awards, 19951
Self-regulatory organization employees and governing members; nonpublic information, disclosure, 24533
Trade time-sequence standards and exchange audit trail systems; extension of time, 8639

NOTICES
Agency information collection activities under OMB review, 4726, 5413, 8357, 8358, 21643, 26244, 31902, 32760
Committees; establishment, renewals, terminations, etc.:
Agricultural Advisory Committee, 23494
Financial Products Advisory Committee, 21332
Contract market proposals:
Chicago Board of Trade--
European Currency Units, 35590, 40586
Financial Times-Stock Exchange 100 Share Index, 27333, 46331
Government National Mortgage Association-II, 34734
Major Market Index Maxi, 19432
NASDAQ 100 Index, 11006
Oats, 21642
Soybean meal, 45143
Soybean oil, 27332
Zero coupon long-term Treasury note, 27331
Zero coupon Treasury bond, 15474
Chicago Mercantile Exchange--
European Currency Units, 25445
Feeder cattle, 15952
Frozen pork bellies, 48622
Gold, 994
Live hogs, 16731
Standard and Poor's OTC Industrial Stock Price Index, 11007, 28835
Twenty, ten, and five-year U.S. Treasury strips, 19564
Chicago Rice & Cotton Exchange; rough rice, 28967
Citrus Associates of New York Cotton Exchange; frozen concentrated orange juice, 31408, 36463
Coffee, Sugar & Cocoa Exchange, Inc.--
Cocoa, 34736
Sugar No. 14, 20579
Commodity Exchange, Inc.; copper, 40436
Intermarket Clearing Corp.; clearing functions transfer, 43764, 50191
MidAmerica Commodity Exchange--
Copper, 15953, 51897
Live hogs, 16731
Oats, 21642
Plan of affiliation with Chicago Board of Trade, 50655
Soybean meal, 48622
Minneapolis Grain Exchange; white wheat, 16723
New York Cotton Exchange--
European Currency Unit, 15474
Propane gas, 994
U.S. dollar index, 5413
New York Futures Exchange; clearing functions transfer, 43764, 50191

Commodity

Philadelphia Board of Trade, Inc.; National Over-the-Counter Index, 4726
Foreign currencies trading; statutory interpretation and inquiry, 42983
Joint audit plan; inquiry, 1101
Meetings:
Agricultural Advisory Committee, 7948, 23494
CFTC-State Cooperation Advisory Committee, 42752
Financial Products Advisory Committee, 24559, 35113
Leverage transaction merchant applications, etc., 35853
Meetings; Sunshine Act, 1159, 3450, 8433, 8434, 12436, 18764, 23102, 26654, 27395, 29509, 31993, 36180, 36953, 41088, 45525, 45959, 47497, 49149, 51503, 52583
National Futures Association; authorization to perform registration functions, 34885
Subpoenas; release of information on Chicago Mercantile Exchange live and feeder cattle contracts, etc., 20257

COMMON CARRIERS

See Civil Aeronautics Board.
Federal Communications Commission.
Federal Maritime Commission.
Interstate Commerce Commission.
Transportation Department.

COMMUNICATIONS

See Federal Communications Commission.
National Communications System.
National Telecommunications and Information Administration.
Rural Electrification Administration.

COMMUNITY DEVELOPMENT

See Community Services Office.
Economic Development Administration.
Small Business Administration.

COMMUNITY SERVICES OFFICE

NOTICES

Grants; availability, etc.:
Discretionary program, 3670

COMPTROLLER OF CURRENCY

RULES

National banks:
Accounts without service charge; interpretive ruling; removed, 32003
Capital changes (equity capital and subordinated debt), 13762
Charitable foundations and charitable contributions; interpretive rulings removed and clarification of Clifford trust, 19324
Corporate activities--
Bank service corporations; investment approval policy, 33332
Fees for processing filings, 1439, 5567
National bankers' banks, 35207
Minimum capital ratios; directives issuance, 10207
Organization, procedures, and public information:
Staff no-objection positions, 37344
Securities Exchange Act disclosure rules, 45276

PROPOSED RULES

National banks:
Bank directors; required notification to nominate; CFR Part removed, 34159
Corporate activities--
Change in bank control, disclosure policy, 19183, 20800
Securities transactions; recordkeeping and confirmation requirements; withdrawn, 31605
Financial and other information, disclosure to bank depositors and security holders, 45372
Suspected crimes, reports, 34857
Regulatory agenda, 17633, 44502

NOTICES

Organization, functions, and authority delegations:
Deputy Comptroller for Multinational Banking, 19841
Privacy Act; systems of records, 16037, 30557
Senior Executive Service:
Performance Review Board; membership, 1972

CONSERVATION AND RENEWABLE ENERGY OFFICE

RULES

Commercial and apartment conservation service Federal standby plan, 37818
Grants:
Institutional conservation program (schools, hospitals, etc.), 18348
Weatherization assistance for low-income persons; interim, 708, 49912

PROPOSED RULES

Consumer products:
Central air conditioners; computer simulation or engineering rating analysis; advance notice, 13042
Dishwashers, television sets, clothes washers, etc.; energy efficiency standards, 12966
Refrigerators, freezers, water heaters, etc.; State petitions for exemption; extension of time, 24198
Water heaters, furnaces, clothes dryers, etc.; State petitions for exemption, 21450
Weatherization assistance for low-income persons, 29620

NOTICES

Consumer product test procedures; waiver petitions:
ANDI-CO Appliances, Inc., 21488
Bock Water Heaters, Inc., 24286, 47106
Coleman Co., Inc., 2710
Ford Products Corp., 32614, 50678
Magic Chef Air Conditioning Co., Inc., 24288
Magic Chef Co., Inc., 41553
Whirlpool Corp., 1628, 34186
White Consolidated Industries, Inc., 51284
Consumer products, energy conservation program:
Average unit cost of residential energy sources, 4888
Energy conservation program:
Affordable housing through energy conservation; draft guide availability and inquiry, etc., 45469
Grant awards:
Energy basic industry research laboratory, 13065
Grants; availability, etc.:
Low-income weatherization assistance program; energy-related business development project, 41190
Industrial energy conservation program:
Corporations; filing exemption list and adequate reporting programs, 21180, 35032
Corporations (one trillion Btu consumption); industrial energy efficiency improvement and recovered materials utilization reporting, 21176
Meetings:
Automotive propulsion systems research and development, 42077
National Energy Extension Service Advisory Board, 6236, 8366, 10300, 13648, 36921, 53185

CONSTRUCTION INDUSTRY

See Employment Standards Administration.
Occupational Safety and Health Administration.

CONSUMER PRODUCT SAFETY COMMISSION

RULES

Baby rattles; safety requirements; correction, 51514
Conflict of interests:
Ethics Counselor, 13555
Flammable fabrics:
Children's sleepwear; footnotes amended, 53307
Clothing textiles and vinyl plastic film; interpretations, clarification of standards, and procedures, 7754
Correction, 11847, 11848, 51670
Clothing textiles standard; requirements for testing and recordkeeping to support guaranties; correction, 11847
Freedom of Information Act; implementation, 7753
Noncomplying, misbranded, or banned products, export; policy statement and interpretation; correction, 51670
Organization, functions, and authority delegations:
Media Relations Office et al., 52440
Poison prevention packaging:
Oral contraceptives; child-resistant packaging requirements exemption; correction, 51514
Policy or interpretation statements:
Emergency exemptions, granting; correction, 51670
Substantial product hazard reports; enforcement policy; extension of time, 6157

PROPOSED RULES

All-terrain vehicles; injury risk; advance notice, 23139
Correction, 25082
Extension of time, 31391
Chain saws, components, and replacement

parts; safety standard development; withdrawn, 35241
Flammable fabrics:
Decubitus and absorbent mattress pads; flammability standard exemption proposal withdrawn, 40869
Hazardous substances:
Petroleum distillates; first aid direction; labeling requirements, 50918
Strong sensitizer; definition, 46300
Regulatory agenda, 18028, 44882
Voluntary standards activities; recognition; withdrawn, 19699

NOTICES

Agency information collection activities under OMB review, 5289, 6233, 7812, 8180, 12849, 19433, 24284, 25292, 28004, 28835, 35288, 35289, 40888, 46810
Commission decisionmaking procedures; availability, 42986
Di(2-ethylhexy)phthalate; draft report availability, etc., 28003
Meetings:
All terrain vehicles hazards, 19433, 21925, 28440, 33616, 40210
Allergic Sensitization Technical Advisory Panel, 7097, 24670
Chronic Hazard Advisory Panel, 9484, 16334, 21924
Cigarette and Little Cigar Fire Safety Interagency Committee, 2704, 3827, 6980, 7812, 13061, 23756, 32102, 40888, 49091
Commission priorities; 1987 FY, 20921
Toxicology Advisory Board, 11535
Meetings; Sunshine Act, 380, 1159, 1973, 3075, 4011, 5030, 6425, 7686, 8695, 9535, 10577, 11988, 12888, 14073, 14486, 15808, 16771, 19262, 19516, 20030, 21011, 23379, 25377, 25821, 28868, 30255, 30781, 31670, 32522, 35356, 36511, 38242, 39216, 40946, 41290, 42639, 43311, 43629, 45525, 46533, 47497, 49494, 50983
Senior Executive Service:
Performance Review Board; membership, 12850
Settlement agreements:
Brown Group Recreational Products, Inc., 49745
Futon Gallery, Inc., et al., 43268
Honeywell, Inc., 2845
Scovill Inc., 11007
Voluntary standards; approaches for increasing Commission support; hearings and inquiry, 33458

CONSUMERS

See Consumer Product Safety Commission.
Federal Trade Commission.
National Highway Traffic Safety Administration.

COOPERATIVE STATE RESEARCH SERVICE

RULES

Special research grants program; administrative programs, 5498

NOTICES

Grants; availability, etc.:
Rangeland research, 12737, 14685
Special research program, 52204
Meetings:
Animal Health Science Research Advisory Board, 33806
Committee of Nine, 14275, 34523, 46148
Cooperative Forestry Research Advisory Council, 43590
Science and Education Research Grants Program Technical Advisory Committee, 12594, 12595

COPYRIGHT OFFICE, LIBRARY OF CONGRESS

RULES

Cable systems; compulsory license, 9270
Correction, 11366
Claims registration:
Semiconductor Chip Protection Act; implementation; mask work protection, 26714
Interim, 263
Coin-operated phonorecord players; recordation and certification, 52458
Copyright registration; cancellation of completed registration forms, 40833
Office organization, and information provision procedures, 30169
Correction, 31368
Privacy Act; implementation, 32696

PROPOSED RULES

Cable television compulsory licensing system, 14725
Claims registration:
Copyright deposit requirements, 6208
Databases, deposit and registration, 24240
Coin-operated phonorecord players; recordation and certification, 42965
Copyright registration; cancellation of completed registration forms, 33065

NOTICES

Compendium of Copyright Office practices; availability, 6288
Import statements and documents; fees; policy decision, 46206

COPYRIGHT ROYALTY TRIBUNAL

RULES

Cable royalty fees; inflation adjustment proceedings, etc., 18480
Public broadcasting entities; cost of living adjustment for performances of musical compositions, 49551

PROPOSED RULES

Cable royalty fees; inflation adjustment proceedings, etc., 10989

NOTICES

Cable copyright royalty rates adjustment; inquiry, 23349, 43605
Cable royalty fees:
Distribution determinations, 5290, 6027, 6030, 9122, 9881, 24929, 25620, 46691, 50937
Distribution proceedings, 9484, 13845, 20922, 23350, 33617
Jukebox royalty fees:
Distribution determinations, 47577, 50656
Distribution proceedings, 31645, 47794
Meetings; Sunshine Act, 43311

COSMETICS

See Federal Trade Commission.
Food and Drug Administration.

COUNCIL ON ENVIRONMENTAL QUALITY

See Environmental Quality Council.

CUSTOMS SERVICE

RULES

Air commerce:
Civil aircraft; entry and clearance forms, 37996
Progressive clearance procedures for airlines, 23292
Articles conditionally free, subject to a reduced rate, etc.:
Aircraft supplies and equipment; Egypt, 33716
Articles exported for repairs, alterations, or processing, 38975
Importation bonds; cancellation, 9797
Effective date postponed, 14093
Carnets:
Liability limitation of domestic guaranteeing associations; TIR carnets, etc., 42516
Conforming amendments (Trade and Tariff Act implementation, etc.), 29949
Correction, 32555
Container stations; relocation or alteration procedures, 15884
Country of origin marking:
Pistachio nuts, imported, 37842
Effective date delayed, 42683
Customs bonds:
Bond structure, revision; correction, 739
Missing documents submission; filing time, 40361
Customs Courts Act and Federal Courts Improvement Act; implementation, 21429
Entry process; acceptance of formal entries with unsecured bonds, 38979
Financial and accounting procedure:
Calculation of interest on overdue accounts and refunds, 21832
Current rates, 23947
Certification fees assessment and collection, 45104
Payment of estimated duties and other charges, 21431
Fines, penalties, and forfeiture procedures, 50287
Fines, penalties, etc.; authority delegation to district directors, 7335
Forms:
Special Customs Invoice, elimination, 9610
Merchandise, special classes:
Cultural property convention implementation; illicit imports and exports prohibited, etc.; interim, 26193
Correction, 27947
Honeybees and honeybee semen, 1043
Obscene articles, 47206
Textiles and textile products; country of origin, etc., 8710
Effective date clarified, 9796
Merchandise entry:
Entry numbers, 27816
Entry type codes; changes in assignment and format, 1499
Merchandise lost, damaged, abandoned, or exported; relief from duties; entry summary filing, 38519
Organization and functions; field organization, ports of entry, etc.:
Columbia-Snake Customs District, Boise, ID, and Colorado Springs, CO, 4973, 13190

Hidalgo and Progreso, TX, 38978, 41488
New York Customs Region, 26694
San Diego, CA, 4504, 38977
Reporting and recordkeeping requirements, 11849
Correction, 13771
Tariff classifications:
Continuous cast iron bars, imported; decision on petition, 38649
Gloves with nonfunctional, nondecorative stitching, 40364
Lace curtain material, 31707
Polypropyhlene rope and twine, 45812
Television camera lens systems, 1044
Correction, 3508
Transportation in bond and merchandise in transit:
Liability limitation of domestic guaranteeing associations; TIR carnets, etc., 42516
Liquidated damage claims against bonded carriers, 49037
Vessels in foreign and domestic trades:
Entry and clearance requirements for lighters, etc., 21427
Guatemala and Bahamas; reciprocal privileges, 53144
Ireland and Sweden; pleasure vessels licensing list, 20900
Correction, 24616
Passengers on foreign vessels taken on board and landed in U.S., 26981
Correction, 37519
Tonnage tax and light money payment, 15414

PROPOSED RULES

Administrative rulings:
Threading of pipe fittings; country of origin (substantial transformation) determinations, 34165
Air commerce:
Civil aircraft; entry and clearance forms, 1544
General revision, 30455
Private aircraft arriving from areas south of U.S., reporting requirements and overflight exemptions, 12819
Cargo containers and road vehicles; certification, 20227
Carnets:
Liability limitation of domestic guaranteeing associations; TIR carnets, etc., 1546
Consumption, appraisement, and informal entries; courier or express air delivery services, 42569
Country of origin marking:
Imported textiles and textile products; advance notice, 31392
Pipe and pipe fittings of iron or steel, 1064
Correction, 4524
Pistachio nuts, imported, 5629
Customs brokers:
Single license, separate permits, grounds for license suspension or revocation, monetary penalty, etc., 31871
Customs duties:
Drawback, claimants under same condition; exemption, 45919
Financial and accounting procedure:
Certification fees assessment and collection, 21455
Fines, penalties, and forfeiture procedures, 26588
Freedom of Information Act; implementation, 1233
Merchandise entry:
Consolidated shipments; broker designations, 52532
Organization and functions; field organization, ports of entry, etc.:
Chicago, IL, 5628, 37004, 42035
Gramercy, LA, 9455
New York Customs Region, 1063
Pascagoula, MS, 40982
Roberts Landing, MI, 42036
Winston-Salem, NC, 23027
Recordkeeping, inspection, search, and seizure:
Violations of 19 U.S.C. 1592, prior disclosures, 27829
Extention of time, 36603
Regulatory agenda, 17639, 44508
Reporting and recordkeeping requirements, 52799
Tariff classifications:
Backpacking tents, imported; advance notice, 27831
Curtains and valances from Holland, 48430
Fuel grade ethanol from Caribbean Basin countries; petition, 14250
Leaded naphtha, 7929
Transportation in bond and merchandise in transit:
Liability limitation of domestic guaranteeing associations; TIR carnets, etc., 1546
Liquidated damage claims against bonded carriers, 1545
Vessels in foreign and domestic trades:
Passengers on foreign vessels taken on board and landed in U.S., 1060

NOTICES

Carnets:
TIR carnet issuing and guaranteeing association applications, 42636
Carrier media bearing data or instructions for use in data processing equipment, imported; valuation, 30558
Customhouse broker license cancellation, suspension, etc.:
Baker, Michael Alan, 20644
Barnhart, James A., 4009, 32826
Robbins, Allen, et al., 37467
Customs broker license examination; rescheduled, 38055
Imported goods, value; interest charges, 27886
Organization, functions, and authority delegations:
Facsimile signatures and seals use; revocation, 8042
Neche, ND, port of entry; change of hours; inquiry, 45957
Privacy Act; systems of records, 30048, 41616
Reimbursable services; excess cost of preclearance operations, 7157, 21956, 34577, 46383
Senior Executive Service:
Performance Review Boards; membership, 20160
Taiwan; release of invoice information on textile products, 8042
Tariff rate quotas:
Fish, 30040
Tuna fish, 16577, 21540
Tariff reclassification petitions, etc.:
Athletic shoes, imported, 42635
Color television picture tubes in receiver assemblies, 7026
Hook and eye tabs incorporated in brassieres, 39067
Vehicle known as "Unimog", imported, 49812
Trade name recordation applications:
Acme Premium Supply Corp., 2653
American Fan Retail Association, Inc., 4828, 6093, 18610
Crissair Inc., 5028, 15034
Cryomec, Inc., 38939
Gerber Products Co., 10341
International Business Machines Corp., 26434, 37467
L.A. Gear California, Inc., 2654
Neenah Foundry Co., 4296, 15034
Supreme Import Export Co., Inc., 10341
Union Fork & Hoe Co., 7026
Unitek Corp., 23866
Tuna and tuna products from Solomon Islands; importation prohibition removed, 15272
Vessel services, container stations, and warehouses; fees, 15271
Warehouse facilities; proprietors fees, 8043, 50032

DEFENSE COMMUNICATIONS AGENCY

NOTICES

Meetings:
Scientific Advisory Group, 15475
Senior Executive Service:
Performance Review Board; membership, 33818

DEFENSE CONTRACT AUDIT AGENCY

NOTICES

Privacy Act; systems of records, 50339, 52993
Senior Executive Service:
Performance Review Board; membership, 33395

DEFENSE DEPARTMENT

See also Air Force Department.
Army Department.
Defense Communications Agency.
Defense Contract Audit Agency.
Defense Intelligence Agency.
Defense Logistics Agency.
Defense Mapping Agency.
Defense Nuclear Agency.
Engineers Corps.
Navy Department.
Uniformed Services University of the Health Sciences.

RULES

Acquisition regulations:
Competition in contracting requirements; etc.; temporary, 13353
Contracting activity designation, contract reporting, etc., 12275
Contractor qualifications; debarment, suspension, and ineligibility, 28209
Interim, 8121
Definitions, negotiation authority, debarment, balance of payments approval authority, etc., 12261
Identification of sources of supply; interim, 41157

Make-or-buy programs, purchase orders, mistakes in bids, etc., 12291
Overhead cost certification; interim, 12028
Precious metals; two price bidding, 41156
Procurement instrument identification numbers, consolidated list of debarred, suspended, and ineligible contractors, etc., 12286
Progress payment rates; interim, 18666
Reverse engineering projects, 29675
Technical data requirements; interim, 43158
Correction, 53324
Weapons systems procurement warranties; temporary, 274
Child and spousal support allotments, involuntary; interim, 49927
Civilian health and medical program of uniformed services (CHAMPUS):
Appeals and hearings; final decisions, policies and procedures; final rule and request for comments, 23300
Federal claims collection, 52315
Medical benefits for former spouses of members or former members, 38522
Medicare and CHAMPUS eligibility regarding age and end stage renal disease; correction, 8729
Mental disorders, treatment; effective date postponed, 26988
Nonavailability statement requirements; exceptions for payments that supplement primary coverage provided by other insurance plans or programs; final rule and request for comments, 23120
Vision care benefit; final rule and request for comments, 23121
Contracting:
Commercial activities program (OMB A-76 implementation), 37527
Commercial activities program procedures (OMB A-76 implementation), 40804
Contractors receiving negotiated contract awards ($10 million or more), 77, 52443
Courts-Martial manual; annual review, 6166
Federal Acquisition Regulation (FAR):
Certification of commercial pricing; meeting, etc., 35815
Civilian Agency Acquisition Council membership, prompt payment discounts, etc., 26902
Competition in contracting requirements, 52428
Interim, 1726, 4221, 10233
Protest procedures; interim, 25680, 27969
Contract cost principles and procedures; insurance and indemnification, etc., 23604
Planning for future competition, integrity of unit prices, etc.; interim, 27560
Correction, 28103
Publicizing provisions and validation of proprietary restrictions, and competition in contracting protest provisions; interim, 2268
Subcontractor sales, unreasonable restrictions; etc.; interim, 35474
Federal claims collection, 15734
Nuclear radiation doses for DOD participants in atmospheric nuclear test program (1945-1962); dose estimate reporting standards, 42520
Organization, functions, and authority delegations:
Uniformed Services University of Health Sciences; Board of Regents procedures, 16229
Personnel:
Former spouse payments from retired pay for court ordered alimony, child support, or division of property, 2665
Official information release in litigation and testimony by DOD personnel as witnesses, 32056
Personal services contracts for direct health care providers, 11693
State tax withholding from retired pay of Uniformed Services members, 47219
Correction, 49930
Interim, 12249, 14383
Records:
DOD newspaper and civilian enterprise publications, 32851
Security:
Industrial personnel security clearance review program, 35790
Veterans:
Post-Vietnam era veterans educational assistance program; monthly benefit rates for high school diploma or equivalency certificate, 19933

PROPOSED RULES

Acquisition regulations:
Contract cost sharing policy, 46796
Precious metals; two price bidding, 28227
Technical data requirements, 36887
Extension of time, 41180
Public meeting, 38144
Travel costs, 47784
Banking institutions on DOD installations; operating procedures, 36619
Banking offices on DOD installations; operating procedures, 36610
Civilian health and medical program of uniformed services (CHAMPUS):
Cosmetic, reconstructive and plastic surgery; elimination of preauthorization requirement, 18888
Liver transplantation, 26222
Contracting:
Commercial activities program (OMB A-76 implementation), 18886
Commercial activities program procedures (OMB A-76 implementation), 19703
Credit unions on DOD installations; operating procedures, 36622
Federal Acquisition Regulation (FAR):
Alcoholic beverage costs, 51779
Architect-engineer services; definition, 10516
Company-furnished automobiles, 51776
Construction contract progress payments; withholding of funds, 7200
Contract changes clauses, 21313
Contract cost principles and procedures; advance agreements and travel costs, 8752
Contracts, voiding and rescinding, 23157
Correction, 23818
Contributions and donations, fines and penalties, and fraud proceedings defense, 53088
Cost accounting standards contracts; interest rate change, 43643
Effect of listing; debarred or suspended contractors excluded, 43633
Employee morale, health, welfare, food services, dormitory costs, and credits, 49662
Executive lobbying costs, 51778
Late bid or proposal sent by certified or registered mail; acceptable evidence in establishing mailing date, 11522
Personal services, compensation, 41179
Personal services and industrial security costs, compensation, 49662
Professional and consultant service costs; litigating appeals against Government, 51778
Public relations costs, 7199
Regulatory agenda, 18016, 44866
Relocation cost principle, 48735
Retroactive or backdated insurance, 42657
Rights in data and copyrights--
Draft availability, 32870
Restrictive markings on technical data; validation, 40416, 40984, 45442
Selling costs, 52727
Social, dining, and country club; membership costs, 51777
Training and education costs, 45708
Correction, 46470
Transportation clauses, 48332
Unallowable costs, 51776
Women-owned small businesses utilization; contract clause, 4241
Definitions, 11523, 13256
Nuclear radiation doses for DOD participants in atmospheric nuclear test program (1945-1962); dose estimate reporting standards, 19538
Personal commercial solicitation on DOD installations, 45432
Personnel:
Drunk and drugged driving by DOD personnel, 13985
Official information release in litigation and testimony by DOD personnel as witness, 10248
Correction, 12337
Regulatory agenda, 17166, 18016, 44040
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712
Veterans:
Educational assistance test program, 50632
Post-Vietnam era veterans educational assistance program--
Benefits waiver under G.I. bill, 37700, 39143
Dates of participation, etc., 25430

NOTICES

Acquisition regulations:
Progress payment rates, 18723
Streamlining; regional briefings, 40587
Agency information collection activities under OMB review, 874, 4726, 4727, 6376, 7626, 7627, 8652, 9706, 10094, 10298, 12605, 12852, 12853, 13646, 14003, 14959, 15773, 15774, 19435, 19995, 20922, 25292, 25735, 26601, 32612, 32613, 34171, 36646, 36648, 40889, 43433, 43434, 48243, 48244, 50191, 52358, 52359
Committees; establishment, renewals, terminations, etc.:
Defense Financial and Investment Review Special Advisory Committee, 18286

Defense Policy Board Advisory Committee, 29248
DOD-University Forum Advisory Committee, 50826
Courts-Martial Manual; proposed revision; inquiry, 15602
Explosives Safety Board:
Ammunition and explosives safety standard; minimum distance requirements, 29998
Federal Acquisition Regulation (FAR); agency information collection activities under OMB review, 7948, 8762, 13647, 13648, 21334, 21335, 26270, 27333, 29249, 47247, 50013, 52991
Foreign assistance:
Honduras; international security assistance determination, 2705
Foreign military sales loans for direct commercial contracts between private suppliers and foreign governments, approval for financing; policy statement, 42076
Global Positioning System (GPS); unauthorized use, 40991
Medical reimbursement rates; 1986 FY, 40991
Meetings:
Ada Board, 4253, 4254, 15475, 28113, 32760
Armed Forces Epidemiological Board, 4728, 20121, 28606, 34539
Defense Acquisition Regulatory Council, 29470
Defense Equal Opportunity Management Institute Board of Visitors, 14961, 48829
Defense Financial and Investment Review Special Advisory Committee, 24285
Defense Management, President's Blue Ribbon Commission, 30992, 36648, 40438, 43270, 48829, 51575
Defense Systems Management College Board of Visitors, 9114
DIA Defense Intelligence College, 14959, 42076
DIA Scientific Advisory Committee, 996, 1102, 4880, 7097, 14959, 15603, 19778, 20120, 20477, 25292, 25735, 27482, 28004, 29999, 30289, 30290, 30869, 33395, 33816, 35853, 42202, 50826
DOD-University Forum Advisory Committee, 38155
DOD-University Forum Working Group, 34890, 35289, 35853
Education Benefits Board of Actuaries, 15954, 24670, 28004, 28606
Education of Handicapped Dependents National Advisory Panel, 43765
Electron Devices Advisory Group, 3828, 5414, 5808, 9308, 11751, 14960, 18908, 20581, 23173, 24810, 27481, 28004, 32103, 38155, 38156, 40211, 40212, 45648, 47795, 50191, 52550
Military Personnel Testing Advisory Committee, 32613, 52550
National Defense University Board of Visitors, 23820
Nuclear Weapons Program Management, President's Blue Ribbon Task Group, 8762
President's Chemical Warfare Review Commission, 4879, 10529, 14959
Retirement Board of Actuaries, 34539
Science Board, 2601, 12852, 16732, 18548, 19067, 21643, 23173, 25736, 38156
Science Board task forces, 1263, 2602, 4727, 5113, 7097, 8761, 11008, 11535, 11931, 12852, 13410, 15773, 16732, 19067, 19436, 23173, 24284, 24670, 25736, 25737, 26244, 27042, 27482, 30869, 36648, 38156, 38157, 40212, 42077, 42202, 43270, 46476, 47246, 47419, 47582, 47795, 48624, 49440, 49983, 50192, 51574, 52358, 52992
Scientific Advisory Group, 14003, 16731, 38702
Sizing DOD Medical Treatment Facilities Blue Ribbon Panel, 3951, 8652, 12852, 16334, 23820
Special Operations Policy Advisory Group, 139, 13646, 21333, 28113, 46154
Strategic Defense Initiative Advisory Committee, 13410, 25737, 35854, 50337
U.S. Court of Military Appeals Code Committee, 23050, 50826
Wage Committee, 874, 2705, 4727, 7948, 13062, 18548, 20922, 24284, 32468, 38572, 40587, 47246, 52992
Women in Services Advisory Committee, 3377, 11411, 21643, 31217, 40437, 47582
Military traffic management. See entries under Army Department.
President's Blue Ribbon Commission on Defense Management; defense procurement system and acquisition process; inquiry, 45927
Privacy Act; systems of records, 325, 12606, 22002, 22090, 40888, 47087
Procurement:
Commercial activities, performance; inventory report and review schedule (OMB A-76 implementation), 15954
Senior Executive Service:
Performance Review Board; membership, 24670
Travel per diem rates, civilian personnel; changes, 9706, 19222, 27840, 36647, 52992

DEFENSE INTELLIGENCE AGENCY

NOTICES
Senior Executive Service:
Performance Review Committee; membership, 25621

DEFENSE LOGISTICS AGENCY

NOTICES
Agency information collection activities under OMB review, 23173, 36649
Cooperative agreements; procedures; inquiry, 8358
Environmental statements; availability, etc.:
Tidewater Virginia Area, hazardous waste storage, 37571
Privacy Act; systems of records, 51898
Product inspection and quality audit of DLA managed items; receiving adjustment, 37022
Product verification of DLA managed items; use of independent test laboratories, 24929
Senior Executive Service:
Performance Review Board; membership, 24019

DEFENSE MAPPING AGENCY

NOTICES
Meetings:
Mapping, Charting and Geodesy Advisory Committee, 36649
Senior Executive Service:
Performance Review Board; membership, 25621

DEFENSE NUCLEAR AGENCY

NOTICES
Meetings:
Scientific Advisory Group on Effects, 874, 30497
Senior Executive Service:
Performance Review Boards; membership, 45649

DELAWARE RIVER BASIN COMMISSION

RULES
Basin regulations:
Discharge of oil grease, 5972
Well registration, 25414
Ground water protection area; Pennsylvania, 5972
PROPOSED RULES
Basin regulations:
Comprehensive plan and water code; amendments and hearing, 41908
Well registration; hearing, etc., 7350
Correction, 9284
Extension of time, 13249
Ground water protection area; Pennsylvania, 2987
NOTICES
Hearings, 3009, 7098, 11010, 15957, 18909, 21335, 25293, 28836, 33618, 38024, 43272, 47247, 50339

DISASTER ASSISTANCE

See Agency for International Development.
Farmers Home Administration.
Federal Crop Insurance Corporation.
Federal Emergency Management Agency.
Small Business Administration.

DISEASES

See Animal and Plant Health Inspection Service.
Centers for Disease Control.
National Institutes of Health.
Public Health Service.

DRUG ENFORCEMENT ADMINISTRATION

RULES
Manufacturers, distributors, and dispensers of controlled substances, registration requirements, etc.:
Ocean vessels, 31588
Organization, functions, and authority delegations:
Chief Counsel; tort claims, 8607
Controller; employee claims, 28769
Practice and procedure:
Hearing transcripts and exhibits, 2046
Registrants; reporting and recordkeeping requirements, 40522
Schedules of controlled substances:
Acetyl-alpha-methylfentanyl, etc., 43698

Buprenorphine, 8104
1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP), etc., 28098
3,4-Methylenedioxymethamphetamine, 23118, 28395
3-Methylfentanyl, 11690
Nalmefene, 45815

PROPOSED RULES

Manufacturers, distributors, and dispensers of controlled substances, registration requirements, etc.:
Ocean vessels, 23451
Protocol and prescription requirements for researchers and practitioners, 42184
Registrants; reporting and recordkeeping requirements, 11902
Schedules of controlled substances:
Dronabinol, 42186
Nalmefene, 23144

NOTICES

Environmental statements; availability, etc.:
Cannabis eradication program--
Federal lands, 12096, 37069
Non-Federal and Indian lands, 21372, 50353
Registration applications, etc.:
Abbott Laboratories, 3040, 26063, 40900, 51488
Aerojet Strategic Propulsion Co., 4282, 23536
The Apothecary, 31785
Applied Sciences Laboratories, Inc., 1003, 48500
Arenol Chemical Corp., 3040, 32121, 32122, 43472
B. Ruppe Drugstore, Inc., 23203
Bartek, Michael J., M.D., 43618
Bio-Fine Pharmaceuticals, Inc., 7007
Brokerage, Inc., 10548
Brown, James A., M.D., 21150
Browning Road Apothecary, 43618
Camacho, Antonio C., M.D., 35336
Campbell's Pharmacy, 19500
Carranza, William H., M.D., 1003
Ciba-Geigy Corp., 47293
Crosstowns Drugs, 46846
Cusmano, Joseph V., M.D., 20143
Darryl's Thrifty Drugs, 50968
DuPont Pharmaceuticals, 4282, 20508, 43472, 47292, 51488
Dvorkin, Ronald, M.D., 24329
E.I. duPont de Nemours & Co., 2739
Eli Lilly Industries, Inc., 4282, 20014, 48500
First State Chemical Co. Inc., 21373, 23537, 30533, 31057
Fitzhugh, John W., M.D., 15652, 49885
Ganes Chemicals, Inc., 3040, 23203, 28483, 37070
Gardner, Steven M., M.D., 43619
Gladstone Pharmacy, 32651
Greco, Joseph A., M.D., 7407, 47634
Groves, Victor M., M.D., 50969
Ham-Ying, John Russel, D.O., 32781
Hamilton, James C., O.D., 48499
Hayes, Jude R., M.D., 5015
Hoffmann La Roche, Inc., 1003, 36501, 50354
Hottinger, John Howard, D.D.S., 35336
Jackson, Oscar J., M.D., 5016, 32122
Janssen, Inc., 14324, 21517, 23538
Jeff Grand Medical Group, 21151
Jeffery Pharmacy, 7408
Johnson Matthey, Inc., 7007, 18326, 24330, 32782, 38046
Kang Yu, M.D., 11468
Kauffman, Avner, M.D., 34208
Kavanagh, Donald S., D.D.S., 5016, 41603
Knarr, William M., D.O., 26643
Knoll Pharmaceutical Co., 14182
Kompus, Larry L., M.D., 43473
Langston, Bernard Leroy, III, M.D., 19500
Lepis, Albert, M.D., 48650
Loman, Scott J., D.D.S., 18941
Lynch, Richard B., Jr., D.O., 7844
M.D. Pharmaceutical, Inc., 14182, 20509, 26851, 31058
Mallinckrodt, Inc., 2739, 4282, 7007, 16756, 18326, 25479, 28045, 37070, 38045
Marion Laboratories, Inc., 3041, 20632, 23537, 35336
Medicine Shoppe, 30533, 46846
Misasi, Sam S. D.O., 11469
Moore, Thomas W., Jr., M.D., 15652
Motor City Prescription et al., 6077
Mullen, Leo M., M.D., 5827
Norac Co. Inc., 9527, 35336
Norton, Paul H., D.P.M., 34209
Palmer, Roger Lee, D.M.D., 34210
Palmer Drugs, 9337
Penick Corp., 31058, 34026, 42616, 47292
Philadelphia Seed Co., 40070, 48501
Phoenix Lynwood Clinic, 21151
Pholeric, John F., Jr., M.D., 48650
Pincus, Jack H., M.D., 24329
Queens County Medical Society Drug Line, 2098
Regal Pharmaceutical Co., 46518
Rocco, Donald Patsy, D.D.S., 34210
Rosen, Stephen Granet, D.D.S., 46844
Rush, Michael A., D.P.M., 19500
Sigma Chemical Co., 23202
Skelton's Pavilion Pharmacy, 46846
Smith Discount Drugs, 43619
Smithkline Corp., 23537, 42107
Sornsin, James M., M.D., 9336
Spoon's Pharmacy, 8199, 46520
Stepan Chemical Co., 24330, 29283, 38723
Sterling Drug, Inc., 23537, 35336
Syncates Associates Inc., 31058, 38723
Timanus, Clifton Orson, D.D.S., 9336, 48499
Turet, Lee A., D.D.S., 1004, 27855
Turner, Dudley B., Jr., D.O., 14183
Upjohn Co., 48501
Vila-Balzac, Gilberto, M.D., 15651
Walker, Elvin Edward, D.O., 3848
Western Fher Laboratories, Inc., 14183, 30768
Whaley, Walker Lanier, M.D., 19595, 46846
Wright, Harold Lloyd, M.D., 15652, 24329
Wyeth Laboratories, Inc., 3041, 32123, 42617
Zoll, Daniel R., M.D., 48650, 52871
Schedules of controlled substances; production quotas:
Schedules I and II--
1985 aggregate, 2866, 5826, 23538, 26642, 28851, 40068, 40069, 51614
1986 aggregate, 40070, 53025, 53026

DRUGS

See Alcohol, Drug Abuse, and Mental Health Administration.
Drug Enforcement Administration.
Food and Drug Administration.

ECONOMIC ANALYSIS BUREAU

PROPOSED RULES

International trade surveys:
U.S. trade in services with foreign persons; reporting and recordkeeping requirements, 37867

ECONOMIC DEVELOPMENT ADMINISTRATION

RULES

Business development program:
Financial assistance for industrial and commercial purposes; interim, 20746
Economic development and adjustment assistance grants; designation of eligible areas:
Notification of public officials; interim, 27419
Supplementary grant rates, etc., 12236
Financial assistance requirements:
Employment of expediters or administrative employees; compensation of persons engaged by or on behalf of applicants; interim, 20747
Nonrelocation; interim, 46749
Property management standards; mortgage provisions waiver; interim, 6338
Public works and development facilities program:
Substantial unemployment definitions, etc., 12236
Tourism and recreation requirements; exemption; interim, 725
Reporting and recordkeeping requirements, 12235

NOTICES

Grants; availability, etc.:
Economic development assistance programs; availability of funds; correction, 5651

ECONOMIC REGULATORY ADMINISTRATION

RULES

Petroleum allocation and price regulations; reporting and recordkeeping requirements reduction, 4957

NOTICES

Consent orders:
Alliance Oil & Refining Co., 47584
Amorient Petroleum Co., 144, 32258
Armstrong Petroleum Corp. et al., 6236, 25752
Atlantic Richfield Co., 8366, 26603
Bass Enterprises Production Co., 49597
Bi-Petro, Inc., 29737, 39758
Century Resources Development, Inc., 32259
Coastal Petroleum Refiners, Inc., 32260
Cox, Edwin L., et al., 51586
Empire Gas Corp., 46819
ENSTAR Corp., 33819, 43274

Gulf Oil Corp., 9493, 24929
IU International Oil & Gas, Inc., et al., 48468
Marathon Petroleum Co., 34901, 35114, 35593
Mobley, O.B., Jr., 28114, 38877
Oxy Petroleum, Inc., 35592
Pratt, Don E., et al., 38878
Texfel Petroleum Corp. et al., 40440
Union Oil Co. of California, 8376, 24813
Crude oil, domestic; allocation program:
Entitlements exception orders; final decision, 1919
Electricity export and import authorizations, permits, etc.:
Boise Cascade Corp., 39162, 46338
Fairfield Energy Venture et al., 36469, 42078
New England Power Pool, 33825
Northern States Power Co., 2850, 7371, 12608, 21490
Vermont Electric Power Co., Inc., 27335
Vermont Electric Transmission Co., 11413
Energy Supply and Environmental Coordination Act; prohibition orders, rescissions, etc.:
Iowa Public Service Co., 45655
Environmental statements; availability, etc.:
Florida; powerplant conversions to coal; withdrawn, 34539
Vermont Electric Transmission Co. et al.; electric transmission line crossing Canadian border, 19439
National Energy Conservation Policy Act:
Gas and electric utilities covered in 1986; list, 53244
Natural gas exportation and importation petitions:
Amoco Energy Trading Corp., 51902
Amtran Gas Transmission, Inc., 51904
Bethlehem Steel Corp., 15958, 24677
Cabot Energy Supply Corp., 8764
Citizens Energy Corp. et al., 49093
CPEX Pacific, Inc., 46335
Czar Resources Inc., 10835, 11413, 15604, 18725, 18911, 24288
Development Associates, Inc., 49986
Dome Petroleum Corp., 6237, 19069, 20923, 28607
El Paso Gas Marketing Co., 50829
Energy Marketing Exchange, Inc., 52839
Fields Energy Resources, Inc., et al., 11237
Frito-Lay, Inc., 51904
Great Lakes Gas Transmission Co., 4735, 12371, 20924, 31223, 34893
J.R. Simplot Co., 3381, 11236
Michigan Consolidated Gas Co., 48467
Midwestern Gas Transmission Co., 16340
N-REN Corp., 15960, 24675
Natural Gas Pipeline Co. of America, 47250
NESP Supply Corp., 47801
Northeast Gas, Inc., 46336
Northern Natural Gas Co., 1617, 8772, 13848, 14133
Northridge Petroleum Marketing U.S., Inc., 31220
Northwest Alaskan Pipeline Co., 8768
Northwest Pipeline Corp., 23495, 41555, 41556
Pacific Gas Transmission Co., 14414
Petro-Canada Hydrocarbons Inc., 48245
Poco Petroleum, Inc., 51285
Salmon Resources Ltd., 41558
Southeastern Michigan Gas Co., 2711, 19071
St. Lawrence Gas Co., Inc., 46817
Tennessee Gas Pipeline Co., 41188, 42753
Tenngasco Exchange Corp. et al., 879, 19781
Texas Eastern Transmission Corp., 31224, 32615, 33820, 33822, 41560
Transco Energy Marketing Co., 50195
Transcontinental Gas Pipe Line Corp., 47422
U.S. Natural Gas Clearinghouse, Ltd., 10533, 28608
Vermont Gas Systems, Inc., 36470
Washington Water Power Co., 2712, 7631
Westcoast Resources Inc., 31905
Yankee International Co., 50341, 51905
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
AES Placerita, Inc., 13273
Alaska Electric Generation & Transmission Cooperative, Inc., 14413, 38159
American Cogen Technology, Inc., 18550
Applied Energy Services, Inc., 16538, 25117
ARCO Petroleum Products Co., 38160
Basic American Foods, 47251
Boise Cascade Corp., 33823
Boston Edison Co., 49987
Calcogen, Inc., 8184
Carson Energy, Inc., 40441, 50196
Chugach Electric Association, Inc., 52361, 52362, 52363
Cogeneration Technology & Development Co., 16342, 25754
Crown Zellerbach Corp., 39754
Dartmouth College, 39755
General Electric Co., 11537, 24022, 25118, 31904
General Motors Corp., 4254, 13411
Gilroy Energy Co., Inc., 11536, 25119
Golden Valley Electric Association, Inc., 31222
Huntsville, AL, 45145
Iowa Public Service Co., 25753
Klondike Equity Enterprises, Inc., 45653, 48246, 48459, 50197
LTV Steel Co., Inc., 37399
Matanuska Electric Association, Inc., 26032
Medina Electric Cooperative, Inc., 37726
Merck & Co., Inc., 45654
Municipal Light & Power, 53002
New England Ethanol Products, 6379
Northern California Power Agency, 5296, 5297, 5298, 14281
Northern Cogeneration One Co., 39757
Occidental Chemical Corp., 47252
Oklahoma Gas & Electric Co., 48460, 48462, 48463, 48464
OLS Energy-Chino, 7813, 21336, 47254
OLS Energy-University of California, 16124, 29738
Owens-Illinois, Inc., 50198
Pennwalt Corp., 43435
Power Developers, Inc., 24023
Public Service Co. of New Hampshire, 3430
Santa Clara, CA, 29251, 41554
Simpson Paper Co., 25119, 37401, 47424
Smith Cogeneration, Inc., 47253
Sunlaw Energy Corp., 11538, 32257, 38162, 50197
Sycamore Cogeneration Co., 49747
Texas Utilities Electric Co., 16125, 16126, 16128, 26033, 26034, 26035, 32258
Texasgulf, Inc., 8184
Thermo Power & Electric, Inc., 48466
United Cogen, Inc., 19441, 33824
University Cogeneration, Inc., 32886
Willamette Industries, Inc., 10095, 38161
Public Utility Regulatory Policies Act:
Gas and electric utilities covered in 1986; list, 53244
Remedial orders:
Apache Oil Co., Inc., 28007
Atlantic Richfield Co., 48120
Big Muddy Oil Processors, Inc., 18725
C&H Refinery, Inc., 40590
Canal Refining Co., 18724
Cities Service Co., 12607
Concord Petroleum Corp. et al., 49988
CPI Crude, Inc., 11237
Elk Trading Co., Inc., 13065
Erickson Refining Corp., 28008
Fields Energy Resources, Inc., et al., 11237
Goldsberry Operating Co., Inc., 13065
Listo Petroleum, Inc., 46817
North American Petroleum Co. et. al., 28008
O.K. Oil & Gas, Inc., et al., 27334
Oklahoma Refining Co., 29738
Oxnard Refining Co., 19442
Pester Derby Oil Co., 37726
Petroleum Supply, Inc., 19997
Phoenix Petroleum Co. et al., 49988
Port Petroleum, Inc., 9882, 47585
Rodgers Hydrocarbon Corp. et al., 19443, 21336, 27334
Salem Ventures, Inc., 3954
Shell Oil Co., 8762, 9492
Shepherd Oil Inc. et al., 51585
Southwestern Gulf Petroleum Co. et al., 49988
Tampimex Oil International, Ltd., 19443
Texaco, Inc., 8763
Thriftway Co., 32887
Tonkawa Refining Co., 29736
Total Petroleum, Inc., 27335
Tri-Service Drilling Co., 42077
Trigon Exploration, Inc., 42990
United Refining Co. et al., 13850

EDUCATION

See Education Department.
Food and Nutrition Service.
Veterans Administration.
Wage and Hour Division.

EDUCATION DEPARTMENT

See also National Council on the Handicapped.

RULES

Bilingual education and minority language affairs:
Emergency immigrant education program, 32562
Fellowship program, 33308
State educational agency program, 33202
Educational research and improvement:
Discretionary program for mathematics, science, computer learning, and critical foreign languages, 25972
Excellence in education program, 25962
Library Services and Construction Act programs, 33172
Strengthening research library resources program, 48190
Women's Educational Equity Act program, 11632
Elementary and secondary education:
Areas affected by Federal activities, etc.; assistance for local educational agencies (impact aid program)--

Application deadline, 4862
Local contribution rates, 33208
Education Consolidation and Improvement Act of 1981; Chapter 2 implementation (block grants), 37974
Indian education programs, 10924
Magnet schools assistance program, 21190
Mathematics, science, foreign languages, and computer learning; State grants for strengthening skills of teachers and instruction, 43542
Migratory children and neglected or delinquent children in institutions (Chapter 1) programs; financial assistance to local educational agencies, 18406
Correction, 31592
Grant administration:
Audit requirements for State and local governments; final rule and request for comments, 37356
Cost principles for nonprofit organizations, 4509
National security information program; implementation, 28101
Postsecondary education:
Guaranteed student loan and PLUS programs; authorities issuing tax-exempt obligations, plan for doing business, 5506
Guaranteed student loan program; family contribution schedule, 13916
National graduate fellows program, 33220
Pell grant program, 10710
Cost of attendance, 19302
Family contribution schedule, 1178, 19296
Student assistance general provisions (Selective Service System registration status), 26950
Special education and rehabilitative services:
Architectural barriers to handicapped removal program, 29328
Correction, 32172
Client assistance program, 9960
Handicapped education research, 34638
Correction, 43702
Handicapped special studies program, 35482
Interpreters for deaf individuals, training, 32678
National Institute of Handicapped Research; innovative grant program, etc., 16672
Rehabilitation Amendments of 1984; implementation, 38628
Severely handicapped individuals; vocational rehabilitation services, supported employment, 25406
Vocational and adult education:
Adult education; State administered program and national adult education discretionary program; clarification, etc., 29352
State vocational education and discretionary programs, 33226
Correction, 38801

PROPOSED RULES

Bilingual education and minority language affairs:
Emergency immigrant education program, 19146
Fellowship program, 26132
Instructional services for limited English proficient persons; project evaluation requirements, 21578
Program implementation; general provisions, 48352
State educational agency program, 21766
Educational research and improvement:
Educational research grant programs, 9970
Library Services and Construction Act programs, 20522
Strengthening research library resources program, 32746
Elementary and secondary education:
Areas affected by Federal activities, etc.; assistance for local educational agencies (impact aid program); local contribution rates, 25024
Indian education program; formula grants to local educational agencies and tribal schools, 11513
Intergovernmental review of agency programs and activities, 30959
Postsecondary education:
College housing program, 46675
College work-study program, 8050
Guaranteed student loan and PLUS programs, 5506, 5539, 35964
National direct student loan program, 8050
Due diligence, 7872
National graduate fellows program, 23390
Student assistance; application information verification, 30674
Supplemental educational opportunity grant program, 8050
Regulatory agenda, 17176, 44052
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712
Special education and rehabilitative services:
Handicapped education research, 11356
Handicapped individuals, severely; vocational rehabilitation services, supported employment, 8300
Handicapped special studies program, 5080
Interpreters for deaf individuals, training, 21186
Special projects and demonstrations providing transitional services for handicapped youth, 28412
Vocational and adult education:
Adult education; State administered program and national adult education discretionary program; clarification, etc., 8304
State vocational education and discretionary programs, 3626

NOTICES

Accrediting agencies and associations, nationally recognized; list, 3011, 40213, 41933
Agency information collection activities under OMB review, 139, 2329, 3011, 3378, 5658, 6235, 7628, 9487, 10531, 11011, 11413, 12854, 13272, 14745, 16123, 18286, 18724, 20258, 21115, 23821, 24285, 24560, 26603, 27043, 27841, 28970, 32254, 32469, 33619, 36650, 37896, 40046, 41725, 43434, 45649, 45928, 47248, 50340, 50657
Civil Rights Office; annual operating plan, 29717, 48624
Data acquisition activities involving educational agencies and institutions, 24019
Education Appeal Board hearings:
Applications for review, 2327, 11536, 20258, 27650, 37719
Claim compromises--
Colorado Department of Education, 19438
Minnesota State Advisory Council for Vocational Education, 4570
Oakland Unified School District, 28113
Foreign languages, critical, for national security, economic, and scientific needs:
Final list, 31412
Inquiry, 14743, 15475
Grantback arrangements; award of funds:
California, 26825
Massachusetts, 19068
Nebraska, 16335
Pennsylvania, 46333
Tennessee, 16337
Grants; availability, etc.:
Bilingual education--
Demonstration projects program, 18909
Fellowship program, 26136
State educational agency program, 27044
Bilingual vocational programs, 19779, 30498, 37899
Business and international education program, 47419
Challenge grant program, 23822
College assistance migrant program, 28005
College housing program, 18287
College work-study program--
Appeal filings, etc., 4732
Approved systems of need analysis, 7099, 53184
Fiscal-operations report and application to participate filing, 35857
Institutional eligibility application forms, 50828
Sample cases and expected parental contributions, 29720, 38651
Cooperative education program, 23053, 38704
Deaf-blind children and youth services program, 14130
Desegregation assistance center programs, 6031, 48118
Desegregation of public education program, 43766
Disadvantaged students program, special services, 33619
Discretionary grant programs, 140, 2848, 4728, 4730, 4881, 4882, 4884, 5293, 7100, 7949, 18392, 19996, 23050, 24560, 29721, 30869, 30992, 32257, 34891, 35028, 35029, 41726, 43768, 45462, 47098
Funding priorities, 21645
Educational media research, production, distribution, and training program, 9488, 48067
Funding priorities, 9490, 31000, 47795
Emergency immigrant education program, 19563
Endowment grant program, 6981, 7813, 20477, 29471, 41552, 43434
Excellence in education program, 31001, 40589
Follow through program, 9312
Foreign language and area studies fellowships program, 37898
Fulbright-Hays training grant programs, 32469

Graduate and professional opportunity fellowships program, 30497, 37720
Handicapped children, severely; innovative programs; auxiliary activities, 700, 701, 13730, 14204, 14962, 41319
  Funding priorities, 13731, 25175, 41318
Handicapped children's early education program, 40472, 41322, 43766
  Funding priorities, 40473, 41322
Handicapped education program, training personnel, 143, 8183, 23052, 26029, 28007, 48071
  Funding priorities, 8182, 21646, 29250, 47796
Handicapped individuals, severely; special projects and demonstrations for providing vocational rehabilitation services--
  Funding priorities, 47799, 50657
  New awards, 49092
  Supported employment, 25294
Handicapped individuals; special recreation programs projects, 46813
Handicapped research, 8181, 14874, 35854, 35855, 35856
  Field-initiated research, 46334
  Funding priorities, 13734, 14870, 15775, 37571, 37574, 46810, 47099
  Spinal cord injuries, special projects and demonstrations, 28971
Handicapped research; research fellowships, 21113
  Funding priorities, 19660, 31902, 47797
Handicapped research and demonstration projects, 48739
  Funding priorities, 48738, 49596
Handicapped special studies program--
  Annual evaluation priorities, 18384, 31219
  State educational agency/Federal evaluation studies, 18385
High school equivalency program, 28006
Independent living centers program, 16204
  Funding priorities, 16202
Indian education programs; formula grant program, 5414, 41933
Indian fellowship program, 10926, 47420
International research and studies program, 32884, 32885
Interpreters for deaf individuals training programs, 21114
Law school clinical experience program, 3012, 50657
Library career training program, 27046
Library Services and Construction Act special projects grants to Indian tribes and Hawaiian natives program, 20540, 40439, 45650
Magnet schools assistance program, 16533, 21199, 49595, 51576
Migrant education basic State formula grant program, 19224
Migrant education interstate and intrastate coordination program, 41184
Minority institutions science improvement program, 32471
National direct student loan program--
  Appeal filings, etc., 4732
  Approved systems of need analysis, 7099, 53184
  Default report filings, 2075
  Fiscal-operations report and application to participate filing, 35857
  Institutional eligibility application forms, 50828
  Sample cases and expected parental contributions, 29720, 36651
National graduate fellows program, 37720, 46156
National resource centers program, 37898
Pell grant program, 11352
  Electronic pilot, 29999, 31649
Postsecondary education improvement fund; comprehensive program, 16334, 51282, 52550
Projects with industry; funding priorities, 41186
Public service education fellowships program, 40217
Refugee children transition program, 5809
Regional educational laboratories and research and development centers program, 14006, 20122, 20260
Rehabilitation long-term training projects, 14132, 18388
  Funding priorities, 18388, 28313
School construction program, 12855
Special needs program, 20477, 24673, 27043, 38706
Special programs staff and leadership personnel training program, 4997, 23354
State student incentive grant program, 53001
Strengthening program, 4010, 6981, 7813, 20477, 38708
Strengthening research library resources program, 32761
Supplemental educational opportunity grant program--
  Appeal filings, etc., 4732
  Approved systems of need analysis, 7099, 53184
  Fiscal-operations report and application to participate filing, 35857
  Institutional eligibility application forms, 50828
  Sample cases and expected parental contributions, 29720, 36651
Talent search and educational opportunity centers programs, 32256
Undergraduate international studies and foreign language program, 32472
Upward bound program, 37398
  Application preparation workshops, 31648
Veterans cost of instruction payments program, 2849, 23756
Vocational education Indian and Hawaiian Natives program, 24811, 24812, 33306, 41935
Women's educational equity act programs, 11634
Meetings:
  Accreditation and Institutional Eligibility National Advisory Committee, 14744, 15775, 32473, 43273, 46814
  Adult Education National Advisory Council, 2602, 25294, 37899
  Bilingual Education National Advisory and Coordinating Council, 35591, 42987, 42988, 42989, 45927, 51576, 51577
  Bilingual Education National Advisory Council, 996, 3377
  Continuing Education National Advisory Council, 6031, 20121, 30727, 33818, 37900, 46155
  Dependents' Education Advisory Council, 2330, 14961
  Education Intergovernmental Advisory Council, 14412, 35591, 45650, 49983, 53374
  Education Statistics Advisory Council, 2330, 21112
  Educational Research National Council, 48244, 48627
  Educational research priorities, 13062, 21488
  Elementary Education Study Group, 40589, 49747
  Indian Education National Advisory Council, 5809, 10835, 14412, 25117, 36651, 51283, 53184
  International Education Programs National Advisory Board, 11752, 32614
  National Assessment of Educational Progress Assessment Policy Committee, 1616, 21112, 41551
  National Graduate Fellows Program Fellowship Board, 37265
  Postsecondary Education Improvement Fund National Board, 7099, 16339, 48624
  Research in Vocational Education National Center Advisory Committee, 7367, 37398
  Vocational Education National Council, 41188
  Women's Educational Programs National Advisory Council, 1263, 14129, 23051, 24673, 37899, 52552
Meetings; Sunshine Act, 24342, 36650, 37110
Postsecondary education:
  Accrediting and State approval agencies; list for review, 19437
  Guaranteed student loan and PLUS programs; special allowances, 4884, 15215, 29999, 46692
  National defense and direct student loan programs; directory of designated low-income schools for teacher cancellation benefits; availability, 15775, 37264
Privacy Act; systems of records, 31219, 31411
Procurement:
  Commercial or industrial activities, performance; review schedule (OMB A-76 implementation), 8362
Senior Executive Service:
  Performance Review Board; membership, 40440
Special education and rehabilitative services:
  Blind vending facilities in Federal prisons, proposed limitations; Secretarial determination under Randolph-Sheppard Act; inquiry, 14005
  Categories of costs under basic State vocational rehabilitation grant programs, 3013

ELECTIONS

See Census Bureau.
Civil Rights Commission.

INDEX VOL 50 1985 UMI

Federal Election Commission.
Justice Department.

ELECTRIC POWER

See Bonneville Power Administration.
Conservation and Renewable Energy Office.
Economic Regulatory Administration.
Federal Energy Regulatory Commission.
Reclamation Bureau.
Rural Electrification Administration.
Southwestern Power Administration.
Tennessee Valley Authority.
Western Area Power Administration.

EMPLOYEE BENEFIT PLANS

See Comptroller of Currency.
Internal Revenue Service.
Pension and Welfare Benefit Programs Office.
Wage and Hour Division.

EMPLOYMENT AND TRAINING ADMINISTRATION

RULES

Aid to Families with Dependent Children (AFDC); work incentive programs; implementation; final rule and request for comments, 6164
Alien temporary employment; labor certification process:
  Piece rates, adjustment, 25705
Comprehensive Employment and Training Act programs; CFR Parts removed, 26704
Federal-State employment security programs; administrative procedures, 51241
Job Training Partnership Act programs:
  Lower living standard income level determination, 24506
    Correction, 27818
  Maximum and minimum limitations on expenditures; interpretations, 11850
  State responsibility in incident report procedures; guidance letter, 12243
    Correction, 31348
  Youth training; single unit charge agreements, 16473
    Correction, 24764
Job Training Partnership and Wagner-Peyser Acts funds availability; interpretation and request for comments, 8323
Targeted jobs tax credit program:
  Lower living standard income level determination, 24506
    Correction, 27818

PROPOSED RULES

Alien temporary employment; labor certification process:
  Adverse effect wage rate; addition of Montana to list, 50311
    Correction, 51551
  Meal charges, 50313
    Correction, 51551
Senior community service employment program; implementation, 29606
  Extension of time, 34725
Trade adjustment assistance for workers, 14720
Unemployment compensation program:
  Income and eligibility verification procedures, 10450

NOTICES

Alien temporary agricultural employment in U.S.; adverse effect wage rates and plans, 33121, 34212, 47636
Federal Supplemental Compensation Act:
  Instructions issued to State employment security agencies, 19818
Federal-State unemployment compensation program:
  Administrative appeal procedures for audit determinations, 40072
  Conformity and compliance proceedings, 38230
  State certifications, 38229, 49142, 49624
  Unemployment insurance program letters--
    Federal unemployment insurance law interpretations, 48274
    Income and eligibility verification system, 24957
    Interest payment on interest-bearing Title XII loans, 38228
    Interest payment on Title XII advances, source of funds identification, 41752
    Work-training and work-relief exemption interpretation, 30249, 32328
Job Training Partnership Act:
  Migrant and seasonal farmworker programs--
    Farmworker Population Data Interagency Task Force report; availability and inquiry, 42789
    State allotments, 18327
    State planning estimates, potential grantee selection; inquiry, 49626
  Native American and summer youth employment and training programs; allocations, etc., 14037, 25342
  Summer youth employment and training programs, etc.; 1985 allotments, 24959
Labor surplus area classifications:
  Annual list, 41606, 43803
  Annual list additions, 31441, 40625
Meetings:
  State Employment Security Agency system administrative financing, 51955
Nonrubber footwear; industry study, 32654
State employment security agency programs; financing, etc.; inquiry, 51955
Trade adjustment assistance for workers; instructions to State employment security agencies, 24598, 30030
Unemployment compensation:
  Ex-servicemembers, remuneration schedule, 9914
Unemployment compensation program; extended benefit periods:
  Alaska, 7847, 41605
  Idaho, 15991, 30889
  West Virginia, 15991, 25343
Unemployment insurance system:
  Quality control program--
    Inquiry, 31787
    Meeting, 31792
Wagner-Peyser Act; State responsibility in incident report procedures; guidance letter, 45673
Wagner-Peyser Act funds:
  Basic labor exchange activities; planning estimates and allotments; 1985 PY, 20955, 21949, 34775
  State public employment services; preliminary planning estimates; 1985 FY, 10872
Adjustment assistance:
  A.B.S. Embroidery et al., 53208
  A&C Wood Turnings, Inc., et al., 4283, 14035
  A.N. Wolf Shoe Co. et al., 6287, 15990
  A&T Fashion Sportswear, Inc., et al., 568, 13092
  ABC Manufacturing Co. et al., 9527, 20937
  Abex Corp., 32654, 35880
  Acme Boot Co., Inc., et al., 569, 18942, 23539, 32654, 40071, 45947
  Adelaide Mills, Inc., 15003
  Advanced Computer Management, 569
  Advanced Hemstitching et al., 42787
  Aeolian American Corp. et al., 20143, 32654
  Aeolian Corp., 39185
  Aeolian Pianos, Inc., et al., 32654, 48654
  Aera Manufacturing et al., 2100
  AFA Corp. et al., 37921
  Airco Carbon et al., 1004, 11265, 24599
  Airco Welding Products, 10549
  Airway Industries, Inc., et al., 15992, 31791
  Alatex, Inc., et al., 27378, 32327, 50354
  Alatex Manufacturing, 41752
  Albany Industrial Maintenance et al., 41037
  Albion Cooperative, 28854
  Alcan Aluminum Corp., 35880
  Algro Knitting Mills, Inc., 28047
  Allied Chemical et al., 50355
  Allied Corp., 7146, 24599
  Allied Materials Corp., 10549, 11265
  Allied Roofing Co., 10549
  Allis Chalmers Corp. et al., 31790
  Allis-Chalmers Engine Division et al., 36930
  Aloyco, Inc., et al., 25342, 48654
  Alpha Sintered Metals, Inc., 48654
  Alta Products Corp., 28047
  Altra, Inc., et al., 45948
  Amax Chemical Corp. et al., 28048, 35337
  Amax Nickel, Inc., 49623
  Amax Specialty Metals Corp., 15653
  Amcast Industrial Corp., 15990
  AMEDCO Casket Harware, 16568
  Amerada Hess Corp. et al., 14035, 33651, 40074
  American Accessories, Inc., et al., 12664, 32654, 33651
  American Brush Co., Inc., 13092
  American Forest Products Co., 41752
  American Hoechst Corp. et al., 5452, 15990, 21950
  American Nuclear Corp. et al., 30032, 37920
  American Safety Equipment Corp., 32654
  American Southern Textile Co., 19251
  American Standard, Inc., et al., 34774
  American Thread Co., 569
  Amstar Corp., 7408, 37445
  Amtex, Inc., 40071
  Anaconda Minerals Co. et al., 30535, 42788
  Anamax Mining Co., 11265
  Anchor Hocking Corp., 27378, 41752
  Andala Manufacturing, 41752
  Anderson Shake & Shingle, Inc., 2100
  Androme Leather Co., 50354
  Apollo Dyeing & Finishing Co., 37920
  Apparel Industries, Inc., 51490
  Apparel 42, Inc., 50354
  Armco, Inc., 48654
  Arno Moccasin, 28854
  Arrow Co., 31791, 32654

Employment

ASARCO, Inc., et al., 4283, 14034, 16568, 38725
ASL Industries, Inc., et al., 40073
AT&T Consumer Products et al., 7849
AT&T Technologies, Inc., et al., 11265, 16568, 41751
Atari, Inc., et al., 19251, 35880
Atlantic Dress Manufacturing Co., Inc., et al., 49625
Auburn Die Co., 15990
Augat, Inc., 47127
Automation Components, Inc., 41752
Avondale Mills et al., 15654, 28047, 28854, 31440
Avtex Fibers, Inc., et al., 35880, 43803
B-G Shoe Co., 13092
B-W Footwear Co., Inc., 16568
Ball Corp., 49623
Bata Shoe Co., Inc., 13092, 49623
Bates Fabrics, Inc., 14035
Bear Creek Uranium Co., 41752
Belmont Manufacturing Co., 11951
Bendey Shoe, Inc., 8804
Benham Knitwear, Inc., 2100
Berg Steel Pipe Corp., 6286
Bergen Southwest Steel, 48654
Berkshire Tanning Corp., 569
Beth Energy Mines Inc. et al., 51489
Bethenergy Mines, Inc., 36931
Bethlehem Steel Corp. et al., 26277, 32654, 37920, 47636
Biltrite Corp., 11951, 15653
Blake Drilling & Exploration, Inc., 31791
Bohemia, Inc., 35880
Boise Cascade Corp. et al., 21519, 41752, 45949
Bomag (U.S.A.), 11951
Bomer Bait Co., 35880
Bonnie Lynne, Inc., 8804
Boot-Ster Manufacturing Co., 11951
Boyd Lumber Corp., 30031
Braemoor Garment et al., 21151
Brandt Cabinet Works, Inc., 35880
Brett Harris Corp., 49623
Briarcliff Mills, Inc., 38725
Briggs & Stratton Corp., 40071
Brook Manufacturing Co., Inc., 32654
Brookevale Manufacturing Co., Inc., 32654
Brown Shoe Co., 7146, 19251
Brunswick Maine Shoe Co., 26277
BTK Industries, Inc., 7146
Buffalo Color Corp., 6286
Burlington Industries, Inc., 15002, 15003, 30031, 48654
Butler County Mushroom Farm, Inc., 42788
C&C Styles, Inc., 7848
Caledonian Manufacturing Co., 50354
Canadian Cedar Industries et al., 36931
Cannon Shoe Co., 2100
Capri Beachwear, Inc., 569
Carilee, Inc., 50354
Carlen Manufacturing Co., Inc., 51490
Carus Chemical Co., 31791
Caryco Mining, Ltd., 6286
Centennial Mills, 32654
Center for Nuclear Studies, 11951
Centralab, Inc., 35880
Century Brass Products, Inc., 8804, 28854, 31791, 38723
Chambersburg Manufacturing, 24599
Champion International Building Products et al., 25799
Champion International Corp., 35880, 41752
Charles Weinstein Coal Co., 48654
Chemstar Products, Inc., 26277
Chino Mines Co., 36931
Chippewa Shoe Co., 11951
Cincy Sportswear, Inc., 10549
Clark & Powell Lumber Co., 47127
Clinton Apparel Manufacturing Co., 569
Code-A-Phone Corp., 28047
Colorado Westmoreland, Inc., 30031
Colt Industries, Inc., 28047, 48654
Commuter Industries, Inc., 31791
Conaway-Winter, Inc., 37920
Connellsville Sportwear, 50354
Connors Footwear, 47127
Consolidation Coal Co., 36931, 37920, 48654
Cooper Wire, 35880
Cooperativa Metropolitina de Consumo, 28047
Copeland Corp., 23539
Corey Shoe Co., Inc., 26277
Corona Plastics, Inc., 15003
Corona Shirt Manufacturing Co., 41752
Cotter Corp., 28854, 32654
Cowden Mena Co., 4820
Craddock-Terry Retail, 11951
Craddock-Terry Shoe Corp., 8804, 11265
Cranston Print Works, 50354
Crest Shoe Co., 26277
Crompton Co., Inc., 21950
Cross Country Clothes, 48654
Crown Zellebach Corp., 16568
Cushman Industries, Inc., 20144
Cycles Apparel, 5451
D.B. Rosenblatt, Inc., 19251
D&F Shirt Co., 33651
Dal Specialties, Inc., 41752
Dale Garment Co., Inc., 8804
Dalton Industries, Inc., 20937
Damon International, Ltd., 35880
Damsel Manufacturing Co., Inc., 42788
David Crystal Sportswear, Inc., 41752
DBI Industries, Inc., 38725
Diamond International Corp., 36931
Dominion Automotive Industries, Inc., 32654
Dorchester Refining Co., 33651
Dori Shoe Co., Inc., 21950
Dorson-Fleisher, Inc., 8804
Double-Z Knitwear Corp., 24599
Draper Corp., 569
Duolite International, Inc., 50356
Durant Electronics, Inc., 38725
Dynapac Manufacturing, Inc., 15003
E.F. Manufacturing Co., 24599
E.I. du Pont de Nemours & Co., Inc., 11951
E.R. Moore Co., 7146
East Point Seafood Co., 30031
Eastland Shoe Manufacturing Co., 31791
Eaton Corp. et al., 569, 23540, 28047, 41752, 47127, 50354
Edwards Manufacturing Co., 23539
EG&C Rotron, 50354
Elder Manufacturing Corp., 45949
Eli's Place, Ltd., 15003
Elite Thames Co., Inc., 15990
Ellen Tracy, Inc., 30031
Ely Group, Inc., 39185
Emerald Mines Corp., 32654, 38724
Emhart Industries, Inc., 6286
Emhart Machinery Group, 41036
Encore Shoe Corp., 11265
Enro Shirt Co., 35880
Ephrata Apparel Co., 51490
Equitable Fashions, 6286
Espy Shoe, Inc., 35880
Euclid, Inc., 11265
Everson Central Shop, 32654
Everything Special, 20144
Exide Corp., 569
Extracorporal, Inc., et al., 16568
F&L Fashions, Inc., 19251
F/V Merluccius, 569
Facet Enterprises, Inc., 11951
Fafnir Bearings, 16568
Fairfield Garment, 8804
Falk Corp., 27378
Farah Manufacturing Co., 2100
Fender Musical Instruments, 7848
Fenner America, Ltd., 569
Fistallis North America, Inc., 37920
Figgie International Inc., 47637
Filbert Central Shop, 32654
Flair Footwear, Inc., 4820
Fleet Air Corp., 35880
Florida Department of Citrus, 13092
Flxible Corp., 32654
FMC Corp., 26277
Formfit Rogers, 32654
Foster Grant Corp., 15990
463 Howard St., Inc., 2100
Franchesca Fashions, 47127
Fred Rueping Leather Co., 51490
Freeman Shoe Co., 28047
G.H. Bass & Co., 14035
Gary Lilly of Florida, 15003
Gateway Coal Co., 15990
Gendex Corp., 45949
General Dynamics Corp., 45949, 51956
General Electric Co., 4283, 15990, 28854, 30031, 31791
General Portland, 2100
General Refractories Co., 51490
Genesco, Inc., 7848
George J. Meyer Manufacturing, 35880
Georgia Boot Co., 15003
Glenn Manufacturing, 47637
Globe Refractories, Inc., et al., 14035, 24062
Glove City Abrading Co., Inc., 50354
Gould & Scammon, Inc., 4283
Great Western Sugar Co., 42788
H.L. Balsinger, Inc., 35880
Hagaman Manufacturing Corp., 45948
Halliburton Co., 36931, 45947
Halltex Clothing Co., 14035
Halomet, Inc., 28047
Hamilton Sportswear, 14035
Hanimex Manufacturing, Inc., 8407
Harman-Motive, Inc., 35880
Harrington & Richardson, Inc., 27378
Harris Graphics Corp., 6286, 26277
Harwood Companies, Inc., 19251
Haywood Male, Inc., 7848
Health-Tex, Inc., 29493
Hercules Shoe Manufacturing Corp., 15990
Hilo Coast Processing Co., 28484
Hoffmann-LaRoche, Inc., 28854
Hoover-NSK Bearing Co., 30031
Hoskins Manufacturing Co. et al., 3604, 14035
Houdaille Industries, Inc., 11951, 20143
Hunt-Wesson Foods, 14035
Hyde Athletic Industries, 2100
Hyster Co., 27378
ICL, Inc., 20937
Imperial Reading Corp., 11951
Independent Leather Manufacturing Corp., 47637
Indiana Glass Co., 30031
Ingersoll-Rand Co., 36931

Inteleplex Corp., 36931
International Carriers, Inc., 50354
International Hat Co., 569
International Jensen, Inc., 30031
International Shoe Co., 50354
ITT Grinnell Corp., 26277
ITT Rayonier, Inc., 15990
ITT Systems, Inc., 26277
ITT Telecom Products Corp., 49623
J&A Young, Inc., 15990
J.C. Penney Co., Inc., 32654
J&K Values, Inc., 30031
J.L. Coombs, 40071
J.S.C. Shoe Corp., 11951
J.T. Loltis Enterprise, 47127
Jack Winter, Inc., 31791
Jenkins Brothers Corp., 30031
Jerold Corp., 50354
Joanola Fabrics, 35880
Johnson Camping, Inc., 10549
Johnson Controls, Inc., 45949
Johnstown Leather Corp., 50354
Jomac Products, 28047
Joseph M. Herman Shoe Co., 7146
Joy-See Fashions Inc., 35337
Jumping-Jacks Shoes, Inc., 28854
Jung Hing Fashions, Inc., 2100
Juvenile Shoe Corp. of America, 13092
Kagan-Lown & Co., 15990
Karg Brothers, Inc., 51490
Karg Brothers Finishing Corp., 51490
Kayser Roth Mens Apparel, Inc., 28047
Kayser-Roth Hosiery, Inc., 35880
Kellwood Co., 35880, 37920
Kennecott Copper Corp., 26277
Kerr-McGee Corp., 28047
Kilborn, Inc., 48654
Kings Point Knitting Mills, Inc., 569
Koppers Co., 32654
La Femme Manufacturing Corp., 10549
Lansford Fashions Manufacturing Corp., 15990
Laranne Sportswear, Inc., 31791
Lawrence Shoe, 32654
Leader Dyeing & Finishing Co., 37920
Leckenby Co., 8804
Lefere Forge & Machine Co., 31791
Leventhal Manufacturing Co., 51490
Levi Strauss & Co., 10549, 15003, 32654
LGAM Manufacturing Co., Inc., 38725
Litton Industries, 35880
LLB Fashions, Inc., 2100
Lloyd Davis Shoe Co., Inc., 13092
Lorraine Manufacturing Corp., 2100
Louis Walter Co., Inc., 41752
Louisianna-Pacific Corp., 42788
Lowndes Coat Co., 15990
LTV Steel Co., 15990, 20144, 26277, 32654, 33651, 42788, 47637, 51490
Luzerne Coal Corp., 36931
M.E.S.S. Distributors, Inc., 47127
M.P. Goodkin, Inc., 2100
Mad Jahn Sportswear, Inc., 28047
Manistee, Inc., 4820
Margaret Fashions, 28854
Mari Anne Bag Corp., 26277
Marlboro Footwear Corp., 15003
Martin Jay Casuals, 26277
Martin Shirt Co., Inc., 42788
Mary Lou Dress Co., Inc., 569
Mayer China Co., 11951
Mayr Brothers Logging Co., Inc., 2101, 16568
McNally Mountain States Steel Co., 8804
Medusa Cement Co., 14035
Mercury Sportswear Co., Inc., 6286
Miami Footwear Corp., 28047
Middletown Footwear, Inc., 50354
Mildred Fran Dress Co., Inc., 7848
Miller, Hess & Co., 4283
Miller Shoe Co., Inc., 10549, 14034
Milton Shoe Manufacturing, Inc., 49623
Mineral Fertilizer Co., 48654
Miniscribe Corp., 28047
Mirro Corp., 40071
Miss Kelley and Miss Kelley II, 8804
Mission Furniture Manufacturing Co., 28047
Missoula White Pine Sash Co., 40073
Misty Harbor, Ltd., 15003
Mode O'Day Co., 7848
Modern Manufacturing Co., Inc., 28047
Modulus Corp., 38725
Mohegan Knitwear Corp., 40071
Monsanto Fibers & Intermediates, 48654
Montgomery Manufacturing Co., 24599
Moose River Mocasinn, 8804
Morrison Machine Co., 37920
Morton Thiokol, Inc., 32654
Motion Control Industries, 8804
Mount Braddock Land Co., 35880
Mount Vernon Mills, Inc., 20937
MSL Stamping Group, 11951
MSM Corp., 49623
Murray Ohio Manufacturing Co., 569
Nannette Manufacturing Co., Inc., 15003, 21950
National Can Corp., 15003
National Mines Corp., 19251
National Semi-Conductor et al., 35881
National Steel Service Center, Inc., 10549
New B Manufacturing Corp., 2101
New Balance Athletic Shoe, Inc., 7848
New Carolina Industries, 7848
New Coat Factory, Inc., 31791, 41037
New Seaboard Industries, 7848
Nexus Industries, 40071
Nikki, Inc., 41752
North County Leatherworks, Inc., 50354
North & Judd, Inc., 26277
North Shore Sportswear Co., 35880
North Star Steel Texas, 8804
Northern Heel Corp., 33651
Northland Shoe Manufacturing Co., 31791
Northway Products Co., 51490
NRC Corp., 35880
Oak Communications Systems, 13092, 14035, 34775, 35337
Ohio Ferro Alloys Corp., 15003, 50354
Olin Corp., 14035
Onetia Knitting Mills et al., 35882
Orem Sportswear, 45949
Outboard Marine Corp., 49623
Ovation Instruments, Inc., 11951
Pako Corp., 15003, 20633
Pandora Industries, Inc., 13092
Park Iron & Welding Co., 40071
Pathfinder Mines Corp., 20144
PBI Industries, 8804
Peerless Audio Manufacturing Corp., 42788
Peerless Tube Co., 569
Perry Manufacturing Corp., 35880
Pester Refining Co., 30031
Pfister & Vogel Tanning Co., 6286
Phar-Shar Manufacturing Co., 50354
Phelps Dodge Corp., 16568
Philadelphia Steel & Wire Corp., 30890
Philips ECG, Inc., 30031, 42789
Pickens Footwear, Inc., 47127
Pico Products, Inc., 35880, 38725
Plastronics Co., 20937, 30033
Pleasantburg Manufacturing Co., 25799
Power Piping Co., 7848
Pratt-Read Corp., 41752
Prestige Sportswear, Inc., 19251, 39185
Prince Graphite, Inc., 40071
Princeton Shirt Co., 32654
Puritan Fashions (Calvin Klein Jeans), 23539
Purolator Products, Inc., 569
Quality Components, Inc., 45949, 47128
Quality Unlimited, Inc., 569, 19819
Quintana Petrochemical Co., 2100
Quivira Mining Corp., 28047
Qume Corp., 11951
Quoddy Manufacturing, 16568
R.A.M. Enterprises, Inc., 8804
R.G. Barry Corp., 569
Rajah Ventures, Ltd., 16568
Ranco Controls Division, 37920
Randee-Wyn, Inc., 14035
RCA Corp., 4283, 14035
Red Cedar Products, Inc., 45949
Reeves Brothers, Inc., 26277
Regina Footwear, Inc., 2100
Reltoc Manufacturing Co., 2102
Republic Steel Corp., 10875
Revere Copper Products, 37920
Rexnord, Inc., 6286, 26277
Riegel Textile Corp., 24599
Riedorph Tanners, 51490
Roadmaster Corp., 21950
Rob Roy, Inc., 33651
Robert Shaw Controls Co., 36931
Rock Hall Manufacturing, 51490
Rockford Textile Mills, 41752
Roller Derby Skate Corp., 15003
Romany Ceramics, Inc., 35880
Roosevelt Mills, Inc., 35880
Roseburg Forest Products Co., 48654
Rowher Manufacturing Co., 31791
Russel Williams Co., 35880
S&M Fringing, Inc., 14035
S&S Manufacturing Co., 25799
Saginaw Shingle Co., 11951
Sawyer Research Products, Inc., 14035
Scio Pottery Co., Inc., 569
Scovill Corp., 35880
Seamless Hospital Products Co., Inc., 45949
Selmer Co., 569, 10549
Shamokin Dress Co., 2100
Shapely, Inc., 40071
Simpson Timber Co., 31791
SKF Industries, Inc., 28854
Smith-Corona, 23539, 30890
Snappy Garment, 28854
Soft Images, Inc., 32654
Soule Steel Co., 42788
South Branch Lumber Co., 36931
Southwestern Portland Cement Co., 15003
Spielberg Manufacturing Co., 35880
Spot-Bilt, Inc., 2100
Sprague Electric Co., 28047
Stackpole Corp., 50354
Standard Metals Corp., 37920
Standard-Coosa Thatcher Co., 35880
Stanley Tools, 41752
Stearns-Rogers Manufacturers, Inc., 48654
Stedfast Rubber Co., Inc., 15003
Stone Manufacturing Co., 47127
Stride Rite Footwear, Inc., 28854, 38725
Sylco Corp., 36931
Tally Toga, Inc., 30031
Tanglewood Manufacturing, 6286
Taverly, Inc., 15990
Tecumseh Products, 15653
Teledyne Amco, 30031

Teledyne Columbia-Summerial, 20144
Tenneford Weaving Co., 28854
Tennessee Chemical Co., 30031
Tennessee Fan Co., 30031
Tennessee Handbags, Inc., 14035
Tensor Lamp Corp., 11265
Terada Manufacturing Co., 8804
Texacan Corp., 45949
Texaco, Inc., 6286, 33651, 35880, 40071
Texas Apparel Co., 47127, 47637
Texon, Inc., 20937
Thomas Manufacturing Co., 51490
Thomaston Mills, 28854
Thomson Co., 42788
Thru Blu, 51490
Timberland Cedar Products, 48654
Timberland Co., 19251
Timken Co., 41752
Tommies, Inc., 24599
TRA Dean Fashions, Inc., 47127
Transport, Inc., 35880
Tremonton Sportswear, 45949
Triumph-Adler Co., 16568
Trojan Luggage Co., 4820, 26277
Troytown Shirt Corp., 50354
Truitt Brothers, Inc., 32654
Tube Lok Products, 35880, 46522
Tubular Corp. of America, Inc., et al., 24062, 42238
Tucson Cornelia & Gila Bend Railroad Co., 51490
Tultex, Inc., 33651
Tuscarora Yarns, Inc., 28047
Twin City Leather Co., Inc., 45947
U.S. Steel Corp., 8804, 13092, 14035, 21950, 23539, 27378, 28047, 35880, 36929, 48654, 50354
U.S. Steel Mining Co., Inc., 23539, 40071
Umetco Minerals Corp., 37920
Union Carbide Corp. et al., 14035, 41752, 48654
Union Manufacturing Co., 2100
United Merchants & Manufacturers, Inc., 33651
United Pants Co., Inc., 14035, 41752
United Pioneer Co., 37920
United Shoe Machinery Corp., 20937
United States Shoe Corp., 21950
United Technologies Corp. et al., 11266, 32654, 39185
United Uniform Manufacturing Co., 23539
Universal Firearms, 6286
Universal Sportwear, Inc., 40071
Uranerz USA, Inc., 30031
USM Corp., 30031
Van Vlaanderen Machine Co., 2100
Vest, Inc., 27378
Viner Brothers, Inc., 19251
Virginia Maid Hosiery Mills, 35880, 45947
Virginia Wire & Fabric Co., 38725
Volunteer Leather Co., 7848
W.I. Forest Products, 35882
W. Kotkes & Son, Inc., 45949
Waldo Shonee Corp., 8804
Wallace International Silversmith, Inc., 24599
Warner & Swasey Co., 40071
Wasser & Fluhrer, Inc., 14035
Waverly Sportsware, 35880
Weinbrenner Shoe Co., 41752
Weisner Products, 20937, 31441
Welland Chemical Inc., 35880
West Orange Manufacturing Co., 39185
West Point Pepperell, Inc., et al., 19251, 36931
West Virginia Garment Co., 11951
Western Block, 13092
Western Nuclear, Inc., 41752
Westinghouse Electric Corp., 13092, 15990
Westmoreland Glass Co., 13092
Westover Knitting Mills, Inc., 14035
Weyerhaeuser Co., 4283, 13092, 21950, 32654, 35880, 45948
Wheatland Tube Co., 188
Whirlpool Corp., 2100
White Stag Manufacturing Co., 35880
White Sundstrand Machine Tool Co., 4283
Whitehall Leather Co., 7848
Whitney Blake Co., 7848
Wickham Piano Plate Co., 51490
Wilker Brothers Co., Inc., 20143, 21950
Wilson Jones Co., 37920, 50970, 53210
Wilson Sporting Goods Co., 31791
Winig Shoe Corp., 40071
Wire Components, Inc., 32654
Wolverine World Wide, Inc., 23539, 37922
Wood & Hyde Leather Corp., 7848, 45948
World Tableware International, Inc., 28047
Yates Industries, 47127
Zenith Dyeing & Finishing Co., 37920
Zenith Electronics Corp., 4283, 13092, 36931, 37920, 41037
Zeus Manufacturing Co., 27378

EMPLOYMENT POLICY, NATIONAL COMMISSION

See National Commission for Employment Policy.

EMPLOYMENT STANDARDS ADMINISTRATION

See also Wage and Hour Division.

RULES

Longshore and Harbor Workers' Compensation Act Amendments of 1984; implementation, etc.; interim, 384
Comment period extended, 9799
Interim rule extended, 39661, 53308
Wage rates; procedures for predetermination, 4506
New publication procedures, 49822

NOTICES

Computer matching project involving beneficiaries under Federal Employees' Compensation Act; report, 7846
Meetings:
Sheltered Workshops Advisory Committee, 28483
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions:
Alabama, 7536, 23242, 24106, 30582, 32348, 45712
Alaska, 15686
Arizona, 24982, 29590, 32348, 41624, 46538, 48296, 50110
Arkansas, 15686, 34336, 35368, 39518, 42330, 48296, 50110, 52118
California, 1674, 5474, 6496, 10580, 11616, 14558, 15686, 16606, 18964, 24982, 25824, 27714, 32348, 34336, 35368, 36516, 38404, 39518, 40780, 41624, 43510, 46538, 47330, 48296, 51182, 53027
Colorado, 2758, 4834, 7536, 9558, 10580, 11616, 14558, 16606, 23242, 42330, 43510
Connecticut, 684, 2758, 7536, 13696, 15686, 18964, 24106, 27714, 30582, 36516, 45712, 50110
Delaware, 15686, 23242, 27714, 37472, 41624
District of Columbia, 3618, 5474, 9558, 11616, 20706, 21546, 24106, 24982, 25824, 27714, 30582, 31456, 32348, 36516, 42330, 48296, 51182, 53027
Florida, 16606, 19846, 20706, 28502, 45712, 50110, 52118
Georgia, 12688, 15686, 18964, 45712
Hawaii, 7536, 16606
Idaho, 5474, 6496, 8566, 10580, 11616, 14558, 24106, 24982, 43510, 46538
Illinois, 1674, 2758, 3618, 5474, 7536, 8566, 9558, 10580, 11616, 12688, 13696, 14558, 15686, 16606, 19846, 20706, 23242, 24106, 25824, 40780, 42330, 45712, 48296, 50110
Indiana, 20706, 30582, 32348
Iowa, 7536, 16606, 18964, 24982, 28502, 38404, 39518, 42330, 45712, 46538, 47330, 48296, 50110, 53090
Kansas, 4834, 12688, 15686, 19846, 20706, 26884, 27714, 29590, 31456, 33150, 34336, 39518, 45712
Kentucky, 4834, 6496, 10580, 27714, 32348, 40780
Louisiana, 8566, 18964, 19846, 21546, 23242, 32348, 35368, 40780, 45712, 46538, 47330, 48296, 49318
Maryland, 9558, 23242, 24106, 30582, 32348, 35368, 36516, 37472, 39518, 42330, 43510
Massachusetts, 10580, 14558, 15686, 36516, 50110, 52118
Michigan, 2758, 3618, 6496, 7536, 9558, 11616, 21546, 23242, 24106, 24982, 25824, 26884, 27714, 33150, 38404, 41624, 43510, 45712, 46538, 48296, 51182, 53027
Minnesota, 1674, 4834, 6496, 7536, 8566, 10580, 12688, 19846, 26884, 28502, 32348, 34336
Mississippi, 3618
Missouri, 7536, 12688, 14558, 19846, 20706, 30582, 32348, 34336, 36516, 38404, 42330, 47330, 48296
Montana, 5474, 7536, 26884, 27714, 30582, 34336, 43510
Nebraska, 12688, 14558, 33150, 34336, 45712, 49318
Nevada, 6496, 8566, 9558, 11616, 15686, 16606, 23242, 38404, 39518, 42330, 43510, 52118
New Jersey, 19846, 28502, 29590, 31456, 32348, 33150, 34336, 35368, 36516, 37472, 39518
New Mexico, 2758, 8566, 19846, 24982, 29590, 39518, 48296, 49318
New York, 684, 1674, 4834, 5474, 7536, 8566, 10580, 11616, 12688, 13696, 15686, 16606, 19846, 20706, 21546, 25824, 27714, 28502, 29590, 30582, 31456, 33150, 34336, 38404, 39518, 43510, 46538, 47330, 49318, 50110, 51182, 53027
North Carolina, 36516
North Dakota, 5474, 6496, 7536, 8566, 11616, 15686, 35368, 37472
Ohio, 2758, 6496, 12688, 14558, 15686, 16606, 19846, 20706, 21546, 24982, 25824, 26884, 27714, 29590, 30582, 40780

Oklahoma, 4834, 6496, 9558, 10580, 13696, 16606, 19846, 21546, 24106, 24982, 25824, 26884, 30582, 34336, 37472, 40780, 49318, 50110, 52118
Oregon, 3618, 6496, 14558, 18964, 24982, 26884, 29590, 35368, 45712, 48296, 49318
Pennsylvania, 684, 3618, 5474, 6496, 7536, 8566, 9558, 12688, 13696, 14558, 15686, 23242, 24106, 24982, 25824, 28502, 30582, 32348, 33150, 34336, 35368, 37472, 38404, 41624, 48296, 49318, 50110, 51182, 52118, 53027, 53090
Rhode Island, 13696, 23242, 26884, 30582, 37472, 41624, 46538, 50110, 52118
South Carolina, 12688, 36516
South Dakota, 49318
Tennessee, 1674, 20706, 21546, 24106, 25824, 27714, 45712
Texas, 2758, 3618, 6496, 7536, 12688, 14558, 16606, 18964, 19846, 21546, 24982, 25824, 36516, 37472, 38404, 40780, 47330, 48296, 49318, 50110
Utah, 5474, 20706, 25824, 38404, 43510, 50110
Vermont, 11616, 32348
Virginia, 1674, 2758, 4834, 5474, 9558, 10580, 13696, 15686, 18964, 21546, 23242, 24106, 25824, 27714, 30582, 33150, 35368, 36516, 37472, 40780, 42330, 45712, 49318, 51182, 53027
Washington, 684, 3618, 14558, 20706, 24106, 24982, 34336, 40780, 41624, 42330, 45712, 49318, 50110, 51182, 52118, 53027, 53090
West Virginia, 3618, 24982, 26884
Wisconsin, 4834, 9558, 10580, 16606, 18964, 20706, 23242, 33150, 35368, 40780, 41624
Wyoming, 11616, 20706, 43510
Minimum wages for Federal and federally-assisted construction; general wage determination decisions; publication procedures, 50116, 51185, 52124, 53027, 53092

ENDANGERED SPECIES

See Fish and Wildlife Service.
National Oceanic and Atmospheric Administration.
Pacific Northwest Electric Power and Conservation Planning Council.

ENDANGERED SPECIES COMMITTEE

RULES
Endangered Species Act; exemption application process, 8122

NOTICES
Consolidated Grain & Barge Co.; exemption application, 46157, 49983

ENERGY

See Bonneville Power Administration.
Economic Regulatory Administration.
Federal Energy Regulatory Commission.
Geological Survey.
Minerals Management Service.
Nuclear Regulatory Commission.
Pacific Northwest Electric Power and Conservation Planning Council.
Rural Electrification Administration.
Southeastern Power Administration.
Southwestern Power Administration.
Synthetic Fuels Corporation.
Western Area Power Administration.

ENERGY CONSERVATION

See Commerce Department.
Conservation and Renewable Energy Office.
Economic Regulatory Administration.
Energy Department.
Energy Information Administration.
General Services Administration.

ENERGY DEPARTMENT

See also Bonneville Power Administration.
Conservation and Renewable Energy Office.
Economic Regulatory Administration.
Energy Information Administration.
Energy Research Office.
Federal Energy Regulatory Commission.
Hearings and Appeals Office, Energy Department.
Southeastern Power Administration.
Southwestern Power Administration.
Western Area Power Administration.

RULES
Acquisition regulations:
Competition in contracting, 12180
Representations and certifications, preparation, 35956
Defense programs:
Protective force officers; arrest authority, etc., 30926
Electric power and transmission rate adjustments and extensions; public participation procedures, 37835
Correction, 48075
Financial assistance:
Audit requirements for State and local governments; interim, 42354
Nondiscrimination on the basis of age; implementation, 8088
Special research grants program, 14856
Unclassified controlled nuclear information; identification and protection, 15818

PROPOSED RULES
Acquisition regulations, 25722, 34656, 43589
Competition in contracting, 3935
Protest procedures, 12053
Representations and certifications, preparation, 21087
Defense programs:
Physical fitness training program for protective force personnel, 46672
Electric power and transmission rate adjustments and extensions; public participation procedures, 206
Financial assistance:
Research grants, 32684
Natural Gas Policy Act:
Ceiling prices for high cost natural gas produced from tight formations; changes to old gas pricing structure; request for FERC final action, 48540
Radioactive wastes; byproduct material, 45736
Extension of time and hearing rescheduled, 47409
Regulatory agenda, 17194, 44070
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712

NOTICES
Atomic energy agreements; subsequent arrangements:
Australia, 20827
Austria, 4888, 36468
Canada, 2076, 7103, 7104, 7630, 27842, 37900, 39162, 41188, 46487, 48829
Energy Department, 52552
European Atomic Energy Community, 2076, 3588, 4888, 7103, 7212, 7630, 9882, 10094, 11536, 13064, 13065, 14962, 20827, 20828, 27842, 30000, 36468, 36469, 37265, 37901, 39030, 39162, 41188, 42203, 43274, 46487, 46488, 47249, 48830, 49985
Hungary, 2076
Indonesia, 27842
International Atomic Energy Agency, 2603, 9115, 27842, 42203, 48829
Japan, 2076, 3588, 7103, 7630, 9115, 14962, 20827, 32103, 37901, 39162, 47249, 48627
Mexico, 2076
Spain, 20923, 49985
Sweden, 9882, 13065, 14962, 39030
Switzerland, 4888, 30000, 36469, 37265, 47249, 48830
Taiwan, 36468
Turkey, 14963
Boiler operations, coal quality and ash characteristics; report availability and inquiry, 9492, 14133
Byproduct nuclear materials:
Cesium-137; leasing, 31003
Conflict of interests:
Divestiture requirements; supervisory employee waivers, 8362, 49597
Post-employment restriction waivers, 28606
Cooperative agreements:
Cascades thermal gradient drilling, 9491
Midwest Research Institute, 34892
New York State Energy Research and Development Authority, 16339
University City Science Center, 30048
Westinghouse Electric Co., 5415
Crude oil price and allocation control violations; restitutionary policy; policy statement, 27400
Environmental statements; availability, etc.:
Aiken, SC, 16534, 30728
Durango, CO, 5295, 50193
Lakeview, OR, 20826, 52553
Nuclear waste repository sites, LA, et al., 3304, 4571, 7212
Richland, WA, 20489
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Lakeview uranium mill tailings site, OR, 52555
Strategic Petroleum Reserve Seaway Complex, TX, 52835
Strategic Petroleum Reserve Texoma Complex, LA and TX, 45464
Grant awards:
American Society of Heating, Refrigeration, and Air Conditioning Engineers, 34892
Battelle Columbus Laboratories, 5658, 6982
Coastal Zone Foundation, 3023
Colorado School of Mines, 19997
Cornell University, 28606
East-West Center, 18301
Geothermal Resources Council, 14412
Historically black colleges and universities, 33819
Home Manufacturers Council of National Association of Home Builders, 40047
Howard University, 38876
Laser Institute of America, 38876

National Academy of Sciences, 9115, 10299, 16340, 26826, 38877, 39754, 40219
National Council on Radiation Protection and Measurement, 8363
Southern States Energy Board, 33095
State teams geothermal research program; eligibility restriction, 19566
Swedish Motor Fuel Technology Co., 33096
Tufts University, 39161
United Nations Institute for Training and Research, 15475
United Negro College Fund, 34891
University of Chicago, 34892
University of Hawaii, 33096
University of Nevada-Las Vegas, 14006
University of Washington, 51902
Grants; availability, etc.:
Advanced coal research at colleges and universities, 1919
District heating and cooling systems, 30728, 47422
Low-level radioactive waste treatment systems operation, 21488
Monitored retrievable storage facility, 16535
Weatherization assistance program; regional training and technical assistance, 29736
International energy program:
Allocation systems test; training session, 28454
Fifth allocation systems test; U.S. oil company participation, 41383
Inquiry, 33396
Murphy Oil Corp. et al.; voluntary agreement and plan of action participation, 25446
Inventions available for license, 2849, 6377, 37023
Liquefied gaseous fuels spill test facility program; forum, 40992
Meetings:
Alternative Fuels Demonstration Facilities Federal Assistance Advisory Committee, 10854
Dose Assessment Advisory Group, 4887, 40992, 41553
International Energy Agency Group of Reporting Companies, 21648
International Energy Agency Industry Advisory Board, 876, 3379, 7103, 19996
International Energy Agency Industry Supply Advisory Group, 21648, 40047
International Energy Agency Industry Working Party, 16734, 21336
National Coal Council, 20582, 31904, 33095, 47584, 48627, 49597
National Petroleum Council, 877, 878, 3014, 4570, 4571, 6378, 7370, 8654, 9491, 10532, 12363, 13062, 13063, 14746, 16340, 18549, 18551, 20125, 20261, 20497, 23054, 23184, 24022, 27652, 29250, 29251, 31220, 31413, 33995, 37575, 38025, 41562, 42753, 45651, 47583, 50658, 53001
Memorandums of understanding:
California-Oregon Transmission Project, 7102, 7368
Nuclear Waste Policy Act; radioactive materials transportation, 47421
Pacific Northwest-Southwest Intertie; transmission line construction; forum, etc., 420
Motor vehicle fuel economy; 1986 gas mileage guide; availability, 49093
National Environmental Policy Act; implementation; inquiry, 7629
Nuclear waste management:
Civilian radioactive waste management--
Federal interim storage fees, 48457
Mission plan availability, 28446
Toll-free telephone information service, 13411
Transportation business plan, draft; availability and inquiry, 33994
Transportation institutional plan, draft; availability and inquiry, 39161
Transportation institutional workshop, 39161
Workshop, 2075
Monitored retrievable storage facility; candidate sites identification for a proposal to Congress, etc., 16536
Radioactive waste management system--
Draft project schedule; availability, 28972
Preliminary draft project schedule; inquiry, 1616, 4998
Technical assistance to nonnuclear weapon states; update, 13738
West Valley demonstration project, NY--
Availability, 877
Availability of project plan and NRC comments, 24813
Patent licenses, exclusive:
Acctek Associates Inc., 15604
Advanced Technology Laboratories, 50938
Battelle Memorial Institute, 27488
ETS Inc., 15604
Numar Corp., 50938
Rockwood Systems Corp., 20125
University of Wyoming Research Corp., 20126
Windtech Inc., 50340
Privacy Act; systems of records, 7209
Procurement:
Commercial activities, performance; inventory and review schedule (OMB A-76 implementation), 20260, 20923, 34174
Radiological conditions, certification:
California, 10853, 38157
Senior Executive Service:
Performance Review Board; membership, 33818, 40991
Strategic Petroleum Reserve Test Sale; briefing and inquiry, 40218
Trespassing on Department property:
Oak Ridge operating sites, TN, 27843, 51283
Pantex Plant, TX, 31004, 51283
Portsmouth Area site, OH, 29733
Savannah River plant site, SC, 31649
Uranium enrichment; advance gas centrifuge and vapor laser isotope separation process; meeting, 13063

ENERGY INFORMATION ADMINISTRATION

NOTICES

Agency information collection activities under OMB review, 4256, 7814, 13649, 16343, 21648, 28611, 30002, 33404, 37575, 42078, 47425, 50200
Forms; availability, etc.:
Coal program data collection forms, 30003
Electric and gas utilities, annual report (ERA-166), 12857
Enhanced oil recovery incentive program, annual report (FE-748), 20261
Manufacturing energy consumption survey (EIA-846), 11486, 15606, 19566, 37023, 47803
Nuclear fuel data (RW-859), 36651
Oil and gas reserve system (EIA-23/23P/64A), 27483
Petroleum product sales identification survey (EIA-863), 31906
Petroleum supply reporting system forms, 13275, 19226
Public electric utilities, annual report (EIA-412), 7105
Industrial emissions of sulfur and nitrogen oxides; survey design; inquiry; extension of time, 2077
Meetings:
American Statistical Association Committee on Energy Statistics, 13649, 40994
Natural gas, high cost; alternative fuel price ceilings and incremental price threshold, 1103, 3379, 7106, 11234, 15776, 21022, 25750, 30000, 33708, 38572, 42755, 48120, 51906
Nonresidential buildings energy consumption survey; inquiry, 4571
Reporting and recordkeeping requirements, 7104, 21927, 24814, 33826, 50938
State-level energy end use, price, and expenditures information; data user needs; inquiry, 34646

ENERGY RESEARCH OFFICE

NOTICES

Committees; establishment, renewals, terminations, etc.:
DOE/NSF Nuclear Science Advisory Committee, 40892
Health and Environmental Research Advisory Committee, 49755
High Energy Physics Advisory Panels, 4572
Grant awards:
Ohio State University et al., 28612
University of Florida et al., 27359
Grants; availability, etc.:
Basic research programs, 14865
Pre-freshman engineering program, 34892
Special research program (toroidal support experimental program), 24025
University research instrumentation program, 39763
Meetings:
Energy Research Advisory Board, 880, 3013, 3014, 3955, 7814, 9896, 12607, 13276, 20582, 24679, 28017, 33620, 39166, 40442, 41728, 46342, 46343, 48635, 49455
Health and Environmental Research Advisory Committee, 14755, 29471, 49995
High Energy Physics Advisory Panel, 3014, 25754, 38163, 48469
Magnetic Fusion Advisory Committee, 3954, 15216, 28454, 43436
Savannah River Plant; health effects and epidemiological studies; report availability, 28016

ENGINEERS CORPS

RULES

Danger zones, restricted areas, and navigation regulations, 42696
Navigation regulations:
  Ohio River, Mississippi River above Cairo, IL, and their tributaries; use, administration, and navigation, 37849
  San Clemente Island, CA; restricted area, 50297
Water resource development projects; public use, 35555
  Correction, 46284

PROPOSED RULES

National Fishing Enhancement Act; implementation, 30479
National pollutant discharge elimination system; permits review; withdrawn, 50316
Natural disaster procedures; emergency employment of Army and other resources, 32092
Navigation regulations:
  Norfolk and Virginia Beach, VA; danger zones and restricted areas, 37554
  Port Everglades, FL; restricted area, 42191
  San Clemente Island, CA; restricted area, 35573
Permit regulations:
  Artificial reefs, 30479
  Special permit form revision, 21311

NOTICES

Environmental statements; availability, etc.:
  Abiqaiu Reservoir, NM, 51575
  Agana Bay, GU, 43765
  Alton, IL, 26602
  Arkansas River, AR, 11751
  Cazenovia Creek, West Seneca, Erie County, NY, 25620
  Chena River, Fairbanks, AK, 5657
  Chicago River, Cook County, IL, 43271
  Claremont Channel, NJ, 51449
  Clermont County, OH, 4569
  Cumberland River, KY, 9310
  Dallas Dam, Columbia River, OR and WA, 23495
  Deer Creek Reservoir, WY, 23352
  Delaware River, Port Jervis, New York area, 50827
  Des Moines River, IA, 36135
  DuPage and Will Counties, IL, 10299
  Feather River, CA, 40588
  Fidalgo and Padilla Bays, Anacortes, WA, 18724
  Fort A.P. Hill, VA, 9707
  Galveston Bay, TX, 3829, 7627
  Goleta, Santa Barbara County, CA, 21334
  Gulf Intracoastal Waterway to Port Bienville, MS, 16122
  Hillsborough County, FL, 14278
  James River, SD, 27483
  Kahana Bay, Oahu, HI, 2602
  Kahuku, Oahu, HI, 7366
  Kahului Small Boat Harbor, Maui, HI, 29248
  Kansas River, KS, 36648
  Kill Van Kull and Newark Bay Channels, NJ and NY, 7812
  Kvichak River, AK, 51902
  La Junta, CO, 9310
  Makaha, Oahu, HI, 13647
  Malheur Lake, OR, 31759
  Mallard-Fox Creek Area, AL, 23353
  Manasquan Reservoir System, Monmouth County, NJ, 42202
  Marlinton, WV, 329
  Mill Creek, Nashville, TN, 41382
  Mississippi and Illinois River, IL, 10833
  Mojave River Dam, San Bernardino, CA, 5293
  Multi-Purpose Dam and Reservoir, St. Helena and East Feliciana Parishes, LA, 23820
  New Port Island, Hampton Roads, VA, 38702
  New York and New Jersey ports, 50827
  Ontonagon, MI, 39030
  Orleans Parish, LA, 51743
  Passaic River Basin, NJ, 42986
  Patrick County, VA, 36136
  Pine Bluff, AR, 3829
  Polk County, IA, 6234
  Port Everglades, FL, 14279
  Presque Isle Peninsula, Erie, PA, 16123
  Prudhoe Bay, Deadhorse, AK, 26601
  Puget Sound Dredged Disposal Aanalysis Study, WA, 18548
  Rossville, KS, 12361
  Sacramento River, CA, 36465
  Sacramento-San Joaquin Delta, CA, 14742
  Santa Barbara County, CA, 26824
  Southwest Pipeline Project, Missouri River, ND, 25748
  St. Croix, VI, 13848
  Suffolk, VA, 14215
  Toledo, OH, 35114
  Trinity River, Tarran, Dallas and Denton Counties, TX, 3009, 6031
  Truth or Consequences and Williamsburg, NM, 9309
  Upper Mississippi River, 13847
  Waikoloa, South Kohala, HI, 4569
  Wayne County, MI, 10833
  Weiser River, ID, 32254
  Wheeler Reservoir, AL, 7366
  Will and Cook Counties, IL, 33817
  Winfield, Cowley County, KS, 20581
  Yakima-Union Gap, WA, 36464
Meetings:
  Coastal Engineering Research Board, 19437, 41725
  Environmental Advisory Board, 9485, 36467
Procurement:
  Commercial activities, performance; cost comparison studies (OMB A-76 implementation), 27042
Recreation user fees, 27334

ENVIRONMENTAL PROTECTION AGENCY

RULES

Acquisition regulations; competition in contracting, 14356
  Correction, 15425
Air pollutants, hazardous; national emission standards:
  Authority delegations--
    Alabama, 24196
    California, 10765, 10766, 12802, 12803, 13021, 13022, 38806, 38807
    Connecticut, 49044
    Florida, 46042
    Georgia, 31181
    Hawaii, 10764
    Iowa, 933, 15425
    Maine, 49044
    Maryland, 34140
    Mississippi, 1851
    Nebraska, 933
    Nevada, 38808
    New Jersey, 27248
    North Carolina, 31182
    Pennsylvania, 8620, 15545, 34140
  Benzene equipment leaks; benzene emissions from maleic anhydride and ethylbenzene/styrene plants, and benzene storage vessels; reconsideration petition denied, 34144
  General provisions; amendments, 46284
  Radionuclides, 5190
  Radon-222 emissions; underground uranium mines, 15386
Air pollution; standards of performance for new stationary sources:
  Authority delegations--
    Alabama, 24196
    Arizona, 10763
    California, 10765, 12801, 12802, 12803, 13021, 38806, 38807
    Connecticut, 49044
    Delaware, 8323
    District of Columbia, 47732
    Florida, 46042
    Georgia, 31181
    Hawaii, 10764
    Iowa, 933, 15425
    Kentucky, 32174
    Maine, 49044
    Maryland, 8324, 34140
    Massachusetts, 49044
    Missouri, 933
    Nebraska, 933, 15424
    Nevada, 10761, 10762, 38808
    New Hampshire, 49044
    New Jersey, 27248
    North Carolina, 31182
    Pennsylvania, 8111, 8620, 15544, 15545, 34140
    Puerto Rico, 18636
    Rhode Island, 49044
    Tennessee, 39099
Automobile and light-duty truck surface coating operations; innovative technology waivers, 36830
Calibration procedures; method 5 revision, 1165
    Correction, 8111
Carbon monoxide continuous emission monitoring systems; specifications and test procedures, 31700
Kraft pulp mills, 6316
    Correction, 7595
Kraft pulp mills; reduced sulfur emissions, test methods, 9578
    Correction, 19022
Metal furniture surface coating, 18247
Metallic mineral processing plants; reference method; withdrawn, 24770
Nitrogen oxide emissions; reference methods, 15893
Nonmetallic mineral processing plants, 31328
Onshore natural gas processing plants--

Equipment leaks of volatile organic compounds, 26122
Sulfur dioxide emissions, 40158
Opacity provisions; reporting and recordkeeping requirements, 53108
Petroleum dry cleaners, 49022
Sulfuric acid plants; standards review, 34461
Wool fiberglass insulation manufacturing, 7694
Air pollution control; new motor vehicles and engines:
Business confidentiality claims under Freedom of Information Act, 34796
Dynamometer calibration procedures; Appendix removed, 27250
Gaseous (nitrogen oxides) and particulate emission standards; 1987 and later model year light-duty vehicles; 1988 and later model year light-duty trucks, heavy-duty engines, and heavy-duty diesel engines, 10606
Reporting and recordkeeping requirements, 29384
Nonconformance penalties for heavy-duty engines and vehicles, including light-duty trucks, 35374, 53454
Reporting and recordkeeping requirements, 4513
Air programs:
Clean Air Act requirements, special exemptions; Guam, 25575
National ambient air quality standards--
Carbon monoxide, 37484
Nitrogen dioxide, 25532
Noncompliance penalties; assessment and collection, 36732, 36734
Primary nonferrous smelter orders, 6434
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Florida, 26203
Iowa, 52920
Maryland, 9627
Mississippi, 26203
New York, 41136
Ohio, 41137
Pennsylvania, 47734
South Carolina, 33036
Tennessee, 26203
Air programs; fuel and fuel additives:
Banking of lead rights, 13116
Correction, 25710
Gasoline lead content; reduced use, 9386
Correction, 25710
Air quality implementation plans:
Clean Air Act; compliance with statutory provisions of Part D; Region V States, 5246
Visibility new source review and monitoring strategy, 28544
Air quality implementation plans; approval and promulgation; various States:
Alabama, 34804
American Samoa, 32697
California, 3338, 3906, 7591, 19529, 25417, 30941, 32172, 35796, 38524
Colorado, 26734, 51521
Connecticut, 10004, 29229, 37178, 50906
Delaware, 27244
Florida, 45603, 52327, 52328, 52460
Georgia, 765
Guam, 2820, 32697
Idaho, 5237, 19530, 23810, 36876, 40377
Illinois, 26732, 38803, 46041, 50908
Indiana, 4975, 15144, 18482, 20568, 21049, 38003
Iowa, 37176
Kansas, 26198
Kentucky, 15421
Maine, 3336, 7770, 18483
Maryland, 7595, 7770, 26199, 27245
Massachusetts, 38804, 47731
Michigan, 18484, 33535, 50907
Missouri, 768, 3337, 14925, 26198, 32411, 41348, 48749
Montana, 16475
Nebraska, 4510, 23003
New Hampshire, 766, 10004, 51250
New Mexico, 8616
New York, 459, 23004, 25073, 29381
North Carolina, 41501
Ohio, 764, 1213, 10964, 24768, 41686, 45606
Oklahoma, 11859
Oregon, 932, 8614, 14925, 15423, 26200, 31368, 37529
Pennsylvania, 7772
Puerto Rico, 7337, 15422
Rhode Island, 769, 52461
Tennessee, 7777, 12539, 15892, 29383, 32412, 33534, 37362, 49389
Texas, 26359, 26991
Utah, 7056, 18245
Vermont, 7767, 23810
Virgin Islands, 5236, 7769
Virginia, 26202
Washington, 3907, 15745, 19530
West Virginia, 26732, 27247
Wisconsin, 7593, 10005, 19682, 26735, 32173
Air quality implementation plans; delayed compliance orders:
Alabama, 3339
Florida, 3340
Georgia, 48582, 48583, 48585
Michigan, 32413
Ohio, 32175
Pennsylvania, 772, 773, 774, 775, 5251, 5252, 5582, 13970, 20760, 24196
Tennessee, 935, 1851, 4512, 48584
Texas, 37178, 37179, 37181
Air quality implementation plans; preparation, adoption, and submittal:
Stack height requirements, 27892
Air quality planning purposes; designation of areas:
California, 12540, 47735
Hawaii, 46436
Idaho, 19530
Illinois, 1509
Indiana, 11503, 15748, 52922
Kansas, 32568
Maine, 7595, 32175
Michigan, 3341, 28574, 48761
Mississippi, 34687
Missouri, 48759
Montana, 16476
Nebraska, 5069
New Mexico, 11860
New York, 3755, 7779, 30704
Ohio, 15746, 41138, 46650
Oregon, 51251
Pennsylvania, 935, 30704, 32414, 46649
Tennessee, 18485, 37362
Virginia, 35561
Washington, 19530
Wisconsin, 41139
Conflict of interests; employee responsibilities and conduct, 39622
Federal contracts, loans, and grants under Clean Air and Water Acts, 36188
Freedom of Information Act; implementation, 51654
Interim, 32950
Grants; debarment and suspension under EPA assistance programs; technical amendment, 20210
Grants, State and local assistance:
Asbestos hazard abatement (schools) program; class deviations, 24876
Treatment works construction--
Interim, 45892
Maximum allowable project costs, 46648
Hazardous waste:
Burning of waste fuel and used oil fuel in boilers and industrial furnaces, 49164
Definition of solid waste, 614
Technical amendments, 14216, 33541
Dioxin-containing wastes, 1978
Identification and listing--
Dinitrotoluene, toluenediamine, and toluene diisocyanate production wastes, 42936
Exclusions, 30271, 34687, 37364, 48886, 50789
Petition procedures; meetings, 273
Petitions to Delist Hazardous Wastes-A Guidance Manual; availability, 21607
Solvent mixtures, 53315
Reporting and recordkeeping requirements, 4513
Statutory provision and underground storage tanks, etc., 28702
Treatment, storage, and disposal facilities--
Interim status standards for owners and operators and EPA administered permit programs, 38946
Paint filter test, 18370
Surface impoundments, land treatment units, and landfills, 16044
Underground storage tanks; notification requirements for owners, 46602
Hazardous waste program authorizations:
Arizona, 47736
Arkansas, 1513
California, 5259
District of Columbia, 3347, 9427, 23008
Florida, 3908
Guam, 5259
Illinois, 4213
Indiana, 4213
Iowa, 3342, 26562
Kansas, 3343, 40377
Kentucky, 2550
Louisiana, 3348
Maryland, 3347, 3511
Massachusetts, 3344
Minnesota, 3756
Missouri, 2821, 47740
Nebraska, 3345
Nevada, 5259, 42181
New Jersey, 5260
New Mexico, 1515
Ohio, 4213
Oklahoma, 11858
Pennsylvania, 3347

Procedures for State RCRA programs, expiration of interim authorizations, 48406
Puerto Rico, 3758
Rhode Island, 3759
South Carolina, 46437
Tennessee, 2820
Texas, 11858, 35798, 40526
Vermont, 775
West Virginia, 3347
Wisconsin, 4213
Judicial review under EPA-administered statutes (races to the courthouse), 7268
Motor vehicle fuel economy:
Test procedures; adjustment factors for corporate average fuel economy; passenger automobiles, 27172
National Environmental Policy Act; implementation, 26310
Organization and functions, 26721
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Acephate, 1050
Alpha-(p-nonylphenyl)-omega-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and corresponding salts, 31842
Bromoxynil, 42020
Camphor, 4210
Carbaryl, 19358
Carbofuran, 36579, 38003
Carboxin, 81
1-(4-Chlorophenoxy)-3,3-dimethyl-,1-(1H-1,2,4-triazol-a-yl)-2-butanone, 1051
Chlorothalonil, 30172
Chlorpyrifos, 4211, 28945
Chlorpyrifos-methyl, 26683, 31843
Cross-reference update, 2980
Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate, 21838, 41144
Cypermethrin, 7172, 39099
Cyromazine, 20371, 42019
Dibutyltin dilaurate, ethyl vinyl acetate, etc., 45607
2,4-Dichlorophenyl p-nitrophenyl ether, 37850
Diclofop-methyl, 20211
N,N-Diethyl-2-(1-naphthalenyloxy) propionamide, 45113
2,3-Dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,4-tetraoxide; correction, 19531
Dimethylpolysiloxane, 32698
Dried grape pomace, 10008
Editorial corrections, 10007
Ethalfluralin, 4975
Ethephon, 14105
Ethylene dibromide, 2546, 2547, 2981
Flucythrinate, 21050, 28946
Glyphosate, 51856
2-Hydroxy-4-n-octoxybenzophenone, 10007
Iprodione, 23689, 46043
Linoleic diethanolamide, 28944
Metalaxyl, 49690
Methidathion, 1052, 5070
Methyl esters of fatty acids, 4212
Methyl N-amyl ketone, 2983
N-Methylpyrrolidone, 4212, 10007
Metolachlor, 23691
Mono and dialhyl (C8-18) methylated ammonium chloride compounds, 16080
Mono- and bis-perfluoroalkyl phosphates, 2983
Monourea sulfuric acid adduct, 10006
Oxamyl, 7061, 8112
Oxyfluorfen, 13194, 23008
Permethrin, 7171, 36994
Polyoxyethylated sorbitolfatty acid esters, 16082
Potassium ricinoleate, etc., 23692
Sodium benzoate, 16081
Sodium chlorite, 51856
Sodium metasilicate and propionate, 28944
((1R,3S)3((1'RS) (1',2',2',2'-Tetrabromoethyl))-2,2-dimethylcyclopropanecarboxylic acid(S)-alpha-cyano-3-phenoxybenxyl ester), 37851
Thiabendazole, 13195, 14104, 14106, 19358
Thiodicarb, 41349
Triclopyr, 18485
Triethylene glycol diacetate, 31843
Triforine, 1054
Vinylpyrrolidone styrene copolymer, 4209
Zinc stearate, titanium dioxide, and calcium stearate, 2980
Pesticide programs:
Authority citations; technical amendments, 41143
Data requirements for registration; effective date, 16234
Registration and classification procedures; protection of data submitters' rights; effective date, 16233
Registration standards; docketing and public participation procedures, 48998
Reporting and recordkeeping requirements, 4513
Risk/benefit information, reporting requirements; interpretation and policy statement, 38115
Correction, 42020
Special review procedures, 49003
Vertebrate control products, performance requirements, 46764
Notification to Agriculture Secretary, 28943
Pesticides; tolerances in animal feeds:
3, 6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine, 5999
Carbaryl, 37846
Chlorpyrifos-methyl, 26682
Cross-reference update, 2958
Correction, 3755
Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1,methylethyl)benzeneacetate, 2283
Cyromazine, 20370
Ethephon, 14096
Iprodione, 4207, 23675
Metalaxyl, 49687
Thiabendazole, 14097
Thiodicarb, 37847, 41341
Pesticides; tolerances in foods:
Chlorpyrifos-methyl, 26682
Cross-reference update, 2958
Correction, 3755
Ethephon, 14096
Iprodione, 4207
Metalaxyl, 49687
Thiabendazole, 14097
((1R,3S)3(1'RS) (1',2',2',2'-Tetrabromoethyl))-2,2-dimethylcyclopropanecarboxylic acid(S)-alpha-cyano-3-phenoxybenzyl ester), 37845
Public information:
Testimony by employees and production of documents in civil legal proceedings, 32386
Radiation protection programs:
Spent nuclear reactor fuel and high-level and transuranic wastes; environmental standards for management and disposal, 38066
Correction, 40003
Reporting and recordkeeping requirements, 4513
Superfund program:
Claims procedures, arbitration, 51196
Hazardous substances; notification requirements and reportable quantity adjustments, 13456
National oil and hazardous substances contingency plan, 37624, 47912
National priorities list update, 6320, 37630
Natural resource claims procedures, 51205
Toxic substances:
Asbestos abatement projects, 28530
Correction, 30423
Chemical information, preliminary assessment; list additions, 11695, 18861, 20909, 47538
Correction, 20760, 50910
Chemical information rules; additional automatic reporting, 34805
Chlorinated naphthalenes; reporting and recordkeeping requirements; correction, 1215
Diethylenetriamine; identification and testing requirements, 21398
Correction, 33543
Health and safety data reporting--
Submission of lists and copies of studies; addition to list of chemicals, 11697, 34809, 47538
Submission of lists and copies of studies; list of chemicals removed, 39667, 42182
Submission of lists and copies of studies; sunset provision suspended temporarily, 39666
Termination date established, 16234
Urea-formaldehyde resins, 18861, 20760, 46295
Vinyl acetate, 52923
Polychlorinated biphenyls (PCBs); manufacturing and processing, etc.; use in electrical transformers, 29170
Correction, 32176
Premanufacture notification exemptions; chemical substances manufactured in quantities of 1,000 kg or less per year, 16477
Records and reports of allegations of significant adverse reactions to health or environment, 46766
Reporting and recordkeeping requirements; editorial amendments, 2046
Significant new uses--
Disubstituted diamino anisole, 34463
Hexachloronorbornadiene, 47534
Test guidelines; codification, 39252, 39472
Test rule development and exemption procedures; interim, 20652
Testing requirements--
Biphenyl, 37182, 41885

Ethyltoluenes, trimethylbenzenes, and C9 aromatic hydrocarbon fraction, 20662, 30423
Hydroquinone, 53145
Mesityl oxide, 51857
Propylene oxide, 48762
1,1,1-Trichloroethane, 51683
Waste material storage and disposal; cross references; correction, 8621
Waste management, solid:
State plans--
Ohio, 47049
Water pollution; effluent guidelines for point source categories:
Coal mining, 41296
Copper forming, 34242
General pretreatment regulations; existing and new sources, 38809
Metal molding and casting, 45212
Nonferrous metals forming and metal powders, 34242
Nonferrous metals manufacturing, 38276
Correction, 12252, 41144, 52775
Pesticide chemicals, 40672
Petroleum refining, 28516
Correction, 32414
Pharmaceutical manufacturing; reporting and recordkeeping requirements, 18486
Plastics molding and forming; correction, 18248
Porcelain enameling, 36540
Reporting and recordkeeping requirements, 4513
Water pollution control:
Drinking water; maximum contaminant levels for--
Fluoride, 47142
Volatile synthetic organic chemicals, 46880
National pollutant discharge elimination system; State programs--
Kansas, 42526
West Virginia, 28202
National pollutant discharge elimination system--
Noncompliance and program reporting, 34648
Permit regulations; correction, 6939, 7912
Storm water runoff; application deadline and testing requirements, 35200
Ocean dumping--
Interim site designations extension; interim, 6942, 33338
San Francisco Channel Bar; site designation, 10009, 38524
San Pedro Basin near Long Beach, CA; site designation, 9273
Pollutants analysis test procedures; guidelines; interim and final rule; correction and comment period extended, 690, 695
Reporting and recordkeeping requirements, 4513
Secondary treatment information, 23382
Technical amendments, 36879
State underground injection control programs--
Federally administered programs; correction, 7060
Idaho, 23956
Missouri, 28941
Nebraska, 5253
Northern Mariana Islands, 28942
Water quality planning and management, 1774

PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Benzene emissions from maleic anhydride and ethylbenzene/styrene plants, and benzene storage vessels; reconsideration petition denied, 34144
Radon-222 emissions; underground uranium mines, 7280
Toxic pollutant assessment--
Perchloroethylene, 52880
Trichloroethylene, 52422
Vinyl chloride, 1182
Volatile organic compounds (VOC) equipment leaks from synthetic organic chemical manufacturing industry, benzene equipment leaks, etc.; reconsideration petition, etc., 14941
Air pollution; standards of performance for new stationary sources:
Ammonium sulfate manufacture, 9055
Fluid catalytic cracking unit regenerators, 46464
Fossil fuel-fired steam generators, 3688
Extension of time, 12574
Industrial-commercial-institutional steam generating units; correction, 49422
Kraft pulp mills; alternative monitoring procedure; withdrawn, 25095
Nonsulfuric acid and nonsulfate particulate matter determination; methods 5B and 5F, 21863
Opacity provisions; continuous opacity monitors (COM) use, 53115
Oxygen, carbon dioxide, sulfur dioxide and nitrogen oxides; instrumental test methods, 8290
Portland cement plants, 36956
Quality assurance and control revisions, 40230
Residential woodcombustion; advance notice, 31504
Sampling location acceptability; alternative procedure, 19725
SO2 and NOx continuous emission monitoring systems; alternative procedures to performance specification, 9057
Synthetic organic chemical manufacturing industry VOC emissions; comment period reopened, 20446
Volatile organic compounds (VOC) equipment leaks from synthetic organic chemical manufacturing industry, benzene equipment leaks, etc.; reconsideration petition, etc., 14941
Air pollution control; new motor vehicles and engines:
Gasoline volatility and hydrocarbon emissions; regulatory strategies analysis availability and hearing, 48100
Hearing date and location change, 51559
Nitrogen oxides (NOx) emission standards; light-duty diesel powered vehicles, 1981--1984 model years; waiver application; hearing, etc., 11739
Nonconformance penalties for heavy-duty engines and vehicles, including light-duty trucks, 9204, 35402
Extension of time, etc., 11515
Hearing cancelled, 37701
Nonconforming motor vehicles and engines, importation, 36838
Trap-based particulate standards test procedures and fuel additives regeneration systems; workshop, 28818
Air programs:
Ambient air monitoring reference and equivalent methods; comment closing date, 13130
Extension of time, 21629
Ambient air quality standards for particulate matter; comment closing date, 13130
Extension of time, 21629
Ambient air quality surveillance; monitoring and data reporting revisions, 9538
Ambient air quality surveillance for particulate matter; comment closing date, 13130
Extension of time, 21629
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Missouri, 30961
South Carolina, 15186
Air programs; fuel and fuel additives:
Banking of fuel usage rights, 718
Gasoline lead content--
Determination by x ray spectrometry; testing procedure, 49338
Total ban, 9400
Motorcycle labeling requirements, and alternate labeling language for all motor vehicles, 33576
Air quality implementation plans:
Clean Air Act; compliance with statutory provisions of Part D, 11738
Particulate matter standards; comment closing date, 13130
Extension of time, 21629
Air quality implementation plans; approval and promulgation; various States:
Alabama, 52805
Arizona, 8346
California, 6217, 20918, 21085, 23032, 29439, 48798
Colorado, 28415, 48613
Delaware, 1880, 18693
Florida, 7187
Idaho, 5265
Illinois, 7619, 12043, 13390, 21629, 21863, 26224, 27462, 28224, 33072, 37238, 47234
Indiana, 123, 865, 4537, 8346, 12338, 14396, 19038, 30960, 41909, 48796
Kansas, 51887
Kentucky, 41912
Louisiana, 25093
Maryland, 862, 863, 18889, 29237, 40872
Michigan, 10794, 15761, 23028, 27030
Missouri, 5630, 8751, 38675, 48612
Nebraska, 23031, 45630, 51262
Nevada, 36635
New Jersey, 7614, 37238
North Carolina, 18274, 34864
Ohio, 8749, 9052, 10076, 15943, 18537, 28596, 36633, 45438
Oregon, 975, 3927
Pennsylvania, 19548, 32451, 38863, 47235
Rhode Island, 26225
Tennessee, 10796, 11183, 52336
Texas, 493, 15190, 33069
Utah, 46782
Washington, 28598
West Virginia, 13250
Wisconsin, 285, 18272, 28818

Wyoming, 47069
Air quality implementation plans; delayed compliance orders:
California, 41916, 46307
Georgia, 21869, 21870, 21872, 21873, 21874
Michigan, 19550
Ohio, 14259, 14396
Pennsylvania, 5267, 11908, 36637, 38863, 38864
Tennessee, 37874
Texas, 20453, 20455, 20458
Air quality implementation plans; preparation, adoption, and submittal:
Air quality models guideline; amendment; draft availability, 9694
Motor vehicle emission factors; workshop, 11737
Stack height requirements--
Corrections, etc., 974
Emissions balancing policy, 52418
Extension of time, 3365, 9456
Air quality planning purposes; designation of areas:
Alabama, 46089, 53159
California, 12574
Georgia, 46089, 53159
Hawaii, 2832
Illinois, 5632, 31732
Indiana, 12044, 19038
Kansas, 3928, 30962, 51887
Michigan, 18890
Minnesota, 51416
Mississippi, 15762
Missouri, 8751
Nebraska, 45630
New York, 7620
Ohio, 6365, 12840
Oregon, 15463, 24784
Pennsylvania, 9694, 10797, 12341, 15763
Tennessee, 11183
Virginia, 15187
Wisconsin, 286
Conflict of interests; employee responsibilities and conduct, 26506
Freedom of Information Act; implementation, 32952
Grants, State and local assistance:
Recipient debts; interest, processing and handling collection, and penalty charges, 5544
Hazardous waste:
Burning of waste as fuel, 1684
Comment period reopened, 19956
Information availability, 26389
Dioxin-containing wastes; petition denied, 41125
Generators of hazardous waste (100 to 1000 kilograms per month), on-site storage, etc., 31278
Identification and listing--
Actinomycin D, etc.; correction, extension of time, etc., 20238
Dioxin-containing wastes, 37338
Exclusions, 7882, 12342; 20239, 23721, 24658, 40292, 47763, 48800, 48911, 48926, 48943, 50810
Exclusions; polynuclear aromatic hydrocarbons study, completion and availability, 19550
Iron dextran; removed, 46468
Linuron and bromacil production wastes, etc., 18622
Methyl bromide, 16432
Sludge from primary wastewater treatment in petroleum refining industry; data availability, 5637
Solvent mixtures, 18378
Spent pickle liquor from steel finishing operations, 36966
Spent solvents, etc., 30908
Used oil, 49258
Land disposal restrictions, schedule, 23250
Recycled used oil; standards, etc., 49212
Storage and treatment tank systems, 26444
Correction, 29992, 36886
Data availability, 51264
Treatment, storage, and disposal facilities--
Definitions, post-closure care, and financial responsibility, 11068
Liability insurance coverage requirements, 33902, 40412, 47236
Permit applications guidance manuals; availability, 1238
Permit writers' guidance manual; availability, 5268, 11740, 13253
Underground storage tanks; notification requirements for owners, 21772
Comment period reopened, 35261
Hazardous waste program authorizations:
Arizona, 11186, 14945
Guam, 47071
Illinois, 47566
Indiana, 47567
Kansas, 30967
Missouri, 38866
Nevada, 33359
North Carolina, 53159
Ohio, 49072
Oregon, 49947
Pennsylvania, 46734
Procedures for approving State program revisions, 24362
Rhode Island, 49561
South Carolina, 37385
Washington, 49949
Wisconsin, 48801
Motor vehicle fuel economy:
Test procedures; adjustment factors for corporate average fuel economy; passenger automobiles and light trucks, 27188
Noise abatement programs:
Motor carriers engaged in interstate commerce; and medium and heavy trucks (transportation equipment); effective date deferral, 25516
Correction, 27321
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 19136
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Aldrin and dieldrin, 10080, 25587, 26592
Alpha-(p-nonylphenyl)-omega-hydroxpoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and corresponding salts, 20235
Ammonium polyphosphate, 26388, 30481
Benzene hexachloride, 125
n-Butanol, 30963, 33783
Carbofuran, 31894
Chlordane, 23717
Chlorothalonil, 26592
Chlorpyrifos, 21876
Croscarmellose sodium, 28108
Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate, 13251, 31893
DDT and TDE, 10077
1,2-Dibromo-3-chloropropane, 10083
N,N-Diethyl-2-(1-naphthalenyloxy) propionamide, 35844, 38015
Dimethylpolysiloxane, 23716
Dodecachlorooctahydro-1,3,4-metheno-2H-cyclobuta(cd)pentalene, 11184
Dried grape pomace, 1071
Endothall, 49705
Ethyl 4,4'-dichlorobenzilate, 23720
Ethylene dibromide, 48799, 52964
Glyphosate, 45121, 48615
Heptachlor, 50643, 53348
Hexakis(2-methyl-2-phenylpropyl)distannoxane, 47761
2-Hydroxy-4-n-octoxybenzophenone, 2296
Linoleic diethanolamide, 15188
Metolachlor, 16104
Mineral oil, 28956, 33578
Mono and dialkyl (C8-C18) methylated ammonium chloride compounds, 6011
Octyl epoxytallate, stearic acid, etc., 28957, 33578
Oxamyl, 2533
Permethrin, 30965
Schradan, 10085
Sodium benzoate, 6012
Sodium chlorite, 46103
Sodium metasilicate and sodium propionate, 15189
Sulfur, 30966
Terpene polychlorinates, 10082
Thiodicarb, 27463
Triethylene glycol diacetate, 20237
Pesticide programs:
Automatic requirements for registrant submission of risk/benefit and exposure data; notification to Agriculture Secretary, 1070
Correction, 12045
Child-resistant packaging for pesticide products--
Notification to Agriculture Secretary, 31892
Registration and classification procedures; hearing, 15462
Data submission--
Flagging of studies for early review, 40408
Flagging of studies for potential effects; notification to Agriculture Secretary, 14115
Exemption of Federal and State agencies for use of pesticides under emergency conditions; notification to Agriculture Secretary, 13251, 50643
Pesticides under emergency conditions; exemption of Federal and State agencies, 13944
Registration data requirements; notification to Agriculture Secretary, 5084
Registration standards; docketing and public participation procedures, 12208
Notification to Agriculture Secretary, 41919
Special review procedures, 12188

Pesticides; tolerances in animal feeds:
DDT and TDE, 10070
1,2-Dibromo-3-chloropropane, 10071
Thiodicarb, 27452, 30277
Pesticides; tolerances in foods:
Benzene hexachloride, 120
DDT and TDE, 10070
Regulatory agenda, 17784, 44644
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712
Superfund program:
Arbitration of claims procedures, 9586
Hazardous substances--
Notification requirements and reportable quantity adjustments, 46468
Reportable quantity adjustments, 13514
National oil and hazardous substances contingency plan, 5862
National priorities list update, 14115, 37950, 53448
Natural resource claims procedures, 9593
Toxic substances:
Anthraquinone; reporting and recordkeeping requirements, 46090
Chemical manufacturers, importers, and processors; comprehensive assessment information rule--
Meetings, 25095
Reporting requirements; opportunity for public meetings, 13391
Diethylenetriamine; oncogonicity bioassay test, 21413
Health and safety data reporting--
Submission of lists and copies of studies; addition to list of chemicals, 40874, 46104
Submission of lists and copies of studies; lengthening sunset provisions, clarifications, etc., 39715, 42966
p-Tert-butylbenzoic acid, p-tert-butyltoluene, p-tert-butylbenzaldehyde, 46309, 47765
Vinyl acetate, 32095, 32578
Inventory data base; production and site reports requirements, 9944
Methylene chloride; regulatory investigation initiation; advance notice, 42037
Polychlorinated biphenyls (PCBs)--
Incorporation by reference, 13393
Manufacturing and processing, etc.; individual and class petitions for exemptions, responses, 35182
Manufacturing and processing, etc.; petition denied, 35192
Manufacturing and processing, etc.; use in electrical transformers; extension of time, 5401
Premanufacture notification and review procedures; limitations on research and development activities, etc.; correction, 5787
Reporting and recordkeeping requirements, 46309
Significant new uses--
Acrylate and methacrylate chemicals, 12046
Benzoic acid, 3,3'-methylenebis(6-amino-, di-2-propenyl) ester, 127
Halogenated-N-(2-propenyl)-N-(substituted phenyl) acetamide, 34500, 37386
Hexachloronorbornadiene, 7351, 15943
4,4' Methylenebis (2-chlorobenzenamine), 16519
Methylphenol, bis (substituted alkyl), 11391
Polyamino chemical substances, 5787
Poly(oxy-1,4-butanediyl)-alpha-(1-oxo-2-propenyl)-omega-((1-oxo-2-propenyl) oxy), 34505
Substituted tetrafluoro alkene, etc., 11384, 19039
Testing requirements--
Anthraquinone, 46090
Benzyl butyl phthalate, 36446
Bisphenol A, 20691
Chlorinated benzenes, 48805
Chloromethane, 19213
Cumene, 46104, 52338
2-Ethylhexanoic acid, 20678, 30213
Fluoroalkenes, 46133, 47569, 49863, 53348
Hydroquinone, 53160
2-Mercaptobenzothiazole, 46121, 52338
Mesityl oxide, 51888
Octamethylcyclotetrasiloxane, 45123, 48102
Oleylamine, 3808, 5084
Pentabromoethylbenzene, 46785
Polyhalogenated dibenzo-p-dioxins/dibenzofurans, 51794
Propylene oxide, 48803, 53166
Quinone, 53165
1,1,1-Trichloroethane, 31895
Waste management, solid:
Paper and paper products containing recovered materials; Federal procurement guideline, 14076
Water pollution; effluent guidelines for point source categories:
Copper forming, 26128
General pretreatment regulations; existing and new sources--
Dilute wastestreams list, 19664
Interference and pass through definitions, 25526
Maryland national pollutant discharge elimination system pretreatment program, 29705
Metal molding and casting; data availability, 6572
Extension of time, 11187
Nonferrous metals forming and metals powders, and copper forming; data availability, etc., 4872
Nonferrous metals manufacturing; data availability, 10918
Oil and gas extraction; offshore subcategory, 34592
Correction, 40983
Extension of time, 53348
Extension of time and workshop, 46784
Workshop rescheduled, 38676
Ore mining and dressing; gold placer mining, 47982
Organic chemicals; data availability, etc., 29068
Extension of time and correction, 41528
Pesticide chemicals; availability of technical and economic data and comment period reopened, 3366
Pharmaceutical manufacturing, 36638
Extension of time, 45920
Plastics and synthetic fibers; data availability, etc., 29068
Extension of time and correction, 41528
Pulp, paper, and paperboard, 36444
Water pollution control:
Drinking water; maximum contaminant levels for--
Fluoride, 20164, 47156
Synthetic organic chemicals, inorganic chemicals, and microorganisms, 46936
Volatile synthetic organic chemicals, 46902, 47025
National pollutant discharge elimination system; State programs--
Kansas, 24784
West Virginia, 2996
National pollutant discharge elimination system--
Innovative technologies, compliance extensions, 49904
Noncompliance and program reporting, 3494
Storm water runoff; application deadline and testing requirements, 9362, 32548, 37701
National primary drinking water regulations; public briefing, 49423
Ocean dumping; incineration activities, 8222
Extension of time, 18275
Hearings, 10252, 13986
Ocean dumping--
Columbia River, OR-WA; site designations, 40274
New York Bight Apex sites; petitions denied, etc., 14336
Pacific Ocean; Johnston Atoll deep ocean disposal site designation, 40568
Oil discharge (sheen regulation), 9776
Extension of time, 21876
Pollutants analysis test procedures; guidelines; correction, 697
State underground injection control programs--
Alaska, 25892, 47761
Northern Mariana Islands, 2696
South Dakota, 7621
Technical seminar, 35574
Water quality standards:
Idaho, 33672, 34499, 35101, 48102
Kentucky, 52540

NOTICES
Agency information collection activities under OMB review, 343, 1934, 3835, 5671, 6991, 9708, 11560, 14755, 15782, 19086, 20005, 23359, 28541, 28839, 29757, 30757, 31656, 33411, 35596, 36665, 39777, 41736, 42595, 45930, 47108, 48491, 49455, 50946
Air pollutants, hazardous; national emission standards:
Authority delegations--
Kentucky, 28840, 30759
Air pollution; standards of performance for new stationary sources:
Authority delegations--

Kentucky, 28840, 30759
Air pollution control:
Acrylonitrile; analysis as toxic pollutant, 24319
Kentucky; proposed actions on Clean Air Act grant; inquiry, 45931
Sulfur dioxide emission standards; Phelps Dodge Corp., Douglas, AZ; suspension extended, 47841
Toxic pollutant assessment--
1,3-Butadiene, 41466
Cadium, 42000
Carbon tetrachloride, 32621
Chlorinated benzenes, 32628
Chlorofluorocarbon-113, 24313
Chloroform, 39626, 49878
Chloroprene, 39632
Chromium or hexavalent chromium, 24317, 43285
Epichlorohydrin, 24575, 33102
Ethylene dichloride, 41994
Ethylene oxide, 40286
Hexachlorocyclopentadiene, 40154
Manganese, 32627
Methyl chloroform, 24314
Perchloroethylene, 52880
Trichloroethylene, 52422
Vinylidene chloride, 32632
Violating facilities list; Sierra Transit Mix Co., NM, 37423
Air pollution control; new motor vehicles and engines:
California pollution control standards--
Amendments, 30009
Assembly-line test procedures, 3971, 26408
Hearing, 20126
Final agency actions, 35122
Air programs:
Ambient air monitoring reference and equivalent methods; lead, 37909
American Cyanamid Co.; noncompliance determination, 45869
Air programs; fuel and fuel additive waivers:
E.I. DuPont de Nemours & Co., Inc., 2615
Air quality; prevention of significant deterioration (PSD):
Authority delegations--
Oklahoma, 19579
Tennessee, 7645
Permit determinations, etc.--
Region I, 4591, 21119
Region II, 13874, 28121, 38029
Region III, 7981
Region IV, 8781, 37908, 48639, 53009
Region VI, 7121, 7216, 8389, 13283, 24836, 36666, 40893, 50841
Region IX, 7381, 7640, 11245, 11418, 20006, 24942, 35865, 50342, 50840, 51300, 51301, 52556
Air quality criteria:
Ammonia, etc.; health assessment documents; call for information and data, 5419
1,3-Butadiene; external review draft of mutagenicity and carcinogenicity assessment; availability, 8672
Lead; second external review; draft availability; corrigenda, 14289
Lead emissions control technology at Bunker Ltd. Partnership; report draft availability and inquiry, 24316
Nickel; health assessment document; availability, 50842
Ozone and photochemical oxidants; second external review draft; availability and inquiry, 52556
Biotechnology regulation, coordinated framework; inquiry:
Correction, 4003
Extension of time, 13301
Committees; establishment, renewals, terminations, etc.:
Agricultural Pesticides Negotiated Rulemaking Farmworker Protection Standards Advisory Committee, 38030, 42223
Chesapeake Bay Executive Council, 29758
Construction Grants Program Management Advisory Group, 5132
FIFRA Scientific Advisory Panel, 14286, 28986
National Air Pollution Control Techniques Advisory Committee, 5132
National Drinking Water Advisory Council, 43777
Environmental auditing; policy statement, 46504
Environmental statements; availability, etc.:
Agency statements--
Comment availability, 546, 1634, 2721, 3590, 4789, 5422, 6382, 7382, 8387, 9509, 10541, 11560, 12628, 13655, 14448, 15635, 16544, 18928, 19803, 20599, 21504, 23188, 24042, 24943, 25782, 26837, 27681, 28469, 29480, 30519, 31422, 32307, 33102, 34193, 35316, 36480, 37425, 38196, 39173, 40598, 41585, 42221, 43460, 45664, 46510, 47268, 48264, 49124, 50007, 50948, 51944, 53010
Weekly receipts, 546, 1633, 2721, 3591, 4789, 5423, 6382, 7381, 8388, 9510, 10540, 12629, 13655, 14448, 15635, 16545, 18927, 19802, 20600, 21505, 23188, 24042, 24943, 25781, 26836, 27681, 28468, 28469, 29479, 30520, 31422, 32306, 33103, 34192, 35317, 36480, 37424, 38196, 39172, 40597, 41584, 42221, 43459, 43460, 45664, 46510, 46511, 47269, 48264, 49126, 50007, 50947, 51943, 53010
Central Florida phosphate industry, 6383
Cincinnati, OH; full containment facility construction, 53011
Coastal marinas assessment handbook, 34546
Cruz Bay, St. John, VI, 47270
Gulf Shores, AL; wastewater management, 13655
Jacksonville Harbor, FL, 8388
Onion Creek, TX; wastewater management, 28468
Saltwater wetlands for wastewater management, 341
Wellfleet, MA; wastewater and septage management program, 50948
West Rehoboth Sanitary Sewer District, Sussex County, DE, 16546
Freshwater Wetlands for Wastewater Management Handbook; availability, 37908
Grants; debarments, suspensions, and voluntary exclusions under EPA assistance programs, 341, 12627, 26622, 38893, 53393
Grants, State and local assistance:
Asbestos School Hazard Abatement Act; awards list, 29478
Ground-water protection activities; allotments, 41579
Regional Administrator protest appeal determinations; subject index list, 4148, 23061
Wastewater treatment works construction; allotments, 11939
Hazardous waste:
Confidential information and data transfer to contractors, 21663, 30758, 40893, 40894
Hazardous substances management; off-site response actions; planning and implementing procedure; inquiry, 45933
Inspections of facilities by nongovernmental inspectors; report to Congress; inquiry, 33103
Land disposal facilities, construction quality assurance; draft availability and inquiry, 48129
Resource Conservation and Recovery Act amendments; video teleconference tapes; availability, 2857
Intergovernmental review of agency programs and activities, 3025, 8394, 13873, 19580
Meetings:
Administrator's Pesticide Advisory Committee, 159, 5121, 5124, 11244, 12076, 19453, 21116, 23764, 28122, 33834, 35318
Agricultural Pesticides Negotiated Rulemaking Farmworker Protection Standards Advisory Committee, 42223, 48130, 51748
Air Pollution Control Techniques National Advisory Committee, 12869, 31025
Chesapeake Bay Executive Council, 40233
Chesapeake Bay Executive Council Science Advisory Board, 53011
Construction Grants Program Management Advisory Group, 8190, 35597, 48491
Dibromochloropropane; use of existing stocks, 8782
FIFRA Scientific Advisory Panel, 1272, 2341, 3834, 7644, 12630, 25783, 30290, 35317, 36668, 37904
Interagency Toxic Substances Data Committee, 18737, 32306, 35597
National Drinking Water Advisory Council, 30010, 45665
Pesticide Emergency Exemption Negotiated Rulemaking Advisory Committee, 1633
Resource Conservation and Recovery Act amendments; conference, 10540
Science Advisory Board, 1130, 1273, 2077, 2340, 5314, 5672, 5811, 6049, 10854, 12081, 13420, 13421, 16544, 19466, 20290, 21662, 21936, 24835, 25782, 28017, 30010, 31242, 33838, 36142, 36921, 37426, 37588, 38584, 40597, 42222, 42595, 42596, 43778, 46829, 48835, 53012

SFIREG Applicator Certification and Training Task Force, 23762, 25457, 31026
State-FIFRA Issues Research and Evaluation Group, 6049, 20283, 25457, 27848, 35865, 38584, 47841
Toxic Substances Control Act; test rule development process, 14293, 19466
Memorandum of understanding:
Drug, pesticide, and environmental contaminent residues in foods, 2304
Safety Equipment Institute; hearing protector devices labeling, 19578
Motor vehicle fuel economy; retrofit devices evaluation:
AUTOTHERM Energy Conservation System, 29764
POLARION-X, 38712
Pesticide, food, and feed additive petitions:
American Hoechst Corp., 41215, 49762
BASF Wyandotte Corp. et al., 21935
Chevron Chemical Co., 50680
Dow Chemical Co. et al., 3023, 5132
Dow Chemical U.S.A. et al., 32766, 38895, 47840
E.I. du Pont de Nemours & Co., Inc., et al., 31773
FMC Corp. et al., 33840
Hoechst-Roussel Agri-Vet Co. et al., 46176
Janssen Pharmaceutical et al., 21502
Mobay Chemical Corp. et al., 2339, 3834, 5123, 14156, 19444, 23185, 24041
Monsanto Co. et al., 15219
Nor-Am Chemical Co. et al., 35858, 49760
PPG Industries, Inc., et al., 46178
Rhone-Poulenc Inc. et al., 9122, 31026, 33834, 33839, 50680, 52850
Roussel Uclaf et al., 12868, 23068
SDS Biotech Corp. et al., 10106
Shell Oil Co. et al., 4265, 48832
Union Carbide Agricultural Products Co., Inc., et al., 16543, 31916, 52851
Zoecon Corp., 6044
Pesticide applicator certification; Federal and State plans:
American Samoa, 9125
Colorado, 31919
Defense Department, 34910, 51947
Fort Berthold Indian Reservation, ND, 31011
Interior Department, 7217
Northern Mariana Islands, 9125
Pacific Islands Trust Territory, 9125
Pesticide programs:
Alabama Department of Agriculture and Industries et al.; specific exemptions for unregistered use; inquiry, 8190
Carbon tetrachloride, carbon disulfide, and ethylene dichloride; intent to cancel, 42997, 46176
Confidential business information; disclosure to Congress, 36142
Confidential information and data transfer to--
Contractors, 167, 14154, 23763, 24693, 31027, 31242, 34007
Forest Service, 31025, 33633
Occupational Safety and Health Administration, 24694
Data call-in notice for chronic data--
MGK-264 (N-octyl bicycloheptene dicarboximide), 47656
Pyrethrins, pyrethrin coils, and pyrethrum powder, 47673
Dibromochloropropane--
Intent to cancel, 1122, 6049
Use of existing stocks, 8782, 46512
Ethylene dibromide--
Exported citrus use, 1271, 12072
Grain fumigants; regulatory status, 38092
Imazaquin; specific exemption application receipt to control sicklepod on soybeans, 16345
Labeling project; inquiry, 4266
Lindane; intent to cancel; amendment, 5424
Microbial pesticides; small scale field testing; notification procedures, 23762
Montana Department of Livestock et al.--
Specific exemption applications to use strychnine; inquiry, 20600
Specific exemption issuance for use of strychnine to control rabid skunks, 48835
Nevada Department of Agriculture; emergency exemption application to use fluvalinate; inquiry, 26407
Non-wood preservative uses of creosote, coal tar, and coal tar neutral oil; intent to cancel registrations, 41943
Nonregulatory pesticide registration guideline on reentry protection; availability, 159
Pesticide assessment guidelines; data reporting addenda; inquiry, 31010
Registration standards and special reviews, and data call-in; schedule for review, etc., 2341, 6050, 7960
Sodium monofluoroacetate (Compound 1080); registration application data, 28986
Availability and inquiry, 7219, 9898
Special local need registrations; voluntary cancellations, 19445, 24042
Special review--
Alachlor, 1115, 10103
Captafol, 1103
Captan, 25884
Carbofuran, 41938, 47435
Cyanazine, 14151, 23068
Dicofol, 33008, 37424
Dinocap, 1119
Sodium fluoroacetate (compound 1080), 31012, 33835
Triphenyltin hydroxide, 1107
Test data; review disclosure, 48833
Texas Department of Agriculture; specific exemptions for unregistered use; inquiry, 12075
Tuberculocidal test methodology; peer review; inquiry, 25457
Wood preservative uses of creosote, pentachlorophenol, and inorganic arsenicals; effective date postponed, 4269
Pesticide registration, cancellation, etc.:
American Cyanamid Co. et al., 34908
Anderson Chemical Co. et al., 24833, 26265
BASF Wyandotte Corp., 7120
Bell Laboratories, Inc., 166
Burroughs Wellcome et al., 7958, 9898, 19452
Calgon Corp., 42997
Caschem, Inc., 31771
Ciba-Geigy Corp. et al., 3024
Cypermethrin, 1112, 39172
Cyromazine, 20373
E.I. du Pont de Nemours & Co., Inc., et al., 7218, 31771, 52852
Elanco Products Co., 7218, 7958
Flora-Guard Insecticidal Soap Concentrate, etc., 6045
FMC Corp., 49759
Glyco, Inc., 5121, 26408, 30513
Hyponex Co., Inc., et al., 28121, 30513
ICI Americas, Inc., 5122, 32767
Idacon, Inc., 33838
Janssen Pharmaceutica, 15217, 21352, 23761
MAAG Agrochemicals, 47840
Merck & Co., Inc., et al., 37903, 45159
Old South Sales Co. et al., 8673
Pet Chemicals Inc., 47839
Solvit Chemical Co., Inc., et al., 35862, 37909
Sumitomo Chemical Co., Ltd., et al., 52849
West Chemical Products, Inc., et al., 167, 5811
Zoecon Corp. et al., 7216, 12078
Pesticides; emergency exemption applications:
Anilazine, etc., 31767
Avermectin B1, 46825
Carbofuran, etc., 41216
B-(4-Chlorophenoxy)-a-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, 12074
Diazinon, etc., 12071
1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl)methyl)-1H-1,2,4-triazole, 14447, 21936
Fluridone, 30233
Methamidophos, etc., 6049
2-Methoxy-n-(2-oxo-1,3-oxazolin-3-yl)-acet-2',6'-xylidine, 14443, 14446, 16346, 23188
Oxyfluorfen, etc., 5122
Permethrin, etc., 31768
Sethoxydim, etc., 16136
Sodium chlorate, etc., 48830
Sodium monofluoroacetate, 9123
Pesticides; experimental use permit applications:
Abbott Laboratories et al., 31917, 37426
Advanced Genetic Sciences, Inc., 33841, 49760
American Cyanamid Co. et al., 13281, 23068, 48831
American Hoechst Corp. et al., 9124, 10311, 14155, 21118, 24313
BASF Wyandotte Corp. et al., 158, 3025, 5125, 31770
E.I. duPont de Nemours & Co., Inc., et al., 18563, 37907
Elanco Products Co. et al., 33838
FMC Corp. et al., 5120, 10105
ICI Americas, Inc., et al., 16137, 23184
Interior Department, 20286, 24041
Rohm & Haas Co. et al., 37906
Sodium fluoroacetate (compound 1080), 15218, 23763
Pesticides; receipts of State registration, 160, 161, 163, 2338, 3026, 6047, 6048, 8394, 10104, 12079, 18564, 20284, 24042, 25454, 35859
Pesticides; temporary tolerances:
American Cyanamid Co., 46176, 48261
American Hoechst Corp., 13282, 19452
Diethatyl-ethyl, 12076, 18567, 52850
E.I. duPont de Nemours & Co., Inc., 20285, 21117, 50681
Ethephon, 31917
Fenarimol, 12079
Florida, 12077, 21119
FMC Corp., 9121
Imazalil, 14157
MAAG Agrochemicals, 37904

Mefluidide, 12077, 20843
Methomyl, 37052
Micro Gene Systems, Inc., 9121
Mycogen Corp., 24832
Nor-Am Chemical Co., 12080, 20844, 46177
Norflurazon, 18566
Oxyfluorfen, 31920, 47838, 47839
Rohm & Hass Co., 9122
Stauffer Chemical Co., 21117
Thiodicarb, 37905
Privacy Act; systems of records, 4589, 18302, 24313, 30758, 49763, 50227
Procurement:
Commercial activities, performance; cost comparison study (OMB A-76 implementation), 6391
Risk assessment; guidelines, etc.:
Chemical mixtures; inquiry, 1170
Superfund program:
Hazardous substances management; off-site response actions; planning and implementing procedure; inquiry, 45933
Hazardous waste enforcement; interim settlement policy; inquiry, 5034
Extension of time, 14986
Toxic and hazardous substances control:
Asbestos; confidential business information; disclosure to Congress, 10108
1,3-Butadiene; report to Occupational Safety and Health Administration, 41393
Chemical designation for priority attention; guidelines availability, 28840
Chemical emergency preparedness program; interim guidance; availability and inquiry, 51451
Chemical substances inventory; intent to remove one hundred and four incorrectly reported chemical substances, 41585
Inquiry, 19284
Chemical testing; data receipt, 5421, 7960, 18927, 31918, 46699
Confidential business information--
Disclosure to Congress, 27053
Security manual; revised procedures, 47108
Confidential information and data transfer to contractors, 3835, 4591, 5671, 7960, 18914, 24831, 24944, 27844, 35597, 36666, 38028, 38199, 45483, 49607, 51300
Dioxin and furan; partial grant of petition, 4426
Health effects testing guidelines; availability and inquiry, 19087, 24041
Interagency Testing Committee; intent-to-designate category of chemicals--
Additions, 13419
Establishment, 13418
Interagency Testing Committee; report; inquiry, 20930, 32485, 47603, 53009
Interagency Testing Committee; responses, etc. --
Alkyl epoxides, 36476, 38199
Carbofuran intermediates, 29761, 33633
2-Chloro-1,3-butadiene, 34546, 37424
4-Chlorobenzotrifluoride, 42216
2-Chlorotoluene, 40445, 46176
1,2-Dibromo-4-(1,2-dibromoethyl)cyclohexane, 19460, 30234
Isopropyl biphenyl and diisopropyl biphenyl, 18920, 24694
Phenylenediamines, 4267
Sodium N-methyl-N-oleoyltaurine, 46178
4,4'-Methylenedianiline; report to Congress decision, 27674
Methylene chloride; accelerated review, 20126
Premanufacture exemption applications, 545, 2720, 3594, 7383, 8393, 9509, 11559, 12626, 13654, 14442, 15633, 16540, 18919, 19801, 21503, 23068, 24935, 24941, 25780, 26840, 27847, 28467, 32293, 33632, 36665, 42774, 46510, 51301
Premanufacture exemption approvals, 159, 1632, 4264, 5124, 5415, 5418, 8393, 10107, 11556, 11557, 14444, 16346, 16539, 19228, 21350, 21351, 24834, 24835, 24935, 25780, 27489, 31770, 32302, 32483, 32484, 33412, 36142, 37578, 41583, 42088, 48638, 50947
Premanufacture notices; monthly status reports, 4898, 5125, 6049, 10311, 12631, 19453, 23068, 24567, 25781, 26046, 32294, 37423, 37579, 43459
Premanufacture notices receipts, 543, 1630, 2718, 2720, 3025, 3591, 3592, 3972, 4790, 4896, 5416, 5417, 5811, 6383, 7640, 7960, 8390, 9503, 9504, 9709, 10108, 10536, 10539, 11557, 11559, 11939, 12623, 12626, 13651, 14439, 14446, 15629, 15632, 16541, 16543, 18915, 18919, 19580, 19797, 19798, 20596, 21119, 21498, 21503, 21936, 23185, 23187, 24041, 24313, 24694, 24936, 24938, 25777, 25778, 26265, 26837, 26840, 27845, 27848, 28464, 28467, 29476, 30290, 30513, 30516, 31656, 32290, 32302, 33628, 33630, 33633, 34008, 34189, 34192, 35313, 35314, 36669, 36671, 37424, 37731, 38194, 38197, 38199, 39166, 39167, 40594, 40596, 41580, 41583, 42088, 42772, 42773, 42775, 43456, 43459, 46175, 46176, 46501, 46503, 46508, 46512, 47435, 47437, 48261, 50004, 50006, 50225, 51302, 51944, 51948, 53194, 53197, 53395
Premanufacture notices review period extensions, 16544, 28840, 34007, 53395
Southeast Chicago; testing requirement rule for toxic chemical substances and mixtures; citizens' petition denied, 30517
Toxic Substances Control Act--
Citizens' petition preparation, guidance, 46825, 50840
Test rule development process; meeting, 14293, 19466
Waste management, solid:
Open dumps; inventory availability, 41952
Water pollution; discharge of pollutants (NPDES):
Alaska OCS operations, 6385, 23578, 28974, 29928, 30010, 35598, 40893
Arkansas, 7216
California, 34036, 34052, 38029
Gulf of Mexico, 30564, 41020
La Parguera Bay, PR, 13871, 40228
Louisiana, 7216
Maryland, 42089
Michigan, 16546
Oklahoma, 7216
Texas, 7216
Water pollution; effluent guidelines for point source categories:
Confidential information and data transfer to contractors, 20290
Simpson Paper Co. et al.--
Denial of variance, 9708, 23185
Variance applications, 32485
Water pollution control:
Disposal site determinations--
Bayou aux Carpes swamp, LA, 20602, 29479, 47267
Maybank, Jack, 4791, 20291
Pyramid Companies, 33835
Reeves, Graham, 12403
Drinking water primary enforcement responsibility determination--
Pennsylvania, 342
Ocean dumping; chemical waste incineration; tentative research permit; hearings, 51360
State underground injection control program; Pennsylvania, 34548
State water quality standards; adoptions and approvals; updated listing; availability, 29758
Virgin Islands Housing Authority; bacteriological standards violation, 21936
Wastewater management alternatives report; availability, 20497
Water pollution control; sole source aquifer designations:
California, 2023
Massachusetts, 5419
New York, 2022, 2025
North Dakota, 4791, 18302
Oregon, 46828
Pennsylvania, 9126
Tennessee, 343
Virginia, 45484
Water quality criteria:
Ambient water quality criteria documents and criteria development guidelines; availability, 30784
Antidegradation policy; question and answer series; availability, 34546
Oxygen, dissolved; inquiry, 15634

ENVIRONMENTAL QUALITY COUNCIL

PROPOSED RULES

National Environmental Policy Act:
Incomplete or unavailable information, 4236, 32234
Regulatory agenda, 17782, 44642

NOTICES

Environmental statements; availability, etc.:
Tennessee-Tombigbee Waterway Wildlife Mitigation Plan, AL and MS, 12850
Meetings; Sunshine Act, 5467, 9535, 50251, 51503, 53061

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

RULES

Age discrimination in employment:
- Bona fide executive or high policy-making employees; exemption, 2543
- Health insurance benefits for employees age 65 to 69; coverage under employer group health plans; interim rule removed, 50614

Employment discrimination:
- Charges; designation of State and local fair employment practice agencies (706 agencies)--
  - Florida, 3510, 38115
  - Kentucky, 4648
  - North Carolina, 52773
  - Texas, 41135
- Complaints filed against recipients of Federal financial assistance; Education Department participation limitation, 8608

Equal Pay Act; confidentiality policy, 30699

Federal equal employment opportunity:
- Special Panel; discrimination allegation case procedures; interim, 52897

Records and reports:
- Higher education staff information report (EEO-6), 24622
- Local union equal employment opportunity reports (EEO-3); waiver, 48580
- State and local government information report (EEO-4), 24622

PROPOSED RULES

Age discrimination in employment:
- Private rights, waivers and releases, 40870

Records and reports:
- Local union equal employment opportunity reports (EEO-3), 31196

Regulatory agenda, 17854, 44710

NOTICES

Agency information collection activities under OMB review, 4270, 28650, 30759, 33633, 34194

Meetings; Sunshine Act, 1295, 3075, 3451, 3866, 4611, 4830, 5349, 7028, 7443, 8434, 9756, 10343, 10577, 11475, 11612, 12684, 13304, 13692, 14486, 15669, 16384, 16579, 18345, 18764, 19262, 19842, 20340, 20870, 21011, 23237, 24083, 24871, 25152, 25377, 26071, 26435, 26876, 27888, 28059, 28490, 29509, 30043, 31090, 36180, 36181, 36511, 37620, 38606, 39216, 39805, 42117, 42639, 43495, 45526, 45887, 46533, 47325, 47893, 48535, 49494, 50706

Privacy Act; systems of records, 5672

Procurement:
- Commercial or industrial activities, performance; productivity review list and schedule (OMB A-76 implementation), 13656, 23069, 35318

Senior Executive Service:
- Performance Review Board; membership, 4792

EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES COMMISSION

NOTICES

Meetings, 1263, 5113, 10541

EXECUTIVE OFFICE OF THE PRESIDENT

See Central Intelligence Agency.
Environmental Quality Council.
Management and Budget Office.
National Critical Materials Council.
Presidential Documents.
President's Economic Policy Advisory Board.
Science and Technology Policy Office.
Trade Representative, Office of United States.

EXPLOSIVES

See Alcohol, Tobacco and Firearms Bureau.

EXPORT-IMPORT BANK

RULES

National security information program; implementation, 27215

Sunshine Act; implementation, 8606

NOTICES

Agency information collection activities under OMB review, 5008, 46182

Meetings:
- Advisory Committee, 11245, 24945, 36143, 43778, 45869

FARM CREDIT ADMINISTRATION

RULES

Conflict of interests; personnel administration, 11655
- Correction, 15865
- Effective date, 20744

Farm credit system:
- Banks and associations, organization--
  - Liquidation, 37985, 47043
  - Transfer of funds and equities; final rule and request for comments, 36985, 42513
- Examinations, audits, and investigations, 20091
  - Effective date, 27931
- Service organization incorporation, 46417

Federal land bank and production credit association charters; mergers and consolidations, 20396
- Correction, 32165
- Effective date, 27930

Funding and fiscal affairs:
- Cooperative bank earnings; distribution method, 36868
  - Effective date, 46418
- Property acquisition and disposition, electronic data and word processing program policies; prior approval requirements eliminated, 48553

Information and records; testimony and production of documents in legal proceedings not involving FCA, 7330

Loan policies and operations:
- Repurchase provisions; loan participation among Farm Credit System institutions, 47043

PROPOSED RULES

Farm credit system:
- Banks and associations, organization; liquidation, 6000
  - Extension of time, 14110
- Disclosure to shareholders, 34711
- Service organization incorporation, 33765

Funding and fiscal affairs:
- Cooperative bank earnings; distribution method, 19379
- Investment activities by system banks, 50798
- Property acquisition and disposition, electronic data and word processing program policies; prior approval requirements eliminated, 31607

Loan policies and operations:
- Repurchase provisions; loan participation among Farm Credit System institutions, 32736

Nondiscrimination on basis of handicap in federally-conducted programs and activities, 51540

Regulatory agenda, 18038, 44892

NOTICES

Authority delegations:
- Assistant to General Counsel et al., 40449
- Deputy Governor et al., 20844
- Senior Deputy Governor et al., 8783

Farm credit system:
- Federal land bank associations, consolidation; proposed charter; inquiry, 48839, 50008
- Production credit associations, consolidation; proposed charter; inquiry, 48838, 50008

Meetings; Sunshine Act, 2121, 3866, 7869, 11988, 18345, 20646, 25152, 30330, 31670, 34793, 38056, 40468, 43056, 48535

FARMERS HOME ADMINISTRATION

RULES

Emergency Agricultural Credit Act; implementation, 11498

Freedom of Information Act; implementation, 11839

Internal Revenue Service offset for delinquent housing borrowers; implementation; interim, 45906

Loan and grant programs:
- Account servicing action notification, 7033
- Applications; taxpayer's identification number, 16055
- Business and industrial loans, 16455
  - Liquidation and property guide, 46415
- Citrus grove rehabilitation and/or reestablishment; emergency loan, 48175
  - Interim, 7566
- Closing loans secured by chattels, 27414
- Community domestic water and waste disposal systems development grants, 12767
  - Interest rates, 43378
- Community facility projects, 7291, 13004
  - Form numbering system, 33331
  - Interest rates, 43378
- Construction and repair; planning and performing construction and other development; inspections, 21035
- Debt settlements; approval authority, 40187

Delinquent and problem case borrowers; special supervision, 45740
Disaster loan assistance programs; memorandum of understanding with SBA, 27416
Farmer program borrowers, special debt set-aside; interim supplemental notice, 39967
Guaranteed loan programs--
Approved lender program, 11648
Debt adjustment program; interim, 9987
Debt adjustment program for operating and farm ownership loans, 6880
Line of credit authority, 39880
Methodology and formulas for allocation of funds, 24178
Correction, 43695
Multiple family housing loans; security servicing; correction, 1206, 21583, 46415
Operating loan policies; renumbering of administrative form, 32843
Process change in account terms; new forms, 16225
Real estate security servicing, 39636
Correction, 49832
Rural housing--
Multiple family housing; predetermined amortization schedule system account servicing, 8581
Policies, procedures and authorizations; interest credit agreement renewals, 27415
Section 502 loan policies, revisions; procedures and authorizations; interim, 39959, 48372
Servicing cases involving unauthorized loans, etc., 12989, 15098
Single family residential property; use of fee appraisers; pilot project, 11839
Property management; loan programs, 23897

PROPOSED RULES

Loan and grant programs:
Community facility projects; use of funds, 21069
Construction and repair; planning and performing site development work, 815
Farm labor housing policies, procedures, and authorizations, 37538
Financing surplus agricultural commodities; restrictions, 49395
Guaranteed farmer program loans; secondary markets; advance notice, 39921
Methodology and formulas for allocation of funds, 6351
Multiple family housing--
Borrowers and grant recipients; management and supervision, 21782
Real property insurance loss deductible clause, 37200
Rural housing; housing preservation grant program, 30429
Single family housing loans; supervision, servicing, and collection, 38662

NOTICES

Loan and grant programs:
Housing and farmer loan borrowers; option to choose between interest rate in effect at loan approval or closing, 48237
Rural housing; Section 502 applicants; eligibility reestablishment, 46471
Natural resource management guide meetings:
Arizona, 4878
California, 4878
Delaware, 4878
Georgia, 1252
Idaho, 2702
Indiana, 7938
Maine, 4879
Michigan, 137
Nevada, 41181
New Jersey, 1252
Puerto Rico, 20249
South Carolina, 8754
Texas, 5284, 9468
Utah, 7623
Virgin Islands, 6978

FEDERAL AVIATION ADMINISTRATION

RULES

Air carriers certification and operations:
Airplane cabin fire protection, 12726
Correction, 14373
Flight time limitations and rest requirements for flight crew members, 29306
Mechanical reliability reports, 32374
Special Federal Aviation Regulation (SFAR) 38, 23941
Correction, 26694
Extension; final rule and request for comments, 450
X ray systems use, 25654
Air traffic operating and flight rules:
Airport radar service areas, 9252
Airspace minimum navigation performance specification; definition, 51193
Alcohol or drug use by crewmembers, 15376
Federal air marshals, transportation; final rule and request for comments, 27924
Multiengine aircraft; approval to operate with inoperable instruments and equipment; minimum equipment list requirement; suspension terminated and request for comments, 51188
Noise compliance regulations for subsonic aircraft; policy statement, 41326
Noise restricted aircraft; special flight authorization, 7751
Shoulder harnesses in normal, utility, and acrobatic category airplanes, 46872
Correction, 48077
Special Federal Aviation Regulation No. 42; removal of obsolete regulation from CFR, 9795
Special VFR weather minimums; exempt locations update, 42671
Transponder-on operation, 45599
Two-way radio communications; failure procedures, 31587
Ultralight vehicles, restrictions near space flight operations or proximity of President and others, 4968
Air traffic rules, special:
Airpark-Dallas Airport, TX; temporary suspension of requirements and request for comments, 16698
High density traffic airports; slot allocation and transfer methods, 52180
Marine Corps Air Station, El Toro, CA, 50264
Aircraft products and parts, certification:
Aerospatiale, 29945
British Aerospace, 7
Fairchild, 5369
Airmen certification:
Alcohol or drug use by crewmembers, 15376
Inspection authorization; issuance and renewal, 15698
Instrument rating; minimum aeronautical experience requirements, 19290
Airport and airplane operator security:
Coordination and training, 28892
Correction, 35535
Airport noise compatibility planning programs; development and submission of airport operator's noise exposure maps; correction, 5063
Airport radar service areas, 9250, 45718, 48742, 49529, 50254, 52439
Airworthiness directives:
Aerospatiale, 20199, 21583, 28093, 28561, 29649
Airbus Industrie, 4197, 5568, 13013, 13548, 18238, 18856, 30806, 32391, 42154
Airotech, Inc., 18239
Alexander Schleicher, 30416
Allison, 19667, 46631
Beech, 445, 11363, 21584, 41674, 45810
Bell, 4857, 12775, 15865, 21037, 52437, 52899
BFGoodrich, 10934
Boeing, 2771, 2773, 3884, 4199, 5569, 6339, 7745, 13552, 15539, 16465, 18854, 18855, 20895, 24187, 25545, 25546, 26690, 29648, 29649, 30802, 31153, 32167, 32168, 33334, 36044, 38505, 40802, 41129, 41130, 42146, 42514, 45097, 45598, 47356, 49029, 49832, 49923, 51235, 53127, 53128
British Aerospace, 4498, 5570, 8319, 12774, 13550, 18239, 18857, 19332, 19333, 19908, 21585, 23396, 23939, 24613, 27931, 28093, 28563, 53129
Canadair, 26692, 27575
Cessna, 2274, 3882, 5375, 13766, 20403, 26693, 30264, 31342, 31586, 34450, 34451, 39651, 41336, 42147, 49349, 49350
CFM International, 3316
Collins, 52763
Costruzioni Aeronautiche Giovanni Agusta S.p.A., 18240
Dassault-Breguet, 27932
DeHavilland, 13553, 21586, 51236, 51237
Dornier, 6154
Douglas Aircraft Co., 13549
EMBRAER, 446, 7747, 34450, 49350
Fairchild, 7748, 39652, 40803, 42148
Fokker, 24188, 51667
Garlick Helicopters et al., 6930
Garrett, 20200, 23108, 27933
Gates Learjet, 14088, 30803, 43565, 45098
General Electric Co., 36989, 50609
Government Aircraft Factories, 41481, 41482
Grob-Werke, 36869, 36987, 36988
Gulfstream Aerospace Corp., 2774, 7165, 10935, 26979, 39652
Hamilton Standard, 447
Hartzell, 19668, 30417
Hughes Helicopters, Inc., 36990
Israel Aircraft Industries, Ltd., 28766
Lockheed, 8320, 13014, 13553, 18853, 36045, 40188, 42151, 42152, 42901, 52765

Marvel-Schebler, 33915
McCauley, 19669
McDonnell Douglas, 448, 2040, 2043, 4637, 10936, 11843, 13015, 13551, 20198, 20896, 28094, 29650, 30804, 30805, 30806, 32166, 36046, 36570, 39653, 42153, 42154, 43566, 46750, 49833, 52766
Messerschmitt-Bolkow-Blohm, GmbH, 4198, 18237
Mitsubishi Heavy Industries, Ltd., et al., 8321, 33335
Mooney Aircraft Corp., 49351
Partenavia Costruzioni Aeronautiche, 14370, 15866
Pilatus Aircraft Ltd. et al., 30693
Piper, 3883, 9794, 12516, 14919, 22985, 22986, 39654
Pitts, 2045
Pratt & Whitney, 25907, 48376
Rolladen-Schneider Flugzeugbau GmbH, 5376
Rolls-Royce Ltd., 5374, 13310, 23109
Saab-Fairchild, 40189
Scott Aviation, 50610
Short Brothers Ltd. et al., 3885, 18241, 27576, 28562
SIAI-Marchetti, 39990
Sikorsky, 10, 10219, 15099, 37172, 38506, 48375, 52438
Slingsby Aircraft Co., Ltd., 29651
Societe Nationale Industrielle Aerospatiale, 15538, 28561, 35772, 37173
Sperry, 13015
Teledyne Continental, 6155, 15098, 16465, 16466
Westland Helicopters Ltd., 13554
Airworthiness standards:
Shoulder harnesses in normal, utility, and acrobatic category airplanes, 46872
Colored Federal airways, 6156, 23397
Control areas, 11843, 16075, 21038, 47358, 47359, 47361, 48077, 50610
Control zones, 728, 3886, 4199, 5378, 5379, 10937, 11844, 12776, 13186, 14695, 18989, 19909, 20093, 20200, 25547, 28564, 28900, 28901, 30418, 31154, 31344, 31706, 32392, 32393, 32692, 34676, 37344, 37345, 38973, 39992, 40190, 41484, 41866, 42008, 45989, 46751, 49030, 49353, 51238, 51240, 52767
IFR altitudes, 4499, 12777, 23272, 31161, 37515, 49674
Jet routes, 14092, 16075, 16466, 25211, 31160, 37646, 37841, 38973, 39655, 39656, 42009, 43379, 47047
Navigation facilities, non-Federal; distance measuring equipment requirements; technical amendment, 48745
Prohibited areas, 6157
Reporting points, 20092, 31157, 37840, 39655
Restricted areas, 4201, 4202, 4966, 6156, 6932, 11364, 15541, 15542, 23665, 24505, 31158, 31159, 31160, 33335, 38777, 38778, 40191, 47361, 47362, 48743, 48744, 50611, 52439
Standard instrument approach procedures, 449, 2776, 4639, 7167, 8098, 10939, 12237, 14371, 16467, 19520, 21039, 25212, 25548, 27934, 29653, 31345, 33023, 35209, 37646, 38974, 43380, 45099, 46421, 48179, 50161, 51668
Terminal control areas, 37994
Transition areas, 726, 727, 728, 2275, 2542, 2775, 3886, 3887, 4200, 4857, 5377, 5378, 5379, 6931, 7750, 10937, 10938, 10939, 12519, 12776, 13186, 13767, 13768, 13769, 18857, 18858, 18989, 19670, 19671, 19909, 20091, 20092, 20093, 20558, 20559, 20897, 20898, 21038, 21235, 23270, 23271, 23272, 23399, 23940, 23941, 25210, 26980, 27934, 28564, 28565, 28900, 28902, 30134, 30265, 30694, 31154, 31156, 31344, 31345, 31706, 32169, 32392, 36047, 37514, 38973, 39991, 40479, 41483, 41485, 42008, 42515, 45401, 45402, 45810, 45989, 46281, 46752, 46753, 47358, 47359, 48378, 49353, 49528, 50285, 50610, 50778, 51238, 51239, 51384, 51513, 51840, 52767, 52899
VOR Federal airways, 4966, 7166, 7751, 11843, 11845, 11846, 13769, 14089, 14090, 14091, 14092, 14694, 15540, 16466, 19334, 20404, 20898, 23397, 23398, 24189, 24505, 31155, 31156, 31160, 31839, 32555, 37841, 38971, 38972, 38973, 39655, 39656, 42009, 47044, 47045, 47046, 47360, 48077, 48178, 49030
War risk insurance, 51332

PROPOSED RULES

Air carriers certification and operations:
Aircraft, U.S. registered; leased by foreign persons; acceptable maintenance standards, 50588
Airport certification, 43094
Clarification, 46673
Cabin interior materials in transport category airplanes; flammability standards, 15038
Comment period reopened, 30447
Emergency evacuation of transport airplanes; technical conference, 32087
Emergency medical equipment for use during flight time, 10444
Flight recorders and cockpit voice recorders, 949
Comment period reopened, 15528
Protective breathing equipment, 41452
Reserve fuel requirements for flight under instrument flight rules (IFR), 42364
Special Federal Aviation Regulation (SFAR) 38, 4472
Air traffic operating and flight rules:
Air Traffic Control Radar Beacon System and Mode S Transponder; implementation in National Airspace System, 37674
Aircraft, U.S. registered; leased by foreign persons; acceptable maintenance standards, 50588
Alcohol tests, submission by crewmembers, 15381
Emergency evacuation of transport airplanes; technical conference, 32087
General operating and flight rules, 11292
National Airspace Review; airspace reclassification and air traffic services requirements; advance notice, 5046
Nighttime VFR weather minimums, 30124
Shoulder harnesses in normal, utility, and acrobatic category airplanes, 19108
Terminal airspace reclassification; advance notice, 5055
Transponder-on operation, 19381
Ultralight vehicles, enforceable requirements for operation; rulemaking petition, 6312
Comment period reopened, 20432
Air traffic rules, special:
High density traffic airports; slot allocation; withdrawal and redistribution, 52199
Pilgrim Airlines petition for rulemaking; restriction of commuter slots, 15577
Special airport traffic area; Abbotsford, British Columbia, Canada, 41906
Aircraft products and parts, certification:
Aerospatiale, 7791
Avions Marcel Dassault-Breguet Aviation, 36437
British Aerospace, 51704
Soloy Conversions, Ltd.; withdrawn, 13810
Special classes of aircraft; type and airworthiness certification procedures, 42368
Airmen certification:
Alcohol tests, submission by crewmembers, 15381
Medical certificates, third-class; extended duration; withdrawn, 39619
Correction, 40982
Student recreational, recreational, student private, and private pilots, 26286
Extension of time, 35180
Airport radar service areas, 27528, 28816, 31472, 32578, 33353, 34721, 37865, 39822, 41693, 43407
Airworthiness directives:
Aerospatiale, 3919, 4227, 8337, 10937, 14390
Airbus Industrie, 2059, 11894, 12036, 21620, 27009, 46775
Avions Marcel Dassault-Breguet Aviation, 32439, 35099, 42561
Beech, 11377, 25579
Bell, 33777, 40562
Boeing, 280, 2063, 2293, 5625, 6188, 6189, 8338, 10976, 11705, 18269, 18874, 18875, 23434, 23435, 25582, 28815, 32440, 33549, 36098, 40866, 42562, 42564, 42565, 45115, 45829, 46775, 46776, 49858, 49944, 52792, 53157
British Aerospace, 2824, 3918, 4228, 4867, 5626, 6190, 8339, 9806, 10974, 12035, 13810, 25584, 26785, 26790, 36097, 36099, 36100, 36101, 40034, 51259, 52793, 52794
California Department of Forestry et al., 40202
Canadair, 9808, 10977
Cessna, 8137, 25253
Dassault-Breguet, 13611
DeHavilland, 3915, 36600
Dornier, 23026
EMBRAER, 31609
Facet (Marvel-Schebler), 14716
Fairchild, 2062, 14391, 16511, 32737, 49055
Fokker, 18873, 29694, 34160, 34161, 34163, 34164, 42566
Garrett, 3916, 7793, 19033
Gates Learjet, 478, 13812, 46777, 47409, 49945
Government Aircraft Factories, 26786, 26787
Gulfstream Aerospace Corp., 23993
Hartzell, 3915, 11512

HTL Advanced Technology, 11892
Hughes Helicopters, Inc., 2059, 3917, 23994, 30448, 30449, 36096
Israel Aircraft Industries, Ltd., 51707
Lockheed, 10975, 11891, 13813, 27601, 49858
Marvel-Schebler, 14717
McDonnell Douglas, 5627, 6191, 7794, 11894, 18270, 18871, 20225, 21622, 27011, 27012, 27602, 40867, 42714, 43572, 50172
Mooney Aircraft Corp., 29988, 35830, 52931
Partenavia Costruzioni Aeronautiche S.p.A., 4869, 4870
Pilatus Aircraft, Ltd., et al., 20430
Piper, 479
Pratt & Whitney, 5396, 20915, 26788, 43222, 45116, 46444, 47411
Rolls-Royce Ltd., 2060, 2061, 16515, 35837, 35838, 35839, 43223
Saab-Fairchild, 34495, 36095
Secut Aiglon, 30449
Short Brothers Ltd., 5397, 10976, 13814, 18870, 33550, 34496, 36102, 39712
SIAI-Marchetti, 13815, 26218, 36441
Sikorsky, 31193
SOCATA, 40201
Wytwornia Sprzetu Komunikacjnego, 11706
Airworthiness standards:
Cabin interior materials in transport category airplanes; flammability standards, 15038
Comment period reopened, 30447
Cargo or baggage compartments; fire protection requirements; comment period reopened, 13226
Crash-resistant fuel systems; advance notice, 8948
Electronic aircraft engine control systems, 6186
Comment period reopened, 25579
Helicopter minimum flightcrew; advance notice, 48786
Correction, 50624
Rotorcraft regulatory review program; operations, maintenance, and rotorcraft-load combination, 10144
Shoulder harnesses in normal, utility, and acrobatic category airplanes, 19108
Transport category airplanes; flight after structural failure; advance notice; withdrawn, 31725
Transport category rotorcraft; minimum climb gradients and takeoff distances; advance notice, 42126
Turboprop engine propeller brakes; extension of time, 1542
Colored Federal airways, 15581
Control areas, 1232, 1867, 2987, 7185, 9453, 15903, 29407, 33354
Control zones, 90, 2825, 5398, 5399, 6197, 12818, 13819, 15577, 15578, 15581, 15583, 18877, 20916, 21623, 25254, 26371, 26372, 28589, 28591, 30206, 33351, 35100, 38855, 38856, 40203, 46447, 52931
Jet routes, 4230, 6198, 9453, 11896, 19380, 20106, 23714, 27014, 33351, 37686, 41905, 47062, 49058
National Airspace Review:
Airspace reclassification and air traffic services requirements; advance notice, 5046
Controlled international airspace designations; advance notice, 30798
Terminal airspace reclassification; advance notice, 5055
Noise standards; aircraft certification; simplification of test requirements, etc., 4173
Parachute jumping; reporting altitudes and terminal control area requirements, 52933
Reporting points, 16097
Restricted areas, 2827, 9809, 11895, 14717, 15903, 24199, 26583, 33356, 34859, 38857, 41904, 45423, 51260
Rulemaking petitions; summary and disposition, 6185, 6312, 15577, 18869, 23433, 25252, 28950, 31724, 34495, 36884, 47757
Terminal control areas, 16707, 26218, 37864, 37865, 49902, 50174, 51548, 52532
Transition areas, 91, 93, 1866, 2825, 2826, 3920, 3921, 4229, 4523, 5398, 5399, 7795, 7796, 8340, 8739, 9452, 10978, 11707, 12313, 12314, 13817, 13818, 15577, 15578, 15583, 15902, 18271, 18877, 19949, 19950, 20916, 20917, 23312, 25254, 25426, 28588, 28589, 28590, 29407, 30206, 30276, 32228, 32441, 32442, 33055, 33351, 33354, 35840, 36884, 37541, 37542, 37685, 38012, 38856, 40035, 40036, 40564, 40565, 40566, 40868, 41524, 41525, 41526, 42567, 42715, 45830, 46448, 46449, 46450, 46451, 46452, 48220, 49057, 50173, 50310, 51259, 51547, 51873, 52795, 52796, 52797, 52932, 53158
VOR Federal airways, 1232, 2294, 6192, 6193, 6195, 7184, 7185, 8738, 9039, 9040, 10979, 13227, 14939, 16095, 19380, 20105, 23714, 25427, 27013, 27014, 28816, 31383, 31384, 33351, 33352, 33355, 34859, 37004, 37683, 37684, 37864, 37866, 47061, 47062, 49058, 49704

NOTICES

Advisory circulars; availability, etc.:
Aircraft engines--
Fuels, lubricants, and additives; qualification, 53241
Identification data and plates; installation, removal, or change, 49492
Aircraft structure, damage tolerance and fatigue evaluation, 13301
Aircraft turbine engines; surge and stall characteristics, 51502
Airplane simulator and visual system evaluation, 42644
Airplanes, small--
Flight in icing conditions, 53056
Listing of applicable circulars, 3073
Reciprocating engines, installation of turbosuperchargers, 33145
Airplanes, two-engine; extended range operations, 5150, 27081
Airships, type certification; design criteria, 42243
Auxiliary fuel system installations, 12886
Flammable fluid components affected by wheels-up landing, 1293
Floor proximity emergency escape path marking, 26874
Flutter, airfoil divergence, and control reversal, 31666
Fuselage doors; structural and functional safety standards, 13302
Human exposure to impact; injury criteria, 32504
Preflight preparation role, 21686
Rotorcraft, normal category certification, 49809
Smoke detection, penetration, and evacuation tests, 31991
Transport category airplanes; flutter substantiation, 12682
Turbine engines--
Initial maintenance inspection test run, 25645
Operating characteristics; evaluation, 913
Waste water/potable water drain system certification testing, 23373
Aircraft:
Noise standards; fleet status and compliance plans of aircraft operators, report, 30777
Parts manufacturer approval program evaluation; report availability, 6303
Airport noise compatibility program:
Hartsfield Atlanta International Airport, GA, 25646
Jackson Hole Airport, WY, 21686, 52578
Los Angeles International Airport, CA, 27523
Natrona County International Airport, WY, 41436
Portland International Airport, OR, 5464, 38047
Seattle-Tacoma International Airport, WA, 16187, 46856
Smyrna Airport, TN, 32341
St. Louis Regional Airport, MO, 43308
Committees; establishment, renewals, terminations, etc.:
Aeronautics Radio Technical Commission, 8808
Federal Aviation Advisory Committee, 31452
Environmental statements; availability, etc.:
Stapleton International Airport, Denver, CO; expansion, 49900
Exemption petitions:
Lineas Aereas del Caribe, S.A., 19102
Exemption petitions; summary and disposition, 2366, 4825, 6301, 10337, 11979, 15266, 18341, 19104, 19836, 20158, 21387, 21539, 23864, 24857, 28057, 29037, 29504, 30776, 31666, 33448, 34789, 36177, 39802, 40253, 45521, 47318, 50698
Flight service stations; private industry operation; study, 20516
Grants; availability, etc.:
Airport improvement program, 26873
Noise compatibility programs; extension of time, 7024
Airway science demonstration program, 24340, 26652
Airway science grant program, 37612, 38240
Visual glideslope indicators; proposed funding policy, 34573, 35630, 39067
Meetings:
Aeronautics Radio Technical Commission, 4008, 4009, 4828, 6304, 7868, 8808, 13302, 13689, 18341, 20159, 21387, 23099, 25374, 26874, 27083, 30776, 35173, 36944, 39802, 41616, 42115, 42817, 43625, 47136, 47650, 48672, 51651, 51972

Air Traffic Procedures Advisory Committee, 11042, 27083, 38938, 51327
Air traffic rules and communication requirements, 37105
Aircraft fly-by-wire and other advanced control system designs; conference, 34573
Airline cabin air quality, 18957
Commercial aircraft fleet modernization, 45701
Future Air Navigation Systems Committee, 53057
National Airspace Review Advisory Committee, 7683, 12886
Planning Perspectives Conference, 40255
Research, engineering, and development conference, 30900
National airspace review enhancement plan, 1667, 2879
Suspended, 16036
Organization and functions, 36944
Alma, GA, 36951
Des Moines, IA, 38938
Houston, TX, 25374
Kansas City, MO, 37616
Las Vegas, NV, 7024, 42114
Los Angeles, CA, 42114
Martha's Vineyard, MA, 5463
McAlester, OK, 25374
Milwaukee, WI, 35173
New Orleans, LA, 25373
Oklahoma City, OK, 25150
Phoenix, AZ, 42114
West Lafayette, IN, 31273
Procurement:
Commercial activities, performance; review and schedule (OMB A-76 implementation), 27523
Technical standard orders:
Air traffic control radar beacon system/ mode select airborne equipment, 4008
Airborne area navigation equipment using multi-sensor inputs; availability and inquiry, 41977
Airborne multipurpose electronic displays, 11474
Child restraint systems; inquiry, 8429
General aviation flight data recorder; availability and inquiry, 14485
Life preservers; inquiry, 27083
VHF radio communications--
Receiving equipment; availability and inquiry, 46380
Transmitting equipment; availability and inquiry, 46380

FEDERAL BUREAU OF INVESTIGATION

NOTICES

Meetings:
National Crime Information Center Advisory Policy Board, 20303, 48143

FEDERAL COMMUNICATIONS COMMISSION

RULES

Commercial radio operators:
General Radiotelephone Operator License; restrictive endorsement, 45827
Verification cards; elimination, 1215
Technical amendments and correction, 38655
Common carrier services:
Access and divestiture related tariffs investigation--
Policy statement, 25982
Reconsideration and clarification petitions, 47741
Access charges; private branch exchange (PBX) connections; clarification, 12254
Reconsideration petitions, 19025
Reconsideration petitions denied and granted in part, 42707
Cellular applications; use of random selection or lotteries instead of comparative hearings, 20760, 51522
Correction, 11506, 27953, 53156
Competitive services rates and facilities authorizations; policy statement, 1215
Consolidated system monthly report 901; elimination, 41153
Customer premises equipment, and enhanced services by AT&T, 40379
Waivers granted, etc., 9033
Customer premises equipment, enhanced services and cellular communications services by Bell Operating Companies, 10029
Customer premises telephone equipment, detariffing procedures, etc. (second computer inquiry)--
National security and emergency preparedness communications; Federal agency use, 1525
Reconsideration order, 9016
State certification of plans; authority delegation, 8627
Telephone company uniform system of accounts, etc; correction, 782
Telephone deregulation; structural separation requirement waivers, 13573, 16704
Digital terminations systems; mutually exclusive applications; random selection procedures, 45608
Correction, 47051
Domestic fixed-satellite service--
Assignment of orbital locations to space stations, 35228
Space station licensing, 36071
Space station licensing (reduced orbital spacing) and antenna performance standards, 2671, 36432, 39004
Equal access and network reconfiguration costs; waiver, etc., 50910
Global communications satellite system and satellite terminal stations, establishment and operation; procurement of apparatus, equipment, and services, 3793
Holding companies annual report (FCC Form H); elimination, 41151
INTELSAT global communications satellite system; authorized user policy for access, 2552
Interlocking directorates, applications for authorizations, 31370
International competitive carrier policies, 48191
Interstate services; authorized rates of return; AT&T communications and exchange telephone carriers, 41350
Jurisdictional Separations Manual; interpretation, 34697, 45405
MTS and WATS market structure, etc.--
Access charges and tariff provisions, 939, 9633, 13023, 18249, 26204, 43707
Florida plan, 47746
Policies and requirements, 15547
MTS rates and rate structure plans; guidelines, 42945
Multichannel multipoint distribution service; licensees selection; lottery procedures, 5983
North Atlantic facilities; policy for distribution of circuits, 34813
Correction, 42182
Obscene materials transmission; enforcement of prohibitions, 42699
Effective date, 48770
Overseas telecommunications traffic data; annual reports, 21607
Pacific telecommunications needs, 1981-1985; facility construction activities, etc.; authorization policies, 35800
Public land mobile services--
Air-ground stations; Austin, TX, 13332
Air-ground stations; Mobile, AL, 23125
Air-ground stations; second signaling channel, etc., 7179
License applications; use of random selection or lotteries; reconsideration, 5583, 50167
One-way paging stations procedures, etc.; reconsideration petition denied, 14386
Revision and update, 32196, 33544
Satellite earth stations licensing, 40019
Satellite systems; international communications services, 42266
Spectrum utilization policy and digital termination systems; correction, 34150
State income taxes, jurisdictional separation; interpretation letter, 15558
Table Mountain Radio Receiving Zone; protection provisions, 39000
Technical amendment, 40862
Telephone companies--
Connection of equipment, systems, and protective apparatus, one and two-line premises wiring and party line service, 29384, 48203
Uniform system of accounts; generally accepted accounting principles, 48408
Telephone network, connection of terminal equipment; editorial amendments, 27250
Terminal equipment connection to telephone network, equipment registration program; application processing procedures and obsolete provisions removed, 47543
Correction, 49930
Communications equipment:
Industrial, scientific, and medical equipment; equipment authorization program, etc., 36061
Reconsideration petition; extension of time, 47050
Radio frequency devices--
Cordless telephones; labeling requirements, 24512

Low-power devices, certification and labeling; correction, 5755
Perimeter protection systems, field disturbance sensors; waiver petition, 32418
Self-contained low power communication requirement, 4664
Spread spectrum and wideband emissions usage, 25234
Technical regulations; re-examination; correction, 2564

Frequency allocations and radio treaty matters:
Aural broadcast studio transmitter links and intercity relay stations, 4655
Petitions denied, 39675
Collision-avoidance systems; footnote removed, 20911
Emission designators system (World Administrative Radio Conference; implementation); correction, 34150
Fixed and mobile services and radio astronomy services; footnotes removed, 52462
Fixed services; Government and non-government usage, 4650
Land mobile services; Detroit, Cleveland, and Buffalo, 40016
Offshore radio telecommunication service, 12021
Radiodetermination satellite service, spectrum allocation, and licensing, 39101
Spread spectrum and wideband emissions usage, 25234

National Environmental Policy Act; radiofrequency radiation, consideration of biological effects, etc., 11151
Effective date postponed, 38653

Organization, functions, and authority delegations:
Commissioners; reduction in number, etc., 26566
Correction, 39100
Common Carrier Bureau, Chief; disclosure of commercial information, 18487
Congressional and Public Affairs Office; establishment, 2984
Correction, 38999
Editorial amendments, 21264
Field Operations Bureau Chief, 37189
General Counsel Office--
Interception of phone conversations; correction, 85, 49048
Reorganization, 14386
Managing Director; official title and authority, 27952
Correction, 39100
Reporting and recordkeeping requirements, 9632
Science and Technology Office and Commission's international programs; reorganization, 37855

Practice and procedure:
Commissioners; reduction in number, etc., 26566
Correction, 39100
Editorial amendments, 21264
Facsimile copy documents; submission, 19359
Filing of briefs; clarification, 38999
Filings; table of contents and summary requirements, 37856
Multichannel multipoint distribution service; licensees selection; lottery procedures, 5983
Correction, 11161
Private land mobile application procedures; random selection or lotteries use, 4649
Private radio service; applications standardization, 37190

Radio broadcasting:
AM broadcast directional antenna sampling systems; proof of performance field strength measurements, 47051
AM stations--
Assignment standards and relationship between AM and FM services, and application acceptance criteria, 51528
Temporary and emergency operation, etc., 30944
AM technical rules; conformance with international agreements, 18818
Partial stay, 25992
Applications for voluntary assignments or transfers of control; one year holding period; reconsideration, 6944
Aural broadcast STL and ICR stations, and TV auxiliary broadcast stations; technical and operational requirements review, 48596
Aural broadcast studio transmitter links and intercity relay stations, 4655
Correction, 7915, 34150
Petitions denied, 39675
Automatic transmission systems at AM, FM, and TV broadcast stations; proceedings terminated, 13791
Broadcast remote pickup service; frequency assignment procedures; effective dates, 9035
Broadcast stations, construction; permits, 52777
Educational FM broadcast stations, noncommercial; agreement with Mexico on movement of commercial band, 1325
Elimination of unnecessary broadcast regulation, 5583
Emergency broadcast system, San Diego-Imperial Countries, CA; use of alternate text; waiver, 41692
FM broadcast assignments; increased availability, 3514, 15558, 31721, 47391
FM broadcast subcarrier transmissions, 1534
FM license application procedures, 19936
Clarification and reconsideration petition denied, 43157
FM translator primary station changes; formal application requirement eliminated, 3524
International broadcast service; frequency assignments, 15146, 42528
License applications; random selection or lotteries; minority ownership preferences to women; proceeding terminated, 16056
Metrication of FCC rules, 23697
Correction, 32205
Multiple and cross-ownership of AM, FM, TV, and CATV systems, 27438
Multiple ownership of AM, FM, and TV stations (twelve station rule), 4666
Network affiliation and transcription contracts filing, 30949
Nighttime operations on Canadian, Mexican, and Bahamian AM clear channels, 24515
Noncommercial, educational FM broadcast stations; reception protection for TV Channel 6 broadcast, 27954
Correction, 273, 30187, 31378
Effective date stayed, 5073
Oversight; clarifications and editorial corrections, etc., 8628, 13972, 32414, 33547, 38529, 39113, 40012, 40395, 47055
Political editorials disclosure requirements; reporting and recordkeeping requirements, 49392
Radiodetermination satellite service, spectrum allocation, and licensing, 39101
Correction, 52330
Rebroadcasts of transmissions of non-broadcast radio stations, 25241
Subsidiary communications authorizations; Commissioner's statement, 6177
Table Mountain Radio Receiving Zone; protection provisions, 39000
Correction, 45406
Technical amendment, 40862
Technical regulations; re-examination; correction, 2564

Radio services, special:
Amateur service--
Antennas, Federal preemption of local zoning regulations, 38813
Authorized frequencies and emissions; editorial amendments, 10771
Call sign transmission, 3525, 5079, 19361
Emission modes (radioteleprinting, etc.), 18665
Frequency allocations, 18662, 33937
Frequency and emission tables, change in format, 13792
Operator examinations administered by volunteers, 38816
Operator examinations notification requirements eliminated, 4976
Rebroadcasts of transmissions of nonbroadcast radio stations, 25241, 41895
Spread spectrum modulation techniques; authorization, 23423
Third-party communications, 49555
Volunteer examiner information requirements, 4686
White Sands Missile Range prohibitions, 33543, 36080
World Administrative Radio Conference implementation; interim operating authority, 26209

Aviation services--
Restricted radiotelephone operator permits, 5590, 6952
Security Control of Air Traffic and Air Navigation Aids (SCATANA), 49554
Emission designators; clarification of usage, 11699
Fixed and mobile services; microwave spectrum utilization policy, 7338
Correction, 29394, 34150, 41154

Maritime services--
Accounting procedures, 23422
Digital selective calling system, 33942, 40023
Distress and safety frequencies, 34150
Medical advisory frequencies, 27968, 29231
Portable ship station licenses and frequency assignments on Great Lakes; eligibility, 16500
Public high seas telegraphy coast station identification, and radio checks on distress frequencies prohibition, 85
Radiotelegraph auto alarm receivers, automatic-alarm-signal keying devices and ship radar installation requirements; correction, 40863
Restricted radiotelephone operator permits, 5590, 13974
Safety of Life at Sea (SOLAS) Convention implementation; survival craft radio equipment, 18489
Ship radar reliability test requirements removed, 30952
Transmitter frequency tolerances, 5073
VHF port operations and bridge-to-bridge channels, 36880

Personal services--
Emission types, limitations; clarification, 15563
Prohibition against digital modulation techniques; non-voice R/C radio service exemption, 37856
Technical regulations; update and clarification, 5074

Private land mobile services--
Application processing procedures, 32419
Conventional and trunked stations, San Diego, CA, 783
Editorial amendments, 39676, 40975, 40976
Emergency electrical alarm protection frequencies; grandfather provisions, etc., 10231
Fire and special emergency radio services; police radio sharing; correction, 23711
Frequencies available along U.S.-Mexico border, 12260
Interconnection with public switched telephone network, 15148
Narrowband technologies for base and mobile communications, 13596, 38129
Offshore radio telecommunication service frequency allocations, 12021, 14389, 33942
Permissible communications restrictions, 6179
Private carrier paging operations channels, 34468
Radiodetermination satellite service, spectrum allocation, and licensing, 39101
Radiolocation service; frequency band allocation, 46048, 47748
Seismic telemetry transmitters, portable; frequency tolerance, 33721
Spread spectrum and wideband emissions usage, 25234
Private operational-fixed microwave service--
Editorial amendments, 39676, 40976
Portable temporary fixed transmitters; antenna standards exemption, 11865
Private carrier systems authorization, 13338
Radiodetermination satellite service, spectrum allocation, and licensing, 39101
Table Mountain Radio Receiving Zone; protection provisions, 39000
Radio stations; table of assignments:
Alabama, 35562
Arizona, 13031, 48089
Arkansas, 8634
California, 8326, 12542, 12543, 13031, 16704, 23695, 24641, 24643, 24646, 34467, 34697, 34698, 35800, 47408
Colorado, 13032
Delaware, 24646
Florida, 1223, 25421, 32706, 33940, 34699, 43393
Georgia, 24640
Hawaii, 35799
Idaho, 4220, 8327, 12544, 34704, 46047
Illinois, 8329, 33941
Indiana, 51685
Kansas, 4215, 5393
Kentucky, 51685
Maine, 34700
Maryland, 24646, 24647, 34466
Massachusetts, 41691
Michigan, 4216, 5391, 8329, 12258, 24640
Minnesota, 8330, 12258, 13033, 25421
Mississippi, 24642, 33545
Missouri, 1226, 8330
Montana, 8327, 12259, 24638, 34704
Nevada, 4217, 24643
New Hampshire, 25422, 34700, 50916
New Jersey, 13791
New Mexico, 4217, 8331, 9804, 12257
New York, 10768, 24638, 26208, 34700, 40395, 41155
North Dakota, 4218, 24642
Oklahoma, 1227, 34465
Oregon, 4219
Pennsylvania, 26208
South Carolina, 52776
South Dakota, 24643
Tennessee, 51685
Texas, 8331, 8332, 13033, 24647, 25992, 43156, 48090
Vermont, 33546, 34700, 41155
Virgin Islands, 1228, 13034
Virginia, 5393, 48091
Washington, 4220, 24645, 34704, 46047
West Virginia, 6179, 21444
Wisconsin, 13035, 33942
Wyoming, 8332
Television broadcasting:
Applications for voluntary assignments or transfers of control; one year holding period; reconsideration, 6944
Aural broadcast STL and ICR stations, and TV auxiliary broadcast stations; technical and operational requirements review, 48596
Automatic transmission systems at AM, FM, and TV broadcast stations; proceedings terminated, 13791
Broadcast stations, construction; permits, 52777
Cable Communications Policy Act; implementation, 18637
Equal employment provisions, 40836
Cable television; major television markets--
Fresno-Visalia, CA, 7915
Melbourne and Cocoa, FL, 2565
Cable television operators; public inspection files and subscriber records, 6947
Cable television relay service; licensing procedures and reporting requirements, 23417
Cable television service; mandatory signal carriage rules; enforcement suspended, 38003
Cable television systems--
Frequency channeling requirements and restrictions, and signal leakage monitoring, 29394
Technical and operational requirements review, 52462
Data transmission services on vertical blanking interval, 4658
Correction, 9035
Elimination of unnecessary broadcast regulation, 5583
Horizontal and vertical blanking intervals; waveform standards, 13971
Instructional television fixed service, 26736
License application procedures, 19936
Clarification and reconsideration petition denied, 43157
License applications; random selection or lotteries; minority ownership preferences to women; proceeding terminated, 36056
Metrication of FCC rules, 23697
Multiple and cross-ownership of AM, FM, TV, and CATV systems, 27438
Multiple ownership of AM, FM, and TV stations (twelve station rule), 4666
Network affiliation and transcription contracts filing, 30949
Oversight, 26567
Cable television relay service, alphabetical index, 23710
Clarifications and editorial corrections, etc., 8628, 13972, 26208, 32414, 33547, 38529, 39113, 40012, 40395, 41692, 47055
Technical regulations; re-examination; correction, 2564
Teletext transmission; reconsideration petitions disposition, 4678
Television stations; table of assignments:
Alabama, 1223, 30951
Alaska, 13335, 15146
Arizona, 4685, 48092
Arkansas, 48092
California, 8333, 13037, 13335, 24644
Colorado, 13333, 23696, 29392
Florida, 8328, 8333, 9033, 12259, 13333, 24641, 34467
Georgia, 1224, 9033, 21616
Illinois, 43156
Kansas, 1225, 5392, 8334
Louisiana, 12260
Michigan, 4684, 49553
Mississippi, 13037, 13336, 16084
Missouri, 5392

Montana, 9034, 48093
Nevada, 13334
New York, 8334
North Carolina, 13336, 21616, 33546, 40021
Ohio, 5394
Oklahoma, 35232, 43713
Oregon, 13337, 40022, 48093
Puerto Rico, 1227, 30187
South Carolina, 13039, 16084
Tennessee, 21616, 30951
Texas, 32867, 40022, 43395
Virginia, 13038
Wisconsin, 13036, 29393
Wyoming, 9034, 27287

PROPOSED RULES

Common carrier services:
Access and divestiture related tariffs investigation, 9462
Correction, 10276
Access service; interstate and intrastate usage determination, 18537, 45841
Annual report Form M and FCC Form 901; amendment, 43730
Bell System Operating Companies--
Equal access obligations, 50316, 51893
Procurement practices, 38143
Cable television, extension of lines, etc.; proceedings terminated, etc.; correction, 1890
Cellular systems; additional frequency allocation, 3809
Extension of time, etc., 9059, 11743, 21903
Central office equipment and interexchange plant costs; separations procedures, 31747
Consolidated system monthly report 901; elimination, 18706
Contract filing by non-dominant carriers; foreign communication matters; tariff-free, free, or reduced rate services; reporting requirements eliminated, 49423
Customer premises equipment, and enhanced services by AT&T, 9060
Customer premises equipment, detariffing procedures, etc. (second computer inquiry), 29440, 43735
Detariffing of billing and collection services, 15191
Digital terminations systems; mutually exclusive applications; random selection procedures, 11402
Domestic fixed-satellite service; space station licensing, 19413
Domestic public cellular radio telecommunications service; frequency operation selection, 11519
Withdrawn, 45843
Holding companies annual report (FCC Form H); elimination, 18705
Interlocking directorates, applications for authorizations, 976
International communications policies, 34867
Extension of time, 39143
International competitive carrier policies, 16318
Interstate services; authorized rates of return--
Access tariff filings; schedule revised, 50183
AT&T communications and exchange telephone carriers, 33786
Interstate telecommunications service; rate integration policies for Alaska, etc., 41714
Mobile communications services; technical flexibility, 25274
MTS and WATS market structure, etc., 47774
Access charge and small business, 2594
Access charge billing and collection, 43587
Affording telephone service assistance for low income households, 52964
Billing inquiry services, etc.; Federal-State Joint Board recommendations, 14729, 18276
End user service order processing expenses, allocation and recovery, 31749
Extension of time, 2037
Florida plan, 2833, 31750
Local telephone service assistance for low income households, 14727, 31738
Policies and requirements, 47765
MTS rates and rate structure plans; guidelines, 1881
Extension of time, 5644
North Atlantic facilities; policy for distribution of circuits, 19050
Obscene materials transmission; enforcement of prohibitions, 10510
Pacific telecommunications needs, 1981-1985; facility construction activities, etc.; authorization policies, 13623
Preservation of records of communication common carriers, 31395
Public land mobile services--
Cellular communications systems, construction period reduction, 50181
State entry regulation, preemption, 21904
Satellite communications; receive-only satellite earth stations; local zoning regulations preemption, 13986
Satellite systems; international communications services, 1570
Extension of time, 4711
Telecommunications services, development and efficiency (third computer inquiry), 33581
Extension of time, 50182
Telephone companies--
Detariffing installation and maintenance of inside wiring, 13991, 24547
Uniform system of accounts; judgments and other costs associated with antitrust lawsuits, etc., 19421
Uniform system of accounts and financial reporting requirements, 1590, 7931, 21910, 24547, 33580
Telephone network, connection of telephone equipment, systems, and protective apparatus; computer-controlled automatic dialing equipment standards, 51893
Traffic statistics of telephone common carriers; reporting requirements; proceeding terminated, 11161, 11909
Uniform settlements policy for parallel international communications routes; implementation and scope, 28418
Communications equipment:
Industrial, scientific, and medical equipment--
Equipment authorization program, etc.; extension of time, 287
Medical ultrasonic diagnostic and monitoring equipment; exemption, 42967, 46144
Low power communication devices operation, 19551
Extension of time, 30213
Radio frequency devices; perimeter protection systems, field disturbance sensors, 32452
Frequency allocations and radio treaty matters:
Land mobile satellite service; spectrum allocation, etc., 8149
Correction, 9292
Extension of time, etc., 9059, 11743, 13255, 21903
Land mobile services; Detroit, Cleveland, and Buffalo, 16109
Mobile communications services; technical flexibility, 25274
Private land mobile services, 1582
Public air-ground telephone system; proceeding terminated, 3571
Radiodetermination satellite service; spectrum allocation, etc., 48229
Extension of time, 13255
Secondary mobile allocation for government and nongovernment use, 40880
UHF television band; sharing by private land mobile radio services, 25587
Correction, 41366
National Environmental Policy Act; implementation, 10814
Practice and procedure:
Digital terminations systems; mutually exclusive applications; random selection procedures, 11402
Direct remote access to Commission data bases; reconsideration petitions, 16722
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 35262
Time computation in Commission proceedings, 23999
Radio broadcasting:
AM broadcast directional antenna sampling systems; proof of performance field strength measurements, 13994
AM stations--
Assignment standards and relationship between AM and FM services, and application acceptance criteria, 8169, 11188, 24786
Technical and operational regulations, 23150
AM technical rules; conformance with international agreements, 30968
AM-FM program duplication, 49863
Aural broadcast STL and ICR stations, and TV auxiliary broadcast stations; technical and operational requirements review, 8172
Automatic transmission systems; utilization by AM, FM, and television broadcast stations, 13838

Broadcast licensees; distress sale policy, 42047
Broadcasting services; compatibility with VHF aeronautical mobile radio services, 19392
  Extension of time, 41718
Elimination of unnecessary broadcast regulation, 5792
  Correction, 11406
Equal employment opportunities, 49566
  Proposals withdrawn, 50329
FM broadcast assignments; increased availability, 2835
FM broadcast stations; technical and operational regulations review, 47076
FM licenses; modification to higher class co-channel or adjacent channels, 45439
FM stations at spacings below minimum separations; notification requirements; petition denied, 47784
Minority ownership in broadcasting, advancement; proceeding terminated, 1239
Network affiliation and transcription contracts filing, 2596
Noncommercial, educational FM broadcast stations; reception protection for TV Channel 6 broadcast--
  Comment period reopened, 23738
Single majority stockholder and minority incentive provisions, reexamination, 27629
Technical and operational requirements review, 19555
Telephone conversation broadcasts, 7931
Radio services, special:
  Amateur service--
    Automatic control of amateur radio stations, 15196
    Auxiliary operation on amateur frequencies, 29454
    Frequencies and emissions, etc. (WARC implementation), 5797
    Frequency allocations; extension of time, 10275
    Frequency coordination of repeaters, 6219, 7805, 8348, 26233
    Operator examinations; pools of questions maintenance by volunteers, 26012
    Operator examinations administered by volunteers, 5644
    Repeater subband emission use, 24548
    Telephony operation in Caribbean insular areas, 15195
    Third-party communications, 10087
  Aviation services--
    Digital administrative communications, 41177, 47080
    Portable aircraft station licenses, aeronautical utility mobile station frequencies, and frequencies for activation of airport lights, 33984
  Business services; frequency restrictions; modifications, 37875
  Fixed and mobile services; microwave spectrum utilization policy, 51420
  Maritime services--
    Distress and safety frequencies, 3574
    Medical advisory frequencies, 132
    Radar transponders and radio beacons, 41170
    Reorganization, 23454
    Ship radar reliability test requirements removed, 3576, 10086
  Private land mobile services--
    Application filing procedures, 42732
    Application processing procedures, 2837, 9293
    Citizens band communications service, etc.; petition dismissed, 865
    Frequency allocations, 1582, 9059, 11743, 21903
    Frequency coordination procedures, 18275, 18277
    Mobile communications services; technical flexibilit, , 25274
    Private carrier paging operations channels, 13997
    Public safety channel allocation, Los Angeles, CA, 3573, 9060, 19956, 24548
    Public safety telecommunications requirements, 32239, 42573
    Radiolocation service allocation frequency band; extension of time, 10821
    Telephone maintenance service, 33072
  Private operational-fixed microwave service; private carrier systems authorization, 37878
    Extension of time, 42734
  Satellite communications; direct broadcast satellite service; technical standards, 6971
    Extension of time, 11744, 31400, 52543
Radio stations; table of assignments:
  Alabama, 34515, 51712
  Alaska, 12584, 14946, 33983, 43415
  Arizona, 16112, 49426, 49427, 49565
  Arkansas, 35574
  California, 23728, 26004, 32869, 35575, 35576, 49073, 51432
  Colorado, 51713
  Florida, 1241, 13050, 21630, 26229, 48807, 49074, 49075, 51265, 51433, 51715
  Georgia, 45133, 51561
  Hawaii, 35578, 51562
  Idaho, 25432, 48808
  Illinois, 21475, 26230, 49076
  Iowa, 24786
  Kansas, 34516, 43415
  Massachusetts, 24659, 26226
  Michigan, 26005, 30971, 35580, 51266
  Minnesota, 49078, 51268
  Mississippi, 4544, 35581
  Missouri, 35579, 51716
  Montana, 26006
  Nebraska, 34516, 51269
  Nevada, 33605, 40414
  New Hampshire, 29446, 43741, 49428
  New York, 4712, 29448, 34873, 49080
  North Carolina, 49079
  Ohio, 21631, 23734
  Oklahoma, 23729, 30973
  Pennsylvania, 23736
  Puerto Rico, 29449, 29450
  Rhode Island, 26226
  South Carolina, 23733, 34874, 51717
  South Dakota, 25430, 34724
  Tennessee, 29451, 33607, 33610, 43417, 43740
  Texas, 14270, 23735, 26007, 29453, 43418, 43419, 43743
  Utah, 23731, 40415
  Vermont, 30974, 43744, 49082
  Virgin Islands, 29450
  Virginia, 26231, 35845, 51560
  Washington, 25432, 30975, 30976, 34520
  Wisconsin, 26230, 34876, 34877, 51564
  Wyoming, 8347
Regulatory agenda, 18048, 44902
Regulatory flexibility review, 13394, 26593
Television broadcasting:
  Aural broadcast STL and ICR stations, and TV auxiliary broadcast stations; technical and operational requirements review, 8172
    Extension of time, 18277
  Automatic transmission systems; utilization by AM, FM, and television broadcast stations, 13838
  Broadcast licensees--
    Distress sale policy, 42047
    General fairness doctrine obligations; hearings, 4619
  Cable Communications Policy Act; implementation--
    Correction, 2594
    Equal employment provisions, 11191, 18538
    Extension of time, 3570
    Proceeding reopened for comments, 38016
  Cable television systems--
    Mandatory signal carriage rules, 48232, 48235, 52808
    Ownership reporting, 9076
    Program-related multi-channel television sound, 11000
    Technical and operational requirements review, 7801, 15592
    Terminal devices, 42729, 45843, 47412
  Cable television--
    Extension of lines, etc.; proceedings terminated, etc.; correction, 1890
    Major television markets; Ashland, KY, 10274
  Educational stations, commercial and noncommercial; channel assignments exchange procedures, 10817
    Correction, 11909
  Elimination of unnecessary broadcast regulation, 5792
    Correction, 11406
  Equal employment opportunities, 49566
    Proposals withdrawn, 50329
  Experimental broadcast stations and instructional television fixed service; technical and operational requirements review, 30979
  Network affiliation and transcription contracts filing, 2596
  Single majority stockholder and minority incentive provisions, reexamination, 27629
  Technical and operational requirements review, 19555
  Telephone conversation broadcasts, 7931
Television stations; table of assignments:
  Alabama, 9072, 21632

Arizona, 4240, 5402, 14947, 30971, 43259
Arkansas, 5404, 14265
California, 2997, 9070, 34519, 52806, 52971
Colorado, 14948, 48106
Florida, 9071, 13402, 16112, 21632
Georgia, 21632
Hawaii, 14949, 16114, 48446
Idaho, 51434
Illinois, 11190, 34519
Kansas, 12586
Kentucky, 21632
Louisiana, 14266, 48230
Minnesota, 12343
Missouri, 14267, 14951
Montana, 9074, 15591
Nevada, 30975
New Mexico, 49707
North Carolina, 14268, 21632, 48806
Oklahoma, 9070, 14952, 23732
Oregon, 14953, 15591
Pennsylvania, 41176
Tennessee, 9072, 12586, 21632
Texas, 12586, 14271, 14954, 26008, 49083
Utah, 9074, 26010
West Virginia, 30978
Wisconsin, 4713, 26011, 45441
Wyoming, 9074

NOTICES

Agency information collection activities under OMB review, 889, 1935, 2082, 2083, 2616, 5675, 5676, 6994, 8673, 8674, 9510, 9898, 10311, 10542, 13078, 14449, 16137, 16138, 19240, 20609, 24837, 26623, 28021, 28470, 28650, 29481, 30234, 31423, 31773, 32308, 32486, 32908, 34752, 35598, 36143, 36672, 37589, 38207, 38713, 40895, 41737, 42223, 42596, 43461, 47109, 47271, 48130, 48265, 48839, 49126, 49764, 50228, 50949, 51304, 52372
Committees; establishment, renewals, terminations, etc.:
  ITU Mobile Services World Administrative Radio Conference Advisory Committee, 13283, 14451
  ITU World Administrative Radio Conference Advisory Committee, 43787
  Land Mobile Radio/UHF Television Technical Advisory Committee, 32487
  Radio Broadcasting Advisory Committee, 3594
Common carrier services:
  Access charge and divestiture related tariffs; investigation, 1634, 11440, 12637, 13078, 23189, 38200
  Bell Operating Companies; interstate or foreign communications; connecting carrier status; inquiry, 27053, 41398
  Communications Satellite Corp.; corporate structure and operation change, 18304, 20939
  Federal Emergency Management Agency exemption authority; communications equipment or security devices to telephone company provided communications network, 43287
    Inquiry, 32311
  Iowa Telephone Association; interstate toll service access, etc., 20606
  MTS and WATS market structure, etc., 4792, 5681
  Tonka Tools, Inc., et al.; petition for ruling; AT&T provision of coinless pay telephones, 24694
  Western Union Telegraph Co.; tariff revisions; proceeding terminated, 25458
Emergency broadcast system; closed circuit test, 18312
Fee refund program; termination, 40895
Meetings:
  Federal-State Joint Board, 8435, 8811, 9325, 23359, 41218
  International (high frequency) broadcasting, 7000
  ITU Mobile Services World Administrative Radio Conference Advisory Committee, 13283, 13875, 30291, 41399, 50949
  Land Mobile Radio/UHF Television Technical Advisory Committee, 32489, 39039, 43285, 45869
  National Industry Advisory Committee, 1938, 11940, 28470
  Radio Broadcasting Advisory Committee, 170, 2858, 3595, 6246, 13876, 16138, 16750, 16751, 19469, 20845, 25463, 36672, 37588, 37589, 47438
  Reduced Orbital Spacing Advisory Committee, 2083, 7385, 19088, 41217
Meetings; Sunshine Act, 2370, 3451, 4011, 5730, 7158, 8434, 8435, 9940, 11044, 11783, 13692, 14791, 15035, 16040, 19263, 23102, 23379, 25377, 26071, 27526, 27888, 28302, 30043, 30905, 31670, 37305, 38942, 40256, 43831, 45959, 46858, 48153, 50251, 50706
Radio broadcasting:
  Broadcast licensees; fairness doctrine obligations, 35418, 45485
  FM vacant channel applications; universal window filing period, 21940, 40599, 46183, 48265, 49764, 50950
  ITU Region 2 Administrative Radio Conference, 33844
  Regional Administrative Radio Conference; inquiry, 2077
  Unnecessary broadcast elimination; policy statement, 6246
Radio services, special:
  Digital termination systems applications; lottery procedures, 6993
  Operational-fixed service applications; lottery procedures, 6992
  Specialized mobile radio systems applications; lottery procedures; San Diego, CA, et al., 170
Rulemaking proceedings; petitions filed, granted, denied, etc., 2616, 4906, 6246, 7385, 8674, 10855, 11940, 13078, 16138, 16751, 18929, 19805, 20606, 21120, 23513, 24694, 25463, 26046, 27682, 28656, 30234, 32308, 35318, 35865, 38207, 41218, 41737, 43285, 45485, 47113, 48265, 49455, 50842, 51598
Senior Executive Service:
  Executive Resources and Performance Review Board; membership, 9510
Telephone companies; revised percentages of depreciation:
  AT&T Communications-Interstate Division, 33841
Television broadcasting:
  Broadcast licensees; fairness doctrine obligations, 35418, 45485
  Shoblom, Lee; use of amateur frequencies for broadcast news gathering; waiver request; inquiry, 34008
  TeleScan, Inc.; system for verification of TV commercials; approval request; inquiry, 24837
Travel reimbursement experiment; quarterly report, 4796, 18311, 32308, 42999
World Administrative Radio Conference:
  HF band allocated to broadcasting services planning; inquiry, 20844
  Mobile services; inquiry, 19803
  Protection from harmful interference for communication satellites using geostationary-satellite orbit; inquiry, 11418

Hearings, etc.:

A&M Broadcasting et al., 15636
Agape Broadcasting Foundation, Inc., et al., 41399
Air Beep of Florida, Inc., et al., 28021
Aircall Northwest, Inc., et al., 28018
American Communications & Television, Inc., et al., 28650
Arkelian Broadcasting Co. et al., 14450
Ashford Communications et al., 52372
Ashley Broadcasting et al., 52373
Attaway Broadcast Group, Inc., et al., 26265
Auto-Phone Co. et al., 9512
B&B Communications et al., 37731
Banks Broadcasting Co., Inc., et al., 16138
Beacon Broadcasting et al., 6994
Berrien Broadcasting Corp. et al., 18567
Better Broadcasting Corp. et al., 20844
Beverly Hills Hotel Corp. et al., 32904
Big Chief Broadcasting et al., 36481
Bowman Aviation, Inc., et al., 46182
Broadcast Data Corp. et al., 26266, 36672
Bryan Industrial Electronics, Inc., et al., 9709
Buena Vista Broadcasters et al., 26267
Bumpous, Shirley C., et al., 9510
Butte Creek Communications Co. et al., 5676
C&P Broadcasting et al., 10108
C.R. Pasquier Associates of Bellevue, Inc., et al., 52375
Caddo Broadcasting Corp. et al., 14986
Calhoun County Broadcasting Co. et al., 1935
Cape Fear Broadcasting Co. et al., 18569
Castle Rock Communications, Ltd., et al., 31029
Catoctin Broadcasting Corp. of New York et al., 19229
Cattle Country Broadcasting et al., 37272
Chadwell, Opal, et al., 36143
Charisma Broadcasting Corp. et al., 32634
Christian Communications, Inc., et al., 6995
Christian County Television, Ltd., et al., 14757
Circle L, Inc., et al., 10311
Clapp & Auel Microwave Communications et al., 14756
Clarke, Jack, III, et al., 7823
Classic Vision, Inc., et al., 52377
Cole, Margaret Ann, et al., 26268
Community Service Telecasters, Inc., et al., 52379
Cope, James M., et al., 28022
Cox Cable Communications, Inc., et al., 37426
Dellar-Davis Broadcasting Co. et al., 43289
Denali Broadcasting Co., Inc., et al., 41218

Digital Paging Systems, Inc., et al., 24699, 24700, 25320, 25321, 25464, 27055, 28022, 31423, 33633, 36673, 41217
DLBS, Inc., et al., 47438
Elim Broadcasting, Inc., et al., 31030
Elkton Broadcasters, Inc., et al., 28021
Family Broadcasting Co., Inc., et al., 20845
Family Television of Dalton, Inc., et al., 50843
Fernandez, Olga Iris, et al., 42223
First Equimedia Ltd. Partnership et al., 41404
Florida Coast Communications Co. et al., 10312
Focus Broadcast Communications, Inc., et al., 28652
Fredericksburg Broadcasting Group et al., 7825
Frontier Communications, Inc., et al., 49607
Gardner, Roni DeAnn, et al., 28653
Glinter, Joanna, et al., 34752
Good Life Radio, Inc., et al., 26268
Great American Broadcasting Corp. et al., 9712
Great Arizona Broadcasting Co. et al., 28023
GRX Productions, Inc., et al., 6996
Harris, Susan, et al., 5677
Henry, Catherine J., et al., 24043
Hi Band Broadcasting Co. et al., 5678
Hoffman Communications, Inc., et al., 2858
Holiday Group, Ltd., et al., 15220
Hughes, John R., et al., 5679
Jackson Co. Broadcasting, Inc., et al., 9711
Jasper County Broadcasting Co. et al., 47441
Jose J. Martinez & Associates et al., 49126
Kafka, Stephen G., et al., 43289
KAYS Inc. et al., 28021
Kilgore Broadcasting et al., 7827, 31034
King, Terry Jan, et al., 47440
KOB-TV, Inc., et al., 40449
Lamonica, Keith E., et al., 6996
Lancaster Radio Paging, Inc., et al., 43778
Leininger-Geddes Partnership et al., 50844
Leland, John H., et al., 9513
Lett Electronics, Inc., et al., 24044
Locher Development Corp. et al., 41218
Lubbock TV 16 Broadcasting et al., 7826
Madison County Broadcasting Co. et al., 26046
Magdalene Gunden Partnership et al., 47441
Magic Valley Broadcasting, Inc., et al., 32486
MATS et al., 5677
McGowan Broadcasting et al., 15220
Meycom, Inc., et al., 40599
Michigan Bell Telephone Co. et al., 21936
Microband Corp. of America et al., 6997
Mifflen County Communications Ltd. Partnership et al., 37282
Milyana Broadcasters et al., 37731
Minority Broadcasters of Alaska et al., 47443
Minority Communications of California, Inc., et al., 2861
Minority Women's TV Coalition et al., 47109
Mobile Communications, Inc., et al., 10313
Mobile TV 61, Inc., et al., 6997
Mobilfone Communications, 43779, 46183
Moore, Josie, et al., 9711
Ms. America Broadcasting, Inc., et al., 41407
Nelson Media, Inc., et al., 32906
Niagara Communications, Inc., et al., 32635
Northeast Communications Corp. et al., 33636
Offshore Broadcasting et al., 5681
Omaha Channel 54, Inc., et al., 28018
Owens, Dorothy J., et al., 36482
Owensboro Television et al., 9513
Page-A-Call et al., 33634, 37282
Patton-Brown Broadcast Group et al., 49127
Paul, Christine E., et al., 2857
Pentecostal Revival Association, Inc., et al., 14758
Powley, John R., et al., 5683, 6998, 14759
Private Networks, Inc., et al., 23764
Professional Communications, Inc., 26266
Puget Television et al., 10314
Radio Page Communications et al., 28653, 32908
Radio Telephone Co. of Daytona Beach, Inc., et al., 14760
Rawley, David A., Jr., et al., 21120
Reese, Dave, et al., 19466
Richford Broadcasting Co. et al., 11753
Roanoke TV 60 Broadcasting et al., 14449
Roberts, Gerald R., et al., 36145
Rodriguez, John Antonio, et al., 42092
Roever, Alfred H., III, et al., 20128
Roswell Broadcasting et al., 7831
Rugby Broadcasting, Inc., 43001
Saint Augustine's College et al., 43286
Saks, David C., 4905
Salina Broadcasting Co. et al., 9511
Sanders, Sherry, et al., 41218
Sanibel Broadcasting Co. et al., 6999, 9127
Sanilac Broadcasting Co. et al., 42596
Satellite Relay, Inc., 7383
790 Communications-WTNY et al., 9511
Shelley Broadcasting, Inc., et al., 41408
Shinn, Charles Ray, et al., 9709, 15636
Silver Spring Associates et al., 49128
South Mississippi Broadcasting Co., Inc., et al., 43786
South Rowan Broadcasting Co., Inc., et al., 5683
Southeast Broadcasting, Ltd., et al., 42092
Southern Radio-Phone, Inc., et al., 10855
Southwest Communications et al., 50342
St. Clement's Episcopal Parish School Inc. et al., 35598
Stockton Mobilphone, Inc., et al., 11245
Stratemeyer, Samuel K., et al., 4797
Suntime Radio Inc. et al., 31032
Tel-Car Corp. et al., 24701
Tel-Dodge Broadcasting Co., Inc., et al., 28655
Tel-Optic Ltd. et al., 14761
Telecom Engineering, Inc., et al., 2617
Telecommunications Systems, Inc., et al., 33636
Telecrafter Corp. et al., 6999, 10317
TeleSTAR, Inc., 27055
Tequesta Broadcasting Corp. et al., 10315, 12404
Townes, Jack, et al., 31027
Tri-State Broadcasting Co., Inc., et al., 49610
Tulsa Broadcasting Group et al., 28019
Tureaud Broadcasting et al., 32636
Turner Broadcasting/CBS Inc. transfer, 30290
Vail, Richard L., et al., 25322
Valley Broadcasting Co. et al., 31424
VBM Enterprises, Inc., et al., 41219
Vela Broadcasting Co. et al., 21938
Vision Broadcasting Corp. et al., 19240
Washoe Shoshone Broadcasting et al., 42090
Weber, John P., Jr., 49456
Weiner, Allan H., et al., 20603
Weiner, Allan M., et al., 47111
Westcom Broadcasting Inc. et al., 50344
Westside Communications of Tampa, Inc., et al., 37282
WHIS Unlimited, Inc., et al., 5678
Wilco Vision et al., 2617
Wise County Messenger, Inc., et al., 15222
Woodridge Enterprises, Inc., et al., 2862
WPOW, Inc., et al., 19242
Wyse, Rita, et al., 19229

FEDERAL CONTRACT COMPLIANCE PROGRAMS OFFICE

NOTICES

Contract sanctions:
Luzianne Blue Plate Foods; debarment, 34928

FEDERAL CROP INSURANCE CORPORATION

RULES

Administrative regulations:
Agency sales and service agreements; approval standards, 33713
Claim for indemnity; interest payments, 7906
Correction, 49027
Crop insurance procedures; CFR Part removed, 1814
Individual yield coverage plan insurance; revision, 32001
Late planting agreement option, 16218
Reinsurance agreement, 24503
Correction, 26976
Combined crop insurance regulations, 52759
Crop insurance; various commodities:
Almonds, 34801, 39635, 43679, 49505
Apples, 1205, 7726, 34801, 39635, 43652, 45903, 49505, 50275
Barley, 16053, 22969, 26349, 49506, 52757
Citrus, 9609, 16220, 34801, 43660, 43672, 49505
Combined crops, 52757
Corn, 26537, 33713, 48168, 48169, 52757
Cotton, 9263, 26537, 33713, 48168, 52757
Dry beans, 10201, 49518, 52757
Flax, 49507, 52757
Forage production, 22969, 26340, 32160, 49506
Forage seeding, 52757
Grain sorghum, 26537, 33713, 48162, 48168, 52757
Grapes, 26546, 34801, 39635, 43666, 49505
Hybrid seed, 4625, 51383
Oats, 1039, 16054, 22969, 26537, 49506, 52757
Peaches, 26339, 39635, 43645, 50275
Peanuts, 2039, 9981, 26537, 48168, 52757
Peas, 7728, 49920, 52757
Popcorn, 7737, 52757
Potatoes, 16054, 51383
Prunes, 50276

Raisins, 10200, 28367, 52207
Rice, 33713, 48168, 52757
Rye, 22969, 26542, 49506
Soybeans, 26537, 48168, 52208, 52757
Sugar beets, 22969, 49506, 51383
Sugarcane, 22969, 49506
Sunflowers, 49513, 52757
Sweet corn, 1824, 4629, 33713, 52757
Tobacco, 1814, 1819, 2950, 12764, 12765, 33713, 51383, 52757
Tomatoes, 7732, 48168, 52757
Walnuts, 43685
Wheat, 16053, 22969, 26345, 49506, 52757
Crop insurance regulations:
County listing removal, 27927
Prevented planting crop insurance policy, 45903
Correction, 49027

PROPOSED RULES
Administrative regulations:
Agency sales and service agreement; approval standards, 34155
Previous proposal withdrawn, 45625
Appeal procedure, 32576
Correction, 34856
Individual yield coverage plan insurance; revision, 11508
Reinsurance agreements, 16502
Combined crop insurance regulations, 46772
Crop insurance; various commodities:
Almonds, 32223
Apples, 32208
Barley, 12550
Citrus, 32214, 32218, 49854
Corn, 36589
County listing update; withdrawn, 27971
Dry beans, 36593
Flax, 36584
Forage production, 12546
Grain sorghum, 36580
Grapes, 32078
Oats, 12560
Peaches, 2055, 7787, 32073, 34856
Potatoes, 51687
Prunes, 7783
Raisins, 16090
Rye, 12565
Soybeans, 45410
Sugar beets, 16265, 50794, 52782
Sugarcane, 23017, 27601
Sunflowers, 26367
Tobacco, 52788
Walnuts, 33744
Wheat, 12555
Crop insurance regulations:
Commercial underwriting, 21060
Advance notice, 9806
County listing removal, and various commodity proposals withdrawn, 4693
Prevented planting crop insurance policy, 36597

NOTICES
Claim for indemnity; current interest rates, 9468, 30215
Crop insurance; various commodities:
Corn, 5284
Cotton, 5284
Grain sorghum, 5284
Peanuts, 5284
Rice, 5284
Crop insurance programs; allowable unit determination, 48619
Meetings:
Crop insurance policies, 35274
Crop insurance programs; new policy directions, 9468
Multiple-peril crop insurance policy writers; nursery crops reinsurance, 1253

FEDERAL DEPOSIT INSURANCE CORPORATION

RULES
Applications, requests, submittals, authority delegations, etc.:
Capital maintenance directives; deposit insurance termination, etc., 11653
General revision, 22970
Capital maintenence, 11128, 13185
Policy statement, 11138, 13185
Corporate powers extension; self-directed IRA and Keogh Plan accounts; interpretive rule, 10753
Fair housing; reporting and recordkeeping requirements, 39986
International operations:
Capital equivalency ledger account provision, 11142
Deposit insurance coverage; asset pledge and maintenance requirements, transfer risk, etc.; correction, 1209
Powers inconsistent with purposes of Federal deposit insurance law:
Obligations of others (check guaranty card and customer-sponsored credit card programs, etc.); prohibition exemption, 10493
Practice and procedure rules:
Capital maintenance directives; deposit insurance termination, etc., 11653
Deposits placed by deposit brokers and financial institutions; reporting requirements, 7
Correction, 4498
Unsafe and unsound banking practices:
Insured nonmember banks; securities activities of subsidiaries; correction, 2274
Obligations of others (check guaranty card and customer-sponsored credit card programs, etc.); prohibition exemption, 10493

PROPOSED RULES
Brokered deposits; reporting and recordkeeping requirements, 31380
Correction, 32439
Corporate powers extension; self-directed IRA and Keogh Plan accounts, 4522
Crimes affecting insured nonmember banks; reports and fidelity bond coverage, notification of change, 43209
Correction, 47409
Fair housing; reporting and recordkeeping requirements, 10784
Freedom of Information Act; implementation, 7184
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 15453
Powers inconsistent with Federal deposit insurance law:
Insurance and real estate underwriting, etc., 23964
Hearing, 23963
Practice and procedure rules:
Bank control notices, disclosure of change, 41361
Regulatory agenda, 18076, 44924
Regulatory flexibility review, 14247

NOTICES
Agency information collection activities under OMB review, 3972, 8784, 9713, 16146, 16147, 26841, 31243, 36146, 37589, 46183, 51748
Bank merger transactions; policy statement; inquiry, 40599
Banking system; disclosure by FDIC of statutory enforcement actions; policy statement, 20609, 52557
Cape Cod Bank & Trust Co., MA; application to withdraw securities from listing with Boston Stock Exchange; inquiry, 37910
Freedom of information, etc.; statutory enforcement actions disclosure; policy statement; inquiry, 7220
Market discipline for FDIC-insured banks; inquiry, 19088, 26841
Meetings; Sunshine Act, 380, 593, 1160, 1295, 1670, 2657, 3075, 3076, 4297, 4298, 5154, 5349, 5467, 5850, 6307, 6308, 7158, 7263, 7686, 8209, 9147, 9535, 10343, 10344, 11475, 11476, 11612, 12108, 12437, 12684, 13303, 13693, 14191, 14333, 14486, 15035, 15524, 15525, 16191, 16384, 16385, 18611, 18765, 18959, 18960, 19516, 19604, 19842, 20030, 20340, 20518, 20519, 21163, 21542, 21543, 21957, 23237, 23238, 23869, 24083, 24084, 24871, 24872, 24979, 25152, 25510, 25649, 25650, 26071, 26072, 26435, 26654, 26655, 26876, 27395, 27711, 28059, 28302, 28303, 28490, 29041, 29295, 29794, 30255, 30330, 30560, 30781, 31090, 31091, 31275, 31993, 32134, 32345, 32522, 32827, 32947, 33450, 34033, 34960, 35176, 35177, 35903, 36181, 36705, 36953, 37109, 37305, 37946, 37947, 38242, 38243, 38737, 38942, 38943, 39216, 39805, 40468, 40469, 40654, 41290, 41618, 41619, 42117, 42639, 42640, 43056, 43311, 43495, 45526, 46533, 46534, 47137, 47325, 47497, 47893, 47894, 48153, 48535, 48536, 48859, 49149, 49150, 49151, 49815, 49896, 50036, 50706, 50884, 50983, 51772, 51982, 52403, 53060, 53061, 53417

FEDERAL ELECTION COMMISSION

RULES
Contribution and expenditure limitations and prohibitions:
Payments received for testing the waters activities; transmittal to Congress, 9992
Effective date, 25698
Organization and functions:
Commission address change, 50778
Repayments by publicly financed Presidential candidates; transmittal to Congress, 9421
Effective date, 26354
Sunshine Act; implementation, 39968

PROPOSED RULES
Compliance procedures; advance notice, 21077
Conflict of interests, 42553
Correction, 47752

Contribution and expenditure limitations and prohibitions:
Contribution by persons and multicandidate political committees, 15169
Correction, 18678
Hearing, 29232
Rulemaking petitions:
Common Cause, 477
Funds use to influence Federal elections; advance notice, 51535
Sunshine Act; implementation, 10066

NOTICES
Meetings:
Clearinghouse Advisory Panel, 29764
Meetings; Sunshine Act, 380, 1296, 2756, 3451, 4611, 4936, 5349, 6308, 7264, 8210, 9358, 10345, 11475, 12437, 14333, 15525, 16385, 18765, 19605, 20519, 21390, 23103, 23869, 24872, 25650, 27712, 28303, 29296, 30331, 31275, 32135, 35356, 36181, 37305, 38056, 39070, 40470, 41981, 42118, 43496, 45527, 46386, 47138, 49151, 49896, 50885, 50984
Special elections; filing dates:
Louisiana, 5132
Texas, 24577, 28656

FEDERAL EMERGENCY MANAGEMENT AGENCY

RULES
Acquisition regulations; competition in contracting, etc., 31316
Claims; personnel claims, 8112
Conflict of interests, 38985
Correction, 42023
Disaster assistance:
Audit requirements for State and local governments; interim, 32062
Coastal Barrier Resources Act; implementation, 38525
Correction, 39675
Crisis counseling assistance and training, 9628
Federal Coordinating Officer, appointment; amendment, 42023
Fire suppression assistance, 50618
Obsolete CFR Parts removed, 32866
Federal crime insurance program:
Commercial crime insurance; rating plan, rate and premium changes, etc., 16494
Federally assisted construction; CFR Part removed, 32866
Flood elevation determinations:
Alabama, 3760, 24623, 30173, 32702, 43146
Alaska, 3760, 5071
Arizona, 5071, 19024, 24623, 32569, 32701, 46045
Arkansas, 8118, 19022, 30173, 32702, 46045, 50791
California, 3760, 7173, 8118, 19024, 24623, 32569, 32702, 43146, 46045
Colorado, 3760, 7173, 24623, 30173, 32569, 43146, 46045
Connecticut, 3760, 5071, 8118, 24623, 32570, 32702, 43146
Delaware, 8118, 46045
District of Columbia, 30173
Florida, 5071, 7173, 24623, 30173, 32569, 32571, 32701, 32702, 42023, 43146, 43706, 46044
Georgia, 3760, 7173, 8118, 19022, 24623, 32569, 32701, 32702, 43706, 46044
Guam, 30173
Idaho, 3760, 8118, 24623, 30173, 43146, 46045
Illinois, 3760, 7173, 8118, 19022, 24623, 30173, 32569, 32571, 32701, 32702, 43146, 43706
Indiana, 8118, 19022, 30173, 32701, 43146, 43706, 46044, 50789
Iowa, 5072, 7173, 8118, 24623, 32571
Kansas, 3760, 19022, 24623, 30173, 43146
Kentucky, 24623, 30173, 43146
Louisiana, 3760, 8118, 30173, 32569, 32570, 32702, 43706, 50789
Maine, 3760, 7173, 24623, 30173, 43146
Maryland, 3760, 5071, 5072, 8118, 19022, 24623, 30173, 32570, 32702
Massachusetts, 3760, 7173, 8118, 24623, 30173, 32570, 43146
Michigan, 3760, 7173, 8118, 32569, 32701, 43146, 50789
Minnesota, 30173
Missouri, 3760, 7173, 19022, 19024, 24623, 30173, 43146
Montana, 8118, 24623, 30173, 32701, 43146
Nebraska, 3760, 8118, 32702, 43146
Nevada, 30173, 43146, 50791
New Hampshire, 8118
New Jersey, 3760, 8118, 19022, 24623, 30173, 43146
New York, 3760, 7173, 8118, 19022, 24623, 30173, 32569, 32702, 43146, 46045, 50790
North Carolina, 7173, 24623, 30173, 43146
North Dakota, 3760, 24623, 30173, 43146
Ohio, 3760, 7173, 8118, 19022, 24623, 30173, 43146, 43706, 50789
Oklahoma, 19022, 32702, 43706, 46045
Oregon, 3760, 24623, 30173, 43146, 45405, 46045
Pennsylvania, 3760, 19022, 30173, 32701, 43146, 46044
Rhode Island, 8118, 19022, 43146
South Carolina, 8118, 32702
Tennessee, 3760, 8118, 24623, 32571, 32702, 43146, 46045
Texas, 3760, 5071, 7173, 8118, 19022, 24623, 30173, 32569, 32571, 32702, 43146, 43706, 46045, 50789, 50790, 50791
Utah, 30173
Vermont, 7173, 19022, 30173, 32571
Virgin Islands, 32702
Virginia, 3760, 8118, 30173, 32702
Washington, 3760, 24623, 43146, 43706, 46045
West Virginia, 8118, 30173, 32702, 43146
Wisconsin, 3760, 8118, 24623, 30173, 32702, 43146, 43706, 46045, 50790, 50791
Flood insurance; communities eligible for sale:
Alabama, 6345, 10229, 19690, 32176, 35225, 37852, 39672, 41146, 41687, 42943, 50617
Alaska, 6346, 10229
Arizona, 1857, 26994, 28947, 32699, 39672, 41687
Arkansas, 26994, 41687, 47540, 49390, 53320
California, 1857, 6346, 10229, 16492, 19690, 26993, 28947, 32176, 32699, 35225, 39672, 41146, 41687, 53322
Colorado, 1857, 6345, 10229, 19690, 23307, 26993, 26994, 32699, 41512, 41687, 46297, 47540, 49390, 53320, 53322
Connecticut, 84, 1857, 6345, 6346, 10229, 32176, 41146, 49390
District of Columbia, 46297, 53322
Florida, 1857, 28947, 32699, 37852, 41146, 41687, 42943, 46297, 53320, 53322
Georgia, 1857, 19690, 25419, 26994, 28947, 31185, 32176, 32699, 39672, 41146, 41687, 49390, 53320
Guam, 46297, 53322
Idaho, 1857, 10229, 10767, 23307, 25419, 31185, 32176, 41146, 41687, 47540
Illinois, 1857, 4515, 6346, 10229, 10767, 14928, 19690, 28947, 32176, 32699, 35225, 37852, 39672, 41146, 41512, 41687, 42943, 46297, 47540, 49390, 53320, 53322
Indiana, 1856, 1857, 6345, 6346, 10229, 12519, 14928, 31185, 32176, 35225, 37852, 41146, 41512, 41687, 47540, 53322
Iowa, 1857, 4515, 10229, 19690, 26993, 32176, 32699, 35225, 37852, 41146, 41687, 42943, 47540, 53322
Kansas, 1856, 6345, 6346, 10229, 26994, 28947, 32176, 35225, 41146, 46297, 49390, 53320
Kentucky, 19690, 26994, 30672, 31183, 35225, 37852, 39672, 41146, 41512, 41687, 42943, 47540, 53322
Louisiana, 14926, 14928, 16492, 19690, 19692, 26994, 42943, 46297, 53320, 53322
Maine, 84, 1856, 1857, 4515, 6345, 10229, 14926, 14928, 19690, 23307, 25419, 26993, 31183, 31185, 32176, 32699, 35225, 37852, 39672, 41146, 41512, 41687, 42943, 47540, 49390, 53320, 53322
Maryland, 6345, 14926, 16492, 19690, 19692, 23307, 26994, 31185, 39672, 41512, 41687, 42943, 46297, 47540, 49390, 53322
Massachusetts, 1857, 4515, 10229, 10767, 14926, 14928, 19690, 19692, 23307, 25419, 26993, 26994, 31183, 31185, 32176, 32699, 41146, 41512, 42943, 45405, 47540, 49390, 53320, 53322
Michigan, 1857, 6345, 10229, 14928, 26994, 28947, 32699, 35225, 37852, 41146, 47540, 53320
Minnesota, 1857, 26994, 32176, 35225, 37852, 39672, 41146, 41687, 42943, 47540, 49390, 53322
Mississippi, 37852, 39672, 41146, 41687, 42943, 53322
Missouri, 1856, 1857, 4515, 6345, 8116, 10229, 10767, 12519, 14928, 26993, 26994, 28947, 31183, 32176, 32699, 35225, 37852, 39672, 41146, 41687, 42943, 53320, 53322
Montana, 49390
Nebraska, 12519, 14928, 19690, 35225, 37852, 39672, 41687, 42943, 47540, 53320, 53322
Nevada, 35225, 41146, 46297, 53322
New Hampshire, 31185, 41146, 47540
New Jersey, 1857, 6346, 10229, 10767, 12519, 14926, 14928, 19690, 19692, 23307, 25419, 26994, 31183, 31185,

41146, 41512, 42943, 46297, 47540, 49390, 50617, 53320, 53322
New York, 84, 1856, 1857, 4515, 6345, 8116, 10229, 10767, 12519, 14926, 14928, 16492, 19690, 19692, 23307, 25228, 25419, 26993, 26994, 28947, 31183, 31185, 32176, 32699, 35225, 41146, 41512, 41687, 42943, 46297, 47540, 49390, 50617, 53320, 53322
North Carolina, 1857, 6346, 8116, 10229, 14928, 19690, 26993, 26994, 31183, 32176, 32699, 41146, 41687, 49390, 53320
North Dakota, 39672, 41687, 50617
Ohio, 1856, 1857, 6345, 8116, 12519, 14928, 16492, 19690, 19692, 25419, 26994, 28947, 31185, 32176, 32699, 35225, 41146, 41512, 47540, 49390, 53320
Oklahoma, 1857, 10229, 14928, 19690, 26994, 31185, 32176, 41146, 41687, 47540
Oregon, 84, 1857, 6345, 12519, 14928, 23307, 25419, 26994, 31185, 37852, 41146, 41687, 46297, 53322
Pennsylvania, 1856, 1857, 6345, 14926, 14928, 16492, 19690, 23307, 25419, 26993, 26994, 31183, 31185, 32176, 32699, 35225, 41146, 41512, 41687, 42943, 47540, 49390, 53322
Rhode Island, 6346, 10229, 12519, 14928, 53320
South Carolina, 1857, 32699
South Dakota, 10229, 32176, 35225, 41146, 41687, 46297, 49390, 53322
Tennessee, 84, 6345, 6346, 10229, 19690, 32699, 41146, 41687, 53322
Texas, 84, 1857, 6345, 8116, 10229, 10767, 12519, 14928, 19690, 23307, 25419, 26993, 26994, 31185, 32699, 39672, 41146, 41512, 41687, 42943, 47540, 49390, 50617, 53320, 53322
Utah, 14928, 50617
Vermont, 84, 6345, 26993, 31185, 32699, 35225, 37852, 39672, 41146, 41687, 42943, 46297, 49390, 50617, 53320, 53322
Virginia, 1856, 6345, 23307, 31185, 41512, 53322
Washington, 84, 1857, 6345, 23307, 25419, 31185, 32176, 39672, 41146, 41687
West Virginia, 1857, 4515, 8116, 10229, 10767, 14928, 16492, 19690, 25419, 26994, 31185, 50617
Wisconsin, 84, 1856, 1857, 6345, 6346, 8116, 10229, 14928, 23307, 25419, 31185, 32176, 32699, 35225, 37852, 39672, 41146, 41512, 41687, 41691, 46297, 47540, 49390, 50617, 53320, 53322
Wyoming, 42943, 53322
Flood insurance program:
Coverage, flood plain management standards, risk premium rate zone designations, etc., 36016
Correction, 43706
Financial assistance/subsidy arrangements; private sector property insurers, 16236
Correction, 24772
Freedom of Information Act; implementation, 30711
Organization, functions, and authority delegations:
Amendments, etc., 40004
Correction, 42023
Privacy Act; implementation, 30711
Public safety officers; awards; extension of cut-off date for nominations, 3349
Riot reinsurance program; CFR Parts removed, 18487

PROPOSED RULES

Acquisition regulations; competition in contracting, etc., 18802
Disaster assistance:
Coastal Barrier Resources Act; implementation, 19870
Duplication of benefits, 21085
Fire suppression assistance, 34865
Reimbursement of other Federal agencies, 33783
Temporary housing assistance, 49959
Federal crime insurance program:
Commercial crime insurance; rating plan, rate and premium changes, etc., 3929
Flood elevation determinations:
Alabama, 5084, 10253, 19039, 19044, 27322
Arizona, 3544, 5084, 19039, 38550, 41705
Arkansas, 5105, 10256, 32578, 49951
California, 3544, 5084, 5105, 10256, 19039, 27322, 38550, 43728, 49951
Colorado, 3544, 5084, 5105, 10253, 10256, 19039, 19044, 27322, 43728, 50810
Connecticut, 3544, 5105, 10256, 19044, 38550, 49951
Delaware, 19039, 49951
Florida, 5084, 5105, 10256, 19044, 27322, 38550, 43728, 50810
Georgia, 3544, 19039
Guam, 10256
Idaho, 3544, 5084, 19039, 19044, 43728
Illinois, 3544, 5084, 5105, 10253, 10256, 19039, 19044, 27322, 29992, 38550, 41705, 43728, 50810
Indiana, 5084, 19044, 49951
Iowa, 3544, 43728, 49951
Kansas, 3544, 5084, 5105, 10253, 10256, 19044, 41705
Kentucky, 3544, 5084, 10256, 19044, 41705, 49951
Louisiana, 3544, 5084, 5105, 50810
Maine, 3544, 5084, 10253, 10256, 19044, 27322, 41705, 43728, 53167
Maryland, 3544, 10256, 15191, 19039, 41705
Massachusetts, 3544, 5084, 10253, 10256, 19044, 27322, 38550, 41705, 43728, 49951
Michigan, 19044, 43728, 50810
Minnesota, 10256, 41705, 49951, 50810
Mississippi, 50810
Missouri, 3544, 10253, 19044, 38550, 38557, 49951, 50810
Montana, 3544, 10256, 27322
Nebraska, 19039, 41705
Nevada, 3544, 10256, 32578, 50810
New Hampshire, 10256, 41705, 49951
New Jersey, 3544, 5084, 13394, 19044, 27322, 38550, 43728
New York, 3544, 5084, 10253, 19039, 19044, 27322, 32578, 38550, 41705, 49951, 50810
North Carolina, 3544, 5270, 10253, 10256, 19044, 27322, 38550, 43728
North Dakota, 3367, 3368, 5084, 10253, 27322
Ohio, 3544, 5084, 5105, 10256, 19044, 27322, 38550, 41705, 49951
Oklahoma, 19039, 32578
Oregon, 3544, 5084, 19039, 19044, 32578, 41705, 49951
Pennsylvania, 3544, 5084, 5105, 27322, 32578, 38550, 41705, 43728, 46143, 49951, 50810
Puerto Rico, 27322, 38550
Rhode Island, 5084, 10256, 19044, 38550
South Carolina, 19039
Tennessee, 3544, 5105, 10256, 19039, 23036
Texas, 3544, 5084, 5105, 10256, 19039, 19044, 32578, 38550, 41705, 43728, 49951, 50810
Vermont, 10253, 41705, 49951, 50810
Virginia, 3544, 5105, 19039, 41705, 49951, 50810
Washington, 3544, 5084, 19039, 19044, 32578, 41705
West Virginia, 3544, 5105, 10253, 19044, 49951
Wisconsin, 3544, 5084, 5105, 10256, 19039, 27322, 32578, 49951, 50810
Flood insurance program:
Coverage, flood plain management standards, risk premium rate zone designations, etc., 14904
Insurance coverage and rates applied to structures located in communities, 20803
Freedom of Information Act; implementation, 19551
Preparedness:
Civil defense; State and local emergency management assistance; emergency operation plans, 27627
Correction, 28959, 30481
Privacy Act; implementation, 19551
Regulatory agenda, 17862, 44718
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712
Riot reinsurance program; CFR Parts removed, 4543

NOTICES

Agency information collection activities under OMB review, 1938, 4906, 10317, 13421, 15223, 18572, 19092, 19469, 20846, 21352, 23069, 25322, 30759, 30760, 31657, 32768, 33105, 47612, 48492, 52380, 52381
Committees; establishment, renewals, terminations, etc.:
Dam Safety Interagency Committee; charter and operating rules, 34912
Disaster and emergency areas:
Alabama, 37589
Arizona, 3406
California, 30520, 34194
Connecticut, 43002, 46184, 47445
Florida, 11754, 38585, 40234, 50682, 52380, 53197
Illinois, 13421, 14157, 15638, 16147, 28249
Louisiana, 47445, 47446, 48492, 50009, 53197
Massachusetts, 46184, 48492, 53198
Michigan, 38896, 40234, 41021
Mississippi, 37052, 37910, 38585, 38896
New Jersey, 43002
New Mexico, 3595
New York, 12650, 43461
Ohio, 24577, 25126
Pennsylvania, 24578, 25323, 25784, 41955, 43002, 47613, 48492, 49459, 50009, 53198

Puerto Rico, 25127, 25323, 27359, 43003, 43462, 47446, 48493
Rhode Island, 43003, 46184
Virginia, 47613, 47614, 48493, 48494, 50009
West Virginia, 47446, 47614, 48494, 50009
Wyoming, 32637
Emergency food and shelter program:
Award amounts, 31657, 47615
Expansion, 3836, 11754, 23359
Emergency public information materials preparation; guide availability and technical assistance program; inquiry, 41737
Environmental statements; availability, etc.:
Mt. Weather, VA, 25126
Grants and cooperative agreements:
Anti-arson strategy program, 15637
Individual and family grant program, 51304
Public information competitive challenge grants program, 19091
Hazardous materials training national workshop, 12649
Meetings:
Advisory Board, 19091, 43461
National Fire Academy Board of Visitors, 40234, 50681
Nuclear power plants; evaluation of alert and notification systems guide; final guidance availability, 43084
Privacy Act; systems of records, 173, 5684, 9713, 20006, 35319
Procurement:
Commercial activities, performance--
Cost comparison and internal efficiency studies (OMB A-76 implementation), 42223
Review schedule (OMB A-76 implementation), 7386
Radiological emergency; State plans:
Arizona, 40233
California, 51304
Kansas, 28471
Louisiana, 30011, 43004
Maryland, 25784, 32910
Minnesota, 6248, 21505, 33847, 40233
Missouri, 28841
New York, 5426
North Carolina, 41955
Pennsylvania, 14453, 47447
South Carolina, 41955
Tennessee, 30521
Texas, 30011
West Virginia, 30011
Wisconsin, 21506, 25625
Radiological emergency planning and preparedness:
Memorandum of understanding with NRC, 15485
Potassium iodide distribution around nuclear power sites for use as a thyroidal blocking agent; Federal policy, 25624, 30258
Radiological emergency response plan, Federal operational plan, 46542
Senior Executive Service:
Performance Review Board; membership, 19091

FEDERAL ENERGY REGULATORY COMMISSION

RULES

Bonneville Power Administration:
Electric power sales methodology; rehearing denied and clarification, 4970
Electric utilities (Federal Power Act):
Annual reports and forms; reporting and recordkeeping requirements, 19912
Effective date, 24906
Electric utilities, cogenerators, and small power producers; fees for benefits and services, 40347
Rehearing, 49924
Licensed hydropower development recreation report (Form No. 80); filing requirement cancelled, 20095
Rate of return on common equity for public utilities; generic determination, 21802, 29655, 43381
Rehearing, 30141
Rehearing denied, 34086
Uniform system of accounts; revisions; correction, 5743
Water power projects; applications for license, permit and exemption from licensing, 11658
Correction, 23947
Rehearing, 21589
Natural gas companies (Natural Gas Act):
Btu measurement adjustments; refund procedures--
Rehearing, etc., 2283, 30141
Stay and rehearing denied, 36571
First sales; collection of refunds owed in excess of maximum lawful prices; policy statement, etc., 23669
Rehearing, 30695
Rehearing denied, 34088
Interstate pipelines and distributors; blanket certificates for sales and transportation, etc., 3506, 25701
Effective date, etc., 27816
Rehearing petition denied, 36571
Natural gas pipeline certificates; project cost limits, etc., 4206
Pipelines; fees for services and benefits, 40332
Rehearing, 51240
Pipelines; interstate transportation of gas for others; effects of partial wellhead decontrol--
Clarification, etc., 49031, 52217
Final rule and policy statement, 42408, 45907, 45908
Reporting and recordkeeping requirements, 45590
Underground gas storage report (Form No. 8) and gas supply and requirements report (Form No. 16), 49031
Filing suspended, 49534
Uniform system of accounts; revisions; correction, 5743
Natural Gas Policy Act:
Btu measurement adjustments; scheduling payments of undisputed charges offset against Btu refunds, 31347
Rehearing denied and clarification, 40359
Ceiling prices; maximum lawful prices and inflation adjustment factors, 4503, 18242, 30814, 45102
Ceiling prices for high cost natural gas produced from tight formations--
Arkansas, 9997
Colorado, 4640, 24614, 24615, 40192
Kentucky, 34090
Louisiana, 5384, 30695
Texas, 2778, 14378, 15729, 34089, 34090, 40193
Utah, 40193
West Virginia, 931
Wyoming, 21041, 40361, 46758
Deregulation and other pricing changes; rehearing, etc., 7333, 15729
First sales; collection of refunds owed in excess of maximum lawful prices; policy statement, etc., 23669
Rehearing, 30695
Rehearing denied, 34088
First sales of pipeline production; rehearing denied and clarification, 14374
Incremental pricing; acquisition cost thresholds, 4206, 8103, 11848, 16699, 23112, 26548, 30815, 35081, 38779, 45103, 47532, 48562, 53307
Pipelines; fees for services and benefits, 40332
Rehearing, 51240
Pipelines; interstate transportation of gas for others; effects of partial wellhead decontrol--
Clarification, etc., 46424, 49031, 49036, 49359, 49360, 49361, 49362, 49363, 49364, 49365, 49366, 49367, 49368, 49369, 49370, 49371, 49534, 51841, 51842, 51843, 51844, 51845, 52217, 52768, 52769, 52770
Final rule and policy statement, 42408, 45907, 45908
Reporting and recordkeeping requirements, 45590
Waiver petition denied, 46424
Organization, functions, and authority delegations:
Chief Administrative Law Judge, 48181
Designation of presiding officers, etc., 21426, 47532
Policy and interpretations:
Natural gas pipeline companies; ratemaking treatment of investment tax credits, 49679
Take-or-pay obligations, payments made in lieu of; regulatory treatment, 16076
Practice and procedure:
Adjustment procedures under Natural Gas Policy Act, 21589
Petroleum price and allocation adjustment request denials by DOE; Commission review, 21597
Remedial order appeals, 15731
Rehearing, 25705
Rehearing denied, etc., 36051
Public Utility Regulatory Policies Act:
Electric utilities, cogenerators, and small power producers; fees for benefits and services, 40347
Rehearing, 49924

PROPOSED RULES

Electric utilities (Federal Power Act):
Electricity sales-for-resale and transmission service--
Advance notice, 27604
Extension of time, etc., 33357, 41164, 43720
Fuel cost adjustment clauses; affiliate purchases; withdrawn, 24779

Interlocking positions; automatic authorization, 21304
Rate of return on common equity for public utilities; generic determination, 30207
Rate schedules filing; electricity sales-for-resale and transmission service, 23445
Reactor plant equipment; property list for use in accounting for addition and retirement, 39134
Water quality certification; waiver of Clean Water Act requirements, 32229
Equal Access to Justice Act; implementation; withdrawn, 24779
Investigations; policy and procedures; withdrawn, 47556
Natural gas companies (Natural Gas Act):
Interstate pipelines and distributors; blanket certificates for sales and transportation, etc., 12326
Pipelines--
Interstate transportation of gas for others; effects of partial wellhead decontrol, 114, 4871, 24130, 26220, 42372, 48221
Ratemaking, risk, and financial effects of partial wellhead decontrol, 3801, 8639
Underground gas storage report (Form No. 8) and gas supply and requirements report (Form No. 16), 20109
Natural Gas Policy Act:
Ceiling prices; stripper gas well filing requirements; temporary pressure build-up determinations, 30859
Ceiling prices for high cost natural gas produced from tight formations--
Colorado, 6198, 14249
Kansas, 21454, 26220
Kentucky, 11901
Oklahoma, 43407
Texas, 15729, 28221, 31391
Utah, 25264
West Virginia, 10505
Wyoming, 5400
Ceiling prices for high cost natural gas produced from tight formations; changes to old gas pricing structure--
Energy Department request for FERC final action, 48540
Procedural schedule, 52935
Ceiling prices for high cost natural gas to commodity values; limitation on incentive prices; extention of time, 2829
First sales; bona fide offers; right of first refusal, 10243
Extension of time, 15176
Pipelines--
Interstate transportation of gas for others; effects of partial wellhead decontrol, 114, 4871, 24130, 26220, 28954, 42372, 48221
Ratemaking, risk, and financial effects of partial wellhead decontrol, 3801, 8639
Oil pipelines; data for depreciation analysis; reporting and recordkeeping requirements, 36601
Extension of time, 43720
Organization, functions, and authority delegations:
Chief Administrative Law Judge; designation of presiding officers in remedial order appeal proceedings, 15730
Policy and interpretations:
Natural gas pipeline companies; ratemaking treatment of investment tax credits, 8138
Extension of time, 12325
Public Utility Regulatory Policies Act:
Electricity sales-for-resale and transmission service--
Advance notice, 27604
Extension of time, etc., 33357, 41164, 43720
Regulatory agenda, 18084, 44932
Rulemaking proceedings; termination, 24779

NOTICES

Electric rate and corporate regulation filings:
Alabama Power Co. et al., 25312, 40994
Alamito Co. et al., 14747, 19795, 23757
Altech Energy III et al., 30876
American Electric Power Service Corp. et al., 9116, 11238, 11539, 15476
Appalachian Power Co. et al., 31417, 43441
Arizona Public Service Co. et al., 15216, 27336, 37576, 47255, 53382
Arkansas Power & Light Co. et al., 39163, 40442, 51744
Baltimore Gas & Electric Co. et al., 14421, 46821
Bangor Hydro-Electric Co. et al., 32262
Boston Edison Co. et al., 37032, 38163
Brigham City, UT, et al., 1264
Centel Corp. et al., 13412, 29745, 30221
Central Illinois Public Service Co. et al., 42208
Central Maine Power Co. et al., 16129
Central Power & Light Co. et al., 49450
Cliffs Electric Service Co. et al., 24679
Commonwealth Edison Co. et al., 29471, 33405, 35295
Connecticut Light & Power Co. et al., 10534, 12381, 48247
Consumers Power Co. et al., 23181, 46166
CP National Corp. et al., 40590
Dayton Power & Light Co. et al., 19226, 50208
Duquesne Power & Light Co. et al., 41564
El Paso Electric Co. et al., 1925, 26247, 52365
Florida Power Co. et al., 25302
Florida Power Corp. et al., 36140
Florida Power & Light Co. et al., 12866, 20583, 50659
Georgia Power Co. et al., 14416, 32887
Green Mountain Power Corp. et al., 6040, 45471, 45929, 46338
Gulf Power Co. et al., 9882
Gulf States Utilities Co. et al., 7212, 37043, 39033
Holyoke Water Power Co. et al., 7371
Idaho Power Co. et al., 20279, 21342, 30730
Illinois Power Co. et al., 4893, 30503
Indiana & Michigan Co. et al., 13650
Interstate Power Co. et al., 48628
Iowa Southern Utilities Co. et al., 47260
Kansas Gas & Electric Co. et al., 7118, 20828, 28623
Kansas Power & Light Co. et al., 2334
Long Island Lighting Co. et al., 3965
Montana Power Co. et al., 50945
Montaup Electric Co. et al., 38025
Northeast Utilities et al., 8655
Northern Indiana Public Service Co. et al., 27655
Oklahoma Gas & Electric Co. et al., 50660
Pacific Gas & Electric Co. et al., 12387, 21930
Pennsylvania Electric Co. et al., 53006
Pennsylvania Power Co. et al., 19074
Public Service Co. of Indiana, Inc., et al., 8779
Public Service Co. of New Hampshire et al., 46340
Public Service Co. of New Mexico et al., 2604, 5662
Public Service Co. of Oklahoma et al., 14140, 28120
San Diego Gas & Electric Co. et al., 18557
Southern California Edison Co. et al., 15606, 27358
Texas-New Mexico Power Co. et al., 6380
West Texas Utilities Co. et al., 3589
Emergency action plan guidelines, 14142
Environmental effects:
Hydropower projects clustered in river basins; assessing procedures; inquiry--
Owens River Basin, CA, 3385, 20281, 34006, 42995, 48479
Salmon River Basin, ID, 3385, 20281, 37041, 42995
Snohomish River Basin, WA, 3385, 20282, 34006, 42995, 48470
Environmental statements; availability, etc.:
Arkansas Department of Parks and Tourism et al., 40997
Boulder, CO, et al., 33620
Bowerstock Mills & Power Co. et al., 32889
City Mills Co. et al., 30222
Consolidated Gas Transmission Corp. et al., 49598
Curtis, Cameron A., et al., 27349
Dennis, George E., et al., 51450
Deyle, Charles A., et al., 30222
Fort Smith, AR, 19573
Gold Run Hydro Associates et al., 16737
Great Northern Nekoosa Corp., 18556
Hall, Melvin R., et al., 28837
Lee, Donald K., 35121
Long Lake Energy Corp. et al., 47104
Modular Hydro Research Corp. et al., 57902
Mojave Pipeline Co. et al., 34174, 30941
Montana Natural Energy, Inc., et al., 48634
Nicholson, Orville, et al., 18557
Owens River Basin, CA, 45146
Point Arguello Natural Gas Line Co., 7818
R&D Power Co. et al., 21496
Redding, CA, 30502
Reed Hydro-Electric Corp. et al., 20273
Rock Falls, IL, et al., 34181
Salmon River Basin, ID, 52841
San Luis Obispo, CA, et al., 47105
Sheep Creek Irrigation Co. et al., 47105
Snohomish River Basin, WA, 42996, 46694
Snowbird, Ltd., et al., 36918
Tennessee Gas Pipeline Co., 11934, 27338
Texas Eastern Transmission Corp. et al., 10535, 29475
Truckee-Carson Irrigation District et al., 47104
West Slope Power Co. et al., 42760
White's Bridge Hydro Co. et al., 48635
Wisconsin Electric Power Co. et al., 15480
Forms; availability, etc.:
Essential power site withdrawals (Form FERC-587); indexing, 53190

Hydroelectric applications, 1619, 3015, 3957, 4999, 7109, 8380, 10300, 11541, 13067, 14014, 14964, 14973, 15609, 18730, 19788, 19998, 20829, 21649, 24683, 25303, 27339, 27352, 28612, 30734, 31225, 32264, 34540, 36655, 38574, 38879, 40997, 41005, 41011, 41205, 41564, 45472, 45473, 45478, 47596, 48479, 49873, 49989, 53384
Interlocking directorate filings:
Bernhart, John B., et al., 20279
Bien, Frank N., et al., 5118
Byrnes, Robert E., et al., 23825
Disbrow, Richard E., et al., 25762
Dowd, A. Joseph, et al., 2331
Fox, S. Robert, Jr., et al., 1926
Greenman, Frederic E., et al., 13278
Harlacher, Meredith R., Jr., et al., 24932
Hatch, Arthur A., et al., 10535, 23501
Nims, Harrie R., et al., 7375
Opeka, John F., et al., 39165
Parent, Brian A., et al., 24690
Sullivan, Paul J., et al., 25303
Uligan, Charles Gregory, et al., 4892
Meetings; Sunshine Act, 593, 1296, 2888, 3077, 5730, 6309, 7687, 9756, 11783, 13912, 14333, 14486, 14791, 15669, 16579, 20031, 20520, 21688, 23379, 23575, 24736, 24979, 25378, 26435, 27396, 28682, 29510, 32522, 36512, 38737, 40946, 41619, 42640, 42819, 43311, 43312, 45887, 47497, 48153, 48536, 49657, 49658, 50984, 51503
Memorandum of understanding:
Transportation Department; liquefied natural gas facilities, 20275
Natural gas certificate filings:
Algonquin Gas Transmission Co. et al., 32616, 47263
ANR Pipeline Co. et al., 12372, 14980, 18551, 19075, 21929, 23180, 24290, 25295, 27652, 28114, 28624, 30227, 31759, 32900, 34738, 35292, 38171, 45473, 49097, 49444, 50200, 50665, 50830, 53374
Arkansas Oklahoma Gas Corp. et al., 24814
Arkla Energy Resources et al., 21336, 23758, 26245, 41563
Black Marlin Pipeline Co. et al., 26403
Carnegie Natural Gas Co. et al., 18912
Colorado Interstate Gas Co. et al., 5664, 10840, 20264, 29739, 38165, 39758, 46157
Columbia Gas Transmission Corp. et al., 1266, 2714, 2851, 5113, 5668, 7952, 8776, 9313, 10097, 14137, 19784, 23822, 24681, 26249, 26834, 31413, 31763, 32103, 32475, 32898, 46488
Columbia Gulf Transmission Co. et al., 32105, 37033
East Tennessee Natural Gas Co. et al., 41191
El Paso Natural Gas Co. et al., 12382, 12857, 40053, 40219, 50669, 51588, 53003
Equitable Gas Co. et al., 2332, 34740
Florida Gas Transmission Co. et al., 36660, 46492
Freeport Pipeline Co. et al., 43773
International Paper Co. et al., 25756
KN Energy, Inc., et al., 45859
Midwestern Gas Transmission Co. et al., 31234, 51908
MIGC, Inc., et al., 40889
Montana-Dakota Utilities Co. et al., 6982
Mountain Fuel Resources, Inc., et al., 11752, 13278, 32108
National Fuel Gas Supply Corp. et al., 9316, 51746
Natural Gas Pipeline Co. of America et al., 14022, 29747
Northwest Central Pipeline Corp. et al., 1617, 15607, 43276, 49103
Northwest Pipeline Corp. et al., 6033, 42760
Ohio River Pipeline Corp., 45148
Panhandle Eastern Pipe Line Co. et al., 7821, 14751
Seagull Interstate Corp. et al, 12389, 16743, 37045
Tennessee Gas Pipeline Co. et al., 37266, 42990
Texas Eastern Transmission Corp. et al., 7119, 49599
Texas Gas Transmission Corp. et al., 33621
Trailblazer Pipeline Co. et al., 42586
Transcontinental Gas Pipe Line Corp. et al., 2605, 3966, 9888, 30732, 49604
Trunkline Gas Co. et al., 30225
United Gas Pipe Line Co. et al., 2336, 2608, 11242, 12861, 15777, 20585, 25763, 27345, 39036, 49106
Western Gas Interstate Co. et al., 51295
Williston Basin Interstate Pipeline Co. et al., 3382, 13416
Natural gas companies:
Btu measurement adjustments; refund procedures; rehearing, etc.; stay denied, 19227
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend, 541, 4259, 8656, 8660, 10838, 14011, 14419, 14420, 16738, 20927, 21496, 21497, 23504, 25124, 25761, 27485, 28014, 29754, 31653, 33410, 34184, 36139, 37408, 38574, 42214, 43283, 45930, 47825, 50218, 52365
Small producer certificates, applications, 1931, 5299, 8781, 10838, 13281, 16742, 24025, 27659, 34181, 37407, 43440, 50215
Natural Gas Policy Act:
First sales collection of refunds owed in excess of maximum lawful prices; order granting waiver, 49754, 50667
OCS leases; blanket determinations, 337, 338, 9895, 45861
Pipeline decontrol; waivers, rehearings, clarifications, etc., 53008
Well category determinations, etc., 4999, 6990, 10836, 11932, 12393, 12395, 15606, 15607, 18729, 19576, 19577, 21498, 23183, 23827, 24693, 30502, 30510, 31415, 33411, 35116, 39165, 41012, 41016, 41020, 42208, 46693
Oil pipeline construction cost (1984), 15965
Oil pipelines, interstate; tentative valuations, 5007, 15965, 18726, 20930, 24814, 26402, 26403, 32261, 41392, 42995, 51299
Preliminary permits surrender:
American Hydro Power Co. et al., 29739
Ball Club Associates et al., 20262
Caples, James W., et al., 45146
Catalyst Energy Development Corp., 43438
Conejos Water Conservancy District, 50212
East Bay Municipal Utility District et al., 50223
Gaber, Steve, 46693
H.M.M., Inc., 31232
Hopewell Power Co., 51593
Hydrowaltham, 35119
Independence Electric Corp. et al., 34002, 40593, 46171
Kentucky Hydro Associates, 28460
Las Cruces, NM, et al., 24817
Lilesville Power Co., 51593
Mega Renewables et al., 38892, 47827
Owen, T.R., 43443
Pacific Hydropower Co., 46693
Petersburg, AK, et al., 51591
Rocky Mountain Hydro, 47828
Rustic Hydro, Inc., 50661
Southern California Edison Co., 36918
Superior Oil Co., 35120
Procurement:
Commercial activities, performance; cost comparison studies schedule (OMB A-76 implementation), 19572
Production-Related Costs Board; membership, 8380
Small power production and cogeneration facilities; qualifying status:
A.E. Staley Manufacturing Co. et al., 48124
AES Placerita, Inc., et al., 31762
AES Shady Point et al., 35120
AES Thames, Inc., et al., 48629
Air Products Manufacturing Corp. et al., 30219
Alexandria/Arlington Resource Recovery Corp., 3957, 6982
Allen, Chester, et al., 46490
Altech Energy III, 33997
Amalgamated Sugar Co. et al., 13066
American Electric & Power, Ltd., 5007
Amoco Production Co. et al., 21928
Ashland Power Associates et al., 40051
Babcock & Wilcox Co. et al., 11938, 48485, 50668
Baker, L. Maurice, et al., 3384
Battes Kill Hydro Associates et al., 47811
Beaver Creek Hydro et al., 49452
Beker Industries Corp. et al., 2337
Bella Rosa Winery, Inc., et al., 14748
Bennington Power Associates et al., 12865
Bethlehem Steel Corp. et al., 9118
Boeri, John L., Jr., et al., 49114
Borden Chemical et al., 49116
Brooklyn Union Gas Co., 27338
Brown, William G., 338
C&H Waste Energy, Inc., et al., 12386
Carson Energy, Inc., et al., 14014
Catalyst Energy Development Corp., 6982
Christiansted Port Terminal Corp. et al., 27357
Cogeneration National Corp. et al., 14136
Cogenic Energy Systems, Inc., et al., 19797, 33407, 47814
Cogentrix of North Carolina, Inc., et al., 10306, 26834
Concept Technology, Inc., et al., 43768
Corn Products, 339
Crown Zellerbach Corp., 34001
Crozer-Chester Medical Center, 19566
Delta Energy Project-Phase III et al., 20282
Downtown Athletic Club et al., 28463
East Orange General Hospital et al., 24818
Electrodyne Research Corp. et al., 41391
Energy Development & Construction Corp., 339
Equitable Gas Co. et al., 42767
Fackrell, Robert N., et al., 32903
Freeport-McMoRan Inc. et al., 51592
Frito-Lay Inc. et al., 11549

Genstar Gas Recovery Systems et al., 40392
Georgia-Pacific Corp., 50216
Gresham, Richard R., et al., 9887
Hillsboro Energy Co. et al., 31416
Hydro Energies Corp. et al., 23502
Hydro Valley Development, Inc., 34002
Hydrodynamics, Inc., 6989
International House of Philadelphia et al., 51299
J.A. Trent & Associates, Inc., et al., 34746
Jenni, Don, 20283
Keating, Joseph Martin, et al., 51916
Knott, James M., et al., 21344
Kuyper, Diane L., et al., 28620
Lohman, David J., et al., 33628
Mercy Hospital et al., 6036
Metrocare Inc. et al., 42215
Modular Generating Systems, Inc., et al., 5119
Monfort of Colorado, Inc., 37403
New Hanover County, NC, 339
New York State Energy Research & Development Authority, 37404
Nitram, Inc., et al., 4896
Northeast Oklahoma Energy Co., 11012
Northern Cogeneration One Co., 339
Northern Energy Group, Inc., et al., 37042
Northwest Power Co. et al., 9320
O'Brien Energy Systems, Inc., et al., 29744
Ogden Martin Systems of Babylon, Inc., 48485
Ogden Martin Systems of Bristol, Inc., 29745
Olmsted, MN, et al., 7373
Pagnotti Enteprises, Inc., et al., 25760
Power Dam Corp. et al., 28621
Power Developers, Inc., et al., 4259
Prince George's County, MD, 5663
Quality Dinette, Inc., et al., 38027, 46694
Resources Extraction & Processing Co., 9894
Rimer, Morton, et al., 20270
Riverbend Electric Co. et al., 11241
San Buenaventura, CA, 33098
Schnabel, Derald, 37408
Scott Paper Co. et al., 23825
Shell California Productions, Inc., et al., 2717
Signal Energy Systems, Inc., et al., 16130
Signal-Sherman Energy Co. et al., 40048
Slaughter, Orville, et al., 32482
Stone Container Corp., 340
Synergics, Inc., 49443
Syracuse City School District, 37409
Thermo Power & Electric, Inc., 340
Transworld Wind Corp. et al., 1927
Tretolite, Inc., 340
Ultrapower Inc. et al., 49118
University Cogeneration, Inc., et al., 31233
University Cogeneration Partners Ltd. et al., 16749
University of San Francisco et al., 46161
Upjohn Manufacturing Co. et al., 24692
Vail, Charles, et al., 38170
Vicon Recovery Systems, Inc., 341
Wagner, Delmar, et al., 49453
Warren Petroleum Co., 341
Waste Management, Inc., 50218
Wehran Eenrgy Corp., 6991
White, Terry G., 3956
White, William T., III, et al., 36663
Wyoming Wind Power, Inc., et al., 38893

Hearings, etc.:

AEP Generating Co. et al., 330
Alabama Power Co., 20261, 51592
Alabama-Tennessee Natural Gas Co. et al., 381, 10096, 25120, 33407, 43437, 47585, 50676, 51586, 53185
Alamito Co., 28455
Algonquin Gas Transmission Co. et al., 332, 2854, 3968, 6037, 6038, 7632, 7633, 8656, 10096, 13412, 14007, 14417, 15961, 20262, 24025, 28456, 28457, 30221, 30730, 32474, 32890, 33407, 35116, 35117, 36652, 38887, 41391, 43438, 48632, 50213, 51286, 53186
American Crude, Inc., 48471
American Electric Power Service Corp., 28008, 48127
American Petrofina Co. of Texas et al., 14983
American Pipeline Co., 50676
Amoco Production Co., 43769, 45147
Anadarko Production Co., 25121, 47259
ANR Pipeline Co. et al., 523, 2331, 3968, 7108, 14007, 19572, 30501, 32474, 37032, 41190, 49440, 50215, 50677, 51287, 53185
ANR Production Co., 48128
Appalachian Power Co., 881, 7214
Applied Energy Services, Inc., et al., 14417, 19075
Aquenergy Systems, Inc., et al., 9119
ARCO Oil & Gas Co., 18727, 43438
Arizona Public Service Co., 28009, 45850
Arkansas Electric Cooperative Corp. et al., 43770
Arkansas Louisiana Gas Co., 523, 881, 4257, 7815, 9501, 11414
Arkansas Oklahoma Gas Corp., 53186
Arkansas Power & Light Co., 37401, 45852
Arkla Energy Resources, 9892, 10097, 32890, 37032
Arkoma Production Co. et al., 8185, 35593
Armco Inc., 33408
Atlantic City Electric Co., 37032
Bangor Hydro-Electric Co. et al., 45657, 47585, 52840
Barker, Norman, Jr., 49751
Bay State Gas Co., 24293
Bayou Interstate Pipeline System, 1264, 2603, 28457
BBB Power Associates, Inc., 4998
Beck, Eileen M., 11932
Bergman, Klaus, 6033
Bethel Associates, 18288
BHP Petroleum (Americas) Inc., 50210
Big Sage Associates, 7951
Bishop Marketing Corp., 28009
Black, Aubrey C., 35117
Bliss Petroleum, Inc., et al., 11239
Bonneville Power Administration, 14282, 19443, 19444, 27663
Bookhart, William B., Jr., 28972
Boston Edison Co., 3015, 25122, 26036, 33997, 47586
Boundary Gas, Inc., 3955, 10097
Brookport Associates, 7815
Buck Rock Hydro, Ltd., 8773
Buckhorn Associates, 8657
Burnt Ranch Stables, 14417
Cabot Pipeline Corp., 36918
Cairo/New York Associates, 3404
Cairo/Wickliffe Associates, 9119
Calero Associates, 8773
California Department of Water Resources, 524
Campbell Development, Inc., 12857
CanadianOxy Offshore Production Co., 881
Canyon Creek Compression Co., 14136, 45861
Carolina Power & Light Co., 4889
Carter, Hugh A., Jr., 7815
Cascade Natural Gas Corp., 29745
Cedar Falls Utilities, 14417
Cenergy Exploration Co., 41012, 46164, 47099
Centel Corp., 21490, 24679, 37402, 50213
Central Hudson Gas & Electric Corp. et al., 33997, 37402, 45656
Central Illinois Light Co., 4891, 47586
Central Illinois Public Service Co., 20263
Central Louisiana Electric Co., Inc., 332
Central Maine Power Co., 30222
Central Power & Light Co., 996
Central & South West Services, Inc., 24026
Central Vermont Public Service Corp., 47823
CFS Hydroelectric Associates, 7952
Chase Exploration Corp. et al., 23497
Cheney Energy Corp., 47260
Cherry Creek Associates, 8658
Chevron U.S.A. Inc. et al., 5299, 33997, 48128
Chino Mines Co., 2714
Cincinnati Gas & Electric Co., 997, 27349, 45852
Cities Service Helex, Inc., 19573
Cities Service Oil & Gas Corp. et al., 7108, 7214, 23497, 26249, 40591, 45864
Citizens Energy Corp. et al., 9884, 47586
Citizens Utilities Co., 6038
Clay Petroleum, Inc., 14008
Cleveland Electric Illuminating Co. et al., 33408
Cliffs Electric Service Co. et al., 38576
CNG Producing Co., 14418
Coastal Oil & Gas Corp., 18555
Colonial Corp., 23498
Colorado Gas Compression, Inc., 23498
Colorado Interstate Gas Co. et al., 1265, 2603, 3969, 6039, 8658, 9119, 11241, 14008, 16734, 21655, 25622, 29753, 32475, 35117, 37901, 42203, 46165, 49748
Columbia Gas Development Corp., 52366
Columbia Gas Transmission Corp. et al., 524, 525, 882, 883, 1933, 2603, 4257, 5659, 13082, 24563, 31654, 32475, 35118, 43439, 43771, 45657, 46165, 46491, 47099, 48122, 49749, 51587, 53187
Columbia Gulf Transmission Co. et al., 37726, 46492, 51587, 53187
Columbia Natural Resources, Inc., 24027, 24028
Columbus & Southern Ohio Electric Co., 31419
Commercial Pipeline Co., Inc., 13067, 40224
Commet Resources, Inc., 42204
Commonwealth Edison Co., 23498, 47586, 47587, 50211
Connecticut Light & Power Co. et al., 31419, 31654, 37402, 45146, 45852, 45853, 46165, 46166, 47587, 48472, 51587
Conoco Inc. et al., 525, 6988, 15476, 36136, 37270, 39030, 39031, 47100
Consolidated Edison Co. of New York, Inc., 997
Consolidated Fuel Supply, Inc., 24293, 46166
Consolidated Gas Supply Corp. et al., 11932

Consolidated Gas Transmission Corp., 4998, 6039, 14283, 18728, 25755, 28457, 28837, 31420, 32262, 32890, 36664, 40224, 41191, 50677, 50678
Consolidated System LNG Co. et al., 19578
Consumers Power Co., 47588
Cook Electric, Inc., 7815
Cooley, Marjorie Linder, et al., 30501
Cord, Virginia Kirk, 16750
Coronado Transmission Co. et al., 8188
Cranberry Pipeline Corp. et al., 50212
Crystal Oil Co., 9120
Cuddebackville Associates, 18288
Dewson Operating Co., Inc., 35593, 36136
Dayton Power & Light Co., 52841
Delhi Gas Pipeline Corp. et al., 14418, 32891, 40048
Delmarva Power & Light Co., 48472
Des Moines, IA, 3955
Diamond Shamrock Exploration Co., 23500, 37901
Diamond Shamrock Offshore Partners Ltd. Partnership, 43439
Discorbis Oil Co. et al., 51289
Distrigas Corp. et al., 24563, 51290
Distrigas of Massachusetts Corp., 7633, 7815, 14139, 20276, 20278, 23055, 26606, 28458, 35118
Doe Run Creek Hydro Rehabilitation Association, 27350
Donley, Edward, 28459
Duffett, John C., 28973
Duke Power Co., 6039, 41013
Duquesne Light Co., 13277, 48472
East Sidney Associates, 18289
East Tennessee Natural Gas Co., 8658, 24294, 28459, 31654, 33995, 46698, 49749, 50666
Eastern Kentucky Production Co., 43440
Eastern Shore Natural Gas Co., 15961, 16734, 42204
Eden Valley Hydro, Ltd., 8773
El Paso Electric Co., 30223, 31420, 47584
El Paso Natural Gas Co. et al., 1928, 7816, 10100, 12393, 14749, 14750, 15478, 19574, 25755, 27487, 28459, 31232, 32477, 36918, 36919, 37038, 37411, 38709, 41196, 46167, 47824, 51290, 51291
Electric Energy, Inc., 332
Elizabethtown Gas Co. et al., 48469
Elwood City, PA, 1928
Energy Consultants, Inc., 47260
Energy Marketing Exchange, Inc., 16736, 24294, 41728
ENSTAR Corp., 51744
EnTrade Corp., 20926, 41196, 47588
Enumclaw/Washington Associates, 9502, 25122
Eppich, Frank J., 6033
Equitable Gas Co. et al., 8658, 14419, 28009, 32892, 36137, 49752, 49753
EUA Power Corp., 36471, 42205
Everest Exploration II et al., 20927
Everest Minerals Corp. et al., 20926
Exxon Corp., 38887
F&T Services Corp., 25446
Fairview City Corp., 11549
Fina Oil & Chemical Co. et al., 34182, 43771, 45148
Florida Gas Transmission Co. et al., 2334, 6039, 10101, 24295, 25122, 37039, 37730, 40049, 50667
Florida Power Corp., 997, 998, 47589
Florida Power & Light Co., 21493, 34002, 45862, 46169
FMP Operating Co., 29753
Fountain City Associates, 9120
Franklin Associates, 9502
Frontier Land & Power Corp., 23500
G.E.C. Oil & Gas Operations, 10837
Gas Gathering Corp. et al., 7371, 26249, 27487, 32478, 43280, 47827
Gas Research Institute, 24564
Georgetown Divide Public Utility District, 32262
Georgia Power Co. et al., 26608, 32478, 41014
Glen Elder Associates, 16737
Golden Wheel Hydro, Ltd., 8773
Goodrich Oil Co., 18555
Granite Associates, 26606
Granite State Gas Transmission, Inc., 11551, 25446, 30223, 49440, 51291
Great Lakes Gas Transmission Co., 6040, 7956, 14009, 20927, 21656, 35117, 37045, 41197, 48633, 53187
Great Northern Nekoosa Corp., 23055
Great Plains Gasification Associates et al., 48633, 48634
Green Mountain Power Corp., 41936
Greenwoood County, SC, 14139
Gresham, Richard, et al., 14421, 14964
Gulf Power Co., 34002
Gulf States Oil & Refining Co., 19575
Gulf States Utilities Co., 332, 26249, 30733, 34182
Hackett, Luther F., 19575
Hadson Gas Systems, Inc., 25756, 41198
Hamilton Brothers Oil Co., 883
Harrisonburg Associates, 16735
Hawaiian Electric Co., 4892
High Island Offshore System, 39032
Holl, F.G., 48634
Holt, Timothy F., et al., 7957
Holyoke Water Power Co. et al., 42757
Horn, Tom, 16737
Houston Pipe Line Co. et al., 5660, 10307, 18289, 36137
Hydraco Power, Inc., 20591
Hydro Resources Co. et al., 11932
Hydro-West, Inc., 13074
Idaho Power Co., 30224, 33097, 37403, 47590, 49749
Illinois Power Co., 2855
Independence Electric Corp., 6990, 9502
Independent Oil & Gas Association of West Virginia, 50667
Indianapolis Power & Light Co., 4260, 10101
Inland Gas Co., Inc., 1268, 25623
Inland Ocean, Inc., 21495
Inter-City Minnesota Pipelines, Ltd., Inc., 6043, 14009, 24295, 41199, 41561
Iowa Public Service Co., 3969, 4260
Iowa Southern Utilities Co., 35118
Iowa-Illinois Gas & Electric Co., 9120
J.R. Simplot Co. et al., 32892
Jacks, Carol Agnes, 26608
Jakes Branch Gas Co., 5659
Jan Energy Co., 27488
Jersey Central Power & Light Co., 21656, 46172
KAMO Electric Cooperative Inc. et al., 34184
Kaneb Production Co., 21495
Kansas City Power & Light Co., 883, 4261
Kansas Gas & Electric Co., 2716, 8186, 24295, 27656, 30504, 36915, 47590
Kansas Power & Light Co., 332, 333, 24295, 24296, 45658, 46172
Keating, Joseph M., 28973, 46172
KemaNord, Inc., 11415
Kentucky Hydro Associates, 5660
Kentucky Power Co., 49094
Kentucky West Virginia Gas Co., 14010, 40225, 41200, 46498, 51292
Kerr-McGee Corp., 5299, 37270
Killington Hydroelectric Co., 6382
Kloc, Thomas J., 11933
KN Energy, Inc., et al., 538, 1269, 3955, 7372, 19575, 31654, 34736, 41199, 46694, 50216, 51292
Koch Industries, Inc., 11933
Kuparuk Transportation Co., 3404
Ladd Petroleum Corp., 2856
Lange, Eric H., 27350
Lansing Board of Water & Light, 4261
Laurel Fuel Co., 23501
Lawrenceburg Gas Transmission Corp., 2335, 9892, 10837, 15217, 28460, 47100
Leo M. Riley Co., 2716
Liberty Natural Gas Co., 15606
Lincoln National Life Insurance Co., 41016
Lind, Thomas O., 15480
Little America Refining Co., 9502
Locust Ridge Gas Co., 1269, 6043, 32478
Los Gatos Associates, 7817
Louisiana Intrastate Gas, 20269
Louisiana Land & Exploration Co. et al., 47101, 47261
Louisiana Resources Co. et al., 526, 16739, 26833
Louisiana-Nevada Transit Co., 538, 884, 19575, 46694
Malone, Edward H., 7108
Manti, UT, et al., 9885
Marathon Oil Co., 4261, 38888
Marion Corp., 21495
Massachusetts Refusetech, Inc., 15479
McCommons Oil Co., 19567
Mega Renewables, 14419, 20269
Mesa Petroleum Co., 538, 42207
MGF Oil Corp., 23501
Michigan Consolidated Gas Corp., 11552
Michigan Gas Storage Co., 7117, 16735, 20269, 25447
Mid Louisiana Gas Co., 5660, 24564, 28461, 35115, 49750
Mid-America Gas Line Corp., 35114
Middle South Services, Inc., 38710
Midwestern Gas Transmission Co., 1269, 8659, 10308, 21657, 24296, 25760, 27488, 31655, 34002, 35119, 37403, 37730, 40255, 41200, 51292, 51745
MIGC, Inc., et al.$ 12385$ 18289, 28838$ 35115, 38889
Miller, William R.$ 14013
Minnesgta Power & Dight Co&, 31417
Mississippi Fued Cg.$ 16741
Mississippi Power & Light Co.$ 45658
Mississippi River Transmission Corp. et al., 6043$ 8774$ 12860$ 14010, 14011$ 14283$ 23055, 30224, 32479$ 37730, 49441, 49750
Mississippi Valley Gas Co.$ 36921
Missouri Hydro Associates, 7817
Mitchell Energy Corp., 14420
Mobil Oil Corp. et al., 5300
Mojave Pipeline Co., 19567
Monsanto Oil Co., 32893
Montana Department of Natural Resources and Conservation, 27350, 29474
Montana Power Co., 24296, 31417, 41936, 47590

Montana-Dakota Utilities Co., 526, 7372, 49750
Montaup Electric Co., 527, 37404
Monterey Pipeline Co. et al., 12386
Mountain Fuel Resources, Inc., et al., 1929, 7634, 7817, 20271, 25760, 28973, 33097, 41201, 41561, 46172, 46694, 46695, 47101, 48129, 50667
Mountain Lake, MN, et al., 997
Mountain West Hydro, Inc., 6990
Mountaineer Gas Co., 28461
Mroczka, Edward J., 37902
Municipal Electric Utilities Association of New York State et al., 30501
Murphy Oil Corp., 21496
Muskingum River Hydro Associates, 14963, 25447
Mustang Fuel Corp., 30507
Nadel & Gussman Oil Co., 3955
Nantahala Power & Light Co., 528
National By-Products, Inc., et al., 12394
National Fuel Gas Supply Corp., 884, 1270, 1930, 2335, 4736, 10102, 28462, 35119, 47101, 47102, 51293
Natural Gas Pipeline Co. of America et al., 1930, 2604, 4258, 7215, 8186, 8659, 10309, 11241, 11552, 13414, 14011, 16741, 16742, 24296, 26606, 29474, 31420, 32479, 32893, 38889, 39032, 41201, 42211, 46498, 48489, 51293, 52841
Neches Pipeline System, 19569
Neisler, Inc., 21658
New England Fish Co., 45864
New England Power Co., 27660, 38581, 38710, 41017, 43275, 45659, 45855, 50213
New England Power Pool, 31421
New Valley Hydro Ltd., 8774
New York City Department of Environmental Protection, 24027
New York State Electric & Gas Corp., 24297
Newaygo, MI, 15606
Niagara Mohawk Power Corp. et al., 528, 885, 15962, 47590, 49750
North Penn Gas Co., 6044, 24565, 34003, 37039, 46697, 47827
Northampton Associates, 16735
Northern Border Pipeline Co., 14139, 24297, 32894, 41201
Northern Gas Marketing, Inc., et al., 40051
Northern Indiana Public Service Co., 24297
Northern Natural Gas Co., 540, 885, 1930, 10102, 15217, 15964, 18556, 19576, 20271, 27484, 28838, 29474, 41202, 46499, 48470, 50214, 51293
Northern States Power Co., 21659, 31421, 45856, 47591, 48473, 53188
Northwest Alaskan Pipeline Co., 21660, 41729, 49442
Northwest Central Pipeline Corp. et al., 6044, 13075, 19569, 25122, 25123, 30224, 31232, 36917, 40226, 47591, 47828, 50213
Northwest Pipeline Corp. et al., 333, 886, 3956, 3969, 5661, 7373, 7817, 9886, 9892, 15964, 16742, 19795, 20272, 25447, 28839, 31421, 32479, 35115, 35120, 40226, 41202, 42996, 47102, 47592, 48122, 48123, 49751, 51294, 53188, 53189
Nuclear Energy Group, Inc., 14420
NuMaineCo Corp., 6991
Oasis Pipe Line Co. et al., 4262, 23182, 24565
Odeco Oil & Gas Co., 42211
Oglethorpe Power Corp. et al., 30741
Ohio Gas Marketing Corp., 28973, 49095
Ohio Power Co., 47592
Orange & Rockland Utilities, Inc., 47592
Overthrust Pipeline Co., 1931
Ozark Gas Transmission System, 13651, 39165
Pacific Gas & Electric Co. et al., 333, 14964, 39165, 45865, 47593, 48250, 53190
Pacific Gas Transmission Co., 45864, 49752
Pacific Hydropower Co., 3404
Pacific Interstate Transmission Co., 9893, 18290, 37040
Pacific Offshore Pipeline Co., 9893, 16735, 37041
Pacific Power & Light Co., 334, 887, 13075, 19576, 24297, 32261, 45659, 51593
Panhandle Eastern Pipe Line Co. et al., 530, 540, 887, 2336, 3404, 5661, 7373, 12395, 20272, 23055, 23056, 25761, 30507, 31233, 32894, 33995, 36664, 37039, 40227, 41562, 46499, 49442, 50661, 53189
Paris Hydro Associates, 12395
Park-Ohio Energy, Inc., 23503
Pasadena, CA, 9502
Pel-Tex Oil Co., 37404
Pelto Oil Co., 38889
Penn-York Energy Corp. et al., 5661, 21660, 33097, 35120
Pennsylvania Electric Co. et al., 2716
Pennsylvania Power & Light Co., 46173
Pennzoil Co. et al., 3969, 18729, 23825, 26250, 32262, 38583, 41729, 45857
Pennzoil Oil & Gas, Inc., et al., 4263
Pennzoil Producing Co. et al., 34737, 47262
Pensacola, FL, et al., 5659
Perry L. Larson Operating Co., 37902
Petro-Lewis Corp. et al., 46692
Phillips & Spradley, 23503
Pine Crest Hydro Ltd., 11555
Pinedale Power & Light Co., 45858
Plains Electric Generation & Transmission Cooperative, Inc., et al., 8774
Plains Petroleum Corp., 45867
Plumas County Flood Control & Water Conservation District, 531
PNG Energy Co., 47261
Pogo Producing Co., 1933, 48247
Portland General Electric Co. et al., 334, 7819, 14012, 28012, 47258, 47593
Producer's Gas Co., 46173
Public Service Co. of Indiana, Inc., 47593
Public Service Co. of New Hampshire, 47594, 48473
Public Service Co. of New Mexico, 998, 37404, 43443, 45659, 51294
Public Service Co. of Oklahoma, 47594
Public Service Electric & Gas Co., 37407, 40050
Public Utility District No. 1 of Chelan County, WA, 14012
Public Utility District No. 1 of Franklin County, WA, 2716
Public Utility District No. 1 of Lewis County, WA, 1933
Puerto Rico Electric Power Authority, 4261
Puget Sound Power & Light Co., 41937
Pure Energy Co., 13280
Quillen, Kurt A., et al., 37041, 42996
Quincy-Columbia Basin Irrigation District et al., 27350, 27351
Randall, Lee W., 33098
Raton Natural Gas Co., 10838, 25124, 26252, 36652
Rauniker, Inc., 30225
Reliance Pipeline Co., 37271
Resources Recovery (Dade County), Inc., 24934, 31422
Ringwood Gathering Co., 10102, 37041, 41202, 49095
Roaring Creek Ranch, 20592
Rochester Gas & Electric Co., 31655
Rogerson Associates, 8774
Saacks, J.J., 41016
Samedan Oil Corp., 51595
Samson Resources Co., 7118, 25454, 42211, 48474
San Diego Gas & Electric Co., 47595
Sanford, Charles S., Jr., 9892
Santa Rosa, CA, 14007
Scarth Oil & Gas Co. et al., 47103
Schneider Lift Translator Corp., 24934
Sea Robin Pipeline Co., 1931, 24298, 28462, 36653, 38710, 50216
Seagull Marketing Services, Inc., 42212
Seaward Development-Hart Island Associates, 23826
Shaffer, Jack A., 25623
Shell Offshore, Inc., et al., 39166, 42213
Shell Oil Co., 47103
Shell Western E&P Inc., 28974
Sierra Pacific Power Co., 9887, 24028
Skopos, Michael J., 13280
Small Hydro East, 27484
Snow Mountain Pine Co. et al., 11933
Sohio Alaska Petroleum Co., 29756
Sonat Exploration Co., 42214
South Carolina Generating Co., Inc., 998, 7956, 34003, 47595
South Carolina Public Service Authority, 1934, 23503, 23827
South Georgia Natural Gas Co. et al., 24030, 28839, 32479, 32896, 40227, 50217
Southeastern Gas Co., 36653
Southern California Edison Co., 531, 3015, 4998, 9894, 24298, 25762, 26250
Southern California Gas Co., 48490
Southern Company Services, Inc., 37409
Southern Indiana Gas & Electric Co. et al., 26251
Southern Natural Gas Co. et al., 541, 1932, 3970, 10102, 18290, 25624, 25763, 27485, 27488, 29474, 32896, 35116, 36653, 37042, 37271, 41203, 46694, 50661
Southern Union Co., 48471
Southland Royalty Co., 48471
Southwest Gas Corp. et al., 11241, 29475, 36138, 37730, 43280, 46500, 47103, 49751, 53190
Southwestern Electric Power Co., 531, 7819, 24298, 28012, 30509, 42759, 45148
Southwestern Gas Pipeline, Inc., et al., 30508
Southwestern Power Administration, 25124, 41937
Southwestern Public Service Co., 13415, 34005, 34744
Spottsville Associates, 9120
St. Joseph Light & Power Co., 998, 999
Sterling Enterprises, Inc., 7957
Stingray Pipeline Co., 16736

Stockport Associates, 18290
STS Energenics Ltd., 38711
Sullivan Drilling Co. et al., 2856
Summer, Virgil C., 25624
Sun Exploration & Production Co., 47262
Sun Gas Transmission Co., Inc., 51747
Tacoma, WA, et al., 4263
Tampa Electric Co., 334, 20592, 37410
Tannehill, Joseph K., 35291
Tenneco Oil Co. et al., 7375, 35594, 39032, 39033, 43443, 50342
Tennessee Gas Pipeline Co. et al., 531, 888, 7821, 19077, 20273, 20929, 24030, 24299, 24566, 26607, 31652, 32480, 36654, 37410, 40994, 42215, 42764, 43280, 45149, 47811, 49753, 50214
Tenngasco Corp. et al., 35595
Tenngasco Gas Supply Co. et al., 28014
Terra Resources, Inc., et al., 27351
Texaco Inc., 45867
Texaco Oils Inc., 533
Texaco Producing Inc., 25448
Texas Eastern Gas Trading Co., 34186
Texas Eastern Transmission Corp. et al., 542, 1270, 1932, 4258, 7215, 7821, 9894, 11555, 14013, 18290, 20274, 20592, 20929, 26607, 29475, 32480, 32481, 32896, 32897, 33995, 33996, 35120, 38711, 43280, 43444, 45858, 46698, 48491, 51294
Texas Gas Exploration Corp., 38890
Texas Gas Pipe Line Corp. et al., 19577, 38711, 47104, 49095
Texas Gas Transmission Corp. et al., 1270, 2857, 3956, 9895, 10310, 19577, 25453, 27486, 28462, 30510, 34005, 41020, 41730, 45659, 49095, 49751, 50217, 52367
Texas-New Mexico Power Co., 4264
Texican Natural Gas Co., 46174
THC Pipeline Co., 30510
Thompson Associates, 18291
Three City Mississippi River Hydropower Agency, 46174
Toce Oil Co., Inc., et al., 7118
Trailblazer Pipeline Co., 4736
Transco Energy Marketing Co., 43772, 45150
Transcontinental Gas Pipe Line Corp. et al., 534, 535, 3406, 4264, 8775, 9895, 10840, 11555, 12861, 14141, 14283, 18291, 23183, 24300, 28462, 30511, 30512, 34005, 36654, 37731, 40051, 41731, 42763, 45150, 46174, 47811, 47828, 48475, 48635, 50217, 51595, 53007
Transwestern Pipeline Co. et al., 9503, 10103, 20274, 29757, 31652, 32481, 36654, 37042, 46500, 46695, 47258, 50662
Trend Exploration Ltd., 37410
Trinity Bar Hydro Ltd., 14421
Trunkline Gas Co., 543, 888, 4895, 13416, 19570, 25126, 30512, 40228, 49097, 49443
Tuolumne County, CA., 8773
TXP Operating Co., 40593, 51596
U-T Offshore System, 47595
UER Marketing Co., 27486, 38891
Union City Associates, 16736
Union Electric Co., 536, 999, 48474
Union Exploration Partners, Ltd., 45867
Union Oil Co. of California et al., 14964, 47259
Union Texas Petroleum Corp., 41203
United Gas Pipe Line Co. et al., 11415, 13416, 14284, 24300, 24566, 24690, 28015, 34006, 38712, 41203, 46175, 46698, 48123, 50214
United Hydro Partners, 21504
Utah Power & Light Co. et al., 2611, 27662
Utilities Holding Co. et al., 15965
Valero Interstate Transmission Co. et al., 3970, 20275, 24567, 25624, 35594, 46500, 51597
Valero Transmission Co. et al., 48478
Valley Gas Transmission, Inc., 14013, 41204, 47828, 49443
Vanceburg, KY, 8775
Vermont Electric Power Co., Inc., 34006
Vermont Independent Power Producers Association, 50217
Vermont Yankee Nuclear Power Corp., 16344, 19570
Vesta Energy Co., 18729, 47595
Virginia Electric & Power Co., 21660, 47596
Walter Oil & Gas Corp., 195773 41204
Warref Hydro Partfers, 9895
Washingtof Water Power Co.$ 23184, 47596
Watervliet Paper Co., 47829
West Penn Power Co. et al., 1934, 37411
West Texas Gas, Inc., 42215, 45151
West Texas Utilities Co., 334, 11936, 47596
Western Gas Interstate Co., 10310, 26608, 33409, 41562
Western Gas Supply Co., 8781
Western Massachusetts Electric Co., 43281, 52842
Western Transmission Corp., 1270, 23184, 45869
Williams Pipe Line Co., 51295
Williston Basin Interstate Pipeline Co., 8775, 14013, 14142, 20593, 23827, 28120, 33996, 41205, 46695, 49989, 50662
Winona Hydro Partners, 21662
Wisconsin Electric Power Co., 26251, 50662
Wisconsin Power & Light Co., 6991, 24300
Wisconsin Public Service Corp., 24301
Wisconsin River Power Co., 33409, 45858
Wisconsin Valley Improvement Co., 9887
Woodbury Associates, 8660
Woods Exploration & Producing Co. et al., 32898
Worcester/Southbridge Associates, 3406
Wylee Petroleum Corp., 31653
Yankee Atomic Electric Co., 5300, 37411
Yankee Resources, Inc., 43772, 45151
Zapata Exploration Co., 29757
Zenith Natural Gas Co., 889

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

NOTICES
Depository institutions with security dealers and others, repurchase agreements; policy statement, 49764
Foreign banks, U.S. branches and agencies:
Assets and liabilities report form, 14157
Country exposure report; inquiry, 2722
Trust assets, annual report (Form 001); proposed revision, 13656

FEDERAL GRAIN INSPECTION SERVICE

RULES
Administration:
Fees for official services performed by agencies, 30129
Fees for supervision of official services, 38503
Licenses and authorizations (for individuals only), 5969
Official services, original services, review of weighing services, etc.; revision and clarification, 45389
Grade descriptions; restrictions on representation, 9981
Grain standards:
Corn, 1039
Oats, 1039
Soybeans, 18455, 23663
Triticale; correction, 5733
Reporting and recordkeeping requirements, 18985
Supervision, monitoring, and equipment testing; grain transfers into export elevators, etc., 2273
Weighing requirements, Class X and Class Y, and inspection methods and procedures, 49667

PROPOSED RULES
Administration:
Fees for supervision of official services, 28104
Correction, 29985
Official services, original services, review of weighing services, etc.; revision and clarification, 15569
Inspection and certification standards; agricultural commodities and products, 52469
Reporting and recordkeeping requirements, 948
Weighing and inspection equipment; performance and procedural requirements, 29689
Correction, 30955
Weighing requirements, Class X and Class Y, and inspection methods and procedures, 7598

NOTICES
Agency designation actions:
Alabama, 4715
Alaska, 4716, 18541
Arkansas, 4716, 18541
California, 135, 18542, 27033, 38145
Colorado, 135, 13641, 23323, 35277
Florida, 43429
Idaho, 23323, 31207, 43427
Illinois, 4716, 8350, 12841, 18542, 27033, 35276, 38145, 38146, 38147, 43427, 43429, 49434, 49435, 49436, 52976
Indiana, 8350, 8352, 18543, 31208, 35276, 38146, 43427, 49434
Iowa, 136, 4715, 8351, 23322, 27034, 43429, 49435, 52976
Kansas, 8351, 18542, 35274
Kentucky, 12842, 23322, 35275
Michigan, 43428, 52976
Minnesota, 27034, 35275, 49433
Mississippi, 27034, 35275, 49433

Nebraska, 135, 12841, 23323
North Dakota, 4716, 12841, 12842, 23322, 27033, 35275
Ohio, 12842, 23322, 31208, 35275, 38145, 52975, 52977
Oklahoma, 52974
Tennessee, 4716, 18541, 18544
Texas, 31209, 38146, 47570
Utah, 23323, 31207, 43427
Virginia, 31208, 38145, 52977
Washington, 135
Wyoming, 8350, 23323
Committees; establishment, renewals, terminations, etc.:
Advisory Committee, 24264
Meetings:
Advisory Committee, 11745, 19425, 26234, 32243, 37705
Wheat dockage certification, 49737

FEDERAL HIGHWAY ADMINISTRATION

RULES
Civil rights:
Supportive services for minority, disadvantaged, and women business enterprises; final rule and request for comments, 51242
Engineering and traffic operations:
Contract claim awards and settlements, 41882
Correction, 46282
Highway design standards, geometric; incorporation by reference; request for comments, 14914
Public lands highways, 10755
Truck size and weight; designated highway networks; deletion of non-Federal-aid primary routes, 46425
Correction, 49688
Uniform Traffic Control Devices Manual; amendments, 10001, 50784
Utilities, accommodation, 20351
Utility relocations, adjustments and reimbursements, 20344
Motor carrier safety regulations:
Financial responsibility minimum levels; motor carriers of passengers, 7061
Handicapped driver waiver program; driver qualifications; application requirements, 49849
Practice rules, 40304
Public transportation:
Mass transit and special use highway projects, 33915
Nonurbanized areas; CFR Part removed, 29209
Right-of-way and environment:
Relocation assistance and real property acquisition regulations; removals and amendments, 34091
State highway traffic safety programs; uniform standards, 45815

PROPOSED RULES
Audit requirements for State and local governments, 43233
Correction, 45423
Engineering and traffic operations:
Bridges, structures, and hydraulics; navigational clearances for bridges, 14251
Construction quality and competition; use of warranties and guaranties; advance notice, 4234
Extension of time, 14722
Contract procedures; submission of affidavit of noncollusion with bids, 12037
Correction, 14251
Federal-aid highway projects; prevailing wage rates in advertisements and contracts, 39137
Federal-aid highways; emergency relief, 37688
Heavy vehicle use tax; certification of enforcement, 32089
Highway construction projects; erosion and sediment control, 2694
Materials and construction; sampling and testing, 38136
Pavement design standards for highways; regulatory procedures for Federal adoption of revisions; advance notice, 16103
Railroads; overpass and underpass structures at highways, 7067
Truck size and weight--
Automobile transporters, 48431
Designated highway networks, 12825, 13821, 37970
Grandfathered maximum semitrailer lengths, and combination vehicles, 8342
Specialized equipment; advance notice, 53940
Uniform Traffic Control Devices Manual; amendments, 10072, 10506, 16515, 21857, 51404, 52534
Highway planning and research activities, administration of funds, 12328
Motor carrier safety regulations:
Citizen band radios on buses; advance notice, 1603
Withdrawn, 15198
Commercial motor vehicle safety; advance notice and docket closings, 2998
Commercial motor vehicle State safety regulation review; guidelines, 1243, 7357
Commercial motor vehicles; parts and accessories necessary for safe operation and inspection, repair, and maintenance; advance notice, 1245
Drivers hours of service; 10 hour exemption in log; proposal withdrawn, 2297
Nonalcoholic drugs; prohibited use, 40040
Splash/spray suppression devices on truck tractors, trailers, and semitrailers, 14630
Public docket reopened, 24549
Toxic gases and ambient temperature in truck cabs; proposal withdrawn, 3000
National Environmental Policy Act; public hearings and location/design approval, 4525
National minimum drinking age; State noncompliance; withholding of Federal-aid highway funds, 39140
Planning:
Highway projects, modified or terminated; use and disposition of property acquired by States, 38130
Truck routing system; longer combination vehicle (LCV) operations in western States, review, 52938

NOTICES
Committees; establishment, renewals, terminations, etc.:
Commercial Motor Vehicle Safety Regulatory Review Panel, 31452
Driver's records of duty status; exemption, 15269
Environmental statements; notice of intent:
Allegany County, MD, 24606, 46381
Anchorage, AK, 25646, 48148
Anne Arundel County, MD, 48672
Bennington, VT, 6305
Brevard County, FL, 32132
Bristol County, MA, 42115
Broward County, FL, 21388
Camden County, MO, 2653
Charleston County, SC, 15806
Cocke County, TN, 9355
Coconino County, AZ, 10879
Cook and Du Page Counties, IL, 29293, 34032
Cuyahoga and Geauga Counties, OH, 37755
Dade County, FL, 30326
Danville (City) and Pittsylvania County, VA, 9938
Davidson and Sumner Counties, TN, 19602
Douglas County, NE, 19514
Douglas County, OR, 46531
Fairfax County, VA, 15523
Fairfield County, CT, 30326
Fulton and DeKalb Counties, GA, 16379
Gallatin County, MT, 5345
Guilford and Randolph Counties, NC, 42115
Gwinnett County et al., GA, 49810
Hartford County, CT, 25817
Hennepin County, MN, 38240
Hillsborough County, FL, 49148
Hoosick, NY, 6305
Huntingdon County, PA, 24858
Indianapolis, Marion County, IN, 25150
Ingham County, MI, 34031
James City and York Counties, VA, 10879
Juneau, AK, 30326
Lahaina District, HI, 2879
Laporte County et al., IN, 16577
Lewis and Clark County, MT, 5346
Logan County, KY, 8809
Los Angeles County, CA, 5723
Macomb County, MI, 9938
Martin County, FL, 32673, 37462
Maury and Williamson Counties, TN, 38938
Monterey County, CA, 13446
Norfolk, VA, 41437
Okanogan County, WA, 12682
Orange County, CA, 45702
Orange County, FL, 32342
Ottawa County, MI, 8431
Passaic County, NJ, 1667
Polk County, OR, 46531
Prince George's County, MD, 27708
Rock Island County, IL, 50702
San Juan County, NM, 51766
Santa Clara County, CA, 19254
St. Croix County, WI, 42243
St. Paul, MN, 48149
Stark and Mahoning Counties, OH, 14784
Sumner County, TN, 25151
Waldo County, ME, 35900
Washington County, MN, 42243
Westchester County, NY, 32132
Westmoreland County, PA, 37616
Heavy trucks; highway user fee liability study;

inquiry, 37106
Highway trust fund, Federal; methodology attributing receipts to States; policy statement and inquiry, 25812
Meetings:
Commercial Motor Vehicle Safety Regulatory Review Panel, 31452, 51766
National Motor Carrier Advisory Committee, 914, 10572, 34031, 51327, 53057
Vehicle weight limitations; bridge formula development report; inquiry, 38048, 40943, 46381
Weight-distance truck tax; inquiry, 15223, 15270

FEDERAL HOME LOAN BANK BOARD

RULES
Federal associations:
Implementation of new powers; limitation on loans to one borrower; final rule and request for comments; correction, 1043
Federal home loan bank system:
Liquid assets and short-term liquid assets definitions; technical amendments, 13968
Presidentially declared emergencies, 48553
Unfair or deceptive credit practices; consumer protections, 19325
Federal home loan securities:
Definitive-form securities, 35080
Federal Savings and Loan Insurance Corporation:
Accounting policy relating to acquisition, development, and construction loans (real estate activities), 18233
Acquisitions of control of insured institutions, 48686
Appraised equity capital; sunset date extended, etc., 45988
Assets classification, 53275
Brokered deposits--
Limitations applicable to institutions with low net worth, 5232
Limitations on deposit insurance; clarification of amendment, 4197
Conversions from mutual to stock form--
Acquisitions of converted institutions, 5741
Conversion proxy solicitations, 20555
Modified conversions, 20390
Criminal referrals and other reports or statements, 49345
Direct investment in real estate, service corporations, and equity securities, 6912
Finance subsidiaries of Federal associations; transactions between an insured institution and its finance subsidiary, 53260
Financial options accounting rule rescission, 23395
Financial options trading (over-the-counter); accounting; final rule and request for comments, 16459
Insurance of accounts; distribution of adjustable-rate mortgage information, 32005
Insurance premiums; payment on semiannual basis, 51837
Insurance settlement; reconsideration procedures, 49524
Loans to one borrower, 45089
Merger approvals; Principal Supervisory Agents authority, 48725
Mortgage loans, etc.; assets qualifying for deferral and amortization of gains and losses, 20395
Mortgage-backed securities (reverse repurchase agreements, etc.); policy statement, 25205
Net-worth requirements of insured institutions, 6891
Technical amendments and correction, 38636
Preferred stock as regulatory net worth, 46739
Presidentially declared emergencies, 48553
Securities offerings, 53284
Subordinated debt securities; issuance and use, 20550
Voluntary assisted-merger program; final rule and request for comments, 31837
Federal savings and loan system:
Annual statement of condition, 2662
Combinations involving Federal stock associations; de novo policy statement; and clarifications; final rule and request for comments, 16071
Finance subsidiaries of Federal associations; transactions between an insured institution and its finance subsidiary, 53260
Merger approvals; Principal Supervisory Agents authority, 48725
Presidentially declared emergencies, 48553
Mortgage loans, federally related:
State due-on-sale laws, preemption; prepayment penalties prohibition, 46744
Organization, functions, and authority delegations:
Gender-related terminology, 32004
Reporting and recordkeeping requirements, 7
Savings and loan holding companies:
Acquisitions of control of insured institutions, 48686
Finance subsidiaries of Federal associations; transactions between an insured institution and its finance subsidiary, 53260
Holding company indebtedness, 19329
PROPOSED RULES
Federal Savings and Loan Insurance Corporation:
Acquisitions of control of insured institutions, 16274
Assets classification, 27290
Correction, 28588
Conservators and receivers, 48970
Conversions from mutual to stock form; voluntary supervisory and modified conversions, 45414
Criminal referrals and other reports or statements, 25250
Finance subsidiaries of Federal associations; transactions between an insured institution and its finance subsidiary, 20422
Financial options trading (over-the-counter); accounting, 53336
Advance notice, 23432
Industry conflicts-of-interest, etc., 26576
Insurance of accounts; distribution of adjustable-rate mortgage information, 16094
Insurance premiums; payment on semiannual basis, 35239
Insurance settlement, 19185
Reconsideration procedures, 19030
Loans to one borrower, 25715
Merger approvals; Principal Supervisory Agents authority, 16271
Multiple-step stock conversions, 42958
Preferred stock as regulatory net worth, 29985
Repurchase and reverse-repurchase agreements, 49940
Securities offerings, 38839
Federal savings and loan system:
Conservators and receivers, 48970
Corporate governance; reorganization, 38832, 52482
Finance subsidiaries of Federal associations; transactions between an insured institution and its finance subsidiary, 20422
Interstate branching within District of Columbia, Maryland, and Virginia Region, 49937
Merger approvals; Principal Supervisory Agents authority, 16271
Prohibited consumer credit practices, 1863
Regulatory agenda, 18092, 44940
Savings and loan holding companies:
Acquisitions of control of insured institutions, 16274
Finance subsidiaries of Federal associations; transactions between an insured institution and its finance subsidiary, 20422
Industry conflicts-of-interest, etc., 26576
NOTICES
Agency information collection activities under OMB review, 889, 1273, 1634, 1635, 2723, 7121, 8784, 11561, 18573, 19469, 20497, 20498, 21352, 28025, 32910, 35123, 38713, 38714, 42598, 45937, 46829, 49459, 53012
Conservator appointments:
Alliance Federal Savings & Loan Association, 5685
Northlake Federal Savings & Loan Association, 11755
Sierra Federal Savings & Loan Association, 33637, 49459
Federal home loan bank services; fee schedules, 35599
Federal Savings and Loan Insurance Corporation insurance premium, 9325, 51948
Meetings:
Federal Savings and Loan Advisory Council, 14791, 15223
Meetings; Sunshine Act, 1973, 3451, 14486, 15671, 16385, 18345, 18611, 18765, 23238, 23870, 25378, 25510, 25650, 28685, 29041, 29794, 30781, 30905, 36705, 37109, 41619, 42248, 42819, 45705, 46858, 47325, 47326, 47499, 47652, 48684, 49659, 51329
Receiver appointments:
Alliance Federal Savings & Loan Association, 35320
Bell Savings Banc of Texas, 32312
Bell Savings & Loan Association, 31657
Beverly Hills Savings & Loan Association, 19092
Butterfield Savings & Loan Association, 32638
Centennial Savings & Loan Association, 37285
Century Savings Association of Kansas, 27682

Citizens Savings & Loan Association, 26841, 50846
Community Federal Savings & Loan Association of Nashville, 24838
Family Federal Savings & Loan Association, 40450
Farmers Savings Bank, 42776
Fidelity Savings & Loan Co., 3836
Glen Ellyn Savings & Loan Association, 39174
Golden Pacific Savings & Loan Association, 40450, 42776
Guaranty Savings & Loan Associaiton, 50846
Heights Savings Association, 37285
Hi-Plains Savings & Loan Association, 49459
Lewis Federal Savings & Loan Association, 47271
Magnolia Federal Savings & Loan Association, 24838
Montana Federal Savings Bank, 34008
People's Savings & Loan Association, 5314
Presidio Savings & Loan Association, 37285
Security Trust Savings & Loan Association, 45937
Southern California Savings & Loan Association, 24838
State Savings & Loan Association, 15488
Sunrise Savings & Loan Association, 30760
U.S.M. Savings Bank, F.S.B., 50846
Western Community Savings & Loan Association, 10318
Westside Federal Savings & Loan Association, 37285
Senior Executive Service:
Bonus awards schedule, 36146
Performance Review Board; membership, 29259
Applications, etc.:
American Savings Bank, FSB, 50010
Bright Banc Savings Association, 7224, 18573
Broken Arrow Federal Savings & Loan Association, 18572
Brookfield Federal Savings & Loan Association, 50010
Brunswick Federal Savings, F.A., 23194
Capital Federal Savings & Loan Association, 50010
Century Federal Savings & Loan Association, 50010
Citizens Savings Bank, FSB, 23193
Citizens Savings & Loan Association, 27682
Coast Savings & Loan Association, 50010
Commercial Federal Savings Bank, 23193
Conservative Savings & Loan Association, 50011
Detroit & Northern Savings, F.A., 3407
Downey Savings & Loan Association, 45485, 50011
East Texas Savings & Loan Association, 10109
Federal Savings Bank of Evangeline Parish, 10109
First Federal Savings & Loan Assocation of Danville, 50011
First Federal Savings & Loan Association of DeKalb County, 50011
First Federal Savings & Loan Association of Kalamazoo, 3407
First Federal Savings & Loan Association of Longview, 10109
Hampton Co-operative Bank. 23193
Heart Federal Savings & Loan Association, 50011
Hobart Federal Savings & Loan Association, 48639
Home Bank, FSB, 50011
Home Federal Savings Bank, 6248
Home Federal Savings & Loan Association of Gainsville, 41021
Home Federal Savings & Loan Association of Oklahoma City, 10109
Lawrence Federal Savings, F.A., 23193
Madison County Federal Savings & Loan Association, 20498
Metropolitan Federal Savings & Loan Association, 50012
Metropolitan Savings & Loan Association, 23193
Mid-America Federal Savings & Loan Association, 50012
Midland/Western Federal Savings & Loan Association of Colorado, 1130
North American Savings Association, 50012
North Wilkesboro Federal Savings & Loan Association, 10109
Old Colony Bank, 52381
Palemetto Federal Savings & Loan Association, 50012
Peoples Federal Savings Association, 18572
Piedmont Federal Savings & Loan Association, 50012
Poughkeepsie Savings Bank, FSB, 50012
Progressive Federal Savings Bank, 13657
Security Federal Savings & Loan Association of South Miami, 50013
Smithville Savings & Loan Association, 20499
Southern Federal Savings & Loan Association of Georgia, 8192
Talladega Federal Savings & Loan Association, 3028
Western Federal Savings Bank, 1130
Worth Federal Savings & Loan Association, 13876

FEDERAL HOME LOAN MORTGAGE CORPORATION

NOTICES
Meetings; Sunshine Act, 7691, 11988, 16386, 18765, 32827, 33147, 41290, 47326, 50036

FEDERAL LABOR RELATIONS AUTHORITY

RULES
Office addresses and geographic jurisdictions:
Dallas Regional Office, 8993
Denver Regional Office, 38636
Honolulu Sub-Regional Office; closing, 48741
NOTICES
Senior Executive Service:
Performance Review Board; membership, 344

FEDERAL MARITIME COMMISSION

RULES
Agreements by ocean common carriers, etc.:
Modifications to existing agreements; exemption, 16703
Nonsubstantive agreements exemption; correction, 6943
Transshipment agreements, 6944
Maritime carriers and related activities in domestic offshore trades:
Vessel financial reporting and recordkeeping requirements, etc., 32068
Correction, 43393
Tariffs; electronic filing, 10966
Tariffs filed by common carriers in foreign commerce of U.S.:
Co-loading practices by non-vessel-operating common carriers, 14704, 31720
Effective date deferred, 20103
PROPOSED RULES
Agreements by ocean common carriers, etc.:
Agreements subject to Shipping Act of 1984; policy, 51418
Modifications to existing agreements; exemption, 5401
Transshipment agreements; environmental assessment, 3369
Marine terminal agreements, 13617
Correction, 19727
Maritime carriers and related activities in domestic offshore trades:
Tariff publication of free time and detention charges applicable to carrier equipment interchanged with shippers or their agents, 32097
Environmental assessment, 39740
Hearing referral, 53167
Vessel financial reporting and recordkeeping requirements, etc., 23318
Maritime carriers and related activities in foreign commerce:
Agreements by ocean common carriers, etc.; independent action provisions, 10810
Extension of time, 14264
Tariff publication of free time and detention charges applicable to carrier equipment interchanged with shippers or their agents, 32097
Environmental assessment, 39740
Hearing referral, 53167
Ports and marine terminal operators, tariff filing, etc.; proceeding terminated, 3368
Regulatory agenda, 18096, 44942
Shipping Act of 1984:
Interpretation of sections 8(a) and (c) for excepted commodities, 10807
Extension of time, 14122
NOTICES
Agency information collection activities under OMB review, 2086, 4906, 32112
Agreements; additional information requests:
Israel Westbound and Eastbound Conferences, 35605
Johnson Scanstar Service Agreement, 36148
New Orleans Terminal Agreement, 26047
Three Lines' Discussion Agreement, 53198
United States Atlantic and Gulf/Ecuador Conference, 6250
Agreements filed, etc., 174, 547, 1131, 1273, 1938, 1939, 2723, 3028, 3408, 3836, 4271, 4591, 4798, 5008, 5132, 5426, 5811, 5812, 6250, 6392, 7000, 7121, 7224, 7228, 7645, 7832, 7833, 8784, 9128, 9514, 9515, 9904, 10543, 11246, 11755, 12081, 13079, 13284, 13657, 14293, 14294, 14769, 15224,

15225, 16147, 16148, 16347, 18312, 18573, 18929, 19581, 19582, 20129, 20292, 20939, 21506, 23069, 23197, 23360, 23513, 23514, 23764, 23765, 23827, 24321, 24838, 25127, 25128, 25323, 26046, 26047, 26841, 27683, 28122, 28471, 28656, 28987, 29481, 30012, 30234, 30291, 30521, 30760, 30877, 30878, 31243, 31657, 32312, 32638, 33105, 33106, 33637, 34194, 34913, 35123, 35320, 35605, 36147, 36148, 36674, 37434, 37910, 38207, 38208, 39039, 39040, 40056, 40450, 41021, 41023, 41219, 41220, 41409, 41956, 42598, 43462, 43463, 43606, 45486, 45487, 45870, 46700, 47113, 47449, 47842, 47843, 48639, 48839, 48840, 49129, 49459, 49612, 50228, 50846, 51306, 51750, 51751, 52557, 53198

Casualty and nonperformance certificates:
- Carnival Cruise Lines, Inc., et al., 20620, 50846
- Costa Armatori S.p.A. et al., 37590, 48266
- Crown Cruise Line S.A. et al., 51949
- Dominican Ferries, 48839, 48840
- Exploration Cruise Lines, Inc., 20620, 42776
- Great Pacific Cruise Lines, Inc., 31921, 32489
- Imperial Ocean Services Ltd. et al., 39040
- North Star Cruises Ltd. et al., 20620
- Ocean Cruise Lines, S.A., et al., 6050
- Pan Ocean Navigation, Inc., et al., 31921, 32489
- Regency Maritime Corp. et al., 32489, 45665
- Sky Cruises Ltd. et al., 34195
- Society Expeditions Cruises, Inc., et al., 35124
- Stena Cargo Line Ltd. et al., 39040
- Sundance Cruises, Corp., et al., 7962

Committees; establishment, renewals, terminations, etc.:
- Automated Tariff Filing and Information System Advisory Committee, 47447
  - Inquiry, 14453

Common carriers; domestic offshore and foreign trade; rates excluding certain classes of shippers; policy letter, 38896

Complaints filed:
- American Plant Food Corp. et al., 23069
- Broes Trucking Co., Inc., et al., 13284
- Carrier International Corp. et al., 3407
- Harrington & Co., Inc., et al., 37732
- Rinker Materials Corp. et al., 50345
- West Indian Co. Ltd. et al., 51749

Energy and environmental statements; availability, etc.:
- Arctic Gulf Marine, Inc., et al., 3595
- Matson Navigation Co., Inc., 9129
- Puget Sound Tug & Barge Co. et al., 13421

Freight forwarder licenses:
- A.F. Burstrom & Son, Inc., et al., 31920
- ABC Freight Forwarders, Inc., et al., 30292
- Agencia Maritima International, Inc., et al., 31921
- Air, Land, Ocean International Service, et al., 3974
- Air/Ocean International, Inc., et al., 29259
- Alpha Cargo Service Corp. et al., 19244
- American Freight Exchange, Inc., et al., 24702
- Behring International, Inc., et al., 24702
- Bremen International, Inc., et al., 49129
- Chem Group, Inc., et al., 29259
- Christensen, Ove, et al., 548
- Coleman International, Inc., et al., 5812
- Dickson, Gordon H., et al., 11756
- E.D.S. International Shipping Corp. et al., 23196
- E.H. Harrington & Co. et al., 19244
- Farrell Transportation Corp. et al., 31243, 46700
- Fitch, William P., et al., 20008
- Foot's Transfer & Storage Co., Ltd., et al., 37435
- Francesco Parisi Midwest, Inc., et al., 40601
- G.S. Engers & Co., 46830
- Gemini Export Service, Inc., et al., 30292
- General Transportation Services, Inc., et al., 20008
- Hasman Shipping Corp. et al., 48130
- International Movements, Inc., 24838
- Intersped Systems, Inc., et al., 50682
- Interstate International, Inc., et al., 23196
- J.B. Fong & Co. et al., 5813
- JEBCO International et al., 47843
- K.J. Segall Customhouse Broker, 37435
- Kamigumi U.S.A. Inc., 49879
- Kennelly & Sisman Co. et al., 548
- Kintetsu Intermodal (U.S.A.), Inc., et al., 42093
- Larmex International Freight Forwarders, Inc., et al., 51749
- LMB Transport, Inc., et al., 2087
- Logistics Forwarding Co., Inc., et al., 46513
- Mark V Systems, Inc., et al., 25464
- Peach International et al., 11756
- Ponex Freight Forwarders Corp. et al., 46700
- Pouch Forwarding Corp. et al., 34914
- Pradillo, A.R., et al., 2086
- Reid & Co. et al., 49768
- RNA Shipping Co. et al., 34914
- Rock-It Cargo, U.S.A., Inc., et al., 37435
- S.T.S. International, Inc., et al., 27682
- Sea-Trans International Corp. et al., 5813
- Sky International et al., 40235
- Suzanne's Forwarding Corp. et al., 3974
- Terra Marine Shipping Co., Inc., et al., 50682
- Tiger Intermodal, Inc., et al., 27683
- Tone Forwarding Corp. et al., 42093
- Trion Freight Forwarding Co. et al., 51451
- Uniport Shipping Corp., Inc., 25465
- Unit International Inc. et al., 19244
- Unitrans Consolidated, Inc., et al., 31243
- Valencia Shipping Agencies, Inc., et al., 48640
- Worldwide Shipping, Inc., 25464

Investigations, hearings, petitions, etc.:
- A/S Ivarans Rederi, 20499
- AABCO, Inc.; vessel operating common carriers military household goods rates, 14293
- Armada Great Lakes/East Africa Service Ltd. et al., 15223
- Atlantic and Gulf/West Coast of South America Conference, 11246
- Cari-Cargo International, Inc., et al., 19581, 32490
- Concorde/Nopal Line; U.S./Venezuela trade conditions, 7001, 14158, 19092, 20939
- Flota Mercante Grancolombiana, S.A., et al., 3408, 5426
- Interpool, Ltd., 51751
- Marcella Shipping Co., Ltd., 19470
- Matson Navigation Co., Inc., 3972, 5133
- Rainbow Navigation, Inc.; U.S./Iceland trade, 51305
- Trans-Pacific Freight Conference (Hong Kong) et al., 15978
- Trans-Pacific Freight Conference of Japan, 37053, 41023
- Trans-Pacific Freight Conference of Japan/Korea et al.; loyalty contract application, 16347
- Transpacific Westbound Rate Agreement, 29260
- U.S.-Argentina and Brazil trades; shipping conditions, 26047
- U.S.-Argentina trade; shipping conditions, 14159

Meetings:
- Automated Tariff Filing and Information System Advisory Committee, 50013

Meetings; Sunshine Act, 1670, 3451, 4298, 5349, 6309, 8436, 9940, 12108, 13693, 16579, 19106, 21689, 23238, 23870, 24085, 24609, 25510, 27889, 29296, 30331, 32345, 34034, 34579, 36514, 39070, 40470, 42248, 46534, 47326, 49151, 50984, 51772

Organization, functions, and authority delegations, 2863, 21507

Part-time career employment program; inquiry, 19806

Rulemaking petitions:
- American President Lines, Ltd., 9904, 14453
- Associated Latin American Freight Conferences et al., 6249
- New York Terminal Conference, 53012

Senior Executive Service:
- Performance Review Board; membership, 40235

Shipping Act of 1984:
- Anti-rebate certification filing requirements--
  - Failure of licensed ocean freight forwarders to comply; investigation and hearing, 23194
  - Failure of non-vessel-operating common carriers in foreign commerce, 9898
- Controlled carriers listing; update, 3407, 45937
- Shippers' association status; petition denied, 7225

Tariffs, inactive; cancellation, 2341

Water pollution program, financial responsibility; certification payments for Coast Guard, 41410

FEDERAL MEDIATION AND CONCILIATION SERVICE

RULES

Freedom of Information Act; implementation, 52917

PROPOSED RULES

Federal claims collection, 52944

Regulatory agenda, 17874, 44730

NOTICES

Grants; availability, etc.:
- Labor-management cooperation program, 2083, 47114, 52558

Meetings:
- President's Mediation and Conciliation Advisory Committee, 12869

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

NOTICES

Meetings; Sunshine Act, 1030, 2371, 3615, 4298, 5155, 5350, 6425, 7264, 8046, 8811, 10140, 11476, 12888, 13113, 13450, 19516, 23379, 24342, 24609, 25152, 26284, 32675, 33888, 34228, 34793, 36181, 36705, 37620, 37947, 38606, 41981, 43056, 43312, 46724, 47500, 50036, 51329

FEDERAL PAY, ADVISORY COMMITTEE

NOTICES

Meetings, 27329

FEDERAL PROCUREMENT POLICY OFFICE

NOTICES

Circulars, policy letters, etc.:
A-114, 11762
A-49; proposed rescission, 46849
77-2, 9145
85-1, 34778
Federal Acquisition Regulation system (Policy Letter 85-1), 34778
Federal audiovisual activities, management (Circular A-114), 11762
Management and operating contracts use (Circular A-49, proposed rescission); inquiry, 46849
Procurement:
Prime contractors qualifying additional sources report; meeting and inquiry, 5331
Small business set-asides (Policy Letter 77-2); rescinded, 9145

FEDERAL RAILROAD ADMINISTRATION

RULES

Freight car safety standards:
Defective wheel; definition, 13381
Locomotive test program; temporary waiver of compliance, 3910
Railroad locomotive safety standards; reporting and recordkeeping requirements, 6952
Railroad operating rules:
Alcohol and drug use control, 31508
Conferences, 32867
Final rule suspended, 45917
Reporting and recordkeeping requirements and correction, 38660
Revised effective dates and correction, 50888
Technical amendments and reconsideration petition granted, 43406
Reporting and recordkeeping requirements, 7918

PROPOSED RULES

Freight car safety standards:
Defective wheels; definition Hearing, etc., 9293, 9977, 15593
Railroad power brakes; special safety inquiry, 35643
Public hearing date change, 39025
Railroad power brakes and drawbars; telemetry device to provide readout of brake pipe pressure, 35640
Public hearing date change, 39024
Rear end marking device--passenger, commuter, and freight trains; inspector selection, etc., 35636

NOTICES

Environmental statements; availability, etc.:
Atlantic City Passenger Rail Project, 46382
Exemption petitions, etc.:
Alaska Railroad Corp., 31991
Algers, Winslow & Western Railway Co., et al., 31814
Atchison, Topeka & Santa Fe Railway Co., 6092, 13689, 24858, 52579
Baltimore & Ohio Chicago Terminal Railroad Co. et al., 13690
Burlington Junction Railway, 39803
Canadian Pacific, Ltd., 52579
Cape Cod & Hyannis Railroad, Inc., et al., 40647
Chicago & North Western Transportation Co., 52580
Indiana Transportation Museum et al., 10338
Iowa Interstate Railroad Co. et al., 19838
Little Rock & Western Railway Corp. et al., 48149
Metro-North Commuter Railroad Co. et al., 4607
Natchez Trace Railroad (NTR) et al., 52580
Norfolk Southern Corp. et al., 8432, 9146, 9753, 19838
Port Authority of New York & New Jersey et al., 9355
Richmond, Fredericksburg & Potomac Railroad Co., 47319
Seaboard System Railroad, 47319, 52581
Texas South-Eastern Railroad Co. et al., 15666
Union Pacific Railroad Co., 41437, 46531

FEDERAL REGISTER, ADMINISTRATIVE COMMITTEE

See also Federal Register Office.

RULES

Publication procedures; update and clarification, 12462
Publications pricing and subscription rates, 35533

FEDERAL REGISTER OFFICE

RULES

Federal Procurement Regulations System and Defense Acquisition Regulations; CFR publication announcement, 26987

NOTICES

Libraries announcing availability of Federal Register and Code of Federal Regulations, 15674
List of Acts requiring publication in the Federal Register (1984). See Reader Aids section in December 31 Federal Register issue.
Taiwan; cultural, commercial, and unofficial relations; agreements between American Institute in Taiwan and Coordinating Council for North American Affairs, 7867

FEDERAL RESERVE SYSTEM

RULES

Authority delegations:
Banking Supervision and Regulation Division Director; prior notice period waiver, 45809
Banking Supervision and Regulation Division Director et al.; capital plan submission, 16070
Reserve banks--
Applications requiring prior approval, and competitive factor reports, 51836
Applications to establish Edge corporations, 40329
Bank holding companies and change in bank control (Regulation Y):
Capital maintenance requirements, 16057
Relocation of subsidiary bank to another State; application requirement, 33913
Correction, 34802
Collection of checks and other items and transfer of funds (Regulation J):
Payor depository institutions; returning unpaid large dollar checks, 5734
Nonpayment notification provision; use of standard holiday schedule; temporary, 41335
Consumer leasing (Regulation M):
Administrative enforcement; technical amendment, 8708
Credit by brokers and dealers (Regulation T):
Employee stock ownership plans; final rule and request for comments, 26356
Options on equity securities; margin requirements, 26355
Electronic fund transfers (Regulation E):
Administrative enforcement; technical amendment, 8707
Official staff commentary update, 13180
Equal credit opportunity (Regulation B):
Administrative enforcement; technical amendment, 8707
Revision and official staff commentary, 48018
Equal employment opportunity, 18768
Extensions of credit by Federal Reserve Banks (Regulation A):
Discount rate changes, 444, 23394
Interest on deposits (Regulation Q):
Early withdrawal penalty; temporary suspension, 25413, 41672, 48552, 50160
Repurchase agreements involving money market mutual fund shares and securities, etc.; interpretation, 13010
International banking operations (Regulation K):
Edge corporations operations, etc., 39974
Membership of State banking institutions (Regulation H):
Capital maintenance requirements, 16057
Share purchase in money market mutual funds, etc.; interpretation, 13010
Practice rules:
Capital maintenance requirements, 16057

Reserve requirements of depository institutions (Regulation D):
Money market deposit accounts held by Hawaiian nonmember institutions, 51508
Repurchase agreements involving money market mutual fund shares and securities, etc.; interpretation, 13010
Reserve requirement ratios, 50284
Securities credit by persons other than banks, etc. (Regulation G):
Credit to trusts for employee stock option plans, 26354
Securities credit transactions; OTC margin stocks list (Regulations G, T, U, and X), 4495, 18230, 30931, 45398
Securities credit transactions (Regulations G, T, and U):
Face-amount certificates, 10933
Comment discussion, 24613
Truth in lending (Regulation Z):
Administrative enforcement; technical amendment, 8708
Effect on State laws; preemption determinations, 25068
Official staff commentary update, 13181
Unfair or deceptive acts or practices (Regulation AA):
Credit practices, 16695
Staff guidelines, 47036, 49524

PROPOSED RULES

Bank holding companies and change in bank control (Regulation Y):
Capital maintenance requirements; perpetual debt as primary capital, 47754
Permissible transactions with nonbank bank subsidiaries, 2057
Real estate investment; permissible nonbanking activities, 4519
Collection of checks and other items and transfer of funds (Regulation J):
Nonstandard holiday closings; float reductions, etc., 47752
Sender's agreement, recovery by Reserve Bank; liability, etc., 12310
Credit by brokers and dealers (Regulation T):
Options on equity securities; margin requirements, 5766
Electronic fund transfers (Regulation E):
Official staff commentary update, 50623
Equal credit opportunitiy (Regulation B):
Revision and official staff commentary, 10890
International banking operations (Regulation K):
Affiliate transactions of Edge corporations; restriction, 35238
Regulatory agenda, 18106, 44950
Securities credit by persons other than banks, etc. (Regulation G):
Corporate takeovers; purchase of debt securities to finance; interpretation, 50606
Credit to trusts for employee stock option plans, 10972
Truth in lending (Regulation Z):
Effect on State laws; preemption determinations, 8737
Official staff commentary update, 50794
Variable rate disclosure, 20221
Extension of time, 30955

NOTICES

ACH transaction data report; approval, 34549
Agency information collection activities under OMB review, 344, 3596, 4592, 4593, 5008, 5314, 7121, 11941, 14159, 14294, 15782, 15978, 16347, 16751, 18313, 19092, 21135, 23516, 23765, 25465, 27684, 28026, 30292, 31036, 31921, 32490, 33106, 33413, 34549, 35605, 37285, 37286, 37435, 39040, 40235, 40236, 40602, 41023, 41741, 41742, 42776, 43463, 46186, 46701, 48266, 49616, 50950, 51306, 51307, 52853, 53012
Committees; establishment, renewals, terminations, etc.:
Consumer Advisory Council; nominations, 23766
Electronic fund transfers:
Automated clearing house transactions; inquiry, 21130, 24703
Automated clearing houses; information collection request; inquiry, 21135
Book-entry securities on Fedwire transfers; inquiry, 21132, 28250
Large-dollar wire transfer systems; risk reduction; policy statement, 21120, 32493, 35606, 51749
Net settlement arrangements; inquiry, 21134, 24703
Wire transfer network; operating schedule, 47450
Federal Open Market Committee:
Domestic open market operations, authorization, 9130, 14160, 14161, 24321
Domestic policy directives, 2618, 9130, 14161, 24322, 29765, 36150, 41589, 47843
Foreign currency operations authorization, 47843
Federal Reserve Bank services; fee schedules and pricing principles:
Book-entry securities service; approval, 12405
Definitive securities safekeeping and noncash collection service, 4907
Interterritory check float recovery; fractional availability crediting option terminated, 11942
Priced service activities consolidation; noncash collection activities; inquiry, 45938
Private sector adjustment factor, 47624
Meetings:
Consumer Advisory Council, 7962, 21664, 36149
Meetings; Sunshine Act, 202, 595, 1161, 1296, 2121, 2657, 2658, 2756, 3451, 3615, 4012, 4830, 5030, 5732, 5850, 6094, 6309, 7264, 7443, 7691, 8046, 8210, 8811, 9536, 10140, 10577, 10885, 11044, 11612, 12108, 12684, 12888, 13304, 14192, 14487, 15274, 15525, 15808, 16191, 16386, 16579, 16771, 18612, 18960, 19263, 19843, 20161, 20870, 21390, 21543, 21688, 21958, 23786, 23870, 24739, 24979, 25510, 25821, 26437, 26877, 27396, 28059, 28060, 28490, 29041, 29510, 30043, 30255, 30331, 30905, 31454, 31815, 31993, 32346, 32525, 32827, 33450, 33670, 34034, 34960, 35356, 36182, 36511, 37110, 37469, 37947, 38243, 38739, 38943, 39217, 40101, 40655, 41290, 41440, 41619, 41981, 42248, 42642, 43056, 43057, 43496, 43831, 45527, 45889, 46386, 47138, 47326, 47894, 48293, 48536, 48859, 49494, 49495, 49659, 49815, 50381, 50706, 51329, 51505, 52583, 53417
National security information program; implementation, 36675
Privacy Act; systems of records, 21136
Repurchase agreement transactions; policy statement, 47451
Unfair or deceptive acts or practices:
Motor vehicles, used; decision not to adopt regulation, 11945
Bank holding company applications, etc.:
ABC Holding Co. et al., 14295
ADBANK, 48641
Alliance Bancorp, 7646, 11012
Allied Bancshares, Inc., et al., 38033
Allied Bankshares, Inc., et al., 33848
American Bancorp, Inc., et al., 20846
American Bankshares, Inc., et al., 38033
American Discount Bankholding Corp. et al., 9715
American Fletcher Corp. et al., 45938
American Interstate Bancorporation, 50345
American National Financial Corp. et al., 42776
Ameritrust Corp. et al., 41738, 49612
Amoskeag Bank Shares, Inc., et al., 34008, 36674, 39040
Amsouth Bancorporation et al., 40603
Anchor Financial Corp. et al., 26050
Anderson Bancshares, Inc., et al., 53199
Angola State Bancorp et al., 2087
Area Bancshares Corp. et al., 53396
Asociated Bank Shares Corp. et al., 28472
AT Indiana Corp. et al., 53395
Atlantic Bancorporation et al., 1939
B-Banc Corp., 12870
Baltimore Bancorp, 2863, 37912
Banc One Corp. et al., 20008, 20499, 41023, 41024
Banca Commerciale Italiana et al., 175, 47271
Banco Safra S.A. et al., 46184
Bancorp of Mississippi, Inc., 47449, 49460
Bancshares 2000, Inc., et al., 18314
BancTenn Corp. et al., 23765
Bank of Boston Corp. et al., 11462, 15225, 39174, 41220, 41957, 51602
Bank of Middlebury Corp. et al., 34195
Bank of Montreal et al., 30761
Bank of New England Corp. et al., 30235, 48642, 52854
Bank of New Hampshire Corp. et al., 7833
Bank of New York Co., Inc., 51603
Bank of the Rockies Bancshares, Inc., 2724
Bank of Virginia Co. et al., 345, 19093, 34753, 48130
BankAmerica Corp. et al., 5133, 13658, 19471
BankEast Corp. et al., 4908, 5426
Bankers Trust New York Corp. et al., 548, 14456, 16348, 21664, 23197, 25465, 30235
Bankmanagers Corp. et al., 1940
Bankmont Financial Corp. et al., 32768

Banks of Mid-America, Inc., 31426
BankVermont Corp. et al., 1940
Bankvest, Inc., et al., 37053
Barclays Bank PLC et al., 10856, 13877
Barclays U.S. Holdings Inc. et al., 33413
Barclays USA Inc. et al., 175
Barnett Banks of Florida, Inc., et al., 19471, 46185
Bath National Corp. et al., 11463
BayBanks, Inc., et al., 13877, 50229
BC Corp. of Detroit et al., 28657
Bellcorp, Inc., 37053
Benson Investment Co., 48267
Benton Capital Corp., 32768
Bergen Bank A/S, 51603
Big Coal River Bancorp, Inc., et al., 31427
Binger Agency, Inc., et al., 31658
BJS, Inc., et al., 47272
BNH Bancshares, Inc., et al., 13876
BoRC Financial Corp. et al., 24578, 26842
Bremer Financial Corp. et al., 16148
Brunswick Bancorp et al., 35124
Buffalo Bancshares, Inc., et al., 14295
C&P Bank Corp. of Pensacola et al., 11562
Calumet National Corp., 48495
Canebrake Bancshares, Inc., et al., 28987
Canton Bancshares, Inc., et al., 46185
Capital City Bank Group, Inc., et al., 48267
Cayman Investment Co. (Delta) et al., 26843
CB Financial Corp. et al., 51604
CB&T Bancshares, Inc., et al., 9515, 18574
CBT Corp., 16349
CCNB Corp. et al., 43464
CDB Corp. et al., 5009
Centennial Beneficial Corp., 28987, 43607
Central Arizona Bancorp, 40602
Central Banc System, Inc., 20941
Central Bancshares, Inc., 52856
Central Banking System, Inc., 21352
Central Fidelity Banks, Inc., et al., 4909, 31774
Central Jersey Bancorp et al., 11247
Chase County Bankshares, Inc., et al., 28472
Chase Manhattan Corp. et al., 3837, 10543, 14770, 15979, 18930, 19245, 21507, 31427, 42094, 45665, 50958
Chattahoochee Financial Corp. et al., 42093
Chemical International Bank, 45160
Chemical New York Corp. et al., 2087, 21666
Citadel Bankshares, Inc., et al., 29482
Citicorp et al., 11561, 15488, 20847, 26409, 27684, 28249, 34754, 39041, 42598, 51604
Citizens Bancshares of Loyal, Inc., et al., 35866
Citizens Banking Corp., 40057
Citizens Bankshares, Inc., 14455
Citizens Corp. et al., 19582
Citizens Dimension Bancorp, Inc., et al., 28841
Citizens Financial Corp., 8192, 15979
Citizens Financial Group, Inc., et al., 1941, 27848
Citizens & Southern Acquisition Corp. et al., 50346
Citizens & Southern Georgia Corp. et al., 18314, 36148, 38585
Citizens State Bancorp et al., 35320
City Banc Corp. et al., 21140
City Holding Co. et al., 33414
Claiborne Holding Co., Inc., et al., 28249
Cloverdale Bank Corp. et al., 45666
CNB Corp. et al., 26410
Colony Bankcorp, Inc., 36151
Colpatria-Sociedad Columbiana de Capitalizacion, S.A., 31036
Colson, Inc., et al., 36484
Colt Investments, Inc., 4271
Comerica Inc., 19245, 20620
Commerce Bancshares, Inc., 32491
Commerce & Energy Bank Holding Co. et al., 30878
Commerce Exchange Corp. et al., 50229
Commerce Group, Inc., et al., 3975
Commercial Bancshares Inc. et al., 8395, 13878, 18315, 40057, 41024
Commonwealth Bancshares, Inc., et al., 38714, 43788
Commonwealth Bancshares Corp. et al., 11013, 23197
Commonwealth Trust Bancorp, Inc., et al., 24702
Communicorp, Inc., et al., 49613
Community Bancorp, Inc., et al., 36149
Community Bancshares, Inc., et al., 15489
Community Bank System, Inc., et al., 31774
Community Bankshares, Inc., et al., 38209
Community Financial Services, Inc., et al., 42094
Community Holding Co. et al., 33414
Compagnie Financiere de Suez et al., 1941, 16752
Consorcio Invesionista Mercantil Y Agricola C.A. et al., 31775
Cook Investment, Inc., 176
Corestates Financial Corp. et al., 20849, 45666
Cornerstone Financial Corp. et al., 53396
Countricorp et al., 18573
Creditbank Shares, Inc., et al., 32491
Dakota Co., Inc., 51949
Delaware National Bancshares Corp. et al., 3975
Denmark Bancshares, Inc., et al., 13079
Deposit Guaranty Corp. et al., 23828
DMB Corp., Inc., 28123
Dominion Bankshares Corp. et al., 9905
DuPage Financial Corp. et al., 15226
Eagle National Holding Co., Inc., et al., 31658
Elders Finance International, Inc., 176
Ellinwood Bankshares, Inc., 37756
Elm Marine Bancshares, Inc., et al., 2343
Elston Corp. et al., 16349
Equimark Purchasing Partners et al., 12082
Equitable Bancorporation, 28657
Evangeline Bancshares, Inc., et al., 7002
F&M Bankshares of Hill City, Inc., 8396
F&M National Corp., 30761
F.N.B. Corp. et al., 12870
Fairfax Bancshares, Inc., et al., 8192
Fairlawn Plaza Investments, Inc., 51750
FAM Financial, Inc., 5813
Farmers & Merchants Bancorp, Inc., et al., 20292
Farmers & Merchants Walterboro Bancshares Corp. et al., 45870
Farmers National Bancorp et al., 1131
FBC Bancshares Inc. et al., 5134
FCS Financial Corp. et al., 13879
Fidelcor, Inc., et al., 1941, 2863, 20009, 35321, 48641
Fifth Third Bancorp et al., 10857, 12650, 23515, 37590
Financial Bankshares, Inc., et al., 3596
Financial Management Bancshares of West Virginia, Inc., et al., 38714
Financial Trust Corp. et al., 30879
Finest Financial Corp. et al., 38586
Firstnabanco, Inc., et al., 29267
First American Bancorp et al., 7962
First American Bank Corp., 5814, 13285
First Antlers Bancorporation, Inc., 8674
First Atlanta Corp. et al., 13285
First Bancorporation of Ohio et al., 25785
First Bank Shares of the South East, Inc., et al., 13659
First Bank System, Inc., et al., 34009, 50683
First Banking Co. of Southeast Georgia et al., 41741
First Bankshares of St. Martin, Ltd., et al., 20500
First Busey Corp., 50684
First Camden Bancorporation et al., 24702
First Citizens Bankshares, Inc., et al., 33848
First Colebrook Bancorp, Inc., et al., 1274
First Colonial Banchares Corp., 46830
First Commerce Bancshares, Inc., 23514
First Commerce Corp. et al., 9515, 45871, 46830
First Community Financial Corp. et al., 4592
First Cordell Banco, Inc., 7002
First Eastern Corp. et al., 23828, 40058
First Exchange Corp., 35321
First Fidelity Bancorp, Inc., et al., 40604
First Fidelity Bancorporation et al., 49130, 49460
First Financial, Inc., 10318
First Financial Bancorporation, 41957
First Franklin Corp. et al., 21353, 24322
First Guthrie Bancshares, Inc., et al., 5685
First Indiana Bancorp et al., 35606, 37911, 39041
First Interstate Bankcorp, 3976
First Interstate Corp. of Wisconsin et al., 25128
First Jersey National Corp. et al., 7963, 16752, 18574, 23514, 26842
First Leesport Bancorp, Inc., et al., 33106
First Maryland Bancorp et al., 43464
First National Bancorp et al., 21665
First National Bancorp in Fort Lee et al., 11013
First National Bancshares of Louisiana, Inc., 24945
First National Cincinnati Corp. et al., 9905
First National Corp. of Jacksonville et al., 8785
First National Lincoln Corp. et al., 12651
First National Shares of Louisiana et al., 23514
First National State Bancorporation et al., 14159
First National Talladega Corp. et al., 25785
First National Vermont Corp. et al., 10109
First New England Bankshares Corp. et al., 14455
First NH Banks, Inc., et al., 7386, 28472, 45160
First Pennsylvania Corp. et al., 48494
First Perry Independent Bancorp, Inc., et al., 47628
First Railroad & Banking Co. et al., 20940, 30879, 31775
First Railroad & Banking Co. of Georgia et al., 7387, 25625, 37436
First Regional Bancorp, Inc., et al., 47272
First Sarasota Bancorporation et al., 31036
First Security Corp. of Kentucky et al., 26623
First Union Bancorp. et al., 890
First Union Corp., 31427

First United Bancorp et al., 51605, 52854
First United Corp. et al., 2342
First United Financial Services, Inc., et al., 4798
First University Bancorp, Inc., et al., 549
First Vermont Financial Corp. et al., 42224
First Virginia Banks, Inc., et al., 15638, 23515, 38033
First Western Bancshares, Inc., 15783
First Wisconsin Corp. et al., 25323, 40602
Firstier, Inc., 49614
FirstPlace Financial Corp. et al., 20940
Firstway Financial, Inc., et al., 8395, 10318
Fishkill National Corp., 26844
Fleet Financial Group, Inc., et al., 7122, 41739
FMB of South Carolina Bancshares, Inc., et al., 43465
FNB Bankshares et al., 9326
FNB Corp. et al., 9516
FNB Shares, Inc., et al., 49613
Forsyth Bancshares, Inc., et al., 20849
Fourth Financial Corp., 38034
Franklin Capital Corp. et al., 34914
Franklin First National Corp. et al., 50230
Freedom Valley Bancshares, Ltd., et al., 32638
FSB Bancorporation et al., 14160
FWB Bancorporation et al., 47272
Gary-Wheaton Corp. et al., 43465
General Bancshares Corp., 38715
GHW Associates et al., 7228
Gibson Investment Co., 30012
Grand Ridge Bancorporation, Inc., et al., 1274
Great Falls Bancorp. et al., 13286
Greater Metro Bank Holding Co. et al., 2343
Green Mountain Financial Services Corp. et al., 999, 30522, 49614
Grupo Financiero Popular, S.A., et al., 24839, 28842
Guaranty Bancshares Corp. et al., 50230
Gulf Coast Holding Corp. ESOT et al., 8786
Gulf First Holding Corp. et al., 21943
Guyan Bancshares, Inc., et al., 18574
Hamptons Bancshares Inc. et al., 24045
Hartford National Corp. et al., 4272, 26051
Henry County Bancshares, Inc., 7387
Home Interstate Bancorp, Inc., 32491
Hongkong & Shanghai Banking Corp. et al., 28123, 37054
Horizon Bancorp, 549, 3976, 21141, 51605
Howard Bancorp et al., 37286
HPK Financial Corp. et al., 51598
Hub Bancshares, Inc., et al., 34195
Hudson Financial Associates et al., 33107
Huntington Bancshares, Inc., et al., 41740, 49461, 53013
Hyden Citizens Bancorp, Inc., et al., 6392
Independent Banks of Virginia, Inc., 28124
Indian Head Banks, Inc., et al., 14160, 32492
Indiana National Corp. et al., 27490
Industrial Bank of Japan, Ltd., 43466
Intermountain Bancshares, Inc., et al., 3029
Investark Bankshares, Inc., 3978
Irving Bank Corp. et al., 46186, 47628
Irwin Union Corp., 13080, 18575
J. Carl H. Bancorporation, 27490
J.E. Cooney Co. et al., 24579
J.P. Morgan & Co. Inc. et al., 23198, 25626, 41025
Jefferson Holding Corp. et al., 27849
Jesup Bancshares, Inc., 11944
Kentucky Bancorporation, Inc., et al., 50346
Kentucky Southern Bancorp, Inc., et al., 7646
Key Bancshares of New York Inc., 24703, 26268
Key Banks Inc. et al., 10857
Keycorp et al., 48131
Keystone Bancshares, Inc., 15783, 52853
Lakeland Financial Corp. et al., 7122
Landmark Bancshares Corp., 37590
Lawrence County Bancshares, Inc., 32769
Lincoln Bancshares, Inc., et al., 3837
Lincoln Financial Corp. et al., 40058, 51950
Lincolnshire Bancshares, Inc., et al., 19246
Louisiana Bancshares, Inc., et al., 5314, 10318, 30236, 37286, 43466, 47449, 47843
Madison Bank Corp. et al., 24045
Magnolia Bancshares, Inc., 45161
Malden Trust Corp. et al., 20009
Mansura Bancshares, Inc., et al., 13659
Manufacturers Hanover Corp. et al., 9129, 35866, 42777, 47273
Manufacturers National Corp. et al., 13286
Marathon Bancorp, 2724
Marine Corp. et al., 15488, 24046, 51307
Marine Midland Banks, Inc., et al., 46830
Marion National Corp., 25128
Marshall & Ilsley Corp. et al., 5813, 9715, 9906, 11247, 20129
Maryland National Corp., 1942, 41026
MCORP et al., 3977, 10110, 27685, 34754, 35124
MCorp Financial, Inc., 25129
Mellon Bank Corp. et al., 16149, 23515, 45161, 47454, 49130
Mercantile Bankshares Corp. et al., 6392, 31037
Merchants Bancorp, Inc., et al., 12404
Merchants Bancshares, Inc., et al., 3977
Merchants Capital Corp., 9516
Merchants National Corp. et al., 37054
Meridian Bancorp, Inc., et al., 51598
Metro Bancorp, Inc., et al., 45871
Miami Corp. et al., 52854
Mid-America Bancorp, 41740
Middlebury National Corp., 38210
Midland Bancorporation et al., 15784
Midland Bank, Plc., 3838
Midlantic Banks Inc. et al., 42224, 43788
MidSouth Bancorp, Inc., et al., 19583, 20293
Midwest Financial Group, Inc., 51599
Mifflinburg Bancorp, Inc., et al., 41221
Miners National Bancorp, Inc., et al., 26843
Mitsubishi Bank Ltd. et al., 52853
Mitsubishi Trust & Banking Corp. et al., 51599
MNB Bancshares, Inc., et al., 5010
Mobile National Corp. et al., 50683
Naperville Financial Corp. et al., 32493
National American Bancorp, Inc., et al., 37055
National Banc of Commerce Co. et al., 30013
National Commerce Corp. et al., 23829, 25324
National Mercantile Bancorp, 35322
National Penn Bancshares, Inc., et al., 345, 5814, 19472
National Westminister Bank PLC et al., 43790
NBD Bancorp, Inc., 46349
NCNB Corp. et al., 550
NEB Corp. et al., 23199
New Bedford Community Bancorp et al., 34754
New Danville Bancorp, Inc., et al., 40236
New Hampshire Savings Bank Corp. et al., 19472
New Superior Financial Corp. et al., 36485, 37732
New Tripoli Bancorp, Inc., et al., 51600
Newport Pacific Bancorp, 20293
NKB, Inc., et al., 43788
NorBanc Group, Inc., 34915
Norstar Bancorp, Inc., et al., 8396, 37436
North American Bank Corp., 14455
North Community Bancorp, Inc., et al., 27359, 28124, 28473
North Georgia Bancshares, Inc., 33107
North Salem State Bancorporation et al., 49462
Northern Kentucky Trust Corp., Inc., et al., 49130
Northern Trust Corp., 4799, 5814
Norwest Corp. et al., 12082, 18930
NS&T Bankshares, Inc., et al., 7229
O.C.B. Bancorp et al., 3597
Oak Hill Financial, Inc., 20849
Old Kent Financial Corp. et al., 49614
Olde Windsor Bancorp, Inc., et al., 4272, 48132
One Valley Bancorp of West Virginia, Inc., et al., 19808, 28025
Osborne Investments, Inc., 45162
Oxford Agency, Inc., 1274
Pacific Regency Bancorp, 5685
Park Financial Corp. et al., 8675
Peconic Bancshares, Inc., et al., 25627, 37911
Pemi Bancorp, Inc., et al., 20129
Penn Bancshares, Inc., et al., 3838
Pennbancorp et al., 39174, 41958
Peoples Bancshares Corp. et al., 46830
Peoples Bankshares, Inc., 8786
Peoples Financial Corp., Inc., et al., 2863, 7123
Philadelphia National Bank, 20500
Pierson Bancorporation, Inc., et al., 13080
Pioneer American Holding Co. Corp. et al., 9129
PNC Financial Corp. et al., 1131, 7834, 10858, 13878, 26269, 33849, 43789
Ponce Bancorporation, Inc., et al., 5427
Post-Och Kreditbanken, Pkabanken, 39175
Potomac Bancorp, Inc., et al., 45872
Prattville Financial Services Corp. et al., 50959
Provident Bancorp, Inc., 10318
PT Investment Corp., 4272
Quality Financial Services Corp., 49615
Rainier National Bank, 10858, 13660
Republic New York Corp. et al., 12871
RepublicBank Corp., 21353
RIHT Financial Corp. et al., 177, 36150
Rurban Financial Corp., 51600
Ruston Bancshares, Inc., 28025, 31244, 32312
Sanwa Bank Ltd., 47116
Saver's Bancorp, Inc., et al., 10859
Schroders Inc. et al., 3411
Schulyer Bancorporation, 29765
Seconn Holding Co. et al., 6251
Security Pacific Corp., 1942, 8193, 10319, 12404, 23516, 40058

Security State Agency of Aitkin, Inc., 31037
Selden Investment, Inc., 7646
Shawmut Corp. et al., 51601
Shelby Bancshares, Inc., et al., 11944
Signal Hills Associates, Inc., 34550
Sloan State Corp. et al., 43790
Smith Associated Banking Corp. et al., 50347
Society Corp. et al., 19808, 20940, 50231
South County Bancshares, Inc., et al., 38897
Southern Jersey Bancorp et al., 23766
Southern National Corp. et al., 45666
SouthTrust Corp. et al., 5685
Southwest Financial Corp., 8786
Southwest First Community, Inc., 32639, 34196
Sovran Financial Corp. et al., 8675, 45872, 49615
St. Francis Bancshares, Inc., et al., 25466
St. James Bancorp, Inc., 48641
Standard Bancshares, Inc., 51602
Starr Banc Shares, Inc., 41221
State National Bancorp, Inc., et al., 11757
State Street Bank & Trust Co., 3978
Sterling Bancshares, Inc., 31775
Summa Bank Corp. et al., 24945
Summit Holding Corp. et al., 40059
Sun Banks, Inc., et al., 26269, 27360
Suntrust Banks, Inc., 50959, 51602
Susquehanna Bancshares, Inc., et al., 30292
Sutton Bancshares, Inc., et al., 19093
Swiss Bank Corp. et al., 46831
Tennessee Eastern Bancshares, Inc., 6251
Texas American Bancshares, Inc., et al., 52859
Texas Commerce Bancshares, Inc., et al., 9716
Third Illinois Bancorp, Inc., 177
Third National Corp. et al., 14456
TN Bancshares, Inc., 39041
U.S. Bancorp, 30293, 34009
Union National Bancorp of Barbourville, Inc., et al., 21666
Union National Corp. et al., 43004
United Bancorp of Kentucky, Inc., et al., 14769, 52855
United Banks of Colorado, Inc., 19246
United City Corp., 12405
United Community Corp., 7647
United Counties Bancorporation et al., 24323
United Jersey Banks et al., 41958, 46350
United Missouri Bancshares, Inc., 47450
United Virginia Bankshares Inc. et al., 32493, 43005
USBANCORP, Inc., et al., 31428
UST Corp. et al., 25324
Valley Bancorporation, 15638
Valley Bancshares, Inc., 13081
Valley Utah Bancorporation, 25627
Verbanc Financial Corp. et al., 27685, 27849
Vernon Bank Corp. et al., 16348
Wachovia Corp. et al., 21665, 23360
Walker Ban Co., 50232
Washington County Bancshares, Inc., 4593
Water Tower Bancorp, Inc., et al., 18930
Wayne Bancorp, Inc., et al., 46350
Weleetka Bancorporation, Inc., 26623
Wells Fargo & Co., 46831, 47274
Wenona Bancorp, Inc., et al., 31776
West Brook Bancshares, Inc., 3029, 9906
Western Bancorporation, Inc., et al., 38897
Western Kansas Investment Corp., Inc., 8676
Woodville Bancshares, Inc., 50684

FEDERAL TRADE COMMISSION

RULES

Antitrust Improvements Act; notification and report form for certain mergers and acquisitions, 46633
Appliances, consumer; energy cost and consumption information in labeling and advertising:
  Clothes washers; comparability ranges, 23285
  Furnaces; comparability ranges, 33514
  Refrigerators, refrigerator-freezers, and freezers; comparability ranges, 7908
  Representative average unit energy costs for residential energy sources, 12786
  Room air conditioners; comparability ranges, 49679
  Water heaters; comparability ranges, 42902
Credit practices; staff guidelines for exemption proceedings, 19335
Funeral industry practices; staff guidelines, 12521, 28062
  Comment analysis, 28081
Motor vehicles, used; trade rule for sales:
  Effective date stayed in Wisconsin, 20094
    Temporary stay of effective date extension, 37345, 50162
  Reporting and recordkeeping requirements, 10471
Organization and functions:
  Monetary claims against Commission; legal authority and claims officer, 16699
Procedure and practice rules:
  Adjudicative proceedings, 41485
  Briefing cross appeals, brief format, and service of process, 28095
  Investigations and adjudications; requirements for motions, 42671
  Miscellaneous revisions and corrections, 53302
  Publicly accessible documents, 50779
  Subpoenas to employees--
    Interim, 25699
    Interim rule confirmed, 36048
Prohibited trade practices:
  Allied Corp. et al., 28374
  American Academy of Orthopaedic Surgeons, 15412
  American Motors Corp. et al., 9795
  American Society of Sanitary Engineering, 43695
  Associated Dry Goods Corp., 21587
  Associated Mills, Inc., 33024
  Atlas Supply Co. et al., 43695
  B.A.T. Industries, Ltd., et al., 2277
  Bricklin, Barry, Dr., 45990
  Brog, Larry, 52767
  California Medical Association, 19334
  Chesebrough Pond's Inc., 50781
  Chevron Corp. et al., 13969
  Columbian Enterprises, Inc., et al., 49835
  Commodore Business Machines, Inc., 13968
  Craftmatic/Contour Organization, Inc., et al., 27578
  Decorating Products Association of Central Florida, 33025
  Descent Control, Inc., 21588
  Echlin Manufacturing Co. et al., 28902
  Great Lakes Carbon Corp. et al., 25549
  Hawaii Dental Service Corp., 33025
  Hospital Corp. of America, 42010, 46753
  International Harverster Co., 2277
  International Shoe Co. et al., 7037
  InterNorth, Inc., and Houston Natural Gas Corp., 43697
  John C. Lincoln Hospital & Health Center medical staff, 46423
  Korman Corp., 26981
  Louisiana State Board of Dentistry, 38514
  Luria Brothers & Co., Inc., et al., 7037, 15413
  Michigan Optometric Association, 43697
  Middle Atlantic Conference, 28374
  Minneapolis, MN, 23284
  Montana Board of Optometrists, 38514
  Multiple Listing Service of Greater Michigan City Area, Inc., 42010
  National Association of Temporary Services, Inc., 48749
  National Customs Brokers & Forwarders Association of America, Inc., 41677
  New Orleans, LA, 4203
  Oklahoma Optometric Association, 49834
  Orange County Board of Realtors, Inc., et al., 42011
  P. Leiner Nutritional Products Corp. et al., 21801
  Salomon/North America, Inc., 33026
  Sentronic Controls Corp. et al., 13189
  Service One International Corp. et al., 48749
  Southwest Sunsites, Inc., et al., 6932, 34802
  Trans-Continental Industries, 41677
  Tristate Household Goods Tariff Conference, Inc., 28902
  Ward Corp. et al., 16226
  Wein Products, Inc., et al., 34803
  Weller, Charles E., 4204
  Weyerhaeuser Co. et al., 51670
  Wright-Patt Credit Union, Inc., 46757
  Young & Rubicam/Zemp, Inc., 23406
Textile Fiber Product Identification Act:
  Country of origin labeling and mail order advertising, 15100
Warranties:
  Informal dispute settlement procedures; exemption, 27936
Warranties and guarantees; advertising guidelines, 18462
  Correction, 20899
Wool Products Labeling Act:
  Country of origin labeling and mail order advertising, 15100

PROPOSED RULES

Appliances, consumer; energy cost and consumption information in labeling and advertising:
  Regulatory review, 13820
Credit practices:
  Exemption request; State of New York Banking Department, 50178
Credit practices; exemption from trade rule; Wisconsin, 46082
Fuel economy advertising for new automobiles; guide amendments, 11378
  Extension of time, 46300
Funeral industry practices; statewide exemption petitions:
  Arizona, 46266
  Texas, 46271
Health spas; staff report publication, 2829
  Extension of time, 11709, 21454

Hearing aid industry; results of survey of recent hearing aid purchasers, 32088
Home insulation, labeling and advertising; regulatory review; comment summary, 13246
Motor vehicles, used; trade rule for sales; exemption in Wisconsin, 21269
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 32443
Octane certification and posting rule; regulatory review, 13048
Ophthalmic practice, commercial, 598
Extension of time and hearings postponed, 23996
Premerger notification:
Reporting and waiting period requirements, 38742
Extension of time, 43407
Procedure and practice rules:
Adjudicative proceedings, 31385
Investigations and adjudications; requirements for motions, 31610
Prohibited trade practices:
Allied Corp. et al., 12314
Associated Dry Goods Corp., 7348
Associated Mills, Inc., 4980
Bass Brothers Enterprises, Inc., et al., 51398
Brog, Larry, 37686
Buckingham Productions, Inc., et al., 28592
Columbia Enterprises, Inc., et al., 35565
Craftmatic/Contour Organization, Inc., et al., 2065
Decorating Products Association of Central Florida, 20107, 23316
Descent Control, Inc., 4983
Federated Department Stores, Inc., 34859
Hawaii Dental Service Corp., 16708
Health Care Management Corp. et al., 41693
Hospital Corp. of America, 29696
InterNorth, Inc., and Houston Natural Gas Corp., 25255
John C. Lincoln Hospital & Health Center medical staff, 29699
John William Costello Associates, Inc., et al., 48789
Kaiser Aluminum & Chemical Corp., 19697, 38548
Kelly, Roy B., 48791
Korman Corp., 13240
Louisiana State Board of Dentistry, 24200
Michigan Optometric Association, 31387
MidCon Corp. et al., 42032
Montana Board of Optometrists, 24203
Multiple Listing Service of Greater Michigan City Area, Inc., 23437
National Association of Temporary Services, Inc., 26373
National Customs Brokers & Forwarders Association of America, Inc., 26375
National Energy Associates, Inc., et al., 47063
North American Philips Corp., 49060
Oklahoma Optometric Association, 37229
Orange County Board of Realtors, Inc., et al., 23440
P. Leiner Nutritional Products Corp. et al., 6005
Rhode Island Board of Accountancy, 49063
Rush-Hampton Industries, Inc., 4987
Saab-Scania of America, Inc., 50800
Service One International Corp. et al., 30717
Southwest Sunsites, Inc., et al., 20432
Sunbeam Corp., 49058
Trans-Continental Industries, 28951
Weider Health & Fitness, Inc., et al., 33778
Wein Products, Inc., et al., 23313, 24206
Wright-Patt Credit Union, Inc., 19536
Wyoming State Board of Registration in Podiatry, 46453
Young & Rubicam/Zemp, Inc., 4990
Regulatory agenda, 18118, 44962
Retail food store advertising and marketing practices, 43224
Extension of time, 7350
Textile Fiber Product Identification Act:
Generic name; establishment requests, 21854, 21855
Warranty terms, written; pre-sale availability, 18495

NOTICES
Agency information collection activities under OMB review, 4910, 16349, 32639, 50232
Authority delegations:
Associate Director for Advertising Practices; health warning rotation plans review under Comprehensive Smoking Education Act, 41594
Cement industry vertical mergers; enforcement policy rescission, 21507
Cigarettes:
Comprehensive Smoking Education Act; manufacturer and importer obligations to submit rotational health warning plans, 4909
Tar, nicotine, and carbon monoxide content; listing, 4910
Correction, 5427
Testing methodology and procedures; inquiry, 41589, 51606
Food distribution industries mergers; enforcement policy rescission, 21508
Line of business program; 1977 annual line of business report, 29482
Meetings; Sunshine Act, 1973, 3615, 5350, 5467, 8436, 12685, 15671, 21163, 25650, 26072, 26284, 26437, 27889, 35632, 37306, 37947, 46386, 47138, 47894
Premerger notification waiting periods; early terminations, 1635, 3597, 6050, 7963, 9907, 10544, 11463, 13081, 15489, 16753, 20130, 23361, 24704, 27058, 28473, 29482, 30761, 32639, 33637, 36151, 38034, 41593, 43791, 46187, 47117, 49616, 52560, 53397

FINANCIAL MANAGEMENT SERVICE

See Fiscal Service.

FINE ARTS COMMISSION

NOTICES

Meetings, 2705, 8180, 12071, 15773, 21638, 27840, 32243, 38035, 42747, 48267, 51739

FIREARMS AND AMMUNITION

See Alcohol, Tobacco and Firearms Bureau.

FISCAL SERVICE

RULES

Collection and deposit of payments to Federal agencies; receipts management and cash management improvements fund operation, 35547
Federal claims collection; waiver of late charges, 6343
Fiscal agency checks; interim, 42518
Correction, 46284
Government Losses in Shipment Act, claims and declaration of valuables; CFR Parts redesignated, 51394
Letter of credit-Treasury financial communications system; allocation of responsibilities and liabilities; interim, 18244
Nomenclature changes, 263
Surety companies; financial guidelines for qualification, 53313

PROPOSED RULES

Book entry Treasury bonds, notes, and bills, 49412
Collection and deposit of payments to Federal agencies; receipts management and cash management improvements fund operation, 12333
Regulatory agenda, 17620, 44491
Surety companies; financial guidelines for qualification, 36115

NOTICES

Federal debt collection and discount evaluation; Treasury current value of funds rate, 4609, 18761, 31668, 45524, 46383
Interest rates:
Renegotiation Board and prompt payment rates, 27525
Surety companies acceptable on Federal bonds:
Aetna Fire Underwriters Insurance Co., 30903
Aetna Insurance Co., 30903
AIU Insurance Co., 47651
Allied Fidelity Insurance Co., 1158
American Bankers Insurance Co. of Florida, 1157
American Credit Indemnity Co., 34577
American Druggists' Insurance Co., 1157
American Home Assurance Co. et al., 31452
American Resources Insurance Co., Inc., 37468
American Surety & Casualty Co., 20869
Bond Safeguard Insurance Co., 7027
Cal-Farm Insurance Co., 15807
Canadian Indemnity Co., 30904
Carlisle Insurance Co., 11781
Classified Insurance Corp., 47651
Covenant Insurance Co., 30903
Delta America Insurance Co., 34577
Eastern Indemnity Co. of Maryland, 12887
Far West Insurance Co., 11781
Federated Mutual Insurance Co., 15807
First California Property & Casualty Insurance Co., 11781
Florida Farm Bureau Mutual Insurance Co., 30903
Gramercy Insurance Co., 11782
Guard Casualty & Surety Insurance Co., 20869
Ideal Mutual Insurance Co., 29038
International Business & Mercantile Reassurance Co., 41288
Iowa National Mutual Insurance Co., 43830, 50033

ITT Lyndon Property Insurance Co., 3449
Midland Insurance Co., 24735
Millers National Insurance Co., 47496
Mission Insurance Co., 24735
National-Ben Franklin Insurance Co. of Michigan et al., 50033
North East Insurance Co., 21010, 21956
Northern Insurance Co. of New York, 30904
Occidental Fire & Casualty Co. of North Carolina, 31669
Prestige Casualty Co., 37755, 41781
Puritan Insurance Co., 24735
Skandia America Reinsurance Corp., 42817
Unigard Security Insurance Co., 15806
Union Indemnity Insurance Co. of New York, 16770, 45188
Universal Surety of America, 42818
Van Tol Surety Co., Inc., 34577
Wilshire Insurance Co., 31669
Worldwide Underwriters Insurance Co., 24735
Surety companies acceptable on Federal bonds; annual list, 27104
U.S. Treasury book-entry securities held at Federal Reserve Banks; fee schedule, 12434

FISH, FISHING

See Fish and Wildlife Service.
Food and Drug Administration.
National Oceanic and Atmospheric Administration.
National Park Service.

FISH AND WILDLIFE SERVICE

RULES
Endangered and threatened species:
Alabama beach mouse, etc., 23872
Amber darter and Conasauga logperch, 31597
American alligator, 25672, 45407
Ash Meadows, CA and NV; plant and insect species, 20777
Beautiful goetzea, 15564
Big Spring spinedace, 12298
Blue Ridge goldenrod, 12306
Brown pelican, 4938
Carex specuicola, 19370
Cochito, 1056
Colorado squawfish and woundfin, 30188, 39691
Desert dace, 50304
Florida pine rockland plants, 29345
Fragrant prickly-apple, 45618
Fresno kangaroo rat, 4222
Grizzly bear, 35086
Guadalupe fur seal, 51251
Hawaiian gardenia, 33728
Hutton tui chub and Foskett speckled dace, 12302, 33951
Incidental taking permit applications; and prohibition for removal of plants from areas under Federal jurisdiction, 39681
Lakela's mint, 20212
Large-flowered fiddleneck, 19374
Last Chance townsendia, 33734
Least tern, 21784
Loch Lomond coyote-thistle, 31187
Longspurred mint and scrub mint, 45621
Maguire daisy, 36089
Maguire primrose, 33731
Mancos milk-vetch, 26568, 30423
Miccosukee gooseberry, 29338
Minnesota gray wolf, 50792
Modoc sucker, 24526
Niangua darter, 24649
Northern flying squirrel, 26999
Owens tui chub, 31592
Palau fantail flycatcher, ground-dove, and owl, 37192
Piping plover, 50726
Prickly-ash, 51867
Rhizome fleabane, 16680
Ruth's golden aster, 29341
San Benito evening-primrose, 5755
San Mateo thornmint, 37858
Short's goldenrod, 36085
Slender rush-pea, 45614
Tar River spiny mussel, 26572
Vahl's boxwood, 32572
Warner sucker, 39117
White River spinedace, 37194
White River springfish and Hiko White River springfish, 39123
Endangered Species Convention:
American alligators; export; Texas 1984-85 harvest seasons, 811
American ginseng; export, 39691
Correction, 42027
Appendixes; amendments, 48212
Federal aid in fish and wildlife restoration; sport fishing, 21445
Hunting:
Open areas list; additions, 34478
Correction, 35563
Refuge specific hunting regulations, 35815
Correction, 37198
Importation, exportation, and transportation of wildlife:
Import/export license fees; etc., 52886
Migratory bird hunting:
Federal Indian reservations, Indian territory, and ceded lands, 35762
Hunting and conservation stamp (Duck Stamp) contest, 9279
Seasons, limits, and shooting hours; establishment, etc., 30424, 33737, 35358, 36198, 36996, 38952, 41359, 42026, 49695
Waterfowl hunting; nontoxic shot zones, 5759, 19178, 36432, 36433
Minimum criteria guidelines, 30849
Migratory bird permits:
Exceptions for accredited institutional members of American Association of Zoological Parks and Aquariums, 8636
Migratory birds; list, 13708
Public entry and use:
Ruby Lake National Wildlife Refuge, NV, 23309
Seizure and forfeiture procedures; conformance with forfeitures for violation of Customs laws, 6349
Sport fishing:
Refuge specific fishing regulations, 29972
PROPOSED RULES
Endangered and threatened species:
Achyranthes rotundata, 15764, 28959
Alabama leather flower, 49970
Ash Meadows gumplant and Amargosa niterwort, 20814
Bay checkerspot butterfly, 10276, 32455, 37391
Beautiful, Rugel's, and four-petal pawpaw, 45634
Bruneau hot spring snail, 33803, 45443, 51894
Canby's dropwort, 12345
Cochise pincushion cactus, 9083
Dismal Swamp southeastern shrew, 28821
Dwarf naupaka, 28878, 42196
Findings on petitions, etc., 13054, 19761, 27637, 29238, 35272, 49868
Fish Creek Springs tui chub, 25283
Flagstaff pennyroyal and long-haired phlox, 12348
Flattened musk turtle, 45638
Florida golden aster, 31629
Florida grasshopper sparrow, 51565
Fragrant prickly-apple, 9089
Giant kangaroo rat, 32585, 48617
Green sea turtle; importation of parts and products, 15396
Withdrawn, 38683
Hayun lagu, 43423
Hymenoxys texana, 9095
Inyo brown towhee, 5647, 9300
Ivory-billed woodpecker, 14123
Jesup's milk-vetch, 51718
Jones cycladenia, 1247
Kauai hau kuahiwi, 28873, 42196
Key Largo woodrat and cotton mouse, 35271
Ko'oloa 'ula, 28876, 42196
Lanai sandalwood, 9086
Large-flowered skullcap, 46797
Leadbeater's possum, etc., 43420
Least Bell's vireo, 18968, 23458, 27992, 40424
Leopard, goral, and serow in Nepal, 24917
Little Colorado spinedace, 21095
Loach minnow, 25380, 37703
Mauna Kea silversword, 9092, 24001
Minnesota trout lily, 18893
Northern aplomado falcon, 20810
Palmate-bracted bird's beak, 28870, 43260
Peter's Mountain mallow, 35584
Piping plover, 3940, 20461
Plant taxa, 39526
Pondberry, 32581
Prairie bush-clover, 49967
Prickly-ash, 5647
Santa Cruz cypress, 37249, 45443, 48616
Scrub balm and longspurred balm, 12587
Spikedace, 25390, 37703
Steamboat buckwheat, 37252, 45443, 48617
Thornber's fishhook cactus, 24241
Tinian monarch, 45632
Toad-flax cress, 36118, 45846, 50646
Tumamoc globe-berry, 20806
Uhiuhi, 31632, 42196
Vertebrate wildlife; review, 37958
Waccamaw silverside, 46320
Wildlife classified as endangered or threatened before 1976 and in 1979 and 1980; 5-year status review, 29901
Wildlife classified as endangered or threatened in 1978; 5-year status review, 29900
Endangered Species Convention:
American ginseng; export, 26015
Appendixes; amendments, 5279, 14402, 24918
Implementing regulations; revision, 38683
Federal aid in fish and wildlife restoration:
Interest earned from license fees, 50185
Hunting:
Open areas list--
Additions, 20462
Correction, 21320
Refuge specific hunting regulations, 23470, 24786

Importation, exportation, and transportation of wildlife:
Humane and healthful transportation to U.S. of wild animals and birds, 49709
Correction, 52809
Marine mammals:
Alaskan natives, reporting and sealing requirements, 49577
Marine Mammal Protection Act of 1972; organizational nomenclature update, 52348
Periodic review of status and determination on waiver of moratorium on taking or importing; rulemaking petition, 32099
Migratory bird hunting:
Duck harvest strategies; intent to review, 6366
Early season, proposed frameworks; doves, pigeons, woodcock, etc., 27638
Federal Indian reservations, Indian territory, and ceded lands--
Guidelines, 31828
Proposal request, 49870
Seasons, limits, and shooting hours; establishment, etc., 10276, 23459, 32587
Waterfowl hunting; non-toxic shot approval procedures, 29706
Waterfowl hunting; non-toxic shot zones, 6017
Minimum criteria draft guidelines, 2298, 7357, 19268
Woodcock (eastern population); environmental assessment, 4994
Migratory birds:
Raptors, exemptions and propagation permits and Federal falconry standards; intent to review, 518
Extension of time, 4877
National Wildlife Refuge System; mineral rights reserved and excepted; advance notice, 20814
Public entry and use:
Ruby Lake National Wildlife Refuge, NV, 9300
Sport fishing:
Refuge specific fishing regulations, 7079
Correction, 8752

NOTICES
Agency information collection activities under OMB review, 13088, 13673, 15792, 20138, 28480, 31776, 42779, 48136, 51465
Alaska National Interest Lands Conservation Act; implementation; report availability, 1644
Atchafalaya National Wildlife Refuge, LA ; lands and waters designated as appropriate; map availability, 16160
Bon Secour National Wildlife Refuge, AL; addition, 1132
Comprehensive conservation plan/ environmental statements; availability, etc.:
Alaska Maritime National Wildlife Refuge, AK, 45944
Alaska Peninsula National Wildlife Refuge, AK, 31046
Becharof National Wildlife Refuge, AK, 18743, 33116
Innoko National Wildlife Refuge, AK, 39055
Izembek National Wildlife Refuge, AK, 23831, 33117
Kenai National Wildlife Refuge, AK, 8796, 14165, 31777
Kodiak National Wildlife Refuge, AK, 52381
Nowitna National Wildlife Refuge, AK, 3416
Selawik National Wildlife Refuge, AK, 41746
Tetlin National Wildlife Refuge, AK, 28289
Togiak National Wildlife Refuge, AK, 21511, 31660
Yukon Flats National Wildlife Refuge, AK, 37443, 46360, 51465
Connecticut Coastal National Wildlife Refuge, CT; establishment, 23530
Emergency exemptions:
California condor, 43612
Peregrine falcon, 30524
Endangered and threatened species permit applications, 184, 1644, 2735, 3981, 6408, 7662, 9134, 9524, 11466, 13885, 14031, 15642, 16365, 18745, 20139, 21358, 23777, 24593, 24710, 25631, 26412, 28288, 31258, 34555, 34916, 37059, 37732, 40616, 41223, 43291, 43292, 45495, 46188, 47280, 47462, 48843, 50684, 52565, 53020
Endangered Species Convention; foreign law notification publication policy, 34015
Endangered Species Convention; foreign law notifications:
Bolivia, 34016, 50965
Caiman and caiman products, 34016
Ecuador, 34016
Paraguay, 34016
Philippines, 39851, 41747
Environmental statements; availability, etc.:
Bristol Bay Region, AK, 18576
California condor; trapping and release, 49883
Charles M. Russell National Wildlife Refuge, MT, 46359
Chincoteague National Wildlife Refuge, VA, 11584
Coachella Valley fringed-toed lizard habitat conservation plan, CA, etc., 31926
D'Arbonne National Wildlife Refuge, LA, 7003, 21145
Endangered bat habitat, Adair and Delaware Counties, OK, 18744
Fakahatchee Strand, FL; Florida panther habitat preservation, 19491
Great Swamp National Wildlife Refuge, NJ, 48137
Honeoye Creek Wetland Project, NY, 24840, 34205
Lake Champlain, NY and VT; sea lamprey control, 36498
Migratory bird hunting in U.S.; lead shot use, 51752
North Key Largo Habitat Conservation Plan, FL, 14299, 41223, 53020
Upper Ouachita National Wildlife Refuge, LA, 29488
Waterfowl hunting in U.S.; steel shot use, 2865
Fishery resources program; statement of responsibilities and role; availability, 20628
Grizzly bear management; interagency guidelines; meeting and inquiry, 21696
Marine mammal permit applications, 2865, 2866, 3981, 7662, 9524, 14031, 18745, 23075, 28040, 32324, 32325, 34916, 36157, 37917, 39179, 48844, 50685
Meetings:
Connecticut River Atlantic Salmon Commission, 5322
Endangered Species of Wild Fauna and Flora International Trade Convention Conference, 5432, 14462
Migratory bird hunting, 5011
Migratory Bird Regulations Committee, 28995
Waterfowl status, 28995
Migratory birds:
Duck stamp sheets; bid acceptance, 35332
North American waterfowl management plan; draft availability and inquiry, 49775
Selected areas not open for 1986/87 season, 19248
Waterfowl; lead poisoning, 20503
National fishery programs:
Artificially propagated fish, report to Congress, 5823
Availability and inquiry, 31047
National species of special emphasis; revised list, 19491, 23364
National Wildlife Refuge System; World War II material management; policy statement, 51952
Palm cockatoos; disposal and sale to qualified breeders, 348
Pipeline rights-of-way applications:
California, 32119
Texas, 11584
Tensas River National Wildlife Refuge, LA; establishment, 12409
Wetlands, U.S., status and trends; report availability, 15507
Wilderness review:
Alaska Maritime National Wildlife Refuge, AK, 45944
Becharof National Wildlife Refuge, AK, 18743, 33116
Innoko National Wildlife Refuge, AK, 39055
Izembek National Wildlife Refuge, AK, 23831, 33117
Kenai National Wildlife Refuge, AK, 8796, 14165, 31777
Kodiak National Wildlife Refuge, AK, 52381
Selawik National Wildlife Refuge, AK, 41746
Tetlin National Wildlife Refuge, AK, 28289
Togiak National Wildlife Refuge, AK, 21511, 31660
Yukon Flats National Wildlife Refuge, AK, 37443, 46360, 51465

FLOOD ASSISTANCE

See Engineers Corps.
Federal Emergency Management Agency.

FOOD AND DRUG ADMINISTRATION

RULES
Animal drugs, feeds, and related products:
Acepromazine maleate tablets, 64
Amoxicillin trihydrate film-coated tablets, 24616
Amprolium, ethopabate, and virginiamycin, 15885
Amprolium for pheasants, 18471
Antibiotic drugs; safety test deletion, 19917, 22987, 24906, 26197
Bambermycins, 6158
Bambermycins, monensin, and roxarsone, 34678
Bambermycins and monensin, 33034

Butorphanol tartrate, 24508
Clindamycin hydrochloride liquid, 21238
Clorsulon drench, 10220
Colloidal ferric oxide and iron hydrogenated dextran injections, 23298, 25216
Crufomate liquid, 19167
Dichlorophene and toluene capsules, 49537
Diethylcarbamazine citrate and oxibendazole chewable tablets, 28768
Dihydrostreptomycin sulfate injection, 5385
Febantel-praziquantel paste, 19167
Fenbendazole paste, 26357
Fenthion solutions, 19168
Flunixin meglumine paste, 38113
Furaltadone; revoked, 5749
Furazolidone aerosol powder, 30152
Gentamicin sulfate, betamethasone valerate topical spray, 739
Halofuginone and bambermycins, 42517, 46282
Halofuginone hydrobromide, 33718
Hygromycin B, tylosin, and tylosin and sulfamethazine, 254
Iron hydrogenated dextran injection, 31709, 37347
Ivermectin injection, 30267
Ivermectin paste, 27818
Lasalocid, 13562
Lasalocid and bacitracin methylene disalicylate, 50612
Lincomycin injection, 31351
Lincomycin with pyrantel tartrate, 50613
Meclofenamic acid tablets, 43384
Melengestrol acetate with monensin, 1843, 16228
Methylprednisolone tablets, 32844
Monensin-mineral granules, 47725
Monensin, 32394
Monensin combinations, 42011
Nicarbazin, 13561
Oxfendazole and trichlorfon paste, 50291
Oxytetracycline hydrochloride soluble powder, 32693
Oxytetracycline hydrochloride tablets, 1045
Oxytocin injection, 6158
Phenylbutazone, 13560
Polyoxyethylene (23) lauryl ether blocks, 48108
Prednisone sterile suspension, 6159
Procaine penicillin G aqueous suspension, 2779
Pyrantel tartrate, 40521, 42156, 47367, 51518
Pyrantel tartrate, tylosin, and tylosin-sulfamethazine, 38782
Salinomycin, roxarsone, and bacitracin methylene disalicylate, 13562
Salinomycin and roxarsone, 45910
Salts of volatile fatty acids; correction, 8606
Sponsor name and address changes--
Altana Inc., 6158
AMI, Inc., 28395
Anaquest, 38781
Biomed Laboratories, 38781
Bristol Laboratories, 28395
Central Soya Co., Inc., 35535
Elanco Products Co., 4208
ESSAR Corp., 49372, 49924
Fort Dodge Laboratories, 13561
Good Life Division of Central Soya Co., Inc., 38782
Henwood Feed Additives, 41340, 43698
Hoechst-Roussel Agri-Vet Co., 41134
National Dermaceutical Products, Inc., 9800
Nylos Trading Co., Inc., 4208
Pacific Molasses Co., 5385
Purina Mills, Inc., 38782, 42011
Solvay Veterinary, Inc., 41488, 45603
Summit Hill Laboratories, Inc., 40965
Wendt Laboratories, Inc., 41134
West Agro, Inc., 21045, 23118
Stanozolol chewable tablets, 38114
Sulfadimethoxine injection, 254
Sulfamethoxypyridazine tablets, 49537
Tioxidazole granules, 52772
Trimethoprim and sulfadiazine oral suspension, 19168
Trimethoprim and sulfadiazine tablets; correction, 9800, 11852
Tylosin, 13563, 18859, 18860, 19169, 19525, 25217, 27421, 28768, 28931, 28932, 30934, 31352, 31708, 32395, 33338, 34678, 35535, 35536, 36419, 36874, 37347, 38783, 39994, 42934, 48310, 49840
Tylosin and sulfamethazine, 20408, 21439, 21440, 21601, 23949, 24509, 25217, 25218, 25219, 27422, 32395, 35214, 42934, 47048, 48189, 50292
Tylosin injection, 50292
Tylosin phosphate, 20204, 21837
Virginiamycin, 47367
Virginiamycin and lasalocid, 21601
Biological products:
Anti-human globulin; additional standards, 5574
Correction, 9800, 10941
Reporting and recordkeeping requirements, 16474
Blood and blood components; labeling requirements, 35458
Correction, 38114
Official release of samples and protocols; reporting and recordkeeping requirements, 10941
Proper name change, clarification, etc., 4128
Correction, 9000, 11365, 16229
Color additives:
C.I. Vat Orange 1, 20405
Effective date confirmed, 33717
Canthaxanthin, 47532
Chlorophyllin-copper complex, oil soluble; use in polymethylmethacrylate bone cement; effective date confirmed, 23948
D&C Blue No. 6, 30697
D&C Orange No. 17, D&C Red Nos. 19 and 37; provisional listing, 4641, 13017, 20401
D&C Orange No. 17, D&C Red Nos. 8, 9, 19, 33, 36, and 37, FD&C Yellow Nos. 5 and 6, and FD&C Red No. 3; provisional listing, 23294
FD&C Red No. 3, FD&C Yellow No. 6, D&C Red Nos. 8, 9, 19, 33, 36, and 37, D&C Orange No. 17; provisional listing, 35783
FD&C Red No. 3, FD&C Yellow Nos. 5 and 6, D&C Red Nos. 8, 9, 33, and 36; provisional listing, 4642, 13018
FD&C Yellow No. 5; provisional listing, 35774, 35789, 45909
(Phthalocyaninato(2-)) copper; use for coloring polybutester nonabsorbable sutures, 16227
Effective date confirmed, 33718
Poly(hydroxyethyl methacrylate)-dye copolymers, 9424, 33336, 45991
Correction, 37845
Effective date confirmed, 23406, 33516, 45814
Conflict of interests; protection of privacy, 52278
Food additives:
Acetylated monoglycerides, 3508
Adhesive coatings and components--
5-Chloro-2-methyl-4-isothiazolin-3-one, etc., 4643
Dimethyl-5-sulfoisophthalic acid, 40964
Isobutyl and methyl esters of styrene-maleic anhydride, 1500
Omega-aminododecanoic acid, 51846
Styrene/acrylate-based copolymers, 47208
Adjuvants, production aids, and sanitizers--
C10-16-Alkyl mercaptoacetates reaction products with dichlorodioctylstannane and trichlorooctylstannane in vinyl chloride plastics, 23297
Benzotriazole, polyoxyethylated (5 moles) tallow amine, sodium petroleum sulfonate, and alpha-alkyl-omega-hydroxypoly(oxyethylene), 36872, 37845
Bis(beta-carbobutoxyethyl) tin bis (isooctylmercaptoacetate) and beta-carbobutoxyethyltin tris(isooctylmercaptoacetate), 37997
Decanoic and octanoic acid, sodium 1-octanesulfonate, and isopropyl alcohol, 30147, 32010
Di-tert-butylphenyl phosphonite condensation product with biphenyl, 21835
Di(n-octyl)tin dichloride, etc., 62, 3510
Elemental iodine, potassium iodide, and isopropanol, 23948
Ethylene-methyl acrylate copolymer resins, 13556
Ethylenebis(oxyethylene) -bis-(3-tert-butyl-4-hydroxy-5/methylhydrocinnamate), 63
Glyceryl tri-(12-acetoxystearate), 1502
Hydrogen peroxide, 51847
Hydrogen peroxide for sterilizing food-contact surfaces prepared from polycarbonate resins, 47211
Mono-and diisooctyl esters of phosphoric acid, 50611
Poly (6-morpholino-s-triazine-2,4-diyl) (2,2,6,6-tetratramethyl-4-piperidyl)imino) hexamethylene (2,2,6-6-tetramethyl-4-piperidyl) imino)), 30148, 32170

Poly ((6-(1,1,3,3-tetramethylbutyl) amino)-s-triazine-2,4-diyl) (2,2,6,6-tetramethyl-4-piperidyl) imino)hexamethylene ((2,2,6,6-tetramethyl -4-piperidyl)imino)), 64
Polyvinyl chloride and vinyl chloride copolymers, 47212
Sulfonated 9-octadecenoic acid and sodium xylenesulfonate, 40964
Tetrakis(methylene(3,5-di-tert-butyl-4-hydroxyhydrocinnamate))-methane, 1842, 3509, 3745, 4859, 21041, 23118, 23296
1,3,5-Tris(4-tert-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione, 52279
1,3,5-Tris(3,5-di-tert-butyl-4-hydroxybenzyl)-s-triazine-2,4,6(1H,3H,5H)trione, 23295, 25550
Tris(2,4,-di-tert-butylphenyl)phosphite, 21836
Zinc hydroxy phosphite, 21834
Chloromethylated aminated styrene-divinylbenzene resins, 29208
Cinnamyl anthranilate; prohibition of use in human food, 42929
Correction, 47367
Dimethylamine-epichlorohydrin copolymer, etc., 49684
Divinylbenzene copolymer, 61
Editorial amendments, 49535
Irradiated foods; production, processing, and handling, 15415, 15417, 24190, 29658
Correction, 18859
Paper and paperboard components--
Acrylic plastics, 30144
5-Chloro-2-methyl-4-isothiazolin-3-one, etc., 4643, 14696
Contact with aqueous and fatty foods, 1209, 31165, 34452
Glyoxal-urea polymer, 3509
Glyoxal-urea-formaldehyde condensate, 29657
Isobutyl and methyl esters of styrene-maleic anhydride, 1500
Styrene copolymers, 47209
Styrene/acrylate-based copolymers, 47208
Petroleum wax; polyalkyl (C16-C22) acrylate polymer, 32561
Polymers--
Acrylic plastics, 30144
2,5-Dimethyl-2,5-di(tert-butylperoxy)hexane, 31349
Ethylene/butene-1 copolymers, 21833
Hexamethylene bis(3,5-di-tert-butyl-4-hydroxyhydrocinnamate), 20560, 22987
Hexanedioic acid polymer with 1,3-benzenedimethanamine, etc., 30146
Perfluorocarbon resins, 1501
Phenol in polycarbonate resins, 14095
Poly-1-butene resins and butene/ethylene copolymers, 31348
Polyarylsulfone resins, 30145, 31840
Polyetherimide resin, 31350, 35535
Poly(oxy-p-phenylenesulfonyl-p-phenylene) resins, 47210
Polyoxymethylene copolymers, 1841
Poly(tetramethylene terephthalate), 20747
Trimethyleneglycol di(p-aminobenzoate), 51846
Quaternary ammonium chloride combination, 3890
Food for human consumption:
Infant formula--
Labeling requirements, 1833, 13555
Nutrient requirements, 45106, 48078
Special medical or dietary uses exemptions, 48183
Irradiated foods; production, processing, and handling, 15415, 15417, 24190
Correction, 18859
Peaches, canned; quality standards, 34676
Pineapple juice; identity standards, etc., 19524
Effective date confirmed, 32560
Food labeling:
Sodium content; declaration and label claims; effective date deferred, 26984
GRAS or prior-sanctioned ingredients:
Editorial amendments, 49535
Licorice (glycyrrhiza), etc., 21043
Low erucic acid rapeseed oil, 3745, 8997
Magnesium carbonate, magnesium chloride, etc., 13557
Correction, 16080
Manganese salts, 19164
Shrimp containing sulfites; notice to shippers, distributors, packers, and importers, 2957
Sodium metasilicate and sodium zinc metasilicate, 38779, 42011
Tannic acid, 21042
Vitamin B-12, 6339
Vitamin D, 30149
Wheat gluten, corn gluten, and zein, 8997
Human drugs:
Antibiotic drugs--
Amoxicillin trihydrate-clavulanate potassium chewable tablets, 42932, 47367
Cefotaxime sodium injection, 45108, 48078, 48580
Ceftazidime pentahydrate injection, 48396, 52917, 53308
Ceftizoxime sodium injection; correction, 253
Dactinomycin, doxorubicin hydrochloride, and plicamycin; deletion of toxicity test, 19675
Dactinomycin and plicamycin, 5748, 9267
Doxycycline hyclate pellet-filled capsules, 41678, 45603
Erythromycin capsules, 36991
Erythromycin topical solution, 20203
Gentamicin sulfate injection; correction, 10754
Marketing approval, 7452, 14212
Marketing approval; reporting and recordkeeping requirements, and clarification, 21237
Nystatin film-coated tablets, 52771
Oligosaccharide and peptide, 15107
Safety test deletion, 19917, 22987, 24906
Sterile amdinocillin, 7764, 10220, 18243
Sterile cefonicid sodium, 29209
Sterile ceftriaxone sodium, 9998, 11690, 18243
Sterile ticarcillin disodium and clavulanate potassium, 33516, 42156, 43384, 45403
Updating and technical changes, 1503, 47212
Cold, cough, allergy, bronchodilator, and antiasthmatic drug products (OTC); anticholinergic drug products, 46582, 49371
Insect repellent drug products (OTC) for oral use, 25170
New drugs and antibiotic drugs; marketing approval, 7452, 14212
Reporting and recordkeeping requirements; clarification, 21237, 23798
Nitroglycerin; removal of packaging and labeling requirements, 7584
Medical devices:
Antimicrobial susceptibility test disc; classification change request denied, 20360
Hearing aids--
Exemption from preemption of State and local requirements; Hawaii, 30698, 32694
Technical data amendments, 30153
Hematocrit measurement calibrator; classification request denied, 5352
Correction, 8729
Hemoglobin measurement calibrator; classification request denied, 5358
Immunoglobulins A, G, M, D, and E immunological test system; reclassification request denied, 414
Investigational device exemptions; conforming amendments, 25908
Correction, 28932
Rheumatoid factor immunological test system; classification change request denied, 20366
National Environmental Policy Act; implementation, 16636, 30267, 32693
Organization and authority delegations:
Biological product licenses, 30696
Devices and Radiological Health Center, Director, et al., 9423
Drugs and Biologics Center officials, 19341
Food and Drug Commissioner; patent term restoration program; correction, 14211
Headquarters; revised organization, etc., 14094
Health Affairs Associate Commissioner, 9424
New drug applications, 30696, 47207
Organizational references update, 8993
Correction, 15543
Regulatory Affairs Office officials et al.; certification, use of department seal, disclosure of official records, etc., 4858
Veterinary Medicine Center officials, 14093

Radiological health:
Diagnostic x ray systems; computed tomography x ray (CT) systems; performance standards; correction, 15543
Electronic products; performance standards--
Exemption applications, 13563
Variance application, 13564
Laser products; performance standards, 33682
Correction, 42156
Microwave and radio frequency emitting standards; exemption applications, 13565
Sunlamp products; performance standards, 36548

PROPOSED RULES
Animal drugs, feeds, and related products:
Bulk new animal drug substances; approval for use by veterinarians, 27016
Correction, 29702
Extension of time, 40405
Polychlorinated biphenyls (PCB's) in sealed electrical transformers and capacitors stored or used in food and feed plants or storage facilities, restrictions; withdrawn, 29233
Sponsored compounds in food-producing animals; carcinogenic residues, criteria and procedures for evaluating safety, 45530
Biological products:
Allergenic extracts; efficacy review, 3082
Correction, 32232, 32741
Allergenic products; additional standards, 30211
Bacterial vaccines and toxoids; efficacy review implementation, 51002
Blood and blood derivatives; efficacy review implementation, 52602
Blood grouping serum; additional standards for diagnostic substances for laboratory tests, 8743
Good manufacturing practices for blood and blood components; reporting and recordkeeping requirements; advance notice, 7187
Reagent red blood cells; additional standards, 24542
Correction, 25995, 28595
Color additives:
Abbreviated names; use in labeling foods, drugs, cosmetics and medical devices, 23815
Correction, 25585
D&C Orange No. 17, D&C Red Nos. 8, 9, 19, 33, 36, and 37, FD&C Yellow No. 6, and FD&C Red No. 3; provisional listing, 26377, 29702
FD&C Yellow No. 5, 35841
Correction, 45117
(Phthalocyaninato(2-)) copper; migration from nonabsorbable sutures, 16310, 19538
Cosmetics:
Methylene chloride as an ingredient of aerosol cosmetic products; proposed ban on use, 51551
Product experiences; voluntary reporting, 47760
Drug labeling:
Oral aspirin-containing drug products (OTC); Reye syndrome warning labeling, 51400
Sulfiting agents; warning statement, 47558
Correction, 49947
Veterinary prescriptions and orders; draft guideline withdrawn, 19382
Drug Price Competition and Patent Term Restoration Act of 1984; implementation--
Advance notice, 21460, 26791
Comment period reopened, 31887
Food additives:
Classification of food substances as generally recognized as safe (GRAS); eligibility, 37294
Correction, 29235
Extension of time, 35571, 39137
Food for human consumption:
Blackcurrant juice; standard consideration; advance notice, 3533
Correction, 7187
Terminated, 26383
Chocolate products; standard consideration; advance notice, 49398
Cocoa powders; standard consideration; advance notice, 49405
Concentrated blackcurrant juice; standard consideration; advance notice, 3535
Correction, 7187
Terminated, 26383
Cottage cheese and dry curd cottage cheese; standard consideration; terminated, 120
Cream cheese; standard consideration; terminated, 119
Frozen strawberries; withdrawn, 2693
Fruit cocktail, canned; standard consideration; advance notice, 49066
Grated cheeses; identity standard, 43720
Lysozyme and avidin reduced dried egg whites; identity standard, 34721
Correction, 37871
Margarine; identity standards; extension of time, 4525
Nectars of citrus fruits; standard consideration; advance notice, 3538
Correction, 7187
Terminated, 26382
Non-pulpy blackcurrant nectar; standard consideration; advance notice, 3541
Correction, 7187
Terminated, 26384
Polychlorinated biphenyls (PCB's) in sealed electrical transformers and capacitors stored or used in food and feed plants or storage facilities, restrictions; withdrawn, 29233
Pulpy nectars of small fruits; standard consideration; advance notice, 4231
Correction, 7613, 29702
Terminated, 26384
Shellfish National safety program; withdrawn, 7797
Food labeling:
Dairy products and frozen confections, required label statements on food containers with separate lids; exemption, 52937
Emulsifiers and stabilizers; exemption, 15177
Sodium content; declaration and label claims; proposed deferral of effective date, 15458
Sulfiting agents, 13306
GRAS or prior-sanctioned ingredients:
Starches, unmodified (cornstarch, etc.) and acid-modified, 12821
Correction, 16098
Sulfiting agents; use on fruits and vegetables served or sold raw to consumers, 32830
Correction, 37381
Tall oil; tentative affirmation, 40204
Correction, 43233
Human drugs:
Antibiotic drugs--
Nystatin film-coated tablets, 30478
Over-the-counter (OTC) use; certification exemption, 29702
Anticaries drug products (OTC); tentative final monograph, 39854
Correction, 43233
Extension of time, 46303
Aphrodisiac drug products (OTC), 2168
Correction, 9678
Chlorofluorocarbon propellants; essential uses, 30210
Correction, 34166
Cold, cough, allergy, bronchodilator, and antiasthmatic drug products (OTC)--
Antihistamine drug products; tentative final monograph, 2200, 6199, 9040
Nasal decongestant drug products; tentative final monograph, 2220, 4872
Deodorant products for internal use (OTC); tentative final monograph, 25162
Correction, 28595
Exocrine pancreatic insufficiency drug products (OTC); tentative final monograph, 46594
Correction, 49409
Fever blisters treatment, orally administered (OTC); tentative final monograph, 25156
Correction, 28595
Hair grower and hair loss prevention drug products (OTC), 2190
Hypophosphatemia and hyperphosphatemia drug products (OTC), 2160
Internal analgesic, antipyretic, and antirheumatic drug products (OTC); drug products for treatment and prevention of nocturnal leg muscle cramps; tentative final monograph, 46588
Correction, 49409
Laxative drug products (OTC); tentative final monograph, 2124
Correction, 6358, 9678
Extension of time, 20235
Male genital desensitizing drug products (OTC), 40260
New drug and antibiotic application review; user charge, 31726
Correction, 37381
Extension of time, 35259
Over-the-counter (OTC) drug products labeling; exclusivity policy change, 15810
Parenteral drug products containing benzyl alcohol or other antimicrobial preservatives, 20233
Correction, 21857
Extension of time, 28594
Poison treatment drug products (OTC); tentative final monograph, 2244
Correction, 6359, 9040
Prescription drugs without approved or abbreviated new drug applications; adverse experience; reporting and recordkeeping requirements, 11478
Correction, 13388
Smoking deterrent drug products (OTC); tentative final monograph, 27552

Stomach acidifier drug products (OTC), 2184
Topical acne (antimicrobial) drug products (OTC); tentative final monograph, 2172
Medical devices:
Cardiac monitor; performance standard development; advance notice, 48156
Correction, 50179
Hearing aids; exemption from preemption of State and local requirements; West Virginia, 36441, 36443
Hematology and pathology devices; automated differential cell counter, 48058
Implanted intracerebral/subcortical stimulator for pain relief, 30277
Neurological; implanted diaphragmatic/phrenic nerve stimulator; premarket approval, 33056
Obstetrical and gynecological devices--
Contraceptive intrauterine device and introducer; premarket approval, 33500, 38548
Contraceptive tubal occlusion device and introducer; premarket approval, 40950, 43721
Radiological health:
Radiation emitting electronic products; records and reports regulations review; report availability, 27024
Correction, 29704

NOTICES

Advisory committee reports, annual; availability, 6253, 33852
Animal drugs, feeds, and related products:
Amprolium in pheasant feed; data availability, 1636
Anthelmintics, canine/feline; efficacy evaluation; guideline availability, 29268
Anti-infective bovine mastitis product development; guideline availability, 29269
Bioequivalance study guideline; availability, 32641
Captan with benzocaine; approval withdrawn, 27360, 29269
Chloramphenicol oral solution; hearing opportunity, 27059
Compounds in food-producing animals; safety guidelines; availability and inquiry, 45556
Crufomate liquid (ruelene wormer drench); approval withdrawn, 19247, 20856
Decton white powder; approval withdrawn, 11570
Dichlorophene and toluene capsules; approval withdrawn, 49619
Freedom of information summaries; guideline availability, 33641
Furaltadone; approval withdrawn, 5816, 9131
Micro Blenders, Inc.; approval withdrawn, 347, 2088
Midicel tablets; approval withdrawn, 49619
Mixer-Mate Plus T-1600 (tylosin phosphate) premix; approval withdrawn, 20295
Prednisone sterile suspension; approval withdrawn, 6252
Sterile drug products produced by aseptic processing; draft guidelines; availability and inquiry, 4799
Suldixine (sulfadimethoxine) injection; approval withdrawn, 347
Biological product licenses:
Globe Blood Plasma Center, Inc., 33415, 38589
Volunteer Blood Center, Inc., 32313
Biological products:
Allergenic extracts; hearing opportunity, 32314
Anti-human globulin, additional standards; guidelines revoked, 5686
Blood and blood components, uniform labeling; guidelines, 35472, 38211
Biotechnology regulation, coordinated framework; inquiry:
Correction, 4003
Extension of time, 13301
Carcinogenicity, interspecies extrapolation of dose-response data; symposium and workshop; inquiry, 45669
Color additive petitions:
Colgate-Palmolive Co., 3030
Davis & Geck, American Cyanamid Co., 6252, 9327
Ethicon, Inc., 34758
Optacryl, Inc., 28477, 38898
Schering Corp., 38036
Wesley-Jessen, 50234
Committees; establishment, renewals, terminations, etc.:
Center for Devices and Radiological Health committees, etc., 4916, 50960, 50962
Center for Drug and Biologics committees, etc., 51454
Devices and Radiological Health Center committees, etc., 3411
Hypersensitivity to Food Constituents Ad Hoc Advisory Committee, 14295
Technical Electronic Product Radiation Standards Committee, 182
Veterinary Medicine Advisory Committee, 19474
Dietary characteristics and cancer study; request for data and information, 46832
Food additive petitions:
American Cyanamid Co., 7657, 41411
American Enka Co., 21943, 35867
Angus Chemical Co., 28033, 30236
B.F. Goodrich Co., 7837, 10319, 28034, 30237
BASF Aktiengesellschaft, 50232
Betz Laboratories, Inc., 37437
Bio-Cide International, Inc., 43467
Boots Co. PLC, 21141
Borg-Warner Corp., 25467
Calgon Corp., 7657, 20623, 42095
Chevron Chemical Co., 38035
Ciba-Geigy Corp., 10859, 25467
Concentrados Marinos, S.A., 180
Distributors Processing, Inc., 29485
Diversey Wyandotte Corp., 7836
Dow Chemical Co., 1132, 14770, 28264, 50233
Drew Chemical Corp., 9521, 11758
Eastman Kodak Co., 14162
Economics Laboratory, Inc., 9521
EMS-CHEMIE AG, 7388
Ferro Corp., 46833
Foodways National, Inc., 34197
General Electric Co., 20624, 43795
Goodyear Tire & Rubber Co., 9522, 11014
H.B. Fuller Co., 3979
ICI Americas, Inc., 7836
INI Agrico, Inc., 46834
International Flour Sales Corp., 181
Kureha Chemical Industry Co., Ltd., 52562
McCormick & Co., Inc., 20624
Miles Laboratories, Inc., 16558, 21943
Minnesota Mining & Manufacturing Co., 50233
Mitsubishi Chemical Industries, Ltd., 551
Monsanto Co., 11946
Moore & Munger Marketing, Inc., 45874
Morton Thiokol, Inc., 12652, 38036
Nalco Chemical Co., 551, 2347
National Pork Producers Council, 26270
Ore & Chemical Corp., 50234
Petrolite Corp., 20625
Pfizer, Inc., 34198
Polaroid Corp., 38036
Ralston Purina Co., 348, 1132, 26270, 26271
Rhone-Poulenc, Inc., 28265
S.C. Johnson & Son, Inc., 23767
Shell Oil Co., 10860, 41026
Squirt & Co., 13084, 20502, 24047
3M Co., Inc., 41412
Toyobo Co., Ltd., 20625
Ube Industries, Ltd., 9521
Union Carbide Corp., 41027, 46352
Witco Chemical Corp., 7388
Food for human consumption:
Confectioneries containing alcohol; manufacturers and importers requirements, analysis method, 8677
Ethylene dibromide in honey; compliance policy guide; availability, 180
Food Chemicals Codex, 3rd Ed.; monographs; inquiry, 49131
Identity standard deviation; market testing permits--
Bread, enriched, 16558
Collards, canned, mustard greens, etc., 16557
Grated cheese, 28264, 35323, 43796
Green beans, canned, 30879, 30880, 30881, 30882, 31776, 47458, 47459
Pacific salmon, canned, 2619, 9518, 24705, 24706
Spinach, canned, 35323, 37437
Tuna, canned, 51452
National Shellfish Sanitation Program Manual of Operations--
Harvesting and processing of shellfish sanitation; draft availability and inquiry, 37055
Shellfish growing areas sanitation; draft availability and inquiry, 27850
Surimi-based seafood products, labeling; compliance policy guide; availability, 30523, 32314
Tomato products, canned; defect action levels; guide availability, 13880, 15785
Trans-fatty acids; report availability, 43290
Grants and cooperative agreements:
Fish and other aquatic animals used for food, comparative drug metabolism studies, 9719
GRAS or prior-sanctioned ingredients:
Fuji Oil Co., Ltd.; petition, 1132
Kyowa Hakko Kogyo Co., Ltd.; petition, 34758
Multi-Kem Corp.; petition, 3030
Novo Laboratories, Inc.; petition, 14297, 14770
Purac, Inc.; petition, 6252
Sulfiting agents; reexamination of status; final report availability, 9131
Human drugs:
Allergenic products for therapeutic uses; clinical trials for evaluation of safety and efficacy; draft guideline availability and inquiry, 42777

Anabolic steroids; approval withdrawn, 42599, 50963
Antibiotic, corticosteroid, and antifungal containing drugs, 15227
Antibiotic/antifungal products; approval withdrawn, 32112
Brompheniramine maleate in combination with phenylephrine hydrochloride, etc.; approval withdrawn, 29484, 31246
Combid spansules; approval withdrawn, 52857
Compliance Policy Guide; expiration dating and stability testing; availability and inquiry, 40606
Cortisporin cream, 15228, 20135
  Approval withdrawn, 45873, 46516
Drug substances, manufactured; submitting supporting documentation in drug applications; draft guideline; availability and inquiry, 16350, 30300
Exclusivity petitions--
  Ceftazidime, 46701
  Ibuprofen, 39177
Finished dosage forms, manufactured; submitting supporting documentation; draft guideline; availability and inquiry, 16350, 19584
Insulin, composed wholly or partly; certification procedures, 14296
International drug scheduling--
  Barbiturate-type sedative and/or hypnotic drug substances; inquiry, 27064
  Psychotropic substances; stimulant or hallucinogenic drugs; inquiry and meeting, 36486, 38587, 40452
Meningococcal polysaccharide vaccines; guideline availability, etc., 33852
New drugs and antibiotic drugs; marketing applications approval; draft guidelines; availability and inquiry, 26411, 29765
Oral acetazolamide, 15229, 20856
Oral proteolytic enzymes; approval withdrawn, 24581, 27492, 31245
Orphan drug products--
  Designations, cumulative list, 4914, 10110, 13880
  Interim guidelines revised; availability, 19583
OTC drug feedback meetings; policy statement, 4916
Parenteral multivitamin drug products; approval withdrawn in part, 8193, 53014
Prescription drugs, direct-to-consumer advertising; moratorium withdrawn, 36677
Preservative-free morphine preparation for epidural use for treatment of severe chronic pain, 16351, 19584
Regulatory review period determination--
  Amrinone lactate, 13881
  Coactin sterile, 25786, 28658, 45492
  Fortaz, 50014, 52561
  Hexabrix injection, 50014, 52562
  Labetalol hydrochloride, 2725
  Lupron injection, 30523, 32314
  Merital capsules, 21667
  Pentoxifylline, 6052
  Promit, 13083
  Ridaura capsules, 34551
  Sectral capsules, 21943
  Seldane tablets, 34552
  Sulcosyn solution, 52564
  Tonocard tablets, 19809, 21509
  Tornalate metered dose inhaler, 21667, 23362
Riker Laboratories et al.; approval withdrawn, 13661
Single-entity coronary vasodilators; approval withdrawn, 36152, 52856
Single-entity coronary vasodilators, nitroglycerin buccal tablets, 27688, 31659
Sterile drug products produced by aseptic processing; draft guidelines; availability and inquiry, 4799
Topical anti-infective products; approval withdrawn, 33639, 43611
Trifluoperazine hydrochloride; revised labeling request, 50964
Laser variance approvals, etc.:
Applied Optics Associates, 6252
Autech Corp. et al., 2344, 5315
Blue Lightning Laser Light Show et al., 7965, 34756, 37916
Florod Corp., 11247
International Laser, Inc., et al., 27687, 31659
Interscope, Inc., et al., 37056
Knott's Berry Farm et al., 21355
Laser Media, Inc., et al., 27686, 43795, 49131
Laser Presentations, Inc., et al., 2343
Pain Suppression Labs, Inc., 11568
Particle Measuring Systems, Inc., 15785
Philips Medical Systems, Inc., 24047
Spectra-Physics, Inc., 15785, 18931
Medical devices:
Class II; policy statement, 43060, 47456
Cytotoxic testing for allergic diseases; compliance policy guide; availability, 14025
Patent extension--
  Fonar beta 3000 nuclear magnetic resonance scanning system, 13082
  New Jersey meniscal bearing knee replacement, 35324
Unapproved medical devices, guidance for emergency use; availability and inquiry, 42866, 45874
Medical devices; premarket approval:
Alcon Laboratories, Inc., 37915
Allergan Pharmaceuticals, Inc., 20854, 23071
American Medical Optics, 19810
Barnes-Hind, Inc., 11569, 13880
Bausch & Lomb, Inc., 28033, 30236
Bausch & Lomb Optics Center, 38587, 41743
Biochem International, Inc., 38898
Cardiac Pacemakers, Inc., 47276, 50232
Centers for Disease Control, 346
CILCO, Inc., 37056
Clini-Therm Corp., 37057
CooperVision, Inc., 32911
Davis & Geck, American Cynamid Co., 47459
DePuy, Inc., 20855, 23071
Dornier System GmbH, 2346
Garren, Lloyd R., Dr., et al., 43797
General Electric Co., 23768
Hoffmann-La Roche, Inc., 24704, 28477
Hybritech, Inc., 2346, 21354
Hydracon Corp., 47629, 50015
International Hydron Corp., 19811, 47460
Johnson & Johnson Products, Inc., 47277
Lasers for Medicine, Inc., 37916
Medical, Inc., 37058
Medical Lasers, Inc., 7231
Medtronic, Inc., 181
Minnesota Mining & Manufacturing (3M) Co., 42095
Nucleus Ltd., 50233
Optical Plastic Research, 11248
Pharmafair, Inc., 23768
Precision-Cosmet Co., Inc., 11571, 13880
Product Development Corp., 48134
Repro-Med Systems, Inc., 3598
Siemens Medical Systems, Inc., 182, 4273
SoftSite Contact Lens Laboratory, 48133
Surgidev Corp., 42096
Syntex Ophthalmics, Inc., 11572
University Optical Products Co., 49769
VisionTech, Inc., 25468, 28658
Wesley-Jessen, 2727
Meetings:
Acquired Immunodeficiency Syndrome (AIDS); serologic test for antibody to human T-lymphotropic virus type III (HTLV-III) workshop, 28477
Advisory committees, panels, etc., 1943, 2347, 3030, 3031, 6393, 10319, 10320, 11566, 15639, 16151, 19094, 20135, 20295, 20622, 21509, 23520, 25628, 25629, 26051, 27059, 27491, 28266, 28988, 32640, 32641, 33640, 34197, 35608, 35867, 37913, 38588, 39176, 40605, 41596, 41597, 41958, 42096, 42225, 43291, 43467, 45491, 46187, 46834, 47457, 48268, 49879, 50847, 51451, 52562
Consumer information exchange, 999, 7964, 11014, 15980, 18931, 19474, 20296, 24580, 26627, 28658, 30762, 34759, 38036, 41743, 46351
Federation of American Societies for Experimental Biology, 3978, 41597, 43290, 51453
Health professional organizations, 11947, 37914
Multivitamin preparations for parenteral use workshop, 28267
Small business participation, 9522, 13881, 35609
Toxicological research; neurotoxicity and behaviorial dysfunction; symposium and workshop, 28034
Memorandums of understanding:
Drug, pesticide, and environmental contaminent residues in foods, 2304
Fish and Wildlife Service, National Marine Fisheries Service, National Ocean Service, and Environmental Protection Agency; protection and management of estuarine and coastal water environment, 45667
Food Safety and Inspection Service; food recalls, 2725
National Cancer Institute; subsequent cancer incidence in women treated by irradiation with x-rays for infertility; study, 20624, 23071
National Institute on Drug Abuse; domestic scheduling of drugs of abuse, 9518, 11758

Swiss Federal Office for Foreign Economic Affairs; good laboratory practice program, 29485
University of Tennessee; collaborative research and educational programs, 9520
Nutrition goals, 1990; PHS implementation plan; study announcement and meeting, 51453
Practice and procedure:
Electronic bulletin board; availability for third party redistribution, 28267
Exhibits and documents submissions for formal evidentiary hearings; guideline availability, 10860
Procurement:
Commercial or industrial activities, performance; review schedule (OMB A-76 implementation), 10860
Radiological health:
Dental x ray patient selection criteria; draft report; availability and inquiry, 29483
Diagnostic nuclear medicine exposure to embryo, fetus, and infant; minimization; draft recommendations; availability and inquiry, 28265, 34553
Diagnostic x ray equipment; retrospective review of performance standard; report availability and inquiry, 46646, 48642, 50293
Nuclear medicine facilities; quality assurance programs; final recommendations; availability, 20011
Sunlamp variance approvals, etc.:
Eurotan International et al., 24048, 25628
Rothschild Sunsystems, Inc., et al., 14024
Sun Industries, Inc., et al., 34757
Tan Body Sun Systems, Manufacturing, Inc., et al., 11568
Ultrabronze Ltd. et al., 2345
UVATEC, Inc., et al., 43006, 47455
X-ray systems variance approvals, etc.:
Elscint, Inc., 31432
Health Mate, Inc., 24047
LOrad Medical Systems, Inc., 24048

FOOD AND NUTRITION SERVICE

RULES
Child nutrition programs:
Child care food program--
Advance payments, 26972
Eligibility documentation and verification, 19305, 20197
Miscellaneous amendments, 8573
Seriously deficient institutions; determinations, etc., 49341
School lunch and breakfast programs; sale of foods of minimal nutritional value, 20545
Women, infants, and children; special supplemental food program, 6108
Correction, 8098
Food distribution program:
Donation of food; yield factor requirements, 20197
National commodity processing program; interim, 37163
Food stamp program:
Alaska thrifty food plan, 13759
Certification of eligible households; notice of adverse action; CFR correction, 48741
Reporting and recordkeeping requirements, 2659
State agency reporting requirements, 20547
Reporting and recordkeeping requirements, 53257
PROPOSED RULES
Aid to families with dependent children (AFDC), and food stamp program, consistency; advance notice, 6970
Child nutrition programs:
Child care food program--
Advance payments, 6183
Meat alternates used in programs, 49933
Seriously deficient institutions; determinations, etc., 20572
Meals, free and reduced, and free milk in schools; eligibility verification monitoring, 39707
National school lunch program--
Meat alternates used in programs, 49933
School lunch program--
Assessment, improvement, and monitoring system (AIMS) reporting, 39707
Revision, 5950
State administrative expense funds; allocation, 37667
Summer food service program--
Audit requirements for State and local governments, reimbursement for one meal per child for each meal service, etc., 45898
Meat alternates used in programs, 49933
Food distribution program:
Donation of food; provisions revised, 33470
Food stamp program:
Forfeiture and denial of property rights, and acceptance of irrevocable letters of credit, 32712
Income and eligibility verification procedures, 10450
Performance reporting system, 35091
NOTICES
Child nutrition programs:
Cash in lieu of commodities; value of donated commodities for 1985 school year, 27035
Child care food program--
National average minimum value of donated foods, 30216
National average payment rates, etc., 27994
Meals and milk, free and reduced price; income eligibility guidelines, 12351, 13642
School lunch, breakfast, and special milk programs; national average payments/ maximum reimbursement rates, 27995
Summer food service program; reimbursement rates, 519
Women, infants, and children; special supplemental food program; income poverty guidelines, 19220
Food distribution program:
Elderly; donated-food assistance level or cash in lieu for nutrition programs, 7203, 9099, 33363
National commodity processing system; termination, 19993
Food stamp program:
Electronic benefit transfer alternative issuance demonstration project, 53170
Income eligibility standards; adjustment, 19766
Research, demonstration, and evaluation projects; inquiry, 7092
Thrifty food plan and deductions, 36641
Meetings:
Child Nutrition National Advisory Council, 37705
Maternal, Infant, and Fetal Nutrition National Advisory Council, 35107
Organization, functions, and authority delegations, 15203, 20250

FOOD SAFETY AND INSPECTION SERVICE

RULES
Freedom of Information Act; implementation, 33332
Meat and poultry inspection:
Agar-agar in meat food products, 19903
Buffalo; voluntary inspection, 41845
Diethylstilbestrol (DES) residues in cattle; anti-mortem inspection; rescission, 53127
Electrical method of slaughter, 25199
Exemptions for retail stores; adjustment of dollar limitations, 12220
Imported cured pork products; control of added substances and labeling requirements, 9788
Imported meat products; list of eligible countries--
Dominican Republic, 14370
Withdrawals, 33715
Imported products; refused entry, 19906
Correction, 30264
Inspection legend; authorization to manufacture brands or other marking devices, 21420
Correction, 34084
Inspection services; fee increase, 723
Margarine or oleomargarine; standards, 3738
Military shipments; export stamp requirement exemption, 25203
Monoammonium glutamate as flavor enhancer, 50282
New turkey inspection system, 37508
Correction, 38097
Overtime and holiday inspection service, 51513
Protective film of water, corn syrup solids, sodium alginate, calcium chloride and sodium carboxymethylcellulose on freshly dressed meat carcasses, 19905
Pump-cured bacon, alpha-tocopherol as N-nitrosamine inhibitor; and lecithin as emulsifier in meat food products, 27573
Correction, 28374
Rabbits and edible products; inspection fees credit rescinded, 25067
Sulfonamide and antibiotic residues in young veal calves, 32162
Swine post-mortem inspection procedures and staffing standards, 19900
Titanium dioxide in isolated soy protein; correction, 6
Trichinae in pork products; methods for destruction, 5226
Correction, 48075
Waiver for dry cured or country ham, 25202
PROPOSED RULES
Meat and poultry inspection:
Accreditation of non-Federal chemistry laboratories; standards and procedures, 15435
Extension of time, 25081

Buffalo; voluntary inspection, 10778
Correction, 11882
Diethylstilbestrol (DES) residues in cattle; ante-mortem inspection; rescission, 16094
Correction, 36998
Exemptions for retail stores; restaurant central kitchens, 33762
Extension of time, 41524
Imported meat products; list of eligible countries; withdrawals, 19029
Labeling system; total plant quality control, 38824
Extension of time, 48096
Military shipments; export stamp requirement exemption, 1540
New turkey inspection system; extension of time, 280
Nitrite levels in bacon, 14711
Operating schedules for total quality control establishments; expansion, 33348
Extension of time, 47060
Partially defatted products; compositional and processing requirements; advance notice, 34157
Extension of time, 48097
Sulfonamide residues in swine; ante-mortem and post-mortem inspection; advance notice, 20796
Extension of time, 35098

NOTICES
Meat and poultry inspection:
Inspection program issuances; availability, 1098
Standards and Labeling Division policy memoranda, 15947, 42070
Transportation accidents; policy directive, 51271
Meetings:
Trichina enzyme immunoassay method, 14739
Memorandum of understanding:
Drug, pesticide, and environmental contaminent residues in foods, 2304

FOREIGN AGRICULTURAL SERVICE

See also Agriculture Department.

RULES
Import quotas and fees:
Sugar--
Licensing for importation/transfer; interim, 47704
Licensing for production of polyhydric alcohol; interim, 47703
Perishable products imported from Israel; emergency relief, 43691
Correction, 49524

PROPOSED RULES
Perishable products imported from Israel; emergency relief, 30716

NOTICES
Import quotas and fees:
Chocolate crumb from Australia; country of origin quota adjustment, 49973
Condensed milk from Denmark; country of origin quota adjustment, 27036
Dairy import licenses, 42070
White or Irish potato production, 38563
Meetings:
Agricultural Export Enhancement Advisory Group, 30492, 37393

FOREIGN AID

See Agency for International Development. State Department.

FOREIGN ASSETS CONTROL OFFICE

RULES
Cuban assets control:
Technical amendments, 33719
U.S. assets of corporation; amendments, 33720
Foreign assets control:
Embargo programs; technical amendments, 27435
Restricted merchandise; publications originating in Cuba, North Korea, Vietnam, or Kampuchea, 5753
Technical amendments, 33719
U.S. assets of corporation; amendments, 33720
Foreign funds control:
Technical amendments, 33719
Nicaraguan trade control, 19890
South African transactions:
Krugerrands importation prohibition, 41682
Loans from U.S. financial institutions, 46726

FOREIGN CLAIMS SETTLEMENT COMMISSION

NOTICES
Meetings; Sunshine Act, 2371, 6425, 11476, 13693, 19605, 24871, 31275, 46535, 51330
Privacy Act; systems of records, 34915

FOREIGN SERVICE GRIEVANCE BOARD

RULES
Grievances and separation for cause cases, 31353

PROPOSED RULES
Grievances and separation for cause cases, 16710

FOREIGN-TRADE ZONES BOARD

NOTICES
Applications, etc.:
Alabama, 24551
Arkansas, 52350
California, 14000, 15205, 15206
Colorado, 34729, 40044
Florida, 24551, 40209, 52980
Georgia, 18544
Hawaii, 31210, 39743, 45137
Illinois, 1606, 3371, 23752, 45446
Indiana, 13642, 23752, 31404
Kansas, 42974
Kentucky, 3945, 16329, 26815, 52980
Louisiana, 3944, 41545, 53351
Maryland, 13057
Massachusetts, 24551, 45446
Michigan, 15768, 16119, 21638, 27471, 31756
Minnesota, 31404
Mississippi, 51442
Missouri, 15769
Nevada, 33089
New Hampshire, 15948
New Jersey, 3945, 20816, 40884, 42973
New York, 3946, 5653, 6372, 7940, 15469, 15769, 24663, 27472, 30986, 42198
North Carolina, 27472
Ohio, 2702, 6024, 15770, 31756, 49593
Oregon, 34524
Pennsylvania, 40044
Rhode Island, 46678, 52981
South Carolina, 31757
Tennessee, 40884
Texas, 300, 13261, 13263, 20252, 38020, 46678, 52981
Utah, 33808
Washington, 15206, 20817, 30987
Wisconsin, 1098, 16118, 18545, 20251, 21107, 27472, 43749, 48818, 49594

FOREST SERVICE

RULES
Boundary Waters Canoe Area Wilderness; motorboat and snowmobile reduction use, etc., 16231
Forest development transportation system; review completed, 23307
Land disposal; sale of lands for agricultural use; CFR Part removed, 23410
Land uses; reservation rights for timber or minerals, rights-of-way, etc.; review completed, 43570
Landownership; National Forest townsites, 29673
Correction, 45823
Motor vehicle use off forest development roads; review termination, 12539
Timber sales, national forest:
Advertising standards and procedures, 32694
Alaska; emergency stumpage rate redeterminations, 30934
Buy-out provisions, 26660
Extension policy, 31840, 38984
Cash downpayment and bid monitoring requirements, 41498
Contracts extension; interim policy, 458

PROPOSED RULES
Minerals; operations in Misty Fjords and Admiralty Island National Monuments, AK, etc., 37005
Timber sales, national forest:
Alaska; emergency stumpage rate redeterminations, 4992
Correction, 8344
Extension of time, 9302
Buy-out provisions, 458
Periodic payment, cash downpayment requirements, and bid monitoring, 2591

NOTICES
Boundary establishment, descriptions, etc.:
Apalachicola National Forest, FL, et al., 33363
Ouachita National Forest, AR, 3004, 14739
Environmental statements; availability, etc.:
Angeles National Forest, CA, 48109
Beaverhead National Forest, MT, 6369, 14125, 49738
Bitterroot National Forest, MT, 28439
Chugach National Forest, AK, 15595
Cibola National Forest, NM, 2702
Clearwater National Forest, ID, 28440
Colville National Forest, WA, 39156
Coronado National Forest, AZ, 28826
Custer National Forest, MT, ND, and SD, 30492, 49085

Deerlodge National Forest, MT, 29242
Denver Metropolitan water supply, CO, 5804
Flathead National Forest, MT, 5409
Gallatin National Forest, MT, 27997
Gila National Forest, NM, 31900
Grand Mesa National Forest, CO, 33807
Gunnison National Forest, CO, 33807
Gypsy moth suppression and eradication projects, 12593, 14000, 14126, 15594, 43430
Helena National Forest, MT, 52977
Idaho Panhandle National Forest, ID, 28440
Intermountain region noxious weed and poisonous plant control program, 45445
Inyo National Forest, CA, 52978
Kaibab National Forest, AZ, 18281
Kootenai National Forest, MT, 40986
Lassen National Forest, CA, 39742
Lewis and Clark National Forest, MT, 5409
Mt. Hood National Forest, OR, 37558
Nezperce National Forest, ID, 46326
Okanogan National Forest, WA, 33088
Pacific Northwest Region, 11002, 19766, 23480
Payette National Forest, ID, 38148, 48816
Routt National Forest, CO, 30287
San Juan National Forest, CO, 12060
Sawtooth National Forest, ID and UT, 9468
Sequoia National Forest, CA, 18719
Southern pine beetle suppression, 32878
Timber contract buy out provisions, 26674
Tongass National Forest, AK, 51723
Transfer of lands and minerals management responsibilities, 35875
Uncompahgre National Forest, CO, 33807
Wallowa-Whitman National Forest, ID, 16327
Wayne National Forest, OH, 37256
Western spruce budworm insect control, 5803
Western spruce budworm management program; Santa Fe National Forest, NM, 25614
Western wilderness area lakes access, national surface water survey, 26234
Finger Lakes National Forest, NY; name change, 40043
Grazing fee review and evaluation report; meeting, 11745
Grizzly bear management; interagency guidelines; meeting and inquiry, 21696
Illinois wild and scenic river management plan, Siskiyou National Forest, OR; availability and inquiry, 38018
Jurisdictional interchange program; inquiry and hearings, 23479
Land and jurisdiction transfers, etc.:
Chattahoochee-Oconee National Forests, GA, et al.; interchange order with Air Force Department, 48816, 50331
National Forest System lands, CA; transfer to Interior Department, 35849, 40426
Land and resource management planning schedules; inquiry, 9469
Meetings:
Apache National Forest Grazing Advisory Board, 10091, 33807
Black Hills National Forest Grazing Advisory Board, 2599, 23169
Boise National Forest Grazing Advisory Board, 7094
Bridger-Teton National Forest Grazing Advisory Board, 24661, 48448
Caribou National Forest Grazing Advisory Board, 18719
Carson National Forest Grazing Advisory Board, 3942
Chalis National Forest Grazing Advisory Board, 36458
Coconino National Forest Grazing Advisory Board, 32243
Colville National Forest Grazing Advisory Board, 15948, 42198
Coronado National Forest Grazing Advisory Board, 15204, 31209
Deerlodge National Forest Grazing Advisory Board, 37393
Deschutes National Forest Grazing Advisory Board, 24264
Florida National Scenic Trail Advisory Council, 37393
Fremont National Forest Grazing Advisory Board, 2702
Gila National Forest Grazing Advisory Board, 2599
Humboldt National Forest Grazing Advisory Board, 3004
Inyo National Forest Grazing Advisory Board, 3942, 32878
Lewis and Clark National Forest Grazing Advisory Board, 299
Lincoln National Forest Grazing Advisory Board, 1605, 21915
Medicine Bow National Forest Grazing Advisory Board, 2072, 29242
Mono Basin National Forest Scenic Area Advisory Board, 2599, 15948, 23480, 27997, 32750, 38147, 45924
Mount St. Helens Scientific Advisory Board, 27997
Nezperce National Forest Grazing Advisory Board, 299
North Kaibab Grazing Advisory Board, 36123
Ochoco National Forest Grazing Advisory Board, 3004
Okanogan National Forest Grazing Advisory Board, 8352, 12352, 24793, 38018, 47242
Pacific Crest National Scenic Trail Advisory Council, 3942, 7360, 40043
Prescott National Forest Grazing Advisory Board, 7623
Routt National Forest Grazing Advisory Board, 26392, 43749
San Juan National Forest Grazing Advisory Board, 23480
Sawtooth National Forest Grazing Advisory Board, 28229
Sierra National Forest Grazing Advisory Board, 8353, 41371
Sitgreaves National Forest Grazing Advisory Board, 18281, 33808
South Kaibab Grazing Advisory Board, 27836
Stanislaus National Forest Grazing Advisory Board, 6225, 43262
State Foresters Committee, 6225
Targhee National Forest Grazing Advisory Board, 4552
Toiyabe National Forest Grazing Advisory Board, 11219, 38870
Tonto National Forest Grazing Advisory Board, 31209
Uinta National Forest Grazing Advisory Board, 24922
Umatilla National Forest Grazing Advisory Board, 2599
National Environmental Policy Act; implementation, 26078, 27036
National Forest System lands, communication sites; administration, 40574
Power line construction grant easements:
Cleveland National Forest, CA, 30286
Public rangelands improvement; experimental stewardship program report; draft availability and inquiry, 25787, 31045
San Jacinto Wilderness; power line construction grant easement, 14125
Siuslaw National Forest, OR; seven-year action plan termination, 19425
Small business timber set-aside program:
Correction, 27997
Final policy, 24788
Proposed changes; extension of time, 3370
Wilderness areas:
Bitterroot and Deerlodge National Forest, MT; hearings, 40574
Gallatin National Forest, MT; hearing, 40986
Little Frog Mountain and Big Frog extension, TN; hearing, 7807
Mt. Baker-Snoqualmie and Wenatchee National Forests, WA; Alpine Lakes Wilderness changes; correction, 9303
Sawtooth National Recreation Area, ID; hearing, 30287
Wilderness fire management policy; final, 6223

GAS

See Alaska Natural Gas Transportation System, Office of Federal Inspector.
Economic Regulatory Administration.
Federal Energy Regulatory Commission.
Geological Survey.
Land Management Bureau.
Minerals Management Service.

GENERAL ACCOUNTING OFFICE

RULES
Authority citations; technical amendments, 49505
Records:
Privacy procedures for personnel records, 13161

NOTICES
Bid protest:
Procurements by Architect of the Capitol; notice of review, 30293
Sales by Federal agencies; notice of review, 14770
Contracts under Federal grants, complaints; discontinuance of review, 3978

GENERAL SERVICES ADMINISTRATION

See also National Archives and Records Service.

RULES
Acquisition regulations:
Acquisition planning, 14243
Competition in contracting requirements, etc., 10036, 27589, 36080
Correction, 14243, 30274
Construction contracts--
Basis of award, 50170
Payment due dates; temporary, 4516, 28948
Contract Appeals Board procedure rules; transfer of regulations, 1534

Contract clauses, payment by wire transfer, etc., 1534
Contract files; reassignments and transfers, 26996
Contract forms, 51394
Contract types, 43713
Contracts with options; application of thresholds, 28578
Disputes and appeals; protests to General Accounting Office; temporary, 26998
Federal service contracts, labor standards, etc., 24523
Correction, 26764
Temporary; expiration date extended, 945
Foreign acquisitions; dollar threshold for applicability of Trade Agreements Act, 38005
Temporary, 4862, 52780
Hand and measuring tools; restrictions on procurement; temporary, 18263
Correction, 20103
Expiration date extended, 43395
Identification of provisions and clauses, 29402
Correction, 33547
Prompt payment discounts and payment terms, 50169
Protests, disputes, and appeals, 24772
Reporting and recordkeeping requirements, uniform contracting procedures, etc., 2284
Advisory committee management, 28203
Contract Appeals Board procedure rules (acquisition regulations), 1756
Correction, 29231
Procurement of ADP goods and services; interim, 26764
Correction, 27969, 29231
Federal Acquisition Regulation (FAR):
Certification of commercial pricing; meeting, etc., 35815
Civilian Agency Acquisition Council membership, prompt payment discounts, etc., 26902
Competition in contracting requirements, 52428
Interim, 1726, 4221, 10233
Protest procedures; interim, 25680, 27969
Contract cost principles and procedures; insurance and indemnification, etc., 23604
Planning for future competition, integrity of unit prices, etc.; interim, 27560
Correction, 28103
Publicizing provisions and validation of proprietary restrictions, and competition in contracting protest provisions; interim, 2268
Subcontractor rules, unreasonable restrictions; etc.; interim, 35474
Federal claims collection, 37529
Federal Information Resources Management Regulation:
ADP equipment and services acquisition--
Alternate procedures for agency delegations of procurement authority requests; temporary, 4408
Dollar threshold raised for blanket delegations of procurement authority, etc.; temporary, 4411
ADP performance validation provisions, 26364
Effective date deferred, 36995
ADP resources utilization and reporting; temporary, 4415
Competition in contracting requirements, etc.; implementation; temporary, 13319
Codification of temporary regulations, 27142, 28208, 36995
Correction, 14386
Data communications systems and services; temporary, 4422
Federal hardware, software, and telecommunication standards; temporary, 4403
Information processing resources management; temporary, 4418
Integrated provisions; establishment, 4322
Records management provisions, 26908
Correction, 28208
Temporary, 14220, 18249
Review program; temporary, 11861
Correction, 13023
Telecommunications acquisitions; temporary, 4406
Teleprocessing services program changes; temporary, 4400
Nondiscrimination:
Age discrimination in Federal financial assistance programs, 23412
Organization and functions, 26363
Privacy Act; implementation, 43138
Property management:
ADP and telecommunications management; CFR Parts removed, 26565
Archives and records; CFR Subchapter removed, 26927
Building and grounds management; special space alterations; authority delegation to tenant agencies to contract; temporary, 16087
Civilian executive agency aircraft information system; temporary, 5386
Claims collection; administrative offset and interest assessment on transportation related claims, 49845
Express small package transportation; carrier contractor use; temporary, 8622, 49551
Federal buildings fund; reimbursable services, 14242
Federal employee parking; temporary; expiration date extended, 10229, 41145
Government work space management; temporary, 26516
Handicapped persons, accommodations; accessibility standards for construction and alteration of public buildings; correction, 49045
Patents; CFR Part removed, 28402
Procurement sources and programs; ordering errors, return of merchandise, 42021
Records management; records holdings annual summary and agency records center annual reports (SF 136 and SF 137) discontinued, 81
Space, assignment, and utilization; supplemental space contract bulletin, 43135
Systems furniture acquisition; temporary, 23411
Transportation and traffic management--
Contract airline service use between selected city-pairs; temporary, 43136
Travel agents and travel management centers use; temporary, 27951
Travel and transportation expense payment system, 43135
Transportation documentation and audit--
Claims not payable by agencies, 3909
Government bill of lading (SF 1103, etc.), 30705
Government transportation request (SF 1169), 30710
Unused ticket redemption; interest assessment (SF 1170), 49845
Unused ticket refund procedures, 938, 29972
Use of cash, 20101
Utilization and disposal--
Foreign gifts and decorations, 82
Personal property; standard forms 120 and 126, instructions for preparing, etc., 31370
Personal property sale; debarment, suspension, and ineligibility of contractors, 41145
Real property; holding agency, 28402
Real property; increase of offer by high bidder at sealed bid or auction sale, 25222
Work space management reform implementation, 28577

PROPOSED RULES

Acquisition regulations:
Competition in contracting requirements, etc.; acquisition of leasehold interests in real property; draft availability, 9293
Construction contracts; payment due dates; draft availability, 12587
Contract files; reassignments and transfer, 16115
Contract methods and types; prompt payment discounts, 41180
Contract types, 16115
Contracting officer warrant program training requirements, etc.; draft availability, 51435
Contractor inspection requirements; draft availability, 38676
Contracts with options; application of thresholds, 15463
Identification of provisions and clauses, 15943
Multiple award schedule procurement, 11910, 50502
Payment due date clauses for supply, service, and construction contracts, etc., 48447
Prompt payment discounts and payment terms, 38016
Protests, disputes, and appeals, 10276
Small business and small disadvantaged business concerns; subcontracting, 14122
Source selection procedures; draft availability, 18708
Termination for convenience of Government and termination liabilities; draft availability, 35582
Federal Acquisition Regulation (FAR):
Alcoholic beverage costs, 51779
Architect-engineer services; definition, 10516
Company-furnished automobiles; 51776

Construction contract progress payments; withholding of funds, 7200
Contract changes clauses, 21313
Contract cost principles and procedures; advance agreements and travel costs, 8752
Contracts; voiding and rescinding, 23157
Correction, 23818
Contributions and donations, fines and penalties, and fraud proceedings defense, 53088
Cost accounting standards contracts; interest rate change, 43643
Effect of listing; debarred or suspended contractors excluded, 43633
Employee morale, health, welfare, food services, dormitory costs, and credits, 49662
Executive lobbying costs, 51778
Late bid or proposal sent by certified or registered mail; acceptable evidence in establishing mailing date, 11522
Personal services, compensation, 41179
Personal services and industrial security costs, compensation, 49662
Professional and consultant service costs; litigating appeals against Government, 51778
Public relations costs, 7199
Regulatory agenda, 18016, 44866
Relocation cost principle, 48735
Retroactive or backdated insurance, 42657
Rights in data and copyrights--
Draft availability, 32870
Restrictive markings on technical data; validation, 40416, 40984, 45442
Selling costs, 52727
Social, dining, and country clubs; membership costs, 51777
Training and education costs, 45708
Correction, 46470
Transportation clauses, 48332
Unallowable costs, 51776
Women-owned small businesses utilization; contract clause, 4241
Definitions, 11523, 13256
Federal Information Resources Management Regulation:
ADP equipment, obsolescence and reuse; draft availability, 24785
ADP performance validation provisions, 7356
ADP resources procurement; protests before GSA Board of Contract Appeals, 43258
Competition in contracting requirements, etc.; implementation, 10252
Federal information processing standards, etc.; update, 34723
Records management programs and management of records; draft availability, 6970
Privacy Act; implementation, 8641
Property management:
ADP and telecommunications; Subchapter F removal from CFR, 23453
Claims collection; administrative offset and interest assessment on transportation related claims, 14261
Debarment, suspension, and ineligibility of contractors who purchase Federal personal property, 52806
Motor equipment management and interagency fleet management system; draft availability, 14260
Transportation and traffic management; draft availability, 14260
Transportation documentation and audit--
Claims, 14261
Commercial bills of lading submission under cost reimbursement-type contracts, 27625
Disbursement procedures; voucher-schedules preparation, etc., 16316
Privately owned personal property Government bill of lading (Form 1203), 27626
Regulatory agenda, 17876, 18016, 44732
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712

NOTICES

Agency information collection activities under OMB review, 346, 2618, 4273, 7647, 7835, 9908, 11946, 16151, 20500, 26410, 30293, 32769, 33638, 34755, 45162, 47275, 50847
Environmental statements; availability, etc.:
Hoskins Park Housing Area et al., RI, 20621
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 7948, 8762, 13647, 13648, 21334, 21335, 26270, 27333, 29249, 47247, 50013, 52991
Looseleaf version; interim correction, 12871
Federal Hotel/Motel Discount Directory; availability, 46350
Federal Information Resources Management Regulation:
Federal Telecommunications System (FTS) Intercity Services, changes; advance notification and inquiry, 45162
Looseleaf edition; ordering procedures, 28032
Meetings:
Advisory Board, 6251, 9908
National Environmental Policy Act; implementation, 7648
Privacy Act; systems of records, 177, 6051, 16149, 20294, 20501, 23829, 24323, 28988
Procurement:
Federal supply schedule improvement (FSG 66), 28658
Low volume copiers; commercial item descriptions development and use; inquiry, 4594
Metal office furniture; contract requirements, 45487
Inquiry and conference, 33849
Multiple award Federal supply schedule program, 7123
Multiple award to single award; criteria for conversion of items; inquiry, 13879
Property management:
Airline discount fares, contract; cost-reimbursable contractors use, 15784
Customer supply centers; eligible Federal activity use, 7834
Kilauea Point Light Station, Kauai, HI; wildlife order conveyance, 7002
National Archives Building; special police protection continuation, 26410
Self-service store--
Lima, PA; conversion, 7229
National Capital Region, closures, 4912
Systems furniture acquisition; inquiry, 28250
Transportation and motor vehicles--
Government national credit card (SF 149); ordering procedures, 48132
Government-wide motor vehicle rental program, 9716
Union City Dam Project, PA; wildlife order conveyance, 20621
Senior Executive Service:
Performance Review Board; membership, 39777
Telecommunications standards:
Coding and modulation requirements for 4,800 bit/second modems; proposed revision, 34755
Data communications systems and services; user-oriented performance parameters, 31428
Data encryption standard with CCITT Group 3 facsimile equipment, interoperability and security requirements; adoption, 18737
Data terminal equipment and circuit-terminating equipment; general purpose 37-position and 9-position interface; adoption; interim, 30294
Facsimile coding schemes and coding control functions for group 5 facsimile apparatus; inquiry, 53013
Glossary of telecommunication terms; inquiry, 11946
Standard optical fiber waveguide material classes and optical sizes for on-premises installation; inquiry, 53013
Travel regulations:
Government contract airfares use by cost-reimbursable contractors, 50847
High rate geographical areas and Alaska Ferry System allowance increase, 43607
Presidential appointee travel and transportation expenses; eligibility criteria, 8676
Correction, 11464
Relocation income tax allowance, 15702, 19247
Travel expenses; report to Congress on travel costs and privately owned vehicle operation, 40059

GEOLOGICAL SURVEY

RULES

State water research institute program, 23113

PROPOSED RULES

State water research institute program, 956
Water-resources research program and technology development program, 42188

NOTICES

Agency information collection activities under OMB review, 14301, 16365, 40616
Committees; establishment, renewals, terminations, etc.:
Water Data for Public Use Advisory Committee, 16365
Grants; availability, etc.:
National earthquake hazards reduction program, 49621
Water resources research program, 47631
Meetings:
Water Data for Public Use Advisory Committee, 10865

National uranium resources evaluation program (digital data; prices, 5323

GOVERNMENT EMPLOYEES

See Equal Employment Opportunity Commission.
Federal Labor Relations Authority.
Merit Systems Protection Board.
Personnel Management Office.

GOVERNMENT PRINTING OFFICE

NOTICES
Meetings:
Depository Library Council, 8396, 32911

HANDICAPPED

See Architectural and Transportation Barriers Compliance Board.
Blind and Other Severely Handicapped, Committee for Purchase from.
Education Department.
Equal Employment Opportunity Commission.
General Services Administration.
Health and Human Services Department.
National Council on the Handicapped.
Personnel Management Office.
Social Security Administration.
Veterans Administration.

HAZARDOUS SUBSTANCES

See Coast Guard.
Consumer Product Safety Commission.
Environmental Protection Agency.
Nuclear Regulatory Commission.
Occupational Safety and Health Administration.
Research and Special Programs Administration.

HEALTH

See Alcohol, Drug Abuse, and Mental Health Administration.
Animal and Plant Health Inspection Service.
Centers for Disease Control.
Food and Drug Administration.
Health and Human Services Department.
Health Care Financing Administration.
Health Resources and Services Administration.
Mine Safety and Health Administration.
National Institutes of Health.
Occupational Safety and Health Administration.
Public Health Service.
Social Security Administration.
Veterans Administration.

HEALTH AND HUMAN SERVICES DEPARTMENT

See also Alcohol, Drug Abuse, and Mental Health Administration.
Centers for Disease Control.
Child Support Enforcement Office.
Community Services Office.
Food and Drug Administration.
Health Care Financing Administration.
Health Resources and Services Administration.
Human Development Services Office.
National Institutes of Health.
Public Health Service.
Social Security Administration.

RULES
Acquisition regulations, 7780, 38004
Interim, 23126
Small business and small disadvantaged business concerns, 46298
Grants, administration:
Audit requirements for State and local governments; interim, 31715
Letter of credit administration, remedial actions, 776
Medicare and medicaid programs:
Fraud and abuse provisions; final rule and request for comments, 37370
Correction, 40003

PROPOSED RULES
Federal claims collection, 18694
Medicare:
Physician fee freeze sanctions, 37386
Public assistance programs:
Medicaid; adjustment of Federal share for uncashed or cancelled (voided) checks, 23147
Regulatory agenda, 17210, 44086
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712

NOTICES
Agency information collection activities under OMB review, 550, 1636, 2724, 3598, 4799, 5427, 6393, 7387, 8397, 9517, 10544, 11565, 12651, 13660, 14456, 15639, 16564, 18931, 19809, 20621, 21508, 23199, 24046, 24946, 25785, 26844, 27686, 28474, 29483, 30522, 31429, 32312, 33108, 35322, 36485, 37436, 38210, 39175, 40604, 41594, 42225, 43467, 45667, 46513, 47276, 48268, 49462, 50960, 51950, 53014
Cigarettes, list of ingredients; submission requirements, 49617
Committees; establishment, renewals, terminations, etc.:
Evaluation of Pain Commission, 23070, 30013
Technology and Disabled National Advisory Board, 9326
Grants; availability, etc.:
Health policy research, 11563
Retirement policy studies, 18315
Hospital discharge data set, uniform; revision, 31038
Meetings:
Evaluation of Pain Commission, 23070, 30013, 34196, 38587, 47118, 50684
President's Council on Physical Fitness and Sports, 24946
Organization, functions, and authority delegations:
Child Support Enforcement Office, 24839, 46515
Departmental Grant Appeals Board, 35608
Deputy Assistant Secretary for Procurement, Assistance, and Logistics, 45939
Facilities and Management Services Office, 45488
Food and Drug Administration, 34759
Health Care Financing Administration, 41595
Human Development Services Office, 24839
Inspector General Office, 890, 45488
Management Analysis and Systems Office et al., 30236, 45940
Personnel Administration Office et al., 20850, 46514
Public Health Service, 24839, 25129, 32769
Social Security Administration, 31922, 33850, 34760, 35607, 35608, 39041, 46514, 47118
Poverty income guidelines; annual revision, 9517
Correction, 10319
Privacy Act:
Computer matching program, 19472, 48133
Systems of records, 49768
Senior Executive Service:
Performance Review Board; membership, 6052, 46351, 50232
Social security benefits:
Contribution and benefit base; old law determination, 11562
Cost of living increase, contribution and benefit base, average of total wages, and tables of benefits, etc., 45558

HEALTH CARE FINANCING ADMINISTRATION

RULES
Medicaid:
Claims processing assessment system, 21839
Comprehensive outpatient rehabilitation facility services and hospital insurance entitlement and benefits; research grants and contracts, removed; correction, 33027
Cost sharing charges, imposition, 23009
Eligibility to severely impaired individuals who work and perform substantial gainful activity, 46760
Fraud and abuse provisions; final rule and request for comments, 37370
Correction, 40003
Home and community-based services, 10013
Correction, 25079
Inmates in public institutions, or individuals in institutions for mental disease or tuberculosis; Federal financial participation, 13196
Correction, 38811
Medicaid Management Information Systems; conditions of approval and reapproval and reduction of Federal financial participation procedures, 30838
Overpayments, recovery; withholding Federal share, 19684
Correction, 23307, 31182
Peer review organizations (PRO), utilization and quality control; assumption of review functions, etc., 15312
Correction, 15427, 41886
Reporting and recordkeeping requirements, 28577
Third party liability, rates for skilled professional medical personnel, etc., 46652
Correction, 49389
Medicare:
Comprehensive outpatient rehabilitation facility services and hospital insurance entitlement and benefits; research grants and contracts, removed; correction, 33027
Direct medical education costs; payment limitation, 27722
Employer group health plans; services furnished to employed aged and spouses; limitations on payment, 41503

Correction, 43703
Forms used for applying for entitlement or enrollment or claiming payment, 39669
Correction, 50165
Fraud and abuse provisions; final rule and request for comments, 37370
Correction, 40003
Health maintenance organizations and competitive medical plans, payment; final rule and request for comments, 1314
Correction, 20570
Hospital inpatient services, prospective payment amount and administrative review--
Interim, 27208
Interim rules removed, 30944
Hospital inpatient services, prospective payments; redesignation of rules, 12740
Correction, 30172
Hospital inpatient services, prospective payments (Diagnosis Related Groups), 35646
Correction, 43570
Effective date postponement, 46651, 49930
Nonphysician medical services; reimbursement limitations, 40168
Overpayments, recovery; withholding Federal share, 19684
Correction, 23307, 31182
Peer review organizations (PRO), utilization and quality control--
Assumption of review functions, etc., 15312, 15427, 41886
Information acquisition, protection, and disclosure, 15347
Reconsideration and appeals, 15365
Sanctions imposed on health care practitioners and service providers, etc., 15335
Reporting and recordkeeping requirements, 28577

PROPOSED RULES
Medicaid:
Checks, uncashed or cancelled; Federal share reimbursement, 23147
Federal financial participation (FFP) in payments to long-term care facilities, 42192
Financial eligibility for categorically needy individuals who lose supplemental security income eligibility due to cost of living increases, 14397
Health care facilities; long-term care survey, 45584
Income and eligibility verification procedures, 10450
Intermediate care facilities for mentally retarded; fire safety standards, 45921
Intermediate sanction of long-term care facilities, 7191
Payments to institutions; post-eligibility determinations for institutionalized individuals, 10992
Pregnant women and children, and newborn children; coverage, 48102
Medicare:
Direct medical education costs; payment limitation, 21026
Health care facilities; long-term care survey, 45584
Home health agencies; financial security requirements, 48435
Correction, 51418
Hospital inpatient services, prospective payment system (Diagnosis Related Groups); 1986 FY rates; meeting, 27406
Hospital inpatient services, prospective payments (Diagnosis Related Groups), 24366
Correction, 27469
Malpractice insurance for hospitals and skilled nursing facilities; payment for costs, 25178
Noncovered services; liability determination procedures, 5787
Nonphysician medical services; reimbursement limitations, 33324
Physician fee freeze sanctions, 37386
Reporting and recordkeeping requirements, 32238
State reimbursement control systems, 20048

NOTICES
Grants and cooperative agreements:
Medicare and medicaid research and demonstration, 4480, 7657
Medicaid:
Deficit Reduction Act of 1984; amendments (eligibility benefits, reimbursements, and administration), 28988
Management information systems; system requirements, 4800, 40895
Oregon; compliance hearing on failure to implement Lynch v. Rank court decision, 48643
Overdue Part B premiums collection; policy statement, 39784
State plan amendments, reconsideration; hearings--
Arkansas, 5686
California, 13287
Georgia, 25326, 47277
Maryland, 25327
Minnesota, 32642
New York, 31659
Pennsylvania, 20856, 31042, 40606
Virginia, 19812, 48642
Washington, 20857
Medicare:
Cytotoxic leukocyte testing; exclusion from coverage, 27691
Deficit Reduction Act of 1984; amendments (eligibility benefits, reimbursements, and administration), 28988
Disproportionate share hospitals; definition, 53398
Fiscal intermediaries and carriers performance; criteria and evaluation standards; inquiry, 39778
Home health agency costs per visit; schedule of limits, 20178, 23071, 27734, 35609
Hospice payment cap, 47278
Inpatient hospital deductible and coinsurance amounts, 39940
Inpatient hospital rehabilitation services criteria for Medicare coverage, 31040, 32643
Monthly actuarial and premium rates, 39932
Overdue Part B premiums collection; policy statement, 39784
Oxygen and oxygen equipment; coverage for use in patient's home, 13742
Peer review organizations (PRO), utilization and quality control; scope of work; inquiry, 46702
Physicians services--
Economic index, 39941
Reasonable compensation equivalent limits, 7123
Regional intermediaries designated to service home health agencies; assignment and reassignment; inquiry, 14162
Skilled nursing facility inpatient routine service costs; schedule of limits, 48304, 51606
Hospital-based costs, 48313, 51606
Supplementary medical insurance (Part B); beneficiaries review procedures; court order and inquiry, 49770
Uninsured aged; monthly hospital insurance premium (Part A premium), 39932
Meetings:
International Classification of Diseases, Ninth Revision, Clinical Modification Coordination and Maintenance Committee, 53015
Organization, functions, and authority delegations, 8397, 9131, 11758, 14297, 15230, 19094
Privacy Act; systems of records, 6395, 14457, 16153, 21356, 27361, 27407, 29766, 30237, 46352, 51951

HEALTH RESOURCES AND SERVICES ADMINISTRATION

RULES
See entries under Public Health Service.

NOTICES
Advisory committees, annual reports; availability, 2088, 2619, 14026, 48269, 51307
Committees; establishment, renewals, terminations, etc.:
Health Planning and Development National Council, 3032
Migrant Health National Advisory Council, 46702
Nurse Training National Advisory Council, 1132
Organ Transplantation Task Force, 1943, 3032
Grants and cooperative agreements:
Advanced nurse training, nurse practitioner training, and nurse special project grants, 7389
Area health education center programs, 3415, 7232, 14986, 37438, 38211
Children, emergency medical services, 36922, 37591
Community health centers, 27851
Family medicine--
Departments establishment, 42227
Faculty development, 4807
Graduate training, 30882
Predoctoral training, 34198
General internal medicine and pediatrics--
Faculty development, 8398
Residency training, 47119
Geriatric education centers, 9522
Funding preference, 20502
Health careers opportunity and nursing special project programs; low income levels, 18741
Health careers opportunity program, 31246
Health system agency grants; health service area population determinations, 30237
Health system agency grants and State health planning and development agency grants; application cycles, 6255
Home health services and training, 6253

Indian health professions preparatory and pregraduate scholarship programs and Indian health scholarship program, 5134
Indian health service; health professions recruitment program, 15981
Nurse anesthetist traineeship, 1943, 53199
Physician assistants programs, 37438
Preventive medicine residency training programs, 31248
Professional nurse traineeship, 53199
State health planning and development agencies; comprehensive primary care services, 28267
Health maintenance organizations, qualified:
List additions, 8787, 35867
Requirements, 11573
Health manpower shortage areas (primary care), 6512, 38444
Health planning and resource development:
Health systems agencies and State health planning development agencies; certificate of need reviews; capital expenditute and annual operating cost expenditure minimums adjustment, 14027
Health service areas redesignation, etc.:
Illinois, 30301, 35324, 42227
Medical facility construction and modernization:
Uncompensated services eligibility; income criteria revision, 14026
Medical reimbursement rates; inpatient and outpatient medical care; 1986 FY, 48135
Meetings; advisory committees:
January, 1275
February, 3599
March, 7837
April, 11249, 13662
May, 15981
June, 13662, 21944, 23520
August, 26845, 28267, 28477
September, 31922, 31923, 36153
October, 31923, 38899
November, 37439, 41743, 45874
January, 50965
Organ Transplantation Task Force:
Immunosuppressive therapies, etc.; hearing, 19247
Inquiry, 13084

HEARINGS AND APPEALS OFFICE, ENERGY DEPARTMENT

NOTICES

Applications for exception:
Cases filed, 145, 4576, 4737, 4738, 5302, 5303, 5304, 6238, 7376, 7377, 10845, 11415, 11416, 12396, 13075, 15483, 15965, 16131, 19998, 20490, 20837, 20838, 24030, 24031, 25766, 25767, 28627, 28628, 30748, 31005, 31236, 31911, 32277, 34747, 34895, 34896, 35297, 36471, 37412, 39764, 39765, 41213, 43444, 43445, 45151, 46343, 46820, 47431, 48250, 49119, 50838, 51597
Decisions and orders, 4573, 4574, 4575, 4577, 4578, 4579, 4580, 4581, 6239, 7377, 7378, 9896, 11417, 12616, 12617, 12618, 13076, 13078, 13850, 13851, 13853, 13854, 13859, 13860, 14142, 15481, 15966, 19085, 19999, 20000, 21345, 23061, 24031, 24311, 24312, 24826, 24828, 24829, 25768, 25769, 26609, 27674, 28629, 28630, 28632, 30745, 30746, 31911, 32278, 32279, 33098, 33100, 33828, 34895, 37416, 37418, 38184, 39037, 39767, 41214, 42079, 42080, 45152, 45154, 45663, 47431, 47433, 47434, 47821, 48251, 48253, 49120, 49759, 49995, 50839, 51598, 52842, 52844
Crude oil overcharges; policy statement implementation, 27402, 41572
Remedial orders:
Objections filed, 146, 4580, 4582, 4739, 5304, 10846, 11417, 15484, 19085, 19086, 20001, 21347, 24312, 25767, 26609, 27673, 28632, 32280, 34748, 37419, 39767, 41215, 42081, 47434, 50839, 50840, 53194
Special refund procedures; implementation and inquiry, 147, 150, 153, 157, 2077, 3832, 4582, 4586, 4739, 4742, 4746, 4749, 4752, 4757, 4763, 4766, 4769, 4771, 4774, 4778, 4779, 4782, 4785, 5305, 5307, 6240, 6244, 7634, 7637, 8188, 8661, 10846, 10849, 12397, 12400, 12609, 12611, 12613, 13855, 13860, 13864, 13866, 14144, 14148, 14423, 14429, 14431, 14436, 15618, 15621, 15625, 15968, 15970, 15973, 16132, 18292, 18295, 18298, 18558, 18561, 19082, 20002, 20491, 20494, 20838, 20840, 21347, 23056, 23505, 23509, 24032, 24036, 24038, 24301, 24303, 24307, 24819, 24824, 25771, 25774, 26036, 26040, 26252, 26611, 26615, 26617, 27047, 27049, 27666, 27668, 27671, 28633, 28636, 28642, 28645, 29252, 29256, 30004, 30749, 31006, 31237, 32271, 32281, 32287, 32763, 33829, 33832, 34748, 34897, 35298, 35300, 35303, 35308, 35310, 36472, 37413, 37419, 38175, 38178, 38181, 38186, 38188, 39768, 39770, 41566, 41568, 42081, 42085, 43446, 43449, 43452, 45155, 45157, 45660, 46344, 46346, 47425, 47428, 47816, 47819, 48253, 48255, 48258, 48646, 49121, 49755, 49997, 50000, 50220, 50222, 51916, 51919, 51922, 51927, 51930, 51934, 51941, 52847, 53390, 53470

HIGHWAYS

See Federal Highway Administration.
Interstate Commerce Commission.
National Highway Traffic Safety Administration.
National Transportation Safety Board.

HISTORIC PRESERVATION, ADVISORY COUNCIL

PROPOSED RULES

Historic properties protection, 41828
Extension of time, 51437
Regulatory agenda, 17776, 44638

NOTICES

Meetings, 5284, 6978, 10823, 21477, 23744, 26391, 37016
Programmatic memorandums of agreement:
Alaska; management of historic properties on lands owned, etc., by Army Department, 4995
Arizona; historic properties management in National Forests, 25284
Bellows Air Force Station, Oahu, HI, 23321
California--
BLM land transfers, 14956
Historic properties on BLM lands, 32748
California-Oregon transmission project, 47239
Celeron/All American Pipeline Project, AZ, CA, NM, and TX; BLM right-of-way grants, 14000
Cumberland River Basin, KY, 20117
Energy Department--
Spent nuclear fuel and high-level radioactive waste sites, 18541
Strategic Petroleum Reserve; crude oil pipelines in Texas, 24003
Farmers Home Administration; housing preservation grant program implementation, 50814
Forest Service; Small Tracts Act implementation, 24661
Fort Benning, AL and GA, 7807
Fort Leavenworth, KS, 16524
Fort Leonard Wood, MO, 14739
Fort Monroe, VA, 26391
National Historic Preservation Act; treatment of historic properties under emergency conditions; model programmatic memorandum of agreement, 7622
National Park Service; planning and leasing activities, 27835
Reclamation Bureau; responses to major natural disasters and national security emergencies, 46471
Red River Waterway Project, AR and LA, 9098
Rural Electrification Adminstration et al; wood pole utility lines assistance program, 11002
Veterans Administration Medical Center, Wood, WI, 34726
Wallowa-Whitman National Forest, OR, 42740
White Sands Missile Range, NM, 7807
Wyoming; historic bridges replacement, 13257
Senior Executive Service:
Performance Review Board; membership, 35874

HISTORY, HISTORIC PRESERVATION

See Historic Preservation, Advisory Council.
National Archives and Records Administration.
National Archives and Records Service.

HOUSING

See Agency for International Development.
Farmers Home Administration.
Federal Home Loan Bank Board.
Federal Home Loan Mortgage Corporation.
Housing and Urban Development Department.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

RULES

Acquisition regulations:
Competition in contracting, etc.; interim, 46572
Effective date, 52781

Audit requirements; non-Federal governmental; effective date, 6937
Audit requirements for State and local governments; interim, 39083
Correction, 41680
Community development block grants:
Indian tribes and Alaskan native villages; conflict of interests, 51675
Loan guarantee program (Section 108)--
Fees; FY 1985 announcement, 5751
Fees; procedures and administration, 5750
Secretary's fund-insular areas, 37524
Technical amendments, 12789
Urban development action grants; antipirating (industrial or commercial facilities relocation) prohibition; policy statement, 1505
Contract Appeals Board; procedures, 45910
Effective date, 52280
Interim, 24906
Fair housing:
Nondiscrimination and equal opportunity in housing, 31359, 52441
Correction, 41680
Government National Mortgage Association:
Attorneys-in-fact list, 37523, 49842
Handicapped persons; accessibility standards for design, construction, and alteration of publicly owned residential structures; correction, 49039
Interstate lands sales registration:
Disclosure exemption and registration requirements; correction, etc., 10942
Low income housing:
Elderly or handicapped housing--
Eligibility of acquired existing housing for non-elderly handicapped, 38797
Interest rate, 2781, 28197, 51677
Housing assistance payments (Section 8)--
Contract rent annual adjustment factors, 11998
Definition of income, income limits, rent calculations, etc.; delayed implementation, 24616
Definition of income resulting from consultation with Farmers Home Administration; revision, 25949
Existing housing; termination of tenancy; suspension; notice required by Court order, 15733
Fair market rent schedules for single room occupancy housing for existing housing program; procedure, 38791
Fair market rents for existing housing and moderate rehabilitation, 14922, 16229
Fair market rents for new construction and substantial rehabilitation, 16612, 23407, 35214
Income adjustments; deduction for handicapped assistance expenses, 39092, 45403
New construction and substantial rehabilitation; contract rent adjustment before cost certification; clarification, 6341
Housing development grant program; interim; correction, 11365
Waiver authority; CFR correction, 30423
Manufactured home procedural and enforcement regulations:
Monitoring inspection fee, 28396
Minimum property standards:
One and two family dwellings, 39586
Technical suitability of products programs; user fee schedule, 2781
Mortgage and loan insurance programs:
Board and care homes, 37520
Coinsurance for construction or substantial rehabilitation of multifamily housing projects; clarification, 40195
Effective date, 46763
Coinsurance for purchase or refinancing of existing multifamily housing projects, 25915
FHA single family mortgage insurance; use of commitment correspondents, 51673
Hospital mortgages, HUD-insured; refinancing, 47726
Income adjustments; deduction for handicapped assistance expenses, 39092
Interest rate changes, 12788, 18472, 21602, 25069, 49538, 51848
Labor standards and wage requirements; effective date, 6937
Correction, 7337
Land development insurance; refinancing of existing mortgage, 14921
Maximum mortgage limits for high cost areas, 19341, 30154, 45993
Methods for calculating one-time mortgage insurance premiums and unearned premium refund factors, 2779
Mortgage insurance endorsement on proposed or new dwelling in new subdivision or improved area, 20096
Environmental review fee establishment, 28197
Mortgagee approval; fee schedule revision, 19923
Multifamily housing projects--
Defaulted mortgage; partial payment of claim, 38784
Tenant participation, 32396
Mutual mortgage insurance and rehabilitation loans--
Disaster victims; technical amendment, 40194
Issue date of debentures, 3891, 7767
Temporary mortgage assistance payments and assignments to HUD; withdrawn, 12527, 14379
Prepayment privileges and application of monthly payments toward late charges on FHA-insured single family mortgages, 25910
Property eligibility in States and territories (American Samoa, etc.), 4646
Property improvement and manufactured home loan program, 43516
Rent supplement and section 236 programs; income definition, rents and recertification of family income--
Delayed implementation, 24616
Interim; correction, 4209
Second mortgages, etc.; escrow accounts associated with interest buy-downs, 20903
Correction, 26696
Single family residences and condominiums; loan-to-value limitation changes for modestly priced homes, 19924
Tenant evictions, subsidized and HUD-owned projects, 38787
Mortgages, multifamily; nonjudicial foreclosure, 41344
Effective date confirmed, 48190
Multifamily Participation Review Committee; membership, 37519
Neighborhood self-help development program:
Technical amendments, 12789
Nomenclature changes, 9268
Public and Indian housing:
Annual contributions for operating subsidy-performance funding system; subsidy determination; interim, 25951
Correction and extension of time, 40196
Definition of income, income limits, rent and reexamination of family income; correction, 9269
Definition of income resulting from consultation with Farmers Home Administration; revision, 25949
Income adjustments; deduction for handicapped assistance expenses, 39092
Effective date, 45403
Performance funding system, 47368
Effective date and correction, 52280
PHA-owned or leased projects--
Contracting authority transfer; effective date, 6937
Individual metering of utilities; extension of deadline for energy audit, 456
PHA-owned public housing projects; demolition or disposition, 50891
Public housing development; prototype costs limits, 19927
Slum clearance and urban renewal:
Rehabilitation loan grant program; risk premiums and application fees, 38789
Rental rehabilitation grant program; formula allocations; performance adjustments; interim, 50594
Solar Energy and Energy Conservation Bank; financial assistance program; allocation of funds, etc., 25010
Urban homesteading program; deregulation, 25941
Correction, 38114

PROPOSED RULES

Community development block grants:
Indian tribes and Alaskan native villages--
Conflict of interests, 25999
Selection process, 31194
Fair housing:
State and local laws; recognition of substantially equivalent laws, 31394
Low income housing:
Elderly or handicapped housing; interest rate adjustments, 11903
Minimum property standards:
Care-type housing, 6359
Carpet and carpet with cushion (Materials Bulletin No. 44d), 41699
Lumber grademarking (Materials Bulletin No. 38i), 35259
Mortgage and loan insurance programs:
Board and care homes, 2830
Bond-financed projects; prepayment limitation, 25995
Condominium ownership; insurance eligibility, 26792
Cooperative housing mortgage insurance; subordinated Secretary-held mortgages; unsubsidized multifamily rental housing projects conversion, 15754
Correction, 16518

FHA single family mortgage insurance; use of commitment correspondents, 18680
Correction, 20235
Hospital mortgages, HUD-insured; refinancing, 25998
Multifamily housing; default submitted by mortgagee, 32233
Single family property foreclosures; mortgage insurance benefit claims without conveyance of title, 1233
Regulatory agenda, 17286, 44166
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712
Slum clearance and urban renewal
Rehabilitation loan grant program; risk premiums and application fees, 7069
Solar Energy and Energy Conservation Bank; financial assistance program; allocation of funds, etc., 9040

NOTICES

Agency information collection activities under OMB review, 1279, 5315, 7139, 7140, 7966, 9327, 10321, 11464, 15501, 18575, 18742, 21358, 23522, 23830, 25130, 25329, 28270, 29486, 32114, 34199, 36494, 37916, 42098, 43469, 43611, 46354, 47849, 49463, 50016, 51751
Committees; establishment, renewals, terminations, etc.:
Energy Conservation Advisory Committee, 41743
Solar Energy Advisory Committee, 41743
Environmental statements; availability, etc.:
Auburn Hills and Rochester Hills, MI, 49619
Boston, MA, 7140
Costa Mesa, CA, 51752
Fort Bend County, TX, 46355
Grants; availability, etc.:
Community development block grant program--
Indian tribes and Alaskan Native villages, 47849
Small cities program, 14994
Community housing resource board program, 21692
Fair housing assistance program, 2620, 31433
Housing assistance payments (Section 8)--
Housing voucher demonstration program, 19475
Rental rehabilitation program vouchers, 8196
Housing development grant program, 6054
International Year of Shelter for Homeless project recognition program, 42136
Multifamily urban homesteading demonstration program, 14987, 28479
Project self-sufficiency, eligible communities, 28184
Public housing; oasis technique research and demonstration project, 14298
Urban development action grants; minimum standards for small cities, 42822
Low income housing:
Elderly or handicapped housing direct loan program (Section 202); fund availability, 4812
Manufactured home construction and safety standards:
Fleetwood Enterprises, Inc., et al.; hearing, 48840, 50848
Meetings:
Contract Document Reform Advisory Committee, 8399
Energy Conservation Advisory Committee, 6396, 37591
Solar Energy Advisory Committee, 6396, 37591
Mortgage and loan insurance programs:
Debenture interest rates, 1280, 28842
Organization, functions, and authority delegations:
Acting Manager, Camden Office; order of succession, 23830
Acting Secretary; order of succession, 28269
Assistant Secretaries et al., 41420
Assistant Secretary for Administration; procurement authority, 42097
Assistant Secretary for Housing-Federal Housing Commissioner et al., 41419
Deputy Assistant Secretary for Multifamily Housing Programs, 34761
Deputy Director of Office of Urban Rehabilitation, 13667
Field Office closings, proposed, 51308
General Counsel Office; execute certain single family mortgage documents, 20859
President of GNMA and Assistant Secretary for Housing-Federal Housing Commissioner; procurement authority, 42098
Public and Indian Housing, Assistant Secretary; housing and housing-related programs and functions, 20943
Regional Administrators et al., 18742
Regional Administrators-Regional Housing Commissioners et al., 42099
Regional offices, etc.; order of succession--
Atlanta, 7966
Buffalo, 5430
New York, 5430, 8399
Newark, 5315
Philadelphia, 1281, 43470, 46354, 46355
Seattle, 11464
Privacy Act; systems of records, 8791, 15787, 18933
Procurement:
Commercial activities, performance; productivity review list (OMB A-76 implementation), 20012
Prototype cost determinations, 14994, 15492, 16438, 24706
Senior Executive Service:
Performance Review Board; membership, 46835
Solar Energy and Energy Conservation Bank; financial assistance:
Funds allocation and program proposals solicitation, 8790

HUMAN DEVELOPMENT SERVICES OFFICE

RULES

Aid to Families with Dependent Children (AFDC); work incentive programs; implementation; final rule with request for comments, 6164
Grants:
Aging, State and community programs--
Interim, 12942
Interim rule affirmed, 41514
Child abuse and neglect prevention and treatment program (Baby Doe safeguard requirements), 14878
Indian tribes, supportive and nutritional services--
Interim, 12942
Interim rule affirmed, 41514

PROPOSED RULES

Grants:
Child abuse and neglect prevention and treatment program (sexual abuse, etc.), 16105
Head Start program; staff recruitment and selection policies (child abuse and neglect prevention provisions), 13253

NOTICES

Disabled infants, services and treatment (Baby Doe safeguard requirements); infant care review committee establishment by health care providers; model guidelines, 14893
Grants; availability, etc.:
Child abuse and neglect prevention and treatment, 32769
Child abuse and neglect research, demonstration, and service improvement project (child sexual abuse), 25860, 27065
Child welfare services resource centers, 12918, 45962
Child welfare services State grant program; allotment percentages, 2728
Coordinated discretionary funds program, 35906
Developmental disabilities basic support and protection and advocacy formula programs; Federal allotment to States, 12652, 29269
Head Start projects, 3698, 4156
Indian tribes; supportive and nutritional services for older Indians, 47845
Native American programs, 7390, 32542, 40148
Runaway and homeless youth program, 11100
Social services block grant program; Federal allotments to States, 2089, 47279
Head Start projects; enrollment and attendance policy guidelines; inquiry, 43636
Meetings:
Child Abuse and Neglect Advisory Board, 348, 25328, 46703
Federal Council on Aging, 4917, 15786, 30524, 43467
President's Committee on Mental Retardation, 9523, 24049, 40607
Organization, functions, and authority delegations, 30014, 41027, 52857, 52858

HUMAN NUTRITION INFORMATION SERVICE

NOTICES

Meetings:
Joint Nutrition Monitoring Evaluation Committee, 13056

HUNTING

See Fish and Wildlife Service.
National Park Service.

IMMIGRATION AND NATURALIZATION SERVICE

RULES

Aliens:
- Classification as immediate relative of U.S. citizen or as preference immigrant; original signature on documents, 38969
- Deportability processing; test program; interim, 34083

Citizenship certificate applicants; decisions; issuance and notification requirements, 39649
- Correction, 41480

Immigration:
- Free legal services programs, listing; application approval and denial, 2040
- Returning resident immigrants; waivers, etc.; employees of American University of Beirut, 49921

Inspection of persons applying for admission:
- Preinspection, 11841

Nonimmigrant classification:
- Admission period and extensions of stay, 42006
- School approval withdrawal; reopening or reconsideration; technical amendment, 9991
- Temporary worker or intracompany transferee; change of status procedures, 25696

Nonimmigrants; documentary requirements; waivers, etc.:
- Bangladesh, India, Pakistan, and Sri Lanka; transit without visa privilege withdrawn, 41314
  - Effective date deferred, 47035

Organization, functions, and authority delegations:
- Border Patrol sector headquarters and stations; listing update, 10751
- Field officers; powers and duties, 37834
  - Issuance of subpoenas, 30133, 47205
- Hartford, CT; district office change to suboffice, 37833
  - Correction, 42513
- Indianapolis, IN; interior locations listing, 9991
- Mexico City District suboffice; transfer from Montevideo to Panama City, 3315, 4494
- Otay Mesa, CA; port of entry, 11146
- San Francisco, CA, and Phoenix, AZ, district offices; field service realignment, 5063
- Service officers, powers and duties, etc., 8319, 11840, 13546, 15098, 20389, 40327, 45597, 51235

Residence, physical presence, and absence; listing of American institutions of research, 26547, 47355
- Correction, 27816

Seizure and forfeiture of vehicles, vessels and aircraft; monetary limitations, 7575

Transportation line contracts:
- Aerolineas Nicaraguenses, S.A., 1206
- AirCal, Inc., 16457
- Atlantic Gulf Airlines, 37985
- Best Airlines, Inc., 40962
- Challenge International Airlines, 7744
- Continental Airlines, 43565, 51835
- Continental/Air Micronesia, 25545
- Egyptair, 25906
- Five Star Airlines, 39075
- Haiti Air, 23789
- LADECO Airlines, 14369
- Martinair Holland, N.V., et al., 5369
- P.R. Express, 11363
- Pacific Interstate Airlines, 40799
- Pro Air Services, 19322
- Samoa Airlines, 7745
- Skystar International, Inc., 29641
- Total Air, 23789
- VIA Rail Canada Inc., 25695

PROPOSED RULES

Aliens:
- Classification as immediate relative of U.S. citizen or as preference immigrant; occupational preference petitions filing, 46441
- Proceedings before immigration judges, 51693

Citizenship certificate applicants; interview and application requirements, 28586

Immigration:
- Adjustment of status to that of persons admitted for permanent residence, 7925
  - Advance parole, 23959

Naturalization and citizenship papers replacement; mandated interview eliminated, 28587

Nonimmigrants; documentary requirements; waivers, etc.:
- Admission of inadmissible aliens; application appeals procedures, 25994
- Bangladesh, India, Pakistan, and Sri Lanka; transit without visa privilege withdrawn, 4865
  - Correction, 5396

Organization, functions, and authority delegations:
- Field officers; powers and duties; issuance of subpoenas, 11880
- Service officers, powers and duties, etc., 27289
  - Acceptable surety and agent, 4979
  - Extension of time, 35098

NOTICES

Arrival/departure record; form revision, 36927

Guam; alien employment certification, temporary; policy and procedures, 565

Immigrant visa; alien relative status classification; form revision, 49467

Nonimmigrant visa; alien fiance and fiancee status classification; form revision, 49467

Regional adjudication centers:
- Direct mail initiative, St. Albans, VT, 50239

Reimbursable services; excess cost of preclearance operations, 13292, 32653, 46708

IMPORTS AND EXPORTS

See Agriculture Department.
- *Alcohol, Tobacco and Firearms Bureau.*
- *Animal and Plant Health Inspection Service.*
- *Commerce Department.*
- *Customs Service.*
- *Drug Enforcement Administration.*
- *Economic Regulatory Administration.*
- *Export-Import Bank.*
- *Federal Maritime Commission.*
- *Foreign Agricultural Service.*
- *Foreign-Trade Zones Board.*
- *International Trade Administration.*
- *International Trade Commission.*
- *State Department.*
- *Textile Agreements Implementation Committee.*
- *Trade Representative, Office of United States.*
- *Treasury Department.*

INDIAN AFFAIRS BUREAU

RULES

Education:
- Minimum academic standards for basic education of Indian children and national criteria for dormitory situations, 36798
- Special education (handicapped children), 34094

Estates of Indians of the Five Civilized Nations, financial assistance and social services program, and Indian Child Welfare Act; technical amendments, 12527

Human services:
- Financial assistance and social services program, 39924

Indian Child Welfare Act:
- Grant application procedures revision, 51244

Law and order on Indian reservations:
- Courts of Indian offenses; list, 12242

Off-reservation treaty fishing:
- Fraser River Convention sockeye and pink salmon fishery; interim, 26958

Tribal governments:
- Rolls of Indians, preparation, 46427

PROPOSED RULES

Education:
- Bureau-funded schools; attendance conditions for non-eligible students, 19701
  - Extension of time, 24234

Grants:
- Economic development and core management grants to small tribes, 32741

Human services:
- Financial assistance and social services program, 30688

Individual Indian money accounts, 10980

Law and order on Indian reservations:
- Courts of Indian offenses; jurisdictions, 43235

Tribal government:
- Rolls of Indians, preparation, 25082
  - Correction, 27456

NOTICES

Agency information collection activities under OMB review, 12410, 12411, 13424, 14301, 15502, 24947, 28271, 30301, 39048

Child custody proceedings, reassumption of jurisdiction; petition receipt, approval, etc.:
- Ely Colony Council, 43007

Committees; establishment, renewals, terminations, etc.:
- Osage Tribal Education Committee, 8400, 37439

Environmental statements; availability, etc.:
- Hoopa Valley Indian Reservation, CA, 1656
- Jackpile-Paguate uranium mine reclamation project, NM, 10864, 15642
- Los Alamos Area, NM, 42778
- Santa Fe County, NM, 11014, 28993

Grants; availability, etc.:
- Indian child welfare program, 53201

Indian Child Welfare Act; child custody proceedings; designated tribal agents; annual list, 34200
Indian estates affected by old age assistance claims, list; reimbursement, 15290, 46835
Indian tribal entities; list, 6055
Indian tribes, acknowledgment of existence determinations, etc.:
Burt Lake Band of Ottawa & Chippewa Indians, Inc., 41746
Chukchansi Yokotch Tribe, 28993
Kaweah Indian Nation, Inc., 14302
Northern Cherokee Tribe of Indians, 36495
Principal Creek Indian Nation East of the Mississippi, 14302
Southeastern Cherokee Confederacy, Inc., et al., 12872, 39047
Tchinouk Indians of Oregon, 24709
Tuscarora Nation of North Carolina, 48841
United Lumbee Nation of North Carolina & America, Inc., 18746
Irrigation projects; operation and maintenance charges:
Crow Indian Irrigation Project, MT, 6055, 7661, 27697
Flathead Irrigation Project, MT, 28993
Fort Peck Irrigation Project, MT, 21143
Pine River Indian Irrigation Project, CO, 14460
Wapato Irrigation Project, WA, 1637, 11575
Wind River Irrigation Project, WY, 11576
Judgment funds; plans for use and distribution:
Cherokee Nation of Oklahoma Indians, 52382
Devils Lake Sioux Tribe of Indians, 14302
Fort McDermitt Paiute and Shoshone Tribe of Indians, 14028
Mescalero Apache Tribe, 30239
Pala Band of Mission Indians, 25631
Pauma Band of Mission Indians, 24708
Quechan Tribe of Fort Yuma, 12410
Salt River Pima-Maricopa Indian Reservation Community, 15790
San Pasqual Band, 30239
Shoshone-Bannock Tribes of Fort Hall Reservation, 30765
Walker River Paiute Tribe, 24708
Land transfers:
Brigham City, UT, 1636
Cherokee Nation of Oklahoma, 49620
Crow Creek Sioux Indian Reservation, SD, 29274
Pueblo of San Felipe, NM, 35331
Pueblo of Taos, NM, 49133
Turtle Mountain Band of Chippewas, 3979
Liquor and tobacco sale or distribution ordinance:
Bay Mills Reservation, MI, 23831
Colorado River Indian Reservation, AR and CO, 8400
Confederated Tribes of Goshute Reservation, NV and UT, 30883
Duckwater Shoshone Tribe, NV, 27696
Pueblo of Santa Ana, NM, 15787
Sault Ste. Marie Tribe of Chippewa Indians, MI, 34761
Meetings:
Exceptional Children Advisory Committee, 11575
Pascua Yaqui Indian Reservation, AZ; jurisdiction retrocession, 34555
Reservation establishment, additions, etc.:
Makah Indian Reservation, WA, 40060
Mescalero Apache Indian Reservation, NM, 3979, 11250
Nooksack Indian Reservation, WA, 351
Poarch Band of Creeks, 15502, 19813
School construction priorities list, 1986 FY, 24707

INFORMATION SECURITY OVERSIGHT OFFICE

RULES
National security information program; implementation, 51826

INSURANCE

See Farmers Home Administration.
Federal Crop Insurance Corporation.
Federal Deposit Insurance Corporation.
Federal Emergency Management Agency.
Federal Home Loan Bank Board.
Fiscal Service.
Social Security Administration.

INTER-AMERICAN FOUNDATION

NOTICES
Committees; establishment, renewals, terminations, etc.:
Fellowship Advisory Committee, 47461
Meetings; Sunshine Act, 10140, 23786, 49495
Privacy Act; systems of records, 38590

INTERIOR DEPARTMENT

See also Fish and Wildlife Service.
Geological Survey.
Indian Affairs Bureau.
Land Management Bureau.
Minerals Management Service.
Mines Bureau.
National Park Service.
Reclamation Bureau.
Surface Mining Reclamation and Enforcement Office.
Water Resources Research Office.

RULES
Acquisition regulations:
Protest procedures; interim, 38657
Assistance programs, administrative requirements and cost principles, 6176
Audit requirements for State and local governments; final rule and request for comments, 25223
Conflict of interests; employee responsibilities and conduct, 2671
Endangered Species Act; exemption application process, 8122
Freedom of Information Act; implementation, 29230
Hearings and appeals procedures, 43703
Contract Appeals Board telephone numbers, 8325
Surface coal mining; petitions for award of costs and expenses, 47222
Privacy Act; implementation, 45113
Watch duty-exemption program, 43567
Annual limitation, 7170

PROPOSED RULES
Archaeological resources protection; supplemental regulations, 47073
Freedom of Information Act; implementation, 286
Correction, 1072
Hearings and appeals procedures, 10996
Indian probate fees, 51711
Indian probate proceedings--
Filing time period for appeals, 48445
Written interrogatories and requests for admission as discovery devices, 48446
Surface coal mining--
Petitions for award of costs and expenses, 21470
Timely filing and penalty payment requirements, 47237
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 37006
Correction, 38143
Regulatory agenda, 17340, 44214
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712
Superfund:
Natural resource damage assessments, 52126
Request for additional comments, 1550, 23818
Watch duty-exemption program, 29232

NOTICES
Agency information collection activities under OMB review, 12409, 20626, 24325
Alaska Land Use Council; work program items; inquiry, 10322
Clean Air Act; adverse impact determinations:
Theodore Roosevelt National Park et al., ND, 7658, 26627
Coastal Barrier Resources System; recommendations; availability and inquiry, 8698, 18576, 28658
Cocopah Indian Tribe of Arizona; right-of-way reservation on lands held in trust, 53201
Committees; establishment, renewals, terminations, etc.:
Alaska Land Use Council, 42600
Garrison Unit Joint Tribal Advisory Committee, 23075
National Capital Memorial Advisory Committee, 37290
Federal claims collection; policies and procedures; availability, 8400
Intergovernmental review of agency programs and activities, 5316
Loxahatchee Wild and Scenic River, FL; national wild and scenic rivers system inclusion approval, 21358
Meetings:
Alaska Land Use Council, 2091, 5316, 5430, 14774, 15983, 35874, 42600, 47461
National Strategic Materials and Minerals Program Advisory Committee, 3842, 14774, 27492, 36494
President's Commission on Americans Outdoors, 34916, 38899, 41746, 42600, 46385, 49133, 51311
Mineral Leasing Act; foreign country status:
Kuwait, 11249
National Environmental Policy Act; implementation, 9132
Organization, functions, and authority delegations, 51455
Privacy Act; systems of records, 2091, 7390, 14027, 23522, 27693, 35329, 41222, 46356, 49133, 50236, 53200
Procurement:
Commercial activities, performance; inventory and review schedule (OMB A-76 implementation), 34009, 51464
Senior Executive Service:
Performance Review Boards; membership, 32646, 35874

Watches and watch movements; allocation of quotas:
Virgin Islands, 12061

INTERNAL REVENUE SERVICE

RULES
Employment taxes and collection of income taxes at source:
Bearer bonds; registration requirements, sanctions, 30 percent withholding repeal; temporary, 33522
Employee tip reporting and substantiation requirements; temporary, 29964
Income earned abroad by citizens or residents of U.S., 2959
Estate and gift taxes:
Estate, gift and generation-skipping transfer tax; temporary, 32010
Excise taxes:
Crude oil windfall profit tax--
Credit or refund to trust beneficiaries, 40971
Exemption qualification definitions, 40966
Partnership items, 39998
Fringe benefits; use of company cars, vacations, etc.; temporary, 747
Correction, 9614
Gas guzzler tax, 29959
Heavy trucks, truck trailers and semitrailers, and tractors; temporary, 37350
Heavy vehicle use tax; diesel fuel tax credits and refunds, 21243
Private foundation return and reporting requirements, simplification, 20755
Sporting goods and firearms manufacturers taxes and administrative provisions applicable to manufacturers and retailers taxes, 32012
Correction, 42518
Tires, recapped or retreaded, 41490
Income taxes:
Actuarial tables and interest factors; correction, 13019
Addition to tax for substantial understatement of liability, 12012
Aggregation of activities for purposes of the at-risk rules; temporary, 9613
Applicable Federal rates of interest; alternate method of determining; temporary, 6937
Bearer bonds; registration requirements, sanctions, 30 percent withholding repeal; temporary, 33522
Below-market loans; temporary, 33519
Brokers; statements required for substitute payments, 23676
Cash in excess of $10,000 received in trade or business; reporting requirements; temporary, 21239
Commuter highway vehicles; investment credit, 29369
Congressional candidates; designation of principal campaign committee, 30816
Corporations; statutory merger using voting stock of controlling corporation (reverse triangular merger), 42688
Credit for employment of new employees (targeted jobs credit), 45996
Crude oil windfall profit tax overpayments; effect on estimated income tax payments and penalties, 11853
Correction, 13019, 18244
Domestic matters under section 338 (corporate stock purchases, etc.); questions and answers; temporary, 16402
Economic performance requirement effective dates; questions and answers; temporary, 20748
Energy grants and financing; information returns, 12531
Energy investment credit for leased qualified intercity buses, 11852
Correction, 18244, 18861
Expenditures for facilities used for entertainment; disallowance of deductions, 36575
Federal grants not includible in income, 27231
Foreign corporations, etc.; information returns, 30160
Foreign corporations or partnerships; withholding exemption request filing, 11856
Foreign investment in U.S. real property interests; correction, 12530
Foreign personal holding companies; information returns, 23407
Correction, 25070, 26358
Foreign sales corporations; general rules, status requirements, definitions, etc.; temporary; correction, 9269
Fringe benefits--
Gross income, taxation and exclusions (use of company cars, etc.); temporary, 52281
Listed property; reporting and recordkeeping requirements; temporary, 46006, 52443
Use of company cars, vacations, etc.; temporary, 747, 9614
Funded welfare benefit plans, treatment; temporary, 27427
Income earned abroad by citizens or residents of U.S., 2959
Industrial development bonds; investments in nonpurpose obligations; temporary, 740
Information returns relating to sales or exchanges of partnership interests; temporary, 52313
Leases, special rules; correction, 13019
Mixed straddles; straddle-by-straddle identification and account establishment; temporary, 3324, 42012
Correction, 12243, 19343
Mortgage credit certificates--
Information reporting and policy statement requirements; temporary, 35536
Temporary, 19344
Mortgage interest received in trade or business; temporary, 33529
Mortgage subsidy bonds; tax-exempt status of interest; reporting and recordkeeping requirements, 35540
Original issue discount reporting requirements; temporary, 25219
Partner's distributive share, 53420
Pension, profit-sharing, and stock bonus plans--
Effective dates, transitional rules, etc.; temporary, 29371
Notice, election, and consent rules; temporary, 29376
Private foundation return and reporting requirements, simplification, 20755
Property transferred in connection with performance of services, 31712
Correction, 39664, 42691
Qualified discount coupons; redemption costs, 18473
Correction, 21046
Rehabilitated buildings, qualified; investment tax credit, 26696
State and local income tax refunds reporting, 37347
Straddles; loss deferral rules, wash sale rules, etc.; and 1256 contracts elections; temporary, 3317
Correction, 11856, 19343
Tax-exempt entity leasing; temporary, 27222
Transportation substantiation (adequate contemporaneous records), luxury automobiles (business and personal use) cost recovery and investment tax credit limitations, and fringe benefits (use of company cars, etc.); temporary, 7038
Correction, 13019
Withdrawn, 46004
Withholding upon disposition of U.S. real property interests by foreign persons; temporary; correction, 9614
Procedure and administration:
Church tax inquiries and examinations; temporary, 9614
Foreign personal holding companies; information returns, 23407
Correction, 25070, 26358
Tax exempt organization returns, public inspection, 14696
Tax overpayments, reduction; past-due debt owed to Federal agency; temporary, 39661
Tax shelter registration; temporary, 15417
Reporting and recordkeeping requirements, 10221
Correction, 13020, 13962

PROPOSED RULES
Employment taxes and collection of income taxes at source:
Employee tip reporting and substantiation requirements, 29964, 29990
Estate and gift taxes:
Below-market loans, 33553
Hearing, 46460
Excise taxes:
Below-market loans, 33553
Hearing, 46460
Crude oil windfall profit tax--
Exemption qualification definitions, 5770
Front-end tertiary oil; withdrawn, 27621
Incremental tertiary oil; hearing, 21860
Fringe benefits; use of company cars, vacations, etc., 747, 836, 7038, 7073
Hearing, 7072, 11904, 14392
Gasohol and other alcohol mixture fuels and tires, tread rubber, and inner tubes, 33977
Hearing, 45429
Luxury automobiles (business and personal use); hearing, 7072, 11904, 14392
Income taxes:
Bearer bonds; registration requirements, sanctions, 30 percent withholding repeal, 33522, 33552
Below-market loans, 33553
Hearing, 46460
Cafeteria plans (employee benefits); hearing, 6200

Capital gains tax and passive investment income tax with respect to S corporations, 27457
Cash in excess of $10,000 received in trade or business; reporting requirements, 21308
Hearing, 30955
Charitable contributions of property; hearing, 21860
Credit for clinical testing expenses for drugs for rare diseases or conditions, 15930
Correction, 20918
Domestic matters under section 338 (corporate stock purchases, etc.); questions and answers, 16402, 16431
Election to expense certain depreciable business assets, 39018
Foreign deferred compensation plans; deductions and adjustments to earnings and profits; requirements, 13821
Correction, 18884
Hearing, 28409
Foreign governments, income from commercial activities within U.S.; guidance on treatment of loan or leases of foreign sovereigns; withdrawn, 37381
Foreign sales corporations--
Foreign management and economic processes requirements; hearing, 8749
General rules, status requirements, definitions, etc.; hearing, 8749
Foster care payments; gross income exclusion, 4702
Hearing, 20802
Fringe benefits, 46006, 46087
Gross income, taxation and exclusions (use of company cars, etc.), 52281, 52333
Provisions withdrawn, 52333
Use of company cars, vacations, etc., 747, 836, 7038, 7072, 7073, 11904, 14392, 52333
Funded welfare benefit plans, treatment, 27427, 27456
Industrial development bonds--
Investments in nonpurpose obligations, 740, 837
Residential rental property, 46303
Information returns relating to sales or exchanges of partnership interests, 52313, 52332
Investment credit for mass assets, recapture, 51874
Investment credit limitation in regulated companies; interest synchronization, 26385
Hearing, 32092
Luxury automobiles, depreciation and investment tax credit; limitation on property used for personal purposes, 46006, 46088
Luxury automobiles, etc. (business and personal use); cost recovery and investment tax credit limitations, 7038, 7071
Hearing, 7072, 11904, 14392
Luxury automobiles and other listed property; limitation on amount of cost recovery deductions and investment tax credit; hearing cancelled, 4701
Luxury automobiles (business and personal use)--
Hearing, 7072
Hearing clarification, 11904
Mixed straddles; straddle-by-straddle identification and account establishment, 3324, 3351
Public hearings, 14256
Mortgage credit certificates, 19344, 19383
Hearing, 29435
Information reporting and policy statement requirements, 35536, 35572
Mortgage interest received in trade or business, 33529, 33551
Hearing, 46674
Mortgage subsidy bonds; tax-exempt status of interest; reporting and recordkeeping requirements; hearing, 7799
Oil and gas properties, transfers by individuals to corporations; hearings, 4701
Pension, profit-sharing, and stock bonus plans--
Effective dates, transitional rules, etc., 29371, 29436, 40983
Notice, election, and consent rules, 29376, 29436
Pension plans, multiemployer; employer liability payments deduction, 20800
Private activity bonds--
Carryforward elections and election to allocate State ceiling to facilities for furnishing of electricity; hearing, 7800
Limitation on aggregate amount, 7800
Rehabilitation expenditures; investment tax credit, 26794
Hearing, 37004
Hearing date change, 40205
Residential energy credit, 45423
Straddles; loss deferral rules, wash sale rules, etc., 3317, 3352
Public hearings, 14256
Tax-exempt entity leasing, 27222, 27297
Hearing, 39714
Transportation substantiation (adequate contemporaneous records), luxury automobiles (business and personal use) cost recovery and investment tax credit limitations, and fringe benefits (use of company cars, etc.); partial withdrawal, 46086
Withholding upon disposition of U.S. real property interests by foreign persons; hearing, 46306
Procedure and administration:
Administrative summonses, 24655
Church tax inquiries and examinations, 9614, 9678
Hearing, 23316
Magnetic media returns; requirements, 37871
Hearing, 42188
Penalties for failure to make returns, etc.; withdrawn, 10981
Tax overpayments, reduction; past-due debt owed to Federal agency, 39661, 39713
Tax return preparers; information disclosure, 47563
Regulatory agenda, 17645, 44512

NOTICES
Art Advisory Panel; report availability, 5348
Committees; establishment, renewals, terminations, etc.:
Commissioner's Advisory Group, 48151
Fuel credit, nonconventional source; inflation adjustment factor and reference prices, 11043
Income taxes:
Credit for the elderly and totally disabled; eligibility determination, 4828
Return electronic filing pilot, 30041
Meetings:
Art Advisory Panel, 9754, 19602, 39803
Commissioner's Advisory Group, 32133, 45885
Form 990 Advisory Committee, 28488
Organization, functions, and authority delegations:
Associate Commissioner (Operations) et al., 6305
Deputy Commissioner et al., 32514
District Counsel, 27525, 38603
District Directors et al., 5849, 8043, 37108
Las Vegas District Counsel Sub-Office, 47323
Regional Commissioners et al., 9754
Revenue Agents et al., 3864, 36509
Service Center Directors et al., 3863
Privacy Act; systems of records, 2880, 29816, 41085, 49493
Procurement:
Commercial activities, performance; inventory and review schedule (OMB A-76 implementation), 2750
Senior Executive Service:
Performance Review Board; membership, 3864, 28489, 43309
Tax counseling for the elderly program; application packages; availability, 27887
Tax Forms Coordinating Committee; annual forms review process; inquiry, 11782

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

See Mexico and United States, International Boundary and Water Commission.

INTERNATIONAL BROADCASTING BOARD

NOTICES
Meetings; Sunshine Act, 23380, 52403

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

See Agency for International Development. Overseas Private Investment Corporation.

INTERNATIONAL JOINT COMMISSION-UNITED STATES AND CANADA

See Canada and United States-International Joint Commission.

INTERNATIONAL TRADE ADMINISTRATION

RULES
Antidumping and countervailing duties:
Administrative reviews on request; transition provisions; interim and final, 32556
Trade and Tariff Act of 1984 amendments; effective date; interim, 5746

Export licensing:
Administrative and enforcement proceedings provisions; revision, 53130
Aircraft and vessel repair station procedure; submission of Form ITA-686P; number of copies reduced, 5971
Applications; processing time limits, 48745
Cambodia; country name change from Kampuchea, 29205
Commodities and technical data; policy clarifications, 23110
Commodities list subject to Naval Petroleum Reserves Production Act, 19522
Commodity control list; electronics and precision instruments--
Computers, software and related equipment; savings clause extension, 4503
Computers, software and related equipment; seminars, 4203
Correction, 2276
Navigation, direction-finding, radar and airborne communication equipment, etc., 37136, 39993
Commodity control list--
Amendments, 13770, 23111
Chemicals, metalloids and petroleum products, 21800
China, exports and reexports, 52900
Metal-working machinery, chemical and petroleum equipment, etc., 37112, 39993
Police-model helmets; foreign policy controls, 27420
Printed circuit boards, equipment designed for manufacture or testing; special licenses available, 23284
Synthetic organic agricultural chemicals; interim, 23405
Underwater photographic cameras and equipment; interim, 32169
Country group listing, commodity control list, etc.; clarifications, 23404
Crude oil exports to Canada for consumption or use, 26145
Defense articles; transfer of jurisdiction from State Department to Commerce Department, 3740
Distribution license procedure, 21562
Correction, 23666, 37996
Quarterly reports for exports to Switzerland and Yugoslavia, 14373
Editorial amendments, 23111
Exports to Coordinating Committee (COCOM) countries, 38511
Correction, 39080
Foreign availability for items controlled for national security purposes, 52912
Hughes Helicopters; exports to all country groups, 18461
Linear alpha olefins and other acrylic organic compounds, 19521
Interim, 729
Operation technical data, 38639
Parts to service equipment; quarterly report, 11994
Phencyclidine classification, shipping tolerances; clarifications, 15867
Service supply license procedure; quarterly reports, 5970
Short supply regulations; interim, 41131
South Africa; export controls, 47363
Technical data; software and electronic computers, 16468
Correction, 18858
Temporary denial provisions, 42666
Export trade certificates of review, 1804
Instruments and apparatus for educational and scientific institutions; duty-free applications, 11500
Restrictive trade practices or boycotts; interpretation, 13187
Watch duty-exemption program, 43567
Annual limitation, 7170

PROPOSED RULES
Countervailing duties, 24207
Extension of time, 32088
Export controls, foreign policy-based; advance notice, 42568
Export licensing:
Commodities list subject to Naval Petroleum Reserves Production Act, 835
Crude oil exports from Alaska's Cook Inlet, 52798
Foreign availability for items controlled for national security purposes, 10501
Petroleum partly refined for further refining; short supply; advance notice, 2064
Watch duty-exemption program, 29232

NOTICES
Alaskan North Slope oil study; inquiry, 50189
Antiboycott violations:
Forsberg, Frank, 1903
Lockheed Engineering & Management Services Co., Inc., 1904
Antidumping:
Anhydrous sodium metasilicate from United Kingdom, 41920
Animal-food grade DL-methionine from France, 16726
Barbed wire and barbless fencing wire from--
Argentina, 18906, 24013, 38563, 46808
Brazil, 18903, 24013, 33364
Poland, 18902, 29711
Brass fire protection products from Italy, 8354
Calcium hypochlorite from Japan, 7941, 15470
Carbon steel plate from--
Finland, 3948
Japan, 52350
Korea, 50648
Poland, 23327, 33385
Romania, 15948, 29459
Carbon steel products from--
Austria, 1911, 23339, 33365
Czechoslovakia, 1912, 23484
East Germany, 1913, 23340, 33368
Hungary, 1914, 23485
Poland, 1915
Romania, 1916, 23342, 29459
Spain, 3949
Venezuela, 1917, 23345, 29460
Carbon steel structural shapes from--
Norway, 2317, 23326, 26815, 32758, 42975
Poland, 2317, 23329, 32101
Carbon steel wire rod from--
Brazil, 24923, 38150
East Germany, 9815, 14408, 24553, 31213
Poland, 18905, 36909, 37888
Portugal, 18900, 38566
Spain, 23485, 37560
Venezuela, 18901, 35284
Carton closing staples and staple machines from Sweden, 3582
Cell site transceivers from Japan, 307
Cellular mobile telephones and subassemblies from Japan, 12599, 24554, 29713, 45447, 51724
Chloropicrin from China, 2844
Circular welded carbon steel line pipe from Venezuela, 12067, 32607, 42199, 48827
Circular welded carbon steel pipes and tubes from--
Korea, 33613, 42582, 43262
Thailand, 12068, 30493, 40427, 50821
Color television receivers, except video monitors, from Taiwan, 43432
Color television receivers from Korea, 43432
Diamond tips for phonograph needles from United Kingdom, 13842
Dried heavy salted codfish from Canada, 3946, 9306, 20819, 27836
Drycleaning machinery from West Germany, 1256, 9700, 32154
Dynamic random access memory semiconductors of 256 kilobits and above from Japan, 51450
Egg filler flats from Canada, 2320, 7206, 24009
Elemental sulphur from Canada, 37889
Erasable programmable read only memories (EPROMs) from Japan, 43603
Expansion tanks and parts from Netherlands, 10297
Fabric expanded neoprene laminate from Japan, 10518, 23488, 29466
Fuel ethanol from Brazil, 11748, 29459, 33814, 38871, 43602, 49740
Galvanized carbon steel sheet from Australia, 3948
Grand and upright pianos from Korea, 6226, 16331, 26020, 37561
Greige polyester/cotton printcloth from China, 5805
Heavy-walled rectangular welded carbon steel pipes and tubes from Canada, 15771, 36910, 37706, 48238
High power microwave amplifiers and components from Japan, 1260
Hot-rolled and cold-rolled carbon steel sheet from Finland, 1918, 4558
Hot-rolled carbon steel plate cut to length from Brazil, 24006, 33815
Hot-rolled carbon steel plate from Romania, 9812
Hot-rolled carbon steel plate in coil from Brazil, 24005, 33815
Hot-rolled carbon steel sheet from Brazil, 24006, 33814
Hydrogenated castor oil from Brazil, 3372, 13644, 31214, 35110, 51725
Iron construction castings from--
Brazil, 24008, 43591, 48826
Canada, 24264, 43592
China, 24014, 43594, 50188
India, 24014, 43595, 51272
Large diameter carbon steel welded pipes from Brazil, 3823, 9701
Low-fuming brazing copper rod and wire from--
France, 10518
New Zealand, 10522, 31405, 42580, 49740
South Africa, 10524, 28826, 38567, 49973
Malleable and nonmalleable cast iron pipe fittings from Taiwan, 34731

Malleable iron pipe fittings from--
Brazil, 34730
Korea, 34731
Natural bristle paint brushes and brush heads from China, 10523, 31636, 35285, 52812
Nylon impression fabric from Japan, 28111, 49976
Offshore platform jackets and piles from--
Japan, 20252, 37566, 48454, 53369
Korea, 20253, 37566, 48452, 52823
Oil country tubular goods from--
Argentina, 2307, 12595, 33386, 51275
Austria, 12069, 32758, 43602
Brazil, 2309, 6226, 24557
Canada, 33387
Korea, 2312, 9307, 16728, 24012
Mexico, 2313, 12598, 24276
Romania, 12070, 32458
Spain, 2315, 12599, 21479, 24277, 30866
Taiwan, 33388
Venezuela, 12071, 33369
Petroleum wax candles from China, 39743
Photo albums and filler pages from--
Hong Kong, 7624, 28828, 36911, 37707, 43751, 51272
Korea, 7625, 28826, 37018, 43754, 51273
Pig iron from--
Canada, 11003
Romania, U.S.S.R., and East Germany, 870
Pistachios, in-shell, from Iran, 42978
Porcelain-on-steel cooking ware from--
China, 53352
Mexico, 53352
Taiwan, 53353
Potassium chloride from--
East Germany, 4559
Israel, 4560
U.S.S.R., 4562
Precipitated barium carbonate from West Germany, 16330
Pressure sensitive plastic tape from Italy, 38698
Printed vinyl film from Brazil, 8754, 48620
Rectangular welded carbon steel pipes and tubes from Korea, 33614, 42583
Red raspberries from Canada, 5654, 19768, 26019
Rock salt from Canada, 7808, 28602, 31213, 49741
Shop towels of cotton from China, 6227, 26020
64K dynamic random access memory components from Japan, 29458, 50649
Small diameter circular and light-walled rectangular welded carbon steel pipes and tubes from Spain, 5409
Small diameter welded carbon steel standard, light-walled rectangular, and heavy-walled rectangular pipe and tube from Singapore, 50653
Small diameter welded carbon steel standard pipe and tube from--
China, 51273
Philippines, 51274
Spun acrylic yarn from Italy, 35849
Stainless clad steel plate from Japan, 30866, 38151
Stainless steel wire rods from France, 9813
Stainless steel woven wire cloth from Japan, 309, 10520
Steel jacks from Canada, 42577
Steel pipes and tubes from Japan, 37565, 43758
Steel reinforcing bars from Canada, 16529
Steel wire nails from--
China, 27479, 47086
Korea, 32606, 40045
Poland, 27475, 35283
Yugoslavia, 27480, 47787
Table wine from--
France, 41375
Italy, 41376
West Germany, 41374
Television receiving sets, monochrome and color, from Japan, 24278, 30867
Titanium sponge from--
Japan, 32459
U.S.S.R., 3584, 16330
Tubular metal framed stacking chairs from Taiwan and Italy, 308
Tubular steel framed stacking chairs from--
Italy, 10293, 21919
Taiwan, 10295, 21917
12-hydroxystearic acid from Brazil, 3373, 13644, 31211, 35110, 51729
12-volt lead-acid type automotive storage batteries from Korea, 23486
12-volt motorcycle batteries from Taiwan, 5206
Valves, couplings, nozzles and connections, of brass, suitable for use in interior fire protection systems, from Italy, 1099
Welded carbon steel API line pipe from Taiwan, 32245, 53176
Welded carbon steel pipe and tube products from--
Turkey, 32245
Yugoslavia, 32246, 53358
Welded carbon steel pipes and tubes from Brazil, 3372, 12843
Welded carbon steel standard pipe and tube from India, 32244, 53356
Welded circular carbon steel pipes and tubes from Venezuela, 1614, 23343, 27037, 42979
Welded rectangular carbon steel pipes and tubes from Taiwan, 1614, 20255, 29713, 32243, 50821
Welded steel wire fabric for concrete reinforcement from--
Italy, 51442
Mexico, 51443
Venezuela, 51444
Antidumping; cost of production calculations subsidies; inquiry, 23169
Antidumping and countervailing duties:
Administrative review requests, 40434, 46148, 46689, 48825, 49739, 50933
Antidumping and countervailing duties waiver; emergency war material purchased abroad, strategic and critical material for stockpiling, and nuclear source materials for common defense and security; hearing, 986
Cheese, quota; foreign government subsidies:
Annual list, 2074, 52811
Quarterly update, 14001, 27036, 40578
Countervailing duties:
Agricultural tillage tools from Brazil, 300, 24270, 34525
Amoxicillin trihydrate and its salts from Spain, 2600
Ampicillin trihydrate and its salts from Spain, 9307
Apparel from Thailand, 9818
Bottled green olives from Spain, 28237
Canned tuna from Philippines, 9474, 30287
Carbon steel plate from Brazil, 29996, 37891
Carbon steel products from--
Austria, 2318, 11220, 19767, 33369, 41546
Brazil, 25437, 36460
Korea, 30987, 41372
Sweden, 2319, 11224, 19767, 33375, 41547
Venezuela, 1905, 11227, 19767, 29465
Carbon steel wire rod from--
Brazil, 26816, 33809
New Zealand, 43590, 52351
Portugal, 19065, 28232, 36129, 50335
Saudi Arabia, 28231, 32751, 47788
Singapore, 36130, 46679
South Africa, 25615, 40885
Spain, 23487, 37018
Trinidad and Tobago, 19561
Venezuela, 19066, 28234, 32465
Cast-iron pipe fittings from Brazil, 8755
Chain of iron or steel from Japan, 19063
Chains and parts of iron or steel from Spain, 37020
Circular welded carbon steel line pipe from Venezuela, 46801, 48827
Circular welded carbon steel pipes and tubes from--
Thailand, 12062, 23331, 32751
Venezuela, 12063, 18899
Circular welded carbon steel standard pipe from Venezuela, 46801
Cold-rolled carbon steel flat-rolled products from Korea, 5653, 30988, 41373
Converted paper-related school and office supplies from Mexico, 20117, 24012
Cotton shop towels from Pakistan, 39744
Deformed steel concrete reinforcing bar from--
Peru, 28230, 37566, 48819
South Africa, 27476, 35107
Fabricated automotive glass from Mexico, 1906
Fasteners from Japan, 1255, 15951, 43750
Float glass from--
United Kingdom, 41182
West Germany, 40886
Fresh Atlantic groundfish from Canada, 35281, 41921
Fuel ethanol from Brazil, 11526, 16727, 46681, 49740
Galvanized steel wire strand from South Africa, 9476, 32880, 43750
Heavy iron construction castings from Brazil, 32462, 35280, 48826
Iron construction castings from Brazil, 24269
Iron ore pellets from Brazil, 2322, 11527, 24265
Iron-metal construction castings from Mexico, 43262
Lamb meat from New Zealand, 15949, 26236, 37708
Leather wearing apparel from--
Argentina, 45139
Mexico, 6024
Lime oil from Peru, 26241
Litharge, red lead, and lead stabilizers from Mexico, 36912
Live swine and fresh, chilled, and frozen pork products from Canada, 1613, 13264, 25097, 27038, 32880

Low-fuming brazing copper rod and wire from--
France, 11004
New Zealand, 11004, 21325, 31638
South Africa, 11005, 21328, 31642
Non-rubber footwear from Brazil, 15597, 26397
Offshore platform jackets and piles from Korea, 20253, 29461, 35108, 42744, 52823
Oil country tubular goods from--
Austria, 12065, 23334, 29457, 43597
Brazil, 5286, 25438, 33812
Canada, 33383, 40209, 53172
Mexico, 24793, 30990
Spain, 5287, 25439, 30989
Taiwan, 33384, 40580, 49977
Venezuela, 12066, 18899, 32466
Oleoresins from India, 23484
Oleoresins of paprika from Spain, 23330
Pig iron from Brazil, 7206
Pistachios, in-shell, from Iran, 42980, 53178
Porcelain-on-steel cooking ware from--
Mexico, 53355
Taiwan, 53354
Portable aluminum ladders and components of ladders from Mexico, 15950, 21480
Portland hydraulic cement and cement clinker from Mexico, 27476, 51732
Prestressed concrete steel wire strand from South Africa, 9477, 31757, 43757
Red raspberries from Canada, 32461, 42574
Refrigeration compressors from Singapore, 6025, 30493
Rice from Thailand, 42581, 50652
Round-shaped agricultural tillage tools (discs) from Brazil, 42743
Scissors and shears from Brazil, 11927
Small diameter carbon steel pipes and tubes from Korea, 33614, 43757
Small diameter welded carbon steel pipes and tubes from Brazil, 26235, 33812
Sodium gluconate from European Communities, 521, 21107
Steel pipes and tubes from South Africa, 35110, 43759
Steel products from--
South Africa, 27837, 35851
Spain, 23488, 26815, 33809
Steel wire rope from South Africa, 9478, 37564, 50930
Sugar content of articles from Australia, 27330, 41182
Table wine from--
France, 40580
Italy, 40584
West Germany, 40582
Textile mill products and apparel from--
Argentina, 9846
Colombia, 9863
Indonesia, 9861, 15208
Malaysia, 9852
Peru, 9871
Philippines, 1607, 11925, 15208
Singapore, 9840
Sri Lanka, 9826
Turkey, 9816, 15208
Textile mill products from--
Mexico, 301, 10824
Thailand, 9832
Tomato products from Greece, 2073
Welded carbon steel line pipe from Taiwan, 32250, 41924, 53363
Welded carbon steel pipe and tube products from--
Mexico, 4555, 13058
Turkey, 32248, 37891, 43597
Yugoslavia, 32247, 41921, 53360
Welded carbon steel pipes and tubes from Spain, 2323, 5654
Welded carbon steel standard pipe and tube from India, 32249, 41926, 53367
Welded steel wire fabric for concrete reinforcement from--
Italy, 51275
Mexico, 51276
Venezuela, 51277
Wool from Argentina, 19064, 37716
Yarns of polypropylene fibers from Mexico, 9701
Export Administration Act; enforcement responsibilities of Commerce Department and Customs Service, 41545
Export privileges, actions affecting:
Agnese, Rudolphe, et al., 29245
Behrens, Kurt, et al., 5288, 28001, 36128
Carlson, Paul C., et al., 9699, 18281
Elzar, Anton, et al., 29244, 35280
Etang Chen et al., 24924
Fife, Denis J., et al., 28001
Forstner, Josef, et al., 15206, 24558
Gopal, Peter K., et al., 45138, 52982
Grandia, Goris Christiaan, 7945
Grinon, Ivan, 50334
Ivady, Sandor, et al., 29246
Kubicek, Josef, et al., 9473, 39159
Noron S.A., 21482
Piher Semiconductores, S.A., 14002, 26242, 28603, 42074, 46688
Scheele, Werner, et al., 50931
Wirth, Hans, et al., 24925
Export trade certificates of review, 308, 871, 3373, 4251, 7204, 7205, 7361, 9479, 9702, 10092, 11219, 11924, 14127, 19428, 20118, 21323, 23046, 23172, 23483, 24004, 24926, 27038, 29997, 32608, 36126, 38021, 39026, 41375, 41720, 41930, 46686, 46807, 47572, 48110, 49086, 49872, 50932, 52819
Guideline issuance, 1786
Foreign availability assessments:
Step and repeat mask alignment and exposure systems and Winchester disk drives, 52981
Foreign buyer program and domestic trade show support, 27473
Foreign country of origin markings:
Imitation native American jewelry and artifacts; inquiry, 7941
Imports:
Stainless steel round wire and cold drawn round bar; price monitoring program termination, 25730
Meetings:
Automated Manufacturing Equipment Technical Advisory Committee, 3822, 11408, 13643, 14127, 21107, 29456, 40578, 41377, 47242, 48819
Biotechnology Technical Advisory Committee, 12843, 33389, 47572
Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee, 6228, 6229, 13643, 14127, 15597, 15599, 25436, 25729, 33389, 35108, 35109, 41377
Computer Systems Technical Advisory Committee, 4565, 4566, 13643, 13644, 13645, 14001, 14127, 20473, 21324, 26396, 26397, 33810, 33811, 33813, 33994, 40579, 40884, 40885, 41377, 47242, 47793, 48110, 48111, 48819
Electronic Instrumentation Technical Advisory Committee, 4567, 13643, 13842, 14127, 25437, 37393, 41377, 47242, 48819
Exporters' Textile Advisory Committee, 14127, 26020, 41920
Importers and Retailers' Textile Advisory Committee, 1261, 9860, 15208, 19773, 23491, 27839, 32881, 37394, 41721, 48450
Management-Labor Textile Advisory Committee, 1261, 9860, 15207, 20119, 25435, 31901, 36643, 41721, 48450
Military Critical Technologies List Implementation Technical Advisory Committee, 8648, 25436, 27330, 29996, 45645, 51732
President's Export Council, 37892, 38151, 42980
Semiconductor Technical Advisory Committee, 1099, 11409, 19773, 26598, 28966, 30495, 38699, 49437
Telecommunications Equipment Technical Advisory Committee, 4567, 10831, 13643, 14127, 25437, 31758, 42981, 47572
Telecommunications Technical Advisory Committee, 40579
Transportation and Related Test Equipment Technical Advisory Committee, 7809, 11409, 24007, 41378, 51737
Organization and functions:
Telephone information services; expansion, 40578
Senior Executive Service:
Performance Review Board; membership, 42744
Short supply determinations; inquiry:
Alloy band saw steel, 48455
Alloy wire rod, 48456
Aluminum-clad cold rolled steel sheet, 19561
Aluminum-clad steel wire and wire strand, 32457
Aluminum-killed cold-rolled steel sheet, 20822
Aluminum-killed nickel electroplated cold rolled steel strip, 36913
Bright nickel-plated steel strip, 50188
Carbon band saw steel, 36644
Carpet nails, 34732, 42583
Cold drawn wire anti-friction bearing steel, 42979
Cold heading quality steel wire and bar, 48449
Galvanized wire, 49872
Galvanized wire stick-collated brads, etc., 32879
High carbon strip steel, 49740
Hot-dipped tin steel sheet, 21483
Hot-dipped tinplate, 48449
Nickel-plated, cold-rolled steel strip and sheet, 41183
Open coil annealed rimmed steel and aluminum-killed cold-rolled steel sheet, 29998
Stainless steel wire, 34733
Steel pipe and tube, 3375, 4250, 4719, 7208, 9111, 13408, 15772, 19064, 20474, 20822, 21483

Trade adjustment assistance determination petitions:
Aiken Industries, Inc., et al., 4554
Bixby International Corp. et al., 48824
Caribbean Die Casting Corp. et al., 40429
General Pneumatic Products Corp. et al., 27838
Gothenburg Feed Products Co. et al., 34524
Injection Footwear Corp. et al., 19221
Lars Machine, Inc., et al., 138
Merritt Estate Winery, Inc., et al., 30726
Pelton Casteel, Inc., et al., 52811
R.M. Marquis Footwear, Inc., et al., 14407
Seattle Refrigeration & Manufacturing Co., Inc., et al., 43604
Specialty Plastics Corp. et al., 24928
Sylvania Shoe Manufacturing Corp. et al., 11408
Trade adjustment assistance reports:
Nonrubber footwear industry, 33993
Watches and watch movements; allocation of quotas:
Virgin Islands, 12061
Scientific articles; duty free entry:
Agriculture Department et al., 26393, 53180
American Health Foundation, 19772
Argonne National Laboratory et al., 23324
Auburn University, 41548
Augustana Hospital and Health Care Center, 19772
Berea College, 46148
Boston University School of Medicine, 8648
Brown University, 50332
California Institute of Technology, 20818
California State University et al., 41183, 48450
Carnegie Institution of Washington, 28963
Center for Energy and Environmental Research, 37258
Centers for Disease Control, 20818
Children's Hospital, Denver, CO, et al., 16119, 18281
Children's Hospital Corp. et al., 26395
Children's Hospital of San Francisco et al., 15596
Clarkson University et al., 46148
Columbia University, 4719
Commerce Department, 53181
Cornell University et al., 4995, 8648, 9475, 19431, 28963, 28964, 29994, 50333
Dartmouth College, 21482
David Taylor Naval Ship Research and Development Center, 41720
Davidson College, 25730
Drexel University et al., 24927
Emory University, 28964
Environmental Protection Agency et al., 7944, 23325, 46806
Forsyth Dental Center et al., 37258
Fred Hutchinson Cancer Research Center et al., 18898
Geological Survey et al., 4719, 24552, 25730, 38569, 41378, 52821
George Washington University Medical Center et al., 39158
Harvard College et al., 6230, 19772
Harvard School of Public Health et al., 27999
Harvard University et al., 4717, 14276, 15469
Indiana University et al., 21481, 40210
Interior Department et al., 20818, 28964, 46806
Iowa State University et al., 1261, 16120
Johns Hopkins University, 51445
Justice Department et al., 11747
Kansas State University et al., 36127
Kent State University, 32757
Lamont-Doherty-Geological Observatory/ Columbia University, 37258
Massachusetts Institute of Technology et al., 12062, 19431, 25731, 37262, 37394
Michigan State University, 25731
Michigan Technological University, 32757
Microelectronics Center of North Carolina et al., 986, 13843, 32757, 37261
Minnesota Department of Natural Resources et al., 46149
Moncrief Radiation Center, 11747, 13060
Montana State University, 987, 14407, 15772
NASA Lewis Research Center et al., 52820
National Aeronautics and Space Administration et al., 19431, 23753, 37261, 38022
National Bureau of Standards, 37257
National Institute of Environmental Health Sciences, 4717
National Institute of Mental Health, 13060
National Institute on Aging, 53181
National Institutes of Health et al., 6230, 50332
National Oceanic and Atmospheric Administration, 28964
NCI-Frederick Cancer Research Facility, 50820
New Mexico Institute of Mining & Technology, 20818
New York Medical College et al., 45645
North Carolina State University et al., 34537, 46150, 51278
Northwestern University Medical School, 6978, 16120
Oakland University, 53181
Pennsylvania State University et al., 20473, 34538, 37259, 50820, 51445
Purdue University et al., 34538
Queens College et al., 41379
Rensselaer Polytechnic Institute, 32758, 37259
Rockefeller University, 53181
Rutgers University et al., 23325, 25731, 41378, 48451
San Diego State University Foundation, 13060
Smithsonian Institution, 6231
Southern Illinois University, 4718
Stanford Linear Accelerator Center, 29995
Stanford University et al., 28965, 45137
State University of New York, 16121, 20473
Texas A&M Research Foundation, 28965
University of Alabama, 37261
University of Arizona, 16121, 36643, 42199
University of California et al., 6979, 7362, 16727, 25731, 28601, 32755, 33613, 37259, 42199, 50333, 51446
University of Chicago et al., 2845, 16121, 25732, 37259, 37262, 41381, 50333, 52822
University of Colorado et al., 6231, 23171, 36643, 41929
University of Florida, 19994, 20474
University of Georgia, 53182
University of Illinois et al., 13059, 23325, 28965, 29457, 41929, 50333, 52822
University of Kansas, 29995
University of Maryland et al., 29995, 32879, 33992, 37261
University of Michigan et al., 33993, 41929
University of Minnesota, 16331, 53182
University of Nebraska Medical Center et al., 13844
University of Nevada, 32756
University of New Mexico et al., 6231, 47243, 48241, 48452
University of North Carolina, 37260
University of Notre Dame et al., 45646
University of Oklahoma et al., 19430
University of Oregon, 11232, 25732
University of Rochester et al., 30217, 37260, 52822
University of Southern California et al., 7362, 20474
University of Southern Mississippi, 4718
University of Tennessee, 19994
University of Tennessee Center for Health Sciences, 4718
University of Texas et al., 6232, 25732, 28965
University of Texas System Cancer Center et al., 11746
University of Utah, 29995
University of Washington et al., 10518, 37262
University of Wisconsin, 8649, 37260
Vanderbilt University, 7363
Veterans Administration Medical Center et al., 29997
Virginia Commonwealth University et al., 23754
Virginia Polytehcnic Institute and State University, 16121
Wayne State University, 23325
Western Research Institute et al., 29243, 50334
Worcester Foundation for Experimental Biology, 37261
Yale University et al., 6979, 32756, 41720, 41929, 50334, 51446

INTERNATIONAL TRADE COMMISSION

NOTICES
Agency information collection activities under OMB review, 6069, 13290, 13677, 14170, 21369, 21515, 25476, 27495, 28292, 30308, 45171, 46366
Import investigations:
Agricultural tillage tools from Brazil, 28292, 43008
Air and surface cargo transportation services between Japan and U.S.; competition, 3035
Aircraft industries, U.S. commuter and business; competitive assessment, 3036, 30244
Aluminum frame, fabric-covered luggage and components, 3421, 11252, 14168
Amorphous metal alloys and articles, 31260
Anhydrous sodium metasilicate from United Kingdom, 40241, 46366
Animal feed grade DL-methionine from France, 14171, 23082
Anodes for cathodic protection and components, 357, 1134, 2754, 5135, 5325, 7970, 10116, 11253, 16168
Apparatus for disintegration of urinary calculi, 16169, 27495, 28999, 36158, 45171
Apparatus for installing electrical lines and components, 357, 2352, 6072, 7970, 26635, 51466

International

Aramid fiber, 7967, 23085, 30246, 41227, 49776
Automatic bowling machine printed circuit control boards, 12090, 31049, 37918, 38904, 47852
Automobile industry, monthly reports; information on production, imports, exports, etc., 10118
Automotive transmission shifters, 2349, 3036, 6070, 7968
Automotive visor/illuminated mirror packages and components, 21147, 37065, 41228
Ball and roller bearing industry, U.S.; competitive assessment, 16169
Barbed wire and barbless wire strand from--
  Argentina, 46366
  Argentina, Brazil, and Poland, 1135, 23083, 29770
  Brazil, 32775
Barter and countertrade transactions, 12090
Calcium hypochlorite from Japan, 15233
Candles from China, 37065, 45172
Carbon steel products from--
  Australia, Finland, and Spain, 4276
  Austria, Czechoslovakia, East Germany, Finland, Hungary, Norway, Poland, Romania, Sweden, and Venezuela, 186
  Austria, Czechoslovakia, East Germany, Hungary, Norway, Poland, Romania, Sweden, and Venezuela, 6070, 7234
  Austria, East Germany, Norway, Poland, Romania, and Venezuela, 26637
  Austria, Sweden, and Venezuela, 16164, 26636
  Austria and Sweden, 40460
  East Germany and Poland, 33858
  Finland, 5327
  Romania and Venezuela, 31050
Carbon steel structural shapes from--
  Norway, 50851
  Poland, 31931
Carbon steel welded pipes and tubes from Spain, 1135
Carbon steel wire rod from--
  East Germany, 13290, 18581, 28294, 31931
  Poland, Portugal, and Venezuela, 15234, 23084
  Portugal, 43008, 47850
  Venezuela, 31927, 32775
Cast-iron pipe fittings from--
  Brazil, 2349, 7236, 16173, 36157, 36926
  Brazil, Korea, and Taiwan, 31928, 38904
Castor oil products from Brazil, 1135, 7236, 33858, 40241
Cellular mobile telephones and subassemblies from Japan, 27496, 31050, 51467
Cellulose acetate hollow fiber artificial kidneys, 31051
Ceramic drainage foils, 7970, 23085, 28999, 40242, 45172
Chain of iron or steel from--
  Japan, 9139
  Spain, 32779
Cloisonne jewelry, 358, 15235, 24712
Cold-rolled carbon steel plates and sheets from--
  Argentina, 5136
  Austria, 37292
Cold-rolled carbon steel products from Korea, 3036
Compound-action metal cutting snips and components, 15235, 16171, 21146, 23083, 24712, 31052
Converted paper-related school and office supplies from Mexico, 21370, 25477
Convertible rowing exercisers, 2350, 19496, 25476, 31052, 31053, 35167, 36157, 42783, 50851
Dialyzers using telescoping connectors for fluid lines, 7969, 14168
Dot matrix line printers and components, 10116, 31049
Double-sided floppy disk drives and components, 4276, 28294, 31053, 35167, 37067, 40242, 41228, 47122, 49776, 52866
Dried salted codfish from Canada, 7236, 27497
Dynamic random access memory semiconductors (DRAM's) of 256 kilobits and above from Japan, 51613, 52869
Egg filler flats from Canada, 7238, 9135
Electric shavers and parts, 43009, 49776
Electrical connectors, 20301, 24711, 24713, 28999, 29000
Erasable programmable read only memories (EPROMs) from Japan, 41230, 47852
Ethyl alcohol from Brazil, 9136, 15236, 41427, 47123, 49777
European Community pork in U.S. and third country markets; competitive position, 25475, 37293, 38721
Expansion tanks, 12091, 47853, 51467
Expansion tanks from Netherlands, 9140, 14168
Fabric and expanded neoprene laminate from Japan, 16165, 30247
Fans with brushless DC motors, 41228, 49778
Fasteners from Japan, 26060, 32778
Flat goods, luggage, and handbags of manmade fibers, 11255
Float glass from West Germany and United Kingdom, 16176, 26060
Floppy disk drives and components, 1136, 6073, 24714, 36158
Fluidized bed combustion systems, 3037, 16171, 18582, 21147, 25474, 29000, 30242, 31929
Foam earplugs, 4277, 10116
Forging industry, U.S.; competitive assessment, 28293, 32777
Fresh Atlantic groundfish from Canada, 32775, 38904
Frozen beverage dispensing machines, 3421, 32776, 37066
Frozen concentrated orange juice from Brazil, 359
Generalized System of Preferences; eligible articles list, etc., 36160
Glass construction blocks, 358, 359, 5136, 5137, 6073
Glass firescreens for fireplaces, 47853
Glass tempering systems, 6074
Golf carts and wheels, 10117
Gremlin character depictions, 3037, 16170, 35169, 42783, 46367, 52868
Harmonized commodity description and coding system; inquiry, 11254
Hearing aid industry; import impact assessment under Educational, Scientific, and Cultural Materials Importation Act, 25476
Heavy iron construction castings from Brazil, 40243
Heavy-walled rectangular welded carbon steel pipes and tubes from Canada, 13089, 20302, 51468
Hot-rolled carbon steel plate from Romania, 16166, 19496, 28295
Human-powered vehicles with combination steering, braking, and propulsion means, 50849
Hydrogenerators from Japan, 40244
Ink jet printing systems and components, 5137, 10117
Iron construction castings from Brazil, Canada, India, and China, 21148, 27498, 47287
Iron ore pellets from Brazil, 1136, 6074, 16174, 25478
Israeli imports, duty-free treatment; probable economic effect, 2351
Key telephone systems and components, 24713, 50849
Large video matrix display system and components, 35167
Large-diameter carbon steel welded pipes from Brazil, 10118
Lime oil from Peru, 23778, 30245
Live swine and pork from Canada, 16175, 31931
Low-fuming brazing copper wire and rod from--
  France, New Zealand, and South Africa, 7971, 14174
  New Zealand, 15238, 33859, 50851
  South Africa, 41231
Mass spectrometers and components, 33860, 49778
Meat deboning machines, 2352, 7237, 12092, 33857
Molded pulp egg filler flats from Canada, 30247
Motor graders with adjustable control consoles and components, 10117, 14169
Multi-level touch control lighting switches, 32777, 52868
Mushrooms, processed; annual statistical reports, 5137
Natural bristle paint brushes from China, 9138, 15238, 36158
Nonrubber footwear, 4278, 30245
Nut jewelry and parts, 45173
Nylon impression fabric from Japan, 25478, 31053
Offshore platform jackets and piles from--
  Japan, 18582, 24716, 50854
  Korea, 18582, 24716, 31932, 37918, 47123, 50854
Oil country tubular goods from--
  Argentina, Brazil, Mexico, and Spain, 7239
  Argentina, Canada, and Taiwan, 31054, 37066
  Argentina and Spain, 21147
  Austria, 27499, 38224, 45502
  Austria, Romania, and Venezuela, 9723, 16173
  Brazil, Korea, and Spain, 2353
  Brazil and Mexico, 26060
Oleoresins from Spain and India, 3422, 10118, 12090, 12419
One piece cold forged bicycle cranks, 33861
Optical waveguide fibers, 11255, 16171
Papermaking machine forming sections for continuous production of paper and components, 18584

Pharmaceutical closures, 47854
Photo albums and filler pages from Hong Kong and Korea, 5327, 12092, 31055, 40244, 50854
Pistachio nuts, in-shell, from Iran, 40460, 47852
Plastic tubing, methods for extruding, 45173
Porcelain-on-steel cooking ware from Mexico, China, and Taiwan, 50855
Porch, patio, and lawn gliders, 12092, 30242, 33862, 41229, 47123
Portable bag sewing machines and parts, 52867
Portable electronic calculators, 2632, 5135, 5136, 24714, 25474
Potassium chloride from U.S.S.R, 11256
Potassium permanganate, 19497
Pull-type golf carts and wheels, 14172, 16170
Radial ply tires for passenger cars from Korea, 52869
Red raspberries from Canada, 1136, 9137, 26638, 31048, 37067, 47124
Rock salt from Canada, 5138, 11257, 31933
Rotary wheel printing systems, 1138, 3039, 15236, 33862
Rowing machines and components, 359, 4279
Semiconductors; competitive position, 18582
Shoe stiffeners, 19498, 25474
Shrimp industry, U.S. Gulf and South Atlantic; competitive conditions, 7238, 11257
64K dynamic random access memory components from Japan, 27498, 32778
Soft sculpture dolls (Cabbage Patch Kids), related literature and packaging, 46368
Softballs and polyurethane cores, 5138, 16171
Softwood lumber, 13291, 24715
Spring balance arm lamp heads, 9141, 14172
Spring retainers for garage door hardware, 12093, 25475, 30243
Stainless steel plate from Sweden, 31056, 43137
Stainless steel wire cloth from Japan, 3421, 9139, 12094
Steel industry, efforts to adjust and modernize; annual surveys; competitive conditions, 11252
Steel wire nails from--
  China, Poland, and Yugoslavia, 24845, 31057
  Yugoslavia, 50850
Steel-consuming industries, effects of restraining U.S. imports on, 27496
Stretch wrapping apparatus and components, 31260, 47855, 52868
Sugar, 18583
Sugar (articles containing), 18584
Sugar content of articles from Australia, 23086, 23533, 28296, 29001, 35170, 37920
Surgical implants for fixation of bone fragments, 6074, 20302, 24715
Table wine from--
  France and Italy, 50853
  West Germany, France, and Italy, 37919, 45174
Tapered tubular steel transmission structures from Korea, 7240, 9336
Tax reforms, proposed; international competitiveness of U.S. industries effects, 52865
Telephone base housing and related packaging and printed materials, 1138, 31057
Textile mill products and apparel from Turkey, Indonesia, and Philippines, 16176
Thin sheet glass from Switzerland, Belgium, and West Germany, 30245
Tobacco, 29000
Trade dispute settlement under GATT and Tokyo Round agreements, 24716
Trade-related employment, 29002
Tubular steel framed stacking chairs from Italy, 14169, 29001
12-volt lead-acid type automotive storage batteries from Korea, 20301, 27500
12-volt motorcycle batteries from Taiwan, 3038, 9141
Unitary electromagnetic flowmeters with sealed coils, 45175
Upper body protector apparatus for use in motosports, 50852, 52868
Valves, nozzles, and connectors of brass from Italy, 2354, 7971, 10547
Vegetables produced in U.S. Great Lakes States and Canada; competitive position, 51612
Welded carbon steel line pipes and tubes from Venezuela, 50852
Welded carbon steel pipes and tubes from--
  Brazil, 7968, 12094
  Brazil and Spain, 5325
  China, Philippines, and Singapore, 47851
  India, Taiwan, and Turkey, 47125, 49466
  India, Taiwan, Turkey, and Yugoslavia, 30243, 37068
  Spain, 6075
  Taiwan, 31930, 36159
  Taiwan and Venezuela, 5326
  Thailand, 43614, 47125
  Thailand and Venezuela, 10866, 16167
  Venezuela, 26638, 29002, 35168, 43615, 43616
Welded steel wire fabric for concrete reinforcement from--
  Italy, Korea, Mexico, and Venezuela, 45176, 47126
  Italy, Mexico, and Venezuela, 49138
Window shades and components, 41229, 47127
Wood shingles and shakes, 43010
Woodworking machines, 1138, 2354, 3039, 3423, 4280, 7969, 9141, 9142, 10326, 14170, 14172, 20303, 23085, 26639
X ray image intensifier tubes, 6075, 10326, 16172, 25477
Meetings; Sunshine Act, 1161, 2121, 3452, 4298, 5155, 5850, 7869, 9940, 10345, 11288, 11988, 11989, 14333, 16191, 18612, 20340, 20341, 21163, 21390, 23575, 25511, 27526, 28141, 28491, 28685, 29510, 29511, 30044, 31454, 31994, 32828, 33888, 34960, 36953, 38739, 41088, 42642, 42819, 43057, 45190, 46241, 47894, 48293, 48859, 49659, 50707, 51505
Organization, functions, and authority delegations:
  Hearing-impaired services; provision, 25479
Senior Executive Service:
  Performance Review Boards; membership, 31049

INTERSTATE COMMERCE COMMISSION

RULES

Accounts, uniform system:
  Railroads and motor carriers of property; indexing annual operating revenues, 7062
Forms listing; update, 40027
Freight forwarders:
  ICC field office locations, 35563
Motor carriers:
  Commercial zones--
    Houston, TX, 10233
    New York, NY, 34478
  Foreign motor private carriers of nonhazardous commodities certificates of insurance; new form (BMC 91MX), 40029
  Lease and interchange of vehicles; master leases agreements; correction, 24648
  Livestock, fish, and unmanufactured agricultural commodities; vehicles exemption, 40549
Organization and functions:
  Significant proceedings on transportation issues; Commission conferences and voting procedures, 2985
Practice and procedure:
  Fees for licensing and related services, 40024
    Clarification, 47224
    Correction, 41158, 41899, 43193
  Foreign motor carriers; certificates of registration; applications, 20773
  Motor carriers of property; small carrier transfer regulations for transactions; modification, 6348
  Pleadings and applications, filing; correction, 30188
  Rail abandonment regulations; technical amendment, 31592
  Rail abandonments; offers of financial assistance; technical amendment, 36432
  Rail and water carrier rates; informal complaints; exemption from letter-of-intent requirements, 15900
  Rail lines, out of service; exemption--
    Complaints filed with U.S. District Court, 8335
    Defense Department notification, 24649
  Railroad cost recovery procedures, 87, 43395
    Reconsideration petition deadline extended, 4518, 10969
  Redesignation and revision; technical amendments, 30275
Rail carriers:
  Boxcar traffic; exemption modifications, 20419
  Coal rate guidelines, nationwide; policy statement, 35562
  Export coal; exemption removed, 20419
  Freight car ownership, car utilization, and distribution rules and practices; investigation of adequacy, 21265
  Intramodal rail competition, 46066

Commissioners' separate expression, 47055
Negative surcharge tariffs; exemption, 33343
Railroad consolidation procedures; trackage rights exemption, 15751
Reasonably expected costs; surcharge determination, 945
Transportation of shipments made subject to contract rate; tariff rate exemption, 52926
Railroad car service orders:
Chicago, Milwaukee, St. Paul & Pacific Railroad Co.; track use by various railroads, 2676, 7919, 11366, 11368, 12031, 21264, 26774, 34705, 36085, 43715, 48211
Records preservation, 10774
Reports:
Railroad annual report (Form R-1)--
Certification by independent accountant, 41899
Revision, 47749
Railroad employees, service and compensation; annual report, 946
Effective date, 23013
Tariffs and schedules:
Amendment procedures; increase in supplemental filings, etc., 459
Correction, 4863
Credit regulations for motor, rail, and water carriers, etc.; repeal, 2289
Effective date postponed, 6182
Motor common carriers of property; residential and redelivered shipments; assessment of charges; removed, 4863
Publication, posting, and filing; misymbolized rate rejection remedy removed, 7063
Publication, posting, and filing for all carriers; consolidation and revision; technical amendments, 37533
Railroad cost recovery procedures, 43395

PROPOSED RULES

Accounts, uniform system:
Motor carriers of passengers; accounting and periodic reporting requirements, 26594
Motor carriers of property, accounting and reporting requirements elimination, 7201
Extension of time, 13053
Motor carriers:
Commercial zones; Cameron, Hidalgo, Starr, and Willacy Counties, TX, 30981
Lease and interchange of vehicles--
Equipment and drivers to private carriers and shippers, 41532
Identification devices; extension of time, 517
Negotiated rates; advance notice, 37391
Recordkeeping requirements for shipments of low value packages; petition for waiver of modification, 21094
Practice and procedure:
Foreign motor carriers; certificates of registration; applications, 9298
Correction, 10822
Intramodal rail competition, 13051
Extension of time, 21319, 25613
Oral argument, 27834
Rail abandonments--
Cost determination, 3002
Financial assistance offers, 14401
Initial decision appeals, 35104
Rail lines; class exemption for acquisition and operation, 34880
Rail carriers:
Abandonments; use of rights-of-way as trails, 7200
Extension of time, 13256
Boxcar traffic exemption--
Car hire and service, 26015, 49576, 52973
Extension of time, 31629
Proceeding reopened, 23741, 40984
Car hire charges--
Review of regulation; advance notice, 16724, 27031, 34878, 52972
Zone of reasonableness; withdrawn, 16724
Demurrage charges, exemption; advance notice, 51565
Securities regulation; exemptions, 13841
Extension of time, 19424
Transportation of shipments made subject to contract rate; tariff rate exemption, 14122
Correction, 19558
Regulatory agenda, 18132, 44974
Reports:
Motor carriers of passengers; accounting and periodic reporting requirements, 26594
Extension of time, 38559
Motor carriers of property, accounting and reporting requirements elimination, 7201
Extension of time, 13053
Railroad annual report (Form R-1)--
Certification by independent accountant, 18539, 25282, 29706
Revision, 18891
Tariffs and schedules:
Ocean carriers; international joint through rates; tariff filing requirements, 21636
Correction, 40985
Short notice effectiveness for independently filed--
Motor passenger carrier rates, 53168
Single-factor motor-water rates, 20920

NOTICES

Agency information collection activities under OMB review, 2737, 3039, 11950, 15238, 15989, 24597, 24717, 30309, 37068
Agreements under sections 5a and b, applications for approval, etc.:
Machinery Haulers Association, 40623
Southern Motor Carriers Rate Conference, Inc., 5076
Energy and environmental statements; availability, etc.:
Bridgeport & Port Jefferson Steamboat Co., 50352
Chicago & North Western Transportation Co., 6076
Coal rate guidelines, nationwide, 552
ICAST & Western Railroad Co., 5825
Western Pacific Railroad Co. et al., 13887
Meetings; Sunshine Act, 14192, 20341, 24598, 24717, 24846, 25132, 25378, 30255, 30256, 30560, 30781, 40256, 41088, 41782, 45190, 45959, 49815
Motor carriers:
Aero Mayflower Transit Co.; predetermined price protection tariff item, 23201
Hearing, 21516, 23365
Hearing cancelled, 25132
Agricultural cooperative transportation; filing notices, 11760, 18939, 23365, 29489, 38594, 40900, 42236, 48271, 50016, 53024, 53025
Armstrong World Industries, Inc.; declaratory order petition, 28296, 31660, 36500
Compensated intercorporate hauling operations, 1645, 2737, 4819, 6411, 7406, 9526, 11596, 13677, 15646, 16566, 18940, 21516, 24051, 24950, 27702, 29489, 30532, 31436, 33119, 35333, 37444, 38226, 40621, 42236, 43471, 45673, 46517, 47288, 48272, 49139, 50017, 51954
Finance applications, 1945, 3424, 11467, 15793, 20631, 24847, 26847, 39057, 39786, 42106, 42784, 43301, 45672
Insurance rates; investigation and inquiry, 45672
Lease of equipment and drivers to private carriers; policy statement; petitions, 31439, 36680
Rate bureaus; expansion of collective ratemaking territory, 33421
Motor carriers; control, purchase, and tariff filing exemptions, etc.:
Aluminum Co. of America, 27501, 30248
Burlington Northern, Inc., 27701, 30248, 30889
Burlington Northern Co., 27368
Champion International Corp., 37736, 50967
Colorado Western Stages, Inc., et al., 50353
Winfield Bus Service, Inc., 25340
Organization and functions:
Practitioner examination; postponement, 19815
Rail carriers:
Atchison, Topeka & Santa Fe Railway Co.; passenger train operation, 19095, 25339, 27500, 28126, 31439
Car hire charges update, 1983; suspension, 16756
Car hire charges update, 1984; proposed suspension, 16756
Consolidated Rail Corp., acquisition by Norfolk Southern Corp.--
Inquiry, 19816
Study modification, 25340
Cost of capital; limited revenue adequacy proceeding; determination, 553, 8799, 10326
Cost ratio for recyclables, 1982-1985 determination, etc., 26416
Cost recovery percentages; inquiry, 3846, 10547
Cost recovery procedures; adjustment factor, 11760, 26061, 39183, 53204
CSX Railroads; boxcar traffic exemption, 32916
General American Transportation Corp. v. Indiana Harbor Belt Railroad Co. et al.; reopening of proceeding, etc., 10867, 16178
Missouri Pacific Railroad Co. et al.; joint rates, division between official and southwestern territories, 45672
National Railroad Passenger Corp. (Amtrak); appointment of agents to require emergency routings, 31934
Product and geographic competition; guidelines--

Inquiry, 13090, 21371, 25635
Market dominance proceedings decision, 46189
Oral argument, 27854
Railroad revenue adequacy standards, 899
State intrastate rail rate authority--
Alaska, 23534
California, 9724
Colorado, 23847
Connecticut, 9724
Delaware, 9724
Florida, 33119
Kansas, 7005
Kentucky, 1139, 43301
Maryland, 26640
Michigan, 1002, 27001
Minnesota, 1284
Nevada, 9724
North Carolina, 9724
Oregon, 38905
Wisconsin, 899
Tank car allowance system investigation, 38594, 41964
U.S. Steel Corp.; tariff charges exemption and refund petition, 27853
Union Pacific Railroad Co.; passenger train operation, 8799, 19095, 31934, 35334
Waybill data; release for use, 8405, 8684, 11597, 15002, 18325, 20860, 23201, 23202, 25339, 30767, 35335, 37593, 39788, 43801, 51311
Railroad operation, acquisition, construction, etc.:
Altra Railroad Co., 33118
Amite, Wilkinson & Feliciana Railroad Co., 31261
AT&L Railroad Co., Inc., et al., 21949, 23847
Atchison, Topeka & Santa Fe Railway Co., et al., 20013, 42236
Baltimore & Ohio Railroad Co. et al., 11257, 25796, 41035, 42785
Bangor & Aroostook Railroad Co., 1646
Borinstein Railroad Co., 14777
Burlington Junction Railway, 9526
Burlington Northern Railroad Co. et al., 360, 9724, 12094, 26275, 31438, 33421, 35170, 37293, 43011, 45946, 49466, 52870
C&J Railroad Investment Co., Inc., 38042
Canonie Atlantic Co. et al., 37293
Carolina & Northwestern Railway Co. et al., 6263
Central Montana Rail, Inc., 23846
Chehalis Western Railroad Co., 40621
Chesapeake & Ohio Railway Co., 3040, 7145, 27702
Chicago, Central & Pacific Railroad Co., 37920, 53206
Chicago, West Pullman & Southern Railroad Co., 7005, 13292
Chicago & North Western Transportation Co. et al., 361, 7972, 23846, 51756
Chicago Short Line Railway Co., 361
Colorado & Eastern Railroad Co., 24051, 27855, 33118, 51469
Columbus & Greenville Railway Co. et al., 14033, 24328
Consolidated Rail Corp. et al., 3847, 5825, 30532, 34207, 38722, 38905, 50017
CSX Corp., 14467
Dakota Rail, Inc., 47288
Dakota Southern Railway Co., 45503
Delaware & Hudson Railway Co., 41035
Delaware Otsego Corp. et al., 361, 12095
Denver & Rio Grande Western Railroad Co. et al., 45876
Everett Railroad Co., 188
Florida East Coast Railway Co., 900
Genesee & Wyoming Industries, Inc., 30020
Genesee & Wyoming Railroad Co., 899
Grand Trunk Western Railroad Co., 28850, 36300
Guilford Transportation Industries, Inc., et al., 14777, 53025
Gulf & Mississippi Railroad Corp., 362, 21149, 24950, 50685
Gulf & Ohio Railways, Inc., 46369
Hammermill Paper Co., 34557
Hillsdale County Railway Co., Inc., 1139
Holton Inter-Urban Railway Co. et al., 45503
Hoosier Rail Development Corp., 899
Horry County Railway Co. et al., 4604
ICAST & Western Railroad Co., 5825
Illinois Central Gulf Railroad Co., 20142, 35226
Illinois & Rock River Railroad Co., 33862
Interstate Scrap & Salvage Co., 41963
Iowa Railroad Co., 5139
Jim Walter Corp., 25634
Lackawanna County Railroad Authority, Inc., 11950
Lackawanna Valley Railroad Corp. et al., 28125
Laurinburg & Southern Railroad Co. et al., 46369
Louisiana & Arkansas Railway Co., 15239, 30309
Maine Central Railroad Co. et al., 11467
MG Rail, Inc., 4921
Michigan Interstate Railway Co., 39058
Milwaukee Road, Inc., 32651
Missouri Pacific Railroad Co. et al., 9724, 15650, 23087, 27855, 34558, 35877, 42603, 49779
Missouri-Kansas-Texas Railroad Co. et al., 553, 3848, 10869, 20142, 26641, 27854, 36161
New England Southern Railroad Co., Inc., et al., 20508, 21371
New York, Susquehanna & Western Railway Corp. et al., 25339
Norfolk & Western Railway Co. et al., 7006, 7972, 9912, 10869
NRUC Corp. et al., 49884
Oregon-Washington Railroad & Navigation Co. et al., 41751
Pigeon River Railroad Co., 34207
Plymouth Short Line, Ltd., 25634
Pocono Northeast Railway, Inc., 26061
Prairie Trunk Railway, 1946
Rarus Railway Corp., 18325
Santa Cruz, Big Trees & Pacific Railway Co., 19815
Soo Line Railroad Co. et al., 10869, 33118
Southern Pacific Transportation Co., 5328, 5689, 7006, 13430, 36681
Southern Railway Co., 7407, 11761
Staten Island Railway Corp., 14777
Tangent Transportation Co., 25133
Union Pacific Corp. et al., 34019
Union Pacific Railroad Co. et al., 13678, 18325, 49623
Walking Horse & Eastern Railroad Co., Inc., 19498, 43471
Waterloo Railroad Co. et al., 35877
Western Pacific Railroad Co., 18324
Wheeling & Lake Erie Railway Co., 3423
Wisconsin & Calumet Railroad Co., Inc., 37756
Wisconsin & Southern Railroad Co., 18941
Railroad services abandonment:
Akron & Barberton Belt Systems Corp., 12419
Alabama Great Southern Railroad Co., 40621
Alabama Southern Railroad Co., 16177, 18940
Arcata & Mad River Rail Road Co., 16178
Atchison, Topeka & Santa Fe Railway Co., 10548, 21515, 23202, 24598, 24848, 36681, 40621, 50966
Baltimore & Ohio Railroad Co., 1646, 2738, 6262, 15238, 20632, 26275, 28296, 38042, 48649
Bear Creek Mainline Railroad, 41602
Bessemer & Lake Erie Railroad Co., 45503
Boston & Maine Corp. et al., 45176
Burlington Northern Railroad Co., 554, 1002, 1646, 1946, 1947, 4603, 4819, 5442, 5688, 7006, 8404, 9526, 12878, 12879, 15508, 16566, 16756, 18940, 19595, 20508, 21515, 24051, 24597, 24846, 25132, 25479, 26061, 27067, 27501, 27854, 31934, 32496, 35612, 38722, 40900, 41602, 43011, 45504, 47634, 49466, 50016, 50685, 52385, 52567
Cadiz Railroad Co., Inc., 31935
Carolina & Northwestern Railway Co., 28850
Central of Georgia Railroad Co., 25133
Chelatchie Prairie Railroad, Inc., 32650
Chesapeake & Ohio Railroad Co., 26416
Chesapeake & Ohio Railway Co., 360, 11019, 26276, 31262, 32779, 33421, 34772, 38722
Chicago & North Western Transportation Co., 2738, 3603, 14323, 18324, 20013, 21150, 31660, 36927, 45946, 47288, 52568
Dayton & Michigan Railroad Co. et al., 50017
Denver & Rio Grande Western Railroad Co., 21515
Elgin, Joliet & Eastern Railway Co., 32326
Frankfort & Cincinnati Railroad, 41602
Fresno Interurban Railway Co. et al., 24846
Grand Trunk Western Railroad Co., 12659, 15239
Hardeman County Railroad Co., Inc., et al., 40461
Illinois Central Gulf Railroad Co., 3847, 13886, 14323, 23534, 30020, 32326, 41232, 41603, 45177, 48273, 52567
Kansas Southwestern Railway Co. et al., 45946
Louisiana Midland Railway Co., 24846
Maine Central Railroad Co., 41428, 43472, 45876
Maryland & Pennsylvania Railroad Co., 7006, 16178
Missouri Pacific Railroad Co., 4604, 11018, 11950, 16567, 20632, 50856, 53025
Mobile & Gulf Railroad Co., 24597
Newburgh & South Shore Railway Co., 50353, 51955
Norfolk & Portsmouth Belt Line Railroad Co., 49466
Norfolk & Western Railway Co., 33863, 37069, 38042, 52870
Northern Missouri Railroad Co., 48142
Oregon-Washington Railroad & Navigation Co. et al., 11761

Ottumwa Connecting Railroad Co., 33118
Prairie Trunk Railway, 23845
Rahway Valley Railroad Co., 51954
Rarus Railway Corp., 38594
Sacramento Northern Railway et al., 42785
Sand Springs Railway Co., 47289
Seaboard System Railroad, Inc., et al., 553, 900, 1002, 1003, 1947, 3848, 4280, 5442, 5826, 7407, 8683, 9142, 13430, 16178, 19250, 21949, 24328, 24848, 26062, 29003, 30308, 35171, 36680, 38042, 39789, 43616, 45177, 45946, 47288, 48649, 51311, 51470, 51614
Sierra Railroad Co., 188
Southern Pacific Transportation Co., 900, 13678, 16567, 25796, 27368, 30020, 31262, 32651, 33422, 35171, 36681, 42236, 42785, 46517, 48498
Southern Railway Co. et al., 8683, 33119, 34207, 36161
St. Louis Southwestern Railway Co., 20013, 21150
Staten Island Railroad Corp., 5328, 5689, 7006
Union Pacific Railroad Co. et al., 6262, 15002, 19815, 27067, 29492, 32779, 34921
Valley & Siletz Railroad Co., 12639
Wabash Railroad Co. et al., 11019, 20508, 42785
Western Maryland Railway Co. et al., 21516
Western Pacific Railroad Co. et al., 9725, 12659, 13886, 31438
Wheeling & Lake Erie Railway Co. et al., 46518
Yakima Valley Transportation Co., 24597
Senior Executive Service:
Performance Review Board; membership, 34019
Tariff authorities, special; revocation of obsolete authorities; inquiry, 21947
Water carrier applications:
Brix, Peter J., et al., 7241
Exploration Cruise Lines, Inc., 34207
Pacific Hawaiian Line, Inc., 39788

INVESTMENTS

See Commodity Futures Trading Commission.
Overseas Private Investment Corporation.
Securities and Exchange Commission.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

See Actuaries, Joint Board for Enrollment.

JUSTICE ASSISTANCE BUREAU

PROPOSED RULES

See entries under Justice Department.

NOTICES

Grants; availability, etc.:
Criminal justice discretionary grant program, 10869, 30664, 32917
Prisons industries enhancement certification program; guidelines; availability, 12661

JUSTICE DEPARTMENT

See also Antitrust Division.
Drug Enforcement Administration.
Federal Bureau of Investigation.
Foreign Claims Settlement Commission.
Immigration and Naturalization Service.
Justice Assistance Bureau.
Justice Programs Office.
Justice Statistics Bureau.
Juvenile Justice and Delinquency Prevention Office.
National Institute of Justice.
Parole Commission.
Prisons Bureau.

RULES

Acquisition regulations, 4450
Competition in contracting, etc.; interim, 29798
Criminal justice block grants, 22987
Emergency Federal law enforcement assistance, 51340
Justice Programs Office; hearing and appeal procedures, 28199
Juvenile justice and delinquency prevention:
Formula grants to States, 25550
Grants competition and peer review requirements, 31361
Local court rules requiring mandatory arbitration; policy statements, 40524
National security information program; implementation, 46388
Nondiscrimination:
Employment discrimination; complaints filed against recipients of Federal financial assistance; Education Department participation limitations, 8608
Open judicial proceedings authorizations; policy, 51677
Organization, functions, and authority delegations:
Assistant Attorney General, Land and Natural Resources Division, 8606, 26197
Associate Attorney General, 36054
Contract Review Committee; abolishment and transfer of functions and staff, 8607
Deputy Attorney General, 25708
Director, U.S. Marshals Service; fugitive matters, 40196
Federal Bureau of Investigation, Director, et al.; travel expenses of newly appointed special agents, 20908
Justice Assistance Act of 1984; organizational changes, 43385
Privacy Act; implementation, 31360
Public safety officers:
Awards; extension of cut-off date for nominations, 3349
Death benefits, 27428

PROPOSED RULES

Criminal justice block grants, 3353
Emergency Federal law enforcement assistance, 31888
Freedom of Information Act; implementation, 52335
Intergovernmental review of agency programs and activities, 28955
Justice Programs Office; hearing and appeal procedures, 11905
Juvenile justice and delinquency prevention:
Formula grants to States, 6098
Correction, 9679
Grants competition and peer review requirements, 16717
Nonimmigrants; documentary requirements; waivers, etc.:
Admission of inadmissible aliens; application appeals procedures, 25994
Privacy Act; implementation, 7800, 31887, 37232, 37233, 37235, 37236, 51410, 51411, 51413
Public safety officers' death benefits, 10982
Regulatory agenda, 17412, 44294
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712
Voting Rights Act; Section 5, administration procedures, 19122
Witness fees, 43409

NOTICES

Agency information collection activities under OMB review, 362, 7241, 9725, 12095, 15508, 20860, 23535, 26641, 27369, 29771, 31440, 36681, 38043, 43616, 45504, 48273, 50967
Committees; establishment, renewals, terminations, etc.:
Attorney General's Commission on Pornography, 8684
Grants; availability, etc.:
Cuban entrants; planned secondary resettlements from South Florida, 27782
Haitian entrants; planned secondary resettlements from South Florida, 27768, 27778
Intergovernmental review of agency programs and activities, 9725
Meetings:
Attorney General's Commission on Pornography, 21671, 23536, 28044, 32780, 37444, 39058, 43617, 50018
President's Commission on Organized Crime, 5139, 13430, 24055
Pollution control; consent judgments:
A&F Materials Co. and McDonnell Douglas Corp., 4604
A.J. MacKay Co. et al., 47290
All Purpose Roll Leaf Corp. et al., 15510
Alto-Tronics Corp., 362
American Cyanamid Co., 3424
American Development Corp., 52871
American Recovery Co., 38043
Amoco Production Co., 8405
ARCO Oil & Gas Co., 38044
Atlas Corp., 13091, 19498
Badische Corp., 23847
Barr & Barr et al., 4605
Ben's Truck & Equipment, Inc., et al., 51757
Borden, Inc., 11762
Cabot Corp. et al., 40245
Cannelton Industries, Inc., 51758
Carolawn Co., Inc., et al., 30767
Caterpillar Tractor Co. et al., 26642
Chattanooga Coke & Chemicals Co., Inc., 23535
Chem-Dyne Corp. et al., 25797
Chrysler Corp., 15240
Clark, Dexter, et al., 3425
Clark Oil & Refining Corp., 12660
Colorado Organic Chemical Co., Inc., et al., 45505
Columbus Coated Fabrics, 36167
Conoco, Inc., et al., 28850
Conservation Chemical Co. et al., 33422
Consolidated Rail Corp., 51757
Continental Can Co., U.S.A., 38044
Corsicana, TX, et al., 53206
Damba Corp., N.V., 40245
Data General Corp. et al., 47289
Dennison Monarch Systems, Inc., 32916
Denver, CO, et al., 45504, 49141

Fairchild Republic Co., 51757
Federated Metals Corp., Inc., 21371
Ford Motor Co., 47291
Fox Paper, Inc., 31262
Franklin, WV, 14778
Friedman, Hyman, et al., 10548
Garland, TX, et al., 24717
General Motors Corp., 36167
Georgia-Pacific Corp., 47290
Goodyear Tire & Rubber Co., 32780
Goolsbey, Larry, et al., 10327
Hamilton County, OH, 11598
Hooker Chemicals & Plastics Corp. et al., 50018
Hygrade Food Products Corp., 30767
Interstate Transformer, Inc., et al., 28660
James River-KVP, Inc., 31262
Jefferson Parish, LA, et al., 32780
Joint Meeting-Rutherford, East Rutherford, Carlstadt, et al., 48143
Kennecott Corp., 27291
Kenner, LA, et al., 21372
Kern Oil & Refining Co., 23088
Kewaunee Scientific Equipment Corp., 47289
Koch Industries, Inc., 51758
Lake Worth, FL, 27290
Lamotte Trucking & Salvage et al., 11598
LFE Corp., Inc., 15508
Lilhead Corp., 19499
LTV Steel Co., 25797
Magnuson Mining Co., 26848
Maine et al., 40624
Marine Power & Equipment Co. et al., 43302
Mariette Plating Co., 38044
Martin Muffler Sales, Inc., 23536
Masonry Products, Inc., 38595
Metate Asbestos Corp. et al., 23366
Mid-States Terminals, Inc., 40071
Middlesboro, KY, 51759
Midwest Solvent Recovery, Inc., et al., 26848
Midwestern Insulation Contractors and Engineers, 49141
Monsanto Co. et al., 34773
N-Ren Corp., 38595
National Finishing Corp., 38045
Okmulgee, OK, et al., 40624
Omega Processing Co., 31936
Orlando, FL, et al., 19499
Painsville OH, 12420
Parma, OH, 5329
Pasadena, TX, et al., 43302
Penntech Papers, Inc., 12660
Philadelphia, PA, 33650
Plastics Universal Corp. et al., 16567
Printpack, Inc., 46518
Quick Roll Leaf Manufacturing Co., 23536
R.C.A. Rubber Co., 28661
Ranger Fuel Corp., 27067
Regan, James L., et al., 33650
Rouge Steel Co., 47291
SCA Chemical Services, Inc., 47291
Schmidt, Hilmar, 38043
SCM Corp., 45505
Service Hardware & Drilling Co., 28044
Shell Oil Co., 19499
Shintech Inc., 41429
Southland Corp., 1139, 16179
Stephens, Clarence, et al., 12660
Sunny Acres Water Co., 1285
Supreme Equipment Corp., 12420
Syncom, 42616
Terex Corp., 26849
Texaco, Inc., 36167
Three Star Muffler et al., 41429
Toronto Paperboard Co., Inc., 20143
Triple A Muffler, 38045
Twin Falls, ID, et al., 33863
United States Steel Corp., 13431, 37293
Vertac Chemical Corp. et al., 53206
Vicco et al., KY, 25796
Virgin Islands, 40244
Water and Sewer Authority of West Carroll, PA, 14174
West Memphis et al., AR, 26848
Westinghouse Electric Corp. et al., 21517
World Oil Co., 52870
Wyoming Valley Sanitary Authority et al., 21372
Youngstown, OH, 51758
Privacy Act; systems of records, 2095, 2096, 7842, 18753, 30309, 31935, 33863, 35878, 35879, 37294, 37295, 37296, 37298, 37299, 40065, 42603, 42615, 51470, 51471, 51473, 51474, 51479
Seized and forfeited property; guidelines, 24052
Senior Executive Service:
  Performance Review Boards; membership, 26417
Settlement agreements:
  Karamatsu, Richard E., et al.; territorial cost-of-living allowance entitled to current and former Federal employees, 47464
Voting Rights Act certifications:
  Bronx County, NY, 45885
  Kings County, NY, 45886
  New York County, NY, 45886

JUSTICE PROGRAMS OFFICE

RULES

See entries under Justice Department.

NOTICES

Grants; availability, etc.:
  Crime victim assistance grant program guideline--
    Final, 43011
    Inquiry, 11262
  Crime victim compensation grant program guideline--
    Final, 34921
    Inquiry, 10119, 11262

JUSTICE STATISTICS BUREAU

NOTICES

Federal Bureau of Investigation's uniform crime reporting program, restructuring report; inquiry, 25340

JUVENILE JUSTICE AND DELINQUENCY PREVENTION OFFICE

RULES

See entries under Justice Department.

PROPOSED RULES

See entries under Justice Department.

NOTICES

Grants and cooperative agreements:
  Causes and correlates of delinquency research program, 39610
  Deinstitutionalization of status offenders, impact; research program, 43088
  Missing children and homeless youth; law enforcement agencies policies and practices, national study, 24951, 28126, 30312, 30533
  Missing Children's Assistance Act program priorities, 19817, 30310
  Missing children's assistance program, 26276
  Nonparticipating State initiative, 36558
  School crime and discipline research and development program, 39602
  Title II programs; 1985 FY program plan, 8800
Meetings:
  Coordinating Council, 7662, 23204, 32653, 49142
  Missing Children's Advisory Board, 7845, 15990, 26276, 35336
  National Conference of Member Representatives from State Advisory Groups, 37445
Missing children, official use of mail in location and recovery; preliminary guidelines, 46622

LABELING

See Alcohol, Tobacco and Firearms Bureau.
Consumer Product Safety Commission.
Federal Trade Commission.
Food and Drug Administration.
Research and Special Programs Administration.

LABOR DEPARTMENT

See also Employment and Training Administration.
Employment Standards Administration.
Federal Contract Compliance Programs Office.
Labor Statistics Bureau.
Labor-Management Relations and Cooperative Programs Bureau.
Labor-Management Standards Office.
Mine Safety and Health Administration.
Occupational Safety and Health Administration.
Pension and Welfare Benefit Programs Office.
Veterans Employment and Training, Office of Assistant Secretary.
Wage and Hour Division.
Workers' Compensation Programs Office.

RULES

Acquisition regulations, 8914
Aid to Families with Dependent Children (AFDC); work incentive programs; implementation; final rule and request for comments, 6164
Contracts and property management:
  Audit requirements for State and local governments; interim, 32050
Exemplary rehabilitation certificates for ex-servicemen, 4209
Federal claims collection:
  Administrative offset, 5204
  Disclosure of information to credit reporting agencies, 5202
    Correction, 8608
  Interest, penalties, and administrative costs, 5209
Freedom of Information Act; implementation, 28306
National security information program; implementation, 51390
Wage rates; procedures for predetermination, 4506
  New publication procedures, 49822

PROPOSED RULES

Federal claims collection:
- Salary offset, 51354
  - Correction, 52944

Nondiscrimination on basis of handicap in federally-conducted programs and activities, 27298
- Comment period reopened, 36885
  - Correction, 38860
- Correction, 28956

Regulatory agenda, 17422, 44302
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712
Right to Financial Privacy Act; implementation, 13049

NOTICES

Agency information collection activities under OMB review, 1647, 2740, 3986, 4819, 5016, 5451, 7145, 7845, 8406, 11022, 11950, 13091, 14034, 16569, 19250, 20632, 21518, 23538, 25341, 25798, 26276, 26851, 28852, 30030, 30534, 31787, 32326, 33120, 33650, 34773, 36929, 38227, 39184, 41035, 41604, 43802, 46521, 48650, 48651, 50019, 51488, 53207

Committees; establishment, renewals, terminations, etc.:
- Economic Adjustment and Worker Dislocation Task Force, 47127
- Employee Welfare and Pension Benefit Plans Advisory Council, 32497
- 4,4'-Methylenedianiline (MDA) Negotiated Rulemaking Advisory Committee, 42787
- Sheltered Workshops Advisory Committee, 36929

Consumer price index; U.S. city average, 188, 7846, 51489

Meetings:
- Economic Adjustment and Worker Dislocation Task Force, 49142
- President's Committee on International Labor Organization, 39184
- Trade Negotiations and Trade Policy Labor Advisory Committee, 3604, 8407, 9527, 14467, 20955, 25341, 33121, 38227, 42787, 48274, 52569

Occupational injuries and illnesses; recordkeeping guidelines; inquiry, 29102
Organization, functions, and authority delegations:
- Congressional Affairs Office et al., 25341
- Employment and Training, Assistant Secretary, 28853

Privacy Act; systems of records, 5140, 5141, 5143, 43473
Procurement:
- Commercial activities, performance; inventory review schedule (OMB A-76 implementation), 20633

Senior Executive Service:
- Performance Review Board; membership, 48654

LABOR STATISTICS BUREAU

NOTICES

American Telephone & Telegraph Co.; recordkeeping exception for occupational injuries and illnesses, 50356
Local area unemployment statistics procedures; proposed changes; inquiry, 45505
Meetings:
- Business Research Advisory Council, 1648, 19818, 33651, 40625
- Business Research Advisory Council Committees, 1647, 19818, 40624, 46521
- Labor Research Advisory Council Committees, 15652, 35880, 42237

LABOR-MANAGEMENT RELATIONS AND COOPERATIVE PROGRAMS BUREAU

RULES

Airline employee protection program, 53094
Federal sector labor organization conduct standards and labor-management reports, 31308

LABOR-MANAGEMENT SERVICES ADMINISTRATION

See Pension and Welfare Benefit Programs Office.

LABOR-MANAGEMENT STANDARDS OFFICE

RULES

Employee benefit plans; temporary bonding rules redesignation, and CFR Parts removed, 26704
Federal sector labor organization conduct standards and labor-management reports, 31308

LAND MANAGEMENT BUREAU

RULES

Administrative procedures:
- Application processing; address changes, 38811
- New Mexico State Office; jurisdiction over public lands in Kansas, 36055
  - Correction, 46044

Alaska native selections; chargeability of submerged lands, 15546
Coal management:
- Administrative amendments, 8625
- Logical mining units; interim, 40197
- Noncompetitive leases and management of existing leases; cost recovery for fee coal exchanges and coal lease transfer approval requirement, 42022

Financial assistance, local governments; payment in lieu of taxes, 1304
Forest management:
- Federal timber contracts; modification, 26676
  - Correction, 28947

Geothermal resources leasing:
- Lease acreage and application fees, 38812

Grazing administration:
- Livestock grazing on public lands, 45824
  - Court order effect, 51522

Land disposition and use:
- Mining claim occupancy and leases; CFR Part removed, 16083

Land resource management:
- Recreation and Public Purposes Act; conveyances to States and their political subdivisions, 50298

Natural history resource management:
- Fossil Forest Research Natural Area, NM; protection of natural, educational, and scientific research values, 42122

Oil and gas leasing:
- Noncompetitive leases; minimum lease size; clarification, 2048
- Rental payment collection procedures; extension of time period for forwarding improperly submitted remittances to Minerals Management Service, 3513

Public land orders:
- Alaska, 4215, 10766, 12253, 27827
- Arizona, 19690
- Arkansas, 3760
- California, 20212
- Colorado, 9279, 11505, 21443, 32866, 38984, 50165
- Florida, 16235
- Idaho, 5262, 11505, 18487, 21443, 23124, 24772
- Michigan, 15145
- Montana, 2551
- Nevada, 10965, 11366
- New Mexico, 9428, 10966, 23958
- Oregon, 11505
- Utah, 12804, 28208
- Washington, 4515
- Wyoming, 1055, 11865

Recreation management:
- Table of contents amendments, 31183
- Wilderness areas, designated; management procedures, 7704
  - Mining claims, 12020

Rights-of-way:
- Mineral Leasing Act; reimbursement of costs, 1308

Special areas:
- Choctaw-Chickasaw Nations and Arkansas Drainage Districts; removed, 46770

PROPOSED RULES

Coal management:
- Competitive leasing requirements; comment period reopened, etc., 10510, 12053
- Environmental protection procedures, 10508
  - Extension of time, 12053
- Noncompetitive leases and management of existing leases; cost recovery for fee coal exchanges and coal lease transfer approval requirement, 23997

Exchanges; fee Federal coal deposits, 37389
Forest management:
- Forest products sales; contractor debarment, 29324
  - Comment period reopened, 39024

Geothermal resources leasing:
- Exploration and lease bonds; consolidation and minimum amount requirements, 18614
  - Onshore oil and gas bonding issues and needs; meeting and comment period reopened, 42967
- Lease acreage and application fees, 14945

Grazing administration:
- Livestock grazing on public lands, 9696

Land disposition:
- FAA airport grants; statutory compliance, 31897
- Federally owned mineral interests; conveyance procedures, 5269

Land resource management:
Special laws and rules; segregation and opening of public lands procedures, 24124
Leases and permits:
Airport leases, 33578
Mineral leasing:
Clarification and revision, etc., 14512
Extension of time, 23150
Natural history resource management:
Fossil Forest Research Natural Area, NM; protection of natural, educational, and scientific research values, 23034
Oil and gas leasing:
Combined hydrocarbon leasing; paying quantities and diligent development requirements, 1300
Comment period reopened, 10998
Exploration and lease bonds; consolidation and minimum amount requirements, 18614
Onshore oil and gas bonding issues and needs; meeting and comment period reopened, 42967
Onshore operations, 11517
Oil shale management; procedures; withdrawn, 38867
Planning, programming, and budgeting; guidance; draft availability, 10086
Recreation management:
Use authorizations; special recreation permits, 37555
Wilderness areas, designated; mining operation plans review process, 31734
Resource management plans:
Planning, programming, and budgeting; planning guidance; draft availability, 53167
Rights-of-way:
Fair market rental fee determination, 2697
Extension of time, 10998
Principles and procedures, 27322

NOTICES

Agency information collection activities under OMB review, 1134, 6256, 13427, 15791, 23524, 23775, 29488, 31924, 34014, 37439, 41747, 42779, 49133, 50347, 50348
Airport leases:
Nevada, 36495, 38902, 47283
Utah, 25132
Alaska Native claims selection:
Afognak Joint Venture, 32772
AHTNA, Inc., 1643, 6397, 28037
Akiachuk, Ltd., 18318, 35876
Alakanuk Native Corp., 33114
Alaska Peninsula Corp., 7401
Aleut Corp., 26632
Askinuk Corp., 6397, 15641
Beaver Kwit'chin Corp., 31043
Belkofski Corp., 49464
Bethel Native Corp., 20503
Chefarnrmute, Inc., 6397
Chenega Corp., 26054
Chickaloon-Moose Creek Native Association, Inc., 23200
Chignik River Ltd., 30307
Choggiung, Ltd., 30019
Chugach Alaska Corp., 24949, 50238
Cook Inlet Region, Inc., 20503, 21668, 26054, 33114
Danzhit Hanlaii Corp., 32772, 32773
Delbycheet, Inc., 2347
Dinyea Corp., 19493
Dot Lake Native Corp., 7401
Doyon, Ltd., 7402, 16156, 16157, 31044, 32646, 33115, 38591
Eklutna, Inc., 9720, 24050, 27363, 30306, 31044, 32773, 33115, 33418, 34556
Far West, Inc., 30307, 32323
Gana-a 'Yoo, Ltd., 2092, 4817, 5431, 7402, 30018, 30019, 32773
Gwitchyaazhee Corp., 4816, 28481
Iliamna Natives Ltd., 32323
Ingalik, Inc., 30018
Kavilco, Inc., 34011
Kikiktagruk Inupiat Corp., 34010
Klawock Heenya Corp., 2732
Knikatnu, Inc., 6397
Kokarmuit Corp., 31923, 34010
Koliganek Natives Ltd., 14320
Koniag Inc., Regional Native Corp., 26632
Kotlik Yupik Corp., 34011
K'oyitl'ots'ina, Ltd., 1639
Kuitsarak, Inc., 8795, 31045
Leisnoi, Inc., 34764, 34765, 47850
Levelock Natives Ltd., 43294
Mary's Igloo Native Corp., 32323
Mendas Cha-ag Native Corp., 7402, 11465
NANA Regional Corp., Inc., 30307
Nima Corp., 182, 20505
Northway Natives Inc., 14320
Nunakauiak Yupik Corp., 34011
Olgoonik Corp., Inc., 23776
Olsonville, Inc., 9720, 12413
Paug-Vik, Inc., Ltd., 9134, 15642, 28843
Pilot Point Native Corp., 5431
Pilot Station, Inc., 18319
Point Possession, Inc., 18319, 21509
Salamatof Native Association, Inc., 4816, 30018, 30884, 40237
Sealaska Corp., 20505, 24049, 32323, 33116, 33645, 34556
Seldovia Native Association, 21669
Seth-de-ya-ah Corp., 30017
Sitnasuak Native Corp., 19813
St. Michael Native Corp., 40899
Stuyahok Ltd., 14461
Swan Lake Corp., 40899
Tatitlek Corp., 34011
Tigara Corp., 43294
Togiak Natives Ltd., 21509
Tozitna, Ltd., 2092, 5431
Tulkisarmute, Inc., 31045
Unalakleet Native Corp., 30018, 31923, 43798, 47850
Wales Native Corp., 4817
Wilson, Albert W., 12873
Classification of public lands:
Arizona, 11581, 14998, 38221
California, 895, 3844, 4599, 4600, 7661, 20627, 26629
Minnesota, 351, 2092, 10322, 12087, 13076
Nevada, 35610
Oregon, 31777, 46360
Utah, 13085, 40062, 48271
Washington, 45167
Wisconsin, 6061
Closure of public lands:
Arizona, 3843
California, 3843, 12411, 21510, 32914
Idaho, 52863
Montana, 11578, 11579, 45498, 52862
New Mexico, 7142, 49134
Utah, 24841
Wyoming, 38900, 39055
Coal leases, exploration licenses, etc.:
Alabama, 23837, 31249, 32495
Colorado, 5011, 8402, 14303, 20504, 30240, 35163, 47281, 48137
Kentucky, 5320
Montana, 23077, 31251
North Dakota, 4601, 6257, 9525, 18752, 20298, 26628, 35332, 38221
Utah, 12654, 27364, 29278
Wyoming, 12653, 15983, 20138, 24325, 24327, 30240, 38037, 47283
Coal management program:
Big Horn Basin, WY; coal core analyses and geophysical logs, 25131
Coal production forecast technical report; availability and inquiry, 9721
Coal unsuitability criteria, application; report availability and inquiry, 9721
Farmington Resource Area, NM; call for coal and resource information, 21363
Federal Coal Property Appraisal; guide availability and inquiry, 8403
Powder River Coal Region, WY; leasing interest inquiry, 28659
Committees; establishment, renewals, terminations, etc.:
District Advisory Councils, 28035
Geothermal Environmental Advisory Panel, 2628
Iditarod National Historic Trail Advisory Council, 37440
National Public Lands Advisory Council; call for nominations, 41601
Conservation and recreation areas:
California Desert Conservation Area Plan, 11579
Conveyance of public lands:
Arizona, 3842, 5321, 13424, 21359, 31250, 31254, 32912, 34917, 34918, 40455, 42101
Montana, 5317, 12653, 12654, 13672, 15504, 19588, 24326, 25333, 28271, 28282, 32913, 43293, 46360, 48645
Nevada, 6259, 47461
Oregon, 23078, 26631, 28659, 31250, 49134
Utah, 38899, 50684
Washington, 48140
Disclaimer of interest to lands:
Arizona, 893, 2732
California, 46703
Nevada, 2734
North Dakota, 23077, 49775
Oregon, 7392
Disposal of public lands:
California, 40061
Environmental concern; designation of critical areas:
Bishop Resource Area, CA, 24841
Blue Ridge Area, CA, 4918
Bonneville Salt Flats, UT, 16157
Central Yukon Planning Area, AK, 38037
Eight Dollar Mountain, OR, 42229
Folsom Resource Area, CA, 7839, 29276
Glenwood Springs Resource Area, CO, 13427
House Range Resource Area, UT, 18577
Jarbridge Planning Area, ID, 38900
Monument Resource Area, ID, 892
North Park Phacelia Research Natural Area et al., CO, 1639
Paradise-Denio Resource Area, NV, 40612
Raven Ridge Area, CO, 38718
Red Hills Management Area, CA, 9525
Red Mountain et al., CA, 3416
Rio Puerco Resource Area, NM, 39180
Sacramento Escarpment Scenic Area, NM, 13289
Spokane District, WA, 32771

Two Rivers Planning Area, OR, 39181
Warm Springs Resource Area, UT, 18578
Environmental statements; availability, etc.:
Albuquerque District, NM, 20506
All American/Celeron and Getty crude oil pipelines, CA, 2733
Amoco Colosseum Project, CA, 8794, 29487
Bairoil/Dakota CO2 project, ND and WY, 37060
Baker Resource Area, OR and WA, 8792, 42230
Black Canyon Planning Area, AZ, 41423
Book Cliffs Resource Area, UT, 24948
Box Elder County, UT, 14999, 41224
Buffalo Resource Area, WY, 23076, 26632, 50965
Carbon dioxide pipeline project, MT, ND, and WY, 6059
Challis/Mackay Resource Area, ID, 46361
Circle Cliffs Tar Sands Resource Area, UT, 3321
Coal preference right lease application--
Alabama, 15503
Colorado, 7839, 13426, 48270
Kentucky, 31248
Coast/Valley Planning Area, CA, 50237
Desolation Canyon wilderness study area, UT, 40612
Desolation-Gray wilderness study area, UT, 41030
Eagle Lake Cedarville wilderness study areas, CA and NE, 12655
Eastern Arizona draft grazing management program, 39054
El Paso transmission line project, NM, 5318, 31251, 46516
Elko Resource Area, NV, 32647
Esmeralda-Southern Nye Planning Area, NV, 40237, 41029
Fable Valley Trail, UT, 45496
Federal coal management program, 5442, 6407, 8403, 9721, 12083, 41421
Federal prototype oil shale tract C-a offtract lease, CO, 40612
Floy Canyon wilderness study area, UT, 37061, 45501
Garnet Resource Area, MT, 39179
Grand Junction Resource Area, CO, 12874, 25334, 43293
Great Salt Lake, UT, 3844
Hanna Basin management plan, WY, 3034
Hickey Mountain-Table Mountain Area, WY, 42601
Jackpile-Paguate uranium mine reclamation project, NM, 10864, 15642, 31043
Jarbridge Planning Area, ID, 38900
Jaub County, UT, 46361
John Day Planning Area, OR, 39048
Josephine and Jackson-Klamath Sustained Yield Units, OR, 23363
Kansas planning analysis, 4275
Kemmerer Resource Area, WY, 4918, 52565
King Range and Chemise Mountain wilderness study areas, CA, 13667
Kremmling Resource management plan, CO, 1639
Lander Resource Area, WY, 45943, 46361
Las Cruces District, NM, 7837
Lassen National Forest, CA, 39742
Lemhi Resource Area, ID, 18747, 40456
Little Lost/Birch Creek land use plan, ID, 41031
Livestock grazing, 31924
Lower Gila North Planning Area et al., AZ, 7402, 41423, 47462
Lower Gila South Planning Area, AZ, 4919, 33642
McKinley County Coal Fee Exchange, NM, 53403
Mead/McCullough-Victorville/Adelanto Transmission Project, CA and NV, 25335
Medicine Lodge Resource Area, ID, 25472
Mexican Mountain and Muddy Creek wilderness study areas, UT, 40612
Middle Gila Planning Area, AZ, 41423
Mill Creek wilderness study area, UT, 41421, 48139
Monument Resource Area, ID, 892
New Mexico Statewide wilderness study areas, 18577
North Fork Well, WY, 13884, 21145
Northeast Resource Area, CO, 14030
Northwest area noxious weed control program, 7142, 23201
Oregon wilderness study areas, 18321, 24842
Pacific Texas pipeline project, 1281, 3418, 25792, 48269
Parachute Shale Oil Project, CO, 31255
Piceance Basin Planning Area, CO, 8401
Pocatello Resource Area, ID, 2627
Powder River Resource Area, MT, 11015
PR Spring combined hydrocarbon lease conversion, UT, 19589, 41420
Rangely carbon dioxide pipeline project, CO, UT, and WY, 6060
Red Hills Management Area, CA, 9525
Red Lodge, MT, 48497
Rio Blanco County, CO, 23200
Rio Puerco Resource Area, NM, 13087, 39180
Rockhouse Basin wilderness study area, CA, 49882
Royal Gorge management plan, CO, 48137
San Juan-San Miguel Planning Area, CO, 34556, 40238
San Rafael Reef wilderness study area, UT, 45500, 49464, 49465
San Rafael Resource Area, UT, 23363
Silver Bell Planning Area, AZ, 41423
South Bearpaw Unit, MT, 23833
South Dakota Resource Area, SD, 16156, 47281
Spokane District, WA, 32771
Sunnyside combined hydrocarbon lease conversion, UT, 3418
Thatcher River wilderness study areas et al., CA, 6260
Transfer of lands and minerals management responsibilities, 35875
Two Rivers Planning Area, OR, 13668, 39181
Utah wilderness study areas, 23526, 40453, 49620
Walker Resource Area, NV, 27492
Western Oregon program management of competing vegetation, 28847
Western United States rangeland vegetation management program, 37591
White Sands Resource Area, NM, 37592
Yuma District, AZ and CA, 1641, 33643
Exchange of lands:
Arizona, 890, 2348, 3419, 7399, 11580, 12083, 12412, 13428, 14165, 14998, 16357, 16360, 16361, 19247, 19494, 19586, 20297, 20507, 23835, 29276, 30306, 30525, 31257, 32648, 32914, 34012, 34557, 37443, 38214, 38215, 40455, 40616, 41421, 41422, 45499, 46703, 47119, 48137, 49880
California, 3845, 9329, 10864, 12085, 12414, 16159, 16565, 23524, 23838, 25792, 28273, 28995, 29279, 30239, 30525, 31253, 33111, 33643, 35875, 36495, 37440, 38590, 40061, 40458, 42101, 43293, 46362, 46363, 49881, 53021
Colorado, 3417, 5012, 13085, 36496, 43470, 48646
Idaho, 2626, 7142, 8403, 9333, 12655, 21509, 21510, 29277, 33642, 34205, 36678, 40237, 47283
Michigan, 18320
Montana, 183, 2094, 2626, 3033, 5822, 23833, 28843, 28844, 31255, 36156, 39052, 40455, 53400
Nevada, 11582, 13883, 41748, 41960, 53404
New Mexico, 3417, 8198, 9910, 10322, 20137, 23838, 32116, 37059, 40060, 52862
North Dakota, 53404
Oregon, 6257, 8795, 16755, 18747, 28038, 28039, 28272, 28278, 32324, 40459, 43798, 45496, 47630, 50347
Utah, 23774, 49464
Washington, 9333
Wyoming, 18746, 53401
Geophysical logs; availability, etc.:
Wyoming, 25131
Geothermal lease sale:
California, 24842
Geothermal leasing:
Form revision--
Clarification, 52863
Proposed; inquiry, 31925
Geothermal lessees and operators; drilling deep temperature gradient holes in California:
Inquiry, 7392
Notice to lessees; availability, 42229
Geothermal resource areas:
California, 19814, 31253, 45875
Idaho, 14321
New Mexico, 37441
Washington, 40240
Grazing fee review and evaluation report; meeting, 11745
Grizzly bear management; interagency guidelines; meeting and inquiry, 21696
Jurisdiction transfers:
Gilmore Creek Tracking Station, AK; meeting, 7392
Jurisdictional interchange program; inquiry and hearing, 23479
Land and resource management planning schedules; inquiry, 9469
Land classifications:
Oregon, 24948
Land use plans:
Alturas Resource Area et al., Susanville District, CA, 2624
Beckwourth Planning Area, CA, 2626
Eagle Lake Resource Area, Susanville District, CA, 37291
Leasing of public lands:
Alaska, 13428, 18751, 24050
California, 894, 20626, 42779
Colorado, 28037
Nevada, 27697, 29488
Oregon, 16158, 31777
Utah, 41030
Management framework plans:
Arizona, 7402, 18319, 41423, 47462
California, 4601, 6260, 13670, 14774, 24593, 32116, 38038, 52383

Colorado, 5318, 38718, 48137
Idaho, 46363, 49134
Montana, 26414
New Mexico, 5318, 24049, 31251, 46516
Oregon, 42229, 43295
Wyoming, 3034, 8198, 38222
Meetings:
Albuquerque District Advisory Council, 18748, 33857, 43799
Anchorage District Advisory Council, 4816, 12414, 25332
Arizona Strip District Advisory Council, 8198, 34012
Arizona Strip District Grazing Advisory Board, 16354, 35164
Bakersfield District Advisory Council, 19592, 42231
Bakersfield District Grazing Advisory Board, 32913
Battle Mountain District Advisory Council, 13284
Battle Mountain District Grazing Advisory Board, 2622, 9328, 31924, 42602
Boise District Grazing Advisory Board, 2622, 13288, 26628
Boise District Multiple Use Advisory Council, 13288
Burley District Advisory Council, 11577
Burley District Grazing Advisory Board, 11577, 35876
Burns District Advisory Council, 20507
Butte District Advisory Council, 10864, 32914, 51953
Butte District Grazing Advisory Board, 10865, 32914
California Desert District Advisory Council, 1642, 11577, 14321, 19494, 41225
California Desert District Grazing Advisory Board, 14462, 41225
Canon City District Advisory Council, 4602, 30305
Canon City District Grazing Advisory Board, 7141, 32318
Carson City District Advisory Council, 12411, 16359, 28481
Carson City District Grazing Advisory Board, 23528
Casper District Advisory Council, 11577, 33418
Casper District Grazing Advisory Board, 7393, 40458
Cedar City District Advisory Council, 6258, 15505, 32115, 47120
Cedar City District Grazing Advisory Board, 19493, 41423
Coeur d'Alene District Advisory Council, 30884
Coos Bay District Advisory Council, 9328
Craig District Advisory Council, 5322, 9910, 14322, 19493, 25788, 31778, 40454, 45498, 51953
Craig District Grazing Advisory Board, 2093, 16355, 32115, 47120
Dickinson District Advisory Council, 11579
Elko District Advisory Council, 9722, 42231
Elko District Grazing Advisory Board, 33644
Ely District Advisory Council, 7141, 8403
Ely District Grazing Advisory Board, 7141, 8403, 39053
Emergency coal lease application (UT), 27364, 29278
Eugene District Advisory Council, 25329, 49773
Fairbanks District Advisory Council, 25131, 36923
Federal-State Coal Advisory Board, 6406, 7662, 19094, 20137
Grand Junction District Advisory Council, 15792, 36496
Grand Junction District Grazing Advisory Board, 28284, 46844
Harquahala, Little Harquahala and Granite Wash Herd Management Areas removal plan, etc., 7399
Helicopters and motorized vehicles use in gathering wild horses and burros, 14321, 19592, 21360, 23834, 26630, 51609, 53023
Idaho Falls District Advisory Council, 11578, 24949, 39785
Idaho Falls District Grazing Advisory Board, 3980, 11578, 15505, 30305, 45944
Kingman Resource Area Grazing Advisory Board, 7398, 38902
Lakeview District Grazing Advisory Board, 32913, 38717
Lakeview District Multi-Use Advisory Council, 19592
Lakeview District Multi-Use Grazing Advisory Board, 19592
Las Cruces District Advisory Council, 12085, 23834, 32119, 45942
Las Cruces District Grazing Advisory Board, 23834
Las Vegas District Advisory Council, 11250
Las Vegas District Grazing Advisory Board, 21144
Lewistown District Advisory Council, 21144, 37061
Lewistown District Grazing Advisory Board, 49621
Medford District Advisory Council, 18579, 25333, 53023
Miles City District Advisory Council, 5321, 12085
Miles City District Grazing Advisory Board, 30303
Moab District Advisory Council, 5321, 28284
Moab District Grazing Advisory Board, 8678, 30301
Montrose District Advisory Council, 20507, 21361, 41961
Montrose District Grazing Advisory Board, 6258, 32915
National Public Lands Advisory Council, 15984, 30302, 42102
Phoenix District Advisory Council, 20136, 40456
Phoenix/Lower Gila Resource Areas Grazing Advisory Board, 7398, 38903
Prineville District Advisory Council, 7393, 18939, 43798
Prineville District Grazing Advisory Board, 7393, 20626, 42232
Rawlins District Advisory Council, 16356, 47282
Rawlins District Grazing Advisory Board, 4602, 25790
Richfield District Advisory Council, 9332, 35332
Richfield District Grazing Advisory Board, 2622, 8680, 49135
Rock Springs District Advisory Council, 12412, 25333, 38217
Rock Springs District Grazing Advisory Board, 25790
Roseburg District Advisory Council, 352, 12414, 31252, 45498
Roswell District Advisory Council, 18320, 36923
Roswell District Grazing Advisory Board, 12412, 30241
Safford District Advisory Council, 5318, 24842, 36923, 53400
Safford District Grazing Advisory Board, 3842, 18749, 35163, 46363
Salem District Advisory Council, 4817, 23079, 49882
Salmon District Advisory Council, 7003, 53204
Salmon District Grazing Advisory Board, 7003
Salt Lake District Grazing Advisory Board, 2627, 20504, 26413
Salt Lake District Multiple Use Advisory Council, 14998
Shoshone District Advisory Council, 7393, 11015, 13428, 23528, 45875
Shoshone District Grazing Advisory Board, 7393, 7394, 11015, 13428, 34205, 47284
Spokane District Advisory Council, 16157
Susanville District Advisory Council, 2093, 6258, 11251, 23834, 45498
Susanville District Grazing Advisory Board, 3980, 23775, 32318, 41423, 48138
Ukiah District Advisory Council, 3417, 25333, 41423
Utah District Grazing Advisory Boards, 33111
Vale District Advisory Council, 4918, 20504, 31924
Vale District Grazing Advisory Board, 4918, 20504, 31924, 45167
Vernal District Advisory Council, 26846
Vernal District Grazing Advisory Board, 28037
Winnemucca District Advisory Council, 28481
Winnemucca District Grazing Advisory Board, 7399, 28994
Worland District Advisory Council, 34764
Worland District Grazing Advisory Board, 16565
Worland District Multiple Use Advisory Council, 15232
Yuma District Advisory Council, 7399, 16354, 33116, 46188
Mineral lease form, combined, 1643
Minerals management:
Coal leases held for ten years--
Draft guidelines and inquiry, 6398, 10112
Final guidelines, 35125, 35876
Federal coal, phosphate, potassium, sodium, sulphur, and tar sand leases; royalty reduction guidelines draft revision; inquiry, 6062, 10111
Logical mining unit application and processing--
Draft guideline; inquiry, 14303, 14460
Final guidelines, 35145, 35876
Motor vehicles; off-road vehicle designations:
California, 4602, 33856, 41425, 48138
Colorado, 18752, 32115
Idaho, 18319
Montana, 25791
Nevada, 34012
New Mexico, 34764, 39052
Utah, 52864

Land

Oil and gas leases:
Alaska, 12413, 31252, 33418, 35164, 36678, 38214, 43297, 45498, 48139
California, 18578, 36496, 51953
Colorado, 352, 6260, 8795, 21364, 43297, 48139
Idaho, 29282
Louisiana, 27363
Montana, 1642, 5322, 10111, 13672, 16356, 31250, 41225, 53400
New Mexico, 6260, 8795, 23835, 25632, 28277, 31924, 31926
North Dakota, 27700, 31250
Texas, 31924
Utah, 4275, 23776, 23777, 26271, 30241, 37060
Washington, 18749
Wyoming, 893, 5322, 6259, 9911, 12083, 15505, 15506, 15507, 16360, 18578, 19591, 20298, 24949, 25334, 25790, 26629, 31251, 32318, 32648, 32773, 33116, 33857, 37733, 45942, 46516, 50348
Oil and gas leasing:
Federal onshore oil and gas lease form; availability, 5687
Form revision--
Clarification, 52863
Proposed; inquiry, 31925
Lessee qualifications auditing system; operational, 23080
Record title processing and operating rights assignments; prioritization, 34204, 40457
Oil and gas sales; known geologic structures; unleased Federal mineral ownership; Eastern States; call for nomination and availability, 5320
Opening of public lands:
Arizona, 895, 3980, 5321, 8793, 9328, 12414, 13429, 21359, 24842
California, 12413, 23527, 30239, 31255, 32318, 43293
Colorado, 39051
Idaho, 8402, 27364, 52383
Montana, 2626, 12653, 12654, 13672, 15504, 19588, 24326, 24333, 27700, 28271, 28282, 32646, 32913, 43293, 43297, 45496, 48139, 48645, 49135
Nevada, 8402, 21144, 34919, 35165, 36496, 41600, 41748, 47461
Oregon, 5431, 23078, 26631, 28659, 31250, 49134
Utah, 46843
Washington, 48140
Wyoming, 48646
Organization, functions, and authority delegations:
Anchorage District Office; mining claim recordation filings, etc., 19814
Patent of public lands:
Washington, 28036, 33644, 34919
Pipeline right-of-way applications:
Idaho, 352
Planning analysis:
Arizona, 7233, 41029, 51953
California, 32116
Illinois, 26629
Kansas, 4275
Missouri, 26630
Utah, 37291, 49135
Public lands; National Wildlife Federation v. Burford; court order publication, 51609, 52565
Public rangelands improvement; experimental stewardship program report; draft availability and inquiry, 25787, 31045
Recreation management plans:
Diamond Craters, OR, 32915, 48138
Recreation management restrictions, etc.:
Butte District, MT, 30884, 38717
Caliente Resource Area, CA, 9330
California Desert District, CA, 34203
Empire Landing and Squaw Lake Campgrounds, AZ and CA, 26633
Hollister Resource Area, CA, 2732, 2733
Medford District, OR, 50348
Montrose District, CO, 28036
Scratchgravel Hills, MT, 31251
Squaw Lake Area, AZ, 28994
Steens Mountain Recreation Plan, OR, 2348
Yuma District, AZ, 34203
Recreation use permit systems:
Upper Missouri National Wild and Scenic River, MT, 2627
Research natural areas:
Arizona, 8792
California, 3416
Idaho, 41029
Resource management plans:
Albuquerque District, NM, 20506
Baker Resource Area, OR and WA, 8792, 42230
Book Cliffs Resource Area, UT, 24948
Box Elder County, UT, 14999, 41224
Buffalo Resource Area, WY, 23076, 26632, 50965
Coast/Valley Planning Area, CA, 50237
Elko Resource Area, NV, 32647
Esmeralda-Southern Nye Planning Area, NV, 40237, 41029
Garnet Resource Area, MT, 39179
Grand Junction Resource Area, CO, 12874, 25334, 43293
Grand Resource Area, UT, 31250
Great Falls Resource Area, MT, 16356
Harve and Great Falls Resource Areas, MT, 24140
Jarbridge Planning Area, ID, 38900
John Day Planning Area, OR, 39048
Kemmerer Resource Area, WY, 12656, 52565
Lander Resource Area, WY, 45943
Las Cruces District, NM, 7837
Lemhi Resource Area, ID, 18747, 40456
Lower Gila South Planning Area, AZ, 4919, 33642
Medicine Lodge Resource Area, ID, 25472
Monument Resource Area, ID, 892
Northeast Resource Area, CO, 14030
Platte River Resource Area, WY, 32647
Pocatello Resource Area, ID, 2627
Powder River Resource Area, MT, 11015
Rio Puerco Resource Area, NM, 13087, 39180
Rockhouse Basin wilderness study area, CA, 49882
San Juan-San Miguel Planning Area, CO, 34556, 40238
San Rafael Resource Area, UT, 23363
South Dakota Resource Area, SD, 16156, 47281
Spokane District, WA, 32771
Two Rivers Planning Area, OR, 13668, 39181
Walker Resource Area, NV, 27492
Washakie Resource Area, WY, 7391
White Sands Resource Area, NM, 37592
Yuma District, AZ and CA, 1641, 33643
Riparian area management; draft policy statement; availability and inquiry, 29487
Sale of public lands:
Alabama, 47284
Alaska, 45671
Arizona, 5317, 16359, 21364, 23526, 26413, 27698, 28272, 30306, 45500, 46364, 53403
Arkansas, 11581, 25790, 30305, 39053, 42232
California, 2624, 3843, 5822, 6260, 7400, 8793, 11465, 13670, 14029, 20627, 23362, 23770, 24710, 25789, 27365, 27493, 27698, 27853, 28285, 29281, 31254, 31778, 33113, 36498, 37292, 37592, 38039, 38590, 41225, 42102, 46364, 47284, 49881
Colorado, 3844, 7394, 9331, 11578, 12415, 13672, 23839
Florida, 892, 897, 8403, 16359
Idaho, 1282, 2734, 4601, 5011, 5318, 6061, 10323, 11581, 13670, 13671, 14028, 18578, 18750, 19590, 21359, 26845, 29279, 29488, 29768, 32318, 38216, 39053, 41030, 43297, 45670
Minnesota, 10322, 19592, 23076, 38040
Montana, 2733, 11948, 23525, 25788, 26413
Nebraska, 25334, 36497
Nevada, 1643, 9721, 12085, 13425, 14303, 14998, 21362, 23839, 24843, 27697, 28287, 29488, 31435, 32495, 36154, 40613, 47631
New Mexico, 13424, 28274, 31257, 36923, 37440
North Dakota, 28276, 32118, 41961, 43298
Oklahoma, 2628, 7143, 8679, 21361, 30303
Oregon, 893, 2623, 6408, 12087, 13882, 13883, 16354, 20297, 24948, 28278, 28281, 28845, 41600, 53405
Utah, 6259, 8198, 9331, 14462, 18318, 18751, 23526, 25132, 25791, 26845, 27066, 28277, 28847, 28995, 30306, 32116, 34918, 37442, 39054, 40453, 41227, 42101, 45497, 46365, 46843
Washington, 13668, 28280, 40614, 40615
Wisconsin, 6061, 38040
Wyoming, 1641, 7143, 11583, 12088, 21362, 29277, 37733, 38717, 39180, 41424, 45501
Sodium lease sale:
Wyoming, 31435, 35165
Survey plat filings:
Arizona, 183, 12416, 28277, 41599
Arkansas, 42228
California, 7395, 7396, 12086, 13669, 14303, 15505, 15506, 16354, 16355, 18749, 20506, 30307, 32319, 32320, 33856, 34203, 38591, 38592, 38593, 41031, 41032, 43295, 43296, 43297, 45875, 47284, 47285, 49882, 51607, 51608
Colorado, 5319, 8678, 10110, 13086, 18579, 19585, 20626, 23525, 25632, 28037, 36154, 36155, 38902, 40613, 42228, 50848
Florida, 12875, 42229
Idaho, 1282, 15504, 29282, 38039, 41424
Louisiana, 34010, 34557
Michigan, 25332, 31254, 42229

Missouri, 42229
Montana, 1283, 14322, 23078, 23079, 28283, 30242, 36155, 38039
Nevada, 4817, 8402, 36496, 41600, 45671
New Mexico, 2093, 4603, 5319, 14028, 14774, 15504, 19589, 19590, 23526, 24710, 28287, 28994, 29768, 30305, 35332, 40060, 40240, 41424, 41425, 45497, 48271, 52383
Oregon, 2628, 9134, 13088, 21363, 23528, 31256, 34012, 40614, 53022
Utah, 7838, 28659
Washington, 2628, 21363, 31256, 34012, 36156, 40614, 53022, 53023
Wisconsin, 14462, 18749, 19593
Wyoming, 3845, 24592, 31252, 40616, 47120, 52383
Vehicle restrictions on public lands:
California, 38901, 40458
Idaho, 41029
Wild and scenic rivers; Owyhee Wild River Management Plan, 24842
Wilderness areas; characteristics, inventories, etc.:
Arizona, 45499
California, 34013, 40458, 45497, 47120
Colorado, 3417
Idaho, 13085, 34917, 40456
Mississippi, 1134
Montana, 1944, 30240, 32119
Oregon, 13085, 34917
Utah, 31778, 51609
Wind energy development applications:
Barstow-Victorville area, CA, 8401
Withdrawal and reservation of lands:
Alaska, 6257, 14461, 21359, 28481, 28482
Arizona, 21365, 23775, 23835, 23836, 24947, 25330, 26271, 28995, 30304, 32320
California, 3033, 5688, 14775, 18939, 25787, 26633, 28286, 28482, 29280, 32321, 38217, 38218, 38219, 38220, 38221, 39049, 39050, 39051, 40457, 41962, 42231, 42602, 46843
Colorado, 2093, 9332, 11015, 13883, 18750, 21945, 39051, 40061
Idaho, 7234, 9328, 9329, 9720, 10323, 19493, 21143, 21144, 23840, 34014, 38901, 40240, 48842
Montana, 11579, 15232, 45496
Nevada, 896, 3845, 21367, 28040, 31256, 38038, 38222
New Mexico, 1638, 1639, 1640, 1641, 10111, 14165, 18750, 20137, 20504, 21359, 21360, 25632, 32321, 38039, 38216, 38593, 40062, 42232, 47121, 47285, 48841
Oregon, 2625, 11580, 15504, 23836, 24326, 24949, 26631, 30240, 31256, 31257, 33111, 33418, 35165
Utah, 7233, 7838, 31045
Washington, 2625, 9525, 12086, 18321, 23080, 23529, 23837, 33112, 35165, 48841
Wisconsin, 183
Wyoming, 7396, 11250, 23529, 23530, 24948, 25131, 29278, 30302, 32322, 33645, 33857, 35165, 35876, 37733, 42601, 45167, 47282, 48140, 48648, 48842, 49621, 53023

LEGAL SERVICES CORPORATION

RULES
By-laws, 30711
Eligibility for legal assistance; income levels, 13331
Correction, 25228
Financial assistance termination procedures; time limits, 30713
Priorities in allocation of resources, 48594
Private attorney involvement; final rule and request for comments, 48586
Refunding denial, 30714
Sunshine Act; implementation, 30714
PROPOSED RULES
By-laws, 495, 11518
Lobbying and other activities; restrictions, 501
Priorities in allocation of resources, 512, 27326
Private attorney involvement, 509, 34510
Advance notice, 25270
Procedures for resolving questioned costs, 35102
Sunshine Act; implementation, 514, 11740
NOTICES
Audit and accounting guide:
Availability and inquiry, 7150
Inquiry, 49276
Grant awards:
American Corporate Counsel Institute, 14184
Atlanta Legal Aid Society, 8418
Birmingham Area Legal Services et al., 197
Charleston County Bar Association et al., 19823
Community Legal Services, Inc., 23540
Crawford County Bar Association, 31660
Drake University School of Law, 47855
Florida Justice Institute, Inc., 5702
Franklin Pierce Law Center et al., 21520, 25800
Loyola of Chicago School of Law, 25800
Loyola University School of Law, 41062
Montana State Bar et al., 3435
National Consumer Law Center et al., 31936
Pine Tree Legal Assistance, Inc., et al., 19252
Salt Lake Legal Aid Society, 21520
San Antonio Bar Association, 24069
University of Southern California et al., 21519
West Virginia University, 25800
Worcester County Bar Association et al., 23204, 25800
Grants; availability, etc.:
Arkansas, 6081, 15005
California, 45951
Higher quality paid services and pro bono programs provided by private bar, development of plans, 13431
Interest on lawyers' trust account programs, 14778
Law school civil clinical program to improve quality of legal services to elderly persons, 11469
Laws affecting elderly persons; development of source materials, 12665
Louisiana, 4284, 15006, 21373, 35171
Mississippi, 6081, 15005
Native American Tribes, federally recognized; legal services for unserved low-income members, 38905
Ohio, 20510
Grants and contracts; applications, etc.:
Michigan Indian Legal Services, 6082
Pennsylvania; transfer of State support funds, 36932
Meetings; Sunshine Act, 2371, 3078, 5030, 6094, 8210, 8211, 10345, 11288, 13450, 15035, 15036, 16579, 16771, 18345, 20341, 23103, 24085, 24809, 24739, 25153, 25511, 29510, 31091, 34793, 34794, 35356, 37306, 39805, 41440, 42118, 45527, 45528, 50381, 50382
Tentative 1985 schedule, 13694, 34960
Presidential Search Committee; request for applications for Corporation President, 7242

LIBRARIES AND INFORMATION SCIENCE, NATIONAL COMMISSION

NOTICES
Meetings; Sunshine Act, 28141, 46859

LIBRARY OF CONGRESS

See also Copyright Office, Library of Congress.

NOTICES
Meetings:
American Folklife Center Board of Trustees, 4928, 16372, 36682

MANAGEMENT AND BUDGET OFFICE

See also Federal Procurement Policy Office.

PROPOSED RULES
Regulatory agenda, 17932, 44780
NOTICES
Assistance to State and local governments, uniform administrative requirements (Circular A-102); compliance supplement, etc., 1650
Audit requirements for State and local governments (Circular A-128), 19114
Agency assignments, 52406 (Republished with significant corrections at page 552, January 6, 1986)
Central clearinghouse audit reports; submission instructions, 50027
Budget rescissions and deferrals, 1420, 6582, 6648, 9410, 12504, 21014, 26510, 31696, 41100, 41105, 49498
Cumulative reports, 2030, 6324, 10174, 15070, 20716, 24742, 28348, 32992, 37322, 42502, 47340, 51830
Circulars, etc.:
A-71; proposed rescission, 10734, 11471
A-76, 32812
A-87, 52406
A-88, 46244
A-90; proposed rescission, 10734, 11471
A-102, 1650, 19114
A-108; proposed rescission, 10734, 11471
A-110, 45183
A-121; proposed rescission, 10734, 11471
A-125, 14688
A-128, 19114, 50027, 52406
A-130, 52730
Proposed circular (Federal information resources management), 10734, 11471

Commercial activities, performance (Circular A-76); transmittal memorandum, 32812
Cost principles for State and local governments (Circular A-87); agency assignments, 52406 (Republished with significant corrections at page 552, January 6, 1986)
Educational institutions; indirect cost rates, audit, and audit followup (Circular A-88, proposed revision), 46244
Federal information resources management (Circular A-130), 52730
Federal information resources management (Circulars A-71, A-90, A-108, and A-121 superseded; proposed circular), 10734, 11471
Higher education institutions, hospitals, and nonprofit organizations; uniform requirements for grants and agreements (Circular A-110, proposed revision), 45183
Hospital, medical care, and treatment cost furnished by United States; rates recovery from tortiously liable third persons, 46373
Principal Federal economic indicators; compilation, release, and evaluation; statistical policy directive, 38932
Prompt payment (Circular A-125):
Timing of payments to contractors, definitions, etc. (Attachment 2), 14688

MARINE MAMMAL COMMISSION

RULES
Sunshine Act; implementation, 2570

NOTICES
Meetings; Sunshine Act, 20342, 38243, 47326

MARITIME ADMINISTRATION

RULES
Federal tort claims procedures, 25711
Subsidized vessels and operators:
Construction-differential subsidy repayment; total payment policy, 19170
Correction, 20102
Vessel financing assistance; obligation guarantees, 9437, 33046
War risk insurance; reinstatement, expiration, and availability of interim binders, 50165

PROPOSED RULES
Bulk preference cargoes, carriage; fair and reasonable rates determination, 31735
Capital Construction Fund; joint tax regulations; withdrawn, 37702
Citizenship for corporations and other entities; requirements for establishment; withdrawn, 29440
Documentation, transfer, or charter of vessels:
Sales and charters to noncitizens; blanket approval, 39737
Marine hull insurance underwriters; approval; advance notice, 41531
Subsidized vessels and operators:
Bulk cargo vessels engaged in worldwide services; operating-differential subsidy, 52338
Dry bulk cargo vessels; operating-differential subsidy payments; withdrawn, 21474
Non-subsidized voyages; restrictions eliminated, 40876
Extension of time, 48616
Vessel financing assistance; obligation guarantees, 9456
Buy American requirements--
Foreign built main diesel engines, waivers; proposal withdrawn, 13050
U.S. construction requirements, 11397

NOTICES
Essential trade routes; intent to redesignate; inquiry, 9532
Extension of time, 16036
Meetings:
Barge Fleeting National Conference, 53241
National Environmental Policy Act; implementation, 11606, 12887, 30900
Trustees; applicants approved, disapproved, etc.:
Alaska State Bank, 19515
American Bank & Trust Co. of Pennsylvania, 7157
Harris Trust & Savings Bank, 32133
Manufacturers Hanover Trust Co. of California, 51973
MBank Dallas, N.A., 21160
Mellon Bank (East) National Association, 32133
Applications, etc.:
American President Lines, Ltd., 14785, 37107
ARCO Transportation Co., 24733
Boston VLCC Tankers, Inc., VI, et al., 46383
Farrell Lines Inc., 36177
Lykes Bros. Steamship Co., Inc., et al., 25374, 32342, 32944, 33145, 36178, 47320, 48856
Moore McCormack Bulk Transport, Inc., 35173, 46382
United States Lines, Inc., 36178
United States Lines (S.A.) Inc., 26069, 40255

MATERIALS TRANSPORTATION BUREAU

See Research and Special Programs Administration.

MEDICAID

See Health Care Financing Administration. Social Security Administration.

MEDICARE

See Health Care Financing Administration. Prospective Payment Assessment Commission.

MERIT SYSTEMS PROTECTION BOARD

RULES
Practice and procedure:
Appeal form, 13173
Filing of petitions for review, etc., 28895
Correction, 30801
Regional offices; realignment of geographical areas, 15409
Special Panel; discrimination allegation case procedures; interim, 52897
Voluntary expedited appeals procedures, 18221

PROPOSED RULES
Regulatory agenda, 17902, 44752

NOTICES
Agency actions review; opportunity to file amicus briefs:
Adverse actions; security clearance revocation or denial, 2355
Arbitration decisions; allegations of prohibited discrimination, 8419
Agency information collection activities under OMB review, 29004
Decisions and index publication; termination, etc., 8684, 10122
Digest availability; call for riders to printing requisition, 28668
Digest termination; inquiry, 32782
Initial appeals and petitions for review; processing time, 50372
Meetings; Sunshine Act, 1030, 18345, 24609, 30044, 41782, 46724
Organization and functions:
Clerk of the Board Office; library hours, 11274
Practice and procedure:
Fixed hearing site policy modification and list revision, 26859
Privacy Act; systems of records, 29003, 36682
Prohibited personnel practices:
Significant actions of OPM; review and inquiry, 11958, 13296, 26418, 50686
Special Counsel Office:
Organization and functions; Zip Code changes, 1007
Senior Executive Service; Performance Review Board; membership, 1007

MEXICO AND UNITED STATES, INTERNATIONAL BOUNDARY AND WATER COMMISSION

NOTICES
Environmental statements; availability, etc.:
Colorado and Rio Grande Rivers, 46705
Rio Grande Canalization Project, NM and TX, 31784, 46706
San Diego County, CA; IBWC interceptors, 28291, 40631
Tijuana-San Diego Area; treatment and disposal facilities for border sanitation problem solution, 16569

MINE SAFETY AND HEALTH ADMINISTRATION

RULES
Education and training:
National Mine Health and Safety Academy; tuition fees, etc., 11642
Metal and nonmetal mine safety and health:
Fire prevention and control standards; update and clarification, 4022
Meetings, 11502
Safety and health standards; recodification, 4048
Technical amendments and corrections, 20099

PROPOSED RULES
Coal mine safety and health:
Underground coal mines--

Roof, face, and rib support, 41784, 50925
Two-entry mining systems task force report; agency decision, 36885
Ventilation, 47702
Mandatory health or safety standards; pattern of violations; identification criteria; advance notice of reproposal, etc., 5470
Extension of time, 13617
Metal and nonmetal mine safety and health:
Gassy mines safety standards, 23612
Extension of time, 29437
Hearings, 37815
Loading, hauling, and dumping standards--
Extension of time, 3681
Hearings, 27566, 33571
Radiation standards--
Advance notice, 4144, 11639
Preproposal draft availability, 47700
Mine plan approval process; advance notice, 11644

NOTICES

Audio noise dosimeters, new personal; acceptance, 26853
Meetings:
Two-Entry Longwall Mining System Task Force, 7409, 26063
Petitions for mandatory safety standard modifications; summary of affirmative decisions, 575, 7147, 18327, 33124, 53211
Safety standard petitions:
A.A.&W. Coals, Inc., 37446
A&F Coal Co., Inc., 19820
AMAX Chemical Corp., 13887
AMAX Coal Co., 26852
American Gilsonite Co., 570, 37446
American Minerals, Inc., 27071
B.S.B. Coal Co., Inc., 32123
Badger Coal Co., 53212, 53213
Barnes & Tucker Co., 13887, 26852, 27071, 27072, 50357
Bartley & Bartley Coal Co., 27702, 35612
Beatrice Pocahontas Co., 49626
BethEnergy Mines Inc., 27703, 35612
Black Joe Coal Co., 32655
Black Panther Energy Resources, Inc., 570
Booker Fork Coal Corp., 18944
C&B Coal Co., Inc., 53213
C&S Mining Co., 7146
C.&W. Coal Co., 53213
Canon Coal Co., 27072
Carter Coal Corp., 46708
Chevron Resources Co., 33122
Clinchfield Coal Co., 13888
Commerce Coal Co., Inc., 41038
Consol Pennsylvania Coal Co., 49627
Consolidation Coal Co., 570, 7147, 13888, 13889, 32123, 32124, 35613, 49627
Cross Mountain Coal, Inc., 27072
Dixie Lee Coal Co., 13890
Domtar Industries, Inc., 26852
Driftco Coal Inc., 46708
Eastern Associated Coal Corp., 571, 27073, 35613, 46709, 50358
Emery Mining Corp., 18943, 32124, 48281
Empire Energy Corp., 5452
Fisher Sand & Gravel Co., 46709
Florence Mining Co., 53214
Franklin Consolidated Mines, Inc., 35613
Frontier-Kemper Constructors, Inc., 571
Garden Creek Pocahontas Co., 49628
Gateway Coal Co., 33122, 49628
General Crushed Stone Co., 53214
Green River Terminal, Inc., 27073
Halfway, Inc., 571
Helen Mining Co., 46709, 51490
Helvetia Coal Co., 47128
Hydrocarbon Resources Co., 33123, 35614, 39186
International Salt Co., 572
J.J.G. Coal Co., 37446
Jet Coal Co., Inc., 35614
Jim Walter Resources, Inc., 572, 13890, 35614
K&L Coal Corp., 27703
K&M Coal Co., 47293
Kaiser Aluminum & Chemical Corp., 13890
Kaiser Coal Corp., 24599
Kaiser Steel Corp., 13891
Kanawha Coal Co., 39186
Keno Coal Co., 27379
Keystone Coal Mining Corp., 50358
L&R Fuels, Inc., 13891
Little Mining, Inc., 37447
LJ's Coal Corp., 33123
Maben Energy Corp., 573
Magnum Quality Coal Co., Inc., 39186
Marion Coal Co., 47129
Marion Fuels, Inc., 37447
Martin County Coal Corp., 53214
McDaniel Mining Co., Inc., 37447
McLayne Resources, Inc., 35615
Mettiki Coal Corp., 39186
Mid-Continent Resources, Inc., 47129
Mississippi Lime Co., 50358
Monterey Coal Co., 19820
Morton Thiokol, Inc., 46710, 46711
NACCO Mining Co., 42238, 46712
National Mines Corp., 47293
Nemacolin Mines Corp., 37448
Neumeister Coal Co., 573
New River Co., 27073
Newsome Coals Inc., 32124
North Mountain Coal, Inc., 46712
NotroCoal, Inc., 53215
Nowacki Coal Co., 13891
O'Donnell Coal Co., 47129
Old Ben Coal Co., 47130
Olga Coal Co., 41039, 46712
Omega Mining Co., Inc., 574
Oneida Coal Co., Inc., 35615
Paramont Coal Co., 574
Peabody Coal Co., 7148, 18944, 32656
Penelee Coal Co., 32125
Permac, Inc., 32125
Pickands Mather & Co., 13892
Pioneer Coal Sales, Inc., 47130
Plateau Mining Co., 7850, 35615, 37448
Powell Mountain Coal Co., Inc., 19820
Preece Energy, Inc., 33123
Pyro Mining Co., 574
Quarto Mining Co., 18943
Red Hawk Coal Corp., 13892
Renegade Coal Co., 27074
Saginaw Mining Co., 18944
Sand Fork Mining Co., Inc., 13893
Shannon Coal Co., Inc., 35616
South Fork Energies, Inc., 7148
Southern Ohio Coal Co., 575
Southern Utah Fuel Co., 7149
Stanford Mining Co., 575
Storm King Mines, Inc., 19821
Surefire Coals, Inc., 18944
T.&H. Coal Co., 53215
Tenneco Minerals Co., 33123
Tennessee Consolidated Coal Co., 35616, 47131
Texas Utilities Mining Co., 27703
Texasgulf, Inc., 7149
Texasgulf Chemicals Co., 27074
Trail Mountain Coal Co., 49629
Trophy Coal Sales, 53216
Turris Coal Co., 32126, 32656
Union Oil Co. of California, 49629, 52570
Vesta Mining Co., 47131
Vojo Coals Inc., 35616
VP-5 Mining Co., 32657
Westmoreland Coal Co., 7149, 32126, 32127
Windsor Power House Coal Co., 39187
Wolf Creek Collieries Co., 49629
Youghiogheny & Ohio Coal Co., 13892, 32657, 37449

MINE SAFETY AND HEALTH FEDERAL REVIEW COMMISSION

See Federal Mine Safety and Health Review Commission.

MINERALS, MINING

See Federal Mine Safety and Health Review Commission.
Geological Survey.
Land Management Bureau.
Mine Safety and Health Administration.
Minerals Management Service.
Mines Bureau.
Surface Mining Reclamation and Enforcement Office.

MINERALS MANAGEMENT SERVICE

RULES

Federal Oil and Gas Royalty Management Act:
Authority delegation to States to conduct inspections, audits, and investigations, 2663
Outer Continental Shelf; minerals and right-of-way management:
Leases, 8-year primary term and exploratory well requirements, 49041
Outer Continental Shelf operations:
Air emissions from oil and gas operations; air quality models, approval and solicitation, 12248
Bid acceptance procedures and bond requirements, 47377
Leases, 8-year primary term and exploratory well requirements, 49041
Nondiscrimination in contracting, 21047

PROPOSED RULES

Oil and gas leases on Indian allotted lands; direct payment of rents and royalties to interest holders, 6362
Outer Continental Shelf; minerals and right-of-way management:
Leases, 8-year primary term and exploratory well requirements, 24546
Reporting and recordkeeping requirements, 40406
Outer Continental Shelf; oil and gas information program:
Area adjacent to a State; definition, 43256
Outer Continental Shelf operations:
California; air quality rules; advance notice, 838
Correction, 1549
Extension of time, 6969
Leases, 8-year primary term and exploratory well requirements, 24546

Nonenergy minerals, leasing; advance notice, 15590
Offshore production platforms; incorporation by reference revision, 40405
Production accounting and auditing system; reporting and recordkeeping requirements, 12828
Extension of time, 21460
Solid minerals; information collection for royalty accounts and audits, 25585

NOTICES
Agency information collection activities under OMB review, 12657, 12876, 13088, 13429, 19594, 23841, 24327, 25335, 30526, 31779, 52384
Committees; establishment, renewals, terminations, etc.:
Outer Continental Shelf Advisory Board, 352
Royal Management Advisory Committee, 32773
Environmental statements; availability, etc.:
Alaska OCS--
Lease sale, proposed, 11016, 15643, 34765, 37061, 46258
Mineral prelease and exploration proposals, 2630, 16366, 28997, 43299
Barrow Arch OCS lease sale, 3870
Central and Western Gulf of Mexico OCS lease sales, 19495, 26054, 26633, 46188
Central Santa Maria Basin OCS development and production plans, 10325, 11251, 26846
Gulf of Mexico OCS--
Lease sales, 355
Mineral exploration and production proposals, 2631, 14032, 30765, 42780
Hawaiian exclusive economic zone; cobalt-rich manganese crusts recovery, 13673, 13674
Middle Atlantic States OCS lease sale, proposed, 3846, 23080
North Aleutian Basin, AK OCS lease sale, 2629, 2735, 40617
Norton Basin, AK OCS lease sale, proposed, 51610
Oil and gas leasing; 5-year program development, 11595
Pacific OCS development and production plan, 15985
St. George Basin, AK OCS lease sale, 15233
Meetings:
Outer Continental Shelf Advisory Board, 2629, 3419, 3420, 5440, 9334, 11251, 20140, 24050, 24594, 30528, 32774, 38223, 40459, 43301, 45501, 45502, 53024
Royalty Management Advisory Committee, 52385
Oil and gas leasing, Federal and Indian lands:
Royalty calculation methodology change, 49465
Outer Continental Shelf; development and production plans:
Cities Service Oil & Gas Corp., 16368
Outer Continental Shelf; development operations coordination:
Amoco Production Co., 3981, 18322, 25794, 28289, 29282, 36156, 49135, 49883
Anadarko Production Co., 33645
ARCO Oil & Gas Co., 353, 354, 2735, 9334, 9722, 13429, 21367, 25633, 25795, 28847, 34017, 43298, 49136
Ashland Exploration, Inc., 33117
BelNorth Petroleum Corp., 353, 23531
Champlin Petroleum Co., 897, 898, 19594
Chevron U.S.A. Inc., 2094, 5323, 12089, 12416, 14166, 15508, 16367, 19494, 27493, 30019, 32120, 42232, 43298, 49136, 49883, 52384
Cities Service Oil & Gas Corp., 16368
CNG Producing Co., 11016, 23841
Conoco Inc., 5324, 7144, 12418, 15507, 15643, 19593, 20298, 21945, 21946, 24844, 30526, 38040, 51610
Corpus Christi Oil & Gas Co., 15233, 21368, 26633, 30527, 31260, 39056, 40064
Diamond Shamrock Exploration Co., 47285
Exxon Co., U.S.A., 5323, 5440, 9135, 9722, 10865, 18579, 19814, 24593, 24594, 36499, 38040, 46517
Forest Oil Corp., 7144, 45501
Freeport Sulphur Co., 21368
Gulf Oil Exploration & Production Co., 354
Howell Petroleum Corp., 11585, 47286, 51466
Huffco Petroleum Corp., 6260, 39056
Kerr-McGee Corp., 1000, 11759, 12417, 12418, 27700, 28290, 37062, 43299, 50349
Louisiana Land & Exploration Co., 16566
Marathon Oil Co., 2631, 26415
Mark Producing Inc., 7404, 8198
McMoRan Offshore Exploration Co., 13429
McMoRan Oil & Gas Co., 25793
Mesa Petroleum Co., 6261
Mobil Oil Exploration & Producing Southeast, Inc., 5012, 10114, 25793, 34919, 49136, 49137
Mobil Producing Texas & New Mexico Inc., 19594, 23777, 41227
ODECO Oil & Gas Co., 12417, 14166, 15792, 16365, 18753, 23531, 23841, 25795, 26634, 27700, 28290, 28996, 30527, 36157, 39055, 47121, 52865
Pennzoil Co., 30528
Pennzoil Exploration & Production Co., 8797
Samedan Oil Corp., 11585, 47632
Saturn Energy Co., 25633
Seagull Energy E & P Inc., 1645, 21368, 28996, 31259, 34920
Shell Offshore Inc., 4603, 10866, 12088, 13674, 14167, 23532, 23841, 25794, 26634, 28997, 30019, 37062, 40617, 41425, 45170, 49137, 52384
Sohio Petroleum Co., 32915
Sonat Exploration Co., 16366, 41032, 41426
Southland Royalty Co., 38222
Superior Oil Co., 353, 355, 3845
Tenneco Oil Exploration & Production Co., 2631, 6261, 7404, 7405, 14467, 16366, 23532, 23842, 27701, 28040, 37062, 40064, 47286, 48141, 50349
Texaco USA, 10113, 10114, 12417, 25795, 32325, 34017, 34920, 41032, 43299
Texas Gas Exploration Corp., 41962
Total Petroleum Inc., 38903
Transco Exploration Co., 26635
TXP Operating Co., 11759, 21946, 28290, 49137, 49138, 49884
Union Oil Co. of California, 10324, 15643, 25633, 39057, 46365, 53024
Union Texas Petroleum Corp., 1000, 37292, 39056
Walter Oil & Gas Corp., 8199, 31259, 35166, 45170
Outer Continental Shelf operations:
Alaska; lease sale; call for information and nominations, 46258
Barrow Arch; lease sale, 3870
Central Gulf of Mexico--
Joint use of warning area 155, 15832
Lease sale, 670, 15835, 26054, 26633, 50736
Leasing systems, 552, 15833
Certification verification agents; cessation of 2-year certification period, 33645
Eastern Gulf of Mexico--
Lease sale, 32528, 47510
Lease sale; clarification, 41426
Lease sale; military operation area restrictions; inquiry, 32537
Leasing systems, 47463
Geological and geophysical permit requirements, 31047
Gulf of Alaska; lease sale; request for interest, 45574
Lease forms, 10324
Leasing maps and official protraction diagrams; availability, 8404, 27701, 30308
Maximum attainable rate; notice to lessees and operators, 42233
Middle Atlantic; lease sale, 23081
North Aleutian Basin--
Lease sale, 36974, 51372
Leasing systems, 51381
North Atlantic; lease sale, 552
Oil and gas blowouts; report availability, 18580
Oil and gas information program; summary report and index availability, 29489
Oil and gas lease sales; restricted joint bidders, 13290, 40618, 42102
Oil and gas leasing; 5-year program development, 20140
Inquiry, 11585, 15644, 33418
Southern California; lease sale; request for information, 2630
St. George Basin--
Lease sale, proposed, 21202
Promising acreage focus, 21145
Strategic and nonenergy minerals found in Exclusive Economic Zone, etc., leasing; inquiry, 2264
Underwater welding of offshore structures and pipelines; workshop, 30526
Water depth criteria for longer primary lease terms, 13289, 19593
Well-control, training and qualification of personnel; list of approved schools, 21512
Western Gulf of Mexico--
Lease sale, 11802, 26054, 26633, 27798
Leasing systems, 27810
Royalty-in-kind program; interest from eligible refiners for purchase of Federal crude oil, 48648

MINES BUREAU

NOTICES

Agency information collection activities under OMB review, 14322, 14323, 14775, 47121, 50349, 50350
Meetings:
Mining and Mineral Research Advisory Committee, 12875, 28660

MINORITY BUSINESS DEVELOPMENT AGENCY

NOTICES

Financial assistance application announcements:
Alabama, 312, 313
Alaska, 5410
Arizona, 988, 16529, 21484
California, 988, 989, 990, 991, 992, 5410, 11750, 21484, 23347, 40886, 42074
Colorado, 15773
Connecticut, 313, 25616
District of Columbia, 50336, 52982
Florida, 314, 315, 49087
Georgia, 311, 316, 317
Hawaii, 52354
Illinois, 40430
Indiana, 46690
Kentucky, 317
Louisiana, 20476
Massachusetts, 318
Michigan, 40431
Mississippi, 311
Missouri, 40431
Nevada, 992
New Jersey, 318, 25617
New York, 319, 320, 321, 1615, 25617, 46328
North Carolina, 321, 322, 993, 11531, 23348
Ohio, 12353, 40432
Oregon, 993
Puerto Rico, 46329, 46330
South Carolina, 323, 4567, 11531
Tennessee, 324, 21331, 23347, 45925
Texas, 2074, 20475
Virginia, 7809, 47573, 47574
Grants; availability, etc.:
Minority business and industry associations and minority Chambers of Commerce, 19773
Group eligibility determination for assistance:
Ex-felons; petition denied, 7364
Minority Enterprise Development Week; meetings, 1262

MISSISSIPPI RIVER COMMISSION

NOTICES

Meetings; Sunshine Act, 14333, 14334, 34579, 35903, 35904

MOTOR VEHICLES

See Environmental Protection Agency.
Federal Highway Administration.
General Services Administration.
Interstate Commerce Commission.
National Highway Traffic Safety Administration.
Urban Mass Transportation Administration.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

RULES

Acquisition regulations, 784, 2049, 11866, 13365, 32974
Interim, 20417
Administrative authority and policy:
NASA airfield facilities; use by aircraft not operated for benefit of Federal Government; procedures, 43125
Conflict of interests; standards of conduct; public financial disclosure, 3887
Federal Acquisition Regulation (FAR):
Certification of commercial pricing; meeting, etc., 35815
Civilian Agency Acquisition Council membership, prompt payment discounts, etc., 26902
Competition in contracting requirements, 52428
Interim, 1726, 4221, 10233
Protest procedures; interim, 25680, 27969
Contract cost principles and procedures; insurance and indemnification, etc., 23604
Planning for future competition, integrity of unit prices, etc.; interim, 27560
Correction, 28103
Publicizing provisions and validation of proprietary restrictions, and competition in contracting protest provisions; interim, 2268
Subcontractor sales, unreasonable restrictions; etc.; interim, 35474
Monetary claims processing; employees' personal property claims; maximum amount, 43127
Nondiscrimination on basis of age in federally-assisted programs and activities, 13311
Organization and functions, 21235
Space transportation system:
Astronaut candidate recruitment and selection program, 13186
Spacelab services, reimbursement; interim, 30807
Tracking and data relay satellite system; use and reimbursement policy; service rates, 2777

PROPOSED RULES

Acquisition regulations, 23159, 25434
Federal Acquisition Regulation (FAR):
Alcoholic beverage costs, 51779
Architect-engineer services; definition, 10516
Company-furnished automobiles, 51776
Construction contract progress payments; withholding of funds, 7200
Contract changes clauses, 21313
Contract cost principles and procedures; advance agreements and travel costs, 8752
Contracts, voiding and rescinding, 23157
Correction, 23818
Contributions and donations, fines and penalties, and fraud proceedings defense, 53088
Cost accounting standards contracts; interest rate change, 43643
Effect of listing; debarred or suspended contractors excluded, 43633
Employee morale, health, welfare, food services, dormitory costs, and credits, 49662
Executive lobbying costs, 51778
Late bid or proposal sent by certified or registered mail; acceptable evidence in establishing mailing date, 11522
Personal services, compensation, 41179
Personal services and industrial security costs, compensation, 49662
Professional and consultant service costs; litigating appeals against Government, 51778
Public relations costs, 7199
Regulatory agenda, 18016, 44866
Relocation cost principle, 48735
Retroactive or backdated insurance, 42657
Rights in data and copyrights–
Draft availability, 32870
Restrictive markings on technical data; validation, 40416, 40984, 45442
Selling costs, 52727
Social, dining, and country clubs; membership costs, 51777
Training and education costs, 45708
Correction, 46470
Transportation clauses, 48332
Unallowable costs, 51776
Women-owned small businesses utilization; contract clause, 4241
Definitions, 11523, 13256
Federal claims collection, 13228
Regulatory agenda, 17906, 18016, 44754
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712

NOTICES

Advisory committees; report on closed meetings; availability, 51614
Agency information collection activities under OMB review, 7859, 8200, 9731, 11023, 13432, 14778, 20510, 21520, 27387, 31058, 32497, 34930, 37300, 53027
Committees; establishment, renewals, terminations, etc.:
Advisory Council et al., 37922
Environmental statements; availability, etc.:
Centaur vehicle as upper stage in space launch activities, 19096
Project Galileo, 36168
Solar terrestrial research needs; combined release and radiation effects satellite program, 41964
Federal Acquisition Regulation (FAR); agency information collection activities under OMB review, 7948, 8762, 13647, 13648, 21334, 21335, 26270, 27333, 29249, 47247, 50013, 52991
Inventions, Government-owned; availability for licensing, 26418, 31059
Meetings:
Advisory Council, 2111, 3849, 9915, 14779, 27501, 40901, 45678, 53028
Aeronautics Advisory Committee, 1008, 2356, 8200, 21521, 29283, 40901
Aerospace Safety Advisory Panel, 2111
History Advisory Committee, 23848
Informal Earth System Sciences Committee, 18587, 32128, 40901, 47856
Life Sciences Advisory Committee, 2112, 26860
National Commission on Space, 18329, 24717, 27864, 31263, 34930, 39188, 43619, 49143, 50372
Space and Earth Science Advisory Committee, 3849, 5329, 11762,

18586, 19096, 30318, 37070, 39188, 51614
Space Applications Advisory Committee, 1008, 12666, 26861, 37300, 37449, 53028
Space Systems and Technology Advisory Committee, 8200, 20861, 39187
Wage Committee, 8201, 24967
Patent licenses, exclusive:
Celanese Corp., 31059
Dr. Friedlander, 21672
Lausch, John, 21672
Power Controls International Pty., Ltd., 7016, 7409, 41430
Rust-Oleum Corp. et al., 24967
Schock, Harold J., et al., 24967

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

See also Federal Register Office.
National Archives and Records Service.

RULES
Chapter establishment and regulations redesignation, 15722
Correction, 20759, 26736
Freedom of Information Act; implementation, 27196
Nixon administration Presidential historical materials; preservation, protection, and access procedures; CFR Part removed, 26992
Official seal requirements, 27196
Privacy Act; implementation, 27196
Public use of records and donated historical materials:
Fee schedule, 50904
Records management, 26930
Correction, 27951

PROPOSED RULES
Freedom of Information Act; implementation, 21461
Official seal requirements, 21461
Privacy Act; implementation, 21461
Public use of records and donated historical materials:
Fee schedule, 42572
Records management, 21218
Regulatory agenda, 17912, 44760
Research rooms, public use, 51414

NOTICES
Agency records schedules; availability and inquiry, 12879, 18585, 21373, 23848, 26419, 28668, 34026, 36501, 40246, 42238, 47132, 47645, 49467, 51615
Committees; establishment, renewals, terminations, etc.:
Preservation Advisory Committee, 51615
Qualifications Review Panel for Position of Director, John Fitzgerald Kennedy Library, 49143
Meetings:
Preservation Advisory Committee, 18951, 38595
Qualifications Review Panel for Position of Director, John Fitzgerald Kennedy Library, 53224
Organization, functions, and authority delegations, 26278
Senior Executive Service:
Performance Review Board; membership, 33652

NATIONAL ARCHIVES AND RECORDS SERVICE

See also National Archives and Records Administration.

PROPOSED RULES
Nixon administration presidential historical materials; preservation, protection, and access procedures, 12575

NOTICES
Meetings:
Preservation Advisory Committee, 7002

NATIONAL BUREAU OF STANDARDS

PROPOSED RULES
Voluntary product standards; development procedures, 43573
Extension of time, 50177

NOTICES
Federal standards policy; implementation; laboratory accreditation guidelines, 8760
Grants; availability, etc.:
Precision measurement grants program, 42075
Research grants program, 19774
Information processing standards, Federal:
Ada programming language, 46472
Proposed; inquiry, 11748
American National Standard Code–
Representation of names of countries, dependencies, and areas of special sovereignty for information exchange, 32609
Representations, subsets, and extensions, 3005
Computer data authentication, 23047
Data descriptive file for information interchange specification, 33090
Data interchange on flexible disk cartridges, 39745, 42745
Graphical kernal system, 12602
Information resource dictionary system, 32610
Message format for computer-based message systems; suspension, 9480
Minimal BASIC and FORTRAN, 52546
Minimal BASIC interpretation, 24558
Optical character recognition dot matrix character sets, proposed; inquiry, 46474
Pascal programming language, 2324
Password usage, 23048
Storage module interfaces, 15470
Videotex/teletext presentation level protocol syntax (North American PLPS), 14128, 15600
Laboratory Accreditation Program, National Voluntary:
Building seals and sealants testing, 21108
Construction testing services; inquiry, 40987
Directory of accredited laboratories supplement, 16729, 28966, 41931
Electromagnetic compatibility and telecommunications equipment testing, 5411, 38874
Food preparation equipment; inquiry, 25440
Hazardous waste analysis; inquiry, 7095
Metals testing; inquiry, 37021
Quarterly report and status of programs, 5655
Meetings:
National Voluntary Laboratory Accreditation Program, 19774
OSI Implementors workshop, 36644
Suppliers and Developers of Dictionary Software Workshop, 23754
Visiting Committee, 3005, 16333
Weights and Measures National Conference, 139, 27331
National Fire Codes:
Fire safety standards; inquiry, 8179, 36131
Technical Committee reports; inquiry, 8178, 36132
Procurement:
Commercial activities, performance; review schedule (OMB A-76 implementation), 37717
Commercial or industrial activities, performance; cost comparison study (OMB A-76 implementation), 993
Senior Executive Service:
General and Limited Performance Review Boards; membership, 6372
General Performance Review Board; membership, 20823

NATIONAL CAPITAL PLANNING COMMISSION

PROPOSED RULES
Regulatory agenda, 17918, 44766

NOTICES
Master plan submission requirements; proposed amendments; availability and inquiry, 39059
Senior Executive Service:
Performance Review Board; establishment and membership, 50686

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

NOTICES
Meetings, 4821, 15993, 31446, 42793, 52386, 52570

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

See Libraries and Information Science, National Commission.

NATIONAL COMMUNICATIONS SYSTEM

NOTICES
Meetings:
National Security Telecommunications Advisory Committee, 5452, 10875, 23541, 31447, 38726, 46370

NATIONAL COUNCIL ON THE HANDICAPPED

NOTICES
Meetings; Sunshine Act, 2371, 16040, 31275, 47327

NATIONAL CREDIT UNION ADMINISTRATION

RULES
Federal credit unions:
Criminal referral program; fraud reporting, 53294
Employee responsibility and conduct; financial interests of employees; exemption, 41673

Fees, 20744
Insurance and group purchasing activities, 16462
Loan interest rates, 48075
National Credit Union Share Insurance Fund; capitalization--
Clarification, 20745
Reporting and recordkeeping requirements, 53293
Operational systems; CFR Part removed, 27417
Organization and operation; ownership of fixed assets; reporting and recordkeeping requirements, 7583
Real estate loan assumption by nonmembers; interpretive ruling and policy statement, 51840
Repurchase agreements of depository institutions with securities dealers and others; interpretive ruling and policy statement, 48372
Share, share draft, and share certificate accounts, 4636
Supervisory committee audits and verifications, 8708
Technical amendments, 20894
Trustees and custodians of pension plans; interpretive ruling and policy statement, 48176
Regional offices; technical amendments, 20894

PROPOSED RULES
Federal credit unions:
Credit union service organizations; investments and loans, 4698
Statutory implementations, 36998
Criminal referral program; fraud reporting, 37380
Regulatory agenda, 18144, 44984

NOTICES
Agency information collection activities under OMB review, 29772, 42622, 43019
Meetings; Sunshine Act, 2888, 4611, 7444, 11785, 13113, 14334, 18960, 20033, 21011, 24085, 24739, 24740, 28303, 35177, 38243, 39217, 41620, 46724, 47894, 48153, 48684, 50251
Senior Executive Service:
Performance Review Board; membership, 3604, 36683

NATIONAL CRITICAL MATERIALS COUNCIL

NOTICES
Meetings, 53224

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

RULES
Museum Services Institute:
Conservation grants, 27584
Museum assessment and general operating support programs, 27586

PROPOSED RULES
Museum Services Institute:
Conservation grants, 4237
Regulatory agenda, 17920, 17924, 44768, 44772

NOTICES
Agency information collection activities under OMB review, 4821, 5019, 13296, 16372, 24718, 28669, 29284, 29497, 30250, 33872, 34221, 41753, 42107, 47305, 47645, 48143, 49468, 50373, 51312, 51491, 52571, 53029
Committees; establishment, renewals, terminations, etc.:
Artists in Education Advisory Panel, 6416
Dance Advisory Panel, 6413
Design Arts Advisory Panel, 6414
Expansion Arts Advisory Panel, 6416
Federal Graphics Evaluation Advisory Panel, 6414
Inter-Arts Advisory Panel, 6414
Literature Advisory Panel, 6414
Media Arts Advisory Panel, 6415
Museum Advisory Panel, 6415
Music Advisory Panel, 6415
Partnership Office Advisory Panel, 6415
Theater Advisory Panel, 6415
Visual Arts Advisory Panel, 6416
Grants; availability, etc.:
Museum services--
Assessment program, 41240
Conservation project support program, 3605
General operating support program, 30768
Meetings:
Artists in Education Advisory Panel, 901, 23849, 52386
Arts and Artifacts Indemnity Panel, 16758, 42793
Arts National Council, 2356, 9337, 15510, 29004, 35884, 42623
Challenge/Advancement Ad Hoc Review Committee, 27865
Dance Advisory Panel, 12096, 24070, 27704, 31263, 37449, 53224
Design Arts Advisory Panel, 902, 9732, 18329, 18330, 26063, 27704, 30251, 47466, 48661
Design Arts and Visual Arts Ad Hoc Planning, 20510
Expansion Arts Advisory Panel, 5702, 7663, 12097, 15510, 18951, 21375
Humanities National Council Advisory Committee, 197, 2633, 15796, 24848, 29284, 42240
Humanities Panel, 2740, 5330, 7663, 11023, 14469, 15796, 16758, 18754, 20304, 23366, 24601, 25800, 27865, 28855, 30545, 31661, 33652, 37301, 38596, 39059, 40902, 41965, 47306, 49143, 53225
Inter-Arts Advisory Panel, 7150, 14050, 14051, 20861, 27387, 34931, 47307
Literature Advisory Panel, 5453, 9732, 12097, 20511, 37736, 47467
Media Arts Advisory Panel, 1648, 5330, 9143, 14050, 15510, 27704, 32335, 45506, 52386
Museum Advisory Panel, 7017, 14051, 18330, 21672, 30890, 47305
Music Advisory Panel, 3850, 4001, 4929, 5702, 7242, 9337, 10123, 18330, 18951, 20511, 23541, 26064, 30545, 31263, 33653, 34558, 34931, 41613, 43482, 45679, 47467, 52386, 53225
Partnership Office Advisory Panel, 902, 18952, 20963, 35171, 53225
President's Committee on Arts and Humanities, 6288, 23849, 40074
Program Initiative for Interdisciplinary Artists Review Committee, 27705
Theater Advisory Panel, 5702, 6288, 9732, 21374, 24331, 35172
Visual Arts Advisory Panel, 6288, 9143, 12667, 18330, 20155, 21375, 24331, 26063, 35884, 45506
Meetings; Sunshine Act, 5850, 16580, 42118
Senior Executive Service:
Performance Review Board; membership, 12096

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

RULES
Anthropomorphic test dummies; drawings copies availability and incorporations by reference approvals, 25422
Fuel economy standards:
Light trucks, 40398
Reconsideration petitions denied, 11162
Passenger automobiles, 40528
Exemption, 32424
Motor vehicle safety standards:
Brake hoses; metric size labeling, 4688
Child restraint systems--
Anchorages, 41356
Buckle requirements, 33722, 39114
Motor vehicles and aircraft, 15154
Controls and displays; international symbols; amendments, 23426
Door locks and door retention components, 12029
Lamps, reflective devices, and associated equipment--
Alternative location for front identification lamps, 36995
Modulating headlamps on motorcycles, 29676
Rear yellow turn signal photometrics, etc.; clarification, etc., 3991, 21619, 23813
Replaceable bulb headlamp systems, 21052, 27451, 37857
Occupant crash protection--
Automatic restraint system (airbags, etc.); petitions for reconsideration; responses, 35233, 36084
Seat belt assemblies, 34152, 36996, 46056
Temporary exemptions; certification labels on exempted vehicles, 10771
Tires, new pneumatic--
Motor vehicles other than passenger cars, 10772
Passenger cars; correction, 10968
Vehicle identification number; correction, 4221
Windshield defoggers, 48772
Motor vehicle theft prevention standard:
Covered vehicles; selection procedures, 34831
Performance standards and criteria for selection of covered vehicles and replacement parts, 43166
Theft rates data, 46666
National Driver Register; procedures for

transition to new automated system, 28191
Organization and delegation of powers and duties:
Motor Vehicle Theft Law Enforcement Act of 1984; implementation, 7345
Reporting and recordkeeping requirements, 40023
State highway traffic safety programs; uniform standards, 45815
Tire identification and recordkeeping, 2287
New tire marking requirements, 10772

PROPOSED RULES
Anthropomorphic test dummies; adoption of Hybrid III test dummy, 14602
Consumer information:
Uniform tire quality grading standards; reconsideration petition denied, 14400
Defect and noncompliance notification; quarterly reports, 12056
Fuel economy standards:
Passenger automobiles, 12344, 29912
Exemption, 5405, 23738
Passenger automobiles and light trucks; extension of time, 4993
Incentive grant criteria, etc.:
Alcohol traffic safety programs, 20438
Motor vehicle safety standards:
Air brake hoses; adhesion test, 21090
Air brake systems, 21313
Comment period reopened, 29993, 30981
Test rig modifications, etc., 20113, 27032
Anthropomorphic test dummies; adoption of Hybrid III test dummy, 14602
Automatic safety brakes; petition denied, 5646
Brake hoses; tensile strength tests; advance notice, 11209
Brake hoses and fluids--
Compatibility requirements, 11213
Referee materials and test procedures, 9294
Child restraint systems--
Restraints with tether strap, 27633
Tether anchorages; proceeding terminated, 27632
Controls and displays; illumination and identification, 37240
Glazing materials; report availability, 7805
Extension of time, 20919
Hazard warning signals; petition denied, 46144
Hydraulic brake systems, 21313
Comment period reopened, 29993, 30981
Petition denied, 4243
Lamps, reflective devices, and associated equipment--
Alternative location for front clearance lamps; withdrawn, 32241
Bulb filament test requirement withdrawn, 35583, 42970
Comprehensive review; advance notice, 42735
Enhanced upper beam in type F headlamp systems, 19986
Hazard warning system, flashing clearance and identification lamps; withdrawn, 42195
Multiple compartment stop lamps and turn signal lamps; minimum effective projected luminous lens area reduction; proceeding terminated, 11506, 12587
Petition denied, 11212
Removable transparent headlamp covers; petition denied, 52544
Semi-sealed headlamp with standardized replacement bulb, etc.; light source system options; extension of time, 294
Standardized replacement light sources, 37882
Standardized replacement light sources as replaceable bulb headlamp systems, 19961
Motorcycle helmets; minimum performance requirements, 39144
Motorcycles; handling characteristics; petition denied, 38557
Occupant crash protection--
Petition denied, 14626
Safety belt buckle releases for new trucks, buses, and multipurpose passenger vehicles, 23041
Seat belt assemblies, 14580
Test procedures and automatic restraint phase-in reporting requirements, 14589
Passenger car brake system, etc., 19744
Correction, 25612
Extension of time, 37702
Rearview mirrors; petition denied, 4242
School bus body joint strength; petition denied, 34878
School bus passenger seating and crash protection, 41368
School buses utilizing new and used components; petition denied, 38558
Splash and spray suppression devices on truck tractors, trailers, and semitrailers, 14632
Extension of time, 24550, 24917
Steering column rearward displacement, 13402
Extension of time, 20919
Tires, new pneumatic, for passenger cars, 28426
Vehicle corrosion; petition denied, 28599
Windshield mounting; report availability, 7805
Extension of time, 20919
Motor vehicle theft prevention standard:
Covered vehicles; selection procedures, 25603
Extension of date for issuance of proposed standard, 4242
Performance standards and criteria for selection of covered vehicles and replacement parts, 19728
Theft rates data, 18708, 32871
National Driver Register; procedures for transition to new automated system, 49409
National minimum drinking age; State noncompliance; withholding of Federal-aid highway funds, 39140
Tire identification and recordkeeping; reconsideration petition denied, 48107

NOTICES
Fuel economy program, automotive; annual report to Congress, 11981
Meetings:
International Harmonization of Safety Standards; schedule, 16189
National Driver Register Advisory Committee, 11285, 34227, 35174
National Highway Safety Advisory Committee, 21388
Rulemaking, research, and enforcement programs, 12433, 35901, 39067, 49895
Motor vehicle defect proceedings; petitions, etc.:
Bennett, Pauline, et al., 14331
Moore, William E., et al., 45702
Morrison, Michael R., et al., 23221
Williams, William B., 50031
Motor vehicle safety standards:
Tires--
Code marks assigned to new manufacturers, 10880
Voluntary registration system; preliminary evaluation report; inquiry, 39214
Motor vehicle safety standards; compliance investigations, etc.:
Jaguar Cars, Inc., 50703
Peoples Car Co., 32673, 37462
Wayne Corp., 32674, 35174, 37462
Motor vehicle safety standards; exemption petitions, etc.:
Alfa Romeo, Inc., 52581
American Honda Motor Co., Inc., 16188
American Jawa Ltd., 48531
Avon Tyres Ltd., 6092, 26426
B.F. Goodrich Co., 5465, 20159, 24078, 34576
British Coach Works, Ltd., 10340, 12887, 25817
California Strolee, Inc., 29791
Chrysler Corp., 13446, 32504
Drikow, Marlin, 50031
Firestone Tire & Rubber Co., 14789, 27709, 28488, 46722
Ford Motor Co., 5723, 5724, 18341
General Motors Corp., 25150, 25819
Graco Metal Products, Inc., 49810
IVECO Trucks of North America, Inc., 5346, 25819
K Mart Corp., 5465
Mack Trucks, Inc., 37945
Metzeler Kautschuck GmbH, 41978
Mitsubishi Motors Corp., 1156
Olin Corp., 5725, 48857
Sumitomo Rubber Industries, Ltd., 30778, 48151
U-Haul International, 5725
Union City Body Co., Inc., 5726, 36703
Vintage Reproductions, Inc., 42634, 45884
Volkswagen of America, Inc., 1971, 28678, 50248
Volvo White Truck Corp., 18344, 37108
Western Star Trucks, Inc., 10881, 37945

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

See Centers for Disease Control.

NATIONAL INSTITUTE OF JUSTICE

NOTICES

Grants; competitive solicitations:
- Adult property offenders, ethnographic study, 52569
- Crime control theory and policy, etc., 7845
- Solicited research programs, 7407, 10871
- Sponsored research programs, 53027
- Spouse assault, alternative police responses; replicating an experiment in specific deterrence, 41035
- Technology assessment program testing and information center, 5329

NATIONAL INSTITUTES OF HEALTH

NOTICES

Committees; establishment, renewals, terminations, etc.:
- Arthritis, Diabetes, and Digestive and Kidney Diseases Special Grants Review Committee, 14026
- Cancer Biology-Immunology Contracts Review Committee, 14026
- Reproductive Endocrinology Study Section, 49132

Environmental statements; availability, etc.:
- Recombinant DNA molecules research, 14794
  - Comment analysis, availability, 30016

Grants; availability, etc.:
- Academic research enhancement awards, 39046
- Minority institutions awards, research centers, 551
- Visual function profile in low vision patients, research projects, 14459

Laboratory animal welfare:
- Humane care and use of laboratory animals by awardee institutions; revised policy; availability, 19584

Meetings:
- Adjuvant chemotherapy for breast cancer conference, 32494
- Advisory Committee to Director, 18931, 46516
- Anesthesia and sedation in dental office; conference, 10860
- Animal Resources Review Committee, 4808, 5819, 16560, 37287, 40608
- Biotechnology Resources Review Committee, 10861, 28478
- Bone marrow transplantation registries, technology assessment, 10863
- Dental Research Programs Advisory Committee, 11947, 39178
- Diabetes National Advisory Board, 14772, 43007, 53020
- Digestive Diseases National Advisory Board, 14772, 27852, 37287, 43007
- Electroconvulsive therapy; conference, 20658
- Fogarty International Center Advisory Board, 32495
- General Clinical Research Centers Committee, 4810, 20858, 45493, 53019
- General Research Support Review Committee, 10861, 15983, 25630, 45493
- National Arthritis Advisory Board, 16563, 35329, 43007
- National Cancer Institute, 2864, 4809, 4811, 5428, 5817, 5818, 8398, 10545, 10862, 13663, 13882, 14771, 15983, 16560, 16561, 16564, 16754, 20941, 20942, 25629, 28478, 28479, 29270, 30763, 32494, 33109, 35325, 37288, 37289, 40608, 40609, 45492, 45493, 47847, 47848, 49462, 52862, 53020
- National Eye Institute, 1276, 10862, 16561, 16562, 20859, 37058, 45494, 53017
- National Heart, Lung, and Blood Institute, 551, 1278, 2864, 3839, 5428, 5429, 5817, 9132, 10545, 10546, 10863, 11947, 13882, 14771, 14772, 16153, 16154, 16562, 18932, 18933, 20858, 25630, 27852, 30763, 30764, 32494, 33110, 37289, 37290, 39179, 40609, 40610, 45494, 47847, 49132, 53017, 53020
- National Institute of Allergy and Infectious Diseases, 1276, 5818, 16153, 16154, 16563, 20942, 35326, 40452, 47846, 53018
- National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, 4809, 16154, 37290, 40453
- National Institute of Child Health and Human Development, 4810, 14771, 16155, 20859, 32643, 40610, 45495, 53018
- National Institute of Dental Research, 8399, 13664, 25631, 32644, 40611, 47847, 53019
- National Institute of Environmental Health Sciences, 8398, 14772, 25630, 32644, 40607, 45495, 53019
- National Institute of General Medical Sciences, 4811, 13664, 14773, 32644, 40611, 53017
- National Institute of Neurological and Communicative Disorders and Stroke, 5429, 10863, 13664, 30764, 35326, 53015, 53018
- National Institute on Aging, 5816, 5817, 13663, 16562, 16563, 32645, 35326, 40609, 45492
- National Library of Medicine, 5816, 16155, 18932, 32645, 40607, 40608, 53016
- Obesity, health implications; conference, 3839
- President's Cancer Panel, 11947, 16153
- Recombinant DNA Advisory Committee, 3839, 5429, 30764, 33462, 41598, 50015, 52176
- Research Grants Division study sections, 1277, 2864, 14773, 16559, 25129, 32644, 35327, 53016
- Research Resources National Advisory Council, 1277, 18932, 32646
- Smokeless tobacco use, health implications; conference, 39178

Procurement:
- Commercial or industrial activities, performance; review schedule (OMB A-76 implementation), 16563, 29270

Recombinant DNA molecules research:
- Actions under guidelines, 9760, 46834, 48344
- Proposed, 12456, 33462, 52176
- Human somatic-cell gene therapy protocols; inquiry, 2940

NATIONAL LABOR RELATIONS BOARD

PROPOSED RULES

Freedom of Information Act; implementation, 51414

NOTICES

Meetings; Sunshine Act, 1030, 14487, 27396, 30331, 31994, 32135, 32525, 38739, 40655

Senior Executive Service:
- Performance Review Board; membership, 12879

NATIONAL MEDIATION BOARD

NOTICES

Meetings; Sunshine Act, 3867, 7264, 11044, 16192, 20870, 24872, 29041, 34034, 37620, 43496, 45889, 48860, 51652

Senior Executive Service:
- Performance Review Board; membership, 19595

NATIONAL OCCUPATIONAL INFORMATION COORDINATING COMMITTEE

NOTICES

Occupational information announcements, 21394

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

RULES

Coastal zone management program:
- Federal consistency regulations, 35210
  - Effective date, 46422

Endangered and threatened species:
- Cochito, 1056
- Guadalupe fur seal, 51252
- Scrimshaw products, 12806, 25713
- Sea turtles; prohibited taking for subsistence purposes; review determination, etc., 278

Financial aid to fisheries:
- Fishermen's Protective Act procedures—
  - Fee adjustment, 15901
  - Seizures of U.S. commercial fishing vessels; interim, 1859, 7180
- Loan fund procedures, 7921

Fishermen's contingency fund:
- Claims; extension of filing period and compensation increase, 13796

Fishery conservation and management:
- Administrative practice and procedure; penalties; technical amendments, 39696
  - Correction, 41159
- Atlantic groundfish, 8735, 40558
- Atlantic mackerel, squid, and butterfish, 947, 2050, 6953, 7346, 10499, 12032, 12544, 20103, 20215, 23310
- Atlantic red hake, 15425, 23712
- Atlantic sea scallop, 38820, 42028, 46069
- Atlantic surf clam and ocean quahog, 2292, 4518, 11166, 14930, 20215, 23014, 30853, 32707, 34154, 46072, 46671, 47225, 49852, 49931, 51533, 51870
- Atlantic swordfish, 33952, 35563

Bering Sea and Aleutian Islands groundfish, 11369, 14107, 19946, 26213, 35825, 36997, 40977, 43716, 43717, 46072, 48601, 49852
Civil procedures; enforcement policy; technical amendment, 36434
Foreign fishing, 34964, 49852
Correction, 43571
Harvest estimates, etc., 468, 1862
Permit fees, etc., 8335
Poundage fee schedule, 460
Supplemental observer program, 8131
Technical amendments, etc., 35023, 39696, 41159, 45114
Gulf of Alaska groundfish, 467, 3911, 10234, 11368, 12809, 15426, 16705, 19946, 20795, 21852, 26213, 26774, 28580, 28581, 29681, 32071, 35825, 41903, 42027, 43193, 43716, 48601
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 34840, 38538
Gulf of Mexico reef fish, 11166
Gulf of Mexico shrimp, 20912, 25713, 28103, 37198
High seas salmon off Alaska, 25247, 28103, 30427, 33346, 35089
Northern anchovy, 32070
Ocean salmon off coasts of Washington, Oregon, and California, 812, 4977, 18672, 20570, 21449, 30195, 30954, 31845, 31847, 31848, 33344, 34705, 35826, 36092, 37535, 42529
Pacific Coast groundfish, 471, 2051, 18668, 24777, 26212, 30195, 32070, 41159, 45828, 49048, 50309, 53325
Puerto Rico and Virgin Islands shallow-water reef fish, 34850
Puerto Rico and Virgin Islands spiny lobster; correction, 1229
South Atlantic snapper-grouper, 38818, 41692
Stone crab, 25713
Tanner crab off Alaska, 2573, 4226, 5764, 6954, 7346, 10233, 13040, 19948, 31604, 41902, 47549, 49853, 50793, 51533
Technical amendments, etc., 39696, 41159
Correction, 45114
Western Pacific spiny lobster, 18264, 20103, 30198, 40558
Marine mammals:
Commercial fishing operations; taking and importing--
Definition, 49696
Technical amendment, 37377
North Pacific fur seals; subsistence taking; interim, 27914, 32205
Pacific halibut fisheries, 13382
Pacific Salmon Fisheries Commission, International:
Fraser River sockeye and pink salmon, 26210
Reporting and recordkeeping requirements, 11995, 40977, 46068, 47225
Seizure and forfeiture procedures; interim, 12781
Tuna, Atlantic fisheries, 20420, 29403, 30853, 31845, 37534, 38538, 43396, 45828

PROPOSED RULES

Coastal zone management program:
Federal consistency regulations, 3798
Endangered and threatened species:
Guadalupe fur seal, 294
Hawaiian monk seal, 1088
Fishery conservation and management:
American lobster, 24251
Atlantic groundfish, 29241, 31899
Atlantic mackerel, squid, and butterfish, 1890, 2302, 28109, 50186
Atlantic red hake, 15464
Atlantic sea scallop, 29240, 31205, 33083
Atlantic surf clam and ocean quahog, 4545, 16326, 21910, 46145, 51435
Atlantic swordfish, 18717, 23159, 27470
Bering Sea and Aleutian Islands groundfish, 29240, 33080, 34881, 47080, 48236
Bering Sea and Aleutian Islands king crab, 8345
Bottomfish and seamount groundfish; public hearings, 13405, 38869
Foreign fishing, 47080, 48236
Permit fees, 41533
Gulf of Alaska groundfish, 26812, 30481, 32456, 34881, 47080, 48236
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 518, 4545, 19558, 24242, 24787, 29709, 39740
Gulf of Mexico reef fish, 40206
Gulf of Mexico shrimp, 50928
King and Spanish mackerel; hearing, 39155
Northeast multispecies, 2598, 12591, 43261, 49582, 51436
Northern anchovy, 27470
Ocean salmon off coasts of Washington, Oregon, and California, 134, 12059
Pacific billfish; hearing, 18983
Pacific Coast groundfish, 4545, 28960, 49590, 51436
Puerto Rico and Virgin Islands shallow-water reef fish, 19559, 24251
South Atlantic snapper-grouper, 13639, 39740
Striped bass, 35105
Tanner crab off Alaska, 8348, 38867
Western Pacific billfish; hearing, 19764
Western Pacific spiny lobster, 48108
Fishery products, processed:
Breaded catfish and surimi-based products; grade standards; advance notice, 48236
Fish fillets; grade standards, 12591
Geostationary operational environmental satellite data collection system; excess capacity utilization, 28816
Marine mammals:
Commercial fishing operations--
Fishing gear and procedural requirements to protect porpoise, 18713
Taking and importing; definition, 4244
Taking and importing; rulemaking petition receipt, 25725
Space shuttle activities; incidental taking, 31200
Correction, 32100
Ocean thermal energy conversion facilities and plantships, licensing, 48097
Tuna, Atlantic fisheries, 11215, 45134
Extension of time, 13256

NOTICES

Artificial reef plan, national:
Availability, 47086
Draft availability and inquiry, 23819
Coastal zone management programs and estuarine sanctuaries:
Evaluation findings availability, 11929, 26027, 37570, 53370
Federal consistency study; inquiry, 18546, 26027
Intent to evaluate performance, 11929, 26027, 37570, 53370
Satisfactory progress findings for State programs; intent to issue, 9480
State programs--
Alabama, 26243, 34883, 35590
California, 324, 872, 14957, 16122, 24794, 41722, 48456, 50654
Florida, 32102
North Carolina, 24795
Committees; establishment, renewals, terminations, etc.:
Marine Fisheries Advisory Committee, 15215
Oceans and Atmosphere National Advisory Committee; request for nominations, 9111
Deep seabed mining, exploration license applications:
Ocean Minerals Co., 994, 25112, 37394
Endangered and threatened species:
North Pacific fur seals--
Issue paper availability and inquiry, 9482
Petition determination, etc., 9232
Environmental statements; availability, etc.:
Coastal resources management program--
New Hampshire, 52982
Rhode Island, 12353
Virginia, 34170
Next generation weather radar system (NEXRAD), 41721, 42584, 48456
Fishery conservation and management:
Ocean salmon off coasts of Washington, Oregon, and California; reports availability, meetings, etc., 10526
Vessel ownership transfer to U.S. corporation under foreign control; application for approval; inquiry, 13845, 32881
Grants; availability, etc.:
Fishing industry research and development projects (Saltonstall-Kennedy funds), 15060
Marine mammal permit applications. See entries under Permits.
Marine mammals:
Annual report; availability, 39753
Dall's porpoise--
Action plan; availability, 20119
Proposed action plan; availability, 8355
Fish import certification--
Northern Ireland, 32466
United Kingdom, 28112
Incidental taking; authorization letters, etc.--
ANAVAR Asociacion, 47793
CGG American Services, Inc., 7626
Japan Deep Sea Trawlers Association et al., 47087
Korean Embassy, 50654
Marine Technical Services, Inc., 5805
National Fish Meal & Oil Association et al., 36644
Sefel Geophysical Ltd. et al., 1100
Western Geophysical Co. of America, 4720
Registration certificates; agents or tanners list, 42746
Taking incidental to commercial fishing operations, 3950, 27481, 32253

Marine sanctuaries:
Key Largo National Marine Sanctuary, 2703
Norfolk Canyon, VA, et al., 37760
Meetings:
Caribbean Fishery Management Council, 5656, 12603, 26818, 32251, 35853, 48241
Emergency striped bass research study, 30496
Gulf of Mexico Fishery Management Council, 5656, 6373, 14129, 26598, 31407, 32251, 34733, 38151, 39027, 41550, 42200, 50933
International Whaling Commission, 50824
Marine Fisheries Advisory Committee, 2326, 4253, 23348, 45460
Mid-Atlantic Fishery Management Council, 6373, 19432, 24559, 28112, 34170, 34734, 41550, 43264, 49087
New England Fishery Management Council, 1262, 8180, 19432, 25440, 31407, 38152, 42585, 49594
North Pacific Fishery Management Council, 1262, 2600, 3827, 7946, 9880, 11532, 15600, 16333, 24928, 25618, 28112, 28604, 30990, 38152, 41931, 45141, 47243, 47793
Oceans and Atmosphere National Advisory Committee, 373, 1009, 6413, 12844, 13645, 14409, 18282, 20823, 21485, 24283, 26817, 31758, 37395, 45141, 51896
Pacific Fishery Management Council, 3827, 4720, 5656, 8180, 9880, 12603, 18720, 25618, 25735, 26598, 30496, 30990, 33615, 36133, 37263, 39027, 41184, 41550, 43604
Regional Fishery Management Councils, 28604
South Atlantic Fishery Management Council, 3585, 9880, 20476, 24664, 30289, 32251, 34733, 38151, 41550, 42200
State Fish and Wildlife Directors Conference, 19222
Western Pacific Fishery Management Council, 5656, 6026, 6373, 11532, 16333, 18720, 29467, 31407, 37263, 40433, 42585, 45926
Permits:
Endangered and threatened species, 9481, 12355, 32611, 39753
Experimental fishing; Pacific Coast groundfish, 10290, 10525, 11410, 13408, 20420, 20470, 21331, 23349, 28002, 32251, 39753, 51278
Foreign fishing, 3728, 6374, 7810, 8355, 11930, 12604, 21109, 30868, 35111, 42745, 48111, 49437, 50150, 51446
Marine mammals, 324, 325, 871, 873, 1099, 1100, 2704, 3008, 3950, 5112, 5805, 5806, 6373, 7209, 7626, 7946, 8179, 9308, 9481, 9482, 9703, 10298, 10526, 11233, 11532, 11751, 12354, 12603, 14409, 15213, 15214, 15472, 18283, 18719, 18907, 19562, 19563, 20119, 20120, 20255, 20578, 21108, 21921, 23075, 24015, 24559, 24664, 25113, 25733, 25734, 25735, 26243, 26399, 27839, 27840, 28238, 28239, 28604, 28605, 29247, 29467, 29715, 30218, 32252, 32253, 32466, 32612, 33816, 34170, 34539, 34883, 35286, 35590, 36133, 36461, 37395, 38875, 39754, 40433, 40887, 41549, 41550, 41723, 42585, 42747, 43759, 43760, 45849, 46150, 46690, 47086, 47574, 48457, 49745, 50336, 50654, 50933, 51281, 51738, 52549, 52824, 52983
Senior Executive Service:
Performance Review Boards; membership, 35111, 39027

NATIONAL PARK SERVICE

RULES

Historic preservation programs; State and local procedures, 35223
National Historic Preservation Act; treatment of properties under emergency conditions; waiver of Federal agency responsibilities, 7588
Resource protection, public use, and recreation:
Wildlife protection; hunting and trapping; interim, 1850
Correction, 3511
Special regulations:
Cape Cod National Seashore, MA; off-road vehicles, 31177
Delaware Water Gap National Recreation Area, NJ and PA; commercial vehicle operations, 34128
Fire Island National Seashore, NY; seaplanes, 24510
Glacier Bay National Park and Preserve, AK; humpback whales protection, 19880
Ozark National Scenic Riverways, MO; fishing, 43387
Ross Lake National Recreation Area, WA; aircraft use, 51855
Statue of Liberty National Monument; closure to public; interim, 37361

PROPOSED RULES

Archeological collections, curation, etc.; advance notice, 41527
Historical and archeological data, preservation; advance notice, 43587
Labor standards applicable to employees of National Park Service concessioners; child labor restrictions, 19548
Correction, 20803, 23028
National capital parks:
Lafayette Park; structure prohibitions, sign limitations, 33571
National Park system; CFR Part removal and incorporation into general and special regulations, 51782
National Cemetery regulations:
Cemetery management; standards and procedures, 43581
Special regulations:
Cape Cod National Seashore, MA; off-road vehicles, 15056
Delaware Water Gap National Recreation Area, NJ and PA; commercial vehicle operations, 973
Lake Chelan and Ross Lake National Recreation Areas, WA; weapons, 19545
Lake Mead National Recreation Area, AZ and NV; noise abatement, 51886
Ozark National Scenic Riverways, MO; fishing, 26809
Ross Lake National Recreation Area, WA; aircraft use, 19547
Saint Croix National Scenic Riverway, WI; water use, 40567
Zion National Park, UT; oversize vehicles, 20111

NOTICES

Agency information collection activities under OMB review, 18939, 25634, 31048, 31779, 33420, 39786, 40618
Boundary establishment, descriptions, etc.:
Assateague Island National Seashore, MD, 33117
Chiricahua National Monument, AZ, 21146
Delaware Water Gap National Recreation Area, NJ and PA, 20299
George Rogers Clark National Historical Park, IN, 356
Loxahatchee Wild and Scenic River, FL, 1283
Padre Island National Seashore, TX, 40618
Pinnacles National Mounment, CA, 21670
Redwood National Park, CA, 47850
Sleeping Bear Dunes National Lakeshore, MI, 552
Closure of facilities:
Lake Mead National Recreation Area, AZ and NV, 32775
Statue of Liberty National Monument, 26415
Columbia Island Marina, George Washington Memorial Parkway; intersection at entrance, proposed changes; meeting and inquiry, 28291
Committees; establishment, renewals, terminations, etc.:
National Capital Memorial Advisory Committee, 12877
Concession contract negotiations:
Alger G. Willis Fishing Camps, Inc., 5823
American Funtier, Inc., 3603
Belle Haven Marina, Inc., 41033
Bryce-Zion Trail Rides, Inc., 3981, 42783
Bullfrog Resort & Marina, Inc., 29769
Carteret Boat Tours, Inc., 35877
City Tavern, 21146
Crafts of Nine States, Inc., 2866
Craftsmen's Guild of Mississippi, Inc., 28043
Fort Sumter Tours, Inc., 20141
H.S. Concessions, Inc., 15793
Harris, J. Carver, 47633
Lake Mead Ferry Service, Inc., 32648
Maggi, John, 1283
Miss Green River Boat Concession, Inc., 14999
Morris, Donza L., 5012
Piscataway Co., Inc., 41601
Rainier Mountaineering, Inc., 23082
Saga-Hill Corp., 23082
Swan Tavern Antiques, 11595
Teton Boating Co., 10546
Vern-Del Enterprises, Inc., 36679
Vocational Rehabilitation Division, HI, 15793
Washington Boat Lines, Inc., 15793
West Park Hospital, 41033
White Sands Concession, Inc., 28044
Willow Beach Resort, Inc., 8797
Concession contracts; franchise fees; inquiry, 31926
Concurrent jurisdiction determinations:
Iowa, 19495
Dinosaur National Monument, CO; entrance road, 36923
Environmental statements; availability, etc.:
See also entries under management and land protection plans.

Aniakchak National Monument and Preserve, 16161
Bering Land Bridge National Preserve, AK, 15641
Big Cypress National Preserve, FL, 10325
Boxley Valley, Buffalo National River, AR, 9335
Cape Krusenstern National Monument, AK, 15644
Chickasaw National Recreation Area, OK, 3420, 14999
Denali National Park and Preserve, AK, 13676
Fort Union National Monument, NM, 8680
Fredericksburg and Spotsylvania National Military Park, VA, 37735
Gates of the Arctic National Park and Preserve, AK, 12658
George Washington Memorial Parkway, VA, 39182
Hot Springs National Park, AR, 23365, 31779
Jackson Lake Safety of Dams Project, ID and WY, 14775
Kantishna Hills and Dunkle Mine Study, AK, 11595
Katmai National Park and Preserve, AK, 13675
Kobuk Valley National Park, AK, 15644
Lake Mead National Recreation Area, AZ and NV, 20630
Lake Meredith Recreation Area and Alibates Flint Quarries National Monument, TX, 12418
Noatak National Preserve, AK, 15645
Piscataway Park, Fort Washington, MD, 49465
Santa Monica Mountains National Recreation Area, CA, 49621
Sequoia-Kings Canyon National Parks, CA, 5688
Upper Delaware National Scenic and Recreational River, DE, NY, and PA, 28849
Wrangell-St. Elias National Park and Preserve, AK, 13675
Yellowstone National Park, WY, 7405
Geophysical plan of operations; availability, etc.:
Padre Island National Seashore, TX, 28998
Grizzly bear management; interagency guidelines; meeting and inquiry, 21696
Historic Places National Register:
Annual supplement update, 8850
Publication announcement, 5014
Historic Places National Register; pending nominations:
Alabama, 3982, 5013, 7003, 11948, 15000, 18322, 19249, 20141, 26274, 29769, 34765, 35610, 37733, 46704, 52566
Alaska, 11017, 15000, 19249, 20141, 41033, 45944
Arizona, 185, 2094, 3034, 11948, 13088, 20944, 28040, 28848, 30884, 32649, 33646, 34765, 35610, 38718, 40065, 45944
Arkansas, 13088, 34765, 37733, 38718, 40065, 41033, 47632
California, 3982, 5823, 11017, 11948, 13088, 15986, 18322, 21946, 27367, 28848, 30884, 32649, 33646, 34765, 38718, 40065, 41033, 42782, 43799, 45944, 48649, 49622, 52566
Colorado, 185, 1001, 2094, 3034, 5013, 11017, 18322, 21946, 23532, 26274, 32649, 34765, 35610, 36924, 42782, 49622, 52566, 53406
Connecticut, 5013, 5823, 11017, 11948, 14032, 15000, 15986, 18322, 20141, 28040, 31780, 32649, 33646, 34765, 40065, 41033, 43799, 46704, 51610, 52566
Delaware, 185, 5013, 33646, 49622
District of Columbia, 1001, 11948, 53406
Florida, 185, 2094, 5013, 5823, 7003, 7840, 11948, 23532, 24594, 25336, 34765, 41033, 42782, 43799, 45944, 46704, 47632, 51610, 52566
Georgia, 7840, 13088, 15000, 18322, 28040, 28848, 29769, 30884, 33646, 34765, 46704, 47632, 48649, 49622, 53406
Guam, 2094
Hawaii, 40065, 42782
Idaho, 15000, 15986, 34765, 41748
Illinois, 3982, 5013, 5823, 11948, 15986, 25336, 29769, 32649, 43799, 45944, 46704, 47632, 48649
Indiana, 185, 5823, 7003, 8797, 9911, 11948, 19249, 20141, 24594, 27367, 34765, 42782, 49622, 50350
Iowa, 11017, 11948, 13088, 20141, 24594, 27367, 38718, 43799
Kansas, 11017, 23532, 24594, 33646, 38718
Kentucky, 7840, 11017, 13088, 15000, 18322, 20141, 20944, 25336, 26274, 27367, 28848, 29769, 31780, 34765, 43799, 46704, 47632, 49622, 51610
Louisiana, 185, 2094, 3982, 7840, 11948, 13088, 15000, 15986, 19249, 27367, 38718, 40065, 41033, 42782, 52566, 53406
Maine, 3034, 3982, 8797, 11948, 23532, 28848, 30884, 31780, 34765, 38718, 48649, 50350, 53406
Maryland, 185, 7840, 9911, 20012, 21946, 23532, 28040, 33646, 34765, 37733, 38718, 43799, 50350, 52566
Massachusetts, 5013, 11017, 15986, 18322, 23532, 27367, 29769, 33646, 34765, 35610, 37733, 38718, 40065, 41033, 41748, 42782, 46704, 47632, 48649, 49622, 50350, 51610, 52566, 53406
Michigan, 2094, 3982, 9911, 11948, 13088, 15986, 19249, 26274, 28848, 34765, 35610, 36924, 41033
Minnesota, 7840, 30884, 31780, 32649, 33646, 36924, 41748, 42782, 46704
Mississippi, 185, 7840, 8797, 11017, 15986, 18322, 20141, 27367, 28848, 32649, 33646, 37733, 38718, 41748
Missouri, 185, 2094, 3982, 5013, 7840, 8797, 9911, 11017, 11948, 13088, 15000, 18322, 20141, 21946, 23532, 25336, 26274, 28040, 28848, 36924, 37733, 38718, 41033, 48649, 51610, 53406
Montana, 185, 9911, 15000, 15986, 21946, 25336, 34765, 35610, 41033
Nebraska, 2094, 15986, 18322, 20141, 31780, 34765, 36924, 38718
Nevada, 25336, 27367, 33646, 34765
New Hampshire, 7003, 15000, 20944, 34765, 42782, 46704
New Jersey, 8797, 11948, 13088, 14032, 15000, 27367, 28040, 33646, 34765, 35610, 42782, 43799, 47632
New Mexico, 3034, 5823, 8797, 9911, 11948, 15000, 18322, 24594, 28040, 34765, 46704
New York, 5013, 7840, 8797, 9911, 11017, 11948, 13088, 15000, 18322, 26274, 27367, 28040, 32649, 33646, 34765, 35610, 37733, 38718, 40065, 45944, 52566
North Carolina, 5013, 5823, 14032, 19249, 23532, 24594, 26274, 27367, 34765, 35610, 37733, 41033, 47632, 49622, 51610
North Dakota, 3034, 5013, 11948, 32649, 41033, 43799, 53406
Northern Mariana Islands, 32649
Ohio, 5823, 7003, 7840, 13088, 15000, 23532, 28040, 29769, 30884, 31780, 34765, 38718, 41748, 43799, 46704, 47632, 51610, 52566, 53406
Oklahoma, 5013, 5823, 7003, 7840, 8797, 9911, 11017, 28848, 29769, 34765, 42782, 43799, 45944, 46704, 48649
Oregon, 3982, 5823, 20944, 23532, 41748, 46704, 49622, 50350
Pennsylvania, 185, 2094, 7003, 9911, 15986, 20141, 20944, 23532, 24594, 27367, 28040, 29769, 33646, 34765, 35610, 41748, 42782, 43799, 45944, 48649, 49622, 50350, 52566, 53406
Puerto Rico, 5013, 43799, 45944, 51610
Rhode Island, 8797, 11017, 11948, 21946, 25336, 33646, 34765, 37733, 47632
South Carolina, 32649, 34765, 38718, 40065, 48649, 51610, 52566
South Dakota, 2094, 21946, 41748, 46704
Tennessee, 8797, 9911, 11017, 13088, 15000, 15986, 25336, 26274, 27367, 28040, 28848, 33646, 42782, 43799, 45944
Texas, 2094, 3982, 5823, 7840, 11017, 11948, 15000, 18322, 25336, 27367, 28040, 31780, 32649, 34765, 40065, 41033, 42782, 43799, 45944, 47632, 49622, 50350, 51610
Utah, 7840, 15986, 24594, 38718, 41033, 45944, 49622
Vermont, 7840, 13088, 15986, 29769, 32649, 40065, 41033, 41748, 42782
Virginia, 3982, 7840, 11948, 15986, 18322, 20141, 20944, 21946, 24594, 28848, 30884, 34765, 38718, 42782, 45944, 46704, 47632, 48649, 49622, 53406
Washington, 5013, 5823, 15986, 18322, 20944, 28040, 31780, 32649, 38718, 45944, 46704, 49622
West Virginia, 7003, 9911, 24594, 28040, 29769, 34765, 38718, 40065, 45944, 47632, 50350, 53406
Wisconsin, 5823, 7003, 7840, 8797, 11948, 15000, 15986, 21946, 23532, 24594, 26274, 27367, 28040, 28848, 33646, 34765, 38718, 41033, 42782, 46704, 51610, 53406
Wyoming, 3034, 14032, 21946, 46704, 48649
Insignias:
Cape Cod National Seashore, 25336
Indiana Dunes National Lakeshore, 26059
Lincoln Home National Historic Site, 26059
Natchez Trace Parkway; POSTRIDER, 9335

Oregon National Historic Trail, 37063
Wilson's Creek National Battlefield, 27368
Loxahatchee Wild and Scenic River, FL; national wild and scenic rivers system inclusion approval, 21358
Management and land protection plans; availability, etc.:
See also entries under environmental statements
Boston African American National Historic Site, MA, 37064
Cape Cod National Seashore, MA, 19814, 34206
Chaco Culture National Historical Park, NM, 28483
Fort Smith National Historic Site, AR and OK, 2736, 20141
Fort Washington Marina, Piscataway Park, MD, 34206
Hot Springs National Park, AR, 7234, 23365
Lyndon B. Johnson National Historical Park, TX, 20631
Martin Luther King, Jr., National Historic Site, GA, 25336
Prince William Forest Park, VA, 10115
Meetings:
Aniakchak National Monument Subsistence Resource Commission, 2736, 6409
Appalachian National Scenic Trail Advisory Council, 38903
Boston National Historical Park Advisory Commission, 21670, 46188
Cape Cod National Seashore Advisory Commission, 184, 5324, 15792, 21670, 29769, 39182, 48497
Cape Krusenstern National Monument Subsistence Resource Commission, 2632
Chesapeake and Ohio Canal National Historical Park Commission, 4818, 15000, 31436, 42602
Cuyahoga Valley National Recreation Area Advisory Committee, 12419, 13886
Delta Region Preservation Commission, 12419, 30766, 42102, 50966
Denali National Park Subsistence Resource Commission, 31436
Gates of the Arctic National Park Subsistence Resource Commission, 1645, 7841, 20298, 43471
Gateway National Recreation Area Advisory Commission, 7966, 18322, 34205
Golden Gate National Recreation Area Advisory Commission, 185, 6409, 15000, 24711, 36679, 38223, 45671
Ice Age National Scenic Trail Advisory Council, 19249
Illinois and Michigan Canal National Heritage Corridor Commission, 24711, 28125, 33420
Indiana Dunes National Lakeshore Advisory Commission, 11467, 19250, 36924
Jefferson National Expansion Memorial Commission, 47633
Kobuk Valley National Park Subsistence Resource Commission, 2632
Lake Clark National Park Subsistence Resource Commission, 18580
Martin Luther King, Jr., National Historic Site and Preservation District Advisory Commission, 1000, 24950, 37443, 39183
National Capital Memorial Advisory Committee, 21671, 42781, 48498
National Capital Region; 1985 Christmas Pageant of Peace, 39183
National Park System Advisory Board, 12089, 42102
North Country National Scenic Trail Advisory Council, 33420
Overmountain Victory National Historic Trail Advisory Council, 15985, 45171
San Antonio Missions Advisory Commission, 3846, 10115, 43613
Santa Monica Mountains National Recreation Area Advisory Commission, 12658, 24327, 36679
Statue of Liberty-Ellis Island Centennial Commission, 12089, 33646, 46189
Upper Delaware Citizens Advisory Council, 5324, 10546, 16368, 20943, 24328, 28849, 32648, 36680, 41602, 46189, 50351
Women's Rights National Historical Park Advisory Commission, 20944, 47463
Wrangell-St. Elias National Park Subsistence Resource Commission, 12089, 26059
Mining plans of operations; availability, etc.:
Death Valley National Monument, 15000
Denali National Park and Preserve, 18580, 20298
Glacier Bay National Park and Preserve, 40618
Kenai Fjords National Park, 20298
Lake Mead National Recreation Area, 31436
Wrangell-St. Ellis National Park and Preserve, 10325
Name changes:
Fort Donelson National Battlefield, 33118
Hopewell Furnace National Historic Site, 52385
National capital memorials criteria and guidelines; inquiry, 12877
National Historic Landmark science and constitutional history theme studies; inquiry, 28848
National Historic Landmarks; proposed boundaries, 3984, 15987, 16160, 16161, 16162, 16163, 16164, 28042, 29770, 31781, 31782, 31783, 38720, 42781
National trails system:
Appalachian National Scenic Trail; rights-of-way relocation, 2866
Natural Landmarks National Registry:
Annual supplement update, 8846
Publication announcement, 5014
Listing, 34018
Oil and gas plans of operation; availability, etc.:
Big Cypress National Preserve, FL, 23365
Padre Island National Seashore, TX, 355, 24596, 28998
Statue of Liberty-Ellis Island donations policy, 5325
World heritage properties list; U.S. nominations, 5014, 8680, 27493, 41749

NATIONAL SCIENCE FOUNDATION

PROPOSED RULES

Regulatory agenda, 17928, 44776

NOTICES

Advisory committee reports; availability, 5331
Agency information collection activities under OMB review, 1009, 11023, 15993, 24848, 31060, 37922, 45178, 45680, 51492
Antarctic Conservation Act of 1978; permit applications, etc., 28670, 29285, 34931, 37071, 38906, 41753, 43304, 46370, 46713, 48282, 48283, 49144
Committees; establishment, renewals, terminations, etc.:
Design, Manufacturing, and Computer Engineering Advisory Committee, 20014
Engineering Science in Chemical, Biochemical, and Thermal Engineering Advisory Committee, et al., 35337
Merit Review Advisory Committee, 14051
National Science Board; nominations for membership, 4822
Oceanographic Facilities Ad Hoc Panel, 28296
Environmental statements; availability, etc.:
Ocean drilling program, 26420
Grant Policy Manual, use of animals in NSF-sponsored research; revised policy, 47645
Grants; availability, etc.:
Astronomical instrumentation and development; charge-coupled device detectors, availability for use, 10327
Materials development and research, 7973, 39789
Middle school science and mathematics teachers program, 45952
Presidential Young Investigators Awards, 14470
Teacher enhancement and informal science education, 7409
Meetings:
Advanced Scientific Computing Program Advisory Committee, 21523, 48661
Advisory Council, 45679
Alan T. Waterman Award Committee, 8436, 9143
Anthropological Systematic Collections Advisory Panel, 14184
Archeology/Physical Anthropology Advisory Panel, 13685, 14471, 45679
Astronomical Sciences Advisory Committee, 36933, 40631, 43303, 52387
Astronomical Sciences Advisory Panel, 15251, 28049
Atmospheric Sciences Advisory Committee, 40075
Biochemistry Advisory Panel, 5019, 18332, 41613
Biological, Behavioral, and Social Sciences Advisory Committee, 2741
Biological Instrumentation Advisory Panel, 14779, 43303
Biophysics Advisory Panel, 18331
Biophysics Program Advisory Panel, 5020
Cell Biology Advisory Panel, 3850, 16571, 38233
Cellular Physiology Advisory Panel, 1649, 18331, 37736
Chemical, Biochemical, and Thermal Engineering Advisory Committee, 21521
Chemistry Advisory Committee, 4284, 5453, 14051, 43620
Civil and Environmental Engineering Advisory Committee, 30769
Computer Research Advisory Committee, 15007, 47307

Decision and Management Science Advisory Panel, 18331, 42794
Design, Manufacturing, and Computer Engineering Advisory Committee, 20156
Developmental Biology Advisory Panel, 2741, 16572, 40074
Developmental Neuroscience Advisory Panel, 15007, 43620
DOE/NSF Nuclear Science Advisory Committee, 3850, 30319
Earth Sciences Advisory Committee, 37070
Earth Sciences Proposal Review Panel, 42795
Earthquake Hazard Mitigation Advisory Committee, 30769
Ecology Advisory Panel, 11959, 37923
Economics Advisory Panel, 13107, 43303
Ecosystem Studies Advisory Panel, 10330, 37923
Electrical, Computer, and Systems Engineering Advisory Committee, 15006
Engineering Advisory Committee, 6289, 25800, 48661
Equal Opportunities in Science and Technology Committee, 1948, 15253, 29285, 40075
Ethics and Values in Science and Technology Advisory Committee, 15007, 38232
Eukaryotic Genetics Advisory Panel, 1947, 14471
Geography and Regional Science Advisory Panel, 16571, 47308
History and Philosophy of Science Advisory Panel, 11959, 43620
Industrial Science and Technological Innovation Advisory Committee, 21521
Integrative Neural Systems Advisory Panel, 10875, 42794
Interagency Arctic Research Policy Committee, 14472
International Programs Advisory Committee, 16570, 48283
Law and Social Sciences Advisory Panel, 15252, 43303
Linguistics Advisory Panel, 12880, 43620
Materials Research Advisory Committee, 13108, 14324, 19097, 43303, 52387
Mathematical Sciences Advisory Committee, 18331, 37923
Measurement Methods and Data Improvement Advisory Panel, 45680
Mechanical Engineering and Applied Mechanics Advisory Committee, 27074
Memory and Cognitive Processes Advisory Panel, 16571, 42794
Merit Review Advisory Committee, 24967, 37923, 48282
Metabolic Biology Advisory Panel, 13107, 38232
Molecular and Cellular Neurobiology Program Advisory Panel, 14779, 42794
National Medal of Science, President's Committee, 40247
Ocean Sciences Advisory Committee, 16571, 18332, 40075
Ocean Sciences Research Advisory Panel, 11959, 32336
Oceanographic Facilities Ad Hoc Panel, 34027
Physics Advisory Committee, 7409, 15252, 34558, 40074
Polar Programs Advisory Committee, 4821, 24601
Policy Research and Analysis and Science Resources Studies Advisory Committee, 47308
Political Science Advisory Panel, 43304
Population Biology and Physiological Ecology Advisory Panel, 15006, 38232, 52387
Prokaryotic Genetics Advisory Panel, 2634, 14471, 40076
Psychobiology Advisory Panel, 11959, 41613
Regulation and Policy Analysis Advisory Panel, 11959
Regulatory Biology Advisory Panel, 2867, 15252, 38232
Science and Engineering Education Advisory Committee, 2741, 41613
Sensory Physiology and Perception Program Advisory Panel, 12880, 43620
Social and Developmental Psychology Advisory Panel, 14780, 40075
Social and Economic Science Advisory Panel, 13685
Social/Cultural Anthropology Advisory Panel, 11601, 47308
Sociology Advisory Panel, 15252, 45679
Systematic Biology Advisory Panel, 11960, 38233, 52387
Meetings; Sunshine Act, 1296, 6095, 10578, 19264, 24979, 31994, 37110, 47138
Organization, functions, and authority delegations, 41966
Privacy Act; systems of records, 39188
Senior Executive Service:
Performance Review Board; membership, 20304, 35172

NATIONAL TECHNICAL INFORMATION SERVICE

NOTICES

Inventions, Government-owned; availability for licensing, 2326, 5807, 6979, 8761, 10831, 14276, 15952, 21921, 26399, 28239, 31216, 33389, 33615, 37263, 41931, 52355
Optical Character Recognition Equipment application to machine-assisted translations of languages; potential developers or suppliers; inquiry, 46691
Patent licenses, exclusive:
Agracetus, 21922
American Cyanamid Co., 31759
Beckman Instruments, Inc., 48118
Calcol, Inc., 34734, 35590
Cetus Corp., 24665
Dental Radiographic Devices, 50825
Douglas Engineering, 15473
E.I. du Pont de Nemours & Co., 4253, 11233
Eli Lilly & Co., 27648
Endotronics, Inc., 46330
Energy Streams, Inc., 5656
Environmental Management Association, Inc., 1100
Food & Energy Breakthru, Inc., et al., 20824
Gynex, 39027
Hoefer Scientific Instruments, 5806
Hubbard, Melvin L., et al., 11006
Innomed, 18547
Merieux Laboratories, Inc., 21110
Mycogen Corp., 2601
NOVA Pharmaceutical Corp., 43760
Oncogen, 15473
Pest-Select et al., 7810
Questel, Inc., 48828
R&D Sprayers, 20823
Rocky Mountain Wildlife Products, 21110
SEMicro Corp., 27649
Smith Kline & French Laboratories, 5289
Southwest Technologies, Inc., et al., 13845
Sterling Drug, Inc., 27648, 34171
Sulcon Systems, 41931
Super Absorbent Co., 20824
University of Missouri, 51738
Upjohn Co., 53371
W.M. Barr & Co., 1615
Zoecon Corp., 5656
Patents, Government-owned; licensing agent assistance, 9703
Products and services; price changes, 1986 FY, 36461
Shipping and handling charges, 24665

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

NOTICES

Domestic telecommunications industry, structure and regulation; comprehensive study; inquiry, 5657
Grants and cooperative agreements; availability, etc.:
Public telecommunications facilities planning and construction, 12110
Public telecommunications facilities program, 49272
Meetings:
Frequency Management Advisory Council, 10093
Proprietary research measurements by private entities; use of facilities at Institute for Telecommunication Sciences; policy and procedures, 23754
Senior Executive Service:
Performance Review Board; membership, 40580

NATIONAL TRANSPORTATION SAFETY BOARD

RULES

Aircraft accidents or incidents notification, etc.; substantial damage definition, 11165

PROPOSED RULES

Aircraft accidents or incidents notification, etc.; immediate notification requirements, 11214

NOTICES

Accident reports, safety recommendations, and responses, etc.; availability, 197, 577, 6289, 9916, 10875, 11601, 21953, 23541, 24849, 26420, 27705, 28671, 29004, 50240, 50373
Aircraft accidents; hearings, etc.:
Dallas-Fort Worth International Airport, Delta Airlines, 38907
Provincetown-Boston Airlines, Inc., 29772
Marine accidents; hearings, etc.:
PILGRIM BELLE passenger vessel grounding, Vineyard Sound, MA, 38907

Meetings; Sunshine Act, 380, 4012, 6309, 7869, 9941, 10346, 11288, 13913, 16040, 16386, 19264, 23575, 25511, 27396, 32828, 33888, 34794, 35177, 36954, 38740, 40470, 40655, 45960, 47652, 48153, 49897, 52584

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

RULES

Commission operations and relocation procedures:
Voluntary relocation application; deadline, 14379

PROPOSED RULES

Commission operations and relocation procedures:
Voluntary relocation application; deadline, 4235

NAVY DEPARTMENT

RULES

Conflict of interests, 9000
Correction, 15891
Naval Discharge Review Board, 10943
Navigation, COLREGS compliance exemptions:
Landing Craft Air Cushion (LCAC) class amphibious vessels, 36424
USS Alaska et al., 28398
USS Arthur W. Radford, 21442
USS Briscoe, 5974
USS California, 11503
USS Caron et al., 1210
USS Carr, 21442
USS Chicago, 42695
USS Conolly, 28399
USS Dahlgren, 20100
USS David R. Ray, 5973
USS Elrod, 5974
USS Farragut, 42694
USS Germantown, 14384
USS Hawes, 1212
USS John A. Moore et al., 36425
USS John Hancock, 5974
USS John Rodgers, 42693
USS Joseph Strauss et al., 1211
USS Josephus Daniels et al., 40526
USS Long Beach, 23798
USS Nicholson et al., 23799
USS O'Brien, 48085
USS Pittsburgh, 46435
USS Providence, 28400
USS San Diego, 46435
USS San Jose, 42695
USS Simpson, 3903
USS South Carolina, 14384
USS Texas, 14385
USS Valley Forge, 28400
Personnel:
Cases involving physical disability, disposition; CFR Part removed, 24622
Courts-Martial Manual, supplementing rules; Judge Advocate General Manual changes, 23799
Medical and dental care for eligible persons at Navy Medical Department facilities, 15111
Payments of amounts due mentally incompetent members of naval service, 28401

PROPOSED RULES

Acquisition regulations, 49819

NOTICES

Agency information collection activities under OMB review, 7813, 52360
Environmental statements; availability, etc.:
Carrier battle group, Everett, WA, 36466
Fleet-wide implementation of organotin antifouling hull paints, 25748
Guayule Natural Rubber Demonstration Program, AZ, 38704
Kings Bay, GA, 34174, 38703
Michigan Transmitter Facility, MI, 875
Military Operating (Airspace) Areas, Eastern North Carolina, 38703
Naval Air Facility, El Centro, CA, 45927
Naval Air Station, Miramar, CA, 36466
Naval Air Station, NV, 28444
Naval Station, Treasure Island, San Francisco County, CA, 16123, 52834
Naval Weapons Station, Concord, CA, 28248
Naval Weapons Station, NJ, 20825, 46691
Stapleton-Fort Wadsworth Complex, NY, 11412, 30497, 41551
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 875, 1263, 3953, 3954, 4881, 6031, 6376, 10834, 11412, 15603, 16532, 20824, 28444, 29249, 31218, 34539, 36465, 38704, 43271, 45461, 46691, 48118, 52360, 52834
Education and Training Advisory Board, 20826, 43606
Naval Academy, Academic Advisory Board to Superintendent, 41551
Naval Academy, Board of Visitors, 9707, 37896
Naval Postgraduate School, Board of Advisors to Superintendent, 37896
Naval Research Advisory Committee, 876, 2602, 4997, 5414, 7813, 8362, 9311, 9312, 9882, 10094, 10834, 11752, 12607, 12854, 13272, 14280, 15603, 15604, 16532, 18909, 19223, 19224, 19779, 20825, 21487, 21927, 23353, 24673, 25622, 26029, 31218, 32103, 37571, 40212, 41551, 45461, 52361, 52835
Naval War College, Board of Advisors to President, 20121
Navy Resale System Advisory Committee, 16532, 40438
Naval Discharge Review Board; hearing locations, 4881, 23353, 37896
Privacy Act:
Computer matching program, 9486
Systems of records, 329, 28442, 35290, 36914, 52997
Procurement:
Commercial activities, performance; program cost studies (OMB A-76 implementation), 14279, 15955, 28445, 32469, 50192
Senior Executive Service:
Performance Review Boards; membership, 33396

NEIGHBORHOOD REINVESTMENT CORPORATION

NOTICES

Meetings; Sunshine Act, 4936, 19605, 32346, 46386

NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

NOTICES

Meetings, 19097

NUCLEAR MATERIALS

See Environmental Protection Agency. Nuclear Regulatory Commission.

NUCLEAR REGULATORY COMMISSION

RULES

Advisory committees; coordination and information exchange meetings between NRC staff and organizations studying nuclear power industry; policy statement, 41480
Byproduct material; domestic licensing:
Regional licensing program, 14692
Byproduct material; human uses:
Physician's use of radioactive drugs; technetium-99m labeled sulfur colloid, etc., 36866
Conflict of interests, 25697
Environmental protection licensing and regulatory policy and procedures:
Charges for document reproduction, etc., 21036
Export and import of nuclear equipment and material:
Reprocessing plant components, 20742
Financial protection requirements and indemnity agreements:
Spent reactor fuel stored at reactor site different than where it was generated, 30415
Freedom of Information Act; implementation, 25204, 27214, 41127
National security information program; implementation, 36983
Nuclear facilities and materials:
Physical Protection of Nuclear Material Convention; implementation, 12221
Nuclear material, special; domestic licensing:
Physical Protection of Nuclear Material Convention; implementation, 12221
Regional licensing program, 14692
Nuclear material, special; eligibility for access to or control over; criteria and procedures, 39076
Nuclear material, special, of low strategic significance; material control and accounting, 7575
Operators' licenses; training and qualification of civilian nuclear power plant personnel; policy statement, 11147
Organization, functions, and authority delegations:
Investigations Office; issuance of subpoenas, 20741
Operations Executive Director; additional rulemaking authority, 42145
Principal office addresses, update, 21036

Physical Protection of Nuclear Material Convention; implementation, 12221
Plants and materials; physical protection:
Physical Protection of Nuclear Material Convention; implementation, 12221
Region II; commercial telephone number change, 46630
Policy statements; obsolete or superseded by subsequent agency action; revocation, 45597
Correction, 47355
Practice rules:
Electric utilities, financial qualification requirements; elimination of review; correction, 18852
Enforcement actions; policy and procedure, 47716
Exceptions to notice and comment rulemaking procedures, 13006
Correction, 15865
Hybrid hearing procedures for expansions of onsite spent fuel storage capacity, 41662
Correction, 45398
Privacy Act; implementation, 41127, 50283
Production and utilization facilities; domestic licensing:
Backfitting process for power reactors; standards establishment, 38097
Codes and standards for nuclear power plants; ASME light-water-cooled plant components code, etc., 38970
Definitions; editorial amendments, 34085
Electric utilities, financial qualification requirements; elimination of review; correction, 18852
Emergency planning; individuals exposed to radiation at offsite locations; policy statement, 20892
Emergency planning and preparedness; requirements, 19323
Hydrogen control requirements, 3498
Correction, 5567
Light water nuclear power plants; analysis of potential pressurized thermal shock events, 29937
Regional licensing program; Fort St. Vrain Nuclear Generating Station, 41128
Severe reactor accidents regarding future designs and existing plants; policy statement, 32138
Specific exemptions; standards clarification, 50764
Public records; production or disclosure in response to subpoenas, etc., 37642
Correction, 40329
Radiation protection standards:
Region II; commercial telephone number change, 46630
Radioactive wastes, high-level; disposal in geologic repositories:
Unsaturated zones, 29641
Source material; domestic licensing:
Physical Protection of Nuclear Material Convention; implementation, 12221
Regional licensing program, 14692
Uranium mill tailings; conformance to EPA standards, 41852
Spent nuclear fuel storage capacity; adequacy determinations, 5548
Correction, 8605
Sunshine Act; implementation; interim, 20889
Extension of time, 25907

PROPOSED RULES

Advisory committees; closed meeting procedures; petition denied, 31191
Byproduct material; domestic licensing:
Decommissioning criteria for nuclear facilities, 5600
Extension of time, 23025
Medical use; requirements, 30616
Byproduct material; human uses:
Medical use; requirements, 30616
Petition for rulemaking; medical diagnostic device; denied, 8136
Physician's use of radioactive drugs; technetium-99m labeled sulfur colloid, etc., 15752
Environmental protection licensing and regulatory policy and procedures:
Decommissioning criteria for nuclear facilities, 5600
Extension of time, 23025
Exemptions and continued regulatory authority in agreement States and offshore waters:
Reporting and recordkeeping requirements, 19695
Financial protection requirements and indemnity agreements:
Extraordinary nuclear occurrence criteria revision, 13978
Extension of time, 32086
Freedom of Information Act; implementation, 31192
National security information program; implementation, 10064
Nuclear materials, special; domestic licensing:
Decommissioning criteria for nuclear facilities, 5600
Extension of time, 23025
Reporting and recordkeeping requirements, 19695
Nuclear Waste Policy Act:
Radioactive wastes, high level; disposal in geologic repositories; licensing procedures, 2579
Plants and materials; physical protection:
Safeguards reporting requirements, 34708
Extension of time, 48220
Practice rules:
Adjudications; disclosure or nondisclosure of information; special procedures for resolving conflicts, 21072
Correction, 23138
Extension of time, 30446
Criteria for reopening records in formal licensing proceedings; correction, 2579
Privacy Act; implementation, 31192
Production and utilization facilities; domestic licensing:
Advanced nuclear power plants; policy statement, 11882
Correction, 13810
Codes and standards for nuclear power plants; ASME light-water-cooled plant components code, etc., 20574
Communications procedures, 11884
Decommissioning criteria for nuclear facilities, 5600
Extension of time, 23025
Emergency planning and preparedness; potential impact of earthquakes; extension of time, 3797
Fire protection policy recommendations; availability, etc., 2056
Petition for rulemaking; emergency response plans, 20799
Correction, 24655
Postulated pipe ruptures, protection against dynamic effects, requirements; general design criterion 4 modification, 27006
Correction, 28815
Severe accident design criteria; advance notice; withdrawn, 32151
Specific exemptions; standards clarification, 16506
Radiation licenses and safety requirements for well-logging operations, 13797
Correction, 15902
Extension of time, 32086
Radiation protection standards:
Protection of individuals exposed to ionizing radiation from routine activities licensed by NRC, 51992 (Republished with significant corrections at page 1092, January 9, 1986)
Radioactive material packaging and transportation:
Evaluation and shipment of irradiated reactor fuel; rulemaking petition, 4866
Radioactive materials, accidental and unexpected releases cleanup; licensees, financial responsibility requirements; advance notice, 23960
Extension of time, 41904
Radioactive wastes, high-level, disposal in geologic repositories:
Environmental standards; petition for rulemaking, 18267
Radiography licenses and radiographic operations safety requirements:
Industrial radiographers certification; advance notice withdrawn, 38011
Records; copying of licensee records and retention periods for security records; withdrawn, 45628
Regulatory agenda, 18154, 44992
Quarterly report availability, 46672
Rulemaking petitions:
Alabama, 53335
Nantz, John L.; denied, 31191
Nevada and Minnesota, 18267, 51701
Nuclear Radiation Consultants, 8136
Southern California Edison Co., 20799, 24655
Wisconsin, 4866
Small business size standards determinations; advance notice, 20913
Source material; domestic licensing:
Decommissioning criteria for nuclear facilities, 5600
Extension of time, 23025
Reporting and recordkeeping requirements, 19695
Uranium mill tailings--
Conformance to EPA standards; extension of time, 2293
Ground water protection, etc.; advance notice; extension of time, 2393

NOTICES

Abnormal occurrence reports:
AC electrical power; loss of offsite and onsite power, 1140
Degraded isolation valves in emergency core cooling systems, etc., 15007
Periodic reports to Congress, 23855, 35338, 51312
Quarterly reports to Congress, 18755, 23850, 33653, 50864

Agency information collection activities under OMB review, 5453, 5828, 6291, 9733, 10123, 12667, 13296, 13433, 14472, 15511, 19824, 20513, 21673, 25136, 29006, 29286, 30319, 33127, 34222, 34558, 34777, 37924, 45955, 46848, 50374, 50864, 51317, 51759
Committees; establishment, renewals, terminations, etc.:
  Medical Uses of Isotopes Advisory Committeee, 14185
  Reactor Safeguards Advisory Committee; meeting procedures, 40248
  Review of Enforcement Policy Advisory Committee, 26066
Confidentiality; policy statement, 48506, 50864
Enforcement policy; Ad Hoc Advisory Committee review study; inquiry, 1142
Engineering expertise on shift; nuclear power plant operating staff; policy statement, 43621
Environmental standard review plans; radiological impacts, releases to groundwater; availability and inquiry, 21375
Environmental statements; availability, etc.:
  Alabama Power Co., 46847
  Arizona Public Service Co. et al., 42630, 48285, 48509, 49144
  Army Department, 51760
  Atlas Minerals, 49802
  Babcock & Wilcox Co., 13297
  Baltimore Gas & Electric Co., 4284, 13893, 14185, 40632
  California Polytechnic State University, 29005
  Carolina Power & Light Co. et al., 902, 10124, 20014, 21673
  Cincinnati Gas & Electric Co. et al., 15018
  Cleveland Electric Illuminating Co., 8805, 26062
  Commonwealth Edison Co., 5331, 5829, 19596, 24968, 38908, 43624
  Connecticut Yankee Atomic Power Co., 13433, 48144
  Consolidated Edison Co. of New York, Inc., 45954
  Consumers Power Co., 27707, 27708, 27865, 40076, 45954
  Dairyland Power Cooperative, 33656, 50877
  Detroit Edison Co. et al., 11026, 28485
  Duke Power Co. et al., 12421, 15802, 18332, 25804, 43043
  Duquesne Light Co. et al., 2743, 15514, 25806, 40462, 41264, 45880
  Exxon Nuclear Co., Inc., 28674, 41974
  Florida Power Corp. et al., 26422, 28858, 29005
  Florida Power & Light Co. et al., 2112, 7422
  General Electric Co., 7243, 46372
  General Public Utilities Nuclear Corp. et al., 16572, 20305, 31794, 36933, 38234, 40463, 49633, 51759
  Georgia Institute of Technology, 52391
  Georgia Power Co. et al., 2113, 4605, 15515, 20157, 51315
  Gulf States Utilities Co. et al., 1649, 5331, 5829, 32811
  Illinois Power Co. et al., 7244, 15663, 23366
  Iowa Electric Light & Power Co., 20862
  Kansas Gas & Electric Co., 1649, 7018
  Louisiana Power & Light Co., 9917
  Maine Yankee Atomic Power Co., 2868
  Manhattan College, 9734
  Mississippi Power & Light Co. et al., 5830
  National Bureau of Standards, 13686
  Nebraska Public Power District, 12667
  Niagara Mohawk Power Corp. et al., 20511, 46524
  Northeast Nuclear Energy Co. et al., 3607, 13434, 14186, 18333, 21954, 41265, 48284, 48510, 48511
  Northern States Power Co., 18333
  Northrop Corp., 25351
  Omaha Public Power District, 20156, 33434
  Pacific Gas & Electric Co., 16573
  Pennsylvania Power & Light Co., 49470
  Philadelphia Electric Co. et al., 9735, 27388, 32129
  Plateau Resources Ltd., 36169, 41975
  Power Authority of State of New York, 15515, 37736
  Public Service Co. of New Hampshire et al., 47468, 47646
  Public Service Electric & Gas Co., 26422
  Rochester Gas & Electric Corp., 11274, 51317
  Rocky Mountain Energy Co., 14053, 21955
  Sacramento Municipal Utility District, 51492
  Sequoyah Fuels Corp., 37450, 48504
  Southern California Edison Co. et al., 37738
  Tennessee Valley Authority, 12668, 15516
  Toledo Edison Co. et al., 581, 41265
  Umetco Minerals Corp., 31797, 39060
  UNC Resources, Inc., 6085
  Union Electric Co., 28130
  University of Lowell, 46227
  University of Michigan, 30547
  University of Missouri, 1285, 14476
  University of Texas, 23088
  University of Utah, 14780
  University of Virginia, 20512
  Virginia Electric & Power Co., 15517
  Virginia Polytechnic Institute and State University, 14478
  Washington Public Power Supply System et al., 21525
  Western Nuclear Inc., 8202
  Westinghouse Electric Corp., 21378, 26863
  Whittaker Corp., 24718
  Wisconsin Electric Power Co., 20863
Export and import license applications for nuclear facilities or materials, 2867, 10330, 16373, 25135, 27502, 36168, 48283
Meetings:
  Medical Uses of Isotopes Advisory Committee, 6291
  Nuclear power plants; health effects models for accident consequence assessment, 40248
  Reactor Safeguards Advisory Committee, 199, 368, 579, 1143, 1650, 1950, 2742, 3069, 3608, 4002, 4931, 4932, 5453, 6293, 6417, 7017, 7152, 7859, 8202, 8419, 8685, 8686, 10330, 11025, 11030, 11604, 12881, 13108, 13436, 13893, 15019, 15511, 15512, 15994, 15996, 18334, 18589, 18755, 19826, 20305, 20634, 20635, 21522, 21672, 23205, 23206, 23207, 25351, 25800, 25801, 26279, 26643, 26863, 27387, 28856, 28857, 29497, 29498, 29774, 29775, 30769, 30770, 30890, 32336, 33135, 33657, 33875, 34028, 34778, 34932, 36934, 36935, 37097, 37098, 38729, 38730, 38908, 39189, 39190, 40462, 40502, 41075, 42631, 42809, 42810, 43483, 43819, 45182, 45183, 45686, 46847, 47648, 48284, 48504, 48506, 49469, 51314, 51492, 51760, 52572, 53032, 53033, 53034
    Proposed schedule, 3069, 7150, 11024, 15994, 20963, 25133, 30036, 33873, 38727, 42808, 47648, 51313
  Regional State Liaison Officers, 13686, 43483
  Review of Enforcement Policy Advisory Committee, 2636, 12097, 26066, 36503, 41767
  Three Mile Island Unit 2 Decontamination Advisory Panel, 4286, 11604, 18756, 28049, 34223, 40249, 49145
  Uranium processing facilities, protection of workers; ultra-sensitive uranium bioassay and nephrotoxicity, 43305
Meetings; Sunshine Act, 202, 1161, 2371, 3452, 4012, 5030, 5851, 7158, 8047, 9148, 10140, 11044, 11989, 13113, 14073, 15274, 16192, 18612, 19264, 20161, 21163, 23103, 23786, 24609, 25511, 26437, 27396, 28060, 28868, 30044, 31091, 31815, 32828, 33888, 34961, 36182, 36954, 37757, 38740, 40101, 41290, 42119, 43312, 43832, 45960, 47139, 47652, 48684, 49659, 50382, 51505, 52877, 53417
Memorandum of understanding:
  Radiological emergency planning and preparedness, 15485
  Washington State Energy Facility Site Evaluation Council, 11962, 14782
Nuclear medicine:
  Radiopharmaceuticals; sodium pertechnetate for nasolacrimal imaging and sulfur colloid for esophageal imaging, 7663
Nuclear Waste Policy Act:
  Design information needs in site characterization plan; draft generic technical position; availability, 14479
  High-level radioactive waste program; generic technical positions; availability, etc., 53029, 53030
  Nonnuclear weapon states, technical assistance ; update, 13738
  Nuclear waste repository sites; concurrence in DOE guidelines, 46525
Nuclear waste transportation:
  Notification to Governors' designees; list, 27075
  Spent nuclear fuel regulation; seminar, 27867
Operating licenses, amendments; no significant hazards considerations:
  Bi-weekly notices, 23543, 24333, 25480, 27502, 29006, 30551, 30894, 31061, 32787, 34933, 37072, 38909, 41241, 43020, 46208, 47856, 49468, 49779, 51618, 53226
  Monthly notices, 3047, 4932, 7979, 12132, 15997, 20969, 24333
Organization and functions:
  Publication sales program with GPO, 14185
  San Onofre Nuclear Generating Station; records relocation, 46717
Petitions filed:
  Nietubicz, Stanley; Fermi-2 facility evacuation routes under flood conditions, 32917

Nuclear

Practice rules:
Late allegations, handling; policy statement, 11030
Reactors, non-power; unirradiated high enriched uranium (HEU) fuel holdings reduction, 40464
Regulatory agreements:
Iowa, 40078, 41062, 41754, 42795, 53408
Washington, 41267
Regulatory guides; issuance, availability, and withdrawal, 2868, 3068, 5145, 5146, 6082, 8804, 9337, 9732, 10123, 10331, 15803, 16179, 18335, 20017, 24724, 25136, 25364, 26064, 30252, 31794, 32338, 33656, 35625, 39189, 40077, 45685, 47650, 50240, 50686, 52391, 53034, 53226, 53409
Reports; availability, etc.:
Containment emergency sump performance, etc., 46228
International atomic energy agency draft safety guides, 2116, 2356, 6082, 9338, 15512
Nuclear power plant piping; dynamic loads and load combinations evaluation, 1144
Nuclear power plant safety analysis report review, 3851, 4003, 31060
Nuclear power plants--
Health effects model accident consequence analysis, 37738
Seismic qualification of equipment operation, draft, 35884
Severe accident source terms, reassessment of technical basis for estimating, 31937, 36936, 46227
Station blackout accidents; evaluation, 24332
Piping Review Committee; seismic design-review of seismic design requirements for nuclear power plant piping evaluation, etc., 24968
Power reactors, containment buildings; leakage rate, 25495
Probabilistic risk assessment (PRA) review manual, 39059
Probabilistic safety analysis procedures guide, draft, 34222
Steam generator tube integrity; resolution of unresolved safety issues, 15798
Rulemaking petitions:
Natural Resources Defense Council, Inc., 20306
Safety analysis and evaluation reports; availability, etc.:
Duquesne Light Co. et al., 45178
General Electric Co., 32917
Georgia Power Co. et al., 29006
Niagara Mohawk Power Corp., 7244
Northeast Nuclear Energy Co., 45877
Southern California Edison Co., 20157
Senior Executive Service:
Performance Review Board; membership, 4606, 29773
Small business size standards, 20913, 50241
Three Mile Island Unit 2; leak rate data falsification:
Inquiry; Presiding Board appointment, 53409
Inquiry and hearing, 52388
Three Mile Island Unit 2 cleanup; progress report, 9143
Applications, etc.:
Advanced Medical Systems, Inc., 27706
Alabama Power Co., 3435, 32337, 48845
American Can Co., 47308
American Electric Power Service Corp., 14472
American Nuclear Corp. et al., 46370
Applied Health Physics, Inc., 1144, 15799
Arizona Public Service Co. et al., 904, 6083, 7152, 13686, 19500, 24332, 33434, 38233, 45955, 49886, 50020, 50872, 51316
Arkansas Power & Light Co. et al., 30251, 30892, 30893, 50972
Astrotech, Inc., 49630
Babcock & Wilcox, 1948, 14185, 32128, 32782
Baltimore Gas & Electric Co., 7420, 9733, 13894, 15661, 16180, 30545, 48501, 50973
Bennington Medical Research Institute, 45685
Boston Edison Co., 7860, 11605, 14780, 28484, 31937
Burton, Kenneth L., 42623
California Polytechnic State University, 30546
Carolina Power & Light Co. et al., 8024, 11960, 15513, 19097, 21953, 24719, 25801, 28857, 31264
Christ Hospital, 38726
Cincinnati Gas & Electric Co. et al., 21378
Cintichem, Inc., 28129, 29006
Cleveland Electric Illuminating Co. et al., 11471, 12669, 16180, 18332, 38233, 38596, 49470, 51616
Columbia University, 19098, 31060
Commonwealth Edison Co., 3605, 4003, 5147, 7243, 7420, 8201, 26279, 28129, 28297, 28484, 32498, 33128, 33875, 34954, 36169, 40247, 41431, 42623, 45680, 51315
Community Hospital, 1145
Connecticut Light & Power Co. et al., 21523
Connecticut Yankee Atomic Power Co., 15801, 25364, 49802
Consolidated Edison Co. of New York, Inc., 2357, 28131, 28299, 28673, 48145, 53407
Consumers Power Co., 4605, 13108, 25495, 27866, 29286, 30251, 30894
Dairyland Power Cooperative, 20016, 34777
Detroit Edison Co. et al., 10561, 12420, 12426, 24602, 29773, 46371, 46523, 49145
Duke Power Co. et al., 903, 3435, 9143, 16758, 19824, 21152, 23088, 24602, 25351, 26863, 30548, 31661, 38234, 42810, 46227, 48503, 51315
Duquesne Light Co. et al., 19099, 42624, 51616
Energy Department et al., 5146, 13896
Florida Power Corp. et al., 1949, 24849, 24969, 25802, 26420, 29498, 29774, 30771, 31662
Florida Power & Light Co. et al., 2869, 6085, 6293, 7862, 9529, 9734, 9919, 13896, 30033, 38727, 45506
General Electric Co., 369, 903, 2634, 10561, 10562, 46713
General Public Utilities Nuclear Corp. et al., 2870, 16572, 21525, 23778, 28484, 30891, 32784, 32785, 32786, 35338, 37098, 38046, 39791, 43045, 43304, 45508
Georgia Power Co. et al., 2114, 3436, 5454, 9917, 20965, 34559, 34560
Gorsira X-Ray, Inc., 3850, 14473
Gulf States Utilities Co. et al., 14052, 36170, 48847
Houston Lighting & Power Co. et al., 10562, 11605, 20635, 23564, 30034, 48662
Illinois Power Co. et al., 10331, 21378, 37451, 38596
Indiana & Michigan Electric Co., 30035, 30319, 31447
Iowa Electric Light & Power Co. et al., 10124, 24331, 27868
John C. Haynes Co., 14474, 20634
Kansas Gas & Electric Co. et al., 10562, 24602, 25351
Kerr-McGee Chemical Corp., 2634, 6416, 30770
Long Island Lighting Co., 2114, 5147, 8202, 8420, 14781, 20512, 21674, 28129, 28674, 36683, 50687
Louisiana Power & Light Co., 11605
Maine Yankee Atomic Power Co., 7018, 20966, 47646
Manhattan College, 12880
Met Lab, Inc., 20966, 43483
Metro Health Center, 47883
Metropolitan Edison Co. et al., 580, 7243, 9143, 20512, 39191, 43046
Mississippi Power & Light Co. et al., 8687, 37451, 49633
Nebraska Public Power District, 13895, 36683, 47885
Niagara Mohawk Power Corp. et al., 48846
North American Inspection, Inc., 33130, 45876
Northeast Nuclear Energy Co. et al., 15798, 20635, 31060, 31795, 36502, 45877, 46714, 49635, 49803
Northern States Power Co., 4285, 20512, 20967
Northrop Corp., 21153, 26862
Nuclear Fuel Services, Inc., 4286, 8420, 19825, 41975, 43484, 50023
Omaha Public Power Co., 28860
Omaha Public Power District, 30549, 31663
Pacific Gas & Electric Co., 2634, 9338, 14186, 19099, 24603, 25136, 25352, 35626
Pennsylvania Power & Light Co. et al., 904, 7423, 15664, 33133, 50025
Pennsylvania State University, 16180
Philadelphia Electric Co. et al., 1650, 2636, 3437, 7152, 11026, 19826, 21379, 26280, 31663, 32918, 34028, 34931, 36934, 37098, 46847, 47467, 47469, 50873, 52874
Pittsburgh Testing Laboratory, 23367
Power Authority of State of New York, 1286, 2871, 4929, 13434, 20017, 28300, 32786, 40247, 49468, 49801, 51616
Precision Materials Corp., 32128, 32664
Princeton University, 43042
Public Service Co. of Colorado, 33134, 53240
Public Service Co. of New Hampshire et al., 11961, 37608, 49889
Public Service Electric & Gas Co. et al., 37737
Reich Geo-Physical, Inc., 10563, 23779
Richard L. Roudebush Veterans Administration Medical Center, 373
Rochester Gas & Electric Corp., 5020, 12423, 23779, 46848, 52392

UMI

Sacramento Municipal Utility District, 20514, 24723
Sequoyah Fuels Corp., 32128, 32665
Southern California Edison Co. et al., 9736, 18587, 45178, 53031
Syncor International Corp., 1147
Tennessee Valley Authority, 9918, 16574, 26064
Texas Utilities Electric Co. et al., 46717, 50974
Toledo Edison Co. et al., 2114, 52388
Trans-Eastern Inspection Services, Inc., 14476
Union Carbide Subsidiary B, Inc., 5458
Union Electric Co., 3607, 8024, 20511, 21379, 35626
University of California, 45180
University of Lowell, 12668, 19827, 26423, 30319, 48847
University of Michigan, 2115
University of Missouri, 3070, 6085, 15797
University of Texas, 368, 12669, 23207, 24603
University of Utah, 16181
University of Virginia, 21379
Vermont Yankee Nuclear Power Corp., 36685
Veterans Administration Hospital (Boston), 370
Veterans Administration Medical Center, 9918, 13436
Virginia Electric & Power Co. et al., 2635, 11962, 13109, 30550, 41975, 42628
Virginia Polytechnic Institute and State University, 15803
Washington Public Power Supply System, 7424, 7426, 19596
Wisconsin Electric Power Co., 14479, 28674
Wisconsin Public Service Corp., 8688, 34561
Yankee Atomic Electric Co., 28859, 45181

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

RULES

Discrimination against employees exercising rights under Occupational Safety and Health Act of 1970; complaint filing period, 32844
Federal employee occupational safety and health programs; reporting and recordkeeping requirements, 40268
Health and safety standards:
  Coke oven emissions standard; conforming deletions, 37352
  Cotton dust--
    Occupational exposure, 51120
    Ring spinning operations; stay of effective date, 14698
  Educational/scientific diving; inapplicability of commercial diving operations regulations; guidelines, etc., 1046
  Employee exposure and medical records, access; partial stay extended, 5752
  Ethylene oxide; occupational exposure, 64
    Effective date change and reporting and recordkeeping requirements, 9800
    Labeling requirements, 41491
  Flammable and combustible liquids; CFR correction, 36992
  Hazard communication--
    Chemical manufacturers, etc.; interim rule and correction, 48750
    Lubricating oils; interpretation, 51852
  Power lawnmowers; definitions, 4648
Procedure rules:
  Issuance of subpoenas and failure of parties to file briefs, 16474
State plans; development, enforcement, etc.:
  Alaska, 14924, 43131
  Arizona, 25561
  Iowa, 27233
  Kentucky, 24884
  Maryland, 29210
  Minnesota, 30821
  New York, 21046
  Tennessee, 29659
  Utah, 28770
  Wyoming, 26548

PROPOSED RULES

Agriculture health and safety standards:
  Field sanitation--
    Comment period reopened, 42660
    Determination, 15086
Construction health and safety standards:
  Compressed air and decompression tables; advance notice, 15756
  Concrete and masonry construction, 37543
    Extension of time and correction, 42571
  Hazard communication; advance notice, 48794
  Underground construction; tunnels and shafts; limited reopening of rulemaking record, 33357
Health and safety standards:
  Benzene; occupational exposure, 50512
  1,3-Butadiene; occupational exposure, 52952
  Ethylene oxide; occupational exposure; labeling requirements exemption, 12827
  Formaldehyde; occupational exposure, 50412
    Advance notice, 15179
    Meeting, 1547
  Hazard communication--
    Advance notice, 48794
    Trade secrets, disclosed to nurses, 49410
  Powered platforms for exterior building maintenance, 2890
    Comment period reopened, 27307
    Extension of time, 15756
    Hearing, 48222
  Presence sensing device initiation of mechanical power presses, etc., 12700
Shipyard employment health and safety standards:
  Hazard communication; advance notice, 48794
State plans; development, enforcement, etc.:
  Arizona, 2440, 6956, 46462
  Indiana, 2446, 6956
  Iowa, 2448, 6956
  Kentucky, 2454, 6956
  Maryland, 2460, 6956
  Minnesota, 2467, 6956
  New Mexico, 46460
  North Carolina, 2473, 6956
  South Carolina, 2475, 6956
  Tennessee, 2477, 6956
  Utah, 2483, 6956
  Vermont, 6956
  Virginia, 2489, 6956
  Wyoming, 2491, 6956

NOTICES

Biotechnology guidelines; inquiry, 14468
Committees; establishment, renewals, terminations, etc.:
  4,4'-Methylenedianiline (MDA) Negotiated Rulemaking Committee; request for nominations, 42789, 48655
  Occupational Safety and Health National Advisory Committee; request for nomination of members, 11952
Grants; availability, etc.:
  New directions training and education program, 47294
Health and safety standards; voluntary protection programs, 43804
Meetings:
  Construction Safety and Health Advisory Committee, 8407, 36932, 40461
  Occupational Safety and Health Federal Advisory Council, 52570
  Occupational Safety and Health National Advisory Committee, 7007, 8407, 23848, 45506
Occupational injuries and illnesses; recordkeeping guidelines; inquiry, 29102
State plans; standards approval, etc.:
  Alaska, 3987, 3988, 3989, 20957, 31792, 43817
  Arizona, 9915
  Indiana, 50019
  Iowa, 48655
  Maryland, 3989, 33125, 43817
  Nevada, 20144, 31793, 34777
  Oregon, 3990, 3991, 31793, 32334
  Puerto Rico, 47297
  South Carolina, 3992
  Utah, 9528, 30317, 31445
  Virgin Islands, 19821, 47298
  Virginia, 51956
  Washington, 3992, 19822, 20150, 20958, 43818, 48656
  Wyoming, 24063
Variance applications, etc.:
  AMAX Lead Co. of Missouri, 15004, 41039, 48282
  ASARCO, Inc., 11598, 24961, 30033
  Chlorine Institute, Inc., 25343, 29283
  Graniteville Co., 6411
  Lead; temporary variances, 10550
  Midwest Sterilization Corp., 40625
  St. Joe Lead Co., 24963, 28128
  St. Regis Corp., 15654, 26853
  Union Boiler Co., 31441, 40627
  Zurn Industries, Inc./Tileman & Co., Ltd., 20145

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

RULES

Sunshine Act; implementation; final rule and request for comments, 51678

NOTICES

Meetings; Sunshine Act, 1670, 5350, 15671, 36514, 39070, 40655, 41291, 42248, 43497, 45528, 46386, 47139, 47895, 49815, 50707, 51652
Senior Executive Service:
  Performance Review Board; membership, 13111

OCEANS AND ATMOSPHERE, NATIONAL ADVISORY COMMITTEE

See National Oceanic and Atmospheric Administration.

OFFICE OF MANAGEMENT AND BUDGET

See Management and Budget Office.

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

See Trade Representative, Office of United States.

OIL

See Economic Regulatory Administration.
Geological Survey.
International Trade Administration.
Land Management Bureau.
Minerals Management Service.
National Park Service.

OVERSEAS PRIVATE INVESTMENT CORPORATION

NOTICES

Agency information collection activities under OMB review, 28675, 37608, 43046
Insurance contract form; proposed revision, 20945
Meetings; Sunshine Act, 4936, 16771, 28491, 36706

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

NOTICES

Committees; establishment, renewals, terminations, etc.:
  Conservation Programs Task Force et al., 4607
  Losses and Goals Advisory Committee et al., 14783
  Mainstem Passage Advisory Committee, 34028
Meetings:
  Coal Options Task Force, 5333, 8689, 14480
  Conservation Programs Task Force, 5333, 8689, 11606, 37924
  Demand Forecasting Advisory Committee, 1656, 5333, 8689, 11771, 37099
  Economic Forecasting Advisory Committee, 1655, 12427, 37739
  Hydropower Assessment Steering Committee, 1656, 11032, 20158, 24851, 33136, 37924
  Industrial Conservation Advisory Task Force, 1656
  Losses and Goals Advisory Committee, 16763, 21526, 24971, 27518, 33435, 35886, 42241, 50878
  Mainstem Passage Advisory Committee, 35629, 37739, 40465, 43306, 45688, 47311, 49636, 53241
  Options Evaluation Task Force, 6086, 15253, 23368
  Production Planning Advisory Committee, 18756, 24070, 28131, 33136, 42241, 47311
  Resident Fish Substitutions Advisory Committee, 16373, 21526, 27519, 33136, 35885, 43306
  Residential Model Conservation Standards, 12427, 18336
  State Agency Advisory Committee, 2875, 7427, 11606, 16763, 20865, 38731
Meetings; Sunshine Act, 595, 3615, 4299, 6095, 9148, 12438, 15274, 19265, 21690, 23239, 25512, 26284, 27397, 27712, 28303, 29042, 30561, 32947, 33670, 36954, 39217, 40470, 40655, 43057, 45528, 47500, 47895, 48860, 50707
Power plan amendments:
  Columbia River Basin fish and wildlife program, 2743, 11032, 28049, 49804, 52575
  Northwest conservation and electric power plan, 2743, 5021, 30654, 33435, 36504, 37099, 37100, 40091, 43822

PACKERS AND STOCKYARDS ADMINISTRATION

See also Agricultural Marketing Service.

NOTICES

Stockyards; posting and deposting:
  Auction Farm, IA, et al., 2306
  Dublin Livestock Co., GA, et al., 7807
  M&R Livestock Co., Inc., IN, et al., 31636, 33612
  Martin's Dairy Stockyards, CA, et al., 50331
  Pierce County Stockyard, Inc., GA, et al., 50331
  Reynolds Livestock Auction, IN, et al., 32750, 36908
  South Central Livestock, Inc., GA, et al., 7806
  Western States Auction Sales, Inc., AZ, et al., 28229, 50331

PANAMA CANAL COMMISSION

RULES

Air navigation for Canal Zone Military Airspace Restricted Area and Canal Zone judiciary; CFR Parts removed, 6170
Federal claims collection; salary offset procedures, 34123
Reporting and recordkeeping requirements, 26990
Shipping and navigation:
  Tolls; vessels in ballast, 52919
  Vessels, arriving and departing; and hazardous cargoes, 19676

PROPOSED RULES

Federal claims collection; salary offset procedures, 19539
  Correction, 23028
Health, sanitation, and communicable disease surveillance, 48604
Organization, functions, and authority delegations, 48604
Regulatory agenda, 17962, 44810
Shipping and navigation:
  Tolls; vessels in ballast, 36444
  Vessels, arriving and departing; and hazardous cargoes, 5781

NOTICES

Agency information collection activities under OMB review, 7020, 37302

PAROLE COMMISSION

RULES

Federal prisoners; paroling and releasing, etc.:
  Conditions of release; firearms or other dangerous weapons, 28101
  Court-ordered financial obligations; child support or alimony payments, etc.; clarification of requirements, 36420
    Correction, 37352
  Information considered; procedures for submittal to Commission, 36422
  Mandatory release in absence of parole; use of good time credits, 46282
  Parole file, disclosure; procedural revisions and clarifications, 40374
  Paroling policy guidelines; clarifications; interim, 40368
  Presentence investigation report; disclosure procedures, 12789
  Prison overcrowding, relief; referral of cases to Prisons Bureau; program discontinued, 36419
  Study prior to sentencing, etc.; obsolete provisions removed, 36423
  Weapon possession; offense severity, 40373
  Youth/Narcotics Addict Rehabilitation Act cases separate guidelines eliminated, offense severity examples changed, etc., 40365

PROPOSED RULES

Federal prisoners; paroling and releasing, etc.:
  Court-ordered financial obligations; child support or alimony payments, etc.; clarification of requirements, 24235
  Prison overcrowding, relief; referral of cases to Prisons Bureau; program discontinued, 24234
    Correction, 24782
  Youth/Narcotics Addict Rehabilitation Act cases separate guidelines eliminated, offense severity examples changed, etc., 24236
    Correction, 26004

NOTICES

Federal prisoners; paroling and releasing, etc.:
  Parole date release; experimental procedures, 3426
Meetings; Sunshine Act, 3078, 4830, 13913, 15808, 26284, 28685, 28686, 34034, 41440, 41981, 43832

PATENT AND TRADEMARK OFFICE

RULES

Patent cases:
  Fees; revision, 31818
    Correction, 32410
  Patent interference proceedings; correction, 23122
Practice rules, 5158, 9368
  Correction, 11366, 25073, 25980

PROPOSED RULES

Patent cases:
  Fees; revision, 25896
    Correction, 27030, 28596
  Patent interference proceedings; advance notice, 2294

Plant patent applications; variety naming requirements, 33062, 52963
Practice rules, 3712

NOTICES

Mask works; interim protection for nationals, domiciliaries, and sovereign authorities:
Australia, 24665, 26818
Canada, 25288, 27649
European Economic Community, 26821, 37892
Japan, 12355, 14277, 16530, 24668
Netherlands, 24795, 26818
Sweden, 18720, 25618
United Kingdom, 24666, 26818
Meetings:
Trademark Affairs Public Advisory Committee, 32102
Procurement contracts; exchange agreement guidelines; inquiry, 49980
Senior Executive Service:
Performance Review Board; membership, 43264

PEACE CORPS

RULES

Conflict of interests, 20902
Correction, 23299
Privacy Act; implementation, 1844
Correction, 4505

PROPOSED RULES

Regulatory agenda, 17966, 44814

NOTICES

Agency information collection activities under OMB review, 906, 28861, 37610
Meetings:
Advisory Council, 10563, 37609
Privacy Act; systems of records, 1950

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

RULES

Address change, 45824
Freedom of Information Act; implementation; fee schedule revisions, 45823

PROPOSED RULES

Privacy Act; implementation, 45841
Regulatory agenda, 17968, 44816
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712

PENSION AND WELFARE BENEFIT PROGRAMS OFFICE

RULES

Employee benefit plans; temporary bonding rules, etc., 26704

PROPOSED RULES

Employee benefit plans:
Plan assets, definition, 961
Hearing rescheduled, 10075
Transitional rule expiration date modification, 6361
Reporting and disclosure requirements; exemption and alternative method of annual reporting for plans investing in entities with plan assets, 3362

NOTICES

Employee benefit plans; class exemptions:
Customer notes of employers investment, 13293
Employee benefit plans and securities broker-dealers, 3427
Independent qualified professional asset managers, plan asset transactions, 41430
Short-term money market instruments, 14043
Employee benefit plans; prohibited transaction exemptions:
Alaska Hotel & Restaurant Employees Pension Trust et al., 28661
Andron, Cechettini & Associates, Inc., et al., 47299, 50359
APX Group, Inc., et al., 21951
Arnett Brokerage Profit-Sharing Plan et al., 10555
Bartlemay & Associates, Inc., et al., 16368
Baton Rouge Building & Contruction Industry Plan et al., 7009, 20150
Broman & Woolley et al., 7853
Bryce Corp. et al., 5689
Carmany, Thomas B., M.D., et al., 6080
Carolina Surgical Clinic et al., 10560
Century Graphics Corp. et al., 20152, 29493
Chris Stone & Associates et al., 37596, 47638
Citizens Bank of Evans City et al., 3041
Cogan Management Inc., 8418
Crawford Fitting Co. et al., 30535, 43473
Cumberland Farms Employees' Retirement Trust et al., 9730
Equitable Life Assurance Society et al., 32657
ESI Profit Sharing Retirement Plan & Trust et al., 7008
First Citizens National Bank et al., 26855
First National Bank of Chicago et al., 35617
General Electric Pension Trust et al., 48657
Gibson Products Co., Inc., et al., 25346, 35623
Home Savings & Loan Association et al., 11267, 20958
Hudson Valley District Council Carpenters Annuity Fund et al., 11272
Incline Glass, Inc., et al., 27856
Intercontinental Monetary Corp., 5017
InterFirst Corp. et al., 7851
Ironworkers Local No. 6 Pension Fund et al., 33126
J.P. Stevens & Co., Inc., et al., 2103
James C. Soper, Inc., et al., 32328
Kay-Bee Toy & Hobby Shops, Inc., et al., 3993, 13092
K's Merchandise Mart, Inc., et al., 34212
Lehndorff & Babson Property Fund et al., 8407
Lesman Instrument Co. et al., 29494
Lincoln National Life Insurance Co. et al., 11953
Local Union No. 731, International Brotherhood of Teamsters, et al., 20960, 30543
M.M.&P. Pension Plan et al., 41062
Maritime Associates et al., 18945
McShane & Bowie Profit Sharing Plan et al., 27379, 35882
Medical Clinic, P.A., et al., 45950
Moore, Thomas E., Jr., M.D., et al., 47640
Mortgage Asset Management Asaociates et al., 37605
Muesco, Inc., 33126
Northwestern Ohio Building and Construction Trades et al., 11272
Operating Engineers Pension Trust et al., 15240, 42617
Pagarigan, Roberto R., M.D., et al., 48659
Paint America Co. et al., 14045
Penn United Technology, Inc., et al., 13094
People's Bank of Bridgeport et al., 9726
Peoples Bank & Trust et al., 24064
Peter W. Burk Employee Pension Benefit Plan et al., 24065
Pleasey Dynamics et al., 46191
Professional Golfers Association of America, 37608
R.A. Gray & Co. et al., 50362
Retail Clerks' Local 919 Health & Welfare Trust Fund et al., 8414
Richard Dempsey Contracting Co., Inc., et al., 33423, 41045
Roland Land Investment Co., Inc., et al., 53216
Royal Bank of Canada et al., 5017
San Francisco Photographers Supply, Inc., et al., 189, 15656
Sherman Clay & Co. et al., 18947
Shirk, Work, Robinson & Williams, et al., 41047, 47303
Shorr Paper Products, Inc., et al., 11952
Simpson Manufacturing Co., Inc., et al., 24600
Ted McWilliams, Inc., et al., 27863
Texas International Airlines, Inc., 11273
Union Oil Employees Profit Sharing Plan et al., 42619
United Technologies Corp., 50372
University Avenue Orthopaedic Medical Group, Inc., et al., 15659
Washington Mortgage Co., Inc., et al., 1004
Watkins Master Trust et al., 32333
Whataburger, Inc., et al., 43477, 53221
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 25133, 43803, 53224

PENSION BENEFIT GUARANTY CORPORATION

RULES

Agency decisions, administrative review; Appeals Board membership, 25221
Multiemployer plans:
Approval of plan amendments; procedures, 12796
Disputes arbitration; employer withdrawal liability, 34679
Correction, 36992
Insolvency notification procedures, 12791
Late premium payment and employer liability underpayments and overpayments; interest rate change, 32171, 50896
Correction, 1210
Powers and duties of plan sponsor of plan terminated by mass withdrawal; benefit reductions and suspensions, 31171
Premium payment; due date; request for comments, 12533
Correction, 23299
Vested benefits, unfunded; non-statutory allocation methods, 49539
Withdrawal liability; notice and collection; interest rates, 12790, 26707, 39664, 53313
Single-employer plans:
Benefit reductions in terminated plans and recovery benefit overpayments, 3892
Late premium payment and employer liability underpayments and

overpayments; interest rate change, 32171, 50896
Correction, 1210
Limitation on guaranteed benefits; maximum guaranteeable benefit, 50900
Pension plan terminations; filing of notices of intent, 31165
Plan sufficiency determination and termination, 31167
Correction, 33035
Premium payment; due date; request for comments, 12533
Valuation of plan benefits--
Interest rates and factors, 6342, 10498, 14700, 20205, 24914, 37354, 50899
Valuing early retirement benefits, 50898

PROPOSED RULES
Multiemployer plans:
Premium payment; due date, 1065
Valuation of plan benefits and plan assets following mass withdrawal, 6956
Vested benefits, unfunded; allocation, 36603
Regulatory agenda, 17970, 44818
Single-employer plans:
Premium payment; due date, 1065
Valuation of plan benefits; terminating plan assets, 19386

NOTICES
Agency information collection activities under OMB review, 907, 5334, 5459, 10331, 31084, 40465, 49636
Multiemployer pension plans:
Bond/escrow exemption requests--
Great Atlantic & Pacific Tea Co., Inc., et al., 11771
Disputes arbitration; employer withdrawal liability; alternative procedure, 38046
Effect of withdrawal following sale of assets, 34780
Inquiry, 2116
Special withdrawal liability rules approval requests--
ILGWU National Retirement Fund, 11965
Substantial damage determination requests--
DeHart Motor Lines, Inc., et al., 36171
TAF Delivery Systems, Inc., 12882
Withdrawal liability in fully funded plans; inquiry, 36504
Privacy Act; systems of records, 16028

PENSION PLANS

See Internal Revenue Service.
Pension and Welfare Benefit Programs Office.
Pension Benefit Guaranty Corporation.
Personnel Management Office.
Railroad Retirement Board.
Social Security Administration.
Veterans Administration.
Workers' Compensation Programs Office.

PERSONNEL MANAGEMENT OFFICE

RULES
Absence and leave:
Use of restored annual leave, 29937
Interim, 3314
Administrative law judges, retired; temporary reemployment, 15407
Agency administrative grievance system, 26965
Conflict of interests:
Post employment; senior employee designations, etc., 31096
Public financial disclosure, post-employment conflicts, and standards of conduct, 1203
Excepted service:
Cooks; Schedule A appointment authority revocation, 11145
Freedom of Information Act; implementation, 3307
Correction, 8993
Health and counseling programs, Federal employees:
Alcoholism and drug abuse programs and services, 16691
Health benefits, Federal employees:
Annuity termination and re-enrollment; interim, 42005
Comprehensive medical plan applications deadline, 8315
Former spouses of civil service employees and retirees; enrollment in program; interim, 24757
Life insurance; basic, standard, additional, and family optional:
Annuity termination and re-enrollment; interim, 42005
Assignment of Federal judges ownership; interim, 8095
Coverage conversion to individual policy, 7903
Premium reduction and open enrollment period, 15428, 26687
Motor vehicle operators; waiver of identification card issuance requirements, 34666
Pay administration:
Deductions from civilian pay for increase in uniformed service retired or retainer pay; revocation, 2039
Fair Labor Standards Act; exemption criteria; cross reference and effective date confirmation, 35488
Grade and pay retention; RIF retroactive benefits removed, 23663
Prevailing rate systems; Federal Wage System employees in foreign areas and U.S. possessions, 38633
Senior Executive Service, performance awards; interim, 38634
Special salary rate schedules for recruitment and retention, 32839
Correction, 34801
Within-grade increases and termination of grade or pay retention; appeal rights for denial, 427, 45389
Performance management and recognition system, 35488
Correction, 40178
Interim, 11788
Performance management and recognition system; minimum performance award funding, 52896
Performance management system; performance based incentive system for general schedule, and merit pay equivalent of within-grade increases; cross reference and effective date confirmation, 35488
Recruitment, selection, and placement:
Veterans, preference eligibles; outplacement assistance program, 39876
Reduction in force (RIF) procedures; cross reference and effective date confirmation, 35488
Reemployment rights:
Panama Canal Commission employees, 13963
Retirement:
Civil Service Retirement and Disability Fund; Federal claims collection, 34663
Civil Service Retirement Spouse Equity Act of 1984; implementation; interim, 20064
Correction, 21031
Senior Executive Service:
Appointment, reassignment, transfer, and reinstatement, 6153
Veterans readjustment appointments; temporary and term employment:
Interim, 13172
Interim rule affirmed, 42509
Voting rights program:
New Mexico, 45608

PROPOSED RULES
Absence and leave:
District of Columbia Government employment; clarification, 7922
Sick leave, recredit, 47060
Allowances and differentials:
Cost-of-living allowance and post differential rates; nonforeign areas, 42531
Extension of time, 53330
Combined Federal Campaign (CFC); solicitation of Federal civilian and uniformed services personnel, 33960
Health benefits, Federal employees:
Refund of program reserves (Blue Cross and Blue Shield Association), 32207
Correction, 34856
Life insurance; basic, standard, additional, and family optional:
Premium reduction and open enrollment period, 15428
Under age 50 waiver cancellation requirement, 34707
Overseas limited appointments; restrictions, 33548
Pay administration:
Debt collection arrangements, 48421
Fair Labor Standards Act; exemption criteria, 35529
Federal claims collection; installment collections; agency definition, etc., 18267
Grade and pay retention, 20422
Prevailing rate systems--
Federal Wage System employees in foreign areas, 28583
Federal Wage System employees in foreign areas and U.S. possessions, 28584
Federal Wage System schedules in Federal specialized industry, 40979
Job grading appeals under Federal Wage System, 37537
Special salary rate schedules for recruitment and retention, 21266, 39697
Agricultural commodity graders, 47057
Computer scientists, 51397

Inhalation therapy technicians, 51397
Medical machine technicians, 47057
Pharmacists, 47058
Police officers, 47059
Performance management and recognition system; minimum performance award funding, 37537
Performance management system; performance based incentive system for general schedule, 35513
Correction, 40865
Personnel records:
Employee medical file system, 15158
Transfer of official personnel folder to another agency, 35505
Correction, 39697
Recruitment, selection, and placement:
Veterans, preference eligibles; outplacement assistance program, 3530
Reduction in force (RIF) procedures, 35506
Reemployment rights:
Senior Executive Service employees, 52928
Regulatory agenda, 17938, 44786
Retirement:
Civil Service Retirement and Disability Fund; Federal claims collection, filing of debt claims, 473
Correction, 2575

NOTICES

Agency information collection activities under OMB review, 5332, 23779, 28861, 42632, 42633
Committees; establishment, renewals, terminations, etc.:
President's Commission on White House Fellowships, 5333
Excepted service:
Schedules A, B, and C; positions placed or revoked--
Consolidated list, 40902
Update, 3852, 8026, 11962, 19598, 21674, 27076, 32129, 36936, 41614, 43820, 46527, 48662, 52573
Health benefits, Federal employees:
Employee organizations; plan sponsorship applications, 31448
Reserve levels; hearing and inquiry, 21526
Life insurance program; Federal employees:
Open enrollment period (1985), 8026
Meetings:
Federal Prevailing Rate Advisory Committee, 2357, 7019, 11964, 16182, 20515, 25138, 28486, 32919, 38597, 42240, 47133, 50974
Privacy Act:
Computer matching program, 26280
Systems of records, 15253
Retirement:
Civil Service Retirement System; interest rate for deposits, etc., 32918, 41767
Senior Executive Service:
Career reserved positions; list, 12890
Performance Review Board; membership, 28049, 42241

PESTICIDES

See Environmental Protection Agency.
Food and Drug Administration.

PLANTS

See Animal and Plant Health Inspection Service.
Fish and Wildlife Service.

POLLUTION

See Coast Guard.
Environmental Protection Agency.
Environmental Quality Council.
Federal Aviation Administration.
Federal Maritime Commission.
Occupational Safety and Health Administration.

POSTAL RATE COMMISSION

RULES

Practice and procedure rules:
Domestic Mail Classification Schedule; E-COM (Electronic Computer Originated Mail) provisions deleted, 37175
Domestic Mail Classification Schedule; publication, 28144
Correction, 30271
Workpapers and computer-generated evidence, 43388

PROPOSED RULES

Practice and procedure rules:
Domestic Mail Classification Schedule; publication, 21628
Reporting and recordkeeping requirements, 52803
Statistical and computer-generated evidence, documentation, 43414
Workpapers and computer-generated evidence, 27308

NOTICES

Complaints filed:
Advo-System, Inc., 5703, 11035, 21154, 14780
Enterprise, Inc., 49805
Tri-Parish Journal, Inc., 24971, 32338
Costing methods study; United Parcel Service petition filed:
Inquiry, 35629
Proceedings instituted, 48664
Mail classification schedules:
Destination-BMC parcel post and rate changes, 47469
Meetings; Sunshine Act, 14487, 24740, 25512, 30561, 32525, 39070, 40256, 41981, 47500, 50707, 51506
Post office closings; petitions for appeal:
Boyds, WA, 10125
Centerfield, UT, 45881
Chatham, MS, 52392
Chester Depot, VT, 5023
Croydon, UT, 40465
East Nicolaus, CA, 25638
Ferndale, FL, 39792
Fitzhugh, OK, 49805
Grady, OK, 37302
Guatay, CA, 23565
Leach, TN, 43486
Little Norway, CA, 28861
Louvale, GA, 33877
Moreno, CA, 40252
North Scituate, MA, 37610
Pacific House, CA, 34781
Perry, SC, 50027
Philomath, GA, 2117
Ranchito, CA, 13686
Range, AL, 2357
Roanoke, WV, 1010
Rock Glen, NY, 1148
Sanitaria Springs, NY, 50375
St. Charles, SC, 39791
Wadsworth, NY, 1010
Whitestone, GA, 34781
Williams Mountain, WV, 1656
Wishon, CA, 38047
Yorkville, CA, 32667
Privacy Act; systems of records, 34029
Visits to facilities, 2117, 7153, 10563, 16764, 21380, 24851, 42633, 46717

POSTAL SERVICE

RULES

Bylaws:
Research and development spending and overruns on capital investment projects, 29380
Domestic Mail Manual:
Addressing procedures, 30834
Combined mailings of special fourth-class and bound printed matter, 43702
Combined presort and ZIP plus 4 presort first-class mailings, 13569
Detached address cards, 42935
E-COM (Electronic Computer Originated Mail) service; removed, 36875
Merchandise Return Service, 9622
Correction, 11151, 14216
Merchandise return service for Federal agencies, 48087
Miscellaneous amendments, 5580, 12019, 30833
Post office box fee group application, 26561
Postage meter licenses; issuance or refusal; guidance and procedures, 49689
Postage meters not set during 6 month period; examination, 33533
Prohibition against mailing odd-shaped items in letter-size envelopes, 48581
Rates, fees, and classifications changes; final rule and request for comments, 2787
Solicitations in guise of bills, invoices, or statements of accounts, 5581
Third-class mail, bulk; annual fees, 20567
Undeliverable-as-addressed mail; handling changes, 7049
Floodplain management and protection of wetlands procedures, 32411
Handicapped persons; accessibility of postal services, programs, facilities, and employment, 14098
International Mail Manual:
Express Mail Service--
Bahamas, 36431
Cyprus, 49689
Denmark, 7048
Finland, 763
Greece, 36431
Iceland, 41135
Panama, 27827
Portugal, 7048
Saudi Arabia, 763
Turkey, 7048
United Arab Emirates, 7048
Miscellaneous amendments, 49387
Surface Air Lift Transit Service to Latin American countries, 50905
National Environmental Policy Act; implementation, 32411
Correction, 33036
Procurement of property and services:
Postal Contracting Manual; amendments; 9015, 28941, 40376

PROPOSED RULES

Domestic Mail Manual:
Addressing procedures, 6007
Combined mailings of special fourth-class and bound printed matter, 33575

Combined presort and ZIP plus 4 presort first-class mailings, 4709
Company permit imprints, 23317
Detached address cards, 31628
E-COM (Electronic Computer Originated Mail); designation of serving Post Offices for acceptance; withdrawn, 36886
Five-digit ZIP code; use for presort discount mailings, etc., 10991
Merchandise return service for Federal agencies, 35843
Plant-load operations, 52534
Post office box fee group application, 8345
Postage meter licenses; issuance or refusal; guidance and procedures, 36885
Postage meters not set during 6 month period; examination, 27992
Prohibition against mailing odd-shaped items in letter-size envelopes, 33068
Second-class periodicals; applicable rates for Plus issues, 9051
  Extension of time, 13050
Third-class mail, bulk–
  Annual fees, 12839
  Sacking regulations, 53342
Undeliverable mail; return of books and sound recordings; procedures, 47564
Undeliverable-as-addressed mail; handling changes, 1870
Floodplain management and protection of wetlands procedures, 26811
Freedom of Information Act; implementation, 1069
International Mail Manual:
  Express Mail Service–
    Bahamas, 31199
    Cyprus, 42966
    Denmark, 2070
    Greece, 31199
    Iceland, 35260
    Mexico, 46307
    Panama, 23146
    Portugal, 2070
    Turkey, 2070
    United Arab Emirates, 2070
  Surface Air Lift Transit Service to Latin American countries, 46463
National Environmental Policy Act; implementation, 26811
Organization and administration:
  Computer retrieved records, fees, 47068
Private carriage of letters, restrictions; private express statutes for extremely urgent letters, 41462
  Correction, 42729
  Extension of time, 46464
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21752

NOTICES

Domestic mail classification and rate schedules; E-COM provision deleted, 29030
Environmental statements; availability, etc.:
  General Mail Facility, NY, 24605
International rates and fees, 2358
International Surface Air Lift Service rates, 46328
Meetings; Sunshine Act, 2121, 3867, 6425, 7691, 10141, 11989, 13914, 16580, 20033, 21543, 24872, 27085, 29042, 30561, 34961, 35632, 38943, 42249, 42819, 46859, 48536, 50382, 53061
Postal rates, fees, and mail classifications; changes, 1010, 2358, 37740, 50878
Privacy Act:
  Computer matching program, 6086, 18591, 37739
  Systems of records, 6086, 18589, 28862, 47311

PRESIDENTIAL DOCUMENTS

ADMINISTRATIVE ORDERS

Africa; financial assistance under Migration and Refugee Assistance Act of 1962 (Presidential Determination No. 85-3 of January 11, 1985), 3877
Algeria; purchase of U.S. arms (Presidential Determination No. 85-12 of April 10, 1985), 16683
Anti-satellite weapons testing (Presidential Determination No. 85-19 of August 20, 1985), 34441
Canadian-U.S. crude oil transfers (Presidential Findings of June 14, 1985), 25189
Cargo Preference Act; delegation of authority (Memorandum of August 7, 1985), 36565
El Salvador:
  Public security forces assistance (Presidential Determination No. 86-2 of October 29, 1985), 48073
  U.S. military assistance–
    Presidential Determination No. 85-18 of September 18, 1985, 43375
    Presidential Determination No. 85-9 of March 29, 1985, 14363
Ethiopia; human rights (Presidential Determination No. 85-20 of September 7, 1985), 37503
European Space Agency; U.S. trade determination (Memorandum of July 17, 1985), 29631
Export control regulations (Notice of March 28, 1985), 12513
Footwear; imports (Memorandum of August 28, 1985), 35205
Foreign military sales financing; certification of interest rate (Presidential Determination No. 85-15 of July 12, 1985), 40183
Haiti; U.S. military assistance (Presidential Determination No. 85-10 of April 2, 1985), 14207
Hot air popcorn poppers; trade determination (Memorandum of November 5, 1985), 47198
Iran emergency; continuation (Notice of November 1, 1985), 45901
Jordan; relations with Israel (Presidential Certification No. 86-01 of October 21, 1985), 45387
Lebanon; suspension of air transportation by U.S. and Lebanese carriers (Presidential Determination No. 85-14 of July 1, 1985), 31835
Lemons and oranges; imports (Memorandum of June 20, 1985), 25685
Malawi; purchase of U.S. arms (Presidential Determination No. 85-4 of February 4, 1985), 6329
Mozambique; purchase of U.S. arms (Presidential Determination No. 85-7 of February 11, 1985), 6335
Pakistan; U.S. military assistance (Presidential Determination No. 86-03 of November 25, 1985), 50273
Palestinian and Khmer refugees; U.S. assistance (Presidential Determination No. 85-16 of July 12, 1985), 29629
Population control; development assistance; authority delegation to Secretary of State (Memorandum of September 19, 1985), 41469
Relocation assistance and real property acquisition, uniform (Memorandum of February 27, 1985), 8953
Sierra Leone; purchase of U.S arms (Presidential Determination No. 85-5 of February 5, 1985), 6331
Steel industry modernization; annual determination (Memorandum of September 30, 1985), 40321
Togo; purchase of U.S. arms (Presidential Determination No. 85-6 of February 11, 1985), 6333
Trading with the Enemy Act; extension of authorities (Memorandum of September 5, 1985), 36563
Yugoslavia; U.S. military assistance (Presidential Determination No. 85-8 of February 16, 1985), 7901

EXECUTIVE ORDERS

Arctic research (EO 12501), 4191
Committees; establishment, renewals, terminations, etc.:
  Americans Outdoors, President's Commission (EO 12529), 33329
  Arctic Research Commission (EO 12501), 4191
  Chemical Warfare Review Commission (EO 12502), 4195
  Child Safety Partnership, President's (EO 12511), 18449
  Defense Management, President's Blue Ribbon Commission (EO 12526), 29203
  Executive Exchange, President's Commission (EO 12516), 21417
  Federal Advisory Committees (EO 12534), 40319
  Foreign Intelligence Advisory Board, President's (EO 12537), 45083
  Foreign Service Board (EO 12536), 41477
  Interagency Arctic Research Policy Committee (EO 12501), 4191
  Mediation and Conciliation, President's Advisory Committee (EO 12497, 12533), 229, 40317
  Nuclear Weapons Program Management, President's Blue Ribbon Task Group (EO 12499), 2947
  Organized Crime, President's Commission (EO 12507), 11835
  Outdoor Recreation Resources Review, Presidential Commission (EO 12503), 4491
  Physical Fitness and Sports, President's Council (EO 12539), 49829
  Private Sector Initiatives, Presidential Board of Advisors (EO 12528), 32389
  Railroad labor disputes; emergency boards to investigate (EO 12531), 36033
  Small Business, National White House Conference (EO 12523), 26963

Technical Review Group on Inertial Confinement Fusion (EO 12509), 15093
World Tourism Organization (EO 12508), 11837
Defense Secretary and Service Secretaries; order of succession (EO 12514), 20383
EURATOM, nuclear cooperation with (EO 12506), 8991
Export controls; termination of emergency authority (EO 12525), 28757
Federal real property management (EO 12512), 18453
Food-for-Peace Program; repeal of administrative position (EO 12527), 32157
Foreign assistance functions; delegation to State Department and IDCA (EO 12500), 3733
Generalized System of Preferences; amendments (EO 12515, 12519, 12524), 20385, 25037, 27409
Government employees:
Cost-of-living allowances; non-foreign areas (EO 12510), 15535
Defense Department employees in Panama; quarters allowance (EO 12520), 25683
Pay and allowances; rates (EO 12496), 211
Relocation expenses; reimbursement (EO 12522), 26337
Libya; refined petroleum imports (EO 12538), 47527
Military-related exports; offsets (EO 12521), 26335
Nicaragua; prohibition of trade (EO 12513), 18629
Nicaraguan Humanitarian Aid Office; establishment (EO 12530), 36031
OMB appointments; conversion (EO 12505), 6151
Regulatory planning process (EO 12498), 1036
Semiconductor chip products; protection (EO 12504), 4849
South Africa:
Economic sanctions (EO 12532), 36861
Krugerrands; import prohibition (EO 12535), 40325
Trade in services (EO 12518), 23661
United States-India Fund for Cultural, Educational, and Scientific Cooperation; delegation of functions (EO 12517), 23105

PROCLAMATIONS
Cuba; suspension of entry as nonimmigrants by government officers or employees (Proc. 5377), 41329
Generalized System of Preferences; amendments (Proc. 5423), 52755
Imports and exports:
Caribbean Economic Recovery Act; implementation (Proc. 5308), 10927
Civil aircraft and globes; tariff modifications (Proc. 5291), 223
High technology products; duty reductions (Proc. 5305), 7571
Pasta from European Economic Community; duty increase (Proc. 5354, 5363), 26143, 33711
Sugar-containing articles (Proc. 5294, 5340), 4187, 20881
Sugars, sirups, and molasses--
Import fees (Proc. 5313), 12987
Tariff modifications (Proc. 5297), 4847
United States-Israel free trade agreement, reductions in U.S. rates of duty (Proc. 5365), 36220
Special observances:
A Time of Remembrance (Proc. 5396), 43115
Adoption Week, National (Proc. 5411), 47523
Adult Day Care Center Week, National (Proc. 5369), 39955
Afghanistan Day (Proc. 5309), 11829
Allergy and Asthma Awareness Week, National (Proc. 5338), 20193
Alzheimer's Disease Month, National (Proc. 5405), 46737
American Education Week (Proc. 5403), 43593
Asian/Pacific American Heritage Week (Proc. 5325), 16207
Baltic Freedom Day (Proc. 5352), 25193
Big Brothers and Big Sisters Week, National (Proc. 5300), 6147
Bill of Rights Day; Human Rights Day and Week (Proc. 5420), 50757
Black Colleges Week, National Historically (Proc. 5370), 39957
Boy Scouts of America, Seventy-fifth Anniversary (Proc. 5421), 51511
Cancer Control Month (Proc. 5311), 11833
Captive Nations Week (Proc. 5357), 29935
Child Abuse Prevention Month, National (Proc. 5315), 13753
Child Health Day (Proc. 5375), 40957
Child Safety Awareness Month, National (Proc. 5331), 18445
Citizenship Day and Constitution Week (Proc. 5367), 37831
Columbus Day (Proc. 5376), 40959
Community College Month, National (Proc. 5418), 50271
Consumers Week, National (Proc. 5306, 5417), 8989, 50269
Correctional Officers Week, National (Proc. 5337), 20195
CPR Awareness Week, National (Proc. 5395), 42669
DECA Week, National (Proc. 5301), 6149
Defense Transportation Day, National, and National Transportation Week (Proc. 5326), 16449
DES Awareness Week, National (Proc. 5327), 16685
Diabetes Month, National (Proc. 5408), 47201
Digestive Diseases Awareness Week, National (Proc. 5342), 20885
Disability in Entertainment Week, National (Proc. 5359), 31151
Down Syndrome Month, National (Proc. 5386), 41837
Dr. Jonas E. Salk Day (Proc. 5335), 19517
Drug Abuse Education Week, National (Proc. 5404), 46279
Drunk and Drugged Driving Awareness Week, National (Proc. 5419), 50755
Education Day, U.S.A. (Proc. 5317), 13757
Employ the Handicapped Week, National (Proc. 5371), 40181
Eugene Ormandy Appreciation Day (Proc. 5410), 47521
Fair Housing Month (Proc. 5329), 16689
Family Reunion Month (Proc. 5351), 25191
Family Week, National (Proc. 5399), 45079
Farm Safety Week, National (Proc. 5346), 21793
Farm-City Week, National (Proc. 5398), 45077
Father's Day (Proc. 5350), 25065
Fire Prevention Week (Proc. 5380), 41471
Flag Day and National Flag Week (Proc. 5353), 25195
Forest Products Week, National (Proc. 5390), 42137
Foster Grandparent Month, National (Proc. 5402), 45591
Freedom of the Press Day (Proc. 5360), 31703
General Pulaski Memorial Day (Proc. 5373), 40797
Heart Month, American (Proc. 5295), 4621
Helen Keller Deaf-Blind Awareness Week (Proc. 5355), 26685
Helsinki Human Rights Day (Proc. 5334), 18627
High Blood Pressure Awareness Week (Proc. 5407), 47029
High-Tech Month, National (Proc. 5394), 42507
Hispanic Heritage Week, National (Proc. 5366), 37635
Home Care Week, National (Proc. 5415), 49825
Hospice Month, National (Proc. 5397), 45075
Housing Week, National (Proc. 5389), 41843
International Youth Year (Proc. 5299), 5363
Jerome Kern Day, National (Proc. 5293), 3731
Jewish Heritage Week (Proc. 5321), 15857
Law Day, U.S.A. (Proc. 5320), 15405
Learning Disabilities Awareness Month (Proc. 5385), 41835
Leif Erikson Day (Proc. 5374), 40955
Lithuanian Independence Day (Proc. 5302), 7029
Loyalty Day (Proc. 5319), 15403
Lupus Awareness Week, National (Proc. 5387), 41839
Made in America Month (Proc. 5424), 52891
Maritime Day, National (Proc. 5343), 21229
Mark Twain Day, National (Proc. 5414), 49665
Medical Transcriptionist Week, National (Proc. 5345), 21233
Mental Illness Awareness Week (Proc. 5379), 41333
Minority Enterprise Development Week (Proc. 5347), 22967
Mother's Day (Proc. 5332), 18447
Myasthenia Gravis Awareness Week (Proc. 5388), 41841
National Day of Fasting to Raise Funds to Combat Hunger (Proc. 5413), 48549
Neighborhood Crime Watch Day, National (Proc. 5362), 33019
Oil Heat Centennial Year (Proc. 5384), 41657
Older Americans Month (Proc. 5328), 16687
OPERATION: Care and Share (Proc. 5392), 42141
Organ Donation Awareness Week, National (Proc. 5324), 16051
Osteoporosis Awareness Week, National (Proc. 5344), 21231
P.O.W.-M.I.A. Recognition Day, National (Proc. 5356), 26961
Pan American Day and Pan American Week (Proc. 5318), 15095
Peace Corps, Twenty-Fifth Anniversary Year (Proc. 5378), 41331

Poison Prevention Week, National (Proc. 5290), 1
Polish American Heritage Month (Proc. 5361), 33017
Prayer, National Day of (Proc. 5296), 4623
Prayer for Peace, Memorial Day (Proc. 5330), 18219
Red Cross Month (Proc. 5298), 5059
Reye's Syndrome Week, National (Proc. 5406), 47027
Safe Boating Week, National (Proc. 5303), 7289
Sanctity of Human Life Day, National (Proc. 5292), 2536
Save Your Vision Week (Proc. 5304), 7569
School Lunch Week, National (Proc. 5381), 41473
Science Week, National (Proc. 5339), 20543
Senior Center Week (Proc. 5341), 20883
Sewing Month, National (Proc. 5368), 39953
Skin Cancer Prevention and Detection Week, National (Proc. 5310), 11831
Small Business Week (Proc. 5312), 12761
Space Exploration Day (Proc. 5358), 30127
Spina Bifida Month, National (Proc. 5383), 41655
Statue of Liberty: Centennial Year of Liberty in United States (Proc. 5400), 45081
Sudden Infant Death Syndrome Awareness Month, National (Proc. 5401), 45085
Temporary Services Week, National (Proc. 5416), 49827
Thanksgiving Day (Proc. 5412), 47525
Tourism Week, National (Proc. 5333), 18451
United Nations Day (Proc. 5372), 40323
Very Special Arts U.S.A. Month (Proc. 5348), 23267
Veterans Day (Proc. 5391), 42139
Victims of Crime Week (Proc. 5322), 15859
Vietnam Veterans Recognition Day (Proc. 5336), 20191
Weather Satellite Week, National (Proc. 5314), 13751
White Cane Safety Day (Proc. 5382), 41475
Women Veterans Recognition Week, National (Proc. 5409), 47203
Women's Equality Day (Proc. 5364), 34445
Women's History Week (Proc. 5307), 9979
World Food Day (Proc. 5393), 42143
World Health Week and World Health Day (Proc. 5316), 13755
World Trade Week (Proc. 5323), 16049
Wright Brothers Day (Proc. 5422), 51665
Youth Suicide Prevention Month (Proc. 5349), 23891

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

NOTICES
Applications for fellowships; extension of deadline date, 42108

PRESIDENT'S ECONOMIC POLICY ADVISORY BOARD

NOTICES
Meetings, 14186, 53035

PRISONS BUREAU

RULES
Inmate control, custody, care, etc.:
Adult basic education program, 25662
Central and regional offices, staff training centers, and institutions; listing, 40104
Correspondence, 40106
Discipline and special housing units, search of control unit inmates; interim, 25660
Incoming publications and telephone regulations, and urine surveillance for illegal drug use, 410
Inmates, escorted trips, 48336
Transfer to State agents for production on State writs, 40105
PROPOSED RULES
Inmate control, custody, care, etc.:
Admission and orientation, chemical abuse programs, etc., 48338
Correction, 51559
Correspondence, 40114
Discipline and special housing units; smoking/nonsmoking areas, etc., 25664
Visiting regulations, 40113
Vocational training programs, 40116
Volunteer and citizen involvement program, 40115
NOTICES
Committees; establishment, renewals, terminations, etc.:
Advisory Corrections Council, 38723
Environmental statements; availability, etc.:
Cumberland County, NJ, 36168
McKean County, PA, 30029
Municipal Airport, Marianna, Jackson County, FL, 25637
Polk-Yamhill County, OR, 40245
Grants and cooperative agreements:
Annual program plan/training schedule; 1986 FY, 34927
Model architectural plans for small jails, 34927
National Institute of Corrections--
Jail classification program, 15794
Regional correctional training, 50970
Meetings:
National Institute of Corrections Advisory Board, 5329, 15794, 46369
National Institute of Corrections:
Bylaws, 28126
Selection project, 900
Prison institutions; list modification, 20509

PROCUREMENT, FEDERAL

See Defense Department.
Federal Procurement Policy Office.
General Services Administration.

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

NOTICES
Medicare; medical and surgical procedures and services; submission of information procedures, 1657
Meetings, 199, 4003, 7153, 27390, 35630, 43822

PUBLIC HEALTH SERVICE

See also Alcohol, Drug Abuse, and Mental Health Administration.
Centers for Disease Control.
Food and Drug Administration.
Health Resources and Services Administration.
National Institutes of Health.
RULES
Foreign quarantine, 1516
Correction, 3910
Grants:
Black lung clinics, 7912
Reporting and recordkeeping requirements, 53156
Health professions student loan program, 34416, 34421
National Institutes of Health; research and demonstration centers, 49692
Nursing student loan program, 34426
Health maintenance organizations:
Member protection in event of insolvency, community rating by class, and primary care within service area of nonmetropolitan HMO, etc., 6171
Correction, 7780
Health planning and resources development:
Health systems agency and State health planning and development agency review; certificate of need, 2008
Medical care and examination:
Technical amendments, 1852
Personnel:
Hansen's disease duty; special pay eliminated, 43144
Radiologic personnel; credentialing and educational programs accreditation standards, 50710
PROPOSED RULES
Health planning and resources development:
Hospital construction and modernization grants; Federal right of recovery and waiver of recovery (trust fund for health care for poor patients), 10798
Medical facility construction and modernization; uncompensated services assurance, 36454
Medical care and examination:
Underground coal miners, 34723
National Library of Medicine programs, 5638
Personnel:
National Health Service Corps private practice loans, 27465
NOTICES
Advisory committees, annual reports; availability, 7390
Committees; establishment, renewals, terminations, etc.:
Health Care Technology Assessment National Advisory Council, 15232
Smoking and Health Interagency Committee, 13665
Cooperative agreement awards:
Boys Clubs of America, 30882
Federal claims collection; cost of collecting delinquent debts, assessment, 41418
Grants; availability, etc.:
Adolescent family life demonstration programs, 21700, 24500
Adolescent family life research grants, 47502
Family planning service delivery improvement research grants, 3684, 47506
General family planning training projects, 12872
Health professions and nurse teaching facilities, federally-assisted; recovery of funds in transactions affecting ownership; policy statement, 34198

Health education assistance loan (HEAL) program; interest rates, 4808, 16754, 30238, 50235
Medical technology scientific evaluations:
Ambulatory blood pressure monitoring of hypertension, 31432
Angelchik anti-gastroesophageal reflux implantable device, 13422
Apheresis in treatment of--
Acute Landry-Guillain-Barre Syndrome, 13288
Systemic lupus erythematosus, 13288
Cardiac rehabilitation services, 32911
Cochlear implant devices, 7131
Continuous positive airway pressure in treatment of obstructive sleep apnea, 43468
End-stage renal disease, clinical management of patients undergoing dialysis, 47279
Endoscopic electrocoagulation for treatment of upper gastrointestinal bleeding, 43468, 45167, 48135
Hemofiltration as substitution for renal dialysis, 43797
Surgical implantation of automatic defibrillators in treatment of heart, 25466
Transillumination light scanning (diaphanography) in detection of breast cancer, 48644
Meetings:
Coordination and Maintenance Committee, 33110
National Toxicology Program; conference, 36491
National Toxicology Program; Scientific Counselors Board, 7658, 13665, 28124, 37290, 41599, 47280, 51455
Orphan Products Board, 47629
Smoking and Health Interagency Committee, 36676
Vital and Health Statistics National Committee, 8678, 9524, 14027, 23769, 33110, 35125, 40060, 43291
Meetings; advisory committees:
March, 7131
June, 20621
October, 36153
December, 47280
National toxicology program:
Carcinogens, fourth annual report; draft availability and inquiry, 51951
Chemicals nominated for testing; inquiry, 13666, 41028
Toxicology and carcinogenesis studies--
HC Blue No. 1, 43468
HC Blue No. 2, 43469
8-Hydroxyquinoline, 27852
Propylene oxide, 11948
Telone II, 29270
Organization, functions, and authority delegations:
Alcohol, Drug Abuse, and Mental Health Administration, 6256, 28842, 33416, 35125
Assistant Secretary for Health Office, 3840, 13666, 50847, 50848
Centers for Disease Control, 26053, 34553
Food and Drug Administration, 1278, 9908, 16155, 25328, 36678, 45670, 51606
Health Resources and Services Administration, 2728, 3415, 4917, 7657, 9132, 13287, 15491, 15786, 21357, 29767, 50235
National Center for Health Services Research and Health Care Technology Assessment, 13422, 13423
National Institutes of Health, 7658, 35329
Passive smoking; meeting, 49463
Patent licenses, exclusive:
MedQuest, Inc., 42228
Raf-Tan, Inc., 42228
Research Corp., 36676
Thermedics, Inc., 36676
Privacy Act; systems of records, 25469, 29270, 33853, 36491, 38212
Annual publication, 41412, 43611

RADIATION PROTECTION

See Environmental Protection Agency.
Food and Drug Administration.
Nuclear Regulatory Commission.

RAILROAD ACCOUNTING PRINCIPLES BOARD

NOTICES

Rail carriers; cost accounting principles; inquiry, 7153

RAILROAD RETIREMENT BOARD

RULES

Federal claims collection, 29957
Freedom of Information Act; implementation, 26356
Garnishment regulations, 12241
Privacy Act; implementation, 27222
Railroad Retirement Act:
Appeals procedure, 19523
Railroad Unemployment Insurance Act:
Appeals procedure, 19523
Employer contribution reports and payment, etc., 5234
Reduction in benefits; interim, 36870
Effective date deferred, 39993
Retirement annuities; computation of supplemental annuities, 11501

PROPOSED RULES

Annuities:
Lump-sum payments, 43575
Federal claims collection, 9285
Freedom of Information Act; implementation, 8341
Privacy Act; implementation, 10247
Railroad Retirement Act:
Annuities, awards, and denials; reopening of decisions, 48602
Appeals procedure, 9810
Retirement annuities; court decree or court-approved property settlements, 35568
Railroad Unemployment Insurance Act:
Appeals procedure, 9810
Regulatory agenda, 17980, 44828

NOTICES

Agency information collection activities under OMB review, 3437, 3853, 4003, 4287, 7153, 11035, 16764, 20516, 20865, 23565, 26424, 26644, 27708, 30321, 31797, 31798, 31937, 33877, 36172, 37302, 41076, 41431, 43624, 46373
Meetings:
Actuarial Advisory Committee, 9340
Meetings; Sunshine Act, 202, 7159, 11476, 16386, 23787, 29042, 36182, 42249, 49152
Privacy Act:
Computer matching program, 16029
Systems of records, 10332, 21155
Railroad Unemployment Insurance Act; determination, 51493
Supplemental annuity program; determination of quarterly rate of excise tax, 7021, 20018, 33878, 42241

RAILROADS

See Federal Railroad Administration.
Interstate Commerce Commission.
Railroad Accounting Principles Board.
Railroad Retirement Board.
United States Railway Association.

RECLAMATION BUREAU

RULES

Columbia Basin Project, WA; high land, reclassification as irrigable; CFR Part removed, 47050
Unproductive land, elimination or exchange; CFR Part removed, 47049

PROPOSED RULES

Boulder Canyon Project; power generation, operation, maintenance, and replacement, 49563
Newlands Reclamation Project; Truckee and Carson River operation and management procedures, etc., 11515
Projects governed by Federal reclamation law; acreage limitation for irrigation water users; hammer clause provisions; advance notice, 45438

NOTICES

Agency information collection activities under OMB review, 9135, 31435, 40063
Central Valley Project, CA:
Transfer of land to Agriculture Secretary, 34920
Water service ratesetting policy, 3420
Contract negotiations:
Bonneville Unit, Central Utah Project, UT, 24596, 32916
Grand Valley Water Users Association, Grand Valley Project, CO, 45502
Quarterly status tabulation of water service and repayment, 3600, 16361, 24328, 30528, 42103
Uncompahgre Valley Project, CO, 30238
Westlands Water District, San Luis Unit, Central Valley Project, CA, 47462
Environmental statements; availability, etc.:
All-American Canal Relocation Project, CA, 16755
Arroyo Pasajero Project, CA, 32496
Bedias Project, TX, 32121, 33421
Big Thompson, Windy Gap Projects, CO, 37064
Boise Project, ID and OR, 14776
Carson Hill Mine, Calaveras County, CA, 24843
Cenral Valley Project, CA, 51464
Central Utah Project, UT, 19248
Central Valley Project, CA, 19495, 25472, 37917, 38593
Colorado River Basin Salinity Control Project, CO, 40063
Colorado-Big Thompson, Windy Gap Projects, CO, 38040
Dolores Project, CO, 19595
Fallon Indian Reservation Irrigation and Drainage System, Newlands Project, NV, 32121, 36679, 43799

Reclamation

Freeman Diversion Improvement Project, United Water Conservation District, Ventura County, CA, 26414
Gallup-Navajo Indian Water Supply Project, AZ, NM, and UT, 1944
Garrison Diversion Unit, Pick-Sloan Missouri Basin Project, ND, 13885
Grass Valley Creek Debris Dam Project, CA, 48842
Hoover Powerplant Modification Project, AZ and NV, 186
Hungry Horse Project, MT, 5688
Jackson Lake Safety of Dams Project, ID and WY, 14775
Kellogg Unit Reformulations Study, CA, 49465
Kesterson Reservoir, CA, 21669, 26274, 28125, 28660
Lake Andes-Wagner Unit, Pick-Sloan Missouri Basin Program, SD, 8798, 14776, 38223
Milk River Water Supply Project, MT, 21669
Narrows Unit, Pick-Sloan Missouri Basin Program, CO, 9334
Newlands Project, CA and NV, 5934
North Side Pumping Division Extension, Minidoka Project, ID, 18580
Payette River Basin, Boise Project, ID and OR, 21369
Truckee and Carson River Basins, Newlands Project, NV, 23201
Tucson Aqueduct, Central Arizona Project, 1945, 33420
Upper Gila Water Supply Study, Central Arizona Project, AZ and NM, 38041, 41426
Westlands Water District, CA, 33649, 46844, 48842
Westside Irrigation Project, WY, 6410
Federal water resources planning; discount rate change, 50848
Meetings:
Colorado River Basin Salinity Control Advisory Council, 39786
Newlands project, CA and NV; operating criteria and procedures; inquiry, 5934
Non-Federal participation in planning investigation, etc.:
Colorado-Big Thompson Pumped-Storage Unit, CO, 10113
Power development planning studies:
Spring Canyon Pumped Storage Project, AZ, 7403, 12622
Power marketing plans:
Diamond Fork Power System and Jordanelle Powerplant, 12619
Sale of public lands:
Nevada, 897, 10547
Wyoming, 5440

RECREATION

See Fish and Wildlife Service.
Interior Department.
National Park Service.

REGULATORY INFORMATION SERVICE CENTER

PROPOSED RULES
Unified agenda of Federal regulations, 17072, 43952

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

RULES
Hazardous materials:
Aircraft and motor vehicle transportation; International Civil Aviation Organization technical instructions; implementation, 49393
Cylinder retester identification procedures, 46054
Correction, 49849
Effective date delayed, 52926
Editorial corrections and clarifications, 41521
Explosives; detonating cord classification and detonator packaging, 798
Individual exemptions; conversion into regulations of general applicability, 11700
Correction, 12544, 13381
Magnetized material, 48419
Nomenclature changes and authority delegation, 45728
Packaging and placarding requirements for liquids toxic by inhalation, 41092
Radioactive materials--
Radiation level limits for exclusive use shipments, 41895
Transportation of limited quantities; exemption renewal, 18667, 21051
Railroad tank cars, empty; placarding requirements, 39005
Correction, 46053
Shipment; miscellaneous amendments, 11048
Correction, 25993
Shipping and packaging requirements; coupler vertical restraint systems, 8635
Transportation between Canada and United States, 41516
Correction, 46053
Reconsideration petition, 52925
Tritium and carbon-14; low specific activity radioactive materials transported for disposal, 23811
United Nations packagings; testing agencies designation, 10060
Correction, 16089
Pipeline safety:
Hazardous liquids transportation; intrastate pipelines regulation, 15895
Correction, 38659, 39008
Response to petitions, 39088
Natural gas transportation, etc.--
Nondestructive testing, 37191
Ovality of field bends in steel pipe, 13224
Recordkeeping and accident reporting requirements, 34470
Nomenclature changes and authority delegation, 45728

PROPOSED RULES
Aviation proceedings:
Uniform system of accounts and reports for large certificated air carriers, 34366
Passenger origin-destination survey, 42870, 47063
Hazardous materials:
Aircraft and motor vehicle transportation; International Civil Aviation Organization technical instructions; implementation, 28820
Cargo tanks; manufacture, operation, etc.; requirements, 37766
Correction and clarification, 49866
Miscellaneous amendments, 288
Packaging and placarding requirements for liquids toxic by inhalation, 5270
Extension of time, 10088
Quantity limitations aboard aircraft; advance notice; summary of comments and hearing, 6013
Shippers; use of cargo, portable, IM portable, and multi-unit tank car tanks in TOFC and COFC service; advance notice, 18278
Transportation between Canada and United States, 23036
Pipeline safety:
Hazardous liquids transportation--
Gathering lines in rural areas, 48811
Intrastate pipelines regulation; reconsideration petitions, 25602, 31401
Steel line pipe specifications update, 45809
Welding requirements, 49429
Natural gas transportation, etc.--
Damage prevention program, 49575
Maximum allowable operating pressure; advance notice, 36116, 45845
Nondestructive testing, 11921

NOTICES
Committees; establishment, renewals, terminations, etc.:
National Hazardous Materials Transportation Advisory Committee, 52876
Technical Hazardous Liquid Pipeline Safety Standards Committee, 3862
Technical Pipeline Safety Standards Committee, 50248
Hazardous materials:
Applications; exemptions, renewals, etc., 1667, 1668, 2117, 5726, 5727, 7437, 8809, 9532, 9533, 10572, 13908, 13909, 15031, 19839, 19840, 20022, 24607, 26427, 28138, 28139, 29505, 32505, 32506, 37462, 37617, 37618, 38733, 41437, 41438, 42244, 47320, 47321, 48531, 50703, 50704, 50979
Compressed natural gas fuel system installations; cylinders used for equipment and vehicles, 41287
Hazardous waste cargo tanks; exemption requirement, 28140
High pressure composite hoop wrapped cylinders (fire-fighting equipment, etc.), 29037
Filling pressure, 32944
Inconsistency rulings, etc.--
Illinois; spent fuel shipments, 45186, 51767
New York City, NY, 2528, 3613, 4934, 5726, 24607, 37308, 47321
New York et al.; spent fuel shipments, 9939
Tucson City Code, 20872
Tank car specifications, 24734
Meetings:
International standards on transport of dangerous goods, 10138

UMI

National Hazardous Materials Transportation Advisory Committee, 4933, 16190, 33667, 51502
Technical Hazardous-Liquid Pipeline Safety Standards Committee, 5152, 32945
Technical Pipeline Safety Standards Committee, 5152, 32945, 47136
Nuclear Waste Policy Act:
Radioactive materials transportation; memorandum of understanding, 47421
Pipeline safety; waiver petitions:
International Paper Co., 45186
Tennessee Gas Pipeline Co., 11987, 27391
Transcontinental Gas Pipe Line Co., 47322
Transcontinental Gas Pipe Line Corp., 26652, 33667
Radionavigation plan, Federal; availability and inquiry, 26426

REVENUE SHARING OFFICE

RULES
Financial assistance to local governments, 3454, 8610, 8612, 26987
Audit requirements for local governments--Interim, 35072
Interim; correction, 36055

NOTICES
Data improvement program; definitions and effective dates, 32378
Entitlement period allocations:
Data definitions and initial allocations; final date for adjustment demands, 41979, 46531

RURAL ELECTRIFICATION ADMINISTRATION

RULES
Electric borrowers:
Advance of funds, 5366
Electric standards and specifications:
Material and equipment items approval, 47709
Wood crossarms (solid and laminated), transmission timbers and pole keys and wood poles, stubs and anchor logs, and quality control and inspection of timber products, 47713
Telephone standards and specifications:
Filled splice closures, 43693
Filled telephone cables with expanded insulation, 46628
Line concentrators; performance specification, 33331
Shield bonding connectors, 11497
Telephone station protectors, 37507

PROPOSED RULES
Electric borrowers:
Audit policies and procedures, 3290
Loan account computations, procedures and policies; unapplied advance payments, 5395
Telephone borrowers:
Audit policies and procedures, 3290
Telephone standards and specifications:
Materials, equipment, and documents approval, 42029
Totally filled fiber optic cable, 40865

NOTICES
Environmental statements; availability, etc.:
Alabama Electric Cooperative, Inc., 9473
Alaska Electric Generation & Transmission Cooperative, Inc., 25285
Arizona Electric Power Cooperative, Inc., 27997
Arkansas Electric Cooperative Corp., 41544
Associated Electric Cooperative, Inc., 7360
Basin Electric Power Cooperative, 38148
Central Electric Power Cooperative, Inc., 7623, 25614
Fergus Electric Cooperative, Inc., 35589
Glacier Electric Cooperative, Inc., 16726
Northern Rio Arriba Electric Cooperative, Inc., 19994
Oglethorpe Power Corp., 29994, 38148
Rio Grande Electric Cooperative, Inc., 7204
Sulfur Springs Valley Electric Cooperative, Inc., 7624
Tri-State Generation & Transmission Association, Inc., 39156
Vigilante Electric Cooperative, Inc., 47417
Loan guarantees, proposed:
Oglethorpe Power Corp., 45847
South Mississippi Electric Power Association, 36459

SAFETY

See Centers for Disease Control.
Coast Guard.
Consumer Product Safety Commission.
Federal Aviation Administration.
Federal Highway Administration.
Federal Railroad Administration.
Mine Safety and Health Administration.
National Highway Traffic Safety Administration.
National Transportation Safety Board.
Occupational Safety and Health Administration.
Occupational Safety and Health Review Commission.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

RULES
Seaway regulations:
Assessment, mitigation or remission of penalties, 10962
Tariff of tolls; feed grain definition, etc., 21263

PROPOSED RULES
Tariff of tolls, 51710
Feed grain definition, etc., 3926

NOTICES
Meetings:
Advisory Board, 5347, 19515, 31991, 45703

SCIENCE AND TECHNOLOGY POLICY OFFICE

NOTICES
Biotechnology regulation, coordinated framework:
Correction, 4003
Extension of time, 13301
U.S. laws, revised matrix, 47174
Cancer risk from chemicals; guidelines, 10372
Committees; establishment, renewals, terminations, etc.:
Biotechnology Science Coordinating Committee, 47174
Laboratory animal welfare:
Vertebrate animals used in testing, research, and training; utilization and care principles, 20864
Meetings:
Aeronautical Policy Review Committee, 20864
White House Science Council, 582, 8422, 19100, 24970, 35885, 45184

SECRET SERVICE

NOTICES
Senior Executive Service:
Performance Review Board; membership, 27084

SECURITIES AND EXCHANGE COMMISSION

RULES
Accounting bulletins, staff:
Financial guarantees; accounting for and disclosure, 52916
Financial statements, etc.; last-in, first-out inventory accounting practices, 11657
Noncurrent marketable equity securities, 37346
African Development Bank; primary offerings, 26190
Correction, 26981, 27947
Conflict of interests:
Food, refreshment, etc.; acceptance, 23286
Post-employment restrictions, 23668
Travel reimbursement acceptance; non-Federal sponsors payment or reimbursement for expenses, 45602
Financial reporting; significance of oral guarantees; interpretation, 51671
Freedom of Information Act; implementation, 45990
Public reference facilities in regional offices, 50286
Investment advisers:
Compensation based on share of capital gains, etc.; conditional exemption, 48556
Exemption application filing; policy and guidelines, 19339
Limited partnerships; client definition, 29206
Recordkeeping requirements, 2542
Redeemable securities sale at price that reflect different sales loads; exemption, 7909
Uniform investment adviser registration, disclosure, and reporting requirements; staff interpretations, 49835
Uniform investment adviser registration application form, 42903
Correction, 46281
Investment companies:
Custody of assets outside U.S.--
Compliance date extended, 5234, 24506
Exemptive relief clarification, 37654, 51673
Exemption application filing; policy and guidelines, 19339
Pricing of initial purchase payment for variable annuity contract, 42680
Pricing of redeemable securities for distribution, redemption, and repurchase, 24762
Quarterly reporting forms and filing obligations for registered investment companies; withdrawal and incorporation into semi-annual report (Form N-SAR), etc., 27937

Correction, 29368, 31839
Redeemable securities sale at prices that reflect different sales loads; exemption, 7909
Regular broker or dealer, and persons not deemed interested persons; correction, 3506
Semi-annual report form for registered investment companies (Form N-SAR), etc.; final rule and request for comments, 1442
Correction, 2956
Separate accounts funding flexible premium variable life insurance contracts, 28930
Comment period extended, 3317
Organization, functions, and authority delegations, 12239
Investment Management Division, Director; administration of Public Utility Holding Company Act, 5064
Market Regulation Division, Director, 7171, 28385, 29368, 30266, 32555
Practice and procedure:
Unlisted trading privileges in over-the-counter securities; policy statement, 38640
Public utility holding companies:
Application and declaration filings; proposed notice of proceeding initiated, 50611
Pilot electronic disclosure system; temporary rules and forms, 23287
Records services; fee schedule and designation of service contractor, 45990
Securities:
Bank municipal securities dealer registration application (Form MSD); Privacy Act statement, 29948
Broker-dealers--
Confirmation disclosure for reported securities, 37648
Customer protection rule, 41337
Registration; applicability to banks, 28385, 52440
Registration (Form BD revision), and successor rules, 41867, 46281
Business combination transactions--
Registration form for foreign registrants (Form F-4), 19010
Registration form for investment companies (Form N-14), 48379
Registration forms (Forms S-4 and 8-K), 18990
Composite compliance examination information; disclosure to Municipal Securities Rulemaking Board, 48555
Confidential treatment filed by institutional investment managers form instructions, 21423
Financial statements and regulation S-X; technical amendments to rules and forms, 25214, 49529
Insurance company separate accounts offering variable annuity contracts; registration forms (Forms N-3, N-4), etc., 26145
Integrated disclosure system; technical amendments to rules, forms, and schedules; correction, 9267
National market system securities designations, 730, 38515
Persons deemed not to be brokers, 27940
Pilot electronic disclosure system; temporary rules and forms, 40479
Proxy review program; proposals of security holders, reinstatement of threshold percentage tests, 48180
Quarterly reporting forms and filing obligations for registered investment companies; withdrawal and incorporation into semi-annual report (Form N-SAR), etc., 27937
Registration exemption of securities underlying options, 20201
Semi-annual report form for registered investment companies (Form N-SAR), etc.; final rule and request for comments, 1442
Correction, 2956, 5234
Shareholder communications, facilitation, 42672
Short tendering rule, 8100

PROPOSED RULES

Financial statements (Regulation S-X):
Accounting for distribution expenses, 28953
Registrant and its subsidiaries and affiliates; consolidated and combined financial statements, 19035
Repurchase and reverse repurchase transactions; disclosure amendments; advance notice, 27973
Freedom of Information Act; implementation; public reference facilities in regional offices, 30858
Investment advisers:
Compensation based on share of capital gains, etc.; conditional exemption, 11718
Limited partnerships; client definition, 8740
Uniform investment adviser registration application form, 18500
Investment companies:
Custody of assets outside U.S.; exemptive relief clarification, 24540
Portfolio instruments; acquisition and valuation, 27982
Proxy rules; comprehensive review, 29409
Registration statement forms; conforming amendments, 1542
Separate accounts funding scheduled premium variable life insurance contracts, 11709
Extension of time, 20227
Unit investment trusts registration (Form N-7), 21282
Public utility holding companies:
Application and declaration filings; proposed notice of proceeding initiated, 27981
Competitive bidding rule; affiliated persons of investment bankers and commercial banking institutions; exemption to serve as officers or directors, 49354, 49705
Competitive bidding rule; and affiliated persons of investment bankers and commercial banking institutions; exemption to serve as officers or directors, 21080
Regulatory agenda, 18194, 45034
Securities:
Annuity or optional annuity contract, definition (safe harbor, etc.); extension of time, 7186
Broker-dealers--
Confirmation disclosure for reported securities, 5766, 13388
Customer protection rule, 11896
Net capital requirements; financial responsibility rules; advance notice, 2690, 16710
Registration (Form BD revision), and successor rules, 19196
Business combination transactions; registration form for investment companies (Form N-14), 11725
Composite compliance examination information; disclosure to Municipal Securities Rulemaking Board, 23443
Correction, 28106
Direct participation program interests exemption; broker-dealer credit extensions; extension of time, 3351
Financial statements and regulation S-X; technical amendments to rules and forms, 25259
Government securities markets and dealers; oversight; need for legislative or regulatory initiatives, 15904
Initiation or resumption of quotations without specified information, 14111
Internationalization of world securities market, 16302
Extension of time, 27829
Lost and stolen securities program, 50624
Multinational offerings facilitation, 9281
National market systems securities designation, etc., 7065, 26584, 41697
Extension of time, 41907
Net capital requirements; nonconvertible debt securities; haircuts on hedged positions, 42961
Opinion shopping, 28219
Options disclosure document, 38673
Prohibition against trading by persons interested in a distribution, 42716
Proxy rules; comprehensive review, 29409
Registration and reporting requirements for small issuers, 41162
Registration statement forms; conforming amendments, 1542
Shareholder communications, facilitation, 13612
Short sales, 38671
Tender offers--
Equal treatment of security holders; withdrawn, 27981
Issuers, 28210
Mergers, etc.; filing fees, 28404
Third-party; equal treatment of security holders, 27976, 46731
Transfer agents; registration forms TA-1 and TA-2, 15912
Unit investment trusts registration (Form N-7), 21282

NOTICES

Agency information collection activities under OMB review, 907, 1153, 2636, 5023, 8040, 8203, 8204, 11773, 16033, 18340, 21155, 25138, 27868, 27871, 28486, 29035, 31448, 31798, 31939, 32338, 32919, 33879, 34226, 38731, 43823, 46850, 48670, 50242, 50878, 51493, 53035
Consolidated quotation plan; amendments, 42813, 45516
Consolidated Tape Association plan; amendments, 23218, 45516
Electronic filing, processing, and information dissemination system; inquiry, 51495
Intermarket trading system:
Filing and immediate effectiveness amendment, 41278

Summary effectiveness amendment, 25640
Meetings:
Edgar operational system, 47886
Securities immobilization workshops, 5462
Small Business Capital Formation, Government-Business Forum, 4004
Meetings; Sunshine Act, 1297, 1974, 3078, 3867, 4299, 4936, 5350, 6095, 6309, 7264, 7265, 7869, 8047, 9358, 10346, 11045, 11288, 11613, 12438, 12685, 13914, 14192, 15036, 15275, 15525, 16580, 18346, 19605, 19606, 20033, 20342, 20520, 20646, 21390, 21690, 23239, 24085, 24873, 25378, 25512, 25651, 26438, 26655, 27885, 35177, 36183, 37110, 37757, 37947, 38243, 38244, 40101, 40470, 41089, 41620, 42249, 43312, 43832, 45705, 46535, 48154, 48537, 49152, 50252, 50707, 51330, 51652, 51773
National market system securities:
Institutional Networks Corp. et al.; reconsideration request denied, 10565
National Association of Securities Dealers, Inc.; summary effectiveness, etc., 3610, 23370, 49642
Side-by-side market making pilot; reconsideration petition denied, etc., 39191
Options price reporting authority:
Immediate effectiveness of amendment, 16376
Plan amendment, 35347
Practice and procedure:
Securities Investor Protection Corp.; bylaw change relating to fund assessments on members, proposed, 53044
Privacy Act; systems of records, 37750
Securities:
Foreign issuers; exemption from registration and reporting requirements; list, 35886
Securities immobilization workshops, 5462
Report availability and inquiry, 27078
Self-regulatory organizations:
American Stock Exchange, Inc.; abbreviated reporting of minor disciplinary infractions, 7245, 14068
American Stock Exchange, Inc., et al.; intermarket trading system plan amendment, 26283
Fingerprinting plan; National Association of Securities Dealers, Inc., 15027, 25503
Options; OTC market trading, etc., 20310
Options disclosure document--
Options Clearing Corp. et al., 38732
Trans Canada Options, Inc., et al., 34956
Orders granting application to strike stock from listing and registration--
Anthem Electronics, Inc., 51957
CalMat Co., 47887
CF&I Steel Corp., 34781
Coradian Corp., 43827
Countrywide Credit Industries, Inc., 47478
CRS Sirrine, Inc., 47477
Federal Realty Investment Trust, 40092
Getty Petroleum Corp., 39197
International Controls Corp., 38600
Knogo Corp., 41268
New York Stock Exchange, Inc., 11977
Nord Resources Corp., 42110
Pearce, Urstadt, Mayer & Greer, Inc., 41285
Philadelphia Stock Exchange, Inc., 9531
Scott Cable Communications, Inc., 33880
Standard Products Co., 48671
Willcox & Gibbs, Inc., 38235
Regulatory responsibilities plan; Midwest Stock Exchange, Inc., and Cincinnati Stock Exchange, Inc., 36173, 45513
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., et al., 1964, 2360, 2745, 4004, 5023, 5024, 5831, 7021, 7433, 9930, 10566, 11972, 12671, 14058, 14063, 14069, 15027, 15258, 19504, 19507, 19508, 20310, 21533, 21535, 23208, 23567, 23859, 24334, 24728, 26283, 26649, 27871, 27872, 27873, 28134, 29776, 32930, 32931, 32932, 33139, 33142, 33438, 33439, 37457, 37925, 39200, 39201, 39206, 39207, 40093, 40633, 41076, 41280, 43824, 45694, 46376, 47480, 48286, 48848, 49643, 49808, 50881, 50976, 51958
Boston Stock Exchange, Inc., 907, 1152, 5023, 13904, 14480, 15518, 25499, 25505, 33662, 48511, 48512
Boston Stock Exchange Clearing Corp., 11774, 20018, 20020
Chicago Board Options Exchange, Inc., et al., 374, 911, 1153, 4823, 5459, 5832, 6420, 7431, 7679, 8691, 10877, 11774, 12098, 12431, 12670, 12671, 13440, 13899, 13900, 14482, 15258, 15518, 15520, 19508, 19509, 19832, 20334, 21381, 21386, 21531, 21536, 21676, 23090, 23217, 23218, 23860, 23861, 23862, 24072, 24073, 24729, 25506, 25640, 25641, 25809, 28676, 29032, 30552, 31264, 31266, 31449, 32933, 32934, 33137, 34784, 35351, 37753, 39207, 39208, 40093, 40095, 40096, 40252, 40636, 40640, 41270, 45516, 46377, 47481, 48514, 49643
Cincinnati Stock Exchange, Inc., 1025, 6300, 10567, 18756, 33880, 39209
Depository Trust Co., 7247, 38601, 41271, 48515, 48849
Midwest Clearing Corp. et al., 1966, 4006, 5832, 5833, 8038, 11976, 13443, 18952, 20021, 24729, 37754, 51645
Midwest Securities Trust Co., 1152, 5149, 5344, 5834, 9931, 10568, 13443, 33442, 45518, 47888, 48849, 51764
Midwest Stock Exchange, Inc., 908, 909, 1662, 2362, 3858, 4287, 6421, 7431, 9738, 9739, 23216, 23370, 25501, 29034, 35890, 35895, 37104, 45695, 46378, 53045
Municipal Securities Rulemaking Board, 374, 3443, 6421, 7680, 9923, 9932, 11278, 11775, 11776, 12883, 13905, 14064, 15666, 18336, 18601, 18602, 21010, 21677, 24852, 25140, 26869, 28135, 30038, 31666, 32934, 34569, 35340, 35896, 36505, 36689, 42814, 43488, 45519, 47482, 53046
National Association of Securities Dealers, Inc., 911, 1662, 4007, 5024, 5344, 6301, 7432, 7435, 9342, 11035, 11039, 11040, 11041, 11042, 11472, 11777, 12672, 12673, 14069, 16035, 20641, 21678, 24074, 24853, 26424, 26650, 27875, 28676, 29290, 29291, 29503, 29779, 30551, 30899, 31264, 31941, 32936, 32941, 36692, 37937, 38235, 38238, 39210, 40641, 41273, 41281, 41769, 43822, 46528, 46850, 47473, 47474, 47483, 48288, 48850, 48851, 49644, 53047
National Securities Clearing Corp., 1966, 13906, 19510, 20336, 23784, 24730, 25368, 30039, 31450, 32816, 41274
New York Stock Exchange, Inc., 1664, 2363, 3859, 5025, 5460, 5708, 5834, 7250, 7432, 8039, 10135, 10568, 11472, 12431, 13297, 14327, 15259, 15263, 16376, 16768, 18592, 18594, 18602, 18757, 21007, 21008, 23371, 23568, 23863, 24075, 27875, 27880, 28136, 32816, 32818, 33662, 33666, 34570, 38600, 38601, 39211, 41082, 41083, 41084, 41271, 41283, 41770, 43051, 43825, 45185, 45692, 46720, 48669, 49638, 50245, 50692, 51499, 53049, 53413
Options Clearing Corp., 3445, 4292, 5341, 6089, 8806, 10334, 10569, 13444, 19833, 20021, 21382, 23568, 24853, 25811, 27881, 29289, 29777, 30897, 31804, 33443, 33444, 35340, 35897, 36176, 39792, 39793, 42110, 50882, 53052
Pacific Clearing Corp. et al., 5837, 9530, 15028, 16184, 25144, 30039, 35898, 37939, 47484, 47485, 48852, 49645, 51500
Pacific Securities Depository Trust Co., 3440, 9530, 15028, 16184, 24730, 30039, 32667, 35898, 37937, 38602, 46721, 47486, 49645
Pacific Stock Exchange, Inc., 1023, 3859, 4292, 5837, 7248, 8040, 8691, 9340, 9739, 13440, 15028, 15262, 18595, 18596, 19508, 19600, 20309, 23095, 23096, 24076, 25499, 26871, 27882, 30898, 33445, 35343, 35899, 40097, 40643, 41431, 41775, 41776, 42111, 43050, 43052, 43053, 45697, 48529, 48853, 50883, 51646, 52398, 53050
Philadelphia Depository Trust Co., 1024, 7154
Philadelphia Stock Exchange, Inc., 1154, 1155, 2364, 2639, 2640, 3445, 3859, 5838, 7248, 7260, 7433, 8030, 8691, 10335, 12098, 13440, 13902, 16185, 18595, 19508, 21532, 21536, 23569, 24856, 25502, 27882, 29036, 30553, 31802, 32819, 34785, 34955, 36686, 37458, 37933, 41276, 41277, 45697, 46851, 48517, 48855, 53051
Stock Clearing Corp. of Philadelphia et al., 1967, 5343
Self-regulatory organizations; unlisted trading privileges:
American Stock Exchange, Inc., et al., 20310
Boston Stock Exchange, Inc., 4004, 5706, 11277, 34783, 35350, 46235
Cincinnati Stock Exchange, Inc., 912, 5707, 10134, 11278, 16032, 19836,

29033, 30037, 33139, 35891, 48671, 51501
Midwest Stock Exchange, Inc., 912, 4005, 5708, 6419, 8205, 10135, 12098, 12882, 12883, 16032, 18954, 25807, 29288, 30038, 30322, 30775, 33884, 39213, 39214, 40095, 41775, 43823, 46378, 48671, 50245
Pacific Stock Exchange, Inc., 3444, 4005, 5714, 8692, 10136, 12098, 12883, 16032, 19512, 25807, 29035, 30038, 31942, 35900, 42112, 48672
Philadelphia Stock Exchange, Inc., 912, 3444, 5715, 6420, 8205, 8693, 11279, 11280, 12884, 16036, 24730, 25808, 27871, 29035, 29036, 29289, 31264, 33139, 34783, 35892, 37940, 38239, 39213, 42112, 45185, 45520, 45694, 46235, 47487, 48670, 49477, 49642, 50977
Senior Executive Service:
Bonus awards schedule, 49479
Performance Review Board; membership, 49479
Applications, etc.:
AARP Insured Tax Free Income Trust et al., 21383
AARP U.S. Government Money Market Trust et al., 23210
ACF Industries, Inc., 8204
Affiliated Fund, Inc., et al., 50974
Alabama Power Co. et al., 12430, 37742, 46234
Alleghany Corp., 11772
Allegheny Generating Co. et al., 25503, 37743
Allegheny Power System, Inc., et al., 12431, 24972
Alliance Capital Management Corp., 23780
Allied Capital Corp. et al., 35892
Amax, Inc., 29499
American Balanced Fund, Inc., et al., 7664
American Capital Comstock Fund, Inc., et al., 3609
American Capital Option Income Fund, Inc., 23089
American Electric Power Co., Inc., et al., 20636, 24070, 36506, 48518, 50975
American Express Credit Corp., 34223
American Federation of Labor and Congress of Industrial Organizations Mortgage Investment Trust, 5147
American Pension Investors Trust et al., 20308
American Southwest Financial Co., Inc., 5334
American Southwest Financial Corp., 5148
Appalachian Power Co., 5703
Arkansas Power & Light Co. et al., 1657, 4288, 30896
Armco, Inc., 23856
ASA Ltd., 50375
Associated Natural Gas Co., 47134
Associated Wholesalers, Inc., 21679
Association of Publicly Traded Investment Funds, 23212
Baker, Fentress & Co., 14054
Banca Nazionale Del Lavoro et al., 7671
Bank of New Zealand et al., 11965
Baupost Group, Inc., et al., 24972
Beacon Income Fund, Inc., 15021
Bear, Stearns & Co., 19501
Benham California Tax-Free Trust et al., 20308
BHP Finance (USA) Inc., 49476
Blackhawk Coal Co. et al., 33657
Blackstone Valley Electric Co., 36507
Boetticher Venture Capital Partners, L.P., et al., 10125
Bowen Basin Capital Corp. Ltd., 7665
BP North American Finance Corp., 31938
Caisse Nationale de Credit Agricole et al., 582
Calvert Fund, 25809
Cameron Iron Works, Inc., 6417
Capital Preservation Fund, Inc., et al., 41767
Capital Realty Investors-V Ltd. Partnership, 35344
Carillon Fund, Inc., 1149
Carnegie-Cappiello Growth Trust et al., 29780
Carnegie/KILICO Variable Annuity Account, 14324
Castle & Cooke, Inc., 35630
Cedar Coal Co. et al., 50693
CEF/KILICO Variable Annuity Account, 14324
Centennial Growth Fund, Inc., 13437
Central Ohio Coal Co. et al., 6417, 14325
Central Operating Co., 47135
Central Power & Light Co. et al., 8805, 21380, 24974, 29776, 47477
Central & South West Corp. et al., 5335, 7246, 8028, 21680, 27869, 27870, 32668, 35347
CenTrust Mortgage Acceptance Corp., 14054
CG Money Market Fund II, Inc., 2744
Chase Manhattan Bank, N.A., 31799
Chesebrough-Pond's Inc., 10129, 53035
Chevron Corp. et al., 47479
Chicago Pacific Corp., 25366
Christiania Capital Corp., 33878
Chrysler Financial Corp., 37456
Citicorp, 5704, 26865, 30894, 45698, 45700, 47887
Citicorp Homeowners, Inc., et al., 36938
Clabir Corp., 7249
Cleveland-Cliffs Inc. et al., 14064
CNG Energy Co., 21380, 49807
CNG Producing Co. et al., 37743
Co-operative Bank Investment Fund, 39793
CoElco, Ltd., 16764
Collateralized Mortgage Securities Corp., 18953
Colonial Government Securities Plus Trust, 13438
Colonial Penn Series Trust et al., 49806
Colorado-Ute Electric Association, Inc., 9934
Columbia Alaskan Gas Transmission Corp. et al., 42812
Columbia Gas System, Inc., et al., 1150, 18593, 20335, 26645, 35348, 43047, 49471
Columbia Gas Transmission Corp. et al., 20637, 28132
Columbus & Southern Ohio Electric Co., 16373, 32668, 46374, 48527
Comerica Bank Canada, 23213
Commercial Credit Co., 53036
Commerzbank Aktiengesellschaft, 46854
Commonwealth Group, Inc., et al., 7246
Compagnie Financiere de Credit Industriel et Commercial et al., 47470
Companion Income Fund, Inc., 21156
Composite AccessFund, Inc., 47886
Conesville Coal Preparation Co. et al., 18956
Connecticut Light & Power Co. et al., 199, 7672, 16182, 23368, 32815, 32920, 33659, 43486, 43487, 49472
Connecticut Mutual Life Insurance Co. et al., 23369
Connecticut Yankee Atomic Power Co. et al., 5336
Conning/Bigler Ltd. Partnership, 49636
Consolidated Gas Transmission Corp. et al., 43828
Consolidated Natural Gas Co. et al., 8029, 15021, 23565, 26866, 29288, 35349, 46229
Copenhagen Handelsbank North America Inc., 7674
Counsellors Cash Reserve Fund, Inc., et al., 33435
Counsellors New York Tax Exempt Fund, Inc., 7673
Crown America Life Insurance Co. et al., 25808
Cuivre River Electric Cooperative, Inc., 15665
Daily Income Fund Inc. et al., 19833
Data Architects, Inc., 19828
Dataflex Corp., 6418
DBL Tax-Free Cash Fund Inc., 14065
DMC Corporate Dividend Fund, Inc., 29500
Donald Sheldon Group, Inc., et al., 32499
Double Exempt Flex Fund, Inc., et al., 43509
Drexel Burnham Lambert Inc., 53410
Drexel Series Trust, 1287, 25495
Dreyfus Tax Exempt Cash Management, Inc., 23781
Dynapac, Inc., 10877
E.F. Hutton & Co., Inc., et al., 19501, 26645, 45688
E.I.P. Funding Corp., 2747
Eastern Utilities Associates et al., 10333, 43048, 47885
Eastwest Penny Stock Fund, Inc., 23089
Eaton & Howard Balanced Fund, 27519
Eaton Vance Government Obligations Trust, 32920
Eberstadt International Fund, L.P., 41277
Edward D. Jones & Co. et al., 41267
Elder's Finance & Investment Co. Ltd., 9921
Eli Securities Co., 11280
Empire Exploration, Inc., et al., 37744
Empire State Municipal Exempt Trust et al., 4288
Energy Fund Inc. et al., 14056
Energy North, Inc., 5839
Equitable Life Financing Corp., 12884
Equitable Variable Life Insurance Co. et al., 4289, 53037
Exxon Corp. et al., 29501
Faletti, Peter F., 7021
Federal Life Money Market Fund, Inc., et al., 35346
Federated Government Securities Trust, 49646
Federated Mortgage Securities Income Fund, 38235
Fidelity Management & Research Co., 18596
Fidelity Standard Life Insurance Co. et al., 45511
Financial Industrial Fund, Inc., et al., 2875
Financiere Credit Suisse-First Boston et al., 51761
Fir Tree International Fund, Inc., 34782

First American International Fund, Inc., 26868
First Bank System, Inc., 19827
First Boston Investment Ltd. Partnership No. 3 et al., 24974
First Chicago Corp., 24724
First Investors Corporate Fund, Inc., 49646
First Investors Management Co., Inc., 10131
First Investors New York Tax Free Fund, Inc., 6090
First PV Funding Corp., 50695
500 Grant Street Associates Ltd. Partnership, 24725
FPA Paramount Fund, Inc., et al., 45510
Frank Russell Capital Co., 34224
Franklin Denver Ltd. Partnership, 11282
Franklin Lakeshore Ltd. Partnership, 31085
Freedom Investment Trust, 37103
Fundpack, Inc., 26647
FundsNet, Inc., 30321
General Foods Corp., 49477
General Mills, Inc., 4290, 21156
General Public Utilities Corp. et al., 9529, 9924
Georgia Power Co., 3854, 33665, 42812
Golden Corral Pooling Group, 10563
Gotabanken et al., 16374
Government Investors Trust et al., 16183
Great-West Life & Annuity Insurance Co. et al., 24333, 27868
Greater Washington Investors, Inc., 26281, 38598
Greenbelt Cooperative, Inc., 19503
GTE Finance Corp., 24725
Guardian Insurance & Annuity Co., Inc., et al., 34561
Gulf Power Co., 34224
Hartford Advisers Fund, Inc., 43487
Hartford Government Securities Fund, Inc., 19834
Hartford Variable Annuity Life Insurance Co.-Variable Account "B", 52392
Hawaiian Electric Industries, Inc., 2358
Highland Capital Corp., 15022
Holding Trust, 26647
HOMAC Mortgage Securities Corp., 23215
Household Finance Corp., 9935
Hudson River Fund, Inc., 53039
Hughes Aircraft Co. et al., 48527
Hutton Advantaged Housing Properties Ltd. Partnership et al., 374
Hutton Investment Series Inc., 8032
Hutton UIT Variable Account, 14325
IDS Certificate Co., 31939
IDS Life Capital Resource Fund I, Inc., 52393
IDS Life Insurance Co. et al., 48519, 48522
IDS Life Special Income Fund I, Inc., 52394
IDS Mutual, Inc., et al., 21527, 51762
IDS Ready Income Money Fund, Inc., 13439
ImmunoGenetics, Inc., 30322
Indiana Community Business Credit Corp., 21681
Indiana Community Credit Corp., 39795
Indiana & Michigan Electric Co., 16764, 20639
Institutional Liquid Assets et al., 2636
Institutional Telephone Trust, First Exchange Series, 52394
Integrated Capital Appreciation Fund, Inc., 21528
Intermark, Inc., 13898
Investment Trust of Boston et al., 50878
ISFA Mortgage Funding Corp., 16033
ITT Financial Corp., 30774
Janus Fund, Inc., et al., 2877
Japan Fund, Inc., 12427
Jersey Central Power & Light Co. et al., 2359, 27870, 28131, 30899, 32921
John Hancock Variable Life Insurance Co. et al., 3441
John Hancock Venture Capital Management, Inc., 25139
Johnstown American Companies, 27519
Joseph E. Seagram & Sons, Inc., et al., 3437, 7677
Keystone Provident Life Insurance Co. et al., 8027, 53041
Keystone Tax Exempt Trust, 32922
Kidder, Peabody & Co. Inc., 9935
KILICO Money Market Fund, Inc., 29287
Kingsport Power Co. et al., 53412
Kleinwort, Benson Ltd., et al., 50242
Koenig Tax-Advantaged Liquidity Fund, Inc., 24976
Kohl, Atlee M., 20639
Lazard Freres & Co., 51647
Lee, Robert E., 7022, 12885
Legg Mason Tax-Exempt Trust, Inc., 7427
Liberty U.S. Government Money Market Trust et al., 29502
Libra Bank PLC, 14066
Libra Fund, Inc., 46229
Libra U.S. Capital Corp., 32498
Life Insurance Co. of Virginia et al., 11967, 33136, 48523
Liquidity Fund, Inc., 32815
Lloyds Bank plc et al., 46717
Logicon, Inc., 11283
Louisiana Power & Light Co. et al., 3071, 33660, 45512
Maine Yankee Atomic Power Co. et al., 25504, 43488
Manufacturers Hanover Mortgage Corp., 19503
Mass. Variable Life Separate Account I et al., 1658
Massachusetts Electric Co., 15665, 37744
Massachusetts Mutual Life Insurance Co. et al., 19828
Massachusetts Tax Exempt Unit Trust et al., 8029
Maui Electric Co., Ltd., 50688
Mecfint (Jersey) Ltd., 3855
Medalist Industries, Inc., 16031
Medco Containment Services, Inc., 19504
Merrill Lynch, Pierce, Fenner & Smith, Inc., et al., 18598, 34563
Merrill Lynch California Municipal Series Trust, 34565
Merrill Lynch Corporate Dividend Fund, Inc., et al., 11275
Merrill Lynch Kecalp Growth Investments Ltd. Partnership 1983 et al., 8035
Merrill Lynch KECALP L.P. 1984 et al., 11969
Merrill Lynch Multi-State Tax-Exempt Series Trust, 34954
Merrill Lynch Natural Resources Trust, 27521
MESBIC Financial Corp. of Dallas, 41269
Metropolitan Edison Co. et al., 31943, 35894, 53043
Metropolitan Tower Life Insurance Co. et al., 37745
MFS Government Guaranteed Securities Trust et al., 2878
MGTC, Inc., 9924
Middle South Energy, Inc., et al., 9530, 16765, 28133, 41278, 52397
Middle South Utilities, Inc., et al., 8690, 18597, 20640, 26282, 26648, 28136, 28137, 36507, 45184, 47473, 49473, 49647
Midwest Energy Co., 50694, 50880
Minnesota Mutual Life Insurance Co. et al., 46719
Mississippi Power Co., 19599
Mississippi Power & Light Co. et al., 3071
Mitsui Bank of Canada, 1969
ML Venture Partners I, L.P., et al., 3438, 51493
Monarch Life Insurance Co. et al., 10127
Monongahela Power Co. et al., 14483
Morgan Guaranty Trust Co. of New York, 34224
Mortgage Bankers Financial Corp. II, 52395
Musikahn Corp., 27079
Narragansett Capital Corp. et al., 1289, 7666, 29030, 48524
Narragansett Electric Co., 45515
National Fuel Gas Co. et al., 3442, 20335, 26649, 36175, 48286, 49474, 50688
National Fuel Gas Distribution Corp., 50377
National Home Finance Co., 11281
National Housing Partnership Realty Fund Two, 9925
National Mutual Life Association of Australasia Ltd. et al., 49647
Nationwide Multi-Flex Money Market Trust, 1292
NEES Energy, Inc., 48288
New England Electric System et al., 8037, 8690, 23782, 32923, 37746, 45515, 53043
New England Energy, Inc., et al., 9926, 32339, 52397
New England Life Government Securities Trust, 47472
New England Power Co., 4006, 43829, 50690
New Orleans Public Service Inc. et al., 1659, 32669
North American Security Life Insurance Co. et al., 21158
North Holding Co., 35889
Northeast Nuclear Energy Co. et al., 36508
Northeast Utilities et al., 910, 4290, 24071
Northwestern Mutual Life Insurance Co. et al., 39197
Northwestern National Life Insurance Co. et al., 50244
Ohio Power Co. et al., 19831
Omega Government Fund, Inc., 29291
Omega Venture Partners I Ltd., 29289
PaineWebber Municipal Bond Fund et al., 3072
PaineWebber Programmed Amortization Term Securities, Inc., 15261
PaineWebber TAGS Trust, Series 1, et al., 6297
PaineWebber Tax-Exempt Income Fund, Inc., 7670
Parkway U.S. Government Trust, 29502
Partners' Deferral Fund et al., 50691
Partners' Growth Fund et al., 10132
Pennsylvania Electric Co., 41771
Pennwalt Corp. et al., 1150
People Express Airlines, Inc., 32923
Phillips Petroleum Co., 35346
Piedmont Income Fund, Inc., 34782

Pierson, Heldring, & Pierson, N.V., 31800
Pilgrim Fund, Inc., 41280
PMG Housing Partners 1984-III, 3857
PMG Housing Partners 1984-IV, 5337
Postipankki et al., 23858
Privatbanken A/S, 23219
Proctor & Gamble Co., 12429
Proven Properties, Inc., 49650
Provident Mutual Variable Life Insurance Co. et al., 37747
Pruco Life Insurance Co. et al., 23782, 47475, 48520
Pruco Life Series Fund, Inc., 51649
Prudential Employees Ltd. Partnership-1986, 49651
Prudential-Bache Adjustable Rate Preferred Stock Fund, Inc., et al., 53412
Prudential-Bache Global Fund, Inc., et al., 23857, 33665
Prudential-Bache Government Plus Fund, Inc., 39199
Prudential-Bache Securities Inc., 7675, 31086
Public Service Co. of Oklahoma et al., 41772, 49894
Putnam High Income Government Trust et al., 52399
Putnam Tax-Free Income Trust et al., 32924
Pyramid Magnetics, Inc., 11970
Retirement Planning Funds of America, Inc., 8030
Rightime Fund, Inc., 38731
Rochester Tax Managed Fund, Inc., et al., 9736
Ryland Acceptance Corp. Four, 34567
Salomon Brothers Mortgage Securities II, Inc., 6418
Salomon Brothers Mortgage Securities V, Inc., 31798
Salomon Brothers Unit Investment Trust, 14326, 15023
Salomon Capital Access Corp., 18954
Sanwa Bank Canada, 46230
Savings Industry Primary Liquidity Fund, Inc., 40632
Savings Industry Primary Liquidity Fund II, Inc., 40633
SBD Lease Funding Corp., 26067
SCI Equity Associates, L.P., 46375
Scudder Variable Life Investment Fund et al., 38934
Sears Corporate Investment Trust, 23570
Sears Mortgage Securities Corp., 16766
Secured Holding Co., Inc., 46231
Securities Investor Protection Corp., 31801
Security Equity Fund et al., 2637
Security Pacific Corp., 16031
Separate Account II of Equitable Variable Life Insurance Co., 34030
Separate Account One of Maine Fidelity Life Insurance Co., 15020
Seven Star Partners, Ltd., 2744
Shearson Lehman Brothers Capital Partners-85 et al., 32925
Shearson Lehman Special Portfolios, 32928, 37936
Shell Oil Co., 26868
Shelter Resource Fund II et al., 24726
Sigma Corporate Adjustable Rate Fund, Inc., 2745
SMA Life Assurance Co. et al., 9936
Solomon, David B., 51643
Source Capital, Inc., 19834
South Jersey Industries, Inc., 5338, 12099, 49474
Southeast Banking Corp., 5339
Southeastern Growth Fund, Inc., 16765
Southeastern Michigan Gas Enterprises, Inc., 15025
Southern Appalachian Coal Co., 28675
Southern Co. et al., 9930, 11473, 21381, 25505, 31663, 31941, 35350, 41773, 42108
Southwestern Electric Power Co., 30322, 41774
Sponsored Money Fund, Inc., 13440
SPR Fund, Inc., 3443
Standby Tax-Exempt Reserve Fund, Inc., 46232
State Street Bank & Trust Co., 31805, 48667
Stewardship Money Fund, Inc., 21159
Storage Equities, Inc., 15020, 25497, 25498, 35338, 35339, 51957
Sun Life Insurance & Annuity Co. of New York et al., 18593
Sun Life of Canada (U.S.) Variable Account D, 28487
Sunair Electronics, Inc., 7249
System Fuels, Inc., et al., 11283, 49475
Tax-Free Cash Reserve, Inc., et al., 32670
Tax-Free Income Portfolios, Inc., 48668
TCW Asset Management Co., 19830
Technology Fund, Inc., et al., 1661, 21384
Templeton Global Funds, Inc., et al., 11970
Temporary Investment Fund, Inc., et al., 9927
Texas Federal Savings & Loan Association, 911
Thomson McKinnon Investment Trust et al., 42815
Thrift Financing Corp., 7678
Thrift Mortgage Acceptance Corp., 25638
Trans World Airlines, Inc., 7428
Transok, Inc., 5705
Triangle Industries, Inc., 12882
Trident Acceptance Corp., 32942
Trust for Short-Term Instruments, 3610
Tultex Corp., 30323
U.S. Government Securities, Inc., 26648
Union Central Life Insurance Co. et al., 16766
Union Tank Car Co., 29031
United States & Foreign Securities Corp., 24977
United Stockyards Corp., 8807, 11971
Van Kampen Merritt Insured Tax Free Income Fund Inc. et al., 1660
Van Kampen Merritt U.S. Government Fund Inc. et al., 8031
Variable Annuity Life Insurance Co. et al., 42108
Variable Insurance Products Fund et al., 37933, 41285
Variable Investment Products Series Fund, Inc., 28487
Venture Muni Plus, Inc., 6299
Vermont Yankee Nuclear Power Corp., 37750
Volunteer State Life Insurance Co. et al., 21529
Wal-Mart Stores, Inc., 36173
Wells Fargo Investment Advisors, 46233
Western Daily Income Fund, Inc., 15026
Western Massachusetts Electric Co., 32340
Western Union Telegraph Co., 5705
Weyerhaeuser Co., 31664
Wingate Housing Partners '85 Ltd. Partnership et al., 43827
World Resources Fund, Ltd., 34226
Worldwide Ventures Corp., 3444
Yankee Atomic Electric Co., 42109, 43829

SELECTIVE SERVICE SYSTEM

RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 35219

PROPOSED RULES
Regulatory agenda, 17986, 44836
Selective service regulation; registrants processing, 52955

NOTICES
Agency information collection activities under OMB review, 24857
Computer matching programs:
  Violators, registration identification, 51325
Privacy Act; systems of records; annual publication, 51318

SMALL BUSINESS ADMINISTRATION

RULES
Business loan policy:
  Business and special purpose loans; recodification and clarification, 12472
    Correction, 13309
  Secondary market substantive rules, 12229
    Correction, 49832
  Waiver of charges by fiscal and transfer agent, 725
Coastal Barrier Resources Act; policy, 14210
Disaster loans:
  Physical disaster assistance program; interim, 4614
  West Coast fisheries (El Nino-related economic injuries); interim, 704
Hearings and Appeals Office procedures; cases other than size appeals; correction, 3740
Innovation research program; policy directive, 917
Nondiscrimination:
  Age discrimination in federally-assisted programs, 41646
  Federally-assisted programs; updated lists, 1441, 1442
Organization, functions, and authority delegations:
  Program activities in field offices, 7583
    Competency approval certificate, 52436
Procurement assistance; competency program certificate, 11994
  Approval authority, 52436
Reporting and recordkeeping requirements, 12772
Small business size standards:
  Commercial fishing industry; interim, 15411
  Dredging activities, 46418
  Engineering services; study result, 9995
    Clarification, 13310
  Real estate agents; interim, 27418
  Service industries and telephone communications, 10495
  Special salvage timber sales purchase; preferential treatment, 6337

PROPOSED RULES
Business loan policy:
  Cable TV and commercial radio and television broadcasters; eligibility for financial assistance (media policy rule), 14248
  Interest rates, 47227

Loans to State and local development companies, 27754
Regulatory agenda, 17988, 44838
Small business investment companies:
Accounting standards and financial reporting requirements, 29532
Small business size standards:
Engineering, architectural, and surveying services, 37539
Extension of time, 49055
Shipbuilding/ship repair; advance notice, 26582
Wholesale trade industry sector, 40032
Surety bond guarantee, 33766

NOTICES
Agency information collection activities under OMB review, 1666, 6090, 7261, 11283, 15264, 16576, 20867, 23571, 28054, 30554, 32501, 41286, 41434, 48289, 50027
Authority delegations:
Assistant Administrator for Administration, 21682
Assistant Inspector General for Investigations, 53054
Associate Administrator for Finance and Investment, 8041
Associate Administrator for Minority Small Business and Capital Ownership Development, 21685
Associate Deputy Administrator for Management and Administration et al., 4293, 5721, 21683
Comptroller, 21683
Deputy Assistant Administrator for Administration et al., 21683
Deputy Assistant Inspectors General for Investigations et al., 53054
Deputy Associate Administrator for Minority Small Business and Capital Ownership Development et al., 21684
Director, Office of Accounting Operations, et al., 21684
Inspector General, 12678, 53053
Committees; establishment, renewals, terminations, etc.:
Size Policy Board, 25642
Disaster loan areas:
Alabama, 7262, 37610, 37940
Arizona, 2640, 4824, 10571
Arkansas, 23570, 52577
California, 1664, 2640, 2641, 24077, 30554, 34571, 49147, 50377
Colorado, 2641
Connecticut, 10137, 43306
Florida, 12679, 38937, 40098, 40644, 50697, 51959, 52577
Guam, 200
Idaho, 2641
Illinois, 2644, 13445, 15521
Indiana, 2641
Iowa, 2641, 4007, 20866
Kansas, 2641, 2645
Louisiana, 2642, 36940, 37941, 47317, 48531
Maryland, 51959
Massachusetts, 3860, 37459, 46529
Michigan, 2642, 18757, 20866, 31086, 31267, 38937, 40644, 42112
Minnesota, 2642, 4824, 13446
Mississippi, 2642, 37459, 40098, 42113
Nebraska, 2642, 2645, 2750, 8422, 20867
New Jersey, 10138, 37941, 49147, 50377
New Mexico, 2643
New York, 11780, 13300, 20867, 45520, 52577
North Carolina, 23570, 31267, 42113
North Dakota, 2643, 21160
Ohio, 24338, 26068
Oklahoma, 2644, 10137
Pennsylvania, 24339, 25369, 30555, 34956, 42242, 45701, 48145
Puerto Rico, 24339, 25642, 42242, 45701, 47317, 50028
Rhode Island, 42816
South Carolina, 36940
South Dakota, 2643
Texas, 913, 2643, 2644, 3447, 4825, 10571, 14483, 23571
Virgin Islands, 374
Virginia, 5720, 43307, 45701, 48145, 50028, 51959
West Virginia, 48146, 50028, 51959
Wisconsin, 2645, 41286, 42242
Wyoming, 33448
Grants and cooperative agreements; availability, etc.:
Minority small business and capital ownership development; management and technical assistance, 37941
Guaranteed business loans; policy change for fixed rate; extension of time, 19100
Interest rates; quarterly determinations, 374, 11977, 26068, 38937
Intergovernmental review of agency programs and activities, 1665, 2365, 14328, 14330, 24335, 24336, 27079, 28052, 28677, 30554, 34786, 37942, 53055
License surrenders:
Atlas Capital Corp., 24338
Benson Investment Co., Inc., 34572
Blackburn-Sanford Venture Capital Corp., 28054
Broward Venture Capital Corp., 23097
Cal Fed Venture Capital Corp., 12679
Capital Investment Co. of Washington, 8040
Central Georgia Capital Funding, Inc., 5840
Certco Capital Corp., 16576
Certified Grocers Investment Corp., 19101
Clifton Capital Corp., 28054
Eastpac, Inc., 12679
Edict Investment Corp., 33667
Enterprise Equity Corp., 38936
Equities Capital Co., 33667
First B.D.J. Financial Services, Inc., 15522
First Miami Small Business Investment Co., 18758
Fook Wah Co., Inc., 10138
Future Money Corp., 9145
Glover Capital Corp., 5720
Lincoln Capital Corp., 27080
Mansfield Capital Corp., 25369
Massachusetts Capital Corp., 24338
Mid America Venture Capital Corp., 42242
NPD Capital, Inc., 33447
Permian Basin Capital Corp., 11780
Raybar Small Business Investment Corp., 34788
RISA Capital Associates, 14187
S.L.C. Investment Corp., 24731
Seattle Trust Capital Corp., 38937
Utica Investment Corp., 20867
Wesco Captial, Ltd., 14187
Loan guarantees; pilot programs:
Illinois; extended, 12680
Loan programs:
Secondary participation guaranty and certification agreement (SBA Form 1086), 5715
Meetings:
Computer Security and Education Advisory Council, 26425, 28053, 40644
National Advisory Council, 8807, 36940
Presidential Advisory Committee on Small and Minority Business Ownership, 8807, 13446, 21160, 23571, 32503, 35353
Veterans Business Affairs Advisory Committee, 24339, 29292
Meetings; regional advisory councils:
Alabama, 18758, 47317
Arizona, 1970, 27081
California, 3073, 4825, 10571, 25642, 28054, 33446, 42113, 43307
Colorado, 15522
Connecticut, 37460
District of Columbia, 24606, 36940
Florida, 18758, 40645, 46529
Georgia, 15522, 49147
Hawaii, 6091, 33446
Idaho, 16768, 40645
Indiana, 6091, 37611
Iowa, 15522, 40645, 42114, 46529
Kentucky, 42113
Louisiana, 14187, 45521
Maine, 1970, 34572
Maryland, 37460, 48530
Massachusetts, 4007, 42113
Michigan, 10137
Minnesota, 10137, 53053
Mississippi, 18758
Missouri, 11978, 34572, 45521
Montana, 13300, 37611, 40645
Nebraska, 23098, 42113
Nevada, 4007, 11284, 33446, 45520
New Hampshire, 8807, 33446, 42242
New Jersey, 29293, 42114
New Mexico, 37459
New York, 10137, 11284, 11977, 31086, 42114, 43307
North Carolina, 23098, 48530
North Dakota, 10137, 41285
Oregon, 19513, 37611
Pennsylvania, 1666, 13300, 36941
Puerto Rico, 19513
Rhode Island, 18759, 48530
South Carolina, 11284, 40253
South Dakota, 40645
Tennessee, 18759, 46529, 50698
Texas, 10138, 23098, 24339, 25642, 34572, 42114, 53055
Utah, 15522, 36941
Vermont, 8807, 19513, 36940, 45521, 46530
Virginia, 11284
Washington, 14187, 37611, 40646, 48531
West Virginia, 11978, 13300, 46529
Wyoming, 16768, 24339
Privacy Act; systems of records, 32503, 45882
Senior Executive Service:
Performance Review Board; membership, 45882
Small business investment companies:
Maximum annual cost of money; Federal Financing Bank rate, 4008, 8041, 12680, 18758, 23572, 26425, 31086, 35353, 38938, 45882
Applications, etc.:
ABC Capital Corp., 6091
Ameriway Venture Partners I, 32501, 50028
ASEA-Harvest Ventures II, 7262
Atlantic Capital Corp., 24605, 40644

Atlantic Energy Capital Corp., 200
BNK Industry Investment Co., 8422
Brentwood Capital Corp., 913, 11779, 31087, 31088
Calista Business Investment Corp., 19512
Capital Circulation Corp., 16378
Capital Impact Corp., 10571
Center City MESBIC, Inc., 2749
Chemical Venture Capital Corp., 7681
Chestnut Capital International II Ltd. Partnership, 2644, 30555
Cogeneration Capital Fund, 3073
Colorado Growth Capital, Inc., 40098
Combined Fund, Inc., 43306
Consumers United Capital Corp., 19512
DC Bancorp Venture Capital Co., 15264, 32502
Domestic Capital Corp., 8040
Enterprise Venture Capital Corp., 30555, 40644
Equis Investment, 8422
Erie Small Business Investment Co., 23097, 33447
Fans Capital Corp., 11977
FCA Investment Co., 11779, 35353
First American Capital Funding, Inc., 24731
First New York Small Business Investment Co., 30556
First Southern Capital Corp., 12679
Formosa Capital Corp., 15265, 37940
GHW Capital Corp., 36941, 50698
Greater Washington Investors, Inc., 40253
Grocers Capital Co., Inc., 5150
Hawaii Venture Capital Inc., 13299
Hickory Venture Capital Corp., 5840, 14329
Hinsley Venture Capital, Inc., 48289
Horn & Hardart Capital Corp., 38936
Itasca Growth Fund, Inc., 23097
Jeanjoo Finance, Inc., 19513, 40466
Latigo Capital Partners, II, 1664, 40466
Losco Investment & Finance Corp., 5721, 32502
Lotus Capital Corp., 5150
M&I Ventures Corp., 27080, 36941
Magna Pacific Investment Inc., 30556, 52577
Mid-State Capital Corp., 10571
Monsey Capital Corp., 5721
Narragansett Venture Corp., 3860
NatWest USA Capital Corp., 50029
New Kukje Investment Co., 4293
NIS Capital Corp., 40645
Norstar Capital Inc., 3447, 20865
Northern Capital Corp., 4824
Northwestern Capital Corp., 46528
NYSTRS/NV Capital, Ltd. Partnership, 53053
Orlando Capital Corp., 9145
Princeton Finance Co., 33447, 47316, 50029
Questech Capital Corp., 20865
RCL, Inc., 13300
Renaissance Capital Corp., 38936
Rocky Mountain Ventures, Ltd., 20866, 23098
Rubber City Capital Corp., 10136, 36941
SB Capital Corp., 29292
Sea Gate Small Business Investment Co., 15265, 32502
Southwest Venture Corp., 6423
Sovran Funding Corp., 8041
UBD Capital, Inc., 23571, 45701
United Capital Investment Corp., 7681
United Finance & Investment Co., 33447
United Jersey Venture Capital, Inc., 34788
Vicksburg Small Business Investment Co., 10138
VK Capital Co., 50029
Wesbanc Ventures, Ltd., 12680, 24077
Westamco Investment Co., 11780
WFG-Harvest Partners Ltd., 37460, 42242
Wisconsin Community Capital, Inc., 36942
Wood River Capital Corp., 32502

SOCIAL PROGRAMS

See ACTION.
Community Services Office.
Food and Nutrition Service.
Health and Human Services Department.
Human Development Services Office.
Social Security Administration.

SOCIAL SECURITY ADMINISTRATION

RULES

Organization and procedures:
Information and records availability; procedures and appeals, 28565
Correction, 30144
Public assistance programs:
Aid to families with dependent children (AFDC)--
Child support enforcement programs; audit and penalty procedures, 40120, 49392
Treatment of assigned support payments received directly and retained by AFDC applicants or recipients, 34693
Grants to States; checks, uncashed or cancelled; Federal share reimbursement, 37659
Low income home energy assistance; 1986 FY State median income, 49552
Quality control requirements; CFR correction, 11698
Research grants and contracts; CFR Part removed, 33027
Social security benefits:
Coverage of employees of private nonprofit organizations, work outside U.S., etc., 36571
Correction, 38113
Deductions, reductions, and nonpayment of benefits; Government pensions; correction, 20901
Disability and blindness determinations, 50118
Disability benefits' reentitlement; correction, 20901
Disability determinations; medical criteria, 50068
Hearings before Administrative Law Judges, 21433
Mental disorders; impairments listing, 35038
Correction, 38113
Multiple impairments determination; interim, 8726
Correction, 19164
Sick pay, 1831
Supplemental security income:
AIDS; impairments listing; interim, 5573
Disability and blindness determinations, 50118
Eligibility; earned income tax credits, 5571
Correction, 14211
Eligibility determination period; benefit payments amount; new benefit payment accounting system, 48563
Correction, 51514
Eligibility to severely impaired individuals who work and perform substantial gainful activity, 46760
Hearings before Administrative Law Judges, 21433
Multiple impairments determination; interim, 8726
Correction, 19164
Public emergency shelters for homeless; eligibility for residents, 51514
Resource limitations, increase, 38981
Resources, exclusions; automobile, property essential to self-support, and the home, 42683

PROPOSED RULES

Aid to families with dependent children (AFDC), and food stamp program, consistency; advance notice, 6970
Public assistance programs:
Aid to families with dependent children (AFDC)--
Home energy assistance; disregard of support and maintenance assistance based on need, 21472
Income and eligibility verification procedures, 10450
Reporting Federal share for child support collections by States, 33784
Grants to States; repayment by installments; interest charges, 18704
Quality control system; review procedure requirements, 25269
Social security benefits:
Application withdrawals; amendment, 51550
Benefits deductions, reductions, and nonpayments; spouse's Government pension, 53340
Cost-of-living increases; delayed retirement credits, and maximum family benefits, 27615
Correction, 29435
Disability and blindness determinations, 18432
Review, 25400
Insured status, unlimited reopening, 47758
Mental disorders; impairments listing, 4948
Mental impairments evaluations; medical professionals qualifications, 50920
Noncovered employment, pension effect; methods of computing primary insurance amount, 49558
Payments to divorced spouses, 5264
Correction, 6358
Personal appearance demonstration projects, 53120
State and local government employees, coverage; extensions for State assessments, etc., 49397
Correction, 50630
Supplemental security income:
Aged, blind, and disabled; conditional payments, resource limits, 46778
Cost-of-living increases; delayed retirement credits, and maximum family benefits, 27615
Correction, 29435
Disability and blindness determinations, 18432
Review, 25400
Eligibility, etc.; prorating monthly benefit payments, 36108

Exclusion of underpayments from resources, 34862
Mental impairments evaluations; medical professionals qualifications, 50920
Passalong of Federal benefit increases to recipients of State supplementary payments, 7607
Personal appearance demonstration projects, 53120
Support and maintenance assistance based on need; exclusion as income or resource, 21457

NOTICES
Grants; availability, etc.:
Low income home energy assistance program; reallotment preliminary determination, 41960
Refugee resettlement program--
Cash and medical assistance, social services, and case management, 7132, 24583
Secondary resettlements, 20038, 21668
Social services funds; allocation, 8194
Research grant, Title II, 21141, 24583
Research grants, 23073, 24706
Social security disability insurance beneficiaries assistance to obtain employment, 23071, 24706
Transitional-employment training demonstration, 18741
Organization, functions, and authority delegations, 3599, 5010, 10321, 13423, 15492, 20297, 23521
Privacy Act:
Computer matching program, 6053
Systems of records, 5819
Social security; foreign insurance or pension systems:
Dominican Republic, 28269, 35874
Grenada, 28268
Iran, 14459
Seychelles, 48136
St. Lucia, 30117
Social security benefits:
Contribution and benefit base old law determination, 11562
Cost of living increase, contribution and benefit base, average of total wages, and tables of benefits, etc., 45558
Mental impairment cases; disability claims determination; inquiry, 9770

SOIL CONSERVATION SERVICE

RULES
Organization, functions, and authority delegations:
Coastal zone management assistance, 7906
Support activities:
Real property acquisition under federally-assisted programs, 32689

PROPOSED RULES
Support activities:
Real property acquisition under federally-assisted programs, 12034
Surface mining specifications; advance notice, 34490

NOTICES
Environmental statements; availability, etc.:
Alta Dutch School, CA, 14739
Applesway Drive, OH, 7361
Aronson Island, MI, 9304
Barrow County Board of Education, GA, 32605
Bayou Mallet Watershed, LA, 48109
Bayou Pierre Watershed, MS, 26392
Bayou Plaquemine Brule Watershed, LA, 15468
Bear-Craine Creeks Watershed, AL, 2599
Beardsley Watershed, CA, 28962
Beartown Watershed, MS, 50929
Belemont County, OH, et al; roadside and streambank measures, 16328
Benson Area Bank Stabilization, AZ, 13407
Bethlehem, Kasson Grove Community, CT, 16327
Big Creek (Tri-County) Watershed, TX, 13407
Big Creek-Hurricane Creek Watershed, MO, 46327
Big Sandy Area, KY, 2600
Bluff Irrigation District Farm, WY, 10292
Bonneville County Roadside, ID, 21321
Buffalo Creek Watershed, PA, 23482
Caddo Creek Watershed, TX, 51570
Cade Branch, IN, 31210
Campbell Creek Watershed, OK, 5285
Canoe Creek Watershed, FL, 38870
Card Industrial Sand, IN, 21322
Cason Branch-Duhart Creek Watershed, GA, 40986
Cayadutta Creek Watershed, NY, 24264
Central Middle School, VA, 27998
Coast Guard Park, MI, 38149
Colbert Roadside Area, OK, 5804
Columbia Water Plant, KY, 33612
Cooper Creek Watershed, VA, 3004
Copper Basin, GA, 32878
Coxton, KY, 33612
Crow Creek Watershed, AR, 51570
Croy Creek, ID, 38871
Cumberland Head, NY, 24662
Deer Creek Watershed, OK, 7939
Deerhead Riverfront Park, MI, 9305
DEM South Coast Dune, RI, 14125
Doyle Township Park Shore, MI, 33990
Dyke Creek, NY, 10824
East Menomonie Watershed, WI, 52978
Ferron Watershed, UT, 19560
Finesville Recreational Field, NJ, 20576
Fishing Creek Watershed, NC, 3005
Fourteen Mile-Bakers Creek Watershed, MS, 21915
Fulton County Landfill, OH, 51570
Gallia County Fairgrounds, OH, 51571
Gilford Park, IN, 41371
Gilmer Township, IL, 7938
Grand Forks County, ND, 11525
Grassy Creek Watershed, MO, 13408
Hamlin Lions Club Field Area, WV, 6225
Harrison Mill-Panther Creeks Watershed, AL, 45847
Howard Creek Watershed, WV, 27648
Jacobs Creek Watersbed, PA, 6023
Jefferson-Patterson Park and Museum, MD, 10823
Kasson South Park, MN, 46327
Kiser Lake, OH, 51571
Lake Antoine-Pike Spawning Marsh, MI, 9305
Leland Freeborn Watershed, CA, 21321
Linville Creek Subwatershed, VA, 23046
Little and Middle Pitman Creeks Watershed, KY, 37256
Little Contentnea Creek Watershed, NC, 48817, 48818
Little Lost River, ID, 30217
Little River Watershed, GA and SC, 31901, 42071
Looney-Mill Creek Watershed, VA, 27998
Lower Bayou Watershed, OK, 28229
Lower Des Plaines Tributaries Watershed, IL, 33990
Lower Sand Creek Watershed, ID, 38149
Lower Winooski River Watershed, VT, 2842
Madison-Cypress Creek Watershed, TN, 36459
Marquette Area District Schools, MI, 33990
Montgomery County Park, VA, 20472
Muskrat Lake Basin Watershed, ND, 30492
North Canton School, NC, 11525
North Hydro Creek, NC, 11923
North Pine/Spring Valley Creek, WA, 12352
Otisco Lake Watershed, NY, 24662
Pacheco Creek, CA, 8353
Pasquale Road, CA, 10292
Pennsboro Lake, WV, 49085
Perley Brook Watershed, ME, 37705
Philip Barbour High School, WV, 1098
Piiholo Road, HI, 23481
Pike County Roadside, IN, 20472
Plateau Valley School, CO, 37256
Prairie Creek, IN and OH, 41372, 51572
Prescott Park, NH, 4250
Raccoon Lake Watershed, IL, 21321
Ramseur Reservoir Watershed, NC, 32101
Rebel Flat Creek Watershed, WA, 10293
Rivermont School, VA, 27999
Rock Creek Watershed, ID, 18719
Rocky Fork Lake, OH, 51572
Shamrock Park, MI, 33991
Shelbyville High School, IN, 20472
Sistersville Elementary School, WV, 49593
Smyth County Landfill, VA, 34882
South Fork Broad River Watershed, GA, 1605
South Fork Kings River Watershed, CA, 21322
South Fork River, VA and WV, 9306
South Fork Watershed, KS, 870
South Harrison Park, IN, 45445
Spring Valley Reservoir, ID, 20576
Sugar River Watershed, NH, 5285
Summit Farm, UT, 19560
Tallahaga Creek Watershed, MS, 31210
Tracy Property, MA, 23819
Tyler County Fairgrounds, WV, 52978
Upper Quaboag River Watershed, MA, 24793
Van Cleve Park, MI, 33991
Vinton County Road, OH, 50332
West Fork of Mayfield Creek Watershed, KY, 25286
West Franklin Watershed, LA, 48109
Westport, WA, 8353
Whitesand-Greens Creeks Watershed, MS, 32750
Winters Road, NJ, 20576
Wyoming County Airport, WV, 19560
Yamhill County Roadside, OR, 14740
Ziegler Group, OH, 51572
Procurement:
Commercial activities, performance; review schedule (OMB A-76 implementation), 7361, 41182
Watershed projects; deauthorization of funds:
Dunloup Creek Watershed, WV, 7361
Fish Bayou Watershed, AR, 25615
Hall-Flat Creek Watershed, IN, 13407
Hardin Creek Watershed, TN, 23481
Kanawha Twomile Creek, WV, 1255

Kickapoo Creek (Lipan) Watershed, TX, 1605
Lewis-Hunsaker Creek Watershed, TN, 23482
Lick Creek Watershed, TN, 27999
Little Bigby Creek Watershed, TN, 23480
Little Luckiamute Watershed, OR, 1605
Middle River Watershed, GA, 9699
Mill Creek Watershed, TN, 23481
Mulberry Creek Watershed, TN, 40883
Nibbs Creek Watershed, VA, 14276
North Fork Obion River Watershed, TN, 23481
Oil Creek Watershed, PA, 43262
Perilla Mountain Watershed, AZ, 37559
Rock Creek Watershed, OR, 1606
San Felipe Creek Watershed, TX, 28229
Wilson-Spring Creek Watershed, TN, 40987

SOUTHEASTERN POWER ADMINISTRATION

NOTICES

Power rates:
Georgia-Alabama System of Projects, 13870, 38193, 41442
Kerr-Philpott System of Projects, 30751

SOUTHWESTERN POWER ADMINISTRATION

NOTICES

Federal hydroelectric power projects; power and energy allocation policy, proposed; inquiry, 7639, 25316
Rate schedule P-4B:
Inquiry, 15485
Interim, 21933
Rate schedule P-84A et al.; interim, 41732
System power rates, proposed; inquiry, 25319

STATE DEPARTMENT

See also Foreign Service Grievance Board.

RULES

Foreign missions and personnel; compulsory liability insurance, 47214
International traffic in arms; correction, 12787
Protection of foreign dignitaries and official personnel:
Departing U.S. Representatives to United Nations, 14379
South Africa and fair labor standards, 53308
Visas, nonimmigrant documentation:
Bangladesh, India, Pakistan, and Sri Lanka; transit without visa privilege withdrawn, 41315
Effective date deferred, 47048

PROPOSED RULES

Regulatory agenda, 17470, 44344
South Africa and fair labor standards, 46455
Visas:
Nonimmigrant and immigrant documentation, 46085
Nonimmigrant documentation; treaty traders and investors, 49705

NOTICES

Agency information collection activities under OMB review, 5345, 15805, 49894
Committees; establishment, renewals, terminations, etc.:
American Private Sector Overseas Security Advisory Council, 5722
South Africa Advisory Committee, 42817
UNESCO Reform Observation Panel, 7156
Cooperative research awards, U.S. and Spain; applied science and technology, 20516, 25642
Environmental statements; availability, etc.:
Coca crop eradication programs overseas; Garlon (triclopyr), 50377
Ethiopia; claims by U.S. nationals against provisional military government; final filing date, 47135
Foreign assistance determinations:
Haiti, 7868
Foreign Missions Act determinations:
Construction supplies and services, acquisition by Soviet Union Embassy complex, 23572
Telecommunications goods and services to missions of Soviet Union and Eastern European states, 46379
Gifts to Federal employees from foreign governments; listing, 9740
Grants; availability, etc.:
Discretionary grant programs; Soviet and Eastern European research and training, 6091, 36698
International conferences:
Private-sector representatives on U.S. delegations, 2645, 31807, 49479
Libya; Export-Import Bank credit application denial support determination, 14070
Meetings:
American Private Sector Overseas Security Advisory Council, 53415
Fine Arts Committee, 5722, 34788
Historical Diplomatic Documentation Advisory Committee, 43489
Inter-American Tropical Tuna Commission, United States National Section Advisory Committee, 35354
International Commission for Conservation of Atlantic Tunas, United States National Section Advisory Committee, 35354
International Intellectual Property Advisory Committee, 11606, 39795
International Investment, Technology, and Development Advisory Committee, 2750, 4932, 4933, 8041, 11978, 20337, 24606, 34226, 41777, 42816, 51765
International North Pacific Fisheries Commission, United States Section Advisory Committee, 36942
International Radio Consultative Committee, 2750, 3861, 4932, 4933, 5463, 8205, 11979, 14187, 16378, 28055, 29503, 33143, 33144, 51651, 52578, 53414
International Telegraph and Telephone Consultative Committee, 374, 3861, 4933, 5463, 8206, 11978, 11979, 18759, 20336, 20337, 28055, 32672, 33143, 34789, 36700, 37105, 37460, 37611, 37612, 41287, 41777, 43307, 51765, 51766, 53415
Oceans and International Environmental and Scientific Affairs Advisory Committee, 375, 26283, 41286
OES Advisory Committee, 16378
Overseas Schools Advisory Council, 18759, 43830
Overseas Security Advisory Council, 24731, 37612
Overseas Security Advisory Panel, 14783, 19601
Private International Law Advisory Committee, 7023, 8423, 10335, 15031, 48856
Shipping Coordinating Committee, 3861, 5462, 7681, 7682, 11978, 14187, 15031, 16378, 19836, 20337, 21386, 25508, 28055, 30775, 31267, 36700, 37611, 41434, 46379, 47889, 50030, 51651, 52400, 52401
Soviet and Eastern European Studies Advisory Committee, 29504, 47317
UNESCO Reform Observation Panel, 7156, 15266, 28055, 46379
Military assistance determinations:
Turkey, 3861
Organization, functions, and authority delegations:
International Development Cooperation Agency, Director; population control, development assistance, 41615
Management Operations, Director, 26068
Oceans and International Environmental and Scientific Affairs, Assistant Secretary, 28487
Passports, foreign; validity:
Libya; extension of restriction, 49809
Privacy Act; systems of records, 12681
Procurement:
Commercial activities, performance; cost comparison studies schedule (OMB A-76 implementation), 41435
Visas, nonimmigrant; validity:
Central African Republic, 8423
Commonwealth of Dominica, 34030

STATISTICAL REPORTING SERVICE

NOTICES

Fresh market vegetable program; proposed change, 37017
Pasture and range condition maps; discontinuance; inquiry, 50819
Poultry production modification estimates, disposition and income; inquiry, 50819

SURFACE MINING RECLAMATION AND ENFORCEMENT OFFICE

RULES

Federal/State cooperative agreements:
Alabama, 30916
Permanent and interim regulatory programs:
Coal preparation plants; interim, 28186
Correction, 31176
Preparation of cross sections, maps, and plans by surveyors and design certification of small impoundments, 16194
Remining operations, highwall elimination; partial suspension, 257
Correction, 12538
Surface mining and reclamation operations (agricultural activities on alluvial valley floors, etc.); court-ordered suspension, 7274
Texas topsoil substitution practice; special study report; availability, 13566, 40375
Unsuitable surface coal mining areas, fragile and historic lands definition; partial suspension, 257
Permanent program submission:
Alabama, 21254, 29379, 49541
Alaska, 28572
Arkansas, 32847, 49374
Colorado, 47215, 49924, 50788

Illinois, 1507, 9620, 45110, 45111
Indiana, 13566, 19929, 20206, 20413, 23684
Iowa, 21440, 49925
Kansas, 14212, 47216
Kentucky, 8608, 13567, 22999, 23686, 37656, 47727, 47728, 50293
Louisiana, 19931
Maryland, 2782, 36970, 47379
Mississippi, 43569
Missouri, 47218
Montana, 258, 47386
New Mexico, 456, 4507, 19356
North Dakota, 260
Ohio, 5236, 10757, 21256, 21257, 25709, 37848
Oklahoma, 10759, 24509, 49376, 50296
Pennsylvania, 13315, 32848, 45820
Texas, 23299, 27947
Utah, 36554, 49542, 51519
Virginia, 19357, 32849, 47388
West Virginia, 15889, 28316, 28324, 35082, 38651
Wyoming, 8108, 49544, 50901

PROPOSED RULES

Abandoned mine land reclamation program:
Fee collection and coal production reporting; reclaimed coal; rulemaking petition, 36858
Extension of time, 41909
Plan submissions--
Colorado, 31998
Virginia, 51885
State reclamation plan and grant amendments, 483
Subsidence insurance program grants, 30402
Coal mining and reclamation operations, bonding and insurance requirements:
Performance bonding; rulemaking petition, 41722
Federal surface coal mining programs:
Georgia, 31674
Idaho, 31674
Massachusetts, 31674
Michigan, 31674
North Carolina, 31674
Oregon, 31674
Rhode Island, 31674
South Dakota, 31674
Tennessee, 4704, 41164
Washington, 31674
Federal/State cooperative agreements:
Alabama, 2988
Permanent and interim regulatory programs:
Application fee collection, etc., 7522
Comment period reopened, 24917
Extension of time, 19037
Public hearing location change, 16311
Bonding and liability insurance requirements; rulemaking petition, 50631
Coal mining; probable hydrologic consequences and cumulative hydrologic impact; draft guidelines availability, 51559
Coal preparation plants, 28180
Correction, 31197
Hearing and comment period reopened, 41365
Permit application and coal exploration, historic preservation requirements; petition availability, 34167
Remining operations, and elimination of adverse physical impact definition, 24880
Subsidence control; surface structure and facilities protection, 27910
Hearing, 35573
Underground mining activities; subsidence regulations; rulemaking petition deferred, 41365
Unsuitable surface coal mining areas--
Fragile and historic lands definition, 30408
Study river areas; boundary guidelines, 32962
Permanent program submission:
Alabama, 12569, 19390, 23996
Alaska, 21625, 34863
Arkansas, 9286, 24782, 26221
Colorado, 16311, 38860, 38861, 45117, 45430
Illinois, 485, 18536, 27025, 30862, 37318
Indiana, 281, 6363, 10791, 12571, 47228
Iowa, 13388, 30956, 43411
Kansas, 6364, 11735, 19953
Kentucky, 283, 2996, 28222, 29235, 37382, 37699, 43413, 45118, 45431
Louisiana, 8147
Maryland, 9679, 30720
Mississippi, 33982
Missouri, 30957, 37383
Montana, 29235, 31891
New Mexico, 10792
North Dakota, 30721
Ohio, 284, 12833, 15759, 18885, 29437, 29438, 30863, 45120
Oklahoma, 5080, 16518, 27461, 39714, 43724, 43726, 49071
Pennsylvania, 486, 23715, 25265, 25267, 43726, 47230
Texas, 9287, 14256, 19212, 47231, 47232
Utah, 8148, 12834, 28107, 30723, 30958, 47233
Virginia, 10793, 26387, 38137, 51885
West Virginia, 21861, 25428, 28343, 50724
Wyoming, 1869, 9680, 28595, 29438, 29704, 30282
Permits and coal exploration systems; approval process requirements and definitions; ownership and control, 13724
Hearings and extension of time, 24122
Unsuitable areas for mining; surface impacts of underground coal mining; prohibitions; advance notice, 13250

NOTICES

Abandoned mine lands and State regulatory programs administration; annual evaluation reports; availability, 3985, 6410, 47122, 49138, 51612
Agency information collection activities under OMB review, 4920, 7144, 9723, 10866, 31784, 32120, 32325
Coal mining operations, underground; valid existing rights determinations:
Jefferson National Forest, VA, 4818
Monongahela National Forest, WV, 356
Environmental statements; availability, etc.:
Black Diamond, King County, WA, 19495
Black Mesa-Kayenta Mine, Navajo County, AZ, 45945
CX Ranch Mine, Bighorn County, MT, 15646
Dry Fork Mine, Campbell County, WY, 7841
John Henry No. 1 Mine, King County, WA, 7005
La Plata Mine, San Juan County, NM, 4920, 38721
Meeker Area Mines, Rio Blanco County, CO, 34018
Red Rim Area, WY, 48844
Rock Creek watershed, TN, 50351
Rosebud Mine, MT, 1945, 37593
Tennessee surface coal mining permits, 10546
Unsuitable areas for mining; surface impacts of underground coal mining, 25473, 34772
Surface coal mining operations; unsuitable lands; petitions, designations, etc.:
Tennessee, 50351
Washington, 19495
Wyoming, 48844
Surface mining permit applications:
Keeline Mine, Campbell County, WY; meeting, 41034

SUSQUEHANNA RIVER BASIN COMMISSION

RULES

Water resources projects; emergency approval by Executive Director, 12241

NOTICES

Hearings, 10336, 46721

SYNTHETIC FUELS CORPORATION

NOTICES

Comprehensive strategy, draft availability; inquiry, 18603
Draft environmental appendix availability, 20338
Comprehensive strategy report:
Appendices availability, 36509
To Congress; availability, 28301
Conflict of interests; revised policy, 29781
Meetings; Sunshine Act, 202, 1297, 3079, 4831, 6426, 10346, 15526, 15671, 20520, 21390, 23239, 23380, 24980, 26284, 28491, 30781, 32135, 33450, 36183, 38244, 41621, 47139, 47652, 50984
Statement of objectives and principles and Phase 1 Business Plan, 8423
Synthetic fuels projects, competitive solicitations; availability, etc.:
Bituminous coal gasification, Eastern Province, et al., 16768, 23572, 32131
Mining and surface processing tar sands, 21685, 28865

TELECOMMUNICATIONS

See Federal Communications Commission.
General Services Administration.
Rural Electrification Administration.
Science and Technology Policy Office.

TENNESSEE VALLEY AUTHORITY

PROPOSED RULES

Regulatory agenda, 17996, 44846

TVA

NOTICES
Agency information collection activities under OMB review, 375, 10336, 16379, 23573, 30900, 40098, 40099, 45185, 49654
Meetings; Sunshine Act, 1974, 2756, 7444, 8211, 10578, 11045, 12888, 15671, 19106, 20033, 20646, 24980, 29794, 34794, 37469, 39070, 40256, 41782, 42119, 43313, 45889, 48293, 49152, 50984, 51982

TEXTILE AGREEMENTS IMPLEMENTATION COMMITTEE

NOTICES
Cotton, wool, and man-made textiles:
Bangladesh, 15600, 16730, 28966
Brazil, 9704, 11410, 12845, 20120, 42200, 52357
China, 2601, 7946, 7947, 11931, 12849, 16729, 18907, 21110, 21923, 26401, 26599, 26823, 28833, 29716, 30496, 31217, 31647, 32253, 34883, 35112, 43760, 48242, 49087, 49088, 51281, 52357, 52824, 53182
Colombia, 27041, 28833, 43762, 43764, 45142
Costa Rica, 51447
Dominican Republic, 25441
Egypt, 28831, 31901
Guam, 8649, 42747
Guatemala, 50190
Haiti, 51448
Hong Kong, 3008, 13272
Hungary, 9705, 42748, 51739
India, 4720, 12848, 18283, 25113, 33390, 42981, 42982, 47575, 52985
Indonesia, 4568, 6027, 9704, 11234, 13061, 16730, 19775, 23492, 24808, 27040, 28002, 46151, 46152, 49088
Israel, 43761, 46809
Japan, 23756
Korea, 4720, 9881, 24016, 28605, 28831, 29247, 38571, 38701, 40990, 41723, 46330, 48242, 49982, 50934, 50936, 51740, 52356
Macau, 35287, 47244, 47575, 48243, 50934
Malaysia, 24017, 24808, 27038, 33390, 34884, 40586, 42748, 46153, 52990
Mauritius, 25113, 37396, 38701, 40045
Mexico, 21485, 40434, 42749, 48243
Nepal, 52986
Northern Mariana Islands, 8650, 36645, 42750
Pakistan, 2755, 3375, 33391, 47244, 49089, 51740, 53373
Peru, 5412, 8180, 18547, 31647, 43268, 52827
Philippines, 7811, 26400, 26401, 30991, 32467, 36134, 37718, 38022, 42201, 42982, 47418, 50654, 52830
Poland, 7096, 52984
Portugal, 28832, 48621, 51896
Romania, 4568, 34171, 42750, 42983, 52828, 52829
Singapore, 3376, 8180, 30991, 37717, 40046, 50655, 52987
Spain, 8356
Sri Lanka, 9112, 13409, 19222, 21923, 32468, 50935
Taiwan, 1616, 3585, 13845, 19563, 26598, 26600, 28830, 29247, 33093, 34885, 39027, 39028, 40989, 41724, 42201, 45142, 46153, 47576, 49594, 50654, 52825, 52830, 52833, 52988, 52989
Thailand, 23492, 31647, 37022, 38875, 41932, 41933, 42982, 45461, 47794, 49438, 51282, 51447, 52825, 53374
Turkey, 3376, 5113, 19995, 29717, 36462, 36914, 45142, 52549, 52826, 52985
Uruguay, 4724, 25440, 27039, 52831
Yugoslavia, 36645, 38023, 52832, 52833
Export visa requirements; certification, etc.:
India, 28240
Indonesia, 19432
Malaysia, 43267
Maldives, 28606, 48621
Mexico, 50825
Pakistan, 25443, 45461
Philippines, 47576
Romania, 30869
Sri Lanka, 51743
Taiwan, 3376, 4721, 12360, 28003, 37718
Thailand, 29248
Uruguay, 6232
Export visa waivers:
Cotton fabrics, 4724, 46154
Cotton terry bar mops, 32467
Man-made fiber sweater jackets, 21485, 26600, 31217
Shop towels; country of origin ruling, 52827
Textile and apparel categories:
Coats and jackets without full frontal openings, 53371
Correlation with U.S. Tariff Schedules, 21639
Cotton dressing gowns, overalls, and vests produced or manufactured in India, 45926
Handmade textile and apparel products; definition clarification, 26028
Textile consultation; review of trade:
Bangladesh, 7811, 11410, 33392, 43265
Brazil, 3586, 23493, 25442
China, 3586, 8651, 15601, 25114, 38152, 40435, 40990, 53371
Guatemala, 4568
Hong Kong, 33393, 37396, 37719, 43265, 46154
India, 4723, 9483
Indonesia, 4722, 10572, 11533, 14410, 18547, 21111, 25443
Israel, 14002
Japan, 25443, 28834, 33091, 38570
Korea, 24016, 33393, 36135, 43763, 48828
Malaysia, 24809, 28242, 32882, 36134, 38699, 50191
Nepal, 42751
Portugal, 14277, 28243, 30869, 51741
South Africa, 33092, 39028, 43763
Sri Lanka, 20256
Taiwan, 11534, 29248, 31901, 33994, 36645, 38023, 43762, 49089
Thailand, 14958, 27331, 38154, 43266
Turkey, 11534, 19776, 25116, 28833, 32883, 43267
Uruguay, 3587, 37895, 49090
Yugoslavia, 29467, 33394

TOBACCO PRODUCTS

See Alcohol, Tobacco and Firearms Bureau.

TOXIC SUBSTANCES

See Environmental Protection Agency.
Environmental Quality Council.
Food and Drug Administration.
Occupational Safety and Health Administration.

TRADE REPRESENTATIVE, OFFICE OF UNITED STATES

RULES
Generalized System of Preferences; eligibility of articles; interim, 19671

NOTICES
Brazil; informatics policy; investigation, 37608
Rebuttal briefs filing deadline extended, 42637
Committees; establishment, renewals, terminations, etc.:
Investment Policy Advisory Committee, 50027
European Economic Community; tariff concessions on canned fruits, impairment; possible U.S. actions; hearing, 47133
Generalized System of Preferences:
Articles eligible for duty-free treatment, etc., 6294, 16578, 18957, 19513, 26423, 31943, 34956, 46228
Government procurement agreement; application determination:
Dollar equivalent of special drawing right units, 53034
Hot air popcorn poppers; domestic production determination, 21006, 47199
Withdrawn, 31448
Import quotas and exclusions, etc.:
Alkaline batteries; disapproval determination, 1655
Alloy tool steel products; warehouse withdrawal determination, 21541, 30320, 41977
Aramid fiber, 50687
Foam earplugs, 9921
Nonrubber footwear, 27518
Specialty steel and alloy tool steel products, 30321
Stainless steel bar, 4606, 16382
Sugar; allocation modification determination, 5463
Tobacco; investigation decision, 30775
Intellectual property; country practices related to identified trade barriers; inquiry, 3853
Korea, 45883
International Sugar Agreement 1977; unused stamps refund deadline, 29287
International trade agreements; determinations:
European Communities et al., 40250
Indonesia, 9342
Israel, 38731
Mexico, 18335
New Zealand, 13111
Philippines, 11471
Turkey, 8428
Israel; free trade area establishment, 35172
Japan:
Imported leather and leather footwear; hearing, 45686
Leather and leather footwear; hearing, 46850
Manufacture, importation, and sale of tobacco products; investigation, 37609

Rebuttal briefs filing deadline extended, 42637
Korea; insurance service; investigation, 37609
Rebuttal briefs filing deadline extended, 42637
Meetings:
Intergovernmental Policy Advisory Committee, 9921
Services Policy Advisory Committee, 9921, 42811
Trade Negotiations Advisory Committee, 27081, 39191
Multifiber Arrangement; inquiry, 8428, 18759
Trade Policy Staff Committee; trade and investment framework agreement with Mexico; inquiry, 38598
Unfair trade practices, petitions, etc.:
Florida Citrus Commission et al.; hearing, 15266
Semiconductor Industry Association, 28866
Wine trading countries; designations:
Canada, 29287, 36686
Jamaica, 29287
Japan, 29287, 36686
Mexico, 29287, 36686
South Korea, 29287, 36686
Taiwan, 29287, 36686
Tobago and Trinidad, 36686

TRANSPORTATION DEPARTMENT

See also Coast Guard.
Commercial Space Transportation Office.
Federal Aviation Administration.
Federal Highway Administration.
Federal Railroad Administration.
Maritime Administration.
National Highway Traffic Safety Administration.
Research and Special Programs Administration.
Saint Lawrence Seaway Development Corporation.
Urban Mass Transportation Administration.

RULES
Acquisition regulations, 14798
Audit requirements for State and local governments; final rule and request for comments, 33339
Correction, 49930
Aviation proceedings:
Economic functions; staff assignments and review; correction, 7169
Procedural regulations--
Antitrust authority transfer, 31134
Transfer of Civil Aeronautics Board functions to DOT, 2374, 3882
Shared airline designator codes; policy statements, 38508
Commercial space transportation:
Licensing process for commercial space launch activities; policy statement and request for comments, 7714
Minority business enterprises participation in DOT programs; suspension and debarment, 18493
Nondiscrimination on basis of handicap in federally-assisted programs, 13039
Organization, functions, and authority delegations:
Assistant Secretary for Policy and International Affairs; aviation consumer protection regulations, etc., 52467
Commercial Space Transportation Office; establishment, etc., 7782, 9036
Director, Community and Consumer Affairs Office; aviation economic functions, 52439
Federal Highway Administrator--
Interstate highway system and emergency highway relief funds, 30275
National minimum drinking age and national speed limit, 43165, 45614
Tandem Truck and Motor Carrier Safety Acts, 277
Research and Special Programs Administration, 45728
Urban Mass Transportation Administrator; interstate highway system and emergency highway relief funds, 30275
Relocation assistance and real property acquisition:
Moving expense allowance schedule, 3525
Uniform cost-effective policies and procedures, 8955
Correction, 12804, 21852

PROPOSED RULES
Aviation proceedings:
Air carrier selection procedures and criteria, certificate duration, and limited-entry markets, 38539
Economic proceedings; air carriers; essential air transportation to freely associated States; extension of time, 11182
Procedural regulations; antitrust authority transfer, 5214, 8341
Tariffs; filing, posting, and publishing international tariffs electronically by U.S. and foreign air carriers; advance notice, 33452
Uniform system of accounts and reports for large certificated air carriers, 34366
Passenger origin-destination survey, 42870, 47063
Freedom of Information Act; implementation, 42049
Correction, 43260
Minority business enterprises participation in DOT programs; materials and supplies purchases, 40422
Regulatory agenda, 17472, 44348
Relocation assistance and real property acquisition:
Duplication of payment, 8987
Time zone boundaries, standard:
Indiana, 25856, 28959, 43745

NOTICES
Agency information collection activities under OMB review, 3612, 8429, 14783, 20338, 24731, 27884, 30324, 36701, 40646, 47493, 50977
Aviation proceedings:
Agreements filed; weekly receipts, 37461, 38240, 39796, 40943, 41778, 42633, 43490, 45883, 46530, 47492, 48290, 49655, 50031, 51326, 51972
All-cargo air service certificate applications, 34956
All-cargo air transportation; inquiry, 14483
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 4294, 4295, 5027, 7156, 7683, 8428, 10572, 11780, 12885, 13688, 14484, 15805, 16576, 19101, 21539, 24077, 25145, 26873, 27883, 28488, 29504, 30775, 31451, 32341, 33144, 34226, 35354, 36943, 37461, 37943, 38240, 39796, 40942, 41778, 42634, 43490, 45883, 46530, 47492, 48291, 49655, 50030, 51326, 51972
Certificates of public convenience and necessity or domestic all-cargo air service certificates of various air carriers; revocation, 48290
Economic regulatory orders and notices, distribution, 25508
Hearings, etc.--
Air Guam, 3611
Air Mid-America, Inc., 14070
Air Train, Inc., 32132
Aircore Aviation, Inc., et al., 9145
All Star Airlines, Inc., 24978
American Central Airlines, Inc., 50698
American Trans Air, Inc., 20867
Amerijet International, Inc., 37944
Arrow Air, Inc., 28301
Barrow Air, Inc., 36943
Bay Air, Inc., 32504
Big Island Air, 36703
Bradford Air Transport, Inc., 8042
Braniff International Airways, 33885, 35901, 40942
Calypso Wings, Inc., 28056
Camai Air, 35172
Cargolux Airlines International S.A., 27390
Caribbean Air Cargo Co., Ltd., 14483
Corporate Air, Inc., 11285
Cross Country Aviation Services, Inc., 35631, 36943
Dominion Intercontinental Airlines, Inc., 19836, 24731
Emerald Tours, Ltd., 7024, 7683
Employee protection program investigations, 33144
Executive Air Charter, 24857
Five Star Airlines, 19601
Flight International Airlines, Inc., 12432
Golden States Airlines, 48146
GP Air, Inc., 39797
Harbor Air Service, 20022
Hispaniola Airways, C. por A., 31268
Horizon Air et al., 48146
Iliamna Air Taxi, Inc., 21387, 21955
Intra-Alaska and Intra-Hawaii all-cargo authority, 9531
Island Air Express, 30325
Jet Charter Service, Inc., 2879
K-Air, Inc., 20868
King Flying Service, 24978
Larry's Flying Service, Inc., 49656
Las Vegas Express, Inc., 36701
Las Vegas Express Airlines, Inc., 36701
Love Field amendment proceeding, 31267, 34031
McClain Airlines, Inc., 50698
Miami-London competitive service case, 7156
Michigan Peninsula Airways, 35354

Midway Airlines, Inc., 39796
Midwestern Airlines, Inc., 37461
Mountain West Airlines, Inc., 41085
North Pacific Airlines, Inc., 49809
Northwest Airways et al., 51502
Pacific Division transfer case, 25369, 25375, 26873, 28056
Pacific East Air, Inc., 2879
Pan American World Airways, Inc., et al., 19253, 34227, 40942
Pan Aviation, Inc., 13687, 13689, 16187, 21387, 23373, 25145, 26426, 33885, 34789, 41435
Pegasus Airlines, Inc., 9531
People Express, Inc., 43491
Polar Alaska Enterprises, Inc., 50979
Ports of Call Travel Club, Inc., 2879
Premiaire, Inc., et al., 45884
Presidential Airways, Inc., 20339
Prinair, 49492
Republic Express, 19101
Resort Commuter, Inc., 33145
Sallee's Aviation, Inc., 26871
Sierra Trans Air, Inc., 37944
Skybus, Inc., 14070
Skystar International, Inc., 20643
Southwest Airlines Co. et al., 2880, 11781, 13687, 19601, 46380, 49147, 51502
Temsco Helicopters, Inc., 50377
Texas Air Corp. et al., 28056
Texas Air-TWA acquisition case, 32673, 32820
Texas National Airlines, Inc., 40943
Total Air, 40466
TPI International Airways, Inc., 4295
Trans Carib Air, Inc., 47889
Trans International Airlines, 5027
U.S.-Japan gateways case, 47889, 47890, 48291
U.S.-Japan gateways case and route authority, 47487
U.S.-Japan route authority, 26871
UCC Charter Co., 36942
United Air Lines, 40942, 49809
United States Overseas Airlines, Inc., 19101
Wien Airlines, 30039
Wright Air Service, Inc., 49147
International cargo rate flexibility level--
Adjustment, 25509, 47493
Update, 13112
Standard foreign fare level--
Establishment, 7024
Index adjustment factors, 15806, 26425, 33885, 42634, 52578
Meetings:
Commercial Space Transportation Advisory Committee, 9753, 45521
Minority Business Resource Center Advisory Committee, 30040, 41287
Minority and women-owned business enterprises bidding on or performing transportation-related contracts; surety bonding program; request for letters to implement; establishment, 37944
Privacy Act; systems of records, 16186
Senior Executive Service:
Performance Review Board; membership, 39797, 41287
Speed limit compliance proceedings:
Arizona, 51959, 52401, 53056
Maryland, 51959, 52401, 52876, 53056
Vermont, 51959, 52401, 53056

TRAVEL AND TOURISM ADMINISTRATION

NOTICES
Meetings:
Travel and Tourism Advisory Board, 2072, 20578, 40433

TREASURY DEPARTMENT

See also Alcohol, Tobacco and Firearms Bureau.
Comptroller of Currency.
Customs Service.
Fiscal Service.
Foreign Assets Control Office.
Internal Revenue Service.
Revenue Sharing Office.
Secret Service.
United States Mint.
RULES
Acquisition regulations:
Disputes and appeals, handling process, 31844
Casinos, currency transactions; reporting and recordkeeping requirements, 5065
Correction, 36875
Exemption for Nevada casinos, 5064, 21837
Claims; military and civilian employees; dollar amount, 29221
Currency and foreign transactions; financial reporting and recordkeeping, 18478
Clarifying amendments, 42691, 46283, 47390
Foreign financial agencies, 27821
Honeybees and honeybee semen; importation, 25685
Portfolio investment survey, foreign, 262
Practice before Internal Revenue Service:
Discipline of appraisers assessed with aiding and abetting penalties, 42014
PROPOSED RULES
Capital Construction Fund; joint tax regulations; withdrawn, 37702
International capital and foreign currency transactions, etc.:
Treasury international capital form BL-3; reporting and recordkeeping requirements, 19702
Practice before Internal Revenue Service:
Discipline of appraisers assessed with aiding and abetting penalties, 7075
Enrollment renewal requirements, 15937
Regulatory agenda, 17616, 44488
NOTICES
Agency information collection activities under OMB review, 1026, 1971, 2368, 2750, 4009, 5347, 5728, 5841, 7442, 8693, 9356, 10341, 10574, 11043, 11474, 11609, 12682, 13447, 14071, 14188, 15667, 16036, 16190, 16577, 16770, 19602, 21388, 21955, 21956, 23573, 24734, 25647, 26653, 27392, 28679, 29294, 29791, 30557, 31667, 32674, 33449, 34032, 34792, 37303, 38736, 40099, 41978, 41979, 42635, 43625, 45523, 46722, 47651, 48673, 49811, 50250, 50883, 53057
Bonds, Treasury:
2004 series, 377, 20643, 32342
2005 series, 12101, 14071, 26429, 27710, 46235, 53058
2009-2014 series, 10882
2015 series, 5846, 7026, 19259, 32511, 32946, 48680, 50705
Boycotts, international:
Countries requiring cooperation; list, 2653, 13691, 27709, 40945
Committees; establishment, renewals, terminations, etc.:
Debt Management Advisory Committee, 27885
Treasury Building Rehabilitation Advisory Committee, 36951
Iran-U.S. Claims Tribunal; payment procedures, 34958
Meetings:
Debt Management Advisory Committee, 1157, 7025, 14188, 27524, 27885, 40650
National Center for State and Local Law Enforcement Training Advisory Committee, 4295, 35174
Notes, Treasury:
A-1995 series, 5843, 7026, 32343
AB-1987 series, 43492, 45188
AC-1987 series, 47890, 48857
AD-1987 series, 51767
B-1995 series, 19256, 20644, 32343
C-1994 series, 10881, 32343
C-1995 series, 32508, 32946
D-1992 series, 375, 1157
D-1995 series, 48675, 50705
E-1992 series, 12105, 14071
F-1992 series, 26433, 27709
G-1992 series, 46239, 46383
H-1991 series, 48679, 50705
J-1990 series, 8206, 8909
K-1990 series, 23221, 23865
L-1989 series, 12103, 14071
L-1990 series, 23866
M-1989 series, 26431, 27710
M-1990 series, 34957, 36509
N-1989 series, 46237, 46383
P-1989 series, 51769
Q-1988 series, 375
R-1987 series, 3448, 4295
R-1988 series, 5841, 7025
S-1987 series, 7684, 8042
S-1988 series, 19254, 20644
T-1987 series, 11285, 12103
T-1988 series, 32507, 32946
U-1987 series, 16380, 18610
U-1988 series, 48673, 50705
V-1987 series, 21160, 23099, 24859
W-1987 series, 25375, 26429
X-1987 series, 30253, 31088
Y-1987 series, 33886, 34958
Z-1987 series, 38053, 38939
Notes (foreign-targeted), Treasury:
L-1990 series, 23223
Organization, functions, and authority delegations:
Assistant Secretary for Management et al., 23573, 43309
Assistant Secretary (Public Affairs and Public Liaison), 31667
Facsimile signatures and seals use; revocation, 8042
Procurement Executive et al., 12100
Treasurer of United States, 49493
Under Secretary et al., 31668
Privacy Act; systems of records, 30334
Senior Executive Service:
Performance Review Board; membership, 5347, 29038, 31992, 35901
Tax treaties, income; various countries:
India, 27392

TRUMAN, HARRY S., SCHOLARSHIP FOUNDATION

NOTICES
Meetings; Sunshine Act, 10888, 29296
Scholarship programs; closing date for nominations, 42777

UNEMPLOYMENT

See Economic Development Administration.
Employment and Training Administration.
Labor Department.
Railroad Retirement Board.

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

NOTICES
Meetings; Sunshine Act, 1670, 13450, 27889, 42119, 43497

UNITED STATES INFORMATION AGENCY

RULES
Acquisition regulations, 13200
Exchange-visitor program:
  National Institutes of Health program; clarification, 49373
  Tax exempt status requirement, 6160
  Teenager program--
    Interim, 31709
    Revocation and suspension procedures, etc., 49373
Foreign Service Officers; appointment, 27422

PROPOSED RULES
Audio-visual materials, worldwide free flow (export-import); appeals time limit, 23453
Exchange-visitor program:
  Teenager exchange visitors; advance notice, 52938
Foreign Service Officers; appointment, 16098

NOTICES
Agency information collection activities under OMB review, 4610, 11610, 13448, 30559, 33668, 34959, 43310, 46383, 48291, 51770
Art objects, importation for exhibition:
  Age of Suleiman the Magnificent, 13112
  Art Nouveau Jewelry by Rene Lalique, 35355
  Blood of Kings: A New Interpretation of Maya Art, 45885
  Boston Early Music Festival and Exhibition, 23236
  China: 7,000 Years of Discovery, 21389
  Colossal Statue of Ramses II, 35355
  Diego Rivera: A Retrospective, 28058, 47891
  Durer to Delacroix: Great Master Drawings from Stockholm, 14790
  Elba to Damascus: Art and Archeology of Ancient Syria, 13112
  Gallery for a King: Old Master Paintings from Dulwich, 8432, 12106, 50883
  Gericault Drawings, 19105
  India, 21540
  Italian Renaissance Sculpture in Time of Donatello, 37619
  Kushan Sculpture: Images from Early India, 42116
  Leonardo da Vinci Drawings of Horses from the Royal Library at Windsor Castle, 5152
  Leonardo to Van Gogh: Master Drawings from Budapest, 13302
  Marc Chagall, 15033
  New Painting: IMPRESSIONISM 1874-1886, 48292
  Pebble Beach Concours d'Elegance, 28140
  Ramses the Great, 30904
  Sculpture of India, 6423, 9357, 20869
  Silk Roads, China Ships, 13448
  Stubbs: An Exhibition in Honor of Paul Mellon, 14332
  300 Years of German Painting and Drawing, 33449
  Titian: The Flaying of Marsyas, 53415
  Treasure House of Britain: Five Hundred Years of Private Patronage and Art Collecting, 30327
  Treasures of the Holy Land: Ancient Art from the Israel Museum, 28058
Authority delegations:
  Associate Director for Broadcasting, 4009
  Associate Director for Management et al., 42637
  Deputy Director et al., 46384
  Director, Television and Film Service Office, 5028
  Executive Director, Radio Broadcasting to Cuba Advisory Board, 8044
  General Counsel and Congressional Liaison, 27393
Committees; establishment, renewals, terminations, etc.:
  Artistic Ambassador Advisory Committee, 46531
  Medical Science Advisory Committee, 48152
  Radio Broadcasting to Cuba Advisory Board, 14189
  Television Telecommunications Advisory Committee, 4610
Grants; availability, etc.:
  Afghan media project; request for concept papers, 34578
  Central American students; support of undergraduate scholarship, 15273, 23785
  English as a foreign language; Rwanda and Togo, 10574
  Fulbright teacher exchange program, 28489
  International educational and cultural activities, 16038, 16578, 20028, 25648, 28866, 29792, 31992, 33668, 38603
  President's International Youth Exchange Initiative, 38939
  Summer institute in American studies, 8693
  University affiliations program, 40651, 41980
  Winter Institute in American Studies, 38939
Meetings:
  Artistic Ambassador Advisory Committee, 46384
  Book and Library Advisory Committee, 11610, 24078
  Cultural Property Advisory Committee, 27394
  International Educational Exchange Advisory Panel, 23866
  Public Diplomacy, U.S. Advisory Commission, 2369, 5348, 10884, 14189, 21010, 24340, 27525, 36179, 41439, 43310, 50033
  Radio Engineering Advisory Committee, 14189, 46384
  Television Telecommunications Advisory Committee, 24078
President's International Youth Exchange Initiative; organization index, 30041
Privacy Act; systems of records, 2654, 2655
Procurement:
  Commercial activities, performance; cost comparison study (OMB A-76 implementation), 19105
  Commercial or industrial activities, performance; review schedule (OMB A-76 implementation), 10884
Senior Executive Service:
  Performance Review Board; membership, 51981

UNITED STATES MINT

NOTICES
Metal tokens; policy statement, 28679

UNITED STATES RAILWAY ASSOCIATION

RULES
Organization, rulemaking, and public information; amendments and obsolete CFR Parts removed, 39015

NOTICES
Meetings; Sunshine Act, 11613

URBAN AFFAIRS

See Community Services Office.
Economic Development Administration.
Urban Mass Transportation Administration.

URBAN MASS TRANSPORTATION ADMINISTRATION

RULES
Buy American requirements; cement, 2289

NOTICES
Buy American requirements; exemption petition, 1156, 18760
Committees; establishment, renewals, terminations, etc.:
  Section 15 Reporting System Advisory Committee, 41780
Environmental statements; availability, etc.:
  Boonton/Montclair corridor, NJ and NY; alternative transit improvements, 20868
  Cleveland, OH; alternative transit improvements, 31273
First article bus test plan; availability, 13690
Grants and cooperative agreements; availability, etc.:
  Formula grant program; funds apportionment, 39948
  Transit agencies managerial training grants, 13447
Meetings:
  Section 15 Reporting System Advisory Committee, 33885, 47650

VESSELS

See Coast Guard.
Customs Service.
Engineers Corps.
Federal Maritime Commission.
Interstate Commerce Commission.
Maritime Administration.
Panama Canal Commission.
Saint Lawrence Seaway Development Corporation.

VETERANS ADMINISTRATION

RULES

Acquisition regulations, 789
Adjudication; pensions, compensation, dependency, etc.:
  Dioxin (Agent Orange) and ionizing radiation claims based on exposure, 34452
  Disability and death pension award; effective date, 25980
  Headstone or marker allowance, 36577
  Incompetent veterans; computations of estate value, waiver of payment discontinuance, etc., 50615
  Pension rates and income limitations; cost-of-living adjustments, 25415, 45580
    Correction, 27584
  Vietnam era veterans; basic eligibility for loan guaranty benefits, 53314
  Vocational training; temporary programs, 52774
Audit requirements for State and local governments, 30937
Board of Veterans Appeals:
  Practice rules, 36992
    Correction, 38653
Legal services, General Counsel:
  Violation of penal statutes, 24767
Life insurance, National Service, Servicemen's Group, and Veterans' Group:
  Dividend option, timely filing of claims, etc., 12252
Loan guaranty:
  Condominium ownership; reporting and recordkeeping requirements, 26359
  Condominium project approval, 5975
  Increase in loan fee for housing loans, 5754
  Interest rates, 12800, 16232, 21837, 24511, 48405, 51681
    Correction, 13970
  Leader; redefinition, 13191
  Manufactured home loans, 3333
  Specially adapted housing assistance; maximum amount increase, 13020
Medical benefits:
  Aid payable to State veterans homes; per diem rates, 32567, 34130
  Emergency outpatient dental treatment, 14704
    Correction, 21604
  Overpayments; waiver, 38802
  Treatment in non-VA facilities in noncontiguous States, territories, etc., 4974
Nondiscrimination in federally-assisted programs on basis of age, 34130
Security and law enforcement at VA facilities, 29226
Vocational rehabilitation and education:
  Dependents education assistance; time limits for processing claims, 16702
  Educational assistance; eligibility, 27825
  Educational assistance allowance; advance payment regulations, etc.; editorial amendments, 36578
  Measurement of courses; accreditation, 21604
  Special restorative training; limitation to eligible children, 21606
  Veterans education--
    Increased rates under dependents, G.I. bill and emergency veterans job training educational assistance programs, 19933, 24768
    Post-Vietnam era veterans educational assistance program, 19933
    Reports of unsatisfactory progress, 29674
    Retroactive approval of courses, 48580
    Technical amendments, 43134
  Vocational Rehabilitation and Counseling Service; authority delegation, 46763
  Vocational rehabilitation program; amendments; correction, 9621

PROPOSED RULES

Acquisition regulations, 40420
Adjudication; pensions, compensation, dependency, etc.:
  Annual benefit amounts of improved pension; frequency of payment, 34498
  Dioxin (Agent Orange) and ionizing radiation claims based on exposure, 13848
  Headstone or marker allowance, 20445
  Incompetent veterans; computations of estate value, waiver of payment discontinuance, etc., 12041
  Vietnam era veterans; basic eligibility for loan guaranty benefits, 28224
  Vocational training; temporary programs, 36631
Board of Veterans Appeals:
  Practice rules, 15184, 50632
Inventions by VA employees as coinventors in research supported by nonprofit organizations and small businesses; contractor obligations, 14393
Legal services, General Counsel:
  Violation of penal statutes, 4708
Loan guaranty:
  Defaults on loans; reporting time extension, 27833
Medical benefits:
  Aid payable to State veterans homes; per diem rates, 9811
  Breaking appointments; eligibility for payment of unauthorized medical services, etc., 29990
Regulatory agenda, 17998, 44848
Relocation assistance and real property acquisition, uniform cost-effective policies and procedures, 21712
Vocational rehabilitation and education:
  Educational assistance allowance; advance payment regulations, etc.; editorial amendments, 13836
  Subsistance allowance payment rates, 38862
  Trial work periods and vocational rehabilitation for veterans with total disability ratings; temporary program, 42726
  Veterans education--
    Civil rights laws; compliance by State approving agencies, 50641
    Educational assistance test program, 50632
    Emergency Veterans Job Training Act; limit on reimbursement of wages, 50642
    Entitlement charges for overpayments, 45629
    Post-Vietnam era veterans educational assistance program, 25430, 37700, 39143
    Reports of unsatisfactory progress, 1549
    Retroactive approval of courses, 21624
    Two-year course operation requirement waiver, 34722
    Undergraduate courses, measurement, 42191
    Veteran's Educational Assistance Act implementation, 47066
  Vocational Rehabilitation and Counseling Service; authority delegation, 23145

NOTICES

Advisory committees, annual reports; availability, 15668, 16382, 20645, 28301, 32826
Agency information collection activities under OMB review, 200, 2119, 2656, 3614, 5728, 5849, 9357, 10885, 12107, 12435, 13910, 14332, 18761, 18958, 21162, 24078, 25819, 30328, 30778, 32826, 34959, 35175, 37468, 39803, 40945, 46532, 46857, 48292, 48857, 48858, 50379, 52582
Committees; establishment, renewals, terminations, etc.:
  Health-Related Effects of Herbicides Advisory Committee, 28489
  Readjustment Problems of Vietnam Veterans Advisory Committee, 21162
  Voluntary Service National Advisory Committee, 7685
  Wage Committee, 11611
Environmental statements; availability, etc.:
  Allen Park, MI, 39068
  Arneytown, NJ, 40099
  Erie, PA, 36951
  Grand Rapids, MI, 11782
  Hampton, VA, 53415
  Jackson, MS, 21687
  Knoxville, IA, 45188
  Marion, IN, 10884
  North Chicago, IL, 10884
  Paramus, NJ, 8809
  Pittsburgh, PA, 11287
  Rifle, CO, 201
  Salisbury, NC, 4829
  Syracuse, NY, 19841
  Yountville, CA, 7027
Medical care reimbursement rates, 1985 FY, 2120
Meetings:
  Administrator's Educational Assistance Advisory Committee, 10139, 41086
  Career Development Committee, 10887, 38605
  Cemeteries and Memorials Advisory Committee, 14189, 52401
  Cooperative Studies Evaluation Committee, 5729, 16382, 35175
  Educational Allowances Station Committee, 201, 18958, 28301, 36179, 37468, 38736, 43494, 45188, 46385, 47136, 47323, 49895, 51981
  Environmental Hazards Advisory Committee, 12107, 19841
  Former Prisoners of War Advisory Committee, 16382

Geriatrics and Gerontology Advisory Committee, 29508
Health Services Research and Development Scientific Review and Evaluation Board, 23099
Health-Related Effects of Herbicides Advisory Committee, 6424, 41086
Medical Research Service Merit Review Boards, 8809, 37619
Readjustment Problems of Vietnam Veterans Advisory Committee, 8810, 20645, 24340, 33449, 51771
Rehabilitation Advisory Committee, 12345, 32521, 45524
Rehabilitation Research and Development Scientific Review and Evaluation Board, 16383, 45958
Special Medical Advisory Group, 14189, 37304
Structural Safety of Veterans Administration Facilities Advisory Committee, 8432, 38605
Voluntary Service National Advisory Committee, 32521
Wage Committee, 14071, 27084, 39804, 52876
Women Veterans Advisory Committee, 6424, 36179
Privacy Act:
Computer matching program, 18761, 23867, 30327, 30779, 31088
Systems of records, 583, 8044, 10886, 11610, 13448, 16770, 23099, 23100, 23866, 26875, 28867, 31453, 36952, 43054, 50033
Procurement:
Commercial activities, performance; productivity review and cost comparison review schedules (OMB A-76 implementation), 24079, 24859, 27710, 43626, 51973
Suspended, 12683
Reports, program evaluations; availability, etc.:
Domiciliary care program, 20516
Life insurance program, 1294
Senior Executive Service:
Performance Review Board; membership, 47323
Settlement agreements:
Gott, Chris L., et al., 45703

VETERANS EMPLOYMENT AND TRAINING, OFFICE OF ASSISTANT SECRETARY

RULES
Exemplary rehabilitation certificates for ex-servicemen; CFR Part removed, 4209

PROPOSED RULES
Federal contractors, annual report; advance notice, 33360

NOTICES
Grants; availability, etc.:
Job Training Partnership Act--
Employment and training programs in various States, 19822, 28853
Employment and training programs operation, 9912, 50970
Meetings:
Veterans Employment Committee, 10549, 24966, 38723, 51957
State employment security agency services; performance standards, 52871

VOCATIONAL REHABILITATION AND EDUCATION

See Education Department.
Human Development Services Office.
Veterans Administration.

WAGE AND HOUR DIVISION

RULES
Migrant and seasonal agricultural worker protection:
State issuance of farm labor contractor certificates of registration--
New Jersey, 42162
Virginia, 40974
Wage rates; procedures for predetermination, 4506
New publication procedures, 49822

PROPOSED RULES
Employees in bona fide executive, administrative, professional, or outside sales capacity, definitions, etc.; advance notice, 47696

NOTICES
Learners, certificates authorizing employment at special minimum wages, 2102, 15993, 31446, 43819
Registration and enforcement procedures; memorandum of understanding between Labor Department and Maryland, 32335

WASTE TREATMENT AND DISPOSAL

See Engineers Corps.
Environmental Protection Agency.

WATER AND WATERWAYS

See Canada and United States-International Joint Commission.
Coast Guard.
Delaware River Basin Commission.
Engineers Corps.
Environmental Protection Agency.
Federal Maritime Commission.
Interior Department.
Interstate Commerce Commission.
Panama Canal Commission.
Reclamation Bureau.
Saint Lawrence Seaway Development Corporation.
Soil Conservation Service.
Water Resources Research Office.

WATER RESOURCES RESEARCH OFFICE

RULES
State water research institute program; CFR Chapter and Parts removed, 23113

PROPOSED RULES
State water research institute program; CFR Chapter and Parts removed, 956

WESTERN AREA POWER ADMINISTRATION

PROPOSED RULES
Boulder Canyon Project; power sale charges, 20732, 49050
Extension of time, 30447

NOTICES
Boulder Canyon project uprating program; contingency capacity and associated energy:
Final allocations, 47830
Proposed allocations, 24829
California-Oregon Transmission Project; allocation criteria of transfer capability among non-Federal public entities:
Final, 42769
Inquiry, 23356, 31912
Colorado River Storage Project power resources; report to Congress, 34752
Customer conservation and renewable energy programs; guidelines and customer acceptance criteria, 33892
Amendments; inquiry and public forum, 5309
Environmental statements; availability, etc.:
Blue River-Gore Pass, Hayden-Blue River transmission line project, CO, 28649
Conrad-Shelby transmission line project, MT, 29259, 37272
Intertie transmission line, CA and OR, 16538
Liberty-Coolidge transmission line, AZ, 14285
Rifle-San Juan transmission line project, CO and NM, 7379
Thermopolis-Alcova-Casper transmission line project, WY, 20593
Washoe Project, CA, 21350
Mead-Northwest Intertie; inquiry, 12619, 13871
Non-Federal participation in planning investigation, etc.:
Colorado-Big Thompson Pumped-Storage Unit, CO, 10113
Spring Canyon Pumped Storage Project, AZ, 30512, 45663
Pacific Northwest-Southwest Intertie; report availability, 11556
Power application requests:
Boulder City Area Projects, 2717
Power development planning studies:
Spring Canyon Pumped Storage Project, AZ, 7403, 12622
Power marketing plans, etc.:
Boulder City area projects, 7823
Central Valley Project, CA, 2502, 33314
Colorado River Storage Project, UT, 9321
Diamond Fork Power System and Jordanelle Powerplant, 12619, 20596
Salt Lake City Area, 13078
Washoe Project, CA, 21350
Power rate adjustments:
Collbran Project, CO, 42771
Pick-Sloan Missouri Basin Program, 32290, 50002
Stampede Powerplant, Washoe Project, CA; allocation, 21350, 43456
Transmission rate adjustments:
Colorado River Storage Project, 42772

WHITE HOUSE FELLOWSHIPS, PRESIDENT'S COMMISSION

See President's Commission on White House Fellowships.

WORKERS' COMPENSATION PROGRAMS OFFICE

PROPOSED RULES

Federal Employees' Compensation Act; medical benefits claims; comment period reopened, 4525

NOTICES

Computer matching project involving beneficiaries under Federal Employees' Compensation Act; report, 7846

PRIVACY ACT—January-December 1985 ANNUAL

AGRICULTURE DEPARTMENT

NOTICES
Computer matching programs, 34522, 51723
Systems of records, 869, 25284, 25727, 34522, 50814

AIR FORCE DEPARTMENT

RULES
Implementation, 40197

PROPOSED RULES
Implementation, 30283

NOTICES
Systems of records, 326, 24672, 25737, 46477, 50337

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

RULES
Implementation, 3904

NOTICES
Systems of records, 3942

ARMY DEPARTMENT

RULES
Implementation, 932, 42163

CENTRAL INTELLIGENCE AGENCY

NOTICES
Systems of records, 50332

CHILD SUPPORT ENFORCEMENT OFFICE

NOTICES
Systems of records, 3412

COMMERCE DEPARTMENT

NOTICES
Systems of records, 9099, 25729

COMPTROLLER OF CURRENCY

NOTICES
Systems of records, 16037, 30557

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RULES
Implementation, 32696

CUSTOMS SERVICE

NOTICES
Systems of records, 30048, 41616

DEFENSE CONTRACT AUDIT AGENCY

NOTICES
Systems of records, 50339, 52993

DEFENSE DEPARTMENT

NOTICES
Systems of records, 325, 12606, 22002, 22090, 40888, 47087

DEFENSE LOGISTICS AGENCY

NOTICES
Systems of records, 51898

EDUCATION DEPARTMENT

NOTICES
Systems of records, 31219, 31411

ENERGY DEPARTMENT

NOTICES
Systems of records, 7209

ENVIRONMENTAL PROTECTION AGENCY

NOTICES
Systems of records, 4589, 18302, 24313, 30758, 49763, 50227

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICES
Systems of records, 5672

FEDERAL EMERGENCY MANAGEMENT AGENCY

RULES
Implementation, 30711

PROPOSED RULES
Implementation, 19551

NOTICES
Systems of records, 173, 5684, 9713, 20006, 35319

FEDERAL RESERVE SYSTEM

NOTICES
Systems of records, 21136

FOREIGN CLAIMS SETTLEMENT COMMISSION

NOTICES
Systems of records, 34915

GENERAL SERVICES ADMINISTRATION

RULES
Implementation, 43138

PROPOSED RULES
Implementation, 8641

NOTICES
Systems of records, 177, 6051, 16149, 20294, 20501, 23829, 24323, 28988

HEALTH AND HUMAN SERVICES DEPARTMENT

NOTICES
Computer matching program, 19472, 48133
Systems of records, 49768

HEALTH CARE FINANCING ADMINISTRATION

NOTICES
Systems of records, 6395, 14457, 16153, 21356, 27361, 27407, 29766, 30237, 46352, 51951

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

NOTICES
Systems of records, 8791, 15787, 18933

INTER-AMERICAN FOUNDATION

NOTICES
Systems of records, 38590

INTERIOR DEPARTMENT

RULES
Implementation, 45113

NOTICES
Systems of records, 2091, 7390, 14027, 23522, 27693, 35329, 41222, 46356, 49133, 50236, 53200

INTERNAL REVENUE SERVICE

NOTICES
Systems of records, 2880, 29816, 41085, 49493

JUSTICE DEPARTMENT

RULES
Implementation, 31360

PROPOSED RULES
Implementation, 7800, 31887, 37232, 37233, 37235, 37236, 51410, 51411, 51413

NOTICES
Systems of records, 2095, 2096, 7842, 18753, 30309, 31935, 33863, 35878, 35879, 37294, 37295, 37296, 37298, 37299, 40065, 42603, 42615, 51470, 51471, 51473, 51474, 51479

LABOR DEPARTMENT

NOTICES
Systems of records, 5140, 5141, 5143, 43473

MERIT SYSTEMS PROTECTION BOARD

NOTICES
Systems of records, 29003, 36682

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

RULES
Implementation, 27196

PROPOSED RULES
Implementation, 21461

NATIONAL SCIENCE FOUNDATION

NOTICES
Systems of records, 39188

NAVY DEPARTMENT

NOTICES
Computer matching program, 9486
Systems of records, 329, 28442, 35290, 36914, 52997

NUCLEAR REGULATORY COMMISSION

RULES
Implementation, 41127, 50283

PROPOSED RULES
Implementation, 31192

PEACE CORPS

RULES
Implementation, 1844
Correction, 4505

NOTICES
Systems of records, 1950

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

PROPOSED RULES
Implementation, 45841

PENSION BENEFIT GUARANTY CORPORATION

NOTICES
Systems of records, 16028

PERSONNEL MANAGEMENT OFFICE

NOTICES
Computer matching program, 26280
Systems of records, 15253

POSTAL RATE COMMISSION

NOTICES
Systems of records, 34029

POSTAL SERVICE

NOTICES
Computer matching program, 6086, 18591, 37739
Systems of records, 6086, 18589, 28862, 47311

PUBLIC HEALTH SERVICE

NOTICES
Systems of records, 25469, 29270, 33853, 36491, 38212
Annual publication, 41412, 43611

RAILROAD RETIREMENT BOARD

RULES
Implementation, 27222

PROPOSED RULES
Implementation, 10247

NOTICES
Computer matching program, 16029
Systems of records, 10332, 21155

SECURITIES AND EXCHANGE COMMISSION

NOTICES
Systems of records, 37750

SELECTIVE SERVICE SYSTEM

NOTICES
Systems of records; annual publication, 51318

SMALL BUSINESS ADMINISTRATION

NOTICES
Systems of records, 32503, 45882

SOCIAL SECURITY ADMINISTRATION

NOTICES
Computer matching program, 6053
Systems of records, 5819

STATE DEPARTMENT

NOTICES
Systems of records, 12681

TRANSPORTATION DEPARTMENT

NOTICES
Systems of records, 16186

TREASURY DEPARTMENT

NOTICES
Systems of records, 30334

UNITED STATES INFORMATION AGENCY

NOTICES
Systems of records, 2654, 2655

VETERANS ADMINISTRATION

NOTICES
Computer matching program, 18761, 23867, 30327, 30779, 31088
Systems of records, 583, 8044, 10886, 11610, 13448, 16770, 23099, 23100, 23866, 26875, 28867, 31453, 36952, 43054, 50033

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	Inspection Operations Manual: Standard operating inspectional and investigational procedures and instructions used by FDA investigational personnel	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Manual accession #PB84-912399, $45.00; subscription accession #PB84-912300, $50.00	
	Inspector Training Manual: Basic training manual for food and drug inspectors and inspection techniques	Food and Drug Administration, Freedom of Information Staff, 5600 Fishers Lane, Rm. 12A-16, Rockville, MD 20857. Cost: $26.00. Payable to the Food and Drug Administration	
	Inspector's Manual for State Food and Drug Officials: Two-part manual— (1) operations section contains inspectional and investigational procedures, (2) program section outlines the specific recommended inspectional procedures applicable to a particular problem area, commodity or regulated industry	Food and Drug Administration, Freedom of Information Staff, 5600 Fishers Lane, Rm. 12A-16, Rockville, MD 20857. Cost: $71.00. Payable to the Food and Drug Administration	
	Inspector's Technical Guide: Technical information for FDA inspectors, not previously available on a broad scale	Food and Drug Administration, Freedom on Information Staff, 5600 Fishers Lane, Rm. 12A-16, Rockville, MD 20857. Cost: $15.00. Payable to the Food and Drug Administration	
	Pesticide Analytical Manual: Procedures and methods used in FDA laboratories for surveillance of the extent and significance of contamination of man and his environment by pesticides and their metabolites	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Volume I—Accession #PB82-911699, $35.00. Volume II—Accession #PB82-911999, $50.00. Entire Manual—Accession #PB82-911799, $75.00	
	Quantity of Contents Compendium: Contains information used to measure acceptance levels of shrinkage in food containers— (1) procedures for measuring fill-of-container, statistical evaluation acceptable common or usual declaration of quantity of contents; (2) information on sampling where special techniques are required	Food and Drug Administration, Freedom of Information Staff, 5600 Fishers Lane, Rm. 12A-16, Rockville, MD 20857. Cost: $26.00. Payable to the Food and Drug Administration	
	Regulatory Procedures Manual: Guidance on regulatory policy and support processing procedures	Food and Drug Administration, Freedom of Information Staff, 5600 Fishers Lane, Rm. 12A-16, Rockville, MD 20857. Cost: $155.00. Payable to the Food and Drug Administration	
	Staff Manual Guides—Organization and Delegation: Directives issued by FDA to establish policy, organization, procedures or responsibilities in the administrative area	Food and Drug Administration, Freedom of Information Staff, 5600 Fishers Lane, Rm. 12A-16, Rockville, MD 20857. Cost: $305.00. Payable to the Food and Drug Administration	
	Supervisory Investigators Guide: Guidelines to assist supervisory inspectors in managing investigational groups	Food and Drug Administration, Freedom of Information Staff, 5600 Fishers Lane, Rm. 12A-16, Rockville, MD 20857. Cost: $12.00. Payable to the Food and Drug Administration	
	Index to Administrative Staff Manuals: Current listing of all staff manuals with indexes and/or table of contents	Food and Drug Administration, Freedom of Information Staff, 5600 Fishers Lane, Rm. 12A-16, Rockville, MD 20857. Cost: $33.00. Payable to the Food and Drug Administration	

Agency and subagency name	Index title; period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of Health and Human Services, Public Health Service, Health Services Administration (HHS/PHS/HSA)	HSA Freedom of Information Act (FOIA) Index: March 1975 to June 30, 1982. The HSA, FOIA Index is a compilation of supplements to the departmental manual system, program level operations manuals, circulars, memoranda, notices and guides used by the components of HSA. All information included in this index is current as of June 30, 1982. The respective bureau level indexes are listed as follows: OA—Office of the Administrator: OCPA—Public Affairs Management System Manual; OPEL—HSA forward plan, fiscal year 1979–83; OM/OCG—HSA procurement operating instructions; OM/OMF—HSA transmittal notices for supplements to HHS manuals; HSA Circulars; OM/OFS—policy decisions, procedures, and opinion. BMS—Bureau of Medical Services: Division of Hospitals and Clinics Operations Manual; BMS supplements to HHS manuals; Manual of Operations for PHS Health Unit, DFEH, BMS; BMS circulars; Contract Physician's Guide. IHS—Indian Health Services: IHS circulars; IHS supplements to HHS manuals; IHS Operations Manual; General Counsel opinions; policy and procedural manual and circulars. BCHS—Bureau of Community Health Services: BCHS administrative guide system; BCHS Operations Manual; Emergency Medical Service Systems Program Guidelines; BCHS Regional Memorandum Series. BHPDS—Bureau of Health Personnel Development and Service: BHPDS supplements to the HHS manuals; BHPDS operations manuals which include memoranda, guidelines, handbooks and procedures	Office of Communications and Public Affairs, HHS/PHS/HSA, Room 14A-39, 5600 Fishers Lane, Rockville, MD 20857. Checks payable to HHS/Public Health Service. Mail to HSA Collection Officer, HHS/PHS/HSA, Room 16-36, 5600 Fishers Lane, Rockville, MD 20857. Fees charged for research and reproduction of information are based upon the current departmental fee schedule for information under the FOI regulations (45 CFR part 5 subpart E)	Office of Communications and Public Affairs, HHS/PHS/HSA, Room 14A-39, 5600 Fishers Lane, Rockville, MD 20857
Department of the Interior, Office of the Secretary	Departmental Manual, Table of Contents, Checklist, and Subject Index dated October 23, 1984. Index of directives containing descriptions of central and field organizations of the Department, delegations of authority, internal policies, guidelines, procedures, and other administrative matters	Chief, Division of Directives and Regulatory Management, Office of Information Resources Management, U.S. Department of the Interior, Washington, DC 20240 One Copy only, no charge	
	Checklist and Subject Index of Departmental Manual Additions to the FPM dated July 5, 1984. Index of Departmental personnel management directives which supplement the Federal Personnel Manual	Chief, Division of Directives and Regulatory Management, Office of Information Resources Management, U.S. Department of the Interior, Washington, DC 20240 One Copy only, no charge	
Department of the Interior, Bureau of Mines	Basic Bureau of Mines Manual General Table of Contents and Checklist–July 6, 1976 Numeric and subject listing of internal policies and procedures by series, part, chapter, paragraph, and subdivision paragraph	In accordance with fee schedule in 43 CFR 2, App. A Bureau of Mines	Helen M. Gellett, Directives Management Officer, 2401 E St. NW., Washington, DC 20241 Telephone 634-4730
Department of the Interior, Bureau of Reclamation	Reclamation Instructions Index - July 12, 1983	Division of Management Support, E&R Center, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225. No charge	Division of Management Support, E&R Center, Bureau of Reclamation, Denver Federal Center, Bldg. 67, Denver, CO 80225 Telephone: 303 236-9814
Department of the Interior, U.S. Geological Survey	Geological Survey Manual Index dated September 23, 1985	1) U.S. Geological Survey Administrative Division, Branch of Administrative Services, Materials Management Section, Inventory Control Unit, 231 National Center, 12201 Sunrise Valley Drive, Reston, VA 22092 2) No charge	Administrative Division, Branch of Administrative Services, Management Support Section, Paperwork Management Unit, 12201 Sunrise Valley Drive, Reston, VA 22092 Telephone (202) 860—7211 (FTS) 928-7211
Department of the Interior, Minerals Management Service	Basic Minerals Management Service Manual Table of Contents and Checklist–October 2, 1985 Listed numerically by part, series, chapter, release number, date, and pages	In accordance with fee schedule in 43 CFR 2, Appendix A	Dorothy Christopher, Directives Management Officer, 12203 Sunrise Valley Drive, Reston, VA 22091 Telephone 435-6213
Department of the Interior, National Park Service	NPS Guidelines and Directive Index Dated July 1, 1985	National Park Service, Administrative Services Div. P.O. Box 37127, Washington, DC 20013-7127 Attn: Paperwork Branch No charge	National Park Service, Administrative Services Div. P.O. Box 37127, Washington, DC 20013-7127 Attn: Paperwork Branch Telephone 202-523-5126
Department of the Interior, Office of Hearings and Appeals	Index-Digest -- Index of synopses for all decisions decided by OHA Boards of Appeal and published Solicitor's decisions under specific topical headings. Useful in researching legal holdings of Dept. of the Interior. Published quarterly, annually and on 5-year basis	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203. No charge	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703-235-3791
Department of the Interior, Office of Surface Mining	Office of Surface Mining Directive Index dated June 15, 1984	Division of Management Services, Branch of General Services, 1951 Constitution Ave., NW., Washington, DC. 20240 No charge	Division of Management Services, Branch of General Services, 1951 Constitution Ave., NW., Washington, DC. 20240 Room 10 Telephone (202) 343-5315
Department of Labor, Office of the Secretary, Wage Appeals Board	Davis-Bacon Act Index. The index contains abstracts of final decisions of the Wage Appeals Board from 1969-1984. The index will be updated periodically. The current 127 page index is available in whole, or the 3 page subject matter table of contents and any individual section may be ordered separately	Office of the Solicitor, Division of Fair Labor Standards, Room N-2716, Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Price is $.10 per page. Make checks payable to Department of Labor	Executive Secretary, Wage Appeals Board, Room N-6507, (202) 523-9039; or Department of Labor Library, Room N-2439 (202) 523-6992 200 Constitution Ave., NW., Washington, DC 20210

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of Labor, Office of the Secretary, Wage Appeals Board	Wage Appeals Board Index-Digest. The index contains abstracts of final decisions of the Wage Appeals Board from 1964-1988. The index is fifty pages long and is supplemented by the new Davis-Bacon Act Index	Office of the Solicitor, Division of Fair Labor Standards, Room N-2716, Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Price is $.10 per page. Make checks payable to Department of Labor	Executive Secretary, Wage Appeals Board, Room N-6507, (202) 523-9039; or Department of Labor Library, Room N-2439 (202) 523-6992 200 Constitution Ave., NW., Washington, DC 20210
Department of Transportation, Federal Highway Administration (FHWA)	Cross/Reference Index of current directives. The index is alphabetical by subject and within each subject, applicable directives are identified. The index also includes a three-part cross-reference for the FHPM, 23 U.S.C. and 23 CFR. The index is updated semi-annually (March and September)	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
	Cease and Desist and Driver Disqualification Final Orders by the Federal Highway Administrator: 1966-1984; listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier and date notice of investigation was mailed	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
	Opinions and Final Orders of the FHWA in Regard to the Regulation of Toll Bridges: 1966-1984 listing of opinions and final orders regarding regulation of toll bridges issued by the Federal Highway Administrator, which identifies the case and the date issued	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
Department of the Treasury, Office of the Secretary	Index of Selected Records: July 1967 to November 1985; Listing of current administrative documents, reports, and releases from the Office of the Secretary, Bureau of Engraving and Printing, Bureau of the Mint, U.S. Secret Service, Bureau of the Public Debt, Bureau of Government Financial Operations, Federal Law Enforcement Training Center, U.S. Customs Service	Library, Room 5010-MT, Department of the Treasury, Washington, DC 20220, Reproduced upon request; fees charged per page copied in accordance with fee schedule at 31 CFR 1.8. Make checks payable to Treasury of the United States	Treasury Department Library, Room 5010 Main Treasury Bldg., 15th and Pennsylvania Ave., NW., Washington, DC 20220
Architectural and Transportation Barriers Compliance Board	ATBCB Freedom of Information Index; June 1978 through November 1982: Final decisions made in adjudication of cases concerning alleged noncompliance to the Architectural Barriers Act of 1968; and a record of the final votes of each member of the Board in every Board proceeding. ATBCB annual reports; pamphlets describing the ATBCB, how to file complaints, and resource guides to literature in the area of creating an accessible environment	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Reproduced upon request. Twenty cents per page, per copy. Make checks payable to the Department of Education Public Information Office, ATBCB, Rm. 1010, 330 C St., SW. Washington, DC 20202. No charge	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC Phone: 202-245-1591 Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202 Telephone: 202-245-1591
Committee for Purchase from the Blind and Other Severely Handicapped	Index of Additions and Deletions to the Procurement List: (a) Procurement List 1986 incorporates all additions and deletions through October 15, 1985; (b) Current index October 1985-December 1985	Order from: Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square Building No. 5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, VA 22202-3509. Price: Ten cents per page, per copy. Make checks payable to: Treasurer of the United States	Committee for Purchase from the Blind and Other Severely Handicapped, Attention: Freedom of Information Officer
Commodity Futures Trading Commission	Index of final Commission opinions, including concurring and dissenting opinions, and orders in the adjudication of cases. April 21, 1975 to date. (This index consists of separate chronological listings of final Commission opinions and orders in enforcement cases and reparations proceedings before the Commission) Index of statements of policy and interpretations adopted by the Commission and not published in the Federal Register. April 21, 1975 to date Index of Commission administrative manuals and instructions to staff that affect a member of the public. April 21, 1975 to date. (Commission instructions no longer in use are not included in this index)	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Price: 10 cents per page	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Telephone 202 254-6314
General Services Administration (GSA)	GSA Freedom of Information index; July 4, 1967 through June 30, 1984. Category A information which is final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases. Category B information which is those statements of policy and interpretations which have been adopted by GSA and are not published in the FEDERAL REGISTER. Category C information which is administrative staff manuals and instructions to staff that affect members of the public	GSA, Freedom of Information Officer (ATRAR), Washington, DC 20405. Price: $4.75. Make checks payable to: General Services Administration	GSA Central Office Library and the business service centers located in each regional office listed below: Central Office Library, 18th & F Sts. NW., Rm. 1033, Washington, DC 20405 Business Service Centers: National Capital Region: 7th & D Sts. SW., Washington, DC 20407 Region 1: John W. McCormack Post Office and Courthouse, Boston, Mass. 02109 Region 2: 26 Federal Plaza, New York, NY 10278 Region 3: 9th & Market Sts., Philadelphia, PA 19107 Region 4: Richard B. Russell Bldg., 75 Spring St., Atlanta, GA 30303 Region 5: 230 So. Dearborn St., Chicago, IL 60604 Region 6: 1500 East Bannister Rd., Kansas City, MO 64131 Region 7: 819 Taylor St., Ft. Worth, TX 76102 Region 8: Building 41, Denver Federal Center, Denver, CO 80225 Region 9: 525 Market St., San Francisco, CA 94105 Region 10: GSA Center, Auburn, WA 98002

Agency and subagency name	Index title; period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
International Boundary and Water Commission, United States and Mexico, U.S. Section	Brochure: Amistad Dam and Reservoir	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840. No charge	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840
	Brochure: Falcon Dam and Power Plant	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545. No charge	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545
	Water Bulletins: Containing data for 1 year covering flow of Rio Grande and related data from Elephant Butte, NM, to Gulf of Mexico, re storage in major reservoirs, diversions, suspended silt, chemical analyses, sanitary aspects of water quality, meteorologic data, and irrigated areas-for years 1931 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4110 Rio Bravo, El Paso, TX 79902. Price: $4.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4110 Rio Bravo, El Paso, TX 79902
	Water Bulletins: Containing data for 1 year covering flow of Colorado River and other Western Boundary streams, and related data (including Tijuana, Santa Cruz, and San Pedro Rivers, and Whitewater Draw) for years 1980 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4110 Rio Bravo, El Paso, TX 79902. Price: $5.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4110 Rio Bravo, El Paso, TX 79902
	Color print map – Lower Rio Grande Valley United States and Mexico	Division Engineer, Projects Division, U.S. Section, IBWC, 4110 Rio Bravo, El Paso, TX 79902. Prices; 14>x36> $4.00 per map; 10>x26> $3.00 per map. Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4110 Rio Bravo, El Paso, TX 79902
	Annual Report: Operation of Rio Grande Dams and Reservoirs. This report provides data concerning the operation of the international dams and reservoirs constructed by the Governments of the United States and Mexico on the reach of the Rio Grande which forms the boundary between the two countries	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4110 Rio Bravo, El Paso, TX 79902. No charge	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4110 Rio Bravo, El Paso, TX 79902
	Color print map: El Paso Rio Grande Projects, Canalization and Rectification Projects	Division Engineer, Projects Division, U.S. Section, IBWC, 4110 Rio Bravo, El Paso, TX 79902. Price: $10.00 per map. Payable to International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4110 Rio Bravo, El Paso, TX 79902
	Brochure: Joint Projects of the United States and Mexico through the International Boundary and Water Commission	Section Secretry, U.S. Sec., IBWC, 4110 Rio Bravo, El Paso, TX 79902. Price: $6.00 per brochure. Payable to International Boundary and Water Commission, U.S. Section	Section Secretary, U.S. Section, IBWC, 4110 Rio Bravo, El Paso, TX 79902
National Science Foundation (NSF)	Index of NSF circulars, manuals, and bulletins in effect as of Dec. 20, 1983. A numerical and classification index of agency-wide issuances encompassing: (a) NSF circulars-convey agency policies, regulations, and procedures of a continuing nature; (b) NSF manuals-provide detailed instructions for implementing operating procedures, requirements, and criteria, and (c) NSF bulletins-used to communicate urgent information concerning changes in policy or procedure prior to its incorporation into a circular or manual, and to communicate other information that is pertinent for a specific period	NSF Public Information Office, Room 531, 1800 G St. NW., Washington, DC 20550. $0.10 per page, per copy. Payable to National Science Foundation	NSF Library, Room 1242, 1800 G St. NW., Washington, DC 20550
	Reviewer panelist, alphabetical listing as of Mar. 30, 1984. Listing contains name, State, and institution of individuals who have reviewed proposals for the National Science Foundation for the period indicated above		
	Indexes of Office of the Director staff memoranda (O/D) in effect as of Dec. 20, 1984. A numerical index, by calendar year, of issuances used by the Director and Deputy Director of the National Science Foundation to implement policy and to communicate with the staff on subjects of their choice		
	Numerical index of NSF important notices in effect as of Feb. 27, 1980. An index of notices serving as the primary means of general communication by the Director, NSF with organizations receiving or eligible for NSF support. The notices convey important announcements of NSF policies and procedures or concerning other subjects determined to be of interest to the academic community and to other selected audiences		
	Reference file of current internal directorate issuances. A listing, by NSF directorate, of pertinent internal issuances of major NSF organizational components conveying policies, criteria, instructions, or procedures amplified at a level below the Office of the Director and to communicate information of specific scope		
	Index of NSF regulations promulgated in the Code of Federal Regulations under Title 41, Public Contracts and Property Management; and Title 45, Public Welfare. A listing, by subject title, of current Foundation regulations with a brief description of the content of each		Office of the General Counsel, Room 501, 1800 G St. NW., Washington, DC 20550

Agency and subagency name	Index title; period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Publications of the National Science Foundation. An index by topical classification, as of Oct. 1983, of current NSF publications issued and available to the public. Listing include annual reports, specific program announcements, and brochures, science resources studies pamphlets, special studies publications, and NSF periodicals. In addition to Titles, provides NSF publication numbers and copy prices. (NSF Publication 83-36)	NSF Publications Section, Room 235, 1800 G St. NW., Washington, DC 20550. One copy only	For inspection or copying: NSF Library, Room 1242, 1800 G St. NW., Washington, DC 20550. For additional information: NSF Communications Resource Branch (OGPP) room 531, 1800 G St. NW., Washington, DC 20550
	NSF Guide to programs, A composite listing of summary information about NSF support programs, as of October, 1983. Provides general guidance and information describing the principal characteristics and basic purposes of each activity; eligibility requirements; closing dates (where applicable); and the address where more detailed information or applications may be obtained. (NSF Publication 83-57)	NSF Publications Section, Room 235, 1800 G St. NW., Washington, DC 20550. One copy gratis; or Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-00458-1. Unit price $5.00	
	NSF Grant Policy Manual. A compendium of basic NSF grant policies and procedures for use by the grantee community and NSF Staff. The Manual implements OMB Circular No. A-110, which is directed toward standardizing and simplifying the various accountability and reporting requirements amoung Federal granting agencies. (NSF Publication 77-47)	Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-81001-4. Unit Price $9.00	NSF Division of Grants and Contracts. Room 201, 1800 G St. NW., Washington, DC 20550
Office of Personnel Management	Index to Information, OPM Document No. 1. As of June 1985. A listing of publications and information systems arranged alphabetically by title. This index includes some information formerly published in the Index to Civil Service Commission Information	Internal Distribution Subunit, Room B-443, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Free	OPM Library or any OPM Office, including regional and area offices
Pennsylvania Avenue Development Corporation	PADC Freedom of Information Act (FOIA) Index; the index contains numeric and subject listings of PADC policy statements; public improvement policies; development guidelines; final opinions and cases interpreting PADC enabling legislation; and internal policies, guidelines and administrative procedures. Contains records originated since October 27, 1972, to date. The index is updated semi-annually (March and September).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20004-1703. Fees charged for research and reproduction of information are based upon the current Corporation fee schedule for information under FOI regulations (36 CFR Part 902, Subpart I).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20004-1703.
Pension Benefit Guaranty Corporation, Legal Department	Index to Pension Benefit Guaranty Corp. Opinion Manual; Sept. 2, 1974 to present; interpretive letters addressing the provisions of Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St. NW., Washington, DC 20006; Charge $0.10 per page; payable to Pension Benefit Guaranty Corp.; or contact Disclosure Officer for information regarding a subscription to the Opinion Manual	Disclosure Officer, Communications and Public Affairs Department, 202-254-5527 (202-254-8010 for TTY and TDD), 2020 K St. NW., Washington, DC 20006
Pension Benefit Guaranty Corporation, Corporate Administrative Planning Department	Index to Pension Benefit Guaranty Corp. Operating Policy Manual; Oct. 1, 1984, to present; contains basic policy statements used by the PBGC staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St., NW., Washington, DC 20006. Charge $.10 per page. Payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operating Policy Manual	
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. OPO Operations Manual; Part 1 from Sept. 2, 1974, to Oct. 1, 1984, and additional Parts as adopted; contains basic policies and procedures used by Insurance Operations Department staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St., NW., Washington, DC 20006. Charge $.10 per page, payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operations Manual	
Pension Benefit Guaranty Corporation, Participant and Employer Appeals Department	Index to Pension Benefit Guaranty Corp. Appeals Board decisions; from Feb. 28, 1980, to present; contains closed appeal case decision letters that are final decisions of the Appeals Board made pursuant to PBGC regulation, 29 CFR Part 2606, Rules for Administrative Review of Agency Decisions	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St. NW., Washington, DC 20006. Charge $.10 per page, payable to Pension Benefit Guaranty Corp.	
Veterans Administration	Board of Veterans Appeals Index I-01-1, an index to appellate decisions. Annual indexes are available from July 1977 to the present. This index is published on microfiche only	Indexes from July 1977 through December 1983 may be obtained from the Chairman, Board of Veterans Appeals (01C1), 810 Vermont Avenue, N.W., Washington, DC 20420. Indexes since January 1984 may be purchased for $7.00 per quarter or for the annual cumulative from: Promisel & Korn, Inc., 4720 Montgomery Lane, Suite 1009, Bethesda, Maryland 20814	Board of Veterans Appeals, Room 824, Lafayette Building, 811 Vermont Avenue, N.W., Washington, DC 20420, or contact your nearest VA regional office
Veterans Administration	Veterans Administration Publication Index; I-85-1. All information is current as of Oct. 31, 1984. Classification subject and numeric listing of manuals, VA Regulations, circulars, interim issues, handbooks, bulletins, pamphlets, and guides, conveying agency policies, regulations and procedures of a continuing nature	The public may obtain a copy of the inde without charge from the Veterans Administration Forms and Publications Depot, 6307 Gravel Ave., Alexandria, VA 22310, ATTN: Depot Officer (03B3)	For inspection: VA Central Office, Editorial Section, Room C-4, 810 Vermont Ave., NW., Washington, DC 20420. Phone: (202) 389-3966 -OR- Administrative Officer at nearest VA facility. Check your local Telephone Directory under United States Government, Veterans Administration, or ask your Directory Assistance Operator for the number in your area

Page
1-21
211-
427-
721-
917-
1039
1203
1429
1813
2039
2273
2539
2659
2771
2947
3307
3497
3731
3877
4187
4491
4621
4847
4957
5059
5225
5368
5547
5738
5969
6147
6329
6891
7029
7165
7289
7569
7721
7901
8095
8317
8573
8703
8989
9261
9421
9609
9785
9979
10199
10493
10749
10927
11145
11363
11497
11653
11829
11991
12215
12513
12761
12987
13161
13309
13537
13751
13963
14087
14207
14363
14691
14919

UMI

FEDERAL REGISTER PAGES AND DATES—JANUARY–DECEMBER 1985

Pages	Date	(Issue No.)
1–210	Jan. 2	(1)
211–426	3	(2)
427–720	4	(3)
721–916	7	(4)
917–1038	8	(5)
1039–1202	9	(6)
1203–1428	10	(7)
1429–1812	11	(8)
1813–2038	14	(9)
2039–2272	15	(10)
2273–2538	16	(11)
2539–2658	17	(12)
2659–2770	18	(13)
2771–2946	22	(14)
2947–3306	23	(15)
3307–3496	24	(16)
3497–3730	25	(17)
3731–3876	28	(18)
3877–4186	29	(19)
4187–4490	30	(20)
4491–4620	31	(21)
4621–4846	Feb. 1	(22)
4847–4956	4	(23)
4957–5058	5	(24)
5059–5224	6	(25)
5225–5362	7	(26)
5363–5546	8	(27)
5547–5732	11	(28)
5733–5968	12	(29)
5969–6146	13	(30)
6147–6328	14	(31)
6329–6890	15	(32)
6891–7028	19	(33)
7029–7164	20	(34)
7165–7288	21	(35)
7289–7568	22	(36)
7569–7720	25	(37)
7721–7900	26	(38)
7901–8094	27	(39)
8095–8316	28	(40)
8317–8572	Mar. 1	(41)
8573–8702	4	(42)
8703–8988	5	(43)
8989–9260	6	(44)
9261–9420	7	(45)
9421–9608	8	(46)
9609–9784	11	(47)
9785–9978	12	(48)
9979–10198	13	(49)
10199–10492	14	(50)
10493–10748	15	(51)
10749–10926	18	(52)
10927–11144	19	(53)
11145–11362	20	(54)
11363–11496	21	(55)
11497–11652	22	(56)
11653–11828	25	(57)
11829–11990	26	(58)
11991–12214	27	(59)
12215–12512	28	(60)
12513–12760	29	(61)
12761–12986	Apr. 1	(62)
12987–13160	2	(63)
13161–13308	3	(64)
13309–13536	4	(65)
13537–13750	5	(66)
13751–13962	8	(67)
13963–14086	9	(68)
14087–14206	10	(69)
14207–14362	11	(70)
14363–14690	12	(71)
14691–14918	15	(72)
14919–15092	16	(73)
15093–15402	17	(74)
15403–15534	18	(75)
15535–15728	19	(76)
15729–15856	22	(77)
15857–16048	23	(78)
16049–16206	24	(79)
16207–16448	25	(80)
16449–16682	26	(81)
16683–18218	29	(82)
18219–18444	30	(83)
18445–18626	May 1	(84)
18627–18848	2	(85)
18849–18984	3	(86)
18985–19160	6	(87)
19161–19304	7	(88)
19305–19516	8	(89)
19517–19666	9	(90)
19667–19896	10	(91)
19897–20084	13	(92)
20085–20190	14	(93)
20191–20382	15	(94)
20383–20542	16	(95)
20543–20740	17	(96)
20741–20880	20	(97)
20881–21030	21	(98)
21031–21228	22	(99)
21229–21416	23	(100)
21417–21580	24	(101)
21581–21792	28	(102)
21793–22966	29	(103)
22967–23104	30	(104)
23105–23266	31	(105)
23267–23392	June 3	(106)
23393–23660	4	(107)
23661–23788	5	(108)
23789–23890	6	(109)
23891–24170	7	(110)
24171–24502	10	(111)
24503–24610	11	(112)
24611–24756	12	(113)
24757–24898	13	(114)
24899–25036	14	(115)
25037–25188	17	(116)
25189–25412	18	(117)
25413–25544	19	(118)
25545–25682	20	(119)
25683–25902	21	(120)
25903–26142	24	(121)
26143–26334	25	(122)
26335–26536	26	(123)
26537–26684	27	(124)
26685–26960	28	(125)
26961–27212	July 1	(126)
27213–27408	2	(127)
27409–27570	3	(128)
27571–27812	5	(129)
27813–27926	8	(130)
27927–28092	9	(131)
28093–28190	10	(132)
28191–28362	11	(133)
28363–28554	12	(134)
28555–28756	15	(135)
28757–28894	16	(136)
28895–29202	17	(137)
29203–29366	18	(138)
29367–29628	19	(139)
29629–29934	22	(140)
29935–30126	23	(141)
30127–30260	24	(142)
30261–30410	25	(143)
30411–30692	26	(144)
30693–30800	29	(145)
30801–30924	30	(146)
30925–31150	31	(147)
31151–31340	Aug. 1	(148)
31341–31584	2	(149)
31585–31702	5	(150)
31703–31834	6	(151)
31835–32000	7	(152)
32001–32156	8	(153)
32157–32388	9	(154)
32389–32552	12	(155)
32553–32688	13	(156)
32689–32838	14	(157)
32839–33016	15	(158)
33017–33328	16	(159)
33329–33506	19	(160)
33507–33710	20	(161)
33711–33910	21	(162)
33911–34074	22	(163)
34075–34440	23	(164)
34441–34662	26	(165)
34663–34800	27	(166)
34801–35078	28	(167)
35079–35204	29	(168)
35205–35532	30	(169)
35533–35766	Sep. 3	(170)
35767–36030	4	(171)
36031–36404	5	(172)
36405–36562	6	(173)
36563–36860	9	(174)
36861–36982	10	(175)
36983–37162	11	(176)
37163–37342	12	(177)
37343–37502	13	(178)
37503–37634	16	(179)
37635–37830	17	(180)
37831–37984	18	(181)
37985–38096	19	(182)
38097–38502	20	(183)
38503–38632	23	(184)
38633–38776	24	(185)
38777–38968	25	(186)
38969–39072	26	(187)
39073–39634	27	(188)
39635–39952	30	(189)
39953–40180	Oct. 1	(190)
40181–40324	2	(191)
40325–40474	3	(192)
40475–40796	4	(193)
40797–40954	7	(194)
40955–41126	8	(195)
41127–41328	9	(196)
41329–41468	10	(197)
41469–41654	11	(198)
41655–41834	15	(199)
41835–42004	16	(200)
42005–42136	17	(201)
42137–42506	18	(202)
42507–42668	21	(203)
42669–42900	22	(204)
42901–43114	23	(205)
43115–43374	24	(206)
43375–43564	25	(207)
43565–43644	28	(208)
43645–45074	29	(209)
45075–45386	30	(210)
45387–45590	31	(211)
45591–45804	Nov. 1	(212)
45805–45900	4	(213)
45901–45984	5	(214)
45985–46278	6	(215)
46279–46414	7	(216)
46415–46626	8	(217)
46627–46736	12	(218)
46737–47026	13	(219)

FEDERAL REGISTER PAGES AND DATES—JANUARY–DECEMBER 1985

Pages	Date	(Issue No.)
47027–47200	14	(220)
47201–47354	15	(221)
47355–47520	18	(222)
47521–47702	19	(223)
47703–48072	20	(224)
48073–48160	21	(225)
48161–48370	22	(226)
48731–48548	25	(227)
48549–48740	26	(228)
48741–49026	27	(229)
49027–49340	29	(230)
49341–49504	Dec. 2	(231)
49505–49664	3	(232)
49665–49824	4	(233)
49825–49918	5	(234)
49919–50156	6	(235)
50157–50268	9	(236)
50269–50608	10	(237)
50609–50754	11	(238)
50755–50890	12	(239)
50891–51234	13	(240)
51235–51382	16	(241)
51383–51510	17	(242)
51511–51664	18	(243)
51665–51834	19	(244)
51835–52206	20	(245)
52207–52434	23	(246)
52435–52756	24	(247)
52757–52890	26	(248)
52891–53126	27	(249)
53127–53256	30	(250)
53257–53480	31	(251)

UMI

e No.)

(242)
(243)
(244)
(245)
(246)
(247)
(248)
(249)
(250)
(251)

INUAL

INDEX

VOL

50

1985

UMI

INDEX
VOL
50
1985
UMI

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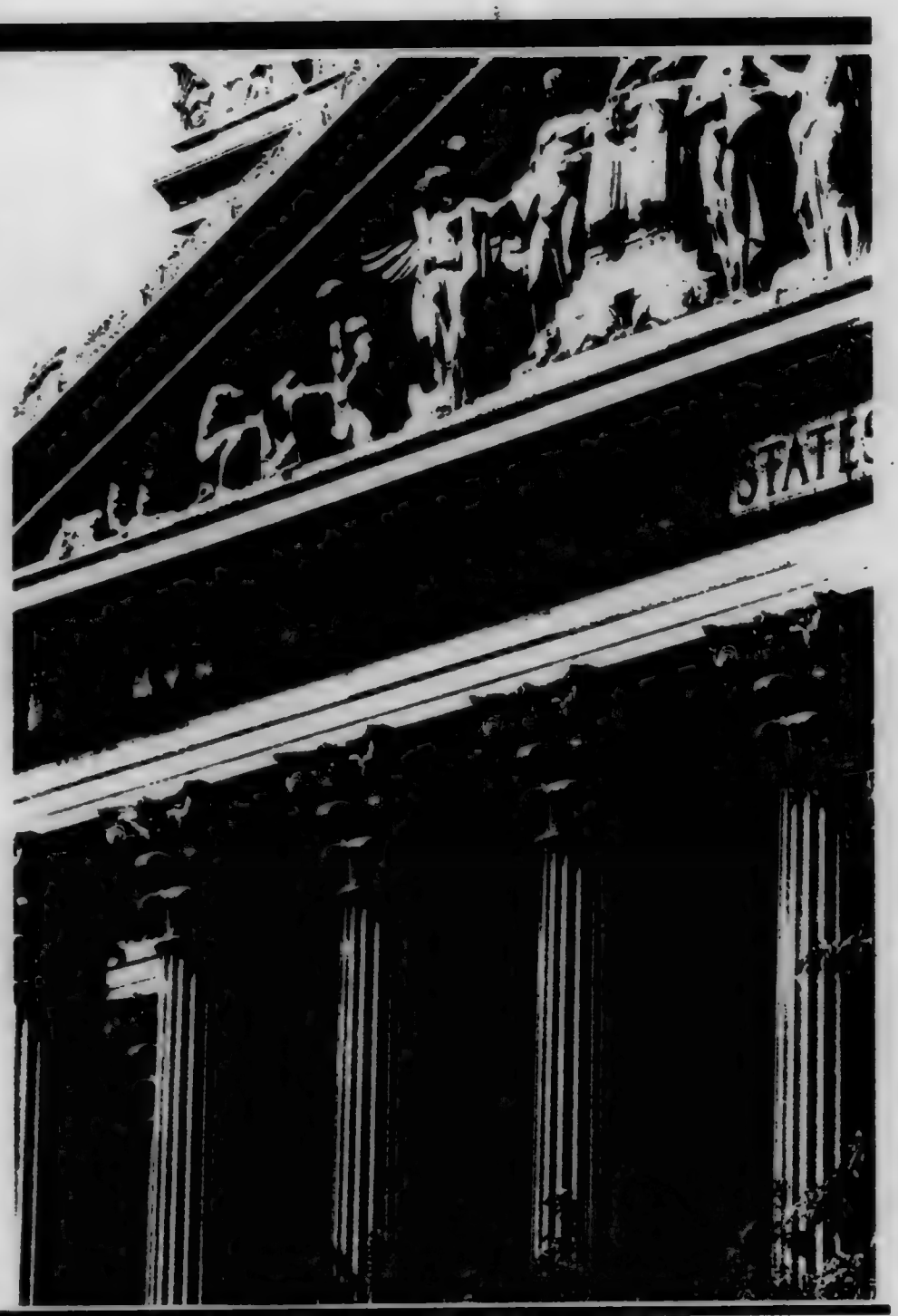
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INDEX

VOL.
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Vol. 50 No. 126

federal register

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50
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126
JL
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1985
UMI

7-1-85
Vol. 50
Pages 2

7-1-85
Vol. 50 No. 126
Pages 28561-27212

federal register

Monday
July 1, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, New York, NY, and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Archives and Records
National Archives and Records Administration

Aviation Safety
Federal Aviation Administration

Bridges
Coast Guard

Cotton
Commodity Credit Corporation

Customs Duties and Inspection
Customs Service

Endangered and Threatened Species
Fish and Wildlife Service

Flood Insurance
Federal Emergency Management Agency

Food Assistance Programs
Food and Nutrition Service

Food Grades and Standards
Agricultural Marketing Service

Food Labeling
Food and Drug Administration

CONTINUED INSIDE

Selected Subjects

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Freedom of Information
National Archives and Records Administration

Fuel Economy
Environmental Protection Agency

Government Employees
Personnel Management Office

Government Procurement
Federal Procurement Regulations System and Defense Acquisition Regulations; CFR publication announcement—Federal Register Office
General Services Administration

Marine Safety
Coast Guard

Marketing Agreements
Agricultural Marketing Service

Medicare
Health Care Financing Administration

Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

Reporting and Recordkeeping Requirements
Panama Canal Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

Trade Practices
Federal Trade Commission

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: July 8 and 9; at 9 a.m. (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 a.m. (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

WHEN: September (two dates to be announced later).

Contents

Federal Register
Vol. 50, No. 126
Monday, July 1, 1985

The President
EXECUTIVE ORDERS
26963 Small Business, National White House Conference on (EO 12523)
PROCLAMATIONS
26961 P.O.W.-M.I.A. Recognition Day, National (Proc. 5356)

Executive Agencies

Agricultural Marketing Service
RULES
26977 Hops of domestic production; CFR Part removed
26976 Melons grown in Texas
26965 Peaches (clingstone), canned; grade standards
PROPOSED RULES
27004 Cucumbers, greenhouse; grade standards
27003 Milk marketing orders; all areas; amendments; withdrawn

Agriculture Department
See also Agricultural Marketing Service; Commodity Credit Corporation; Federal Crop Insurance Corporation; Federal Grain Inspection Service; Food and Nutrition Service; Foreign Agricultural Service; Forest Service.
NOTICES
Import quotas and fees:
27033 Meat import limitations; quarterly estimates

Air Force Department
NOTICES
Meetings:
27042 Scientific Advisory Board (2 documents)

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
27068 Calmar, Inc., et al.

Coast Guard
RULES
Anchorage regulations:
26988 Louisiana (Lower Mississippi River); correction
Dangerous cargoes:
26998 Self-propelled vessels carrying hazardous liquids; safety requirements; correction
Drawbridge operations:
26989 New Jersey; temporary
Ports and waterways safety:
26989 Shipping safety fairways; Louisiana Offshore Oil Port
PROPOSED RULES
Drawbridge operations:
27026 Florida, Georgia and South Carolina
27029 Louisiana

Commerce Department
See International Trade Administration; Patent and Trademark Office.

Commodity Credit Corporation
RULES
Loan and purchase programs:
26976 Cotton

Customs Service
RULES
Vessels in foreign and domestic trades:
26981 Passengers on foreign vessels taken on board and landed in U.S.

Defense Department
See also Air Force Department; Engineers Corps.
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
26988 Mental disorders, treatment; effective date postponed
NOTICES
Meetings:
27042 Science Board task forces

Education Department
NOTICES
27043 Agency information collection activities under OMB review
Grants; availability, etc.:
27044 Bilingual education; State educational agency program
27046 Library career training program
27043 Special needs program

Energy Department
See Hearings and Appeals Office, Energy Department.

Engineers Corps
NOTICES
Procurement:
27042 Commercial activities, performance; cost comparison studies (OMB A-76 implementation)

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
26991 Texas
Motor vehicle fuel economy:
27172 Test procedures; adjustment factors for corporate average fuel economy; passenger automobiles
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
27030 Michigan
Motor vehicle fuel economy:
27188 Test procedures; adjustment factors for corporate average fuel economy; passenger automobiles and light trucks
NOTICES
Toxic and hazardous substances control:
27053 Confidential business information; disclosure to Congress

Federal Aviation Administration
RULES
Airworthiness directives:
26978 Gulfstream Aerospace
26980 Transition areas
PROPOSED RULES
Airworthiness directives:
27009 Airbus Industrie
27011, 27012 McDonnell Douglas (2 documents)
27014 Jet routes and VOR Federal airways
27013 VOR Federal airways
NOTICES
Advisory circulars; availability, etc.:
27061 Airplanes, two-engine; extended range operations
Meetings:
27063 Aeronautics Radio Technical Commission
27063 Air Traffic Procedures Advisory Committee
Technical standard orders:
27063 Life preservers; inquiry

Federal Communications Commission
NOTICES
Common carrier services:
27053 Interstate or foreign communications; connecting carrier status
Hearings, etc.:
27055 Digital Paging Systems, Inc., et al.
27055 TeleSTAR, Inc.

Federal Crop Insurance Corporation
RULES
Administrative regulations:
26976 Reinsurance agreement; correction

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
26983 Maine et al.
26984 Oklahoma et al.

Federal Grain Inspection Service
NOTICES
Agency designation actions:
27033 California and Illinois; inquiry
27033 Illinois and North Dakota
27034 Iowa
27034 Minnesota and Mississippi

Federal Register Office
RULES
26987 Federal Procurement Regulations System and Defense Acquisition Regulations; CFR publication announcement

Federal Trade Commission
RULES
Prohibited trade practices:
26981 Korman Corp.
NOTICES
27058 Premerger notification waiting periods; early terminations

Fiscal Service
NOTICES
27104 Surety companies acceptable on Federal bonds; annual list

Fish and Wildlife Service
RULES
Endangered and threatened species:
26999 Northern flying squirrel

Food and Drug Administration
RULES
Food labeling:
26984 Sodium content; declaration and label claims; effective date extension
PROPOSED RULES
Animal drugs, feeds, and related products:
27016 Bulk new animal drug substances; approval for use by veterinarians
Radiological health:
27024 Radiation emitting electronic products; records and reports regulations review; availability of report
NOTICES
Animal drugs, feeds, and related products:
27059 Chloramphenicol oral solution; opportunity for hearing
Human drugs:
27064 International drug scheduling; barbiturate-type sedative and/or hypnotic drug substances; inquiry
Meetings:
27059 Advisory committees, panels, etc.; agenda change

Food and Nutrition Service
RULES
Child nutrition programs:
26972 Child care food program; advance payments
NOTICES
Child nutrition programs:
27035 Cash in lieu of commodities; value of donated commodities for 1985 school year

Foreign Agricultural Service
NOTICES
Import quotas and fees:
27036 Condensed milk from Denmark; country of origin quota adjustment

Forest Service
NOTICES
27036 National Environmental Policy Act; implementation; correction

General Services Administration
RULES
Acquisition regulations (GSAR):
26996 Contract files; reassignments and transfers
26998 Disputes and appeals; protests to General Accounting Office; temporary
Federal Information Resources Management Regulation:
27142 Competition in contracting requirements, etc.; implementation; and codification of temporary regulations

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; Human Development Services Office.

Health Care Financing Administration
RULES
Medicare:
27208 Hospital inpatient services, prospective payment amount and administrative review; interim

Hearings and Appeals Office, Energy Department
NOTICES
27047-27048 Special refund procedures; implementation and inquiry (2 documents)

Human Development Services Office
NOTICES
Grants; availability, etc.:
27065 Child abuse and neglect research, demonstration, and service improvement project (child sexual abuse); applications date extended

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Surface Mining Reclamation and Enforcement Office.

International Trade Administration
NOTICES
Antidumping:
27037 Welded circular carbon steel pipes and tubes from Venezuela
Cheese, quota; foreign government subsidies:
27036 Quarterly update
Countervailing duties:
27038 Live swine and fresh, chilled and frozen pork products from Canada; correction
27038 Export trade certificates of review

Interstate Commerce Commission
PROPOSED RULES
Rail carriers:
27031 Car hire charges, review of regulation; advance notice; extension of time
NOTICES
Railroad services abandonment:
27067 Burlington Northern Railroad Co.
27067 Union Pacific Railroad Co. et al.

Justice Department
See also Antitrust Division.
NOTICES
Pollution control; consent judgments:
27067 Ranger Fuel Corp.

Labor Department
See Mine Safety and Health Administration.

Land Management Bureau
NOTICES
Sale of public lands:
27066 Utah

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modifications:
27071 American Minerals, Inc.
27071, 27072 Barnes & Tucker Co. (2 documents)
27072 Canon Coal Co.
27072 Cross Mountain Coal, Inc.
27073 Eastern Associated Coal Corp.
27073 Green River Terminal, Inc.
27073 New River Co.
27074 Renegade Coal Co.
27075 Texasgulf Chemicals Co.

National Archives and Records Administration
See also Federal Register Office.
RULES
26992 Nixon administration Presidential historical materials; preservation, protection, and access procedures; CFR Part removed
27196 Privacy and Freedom of Information Acts implementation, and official seal requirements

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
27032 Air brake systems; test rig modifications, etc.; extension of time

National Science Foundation
NOTICES
Meetings:
27074 Mechanical Engineering and Applied Mechanics Advisory Committee

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities, domestic licensing:
27006 Postulated pipe ruptures, protection against dynamics effects, requirements; general design criterion 4 modification
NOTICES
27075 Nuclear waste transportation; Governors' designees receiving advance notification

Panama Canal Commission
RULES
26990 Reporting and recordkeeping requirements

Patent and Trademark Office
PROPOSED RULES
Patent cases:
27030 Fees; revision; correction

Personnel Management Office
RULES
26965 Agency administrative grievance system
NOTICES
Excepted service:
27076 Schedules A, B, and C; positions placed or revoked; update

Postal Service
NOTICES
27085 Meetings; Sunshine Act

Revenue Sharing Office
RULES
26987 Financial assistance to local governments; correction

Secret Service
NOTICES
Senior Executive Service:
27084 Performance Review Board; membership

Securities and Exchange Commission
RULES
26981 African Development Bank, primary offerings; correction
NOTICES
Applications, etc.:
27079 Musikahn Corp.
27078 Securities immobilization workshops; report availability

Small Business Administration
NOTICES
Applications, etc.:
27080 M & I Ventures Corp.
27079 Intergovernmental review of agency programs and activities
License surrenders:
27080 Lincoln Capital Corp.
Meetings; regional advisory councils:
27081 Arizona

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission:
27025 Illinois

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
27041 Colombia
27040 Indonesia
27038 Malaysia
27039 Uruguay

Trade Representative, Office of United States
NOTICES
Meetings:
27081 Trade Negotiations Advisory Committee

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration.

Treasury Department
See Customs Service; Fiscal Service; Revenue Sharing Office; Secret Service.

Veterans Administration
NOTICES
Meetings:
27084 Wage Committee

Separate Parts in This Issue

Part II
27104 Department of the Treasury, Financial Management Service

Part III
27142 General Services Administration

Part IV
27172 Environmental Protection Agency

Part V
27196 National Archives and Records Administration

Part VI
27208 Department of Health and Human Services, Health Care Financing Administration

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12523 26963
Proclamations:
5356 26961

5 CFR
771 26965

7 CFR
52 26965
226 26972
400 26976
979 26976
991 26977
1427 26978
Proposed Rules:
Ch. X 27003
51 27004

10 CFR
Proposed Rules:
50 27006

14 CFR
39 26979
71 26980
Proposed Rules:
39 (2 documents) 27009, 27012
71 (3 documents) 27013, 27014
75 27014

16 CFR
13 26981

17 CFR
288 26981

19 CFR
4 26981

21 CFR
101 26984
Proposal Rules:
201 27016
211 27016
514 27016
559 27016
1002 27024

30 CFR
Proposed Rules:
913 27025

31 CFR
51 26987

32 CFR
Parts 1-39 26987
199 26988

33 CFR
110 26988
117 26989
150 26989
166 26989
Proposed Rules:
117 (2 documents) 27026-27029

35 CFR
101 26990
103 26990
121 26990

36 CFR
1200 27196
1202 27196
1250 27196

37 CFR
Proposed Rules:
1 27030

40 CFR
52 26991
600 27172
Proposed Rules:
52 27030
600 27188

41 CFR
Chs. 1-49 26987
105-63 26992
201-1 27142
201-2 27142
201-8 27142
201-11 27142
201-16 27142
201-20 27142
201-21 27142
201-23 27142
201-24 27142
201-26 27142
201-30 27142
201-31 27142
201-32 27142
201-38 27142
201-39 27142
201-40 27142

42 CFR
412 27208

44 CFR
64 (2 documents) 26993, 26994

46 CFR
153 26996

48 CFR
504 26996
533 26996

49 CFR
Proposed Rules:
Ch. X 27031
571 27032

50 CFR
17 26999

Federal Register
Vol. 50, No. 126
Monday, July 1, 1985

Presidential Documents

Title 3—

The President

Proclamation 5356 of June 27, 1985

National P.O.W./M.I.A. Recognition Day, 1985

By the President of the United States of America

A Proclamation

Since the Revolutionary War, America's men and women have made unselfish sacrifices to defend freedom. In each of America's wars, America's prisoners of war have faced extraordinary hardships and overcome them through extraordinary sacrifices. The bravery, suffering, and profound devotion to duty of our P.O.W.s and M.I.A.s have earned them a preeminent place in the hearts of all Americans. Their heroism is a beacon to follow forever. Their spirit of hope and commitment to the defense of freedom reflects the basic tenets of our Nation.

This country deeply appreciates the pain and suffering endured by families whose fathers, sons, husbands, or brothers are today still missing or unaccounted for. These families are an example of the strength and patriotism of all Americans. We as a people are united in supporting efforts to return the captive, recover the missing, resolve the accounting, and relieve the suffering of the families who wait. We accept our continuing obligation to these missing servicemen. Until the P.O.W./M.I.A. issue is resolved, it will continue to be a matter of the highest national priority. As a symbol of this national commitment, the P.O.W./M.I.A. Flag will fly over the White House, the Departments of State and Defense, the Veterans' Administration, and the Vietnam Veterans Memorial on July 19, 1985, and over the Vietnam Veterans Memorial on Memorial Day and Veterans Day.

By Senate Joint Resolution 87, the Congress has designated July 19, 1985, as "National P.O.W./M.I.A. Recognition Day." On this day, we recognize the special debt all Americans owe to our fellow citizens who gave up their freedom in the service of our country; we owe no less to their families.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Friday, July 19, 1985, as National P.O.W./M.I.A. Recognition Day. I call on all Americans to join in honoring all former American prisoners of war, those still missing, and their families who have endured and still suffer extraordinary sacrifices on behalf of this country. I also call upon State and local officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of June, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-15571
Filed 6-28-85; 10:40 am]
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Presidential Documents

Executive Order 12523 of June 27, 1985

National White House Conference on Small Business

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to implement the White House Conference on Small Business Authorization Act (Public Law 98–276), it is hereby ordered as follows:

Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act applicable to the White House Conference on Small Business Authorization Act, except that of reporting annually to the Congress, shall be performed by the Administrator of the Small Business Administration in accordance with the guidelines and procedures established by the Administrator of General Services.

Ronald Reagan

THE WHITE HOUSE,
June 27, 1985.

[FR Doc. 85-15672
Filed 6-28-85; 10:41 am]
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OFFICE
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5 CFR Pa

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AGENCY:
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Rules and Regulations

Federal Register
Vol. 50, No. 128
Monday, July 1, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 771

Agency Administrative Grievance System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment to OPM regulations clarifies the meaning of one of the regulatory exclusions of subject matter from coverage under the agency administrative grievance system. The affected exclusion concerns nonselection for promotion from a group of properly ranked and certified candidates, and as amended, also excludes decisions not to promote an employee noncompetitively.

EFFECTIVE DATE: July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert; Office of Employee, Labor and Agency Relations: (202) 653–8557.

SUPPLEMENTARY INFORMATION: OPM proposed this amendment with a 60-day comment period in 49 FR 28721 on July 16, 1984. Responses were received from 9 agencies, 3 labor organizations, and 1 individual.

The great majority of the commenters strongly endorsed the change and said that the amendment should be implemented as written. Many agency comments contained such phrases as "very much endorse," "fully endorse," and "strongly concurs." One agency commenter agreed with the proposed amendment but recommended that OPM go further and add a new exclusion that had not been proposed. OPM did not adopt this recommendation.

The labor organizations that commented generally argued that the agency administrative grievance system should be a broad forum available to employees on the full scope of disputable matters and, therefore, should not exclude decisions on noncompetitive promotions. In addition, one of the unions expressed the view that career ladder promotions (which they noted are acquired through competitive staffing procedures) are "conditions of employment" which should be recognized by the agency as entitling the employee to the training, counseling, etc. necessary for the employee to advance steadily through the applicable grade structure. They further argued that bargaining unit employees and their unions are allowed by statute to grieve changes in conditions of employment, and that the regulation would circumvent that right.

However, OPM continues to believe that nonselection for promotion, whether it concerns a competitive or a noncompetitive circumstance, is a decision which is not subject to administrative grievance system review. In addition, OPM does not agree that selection for a career ladder position establishes a "condition of employment." With respect to bargaining unit employees' statutory right to grieve changes in conditions of employment, we note that these regulations, which concern the agency administrative grievance system, would not, except in unusual circumstances, apply to or affect bargaining unit employees. Finally, althought the nonselection decision (or lack of decision) is not grievable under the agency administrative grievance system, employees may be able to grieve related matters they believe affect their opportunities to be considered for promotions.

Therefore, OPM is amending its regualtions by adding language that excludes grievances over management decisions not to promote an employee noncompetitively. As amended, the exclusion applies to any noncompetitive promotion decision (or lack of decision), including decisions not to promote an employee occupying a position in a career ladder series.

Executive Order 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subject in 5 CFR Part 771

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.,
Loretta Cornelius,
Acting Director.

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

Accordingly, OPM amends 5 CFR Part 771 as follows:

1. The authority for Part 771 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1943–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR Parts 1964–1969 Comp., p. 306.

2. Section 771.206(c)(1)(iii) is revised to read as follows:

§ 771.206 Exclusions.

* * * * *

(c) *Matters excluded.*

(1) * * *

(iii) Nonselection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion.

* * * * *

[FR Doc. 85–15703 Filed 6–28–85; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Canned Clingstone Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to revise the voluntary U.S. Standards for Grades of Canned Clingstone Peaches. The standards were developed by the United States Department of Agriculture (USDA) at the request of major segments of the canned clingstone

peach industry. Their effect will be to better serve the needs of the canned clingstone peach industry and allow for more orderly marketing of canned clingstone peaches.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Jennings, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C 20250, Telephone (202) 447–6247.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or exports markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices.

It is found that good cause exists for making this document effective upon publication in the **Federal Register** (5 U.S.C. 533) because: (1) The 1985 crop begins in late June, and this final rule should be effective by the time new crop deliveries from growers to processors begin; (2) postponing the effective date of this final rule would serve no useful purpose and could cause administrative problems in the application of the U.S. Standards for Grades of Canned Clingstone Peaches.

Based on industry recommendations, the voluntary grade standards for canned clingstone peaches were revised to institute an "attributes standards" type of grading on July 1, 1978. Before that time, the grade standards utilized the "variable standards" type of grading. Even though the attributes standards may have greater statistical validity, the clingstone peach processing industry claims that they are more cumbersome in their practical application than the former variable standards. Therefore, major segements of the canned clingstone peach industry now believe that attributes standards do not best serve their needs. They believe it is difficult to communicate quality levels between processors, buyers, brokers, and other users through these standards.

Under the attributes standards, one type or several types of physical defects may be present in each classification. The classifications are minor, major, severe, and critical. This allows more of an individual type of defect to be present than under the variable standards in the absence of other types of defects within the classification. For example, defects such as color, blemishes, and mechanical damage are grouped and their sum is used to determine compliance with the classification tolerance. Such determinations of tolerance compliance could be based solely on blemishes if no color defects or mechanical damage is present. The clingstone peach industry has asked for standards, such as the previous variables standards, that require each defect to be separately classified without grouping with other defects. Therefore, in the above example, if the variable standards were used, the number of blemishes allowed to meet the tolerance would be set without regard to whether color defects or mechanical damage were present. In addition to the individual tolerances, the sample would also have to meet a minimum total score. This rule revises the current attributes standards type of grading to a variables standards type of grading that is basically the same as the former variables standards.

On April 17, 1985, a proposed rule, revising the current clingstone peach standards, was published in the **Federal Register** (50 FR 15160). Comments could be filed until May 17, 1985. No comments were received.

Therefore, the USDA hereby finalizes the proposed rule for clingstone peaches to establish a variables standards type of grading that is basically the same as the standards that were used before the attributes standards became effective on July 1, 1978.

List of Subjects in 7 CFR Part 52

Fruits and vegetables, Food grades, Standards.

PART 52—[AMENDED]

Accordingly, the United States Standards for Grades of Canned Clingstone Peaches (7 CFR 52.2561–52.2576) are amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622, 1624).

2. In Part 52, §§52.2562, 52.2563 and 52.2564 are revised to read as follows:

§ 52.2562 Styles.

(a) *"Halves" or "Halved"* canned peaches are peeled and pitted peaches, cut approximately in half along the suture from stem to apex.

(b) *"Quarters" or "Quartered"* canned peaches are halved peaches cut into two approximately equal parts.

(c) *"Slices" or "Sliced"* canned peaches are peeled and pitted peaches cut into sectors smaller than quarters.

(d) *"Dice" or "Diced"* canned peaches are peeled and pitted peaches cut into approximate cubes.

(e) *"Whole"* canned peaches are peeled, unpitted, whole peaches with or without stems removed.

(f) *"Mixed pieces of irregular sizes and shapes"* are peeled, pitted, and cut units of canned peaches that are predominantly irregular in size and shape which do not conform to a single style of halves, quarters, slices, or dice and which may consist of:

(1) Units (commonly called "salad cuts" or "salad pieces") which may have been prepared originally as peach halves but which are irregular in size and shape in that more than one-fourth of the unit appears to have been removed at the outer curved surface and which have been cut further into pieces;

(2) Units which may have been prepared originally as peach slices but which are irregular in size and shape in that they have been cut further into pieces; or

(3) Mixtures of two or more of the following styles which may or may not be of normal shape: Halves, quarters, slices, or diced.

§ 52.2563 Grades.

(a) *"U.S. Grade A"* is the quality of halves, quarters, slices, dice, or whole canned clingstone peaches that possess similar varietal characteristics, that possess a normal flavor and odor; that possess a good color; that are practically uniform in size and symmetry for the applicable style; that are practically free from defects; that possess a good character; and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 90 points: Provided, That halves, quarters, slices, dice, or whole canned clingstone peaches may possess a reasonably good color; may be reasonably uniform in size and symmetry; and may possess a reasonably good character, if the total score is not less than 90 points.

(b) *"U.S. Grade B"* is the quality of halves, quarters, slices, dice, whole, or

mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess similar varietal characteristics; that possess a normal flavor and odor; that possess a reasonably good color; that are reasonably uniform in size and symmetry for the applicable style; that are reasonably free from defects; that possess a reasonably good charcter; and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 80 points: Provided, That halves, quarters, slices, dice, or whole canned clingstone peaches may be fairly uniform in size and symmetry if the total score is not less than 80 points.

(c) *"U.S. Grade C"* is the quality of halves, quarters, slices, diced, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess similar varietal characteristics; that possess a normal flavor and odor; that possess a fairly good color; that are fairly uniform in size and symmetry for the applicable style; that are fairly free from defects; that possess a fairly good character; and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 70 points.

(d) *"U.S. Grade D"* is the quality of halves, quarters, slices, diced, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that may possess dissimilar varietal characteristics; that possess a normal flavor odor; that possess a fairly good color; that may vary in size and symmetry for the applicable style; that are fairly free from defects except for crushed and broken units in the styles of halves, quarters, or whole style; that possess a noticeable variability in character; and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 60 points. Canned clingstone peaches of this grade may or may not meet the minimum standards of quality for canned peaches issued pursuant to the Federal Food, Drug, and Cosmetic Act.

(e) *"Substandard"* is the quality of canned clingstone peaches that fails to meet the applicable requirements of U.S. Grade C or of U.S. Grade D and is the quality of canned clingstone peaches that may or may not meet the minimum standards of quality for canned peaches issued pursuant to the Federal Food, Drug, and Cosmetic Act.

§ 52.2564 Grades of canned "solid-pack" clingstone peaches.

(a) *"U.S. Grade C Solid-Pack"* is the quality of halves, quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that possess a normal flavor and odor; that possess a fairly good color; that are fairly free from defects for canned "solid-pack" clingstone peaches; that possess a fairly good character for "solid-pack" clingstone peaches; and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 70 points.

(b) *"Substandard Solid-pack"* is the quality of halves, quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that fail to meet the requirements of "U.S. Grade C Solid-Pack."

3. In Part 52, §§ 52.2570 through 52.2575 are revised to read as follows:

§ 52.2570 Ascertaining the grade.

(a) *"General."* In addition to considering other requirements outlined in the standards the following quality factors are evaluated:

(1) Factors not rated by score points in canned clingstone peaches other than "solid-pack" clingstone peaches are:

(i) Varietal characteristics.

(ii) Flavor and odor.

(2) Factor not rated by score points in "solid-pack" clingstone peaches: Flavor and odor.

(3) Factors rated by score points. The relative importance of each factor which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given such factors are:

	Points
(i) Color	20
(ii) Uniformity of size and symmetry	20
(iii) Absence of defects	30
(iv) Character	30
Total score	100

(b) Definition of flavor and odor.— "Normal flavor and odor" means that the canned peaches are free from objectionable flavors and odors of any kind.

§ 52.2571 Ascertaining the rating for the factors which are scored.

The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. The numerical range within each factor which is scored is inclusive (for example, "18 to 20 points" means "18, 19, or 20 points").

§ 52.2572 Color.

(a) *"General."* (1) The color of canned clingstone peaches other than canned "spiced" peaches refers to the predominant and characteristic color on the surface of whole units, and the outside surfaces of other units, except the cut surfaces of such units are also considered when adversely affected by discoloration. Units other than whole on which the pit cavity is abnormally discolored are considered under the factor of absence of defects only.

(2) The factor of color for canned "spiced" peaches is not based on any detailed requirement and is not scored but the color shall be normal for canned "spiced" peaches; the other three factors (uniformity of size and symmetry, absence of defects, and character as applicable) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions to determine the total score.

(b) *"A" classification.* Canned clingstone peaches that possess a good color may be given a score of 18 to 20 points. Mixed pieces of irregular sizes and shapes that score 18 to 20 points shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule). "Good color" means that the peaches possess a bright color ranging from yellowish orange to orange yellow; and that there may be present units which possess "reasonably good color" as follows:

(1) In the style of halves, quarters, slices, or whole, not more than 10 percent, by count, of the units may possess "reasonably good color"; or one unit in a container is permitted to possess "reasonably good color": Provided, That in all containers comprising the sample such units do not exceed an average of 10 percent of the total number of units; and

(2) In the styles of dice or mixed pieces of irregular sizes and shapes, not more than 10 percent, by weight, of the drained peaches may possess "reasonably good color".

(c) *"B" classification.* Canned clingstone peaches that possess a reasonably good color may be given a score of 16 or 17 points. Mixed pieces of irregular sizes and shapes that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule). "Reasonably good color" means that the canned clingstone peaches possess a reasonably bright color that may fail to meet minimum color requirements for Grade A but is equal to or better than light orangish-yellow; that the units may possess slight

discoloration due to oxidation, pit pigmentation, or other causes which does not more than slightly affect the appearance or edibility, or both, of the product; and that there may be present units which possess "fairly good color" as follows:

(1) In the style of halves, quarters, slices, or whole, not more than 10 percent, by count, of the units may possess "fairly good color;" or one unit in a container is permitted to possess "fairly good color;" Provided, That in all containers comprising the sample such units do not exceed an average of 10 percent of the total number of units; and

(2) In the style of dice or mixed pieces of irregular sizes and shapes, not more than 10 percent, by weight, of the drained peaches may possess "fairly good color."

(d) *"C," "D", and "C–SP" classification.* Canned clingstone peaches and canned solid-pack clingstone peaches that possess a fairly good color may be given a score of 14 or 15 points. Canned clingstone peaches or canned "solid-pack" clingstone peaches that fall into this classification shall not be graded above U.S. Grade C or U.S. Grade C Solid-Pack, whichever is applicable, regardless of the total score for the product (this is a limiting rule). "Fairly good color" means that the peaches possess a color that may fail to meet minimum color requirements for Grade B, but is equal to or better than greenish-yellow; that the units may possess slight discoloration due to oxidation, pit pigmentation or other causes which do not materially affect the appearance or edibility, or both, of the product; and that the units may possess other color as follows:

(1) In the style of halves, quarters, slices, or whole, not more than 10 percent, by count, of the units may fail to meet the minimum color for Grade C or may be off-color; or one unit in a container is permitted to possess such color; Provided, That in all containers comprising the sample such units do not exceed an average of 10 percent of the total number of units.

(2) In the style of dice or mixed pieces of irregular sizes and shapes, not more than 10 percent, by weight, of the drained peaches may consist of units that fail to meet the minimum color for grade C or may be off-color: Provided, That such units do not materially affect the appearance of the product.

(e) *"SStd" and "SStd-SP" classification.* Canned clingstone peaches and canned "solid-pack" clingstone peaches that fail to meet the requirements of paragraph (d) of this section may be given a score of 0 to 13 points and shall not be graded above Substandard or Substandard Solid-Pack, whichever is applicable, regardless of the total score for the product (this is a limiting rule).

§ 52.2573 Uniformity of size and symmetry.

(a) *General.* The factor of uniformity of size and symmetry for mixed pieces of irregular sizes and shapes of canned clingstone peaches and all applicable styles of canned "solid-pack" clingstone peaches is not based on any detailed requirements and is not scored; the other three factors (color, absence of defects, and character, as applicable) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions to determine the total score.

(b) *Off-suture cuts.* "Off-suture cut" in halved or quartered canned clingstone peaches means a halved or quartered unit which has been cut at a distance from the suture greater than three-eighths inch at the widest measurement from the suture.

(c) *Partially detached or detached piece.* A "partially detached or detached piece" in halved canned clingstone peaches means a unit which has the appearance of a slice resulting from an off-suture cut or from improper cutting and which may or may not be attached to the half from which cut. In determining the applicable allowances in terms of percentage by count, a partially detached piece together with the half to which it is partially attached is considered as one unit or a detached piece with the half from which detached or together with any other half is considered as one unit.

(d) *Partial slice.* A "partial slice" in the style of slices is a unit that has had the semblance of a slice with respect to thickness and shape but is less than three-fourths of an apparent full slice and that does not bear marks of crushing. In determining the allowances in terms of percentage by count, partial slices aggregating the equivalent of an average size slice shall be considered as one unit.

(e) *Sliver.* A "sliver" in the style of slices is a sector that is substantially smaller than the general size of slices or that weighs 3 grams or less.

(f) *Slab.* A "slab" in the style of slices is a portion of a unit which does not conform to the shape of a definite slice due to improper cutting.

(g) *"A" Classification.* Halves, quarters, slices, dice, or whole canned clingstone peaches that are practically uniform in size and symmetry may be given a score of 18 to 20 points. "Practically uniform in size and symmetry" has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, and whole.* The units are very symmetrical and the weight of the largest full-size unit does not exceed the weight of the smallest full-size unit by more than 40 percent; the weight of each half is not less than three-fifths oz; the weight of each quarter is not less than three-tenths oz; and not more than 10 percent, by count, of the units in the style of halves or quarters may possess off-suture cuts or partially detached or detached pieces, or any combination thereof. One unit in a container is permitted to possess an off-suture cut or partially detached or detached piece if such unit exceeds the allowance of 10 percent, by count: Provided, That in all containers comprising the sample such units do not exceed an average of 10 percent of the total number of units.

(2) *Slices.* Not more than a total of 5 percent, by count, of the units may be partial slices, slivers, and slabs: Provided, That not more than 2½ percent, by count, are slabs; and excluding partial slices, slivers, and slabs that may be present, the variation is size and symmetry of the other units does not affect more than slightly the appearance of the product.

(3) *Dice.* Not more than 10 percent, by weight, of the drained clingstone peaches may be units that are more than three-fourths inch in their greatest edge dimension or are of such size as to pass through a five-sixteenth inch square opening.

(h) *"B" Classification.* Halves, quarters, slices, dice, or whole canned clingstone peaches that are reasonably uniform in size and symmetry may be given a score of 16 or 17 points. "Reasonably uniform in size and symmetry" has the following meanings with respect to the following styles of canned clingstone peaches.

(1) *Halves, quarters, and whole.* The units are reasonably symmetrical and the weight of the largest full-size unit does not exceed the weight of the smallest full-size unit by more than 60 percent; the weight of each half is not less than three-fifths oz; the weight of each quarter is not less than three-tenths oz; and not more than 20 percent, by count, of the units in the style of halves or quarters may possess off-suture cuts or partially detached or detached pieces, or any combination thereof. One unit in a container is permitted to possess an off-suture cut or partially detached or detached piece if such unit exceeds the allowance of 20 percent, by count: Provided, That in all containers comprising the sample such

units do not exceed an average of 20 percent of the total number of units.

(2) *Slices.* Not more than a total of 10 percent, by count, of the units may be partial slices, slivers, and slabs: Provided, That not more than 5 percent, by count, are slabs; and excluding partial slices, slivers, and slabs that may be present, the variation in size and symmetry of the other unit does not more than materially affect the appearance of the product.

(3) *Dice.* Not more than 15 percent, by weight, of the drained clingstone peaches may be units that are more than three-fourths inch in their greatest edge dimension or are of such size as to pass through a five-sixteenth inch square opening.

(i) *"C" Classification.* Halves, quarters, slices, dice, or whole canned clingstone peaches that are fairly uniform in size and symmetry may be given a score of 14 or 15 points. Canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule). "Fairly uniform in size and symmetry" has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, and whole.* The units may vary in size, thickness, and symmetry and the weight of the largest full-size unit may be not more than twice the weight of the smallest full-size unit; the weight of each half is not less than three-fifths oz; the weight of each quarter is not less than three-tenths oz; and not more than 40 percent, by count, of the units in the style of halves or quarters may possess off-suture cuts or partially detached or detached pieces, or any combination thereof: Provided, That the presence of such units does not give the appearance of canned peaches of "Mixed Pieces of Irregular Sizes and Shapes" or canned peaches that are "Unevenly Trimmed."

(2) *Slices.* Not more than a total of 20 percent, by count, of the units may be partial slices, slivers, and slabs: Provided, That not more than 10 percent, by count, are slabs; and excluding partial slices, slivers, and slabs that may be present, the balance of slices may vary noticeably in size, thickness and symmetry.

(3) *Dice.* Not more than 20 percent, by weight, of the drained clingstone peaches may be units that are more than three-quarters inch in their greatest edge dimension or are of such size as to pass through a five-sixteenth inch square opening.

(j) *"D" and "SStd" Classification.* Canned clingstone peaches of the applicable styles which fail to meet paragraph (i) of this section may be given a score of 0 to 13 points and shall not be graded above the following stated grade, regardless of the total score for the product (this is a limiting rule):

(1) Halves, quarters, or whole canned clingstone peaches in which the weight of the largest full-size unit is more than twice the weight of the smallest full-size unit shall not be graded above U.S. Grade D and are also "Below Standard in Quality—Mixed Sizes."

(2) Halves of canned clingstone peaches in which the weight of any half is less than three-fifths oz shall not be graded above U.S. Grade D and are also "Below Standard in Quality—Small Halves."

(3) Quarters of canned clingstone peaches in which the weight of any quarter is less than three-tenths oz shall not be graded above U.S. Grade D and are also "Below Standard in Quality—Small Quarters."

(4) Slices and dice canned clingstone peaches shall not be graded above U.S. Grade D.

§ 52.2574 Absence of defects.

(a) *General.* The factor of absence of defects refers to the degree of freedom from harmless extraneous material (such as stems or leaves and portions thereof), from pit material, from units that are crushed or broken for the applicable style, and from any other defects which detract from the appearance or edibility of the product.

(a) *Blemished.* "Blemished" or "blemished units" means units that are blemished with scab, hail injury, discoloration, or other abnormality which affects materially the appearance or edibility, or both, of the unit.

(2) *Crushed or broken.* "Crushed or broken" means that:

(i) A unit in halves, quarters, or whole style of canned clingstone peaches is "crushed" if the unit has definitely lost its normal shape and bears marks of crushing or is otherwise crushed not due to ripeness; and

(ii) A unit in halves, quarters, or whole style of canned clingstone peaches is "broken" if severed into definite parts; halves of canned clingstone peaches that are slightly or partially split from the edge to the pit cavity are not considered broken. Portions equivalent to a full-size unit that has been broken are considered as one unit in determining the percentage by count.

(3) *Pit material.* "Pit material" means any whole pit in all styles other than whole style or any portion of a peach pit, regardless of size, except when whole peach pits or peach kernels are permitted as seasoning ingredients in other than whole style.

(b) *"A" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that are practically free from defects may be given a score of 27 to 30 points. Mixed pieces of irregular sizes and shapes of canned clingstone peaches that score 27 to 30 points shall not be graded above U.S. Grade B regardless of the total score for the product (this is a partial limiting rule). "Practically free from defects" means that the canned clingstone peaches are practically free from pit material, from harmless extraneous material, and from any defects not specifically mentioned that affect the appearance or edibility of the product, and in addition, has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters; and whole.* Not more than an average of one-eighth square inch of peel for each pound of total contents may be present; not more than 5 percent, by count, of the units may be crushed, or broken; and not more than 5 percent, by count, of the units may be blemished. One unit in a container is permitted to be crushed or broken and one unit in a container is permitted to be blemished if any of such units exceeds the respective allowances of 5 percent by count; Provided, That in all containers comprising the sample such crushed or broken units do not exceed an average of 5 percent of the total number of units and such blemished units do not exceed an average of 5 percent of the total number of units.

(2) *Sliced.* Not more than an average of one-eighth square inch of peel for each pound of total contents may be present; and not more than 3 percent, by count, of the units may be blemished. One unit in a container is permitted to be blemished if such unit exceeds the allowance of 3 percent by count: Provided, That in all containers comprising the sample such blemished units do not exceed an average of 3 percent of the total number of units.

(3) *Dice.* Not more than an average of one-eighth square inch of peel for each pound of total contents may be present; and not more than 3 percent, by weight, of drained clingstone peaches may consist of units that are blemished.

(4) *Mixed pieces of irregular sizes and shapes.* Not more than an average of one-eighth square inch of peel for each pound of total contents may be present; and not more than 1 blemished unit for

each 32 oz of total contents may be present.

(c) *"B" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that are reasonably free from defects may be given a score of 24 to 26 points. Canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade B regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects" means that the canned clingstone peaches are practically free from pit material, are reasonably free from harmless extraneous material and from any defects not specifically mentioned that affect the appearance or edibility of the product, and in addition, has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, and whole.* Not more than an average of one-half square inch of peel for each pound of total contents may be present; not more than 5 percent, by count, of the units may be crushed, or broken; and not more than 10 percent, by count, of the units may be blemished. One unit in a container is permitted to be crushed or broken and one unit in a container is permitted to be blemished if any of such units exceed the respective allowances of 5 percent and 10 percent, by count: Provided, That in all containers comprising the sample such crushed or broken units do not exceed an average of 5 percent of the total number of units and such blemished units do not exceed an average of 10 percent of the total number of units.

(2) *Sliced.* Not more than an average on one-half square inch of peel for each pound of total contents may be present; and not more than 6 percent by count, of the units may be blemished. One unit in a single container is permitted to be blemished if such unit exceeds the allowance of 6 percent, by count: Provided, That in all containers comprising the sample such blemished units do not exceed an average of 6 percent of the total number of units.

(3) *Dice.* Not more than an average of one-half square inch of peel for each pound of total contents may be present; and not more than 6 percent, by weight, of drained clingstone peaches may consist of units that are blemished.

(4) *Mixed pieces of irregular sizes and shapes.* Not more than an average of one-half square inch of peel for each pound of total contents may be present; and not more than 1 blemished unit for each pound of total contents may be present.

(d) *"C" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that are fairly free from defects may be given a score of 21 to 23 points. Canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade C regardless of the total score for the product (this is a limiting rule). "Fairly free from defects" means that the canned clingstone peaches are practically free from pit material; are fairly free from harmless extraneous material and from any defects not specifically mentioned that affect the appearance or edibility of the product; and in addition, has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, and whole.* Not more than an average of one square inch of peel for each pound of total contents may be present; not more than 5 percent, by count, of the units may be crushed or broken; and not more than 20 percent, by count, of the units may be blemished. One unit in a container is permitted to be crushed or broken and one unit in a container is permitted to be blemished if any of such units exceed the respective allowances of 5 percent and 20 percent, by count: Provided, That in all containers comprising the sample such crushed or broken units do not exceed an average of 5 percent of the total number of units and such blemished units do not exceed an average of 20 percent of the total number of units.

(2) *Slices, dice, and mixed pieces of irregular sizes and shapes.* Not more than an average of one square inch of peel for each pound of total contents may be present; and not more than 20 percent, by count, of the units may be blemished.

(e) *"D" classification.* Canned clingstone peaches of any style which fail to met the requirements of paragraph (d) of this section but which meet the requirements of this paragraph may be given a score of 0 to 20 points and shall not be graded above U.S. Grade D, regardless of the total score for the product (this is a limiting rule). Halves, quarters, or whole canned clingstone peaches that are thereby U.S. Grade D may also be "Below Standard in Quality—Blemished" or "Partly Crushed or Broken" or "Unevenly Trimmed", or combinations thereof. Canned clingstone peaches of U.S. Grade D with respect to "absence of defects" are practically free from pit material, are fairly free from harmless extraneous material and from any defects not specifically mentioned that affect materially the appearance or edibility of the product, and in addition:

(1) Not more than an average of one square inch of peel for each pound of total contents may be present;

(2) In the style of halves, quarters, or whole, any amount of crushed or broken units may be present; and

(3) Not more than 20 percent, by count, of the units may be blemished. One unit in a container is permitted to be blemished if such unit exceeds the allowance of 20 percent, by count: Provided, That in all containers comprising the sample such blemished units do not exceed an average of 20 percent of the total number of units.

(f) *"SStd" classification.* Canned clingstone peaches that fail to meet the applicable requirements of paragraph (e) of this section may be given a score of 0 to 20 points and shall not be graded above the following stated grades, as applicable, regardless of the total score for the product (this is a limiting rule).

(1) Halves, quarters, or whole canned clingstone peaches shall not be graded above Substandard and may also be "Below Standard in Quality" for the applicable reasons:

(i) Not well peeled;

(ii) Partly crushed or broken;

(iii) Unevenly trimmed;

(iv) Blemished.

(2) Slices, dice, or mixed pieces of irregular sizes and shapes of canned clingstone peaches shall not be graded above Substandard and may also be "Below Standard in Quality" for the applicable reasons:

(i) Not well peeled;

(ii) Blemished.

(g) *"C–SP" classification.* Halves, quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that are fairly free from defects for canned "solid-pack" clingstone peaches may be given a score of 21 to 23 points. Canned "solid-pack" clingstone peaches that fall into this classification shall not be graded above U.S. Grade C Solid-Pack, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects for canned 'solid-pack' clingstone peaches" means that the canned "solid-pack" clingstone peaches are practically free from pit material, are fairly free from harmless extraneous material and from any defects not specifically mentioned that affect the appearance or edibility of the product, and in addition, there may be present:

(1) Not more than an average of one square inch of peel for each pound of total contents; and

(2) Not more than 2 blemished units for each pound of total contents.

(h) *"SStd–SP" classification.* Halves, quarters, slices, dice or mixed pieces of

irregular sizes and shapes of canned "solid-pack" clingstone peaches that fail to meet the requirements of paragraph (g) of this section may be given a score of 0 to 20 points and shall not be graded above Substandard Solid-Pack, regardless of the total score for the product (this is a limiting rule).

§ 52.2575 Character.

(a) *General.* The factor of character refers to the degree of ripeness, the texture, and tenderness of the product.

(b) *"A" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess a good character may be given a score of 27 to 30 points. Mixed pieces of irregular sizes and shapes of canned clingstone peaches that score 27 to 30 points shall not be graded above U.S. Grade B regardless of the total score for the product (this is a partial limiting rule). "Good character" has the following meanings with respect to the various styles of canned clingstone peaches:

(1) *Halves, quarters, slices, and mixed pieces of irregular sizes and shapes.* The units are pliable and possess a tender, fleshy texture typical of mature, well-ripened, properly prepared, and properly processed canned clingstone peaches; the units are intact and possess reasonably well-defined edges; and not more than 10 percent, by count, of the units may possess a "reasonably good character". One unit in a container is permitted to possess a "reasonably good character" if such unit exceeds the allowance of 10 percent, by count: Provided, That the appearance or eating quality, or both, is not more than slightly affected by the character of such unit.

(2) *Dice.* The product generally possesses a texture typical of mature, well-ripened, properly prepared, and properly processed canned clingstone peaches; not more than 3 percent, by weight, of the drained clingstone peaches may be excessively frayed or mushy; and the product is otherwise reasonably free from crushed units.

(3) *Whole.* The units possess a tender texture typical of mature, well-ripened, properly prepared, and properly processed canned clingstone peaches; the units are uniformly intact and firm; and not more than 10 percent, by count, of the units may possess a "reasonably good character".

One unit in a container is permitted to possess a "reasonably good character" if such unit exceeds the allowance of 10 percent, by count: Provided, That the appearance or eating quality, or both, is not more than slightly affected by the character of such unit.

(c) *"B" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess a reasonably good character may be given a score of 24 to 26 points. Mixed pieces of irregular sizes and shapes of canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule). "Reasonably good character" has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, slices, and mixed pieces of irregular sizes and shapes.* The units possess a texture typical of mature, properly ripened, properly prepared, and properly processed canned clingstone peaches; the texture is reasonably fleshy, and the units are reasonably tender or the tenderness may be variable within the unit; the units are reasonably intact with not more than slightly frayed edges and may be slightly firm or slightly soft but are not mushy; and not more than 10 percent, by count, of the units may possess a fairly good character. One unit in a container is permitted to possess such fairly good character if such unit exceeds the allowance of 10 percent, by count: Provided, That the appearance or eating quality, or both, is not affected materially by the character of such unit.

(2) *Dice.* The product generally possesses a texture typical of mature, properly ripened, properly prepared, and properly processed canned clingstone peaches; not more than 5 percent by weight, of the drained clingstone peaches may be excessively frayed or mushy; and the product is otherwise reasonably free from crushed units.

(3) *Whole.* The units possess a texture typical of mature, properly ripened, properly prepared, and properly processed canned clingstone peaches; the units are reasonably tender or the tenderness may be variable within the unit; the units may be slightly firm or slightly soft but are not mushy; and not more than 10 percent by count of the units may possess a fairly good character, except for mushy or "not tender" units. One unit in a container is permitted to possess such fairly good character if such unit exceeds the allowance of 10 percent, by count: Provided, That the appearance or eating quality, or both, is not affected materially by the character of such unit.

(d) *"C" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess a fairly good character may be given a score of 21 to 23 points. Canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade C regardless of the total score for the product (this is a limiting rule). "Fairly good character" has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, slices, and mixed pieces of irregular sizes and shapes.* The units possess a texture typical of mature, properly prepared, and properly processed canned clingstone peaches which may be variable in fleshiness but the texture is fairly fleshy; the units may be lacking uniformity of tenderness; the units may be frayed but not excessively frayed or may be soft; and not more than 10 percent, by weight, of the drained clingstone peaches may be mushy or units that are so firm as to be "not tender."

(2) *Dice.* The product generally possesses a texture typical of mature, properly prepared, and properly processed canned clingstone peaches; not more than 10 percent, by weight, of the drained clingstone peaches may be excessively frayed or mushy or are so firm as to be "not tender," and the product is otherwise fairly free from crushed units.

(3) *Whole.* The units possess a texture typical of mature, properly prepared, and properly processed canned clingstone peaches which may be variable; the units may be lacking uniformity of tenderness; the units may be markedly firm or markedly ragged or soft; and not more than 10 percent, by count, of the units may be mushy or so firm as to be "not tender." One unit in a container is permitted to be mushy or "not tender" if such unit exceeds the allowance of 10 percent, by count: Provided, That in all containers comprising the sample, such units do not exceed an average of 10 percent of the total number of units.

(e) *"D" classification.* Canned clingstone peaches of any style that meet the requirements of paragraph (d) of this section with respect to units that are so firm as to be "not tender" but which otherwise possess a noticeably variable texture with not more than 25 percent, by weight, of the drained canned clingstone peaches that consist of mushy fruit may be given a score of 0 to 20 points and shall not be graded above U.S. Grade D, regardless of the total score for the product (this is a limiting rule).

(f) *"SStd" classification.* Canned clingstone peaches of any style that fail to meet the applicable requirements of paragraph (d) or (e) of this section may

be given a score of 0 to 20 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule). Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that are "not tender" are also "Below Standard in Quality—Not Tender."

(g) *"C–SP" classification.* Halves quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that possess a fairly good character for canned "solid-pack" clingstone peaches may be given a score of 21 to 23 points. Canned "solid-pack" clingstone peaches that fall into this classification shall not be graded above U.S. Grade C Solid-Pack regardless of the total score for the product (this is a limiting rule). "Fairly good character for canned 'solid-pack' clingstone peaches" means the product generally possesses a texture of properly prepared and properly processed "solid-pack" clingstone peaches which may be variable in tenderness, may be soft, or may consist of fairly firm units.

(h) *"SStd-SP" classification.* Halves, quarters, slices, dice, or mixed pieces of irregular size and shapes of canned "solid-pack" clingstone peaches that fail to meet the requirements of paragraph (g) of this section may be given a score of 0 to 20 points and shall not be graded above Substandard Solid-Pack, regardless of the total score for the product (this is a limiting rule).

4. In Part 52, § 52.2576 is added to read as follows:

§ 52.2576 Ascertaining the grade of a lot.

The grade of a lot of canned clingstone peaches covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.1 to 52.83).

Done at Washington, DC, on: June 26, 1985.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 85–15669 Filed 6–28–85; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Advance Payments in the Child Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Child Care Food Program (CCFP) regulations by reorganizing and simplifying the current provisions governing the payment of advance funds to institutions. In the proposed rule, three substantive modifications to the advance payment process were outlined and discussed. In this final rule, two of these modifications have been adopted essentially as proposed. First, the final rule requires State agencies to compare advance payments to earnings for each institution on a monthly basis and take appropriate actions to ensure that they do not exceed claims. Secondly, it requires sponsors to disburse all payments, including operating advances to their facilities within five working days of receipt. These changes are designed (1) to help ensure appropriate accountability for program funds at the State and institution levels, and (2) to better implement the intent of program legislation by ensuring that advance funds are provided in a timely manner to those for whom advance payments are intended. The third modification, which would have limited advance payments to the amount of reimbursement earned by an institution for the same month in the previous year, will not be adopted.

EFFECTIVE DATE: This final rule is effective July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura or Mr. James C. O'Donnell, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302, or by telephone at (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This rulemaking has been reviewed in accordance with Executive Order 12291 and has not been classified as a major rule because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or the ability of U.S. enterprises to compete with foreign based enterprises. This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting or recordkeeping requirements that are included in this rule have been submitted and approved by the Office of Management and Budget under 0584–0055 for use through September 30, 1987. This final rule imposes no change to the burden associated with that clearance.

Background

The Department published a proposed rule on February 14, 1985 (50 FR 6183), which contained certain provisions intended to reorganize and simplify the rules governing the payment of advances to institutions participating in the Child Care Food Program (CCFP). Further, the proposal contained three substantive modifications to the advance payment process as follows. First sponsoring institutions would be required to disburse all payments, including operating advances, to the child care facilities which they sponsor within five working days of receipt; secondly, no advance could exceed the amount of reimbursement earned by the institution for the same month in the previous year; and thirdly, State agencies would be required to compare advances to earnings for each institution on a monthly basis and take appropriate actions to ensure that advances do not exceed claims.

The Department established a 60-day period during which interested parties could submit comments on the proposal for consideration in the development of this final rule. During the comment period 587 comments were received. Three were from advocacy groups; eight from Food and Nutrition Service regional offices and the Department's Office of the Inspector General; 17 from State administering agencies; one from a Congressional office; 437 from institutions and other participants; and 121 from parents and other concerned parties.

A significant number of the commenters (a total of 491 CCFP day care providers, parents with children participating in the CCFP and other interested parties) stated their general opposition to any change in the current advance payment system without providing any comments on any specific provisions in the proposed rule. In addition, the Department believes it noteworthy that 502 of the comments submitted in opposition to the proposed rule were from one State and were in one way or another associated with only a few sponsoring organizations.

In developing the final rule, all comments were taken into consideration. This preamble summarizes and discusses the significant issues raised by the commenters.

1. Limitation on Advances

The Department received 89 comments which addressed the requirement in § 226.10(a) of the proposed rule that the advances issued to an institution for a given month shall not exceed the reimbursement earned by the institution for the same month in the preceding year. Sixty-five were opposed, and four were in favor of the proposed requirement. In addition, 22 comments were received on the proposal to rescind the provision in § 226.10(a) of the current regulations which states that the first advance of each fiscal year to an institution shall approximate the average reimbursement for the previous six-months. Of the comments received, nine were opposed and 13 were in favor.

The first part of the proposed change to § 225.10(a) would require that the advances issued to an institution for a given month not exceed the reimbursement earned by the institution for the same month in the preceding year. An overwhelming majority of those commenting on this provision disapproved of this change. Some of those commenters believed that it would hinder the growth of institutions. Others felt that the proposed change would not adequately reflect current participation levels and, therefore, would restrict an institution's ability to receive an advance payment equal to anticipated earned reimbursement or to expand its operation. These commenters argued that, due to program increases, the advance would not reflect the full level of claims customarily received from an institution (as provided for in section 17(f)(4) of the National School Lunch Act (NSLA)), and/or that the amount of reimbursement received in a previous year would not be reliable indicator of what would be needed for the same month in the current year. They pointed out that advances are intended to alleviate cash flow difficulties and can only do so if advances fluctuate with the changes in program participation. Still other commenters suggested (1) that the State agencies use the "preceding month" or "preceding quarter" instead of "preceding year" for limiting advance issuances or (2) that the State agencies be afforded discretion in determining the amount of the advance using available data such as recent reimbursement levels and projected growth or reduction in operations.

The Department acknowledges the concerns expressed by the commenters that this change may result in advances that do not reflect current participation and reimbursement trends, and in view of the widespread concern, the Department has reconsidered this provision and is rescinding the proposed requirement which limits advances to the amount paid in the same month in the previous year. Nevertheless, the Department continues to believe that the amount of the advance should reflect the full level of valid claims customarily received from the institution to ensure that institutions do not receive excessive advances. The Department believes that this will be accomplished by the full implementation of this final rule by State agencies.

In addition to the above, several commenters suggested that advance payments be totally eliminated and the CCFP be entirely a reimbursement program for services already provided or that they be limited to the first year of operation of each institution. This proposal conflicts with the CCFP statute which requires the State to provide advances to institutions (Section 17(f)(4) of the NSLA, 42 U.S.C. 1766(f)(4)).

Furthermore, some others disapproving of the proposed advance limitation change expressed concern that eliminating the language governing advance payments to new institutions meant that if an institution has not participated in the CCFP in the previous year, that institution would not receive an advance for that particular application month. The Department wants to make it clear that institutions that have not participated in the program in the previous year remain entitled to receive advance payments. If a new institution applies for an advance, the same procedures used for all other institutions would apply (i.e., the institution would receive the amount that the State agency estimates the institution *will* submit in a valid claim). Thus, it is no longer necessary to retain a separate provision to govern advances for new institutions.

With regard to rescinding the six-month reimbursement average as a basis for determining the amount of advances for the first month of the fiscal year, some commenters indicated that they believed the six-month average provision assured institutions of an equitable method of determining advance funds. Others pointed out that because some claiming months are atypical advance payments based on the average reimbursement earned during the previous six months have resulted in excessive advances.

As noted above, in the proposed rule the Department proposed to tie the level of advances to the amount of reimbursement earned during the same month in the previous year. Because this limitation would apply to advances earned throughout the year, the Department determined that it was no longer necessary to retail the regulatory requirement that the first advance of the fiscal year be determined by the average of the institution's earned reimbursement for the prior six months, as adjusted by the State agency to reflect the full amount of reimbursement which the State agency estimates that the institutions will earn. Although the Department has decided not to adopt its proposal to limit advances to the amount of reimbursement earned during the same month in the previous year, the Department does not believe it is necessary to reinstate the six-month guideline.

When advance payments were first introduced into the CCFP, the Department believed that the six-month average was needed as a guideline for determining the amount of initial advances for each fiscal year and as a safeguard to ensure that institutions did not receive excessive advances. Accordingly, the Department included the six-month requirement in a proposed rulemaking on July 3, 1979 (44 FR 39094). However, in the final rule issued on January 22, 1980 (45 FR 4980), the Department modified the advance provisions to allow States to make the first advance of the fiscal year in an amount which approximated the six month average as adjusted by the State agency's estimate of the institution's need. Now that States have had a significant amount of experience in making advances, the Department believes this six-month average guideline is no longer necessary. Furthermore, under this final rule the State agencies must make monthly reconciliations to the advances paid versus reimbursements earned. The Department believes that this requirement will provide an adequate safeguard against excessive advance payments. Finally, removing this requirement from the current regulations will provide more flexibility to States in determining advance payments and thus will ultimately be in the best interest of State agencies and institutions alike. Therefore, the Department has adopted the proposed change to remove the six-month average from the initial advance.

2. Recovery of Excess Advance Payments

The Department received 36 comments addressing the proposed change under which State agencies would be required to conduct monthly comparisions of reimbursement claims to advances and recover any part of the advance which exceeds the amount of reimbursement that the institution is entitled to receive. Sixteen commenters opposed the provisions, and 20 were in favor of the change.

The commenters that disagreed with the proposed provision pointed out that this system would require more staff time and increase the paperwork needed to provide advances to institutions. Others felt, on the other hand, that it would ensure greater fiscal accountability, significantly limit the potential loss of program funds at the State and institution levels, and prevent large overclaims from the build-up of excess advances that may result in either a substantial loss of funds to the institution or in the institution's closure. A number of States indicated that they already conduct monthly or quarterly reconciliations and that they strongly believe the reconciliation is a useful financial management tool. The Department continues to believe that the monthly reconciliation is a reasonable and useful tool for good program management for many of the reasons discussed by supporters of the proposal. Therefore, this final rule includes the monthly comparison provision essentially as proposed.

Among the specific comments on this provision were recommendations that (1) it be clarified in paragraph (a) that advance payment estimates are to be determined by the State agency and not by the individual institution; (2) the word "valid" be included in the first sentence of paragraph (b)(2) to strengthen the provision addressing claims for reimbursement; (3) a distinction be made between the "withholding" and the "denying" of an advance payment to an institution; and (4) withholding of the payment may not be appealed for at least one month. The Department disagrees with the commenter that there is a difference between "withholding" the advance for lack of a "valid" claim and "denying" the advance, which is an appealable action as listed in 226.6(j). If the State agency withholds the advance for the reason listed above, it is in fact denying the advance and this action is appealable since the law stipulates that advances must be made available by the first day of each month. However, the Department believes that several of the above suggested clarifications will help eliminate any ambiguities in §§ 226.10(a) and (b)(2) of the reegulations. Therefore, the Department is modifying the proposed language in paragraph (a) to include in the second sentence after the word "estimate" the works "by the State agency" to emphasize that the State has the authority for making the advance estimates. In addition, in paragraph (b)(2), the word "valid" is inserted between the words "a" and "claim."

3. Disbursement of Advance Payments to Facilities

The Department proposed to amend §§ 226.10(g) and (h) to require sponsors to disburse all payments, including operating advances, to their family day care homes within five working days of receipt. Furthermore, the Department proposed to apply this five day limitation to sponsors of child care centers and outside-school-hours care centers. Previously, sponsors had 15 days in which to disburse advances to centers. Eighty-seven comments were received on the requirement for sponsors of homes. Seventy-six disapproved, and 11 were in favor. Fifteen comments dealt with sponsors of centers, with nine in favor and six opposed.

The commenters opposed to the mandatory pass-through to the homes expressed a number of concerns. Some felt that the proposed change would increase the paperwork of both the State agency and sponsoring organizations. They further maintained that the five-day pass through and the need to reconcile advance payments to homes with reimbursement earned would require an even more complex recordkeeping system and an increased administrative burden which would result in a need for additional administrative funds. This proposed change, they felt, would require sponsors to disburse two checks for each home instead of one, thus offsetting any Federal savings from these cash management efforts. The additional burden would double or triple the paperwork, and many careless errors in this multiple payment arrangement could occur.

Other commenters believed it unwise to make payment to the home until actual costs have been incurred and reported. Furthermore, a number noted that even though there is a close working relationship with the homes, many homes leave the program unexpectedly for various reasons (e.g., sickness, moving, lack of children, family difficulties). Some argued that this method would be an irresponsible use of Federal dollars and would tempt homes to commit fraud by claiming children that were not in attendance in order to receive sufficient reimbursement to cover the advance payment.

Finally, a number of commenters believed an that additional two to three month delay in reimbursement to homes would result if this action is adopted because sponsors would no longer accept advances given the new requirements attached to them. Many of these commenters made the point that, currently, sponsors use the advances to pay the current reimbursement payments to homes.

Despite this opposition to the pass-through requirement as a condition of receipt of an advance payment, the Department continues to assert that the intent of the advance payment provision in the law was to make advances available to participants to meet current expenses. Currently, many sponsoring organizations of homes which receive advances are holding them until the homes submit their claims for reimbursement after the end of the month. The Department acknowledges that implementation of this provision may result in some sponsors having to revise their procedures for making payments to homes. Once the requirement is fully implemented, however, the Department believes that sponsors will be able to utilize it to the benefit of homes, as envisioned by the law. This provision will also extend to sponsors of day care homes the pass-through requirement that has existed for sponsors of centers since the original final rule on advances was published in 1980. Accordingly, this final rule requires that sponsors pass advance payments through to their facilities within five working days of receipt from the State agency.

One commenter suggested that the language be revised to include a provision to allow the sponsor to request advances for and to provide advances to some homes, but not all homes. This commenter further asserted that some sponsors have a central group of homes who have participated in the program for many years and that these particular sponsors may feel comfortable in issuing advances to their homes in this category but not to other homes under its sponsorship. The commenter believed that this option would be beneficial to the homes without creating a substantial burden to the sponsor or the State agency. Moreover, it would provide a more acceptable alternative should the total operating advance be inadequate to pay

each home its full anticipated reimbursement.

The Department believes that sponsors should be allowed to request only a portion of the advance which the State agency estimates the institution to be entitled to and pass it on to their homes in a manner determined by the sponsor to be in the best interest of the program and its homes. Thus, in this final rule, sponsors which request less than full advance payment may disburse the advance to whichever homes it chooses, as long as the entire amount of the advance payment received from the State agency is so disbursed.

In this regard, a sponsor's option to request less than a full advance should be distinguished from the instance in which a sponsor requests a full advance, but that advance is inadequate to provide advances to all homes in the amount of their full anticipated reimbursement. In the proposed rule, a sponsor which requested a full advance, which in fact was inadequate to provide advances to all homes would have been required to prorate the advance among all the homes it sponsored. The Department originally proposed that provision as part of the larger proposal to limit advance payments to the amount of the reimbursement earned by the institution in the same month in the previous year. Because of that limitation, there was a possibility that even if a sponsor requested a full advance, the advance would be insufficient to provide full advances to all homes.

However, as discussed above, that limitation has not been implemented in this final rule. Absent that limitation, it is unlikely that if a sponsor requests a full advance, the advance will be insufficient to cover the full anticipated reimbursement for all the sponsor's homes. Consequently, the Department no longer believes that it is necessary to specify that the sponsor must disburse the advance on a pro rata basis if such a situation should arise. Under the final rule, should the full advance be insufficient, the manner in which the advance is disbursed among the homes is left up to the discretion of the sponsor, as long as the full amount of the advance is disbursed.

With regard to the comments received on the proposed five day limitation on the pass-through of advances to child care centers and outside-school-hours care centers, the majority of commenters supported the provision as proposed. Those opposed, for the most part, expressed concerns similar to those expressed by the opponents of the pass-through to homes. Those in favor agreed with the Department that the advance funds should be made available for use by the centers as quickly as possible and that the relative stability of the CCFP in centers should make this a reasonable provision for sponsors to administer. Therefore, the Department is implementing this provision in the final rule as proposed.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

PART 226—[AMENDED]

Accordingly, the Department is amending 7 CFR Part 226 as follows:

1. The authority citation for Part 226 continues to read as follows:

Authority: Sections 803, 810 and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758 and 1766); Section 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); Section 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

§ 226.7 [Amended]

2. Section 226.7(i) is amended by revising the phrase "on a periodic basis" to read "on a monthly basis."

3. Section 226.10, is amended by revising paragraphs (a) and (b) to read as follows:

§ 226.10 Program payment procedures.

(a) By the first day of each month of operation, the State agency shall provide an advance payment to each institution electing to receive such payments, in accordance with § 226.6(b)(10). Advance payments shall equal the full level of claims estimated by the State agency to be submitted in accordance with paragraph (c) of this section, considering prior reimbursement claims and other information such as fluctuations in enrollment. The institution may decline to receive all or any part of the advance.

(b) For each fiscal year, the amount of payment made, including funds advanced to an institution, shall not exceed the amount of valid reimbursement claimed by that institution. To ensure that institutions do not receive excessive advance payments, the State agency shall observe the following procedures:

(1) After three advance payments have been made to an institution, the State agency shall ensure that no subsequent advance is made until the State agency has validated the institution's claim for reimbursement for the third month prior to the month for which the next advance is to be paid.

(2) If the State agency has audit or monitoring evidence of extensive program deficiencies or other reasons to believe that an institution will not be able to submit a valid claim for reimbursement, advance payments shall be withheld until the claim is received or the deficiencies are corrected.

(3) Each month the State agency shall compare incoming claims against advances to ensure that the level of funds authorized under paragraph (a) of this section does not exceed the claims for reimbursement received from the institution. Whenever this process indicates that excessive advances have been authorized, the State agency shall either demand full repayment or adjust subsequent payments, including advances.

(4) If, as a result of year end reconciliation as required by the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015), the State agency determines that reimbursement earned by an institution during a fiscal year is less than the amount paid, including funds advanced to that institution, the State agency shall demand repayment of the outstanding balance or adjust subsequent payments.

* * * * *

4. Section 226.16, is amended by removing the first three sentences of paragraph (g), adding the following four new sentences to the beginning of paragraph (g), and by revising the first sentence of paragraph (h) to read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(g) Each sponsoring organization electing to receive advance payments of program funds for day care homes shall disburse the full amount of such payments within five working days of receipt from the State agency. If the sponsor requests the full operating advance to which it is entitled, the advances to day care homes shall be the full amount which the sponsor expects the home to earn based on the number of meals projected to be served to enrolled children during the period covered by the advance multiplied by the applicable payment rate as specified in § 226.13(c). If a sponsor elects to receive only a part of the operating advance to which it is entitled, or if the full operating advance is insufficient to provide a full advance to each home, the advance shall be disbursed to its homes in a manner and an amount the sponsor deems appropriate. Each sponsor shall disburse any reimbursement payments for food service due to each day care

home within five working days of receipt from the State agency.* * *

(h) Sponsoring organizations shall make payments of program funds to child care centers or outside-school-hours care centers within five working days of receipt from the State agency, on the basis of the management plan approved by the State agency, and may not exceed the Program costs documented at each facility during any fiscal year; except in those States where the State agency has chosen the option to implement a meals times rates payment system.* * *

* * * * *

Dated: June 24, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-15478 Filed 6-28-85; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 2540S]

General Administrative Regulations; Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule, correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the **Federal Register** on Tuesday, June 11, 1985, at 50 FR 24503, issuing a new Subpart J in Chapter IV of Title 7 of the Code of Federal Regulations (CFR), to be known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Reinsurance Agreement. The Subpart was inadvertently published as Subpart J and should have read Subpart I. This notice is published to correct that error.

EFFECTIVE DATE: July 11, 1985.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: FR Doc. 84-14060, appearing at page 24503, is corrected in the following instances:

1. The Subpart title J is redesignated as Subpart I to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart I—Reinsurance Agreement.

Authority: Secs. 508, 516, Pub. L. 75-430, 52 stat. 73, 77 as amended (7 U.S.C. 1508, 1516).

Done in Washington, D.C., on June 24, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 25, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-15604 Filed 6-28-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 979

Melons Grown in South Texas; Suspension of Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This suspends § 979.304 Handling regulation pertaining to melons grown in South Texas for the balance of the 1985 shipping season. The 1985 season is nearly over and the quantity of melons remaining is insufficient to warrant regulation. Packing, inspection and committee overhead costs would likely exceed the benefits of continuing the regulation.

EFFECTIVE DATE: June 25, 1985.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447-5764.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Marketing Agreement No. 158 and Order No. 979 regulate the handling of melons grown in counties in South Texas. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The South Texas Melon Committee, established under the order, is responsible for its local administration.

Section 979.304 *Handling regulation,* as amended (47 FR 13118, 24109; 48 FR 21881; 49 FR 15541; and 50 FR 3797 became effective May 1, 1982, and would have remained in effect until terminated or amended. However, the South Texas Melon Committee, in a telephone vote held on June 21 voted unanimously to recommend suspending the regulation for the balance of the 1985 season which ends June 30, 1985. Excessive rains have curtailed harvesting and shipping operations in the production area. The committee concluded that the season is nearly over and the quantity remaining is insufficient to warrant continuing the regulation.

It is hereby found that continuing § 979.304 *Handling regulation* for the remainder of the season would no longer tend to effectuate the declared policy of the act and should be suspended. It is further found that it is impracticable and contrary to the public interest to provide 60 days for interested persons to file comments, engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this suspension until 30 days after publication in the **Federal Register** (5 U.S.C. 553) since the regulation is being suspended and regulatory activities imposed on handlers will thereupon cease.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons, Texas.

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for Part 979 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 979.304 [Temporarily suspended]

2. Section 979.304 is hereby suspended for the balance of the 1985 shipping season through June 30, 1985.

Suspension of regulation: The provisions of § 979.304 Handling regulation, as amended (47 FR 13118, 24109; 48 FR 21881; 49 FR 15541; and 50 FR 3797) are hereby suspended for the balance of the 1985 shipping season.

Dated: June 25, 1985, to become effective upon signature.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-15752 Filed 6-28-85; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 991

[Docket No. F&V AO-357-A-2]

Hops of Domestic Production; Order Terminating Marketing Order 991, an Amended and Amendatory Proceeding

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This action terminates the Federal marketing order for domestically produced hops effective December 31, 1985, because the Secretary of Agriculture has determined that the order obstructs and does not tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (act). In addition, this action terminates the amendatory proceeding which began January 11, 1984 (Docket No. F&V AO 357–A–2).

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–5053.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of section 8c(16) of the act (7 U.S.C. 601–674).

Notice is hereby given of the filing with the Hearing Clerk of this order terminating Marketing Order No. 991, regulating the handling of domestically produced hops and the proceeding to amend the order (49 FR 18862). Copies of this decision may be obtained from Frank M. Grasberger.

Preliminary Statement

Marketing Order No. 991 (7 CFR Part 991) regulating the handling of domestically produced hops, issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and all rules and regulations and supplementary orders heretofore issued thereunder and now effective, are hereby terminated effective December 31, 1985. In view of this action, no further consideration will be given to the pending rulemaking proceeding involving a proposed amendment of the order (49 FR 18862). Therefore, that amendatory proceeding (Docket No. F&V AO 357–A–2) is hereby terminated July 1, 1985.

Background Statement

Marketing Order 991 regulates the handling of hops of domestic production and has been in effect continuously since 1966. The order regulates the handling of domestic hops under the provisions of section 608c(6)(B) of the act.

The order limits the quantity of hops handlers may purchase from or handle on behalf of any and all producers. The objective of the order is to annually adjust supply to market needs through a salable quantity and allotment percentage recommended by the Hop Administrative Committee (HAC) and established by the Secretary. The allotment percentage is applied to each producer's allotment base to determine the producer's annual allotment; i.e., the quantity that handlers may purchase from or handle on behalf of the producer. The salable quantity recommended for the past several years has not accurately reflected market needs but rather has attempted to prevent the allotment percentages from cutting across the contracts producers have with dealers and to keep the price of leased base at reasonable levels. This has resulted in actions by producers that are outside of the order's purpose such as the leasing of allotment base to other producers, and has caused considerable controversy both within and outside the hop industry over certain provisions of the current program.

Moreover, the order restricts entry so that producers who did not receive allotment base when the order was issued in 1966 had to either inherit, purchase, or lease allotment base in order to market hops.

Currently, hops are produced commercially in Washington, Oregon, Idaho, and California. There are about 225 hop producers in the area of production. Most of these are large operators because of the sizeable investment required. Currently, there are no major cooperatives in the hop industry.

While there are 23 handlers (dealers) regulated under the order; seven of these handle about 97 percent of the domestic hops. The largest dealers also buy and sell hops in world markets. Dealers normally purchase hops from producers by contracting for a specific quantity at a given price for delivery three to five years in the future. This arrangement has been the practice long before the order was established.

Since 1966, there has been a shift in production within the entire area of production. Hop acreage in California declined from over 9,000 acres in the early 1950's to less than 150 acres in 1984. During this same period Washington hop acreage expanded from about 14,000 acres to over 24,000 acres. Hop acreage in Oregon and Idaho has remained fairly constant with some periodic fluctuation, but with no significant trends. Total hop acreage in the U.S. is expected to decline over the next several years as newer high alpha acid varieties replace some of the older varieties. Yields per acre in the U.S. have been trending upward from an average of approximately 1,600 pounds in the 1950's to 1,900 pounds in the 1980's. Most other hop producing countries have not increased yields, probably because irrigation is not used to the extent that it is in the U.S.

If this trend of changing to higher alpha varieties and increasing yields continues and beer production remains constant, the acreage required to provide the quantity of hops needed by brewers will decline, necessitating further adjustments by producers in acreage planted to hops.

The order provides for allotment bases which are the foundation for determining the market share allocated to each producer. These allotment bases are based on the quantity of hops producers sold during the years 1962, 1963, 1964, and 1965, with liberal adjustment for extenuating circumstances. The total of all producers' allotment bases is 59,270,000 pounds. There are no limitations on the varieties of hops that can be grown, the location of a producer's hop production (within the four state area of production), the number of acres on which the producer produces hops, or the quantity of hops a producer can produce, except that any hops in excess of a producer's annual allotment become reserve hops. Reserve hops are pooled and released only if market needs warrant such release.

Because of the "base" allotment system, there is a substantial barrier to entry by new producers. The current order provides for allotment bases which are the foundation for determining the market share allocated to each producer. The allotment bases in the current order are still based upon the quantity of hops producers sold during the years 1962–65.

The "bona fide" effort requirement in the order currently prescribes that the right of each producer to retain all or part of his order allotment base depends on his continuing to make a bona fide effort to produce his annual allotment, and failing to do so, his allotment base must be reduced by an amount equivalent to the unproduced portion. The "bona fide" effort requirement has failed in its goal of assuring that allotment holders are genuine producers. Although the order requires a bona fide effort to produce the full allotment, the

requirement has been waived for the last several years.

Entry of new producers has been severely restricted because additional allotment base was not issued. When the order became effective in 1966, a total of 59,270,000 pounds of allotment base was issued to producers who had a sales history during the representative period 1962–65. Since that initial issuance, virtually no additional allotment base has been issued. Instead of issuing additional base, the increased demand has been met by adjusting allotment percentages and salable quantities. In 1980, for example, the need for additional hop marketing was met by increasing the annual allotment percentage to well over 100 percent of the total allotment base for 1981. The same action was also taken subsequent to 1981.

The order currently permits a producer to transfer all or part of an allotment base to another producer by notifying the HAC in writing of the transfer. Transfers of allotment base between producers have been relatively free of restrictions. As a result of the liberal transfer provisions, a secondary market has developed which focuses producer concern more on allotment base trading than on the production and marketing of hops. Since virtually no additional allotment base has been issued, available allotment base has become a scarce commodity commanding a high price. This activity in leasing and transferring allotment base, especially where new hop producers were concerned, has contributed to an overexpansion of hop production and hop producing facilities.

There is a conflict between the order provision permitting only one-year volume regulation and contracting practices in the hop industry. The order provides that the HAC can recommend a volume regulation for only the following marketing year. However, the practice in the industry is for producers and handlers to contract for three to five years. This conflict has created serious problems for the industry and has resulted in the establishment of salable quantities in excess of market needs to allow producers to fulfill their contractual obligations. Since the Act was intended to eliminate such imbalances between supply and demand, the volume regulation recommendation provisions of the order have clearly failed.

The purpose of marketing order programs normally is to provide a stable and orderly market environment which will tend to improve grower returns for the commodity involved. The hop marketing order now in effect has not achieved and maintained this market stability as evidenced by current market conditions.

The market for hops is depressed. Prices in the spot and contract markets are at very low levels and frequently during the past few years have been below the average costs of production. Furthermore, there is little expectation that the prices producers receive for hops will improve over the next few years unless dramatic reductions in world hop production and supplies occur.

Brewers and handlers are overstocked with hops to the extent that they now hold about one and one-half year's brewing needs. This situation is further exacerbated by the lagging production and sales of beer which are not expected to show much improvement over the next few years.

Contracting is practically non-existent. In fact in 1983, 1984, and 1985 many producers were offered incentives, such as extensions in their current contracts, and partial payment of their contracted prices not to deliver hops against those contracts. The only new contracts currently being negotiated are for specific varieties or with a few producers.

All of these market conditions developed while the marketing order was in full operation. However, the order did not function to correct the marketing conditions in a time of declining market demand. Furthermore, the order has not functioned so as to be responsive to changing market conditions and apparently was unable to adjust supply, even with its allotment provisions, to meet actual market needs. For these reasons, the order obstructs and has not effectuated the declared policy of the act.

Therefore, pursuant to Section 8c(16)(A) of the act and § 991.78 of the order it is found that Marketing Order No. 991, regulating the handling of hops of domestic production, issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) and all rules and regulations and supplementary orders heretofore issued thereunder and now effective obstruct or do not tend to effectuate the declared policy of the act. To avoid undue disruption within the hop industry and maintain continuity throughout the end of the 1985 calendar year M.O. 991, and all rules, regulations and supplementary orders, are hereby terminated effective December 31, 1985. Also, this decision terminates the amendatory proceeding initiated in early 1984.

Another document establishing a salable quantity and allotment percentage for the period August 1, 1985 to December 31, 1985, will be issued separately and published in a subsequent issue of the **Federal Register**.

As provided in § 991.79 on and after the effective date hereof, the members of the Hop Administrative Committee shall, for the purpose of liquidating the affairs of the Committee, continue as trustees of all funds and property then in its possession or under its control, including claims for any funds unpaid or property not delivered at the time of such termination. The procedure upon termination of the order is set forth in §§ 991.79 and 991.80. As provided in § 991.80, the provisions thereof are, and shall remain, in effect at and after the effective time hereof.

List of Subjects Affected in 7 CFR Part 991

Marketing agreements.

PART 991—[REMOVED]

Accordingly, 7 CFR Part 991 is removed.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 26, 1985.

Karen K. Darling,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-15748 Filed 6-27-85; 11:03 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1427

[Amdt. 5]

CCC Cotton Loan Program Regulations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the Commodity Credit Corporation (CCC) Cotton Loan Program Regulations governing the 1980 and subsequent crops of cotton concerning the packaging of cotton which is pledged to CCC as collateral for price support loans. The specifications for bale packaging materials used in wrapping cotton for 1985 that were approved and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) are acceptable to CCC. Therefore, CCC is incorporating these specifications by reference and will require that 1985-crop cotton pledged to CCC as collateral for price support loan be wrapped to comply with these specifications.

DATE: Effective June 28, 1985. The Director of the Federal Register approved the incorporation by reference of the 1985 specifications effective on June 28, 1985.

ADDRESS: Harold Jamison, Cotton, Grain, and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Carolyn E. Cozart, Cotton, Grain, and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447–7987. The Final Impact Statement describing the options considered in developing the rule that eliminated the publishing in the Federal Register of packaging specifications and the impact of implementing each option is available upon request from the above-named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this rule applies to are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation has been completed. It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

A final rule was published in the Federal Register on July 1, 1982, that amended the cotton loan program regulations to provide that CCC would no longer publish in the Federal Register the packaging specifications acceptable to CCC for packaging cotton pledged to CCC for price support loans. Instead, CCC determined that the specifications for cotton bale packaging materials approved and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) were acceptable to CCC for packaging cotton pledged to CCC for price support loans and incorporated by reference, in accordance with 1 CFR Part 51, the specifications approved and published by the JCIBPC for 1982-crop cotton.

Since the only purpose of this final rule is to amend the cotton loan program regulations to incorporate by reference the specifications approved and published by the JCIBPC for 1985-crop cotton which are generally available and accepted by the cotton industry, it has been determined that no further public rulemaking is required.

Accordingly, the regulations governing the cotton loan program set forth at 7 CFR 1427.1 through 1427.25 are amended as stated herein in order to incorporate by reference, in accordance with 1 CFR Part 51, the packaging specifications approved and published by the JCIBPC for 1985-crop cotton.

Copies of the specifications published by the JCIBPC will be made available to the public upon request by that Committee and by county ASCS offices.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Surety bonds, Warehouse.

Accordingly 7 CFR Part 1427 is amended as follows:

PART 1427—[AMENDED]

1. The authority citation for 7 CFR §§ 1427.1–1427.25 continues to read as follows:

Authority: Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421); Sec. 602, 91 Stat. 934 (7 U.S.C. 1444).

2. In § 1427.5, paragraph (l) is revised to read as follows:

§ 1427.5 Eligible cotton.

* * * * *

(l) Each bale must be packaged in materials which meet the specifications adopted and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging material. Heads of bales must be completely covered. Copies of the 1985 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available to the public upon request at the county ASCS office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Informaion with respect to experimental packaging material may be obtained from JCIBPC.

* * * * *

Signed at Washington, D.C., June 24, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

FR Doc. 85–15532 Filed 6–28–85; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–CE–28–AD; Amdt. 39–5003]

Airworthiness Directive (AD); Suspension of Amdt. 39–5003; AD 85–03–04; Gulfstream Aerospace Models 112, 112B, 112TC, 112TCA, 114 and 114A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Following issuance of a Notice of Proposed Rulemaking on October 9, 1984, Amendment 39–5003, Airworthiness Directive (AD) 85–03–04, was issued February 21, 1985, effective March 25, 1985, as corrected March 19, 1985. That AD, which supersedes AD 77–16–09, requires modification of the front seat base structure and relocation of the shoulder strap anchor on Gulfstream Aerospace Models 112 and 114 Series airplanes. This action suspends the effectivity of Amendment 39–5003 to enable the FAA to consider more fully information submitted by a petitioner which raises substantial issues in support of rescission of the amendment. The petition to rescind the AD questions whether the modification imposed by AD 85–03–04 offers a significant improvement over that required by AD 77–16–09.

EFFECTIVE DATE: July 2, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Dragset, Airplane Certification Branch, ASW–150, FAA, Southwest

Region, Post Office Box 1689, Fort Worth, Texas 76101; Telephone (817) 877-2075.

Discussion

The FAA issued Amendment 39-5003, AD 85-03-04, on February 21, 1985 (50 FR 7165) to become effective March 25, 1985, as corrected March 19, 1985 (50 FR 10935). The amendment, which supersedes AD 77-16-09, requires modification of the front seat base structure and relocation of the shoulder strap anchor on Gulfstream Aerospace Models 112 and 114 series airplanes.

The Aircraft Owners and Pilots Association (AOPA) submitted a petition requesting the rescission of Amendment 39-5003, contending that the modification imposed by the AD does not provide a significant improvement over that required by AD 77-16-09. In light of the substantial issues raised in the AOPA petition, the FAA recognizes the need to fully reevaluate its action to verify that the mandatory seat modification in Amendment 39-5003 results in the requisite level of safety for aircraft occupants.

Accordingly, pending disposition of the AOPA petition the FAA has determined that the public interest justifies suspension of the effectivity of Amendment 39-5003. Since Amendment 39-5003 became effective on March 25, 1985, and required compliance within 100 hours time-in-service after its effective date, some operators may already have performed the required airplane modifications. The suspension of Amendment 39-5003 adopted by this rule is not effective as to airplane modifications accomplished pursuant to the AD prior to this action, and any airplanes already modified will continue to conform to the type design requirements in effect under Amendment 39-5003 prior to suspension of its effectivity.

This action is necessary to resolve a substantial safety question in Amendment 39-5003, which could unduly burden the public unless the AD's effectivity is suspended. Accordingly, I find that notice and public procedure hereon are impracticable and contrary to the public interest and that good cause exists for making the adoption of this action effective on less than 30 days notice.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89; 49 CFR 1.47

2. Part 39 of the Federal Aviation Regulations is amended, effective July 2, 1985, by suspending the effective date of Amendment 39-5003, published in the **Federal Register** on March 14, 1985 (50 FR 10935) as corrected March 19, 1985 (50 FR 10935).

Issued in Kansas City, Missouri, on June 20, 1985.

Edwin S. Harris,

Acting Director, Central Region.

[FR Doc. 85-15730 Filed 6-26-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ASO-11]

Alteration of Transition Area; Campbellsville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment increases the size of the Campbellsville, Kentucky, transition area to accommodate changes in instrument approach procedures. The Arista radio beacon (RBN), which was previously located on Taylor County Airport, has been relocated to a new site approximately five miles northeast of the airport. This relocation necessitates a change in the instrument approach procedures which serves Runway 23 at Taylor County Airport and requires cancellation of the instrument approach procedures to Runway 05. These changes in procedures permit the revocation of the existing transition area arrival extension established southwest of the airport and requires increasing the size of the northeast arrival extension. The net effect of these changes will be to raise the floor of controlled airspace from 700 to 1,200 feet above the surface in an area southwest of the airport and to lower the floor from 1,200 to 700 feet in a larger area northeast of the airport.

EFFECTIVE DATE: 0901 G.m.t., September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 23, 1985 (50 FR 15902), the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by altering the Campbellsville, Kentucky, transition area by revoking the existing arrival extension southwest of the Taylor County Airport and increasing the size of the northeast arrival extension. These alterations will provide the necessary controlled airspace for aircraft executing a revised instrument approach procedure to the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Campbellsville, Kentucky, transition area to accommodate Instrument Flight Rule Operations at Taylor County Airport.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition Areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); (14 CFR 11.69); 49 CFR 1.47.

2. By amending § 71.181 as follows:

Campbellsville, KY—[Revised]

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Taylor County Airport (Lat. 37°21'24" N., Long. 85°18'43" W.); within 3.5 miles each side of the 050° bearing from the Taylor County RBN (Lat. 37°24'27" N., Long. 85°14'04" W.), extending from the 6.5 mile radius area to 11.5 miles northeast of the RBN.

Issued in East Point, Georgia, on June 21, 1985.

Thomas H. Protiva,

Acting Director, Southern Region.

[FR Doc. 85-15732 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3155]

The Korman Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Trevose, Pa. homebuilder, developer and real estate manager, among other things, to cease representing that it will correct any problems due to faulty materials, workmanship or design, unless the firm corrects the problems within a reasonable time after being informed of the defect by the homeowner. The firm is also barred from failing to perform its warranty obligations within a reasonable period of time and remedy non-warranted problems that the company has represented that it will correct. Should a written warranty be offered in connection with the sale of a home, a notice has to be conspicuously displayed in sales offices advising that a free copy of the warranty is available upon request. All limitations on, disclaimers of, or exclusions from coverage under the written warranty have to be clearly and conspicuously disclosed within both the warranty and each sales contract used by the firm. If homes are covered by a written warranty, the firm has to use a prescribed dispute settlement process to resolve warranty disputes, and provide a written description of that process to each home purchaser. The order additionally requires the company to provide repairs or reimbursements, in accordance with redress procedures set forth in the order, to eligible homeowners who bought their homes since Oct. 1, 1978 and still own those homes; and to maintain specified files for a period of three years.

DATE: Complaint and Order issued June 12, 1984.[1]

FOR FURTHER INFORMATION CONTACT: James K. Leonard, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 14371, Chicago, IL 60603. (312) 353-5576.

SUPPLEMENTARY INFORMATION: On Wednesday, April 3, 1985, there was published in the **Federal Register**, 50 FR 13240, a proposed consent agreement with analysis In the Matter of The Korman Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.10-1 Availability of merchandise and/or services; § 13.70 Fictitious or misleading guarantees; § 13.175 Quality of product or service; § 13.205 Scientific or other relevant facts; § 13.287 Warranties. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-5 Arbitration; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-75 Warranties. Subpart—Delaying or Withholding Corrections, Adjustments or Action Owed: § 13.675 Delaying or withholding corrections, adjustments or action owed. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1647 Guarantees; § 13.1715 Quality; § 13.1740 Scientific or other relevant facts; § 13.1777 Warranties. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1885 Scientific or other relevant facts; § 13.1905-65 Warranties. Subpart—Offering Unfair, Improper, and Deceptive Inducements to Purchase or Deal: § 13.1980 Guarantee, in general; § 13.2063 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Homebuilding, Real estate development, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 85-15686 Filed 6-28-85; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 288

[Release Nos. 33-6589-34-22156; 39-000; AFDB-1]

Primary Offerings by the African Development Bank

Correction

In FR Doc. 85-15200 beginning on page 26190 in the issue of Tuesday, June 25, 1985, make the following correction. On page 26192, third column, the eighth and ninth lines from the bottom should have read: "Release No. 33-6589 will not have a significant".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 85-109]

Customs Regulations Amendments Relating to Passengers on Foreign Vessels Taken on Board and Landed in the United States

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: Customs is amending its regulations relating to the transportation of passengers by a foreign vessel between ports or places in the United States either directly or by way of a foreign port. The amendment provides that, with certain exceptions, such transportation is prohibited when passengers are actually embarked at one port or place in the United States and disembarked at another port or place in the United States. This amendment will more accurately reflect the scope and intent of the coastwise trade passenger statute which contains no provision for exceptions based upon the number of hours a vessel is in port, such as is provided in the current regulations. The prohibition will not apply when pasengers are so transported between such ports or places on a voyage touching foreign ports other than nearby foreign ports. The amendment will simplify the administration of the statute for Customs, be of benefit to the economy of certain of the American coastwise ports affected, and in no way erode the statutory protection given to American vessels engaged solely in domestic trade.

EFFECTIVE DATE: July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Edward B. Gable, Jr., Director, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5732).

SUPPLEMENTARY INFORMATION:

Background

Title 46, United States Code, section 289 provides that no foreign vessel shall transport passengers between ports or places in the United States either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and landed.

Section 4.80a, Customs Regulations (19 CFR 4.80a), provides that a foreign vessel which takes a passenger on board at a port in the United States its territories, or possessions embraced within the coastwise laws ("coastwise port") will be deemed to have landed that passenger in violation of the coastwise laws (46 U.S.C. 289): (1) If the passenger goes ashore, even temporarily, at another coastwise port on a voyage to one or more coastwise ports but touching at a "nearby foreign port or ports" (as defined in § 4.80a(c)), Customs Regulations (19 CFR 4.80a(c)), but at no other foreign port, and (2) if during the course of the voyage the vessel remains in the coastwise port (not including the port of embarkation) for more than 24 hours, without regard to whether the passenger ultimately severs his connection with the vessel at the port which he embarked. The 24-hour rule of § 4.80a(2) does not apply to a trip on which the vessel would at some time touch at a foreign port other than a "nearby foreign port," for example, a port in Europe or in South America.

The essence of the 24-hour rule was originally stated in T.D. 55147(19) of June 3, 1960 (95 Treasury Decisions 297), because it was believed at that time that it was necessary to implement a workable administrative rule of interpretation by which to effectively and efficiently ascertain violations of the coastwise passenger statute, 46 U.S.C. 289.

Customs has been advised that certain American coastwise ports, such as those in Alaska, Florida, and Puerto Rico, are placed in a disadvantageous position in their competition with nearby foreign ports for tourist business due to present § 4.80a(a)(2) and that the net result is to hurt the economy of these American ports by depriving them of revenue. It has been recommended that the 24-hour limit be extended to permit foreign-flag vessels from U.S. ports to be able to land passengers at other U.S. ports for longer periods.

The references in § 4.80a to a 24-hour rule and nearby foreign ports are the result of attempts by Customs to apply an Attorney General's opinion dated February 26, 1910 (28 O.A.G. 204). In that case, a foreign-flag vessel transported 615 passengers between New York and San Francisco. However, the Attorney General stated that since the passengers were so transported on a cruise around the world, the primary object of the passengers was to visit various parts of the world on a pleasure tour and then return home via California, not be transported in domestic commerce, and therefore the transportation was not in violation of 46 U.S.C. 289.

The 1910 Attorney General's opinion was extended to voyages touching at foreign ports other than nearby foreign ports, as defined in § 4.8a(c), Customs Regulations, by T.D. 68–285 (33 FR 16558, November 14, 1968). On the other hand, voyages solely to one or more coastwise ports have always been considered predominantly coastwise in their nature and object and therefore passengers on such a voyage temporarily going ashore at a coastwise port have been deemed to have been disembarked in violation of the statute. An example of such a voyage would be one including only coastwise ports in California and Hawaii.

The terms "embark" and "disembark" are trade words of art which normally mean going on board a vessel for the duration of a specific voyage and leaving a vessel at the conclusion of a specific voyage. In this normal context the words do not contemplate temporary shore leave for any specified number of hours during a voyage. It has been determined that the use of the terms in the amendment will follow the intent of Congress and clarify the scope of the regulations. That the statutory language "so transported and landed" means the final and permanent disembarking is further shown by the following Attorney General Opinions:

1. 28 O.A.G. 204, February 26, 1910, citing a statement by the Chairman of the interested House committee at the time that the legislation relates to "the conveyance of passengers between ports of the United States";

2. 29 O.A.G. 318, February 12, 1912, stating that the words of the statute "imply a transportation beginning at one port or place in the United States and ending at another port therein";

3. 30 O.A.G. 44, February 1, 1913, covering the application of the statute to passengers joining a vessel in a port of the U.S. and "disembarking at the port of New York" and referring to the passengers' "ultimate destination, New York, and landed there"; and

4. 36 O.A.G. 352, August 13, 1930, covering the application of the statute to passengers on a vessel which "would transport them from San Francisco to Honolulu" even though the passengers "later embarked" on another vessel for a foreign country.

To assist Customs in gauging the degree of interest in adjusting the 24-hour rule, and advance notice was published in the **Federal Register** on April 25, 1984 (49 FR 17769), inviting public comment. After consideration of the 193 comments received in response to the advance notice, it was determined to propose a specific amendment to § 4.80a.

Customs published a notice in the **Federal Register** on January 9, 1985 (50 FR 1060), proposing specific amendments and inviting public comments to be submitted by March 11, 1985. Following is a dicussion of the comments received in response to that notice.

Discussion of Comments

As a result of the notice, 176 responses were received from national, state, and local government officials; port authorities; unions; trade associations; vessel operators; individuals; and various miscellaneous sources. Those responding demonstrated overwhelming support for

the proposal, with only 13 negative comments.

Of those opposing the proposal, several state that the present 24-hour rule, and/or the proposed liberalization of that time limit, are contrary to the intent of the Congress, dating back to 1886 when the coastwise passenger statute was enacted.

As stated in the notice, the essence of the 24-hour rule was originally stated in T.D. 55147 (19), June 3, 1960 (95 Treasury Decision 297). Customs is satisfied, after administering the 24-hour rule for a quarter of a century, that it is not contrary to the intent of the statute, which is to reserve for American-flag vessels the transportation of passengers from one U.S port to another. Further, the amendment will not change the present prohibition on the transportation of passengers on foreign vessels solely on voyages between coastwise ports. At present, passengers embarking on a foreign vessel touching nearby foreign ports who go ashore temporarily at a subsequent U.S. port where the vessel remains for more than 24 hours are considered transported in violation of the coastwise laws. In addition to causing administrative problems for Customs, the 24-hour rule hurts the economy of the subsequent U.S. port since the net result is that passenger temporarily going ashore will spend 24 hours or less in the U.S. port and much more time in the nearby foreign ports visited by the vessel. The proposal is limited to providing that on such a voyage, the passengers going ashore will only be in violation of the coastwise laws if they disembark at the subsequent U.S. port, i.e., do not come back on board the vessel and depart with it when it leaves the port.

It is of paramount importance in this area to consider the primary object of passengers in taking a voyage. The Attorney General's opinion of February 26, 1910 (28 O.A.G. 204), cited earlier in this document, is the authority for considering this primary object. The need to confirm the object of a particular voyage, even one which upon first examination may appear to be prohibited by the strict letter of the coastwise passenger statute, was clearly confirmed by the only major federal court decision on the subject in the case of *The Granada*, 35 Supp. 892 (1940). In light of the above-cited authorities, Customs will continue to be alert with an eye to detecting any violations of the passenger coastwise transportation statute.

One commenter states that it is "currently engaged in the design and engineering" of a passenger vessel, that "plans call for the vessel to enter service sometime in 1987," and that the amendment would "jeopardize" its postion. If in fact a U.S.-flag, U.S.-built passenger vessel were to be built after the amendment, under the statute, Customs would continue to prohibit competition by any foreign-flag and/or foreign-built vessel in the transportation of passengers solely between U.S. ports, whether the passengers disembarked or only went ashore temporarily. Further, under the statute, Customs would continue to prohibit competition by any foreign-flag and/or foreign-built vessel in embarking passengers at one U.S. port, touching at a nearby foreign port, and disembarking the passengers at a second U.S. port. We do not believe that permitting foreign-flag foreign-built vessels on voyages touching nearby foreign ports to allow passengers who embarked at U.S. ports to go ashore temporarily at other U.S. ports will jeopardize any U.S.-flag U.S.-built vessels that will be built in the future. First, we believe that a prohibition on such activity by foreign vessels would simply result in either the foreign vessels offering fly and sail packages so that American passengers would embark on foreign vessels in foreign ports or the foreign vessels dropping U.S. ports from their itineraries. The net result would be a great loss for American business at U.S. ports where American passengers now embark on foreign vessels or visit temporarily while a foreign vessel is in port. Second, we believe that if at some future date it was actually shown that U.S.-flag U.S.-built vessels were hurt by the amendment and Customs did not take remedial steps, the Congress would quickly take appropriate action.

One commenter suggests that the language of the amendment, as proposed, be changed to reflect that the regulation also applies to U.S.-flag vessels which are not qualified to engage in the coastwise trade for the reason that they are foreign built. We believe that this suggestion has merit and the amendment has been changed to reflect this point.

One commenter suggests that terms used in the regulation be defined. We agree with this comment and the regulations have been so revised.

Another commenter recommends that the regulations should reflect the Puerto Rico passenger vessel statute enacted on October 30, 1984, as Pub. L. 98–563. We agree with this comment also and have included this point.

Many of the negative comments state that the amendment will hurt the U.S.-flag passenger fleet. To our knowledge there is no regular salt water U.S.-flag passenger fleet that has vessels touching nearby foreign and U.S. ports. Many of the negative comments also state that the amendment will hurt efforts to revitalize the U.S.-flag passenger fleet. If it is ever shown that there are U.S.-flag, U.S.-built vessels capable of successful economic competition with foreign vessels in voyages touching nearby foreign and U.S. ports, and that such U.S.-flag, U.S.-built vessels are in fact hurt by provisions of the Customs Regulations, we will immediately reconsider the regulations.

After consideration of all the comments, we believe that the amendment will simplify the administration of the statute for Customs, will be of benefit to the economy of certain of the American coastwise ports affected, and will in no way erode the statutory protection given to American vessels engaged solely in domestic trade (e.g., all of the many U.S.-flag, U.S.-built passenger vessels operating on the inland waters of the U.S. solely between U.S. points would continue to be protected from competition by foreign vessels). However, as stated above, we do believe that three minor and non-substantive changes should be made, as follows:

1. The terms used should be defined in the regulations to make them more intelligible to those unfamiliar with them.

2. The amendment should specifically cover U.S.-flag vessels not qualified to engage in the coastwise tread as well as foreign-flag vessels.

3. The amendment must refer to the special exemption for vessels transporting passengers between Puerto Rico and other U.S. ports, enacted on October 30, 1984, as Pub. L. 98–563 (98 Stat. 2916); see 46 U.S.C. 289c.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Analysis

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (Pub. L. 96–353, 5 U.S.C. 301 *et seq.*), it is hereby certified that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Imports.

Amendments to the Regulations

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4, Customs Regulations (19 CFR Part 4), continues to read as follows:

Authority:

5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 2103;
§ 4.1 also issued under 46 U.S.C. 163;
§ 4.2 also issued under 19 U.S.C. 1433, 1441, 1486;
§ 4.3 also issued under 19 U.S.C. 288, 1434, 1435, 1441, 46 U.S.C. 111;
§ 4.5 also issued under 19 U.S.C. 1141;
§ 4.6 also issued under 19 U.S.C. 1585;
§ 4.7 also issued under 19 U.S.C. 1431, 1439, 1465, 1581(a), 1853, 46 U.S.C. 883a, 883b;
§ 4.7a also issued under 19 U.S.C. 1431, 1432, 1439, 1465, 1498, 1584, 46 U.S.C. 674;
§ 4.8 also issued under 19 U.S.C. 1448, 1486;
§ 4.9 also issued under 19 U.S.C. 1434, 1435, 42 U.S.C. 269, 46 U.S.C. 677;
§ 4.10 also issued under 19 U.S.C. 1448, 1451;
§ 4.12 also issued under 19 U.S.C. 1440, 1584;
§ 4.14 also issued under 19 U.S.C. 1466, 1498;
§ 4.15 also issued under 46 U.S.C. 310;
§ 4.16 also issued under 19 U.S.C. 1435b;
§ 4.20 also issued under 46 U.S.C. 77, 81, 83–83k, 121, 128, 810;
§ 4.21 also issued under 19 U.S.C. 1441; 46 U.S.C. 121–125, 128, 129, 132, 135;
§ 4.22 also issued under 46 U.S.C. 121, 128, 141;
§ 4.24 also issued under 46 U.S.C. 2108;
§ 4.30 also issued under 19 U.S.C. 289, 1446, 1448, 1450–1454, 1490;
§ 4.31 also issued under 19 U.S.C. 1453, 1586;
§ 4.32 also issued under 19 U.S.C. 1449;
§ 4.35 also issued under 19 U.S.C. 1447;
§ 4.36 also issued under 19 U.S.C. 1431, 1457, 1458; 46 U.S.C. 100;
§ 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;
§ 4.38 also issued under 19 U.S.C. 1448, 1505;
§ 4.39 also issued under 19 U.S.C. 1432, 1446;
§ 4.40 also issued under 19 U.S.C. 1446;
§ 4.50 also issued under 19 U.S.C. 1431;
§ 4.65a also issued under 46 U.S.C. 86–86i, 88–88g;
§ 4.66 also issued under 46 U.S.C. 91;
§ 4.66a also issued under 33 U.S.C. 1321, 46 U.S.C. 91;
§ 4.66b also issued under 33 U.S.C. 407, 1321;
§ 4.68 also issued under 46 U.S.C. 674, 817d, 817e;
§ 4.74 also issued under 46 U.S.C. 91;
§ 4.75 also issued under 46 U.S.C. 91;
§ 4.80 also issued under 46 U.S.C. 13, 251, 289, 319, 802, 808, 883, 883–1;
§ 4.81 also issued under 19 U.S.C. 1433, 1439, 1442, 1443, 1444, 1486; 46 U.S.C. 251, 313, 314, 883;
§ 4.81a also issued under 46 U.S.C. 883;
§ 4.82 also issued under 19 U.S.C. 293, 294; 46 U.S.C. 123;
§ 4.83 also issued under 46 U.S.C. 91, 111, 123;
§ 4.84 also issued under 19 U.S.C. 1433, 1435, 1437; 46 U.S.C. 91, 313, 314, 883–1,
§ 4.85 also issued under 19 U.S.C. 1430, 1442, 1443, 1444, 1623;
§ 4.86 also issued under 19 U.S.C. 1442, 1443, 1444;
§ 4.88 also issued under 19 U.S.C. 1442, 1622, 1623;
§ 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. 883;
§ 4.94 also issued under 19 U.S.C. 1433, 1434, 1435, 1441, 46 U.S.C. 91, 104, 313, 314;
§ 4.98 also issued under 31 U.S.C. 9701;
§ 4.100 also issued under 19 U.S.C. 1706.

2. Section 4.80a is revised to read as follows:

§ 4.80a Coastwise transportation of passengers.

(a) For the purposes of this section, the following terms will have the meaning set forth below:

(1) *Coastwise port* means a port in the U.S., its territories, or possessions embraced within the coastwise laws.

(2) *Nearby foreign port* means any foreign port in North America, Central America, the West Indies (including the Bahama Islands, but not including the Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curacao). A port in the U.S. Virgin Islands shall be treated as a nearby foreign port.

(3) *Distant foreign port* means any foreign port that is not a nearby port.

(4) *Embark* means a passenger boarding a vessel for the duration of a specific voyage and *disembark* means a passenger leaving a vessel at the conclusion of a specific voyage. The terms *embark* and *disembark* are not applicable to a passenger going ashore temporarily at a coastwise port who reboards the vessel and departs with it on sailing from the port.

(5) *Passenger* has the meaning defined in § 4.50(b).

(b) The applicability of the coastwise law (46 U.S.C. 289) to a vessel not qualified to engage in the coastwise trade (i.e., either a foreign-flag vessel or a U.S.-flag vessel that is foreign-built or at one time has been under foreign-flag) which embarks a passenger at a coastwise port is as follows:

(1) If the passenger is on a voyage solely to one or more coastwise ports and the passenger disembarks or goes ashore temporarily at a coastwise port, there is a violation of the coastwise law.

(2) If the passenger is on a voyage to one or more coastwise ports and a nearby foreign port or ports (but at no other foreign port) and the passenger disembarks at a coastwise port other than the port of embarkation, there is a violation of the coastwise law.

(3) If the passenger is on a voyage to one or more coastwise ports and a distant foreign port or ports (whether or not the voyage includes a nearby foreign port or ports) and the passenger disembarks at a coastwise port, there is no violation of the coastwise law provided the passenger has proceeded with the vessel to a distant foreign port.

(c) An exception to the prohibition in this section is the transportation of passengers between ports in Puerto Rico and other ports in the U.S. on passenger vessels not qualified to engage in the coastwise trade. Such transportation is permitted until there is a finding under 46 U.S.C. 289c that a qualified U.S.-flag passenger vessel is available for such service.

(d) The owner or charterer of a foreign vessel or any other interested person may request from Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, an advisory ruling as to whether a contemplated voyage would be considered to be coastwise transportation in violation of 46 U.S.C. 289. Such a request shall be filed in accordance with the provisions of Part 177, Customs Regulations (19 CFR Part 177).

William Von Raab,
Commissioner of Customs.

Approved: June 13, 1985.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 85-15753 Filed 6-28-85; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 80N-0314]

Food Labeling; Declaration of Sodium Content of Foods and Label Claims for Foods on the Basis of Sodium Content; Extension of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; extension of effective date.

SUMMARY: The Food and Drug Administration (FDA) is extending the effective date for compliance with food labeling regulations requiring declaration of sodium content as part of nutrition labeling for all affected

products initially introduced or initially delivered for introduction into interstate commerce. This document extends the effective date from July 1, 1985, until July 1, 1986.

EFFECTIVE DATE: The requirement to include sodium content information in nutrition labeling is effective July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Scott F. Andres, Center for Food Safety and Applied Nutrition (HFF–204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–3117.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 18, 1984 (49 FR 15510) as amended June 28, 1984 (49 FR 26571), FDA published a final regulation amending 21 CFR 101.9(c) to require that the sodium content of foods be included in nutrition labeling information whenever nutrition labeling appears on food labels. The effective date for compliance with this provision of the sodium labeling regulation was July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after that date.

Subsequent to the publication of the final regulation, FDA received from a national trade organization representing the soft drink industry a petition for reconsideration, as well as a number of requests from other members of the food industry for extensions of the effective date, in order to use up label stocks of slow-moving items which will not be depleted by the July 1, 1985, deadline. Additional information, submitted with these requests indicated that there probably would be an increase in costs to consumers if existing label inventories for slow-moving products could not be used after July 1, 1985. Consequently, FDA reconsidered its previous position and proposed in the Federal Register of April 18, 1985 (50 FR 15458) an extension of the effective date for a period of 1 year until July 1, 1986.

Comments responding to the proposed extension were received from trade associations; supermarket chains; food manufacturers and processors, including canners and packagers; food cooperatives and sales organizations; several consumers; a local government representative; a health professional; and a consumer-interest group.

With one exception, comments received from the food industry favored the proposed 1-year extension. These comments indicated that labels of high-volume items were either already in compliance or would be in compliance with the sodium labeling regulations by July 1, 1985, and that labels of slower-moving items would be brought into compliance during the next printing cycles. The majority of these comments included projected cost estimates of losses to industry if large numbers of these nonconforming labels of slower-moving items had to be destroyed on July 1, 1985. Most manufacturers indicated that these costs would ultimately be passed on to consumers. Sales below projected levels coupled with the necessity to order in advance the large minimum quantities of labels required by label companies were cited as major reasons for accumulating large label inventories. Other comments noted problems with printing companies and delays in obtaining analytical data as reasons for not being able to comply with the July 1, 1985, deadline.

A summary of the comments opposing the proposed extension and the agency's responses are as follows:

1. One food manufacturer was concerned that the proposed extension would place its sodium-labeled products at a competitive disadvantage with other products on the same shelf having no sodium labeling. The comment indicated that, because of company efforts to comply with the July 1, 1985, deadline, the labels of nearly 85 percent of the firm's packaged products already contained sodium content information. The comment speculated that competitors' products having no sodium labeling would be perceived by consumers to contain no sodium and suggested that FDA institute a consumer awareness program to inform individuals of this situation.

The agency disagrees with the comment. Although products that are not sodium labeled could be perceived by some consumers to contain no sodium, most of the comments received by FDA in response to the proposed sodium labeling regulation indicated that the opposite is true. Several consumers believed that the regulated industry would not voluntarily disclose sodium content information of labels of products containing substantial amounts of sodium because that information would have a negative impact. In fact, these comments suggested that manufacturers would voluntarily label only those foods that had low sodium contents. Patients on sodium-restricted diets as well as members of the general population who wish to limit their sodium intake said that they preferred those products having sodium content information over those not so labeled. FDA has repeatedly stressed that label information about the amount of sodium in a specific quantity of food will enable the consumer to judge the overall contribution of that particular food in the daily diet and to maintain his or her total daily sodium intake at desired levels.

2. Comments received from several consumers, a local government representative, and a health professional expressed concern about potential adverse health consequences resulting from an extension of the effective date. One of the consumers contended that a delay in sodium labeling might lead to reluctance on the part of the food industry to continue to develop lower sodium products.

The agency does not believe that a 1-year extension of the effective date will have an adverse impact of the health of individuals who are monitoring their daily sodium intake. Data obtained from FDA surveys indicate that there is already a widspered appearance of sodium labeling throughout the food supply. The most recent Food Label and Package Survey (FLAPS) conducted in 1984 revealed that the labels of foods accounting for nearly 40 percent of grocery sales of FDA-regulated packaged-processed foods included quantitative sodium content information. Furthermore, 53 of 58 processed food groups included in the FLAPS survey have some products with quantitative sodium labeling. These figures indicate that even in mid-1984 consumers could make selections from a wide variety of sodium-labeled foods to maintain total daily sodium intake at desired levels. In addition, recent comments submitted by the food industry in support of the proposed extension indicate that many labels not included in the 1984 FLAPS estimates will be in compliance with the sodium labeling regulation by July 1, 1985.

The agency also disagrees that a 1-year delay would preclude further efforts by the food industry to lower the sodium content of processed foods. Although this is a considerably more difficult area in which to obtain meaningful measurements of progress than is sodium labeling, FDA has several indications that industry is gradually making significant reductions in sodium content. For example, a substantial decrease in the tonnage of salt produced for table and food-processing use has been reported; the sodium content of many canned soups has been reduced; and many new sodium-modified products, which offer consumers more choices between conventional and sodium-modified foods, have been and continue to be introduced in to the marketplace. FDA encourages manufacturers to accelerate the development of sodium-modified foods, in order to coordinate product

introduction with required label changes.

The role of the public, however, cannot be underestimate in bringing about reductions of sodium levels of processed foods. If the public actively expresses its concern in this area by purchasing foods with lower sodium content or those that bear sodium labeling, then industry will respond by making more such products available. In any event, the total daily sodium intake from a variety of foods in the individual diet is what is important from a health standpoint. Therefore, even if further introductions of sodium-modified products were delayed, this extension would not have an adverse impact on the health of individuals who are monitoring their daily sodium intake.

3. A comment from a consumer organization contended that the proposal to extend the effective date is inconsistent with FDA representations made to the court in *Center for Science in the Public Interest* v. *Novitch* (Civil No. 83-801 (D.D.C. June 11, 1984)). That case involved a challenge to the agency's denial of a petition requesting mandatory sodium labeling on all FDA-regulated packaged, processed foods. The comment argued further that the proposed extension would undermine the foundation of the court's decision that the agency acted reasonably when it denied that petition. The comment suggested that the case was decided largely on the basis of agency representations that the sodium labeling regulation would become effective on July 1, 1985.

The agency disagrees with the comment's interpretation of the court's decision. The court held (slip op. at 19) that FDA had "carefully considered the Center for Science in the Public Interest's petition and made a rational decision that a voluntary labeling program was the most appropriate course of action at the present time." The court further stated that "The FDA should be given the opportunity to * * * determine if food manufacturers will provide sodium content labeling * * * voluntarily." *Id.* This extension of the effective date does not change the provisions of the final sodium labeling regulation nor the rationale for pursuing this course of action that FDA explained in its final regulation and that the court accepted. Furthermore, in granting this extension, the agency has relied on industry claims that labels of most higher-volume items will be in compliance with the sodium labeling regulation before July 1, 1985. FDA, as stated in the proposal, fully expects manufacturers to bring their labels into compliance as soon as possible but no later than July 1, 1986.

4. One comment suggested that the proposed extension of the effective date was based largely on concerns about increased costs to industry. One comment argued that FDA is being inconsistent with its conclusions in the final regulation on sodium labeling that the period remaining between the promulgation of the final regulation and July 1, 1985, would be sufficient for most manufacturers to exhaust existing inventories of noncomplying labels and to phase in required label changes.

In both the proposed and final regulation, FDA announced that it would consider a number of options for minimizing adverse economic effects. As discussed above, FDA received a large number of requests for extension of time to comply with the final regulation. Although FDA did not fully evaluate each request on its merits, the agency has determined that most labels for which an extension was requested were for items that represent a small fraction of products available in the marketplace. Finally, FDA is relying on manufacturers' assurances that the labels of higher-volume items will be in compliance by July 1, 1985. Therefore, FDA believes that it is appropriate to grant a blanket 1-year extension to July 1, 1986. Again, as stated in paragraph 3, the agency is granting the exemption with the understanding that the food industry will strive to include sodium in nutrition labeling as soon as possible.

5. One comment expressed concern that the proposed extension "sets a dangerous precedent whereby an industry need only inundate the agency with requests for exemptions in order to achieve postponement of a rule it opposes." The comment also contended that the purported administrative burden on FDA was unclear in view of the fact that the agency had already reviewed the extension requests in enough detail to determine that many were warranted.

FDA proposed to extend the effective date of the sodium labeling regulation only after the agency had determined that the objectives of the regulation would still be accomplished and that sodium labeled foods would be available for most food categories and not, as suggested by the comment, because the agency was inundated by requests from industry. Further, the agency would not have proposed a blanket extension nor have previously indicated its willingness to consider individual requests for extensions if it believed that such actions would adversely affect the public health. In addition, FDA has not evaluated the merits of each of the individual requests for extensions as the comment alleges. Because so many requests were submitted, however, the agency has concluded that the time required to review these labels one at a time in order to determine whether each individual extension was justified would adversely affect the allocation of agency resources. The agency therefore decided that an extension to allow manufacturers sufficient time to bring labels of slow-moving items into compliance without destroying existing inventories of noncomplying labels will ease the cost of transition with no adverse impact on the public health objectives of the regulation.

6. One comment expressed the belief that there was no basis for the agency to anticipate additional extension requests because most manufacturers would have already attempted to secure extensions in time to comply with the regulation if the effective date remained unchanged.

FDA disagrees with this comment. The majority of requests documented steps that the manufacturers had taken subsequent to the publication of the final regulation to ensure compliance by July 1, 1985. However, some manufacturers indicated that they were not able to estimate projected losses resulting from destruction of existing inventories of noncomplying labels of slow-moving items until sales data were evaluated for 1984. Manufacturers also indicated that most of these noncomplying labels were ordered before April 1984. Several requests and inquiries from other firms indicated that more labels would be submitted for consideration after additional estimates of potential economic losses had been completed. It is for these reasons that FDA concluded that there is a basis for anticipating additional extension requests and that a blanket 1-year extension is appropriate.

7. One comment argued that the proposed extension is "especially arbitrary" because a less drastic alternative to a blanket extension exists. The comment noted that only 66 companies had requested extensions and that "the products manufactured by these companies represent only a minute portion of the total number of products available in an average grocery store." Furthermore, the comment declared that FDA's apparent concern about manufacturers who cannot deplete existing noncomplying label inventories before July 1, 1985, cannot be used as a basis to justify exempting the overwhelming majority of producers

who can comply with the original effective date. The comment proposed an alternative approach in which FDA would retain the original effective date and would grant extensions only to those companies who have already attested to the fact that their current label inventories cannot be depleted before July 1, 1985. The comment contends that this alternative would not require numerous case-by-case determinations.

The agency believes that the limited extension proposed in this comment could discriminate against those manufacturers who elected to withhold their requests for extension once the proposed extension had been published by the agency in the Federal Register. FDA is aware of several manufacturers of slow-moving items who had only recently completed their estimates of potential economic losses and who decided to forego their formal submissions of written requests after the proposed general extension was published. If a blanket extension had not been proposed, only those submitting written requests and supporting data in response to statements regarding possible alternatives to minimize economic burden contained in the proposed and final regulation would have received consideration by the agency. The limited extension proposed in this comment would not accomplish the objective of minimizing economic impact on small businesses if FDA were to exclude from consideration for an extension those manufacturers who elected to withhold their requests pending final agency action on the proposed blanket extension.

8. One comment suggested that the proposed blanket extension of the effective date would reduce the original projected extent of sodium labeling by at least 35 percent. According to the comment, the blanket extension would thus produce a substantial, rather than a marginal, reduction in the projected availability of sodium-labeled food.

The agency disagrees with the comment. The most recent FLAPS survey, which revealed that quantitative sodium information appears on the lables of foods accounting for nearly 40 percent of grocery sales of FDA-regulated packaged-processed foods, analyzed the labels of products collected in supermarkets between February and July 1984. This estimated figure must be viewed as conservative in light of continuing changes in the marketplace and because the originally announced effective date of the regulation was still 1 year away. New sodium-modified products whose sales potentials were not yet known have entered the marketplace since July 1984 and were not included in the FLAPS survey. This comment also assumes that manufacturers will delay sodium labeling until July 1, 1986. On the contrary, FDA has been assured by manufacturers that this will not be the case. The agency has also announced that it expects labels of slow-moving items to be brought into compliance as soon as possible and no later than July 1, 1986.

FDA again emphasizes that the availability of sodium labeled foods in individual food categories is more significant to the consumer on a sodium-restricted diet than is the extent of sodium labeling determined as a percentage of overall retail grocery sales.

FDA has reviewed the comments received and continues to believe that the most reasonable course to follow is to grant an extension of the effective date for compliance with the mandatory provisions of the sodium labeling regulation until July 1, 1986.

List of Subjects in 21 CFR Part 101

Food labeling, Misbranding, Nutrition labeling, Warning statements.

PART 101—FOOD LABELING

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1040–1042 as amended, 1047–1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the effective date for compliance with paragraph (c)(8)(i) of § 101.9 *Nutrition labeling of foods* is extended to July 1, 1986.

Dated: June 26, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-15791 Filed 6-27-85; 11:12 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

31 CFR Part 51

Financial Assistance to Local Governments

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule concerning financial assistance to local governments published in the Federal Register on Thursday, January 24, 1985, at 50 FR 3454.

FOR FURTHER INFORMATION CONTACT: Richard S. Isen, Chief Counsel, Office of Revenue Sharing, or Jacqueline L. Jackson, Attorney Advisor. Telephone: (202) 634-5162.

SUPPLEMENTARY INFORMATION: Accordingly, corrections are made in FR Doc. 85-1524 beginning on page 3454 in the issue of January 24, 1985, as follows:

(1) On page 3464, first column, first line, the word "Review" should read "Revenue."

(2) On page 3467, first column, no. 2 "Local statutes or ordinances. Age limitations on concurring alcoholic beverages or possessing firearms are not covered by the Act so long as these are adopted by an elected general purposes legislative body" should read as follows:

"(2) *State statutes.* Statutes setting age limitations on obtaining a driver's license or fixing age limits for compulsory school attendance are not covered by the Act."

Dated: June 25, 1985.

Richard S. Isen,

Chief Counsel, Office of Revenue Sharing.

[FR Doc. 85-15099 Filed 6-28-85; 8:45 am]

BILLING CODE 4810-39-M

OFFICE OF THE FEDERAL REGISTER

32 CFR Parts 1-39

41 CFR Chs. 1-49

CFR Publication Announcement Relating to Federal Procurement Regulations and Defense Acquisition Regulations

Editorial Note: On September 19, 1983 (48 FR 42103), a joint document issued by the General Services Administration, the Department of Defense and the National Aeronautics and Space Administration, established a new Federal Acquisition Regulation in Title 48 of the Code of Federal Regulations (CFR). The general Federal Acquisition Regulation (FAR) published on that date is codified at Chapter 1 of Title 48. Chapters 2 through 49 of Title 48 were reserved and established for individual agency implementations and supplementations of the FAR. The FAR in Chapter 1 together with the agency regulations in Chapters 2 to 49 comprise the Federal Acquisition Regulations System that went into effect on April 1, 1984.

The FAR system replaced both the Federal Procurement Regulations System (FPRS) for civilian contracts (41 CFR Subtitle A, Chapters 1 to 49) and the Defense Acquisition Regulations (DAR) for defense contracts (32 CFR Chapter 1, Parts 1 to 39). While the new FAR regulations in Title 48 replaced the Title 32 DAR and Title 41 FPR regulations as of April 1, 1984, both the DAR and FPR provisions continue to apply to those contracts which preceded the effective date of the FAR.

The Office of the Federal Register (OFR) normally reissues its CFR revisions of both Title 32 and Title 41 volumes as of July of each year. Because of numerous amendments published to both the DAR and FPR during the July 1, 1983 to July 1, 1984 CFR revision cycle, the Office of the Federal Register issued full text revisions as of July 1, 1984, for each of the CFR volumes containing DAR or FPR regulations.

These 14 CFR volumes are:

Defense Acquisition Regulations
Title 32
- (Part 1–39), volume I
- (Part 1–39), volume II
- (Part 1–39), volume III

Federal Procurement Regulations
Title 41,
- Chapter 1, (Part 1–1 to Part 1–10)
- Chapter 1, (Parts 1–11 to Appendix)—Chapter 2
- Chapter 3 to Chapter 6
- Chapter 7
- Chapter 8
- Chapter 9
- Chapter 10 to 17
- Chapter 18, volume I (Parts 1–5); volume II (Parts 6–19); volume III (Parts 20–52 and Appendix)
- Chapter 19 to Chapter 100

These CFR volumes represent the final codified versions of the former procurement systems which continue to apply to those contracts entered into prior to the adoption of the FAR. Because the former FPR and DAR regulations do not apply to contracts entered into subsequent to the effectiveness of the FAR on April 1, 1984, it is unlikely that there will be any further amendments to these regulations. Since July 1, 1984 there has been only one amendment published in the **Federal Register** which affected the former FPR or DAR regulations. This amendment was not a substantive amendment; it was a clarifying statement to a Labor Department procurement regulation in 41 CFR 29–70.103 (see 49 FR 38108, September 27, 1984).

The FPR and DAR regulations issued in the July 1, 1984 CFR editions are substantively unchanged. The Office of the Federal Register normally does not reissue CFR volumes when there have been no amendments issued to a particular volume during the revision cycle. A cover is usually issued and sent to CFR subscribers indicating that the last edition should be retained. The Superintendent of Documents, Government Printing Office continues to sell the "old" edition until supplies are exhausted.

Since the 1984 FPR and DAR regulations were printed in the 14 volumes listed above, OFR will not reprint the full text of these regulations in the July 1, 1985 CFR revisions. Users should retain the 1984 edition of these volumes. The 1985 revision of Titles 32 and 41 will contain only text of those parts not affected by the FAR and a note referring the reader to the 1984 edition for the text of the FPR (41 CFR Chapters 1 to 49) and DAR (32 CFR Parts 1 to 39).

For further information on the publication or editorial content of *Code of Federal Regulations* volumes please contact Robert Jordan or Donna Rickett on 202–523–3419.

BILLING CODE: 1505-02-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD 6010.8–R, Amdt. No. 28]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Treatment of Mental Disorders

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule; postponement of effective date.

SUMMARY: Amendment No. 28 to DOD 6010.8–R, published in the **Federal Register** on September 14, 1984 (49 FR 36087) established that any residential treatment center or alcohol rehabilitation facility which had not entered into a participation agreement with the Director, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), by June 1, 1985, would no longer be considered a CHAMPUS-authorized provider and no benefits would be paid for any services rendered by such facility. This amendment postpones the date for such facilities to enter into participation agreements with OCHAMPUS until October 1, 1985. This extension will provide sufficient time for appropriate decisions to be made regarding the final language of the revised participation agreements.

EFFECTIVE DATE: June 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Regensberg, Policy Branch, OCHAMPUS, Aurora, Colorado 80045, telephone (303) 361–3572.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DOD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. Amendment No. 28 was published in the **Federal Register** on September 14, 1984 (49 FR 36087).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended to read as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

§ 199.12 [Amended]

2. In the notes which follow §§ 199.12(b)(4)(v)(*b*) and (b)(4)(viii)(*b*)(*3*)(*vi*), remove the date "June 1, 1985" and add in place thereof the date "October 1, 1985", each time it appears.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 24, 1985.

[FR Doc. 85–15477 Filed 6–28–85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD8–83–10]

Anchorage Ground, Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a Final Rule on the reduction in size of the Alliance Anchorage, that appeared in the **Federal Register** of Monday, January 14, 1985 (50 FR 1849).

FOR FURTHER INFORMATION CONTACT: LTJG K.D. Christopher, Project Officer, Commander, Eighth Coast Guard District, (mps), 500 Camp Street, New Orleans, LA 70130, Tel: (504) 589–6901.

1. The authority citation for Part 110 continues to read as fo'lows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. The following corrections are made in Docket No. CGD8–83–10 appearing in the issue of January 14, 1985:

a. On page 1849, column two, the third full paragraph, "110.195(a)(6)" is corrected to read "110.195(a)(9)".

b. On page 1849, column two, the fourth full paragraph, "(6)" is corrected to read "(9)".

c. As corrected section 110.195(a)(9) reads as follows:

§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.

(a) * * *

(9) Alliance Anchorage. An area 2.0 miles in length along the right descending bank of the river, 800 feet wide extending from mile 63.8 to mile 65.8 above Head of Passes.

* * * * *

Dated: June 26, 1985.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85–15715 Filed 6–28–85; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD3 85–26]

Temporary Drawbridge Operation Regulations; Beach Thorofare, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary regulation.

SUMMARY: The Coast Guard is issuing temporary regulations for the Route 52 (Ninth Street) bridge across Beach Thorofare, a part of the New Jersey Intracoastal Waterway at mile 80.4, in Ocean City, New Jersey. These temporary regulations allow the draw to open on signal on the hour and half hour between 8 a.m. and 10 p.m. on Saturdays, Sundays, and Federal holidays. The current regulations allow this between 11 a.m. and 5 p.m. on Saturdays, Sundays, and Federal holidays from Memorial Day through Labor Day. This is being done to evaluate whether a change of this kind in the regulations will reduce vehicular traffic congestion in the vicinity of the bridge while still providing for the reasonable needs of navigation.

DATES: These temporary regulations become effective on July 4, 1985 and terminate on September 2, 1985. Comments must be received on or before September 17, 1985.

ADDRESSES: Comments should be mailed to Commander (oan-br), Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004. Comments may also be hand delivered to this address. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668–7994.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for these regulations and it is being made effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures would be impracticable. Implementation of these temporary regulations is necessary to evaluate their effect during the summer months when both recreational boating traffic and vehicular traffic are at their peak.

Persons affected by or concerned with these temporary regulations are invited to comment on their feasibility and impact on both marine and vehicular traffic, including observed effects (beneficial and detrimental), and any suggestions for changes. Persons submitting comments should include their name and address, identify the bridge and give reasons for support of or opposition to these temporary regulations. If a determination is made to permanently change the regulations, a Notice of Proposed Rulemaking will be published to afford the public further opportunity to comment at that time.

Drafting Information

The drafters of these regulations are Lucas A. Dlhopolsky, project manager, and Mary Ann Arisman, project attorney.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.733(f) is revised to read as follows for the period July 4 through September 2, 1985. Because this is a temporary rule, this revision will not appear in the Code of Federal Regulations.

§ 117.733 New Jersey Intracoastal Waterway.

* * * * * *

(f) The draw of the Route 52 (Ninth Street) bridge, across Beach Thorofare, mile 80.4 at Ocean City, shall open on signal; except that, from Memorial Day through Labor Day from 8 a.m. to 10 p.m. on Saturdays, Sundays and Federal holidays, the draw need be opened only on the hour and half hour. Public vessels of the United States, vessels with another vessel in tow, and vessels in distress shall be passed at any time.

* * * * * *

Dated: June 24, 1985.

P. A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85–15717 Filed 6–28–85; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Parts 150 and 166

[CGD 85–044]

Shipping Safety Fairways

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule incorporates the North of Gulf and South of Gulf Fairways, associated with the Louisiana Offshore Oil Port (LOOP), into the Shipping Safety Fairways section of the Code of Federal Regulations (CFR). The LOOP fairways are currently described in the annex to Part 150, the Deepwater Port Regulations. This rule merely transfers these fairway regulations to Part 166, Shipping Safety Fairways, to maintain organizational consistency and clarity within the CFR.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ltjg D. Reese, Project Manager, Office of Navigation, (G–NSR–3), Room 1408, U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC, 20593, telephone (202) 245–0108, between 8 a.m. and 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: This rule was not preceded by a Notice of Proposed Rulemaking (NPRM) or public comment period. This rule is purely administrative in nature; therefore, notice and public comment are unnecessary in accord with 5 U.S.C. 553(b)(B). This rule merely transfers the LOOP fairway regulations from Part 150 to Part 166 of the CFR, and involves no substantive changes. Therefore, good cause exists for making these changes effective in less than 30 days after publication.

Drafting Information

The principal persons involved in drafting this rulemaking are: Ltjg D. Reese, Project Manager, Office of Navigation, and Lieutenant Dave Shippert, Project Attorney, Office of Chief Counsel.

Discussion of Regulations

Most of the existing fairways were originally established by the Corps of Engineers (COE) between 1948 and 1968. In 1978, the Ports and Waterways Safety Act (PWSA) (Pub. L. 95–474; 92 Stat. 1473; 33 U.S.C. 1223(c)) gave the Coast Guard the authority to establish vessel routing measures, including fairways. In 1982, the Coast Guard adopted existing shipping safety fairway regulations from the COE and promulgated these in 33 CFR Part 166 (47 FR 20580).

The North of Gulf and South of Gulf Fairways were established during the deepwater port licensing process in 1980 and were included as an annex to the regulations governing the Louisiana Offshore Oil Port at 33 CFR Part 150 (45 FR 85644). A recent port access route study of the LOOP area noted the organizational discrepancy and recommended that the LOOP fairway regulations be included in Part 166 which is designated "Shipping Safety Fairways" (50 FR 9682). This rule implements that recommendation and results in no substantive change to the fairway regulations or descriptions.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 25, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule will have no impact except to enhance the consistency and organization of the regulations within Title 33 of the CFR. This final rule makes no changes to any existing regulation but merely transfers certain rules to a more appropriate section of the code. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 150

Deepwater ports.

33 CFR Part 166

Marine safety, Shipping safety fairways, Anchorage areas.

In consideration of the foregoing, the Coast Guard is amending Parts 150 and 166 of Title 33, Code of Federal Regulations as follows:

PART 150—[REVISED]

1. The authority cite for Part 150 is revised to read as follows:

Authority: 33 U.S.C. 1509 (a)(b); 33 U.S.C. 1231; 49 CFR 1.46.

2. The note following § 150.301 is revised to read as follows:

§ 150.301 Applicability

* * * * *

Note. Appendix A to this part describes the designated boundaries of U.S. deepwater port safety zones. Included within the safety zones are specific areas to be avoided, anchorages, and other ship's routing measures associated with particular safety zones. (Shipping safety fairways associated with deepwater ports are described in Part 166 of this Title.)

3. The heading and paragraphs I and IV of Appendix A to Part 150 are revised to read as follows:

Appendix A—Deepwater Port Safety Zone Boundaries

I. *Purpose.* This appendix contains a general description of the deepwater port safety zone designated and developed during the license application review process for each deepwater port that has been authorized for contruction and operation off the United States coastline. Annexes show, to the nearest second of latitude and longitude, the geographical boundaries of each resultant safety zone. (Shipping safety fairways associated with the Deepwater Ports are descibed in Part 166 of this Title.)

The regulations in Subpart C of this part concerning vessel navigation and activities permitted and prohibited at U.S. deepwater ports apply only in the safety zone areas and adjacent waters and supplement the International Regulations for Preventing Collisions at Sea.

* * * * *

IV. *Modifications.* Safety zone boundaries are subject to modification as experience is gained in U.S. deepwaters port operations. Modifications will be made only after due notification and consideration of the views of interested persons.

4. Annex A to Part 150 is revised to delete paragraph (d) in its entirety.

PART 166—[REVISED]

5. The authority cite for Part 166 is revised to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46(n)(4).

6. Section 166.200 is amended by adding a new paragraph (d)(52) to read as follows:

§ 166.200 Shipping safety fairways and anchorage areas, Gulf of Mexico.

* * * * *

(d) * * *

(52) Louisiana Offshore Oil Port (LOOP) Shipping Safety Fairway to Safety Zone. (i) North of Gulf Safety Fairway. The two mile wide area enclosed by rhumb lines joining points at:

Latitude	*Longitude*
28°46'36"	89°55'00"
28°46'14"	89°54'17"
28°45'47"	89°54'19"
28°36'06"	89°55'44"
28°18'30"	89°55'15"
28°20'58"	89°53'03"
28°36'09"	89°53'28"
28°49'07"	89°51'30"
28°50'20"	89°53'51"

(ii) South of Gulf Safety Fairway. The two mile wide area enclosed by rhumb lines joining points at:

Latitude	*Longitude*
28°15'20"	89°55'10"
27°46'29"	89°54'23"
27°46'32"	89°52'08"
28°17'46"	89°52'56"

Dated: June 20, 1985.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 85–15718 Filed 6–28–85; 8:45 am]

BILLING CODE 4910-14-M

PANAMA CANAL COMMISSION

35 CFR Parts 101, 103, and 121

Paperwork Reduction Act; OMB Approved Collections of Information

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: In accordance with the requirement of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) that agencies publish Office of Management and Budget (OMB) control numbers assigned to their collection of information requirements contained in regulations, the Panama Canal Commission is amending Parts 101, 103, and 121 of Title 35, Code of Federal Regulations to reflect current OMB numbers in the format recommended by the Office of the Federal Register.

EFFECTIVE DATE: June 28, 1985.

ADDRESS: Send comments to Carlos Tellez, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget,

Room 3228, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, telephone 202–634–6441 or Mr. Thomas C. Duty, Chief, Administrative Services Division, Panama Canal Commission, telephone in Balboa Heights, Republic of Panama, 011–507–52–7757.

SUPPLEMENTARY INFORMATION: 44 U.S.C. Chapter 35 requires Federal agencies to obtain approval from the Office of Management and Budget before collecting information from ten or more members of the public. As evidence of such approval, agencies are required to display an OMB control number on collection of information requirements.

The Panama Canal Commission has received OMB approval, valid through March 31, 1988, for the collection of information requirements contained in Subchapter C of Chapter I, 35 CFR. The OMB Control Number for all collection of information requirements in Subchapter C is 3207–0001.

The OMB Control Number was included in §§ 101.10, 113.4, 113.22, 113.28, 113.29, 113.42, 113.47, 113.50, and 123.4 by publication in the **Federal Register**, on May 10, 1985 (50 FR 19676). An amendment to § 103.8 for the purpose of including the OMB Control Number was published in the **Federal Register** of June 15, 1983 (48 FR 27399), but was never codified into 35 CFR.

We are now incorporating the OMB Control number in 103.8 and the remaining collection of information requirements contained in Subchapter C of Chapter I of 35 CFR, namely, §§ 101.9, 103.6, 103.32, 103.42, and 121.45.

The Commission had determined that this is not a major rule as defined under Section 1(b) of Executive Order 12291, dated February 17, 1981. Furthermore, the Regulatory Flexibility Act is inapplicable since this regulation does not have an impact on small entities (5 U.S.C. 601–612).

List of Subjects in 35 CFR Parts 101, 103, and 121

Panama Canal, Vessels, Documentation, Boarding officers, Order of transit, Draft limitation, Booking system, reporting and record keeping requirements.

Accordingly, Parts 101, 103, and 121 Subchapter C, of Chapter I to Title 35, Code of Federal Regulations, are amended as set forth below.

1. The authority citations for Parts 101, 103 and 121 are revised to read as follows:

Authority: 22 U.S.C. 3811, EO 12215, 45 FR 36043, and 44 U.S.C. 3501.

2. Section 101.9 is amended by adding the OMB clearance language, reading as follows:

§ 101.9 Papers required by the boarding officer.

* * * * *

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 3207–0001)

3. Section 103.6 is amended by adding the OMB clearance language reading as follows:

§ 103.6 Size and draft limitations of vessels.

* * * * *

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 3207–0001)

4. Section 103.8 is amended by adding the OMB clearance language reading as follows:

§ 103.8 Preference in the transit schedule; order of transiting vessels.

* * * * *

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 3207–0001)

5. Section 103.32 is amended by adding the OMB clearance language reading as follows:

§ 103.32 Engine Orders to be recorded.

* * * * *

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 3207–0001)

6. Section 103.42 is amended by adding the OMB clearance language reading as followins:

§ 103.42 Maneuvering Characteristics; data required.

* * * * *

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 3207–0001)

7. Section 121.45 is amended by adding the OMB clearance language reading as follows:

§ 121.45 Drawings of new vessels to be furnished to the Board.

* * * * *

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 3207–0001)

Dated: June 17, 1985.

D.P. McAuliffe,

Administrator.

[FR Doc. 85–15556 Filed 6–28–85; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–6–FRL–2856–3]

Plan for Exxon U.S.A. Baytown Refinery, Baytown, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving the Exxon U.S.A. Baytown Refinery Alternative Emission Reduction Plan ("Bubble") as a revision to the Texas State Implementation Plan (SIP). The Bubble uses replacement of leaded gasoline in two storage tanks and light naphtha in a third with relatively nonvolatile lube distillate in lieu of controls on five other fixed roof storage tanks; three in laktane and two in heptane service. The use of a process change to produce emission reduction credits is consistent with EPA's proposed Emissions Trading Policy Statement of April 7, 1982 (47 FR 15076).

DATE: This rule will become effective July 31, 1985.

ADDRESSES: Copies of the SIP revision are available for inspection during normal business hours at the following locations:

Texas Air Control Board, 6330 Hwy 290 East, Austin, Texas 78723
Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460
Environmental Protection Agency, Region 6, Air Branch, 1201 Elm Street, Dallas, Texas 75270
Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Timothy A. Glasco, State Implementation Plan Section, Air Branch, Air & Waste Management Division, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270 (214) 767–1518.

SUPPLEMENTARY INFORMATION: On March 26, 1984 (49 FR 11199), EPA proposed approval for a revision to the Texas SIP for an Alternative Emissions Reduction Plan for the Exxon U.S.A. Baytown Refinery in Baytown, Texas. No comments were received during the comment period for the proposal and EPA today is approving the revision.

Background

At the Baytown Refinery, Exxon has changed the service of two storage tanks containing leaded gasoline and one tank containing light naphtha over to storage

of heavy, relatively nonvolatile lube distillate. The emission reduction credits earned from this service change are being applied in lieu of placing controls on five smaller, fixed roof tanks. Three of the uncontrolled tanks contain laktane (octane), and the remaining two contain heptane. The revised limits for the Exxon Baytown Refinery are as follows:

Source (Tank No.)	Previous RACT emission limits (tons VOC/yr)[1]	New emission limits under the bubble (tons VOC/yr)	Net change in emissions (tons VOC/yr)
90	0.75	3.83	+3.08
91	0.75	3.83	+3.08
92	0.75	3.83	+3.08
98	1.43	11.50	+10.07
99	1.43	11.50	+10.07
715	19.92	0.11	−19.81
720	0.81	0.06	−0.75
1072	12.00	0.08	−11.92
Total	37.84	34.74	−3.10

[1]Emission estimates based on use of emission factors from EPA Publication AP-42, Section 12 Part 4.3 "Storage of Organic Liquids."

Review

The bubble was reviewed against the proposed Emissions Trading Policy published in the Federal Register on April 7, 1982 (47 FR 15076). EPA has reviewed the State's submittal and developed an Evaluation Report.[2] This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 Office and the other address listed above. Briefly, the review is summarized below.

To qualify for approval as an Alternate Emissions Reduction, the reductions must be surplus, enforceable, permanent, and quantifiable. First, the reductions are surplus because credit is only given for emissions reductions beyond the Texas requirements for Reasonably Available Control Technology (RACT).[3] The credits for emission reductions were achieved by a process change and gasoline production cutbacks. Should production be restored EPA has determined that the maximum increase in emissions due to increased throughput to other tanks would be less than 0.1 tons per year.

Second, the limits in the bubble are enforceable because TACB, through a Board Order, has established enforceable emission requirements for each tank. Since the documents will be a part of the Texas SIP, they will be federally enforceable.

Third, upon approval, the new emission limits become a permanent part of the federally enforceable SIP.

Fourth, the company submitted detailed calculations, quantifying all of the emissions involved in the trade.

The Exxon bubble meets all of the criteria for an acceptable bubble as outlined in the April 7, 1982 Federal Register policy statement. Therefore EPA is proposing to approve this alternative emission reduction plan.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Dated: June 19, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Title 40, Part 52 of the Code of Federal Regulations is amended to include the following:

Subpart SS—Texas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

2. Section 52.2270 is amended by adding paragraph (c)(60) as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(60) The Alternative Emission Control Plan for the Exxon Baytown Refinery in Baytown, Texas was adopted by the Texas Air Control Board on March 18, 1983, in Board Order No. 83–2.

[FR Doc. 85–15577 Filed 6–28–85; 8:45 am]

BILLING CODE [illegible]

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[2] EPA Review of the Exxon Bubble in October 1983.

[3] EPA approved the ozone attainment demonstration for Harris County, Texas, on June 28, 1985 (50 FR 26358). Harris County is therefore an ozone nonattainment area with an approved demonstration. Under the proposed Emissions Trading Policy Statement and the notice of August 31, 1983 soliciting comment on certain aspects of the policy (48 FR 38560), the proper trading baseline in such areas is the set of requirements in the approved plan. For the facility involved in this trade, the Harris County Plan requires RACT. Therefore, the RACT baseline relied on in this trade is appropriate.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

41 CFR Part 105–63

Removal of Invalid Regulation

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: This document removes Part 105–63 of Title 41 of the Code of Federal Regulations, which concerns preservation and protection of and access to the Presidential historical materials of the Nixon administration. The regulations appearing in this part were ruled invalid by the District Court in 1983.

EFFECTIVE DATE: December 30, 1983.

FOR FURTHER INFORMATION CONTACT: Gary Brooks, Legal Services Staff, National Archives (NSL), Washington, DC 20408, 202–523–3618.

SUPPLEMENTARY INFORMATION: On December 30, 1983, the U.S. District Court of the District of Columbia ruled that Section 104(b) of the Presidential Recordings and Materials Preservation Act was unconstitutional based upon the *INS* v. *Chadha* decision and that previously promulgated regulations were invalid due to the exercise of the legislative veto on numerous occasions (*Allen et. al.* v. *Carmen et al.*, 578 F. Supp. 951). This rule removes this invalid regulation from Title 41 of the Code of Federal Regulations.

The National Archives and Records Administration published a notice of proposed rulemaking (50 FR 12575; March 29, 1985) to replace these invalid regulations. The final rule is expected to be issued later this summer, and will appear in Title 36, Chapter XII of the Code of Federal Regulations.

List of Subjects in 41 CFR Part 105–63

Archives and records, Nixon historical materials.

For the reasons stated in the preamble, Part 105–63 of Title 41 of the Code of Federal Regulations is removed.

Dated: June 27, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85–15778 Filed 6–28–85; 8:45 am]

BILLING CODE 7515-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6664]

Suspension of Community Eligibility of Flood Insurance; Maine et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, 500 C Street, Southwest, FEMA, Room 416, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Region I					
Maine: Cumberland	Harpswell, town of	230169B	July 15, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Nov. 1, 1974 and Oct. 8, 1976	July 3, 1985.
Massachusetts:					
Bristol	Dartmouth, town of	250051C	Sept. 10, 1971, emergency; Aug. 15, 1977, regular; July 3, 1985, suspended.	Feb. 26, 1975, Aug. 15, 1977, June 1, 1983 and Oct. 1, 1983.	Do.
Essex	Marblehead, town of	250091	Jan. 18, 1974, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Jan. 18, 1976	Do.
Barnstable	Sandwich, town of	250012E	Dec. 29, 1972, emergency; June 18, 1980, regular; July 3, 1985, suspended.	Jan. 14, 1977, Mar. 28, 1978 and June 18, 1980.	Do.
Essex	Swampscott, town of	250105B	Sept. 29, 1972, emergency; Sept. 3, 1976, regular; July 3, 1985, suspended.	May 24, 1974 and Sept. 3, 1976.	Do.
Barnstable	Truro, town of	255222B	Nov. 26, 1971, emergency; Apr. 20, 1973, regular; July 3, 1985 suspended.	Apr. 20, 1973, July 1, 1974 and Dec. 12, 1975.	Do.
Vermont: Bennington	Manchester, town of	500015B	Jan. 28, 1972, emergency; Apr. 3, 1978, regular; July 3, 1985, suspended.	Aug. 2, 1974 and Apr. 3, 1978	Do.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Region II					
New York: Ulster	Hurley, town of	360857B	June 20, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.	May 31, 1974 and May 28, 1976.	Do.
Region IV					
North Carolina:					
Chowan	Unincorporated areas	370301B	Aug. 25, 1977, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Jan. 27, 1978	Do.
Do.	Edenton, town of	370062C	Nov. 14, 1973, emergency; Sept. 15, 1977, regular; July 3, 1985, suspended.	Feb. 15, 1974, Aug. 6, 1976 and Sept. 15, 1977	Do.
Region VI					
Texas: Brazoria	Lake Jackson, city of	485484D	Sept. 25, 1970, emergency; July 7, 1972, regular; July 3, 1985, suspended.	July 7, 1972, July 1, 1974, July 25, 1975 and Mar. 18, 1977.	Do.
Region VII					
Iowa: Black Hawk	Waterloo, city of	190025E	May 7, 1971, emergency; July 3, 1985, regular; July 3, 1985, suspended.	June 28, 1974, Sept. 19, 1975, Sept. 13, 1977, May 6, 1980 and July 5, 1984.	Do.
Missouri:					
Newton	Granby, city of	290638	Aug. 29, 1975, emergency; Nov. 11, 1975 regular; July 3, 1985, suspended.	Apr. 12, 1974 and Nov. 7, 1975.	Do.
Cass	Peasant Hill, city of	2952600	Apr. 9, 1971, emergency; Apr. 28, 1972, regular; July 3, 1985, suspended.	Sept. 15, 1972, July 1, 1974 and Dec. 26, 1975.	Do.
Colorado: Ouray	Unincorporated areas	080136A	July 18, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.		Do.
California: Shasta	Redding, city of	0600000	June 18, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Dec. 20, 1974 and June 21, 1977.	Do.
Region II Minimal Conversions					
New York:					
Columbia	Canaan, town of	361313C	Jan. 27, 1976, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Nov. 1, 1974, May 21, 1976 and July 1, 1977.	Do.
Herkimer	Cold Brook, village of	360206B	Feb. 10, 1976, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Feb. 11, 1977	Do.
Jefferson	Lafflay, town of	360341C	June 12, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.	June 28, 1974, Dec. 12, 1975 and Oct. 8, 1976.	Do.
Herkimer	Norway, town of	361110B	June 25, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Nov. 1, 1974 and July 2, 1976	Do.
Jefferson	Rodman, town of	360349B	July 29, 1975, emergency; July 3, 1985, regular; July 3, 1985 suspended.	June 21, 1974 and Dec. 10, 1976.	Do.
Herkimer	Salisbury, town of	360317B	Mar. 18, 1981, emergency; July 3, 1985, regular; July 3, 1985, suspended.	June 7, 1974 and July 16, 1976.	Do.
Lewis	Watson, town of	360377B	May 4, 1976 emergency; July 3, 1985, regular; July 3, 1985, suspended.	Nov. 1, 1974 and July 16, 1976.	Do.
Region III					
Pennsylvania:					
Clarion	Elk, town of	422365A	Feb. 11, 1976, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Jan. 31, 1975	Do.
Clarion	Farmington, township of	422366B	Aug. 21, 1975 emergency; July 3, 1985, regular; July 3, 1985, suspended.	Jan. 17, 1975 and Jan. 25, 1980.	Do.
McKean	Sergeant, township of	422474B	Aug. 5, 1975, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Feb. 14, 1975 and July 4, 1980.	Do.
Crawford	West Fallowfield, township of	422651B	May 23, 1977, emergency; July 3, 1985, regular; July 3, 1985, suspended.	Apr. 21, 1978	Do.

[1] Date certain Federal assistance no longer available in special flood hazard areas.

Code for Reading 4th column:

Emerg.—Emergency
Reg.—Regular
Susp.—Suspension

Issued: June 24, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-15565 Filed 6-28-85; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 64

[Docket No. FEMA 6656]

List of Communities Eligible for the Sale of Flood Insurance; Oklahoma et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street Southwest, Donohoe Building, Room 416, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map

has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and county	Location	Community	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Oklahoma: Creek	Unincorporated areas	400490	May 6, 1985, emergency	May 10, 1981.
Arkansas: Lonoke	Lonoke, city of	050341A	May 6, 1985, emergency; May 6, 1985 regular	Mar. 25, 1976 and Mar. 15 1982.
Kansas: Cherokee	Unincorporated areas	200044A	May 10, 1985, emergency	May 10, 1977.
New York: Dutchess	Red Hook, village of, Dutchess County	361514—New	May 10, 1985, emergency; May 10, 1985, regular	NSFHAs.
Missouri:				
Dunklin	Unincorporated areas	290122A	May 15, 1985, emergency	Apr. 19, 1983.
Grundy	....do	290150A	....do	Dec. 1, 1983.
Livingston	....do	290614A	....do	Dec 15, 1982.
Oregon: Marion	Keizer, City of [3]	410266	Dec. 10, 1971, emergency; Aug. 15, 1979, regular	May 1, 1985.
Michigan: Oakland	Bingham Farms, Village of	260713A	May 15, 1985, emergency; May 15, 1985, regular	Jan. 3, 1985.
Texas: Travis	Lago Vista, City of [3]	481586—New	Jan. 29, 1976, emergency; Apr. 1, 1982, regular	
Minnesota: Pine	Pine City, City of	270346B	Mar. 28, 1975, emergency; Dec. 1, 1981, regular; Dec. 1, 1981, suspended; May 21, 1985, reinstatement.	Jan. 9, 1974 and June 14, 1976.
Pennsylvania:				
Butler	Cherry, Township of	422342B	Mar. 7, 1977, emergency; May 1, 1985, regular; May 1, 1985, suspended; May 24, 1985, reinstatement.	Jan. 10, 1975 and Jan. 16, 1981.
Butler	Venango, township of	422359A	June 3, 1977, emergency; May 1, 1985, regular; May 1, 1985, suspended; May 24, 1985, reinstatement.	Jan. 24, 1975.
Colorado: Eagle	Avon, town of	080308—New	May 22, 1985, emergency	
Georgia: Carroll	Unincorporated areas	130464	May 28, 1985, emergency	Aug. 11, 1978.
Arizona: Mohave	Bullhead City, city of [3]	040125—Ndew.	May 6, 1974, emergency; Mar. 15, 1982, regular	
West Virginia: Jackson	Unincorporated areas	540063B	Nov. 25, 1975, emergency; May 1, 1985, regular; May 1, 1985, suspended; May 13, 1985, reinstatement.	Jan. 17, 1975 and Oct. 23, 1981.
New York: Cortland	Cincinnatus, city of	360177B	July 7, 1975, emergency; May 15, 1985, regular; May 15, 1985, suspended; May 22, 1985, reinstatement.	Apr. 5, 1974 and July 17, 1978.
Kentucky: Harrison	Unincorporated areas	210329B	May 31, 1985, emergency; May 31, 1985, regular	Aug. 26, 1977 and Nov. 4, 1981.
North Carolina: Haywood	Waynesville, town of	370124B	July 2, 1975, emergency; Jan. 6, 1983, regular; Jan. 6, 1983, suspended; May 29, 1985, reinstatement.	Mar. 8, 1974 and Nov. 29, 1974, Aug. 27, 1976, and Jan. 6, 1983.
Region I				
Massachusetts: Barnstable	Harwich, town of	250008C	May 15, 1985, suspension withdrawn	July 19 1974, Oct. 22, 1976 and Sept. 30, 1980.
Region II				
New Jersey: Morris	Mount Olive, township of	340353B	....do	Jan. 18, 1974 and Mar. 19, 1976.
Region III				
Maryland: Talbot	Unincorporated areas	240066A	....do	Apr. 25, 1975.
Region V				
Ohio: Logan	....do	390772C	....do	Feb. 3, 1978 and July 13, 1979.
Region VI				
Louisiana: Vermilion Parish	....do	220221D	....do	May 31, 1977, May 9, 1978 and Oct. 1, 1982.
Region VIII				
Colorado: Jefferson	Golden, city of	080090A	....do	Nov. 5, 1976.
Region II Minimal Conversions				
New York: Lewis	Denmark, town of	360363B	May 15, 1985, suspension withdrawn	June 28, 1974 and May 28, 1976.

State and county	Location	Community	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Warren	Hague, town of	360873	do	Nov. 5, 1976, Mar. 10, 1978, Dec. 21, 1979 and Dec. 11, 1981.
Columbia	Hillsdale, town of	361320A	do	Jan. 3, 1975.
Cortland	Marathon, town of	361327B	do	Nov. 29, 1974 and July 2, 1976.
Essex	North Hudson, town of	361391A	do	July 11, 1975.
Cortland	Preble, town of	360185B	do	Feb. 15, 1974 and July 16, 1976.
Tioga	Richford, town of	361216B	do	Dec. 20, 1974 and July 23, 1976.
Essex	Schroon, town of	361156B	do	Do.
Cortland	Scott, town of	361328B	do	Nov 1, 1974 and June 25, 1976.
Do	Solon, town of	361329A	do	Jan. 17, 1975 and July 30, 1976.
Do	Harford, town of	360180	do	June 28, 1974 and May 28, 1976.

[1] City of Keizer is a new community eligible 5-10-85. Was formerly under Marion County, Oregon (#410154).
[2] The City of Lago Vista, (Travis County) is a newly incorporated community eligible 5-23-85 that was participating in the Regular Program as an unincorporated area of Travis County. The City has adopted the County's FIS and FIRM for floodplain management and insurance purposes.
[3] The City of Bullhead City, (Mohave County) is a newly incorporated community eligible 5-28-85 that was participating in the Regular Program as an unincorporated area of Mohave County. The City has adopted the County's Flood Insurance Study and Flood Insurance Rate Map for floodplain management and insurance purposes.

Code for reading 4th Column:
Emerg.—Emergency
Reg.—Regular
Susp.—Suspension
Rein.—Reinstatement

Issued: June 24, 1985.

Jeffrey S. Bragg,
Administrator, Federal Insurance Administration.

[FR Doc. 85-15566 Filed 6-28-85; 8:45 am]
BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 153

[CGD 81-078]

Safety Rules for Self-Propelled Vessels Carrying Hazardous Liquids

Correction

In FR Doc. 85-8364 beginning on page 21166 in the issue of Wednesday, May 22, 1985, make the following correction:

§ 153.8 [Corrected]

On page 21171, in the table, first column, in the forty-second line, "Dichloropropene" should have read "Dichloropropane".

BILLING CODE 1505-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 504

[APD 2800.12 CHGE13]

General Services Administration Acquisition Regulation; Contract Files

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to revise Subpart 504.8, Contract Files, to clarify who is responsible for contract files, to add procedures for transferring contract files from one office to another or from one contracting officer to another, to supplement FAR procedures on closing out contract files, and to supplement FAR coverage on the disposal of contract files. The intended effect is to improve the regulatory coverage and to provide uniform procedures for use by GSA contracting activities.

EFFECTIVE DATE: June 18, 1985.

FOR FURTHER INFORMATION CONTACT: L. Gaye Hirz-Kester, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-4763.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 1985, the General Services Administration published in the **Federal Register** (50 FR 16115) GSAR Notice 5-90 inviting comments from interested parties on these proposed changes to the regulation and provided a 30-day comment period. No public comments were received. Comments received from various elements within GSA were analyzed, reconciled, and incorporated, if applicable, into this final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule has no impact outside the agency. It establishes procedures for transferring files within the agency from one office to another or from one contracting officer to another. Therefore, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 504

Government procurement.

1. The authority citation for 48 CFR Part 504 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. The table of contents for Part 504 is amended by revising the title of section 504.103 and by adding section 504.804-5 and 504.805 as set forth below:

PART 504—ADMINISTRATIVE MATTERS

Sec.

Subpart 504.1—Contract Execution

504.103 Contract clause.

* * * * *

Subpart 504.8—Contract Files

* * * * *

504.804–3 Detailed procedures for closing out contract files.

504.805 Disposal of contract files.

* * * * *

Authority: 40 U.S.C. 486(c).

3. Section 504.800 is revised to read as follows:

504.800 Scope of subpart.

This subpart prescribes requirements for using a standard contract file format for all contracts, except leases of real property, that exceed the small purchase limitation. The application of this subpart to small purchases is optional.

4. Section 504.802 is revised to read as follows:

504.802 Contract files.

(a) *Standardization of files.* Professionalism in acquisition dictates that contract files be complete and able to stand on their own. To achieve this goal and to facilitate processing and administration of contracts at all levels, contract files are to be organized in a standardized manner throughout the agency. Therefore, all contracts over $25,000 must be supported with an official contract file containing all necessary information and documentation in accordance with the requirements outlined in FAR 4.802 and 4.803. The documents shall be organized in accordance with the standard contract file format in GSAR 504.803.

(b) *Responsibility for contract files.* The contracting officer shall be responsible for the official file. All documents pertaining to the contract shall be forwarded by those initiating them to the contracting officer for inclusion in this file. The contracting officer is also responsible for the accountability of contract files transferred to the records center and for knowing the location of the files as provided by the National Archives and Records Administration.

(c) *Transfer of responsibility for contract files.* (1) When responsibility for a contract is transferred from one contracting officer to another, e.g., transfer of assignments or redelegation of contract administration (intraoffice or interoffice), the contracting officer transferring the files shall prepare a detailed listing by file number and/or name to identify the file(s) to be transferred.

(2) If available, duplicates of the files to be transferred must be retained by the contracting officer until acknowledgement of receipt of the transferred files by the contracting officer is received. However, duplicate files should not be created for the transfer.

(3) The original contracting officer transferring the files shall retain one copy of the listing and send a copy of the listing to the successor contracting officer under a separate mailing as advance notice of the files to be transferred.

(4) The files to be transferred to the successor contracting officer must be sent by certified mail, return receipt requested, when appropriate, or by another method so as to obtain a signature of the successor contracting officer for receipt of the contract files that are transferred. The transferred files must be accompanied by two copies of the listing to the successor contracting officer.

(5) The successor contracting officer, who becomes responsible for the files, shall sign one copy of the listing certifying that he/she has received the files listed and return the signed copy to the contracting officer that transmitted the files.

5. Section 504.803 is amended by revising the introductory text of paragraph (a), paragraphs (a)(12), (13), (14), (18), and (24); deleting paragraph (a)(25) and redesignating paragraphs (a)(26) through (a)(30) as (a)(25) through (a)(29) and revising new paragraphs (a)(25) through (a)(29); revising paragraphs (b) and (c); and deleting paragraph (d) as follows:

504.803 Contents of contract files.

(a) The items listed therein shall be placed in the contract file in reverse order; i.e., item (1) should be placed on the bottom of the file, item (2) on top of item (1), etc.

* * * * *

(12) Cost or pricing data. Where the requirement for submission of cost or pricing data is waived, as provided in FAR 15.804–3, the waiver and documentation supporting the waiver should be filed under this tab.

(13) Field pricing report (see FAR 15.805–5 and GSAR 515.805–5). Where the requirement for a field pricing report of a price proposal is waived, as provided in FAR 15.805–5, the waiver and documentation supporting the waiver should be filed under this tab.

(14) Price or cost analysis report prepared under FAR 15.808. Supporting technical analyses, other than those supporting an audit report, should be filed under this tab. The profit or fee analysis required by FAR Subpart 15.9 should be made a part of the price or cost analysis report. In those cases where an independent Government estimate is prepared, it should also be made a part of the price or cost analysis report.

* * * * *

(18) EEO compliance review.

* * * * *

(24) Contractual action. Subcontracting plans that are incorporated in and made a material part of a contract as required by FAR 19.705–5(a)(5) should be filed under this tab. Where an award is to be accomplished by use of the award portion of the SF 33, or similar forms, the contract document should be included in TAB 23.

* * * * *

(25) Evidence of concurrence for legal sufficiency of the appropriate counsel (if applicable).

(26) Any required approvals—GSA Form 1535, Recommendation for Award (if applicable).

(27) GSA Form 2932, Proposed Substantial Contract Award (if applicable).

(28) Standard Form 99, Notice of Award of Contract, (if applicable).

(29) GSA Form 3439, GDA/FPDS Individual Contract Action Report.

(b) The contract file must be numerically tabbed as required by GSAR 504.803(a). Documents within the tab should be filed chronologically with the most recent document on top. If any of the documents are too voluminous to be placed under the applicable tab, they should be included in a separate file and the tab annotated with the location of the file. All of the items described will not always be needed for each contract action. Unneeded items, therefore, will be self deleting. If a tab is not required for a particular action, it should be omitted from that contract file.

(c) An index of the file tabs should be prepared and placed in the file. Items which do not apply should be so marked and if necessary, a brief explanation included. In order to facilitate the preparation of the index, each service/office may prepare a standard contract file checklist based on the requirements of GSAR 504.803(a) appropriate to that particular service/office. The requirements of a particular service/office may make appropriate the inclusion of sub-headings under a tab or, if deemed necessary, additional items.

6. Sections 504.804–5 and 504.805 are added to read as follows:

504.804-5 Detailed procedures for closing out contract files.

When the statement required by FAR 4.804-5(b) is completed, the administrative contracting officer (ACO) shall forward the statement and the contract files to the cognizant procuring contracting officer (PCO). The ACO shall follow the procedures outlined in GSAR 504.802(c) when transferring the files to the PCO.

504.805 Disposal of contract files.

The contracting officers' accountability for contract files shall terminate at the end of their retention period when the notice of disposal is received from the National Archives and Records Administration, and disposal is approved by the contracting officer's immediate supervisor with the contracting officer's concurrence.

Dated: June 18, 1985.

Richard H. Hopf, III

Acting Assistant Administrator for Acquisition Policy.

[FR Doc. 85-15692 Filed 6-28-85; 8:45 am]

BILLING CODE 6820-61-M

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48 CFR Part 533

[Acquisition Circular AC-85-4]

Protests to the General Accounting Office (GAO)

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular temporarily amends section 533.104 (b) and (c) of the General Services Administration Acquisition Regulation, to implement Federal Acquisition Circular 84-9 which revised the Federal Acquisition Regulation (FAR) to comply with the "stay" and "damages" provisions of the Competition in Contracting Act of 1984 (CICA). The intended effect is to provide guidance to GSA contracting activities pending a revision to the regulation.

EFFECTIVE DATE: June 21, 1985.

Expiration Date: This Acquisition Circular will expire December 21, 1985, unless canceled earlier or extended.

Comment Date: Comments must be submitted on or before August 30, 1985.

ADDRESS: Comments may be submitted to Ida Ustad, 18th & F Streets, NW., Room 4027, Office of GSA Acquisition Policy and Regulations, Washington, D.C., 20405, (202) 523-4754.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-4754.

SUPPLEMENTARY INFORMATION: Pursuant to section 22(d) of the Office of Federal Procurement Policy Act, as amended, a determination has been made to waive the requirement for publication of procurement procedures for public comment before the regulation takes effect. The need to comply with the statutory provisions of the CICA regarding "staying" awards or performance and awarding "damages" is an urgent and compelling circumstance that makes advance publication impracticables. The General Services Administration certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). This rule implements the Federal Acquisition Regulations by providing internal agency procedures for making determinations regarding suspending the award or performance of contracts. Accordingly, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Ch. 5

Government procurement.

1. The authority citation for 48 CFR Part 533 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Part 533 is amended by the following acquisition circular.

June 21, 1985.

General Services Administration Acquisition Regulation Acquisition Circular AC-85-4

To: All contracting activities
Subject: Protests to the General Accounting Office (GAO).

1. *Purpose.* This Acquisition Circular temporarily amends Section 533.104 (b) and (c) of the General Services Administration Acquisition Regulation (GSAR), 48 CFR Ch. 5 (APD 2800.12), to implement FAC 84-9 which revised the Federal Acquisition Regulation (FAR) to comply with the "stay" and "damages" provision of the Competition in Contracting Act of 1984 (CICA).

2. *Background.* FAC 84-6, which initially implemented the CICA protest provisions, did not implement the "stay" provisions in 31 U.S.C. 3553 (c) and (d) and the GAO "damages" provision in 31 U.S.C. 3554(c) based on guidance from the Department of Justice and direction from the Office of Management and Budget (OMB). On June 5, 1985, as a result of a decision in *Ameron, Inc.* v. *U.S. Army Corps of Engineers,* Civil No. 85-1064, May 28, 1985, (D.C.N.J.), the Department of Justice advised the responsible Federal agencies to revise FAC-84-6 to comply with the cited provisions pending further appeal. In the referenced case, the district court issued a permanent injunction requiring the defendants, including Defense Secretary Weinberger, to refrain from applying FAC-84-6 or OMB Bulletin No. 85-6 insofar as they conflict with the "stay" provisions and to secure the issuance of regulations which comply with and implement the statutory provision. The Attorney General has decided that the Government will comply with the "damages" provision during the same period even though compliance with that statutory provision is not required by the permanent injunction. Accordingly, FAC 84-9 revised those portions of FAC 84-6 that were inconsistent with the statute.

3. *Effective date.* June 21, 1985.

4. *Expiration date.* This circular expires 6 months after issuance (December 21, 1985) unless cancelled earlier.

5. *Reference to regulation.* Section 533.104 (b) and (c) of the General Services Administration Acquisition Regulation.

6. *Explanation of change.* Section 533.104 is amended to revise paragraph (b) and (c) to read as follows:

533.104 Protests to GAO.

* * * * *

(b) *Protests before award.* In accordance with FAR 33.104(b), the HCA may determine in writing that urgent and compelling circumstances which significantly affect the interests of the United States will not permit awaiting the decision of GAO and award is likely to occur within 30 calendar days. The written determination and findings (D&F) should be prepared by the contracting officer for the signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate Assistant General Counsel. After the D&F is approved, it must be returned to the appropriate Assistant General Counsel who will notify GAO of the Agency's findings and intended action before the award is made.

(c) *Protests after award.* The procedure in paragraph (a) apply to the handling of protests after award. If the protest is received within 10 days after award, contract performance shall be suspended in accordance with FAR 33.104(c) unless the HCA determines in writing that contract performance will be in the best interests of the United States or that urgent and compelling circumstances that significantly affect

the interests of the United States will not permit waiting for the GAO's decision. The written determination and findings (D&F) should be prepared by the contracting officer for signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate Assistant General Counsel. After the D&F is approved, it must be returned to the assistant General Counsel who will notify GAO of the agency's findings and intended action before contract performance is authorized.

Richard H. Hopf, III,

Acting Assistant Administrator for Acquisition Policy.

[FR Doc. 85-15693 Filed 6-28-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Kinds of Northern Flying Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for two kinds of northern flying squirrel found in the Appalachian Mountains of North Carolina, Tennessee, Virginia, and West Virginia. Both are evidently very rare and jeopardized by habitat loss, human disturbance, and competition with, and the transfer of a lethal parasite from, the more common southern flying squirrel. This rule implements the protection of the Endangered Species Act of 1973, as amended, for these two kinds of northern flying squirrel.

DATE: The effective date of this rule is July 31, 1985.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

The so-called flying squirrels do not actually fly, but are capable of extensive and maneuverable gliding by means of a furred, sheetlike membrane along the sides of the body, between the fore and hind limbs. There are 35 species, most of them in the forested parts of Eurasia (Nowak and Paradiso 1983). Only two species occur in North America: the southern flying squirrel (*Glaucomys volans*), found in extreme southeastern Canada, the eastern half of the United States, Mexico, and Central America; and the northern flying squirrel (*Glaucomys sabrinus*), found mainly in Canada, Alaska, and the western and northern parts of the conterminous United States (Hall 1981).

Until well into the 20th century, *G. sabrinus* was not known to occur in the eastern United States to the south of New York. Then Miller (1936) described the subspecies *G. s. fuscus*, based on specimens collected in the Appalachian Mountains of eastern West Virginia, and Handley (1953) described *G. s. coloratus*, from specimens taken in the Appalachians of eastern Tennessee and western North Carolina. Subsequently, *G. s. fuscus* was found also in the southwestern part of Virginia (Handley 1980). For purposes of convenience, *G. s. coloratus* may be referred to as the Carolina northern flying squirrel, and *G. s. fuscus* as the Virginia northern flying squirrel.

According to Handley (1953), seven specimens of *G. s. coloratus* averaged 286 millimeters (11¼ inches) in total length and 134 millimeters (5¼ inches) in tail length, and five specimens of *G. s. fuscus* averaged 266 millimeters (10½ inches) in total length and 115 millimeters (4½ inches) in tail length. The coloration of both subspecies is generally brown above and buffy or orange white below. *G. s. coloratus* is the darker of the two, but both are considerably darker than the subspecies of *G. sabrinus* found farther to the north in the eastern U.S.

There has long been recognition that *G. s. coloratus* and *G. s. fuscus* are rare and that their survival might be in jeopardy. Since their original discovery, only about 30 specimens are known to have been collected, dead or alive, and at only about 8 localities. Recent efforts have failed to find these squirrels at most of these same localities. There are numerous actual or potential problems. Both subspecies may have been declining since the Pleistocene, along with the contraction of suitable boreal forest habitat. They now have relictual distributions in widely scattered areas at high elevations. Their decline has probably been accelerated through clearing of forests and other disturbances by people. They apparently are being displaced in at least some areas by the more adaptable and aggressive southern flying squirrel (*G. volans*). In addition, there is growing evidence that the nematode parasite *Strongyloides*, which is carried without obvious harm by *G. volans*, is being transferred to *G. sabrinus* with lethal effect.

Handley (1980) classified *G. s. fuscus* as "endangered" in Virginia. The West Virginia Department of Natural Resources includes this subspecies in its list of animals of special concern, and refers to it as being of "scientific interest." Weigl (1977) classified *G. s. coloratus* as "threatened" in North Carolina. Kennedy and Harvey (1980) indicated that *G. s. coloratus* is considered to be "deemed in need of special management" by the Tennessee Wildlife Resources Agency and to be of "special concern" by the Tennessee Heritage Program. In a report published by the U.S. Forest Service, Lowman (1975) stated that *G. s. coloratus* and *G. s. fuscus* are "threatened" in Virginia, North Carolina, and Tennessee.

In its Review of Vertebrate Wildlife in the **Federal Register** of December 30, 1982 (48 FR 58454-58460), the U.S. Fish and Wildlife Service placed both subspecies in category 2, meaning that a proposal to list as endangered or threatened was possibly appropriate, but that substantial data were not then available to biologically support such a proposal. Subsequently, the Service received a report from Dr. Donald W. Linzey (1983), who had been contracted more than 3 years earlier to investigate the status of the two flying squirrels. The data in Dr. Linzey's report, along with other new information assembled by the Service, showed that a proposal to list both squirrels as endangered was warranted. Such a proposal was published in the **Federal Register** of November 21, 1984 (49 FR 45880-45884).

Summary of Comments and Recommendations

In the proposed rule of November 21, 1984, and associated notifications, all interested parties were requested to submit information that might contribute to development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and other concerned parties were contacted and requested to comment. Newspaper notices, inviting public comment, were published in the *Asheville Citizen Times* on December 15, 1984, the *Elizabethton Star* on December 14, 1984, the *Elkins Inter-Mountain* on December 19, 1984, the *Virginian* on December 15, 1984, and the *Gatlinburg Mountain Press* on December 17, 1984.

Eight responses were received. The Board of Supervisors of Smyth County, Virginia, indicated that it had no comment. The National Park Service, the Tennessee Department of Conservation, the West Virginia Department of Natural Resources, The Nature Conservancy, Professor Lawrence R. Heaney of the University of Michigan, and Professor J. Edward Gates of the University of Maryland expressed support for the proposal. Professor Gates added that he has been carrying out a limited search for *G. sabrinus* in West Virginia. The effort has not been successful so far, but on November 4, 1984, three *G. volans* were captured in one of the nest boxes that had been installed. This event might possibly contribute to the view that *G. volans* is replacing *G. sabrinus* (see factor "E" in the following section).

The only opposing comment was from the Tennessee Wildlife Resources Agency, which indicated that endangered status is not yet justified for *G. sabrinus* in Tennessee, because adequate documentation has not been found to differentiate the subspecies in that State from those in other parts of the nation. In response, the Service would point out that the subspecies found in Tennessee (*G. s. coloratus*) was formally described in a relatively recent publication by a reputable mammalogist (Handley 1953), that his conclusions have been accepted in the standard comprehensive reference on the systematics of North American mammals (Hall 1981), and that no challenge to this situation is known. The Service therefore considers continued recognition of the subspecific distinction of *G. s. coloratus* to be warranted.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Carolina and Virginia northern flying squirrels should be classified as endangered. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Carolina (*Glaucomys sabrinus coloratus*) and Virginia (*G. s. fuscus*) northern flying squirrels are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* According to Professor Peter D. Weigl of Wake Forest University (1977, and pers. comm., March 2, 1984), *G. s. coloratus* and *G. s. fuscus* occur primarily in the ecotone, or vegetation transition zone, between the coniferous and northern hardwood forests. Both forest types are used in the search for food, while the hardwood areas are needed for nesting sites. As these squirrels are adapted to cold, boreal conditions, their range has probably been contracting since the end of the Pleistocene (Ice Age). They now have a relictual distribution, restricted to isolated areas at high elevations, separated by vast stretches of unsuitable habitat. In these last occupied zones, the squirrels and their habitat may be coming under increasing pressure from human disturbance, such as logging and development of skiing and other recreational facilities. Handley (1980) stated that while the range of *G. s. fuscus* had probably already been fragmented prior to the arrival of European settlers, its decline has undoubtedly been accelerated by the clearing of forests during the past 200 years, and that it must be on the verge of extinction in Virginia. Lowman (1975) considered both subspecies to be threatened "due to reduction of habitat by logging and other land use."

Available evidence indicates that *G. s. coloratus* and *G.s. fuscus* are rare and that their historical decline is continuing. The two subspecies are represented by only 28 specimens in museum collections (Linzey 1983; West Virginia Department of Natural Resources, pers. comm., April 25, 1984). A few other individuals have been captured alive and then released. The museum specimens were taken in seven separate areas of North Carolina (Yancey County), Tennessee (Carter and Sevier Counties) Virginia (Smyth County), and West Virginia (Pocahontas and Randolph Counties). Weigl (1977), in a paper prepared for a symposium in 1975, stated that in the previous 10 years the two subspecies had been captured only in two of these areas—the Roan Mountain vicinity of Carter County, Tennessee, and Whitetop Mountain, Smyth County, Virginia. He noted that 8 weeks of trapping in 1965–1966 in the Mount Mitchell area of Yancy County, North Carolina, the type locality of *G. s. coloratus*, had failed to find a single individual. Weigl (pers. comm., March 2, 1984) added that during the past few years he had failed to find *G. s. coloratus* in the Roan Mountain area.

Linzey (1983) reported the results of a 40-month search for *G.s. coloratus* and *G. s. fuscus* throughout their range. During this investigation, he placed 490 nest boxes at 35 sites in Maryland, North Carolina, Tennessee, Virginia, and West Virginia, including six of the seven areas in which the subspecies had been previously collected. The boxes were checked at regular intervals, and any occupants were captured and indentified. Only three individual northern flying squirrels were found in the course of the study. In April 1981, a pair *G. s. coloratus* was caught in the Mount Mitchell area of North Carolina, and in May 1981 an adult female *G. s. fuscus* was taken in an area of Pocahontas County, West Virginia, from which the subspecies was not previously known. All three individuals were marked and released. This investigation thus showed that both subspecies still exist, but that they are very rare and perhaps no longer present in much of their former range.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The subject subspecies are not known to be jeopardized by human utilization. Nonetheless, flying squirrels are highly desirable as pets to some persons, and collecting for such purposes is at least a potential threat to the already rare *G. s. coloratus* and *G. s fuscus*.

C. *Disease or predation.* Weigl (pers. Comm., March 2, 1984) suggested that increasing human recreational use of northern flying squirrel habitat might result in predation on *G. s. coloratus and G. s. fuscus* by pets, especially cats.

D. *The inadequacy of existing regulatory mechanisms.* Not now known to be applicable.

E. *Other natural or manmade factors effecting its continued existence.* According to Handley (1980), logging and other clearing activity has not only reduced the original habitat of the northern flying squirrel (*G. sabrinus*), but resulted in an invasion of this zone by the southern flying squirrel (*G. volans*). Regrowth in cleared areas, if any, tended to be deciduous forest favored by *G. volans*, and hence the way was open for the spread of that species.

Weigl (1978) pointed out that originally there was apparently little overlap between the ranges of the two species, with *G. sabrinus* found in the higher elevations of the applications and *G. volans* in the lower. When *G. volans* began to expand into the habitat of *G. sabrinus*, however, it seems to have successfully competed with and displaced the latter species. Weigl's studies of captive animals have demonstrated that *G. volans* though smaller than *G. sabrinus*, is more

aggressive, more active in territorial defense, and dominant in competition for nests. When the two species meet in an ecotone between coniferous and deciduous forest, *G. volans* would be expected to force *G. sabrinus* out into the purely coniferous zone, which lacks favorable nesting sites, and thus the breeding level of the latter species would be reduced.

In addition to its success in direct confrontations, *G. volans* has evidently employed a more subtle, but deadly, biological mechanism against *G. sabrinus*. Weigl (1975, and pers. comm., March 2, 1984) maintained captive colonies of the two species in adjacent outdoor aviaries. All the *G. sabrinus* weakened and died within three months, and this mortality was associated with heavy infestations of the nematode parasite *Strongyloides*. All the *G. volans* also carried the parasite, but they remained in apparent good health and continued to breed. Subsequently, *Strongyloides* was found in five wild populations of *G. volans* in North Carolina, but never in wild *G. sabrinus*. Experiments in captivity, however, demonstrated that *Strongyloides* could be transferred from *G. volans* to *G. sabrinus*. Apparently, *G. volans* is the natural host of this parasite and has developed an immunity to its ill effects. Under original conditions, with the two squirrel species occupying largely separate ranges, there would have been little interchange. When contact between the two was increased through habitat disruption, *Strongyloides* could spread to *G. sabrinus*, which lacked any immunity, and thus could serve as a powerful competitive weapon for *G. volans*.

Because of its ability to displace *G. sabrinus* by the means described above, *G. volans* seems to have taken over much of the former's range in the Appalachians. Handley (1980) report that in Virginia *G. volans* now occurs at the tops of the highest mountains and occupies the best remnants of habitat that is suitable for *G. sabrinus*. Weigl (pers. comm., March 2, 1984) stated that he has failed to trap *G. sabrinus* at Roan Mountain, Tennessee, during the past few years, but at the same time has found *G. volans* to be more abundant at higher elevations in this area. As noted above, Linzey (1983) captured only three specimens of *G. sabrinus* during 40 months of study, and yet an effort had been made to place the nest boxes in areas that appeared to have habitat suitable for the species, including most of the localities from which it had previously been recorded. In these same nest boxes, Linzey captured at least 29 individual *G. volans*.

The decision to determine endangered status for the Carolina and Virginia nothern flying squirrels was based on an assessment of the best available scientific information and of past, present, and probable future threats to the species. A decision to take no action would exclude the two flying squirrels from needed protection pursuant to the Endangered Species Act. A decision to determine only threatened status would not adequately express the evident rarity and multiplicity of problems of these animals. Critical habitat is not being designated, for the reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that "critical habitat" be designated, "to the maximum extent prudent and determinable," concurrent with the determination that a species is endangered or threatened. The Service finds that designation of critical habitat for the Carolina and Virginia northern flying squirrels is not prudent at this time. Flying squirrels in general are popular as pets (see, for example, Lowery 1974). Although the two subject subspecies are not now known to be collected for this purpose, publication of a precise critical habitat description and map could expose these rare and vulnerable animals to increased disturbance and taking. Moreover, the nest boxes placed during the recent status survey are still present and being used for study. These boxes are readily visible and flying squirrels may be easily trapped therein during their diurnal period of inactivity. Any publicity regarding the location of these boxes should be avoided.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition throught listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires recovery actions. Such actions are initiated by the Service following listing. The protection required of Federal agencies, and prohibitions against taking and harm, are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal in **Federal Register** of June 29, 1983, 48 FR 29990). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. No specific Federal activities that may be affected in this regard, with respect to the listing of the Carolina and Virginia northern flying squirrels, are known at this time. Much of the region that these squirrels may inhabit, however, is within national forest land. Therefore, certain actions by the U.S. Forest Service, such as timber sales, establishment of recreation facilities, and spraying of insecticides, may become subject to consultation.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National

Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

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Author

The primary author of this rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals:							
Squirrel, Carolina northern flying	*Glaucomys sabrinus coloratus*	U.S.A. (NC, TN)	Entire	E	188	NA	NA
Squirrel, Virginia northern flying	*Glaucomys sabrinus fuscus*	U.S.A. (VA, WV)	do	E	188	NA	NA

Dated: June 13, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–15733 Filed 6–28–85; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 50, No. 128
Monday, July 1, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Ch. X

[Docket Nos. AO-160-A82-R92, etc.]

Milk in the Middle Atlantic and Other Marketing Areas; Termination of Proceeding on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR Part	Marketing area	AO Nos.
1004	Middle Atlantic	AO-160-A82-R92,
1001	New England	AO-14-A66,
1002	New York-New Jersey	AO-71-A74-R91,
1006	Upper Florida	AO-356-A21,
1007	Georgia	AO-366-A23,
1011	Tennessee Valley	AO-251-A28,
1012	Tampa Bay	AO-347-A24,
1013	Southeastern Florida	AO-286-A31,
1030	Chicago Regional	AO-361-A21,
1032	Southern Illinois	AO-313-A32,
1033	Ohio Valley	AO-166-A53,
1036	Eastern Ohio-Western Pennsylvania	AO-179-A48,
1040	Southern Michigan	AO-225-A36,
1044	Michigan Upper Peninsula	AO-299-A23,
1046	Louisville-Lexington-Evansville	AO-123-A52,
1049	Indiana	AO-319-A35,
1050	Central Illinois	AO-355-A32,
1064	Greater Kansas City	AO-23-A59,
1065	Nebraska-Western Iowa	AO-86-A42,
1068	Upper Midwest	AO-179-A39,
1075	Black Hills	AO-249-A19,
1076	Eastern South Dakota	AO-260-A39,
1079	Iowa	AO-295-A35,
1093	Alabama-West Florida	AO-366-A2,
1094	New Orleans-Mississippi	AO-106-A46,
1096	Greater Louisiana	AO-257-A31,
1097	Memphis	AO-219-A59,
1098	Nashville	AO-184-A46,
1099	Paducah	AO-183-A36,
1102	Fort Smith	AO-237-A32,
1106	Southwest Plains	AO-210-A44,
1108	Central Arkansas	AO-243-A36,
1120	Lubbock-Plainview	AO-328-A28,
1124	Oregon-Washington	AO-368-A15,
1125	Puget Sound-Inland	AO-236-A50,
1126	Texas	AO-231-A58,
1131	Central Arizona	AO-271-A25,
1132	Texas Panhandle	AO-259-A38,
1134	Western Colorado	AO-301-A18,
1135	Southwestern Idaho-Eastern Oregon	AO-280-A4,
1138	Great Basin	AO-308-A25,
1137	Eastern Colorado	AO-326-A33,
1138	Rio Grande Valley	AO-338-A36,
1139	Lake Mead	AO-374-A8,

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action terminates the current proceeding on proposed amendments to provide for a separate classification and price for milk used to produce butter and nonfat dry milk in all 44 Federal milk orders. At the request of producers, a public hearing was held July 25–27, 1984, to consider their proposals. On March 15, 1985, the Department issued its recommendation to deny all proposals. Subsequently, the producers have asked that the proceeding be terminated.

DATE: This withdrawal is effective June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued June 22, 1984; published June 27, 1984 (49 FR 26239).

Notice of Rescheduled Hearing: Issued July 3, 1984; published July 6, 1984 (49 FR 27769).

Recommended Decision: Issued March 15, 1985; published March 20, 1985 (50 FR 11171).

Extension of Time for Filing Exceptions: Issued April 4, 1985; published April 9, 1985 (50 FR 13976).

Statement of Consideration

A public hearing was held to consider proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Middle Atlantic and other marketing areas. The hearing was held, pursuant to the provisions of the Agricutural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), at Alexandria, Virginia, on July 25–27, 1984, pursuant to notices issued June 22, 1984 (49 FR 26239) and July 3, 1984 (49 FR 27769).

The hearing was held at the request of the National Milk Producers Federation (NMPF), to consider proposals which would provide for a separate class and price for milk used to make butter and nonfat dry milk. The proposed price for such milk would be either the Minnesota-Wisconsin (M-W) price for manufacturing grade milk, or a butter-nonfat dry milk formula price; whichever was lower. Such milk now is classified and priced under the orders on the same basis as milk used to make hard cheeses and certain other manufactured dairy products.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on March 15, 1985 (50 FR 11171), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision. Interested persons were afforded an opportunity to file written exceptions thereon by April 19, 1985, which date was extended to May 20, 1985 (50 FR 13976).

The Deputy Administrator recommended that the orders should not be amended to provide a separate classification and price for milk used to produce butter and nonfat dry milk. The denial was based in part on the fact that the record lacked adequate information to demonstrate the need for adopting the proposed amendments in the Federal order markets. Further deficiencies of the record also led to the recommended denial of the proposals because key questions could not be answered. Thus, it was concluded that butter and powder plants should not be provided a lower price under certain specified market conditions.

The proponent, NMPF, filed exceptions to the recommended decision, indicating that the Department failed to give proper consideration and weight to the evidence presented on the need for a separate class and price for milk used in the production of butter and powder. Furthermore, NMPF claimed that because the Department failed to rule in a manner which was both timely and favorable to them, inequitable marketing conditions arose during the months of December through February 1984–85 when the M-W price exceeded a price level for milk that reflected market values for butter and powder.

Although NMPF did not ask for a reversal of the recommended decision, they did ask that the proceeding be terminated. In their request for termination, NMPF stated that the April 1, 1985, changes in the support purchase prices for nonfat dry milk and cheese will undoubtedly impact on the comparative economic positions of cheese plants and butter-powder plants; reducing the ability of cheese plants,

especially those making barrel cheese, to pay for milk compared to butter-powder plants. Due to the change in the Price Support Program, NMPF contends that the competitive situation faced by butter-powder has changed since the time of the hearing.

In addition, NMPF expressed the view that a decision that could set precedent should not be made on the basis of a lack of information. They agree with the recommended decision's finding that further information is needed on such items as manufacturing capacity and cooperative operations.

The recommended decision was supported in the comment submitted by the Washington State Dairymen's Federation, which stated that they remain opposed to a separate classification for milk used in butter and powder production. One other supporting comment was received.

On the basis of both the lack of adequate record evidence and the request for termination by the proponents, the proceeding with respect to the July 1984 hearing should be terminated. The NMPF's withdrawal of support for this proceeding means that at this time there is no apparent interest by any party in the establishment of a separate class and price for butter and nonfat dry milk as proposed. Since the recommended decision was to deny the adoption of all proposed amendments, recognition should be given to the proponent's request to halt the proceeding.

Termination Order

In view of the foregoing, it is hereby determined that the aforesaid proceeding with respect to proposed amendments to the tentative marketing agreements and to the orders should be and is hereby terminated.

The authority citation for 7 CFR Chapter X continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, D.C. on: June 24, 1985.

Alan T. Tracy,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–15687 Filed 6–28–85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 51

United States Standards for Grades of Greenhouse Cucumbers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would amend the voluntary U.S. Standards for Grades of Greenhouse Cucumbers. Industry has requested that the standards be amended to bring them in line with current cultural and marketing practices. The Agricultural Marketing Service has the responsibility, in cooperation with industry, to maintain current grade standards.

DATE: Comments must be received on or before July 31, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Mizelle, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2188.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA Procedures and Executive Order 12291 and has been designated as "nonmajor." It will not result in an annual effect of $100 million or more. There will be no major increase in cost or prices for consumers, individual industries, Federal, State and local government agencies or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices.

The voluntary United States Standards for Grades of Greenhouse Cucumbers became effective in 1934. Cultural and marketing practices have changed to the extent that the current standards no longer provide industry with an up-to-date means of determining quality and negotiating sales. In October of 1983 representatives of the American Greenhouse Vegetable Growers Association (AGVGA) met with officials of the Fresh Products Branch to discuss amending the standards. AGVGA established a Grades and Standards Committee which, in cooperation with program personnel, developed a "Draft" standard incorporating proposed changes which AGVGA distributed to their members for review and comments. Member comments unanimously endorsed the proposed amendment. AGVGA has formally requested that the standards be amended to bring them in line with current cultural and marketing practices.

Accordingly, this proposed amendment would make the following changes and additions:

—Delete maturity requirements from all grades. The current standards require the cucumbers to be sufficiently mature for slicing purposes but not full-grown or ripe. Hybridization has eliminated the need for this requirement.

—Establish a definition for "Injury" by specific defects which would be added to the other requirements of the U.S. Fancy grade.

—"Clean," practically free from dirt or other foreign material, would become the minimum cleanness requirement for all grades. Current U.S. Fancy and U.S. No. 1 grades must be free from "Damage" caused by dirt and U.S. No. 2 free from "Serious Damage."

—U.S. Fancy grade cucumbers would be required to be free from cuts and the U.S. No. 1 and U.S. No. 2 grades be free from unhealed cuts. The current standards require cucumbers to be "free from unhealed cuts" in the U.S. Fancy and U.S. No. 1 grades and the U.S. No. 2 grade free from serious damage by cuts.

—The minimum length, unless otherwise specified, would be not less than 11 inches for all grades. The minimum length in the current standards is 5½ inches for the U.S. Fancy grade and, unless otherwise specified, 5¼ inches for the U.S. No. 1 grade.

—The "Standard Pack" section would be redefined to reflect current packing practices.

—Add definitions for "Permanent defects" and "Condition defects."

—The grade standards format would be updated.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

PART 51—[AMENDED]

Accordingly, it is proposed that 7 CFR Part 51 be amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended, 7 U.S.C. 1622–1624.

2. Subpart—United States Standards for Grades of Greenhouse Cucumbers and the table of contents thereof are revised to read as follows:

Subpart—United States Standards for Grades of Greenhouse Cucumbers

Sec.

51.3855 General.
51.3856 Grades.
51.3857 Tolerances.
51.3858 Application of tolerances.
51.3859 Standard pack.
51.3860 Definitions.
51.3861 Permanent defects.
51.3862 Condition defects.
51.3863 Classification of defects.

Subpart—United States Standards for Grades of Greenhouse Cucumbers

§ 51.3855 General.

Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

§ 51.3856 Grades.

(a) "U.S. Fancy" consists of cucumbers which meet the following requirements:

(1) Basic requirements:

(i) Clean;

(ii) Well formed;

(iii) Well colored;

(iv) Fresh; and,

(v) Firm.

(2) Free from: Decay, cuts or mechanical injury.

(3) Free from injury by:

(i) Scars;

(ii) Freezing;

(iii) Mosaic or other diseases; and,

(iv) Insects or other means.

(4) Size: Unless otherwise specified, the minimum length shall be not less than 11 inches.

(5) Tolerances: (See § 51.3857)

(b) "U.S. No. 1" consists of cucumbers which meet the following requirements:

(1) Basic requirements:

(i) Clean;

(ii) Fairly well formed;

(iii) Fairly well colored;

(iv) Fresh; and,

(v) Firm.

(2) Free from: Decay and unhealed cuts.

(3) Free from damage by:

(i) Scars;

(ii) Freezing;

(iii) Mosaic or other diseases;

(iv) Insects; and,

(v) Mechanical or other means.

(4) Size: Unless otherwise specified, the minimum length shall be not less than 11 inches.

(5) Tolerances: (See § 51.3857)

(c) "U.S. No. 2" consists of cucumbers which meet the following requirements:

(1) Basic requirements:

(i) Clean;

(ii) Not badly deformed;

(iii) Fairly well colored;

(iv) Fresh; and,

(v) Firm.

(2) Free from: Decay and unhealed cuts.

(3) Free from serious damage by:

(i) Scars;

(ii) Freezing;

(iii) Mosaic or other diseases;

(iv) Insects; and,

(v) Mechanical or other means.

(4) Size: Unless otherwise specified, the minimum length shall be not less than 11 inches.

(5) Tolerances: (See § 51.3857)

§ 51.3857 Tolerances.

In order to allow for variations incident to proper grading and handling in the foregoing grades the following tolerances, by count, shall be permitted in any lot:

(a) *For defects.* Ten percent for cucumbers in any lot which fail to meet the requirements of the specified grade: Provided, that included in this amount not more than 1 percent for decay.

(b) *For off-size.* Five percent for cucumbers in any lot which are below a specified minimum length and 5 percent for cucumbers longer than a specified maximum length.

§ 51.3858 Application of tolerances.

When packed in containers the contents shall be the sample, when in bulk or bulk bins the sample shall consist of at least 25 cucumbers. Individual samples are subject to the following limitations:

(a) For a tolerance of 10 percent or more, individual samples may contain not more than one and one-half times the tolerance specified except that when the lot consists of containers with 18 cucumbers or less, individual containers may contain not more than double the tolerance specified: And provided further, that the average is within the specified lot tolerance.

(b) For a tolerance of less than 10 percent, individual samples may contain not more than double the tolerance specified: Provided, that at least one defective and one off-size cucumber may be permitted in any sample: And provided further, that the average is within the specified lot tolerance.

§ 51.3859 Standard pack.

(a) Each cucumber shall be completely enclosed in a shrink wrapper.

(b) Cucumbers shall be fairly uniform in size and packed fairly tight in layers in containers according to approved and recognized methods.

(1) Fairly uniform in size means that not more than 10 percent, by count, of the cucumbers in any containers shall vary more than 2 inches in length.

(2) In order to allow for variations incident to proper packing, not more than 10 percent, by count, of the containers in any lot may fail to meet these requirements.

§ 51.3860 Definitions.

(a) "Clean" means practically free from dirt or other foreign material.

(b) "Fresh" means bright, not wilted, yellow or exhibiting other symptoms of aging.

(c) "Well formed" means that the shape shall be fairly straight and not more than slightly tapered at one or both ends.

(d) "Fairly well formed" means not materially curved, constricted, or pointed at one or both ends, or otherwise materially misshapen.

(e) "Badly deformed" means badly curved, beaked, bottlenecked, constricted, or otherwise so badly misshapen that the appearance is seriously affected.

(f) "Well colored" means a characteristic green color over practically the entire surface.

(g) "Fairly well colored" means a characteristic green color over two-thirds or more of the surface except for areas affected by foliage shading.

(h) "Injury" means any defect described in § 51.3863 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which slightly detracts from the appearance, or the edible or marketing quality.

(i) "Damage" means any defect described in § 51.3863 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality.

(j) "Serious damage" means any defect described in § 51.3863 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality.

§ 51.3861 Permanent defects.

"Permanent defects" means defects which are not subject to change during

shipping or storage; including, but not limited to factors of shape, scars, or growth cracks and cuts which are so located as to indicate that they occurred prior to packing.

§ 51.3862 Condition defects.

"Condition defects" means defects which may develop or change during shipment or storage; including, but not limited to decay, soft or yellowing and bruises which are so located as to indicate that they occurred after packing.

§ 51.3863 Classification of Defects.

Defects	Injury [1]	Damage [1]	Serious Damage [1]
Bruises	When any indentation is more than 1/10 inch (1.6mm) in depth or exceeds an area of a circle ½ inch (12.7mm) in diameter..	When any indentation is more than ¼ inch (3.2mm) in depth or exceeds an area of a circle ¾ inch (19.1mm) in diameter..	When any indentation is more than ¼ inch (6.4mm) in depth or exceeds an area of a circle 1 inch (25.4mm) in diameter.
Insects	When feeding injury is evident or any insect is present....	When feeding injury materially detracts from appearance or any insect is present..	When feeding injury seriously detracts from appearance or any insect is present.
Scars	When not smooth, or not light colored, and aggregating more than the area of a circle ⅜ inch (9.5mm) in diameter; or smooth and light colored and aggregating more than the area of a circle ¾ inch (19.1mm) in diameter..	When not smooth, or not light colored, and aggregating more than the area of a circle ½ inch (12.7mm) in diameter: or smooth and light colored and aggregating more than the area of a circle 1½ inch (38.1mm) in diameter..	When dark or slightly rough or barklike scars aggregate more than a circle ¾ inch)19.1mm) in diameter; or smooth and light colored and aggregating more than the area of a circle 2 inches (50.8mm) in diameter.

[1] Defect classifications are based on a cucumber 11 inches in length. Correspondingly larger areas are permitted on longer cucumbers and smaller areas on shorter cucumbers.

Done in Washington, D.C. on: June 26, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-15686 Filed 6-28-85; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Modification of General Design Criterion 4 Requirements for Protection Against Dynamic Effects of Postulated Pipe Ruptures

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations that require the protection of structures, systems and components important to safety against dynamic effects of postulated large pipe ruptures. Specifically, the proposed amendments would modify General Design Criterion 4 (GDC 4) to allow demonstration of piping integrity by analyses to serve as a basis for excluding consideration of dynamic effects associated with certain pipe ruptures. These analyses constitute what commonly is referred to as the "leak-before-break" concept. The modification will permit the selective removal of pipe whip restraints and jet impingement shields from operating plants, plants under construction and future plant designs, but will not impact other design requirements such as emergency core cooling system (ECCS) performance and containment design.

DATE: Comment period expires September 2, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration can only be given to comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

Deliver comments to: Room 1121, 1717 H Street, NW., Washington, D.C. between 8:15 a.m. and 5:00 p.m. weekdays.

Copies of the regulatory analysis, documents reference in this notice and comments received may be examined at: the NRC Public Document Room at 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John A. O'Brien, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 443-7854.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Regulatory History
III. Scope of Rulemaking
IV. Proposed Rule
V. Future Rulemaking
VI. Availability of Documents
VII. Finding of No Significant Environmental Impact
VIII. Paperwork Reduction Act Statement
IX. Regulatory Analysis
X. Regulatory Flexibility Act Certification
XI. List of Subjects In 10 CFR Part 50

Background

Recent investigations using both deterministic and probabilistic analyses have demonstrated that for the specific case of the main primary loops of pressurized water reactors, double-ended guillotine or longitudinal ruptures are extremely unlikely. Attempts are currently underway to learn if these findings are applicable to other high energy piping systems, including piping in boiling water reactors.

These deterministic and probabilistic analyses depend on advanced fracture mechanics techniques, and include investigations of potential indirect failure mechanisms which could lead to pipe rupture. The objective of this approach (hereafter referred to as leak-before-break) is to demonstrate by analysis that the detection of small flaws, either by inservice inspection or by leakage monitoring systems, is assured long before the flows can grow to critical or unstable sizes and lead to large break areas such as the double-ended guillotine pipe rupture.

General Design Criterion 4 (GDC 4), Appendix A, 10 CFR Part 50, states: "Criterion 4—Environmental and missile design bases. Structures, systems, and components important to safety shall be designed to accommodate the effects of and to be compatible with the environmental conditions associated with normal operation, maintenance, testing, and postulated accidents, *including loss-of-coolant accidents.* These structures, systems, and components shall be appropriately protected against *dynamic effects, including the effects of missiles, pipe whipping, and discharging fluids, that may result from equipment failures and from events and conditions outside the nuclear power unit."* (emphasis added)

The "Definitions and Explanations" section of Appendix A defines a "loss of coolant accident" as follows: "Loss of coolant accidents. Loss of coolant accidents mean those postulated accidents that result from the loss of reactor coolant at a rate in excess of the capability of the reactor coolant makeup system from breaks in the reactor coolant pressure boundary, *up to and including a break equivalent in size to the double-ended rupture of the largest pipe of the reactor coolant system.*" (emphasis added)

GDC 4 and the definition of a "loss of coolant accident" taken together have been conservatively appled to require all nuclear power reactor to employ massive pipe whip restraints and jet impingement shields to mitigate the dynamic effects of a postulated guillotine rupture in the largest pipes of the reactor coolant system. It can now be shown that these protective devices actually degrade overall safety because they reduce the effectiveness of inservice inspection, and because of difficulties and potential errors in installation or reinstallation, that could actually increase the likelihood of pipe rupture. The past serveral years have witnessed the development and experimental validation of analysis methods described above to demonstrate piping integrity in specific situations. This concept is fundamental in deciding whether or not guillotine pipe ruptures should be considered in formulating regulatory requirements.

The need and urgency for addressing the issue stem from the widespread acceptance of the analysis results and the research findings pertaining to pipe rupture coupled with increasing confidence in its applicability. Prior to the fast few years, there was no sound technical basis for excluding certain pipe ruptures from the design basis. Now it is clear that it is possible to defend the exclusion of pressurized water reactor (PWR) primary loop double-ended guillotine pipe ruptures, and that the scope may be extened to other piping, including piping in boiling water reactors. Rulemaking action will promote investigations to determine which other situations will permit the removal of pipe whip restraints and jet impingement shields. Acceptance criteria for generally applying these results pertaining to leak-before-break have been published by the NRC staff in "Report of the U.S. Nuclear Regulatory Commission Piping Review Committee", NUREG–1061, Volume 3, and are being proposed by the American Nuclear Society in ANS–58.2 entitled "Design Basis for Protection of Light Water Nuclear Power Plants Against Effects of Postulated Pipe Rupture."

In summary, the requirements of GDC 4 as applied in the context of the definition of LOCA have led to a situation where protective devices have been added to nuclear power plants to forestall events which are now regarded as extremely unlikely. These protective devices reduce safety and increase worker radiation exposures. A need exists to allow exclusion from compliance with GDC 4 requirements of certain pipe ruptures when supported by acceptable analyses:

Regulatory History

In 1975, the NRC staff was informed of newly defined asymmetric blowdown loads that result by postulating rapid-opening double-ended ruptures of PWR primary piping at the most adverse location in the piping system, that is, inside the reactor cavity. This problem was later designated as Unresolved Safety Issue A–2 (USI A–2). In June of 1976, the staff requested that the owners of operating PWRs evaluate their primary systems for these asymmetric loads. In response, owner groups submitted probabilistic studies and proposals for augmented inservice inspection. In a letter to the owners of all operating PWRs in January 1978, the staff concluded that the existing data base was not sufficient to support the findings of the probability studies and that inservice inspection alone was not an acceptable resolution.

As a consequence, plant analyses for asymmetric loads were submitted for review during 1980. It became clear after reviewing these analyses that some plants might require extensive modifications. In parallel with the preparation of the plant analyses, Westinghouse undertook a deterministic fracture mechanics evaluation to demonstrate that an assumed double-ended rupture is not a credible design basis event for PWR primary piping. These efforts eventually led to the submission of two reports: "Mechanistic Fracture Evaluation of Reactor Coolant Pipe Containing a Postulated Circumferential Throughwall Crack," WCAP 9558, Rev. 2., May 1981, and "Tensile and Toughness Properties of Primary Piping Weld Metal For Use In Mechanistic Fracture Evaluation," WCAP 9787, May 1981.

Also during 1981, the nine volumes of NUREG/CR–2189 entitled "Probability of Pipe Fracture in the Primary Coolant Loop of a PWR Plant" were published by Lawrence Livermore National Laboratory under contract to the Office of Nuclear Regulatory Research. Using different methodologies, both the Westinghouse and Lawrence Livermore National Laboratory studies supported the conclusion that double-ended pipe ruptures in PWR primary loop piping are extremely low-probability events. The staff reviewed the Westinghouse and Lawrence Livermore National Laboratory documents and accepted the findings presented therein. In the process of resolving USI A–2, both the Westinghouse and Livermore studies were presented to the Advisory Committee on Reactor Safeguards (ACRS) to obtain its concurrence on the staff's evaluation of the results. In a June 14, 1983 letter to the NRC Executive Director for Operations, the ACRS stated:

> We believe it is now appropriate and fitting to apply [fracture mechanics] to the analysis of Task Action Plan A–2 (USI A–2) dealing with the treatment of Asymmetric Blowdown Loads on Reactor Primary Coolant Systems. Fracture mechanics analysis clearly indicates that in PWR primary piping a substantial range of stable crack sizes exists between those which give detectable leaks, and the much larger size that results in a sudden failure. That is, there is no known mechanism in PWR primary piping material for developing a large break without going through an extended period during which the crack would leak copiously.
>
> However, any relaxation of requirements to cope with double-ended guillotine break should be preceded by rigorous reexamination of the integrity of heavy component supports under all design conditions.

NRC's "Committee to Review Generic Requirements" (CRGR) has the responsibility to review and recommend to the Executive Director for Operations approval or disapproval of requirements to be imposed by the staff on power reactors. Because the application of leak-before-break technology in lieu of postulated large pipe ruptures is at variance with current NRC regulations, the proposed staff actions regarding USI A–2 were presented to the CRGR.

The CRGR views on the leak-before-break concept were reported in the minutes of CRGR meeting number 47, dated October 14, 1983, as indicated below:

> The CRGR observed that the staff findings concerning leak before break have broad implications that go beyond resolution of the A–2 issue affecting 13 (sic) PWR licensees. These findings and the technical justifications in support of the findings could extend to other break locations and to assumptions previously made for piping loops and components of the reactor coolant systems, for piping connected to the coolant system and perhaps to the piping of other systems in the plant. This broader applicability of the leak-before-break criteria could have potentially large positive benefits

in terms of the degree to which unneeded and potentially counter-productive hardware (e.g., piping restraints, jet imingment barriers etc.) continues to be required in plant construction. In this regard, the CRGR was advised by staff that the leak-before-break criteria could be more broadly extended to apply to the large size piping and components in the PWR reactor coolant system.

Generic letter 84–04, dated February 1, 1984, entitled "Safety Evaluation of Westinghouse Topical Reports Dealing With Elimination of Postulated Pipe Breaks In PWR Primary Main Loops" allowed licensees to request exemptions from the requirements of GDC 4 with respect to asymmetric blowdown loads resulting from discrete breaks in the primary main coolant loop (USI A–2). This use of exemptions, however, is limited and indicates a need to address the issue in rulemaking. This rulemaking is being initiated to permit this new approach to piping behavior and to obtain public comment on the proposed course of action.

Scope of Rulemaking

The direct dynamic effects of pipe rupture are missile generation, pipe whipping, pipe break reaction forces and discharging fluids. The influence of discharging fluids includes jet impingement forces, decompression waves within the intact portion of the piping system and pressurization in cavities, subcompartments and compartments.

There are two reasons for the decision to treat only dynamic effects in this rulemaking as opposed to other related requirements which could be interpreted to involve postulated pipe ruptures. First, loss-of-coolant accidents that place requirements on safety systems and structures include breaches in the reactor coolant pressure boundary other than the double-ended pipe rupture. Second, studies completed to date indicate that the only adverse safety implications associated with postulating pipe rupture are those resulting from consideration of the dynamic effects associated with pipe rupture. The placement of pipe whip restraints and jet impingement shields degrades plant safety, reduces the accessibility for and effectiveness of inservice inspection, increases inservice inspection radiation dosages and adversely affects construction and maintenance economics. Thus, significant safety benefits accrue when more realistic assumptions are made concerning the dynamic effects associated with postulated pipe ruptures. Current design margins in the primary loop heavy component supports are to be maintained. Existing heavy component supports designed for the dynamic effects of pipe rupture and seismic events are not affected. New plants will be designed with supports which have margins comparable and equivalent to those margins now present.

Proposed Rule

The language of the proposed amendment to the rule specified "conditions consistent with the design basis for piping." The design basis for the piping includes the Code of Federal Regulations, that is, applicable general design criteria, applicable sections of NUREG–0800 (Standard Review Plan), applicable Regulatory Guides and applicable industry standards (Section III of the ASME Boiler and Pressure Vessel Code). The proposed rules consists of added text at the end of GDC 4 which permits the use of analyses to exclude dynamic effects of certain pipe ruptures.

The amendment would permit the demonstration of piping integrity by analyses such as a fracture mechanism evaluation including the effects of fatigue and, if relevant, stress corrosion, in additon to an investigation of potential indirect failure mechanisms which could lead to pipe rupture.

Modification of the licensed configuration of operating plants by the removal of pipe whip restraints and jet impingement shields involves an unreviewed safety question under 10 CFR 50.59. Licensees of operating plants desiring to make modifications beyond the scope of this amendment will be required to submit a license amendment for NRC approval in accordance with revised General Design Criterion 4. The license amendment shall also include provisions for an augmented leakage detection system or other license conditons developed during the rulemaking action.

Similarly, applicants for an operating license seeking design modifications beyond those approved in Generic Letter 84–04 will be required to submit an amendment to the application for NRC approval in accordance with 10 CFR 50.35(c). The amendment to the application shall also include provisions for any license conditions developed during the rulemaking action.

The supporting safety analysis must demonstrate from the results of a fracture mechanics analysis that a substantial range of stable pipe crack sizes exist for an extended period which provide detectable leaks, and that he fluid systems piping will not rupture under these conditions consistent with the design basis for the piping.

It is estimated that this rulemaking action will reduce total occupational radiation exposure by amounts measured in tens of thousands of man-rem and that total cost savings will exeed $100 million.

Future Rulemaking

The amendment proposed below is limited to the primary coolant loop piping in pressurized water reactors. It is therefore equivalent in scope to the staff actions taken in Generic Letter 84–04 regarding USI A–2 and to the exemptions to GDC 4 which were authorized in that connection. The Commission will, in the near future, propose a broader amendment to GDC 4 which would allow application of the new technical approach outlined above to all reactor piping in all reactor types providing adequate technical justification can be supplied for each new application.

Availability of Documents

1. Copies of NUREG/CR–100, Volume 3, may be purchased by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C., 20013–7082, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

2. ANS–58.2, "Design Basis for Protection of Light Water Nuclear Power Plants Against Effects of Postulated Pipe Rupture," is available from The American Nuclear Society, 555 North Kensington Avenue, La Grange Park, Illinois 60525.

3. A nonproprietary version of the Westinghouse report, "Mechanistic Fracture Evaluation of Reactor Coolant Piping Containing a Postulated Circumferential Throughwall Crack," WCAP 9558, Rev. 2, May 1981, is available n the NRC Public Document Room, 1717 H Street NW, Washington, D.C.

4. A nonproprietary version of the Westinghouse report, "Tensile nd Toughness Properties of Primary Piping Weld Metal For Use In Mechanistic Fracture Evaluation," WCAP 9787, May 1981, is available in the NRC Public Document Room.

5. Copies of NUREG/CR–21189, Volumes 1–9, may be purchased by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013–7082, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

6. ACRS Letter to William J. Dircks, NRC Executive Director of Operations, dated June 14, 1983, dealing with fracture mechanics, is available in the NRC Public Document Room.

7. Minutes of CRGR Meeting Number 47, dated October 14, 1983, are available in the NRC Public Document Room.

8. Generic Letter 84–04, dated February 1, 1984, is available in the NRC Public Document Room.

Finding of No Significant Environmental Impact

The Commission has determined under the National Environment Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. Although certain plant hardware may not be reinstalled after removal for inspections, this will not alter the environmental impact of the licensed activities. It is anticipated that removed hardware would be stored at the plant site to be available for any potential future needs. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from John A. O'Brien, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 443–7854.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0011.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW, Washington, DC. Single copies of the analysis may be obtained from John A. O'Brien, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 443–7854.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definitions of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 68 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100—50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In Appendix A to Part 50, General Design Criterion 4 is revised to read as follows:

Appendix A—General Design Criteria for Nuclear Power Plants

* * * * *

Criteria

I. Overall Requirements

* * * * *

Criterion 4—Environmental and missile design bases. Structures, systems, and components important to safety shall be designed to accommodate the effects of and to be compatible with the environmental conditions associated with normal operation, maintenance, testing, and postulated accidents, including loss-of-coolant accidents. These structures, systems, and components shall be appropriately protected against dynamic effects, including the effects of missiles, pipe whipping, and discharging fluids, that may result from equipment failures and from events and conditions outside the nuclear power units. ***However, the dynamic effects associated with postulated pipe ruptures of primary coolant loop piping in pressurized water reactors may be excluded from the design basis when analyses demonstrate the probability of rupturing such piping is extremely low under design basis conditions.***

* * * * *

Dated at Washington, D.C., this 25th day of June 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–15756 Filed 6–28–85; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-54-AD]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspections for cracks in the flange and in certain fastener holes in fuselage frame 47 and modification and repairs, as necessary, on Airbus Industrie Model A300 B2 and B4 series airplanes. There have been reports of cracks in these locations and if these cracks are not detected and repaired,

the potential exists for rapid decompression of the airplane.

DATES: Comments must be received on or before August 16, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–54–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Aerospace Engineer, Standardization Branch, ANM–113; telephone (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–54–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The French Civil Aviation Authority (DGAC) has issued two Consigne de Navigabilité which mandate compliance with Airbus Industrie (AI) Service Bulletins A300–53–194 and A300–53A193. These service bulletins prescribe inspections, and corrective actions, as necessary of the following in-service difficulties:

A. Cracks have been reported in fastener hole A of fuslage frame 47 on airplanes which had accumulated between 7,000 and 17,000 landings. Inspection of the Model A330 fatigue specimen revealed that a crack had developed in fastener hole B of fuselage frame 47. This crack developed to 35,500 simulated landings. AI Service Bulletin A300–53–194 prescribes eddy current inspection of fastener holes A and B and modification and repairs, as necessary.

B. During routine maintenance, cracks were discovered in the inboard flange of fuselage frame 47 (LH and RH). Some of these cracks had a length of more than 5 inches and were found on airplanes that had accumulated between 10,500 and 12,100 landings. In some instances the origin of the cracks was stress corrosion, but in others the origin was fatigue related. However, the propagation of the cracks was, in all cases, due to fatigue. AI Service Bulletin A300–53A193 prescribes inspection for cracks of frame 47, and repair, as necessary.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the corrective actions mentioned above.

It is estimated that 34 U.S. registered airplanes would be affected by this AD, that it would take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $54,400.

For these reasons the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.85; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, serial numbers as listed in each applicable service bulletin, certificated in any category. To prevent propagation of cracks in fuselage frame 47, accomplish the following within ninety (90) days after the effective date of this AD, or upon reaching the threshold number of landings indicated in each paragraph below, whichever occurs later, unless already accomplished:

A. Prior to the accumulation of 6,000 landings, inspect by eddy current fastener holes A and B of frame 47, LH and RH, in accordance with the accomplishment instructions of Airbus Industrie (AI) Service Bulletin A300–53–194, Revision 1, dated November 12, 1984:

(1) If no cracks are found in the fastener holes, proceed with a cold expansion and install "bull nose" light interference fasteners in holes A, B, C, and D, LH and RH, in accordance with the service bulletin instructions within the next 1,000 landings.

(2) If a crack is found in the bore of fastener hole A, determine the crack depth and proceed as follows, in accordance with the service bulletin:

(i) If crack depth is less than 1 mm, repair prior to the next 1,000 landings after detection of the crack.

(ii) If crack depth is greater than or equal to 1 mm, perform a more precise eddy current check to determine crack length (equal to the precise depth measurement). Then, if the crack depth is between 1 mm and 3 mm, repair within 1,000 landings after crack detection and if the crack depth is between 3 mm and 6 mm repair within 500 landings after crack detection. If the crack depth is greater than or equal to 6 mm, inspect visually or with a dye penetrant. If the crack can be

detected visually, repair before further flight, but if it cannot be detected visually, repair within the next 50 landings after detection.

(3) If cracks are detected in the bore of fastener hole B, repair in accordance with the service bulletin as follows:

(i) Depth of crack less than or equal to 0.40 mm: repair within the 1,000 landings following crack detection.

(ii) Depth of crack greater than 0.40 mm: repair before further flight.

B. Visually inspect for cracks in fuselage frame 47 in accordance with Airbus Industrie Service Bulletin A300-53A199, dated March 14, 1984.

For B2 series airplanes, this inspection must be accomplished prior to the accumulation of 5,000 landings or within the next 300 landings after the date of this AD, whichever occurs later.

For B4 series airplanes, this inspection must be accomplished prior to the accumulation of 8,000 landings or within the next 300 landings after the effective date of this AD, whichever occurs later.

(1) If no cracks are detected, no further action is required.

(2) If a crack is detected, proceed as follows:

(i) If crack length is 7 mm or less, repeat the above inspection at intervals not to exceed 300 landings;

(ii) If crack length is greater then 7 mm, repair before further flight in accordance with the service bulletin instructions.

(3) Repair of cracks in accordance with the service bulletin instructions constitutes terminating action for the inspection requirements of this paragraph.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 17, 1985.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-15662 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-55-AD]

Airworthiness Directives; McDonnell Douglas Model DC-8-70 Series Aircraft, With an Auxiliary Power Unit (APU) Installed

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require modification of the auxiliary power unit (APU) installed on DC-8-70 series aircraft. This action is prompted by an incident in which the exhaust door shut inadvertently, causing a blowout of the exhaust duct. As a result, exhaust gas discharged into the cargo compartment and caused wiring and structural damage. This action is necessary to minimize the potential of APU exhaust duct failure and resultant wiring and structural damage.

DATE: Comments must be received on or before August 12, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-55-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2835.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-55-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Of twelve (12) APU's in service on the DC-8-70 series aircraft, one has experienced a failure of the exhaust door and discharge of the gas into the cargo compartment, resulting in wiring and structural damage. The sequence of events is believed to have been as follows: The exhaust door drift toward the closed position was caused by stray voltage, and as the door reached the half-closed position, it was fully closed by the exhaust blast. The sudden over-pressurization of the APU module caused the exhaust duct to separate and allowed the gas to enter the cargo compartment. The gas flow impinged on an area in which wiring was located and damaged both the wiring and the structure. As the door was closed, the drive shaft was twisted about 45 degrees.

McDonnell Douglas Corporation has issued DC-8-70 Service Bulletin (S/B) 49-2 dated May 9, 1985, which defines removal modification, inspection, and reinstallation procedures necessary to avoid the potential problem of stray voltage inadvertently driving the door towards the closed position during APU operation.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive (AD) is being proposed which would require compliance with McDonnell Douglas DC-8-70 Service Bulletin 49-2, dated May 9, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 18.5

manhours per APU to accomplish the required actions, and that the average labor cost would be $40 per manhour. There is no charge for the kits and the APU modifications. Based on these figures, the total cost impact of this AD to U.S. operators would be $5,920.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-8-70 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.85; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-8-70 series airplanes, equipped with Auxiliary Power Units. Compliance is required as indicated.

To preclude potential APU exhaust door failures and resulting wiring and structural damage, accomplish the following, unless already accomplished:

A. Within six (6) months after the effective date of this AD, complete the modifications defined in McDonnell Douglas DC-8-70 Service Bulletin 49-2, dated May 9, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. The modifications involve removal of the APU; modification of the APU module and control boxes; revision of the APU control system sensing and firex control wiring; replacement of three generator phase circuit breakers; and the APU control and fuel supply circuit breakers; inspection of the wire routing; and reinstallation of the APU.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on June 11, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-15603 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-56-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1165

AGENCY: Federal Aviation Adminstration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require the inspection of all generator power feeder cables on all McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes and modification of the power feeder cable installation to preclude premature chafing on all McDonnell Douglas Model DC-9-81 and DC-9-82 series airplanes. This action is prompted by a report of an APU generator feeder cable electrically shorting to the airplane structure and causing smoke to enter the cabin area. This proposed AD is required to aid in the elimination of a potential ignition source for fire.

DATE: Comments must be received on or before August 12, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-56-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Alan T. Shinseki, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-56-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

One DC-9-82 operator reported smoke being emitted from the floor area during ground maintenance caused by an APU generator feeder cable shorting to the seat track. Evidence of insulation chafing due to similarly misrouted

generator power feeder cables was found by inspection of other in-service DC-9-81 and DC9-82 airplanes. Four other cases of chafed generator power feeder cables resulting in shorting to the airplane structure have been reported by U.S. operators.

The manufacturer conducted an inspection of its DC-9-81/82 production line which revealed numerous generator power feeder cable routing discrepancies that may contribute to premature cable insulation wear. An inspection of selected in-service airplanes of prior McDonnell Douglas DC-9 models was also conducted. It was concluded that while some maintenance related discrepancies were found, no abnormal wear conditions existed.

The manufacturer has issued McDonnell Douglas DC-9 Service Bulletin 24-78, which provides the prescribed maintenance procedures for all DC-9 and C-9 model airplanes and the modification instructions to correct the generator power feeder cable installation on McDonnell Douglas Model DC-9-81/-82 series airplanes.

This AD proposes a one-time inspection of the generator power feeder cables on all McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes and modification of the generator power feeder cable installation on McDonnell Douglas DC-9-81/-82 model airplanes.

It is estimated that 669 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 40 to 92 manhours, per airplane to accomplish the required actions, and the average labor costs would be $40 per manhour. The actual costs of modification parts for McDonnell Douglas Model DC-9-81 and DC-9-82 series airplanes are estimated to be $250 per airplane. Based on these figures, the total cost impact of this AD on the U.S. fleet is estimated to be $1,738,970.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any McDonnel Douglas Model DC-9 and C-9 (Military) series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.85; and 49 CFR 1.47

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to all McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, fuselage numbers 1 through 1165, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To eliminate a potential fire ignition source from the generator power feeder cable installation, accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), for all McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, inspect and repair, as necessary, power feeder cable installation in accordance with the Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 24-78, dated April 9, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Within 12 months after the effective date of this airworthiness directive (AD), modify the power feeder cable installation on all McDonell Douglas Model DC-9-81 and DC-9-82 series airplanes in accordance with the Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 24-78, dated April 9, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Alternates means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operative airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on June 11, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-15061 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ASO-8]

Proposed Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend and establish several Federal Airways in south Georgia and north Florida to enhance the flow of air traffic in this area.

DATE: Comments must be received on or before August 15, 1985.

ADDRESSES: Send comments on the proposed in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 85-ASO-8, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis

supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ASO-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposed contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend VOR Federal Airways V-5, V-51, V-154, V-295, V-321, V-362, V-537 and V-579 and establish new V-578. These airway amendments and establishment will enhance the flow of air traffic in south Georgia and north Florida by eliminating bends in airways and establishing a new direct airway. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V-5—[Amended]

By removing the words "From Dublin, GA, via Athens, GA" and substituting the words "From Wiregrass, AL; Albany, GA; Vienna, GA; Dublin, GA; Athens, GA"

V-51—[Amended]

By removing the words "INT Alma 342° and Dublin, GA, 167° radials,"

V-154—[Amended]

By removing the words "INT of Dublin 122° and Savannah, GA, 279° radials; to Savannah." and substituting the words "to Savannah, GA."

V-295—[Amended]

By removing the words "to Tallahassee, FL" and substituting the words "Tallahassee, FL; to Eufaula, AL"

V-321—[Amended]

By removing the words "From Albany, GA, via" and substituting the words "From Marianna, FL; via Albany, GA;"

V-362—[Amended]

By removing the words "From Alma, GA, via INT Alma 311° and Vienna, GA, 123° radials; Vienna" and by substituting the words "From Brunswick, GA; via Alma, GA; Vienna, GA"

V-537—[Amended]

By removing the words "Greenville, FL" and substituting the words "Greenville, FL; Moultrie, GA; to Macon, GA"

V-578—[Amended]

By removing the words "to Cross City, FL" and substituting the words "Cross City, FL; Valdosta, GA; Tift Myers, GA; to Vienna, GA"

V-578—[Amended]

From Albany, GA; Tift Myers, GA; to Alma, GA.

Issued in Washington, D.C., on June 21, 1985.

John Watterson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-15060 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 85-ASO-6]

Proposed Alteration of VOR Federal Airways and Jet Routes; Fort Myers, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend various Federal Airways and Jet Routes in southern Florida. The Fort Myers, FL, Very High Frequency Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC) is being relocated and renamed the Lee County, FL, VORTAC.

DATE: Comments must be received on or before August 15, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 85-ASO-6, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–ASO–6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Afairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.123 § 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to amend the alignment and descriptions of various VOR Federal Airways and Jet Routes in the vicinity of Fort Myers, FL, VORTAC. Due to commercial encroachment and possible loss of land lease, the Fort Myers, FL, VORTAC is being relocated to an on-airport site (lat. 26°31'49" N., long. 81°46'37" W.) and is being renamed the Lee County, FL, VORTAC. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact in so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

VOR Federal airways and jet routes, Aviation safety.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. § 71.123. is amended as follows:

V–7—[Amended]

By removing the words "via Fort Myers, FL;" and substituting the words "via Lee County, FL;"

V–35—[Amended]

By reveaving the words "and Fort Myers, Fl, 137° radials; Fort Myers;" and substituting the words "and Lee County, FL, 137°T(126°M) radials; Lee County;

V–157—[Amended]

By removing the words "The airspace at and above 7,000 feet MSL which lies within the Lake Placid MOA is excluded during the time the Lake Placid MOA is activated."

V–225—[Amended]

By removing the words "Fort Myers, FL;" and substituting the words "Lee County, FL;"

V–441—[Amended]

By removing the words "Lakeland, FL, 080° radials" and substituting the words "Lakeland, FL, 083°T(082°M) radials"

V–521—[Amended]

By removing the words "Fort Myers, FL, 101° radials; Fort Myers; INT Fort Myers 022°" and substituting the words "Lee County, FL, 098°T(097°M) radials; Lee County; INT Lee County 013°T(012°M)"

V–539—[Amended]

By removing the words "Fort Myers, FL, 163°T(162°M) radials; to Fort Myers" and substituting the words "Lee County, FL, 166°T(165°M) radials; to Lee County"

V–579—[Amended]

By removing the words "From Ft. Myers, FL, via INT Ft. Myers 311°" and substituting the words "From Lee County, FL, via INT Lee County 312°T(311°M)"

PART 75—[AMENDED]

3. The authority citation for Part 75 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) 1354(a), 1510; Executive order 10854; 49 U.S.C. 106(g) Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

4. Section 75.100 is amended as follows:

J–41—[Amended]

By removing the words "From Key West, FL, via INT of Key West 356° and St. Petersburg, FL 151° radials; St. Petersburg" substituting the words "From Key West, Fl, via Lee County, FL, St. Petersburg, FL"

J–75—[Amended]

By removing the words "Fort Myers, FL; INT Fort Myers 345°" and substituting the words "Lee County, FL; INT Lee County 343°T(342°M)"

Issued in Washington, D.C., on June 21, 1985.

John Watterson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–15059 Filed 6–28–85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201, 211, 514, and 559

[Docket No. 83N-0076]

Approval of Bulk New Animal Drug Substances for Use by Licensed Veterinarians

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the animal drug regulations to establish criteria and procedures for approval of new animal drug applications (NADA's) for bulk new animal drug substances for use by or on the prescription of licensed veterinarians. Veterinarians will be able to obtain approved bulk new animal drug substances for compounding drugs for use in their private professional practices, and pharmacists will be able to compound such substances on the prescription of a veterinarian.

DATE: Comments by September 30, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Frank G. Pugliese, Center for Veterinary Medicine (HFV-101), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION:

Introduction

The Federal Food, Drug, and Cosmetic Act (the act) requires that new animal drugs (i.e., drugs that are intended for use in animals and that are not generally recognized by qualified experts as safe and effective for their intended use) be approved by FDA prior to distribution. FDA regulations preclude the distribution of bulk new animal drug substances intended for veterinary purposes, except for use in the preparation of approved drug products (finished dosage form drugs) by the sponsor of the NADA for the drug product. An "animal drug substance" is an active ingredient that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure or any function of an animal's body. Under this proposed rule "new animal drug substance" is an animal drug substance that, when used in the preparation of a drug product intended for animal use, causes the drug product to be a new animal drug. Under this proposed rule a "bulk new animal drug substance" is defined as a new animal drug substance intended for use by a veterinarian or pharmacist in compounding a finished dosage form new animal drug.

Some veterinarians and drug distributors have in the past asked FDA to permit distribution of bulk new animal drug substances to veterinarians for compounding and use in the veterinarians' practices. Neither the drug substance nor the finished dosage form would be subject of an approval. The requests have been made because some veterinarians prefer not to purchase approved drugs in finished dosage form, which can be more expensive. FDA has consistently refused to sanction such a practice, based on its view that the act does not authorize the practice, and has taken regulatory action to prevent distribution of unapproved bulk new animal drug substances to veterinarians. As a result, some view FDA as interfering with the practice of veterinary medicine. Also, some argue that the substances are not new animal drugs and, therefore, are not required to have FDA approval.

On September 11, 1981, the Presidential Task Force on Regulatory Relief requested that FDA reevaluate its bulk new animal drug substance policy and the restrictions it places on use of bulk pharmaceuticals by veterinarians. The Task Force asked the agency to determine whether there is a continuing need for the current statutory requirements and, if not, to recommend remedial legislative action. In response to this request and to continuing requests from bulk new animal drug substance suppliers and veterinarians, FDA's Center for Veterinary Medicine (CVM) formed a Bulk Drug Task Force, comprised of agency staff members representing a variety of disciplines. The Director of CVM asked the Task Force to review CVM's policy, explore alternatives, and recommend a course of action. The Task Force submitted its report on February 4, 1982. Availability of the CVM Task Force report was announced in the **Federal Register** of July 29, 1983 (48 FR 34512).

The CVM Task Force Report

The CVM Task Force concluded that the language as well as the purpose of the act supported the existing FDA policy. To accomplish its goal of protecting the public health, Congress provided for premarketing approval of drugs. The act requires that all new animal drugs undergo premarketing approval to assure that they are safe, effective, properly labeled, and manufactured under high standards of quality before commercial distribution. The act does not provide an exemption from the premarketing approval requirements for bulk new animal drug substances that are to be used or dispensed by veterinarians.

The Task Force strongly opposed any amendment to the act that would permit the unrestricted sale of such substances to veterinarians. The Task Force was concerned that the distribution of bulk new animal drug substances for use in unapproved finished dosage form products could compromise the safety and wholesomeness of food products from treated animals and thus jeopardize the health of the consumer. Sanctioning such distribution could also undermine the new animal drug approval system, because sponsors of approved drugs would be at a competitive disadvantage. This would decrease incentive to conduct research (e.g., target animal safety, effectiveness, human food safety) and develop new products, thereby discouraging sponsors from seeking approval for their products.

Permitting the marketing of bulk new animal substances for use in unapproved finished dosage forms might also cause the proliferation of foreign sources of drug substances over which FDA is able to exercise only limited control. It could result in the distribution and use of bulk new animal drug substances that are not manufactured under current good manufacturing practice (CGMP). Moreover, although the unapproved finished dosage form drugs compounded from such substances may be similar to approved drug products, they may differ in bioavailability (i.e., the amount of the drug substance that reaches the site of pharmacological action), and therefore may be unsafe or ineffective. In addition, adverse drug reactions would most likely not be reported because unapproved drugs are not subject to the reporting requirements of the act.

Based on these concerns, the CVM Task Force concluded that continued refusal to sanction distribution to veterinarians of unapproved bulk new animal drug substances intended for use in animals is necessary. Nevertheless, because of the continued interest of some veterinarians in the use of bulk new animal drug substances, and because of its belief that veterinarians are qualified to compound certain drugs into finished dosage form, the Task Force recommended the development and implementation of a premarket approval procedures for bulk new animal drug substances. Such substances would be approved if an

applicant demonstrated that the substances could be compounded by practitioners into finished dosage drugs of acceptable quality and if the finished dosage forms, as they would be formulated by practitioners, had themselves been shown to be safe and effective for one or more specific conditions or indications. The Task Force recommended that the agency develop procedures and criteria for submission and approval of NADA's for such products.

After careful review of the CVM Task Force report, the agency has concluded that it agrees with the Task Force findings. The agency believes that provisions should be made for the approval of NADA's for bulk new animal drug substances for compounding by veterinarians for use in their practices. The agency believes that the compounding of such products could also be done by pharmacists, so that veterinarians will have the option of compounding their own drugs, or having pharmacists compound such drugs on their prescription.

The existing NADA approval regulations are not structured to facilitate approval of applications for bulk new animal drug substances that are to be formulated into finished form by practitioners or pharmacists. Moreover, approval of such applications may have a significant impact on the public, veterinarians, pharmacists, and the drug industry. Therefore, FDA is proposing a new regulation, and is also proposing conforming modifications to existing regulations.

When it published the notice of availability of its Task Force report in July 1983, the agency reaffirmed its position that unapproved bulk drugs for veterinary use may not be sold except to sponsors of approved new animal drug applications. The agency will continue to recommend regulatory action in appropriate cases, notwithstanding the pendency of this proposal.

Legal Considerations

The agency's position is that a bulk new animal drug substances requires approval prior to use, even if that use is by a veterinarian. As noted above, some have challenged that position. The legal basis supporting the agency's view is as follows:

A substance intended for use in a finished dosage form drug is itself a drug, even if it is considered to be a component. See section 201(g)(1)(D) of the Act (21 U.S.C. 321(g)(1)(D)), which states that an article intended for use as a component of any of the articles specified in section 201(g)(1) (A), (B), or (C) of the act is a drug. As a result, even if the substances that are subject of this notice are regarded as components, they are subject to the adulteration and misbranding provisions of the act.

Thus, if a bulk drug substance is labeled for veterinary medical uses, and the substance is not generally recognized as safe and effective for those uses, it is a new animal drug substance, as well as a new animal drug within the meaning of section 201(w) of the act. Unless it is subject of an approved application, it is unsafe as provided in section 512 of the act (21 U.S.C. 360b) and is, therefore, adulterated under section 501(a)(5) of the act (21 U.S.C. 351(a)(5)).

Section 201(w) of the act defines "new animal drug," in the case of noncertifiable drugs, by reference to the conditions of use prescribed, recommended, or suggested in the labeling of a drug. (A certifiable antibiotic intended for animal use is, *per se*, a new animal drug without reference to its labeling.) Some persons who have marketed bulk new animal drug substances to veterinarians have contended that if such substances are not labeled for specific indications they do not fall within the definition of "new animal drug" or "new animal drug substance" and, therefore, can be legally marketed because they are not adulterated. FDA believes that such drugs, nevertheless, meet the statutory definition of "new animal drug." If, for example, they are labeled for "veterinary use" or "for animal use" their labeling suggests that they are intended for use for any and all veterinary medical indications when formulated into finished dosage forms. Because the finished dosage forms could not be generally recognized as safe and effective for all such indications, the drug substances are new animal substances. See, e.g., *United States* v. *Articles of Drug * * * Sulfachlorpyridazine Acid * * * Dexamethazone USP * * *,* Civil No. F 74–155 (E.D. Cal. 1977). Moreover, such substances are new animal drug substances even if they do not bear labeling, where their intended use is in a finished dosage form drug that is a new animal drug as shown in its labeling. See, e.g., *United States* v. *An Article of Drug, Etc., * * * Ethinamide-INH,* No. 67C288 (E.D.N.Y., August 19, 1967).

Even if the substances are not "new animal drug substances," they must bear adequate directions for use, as required by section 502(f)(1) of the act and as shown below. Otherwise they are misbranded. (If they bear such directions, and the drug is not generally recognized as safe and effective for the uses indicated, the drug is a new animal drug.) Sections 502(f) and 503(a) of the act (21 U.S.C. 352(f) and 353(a)) provide for exemption from the statutory "adequate directions" requirement. FDA regulations in Subpart D of 21 CFR Part 201 provide for exemption from the "adequate directions for use" requirements for bulk drug substances, but only under certain circumstances not applicable in this instance. The agency has not provided exemptions from the "adequate directions for use" requirement for bulk new animal drug substances that are distributed to veterinarians for use in finished dosage forms that are never subject of an approved NADA.

Moreover, the agency believes that such exemptions are not authorized by the statute for the following reasons. The act does not provide for an exemption from the "adequate directions for use" requirements for bulk drug substances that are to be distributed to veterinarians or other practitioners. Nor does it provide for exemption from the adulteration provision of section 501(a)(5) of the act. It is clear that Congress contemplated the special needs of practitioners when it enacted the statute. For instance, section 501(g)(2) of the act (21 U.S.C. 360(g)(2)) exempts practitioners from registration under certain circumstances, and section 503(b) of the act (21 U.S.C. 353(b)) exempts human prescription drugs from the labeling requirement for "adequate directions for use" when dispensed by a pharmacist. Congress made no special provision in the act for the use of unapproved bulk drug substances by practitioners, however.

Further support for FDA's view comes from section 512(a) of the act, which, in conjunction with sections 501(a) and 301, prohibit the use or intended use of an approved new animal drug in a manner that is inconsistent with the conditions of the approved application. The statute does not exclude use by veterinarians from this prohibition. The section 512(a) requirement that an approved new animal drug not be used inconsistently with its approved labeling is strong evidence of Congress' intention that veterinarians' use of drugs in their practices should not be entirely unlimited. It supports the agency's position that its requirement for approval of bulk new animal drug substances for use by veterinarians does not constitute an unlawful interference with the practice of medicine. "The fact that the practice of medicine is an area traditionally regulated by the states does not invalidate those provisions of the [Federal Food, Drug, and Cosmetic

Act] which may at times impinge on some aspects of doctor's practice." *Pharmaceutical Manufacturers Association* v. *FDA*, 484 F. Supp. 1179, 1188 (D. Del. 1977), *aff'd* 634 F.2d 106 (3d Cir. 1980). The right to practice one's profession is not without permissible limitation. *Pharmaceutical Society of the State of New York, Inc.* v. *Lefkowitz*, 454 F. Supp. 1175, 1181 (S.D.N.Y. 1978). The act was not intended to regulate the practice of medicine; however, it was obviously intended to control the availability of drugs for prescription or use by practitioners. *United States* v. *Evers*, 453 F. Supp. 1141 (M.D. Ala. 1978), *aff'd on other grounds*, 643 F.2d 1043 (5th Cir. 1981). FDA can regulate the use of new animal drugs regardless of the professional status of the person who causes the violation. *United States* v. *Articles of Drug* * * * *Sulfachlorpyridazine Acid* * * * *Dexamethazone USP* * * *, Civil No. F 74–155 (E.D. Cal. 1977). See also *American Medical Assoc.* v. *Mathews*, 429 F. Supp. 1179, 1201–1203 (N.D. Ill. 1977).

Summary of the Proposal

The agency proposes to amend its regulations to set forth criteria and procedures for the approval of NADA's for bulk new animal drug substances that are to be compounded into finished dosage form by or on the prescription of licensed veterinarians for use in their professional practices. Applications for such products will be required to meet the general premarketing approval requirements of the act. That is, the applicant will have to show through submission of data that the finished dosage form drugs, as they are to be compounded by veterinarians or pharmacists, will be safe and effective for one or more veterinary medical indications. The tests to be submitted will be those required for new animal drugs under section 512 of the act.

The applicant also will have to provide adequate labeling for the bulk new animal drug substance. The labeling will be required to bear adequate directions for prescription use, including directions for compounding the finished dosage form drug, and the following statement: "Caution: Federal law restricts this drug substance to compounding and use by or on the prescription of a licensed veterinarian." The applicant will also have to provide evidence to show that the bulk new animal drug substance will be manufactured, and the finished dosage form can be compounded, under the standards of quality required by the act. Also, the manufacturer of the approved bulk new animal drug substance will be subject to CGMP regulations, to the requirement of registration as a drug manufacturer, and to the "record and reports" provision of the act.

In view of the foregoing requirements, the agency anticipates that such NADA's will be submitted by persons who manufacture the bulk new animal drug substance, or who supply it to veterinarians or pharmacists.

Approval of this type of NADA will be limited to those drugs that, in the agency's judgment, can be formulated into safe and effective finished dosage form drugs by or on the prescription of licensed veterinarians. The drugs most suitable for bulk new animal drug substance NADA's may, at the present time, be those that are the therapeutic equivalents of the drugs that were reviewed and found effective by the National Academy of Sciences/National Research Council (NAS/NRC) in the Drug Effectiveness Study Implementation (DESI) following passage of the 1962 drug effectiveness amendments to the act. Under present regulations, applications for such drugs ordinarily are abbreviated, in that they ordinarily meet the safety and effectiveness requirements of the act if they contain only bioequivalence data and, in some instances, tissue residue depletion data.

The agency will, however, consider accepting applications for bulk new animal drug substances in all the circumstances under which full NADA's are currently filed. Also, under the proposed procedure, sponsors of existing NADA's could file supplements to provide for the marketing of bulk new animal drug substance counterparts of currently approved finished dosage forms. Regardless of the type of application (e.g., full NADA, abbreviated NADA for therapeutic equivalent of an approved NAS/NRC-reviewed drug, or supplemental NADA), the applicant will be required to provide assurance that pharmacists and veterinarians possess or can readily obtain the expertise and equipment necessary for compounding the finished dosage form.

The proposal is not intended to restrict the approval of veterinary drugs for which adequate directions for lay use can be written for over-the-counter (OTC) sale in large packages. FDA has approved such new animal drugs in the past (e.g., for water soluble drugs to be added to drinking water). Such drugs do not require further compounding by skilled professionals and will continue to be approved by FDA for OTC use. Similarly, FDA will continue to approve for prescription use finished dosage form new animal drugs in large containers, where appropriate. Therefore, it should be clear that this proposal, which is to establish a mechanism for approving NADA's for substances that require compounding for use, is not intended to authorize the shipment in large containers to veterinarians of unapproved finished dosage form drugs (those that do not require compounding or similar manipulation before use). Such drugs must be approved under provision of the existing regulations.

The agency has approved prescription veterinary drugs that require certain manipulation by veterinarians (e.g., addition of water to a lyophilized powder to prepare an injectable solution). Such drugs are ordinarily packaged in individual dosage quantities and are considered to be finished dosage forms at the time of manufacture by the NADA sponsor. An example of the type of substance the agency expects to consider for approval under the proposal (based on the interest expressed in the past by veterinarians) is a drug substance in powder form, shipped in bulk packages. The veterinarian would add water, place it in small dosage-size bottles closed by rubber stoppers and, autoclave the solution, for future injectable use. Such activity by a veterinarian (or pharmacist) is considered by the agency to be "compounding," which is defined for purposes of this program as any mixing of a drug substance by a veterinarian (or by a pharmacist following a veterinarian's prescription) in preparing a finished dosage form, other than that traditionally done with respect to the dispensing or administration of a finished dosage form. Because the distinction between a "drug substance" and a "finished dosage form" cannot be defined precisely, the agency will encourage potential sponsors to consult with CVM for a determination as to whether a particular article is a finished dosage form (subject to approval through submission of a conventional NADA) or a drug substance subject to approval as a bulk new animal drug substance.

Veterinarians who use or prescribe approved bulk new animal drug substances solely within the course of their professional practices will be exempt from the registration requirements in Part 207, from the CGMP provision of the statute (section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B))), and from the records and reports requirements in § 510.300 that are applicable to NADA sponsors. However, veterinarians will be advised to follow

carefully the compounding instructions in the approved labeling when making the finished dosage form drug to assure its safety and effectiveness. Veterinarians will also be encouraged to observe carefully animals being treated with finished dosage form drugs compounded from bulk new animal drug substances, and to report any unexpected result to the distributor of the bulk new animal drug substance named in the labeling or to the NADA sponsor. Veterinarians who compound finished dosage form drugs for distribution or use outside their professional practices, even if they use approved bulk new animal drug substances, are drug manufacturers. Thus, they are subject to regulatory action unless they are registered as manufacturers, are in compliance with the CGMP regulations, and are the sponsors of approved NADA's.

Pharmacists who compound finished dosage form drugs from approved bulk new animal drug substances solely within the course of their professional practices upon the basis of a veterinarian's prescription will be exempt from the registration requirements of section 510 of the act and 21 CFR Part 207, from the CGMP regulations (although they are subject to the CGMP provisions of the statute), and from the records and reports requirements in § 510.300. However, they will be advised to follow carefully the compounding instructions, and will be subject to the same kinds of regulatory action as veterinarians if their activities are outside the scope of their professional practices.

Approved bulk new animal drug substances will be exempt from the adequate directions for use requirements of section 502(f)(1) of the act if they are in conformance with the veterinary prescription drug exempting regulation (21 CFR 201.105). Finished dosage form drugs made from bulk new animal drug substances will be exempt under 21 CFR 201.110 from the adequate directions for use requirements of section 502(f)(1) of the act when dispensed by a licensed veterinarian, or by a pharmacist on the prescription of a licensed veterinarian, provided that the drugs meet the requirements of that regulation, i.e., that they bear labeling with the name and address of the veterinarian, the directions for use, and any cautionary statements contained in the prescription.

Discussion of the Proposal

The proposal would establish a new Part 559. The new part would provide for approval of applications for bulk new animal drug substances for further compounding by or on the prescription of licensed veterinarians for use in their professional practices. The new part will consist of Subpart A, containing general provisions, and Subpart B, which will list specific bulk drug substances when they are approved, as required by section 512(i) of the act.

Subpart A contains new § 559.4 *Approval of new animal drug applications for bulk new animal drug substances for use by licensed veterinarians.* This section defines "new animal drug substances" and "bulk new animal drug substances," the latter being the pharmacologically active substances that will be eligible for approval. The section also states that FDA may approve NADA's for such drug substances, identifies the data and information requirements for NADA approval, and specifies the responsibilities of the sponsor of the NADA and the manufacturer of the bulk new animal drug substance.

1. Proposed § 559.4(a) defines "new animal drug substance" as a drug substance that, when used in the preparation of a finished dosage form drug, causes that drug to be a new animal drug, and "bulk new animal drug substance" as a new animal drug substance for use in the compounding of a finished dosage form new animal drug.

2. Proposed § 559.4(b) states that FDA will approve NADA's for bulk new animal drug substances if they are for further compounding by or on the prescription of a licensed veterinarian and are for use solely in the veterinarian's practice.

3. Proposed § 559.4(c) states that applications for approval of bulk new animal drug substances must meet the requirements of § 514.1 *Applications* (21 CFR 514.1) except as modified by paragraph (c).

a. Proposed § 559.4(c)(1) would require compliance with § 514.1(b)(3) *Labeling*, except (b)(3)(ii), which pertains to nonprescription drugs. Proposed § 559.4(c)(1) would require the labeling of bulk new animal substances to bear complete compounding instructions for the pharmacist or veterinarian who is to prepare the finished drug. Section 514.1(b)(3)(iii) currently requires that prescription veterinary drugs bear information adequate to permit veterinarians to use the new animal drugs safely and for the purposes for which they are intended, including those purposes for which they are to be advertised or represented. These requirements are particularized in § 201.105. The labeling for new animal drug substances therefore must bear all such information, including directions for compounding.

The proposal would modify § 201.105 to require that the labeling for the bulk new animal drug substances bear the following statement: "Caution: Federal law restricts this drug substance to compounding and use by or on the prescription of a licensed veterinarian." Bulk new animal drug substances covered by this proposal will be restricted to prescription use because their safe and effective use requires, among other things, knowledge of drug compounding, drug interactions, pharmacology, and toxicology. Therefore, adequate directions for lay use cannot be written.

The proposed prescription legend for approved bulk new animal drug substances would differ slightly from the legend required for other veterinary prescription drugs. That legend states: "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" (21 CFR 201.105). (Section 201.105 requires that a veterinary drug for which adequate directions for lay use cannot be written be sold only to or on the "prescription or other order" of a licensed veterinarian). The difference between the legends is explained by the fact that the agency interprets the word "prescription" to apply only to the practitioner's direction to a pharmacist. Some States permit authorized persons other than pharmacists to dispense restricted veterinary drugs on a veterinarian's order. The agency has not attempted to preempt such practices; hence, it has referred to use on the "order" of a veterinarian (a prescription being one type of order). However, the agency has concluded that, if the safety and effectiveness requirements of the act are to be met, approved bulk new animal drug substances may be compounded and dispensed only by a registered pharmacist or a licensed veterinarian. To maintain consistency in the definition of terms, therefore, the agency proposes to use only the term "prescription" in the legend for an approved bulk new animal drug substance. The agency considers the two prescription legends to be equivalent in all other aspects.

b. Proposed § 559.4(c)(2) would provide for the submission to FDA prior to aproval of samples of the bulk new animal drug substance as well as samples of the finished dosage form prepared by following the compounding instructions in the labeling. This provision will meet the requirements of the act for samples (section 512(b)(5)).

c. Proposed § 559.4(c)(3) would require compliance with § 514.1(b)(5)

Manufacturing methods, facilities, and controls, as modified by § 559.4(c)(3). FDA has, in § 514.1(b)(5), particularized the provisions of section 512(b)(4) of the act. Proposed § 559.4(c)(3) states that the specific requirements of § 514.1(b)(5) will apply only to the manufacture of the bulk new animal drug substance, and not to the compounding of the finished product by the veterinarian or pharmacist, provided that the applicant submits information to show that the finished dosage form can be prepared properly.

Section 512(b)(4) of the act requires applicants to submit "a full description of the methods used in, and the facilities used for, the manufacture, processing, and packing" of the drugs they intend to market. Essentially, this section requires evidence that the applicant can comply with CGMP requirements of the act when manufacturing commences.

The general requirements of section 512(b)(4) of the act apply to finished dosage forms. Thus, the sponsor of any NADA must describe the "methods used in, and the facilities and controls used for, the manufacture, processing, and packing" of the finished dosage form.

It will be impracticable, however, for the sponsor of an NADA for a bulk new animal drug substance to provide, for the finished dosage form, much of the information prescribed by § 514.1(b)(5). Therefore, proposed § 559.4(c)(3), along with the compounding directions required by proposed § 559.4(c)(1) and the requirement for samples under § 559.4(c)(2), would provide alternative criteria for meeting the statutory requirements. The applicant would have the burden of showing that veterinarians and pharmacists have or can readily obtain the knowledge, skills, and equipment necessary to compound safe and effective finished dosage form drugs by following the instructions in the labeling for the bulk new animal drug substances. Thus, the requirements in proposed § 559.4(c)(3) would limit the kinds of bulk substances that may be approved for use by or on the prescription of licensed veterinarians, because preparation of some finished dosage forms may require special education, equipment, or facilities that are not likely to be possessed by or available to most pharmacists or veterinarians.

The agency believes that the requirements of section 512(b)(4) of the act will be satisfied through a description of the methods, facilities, and controls that the pharmacist or veterinarian will be expected to have and use. FDA will not approve the application unless it is persuaded, by evidence submitted by the sponsor, that veterinarians and pharmacists possess or can readily obtain the equipment and training required to prepare the finished dosage form. Moreover, the legality of the proposal is supported by the fact that the act contemplates that the manufacture or compounding of drugs will be done by practitioners. For instance, section 510(g)(2) of the act exempts from registration practitioners who "manufacture, prepare, propagate, compound, or process drugs" for use only in their practices. For such an activity to take place, practitioners must be able to procure the raw or intermediate materials that will make up the finished product.

d. Proposed §559.4(c)(4) would require compliance with § 514.1(b)(8) *Evidence to establish safety and effectiveness.* This includes evidence to establish the safety and effectiveness of the bulk new animal drug substance, based on data from tests using the finished dosage form. Such information is necessary to satisfy the requirements of section 512(b)(1) of the act. Applicants for approval of bulk new animal drug substances for which the finished dosage form has a counterpart drug that was approved prior to 1962 and that was reviewed by NAS/BRC and found to be effective will ordinarily be able to meet the safety and effectiveness requirements by (1) demonstrating, where necessary, that the finished dosage form products compounded from the bulk new animal drug substances are bioequivalent to the approved counterpart drug and (2) submitting tissue residue depletion studies, in the case of drugs for use in food-producing animals, as needed.

4. Proposed § 559.4(d) would require the sponsor of the NADA to comply with the records and reports requirements of § 510.300 *Records and reports concerning experience with new animal drugs for which an approved application is in effect.* Section 512(1) of the act requires the sponsor of any new animal drug approved to section 512(b) of the act to establish and maintain records and make reports on experience and other data or information obtained on the drug as prescribed by regulation. In § 510.300, FDA prescribes the records and reports obligations necessary to comply with the statutory requirements. Information required to be reported includes, among other things, reports of adverse reactions and product defects. Paragraph (d) of the new section makes clear that the applicant will have an obligation to comply with the "records and reports" requirement with respect to the finished dosage form as well as the bulk new animal drug substance.

5. Proposed § 559.4(e) would require those who manufacture or otherwise prepare bulk new animal drug substances within the scope of section 510(a)(1) of the act to register in accordance with Part 207.

Section 510 of the act requires all persons who own or operate establishments engaged in "the manufacture, preparation, propagation, compounding, or processing" of drugs to register, unless exempted under section 510(g). This includes, as provided by section 510(a)(1) of the act, "repackaging or otherwise changing the container, wrapper, or labeling of any drug package * * * in furtherance of the distribution of the drug * * * from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user." The term "manufacturing or processing" includes "manipulation, sampling, testing, or control procedures applied to the final product or to any part of the process" (21 CFR 207.3(a)(8)). Because bulk new animal drug substances are drugs, those who process such substances in the manner described in section 510 of the act must register.

However, section 510(g) of the act exempts from registration pharmacies and licensed practitioners who are acting within the scope of their professional practices. Therefore, paragraph (e) of the new section provides that licensed veterinarians who compound finished dosage form drugs from approved bulk new animal drug substances for use in their practices and registered pharmacists who compound finished dosage form drugs from approved bulk new animal drug substances on the prescription of a licensed veterinarian will not be required to register with the FDA as long as they comply with the applicable requirements of section 510(g) of the act.

6. Proposed § 559.4(f) would require those who manufacture, process, pack, or hold bulk new animal drug substances to comply with CGMP's as required in Parts 210 and 211.

Under section 501(a)(2)(B) of the act, a drug is deemed to be adulterated if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with the CGMP requirements. This is to assure that the drug meets the requirements of the act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

FDA has adopted detailed CGMP regulations (21 CFR Parts 210 and 211)

that implement the provisions of the statute. However, the existing GCMP regulations apply only to the manufacture of "drug products," a term which is ordinarily defined to include only finished dosage from drugs (21 CFR 210.3(b)(4) and 211.1(a)). Because components of drugs are drugs, FDA has considered the manufacture of bulk active ingredients to be subject to the general requirements of section 501 (a)(2)(B) of the act, and has used the standards set forth in the CGMP regulations as guidelines during inspections of manufacturers of bulk drug components.

The agency has concluded that the binding requirements of the CGMP regulations should be applied to the manufacture, processing, packing, or holding of the bulk new animal drug substances.

The application of the CGMP regulations to bulk new animal drug substances is especially appropriate because the compounding of the final dosage form by the veterinarian or pharmacist will not be subject to the CGMP regulations. The agency has interpreted the statutory CGMP provision as not applying to medical practitioners, including veterinarians. Although the agency believes that pharmacists are subject to the statutory provision, it has not adopted CGMP regulations for pharmacists, and has not applied the existing CGMP regulations for pharmacists, and has not applied the existing CGMP regulations to pharmacists who are acting within the scope of their authorized practices. The agency believes, nevertheless, that the proposed NADA's for bulk new animal drug substances are authorized by the statute, even though it does not intend to apply the CGMP regulations to authorized compounding. The basis for its conclusion is described in the following paragraphs.

The basic purpose of section 501(a)(2)(B) of the act is to assure that the finished dosage form is safe and meets appropriate standards. The proposal will require those who manufacture, process, pack, or hold the bulk new animal drug substance to comply with applicable portions of the CGMP regulations in the preparation of the bulk new animal drug subatances itself. As stated above, the agency will not approve the application unless it believes that veterinarians and pharmacists are capable of compounding the finished dosage form correctly. If experience demonstrates that practitioners or pharmacists are unable consistently to compound a particular bulk new animal drug substance into a safe and effective finished dosage form, the NADA approval could be withdrawn under provision of section 512(e) of the act. That section provides for withdrawal of approval if, among other things, new information or experience shows that the drug is unsafe, not shown to be safe, or lacks substantial evidence of effectiveness under the approved "conditions of use." The approved conditions of use include a requirement that the conditions of use be "reasonably certain to be followed in practice" (section 512(d)(2)(D) of the act.

If, however, the problem centers around one or more individual practitioners and not specific NADA's, the statute permits regulatory action against the individual veterinarians. Section 512(a)(1) of the act states that "A new animal drug shall, with respect to any particular use or intended use * * * be deemed unsafe * * * unless * * * (B) such drug * * * conform to such appoved application." If the veterinarian does not compound the drug in accordance with the directions provided by the manufacturer and, therefore, the finished formulation does not meet expected quality standards, it is not a drug that conforms to the approved application. It is therefore adulterated under section 501(a)(5) of the act. The drug is subject to seizure, and the veterinarian is subject to injunction or prosecution. As noted above, action could be taken against individual pharmacists under the general provision of section 501(a)(2)(B) of the act.

7. The agency proposes to make conforming amendments in certain regulations. The proposal would:

a. Amend the veterinary prescription drug regulation, § 201.105 *Veterinary Drugs* to exempt approved bulk new animal drug substances from the requirement of bearing adequate directions for use (section 502(f)(1) of the act). Section 201.105 would apply when the bulk new animal drug substance is shipped by the NADA sponsor to a pharmacist or veterinarian.

b. Amend § 201.110 *Retail exemption for veterinary drugs* so that it will refer to the prescription legend that will be used with approved bulk new animal drug substances.

c. Amend § 201.122 *Drugs for processing, repacking, or manufacturing* so that its applicability to raw materials being shipped to the sponsor of an NADA for a bulk new animal drug substance would be clear. The proposal would also change that regulation to conform its contents in all respects to the agency's interpretation as to new animal drug substances. The agency has concluded that § 201.150 *Drugs; processing, labeling, or repacking* as currently in effect would apply to the shipment of unapproved bulk new animal drug substances without change.

d. Amend § 211.1 *Scope* to include within the scope of the CGMP regulations the manufacture of bulk new animal drug substances that are subject to new Part 559 (see paragraph 6 above).

e. Amend § 514.1 *Applications* to add new paragraph (f). Proposed paragraph (f) states that NADA's for bulk new animal drug subatances are subject to the requirements of § 514.1 as modified by new § 559.4.

Environmental Impact

The agency has determined pursuant to 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The agency has assessed the economic impact of this proposal and has concluded that it is not a major rule as defined in Executive Order 12291. The agency believes that fewer than 10 companies will be affected, and most will already hold approved NADA's for the finished form of the drug they wish to supply in bulk. In these cases, firms will incur an estimated cost of $3,100 for each bulk supplement to an approved NADA. The typical firm is not expected to submit more than 10 supplements because fewer than 20 drugs are now being sold to veterinarians in bulk form. Additional firms that do not currently market these drugs in finished form may also elect to supply bulk drugs to veterinarians. These firms would incur costs of approximately $50,000 for an abbreviated NADA for each bulk drug. However, the agency expects fewer than three new entrants because of the limited size of this market, and the presence of established manufacturers of these products. Thus, the total costs of this rule to all affected companies are expected to be less than $1 million. Because of the limited impact of this rule, the agency certifies, in accordance with the Regulatory Flexibility Act, that this proposed rule, if implemented, will not impose a significant economic impact on a substantial number of small entities.

A threshold assessment supporting these conclusions is available for review

in the Dockets Management Branch (address above).

Paperwork Reduction Act of 1980

Section 559.4(c) of this proposed rule contains collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Bruce Artim.

Paragraphs (d), (e), and (f) of § 559.4 cross-reference regulations in Title 21 of the Code of Federal Regulations that contain collection of information requirements that have been approved by OMB as follows:

Section 559.4(d) references § 510.300 *Records and reports concerning experience with new animal drugs* (OMB control number 0910-0019);

Section 559.4(e) references Part 207—Registration of Producers and Listing of Drugs in Commercial Distribution (OMB control number 0910-0045); and

Section 559.4(f) references Part 211—Current Good Manufacturing Practice for Finished Pharmaceuticals (OMB control number 0910-0139).

List of Subjects

21 CFR Part 201

Drugs, Labeling.

21 CFR Part 211

Drugs, Manufacturing, Labeling, Laboratories, Packaging and containers, Warehouses.

21 CFR Part 514

Administrative practice and procedure, Animal drugs.

21 CFR Part 559

Bulk new animal drug substances.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR Part 201 continues to read as follows:

Authority: Sec. 701, 52 Stat. 1055-1056 as amended (21 U.S.C. 371), unless otherwise noted; 21 CFR 5.10, 5.11.

§ 201.105 [Amended]

2. In § 201.105 *Veterinary drugs* as follows:

a. In paragraph (a)(1) by inserting at the end of the paragraph immediately before the semicolon and "or" the following: "; except that the term "other order" shall not apply in the case of a bulk new animal drug substance meeting the requirements of Part 559 of this chapter".

b. In paragraph (b)(1) by inserting at the end of the paragraph immediately before the semicolon and "and" the following: "; except in the case of a bulk new animal drug substance meeting the requirements of Part 559 of this chapter, the label shall bear the statement: Caution: Federal law restricts this drug substance to compounding and use by or on the prescription of a license veterinarian".

c. In paragraph (c)(1) by inserting at the end of the paragraph immediately before the semicolon and "and" the following: "; except in the case of a bulk new animal drug substance meeting the requirements of Part 559 of this chapter, the foregoing information shall appear on labeling on or within the package in which the substance is delivered to the practitioner or pharmacist".

§ 201.110 [Amended]

3. In § 201.110 *Retail exemption for veterinary drugs* by revising the phrase "upon a prescription or other order" to read "upon a prescription or other order (upon a prescription, in the case of a bulk new animal drug substance meeting the requirements of Part 559 of this chapter)".

4. By revising § 201.122 to read as follows:

§ 201.122 Drugs for processing, repacking, or manufacturing.

A drug in a bulk package (except tablets, capsules, or other dosage unit forms) intended for processing, repacking, or use in the manufacture of another drug shall be exempt from section 502(f)(1) of the act if its label bears the statement"Caution: For manufacturing, processing, or repacking"; and , if in substantially all dosage forms in which it may be dispensed it is subject to section 503(b)(1) of the act, the statement "Caution: Federal law prohibits dispensing without prescription", or if in substantially all dosage forms in which it may be dispensed it is subject to § 201.105, the statement "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian." Drugs described in the preceding sentence shall include drug substances intended for use in the preparation of bulk new animal drug substances as that term is defined in § 559.4(a)(2) of this chapter; the label for such drug substances shall bear the statement "Caution: Federal law restricts this drug substance to compounding and use by or on the prescription of a licensed veterinarian". This exemption and the exemption under § 201.120 may be claimed for the same article. But the exemption shall not apply to a substance intended for a use in manufacture, processing, or repacking which causes the finished article to be a new drug or new animal drug, unless:

(a) an approved new drug application or new animal drug application held by the person preparing the dosage form or drug for dispensing covers the production and delivery to him or her of such substance, or in the case of a bulk new animal drug sustance subject to Part 559 of this chapter, an approved new animal drug application held by the person preparing the bulk new animal drug substance covers the preparation and delivery to him or her of such substance;

(b) If no application is approved with respect to such new drug, new animal drug or bulk new animal drug substance the label statement "Caution: For manufacturing, processing, or repacking" is immediately supplemented by the words "In the preparation of a new drug or new animal drug limited by Federal law to investigational use", and the delivery is made for use only in the manufacture of such new drug or new animal drug limited to investigational use as provided in § 312.1 or § 511.1 of this chapter; or

(c) A new drug application or new animal drug application covering the use of the drug substance in the production and marketing of a finished drug product (or bulk new animal drug substance in the case of an application submitted under provision of Part 559 of this chapter) has been submitted but not yet approved or disapproved, the bulk drug is not exported, and the finished drug product (bulk new animal drug substance, in the case of an application submitted under provision of Part 559 of this chapter) is not further distributed after it is manufactured until after the new drug application or new animal drug application is approved.

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

5. The authority citation for 21 CFR Part 211 continues to read as follows:

Authority: Secs. 501, 701, 52 Stat. 1049–1050 as amended, 1055–1056 as amended (21 U.S.C. 351, 371); 21 CFR 5.10, 5.11.

6. Part 211 is amended in § 211.1 by revising paragraph (a) to read as follows:

§ 211.1 Scope.

(a) The regulations in this part contain the minimum current good manufacturing practices for preparation of drug products for administration to humans or animals and for the preparation of approved bulk new animal drug substances subject to Part 559 of this chapter. All portions of this part shall be applicable to bulk new animal drug substances regardless of the terms used (e.g. "drug product," "drug," "components").

* * * * *

PART 514—NEW ANIMAL DRUG APPLICATIONS

7. The authority citation for 21 CFR Part 514 continues to read as follows:

Authority: Secs. 512(i), (n), 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b(i), (n), 371(a)); 21 CFR 5.10, 5.11.

8. Part 541 is amended in § 514.1 by adding new paragraph (f) to read as follows:

§ 514.1 Applications.

* * * * *

(f) Applications for approval of bulk new animal drug substances for further compounding by or on the prescription of licensed veterinarians into finished dosage form drugs for use solely in their professional practice are subject to the requirements of this section as modified by § 559.4 of this chapter. Except as modified by § 559.4 of this chapter, all portions of this part shall be applicable to bulk new animal drug substances regardless of the terms used (e.g. "drug product," "drug," "dosage form," "drug substance," "components").

PART 599—BULK NEW ANIMAL DRUGS FOR USE BY LICENSED VETERINARIANS

D. By adding new Part 599 to read as follows:

Subpart A—General Provisions

Sec.

599.4 Approval of new animal drug applications for bulk new animal drug substances for compounding and use by or on the prescription of licensed veterinarians.

Subpart B—Approved Bulk New Animal Drugs [Reserved]

Authority: Secs. 301, 501, 502, 503, 510, 512, 701(a), 52 Stat. 1050–1051 as amended, 1055, 76 Stat. 794–795 as amended, 82 Stat. 343–351; 21 U.S.C. 331, 351, 352, 353, 360, 360b, 371(a).

Subpart A—General Provisions

§ 559.4 Approval of new animal drug applications for bulk new animal drug substances for compounding and use by or on the prescription of licensed veterinarians.

(a)(1) A "new animal drug substance" is a drug substance that, when used in the manufacture, processing, or packing of a finished dosage form animal drug, causes that drug to be a new animal drug.

(2) A "bulk new animal drug substance" is a new animal drug substance intended for use in the compounding of a finished dosage form new animal drug by a veterinarian or pharmacist.

(b) The Food and Drug Administration will approve new animal drug applications for bulk new animal drug substances for further compounding into finished dosage form new animal drugs for use by or on the prescription of a licensed veterinarian. Such products are to be used or prescribed for use solely within the veterinarian's professional practice.

(c) Applications for approval of bulk new animal drug substances must meet the requirements of § 514.1 of this chapter as modified by this paragraph. Where information on "dosage form(s)" is required in § 514.1 of this chapter, the applicant shall submit information on each dosage form into which the bulk new animal drug substance is to be compounded.

(1) Labeling shall include that required by § 514.1(b)(3) of this chapter, excluding § 514.1(b)(3)(ii). In addition, it shall include complete instructions for the compounding of the finished dosage form new animal drug. This shall include, but not be limited to, the methods, facilities and equipment, materials, and controls to be used in the compounding of the finished dosage form new animal drug.

(2) Samples that may be requested by the Center for Veterinary Medicine under provision of § 514.1(b)(6) of this chapter shall include samples of either the bulk new animal drug substance, the finished dosage form new animal drug prepared following the directions in the labeling, or both.

(3) The data and other information for manufacturing methods, facilities, and controls required by § 514.1(b)(5) of this chapter must be provided for the bulk new animal drug substance as it is to be prepared, packaged, and distributed by or for the NADA sponsor. The information specified in § 514.1(b)(5) is not required for the new animal drug product (finished dosage form) that is to be compounded by the pharmacist or veterinarian provided that the applicant submits data and information to establish:

(i) That the finished dosage form new animal drug can be compounded from the bulk new animal drug substance; and,

(ii) That any special requirements (e.g., knowledge, equipment, facilities) necessary for compounding the bulk new animal drug substance into a finished dosage form new animal drug are possessed by or readily available to pharmacists and veterinarians.

(4) The applicant must submit evidence as required by § 514.1(b)(8) of this chapter to establish the safety and effectiveness of the bulk new animal drug substance. This evidence must include data from tests conducted with the finished dosage form new animal drug, prepared from the bulk new animal drug substance using the directions for compounding to be included in the labeling of the bulk new animal drug substance. Such data must establish that the finished dosage form new animal drug is safe and effective for the proposed use or uses.

(d) The sponsor of any new animal drug application approval granted under this part shall comply with the requirements of § 514.300 of this chapter regarding records and reports for the bulk new animal drug substance as well as for finished dosage form new animal drugs made from the bulk new animal drug substance.

(e) The owner or operator of any drug establishment engaged in the manufacture, preparation, propagation, compounding, or processing of any bulk new animal drug substance approved under this part must register as provided in Part 207 of this chapter, except that licensed veterinarians who compound finished dosage form new animal drugs from bulk new animal drug substances for use in their professional practices, and registered pharmacists who compound finished dosage form new animal drugs from approved bulk new animal drug substances on the prescription of a licensed veterinarian, are not required to register as long as they comply with the applicable requirements of section 510(g) of the act.

(f) The manufacture, processing, packing, and holding of any bulk new animal drug substance approved under this part shall comply with current good manufacturing practice as provided in Parts 210 and 211 of this chapter, except that licensed veterinarians who compound finished dosage form new animal drugs from approved bulk new

animal drug substances for use in their professional practices, and registered pharmacists who compound finished dosage form drugs from approved bulk new animal drug substances on the prescription of a licensed veterinarian are not required to comply with Parts 210 and 211 as long as they are operating within the scope of their respective practices.

Subpart B—Approved Bulk New Animal Drugs [Reserved]

Interested persons may, on or before September 30, 1985, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 6, 1985.

Frank E. Young,
Commissioner of Food and Drugs.

Margaret M. Heckler,
Secretary of Health and Human Services.

[FR Doc. 85-15674 Filed 6-28-85; 8:45 am]
BILLING CODE 4160-01-M

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21 CFR Part 1002

[Docket No. 82N-0273]

Review of Records and Reports Regulations for Radiation Emitting Electronic Products; Availability of Report

AGENCY: Food and Drug Administration.

ACTION: Availability of report.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public review and comment of a report prepared by FDA's Center for Devices and Radiological Health (CDRH) entitled "Report of the CDRH Task Force for Retrospective Review of the Recordkeeping and Reporting Requirements of 21 CFR 1002." The report discusses the findings and recommendations of a CDRH task force which reviewed the recordkeeping and reporting requirements imposed upon manufacturers, dealers, and distributors of radiation-emitting electronic products. The report is being made available for public comment to provide the agency with further views to be considered for future proposed rulemaking.

DATE: Comments by August 30, 1985.

ADDRESSES: Comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Single copies of the report may be obtained by submitting a written request to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Melvyn Altman, Center for Devices and Radiological Health (HFS-83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 14, 1981 (46 FR 36333), FDA published a notice announcing a systematic review of its rules and asked the public to comment on those FDA regulations that are most burdensome. The purpose of the review is to identify regulations that impose significant cost burdens and, for such rules, to explore alternative measures for protecting the public health. This retrospective review is required by the Regulatory Flexibility Act (Pub. L. 96-354) and by Executive Order 12291.

As a result of a systematic assessment of public comments in response to the July 14, 1981 notice and of available information, FDA published a notice in the **Federal Register** of July 2, 1982 (47 FR 29004) that identified Part 1002 (21 CFR Part 1002) as one of the rules selected as its highest initial review priorities.

Subsequently, in the **Federal Register** of November 16, 1982 (47 FR 51706), FDA published a notice inviting interested persons to submit comments, data, and information to assist FDA in assessing the benefit, economic cost, and need for revision of the regulations in Part 1002. In addition, CDRH convened an internal task force to review the regulations, analyze any comments received, and prepare recommendations for further FDA action. To conduct its review, the task force (1) interviewed many FDA supervisory and staff people and independently solicited from them comments, data, and information; (2) analyzed the comments, data, and information received in response to the notices of July 14, 1981, July 2, 1982, and November 16, 1982; (3) investigated societal benefits and economic costs (including the agency's costs) of the regulations and any feasible alternatives; (4) prepared cost impact analyses with regard to the Regulatory Flexibility Act and Executive Order 12291; and (5) prepared the subject report summarizing recommendations for FDA action.

Organization of the Report

Section 1 of the report, "Introduction and Background," briefly discusses why the retrospective review was done; outlines the portions of the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, 42 U.S.C. 263b et seq.) and associated regulations that are relevant to records and reports required for electronic products; and summarizes the criteria that the task force used to review the regulations.

Sections 2 through 4 generally follow the order of the subparts of Part 1002 (Subparts A through G). Within each section is a summary of relevant public comments, FDA staff comments, and the task force's discussion, conclusions, and recommendations.

Section 5 is an analysis of the economic impact that the current regulations impose on industry and the Government, and the estimated impact that the recommended changes to the regulations would have on industry.

The report is on file under the docket number appearing in brackets in the heading of this document and is available for public examination in the Dockets Management Branch (address above). Requests for single copies of the report should be submitted in writing to the contact person identified above.

Interested persons may, on or before August 30, 1985, submit to the Dockets Management Branch written comments on this report. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Comments received will be considered for future proposed rulemaking.

Dated: June 21, 1985.

Joseph P. Hile,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-15673 Filed 6-28-85; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Illinois Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a program amendment submitted by Illinois as an amendment to the State's permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted consist of proposed rules to Illinois' regulations to implement and administer the Agricultural Land Productivity Formula for determining the success of crop production on reclaimed prime farmland and other cropland areas. The proposed amendments are also intended to make Illinois' rules concerning revegetation consistent with the revised Federal regulations published in 48 FR 40140, September 2, 1983.

This notice sets forth the times and locations that the Illinois program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m. July 31, 1985 will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Illinois regulatory program. A public hearing on the proposed amendment has been scheduled for July 26, 1985. Any person interested in speaking at the hearing should contact Mr. James F. Fulton, at the address or telephone number listed below by July 16, 1985. If no person has contacted Mr. Fulton by that date to express an interest in the hearing, the hearing will be canceled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing is scheduled for 1:00 p.m. in the Springfield Field Office, 600 E. Monroe Street, Springfield, Illinois 62701.

Written comments and requests for an opportunity to speak at the hearing should be directed to Mr. James F. Fulton, Field Office Director, Springfield Field Office, Office of Surface Mining, 600 E. Monroe Street, Springfield, Illinois 62701; Telephone: (217) 492–4495.

Copies of the Illinois program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the Springfield Field Office listed above, OSM Headquarters Office, and the Office of the State regulatory authority listed below, during normal working hours Monday through Friday, excluding holidays. Each requester may receive, free of charge, one single copy of the proposed amendment by contacting OSM's Springfield Field Office.

Office of Surface Mining, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240

Department of Mines and Minerals, Land Reclamation Division, 227 South 7th Street, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fulton, Director, Springfield Field Office, Office of Surface Mining, 600 E. Monroe Street, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Illinois program, can be found in the June 1, 1982 **Federal Register** (47 FR 23858).

II. Submission of Revisions

By letter dated May 30, 1985, Illinois submitted program amendments to implement and administer the Agricultural Land Productivity Formula for determining the success of crop production on reclaimed prime farmland and other cropland areas (1816.116 and Appendix A). Other proposed revegetation amendments (1816.111–1816.117) are being proposed to make the rules consistent with Federal regulations.

The general requirements for revegetation have been amended as have timing, mulching and other soil stabilizing practices, standards for success, and tree and shrub stocking for forest land. Illinois proposes to repeal rules on use of introduced species and grazing. These were areas identified by OSM as being inconsistent with Federal regulations. The amendments are proposed to make Illinois' revegation regulations consistent with Federal standards.

30 CFR 816.116 requires that the standards used to judge revegetation success be part of the approved program. Illinois has submitted its method for determining revegetation success as Appendix A of the proposed amendments.

The full text of the proposed amendments submitted by Illinois is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendments will become part of the Illinois program.

III. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 25, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85-15744 Filed 6-28-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-84-29]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL, GA, SC

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering changing regulations governing the drawbridges across the Atlantic Intracoastal Waterway (AICW) from Little River, South Carolina to Miami, Florida to provide for "on demand" openings for certain large vessels during authorized closed periods. This proposal is being made because of concern for the safety of both these vessels and the bridges and to provide for consistency in the operation of drawbridges across the AICW within the Seventh Coast Guard District. Additional changes deleting weather related exemptions at certain bridges and standardizing terminology to identify holidays as federal holidays are proposed.

DATE: Comments should be received on or before August 15, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130. The comments and other materials reference in this notice will be available for inspection and copying at 51 SW 1st Avenue, Room 816, Miami, Florida. Normal office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, (305) 350-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments.

Persons submitting comments should include their names and addresses, identify this proposal, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received, and determine a course of final actions on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

On October 31, 1984 the Commander, Seventh Coast Guard District published a notice of proposed rulemaking (49 FR 43715) soliciting comments on a rule that would require all drawbridges across the AICW to open on demand for "regularly scheduled cruise vessels" during authorized closed periods. This was intended to establish consistency in the operating regulations for these bridges and provide for the safe transit of large cruise vessels. Based on comments received on the proposed rule we have determined that it is the size of the vessel and not the nature of its employment that should be paramount in the proposed exception. Gross tonnage is a readily available measure of a vessel's bulk. Because the large cruise vessels which inspired the original proposal exceed 90 gross tons; this figure was selected as the cut-off for exempted vessels. Smaller vessels would be expected to be more maneuverable. This 90 gross ton criteria eliminates the need to define the term "regularly scheduled cruise vessels."

Specific regulations applicable to certain bridges when storm warnings are in effect would be revoked in the interest of uniformity and because vessels encountering storm conditions in certain situations can be considered "vessels in distress" eligible for on demand passage through a drawbridge during authorized closed periods.

The existing regulations variously address holidays, federal holidays and state holidays. The proposed regulations label all holidays as federal holidays in order to eliminate possible confusion.

Certain bridges contained in this proposal are currently the subject of other rulemaking which would establish or revise specific operating regulations. Those changes are being addressed independently of this proposal and are included herein solely in the interest of completeness. Minor editorial changes have been proposed throughout these regulations to improve readability.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the proposal is primarily a change of form, not of substance. Regulations now in effect at 10 of the 41 bridges affected by this proposal provide for on demand draw opening for regularly scheduled cruise vessels, regardless of size. The proposed regulation would remove this privilege from smaller cruise vessels at these 10 bridges but extend it to large vessels, regardless of employment, at all 41 bridges. Smaller cruise vessels can safely adjust their schedules to arrive at drawbridges at appropriate opening times. Since the economic impact of this proposal is expected to be minimal the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows: 33 U.S.C. 499, 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. In Part 117, §§ 117.261, 117.353, and 117.911 are proposed to be revised as follows:

* * * * *

Florida

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

(a) *Exempt Vessels.* This term means public vessels of the United States, tugs with tows, vessels over 90 gross tons, and vessels in distress.

(b) *McCormick Bridge, mile 747.5 at Jacksonville Beach.* The draw shall open on signal; except that, during April, May, October, and November, from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m. Monday

through Friday except federal holidays, the draw need open only on the hour and half-hour. During April, May, October, and November, from 12 noon to 6 p.m. Saturdays, Sundays, and federal holidays, the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(c) [Reserved]

(d) *Bridge of Lions (SR A1A) bridge, mile 777.9 at St. Augustine.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m. the draw need open only on the hour and half-hour; however, the draw need not open at 8 a.m., 12 noon, and 5 p.m. Monday through Friday except federal holidays. From 7 a.m. to 6 p.m. on Saturdays, Sundays and federal holidays the draw need only open on the hour and half-hour. Exempt vessels shall be passed at any time.

(e) *Seabreeze Boulevard bridge, mile 829.1 at Daytona Beach.* The draw shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Saturday except federal holidays, the draw need open only at 8 a.m. and 5 p.m. Exempt vessels shall be passed at any time.

(f) *Memorial bridge, mile 830.6 at Daytona Beach.* The draw shall open on signal; except that, from 7:45 a.m. to 8:45 a.m. and 4:45 p.m. to 5:45 p.m. Monday through Saturday except federal holidays, the draw need open only at 8:15 a.m. and 5:15 p.m. Exempt vessels shall be passed at any time.

(g) *SR A1A bridge, mile 835.5 at Port Orange.* The draw shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Saturday except federal holidays, the draw need open only at 8 a.m. and 5 p.m. Exempt vessels shall be passed at any time.

(h) [Reserved]

(i) *Harris Saxon bridge, mile 846.5 at New Smyrna Beach.* The draw shall open on signal; except that, from March 15 through October 15 on Saturdays, Sundays, and federal holidays from 3 p.m. to 6 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(j) *NASA railroad bridge, mile 876.6 near Jay Jay.* The draw shall be operated as follows:

(1) The bridge is not constantly tended.

(2) The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass.

(3) When a train approaches the bridge, the lights go to flashing red and a horn sounds four blasts, pauses, and then repeats four blasts. After an eight minute delay, the draw lowers and locks, providing the scanning equipment reveals nothing under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied.

(4) After the train has cleared, the draw opens and the lights return to flashing green.

(k) *SR402 bridge, mile 878.9 at Titusville.* The draw shall open on signal; except that, from 8:45 a.m. to 7:45 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday, the draw need not open. Exempt vessels shall be passed at any time.

(l) *John F. Kennedy Space Center (SR405) bridge, mile 885.0 at Addison Point.* The draw shall open on signal; except that, from 6:45 a.m. to 9 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday, the draw need not open. Exempt vessels shall be passed at any time.

(m) *SR518 bridge, mile 914.4 at Eau Gallie.* The draw shall open on signal; except that, from 6:45 a.m. to 8:15 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday except federal holidays, the draw need open only at 8:15 a.m. and 4:15 p.m. From 8:15 a.m. to 4:15 p.m. Monday through Friday except federal holidays, the draw need open only on the quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(n) *Merrill Barber (SR60) bridge, mile 951.9 at Vero Beach.* The draw shall open on signal; except that, from 7:45 a.m. to 9 a.m., 12 noon to 1:15 p.m., and 4 p.m. to to 5:15 p.m., Monday through Friday, except federal holidays, the draw need open only at 8:30 a.m., 12:30 p.m. and 4:30 p.m. From December 1 thorugh April 30, from 7 a.m. to 6 p.m., Monday through Friday except federal holidays and as provided above, the draw need only open on the hour, quarter-hour and half-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(o) [Reserved]

(p) [Reserved]

(q) *Indiantown Road (SR706) bridge, mile 1006.2 at Jupiter.* The draw shall open on signal; except that, from November 1, through April 30, from 7 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Exempt vessels shall be passed at any time.

(r) [Reserved]

(s) *PGA Boulevard bridge, mile 1012.6.* The draw shall open on signal; except that from, 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the quarter-hour and three-quarter hour.

On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Exempt vessels shall be passed at any time.

(t) *Parker (US1) bridge, mile 1013.7.* The draw shall open on signal; except that from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m. Monday through Friday except federal holidays, the draw need open only on the hour and half-hour. On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Exempt vessels shall be passed at any time.

(u) *Flagler Memorial (SR A1A) bridge, mile 1021.9 at Palm Beach.* The draw shall open on signal; except that, from November 1 to May 31, Monday through Friday except federal holidays, from 8 a.m. to 9:30 a.m. and from 4 p.m. to 5:45 p.m., the draw need open only at 8:30 a.m. and 4:45 p.m.. From 9:30 a.m. to 4 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(v) *Royal Park (SR704) bridge, mile 1022.6 at Palm Beach.* The draw shall open on signal; except that, from November 1 to May 31, Monday through Friday except federal holidays, from 8 a.m. to 9:30 a.m. and from 3:30 p.m. to 5:45 p.m., the draw need open only at 8:45 a.m., 4:15 p.m., and and 5 p.m.. From 9:30 a.m. to 3:30 p.m., the draw need open only on the hour and quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(w) *Southern Boulevard (SR700/80) bridge, mile 1024.7 at Palm Beach.* The draw shall open on signal; except that, from November 1 to May 31, Monday through Friday except federal holidays, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6:30 p.m., the draw need open only at 8:15 a.m. and 5:30 p.m. Exempt vessels shall be passed at any time.

(x) [Reserved]

(y) *Lantana Avenue bridge, mile 1031.0 at Lantana.* The draw shall open on signal; except that, from December 1, to April 30, on Saturdays, Sundays, and federal holidays, from 10 a.m. to 6 p.m., the bridge need open only on the hour, quarter-hour half-hour, and three-quarter hour. Exempt vessels shall be passed at any time.

(z) [Reserved]

(aa) *Atlantic Avenue (SR806) bridge, mile 1039.6 at Delray Beach.* The draw shall open on signal; except that, from November 1 to May 31 from 10 a.m. to 6 p.m. Monday through Friday, the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(bb) *SR810 bridge, mile 1050.0 at Deerfield Beach.* The draw shall open on signal; except that, from November 1

to May 31 from 11 a.m. to 5 p.m. on Saturdays, Sundays and federal holidays, the draw need not open only on the hour and quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(cc) *N.E. 14th Street bridge, mile 1055.0 at Pompano.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(dd) *Atlantic Boulevard (SR8140 bridge, mile 1056.0 at Pompano.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(ee) *Commercial Boulevard bridge, mile 1059.0 at Lauderdale-by-the-Sea.* The draw shall open on signal; except that, from November 1 to May 15 from 12 noon to 6 p.m., Monday through Saturday, and from 9 a.m. to 6 p.m. on Sundays, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. Exempt vessels shall be passed at any time.

(ff) *Oakland Park Boulevard bridge, mile 1060.5 at Ft. Lauderdale.* The draw shall open on signal; except that, from November 15 through May 15 from 7 a.m. to to 6 p.m., Monday through Friday except federal holidays, the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour, and from 10 a.m. to 6 p.m. on Saturdays, Sundays and federal holidays, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. Exempt vessels shall be passed at any time.

(gg) *Sunrise Boulevard (SR838) bridge, mile 1062.6 at Fort Lauderdale.* The draw shall open on signal; except that, from November 15 through May 15 and year-round through November 14, 1986 from 7:15 a.m. to 6:15 p.m.,the draw need open only on the quarter-hour and three quarter hour. Exempt vessels shall be passed at any time.

(hh) *Brooks Memorial (S.E. 17th Street) bridge, mile 1065.9 at Fort Lauderdale.* The draw shall open on signal; except that, from 7 a.m. to 7 p.m., the draw need not be reopened for a period of 15 minutes after each closure. The owner of or agency controlling the bridge shall display on both sides of the bridge a time clock which is acceptable to the District Commander and which indicates to approaching vessels the number of minutes remaining before the draw is available for opening. Exempt vessels shall be passed at any time.

(ii) [Reserved]

(jj) *Hollywood Beach Boulevard (SR820) bridge, mile 1072.2 at Hollywood.* The draw shall open on signal; except that, from November 15 through May 15 from 10 a.m. to 6 p.m., the draw need open only on the hour and half-hour. From May 16 through November 14 on Saturdays, Sundays, and federal holidays, from 9 a.m. to 7 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(kk) *Hallandale Beach Boulevard (SR824) bridge, mile 1074.0 at Hallandale.* The draw shall open on signal; except that, from 7:15 a.m. to 6:15 p.m., the draw need open only on the quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(ll) *N.E. 163rd Street (SR826) bridge, mile 1078.0 at Sunny Isles.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m., on Monday through Friday except federal holidays, and from 10 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays, the draw need open only on the quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(mm) *Broad Causeway bridge, mile 1081.4 at Bay Harbor Islands.* The draw shall open on signal; except that, from 8 a.m. to 6 p.m., the draw need open only on the quarter-hour and three-quarter hour. Exempt vessels shall be passed at any time.

(nn) *West Span of the Venetian Causeway, mile 1088.6 at Miami.* The draw shall open on signal; except that, from November 1 through April 30, Monday through Friday except federal holidays, from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., the draw need be opened only on the hour and half-hour. Exempt vessels shall be passed at any time.

(oo) *MacArthur Causeway bridge, mile 1088.8 at Miami.* The draw shall open on signal; except that, from November 1 through April 30 from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(pp) *Dodge Island bridges, mile 1089.4 at Miami.* The draws shall open on signal; except that, from 7:15 a.m. to 5:45 p.m. Monday through Saturday except federal holidays, the draws need open only on the quarter-hour and three quarter hour. Exempt vessels shall be passed at any time.

(qq) *Rickenbacker Causeway bridge, mile 1091.6 at Miami.* The draw shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except federal holidays, and 11 a.m. to 6 p.m. Saturdays, Sundays, and federal holidays, the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

* * * * *

§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St. Marys River.

(a) *Exempt Vessels.* This term means public vessels of the United States, tugs with tows, vessels over 90 gross tons, and vessels in distress.

(b) *Causton Bluff (SR26) bridge across the Wilmington River, mile 579.9 near Causton Bluff.* The draw shall open on signal except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except federal holidays, the draw need open only at 8:10 a.m. and 5:20 p.m. Exempt vessels shall be passed at any time.

(c) *Memorial (US80) Bridge across the Wilmington River, mile 582.8 at Thunderbolt.* The draw shall open on signal; except that, from 7:45 a.m. to 9:15 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday except federal holidays, the draw need open only at 8:30 a.m. and 5:45 p.m. From May 15 to September 15 from 12 noon to 1:30 p.m. and 4 p.m. to 6 p.m. on Sundays, and federal holidays the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(d) *Torras Causeway bridge across the Frederica River, mile 675.5 at Simons Island.* The draw shall open on signal; except that, from 7:30 a.m. to 9:30 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday except federal holidays, the draw need open only on the hour and half hour. Exempt vessels shall be passed at any time.

* * * * *

South Carolina

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

(a) *Exempt Vessels.* This term means public vessels of the United States, tugs with tows, vessels over 90 gross tons, and vessels in distress.

(b) *Socastee (SR544) bridge, mile 371 at Socastee.* The draw shall open on signal except that from April 1 through June 30 and October 1 through November 30 from 7 a.m. to 10 a.m. and 2 p.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half-hour. From May 1 through June 30 and October 1 through October 31 from 10 a.m. to 2 p.m., Saturdays, Sundays and federal holidays, the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(c) *Ben Sawyer (SR703) bridge across Sullivan's Island Narrows, mile 462.2 between Sullivan's Island and Mount Pleasant.* The draw shall open on signal, except that the draw need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays. On Saturdays, Sundays, and federal holidays, from 2 p.m. to 6 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(d) *SR171/700 bridge across Wappoo Creek, mile 470.8 at Charleston.* The draw shall open on signal, except that the draw need not open from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays. On Saturdays, Sundays, and federal holidays, from 2 p.m. to 6 p.m., the draw need open only on the hour and half-hour. Exempt vessels shall be passed at any time.

(e) *Lady's Island bridge across the Beaufort River, mile 536.0 at Beaufort.* The draw shall open on signal, except that, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Saturday except federal holidays, the draw need open only on the hour. Exempt vessels shall be passed at any time.

* * * * *

Dated: June 17, 1985.

A. R. Larrabee,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 85-15709 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD8-85-11]

Drawbridge Operation Regulations; Schooner Bayou Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge over Schooner Bayou Canal, mile 4.0 from White Lake, on LA82 at Little Prairie Ridge, Vermilion Parish, Louisiana. The change would require that at least four hours advance notice be given for an opening of the draw between 10 p.m. and 6 a.m. Outside these hours, the bridge would continue to open on signal. Presently, the draw is required to open on signal at all times. This proposal is being made because of the infrequent requests to open the draw during the proposed advance notice period. This action should relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw from 10 p.m. to 6 a.m., while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before August 15, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested parties are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 6.0 feet above high water and 9.0 feet above low water, at the pivot pier, and a foot higher at the rest pier. Navigation through the bridge consists of oil industry related boats, shrimp/fish boats, and recreational craft. Data submitted by the LDOTD show that this traffic through the bridge is infrequent during the proposed advance notice period, as follows:

(1) In 1984, between 10 p.m. and 6 a.m., the proposed advance notice period, there were 302 bridge openings—an average of 25.2 openings per month or an average of five openings every six days. In 1983, for the same time period, there were 219 openings—an average of 18.3 openings per month or an average of three openings every five days.

(2) The total number of openings in 1984, 1983, 1982, 1981, 1980, 1979, and 1978 were: 1994, 1209, 1542, 2234, 2495, 2021, and 2329, respectively.

Considering the few openings involved, the Coast Guard feels that the current on site attendance at the bridge between 10 p.m. and 6 a.m. is not warranted and that the bridge can be placed on a four hours advance notice for an opening during that period. This will provide relief to the bridge owner, while still providing for the reasonable needs of navigation.

The advance notice for opening the draw would be given by placing a collect call at any time to the LDOTD District Office at Lafayette, Louisiana, telephone (318) 233-7404. From afloat, this contact may be made by radiotelephone through a public coast station.

The LDOTD recognizes that there may be an unusual occasion to open the bridge on less than four hours notice for an emergency or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass this bridge during the proposed advance notice period of 10 p.m. to 6 a.m., as evidenced by the combined 1983 and 1984 bridge opening statistics which show that the bridge averaged two openings every three days. These vessels can reasonably give four hours advance notice for a bridge opening between 10 p.m. and 6 a.m. by placing a collect call to the bridge owner at any time. Mariners requiring the bridge openings are mainly repeat users and scheduling their arrival at the bridge at the appointed time during the advance notice period should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499, and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

2. Section 117.494 is added to read as follows:

§ 117.494 Schooner Bayou Canal.

The draw of the S82 bridge, mile 4.0 from White Lake at Little Prairie Ridge, shall open on signal, except that, from 10 p.m. to 6 a.m. the draw shall open on signal if at least four hours notice is given. The draw shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

Dated: June 19, 1985.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85-15716 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 50459-5059]

Revision of Patent Fees

Correction

In FR Doc. 85–15156 beginning on page 25896 in the issue of Friday, June 21, 1985, make the following corrections:

1. On page 25897, in the first column, in the second complete paragraph, in the eighth line from the end of the paragraph, "of" should read "or".

2. On the same page, in the second column, in the next to last line of the first complete paragraph, "cost of" should read "cost to".

3. On page 25898, in the first column, under the heading *Section 1.26 Refunds.*, in the first line "1.25" should read "1.26".

4. On the same page, in the next to last line of the first column, "cost of" should read "cost to".

5. On page 25900, in the first column, in the last line of § 1.19(a)(2), the brackets around "$8.00" should be removed.

6. On the same page, in the second column, in the last line of § 1.19(h), the arrow preceding "$10.00" should be removed.

7. On page 25901, in the first column, in the last line of § 1.21(a)(3), the brackets around "$25.00" should be removed.

8. On the same page in the second column, in the last line of § 1.21(g), the brackets around "$0.20" should be removed.

9. On the same page and in the same column, in the next to last line of § 1.21(i), "of" should read "or".

10. On the same page, in the third column, in the last line of § 1.21(k), the brackets around "actual cost" should be removed.

11. On page 25902, in the second column, in the next to last line of § 1.445(a)(3), brackets should be added around the reference to footnote 1.

12. On the same page, in the third column, brackets should be added around footnote 1 which follows § 1.445(a)(6).

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2856-4]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the Michigan State Implementation Plan (SIP) for sulfur dioxide (SO^2) as it applies to the Consumer Power Company) (CPC) J.H. Campbell plant in Ottawa County, Michigan. The plant is located in an area classified as attainment for the National Ambient Air Quality Standards (NAAQS) for SO_2.

Consent Order No. 12–1984 for the J.H. Campbell plant allows the plant's Units 1 and 2 to emit SO_2 at an allowable rate of 4.88 to 4.68 lbs/MMBTU on a daily basis for a 3-year (1985–1987) period. The Consent Order represents a reduction from the previous (1980–1984) 6.6 lbs SO_2-MMBTU allowable emission rate but is higher than the underlying 1.66 lbs SO_2/MMBTU emission limit in the Michigan SIP. An acceptable attainment demonstration was provided which shows that the proposed limits will protect the SO_2 NAAQS and the Prevention of Significant Deterioration (PSD) increments.

DATE: USEPA must receive comments on or before July 31, 1985.

ADDRESSES: Written comments should be sent to: (Please submit an original and five copies, if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Toni Lesser, (312) 886–6037.

Copies of the State's submittal and USEPA's evaluation are available for inspection during normal business hours at (It is recommended that you telephone Ms. Toni Lesser, at (312) 886–6037, before visiting the Region V office):

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48821.

SUPPLEMENTARY INFORMATION: On May 31, 1972 (37 FR 10842), USEPA approved Michigan's Rule 336.49 imposing statewide emission limitations for control of SO_2 emissions from power plants. On January 17, 1980, Michigan revised and recodified R336.49 and R336.1401; these revisions were not substantive. Rule 336.1401 contains emissions limits and compliance dates identical to those in R336.49.

On May 6, 1980 (45 FR 29795), USEPA approved R336.1401. Rule 336.1401 contains a 1 percent sulfur content in fuel limitation for large coal-burning power plants, with compliance date of July 1, 1978. Under this rule, a source could obtain an exception from meeting the SO_2 limit up until January 1, 1980, if certain specified conditions were met. After January 1, 1980, a source could apply to the Michigan Air Pollution Control Commission (MAPCC) for a compliance date extension, pursuant to State regulations. However, any such extensions must be submitted to USEPA as a revision to the federally approved SIP.

On December 24, 1980 (45 FR 85004), USEPA approved a 5-year compliance date extension from Michigan's Rule 336.1401 for the CPC's J.H. Campbell plant (Consent Order No. 5–1979). The J.H. Campbell plant is located in Port Sheldon Township, Ottawa County, Michigan, approximately 1 kilometer east of Lake Michigan. Ottawa County is located in Air Quality Control Region

122 which was designated as an attainment area for SO_2 on October 5, 1978 (45 FR 45993). Consent Order No. 5–1979 contained provisions that SO_2 emissions from the J.H. Campbell Plant Units 1 and 2 were not to exceed 6.6 lbs/MMBTU on a daily basis (or 3.05 percent sulfur in coal on an annual average basis) between January 1, 1980, and December 31, 1984.

In a State hearing held on November 29, 1983, the MAPCC denied CPC's request for an additional 5 year compliance date extension (January 1, 1985, to December 31, 1989).

On June 18, 1984, the MAPCC approved a new request by CPC for an additional 3 year compliance date extension (January 1, 1985–December 31, 1987) at J.H. Campbell Units 1 and 2. On October 1, 1984, MDNR submitted the Stipulation for Entry of Consent Order and Final Order, SIP No. 12–1984, between the CPC and the MAPCC as a revision to Michigan's SO_2 SIP. The key provisions of the Order are summarized below:

- J.H. Campbell Units 1 and 2 must be in compliance with the 1 percent sulfur fuel in R336.1401 prior to January 1, 1988.
- SO_2 emission limitations:

	Daily (lbs/MMBTU)	Quarterly (percent sulfur fuel)
1985	[illegible]	2.6
1986	4.76	2.5
1987	[illegible]	[illegible]

- CPC must enter into contracts for low sulfur coal (1,200,000 tons) by January 1, 1985.
- CPC must operate several SO_2 ambient monitors and a stack gas emission monitor.

Consent Order No. 12–1984 requires a reduction from the 6.6 lbs/MMBTU limit allowed in 1984 to a 4.88 lbs/MMBTU limit in 1986. In support of the SIP revision, MDNR submitted the CPC application, MDNR staff reports and MDNR analyses of the CPC application.

USEPA's technical support document of November 30, 1984, provides a detailed discussion of USEPA's review of air quality modeling analysis and PSD applicability.

The analyses are consistent with USEPA's modeling guidelines and indicate that the revised SO_2 emission limitations for the J.H. Cambell Plant will not cause or contribute to a violation of the SO_2 in Michigan or any other State.

Because the CPC J.H. Campbell plant is located in an area designated as attainment for the SO_2 NAAQS and the proposed SIP revision constitutes a relaxation of the Michigan SO_2 SIP, the PDS regulations (August 7, 1980, 45 FR 52676) may be applicable. Relaxations must be reviewed for PSD increment consumption, if the PSD baseline date has been triggered by the filing of a complete PSD application within the area in which the J.H. Campbell plant is located in or has a 1 $\mu g/m^3$ impact. Because the baseline date was triggered in 1980 for Ottawa County, a PSD increment consumption analysis is necessary for the J.H. Campbell revision. It is noted, however, that the proposed emission limitations are lower than the historical actual emission rates from this plant; and, therefore, the revision will result in a decrease in actual emissions from the plant. Consequently, the proposed revision expands rather than consumes the available PSD increment in this area.

USEPA has reviewed the State of Michigan's request for a 3-year SO_2 compliance date extension from R336.1401 for the CPC J.H. Campbell plant. USEPA is today proposing approval of this revision. This revision represents a reduction from the 1980–1984, 6.6 lbs/MMBTU allowable emission rate, but is higher than the 1.66 lbs/MMBUT allowable rate in the underlying Michigan SO_2 SIP. The Consent Order between Michigan and CPC requires compliance with R336.1401 prior to January 1, 1988. An acceptable attainment demonstration was provided which shows that the proposed limits will protect the SO_2 NAAQS and PSD increments.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities because it affects only one source. In addition, this action imposes no additional requirements on the source.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

This notice is issued under authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated: Febuary 25, 1985.

Alan Lavin,

Acting Regional Administrator.

[FR Doc. 85–15572 Filed 6–28–85; 8:45 am]

BILLING CODE [illegible]

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 334 (Sub–5)]

Review of Car Hire Charges; Extension of Time

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to advance notice of proposed rulemaking.

SUMMARY: At 50 FR 16724, April 29, 1985, the Commission opened this proceeding to undertake a broad review of the regulation of railroad car-hire charges (except car-hire charges for boxcars). That notice established due dates of June 28 and August 27, 1985, respectively, for the filing of initial and reply comments. In response to requests, this notice extends those dates by 60 days.

DATES: Initial comments are due by August 27, 1985; reply comments are due by October 28, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking published April 29, 1985 (50 FR 16724) established due dates of June 28 and August 27, 1985, respectively, for the filing of initial and reply comments in this proceeding. By a joint petition filed June 11, 1985, the American Short Line Railroad Association, BRAE Corporation, and Itel Rail Corporation (petitioners) seek 60-day extensions of time for filing those comments. In reply, the Consolidated Rail Corporation has requested a 90-day extension. Petitioners join in that request, but the Railway Progress Institute supports only the petitioners original 60-day request. In addition, the railroad subsidiaries of CSX Corporation have also requested a 90-day extension.

Because of the complex issues, a 60-day extension is warranted. The longer extension requests are not warranted, because this is a longstanding issue in the railroad industry, because an additional 60 days is ample time to adequately prepare, and because the railroads have addressed the same issues recently in similar proceedings.

Decided: June 24, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85–15745 Filed 6–28–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-07; Notice 2]

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period on a notice of proposed rulemaking published May 14, 1985, regrading the timing of air brakes on vehicles used in combinations. The comment period was scheduled to close on June 28, 1985. NHTSA received five petitions asking that the comment period be extended to allow commenters more time to analyze the available data on the effects of various actuation and release times on the braking performance of vehicles operated in combinations. NHTSA has concluded that the commenters would benefit from additional time to review NHTSA data that has recently been made available. The agency also concludes that testing scheduled by the petitioners would provide useful data on brake performance which NHTSA should have the opportunity to consider before proceeding with this rulemaking. Accordingly, the comment period is extended until December 30, 1985.

DATE: The comment period for Docket No. 85-07; Notice 1 is extended so that it closes December 30, 1985.

ADDRESS: Comments should refer to Docket No. 85-07 and be submitted to: docket Section, Room 5109, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590 (Docket Hours are 8:00 am to 4:00 pm Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. James Clements, Office of Vehicle Safety Standards, HNTSA, 400 Seventh Street SW., Washington, D.C. (202-426-1714).

SUPPLEMENTARY INFORMATION: NHTSA published a notice of proposed rulemaking regarding the actuation and release timing for air brakes on combination vehicles at 50 FR 20113, May 14, 1985. The comment period for the proposal was scheduled to close June 28, 1985.

NHTSA received five petitions asking that the comment period be extended. The Motor Vehicle Manufacturers Association (MVMA) petitioned for an extension to November 12, 1985, to permit an analysis of the test data submited to the docket by NHTSA and to schedule and conduct tests of vehicle and brake system configurations that were not part of the NHTSA test program. The American Trucking Association (ATA) petitioned for a six-month extension to allow time to incorporate the proposed procedures into a testing program that will form the basis for more comprehensive comments. The Truck Trailer Manufacturers Association asked for 60 days to permit the completion of their tests and the sharing of information at their Engineering Committee meeting in August. General Motors and the Ford Motor Company each requested a six-month extension to permit the completion of their respective testing programs.

NHTSA has carefully considered these comments. In the agency's view, the new testing proposed by the petitioners might well yield significant new data on brake compatibility. To give the agency the opportunity to examine this data, and to allow the interested public more time to analyze the data which are currently available, NHTSA has decided to extend the comment period for this rulemaking for the six months requested by the majority of the petitioners. The new closing date for comments is December 30, 1985.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 150.

Issued on June 26, 1985.

William A. Boehly,

Acting Associate Administrator for Rulemaking.

[FR Doc. 85-15709 Filed 6-26-85; 12:54 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 50, No. 126
Monday, July 1, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Third Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Pub. L. 96–177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1985 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As published on December 27, 1984 (49 FR 50215), the estimated aggregate quantity of meat articles prescribed by subsection 2(c), as adjusted by subsection 2(d) of the Act, for calendar year 1985 is 1,199 million pounds.

In accordance with the requirements of the Act, I have determined that the third quarterly estimate for 1985 of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1985 is 1,180 million pounds.

Done at Washington, D.C., this 27th day of June, 1985.

John R. Block,

Secretary.

[FR Doc. 85–15795 Filed 6–27–85; 11:49 am]

BILLING CODE 3410–10–M

Federal Grain Inspection Service

Designation Renewal of Grain Inspection, Inc. (ND) and Kankakee Grain Inspection Bureau, Inc. (IL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Grain Inspection, Inc. (Jamestown), and Kankakee Grain Inspection Bureau, Inc. (Kankakee), as official agencies responsible for providing official servcies under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: August 1, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Jamestown's and Kankakee's designations terminate on July 31, 1985, and requested applications for official agency designation to provide official services within each specified geographic area in the February 1, 1985, **Federal Register** (50 FR 4716). Applications were to be postmarked by March 4, 1985. Jamestown and Kankakee were the only applicants, each applying for designation renewal.

FGIS announced the applicant names and requested comments on same in the March 1, 1985, **Federal Register** (50 FR 12841). Comments were to be postmarked by May 16, 1985; none were received.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Jamestown and Kankakee are able to provide official services in the respective geographic areas for which FGIS is renewing their designations, effective August 1, 1985, and terminating July 31, 1988. Jamestown and Kankakee will provide official inspection services in their respective specified geographic areas, which are the entire areas previously described in the February 1, **Federal Register.**

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

Grain Inspection, Inc., 217 4th Avenue, NW., P.O. Box 1652, Jamestown, ND 58401

Kankakee Grain Inspection Bureau, Inc., 550 North Fifth Avenue, P.O. Box 102, Kankakee, IL 60901

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: June 24, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–15612 Filed 6–28–85; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Los Angeles Grain Inspection Service, Inc. (CA) and Peoria Grain Inspection Service, Inc. (IL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Los Angeles Grain Inspection Service, Inc. (Los Angeles),

and Peoria Grain Inspection, Service, Inc. (Peoria).

DATE: Comments to be postmarked on or before August 15, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within specified geographic areas in the April 1, 1985, **Federal Register** (50 FR 18542). Applications were to be postmarked by May 31, 1985. Los Angeles Grain Inspection Service, Inc., and Peoria Grain Inspection Service, Inc., were the only applicants, each applying for designation renewal in the areas currently assigned to those agencies.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C 71 *et seq.*))

Dated: June 24, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–15613 Filed 6–28–85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Areas Currently Assigned to Minnesota Department of Agriculture (MN) and Mississippi Department of Agriculture and Commerce (MS)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to each specified agency. The official agencies are the Minnesota Department of Agriculture and the Mississippi Department of Agriculture and Commerce.

DATE: Applications to be postmarked on or before July 31, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

The Minnesota Department of Agriculture (Minnesota), 316 Grain Exchange Building, Minneapolis, MN 55415, and the Mississippi Department of Agriculture and Commerce (Mississippi), P.O. Box 1609, Jackson, MS 39205, were each designated under the Act as an official agency to provide inspection and weighing functions on January 1, 1983.

Each official agency's designation terminates on December 31, 1985. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Minnesota, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Minnesota, except those export port locations within the State.

The geographic area presently assigned to Mississippi, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Mississippi, except those export port locations within the State.

Interested parties, including Minnesota and Mississippi, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning January 1, 1986, and ending December 31, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C 71 *et seq.*))

Dated: June 24, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–15614 Filed 6–28–85; 8:45 am]

BILLING CODE 3410-EN-M

Designation Renewal of A.V. Tischer and Son, Inc. (IA)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of A.V Tischer and

Son, Inc. (Tischer), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: July 1, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Tischer's designation terminates on June 30, 1985, and requested applications for official agency designation to provide official services within a specified geographic area in the January 2, 1985, issue of the **Federal Register** (50 FR 135). Applications were to be postmarked by February 4, 1985. Tischer was the only applicant for the designation and applied for designation renewal.

FGIS announced the applicant name and requested comments on same in the March 1, 1985, issue of the **Federal Register** (50 FR 8351). Comments were to be postmarked by April 15, 1985; nine comments were received regarding Tischer's designation renewal.

The comments focused upon Tischer's grading accuracy; the need for a public hearing on Tischer's designation renewal; and permitting grain firms to obtain official services with any designated agency of their choice.

Specifically, the comments questioned the grading accuracy for official inspection services performed by Tischer. Pursuant to section 5(b) of the Act and § 800.215 of the regulations, FGIS supervises the official inspection and weighing activities of licensed persons employed by designated agencies, including Tischer. For over the past year, FGIS has increased its supervision of Tischer, based upon questions raised by grain firms as to Tischer's grading accuracy. This action arose out of an April 18, 1984, FGIS meeting with approximately 50 grain firms. Based upon results of this increased level of supervision and all available information, FGIS has determined that Tischer has been and is presently well within the prescribed grade tolerances and compares favorably with all agencies in the official inspection system.

Pursuant to section 7(g) of the Act and § 800.196 of the regulations, agencies' designations terminate not later than triennially. FGIS has implemented a three-step procedure in which notices of designation termination and request for applicants; request for comments regarding applicants; and designation renewal are published in the **Federal Register**. While the Act specifies hearings for certain purposes such as a revocation or suspension of a designation, the Act does not provide for a hearing for the designation process including renewals. In any event, interested persons are afforded the opportunity to present comments regarding applicants. As such, a hearing would not be appropriate.

Section 7(f)(2) of the Act provides that only one official agency shall be operative at one time for any geographic area. Further, section 7(f)(3) provides that except as authorized by the Administrator no official agency may inspect an officially drawn sample from a lot of grain unless such lot of grain is physically located within the geographic area assigned to the agency at the time such sample is drawn. Section 7A of the Act provides for similar limitations with respect to Class X and Class Y weighing, as appropriate. These provisions of the Act were drafted, in part, to prevent "grade shopping" by applicants for official services, while at the same time maintaining the integrity and viability of the nation's inspection and weighing program. Accordingly, grain firms are not permitted to obtain official services from any designated agency of their choice.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Tischer is able to provide official services in the geographic area for which FGIS is renewing its designation. Effective July 1, 1985, and terminating June 30, 1988, Tischer will provide official inspection services and Class X or Class Y weighing services in its specified geographic area, which is the entire area previously described in the January 2 **Federal Register** issue.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified services points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

A.V. Tischer and Son, Inc., 137 10th Street, NW., P.O. Box 330, Fort Dodge, IA 50501

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 25, 1985.

Neile E. Porter,

Acting Director, Compliance Division.

[FR Doc. 85–15015 Filed 6–28–85; 8:45 am]

BILLING CODE 3410-EN-M

Food and Nutrition Service

Cash in Lieu of Commodities; Value of Donated Commodities for School Year 1985

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that, since the value of agricultural commodities and other foods provided meets the level of assistance authorized under the National School Lunch Act, there will be no shortfall cash payments to States for the National School Lunch Program for 1985 school year. The Secretary of Agriculture has determined that the annually programmed level of assistance was met in food donations by June 30, 1985.

FOR FURTHER INFORMATION CONTACT: Beverly King, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION:

Classification

This action, which implements a mandatory provision of section 6(b) of the National School Lunch Act, has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified as "nonmajor." It meets none of the three criteria in the Executive Order; the action will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs, and will not have a significant impact on competition, employment, productivity,

innovation, or the ability of U.S. enterprises to compete.

The action has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act of 1980. Robert E. Leard, Administrator, Food and Nutrition Service has determined that it will not have a significant economic impact on a substantial number of small entities. The primary purpose of the action is to notify States that the amount of foods donated will meet the programmed level for the school year 1985; therefore, no payment of cash in lieu of donated foods will be necessary.

Section 6(b) of the National School Lunch Act (the Act), as amended (7 U.S.C. 1755) and the regulations governing cash in lieu of donated foods (7 CFR Part 240) require the Secretary of Agriculture by May 15 of each school year to estimate the value of agricultural commodities and other foods that will be delivered to States during that school year. Under the food distribution regulations (7 CFR Part 250), these foods are used by schools participating in the National School Lunch Program. If the estimated value is less than the total level of commodity assistance authorized under Section 6(e) of the Act, the Secretary is required by June 15 of that school year to pay to each State administering agency funds equal to the difference between the value of programmed deliveries and the total level of authorized assistance for each State.

For school year 1985 the adjusted minimum national average value of donated foods or payment of cash in lieu thereof per lunch has been established under section 6(e) at 12.0 cents per lunch (49 FR 32776). In accordance with this requirement, a national entitlement of $452,993,782 in commodities was established for school year 1985. The Secretary has determined that at least that amount was available for delivery nationally by June 30, 1985, to meet the mandated level of assistance.

Notice is hereby given, therefore, that no shortfall cash payments will be made for the school year ending June 30, 1985.

This notice contains no reporting or recordkeeping provision necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance No. 10.550)

Dated: June 25, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85–15751 Filed 6–28–85; 8:45 am]

BILLING CODE 3410-30-M

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of country of origin adjustment for certain condensed milk from Denmark.

SUMMARY: Presidential Proclamation 4708 issued December 11, 1979, amended Headnote 3(a) of Part 3 of the Appendix to the Tariff Schedules of the United States to permit the Secretary of Agriculture to make country of origin adjustments for unlicensed quotas that will not be filled by the country of origin listed opposite the quota. This notice implements such an adjustment will respect to the quota quantity assigned to Demark for condensed milk in airtight containers.

EFFECTIVE DATE: July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6616 South Building, Department of Agriculture, Washington, D.C. 20250 or telephone at (202) 447–5270.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1 and has been determined to be "nonmajor" since it will not have any of the significant effects specified in those documents. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota item specified herein may be entered does not affect the ability of importers to import this quota item, but only expands the number of countries from which the item may be imported. Also, since this action is being taken in recognition of changes in the market which have already occurred, this action will not cause any new economic impact.

An assessment of the impact of this rule on the environment was made and, based on this evaluation, this action is not a major federal action and will have no foreseeable significant effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this proposed rule.

Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) sets forth import limitations imposed on certain dairy products, including certain condensed milk. Headnote 3(a)(iii) of that Appendix allows for reallocating the quota amount of a dairy article listed in that Appendix among the countries of origin specified for a given article if it is determined that the quota amount assigned to a particular country is not likely to be entered from that country within a given calendar year. I hereby determine that it is not likely that the amount of condensed milk specified in TSUS Item 949.90 for Denmark will be entered from that country during calendar year 1985.

Notice is hereby given that the 1985 unused quota quantity for condensed milk specified in TSUS Item 949.90 for Denmark may be imported from Canada, Denmark, the Netherlands and Australia for the remainder of the 1985 quota year.

This quota quantity for TSUS Item 949.90 will revert to the original supplying country on January 1, 1986.

Issued at Washington, D.C., this 17th day of June 1985.

Richard A. Smith,

Administrator.

[FR Doc. 85–15714 Filed 6–28–85; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

National Environmental Policy Act; Revised Implementation Procedures

Correction

In FR Doc. 85–15017 beginning on page 26078 in the issue of Monday, June 24, 1985, make the following correction:

On page 26086, in the first column, the material beginning "Appendix II" and continuing through the paragraph which precedes the heading "Chapter 10—Scoping" should have appeared on page 26082 in the second column between the fourth line and the heading *"02—OBJECTIVES"*.

BILLING CODE 1505-03-M

DEPARTMENT OF COMMERCE

International Trade Administration

Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Publication of quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which subsidies were identified in our April 1, 1985, quarterly update to our annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: June 28, 1985.

Alan F. Holmes,

Deputy Assistant Secretary, Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (cents per pound)	Net [2] subsidy (cents per pound)
Belgium	European Community (EC) Restitution Payments	4.0	4.0
Canada	Export Assistance on Certain Cheeses	25.5	25.5
Denmark	EC Restitution Payments	.0	.0
Finland	Export Subsidy	24.7	24.7
	Indirect Subsidies	14.3	14.3
		39.0	39.0
France	EC Restitution Payments	.0	.0
Ireland	EC Restitution Payments	5.6	5.6
Italy	EC Restitution Payments	17.2	17.2
Luxembourg	EC Restitution Payments	4.0	4.0
Netherlands	EC Restitution Payments	.0	.0
Norway	Indirect (Milk) Subsidy	13.5	13.5
	Consumer Subsidy	29.9	29.9
		43.4	43.4
Switzerland	Deficiency Payments	55.3	55.3
U.K.	EC Restitution Payments	.0	.0
W. Germany	EC Restitution Payments	.0	.0

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1267(6).

[FR Doc. 85-15755 Filed 6-28-85; 8:45 am]
BILLING CODE 3510-DS-M

[A-307-401]

Certain Welded Circular Carbon Steel Pipes and Tubes From Venezuela; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from the respondent in this investigation to postpone the final determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A). Based on this request, we are postponing our final antidumping duty determination as to whether sales of certain welded circular carbon steel pipes and tubes from Venezuela have occurred at less than fair value until not later than October 16, 1985.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Karen L. Sackett, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington D.C. 20230; telephone (202) 377–3003.

SUPPLEMENTARY INFORMATION: On January 7, 1985, we announced the initiation of an antidumping duty investigation to determine certain welded circular carbon steel pipes and tubes from Venezuela, are being, or are likely to be, sold in the United States at less than fair value (50 FR 1614). We issued our preliminary affirmative determination on May 28, 1985 (50 FR 23343). That notice stated that we would issue a final determination by August 12, 1985. On June 10, 1985, counsel for respondent requested that we extend the period for the final determination until not later than the 135th day after publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. If exporters who account for a significant proportion of exports of the subject merchandise request an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than October 16, 1985.

This notice is published pursuant to section 735(d) of the Act.

Scope of Investigation

The product under investigation is small diameter circular welded carbon steep pipe and tube with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the Tariff

Schedules of the United States Annotated under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 25, 1985.

[FR Doc. 85-15754 Filed 6-28-85; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Henny Penny Corporation, (("HPC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(b), which requires the Secretary of Commerce to publish in the **Federal Register** a summary of each certificate issued. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products: Commercial foodservice equipment, including accessories and spare parts.

Services: Export sales and marketing services to assist individual clients in the export of commercial foodservice equipment. Such services include: (1) Identifying and establishing export sales distribution contacts; (2) establishing export distribution and sales networks; (3) providing guidance on export sales distribution coordination, the establishment of exclusive distributorships, export marketing strategies, technical service coordination, qualification of equipment for use in export markets, advertising, and export credit; and (4) providing a full range of training procedures for export department functions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. HPC may enter into individual agreements with clients, whereby HPC agrees to provide such clients with Services in Export Trade; and the clients agree (a) not to obtain such Services from any person or company other than HPC, and/or (b) to export Products in Export Trade only through distributors approved by HPC. In such agreements, HPC and its clients also may agree that in the event that the client sells its Products for the Export Markets other than through the distributors approved by HPC, the client will pay a commission to HPC. These agreements may include provisions requiring each client to provide HPC with monthly export sales reports.

2. For its own account, HPC may enter into exclusive agreements with distributors for the Export Markets, wherein (a) HPC agrees to deal in any portion of the Export Markets only through such distributors and/or (b) the distributors agree not to represent HPC's competitors for the Export Markets, unless authorized by HPC. Such agreements may include price and territorial restrictions for the Export Markets.

3. On behalf of its Member, HPC may develop and arrange for exclusive agreements between its Member and any distributor(s) for the Export Markets, wherein (a) the Member agrees to deal in any specified territories in the Export Markets only through such distributors and/or (b) the distributors agree not to represent the Member's competitors for the Export Markets, unless authorized by the Member. Such agreements, established by HPC for its Member, may include price and territorial restrictions for the Export Markets.

Member

Lincoln Manufacturing Company, Inc. of Fort Wayne, Indiana is a "Member" on this certificate within the meaning of § 325.2(1) of the Regulations.

A copy of each certificate is available for inspection and copying in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Dated: June 25, 1985.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 85-15679 Filed 6-28-85; 8:45 am]

BILLING CODE 3510-DR-M

[C-122-404]

Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled and Frozen Pork Products from Canada

Correction

In FR Doc. 85-14400 beginning on page 25097 in the issue of Monday, June 17, 1985 in the tenth line of the "**SUMMARY**" paragraph the figure "$0.25523" should read, "$0.05523".

BILLING CODE 1505-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending the Import Restraint Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 1, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and Malaysia have exchanged notes extending their Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 5, 1980 and February 27, 1981, as amended, for eight months beginning on January 1, 1985 and

extending through August 31, 1985. The agreement, as amended and extended, establishes specific limits for Categories 331, 333/334/335, 341, 345, 338/339, 340, 347/348, 445/446, 604 and 638/639, among others, exported during the eight-month period which began on January 1, 1985 and extends through August 31, 1985. The agreement, as amended and extended, also contains a consultation mechanism for categories not subject to specific limits for which levels may be established during the agreement period. The letter published below cancels and supersedes the directive of June 4, 1985 and establishes eight-month limits for the foregoing categories. The limits have not been adjusted to account for any imports exported after December 31, 1984. As the data become available, such charges will be made.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 27, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This letter cancels and supersedes the directive of June 4, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements which established six-month limits for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Malaysia and exported during the six-month period which began on January 1, 1985.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 5, 1980 and February 27, 1981, as amended and extended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Malaysia and exported during the eight-month period which began on January 1, 1985 and extends through August 31, 1985, in excess of the indicated restraint limits:

Category	8-mo restraint limit [1]
331	408,253 dozen pairs.
333/334/335	53,485 dozen of which not more than 26,743 dozen shall be in Cat. 333; not more than 26,743 dozen shall be in Cat. 334 and not more than 26,743 dozen shall be in Cat. 335.
338/339	312,675 dozen of which not more than 124,818 dozen shall be in Cat. 339.
340	217,961 dozen.
341	154,362 dozen.
345	44,651 dozen.
347/348	123,264 dozen of which not more than 64,416 dozen shall be in Cat. 348.
445/446	16,874 dozen.
604	883,843 pounds.
638/639	126,845 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1984.

In carrying out this directive, entries of cotton, wool, and man-made fiber textiles and textile products in the foregoing categories, produced or manufactured in Malaysia, which have been exported to the United States during the period which began on January 1, 1984 and extended through December 31, 1984, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during those periods. In the event the limits so established have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of December 6, 1980 and February 27, 1981, as amended and extended, between the Governments of the United States and Malaysia which provide, in part, that: (1) specific limits or sublimits may be exceeded by not more than five percent, if a corresponding reduction is made in one or more other specific limits in the same group during the same agreement year; (2) specific limits may be adjusted for carryover; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709, as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-15811 Filed 6-28-85; 8:45 am]

BILLING CODE 3510-DR-M

Controlling Imports of Certain Wool Apparel Products Produced or Manufactured in Uruguay

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 1, 1985. For further information contact William Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The bilateral agreement, effected by exchange of notes dated January 23, 1984, as amended, between the Governments of the United States and Uruguay establishes specific restraint limits of 19,865 dozen for men's and boys' wool coats in Category 434, 40,501 dozen for wool coats in Category 435, and 6,019 dozen for women's, girls', and infants' wool suits in Category 444, produced or manufactured in Uruguay and exported during the agreement year beginning on July 1, 1985 and extending through June 30, 1986. The letter which follows this notice directs the Commissioner of Customs to prohibit entry for consumption and withdrawal from warehouse for consumption of wool textile products in Categories 434, 435 and 444, produced or manufactured in Uruguay and exported during the year beginning on July 1, 1985, in excess of the designated restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983

(48 FR 57584), April 4, 1984 (49 FR 13397), June 26, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 27, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended, on December 15, 1977 and December 22, 1981; pursuant to the bilateral agreement effected by exchange of notes dated January 23, 1984, as amended, between the Governments of the United States and Uruguay; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Categories 434, 435 and 444, produced or manufactured in Uruguay and exported during the twelve-month period beginning on July 1, 1985 and extending through June 30, 1986, in excess of the following restraint limits:

Category	12-mo restraint limit
434	19,885 dozen.
435	49,501 dozen.
444	6,019 dozen.

In carrying out this directive entries of wool textile products in Categories 435 and 444, produced our manufactured in Uruguay, which have been exported on and after July 1, 1984 and extending through June 30, 1985 shall, to the extent of any unfilled balances, be charged to the limits established for such goods during that twelve-month period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

This limit is subject to adjustment in the future according to the provisions of the bilateral agreement, as amended, which provide, in part, that: (1) the specific limits may be adjusted for carryover and carryforward and (2) administrative arrangements or adjustments may be made to resolve minor problems arising the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 12, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 26, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile agreements has determined that this actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-15809 Filed 6-28-85; 8:45 am]

BILLING CODE 3510-DR-M

Limits for Certain and Cotton Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 1, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On July 2, August 30, October 29, November 2, December 20 and December 28, 1984 and February 1, 1985 letters to the U.S. Customs Service were published in the **Federal Register** (49 FR 27194, 34391, 43484, 44119, 49492, 50433 and 50 FR 4732), which established import restraint limits for cotton and man-made fiber textile products in Categories 315, 320 pt (only TSUSA numbers 320.—, 321.—, 322.—, 326.—, 327.—, and 328.— with statistical suffixes 21, 22, 24, 31, 36, 49, 57, 74, 80 and 98), 331, 334, 338, 339, 341 and 631 pt. (only TSUSA numbers 704.3215, 704.8525, 704.8550, and 704.9000), produced or manufactured in Indonesia and exported during the following periods:

Category	Period
315	July 1, 1984 to June 30, 1985.
320 pt.	July 31, 1984 to June 30, 1985.
331	July 1, 1984 to June 30, 1985.
334	September 28, 1984 to June 30, 1985.
338	December 31, 1984 to June 30, 1985.
339	July 1, 1984 to June 30, 1985.
341	July 1, 1984 to June 30, 1985.
631 pt.	September 17, 1984 to June 30, 1985.

These levels are all filled.

On December 14, 1984 a further notice was published in the **Federal Register** (49 FR 49079) announcing that, as of January 1, 1985, the Committee for the Implementation of Textile Agreements, in order to prevent market disruption, would direct the U.S. Customs Service, as appropriate, to permit entry into the United States for consumption, or withdrawal from warehouse for consumption, of such goods which were exported during a prior restraint period in excess of the restraint limit established for that period at a prescribed rate per month during each of the first five months of the following period. CITA has decided, in the case of imports in Categories 315, 320 pt. 331, 334 338, 339, 341 and 631 pt. to direct Customs to permit entry in the specified amounts during each of the five thirty day periods stipulated in the letter to the Commissioner of Customs which follows this notice. However, because of the amount of the overshipment in Category 320 pt., entered during the previous period, this level will not reopen until the second the second thirty-day period.

A description of the textile categories in terms of TSUSA numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 26, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 27, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreements, effected by exchange of notes dated October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on July 1, 1985, to permit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories produced or

manufactured in Indonesia and exported during the specified periods noted below which were in excess of the limits established for those periods.

Category	Amount to be entered per 30-day period	Previous restraint period
315	2,404,942 square yards	July 1, 1984 to June 30, 1985.
320 pt.[1]	647,486 square yards	July 31, 1984 to June 30, 1985.
331	63,322 dozen pairs	July 1, 1984 to June 30, 1985.
334	4,800 dozen	September 28,336 1984 to June 30, 1985.
338	44,346 dozen	December 31, 1984 to June 30, 1985.
339	89,000 dozen	July 1, 1984 to June 30, 1985.
341	72,000 dozen	July 1, 1985 to June 30, 1985.
631 pt.[2]	25,319 dozen pairs	September 17, 1984 to June 30, 1985.

[1] In Category 320, only TSUSA numbers 320.—, 321.—, 322.—, 326.—, 327.—, and 328.—with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.
[2] In Category 631 pt., only TSUSA numbers 704.3215, 704.8525, 704.8550, and 704.9000.

The thirty-day periods shall be as follows:
July 1, 1985 to July 30, 1985
July 31, 1985 to August 29, 1985
August 30, 1985 to September 28, 1985
September 29, 1985 to October 28, 1985
October 29, 1985 to November 27, 1985

A description of the textile categories in terms of TSUSA numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57564), April 4, 1984 (49 FR 13397), June 28, 1984 (48 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 47782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–15808 Filed 6–28–8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Colombia

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 1, 1985. For further information contact William Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement effected by exchange of notes dated July 1, and August 11, 1982, as amended, between the Governments of the United States and Colombia establishes specific limits for cotton, wool and man-made fiber textile products in Categories 363, 433, 435, 442, 443, 444, 448, and 641 produced or manufactured in Colombia and exported during the twelve-month period which begins on July 1, 1985 and extends through June 30, 1986. It also provides consultation levels for other categories, such as Categories 320, 369 and 644, which are not subject to specific limits and which may be adjusted during the agreement year. Accordingly, a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs is published below which directs that entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in the foregoing categories be limited to the designated twelve-month restraint levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (43 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 23, 1984 (49 FR 26622), July 16, 1984 (49 FR 23754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 27, 1985

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and August 11, 1982, as amended, between the Governments of the United States and Colombia; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the indicated categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on July 1, 1985 and extending through June 30, 1986, in excess of the following restraint limits:

Categories	12-mo restraint limit
320	7,000,000 yards.
363	4,007,150 numbers.
369	217,391 pounds.
433	7,141 dozen.
435	5,068 dozen.
442	8,161 dozen.
443	12,105 dozen.
444	4,476 dozen.
448	7,141 dozen.
641	100,209 dozen.
644	27,778 dozen.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Colombia, which have been exported to the United States during the twelve-month period beginning on July 1, 1984 and extending through June 30, 1985 shall, to the extent of any unfilled balances, be charged against the levels established for such goods during that twelve-month period. In the event that the levels established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement as amended, between the Governments of the United States and Colombia, which provide, in part, that: (1) within the applicable group limits of the agreement, specific limits may be exceeded by designated percentages; (2) these same limits may also be increased for carryover and carryforward up to 11 percent of the applicable category limits; (3) certain consultation levels may be increased within in the applicable group limits upon agreement between the two Governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems

arising in the implementation of the agreement. Any appropriate adjustment under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-15810 Filed 6-28-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Software; Meeting Change

ACTION: Change in place of Advisory Committee meeting.

SUMMARY: The meeting place for the Defense Science Board Task Force on Software scheduled for 8 July 1985 in the Pentagon, Washington, D.C. as published in the **Federal Register** (Vol. 50, No. 111, Monday, June 10, 1985, FR Doc. 85-13852) has been changed to the MITRE Corporation, 1820 Dolley Madison Boulevard, McLean, Virginia. In all other respects the original notice remains unchanged.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 28, 1985.

[FR Doc. 85-15734 Filed 6-28-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 25, 1985.

The USAF Scientific Advisory Board's Ad Hoc Committee on High Power Microwave Systems will meet at the Pentagon, Washington, DC on July 26, 1985.

The purpose of the meetings will be to review information on weaponization concepts and updates on program structuring. The meeting will convene from 8:30 a.m. to 4:30 p.m.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at, 202-697-8845.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-15697 Filed 6-28-85; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

June 21, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Options for Attack of Strategic Relocatable Targets will meet in the Pentagon on July 29-30-31, 1985 from 8:30 a.m. to 4:00 p.m. each day. The purpose of the meeting will be to review findings to date on existing and programmed systems which may be effectively applied to attack of mobile ballistic missiles and to write the committee's final draft report.

The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-15698 Filed 6-28-85; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Notice of OMB Circular A-76 Cost Comparison Studies

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of OMB circular A-76 cost studies.

SUMMARY: The U.S. Army Corps of Engineers intends to conduct OMB Circular A-76 cost comparison studies of its various functions nation-wide. This listing includes studies of pure civil works-funded activities only. Studies of activities funded entirely or in part by Department of Defense will be published separately by the Department of the Army. The studies listed below are expected to be completed within the next twelve months. Contracts may or may not result from the cost comparison studies.

ADDRESS: USACE, DAEN-RMM-C, Washington, D.C. 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Gary W. Lloyd at (202) 272-0044.

SUPPLEMENTARY INFORMATION: The cost comparison study process is rigorous and time consuming. The actual length of time required to complete a study depends upon the size and complexity of the function under study. Specific invitations for bid or requests for proposal will be announced in the Commerce Business Daily (CBD) as each study reaches the solicitation stage. No consolidated bidders list is being maintained since solicitations will be processed by contracting offices throughout approximately 29 Corps of Engineers' field operating activities:

Location	Function
Districts:	
Vicksburg	Fac/Grounds/Util Maint, study start, 01-10-84.
New Orleans	ADP Data Trans/Entry, study start, 13-05-83.
Do	ADP Oper & Maint of Equip, study start, 04-02-84.
Do	ADP Oper & Maint of Equip, study start, 04-02-84.
Do	Oper & Maint of Locks, study start, 07-09-83.
Do	Word Processing, study start, 08-01-84.
Do	Admin Tel/Teletype, study start, 10-01-83.
Memphis	Oper & Maint Hx Pump Plant, study start, 05-15-84.
Do	Oper & Maint GB Pump Plant, study start, 05-30-84.
Do	Oper & Main #17 Pump Plant, study start, 07-12-83.
Kansas City	VARIOUS: Motor Pool/Vehicle Maint, Radio Elec Repair, study start 02-01-85.
New York	Admin Support Services, study start, 07-01-85.
Do	FAc/Grounds/Util Maint, study start, 08-04-83.
Philadelphia	VARIOUS: Fac/Grounds/Util Maint, Warehse & Stock Handling, study start 05-31-85.
Do	VARIOUS: Fac/Grounds/Util Maint, Motor Pool/Vehicle Maint, study start 05-31-85.
Do	VARIOUS: Audiovisual, Mail & File, Printing & Repro, Work Processing Ctr, study start 08-31-85.
Buffalo	Admin Support Services, study start, 04-01-85
Chicago	Admin Support Services, study start, 03-06-85.
Do	Printing & Repro, study start, 03-06-85.
Detroit	Admin Support Services, study start, 07-01-85.
Do	Grnds Main/Snow Rem/Custod, study start, 12-12-84.
Rock Island	Audiovisual, study start, 03-15-85.
St. Paul	Mail & File, study start, 04-01-85.
Portland	Data Transcript/Keypunch, study start, 05-31-85.
Do	Audiovisual, study start, 10-01-84.
Do	Mail & File study start, 08-15-85.
Seattle	Warehousing/Stock Handling, study start, 08-01-85.
Do	LWSC Visitor Center, study start, 07-15-85.
Walla Walla	Recreation Area Oper, study start, 02-01-85.
Do	Habitate Area Mgmt, study start, 06-15-85.

Location	Function
Do	Audiovisual, study start, 08-15-85.
Do	Mail & File/Messenger, study start, 08-15-85.
Do	Fac/Grounds/Util Maint, study start, 08-15-85.
Do	Microfilming, study start, 08-01-83.
Nashville	Audiovisual, study start, 11-18-83.
Huntington	Audiovisual, study start, 08-19-85.
Do	Mail & File, study start, 08-19-85.
Nashville	Word Processing Ctr, study start, 10-17-83.
Louisville	Floating Plant Oper, study start, 07-01-85.
Do	Exterior Painting, study start, 07-01-85.
Do	Compliance Inspection, study start, 08-26-85.
Huntington	Word Processing Ctr, study start, 10-17-83.
Pittsburgh	Word Processing Ctr, study start, 07-01-83.
Do	Recreation Area Oper, study start, 07-01-85.
Do	Recreation Area Oper, study start, 07-01-85.
Mobile	Fac/Grounds/Util Maint, study start, 07-01-85.
Wilmington	Drift/Debris Removal, study start, 07-08-85.
Savannah	Mail & File, study start, 07-01-85.
Jacksonville	Oper/Maint Lock/Dam/Bridge, study start, 07-05-85.
Mobile	Fac/Grounds/Util Maint, study start, 07-01-85.
Albuquerque	Motor Pool/Vehicle Maint, study start, 11-18-85.
Little Rock	Word Processing, study start, 05-01-85.
Do	Communication/Elect Sys, study start, 08-15-84.
Tulsa	VARIOUS: Fac/Grounds/Util Maint, Motor Pool/Vehicle Maint, study start, 80-20-85.
Division: New England	Admin Support Services, study start, 04-01-85.

Terence Connell,

Colonel, Corps of Engineers, Director of Resource Management.

[FR Doc. 85-15455 Filed 6-28-85; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Special Needs Program; Application Preparation Workshop for New Non-Renewable Development Grants

SUMMARY: The Assistant Secretary for Postsecondary Education will conduct a one day Application Preparation Workshop to assist prospective applicants to develop applications for non-renewable development grants under the Special Needs Program.

DATE: July 8, 1985.

ADDRESS: The location for the workshop is as follows: GSA Auditorium, Regional Office Building #3, 7th and D Streets SW., Washington, D.C. 20202; Contact Person: Dr. Elwood L. Bland, (202) 245-9077.

SUPPLEMENTARY INFORMATION: An Application Notice for new grants in fiscal year 1985 under the Special Needs Program was published in the Federal Register on June 12, 1985 (50 FR 24673-24675). The deadline date for the receipt of applications is August 1, 1985. Under this announced competition, it is estimated that approximately $15,000,000 will be available for new awards. In accordance with section 347 of the Higher Education Act of 1965, as amended, priority in the selection of grantees may be given to historically Black and two-year institutions to satisfy statutory set-aside requirements.

The July 8, 1985 workshop will consist of a one-day session which will include a review of requirements for filing applications, the purposes of the Special Needs Program, allowable and non-allowable costs, and the application review process. Time will be provided for questions and answers. The workshop will begin with registration at 8:30 a.m., and presentations are scheduled from 9:00 a.m. to 4:00 p.m. The Department will not charge a registration fee for attendance at the workshop.

(Catalog of Federal and Domestic Assistance # 84.31B—Special Needs Program)

Dated: June 26, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85-15737 Filed 6-28-85; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before July 31, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 26, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Education Research and Improvement

Type of Review Requested: New
Title: A Study of Local Implementation of Chapter 1 of the Education Consolidation and Improvement Act
Agency Form Number: G50-0P
Frequency: Non-recurring
Affected Public: State or local governments
Reporting Burden: Responses: 2,250; Burden Hours: 2,250
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The information will provide nationally representative data on the way districts implement Chapter 1 of the Education Consolidation and Improvement Act (ECIA) for use by Congress in its 1987 reauthorization hearings on ECIA of 1981. This study will collect information from local government officials, especially those involved with the Chapter 1 program at the district level.

Type of Review Requested: Extension
Title: Common Core of Data (CCD) 1985-86, 1986-87
Agency Form Number: ED 2442, 2443, 2443-1, 2444, 2445, 2446 and 2447
Frequency: Annually

Affected Public: State or local governments
Reporting Burden: Responses: 57; Burden Hours: 19,549
Recordkeeping Burden: Recordkeeping: 0; Burden Hours: 0

Abstract: These data provide information about student enrollment, teachers, and related finances by source and function. Data are used to create sampling frames, allocate Federal funds under Chapter 1 of the Education Consolidation Improvement Act, and carry out studies mandated by the National Center for Education Statistics.

Office of Postsecondary Education

Type of Review Requested: New
Title: Performance Report for the Special Services for Disadvantaged Students Program
Agency Form Number: ED 1231
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Responses: 663; Burden Hours: 1,989
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Special Services grantees are required to submit annual performance reports. The reports are used to evaluate project accomplishments and to collect impact data for budget submissions and congressional hearings.

Type of Review Requested: New
Title: National Graduate Fellows Program
Agency Form Number: E40-7P
Frequency: Annually
Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions
Reporting Burden: Responses: 7,000; Burden Hours: 21,000
Recordkeeping Burden: Recordkeepers: 30; Burden Hours: 60

Abstract: The National Graduate Fellows Program application is utilized to obtain information to screen roughly 7,000 graduate students for 450 merit based fellowships.

Type of Review Requested: Extension
Title: Application for the Veteran's Cost-of-Instruction Payments Program (VCIP)
Agency Form Number: ED 269
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Responses: 800; Burden Hours: 800
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Section 420 of the Higher Education Act of 1965, as amended, authorizes payments to institutions of higher education based on veteran student enrollments. The Veteran's Cost-of-Instruction Payments Program application obtains the necessary data to verify eligibility and calculate awards.

Office of Planning, Budget and Evaluation

Type of Review Requested: New
Title: Assessment of the State Operated Programs for Handicapped Children under Chapter 1 of the Education Consolidation and Improvement Act of 1981
Agency Form Number: P75-4P
Frequency: One time
Affected Public: State or local governments
Reporting Burden: Responses: 138; Burden Hours: 138
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This study will provide information on the operation of the State operated programs for the handicapped children under Chapter 1 of the Education Consolidation and Improvement Act of 1981. Data will be collected from special education administrators at State and local educational agencies and State-operated/State-supported agencies.

[FR Doc. 85-15738 Filed 6-28-85; 8:45 am]
BILLING CODE 4000-01-M

Office of Bilingual Education and Minority Languages Affairs

Bilingual Education: State Educational Agency Program; Applications

AGENCY: Department of Education.

ACTION: Application Notice for new awards under the Bilingual Education: State Educational Agency Program for Fiscal Year 1985.

SUMMARY: Applications are invited for new projects under the Bilingual Education: State Educational Agency Program.

Authority for this program is contained in section 732 of Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511.

(20 U.S.C. 3242)

State educational agencies (SEAs) are eligible for assistance under the State Educational Agency Program.

The purpose of the awards is to provide financial assistance through grants to State educational agencies (SEAs) to collect, aggregate, analyze, and report data and information on the States population of limited English proficient persons, and the educational services provided or available to those persons. The program further provides for additional services in support of programs of bilingual education funded in their States.

Closing date for transmittal of applications: Applications for new awards must be mailed or hand delivered on or before August 1, 1985.

Applications delivered by mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.003R, 400 Maryland Avenue, S.W., Washington, DC. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on the method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, S.W., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, DC. time) daily, except Saturdays, Sundays, and Federal holidays.

Applications that are hand-delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Program information: The State Educational Agency Program provides financial assistance to SEAs to collect, aggregate, analyze, and publish data on the limited English proficient persons in their States and the educational services provided or available to those persons.

In addition to these required activities, SEAs may propose additional activities designed to improve the effectiveness of programs of bilingual education in their States, such as those assisted under Title VII. Applications will be approved for a period of one year.

Intergovernmental review: This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthed federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why these views will not be accommodated; and
- Revokes OMB Circular A–85.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and selected this program for review:

States	
Alabama	New Hampshire
Arizona	New Jersey
Arkansas	New Mexico
California	North Carolina
Colorado	North Dakota
Connecticut	Ohio
Delaware	Oklahoma
Florida	Oregon
Georgia	Pennsylvania
Hawaii	Rhode Island
Illinois	South Carolina
Indiana	South Dakota
Iowa	Tennessee
Kansas	Texas
kentucky	Utah
Louisiana	Vermont
Maine	Virginia
Maryland	Washington
Massachusetts	West Virginia
Michigan	Wisconsin
Mississippi	Wyoming
Minnesota	Virgin Islands
Missouri	District of Columbia
Montana	Puerto Rico
Nebraska	Northern Mariana
Nevada	Islands

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by September 1, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4161 (CFDA No. 84.003R), 400 Maryland Avenue SW., Washington, D.C. 20202.

Proof of mailing will be determined on the same basis as applications.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Application forms: Application forms and program information packages are expected to be available by July 2, 1985.

These may be obtained by writing to Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421 Reporters Building), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 50 pages.

The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1885–0506)

Available funds: It is expected that approximately $5,000,000 will be available for this program for Fiscal Year 1985.

An award to an SEA shall not be less than $50,000 nor greater than 5 percent of the aggregate of the amounts paid under the Basic Projects Program and the Demonstration Projects Program previously authorized under section 721 of Title VII, as amended by Pub. L. 95–561 and 34 CFR Parts 501 and 502 (1984).

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: Regulations applicable to this program include the following:

(1) The regulations governing the State Educational Agency Program proposed to be codified in 34 CFR Part 548. (Applications are being accepted based on the notice of proposed rulemaking for the State Educational Agency Program which was published in the Federal Register on May 28, 1985 (50 FR 21786). If the Secretary makes changes in the final regulations, the Secretary may extend the closing date to allow applicants to amend or resubmit their applications.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), except for § 75.217(a)(3) and (c)–(e) (relating to review of applications), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs nd Activities).

Further information: For further information contact Luis A. Catarineau, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 421, Reporters Building), Washington, D.C. 20202. Telephone: (202) 245–2922.

(20 U.S.C. 3242)

Dated: June 26, 1985.

(Catalog of Federal Domestic Assistance Nubmer 84.003, Bilingual Education)

Carol Pandàs Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85-15736 Filed 6-28-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Educational Research and Improvement

Library Career Training Program Applications for New Awards

AGENCY: Department of Education.

ACTION: Application Notice for New Awards Under Library Career Training Program for Fiscal Year 1986.

SUMMARY: Applications are invited for new projects under the Library Career Training Program.

Authority for this program is contained in sections 201 and 222 of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. (20 U.S.C. 1021 *et seq.*)

The purpose of these grants is to assist in training persons in librarianship.

Institutions of higher education or a library agency or organization are eligible to apply.

Closing date for transmittal of applications: Applications for new awards must be mailed or hand delivered or or before September 16, 1985.

Applications delivered by mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.036), 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Program information: Evaluation criteria and eligibility requirements for the Library Career Training program appear in the Code of Federal Regulations at 34 CFR Part 776. The Fiscal Year 1986 grant program will be governed by the provisions of the final regulations on March 5, 1982, in the **Federal Register** (47 FR 9786).

Pursuant to 34 CFR 776.34(c), applications for grants will be evaluated independently according to academic levels, i.e., associate, bachelor's, master's, post-masters, and doctorate. The Secretary expects the Congress to limit the use of any apprpriations for fellowship projects only, based on similar limitations made annually since Fiscal Year 1981. The Secretary will not consider applications for institute or traineeship projects.

Application forms: Application forms and program information packages are expected to be available by July 26, 1985. These may be obtained by writing to Library Education, Research, and Resources Branch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 613, Brown Building, Washington, D.C. 20202-1630.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages.

The Secretary further urges that applicants not submit information that is not requested.

(The application form is approved by the Office of Management and Budget under control number 1850-0022, Exp. Date 10/86.)

Available funds: The Department of Education has not requested funds for the Library Career Training program for Fiscal Year 1986. However, applications are invited to allow for sufficient time to evaluate applications and complete processing prior to the end of the fiscal year in the event that funds are approrpriated for the program. In Fiscal year 1985, 38 grants were awarded totaling $635,000 which provided fellowships to 72 individuals. In Fiscal Year 1985, $455,000 was awarded for fellowships at the master's level, $48,000 at the post-master's level, and $132,000 at the doctural level. If funds are appropriated for the program in Fiscal Year 1986, the Secretary will reserve funds for fellowships.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing the Library Career Training Program 34 CFR Part 776.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78.

Further Information: For further information contact Mr. Frank A. Stevens or Mrs. Yvonne Carter, Library Education, Research, and Resources Branch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 613, Brown Building, Washington, D.C. 20202-1630. Telephone: (202) 254-5090.

(20 U.S.C. 1021, *et seq.*)

(Catalog of Federal Domestic Assistance No. 84.036, Library Career Training Program)

Dated: June 26, 1985.

Emerson J. Elliott,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 85-15700 Filed 6-28-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $29,673.56 obtained as a result of a consent order which the DOE entered into with Naphsol Refining Company, a reseller-retailer of petroleum products located in Muskegon, Michigan. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATES AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0134.

FOR FURTHER INFORMATION CONTACT: Douglas Friedman, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $29,673.56 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Naphsol Refining Company. The funds were provided to the DOE by Naphsol to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of refined petroleum products during the period November 1, 1973, through March 31, 1975.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased motor gasoline, No. 1 fuel oil, or No. 2 fuel oil from Naphsol. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from Naphsol and to demonstrate that it was injured by Naphsol's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: June 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

June 21, 1985.

Name of Firm: Naphsol Refining Co.
Date of Filing: October 13, 1983.
Case Number: HEF-0134.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Naphsol Refining Company (Naphsol).

I. Background

Naphsol is a "reseller-retainer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Muskegon, Michigan. A DOE audit of Naphsol's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that between November 1, 1973, and March 31, 1975, Naphsol committed possible pricing violations amounting to $185,274.48 with respect to its sales of No. 1 fuel oil, No. 2 fuel oil, and motor gasoline.

In order to settle all claims and disputes between Naphsol and the DOE regarding the firm's sales of motor gasoline, No. 1 fuel oil, and No. 2 fuel oil during the period covered by the audit, Naphsol and the DOE entered into a consent order on August 31, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Naphsol does not admit that it violated the regulations.

Under the terms of the consent order, Naphsol was required to deposit $29,673.56 into an interest bearing escrow account for ultimate distribution by the DOE. Naphsol remitted this sum on September 4, 1982.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable

[1] As of May 31, 1985, the Naphsol escrow account contained $43,392.00, including accrued interest.

purchasers of refined petroleum products who may have been injured by Naphsol's pricing practices during the period November 1, 1973, through March 31, 1975. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the Naphsol refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Naphsol's alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly in all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. Finally, we are making a proposed finding that end users of Naphsol products were injured by Naphsol's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it occurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Naphsol times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.0005036 per gallon.[8] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that claimants seeking small refunds were injured by Naphsol's pricing practices. There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be rquired to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Other refund decisions have expressed this threshold in terms of either purchase volumes or refund dollar amounts. In *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp., Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*) and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs. [9]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases from Naphsol not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of No. 1 furl oil, No. 2 fuel oil,

[8] This figure is derived by dividing the $29,673.56 settlement amount by the 58,927,333 gallons of products sold by Naphsol during the consent order period.

[9] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to prove their injury. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 COE P 85,029 at 88,125 (1982) (ADA).

or motor gasoline from Naphsol during the consent order period.

As noted above, we are making a proposed finding that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) *(PVM); see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein.[4]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Naphsol's alleged violations of the DOE regulations would routinely be passed through to the utilities' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,539 (1982) (*Tenneco*), and *Office of Speical Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds should file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its monthly purchases from Naphsol. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, Section 210 actions. If these actions have been concluded the applicant should finish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisified, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy By Naphsol Refining Company pursuant to the consent order executed on August 31, 1981, will be distributed in accordance with the foregoing decision.

[FR Doc. 85-15705 Filed 6-28-85; 8:45 am]

BILLING CODE 6450-01-M

[4] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be rquired to make any showing of injury beyond that reqtired of other end users.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $3,500,000.00 (plus accrued interest) obtained as the result of a consent order between the DOE and the True Companies. The funds will be distributed to refund applicants who purchased propane, butane, natural gasoline, natural gas liquid products, #1 fuel, #2 fuel, crude oil, and/or motor gasoline from The True Companies during the Consent Order period (August 19, 1973 through January 28, 1981).

DATE AND ADDRESS: Comments must be filed in duplicate by July 31, 1985 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should display conspicuously a reference to Case Number HEF-0557.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director, or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute moneys obtained from The True Companies (True). True entered into a Consent Order to settle possible pricing violations with respect to its sales of petroleum products during the period from August 19, 1973 and January 28, 1981. Under the terms of the Consent Order, True has remitted $3,500,000.00 which is being held in an interest-bearing escrow account pending determination of its proper distribution.

The DOE has tentatively decided to allocate one-third of the consent order moneys to crude oil claims and two-

thirds of the moneys to non-crude oil claims. Crude oil claims will be evaluated by standards established in prior DOE cases. The DOE proposes that the portion of the Consent Order fund allocated to non-crude oil claims be distributed in a two stage refund proceeding. The first stage will attempt to refund moneys to customers who can document their purchases of True products. The Proposed Decision and Order provides that the funds will be distributed to successful claimants based on the number of gallons of product which they purchased and the extent to which they can prove that they were injured by the alleged overcharges. After meritorious claims are paid in the first stage, second-stage refund procedures may become necessary to distribute any remaining funds.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claim is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. to 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: June 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Case: The True Companies.
Date of Filing: December 7, 1984.
Case Number: HEF-0557.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

On December 7, 1984, the ERA requested that the OHA formulate and implement procedures to distribute funds which it received pursuant to a consent order with The True Companies (True).[1]

This Proposed Decision concerns the distribution of that consent order fund.

I. Background

During the consent order period (August 19, 1973 through January 28, 1981) True produced, extracted, resold, and marketed petroleum products including crude oil, propane, butane, natural gasoline, and natural gas liquids. The True Consent Order also covers No. 2 fuel, No. 1 fuel, and motor gasoline although, according to True, the Companies did not sell those products and the products were included in the Consent Order solely to eliminate the potential for any further enforcement actions against True. Telephone Conversation between Irene Bleiweiss, OHA Staff Attorney, and Jack Blomstrom, Attorney for True (May 30, 1985). The Mandatory Petroleum Price Regulations, 10 CFR Part 212, governed the maximum prices that could lawfully be charged for all of the products covered by the Consent Order.

On August 6, 1981, the ERA issued a Proposed Remedial Order (PRO) to True Oil Company alleging that, from September 1, 1973 through October 31, 1976, True Oil Company charged more for propane, butane, and natural gasoline than it was permitted to by law. True Oil Company sold these products via transfer to an affiliated marketing company. The marketing affiliate was called Reserve Oil Purchasing Company until November 1973, and Black Hills Oil Marketers until November 1977, when it became True Oil Purchasing Company (TOPCO).

In order to settle the claims made in the PRO and any other claims which might have arisen from True's activities between August 19, 1973 and January 28, 1981, True and the DOE entered into a Consent Order on July 28, 1983. 48 FR 55768 (July 28, 1983). Pursuant to the Consent Order, True refunded the sum of $3,500,000.00 to the DOE.

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable readily to identify the persons who may have been injured as a result fo alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA petition to implement a Subpart V proceeding with respect to the True Consent Order fund and have determined that it is appropriate to establish such a proceeding.

III. Proposed Refund Procedures

The True Consent Order covers crude oil as well as other petroleum products. Since the DOE regulations treat such products differently, in cases where both types of products are involved, we have divided consent order funds into separate pools of refund monies. *E.g., Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985). Although True sold more crude oil than other covered products during the consent order period, the company estimates that only one-third of the alleged overcharges are attributable to crude oil. Telephone Conversation between Irene Bleiweiss, OHA Staff Attorney, and Jack Blomstrom, Attorney for True (June 7, 1985). Our review of the record indicates that this estimate is reasonable. Therefore, we propose to divide the consent order fund as follows: one-third of the fund ($1,166,666.70) will be available to claims based on crude oil and two-thirds of the fund ($2,333,333.30) will be available to purchasers of other True products.

A. Crude Oil

All refund applications involving crude oil will be considered based on the standards enunciated in the cases of *A. Johnson & Co.*, 12 DOE ¶ 85,102 (1984) (*Johnson*); *Office of Enforcement*, 9 DOE ¶ 82,521 (1982) (*Alkek*); and *Office of Enforcement*, 9 DOE ¶ 82,553 (1982) (*Adams*). These cases discussed in

[1] "The True Companies" (True) is the name used in the Consent Order and in this Decision and Order to refer to six individuals (H.A. True, Jr., Jean D. True, Tamma T. Hatten, H.A. True III, Diemer D. True, and David L. True) doing business as the following companies: True Oil Company; True Drilling Company; Eighty-Eight Oil Company; Equitable Purchasing Company; Smokey Oil Company; True Oil Purchasing Company, now a defunct corporation; Black Hills Oil Marketers, Inc., now a defunct corporation; Black Hills Trucking, Inc.; Reserve Oil Purchasing Company, now a defunct corporation; Toolpushers Supply Company; Reserve Oil Field Supply Company; Belle Fourche Pipeline Company; True Land and Royalty Company, now a defunct corporation; and Cambria Oil Company. Five of these companies (Toolpushers Supply Company, True Drilling Company, True Land and Royalty Company, Belle Fourche Pipeline Company, and Black Hills Trucking, Inc.) were engaged solely in non-regulated activities such as drilling and transportation. Telephone Conversation between Irene Bleiweiss, OHA Staff Attorney, and Jack Blomstrom, Attorney for True (May 30, 1985).

detail the considerations involved in evaluation of refund claims involving crude oil.

Claims for refunds from the crude oil refund pool can be based on two theories. First, a firm may claim that it was charged prices in excess of the applicable ceiling prices in its purchase of True crude oil during the consent order period. Second, an applicant may base its refund claim on its participation in the Entitlements Program.

All claimants whose claims are based on their purchases of crude oil from True must file refund applications in order to be eligible to receive refunds. Such applications should be based on the standards enunciated in the *Johnson, Alkek* and *Adams* cases. Any claimants whose interests in this case are based solely on participation in the Entitlements Program, will not have to file a refund application in this case if they have filed a similar application in another OHA case. Such persons will be deemed to have filed a similar application in this proceeding. This approach will simplify and expedite our consideration of these entitlements claims.

B. Other Products

Based on our experience with Subpart V cases, we believe that the distribution of the non-crude oil pool of consent order moneys should take place in two stages. The first stage will attempt to refund moneys to those who purchased True products during the consent order period. Such purchasers must file claims and document their purchases in order to be eligible for a portion of the consent order fund. In addition, purchasers will be required to prove that they did not pass the overcharges on to their own customers.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. *See generally Office of Special Counsel,* 10 DOE ¶ 85,048 (1982). We will not determine second stage refund procedures at this time because such procedures will necessarily depend on the size of the fund remaining after first stage procedures are completed.

1. Refunds to Identifiable Purchasers

During the first stage of the refund process, we propose that the True consent order fund be distributed to claimants who satisfactorily demonstrate that they were injured by True's alleged overcharges. The audit file which provided the basis for the PRO issued to True Oil Company, identifies a number of customers who purchased that firm's propane, butane, and natural gasoline and who therefore might have been injured by the alleged overcharges. The names of these customers and the products and volumes which they purchased are set forth in the Appendix to this Proposed Decision and Order. However, since the customers identified in the Appendix are not the only customers who might have been injured by the prices which True charged, we will establish a claims procedure in which we will accept applications from the customers identified in the Appendix and any other parties who can demonstrate that they were injured by True's alleged overcharges.

All claimants will have to file an application in order to receive a refund. Applicants not specifically named in the Appendix will be required to provide all relevant information necessary to establish a claim, including documentation of the date, place, price and volume of the product(s) purchased. However, a customer named in the Appendix may utilize an alternative means to qualify for a refund if it is unable to fully document its application. Under this alternative means, an identified customer must: (1) Explain why documentation of its purchase volumes is not available or would be expensive or difficult to obtain; (2) certify that it was a purchaser of True products during the relevant period (see Appendix for dates); (3) certify that the specified purchase volume in the Appendix appears reasonably accurate; and (4) limit its claims to the volumes and products set forth in the Appendix. *See Marion Corp.,* 12 DOE ¶ 85,013 (1984).

All applicants, with three exceptions discussed later in this Proposed Decision, will be required to show the extent to which they have been injured by the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the consent order fund. While there are a variety of ways in which a showing of injury may be made, a reseller will generally be required to demonstrate that during the period covered by the Consent Order, it had "banks" of unrecovered product costs which were at least equal to the amount of the refund claimed, and that it did not pass these costs through to its own customers. A reseller might establish that it absorbed the alleged overcharges by showing, for example, that market conditions would not permit it to increase its prices to pass additional costs through to its own customers. *Office of Enforcement,* 10 DOE ¶ 85,056 (1983); *Office of Enforcement,* 10 DOE ¶ 85,029 (1982). If a reseller of True products passed the alleged overcharges through to its own customers, then these indirect customers will be entitled to a refund if they themselves can prove injury. Therefore, we will permit customers who indirectly purchased True products as well as those who purchased directly from True to file applications for refunds.

In this case we will adopt three presumptions of injury which have been used in many previous special refund cases. First we will presume that end-users or ultimate consumers of True products whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges. Second, we will not require a showing of injury from agricultural cooperatives that passed the alleged overcharges on to their end-user members, provided that the cooperatives comply with standards set forth later in this Decision. Finally, we will presume that applicants wo are claiming small refunds were injured by the alleged overcharges. These presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

We will not require end-users or ultimate consumers whose businesses are unrelated to the petroleum industry to show injury. *See Texas Oil & Gas Corp.,* as DOE ¶85,069 at 88,209 (1984). Customers in this group might include, for example, businesses and individuals who purchased propane for heating purposes. The fuel costs of such end-users are only one, indistinguishable component of their prices for goods and services. Unlike regulated firms in the petroleum industry, other businesses were not subject to price controls during the consent order period and were not required to keep records. Thus, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum products and services would be beyond the scope of a refund proceeding. *Id.* Therefore, such end-users who document their purchase volumes of True products during the consent order period will be found to have made a sufficient showing of injury. On the other hand, refund applicants who were subject to the DOE regulatory program will be required to provide a detailed demonstration that they were injured, with the exception of those making small claims.

We recognize that making a showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of True products. For example, such firms may

have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs, or that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,15 (1984); *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,014 (1984). We will adopt such a procedure in this case. Therefore, any applicant claiming a refund of $5,000.00 or less need not make a detailed showing of injury in order to be eligible to receive a refund.

Agricultural cooperatives will not be required to show that they did not pass increased costs through to their customers. By its very nature, an agricultural cooperative would routinely pass through any overcharges to its member customers. Similarly, any refunds received by an agricultural cooperative would influence the prices charged to member customers. Therefore, we have held that agricultural cooperatives are not required to prove injury. *E.g., APCO Oil Corp.*, 12 DOE ¶ 85,144 (1985). Instead, an agricultural cooperative's refund application should explain fully the manner in which refunds will be passed through to its customers and how its members will be advised of the cooperative's receipt of the refund money. Sales by cooperatives to non-members, however, will be treated the same as sales by any other resellers.

We also propose to establish a rebuttable presumption that firms which made only spot purchases of True products have suffered no injury. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of True's product at increased prices unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Accordingly, in order to overcome the rebuttable presumption that they were not injured, spot purchasers should submit additional evidence to establish that they were unable to recover the prices they paid for True products.

2. Calculation of Refund Amounts

We propose to use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged overcharges were spread equally over all the gallons of products which True sold. We have calculated a volumetric refund amount by dividing the consent order amount by the approximate number of gallons which True sold during the period covered by the Consent Order. Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus accrued interest.

We have tentatively set the True volumetric refund amount at $0.0469 per gallon. We derived this figure by dividing the consent order pool available for products other than crude oil ($2,333,333.30) by an estimate of the number of gallons of products which True sold during the consent order period (49,769,328). The audit file did not account for the entire consent order period. It did, however, contain monthly gallonage data for True's marketing affiliate's sales of propane (61 months), butane (18 months), and natural gasoline (9 months). We used this information to compute the average monthly gallonage of propane, butane, and natural gasoline which True Oil Company's marketing affiliate sold. We then multiplied this figure by the number of months in the consent order period to obtain our estimate of total gallons sold.

Since a consent order is necessarily the result of compromise, the volumetric refund amount derived from that consent order settlement is also a compromise. The volumetric refund amount does not purport to refund the exact amount that a customer may have been overcharged. Rather, it is a method by which a customer can receive an appropriate proportion of the consent order fund. We recognize that a particular purchaser could have suffered a disproportionate share of the injury. Therefore, any purchaser may file a refund application based on a claim that his share of the alleged overcharges was greater than the *pro rata* amount determined by the volumetric presumption. We also recognize that, if we recive refund applications based on total gallonages which exceed our estimate or if we receive applications based on purchases of fuel oil or motor gasoline, it may become necessary to adjust the per gallon refund amount downward.

As in previous cases, we will establish a minimum refund amount of $15.00 for first-stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefit of restitution in those situations. *See, e.g. Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Before distributing any portion of the consent order fund, we intend to publicize the distribution process, to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. Comments regarding the tentative distribution process set forth in this Proposed Order should be filed with the Office of Hearings and Appeals within 30 days of publication of this Proposed Decision and Order in the **Federal Register**. Applications for refunds should not be filed at this time. Detailed procedures for filing applications for refunds will be provided in a final Decision and Order.

It Is Therefore Ordered That:

The $3,500,000.00 refund amount obtained from The True Companies pursuant to the Consent Order entered into with the Department of Energy on July 28, 1983 will be distributed in accordance with the foregoing Decision.

APPENDIX.—IDENTIFIED CUSTOMERS OF TRUE OIL COMPANY'S MARKETING AFFILIATE: RESERVE OIL PURCHASING COMPANY, BLACK HILLS OIL MARKETINGS, TRUE OIL PURCHASING COMPANY

Customer name	Gallons purchased
Propane: Sept. 1, 1973 to Oct. 31, 1978	
A&V Gas	72,826
Alden Oil Co	81,535
Amoco Production	57,182
Arrow Gas	158,233
Black Thunder	166,674
Butane Power & Equipment	328,995
Cal-Gas Co	479,915
Cal Liquid Gas Co.	1,568,045
Conex	13,047,765
Davis Oil	2,550
Dix-O-Gas	236,712
Empire Gas	1,741,357
Gary Operating	277,137
H.S. Sowards	17,272
Huntsmen Oil	66,951
Kerr-McGee	23,571
Little America	41,012
McCulloch Gas	119,753
Murphy Oil Co	410
N.C. Paving Co	142,377
Jenny Paton	150
Paving Corp	30,440
Petroleum Intermountain	415,387
Polar Gas	74,003
Rocky Mountain Natural Gas	306,664
T&T Gas Products	209,196
Tooke Engineering	156,381
Townsend Co./Bill Townsend	18,065
Uan Gas, Inc	95,507
V-1 Oil Co	2,720,897
W&S	8,836
Westland Oil Co	9,001
Butane: December 1973 to October 1978	
Amoco Oil	80,315

VOL 50 ISS 126 JUL 1 1985 UMI

APPENDIX.—IDENTIFIED CUSTOMERS OF TRUE OIL COMPANY'S MARKETING AFFILIATE: RESERVE OIL PURCHASING COMPANY, BLACK HILLS OIL MARKETING, TRUE OIL PURCHASING COMPANY—Continued

Customer name	Gallons purchased
Farmers Union	1,100,037
Pasco	44,133
Solar Petroleum	829,548
Texaco	306,308
Natural Gasoline: January 1974 to September 1974	
Conex	37,884
Farmers Union	506,499
Tesoro Petroleum Co	99,179

[FR Doc. 85-15708 Filed 6-28-85; 8:45 am]
BILLING CODE 6560-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140064; TSH-FRL 2856-2]

Access to Confidential Business Information by Congress

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The House Committee on Energy and Commerce has asked EPA for information relevant to a bill now pending before the Committee. Part of the information which the Committee has specifically requested is information which was submitted to EPA under the Toxic Substances Control Act (TSCA). Some of the responsive information which will be given to the Committee has been claimed confidential by its submitters.

DATE: This confidential business information will be provided to the Committee no sooner than July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, D.C. 20460. Toll-Free: (800-424-9065). In Wasington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: In a June 10, 1985, letter to the EPA Administrator, the Chairman of the House Committee on Energy and Commerce requested that the Agency provide information relevant to specific provisions of a bill, H.R. 2576, "The Toxic Release Control Act of 1985," which is currently pending before the Committee. Section 102 of that bill contains an inventory of 85 chemical substances which Congress would find to be "hazardous substances that may be released into the air." The Committee has specifically asked EPA for a listing of manufacturers, processors, and manufacturing/processing sites for each of the 85 substances. To satisfy this request, the Agency will provide the Committee with relevant information on the substances and their manufacturers, importers, and processors which EPA has received under section 5, 8, and 12 of TSCA. Some of the information requested by the Committee has been claimed confidential by the submitters of the information..

Under section 14(e) of TSCA and 40 CFR 2.306(h), EPA is required to provide TSCA confidential business information to a Congressional committee in response to a written request by its chairman.

This **Federal Register** notice is being published to provide notification to all manufacturers, importers, and processors who have submitted the information described above to EPA under TSCA and have claimed it confidential that the Agency will permit the House Committee on Energy and Commerce to have access to that TSCA information.

EPA will inform the Committee of the confidential status of the information in question, of the security procedures EPA follows to protect the information, and of the provisions of section 14 of TSCA, which set criminal penalties for unlawful disclosure of confidential business information.

The Committee has not indicated where it will review the TSCA confidential business information.

Dated: June 27, 1985.

Marcia Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-15839 Filed 6-28-85; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 85-197; FCC 85-320]

Bell Operating Companies; Declaratory Ruling; Memorandum Opinion and Order

In the matter of declaratory ruling on the application of section 2(b)(2) of the Communications Act of 1934 to Bell Operating Companies.

Adopted: June 14, 1985.

Released: June 20, 1985

By the Commission.

I. Introduction and Discussion

1. The Communications Act of 1934 grants this Commission plenary authority over interstate and foreign communications. 47 U.S.C. 151, 152(a). Section 2(b)(2) of that Act, 47 U.S.C. 152(b)(2), creates a limited exception to our power to regulate persons that provide interstate or foreign communication services as common carriers. That subsection exempts some of those carriers from some of the provisions of the Communications Act. Carriers that are entitled to claim the section 2(b)(2) exemption are known as "connecting carriers." Section 2(b)(2) provides in pertinent part:

> . . . nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to . . . any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carriers . . . except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply (to such a carrier).

2. Neither the American Telephone & Telegraph Company ("AT&T") nor any of its carrier subsidiaries were classified as "connecting carriers" prior to the divestiture that was ordered in *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (MFJ). The plan of reorganization that implemented the divestiture decree does not appear to change the status of any of the divested Bell Operating Companies ("BOCs") and no divested BOC has asserted that it has acquired connecting company status. Nevertheless, some state public utility commissions have asserted in judicial proceedings that the divested BOCs did acquire connecting company status at the time of the divestiture.[1] More recently the Wisconsin Public Service ("Wisconsin Commission") asserted in a proceeding to represcribe depreciation rates for Wisconsin Bell, Inc. ("Wisconsin Bell") and other telephone companies that this Commission cannot prescribe depreciation rates for Wisconsin Bell because Wisconsin Bell became a connecting carrier at the time of

[1] For example, in petitions for a writ of certiorari to review the Court of Appeals decision in *National Ass'n of Regulatory Utility Com'rs v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 105 S. Ct. 1224, 1225 (1985), the Michigan Public Service Commission, the State of Michigan, the Public Service Commission of Wisconsin and the New York State Department of Public Service raised arguments based on the alleged 2(b)(2) status of the BOCs.

divestiture.[3] Although the Wisconsin Commission did not present evidence or argument in that depreciation proceeding that would contradict our belief that this Commission has power to prescribe depreciation rates for all divested BOCs including Wisconsin Bell, we stated that "we plan to initiate a proceding in the near future to resolve outstanding factual and legal issues which have arisen in several contests."[4] We are adopting this Order in order to establish a structure for that proceeding.[5]

3. Inasmuch as the determination of connecting carrier status is likely to involve factual determinations with respect to the operations and relationships of a particular carrier, declaratory ruling proceedings should be used to remove any uncertainty with respect to the status of the BOCs. We believe that state commissions with common carrier regulatory jurisdiction over a BOC have standing to seek a declaratory ruling with respect to the status of that BOC because their regulatory powers might indirectly be affected by a BOC's status under section 2(b)(2). We will accordingly treat the Wisconsin Commission filing of September 14, 1984, as a petition for declaratory ruling with respect to the status of Wisconsin Bell. Although the contents of that filing are not sufficient to establish the factual predicate for a claim that Wisconsin Bell has acquired connecting carrier status, we will afford the Wisconsin Commission sixty (60) days from the date on which this order is released to complete its filing.

4. It seems likely that any decision we may reach with regard to the Wisconsin petition will have an impact upon all the BOCs, as well as upon the states in which they operate. Therefore, to the extent that any state or BOC believes that a BOC has acquired 2(b)(2) status, we encourage it to take advantage of this sixty day period by filing a petition for declaratory ruling. We are establishing this docket in order to consider all of the petitions jointly.[6] This will promote regulatory efficiency by enabling us to resolve in one proceeding all outstanding uncertainties regarding the BOCs and section 2(b)(2). Following the close of this sixty day period, however, we will look with disfavor upon petitions for declaratory rulings on this question.

5. At the close of the sixty day period, we will allow interested parties thirty (30) days to comment upon the pleadings. Replies will be due fifteen (15) days later.

6. Carriers or state commissions that choose to file such petitions should note that this Commission determined shortly after the Communications Act was adopted that any telephone company claiming connecting carrier status has the burden of establishing that it is covered by the exemption. We said at that time: "The principle is well settled that when a legislative act is passed, conferring jurisdiction over the things enumerated therein and providing an exemption under certain specified conditions, the burden is not upon the agency to show that its jurisdiction extends to any individual, but is on the party claiming exemption to show that the Act does not apply to him." *Intra State Telephone Company*, 3 FCC 172 (1935). The case law supports this conclusion. *Rochester Telephone Corp. v. United States*, 23 F.Supp 634, 636 (1938), *aff'd*, 307 U.S. 1925 (1939).

7. We believe this conclusion is still valid. Accordingly, we will proceed on the assumption that none of the BOCs has acquired 2(b)(2) status unless and until a BOC or state commission establishes that the status of some BOC has changed. Such an approach seems particularly appropriate inasmuch as the *MFJ* was not intended to disturb the jurisdictional allocation established by the 1934 Act;[8] a cursory examination of the LATA boundaries established pursuant to the *MFJ* reveals that it is unlikely that any BOC is providing interstate communication in a manner that falls within the scope of the 2(b)(2) exemption;[7] and, the legislative history indicates that Congress did not intend to create an exemption that would be applicable to carriers of the size and nature of the BOCs.[9]

8. Moreover, common control relationships are also likely to preclude a finding that most BOCs have connecting carrier status. It seems evident that the requirement that a connecting carrier be "engaged in interstate or foreign communication solely through physical connection with the facilities of another [unaffiliated] carrier" would exclude any carrier that connects directly with a line of an affiliated carrier to provide interstate communication. The use of the word "solely" also appears to exclude a carrier that participates in the same interstate communication even if the affiliated carriers do not connect directly with each other. Such an interpretation would exclude almost all of the BOCs.[9] Although holding company subsidiaries that could be described as establishing indirect connections with an affiliated subsidiary in other states have sometimes been classified as connecting carriers,[10] it is now our tentative view that Congress intended to create a more limited exemption. We hereby afford affected persons an opportunity to brief that question before we make any final determination.[11]

9. A state commission seeking a declaratory ruling will, of course, assume the same burden that a carrier would be required to meet if it asserted a 2(b)(2) exemption claim for itself. That burden includes establishing the factual predicate for any claim that a carrier's operations fit all of the requirements for a section 2(b)(2) exemption.[12]

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[3] See Letter to Kenneth Moran, FCC Common Carrier bureau, from Wisconsin Commission, dated September 14, 1984.

[4] *Prescription of Revised Percentages of Depreciation*, FCC 84-621, released December 19, 1984, at para. 12, *petition for review pending, Public Service Commission of Wisconsin v. FCC*, No. 85-1258, 7th Cir., petition filed February 19, 1985.

[5] Certain regional Bell holding companies have argued that they are not common carriers and therefore are not subject to this Commission's jurisdiction. We have not yet found it necessary to address these arguments and we do not do so here. *See Capitalization Plans for Furnishing of Customer Premises Equipment and Enhanced Services*, FCC 85-20, (released Feb. 4, 1985) at para. 17, petition for review pending, *US West v. FCC*, 7th Cir., No. 85-1425 (filed March 18, 1985); but see *GTE-Telenet*, 70 FCC 2d 2269 (1979).

[6] Any state or BOC that chooses to file a petition for declaratory ruling in response to this Order should include the docket number in its filing.

[7] *See, e.g.*, United States Department of Justice, *Response to Public Comments on Proposed Modification of Final Judgment*, 47 FR 23331-32 (1982).

[8] See especially the criteria set forth in *Classification of Telephone Companies*, 3 FCC 37 (1935).

[9] *See, e.g.*, 78 Cong. Rec. 8846 (1934) (remarks of Senator Clark) (section 2(b)(2) intended to exempt small carriers, "family enterprises")

[10] For example, when a caller places an interstate call from Philadelphia to Baltimore, it must use the facilities of three carriers: Bell Telephone of Pennsylvania, AT&T or another interexchange carrier, and C&P Telephone of Maryland. The two BOCs involved in handling that interstate call are under the common control of Bell Atlantic, a regional holding company created by the divestiture of AT&T. The BOCs in this example would not appear to be engaged in interstate communication solely through physical connection with the facilities of an unaffiliated carrier. Each BOC that is affiliated with another BOC handles hundreds of such calls each day.

[11] *See, e.g.*, Barron County Telephone Company, 5 F.C.C. 33, 35-36 (1937).

[12] Persons other than petitioners who wish to discuss this question may file at the time comments in response to declaratory ruling petitions are filed.

[13] We assume that a state commission has or can readily obtain any necessary information with respect to the facilities or operations of a BOC that is subject to its jurisdiction if this is not the case, a state commission may, of course, seek an appropriate discovery order from this Commission.

11. Ordering Clauses

10. Therefore, it is Ordered, pursuant to sections 1, 2, 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 152, 154(i), 154(j), and section 1.2 of the Commission's rules, 47 CFR section 1.2, that the Wisconsin Public Service Commission be given sixty (60) days from the date on which this order is released to make factual and legal demonstrations regarding the application of section 2(b)(2) of the Act, 47 U.S.C. 152(b)(2), to the Wisconsin Bell Telephone Company.

11. It is further ordered, that any Bell Operating Company wishing to claim 2(b)(2) status, and any state with common carrier jurisdiction over a Bell Operating Company that wishes to claim such company has acquired 2(b)(2) status, be given sixty (60) days from the date on which this order is released to petition for a declaratory ruling and make the factual and legal demonstrations needed to establish such a claim.

12. It is Further Ordered, that any interested person may file comments upon any petition for declaratory ruling filed in connection with this proceeding within thirty (30) days after the close of the sixty (60) day period established herein for filing such petitions. Replies will be due fifteen (15) days after close of the comment period.

13. It is Further Ordered, that the Secretary shall cause copies of this order to be served upon the Wisconsin Public Service Commission, each of the Bell Operating Companies, including the Cincinnati Bell Telephone Company and the Southern New England Bell Telephone Company, and the public service commissions of the District of Columbia and of each state except Alaska and Hawaii.

14. It is Further Ordered That the Secretary shall cause a copy of this Order to be published in the Federal Register.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-15739 Filed 6-28-85; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 85-201; File No. 50076; CM-P-74 et al.]

Digital Paging Systems, Inc., et al.; Memorandum Opinion and Order for Construction Permits

In re applications of GC Docket No. 85-201:

Digital Paging Systems, Inc..	File No. 50076-CM-P-74.
Private Networks, Inc.	File No. 50175-CM-P-74.
M.C.C.A. Service Corporation.	File No. 50205-CM-P-74.
Multipoint Information Systems, Inc..	File No. 50208-CM-P-74.
Multi-Communications Services, Inc..	File No. 50210-CM-P-74.

For Construction Permits in the Multipoint Distribution Service for a new station on Channel 2, at Atlanta, Georgia.

Adopted: June 17, 1985.
Released: June 21, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Atlanta, Georgia. The applications are therefore mutually exclusive and require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Digital Paging Systems, Inc., Private Networks, Inc., M.C.C.A. Service Corporation, Multipoint Information Systems, Inc., Multi-Communications Services, Inc. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearances in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, That any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. ANSWERING Service, Inc., et al.*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the Federal Register.

James R. Keegan,

Chief, Domestic Facilities Division Common Carrier Bureau.

[FR Doc. 85-15741 Filed 6-28-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including Atlanta, Georgia, where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

[Common Carrier Docket No. 85-202; File Nos. 1743 CF-P-85 through 1757 CF-P-85]

TeleSTAR, Inc., for Authority To Construct New Common Carrier Point-to-Point Microwave Radio Stations; Apparent Liability and Order Designating Applications for Hearing

Adopted: June 18, 1985.
Released: June 21, 1985.

By the Common Carrier Bureau.

1. Before the Bureau are the applications of TeleSTAR, Inc. for

authority to construct 15 common carrier microwave radio stations that will form a microwave transmission system between Salt Lake City, Utah and Denver, Colorado. A petition to dismiss has been filed by Western Tele-Communications, Inc. (Western), and informal protests have been filed by Western, Mountain Bell, Inc., and MCI Telecommunications Corp. For the reasons set forth below, we conclude that the petition and protests raise substantial and material questions of fact, and designate the issues raised for hearing.

Background

2. TeleSTAR filed its applications on January 23, 1985, along with a request for expedited processing. Subsequently, the Commission received a letter dated January 31, 1985 from Western. In that letter Western stated that TeleSTAR had virtually completed construction of five of the stations, including such features as buildings, towers, antennas and waveguides. The letter was accompanied by photographs, dated January 25, 1985, allegedly showing construction at the five sites. Western requested that the applications be dismissed for premature construction, and that the Commission investigate the facts and circumstances surrounding the construction. By letter dated February 11, 1985, Mountain Bell concurred with Western's request for an investigation, claiming that such premature construction jeopardized the fequency coordination process by decreasing the flexibility necessary for engineering settlements of potential interference problems.

3. In a responsive pleading filed on February 11, 1985, TeleSTAR admitted that construction had in fact occurred at 13 of the 15 sites, but claimed that no electrical work had been done ad no radio transmitters installed. TeleSTAR denied willfully constructing in violation of the rules, describing its belief at the time that Commission authority in the form of a construction permit was required only at the point that radio transmitters or other electrical equipment would be installed, and that the relevant rules, including § 21.3(b), are ambiguous on this point.

4. In a subsequent letter dated February 21, 1985, Western repeated its request for a full inquiry into the matter. On March 8, 1985, Western filed a Petition to Dismiss the applications on the basis that the premature construction demonstrated that TeleSTAR was not technically and otherwise qualified to be a Commission licensee, and that it lacked candor by failing to mention in its applications that the facilities were already constructed. Western also reiterated its request for an inquiry, and asked that any construction permits that may be awarded be conditioned upon appropriate Commission sanctions. TeleSTAR filed an opposition, repeating its previous denial of willfulness and further claiming that a recent revision of section 319(a) of the Communications Act indicated Congressional intent to avoid imposing sanctions. In its Reply Western contended that the recent revision to section 319(a) was editorial in nature, effecting no substantive change in the statute.[1]

5. By letter dated May 9, 1985, MCI Telecommunications Corp. informally objected to TeleSTAR's construction. MCI essentially reiterated the arguments advanced by Western and Mountain Bell, emphasizing the adverse effect of premature construction upon the frequency coordination process. TeleSTAR responded by letter dated May 14, 1985, referring to its previous pleadings to answer MCI's objections.

Discussion

6. Section 319(a) of the Communications Act provides that "[n]o license shall be issued under the authority of this Act for the operation of any station unless a permit for its construction has been granted by the Commission." 47 U.S.C. 319(a). Section 21.3(b) of the Commission's rules contains the same provision, and also states that "[n]o construction or modification of a station may be commenced without a construction permit, a modified construction permit, or other authority issued by the Commission for the exact construction or modification to be undertaken * * * ." 47 CFR 21.3(b).

7. There are several reasons behind this proscription of premature construction.[2] The process of applying for a construction permit provides the Commission with information on the location and nature of proposed facilities, enabling the Commission to ensure compliance with concerns such as Federal Aviation Administration antenna tower regulations and environmental regulations.[3] More importantly, our requirement that applicants complete their frequency coordination process prior to construction would be undermined if construction could be permitted prior to applying for and receiving Commission authorization; applicants who had constructed would not have the flexibility to consider many engineering adjustments that could otherwise solve frequency coordination problems.[4]

8. TeleSTAR has admitted to engaging in construction at 13 of 15 sites. The admitted construction ranges in extent. At six sites, including those described by Western, the transmitter housings, towers, antennas, and waveguides have been constructed. At two sites the transmitter housings, towers, and antennas have been built; at two others the transmitter housings and towers have been completed. At one site only the transmitter housing has been constructed, and miscellaneous minor construction has occurred at two others. At the remaining two sites, TeleSTAR submits that no construction whatsoever has occurred.[5]

9. TeleSTAR claims that the Commission's rules are ambiguous, relying both on the text of § 21.3 as well as a number of cases which it claims place a complex gloss on the regulations. TeleSTAR's argument is not persuasive. TeleSTAR admits in its pleadings that the construction violates Commission rules;[6] this admission is

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[1] On April 3, 1985, TeleSTAR filed a request for special temporary authority to finish construction of the stations and to begin operating them. Because of our decision to investigate whether unlawful construction has already taken place, we will not authorize any further constuction. Accordingly, the request for the STA will be denied.

[2] If facilities are constructed prior to authorization, the fact that facilities have been built could be used to pressure the Commission in its decision to grant permits or licenses. *WJIV, Inc.* v. *FCC*, 231 F.2d 725 (D.C. Cir. 1956).

[3] *See, e.g.*, 47 CFR 17.4 (review of antenna structures regarding possible air navigation hazard); *id.* § 1.1301–1319 (procedures implementing the National Environmental Policy Act of 1969). In addition, an applicant seeking to locate a radio station in one of the quiet zones (restricted to minimize harmful impact on radio astronomy or other facilities sensitive to frequency interference) must follow the procedures set forth in § 21.113 of the rules prior to construction.

[4] The Commission has emphasized the importance of construction permits in assuring efficient frequency use in its recent rulemaking involving Public Land Mobile Radio Services. *See* Revision and Update of Part 22 of the Public Mobile Services. Rules, 95 F.C.C.2d 769, 773 (1983). In addition to coordinating with other carriers, in certain instances an applicant proposing a station within a certain distance of the Canadian or Mexican borders may have to have the proposal coordinated with the respective government. *See* Agreement Between United States of America and Canada Concerning Coordination and Use of Radio Frequencies Above 30 Mc/s, TIAS No. 5205 (1962), *revised in part*, TIAS No. 5833 (1965); *see generally* The Radio Regulations (Geneva 1979) (containing provisions governing certain coordination procedures applicable to coutries including Mexico).

[5] This construction summary is drawn from TeleSTAR's Response Pleading of February 11, at page 6, erratum. The miscellaneous construction involved the installing of a building mount at one site and the installation of a roof jack at another.

[6] Opposition of TeleSTAR, at 11, 28; Responsive Pleading of February 11, at 8.

inconsistent with an argument that the rules are ambiguous. More fundamentally, even in light of the Commission's past interpretations, the level of ambiguity asserted by TeleSTAR would not involve the type of construction which it seeks to justify. It is true that in certain cases the Commission has found construction to be *de minimis*, and exacted no penalty.[7] In addition, the Commission will not consider premature the construction of facilities that have a legitimate alternative purpose.[8] Finally, activities necessary to determine whether a site is adequate, such as test borings, are not construction but rather a matter of prudence in the selection of a suitable site.[9]

10. However, such situations are markedly distinguishable from the construction which TeleSTAR has accomplished. The company has constructed eleven transmitter housings, ten towers, eight antennas, and six waveguides. Obviously the amount and kind of construction is inconsistent with the language of § 21.3.

11. With regard to the text of the rules, TeleSTAR argues that the term "radio station" in § 21.3 is vague, pointing to the definition of the term in § 21.2 of the rules. That definition reads:

> *Radio Station.* A separate transmitter or a group of transmitters under simultaneous common control, including the accessory equipment required for carrying on a radiocommunication service.

"Radiocommunication" is defined in the same section as "any telecommunications by means of Hertzian waves." TeleSTAR argues that these definitions could lead a person reasonably to believe that the station construction referred to § 21.3 "only includes transmitters and related electrical equipment," and that towers, while convenient, are not necessary to the propagation of such waves and the carrying on of such a service.[10] Even assuming, *arguendo*, that one accepts such a narrow reading of the three rules,[11] the argument TeleSTAR makes is still not persuasive in this case. TeleSTAR admits to constructing eight antennas and six waveguides; TeleSTAR argument that antennas and waveguides are not "required for carrying on a radiocommunication service" by means of Hertzian waves is simply not credible. Thus, even if the Bureau accepts the premises of TeleSTAR's argument, TeleSTAR's construction goes beyond the range of any arguable ambiguity.[12]

12. With regard to TeleSTAR's argument that the recent amendments to section 319(a) of the Act indicate a Congressional intent to abandon Commission sanctions, we note that prior to 1982, section 319(a) read:

> No license shall be issued under the authority of this Act for the operation of any station *the construction of which is begun or is continued after this Act takes effect*, unless a permit for its construction has been granted by the Commission.

47 U.S.C. 319(a) (emphasis added). The italicized language was deleted in 1982, in an editorial revision of the Act.[13] As the Commission has noted previously, this revision was housekeeping in nature, effecting no substantive change in the statute.[14]

13. We conclude that there are substantial and material questions of fact concerning the circumstances surrounding the construction by TeleSTAR and its subsequent application to the Commission. We note first that there is a substantial question concerning whether TeleSTAR has made material misrepresentations or demonstrated a lack of candor in its dealings with the Commission. TeleSTAR admits that its principals were familiar with the Part 21 rules, including § 21.3.[15] It contends that these principals honestly but mistakenly believed that the construction in question was permissible, yet as pointed out above that argument is not persuasive. If in fact the construction was undertaken with knowledge that such construction might well or would in fact violate the Commission's rules, then TeleSTAR would have lacked candor or misrepresented this fact to the Commission in the pleadings; in addition, TeleSTAR would have lacked candor when it filed its applications for construction permits without informing the Commission that some of the facilities had in fact already been substantially constructed. We therefore designate the issues of misrepresentation and candor for hearing.[16]

14. Should no finding be made that TeleSTAR lacked candor or made material misrepresentations to the Commission, and no findings be made that the construction was completed

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[7] *See, e.g.*, Harriscope, Inc., 15 Rad. Reg. (P&F) 332 (1957); *see also* Jefferson Radio Corp., 29 F.C.C.2d 873 (1980). TeleSTAR admits that its construction is not *de minimis*. Responsive Pleading of February 11, at 18.

[8] Spectrum Communications, Inc., 40 F.C.C.2d 467, 468–69 (1973); Cherry & Webb Broadcasting Co., 22 F.C.C. 1082, 1126–27 (1956) (Initial Hearing Decision), *aff'd*, 22 F.C.C.2d 1080 (1957); *cf.* WAVV Communications, Inc., 48 F.C.C.2d 1113 (1974). For example, the construction of a tower proposed to be used for CARS is not premature if that tower is also to be used for an authorized cable headend system. Premature Construction in the CAR Service, 39 Rad. Reg. 2d (P&F) 1515 (1977) (Pub. Notice); *see* Spectrum Communications, Inc., 40 F.C.C.2d at 468–69. TeleSTAR does not contend that its construction fits within this category. Responsive Pleading of February 11, at 18.

[9] Clarification of Test Borings as Premature Construction, 13 F.C.C.2d 979 (1968).

[10] Opposition of TeleSTAR, at 27.

[11] Of course, we do not concede this interpretation; as noted even TeleSTAR itself now admits that its construction violates § 21.3.

[12] The bureau also notes that the policies behind § 21.3 could be frustrated by the construction in the present case. The restriction against premature construction prevents pressure from being exerted to influence the Commission's licensing decisions. As Western correctly points out, TeleSTAR in its opposition argues that application of sanctions in the present case would be uneconomical, would "delay the introduction of services," and would "only serve to increase the service costs unnecessarily." Opposition of TeleSTAR at i, 40. In addition, the Commission in this instance had no opportunity to review compliance with Part 17 of the rules prior to construction. Finally, construction of this type could jeopardize the frequency coordination process, as Mountain Bell suggests, by eliminating the flexibility of carriers such as TeleSTAR to solve interference problems which may be encountered.

[13] At that time, section 319(d) was also amended to give the Commission the authority to discontinue the construction permit requirement for certain classes of stations. The Commission has announced, however that it will continue to require construction permits for, *inter alia*, common carrier radio stations. *See* Public Notice, 52 Rad. Reg. 2d (P&F) 656 (1982).

[14] *See, e.g.*, King County Broadcasters, 55 Rad. Reg. 2d (P&F) 1501 (1984). Although the Commission took no action against the construction in the King County case, that decision involved a broadcast applicant and focused almost exclusively on whether as a matter of law the Commission must require the dismantling of a preconstructed facility. In the instant case, involving a common carrier applicant, the problems created by premature construction would be extremely serious. As the Commission has noted with regard to the Public Land Mobile Services, due to frequency coorindation "the current requirement that applicants obtain authorization prior to construction guarantees efficient spectrum allocation and utilization * * *." Revision and Update of Part 22 of the Public Mobile Servs. Rules, 95 F.C.C.2d 769, 773 (1983). Therefore, it is essential that we strictly enforce the construction permit requirement for common carrier services.

[15] The applications include under Item 35 a certification by Walter N. Stewart, president of the company, that he was familiar with the Part 21 rules and that the engineering information presented in the applications was *complete* and accurate. In addition, TeleSTAR admits in its opposition that "Mr. Stewart must have read § 21.3" in light of his certification. Opposition of TeleSTAR at 28.

[16] The hearing should explore all relevant aspects of the construction and the applications. For example, TeleSTAR in its application to the Bureau of Land Management for authority for certain facilities on federal land, filed with the Bureau of Land Management on May 11, 1984, stated that "a parent company will complete all constructions including the power lines." However, TeleSTAR fails to list any parent company on its Form 430 filed with this Commission. Resolution of this possible inconsistency could be relevant both to the issues of TeleSTAR's candor as well as to the identity of the actual entity involved in the construction.

with knowledge that such construction was in probable violation of § 21.3, there still remains the question of whether a forfeiture would be appropriate pursuant to section 503 of the Act and § 1.80 of the Commission's rules.[17] These questions will be designated along with the other issues, for consideration by hearing. Based on the evidence and the admissions discussed above, we conclude that TeleSTAR has apparently violated § 21.3 of the Commission's rules, 47 CFR 21.3, by constructing radio stations without a construction permit or other authorization.[18] Section 503(b) of the Act specifies that "[e]ach day of a continuing violation shall constitute a separate offense."

Ordering Clause

15. Accordingly, it is ordered that the petition of Western, and the objections of Mountain Bell and MCI, are granted to the extent consistent with the foregoing opinion, and denied in all other respects.

16. It is further ordered that the applications of TeleSTAR for the common carrier microwave facilities in the instant case are designated for hearing in accordance with section 309(e) of the Communications Act, as amended, 47 U.S.C. 309(e), upon the following issues:

(1) To determine the facts and circumstances surrounding the construction by TeleSTAR of the facilities for which it has applied for construction authority;

(2) To determine, in light of the evidence adduced above,

(a) Whether TeleSTAR constructed the aforementioned facilities in violation of § 21.3 of the Commission's rules, 47 CFR 21.3, and whether such construction was effectuated with the knowledge that the construction was in violation of § 21.3;

(b) Whether TeleSTAR has exhibited a lack of candor or intentionally misrepresented material facts to the Commission;

(c) Whether TeleSTAR is qualified to be a Commission licensee;

(d) Whether a grant of TeleSTAR's applications would serve the public interest, convenience and necessity;

(e) Whether, in light of the determination of Issue (2)(d), an Order of Forfeiture should be issued pursuant to Section 503 of the Act, 47 U.S.C. 503, and § 1.80 of the Commission's Rules, 47 CFR 1.80, in the amount of $5,000.00 or whatever lesser amount is determined to be appropriate.

17. It is further ordered that TeleSTAR shall have the responsibility to adduce evidence on the issues set forth above, and that the burden of proof on the conclusory issues set forth above shall be placed on TeleSTAR.[19]

18. It is further ordered that TeleSTAR, Western Mountain Bell, MCI, and the Chief, Common Carrier Bureau, are made parties to this proceeding.

19. It is further ordered that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent order.

20. It is further ordered that all designated parties shall file written notices of appearance, pursuant to § 1.221 of the Rules, 47 CFR 1.221, within 20 days of the release date of this Order.

21. It is further ordered that other parties desiring to participate in the hearing, including parties with applications mutually exclusive with the instant applicant and who wish to participate in this proceeding, shall file a petition to intervene, pursuant to § 1.221 of the Rules, within 30 days of the publication of this Order in the Federal Register.

22. It is further ordered that the application of TeleSTAR for special temporary authority is hereby denied without prejudice, and the request for expedited processing is also denied.

23. It is further ordered that the Secretary shall cause a copy of this Order to be published in the Federal Register.

Albert Halprin,
Chief, Common Carrier Bureau.

[FR Doc. 85-15740 Filed 6-28-85; 8:45 am]
BILLING CODE 6712-01-M

[17] These issues, standing alone, could possibly be resolved without the need for a hearing. However, since we are designating these applications on the candor question, we will include an investigation of whether licensing the facilities already constructed, with or without a forfeiture, would further the public interest given the extent and nature of the construction and the level of competition in the provision of these services in this specific situation. *See* 47 U.S.C. 503(b)(3)(A) (Commission has the discretion to determine forfeitures by hearing procedure).

[18] This conclusion constitutes our initial assessment under 47 U.S.C. 503(b)(2) and 503(b)(3)(A). A forfeiture liability may properly be assessed against a person who is not a Commission licensee without a citation and the opportunity for a personal interview, if the person is "engaging in activities for which a license, permit, certificate, or other authorization is required." 47 U.S.C. 503(b)(5). We also note that the forfeiture analysis in this order is expressly premised upon TeleSTAR's representation in its Form 430 that it holds or has applied for no other licenses, and is affiliated with no other licensees, permittees, or other parties holding Commission authorizations.

[19] Where an applicant, against whom charges of misconduct have been raised, has within its peculiar knowledge the facts regarding the alleged misconduct, the applicant will have the burdens of production and proof on such issues. *See generally* Granbury Communications Co., 66 F.C.C.2d 966, 969 (1978); Miami Broadcasting Corp., 11 F.C.C.2d 920, 923 (Rev. Bd. 1968).

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following tranactions were granted early termination of the waiting period provided by law ans the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 85-0590—Talley Industries, Inc.'s proposed acquisition of voting securities of Gromen Corp. (Grover Hermann Foundation, UPE).	June 5, 1985.
(2) 85-0594—The Dow Chemical Co.'s proposed acquisition of assets of the Upjohn Co. plus acquisition of voting securities of Admiral Equipment Co. (The Upjohn Co., UPE).	June 5, 1985.
(3) 85-0618—Linebeck Corp.'s proposed acquisition of assets of American Bridge Division of United States Steel Corp. and voting securities of two U.S. Steel Subsidiaries, American Bridge International, Inc. and American Bridge Engineering of Illinois, Inc. (United States Steel Corp., UPE).	June 5, 1985.
(4) 85-0622—MKDG II's proposed acquisition of assets of Aspen Skiing Co..	June 5, 1985.
(5) 85-0628—The News Corp. Ltd.'s proposed acquisition of assets of Aspen Skiing Co..	June 5, 1985.
(6) 85-0630—Nesbitt, Thompson, Inc.'s proposed acquisition of assets of Fahnestock & Co.	June 5, 1985.
(7) 85-0643—Williams Resources, Inc.'s proposed acquisition of assets of Williams Co.	June 6, 1985.
(8) 85-0180—Xerox Corp.'s proposed acquisition of assets of and voting securities of Sevin Corporation (Canada Development Corp., UPE).	June 7, 1985.

Transaction	Waiting period terminated effective
(9) 85-0584—Davis Oil Co.'s proposed acquisition of assets of NWT Natural Resources Co. (Northwest Industries, Inc., UPE).	June 7, 1985.
(10) 85-0631—Price Communications Corp.'s proposed acquisition of assets of WBC Associates, L.P.	June 7, 1985.
(11) 85-0636—Great Lakes Chemical Corp.'s proposed acquisition of voting securities of Purex Pool Products, Inc. (Purex Industries, Inc., UPE).	June 7, 1985.
(12) 85-0637—McKesson Corp.'s proposed acquisition of voting securities of S-P Drug Co., Inc.	June 7, 1985.
(13) 85-0642—McKesson Corp.'s proposed acquisition of voting securities of S-P Drug Co., Inc.	June 7, 1985.
(14) 85-0649—Coast R.V., Inc.'s proposed acquisition of voting securities of CF Products Corp. and United Sales & Warehouse of Texas, Inc. (Coachmen Industries, Inc., UPE).	June 7, 1985.
(15) 85-0656—DeKalb AgResearch, Inc.'s proposed acquisition of voting securities of Nicor Resources, Ltd. (Nicor, Inc., UPE).	June 7, 1985.
(16) 85-0557—Louis J. Roussel's proposed acquisition of voting securities of National Savings Life Insurance Co. (Western Preferred Corp., UPE).	June 10, 1985.
(17) 85-0640—Siemens Aktiengesellschaft's proposed acquisition of voting securities of Tel-Plus Communications, Inc. (Telecom Plus International, UPE).	June 10, 1985.
(18) 85-0648—Robert S. Jepson, Jr.'s proposed acquisition of assets of of Hill Refrigeration Division (Emhart Corp., UPE).	June 10, 1985.
(19) 85-0604—Warner K. Ray's proposed acquisition of voting securities of Mexician Leasing Corp. (Harvey Kinzelberg, UPE).	June 11, 1985.
(20) 85-0641—Henry Crown & Co.'s proposed acquisition of Champion's Fasson Envelope (Champion International, UPE).	June 11, 1985.
(21) 85-0644—Barrick Resources's proposed acquisition of voting securities of Getty Gold Mine (Texaco, Inc., UPE).	June 11, 1985.
(22) 85-0614—AmeriHealth, Inc.'s proposed acquisition of assets of Hospital Corp. of America.	June 12, 1985.
(23) 85-0627—Reynolds Metals Co.'s proposed acquisition of assets of the Metals Goods Division (Alcan Aluminium Ltd., UPE).	June 12, 1985.
(24) 85-0677—Butler Manufacturing Co. of voting securities of National Architectural Products Corp. (REK Corp., UPE).	June 12, 1985.
(25) 85-0507—Abbott Laboratories' proposed acquisition of Shaw Associates (Robert Francis Shaw, M.D., UPE).	June 13, 1985.
(26) 85-0512—Abbott Laboratories' proposed acquisition of voting securities of OXIMETRIC, Inc.	June 13, 1985.
(27) 85-0619—Reliance Capital Group, L.P.'s proposed acquisition of assets of Station KBSC Channel 52 (Oak Industries, UPE).	June 13, 1985.
(28) 85-0650—Southmark Corp.'s proposed acquisition of J.M. Peters Co., Inc. (James M. Peters, UPE).	June 13, 1985.
(29) 85-0672—Fansteel, Inc.'s (T.M. Evans, UPE) proposed acquisition of voting securities of Custom Technologies Corporation (Beatrice Cos., Inc., UPE).	June 13, 1985.
(30) 85-0674—Johnstown American Cos. of voting securities of Consolidated Capital Equities Corp. (John Lie-Nielsen, UPE).	June 13, 1985.
(31) 85-0675—John Lie-Nielsen's proposed acquisition of assets of Johnstown Management Co.	June 13, 1985.
(32) 85-0678—Lonnie A. Pilgrim's proposed acquisition of assets of Pluss-TexPoultry, JM&S and PT Poultry Growers, Inc. (Sam Pluss, UPE).	June 13, 1985.
(33) 85-0679—Lonnie A. Pilgrim's proposed acquisition of assets of Pluss-TexPoultry, JM&S and PT Poultry Growers, Inc. (James H. Pluss, UPE).	June 13, 1985.
(34) 85-0609—Inspiration Resources Corp.'s proposed acquisition of Marline Petroleum Corp. (Marline Oil Corp., UPE).	June 13, 1985.
(35) 85-0685—Wellcraft, Inc.'s proposed acquisition of voting securities of the Cressey Co., Inc.	June 14, 1985.

Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-15667 Filed 6-28-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice of the Cardiovascular and Renal Drugs Advisory Committee to reflect a correction in the agenda. The announcement of the Cardiovascular and Renal Drugs Advisory Committee meeting, which was published in the **Federal Register** of June 20, 1985 (50 FR 25628), is revised to read as follows:

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. July 25 and 26, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, July 25, 9 a.m. to 10 a.m.; open committee discussion, July 25, 10 a.m. to 5 p.m.; July 26, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drugs and Biologics (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss NDA 18-981, Encainide (Enkaid) for use as an anti-arrhythmic agent, Bristol-Myers Co.; NDA 19-151, Propafenone (Rhythmonorm), for use as an anti-arrhythmic agent, Knoll Pharmaceutical Co.; Draft guidelines for study of anti-arrhythmic agents.

Dated: June 25, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-15670 Filed 6-28-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0185]

Chloramphenicol Oral Solution; Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to withdraw approval of new animal drug applications for chloramphenicol oral solution for animal use. This action is based on new information that the labeled directions for use have not been followed in practice and are not likely to be followed in the future. The drug has been used widely for treatment of food-producing animals, a use for which the drug is specifically contraindicated. Residues of the drug, which have been found in food products, can cause serious human blood disorders including aplastic anemia. Unless the approvals are withdrawn, the misuse in food-producing animals is likely to continue.

DATES: A written appearance requesting a hearing by July 31, 1985; data and analysis on which the request for hearing relies by August 30, 1985.

ADDRESS: Written appearance, data, and analysis to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4940.

SUPPLEMENTARY INFORMATION:

Introduction

The Director of FDA's Center for Veterinary Medicine is providing an opportunity for hearing on a proposal to

withdraw approval of the new animal drug applications (NADA's) for chloramphenicol oral solution for animal use, and to revoke the animal drug regulation reflecting approval of the NADA's (21 CFR 555.110c). This action is based upon new information which demonstrates that the products have not been used, and are not reasonably likely to be used, under the conditions of use upon which the applications were approved. Accordingly, the drugs are deemed unsafe under section 512(e)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)(1)).

Section 512(e)(1)(A) of the act provides authority to withdraw approval of a new animal drug application if experience or scientific data show that the drug is unsafe. Section 512(e)(1)(B) of the act provides authority to withdraw approval if new evidence shows that the drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved. Section 512(d)(2)(D) states that in determining whether a drug is safe for use under the conditions prescribed, recommended, or suggested in the labeling, the agency shall consider, among other factors, whether those conditions of use are reasonably certain to be followed in practice. Accordingly, where labeled indications for use of an approved new animal drug have not been followed, and are not reasonably likely to be followed in practice, the drug is deemed by statute to be unsafe and therefore its approval is subject to withdrawal.

Affected NADA's

The NADA's for chloramphenicol oral solution known to the Director and affected by this notice are:

Firm	NADA No.	Date approved
John D. Copenco & Co., Inc., Baltimore, MD 21225	65-354	9/07/73
Pfizer, Inc., 235 East 42d St., New York, NY 10017	65-464	7/29/76
Philips Roxanne, Inc., 2621 North Belt Highway, St. Joseph, MO 64502	65-471	12/27/77
Michael Gordon, P.O. Box 8091, San Francisco, CA 94118	65-484	8/15/80
Medico Industries, Inc. (a Tech-America Co.), Elkan Estates, P.O. Box 338, Elwood, KS 66024	65-487	4/10/81

The approval of NADA 55-003 for chloramphenicol oral solution, held by International Multifoods, Inc., was voluntarily withdrawn in response to a letter from the Director (see 49 FR 37059; September 21, 1984). The Director requested that all sponsors of chloramphenicol oral solutions voluntarily withdraw approval of their products based on evidence of misuse and a human health hazard resulting from that misuse.

The approved NADA's listed in 21 CFR 555.110c provide for manufacture and marketing of products containing 100 or 250 milligrams of chloramphenicol per milliliter in a propylene glycol solution. The NADA's provide for manufacture and sale of the drug in 16-ounce (pint), 8-ounce, 200-milliliter, 4-ounce, and 100-mililiter sizes. The drug is also approved for animal use in capsule, tablet, oral suspension, and injectable forms. These dosage forms are not affected by this notice.

Chloramphenicol oral solutions are approved and labeled for treating dogs for bacterial pulmonary infections, urinary tract infections, enteritis, and infections associated with canine distemper that are caused by organisms susceptible to chloramphenicol. The approval regulation (21 CFR 555.110c) requires the labels to bear a statement that "this product is not to be used in animals which are raised for food production." The regulation also restricts the drug to use by or on the order of a licensed veterinarian. In addition, the approved NADA's require the labeling to bear the statement "due to its bitter taste, the drug should be administered by stomach tube whenever practical."

Summary

Available data and information establish that most of the chloramphenicol oral solution distributed in recent years has been used to treat food-producing animals, usually by injection or infusion. The data and information were derived from investigations and surveys conducted by FDA, drug residue sampling carried out by the U.S. Department of Agriculture (USDA), antibiotic marketing and certification reports, data on drug sales to large animal practitioners, and other sources.

Chloramphenicol causes fatal blood dyscrasias, such as aplastic anemia, as well as other serious disease conditions in humans. The effect of the drug in causing aplastic anemia appears not to be dose dependent. USDA residue sampling reports and other sources establish that use of chloramphenicol oral solution in food-producing animals has resulted in drug residues in human food. The residue levels are greater than certain therapeutic doses associated with blood dyscrasias in man. Thus, chloramphenicol could have serious adverse effects in humans.

The withdrawal of approval of chloramphenicol oral solution would have little or no effect on canine practitioners and dog owners. The drug is approved for use in dogs in other dosage forms that are more conveniently administered. Based on the available evidence, the Director has concluded that use of chloramphenicol oral solution in food-producing animals, rather than dogs, is likely to continue if approval is not withdrawn.

Toxicity of the Drug

Chloramphenicol, a broad-spectrum antibiotic originally produced by *Streptomyces venezuelae*, was specifically recognized by Congress in 1949 when it provided for certification of the drug through amendment of section 507 of the act (21 U.S.C. 357). Use of chloramphenicol in human medicine for treatment of many bacterial and certain viral and rickettsial infections began about the same time. However, studies and reports linking chloramphenicol to blood dyscrasias such as aplastic anemia have led to a severe curtailment of the use of chloramphenicol in human medicine. Today its use in human medicine is recommended only when other antimicrobial agents are ineffective, and then only in hospitalized and carefully monitored patients.

Aplastic anemia has a 70 percent fatality rate within 5 years of exposure (Ref. 1). The risk of fatal aplastic anemia following exposure to chloramphenicol has been estimated as being between 1 in 21,000 and 1 in 36,000, a risk 13 times higher than the risk of aplastic anemia without exposure to the drug (Ref. 1). Significantly, the effect is not dose dependent (Ref. 2). The effect has been reported following exposure to extremely low levels of chloramphenicol, as, for example, in the use of medicated eye drops (Ref. 3).

Chloramphenicol has other serious toxic effects, believed to be dose related. These include, but are not limited to, bone marrow suppression (Ref. 4); "gray syndrome," an often fatal condition characterized by circulatory collapse that has been observed in infants and is believed to affect others who have defective capacity for conjugating and excreting chloramphenicol (Ref. 2); and anorexia, depression, and behavioral modifications such as lethargy and loss of recent memory (Ref. 4). The drug has also been shown to be a teratogen in rats (Ref. 5). In addition, available literature suggests that bone marrow depression and aplastic anemia due to use of chloramphenicol is associated with subsequent development of leukemia in humans (Ref. 5).

The Director is especially concerned about the possibilty of chloramphenicol residues occurring in the edible products

of food-producing animals in view of the fact that the occurrence of aplastic anemia in humans does not appear to be dose related. Research studies show that residues of the drug occur in edible tissues and in milk from treated animals (Refs. 6, 7, and 8). The information, however, is limited by the absence of information on metabolites (there is evidence that the aplastic anemia caused by chloramphenicol is due to metabolites and not the parent substance (Ref. 9)); by the short period of time over which depletion was measured (6 to 8 hours); and by a lack of sensitivity of the assay. The most sensitive assay used in these studies could detect 1 part per million (ppm) of chloramphenicol.

As documented below, USDA has found residues of chloramphenicol in edible products. However, the analytical methods that are available for measuring chloramphenicol residues in tissues are limited to detecting and measuring only the parent (or administered) compound. The Director is aware that residues will consist not only of the parent compound, but also of an array of metabolites that have resulted from chemical transformation of the parent drug by the animal, and that the harm to humans may be caused by the metabolites. Therefore, the Director concludes that use of chloramphenicol in food-producing animals causes a risk to human health. Any such risk is unacceptable.

Evidence of Misuse

A. Introduction

The use or intended use of an approved new animal drug in a manner that is inconsistent with the conditions of its approval causes the drug to be unsafe and thereby adulterated under sections 512(a)(1)(B) and 501(a)(5) of the act (21 U.S.C. 360b(a)(1)(B) and 351(a)(5)). In addition, misuse of an approved new animal drug provides grounds for withdrawal of approval. The Director has, in the past, exercised his regulatory discretion through a policy permitting "extra-label" use of approved animal drugs in certain circumstances. Until recently, the policy permitted extra-label use of drugs in food-producing animals unless residues occurred in edible products. Because of evidence of increasing misuse of chloramphenicol and other drugs, the Director has revised the policy to provide that extra-label use of drugs in food-producing animals is permitted only in very limited instances. The policy is stated in Compliance Policy Guide 7125.06 (see 49 FR 20915, May 17, 1984; and 49 FR 45930, November 21, 1984).

Further, the policy guide states that use of chloramphenicol in food-producing animals is not permitted under any circumstances. The Director has categorically excluded extra-label use of chloramphenicol in food animals because of the extreme human toxicity of the drug, because of new evidence establishing that residues of the drug occur in human food derived from animals administered the drug, and because of new evidence of extensive use of the drug in food-producing animals.

The sections below document evidence available to the Director establishing that chloramphenicol oral solution has been used widely in the treatment of food animals, and that such use is likely to continue. The information below describes some of the reasons why chloramphenicol became a significant drug in the therapy of food-producing animals.

Chloramphenicol has been shown through in vitro studies to be effective against a wide variety of pathogens that are of significant concern in veterinary medicine. These pathogens include staphylococci, streptococci, salmonellae, pasteurellae, *Escherichia coli*, *Bordetella*, *Haemophilus*, chlamydiae, and rickettsiae (Refs. 10 and 11). Pharmacokinetic research has established what are purported to be effective therapeutic concentrations of the drug in body fluids and tissues (Ref. 10). Research has shown that these drug concentrations are maintained for a sufficient time after administration to permit practical dosage schedules for a number of food animal species (Refs. 10 and 11). Moreover, scientific authorities contend that therapeutic dosages have not resulted in toxic reactions in the treated animals. In view of the foregoing information, the drug has been thought to be useful in food-producing animals (Refs. 10, 11, 12, and 14).

Although few adequate and well-controlled clinical studies have been reported in the scientific literature, the evidence of in vitro susceptibility and pharmacokinetic research have tended to establish a theoretical basis for clinical use of chloramphenicol in food-producing animals. Some scientists believe that occurrence of bacterial resistance to chloramphenicol is low at the suggested dosages. Therefore, the drug has been viewed as a viable alternative to other drugs (such as tetracycline and penicillin) against which resistance has developed (Refs. 10 and 12). In addition, the cost of the chloramphenicol oral solution has been relatively low, making its use economically feasible (Ref. 15).

Widespread veterinary use of the drug in food-producing animals has been generally acknowledged in the scientific literature (Refs. 10, 14, and 16). The scientific literature contains reports of use of chloramphenicol in treatment of a variety of clinical conditions in food-producing animals. These have included, but have not been limited to, enteritis (diarrhea) in cattle and swine caused by *Salmonella* and *Escherichia coli* (Ref. 11), mastitis in dairy cattle (Ref. 13), and bovine respiratory disease complex (Ref. 15). In fact, chloramphenicol has been said to be "most often the preferred drug against *Salmonella* and *Escherichia coli* infections of the gastrointestinal tract" (Ref. 10). Excerpts or summaries of scientific literature have been presented during meetings of veterinarians and animal producers, and have appeared in extension service publications, popular magazines, and other publications directed toward practicing veterinarians and animal producers.

Although evidence suggests that chloramphenicol has been administered to food-producing animals in the United States for a number of years, that evidence also suggests that widespread use did not develop until the past decade and, in particular, during the past several years (Ref. 16 and marketing data described below). Reports of increasing frequency of use, along with USDA's finding for the first time of chloramphenicol residues in human food, has caused FDA to investigate the extent of the drug's use in food-producing animals. Subsections B. and C., below, summarize the results of FDA investigations as well as evidence from other sources.

Information available shows that the chloramphenicol product used in food-producing animals has primarily been the oral solution, generally administered by injection. As the usual route of administration despite suggestions in the literature that injectable use of the oral solution is inadvisable (Ref. 12). The Director believes that injectable use of the oral solution occurs for several reasons: the oral solution is less expensive than the product approved for parenteral administration; oral administration is ineffective in ruminants because the rumen microflora destroy the drug; and the oral solution is difficult to administer orally in all species because of its bitter taste.

B. Direct Evidence of Misuse

USDA residue sampling has provided evidence that chloramphenicol has been

used in food-producing animals, and that such use has resulted in residues in food. Since 1981, USDA has tested for chloramphenicol residues in its residue monitoring and surveillance programs. Between 1981 and 1984, chloramphenicol residues were found in 20 carcasses in amounts ranging from 20 parts per billion (ppb) to 773 ppm. Eighteen of the 20 carcasses were from veal calves; the remaining 2 were from a heifer and a dairy cow. No chloramphenicol was found in other species. FDA followup investigations of a number of these incidents has confirmed the use of chloramphenicol by the producers whose animals were found to have residues of the drug.

Eleven of the residues were found in 3,889 carcasses tested in 1981, 1982, and 1983 in the USDA random sampling (monitoring) program. Under that program, the carcasses of a number of animals of different species and age classes are tested on a random basis each year for chloramphenicol. The percentage of carcasses in which residues have been found is, therefore, small. However, because of the limits of the methodology that has been available to USDA, the Director believes that the actual occurrence of residues is likely to be more frequent. The method of analysis that has been available for use is an electron-capture gas-liquid chromatographic method developed by Jackson, Allen, and Wiseman of FDA and modified by Simpson, Ali, and Raivera-Mendez of USDA. The method of analysis is limited to detection of parent chloramphenicol only and does not detect its metabolites. It has a sensitivity limit of 10 ppb. Moreover, with few exceptions, samples taken during the 1981–1983 period were of muscle. The Director believes that residues are more likely to be found in liver and kidney.

Based on the residue data obtained by USDA and the increasing frequency of reports of illegal use of chloramphenicol, FDA has conducted a number of inspections during the past several years. These inspections have revealed extensive use of chloramphenicol oral solution in food-producing animals.

The agency has found evidence of such unapproved use or intended use of chloramphenicol in nearly 100 inspections of animal producers, veterinarians, and retail distributors in 1982–1984. In nearly all instances, the investigators found the oral solution. In most instances, the drug was in 16-ounce (pint) bottles, although a few 8-ounce bottles were found. The investigators documented the presence of drugs covered by each of the NADA's listed above. The drugs had been administered, or were intended to be administered, to dairy and beef cattle and calves (including feedlot cattle and calves, and lactating dairy cows), and to young and mature swine. The drug was described as being used to treat salmonellosis in pigs and calves; coliform infections in calves; calf and baby pig scours; mastitis in dairy cattle; "toxic cow syndrome"; pneumonia, shipping fever, and other respiratory problems in calves; *Haemophilus* infections in calves; *Pasteurella hemolytica* infections in cattle; and as a disease prevention measure in newborn calves as well as calves entering the feedlot.

In several instances, investigators established the shipment of hundreds of 1-pint bottles to individual farms and feedlots over periods ranging from several months to several years. In one example, inspection of a drug distributor established that the firm shipped 2,400 1-pint bottles of chloramphenicol oral solution to 1 feedlot during a 3-month period. In another example illustrating the extent of food animal use, a veterinarian stated that he and every other veterinarian in his state (Washington) had used chloramphenicol in food animals for years. He reported that the veterinarians in that State commonly used the drug to treat mastitis in dairy cattle and pneumonia in young calves.

A 1982 FDA survey provided additional evidence of widespread use of chloramphenicol in food animals. In this survey, a followup to a 1980 survey of diethylstilbestrol (DES) use, FDA investigators were directed also to look for chloramphenicol. The survey covered veterinary supply stores, distributors, medicated feed mills, feedlots, and other suppliers. Of 103 establishments surveyed, 9 supplied chloramphenicol for use in food animals, and 15 used the drug in food animals. Eleven firms used, and six firms supplied, chloramphenicol to treat cattle. Three other firms used or supplied chloramphenicol to treat swine. Finally, two firms used, and two firms supplied, chloramphenicol for food animals whose species was not specified in the reports. In almost all instances, the chloramphenicol used was the oral solution, supplied in 16-ounce bottles. Thus, the Director concludes that the product being misused was the oral solution covered by this notice.

C. Other Evidence of Misuse

Market data compiled by IMS America Ltd. establish that distribution of chloramphenicol oral solution was to large animal veterinarians, that is, those treating farm animals and horses. For instance, the 1981 estimated sales to large animal practitioners of 16-ounce bottles of chloramphenicol oral solution was $2.5 million, compared to $23,000 for small animal practitioners (Ref. 17).

Additionally, a survey of over 100 food animal veterinarians, i.e., those who devoted 50 percent or more of their practices to large animals, revealed that approximately 95 percent had used chloramphenicol in their practices (Ref. 16).

The Director notes that equine practitioners are included in the category "large animal veterinarians." However, use of chloramphenicol as an antibiotic in horses is limited by the drug's short half-life in that species (Ref. 10) and the fact that the horse population is not large enough to account for a significant portion of the quantities that have been distributed to large animal veterinarians.

According to data submitted to FDA by sponsors as required by 21 CFR 510.300, the amount of chloramphenicol oral liquid marketed in recent years was equivalent to:

1978: 4,300 kilograms of chloramphenicol.
1980: 20,300 kilograms of chloramphenicol.
1982: 28,400 kilograms of chloramphenicol.

According to data available from the agency's antibiotic certification program for fiscal year 1981 (the last full year for which such data are available because batch certification has since been discontinued), the following amounts of chloramphenicol for veterinary use were certified:

Oral solution: 28,987 kilograms.
Injectable solution: 81 kilograms.
Tablets: 3,156 kilograms.
Capsules: 26,747 kilograms.

If most or all of the chloramphenicol approved for animal use were actually used in dogs, then the predominant dosage forms sold should be those that can be administered in the most practical manner. However, the data presented above demonstrate that this is not the case. It is necessary to administer the oral solution by stomach tube because the bitterness of the product effectively prevents direct oral administration. Administration of a drug three or four times each day by injection, or in the form of capsules or tablets, is much more practical than stomach tubing a dog three or four times a day. Although use of the oral solution for injection in large animals appears to be common, it is unlikely that much of

the oral solution is used in dogs by the parenteral route.

D. Likelihood of Misuse in the Future

The Director believes that use of chloramphenicol oral solution has declined in recent months as a result of public information programs and regulatory initiatives. For example, most persons who were interviewed in the inspections described above stated that they had, or would, discontinue use of the drug in food animals.

However, the Director believes that if the approvals are not withdrawn, the directions for use (i.e., only in dogs) are not reasonably likely to be followed in practice. First, there is evidence that some individuals and firms inspected by FDA would not have discontinued the use without the inspections. Further, the inspections FDA conducted most likely covered only a small fraction of those who have used the drug in food-producing animals. Second, the Director believes that only an extremely small amount of the chloramphenicol oral solution sold in recent years has been used in small animal practice. Evidence described above supports this conclusion. This is due to the drug's lack of palatability, the difficulty of stomach tube administration, and the availability of other, more practical dosage forms. Small quantities might be used when a stomach tube is already in place, e.g., when the animal has a broken jaw. In that case, however, either the suspension or the injection would suffice. Because of its bitter taste, the drug is used occasionally for an unlabeled use, to deter small animals from licking bandages. There are alternative means of accomplishing that purpose.

Therefore, canine practitioners and dog owners would not be adversely affected if chloramphenicol oral solutions were no longer available. The other currently available dosage forms (capsules, tablets, oral suspension, and injection) will meet contemplated needs for chloramphenicol in canine practice. Chloramphenicol oral solutions do not provide unique benefits for use in dogs compared to the other available dosage forms. In fact, because of its characteristics, the oral solution is potentially more hazardous to administer to the patient than other available dosage forms.

Thus, the Director concludes that if approval of the chloramphenicol oral solutions is continued, virtually all of the drug sold will be used in food animals. The Director's conclusions are supported unanimously by the views of several small animal practitioners and small animal clinicians associated with veterinary colleges. Their opinions were elicited in an informal survey. Summaries of their comments are included in the record of this proceeding.

Environmental/Economic Impact

FDA has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding, contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979; 44 FR 71742), may be seen in the Dockets Management Branch, Food and Drug Administration (address above), between 9 a.m. and 4 p.m., Monday through Friday.

An economic assessment indicates that only an extremely small amount of the chloramphenicol oral solution sold in recent years is used in small animal practice due to the difficulty of administration and availability of more practical dosage forms. The estimated annual sales of chloramphenicol oral solution is about $3 million, of which only about 1 percent is used as approved and labeled for small animals. The remainder of the sales are believed by the agency to be used for large animals, an unapproved use. Therefore, the approved and labeled use by canine practitioners and dog owners will not be adversely affected (economically) if chloramphenicol oral solution were no longer available (the need being met by other currently available dosage forms, e.g., capsules, tablets, oral suspension, and injection).

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Calderwood, S.B., and R.C. Moellering, Jr., "Common Adverse Effects of Antibacterial Agents on Major Organ Systems," *Surgical Clinics of North America*, 60:85–91, 1980.

2. Feder, H.M., Jr., C. Osier, and E. G. Maderazo, "Chloramphenicol: A Review of Its Use in Clinical Practice," *Review of Infectious Diseases*, 3:479–491, 1981.

3. Fraunfelder, F.T., G.C. Bagby, Jr., and D. J. Kelly, "Fatal Aplastic Anemia Following Topical Administration of Ophthalmic Chloramphenicol," *American Journal of Ophthalmology*, 93:358–360, 1982.

4. Clark, C.H., "Metabolic Effects and Toxicities of Chloramphenicol," *Modern Veterinary Practice*, pp. 663–668, 1978.

5. IARC Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Man, Vol. 10, Some Naturally Occurring Substances, pp. 85–98, International Agency for Research on Cancer, Lyon, 1976.

6. Appelgren, L.E., B. Eberhardson, K. Martin, and P. Slanina, "The Distribution and Fate of 14C–Chloramphenicol in the Newborn Pig," *Acta Pharmacology et Toxicology*, 51:345–350, 1982.

7. Haaland, M.A., J.E., Manspeaker, and T.W. Moreland, "Antibiotic Residues in Milk After Intrauterine Infusion," *Veterinary Medicine*, pp. 382–386, 1984.

8. Sisodia, C.S., V.S., Gupta, R.H. Dunlop, and O.M. Radostits, "Chloramphenicol Concentrations in Blood and Milk of Cows Following Parenteral Administration," *Canadian Veterinary Journal*, 14:217–220, 1973.

9. Krishna, G., I. Aykac, and D. Siegel, "Recent Studies on the Mechanisms of Chloramphenicol Activation Responsible for Aplastic Anemia," *in* "Safety Problems Related to Chloramphenicol and Thiamphenicol Therapy," Eds. Y. Najean, et al., Raven Press, New York, pp. 5–16, 1981.

10. Sisodia, C.S., "Pharmacotherapeutics of Chloramphenicol in Veterinary Medicine," *Journal of the American Veterinary Medical Association*, 176:1069–1071, 1980.

11. Clark, C.H., "Clinical Uses of Chloramphenicol," *Modern Veterinary Practice*, 889–894, 1978.

12. Knight, A.P., "Chloramphenicol Therapy in Large Animals," *Journal of the American Veterinary Medical Association*, 178:309–310, 1981.

13. Clark, C.H., "Chloramphenicol Dosage," *Modern Veterinary Practice*, 749–754, 1978.

14. Mercer, H.D., "The Comparative Pharmacology of Chloramphenicol," *Journal of the American Veterinary Medical Association*, 176:923–924, 1980.

15. Hjerpe, C.A., "The Bovine Respiratory Disease Complex," *Current Veterinary Therapy—Food Animal Practice*, W. B. Saunders, pp. 708–722, 1981.

16. Tindall, B., "After Chloramphenicol," *Animal Nutrition and Health*, pp. 34–39 (separate comments by J. Herrick, p. 37), July–August 1984.

17. IMS America Ltd., U.S. Pharmaceutical Market Animal and Poultry (Fourth Quarter 1981).

Notice of Opportunity for Hearing

Therefore, notice is given to the sponsors listed above, and to all other interested persons, that the Director of the Center for Veterinary Medicine proposes, under section 512(e) of the act, to withdraw approval of those NADA's for chloramphenicol oral solution cited above. This action is based on section 512(e)(1)(A) and (B) of the act in that new information not available at the time that the applications were approved evaluated together with information available at that time shows that the product is not safe for use under

the apparent conditions of its use. Upon finalization of the withdrawal of approvals of the applications identified above, the corresponding regulation shall be revoked as provided in section 512(i) of the act (21 U.S.C. 360b(i)) (21 CFR 555.110c).

In accordance with provisions of section 512 of the act (21 U.S.C. 360b) and regulations promulgated under it (21 CFR Part 514) and under authority delegated to him by 21 CFR 5.84, the Director hereby provides an opportunity for hearing to show why approval of the new animal drug applications listed above, and all supplements thereto, should not be withdrawn. Any hearing would be subject to the provisions of 21 CFR Part 12.

Copies of the documents cited in this notice have been placed on file with the Dockets Management Branch and are available for examination. Because certain documents concern ongoing FDA investigations, examination, copying, and distribution of those documents will be restricted in accordance with applicable regulations.

If an applicant decides to seek a hearing, the applicant shall file (1) on or before (July 31, 1985) a written notice of appearance and request for a hearing, and (2) on or before (August 30, 1985) the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 514.200.

Any other interested person may also submit comments on this notice. Procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 514.200.

The failure of the applicant to file timely written appearance and request for hearing as required by 21 CFR 514.200 constitutes an election by the applicant not to make use of the opportunity for a hearing. The Director will summarily enter a final order withdrawing approval of the application.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact that precludes the withdrawal of approval of the application(s), or that the request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice shall be filed in four copies. All submissions under this notice, except for data and information prohibited from public disclosure under section 301(j) of the act (21 U.S.C. 331(j)) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b)) and under authority delegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84).

Dated: June 25, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-15069 Filed 6-28-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0286]

International Drug Scheduling; Convention on Psychotropic Substances; Barbiturate-Type Sedative and/or Hypnotic Drug Substances

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit data or comments concerning abuse potential, actual abuse, and medical usefulness and trafficking of 31 barbiturate-type sedative and/or hypnotic drug substances. This information will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding abuse liability, actual abuse, and trafficking of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drugs. This notice requesting information is required by law.

DATE: Comments by July 30, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The United States is a party to the 1971 Convention on Psychotropic Substances. Article 2 of the Convention on Psychotropic Substances provides that if WHO has information about a substance which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations and provide the Secretary-General with information in support of its opinion. The Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) provides that when WHO notifies the United States under Article 2 of the Convention on Psychotropic Substances that WHO has information that may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services. The Secretary must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments to assist the Department of Health and Human Services (DHHS) in preparing scientific and medical evaluations about the drug or substance.

The agency has been provided with an advance copy of the WHO notification and has included it in this **Federal Register** notice. The authenticated copy of the WHO notification will be placed on display in the Dockets Management Branch when it is received. The notice requests the United States to submit data concerning the abuse potential, actual abuse, and medical usefulness of 31 barbiturate-type sedative and/or hypnotic drug substances. The contents of the notice follows:

United Nations

Vienna International Centre

The Secretary-General of the United Nations has the honour to draw attention to a request from the Director-General of the World Health Organization for assistance in obtaining data on the following thirty-one substances:

1. Allobarbital
2. Alphenal: 5-allyl-5-phenylbarbituric acid
3. Aprobarbital
4. Benzobarbital (also known as benzobarbitone)
5. Butalbital
6. Butallylonal: 5-(2-bromoallyl)-5-(1-methylpropyl)-barbituric acid
7. Buthalital Sodium
8. Butobarbital: 5-butyl-5-ethylbarbituric acid
9. Cyclopentobarbital: 5-(-1-cyclopenten-2-yl)-5-allylbarbituric acid
10. Difebarbamate
11. Febarbamate
12. Heptabarbital (also known as heptabarb)
13. Hexethal: 5-hexyl-5-ethylbarbituric acid

14. Hexobarbital
15. Mephebarbital (also known as heptobarbital)
16. Metharbital
17. Methitural
18. Methohexital
19. Nealbarbital
20. Praxitone
21. Probarbital sodium
22. Propallylonal: 5-(2-bromoallyl)-5-isopropylbarbituric acid
23. Proxibarbal
24. Secbutabarbital (also known as secbutobarbital)
25. Talbutal
26. Thialbarbital
27. Thiamylal sodium: Sodium 5-allyl-5-(1-methylbutyl)-2-thiobarbiturate
28. Thiobutabarbital: 5-(1-methylpropyl)-5-ethyl-2-thiobarbituric acid
29. Thiopental Sodium
30. Vinbarbital
31. Vinylbital

The WHO twenty-third Expert Committee on Drug Dependence, to be convened from 21 to 26 April 1986, will examine the thirty-one substances listed above to determine if any proposals should be made concerning their possible control under the provisions of the Convention on Psychotropic Substances. In this connection, it would be appreciated if the Government would submit data on any of the thirty-one substances. It would greatly assist the Secretary-General if such data were submitted on a substance-by-substance basis following the outline contained in the questionnaire attached to the present note as an annex.

In view of the fact that a report must be prepared for WHO on this subject, it would be appreciated if the information could be transmitted to the Secretary-General by 30 August 1985. Replies should be addressed to the attention of the Director of the Division of Narcotic Drugs, Vienna International Centre, P.O. Box 500, A–1400 Vienna, Austria.

May 15, 1985.

UNITED NATIONS DIVISION OF NARCOTIC DRUGS, Vienna International Centre, A–1400 Vienna, Austria.

Questionnaire for data collection for use by the World Health Organization and the Commission on Narcotic Drugs of the Economic and Social Council

Substance reported on ————

1. Availability of the substance (registered, marketed, dispensed, etc.).
2. National control measures applied to the substance as compared to measures applied to narcotic drugs or psychotropic substances (e.g. prescription requirements, licensing of manufacture and distribution, control of import and export, etc.).
3. Extent of abuse of the substance.
4. Degree of seriousness of the public health and social problems [1] associated with abuse of the substance.
5. Number of seizures of the substance in the illicit traffic during the previous three years and the quantities involved.
6. Identification of the substance as of local or foreign manufacture and indication of any commercial markings.
7. Existence of clandestine laboratories manufacturing the substance.

[1] Examples of public health and social problems are acute intoxication, accidents, work absenteeism, mortality, behavior problems, criminality, etc. For a thorough examination of the question please refer to the WHO publication entitled "Assessment of Public Health and Social Problems Associated with the Use of Psychotropic Drugs" (No. 650 in the WHO Technical Report Series) and Chapter 7 of the WHO publication entitled "Guidelines for the Control of Narcotic and Psychotropic Substances."

Therefore, as required by section 201(d)(2)(A) of the CSA (21 U.S.C. 811(d)(2)(A)), FDA on behalf of DHHS invites interested persons to submit data or comments regarding the named 31 drugs.

Of the 31 drug substances listed in the WHO notice, only 19 have a marketing history in the United States. The available data indicate that 16 of the drug substances are currently available in the United States. All 16 substances are controlled under the CSA. They include:

Allobarbital	Methohexital
Alphenal	Probarbital
Aprobarbital	Sodium Thiobutabarbital
Butalbital	Talbutal
Butobarbital	Thialbarbital
Cyclopentobarbital	Thiamylal Sodium
Hexobarbital	Thiopental Sodium
Metharbital	Vinbarbital

Of these drug substances, all are controlled in Schedule III of the CSA except for methohexital which is found in Schedule IV.

Data and information received in response to this notice will be used to prepare supplemental scientific and medical information on these drugs in addition to that previously provided by the United States to WHO. (A copy of that information is on file in the Dockets Management Branch under this docket.) DHHS will forward that information to WHO, through the Secretary of State, for WHO's consideration in deciding whether to recommend international control of any of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these drugs and could impose certain recordkeeping requirements on them.

Upon receipt of the information, DHHS will not make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Rather, DHHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in 1986. Any DHHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comment as required by 21 U.S.C. 811(d)(2)(B).

Interested persons may, on or before July 30, 1985, submit to the Dockets Management Branch (address above) written comments regarding this action. This short comment period is necessary to assure that DHHS may, in a timely fashion, provide the requested comments and data. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should provide data and/or information in the format described in the WHO questionnaire for data collection found above. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 25, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–15671 Filed 6–28–85; 8:45am]

BILLING CODE 4160–01–M

Office of Human Development Services

Program Announcement No. HDS–85.2; Administration for Children, Youth and Families Child Abuse and Neglect Research, Demonstration and Service Improvement Projects

AGENCY: Office of Human Development Services (HDS), HHS.

ACTION: Amendment of announcement of availability of funds and request for applications under the HDS Discretionary Grants Program.

SUMMARY: This document amends Program Announcement No. HDS–85.2 published in the **Federal Register** on Friday, June 21, 1985 (50 FR 25860) to extend the due date for receipt of applications to August 12, 1985.

FOR FURTHER INFORMATION CONTACT: Roland Sneed (202) 245–2840.

SUPPLEMENTARTY INFORMATION: On June 21, 1985, the Administation for Children, Youth and Families (ACYF) published an announcement of the availability of approximately $2 million for new grants relating to the prevention, identification, treatment and remediation of child abuse and neglect, including child sexual abuse. The closing date for receipt of applications under that announcement was July 22, 1985.

ACYF has determined that, in view of the complex nature of the subject areas to be addressed, an extension of the due date for receipt of applications is warranted in order to afford potential

applicants sufficient time to develop worthwhile proposals.

Therefore, ACYF is extending the due date for receipt of applications to August 12, 1985. Applications must be submitted in accordance with the requirements set forth in the June 21, 1985 announcement.

Waiver of the Executive Order 12372 Requirement for a 60-day Comment Period for the States' Single points of Contact (SPOC).

ACYF must award grants under this announcement by September 30, 1985. In view of this, a waiver has been granted of the provisions of Executive Order 12372 which require that the States' Single Points of Contact (SPOC) be afforded 60 days from the closing date for receipt of applications in which to review and submit comments to HDS on applications from their State.

Therefore, in order for their comments to be considered during the review process, SPOCS comments must be received by HDS by September 13, 1985.

(Catalog of Federal Domestic Assistance Program, Number: 13.628, Child Abuse and Neglect Prevention and Treatment.)

Dated: June 25, 1985.

Joseph Mottola,

Acting Commissioner, Administration for Children, Youth and Families.

Approved: June 28, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 85-15743 Filed 6-28-85; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Utah 51475]

Salt Lake District; Realty Action for Lands in Tooele County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: This is a Notice of a competitive sale of 60.00 acres of public land in Tooele County, in accordance with existing law.

DATE: The date of the sale is September 11, 1985.

ADDRESS: Comments concerning the sale will be accepted for a period of 45 days from the date of this notice by the: District Manager, Salt Lake District, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Nancy Bloyer, Pony Express Realty Specialist, (801) 524-5792.

SUPPLEMENTARY INFORMATION: The following described public land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) or FLPMA:

Legal description	Acreage	Appraised value of tract
T.4S., R.7W., SLB&M		
Section 3:		
Tract 1—Lots 6, 17	5.02	$2,500
Tract 2—Lots 7, 16	5.02	2,500
Tract 3—Lots 8, 15	5.02	2,000
Tract 4—Lots 9, 10	5.01	2,500
Tract 5—Lots 11, 12	5.00	2,500
Tract 6—Lots 13, 14	5.01	3,000
Tract 7—Lots 22, 23	5.00	3,500
Tract 8—Lots 21, 24	5.01	2,000
Tract 9—Lots 30, 31	4.99	3,500
Tract 10—Lots 29, 32	4.99	2,500
Tract 11—Lots 35, 36	4.99	4,000
Tract 12—Lots 33, 34	5.00	3,000

The subject public lands are interspersed with private lands and as such are difficult to manage. Also, the lands have the potential for rural residential development and would fulfill a need for additional home sites in the small community of Terra. This objective could not be achieved on other lands, nor do the public lands have more important public values than for community expansion.

The sale is consistent with the Bureau of Land Management's planning system and with Tooele County planning and zoning.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

Terms and conditions applicable to the sale are:

1. The sale of these lands is subject to all valid existing rights.

2. Patents issued will be subject to a right-of-way reservation in each tract for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. Patents issued will be subject to a right-of-way reservation for each tract not to exceed 33 feet along tract boundaries for road and public utility corridors.

4. All minerals are reserved to the United States together with the right to prospect for, mine, and remove the minerals.

5. Tooele County will issue only one building permit per tract, including those tracts that are split into two parcels by Highway 199.

There is no culinary water system in Terra. Present residents receive their water from private wells.

Special precautions may be required by the Tooele Conty Zoning Office to insure soil stability of building locations.

The sale will be conducted by competitive sealed bid with no oral bidding. Bids may be made by a principal or duly qualified agent. Qualified bidders include: Citizens of the United States 18 years of age or over; a corporation subject to the laws of any state or of the United States; a state, state instrumentality or political subdivision authorized to hold property; and any entities legally capable of holding lands or interests therein under the laws of the state within the lands to be conveyed are located. Entities include but are not limited to associations, partnerships, and other legal entities.

All bids must conform to the following conditions:

1. All bids must be delivered to the Salt Lake District, Bureau of Land Management at the above address before the sale date, September 11, 1985.

2. Each bid must be contained in a sealed envelope, one bid per envelope. The envelope must be clearly identified as a sealed bid and must display the tract number to which it applies as follows: "Bid for Public Sale, Serial U-51475, Tract ———, Tooele County."

3. Each bid must identify the name and address of the bidder and, if applicable, his or her agent's name and address.

4. Each bid must identify the tract number and the amount of the bid and must include all the lands in a tract. No bid will be accepted for less than the appraised fair market value of a tract.

5. A certified check, money order, bank draft or cashier's check made payable to the Bureau of Land Management for not less than 20 percent of the amount of the bid must be included with the bid.

6. Each bid must include a statement certifying that the bidder is a U.S. citizen, or that a business is under the legal jurisdiction of a U.S. state.

7. The bid must be signed and dated by the bidder.

All bids will be opened on the sale date of September 11, 1985, at 1:00 p.m. at the BLM Salt Lake District Office Conference Room, 2370 South 2300 West, Salt Lake City, Utah. The highest bid over fair market value establishes the sale price and the apparent high bidder for each tract. If two or more envelopes are received containing valid bids of the same amount, the determination of which is to be

considered the high bid will be by drawing. The apparent high bidder will be notified of such by certified mail. No preference right will be given to adjoining landowners.

The apparent high bidder must submit the remainder of his or her bid within 180 days of the sale. If the remainder of the bid price has not been received within 180 days from the apparent high bidder, the deposit will be forfeited and disposed of as other receipts of sale. The tract will then be offered for sale to the next highest bidder in succession until the tract is sold. If a tract remains unsold, it will be offered for sale by sealed bid anytime after the original sale. The sealed bids will be opened at 7:45 a.m. on the first Monday of every month. This will continue until all parcels are sold or until the appraisal is no longer valid. All bids will be returned, accepted or rejected within 30 days of the sale date. Patents will be issued by mail.

The authorized officer may reject the highest qualified bid and release the bidder from his obligation and withdraw the tract for sale, if he determined that consummation of the sale would be inconsistent with the provisions of any existing law, or collusive or other activities have hindered or restrained free and open bidding, or consummation of the sale would encourage or promote speculation in public lands.

Detailed information concerning the sale including the planning documents and environmental assessment is available for review at the above address. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Lynn F. Williams,

Acting District Manager.

[FR Doc. 85-15664 Filed 6-28-85; 8:45 am]

BILLING CODE 4310-DQ-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-312)]

Burlington Northern Railway Co.—Abandonment—in Park County, MT

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 22.96-mile rail line between Mission (milepost 0.02) and Wilsall (milepost 22.98) in Park County, MT. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-15747 Filed 6-28-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33 (Sub-No. 34X); Docket No. AB-37 (Sub-No. 19X)]

Union Pacific Railroad Co.—Discontinuance of Trackage Rights Exemption—in Idaho County, ID; and Oregon-Washington Railroad & Navigation Co.—Discontinuance of Trackage Rights Exemption—in Idaho County, ID

The Union Pacific Railroad Company (UP) and Oregon-Washington Railroad & Navigation Company (OWR&N) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuance of Service and Trackage Rights.* Applicants seek to discontinue trackage rights over a line of railroad owned by the Burlington Northern Railroad Company (BN) and operated by the Camas Prairies Railroad Company (CP), extending from milepost 61.0 near Kooskia to milepost 62.9 near Stites, a distance of 1.9 miles in Idaho County, ID.[1]

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal compliant filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance of trackage rights shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective July 31, 1985, (unless stayed pending reconsideration). Petitions to stay must be filed by July 10, 1985, and petition for reconsideration, including environmental, energy, and public use concerns, must be filed by July 22, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge St., Omaha, NE 68179.

If the notice of exemption contains fales or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 24, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-15748 Filed 6-28-85; 8:45 am]

BILLING CODE 7035-01-M

[1] Previously, BN and CP filed a notice of exemption under these rules for discontinuance of service by CP and abandonment by BN over the line involved in this proceeding. *See* Docket Nos. AB-6 (Sub-No. 256X), *Burlington Northern R.R. Co.—Abandonment Exemption—in Idaho County, ID,* and AB-236 (Sub-No. 2X), *Camas Prairie R.R. Co.—Discontinuance of Service Exemption—In Idaho County, ID* (not printed), served June 11, 1985.

DEPARTMENT OF JUSTICE

Lodging of Amended Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 5, 1985, a proposed consent decree in *United States v. Ranger Fuel Corporation,* Civil No. 83-5273 was lodged with the United States District Court for the Southern District of West Virginia. The proposed decree imposes an up-front civil penalty of forty thousand ($40,000), and requires immediate compliance with the permit limitations for outfalls 001-011 with stipulated penalties for non-compliance. The decree also establishes a construction schedule for treatment facilities at outfall 012 requiring compliance with the permit limitations by October 15, 1985, the imposition of

interim limitations until that date and stipulated penalties for failure to comply with the interim and final limitations at outfall 012.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Ranger Fuel Corporation*, D.J. Ref. 90-5-1-1-1084.

The proposed consent decree may be examined at the Office of the United States Attorney, Room 4108, Federal Building, 500 Quarrier Street, Charleston, West Virginia 25301, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA. 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Ave., NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the proposed consent decree, refer to the case, proposed decree, and D.J. reference number and enclose a check in the amount of $2.50 ($0.10/page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-15606 Filed 6-28-85; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States of America v. Calmar Incorporation and Realex Corporation; Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed consent decree and competitive impact statement have been filed with the United States District for the District of New Jersey in the case of *United States v. Calmar Incorporated and Realex Corporation*, Civil Action No. 84-5271 (DRD).

The complaint, which was filed on December 20, 1984, alleged that the acquisition of Realex Corporation by Calmar Incorporated would substantially lessen competition in the manufacture and sale of regular sprayers and regular dispensers in the United States in violation of section 7 of the Clayton Act, 15 U.S.C. 18. On January 30, 1985, following an evidentiary hearing, the District Court denied the Government's Motion for Preliminary Injunction to prevent the acquisition until a trial on the merits could be held.

The proposed judgement would require Calmar for ten years to notify the government prior to any future acquisition or merger involving a manufacturer of regular sprayers or regular dispensers for sale in the United States. The proposed judgment prohibits consummation of any such transaction for eight years without prior permission of the Department of Justice or the Court. The proposed judgment also provides that Calmar shall license certain specified patents obtained from Realex on a non-exclusive basis and upon reasonable and non-discriminatory terms and conditions.

Public comment on the proposed judgment is invited for a period of 60 days from the date of this notice. Comments should be addressed to Alan L. Marx, Chief, General Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530. All comments will be filed with the Court and published in the Federal Register.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Stipulation

In the United States District Court for the District of New Jersey; United States of America, Plaintiff, v. Calmar Incorporated and Realex Corporation, Defendants.

Civil Action No. 84-5271 (DRD).

Filed: June 19, 1985.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16) and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

For the plaintiff: Charles F. Rule,
Acting Assistant Attorney General;
Roger B. Andewelt,
Alan L. Marx,
Attorneys, Department of Justice.

Seymour H. Dussman,
Frank Scales, Jr.,
Richard S. Nicholson,
Thomas L. Allen,
Attorneys, Department of Justice, Antitrust Division, Washington, D.C. 20530, (202) 724-6327.

For the defendants:
Alan J. Weinschel,
Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153.

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on December 20, 1984, and plaintiff's Motion for Preliminary Injunction having come on to be heard on January 21, 1985 before this Court, and the Court having considered papers in support of said motion and in opposition thereto, and having considered the evidence presented during the course of an evidentiary hearing on January 21-25, 1985, and the Court having made and filed its findings of fact and conclusions of law on January 30, 1985, and having denied plaintiff's Motion for Preliminary Injunction in an Opinion dated January 30, 1985, and the parties hereto, by their attorneys, having consented to the entry of this Final Judgment without further proceedings and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue;

Now, therefore, upon consent of the parties hereto, it is hereby,

Ordered, adjudged and decreed as follows:

I.

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act (15 U.S.C. 18).

II.

As used in this Final Judgment:

A. "Calmar" means Calmar Incorporated, a Delaware corporation with its principal offices in Watchung, New Jersey.

B. "Realex" means Realex Corporation, a former Missouri corporation with its principal offices in

Kansas City, Missouri, which has been acquired by Calmar.

C. "Regular Sprayer" means a plastic mechanical pump device which sits on the top of a container, that when operated (by vertically depressing the head of the pump mechanism) dispenses from the container greater than one-half cubic centimeter of liquid in the form of a spray.

D. "Regular Dispenser" means a plastic mechanical pump device which sits on the top of a container, that when operated (by vertically depressing the head of the pump mechanism) dispenses from the container up to three cubic centimeters of liquid in the form of a stream.

E. "Person" means any individual, partnership, firm, corporation, association or other business or legal entity.

The definitions in this section expressly exclude from their meaning high viscosity mechanical pump devices used for dispensing toothpaste.

III.

This Final Judgment applies to Calmar, and to its officers, directors, managers, agents, employees, subsidiaries, successors and assigns, and to all other persons acting in concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

A. Calmar shall require, as a condition of the sale or other disposition of all, or substantially all, of its assets, that the acquiring party agree to be bound by the provisions of this Final Judgment and that such agreement be filed with plaintiff and the Court.

B. Calmar shall provide written notice to the plaintiff no later than thirty days subsequent to the effective date of any action whereby Calmar (1) changes its name, (2) liquidates or otherwise ceases operations, (3) declares bankruptcy, or (4) is acquired by, or becomes a subsidiary of, another firm.

V.

A. Calmar is hereby enjoined and restrained (i) for a period of eight years from the entry of this Final Judgment from purchasing, consolidating with, merging with, or acquiring control of, by acquisition of its securities or its assets, any person who has been engaged in the manufacture of regular sprayers or regular dispensers for sale within the United States within one year preceding the date of the proposed transaction, without the prior written consent of the Department of Justice or of the Court, and (ii) for an additional period of two years from purchasing, consolidating with, merging with, or acquiring control of, by acquisition of its securities or its assets, any person who has been engaged in the manufacture of regular sprayers or regular dispensers for sale within the United States within one year preceding the date of the proposed transaction, unless Calmar shall first give sixty (60) days advance written notice of any such proposed transaction to the Department of Justice.

B. Calmar is hereby enjoined and restrained for a period of five years from the entry of this Final Judgment from refusing to license any of the patents issued to or applied for by Realex listed in Appendix A to this Final Judgment on a non-exclusive basis and upon reasonable and non-discriminatory terms and conditions.

VI.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Calmar made to its principal office, be permitted:

(1) Access during office hours of Calmar to inspect and copy all books, ledgers; accounts, correspondence, memoranda, and other records and documents in the possession or under the control or Calmar, which may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Calmar and without restraint or interference from it, to interview officers, employees and agents of Calmar, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Calmar's principal office, Calmar shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Calmar to plaintiff, Calmar represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Calmar marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten days notice to Calmar prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Calmar is not a party.

VII.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of its provisions, for the enforcement of compliance with it, or for the punishment of violations of it.

VIII.

This Final Judgment shall be in effect for a period of ten years following its date of entry.

IX.

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), the United States files this Competitive Impact Statement, relating to the proposed Final Judgment submitted for entry in this case.

I. Nature and Purpose of the Proceeding

On December 20, 1984, the United States filed a civil antitrust suit alleging that the acquisition of Realex Corporation by Calmar Incorporated would violate Section 7 of the Clayton Act, 15 U.S.C. 18. Calmar manufactures regular sprayers, regular dispensers, other dispensing devices, plastic bottles, plastic closures, and other molded plastic packaging components at its plants in City of Industry, California, and Washington Court House, Ohio. It had net sales of approximately $62 million in 1983. Realex manufactures

regular sprayers, regular dispensers, other dispensing devices, plastic closures, and other molded plastic packaging components at its plant in Lee's Summit, Missouri. Realex is also engaged in various other businesses. It had net sales of approximately $25 million for the year ended October 31, 1983.

The complaint alleged that the acquisition of Realex by Calmar would eliminate actual and potential competition in the manufacture and sale of regular sprayers and regular dispensers, increase concentration in the regular sprayer and regular dispenser markets, and substantially lessen competition in the regular sprayer and regular dispenser markets. The complaint asked that the Court adjudge the proposed acquisition a violation of section 7 of the Clayton Act and issue preliminary and permanent injunctions preventing the acquisition.

The District Court held an evidentiary hearing on the Government's Motion for Preliminary Injunction from January 21 to January 25, 1985. On January 30, 1985, the Court issued an opinion denying the motion and entered its findings of fact and conclusions of law. The Government decided not to appeal the denial of its Motion for Preliminary Injunction. On or about February 11, 1985, Calmar acquired Realex. Shortly thereafter, the parties commenced negotiations to reach a settlement of the case.

Accompanying this Competitive Impact Statement are a proposed Final Judgment and Stipulation. Under the Stipulation, the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action. The Court will retain jurisdiction to interpret, modify, or enforce compliance with the provisions of the proposed Final Judgment.

II. The Nature of the Alleged Violations

Regular sprayers and regular dispensers are plastic mechanical pump devices which sit on the top of containers. They are operated by vertically depressing the head of the pump mechanism. A regular sprayer dispenses from the container more than one-half cubic centimeter of liquid in the form of a spray. A regular dispenser dispenses from the container up to three cubic centimeters of liquid in the form of a stream. Regular sprayers and regular dispensers are made from injection-molded plastic parts, metal springs, and metal or plastic balls.

Regular sprayers and regular dispensers are sold to manufacturers and packagers of consumer products, who incorporate them into the packages in which their products are sold. Regular sprayers are generally placed on containers of liquids that are most conveniently applied in the form of a thick, heavy spray, such as household cleaners, window cleaners, hair sets and conditions, automotive care products, and plant care products. Regular dispensers are generally placed on containers of viscous liquid products, such as hand and body lotion and liquid soap.

The manufacture and sale of regular sprayers in the United States is a highly concentrated industry. Prior to the acquisition of Realex by Calmar, there were three domestic manufacturers and sellers of regular sprayers. Calmar was by far the largest, with approximately 60 percent of the market. Realex was the second largest, with an approximately 23 percent market share. The HHI (the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm in the market and then summing the resulting numbers) was approximately 4,400. The acquisition of Realex by Calmar increased the HHI by more than 2,700, to over 7,100.

The manufacture and sale of regular dispensers in the United States is also a highly concentrated industry. Prior to the acquisition of Realex, there were four domestic manufacturers and sellers of regular dispensers (plus one large user of regular dispensers that manufactured dispensers only for its own use under license from Realex). Calmar was by far the largest, with approximately 58 percent of the market. Realex was the second largest, with an approximate 21 percent market share. The HHI was approximatley 4,000. The acquisition of Realex by Calmar increased the HHI by more than 2,400, to over 6,400.

In its January 30, 1985, opinion, the Court concluded that "the relevant [product] market includes regular sprayers, regular dispensers, fine mist sprayers, large dispensers and trigger sprayers." In the market defined by the Court, Calmar's market share was approximately 41 percent and Realex's was approximately 9 percent. The pre-merger HHI was approximately 2,300. The acquisition increased the HHI by more than 700, to over 3,000. Thus, the Court recognized that "the merger will result in a degree of concentration which establishes prima facie that it is likely to cause a substantial lessening of competition." However, relying upon *United States v. Waste Management, Inc.*, 743 F.2d 976 (2d Cir. 1984), the Court then concluded that "even after the proposed merger the ease of entry into the market would prevent any supplier from exercising market power." Therefore, in the Court's view, the merger was unlikely to violate section 7.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment provides that for a period of eight years Calmar shall not merge with or acquire any entity which has been engaged in the manufacture of regular sprayers or regular dispensers for sale within the United States within one year prior to the proposed transaction, without first obtaining the permission of the Department of Justice or the Court. For an additional two years Calmar shall not merge with or acquire any such entity without giving sixty days advance written notice of the proposed transaction to the Department of Justice. The proposed Final Judgment also provides that for a period of five years Calmar shall license certain patents obtained from Realex on a non-exclusive basis and upon reasonable and non-discriminatory terms and conditions. These patents are listed in Appendix A to the Final Judgment.

IV. Competitive Effect of the Proposed Final Judgment

Both the regular sprayer and the regular dispenser markets are relatively small. Total sales of regular sprayers in the United States in 1984 amounted to approximately 200 million units worth about $25 million. Tolal sales of regular dispensers in 1984 were nearly 130 million units worth $16 million. Firms not currently selling regular sprayers or regular dispensers in the United States, including foreign manufacturers, could become a factor in these markets with assets and sales that, compared to other industries, are not large.

Acquistions having a significant adverse effect on competition in these markets can therefore involve dollar amounts that do not require reporting under the premerger reporting program created by section 7A of the Clayton Act, 15 U.S.C. 18(a). The proposed Final Judgment eliminates the possibility that Calmar could make such acquisitions without prior notice to the government for the next ten years.

One large user of regular dispensers manufactures its requirements under a patent license obtained from Realex. Availability of a non-exclusive patent license upon reasonable and non-discriminatory terms and conditions may assist others to enter the market, either for sale to third parties or to manufacture for their own use. The

proposed Final Judgment requires Calmar to make available such licenses for the patents specified in Appendix A to the Judgment.

V. Remedies Available to Private Parties

Entry of the proposed Final Judgment will have no effect on the rights of persons who may have been injured by the alleged violation. Private plaintiffs may sue for any remedy they deem appropriate. However, pursuant to section 5(a) of the Clayton Act, 15 U.S.C. 16(a), this judgment may not be used as prima facie evidence in private litigation.

VI. Procedures Available for Modification of the Proposed Final Judgment

For a period of 60 days following the filing of the proposed Final Judgment and its publication in newspapers and the **Federal Register**, interested persons may submit written comments to Alan L. Marx, Chief, General Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530. These comments and the government's response will be filed with the Court and published in the **Federal Register**. The government will carefully consider all comments to determine if there is any reason for withdrawing its consent to the proposed judgment, which it may do at any time before the decree is entered by the Court. The Court will retain jurisdiction over the judgment following its entry so as to permit any of the parties to apply for orders modifying or enforcing the decree.

VII. Alternatives To the Proposed Final Judgment

The primary alternative considered was litigating the case on the merits in order to obtain divestiture of Realex. A trial on the merits, together with possible appeals, could have required the expenditure of substantial time and resources without any certainty of ultimate success. Even if the government prevailed on the merits, it is not certain that Realex would eventually be restored as a viable independent competitor in the manufacture and sale of regular sprayers and regular dispensers. Therefore, we concluded that the proposed Final Judgment was the best alternative available to the government at the current time.

The government also considered requiring advance approval or notification of proposed mergers or acquisitions by Calmar of entities manufacutring or selling other types of dispensing devices. However, neither the complaint nor the government's evidence at the preliminary injunction hearing alleged that the acquisition of Realex had any competitive impact on the manufacture or sale of dispensing devices other than regular sprayers and regular dispensers. The goverment remains free to bring actions under the antitrust laws if Calmar attempts to acquire an entity engaged in activities not subject to the proposed Final Judgment if the effect of such an acquisition may be substantially to lessen competition.

VII. Determinative Documents and Materials

There are not materials or documents that the United States considered determinative in formulating the proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Respectively submitted,

Seymour H. Dussman,
Frank Seales, Jr.,
Richard S. Nicholson,
Thomas L. Allen,
Attorneys for the United States, United States Department of Justice, Antitrust Divisions, Washington, D.C., 20530, (202) 724–6327.

[FR Doc. 85–15562 Filed 6–28–85; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M–85–5–M]

American Minerals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

American Minerals, Inc., Route 1, Box 47, Rosiclare, Illinois 62982 has filed a petition to modify the application of 30 CFR 56.9–88 (roll-over protective structures) to its Camden Plant (I.D. No. 28–00968) located in Camden County, New Jersey. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the mine's front-end loaders be equipped with roll-over protective structures (ROPS).

2. The front-end loaders are used only inside the building, which has low head room and a flat concrete floor surface. The distance from the floor to the average roof truss is twelve feet.

3. Petitioner states that if ROPS were installed there would not be enough room to operate these machines. Changing the roof truss is not possible due to the construction of the building.

4. As an alternate method, petitioner proposes to operate the equipment with the use of seat belts, governed controls and trained operators, in lieu of using ROPS. Petitioner further states there are no gulleys or steep ramps which could cause the equipment to turn over.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85–15729 Filed 6–29–85; 8:45 am]
BILLING CODE 4510–43–M

[Docket No. M–85–31–C]

Barnes & Tucker Co.; Petition for Modification of Application of Mandatory Safety Standard

Barnes & Tucker Company, 1912 Chestnut Avenue, Barnesboro, Pennsylvania 15714 has filed a petition to modify the application of 30 CFR 75.1100–3 (condition and examination of firefighting equipment) to its Lancashire No. 24–D Mine (I.D. No. 36–00835) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all firefighting equipment be maintained in a usable and operative condition.

2. Petitioner states that due to extremely cold weather conditions during the winter months, the waterline used for the deluge system for fire protection along the "W" belt drive freezes and is inoperative.

3. As an alternate method, petitioner proposes that:

a. A dry waterline deluge system will be installed at the head end of the "W" belt drive for fire protection. This dry waterline deluge system will be pressurized by a signal from the fire

sensors to an automatic actuator valve installed in the waterline. A manual bypass valve will also be installed in the system to allow the waterline for the deluge system to be pressurized if desired.

b. All persons in the vicinity of the "W" belt drive will be instructed as to the operation of the dry pipe system and an ample supply of water will be available for the dry pipe system.

4. Petitioner states that the proposed alternate method will provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15721 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-41-C]

Barnes & Tucker Co.; Petition for Modification of Application of Mandatory Safety Standard

Barnes & Tucker Company, 1912 Chestnut Avenue, Barnesboro, Pennsylvania 15714 has filed a petition to modify the application of 30 CFR 75.1100-3 (condition and examination of firefighting equipment) to its Lancashire No. 24-B Mine (I.D. No. 36-00837) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all firefighting equipment be maintained in a usable and operative condition.

2. Due to extremely cold weather during the winter months, the waterline used for fire protection along the slope belt freezes and is inoperative.

3. As an alternate method, petitioner proposes to install a dry waterline along the slope belt for fire protection equipped with an automatic actuating valve. This valve will be connected to the automatic fire sensors installed and maintained as required by the appropriate standards. When activated, the automatic fire sensors will send a signal to the actuator valve, causing the waterline to be pressurized with water. A manual bypass valve will also be installed to allow pressurization if desired. All persons in the vicinity of the slope will be instructed as to the operation of this system.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15723 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-37-C]

Canon Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Canon Coal Company, c/o Thorp, Reed & Armstrong, One Riverfront Center, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.1303 (permissible explosives, detonators, blasting devices and shot-firing units; stemming boreholes) to its Pitt Gas Mine (I.D. No. 36-06478) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that explosives be used within 48 hours after being taken underground.

2. As an alternate method, petitioner proposes to store explosives in underground magazines for a period of time not to exceed their shelf lives. The underground magazines will be of substantial construction with no metal exposed on the inside, and located in a dry, well rock-dusted and well-ventilated area at least 25 feet from roadways and power wires.

3. Petitioner states that the proposed alternate method will allow rehabilitation work of fall areas to begin quickly and will eliminate the additional hauling and handling of explosives required by surface storage.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15725 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-28-C]

Cross Mountain Coal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Cross Mountain Coal, Inc., P.O. Box 547, Lake City, Tennessee 37769 has filed a petition to modify the application of 30 CFR 77.1605(k) (berms or guards) to its No. 1 Mine (I.D. No. 40-02684) and its No. 2 Mine (I.D. No. 40-02859), both located in Campbell County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer bank of elevated roadways.

2. Petitioner states that application of the standard will result in a diminution of safety to the miners affected because berms confine water runoff to the road surface which washes away the surfacing materials, resulting in a dangerous road surface. The berms also hamper the removal of snow and ice with a motor grader.

3. As an alternate method, petitioner proposes to:

a. Make daily inspections of all coal-hauling vehicles. Any defects detected

will be corrected before the vehicle is put into service;

b. A specific traffic system and rules will be developed for the roads. These rules will be posted throughout the mine area, on the bulletin boards, and will become a part of the training and retraining programs;

c. All haulage vehicles will have original manufacturer's brakes and an emergency braking system; and

d. All equipment operators will be trained in the use of haulage equipment and safety of the vehicles on haulage roads.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15727 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-33-C]

Eastern Associated Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Corporation, One PPG Place, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.300 (mechanical ventilation—main fans) to its Harris No. 2 Mine (I.D. No. 46-01270) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all coal mines be ventilate by mechanical ventilation equipment installed and operated as approved by an authorized representative of the Secretary.

2. Petitioner states that the tunnel was driven through the Campbell Creek seam, which is a nongassy coal seam. Although adequately supported, areas of the top around each end of the tunnel have fallen out up to distances of 30 feet. There is only 100 to 150 feet of cover in the tunnel area because it is on the point of a mountain. The tunnel consists of a single entry with no additional working, and is ventilated by natural ventilation.

3. Petitioner states that installation of mechanical ventilation would require substantial construction work in areas where the top has fallen out and cover is limited. Such work would unnecessarily expose miners to hazardous conditions.

4. As an alternate method, petitioner proposes to continue its present system of natural ventilation for the tunnel.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Person interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at the address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15728 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-25-C]

Green River Terminal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Green River Terminal, Inc., P.O. Box 696, Sebree, Kentucky 42455 has filed a petition to modify the application of 30 CFR 77.1605(k) (berms or guards) to its Green River Terminal (I.D. No. 15-15035) located in Webster County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer bank of elevated roadways.

2. No trucks carrying crushed coal will be operated on the elevated roadways.

3. The use of berms would create problems with drainage and vegetation, lessening the stability of the haul road fill.

4. As an alternate method, petitioner proposes to post and enforce a 5 MPH speed limit on all elevated roadways.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on on before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards Regulations and Variances.

[FR Doc. 85-15726 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-39-C]

The New River Co.; Petition for Modification of Application of Mandatory Safety Standard

The New River Company, Drawer 711, Mount Hope, West Virginia 25880 has filed a petition to modify the application of 30 CFR 75.1100-2(b) (quantity and location of firefighting equipment) to its Skelton Mine (I. D. No. 46-01500) located in Raleigh County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that water lines be installed parallel to the entire length of belt conveyors.

2. Petitioner states that during the winter months, the water line is constantly threatened by freezing and bursting.

3. As an alternate method, petitioner proposes to use a dry pipe firefighting system with hose outlets at 300-foot intervals with specified conditions as outlined in the petition.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or

received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15724 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-17-C]

Renegade Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Renegade Coal Company, 44 N. Crescent St., Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 1 Slope (I.D. No. 36-07528) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine.

2. The mine has no history of ignition, explosion, or mine fires, or harmful quantities of carbon dioxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations fo respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners. High velocities and large quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face will be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set or developing entries will be 5,000 cubic feet per minute; and

c. The intake end of a pillar line will be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will at all times provide the same measure of protection for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Adminstration, Room 627, 4015 Wilson Boulevard, Arlington, Virgina 22203. All commentsmust be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15720 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-4-M]

Texasgulf Chemicals Co.; Petition for Modification of Application of Mandatory Safety Standard

Texasgulf Chemicals Company, P.O. Box 100, Granger, Wyoming 82934 has filed a petition to modify the application of 30 CFR 57.21-46 (crosscut intervals) to its Trona Operations (I.D. No. 48-00639) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that crosscuts be made at intervals not in excess of 100 feet between entries and between rooms.

2. The trona ore mined is incombustible and is used in fire extinguishers. Methane does not emanate from the ore mined, but does come in minute amounts from floor rock. Present auxiliary ventilation capacity is in excess of requirements and can provide for mining distances greater than presently mined.

3. Floor heave is a severe problem, causing much damage to stoppings in place. This floor movement buckles stoppings, resulting in loss of seal and leakage of air to the return airway.

4. As an alternate method, petitioner proposes that crosscuts be made at intervals not in excess of 250 feet between entries and between rooms in lieu of 100 feet as required by the standard. The 250-foot distance will reduce the number of stoppings between intake and return by half, greatly reducing air loss by leakage and improving ventilation to the face area where miners are working.

5. Petitioner states that the proposed alternate method will provide the same measure of protection to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1985. Copies of the petition are available for inspection at the address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Viariances.

[FR Doc. 85-15722 Filed 6-28-85; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee on Mechanical Engineering and Applied Mechanics; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee on Mechanical Engineering and Applied Mechanics (MEAM).

Date, Time & Place: July 17 and 18, 1985—9:00 a.m.-5:00 p.m. each day, Board Room, Room 540.

Type of meeting: Open.

Contact Person: Dr. John A. Weese, Division Director, Mechanics, Structures, and Materials Engineering (MSME), Room 1110, National Science Foundation, Washington, D.C. 20550 (202) 357-9542.

Summary/minutes: May be obtained from Mrs. Delores Wade, Division of Mechanics, Structures, and Materials Engineering (MSME), Room 1110, National Science Foundation, Washington, D.C. 20550, (202) 357-9542.

Purpose of committee: To provide direction for Mechanics, Structures, and Materials Engineering Research.

Agenda

Wednesday, July 17—Open—9:00 A.M.-5:00 P.M.

9:00-10:30—Call to Order and Discussion of Directorate Activities
10:30-12:00—Status of MSME Division MSME Staff
12:00-1:30—LUNCH
1:30-3:30—Descriptions of the MSME Programs
3:30-5:00—Discussion of the Role of the MSME Advisory Committee
5:00—Recess for the day

Thursday, July 18—Open—9:00 A.M.–5:00 P.M.

8:30–10:30—Development of Plan for the MSME Advisory Committee
10:30–12:00—Discussion with MSME Staff
12:00–1:30—LUNCH
1:30–5:00—Committee Members Assignments, Preparation of Meeting Report, Closing Remarks
5:00—Adjourn

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 85-15707 Filed 6-28-85; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982, the Nuclear Regulatory Commission (NRC) published in the **Federal Register**, as final, certain amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), which require advance notification to Governors or their designees concerning transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

States	Part 71	Part 73
Alabama	Col. Byron Prescott, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36102-0501, (205) 261-4378.	Same.
Alaska	Mr. Bill Ross, Commissioner, Alaska Department of Environmental Conservation, Pouch O, Juneau, AK 99811, (907) 465-2666.	Same.
Arizona	Charles F. Tedford, Director, Arizona Radiation Regulatory Agency, 925 South 52nd Street, Suite 2, Temple, AZ 85281, (602) 255-4845. After hours: (602) 889-4892.	Same.
Arkansas	E.F. Wilson, Director, Radiation Control and Emergency Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72201, (501) 661-2301. After hours: (501) 661-2136 or 661-2096.	Same.
California	Lt.M. Short, Chief, California Highway Patrol, P.O. Box 898, Sacramento, CA 95804 (916) 445-6211	Same.
Colorado	Captain Lonnie J. Westphal, Officer in Charge, Staff Services Branch, Colorado State Patrol, 1325 South Colorado Boulevard, Building 700B, Denver, CO 80222, (303) 691-8107. After hours: (303) 757-9422.	Same.
Connecticut	The Honorable Stanley J. Pac, Commissioner, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106, (203) 566-2110.	Same.
Delaware	Edward J. Steiner, Secretary, Department of Public Safety, Highway Administration Building, P.O. Box 818, Dover, DE 19903, (302) 736-4221.	Same.
Florida	Harlen Keaton, Public Health Physicist Manager, Office of Radiation Control, Department of Health and Rehabilitative Services, P.O. Box 15490, Orlando, FL 32858, (305) 298-0580.	Same.
Georgia	Ken M. Copeland, Director of the Office of Permits and Enforcement, Georgia Department of Transportation, 2nd Floor, Virginia Avenue, Hapeville, GA 30354, (404) 656-5425.	Same.
Hawaii	Melvin K. Kotzumi, Deputy Director for Environmental Health, Department of Health, P.O. Box 3378, Honolulu, HI 96813, (808) 548-4139.	Same.
Idaho	Robert D. Funderburg, Manager, Radiation Control Section, Department of Health and Welfare, Division of Environment, 450 West State, 5th Floor, Statehouse, Boise, ID 83720, (208) 334-4107. After hours: (208) 382-5260.	Same.
Illinois	Dr. Terry Lash, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 546-8100.	Same.
Indiana	John T. Shettle, Superintendent, Indiana State Police, 301 State Office Building, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232-8248 (24 hours).	Same.
Iowa	John D. Crandall, Director, Office of Disaster Services, Hoover State Office Building, Des Moines, IA 50319, (515) 281-3231.	Same.
Kansas	Leon H. Mannell, P.E. Administrator, Radiological Systems, The Adjutant General's Department, Division of Emergency Preparedness, P.O. Box C-300, Topeka, KS 66601, (913) 296-0253, Ext. 321.	Same.
Kentucky	Donald R. Hughes, Sr., Supervisor, Radiation Control Department for Health Services, 275 East Main Street, Frankfort, KY 40621, (502) 564-3700.	Same.
Louisiana	Col. Wiley D. McCormick, Head, Louisiana State Police, 265 South Foster Drive, P.O. Box 66614, Baton Rouge, LA 70896, (504) 925-6117.	Same.
Maine	Chief of the State Police Maine Department of Public Safety, Statehouse—Station No. 42, Augusta, ME 04333, (207) 289-2155.	Same.
Maryland	Lt. Colonel Frank Mazzone, Chief, Field Operations Bureau, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (301) 486-3101.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 150 Tremont Street, 7th Floor, Boston, MA 02111, (617) 727-6214.	Same.
Michigan	James E. Cox, Captain, Commanding Officer, Operations Division, Michigan Department of State Police, 714 South Harrison Road, East Lansing, MI 48823 (517) 337-6100.	Same.
Minnesota	Deidre M.A. Krause, Operations Officer, Minnesota Division of Emergency Services, 85 State Capitol, St. Paul, MN 55155, (612) 296-8452. After hours: (612) 778-0800.	Same.
Mississippi	James E. Maher, Director, Mississippi Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39216, (601) 352-9100.	Same.
Missouri	Richard D. Ross, Director, State Emergency Management Agency, 1717 Industrial Drive, P.O. Box 116, Jefferson City, MO 65102, (314) 751-2321. After hours: (314) 751-2748.	Same.
Montana	Mr. Larry Lloyd, Chief, Occupational Health Bureau, Department of Health and Environmental Sciences, Room A113, Cogswell Building, Helena, MT 59620, (406) 444-3671.	Mr. George Dethell, Administrator, Disaster and Emergency Services Division, 1100 North Last Chance Gulch, Helena, MT 59601, (406) 444-6111.
Nebraska	Col. Elmer J. Kohmetscher, Superintendent, Nebraska State Patrol, P.O. Box 94907, State House, Lincoln, NE 68509, (402) 471-2406 or (402) 471-4545.	Same.
Nevada	John Vaden, Supervisor, Radiological Health Section, Bureau of Regulatory Health Services, Nevada Division of Health, 505 East King Street, Room 202, Carson City, NV 89710, (702) 885-5394.	Same.
New Hampshire	Lt. Paul Richardson, Supervisor, Communications Section, Division of State Police, New Hampshire Department of Safety, James H. Hayes Building, Hazen Drive, Concord, NH 03301, (603) 271-3636.	Same.
New Jersey	Frank Cocotto, Special Assistant, Division of Environmental Quality, Room 1100, CN-027, Trenton, NJ 08625, (609) 984-7855.	Same.
New Mexico	Ken Hargis, Chief, Radiation Protection Bureau, Health and Environment Department, P.O. Box 968, Santa Fe, NM 87504-0968, (505) 984-0020, ext. 279. After hours: (505) 471-0121.	Same.
New York	Donald A. Davis, Director, State Emergency Management Office, Division of Military and Naval Affairs, Public Security Building, State Campus, Albany, NY 12226, (518) 457-2222.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
North Carolina	Lt. Walter K. Chapman, Operations Officer, North Carolina Highway Patrol Headquarters, P.O. Box 27687, Raleigh, NC 27611, (919) 733-4030. After hours: (919) 733-3861.	Same.
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, North Dakota State Department of Health, 1200 Missouri Avenue, Room 304, Box 5520, Bismarck, ND 58502-5520, (701) 224-2348. After hours: 1-800-472-2121.	Same.
Ohio	James R. Williams, Chief of Staff, Disaster Services Agency, 2825 Granville Road, Worthington, OH 43085, (614) 889-7157.	Same.
Oklahoma	The Honorable Paul W. Reed, Jr., Commissioner of Public Safety, Oklahoma Department of Public Safety, 3600 North Eastern Avenue, Oklahoma City, OK 73111, (405) 424-4011.	Same.
Oregon	William T. Dixon, Administrator Siting and Regulation, Oregon Department of Energy, 102 Labor and Industries Building, Salem, OR 97310, (503) 378-6456.	Same.
Pennsylvania	George M. Johnson, Director, Response and Recovery, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA 17105 (717) 783-8150. After hours: (717) 783-8150.	Same.
Rhode Island	William A. Maloney, Associate Administrator Motor Carriers, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277-3500.	Same.
South Carolina	Heyward G. Shealy, Chief, Bureau of Radiological Health, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 758-7606. After hours: (803) 758-5531.	Same.
South Dakota	Robert D. Gunderson, Division Director, Emergency and Disaster Services, Capitol Building, Basement, Pierre, SD 57501, (605) 773-3231.	Same.
Tennessee	John White, Assistant Deputy Director, Tennessee Emergency Management Agency, State Emergency Operations Center, 3041 Sidco Drive, Nashville, TN 37204, (615) 252-3300. After hours: 1-800-258-3300.	Same.
Texas	Dr. Robert Bernstein, Commissioner, Texas Department of Health, Bureau of Radiological Health, 1100 West 49th Street, Austin, TX 78756, (512) 458-7375.	Col. James B. Adams, Director, Texas Department of Public Safety, 5805 North Lamar Austin, TX 78752, (512) 465-3000.
Utah	Larry F. Anderson, Director, Bureau of Radiation Control, State Office Building, Room 3230, P.O. Box 45500, Salt Lake City, UT 84145-0500 (801) 533-6734.	Same.
Vermont	Patrick J. Garahan, Secretary, Vermont Agency of Transportation, 133 State Street, Montpelier, VT 05602, (802) 828-2657.	Same.
Virginia	Michael M. Cline, Deputy Director, Operations Division, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, VA 23225, (804) 323-2300.	Same.
Washington	Curtis P. Eschels, Chairman, Energy Facility Site Evaluation Council, Mail Stop PY-11, Olympia, VA 98504, (206) 459-6490.	Same.
West Virginia	Colonel W.F. Donohoe, Superintendent, Department of Public Safety, 725 Jefferson Road, South Charleston, WV 25309, (304) 746-2111.	Same.
Wisconsin	Carol Z. Hemersbach, Administrator, State of Wisconsin/Division of Emergency Government, 4802 Sheboygan Avenue, Room 99A, P.O. Box 7865, Madison, WI 53707, (608) 266-3232.	Same.
Wyoming	Julius E. Hess, Jr., Chief, Radiological Health Services, Department of Health and Social Services, Hathaway Building, Cheyenne, WY 82002 (307) 777-7956.	Same.
District of Columbia	Herbert T. Wood, Ph.D., Senior Public Health Advisor, Department of Consumer and Regulatory Affairs, Room 1014, 614 H Street, NW., Washington, DC 20001, (202) 727-7190. After hours: (202) 529-3349.	Same.
Puerto Rico	Santos Rohena, Jr., Chairman, Environmental Quality Board, P.O. Box 11488, Santurce, PR 00910, (809) 722-1175 or (809) 725-5140.	Same.
Guam	James B. Branch, Administrator, Guam Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910, (671) 646-7579.	Same.
Trust Territory of the Pacific Islands	R. Kent Harvey, Attorney general, Trust Territory of the Pacific Islands, Saipan, CM 96950, Saipan 9325 or 9264.	Same.
Virgin Islands	Hon. Juan Luis, Governor, Government House Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-0001.	Same.
American Samoa	Hon. Peter Coleman, Governor of American Samoa, Territorial Capitol, Pago Pago, American Samoa 96799, 633-4116.	Same.
Commonwealth of the Northern Mariana Islands	Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Mariana Islands Government, Saipan, CM 96950, No. 9130 or No. 9834.	Same.

Questions regarding this matter should be directed to Mindy Landau at (301) 492-9660.

Dated at Bethesda, Maryland this 14th day of June, 1985.

For the Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

June 1985.

[FR Doc. 85-15757 Filed 6-28-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6617.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on May 28, 1985 (50 FR 21674). Individual authorities established or revoked under Schedules A, B, or C between May 1, 1985 and May 31, 1985 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established or revoked during May.

Schedule B

No Schedule B exceptions were established or revoked during May.

Schedule C

The following exceptions are established:

Department of Agriculture

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective May 3, 1985.

One Private Secretary to the Chief, Soil Conservation Service. Effective May 8, 1985.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective May 13, 1985.

One Administrator (Human Nutrition Information Service) to the Assistant Secretary for Food and Consumer Services. Effective May 15, 1985.

One Confidential Assistant (Director, Legislative Affairs and Public Information Staff) to the Administrator, Farmers Home Administration. Effective May 15, 1985.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective May 15, 1985.

One Confidential Assistant to the Deputy Secretary. Effective May 15, 1985.

One Private Secretary to the Executive Assistant to the Secretary. Effective May 15, 1985.

One Confidential Assistant to the Executive Assistant to the Secretary. Effective May 21, 1985.

One Confidential Assistant to the Under Secretary for Small Community and Rural Development. Effective May 21, 1985.

Department of Commerce

One Confidential Assistant to the Deputy Assistant Secretary for Capital Goods and International Construction, International Trade Administration. Effective May 7, 1985.

One Confidential Assistant to the Director, Minority Business Development Agency. Effective May 7, 1985.

One Confidential Assistant to the Director, Minority Business Development Agency. Effective May 10, 1985.

One Confidential Assistant to the Associate Administrator, National Oceanic and Atmospheric Administration. Effective May 23, 1985.

One Private Secretary and Confidential Assistant (Typing) to the Associate Administrator, National Oceanic and Atmoshperic Administration. Effective May 23, 1985.

Department of Defense

One Private Secretary to the Principal Deputy Assistant Secretary of Defense (Public Affairs). Effective May 7, 1985.

One Private Secretary to the Senior Judge, U.S. Court of Military Appeals. Effective May 7, 1985.

One Assistant for European Security Negotiations to the Deputy Assistant Secretary of Defense (Negotiations Policy). Effective May 21, 1985.

Department of Education

One Deputy Director, Office of Bilingual Education and Minority Languages Affairs to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective May 16, 1985.

One Executive Secretary to the Chief of Staff/Counselor to the Secretary. Effective May 16, 1985.

Department of Energy

One Deputy Assistant Secretary for House Liaison to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective May 7, 1985.

One Director of Public Liaison to the Director of Communications, Office of the Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective May 7, 1985.

Two Staff Assistants to the Special Assistant to the Secretary. Effective May 7, 1985.

One Director, Office of Domestic Issues to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective May 9, 1985.

One Legislative Affairs Specialist to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective May 9, 1985.

One Secretary (Confidential Assistant) to the Administrator, Economic Regulatory Administration. Effective May 13, 1985.

One Special Assistant to the Deputy Assistant Secretary for Breeder Reactor Programs, Office of Assistant Secretary for Nuclear Energy. Effective May 23, 1985.

One Director, Press Services Division to the Director, Office of Communications. Effective May 28, 1985.

One Staff Assistant to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective May 28, 1985.

One Staff Assistant to the Director, Office of Minority Economic Impact. Effective May 28, 1985.

One Staff Assistant to the Director, Office of Energy Research. Effective May 30, 1985.

Department of Health and Human Services

One Staff Assistant to the Deputy Assistant Secretary for Legislation (Human Services), Office of Secretary. Effective May 7, 1985.

One Special Assistant for Special Groups to the Director, Office of Civil Rights. Effective May 13, 1985.

One Executive Assistant to the Director, Office of Child Support Enforcement. Effective May 24, 1985.

One Confidential Assistant to the Executive Assistant to the Secretary. Effective May 28, 1985.

Department of Housing and Urban Development

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective May 7, 1985.

One Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations. Effective May 7, 1985.

One Special Assistant to the Assistant Secretary for Community Planning and Development. Effective May 8, 1985.

One Special Assistant to the Regional Administrator/Regional Housing Commissioner, Hartford, Connecticut. Effective May 8, 1985.

One Special Assistant to the Deputy Assistant Secretary for Program Development, Office of the Assistant Secretary for Community Planning and Development. Effective May 9, 1985.

One Executive Assistant to the Regional Administrator/Regional Housing Commissions, Dallas, Texas. Effective May 10, 1985.

One Special Assistant to the Assistant Secretary for Community Planning and Development. Effective May 14, 1985.

One Confidential Assistant to the Under Secretary. Effective May 20, 1985.

One Confidential Assistant to the Assistant Secretary for Community Planning and Development. Effective May 28, 1985.

One Assistant to the Secretary for Special Programs. Effective May 24, 1985.

One Executive Director, Federal Council on Aging to the Assistant Secretary for Human Development Services. Effective May 28, 1985.

Department of Interior

One Confidential Assistant to the Special Assistant (Field Representative), Secretary's Field Coordination Office, Sacramento, California. Effective May 7, 1985.

Two Special Assistants to the Director of Policy Analysis, Office of the Assistant Secretary for Policy, Budget and Administration. Effective May 7, 1985.

One Special Assistant to the Director of Policy Analysis, Office of the Assistant Secretary for Policy, Budget and Administration. Effective May 13, 1985.

One Special Assistant to the Director, Bureau of Land Management, Sacramento, California. Effective May 21, 1985.

Department of Justice

One Staff Assistant to the Assistant Attorney General, Office of Legal Policy. Effective May 7, 1985.

One Confidential Assistant to the Special Assistant to the Attorney General for Cabinet Affairs. Effective May 13, 1985.

One Special Assistant (Public Relations) to the Director, Office of

Regulatory and Legislative Affairs, Civil Division. Effective May 13, 1985.

One Confidential Assistant to the Attorney General. Effective May 15, 1985.

One Associate Director of Public Affairs to the Director of Public Affairs. Effective May 24, 1985.

Department of Labor

One Assistant to the Deputy Under Secretary for Legislative Affairs. Effective May 13, 1985.

One Executive Assistant to the Chief of Staff, Office of the Secretary. Effective May 31, 1985.

One Staff Assistant to the Chief of Staff, Office of the Secretary. Effective May 31, 1985.

Department of State

One Secretary (Typist) to the Ambassador and U.S. Negotiator on Strategic Nuclear Arms. Effective May 21, 1985.

One Staff Assistant to the Ambassador on Space and Defensive Arms and Head of the U.S. Delegation to Geneva. Effective May 21, 1985.

One Staff Assistant to the Ambassador and U.S. Negotiator on Strategic Nuclear Arms. Effective May 23, 1985.

Department of Transportation

One Congressional Liaison Specialist to the Director of Congressional Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective May 7, 1985.

One Special Assistant to the Deputy Secretary. Effective May 20, 1985.

One Confidential Assistant to the Chief of Staff. Effective May 21, 1985.

One Marketing Assistant to the Administrator, Saint Lawrence Seaway Development Corporation. Effective May 23, 1985.

One Special Assistant to the Director, Office of Public and Consumer Affairs, National Highway Traffic Safety Administration. Effective May 24, 1985.

One Special Assistant to the General Counsel. Effective May 24, 1985.

Department of Treasury

One Confidential Secretary to the Deputy Treasurer of the United States. Effective May 13, 1985.

One Congressional Liaison Specialist to the Commissioner, U.S. Customs Service. Effective May 23, 1985.

One Staff Assistant to the General Counsel. Effective May 24, 1985.

Architectural and Transportation Barriers Compliance Board

One Executive Assistant to the Chairman. Effective May 9, 1985.

Commission on Civil Rights

One Confidential Assistant to the Assistant Staff Director for Programs and Policy. Effective May 7, 1985.

Equal Employment Opportunity Commission

One Confidential Assistant to the Chairman. Effective May 7, 1985.

Federal Communications Commission

One Legislative Affairs Officer to the Director, Office of Congressional and Public Affairs. Effective May 9, 1985.

Federal Labor Relations Authority

One Special Assistant to the General Counsel. Effective May 21, 1985.

International Trade Commission

One Staff Assistant (Legal) to a Commissioner. Effective May 13, 1985.

National Endowment for the Humanities

One Congressional Liaison Officer to the Director, Institute of Museum Services. Effective May 7, 1985.

National Labor Relations Board

One Confidential Assistant to a Board Member. Effective May 8, 1985.

National Transportation Safety Board

One Special Assistant to the Chairman. Effective May 7, 1985.

Office of Management and Budget

One Public Affairs Specialist to the Assistant Director of Public Affairs. Effective May 7, 1985.

One Secretary to the Director. Effective May 10, 1985.

Small Business Administration

One Confidential Assistant to the Director, Office of Women's Business Ownership. Effective May 7, 1985.

One Special Assistant to the Associate Deputy Administrator for Management and Administration. Effective May 7, 1985.

One Special Assistant to the Director, Office of Women's Business Ownership. Effective May 13, 1985.

One Special Assistant to the Associate Administrator for Management Assistance. Effective May 22, 1985.

One Assistant Administrator for Public Communications to the Administrator, Office of Public Communications. Effective May 30, 1985.

United States Government Printing Office

One Confidential Assistant to the Director of Legislative and Public Affairs. Effective May 28, 1985.

One Staff Assistant to the Public Printer. Effective May 28, 1985.

United States Tax Court

One Secretary (Confidential Assistant) to a Judge. Effective May 23 1985.

Veterans Administration

One Confidential Assistant to the Administrator. Effective May 7, 1985.

One Confidential Assistant to the Associate Deputy Administrator for Public and Consumer Affairs. Effective May 7, 1985.

One Confidential Assistant to the Associate Deputy Administrator for Congressional and Intergovernmental Affairs. Effective May 24, 1985.

Loretta Cornelius,

Acting Director, U.S. Office of Personnel Management.

[FR Doc. 85-15704 Filed 6-28-85; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22168; File No. S7-27-85]

Securities Processing

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Availability of Division of Market Regulation's Report, "Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems"; Request for Comment.

SUMMARY: A draft staff report on the Commission's Securities Immobilization Workshops held in February and March 1985 is available for public comment.

DATE: Public comment on the draft report is invited until September 1, 1985. Comments should be addressed to the Secretary of the Commission, Securities and Exchange Commission, 450 Fifty Street, NW., Washington, D.C. 20549, and should refer to File No. S7-27-85.

FOR FURTHER INFORMATION CONTACT: Elliott Cowan (202) 272-2418 or Joseph M. Furey (202) 272-2416, Mail Stop 5-1, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the report will be mailed upon request.

SUPPLEMENTARY INFORMATION: At the Securities Immobilization Workshops, representatives from the securities issuance and processing communities discussed ways to expand the use of central depositories to immobilize securities certificates and reviewed recent developments involving book-entry recordkeeping systems. The report summarizes the Workshops and

contains recommendations for an industry program to accelerate the immobilization of securities certificates.

John Wheeler,
Secretary.
June 25, 1985.
[FR Doc. 85-15749 Filed 6-28-85; 8:45 am]
BILLING CODE 8010-01-M

[File No. 500-1]

Musikahn Corp.; Order of Suspension of Trading

June 26, 1985.

It appearing to the Securities and Exchange Commission that there is a lack of adequate current information concerning the affairs of Musikahn Corp. with respect to, among other things, the company's financial condition, the closing of retail stores and a recent loan obtained by the company.

Therefore, it is ordered, pursuant to section 12(k) of the Exchange Act of 1934, that trading in Musikahn Corp., over-the-counter or otherwise is suspended, for the period from 9:30 a.m. on June 26, 1985 through midnight (EDT) on July 8, 1985.

By the Commission.
John Wheeler,
Secretary.
[FR Doc. 85-15750 Filed 6-28-85; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to fund for the first time an additional Small Business Development Center (SBDC) in Puerto Rico during fiscal year 1985. Currently, there are 40 SBDC's in existence. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to the proposal developer for the SBDC to be funded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through August 30, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically section 135.4, SBA is publishing this notice to provide public awareness of the pending application for funding of the proposed Small Business Development Center (SBDC). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDC will be funded at the earliest practicable date following the 60-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying this SBDC and providing the mailing address of the proposed developer is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single point of contact and other interested local entities are expected to advise the relevant proposal developer of their comments regarding the proposed funding in writing as soon as possible. Copies of such written comments must also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Comments will be accepted by the relevant proposal developer and SBA for a period of two months (60 days) from the date of publication of this notice. The proposed developer will make every effort to accommodate these comments during the 60-day period. If the comments cannot be accommodated by the proposed developer, SBA will, prior to funding the proposed SBDC, either attain accommodation of any comments or furnish an explanation to the commenter of why accommodation cannot be attained prior to funding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In States where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association), exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basis small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by status or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small busines community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small businesses that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Address of Proposed SBDC and Proposal Developer: Mr. Ramachandra K. Asundi, Professor, University of Puerto Rico, College of Business, Mayaguez, Puerto Rico 00708, (809) 834-4040.

Dated: June 21, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-15064 Filed 6-28-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/01-0335]

Lincoln Capital Corp.; License Surrender

Notice is hereby given that Lincoln Capital Corporation, 41 East 42nd Street, New York, New York 10017, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Lincoln Capital Corporation was licensed by the Small Business Administration on April 23, 1962.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on May 29, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 14, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-15061 Filed 6-28-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 05/05-0202]

M & I Ventures Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing Small Business Investment Companies (13 CFR 107.102 (1985)) under the name of M & I Ventures Corporation, 770 North Water Street, Milwaukee, Wisconsin 53202 for a license to operate as a small business investment company (SBIC) under the

provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 et seq.).

The Applicant will begin operations with private capital of $3,000,000.

The Officers, directors and sole shareholder of the Applicant are as follows:

John T. Byrnes, 10411 West Hillside Avenue, Wauwatosa, Wisconsin 53222—President, Director

Daniel P. Howell, 33556 S. Indiana, Milwaukee, Wisconsin 53207—Vice President

Michael A. Hatfield, 4913 N. Bartlett Avenue, Whitefish Bay, Wisconsin 53217—Secretary

J. A. Puelicher, 9080 North Range Line Road, Milwaukee, Wisconsin 53217—Director

James B. Wigdale, 6424 North Lake Drive, Milwaukee, Wisconsin 53217—Director

M & I Capital Markets Group, 770 North Water Street, Milwaukee, Wisconsin 53202—Sole Shareholder

M & I Capital Markets Group is a wholly owned subsidiary of Marshall & Ilsley Corporation, a bank holding company.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L St., NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Milwaukee, Wisconsin.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: June 20, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-15682 Filed 6-28-85; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, Arizona, will hold a public meeting at 10:00 a.m. on July 17, 1985, at the Phoenix Metropolitan Chamber of Commerce, 34 W. Monroe Street, Suite 900, Phoenix, Arizona to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Walter Fronstin, District Director, U.S. Small Business Administration, 2005 North Centeral Avenue, Phoenix, Arizona 85004, (602) 261-2206.

June 21, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-15683 Filed 6-28-85; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Negotiations; Meeting and Determination of Closing of Meeting

The meeting of the Advisory Committee for Trade Negotiations (the Advisory Committee) to be held Thursday, July 18, 1985, from 2:00 p.m. to 5:00 p.m. in Washington DC., will involve a review and discussion of the current issues involving the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC. 20528.

Michael B. Smith,

Acting United States Trade Representative.

[FR Doc. 85-15678 Filed 6-28-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 120-42]

Advisory Circular—Extended Range Operations With Two-Engine Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Advisory Circular.

SUMMARY: This notice announces the Federal Aviation Administration's establishment of criteria to permit extended range overwater opertions (as well as extended range operations over uninhabited land areas) of certain two-engine airplanes and provides notice of availability of Advisory Circular (AC) 120-42, which specifies detailed and comprehensive safety criteria to ensure that such operations meet the high level of safety commensurate with air carrier operations. These criteria are applicable to two-engine transport category airplanes operated by air carriers holding operating authority under 14 CFR Part 121. AC 120-42 specifies detailed technical criteria in the following areas which are required to provide the necessary high level of safety:

1. Type design approval methods for two-engine airplanes intended for use in extended range operations.

2. In-service experience considerations to demonstrate that the necessary level of propulsion system reliability has been achieved in-service, and that the applicant has obtained sufficient maintenance and operational familiarity with the particular airplane.

3. Operational approval methods to substantiate the operator's ability to safely conduct and support extended range operations with two-engine airplanes.

4. The methods to be used by a newly established Propulsion System Reliability Assessment Board during evaluation of the suitability of a particular airplane/engine combination for use in extended range operations.

DATE: The effective date of Advisory Circular (AC) 120-42 is June 6, 1985.

ADDRESS: A copy of the advisory circular may be obtained by contacting: U.S. Department of Transportation, Subsequent Distribution Section, M-494.3, 400 7th Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Further information may be obtained by contacting Mr. Jerald M. Davis, Flight Technical Programs Branch, Air Transportation Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telepone (202) 426-8452.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 1985, the Federal Aviation Administration (FAA) announced its proposed plans and invited public comments on the draft advisory circular (AC), which specified detailed and comprehensive safety criteria that would have to be met to

ensure that extended range operations with two-engine airplanes met the high level of safety commensurate with air carrier operations. Comments were requested to be received on or before March 8, 1985.

Extensive comments were received in response to this request and the comments, in general, supported the criteria proposed by FAA for evaluating and approving extended range operations with two-engine airplanes. These comments indicated that the overall concepts in the AC were technically and operationally sound. Furthermore, the vast majority of the comments were of a very detailed, technical, and operational nature and were related to refining the special safety criteria to ensure that extended range operations with two-engine airplanes provide a level of safety equal to that required of three- and four-engine airplanes currently flying these routes. Comments were received from five aircraft manufacturers, three engine manufacturers, one association of manufacturers, three airline pilot associations, two air transport associations, two airlines, two national aviation authorities, one international airline passenger association, and one private individual. One of the national aviation authorities commenting indicated that it had already developed similar and fully compatible special safety criteria and planned to publish these criteria in the near future.

After a careful and thorough review of the public comments received, the FAA has determined that the proposed concepts are teachnically and operationally sound and that the special safety criteria included in AC 120-42 will ensure that extended range operations with two-engine airplanes that meet these criteria, provide a level of safety equal to that required of three- and four-engine airplanes currently flying these routes. Furthermore, the introduction of the airframe systems and engine technology necessary to meet these special safety criteria will result in a much safer operation in domestic, as well as oceanic service, than the turbojet airplanes designed 20 to 30 years ago, which would be replaced by these new airplanes, could provide.

This AC is responsive to industry requests for timely guidance on type design and operational approvals for two-engine airplanes for use in extended range operations. This AC also implements the work of the International Civil Aviation Organization's Extended Range Operations (ETOPS) Study Group, which the U.S. actively participated in and supported.

Outline and Examples of Advisory Circular 120-42 Criteria

Under AC 120-42, in order for an operator to obtain approval for extended range operations with two-engine airplanes, the operator would have to show that each of the systems of the particular airplane-engine combination is designed to fail-safe criteria, in which single failures of systems are considered to occur regardless of probability and multiple failure must be considered if likely, and that the systems can be continuously maintained and operated to achieve the highest level of safety during the intended operation. To achieve compliance, the type design of the particular airplane initially would have to be shown to be sufficiently reliable for extended range operations. Type design approval would involve detailed and extensive showings that the airframe, propulsion, auxiliary power unit, hydraulic, electrical, pressurization and fire protection systems abroad the airplane meet special redundancy requirements and other standards of airworthiness that take into consideration the possibility that the airplane may have to be flown for an extended period of time with only one operative engine. For example, the airplane would be required to have multiple sources of electrical power for instruments and would have to be capable of safe flight after the complete loss of any two hydraulic systems and any engine. As another example, cargo compartment fire protection systems would have to be capable of suppression or extinguishing in-flight fires considering the extra time that might be needed to reach an airport.

In addition to obtaining type design approval for the airplane for extended range operations, the operator of the airplane would have to show that an adequate level of in-service propulsion system reliability can be achieved by the world fleet and by the particular operator for the airplane-engine combination type for which extended range operational authority is requested. This will necessitate a review, statistical analysis, and engineering assessment of in-service reliability, including the review of data on engine shutdowns, unscheduled removals and dispatch delays. In general, 250,000 engine hours of world fleet service and 12 months of operations by the particular operator would have to be accumulated with the particular airplance-engine combination before an airplane-engine reliability determination could be made.

If type design approval is obtained and if it is found that the in-service experience with a particular airplane-engine configuration is adequate, the operator would have to show that its operating procedures and dispatch rules ensure that its operations will be conducted safely. First, the operator's continuous airworthiness maintenance program would have to be evaluated to ensure that it is adequate. For example, the program would have to incorporate procedures to preclude extended range operations with any two-engine airplane that had an engine or other primary system failure on a previous flight, unless appropriate corrective action had been taken. Periodic reporting of current engine reliability and notification of changed maintenance procedures prior to implementation would also be necessary.

The operator would also have to use adequate radio and navigation equipment for the routes to be flown. In addition, fuel supplies would have to be shown to be adequate, for each flight. In establishing the necessary fuel supplies, a critical fuel scenario would be considered, involving a simultaneous failure of the pressurization system (forcing low-level, high-fuel-burn flight) and of an engine, at the critical point in time of the flight based on the time needed to reach a suitable alternate airport.

In addition, the operator would have to revise its Operations Manual to include special procedures for single engine operations. Also, its crewmember training and evaluation programs would have to be upgraded to cover the procedures for extended range operations. To ensure that the operator's overall procedures are adequate and that it is capable of conducting extended range operations, the operator would have to conduct a validation flight, witnessed by the FAA.

The above discussion only outlines the requirements that would have to be met for the approval of extended range operations with two-engine aircraft and presents several examples of those requirements. The advisory circular includes considerably more detailed and comprehensive engineering and operational criteria which would have to met before approval would be granted.

Issued in Washington, DC, on June 25, 1985.

[FR Doc. 85-15057 Filed 6-28-85; 8:45 am]
BILLING CODE 4910-13-M

Air Traffic Procedures Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from July 23, at 9 a.m., through July 26, 1985, at 4 p.m., at FAA Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, Missouri.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than July 19, 1985, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic, Acting ATO-300, 800 Independence Avenue, SW., Washington, DC, 20591, telephone (202) 426-3725. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is planned to be held from October 21 through October 24, 1985, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on June 25, 1985.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 85-15656 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-13-M

Life Preservers; Request for Comments on Draft Technical Standard Order (TSO)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on draft technical standard order (TSO).

SUMMARY: The draft TSO-C13e prescribes the minimum performance standards that life preservers must meet in order to be identified with the TSO marking "TSO-C13e." The TSO-C13e essentially is identical to current TSO-C13d except for the changes described as follows: (1) Paragraph (d) is revised to withdraw authorization to identify or mark life preservers under any preceeding TSO, effective 2 years after the effective date of TSO-C13e. (2) Paragraph 4.1.2 of Appendix 1 is revised to allow use of one or more separate gastight flotation chambers. (3) Paragraph 4.1.11 is revised to require more stringent life preserver retention and donning characteristics. (4) A new donning test is specified in paragraph 5.9. (5) A new paragraph 4.1.12.6 is added to require that a properly donned life preserver not form a trough which wold significantly direct wave action into the wearer's face. (6) Paragraph 4.1.13 is revised to require an automatically activated survivor locator light. (7) Paragraph 4.1.14 is revised to require a stowage package for the life preserver.

DATE: Comments must identify the TSO file number and be received on or before October 1, 1985.

ADDRESS: Send all comments on the draft technical standard order to:

Federal Aviation Administration, Policy and Procedures Branch, AWS-110, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C13e, 800 Independence Avenue, SW., Washington, DC. 20591

Or deliver comments to:

Room 335, 800 Independence Avenue, SW., Washington, DC. 20591

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Policy and Procedures Branch, AWS-110, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591 Telephone (202) 426-8395.

Comments received on the draft technical standard order may be inspected, before and after the closing date for comments, at Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC. 20591, between 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of the proposed draft TSO may be obtained by contacting the person under "For Further Information Contact." Federal Test Method Standard No. 191A may be examined at any FAA aircraft certification office, and may be obtained (or purchased) from the General Services Administration, Business Service Center, Region 3, 7th and D Streets, SW., Washington, DC. 20407.

Issued in Washington, DC, on June 24, 1985.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division.

[FR Doc. 85-15658 Filed 6-28-85; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on July 19, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C., commencing at 9:00 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Opening Remarks; (2) Approval of Minutes of Meeting Held on May 17, 1985; (3) Chairman's Report on RTCA Administration and Activities; (4) Special Committee Activities Report for May and June 1985; (5) Report of the RTCA Fiscal and Management Sub-Committee; (6) Consideration of Resolution to Amend the RTCA Constitution and Bylaws; (7) Consideration of Proposals to Establish New Special Committees; and (8) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C., 20005, (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on June 24, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-15731 Filed 6-28-85; 8:45 am]

BILLING CODE 4810-13-M

DEPARTMENT OF THE TREASURY

Secret Service

Appointment of Performance Review Board (PRB) Members

This notice announces the appointment of members of Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning July 1, 1984, and ending June 30, 1985. Each PRB will be composed of at least three of the Senior Executive Service members listed below.

Name and Title

William R. Barton—Deputy Director, U.S. Secret Service
Joseph R. Carlon—Assistant Director, Protective Research (USSS)
Edward J. Pollard—Assistant Director, Protective Operations (USSS)
Gerald W. Bechtle—Assistant Director, Inspection (USSS)
Larry B. Sheafe—Assistant Director, Investigations (USSS)
Stephen E. Garmon—Assistant Director, Administration (USSS)
Robert R. Snow—Assistant to the Director, Public Affairs (USSS)
Robert L. DeProspero—Assistant to the Director, Training (USSS)
Edward P. Walsh—Deputy Assistant Director, Protective Research (USSS)
William R. Hoskyn—Deputy Assistant Director, Protective Operations (USSS)
Don A. Edwards—Deputy Assistant Director, Protective Operations (USSS)
Paul A. Buskirk—Deputy Assistant Director, Protective Operations (USSS)
Kevin R. Houlihan—Deputy Assistant Director, Investigations (USSS)
John J. Kelleher—Chief Counsel, U.S. Secret Service

For further information contract: Wesley Bishop, Chief, Personnel Division, Room 912, 1800 G Street, NW., Washington, D.C. 20223, Telephone No. 202-535-5800.

John R. Simpson,

Director.

[FR Doc. 85-15695 Filed 6-28-85; 8:45 am]

BILLING CODE 4810-42-M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92-463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, July 18, 1985, at 2:30 p.m.
Thursday, August 1, 1985, at 2:30 p.m.
Thursday, August 15, 1985, at 2:30 p.m.
Thursday, August 29, 1985, at 2:30 p.m.
Thursday, September 12, 1985, at 2:30 p.m.
Thursday, September 26, 1985, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: June 24, 1985.

By direction of the Administrator.

Donald W. Jones,

Associate Deputy Administrator for Public and Consumer Affairs.

[FR Doc. 85-15686 Filed 6-28-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 126
Monday, July 1, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Postal Service	1

1

POSTAL SERVICE

(Board of Governors)

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 9:30 a.m. on Monday, July 8, 1985, in Washington, D.C., and at 8:30 a.m. on Wednesday, July 10, 1985, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, D.C. As indicated in the following paragraph, the July 8 meeting is closed to public observation. The July 10 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245–3734.

At its meeting on June 4, 1985, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for July 8. (See 50 FR 24872, June 13, 1985.)

The meeting will involve a discussion of personnel matters.

AGENDA

Monday Session

July 8, 1985—9:30 a.m. (Closed)

1. Discussion of Personnel Matters.

Wednesday Session

July 10, 1985—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 3–4, 1985.
2. Remarks of the Postmaster General.

(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the Members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)

3. Consideration of Postal Rate Commission recommended decision in Docket No. MC84–2, "Mail Classification Schedule, E–COM Service."

(The Governors will consider the Postal Rate Commission's recommended decision of December 21, 1984, and Order No. 613 of June 26, 1985.)

4. Consideration of proposed filing with the Postal Rate Commission for mail classification change.

(The Board will consider a proposed change to the Domestic Mail Classification Schedule regarding forwarding of mail by commercial mail receiving agents.)

5. Report on Operations Group.

(James V. Jellison, Senior Assistant Postmaster General, Operations Group, will report on the Operations Group.)

6. Review of Public and Employee Communications Programs.

(Mary J. Layton, Assistant Postmaster General, Public and Employee Communications Department, will report on communications and public affairs.)

7. Briefing on Safety Program.

(Darnley M. Howard, Director, Office of Safety & Health, will report on the safety program.)

8. Briefing on the National Address Change Program.

(Robert G. Krause, Director, Office of Address Information & Management, will report on the national address change program.)

9. Consideration of amendment to the Bylaws of the Board of Governors.

(Miss Peters will present a proposed change to the Board's Bylaws regarding funding Research and Development projects.)

10. Consideration of Extension of Service Contract.

(Mr. Schiller will propose exercising an option to extend an existing contract for professional support services.)

11. Capital Investments:

a. Automation Program—Phase II.

b. Redding, California—General Mail Facility.

12. Consideration of the Tentative Agenda for the August 5–6, 1985, meeting of the Board of Governors in Anchorage, Alaska.

David F. Harris,

Secretary.

[FR Doc. 85–15822 Filed 6–27–85; 2:45 pm]

BILLING CODE 7710-12-M

VOL
50
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126
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federal register

Monday
July 1, 1985

Part II

Department of the Treasury

Financial Management Service

Circular 570; 1985 Revision; Surety Companies Acceptable on Federal Bonds; Notice

4810-35
4-00236

DEPARTMENT OF THE TREASURY

FINANCIAL MANAGEMENT SERVICE

(Dept. Circular 570; 1985 Rev.)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective: July 1, 1985

This Circular is published annually, as of July 1, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of this Circular and other information pertinent to Federal sureties may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226. Telephone: (202) 634-2319. Interim changes are published in the FEDERAL REGISTER as they occur (See Note a/).

The following companies have complied with the law and the regulations of the Treasury Department and are acceptable as sureties and reinsurers on Federal bonds (under Sections 9304 to 9308 of Title 31 of the United States Code), to the extent of and with respect to the localities indicated, except as indicated in Footnote 2.

W. E. Douglas
Commissioner
Financial Management
Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

AID Insurance Company (Mutual). BUSINESS ADDRESS: 701 Fifth Avenue, Des Moines, IA 50309. UNDERWRITING LIMITATION b/: $10,629,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

Accredited Surety and Casualty Company, Inc. BUSINESS ADDRESS: 918 South Orange Avenue, Orlando, FL 32806. UNDERWRITING LIMITATION b/: $254,000. SURETY LICENSES c/: AL, FL, GA, IN, LA, MS, VA. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

The Aetna Casualty and Surety Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $108,715,000. SURETY LICENSES c/: All. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Aetna Casualty and Surety Company of Illinois. BUSINESS ADDRESS: 1020 - 31st Street, Downers Grove, IL 60515. UNDERWRITING LIMITATION b/: $23,844,000. SURETY LICENSES c/: All except GU, ME, NH, NC, PR, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Aetna Life and Casualty Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $217,044,000. SURETY LICENSES c/: CT, DC. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Aetna Reinsurance Company. BUSINESS ADDRESS: One Franklin Plaza, Philadelphia, PA 19102. UNDERWRITING LIMITATION b/: $3,450,000. SURETY LICENSES c/: AL, CA, DE, GA, HI, IN, IA, KS, LA, MS, NJ, NY, OK, TX, UT. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Affiliated FM Insurance Company. BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: $2,874,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Rhode Island. FEDERAL PROCESS AGENTS d/.

Alaska Pacific Assurance Company. BUSINESS ADDRESS: 4040 "B" Street, Anchorage, AK 99503. UNDERWRITING LIMITATION b/: $2,046,000. SURETY LICENSES c/: AK, CA, ID, MS, OR, SD. INCORPORATED IN: Alaska. FEDERAL PROCESS AGENTS d/.

Allegheny Mutual Casualty Company. BUSINESS ADDRESS: 485 Chestnut Street, Meadville, PA 16335. UNDERWRITING LIMITATION b/: $275,000. SURETY LICENSES c/: DC, FL, IL, IN, LA, MD, MI, NJ, OH, OK, PA, TN, TX, WI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Allendale Mutual Insurance Company. 2* BUSINESS ADDRESS: Post Office Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: $21,527,000. SURETY LICENSES c/: All except DE, GU, KS, LA, PR. INCORPORATED IN: Rhode Island. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Allianz Insurance Company. BUSINESS ADDRESS: Post Office Box 54897, Terminal Annex, Los Angeles, CA 90054. UNDERWRITING LIMITATION b/: $3,522,000. SURETY LICENSES c/: All except GU, OK. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Allstate Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: $328,150,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

American Agricultural Insurance Company. BUSINESS ADDRESS: 225 Touhy Avenue, Park Ridge, IL 60068. UNDERWRITING LIMITATION b/: $6,781,000. SURETY LICENSES c/: AZ, CO, FL, GA, ID, IL, IN, IA, KS, MA, MD, NM, NY, NC, ND, OR, PA, SC, TX, UT, VA, WA, WI. (Reinsurance only in KS, MA, NY.) INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

American Automobile Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $5,615,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA. BUSINESS ADDRESS: 11222 Quail Roost Dr., Miami, FL 33157. UNDERWRITING LIMITATION b/: $1,843,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

American Bonding Company. BUSINESS ADDRESS: 8601 Beverly Boulevard, Los Angeles, CA 90048. UNDERWRITING LIMITATION b/: $331,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, HI, ID, IA, KS, MO, MT, NE, NV, NM, OK, OR, TX, UT, WA. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

American Casualty Company of Reading, Pennsylvania. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $5,052,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

AMERICAN CENTENNIAL INSURANCE COMPANY. BUSINESS ADDRESS: 400 Beneficial Center, Peapack, NJ 07977. UNDERWRITING LIMITATION b/: $2,322,000. SURETY LICENSES c/: All except GU, ME, PR, WY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

American Credit Indemnity Company. BUSINESS ADDRESS: 300 St. Paul Place, Baltimore, MD 21202. UNDERWRITING LIMITATION b/: $5,749,000. SURETY LICENSES c/: All except GU, HI, PR, VI, WY. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

American Economy Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46207. UNDERWRITING LIMITATION b/: $8,283,000. SURETY LICENSES c/: All except CT, GU, ME, NJ, PR, VI. (Reinsurance only in NH.) INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

American Employers' Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $4,051,000. SURETY LICENSES c/: All except GU, PR. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

AMERICAN-EUROPEAN REINSURANCE CORPORATION. BUSINESS ADDRESS: 280 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $794,000. SURETY LICENSES c/: AK, CO, DE, DC, MI, NE, NY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

American Fidelity Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03105. UNDERWRITING LIMITATION b/: $789,000. SURETY LICENSES c/: AK, CT, DC, IA, ME, MD, MA, MS, NE, NH, ND, OK, RI, SD, UT, VT, WV. INCORPORATED IN: Vermont. FEDERAL PROCESS AGENTS d/.

American Fire and Casualty Company. 2* BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $3,509,000. SURETY LICENSES c/: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, MO, NC, OK, SC, TN, TX, VA. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

American General Fire and Casualty Company. BUSINESS ADDRESS: Post Office Box 1502, Houston, TX 77001. UNDERWRITING LIMITATION b/: $2,651,000. SURETY LICENSES c/: AR, LA, NM, OK, TX. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

American Guarantee and Liability Insurance Company. BUSINESS ADDRESS: 231 North Martingale Road, Schaumburg, IL 60196. UNDERWRITING LIMITATION b/: $2,040,000. SURETY LICENSES c/: All except GU, HI, PR, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

American Indemnity Company. BUSINESS ADDRESS: Post Office Box 1259, Galveston, TX 77553. UNDERWRITING LIMITATION b/: $2,878,000. SURETY LICENSES c/: AL, AZ, CA, CO, DC, FL, GA, IL, IN, IA, KS, KY, LA, MS, MO, MT, NE, NM, NC, OH, OK, SC, TN, TX, WI, WY. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

AMERICAN INDEPENDENT REINSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 3802, 3001 Summer Street, Stamford, CT 06905. UNDERWRITING LIMITATION b/: $2,733,000. SURETY LICENSES c/: AK, CT, DC, IN, IA, ME, MD, MN, MT, NE, NV, NM, NY, ND, TX, UT. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

The American Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $19,474,000. SURETY LICENSES c/: All except VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

American Manufacturers Mutual Insurance Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $9,747,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

American Motorists Insurance Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $17,887,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

American Mutual Liability Insurance Company. BUSINESS ADDRESS: Wakefield, MA 01880. UNDERWRITING LIMITATION b/: $5,247,000. SURETY LICENSES c/: All except GU, HI, PR, VI. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

American National Fire Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: $739,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

American Re-Insurance Company. BUSINESS ADDRESS: One Liberty Plaza, 91 Liberty Street, New York, NY 10006. UNDERWRITING LIMITATION b/: $29,054,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

American Southern Insurance Company. BUSINESS ADDRESS: Post Office Box 7369, Station C, Atlanta, GA 30357. UNDERWRITING LIMITATION b/: $583,000. SURETY LICENSES c/: AL, FL, GA, SC. INCORPORATED IN: Georgia. FEDERAL PROCESS AGENTS d/.

American States Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46207. UNDERWRITING LIMITATION b/: $24,537,000. SURETY LICENSES c/: All except CT, GU, ME, NY, PR, VI. (Reinsurance only in NH.) INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

American Surety and Casualty Company. BUSINESS ADDRESS: Post Office Box 52326, Jacksonville, FL 32201. UNDERWRITING LIMITATION b/: $243,000. SURETY LICENSES c/ : FL. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

Amwest Surety Insurance Company. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365. UNDERWRITING LIMITATION b/: $274,000. SURETY LICENSES c/: AK, AZ, CA, CO, FL, ID, MT, NV, NM, OR, TX, WA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Antilles Insurance Company. 2* BUSINESS ADDRESS: Post Office Box 3507, Old San Juan, Puerto Rico 00904. UNDERWRITING LIMITATION b/: $771,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico. FEDERAL PROCESS AGENTS d/.

ANVIL INSURANCE COMPANY. BUSINESS ADDRESS: 18021 Cowan Street, Irvine, CA 92714. UNDERWRITING LIMITATION b/: $523,000. SURETY LICENSES c/: AZ, CA, ID, MT, NV, NM, OR, TX, UT, WA, WY. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Argonaut Insurance Company. BUSINESS ADDRESS: 250 Middlefield Road, Menlo Park, CA 94025. UNDERWRITING LIMITATION b/: $9,826,000. SURETY LICENSES c/: All except ME, PR, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Arkwright-Boston Manufacturers Mutual Insurance Company.2* BUSINESS ADDRESS: 225 Wyman Street, Waltham, MA 02154. UNDERWRITING LIMITATION b/: $29,940,000. SURETY LICENSES c/: CA, CO, CT, DC, IL, IN, IA, KS, KY, MD, MA, MI, MN, MO, NE, NV, NH, NJ, NM, NY, NC, OH, RI, UT, VT, WA, WY. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

Associated Indemnity Corporation. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $3,786,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Atlantic Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: $780,000. SURETY LICENSES c/: All except CT, DE, GU, HI, ID, IA, LA, ME, MA, NE, NH, NJ, NY, ND, PR, RI, VT, VA, VI, WA, WI, WY. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Atlantic Mutual Insurance Company. BUSINESS ADDRESS: Atlantic Building, 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: $10,592,000. SURETY LICENSES c/: All except AL, GU, HI, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

The Automobile Insurance Company of Hartford, Connecticut. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $2,618,000. SURETY LICENSES c/: All except AL, DE, GU. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Auto-Owners Insurance Company.2* BUSINESS ADDRESS: Post Office Box 30660, Lansing, MI 48909. UNDERWRITING LIMITATION b/: $28,695,000. SURETY LICENSES c/: AL, AZ, CA, FL, GA, IL, IN, IA, MI, MN, MO, NE, NC, ND, OH, SC, SD, TN, TX, UT, WI. INCORPORATED IN: Michigan. FEDERAL PROCESS AGENTS d/.

Balboa Insurance Company. BUSINESS ADDRESS: Post Office Box 1770, Newport Beach, CA 92663. UNDERWRITING LIMITATION b/: $5,054,000. SURETY LICENSES c/: All except LA, PR. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Bankers Multiple Line Insurance Company. BUSINESS ADDRESS: 4810 North Kenneth Avenue, Chicago, IL 60630. UNDERWRITING LIMITATION b/: $3,175,000. SURETY LICENSES c/: All except DE, GU, HI, ME, PR. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

Binford Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $71,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico. FEDERAL PROCESS AGENTS d/.

BOND SAFEGUARD INSURANCE COMPANY. BUSINESS ADDRESS: 1010 Lake Street, Oak Park, IL 60301. UNDERWRITING LIMITATION b/: $88,000. SURETY LICENSES c/: IL. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Boston Old Colony Insurance Company.2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $1,763,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

The Buckeye Union Insurance Company.2* BUSINESS ADDRESS: Post Office Box 1499, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $20,114,000. SURETY LICENSES c/: DC, FL, IL, IN, KY, MI, MO, NY, OH, PA, VA, WV. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

CNA CASUALTY OF PUERTO RICO. BUSINESS ADDRESS: GPO Box SA, San Juan, Puerto Rico 00936. UNDERWRITING LIMITATION b/: $1,001,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico. FEDERAL PROCESS AGENTS d/.

The Camden Fire Insurance Association. BUSINESS ADDRESS: 436 Walnut Street, Philadelphia, PA 19105-1109. UNDERWRITING LIMITATION b/: $18,090,000. SURETY LICENSES c/: All except AL, AK, AR, DE, GA, GU, HI, ID, LA, ME, MS, MT, NE, NH, OR, PR, SC, SD, TN, TX, VT, VI, WA, WY. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

Capitol Indemnity Corporation. BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705. UNDERWRITING LIMITATION b/: $367,000. SURETY LICENSES c/: AZ, FL, ID, IL, IN, IA, LA, MI, MN, MO, MT, NM, ND, OK, SD, TX, WI, WY. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Centennial Insurance Company. BUSINESS ADDRESS: Atlantic Building, 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: $3,280,000. SURETY LICENSES c/: All except AL, GU, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Central Mutual Insurance Company. BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. UNDERWRITING LIMITATION b/: $2,594,000. SURETY LICENSES c/: All except AR, GU, HI, ND, OR, PR, SD, VI, WI. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

THE CENTRAL NATIONAL INSURANCE COMPANY OF OMAHA. BUSINESS ADDRESS: 105 South 17th St., Omaha, NE 68102. UNDERWRITING LIMITATION b/: $7,755,000. SURETY LICENSES c/: All except GU, HI, NY, VI. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

Century Indemnity Company. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $766,000. SURETY LICENSES c/: All except DE, GU, HI, OR, PR, VI. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

CENTURY SURETY COMPANY. BUSINESS ADDRESS: 1889 Fountain Square Court, Columbus, OH 43224. UNDERWRITING LIMITATION b/: $326,000. SURETY LICENSES c/: IN, OH, WV. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

The Charter Oak Fire Insurance Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $2,935,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

CIGNA INSURANCE COMPANY. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $7,463,000. SURETY LICENSES c/: All except GU, HI, LA, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

The Cincinnati Insurance Company. BUSINESS ADDRESS: Post Office Box 145496, Cincinnati, OH 45214. UNDERWRITING LIMITATION b/: $20,149,000. SURETY LICENSES c/: All except CA, CT, GU, HI, LA, ME, MA, NH, NJ, PR, RI, SD, VT, VI. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

Colonial Surety Company. 2* BUSINESS ADDRESS: 9 Parkway Center, Borough of Greentree, Pittsburgh, PA 15220. UNDERWRITING LIMITATION b/: $409,000. SURETY LICENSES c/: DE, NJ, PA. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Commercial Insurance Company of Newark, New Jersey. 2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $4,750,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

Commercial Union Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $14,629,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

The Connecticut Indemnity Company. BUSINESS ADDRESS: Post Office Box 420, Hartford, CT 06141. UNDERWRITING LIMITATION b/: $1,607,000. SURETY LICENSES c/: All except PR. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Consolidated Insurance Company. BUSINESS ADDRESS: 115 North Pennsylvania Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $756,000. SURETY LICENSES c/: FL, ID, IL, IN, IA, KY, MI, OH, OR, TN, WA, WI. INCORPORATED IN: Indiana.

Continental Casualty Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $106,222,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

The Continental Insurance Company. 2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $14,095,000. SURETY LICENSES c/: All. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

Continental Reinsurance Corporation. 2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $4,093,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, FL, HI, ID, IL, IN, IA, MI, MT, NV, NJ, NM, NY, NC, OK, OR, TX, UT, VA, WA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Continental Surety and Fidelity Insurance Company. BUSINESS ADDRESS: Post Office Box 730, Littleton, CO 80160. UNDERWRITING LIMITATION b/: $124,000. SURETY LICENSES c/: AK, CO, MT, NM, UT. INCORPORATED IN: Colorado. FEDERAL PROCESS AGENTS d/.

Continental Western Insurance Company.2* BUSINESS ADDRESS: Post Office Box 1594, Des Moines, IA 50306. UNDERWRITING LIMITATION b/: $2,252,000. SURETY LICENSES c/: AZ, AR, CO, DC, ID, IL, IN, IA, KS, KY, ME, MI, MN, MO, MT, NE, NV, NM, ND, OK, SD, TN, TX, UT, WI, WY. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

Contractor's Bonding and Insurance Company. BUSINESS ADDRESS: 1213 Valley Street, Seattle, WA 98109. UNDERWRITING LIMITATION b/: $346,000. SURETY LICENSES c/: AK, AZ, ID, MT, NV, NM, OR, SC, UT, VA, WA. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

Cooperativa de Seguros Multiples de Puerto Rico. BUSINESS ADDRESS: G.P.O. Box 3846, San Juan, Puerto Rico 00936. UNDERWRITING LIMITATION b/: $2,570,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico. FEDERAL PROCESS AGENTS d/.

Cornhusker Casualty Company. BUSINESS ADDRESS: 9140 West Dodge Road, Omaha, NE 68114. UNDERWRITING LIMITATION b/: $5,310,000. SURETY LICENSES c/: CO, IA, KS, NE, SD, WY. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

CORONET INSURANCE COMPANY. BUSINESS ADDRESS: 3500 West Peterson Avenue, Chicago, IL 60659. UNDERWRITING LIMITATION b/: $1,103,000. SURETY LICENSES c/: FL, GA, IL, TX. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Cotton States Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 105303, Atlanta, GA 30348. UNDERWRITING LIMITATION b/: $1,674,000. SURETY LICENSES c/: AL, FL, GA, NC, SC, TN. INCORPORATED IN: Georgia. FEDERAL PROCESS AGENTS d/.

Covenant Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 300, Hartford, CT 06101. UNDERWRITING LIMITATION b/: $270,000. SURETY LICENSES c/: AL, AZ, CA, CO, CT, FL, ID, ME, MA, MS, MO, NH, NJ, NY, OR, PA, VT, WA. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Cumis Insurance Society, Inc. BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53701. UNDERWRITING LIMITATION b/: $3,750,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

DELTA CASUALTY COMPANY. BUSINESS ADDRESS: 4711 North Clark Street, Chicago, IL 60640. UNDERWRITING LIMITATION b/: $492,000. SURETY LICENSES c/: IL, IA. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Dependable Insurance Company, Inc. BUSINESS ADDRESS: Post Office Box 19030, Jacksonville, FL 32245-9030. UNDERWRITING LIMITATION b/: $1,731,000. SURETY LICENSES c/: All except GU, ME, NH, VI. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

DEVELOPERS INSURANCE COMPANY. BUSINESS ADDRESS: 333 Wilshire Avenue, Anaheim, CA 92801. UNDERWRITING LIMITATION b/: $263,000. SURETY LICENSES c/: CA, NV. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Expire Fire and Marine Insurance Company. BUSINESS ADDRESS: 1624 Douglas Street, Omaha, NE 68102. UNDERWRITING LIMITATION b/: $1,140,000. SURETY LICENSES c/: All except CT, DE, DC, GU, LA, MA, NJ, NY, OR, PR, RI, TN, VI, WV. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

The Employers' Fire Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $1,812,000. SURETY LICENSES c/: All except GU, PR. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company. BUSINESS ADDRESS: 2000 Westwood Drive, Wausau, WI 54401. UNDERWRITING LIMITATION b/: $10,262,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Employers Mutual Casualty Company. BUSINESS ADDRESS: Post Office Box 712, Des Moines, IA 50303-0712. UNDERWRITING LIMITATION b/: $9,366,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

Employers Reinsurance Corporation. BUSINESS ADDRESS: 5200 Metcalf, Post Office Box 2991, Overland Park, KS 66201. UNDERWRITING LIMITATION b/: $43,971,000. SURETY LICENSES c/: All except GU, HI, PR, VI. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

ENNIA REINSURANCE COMPANY OF AMERICA. BUSINESS ADDRESS: 127 John Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $1,740,000. SURETY LICENSES c/: AR, GA, ID, IL, IN, IA, KS, LA, MS, NY, OK, TX. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Erie Insurance Company. BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. UNDERWRITING LIMITATION b/: $464,000. SURETY LICENSES c/: DC, IN, KY, MD, OH, PA, VA, WV. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

EVANSTON INSURANCE COMPANY. BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. UNDERWRITING LIMITATION b/: $3,939,000. SURETY LICENSES c/: DC, IL. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

FAIRMONT INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 7750, 4111 West Alameda Avenue, Burbank, CA 91510-7750. UNDERWRITING LIMITATION b/: $2,137,000. SURETY LICENSES c/: All except AL, GA, GU, HI, IL, KS, ME, MA, MN, MO, NH, NJ, OH, OK, PA, PR, RI, SD, TN, VT, VA, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Farmers Alliance Mutual Insurance Company. BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. UNDERWRITING LIMITATION b/: $1,639,000. SURETY LICENSES c/: AZ, CA, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, NY, ND, OK, OR, SD, TX, WA. INCORPORATED IN: Kansas. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Farmland Mutual Insurance Company. BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315. UNDERWRITING LIMITATION b/: $2,015,000. SURETY LICENSES c/: AR, CO, IL, IN, IA, KS, KY, MN, MO, NE, NV, ND, OH, OK, SD, TX, WI, WY. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

FAR WEST INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365. UNDERWRITING LIMITATION b/: $108,000. SURETY LICENSES c/: CA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Federal Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $40,929,000. SURETY LICENSES c/: All. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

FEDERATED MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 129 East Broadway, Owatonna, MN 55060. UNDERWRITING LIMITATION b/: $20,911,000. SURETY LICENSES c/: All except AK, DE, GU, HI, ME, NH, PR, VI. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

The Fidelity and Casualty Company of New York. 2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $10,160,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

Fidelity and Deposit Company. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $294,000. SURETY LICENSES c/: MD, TX. INCORPORATED IN: Maryland. FEDERAL PROCESS AGENTS d/.

Fidelity and Deposit Company of Maryland. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $13,738,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Maryland. FEDERAL PROCESS AGENTS d/.

Fireman's Fund Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $75,181,000. SURETY LICENSES c/: All. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Firemen's Insurance Company of Newark, New Jersey 2*. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $28,573,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

First California Property and Casualty Insurance Company. BUSINESS ADDRESS: 23621 Park Sorrento, Suite 101, Calabasas, CA 91302. UNDERWRITING LIMITATION b/: $193,000. SURETY LICENSES: CA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

First Financial Insurance Company. BUSINESS ADDRESS: 401-417 Fayette Avenue, Springfield, IL 62704. UNDERWRITING LIMITATION b/: $452,000. SURETY LICENSES c/: AK, AZ, AR, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NV, NM, ND, OH, OK, OR, SC, SD, TN, TX, UT, VA, WA, WV, WI. (Includes bail bonds in IN.) INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

First Insurance Company of Hawaii, Ltd. BUSINESS ADDRESS: Post Office Box 2866, Honolulu, HI 96803. UNDERWRITING LIMITATION b/: $1,587,000. SURETY LICENSES c/: GU, HI. INCORPORATED IN: Hawaii. FEDERAL PROCESS AGENTS d/.

First National Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $2,930,000. SURETY LICENSES c/: All except GU, HI, ME, NH, PR, VT, VI. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

Foremost Insurance Company. BUSINESS ADDRESS: 5800 Foremost Drive, SE, P.O. Box 2450, Grand Rapids, MI 49501. UNDERWRITING LIMITATION b/: $11,926,000. SURETY LICENSES c/: All except DE, DC, GU, HI, PR, RI, VI. INCORPORATED IN: Michigan. FEDERAL PROCESS AGENTS d/.

Fremont Indemnity Company. BUSINESS ADDRESS: 1709 West Eighth Street, Los Angeles, CA 90017. UNDERWRITING LIMITATION b/: $8,619,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NV, NJ, NM, ND, OH, OK, OR, PA, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Fritz Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $68,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico. FEDERAL PROCESS AGENTS d/.

General Accident Insurance Company of America. BUSINESS ADDRESS: 436 Walnut Street, Philadelphia, PA 19105-1109. UNDERWRITING LIMITATION b/: $49,994,000. SURETY LICENSES c/: All except AL, AR, GU, ME, ND, SC, VI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

GENERAL CASUALTY COMPANY OF WISCONSIN. BUSINESS ADDRESS: One General Drive, Sun Prairie, WI 53596. UNDERWRITING LIMITATION b/: $3,044,000. SURETY LICENSES c/: IL, IN, IA, KS, MN, MO, NE, ND, SD, WI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

General Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $14,470,000. SURETY LICENSES c/: All. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

General Reinsurance Corporation. 2* BUSINESS ADDRESS: 695 East Main Street, P.O. Box 10350, Stamford, CT 06904-2350. UNDERWRITING LIMITATION b/: $55,724,000. SURETY LICENSES c/: All except GU, HI, PR, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

The Glens Falls Insurance Company. 2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $1,885,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Global Surety & Insurance Co. BUSINESS ADDRESS: 160 Kiewit Plaza, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $1,120,000. SURETY LICENSES c/: AZ, CA, CO, MT, NE, SD. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

Globe Indemnity Company. BUSINESS ADDRESS: 150 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $8,436,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Grain Dealers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 1747, Indianapolis, IN 46206. UNDERWRITING LIMITATION b/: $2,574,000. SURETY LICENSES c/: All except AL, AK, CT, DE, DC, FL, GU, ID, ME, MD, MA, MT, NH, NJ, NY, ND, PA, PR, RI, UT, VT, VI, WV. INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

GRAMERCY INSURANCE COMPANY. 2* BUSINESS ADDRESS: Post Office Box 53256, Houston, TX 77052. UNDERWRITING LIMITATION b/: $229,000. SURETY LICENCES c/: DE, MD, TX. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Granite State Insurance Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $746,000. SURETY LICENSES c/: All except CT, DE, GU, HI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

Great American Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: $33,925,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

Great Northern Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $1,102,000. SURETY LICENSES c/: All except AL, AR, CA, CT, DE, GU, ID, NC, PR, TN, VI, WV. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

Greater New York Mutual Insurance Company. 2* BUSINESS ADDRESS: 215 Lexington Avenue, New York, NY 10016. UNDERWRITING LIMITATION b/: $6,926,000. SURETY LICENSES c/: All except AK, AR, GU, HI, LA, OR, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Gulf Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: $9,724,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

The Hamilton Mutual Insurance Company of Cincinnati, Ohio. BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, OH 45206. UNDERWRITING LIMITATION b/: $366,000. SURETY LICENSES c/: IN, KY, MI, OH. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

The Hanover Insurance Company. BUSINESS ADDRESS: 440 Lincoln Street, Worcester, MA 01605. UNDERWRITING LIMITATION b/: $20,854,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

HARCO NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 94309, Schaumburg, IL 60194. UNDERWRITING LIMITATION b/: $1,613,000. SURETY LICENSES c/: All except GU, HI, PR, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Harleysville Mutual Insurance Company. BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438. UNDERWRITING LIMITATION b/: $11,094,000. SURETY LICENSES c/: CA, CO, DE, DC, GA IL, IN, IA, KS, MD, MI, MS, MO, NJ, NM, NC, OH, OK, PA, SC, TN, TX, UT, VA, WV, WI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Hartford Accident and Indemnity Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $85,705,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Hartford Casualty Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $7,233,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

Hartford Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $79,720,000. SURETY LICENSES c/: All except VI. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Hartford Insurance Company of Alabama. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $967,000. SURETY LICENSES c/: AL, OK, PA. INCORPORATED IN: Alabama. FEDERAL PROCESS AGENTS d/.

Hartford Insurance Company of Illinois. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $3,012,000. SURETY LICENSES c/: IL, PA. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Hartford Insurance Company of the Midwest. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $1,018,000. SURETY LICENSES c/: AK, AR, CT, DC, FL, GA, ID, IN, IA, KS, LA, MD, MI, MT, NE, NM, NY, ND, OR, PA, SC, TX, UT, VA, WV, WI. INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

Hartford Insurance Company of the Southeast. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $912,000. SURETY LICENSES c/: FL, GA, LA, PA. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

THE HAWAIIAN INSURANCE & GUARANTY COMPANY, LIMITED. BUSINESS ADDRESS: P.O. Box 2255, 1001 Bishop Street, Pacific Tower, Honolulu, HI 96804. UNDERWRITING LIMITATION b/: $1,449,000. SURETY LICENSES c/: AK, AR, CA, HI, ID, NV, OR, WA. INCORPORATED IN: Hawaii. FEDERAL PROCESS AGENTS d/.

Hawkeye-Security Insurance Company. BUSINESS ADDRESS: 1017 Walnut Street, Des Moines, IA 50307. UNDERWRITING LIMITATION b/: $1,614,000. SURETY LICENSES c/: AZ, CO, DC, ID, IL, IN, IA, KS, MD, MI, MN, MO, MT, NE, NV, NM, OH, SD, TX, UT, VA, WI, WY. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

Highlands Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, TX 77002. UNDERWRITING LIMITATION b/: $20,337,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS. d/.

Highlands Underwriters Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, TX 77002. UNDERWRITING LIMITATION b/: $1,440,000. SURETY LICENSES c/: AL, AZ, AR, CA, FL, GA, LA, MS, NM, OK, TX. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

The Home Indemnity Company. BUSINESS ADDRESS: 59 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $5,879,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

The Home Insurance Company. BUSINESS ADDRESS: 59 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $29,171,000. SURETY LICENSES c/: All except VI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

Houston General Insurance Company. BUSINESS ADDRESS: Post Office Box 2932, Fort Worth, TX 76113-2932. UNDERWRITING LIMITATION b/: $1,266,000. SURETY LICENSES c/: All except CT, GU, HI, ME, MA, MN, NE, NH, NJ, PA, PR, RI, VT, VI, WV, WI. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Hudson Insurance Company. BUSINESS ADDRESS: 280 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $829,000. SURETY LICENSES c/: CA, CO, DE, IA, NH, NY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

IGF Insurance Company. BUSINESS ADDRESS: 2882 - 106th Street, Des Moines, IA 50322. UNDERWRITING LIMITATION b/: $354,000. SURETY LICENSES c/: AR, CO, IL, IA, KS, MN, MO, MT, NE, ND, OK, SD, WI. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

INA Reinsurance Company. BUSINESS ADDRESS: One Franklin Plaza, Philadelphia, PA 19102. UNDERWRITING LIMITATION b/: $13,131,000. SURETY LICENSES c/: All except GU, ME, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

ITT Lyndon Property Insurance Company. BUSINESS ADDRESS: 12555 Manchester Road, St. Louis, MO 63131. UNDERWRITING LIMITATION b/: $2,559,000. SURETY LICENSES c/: All except AK, GU, HI, ME, NH, NJ, NY, PR, WY. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

Illinois National Insurance Co. BUSINESS ADDRESS: 133 South 4th Street, Springfield, IL 62700. UNDERWRITING LIMITATION b/: $1,430,000. SURETY LICENSES c/: AK, IL, IN, IA, KY, MD, MO, MT, NE, NH, NM, NY, ND, OH, SD, TX, UT, VT, WV. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

IMPERIAL CASUALTY AND INDEMNITY COMPANY. BUSINESS ADDRESS: 306 South 15th Street, Omaha, NE 68102. UNDERWRITING LIMITATION b/: $1,794,000. SURETY LICENSES c/: All except AL, GU, HI, NY, NC, UT, VT, VI. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

Indemnity Company of California. BUSINESS ADDRESS: 333 Wilshire Avenue, Anaheim, CA 92801. UNDERWRITING LIMITATION b/: $421,000. SURETY LICENSES c/: CA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Indemnity Insurance Company of North America. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $10,279,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Indiana Insurance Company. BUSINESS ADDRESS: 115 North Pennsylvania Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $4,387,000. SURETY LICENSES c/: FL, ID, IL, IN, IA, KY, MI, OH, OR, TN, WA, WI. INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

Indiana Lumbermens Mutual Insurance Company.2* BUSINESS ADDRESS: Post Office Box 68600, Indianapolis, IN 46268. UNDERWRITING LIMITATION b/: $555,000. SURETY LICENSES c/: All except AK, GU, HI, ME, MA, NH, NJ, NY, PR, RI, VT, VI, WY. INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

Industrial Indemnity Company. BUSINESS ADDRESS: Post Office Box 7468, San Francisco, CA 94120. UNDERWRITING LIMITATION b/: $11,685,000. SURETY LICENSES c/: All except PR, VI, WV. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Industrial Indemnity Company of the Northwest. BUSINESS ADDRESS: 2121 4th Avenue, Suite 1500, Seattle, WA 98121. UNDERWRITING LIMITATION b/: $423,000. SURETY LICENSES c/: AK, AZ, CA, DC, HI, ID, MT, NV, OR, UT, WA. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

Inland Insurance Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $1,523,000. SURETY LICENSES c/: AZ, CO, IA, KS, MN, MT, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Insurance Company of North America. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $58,617,000. SURETY LICENSES c/: All. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Insurance Company of the Pacific Coast. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: $455,000. SURETY LICENSES c/: CA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Insurance Company of the West. BUSINESS ADDRESS: Post Office Box 81063, San Diego, CA 92138. UNDERWRITING LIMITATION b/: $2,926,000. SURETY LICENSES c/: AZ, CA, NV, NM, OK, OR, WA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Integon Indemnity Corporation. BUSINESS ADDRESS: Post Office Box 3199, Winston-Salem, NC 27152. UNDERWRITING LIMITATION b/: $637,000. SURETY LICENSES c/: AL, AK, AZ, AR, FL, GA, ID, IN, IA, KS, KY, LA, MS, MO, NE, NV, NM, NC, OH, OK, OR, SC, TN, TX, UT, VA, WA, WV. INCORPORATED IN: North Carolina. FEDERAL PROCESS AGENTS d/.

Integrity Insurance Company. BUSINESS ADDRESS: Mack Centre Drive - 5th Floor, Paramus, NJ 07652. UNDERWRITING LIMITATION b/: $2,625,000. SURETY LICENSES c/: All except CT, GU, PR, VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

Integrity Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 539, Appleton, WI 54912. UNDERWRITING LIMITATION b/: $178,000. SURETY LICENSES c/: DC, MN, WI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

International Cargo and Surety Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $89,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico. FEDERAL PROCESS AGENTS d/.

International Fidelity Insurance Company. BUSINESS ADDRESS: 24 Commerce Street, Suite 333, Newark, NJ 07102. UNDERWRITING LIMITATION b/: $416,000. SURETY LICENSES c/: All except AL, CA, CT, GU, HI, KS, KY, ME, NE, NH, RI, VT, VI, WV, WI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

International Insurance Company. BUSINESS ADDRESS: Crum & Forster, 305 Madison Ave., CN-1932, Morristown, NJ 07960-1932. UNDERWRITING LIMITATION b/: $3,173,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

International Service Insurance Company. BUSINESS ADDRESS: Post Office Box 1040, Fort Worth, TX 76101. UNDERWRITING LIMITATION b/: $1,085,000. SURETY LICENSES c/: AK, CA, NE, NM, TX. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Investors Insurance Company of America. BUSINESS ADDRESS: 145 No. Franklin Turnpike, Ramsey, NJ 07446. UNDERWRITING LIMITATION b/: $1,636,000. SURETY LICENSES c/: FL, GA, NJ, NY. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

Iowa National Mutual Insurance Company. BUSINESS ADDRESS: 500 Second Avenue, S.E., Cedar Rapids, IA 52406. UNDERWRITING LIMITATION b/: $3,110,000. SURETY LICENSES c/: All except AK, CT, DE, DC, GU, HI, KS, LA, ME, MD, MA, MS, NV, NH, NJ, OR, PR, RI, VT, VI, WV. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

John Deere Insurance Company.2* BUSINESS ADDRESS: 34th Avenue and 80th Street, Moline, IL 61265. UNDERWRITING LIMITATION b/: $7,079,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

The Kansas Bankers Surety Company. BUSINESS ADDRESS: Post Office Box 1654, Topeka, KS 66601. UNDERWRITING LIMITATION b/: $345,000. SURETY LICENSES c/: DC, KS, MO, NE, WI. INCORPORATED IN: Kansas. FEDERAL PROCESS AGENTS d/.

Kansas City Fire and Marine Insurance Company.2* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $879,000. SURETY LICENSES c/: All except PR, VI. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

Lawyers Surety Corporation. BUSINESS ADDRESS: 1221 River Bend Drive, Dallas, TX 75247. UNDERWRITING LIMITATION b/: $389,000. SURETY LICENSES c/: AL, AR, CA, FL, GA, IL, KY, MS, NC, OK, SC, TN, TX. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Liberty Mutual Insurance Company. BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. UNDERWRITING LIMITATION b/: $136,209,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

Lumbermens Mutual Casualty Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $94,490,000. SURETY LICENSES c/: All except GU, KS, PR, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Maine Bonding and Casualty Company. BUSINESS ADDRESS: Post Office Box 448, Portland, ME 04112. UNDERWRITING LIMITATION b/: $951,000. SURETY LICENSES c/: ME, MA, NH, RI, VT. INCORPORATED IN: Maine. FEDERAL PROCESS AGENTS d/.

Maryland Casualty Company. BUSINESS ADDRESS: Post Office Box 1228, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $39,767,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Maryland. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Massachusetts Bay Insurance Company. BUSINESS ADDRESS: 440 Lincoln Street, Worcester, MA 01605. UNDERWRITING LIMITATION b/: $731,000. SURETY LICENSES c/: All except AK, AR, DE, GU, HI, ID, MT, NV, NM, ND, OR, PR, SD, UT, VI, WV, WY. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

Mead Reinsurance Corporation. BUSINESS ADDRESS: 6 North Main Street, Dayton, OH 45402. UNDERWRITING LIMITATION b/: $1,860,000. SURETY LICENSES c/: All except CT, GU, HI, ME, MA, MO, NH, PR, RI, SD, VI, WY. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/ (KS, VT - Reinsurance only.)

The Mercantile and General Reinsurance Company of America. BUSINESS ADDRESS: 310 Madison Avenue - CN1930, Morristown, NJ 07960. UNDERWRITING LIMITATION b/: $1,566,000. SURETY LICENSES c/: All except AL, AK, AZ, GU, HI, ME, MN, MO, MT, NM, NC, ND, OR, RI, SD, VA, VI, WA.
INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Merchants Bonding Company (Mutual). BUSINESS ADDRESS: 2100 Grand Avenue, Des Moines, IA 50312. UNDERWRITING LIMITATION b/: $410,000. SURETY LICENSES c/: AZ, CA, IA, KS, NE, OK, TX. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

Meritplan Insurance Company. BUSINESS ADDRESS: Post Office Box 1770, Newport Beach, CA 92663. UNDERWRITING LIMITATION b/: $838,000. SURETY LICENSES c/: AL, AZ, CA, CO, DE, FL, HI, IN, IA, LA, MI, MN, MS, MT, NE, NV, NM, NY, NC, OH, OK, OR, SC, TX, UT, WA, WI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Michigan Millers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 30060, Lansing, MI 48909. UNDERWRITING LIMITATION b/: $5,152,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, FL, IN, KS, KY, MI, MO, NE, NJ, NY, NC, OH, OK, PA, TX, VA, WA. INCORPORATED IN: Michigan. FEDERAL PROCESS AGENTS d/.

Michigan Mutual Insurance Company. BUSINESS ADDRESS: 28 West Adams Avenue, Detroit, MI 48226. UNDERWRITING LIMITATION b/: $12,058,000. SURETY LICENSES c/: All except DE, GU, HI, OR, PR, VI. (DC Fidelity only.) INCORPORATED IN: Michigan. FEDERAL PROCESS AGENTS d/.

Mid-Century Insurance Company. BUSINESS ADDRESS: Post Office Box 2478, Terminal Annex, Los Angeles, CA 90051. UNDERWRITING LIMITATION b/: $2,638,000. SURETY LICENSES c/: AZ, AR, CA, CO, FL, GA, ID, IL, IA, KS, MD, MI, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TX, WA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

MID-CONTINENT CASUALTY COMPANY. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: $3,674,000. SURETY LICENSES c/: AL, AZ, AR, CO, FL, IN, IA, KS, MN, MS, MO, MT, NE, NM, ND, OK, OR, SD, TN, TX, UT, WA, WY. INCORPORATED IN: Oklahoma. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

The Millers Mutual Fire Insurance Company of Texas. BUSINESS ADDRESS: Post Office Box 2269, Fort Worth, TX 76113. UNDERWRITING LIMITATION b/: $3,669,000. SURETY LICENSES c/: AR, CA, CO, DC, ID, IL, IN, IA, LA, MS, MO, MT, NE, NJ, NM, OK, OR, PA, TX, WA, WI, WY. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Millers' Mutual Insurance Association of Illinois. BUSINESS ADDRESS: 111 East Fourth Street, Alton, IL 62002. UNDERWRITING LIMITATION b/: $3,530,000. SURETY LICENSES c/: AL, AR, CO, DC, GA, IL, IN, IA, KS, LA, MN, MS, MO, NC, OK, SD, TN, WI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Millers National Insurance Company. 2*. BUSINESS ADDRESS: 29 North Wacker Drive, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $254,000. SURETY LICENSES c/: All except AK, CO, CT, DE, GU, HI, LA, ME, MS, NV, NH, PA, PR, RI, VT, VI, WA. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Minnesota Trust Company of Austin. BUSINESS ADDRESS: 107 West Oakland Avenue, Post Office Box 463, Austin, MN. 55912. UNDERWRITING LIMITATION b/: $106,000. SURETY LICENSES c/: MN, MT, ND. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

Morrison Assurance Company, Inc. 2*. BUSINESS ADDRESS: 5109 South Lois Avenue, Tampa, FL 33681. UNDERWRITING LIMITATION b/: $808,000. SURETY LICENSES c/: AL, AZ, AR, FL, GA, KY, LA, MS, MO, MT, NM, ND, OK, SC, TN, TX, UT, WV. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

MOTORS INSURANCE CORPORATION. BUSINESS ADDRESS: 3044 West Grand Boulevard, Detroit, MI 48202. UNDERWRITING LIMITATION b/: $43,643,000. SURETY LICENSES c/: All except AZ, AR, CA, CO, CT, GU, HI, KS, LA, MA, MO, MT, NE, NH, OH, OR, PA, PR, TN, UT, VA, VI, WI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Munich American Reinsurance Company. BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. UNDERWRITING LIMITATION b/: $5,600,000. SURETY LICENSES c/: AR, CA, CO, CT, DE, DC, FL, GA, HI, IL, IN, IA, KS, LA, MI, NH, NY, OH, OK, PA, SC, TX, VT, VA. (CT, KS, NH, OK, VT. Reinsurance only) INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

National American Insurance Company of New York. BUSINESS ADDRESS: 1515 S. 75th Street, P.O. Box 3800, Omaha, NE 68103. UNDERWRITING LIMITATION b/: $1,538,000. SURETY LICENSES c/: All except DE, GU, HI, MD, NM, PR, VI, WY. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

National Automobile and Casualty Insurance Company. BUSINESS ADDRESS: Post Office Box 7040, Pasadena, CA 91109. UNDERWRITING LIMITATION b/: $571,000. SURETY LICENSES c/: AK, AZ, CA, NV, WA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

National-Ben Franklin Insurance Company of Illinois. 2*, 3*. BUSINESS ADDRESS: 200 South Wacker Drive, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $9,534,000. SURETY LICENSES c/: DC, IL, IN, IA, KY, MN, NY, NC, ND, WI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

National Excess Insurance Company. BUSINESS ADDRESS: 24422 Avenida de la Carlota, Laguna Hills, CA 92653. UNDERWRITING LIMITATION b/: $599,000. SURETY LICENSES c/: All except CT, FL, GA, GU, HI, KY, ME, MA, MD, NV, NH, NJ, NY, PA, PR, RI, VT, VI, WV, WY. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

National Fire Insurance Company of Hartford. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $7,851,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

National Grange Mutual Insurance Company. BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. UNDERWRITING LIMITATION b/: $3,515,000. SURETY LICENSES c/: CT, DE, DC, ME, MD, MA, NH, NY, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

National Indemnity Company. BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $52,510,000. SURETY LICENSES c/: All except AL, GU, HI, MA, NJ, NY, PR, VI. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

THE NATIONAL MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: One Insurance Square, Celina, OH 45822. UNDERWRITING LIMITATION b/: $300,000. SURETY LICENSES c/: DC, IL, IN, KY, MI, OH, PA, TN, WV. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

The National Reinsurance Corporation. BUSINESS ADDRESS: 777 Long Ridge Road, Post Office Box 10167, Stamford, CT 06904-2167. UNDERWRITING LIMITATION b/: $5,070,000. SURETY LICENSES c/: All except AL, CT, FL, GA, GU, LA, ME, MS, MO, NC, OR, SC, SD, TN, WA, WV. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

National Surety Corporation. BUSINESS ADDRESS: 200 West Monroe Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $7,011,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Nationwide Mutual Insurance Company. BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $136,769,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

The Netherlands Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. UNDERWRITING LIMITATION b/: $799,000. SURETY LICENSES c/: AZ, CA, DC, ID, IN, IA, ME, MD, MA, MI, NV, NH, NJ, NY, NC, OH, RI, SC, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

New Hampshire Insurance Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $20,252,000. SURETY LICENSES c/: All. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

New South Insurance Company. BUSINESS ADDRESS: Post Office Box 3199, Winston-Salem, NC 27152. UNDERWRITING LIMITATION b/: $578,000. SURETY LICENSES c/: IN, LA, MS, NV, NC, OR, TX, VA, WA, WV. INCORPORATED IN: North Carolina. FEDERAL PROCESS AGENTS d/.

New York Underwriters Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $7,190,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Newark Insurance Company. BUSINESS ADDRESS: 150 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $1,066,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

North American Reinsurance Corporation. 2* BUSINESS ADDRESS: 100 East 46th Street, New York, NY 10017. UNDERWRITING LIMITATION b/: $10,467,000. SURETY LICENSES c/: All except GU, VI, WY. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

North American Specialty Insurance Company. 4* BUSINESS ADDRESS: 5 Warren Street, Concord, NH 03301 UNDERWRITING LIMITATION b/: $531,000. SURETY LICENSES c/. All except AL, CA, GU, HI, KS, MD, MA, MS, OK, OR, PR, SD, VI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

The North River Insurance Company. BUSINESS ADDRESS: Crum & Forster, 305 Madison Ave., CN-1932, Morristown, NJ 07960-1932. UNDERWRITING LIMITATION b/: $11,087,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

North Star Reinsurance Corporation. BUSINESS ADDRESS: Ten Stamford Forum, P.O. Box 10009, Stamford, CT 06904. UNDERWRITING LIMITATION b/: $4,327,000. SURETY LICENSES c/: All except CO, GU, HI, ME, MN, NC, ND, SC, VT, VI, WY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Northbrook Property and Casualty Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: $3,315,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

The Northern Assurance Company of America. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $5,488,000. SURETY LICENSES c/: All except GU, PR. INCORPORATED IN: Massachusetts. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Northwestern National Casualty Company. BUSINESS ADDRESS: Post Office Box 2070, Milwaukee, WI 53201. UNDERWRITING LIMITATION b/: $572,000. SURETY LICENSES c/: All except AK, CT, GU, HI, ME, MA, NV, NJ, NH, NY, PR, VT, VI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Northwestern National Insurance Company of Milwaukee, Wisconsin. 2* BUSINESS ADDRESS: Post Office Box 2070, Milwaukee, WI 53201. UNDERWRITING LIMITATION b/: $2,823,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Northwestern National Surety Company. BUSINESS ADDRESS: P.O. Box 2070 Milwaukee, WI 53201. UNDERWRITING LIMITATION b/: $1,482,000. SURETY LICENSES c/: IL, OR, WI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

NORTHWESTERN PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: Crown Plaza, Suite 1000, 1500 SW First Avenue, Portland, OR 97201-5852. UNDERWRITING LIMITATION b/: $1,227,000. SURETY LICENSES c/: CA, OK, OR, TX, WA. INCORPORATED IN: Oregon. FEDERAL PROCESS AGENTS d/.

Oceanic Insurance and Surety Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $61,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico. FEDERAL PROCESS AGENTS d/.

The Ohio Casualty Insurance Company.2* BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $34,176,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

Ohio Farmers Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: $12,492,000. SURETY LICENSES c/: All except AK, CT, GU, HI, KS, PR, VI. (Restricted to existing business only in NH.) INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

Oklahoma Surety Company. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: $350,000. SURETY LICENSES c/: KS, OK, TX. INCORPORATED IN: Oklahoma. FEDERAL PROCESS AGENTS d/.

Old Republic Insurance Company. 2* BUSINESS ADDRESS: Post Office Box 789, Greensburg, PA 15601. UNDERWRITING LIMITATION b/: $15,109,000. SURETY LICENSES c/: All except PR, VI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

The Omaha Indemnity Company. BUSINESS ADDRESS: 3201 Farnam Street, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $734,000. SURETY LICENSES c/: All except GU, LA, NH, NJ, PR, VI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Oregon Automobile Insurance Company. BUSINESS ADDRESS: Post Office Box 74, Portland, OR 97207. UNDERWRITING LIMITATION b/: $1,117,000. SURETY LICENSES c/: ID, NV, OR, UT, WA. INCORPORATED IN: Oregon. FEDERAL PROCESS AGENTS d/.

Pacific Employers Insurance Company. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $4,926,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Pacific Indemnity Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $5,910,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Pacific Insurance Company, Limited. BUSINESS ADDRESS: Post Office Box 1140, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: $3,393,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii. FEDERAL PROCESS AGENTS d/.

Peerless Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. UNDERWRITING LIMITATION b/: $4,360,000. SURETY LICENSES c/: All except GU, HI, NJ, PR, VI. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

Pekin Insurance Company. BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. UNDERWRITING LIMITATION b/: $1,081,000. SURETY LICENSES c/: IL, IN, IA, WI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

Pennsylvania Manufacturers' Association Insurance Company.2* BUSINESS ADDRESS: 925 Chestnut Street, Philadelphia, PA 19107. UNDERWRITING LIMITATION b/: $15,015,000. SURETY LICENSES c/: All except AL, AR, CT, GU, HI, KS, ME, MN, ND, OR, PR, VI, WY. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Pennsylvania Millers Mutual Insurance Company. BUSINESS ADDRESS: 15 Public Square, P.O. Box-P, Wilkes-Barre, PA 18773-0016. UNDERWRITING LIMITATION b/: $2,553,000. SURETY LICENSES c/: AR, CT, DC, FL, GA, ID, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, ND, PA, RI, SC, TN, VT, VA. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Pennsylvania National Mutual Casualty Insurance Company. BUSINESS ADDRESS: 1900 Derry Street, Harrisburg, PA 17105. UNDERWRITING LIMITATION b/: $5,726,000. SURETY LICENSES c/: All except CA, CT, GU, HI, NV, NH, ND, PR, VI, WY. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

The Personal Service Insurance Co. BUSINESS ADDRESS: P.O. Box 1226, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $1,031,000. SURETY LICENSES c/: IN, OH. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Phoenix Assurance Company of New York. 2*. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $3,641,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: New Hampshire. FEDERAL PROCESS AGENTS d/.

The Phoenix Insurance Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $24,425,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

PLANET INSURANCE COMPANY. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $559,000. SURETY LICENSES c/: All except PR, VI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Progressive Casualty Insurance Company. BUSINESS ADDRESS: 6300 Wilson Mills Road, Mayfield Village, OH 44143. UNDERWRITING LIMITATION b/: $11,619,000 SURETY LICENSES c/: All except AZ, CT, DE, DC, GU, HI, IL, KS, LA, MD, ME, NH, NY, PA, PR, SC, TX, UT, VA, VI, WV, WI. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

The Progressive Mutual Insurance Company. BUSINESS ADDRESS: 6300 Wilson Mills Road, Mayfield Village, OH 44143. UNDERWRITING LIMITATION b/: $685,000. SURETY LICENSES c/: DC, NJ, OH. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

Protective Insurance Company. BUSINESS ADDRESS: 3100 North Meridian Street, Indianapolis, IN 46208. UNDERWRITING LIMITATION b/: $2,671,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Indiana. FEDERAL PROCESS AGENTS d/.

Prudential Reinsurance Company. BUSINESS ADDRESS: 100 Mulberry Street, Newark, NJ 07102. UNDERWRITING LIMITATION b/: $17,032,000. SURETY LICENSES c/: All except GU, NV, NC, WV, WY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Public Service Mutual Insurance Company. BUSINESS ADDRESS: 393 Seventh Avenue, New York, NY 10001. UNDERWRITING LIMITATION b/: $3,827,000. SURETY LICENSES c/: AZ, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, ME, MD, MA, MI, MN, MS, NH, NJ, NY, NC, OH, OR, PA, RI, SC, VT, VA, WV, WI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Puerto Rican-American Insurance Company. BUSINESS ADDRESS: Post Office Box S-112, San Juan, Puerto Rico 00902. UNDERWRITING LIMITATION b/: $4,098,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico. FEDERAL PROCESS AGENTS d/.

Ranger Insurance Company. BUSINESS ADDRESS: Post Office Box 2807, Houston, TX 77252-2807. UNDERWRITING LIMITATION b/: $2,931,000. SURETY LICENSES c/: All except CT, GU, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Regent Insurance Company. BUSINESS ADDRESS: One General Drive, Sun Prairie, WI 53596. UNDERWRITING LIMITATION b/: $2,247,000. SURETY LICENSES c/: IL, IN, IA, KS, MN, MO, NE, ND, SD, WI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

The Reinsurance Corporation of New York. BUSINESS ADDRESS: 99 John Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $2,337,000. SURETY LICENSES c/: All except GU, HI, PR, VI. (Co-surety only in FL, MA, VA.) INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Reliance Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $39,210,000. SURETY LICENSES c/: All. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Reliance Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $761,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Republic-Franklin Insurance Company. BUSINESS ADDRESS: Post Office Box 1438, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $576,000. SURETY LICENSES c/: IN, MI, OH. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

REPUBLIC INSURANCE COMPANY. BUSINESS ADDRESS: Post Office Box 660560, Dallas, TX 75266-0560. UNDERWRITING LIMITATION b/: $10,129,000. SURETY LICENSES c/: All except AL, FL, GU, HI, ME, MA, MT, NH, ND, RI, SD, VT, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Republic Western Insurance Company.2* BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004. UNDERWRITING LIMITATION b/: $3,239,000. SURETY LICENSES c/: All except CT, GU, HI, LA, ME, NH, PR, VI, WY. INCORPORATED IN: Arizona. FEDERAL PROCESS AGENTS d/.

Rockwood Insurance Company. 2* BUSINESS ADDRESS: 654 Main Street, Rockwood, PA 15557. UNDERWRITING LIMITATION b/: $1,726,000. SURETY LICENSES c/: All except CA, CT, DC, GU, HI, IL, KY, ME, MA, MI, MN, NH, NJ, NY, NC, OH, PR, RI, TN, VT, VI, WI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Royal Indemnity Company. BUSINESS ADDRESS: 150 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $3,029,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Royal Insurance Company of America. BUSINESS ADDRESS: 150 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $10,328,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

SAFECO Insurance Company of America.2* BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $17,361,000. SURETY LICENSES c/: All except PR, VT, VI. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

SAFECO Insurance Company of Illinois. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $2,826,000. SURETY LICENSES c/: AZ, CO, IL, MD, MA, MN, NE, NM, OR, TN, TX, UT, WI. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

SAFECO National Insurance Company. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $1,884,000. SURETY LICENSES c/: MO, NY. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

St. Paul Fire and Marine Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $79,466,000. SURETY LICENSES c/: All. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

St. Paul Mercury Insurance Company. BUSINESSS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $2,307,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

Seaboard Surety Company. BUSINESS ADDRESS: 90 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $5,230,000. SURETY LICENSES c/: All. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Security Insurance Company of Hartford. BUSINESS ADDRESS: Post Office Box 420, Hartford, CT 06141. UNDERWRITING LIMITATION b/: $7,506,000. SURETY LICENSES c/: All except MA, NJ, PR. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

Security National Insurance Company. BUSINESS ADDRESS: Post Office Box 225028, Dallas, TX 75265. UNDERWRITING LIMITATION b/: $670,000. SURETY LICENSES c/: AL, AR, CA, CO, IL, IN, KS, KY, NM, OH, OK, TX, WA, WI, WY. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Select Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: $1,278,000. SURETY LICENSES c/: All except CT, GU, HI, LA, ME, MA, NH, NJ, NY, ND, PA, PR, RI, UT, VI. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Selected Risks Insurance Company. BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. UNDERWRITING LIMITATION b/: $11,881,000. SURETY LICENSES c/: AL, DE, DC, FL, GA, MD, MS, NJ, NC, PA, SC, TX, VA. INCORPORATED IN: New Jersey. FEDERAL PROCESS AGENTS d/.

SENTINEL INSURANCE COMPANY, LTD. BUSINESS ADDRESS: Post Office Box 1140, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: $814,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii. FEDERAL PROCESS AGENTS d/.

*See tootnotes at end of Circular.

Sentry Indemnity Company. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. UNDERWRITING LIMITATION b/: $1,047,000. SURETY LICENSES c/: All except AK, CT, DE, DC, GU, HI, ME, MA, MI, NE, NH, NJ, NY, PA, PR, RI, VT, VA, VI, WV. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Sentry Insurance a Mutual Company. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. UNDERWRITING LIMITATION b/: $6,342,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Wisconsin. FEDERAL PROCESS AGENTS d/.

Skandia America Reinsurance Corporation: BUSINESS ADDRESS: 280 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $3,967,000. SURETY LICENSES c/: All except AL, CT, GU, HI, ID, KY, ME, MN, NM, NC, ND, OR, PR, RI, SD, TN, VI, WY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

South Carolina Insurance Company. BUSINESS ADDRESS: Post Office Box #1, Columbia, SC 29202. UNDERWRITING LIMITATION b/: $5,730,000. SURETY LICENSES c/: All except GU, HI, ME, NH, PR, RI, VT, VI. INCORPORATED IN: South Carolina. FEDERAL PROCESS AGENTS d/.

SOUTHEASTERN CASUALTY AND INDEMNITY INSURANCE COMPANY, INC. BUSINESS ADDRESS: 1620 W. Oakland Park Blvd., Suite 200, Ft. Lauderdale, FL 33311. UNDERWRITING LIMITATION b/: $328,000. SURETY LICENSES c/: FL, LA. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

The Standard Fire Insurance Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $8,912,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

State Automobile Mutual Insurance Company. BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $13,331,000. SURETY LICENSES c/: AL, AR, FL, GA, IN, KY, MD, MI, MS, MO, NC, OH, PA, SC, TN, WV. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

State Farm Fire and Casualty Company. BUSINESS ADDRESS: 112 East Washington Street, Bloomington, IL 61701. UNDERWRITING LIMITATION b/: $137,979,000. SURETY LICENSES c/: All except GU, PR, VT. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

State Surety Company. BUSINESS ADDRESS: P. O. Box 1976, Des Moines, IA. 50306. UNDERWRITING LIMITATION b/: $375,000. SURETY LICENSES c/: AZ, CO, DC, IL, IA, KS, MN, MO, MT, NE, ND, OK, SC, WI, WY. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Surety Company of the Pacific. 2* BUSINESS ADDRESS: Post Office Box 2105, Santa Monica, CA 90406. UNDERWRITING LIMITATION b/: $244,000. SURETY LICENSES c/: CA. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

TEXAS PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $384,000. SURETY LICENSES c/: AR, TX. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Transamerica Insurance Company. BUSINESS ADDRESS: 1150 South Olive Street, Los Angeles, CA 90015. UNDERWRITING LIMITATION b/: $13,329,000. SURETY LICENSES c/: All except PR, VI. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Transamerica Insurance Company of Michigan. BUSINESS ADDRESS: 1150 South Olive Street, Los Angeles, CA 90015. UNDERWRITING LIMITATION b/: $11,729,000. SURETY LICENSES c/: AR, IL, IN, IA, KS, MI, MN, OH, SD. INCORPORATED IN: Michigan. FEDERAL PROCESS AGENTS d/.

Transamerica Premier Insurance Company. BUSINESS ADDRESS: 600 Montgomery Street, San Francisco, CA 94111. UNDERWRITING LIMITATION: $3,217,000. SURETY LICENSES c/: All except AK, CT, HI, IN, MA, NE, NH, NY, OH, PR, SD, VI, WV. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Transcontinental Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $4,498,000. SURETY LICENSES c/: All except GU, HI, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Transport Indemnity Company. BUSINESS ADDRESS: 3670 Wilshire Boulevard, Los Angeles, CA 90010. UNDERWRITING LIMITATION b/: $2,084,000. SURETY LICENSES c/: AZ, CO, ID, IN, KS, MO, MT, NE, NM, OH, OK, OR, SD, TX, WY. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Transportation Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $2,116,000. SURETY LICENSES c/: All except GU, PR, VI, WV. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

The Travelers Indemnity Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $58,528,000. SURETY LICENSES c/: All. INCORPORATED IN: Connecticut. FEDERAL PROCESS AGENTS d/.

THE TRAVELERS INDEMNITY COMPANY OF AMERICA. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $2,120,000. SURETY LICENSES c/: All except AR, FL, GU, KS, MA, OR, VI. INCORPORATED IN: Georgia. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

The Travelers Indemnity Company of Illinois. BUSINESS ADDRESS: 200 West Madison Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $854,000. SURETY LICENSES c/: All except AR, CT, DE, GU, KS, LA, MA, NH, NJ, NC, OR, PA, PR, VI, WV, WI, WY. INCORPORATED IN: Illinois. FEDERAL PROCESS AGENTS d/.

The Travelers Indemnity Company of Rhode Island. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $14,144,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Rhode Island. FEDERAL PROCESS AGENTS d/.

Trinity Universal Insurance Company. BUSINESS ADDRESS: Post Office Box 225028, Dallas, TX 75265. UNDERWRITING LIMITATION b/: $42,046,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, NE, NM, OH, OK, OR, TX, WA, WI, WY. INCORPORATED IN: Texas. FEDERAL PROCESS AGENTS d/.

Trinity Universal Insurance Company of Kansas, Inc. BUSINESS ADDRESS: 2000 Ross Avenue, Dallas, TX 75201. UNDERWRITING LIMITATION b/: $422,000. SURETY LICENSES c/: AL, AZ, CO, KS, KY, LA, NE, OH, OK, TX. INCORPORATED IN: Kansas. FEDERAL PROCESS AGENTS d/.

Tri-State Insurance Company. BUSINESS ADDRESS: Post Office Box 3269, Tulsa, OK 74102. UNDERWRITING LIMITATION b/: $1,820,000. SURETY LICENSES c/: AL, AZ, AR, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NM, ND, OK, SD, TN, TX, UT, WA, WY. INCORPORATED IN: Oklahoma. FEDERAL PROCESS AGENTS d/.

Tri-State Insurance Company of Minnesota. BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. UNDERWRITING LIMITATION b/: $728,000. SURETY LICENSES c/: IA, MN, NE, ND, SD, WI. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

Twin City Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $3,947,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Minnesota. FEDERAL PROCESS AGENTS d/.

ULICO CASUALTY COMPANY. BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. UNDERWRITING LIMITATION b/: $726,000. SURETY LICENSES c/: All except AL, CA, CT, GU, IL, IN, LA, ME, MA, NH, NY, NC, PR, RI, VI, WI, WY. INCORPORATED IN: Delaware. FEDERAL PROCESS AGENTS d/.

Unigard Security Insurance Company. 1*, 2* BUSINESS ADDRESS: 1215 Fourth Avenue, Seattle, WA 98161. UNDERWRITING LIMITATION b/: $6,061,000. SURETY LICENSES c/: All except CT, GA, GU, NH, NJ, PR, VI. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Union Insurance Company. BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $2,170,000. SURETY LICENSES c/: CO, IA, KS, MN, MO, ND, OK, SD, TX, WY. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

United Fire & Casualty Company. BUSINESS ADDRESS: Post Office Box 4909, Cedar Rapids, IA 52407. UNDERWRITING LIMITATION b/: $1,583,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, ID, IL, IN, IA, KS, LA, MN, MS, MO, MT, NE, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa. FEDERAL PROCESS AGENTS d/.

UNITED NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: 1737 Chestnut Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $2,958,000. SURETY LICENSES c/: PA. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

United Pacific Insurance Company. BUSINESS ADDRESS: 33405 Eighth Avenue South, C-3000, Federal Way, WA 98003. UNDERWRITING LIMITATION b/: $4,767,000. SURETY LICENSES c/: All. INCORPORATED IN: Washington. FEDERAL PROCESS AGENTS d/.

United Pacific Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $1,147,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

United States Fidelity and Guaranty Company. BUSINESS ADDRESS: 100 Light Street, Post Office Box 1138, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $65,259,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Maryland. FEDERAL PROCESS AGENTS d/.

United States Fire Insurance Company. BUSINESS ADDRESS: Crum & Forster, 305 Madison Ave., CN-1932, Morristown, NJ 07960-1932. UNDERWRITING LIMITATION b/: $23,185,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

UNIVERSAL INSURANCE COMPANY. BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, Puerto Rico 00936. UNDERWRITING LIMITATION b/: $1,741,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico. FEDERAL PROCESS AGENTS d/.

Universal of Omaha Casualty Insurance Company. BUSINESS ADDRESS: 11225 Davenport Street, Suite 105, Omaha, NE 68154. UNDERWRITING LIMITATION b/: $124,000. SURETY LICENSES c/: NE. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

Universal Security Insurance Company. BUSINESS ADDRESS: 5454 West Fargo Avenue, Skokie, IL 60077. UNDERWRITING LIMITATION b/: $628,000. SURETY LICENSES c/: AL, AR, CO, FL, GA, IL, IN, IA, KY, LA, MS, MO, NV, NC, OH, OR, TN, WA, WI INCORPORATED IN: Tennessee. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

Universal Surety Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $796,000. SURETY LICENSES c/: AZ, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WA, WI, WY. INCORPORATED IN: Nebraska. FEDERAL PROCESS AGENTS d/.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY. BUSINESS ADDRESS: 5115 Oak Street, Kansas City, MO 64112. UNDERWRITING LIMITATION b/: $10,149,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Missouri. FEDERAL PROCESS AGENTS d/.

Utica Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 530, Utica, NY 13503. UNDERWRITING LIMITATION b/: $5,906,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

Valley Forge Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $3,490,000. SURETY LICENSES c/: All except AK, GU, HI, PR, VI. INCORPORATED IN: Pennsylvania. FEDERAL PROCESS AGENTS d/.

Vigilant Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $6,764,000. SURETY LICENSES c/: All except PR. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

VOYAGER GUARANTY INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 2918, Jacksonville, FL 32203. UNDERWRITING LIMITATION b/: $388,000. SURETY LICENSES c/: AL, FL, LA, MD, MS, SC, TN, VA. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS d/.

Washington International Insurance Company. BUSINESS ADDRESS: 1900 East Golf Road, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $381,000. SURETY LICENSES c/: AZ, CA, FL, IL, MD, MA, MO, NY, TX, WA. INCORPORATED IN: Arizona. FEDERAL PROCESS AGENTS d/.

West American Insurance Company. 2* BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $32,066,000. SURETY LICENSES c/: All except AK, CT, GU, HI, ME, MA, MT, NH, PR, RI, VT, VI, WV. INCORPORATED IN: California. FEDERAL PROCESS AGENTS d/.

Westchester Fire Insurance Company. BUSINESS ADDRESS: Crum & Forster, 305 Madison Avenue, CN-1932, Morristown, NJ 07960-1932. UNDERWRITING LIMITATION b/: $13,462,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: New York. FEDERAL PROCESS AGENTS d/.

The Western Casualty and Surety Company. BUSINESS ADDRESS: 14 East First Street, Fort Scott, KS 66701. UNDERWRITING LIMITATION b/: $12,939,000. SURETY LICENSES c/: All except CT, GU, HI, ME, MA, NH, NY, PR, RI, VT, VA, VI. INCORPORATED IN: Kansas. FEDERAL PROCESS AGENTS d/.

*See footnotes at end of Circular.

The Western Fire Insurance Company. BUSINESS ADDRESS: 14 East First Street, Fort Scott, KS 66701. UNDERWRITING LIMITATION b/: $10,762,000. SURETY LICENSES c/: All except AL, CT, DE, DC, GA, GU, HI, IN, LA, ME, MA, NH, NJ, PR, RI, SC, VT, VI. INCORPORATED IN: Kansas. FEDERAL PROCESS AGENTS d/.

Western Surety Company. BUSINESS ADDRESS: 101 South Phillips Avenue, Sioux Falls, SD 57192. UNDERWRITING LIMITATION b/: $2,411,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: South Dakota. FEDERAL PROCESS AGENTS d/.

Westfield Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: $5,926,000. SURETY LICENSES c/: All except AK, CT, FL, GU, HI, ME, PR, VI. (Existing business only in NH.) INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

Westfield National Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: $1,802,000. SURETY LICENSES c/: IA, OH. INCORPORATED IN: Ohio. FEDERAL PROCESS AGENTS d/.

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) of TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 (See Note (e))

Alliance Assurance Company, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $3,312,000. FEDERAL PROCESS AGENTS: DC.

Frankona Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 2440 Pershing Road, Suite #200, P.O. Box 1069, Kansas City, MO 64141. UNDERWRITING LIMITATION b/: $1,040,000. FEDERAL PROCESS AGENTS: DC.

The London Assurance, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $4,404,000. FEDERAL PROCESS AGENTS: DC.

Munich Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. UNDERWRITING LIMITATION b/: $5,899,000. FEDERAL PROCESS AGENTS: DC.

The Sea Insurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $2,185,000. FEDERAL PROCESS AGENTS: DC.

Sun Insurance Office, Limited, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $3,058,000. FEDERAL PROCESS AGENTS: DC.

Swiss Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 100 East 46th Street, New York, NY 10017. UNDERWRITING LIMITATION b/: $15,301,000. FEDERAL PROCESS AGENTS: DC.

The Tokio Marine and Fire Insurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. UNDERWRITING LIMITATION b/: $4,829,000. FEDERAL PROCESS AGENTS: DC.

Trans Pacific Insurance Company, U.S. Branch. BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. UNDERWRITING LIMITATION b/: $516,000. FEDERAL PROCESS AGENTS: DC.

"Winterthur" Swiss Insurance Company, U.S. Branch. BUSINESS ADDRESS: One World Trade Center, Suite 8911, New York, NY 10048. UNDERWRITING LIMITATION b/: $5,512,000. FEDERAL PROCESS AGENTS: DC.

Zurich Insurance Company, U.S. Branch. BUSINESS ADDRESS: 231 North Martingale Road, Schaumburg, IL 60196. UNDERWRITING LIMITATION b/: $12,970,000. FEDERAL PROCESS AGENTS: DC.

FOOTNOTES

1* Uniguard Mutual Insurance Company demutualized and changed its name to Uniguard Security Insurance Company. (See Federal Register of April 22, 1985, pg. 15806.)

2* License information is not current. Confirmation regarding whether a company is licensed for surety in a particular state may be obtained from that State's Department of Insurance.

3* National-Ben Franklin Insurance Company of Michigan merged into National-Ben Franklin Insurance Company of Illinois, effective December 31, 1984. National-Ben Franklin Insurance Company of Michigan was summarily liquidated.

4* Delta America Insurance Company changed its name to North American Specialty Company, effective March 26, 1985.

N O T E S

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) Treasury requirements do not limit the penal sum of bonds which surety companies may execute. The net retention, however, cannot exceed the Underwriting Limitation, and Excess Risks must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Treasury reinsurance form to be filed with the bond or within 45 days thereafter. Risks in excess of the limit fixed herein must be reported for the quarter in which they are executed. In protecting such excess, the limitation in force on the date of the execution of the risk will govern absolutely.

(c) A surety company must be licensed in the State or other area in which it executes (signs) a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed (28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5(b)). The term "other area" includes the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

A company may act as a direct writer or reinsurer in the states listed, unless otherwise noted.

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the state or other area wherein the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

Title 31, Section 9306 of the U.S. Code provides that in the absence of any agent of a company, service of process may be made upon the Clerk of the court within the district where suit is brought, with like effect as upon an agent appointed by the company. The officer serving process upon the Clerk should immediately transmit a copy of the summons by mail to the corporate secretary of the company (at the business address shown in Treasury Circular 570), and state such fact in his return. A judgement, decree, or order of a court entered or made after service of process will be as valid and binding on the company as if served with process in said district.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

[FR Doc. 85-14795 Filed 6-28-85; 8:45 am]
BILLING CODE 4810-35-C

VOL
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federal register

Monday
July 1, 1985

Part III

General Services Administration

41 CFR Ch. 201

Implementation of Public Laws 98-369 and 98-577 Regarding Competition in the Acquisition of Information Resources and Codification of Temporary Regulations; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-2, 201-8, 201-11, 201-16, 201-20, 201-21, 201-23, 201-24, 201-26, 201-30, 201-31, 201-32, 201-38, 201-39, and 201-40

[FIRMR Amdt. 4]

Implementation of Public Laws 98-369 and 98-577 Regarding Competition in the Acquisition of Information Resources and Codification of Temporary Regulations

AGENCY: Office of Information Resources Management, GSA.

ACTION: Final rule.

SUMMARY: This regulation codifies the implementation of the Competition in Contracting Act of 1984 (Pub. L. 98-369) and the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Pub. L. 98-577) regarding the special category procurement and contracting regulations for certain automatic data processing and telecommunications resources, as well as related management provisions, contained in the Federal Information Resources Management Regulation (FIRMR) Temporary Regulation 11 (50 FR 13319, April 4, 1985). Other changes are made in provisions that are affected by that statutory implementation issuance. This regulation also codifies all FIRMR temporary regulations existing when FIRMR integrated text was published (50 FR 4322, January 30, 1985). The intent is to appropriately amend the FIRMR to accomplish the new statutory objectives and requirements, based on public review and comments.

EFFECTIVE DATE: August 30, 1985, but may be observed earlier.

FOR FURTHER INFORMATION CONTACT: William R. Loy, Policy Branch (KMPP), Office of Information Resources Management, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (1) The provisions of FIRMR Temp. Reg. 11 (50 FR 13319, April 4, 1985) (modified by consideration of comments received) are codified by this amendment. The changes are explained in the following paragraphs (2), (3), and (4). Paragraph (2) sets forth, consecutively section by section, explanations of implementations of Pub. L. 98-369 and 98-577. Paragraph (3) sets forth explanations of other changes being made in sections that are affected by paragraph (2) actions. Paragraph (4) sets forth "pen and ink" changes, primarily in terminology, necessary for consistency in implementation of the above referenced statutes.

(2) The following sections are changed to implement Pub. L. 98-369 and 98-577.

a. Section 201-1.102, Authority, is amended to cite Pub. L. 98-369 and Pub. L. 98-577.

b. Section 201-1.102-2, Other related authorities, is amended to cite pertinent sections of the Office of Federal Procurement Policy Act, as amended, appearing in Pub. L. 98-369 and Pub. L. 98-577.

c. Section 201-1.502, Solicitation of agency and public views, is amended to implement Pub. L. 98-577.

d. Section 201-2.001, Definitions, is amended (i) to add definitions for "Compatibility limited requirement," (modified as a result of comment) "Full and open competition," and "Responsible source;" (ii) to modify the definition for "Selection plan;" and (iii) to remove definitions for "Competitive requirement," "Maximum practicable competition," and "Noncompetitive (sole source) requirement." (See also paragraph (3)d.)

e. Section 201-11.001, The full and open competition objective (modified as a result of comment to address schedules in paragraph (c)) is added.

f. Section 201-11.001-1, Application of FAR provisions, is revised (including changes as a result of comment) to specifically reference implementation of Pub. L. 98-369 in the Federal Acquisition Regulation (48 CFR Ch. 1).

g. Section 201-11.002, Other than full and open competition, and § 201-11.002-1, Use and documentation of specific make and model specifications, are revised (including changes as a result of comment) to change the captions and text to set forth the special agency activities required when a requirement is contemplated to be satisfied through other than full and open competition. As the result of comment, paragraph (b) of § 201-11.002-1 (appearing in Temp. Reg. 11 as § 201-30.013-2) has been revised (and paragraph (c) deleted) to require not only submission of certified data (required by Temp. Reg. 11), but also justifications and approvals in accordance with FAR 6.303 and 6.304 when a specific make and model specification is used to describe a requirement, notwithstanding the existence of more than one responsible source.

h. Section 201-11.003, Agency responsibilities, is amended (including changes as a result of comment) to change the caption and text to recognize the relationship between agency front-end ADP procurement activities and attainment of the full and open competition objective.

i. Section 201-16.001, Planning, is added to recognize that attainment of the full and open competition objective is a necessary consideration in the planning process.

j. Section 201-23.103, Procurement and contracting authority, is amended to specifically reference Part 201-11, Competition, provisions.

k. Section 201-23.104, Blanket regulatory delegations of procurement authority, is amended where necessary (in the various subsections) (including a clarification in § 201-23.104-5 as a result of comment) to express the thresholds in terms of the type of specifications that are used in contracting, in order to place emphasis on agency requirement definition activities as a means of attaining the competition objective. (See also paragraph (3)e.)

l. Section 201-23.106, Specific acquisition delegation of procurement authority, is amended (including changes to paragraphs (a)(11) and (b)(4) of § 201-23.106-1 and paragraph (b)(5)(ii)(G) of § 201-23.106-2) to adjust provisions (in the two subsections) regarding documentation and submission requirements, particularly where the type of specification selection and sole source requirements available from only one responsible source are discussed. Similar action is taken in § 201-39.006-4, Data, facsimile, and record telecommunications services submissions.

m. Section 201-24.104, Small purchases, is revised to provide that FAR Part 13 procedures apply to requirements for information resources under $25,000 except when following the FIRMR procedures for use of GSA information resources schedule contracts.

n. Section 201-24.207, Solicitations for compatibility limited requirements, is amended (including clarification as a result of comment) to change the caption and orientation to the contracting process. Conditions are established for solicitations using compatibility limited requirements when offers for non-compatible items for replacement systems or augmentation components are restricted. Management provisions involving the establishment of requirements formerly appearing in this section are revised (including changes in paragraph (b) as a result of comment) and moved to new § 201-30.009-3, Establishing compatibility limited requirements.

o. Sections 201-24.211, 201-24.212, and 201-24.304 are removed and reserved and the specification management

provisions are now contained in §§ 201–30.013, Specifications; 201–30.013–1, Use of functional specifications; and 201–38.012, Use of functional telecommunication system specifications, reflecting the pre-solicitation nature of the activity. Section 201–30.013–2 (appearing in Temp Reg. 11) has been revised and moved to § 201–11.002–1. (See paragraph (2)g.)

p. Section 201–30.007, Determination of need and requirements analysis, is amended to place emphasis on the full and open competition objective during agency requirements analysis activities, including performance evaluation of currently installed systems. (See paragraph (8).)

q. Section 201–30.008, Determination of system/item life, is amended (including clarification in paragraph (d) as a result of comment) to require consideration of subsequent procurements when establishing system/item lives when the requirement is available from only one responsible source.

r. Section 201–32.102, Least cost acquisition, is amended to recognize the restriction in Pub. L. 98–369 on concerns related to funding as a basis for agency actions.

s. Section 201–32.206, Use of GSA nonmandatory ADP schedule contracts, and § 201–40.006, Use of GSA nonmandatory telecommunications schedule contracts, are amended (including changes to paragraphs (a)(2), (d), (f)(2)(v)(F), and (g)(2)(iii)(C) to § 201–32.206, and changes to paragraph (c)(2)(iii)(C), and the addition of (b)(2)(v)(E) to § 201–40.006 as a result of comment) to adjust the competitive procedures to conform to the intent of Pub. L. 98–369 and in paragraphs (a)(2) of each provision to apply (i) the FAR provisions regarding only one responsible source and (ii) the use of specific make and model specifications provisions in § 201–11.002–1 to the schedule procedures. (See also paragraphs (3)g., h., and i.)

t. Section 201–32.303, Use of GSA Teleprocessing Services Program (TSP), is amended in paragraph (a)(1) to apply (i) the FAR provisions regarding only one responsible source and (ii) the use of specific make and model specifications provisions in § 201–11.002–1 to the schedule procedures.

u. Section 201–32.303–3, Procedures for acquiring TSP services, is amended (including changes to paragraph (d) as a result of comment) to state that the lowest overall cost alternative must be met when using abbreviated procedures.

(3) The following sections are changed for reasons other than statutory implementations.

a. Section 201–1.103, Applicability, is amended to clarify that the FIRMR applies to the use of GSA nonmandatory schedules for the acquisition of communications equipment under Federal Supply Classification Group 58 not defined as telecommunications equipment.

b. Section 201–1.104–3, Copies, is amended to clarify ordering the looseleaf edition of the FIRMR.

c. Section 201–1.402, Policy, is amended to reflect the Administrator of General Services' delegation of authority to GSA's Assistant Administrator for Information Resources Management to approve requests by Federal agencies for individual deviations from the FIRMR.

d. Section 201–2.001, Definitions, is also amended to add (i) the words "ADP system" to the title of the term "Functional ADP system specification" and (ii) a clarifying sentence to the definition of the term "Lowest overall cost" and to delete the definition of "Comparative cost analysis." (See also paragraph (4).)

e. Section 201–23.104–7, ADP equipment systems, is also amended to explain how the DPA thresholds apply to combined procurements of equipment, software, and maintenance under a single procurement and where these items are combined with commercial ADP services under a single procurement. (See also paragraph (2)k.)

f. Section 201–24.208 is amended by adding a sentence to paragraph (a) that appears in the definition of "lowest overall cost."

g. Section 201–24.210 is amended (including changes to clarify the intent of paragraph (b) as a result of comment) to require that an agency conduct a new market survey before exercising a renewal option on a system life selection, awarded on an availability from only one responsible source basis, and if an alternate source exists, prepare an acquisition plan to initiate a subsequent competitive procurement.

h. Sections 201–32.206 and 201–40.006 are also amended to reflect a March 1, 1985, determination by the Administrator of GSA made pursuant to Pub. Law 98–577 (after consultations with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration) that it is not appropriate or reasonable to require a 30-day synopsis in the Commerce Business Daily (CBD) for all orders above $10,000 under GSA nonmandatory ADP and telecommunications schedule contracts. (The effect of this determination is explained in FIRMR Bulletin 13, Suplement 1, April 3, 1985.) These sections continue the synopsis requirement at the $50,000/15 day level, but extend the policy uniformly to all orders in excess of $50,000 under GSA nonmandatory ADP and telecommunications schedule contracts. (See also paragraph (2)s.)

i. Sections 201–32.206 and 201–40.006 are also amended to expressly require that agencies wait at least 15 days from the date the synopsis appears in the CBD before placing an order under the GSA nonmandatory ADP and telecommunications schedule program, in response to complaints received by GSA regarding some agencies' practices. (See also paragraphs (2)s. and (3)g.)

j. Section 201–32.206 is also amended to require that the synopsis notice indicate, when applicable, that the requirement was described by technical or requirements personnel using a specific make and model specification. (See also paragraphs (2)s., (3)h., and (3)i.)

k. Section 201–32.206 is also amended to delete the references to "CPUs" in connection with the continued lease of ADPE, in recognition that CPUs are included in more and more devices, which makes this distinction less significant. (See also paragraphs (2)s., (3)h., (3)i., and (3)j.)

l. Section 201–38.010, Analysis of data communication requirements, is revised to correct an editorial error by removing the word "[Reserved]" and inserting the words "See Temp. Reg. 9" and making a terminology change in paragraph (b).

(4) The following sections are changed to provide terminology changes required by statutory implementation.

a. The following additional sections are amended to reflect "full and open" competition where the term "maximum practicable" was formerly used, to implement Pub. L. 98–369:

201–1.103 Applicability.
201–21.011 GSA policies and objectives.
201–24.202 Severable ADP requirements.
201–24.203 Furnishing ADP items and services to contractors.
201–30.012 Conversion planning and management responsibilities.
201–32.106 Publicizing contracting actions.
201–32.303–2 Scope of the TSP.

b. The following additional sections are amended to use the terms "requirements" and "specifications" on a consistent basis (deleting "procurement," "acquisition," "negotiation" or "purchase descriptions," where necessary) when describing the documentation of requirements:

201–23.111–1 Requiring agency responsibilities.
201–23.111–2 GSA responsibilities.

201–30.012 Conversion planning and management responsibilities.
201–30.012–1 Software conversion studies.

c. The following sections are amended to use the term "an unusual and compelling urgency" where "a public exigency" was used, to implement Pub. L. 98–369:

201–8.101–3 Exception to a Federal Telecommunication Standard (FED–STD).
201–24.106 Urgent requirement.

(5) The provisions of FIRMR Temp. Regs. 1 (Supp. 1), 2 (Supp. 1), 4, 5, 6, 7, 8, and 9 (50 FR 4400, January 30, 1985) are also codified by this amendment. These temporary regulations and Temporary Regulation 11 are canceled and superseded.

(6) Paragraph introductions to the individual sections in this issuance are annotated where applicable to indicate the specific reissued FIRMR temporary regulation in which the provision being codified first appeared. In § 201–20.204(b)(2), changed from Temp. Reg. 8, the organizational title of the ADP unit contact is required (not the name as previously required).

(7) Notice of proposed rulemaking regarding this amendment was published in the **Federal Register** (50 FR 10252, March 14, 1985). Temporary Regulation 11 (50 FR 13319), April 4, 1985) extended the comments due date to April 30, 1985. Comment due dates for the other temporary regulations being codified have expired. All comments received have been considered for this issuance.

(8) Notice of proposed rulemaking regarding performance validation (paragraphs (d)(10) and (d)(11) of § 201–30.007) was published in the **Federal Register** (50 FR 7356, February 22, 1985) and implemented in this amendment. Other portions of that proposal were published as Amendment 2 to the FIRMR. (See also paragraph (2)p.)

(9) The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no net cost effect on society.

List of Subjects in 41 CFR Ch. 201

Government information resources activities, Government procurement.

PART 201–1—[AMENDED]

Chapter 201 of Title 41 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Part 201–1 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–1.102 is amended by adding paragraphs (c)(4) and (c)(5) to read as follows:

§ 201–1.102 Authority.

* * * * *

(c) * * *

(4) Pub. L. 98–369, The Competition in Contracting Act of 1984.

(5) Pub. L. 98–577, The Small Business and Federal Procurement Competition Enhancement Act of 1984.

3. Section 201–1.102–2 is amended by revising paragraph (b)(3) to read as follows:

§ 201–1.102–2 Other related authorities.

* * * * *

(b) * * *

(3) The Office of Federal Procurement Policy Act of 1974, Pub. L. 93–400 (41 U.S.C. 401 et seq.), as amended, including Sec. 6(h) (41 U.S.C. 405(h)) regarding authority relationships, Sec. 16(3) (41 U.S.C. 414) regarding agency responsibilities, Sec. 18 (41 U.S.C. 416) regarding procurement notices, and Sec. 22 (41 U.S.C. 416b) regarding publication of proposed regulations.

* * * * *

4. Section 201–1.103 is amended by (i) removing from paragraph (b)(3) the words "maximum practicable" and inserting in their place the words "full and open", (ii) adding a new paragraph (c)(5) regarding the scope of GSA schedule contracts, and (iii) removing the period and adding at the end of the note following paragraph (g) the words "(see § 201–23.104–6).", as follows:

§ 201–1.103 Applicability.

* * * * *

(b) * * *

(3) When the very subject matter of a contract is for something other than the contracting for ADP resources, agencies shall not require their Government contractors to apply the policies and procedures in the FIRMR even though commercially available ADP resources are used in contract performance. However, if it is operationally feasible to sever the ADP resources requirements from the overall requirement, they shall be severed and contracted for in accordance with the FIRMR if this action will promote economy, efficiency, and full and open competition.

* * * * *

(c) * * *

(5) The FIRMR applies to the use of GSA nonmandatory schedules for the acquisition of communications equipment under Federal Supply Classification Group 58 not defined as telecommunications equipment.

* * * * *

(g) * * *

Note.—The FIRMR includes a blanket delegation of procurement authority for agencies to procure (non-personal) commercial ADP support services (see § 201–23.104–6).

5. Section 201–1.104–3 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 201–1.104–3 Copies.

* * * * *

(b) * * *

(1) Federal agencies from the GPO, using SF–1 rider requisitions to GSA requisitions; and

(2) The public from the GPO, using direct subscription.

6. Section 201–1.402 is revised to read as follows:

§ 201–1.402 Policy.

Deviations from the FIRMR shall be kept to a minimum consistent with the specific needs and statutory authorities of each agency. Class deviations may be authorized only by the Administrator of General Services. Individual deviations may also be authorized by the GSA Assistant Administrator for Information Resources Management, or the officials designated by the Assistant Administrator for this purpose.

7. Section 201–1.502 is amended by revising paragraphs (a), (b), (c), and (d); redesignating paragraph (e) as (f); and adding a new paragraph (e). As revised § 201–1.502 reads as follows:

§ 201–1.502 Solicitation of agency and public views.

(a) Views of interested parties will be considered in formulating policies and regulations under the FIRMR.

(b) The opportunity to submit written comments on proposed significant changes to the FIRMR will be provided by a notice in the **Federal Register**. Each of these notices will—

(1) Include the text of the proposal or a summary and a statement specifying where the full text may be obtained; and

(2) Request interested parties to submit comments on the proposed coverage, addressed to the General Services Administration, Chief, Policy Branch (KMPP), Washington, DC 20405,

for consideration in the formulation of the final coverage that will be published in the **Federal Register.**

(c) The length of the comment period will not be less than 30 days. Normally, at least 60 days will be given for the receipt of comments.

(d) Comments need not be solicited if the proposed coverage does not constitute a significant change to the FIRMR.

(e) The Administrator of General Services may issue a temporary change to the FIRMR where solicitation of comments is impractical due to urgent and compelling circumstances (e.g., when a new statute must be implemented in a relatively short period of time). However, provisions will be made for a public comment period of at least 30 days for consideration in the formulation of the final change to the FIRMR.

(f) Consideration will also be given to unsolicited recommendations for changes to the FIRMR that have been submitted in writing with sufficient data and rationale to permit evaluation.

PART 201-2—[AMENDED]

1. The authority citation for Part 201–2 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–2.001 is amended by adding (alphabetically) definitions to read as follows:

§ 201-2.001 Definitions.

* * * * *

"ADP equipment system" means an operational or managerial entity of general purpose ADPE components containing at least one separate identifiable central processing unit and such other components as input/output devices and storage units.

* * * * *

"ADP resource" means (1) automatic data processing equipment (ADPE), software, firmware, or related supplies as defined in § 201–2.001, (2) ADP management, technical, or operations personnel, or (3) a contracted commercial ADP service or ADP support service.

"ADP resource system" means a combination of ADP resource elements organized to perform specific or types of specific ADP requirements. ADP equipment systems and systems using commercial ADP services are included.

* * * * *

"ADP sharing" means the provision of available ADP resources to users by an organization with no primary responsibility for supporting those users.

* * * * *

"ADP unit" means any organizational element of the Federal Government which:

(a) Uses or plan to use ADPE;

(b) Uses or plans to use commercial ADP services;

(c) Has organizational components which perform ADP management, development, programming, selection, or implementing functions; or

(d) Has Government contractors, including educational institutions and other not-for-profit contractors or organizations, who operate ADP equipment in the performance of work under cost reimbursement-type contracts or subcontracts when: (1) equipment is leased and the total cost of leasing is to be reimbursed under one or more cost reimbursement-type contracts; (2) equipment is purchased by the contractor for the account of the Government or title will pass to the Government; (3) equipment is furnished to the contractor by the Government; or (4) equipment is installed in Government-owned, contractor-operated facilities.

* * * * *

"Analog computer" means a computer that operates on continuous data as distinguished from discrete data. It translates physical conditions such as flow, temperature, pressure, angular position, or voltage into related mechanical quantities and uses mechanical or electrical equivalent circuits as an analog for the physical phenomenon being investigated.

* * * * *

"Automatic data processing equipment (ADPE)" means general purpose, commercially available, mass-produced automatic data processing devices; i.e., components and the equipment systems configured from them together with commercially available software packages that are provided and are not priced separately, and all documentation and manuals relating thereto, regardless of use, size, capacity, or price, that are designed to be applied to the solution or processing of a variety of problems or applications and are not specially designed (as opposed to configured) for any specific application.

(a) Included are:

(1) Main-frame, mini, and micro digital, analog, or hybrid computers;

(2) Auxiliary or accessorial equipment, such as plotters, tape cleaners, tape testers, data conversion equipment, source data automation recording equipment (optical character recognition devices, computer input/output microfilm and other data acquisition devices), or computer performance evaluation equipment; etc., designed for use with digital, analog, or hybrid computer equipment, either cable or modem connected, wire connected, or stand-alone, and whether selected or acquired with a computer or separately;

(3) Punched card accounting machines that can be used in conjunction with or independently of digital, analog, or hybrid computers;

(4) Devices used to control and transfer data and/or instructions to and from a central processing unit (CPU), including data transmission terminals, batch terminals, display terminals, modems, sensors, multiplexors, and concentrators;

(5) Storage devices that are designed to be cable connected for use on line in which data can be inserted, retained, and retrieved for later use;

(6) General purpose mini or microcomputers used as control mechanisms where computer technology is essential in controlling, monitoring, measuring, and directing processes, devices, instruments, or other equipment (see also §§ 201–24.202 and 201–24.203); and

(7) Equipment used in office automation applications that is designed to be controlled by a general purpose data processing language primarily to be applied through the internal execution of a series of instructions, not limited to specific key stroke functions, and designed to process a variety of applications.

(b) Excluded are:

(1) ADPE systems and components specially designed (as opposed to configured) and produced to perform computational, data manipulation, or control functions, but which have no general purpose applicability;

(2) ADPE that is modified at the time of production to the extent that:

(i) It no longer has a commercial ADP market; or

(ii) It cannot be used to process a variety of applications; or

(iii) It can be used only as an integral part of a non-ADP system.

* * * * *

"Compatibility limited requirement" means a statement of ADP equipment or service requirements expressed in terms that require the items to be compatible with the existing software or ADP equipment.

* * * * *

"Data processing facility" means the personnel, hardware, software, and physical facilities of an organizational

entity whose primary function is the operation of one or more computers. A data processing facility includes:

(a) The personnel who operate computers; develop and maintain software; provide user liaison and training; schedule jobs and computer time; prepare and control input data; control, reproduce, and distribute output data; maintain tape and disk libraries; provide security; maintenance, and custodial services; and manage or provide administrative support to other personnel engaged in these activities.

(b) The owned, rented, or leased computer and telecommunications hardware including central processing units; associated peripheral equipment such as control or switching units, disk drives, tape drives, drum storage, printers, card readers, and consoles; data entry equipment; data reproduction, decollation, booking, and binding equipment; and telecommunications equipment used for the transfer of data between remote sites and the facilities including telecommunications control units, terminals, modems and dedicated phone lines.

(c) The general purpose software including operating system software, utilities, sort, merge, language processors, access methods, data base processors, and other similar multiuser software.

(d) The physical facilities including computer rooms; tape and disk libraries, stockrooms and warehouse space; office space; physical fixtures such as desks, chairs, storage, and file cabinets; general office telephones; and general office duplicating equipment, calculators, typewriters, and similar office machines.

* * * * *

"Data processing facility subject to OMB Circular A–121" means all data processing facilities operated by, or on behalf of, an executive agency that provide service to more than one user, operate one or more general management computers, and exceed $100,000 per year for the full cost of operation.

* * * * *

"Digital computer" means a computer that operates on a discrete data by performing arithmetic and logic processes on these data.

* * * * *

"Full and open competition" means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement. (41 U.S.C. 403(7))

* * * * *

"Full cost for purposes of OMB Circular A–121" means all significant expenses incurred in the operation of a data processing facility. The following cost elements are included:

(a) Personnel—including salaries, overtime, and fringe benefits (both funded and unfunded) of civilian and military personnel; training; and travel.

(c) Equipment—including depreciation for owned capitalized equipment, rental cost, leased costs, and direct expenses for non-capitalized equipment.

(c) Software—including depreciation for capitalized costs of developing, converting, or acquiring software; rental costs for software; and direct expenses for non-capitalized acquisition of software.

(d) Supplies—including office supplies, data processing materials, and miscellaneous expenses.

(e) Contracted services—including technical and consulting services, equipment maintenance, data entry support, operations support, maintenance of multipurpose and operating system software and telecommunications network services.

(f) Space occupancy—including rental and depreciation of buildings, general office furniture, and equipment, building maintenance; heating, air conditioning, and other utilities expenses; telephone charges; and building security and custodial services.

(g) Intra-agency services and overhead—including the costs of normal agency support services, either billed or allocated.

(h) Interagency services—including the costs of services provided by other agencies and departments, whether reimbursed or estimated.

* * * * *

"Functional telecommunication system specifications" means: (a) The delineation of the requirements that the system is intended to satisfy and (b) the assumptions and facts underlying the requirements. The actual specification depends on the type of system to be procured; e.g., voice system, data system, or data service.

* * * * *

"General management computer for purposes of OMB Circular A–121" means a digital computer which is used for any purpose other than as a part of a process control, combat weapon, space, or mobile system.

* * * * *

"Hybrid computer" means a computer for data processing using both analog representation and discrete representation of data.

* * * * *

"Information processing resource" means general purpose ADPE as defined in § 201–2.001, special purpose equipment that is excluded under paragraphs (b)(1) of the definition of ADPE, and the software terms defined in § 201–2.001. (An example of special purpose equipment is "office information system equipment" that is designated as Federal Supply Class (FSC) 7435 in ADP nonmandatory schedule contracts.)

* * * * *

"Lowest overall cost" means the least expenditure of funds over the system/item life, price and other factors considered. Lowest overall costs shall include purchase price, lease or rental prices, or service prices of the contract actions involved, other factors, and other identifiable and quantifiable costs that are directly related to the acquisition and use of the system/item; e.g., personnel, maintenance and operation, site preparation, energy consumption, installation, conversion, system start-up, contractor support, and the present value discount factor (see also § 201–24.208). The quantifiable cost of conducting the contracting action and other administrative costs directly related to the acquisition process are included.

"Lowest overall cost for purposes of telecommunication acquisition" means the least expenditure of funds over the systems or items life, price and other factors considered. Lowest overall costs shall include, but shall not be limited to, such elements as personnel, purchase price or rentals, maintenance, site preparation and installation, programing, and training.

* * * * *

"Responsible source" means a prospective contractor who:

(a) Has adequate financial resources to perform the contract or the ability to obtain such resources;

(b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;

(c) Has a satisfactory performance record;

(d) Has a satisfactory record of integrity and business ethics;

(e) Has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain such organization, experience, controls, and skills;

(f) Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain such equipment and facilities; and

(g) Is otherwise qualified and eligible to receive an award under applicable laws and regulations. (41 U.S.C. 403(8))

* * * * *

"Specific make and model specification" means a description of a Government requirement that is expressed in a form so restrictive that only the specified make and model will satisfy the Government's needs, irrespective of the number of suppliers that may be able to furnish the specific make and model.

* * * * *

"User" means an organizational or programmatic entity which receives service from a data processing facility. A user may be either internal or external to the agency or agency organization responsible for the facility.

* * * * *

§ 201-2.001 [Amended]

3. Section 201-2.001 is amended further (see paragraph 2. above) (i) by removing from the FIRMR the following definitions— "Competitive requirement," "Maximum practicable competition," and "Noncompetitive (sole source) requirement" and (ii) by modifying existing definitions as follows—Change the term "Functional specification" by adding the words "ADP system" to read "Functional ADP system specification;" and remove from the last sentence of the definition for "Selection plan" the words "make or model description" and insert in their place the words "make and model specification."

PART 201-8—[AMENDED]

1. The authority citation for 41 CFR Part 201-8 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 201-8.101-3 [Amended]

2. Section 201-8.101-3 is amended by removing from paragraph (a)(2) the words "a public exigency" and inserting in their place the words "an unusual and compelling urgency."

3. Section 201-8.105-20 is amended by adding the text appearing in Temp Reg. 2, Supp. 1. As revised, the section reads as follows:

§ 201-8.105-20 FIPS PUB 60-2, Input/Output (I/O) Channel Interface.

(a) FIPS PUB 60-2 defines the functional, electrical and mechanical interface specifications for connecting computer peripheral equipment as a part of automatic data processing (ADP) systems. This standard, with a companion standard for power control (FIPS PUB 61-1), defines the hardware characteristics for the I/O channel interface. Three related standards specify how the interface is to be used when connecting particular classes of peripheral devices. They are FIPS PUB 62, Operational Specifications for Magnetic Tape Subsystems; FIPS PUB 63-1, Operational Specifications for Variable Block Rotating Mass Storage Subsystems; and FIPS PUB 97, Operational Specifications for Fixed Block, Rotating Mass Storage Subsystems.

(b) FIPS PUB 60-2 is applicable to the acquisition of all ADP systems and peripheral subsystems acquired by the Federal Government except minicomputer, microcomputer, and other small-scale systems that are specifically excluded by the National Bureau of Standards (NBS). The standard contains applicability, implementation, and waiver provisions. A list of currently excluded systems and the current criteria for excluding them is developed, maintained, and periodically distributed to Federal agencies by NBS and is available from NBS upon request.

(c) The correct operation of interfaces required to conform to FIPS PUB 60-2 must be verified by NBS before the acceptance of all applicable ADP equipment. A list of equipment having verified interfaces is maintained and periodically distributed to Federal agencies by NBS upon request. It identifies each interface verified and the conditions under which it was verified.

(d) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FIPS PUB 60-2 (Input/Output (I/O) Channel Interface) (May 84 FIRMR)

Unless otherwise excluded as specified in FIPS PUB 60-2 or unless a waiver is granted following the waiver procedures specified in FIPS PUB 60-2, ADP systems and peripheral subsystems that may result from this solicitation, must conform to FIPS PUB 60-2 for the connection of computers to those general classes of peripheral subsystems (such as magnetic tape or disk subsystems) for which operational specifications have been issued and are in effect. The correct operation of these system's conforming interfaces must be verified before the acceptance of all applicable ADP equipment. Arrangements for verification may be made according to procedures issued by the National Bureau of Standards. These procedures may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, Attention: Verification of I/O Channel Interface Standards. The Government may, at its options, apply instrumentation and test equipment at any interface required to conform with FIPS PUB 60-2 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 60-2.

(End of requirement statement)

(e) Verification procedures regarding FIPS PUBS 60-2 and 63-1 were published on December 11, 1979 (44 FR 71445). A verification procedure checklist was also published on February 27, 1980 (45 FR 12862). Questions may be directed to the Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, NBS, Gaithersburg, MD 20899.

4. Section 201-8.105-23 is amended by adding the text appearing in Temp. Reg. 2, Supp. 1. As revised, the section reads as follows:

§ 201-8.105-23 FIPS PUB 63-1, Operational Specifications for Variable Block, Rotating Mass Storage Subsystems.

(a) FIPS PUB 63-1 defines the peripheral device dependent operational interface specifications for connecting variable block, rotating mass storage subsystems, such as magnetic disk equipment, to ADP systems. It is to be used with FIPS PUB 60-2, I/O Channel Interface, and FIPS PUB 61-1, Channel Level Power Control Interface. FIPS PUBS 60-2, and 61-1, plus this standard, provide for full plug-to-plug interchangeability of variable block, rotating mass storage equipment as a part of ADP systems. FIPS PUB 63-1 applies to the acquisition of variable block magnetic disk equipment if use of FIPS PUB 60-2 and 61-1 is required. If waivers apply to a solicitation, the requirements document shall so state.

(b) NBS must verify the correct operation of interfaces required to conform to FIPS PUB 63-1 before the applicable ADP equipment can be accepted. NBS establishes, maintains, and distributes to Federal agencies a list of equipment with verified interfaces; it is also magnetic disk equipment if use of FIPS PUB 60-2 and 61-1 is required. If waivers apply to a solicitation, the requirements document shall so state.

(b) NBS must verify the correct operation of interfaces required to conform to FIPS PUB 63-1 before the applicable ADP equipment can be accepted. NBS establishes, maintains, and distributes to Federal agencies a list of equipment with verified interfaces; it is also available from NBS upon request. The list identifies each interface verified and the conditions of verification. The solicitation document shall require offerors to state the status of verification for those interfaces for which conformance is required.

(c) An alternative to FIPS PUB 63-1 is FIPS PUB 97 Operational Specifications

for Fixed Block, Rotating Mass Storage Subsystems. If either standard is used, the other is not required. Additional operational specifications are available from NBS in a report titled, "Additional Operational Specifications for Variable Block, Rotating Mass Storage Devices (FIPS PUB 63–1 SUP)," which provides track format definition and specifies the sense information format and content for particular classes of variable block, rotating mass storage devices. Whenever FIPS PUB 63–1 is specified, conformance to the supplemental device dependent characteristics contained in the above mentioned NBS report also may be required at the option of the procuring agency.

(d) When an agency determines that the nature of the requirement is such that conformance to the supplemental device dependent characteristics contained in the report is required, the requirements provision in paragraph (e) of this section shall be included in the requirements document, including solicitation. However, if an agency determines that it is not essential to require conformance to the supplemental device dependent characteristics contained in the report, the requirements provision in paragraph (f) of this section shall be included in the document.

(e) The standard terminology when supplemental device characteristics are required is, as follows:

Applicability of FIPS PUB 63–1 (Interface: ADP Systems/Variable Block, Rotating Mass Storage Subsystems With Conformance to Supplemental Device Dependent Characteristics) (May 84 FIRMR)

Unless otherwise excluded as specified in FIPS PUB 63–1 by reference to FIPS PUBS 60–2 and 61–1 or unless a waiver is granted following the waiver procedures specified in FIPS PUB 63–1, ADP systems and variable block, rotating mass storage subsystems that may result from this solicitation must conform to FIPS PUB 63–1. In addition, conformance to the specifications for Class(es) [Insert class(es)] as contained in the NBS report entitled "Additional Operational Specifications for Variable Block Rotating Mass Storage Devices" is required. The correct operation of all interfaces, whose conformance to FIPS PUB 63–1 and the above designated class(es) is required, must be verified before the acceptance of all applicable ADP equipment in accordance with FIRMR § 201–8.105–23(b). Arrangements for verification may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, Attention: Verification of Operational Specifications for Rotating Mass Storage Subsystems. The Government may, at its options, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 63–1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 63–1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of requirement statement)

(f) The standard terminology when supplementary device characteristics are not required is, as follows:

Applicability of FIPS PUB 63–1 (Interface: ADP Systems/Variable Block, Rotating Mass Storage Subsystems Without Supplementary Device Dependent Characteristics) (May 84 FIRMR)

Unless otherwise excluded as specified in FIPS PUB 63–1 by reference to FIPS PUB 60–2 and 61–1 or unless a waiver is granted following the waiver procedures specified in FIPS PUB 63–1, ADP systems and variable block, rotating mass storage subsystems that may result from this solicitation must conform to FIPS PUB 63–1. The correct operation of all interfaces, whose conformance to FIPS PUB 63–1 is required, must be verified before the acceptance of all applicable ADP equipment in accordance with FIRMR § 201–8.105–23(b). Arrangements for verification may be obtained by writing the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, Attention: Verification of Operational Specifications for Rotating Mass Storage Subsystems. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 63–1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 63–1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of requirement statement)

5. Section 201–8.105–34 is amended by adding the text appearing in Temp. Reg. 2, Supp 1. As revised, the section reads as follows:

§ 201–8.105–34 FIPS PUB 97, Operational Specifications for Fixed Block, Rotating Mass Storage Subsystems.

(a) FIPS PUB 97 defines the peripheral device dependent operational interface specifications for connecting fixed block, rotating mass storage subsystems, such as magnetic disk equipment, to ADP systems. It is to be used with FIPS PUB 60–2, I/O Channel Interface, and FIPS PUB 61–1, Channel Level Power Control Interface. FIPS PUBS 60–2 and 61–1 plus this standard, provide for full plug-to-plug interchangeability of fixed block, rotating mass storage equipment as a part of ADP systems. FIPS PUB 97 applies to the acquisition of fixed block magnetic disk equipment if FIPS PUBS 60–2 and 61–1 are required. If waivers apply to a solicitation, the requirements document shall so state.

(b) NBS must verify the correct operation of interfaces required to conform to FIPS PUB 97 before the applicable ADP equipment can be accepted. NBS establishes, maintains, and distributes to Federal agencies a list of equipment with verified interfaces; it is also available from NBS upon request. The list identifies each interface verified and the conditions of verification. The solicitation document shall require offerors to state the status of verification for those interfaces for which conformance is required.

(c) An alternative to FIPS PUB 97 is FIPS PUB 63–1, Operational Specifications for Variable Block, Rotating Mass Storage Subsystems. If either standard is used, the other is not required.

(d) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FIPS PUB 97 (Interface: ADP Systems/Fixed Block, Rotating Mass Storage Subsystems) (May 84 FIRMR)

Unless otherwise excluded as specified in FIPS PUB 97 by reference to FIPS PUBS 60–2 and 61–1 or unless a waiver is granted, following the waiver procedures specified in FIPS PUB 97, ADP systems and fixed block, rotating mass storage subsystems that may result from this solicitation must conform to FIPS PUB 97. The correct operation of all interfaces whose conformance to FIPS 97 is required must be verified before the acceptance of all applicable ADP equipment. Arrangements for verification may be made according to procedures issued by NBS. These procedures may be obtained by writing the Director, Institute of Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, Attention: Verification of Operational Specifications for Rotating Mass Storage Subsystems. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 97 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 97. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of requirement statement)

6. Section 201–8.106–6 is amended by adding the text appearing in Temp. Reg. 2, Supp. 1. As revised, the section reads as follows:

§ 201–8.106–6 FIPS PUB 96, Message Format for Computer Based Message Systems.

(a) FIPS PUB 96 provides for the separation of information so that a computer based message system (CBMS) can locate and operate on that information. The intent of the standard is to aid information interchange among CBMSs by permitting users of different CBMSs to transmit messages to each other.

(b) The standard applies to the acquisition and use of CEMS and services in networked systems.

(c) The standard does not apply to single-processor, stand-alone systems that are not interconnected with any other CEMS or to systems established strictly for the purpose of supporting research in computer science or communications. However, conformity with FIPS PUB 99 is recommended if it is likely that the system will be connected to another central processing unit or to a CEMS interconnected with an existing network.

(d) Implementation dates: (1) All requirements documents for CEMS in-house development initiated on or after March 1, 1984 shall implement the standard.

(2) All solicitation documents released on or after March 1, 1985 for computer based message equipment or services shall implement the standard.

(e) The standard terminology for use in requirements documents, including solicitation is:

Applicability of FIPS PUB 99 (Computer Based Message Systems and Services) (May 84 FIRMR)

All computer based message systems and services in networked systems offered as a result of the requirements of which this is a part shall comply with FIPS PUB 99 unless the requirements document specifies elsewhere that the services are provided by or are systems whose sole purpose is to support research in computer science or communications.

[End of requirement statement]

7. Section 201–8.113–7 is amended by adding the text appearing in Temp. Reg. 2, Supp. 1. As revised, the section reads as follows:

§ 201–8.113–7 FIPS PUB 100/FED–STD 1041, interface between data terminal equipment (DTE) and data circuit-terminating equipment (DCE) for operation with packet-switched data communication networks.

(a) FIPS PUB 100/FED–STD 1041 adopts a subset of the International Telegraph and Telephone Consultative Committee (CCITT) Recommendation X.25 for operating in the packet mode on public data networks. The technical specifications of this standard shall be employed in designing, developing, and acquiring Federal ADP equipment, telecommunications equipment, or services using public packet-switched data communication networks whenever an interface based on CCITT Recommendation X.25 is required.

(b) NBS has established a testing service to evaluate equipment and services for conformance to this joint standard. This service will assist Federal agencies who wish to follow the options specified in the standard and limit acquisition to equipment that has been verified for conformance to the joint standard. Further information may be obtained from the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, DC 20234, Attention: X.25 Verification.

(c) The standard terminology to be used in requirements documents, including solicitations, is:

Applicability of FIPS PUB 100/FED–STD 1041 (Public Packet-Switched Data Communications Network Interface) (MAY 84 FIRMR)

All applicable ADP and telecommunications equipment or services using public packet switched data communication networks which require an interface based on CCITT Recommendation X.25 must comply with the requirements specified in FIPS PUB 100/FED–STD 1041.

[End of requirement statement]

PART 201–11—[AMENDED]

1. The table of contents of Part 201–11 is amended by revising the entries for §§ 201–11.001, 201–11.001–1, 201–11.002, 201–11.002–1, and 201–11.003 (Note.—The entries for §§ 201–11.002–2, 201–11.003–1, and 201–11.003–2 are removed.); and the authority citation for the part continues to read as follows:

201–11.001 The full and open competition objective.
201–11.001–1 Application of FAR provisions.
201–11.002 Other than full and open competition.
201–11.002–1 Use and documentation of specific make and model specifications.
201–11.003 Agency responsibilities.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–11.001 is revised to read as follows:

§ 201–11.001 The full and open competition objective.

(a) The basic procurement objective in satisfying ADP and telecommunications requirements is to obtain full and open competition through the use of competitive procedures (including the GSA information resources multiple award schedule program) which permit all responsible sources (see FAR Subpart 9.1) that can satisfy the needs of the Government to submit offers. The contract action shall be made at the lowest overall cost to the Government, price and other factors considered, over the system/item life with due regard to the nature of the supplies or services to be acquired.

(b) This requires an acquisition strategy, suitable to the circumstances, in which the statement of the user's requirement is set forth in the least restrictive terms possible without compromising economy or efficiency. It shall be designed to elicit favorable offers from all responsible sources capable of satisfying the Government's needs.

(c) Use of GSA information resources multiple award schedules (issued under the procedures established by the Administrator of General Services consistent with 41 U.S.C. 259(b)(3)(A)) is a competitive procedure if ordering offices follow applicable FIRMR procedures (see particularly §§ 201–32.206, 201–32.303, and 201–40.003).

3. Section 201–11.001–1 is revised to read as follows:

§ 201–11.001–1 Application of FAR provisions.

FAR Part 6 prescribes general policies and procedures to promote competition. They provide for full and open competition, full and open competition after exclusion of sources, and other than full and open competition. These general provisions are applicable to the acquisition of ADP and telecommunications resources, in addition to the provisions set forth in this Part 201–11. (Note.—Subpart 201–1.6 sets forth the relationship between FAR and FIRMR contracting rules.)

4. Section 201–11.002 is revised to read as follows:

§ 201–11.002 Other than full and open competition.

(a) *General.* When an agency determines that full and open competition cannot be obtained in satisfying an ADP or telecommunications requirement, the procurement action must be justified and approved in accordance with Part 201–23, Part 201–39, and FAR Part 6. The agency is required to document its files with a justification for the contemplated procurement action (see FAR 6.303). Technical and requirements personnel must provide certified data supporting their recommendations for these procurement actions. Lack of advance planning or concerns related to the amount of funds available cannot be used as the basis for this justification.

(b) *Only one responsible source certification requirements.* When an agency determines (1) that only one responsible source can meet its requirement after following the management, planning, and market research activities referred to in § 201–11.003 and (2) that no other type of supplies or services will satisfy the agency's needs, technical and requirements personnel are responsible

for providing, and certifying as accurate and complete, the necessary data to support the recommendation for this requirement (see FAR 6.303–1(b)).

5. Section 201–11.002–1 (appearing in Temp. Reg. 11 as § 201–30.013–2) is revised to read as follows:

§ 201–11.002–1 Use and documentation of specific make and model specifications.

(a) A specific make and model specification shall be used only when no other type of specification can satisfy the needs of the Government.

(b) The use of a specific make and model specification is considered to be other than full and open competition and must be certified, justified, and approved in accordance with FAR 6.303 and 6.304, notwithstanding the existence of more than one responsible source.

(1) The justification in all cases must address why no other type of supplies or services will satisfy the agency's needs and the practical factors which preclude the development of a less restrictive specification.

(2) The provisions of this paragraph (b) of § 201–11.002–1 shall not apply when (i) an order is placed against a GSA information resources multiple award schedule contract and (ii) the technical and requirements personnel describe the requirements with a specification type of higher precedence use than a specific make and model specification (for example, see § 201–30.013), notwithstanding the fact that when the order is placed, it cites a specific make and model.

§ 201–11.002–2 [Removed]

6. Section 201–11.002–2 is removed.

7. Section 201–11.003 is revised to read as follows:

§ 201–11.003 Agency responsibilities.

(a) Full and open competition is a basic procurement objective of the Government. Full and open competition among offerors who are capable of meeting the user's needs will ensure that the Government's needs are satisfied at the lowest overall cost, price and other factors considered, over the system/item life. It is essential that proper management actions, including planning and market research activities, be accomplished before the contract actions become imminent (see Parts 201–16, 201–20, 201–21, 201–23, 201–24, 201–30, and 201–38).

(b) Agency information resources managers and contracting officers both have the responsibility for ensuring that this basic procurement objective is met. This responsibility extends to fostering competitive conditions for subsequent procurements.

(c) Agencies must consider their systems life and contract expiration dates when planning for future information resources requirements activities. Agency plans for follow-on procurements should allow sufficient time for completion of the acquisition process, including any required conversion of data files and programs. A competition for the follow-on period shall be started in sufficient time to ensure completion before the expiration of the existing contract.

§§ 201–11.003–1 and 201–1.003–2 [Removed]

8. Sections 201–11.003–1 and 201–11.003–2 are removed.

PART 201–16—[AMENDED]

1. The table of contents of Part 201–16 is amended by revising the entry for § 201–16.001; and the authority citation for the part continues to read as follows:

201–16.001 Planning to meet the full and open competition objective.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–16.001 is revised to read as follows:

§ 201–16.001 Planning to meet the full and open competition objective.

(a) The head of the agency shall use advance procurement planning and market research directed to the achievement of the full and open competition objective. This planning is a joint responsibility of the agency's requirements and procuring activities. It is essential to the success of this objective that the manager who establishes the needs, the manager who prepares the requirement specifications, and the manager who contracts for satisfying the requirement all coordinate their efforts in establishing a realistic acquisition plan.

(b) Agency performance of this responsibility will serve as a factor in GSA's determinations for granting specific and blanket delegations of procurement authority to agencies.

3. Section 201–16.002 is amended by adding paragraph (c) appearing in Temp. Reg. 7 and paragraph (d) appearing in Temp. Reg. 8.

The revised paragraphs read as follows:

§ 201–16.002 Planning requirements.

* * * * *

(c) The plan should be used by agencies to manage their sharing and reutilization programs. Planning short- and long-range procurement strategies is essential to avoid the continued use of costly, outmoded computers or other obstacles to more effective, efficient, and economical ADP.

(d) Agency planning requirements should be promulgated in the agency directives system and should communicate to agency managers the goals, managerial approach, policies, procedures, and responsibilities of specific officials or offices for information resources management. The plan should address installed as well as new systems, procedures for post-installation review of new systems, and procedures for the periodic audit of information systems. Agencies are encouraged to consider GSA programs that are available to assist agencies in applying information processing resources to agency needs.

PART 201–20—[AMENDED]

1. The authority citation for Part 201–20 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C., 486(c).

2. Section 201–20.006 is amended by adding the text appearing in Temp. Reg. 7. As revised, the section reads as follows:

§ 201–20.006 Sharing and reutilization.

Sharing installed ADPE and its operating system software shall be considered as a means of meeting the ADP requirements of the user (see Part 201–31 and OMB Circular A–121). Excess ADPE shall also be considered a source of supply (see Part 201–33). Sharing Government-owned common-use application software should be considered prior to development of new programs (see Part 201–31). Additional ADP capacity shall be acquired only if an agency has made reasonable efforts to determine that existing resources will not economically and efficiently meet the requirements. However, continued use of costly outmoded computers should be avoided.

PART 201–21—[AMENDED]

1. The authority citation for Part 201–21 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 201–21.011 [Amended]

2. Section 201–21.011 is amended by removing from paragraph (a)(4) the words "to the maximum practicable extent." and inserting in their place the words "on a full and open basis." and by redesignating paragraph (c) to read paragraph (3) of paragraph (b).

PART 201-23—[AMENDED]

1. The table of contents of Part 201–23 is amended by adding an entry for § 201–23.104–7; and the authority citation for the part continues to read as follows:

201–23.104–7 ADP equipment systems.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–23.102 is amended by adding the text appearing in Temp. Reg. 6. As revised, the section reads as follows:

§ 201–23.102 Responsibility for conduct and accountability of acquisitions made under delegation of contracting authority from GSA.

(a) The provisions of Pub. L. 96–511 (the Paperwork Reduction Act of 1980) direct each executive agency head to designate a senior official (officials in DOD) reporting to the agency head to be responsible for implementing the Act. This designated senior official is assigned responsibility for the conduct of and accountability for any acquisitions made under a delegation of authority under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) (see 44 U.S.C. 3506(c)(4)).

(b) The designated senior official in each agency shall advise GSA in writing of the position title and organizational identity of those officials who have been authorized to submit agency procurement requests to GSA (see also §§ 201–23.106 and 201–23.112).

(c) The designated senior official shall keep the listings current. (A change of incumbent in an unchanged position and organizational assignment does not require notification.) Listings shall be submitted to GSA (KMA), Washington, DC 20405.

3. Section 201–23.103 is amended by adding paragraphs (a) and (b) appearing in Temp. Reg. 6 and revising paragraph (b). The revised paragraphs read as follows:

§ 201–23.103 Procurement and contracting authority.

(a)(1) To allow for the orderly implementation of a program for the economical and efficient acquisition of ADP resources, agencies are authorized to acquire by contracting for these items—

(i) In accordance with the blanket delegation provisions of § 201–23.104,

(ii) When a specific agency delegation has been provided by GSA in accordance with the provisions of § 201–23.105, or

(iii) When a specific acquisition delegation has been provided by GSA in accordance with the provisions of §§ 201–23.106 and 201–23.107.

(2) Requirements shall not be fragmented in order to circumvent established delegation of procurement authority thresholds.

(b)(1) Agencies shall comply with the applicable provisions of the FIRMR before initiating procurement action on a requirement.

(2) Agencies shall accomplish procurement actions in accordance with applicable provisions of the FIRMR, including the provisions of Parts 201–11, 201–24, and 201–32.

* * * * *

4. Section 201–23.104–1 is amended by adding the text appearing in Temp. Reg. 6 and revising paragraphs (c)(1) and (c)(2). As revised, the section reads as follows:

§ 201–23.104–1 Automatic data processing equipment (ADPE).

Except as indicated in § 201–23.201 regarding potential use of the ADP fund, Part 201–31 regarding sharing, and Part 201–33 regarding the use of excess ADPE, agencies may procure ADPE without prior approval of GSA when either paragraphs (a), (b), or (c) applies.

(a) The procurement is to be made by placing a purchase/delivery order against an applicable GSA requirements-type contract.

(b) The procurement is to be made by placing a purchase/delivery order against a GSA schedule contract provided that the following three conditions are met:

(1) The order is within the maximum order limitation (MOL) of the applicable contract;

(2) The total purchase price (even though the item(s) are to be rented or leased) of the item(s) covered by the order does not exceed $300,000;

(3) The requirements set forth in § 201–32.206 on the use of GSA schedule contracts are met.

(c) The procurement is to be made by solicitation procedures other than use of GSA requirements-type or schedule contracts and the value of the procurement (including evaluated optional features) does not exceed:

(1) Except as provided in paragraph (c)(2) below, $2,500,000 purchase price or basic monthly rental charges (including attendant maintenance costs) that do not exceed an annual rate of $1,000,000; or

(2) $250,000 purchase price or basic monthly rental charges (including attendant maintenance costs) that do not exceed an annual rate of $100,000 for requirements available from only one responsible source or requirements using specific make and model specifications.

5. Section 201–23.104–2 is amended by adding the text appearing in Temp. Reg. 6 and revising paragraphs (c)(1) and (c)(2). As revised, the section reads as follows:

§ 201–23.104–2 Software.

Except for software available through the Federal Software Exchange Center as covered by § 201–31.014 and software provided with and not separately priced from the ADPE, agencies may procure commercially available software without prior approval of GSA when either (a), (b), or (c) applies.

(a) The procurement is to be made by placing a purchase/delivery order against an applicable GSA requirements-type contract.

(b) The procurement is to be made by placing a purchase/delivery order under the terms and conditions of an applicable GSA schedule contract (see § 201–32.206).

(c) The procurement (regardless of method or time period) is to be made by solicitation procedures other than use of GSA requirements-type or schedule contracts and the value of the procurement (including evaluated optional features) does not exceed:

(1) Except as provided in paragraph (c)(2) below, $1,000,000; or

(2) $100,000 for requirements available from only one responsible source.

6. Section 201–23.104–3 is amended by adding the text appearing in Temp. Reg. 6 and revising paragraphs (b)(1) and (b)(2). As revised, the section reads as follows:

§ 201–23.104–3 Maintenance services.

Agencies may procure maintenance services without prior approval of GSA when either paragraph (a) or (b) of this § 201–23.104–3 applies.

(a) The procurement is to be made by placing a purchase/delivery order under the terms and conditions of an applicable GSA schedule contract (see § 201–32.206).

(b) The procurement is to be made by solicitation procedures other than use of GSA requirements-type or schedule contracts and the monthly charges do not exceed:

(1) Except as provided in paragraph (b)(2) below; an annual rate of $1,000,000; or

(2) An annual rate of $100,000 for requirements available from only one responsible source.

7. Section 201–23.104–5 is amended by adding paragraphs (a) and (b) appearing in Temp. Reg. 6 and paragraph (d) appearing in Temp. Reg. 1, Supp. 1 and

by revising paragraphs (a)(1) and (a)(2). The revised paragraphs read as follows:

§ 201-33.104-5 Commercial ADP services.

(a) Agencies shall use GSA's Teleprocessing Services Program in accordance with the applicability provisions set forth in § 201-32.303-1. Agencies may procure commercial ADP services without prior approval of GSA when the monthly charges (including evaluated optional features) do not exceed:

(1) Except as provided in paragraph (a)(2) below, an annual rate of $2,000,000; or

(2) An annual rate of $200,000 for requirements available from only one responsible source or requirements using specific make and model specifications.

(b) Agencies shall comply with the requirements regarding the sharing or use of existing Federal ADP resources and the use of GSA sources of supply before initiating procurement action under authority of this § 201-23.104-5.

* * * * *

(d) Contract awards under the basic agreement shall be based on blanket or individual delegations of procurement authority. The resulting contract award amount and scope will redefine and limit the applicable authorization from that estimated in the agency procurement request submission or estimate, except as provided in this paragraph (d). The contract "Engineering Changes" provision is designed to accommodate changes to requirements (including equipment and software specifications) to meet changed or increased data processing requirements, to increase economy or efficiency, to improve performance or productivity, or to save energy. Any changes implemented shall be within the scope and systems life of the contract. Increased requirements up to 25 percent of those specified in the contract (including contractually specified options) shall be deemed to be requirements within the scope of this paragraph (d), provided the requirements are elected to be implemented by the contracting officer under the "Engineering Changes" provision. Other requirements shall be treated as new requirements requiring authorization for contracting under this § 201-23.104-5 (see also § 201-32.303(e)).

8. A new section 201-23.104-7 (appearing in Temp. Reg. 11) is added to read as follows:

§ 201-23.104-7 ADP equipment systems.

(a) When ADPE, software, and maintenance services (or any combination thereof) are "combined" and procured as an equipment system under a single procurement action, GSA approval shall be required when the price or charges for either the equipment (including attendant maintenance costs for rentals), the software, or the maintenance services exceeds the applicable dollar threshold in §§ 201-23.104-1, 201-23.104-2, or 201-23.104-3.

(b) When commercial ADP services and any combination of ADPE, software, or maintenance services are procured under a single procurement action, GSA approval shall be required when the individual price of either the equipment, the software, the maintenance services, or the commercial ADP services exceeds the applicable dollar threshold in §§ 201-23.104-1, 201-23.104-2, 201-23.104-3, or 201-23.104-5.

9. Section 201-23.105 is amended by adding the text appearing in Temp. Reg. 6. As revised, the section reads as follows:

§ 201-23.105 Specific agency or agency component blanket delegation of procurement authority.

Specific changes in thresholds or conditions regarding the exercise of procurement authority by a particular agency or component thereof may be authorized by the GSA Assistant Administrator for Information Resources Management (K). The changes will be in writing, will cite this § 201-23.105, will state effectivity and scope of applicability, and will be directed to the designated senior official of the applicable agency.

10. Section 201-23.106 is amended by adding the text appearing in Temp. Reg. 5. As revised, the section reads as follows:

§ 201-23.106 Specific acquisition delegation of procurement authority.

(a) If an agency determines that the conditions of the contemplated procurement are not covered by the blanket delegation of procurement authority provisions of §§ 201-23.104 or 201-23.105, or if the conditions of the contemplated procurement change during the procurement process so that those provisions become inapplicable, two copies of the agency procurement request (APR) and other applicable documents shall be forwarded to the General Services Administration (KMA), Washington, DC 20405. The APR shall be signed by an official who has been authorized to initiate the acquisition action and shall identify the position title and organizational identity of the official who has been authorized to conduct the procurement. GSA will process only those submissions signed by authorized officials and identified by position title and organizational identity who appear on the submitted listing (see § 201-23.102(b)). Other submissions will be returned without action to the submitting office for resubmission by an authorized agency official. In addition, the APR shall contain the name and telephone number of an individual within the agency who shall act as the point of contact for GSA. The APR shall include, as applicable, information set forth in §§ 201-23.106-1 or 201-23.106-2.

(b) Any Federal agency may elect (or continue, if an election has been made) to use the alternate APR submission requirements as set forth in § 201-23.106-2 when submitting ADP equipment or service procurement requests to GSA. This procedure is an alternative to the APR submission provisions of § 201-23.106-1.

(c) The agency designated senior official shall advise GSA (KMA), Washington, DC 20405, when the alternate APR submission procedure will be used by the agency. Agency notifications already submitted (under F-126 procedures) will be assumed to continue (as modified by this Temp. Reg. 5) unless GSA is notified to the contrary.

(d) GSA encourages agencies to establish early planning coordination with GSA's agency planning and authorization officials (KMA). Often potential delays and problem areas can be identified and remedied in advance of the formal APR submission.

(e) When required, the information submitted by an agency may be made available to Government oversight activities.

11. Section 201-23.106-1 is amended by (i) revising paragraphs (a)(11), (a)(17), (b)(13)(ii), and (b)(4)(ii), (iii), (iv), and (viii), and (ii) adding paragraph (a)(18) to read as follows:

§ 201-23.106-1 Agency procurement request (APR) submissions.

(a) * * *

(11) If applicable, a copy of the certified data supporting any use of a specific make and model specification as required by § 201-11.002-1; and, if applicable, the certified data supporting of contemplated requirement available from only one responsible source (see § 201-11.002(b)).

* * * * *

(17) Findings to support the use of compatibility limited requirements as required by § 201-30.009-3, where applicable.

(18) A statement as to whether the acquisition plan contemplates contracting (see FAR 7.104(c)) under policies and procedures for:

(i) Full and open competition (see FAR Subpart 6.1);

(ii) Full and open competition after exclusion of sources (see FAR Subpart 6.2); or

(iii) Other than full and open competition (see FAR Subpart 6.3). In addition, provide the applicable statutory contracting authority cited in FAR 6.302–1 through 6.302–7 permitting the use of such procedures.

(b) * * *

(3) * * *

(ii) Summary description of the alternatives considered to meet the requirement, the related costs, and the basis for the alternative selected with reference to the agency's requirements analysis and analysis of alternatives (see §§ 201–30.007 and 201–30.009, respectively).

* * * * *

(4) * * *

(ii) Type of specification (see § 201–30.013).

(iii) The basis and documentation to support the use of compatibility limited requirements, when applicable (see § 201–30.009–3).

(iv) If applicable, a copy of the certified data supporting any use of a specific make and model specification as required by § 201–11.002–1; and if applicable the certified data supporting a contemplated requirement available from only one responsible source (see § 201–11.002(b)).

* * * * *

(viii) a statement as to whether the acquisition plan contemplates contracting (see FAR 7.104(c) under policies and procedures for:

(A) Full and open competition (see FAR Subpart 6.1);

(B) Full and open competition after exclusion of sources (see FAR Subpart 6.2); or

(C) Other than full and open competition (see FAR Subpart 6.3). In addition, provide the applicable statutory contracting authority cited in FAR 6.302–1 through 6.302–7 permitting the use of such procedures.

* * * * *

12. Section 201–23.106–2 is amended by adding the text appearing in Temp. Reg. 5, revising paragraphs (b)(3)(i) and (b)(5), and by adding paragraph (b)(3)(iv). As revised, the section reads as follows:

§ 201–23.106–2 Alternate APR submission requirements.

(a) Agencies may elect to use the alternate APR submission procedure set forth in this § 201–23.106–2 when submitting ADP equipment or service requests to GSA. However, because the procedure offers agencies broader procurement autonomy than otherwise provided in § 201–23.106–1, it places greater emphasis on the responsibilities of agency officials to ensure that current regulatory provisions are followed before acquisitions take place. In establishing internal procedures, agencies should strive to (i) designate executive level officials to initiate and accept accountability for acquisition actions under this regulation's alternate APR submission procedure and (ii) provide for an independent review to validate agency compliance with regulations.

(b) Alternate APR submission requirements for agency request for ADP equipment or services are as follows:

(1) *Agency Information:* Provide agency name, address, and location where equipment will be installed or services will be performed. Provide names and telephone numbers of appropriate technical and contracting officials. Identify the position title and organization identity of the official authorized to conduct the acquisition (see § 201–23.106(a)).

(2) *Project Title and Description:* (i) Provide the project title and a brief but specific description of the primary agency program(s) that the ADP equipment or service will support.

(ii) Provide a brief but specific description of the current major system components (including ADPE configuration) or services supporting the program(s).

(iii) Provide a brief but specific description of the major system components or services to be acquired during the systems life of the requirement. This should reflect resources required for system expansion (i.e., anticipated augmentations, upgrades, and other system modifications) during the systems life if such requirements will be included in the solicitation document as evaluated options. The delegation resulting from this submission will be limited to resources described herein.

(3) *Acquisition strategy:* (i) Indicate whether or not the proposed procurement approach is to satisfy a requirement using a specific make and model specification; whether compatibility limited requirements will be used on either a mandatory or nonmandatory basis; and specify the type of contract expected to be used.

(ii) Identify by fiscal year quarter the following planned milestones: Release of solicitation document and contract award.

(iii) If the request involves a pilot or prototype, the strategy for the follow-on implementation phase must be described.

(iv) Indicate whether the acquisition plan contemplates contracting (see FAR 7.104(c)) under policies and procedures for:

(A) Full and open competition (See FAR Subpart 6.1);

(B) Full and open competition after exclusion of sources (see FAR Subpart 6.2); or

(C) Other than full and open competition (see FAR Subpart 6.3). In addition, provide the applicable statutory contracting authority cited in FAR 6.302–1 through 6.302–7 permitting the use of such procedures.

(4) *Estimated Contract Life and Cost:* The estimated contract cost of the acquisition (not the overall system life cost) shall be identified by type of request for the contract life and shall include all anticipated optional quantities, services, and periods. Detailed cost breakdowns may be included when necessary to describe clearly the estimated costs. The estimated contract cost (for all years) should correspond to the planned contract life. The delegation of authority resulting from this submission will be limited to quantities and years described herein.

Type of request	Estimated contract cost	Contract life
—ADPE system or item		
—ADPE system replacement/augmentation.		
—Proprietary software		
—Equipment maintenance		
—ADP services acquired under TSP/BA.		
—ADP services acquired under TSP/MAS.		
—ADP services acquired under TSP exception.		
—ADP services outside TSP scope.		

(5) *Regulatory compliance:* (i)(A) Provide a statement which indicates that the agency has reviewed and complied (or will comply) with all applicable regulations, or

(B) List those deviations to the regulations that apply to this request for which approval is sought and provide an explanation for each regulatory deviation request (see Subpart 201–1.4).

(ii) Provide the date of completion or most recent update of the following documentation, or indicate not applicable:

Documentation	Date
(A) Requirements analysis (see § 201–30.007).	
(B) Analysis of alternatives (see § 201–30.009).	

Documentation	Date
(C) Performance evaluation for the currently installed ADP system (see §§ 201-30.007(b)(9) and 201-34.002).	
(D) Findings to support the use of compatibility limited requirements (see § 201-30.009-3).	
(E) Software conversion study (see § 201-30.012-1).	
(F) Certified data to support a contemplated requirement available from only one responsible source (see § 201-11.003(b)).	
(G) Certified data to support a contemplated requirement using a specific make and model specification (see § 201-11.002-1).	
(H) Description of those planned actions necessary to foster competition for subsequent procurements (see § 201-30.012).	

(6) *Agency remarks:* Provide additional information deemed necessary concerning any of the above items or special conditions associated with this procurement; e.g., required building contruction/modification by GSA.

(7) *Agency/GSA references:* Provide references to previous GSA authorizations (including previous GSA case numbers), meetings, telephone discussions, etc.

(8) *Agency authorized signature, position title, organizational identity, date.*

Note.—GSA will process only those agency submissions signed by an authorized official (see § 201–23.108(a)). The official's position title and organizational identity must be provided.

13. Section 201–23.107 is amended by adding paragraphs (d) and (e) appearing in Temp. Reg. 5. The revised paragraphs read as follows:

§ 201–23.107 GSA action on agency APR submissions.

* * * * *

(d) When an agency selects the alternate APR submission procedure under § 201–23.108–2(a), GSA will promptly review and take appropriate action on the APR. When necessary, GSA will conduct a more in-depth review before issuing a DPA under the alternate APR submission procedure. In some instances, this may require the submission of additional information.

(e) GSA will conduct periodic reviews of current and past agency acquisition actions as it deems appropriate. These periodic reviews will (i) verify agency compliance with regulations and DPA conditions or limitations, (ii) assess GSA procurement policies and directions given to agencies, and (iii) assess the agency's planning and control mechanisms regarding the use of the delegated authority to accomplish economical and efficient acquisition, use, and management of ADP resources. GSA will take appropriate actions when findings indicate failures to comply with regulations or conditions or limitations of individual DPA's or unauthorized deviations to regulations. Actions may include voiding a DPA before award and withdrawing an agency's authority to use the alternate APR submission procedure.

14. Section 201–23.111–1 is amended by revising paragraph (a) to read as follows:

§ 201–23.111–1 Requiring agency responsibilities.

* * * * *

(a) Submit to GSA the documentation required by § 201–23.106–1. The documentation shall include the agency's requirements, the system/item life, the technical specification, and, if applicable, the justification to support the contracting procedure;

* * * * *

15. Section 201–23.111–2 is amended by revising paragraphs (b), (d), (f), (g), (j), and (k) and by redesignating (l) thru (q) as (k)(2), (k)(3), (k)(4), (l), (m), and (n), respectively, as follows:

§ 201–23.111–2 GSA responsibilities.

* * * * *

(b) Form the contracting team which will be headed by the GSA contracting officer;

* * * * *

(d) Prepare the contracting plan (which will be coordinated with the requiring agency), and any justifications or contractual material needed for the selection plan;

* * * * *

(f) Receive offers from the offerors;

(g) Provide copies of all offers received to the requiring agency;

* * * * *

(j) Notify the offeror concerned when an offer is determined to be unacceptable;

(k) If applicable, (1) Conduct negotiations with all offerors whose proposals are within the competitive range, price and other factors considered;

(2) Notify the offerors of the date and time that negotiations are to be terminated;

(3) Provide the requiring agency's designated point of contact with both a report which summarizes the results of negotiations and copies of proposed contracts negotiated with offerors for consideration in the requiring agency's evaluation and analysis; and

(4) Brief the appropriate requiring agency personnel on the results of contract negotiations when requested;

(l) Award the contract after receiving notification of the requiring agency's selection;

(m) Debrief offerors, with the assistance of requiring agency representatives, when debriefings are requested by offerors; and

(n) Distribute the contract and forward all pertinent documents to the successor contracting officer appointed by the requiring agency.

16. Section 201–23.112–1 is amended by adding the text appearing in Temp. Reg. 5. As revised, the section reads as follows:

§ 201–23.112–1 Agency responsibility.

When acting under a GSA delegation of procurement authority under Subpart 201–23.1, the agency designated senior official is responsible for compliance with applicable procurement policies, regulations, and, in particular, Parts 201–24 and 201–32 and, if applicable, the specific terms of the delegation (see § 201–23.107).

17. Section 201–23.112–2 is amended by adding the text appearing in Temp. Reg. 5. As revised, the section reads as follows:

§ 201–23.112–2 GSA review of agency acquisition actions.

GSA reserves the right to review agency actions supporting any acquisition authorized under this Subpart 201–23.1. Documentation relative to agency actions made under the regulations issued under section 111 and other provisions of the Federal Property and Administrative Services Act of 1949, as amended, shall be made available for review upon request of GSA officials. (Documentation should be retained in agency files for such periods as required by applicable law or regulation.)

18. Section 201–23.501 is amended by adding the text appearing in Temp. Reg. 4. As revised, the section reads as follows:

§ 201–23.501 Use of multi-year contracting authority for small telecommunication systems.

(a) In order to provide for the economical and efficient acquisition of small telecommunications systems, executive agencies are authorized under 40 U.S.C. 481(a)(3) to enter into multi-year contracting arrangements subject to the following conditions.

(1) Each agency electing to exercise the delegation shall establish management and control procedures coordinated by the agency designated senior official for information resources management activities and agency senior procurement executive.

(2) The authority may be used for requirements only within the 50 States.

(3) The telephone systems must be at locations where requirements can be satisfied by systems smaller than those described in § 201–39.002–1 (generally, less than 25 lines or 50 telephones).

(4) The system life shall not exceed 5 years.

(5) The system life cost shall not exceed $25,000.

(6) The authority shall not be used where GSA consolidated local telephone service is available.

(b) The blanket delegation is to the agency head and may be redelegated. GSA reserves the right to review an agency's exercise of this delegated authority. The GSA Assistant Administrator for Information Resources Management may change the conditions regarding the exercise of the authority by a particular agency or component thereof, including withdrawal of the authority. (Any changes will be in writing, will cite this § 201–23.501, will state the effective date and scope of the change, and will be directed to the designated senior official of the applicable agency.)

PART 201–24—[AMENDED]

1. The table of contents of Part 201–24 is amended by revising the entries for §§ 201–24.207, 201–24.211, 201–24.212, and 21–24.304; and the authority citation for the part continues to read as follows:

201–24.107 Solicitations for compatibility limited requirements.
201–24.211 [Reserved]
201–24.212 [Reserved]
201–24.304 [Reserved]

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–24.104 is amended by adding the text appearing in Temp. Reg. 1, Supp. 1. As revised, the section reads as follows:

§ 201–24.104 Small purchases.

(a) Except as provided in paragraph (b) of this § 201–24.104, the provisions of FAR Part 13 (Small purchases and other simplified purchase procedures) apply when the aggregate amount over the system/item life of a requirement for information resources does not exceed $25,000.

(b) Alternatively, if the contracting officer elects to satisfy such requirements through use of GSA information resources schedule contracts, applicable FIRMR schedules procedures shall be followed (see §§ 201–32.206, 201–32.303, and 201–40.006).

3. Section 201–24.106 is revised to read as follows:

§ 201–24.106 Urgent requirements.

The existence of an unusual and compelling urgency (e.g, the Government will suffer serious injury, financial or otherwise, if the equipment or services are not available by a specific date) shall not relieve the agency from the responsibility of requesting offers from as many potential sources as is practicable under the circumstances. The system/item life duration for an urgent requirement contracted for under other than full and open competition procedures shall be held to the minimum practicable life.

§ 201–24.202 [Amended]

4. Section 201–24.202 is amended by removing from paragraph (a) the words "maximum practicable" and inserting in its place the words "full and open."

§ 201–24.203 [Amended]

5. Section 201–24.203 is amended by removing from paragraph (b) the words "maximum practicable" and inserting in their place the words "full and open."

6. Section 201–24.207 is revised to read as follows:

§ 201–24.207 Solicitations for compatibility limited requirements.

(a) Compatibility limited requirements shall not be made mandatory requirements solely for reasons of economy or efficiency. In solicitations for the replacement of a computer system(s), offers for non-compatible equipment may be excluded only if the agency determines that the risk of a conversion failure requires the exclusion (see § 201–30.009–3).

(b) Solicitations which include compatibility limited requirements for the augmentation of a computer system(s) may exclude non-compatible offers only if the agency determines that exclusion of non-compatible components and any other alternative is justified (see § 201–30.009–3). The justification for precluding the use of any alternative other than augmentation with compatible components must be based on the recent completion of both a requirements analysis (see § 201–30.007) and an analysis of alternatives (see § 201–30.009).

(c) If the conditions of paragraphs (a) or (b) of this § 201–24.007 are not met, solicitations which include compatibility limited requirements shall provide for the submission and evaluation of acceptable non-compatible offers from responsible offerors that will meet the user's requirement at the lowest overall cost, price and other factors considered, over the system/item life.

7. Section 201–24.208 is amended by revising the introductory text of paragraph (a) and by adding paragraph (c) appearing in Temp. Reg. 8. The revised paragraphs read as follows:

§ 201–24.208 Evaluation of acquisition alternatives.

(a) Except as provided in paragraph (c) of this § 201–24.208, a comparative cost analysis shall be made to determine the method of acquisition that represents the lowest overall cost alternative over the system/item life. However, the administrative costs of conducting an analysis to determine the lowest overall cost alternative shall be commensurate with the cost or price of the item being acquired and with the benefits expected to be derived from conducting the analysis. The alternatives that must be considered will vary, depending on the system/item being acquired and the requirement of the initial user. As a minimum, all of the following alternatives that will meet the user's needs shall be considered.

* * * * *

(c) When an agency determines that a purchase alternative is likely to be the most advantageous method of acquisition for a system/item with an anticipated purchase price of $25,000 or less pursuant to analysis under paragraph (b) of § 201–30.007 and paragraph (c) of § 201–30.006, the analysis required by paragraph (a) of this § 201–24.208 is not required. See also § 201–24.216.)

8. Section 201–24.210 is revised to read as follows:

§ 201–24.210 Exercising renewal options in ADP services contracts.

(a) Before exercising any renewal options, including those on a TSP basic agreement (BA) or MAS system life selection, the agency shall conduct an analysis to determine whether exercising the renewal option is the most advantageous method of fulfilling the Government's need, price and other fctors considered.

(b) Before exercising a renewal option on a system life selection awarded on an availability from only one responsible source basis, the agency shall conduct a new market survey on a timely basis to determine the availability of alternate sources of supply. If the survey indicated that an alternative source of supply exists, the agency shall prepare an acquisition plan (see FAR Part 7) showing the major milestones for satisfying the requirement on a full and open competition basis for the earliest practicable acquisition.

(c) Agency acquisition files shall be documented with the results of the evaluation.

§§ 201-24.211 and 201-24.212 [Removed and Reserved]

9. Sections 201–24.211 and 201–24.212 are removed and reserved.

10. Section 201–24.216 is amended by adding the text appearing in Temp Reg. 6. As revised, the section reads as follows:

§ 201–24.216 Award criteria for low cost ADP equipment acquisitions.

Agencies may acquire ADPE on the basis of lowest offered purchase price when all of the following conditions are met:

(a) The purchase price of each system or item of equipment (including associated software) being acquired does not exceed $25,000;

(b) The total purchase price of all of the equipment and software being acquired under the procurement is $300,000 or less;

(c) The requirements are not fragmented to circumvent the thresholds in paragraphs (a) and (b) of this § 201–24.216;

(d) The purchase method is likely to be the lowest overall cost acquisition alternative (see §§ 201–24.206 and 201–30.006); and

(e) The agency determines, based on the requirements analysis, determination of system/item life, and analysis of alternatives, that award based on lowest offered purchase price is consistent with the lowest overall cost policy objective. (See §§ 201–30.007, 201–30.008, and 201–30.009.)

§ 201-24.304 [Removed and Reserved]

11. Section 201–24.304 is removed and reserved.

12. Section 201–24.305 is amended by adding the text appearing in Temp. Reg. 4. As revised, the section reads as follows:

§ 201–24.305 Comparative cost analysis.

When adjusting the system life cost to the present value of money, the present value is computed by using the discount rate prescribed by OMB Circular A–94 or a higher rate as determined by the procuring agency. The higher rate, if used, is to reflect the agency's desired rate of return to assure the optimal allocation of its limited funds.

PART 201-26—[AMENDED]

1. The authority citation for Part 201–26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Subpart 201–26.2 is amended by adding the text of §§ 201–26.200, 201–26.201, 201–26.202, 201–26.203, 201–26.204, 201–26.205, and 201–26.206 appearing in Temp. Reg. 8. As revised, the sections read as follows:

§ 201–26.200 Scope of subpart.

This subpart sets forth the policy and criteria for the maintenance of an Automatic Data Processing Equipment Data System (ADPE/DS) by Federal agencies.

§ 201–26.201 Effect on other directives.

This subpart supersedes the reporting requirements under the ADP Management Information System (ADP/MIS) established by Office of Management and Budget (OMB) Circular A–83, October 5, 1971, superseded by Federal Management Circular 74–2, February 25, 1974, superseded by FPMR Amendment F–31, June 1978, superseded by FPMR Temp. Reg. F–500, August 30, 1983.

§ 201–26.202 Policy intent.

This subpart establishes the requirement for developing, operating, and maintaining an ADPE/DS for ADP equipment systems to assist the Office of Management and Budget (OMB), the General Services Administration (GSA), and other Federal agencies in carrying out their management responsibilities for the most effective and efficient use of ADPE. Agencies may supplement the data system to provide for their individual needs.

§ 201–26.203 Applicability.

(a) *Applicability.* The provisions of this subpart are applicable to all Federal agencies (as defined in § 201–2.001) having organizations (referred to herein as ADP units as defined in § 201–2.001) that use ADP equipment systems.

(b) *Exemptions:* The following are exempt from the reporting requirements of this subpart:

(1) Punched card machines, modems, and terminals;

(2) Analog computer systems even though a part of a hybrid system (The digital equipment system portion of the hybrid computer system is not exempt.);

(3) ADP equipment systems that are both integral to a combat weapon or space system and built or modified to special Government design;

(4) Totally Government-owned ADP equipment systems when the aggregate purchase price does not exceed $50,000;

(5) ADP equipment systems that are partially Government-owned and partially leased, when the total purchase price of the Government-owned components does not exceed $50,000, and the total lease charges for the leased components do not exceed $1,667 per month; and

(6) Leased ADP equipment systems when the monthly lease charges for the total configuration do not exceed $1,667.

§ 201–26.204 Policies and procedures.

(a) *Objective.* The ADPE/DS will provide inventory data on applicable ADPE that will:

(1) Facilitate the management of ADPE resources by Federal agencies;

(2) Facilitate the identification and replacement of obsolescent ADPE;

(3) Assist OMB, GSA, Office of Personnel Management, and the Department of Commerce in carrying out their specific Governmentwide responsibilities relating to ADP as delineated in OMB Circular A–71, Subject: "Responsibilities for the Administration and Management of Automatic Data Processing Activities"; and

(4) Provide for future development of additional data subsystems that may become a part of the ADPE/DS or may be separate elements in an overall ADP management information system. This future development, as the need arises, would be under the direction of GSA's Office of Information Resources Management with participation of involved agencies.

(b) *ADPE/DS structure.* The ADPE/DS will be composed of the major data elements listed below. Elements 1 through 6 are the System record—Level I; elements 7 through 13 are the Component record—Level II.

(1) Agency and subagency code (4 position code) as specified by Federal Information Processing Standard Publication 95 which identifies the agency and the subagency;

(2) Agency ADP unit code (4 position code) used to uniquely identify the ADP unit within the subagency (will automatically generate the full address of the ADP unit as well as the organizational title (abbreviated to no more than 25 positions) and telephone number for the contract at the ADP unit);

(3) System identification (2 position code assigned for each installed ADPE system at an ADP unit), and manufacturer's code (3) position code assigned to each manufacturer), and the system designation number as established by the manufacturer (seven position code);

(4) Acquisition date (4 position code) showing year and month of original acquisition in the Federal inventory;

(5) Fiscal year of expiration of planned system life (2 position code) (See § 201–30.006 and definition of system/item life in § 201–2.001);

(6) Fiscal year of next planned major replacement upgrade or augmentation (2 position code) with associated year of expiration of extended (if any) system life (2 position code);

(7) Agency ADP Unit Code—Repeat of (1) and (2) above;

(8) Component class (2 position code) represented in each system;

(9) Component ownership code (1 position code)—either (i) agency owned, (ii) straight lease, (iii) lease with option to purchase (LWOP), (iv) special lease plans, e.g., lease to ownership plan (LTOP), lease with title transfer plan, installment purchase plan (IPP), or alternate payment plan (APP), or (v) ADP Fund leased;

(10) Component designation by manufacturer/type/model (11 position code);

(11) Quantity of components in each ownership code (3 position code);

(12) Component cost in reported system—Most recent purchase price in hundreds of dollars (6 position code) and/or most recent monthly rental price in hundreds of dollars including maintenance (4 position code);

(13) Utilization percentage (2 position code) average for each ADP Fund leased item.

Note.—The system composition and cost will be calculated from the component data.

§ 201-28.205 Responsibilities.

(a) The Office of Information Resources Management, GSA is responsible for:

(1) Developing and issuing the necessary reporting procedures for carrying out the provisions of this subpart relating to ADPE/DS;

(2) Establishing the equipment inventory on a perpetual basis;

(3) Maintaining subsystems that may be part of the data base;

(4) Responding to requests from agencies and others for data from the data base; and

(5) Developing and/or participating in the development of reporting subsystems.

(b) Federal agencies are responsible for:

(1) Developing internal implementing instructions to carry out the objectives of this subpart;

(2) Furnishing the necessary data on an accurate and timely basis to comply with this subpart;

(3) Ensuring the use of these data to improve management practices; and

(4) Recommending such changes, additions, or deletions to the ADPE/DS as they deem necessary to improve the effectiveness of the system.

§ 201-28.206 Reporting requirements.

(a) *Initial reporting.* During the last week of September 1983, GSA (KHEE) will convert the current ADP/MIS data base to the new ADPE/DS data base. Hard copy will be provided to each of the Government agencies for verification and annotation of the new data elements. Verified and annotated copy shall be completed and returned to GSA within forty-five days of its receipt.

(b) *Regular reporting.* Agency updates to the data base shall be submitted thereafter at the end of each calendar quarter. Agency data shall be forwarded, in accordance with the instructions contained in a GSA Handbook that will supplement this subpart, addressed to: General Services Administration (KHEE), Washington, DC 20405.

(c) *Special reporting.* GSA reserves the right to require Government agencies to submit special reports as to the quantities, kinds, and locations of computers acquired below the dollar thresholds stated in § 201-28.203(b) (4), (5), and (6) during a particular period with the reporting details and format to be specified at the time of call. At least 60 calendar days will be provided for agencies to respond. Submissions will not be required more often than once per year.

(d) *Consolidation.* Agencies may provide both regular and special reports on either a centralized or decentralized basis.

(e) *Reports control.* This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 0312-GSA-QU.

PART 201-30—[AMENDED]

1. The table of contents of Part 201-30 is amended by adding entries for §§ 201-30.009-3 and 201-30.013-1; revising the entry for 201-30.013; and the authority citation for the part continues to read as follows:

201-30.009-3 Establishing compatibility limited requirements.
201-30.013 Specifications.
201-30.013-1 Use of functional specifications.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201-30.007 is amended by adding the text appearing in Temp. Reg. 8 and by (i) adding a sentence to paragraph (a), (ii) redesignating paragraph (c) as paragraph (d), (iii) adding a new paragraph (c), and (iv) adding new subparagraphs (9), (10), and (11) to new paragraph (d). As revised, the section reads as follows:

§ 201-30.007 Determination of need and requirements analysis.

(a) The acquisition of new or additional information processing resources shall be based on mission needs. These needs shall be specified in a manner designed to achieve the full and open competition objective for the procurement, with due regard to the nature of the property and services to be acquired. These needs shall be expressed in the form of deficiencies in existing capabilities, new or changed program requirements, or opportunities for increased economy and efficiency. In any event, and as required by § 201-20.003, the needs shall be supported by a requirements analysis that is commensurate with the size and complexity of the need.

(b) Agencies may find it more cost effective to conduct requirements analyses based on aggregated requirements. Requirements may be aggregated on either organizational or functional bases. Aggregated requirements analysis may be used where the applications and work environments of the individual requirements are homogeneous and where adequate workload measures and performance indicators are available. Individual requirements analyses are required when this is not the case.

(c) The needs and specific circumstances of the acquiring agency will determine how the requirements are specified. The types of specifications shall depend on the nature of the mission need and the market available to satisfy such needs. The range of specifications is described in § 201-30.013. Subject to such needs, the specification may be functional, equipment performance oriented, a combination of functional and equipment performance, plug-to-plug compatible, brand name or equal, or specific make and model. If any specification is used to describe a requirement that is available from only one responsible source, the provisions of § 201-11.002 apply. If the specification is based on a compatibility limited requirement, it must be justified as required by § 201-30.009-3. The use of a specific make and model specification must be justified as required by § 201-11.002-1.

(d) As a minimum, the agency shall consider the following factors in the requirements analysis:

(1) The information processing functions that must be performed.

(2) The agency applications, information resource systems, and components involved, their physical locations, and operational constraints.

(3) The problem that will be solved by acquiring new or additional equipment, systems and/or software.

(4) The nature of the data or information to be generated, transmitted, or stored on the proposed equipment or system, who will maintain it, and who will require access to it.

(5) The feasibility of sharing, using reassigned or excess Government-owned or -leased equipment, the off-loading of lower priority applications, using Federal data processing centers and GSA sources of supply, using commercial ADP services, or if applicable, increasing the capability and productivity of the existing system.

(6) The probable improvement in operational effectiveness and the economies that will be realized from acquiring new or additional equipment, systems, and/or software.

(7) Space management considerations; e. g., heat dissipation, air flow, temperature range, relative humidity, energy conservation, power supply, cables, including coordination with building managers and GSA (See FPMR § 101–17.101–5.).

(8) The present and projected workload in terms of:

(i) Systems life;

(ii) Data entry and associated telecommunications support;

(iii) Data base(s) and base management;

(iv) Data handling or transaction processing by type and volume;

(v) Output needs and associated telecommunications support;

(vi) Expandability requirements; and

(vii) Privacy and security safeguards.

(9) A performance evaluation of the currently installed ADP system(s) to provide a baseline for evaluation of proposed alternatives for meeting the data processing needs.

(10) The risks over the systems life of adverse impact on agency missions by acquiring insufficient ADPE capacity versus the extra costs of acquiring excessive ADPE capacity.

(11) The appropriate performance and capability validation techniques that should be employed in the acquisition.

3. Section 201–30.007–1 amended by adding the text appearing in Temp. Reg. 8. As revised, the section reads as follows:

§ 201–30.007–1 Records management factors.

Agencies shall consider the following records management factors when performing a requirements analysis or designing an information system:

(a) Does the system design protect against the accidental destruction of records?

(b) Is there a records disposition schedule for the records being created by the equipment or system?

(c) Does the equipment or system use forms and, if so, have they been produced in accordance with the agency forms management program?

(d) Does the equipment or system produce reports subject to the agency reports control program?

4. Section 201–30.008 is amended by adding paragraph (c) appearing in Temp. Reg. 8 and paragraph (d). The revised paragraph (c) and added paragraph (d) read as follows:

§ 201–30.008 Determination of system/item life.

* * * * *

(c) The determination of a system/item life is optional for a system/item with a purchase price of $25,000 or less when there is a reasonable certainty that purchase will be the most advantageous method of acquisition. However, if lease or rental plans are to be solicited, the determination of a system/item life is necessary to conduct a meaningful lease/purchase evaluation.

(d) Agencies shall consider subsequent procurement when establishing system/item lives. The system/item life duration for the requirements available from only one responsible source or for requirements with unusual and compelling urgency shall be held to the minimum practicable time. The justification for other than full and open competition shall be used to manage and plan for full and open competition in any subsequent procurement. Agency information resources managers and contracting officers both have responsibility for management and planning actions necessary to foster full and open competitive conditions for subsequent procurements. When applicable, an acquisition plan (see FAR Part 7) showing the major milestones for completing a follow-on full and open competitive procurement shall be prepared.

5. Section 201–30.009 is amended by adding the text appearing in Temp. Reg. 8. As revised, the section reads as follows:

§ 201–30.009 Analysis of alternatives for satisfying a requirement.

(a) A comparative cost analysis shall be performed for each identified requirement or when planning (see § 201–16.002) indicates the possible existence of obsolescent ADPE; i.e., equipment becoming outmoded or out of date, thereby reducing productivity. The purpose of the analysis is to determine which alternative will meet the user's needs at the lowest overall cost over the system/item life. Except as provided in paragraph (c) of this section, the alternatives to be considered shall include, but are not limited to the following:

(1) Use of non-ADP resources to satisfy the requirement.

(2) Use of existing ADP facilities (e.g., Federal Data Processing Centers) and resources on a shared basis. OMB Circular A–121 requires executive agencies to establish a management control procedure to determine which existing data processing facility will be used to support major new applications (see Part 201–31).

(3) Use of commercial ADP services.

(4) Redesign of application programs, using Federal or ANSI standard language to the maximum practicable extent.

(5) Revision of production schedule or job stream and matching work elements to resource systems to improve productivity.

(6) Addition or change in working shifts to increase capacity.

(7) Augmentation of installed ADPE by adding additional components to increase data processing capacity.

(8) Upgrading selected system components, such as adding additional selector channels, memory, faster tape or disk units, etc., in order to improve throughput capability.

(9) Replacing installed ADP system with a compatible system that will handle the workload.

(10) Competitive replacement of the installed ADP system through use of functional specifications.

(b) [Reserved]

(c) [Reserved]

6. Section 201–30.009–1 is amended by adding the text appearing in Temp. Reg. 8. As revised, the section reads as follows:

§ 201–30.009–1 Analysis of low value acquisitions.

When the anticipated value of the procurement is $50,000 or less, the comparative cost analysis may be limited to an analysis that demonstrates that the benefits of acquiring the proposed system/item will outweigh the costs. However, requirements shall not be fragmented to circumvent this threshold. (For example, if the total cost of the various components of a system exceed $50,000, they may not be acquired individually to avoid a comprehensive comparative cost analysis.)

7. Section 201–30.009–3 (appearing in Temp. Reg. 11) is added to read as follows:

§ 201-30.009-3 Establishing compatibility limited requirements.

(a) A compatibility limited requirement shall be expressed in a type of specification (see § 201-30.013) that will serve to accomplish the full and open competition objective. When it is necessary to express a requirement in a specific make and model specification, special justification is required (see § 201-11.002-1).

(b) A statement of requirements to augment or replace existing ADP equipment or services that is limited to ADP equipment or services compatible with the existing operating system or with ADPE shall be—

(1) Supported by a software conversion study, if required (see § 201-30.012-1);

(2) Justified on the basis of agency mission-essential data processing requirements and economy and efficiency; and

(3) Meet the requirements of this § 201-30.009-3.

(c) The following factors shall be considered in determining whether the incorporation of compatibility limited requirements is justified for the augmentation or replacement acquisition:

(1) The essentiality of existing software, without redesign, to meet agency critical mission needs; e.g., the continuity of operations may be so critical that conversion is not a viable alternative.

(2) The additional risk associated with conversion if compatibility limited requirements are not used and the extent to which the Government would be injured, financially or otherwise, if the conversion to the new ADP system fails.

(3) The additional adverse impact of factors such as delay, lost economic opportunity, and less than optimum utilization of skilled professionals if compatibility limited requirements are not used.

(4) The steps being taken to foster competitive procedures in the augmentation or replacement acquisition (see § 201-30.012).

(5) The off-loading of selected applications programs to commercial data processing service facilities as an alternative to conversion.

(6) The continuation of ADP services for selected application programs with the present commercial ADP services contractor as an alternative to conversion of all programs in the present ADP resource system.

(7) The extent of essential parallel operations; i.e., the need to continue operation of the old system in parallel with the new system until the new system can fully support the mission needs.

(8) The feasibility of competing conversion requirements to be performed on a guaranteed basis under a solicitation that couples the conversion effort and ADP services in a single contract, including consideration of the basis for a calculation of liquidated-damages provisions for conversion performance failure.

(d) The findings that support the use of compatibility limited requirements shall be submitted with each agency procurement request (APR) under § 201-23.106-1 for an augmentation or replacement acquisition when the use of specifications incorporating compatibility limited requirements is contemplated.

(e) Provisions regarding solicitations for compatibility limited requirements are contained in § 201-24.207.

§ 201-30.012 [Amended]

8. Section 201-30.012 is amended by (i) removing from the introductory text the words "as to be a major impediment to effective competition by a noncompatible offeror" and inserting in their place the words "that it is not a viable alternative"; (ii) inserting in paragraph (a) the word "competitively" between the words "are met" and "at the lowest"; (iii) inserting in paragraphs (a) and (b)(8) the word "competitive" between the words "subsequent" and "acquisitions"; (iv) removing in paragraph (b)(8) the words "to the maximum practicable extent"; and (v) removing from paragraph (b)(10)) the words "purchase descriptions limit the competitiveness of the acquisition" and inserting in their place the words "specifications tend to limit the number of responsible sources that can satisfy the requirement."

§ 201-30.012-1 [Amended]

9. Section 201-30.012-1 is amended by (i) inserting in paragraph (a) the word "competitively" between the words "are met" and "at the lowest" and (ii) inserting in paragraph (c)(2)(v) the word "requirements" after the word "noncompatible" and the word "time" between the words "with" and "schedules."

10. Section 201-30.013 is revised to read as follows:

§ 201-30.013 Specifications.

(a) Agencies shall design ADP specifications describing Government requirements to obtain full and open competition from all responsible sources (including manufacturers, leasing companies, third-party vendors, and ADP service contractors) with due regard to the nature of the property or services to be acquired. The type of specification included in a solicitation shall depend on the nature of the agency needs. Functional specifications maximize competition. If functional specifications cannot be used, other types of specifications shall be used in the following order of precedence:

(1) Equipment performance specifications.

(2) Software and equipment plug-to-plug compatible functionally equivalent specifications.

(3) Brand name or equal specifications.

(4) Specific make and model specifications.

(b) Specific make and model type specifications restrict competition. Use of this type of specification must be justified (see § 201-11.002-1).

11. Section 201-30.013-1 (appearing in Temp. Reg. 11) is added to read as follows:

§ 201-30.013-1 Use of functional specifications.

Specifications shall be developed in such a manner as is necessary to maximize, and not limit, competition. Due regard to the nature of the property or services to be acquired may require the use of restrictive provisions or conditions, but only to the extent necessary to satisfy the needs of the agency. Functional specifications are the preferred method of expressing the user's requirements in solicitation documents. The functional specification may be augmented with equipment characteristics and elements of performance when necessary to reflect the user's needs.

PART 201-31—[AMENDED]

1. The authority citation for Part 201-31 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Sections 201-31.002 through 201-31.006 are amended by adding the text appearing in Temp. Reg. 7. As revised, the sections read as follows:

§ 201-31.002 ADP sharing considerations.

(a) *General.* The growth of ADP in the Government has increased sharing opportunities. Sharing these resources may be the most economical and efficient means to satisfy an ADP requirement, but is seldom a substitute for fundamental ADP capabilities needed by an agency. However, several factors tend to diminish the realization of the economic and efficiency potentials in sharing. These factors

include increasing complexities of setting up on another data processing facility (even when the facility has the same versions of the same software), better and cheaper micro and mini computer alternatives, availability of GSA's Teleprocessing Services Program for commercial ADP services, entry of many new time sharing vendors into the Government marketplace, and requirements for security and Privacy Act safeguards. Some data processing facilities, e.g., Federal Data Processing Centers, have a primary mission responsibility of providing ADP services and ADP support services. These facilities are generally characterized by good documentation, a wide range of software, a user assistance staff, and full cost accounting. These services may not be readily available to prospective users if the facility is not routinely sharing its resources.

(b) *Requirement considerations.* Sharing may present a viable alternative for agencies who (1) need greater capacity, (2) want to evaluate expensive software or equipment configurations before acquisition (3) have insufficient ADP requirements to justify a separate facility. Applications such as financial management, statistics, engineering, and mathematics are often good sharing candidates. Applications such as command and control systems, intelligence and law enforcement systems, and systems with special security requirements are often not good sharing candidates.

(c) *Facility considerations.* The workload orientation of a facility may severely limit its potential for sharing. This can be true for facilities (1) which have acute privacy or security implications (e.g., certain IRS, VA, Defense, or SSA facilities), (2) which have special opportunities for fraud (e.g., funds transfer and treasury check disbursing systems), (3) which are dedicated to a single function (e.g., military logistics or weather), and (4) which have been reviewed and determined to be obsolescent.

(d) *Sharing as resource justification.* As provided in OMB Circular A–121, sharing arrangements can be used by the agency providing services in justifications to OMB for resource requests and allocations only in such cases where exceptional circumstances preclude the user agency from using alternative sources. However, the unfunded portion of planned reimbursements arising from equipment and software depreciation may be used for the replacement and augmentation of ADP capital assets provided such usage is in accordance with A–121 provisions.

§ 201–31.003 Governmentwide ADP sharing.

(a) Federal agencies shall be responsible for determining whether their ADP requirements can be efficiently and economically satisfied by using existing resources. OMB Circular A–121, subject: Cost Accounting Cost Recovery and Interagency Sharing, dated September 10, 1980, specifically paragraph 4f, applies.

(b) Federal agencies shall be responsible for determining to what extent their ADP resource systems will be made available to users (see also OMB Circular A–121, paragraph 4a).

(c) Agencies seeking sharing facilities will identify and deal directly with those facilities. Since sharing is a viable alternative for only a portion of ADP requirements (see § 201–31.002), agency procedures for making these determinations shall be oriented toward potential sources of sharing support rather than an exhaustive review of all Federal facilities.

(d) Management officials of agencies who have an interest in sharing their facilities should participate in informal interagency sharing groups. These groups should exchange information concerning the minimum capabilities of their facilities in order to identify their salient characteristics to the potential user, e.g., documentation, user assistance, capabilities, prices, duration, bumping or termination terms.

(e) GSA will facilitate use of existing resources by issuing bulletins from time to time containing information concerning sharing opportunities. GSA will assist in the search for sharing opportunities as needed in time of national emergency or public exigency. Upon request to the parties concerned, GSA will arbitrate disputes concerning prices and services between agencies. Requests may be directed to General Services Administration (KMA), Washington, DC 20405.

(f) GSA will foster the establishment of Federal Data Processing Centers where opportunities and needs for economical and efficient service exist (see § 201–31.010–1).

§ 201–31.004 ADP sharing procedures.

(a) A Federal agency shall not initiate the process of selecting and acquiring ADP resources unless it first makes reasonable efforts to determine that the required ADP capability cannot be met economically and efficiently by using existing ADP resources on a shared, reimbursable basis.

(b) When it is determined that existing resources are capable of meeting an agency's requirement, the agency shall consider this alternative as part of the analysis (see § 201–30.009).

(c) Federal agencies shall first attempt to satisfy their ADP requirements by selectively screening resources of other ADP units in their agency and in other agencies. If the result of screening "targets of opportunity" is unsuccessful, the basis for this determination shall be documented.

(d) Federal agencies are required to include a statement relative to this screening procedure when submitting agency procurement requests (see § 201–23.106).

(e) Sharing of excess data processing capacity by Executive agencies with users from other agencies shall be consistent with the provisions of OMB Circular A–121.

§ 201–31.005 ADP sharing exceptions and exemptions.

(a) Agencies should try to share their ADP resources. However, agencies need not share a system if it does not lend itself to sharing because of the uniqueness of a particular program or mission, or because of the design of the system (see § 201–31.002).

(b) In addition, the following ADP resources are exempt from the requirements for sharing:

(1) ADPE built or modified to special Government design specifications which has no general purpose applicability and is integral to a weapons or space system;

(2) Analog computers; and

(3) ADPE maintenance services.

§ 201–31.006 Reporting of sharing and services obtained from a commercial source.

(a) *Sharing.* (1) ADP sharing (as defined in § 201–2.001) accomplished by data processing facilities (as defined in § 201–2.001) shall be reported by each facility if the total dollar amount charged by a facility to users (as defined in § 201–2.001) other than those which the facility has primary responsibility for supporting exceeds $100,000 during a fiscal year.

(2) Reports of sharing shall be submitted on GSA Form 2068A to the General Services Administration (KHE), Washington, DC 20405, not later than 60 days (November 30) after the close of the fiscal year. Federal agencies may elect to submit reports on a centralized basis at any organization level desired. Each agency shall advise GSA (KHE) of the procedures it will follow:

(b) *Services obtained from a commercial source.* (1) ADP services and ADP support services (as defined in § 201–2.001) shall be reported by each

user (as defined in § 201–2.001) on a call basis specified by GSA (KM), Washington, DC 20405.

(2) Reports of ADP services and ADP support services, to the extent specified in each call, shall be submitted on GSA Form 2068A or other format as requested, to the GSA address specified. At least 60 days will be provided for agencies to respond. Submissions will not be required more often than once per year. Agencies may provide the reports on a centralized basis at any organizational level desired.

(c) *Reports Control.* Intergency reports control number 1106–GSA–AN (currently assigned expiration date: March 31, 1985) has been assigned to this reporting requirement.

3. Sections 201–31.010–1 and 201–31.010–2 are amended by adding the text appearing in Temp. Reg. 7. As revised, the sections read as follows:

§ 201–31.010–1 General.

An FDPC may be established if feasibility studies indicate that one is needed. GSA-operated FDPCs are financed by the ADP Fund. FDPCs operated by other agencies under a delegation of authority may be, but are not necessarily, financed by the ADP Fund. In either instance, the FDPC and the requesting agency will arrange mutually satisfactory means, consistent with OMB Circular A–121, for reimbursing the FDPC for services rendered.

§ 201–31.010–2 Services available from FDPCs.

FDPCs provide many ADP services and ADP support services. GSA, through informational bulletins, will announce the availability of specific services and associated costs.

4. Section 201–31.010–3 is amended by adding paragraph (a) appearing in Temp. Reg. 7. The revised paragraph reads as follows:

§ 201–31.010–3 Point of contact.

(a) Agencies that require any FDPC services that have not been provided through the procedures set forth in § 201–31.004 should contact General Services Administration (KMA), Washington, DC 20405 or the appropriate FDPC.

* * * * *

PART 201–32—[AMENDED]

1. The table of contents of Part 201–32 is amended by revising the entry for 201–32.206; and the authority citation for the part continues to read as follows:

201–32.206 Use of GSA nonmandatory ADP schedule contracts.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 201–32.102 [Amended]

2. Section 201–32.102 is amended by removing from paragraph (a) the words ", subject to the availability of funds."

§ 201–32.106 [Amended]

3. Section 201–32.106 is amended by inserting in the introductory text the words "full and open" between the words "that" and "competition" and removing the words "to the maximum practicable extent" and by removing the citation "§ 201–32.207–1(f)" in paragraph (a) and inserting the citation "§ 201–32.206(f)" in its place.

4. Section 201–32.206 (appearing in Temp. Reg. 6, except for paragraph (h)) is revised to read as follows:

§ 201–32.206 Use of GSA nonmandatory ADP schedule contracts.

(a) *General.* (1) An order placed against a GSA nonmandatory ADP schedule contract (FSC Group 70) under § 201–23.104 is subject to the provisions of this § 201–32.206 and other applicable FIRMR provisions, including Parts 201–24, 201–30, and 201–32.

(2) An order against a GSA nonmandatory ADP schedule contract is placed under competitive procedures when (i) the ordering agency follows the procedures of this § 201–32.206 (but see § 201–11.002–1 where technical and requirements personnel use a specific make and model specification) and (ii) the order provides the lowest overall cost alternative to meet the needs of the Government. However, the use of a GSA nonmandatory ADP schedule contract for requirements available from only one responsible source shall be certified, justified, and approved in accordance with FAR 6.303 and 6.304. If responsible alternative sources are available (see FAR Part 7 for market survey procedures), the availability of items under a GSA nonmandatory ADP schedule contract shall not preclude or waive the requirement to seek (through alternative contracting procedures) the lowest overall cost alternative to meet the needs of the Government. In addition, the availability of those items under a GSA nonmandatory ADP schedule contract shall not preclude or otherwise detract from procuring the items (including peripheral equipment or items for augmenting an existing system) from a number of different sources if this action will be in the best interest of the Government. Any restrictive requirement (e.g., an "all or none" requirement or a requirement for "only new" equipment) shall not be used unless specifically justified.

(3) Suitable equipment or services must be considered whether or not it is on a GSA nonmandatory ADP schedule contract. When an agency is procuring under the blanket delegation of procurement authority provisions of § 201–23.104, the lowest overall cost alternative shall be sought. When using a GSA nonmandatory ADP schedule, an agency shall consider the offerings of a sufficient number of schedule contractors to ensure that its requirements are satisfied at the lowest overall cost to the Government. Alternatively, the agency may choose to prepare a solicitation document in an effort to secure appropriate products and related services at lower overall costs to the Government. Even though the solicitation process consumes time and resources, it may be in the best interest of the Government when:

(i) The expected cost reduction will exceed the added costs of solicitation and contracting;

(ii) There is a reasonable expectation that better offers will be received from suppliers other than the schedule contractor (e.g., "third party" suppliers) for suitable items; or

(iii) The agency requirement cannot be satisfied reasonably by any schedule contractor; e.g., the agency's requirement calls for a customized package of equipment, training services, or other features not offered under the schedule.

(4) An agency shall comply with the synopsis requirements of paragraphs (f) and (g) of this section before placing an order, against a GSA nonmandatory ADP schedule contract.

(b) *Initial acquisition of ADPE.* An order for the initial acquisition of ADPE (whether for purchase or rental) may be placed against a GSA nonmandatory ADP schedule contract provided that both of the following conditions are met.

(1) The order does not exceed any applicable contract maximum order limitation (MOL).

(2) When the purchase price of the items covered (even though rented or leased) exceeds $300,000, a specific delegation of procurement authority (DPA) is obtained. (See §§ 201–23.104–1(b) and 201–23.106.)

(c) *Continued rental of lease or installed ADPE and software.* A GSA nonmandatory ADP schedule contract may be used for the continued lease or rental of installed equipment and software. However, before issuing a renewal order where the schedule purchase price exceeds $300,000, a specific DPA under § 201–23.104 shall be obtained if the results of the Commerce Business Daily (CBD) synopsis indicate

that identical (specific make and model) or suitable substitute equipment is available from a source other than the schedule contract.

(d) *Conversion from lease to purchase of installed ADPE.* A GSA nonmandatory ADP schedule contract may be used for the conversion from lease to purchase of installed ADPE. However, before issuing an order to purchase previously leased ADPE with a net order price for the conversion exceeding $300,000, a specific DPA under § 201–23.104 shall be obtained if the results of the CBD synopsis indicate that identical (specific make and model) or suitable substitute equipment is available from a source other than the schedule contract.

(e) *Acquisition of software and maintenance services.* (1) An order may be placed against a GSA nonmandatory ADP schedule contract for software and maintenance services provided that the order does not exceed any applicable contract MOL.

(2) A GSA nonmandatory ADP schedule contract may contain ADP support services that are limited exclusively to direct support of operating/executive systems and other proprietary software under the contract.

(f) *Synopsis requirements.* (1) The intent to place an order against a GSA nonmandatory ADP schedule contract shall be synopsized in the CBD at least 15 calendar days before placing the order when (i) the purchase price of the equipment (whether purchased or leased) exceeds $50,000, (ii) the software charges (whether annual rate or single charge) exceed $50,000, (iii) the maintenance charges exceed a $50,000 annual rate, or (iv) the total value of any order exceeds $5,000. In calculating the 15 days for synopsizing, notwithstanding the presumption in FAR 5.203(f), the first day shall be the actual date the synopsis appears in the CBD. (In accordance with the Administrator of General Services' determination under Pub. L. 96–577, this synopsis requirement supersedes the requirement in FAR Subpart 5.2 to synopsize orders in excess of $10,000 for 30 days.)

(2) The synopsis should include sufficient information to permit the agency analysis required by paragraph (g) of this § 201–32.206. It shall be prepared and forwarded in accordance with FAR 5.207. The synopsis shall not be unnecessarily restrictive of competition, and as a minimum, and as applicable, it shall include:

(i) A statement that all responsible sources may respond to the synopsis and that all such responses will be fully considered by the agency;

(ii) The name, business address, and telephone number of the contracting officer;

(iii) A request for pricing data;

(iv) A statement that no contract award will be made on the basis of any response to the notice, because the synopsis of intent to place an order against the schedule contract shall not be considered a solicitation document; and

(v) An accurate description of the equipment or services to be ordered, including:

(A) The specific make and model of any equipment to be ordered or maintained;

(B) The name, functional description, and operating environment of any software packages to be ordered;

(C) The quantities, dates required, period of performance, and system/item life;

(D) The support requirement (e.g., hours of maintenance coverage or response times) for the ordered items;

(E) Any restrictive (e.g., "bundled," "only new," or "all or none") requirements that have been justified; and

(F) When converting from lease to purchase of installed ADPE, the amount of the net order price for the conversion.

(3) Publication of contract award information in the CBD is not required when an order is placed against a GSA nonmandatory ADP schedule contract since the schedule contracts are publicized in accordance with FAR Subpart 5.3.

(g) *Actions after the CBD synopsis.* The schedule order synopsis technique provides agencies with both the GSA negotiated schedule prices (derived from discounting prices in the competitive commercial marketplace) and such additional product and cost information as might be submitted by potential nonschedule suppliers in response to the CBD notification. After full consideration of the responses received in response to the CBD notice, the contracting officer must decide whether ordering from a GSA nonmandatory ADP schedule contract, or preparing a solicitation document, results in the lowest overall cost alternative to meet the needs of the Government. Accordingly, the contracting officer shall take one of the following actions:

(1) When no responses are received, the procurement file shall be documented with the results of the CBD synopsis and an analysis that indicates that an order placed against the applicable schedule contract provides the lowest overall cost alternative to the Government.

(2) When a response to the CBD notice is received from either a responsible nonschedule vendor or a schedule contractor (expressing an interest either on or off schedule) for an item(s) that meets the user's requirement, the contracting officer shall take one of the following actions:

(i) Document the procurement file with an analysis that indicates that the respondent's item(s) would not meet the requirement, or that the synopsized schedule item(s) provides the lowest overall cost alternative, and place an order against the synopsized schedule contract;

(ii) Document the procurement file with an analysis that indicates that a responding contractor's schedule offering is the lowest overall cost alternative and place an order against that schedule contract; or

(iii) Document the procurement file with an analysis that indicates that ordering from a GSA nonmandatory ADP schedule may not result in the lowest overall cost alternative to the Government. When this is the case, the contracting officer normally should issue a solicitation document. In this event:

(A) The solicitation should contain terms and conditions substantially the same as those contained in the schedule contract against which the order was to be placed. The addressees of the solicitation shall include the schedule contractor to ascertain any interest in furnishing the item(s) off the schedule. This procedure will permit the schedule vendor to discount the schedule item(s) price under a separate proposal that would not be a "price reduction" in the schedule contract.

(B) The agency shall publicize the procurement in accordance with the provisions of FAR Subpart 5.2.

(C) The contracting officer shall evaluate the offers received. It should be noted that some offerors may not agree to the solicitation terms and conditions that schedule contractors have accepted. The contracting officer shall act in a manner that provides the lowest overall cost alternative to the Government by either awarding a contract based on the offers received in response to the solicitation or placing an order with a schedule contractor. The procurement file shall be documented to reflect the action taken.

(h) *Lowest overall cost alternative order not at lowest price.* If items are to be acquired under a GSA nonmandatory ADP schedule contract at other than the lowest delivered price available for identical or similar items under any GSA nonmandatory ADP schedule contract, an agency shall justify the

action and shall retain the justification and supporting data or submit them to GSA if a specific DPA is required (see § 201–23.106). The following are examples of factors that may be used in support of a justification that an order at other than the lowest delivered price is the lowest overall cost alternative to meet the needs of the Government.

(1) Special features of one item, not provided by comparable items, are required in effective program performance.

(2) An actual need exists for special characteristics to accomplish identified tasks.

(3) It is essential that the item selected be compatible with items or systems already being used.

(4) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated with respect to machine or systems, especially at isolated use points will produce savings over the system/item life which are greater than the difference in order prices.

§ 201–32.206 [Amended]

5. Section 201–32.206 is amended by removing from the last sentence the citation "101–26.502" and inserting in its place the citation "101–26.509."

6. Section 201–32.302–2 is amended by adding paragraph (a) of the clause appearing in Temp. Reg. 1, Supp. 1. The revised paragraph reads as follows:

§ 201–32.302–2 Access to contractor facilities and records—privacy safeguards inspection.

* * * * *

(a) The Government shall be afforded full, free, and uninhibited access to all facilities and installations, and to all technical capabilities and operations, and to all documentation, records, and data bases for the purpose of carrying out a program of inspection to ensure continued efficacy and efficiency of safeguards against threats and hazards to data security, integrity, and confidentiality.

* * * * *

7. Section 201–32.303 is amended by adding paragraphs (a) and (e) appearing in Temp. Reg. 1, Supp. 1. The revised paragraphs read as follows:

§ 201–32.303 Use of the GSA teleprocessing services program (TSP).

* * * * *

(a) *The multiple award schedule (MAS).* (1) GSA periodically establishes a TSP multiple award schedule under which it negotiates contracts which include firm rates for services from the participating firms. An order against a TSP MAS contract is placed under competitive procedures when (i) the ordering agency follows the procedures of this § 201–32.303 (but see § 201–11.002–1 where technical and requirements personnel use a specific make and model specification) and (ii) the order provides the lowest overall cost alternative to meet the needs of the Government. However, the use of the MAS for requirements available from only one responsible source shall be certified, justified, and approved in accordance with FAR 6.303 and 6.304.

(2) These schedule contracts are made available for efficient agency acquisition. The MAS provides for incremental discounts based on each firm's total MAS dollar volume of services delivered Governmentwide. However, for evaluation purposes, individual selections under the MAS will be based on an assumed "zero volume" for each contractor. Agencies will apply the volume discount for each contractor according to the agency's estimated monthly use of the requirement being evaluated. The MAS defines the terms and conditions under which a purchase order placed by an agency will be performed by the contractor selected by that agency. The MAS terms and conditions can be modified only by GSA. Under the provisions of the MSA, a participating firm may modify its service offerings through a MAS modification procedure.

(3) Agencies shall initiate the procedures described in the Teleprocessing Services Program Handbook by notifying TSP MAS firms of their requirements and planned source selection. For all selections under the MAS, an agency has the option of not allocating time for receipt, processing, and distribution of modifications and price reductions, provided it has determined that the procedure will result in the lowest overall cost alternative to meet the needs of the Government and provided the letter of inquiry states that this procedure is applicable. (See § 201–32.303–3(d) which also does not permit modifications.) If an agency chooses to disallow modifications, it must document the procurement file to show why disallowing modifications is more advantageous than allowing modifications, e.g., immediate need of service outweighs the potential for lower pricing. The agency shall make the source selection in accordance with the terms of the MAS and shall evaluate, select a source, and issue a line item, time and resources-used, ceiling-price purchase order. The MAS shall not be used for a dedicated teleprocessing system (see § 201–2.001 for definition) requirement; however, portions of a system such as on-line storage and communication ports may be reserved for exclusive use by a single user or group of users. Dedicated system alternatives should not be confused with dedicated use ADPE or software as provided in § 201–24.209.

* * * * *

(e) *Agency management of TSP services.* (1) Agency management is responsible for controlling costs and taking appropriate action when expenditures for services exceed the estimates and contract ceiling amounts. An essential element in controlling costs is the establishment of procedures to account for and allocate all costs of data processing to the end users according to the services received. Principles for these procedures are set forth in GAO Accounting Pamphlet Number 4 and OMB Circular A–121.

(2) Since the use of TSP services under many TSP basic agreement contracts has substantially exceeded the estimated use and in many instances has resulted in unreasonable and excessive charges compared to the original evaluation, Federal agencies should monitor these contracts on a monthly basis. If the actual use based on expenditures exceeds the projected use by more than 25 percent for two or more consecutive months, a report should be submitted to the requiring official, with a copy to the designated senior official for the agency under the Paperwork Reduction Act. The requiring official should investigate the increased use to determine its cause(s) and develop a plan to correct the situation. Depending upon the extent of the increase, including expected duration, and whether appropriate management action will reduce the use to an acceptable level, it may be necessary for the agency to recompute its requirements. Similar procedures should be implemented for monitoring costs from purchase orders placed under the MAS.

(3) Good agency management of TSP services starts with good planning and the commitment to follow through. Maintaining current requirement specifications, workload estimates, and program packages needed for benchmarking will add flexibility to the ability to locate, respond to, and correct program deficiencies (see also § 201–23.104–5(d)).

8. Section 201–32.303–2 is amended by adding paragraphs (b), (c)(2), (c)(3), and (d) appearing in Temp. Reg. 1, Supp. 1. The revised paragraphs read as follows:

§ 201–32.303–2 Scope of the TSP.

* * * * *

(b) *Excluded TSP services.* Exclusively local batch processing services are excluded.

(c) * * *

(2) Technical assistance/analyst services (TA/AS). Includes limited design and development tasks and technical assistance on the use of vendor-provided software packages. Such service shall be used only when optimizing existing application systems, provided such services are incidental to the teleprocessing services being procured and the cost of the TA/AS does not exceed 10 percent or $100,000 (whichever is less) of the total requirement per year (see also § 201–32.303–2(d);

(3) Use of the TSP firm's premium (extra charge) software packages related to a teleprocessing requirement;

* * * * *

(d) *Limitations on TA/AS.* Technical assistance/analyst services (TA/AS) (paragraph (c)(2) of this section) have TSP acquisition dollar limitations that are reflected in both the MAS and BA. Procurement of TA/AS services that exceed the established limitations or that are for purposes other than those stated in paragraph (c)(2) above should be on a full and open competition basis (see also § 201–32.304). The dollar limitation of each teleprocessing requirement is 10 percent of the total value of the requirement per fiscal year, not to exceed $100,000 per year. The requiring agency shall obtain authorization from the GSA TSP contracting officer before placing a purchase order under the MAS or awarding a contract under the BA that includes requirements that are estimated to exceed the above limitations.

* * * * *

9. Section 201–32.303–3 is amended by adding paragraphs (b)(3), (b)(4), (c), and (d) appearing in Temp. Reg. 1, Supp. 1 and revising paragraph (d). The revised paragraphs read as follows:

§ 201–32.303–3 Procedures for acquiring TSP Services.

* * * * *

(b) * * *

(3) Benchmarks are required for TSP requirements that exceed $500,000 per year unless the procuring agency determines that analytical techniques such as paper/technical evaluations will provide the accuracy needed for cost evaluation. The complexity of a benchmark or an analytical technique should be scaled to the value and complexity of the associated procurement. Benchmarks or analytical techniques may be used for annual requirements between $100,000 and $500,000. In this dollar range, minimal benchmarks (functional and/or scenario tests using vendor application software packages, etc.) should be used to the maximum practicable extent. The use of benchmarks for requirements under $100,000 annually is not normally cost effective; however, a minimal benchmark may be used if an agency determines that a benchmark is needed as a reasonable basis for cost validation. The agency's benchmark package for requirements over $500,000 annually shall be available to offerors at least 45 calendar days before benchmark performance. However, if the agency is procuring services to fulfill an urgent requirement, a shorter availability period may be specified. The selection of the benchmark workload is critical to the source selection because it will exercise the contractor's billing algorithm, a significant factor in cost determination.

(4) For selections under the MAS, prices, rates, and discounts applied in the calculation of the system life cost shall conform to the terms of the schedule agreement. Related ADP support service costs for selections under the MAS, except for conversion services and system design and programming, shall be derived directly from the price list.

* * * * *

(c) *Low cost procurement.* When the system life estimated cost does not exceed $25,000, the MAS method provides a simplified procedure that agencies may use for selecting teleprocessing services. Requirements shall not be fragmented in order to circumvent normal TSP procedures.

(d) *Abbreviated procedures.* When the annual cost is not expected to exceed $50,000, an agency may elect to use a special abbreviated procedure under the MAS. This abbreviated procedure permits considering a sufficient number of MAS contractors that the selecting agency's contracting officer deems necessary to ensure that the requirement is met at the lowest overall cost alternative to meet the needs of the Government. This abbreviated procedure does not allow letters of interest, modifications of any type, or benchmarking. The technically acceptable MAS evaluated as the lowest overall cost alternative, price and other factors considered, shall be selected from the MAS contractors.

* * * * *

PART 201–38—[AMENDED]

1. The table of contents of Part 201–38 is amended by revising the entries for §§ 201–38.010, 201–38.012, and 201–38.014–1; and the authority citation for the part continues to read as follows:

201–38.010 Analysis of data communications requirements.
201–38.012 Use of functional telecommunications system specifications.
201–38.014–1 Submission of requirements to GSA.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–38.010 is amended by revising the section heading and adding the text appearing in Temp. Reg. 9. As revised, the section reads as follows:

§ 201–38.010 Analysis of data communications requirements.

Agencies should develop a plan that will ensure adequate service before they lease or purchase any intercity communication facilities. Agency plans and associated actions should be based on the findings of a determination of need and requirements analysis, and a comparative cost analysis.

(a) *Determination of need and requirements analysis.* The acquisition of new or additional telecommunications capabilities shall be based on program needs that flow from mission requirements. These needs may be expressed in the form of deficiencies in existing capabilities, new or changed mission requirements, or opportunities for increased economy and efficiency. In any event, the needs shall be supported by a requirements analysis commensurate with the size and complexity of the need.

(b) *Analysis of alternatives.* A comparative cost analysis shall be performed for each requirement to determine which alternative will meet the user's needs at the lowest overall cost, price and other factors considered, over the system/service life.

(c) *Common use systems.* Agencies shall consider use of available consolidated services. GSA and the Defense Communications Agency (DCA) provide economical communications services to Federal agencies by obtaining resources in bulk quantities from commercial carriers. Economy of scale discounts are available under the DCA's Multiplex service and GSA's Consolidated DATACOM Network, the Federal Telecommunications System (FTS), and through the value added network (VAN) billing program.

§ 201–38.011 [Amended]

3. Section 201–38.011 is amended by removing the word "and" and inserting in its place "of" in the last sentence in paragraph (c).

4. Section 201–38.012 (appearing in Temp. Reg. 11) is added to read as follows:

§ 201–38.012 Use of functional telecommunications system specifications.

(a) Functional telecommunications system specifications shall be used where possible. Agency telecommunications specifications shall not be limited to tariff descriptions. Where applicable, requirements shall be set forth in a manner that will permit all responsible tariff and nontariff suppliers to submit offers.

(b) The fact that a tariffed carrier can provide the required service and/or equipment does not by itself constitute justification to order from the tariffed carrier.

(c) Section 201–40.007 sets forth requirements concerning telecommunications solicitations.

5. Sections 201–38.014–1, 201–38.014–2, and 201–38.014–3 are amended by adding the text appearing in Temp. Reg. 4. As revised, the sections read as follows:

§ 201–38.014–1 Submission of requirements to GSA.

Agency telecommunications requirements shall be submitted to the General Services Administration (GSA) in accordance with procedures outlined in § 201–39.006 unless the agency requirement is exempt under those provisions. If the agency requirement is exempt under § 201–1.103 or if GSA determines that service, efficiency and the least overall cost to the Government is best achieved through direct agency action, the agency will be authorized to contract to satisfy the requirement and shall follow the procedures specified in §§ 201–11.003–1, 201–11.003–2, and 201–24.304. Costs and other factors that will be considered include all costs of service delivery, administrative and engineering support activities, and service requirements associated with items such as national security, emergency preparedness, connectivity, management and control. Service shall include the satisfaction of national security, emergency preparedness, connectivity, management and control in addition to basic service delivery.

§ 201–38.014–2 GSA actions.

(a) GSA will assess the efficiency, service, and cost of using the Federal Telecommunications System (FTS) and other common user services or systems. If GSA determines that it is in the best interest of the Government to use common user systems, GSA will make the necessary arrangements. GSA will document the file to show the basis for the determination, with primary emphasis on cost considerations. GSA also may elect to provide telecommunications on behalf of the agency where it determines that this action is economical and in the interest of the Government.

(b) If an agency submits a request to GSA to use an alternative to the FTS for some or all of its voice long distance needs, GSA will assess the efficiency, service, and cost of the proposal. GSA will consider the proposal's total costs to the Government, compared to the total costs to the Government in meeting the agency's needs using (1) the FTS, (2) the lowest cost commercial offerings on the public network, or (3) other alternatives, as applicable. GSA will make a determination for a preferred option within the time periods as specified in §§ 201–39.007.1 and 201–39.007.2, as applicable.

§ 201–38.014–3 Review of proposed determinations by the Office of Management and Budget.

(a) In the absence of mutual agreement between GSA and the agency concerned, proposed GSA determinations with respect to a specific agency long distance voice telecommunications requirement submission to GSA shall be subject to review and decision by OMB. When these matters are submitted to OMB for resolution, the submitting agency (GSA or the agency concerned) shall submit copies of the submission and all relevant data and information to the other party.

(b) The Administrator of General Services has authorized the Office of Management and Budget (OMB) to review and decide, based on economy, efficiency or service, the manner in which agency requirements referred to in paragraph (a) of this § 201–38.014–3 shall be satisfied.

6. Section 201–38.017 is amended by adding the text appearing in Temp. Reg. 4. As revised, the section reads as follows:

§ 201–38.017 GSA provided service through the FTS.

When GSA provides local telephone and/or intercity telephone services to Federal agencies, GSA will assume the responsibility of meeting all agency requirements. Agencies shall notify GSA of any changes desired at these locations through the use of Standard Form (SF) 145. The SF 145 is generally sent to the local GSA supervisor at the serving location. (See Part 201–41.)

PART 201–39—[AMENDED]

1. The authority citation for Part 201–39 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–39.002–3 is amended by adding the text appearing in Temp. Reg. 8. As revised, the section reads as follows:

§ 201–39.002–3 Data, facsimile, and records telecommunications services.

(a) These services are installation, replacement, relocation, removal, or use of intercity network data, facsimile, and record telecommunications services or facilities that exceed $50,000 in annual lease or purchase cost. Data, facsimile, and record transmission channels or equipment, either electrically, electronically, or acoustically coupled and multiplexing facilities, regardless of transmission speed are included.

(b) Local data, facsimile, or record telecommunications requirements are not included.

(c) Requirements where dedicated access to the FTS intercity voice network or to FTS local service systems are included, regardless of cost.

3. Section 201–39.006–1 is amended by revising paragraph (a) and adding a chart for the end of the section, as follows:

§ 201–39.006–1 Local telephone service submissions.

(a) Requests for local telephone service shall include appropriate information as set forth in the chart entitled "Required Information for Changes in Telephone Service." The chart appears at the end of this § 201–39.006–1.

* * * * *

REQUIRED INFORMATION FOR CHANGES IN TELEPHONE SERVICES

[Chart referenced in § 201–39.006–1(a)]

If—	Submit—
1. Making any submission that is a major local service change as described at § 201–39.002–1.	1. The agency's name and address (including street, city, state, and ZIP code).

REQUIRED INFORMATION FOR CHANGES IN TELEPHONE SERVICES—Continued

[Chart referenced in § 201-39.006-1(a)]

If—	Submit—
2. Installing/changing, etc., a PBX/Centrex or similar system.	2. The name and telephone number of the person to contact. 3. A brief statement describing the particular request; e.g., "This is a 200 main station addition to an existing PBX." 4. As appropriate, a copy of a recent month's itemized equipment statement and actual cost, including mileage charges, number of operating positions, consoles, Central Office (C.O.) circuits, tielines, L.D. circuits, FTS circuits, main and extension stations, power plant, off-premise mileage, and other pertinent details. 1. The make/model or equivalent of the present system. 2. The type of ownership (lease or purchase) and estimated annual cost. 3. System life projection. 4. Annual maintenance and repair cost. 5. Telephone operator cost, number of persons, and annual salaries. 6. OPX mileage and cost for each OPX location served. 7. Space requirements. 8. Total termination liability and expiration date. 9. Main station capacity. 10. Number of stations installed, main and extension. 11. Number and type of circuits and monthly cost of: C.O., tielines, WATS, FTS, other. 12. Number and type of attendant positions. 13. Proposed system functional characteristics.
3. Changing an ACD system	1. Number of positions, trunks, or circuits by type, for supervisory consoles. 2. The name of the geographical area to be served. 3. Statement (Yes or No) indicating that the monitoring, service observing, or listening-in features of the ACD will be removed or disabled at the time of installation. If "No", agencies must certify that the provisions of § 201-6.2 have been met.
4. Adding or revising tielines between PBX or like systems	1. Number of calls per day and percent of calls during busy hour. 2. Monthly cost for tieline and terminal equipment. 3. Nonrecurring cost.
5. Adding or changing FTS intercity or inter-exchange service.	1. Estimate the daily number of intercity calls by destination. 2. Provide information described at § 201-39.006-3 as appropriate.

4. Section 201-39.006-4 is amended by adding the text appearing in Temp. Reg. 9, by revising paragraphs (c)(3)(i) and (c)(5), and by adding paragraph (c)(3)(iii). As revised, the section reads as follows:

§ 201-39.006-4 Data, facsimile, and record telecommunications services submissions.

(a) Agencies requiring intercity data, record, of facsimile transmission network services or facilities that exceed $50,000 in annual lease or purchase cost (major changes and new installations as described in § 201-39.002-3) shall submit an Agency Telecommunications Request (ATR) to the General Services Administration (KMAS), Washington, DC 20405. The ATR shall include the information as set forth in paragraph (c) of this § 201-39.006-4. Local data, record, or facsimile telecommunications requirements do not require GSA review and approval.

(b) Public Law 96-511 (the Paperwork Reduction Act of 1980) directs each executive agency head to designate a senior official (officials in DOD) reporting to the agency head to be responsible for implementing the Act. This designated senior official in each agency shall advise GSA in writing of the position, title, and organization identity of those officials who have been authorized to submit ATRs to GSA. The designated senior official shall keep the listing current. (A change of incumbent in an unchanged position and organizational assignment does not require notification.) Listings shall be submitted to the General Services Administration (KMAS), Washington, DC 20405.

(c) Agency telecommunications request (ATR) submissions for intercity data transmission facilities or services required by paragraph (a) of this § 201-39.006-4 shall be prepared as follows:

(1) *Agency Information:* Provide agency name, address, and names and telephone numbers of appropriate agency technical and contracting points of contact.

(2) *Project Title and Description:* (i) Provide the project title and a brief but specific description of the primary agency program(s) that the required telecommunications resources will support.

(ii) Provide a brief but specific description of the current intercity data telecommunications transmission facilities (including major systems components) and services currently supporting the program(s).

(iii) Provide a brief but specific description of the intercity data telecommunications transmission facilities (including major systems components) and services requirements to be acquired. Include a network diagram, if appropriate, or such other pertinent information agencies may wish to present that will enable GSA to understand the requirement. This description should reflect resources required for system expansion (i.e., anticipated augmentation and other major system modifications) during the system life if such requirements will be included in the solicitation document as evaluated options.

(3) *Acquisition strategy:* (i) Indicate whether or not the proposed procurement approach is to satisfy a requirement using a specific make and model specification. Specify the type of contract expected to be used. Indicate whether GSA multiyear contracting authority is required.

(ii) Identify by fiscal year quarter the planned milestone dates for

(A) release of solicitation document and

(B) contract award.

(iii) Indicate whether the acquisition plan contemplates contracting (see FAR 7.104(c)) under policies and procedures for:

(A) Full and open competition (see FAR Subpart 6.1);

(B) Full and open competition after exclusion of sources (see FAR Subpart 6.2); or

(C) Other than full and open competition (see FAR Subpart 6.3). In addition, provide the applicable statutory contracting authority cited in FAR 6.302-1 through 6.302-7 permitting the use of such procedures.

(4) *Estimated Contract Life and Cost:* Identify the estimated contract cost of the acquisition (not the overall systems life cost) for the contract life. Include all anticipated optional quantities, services, and periods. Detailed cost breakdowns may be included when necessary to describe clearly the estimated costs. The estimated contract cost (for all years) should correspond to the planned contract life.

Note.—The GSA approval resulting from the submission will be limited to quantities and years described herein.

(5) *Regulatory compliance:* (i)(A) Provide a statement which indicates that the agency has reviewed and complied (or will comply) with all applicable regulations, or

(B) List those deviations to the regulations that apply to this request for which approval is sought and provide an explanation for each regulatory deviation request (see Subpart 201–1.4).

(ii) Provide the date of completion or most recent update of the following documentation or indicate not applicable:

(A) Requirements analysis (see § 201–38.010(a));

(B) Analysis of alternatives (see § 201–38.010(b)); and

(C) Certified data supporting any use of a specific make and model specification as required by § 201–11.002–1; and certified data supporting a contemplated requirement available from only one responsible source (see § 201–11.002(b)).

(6) *Agency/GSA references:* Provide references to previous GSA FPMR approvals (including previous GSA case number), meetings, telephone discussions, etc.

(7) *Agency authorized signature, position title, organizational identity, date:* Provide these data.

Note.—GSA will process only those agency submissions signed by an authorized official. See paragraph (b) of this § 201–39.006–4.

5. Section 201–39.006–5 is amended by adding the text appearing in Temp. Reg. 9. As revised, the section reads as follows:

§ 201–39.006–5 GSA common user data communication system submissions.

Agencies that plan to use GSA common user data communication systems shall provide the following information only when dedicated network access is required:

(a) A list of all network dedicated locations;

(b) An estimate of the peak transmission rate to and from each dedicated location in bits per second (bps), characters per second (cps), or facsimile pages per minute; and

(c) A description of the network conditioning, security, accuracy, and error detection required.

6. Section 201–39.007–3 is amended by adding the text appearing in Temp. Reg. 9. As revised, the section reads as follows:

§ 201–39.007–3 Action on data telecommunication service submissions.

GSA will normally base its review only on the information provided in the ATR submission under § 201–39.006–4. However, when necessary, GSA will conduct a more in-depth review before approving an ATR. In some instances, this may require the submission of additional information. In this regard, GSA reserves the right to review agency actions implementing any requirements described in § 201–39.002–3. Documentation shall be made available for review upon request of GSA officials. (Documentation should be retained in agency files for such periods as required by applicable law or regulation.)

PART 201–40—[AMENDED]

1. The table of contents of Part 201–40 is amended by revising the entry for § 201–40.006; and the authority citation for the part continues to read as follows:

201–40.006 Use of GSA nonmandatory telecommunications schedule contracts.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 201–40.002–1 is amended by adding the text appearing in Temp. Reg. 4. As revised, the section reads as follows:

§ 201–40.002–1 GSA acquisition of agency systems.

The following provisions apply when GSA performs a system acquisition on behalf of an agency.

(a) *Agency responsibilities.* The requiring agency shall—

(1) Prepare the documentation using criteria discussed in § 201–40.007;

(2) Prepare or assist GSA in the preparation of the technical portion of the solicitation document;

(3) Provide technical and contracting personnel, as required, to be members of the procurement team;

(4) Prepare or assist GSA in the preparation of the selection plan and submit it to the contracting officer prior to the issuance of the solicitation documents;

(5) Assist GSA in the technical evaluation of proposals;

(6) Provide GSA with copies of all correspondence between the agency and offerors;

(7) Assist GSA in performing the economic evaluation of proposals;

(8) Assist in writing any determination of findings, or provide a justification to support the contracting procedure when necessary;

(9) Provide GSA with administrative information; e.g., financial data (paying office, fund citation, etc.), contract distribution list, and name of agency contracting officer;

(10) Participate in the negotiation;

(11) Assist GSA in debriefing offerors, if necessary;

(12) Place the delivery order, if applicable, and

(13) Administer the contract when it is transferred to the agency.

(b) *GSA responsibilities.* As necessary for the specific acquisition, GSA will—

(1) Form the procurement team, including technical, contracting, and economic analysis personnel. If the agency does not have qualified technical personnel, GSA will prepare the technical portion of the solicitation document;

(2) Prepare the solicitation document;

(3) Act as the point of contact between the Government and offerors, including the execution or approval of all correspondence between the Government and any offerors, receiving proposals from offerors, and providing copies of all offers to the agency;

(4) Perform the economic evaluation of proposals;

(5) Participate in the technical evaluation of proposals;

(6) Perform evaluations, including attendance at demonstrations, to determine the technical capability of the items offered;

(7) Conduct negotiations, as necessary, notify offerors when proposals are unacceptable, and prepare determinations and findings, as necessary;

(8) Ensure that the agency is informed of all procurement activities, including the reporting of results of negotiations and providing draft copies of the contract to the agency;

(9) Award and distribute the contract, including the transmission of all pertinent documents to the successor contracting officer appointed by the agency; and

(10) Debrief offerors, as necessary.

3. Sections 201–40.006, 201–40.007, and 201–40.007–1 are amended by adding the text appearing in Temp. Reg. 4. As revised, the sections read as follows:

§ 201–40.006 Evaluation of acquisition alternatives.

The method of contracting for telecommunications requirements shall be determined after consideration of the relative merits of the alternative methods available; i.e., purchase, lease, or lease-with-option-to-purchase. A comparative cost analysis of the alternative methods shall be performed to determine which method provides the

Government with the lowest overall cost over the total systems life (see also § 201–24.305). Particular attention in the cost analysis should be given to two-tier pricing mechanisms where recovery of facilities and equipment capital investment is treated in a different manner than the labor intensive elements of the price.

§ 201–40.007 Solicitations.

(a) Agencies shall prepare solicitations in accordance with applicable FAR provisions and this § 201–40.007. Upon request, GSA will provide assistance in developing solicitation packages and will help agencies in the solicitation process. Section 201–40.002–1 provides guidelines for agencies when GSA performs the contracting on behalf of an agency.

(b) The solicitation shall identify all evaluation factors that are to be considered. It shall include mandatory requirements and, where applicable, evaluated optional features. If evaluated optional features (see § 201–2.001 for definition) are included, relative weights (expressed in dollar values, points, or any other reasonable indicators that describe the relative importance) shall be assigned to these features.

(c) To assist agency personnel in reviewing proposals, the contracting office shall prepare a selection plan prior to issuing the solicitation.

§ 201–40.007–1 Use of GSA model solicitation for PBX systems.

GSA has developed a model solicitation package for PBX systems that is available to agencies upon request from General Services Administration (KET), Washington, DC 20405.

4. Section 201–40.008 is amended by adding the text appearing in Temp. Reg. 4. As revised, the section reads as follows:

§ 201–40.008 Use of GSA nonmandatory telecommunications schedule contracts.

(a) *General.* (1) An order placed against a GSA nonmandatory telecommunications schedule contract (FSC Group 58) is subject to the provisions of this § 201–40.008 and other applicable FIRMR provisions, including Parts 201–24, 201–38 and 201–40.

(2) An order against a GSA nonmandatory telecommunications schedule contract is placed under competitive procedures when (i) the ordering agency follows the procedures of this § 201–40.008 (but see § 201–11.002–1 where technical and requirements personnel use a specific make and model specification) and (ii) the order provides the lowest overall cost alternative to meet the needs of the Government. However, the use of a GSA nonmandatory telecommunications schedule contract for requirements available from only one responsible source shall be certified, justified, and approved in accordance with FAR 6.303 and 6.304. If responsible alternative sources are available (see FAR Part 7 for market survey procedures), the availability of items under a GSA nonmandatory telecommunications schedule contract shall not preclude or waive the requirement to seek (through alternative contracting procedures) the lowest overall cost alternative to meet the needs of the Government. Any restrictive requirements (e.g., a requirement for "only new" equipment or unique features) shall not be used unless specifically justified.

(3) Suitable equipment of services must be considered whether or not it is on a GSA nonmandatory telecommunications schedule contract. The lowest overall cost alternative shall be sought. When using a GSA nonmandatory telecommunications schedule, an agency shall consider the offerings of a sufficient number of schedule contractors to ensure that its requirements are satisfied at the lowest overall cost to the Government. Alternatively, the agency may choose to prepare a solicitation document (see § 201–40.007) in an effort to secure appropriate products and related services at lower overall costs to the Government. Even though the solicitation process consumes time and resources, it may be in the best interest of the Government when:

(i) The expected cost reduction will exceed the added costs of solicitation and contracting;

(ii) There is a reasonable expectation that better offers will be received from suppliers other than the schedule contractor for suitable items; or

(iii) The agency requirement cannot be satisfied reasonably by any telecommunications schedule contractor; e.g., the agency's requirement calls for a customized package of equipment, training services, or other features not offered under the schedule.

(4) An agency shall comply with the synopsis requirements of paragraphs (b) and (c) of this section before placing an order against a GSA nonmandatory telecommunications schedule contract.

(5) An order under a GSA nonmandatory telecommunications schedule contract shall not exceed any applicable contract maximum order limitation (MOL).

(b) *Synopsis requirements.* (1) The intent to place an order against a GSA nonmandatory telecommunications schedule contract shall be synopsized in the CBD at least 15 calendar days before placing the order when (i) the purchase price of the equipment (whether purchased or leased) exceeds $50,000, (ii) the maintenance charges exceed a $50,000 annual rate, or (iii) the total value of any order exceeds $50,000. In calculating the 15 days for synopsizing, notwithstanding the presumption in FAR 5.203(f), the first day shall be the actual date the synopsis appears in the CBD. (In accordance with the Administrator of General Services' determination under Public Law 98–577, this synopsis requirement supersedes the requirement in FAR Subpart 5.2 to synopsize orders in excess of $10,000 for 30 days.)

(2) The synopsis should include sufficient information to permit the agency analysis required by paragraph (c) of this section. It shall be prepared and forwarded in accordance with FAR 5.207. The synopsis shall not be unnecessarily restrictive of competition, and as a minimum, and as applicable, it shall include:

(i) A statement that all responsible sources may respond to the synopsis and that all such responses will be fully considered by the agency;

(ii) the name, business address, and telephone number of the contracting officer;

(iii) A request for pricing data;

(iv) A statement that no contract award will be made on the basis of any response to the notice, because the synopsis of intent to place an order against the schedule contract shall not be considered a solicitation document; and

(v) An accurate description of the equipment or services to be ordered, including:

(A) The specific make and model of any equipment to be ordered or maintained;

(B) The quantities, dates required, period of performance, and system/item life;

(C) The support requirements (e.g., hours of maintenance coverage, response times) for the ordered items;

(D) Any restrictive requirements that have been justified;

(E) When converting from lease to purchase of installed telecommunications equipment, the amount of the net order price for the conversion.

(3) Publication of contract award information in the CBD is not required when an order is placed against a GSA nonmandatory telecommunications schedule contract since the schedule contracts are publicized in accordance with FAR Subpart 5.3.

(c) *Actions after the CBD synopsis.* The schedule order synopsis technique provides agencies with both the GSA negotiated schedule prices (derived from discounting prices in the competitive commercial marketplace) and such additional product and cost information as might be submitted by potential nonschedule suppliers in response to the CBD notification. After full consideration of the responses received in response to the CBD notice, the contracting officer must decide whether ordering from a GSA nonmandatory telecommunications schedule contract, or preparing a solicitation document, results in the lowest overall cost alternative to meet the needs of the Government. Accordingly, the contracting officer shall take one of the following actions:

(1) When no responses are received, the procurement file shall be documented with the results of the CBD synopsis and an analysis that indicates that an order placed against the applicable schedule contract provides the lowest overall cost alternative to the Government.

(2) When a response to the CBD notice is received from either a responsible nonschedule vendor or a schedule contractor (expressing an interest either on or off schedule) for an item(s) that meets the user's requirement, the contracting officer shall take one of the following actions:

(i) Document the procurement file with an analysis that indicates that the respondent's item(s) would not meet the requirement, or that the synopsized schedule item(s) provides the lowest overall cost alternative, and place an order against the synopsized schedule contract;

(ii) Document the procurement file with an analysis that indicates that a responding contractor's schedule offering is the lowest overall cost alternative and place an order against that schedule contract; or

(iii) Document the procurement file with an analysis that indicates that ordering from a GSA nonmandatory telecommunications schedule may not result in the lowest overall cost alternative to the Government. When this is the case, the contracting officer normally should issue a solicitation document. In this event:

(A) The solicitation should contain terms and conditions substantially the same as those contained in the schedule contract against which the order was to be placed. The addressees of the solicitation shall include the schedule contractor to ascertain any interest in furnishing the item(s) off the schedule. This procedure will permit the schedule vendor to discount the schedule item(s) price under a separate proposal that would not be a "price reduction" in the schedule contract.

(B) The agency shall publicize the procurement in accordance with the provisions of FAR Subpart 5.2.

(C) The contracting officer shall evaluate the offers received. It should be noted that some offerors may not agree to the solicitation terms and conditions that schedule contractors have accepted. The contracting officer shall act in a manner that provides the lowest overall cost alternative to the Government by either awarding a contract based on the offers received in response to the solicitation or placing an order with a schedule contractor. The procurement file shall be documented to reflect the action taken.

(d) *Lowest overall cost alternative order not at lowest price.* If items are to be acquired under a GSA nonmandatory telecommunications schedule contract at other than the lowest delivered price available for identical or similar items under any GSA nonmandatory telecommunications schedule contract, an agency shall justify the action and shall retain the justification and supporting data. The following are examples of factors that may be used in support of a justification that an order at other than the lowest delivered price is the lowest overall cost alternative to meet the needs of the Government.

(1) Special features of one item, not provided by comparable items, are required in effective program performance.

(2) An actual need exists for special characteristics to accomplish identified tasks.

(3) It is essential that the item selected be compatible with items or systems already being used.

(4) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated with respect to machines or systems, especially at isolated use points will produce savings over the system/item life which are greater than the difference in order prices.

Appendix A—[Amended]

1. Appendix A to Chapter 201 is amended by removing Temp. Regs. 1 (Supp. 1), 2 (Supp. 1), 4, 5, 6, 7, 8, 9, and 11.

Dated: June 25, 1985.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85-15065 Filed 6-28-85; 8:45 am]

BILLING CODE 6820-25-M

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federal register

Monday
July 1, 1985

Part IV

Environmental Protection Agency

40 CFR Part 600

Fuel Economy Test Procedures; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 600

[AMS-FRL-2839-5B]

Fuel Economy Test Procedures; CAFE Adjustments To Compensate for Changes in 1975 Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule grants Corporate Average Fuel Economy (CAFE) adjustments to compensate for the effects of past test procedure changes. The CAFE adjustments are calculated for each manufacturer to directly compensate for the CAFE impact each manufacturer experienced as a result of the test procedure changes. Additionally, this rule grants fuel economy adjustments to compensate for the effects of test procedure changes on fuel economy results used for the purpose of assessing Gas Guzzler Taxes on 1981 and later model types. This rule also establishes the procedures which the Agency will follow in providing notice and opportunity for public participation in determining CAFE and gas guzzler adjustments for any future test changes. Finally, revised test vehicle mileage accumulation limits are established by this rule to maintain the stringency of the CAFE standards in future model years.

DATE: This final rule is effective July 31, 1985.

ADDRESS: Copies of material relevant to this rulemaking are contained in public docket no. A–83–44 at the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Whitehead, Certification Policy and Support Branch, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668–4403.

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy and Conservation Act (EPCA) requires that manufacturers' average fuel economies for passenger automobiles meet minimum standards in the 1978 and later model years, 15 U.S.C. 2001 *et seq.* These standards are the Corporate Average Fuel Economy (CAFE) standards. Since the stringency of the standards is a function of the test used to determine compliance, section 503(d) of EPCA specifies that EPA should determine each manufacturer's CAFE value using the test procedures and practices that EPA had used for the 1975 model year, or procedures which would yield "comparable results." Any change to the test procedures used by EPA for the 1975 model year which would necessarily result in a systematically lower average fuel economy than that measured by the 1975 model year procedures would increase the stringency of the CAFE standards. Conversely, any change that would necessarily result in a higher average fuel economy than that measured by the 1975 model year procedures would decrease the stringency of the CAFE standards. In either case, since EPA is not authorized to change the stringency of the CAFE standards through test procedure changes, a CAFE adjustment may be warranted.

After 1975, EPA made several test procedure changes to improve the ability of the test to predict actual fuel economy improvements to keep up with technological advances and to minimize test-to-test variability. In January 1982, the United States Court of Appeals for the Sixth Circuit ordered EPA to initiate rulemaking proceedings concerning procedures for establishing CAFE adjustment values. EPA responded by issuing a Notice of Proposed Rulemaking (NPRM) (48 FR 56526) on December 21, 1983, which proposed to apply an industry-wide CAFE adjustment of 0.2 miles per gallon (mpg) for passenger automobiles of 1980 and later model years to account for the effects of past changes in test procedures.

EPA also proposed that whenever new test procedure changes are implemented, EPA would determine whether CAFE adjustments are warranted by assessing all test changes and their industry-wide impact on CAFE results, and adjust CAFE results for any significant CAFE penalty imposed on a representative fleet. A "significant CAFE penalty" was defined as any change or group of changes that has at least a tenth of an mpg effect on CAFE results.

Since the Energy Tax Act of 1978 which imposes the "gas guzzler tax" also mandates use of EPA's 1975 model year test procedures or procedures yielding comparable results (26 U.S.C. 4064(c)(1), EPA additionally proposed a 0.2 mpg increase to the model type combined fuel economy for purposes of assessing the taxes on 1981 and later model types.

On December 7, 1984, EPA issued a supplement (49 FR 48024) to the December 21, 1983 NPRM. The supplemental NPRM proposed additional CAFE adjustments to compensate for test procedure changes which EPA had not considered previously. Industry-wide CAFE adjustments for the 1980 and later model years were proposed to account for the effects of changes in test fuel properties. Also, an industry-wide CAFE adjustment of 0.4 mpg was proposed for the 1981 model year to compensate for fuel efficient oils improvements which were not reflected in the fuel economy tests for that model year.

The intent of these proposals was to provide a CAFE adjustment in those circumstances where a systematic change in the test results, and thus in the stringency of the CAFE standards, would necessarily result from adoption of a revised procedure. However, consistent with past rulemakings and policy statements by EPA, no CAFE credit was proposed for procedure changes whose effect was to limit a manufacturer's ability to gain increases in its measured CAFE without increasing actual fuel economy by taking advantage of flexibilities that had existed in the 1975 test procedure. Closing such loopholes in fact yielded "comparable results" and thus maintained the stringency of the CAFE standards, since the fuel economy estimates on which Congress based the CAFE standards were generated before manufacturers had the incentive to use the flexibilities in the 1975 procedures. Similarly, no CAFE *debit* was proposed for changes which improved the ability of the test procedures to detect real fuel economy gains. Such test changes appropriately benefited those manufacturers which adopted fuel economy-improving design innovations, as Congress intended in establishing the CAFE standards.

For a comprehensive description of the background relating to this rulemaking, please refer to the preambles of the December 21, 1983 NPRM and the December 7, 1984 supplemental NPRM. In addition, a detailed discussion of the issues pertaining to this rulemaking is contained in the Summary and Analysis of Comments which is available in the public docket.

II. General Description of the Final Rule

The rules promulgated here today have the following provisions:

A. CAFE adjustment equations are established and made applicable to 1980 and later model years passenger automobile CAFE's to account for test procedure changes which involved

distance measurement, inertia weight categories, dynamometer controllers, laboratory humidity, exhaust gas samplers, test fuel properties and energy efficient oils. The equations provide CAFE adjustments by model year on a manufacturer-specific basis. The results of EPA's calculation of CAFE adjustments applying to specific manufacturers for the 1980 through 1984 model years are shown in Appendix A to this preamble. The adjustments were calculated and applied to each manufacturer's unadjusted CAFE prior to rounding to the nearest 0.1 mpg. (EPA calculated CAFE adjustments and revisions only for manufacturers whose CAFE's for past model years have been confirmed; revised CAFE's will be calculated for other manufacturers once their past CAFE's are confirmed.)

B. This rule defers final action on light truck CAFE adjustments; therefore, no light truck CAFE adjustments are granted by this rule. Light truck CAFE adjustments are addressed in a notice of proposed rulemaking appearing elsewhere in this issue of the Federal Register.

C. For the purpose of assessing the gas guzzler tax for 1980 and later model years, the CAFE adjustment equations are also made applicable to model type combined fuel economy values to account for past test procedure changes' effect on fuel economy test results.

D. All fuel economy test results used for passenger automobile CAFE calculations shall be adjusted to the approximate fuel economy test results at 4,000 miles if the test vehicle has accumulated more than 6,200 miles. This requirement will be effective beginning with the 1987 model year.

E. Regulations are adopted for calculating 1985 and later model year CAFE adjustments for the procedure changes addressed in the rulemaking. The methodology adopted is consistent with that used for calculating the 1980 through 1984 adjustments.

F. Regulations are also established for determining the CAFE effect of future test procedure changes. The procedure being adopted will consider each test procedure change and provide appropriate CAFE adjustments.

III. Discussion of Issues and Comments

The Summary and Analysis of Comments, as placed in the public docket, presents detailed explanations of the issues, summaries of the public comments, analyses of the comments, and recommendations. Following is an abbreviated discussion of the issues and EPA's decisions.

A. Inertia Test Weight Change

During dynamometer testing for emissions and fuel economy, the inertia effects of vehicle operation are simulated by setting the dynamometer mass loading to simulate the vehicle's weight. This is accomplished by engaging a series of flywheels. The weight simulation is not continuous: Rather, it is approximated by the increments available in these flywheels. Due to this approximation, many vehicles are tested at weight settings which are higher or lower than their actual weights. In 1975, these inertia weight increments were 250 lbs. up through 3,000 lbs., and 500 lbs. for inertia weight settings from 3,000 to 5,000 lbs. Except as explained below, vehicle weights were divided at the middle of these increments to determine at which inertia setting testing would be conducted. For example, the "3,500 lb." weight category included all vehicles which weighed from 3,251 lbs. to 3,750 lbs. Consequently, a vehicle in a class above 3,000 lbs. could be tested at an inertia weight setting as much as 250 lbs. higher or 250 lbs. lower than its actual weight.

Beginning with the 1980 model year, the test weight increments were halved or in some cases quartered, to improve the accuracy of inertia weight simulation. Now, for example, a vehicle in the 3,000 to 4,000 lb. weight range will be tested at a simulated weight setting no more than 62 lbs. higher or 62 lbs. lower than its actual weight. Since the inertia weight required to be accelerated and decelerated during driving can affect emissions and fuel economy, this reduction in inertia weight increments reduces the potential bias in emission and fuel economy test results due to inexact weight simulation. Additionally, the smaller increments make it easier for manufacturers to gain credit for vehicle weight reduction. Whereas prior to the 1980 model year, a manufacturer might have had to remove as much as 500 lbs. from a vehicle in the very popular 3,000 to 4,000 lb. weight range before it was tested at the next lower inertia weight setting, a weight reduction of no more than 125 lbs. assures testing at a lower test weight setting under the revised regulations.

In the December 1983 NPRM, EPA proposed an industry-wide credit for this change to smaller inertia weight increments. The goal of adopting the smaller increments was to improve the accuracy and minimize the potential bias that could result from testing vehicles at a simulated weight either too high or too low in comparison to actual vehicle weights. EPA did not expect that the change would either systematically increase or decrease fuel economy compared to the 1975 test procedures, and thus anticipated no effect on CAFE standard stringency. In fact, prior to implementing the change, EPA reviewed available data and determined that for the 1975 model year, vehicle weights were spread fairly uniformly across the inertia weight classes (42 FR 45842, September 12, 1977). Thus, when these classes were approximately halved to determine the new weight increments, no significant industry-wide impact was anticipated.

However, in preparing the CAFE adjustment NPRM, EPA carefully analyzed the current test weights compared to the old test weights. As first indicated by Ford, EPA determined that there was a slight increase in average test weight for one range of vehicle weights as a result of the change in inertia weight categories. The increase was caused by the elimination of the 1975 test procedures' discontinuity in weight simulation at 3,000 lbs. (i.e., the dynamometer had been adjustable in 250 lb. increments up to 3,000 lbs. but in 500 lb. increments above 3,000 lbs.). Under the old procedure, vehicles in the other inertia weight categories were tested at a weight which was the mid-point of the weight range in the category. (For example, vehicles in the weight category ranging from 3,251 to 3,750 lbs. were tested at 3,500 lbs.) In the 3,000 lb. inertia weight category, however, the vehicles ranged from 2,876 lbs. to 3,250 lbs., but were tested at 3,000 lbs. instead of 3,062 lbs., the mid-point. For this category only, the test weight simulated weights as much as 250 lbs. higher but only 125 lbs. lower than actual vehicle weight. Consequently, for a uniform distribution of vehicles across the 3,000 lb. category, the test weight was 62 lbs. lower than the average of the vehicle weights represented. In short, the 1975 3,000 lb. inertia weight category slightly biased the test weight, and thus the test results, in the manufacturers' favor. The change in inertia weight categories eliminated this bias, effectively making the CAFE standards more stringent.

In adopting the finer inertia weight increments, EPA made dynamometers adjustable in 125 lb. increments up through 4,000 lbs. and in 250 lb. increments above 4,000 lbs. This introduced a new discontinuity in weight simulations for the 4,000 lb. test weight. Like the discontinuity for the 3,000 lb. category under the 1975 procedures, this new discontinuity also results in an unbalanced test interval. Here, the weight category ranges from

62 lbs. below the test weight to 125 lbs. above the test weight. For a uniform distribution of vehicles across the weight category, the test weight is 31.5 lbs. too low to accurately simulate the average of the vehicle weights represented. The degree of missimulation is not as great as that for the 3,000 lb. category under the old procedures, however. Thus, the net effect of adoptng the new procedures was that the average test weight simulated on the dynamometer for the whole range of vehicles necessarily increased. This directional shift in stringency caused EPA to propose a CAFE adjustment for this test procedure change.

GM and Ford were the only commenters on this specific issue. GM, consistent with its comments on other issues, recommended that the adjustment for change in inertia weight simulation be manufacturer-specific (that is, a unique value calculated for each manufacturer based on its own product line). But GM went considerably further in departing from EPA's proposal. GM recommended that each individual test vehicle be adjusted to account for the difference between its current test weight and the test weight it would have been tested at under the old regulations. As stated above, one of the purposes of going to finer inertia weight increments was to improve the accuracy of the weight simulation and thus limit the potential fuel economy bias due to inexact weight simulation. This bias would result if the distribution of actual vehicle weights in an inertia weight category on average did not equal the simulated test weight for that inertia weight category. For example, if the average actual vehicle weight was above the test weight for an inertia weight category, the vehicles, on average, would be tested at a weight lower than their actual weight. Since fuel economy tends to increase with decreases in vehicle weight, such a too low test weight would result in inappropriately high fuel economy estimates. Conversely, if the average vehicle weight was *below* the test weight, the vehicles, on average, would be tested at a weight higher than their actual weight. Thus, their measured fuel economy would be inappropriately low.

In recommending that EPA adjust each test vehicle back to its old test weight, GM, in effect, recommends that EPA revert to the old system where the potential for this fuel economy bias was much greater than under the current procedures. As suggested in the above example, a manufacturer would benefit from this added bias if it had tended to design vehicles so that their weights fell predominantly in the upper regions of the old inertia weight classes. Such test weight undersimulation would result in a significantly higher CAFE for the manufacturer than warranted by its vehicle designs, which are more accurately evaluated under the current finer inertia weight increments.

Under GM's method, many manufacturers would receive substantially less credit than GM in the 1980 through 1984 model years, in some cases zero or a negative CAFE adjustment. This is because, most likely by chance, these manufacturers tended to have more vehicles situated below the old test weights for the old inertia weight classes rather than above the test weights, in contrast to GM. EPA has discovered no technical reason why one manufacturer operating under the current inertia weight test procedures would tend to have vehicles situated above the old test weights while another manufacturer would be expected to have its vehicles situated below the test weight. How current vehicles' weights, developed in light of the current inertia weight test procedures, look when overlaid on the old inertia weight categories is technically irrelevant. Thus, adopting GM's method would provide some manufacturers, including GM, with substantial CAFE credit and a seemingly random group of other manufacturers with significantly less credits or even debits just on the basis of where their vehicles' weights happen to fall relative to the old weight categories. Such a scheme could inappropriately penalize manufacturers for designing their vehicles in light of the new categories, which were introduced not only to better simulate actual vehicle weight, but to encourage manufacturers to take additional weight off their vehicles. Additionally, the GM methodology allows significant CAFE biasing in the future and erosion of the stringency of the CAFE standards. Therefore, it cannot be considered a credible methodology for determining CAFE adjustments.

GM's methodology does suggest one other consideration with respect to the inertia weight issue. Under GM's methodology, positive credits result if more vehicles are situated above a test weight than below the test weight. EPA does not deny that in actuality a specific manufacturer's vehicle weigths may not be symmetrically distributed such that the average actual vehicle weight coincides exactly with the dynamometer test weight. EPA acknowledged this in the rulemaking which adopted the revised inertia weight procedures. However, the clear purpose of the test procedure has always been to test vehicles *on average* at their *actual vehicle* weight. Disallowing CAFE credit for vehicles which under the old procedures would have been tested at a weight lower than their actual weight (whether resulting from random occurrence or intentional efforts by the manufacturer) preserves the purpose of the original inertia weight procedure.

In establishing the CAFE program, Congress did not intend for manufacturers to take advantage of flexibilities in the test procedure to derive CAFE increases which are not the result of design improvements or marketing shifts and which would not result in any improvement in actual fuel economy. GM's recommendation would effectively undo EPA's efforts to assure that only actual fuel economy gains are reflected in a manufacturer's CAFE. GM's approach would necessarily decrease the stringency of the standards intended by Congress and as a result must be rejected by EPA.

Ford accepted EPA's general proposal, but recommended a slightly different methodology for calculating the impact on CAFE of the inertia weight test procedure change. Ford only considered the impact on vehicles in the original 3,000 lb. weight class when evaluating the test procedure change. Ford recognized that the revised test procedure eliminated the undersimulation of vehicle weights that had existed in the 3,000 lb. weight class prior to the test procedure change. Ford's methodology calculates a credit based on this elimination of undersimulation. However, it does not account for the fact that a new area of undersimulation was created by the revised procedures at the 4,000 lb. test weight. This acts to benefit the industry in a similar fashion, though not to as great an extent, as the old procedure. This new benefit at 4,000 lbs. should be used to partially offset the loss of benefit at 3,000 lbs. Ford's methodology does not do this. The method proposed by EPA adjusts for inertia weight offsets occurring over the full range of possible weights. Therefore, Ford's recommendation is accepted in principle, but EPA's specific methodology is adopted since it more comprehensively adjusts for the change in test procedure.

The EPA methodology includes calculating manufacturer-specific CAFE adjustments for this change in inertia weight test procedure. Each manufacturer's CAFE is credited by the loss in fuel economy due to the procedural change in the 3,000 lb.

category. This credit is a function of the manufacturer's sales in the current 3,000 lb. inertia weight class, an estimate of the manufacturer's fuel economy for that class, and an industry-wide sensitivity factor which accounts for the expected fuel economy impact due to the average test weight increase of 62 lbs. in that class. This credit is reduced by the beneficial fuel economy impact resulting from the weight undersimulation introduced by the revised procedures in the 4,000 lb. category. The beneficial impact is a function of the manufacturer's sales in the 4,000 lb. equivalent test weight category, an estimate of the manufacturer's fuel economy for that category, and the same industry-wide sensitivity factor which is used to account for the expected fuel economy impact due to the average test weight undersimulation of 31.5 lbs. in that category. As suggested by Ford and GM, the value of this industry-wide sensitivity factor has been revised to more accurately represent the average effect of weight changes on fuel economy. (For further information on the derivation of the test weight sensitivity factor, see Section B of the Summary and Analysis of Comments, contained in the docket.)

EPA has determined that the net impact of the inertia weight adjustment should not be less than zero; that is, no manufacturer should receive a net debit as a result of this inertia weight test procedure change. This could have occurred in the case of a manufacturer with such a very limited product line that, for example, it had no sales in the 3,000 lb. inertia weight category and thus received no CAFE adjustment credit. Any sales in the 4,000 lb. inertia weight category would then lead to a net CAFE debit for that manufacturer. This is inappropriate for several reasons. First, EPA's approach to adjusting CAFE's does not—and cannot with available sales data—determine exactly where a manufacturer's 1975 model year vehicles actually fell in the old inertia weight categories. As a result, EPA cannot make a direct comparison between how a manufacturer's vehicles were distributed in 1975 and in later model years in order to compute precisely how much a manufacturer has been hurt or helped by the change in inertia weight categories. EPA's approach is most accurate for manufacturers with large, diverse product lines, since there is a greater likelihood that their vehicles were evenly distributed about the 1975 test weight settings and continue to be evenly distributed about the current settings. However, in the case of limited product line manufacturers, that theoretical symmetry is less likely and the possibility of unfair results is consequently increased. For example, if a manufacturer's few models happened to be in the lower end of the 4,000 lb weight class under both the 1975 and current test procedures, it has not benefited by the new undersimulation created by the test change, but remains subject to a continuing oversimulation of its vehicles' actual weight. It would hardly be fair in such cases to debit the manufacturer for a potential benefit it has never enjoyed.

B. Manufacturer-Specific CAFE Adjustments

EPA proposed *industry-wide* CAFE adjustments to account for the test procedure changes which impact CAFE measurements. Thus, the first NPRM would have provided all manufacturers with the same CAFE adjustment of 0.2 mpg. The Agency determined that this fixed level of credit would provide all of the most affected manufacturers (i.e., those failing or in jeopardy of failing the CAFE standard) with a reasonable CAFE adjustment which adequately compensated these manufacturers for the adverse CAFE impact of the test procedure changes addressed. Further, the uniform credit had the advantage of treating all manufacturers alike, thus preserving their competitive position in regard to CAFE compliance. Finally, the fixed credit was very easy to implement, minimizing the administrative burden on both the industry and the Agency.

Nearly all the commenters supported the proposal to adopt industry-wide CAFE adjustments. There major reasons were cited. First, commenters stated that industry-wide adjustments would be reasonably accurate for the purpose of providing appropriate CAFE adjustments. Second, the fixed factors would be simple to implement. The smaller manufacturers in particular feared that calculating manufacturer-specific factors would place a disproportionately large administrative burden on them compared to the large manufacturers. Third, many commenters believed that the existing data did not support manufacturer-specific sensitivity factors to determine, for example, the fuel economy impact of a unit of test weight or humidity change for each manufacturer's designs. Requiring the manufacturers to determine manufacturer-specific sensitivity factors would then place a very substantial economic burden on most manufacturers.

GM, however, strongly supported manufacturer-specific calculation of CAFE adjustments. GM cited several reasons for its recommendations. First, it believed that manufacturer-specific adjustments would be consistent with the EPCA which requires each manufacturer, independent of other manufacturers, to comply with the CAFE standards. Second, GM pointed out that the equations which EPA used to estimate the fuel economy impact of the test procedure changes were in part dependent on several factors which could vary between manufacturers, specifically, the base CAFE to which the adjustments would apply, the average highway and city fuel economy values, and the fuel economy sensitivity of particular vehicle designs to changes in weight and humidity. Third, GM believed that for its particular designs, the appropriate fuel economy adjustment factors to account for weight and humidity changes were higher than the values EPA used in its industry-wide calculation, in which case GM would warrant a larger CAFE credit. Fourth, as previously discussed in the inertia weight change context, GM's alternative methodology for adjusting CAFE's calculated manufacturer-specific credits. Under this methodology, the CAFE credits GM calculated for itself were considerably higher than what EPA had calculated for the inertia weight issue when developing its proposed industry-wide credits. GM determined that, due to these points, GM should receive a higher CAFE adjustment credit under its manufacturer-specific calculation than that provided by EPA's proposal.

After reviewing these comments, EPA has concluded that there are valid points on both sides of the issue. EPA agrees with GM that the equations EPA uses to determine CAFE adjustments do contain coefficients which vary among manufacturers. In particular, the base CAFE of a manufacturer's fleet can significantly affect the amount of CAFE credit that the manufacturer is due. For a number of the test procedure changes, the fuel economy impact is in direct proportion to the base level of fuel economy. Thus, a manufacturer with a higher base CAFE has been more adversely affected by these test procedure changes and therefore deserves a higher CAFE adjustment credit, than a manufacturer with a lower base CAFE. A similar argument can be made for credits dependent on a manufacturer's actual average city and highway fuel economy values.

In these circumstances, it is technically inaccurate to calculate adjustments using industry average base CAFE's and city and highway fuel economy values. Doing so necessarily overcompensates manufacturers with

lower than average fuel economy performance by awarding them credits which are greater than the CAFE penalty they incurred due to the test procedure changes. Conversely, manufacturers with high fuel economy values are undercompensated compared to the impact the test procedure changes had on their CAFE's.

The same type of CAFE adjustment dependence on actual fuel economy performance occurs in the case of the inertia weight issue. Here, the more technically appropriate CAFE adjustment is calculated using individual manufacturer sales and fuel economy performance for the affected 3,000 lb. and 4,000 lb. weight categories, rather than the industry-average fuel economies and sales EPA considered in developing the CAFE adjustment proposals.

Administratively, calculating CAFE adjustments on the basis of each manufacturer's base CAFE and city and highway fuel economy values is simple and straightforward. Similarly, it is not difficult to calculate a manufacturer's 3,000 lb. and 4,000 lb. vehicle fuel economies and sales volumes for the purpose of determining inertia weight credit. Sufficient data already exists in the CAFE program data base, and calculating adjustments on the basis of manufacturer-specific rather than industry-wide information adds no significant administrative burden.

Finally, although some smaller manufacturers feared that manufacturer-specific CAFE adjustments might in some way place a larger manufacturer at a competitive advantage, it appears that calculating CAFE adjustments on the basis of manufacturer-specific fuel economies does not introduce any anti-competitive pressure. Since the necessary data for calculating every manufacturer's CAFE adjustment is already in the CAFE data base, small manufacturers will not be disproportionately burdened by the adjustment procedures as compared to large manufacturers. Moreover, manufacturer-specific adjustments probably do a better job of restoring competitive position than industry-wide adjustments since those manufacturers who were most severely affected by the test procedure change would receive the proportionately higher CAFE adjustment credit they are due, while those manufacturers who were less affected would not receive a windfall.

After careful consideration of all the comments, EPA now agrees, in general, with GM's reasoning that manufacturer-specific adjustments are needed and that it is appropriate to calculate CAFE adjustment values on the basis of manufacturer-specific base CAFE, city and highway fuel economy performance and, for the inertia weight issue, on manufacturer-specific sales and fuel economies for the 3,000 lb. and 4,000 lb. weight categories.

GM also argued that it was technically appropriate to use manufacturer-specific factors to account for the fuel economy impact of the changes in test weight and laboratory humidity. EPA has determined that available data is insufficient to calculate such manufacturer-specific factors for individual manufacturers. Substantial additional data would be required, adding greatly to the cost borne by EPA and the industry of determining CAFE adjustments and substantially delaying the calculation of the adjustments while such data was procured. Further, review of available data does not support the GM hypothesis that different manufacturers have vehicle designs whose response to changes in test weight or humidity differs significantly. However, on the basis of the comments and test data supplied by manufacturers, EPA has revised the test weight and humidity sensitivity factors and has applied these revised sensitivity factors in calculating each manufacturer's CAFE adjustment. (See portions of preamble concerning inertia weight and humidity test procedure changes for discussion of the derivation of the sensitivity factors.)

C. Test Distance Measurement

In the 1975 model year, EPA calculated fuel economy by dividing the nominal test cycle distance (7.5 miles for the city cycle and 10.242 miles for the highway cycle) by the quantity of fuel consumed during the test. This test procedure was changed in 1976 (40 CFR 86.144) to require, beginning with the 1978 model year, measurement of the actual distance driven over the test and use of this measured distance in the fuel economy calculation. Ford later presented information to EPA which showed that the mean distance of the city driving cycle is actually 7.45 miles, 0.05 miles less than the nominal test cycle distance. This meant that the 1975 test procedure slightly overstated vehicles' fuel economy because it divided the amount of fuel consumed during the test into the nominal distance of 7.5 miles instead of the actual mean test cycle distance of 7.45 miles, which a vehicle would have accumulated if it had exactly followed the driving schedule. Thus, when EPA required that fuel economy be calculated according to actual distance driven, it eliminated the 1975 test's slight inherent bias in favor of manufacturers, thereby effectively increasing the stringency of the CAFE standards. Similarly, there was a slight difference between the nominal distance of the highway cycle (10.242) and the mean average highway cycle distance (10.256 miles).

Recognizing that the test procedure change consistently yielded lower CAFE results than the 1975 procedures, EPA proposed providing a CAFE correction to compensate for this change. EPA estimated that on an industry-wide basis a CAFE credit of approximately 0.1 mpg for the 1978 and later model years was due.

The commenters were satisfied with EPA's derivation of the CAFE adjustment for distance measurement. However, they stated that one parameter used in the EPA equation, the highway/city fuel economy ratio, should be revised. EPA had derived this parameter from the EPA Emissions Factors data base, a data base used to assess in-use fuel economy and emissions but not used to determine manufacturers' CAFE's. Ford stated that it would be more appropriate to use the EPA/manufacturer certification and fuel economy data base for consistency in the derivation of the CAFE adjustment.

EPA concurs that the highway/city fuel economy ratio used should be derived from the EPA/manufacturer data base. This is the data base from which CAFE values are calculated and all other correction parameters are obtained where possible. Thus, the distance correction term of this rule's CAFE adjustment equation uses highway/city fuel economy ratios which are derived from the EPA/manufacturer final CAFE data base.

D. Dynamometer Controllers

EPA proposed a CAFE adjustment to compensate for EPA's laboratory equipment change from manual to automatic dynamometer load controllers. The CAFE adjustment for automatic dynamometer controllers uses the highway/city fuel economy ratio in a fashion similar to the adjustment for distance measurement. As with the distance measurement issue, the only comments specific to this issue addressed the source of the highway/city fuel economy ratio. Since it is a more appropriate data base, the dynamometer controller term of this final rule's CAFE adjustment equation uses highway/city fuel economy ratios which are derived from the EPA/manufacturer final CAFE data base. The CAFE adjustments due to dynamometer controller changes have not changed significantly from the proposal.

E. Laboratory Humidity

In 1977, EPA raised the humidity level in its laboratory from a nominal 50 grains/pound (gr./lb.) to a nominal 75 gr./lb. This higher humidity level was maintained until February 1980 at which time the nominal humidity was returned to 50 gr./lb. Since measured fuel economy generally decreases when laboratory humidity is increased, EPA proposed a CAFE adjustment for the period when the EPA laboratory humidity increased from a nominal 50 gr./lb. to a nominal 75 gr./lb. (The actual average for this period was 71 gr./lb.) EPA calculated CAFE credits ranging from 0.01 mpg to 0.02 mpg for the major domestic manufacturers in the 1976–1980 model years as a result of this change in laboratory humidity level.

Ford and GM both commented that a larger CAFE adjustment for humidity is justified for several reasons. First, they pointed out that the EPA humidity level in 1975 was 49 gr./lb., not 52 gr./lb. as used in EPA's calculation of the proposed humidity correction. This difference would directionally increase the CAFE adjustment. Second, they noted that the EPA laboratory humidity level is presently higher than the 1975 humidity because of an April 1983 humidity monitoring instrumentation change which was not addressed in the proposal. Third, they asserted that the humidity/fuel economy sensitivity factor used by EPA was lower than that indicated by their data.

EPA's analysis of the comments revealed the need to revise the calculation of CAFE adjustments related to humidity issues. EPA's investigation confirmed that the baseline 1975 model year humidity level was approximately 49 gr./lb. This investigation also revealed that the average annual EPA laboratory humidity level varied slightly from year to year. Further, the April 1983 change in the type of humidity measuring equipment used in the EPA laboratory resulted in approximately a 5 gr./lb. increase in actual humidity. Finally, the humidity/fuel economy sensitivity factor required revision to correct for limitations in EPA's data base and calculations pointed out by manufacturers' comments and data. (For a discussion of the basis for EPA's revised humidity/fuel economy sensitivity factor, see Section E of the Summary and Analysis of Comments, found in the docket.) These changes have been incorporated in the term which compensates for the effect of laboratory humidity in the CAFE adjustment equation.

GM also requested additional credit for a humidity related change it made in its laboratory practice which hurt its fuel economy. Prior to EPA's installing the new humidity measuring equipment discussed above, GM installed the same equipment in its own facility. GM requested additional CAFE credit for its loss in calculated fuel economy at its facility between the time it installed the new humidity equipment and the time EPA adopted it.

GM's request must be rejected since it would provide fuel economy credit on the basis of laboratory practices largely within the control of individual manufacturers. Manufacturers are required to maintain a reasonable level of correlation with the EPA facility. However, EPA is not equipped to consider how each manufacturer's individual laboratory practices may affect fuel economy; the potential issues are too numerous and in many cases not precisely quantifiable. EPA's laboratory thus serves as the standard of comparability for all other laboratories. If manufacturers cannot maintain reasonably close correlation with the EPA facility, proportionately more of the manufacturer's vehicles are tested at EPA or the manufacturer's fuel economy testing program is halted until the cause of the lack of correlation can be corrected. Consequently, consideration of only those changes made in EPA's laboratory practice (coupled with the requirement for adequate correlation) provides a sufficient measure of CAFE impact.

F. Constant Volume Samplers

GM requested CAFE credits for the effects of malperforming constant volume samplers (CVS's) at the EPA laboratory. In November 1981, EPA reported that some or all of the CVS's had not been operating properly at critical flow conditions prior to September 1981 causing slightly non-proportional sampling. EPA modified the CVS's to correct the problem, installed monitoring and warning systems to insure that the problem would not occur in the future, and performed a test program to characterize the potential impact of the malperforming equipment on emissions and fuel economy measurements.

EPA's study [1] in 1982 was unable to ascertain the exact effect of the equipment malperformance on fuel economy. The effect depends on the degree of non-proportional sampling that existed and on individual test vehicle characteristics as they affect the sampling system. However, the degree of non-proportional sampling that occurred is not known. EPA's ongoing correlation program with the industry failed to detect this problem, as did the routine calibration and quality audit checks that were periodically performed. In addition, it is not known how long the CVS samplers were in non-critical flow. While EPA believes the samplers were operating properly when installed in 1975, it is possible the checks performed at that time could not detect this non-critical flow condition. Alternatively, the non-critical flow condition could have existed for a comparatively short period of time, thus affecting fewer tests. This uncertainty makes it impossible to calculate precise CAFE adjustments based on the exact adverse impact of non-critical flow.

EPA was also unable to discern from a controlled study a mathematically predictable pattern to the effects of the CVS malperformance on test vehicle fuel economy. The study did establish that for the vehicles used in the evaluation higher fuel economy was achieved using equipment at critical flow. Test conditions were established to simulate the worst out-of-critical flow conditions found. Under these conditions, the average fuel economy effect was estimated at: 0.6 percent of the city fuel economy value and 1.0 percent of the highway fuel economy value. The study also established that the impact varied across vehicles. However, the study did not test enough vehicles of the various designs in the industry's fleet to establish a specific fleet-wide impact. To test enough vehicles would have been unreasonably costly and time-consuming and was not warranted considering the uncertainty in the degree of non-critical flow and the time period over which non-critical flow existed.

Although these uncertainties make precise, manufacturer-specific adjustments impossible, it is clear that the malperforming CVS's did have some adverse impact on fuel economy test results. EPA has decided to provide CAFE adjustments in the 1980 through 1982 model years for this issue based on the average maximum effects determined in its limited study and as applied to the average portion of vehicle fuel economy tests conducted at EPA's test facility for the 1980 through 1982 model years. This is consistent with the suggestions of GM. EPA is confident that this CAFE adjustment fully compensates for the maximum adverse impact on manufacturers' CAFE that could have resulted from the non-critical flow

[1] See EPA report No. EPA–AA–EOD–84/2, "Non-Proportional Sample Rates in a Critical Flow Venturi Constant Volume Sampler: Effects on Federal Emission Test Fuel Economy, January, 1982.

operation of EPA's constant volume samplers.

G. Fuel Efficient Oils

In comments on the original NPRM, both GM and Ford proposed that manufacturers be granted CAFE credit due to EPA's prohibition on the use of fuel efficient oils in test vehicles during 1980 and 1981 model year testing. Beginning with the 1982 model year, EPA approved the use of oils which improve fuel economy by, on average, 1.8 percent. This approval was based on in-use oil availability data gathered during the 1981 model year, so the approval came too late for 1981 model year testing. EPA subsequently determined that such fuel-efficient oil was generally available during the 1981 production year and was typically recommended for consumer use in 1981 model year vehicles by the automobile manufacturers. Therefore, EPA proposed in the supplemental NPRM an additional 0.40 mpg (1.8 percent of the 22 mpg CAFE standard for 1981) industry-wide CAFE credit for the 1981 model year only. EPA did not propose fuel efficient oil credits for the 1980 model year, since fuel efficient oil availability and usage did not appear to be sufficient.

In their comments on the supplemental NPRM, GM and Ford both claimed they are due more CAFE credits for the fuel efficient oils issue than EPA proposed. They argued that manufacturers deserve CAFE credit for 1980, as well as 1981, based on their claim that fuel efficient oils were available in 1980. GM commented that it recommended to its customers in the 1980 model year use of higher quality engine oils labeled with the American Petroleum Institute (API) designation "SF" and oils which were labeled as "Energy Saving", "Gas Saving" or the like. Additionally, GM provided a list of energy efficient oils which were available to consumers in 1980. EPA had previously accepted the "SF" designation as adequately denoting for consumers oils with fuel-efficient properties; however, the "SF" designation only came into use midway through the 1980 model year. GM's list indicated, though, that fuel-efficient oils were available and adequately labeled throughout 1980, making their usage likely.

After considering the comments, EPA has concluded, within the constraints of its general policy, that a CAFE credit is appropriate for both the 1980 and 1981 model years. EPA has reached this conclusion based on the likelihood that fuel-efficient oil was recommended, available and used by consumers during the 1980 and 1981 model years.

GM and Ford also contended that manufacturers should be awarded a 2 percent, instead of 1.8 percent, CAFE credit for 1980 and 1981, since the Department of Transportation (DOT) in setting the 1981 through 1984 CAFE standards assumed a 2 percent fuel economy improvement from the use of improved engine oils. Moreover, GM claimed an additional 0.2 percent CAFE penalty for model years 1982 and later because the March 17, 1981 EPA approval for use of fuel-efficient oils effectively allowed use of only those oils offering up to a 1.8 percent improvement in fuel economy. Finally, GM and Ford requested that EPA remove all restrictions on the use of energy efficient oils during fuel economy testing for 1986 and later model years.

EPA considers its general requirement, that the oils used in test vehicles be representative of what is likely to be used by consumers, to be appropriate policy. EPA has always, including in the 1975 base year, required the use of representative oils to ensure that the fuel economy improvements measured by the test will probably be realized by the consumer as well. The current guidelines automatically allow manufacturers to upgrade test vehicle oils if oils in the marketplace improve. Furthermore, EPA's stated policies do not preclude alternative means to demonstrate that a given oil will likely be used by consumers. On the other hand, the guidelines prevent a manufacturer from using its sophisticated test and screening capabilities to locate and use in the fuel economy program the very best oil. If there is not a reasonable likelihood that the typical driver will be able to locate and use an oil of similar fuel savings capability, its use in the fuel economy program would result in unrepresentatively high fuel economy benefit. EPA thus considers it appropriate to maintain its general policy of denying the use of a fuel saving oil (and, hence, denying commensurate CAFE credit) unless such oils can be shown to be representative.

Regarding the magnitude of the credit for the 1980 and 1981 model years, when EPA approved the use of fuel efficient oils for the 1982 model year, it specified that the test vehicle oil could not provide more than the sales-weighted average fuel economy improvement offered by oils labeled "SF". Subsequent manufacturer surveys of the marketplace indicated the average improvement to be 1.8 percent. Therefore, EPA has decided to grant 1980 and 1981 model year fuel efficient oils CAFE credit equal to the 1.8 percent maximum improvement allowed for fuel efficient oils in test vehicles.

EPA disagrees with GM and Ford that an additional 0.2 percent credit is due based on DOT projections. In setting the 1981–1984 model year CAFE standards, DOT projected several technological improvements as options to improve fuel economy. One option, improved lubricants, was estimated to improve fuel economy by 2 percent. However, DOT decided not to set the standards so high that all of the technological options would be necessary within the period of 1981–1984. DOT stated that implementation of all of the technological options would result in average fuel economy levels in excess of 27.5 mpg. Thus, the standards which DOT promulgated were believed to be achievable without the full estimated benefit of improved lubricants being realized. Most importantly, EPA's approval for use of energy efficient oils which improve fuel economy by 1.8 percent was based on the fuel economy improvement of actual oils, representatively available and, therefore, expected to be used in typical service. DOT's 2 percent benefit, in contrast, was an estimate of potential improvement.

As indicated above, the EPA policy does not have a prescribed maximum limit on the percent fuel economy improvement that oils used in testing can contribute. A manufacturer can receive approval to use oils offering fuel economy improvements greater than the 1.8 percent level which was approved for GM. However, approval will only be granted if the guidelines of the EPA policy are met, thus providing assurance that these oils will be representative of oils in production vehicles as built and used in service. EPA has taken specific and appropriate steps to assure that manufacturers are properly credited for the use of fuel efficient lubricants representative of those readily available and in use in the field. The difference between the EPA's approval of GM's use of oils which improve fuel economy 1.8 percent and DOT's two percent fuel economy improvement represents the difference between actual test results and estimated potential. Consequently, EPA finds that the 1.8 percent CAFE credit appropriately compensates manufacturers for fuel economy lost as a result of EPA's past prohibition against use of fuel efficient oils in test vehicles. This final rule uses the 1.8 percent figure to calculate CAFE adjustments for fuel efficient oils.

H. Test Fuel Properties

On August 19, 1984, subsequent to the close of the NPRM comment period, GM requested additional CAFE credits to compensate for changes in the properties of the test fuel used for gasoline-fueled vehicles that have occurred since the 1975 model year CAFE baseline. Certain fuel properties affect the calculated fuel economy because a chemical balance technique is used to measure fuel economy. If these test fuel properties change, the fuel economy results will not be consistent with the results that would have been achieved using 1975 test fuels. This constitutes a test procedure change; therefore, on December 7, 1984, EPA issued a supplemental NPRM which proposed to adjust manufacturers' CAFE's to compensate for variations of test fuel properties. EPA proposed to calculate test fuel adjustments annually, using average annual EPA test fuel properties. The primary issue in the supplemental NPRM was how to calculate the appropriate test fuel CAFE credit. Secondary issues included granting adjustments for future test fuel changes and adjustments for changes in diesel test fuel properties.

The comments received in response to the supplemental NPRM favored CAFE adjustments to account for variations in test fuel properties. As a method of calculating such adjustments, the equation proposed by GM in its August 1984 request was unanimously supported. In response to concerns EPA had expressed regarding an experimentally derived term, "R", used in the GM equation, Ford submitted data from over 200 vehicle tests which substantiated the value "R" used by GM. After analyzing the comments, EPA has concluded that the equation proposed by GM is technically correct and should be used to calculate CAFE adjustments for test fuel properties.

The supplemental NPRM also requested comments on the properties of test fuel in the baseline model year, 1975. The commenters recommended that EPA use the fuel properties which were defined by EPA in 1976 as historical average values and which correspond to the values used to establish the EPA fuel economy equation. Additionally, the commenters recommended a net heating value for the baseline fuel. This value was determined from the average historic fuel properties. Given that the properties of the test fuel used at the EPA laboratory in the 1975 model year are not know, EPA agrees with the commenters that the suggested fuel property values seem to be the most appropriate baseline. Therefore, this rule establishes the baseline test fuel properties to be:

Specific Gravity=0.739
Carbon Weight Fraction=0.866
Lower Heating Value=18,507 Btu/lb.

The final aspect of calculating this adjustment involves establishing the properties of test fuel used in the 1980 through 1985 model years. EPA proposed basing the credit on the fuels used by EPA during this period. The commenters generally stated that average industry-wide test fuel properties should be used for calculating adjustments, not just EPA data.

In the baseline model year of the CAFE standards, 1975, virtually all tests were performed at the EPA laboratory. In subsequent model years, EPA accepted test data from manufacturers' laboratories provided that their test results correlated well with EPA test results. If good correlation does not exist, the manufacturers' data is not accepted by EPA. Thus, the EPA laboratory is the standard against which all other laboratories are compared. Variation of the fuel used in the EPA laboratory consequently affects the standard by which all laboratories are compared.

EPA does not, however, have complete records of the fuels used by the EPA laboratory. Since the laboratories of EPA and the domestic manufacturers generally obtain their test fuel from the same supplier(s), it is logical to use average test fuel properties from the records of domestic manufacturer laboratories and the fuel suppliers to represent the properties of fuel used at the EPA laboratory in past model years. This rule uses such average fuel properties data to calculate the adjustments. The adjustments granted by this rule for test fuel variations are −0.8 percent for the 1980 model year, 0.10 percent for the 1981 model year, 0.75 percent for the 1982 model year, 1.34 percent for the 1983 model year, 1.29 percent for the 1984 model year and 0.88 percent for the 1985 model year.

The supplemental NPRM stated that EPA intended to analyze changes in diesel test fuel properties to determine if CAFE corrections are appropriate for the light-duty diesel category. Few comments and no data were received regarding diesel fuel. Volkswagen (VW) and GM supported EPA's intent to analyze diesel fuel. The Motor Vehicle Manufacturers Association (MVMA) and Ford both commented that there is no indication that an adjustment for diesel test fuel properties is necessary. EPA found that insufficient data are available to determine what, if any adjustment for diesel test fuel properties is necessary. Nonetheless, it is still possible that diesel fuel properties have varied and thus that some CAFE adjustment is due. (EPA is, in fact, seeking more data relevant to this issue in the NPRM on light truck CAFE's being published today.) Since an exact adjustment for diesel test fuel properties cannot be determined and since diesel-fueled vehicles constitute a small fraction of the overall vehicle fleet, EPA has decided to apply the gasoline test fuel adjustment to the vehicle fleet as a whole.

For future model years, EPA proposed granting adjustments based on the average annual properties of the fuel used by EPA. The commenters proposed several alternative approaches to future fuel-related adjustments. These included making test-specific adjustments, tightening the test fuel specifications, and making laboratory-specific fuels adjustments. These alternative approaches appear to have merit. However, changing the test fuel specifications or revising the equation which is used to calculate the fuel economy of a test to yield test-specific adjustments is beyond the scope of this rulemaking. This rule will grant future fuels adjustments based on the average annual properties of fuel used by EPA. However, EPA will pursue the suggested alternatives in a NPRM being issued concurrent with this final rulemaking.

I. Gas Guzzler Tax Applicability

Congress, in the Energy Tax Act of 1978, Pub. L. 95-618, established a tax schedule for those vehicles not achieving a minimum fuel economy level, commonly known as the Gas Guzzler Tax. The fuel economy levels were based upon EPA testing and calculation procedures in effect for the 1975 model year. Commenters noted that both the CAFE and the Gas Guzzler fuel economy levels are based on the 1975 model year procedures. Thus, the commenters stated, any correction factors applicable to CAFE should be applicable to Gas Guzzler Tax procedures. EPA agrees with this basic premise and will apply the correction factors determined for CAFE to the Gas Guzzler Tax calculation procedures.

Applying the correction factors to the model type Gas Guzzler Tax calculations that will occur after the effective date of this rule is straightforward. In the 1986 and later model years, any model type that meets or exceeds a 22.5 mpg fuel economy level will not be affected in any way. For those model types that are below

the 22.5 mpg fuel economy level there will be one additional step in the calculation procedures. A correction factor determined for each model type will be applied to the model type's fuel economy value prior to determining compliance with the gas guzzler standard and tax liability. This adjusted value will then be rounded to the nearest 0.1 mpg and the projected tax liability indicated in the tables of 40 CFR § 600.513 will be depicted on the fuel economy label.

Specific modifications to the CAFE adjustment calculation must be made to make it applicable to the gas guzzler determination. If a model type fails to exceed the fuel economy level of the Gas Guzzler Tax, a fuel economy adjustment will be calculated. The gas guzzler adjustment will be determined using the model type fuel economy value (calculated prior to the application of any of the test procedure fuel economy adjustments) as the base fuel economy, rather than the corporate average fuel economy as in the case of the CAFE adjustment. Similarly, the model type city and highway fuel economy values will be used to determine the appropriate city-highway ratio rather than the corporate average city and highway fuel economy values. The gas guzzler fuel economy will be credited in proportion to the 3,000 lb. inertia weight class sales within the model type and debited in proportion to the 4,000 lb. equivalent test weight sales within the model type. Consistent with the determination made for CAFE adjustment, no net negative adjustment will be incorporated for the inertia weight issue.

Finally, the gas guzzler adjustment calculation, like the CAFE adjustment calculation, incorporates a correction coefficient to account for test procedure changes. The exact value of this coefficient can only be determined subsequent to the applicable model year because it is based, in part, on EPA laboratory data of average test fuel properties and humidity for that model year. Determination of this coefficient subsequent to the end of the model year does not present any problems with regard to calculating CAFE's or gas guzzler taxes. However, gas guzzler labels are determined prior to and during a model year. Thus, manufacturers need to know prior to the start of the model year the value of the coefficient to determine gas guzzler labels. Therefore, EPA must provide a correction coefficient to be used for gas guzzler label calculations prior to actual testing. For 1986 and later model years, the EPA laboratory plans to maintain a stable humidity level (approximately 5 grains/lb. above the baseline conditions) and use test fuels which are like the baseline fuels. Therefore, for gas guzzler labeling purposes, a fixed correction coefficient can be established which accounts for test procedure changes.

The stated modifications describe the administrative procedures that will be employed for model types whose Gas Guzzler Tax liability will be calculated after the effective date of the regulations. For those model types that have already been determined to be gas guzzlers, if requested by the manufacturer, EPA will recalculate the fuel economy values. These calculations will be made available to the affected manufacturers and furnished to the Internal Revenue Service (IRS). EPA has coordinated this possibility with the IRS which is responsible for administering the Gas Guzzler Tax. The IRS has indicated that it will review any change in tax liability on a case-by-case basis.

J. Revised Mileage Accumulation Limit

In the original NPRM, EPA proposed to revise the limit on fuel economy test vehicle's accumulated mileage from 10,000 miles to some appropriate mileage between 4,250 miles and 6,200 miles. The background to this proposal was provided in detail in the NPRM (at 48 FR 56532) and will not be repeated in detail here. Essentially, EPA's position is that since a vehicle's fuel economy tends to improve as it accumulates mileage, allowing vehicles to be tested at 10,000 miles instead of at an average of around 4,000 miles, as was the practice in 1975, effectively eases the CAFE standard that manufacturers must meet. Rather than restrict actual vehicle mileage, which could raise test vehicle cost to the manufacturers, EPA proposed mathematically adjusting fuel economy results for vehicles tested at high accumulated mileages to levels corresponding to a 4,000-mile accumulated mileage limit.

EPA first implemented an adjustment requirement in a rule published on October 13, 1981 (46 FR 50497), which required the adjustment of fuel economy data generated by emission-data vehicles tested at greater than 6,200 miles. This was done for both CAFE and fuel economy labeling purposes. Subsequently, on April 6, 1984 (49 FR 13832), EPA published a final rule requiring that all data generated by fuel economy data vehicles over 6,200 miles be adjusted to 4,000-mile levels for labeling (but not CAFE) purposes. Today's final rule extends the same requirement (i.e., that all data generated above the 6,200-mile limit be adjusted to 4,000-mile levels) to all CAFE data and additionally, revises the fuel economy adjustment for mileage accumulation equations.

EPA received extensive comments on the proposal, primarily from Ford, GM, and the MVMA. The two major issues raised in comments involve the appropriateness of imposing the lower mileage accumulation limit on the associated CAFE adjustment, and the statistical validity of the adjustment equation itself.

The premise that fuel economy improves with mileage accumulation was not disputed by any commenters. Also unchallenged was the point that the inflation of CAFE by testing vehicles at higher mileages does not reflect any design improvement which will result in reduction of in-use fuel consumption. However, the proposed application of a mileage accumulation limit on fuel economy test vehicles for CAFE purposes was hotly disputed, especially by the manufacturers that tend to test vehicles at higher average mileages.

The first issue to be considered is whether such a mileage accumulation limit should be implemented. Clearly, as test vehicle mileage increases, the effectiveness of the CAFE standards in improving fleet-average fuel ecomomy is compromised. EPA has documented the trend of higher mileage accumulation for test vehicles since 1975. Maintaining the stringency of the CAFE standards definitely requires the enforcement of a mileage accumulation limit.

The proposal to adjust the fuel economy results of all fuel economy test vehicles to the 4,000-mile level was based on the assumption that Congress set the CAFE standards based on 4,000-mile data. The 4,000-mile baseline assumption stems from the CAFE statute's requirement to use 1975 test procedures, which included a requirement that emission-data certification vehicles be tested at 4,000 ±250 miles. However, the actual baseline used to set CAFE standards is not traceable to a particular data base such as the emissions certification data base. Also, data from some running change vehicles used in emissions certification and fuel economy data vehicles used in the voluntary labeling program may have been considered in establishing the CAFE standards. These vehicles often have test mileages above 4,250 miles. When Congress finally set the standards, it did not address every detail of how the testing was to be done, but instead simply referred to the 1975 test procedures. Since a 1975 model year fuel economy calculation could have included test results from vehicles with

greater than 4,250 miles, EPA now agrees that adjusting test results from *all* vehicles to a 4,000-mile level, as proposed, is not appropriate.

However, the basis of the proposal remains valid. It is not appropriate for manufacturers to further erode the accuracy of the CAFE estimates by continuously increasing the test fleet's average mileage accumulation over the 1975 level. The tenor of this rulemaking is to correct for changes made in the way vehicles have been tested since 1975. EPA's analysis shows that average milege accumulation since 1975 has steadily increased. If corrections are to be made which credit manufacturers for lost fuel economy due to test procedures changes, similar corrections could be justified for inappropriately high test results. However, EPA did not propose a "negative" CAFE adjustment for prior model years for these potential gains since the adjustment is necessarily sensitive to each manufacturer's test fleets and could have severe impacts not anticipated by each manufacturer when testing was conducted. Instead, the Agency proposed to stop the CAFE erosion in future model years.

As stated above, the option to adjust *all* data back to a 4,000-mile level has been rejected. However, to maintain the stringency of the CAFE standards as envisioned by Congress, an alternative mileage accumulation limit should be implemented. Presently, data for fuel economy labeling purposes generated by vehicles with more than 6,200 accumulated miles must be adjusted to the levels the vehicles would typically have generated at 4,000 miles. EPA has concluded that this also is an appropriate mileage limit for CAFE purposes for two reasons. First, adjustment of fuel economy data from vehicles exceeding 6,200 miles would ensure consistency with labeling practice and with the requirement that CAFE data from emission-data vehicles exceeding 6,200 miles must be adjusted to the 4,000-mile level. Second, about 90 percent of the industry's CAFE data are currently generated at less than 6,200 miles. Requiring mileage adjustment only for tests on vehicles exceeding 6,200 miles would recognize the considerable variability in the data used to generate the mileage adjustment equation and thus, the lack of precision that would otherwise be involved in adjusting the majority of the data for the relatively small fuel economy increases expected between 4,000 miles and 6,200 miles. Adjusting tests for vehicles between 6,200 and 10,000 miles would, however, compensate for the most serious cases of bias resulting from higher mileage accumulation. Thus, this change would retain the manufacturer's flexibility to test vehicles beyond 4,250 miles, but would prevent further significant inflation of CAFE estimates due to excessive mileage accumulation. There would be no test vehicle cost penalty since vehicles will still be allowed to accumulate mileage over the 6,200-mile limit, but the test data would then be adjusted to a 4,000-mile level.

The proposed fuel economy adjustment equation also received criticism. In light of the comments, EPA has performed a new analysis of the relationship between mileage and fuel economy. (See Section L and Appendix A of the Summary and Analysis of Comments to this rulemaking, contained in the docket.) An improved data base was developed from vehicle tests used for final CAFE calculations in model years 1979–1982. The analysis technique was improved by calculating the sensitivity of fuel economy changes to test mileage changes for all subconfigurations within the data set. The mean sensitivity was then used to develop an equation which adjusts fuel economy results to a 4,000-mile level. These changes, incorporated in the final rule, address the significant criticisms by commenters. The result is a reasonable estimate of the impact of mileage accumulation on fuel economy test resutls that will only be used if a manufacturer voluntarily exercises its option to test vehicles at over 6,200 miles.

EPA also had proposed that the new mileage limit on test results be effective beginning with the 1986 model year. However, since 1986 model year testing is underway and test plans may be well established, the CAFE data adjustment provision will take effect beginning with the 1987 model year for passenger cars only. (EPA also had proposed application of the 6,200-mile CAFE mileage limit to light trucks as well as passenger cars. However, as discussed below, the impact on light trucks will be addressed in a separate rulemaking.)

As noted above, the mileage adjustment equation has been updated and improved, which has resulted in a smaller adjustment. Since the equation is also used for adjusting data included in label calculations, EPA is finalizing the revised equation beginning with the 1986 model year for use in the labeling program. Any 1986 model year data already adjusted using the old equation and any 1986 model year label values already calculated at the time of this publication, may, at the maufacturer's option, be recalculated using the new equation published today.

K. CAFE Credits for Light Trucks

Light truck is a vehicle classification separate from passenger automobiles. The original NPRM did not propose any CAFE credit for light trucks. Some commenters stated that EPA should separately propose light truck CAFE adjustments to account for the same test procedure changes which affected passenger vehicles, including inertia weight simulation, distance driven measurement and laboratory humidity level. EPA agrees and is publishing elsewhere in today's Federal Register proposed light truck CAFE adjustments.

L. Changes for Which CAFE Credit is Denied

EPA received requests for CAFE credits for test procedure issues which were not addressed in the NPRM. EPA has determined that CAFE credits are unwarranted for the following four issues:

1. Manual Transmission Shift Speeds

In the 1975 model year, EPA regulations required that vehicles equipped with manual transmissions be shifted at minimum speeds of 15, 25, and 40 miles per hour (mph) unless the manufacturer recommended alternative shifts speeds. In 1975, the 15, 25, and 40 mph shift speeds were considered to be representative of in-use operation and nearly all manufacturers, in fact, used these shift speeds. Further, in allowing alternative shift speeds, EPA anticipated that manufacturers would only recommend shift points representative of expected in-use operation.

Subsequent to the 1975 model year, EPA revised the requirements concerning shift speeds several times. These revisions were intended to further define and provide guidance as to how to determine whether proposed shift schedules were representative of actual vehicle operation. Revisions to the procedures for determining representative shift speeds were particularly necessary to accommodate new technology such as improved transmission designs and better matching of engines and transmissions. Lower shift speeds tend to increase fuel economy measured during testing and if followed by drivers, in-use fuel economy should comparably increase. It is appropriate to allow shift schedules which result from new technology, but it is not appropriate to allow unrealistic shift schedules which optimize fuel economy during the test program but are unlikely to be followed in use and are therefore, unlikely to yield comparable fuel economy improvement expected in use. Since EPA has provided criteria for

allowing their use in CAFE testing, lower shift speeds than those used during the 1975 model year have resulted in significant improvement in manufacturers' CAFE.

GM stated that the changes EPA has made since 1975 regarding shift speeds are inconsistent with the comparability requirement of EPCA, are arbitrary, and are not within EPA's authority. Specifically, GM objected to the requirement that alternative shift speeds be demonstrated to be representative of in-use driving. GM based its claims for CAFE credits on the fuel economy difference between using the most fuel efficient shift speeds during the fuel economy test and using representative shift speeds as specified by EPA. GM contended that EPA's policies have reduced GM's ability to receive full CAFE credit for improvements in technology.

EPA cannot agree with GM's contentions. The EPA shift speed policies have been implemented to ensure that the test vehicles are shifted at speeds typical of in-use operation so that any associated fuel economy improvement is likely to be realized by the customer. This is fully consistent with the policies and practices in place in the 1975 model year. Throughout the fuel economy program, EPA has not allowed use of shift speeds so low that consumers are unlikely to use them. To allow unrealistically low shift speeds without any evidence that consumers would indeed shift at those speeds would result in inappropriately high fuel economy test values and manufacturer CAFE values. Test practices which allow increases in a manufacturer's CAFE without a corresponding reduction of in-use fuel consumption erode the effectiveness of the CAFE standards in reducing the nation's fuel consumption. Similarly, giving credit for practices beyond what is representative of in-use operation reduces the stringency of the CAFE standards and does not maintain comparability with the 1975 procedures as required by EPCA. Thus, no CAFE credit is warranted for the general changes EPA has made to refine and further delineate its policies for allowing alternative shift schedules. Credit for improvements in technology that allow lower shift speeds will still be available where manufacturers can show that alternative shift schedules are representative of in-use driving.

2. Shift Indicator Light Policy

As a particular aspect of EPA's manual transmission shift speed procedures, GM criticized EPA's policy concerning shift indicator lights. Shift indicator lights are intended to signal the driver when vehicle operating conditions would allow acceptable operation at the next higher gear. These signals typically occur at speeds lower than those at which drivers have normally been accustomed to shifting.

EPA's current shift light policy allows manufacturers to gain credit for fuel economy improvements for shift lights in proportion to the frequency with which drivers shift in response to the light. EPA has allowed two options for gaining this shift light fuel economy credit. First, manufacturers may survey the shift speeds of a random cross-section of drivers operating vehicles equipped with shift lights. The resulting average in-use shift points are then used during fuel economy program testing. Alternatively, manufacturers can survey for the percentage of time drivers follow their shift light signals. Under this alternative, test vehicles are tested according to the base (non-shift light) shift points and tested again according to the shift light shift points. The fuel economy results are then combined into a weighted average according to the percentage of usage determined in the manufacturer's survey. Under either approach, the fuel economy estimate reflects average in-use shift points.

GM, in its comments, claimed EPA has arbitrarily constrained GM from gaining the full fuel economy benefits deserved for such technology improvements as shift indicator lights. GM specifically claimed that EPA policy limited its shift light credit to a 65 percent usage frequency. This is not correct. For labeling purposes EPA allows up to a 65 percent usage frequency for new designs and applications for which no factual usage data exist. However, for CAFE purposes, EPA relies on survey-determined actual usage factors. As these surveys have demonstrated, actual adherence to the shift lights varies considerably in-use (from less than 40 percent to infrequently over 65 percent) which makes it impractical for EPA to establish any fixed usage factors. Consequently, EPA will continue to rely on in-use surveys to establish the appropriate fuel economy benefit due to shift indicator lights. Not only does this EPA policy give credit based on actual in-used data, but it also creates an incentive for manufactures to adopt the most effective designs. If the manufacturers were able to gain fuel economy credit that assumed 100 percent adherence to their shift lights, they would have an incentive to calibrate their lights to come on at even lower shift speeds to gain further CAFE benefit. This might actually result in decreased in-use fuel economy if drivers learn to generally ignore the shift light as a result of the recommended shift speeds being too low to all accepatable driveability.

In conclusion, no manufacturer, including GM, has been arbitrarily constrained as to the fuel economy benefit it can derive from technology improvements such as shift indicator lights. Rather, EPA has developed and implemented procedures which provide fuel economy credit consistent with the gains expected in-use. This maintains the fuel economy test's comparability with the 1975 test procedures as required by EPCA. To provide additional credits as suggested by GM would reduce the stringency of the standard by generating CAFE gains in excess of the actual impact on vehicle fuel economy. As such, GM's recommendations for additional credits must be denied.

3. Driving Schedule Compliance

The Federal Test Procedure (FTP) requires vehicles to operate on a fixed speed time schedule on a chassis dynamometer. The 1975 model year test procedure required test vehicles to follow this driving schedule as closely as possible within the limits of the vehicles' capability.

Ford commented that CAFE credit may be due for two changes which are related to test vehicle compliance with the driving schedule. First, Ford states that a Novermber 14, 1978 technical amendment which requires vehicles to be operated at *maximum available power*, if necessary, to follow driving schedule may qualify for a CAFE adjustment. For the 1975 model year, the exact requirement was for *wide-open-throttle* operation, if necessary to follow the driving schedule. Second, Ford stated that EPA's December 27, 1982 interpretation of the speed variation tolerance has increased the stringency of the tolerance. This interpretation was intended to prohibit deliberate deviations from the driving trace in order to minimize speed variations (termed "trace smoothing") which could improve emissions and fuel economy test results.

These two issues do not represent changes from the 1975 model year test procedures and, therefore, do not warrant a CAFE adjustment. The technical amendment which addressed using maximum available power only clarified the requirement that a vehicle should follow the driving schedule even if it requires operating at wide-open-throttle and selecting the proper

transmission gear for maximum available power. This requirement to follow the driving trace to the best capability of the car has existed throughout the fuel economy program. Likewise, EPA's interpretation of the speed variation tolerance clarified that the intended purpose of this tolerance has always been to permit reasonable speed deviations from the driving schedule, but not to allow purposeful deviations such as might occur if the driver were to try to bias fuel economy or emission test results. It should further be noted that these tolerances have a two-sided effect in that they limit biasing which could either increase or decrease fuel economy. Thus, the intent and effect of EPA's interpretation of the speed variation tolerance is to minimize the test-to-test variation in fuel economy test results. Therefore, no CAFE adjustment is warranted.

4. Vehicle Preconditioning

A vehicle's emissions and fuel economy can be influenced by the preconditioning received by the vehicle before testing. The EPA test procedure includes a vehicle preconditioning sequence to ensure that vehicles are tested in a manner and condition representative of typical operation and consistent across all vehicles. In 1976, EPA published, regulations (41 FR 35627, August 23, 1976) which deleted, as unnecessary, one hour of vehicle preconditioning driving which had been part of the test sequence. Ford commented that the deletion of one hour of the preconditioning driving schedule may effect fuel economy but provided no data or technical rationale which substantiated its claim.

Coupled with deletion of this one-hour drive from the preconditioning schedule, EPA issued Advisory Circular No. 50A which stated that manufacturers should deliver their vehicles to EPA test facilities in a condition which is representative of typical operation. Since the requirement that vehicles should be delivered for testing in a condition representative of typical operation involves use of a driving cycle identical to the deleted preconditioning driving cycle, the change in preconditioning procedure has no effect on CAFE, and no CAFE adjustment is warranted.

M. Future CAFE Adjustments

The NPRM proposed to provide CAFE adjustment for future test procedure changes which had, individually or as a group, a quantifiable impact of 0.10 mpg or more for any manufacturer. Consistent with the philosphy followed in determining adjustment for past test procedure changes, EPA proposed to consider the CAFE impact of procedure changes which require revision of the regulatory requirements as well as those which do not. Further, test procedure changes whose effect was to close loopholes or provide manufacturers with an improved ability to receive CAFE credit for real fuel economy improvements would not warrant CAFE adjustment. Finally, largely to allow timely implementation of certain test procedure changes that do not require revision of regulatory requirements, EPA stated its intent not to delay adoption of such changes pending rulemaking proceedings to determine their CAFE impact. Rather these test procedure changes could be adopted and any CAFE impact and resultant CAFE adjustment subsequently determined.

In commenting on the proposal, several manufacturers pointed out that the proposed regulations needed to be clarified to conform to the intent stated in the preamble. Specifically, the aggregate effect of several procedure changes with, for example, individually small CAFE impacts should be considered when determining if CAFE has been significantly impacted and an adjustment therefore warranted. The regulations have been revised to clarify the intent to consider the aggregate effect of procedure changes where individually they do not result in a significant CAFE impact.

GM also commented that 0.10 mpg should not define the threshold for providing CAFE adjustment. Rather, GM recommended that CAFE adjustments be provided if any manufacturer's CAFE would be affected by a test procedure change. Manufacturer CAFE's are determined by rounding off the calculated value to the nearest 0.1 mpg and CAFE adjustments of less than 0.10 mpg could affect this rounding off. This potential impact of more precise calculation of CAFE adjustment is evident in EPA's determination of adjustments for past test procedure changes. In several instances, CAFE adjustments have been provided for test procedure changes which have less than a 0.1 mpg impact. EPA concurs with the point brought out by GM. Therefore, EPA is not establishing a minimum threshold for consideration of whether future test procedure changes warrant a CAFE adjustment. All future changes will be addressed through rulemaking procedures to determine if their effect on CAFE are significant and if they appropriately warrant a CAFE adjustment.

Finally, Ford recommended that EPA consider the alternative of first considering via rulemaking the need for and likely CAFE impact of any test procedure change prior to implementing the change. For the same reasons stated in the proposal, EPA finds it unnecessary and disruptive to precede the implementation of a test procedure change with a rulemaking unless the nature of the change requires revision of the regulations.

EPA will continue its present methods of providing notification to industry of any changes in laboratory equipment and practices and any changes in certification and fuel economy program policies or practices which may be of interest to or have an impact on the manufacturers but which do not require modifications to the regulations. Routine equipment changes are announced to the industry through "Equipment-Procedure Change Notices." Depending on the type of equipment change, these notices request comment and submission of data on any effect on test results. Industry notice of any significant change in program or laboratory practice is provided by the EPA system of advisory circulars. Advisory circulars provide guidance to manufacturers on the acceptability of certain laboratory practices and test procedures. In issuing these Equipment-Procedure Notices and advisory circulars, EPA will assess the expected fuel economy impact. The industry will be notified of EPA's interim determination and provide the opportunity to comment at the time the revised procedure documentation is distributed. If EPA's assessment or industry's comments regarding advisory circulars or Equipment Change Notices, indicate that a manufacturer's CAFE will likely be affected EPA will initiate rulemaking to determine if a CAFE credit is appropriate and if it is, the level of that credit.

To summarize EPA's plans for determining future CAFE adjustments: (1) The CAFE impacts of only test procedure changes initiated subsequent to this rulemaking will be considered; (2) no adjustments will be provided for changes which close loopholes which permit manufacturers to gain measured improvements to fuel economy that are not the result of real improvement to actual vehicle fuel economy; (3) no debits will be assessed for test procedure changes which provide manufacturers with improved ability to receive credit for real fuel economy improvements; (4) adjustments will be based on changes initiated by EPA; no adjustment will be made for changes independently adopted by manufacturers; (5) changes will be assessed either individually or

collectively for their impact on manufacturers' CAFE; (6) the impact of the changes on CAFE will be determined via rulemaking; (7) for changes which involve specific changes to the regulations, the CAFE impact will be determined as part of the rulemaking implementing such changes; (8) for changes not requiring revised regulations, EPA may choose to implement the test procedure change prior to determining and providing any appropriate CAFE adjustment via rulemaking.

IV. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will result in an annual effect on the economy of less than $100 million. Also, this regulation should not result in increased costs or prices for consumers, industries, or others, nor should it have adverse effects on competition, employment, investment, or productivity. In fact, the CAFE adjustments granted by this rulemaking will reduce the burden, including the costs of compliance with fuel economy requirements, for the industry as a whole. The results of EPA's calculation of the CAFE adjustments provided by this rule, shown in Appendix A, indicate that the position of all manufacturers' CAFE compliance is enhanced.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available for public inspection in the docket for this rulemaking: Docket No. A–83–44. The EPA's Central Docket Section (A–130) is located at 401 M Street, S.W., Washington, D.C. 20460.

V. Reporting and Recordkeeping Requirements

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory flexibility analysis. This rulemaking will not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

VII. List of Subjects in 40 CFR Part 600

Electric power, Energy conservation, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements, Administrative practice and procedure, Fuel economy.

Dated: June 22, 1985.

Lee M. Thomas,

Administrator.

Appendix A

Note.—The following appendix will not appear in the Code of Federal Regulations.

1980 Model Year

Manufacturer	Compliance category	Unadjusted CAFE	Adjusted CAFE
American Motors	Domestic—PA	21.5	22.3
Chrysler	Domestic—PA	21.7	22.3
Ford	Domestic—PA	22.1	22.9
General Motors	Domestic—PA	21.9	22.8
Avanti	Domestic—PA	15.8	16.3
Checker	Domestic—PA	18.5	19.1
Chrysler	Import—PA	32.5	33.6
Ford	Import—PA	29.8	30.7
Alfa Romeo	Import—PA	21.7	22.4
BMW	Import—PA	25.9	26.7
Mercedes-Benz	Import—PA	23.8	24.6
Fiat	Import—PA	26.8	27.4
Honda	Import—PA	29.2	30.1
Jaguar Cars Inc.	Import—PA	21.8	22.2
Nissan	Import—PA	31.2	32.2
Peugeot	Import—PA	27.2	28.1
Renault	Import—PA	33.3	34.3
Rolls-Royce	Import—PA	11.1	11.4
Saab	Import—PA	23.4	24.3
Toyo Kogyo	Import—PA	26.0	26.8
Toyota	Import—PA	27.4	28.3
Volkswagen	Import—PA	31.3	32.3
Volvo	Import—PA	21.8	22.3
Fuji Heavy Ind.	Import—PA	27.9	28.7

1981 Model Year

Manufacturer	Compliance category	Unadjusted CAFE	Adjusted CAFE
American Motors	Domestic—PA	22.4	23.1
Chrysler	Domestic—PA	26.1	26.8
Ford	Domestic—PA	23.4	24.1
General Motors	Domestic—PA	23.2	23.8
Checker	Domestic—PA	18.6	19.1
Alfa Romeo	Import—PA	22.5	23.1
Chrysler	Import—PA	32.0	32.9
Ford	Import—PA	34.3	35.2
BMW	Import—PA	26.6	27.3
DeLorean	Import—PA	24.0	24.6
Mercedes-Benz	Import—PA	25.6	26.3
Fiat	Import—PA	27.6	28.4
Honda	Import—PA	30.6	31.6
Isuzu	Import—PA	34.7	35.6
Jaguar Cars Inc.	Import—PA	18.5	19.0
Maserati	Import—PA	10.2	10.5
Nissan	Import—PA	30.5	31.4
Peugeot	Import—PA	27.9	28.7
Renault	Import—PA	29.4	30.2
Rolls-Royce	Import—PA	10.9	11.2
Saab	Import—PA	23.3	24.1
Toyo Kogyo	Import—PA	31.1	31.9
Toyota	Import—PA	30.8	31.8
Volkswagen	Import—PA	34.2	35.2
Volvo	Import—PA	22.3	22.9

1981 Model Year—Continued

Manufacturer	Compliance category	Unadjusted CAFE	Adjusted CAFE
Fuji Heavy Ind.	Import—PA	31.2	32.0

1982 Model Year

Manufacturer	Compliance category	Unadjusted CAFE	Adjusted CAFE
American Motors	Domestic—PA	23.9	24.3
Chrysler	Domestic—PA	27.2	27.6
Ford	Domestic—PA	24.8	25.0
General Motors	Domestic—PA	24.2	24.6
Checker	Domestic—PA	18.4	18.7
Ford	Import—PA	34.4	34.9
Alfa Romeo	Import—PA	24.8	25.0
BMW	Import—PA	26.4	26.9
Mercedes-Benz	Import—PA	26.3	26.6
Fiat	Import—PA	25.7	26.1
Honda	Import—PA	33.4	33.9
Isuzu	Import—PA	37.6	38.1
Jaguar Cars Inc.	Import—PA	18.8	19.0
Maserati	Import—PA	10.1	10.2
Nissan	Import—PA	30.7	31.2
Peugeot	Import—PA	27.6	28.0
Renault	Import—PA	32.4	32.9
Rolls-Royce	Import—PA	10.8	11.0
Saab	Import—PA	24.1	24.5
Mitsubishi	Import—PA	33.1	33.6
Toyo Kogyo	Import—PA	29.4	29.8
Toyota	Import—PA	30.5	30.9
Volkswagen	Import—PA	32.9	33.4
Volvo	Import—PA	25.1	25.5
Fuji Heavy Ind.	Import—PA	31.8	32.0

1983 Model Year

Manufacturer[1]	Compliance category	Unadjusted CAFE	Adjusted CAFE
American Motors	Domestic—PA	33.5	34.2
Ford	Domestic—PA	23.8	24.3
General Motors	Domestic—PA	23.5	24.0
Chrysler	Import—PA	33.8	34.5
Alfa Romeo	Import—PA	25.2	25.8
BMW	Import—PA	25.8	26.2
Bertone	Import—PA	29.1	29.7
Mercedes-Benz	Import—PA	26.8	27.2
Ferrari	Import—PA	13.2	13.5
Honda	Import—PA	35.3	36.0
Isuzu	Import—PA	30.7	31.4
Jaguar Cars Inc.	Import—PA	16.8	18.2
Maserati	Import—PA	10.0	10.2
Nissan	Import—PA	32.7	33.4
Peugeot	Import—PA	25.1	25.6
Pininfarina	Import—PA	28.9	29.5
Renault	Import—PA	31.4	32.0
Rolls-Royce	Import—PA	11.0	11.2
Saab	Import—PA	25.9	26.6
Mitsubishi	Import—PA	30.2	30.8
Toyo Kogyo	Import—PA	28.9	29.4
Toyota	Import—PA	32.6	33.3
Volkswagen	Import—PA	30.0	30.7
Volvo	Import—PA	25.8	26.5
Fuji Heavy Ind.	Import—PA	32.4	33.0

[1] Does not include manufacturers whose CAFE's have not yet been confirmed.

1984 Model Year

Manufacturer[1]	Compliance category	Unadjusted CAFE	Adjusted CAFE
General Motors	Domestic—PA	24.4	24.9
BMW	Import—PA	27.4	28.0

1984 MODEL YEAR—Continued

Manufacturer [1]	Compliance category	Unadjusted CAFE	Adjusted CAFE
Bertone	Import—PA	[illegible]	29.8
Mercedes-Benz	Import—PA	[illegible]	28.2
Ferrari	Import—PA	14.1	14.6
Isuzu	Import—PA	29.4	29.2
Jaguar Cars Inc.	Import—PA	19.0	19.4
Peugeot	Import—PA	24.5	25.0
Pininfarina	Import—PA	28.5	29.0
Saab	Import—PA	25.3	[illegible]
Mitsubishi	Import—PA	30.9	[illegible]
Mazda Motor Corp.	Import—PA	[illegible]	[illegible]
Toyota	Import—PA	32.9	[illegible]
Volvo	Import—PA	28.4	27.0

[1] Does not include manufacturers whose CAFE's have not yet been confirmed.

PART 600—[AMENDED]

For the reasons set forth in the preamble, EPA amends 40 CFR Part 600 as follows:

1. The authority citation for Part 600 continues to read as follows:

Authority: Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, 89 Stat. 871, Title IV of the National Energy Conservation Policy Act of 1978, Pub. L. 95–619, 92 Stat. 3295.

2. Section 600.006–86 is amended by revising paragraph (g)(1) to read as follows:

§ 600.006–86 Data and information requirements for fuel economy vehicles.

* * * * *

(g)(1) The manufacturer shall adjust all test data used for fuel economy label calculations generated by vehicles with engine-drive system combinations with more than 6,200 miles by using the following equation:

$$FE_{4,000_{mi}} = FE_T\,[0.979 + 5.25 \times 10^{-6}(mi)]^{-1}$$

Where:

$FE_{4,000_{mi}}$ = Fuel economy data adjusted to 4,000-mile test point rounded to the nearest 0.1 mpg.

FE_T = Tested fuel economy value rounded to the nearest 0.1 mpg.

mi = System miles accumulated at the start of the test rounded to the nearest whole mile.

* * * * *

3. A new § 600.006–87 is added to read as follows:

§ 600.006–87 Data and information requirements for fuel economy vehicles.

(a) For certification vehicles with less than 10,000 miles, the requirements of this section are considered to have been met except as noted in paragraph (c) of this section.

(b)(1) The manufacturer shall submit the following information for each fuel economy data vehicle:

(i) A description of the vehicle, exhaust emission test results, applicable deterioration factors, and adjusted exhaust emission levels.

(ii) A statement of the origin of the vehicle including total mileage accumulation, and modifications (if any) from the vehicle configuration in which the mileage was accumulated. (For modifications requiring advance approval by the Administrator, the name of the Administrator's representative approving the modification and date of approval are required.) If the vehicle was previously used for testing for compliance with Part 86 of this chapter or previously accepted by the Administrator as a fuel economy data vehicle in a different configuration, the requirements of this paragraph may be satisfied by reference to the vehicle number and previous configuration.

(iii) A statement that the fuel economy data vehicle, with respect to which data are submitted:

(A) Has been tested in accordance with applicable test procedures,

(B) Is, to the best of the manufacturer's knowledge, representative of the vehicle configuration listed, and

(C) Is in compliance with applicable exhaust emission standards.

(2) The manufacturer shall retain the following information for each fuel economy data vehicle, and make it available to the Administrator upon request:

(i) A description of all maintenance to engine, emission control system, or fuel system components performed within 2,000 miles prior to fuel economy testing.

(ii) In the case of electric vehicles, a description of all maintenance to electric motor, motor controller, battery configuration, or other components performed within 2,000 miles prior to fuel economy testing.

(iii) A copy of calibrations for engine, fuel system, and emission control devices, showing the calibration of the actual components on the test vehicle as well as the design tolerances.

(iv) In the case of electric vehicles, a copy of calibrations for the electric motor, motor controller, battery configuration, or other components on the test vehicle as well as the design tolerances.

(v) If calibrations for components specified in paragraph (b)(2) (iii) or (iv) of this section were submitted previously as part of the description of another vehicle or configuration, the original submittal may be referenced.

(c) The manufacturer shall submit the following fuel economy data:

(1) For vehicles tested to meet the requirements of Part 86 (other than those chosen in accordance with § 86.085–24 (c) and (h)), the city and highway fuel economy results from all tests on that vehicle, and the test results adjusted in accordance with paragraph (g) of this section.

(2) For each fuel economy data vehicle, all individual test results (excluding results of invalid and zero mile tests) and these test results adjusted in accordance with paragraph (g) of this section.

(d) The manufacturer shall submit an indication of the intended purpose of the data (e.g., data required by the general labeling program or voluntarily submitted for specific labeling).

(e) In lieu of submitting actual data from a test vehicle, a manufacturer may provide fuel economy values derived from an analytical expression, e.g., regression analysis. In order for fuel economy values derived from analytical methods to be accepted, the expression (form and coefficients) must have been approved by the Administrator.

(f) If, in conducting tests required or authorized by this part, the manufacturer utilizes procedures, equipment, or facilities not described in the Application for Certification required in § 86.087–21, the manufacturer shall submit to the Administrator a description of such procedures, equipment, and facilities.

(g)(1) The manufacturer shall adjust all test data used for fuel economy label calculations in Subpart D and average fuel economy calculations in Subpart F for passenger automobiles within the categories identified in paragraphs (a)(1) and (a)(2) of § 600.510. The test data shall be adjusted in accordance with (g)(3) or (g)(4) as applicable.

(2) The manufacturer shall only adjust the test data used for fuel economy label calculations, in Subpart D for light trucks within the categories identified in paragraphs (a)(3) through (a)(6) of § 600.510. The test data shall be adjusted in accordance with (g)(3) or (g)(4) as applicable.

(3) The manufacturer shall adjust all test data generated by vehicles with engine-drive system combinations with more than 6,200 miles by using the following equation:

$$FE_{4,000_{mi}} = FE_T[0.979 + 5.25 \times 10^{-6}(mi)]^{-1}$$

Where:

$FE_{4,000_{mi}}$ = Fuel economy data adjusted to 4,000-mile test point rounded to the nearest 0.1 mpg.

FE_T = Tested fuel economy value rounded to the nearest 0.1 mpg.

mi = System miles accumulated at the start of the test rounded to the nearest whole mile.

(4) For vehicles with 6,200 miles or less accumulated, the manufacturer is not required to adjust the data.

4. Section 600.510–80 is amended by adding and reserving paragraph (d), and adding paragraphs (e), and (f) to read as follows:

§ 600.510–80 Calculation of average fuel economy.

* * * * *

(d) [Reserved].

(e) For passenger automobile categories identified in paragraphs (a)(1) and (a)(2) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:

$$AFE_{adj} = AFE\ [((0.55 \times a \times c) + (0.45 \times c) + (0.5556 \times a) + 0.4487) / ((0.55 \times a) + 0.45)] + IW$$

Where:

AFE_{adj} = Adjusted average combined fuel economy, rounded to the nearest 0.1 mpg.

AFE = Average combined fuel economy as calculated in paragraph (c) of this section, rounded to the nearest 0.0001 mpg.

a = Sales-weighted average (rounded to the nearest 0.0001 mpg) of all model types highway fuel economy values (rounded to the nearest 0.1 mpg) divided by the sales-weighted average (rounded to the nearest 0.0001 mpg) of all model types city fuel economy values (rounded to the nearest 0.1 mpg). The quotient shall be rounded to 4 decimal places. These average fuel economies shall be determining using the methodology of paragraph (c) of this section.

c = 2.501×10^{-2} for the 1980 model year
c = 2.184×10^{-2} for the 1981 model year
c = 9.280×10^{-3} for the 1982 model year
c = 1.435×10^{-2} for the 1983 model year
c = 1.420×10^{-2} for the 1984 model year
c = 1.490×10^{-2} for the 1985 model year

$$IW = (9.2917 \times 10^{-5} \times SF_{3IWC} \times FE_{3IWC}) - (3.5123 \times 10^{-5} \times SF_{4ETW} \times FE_{4IWC})$$

Note.—Any calculated value of IW less than zero shall be set equal to zero.

SF_{3IWC} = The 3000 lb. inertia weight class sales divided by total sales. The quotient shall be rounded to 4 decimal places.

SF_{4ETW} = The 4000 lb. equivalent test weight category sales divided by total sales. The quotient shall be rounded to 4 decimal places.

FE_{3IWC} = The sales-weighted average combined fuel economy of all 3000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

FE_{4IWC} = The sales-weighed average combined fuel economy of all 4000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

(f) The Administrator shall calculate and apply additional average fuel economy adjustments if, after notice and opportunity for comment, the Administrator determines that as a result of test procedure changes not previously considered, such correction is necessary to yield fuel economy test results that are comparable to those obtained under the 1975 test procedures. In making such determination, the Administrator must find that:

(1) A directional change in measured fuel economy of an average vehicle can be predicted from a revision to the test procedures;

(2) The magnitude of the change in measured fuel economy for any vehicle or fleet of vehicles caused by a revision to the test procedures is quantifiable from theoretical calculations or best available test data;

(3) The impact of a change on average fuel economy is not due to eliminating the ability of manufacturers to take advantage of flexibilities within the existing test procedures to gain measured improvements in fuel economy which are not the result of actual improvements in the fuel economy of production vehicles.

(4) The impact of a change on average fuel economy is not due to a greater ability of manufacturers to reflect in average fuel economy those design changes expected to have comparable effect on in-use fuel economy.

(5) The test procedure change is required by EPA or is a change initiated by EPA in its laboratory and is not a change implemented solely by a manufacturer in its own laboratory.

5. Section 600.510–86 is amended by adding paragraphs (e) and (f) to read as follows:

§ 600.510–86 Calculation of average fuel economy.

* * * * *

(e) For passenger categories identified in paragraphs (a)(1) and (a)(2) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:

$$AFE_{adj} = AFE[((0.55 \times a \times c) + (0.45 \times c) + (0.5556 \times a) + 0.4467) / ((0.55 \times a) + 0.45)] + IW$$

Where:

AFE_{adj} = Adjusted average combined fuel economy, rounded to the nearest 0.1 mpg.

AFE = Average combined fuel economy as calculated in paragraph (c) of this section, rounded to the nearest 0.0001 mpg.

a = Sales-weighted average (rounded to the nearest 0.0001 mpg) of all model types highway fuel economy values (rounded to the nearest 0.1 mpg) divided by the sales-weighted average (rounded to the nearest 0.0001 mpg) of all model types city fuel economy values (rounded to the nearest 0.1 mpg). The quotient shall be rounded to 4 decimal places. These average fuel economies shall be determined using the methodology of paragraph (c) of this section.

c = A constant value, fixed by model year. For 1986 and later model years, the Administrator will specify the c values after the necessary laboratory humidity and test fuel data become available.

$$IW = (9.2917 \times 10^{-5} \times SF_{3IWC} \times FE_{3IWC}) - (3.5123 \times 10^{-5} \times SF_{4ETW} \times FE_{4IWC})$$

Note.—Any calculated value of IW less than zero shall be set equal to zero.

SF_{3IWC} = The 3000 lb. inertia weight class sales divided by total sales. The quotient shall be rounded to 4 decimal places.

SF_{4ETW} = The 4000 lb. equivalent test weight category sales divided by total sales. The quotient shall be rounded to 4 decimal places.

FE_{3IWC} = The sales-weighted average combined fuel economy all 3000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

FE_{4IWC} = The sales-weighed average combined fuel economy of all 4000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

(f) The Administration shall calculate and apply additional average fuel ecomony adjustments if, after notice and opportunity for comment, the Administrator determines that, as a result of test procedure changes not previously considered, such correction is necessary to yield fuel economy test results that are comparable to those obtained under the 1975 test procedures. In making such determinations, the Administrator must find that:

(1) A directional change in measured fuel economy of an average vehicle can be predicted from a revision to the test procedures;

(2) The magnitude of the change in measured fuel economy for any vehicle or fleet of vehicles caused by a revision to the test procedures is quantifiable from theoretical calculations or best available test data;

(3) The impact of a change on average fuel economy is not due to eliminating the ability of manufacturers to take advantage of flexibilities within the existing test procedures to gain measured improvements in fuel economy which are not the result of actual improvements in the fuel economy of production vehicles.

(4) The impact of a change on average fuel economy is not solely due to a greater ability of manufacturers to reflect in average fuel economy those design changes expected to have comparable effect on in-use fuel economy.

(5) The test procedure change is required by EPA or is a change initiated by EPA in its laboratory and is not a change implemented solely by a manufacturer in its own laboratory.

6. Section 600.513–81 is amended by adding paragraph (a)(3), redesignating paragraphs (c) through (f) as paragraphs (d) through (g) and redesignating the paragraph following (b)(2)(vi) as paragraph (c), and revising paragraphs (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), and (g)(1) to read as follows:

§ 600.513–81 Gas Guzzler Tax.

(a)* * *

(2)* * *

(3) For 1980 and later model year passenger automobiles, the combined general label model type fuel economy value used for Gas Guzzler Tax assessments shall be calculated in accordance with the following equation, rounded to the nearest 0.1 mpg:

$$FE_{adj} = Fe\ [((0.55 \times a_e \times c) + (0.45 \times c) + (0.5556 \times a_e) + 0.4487) / ((0.55 \times a_e) + 0.45)] + IW_e$$

Where:

FE_{adj} = Fuel economy value to be used for determination of gas guzzler tax assessment rounded to the nearest 0.1 mpg.

FE = Combined model type fuel economy calculated in accordance with § 600.207, rounded to the nearest 0.0001 mpg.

a_e = Model type highway fuel economy, calculated in accordance with § 600.207, rounded to the nearest 0.0001 mpg divided by the model type city fuel economy calculated in accordance with § 600.207, rounded to the nearest 0.0001 mpg. The quotient shall be rounded to 4 decimal places.

$c = 2.501 \times 10^{-2}$ for the 1980 model year
$c = 2.184 \times 10^{-2}$ for the 1981 model year
$c = 9.260 \times 10^{-3}$ for the 1982 model year
$c = 1.435 \times 10^{-2}$ for the 1983 model year
$c = 1.420 \times 10^{-2}$ for the 1984 model year
$c = 1.490 \times 10^{-2}$ for the 1985 model year
$c = 1.300 \times 10^{-2}$ for the 1986 and later model years

$$IW_e = (9.2917 \times 10^{-3} \times SF_{3IWCO} \times FE_{3IWCO}) - (3.5123 \times 10^{-3} \times SF_{4ETWC} \times FE_{4IWCO})$$

Note.—Any calculated value of IW less than zero shall be set equal to zero.

SF_{3IWCO} = The 3000 lb. inertia weight class sales in the model type divided by the total model type sales. The quotient shall be rounded to 4 decimal places.

SF_{4ETWC} = The 4000 lb. equivalent test weight sales in the model type divided by the total model type sales, the quotient shall be rounded to 4 decimal places.

FE_{3IWCO} = The 3000 lb. inertia weight class base level combined fuel economy used to calculate the model type fuel economy rounded to the nearest 0.0001 mpg.

FE_{4IWCO} = The 4000 lb. inertia weight class base level combined fuel economy used to calculate the model type fuel economy rounded to the nearest 0.0001 mpg.

(b) * * *

(1) Passenger automobiles with a combined general label model type fuel economy value of less than 17.0 mpg, calculated in accordance with paragraph (a)(3) of this section and rounded to the nearest 0.1 mpg, shall carry a Gas Guzzler Tax statement pursuant to section 403 of the National Energy Conservation Policy Act.

* * * * *

(c) This paragraph applies to 1982 model year vehicles.

(1) Passenger automobiles with a combined general label model type fuel economy value of less than 18.5 mpg, calculated in accordance with paragraph (a)(3) of this section and rounded to the nearest 0.1 mpg, shall carry a Gas Guzzler Tax statement pursuant to section 403 of the National Energy Conservation Policy Act.

* * * * *

(d) This paragraph applies to 1983 model year vehicles.

(1) Passenger automobiles with a combined general label model type fuel economy value of less than 19.0 mpg, calculated in accordance with paragraph (a)(3) of this section and rounded to the nearest 0.1 mpg, shall carry a Gas Guzzler Tax statement pursuant to section 403 of the National Energy Conservation Policy Act.

* * * * *

(e) This paragraph applies to 1984 model year vehicles.

(1) Passengers automobiles with a combined general label model type fuel economy value of less than 19.5 mpg, calculated in accordance with paragraph (a)(3) of this section and rounded to the nearest 0.1 mpg, shall carry a Gas Guzzler Tax statement pursuant to section 403 of the National Energy Conservation Policy Act.

* * * * *

(f) This paragraph applies to 1985 model year vehicles.

(1) Passengers automobiles with a combined general label model type fuel economy value of less than 21.0 mpg, calculated in accordance with paragraph (a)(3) of this section and rounded to the nearest 0.1 mpg, shall carry a Gas Guzzler Tax statement pursuant to section 403 of the National Energy Conservation Policy Act.

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(g) This paragraph applies to 1986 and later model year vehicles.

(1) Passenger automobiles with a combined general label model type fuel economy value of less than 22.5 mpg, calculated in accordance with paragraph (a)(3) of this section and rounded to the nearest 0.1 mpg, shall carry a Gas Guzzler Tax statement pursuant to section 403 of the National Energy Conservation Policy Act.

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FR Doc. 85–18711 Filed 6–28–85; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 600

[AMS-FRL-2839-5A]

Fuel Economy Test Procedures Proposed Revision of Fuel Economy Calculation Equation and Consideration of Light Truck Fuel Economy Adjustments To Compensate for Test Procedure Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes a revised equation for the calculation of passenger automobile and light truck fuel economies for 1987 and later model years. Additionally, it considers light truck Corporate Average Fuel Economy (CAFE) adjustments to compensate for the effects of past test procedure changes.

Currently, the EPA test procedures calculate fuel economies using equations which are based on fixed test fuel properties. In practice, test fuel properties are not fixed and have, in fact, varied over time. Thus, measured fuel economy has been affected by variation of test fuel properties. A final rule being published elsewhere in today's **Federal Register** grants CAFE adjustments for passenger automobiles to compensate for variation of test fuel properties in past model years and establishes a procedure to adjust for variations in the future. The fuel economy calculation equation proposed today would compensate directly for variations in test fuel properties by changing the equations used to calculate fuel economy test results and would eliminate the necessity of separately providing future CAFE adjustments to compensate for variation of test fuel properties.

This notice also addresses the issue of CAFE adjustments for light trucks. As mentioned above, elsewhere in today's **Federal Register** EPA is granting passenger automobile CAFE adjustments to compensate for test procedure changes which influenced the stringency of the CAFE standards. The stringency of light truck standards may have also been influenced by several test procedure changes. Therefore, EPA is proposing light truck CAFE adjustments, where appropriate, to compensate for the fuel economy effects of test procedure changes.

DATE: Comments on this proposed rule must be received by July 31, 1985.

ADDRESS: Comments in response to this notice should be submitted to the Environmental Protection Agency Central Docket Section (A–130), Attn.: Docket No. A–85–16 Gallery 1, West Tower Lobby, Waterside Mall, 401 M. Street, S.W., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Matthew J. Wagner, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105: (313) 668–4345.

SUPPLEMENTARY INFORMATION:

A. Fuel Economy Equation

1. Background

Under the Energy Policy and Conservation Act (EPCA), 15 U.S.C. 2001 *et seq*, EPA is responsible for measuring automobile manufacturers' Corporate Average Fuel Economy (CAFE) so that the National Highway Traffic Safety Administration (NHTSA) can determine compliance with the CAFE standards set by either Congress or the Department of Transportation. In making this determination EPA is required by section 503(d) of EPCA to use 1975 model year test procedures or procedures which yield "comparable results."

In a final rule published in today's **Federal Register**, EPA assessed the impact on manufacturers' CAFEs of a number of test procedure changes it had enacted in the past, and granted CAFE adjustments where those changes had resulted in systematically lower test results than would have been obtained had 1975 procedures been used. EPA also considered the CAFE impact of variations in test fuel properties, and granted CAFE adjustments for past model years to compensate for the effects of those variations. For future model years, EPA stated that it would continue to adjust CAFE test results for year-to-year variations in test fuel properties, but left open the possibility of revising the equation for calculating CAFE to directly account for fuel property variations.

EPA's fuel economy test procedures specify equations for calculating fuel economy (40 CFR 600.113–78). These equations are based on the carbon balance technique which allows fuel economy to be determined from measurement of exhaust emissions. This technique relies upon the premise that the quantity of carbon in a vehicle's exhaust gas is equal to the quantity of carbon consumed by the engine as fuel. A general equation for calculating fuel economy in miles per gallon (mpg) using the carbon balance technique is as follows:

$$mpg = \frac{\text{grams carbon/gal fuel}}{\text{grams carbon in exhaust/mile}} \quad (1)$$

Although this general equation is applicable to any carbon-based fuel, the current equations for both gasoline and diesel fuel economy assume constant fuel properties based on EPA's 1975 test fuels. However, the current EPA test fuel specifications (40 CFR 86.113–82) do not define a unique fuel, so fuel properties can and have varied over time.

In an August 15, 1984[1] letter to EPA concerning the effect of test fuel properties on fuel economy testing and CAFE, General Motors (GM) stated that vehicle tests indicate that changes in test fuel properties have a measurable effect on calculated fuel economy. In the December 7, 1984 Supplemental NPRM concerning CAFE adjustments,[2] EPA acknowledged the effect these changing test fuel properties had on past model year fuel eonomony test results and proposed granting compensatory CAFE credits. EPA also proposed that future model year passenger car fuel economy test results be adjusted on the basis of average EPA test fuel specifications for the test year. EPA requested comments regarding this proposal and other future improvements in the fuel economy measurement methodology to account for test fuel properties.

Comments received in response to the December 7, 1984 Supplemental NPRM indicated two possible courses of action to preclude the need for any future fuel economy adjustments for test fuel properties. The majority of comments suggested revision of the current fuel economy equation. The revised equation would compensate for fuel property changes and yield a calculated fuel economy value equal to that which the current equation would yield if 1975 test fuel had been used. Other commenters suggested that EPA establish tighter test fuel tolerances which would preclude the need for any future adjustments.

In today's final rule granting passenger automobile CAFE adjustments, EPA established procedures to adjust future passenger car fuel economy on a model year basis

[1] See General Motors letter addressed to Mr. R.E. Maxwell, Certification Division Director, "Effect of Test Fuel Properties on Fuel Economy Testing and CAFE," August 15, 1984.

[2] See 49 FR 48024–48026, December 7, 1984.

using average EPA test fuel specifications for the particular test year. This procedure will remain in effect unless it is superseded by final regulations resulting from today's proposal to revise the fuel economy calculation equation to directly compensate for variations in fuel properties.

2. Revised Fuel Economy Equation (Proposed Action)

For calculation of fuel economy for 1987 and later model year test vehicles, EPA proposes to revise the current fuel economy equations to accommodate varying fuel properties. Fuel economy would be calculated by using fuel economy equations which account for test fuel properties in a manner identical to those used in today's final rule for passenger automobiles CAFE adjustments. However, whereas the current equation uses the fuel economy adjustment based on the average annual test fuel properties of the fuel used by EPA and applies this adjustment to the manufacturer's CAFE, the proposed equation would use the fuel economy adjustment based on the test fuel used in a vehicle during each test and apply the adjustment to each individual city and highway fuel economy test result.

The revised equations would require manufacturers and EPA to determine the properties of the fuel used in each fuel economy test, specifically the fuel's carbon weight fractions (CWF), net heating value (NHV) and specific gravity (sg). Although determining additional variables might appear burdensome for both EPA and manufacturers, this approach has several advantages that make it attractive for implementation.

Many manufacturers attempt to obtain test fuel from the same supplier as EPA in order to minimize potential fuel economy test result differences between their laboratories and EPA's. However, obtaining fuel from the same supplier is not always convenient, depending on the location of a manufacturer's laboratory. Some foreign manufacturers must use the fuel available to them locally or transport fuel over long distances at great expense. Ultimately, some foreign manufacturers must choose either to use potentially different test fuels or to face significant additional costs for shipping test fuels overseas.

The revised fuel economy equations would minimize the need for manufacturers to obtain test fuel from the same supplier in order to maintain comparability of fuel economy test results with EPA. The revised equations would adjust for the fuel properties of the test fuels actually used to calculate fuel economy values which would have resulted had the reference (1975) test fuel been used. Therefore, test fuels having a relatively wide range of property values within the currently specified tolerances could be used for fuel economy testing, yet the resulting measured fuel economy values would approximate the values that would have been obtained if all laboratories used the same fuel. At the same time, the proposed equations maintain the objective of the current CAFE adjustment procedures for test fuels to adjust fuel economy to approximate the value that would have been obtained using the 1975 model year reference fuel. This will maintain the stringency of the CAFE standards across manufacturers.

The majority of comments received concerning fuel economy adjustment due to changing test fuel properties supported this methodology. For example, Volvo commented that if this revised equation were implemented, purchasing test fuel may become much more convenient due to the revised equation's ability to accommodate fuels different from that used by EPA. Overall, the greater accuracy in calculating CAFE and convenience in obtaining fuel that the revised equation would provide, as well as the strong backing it has received from manufacturers, support its implementation.

If the fuel economy equation is revised to account for varying test fuel properties, then it would be appropriate to use fuel properties unique to diesel fuel when calculating diesel vehicle fuel economy. This would require EPA to establish the sensitivity of fuel economy to fuel energy content (i.e., the "R" factor) and the net heating value for diesel fuel. EPA proposes using an "R" factor of 0.6 for the diesel fuel economy equation, as was used in the gasoline fuel economy equation. EPA requests comments on the value of "R" for diesels. EPA also proposes to use 18,443 Btu/lb. as the reference net heating value of diesel test fuel based on an EPA Technical Support Report [3] published in 1976. Finally, EPA also proposes to use a specific gravity value of 0.850 and a carbon weight fraction value of 0.866 as reference diesel test fuel properties. Comments are requested as to the appropriateness of these values. If the comments support these values but the proposed revision of the fuel economy equation is not adopted, EPA may choose to revise its current CAFE adjustment methodology for future model years to more accurately reflect the impact of diesel test fuel variability. EPA requests comments on applying such a revision to the calculation of future CAFE adjustments.

The proposed revised fuel economy equation is in a form which calculates fuel economy according to the particular properties of the test fuel actually used. It is thus important to maintain an accurate account of test fuel property values by performing fuel analyses on a regular basis. The frequency of such analyses must be sufficient to track any change in test fuel property values which may significantly affect fuel economy, but must not make implementation of such a test procedure economically impractical.

Test fuel can be sampled for analysis using several different approaches. A fuel sample can be drawn from and analyzed for every vehicle tested. This practice would assure an accurate account of test fuel properties for each vehicle test. However, performing fuel analyses at this frequency would require significant additional technical support and funding. Therefore, an approach requiring somewhat less sampling would be more practical for implementation.

While the majority of manufacturers are in favor of a test-by-test fuel economy calculation, most comments in response to the supplemental NPRM indicate that fuel sampling should take place on a batch basis. A fuel sample could be drawn and analyzed following the fresh fuel's transfer to storage. If the receiving storage tank contained any residual fuel, a sample would not be drawn until the two fuels were allowed to mix and assume properties characteristic of that fuel mix. This method is most economically practical. However, one additional approach should be considered.

Test facilities having large volume storage tanks often can store up to a three- or four-month supply of test fuel. Although most storage environments are temperature controlled, this control does not maintain all chemical activity within the fuel to an undetectable level. Over time, reactive hydrocarbons and impurities in the fuel have a tendency to oxidize and form viscous liquids and solids which are known, descriptively, as gum. Chemical formation of gum can cause changes in the properties of the fuel itself. Thus, over extended fuel storage periods, these changes may be significant enough to affect fuel economy test results. Periodic fuel samples from a single batch would be required so that the changing fuel

[3] See "Methodology for Calculation of Diesel Fuel to Gasoline Fuel Economy Equivalence Factors," January 1976 Technical Support Report for Regulatory Action, EPA–AA–FE 76–01.

properties could be measured and recorded appropriately for purposes of fuel economy calculation.

Although all these approaches have potential, each approach presents some difficulties. The first approach (measuring each test vehicle's fuel properties) may require an amount of time and money beyond that which is available or necessary. While the second approach (batch sampling once after each new batch is added to existing fuel) seems feasible, EPA realizes that some test facilities have limited or no storage capabilities and thus receive fuel in barrels. Unless each shipment of barreled fuel was considered a batch, each individual barrel may require sampling to assure consistent fuel property values. Finally, it is not certain how consistently or at what rate a fuel's properties would change chemically. Since the fuel storage environment may vary between test facilities, a single specified frequency of fuel sampling and analysis may be impractical.

After considering each approach, EPA believes that fuel sampling and analysis either on a batch basis or on a batch basis supplemented by periodic resampling would be the most appropriate approach and proposes both in the alternative. EPA requests comments as to the need for and cost of supplemental resampling of a batch. Based on these comments and further analysis of this issue, EPA will select one of these alternatives for fuel sampling.

In developing this proposal EPA closely considered the option of improving the test fuel specifications in order to eliminate any significant fuel economy impact due to test fuel variation. The Ford Motor Company (Ford) showed strong support for this alternative. In its response to the supplemental NPRM Ford stated:

> Specifications and sufficient tolerances for fuel properties should be proposed by regulation to ensure comparability to the carbon balance equation and to preclude the need for on-going adjustment.[4]

While 40 CFR 86.113–32 gives specifications for certification test fuels, EPA realizes that these specifications do not define a unique fuel. As a result, certain CAFE related fuel properties have varied over time. However, if all fuel properties affecting CAFE results were included in the specifications for future test fuels and sufficiently narrow tolerances for these properties were defined, the need for future fuel economy adjustment might be eliminated.

This alternative appears to offer convenience and simplicity. However, the difficulties which would arise in implementing tightened fuel specifications downplay its advantages. EPA believes that test fuel specifications are sufficiently tight when changes in fuel property values within the specified tolerance do *not* change fuel economy test results by more than 0.01 miles per gallon (mpg). This is the degree of precision EPA has used in determining the effect of other test procedure changes on CAFE. This precision is necessary since as little as 0.01 mpg can affect manufacturers' CAFE as rounded off to the nearest 0.1 mpg.

Using this precision, for example, EPA has calculated the fuel carbon density tolerance which would limit the effect of variations in carbon density on fuel economy to less than or equal to 0.01 mpg. This tolerance is calculated by equating the sum of a given fuel economy and 0.01 mpg to a slightly modified form of the current fuel economy equation.[5] For vehicles having low fuel economy, such as 10 mpg, a tolerance as large as ±2.4 gC/gal would assure a change of no more than 0.01 mpg for a calculated fuel economy. However, at exceptionally high fuel economies, such as 50 mpg, the acceptable tolerance is less than ±0.5 gC/gal. At the 1985 CAFE standard (27.5 mpg), a tolerance of approximately ±0.9 gC/gal would be required in order to limit the impact of variations to 0.1 mpg. EPA believes obtaining sufficient test fuel with carbon density within such tight tolerances may be technically impossible and economically infeasible. According to EPA fuel purchasing specifications the tolerance on carbon density is ±20 gC/gal. This tolerance would allow a potential fuel economy change of approximately ±0.2 mpg at 27.5 mpg. EPA believes that production of a suitably specified fuel may not be possible given the current level of petroleum refinement technology.

Tightening test fuel's tolerances will also inconvenience some manufacturers. Due to the varying capabilities of refineries, the differences in fuel property tolerances of fuel acquired from various suppliers may be considerable. As a result, some manufacturers, particularly those overseas, may find it difficult to obtain fuel having the same property tolerances as those required by revised test fuel specifications. To secure a fuel identical to that specified by EPA, some foreign manufacturers might be forced to transport the fuel over long distances. Thus, even if fuel of sufficiently tight tolerance were available in the United States, foreign manufacturers might have to incur considerable additional cost to obtain it.

In summary, tightening the fuel specifications does not appear to be a viable option to controlling fuel property variation and, as a result, calculated fuel economy variation. Nevertheless, if comments indicate that such an alternative is possible on a practical basis, EPA will explore the fuel specifications alternative further.

EPA recognizes that it is preferable to use test fuel with properties as close as practical to the 1975 model year baseline fuel properties to minimize any unforeseen error that the adjustment equation may introduce in calculating fuel economy. Consequently, EPA will make every effort to purchase test fuel with properties close to the 1975 model year baseline test fuel and encourages manufacturers to do so as well.

Finally, should none of the options described above prove preferable, the current regulations will be retained and manufacturers' CAFEs will be adjusted according to the average annual test fuel properties as used by EPA at its laboratory.

B. Light Truck CAFE

1. Background

In today's final rule on CAFE adjustments, EPA finalized procedures to adjust passenger automobile fuel economy test results in light of test procedure changes. Fuel economy adjustments for light trucks must be determined separately because the National Highway Traffic Safety Administration (NHTSA) considered some, although not all, of EPA's test procedure changes in developing the light truck CAFE standards. This NPRM considers what, if any, adjustments are due for light trucks based on changes in fuel economy test procedures.

In December 1975, Congress adopted the Energy Policy and Conservation Act (EPCA), 15 U.S.C. 2001 *et seq.* Section 502(b) of EPCA requires the Administrator of the NHTSA to issue average fuel economy standards for 1979 and later model year light trucks. Under section 503(d), manufacturer compliance with these standards is to be determined by EPA using 1975 model year test

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[4] See Ford Motor Company Letter addressed to Mr. Richard Wilson, Office of Mobile Sources Director, "Ford Motor Company Comments in Response to EPA's Supplemental Notice of Proposed Rulemaking Regarding Fuel Economy Test Procedure Adjustments," January 22, 1985.

[5] See EPA Draft, "Derivation of a Method of Calculation of Maximum Tolerance to Produce a Given Change in Fuel Economy," April 4, 1985, M. Wagner.

procedures or procedures which yield "comparable results."

To establish light truck CAFE standards, NHTSA analyzes fuel economy test data to determine light trucks' baseline fuel economy. It then sets standards from this baseline value at the level required by section 502(b), "the maximum feasible average fuel economy level which light trucks can achieve." To determine maximum feasible fuel economy, NHTSA is required by section 502(e) to consider the following factors:

a. Technological feasibility;
b. Economic practicability;
c. The effect of other Federal motor vehicle standards upon fuel economy; and
d. The need of the nation to conserve energy.

In setting light truck CAFE standards, NHTSA may have taken into account the fuel economy impact of EPA test procedure changes, thus making CAFE adjustments unnecessary. Since measured fuel economy is a function of fuel economy test procedures, any test procedure change may influence measured fuel economy values. If a test procedure change was reflected in NHTSA's baseline test data or in its determination of the "maximum feasible" level, however, the resultant light truck standards account for the fuel economy effects of that change. On the other hand, a test procedure change which was not considered in the establishment of the light truck CAFE standards may effectively change the stringency of those standards and an adjustment may be warranted. In the event that the stringency of light truck fuel economy standards have been influenced by test procedure changes, EPA proposes to adopt manufacturer-specific CAFE adjustments to adjust for these changes.

2. Light Truck CAFE Adjustment (Proposed Action)

EPA has reviewed NHTSA's rulemakings which established light truck CAFE standards for the 1979 through the 1986 model years in order to establish whether the test procedure changes at issue in the passenger automobile rulemaking were included in the baseline data used to set the light truck CAFE standards. In performing this assessment, EPA has restricted the applicability of possible light truck adjustments to 1981 and later model years for two reasons. One, no manufacturer failed to comply with light truck CAFE standards until the 1984 model year. Two, EPCA allows manufacturers to apply towards their current CAFE only those positive CAFE adjustments granted for the past three years.

EPA is proposing today to provide manufacturer-specific CAFE adjustments for two of the changes which were considered in the final rule for passenger automobiles. These changes include a positive adjustment for changes in test fuel properties and a small negative adjustment for reductions in laboratory humidity. The other changes were implemented prior to the years for which NHTSA determined light trucks' baseline fuel economy and so are reflected in the light truck CAFE standards. The findings with respect to each test procedure change generating passenger car CAFE adjustments are discussed below. (For a more detailed discussion of the test changes themselves, see the final rule on passenger automobile CAFE adjustment in today's **Federal Register**.) These findings have been made in coordination with NHTSA.

a. Test Distance Measurement

The Federal Test Procedure used by EPCA in 1975 calculated fuel economy by dividing the nominal test cycle distance (7.5 miles) by the test vehicle's fuel consumption. This procedure was changed in September of 1976 (40 CFR 86.144) to require measurement of the actual distance driven over the test cycle and use of this measured distance to calculate fuel economy.

The 1981 and later model year light truck CAFE standards were established using data generated from the 1979 and later model year fuel economy program, several years after the distance measurement change was made. Therefore, this test procedure change was taken into account in setting all 1981 and later model year light truck standards, and no CAFE adjustment for it is warranted.

b. Dynamometer Controllers

The chassis dynamometers used for vehicle testing are equipped with power absorption units (PAU's) which simulate the load on a vehicle during actual driving. In the 1975 model year, these PAU's were manually set before each test and no corrections were made during the test. Presently, EPA dynamometers are equipped with automatic load control circuits, which continuously monitor and adjust the dynamometer loading.

EPA converted to automatic dynamometer load controllers in 1977. Since 1981 and later model year light truck standards were established using 1979 or later model year baseline data, the change was taken into account for the standards, so no CAFE adjustment is warranted.

c. Laboratory Humidity

The ambient humidity level affects engine efficiency and hence, fuel economy; in general, as ambient humidity increases, a vehicle's fuel economy decreases. (The specific effects are discussed in the final rule for passenger automobiles.) EPA investigated the EPA laboratory humidity levels that existed at the time light truck baseline data were generated for the various model year light truck CAFE standards. EPA found that in the baseline year for the 1981 and later model year light truck standards, the humidity levels were in all cases equal to or above the humidity levels of the model years to which the standards applied. Specifically, the humidity in the 1979 model year, the baseline year, averaged 74 grains per pound dry air (gr/lb) wet bulb at EPA while the average in the years to which the standards based on the 1979 data applied was 55 gr/lb in 1981, 52 gr/lb in 1982 and 54 gr/lb in 1983. The 1984 average measured at EPA was 51 gr/lb but this was measured using new equipment; for comparison to the 1979 data, the 1984 wet bulb-equivalent humidity was 56 gr/lb.

Since fuel economy is increased with decreased humidity, manufacturers actually derived a fuel economy benefit in the 1981–1984 model years by their vehicles being tested at lower humidity levels than those on which the standards were based. Receipt of this fuel economy benefit effectively reduced the stringency of the applicable CAFE standard. Thus EPA proposes that debits, calculated for each manufacturer using the same sensitivity factor and methodology as in the final rule for passenger automobile CAFE adjustments, are warranted for 1981 through 1984 light truck CAFE's.

Future adjustments for laboratory humidity should not be necessary. Light truck CAFE standards for 1985 and future model years were based on 1984 EPA fuel economy data that was generated at 56 gr/lb humidity. The EPA laboratory humidity has remained relatively constant (52 to 56 gr/lb) for the past several years, and future humidity levels are expected to remain constant. Since humidity changes this small (less than 5 gr/lb) have an insignificant fuel economy impact at the fuel economy level of light trucks, no humidity related adjustments for 1985 and later model years are anticipated.

d. Inertia Weight Changes

In the final rule for passenger automobiles CAFE adjustment, EPA considered the effects that changes in the dynamometer operation had on fuel economy test results. A dynamometer is used to simulate a test vehicle's weight during fuel economy testing. EPA adopted the use of finer inertia weight increments beginning with the 1980 model year. In its March 23, 1978 final rule establishing the 1981 truck CAFE standards, NHTSA expressly acknowledged the planned inertia weight change and took this change into account when it set the standards (43 FR 12000, March 23, 1978).

When NHTSA revised the 1981 model year two-wheel drive light truck CAFE standards, the effect on inertia weight changes was again addressed. In the June 25, 1979 final rule NHTSA stated:

> In addition, refinements to the weight simulation used by EPA for fuel economy testing are now expected to reduce previously projected improvements in measured fuel economy (naturally, on-the-road improvements are unaffected). Although these refinements make testing more accurate, their effect on measured fuel economy must be accounted for. (44 FR 36979, June 25, 1979)

From these rulemakings, it is evident that the inertia weight change was taken into account when light truck CAFE standards were set for the 1981 model year. Accordingly, no CAFE adjustment is necessary for 1981 or later model years since all later model year standards set subsequent to the 1981 standards will account for this change also.

e. Fuel Efficient Oils

The events that led to the establishment of an fuel efficient oils policy, which provides criteria on which EPA bases its approval for use of fuel-efficient crankcase lubricants in CAFE test vehicles, are discussed in the final rule for passenger automobiles CAFE adjustments.

When NHTSA established the 1980 and 1981 model year light truck CAFE standards, EPA had not yet granted approval for the use of fuel-efficient lubricants. NHTSA projected the use of energy efficient oils in the 1981 model year. However, since approval to use these oils was beyond NHTSA's control, NHTSA set alternative fuel economy standards for the 1981 model year. On page 12005 of the March 23, 1978 final rule (43 FR 12006), NHTSA stated:

> In the unlikely event that EPA has not yet approved the use of these improved lubricants by January 1, 1980, a lower fuel economy standard, excluding the projected use of the lubricants, will be in effect.

EPA did not grant the approval until March 17, 1981 (effective beginning with the 1982 model year); consequently, the lower alternative 1981 model year standard went into effect. For light trucks, then, the 1981 model year CAFE standard took account of the fuel efficient oils issue, making a CAFE adjustment unnecessary. No CAFE adjustment for subsequent years is warranted for the same reasons that no adjustment was determined necessary by EPA in the final rule for passenger automobiles CAFE adjustments.

f. Test Fuel Properties

EPA fuel economy test procedures currently specify equations for calculating fuel economies which are based on fixed test fuel properties. In practice, test fuel properties are not fixed and have, in fact, varied over time. These variations of test fuel properties may have influenced measured fuel economy. This issue is discussed in more detail in the final rule for passenger automobiles CAFE adjustments. In that final rule, EPA adopted a procedure to adjust manufacturers' CAFE's for the difference between the annual average properties of the test fuel used at EPA's laboratory and the baseline model year test fuel properties. EPA deferred action on this issue for light trucks in order to consider all light truck CAFE adjustment issues in one rulemaking.

EPA proposes to adopt for light trucks the procedures in place for adjusting passenger automobiles' CAFE for variations in test fuel properties. The same equation would be used with one modification. Because the baseline model year for the 1981 through 1984 model year light truck standards was the 1979 model year, the fuel used by EPA for the 1979 model year test program would be used to establish the baseline fuel properties. Consistent with the passenger automobile CAFE adjustments, this fuel adjustment would be applied to each manufacturer's light truck CAFE's. For 1985 and later model years, each manufacturer's CAFE fuel economy would be adjusted on a model year basis using the annual average values of the EPA test fuel, unless EPA adopts the proposal included in this notice for a revised fuel economy calculation equation.

g. Mileage Accumulation Limit

In the December 21, 1983 NPRM on passenger autombile CAFE adjustment EPA proposed, beginning in the 1986 model year, the application of a mileage-based fuel economy adjustment factor to all vehicles with accumulated mileage greater than 4,250 miles. EPA has finalized mileage adjustment rules for passenger automobiles but has deferred final action on light trucks for this rulemaking.

Comments received in response to the proposed mileage-based fuel economy adjustment factor specifically addressed its applicabilities to light trucks. Those comments will be considered in this rulemaking and need not be repeated.

h. Constant Volume Samplers

Due to a period of constant volume sampler equipment malperformance at the EPA test facility,[6] EPA concluded that a CAFE adjustment was appropriate for passenger automobiles. EPA is not certain whether the samplers were malperforming in the 1979 model year, the model year on which the light truck standards were based. EPA has, however, determined that after the samplers were repaired in September 1981, measured fuel economy was increased. Therefore, the stringency of the 1983 through 1985 standards may have been reduced by the increased fuel economy which resulted from the sampler repairs. Thus, manufacturers may be due debits for the 1983 through 1985 model years. However, due to the uncertainty as to whether this malfunction actually existed in the baseline model year, EPA proposes no adjustments for the issue of sampler performance.

C. Public Participation

EPA requests written comments on the above proposals to revise the equation for calculating fuel economy and to adjust for light truck's CAFE's to compensate for changes in fuel economy test procedures. In particular, EPA requests comments concerning the following items:

1. Fuel Specifications

a. What fuel specifications for both gasoline and diesel test fuels would be required to reduce the variability of test fuel properties such that no other fuel-related CAFE adjustment is necessary?

b. How would tightened fuel specifications affect manufacturers with respect to cost and availability of test fuel?

2. Light Truck CAFE Adjustment

a. EPA requests comments on the Agency's proposed approach to granting manufacturer-specific CAFE adjustments for light trucks.

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[6] See EPA report No. EPA–AA–EOD–81/2, "Non-Proportional Sample Rates in a Critical Flow Venturi Constant Volume Sampler: Effects on Federal Emission Test Fuel Economy," January, 1982.

D. Regulatory Analysis

1. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because if adopted, it will result in an annual effect on the economy of less than $100 million. Also, this regulation should not result in increased costs or prices for consumers, industries, or others, nor should it have adverse effects on competition, employment, investment, or productivity. In fact, the CAFE adjustments proposed by this rulemaking would reduce the burden, including the costs of compliance with fuel economy requirements, for the industry as a whole.

2. Paperwork Reduction Act

This action was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket for this rulemaking. This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 2051 *et seq.*

3. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities such that a regulatory analysis is required. The revision of the fuel economy regulations established by this rulemaking should not significantly increase the burden including costs of compliance with fuel economy requirements, for the industry as a whole, as well as for small entities. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant impact on a substantial number of small entities.

E. List of Subjects in 40 CFR Part 600

Electric power, Energy conservation, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements, Administrative practice and procedure, Fuel economy.

Dated: June 22, 1985.

Lee M. Thomas,

Administrator.

PART 600—[AMENDED]

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR Part 600 as follows:

1. The authority citation for Part 600 continues to read as follows:

Authority: Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, 89 Stat. 871, Title IV of the National Energy Conservation Policy Act of 1978, Pub. L. 95–619, 92 Stat. 3295.

2. A new § 600.113–87 is added to read as follows:

§ 600.113–87 Fuel ecomony calculations.

The calculations of the weighted fuel economy values require input of the test fuel's specific gravity, carbon weight fraction and net heating value and the weighted grams/mile values for HC, CO, and CO_2 for both the city fuel economy test and the highway fuel economy test. The city and highway fuel economy values shall be calculated as specified in this Section. A sample appears in Appendix II to this part.

(a) Calculate the weighted grams/mile values for the city fuel economy test for HC, CO, and Co_2 as specified in § 86.144 of this chapter.

(b) (1) Calculate the mass values for the highway fuel economy test for HC, CO and CO_2 as specified in paragraph (b) of § 86.144 of this chapter.

(2) Calculate the grams-mile values for the highway test for HC, CO and CO_2 by dividing the mass values obtained in (b)(1) by the actual distance traveled, measured in miles, as specified in paragraph (h) of § 86.135 of this chapter.

(c) Measure and record the test fuel properties specified below of the fuel used to determine emission values (obtained per paragraph (a) or (b) as applicable):

(1) Test fuel specific gravity per ASTM D 287.

(2) Test fuel carbon weight fraction per either ASTM D 2789 or the method of Pregle using ASTM E 191.

(3) Test fuel net heating value by mass (Btu/lb.) per ASTM D 240.

(d) Calculate the city fuel economy and highway fuel economy from the test fuel specific gravity, carbon weight fraction and net heating value and the grams/mile values for HC, CO, and CO_2. The emission values (obtained per paragraph (a) or (b) as applicable) used in each calculation of this section shall be recorded using two places to the right of the decimal point. The CO_2 values (obtained per paragraph (a) or (b) of this section as applicable) used in each calculation of this section shall be rounded to the nearest gram/mile. The specific gravity and the carbon weight fraction shall be recorded using three places to the right of the decimal point. The net heating value shall be recorded to the nearest whole Btu/lb. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTM E 29–67.

(e) For gasoline-fueled automobiles the fuel economy in miles per gallon is to be calculated using the following formula:

$$mpg = \{5174 \times 10^4 \times CWF \times sg\} / [((CWF \times HC) + (0.429 \times CO) + (0.273 \times CO_2))((0.6 \times sg \times NHV) + 5471)]$$

Where:

HC = Grams/mile HC as obtained in paragraph (a) or (b) of this section.
CO = Grams/mile CO as obtained in paragraph (a) or (b) of this section.
CO_2 = Grams/mile CO_2 as obtained in paragraph (a) or (b) of this section.
CWF = Carbon weight fraction of test fuel as obtained in paragraph (c) of this section.
NHV = Net heating value by mass of test fuel as obtained in paragraph (c) of this section.
sg = Specific gravity of test fuel as obtained in paragraph (c) of this section

Round the calculated result to the nearest 0.1 miles per gallon.

(f) For diesel powered automobiles, calculate the fuel economy in miles per gallon of diesel fuel using the following formula:

$$mpg = \{5916 \times 10^4 \times CWF \times Sg\} / [((CWF \times HC) + (0.429 \times CO) + (0.273 \times CO_2))((0.6 \times sg \times NHV) + 6271)]$$

Where:

HC = Grams/mile HC as obtained in paragraph (a) or (b) of this section.
CO = Grams/mile CO as obtained in paragraph (a) or (b) of this section.
CO_2 = Grams/mile CO as obtained in paragraph (a) or (b) of this section.
CWF = Carbon weight fraction of test fuel as obtained in paragraph (c) of this section.
NHV = Net Heating value by mass of test fuel as obtained in paragraph (c) of this section.
sg = Specific gravity of test fuel as obtained in paragraph (c) of this section.

Round the calculated result to the nearest 0.1 mile per gallon.

3. Appendix II is revised to read as follows:

Appendix II—Sample Test Value Calculations

1. Applicable to 1978 and through 1986 Model Year Automobiles.

(a) Assume that a gasoline-fueled vehicle was tested by the Federal Emission Test Procedure and the following results were calculated:

HC = 1.03 grams/mile
CO = 6.74 grams/mile
CO_2 = 785 grams/mile

According to the procedure in § 600.113, the city fuel economy or MPG_c for the vehicle may be calculated by substituting the HC, CO, and CO_2 gram/mile values into the following equation.

$$MPG_c = \frac{2421}{(0.866 \times HC) + (0.429 \times CO) + (0.273 \times CO_2)}$$

$$MPG_c = \frac{2421}{(0.866 \times 1.03) + (0.429 \times 8.74) + (0.273 \times 785)}$$

$$MPG_c = 11.1$$

(b) Assume that the same vehicle was tested by the Federal Highway Fuel Economy Test Procedure and calculation similar to that shown in (a) resulted in a highway fuel economy or MPG_h of 18.6. According to the procedure in § 600.113, the combined fuel economy (called $MPG_{c/h}$) for the vehicle may be calculated by substituting the city and highway fuel economy values into the following equation:

$$MPG_{c/h} = \frac{1}{\frac{0.55}{MPG_c} + \frac{0.45}{MPG_h}}$$

$$MPG_{c/h} = \frac{1}{\frac{0.55}{11.1} + \frac{0.45}{18.6}}$$

$$MPG_{c/h} = 13.8$$

2. Applicable to 1987 and Later Model Year Automobiles

(a) Assume that a gasoline-fueled vehicle was tested by the Federal Emission Test Procedure and the following results were calculated:

HC = 1.03 grams/mile
CO = 8.74 grams/mile
CO_2 = 785 grams/mile

(b) Assume that the test fuel used for this test had the following properties:

sg = 0.745
CWF = 0.866
NHV = 18,478 Btu/lb.

According to the procedure in § 600.113, the city fuel economy or MPG_c for the vehicle may be calculated by substituting the HC, CO, and CO_2 gram/mile values and the sg, CWF, and NHV values into the following equation:

$$MPG_c = (5174 \times 10^4 \times CWF \times sg) / [((CWF \times HC) + (0.429 \times CO) + (0.273 \times CO_2)) ((0.6 \times sg \times NHV) + 5471)]$$

$$MPG_c = (5174 \times 10^4 \times 0.866 \times 0.745) / [(0.866 \times 1.03 + 0.429 \times 8.74 + 0.273 \times 785) (0.6 \times 0.745 \times 18478 + 5471]$$

$$MPG_c = 11.2$$

(b) Assume that the same vehicle was tested by the Federal Highway Fuel Economy Test Procedure and a calculation similar to that shown in (a) resulted in a highway fuel economy of MPG_h of 18.6. According to the procedure in § 600.113, the combined fuel economy (called $MPG_{c/h}$) for the vehicle may be calculated by substituting the city and highway fuel economy values into the following equation:

$$MPG_{c/h} = \frac{1}{\frac{0.55}{MPG_c} + \frac{0.45}{MPG_h}}$$

$$MPG_{c/h} = \frac{1}{\frac{0.55}{11.2} + \frac{0.45}{18.6}}$$

$$MPG_{c/h} = 13.0$$

4. Section 600.510–86 is amended by adding paragraph (g) as follows:

§ 600.510–86 [Amended]

* * * * *

(g) For vehicle categories identified in paragraphs (a)(3) through (a)(6) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:

$AFE_{adj} = T \times AFE$
where:
AFE_{adj} = Adjusted average fuel economy, rounded to the nearest 0.1 mpg.
AFE = Average fuel economy as calculated in paragraph (c) of this section, rounded to the nearest 0.0001 mpg.
T = A constant value, fixed by model year. For 1985 and later model years, EPA will calculate and publish the T values when the required laboratory data becomes available.

5. Section 600.510–80 is amended by adding paragraph (g) as follows:

§ 600.510–80 [Amended]

* * * * *

(g) For vehicle categories identified in paragraphs (a)(3) through (a)(7) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:

$AFE_{adj} = T \times AFE$
where:
AFE_{adj} = Adjusted average fuel economy, rounded to the nearest 0.1 mpg.
AFE = Average fuel economy, as calculated in paragraph (c) of this section, rounded to the nearest 0.0001 mpg.
T = 1.0000 for the 1980 model year.
T = 0.9963 for the 1981 model year.
T = 1.0020 for the 1982 model year.
T = 1.0084 for the 1983 model year.
T = 1.0084 for the 1984 model year.

[FR Doc. 85–15710 Filed 6–28–85; 8:45 am]
BILLING CODE 6560-50-M

federal register

Monday
July 1, 1985

Part V

National Archives and Records Administration

36 CFR Parts 1200, 1202 and 1250
NARA Privacy Act, FOIA, and Official Seal Regulations; Final Rule

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1200, 1202, and 1250

NARA Privacy Act, FOIA, and Official Seal Regulations

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule adds regulations concerning use of the official NARA seal and NARA procedures for implementing the Privacy Act of 1974 and the Freedom of Information Act. NARA is a new agency established by Pub. L. 98–497 and must publish regulations on these subjects.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202–523–3214 (FTS 523–3214).

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking concerning use of the official NARA seal and NARA procedures for implementing the Privacy Act of 1974 and the Freedom of Information Act on May 24, 1985 (50 FR 21461, May 24, 1985). No comments were received during the comment period. Only minor editorial corrections have been made in this rule.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects

36 CFR Part 1200

Seals and insignia.

36 CFR Part 1202

Privacy.

36 CFR Part 1250

Freedom of information.

For the reasons set forth in the preamble, Chapter XII of Title 36 of the Code of Federal Regulations is amended by adding Parts 1200, 1202, and 1250 to read as follows:

PART 1200—OFFICIAL SEALS

Sec.

1200.1 Definitions.
1200.2 Description and design.
1200.4 Authority to affix seals.
1200.6 Use of the seals.

Authority: 44 U.S.C. 2104(e), 2116(b), 2302.

§ 1200.1 Definitions.

For the purposes of this part—

"Embossing seal" means a display of the form and content of the official seal made on a die so that the seal can be embossed on paper or other medium.

"NARA" means all organizational units of the National Archives and Records Administration.

"Official seal" means the original(s) of the seal showing the exact form, content and color.

"Replica" or "reproduction" means a copy of the official seal displaying the form, content and color.

§ 1200.2 Description and design.

(a) *National Archives and Records Administration seal.* The design is illustrated below and described as follows:

Centered on a disc with a double-line border a solid line rendition of an heraldic eagle displayed holding in its left talon thirteen arrows, in its right talon a branch of olive, bearing on its breast a representation of the shield of the United States and displayed above its head a partially unrolled scroll inscribed with the words LITTERA SCRIPTA MANET one above the other; all within the circumscription NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, with the date 1985 at bottom center.



(b) *National Archives seal.* The design is illustrated below and described as in paragraph (a) of this section, encircled by the circumscription THE NATIONAL ARCHIVES OF THE UNITED STATES, with the date 1934 at the bottom center.



(c) *National Archives Trust Fund Board seal.* The design is illustrated below and described as in paragraph (a) of this section, encircled by the circumscription NATIONAL ARCHIVES TRUST FUND BOARD, with the date 1941 at the bottom center.



§ 1200.4 Authority to affix seals.

The Archivist of the United States and the Archivist's designees are authorized to affix the official seals, embossing seals, replicas and reproductions to appropriate documents, certifications and other material for all purposes authorized by this part.

§ 1200.6 Use of the seals.

(a) The seals are the official emblems of NARA and their use is therefore permitted only as provided in this part.

(b) Use by any person or organization outside NARA may be made only with prior written approval by NARA.

(c) Requests by any person or organization outside NARA for permission to use the seals must be made in writing to the Archivist of the United States, National Archives (N), Washington, DC 20408, and must

specify, in detail, the exact use to be made. Any permission granted applies only to the specific use for which it was granted and is not to be construed as permission for any other use.

(d) Use of the NARA and the National Archives of the United States seals shall be primarily for informational purposes and for authentication of documents. The National Archives Trust Fund Board seal shall be used only for Trust Fund documents and publications. The seals may not be used on any article or in any manner which may discredit the seals or reflect unfavorably upon NARA or which implies NARA endorsement of commercial products or services, or of the user's policies or activities.

(e) Falsely making, forging, counterfeiting, mutilating, or altering the official seals, replicas, reproductions or embossing seals, or knowingly using or possessing with fraudulent intent any altered seal is punishable under section 506 of title 18, United States Code.

(f) Any person using the official seals, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part is subject to the provisions of 18 U.S.C. 1017, which provides penalties for the wrongful use of an official seal, and to other provisions of law as applicable.

PART 1202—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

Sec.

1202.1 Scope of part.
1202.2 Purpose.
1202.4 Definitions.

Subpart A—General Policy

1202.10 Collection and use.
1202.12 Standards of accuracy.
1202.14 Rules of conduct.
1202.16 Safeguarding systems of records.
1202.18 Inconsistent issuances of NARA superseded.
1202.20 Records of other agencies.
1202.22 Subpoena and other legal demands.

Subpart B—Disclosure of Records

1202.30 Conditions of disclosure.
1202.32 Procedures for disclosure.
1202.34 Accounting of disclosures.

Subpart C—Individual Access to Records

1202.40 Forms of request.
1202.42 Special requirements for medical records.
1202.44 Granting access.
1202.46 Denials of access.
1202.48 Appeal of denial of access within NARA.
1202.50 Records available at a fee.
1202.52 Prepayment of fees over $25.
1202.54 Form of payment.

Subpart D—Requests to Amend Records

1202.60 Submission of requests to amend records.
1202.62 Review of requests to amend records.
1202.64 Approval of requests to amend.
1202.66 Denial of requests to amend.
1202.68 Agreement to alternative amendments.
1202.70 Appeal of denial of request to amend a record.
1202.72 Statements of disagreement.
1202.74 Judicial review.

Subpart E—Report on New Systems of Records and Alteration of Existing Systems

1202.80 Reporting requirement.
1202.82 Federal Register notice of establishment of new system or alteration of existing system.
1202.84 Effective date of new system of records or alteration of an existing system of records.

Subpart F—Exemptions

1202.90 Specific exemptions.

Subpart G—Assistance and Referrals

1202.100 Requests for assistance and referral.

Authority: 44 U.S.C. 2104(a); 5 U.S.C. 552a.

§ 1202.1 Scope of part.

This part sets forth policies and procedures concerning the collection, use, and dissemination of records maintained by NARA which are subject to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a. These policies and procedures govern only those records as defined in § 1202.4. Policies and procedures governing the disclosure and availability of NARA administrative records in general are in Part 1250 of this Chapter. This part also covers exemptions from disclosure of personal information; procedures for guidance of subject individuals in obtaining information and inspecting and disagreeing with the content of records; accounting for disclosures of information; special requirements for medical records; and fees.

§ 1202.2 Purpose.

This part implements the provisions of 5 U.S.C. 552a, popularly known as the "Privacy Act of 1974" (hereinafter referred to as the Act). This part prescribes procedures for notifying an individual of NARA systems of records which may contain a record pertaining to him or her, procedures for gaining access and contesting the contents of such records, and other procedures for carrying out the provisions of the Act.

§ 1202.4 Definitions.

For the purposes of this Part 1202:

"Access" means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

"Agency" means agency as defined in 5 U.S.C. 552(e).

"Disclosure" means a transfer of a record, a copy of a record, or the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

"Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

"Maintain" includes maintain, collect, use, and disseminate.

"Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history and criminal or employment history and that contains his or her name or an identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph.

"Routine use" means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

"Solicitation" means a request by a NARA officer or employee that an individual provide information about himself or herself.

"Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

"Subject individual" means the individual named or discussed in a record or the individual to whom a record otherwise pertains.

"System manager" means the NARA employee who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information therein.

"System of records" means a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to that individual.

Subpart A—General Policy

§ 1202.10 Collection and use.

(a) *General.* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under NARA programs will be collected directly from the subject individual to

the extent practicable. The system manager also shall ensure that information collected is used only in conformance with the provisions of the Act and these regulations.

(b) *Solicitation of information.* System managers shall ensure that at the time information is solicited the solicited individual is informed of the authority for collecting that information, whether providing the information is mandatory or voluntary, the purposes for which the information will be used, the routine uses of the information, and the effects on the individual, if any, of not providing the information. The Assistant Archivist for Management and Administration shall ensure that forms used to solicit information are in compliance with the Act and these regulations.

(c) *Solicitation of social security number.* Before a NARA employee requests an individual to disclose his or her social security number, the officer or employee shall ensure that either:

(1) The disclosure is required by Federal law, or;

(2) The disclosure was required under a Federal law or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975.

If solicitation of the social security number is authorized under paragraph (c) (1) or (2) of this section, the NARA employee who requests an individual to disclose his or her social security number shall first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the uses that will be made of it.

(d) *Soliciting information from third parties.* A NARA employee shall inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

§ 1202.12 Standards of accuracy.

The system manager shall ensure that all records which are used by NARA to make a determination about any individual are maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

§ 1202.14 Rules of conduct.

All NARA employees involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, shall review the provisions of 5 U.S.C. 552a and the regulations in this part, and shall conduct himself or herself in accordance with the rules of conduct concerning the protection of personal information in the NARA Standards of Conduct.

§ 1202.16 Safeguarding systems of records.

The system manager shall ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. Personnel information contained in both manual and automated systems of records shall be protected by implementing the following safeguards:

(a) Official personnel folders, authorized personnel operating or work folders, and other records of personnel actions effected during a NARA employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualifications and skills, performance appraisals, and conduct, shall be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnishes an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(b) System managers, at their discretion, may designate additional records of unusual sensitivity which require safeguards similar to those described in paragraph (a) of this section.

(c) System managers shall permit access to and use of automated or manual personnel records only to persons whose official duties require such access, or to subject individuals or their representatives as provided by this part.

§ 1202.18 Inconsistent issuances of NARA superseded.

Any policies and procedures in any NARA issuance which are inconsistent with the policies and procedures in this part are superseded to the extent of that inconsistency.

§ 1202.20 Records of other agencies.

(a) *Other agencies' records managed and administered by NARA.* Rules governing the maintenance of systems of records of agencies other than NARA which are located in the National Archives of the United States and Federal Records Centers are in Subchapter C of this chapter.

(b) *Current records of other agencies.* If NARA receives a request for access to records which are the primary responsibility of another agency, but which are maintained by or in the temporary possession of NARA on behalf of that agency, NARA shall refer the request to the agency concerned for appropriate action. NARA shall advise the requester that the request has been forwarded to the responsible agency. Records in the custody of NARA which are the primary responsibility of the U.S. Office of Personnel Management (OPM) are governed by the OPM rules promulgated pursuant to the Act.

§ 1202.22 Subpoenas and other legal demands.

Access to NARA systems of records by subpoena or other legal process shall be in accordance with the provisions of Part 1250 of this chapter for administrative records and Part 1254 of this chapter for accessioned records, FRC records, and donated historical materials.

Subpart B—Disclosure of Records

§ 1202.30 Conditions of disclosure.

No NARA employee may disclose any record to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(a) To NARA employees who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act;

(c) For a routine use as published in a notice in the **Federal Register**;

(d) To the Bureau of the Census for uses pursuant to Title 13, United States Code;

(e) To a recipient who has provided NARA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record. (The record shall be transferred in a form that is not individually identifiable. The written statement shall include as a minimum:

(1) A statement of the purpose for requesting the records; and

(2) Certification that the records will be used only for statistical purposes; these written statements shall be maintained as records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager shall ensure that the identity of the individual cannot reasonably be

deduced by combining various statistical records.);

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government;

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality or his or her other designated representative has made a written request to NARA specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health or safety of an individual, not necessarily the individual to whom the record pertains (upon such disclosure, a notification must be sent to the last known address of the subject individual);

(i) To either House of Congress or to a subcommittee or committee (joint or of either House, to the extent that the subject matter falls within its jurisdiction);

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(k) To a consumer reporting agency in accordance with section 3711(f) of title 31; or

(l) Pursuant to the order of a court of competent jurisdiction.

§ 1202.32 Procedures for disclosure.

(a) Upon receipt of a request for disclosure, the system manager shall verify the right of the requester to obtain disclosure pursuant to § 1202.30. Upon verification, the system manager shall make the requested records available.

(b) If the system manager determines that the disclosure is not permitted under § 1202.30, he or she shall deny the request in writing and shall inform the requester of the right to submit a request for review and final determination to the Director, Legal Services Staff, National Archives (NSL), Washington DC 20408.

§ 1202.34 Accounting of disclosures.

(a) Except for disclosures made pursuant to § 1202.30 (a) and (b), an accurate accounting of each disclosure shall be made and retained for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting shall include the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(b) The system manager also shall maintain in conjunction with the accounting of disclosures:

(1) A full statement of the justification for the disclosures;

(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent by the subject individual to a disclosure.

(c) Except for the accounting of disclosures made to agencies or instrumentalities in law enforcement activities in accordance with § 1202.30 or of disclosures made from exempt systems (see Subpart F of this part), the accounting of disclosures shall be made available to the individual upon request. Procedures for requesting access to the accounting are in Subpart C of this part.

Subpart C—Individual Access to Records

§ 1202.40 Forms of requests.

(a) Individuals seeking access to their records or to any information pertaining to themselves which is contained in a system of records should notify the system manager or applicable NARA official at the address indicated in the Federal Register notice describing the pertinent system of records.

(b) The request shall be in writing and shall bear the legend "Privacy Act Request" both on the request letter and on the envelope. The request letter shall contain:

(1) The complete name and identifying number of the NARA system as published in the Federal Register;

(2) The full name and address of the subject individual;

(3) A brief description of the nature, time, place, and circumstances of the individual's association with NARA; and

(4) Any other information which the individual believes would help the system manager to determine whether the information about the individual is included in the system of records.

The system manager or other NARA official shall answer or acknowledge the request within 10 workdays of its receipt by NARA.

(c) System managers at their discretion, may accept oral requests for access to a NARA system of records, subject to verification of identity.

§ 1202.42 Special requirements for medical records.

(a) A system manager who receives a request from an individual for access to those official medical records which belong to the Office of Personnel Management and are described in Chapter 339 of the Federal Personnel Manual (medical records which are otherwise filed in the Official Personnel Folder), shall refer the pertinent system of records to a Federal Medical Officer for review and determination in accordance with this section. If no Federal medical officer is available to make the determination required by this section, the system manager shall refer the request and the medical reports concerned to the Office of Personnel Management for a determination.

(b) If, in the opinion of a Federal Medical Officer, medical records requested by the subject individual indicate a condition about which a prudent physician would hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall not release the medical information to the subject individual nor to any person other than a physician designated in writing by the subject individual, his or her guardian, or conservator.

(c) If, in the opinion of a Federal medical officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall release the information to the subject individual or to any person, firm, or organization which the individual authorizes in writing to receive it.

§ 1202.44 Granting access.

(a) Upon receipt of a request for access to non-exempt records, the system manager shall make such records available to the subject individual or shall acknowledge the request within 10 workdays of its receipt by NARA. The acknowledgment shall indicate when the system manager will make the records available.

(b) If the system manager anticipates more than a 10-day delay in making a record available, he or she also shall include in the acknowledgment specific reasons for the delay.

(c) If a subject individual's request for access does not contain sufficient information to permit the system manager to locate the records, the system manager shall request additional information from the individual and shall have 10 workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and to indicate when the records will be available.

(d) Records will be made available for authorized access during normal business hours at the NARA offices where the records are located. Requesters should be prepared to identify themselves by signature (i.e., to sign the access log on the date of access and to produce other identification verifying the signature).

(e) Upon request, a system manager shall permit a subject individual to examine the original of a non-exempt record, shall provide the individual with a copy of the record, or both. Fees shall be charged only for copies requested by the individual and not for copies provided to the individual for the convenience of NARA.

(f) Subject individuals may request to pick up a record in person or to receive it by mail, directed to the name and address provided by the individuals in their request. A system manager shall not make a record available to a third party for delivery to the subject individual, except for medical records as outlined in § 1202.42.

(g) Subject individuals who wish to have a person of their choosing review, accompany them in reviewing, or obtain a copy of a record must, prior to the disclosure of their record, sign a statement authorizing the disclosure. The system manager shall maintain this statement with the record.

(h) The procedure for access to an accounting of disclosures is identical to the procedure for access to a record as set forth in this section.

§ 1202.46 Denials of access.

(a) A system manager may deny a subject individual access to his or her record only on the grounds that NARA has published rules in the Federal Register exempting the pertinent system of records from the access requirement. Exempt systems of records are described in Subpart F of this part.

(b) Upon receipt of a request for access to a record which the system manager believes is contained within an exempt system of records, he or she shall forward the request to the Assistant Archivist for Management and Administration. The system manager shall append to the request an explanation of the determination that the requested record is contained within an exempt system of records and a recommendation that the request be denied or granted.

(c) If the system manager is the Assistant Archivist for Management and Administration, that person shall retain the responsibility for denying or granting the request.

(d) The Assistant Archivist for Management and Administration shall, in consultation with legal counsel and such other officials as deemed appropriate, determine if the requested record is in fact contained within an exempt system of records and:

(1) If the record is not contained within an exempt system of records, the Assistant Archivist for Management and Administration shall notify the system manager to grant the request in accordance with § 1202.44, or

(2) If the record is contained within an exempt system of records, the Assistant Archivist for Management and Administration shall:

(i) Notify the requester that the request is denied, including a statement justifying the denial and advising the requester of the right to judicial review of that decision as provided in § 1202.74; or

(ii) Notify the system manager to make the record available to the requester in accordance with § 1202.44, notwithstanding the inclusion of the record within an exempt system of records.

§ 1202.48 Appeal of denial of access within NARA.

(a) Requesters denied access, in whole or part, to records pertaining to them, exclusive of those records for which the system manager is the Archivist of the United States, may file with NARA an appeal of that denial. All appeals should be addressed to the Deputy Archivist of the United States, National Archives (ND), Washington, DC 20408.

(b) Each appeal to the Deputy Archivist shall be in writing. The appeal should bear the legend "Privacy Act—Access Appeal," on both the face of the letter and the envelope.

(c) Upon receipt of an appeal, the Deputy Archivist shall consult with the system manager, the official who made the denial, legal counsel, and such other officials as may be appropriate. If the Deputy Archivist, in consultation with these officials, determines that the request for access should be granted because the subject records are not exempt, the Deputy Archivist shall immediately either instruct the system manager in writing to grant access to the record in accordance with § 1202.44 or shall grant access and shall notify the requester of that action.

(d) If the Deputy Archivist, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the Deputy Archivist immediately shall notify the requester in writing of that determination. This action shall constitute NARA's final determination on the request for access to the record and shall include:

(1) The reason for the rejection of the appeal; and

(2) Notice of the requester's right to seek judicial review of NARA's final determination, as provided in § 1202.74.

(e) The final NARA determination will be made no later than 30 workdays from the date on which the appeal is received by the Deputy Archivist. The Deputy Archivist may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The Deputy Archivist's notification shall include an explanation of the reasons for the extension of time.

(f) Denial of access by the Archivist to records for which the Archivist is the system manager shall constitute the NARA final determination in such instances. Requesters shall be given notice of their right to seek judicial review of the determination, as provided in § 1202.74.

§ 1202.50 Records available at a fee.

The system manager shall provide one copy of a record to a requester at a fee prescribed in § 1258.10 of this chapter.

§ 1202.52 Prepayment of fees over $25.

If the system manager determines that the estimated total fee is likely to exceed $25, the system manager shall notify the individual that the estimated fee must be prepaid prior to NARA's making the records available. NARA will remit any excess amount paid by the individual or bill the individual for an additional amount if there is a variation between the final fee charged and the amount prepaid.

§ 1202.54 Form of payment.

Payment shall be by check or money order payable to the National Archives Trust Fund and shall be addressed to the system manager.

Subpart D—Requests To Amend Records

§ 1202.60 Submission of requests to amend records.

Subject individuals who desire to amend any record containing personal information about themselves should write to the NARA system manager specified in the pertinent Federal Register notice concerning NARA's systems of records. A current NARA employee who desires to amend personnel records should write to the Director of Personnel, National Archives (NAP), Washington, DC 20408. Each request shall include evidence of and justification for the need to amend the pertinent record. Each request should

bear the legend "Privacy Act—Request To Amend Record" prominently marked on both the face of the request letter and the envelope.

§ 1202.62 Review of requests to amend records.

(a) The system manager shall acknowledge receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment should include the system manager's determination either to amend the record or to deny the request to amend as provided in § 1202.66.

(b) When reviewing a record in response to a request to amend, the system manager shall assess the accuracy, relevance, timeliness, and completeness of the existing record in light of the proposed amendment. The system manager shall determine whether the amendment is justified. With respect to a request to delete information, the system manager also shall review the request and existing record to determine whether the information is relevant and necessary to accomplish an agency purpose required to be accomplished by law or Executive Order.

§ 1202.64 Approval of requests to amend.

If the system manager determines that amendment of a record is proper in accordance with the request to amend, he or she promptly shall make the necessary amendment to the record and shall send a copy of the amended record to the subject individual. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record of the fact that an amendment has been made and give the substance of the amendment. Where practicable, the system manager shall send a copy of the amended record to previous recipients. The system manager shall advise the Assistant Archivist for Management and Administration that a request to amend has been approved.

§ 1202.66 Denial of requests to amend.

(a) If the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, the request to amend and the system manager's determinations and recommendations shall be referred to the Assistant Archivist for Management and Administration.

(b) If the Assistant Archivist for Management and Administration, after reviewing the request to amend a record, determines to amend the record in accordance with the request, the Assistant Archivist promptly shall return the request to the system manager with instructions to make the requested amendments in accordance with § 1202.64.

(c) If the Assistant Archivist for Management and Administration, after reviewing the request to amend a record, determines not to amend the record in accordance with the request, the Assistant Archivist promptly shall advise the requester in writing of the decision. The denial letter shall state the reasons for the denial of the request to amend; include proposed alternative amendments, if appropriate; state the requester's right to appeal the denial of the request to amend; and state the procedure for appealing.

§ 1202.68 Agreement to alternative amendments.

If the denial of a request to amend a record includes proposed alternative amendments, and if the requester agrees to accept them, the requester shall notify the Assistant Archivist for Management and Administration who immediately shall instruct the system manager to make the necessary amendments in accordance with § 1202.64.

§ 1202.70 Appeal of denial of request to amend a record.

(a) A requester who disagrees with a denial of a request to amend a record may file an appeal of that denial. The requester shall address the appeal to the Deputy Archivist of the United States, National Archives (ND), Washington, DC 20408. If the requester is an employee of NARA and the denial to amend involves a record maintained in the employee's Official Personnel Folder, as described in Chapter 293 of the Federal Personnel Manual, the appeal should be addressed to the Assistant Director, Workforce Information Office, Compliance and Investigations Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(b) Each appeal to the Deputy Archivist shall be in writing and must be received no later than 30 calendar days from the date of the requester's receipt of a denial of a request to amend a record. The appeal shall bear the legend "Privacy Act—Appeal," both on the face of the letter and the envelope.

(c) Upon receipt of an appeal, the Deputy Archivist shall consult with the system manager, the official who made the denial, legal counsel, and such other officials as may be appropriate. If the Deputy Archivist, in consultation with these officials, determines that the record should be amended as requested, he or she immediately shall instruct the system manager to amend the record in accordance with § 1202.64 and shall notify the requester of that action.

(d) If the Deputy Archivist, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the Deputy Archivist immediately shall notify the requester in writing of that determination. This action shall constitute the NARA final determination on the request to amend the record and shall include:

(1) The reasons for the rejection of the appeal;

(2) Proposed alternative amendments, if appropriate, which the requester subsequently may accept in accordance with § 1202.68;

(3) Notice of the requester's right to file a Statement of Disagreement for distribution in accordance with § 1202.72; and

(4) Notice of the requester's right to seek judicial review of the NARA final determination, as provided in § 1202.74.

(e) The NARA final determination shall be made no later than 30 workdays from the date on which the appeal is received by the Deputy Archivist. In extraordinary circumstances, the Deputy Archivist may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The Deputy Archivist's notification shall include a justification for the extension of time.

§ 1202.72 Statements of disagreement.

Upon receipt of a NARA final determination denying a request to amend a record, the requester may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement shall include an explanation of why the requester believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager shall maintain the Statement of Disagreement in conjunction with the pertinent record and shall include a copy of the Statement of Disagreement in any disclosure of the pertinent record. The system manager shall provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed only if the disclosure was subject to the accounting requirements of § 1202.34.

§ 1202.74 Judicial review.

Within 2 years of receipt of a NARA final determination as provided in § 1202.48 or § 1202.70, a requester may seek judicial review of that determination. A civil action must be filed in the Federal District Court in

which the requester resides or has his or her principal place of business or in which the NARA records are situated, or in the District of Columbia.

Subpart E—Report on New Systems of Records and Alteration of Existing Systems

§ 1202.80 Reporting requirement.

(a) Prior to the establishment of a new NARA system of records or the alteration of an existing NARA system of records, the system manager shall notify the Assistant Archivist for Management and Administration of the proposed new system or alteration. The system manager shall include with the notification a complete description and justification for each system of records that the system manager proposes to establish or alter. If the Assistant Archivist for Management and Administration determines that the establishment or alteration of a system of records is in the best interest of the Government, the Assistant Archivist for Management and Administration will submit, no later than 60 calendar days prior to the establishment or alteration of a system of records, a report of the proposal to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for their evaluation of the probable or potential effect of the proposal on the privacy and other personal or property rights of individuals.

(b) The reports required by this regulation are exempt from reports control.

§ 1202.82 Federal Register notice of establishment of new system or alteration of existing system.

The NARA Assistant Archivist for Management and Administration shall publish in the Federal Register a notice of the proposed establishment or alteration of a system of records when:

(a) Notice is received that the Senate, the House of Representatives, and the Office of Management and Budget do not object to the establishment of a new system of records or to the alteration of an existing system of records, or

(b) No fewer than 30 calendar days have elapsed from the date of submission of the proposal to the Senate, the House of Representatives, and the Office of Management and Budget without receipt by NARA of an objection to the proposal.

§ 1202.84 Effective date of new systems of records or alteration of an existing system of records.

Systems of records proposed to be established or altered in accordance with this subpart shall be effective no sooner than 30 calendar days from the publication of the notice required by § 1202.82.

Subpart F—Exemptions

§ 1202.90 Specific exemptions.

(a) The following NARA systems of records are exempt from subsections (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f) of the Privacy Act of 1974:

(1) Investigation Case Files, NARA–23.

(2) Personnel Security Case Files, NARA–24.

(b) These systems of records are exempt:

(1) To the extent that the systems consist of investigatory material compiled for law enforcement purposes; however, if any subject individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the indentity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence; and

(2) To the extent the systems of records consist of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

(c) These NARA systems of records have been exempted to maintain the efficacy and integrity of investigations conducted pursuant to NARA's responsibilities in the areas of Federal employment, Government contracts, and access to security classified information.

Subpart G—Assistance and Referrals

§ 1202.100 Requests for assistance and referrals.

Requests for assistance and referral to the responsible system manager or other NARA employee charged with implementing these regulations should be made to the Assistant Archivist for Management and Administration, National Archives (NA), Washington, DC 20408.

PART 1250—PUBLIC AVAILABILITY OF NARA ADMINISTRATIVE RECORDS AND INFORMATIONAL MATERIALS

Sec.
1250.1 Scope of part.

Subpart A—General Provisions

1250.10 Purpose.
1250.12 Availability of records.
1250.14 Applying exemptions.
1250.16 Records of other agencies.

Subpart B—Publication of General Agency Information and Rules in the Federal Register

1250.20 Published information and rules.

Subpart C—Availability of Orders, Regulations, and Manuals

1250.30 General.
1250.32 Available materials
1250.34 Index.
1250.36 Public inspection and copying.
1250.38 Waiver of fee.
1250.40 Searches.
1250.42 Fee schedule.
1250.44 Form of payment.
1250.46 Prepayment of fee over $25.

Subpart D—Described Records

1250.50 General.
1250.52 Procedures for making records available.
1250.54 Submission of requests for described records.
1250.56 Response to initial request.
1250.58 Appeal within NARA.
1250.60 Extention of time limits.

Subpart E—Exemptions

1250.70 Categories of records exempt from disclosure under FOIA.

Subpart F—Subpoenas and Other Legal Demands for NARA Administrative Records

1250.80 Service of subpoena and other legal demands for NARA administrative records.

Authority: 44 U.S.C. 2104 (a); 5 U.S.C. 552.

§ 1250.1 Scope of part.

This part sets forth policies and procedures concerning the availability to the public of all records and informational materials generated, developed, or held by NARA with respect to:

(a) NARA organization and functions and regulations of general applicability;

(b) NARA final orders and staff manuals; and

(c) Operational and other appropriate agency records.

This part also covers exemptions from disclosure of these records; procedures for the guidance of the public in inspecting and obtaining copies of NARA records; and the service of a subpoena or other legal demand with

respect to NARA administrative records.

Subpart A—General Provisions

§ 1250.10 Purpose.

This part implements the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, as amended. This part prescribes procedures by which the public may inspect and obtain copies of NARA records under FOIA.

§ 1250.12 Availability of records.

NARA administrative records are available to the greatest extent possible in keeping with the spirit and intent of FOIA. NARA will furnish them promptly to any member of the public upon request addressed to the office designated in § 1250.54 at fees specified in § 1250.42. The person making the request need not have a particular interest in the subject matter, nor must that person provide justification for the request. The requirement of FOIA that records be available to the public refers only to records in existence at the date of the request and imposes no obligation on NARA to compile or create information or records in response to a request.

§ 1250.14 Applying exemptions.

NARA may deny a request for a NARA record if the record falls within an exemption of FOIA as outlined in Subpart E of this part. Except when a record is classified or when disclosure would violate any Federal law, the authority to withhold a record is permissive rather than mandatory. NARA will not withhold a record unless there is a compelling reason to do so. In the absence of a compelling reason, NARA will disclose a record although it otherwise is subject to exemption.

§ 1250.16 Records of other agencies.

(a) *Other agencies' records managed by NARA.* The availability of records of other agencies in the physical custody of NARA and records which have been accessioned into the National Archives of the United States and Federal Records Centers is governed by Part 1254 of this chapter. (Availability of Records and Donated Historical Materials.)

(b) *Current records of other agencies.* If NARA receives a request to make available current records that are the primary responsibility of another agency, NARA shall refer the request to the agency concerned for appropriate action. NARA shall inform the requestor that NARA has forwarded the request to the responsible agency.

Subpart B—Publication of General Agency Information and Rules in the Federal Register

§ 1250.20 Published information and rules.

In accordance with 5 U.S.C. 552(a)(1), NARA publishes in the Federal Register, for the guidance of the public, the following general information concerning NARA:

(a) A description of its central and field organization and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general courses and methods by which functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and content of all papers, reports, and examinations;

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by NARA;

(e) Each amendment, revision, or repeal of the materials described in this section.

Subpart C—Availability of Orders, Regulations, and Manuals

§ 1250.30 General.

NARA makes available for public inspection and copying the materials described in paragraph (a)(2) of the FOIA (5 U.S.C. 552(a)(2)), which are listed in § 1250.32, and an Index of those materials as described in § 1250.34, at the National Archives Building located at 8th and Pennsylvania Avenue, Washington, DC. Reasonable copying services are available at fees specified in § 1258.10 of this chapter.

§ 1250.32 Available materials.

NARA materials available under this Subpart C are as follows:

(a) NARA orders;

(b) Written statements of NARA policy that are not published in the Federal Register;

(c) Administrative staff manuals and instructions to staff affecting a member of the public unless these materials are promptly published and copies offered for sale.

§ 1250.34 Index.

NARA will maintain and make available for public inspection and copying current indexes regarding any matter issued, adopted, or promulgated after July 4, 1967, and described in § 1250.32. NARA will publish quarterly and make available copies of each index or supplement thereto. The index will be maintained for public inspection by the Office of Management and Administration, National Archives (NA), Washington, DC 20408.

§ 1250.36 Public inspection and copying.

NARA will make records not subject to exemption available at the NARA facility where the records are located during normal working hours (see Part 1253 of this chapter), or at an alternative NARA facility as mutually agreed upon by NARA and the requester. NARA will agree to show the originals or a copy of the originals if the originals are located at another NARA facility, make one copy available at a fee, or a combination of these alternatives.

§ 1250.38 Waiver of fee.

Any request for waiver or reduction of a fee shall be included in the initial letter requesting access to NARA records under § 1250.54. The waiver request should explain how the information requested primarily benefits the general public and why it is, therefore, in the public interest for NARA to waive or reduce the fee.

§ 1250.40 Searches.

(a) NARA may charge for the time spent in the following activities in determining "search time" subject to the search fees in § 1250.42:

(1) Time spent in trying to locate NARA records which come within the scope of the request;

(2) Time spent in either transporting a necessary NARA searcher to a place of record storage, or in transporting records to the location of a necessary NARA searcher; and

(3) Direct costs involving the use of computer time to locate and extract requested records.

(b) NARA will not charge for the time spent in the following activities in determining "search time" subject to the search fees in § 1250.42:

(1) Time spent in examining a requested record to determine whether NARA should assert an exemption;

(2) Time spent in deleting exempt matter withheld from records otherwise made available;

(3) Time spent in monitoring a requester's inspection of disclosed NARA records; or

(4) Time spent in copying records.

§ 1250.42 Fee schedule.

(a) *Reproduction fees.* Copies of NARA records will be furnished at the fees for reproduction services in § 1258.10 of this chapter.

(b) *Search fees.* (1) This standard search fee if $8 per hour or fraction thereof, after the initial half hour, used to locate the requested records.

(2) When NARA must use professional staff to search for the requested records because clerical staff would be unable to locate them, the search fee is $18 per hour or fraction thereof, after the initial half hour, used to locate the requested records.

(3) When the search includes non-personnel expenditures to locate and extract requested records, such as computer time or transportation expenses, the applicable fee is the direct cost to NARA.

§ 1250.44 Form of payment.

Requesters shall pay fees by check or money order made payable to the National Archives Trust Fund, and addressed to the official named by NARA in its correspondence.

§ 1250.46 Prepayment of fees over $25.

NARA shall require prepayment of search and reproduction fees which are likely to exceed $25. When the estimated total fee exceeds $25, the requester will receive notice to prepay and will be advised that if prepayment is not received within 20 workdays from the date of NARA's notice, he or she may incur additional charges for time spent searching for the records an additional time.

Subpart D—Described Records

§ 1250.50 General.

(a) Except for records made available in accordance with Subparts B and C of this part, NARA promptly will make records available to a requester when the request describes the records so as to enable a professional NARA employee to identify and locate the record(s) unless NARA invokes an exemption in accordance with Subpart E of this part. NARA will consult with the requester, when necessary, to more specifically identify the requested record(s).

(b) Upon receipt of a request that does not reasonably describe the records requested, NARA may contact the requester to seek a more specific description. The 10-workday time limit set forth in § 1250.56 will not start until NARA receives a request reasonably describing the records.

§ 1250.52 Procedures for making records available.

This section sets forth initial procedures for making requested records available. These procedures do not apply to records of other agencies that have been transferred to NARA in accordance with 44 U.S.C. 2107 and 3103; in those cases, the procedures in Part 1254 of this chapter govern.

§ 1250.54 Submission of requests for described records.

For records located in NARA, the requester shall submit a request in writing to the NARA FOIA Officer, National Archives (NAA), Washington, DC 20408. Requests shall include the words "Freedom of Information Request" prominently marked on both the face of the request letter and the envelope. The 10-workday time limit for agency decisions set forth in § 1250.56 begins with receipt of the request by the NARA office which maintains the requested records. A requester who has questions concerning a FOIA request may consult the NARA FOIA Officer.

§ 1250.56 Response to initial request.

NARA shall mail a response to an initial FOIA request within 10 workdays (that is, excluding Saturdays, Sundays, and legal Federal holidays) after receipt of a request by the NARA office that maintains the records. In unusual circumstances, NARA will inform the requester of the agency's need to extend the time to respond to the request.

§ 1250.58 Appeal with NARA.

(a) A requester who receives a denial in whole or in part of a request may appeal that decision within NARA. The requester shall direct the appeal to the Deputy Archivist, National Archives (ND), Washington, DC 20408.

(b) The Deputy Archivist must receive an appeal no later than 30 calendar days after receipt by the requester of the initial denial of access.

(c) The requester shall appeal in writing and include a brief statement of the reasons he or she thinks NARA should release the records and enclose copies of the initial request and denial. The appeal letter shall include the words "Freedom of Information Appeal" on both the face of the appeal letter and the envelope. NARA has 20 workdays after receipt of an appeal to make a determination with respect to the appeal. The 20-workday time limit shall not begin until the Deputy Archivist receives the appeal.

(d) A requester who has received a denial of an appeal may seek judicial review of NARA's decision in the United States district court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the District of Columbia.

§ 1250.60 Extension of time limits.

In unusual circumstances the Assistant Archivist for Management and Administration may extend the time limits prescribed in § 1250.58. If necessary, more than one extension of time may be taken. However, the total extension of time shall not exceed 10 workdays with respect to a particular request. The extension may be divided between the initial and appeal stages or within a single stage. NARA shall provide a written notice to the requester of any extension of time limits.

Subpart E—Exemptions

§ 1250.70 Categories of records exempt from disclosure under the FOIA.

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defence or foreign policy and that are, in fact, properly classified under the Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute, other than the Privacy Act, provided that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of these records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigatory techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) NARA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section.

(c) NARA will invoke no exemption under this section if the requested records would be available under the Privacy Act of 1974 and NARA implementing regulations in Part 1202 of this chapter, or if disclosure would cause no demonstrable harm to any public or private interest.

Subpart F—Subpoenas or Other Legal Demands for NARA Administrative Records

§ 1250.80 Service of subpoena or other legal demand for NARA administrative records.

(a) A subpoena duces tecum or other legal demand for the production of NARA administrative records should be addressed to the Director of the Legal Services Staff, National Archives (NSL), Washington, DC 20408, with respect to NARA records.

(b) The Archivist of the United States and the Director of the Legal Services Staff are the only NARA employees authorized to accept, on behalf of NARA, service of a subpoena duces tecum or other legal demands for NARA administrative records.

(c) Regulations concerning service of a subpoena or other legal demand for records accessioned into the National Archives of the United States, records of other agencies in the custody of the Federal records centers, and donated historical materials are located at Part 1254 of this chapter.

Dated: June 25, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85-15875 Filed 6-28-85; 11:09 am]

BILLING CODE 7515-01-M

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federal register

Monday
July 1, 1985

Part VI

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412

Medicare Program; Court Ordered Regulations Regarding Prospective Payment Amount and Administrative Review: Interim Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

Medicare Program; Court Ordered Regulations Regarding Prospective Payment Amount and Administrative Review

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim rule.

SUMMARY: This interim rule is being issued solely in response to an order of the United States District Court for the Northern District of California in *Redbud Hospital District* v. *Heckler*, No. C–84–4382 MHP dated June 14, 1985. HCFA disagrees with the court's order and has appealed the decision to the United States Court of Appeals for the Ninth Circuit. These interim rules modify the process for determining the Medicare prospective payment rate for inpatient hospital services to take into account extraordinary and unusual costs incurred after the base year; the special needs of hospitals serving disproportionate numbers of Medicare and low-income patients; and the special needs of sole community hospitals. In addition, they modify the requirements for administrative review of the hospital-specific portion of a hospital's PPS rate. These rules will be null and void in the event that either (a) a stay of the June 14, 1985 order is entered by a higher Court or (b) the June 14, 1985 order is reversed on appeal.

DATE: Effective August 1, 1985. To assure consideration, comments must be received by August 14, 1985.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, P.O. Box 26676, Baltimore, Maryland 21207, Attention: BERC–346–FC.

In commenting, please refer to file code BERC–346–FC. If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Linda Magno, 301–594–9343.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98–21) on April 20, 1983, established a prospective payment system for Medicare payment of inpatient hospital services, effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). This list contains 470 specific categories.

In order to implement the prospective payment system for inpatient hospital services as required by section 1886(d) of the Act, we published the following documents in the **Federal Register**:

- On September 1, 1983, we published an interim final rule (48 FR 39752), effective for hospital cost reporting periods beginning on or after October 1, 1983. Technical corrections were issued on October 19, 1983 (48 FR 48467).
- On January 3, 1984, we published a final rule (49 FR 234) that made changes as the result of our consideration of the public comments that were received in response to the interim final rule. Technical corrections were issued for this document on June 1, 1984 (49 FR 23010).
- In order to update the prospective payment rates for fiscal year 1985, we published a proposed rule on July 3, 1984 (49 FR 27422) and a final rule on August 31, 1984 (49 FR 34728), for which technical corrections were issued on October 15, 1984 (49 FR 40167).
- On March 29, 1985, we published a final rule (50 FR 12740) to redesignate the prospective payment regulations under a new Part 412. These regulations were previously located in 42 CFR 405.470 through 405.477.

B. The Court Order

In a case involving a hospital's challenge to the intermediary's determination of its initial PPS rate, on July 30, 1984 the United States District Court for the Northern District of California issued a preliminary injunction. *Redbud Hospital District v. Heckler*, No. C–84–4382–MHP (N.D. Cal. July 30, 1984) (order granting preliminary injunction). The court preliminarily directed the Secretary to promulgate regulations that:

a. Take into account in accordance with 42 U.S.C. 1395ww(b)(4)(A) the extraordinary and unusual costs not necessarily reflected in a hospital's base year costs but which if not considered in estimating the hospital-specific target rate are likely to result in a distortion in that rate;

b. Take into account the special needs of hospitals serving a disproportionate number of Medicare and low-income patients as provided in 42 U.S.C. 1395ww(d)(5)(C)(i);

c. Take into account in accordance with 42 U.S.C. 1395ww(d)(5)(C)(ii) and the pertinent legislative history the special needs of sole community hospitals and the unique effects of their status upon the hospital-specific rate;

d. Provide for timely and reasonable review and rendering of a final determination upon an intermediary's estimate of a hospital's hospital-specific target rate under the Prospective Payment System.

The court recently modified its previous order, to require specifically that:

> [The Secretary] shall publish these implementing regulations in the **Federal Register** as an interim final rule by no later than July 1, 1985, effective August 1, 1985.
>
> A 45-day comment period shall follow publication of the interim final rule. The regulations shall be published in the **Federal Register** as a final rule no later than October 1, 1985.

Redbud Hospital District v. *Heckler*, No. C–84–4382–MHP (N.D. Cal. June 14, 1985) (order modifying preliminary injunction). Although the court stayed that aspect of its earlier order requiring regulations to implement 42 U.S.C. 1395ww(b)(4)(A) above, it further stated that this does "not change the Secretary's responsibilities" under other unspecified statutory provisions, to "promulgate regulations or adopt policies accounting for any extraordinary and unusual costs not reflected in a hospital's base year costs but which if not considered in estimating the hospital specific target rate will result in distortion in that rate."

HCFA disagrees with the court's decision and has appealed the case to the United States Court of Appeals for the Ninth Circuit. *Redbud Hospital District* v. *Heckler* No. C–8404382 MHP (N.D. Cal. 1985), *appeal docketed* No. 85–2196 (9th Cir. June 19, 1985). The Department has also requested a stay of the order pending appeal, and the request should be acted upon shortly. Since the stay was not granted by June 27, 1985, the date by which it was necessary to submit documents for publication to the **Federal Register** so as

to comply with the July 1, 1985 deadline established by the district court, HCFA is issuing these interim regulations solely to comply with the court order. With the exception of the provisions related to sole community hospitals, which are the same as those to be separately proposed, the Department strongly disagrees with the appropriateness of these regulations and believes that they may significantly impair the Medicare prospective payment systems. In the event that the stay is granted or the court's order is otherwise vacated, these regulations no longer will be effective.

II. The Regulatory Provisions

A. Extraordinary and Unusual Costs

The district court in *Redbud* stayed that portion of its July 1984 order that would have required the Secretary to promulgate regulations that would provide for a modification of a hospital's hospital-specific rate pursuant to 42 U.S.C. 1395ww(b)(4)(A) to account for extraordinary or unusual costs not reflected in base year costs, but which if not considered, would result in a distortion of the rate. The court then, somewhat ambiguously, suggested that this stay "does not change the Secretary's responsibilities to promulgate regulations or adopt policies" along these lines. Although the court's decision does not clearly require it, out of an abundance of caution, these regulations set forth a process under which a hospital may submit an application to its fiscal intermediary requesting a modification of its hospital-specific rate to reflect extraordinary or unusual costs that will be experienced in the hospital's PPS years but result from circumstances that were not present during the base year. The application must: Include a description of, and evidence to support the existence of, extraordinary or unusual circumstances beyond the hospital's control that were essential to the provision of care to beneficiaries; specify the amount of additional costs experienced in the subsequent cost year; submit adequate documentation to support the specified amount; identify the cost containment efforts undertaken by the hospital to avoid the increased costs arising from the identified circumstances; and submit data showing that the PPS rate received by the hospital is inadequate to cover increased costs. The intermediary will forward the application, supporting documentation, and a recommendation to HCFA. Based on these materials and any other relevant information, HCFA will determine, based on facts in each specific case, whether an adjustment to the hospital-specific rate is warranted.

B. Disproportionate Share Hospitals

Section 1886(d)(5)(C)(i) authorizes discretionary adjustments to the prospective payment rates in consideration of the special needs of certain classes of hospitals that incur additional costs because they serve a significantly disproportionate number of low income patients or Medicare Part A beneficiaries or both. We did not make special provisions for these hospitals in the regulations because our current data do not show that an adjustment is warranted. However, the district court in *Redbud* has ordered HCFA to issue these regulations providing for such adjustments even in the absence of supporting data. The regulations establish an application process whereby a hospital can, on a case-by-case basis, establish its status as a disproportionate share hospital; identify the increased Medicare costs associated with the special needs arising from the disproportionate number of low income or Medicare patients served; and show that the hospital's current PPS payments (including indirect medical education and outlier payments) are inadequate to cover these increased costs. The process, as in the case of extraordinary circumstances discussed above, involves an application submitted to the fiscal intermediary and a determination by HCFA, based on facts in each specific case, as to whether an adjustment is appropriate.

C. Sole Community Hospitals (SCH)

HCFA has developed independently a notice of proposed rulemaking to allow an adjustment (if warranted) of the hospital-specific portion of the prospective payment rate for sole community hospitals. In substance, we are publishing that proposed rule as an interim final rule in response to the court order in *Redbud*. In light of the uncertain status of these regulations, however, HCFA intends to go forward with the normal rulemaking process on this issue and expects to publish a complete notice of proposed rulemaking shortly.

In enacting the Social Security Amendments of 1983 (Pub. L. 98–21), Congress acknowledged the unique contribution and vulnerability of SCHs by providing a special payment formula that places a continuing, heavy reliance on the hospital-specific rates calculated from Medicare costs in the base year, generally the 12-month hospital cost reporting period that ended on or after September 30, 1982 and before September 30, 1983. The legislative history of Pub. L. 98–21 expresses Congressional intent that the Secretary provide exceptions and adjustments under the prospective payment system to take into account the special circumstances faced by SCHs. (See Senate Report No. 98–23, 98th Cong., 1st Sess., p. 54 (1983) and House Report No. 98–25, Part I, 98th Cong. 1st Sess., p. 141 (1983)). Congress provided in section 1886(d)(5)(C)(iii) of the Act that, "the Secretary shall provide by regulation for such other exceptions and adjustments to such payment amounts as the Secretary deems appropriate. Thus, additional adjustments under the prospective payment system for SCHs are authorized as the Secretary finds are appropriate.

These regulations utilize the Secretary's authority under section 1886(d)(5)(C)(iii) of the Act to provide an additional adjustment for SCHs under certain circumstances. The regulations allow SCHs experiencing certain significant cost distortions to request an adjustment of the hospital-specific portion of their prospective payment rate. The SCHs are required to submit documentation to their fiscal intermediaries of the circumstances that gave rise to the cost distortion, the community need for the additional health care services or change in circumstances that has occurred and its resulting cost impact. Adjustments will not be granted if the cause of the cost distortion is not related to community medical needs. For example, an adjustment would not be authorized for any additional costs arising from entering a management contract or for expansion of beds in a hospital operating at low occupancy levels, regardless of the fact that a certificate of need had been granted for the expansion, because the changes are not required for purposes of the delivery of patient care.

The intermediary must forward within 90 days all submitted documentation, its analysis of the provider's claims, a copy of the cost reports and other overall cost data for the base year and the year in which the distortion occurs, and its recommendation for acceptance or rejection of the request to our central office for processing. HCFA will determine if an adjustment to the hospital-specific portion is justified and, if so, the amount of the adjustment granted. We would notify the intermediary of our decision within 90 days of receiving all the necessary information. Adjustments granted under this provision would be made on a *prospective basis* beginning with the

first day of the first cost reporting period after a favorable determination.

Generally, when a hospital adds to or expands existing services there may be significant cost distortions arising from the initiation of the services (that is, start-up costs). Additionally, there is likely to be an initial period of abnormally low utilization until the availability of the new services becomes well known in the medical community. This combination of abnormally high costs and minimal utilization is likely to result initially in cost per treatment that does not represent costs that the hospital would incur in future cost reporting periods.

Because the adjustment made to the hospital-specific portion of the prospective payment rate under this provision will, if renewed, carry forward to future cost reporting periods (when utilization should be higher and start-up costs no longer exist), we believe it would be inappropriate to establish an amount to be used for all future cost reporting periods that represents mainly start-up costs and initial low utilization. Similarly, we believe the costs recognized must be subject to a test of reasonableness.

Consequently, if we determine that an adjustment is warranted, we will calculate the per discharge adjustment amount recognizing reasonable costs and utilization levels appropriate to the time period involved.

D. Administrative Review

Under current HCFA policy, an intermediary's estimation of a hospital's base year costs and modifications thereto, made for purposes of determining the hospital-specific portion of the PPS rate is not considered a final decision. As a result, the Provider Reimbursement Review Board (PRRB) does not have jurisdiction to review that determination under section 1878 of the Act until a notice of program reimbursement (NPR) has been issued after the end of a PPS cost reporting period. HCFA Ruling 84–1, 49 FR 22413–4 (May 29, 1984). The district court in *Redbud* has ordered a change in this policy to provide for review and rendering of a final decision upon an intermediary's estimate of a hospital's hospital-specific rate under PPS.

In accordance with the order, these interim regulations provide for PRRB review of an intermediary's determination as to the hospital-specific rate if the hospital can show good cause for proceeding to such review in the absence of an NPR; and if the issue presented in the administrative appeal can be fairly determined before the end of the cost year and in the absence of the information available in an NPR.

III. Effective Date of the Regulations

As required by the court order in *Redbud*, these regulations will be effective on August 1, 1985. If a stay of the court's order is issued before that time, however, the regulations will not take effect on August 1, 1985. Moreover, in light of the fact that the Department does not necessarily agree with the court's conclusion that these regulations are authorized by the Medicare Act, if the court's order is stayed, vacated or otherwise rendered ineffective at any time after August 1, 1985 these regulations will also be automatically invalidated. In the event that the district court order is vacated or reversed, any actions taken by HCFA under these regulations will be void *ab initio*, any amounts paid out pursuant to such actions will be recouped, and any decisions rendered pursuant to the regulations will be cancelled and of no effect.

IV. Other Required Information

A. Waiver of Proposed Rulemaking

The Administrative Procedure Act (5 U.S.C. 553) requires us to publish general notice of proposed rulemaking in the **Federal Register**, and afford an opportunity for public comment on proposed rules. Such notice includes a statement of the time, place, and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, this requirement does not apply when an agency finds good cause that such a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rules issued.

These interim final rules are necessary for the timely implementation of the district court decision in *Redbud*. Failure to promulgate these rules could result in contempt proceedings against the Department. Therefore, affording a proposed rulemaking process is impracticable because it would result in the violation of a court order. Thus, we find good cause to waive proposed rulemaking.

B. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or result in significant adverse effects on competition, employment, investment, productivity, or innovation. We expect that in most cases the amounts of adjustments allowed under these regulations would be small relative to total payment for all hospitals; however, we have not had the opportunity to complete an analysis of the economic effects of these regulations. We will do so before issuing a final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires us to prepare and publish a regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we treat all hospitals as small entities. However, we expect that a relatively small number of hospitals will apply and qualify for adjustments under these regulations. Therefore, the Secretary certifies under 5 U.S.C. 605(b) that this proposed rule would not result in a significant impact on a substantial number of small entities.

In any event, the Regulatory Flexibility Act allows the Secretary to waive this requirement if the rule is promulgated in response to an emergency that makes compliance impracticable. For the reasons discussed in section IV.A. above, we find that compliance with the requirements of this Act is impracticable in light of the court order in *Redbud*.

D. Paperwork Reduction Act

Certain sections of this proposed rule contain information collection requirements. As required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3501 *et seq.*), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of these requirements. In accordance with section 3507(g) of that Act and the implementing regulations, we are requesting emergency processing of our submission to OMB since a judicial deadline will be missed if normal procedures are followed. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Agency address stated earlier in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, Attn: Desk Officer for HCFA.

List of Subjects in 42 CFR Part 412

Cancer hospitals, Christian Science sanatoria, Discharges and transfers, Inpatient hospital services, Medicare, Outlier cases, Prospective payment, Referral centers, Renal transplantation centers, Sole community hospitals.

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1871, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1395hh, and 1395ww).

2. Part 412 is amended by adding a new Subpart H to read as follows:

Subpart H—Court Ordered Adjustments Under the Prospective Payment System

Sec.
412.200 Basis and purpose
412.201 Adjustment of the hospital-specific rate for extraordinary and unusual costs
412.202 Adjustments for hospitals serving a significantly disproportionate number of low income or Medicare patients
412.203 Adjustment of the hospital-specific rate for sole community hospitals
412.204 Exception to jurisdictional requirements for administrative review

Subpart H—Court Ordered Adjustments Under the Prospective Payment System

§ 412.200 Basis and purpose.

This subpart implements the federal district court order of June 14, 1985 in *Redbud Hospital District* v. *Heckler*, No. C–84–4382 MHP, (N.D. Cal.). This subpart is effective on August 1, 1985 and will remain in effect only as long as the district court order is in effect. If the district court order is vacated or reversed, any actions that have been taken under these regulations will be void, and affected providers will be restored to their status prior to the actions.

§ 412.201 Adjustment of the hospital-specific rate for extraordinary and unusual costs.

(a) *General Rule.* HCFA may adjust the hospital-specific rate as determined under this part to take into account extraordinary and unusual costs not reflected in a hospital's base year costs but, which if not considered, would result in payments under PPS that are inadequate to cover those costs.

(b) To qualify for an adjustment to its hospital-specific rate under this section, a hospital must submit an application to its fiscal intermediary which includes, in addition to other cost information requested by HCFA, documentation establishing:

(1) The existance of extraordinary or unusual circumstances occurring after the base year which result in a distorted hospital-specific rate;

(2) That the circumstances identified in paragraph (a)(1) were beyond the control of the hospital and were essential to the provision of care to Medicare beneficiaries.

(3) The amount of additional cost experienced in the cost year as a result of the identified circumstances (including its Medicare cost report for the cost period at issue);

(4) The inadequacy of PPS and other Medicare reimbursement to meet the additional costs; and

(5) Cost containment efforts instituted by the hospital to keep costs within reasonable proximity of the prospective payment rates.

(c) The intermediary will forward the hospital's submittal, along with its analysis and recommendation, to HCFA within 90 days of receipt of the necessary documentation. HCFA will determine whether a payment adjustment is warranted and, if so, the appropriate amount of the adjustment. Adjustments authorized by HCFA under this section are effective beginning with the first day of the first cost reporting period after a final determination is made. Adjustments will be granted only for cost reporting periods beginning prior to October 1, 1986.

§ 412.202 Adjustments for hospitals serving a significantly disproportionate number of low income or Medicare patients.

(a) *General Rule:* HCFA may adjust the federal portion of a hospital's payment amount as determined under this part to take into account the increased costs incurred by hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under Part A of Medicare.

(b) To qualify for an adjustment to its PPS rate under this section a hospital must submit an application to its fiscal intermediary which includes documentation establishing:

(1) That it serves a significantly disproportionate number of low income or Midicare Part A patients as compared to other hospitals that participate in the Medicare program;

(2) That the special needs of these patients resulted in additional costs to the hospital (including in the application its Medicare cost report for the cost period at issue) and the costs were essential to the provision of care to Medicare beneficiaries;

(3) The amount of additional costs identified in paragraph (b)(2) that have not been reimbursed adequately under the hospital's PPS rate, indirect medical education, outlier and other payments; and

(4) Cost containment efforts, instituted by the hospital to keep costs within reasonable proximity of the prospective payment rates, and revenue collection efforts.

(c) The intermediary will forward the hospital's submittal, along with its analysis and recommendation, to HCFA within 90 days of receipt of the necessary documentation. HCFA will determine whether a payment adjustment is warranted and, if so, the appropriate amount of the adjustment. Adjustments authorized by HCFA under this section are effective beginning with the first day of the first cost reporting period after a final determination is made.

§ 412.203 Adjustment of the hospital-specific rate for sole community hospitals.

(a) *General Rule.* HCFA may adjust the amount of operating costs considered in establishing the hospital-specific base payment rate for SCHs (as determined under § 412.71) to take into account factors necessary for patient care that would result in a significant distortion in the operating costs of inpatient hospital services. These factors may include, but are not limited to, the addition of needed health care services that were not available in the hospital during its base year.

(b) *Documentation.* To qualify for an adjustment to its hospital-specific rate under this section, an SCH must submit documentation, including cost information as requested by HCFA, to the intermediary demonstrating the—

(1) Occurrence responsible for the cost distortion;

(2) Necessity of, and justification for, the occurrence; and

(3) Amount of the distortion that results from the specified event.

(c) *Intermediary recommendation.* The intermediary forwards the hospital's submittal, along with its analysis and recommendation, to HCFA within 90 days of receipt of the necessary documentation.

(d) *Determination by HCFA.* HCFA determines, within 90 days of receiving all the necessary information from the intermediary, whether a per discharge payment adjustment amount is justified based on—

(1) The needs of the SCH and of the community;

(2) The increase in the SCH's operating costs arising from the

additional health care service or other change; and

(3) Reasonable utilization of the services, if the cost distortion is caused by the addition or expansion of services.

(e) Adjustments authorized by HCFA under this section, or that are based on an administrative decision (§ 405.1871 of this chapter) or judicial review decision (§ 405.1877 of this chapter) that is no longer subject to review by a higher reviewing authority, are effective beginning with the first day of the first cost reporting period after a final determination on a sole community hospital's request is made.

(f) Adjustments granted are effective for one cost reporting period and may be renewed by HCFA, in whole or in part, based upon the submission of such information as HCFA may require. In addition, HCFA may request information from the hospital at any time to determine whether an adjustment previously granted remains appropriate, and an adjustment may be terminated or revised upon 30 days' notice whenever HCFA determines that such action is appropriate.

§ 412.204 Exception to jurisdictional requirements for administrative review.

A hospital may obtain administrative review of an intermediary's determination as to its hospital-specific rate if:

(a) It files a request for a hearing before the Provider Reimbursement Review Board on the intermediary's determination within 30 days of receiving notice thereof or within 30 days of the effective date of this regulation, whichever is later;

(b) There is good cause shown to proceed with such review in the absence of a notice of program reimbursement for the cost year at issue; and

(c) The issues presented in the appeal can be fairly determined before the end of the cost year and in the absence of the information available on a completed notice of program reimbursement.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program)

Dated: June 27, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 27, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-15810 Filed 6-28-85; 8:45 am]

BILLING CODE 4120-01-M

Reader Aids

Federal Register

Vol. 50, No. 126

Monday, July 1, 1985

INFORMATION AND ASSISTANCE

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Problems with subscriptions	275-3054
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Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

26961-27212.....1

LIST OF PUBLIC LAWS

Last List June 25, 1985

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 14/Pub. L. 99-55

To designate the Federal Building and United States Courthouse in Ashland, Kentucky, as the "Carl D. Perkins Federal Building and United States Courthouse". (June 26, 1985; 99 Stat. 98) Price: $1.00

S.J. Res. 125/Pub. L. 99-56

Designating the week of June 23, 1985, through June 29, 1985, as "Helen Keller Deaf-Blind Awareness Week". (June 26, 1985; 99 Stat. 99) Price: $1.00

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 1985

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
July 1	July 16	July 31	August 15	August 30	September 30
July 2	July 17	August 1	August 16	September 3	September 30
July 3	July 18	August 2	August 19	September 3	October 1
July 5	July 22	August 5	August 19	September 3	October 3
July 8	July 23	August 7	August 22	September 6	October 7
July 9	July 24	August 8	August 23	September 9	October 7
July 10	July 25	August 9	August 26	September 9	October 8
July 11	July 26	August 12	August 26	September 9	October 9
July 12	July 29	August 12	August 26	September 10	October 10
July 15	July 30	August 14	August 29	September 13	October 15
July 16	July 31	August 15	August 30	September 16	October 15
July 17	August 1	August 16	September 3	September 16	October 15
July 18	August 2	August 19	September 3	September 16	October 16
July 19	August 5	August 19	September 3	September 17	October 17
July 22	August 6	August 21	September 5	September 20	October 21
July 23	August 7	August 22	September 6	September 23	October 21
July 24	August 8	August 23	September 9	September 23	October 22
July 25	August 9	August 26	September 9	September 23	October 23
July 26	August 12	August 26	September 9	September 24	October 24
July 29	August 13	August 28	September 12	September 27	October 28
July 30	August 14	August 29	September 13	September 30	October 28
July 31	August 15	August 30	September 16	September 30	October 29

VOL 50 ISS 126 JUL 1 1985 UMI

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7 Parts:
0-45.....
46-51.....
52 .....
53-209.....
210-299.....
300-399.....
400-699.....
700-899.....
900-999.....
1000-1059
1060-1119
1120-1199
1200-1499
1500-1899
1900-1944
1945-End.

8

9 Parts:
1-199.....
200-End.

10 Parts:
0-199.....
200-399.....
400-499.....
500-End.

11

12 Parts:
1-199.....
200-299.....
300-499.....
500-End.

13

14 Parts:
1-59.....
60-139.....
140-199.....
200-1199.
1200-End.

15 Parts:
0-299.....
300-399.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily Federal Register as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$5.50	Apr. 1, 1985
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
4	12.00	Jan. 1, 1985
5 Parts:		
1–1199	13.00	Jan. 1, 1984
1–1199 (Special Supplement)	None	Jan. 1, 1984
1200–End, 6 (6 Reserved)	7.50	Jan. 1, 1985
7 Parts:		
0–45	14.00	Jan. 1, 1985
46–51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1985
53–209	14.00	Jan. 1, 1985
210–299	13.00	Jan. 1, 1985
300–399	8.00	Jan. 1, 1985
400–699	12.00	Jan. 1, 1985
700–899	14.00	Jan. 1, 1985
900–999	14.00	Jan. 1, 1985
1000–1059	12.00	Jan. 1, 1985
1060–1119	9.50	Jan. 1, 1985
1120–1199	8.00	Jan. 1, 1985
1200–1499	13.00	Jan. 1, 1985
1500–1899	7.50	Jan. 1, 1985
1900–1944	12.00	Jan. 1, 1985
1945–End	13.00	Jan. 1, 1985
8	7.50	Jan. 1, 1985
9 Parts:		
1–199	13.00	Jan. 1, 1985
200–End	9.50	Jan. 1, 1985
10 Parts:		
0–199	17.00	Jan. 1, 1985
200–399	9.50	Jan. 1, 1985
400–499	12.00	Jan. 1, 1985
500–End	14.00	Jan. 1, 1985
11	7.50	Jan. 1, 1985
12 Parts:		
1–199	8.00	Jan. 1, 1985
200–299	14.00	Jan. 1, 1985
300–499	9.50	Jan. 1, 1985
500–End	14.00	Jan. 1, 1985
13	13.00	Jan. 1, 1985
14 Parts:		
1–59	16.00	Jan. 1, 1985
60–139	13.00	Jan. 1, 1985
140–199	7.50	Jan. 1, 1985
200–1199	15.00	Jan. 1, 1985
1200–End	8.00	Jan. 1, 1985
15 Parts:		
0–299	6.50	Jan. 1, 1985
300–399	13.00	Jan. 1, 1985
400–End	12.00	Jan. 1, 1985
16 Parts:		
0–149	9.00	Jan. 1, 1985
150–999	10.00	Jan. 1, 1985
1000–End	13.00	Jan. 1, 1985
17 Parts:		
1–239	14.00	Apr. 1, 1984
240–End	13.00	Apr. 1, 1984
18 Parts:		
1–149	12.00	Apr. 1, 1984
150–399	15.00	Apr. 1, 1984
400–End	7.00	Apr. 1, 1985
19	21.00	Apr. 1, 1985
20 Parts:		
1–399	8.00	Apr. 1, 1985
400–499	16.00	Apr. 1, 1985
500–End	14.00	Apr. 1, 1984
21 Parts:		
1–99	9.00	Apr. 1, 1985
100–169	11.00	Apr. 1, 1985
170–199	13.00	Apr. 1, 1985
200–299	4.25	Apr. 1, 1985
300–499	14.00	Apr. 1, 1984
500–599	16.00	Apr. 1, 1985
600–799	6.50	Apr. 1, 1985
800–1299	10.00	Apr. 1, 1985
1300–End	5.50	Apr. 1, 1985
22	17.00	Apr. 1, 1984
23	14.00	Apr. 1, 1985
24 Parts:		
0–199	11.00	Apr. 1, 1985
*200–499	19.00	Apr. 1, 1985
500–699	6.50	Apr. 1, 1985
700–1699	12.00	Apr. 1, 1984
*1700–End	9.00	Apr. 1, 1985
*25	18.00	Apr. 1, 1985
26 Parts:		
§§ 1.0–1.169	14.50	Apr. 1, 1984
§§ 1.170–1.300	12.00	Apr. 1, 1985
§§ 1.301–1.400	7.50	Apr. 1, 1985
§§ 1.401–1.500	15.00	Apr. 1, 1985
§§ 1.501–1.640	12.00	[2] Apr. 1, 1984
§§ 1.641–1.850	11.00	Apr. 1, 1985
§§ 1.851–1.1200	14.00	Apr. 1, 1984
§§ 1.1201–End	17.00	Apr. 1, 1984
2–29	15.00	Apr. 1, 1985
*30–39	9.50	Apr. 1, 1985
40–299	18.00	Apr. 1, 1985
*300–499	11.00	Apr. 1, 1985
500–599	8.00	[1] Apr. 1, 1980
600–End	4.75	Apr. 1, 1985
27 Parts:		
1–199	13.00	Apr. 1, 1984
200–End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0–99	14.00	July 1, 1984
100–499	6.50	July 1, 1984
500–899	14.00	July 1, 1984
900–1899	7.50	July 1, 1984
1900–1910	15.00	July 1, 1984
1911–1919	5.50	July 1, 1984
1920–End	14.00	July 1, 1984
30 Parts:		
0–199	13.00	July 1, 1984
200–699	5.50	July 1, 1984
700–End	13.00	July 1, 1984
31 Parts:		
0–199	8.00	July 1, 1984
200–End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	18.00	July 1, 1984
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–629	13.00	July 1, 1984
630–699	12.00	July 1, 1984
700–799	13.00	July 1, 1984
800–999	9.50	July 1, 1984
1000–End	6.00	July 1, 1984
33 Parts:		
1–199	14.00	July 1, 1984
200–End	13.00	July 1, 1984
34 Parts:		
1–299	14.00	July 1, 1984
300–399	8.50	July 1, 1984
400–End	14.00	July 1, 1984
35	7.50	July 1, 1984
36 Parts:		
1–199	9.00	July 1, 1984
200–End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0–17	14.00	July 1, 1984
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
52	14.00	July 1, 1984
53–80	16.00	July 1, 1984
81–99	14.00	July 1, 1984
100–149	9.50	July 1, 1984
150–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–424	13.00	July 1, 1984
425–End	14.00	July 1, 1984
41 Chapters:		
1, 1–1 to 1–10	13.00	July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3–6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10–17	9.50	July 1, 1984
18, Vol. I, Parts 1–5	13.00	July 1, 1984
18, Vol. II, Parts 6–19	13.00	July 1, 1984
18, Vol. III, Parts 20–52	13.00	July 1, 1984
19–100	13.00	July 1, 1984
101	15.00	July 1, 1984
102–End	9.50	July 1, 1984
42 Parts:		
1–60	12.00	Oct. 1, 1984
61–399	8.00	Oct. 1, 1984
400–End	18.00	Oct. 1, 1984

Title	Price	Revision Date
43 Parts:		
1–999	9.50	Oct. 1, 1984
1000–3999	14.00	Oct. 1, 1984
4000–End	8.00	Oct. 1, 1984
44	13.00	Oct. 1, 1984
45 Parts:		
1–199	9.50	Oct. 1, 1984
200–499	6.50	Oct. 1, 1984
500–1199	13.00	Oct. 1, 1984
1200–End	9.50	Oct. 1, 1984
46 Parts:		
1–40	9.50	Oct. 1, 1984
41–69	9.50	Oct. 1, 1984
70–89	6.00	Oct. 1, 1984
90–139	9.00	Oct. 1, 1984
140–155	9.50	Oct. 1, 1984
156–165	10.00	Oct. 1, 1984
166–199	9.00	Oct. 1, 1984
200–499	13.00	Oct. 1, 1984
500–End	7.50	Dec. 31, 1984
47 Parts:		
0–19	13.00	Oct. 1, 1984
20–69	14.00	Oct. 1, 1984
70–79	13.00	Oct. 1, 1984
80–End	14.00	Oct. 1, 1984
48 Chapters:		
1 (Parts 1–51)	13.00	Oct. 1, 1984
1 (Parts 52–99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
3–6	12.00	Oct. 1, 1984
7–14	14.00	Oct. 1, 1984
15–End	12.00	Oct. 1, 1984
49 Parts:		
1–99	7.50	Oct. 1, 1984
100–177	14.00	Nov. 1, 1984
178–199	13.00	Nov. 1, 1984
200–399	13.00	Oct. 1, 1984
400–999	13.00	Oct. 1, 1984
1000–1199	13.00	Oct. 1, 1984
1200–1299	13.00	Oct. 1, 1984
1300–End	3.75	Oct. 1, 1984
50 Parts:		
1–199	9.50	Oct. 1, 1984
200–End	14.00	Oct. 1, 1984
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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

CFR ISSUANCES 1985
January—April 1985 Editions and Projected July, 1985 Editions

This list sets out the CFR issuances for the **January—April 1985** editions and projects the publication plans for the **July, 1985** quarter. A projected schedule that will include the **October, 1985** quarter will appear in the first **Federal Register** issue of October.

For pricing information on available 1984–1985 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1985:

Title	
CFR Index	200–End
1–2 (Revised as of Apr. 1, 1985)	**10 Parts:**
	0–199
3 (Compilation)	200–399
	400–499
4	500–End
5 Parts:	**11**
1–1199 (To be announced)	
1200–End	**12 Parts:**
	1–199
6 [Reserved]	200–299
	300–499
7 Parts:	500–End
0–45	
46–51	**13**
52	
53–209	**14 Parts:**
210–299	1–59
300–399	60–139
400–699	140–199
700–899	200–1199 (Revised as of Feb. 1, 1985)
900–999	1200–End
1000–1059	
1060–1119	**15 Parts:**
1120–1199	0–299
1200–1499	300–399
1500–1899	400–End
1900–1944	
1945–End	**16 Parts:**
	0–149
8	150–999
	1000–End
9 Parts:	
1–199	

Titles revised as of April 1, 1985:

Title	
17 Parts:	
1–239	**24 Parts:**
240–End*	0–199
	200–499
18 Parts:	500–699
1–149*	700–1699
150–399*	1700–End
400–End	
	25
19	
	26 Parts:
20 Parts:	1 (§§ 1.0–1–1.169)
1–399	1 (§§ 1.170–1.300)
400–499	1 (§§ 1.301–1.400)
500–End	1 (§§ 1.401–1.500)
	1 (§§ 1.501–1.640) (Cover only)
21 Parts:	1 (§§ 1.641–1.850)
1–99	1 (§§ 1.851–1.1200)
100–169	1 (§§ 1.1201–End)
170–199	2–29
200–299	30–39
300–499	40–299
500–599	300–499
600–799	500–599 (Cover only)
800–1299	600–End
1300–End	
	27 Parts:
22	1–199
	200–End*
23	

Projected July 1, 1985 editions:

Title	
28	300–399
	400–End
29 Parts:	
0–99	**35**
100–499	
500–899	**36 Parts:**
900–1899	1–199
1900–1910	200–End
1911–1919	
1920–End	**37**
30 Parts:	**38 Parts:**
0–199	0–17
200–699	18–End
700–End	
	39
31 Parts:	
0–199	**40 Parts:**
200–End	1–51
	52
32 Parts:	53–80
1–189	81–99
190–399	100–149
400–629	150–189
630–699	190–399
700–799	400–424
800–999	425–699
1000–End	700–End
33 Parts:	**41 Parts:**
1–199	1–100
200–End	Chap. 101
	Chap. 102–200
34 Parts:	Chap. 201–End
1–299	

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VOL
50

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126

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VOL
50

ISS
127

JL
2

1985

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VOL
50
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127
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7-2-85
Vol. 50
Pages 27

7-2-85
Vol. 50 No. 127
Pages 27213-27408

federal register

Tuesday
July 2, 1985

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Selected Subjects

Administrative Practice and Procedure
Immigration and Naturalization Service
Postal Rate Commission

Air Pollution Control
Environmental Protection Agency

Civil Rights
Labor Department

Classified Information
Export-Import Bank

Flood Insurance
Federal Emergency Management Agency

Food Additives
Food and Drug Administration

Freedom of Information
Nuclear Regulatory Commission

Income Taxes
Internal Revenue Service

Legal Services
Legal Services Corporation

Marketing Agreements
Agricultural Marketing Service

Occupational Safety and Health
Occupational Safety and Health Administration

Privacy
Railroad Retirement Board

CONTINUED INSIDE

VOL 50 ISS 127 JL 2 1985 UMI

Selected Subjects

Public Lands—Rights-of-Way 27213
Land Management Bureau

Savings and Loan Associations 27288
Federal Home Loan Bank Board

Telephone 27288
Federal Communications Commission

Televison Broadcasting 27329
Federal Communications Commission

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WASHINGTON, DC

WHEN: September (two dates to be announced later). 27369 27333 27387

Contents

Federal Register
Vol. 50, No. 127
Tuesday, July 2, 1985

Agricultural Marketing Service
RULES
27213 Cherries grown in Michigan et al.
PROPOSED RULES
27288 Kiwifruit grown in California
Tobacco inspection:
27208 Farmville, VA, auction market approval; referendum

Agricultural Stabilization and Conservation Service
NOTICES
Marketing quotas and acreage allotments:
27329 Tobacco; penalty rates

Agriculture Department
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service.

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
27369 Newell Companies, Inc.

Army Department
See also Engineers Corps.
NOTICES
Military traffic management:
27333 Household goods carrier industry; intrastate rate acquisition program

Arts and Humanities, National Foundation
NOTICES
Meetings:
27387 Inter-Arts Advisory Panel

Commerce Department
See International Trade Administration; National Bureau of Standards.

Commodity Futures Trading Commission
NOTICES
Contract market proposals (Chicago Board of Trade):
27333 Financial Times-Stock Exchange 100 share index
27332 Soybean oil
27331 Zero coupon long-term Treasury note
27395 Meetings; Sunshine Act (5 documents)

Defense Department
See also Army Department.
NOTICES
27333 Federal Acquisition Regulation (FAR); agency information collection activities under OMB review

Economic Regulatory Administration
NOTICES
Electricity export and import authorizations, permits, etc.:
27335 Vermont Electric Power Co., Inc. (Highgate Project)
Remedial orders:
27334 O.K. Oil & Gas, Inc., et al.
27334 Rodgers Hydrocarbon Corp. et al.
27335 Total Petroleum, Inc.

Employment and Training Administration
NOTICES
Adjustment assistance:
27378 Alatex, Inc., et al.
27378 Falk Corp. et al.

Energy Department
See Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.
NOTICES
27400 Crude oil price and allocation control violations; restitutionary policy

Energy Research Office
NOTICES
Grant awards:
27359 University of Florida et al.

Engineers Corps
NOTICES
27334 Recreation user fees

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources, etc.:
27248 New Jersey; authority delegations
Air pollution control; new motor vehicles and engines:
27250 Dynamometer calibration procedures; Appendix removed
Air quality implementation plans; approval and promulgation; various States:
27244 Delaware
27245 Maryland
27247 West Virginia
PROPOSED RULES
Noise abatement programs:
27321 Motor carriers engaged in interstate commerce; and medium and heavy trucks (transportation equipment) effective date deferral; correction

Export-Import Bank
RULES
27215 National security information program; implementation

Federal Communications Commission
RULES
Common carrier services:
27250 Telephone network, connection of terminal equipment; editorial amendments
Television station; table of assignments:
27287 Wyoming

Federal Deposit Insurance Corporation
NOTICES
27395 Meetings; Sunshine Act

Federal Emergency Management Agency
PROPOSED RULES
Flood elevation determinations:
27322 Alabama et al.
NOTICES
Disaster and emergency areas:
27359 Puerto Rico

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
27336 Arizona Public Service Co. et al.
27358 Southern California Edison Co. et al.
Environmental statements; availability, etc.:
27349 Curtis, Cameron A., et al.
27338 Tennessee Gas Pipeline Co.
Hearings, etc.:
27349 Cincinnati Gas & Electric Co.
27350 Doe Run Creek Hydro Rehabilitation Association
27350 Lange, Eric H.
27350 Montana Department of Natural Resources and Conservation
27350, 27351 Quincy-Columbia Basin Irrigation District et al. (3 documents)
27351 Terra Resources, Inc., et al.
27339, 27352 Hydroelectric applications (2 documents)
27396 Meetings; Sunshine Act
Natural gas certificate filings:
27345 United Gas Pipeline Co. et al.
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
27338 Brooklyn Union Gas Co.; correction
27357 Christiansted Port Terminal Corp. et al.

Federal Home Loan Bank Board
PROPOSED RULES
Federal Savings and Loan Insurance Corporation:
27290 Classification of assets

Federal Pay, Advisory Committee
NOTICES
27329 Meetings

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
27359 North Community Bancorp, Inc., et al.
27360 Sun Banks, Inc., et al.
27396 Meetings; Sunshine Act

Food and Drug Administration
PROPOSED RULES
Food additives:
27294 Classification of food substances as generally recognized as safe (GRAS); eligibility
NOTICES
Animal drugs, feeds, and related products:
27360 Captan with benzocaine; approval withdrawn

General Services Administration
NOTICES
27333 Federal Acquisition Regulation (FAR); agency information collection activities under OMB review

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration.

Health Care Financing Administration
PROPOSED RULES
Medicare:
27406 Hospital inpatient services, prospective payment system (Diagnosis Related Groups); 1986 FY rates; meeting
NOTICES
27361, 27404 Privacy Act; systems of records (2 documents)

Hearings and Appeals Office, Energy Department
NOTICES
27402 Crude oil overcharges; policy statement

Immigration and Naturalization Service
PROPOSED RULES
Organization, functions, and authority delegations:
27289 Service officers, powers and duties, etc.; withholding of confidential information, etc.

Interior Department
See Land Management Bureau; National Park Service.

Internal Revenue Service
RULES
Income taxes:
27231 Federal grants not includable in income
27222 Tax-exempt entity leasing; temporary
PROPOSED RULES
Income taxes:
27297 Tax-exempt entity leasing; cross reference

International Trade Administration
NOTICES
Countervailing duties:
27330 Sugar content of articles from Australia
Meetings:
27330 MCTL Implementation Technical Advisory Committee; date change

Interstate Commerce Commission
NOTICES
Motor carriers; control, purchase, and tariff filing exemptions, etc.:
27368 Burlington Northern Railroad Co. et al.
Railroad services abandonment:
27368 Southern Pacific Transportation Co.

Justice Department
See also Antitrust Division; Immigration and Naturalization Service.
NOTICES
27369 Agency information collection activities under OMB review

Labor Department
See also Employment and Training Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration; Pension and Welfare Benefit Programs Office.
PROPOSED RULES
27298 Nondiscrimination on the basis of handicap in programs and activities; enforcement

VOL 50 ISS 127 JL 2 1985 UMI

Land Management Bureau
PROPOSED RULES
Rights-of-way:
27322 Principles and procedures; rights-of-way granted prior to October 21, 1976
NOTICES
Alaska native claims selection:
27363 Eklutna, Inc.
Meetings:
27364 Emergency coal lease application (UT)
Oil and gas leases:
27363 Louisiana
Opening of public lands:
27364 Idaho
Sale of public lands:
27365 California

Legal Services Corporation
PROPOSED RULES
37326 Priorities in allocation of resources

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modifications:
27379 Keno Coal Co.

National Aeronautics and Space Administration
NOTICES
27387 Agency information collection activities under OMB review
27333 Federal Acquisition Regulation (FAR); information collection activities under OMB review

National Bureau of Standards
NOTICES
Meetings:
27331 Weights and Measures National Conference

National Labor Relations Board
NOTICES
27396 Meetings; Sunshine Act

National Park Service
NOTICES
Historic Places National Register; pending nominations:
27367 California et al.
27368 Wilson's Creek National Battlefield; insignia

National Transportation Safety Board
NOTICES
27396 Meetings; Sunshine Act (2 documents)

Nuclear Regulatory Commission
RULES
27214 Freedom of Information Act; implementation
NOTICES
Environmental statements; availability, etc.:
27388 Philadelphia Electric Co.
Meetings:
27387 Reactor Safeguards Advisory Committee
27396 Meetings; Sunshine Act

Occupational Safety and Health Administration
RULES
State plans; development, enforcement, etc.:
27233 Iowa
PROPOSED RULES
Health and safety standards:
27307 Powered platforms for exterior building maintenance; comment period reopened

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
27397 Meetings; Sunshine Act

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
27379 McShane & Bowie Profit Sharing Plan et al.

Postal Rate Commission
PROPOSED RULES
Practice rules:
27308 Workpapers and computer-generated evidence

Prospective Payment Assessment Commission
NOTICES
27390 Meetings

Railroad Retirement Board
RULES
27222 Privacy Act; implementation

Research and Special Programs Administration
NOTICES
Pipeline safety; waiver petitions:
27391 Tennessee Gas Pipeline Co.

Textile Agreements Implementation Committee
NOTICES
Textile consultation; review of trade:
27331 Thailand

Transportation Department
See also Research and Special Programs Administration.
NOTICES
Aviation proceedings; hearings, etc.:
27390 Cargolux Airlines International S.A.

Treasury Department
See also Internal Revenue Service.
NOTICES
27392 Agency information collection activities under OMB review
Tax treaties, income; various countries:
27392 India

United States Information Agency
NOTICES
Authority delegations:
27393 General Counsel and Congressional Liaison
Meetings:
27394 Cultural Property Advisory Committee

Separate Parts in This Issue

Part II
27340 Department of Energy, Office of the Secretary, and Office of Hearings and Appeals

Part III
27406 Department of Health and Human Services, Health Care Financing Administration

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

VOL 50 ISS 127 JL 2 1985 UMI

CFR PA
A cumulat
the Reade
7 CFR
930.....
Proposed
29.....
920.....
8 CFR
Proposed
103.....
10 CFR
9.....
12 CFR
403.....
Proposed
561.....
563.....
571.....
20 CFR
200.....
21 CFR
Proposed
170.....
26 CFR
1 (2 docu
602 (2 do
Proposed
1.....
29 CFR
1952.....
Proposed
33.....
1910.....
39 CFR
Proposed
3001.....
40 CFR
52 (3 doc
60.....
61.....
86.....
Proposed
202.....
205.....
43 CFR
Proposed
2800.....
44 CFR
Proposed
67.....
45 CFR
Proposed
405.....
412.....
1620.....
47 CFR
68.....
73.....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
930.....27213
Proposed Rules:
29.....27288
920.....27288

8 CFR
Proposed Rules:
103.....27289

10 CFR
9.....27214

12 CFR
403.....27215
Proposed Rules:
561.....27290
563.....27290
571.....27290

20 CFR
200.....27222

21 CFR
Proposed Rules:
170.....27294

26 CFR
1 (2 documents).....27222, 27231
602 (2 documents).....27222, 27231
Proposed Rules:
1.....27297

29 CFR
1952.....27233
Proposed Rules:
33.....27298
1910.....27307

39 CFR
Proposed Rules:
3001.....27308

40 CFR
52 (3 documents).....27244–27247
60.....27248
61.....27248
86.....27250
Proposed Rules:
202.....27321
205.....27321

43 CFR
Proposed Rule:
2800.....27322

44 CFR
Proposed Rules:
67.....27322

45 CFR
Proposed Rules:
405.....27406
412.....27406
1620.....27326

47 CFR
68.....27250
73.....27287

VOL
50
ISS.
127
J.L
2
1985
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Rules

This sectio
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7 CFR Par

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AGENCY: A
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Rules and Regulations

Federal Register
Vol. 50, No. 127
Tuesday, July 2, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia and Maryland

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes free and restricted percentages applicable to cherries acquired by handlers during the 1985–86 fiscal period, and the rate of charges for receiving, processing, storing and other costs related to reserve pool cherries for such period. This action is necessary to promote orderly marketing in the interest of producers and consumers.

DATES: Effective period, May 1, 1985, through April 30, 1986.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Marketing Order 930 (7 CFR Part 930), regulating the handling of tart cherries grown in eight States. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The rule is based upon the recommendation and information submitted by the Cherry Administrative Board (hereinafter referred to as the "Board") and upon other available information.

This rule adds a new § 930.301 under Subpart-Rules and Regulations effective under M.O. 930. Section 930.301 establishes free and restricted percentages of cherries acquired by handlers during the fiscal period ending April 30, 1986, at 93 and 7 percent, respectively. The Board met on June 20, 1985, to consider supply and market conditions and other factors affecting the need for such regulation. It recommended setting such free and restricted percentages for cherries acquired by handlers. The free percentage fixed for a fiscal period represents the percentage of a particular crop which would meet the expected demand for processed cherries during that period. A quantity of cherries in excess of the estimated demand is represented by the restricted percentage. Restricted percentage cherries may be processed and stored in a reserve pool for the benefit of the growers, or the producer may divert such cherries to dried or juice products, export them to certain foreign countries, or leave them unharvested. Reserve cherries which are pooled are processed and held in storage for later release into normal commercial outlets.

The free and restricted percentages for the 1985–86 fiscal period adopted by the Board were based on the production estimate released by the Crop Reporting Board of USDA on June 19, 1985, and other estimates developed by the Board relative to potential demand, carryover, etc. Total U.S. production of tart cherries is estimated by the Board to be 268 million pounds, with 247.6 million pounds of the total expected from the area regulated under M.O. 930. The Board recommended free and restricted percentages based upon the following estimates:

	Million pounds
Supply:	
(1) Estimated U.S. production	268
(2) Less fresh sales and quantity set aside for additional market growth	12.5
(3) Total	255.5
Demand: (4) Total (frozen, canned, other)	238
Percentages:	
(5) Total supply less total demand (item 3 minus item 4)	17.5
(6) Available for processing from regulated area	247.6
(7) Restricted percent	7
(8) Free percentage (100 percent minus restricted percent—item 7)	93

The estimated demand of 238 million pounds plus the amount set aside for additional market growth would make available for sale a quantity of tart cherries for processing substantially in excess of 110 percent of average sales in recent years.

The rule also adds a new § 930.311 under Subpart—Rules and Regulations which establishes a handler compensation rate to be paid by producers having an interest in the reserve pool. Under M.O. 930, whenever the Secretary fixes free and restricted percentages for a fiscal period, each handler must set aside for the reserve pool a portion of the cherries acquired by such handler. Reserve pool cherries must be be set aside by handlers in 30 pound capacity containers in the form commonly referred to in the cherry industry as "5 plus 1 frozen cherries" (five pounds of raw pitted cherries combined with one pound of sugar) and must be stored thereafter in a freezer storage facility. Since the equity in the cherries remains with the producer, the producer must pay the handler for these services—i.e., receiving, processing, necessary materials, storing, and other related costs. As a general rule, these costs are deducted by the handler from any monies due producers for deliveries of free percentages cherries. The Board solicited data from handlers relative to their estimated costs and unanimously recommended the compensation rates hereinafter set forth based on that data. Cherry growers and handlers need to be aware of the rates of payment for services on reserve pool cherries as soon as possible, because the harvesting and processing of cherries has begun. Compliance with this rule requires no advance preparation on the part of cherry handlers.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared policy of the act. The harvesting of cherries began about mid-June, and the rule should become effective as soon as

possible to enable growers and handlers to make necessary decisions pertaining to the harvesting of cherries. In addition, the marketing order requires that this rule be effective for all cherries acquired by handlers during the entire fiscal period (May 1, 1985, through April 30, 1986). Interested persons were given an opportunity to submit information and views on these requirements for the 1985 season cherry crop at an open meeting at which the Board recommeded implementation of such requirements. Cherry growers and handlers have been apprised of such requirements. It is found that this rule will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 930

Marketing agreements and order, Cherries.

PART 930—[AMENDED]

1. The authority citation for 7 CFR Part 930 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Sections 930.301 and 930.311 are added to read as follows: (§§ 930.301 and 930.311 expire April 30, 1986, and will not be published in the annual Code of Federal Regulations).

§ 930.301 Free and restricted percentages.

The free and restricted percentages applicable to all cherries acquired during the fiscal period May 1, 1985, through April 30, 1986, shall be 93 percent and 7 percent, respectively.

§ 93.311 Handler compensation rate.

During the fiscal period May 1, 1985, through April 30, 1986, each handler shall be compensated by producers (or their successors in interest) having an interest in the reserve pool as follows:

(a) At the rate of $0.22 per pound of reserve pool cherries received as raw unpitted cherries, and processed into the form of 5 plus 1 frozen cherries (five pounds of raw pited cherries combined with one pound of sugar) packed in containers as specified in § 930.104(a) of this subpart, and for storage in a suitable freezer storage facility for 30 days from the date such cherries are placed in such storage facility; and

(b) At the rate of $0.045 per pound of reserve pool cherries as specified in § 930.311(a) of this section, for storage thereafter in a suitable freezer storage facility.

Dated: June 28, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–15830 Filed 7–1–85; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

Public Records; Freedom of Information Act; Granting Appeals

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission revises one section of its Freedom of Information Act (FOIA) regulations to provide that appeals from initial denials of requests for information under the FOIA shall be decided by the Secretary of the Commission, with the advice and concurrence of the Office of General Counsel, instead of being decided by the Commission. The Secretary will be required to consult with the Commission before granting an appeal.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Theresa Hajost, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634–1493.

SUPPLEMENTARY INFORMATION: Under the Commission's current FOIA regulations (10 CFR 9.15), appeals from initial denials of requests for documents under the FOIA (5 U.S.C. 552) made by committees, boards, panels, and offices reporting to the Commission are addressed to the Commission. Under section 161(n) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(n), the Commission has the power to delegate functions such as this to "other officers of the Commission."

The Commission is delegating the FOIA appeal function to the Secretary of the Commission. The Secretary will exercise this authority only with the advice and concurrence of the Office of the General Counsel. The Secretary will consult with the Commission when granting an appeal. When denying an appeal, the Secretary will consult with the Commission as appropriate. Decisions of the Secretary on appeals shall constitute final agency action.

Appeals currently pending before the Commission will be referred to the Secretary.

Because this is a rule of procedure and practice, the Commission finds, pursuant to 5 U.S.C. 553(b)(A), that advance notice and opportunity to comment are not required. Accordingly, the Commission finds that because these amendments relate solely to matters of agency organization, procedure, or practice, good cause exists for omitting notice of proposed rulemaking and public procedure thereon, as unnecessary, and for making the amendments effective upon publication in the **Federal Register**. Because this revision is not a final rule requiring notice of proposed rulemaking, under 5 U.S.C. 553, the provision of 5 U.S.C. 603 requiring a regulatory flexibility analysis does not apply.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

List of Subjects in 10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for Part 9 continues to read as follows:

Authority: Sec 161, Pub. L. 83–703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841). Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552a; Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.15 paragraphs (a) and (b) are revised to read as follows:

§ 9.15 Committees, boards, panels, and offices reporting to the Commission

(a) For boards, panels, and offices reporting directly to the Commission, and the Office of the Executive Legal Director, the initial determination on a request for records or request for waiver

or reduction of fees for locating and reproducing such records, required by § 9.9 shall be made by the head of such board, panel, or office or his designee, instead of the Director, Office of Administration, and an appeal of an adverse determination shall be made to the Secretary of the Commission instead of the Executive Director for Operations.

(b) The Advisory Committee Management Officer shall make the initial determination required by § 9.9 on requests for records of advisory committees established pursuant to Part 7 of this chapter, including the Advisory Committee on Reactor Safeguards, or requests for waiver or reduction of fees for locating and reproducing such records, and an appeal of an adverse determination shall be to the Secretary of the Commmission.

Dated at Washington, DC, this 25th day of June, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-15758 Filed 7-1-85; 8:45 am]

BILLING CODE 7590-01-M

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 403

Classification, Declassification, and Safeguarding of National Security Information

AGENCY: The Export-Import Bank of the United States (Eximbank).

ACTION: Final rule.

SUMMARY: This final rule amends, revises and reorganizes established Export-Import Bank rules regarding the handling of classified information, at 12 CFR Part 403. The changes are made to conform these rules to the requirements of National Security Decision Directive 84, "Safeguarding National Security Information." The changes also clarify and reorganize these rules to improve the implementation of applicable law and policy.

EFFECTIVE DATE: July 1, 1985.

ADDRESS: Office of the General Counsel, 811 Vermont Avenue, NW., Washington, D.C. 20571.

FOR FURTHER INFORMATION CONTACT: Joseph H. Gainer, Jr., Acting General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Washington, D.C. 20571. (202) 566-8334.

SUPPLEMENTARY INFORMATION: National Security Decision Directive 84, "Safeguarding National Security Information", (NSDD-84) was signed by the President on March 11, 1983. The Export-Import Bank is amending its regulations at 12 CFR Part 403 to conform to the requirements of NSDD-84. Pursuant to the requirements of NSDD-84, various provisions have been added to these regulations. § 403.10(b) now requires that persons with authorized access to classified information must sign a nondisclosure agreement as a condition of access. § 403.10(d) now provides that every media inquiry concerning classified information must be directed to the Security Officer. § 403.11 now sets forth in detail required procedures for reporting and investigating unauthorized disclosures of information, and in conjunction with § 403.2(d)(3), makes required provision for the imposition of sanctions against agency personnel for the unauthorized disclosure of national security information, or for refusal to cooperate with enforcement efforts.

Part 403 has been reorganized and subparts revised and renamed to eliminate repetition and to provide for a more usable and concise grouping of topics. Former Subpart § 403.3, "Authority to classify", is no longer a separate subpart; its substance may now be found at new § 403.3(c), "Original Classification Authority and Criteria". Former Subpart § 403.6, "Training Responsibilities and objectives", was not necessary to retain as a separate subpart; its substance may now be found at § 403.2(c)(2).

Many other changes have been made to facilitate use of the regulations and improve compliance with applicable laws and executive orders. A listing of definitions for key terms in Part 403 has been added at § 403.1(b). Other changes include: at § 403.7(b), the provision of a one year limit as the norm for review of mandatory declassification requests, which conforms to the limit described in implementing regulations of the Information Security Oversight Office at 32 CFR § 2001.32(a), and allows for the careful review appropriate to declassification decisions; at § 403.7(g), the exemption of Presidential information from mandatory review for declassification is made explicit; at § 403.3(e)(4) and 403.7(e), clarification is provided on the handling of foreign government information.

The Export-Import Bank finds that 12 CFR Part 403, as amended and revised, is exempt from the public notice and comment procedures prescribed by the Administrative Procedure Act. Pursuant to 5 U.S.C. 553 (a) and (b), precedures for public notice and comment are inapplicable in the context of national security functions, matters related to agency management or personnel, and to interpretative rules, general statements of policy, or rules of agency organization, procedure, and practice. 12 CFR Part 403, as amended and revised, is concerned with the Bank's procedures for the handling of classified information impacting upon the national security interests and foreign affairs of the United States, and with policy, rules, procedure and practice for handling classified information by the agency and its personnel. 12 CFR Part 403 is therefore exempt from the procedures of 5 U.S.C. 553.

The requirements of Executive Order 12291, February 17, 1981, 46 FR 13193, and the Regulatory Flexibility Act (Pub. L. 96-354), are inapplicable, as these rules pertain to Agency management and national security functions and notice of proposed rulemaking is not required. The Export-Import Bank considers that, in any event, these regulations would not constitute either a major rule for the purposes of Executive Order 12291, nor rules which will have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 403

Classified information.

Accordingly, 12 CFR Part 403 is revised to read as follows, in its entirety:

PART 403—CLASSIFICATION, DECLASSIFICATION, AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION

Sec.

403.1 General policies and definitions.
403.2 Responsibilities.
403.3 Classification principles and authority.
403.4 Derivative classification.
403.5 Declassification and downgrading.
403.6 Systematic review for declassification.
403.7 Mandatory review for declassification.
403.8 Appeals.
403.9 Fees.
403.10 Safeguarding.
403.11 Enforcement and investigation procedures.

Authority: Executive Order 12356, National Security Information, April 2, 1982 (3 CFR, 1982 Comp. p. 166) (hereafter referred to as the "Order"), Information Security Oversight Directive No. 1, June 25, 1982 (32 CFR Part 2001) (hereafter referred to as the "Directive"), and National Security Decision Directive 84, "Safeguarding National Security Information," signed by the President on March 11, 1983 (hereafter referred to as "NSDD 84").

§ 403.1 General policies and definitions.

(a) This regulation of the Export-Import Bank (the Bank) implements executive orders which govern the classification, declassification, and safeguarding of national security information and material of the United States. This regulation is based on Executive Order 12356, National Security Information, April 2, 1982 (3 CFR, 1982 Comp. p. 166) (hereafter referred to as the "Order"), Information Security Oversight Directive No. 1, June 25, 1982 (32 CFR Part 2001) (hereafter referred to as the "Directive"), and National Security Decision Directive 84, "Safeguarding National Security Information," signed by the President on March 11, 1983 (hereafter referred to as "NSDD 84"). Violation of the provisions of Part 403 may result in the imposition of administrative penalties, and civil and criminal penalties under applicable law. Executive Order 12356 prescribes a uniform system for classifying, declassifying, and safeguarding national security information. It recognizes that it is essential that the public be informed concerning the activities of the Government, but that the interests of the United States and its citizens require that certain information concerning the national defense and foreign relations be protected against unauthorized disclosure. Information may not be classified under the Order unless its disclosure reasonably could be expected to cause damage to the national security.

(b) For the purposes of the Order, the Directive and these guidelines, the following terms shall have the meanings specified below:

(1) "Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(2) "National security information" means information that has been determined pursuant to this Order or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(3) "Foreign government information" means:

(i) Information provided by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or

(ii) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

(4) "National security" means the national defense or foreign relations of the United States.

(5) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship, or both, be held in confidence.

(6) "Original classification" means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

§ 403.2 Responsibilities.

In the carrying out of security procedures, responsibility falls on all personnel generally and on certain personnel in a more particular manner.

(a) *Individual* Each employee of the Bank having access to classified material has an individual responsibility to protect such information. Classified information should be secured in approved equipment or facilities whenever it is not under the direct control of the employee.

(b) *Office and Division Heads* These officials have the additional responsibility of a continuing review for ascertaining that security procedures are properly observed by the personnel comprising their respective offices.

(c) *Security Officer* (1) The Security Officer has the responsibility for developing, inspecting, and advising on procedures and controls for safeguarding classified material originating in, received by, in transit through, or in custody of the Bank; the training and orientation of employees; the carrying out of inspections; and the destruction of obsolete and non-record material.

(2) The Security Officer shall be responsible for disseminating written material and conducting oral briefings to inform Bank personnel of the Order, Directive, and regulations. An explanation of the practical application of these procedures and the underlying policy objectives thereof shall be emphasized.

(d) *Security Committee* (1) This Committee consists of the General Counsel, as Chairperson, the Security Officer, and other Bank employees, as designated by the President and Chairman (hereinafter referred to as the "Chairman)" and is responsible for the implementation and enforcement of the Order and the Directive. This Committee will act on all matters with respect to the Bank"s administration of these regulations.

(2) All suggestions and complaints regarding the Bank's Information Security Program, including those regarding over-classification, failure to declassify, or delay in declassifying, not otherwise provided for herein, shall be referred to the Security Committee for review.

(3) The Security Committee shall have responsibility for recommending to the Chairman appropriate administrative action to correct abuse or violation of these regulations or of any provision of the Order or Directive thereunder, including but not limited to notification by warning letter, formal suspension without pay, and removal. Upon receipt of such a recommendation, the Chairman shall make a decision and advise the Security Committee of this action.

§ 403.3 Classification principles and authority.

(a) *Classification Principles.* (1) Except as provided in the Atomic Energy Act of 1954, as amended, the Order provides the only basis for classifying national security information. Information held by the Bank will be made available to the public to the extent possible consistent with the need to protect the national defense or foreign relations, as required by the interests of the United States and its citizens. Accordingly, security classification shall be applied only to protect the national security.

(2) Before a classification determination is made, each item of information that may require protection shall be identified exactly. This requires identification of that specific information, disclosure of which could affect the national security. When there is reasonable doubt about the need to classify, the information should be safeguarded as if it were confidential until a final determination is made by an authorized classifier as to its classification. The final determination must be made within thirty (30) days.

(b) *Classification Designations.* Information which requires protection against unauthorized disclosure in the interest of national security ("classified information") shall be classified at one of the following three levels:

(1) TOP SECRET shall be applied only to information, the unauthorized

disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

(2) SECRET shall be applied only to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.

(3) CONFIDENTIAL shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

Except as provided by statute, no other terms, such as "SENSITIVE," "OFFICIAL BUSINESS ONLY," "AGENCY," "BUSINESS," "ADMINISTRATIVELY," etc., shall be used within the Bank in conjunction with any of the three classification levels defined above.

(c) *Original Classification Authority and Criteria.* (1) The Bank's authority to assign original classification to any document is limited as follows and is nondelegable:

Classification	Classifier
CONFIDENTIAL	President and Chairman. First Vice President and Vice Chairman. General Counsel. Senior Vice Presidents. Security Officer.

(2) A determination to classify information shall be made by an original classification authority when the information concerns one or more of categories (i) through (x) of this paragraph, and when the unauthorized disclosure of the information, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security. Information shall be considered for classification if it concerns:

(i) Military plans, weapons, or operations;

(ii) The vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;

(iii) Foreign government information;

(iv) Intelligence activities (including special activities), or intelligence sources or methods;

(v) Foreign relations or foreign activities of the United States;

(vi) Scientific, technological, or economic matters relating to the national security;

(vii) United States Government programs for safeguarding nuclear materials or facilities;

(viii) Cryptology;

(ix) A confidential source; or

(x) Other categories of information that are related to the national security and that require protection against unauthorized disclosure as determined by the President of the United States, by the Chairman or by other officials who have been delegated original classification authority by the President. Recommendations concerning the need to designate additional categories of information that may be considered for classification shall be forwarded through the Security Officer to the Chairman for determination. Such a determination shall be reported to the Director of the Information Security Oversight Office.

(3) Information that is determined to concern one or more of the above categories shall be classified when an original classification authority also determines that its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security. Accordingly, certain information which would otherwise be unclassified may require classification when associated with other unclassified or classified information. Classification on this basis shall be supported by a written explanation that, at a minimum, shall be maintained with the file or reference on the recent copy of the information.

(4) Unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or disclosure of intelligence sources or methods is presumed to cause damage to the national security.

(5) Information classified in accordance with the above classification categories shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information.

(d) *Duration of Original Classification.* (1) Information shall be classified as long as required by national security considerations. When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified. If the date or event for declassification cannot be determined at the time of classification, the standard notation "Originating Agency's Determination Required", or its abbreviation "OADR", should be entered on the "Declassify on" line.

(2) Automatic declassification determinations under predecessor orders shall remain valid unless the classification is extended by an authorized declassification authority. These extensions may be by individual documents or categories of information, provided, however, that any extension of classification on other than an individual document basis shall be reported to the Director of the Information Security Oversight Office. The declassification authority shall be responsible for notifying holders of the information of such extensions.

(3) Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of the Order.

(e) *Marking and Identification.* (1) Classified information must be marked, or otherwise identified, to inform and warn the holder of the information of its sensitivity. The classifier is responsible for ensuring that proper classification markings are applied. At the time of classification, the following information shall be shown on the face of all classified documents, or clearly associated with other forms of classified information in a manner appropriate to the medium involved, unless this information itself would reveal a confidential source or relationship not otherwise evident in the document or information:

(i) One of the three classification levels defined in § 403.3(b); "(TS)" for Top Secret, "(S)" for Secret, "(C)" for Confidential, and "(U)" for Unclassified; with each page marked at top and bottom according to the highest level of classified information on each page.

(ii) The identity of the original classification authority if other than the person whose name appears as the approving or signing official;

(iii) The agency and office of origin; and

(iv) The date or event for declassification, or the notation "Originating Agency's Determination Required."

(2) Each classified document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are not classified. The Chairman may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

(3) Marking designations implementing the provisions of the Order, including abbreviations, shall conform to the standards prescribed in implementing directives issued by the Information Security Oversight Office. All authorized classifiers shall be issued

a uniform stamp that has a "Classified by" line and a "Declassify on" line.

(4) Documents that contain foreign government information shall include either the marking, "FOREIGN GOVERNMENT INFORMATION", or a marking that otherwise indicates that the information is foreign government information. If that fact must be concealed, the document will be marked as if it were of U.S. origin. Foreign government information shall either retain its original classification or be assigned a United States classification that shall ensure a degree of protection at least equivalent to that required by the entity that furnished the information.

(5) Documents that contain information relating to intelligence sources or methods shall include the following marking unless proscribed by the Director of the Central Intelligence: WARNING NOTICE—INTELLIGENCE SOURCES OR METHODS INVOLVED.

(6) Information assigned a level of classification under predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Omitted markings may be inserted on a document by the General Counsel or the Security Officer.

(f) *Limitations on Classification.* (1) In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security.

(2) Basic scientific research information not clearly related to the national security may not be classified.

(3) The Chairman or other authorized original classifiers may reclassify information previously declassified and disclosed if it is determined in writing that (i) the information requires protection in the interest of national security, and (ii) the information may reasonably be recovered. In making such determination, the Chairman or any other authorized original classifier shall consider the following factors: The lapse of time following disclosure; the nature and extent of disclosure; the ability to bring the fact of reclassification to the attention of persons to whom the information was disclosed; the ability to prevent further disclosure; and the ability to retrieve the information voluntarily from persons not authorized access to its reclassified state. These reclassification actions shall be reported promptly to the Director of the Information Security Oversight Office.

(4) Information may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of the Order and these regulations, if such classification meets the requirements of the Order and is accomplished personally and on a document-by-document basis by the Chairman, the Vice Chairman, or the Security Officer.

§ 403.4 Derivative classification.

(a) *Use of derivative classification.* (1) Unlike original classification which is an initial determination, derivative classification is an incorporation, paraphrasing, restatement, or generation in new form of information that is already classified. Derivative classification is the responsibility of those who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide. Original classification authority is not required for derivative classification.

(2) Persons who apply such derivative classification markings shall:

(i) Respect original classification decisions;

(ii) Verify the information's current level of classification so far as practicable before applying the markings; and

(iii) Carry forward to any newly created documents the assigned dates or events for declassification or review. The latest date for declassification should be entered in the case of multiple source documents.

(b) *New Material.* (1) New material that derives its classification from information classified on or after the effective date of the Order, April 2, 1982, shall be marked with the declassification date or event, or the date for review, as assigned to the source information.

(2) New material that derives its classification under prior orders shall be treated as follows:

(i) If the source material bears a classification date or event 20 years or less from the date or origin, that date or event shall be carried forward on the new material.

(ii) If the source material bears no declassification date or event or is marked for declassification beyond 20 years, the new material shall be marked with a date for review for declassification at 20 years from the date of original classification of the source material.

(iii) If the source material is foreign government information bearing no date or event for declassification or is marked for declassification beyond 30 years, the new material shall be marked for review for declassification at 30 years from the date of original classification of the source materials.

(iv) A copy of the source document or documents should be maintained with the file copy of the new document or documents which have been derivatively classified.

§ 403.5 Declassification and downgrading.

(a) *Authority and policy for declassification and downgrading.* Information that continues to meet the classification requirements prescribed in § 403.3(c) despite the passage of time will continue to be safeguarded. However, information which is properly classified at the time it is developed may not necessarily require protection indefinitely. National security information over which the Bank exercises final classification jurisdiction shall be declassified or downgraded as soon as national security considerations permit. Information shall be declassified or downgraded by:

(1) The official who authorized the original classification, if that official is still serving in the same position, by a successor, or by a supervisory official of either; or

(2) Officials specifically delegated this authority in writing by the Chairman or by the Security Officer. A list of those who may be so delegated shall be maintained by the Security Officer.

(3) If the Director of the Information Security Oversight Office determines that information is unlawfully classified, the Director may require the Export-Import Bank to declassify it. Any such decision by the Director may be appealed to the National Security Council. The information shall remain classified until the appeal is decided.

(b) *Declassification Procedure.* Information marked with a specific declassification date or event shall be declassified on that date or upon occurrence of that event. The overall classification markings shall be lined through a statement placed on the cover or first page to indicate the declassification authority, by name and title, and the date of declassification. If practicable, the classification markings on each page shall be cancelled; otherwise, the statement on the cover or first page shall indicate that the declassification applies to the entire document.

(c) *Notification to Holders.* When classified information has been properly marked with specific dates or events for declassification it is not necessary to

issue notices of declassification to any holders. However, when declassification action is taken earlier than originally scheduled, or the duration of classification is extended, the authority making such changes shall promptly notify all holders to whom the information was originally transmitted. This notification shall include the marking action to be taken, the authority for the change (name and title), and the effective date of the change. Upon receipt of notification, recipients shall make the proper changes and shall notify holders to whom they have transmitted the classified information.

(d) *Downgrading.* Information designated a particular level of classification may be assigned a lower classification level by the original classifier or by an official authorized to declassify the same information. Prompt notice of such downgrading shall be provided to known holders of the information. Classified information marked for automatic downgrading under previous Executive Orders shall be reviewed to determine that it no longer continues to meet classification requirements despite the passage of time.

(e) *Transferred Information.* Classified information transferred from one agency to another in conjunction with a transfer of functions, and not merely for storage purposes, shall be considered under the control of the receiving agency for purposes of downgrading and declassification, subject to consultation with any other agency that has an interest in the subject matter of the information. Prior to forwarding classified information to an approved storage facility of the Bank, to a Federal records center, or to the National Archives for permanent preservation, the information shall be reviewed for downgrading or declassification.

§ 403.6 Systematic review for declassification.

Classified information determined by the Archivist of the United States to be of sufficient value to warrant permanent retention will be subject to systematic declassification review by the Archivist in accordance with guidelines provided by the Bank, as originator of the information. These guidelines shall be developed by the Security Officer who is designated by the Bank to assist the Archivist in the review process. The guidelines shall be reviewed every five years or as requested by the Archivist of the United States.

§ 403.7 Mandatory review for declassification.

(a) Classified information under the jurisdiction of the Bank shall be reviewed for declassification upon receipt of a request by a United States citizen or permanent resident alien, a Federal agency, or a State or local government. A request for mandatory review of classified information shall be submitted in writing and describe the information with sufficient particularity to locate it with a reasonable amount of effort. Requests may be addressed to the:

General Counsel, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, D.C. 20571

(b) The Bank's response to mandatory review requests will be governed by the amount of search and review time required to process the request. The Bank will acknowledge receipt of all requests, and will inform the requester if additional time is needed to process the request. Except in unusual circumstances, the Bank will make a final determination within one year from the date of receipt of the request.

(c) When information cannot be declassified in its entirety, the Bank will make a reasonable effort to release, consistent with other applicable laws, those declassified portions that constitute a coherent segment.

(d) The bank shall determine whether information under the classification jurisdiction of the Bank or any reasonably segregable portion of it no longer requires protection. If so, the General Counsel shall promptly make such information available to the requester, and shall inform the requester of any fees due before releasing the document. If the information may not be released, in whole or in part, the General Counsel shall give the requester a brief statement of the reasons, and a notice, mailed with return receipt requested, of the right to appeal the determination within 60 days of the denial letter's receipt.

(e) The agency that initially received or classified records containing foreign government information shall be responsible for making a declassification determination on review requests for classified records which contain such foreign government information. Such requests shall be referred to the appropriate agency for action.

(f) When the Bank receives a mandatory declassification review request for records in its possession that were originated by another agency, it shall forward the request to that agency. The Bank may request notification of the declassification determination.

(g) Information originated by a President, the White House staff, by committees, commissions, or boards appointed by the President, or other specifically providing advice and counsel to a President or acting on behalf of a President is exempted from the provisions of mandatory review for declassification, except as consistent with applicable laws that pertain to presidential papers or records.

(h) The bank shall process requests for declassification that are submitted under the provisions of the Freedom of Information Act, as amended, or the Privacy Act of 1974, in accordance with the provisions of those acts. (*See*, 12 CFR 404 and 12 CFR 405, respectively.) In any case, however, exemptions under the Freedom of Information Act or other exemptions under applicable law may be invoked by the Bank to deny material on grounds other than classification.

(i) The Bank shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under the Order.

§ 403.8 Appeals.

(a) The Vice Chairman is designated to receive appeals on requests for declassification which have been denied by the Bank. Such appeals shall be addressed to:

First Vice President & Vice Chairman, Export-Import Bank of the United States, 811 Vermont Avenue NW., Washington, D.C. 20571

The appeal must be received within 60 days after receipt by appellant of the denial letter. Appeals shall be decided within 30 days of their receipt by the Vice Chairman.

(1) If the decision is to declassify the materials in their entirety, the Vice Chairman shall promptly make such information available to the requester, and inform the requester of any fees due before releasing the documents.

(2) If the decision is to deny declassification of a portion of the material, the Vice Chairman shall promptly make the part which was declassified available to the requester, and shall advise the requester, in writing, of the reasons for the partial denial of declassification.

(3) If the decision is to deny declassification of all the material, the Vice Chairman shall promptly advise the requester, in writing, of the reasons for such denial.

§ 403.9 Fees.

The following specific fees shall be applicable with respect to services rendered to members of the public under these regulations, by the Bank, except that the search fee will normally be waived when the search involves less than one-half hour of clerical time.

(a) Search for records, per hour or fraction thereof:

(i) Professional	$11.00
(ii) Clerical	6.00
(b) Computer service charges per second for actual use of computer central processing unit	.25
(c) Copies made by photostat or otherwise (per page); maximum of 5 copies will be provided	.10
(d) Certification of each record as a true copy	1.00
(e) Certification of each record as a true copy under official seal	1.50
(f) Duplication of architectural photographs and drawings	2.00

Fees must be paid in full prior to issuance of requested copies. Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or postal money order. Remittances shall be made payable to the order of the Export-Import Bank of the United States, and mailed to:

General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue NW., Washington, D.C. 20571

§ 403.10 Safeguarding.

(a) *General Access Requirements.* Except as provided in § 403.10(c), access to classified information shall be granted in accordance with the following:

(1) *Determination of Trustworthiness.* No person shall be given access to classified information or material unless a favorable determination has been made as to his trustworthiness. The determination of eligibility, refered to as a security clearance, shall be based on such investigations as the Bank may require in accordance with the standards and criteria of applicable law and Executive orders.

(2) *Determination of Need to Know.* In addition to a security clearance, a person must have a need for access to the particular classified information or material sought in connection with the performance of official duties or contractual obligations. The determination of that need shall be made by officials having responsibility for the classified information or material.

(b) *Classified Information Nondisclosure Agreement.* All persons with authorized access to classified information shall be required to sign a nondisclosure agreement, Standard Form 189, as a condition of access. This form shall be retained in the security file of the individual for 50 years.

(c) *Access by Historical Researchers and Former Presidential Appointees.* The Bank shall obtain written agreements from requesters to safeguard the information to which they are given access as permitted by the Order and written consent to the Bank's review of their notes and manuscripts for the purpose of determining that no classified information is contained therein. A determination of trustworthiness is a pre-condition to a requester's access. If the access requested by historical researchers and former Presidential Appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to Title 5 of the Independent Offices Appropriations Act, 65 Stat. 290, 31 U.S.C. 483a (1976), the requester shall be so notified and the fees may be imposed.

(d) *Media Contacts.* All contacts by members of the media which concern classified information shall be directed to the attention of the Security Officer, Room 1031, Export-Import Bank of the United States, 811 Vermont Avenue NW., Washington, D.C. 20571.

(e) *Dissemination.* Except as otherwise provided by directives issued by the President through the National Security Council, classified information originating in another agency and in the possession of the Bank may not be disseminated outside the Bank without the consent of the originating agency.

(f) *Accountability Procedures.* Dissemination of various levels of classified information or material shall be within the control and responsibility of designated control officers. Particularly stringent controls shall be placed on information and material classified as TOP SECRET.

(1) *TOP SECRET.* Designated as TOP SECRET control officers are the Chairman, Vice Chairman and the Security Officer who alone have authority to receive TOP SECRET information for the Bank. Other personnel authorized in writing by the Chairman or Security Officer also may receive TOP SECRET information for the Bank. It shall be the responsibility of these individuals with respect to all TOP SECRET information:

(i) To receive the material for the Bank;

(ii) To maintain registers which will reflect the routing of the material and the return thereof in a reasonable length of time for security storage;

(iii) To dispatch and make record of material disseminated to authorize persons outside the Bank;

(iv) To make a physical inventory of all material at least annually; and

(v) To maintain current access records.

(2) *SECRET.* Designated as SECRET control officers are the Security Officer and the Analysis, Records & Communications Manager, who have the responsibility with respect to all information classified in this category:

(i) To receive the material for the Bank;

(ii) To maintain registers which will reflect the routing of the material and the return thereof in a reasonable length of time for security storage;

(iii) To dispatch and make record of material disseminated to authorized persons outside the Bank;

(iv) To maintain current access records.

(3) *CONFIDENTIAL.* Designated as CONFIDENTIAL control officers are the Security Officer and the Analysis, Records & Communications Manager who have responsibility with respect to all information classified in this category:

(i) To review material for the Bank;

(ii) To route the material to proper Bank offices;

(iii) To dispatch and make record of material disseminated to authorized persons outside the Bank;

(iv) To maintain current access records.

(g) *Storage.* Classified information shall be stored only in facilities or under conditions adequate to prevent unauthorized persons from gaining access to it and in accordance with the Directive as well as General Services Administration standards and specifications. Reference may be made to 32 CFR 2001.41, 2001.43 for preliminary guidance regarding these standards and specifications.

(h) *Coversheets.* Department of State (DOS) classified incoming cables are to be logged in and routed to the appropriate offices in double envelopes. When these cables are being used in various offices, classified coversheets must be used to protect the documents. This practice eliminates the possibility of inadvertently mixing classified with non-classified material, and promotes security awareness. Coversheets are obtainable from the Office of the Security Director.

(i) *Transmittal.* (1) To be transmitted outside the Bank, all classified documents must be sent through the Security Office and have attached EIB Form 71-2, approved by one of the following: the President and Chairman, First Vice President and Vice Chairman, a Senior Vice President, General

Counsel, Vice President or Security Officer.

(2) *Preparation and Receipting.* Classified information shall be enclosed in opaque inner and outer covers before transmitting. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and addresses of both sender and addressee. Transmittal documents shall indicate on their face the highest level of any information transmitted, and must clearly state whether or not the transmittal document itself is classified after removal of enclosures and attachments. The outer cover shall be sealed and addressed with no identification of the classification of its contents. A receipt shall be attached to or enclosed in the inner cover, except that CONFIDENTIAL information shall require a receipt only if the sender deems it necessary. The receipt shall identify the sender, addressee, and the document but shall contain no classified information. It shall be immediately signed by the recipient and returned to the sender. Any of these wrapping and receipting requirements may be waived by agency heads under conditions that will provide adequate protection and prevent access by unauthorized persons.

(3) *Transmittal of CONFIDENTIAL Information.* CONFIDENTIAL information shall be transmitted within and between the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories or possessions by one of the means established for higher classifications, or by United States Postal Service, certified first class, or express mail service, when prescribed by an agency head. Outside these areas, CONFIDENTIAL information shall be transmitted only as is authorized for higher classification levels.

(4) Transmittal of TOP SECRET and SECRET information shall be in accordance with the Directive. Reference may be made to 32 CFR 2001.44 for preliminary guidance.

(j) *Destruction.* Classified information no longer needed in working files or for record or reference purposes shall be processed for appropriate disposition in accordance with Chapters 21 and 33 of Title 44 U.S.C., when govern disposition of Federal Records. All classified information approved for destruction must be torn and placed in containers designated as burnbags which are available through the Office Services Section of the Bank. Destruction of such information will be carried out by the Security Officer or a designee by use of a disintegrator or by burning. The method of destruction selected must preclude recognition or reconstruction of the classified information or material. Records of destruction will be maintained by the Security Office for TOP SECRET information and material with serialized markings or material for which there is a special need to record its destruction.

(k) *Reproduction Controls.* (1) Reproduction of classified documents is prohibited, except by personnel authorized in writing by the Chairman or Security Officer.

(2) TOP SECRET documents may not be reproduced without the consent of the originating agency unless otherwise marked by the originating office.

(3) Reproduction of SECRET and CONFIDENTIAL documents may be restricted by the originating agency.

(4) Reproduced copies of classified documents are subject to the same accountability and controls as the original documents.

(5) Records shall be maintained by the Security Officer to show the number and distribution or reproduced copies of all TOP SECRET documents, of all documents covered by special access programs distributed outside the originating agency, and all SECRET and all CONFIDENTIAL documents which are marked with special dissemination and reproduction limitations.

§ 403.11 Enforcement and investigation procedures.

(a) *Loss or Possible Compromise.* Any person who has knowledge of the loss or possible compromise of classified information shall immediately report the circumstances to the Security Officer of the Bank. In turn, the originating agency shall be notified about the loss or compromise in order that a damage assessment may be conducted and appropriate measures taken to negate or minimize any adverse effect, and prevent further such loss or compromise. An immediate inquiry shall be initiated by the Bank for the purposes: (1) Of determining cause and responsibility and (2) taking corrective measures and appropriate administrative, disciplinary, or legal action.

(b) *Reporting and Investigating Unauthorized Disclosures.* (1) Employees who have reason to believe that an unauthorized disclosure of classified information has occurred shall report the disclosure to their supervisor, who shall inform the Security Officer.

(2) The Bank shall promptly notify the Information Security Oversight Office at the General Services Administration, Washington, D.C. 20405, of all unauthorized disclosures of classified information.

(3) If the Bank believes that it is the source of an unauthorized disclosure of classified information that it originated, it shall evaluate the disclosure under paragraph (b)(7) of this section. If the disclosure is serious, the Bank shall report the disclosure and the results of the evaluation to the Department of Justice together with notification that it is conducting an internal investigation.

(4) If the Bank believes that it is the source of an unauthorized disclosure of classified information that it handled but did not originate, it shall report the disclosure to the Department of Justice and to the originating agency(ies) or department(s) for evaluation under paragraph (b)(7) of this section. If the Bank cannot determine the identity of the originating agency(ies) or department(s), it shall report the disclosure to the Department of Justice together with any information or reasonable inferences as to the identity of the originating agency(ies) or department(s).

(5) If the Bank receives a request for an evaluation of information it originated, it shall, if the evaluation shows the disclosure was serious, inform the agency(ies) or department(s) from which the disclosure occurred of this conclusion and request that the agency(ies) or department(s) conduct an internal investigation.

(6) If the Bank determines that an unauthorized disclosure of classified information has occurred but that it neither originated, handled nor disclosed the information, it shall report the disclosure to the likely originating agency(ies) or department(s).

(7) In determining whether a disclosure is sufficiently serious to warrant reporting to the Department of Justice, the Bank, if it is the originating agency, shall ascertain the nature of the disclosed information, determine the extent to which it disseminated the information and evaluate the disclosure to determine whether it seriously damages its mission and responsibilities. In evaluating the damage caused by the disclosure, the Bank shall consider such matters as whether the disclosure jeopardizes an ongoing project, operation or source of information and to what extent the policy goals underlying the project or operation must be altered.

(8) In any instance where the Bank is determined to be the source of an unauthorized disclosure and an evaluation by the Bank or the originating agency(ies) or department(s) determines the disclosure to be of a serious nature, an internal investigation will be initiated and an investigation report, containing such information as may be required by the Department of

Justice, will be submitted to the Department of Justice within 15 days after notification from the originating agency or Department of Justice, but in any case no later than 30 days. If the investigation report is not completed within 15 days, the Bank shall submit as much of the required information as is available at that time and furnish additional information as it is developed.

(9) Whenever the Bank determines during the course of an investigation that it is necessary to compel or induce the cooperation of an emplyee, the Bank shall first consult with the Department of Justice. The Department of Justice will coordinate with the Bank to determine the procedures the Bank may use to compel an employee's participation without foreclosing possible criminal proceedings.

(10) The Bank shall maintain records of all disclosures that have been reported or investigated.

(11) All employees shall cooperate fully with officials of the Bank or other agencies who are conducting investigations of unauthorized disclosures of classified information.

(12) Employees determined by the Bank to have knowingly participated in an unauthorized disclosure of classified information or who have refused to cooperate with an investigation of such a disclosure shall be denied further access to classified information and shall be subject to other appropriate administrative sanctions. Prior to taking action against an employee in connection with the unauthorized disclosure or classified information, the Bank shall consult with the Department of Justice, Criminal Division.

Joseph H. Gainer, Jr.,

Acting General Counsel, Export-Import Bank of the United States.

[FR Doc. 85-15841 Filed 7-1-85; 8:45 am]

BILLING CODE 6690-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 200

Regulation To Provide for General and Specific Exemptions for Systems of Records Under the Privacy Act

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends § 200.4 of its regulations, which implement the Privacy Act, to provide for general and specific exemptions to certain provisions of the Privacy Act, and to exempt a new system of records, RRB-43, Investigation Files, from those requirements of the Privacy Act consistent with the specific exemption provision of the act at 5 U.S.C. 552a(k)(2).

EFFECTIVE DATE: July 2, 1985.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60601, (312) 751-4548 (FTS 387-4548).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board hereby exempts, under the specific exemption provisions of 5 U.S.C. 552a(k)(2), the following RRB records system: RRB-43, Investigation Records, maintained by the Bureau of Audit and Investigation. See 50 FR 10332 (March 14, 1985). In addition, the Board adds a paragraph to the same section of its regulations to address the possible future exemption of this system of records (and others) under the general exemption provisions of 5 U.S.C. 552(j)(2).

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required.

The RRB published the proposed rule on March 14, 1985, at 50 FR 10247-48 for a 60-day comment period. No comments were received from the public. This final rule is identical to the proposed rule.

List of Subjects in 20 CFR Part 200

Railroad retirement, Railroad unemployment insurance, Privacy.

PART 200—[AMENDED]

Title 20 CFR Part 200 is amended as follows:

1. The authority citation for Part 200 is revised to read as follows:

Authority: 45 U.S.C. 231f and 45 U.S.C. 362, unless otherwise noted. § 200.4 also issued under 5 U.S.C. 552a.

§ 200.4 [Amended]

2. Title 20 CFR is amended by redesignating paragraphs (f) through (n) as paragraphs (h) through (p) and adding new paragraphs (f) and (g) to § 200.4 to read as follows:

* * * * *

(f) *General exemptions.* No Agency records system or systems as such are exempted from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a(j) except as may be designated by rules promulgated by the Railroad Retirement Board and published in the **Federal Register** as required.

(g) Specific exemptions—(1) Systems of records subject to investigatory material exemption under 5 U.S.C. 552a(k)(2). RRB-43, Investigation Files, a system containing information concerning alleged violations of law, regulation, or rule pertinent to the administration of programs by the RRB or alleging misconduct or conflict of interest on the part of RRB employees in the discharge of their official duties.

(2) Privacy Act provisions from which exempt. The system of records described in this paragraph is exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1), 4G, H, and I (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a.

(3) Reasons for exemptions. The system of records described in this section is exempt for one or more of the following reasons:

(i) To prevent the subject of the investigations from frustrating the investigatory process.

(ii) To protect investigatory material compiled for law enforcement purposes.

(iii) To fulfill commitments made to protect the confidentiality of sources and to maintain access to necessary sources of information.

(iv) To prevent interference with law enforcement proceedings.

Dated: June 24, 1985.

By authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-15843 Filed 7-1-85; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T. D. 8033]

OMB Control Numbers Under the Paperwork Reduction Act; Tax-Exempt Entity Leasing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations regarding tax-exempt entity leasing. Changes to the applicable tax law were made by the Tax Reform Act of 1984 ("TRA"). These regulations provide guidance to persons executing lease agreements involving tax-exempt entities under section 168 (j) of the Internal Revenue Code of 1954. In addition, the text of the temporary regulations set forth in this document serves as the comment document for the

notice of proposed rulemaking published in the notices section of this issue of the Federal Register.

DATE: In general, the regulations apply to leases involving tax-exempt entities entered into after May 23, 1983, and to property placed in service by the taxpayer after May 23, 1983. The revision to the safe harbor lease reporting requirements is effective with respect to such lease agreements executed after June 30, 1985.

ADDRESS: Address inquiries to Robert Beatson (Attn: LR–124–84), Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (202–566–3590).

FOR FURTHER INFORMATION CONTACT: Robert Beatson, 202–566–3590.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations regarding tax-exempt entity leasing under section 168(j) of the Internal Revenue Code of 1954, as enacted by section 31 of TRA. Since the tax-exempt entity leasing provisions generally became effective with respect to certain lease agreements entered into after May 23, 1983, there is a need for immediate guidance relating to basic issues regarding these provisions so taxpayers leasing property to certain tax-exempt entities can comply with these new provisions. These regulations will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Section 31 of TRA enacts a number of limitations regarding cost recovery deductions and tax credits applicable to certain property leased (or provided under a similar arrangement) to a tax-exempt entity such as a State or local governmental unit, an organization exempt from Federal taxation under section 501(c), or a foreign person who is generally not subject to Federal taxation. These limitations are intended to ensure that tax-exempt entities do not indirectly receive investment tax incentives through a lease (in the form of lower rent) that they would be ineligible to receive if they owned such property. These provisions are generally intended to eliminate the ability of tax-exempt entities to effectively gain the advantage of income tax deductions and credits while having no corresponding liability to pay any tax on income from such property.

TRA reduces the tax benefits of lease arrangements involving tax-exempt entities by providing that the portions of real property constituting "tax-exempt use property" as defined by TRA which are leased to such entities generally must be depreciated over at least 40 years, and by providing that the portion of personal property constituting "tax-exempt use property" must generally be depreciated over at least a period defined by its ADR class mid-point life. TRA also provides clarification regarding when property is provided pursuant to a service contract rather than a lease. A number of basic issues regarding the tax-exempt leasing provisions are discussed in the following temporary regulations. In addition, provisions regarding the manner and times for making certain elections with respect to these provisions were published in Treasury Decision 7976 in the Federal Register for September 10, 1984 (49 FR 35486).

These temporary regulations, presented in question and answer format, are intended to provide guidelines upon which taxpayers may rely to resolve the basic questions specifically set forth herein. No inference should be drawn regarding issues involving this or other Code sections not raised herein or reasons certain questions, and not others, are included in these regulations.

This document also contains temporary regulations revising the information reporting requirements for safe harbor lease agreements (now only permissible for qualified mass commuting vehicles as defined in section 103(b)(9)) executed after June 30, 1985. Form 6793, pertaining to safe harbor lease agreements, is obsolete for lease agreements executed after that date.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that these temporary regulations are not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) because these are temporary regulations, and there is a need to provide the public with immediate guidance. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Robert Beatson of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and the Treasury Department participated, however, in developing the regulations on matters of both substance and style.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

List of Subjects

26 CFR 1.61–1–1.281–4

Income taxes, Taxable income, Deductions, Exemptions, Leasing.

26 CFR Part 602

OMB control numbers, Paperwork Reduction Act, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

1. The authority for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 and 26 U.S.C. 168(j)(10) * * *; § 1.168(f)(8)–1T also added under section 112(c), Black Lung Benefits Revenue Act of 1981 (Pub. L. 97–119); and § 1.168(j)–1T also added under 26 U.S.C. 168(j)(10).

2. A new § 1.48–12T is added immediately following § 1.48–10(j) to read as follows:

§ 1.48–12T Tax-exempt entity leasing (temporary).

In general. For certain investment tax credit consequences for property which is tax-exempt use property under section 168(j), see § 1.168(j)–1T.

3. A new § 1.168(f)(8)–1T is added immediately following § 1.168–7 to read as follows:

§ 1.168(f)(8)–1T Safe-harbor lease information returns concerning qualified mass commuting vehicles (Temporary).

In general. Form 6793, Safe Harbor Lease Information Return, is obsolete for safe harbor lease agreements executed after June 30, 1985. The parties to a safe harbor lease agreement under section 168(f)(8) executed after June 30, 1985 must file with their timely filed (including extensions) Federal income tax returns for the taxable year during which the lease term begins a statement containing the following information:

(a) The name, address, and taxpayer identification number of the lessor and the lessee;

(b) A description of the property with respect to which safe-harbor lease treatment is claimed;

(c) The date on which the lessee places the property in service, the date on which the lease begins, and the term of the lease;

(d) The recovery property class of the leased property under section 168(c)(2) (for example, 5-year);

(e) The terms of the payments between the parties to the lease transaction;

(f) The unadjusted basis of the property as defined in section 168(d)(1) and its adjusted basis as determined under § 5c.168(f)(8)–6(b)(3); and

(g) If the lessor is a partnership or grantor trust, the name, address, and taxpayer identification number of the partners or beneficiaries and the service center at which the income tax return of each partner or beneficiary is filed.

The lessor's failure to file the above-described statement shall void such agreement as a safe-harbor lease under section 168(f)(8) as of the date of the execution of the lease agreement. For rules regarding extensions of time for filing elections, see § 1.9100–1.

4. A new § 1.168(j)–1T is added immediately following § 1.168(f)(8)–1T to read as follows:

§ 1.168(j)–1T Questions and answers concerning tax-exempt entity leasing rules (Temporary).

The following questions and answers concern tax-exempt entity leasing under section 168(j) of the Internal Revenue Code of 1954, as enacted by section 31 of the Tax Reform Act of 1984 ("TRA") (Pub. L. 98–369):

Consequences of Tax-Exempt Use Status

Q–1. If recovery property is subject to the tax-exempt entity leasing provisions of section 168(j), how must the taxpayer compute the property's recovery deductions?

A–1. The taxpayer must compute the property's recovery deductions in accordance with section 168(j) (1) and (2); that is, the taxpayer must use the straight line method and the specified recovery period. For property other than 18-year real property, the applicable recovery percentages for the specified recovery period are to be determined with reference to the tables contained in Prop. Treas. Reg. § 1.168–2(g)(3)(iv)(A). For 18-year real property for which a 40-year recovery period is required, the applicable recovery percentages are to be determined under the following table:

40-YEAR STRAIGHT LINE METHOD (ASSUMING MID-MONTH CONVENTION)

If the recovery year is—	And the month in the first recovery year the property is placed in service is—											
	1	2	3	4	5	6	7	8	9	10	11	12
	The applicable recovery percentage is—											
1	2.4	2.2	2.0	1.8	1.6	1.4	1.1	0.9	0.7	0.5	0.3	0.1
2	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
3	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
4	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
6	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
7	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
8	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
9	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
10	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
11	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
12	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
13	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
14	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
15	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
16	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
17	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
18	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
19	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
20	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
21	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
22	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
23	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
24	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
25	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
26	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
27	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
28	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
29	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
30	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
31	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
32	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
33	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
34	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
35	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
36	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
37	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
38	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
39	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
40	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
41	0.1	0.3	0.5	0.7	0.9	1.1	1.4	1.6	1.8	2.0	2.2	2.4

Q–2. If recovery property that was placed in service after December 31, 1980 by a taxable entity subsequently becomes tax-exempt use property, how are such property's cost recovery deductions under section 168 affected?

A–2. A change to tax-exempt use property, as defined in section 168(j)(3), will cause the cost recovery deductions under the accelerated cost recovery system (ACRS) to be recomputed. The allowable recovery deduction for the taxable year in which the change occurs (and for subsequent taxable years) must be determined as if the property had originally been tax-exempt use property. Proper adjustment must be made under the principles of Prop. Treas. Reg. § 1.168–2(j)(3)(i)(B) to account for the difference between the deductions allowable with respect to the property prior to the year of change and those which would have been allowable had the taxpayer used the recovery period and method for tax-exempt use property under section 168(j) (1) and (2). However, no adjustment is made pursuant to the provisions of this A–2 if section 168 (j)(2) (C) applies, that is, if the taxpayer had selected a longer recovery period in the year the property was placed in service than the recovery period prescribed for such property under section 168(j)(1).

Example (1). On July 1, 1983, X, a calendar year taxpayer, places in service 5-year recovery property with an unadjusted basis of $100. For 1983, X's allowable deduction is $15 (*i.e.*, .15 × $100). In 1984, the property becomes tax-exempt use property. Under section 168(j), assume the prescribed

recovery period is 12 years. For 1984 (and subsequent taxable years), X's allowable deduction is determined as if the property had been tax-exempt use property since 1983, that is, the year it was placed in service. Thus, taxable year 1984 is the property's second recovery year of its 12-year recovery period. Additionally, X must account for the excess allowable recovery deduction of $11 (*i.e.*, the difference between the recovery allowance for 1983 ($15) and the allowance for that year had the property been tax-exempt use property ($4)) in accordance with the principles of Prop. Treas. Reg. § 1.168–2(j)(3)(i)(B). Thus, the recovery allowances in 1984 and 1985 are $7.97, determined as follows:

Unadjusted basis multiplied by the applicable recovery percentage for second recovery year ($100×.09)	$9.00
Excess allowable recovery deduction multiplied by the applicable recovery percentage for second recovery year divided by the sum of the remaining unused applicable percentages for tax-exempt use property existing as of the taxable year of change (1984) (($11×.09)/.96)	−1.03
Difference—allowable deduction for 1984	$7.97
Unadjusted basis multiplied by the applicable recovery percentage for third recovery year ($100×.09)	$9.00
Excess allowable recovery deduction multiplied by the applicable recovery percentage for third recovery year divided by the sum of the remaining unused applicable percentages for tax-exempt use property existing as of the taxable year of change (1984) (($11×.09)/.96)	−1.03
Difference—allowable deduction for 1985	$7.97

Additionally, X must make a similar adjustment for the taxable years 1986 through 1995, that is, his fourth through thirteenth recovery years.

Example (2). Assume the same facts as in *Example (1)* except that in 1983, X elected under section 168 (b) (3) with respect to the 5-year property to use the optional recovery percentages over a 25-year recovery period. Based on these facts, the provisions of this A–2 do not apply.

Definition of Tax-Exempt Use Property

Mixed Leases of Real and Personal Property

Q–3. How is a mixed lease of real property and personal property (*e.g.*, a building with furniture) to be treated for purposes of applying the rules of section 168(j)(3) defining which property constitutes tax-exempt use property?

A–3. The general rule is that 18-year real property and property other than 18-year real property are tested separately to determine whether each constitutes tax-exempt use property. However, if a lease of section 1245 class property is incidental to a lease of 18-year real property, and the 18-year real property is not tax-exempt use property, then the section 1245 class property also does not constitute tax-exempt use property. A lease of section 1245 class property will be considered incidental if the adjusted basis of all section 1245 class property leased in the same transaction is 1 percent or less of the adjusted basis of all 18-year real property leased in such transaction.

Buildings Which Are Partially Tax-Exempt Use Property

Q–4. If part of a building is leased to a tax-exempt entity in a disqualified lease and part of the building is leased other than to a tax-exempt entity in a disqualified lease, to what extent do the tax-exempt entity leasing rules apply to such building?

A–4. The taxpaper must determine the amount of the building's unadjusted basis that is properly allocable to the portion of the building that is tax-exempt use property; the section 168(j) rules apply to the allocated amount. Solely for purposes of determining what percentage of the building's basis is subject to the tax-exempt entity leasing rules, no part of the basis is allocated to common areas.

Example. A constructs a 3-story building in 1984 at a cost of $900,000. Each floor consists of 30,000 square feet. The only common area (10,000 square feet) in the building is on the first floor. A leases the first floor (other than the common areas) to a firm that is not a tax-exempt entity. A leases the top two floors to a tax-exempt entity in a 25-year lease. The top two floors constitute tax-exempt use property. Assume that square footage is the appropriate method for allocating basis in this case. Thus, A must allocate $675,000 of the $900,000 basis to the tax-exempt use portion, determined as follows:

$$\frac{\text{square footage of building which is tax-exempt use property (excluding common areas)}}{\text{total square footage in the building (excluding common areas)}} = \frac{60{,}000 \text{ sq. feet}}{80{,}000 \text{ sq. feet}} = \frac{3}{4}$$

$\frac{3}{4} \times \$900{,}000 = \$675{,}000$

A must compute his recovery deductions on this portion of the basis ($675,000) in accordance with the rules of section 168(j) (1) and (2).

Requirement of a Lease

Q–5. Can the use of property by a party other than a tax-exempt entity result in the property being treated as tax-exempt use property within the meaning of section 168(j)(3)?

A–5. Yes, if based on all the facts and circumstances it is more appropriate to characterize the transaction as a lease to a tax-exempt entity. A transaction can be characterized as a lease to a tax-exempt entity under section 168(j)(6)(A), which provides that "the term 'lease' includes any grant of a right to use property"; or under the service contract rules of section 7701(e). See Q&A #18 for rules regarding service contracts.

Example. A trust is executed on January 1, 1984, to create a pooled income fund (P) that meets the requirements of section 642(c)(5). A university (U) that is tax-exempt under section 501(c)(3) is the remainderman of the pooled income fund. P's purpose is to construct and operate an athletic center on land adjacent to U's campus. Construction of the athletic center, which has a 50-year useful life, was completed and the center was placed in service on February 1, 1985. The athletic center is managed for a fee by M, an unrelated taxable organization which operates athletic facilities open to the public. Office space at the facility is occupied rent-free by both the U athletic department and M. Scheduling of activities at the center is handled jointly by members of U's athletic department and M. General operating expenses of the athletic center are paid by P. Although the athletic center is open to the public for a membership fee, the majority of members are U's students who pay membership fees as part of their tuition. These fees are remitted by U to P. This arrangement is in substance a grant to U of a right to use the facility, and therefore a lease to U under section 168(j)(6)(A). U, as remainderman, will have obtained title to the entire building when the last pooled income fund donor dies. This arrangement is a disqualified lease because either (1) U has the equivalent of a fixed price purchase option under section 168(j)(3)(B)(ii)(II) (if U receives title as remainderman before the end of the useful life of the building), or (2) the lease has a term in excess of 20 years under section 168(j)(3)(B)(ii)(III) (if U does not receive title as remainderman until 20 years have elapsed), or both. Therefore, the allowable recovery deductions (without regard to salvage value) must be computed in accordance with section 168(j) (1) and (2). In addition, because this arrangement is treated as a lease under section 168(j), the facility is used by U for purposes of section 48(a)(4), and thus no investment tax credit is permitted with respect to any portion of the facility. This arrangement also may be treated as a lease to U for all purposes of chapter 1 of the Internal Revenue Code under section 7701 (e).

"More Than 35 Percent of the Property" Test

Q–6. How is the percentage of 18-year real property leased to a tax-exempt entity in a disqualified lease to be determined for purposes of the "more than 35 percent of the property" test of section 168(j)(3)(B)(iii)?

A–6. The phrase "more than 35 percent of the property" means more than 35 percent of the net rentable floor space of the property. The net rentable floor space in a building does not include the common areas of the building, regardless of the terms of the lease. For purposes of the "more than 35 percent of the property" rule, two or more buildings will be treated as separate properties unless they are part of the same project, in which case they will be treated as one property. Two or more buildings will be treated as part of the same project if the buildings are constructed, under a common plan, within a reasonable time of each other on the same site and will be used in an integrated manner.

Q–7. Are disqualified leases to different tax-exempt entities (regardless of whether they are related) aggregated in determining whether 18-year real property is tax-exempt use property?

A–7. Yes.

Example. A tax-exempt entity participates in industrial development bond financing for the acquisition of a new building by a taxable entity. The tax-exempt entity leases 60 percent of the net rentable floor space in the building for 5 years. Sixty percent of the building is tax-exempt use property. If the same tax-exempt entity leased only 19 percent of the net rentable floor space in the building for 5 years, no portion of the building would be tax-exempt use property because not more than 35 percent of the property is leased to a tax-exempt entity pursuant to a disqualified lease. If such tax-exempt entity leased only 19 percent of the net rentable floor space in the building for 5 years and another tax-exempt entity leased 20 percent of the net rentable floor space in the building for a term in excess of 20 years (or a related entity leased 20 percent of the building for 5 years), 39 percent of the building would be tax-exempt use property. See A–4 regarding the determination of the amount of the building's unadjusted basis that is properly allocable to the portion of the building that is tax-exempt use property.

"Predominantly Used" Test

Q–8. What does the term "predominantly used" mean for purposes of the section 168(j)(3)(D) exception to the tax-exempt use property rules?

A–8. "Predominantly used" means that for more than 50 percent of the time used, as determined for each taxable year, the real or personal property is used in an unrelated trade or business the income of which is subject to tax under section 511 (determined without regard to the debt-financed income rules of section 514). If only a portion of property is predominantly used in an unrelated trade or business, the remainder may nevertheless be tax-exempt use property.

Q–9. How is the "predominantly used" test of section 168(j)(3)(D) to be applied to a building?

A–9. The "predominantly used" test is to be applied to a building in the following manner:

(i) Identify the discrete portions (excluding common areas) of the building which are leased to a tax-exempt entity in a disqualified lease under section 168(j)(3)(B)(ii). A discrete portion of a building is an area physically separated from other areas. An area is physically separated from other areas if separated by permanent walls or by partitions serving as room dividers if such partitions remain in place throughout the taxable year. A discrete portion can be the entire building, floors, wings, offices, rooms, or a combination thereof. For example, a building whose entire internal space consists of a single large room used as a gymnasium has only one discrete portion. On the other hand, if the building has 3 stories with 10 offices on each floor, each of the 30 offices is a discrete portion.

(ii) Determine whether each discrete portion is predominantly used in an unrelated trade or business subject to tax under section 511. See A–8 for the rules regarding how to make this determination.

(iii) Once the discrete portions of the building that constitute tax-exempt use property have been identified, an appropriate allocation of basis must be made to such discrete portions. See A–4 for rules regarding how to make such allocation.

(iv) The application of these rules is illustrated by the following example:

Example. A building, constructed in 1985, is leased in its entirety to a tax-exempt entity (E) pursuant to a 25-year lease. The building has 25,000 square feet of net rentable floor space and consists of an auditorium (15,000 square feet), a retail shop (10,000 square feet), plus common area of 5,000 square feet. E uses the auditorium 80 percent of the time in its exempt activity and 20 percent of the time in an unrelated trade or business subject to tax under section 511. The retail shop is used 90 percent of the time in an unrelated trade or business subject to tax under section 511 and 10 percent of the time in an exempt activity. Thus, the auditorium is tax-exempt use property; the retail shop is not. An appropriate allocation of basis to the auditorium must be made. See A–4.

Definition of Tax-Exempt Entity

Q–10. What elections must be made in order to avoid the "5-year lookback" rule of section 168(j)(4)(E)(i)?

A–10. Only organizations which were exempt from tax under section 501(a) as organizations described in section 501(c)(12) (and which are no longer tax-exempt) may avoid the 5-year lookback rule of section 168(j)(4)(E)(i). In order to avoid the 5-year lookback rule with respect to any property, two elections are required. First, the organization must elect not to be exempt from tax under section 501(a) during the tax-exempt use period (as defined in section 168(j)(4)(E)(ii)(II)) with respect to the property. Second, the organization must elect to be taxed on the exempt arbitrage profits as provided in section 31(g)(16) of the Tax Reform Act of 1984. See Temp. Treas. Reg. § 5h.4(a) for the time and manner of making these elections. These elections, once made, are irrevocable.

Q–11. Does the term "tax-exempt entity" include tax-exempt plans of deferred compensation and similar arrangements?

A–11. Yes. For purposes of section 168 (j), the term "tax-exempt entity" includes trusts or other entities that are tax-qualified under section 401 (a), individual retirement accounts, simplified employee pensions, and other tax-exempt arrangements described in subchapter D of chapter 1 of the Internal Revenue Code.

Special Rules for High Technology Equipment

Q–12. What effect do the tax-exempt entity leasing provisions have on "qualified technological equipment"?

A–12. "Qualified technological equipment" which is leased to a tax-exempt entity for a term of 5 years or less shall not constitute tax-exempt use property. If "qualified technological equipment" which is leased to a tax-exempt entity for a term of more than 5 years constitutes tax-exempt use property (as defined in section 168(j)(3)) and is not used predominantly outside the United States, the rules of section 168(j) (1) and (2) apply except that the recovery period to be used for such equipment shall be 5 years regardless of the length of the lease term. For purposes of section 168(j)(5), "qualified technological equipment" means (1) any computer or peripheral equipment, (2) any high technology telephone station equipment installed on the customer's premises, and (3) any high technology medical equipment. For definitions of these terms, see A–13 through A–16.

Q–13. What is a "computer" as that term is used in section 168(j)(5)(C)(i)(I)?

A–13. Computers are electronically activated devices that are programmable by the user and that are capable of accepting information, applying prescribed processes to it, and supplying the results of those processes with or without human intervention. Computers consist of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities. A computer does not include any equipment which is an integral part of property that is not a user-programmable device, any video games or other devices used by the user primarily for amusement or entertainment purposes, or any typewriters, calculators, adding or accounting machines, copiers, duplicating equipment, or similar equipment. A computer does not include any equipment that is not tangible personal property.

Q–14. What is "peripheral equipment" as that term is used in section 168(j)(5)(C)(i)(I)?

A–14. Peripheral equipment means tangible personal property such as auxiliary machines, whether on-line or off-line, that are designed to be placed under the control of the central processing unit of the computer. Some examples of peripheral equipment are: card readers, card punches, magnetic tape feeds, high speed printers, optical character readers, tape cassettes, mass storage units, paper tape equipment, keypunches, data entry devices, teleprinters, terminals, tape drives, disc drives, disc files, disc packs, visual image projector tubes, card sorters, plotters, and collators. Peripheral equipment does not include equipment not included in Asset Depreciation Range (ADR) 00.12 listed in section 3 of Rev. Proc. 83–35, 1983–1 C.B. 745, 746. Peripheral equipment also does not include any equipment that is an integral part of property that is not a user-programmable device, any video games or other devices used by the user primarily for amusement or entertainment purposes, or any typewriters, calculators, adding or accounting machines, copiers, duplicating equipment, or similar equipment.

Q–15. What does "high technology telephone station equipment" mean as that term is used in section 168(j)(5)(C)(i)(II)?

A–15. High technology telephone station equipment includes only tangible personal property described in asset depreciation range (ADR) class 48.13 listed in section 3 of Rev. Proc. 83–35, 1983–1 C.B. 745, 758 that has a high technology content and which, because of such high technology content, can reasonably be expected to become obsolete before the expiration of its physical useful life. For example, telephone booths and telephones which include only a standard dialing feature are not high technology equipment. However, telephones with features such as an abbreviated dialing short program, an automatic callback, or conference call feature may qualify as high technology equipment. High technology telephone station equipment may include terminal equipment including such extra features but not terminal equipment used in conjunction with features offered through central office capacity. There are no current plans to utilize the regulatory authority provided in section 168(j)(5)(C)(iv).

Q–16. What is "high technology medical equipment" as that term is used in section 168 (j)(5)(C)(i)(III)?

A–16. High technology medical equipment is any electronic, electromechanical, or computer-based high technology equipment which is tangible personal property used in the screening, monitoring, observation, diagnosis, or treatment of human patients in a laboratory, medical, or hospital environment. High technology medical equipment includes only equipment that has a high technology content and which, because of such high technology content, can reasonably be expected to become obsolete before the expiration of its physical useful life. High technology medical equipment may include computer axial tomography (C.A.T.) scanners, nuclear magnetic resonance equipment, clinical chemistry analyzers, drug monitors, diagnostic ultrasound scanners, nuclear cameras, radiographic and fluoroscopic systems, Holter monitors, and bedside monitors. Incidental use of any such equipment for othe purposes, such as research, will not prevent it from qualifying as high technology medical equipment. There are no current plans to utilize the regulatory authority provided in section 168(j)(5)(C)(iv).

Lease Term

Q–17. What is included in determining the length of a lease term?

A–17. (i) The lease term starts when the property is first made available to the lessee under the lease. The lease term includes not only the stated duration, but also any additional period of time which is within the "realistic contemplation of the parties at the time the property is first put into service. *Hokanson* v. *Commissioner,* 730 F.2d 1245, 1248 (9th Cir. 1984). A subsequent period of time is included in the term of the original lease if the circumstances indicate that the parties, upon entering into the original lease, had informally agreed that there would be an extension of the original lease.

(ii) With respect to personal property, the lease term includes all periods for which the tax-exempt lessee or a related party (as defined under section 168(j)(7)) has a legally enforceable option to renew the lease, or the lessor has a legally enforceable option to compel its renewal by the tax-exempt entity or a related party. This is true regardless of the renewal terms of the lease agreement or whether the lease is in fact renewed.

(iii) With respect to real property, the lease term includes all periods for which the tax-exempt lessee or a related party (as defined under section 168(j)(7)) has a legally enforceable option to renew the lease, or the lessor has a legally enforceable option to compel its renewal by the tax-exempt entity or a related party, unless the option to renew is at fair market value, determined at the time of renewal. The *Hokanson* facts and circumstances test (see (i) above) may cause the term of a fair market value renewal option to be treated as part of the original lease term.

(iv) Successive leases that are part of the same transaction or a series of related transactions concerning the same or substantially similar property shall be treated as one lease. This rule applies if at substantially the same time or as part of one arrangement the parties enter into multiple leases covering the same or substantially similar property, each having a different term. If so, then the original lease term will be treated as running through the term of the lease that has the last expiration date of the multiple leases. The multiple lease rule will not apply merely because the parties enter into a new lease at fair market rental value at the end of the original lease term.

(v) The application of the above rules is illustrated by the following examples:

Example (1). On December 30, 1984, X, a taxable corporation, and Y, a tax-exempt entity, enter into a requirements contract for a period of 3 years. The requirements contract sets the terms and conditions under which X and Y will do business on those occasions when X actually leases items of personal property to Y. The requirements contract imposes no obligation on either party to actually enter into a lease agreement. Pursuant to this requirements contract, on January 1, 1985, X and Y enter into three separate leases. Under the leases, Y obtained the use of three identical items of personal property, each for a term of six months beginning on January 1, 1985. On March 1, 1985, Y entered into a fourth lease

for the use of a fourth item of personal property substantially similar to the other three items for a term of 20 months beginning on that date. The mere fact that all 4 leases were entered into pursuant to the same requirements contract and involved the same or substantially similar property does not require aggregation of the terms of such leases under section 168(j)(6)(B).

Example (2). Assume the same facts as in Example (1) except that, instead of the 4 leases entered into in Example (1), on January 1, 1985, pursuant to the requirements contract, X and Y enter into a lease for an item of personal property for one year. On January 10, 1986, after the end of the one-year lease term, X and Y enter into a second lease with respect to the same or substantially similar equipment. Assuming that the requirements contract itself is not a lease and assuming that the parties did not have any informal or implicit understanding (other than the general expectation of doing some business in the future) to enter into the second lease when the first lease was entered into, these two leases are not aggregated. The mere fact that the parties entered into two leases under the requirements contract does not result in the application of the section 168(j)(6)(B) rules for successive leases.

Example (3). The facts are the same as in *Example (2)* except that the parties did have an understanding, informal or otherwise, at the time of the first lease that they would enter into a second lease of the same personal property. The terms of the leases are aggregated.

Example (4). The facts are the same as in *Example (2)* except that, instead of the leases entered into in Example (2), on January 1, 1985, X and Y enter into two separate leases, each for a term of one year. One lease is for the period beginning on January 1, 1985 and ending on December 31, 1985. The other lease is for the period beginning on January 1, 1986 and ending on December 31, 1986. Both leases involve the same or substantially similar personal property. Under the successive lease rule, the terms of both leases are aggregated for purposes of determining the term of either lease under section 168(j)(6)(B). This result occurs because the two leases were entered into as part of the same transaction, and they relate to the same or substantially similar personal property.

Service Contract Issues

Q–18. How is the treatment of service contracts affected by the service contract rules set forth in section 7701(e)?

A–18. If a contract which purports to be a service contract is treated as a lease under section 7701(e), such contract is to be treated as a lease for all purposes of Chapter 1 of the Internal Revenue Code (including, for example, section 168(j) and section 48(a) (4) and (5)).

Q–19. Does a contract to provide heating, maintenance, etc. services in low-income housing come within the low-income housing exception in section 7701(e)(5) to the service contract rules set forth in section 7701(e)?

A–19. No. Although certain low-income housing operated by or for an organization described in paragraphs (3) or (4) of section 501(c) is not subject to the service contract rules in section 7701(e), a contract, for instance, to provide heating services to low-income housing units, such as by installing and operating a furnace, does not constitute "low-income housing" within the meaning of section 7701(e)(5). Thus, the rules of section 7701(e) apply to such contracts in determining whether they are properly treated as leases.

Partnership Issues

Q–20. Do the provisions applicable to property leased to partnerships, set forth in section 168(j)(8), and the provisions applicable to property owned by partnerships, set forth in section 168(j)(9), apply to pass-through entities other than partnerships?

A–20. Yes. Rules similar to those provided in paragraphs (8), (9)(A), (9)(B), and (9)(C) of section 168(j) and those provided in Q & A's 21–26 apply to pass-through entities other than partnerships.

Q–21. What rules apply to property owned by a partnership in which one or more partners is a tax-exempt entity?

A–21. If property is owned by a partnership having both taxable and tax-exempt entities as partners, and any allocation to a tax-exempt entity partner is not a "qualified allocation" under section 168(j)(9)(B), then such entity's proportionate share of the property is to be treated as tax-exempt use property for all purposes. However, the property will not be tax-exempt use property if it is predominantly used by the partnership in an activity which, with respect to the tax-exempt entity, is an unrelated trade or business. An activity is an unrelated trade or business with respect to a tax-exempt entity if such entity's distributive share of the partnership's gross income from the activity is includible in computing its unrelated business taxable income under section 512(c) (determined without regard to the debt-financed income rules of section 514). A tax-exempt entity partner's proportionate share of property of a partnership equals such partner's share of that item of the partnership's income or gain (excluding income or gain allocated under section 704(c)) in which the tax-exempt entity has the highest share. If the tax-exempt entity partner's share of any item of income or gain (excluding income or gain allocated under section 704(c)) may vary during the period it is a partner, the previous sentence shall be applied with reference to the highest share of any such item that it may receive at any time during such period. The application of these rules is illustrated by the following example:

Example. A partnership (P) operates a factory, which consists of a building and various items of machinery. P has one tax-exempt entity (E) as a partner, and E's proportionate share is 10 percent (*i.e.*, 10 percent is the largest share of any item of income or gain that E may receive during the time E is a partner). Unless P's allocations to E are qualified under section 168(j)(9)(B), 10 percent of each item of partnership property (including the building) is tax-exempt use property, notwithstanding the 35 percent threshold test of section 168(j)(3)(B)(iii) that is otherwise applicable to 18-year real property. However, the property will not be tax-exempt use property if it is predominantly used by the partnership in an activity which, with respect to E, is an unrelated trade or business (determined without regard to the debt-financed income rules of section 514).

Q–22. What consititutes a "qualified allocation" under section 168(j)(9)(B)?

A–22. (i) A "qualified allocation" means any allocation to a tax-exempt entity which is consistent with such entity's being allocated the same share (*i.e.*, the identical percentage) of each and every item of partnership income, gain, loss, deduction, credit, and basis during the entire period such entity is a partner. Except as provided in A–23, an allocation is not qualified if it does not have substantial economic effect under section 704(b). However, for purposes of the two preceding sentences, items allocated under section 704(c) (relating to contributed property) are not taken into account. An allocation is not a "qualified allocation" under section 168(j)(9)(B) if the partnership agreement provides for, or the partners have otherwise formally or informally agreed to, any change (regardless of whether such change is contingent upon the happening of one or more events) in the tax-exempt entity's distributive share of income, gain, loss, deduction, credit, or basis at any time during the entire period the tax-exempt entity is a partner.

(ii) A change in a tax-exempt entity's distributive share of income, gain, loss, deduction, credit, or basis which occurs as a result of a sale or redemption of a partnership interest (or portion thereof) or a contribution of cash or property to the partnership shall be disregarded in determining whether the partnership allocations are qualified, provided that such transaction is based on fair market value at the time of the transaction and that the allocations are qualified after the change. For this purpose, the consideration determined by the parties dealing at arm's length and with adverse interests normally will be deemed to satisfy the fair market value

requirement. In addition, a change in a tax-exempt entity's distributive share which occurs as a result of a partner's default (other than a prearranged default) under the terms of the partnership agreement will be disregarded, provided that the allocations are qualified after the change, and that the change does not have the effect of avoiding the restrictions of section 168(j)(9). Any of the above-described transactions between existing partners (and parties related to them) will be closely scrutinized.

Example (1). A, a taxable entity, and B, a tax-exempt entity, form a partnership in 1985. A contributes $800,000 to the partnership; B contributes $200,000. The partnership agreement allocates 95 percent of each item of income, gain, loss, deduction, credit, and basis to A; B's share of each of these items is 5 percent. Liquidation proceeds are, throughout the term of the partnership, to be distributed in accordance with the partner's capital account balances, and any partner with a deficit in his capital account following the distribution of liquidation proceeds is required to restore the amount of such deficit to the partnership. Assuming that these allocations have substantial economic effect within the meaning of section 704(b)(2), they are qualified because B's distributive share of each item of income, gain, loss, deduction, credit, and basis will remain the same during the entire period that B is a partner. The fact that the liquidation proceeds may be distributed in a ratio other than 95 percent/5 percent does not cause the allocations not to be qualified.

Example (2). A, B, and E are members of a partnership formed on July 1, 1984. On that date the partnership places in service a building and section 1245 class property. A and B are taxable entities; E is a tax-exempt entity. The partnership agreement provides that during the first 5 years of the partnership, A and B are each allocated 40 percent of each item of income, gain, loss, deduction, credit, and basis; E is allocated 20 percent. Thereafter, A, B, and E are each allocated 33⅓ percent of each item of income, gain, loss, deduction, credit, and basis. Assume that these allocations meet the substantial economic effect test of section 704(b)(2) and E's distributive share of the partnership's income is not unrelated trade or business income subject to tax under section 511. The allocations to E are not qualified allocations under section 168(j)(9)(B) because E's distributive share of partnership items does not remain the same during the entire period that E is a partner in the partnership. Thus, 33⅓ percent of the building and 33⅓ percent of the section 1245 class property are tax-exempt use property from the time each is placed in service by the partnership and are thus subject to the cost recovery rules of section 168(j) (1) and (2). In addition, no investment tax credit is allowed for 33⅓ percent of the section 1245 class property because of section 48(a)(4).

Q–23. In determining whether allocations constitute qualified allocations, what rules are applied to test allocations that are not governed by the substantial economic effect rules?

A–23. A–22 provides the general rules to be used in determining whether an allocation is a qualified allocation, including the rule that the allocation must have substantial economic effect. However, certain allocations are not governed by the substantial economic effect rules (*e.g.*, an allocation of basis of an oil and gas property is generally governed by section 613A(c)(7)(D), rather than section 704(b)), and other allocations cannot satisfy the substantial economic effect rules (*e.g.*, allocations of credits, allocations of deduction and loss attributable to nonrecourse debt, and allocations of percentage depletion in excess of basis). Since allocations in either of these categories cannot be tested under the substantial economic effect test, these allocations, in order to be qualified, must comply with the relevant Code or regulation section that governs the particular allocation (*e.g.*, in the case of an allocation of basis of an oil and gas property, section 613A(c)(7)(D)).

Q–24. Will the Internal Revenue Service issue letter rulings on the issue of whether an allocation is a "qualified allocation" for purposes of section 168(j)(9)?

A–24. The Internal Revenue Service will accept requests for rulings on the question of whether an allocation is a "qualified allocation" for purposes of section 168(j)(9). Such requests should be submitted in accordance with the appropriate revenue procedure. One requirement of a qualified allocation is that such allocation must have substantial economic effect under section 704(b)(2). Currently, the Service will not rule on the question of whether an allocation has substantial economic effect under section 704(b)(2). Therefore, unless and until this policy is changed, a ruling request regarding a qualified allocation must contain a representation that the subject allocation has substantial economic effect (or complies with A–23, if applicable).

Q–25. Do priority cash distributions which constitute guaranteed payments under section 707(c) disqualify an otherwise qualified allocation?

A–25. Priority cash distributions to partners which constitute guaranteed payments will not disqualify an otherwise qualified allocation if the priority cash distributions are reasonable in amount (*e.g.*, equal to the Federal short-term rate described in section 1274(d)) and are made in equal priorities to all partners in proportion to their capital in the partnership. Other guaranteed payments will be closely scrutinized and, in appropriate cases, will disqualify an otherwise qualified allocation.

Example. A and B form Partnership AB to operate a manufacturing business. A is a tax-exempt entity; B is a taxable person. A contributes $500,000 to the partnership; B contributes $100,000. The partnership agreement provides that A and B are each entitled to cash distributions each year, in equal priority, in an amount equal to 8 percent of their capital contribution. Assume that these payments are reasonable in amount and constitute guaranteed payments under section 707(c). Without taking into consideration the guaranteed payments, all allocations constitute qualified allocations under section 168(j)(9)(B) and A–22. These guaranteed payments will not disqualify such allocations.

Q–26. Can property be treated as tax-exempt use property under both the general rule of section 168(j)(3) and the partnership provisions of section 168(j)(9)?

A–26. Yes. For example, a tax-exempt entity may be a partner in a partnership that owns a building 60 percent of which is tax-exempt use property because it is leased to an unrelated tax-exempt entity under a 25-year lease. The status of the remaining 40 percent depends on whether or not allocations under the partnership agreement are qualified under section 168(j)(9). If the allocations are not qualified under section 168(j)(9), the tax-exempt entity's proportionate share (as determined under section 168(j)(9)(C)) of the remaining 40 percent will be tax-exempt use property. For example, if the tax-exempt entity's proportionate share is 30 percent, then 12 percent of the remaining 40 percent (*i.e.*, .30 times .40) is tax-exempt use property and a total of 72 percent of the property (60 percent + 12 percent) is tax-exempt use property.

Effective Date Questions

Q–27. Does an amendment to a lease (or sublease) to a tax-exempt entity of property which, pursuant to the effective date provisions of section 31(g) of TRA, is not subject to section 168(j) cause such property to be subject to the provisions of section 168(j)?

A–27. An amendment to such a lease (or sublease) does not cause such property to be subject to the provisions of section 168(j) unless the amendment increases the term of the lease (or sublease). However, if the amendment increases the amount of property subject to the lease, the additional property must be tested independently under the effective date provisions of section 31(g) of TRA. See A–31 for special rules regarding improvements to property.

Example. On May 1, 1983, X, a taxable entity, and E, a tax-exempt entity, enter into a lease whereby X will lease to E the top 4 floors of a ten-story building for a lease term of 25 years. In 1985, the lease is amended to provide that E will lease an additional floor for the balance of the lease term. At that time the annual rent due under the lease is increased. Pursuant to the provisions of section 31(g)(2)(A) of TRA, section 168(j) does not apply to the lease to E of the top 4 floors of the building. Assuming that no other provision of section 31(g) of TRA provides otherwise, the floor added to the lease in 1985 is subject to the provisions of section 168(j).

Q–28. If property which is not subject to section 168(j) by virtue of the effective date provisions of section 31(g) of TRA is sold, subject to the lease to the tax-exempt entity, what are the consequences?

A–28. Property to which section 168(j) does not apply by virtue of the effective date provisions set forth in section 31(g)(2), (3), and (4) of TRA will not become subject to section 168(j) merely by reason of a transfer of the property subject to the lease by the lessor (or a transfer of the contract to acquire, construct, reconstruct, or rehabilitate the property), so long as the lessee (or party obligated to lease) does not change. For purposes of the preceding sentence, the term "transfer" includes the sale-leaseback by a taxable lessor of its interest in the property, subject to the underlying lease to the tax-exempt entity. However, if property is transferred to a partnership or other pass-through entity after the effective date of section 168(j)(9) (see section 31(g) of TRA), such property is subject to the provisions of section 168(j)(9).

Q–29. Can property which was leased to a tax-exempt entity after May 23, 1983 and acquired by a partnership before October 22, 1983 be tax-exempt use property?

A–29. Yes. Because the property was leased to a tax-exempt entity after May 23, 1983, it may be tax-exempt use property under section 168(j)(3) and section 31(g)(1) of TRA. However, if the partnership included a tax-exempt entity as a partner, section 168(j)(9) would be inapplicable under section 31(g)(3)(B) of TRA because the partnership acquired the property before October 22, 1983.

Q–30. What is a binding contract for purposes of the transitional rules in section 31(g) of TRA?

A–30. (i) A contract is binding only if it is enforceable under State law against the taxpayer or a predecessor and does not limit damages to a specified amount, as for example, by a liquidated damages provision. A contract that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages for this purpose. In determining whether a contract limits damages, the fact that there may be little or no damages because the contract price does not significantly differ from fair market value will not be taken into account. For example, if a taxpayer entered into an irrevocable contract to purchase an asset for $100 and the contract contained no provision for liquidated damages, the contract is considered binding notwithstanding the fact that the property had a fair market value of $99 and under local law the seller would only recover the difference in the event the purchaser failed to perform. If the contract provided for a refund of the purchase price in lieu of any damages allowable by law in the event of breach or cancellation, the contract is not considered binding.

(ii) A contract is binding even if subject to a condition, so long as the condition is not within the control of either party or a predecessor in interest. A contract will not be treated as ceasing to be binding merely because the parties make insubstantial changes in its terms or because any term is to be determined by a standard beyond the control of either party. A contract which imposes significant obligations on the taxpayer (or a predecessor) will be treated as binding notwithstanding the fact that insubstantial terms remain to be negotiated by the parties to the contract.

(iii) A binding contract to acquire a component part of a larger piece of property will not be treated as a binding contract to acquire the larger piece of property. For example, if a tax-exempt entity entered into a binding contract on May 1, 1983 to acquire a new aircraft engine, there would be a binding contract to acquire only the engine, not the entire aircraft.

Q–31. If an improvement is made to a property that is "grandfathered" (*i.e.*, property that is not subject to section 168(j) because of the effective date provisions of section 31(g) of TRA), to what extent will such improvement be grandfathered?

A–31. Section 31(g)(20)(B) provides that a "substantial improvement" to property is treated as a separate property for purposes of the effective date provisions of section 31(g) of TRA. As a result, a "substantial improvement" will not be grandfathered unless such "substantial improvement" is grandfathered under a provision other than section 31(g)(20)(B). A property that is grandfathered will not become subject to section 168(j) merely because an improvement is made to such property, regardless of whether the improvement is a "substantial improvement". If an improvement other than a "substantial improvement" is made to property (other than land) that is grandfathered, that improvement also will be grandfathered. The determination of whether new construction constitutes an improvement to property or the creation of a new separate property will be based on all facts and circumstances. Furthermore, any improvement to land will be treated as a separate property.

Example. On January 3, 1983, T, a taxable entity, entered into a lease of a parking lot to E, a tax-exempt entity. On January 1, 1985, T begins construction of a building for use by E on the site of the parking lot. The building is completed and placed in service in November 1985. The building is treated as a separate property, and is thus subject to the provisions of section 168(j), unless the building is grandfathered under a provision other than section 31(g)(20)(B) of TRA.

Q–32. What is "significant official governmental action" for purposes of the section 31(g)(4) transitional rule of TRA?

A–32. (i) "Significant official governmental action" involves three separate requirements. First, the action must be an official action. Second, the action must be specific action with respect to a particular project. Third, the action must be taken by a governmental entity having authority to commit the tax-exempt entity to the project, to provide funds for it, or to approve the project under State or local law.

(ii) The first requirement of official action means that the governing body must adopt a resolution or ordinance, or take similar official action, on or before November 1, 1983. The action qualifies only if it conforms with Federal, State, and local law (as applicable) and is a proper exercise of the powers of the governing body. Moreover, the action must not have been withdrawn. There must be satisfactory written evidence of the action that was in existence on or before November 1, 1983. Satisfactory written evidence includes a formal resolution or ordinance, minutes of meetings, and binding contracts with third parties pursuant to which third parties are to render services in furtherance of the project.

(iii) The second requirement of specific action is directed at the substance of the action taken. The action must be a specific action with respect to a particular project in which the governing body indicates an intent to have the project (or the design work for it) proceed. This requires that a specific project have been formulated and that the significant official action be a step toward consummation of the project. If the action does not relate to a

specific project or merely directs that a proposal or recommendation be formulated, it will not qualify. The following set of actions with respect to a particular project constitute specific action: the hiring of bond counsel or bond underwriters necessary to assist in the issuance and sale of bonds to finance a particular project or the adoption of an inducement resolution relating to bonds to be issued for such a project; applying for an Urban Development Action Grant on behalf of the project described in the application, receiving such a grant concerning the project, or the recommendation of a city planning authority to proceed with a project; the enactment of a State law authorizing the sale, lease, or construction of the property; the appropriation of funds for the property or authorization of a feasibility study or a development services contract with respect to it; the approval of financing arrangements by a regulatory agency; the enactment of a State law designed to provide funding for a project; the certification of a building as a historic structure by a State agency and the Department of the Interior; or the endorsement of the application for a certification of need with respect to a medical facility by a regulatory agency other than the agency empowered to issue such a certificate.

(iv) The third requirement for significant official governmental action is that the action must be taken by a Federal, State, or local governing body having authority to commit the tax-exempt entity to the project, to provide funds for it, or to approve the project under applicable law.

If the chief executive or another representative of a governing body has such authority, action by such representative would satisfy the requirement of this (iv). A governing body may have the authority to commit the tax-exempt entity to a project notwithstanding the fact that the project cannot be consummated without other governmental action being taken. For example, a city council will be treated as having authority to commit a city to do a sale-leaseback of its city hall notwithstanding the fact that State law needs to be amended to permit such a transaction. Similarly, if a local project cannot be completed without Federal approval, either legislative or administrative, the obtaining of such approval satisfies the requirements of this (iv).

(v) Routine governmental action at a local level will not qualify as significant official governmental action. Routine governmental action includes the granting of building permits or zoning changes and the issuance of environmental impact statements.

(vi) In order to qualify under the transitional rule of TRA section 31(g)(4), a sale and leaseback pursuant to a binding contract entered into before January 1, 1985 must be part of the project as to which there was significant official governmental action. Except as provided in the following sentence, where there has been significant official governmental action on or before November 1, 1983 with respect to the construction, reconstruction or rehabilitation of a property, the sale and leaseback of such property pursuant to a binding contract entered into before January 1, 1985 will be treated as part of the project which was the subject of the significant official governmental action. However, if the construction, reconstruction or rehabilitation was substantially completed prior to January 1, 1983, the sale and leaseback of such property will be treated as a separate project, unless the sale and leaseback was contemplated at the time of the significant official governmental action. Nevertheless, where the sale and leaseback is treated as a separate project, section 31(g)(4) may apply if there was significant official governmental action on or before November 1, 1983, with respect to such sale and leaseback. The application of this provision is illustrated by the following example:

Example. In the summer of 1927, the Board of Aldermen of City C passed a resolution authorizing the design and contruction of a new city hall and appropriated the funds necessary for such project. Construction was completed in 1928. At the time of the significant official governmental action, City C had no plan to enter into a sale-leaseback arrangement with respect to the facility. On December 15, 1984, City C entered into a binding sale-leaseback arrangement concerning the city hall. This transaction will not qualify for exclusion from section 168(j) under the section 31(g)(4) of TRA since construction of the facility in question was substantially completed before January 1, 1983. If, however, there had been significant official governmental action on or before November 1, 1983 with respect to the sale-leaseback project, then the transitional rule of section 31(g)(4) of TRA would apply.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

5. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

6. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.168(f)(8)–1T . . . 1545–0923".

Roscue L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: June 19, 1985.

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

[FR Doc. 85-15846 Filed 6-28-85; 9:46 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[T.D. 8032]

Federal Grants not Includible in Income in Certain Cases

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to certain federal grants and scholarships which are not includible in income. Changes to the applicable law made by the Tax Treatment Act of 1980 are reflected in this document. These regulations provide guidance to Internal Revenue Service personnel who administer the Code and members of the public who are subject to these laws.

DATES: These regulations are effective for amounts received under qualifying programs after December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Margaret M. O'Connor of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, (Attention: CC:LR:T, 202–566–3287, not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1984, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 117(c) of the Internal Revenue Code of 1954 (49 FR 33281). No comments were received. A public hearing was not requested. Accordingly, the proposed amendments are adopted by this Treasury decision as they appeared in the **Federal Register**. Typographical errors which were contained in the notice of proposed rulemaking have been corrected.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a

Regulatory Impact Analysis is therefore not required. Although a notice of proposed rulemaking which solicited public comments was issued, the Internal Revenue Service concluded when the notice was issued, that the regulations are interpretative and that the notice and public procedure requirement of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information contained in these regulations has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Margaret M. O'Connor of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR Part 1 (§§ 1.61–1—1.281–4)

Income taxes, Taxible income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended by adopting, without change, the regulations proposed as a notice of proposed rulemaking published in the **Federal Register** on August 22, 1984, (49 FR 33281) and Part 602 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Paragraph (b) of § 1.117–3 is amended by removing "institution" wherever it appears and inserting in lieu thereof, "organization" and by removing "section 117 adopts" wherever it appears and inserting in lieu thereof "paragraphs (a) and (b) of section 117 adopt".

Par. 3. The first sentence of paragraph (c)(1) of § 1.117–4 is amended by inserting the phrase "and § 1.117–5" after "§ 1.117–2".

Par. 4. A new § 1.117–5 is added to read as set forth below.

§ 1.117–5 Federal grants requiring future service as a federal employee.

(a) *In general.* Under section 117(c), amounts received by an individual under a federal program as a scholarship or grant for qualified tuition and expenses at an institution of higher education are excluded from the gross income of the recipient even though the recipient is required to perform future service as a federal employee. See paragraph (c) of this section for the definitions of the terms "qualified tuition and expenses" and "institution of higher education."

(b) *Exception for uniformed services scholarship programs.* The requirements of this section do not apply to amounts received before 1985 by a member of a uniformed service who entered training before 1981 under the Armed Forces Health Professions Scholarship Program, National Public Health Service Corps Scholarship Training Program, or other substantially similar federal programs requiring the recipient to work for a uniformed federal service after compietion of studies. These awards are governed by section 4 of Pub. L. 93–483 as amended by Pub. L. 95–171, Pub. L. 95–600 and Pub. L. 96–167. See section 101(3) of title 37, United States Code for the definition of the term "uniformed service."

(c) *Definitions.* (1) *Qualified tuition and related expenses.* For purposes of section 117(c) and this section, qualified tuition and related expenses are those amounts which under the terms of the federal program are required to be used and in fact are used for payment of:

(i) Tuition and fees that are required for the recipient's enrollment or attendance at an institution of higher education; and

(ii) Those amounts used for payment of fees, books, supplies and equipment required for courses of instruction at such an institution.

Incidental expenses are not considered related expenses and thus are not excludable from gross income under section 117(c). Incidental expenses include room and board at an institution of higher education, expenses for travel (including expenses for meals and lodging incurred during travel and allowances for travel of the recipient's family), research, clerical help, equipment and other expenses which are not required for enrollment at the institution or in a course of instruction at such institution.

(2) *Institution of higher education.* To qualify as an institution of higher education under this section, the institution must be a public or other nonprofit institution in any state which—

(i) Admits as regular students only individuals who have a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) Is legally authorized within the state to provide a program of education beyond high school; and

(iii) Provides an education program for which it awards a bachelor's or higher degree or which is acceptable for full credit towards such a degree, or which trains and prepares students for gainful employment in a recognized health profession. For purposes of this section, recognized health professions are those health professions which are supervised or monitored by appropriate state or federal agencies or governing professional associations and which require members to be currently licensed or certified in order to practice.

(3) *Service as a federal employee*—(i) *In general.* Except as otherwise provided in paragraph (c)(3)(ii) of this section, service as a federal employee refers to employment of the recipient by the federal government to work directly for the federal government. Thus, federal grants or scholarships which do not require the recipient to work directly for the federal government are not governed by the rules of this section.

(ii) *Service in a health manpower shortage area.* For purposes of this section an obligation under a grant for the recipient to serve in a health related field in a health manpower shortage area as designated by the Secretary of Health and Human Services according to the criteria of the Public Health Services Act (42 U.S.C. 254(e)) and the regulations promulgated thereunder (42 CFR 5.1–5.4) will be considered an obligation to serve as a federal employee.

(d) *Records required for exclusion from gross income.* To exclude amounts received under federal programs requiring future services as a federal employee, the recipient must maintain records that establish that the amounts received under such programs were used for qualified tuition and related expenses as defined in paragraph (c)(1) of this section. Qualifying uses may be established by providing to the Service, upon request, copies of relevant bills, receipts, cancelled checks or other convenient documentation or records which clearly reflect the use of the money received under the grant. The

recipient must also submit, upon request, documentation establishing receipt of the grant and setting out the terms and requirements of the particular grant.

(e) *Applicability of rules of §§ 117(a) and 117(b).* Except where a different rule has been expressly provided in this section, amounts received under federal grants requiring future service as a federal employee, and which meet the requirements for exclusion from gross income under this section, are subject to the rules, limitations and definitions specified in §§ 117 (a) and (b) of the Code and §§ 1.117–1 through 1.117–4.

(f) *Effective date.* Except as provided in paragraph (b) of this section, this section will apply to amounts received after December 31, 1980 under federal programs which meet the requirements of this section.

PART 602—[AMENDED]

Par. 5. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602. 101(c) is amended by inserting in the appropriate places in the table: "§ 1.117–5 . . . 1545–0869".

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: June 17, 1985.

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

[FR Doc. 85–15848 Filed 7–1–85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-006]

Iowa State Plan; Approval of Revised Compliance Staffing Benchmarks and Final Approval Determination

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of Revised Compliance Staffing Benchmarks and Final State Plan Approval.

SUMMARY: This document amends Subpart J of 29 CFR Part 1952 to reflect the Assistant Secretary's decision approving revised compliance staffing requirements and granting final approval to the Iowa State plan. As a result of this affirmative determination under section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA standards and enforcement authority no longer apply to occupational safety and health issues covered by the Iowa plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over maritime employment in the private sector; bridge construction projects over the Mississippi and Missouri Rivers between Iowa and other States; Federal government-owned, contractor-operated military/munitions facilities; and private sector hazardous waste disposal facilities designated as "Superfund sites." Federal jurisdiction also remains in effect with respect to Federal government employers and employees.

EFFECTIVE DATE: July 2, 1985.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, initial approval is granted.

A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period. 29 CFR 1902.2(b). The Assistant Secretary publishes a notice of "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met. 29 CFR 1902.34.

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA. 29 CFR 1954.3(f). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupation safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3, 1902.4 and 1902.37 are being applied. An affirmative determination under Section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent jurisdiction in the State with respect to occupational safety and health issues covered by the plan. 29 U.S.C. 667(e).

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety and health compliance officers established by OSHA for that State. This requirement stems from a 1976 Court Order by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall,* C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision, that directed the Assistant Secretary to calculate for each State plan State the number of enforcement personnel needed to assure a "fully effective" enforcement program.

History of the Iowa Plan and Its Compliance Staffing Benchmarks

Iowa Plan

On October 4, 1972, Iowa submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on October 21, 1972, a notice was published in the **Federal Register** (37 FR 22780) concerning submission of the

plan, announcing that initial Federal approval was at issue and offering interested persons an opportunity to submit data, views and arguments concerning the plan. Comments were received from the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO) and the Master Builders of Iowa. In response to these comments, as well as to OSHA's review of the plan submission, the State made changes in its plan which were discussed in the notice of initial approval. On July 20, 1973, the Assistant Secretary published a notice granting initial approval of the Iowa plan as a developmental plan under Section 18(b) of the Act (38 FR 19368). The plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The Iowa Bureau of Labor is the State agency designated by the Governor to administer the plan throughout the State. The plan provides for the adoption by Iowa of standards which are identical to the Federal occupational safety and health standards, including emergency temporary standards. The Iowa plan also authorizes the Commissioner to adopt and promulgate occupational safety and health standards which result in improved safety and health for employees. The plan requires employers to furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the agency. Employees are likewise required to comply with all standards and regulations applicable to their conduct. The plan contains provisions similar to Federal procedures for, among others, imminent danger proceedings, employee discriminatory protection, variances, safeguards to protect trade secrets, and employer and employee rights to participate in inspection and review proceedings. Appeals of citations, penalties, and abatement periods are heard by the Iowa Occupational Safety and Health Review Commission. Decisions of the Review Commission may be appealed to the State District Court.

The notice of initial approval noted some of the following distinctions between the Federal and Iowa program. The State plan does not cover safety and health in private sector maritime employment. The State plan provides for special variances from its standards, rules or regulations when they are in conflict with standards, rules or regulations promulgated by any Federal agency other than the U.S. Department of Labor; however, it does not provide for a special variance when the conflict is with a standard promulgated by a State agency (a special variance ceases to exist upon resolution of the conflict by conflicting Federal agencies). The Iowa Act provides for monetary penalty assessment in both the private and public (State and local government) sectors.

The Assistant Secretary's initial approval of the Iowa developmental plan, a general description of the plan, a schedule of required developmental steps and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart J; 38 FR 19368 (July 20, 1973)).

In accordance with the State's developmental schedule all major structural components of the plan were put in place and submitted for OSHA approval during the period ending July 20, 1976. The "developmental steps" included the following: amendments to the Iowa Occupational Safety and Health Act; adoption of Federal standards; development of a program for education and training of employees and employers; hiring of additional safety and health personnel; and, completion of basic training for State personnel.

These submissions were carefully reviewed by OSHA and after opportunity for public comment and modification of State submissions where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of Section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Iowa subpart of 29 CFR 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.164).

In 1975, OSHA entered into an operational agreement with the State of Iowa. A Federal Register notice was published on October 31, 1975 (40 FR 50716), announcing the signing of the agreement. Under the terms of that agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the Iowa plan. However, in 1977, due to the temporary loss by Iowa of a significant number of health enforcement staff and replacement of more experienced industrial hygienists with trainees, OSHA published notice of an amended operational agreement (42 FR 37810) on July 25, 1977, resuming concurrent Federal enforcement authority with respect to occupational health issues for as long as necessary to assure occupational health protection to employees. In 1981, OSHA determined that Iowa's industrial hygiene staff had again achieved sufficient capability to effectively enforce State health standards. Effective July 1, 1981, Federal OSHA ceased health inspections in the State of Iowa and, on June 11, 1982, (47 FR 25324) OSHA published notice of an amended operational agreement indicating that Federal enforcement authority in Iowa would no longer be initiated with regard to Federal occupational safety and health standards in the issues covered by the Iowa occupational safety and health plan.

On September 14, 1978, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Iowa had satisfactorily completed all developmental steps (41 FR 39027). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the Iowa plan—to be at least as effective as corresponding Federal provisions. Certification does not entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and moitoring of State activity to determine, in accordance with section 18(e) of the Act, whether the statutory and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

Iowa Benchmarks

In 1978, the Assistant Secretary was directed by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406), pursuant to a U.S. Court of Appeals decision, to calculate for each State plan state the number of enforcement personnel (compliance staffing benchmarks) needed to assure a "fully effective" enforcement program. In 1980, OSHA submitted a Report to the Court containing the benchmarks and requiring Iowa to allocate 39 safety compliance officers and 56 industrial hygienists to conduct inspections under the plan.

In September 1984 the Iowa State designee in conjunction with OSHA completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for Iowa. Pursuant to an initiative begun in August 1983 by the State plan designees as a group with OSHA and in accord

with the formulas and general principles established by that group for individual State revision of the benchmarks, Iowa reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal to OSHA contained in comprehensive documents of revised compliance staffing benchmarks of 16 safety and 13 health compliance officers.

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR Part 1902, Subpart D. On January 16, 1985, the Occupational Safety and Health Administration published notice of its proposal to approve revised compliance staffing benchmarks for Iowa and the resultant eligibility to the Iowa State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted (50 FR 2448). The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Unified Management Information System, and staffing which meets the proposed revised State staffing benchmarks.

The January 16 **Federal Register** notice set forth a general description of the Iowa plan and summarized the results of Federal OSHA monitoring of State operations during the period from October 1982 through March 31, 1984. In addition to the information set forth in the notice itself, OSHA submitted, as part of the record in this rulemaking proceeding, extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which Iowa operates its plan, and copies of all previous **Federal Register** notices regarding the plan.

A copy of the October 1982–March 1984 Evaluation Report of the Iowa plan ("18(e) Evaluation Report"), which was extensively summarized in the January 16 proposal and which provided the principal factual basis for the proposed 18(e) determination, was included in the record (Ex. 3–12). Copies of all OSHA evaluation reports on the plan since its certification as having completed all developmental steps were made part of the record.

The January 16 **Federal Register** also contained notice of OSHA's proposal to approve revised compliance staffing benchmarks for Iowa. A detailed description of the methodology and State-specific information used to develop the revised compliance staffing benchmarks for Iowa was included in the notice. In addition, OSHA submitted, as a part of the record (Docket No. T–008), Iowa's detailed submission containing both a narrative explanation and supporting data. A summary of the benchmark revision process was likewise set forth in a separate **Federal Register** notice on January 16, 1985, concerning the Wyoming State plan (50 FR 2491). An informational record was established in a separate docket (No. T–018) and contained background information relevant to the benchmark issue in general and the current benchmark revision process.

To assist and encourage public participation in the benchmark revision process and 18(e) determination, copies of the complete record were maintained in the OSHA Docket Office in Washington, D.C., in the OSHA Region VII Office in Kansas City, Missouri, and the office of the Iowa Bureau of Labor in Des Moines. A summary of the January 16 proposal, with an invitation for public comments, was published in Iowa on January 24, 1985. (Ex. 5).

The January 16 proposal invited interested persons to submit, by February 20 (subsequently extended to March 22, 1985, 50 FR 6956, in response to a request from James N. Ellenberger, Department of Occupational Safety, Health and Social Security, AFL–CIO), written comments and views regarding the Iowa plan, whether the proposed revised compliance staffing benchmarks should be approved, and whether final approval should be granted. Opportunity to request an informal public hearing on the issue of final approval was likewise provided. Eight comments were received in response to these notices. Three comments were received from organized labor, two from a private individual, two from employer groups, and one from an employer. No requests for an informal hearing were received.

Summary and Evaluation of Comments Received

During this proposed rulemaking OSHA has encouraged interested members of the public to provide information and views regarding operations under the Iowa plan, to supplement the information already gathered during OSHA monitoring and evaluation of plan administration and regarding the proposed revised compliance staffing benchmarks for Iowa.

In response to the January 16 **Federal Register** notice, OSHA received comments from John E. Lee III, (Exs. 4–2; 4–6); Aluminum Company of America, Bertram D. Dinman, M.D., Vice President, Health and Safety (Ex. 4–3); Iowa Association of Business and Industry, D. G. Hauser, Vice President (Ex. 4–4); Sheet Metal Contractors of Iowa, Inc., Dennis Hogan, Executive Vice President, Counsel (Ex. 4–5); Iowa Federation of Labor (AFL–CIO), James Wengert, President (Ex. 4–7); the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), Margaret Seminario, Associate Director, Department of Occupational Safety, Health and Social Security (Ex. 4–8); and, United Steelworkers of America (AFL–CIO), Mary Win O'Brien, Assistant General Counsel (Ex. 4–9). Iowa Labor Commissioner Allen J. Meier responded to the public comments (Ex. 4–10).

The Aluminum Company of America endorsed the final approval because the Company is impressed with the services and competency with which the State of Iowa has administered its program; the Iowa Association of Business and Industry also expressed its support for final approval of the Iowa State plan; Sheet Metal Contractors of Iowa, Inc. believes it is important to keep responsibility at the lowest efficient level possible, and thus, the State should administer its own program. John E. Lee III expressed concern about the manner in which the State's Right-to-Know law was enacted, how the law relates to the State plan and he also expressed concern about an Iowa Supreme Court decision regarding Iowa's authority to obtain administrative warrants to conduct inspections. These comments are addressed in the appropriate sections of the Findings and Conclusions portion of this notice.

The United Steelworkers of America commented extensively on the benchmark revision process in general but did not direct any specific comments to the Iowa revision.

The National AFL–CIO indicated opposition to approval of the proposed revised benchmarks of Iowa and therefore opposed the granting of final State plan approval. Some of the AFL–CIO's comments were directed toward OSHA's system for monitoring and evaluating State plans and the requirements that a State must meet to be eligible for final approval.

The evaluation of the Iowa plan was conducted in accordance with OSHA's new State plan monitoring and evaluation system. This system uses statistical data to compare Federal and State performance on a number of criteria, or measures. Significant differences between the two are evaluated to determine whether these differences, viewed within the framework of overall State plan

administration, detract from the State's effectiveness and potentially render it less effective than the Federal program.

The AFL–CIO expressed concern that Federal OSHA's monitoring system, with its reliance on statistical indicators, fails to accurately reflect the overall conduct of the State program and tries to limit those areas of State performance which exceed OSHA's enforcement efforts in several areas. However, OSHA never intended that superior performance would result in any negative conclusion. Statistical outliers display differences, not necessarily deficiencies. If further review related to an outlier determines stronger State performance, clearly no negative determination will be made. Commissioner Meier in responding to comments by the AFL–CIO affirms that OSHA's evaluation process does not limit the level of enforcement activity of State programs; there are no caps or limitations set.

The Iowa Federation of Labor (AFL–CIO), though generally satisfied with the manner in which the Iowa Occupational Safety and Health program functions, was concerned with two particular areas. Those areas are the Iowa Supreme Court decision concerning Iowa's authority to secure administrative warrants which is discussed in the Findings and Conclusions section which follows, and the proposed revised safety and health compliance staffing benchmarks. The Iowa Federation of Labor felt that the proposed benchmarks should be higher.

Comments by the AFL–CIO and the Steelworkers addressing the proposed revised benchmarks for Iowa reflected for the most part the commenters' concerns regarding the benchmark revision process generally. Thus, the comments question whether the benchmarks formula as applied in Iowa should have assumed a need for routine, general schedule inspections at all covered workplaces; whether the proposed staffing levels will be sufficient to respond to new hazards or future standards; and question the appropriateness of the inclusion or exclusion of various industry groups in Iowa's general inspection universe unless corresponding industries are treated identically in other States. As was specifically discussed in the Federal Register notice of June 13, 1985, dealing with approval of revised benchmarks for the Kentucky State plan (50 FR 24884), the concept of universal general schedule coverage has been replaced by more sophisticated targeting systems which deploy enforcement resources where they are most needed, and universal coverage is as inappropriate a concept for benchmarks formulation as it is for inspection scheduling. The possible effect of new hazards or future standards cannot be ascertained with any precision, and in any case both OSHA and the States have generally been able to effectively enforce new standards with no additions to staff for that purpose. As to the need for "uniformity," OSHA believes the greatest strength of the current formula is that it takes into account actual State program needs as shown by State data and experience. OSHA has found that the formula used to derive benchmarks for Iowa and other States involved in the 1984 revision process employs the best information and techniques currently available; properly takes into account each of the factors set forth in the District Court Order in *AFL–CIO* v. *Marshall;* and, is an appropriate means of establishing fully effective benchmarks which provide proper program coverage in the context of each State's specific program needs. A more detailed discussion of the general concerns raised by the AFL–CIO and the Steelworkers can be found in the June 13, 1985 Federal Register notice on Kentucky (50 FR 24884).

Certain of the AFL–CIO comments deals with issues specific to Iowa's benchmark calculations. The AFL–CIO commented that Iowa's benchmark calculations do not include general schedule safety or health inspection coverage of establishments with ten or fewer employees. As indicated by Iowa Labor Commissioner Meier in his response, 20 percent of Iowa's workforce is covered by routine safety and/or health inspections, but employees in these targeted workplaces suffer about 55 percent of all occupational injuries and illnesses. In considering whether small establishments should be included in the general schedule universes, the State reviewed data from past inspections in small establishments, and no specific industrial groups or establishments presented a sufficiently high hazard potential in either safety or health to justify programmed inspections. Coverage of all workplaces regardless of size is afforded through the complaint and accident inspection process, and through safety and health consultation visits performed by the Bureau of Labor.

In its benchmark calculations Iowa added 100 non-manufacturing establishments to its initial safety inspection universe based on State workers' compensation data showing high injury rates at those workplaces. The AFL–CIO incorrectly assumes that other non-manufacturing firms where hazards exist are not "covered" by general schedule inspections. It must be remembered that the establishment by a State of its initial inspection universe is a theoretical construct and not in itself a targeting system but rather a method for determining a reasonable estimate of workplaces with industrial exposures likely to produce hazards. As Iowa indicates in its response, the list of 100 employers was compiled for benchmark purposes and does not represent the State's actual targeting list for future inspections. The State benchmark calculation provides resources sufficient to inspect 100 non-manufacturing establishments biennially. The list of 100 may change from year to year. None of the industries mentioned by the union are in fact exempted from coverage, as the comment implies. Rather, the benchmark calculation assumes that the State, in designing its general schedule enforcement program, will establish priorities among groups of non-manufacturing employers and will first inspect those which have been shown by State-specific workers' compensation data to be most in need of such inspections.

The AFL–CIO asserted that there are a number of industries in which health hazards exist but which are not included in the high-hazard industries included in the Iowa general schedule inspection universe. The 150 industries identified as being most hazardous in Iowa, and thus included in the general inspection universe, employ 19% of the State's workers, and the State's emphasis on these industries is, in OSHA's judgment, an accurate and appropriate means of determining for benchmark purposes the extent of general schedule health coverage needed for proper program coverage. The State reviewed its past inspection history in all manufacturing and non-manufacturing Standard Industrial Classifications (SICs) not included in the initial universe and found no industry groups or establishments with a higher than average rate of violations per inspection.

Some of the less hazardous industries identified by the AFL–CIO, e.g., confectionery products and secondary non-ferrous metals, will in practice be covered by general schedule inspections by safety officers cross-trained to recognize potential health hazards and refer them for inspection by an industrial hygienist. The AFL–CIO objects to exclusion of agriculture from the initial health universe. Although OSHA's authority for coverage of agriculture is relatively limited, the State

has, in fact, instituted two special emphasis programs in agriculture (in grain elevators and grain handling facilities and in migrant labor camps) which are reflected in their safety benchmarks calculation; as just noted, Iowa enforcement personnel are cross-trained to identify and respond to health hazards. In all of the industries identified in the comments, employees may always file complaints and request an inspection whenever they believe a serious health hazard exists in their workplace.

The AFL–CIO expressed concern that health inspection in mobile industry are "limited to 1.6% of general schedule health inspection resources." The 1.6 percentage is a projection, based on prior enforcement experience, of the proportion of total health inspection resources that will likely be needed for mobile worksites in the future, and is not a limitation upon the State which retains the authority and responsibility for targeting its enforcement inspections and maintaining an appropriate mix between fixed and mobile inspections. Calculations made for benchmark purposes represent a hypothetical measure of workload likely to be present within a State and are not binding upon the State in selecting particular worksites for inspection. It should be noted that the State historically devotes approximately 50% of all its inspections, safety and health combined, to construction. As noted above, the State's safety inspectors are cross-trained to identify and make referrals of serious health hazards such as noise, lead and asbestos. Additionally, annual health inspectioons are conducted at all establishments involved in the removal or encapsulation of asbestos; resources needed for these inspections are added into the benchmark calculation as a separate factor. OSHA finds that the projection made by Iowa of its total health enforcement needs in the mobile sector is reasonable.

The AFL–CIO expressed the view that because the health benchmark calculations are based on enforcement history, the level projected by the State does not provide for coverage of hazards which have "not been adequately covered by inspections in the past." No data is offered to support this suggestion of inadequate enforcement and OSHA's findings concerning the effectiveness of State plan enforcement, set forth elsewhere in this notice, offer no basis for such an assumption and indeed show that the State's inspections effectively identify and require the correction of workplace hazards.

The AFL–CIO believes that Iowa provides health resources sufficient to cover only two public sector establishments and thus denies this group of workers proper protection. As the State points out in its response, the AFL–CIO is mistaken in that although only two public sector worksites perform functions that are equivalent to those in the 150 most hazardous industries, nonetheless, the benchmark formula provides one full-time health inspector for the public sector.

The AFL–CIO objects to the exclusion from general schedule inspection of establishments which participate in Iowa's safety and health consultation program which the union mistakenly characterizes as a "permanent exemption." The benchmark calculation does not of itself create a permanent exemption for any establishment but merely reflects the State's projection of the likely amount of participation at any given time in the future given the fact that particular establishments enter and leave the consultation program. The maximum consultative exemption is for one year and in some cases may be for as little as 45 days, as Commissioner Meier points out in his response. Such establishments have qualified for an exemption from routine inspections by participating in a comprehensive on-site health visit performed by the Bureau of Labor using non-benchmark personnel. The correction of all hazards found during the visit is mandatory and the participating establishments remain subject to State enforcement in response to accidents and complaints. Exclusion of worksites participating in such a program from Iowa's benchmarks calculation is justified.

Finally, the AFL–CIO and the Steelworkers allege that the number of enforcement personnel now found appropriate for a fully effective program in Iowa and other States is lower than the staffing levels allocated by the States in 1980 or projected in the benchmarks issued by OSHA during its first effort to implement the *AFL–CIO* v. *Marshall* Court Order in 1980. However, the District Court Order on which the revision process has been based does not assume or require that revised benchmarks must provide a comparative increase over past levels. The adequacy of the revised benchmarks cannot be determined by whether they are greater or smaller than the 1980 benchmarks or earlier enforcement levels. Such direct numerical comparison of staffing levels is no more valid than was the direct comparison of State to Federal staffing levels under the "at least as effective" test rejected by the Court of Appeals in 1978. The objective assigned to OSHA by the Court of Appeals decision and District Court Order was, in sum, to measure the workload assumed by each State under its plan and to determine, using the best available information and techniques, but avoiding direct numerical comparisons, the staffing levels needed for fully effective coverage. This is precisely what has been done in the present revision process. The review of each State's illness and injury data, industrial mix, demographics and enforcement history has been far more detailed than was the case when benchmarks were first issued in 1980. As discussed above, the concept of universal routine inspections has been replaced by far more sophisticated targeting devoting resources to the relative minority of industries where the majority of enforcement-preventable injuries occur. These factors have resulted in the more realistic enforcement staffing requirements embodied in the revised benchmarks for Iowa.

For these reasons, and in light of other comments by groups and individuals directly affected and knowledgeable about safety and health enforcement needs in Iowa, OSHA believes application of the current benchmark formula for Iowa has resulted in staffing levels which result in fully effective enforcement in the State of Iowa.

Findings and Conclusions

Iowa Benchmarks

As provided in the 1978 Court Order in *AFL–CIO* v. *Marshall*, Iowa, in conjunction with OSHA, has undertaken to revise the compliance staffing benchmarks originally established in 1980 for Iowa. OSHA has reviewed the State's proposed revised benchmarks and supporting documentation and carefully considered the public comments received with regard to this proposal, and determined that compliance staffing levels of 16 safety and 13 health compliance officers meet the requirements of the Court and provide staff sufficient to ensure a fully effective enforcement program.

Iowa Final Approval

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the Iowa State plan. This information has included all previous evaluation findings since certification of

completion of the State plan's developmental steps, especially data for the period of October 1982 through March 1984 and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows.

(1) *Standards.* Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. Such standards where not identical to the Federal must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1902.4(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1902.4(b)(2)(i)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1902.4(b)(2)(vi)); must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1902.4(b)(2)(vii)); and where applicable to a product must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.2(c)(2)).

As documented in the approved Iowa State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the January 16 notice, the Iowa plan provides for the adoption of standards and amendments thereto which are identical to or at least as effective as Federal standards. The State's law and regulations, previously approved by OSHA and made a part of the record in this proceeding (Exs. 2–2 and 2–3), include provisions addressing all of the structural requirements for State standards set out in 29 CFR Part 1902.

In order to qualify for final State plan approval, a State program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)); to have timely adopted identical or at least as effective standards, including emergency temporary standards and standards amendments (29 CFR 1902.37(b)(3)); to have interpreted its standards in a manner consistent with Federal interpretations and thus to demonstrate that in actual operation State standards are at least as effective as the Federal (29 CFR 1902.37(b)(4)); and to correct any deficiencies resulting from administrative or judicial challenge of State standards (29 CFR 1902.37(b)(5)).

As noted in the "18(e) Evaluation Report" and summarized in the January 16, 1985 **Federal Register** notice, Iowa has generally adopted standards in a timely manner which are identical to Federal standards and additionally has enacted legislation for development of a comprehensive Right-to-Know standard as well as an asbestos removal standard. Iowa is developing a standard pursuant to its Right-to-Know law that will cover the issue of hazard communication; however, as an iterim measure, the State has adopted OSHA's Hazard Communication standard. Regarding Iowa's enactment of Right-to-Know legislation, John E. Lee III commented (Ex. 4–2) that Iowa has not acted in conformity with its State plan enabling legislation and contended that the State has no legal authority to enact such legislation; that the State is enforcing standards and laws not promulgated or adopted under the State plan; that the Bureau of Labor has been removed from its role to promulgate standards as provided by the plan; and, that the public has been given no opportunity to comment on the Right-to-Know law.

Iowa Labor Commissioner Allen J. Meier (Ex. 4–10), in responding to John E. Lee III's comments, submits that although the Iowa Act requires the State Bureau of Labor to adopt standards identical to OSHA's, the State legislature is not precluded from enacting complementary legislation which may result in different State standards so long as the resultant State standards are at least as effective as the Federal and meet all State requirements. Commissioner Meier submits further that the public had the right to comment on the Right-to-Know law through the legislative process and on the Bureau of Labor's adoption of the Federal Hazard Communication Standard at a public hearing held on April 9, 1984. OSHA concludes that Iowa has acted in conformance with State plan requirements in enacting its Right-to-Know law and adopting the Federal Hazard Communication standard as an interim measure.

When a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. As already noted, Iowa generally adopts standards identical to those of OSHA. Iowa likewise adopts standards interpretations which are identical to Federal. OSHA's monitoring has found that the State's application of its standards is comparable to Federal standards application. No legal challenges to standards have occurred in Iowa.

Therefore, in accordance with section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds the Iowa program in actual operation to provide for standards adoption, correction when found deficient, interpretation and application, in a manner at least as effective as the Federal program.

(2) *Variances.* A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal program (29 CFR 1902.4(b)(2)(iv)). The Iowa State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to qualify for final State plan approval permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); temporary variances granted must assure compliance as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). As noted in the 18(e) Evaluation Report and the January 16 notice, Iowa granted requests for one permanent and one temporary variance during the evaluation period. The permanent variance granted by the State assured equivalent employee safety and health protection. The temporary variance specified interim protection, was for the shortest feasible period and was granted prior to the effective date of the standard. The State has adhered to approved procedures when granting permanent and temporary variances.

Iowa's Act also allows for a special variance from the State's standards, rules or regulations when they are in conflict with standards, rules, or regulations promulgated by any Federal agency other than the U.S. Department of Labor. No special variances have been granted under the Iowa program.

Accordingly, OSHA finds that the Iowa program effectively grants variances from its occupational safety and health standards.

(3) *Enforcement.* Section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1) require a State to provide a program for enforcement of State standards which is and will continue to be least as effective in providing safe and healthful employment and places of employment as the Federal program. The State must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the legal authority for standards enforcement

including compulsory process (29 CFR 1902.4(c)(2)).

The Iowa law (Iowa Statute 88.5) and implementing regulations previously approved by OSHA establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms virtually identical to those in the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effective compliance program (29 CFR 1902.37(b)(2)). The "18(e) Evaluation Report" data show no lack of adherence to such procedures.

(a) *Inspections.* A State plan must provide for inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1902.4(c)(2)(i)). As noted in the January 16, 1985 Federal Register notice, Iowa has adopted OSHA's complaint policy. Data contained in the 18(e) Evaluation Report indicates that 68.6% of the safety complaints and 66.2% of the health complaints resulted in inspections (Evaluation Report, p. 37).

In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)). The 18(e) Evaluation Report indicates that 97.8% of State programmed safety and 94.5% of programmed health (general schedule) inspections during October 1982 through March 31, 1984, were conducted in high-hazard industries, which exceeds the Federal experience and therefore compares favorably with Federal performance (Evaluation Report, p. 32). Iowa utilizes the Federal high-hazard list to schedule programmed inspections.

(b) *Employee Notice and Participation in Inspections.* In conducting inspections a State must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(2)(ii)). The State's procedures require compliance officers to provide this opportunity. The 18(e) Evaluation and previous reports show that the State utilized employee interviews and/or employee accompaniment in 100% of its initial inspections (Evaluation Report, p. 43). OSHA has concluded that employee representation is properly provided in State inspections.

In addition, a State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1902.4(c)(2)(iv)), and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, Iowa requires that a poster, which was previously approved by OSHA (40 FR 40156), be displayed in all covered workplaces. Requirements for the posting of the poster and other notices, such as citations, contests, hearings and variance applications, are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employee exposure to regulated agents and access to medical and monitoring records is provided through State standards, including the Access to Employee Exposure and Medical Records standard. During the evaluation period there were 24 inspections with posting violations cited (Evaluation Report, p. 44). Federal OSHA evaluation concluded that the State performance is satisfactory.

(c) *Nondiscrimination.* A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program, including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). The Iowa law and regulations provide for discrimination protection which is at least as effective as the Federal. The State investigated 36 complaints out of 36 complaints received. The State settled administratively five meritorious complaints out of eight complaints found initially meritorious. The three remaining complaints were under investigation by the State at the close of the evaluation period. Average lapse time between receipt of a complaint and the notification to the complainant of the investigation results for the State was 109.4 days. Federal evaluation of the cases indicates that the State action was satisfactory (Evaluation Report, p. 81).

(d) *Restraint of Imminent Danger; Protection of Trade Secrets.* A State plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1902.4(c)(2)(vii)), and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisions concerning imminent danger and protection of trade secrets in its law, regulations and field operations manual which are identical to the Federal. There were no imminent danger situations identified during this reporting period, although past monitoring has shown that such situations are handled properly. No Complaints About State Program Administration (CASPA's) have been received concerning trade secrets.

(e) *Right of Entry; Advance Notice.* A State plan is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1902.3(e)). Likewise, a State is expected to prohibit advance notice of inspection, allowing exception no broader than in the Federal program (29 CFR 1902.3(f)). The Iowa State Regulations 530–3.2(88), (1), (2) and (3) authorize the Commissioner to seek compulsory process, if necessary, to permit entry into such establishment that refused entry for the purpose of inspection or investigation. However, on January 16, 1985, the Iowa Supreme Court ruled that the Iowa Bureau of Labor lacked the explicit statutory authority necessary for the issuance of an administrative warrant. The Iowa Bureau of Labor sought legislation to remedy the situation. A bill clarifying the authority of the Iowa Bureau of Labor to obtain administrative warrants was passed and signed into law by the Governor on April 23, 1985 (Ex. 2–2A). While the legislation was pending, the State requested the assistance of Federal OSHA, pursuant to the terms of the Operational Status Agreement, in cases where the State was denied entry to inspect.

John E. Lee III (Ex. 4–6) and the National and Iowa AFL–CIO (Exs. 4–8 and 4–7) expressed concern that the Iowa Supreme Court decision on warrants diminished the effectiveness of the State plan. However, OSHA finds that the State's prompt action in obtaining legislative remedy of the Court's decision effectively obviates concern about the State's authority to obtain administrative warrants to conduct inspections.

In order to be found qualified for final approval, a State is expected to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. The 18(e) Evaluation Report (p. 41) shows that Iowa obtained 85 denial of entry warrants for 152 refusals. The Iowa law prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal. The State used advance notice in only .1% of its inspections; the 18(e) Evaluation Report (p. 44) shows that two instances of advance notice procedures were used in

Iowa. The State's use of its procedures was found to be proper.

(f) *Citations, Penalties, and Abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations identified during inspection, for the proposal of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2) (x) and (xi)). The Iowa plan through its law, regulations and field operations manual, which have all been previously approved by OSHA, has established a system similar to the Federal for prompt issuance of citations of employers delineating violations and establishing reasonable abatement periods, requiring posting of such citations for employee information and proposing penalties.

In order to be qualified for final approval, the State, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(b)(10)), to issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), to propose penalties for first instance violations that are at least as effective as those under the Federal program (29 CFR 1902.37(b)(12)), and to ensure abatement of hazards including issuance of failure to abate notices and appropriate penalties (29 CFR 1902.37(b)(13)).

Comparison of Federal and State data, as discussed in the 18(e) Evaluation Report (p. 50) shows that the State finds a comparable number of violations per initial inspection (1.3). The State cited as serious 54.2% of violations in safety inspections and 38.4% in health inspections. Additionally, data showed the State's percentage of not-in-compliance programmed inspections for safety (52.0%) was comparable to Federal OSHA and for health (66.3%) exceeded Federal OSHA experience. As noted in the 18(e) Evaluation Report, monitoring has indicated that the State does effectively identify and cite violations, and that inspectors recognize, properly classify, and document violations. Notices of citations, penalties, and abatement periods take less time to issue than Federally (11.6 days safety and 7.9 days health) from inspection to issuance of citation and proposed penalty. During the 18(e) evaluation period penalty levels for serious violations were higher than Federal ($297.00 safety, $445.00 health) (Evaluation Report, p. 58).

Iowa conducted one follow-up inspection that resulted in failure-to-correct citations out of eight follow-up inspections. During the evaluation period only 12.5% of safety but 69.3% of health cases with serious, willful and repeat violations remained open more than 30 days after the abatement date. Midway through the evaluation period the State initiated improved administrative controls to address the relatively high percentage of open health cases, and on-site review by OSHA disclosed that the necessary changes had been implemented (Evaluation Report, p. 54). The State sets few abatement periods beyond 30 days. The 18(e) Evaluation Report indicates acceptable performance.

(g) *Contested Cases.* In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). Iowa's procedures for contest of citations, penalties and abatement requirements and for ensuring employee rights are contained in the law, regulations and field operations manual made a part of the record in this proceeding and are substantially identical to the Federal procedures. Appeals of citations, penalties and abatement periods are heard by the Iowa Occupational Safety and Health Review Commission and may be further appealed to the State District Court. One-hundred thirty-six cases during October 12, 1982 through March 31, 1984, resulted in contests. OSHA evaluation of these cases supported the conclusion that the State's enforcement actions are adequately supported.

To qualify for final approval, the State must seek review of any adverse adjudications and take action to correct any enforcement program deficiencies resulting from adverse administrative or judicial determinations (29 CFR 1902.37(b)(14)). As previously mentioned in the Right-of-Entry/Advance Notice section of this notice, there was an adverse Iowa Supreme Court decision concerning the State's ability to obtain administrative warrants to conduct inspections. The State promptly enacted legislation that remedied the situation. In addition, the January 16 proposal noted that the Iowa Bureau of Labor had sought judicial review of two adverse decisions by the State Review Commission. The first of these decisions, dealing with the permissible scope of complaint inspections, was not made moot by the Iowa Supreme Court decision discussed above. The second decision, holding that the State must have sufficient probable cause to trigger either a warrantless or warrant inspection, was reversed by the Iowa District Court for Polk County on June 7, 1985. Accordingly, OSHA finds that the Iowa plan effectively reviews contested cases and obtains corrective action in response to adverse decisions.

(h) *Enforcement Conclusion.* In summary, the Assistant Secretary finds that enforcement operations provided under the Iowa plan are competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) *Public Employee Program.* Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's program for public employees be as effective as the State's program for private employees covered by the plan.

Iowa's plan provides a program in the public sector which is identical to that in the private sector, including the proposal of penalties. During the evaluation period, the State conducted 25 inspections in the public sector and cited 23 violations. Although Bureau of Labor Statistics (BLS) incidence rates are generally comparable between the public and private sector in Iowa, the 18(e) Evaluation Report indicates that the change between 1981 and 1982 in the lost workday case rate in State and local government was higher than in the private sector (+6.7% vs. −8.3%). This difference in the incidence rates is attributable to changes in employment patterns between 1981 and 1982, during which period there were declines in both private and public sector employment. However, private sector employment decreases were mostly in hazardous industry divisions while there was no corresponding decline in hazardous employment in the public sector (Evaluation Report, p. 27).

Because the State treats the public sector in the same manner as the private sector, as evidenced by its written procedures, which are applicable to all

covered employees, public and private, and since monitoring indicates similar performance in the public and private sectors, OSHA concludes that the Iowa program meets the criterion in 29 CFR 1902.3(j).

(5) *Staffing and Resources.* Section 18(c)(4) of the Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1902.37(b)(l), one factor which OSHA must consider in evaluating a plan for final approval is whether the State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

Iowa has committed itself to funding the State share of salaries for 16 safety inspectors and 13 health enforcement officers as evidenced by the FY 1984 Application for Federal Assistance (Ex. 2–6) as well as its subsequent FY 1985 application. These compliance staffing levels meet the revised benchmarks proposed for Iowa.

As noted in the Federal Register notice announcing certification of the completion of developmental steps for Iowa (41 FR 39027), all personnel under the plan meet civil service requirements under the State merit system, which was found to be in substantial conformity with the Standards for a Merit System of Personnel Administration by the U.S. Civil Service Commission.

The State provides continuing training for its staff. The Evaluation Report (p. 20) noted that the State provided an average of 82.0 hours for safety inspectors and 93.5 hours of training for industrial hygienists.

Because Iowa has allocated sufficient enforcement staff to meet the revised benchmarks for that State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the 1978 Court Order in *AFL–CIO* v. *Marshall, supra,* are being met by the Iowa plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The Iowa plan was funded at $1,507,342 in FY 1984. (Fifty percent of the funds are provided by Federal OSHA and 50% are provided by the State.)

As noted in the Evaluation Report, Iowa's funding appears sufficient. On this basis, OSHA finds that Iowa has provided sufficient funding for the various activities carried out under the plan.

(6) *Records and Reports.* A State plan must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (section 18(c)(8) of the Act and 29 CFR 1902.3.(1)).

Iowa employer recordkeeping requirements are substantially identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illnesses and Injuries. As noted in the January 16 proposal, the State participates and has assured its continuing participation with OSHA in the Federal-State Unified Management Information System as a means of providing reports on its activities to OSHA.

For the foregoing reasons, OSHA finds that Iowa has met the requirements of sections 18(c)(7) and (8) of the Act on employer and State reports to the Secretary.

(7) *Voluntary Compliance Program.* A State plan is required to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1902.4(c)(2)(xiii)).

During the 18(e) evaluation period, Iowa provided training to 1,186 employers and supervisors and 1,279 employees. Of the employees trained, 70% were in high hazard industries (Evaluation Report, p. 21).

Iowa provides on-site consultative services to public sector (State and local government) employers under its approved State plan. During the 18(e) evaluation period, 31 public sector on-site consultative visits were conducted in Iowa. The State's on-site consultation program for the private sector is conducted apart from the State plan under a separate agreement with OSHA under section 7(c)(1) of the Act.

Accordingly, OSHA finds that Iowa has established and is administering an effective voluntary compliance program.

(8) *Injury and Illness Statistics.* As a factor in its 18(e) determination, OSHA must consider the Bureau of Labor Statistics Annual Occupational Safety and Health Survey and other available Federal and State measurements of program impact on worker safety and health (29 CFR 1902.37(b)(15)).

The AFL–CIO expressed concern (Ex. 4–6) that occupational injury and illness incidence rates in the private sector for Iowa in 1982 exceeded the Federal averages except for the construction all case rate and the all industry lost workday case rate. However, the higher rates referred to by the AFL–CIO are only slightly higher than the Federal and are within established ranges. Further, the all industry, manufacturing and construction lost workday case rates, as well as such rates for four of the five highest rate industries in Iowa, declined by a greater percentage than changes in corresponding rates in States under Federal OSHA jurisdiction. (Evaluation Report, pp. 92–95.) While these rates do slightly exceed Federal rates when directly compared, as noted in the 18(e) Evaluation Report, a decreasing trend is evident.

Further, in his response to the AFL–CIO comments, Iowa Labor Commissioner Meier suggests that caution is necessary when comparing rates for an individual State with corresponding rates for other States or for the Nation because of variations in the size of firms and industries, and because the proporation of the work force in hazardous industries has a direct effect on the overall rates. Differences in industry mix must be considered in making direct comparisons of aggregated data. The State also notes that the lost workday incidence case rate for all industries is lower in Iowa than for the Federal States and, that there has been an improvement in Iowa's injury and illness rates over the three year period between 1979 and 1982. (Ex. 4–10).

Considering the State's overall substantial decline in injury and illness rates, OSHA finds a favorable comparison between Iowa's trends in injury and illness statistics and those in States with Federal enforcement.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments received thereon. The present Federal Register document sets forth the findings and conclusions from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that (1) the revised compliance staffing levels proposed for Iowa meet the requirements of the 1978 Court Order in *AFL–CIO* v. *Marshall* in providing the number of safety and health compliance officers necessary for a "fully effective" enforcement program, and (2) the Iowa State plan for occupational safety and health in actual operation, which has been monitored for at least one year subsequent to certification, is at least as effective as the Federal program and meets the statutory criteria for State plans in section 18(e) of the Act and implementing regulations at 29 CFR 1902. Therefore, the revised compliance

staffing benchmarks of 16 safety and 13 health are approved and the Iowa State plan is hereby granted final approval under Section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective July 2, 1985.

Under this 18(e) determination, Iowa will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in providing employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting State initiated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, Iowa must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the Department of Labor, or any revision to those benchmarks.

Effect of Decision

The determination that the criteria set forth in section 18(c) of the Act and 29 CFR Part 1902 are being applied in actual operations under the Iowa plan terminates OSHA authority for Federal enforcement of its standards in Iowa, in accordance with section 18(e) of the Act, in those issues covered under the State plan. Section 18(e) provides that upon making this determination "the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under Section 9 or 10 before the date of determination."

Accordingly, Federal authority to issue citations for violation of OSHA standards (sections 5(a)(2) and 9); to conduct inspections (except those necessary to conduct evaluations of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section 18(e)) (section 8); to conduct enforcement proceedings in contested cases (section 10); to institute proceedings to correct imminent dangers (section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act (section 17) is relinquished as of the effective date of this determination.

Federal authority under provisions of the Act not listed in section 18(e) are unaffected by this determination. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act although such complaints may be initially referred to the State for investigation. Jurisdiction over any proceeding initiated by OSHA under Sections 9 and 10 of the Act prior to the date of this final determination remains a Federal responsibility. The Assistant Secretary also retains his authority under Section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination. In the event that a State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in the State.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Iowa plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or criteria which relate to safety or health in private sector maritime employment; bridge construction projects over the Mississippi and Missouri Rivers between Iowa and other States; Federal government-owned, contractor-operated military/munitions facilities; and, private sector hazardous waste disposal facilities designated as "Superfund sites," since these issues are excluded from coverage under the Iowa plan. In addition, Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the State is unable to provide effective coverage for reasons not related to the required performance or structure of the State plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its plan. Section 18(f) and regulations at 29 CFR Part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the State has substantially failed to comply with any provision or assurance contained in the plan. Additionally, the Assistant Secretary is required to initiate proceedings to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47 *et seq.*, if his evaluations show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to the Assistant Secretary as required by 29 CFR Part 1953.

Explanation of Changes to 29 CFR Part 1952

29 CFR Part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determinations be accompanied by changes to Part 1952 reflecting the final approval decision. This notice makes several changes to Subpart J of Part 1952 to reflect the final approval of the Iowa plan.

A new § 1952.163, Compliance staffing benchmarks, has been added to reflect the approval of the 1984 revised benchmarks for Iowa.

A new § 1952.164, Final approval determination, has been added to reflect the determination granting final approval of the plan. The new paragraph contains a more accurate description of the scope of the plan than the one contained in the initial approval decision.

Newly redesignated § 1952.165, Level of Federal enforcement, has been revised to reflect the State's 18(e) status. The new paragraph replaces former § 1952.162, which described the relationship of State and Federal enforcement under an Operational Status Agreement which was entered into on April 29, 1982. Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for Iowa, and the Operational Status Agreement is no longer in effect. § 1952.165 describes the issues where Federal authority has been terminated and the issues where it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present **Federal Register** notice.

While most of the existing Subpart J has been retained, paragraphs within the subpart have been rearranged and renumbered so that the major steps in

the development of the plan (initial approval, developmental steps, certification of completion of development steps and final plan approval) are set forth in chronological order. Related editorial changes to the subpart include modification of the heading of § 1952.160, to clearly identify the 1973 initial plan approval decision to which it relates. The addresses of locations where State plan documents may be inspected have been updated and are found in § 1952.166.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*) that this rulemaking will not have a significant economic impact on a substantial number of small entities. Final approval will not place small employers in Iowa under any new or different requirements nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan. A certification to this effect was forwarded previously to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, D.C., this 1st day of July 1985.

Robert A. Rowland,

Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subpart J of 29 CFR Part 1952 is hereby amended as follows:

1. The authority citation for Part 1952 continues to read:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736).

§ 1952.160 Description of the plan as initially approved.

2. Section 1952.160 is amended by revising the heading to as set forth above.

§§ 1952.161, 1952.162, 1952.163, and 1952.164 [Redesignated as §§ 1952.166, 1952.165, 1952.161, and 1952.162]

3. Section 1952.161 is Redesignated as § 1952.166

4. Section 1952.162 is Redesignated as § 1952.165

5. Section 1952.163 is Redesignated as § 1952.161

6. Section 1952.164 is Redesignated as § 1952.162 and amended by revising the heading to read: § 1952.162 Completion of developmental steps and certification.

7. The Table of contents for Part 1952, Subpart J, is revised to read as follows:

Subpart J—Iowa

Sec.

1952.160 Description of the plan as initially approved.
1952.161 Developmental schedule.
1952.162 Completion of developmental steps and certification.
1952.163 Compliance staffing benchmarks.
1952.164 Final approval determination.
1952.165 Level of Federal enforcement.
1952.166 Where the plan may be inspected.

8. New §§ 1952.163 and 1952.164, are added to read as follows:

§ 1952.163 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO v. Marshall*, compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984, Iowa, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 16 safety and 13 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements effective July 2, 1985.

§ 1952.164 Final approval determination.

(a) In accordance with Section 18(e) of the Act and procedures in 29 CFR 1902, and after determination that the State met the "fully effective" compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL–CIO* v. *Marshall* (CA 74–406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Iowa State plan for a period of at least one year following certification of completion of developmental steps (41 FR 39027). Based on the 18(e) Evaluation Report for the period of October 1982 through March 1984, and after opportunity for public comment, the Assistant Secretary determined that in operation, the State of Iowa occupational safety and health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in Section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Accordingly, the Iowa plan was granted final approval and concurrent Federal enforcement authority was relinquished under Section 18(e) of the Act effective July 2, 1985.

(b) The plan which has received final approval covers all activities of employers and all places of employment in Iowa except for private sector maritime employment; Federal government-owned, contractor-operated military/munitions facilities; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other States; and, private sector hazardous waste disposal facilities designated as "Superfund sites."

(c) Iowa is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR Part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

9. Newly designated §§ 1952.165 and 1952.166 are revised to read as follows:

§1952.165 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval of the Iowa plan under section 18(e) of the Act, effective July 2, 1985, occupational safety and health standards which have been promulgated under Section 6 of the Act do not apply with respect to issues covered under the Iowa plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under section 5(a)(2) and 9 of the Act; to conduct inspections and investigations under Section 8 (except those necessary to conduct evaluation of the plan under Section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under sections 9 or 10 before the effective date of the 18(e) determination.

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to

occupational safety and health issues covered by the Iowa plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to private-sector maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification; as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments); Federal government-owned, contractor-operated military/munitions facilities; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other States; and, private sector hazardous waste disposal facilities designated as "Superfund sites." In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immedately upon agreement between Federal and State OSHA.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under Section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Iowa State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

§ 1952.166 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3476, Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 911 Walnut Street, Room 406, Kansas City, Missouri 64106; and Office of the Commissioner, Iowa Bureau of Labor, State House, 307 East Seventh Street, Des Moines, Iowa 50319.

[FR Doc. 85-15581 Filed 7-1-85; 8:45 am]
BILLING CODE 6570-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket No. AM019DE; A-3-FRL-2857-9]

Approval and Promulgation of Implementation Plans; Approval of a Revision of the Delaware State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This Notice approves several revisions to the Delaware State Implementation Plan (SIP). The revisions consist of amendments to Regulation No. XVII–Source Monitoring, Record Keeping and Reporting; Regulation No. XIII—Open Burning; Regulation No. XIV—Visible Emissions; and Regulation No. II—Permits. EPA has reviewed these revisions and has concluded that they meet all requirements of the Clean Air Act and 40 CFR Part 51. Therefore, EPA is approving the amendments as revisions to the Delaware SIP.

EFFECTIVE DATE: August 1, 1985.

ADDRESSES: Copies of the SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Patricia Gaughan (3AM11)

Department of Natural Resources and Environmental Control, Division of Environmental Control, Air Resources Section, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901, Attn: Mr. Robert R. French

Public Information Reference Unit, U.S. Environmental Protection Agency, EPA Library, Room 2922, 401 M Street, SW., Washington, D.C. 20460

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Pine at the EPA Region III address listed above or call 215/597-4554.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1984 the State of Delaware submitted to EPA Region III, Secretarial Orders announcing the adoption of several amendments to their State Regulations. The State requested that these amendments be approved as revisions of the Delaware State Implementation Plan (SIP). On January 14, 1985, EPA proposed approval of these amendments to the Delaware SIP in the Federal Register (50 FR 1880). No comments were received regarding the proposed amendments during the 30-day comment period. The State provided documentation that a public hearing regarding the proposed changes was held as required by 40 CFR 51.4. The hearing was held on March 28, 1984, in Wilmington, Delaware after adequate public notice was given.

The following items are being approved as amendments to Delaware's Regulation:

(1) Authorization to require environmental monitoring when waterborne craft or boats engage in the bulk transfer of solid materials in the Delaware Bay.

(2) Elimination of required written approval of certain burning operations.

(3) Requirement of written approval by the receiving party during the transfer of permits from one party to another.

(4) Deletion of reference to the Ringleman Smoke Chart as a method of determining compliance to the opacity regulation.

(5) Amendment to clarify that all waste oil burners require a permit.

EPA has reviewed these revisions and has concluded they meet all the requirements of the Clean Air Act and 40 CFR Part 51. Therefore, EPA is approving the revisions to the Delaware SIP.

Regulation Description

Section 1 of Regulation No. XVII, Source Monitoring, Record Keeping and Reporting, adds a new Section authorizing the Department to require the owner or operator of an air contaminant source consisting of ships, boats or other waterborne craft engaged in a bulk transfer operation to provide for the installation, operation and maintenance of environmental monitoring equipment. This amendment will require the owners of such operations to bear the cost of ambient air monitoring activities and will allow the Department to determine the impact of the transfer operations on air quality. The regulation is limited to the transfer of bulk solid material because of the greater air pollution potential inherent in the transfer of solids as compared to liquids.

Regulation No. XIII, Open Burning, has several amendments being approved. Section 1.1 is amended to eliminate the requirement of written Departmental approval for certain open burning activities. Section 2.3. (a) and (b) are added which make exceptions to domestic burning an agricultural operations in the area north of the Chesapeake and Delaware Canal. Section 2.5 shall require all fires to remain under supervision until extinguished and that open burning shall not cause local nuisance conditions from smoke or odors. Open burning shall be conducted only at certain times under new section 2.6. Section 2.7 prohibits tires, waste, oil, or oils heavier than No. 2 from being used as auxiliary fuel.

Section 2.8 is also added which may not allow open burning for the removal of fire hazards or fire fighting instructions unless approved by the State Fire Marshal. Section 2.9 adds to Regulation XIII that open burning will be terminated upon notification by the Department or State Fire Marshal. Revisions to this regulation also include renumbering of the sections.

EPA believes that the deletion of the requirement for a written approval under Section 1.1 will not have adverse effects on air quality. The amended regulation places several restrictions on open burning to protect air quality and includes regulatory provisions which have been set forth as conditions in air pollution permits. EPA believes that the other amended sections to the Open Burning regulation also will have no adverse effects on air quality.

Section 3.1 of Regulation No. II, Permits, is amended to clarify that the exemption from permit requirements for fuel burning equipment less than 1,000,000 BTU/hr does not apply to the burning of waste oil. Since waste oil has the potential for high concentrations of PCB's and heavy metals such as lead (Pb), the requirement of a permit for waste oil burning would be beneficial. This process will provide the mechanism for oil sampling and analysis and the control of emissions into the air.

Section 8.1 under Regulation No. II, is also amended. This section requires the written approval of all affected parties prior to the transfer of any permit from one person to another. Amending this Section will ensure that the party receiving responsibility of any permit agrees to the transfer. This amendment has no impact on air quality.

Regulation No. XIV, Visible Emissions, section 2.1, is amended to delete any reference to the Ringleman Smoke Chart as a method of determining compliance with opacity standards. The amended regulation allows use of the chart as a guideline for determining the opacity of black smoke. However, § 1.5(c)(1) of Regulation No. XX, New Source Performance Standards, which is the current EPA test method for visible emissions, must be used in determining compliance with any opacity standard.

EPA Action

EPA has reviewed this revision and believes there will be no adverse effects on air quality associated with these amendments. Therefore, EPA is approving these regulatory revisions as a part of the Delaware SIP.

The Administrator's decision to approve this SIP revision is based on a determination that the amendments meet the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from today. Under section 307(b)(2), the requirements which are the subject of today's Notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Delaware was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 25, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart I—Delaware

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.420 is revised by adding paragraph (c)(34) as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(34) Revisions to the Delaware Regulations Governing the Control of Air Pollution were submitted by the Secretary on August 8, 1984.

(i) *Incorporation by reference.* (A) Amendments to Regulations II (Permits); XIII (Open Burning); XIV (Visible Emissions); and XVII (Source Monitoring, Record Keeping and Reporting).

[FR Doc. 85–15820 Filed 7–1–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[EPA Document No. AM054MD; A–3–FRL–2857–8]

Approval of a Revision to the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Department of Health and Mental Hygiene (DHMH) has submitted amendments to its air quality control regulations and has requested that they be reviewed and processed by EPA as a revision to the Maryland State Implementation Plan (SIP). This revision, submitted on March 14, 1984,

amends existing Code of Maryland Regulations (COMAR) that deal with the control of incinerators. The revision consists of amendments to section 10.18.02, *Permits, Approvals, and Registration*, and section 10.18.08, *Control of Incinerators*. These amendments set emission standards for hazardous waste incinerators and exempt operators of these incinerators from obtaining an air quality permit to construct. They also prohibit the construction or use of hazardous waste incinerators except in accordance with applicable hazardous waste and air quality regulations. These facilities are required to obtain hazardous waste facility permits which are issued by the DHMH under COMAR 10.51.07. This Notice summarizes the amendments which EPA is today approving.

EFFECTIVE DATE: August 2, 1985.

ADDRESSES: Copies of the revision and the accompanying support documents are available during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Programs Branch (3AM10), 841 Chestnut Building, Philadelphia, PA 19107
Attn: Mr. James Topsale, P.E.

Maryland Air Management Administration, Maryland Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201
Attn: Mr. George Ferreri, Director

Public Information Reference Unit, U.S. Environmental Protection Agency, EPA Library, Room 2922, 401 M Street, SW., Washington, DC 20460

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Pine at the address for EPA Region III, or telephone (215) 597–4554.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 1984, the DHMH submitted to EPA Region III amendments to its Code of Maryland Regulations (COMAR) for *Permits, Approvals, and Registration (COMAR 10.18.02)* and for the *Control of Incinerators (COMAR 10.18.08)*. EPA had proposed approval of these amendments to the Maryland SIP in the January 7, 1985 Federal Register (50 FR 862). No comments were received during the 30-day comment period ending February 6, 1985. The DHMH provided proof that, after adequate public notice, a public hearing was held on December 12, 1983 in Baltimore, Maryland regarding these amendments.

Regulation Description

The amendments to COMAR 10.18.02 and .08 are concerned with hazardous waste incinerators. These amendments set emission standards for hazardous waste incinerators and exempt them from obtaining an air quality permit to construct. They also prohibit the construction or use of hazardous waste incinerators except in accordance with applicable hazardous waste and air quality regulations. Other amendments provide definitions for "incinerator" and "hazardous waste incinerator," and set a Visible Emission (VE) standard for hazardous waste incinerators. The amendments and EPA's evaluation are as follows:

A. COMAR 10.18.02.03 Permits, Approvals, and Registration

Regulation .03 is amended to exempt operators of hazardous waste incinerators from having to obtain an air quality permit to construct. These facilities are required to obtain a hazardous waste facility permit which is issued by the DHMH under COMAR 10.51.07. Under COMAR 10.51.05.15–1F(5), the substantive requirements of all air quality regulations (COMAR 10.18) must be met before a permit to construct or a permit to operate can be issued. This includes meeting the requirements of COMAR 10.18.02.03(A) for New Sources Impacting on a Nonattainment Area (NSINA's) and Prevention of Significant Deterioration (PSD) Sources.

The amendment consolidates the Clean Air Act (CAA) and Resource Conservation and Recovery Act requirements, resulting in one state permit. This permitting procedure will not exempt a source from any air quality regulation requirements. The Maryland Air Management Administration (MAMA) will continue to provide all of the technical review and enforcement actions dealing with the incinerator design and operation. This review is being done under an agreement between the MAMA and the Maryland Waste Management Administration.[1] By letter of November 29, 1984, the MAMA clarified that permit applications would only be accepted from incinerators subject to the hazardous waste facility regulations and that hazardous waste facility permits would be treated as air quality permits for all purposes.

This action involves only a procedural amendment, and will not result in any adverse impacts on the attainment or maintenance of air quality. EPA approves this amendment.

B. COMAR 10.18.08.01 Control of Incinerators, Definitions

This regulation is amended to redefine the term "incinerator" and to insert the definition for "hazardous waste incinerator" as it is defined in COMAR 10.51.01.03B(26.2). This action is only concerned with the definition of terms. Because it will not result in any adverse impacts on the attainment or maintenance of air quality, EPA is approving this amendment.

C. COMAR 10.18.08.04 Visible Emissions (VE)

This regulation is amended to include hazardous waste incinerators in the VE regulations. The amendment prohibits visible emissions, other than water in an uncombined form, which are visible to human observers. Because the amendment will not result in any adverse impacts on the attainment or maintenance of air quality, EPA is approving it.

D. COMAR 10.18.08.05 Particulate Matter

This regulation defines particulate emission standards for incinerators. It is being amended to include hazardous waste incinerator particulate standards. The amendment adopts .03 grain per dry standard cubic foot (gr/SCFD) emission standard. This standard is consistent with the .03 gr/SCFD standard set in Areas III and IV in Maryland for all incinerators except for infectious waste incinerators, which have a standard of .10 gr/SCFD. It is more stringent than the previous .10 gr/SCFD standard set in Areas I, II, V, and VI for all incinerators built after 1972.

Because this amendment maintains the previous standard set in Areas III and IV, and sets a stricter standard in Areas I, II, V and VI, EPA has determined that no adverse impacts on the attainment or maintenance of air quality will occur. EPA approves this amendment.

E. COMAR 10.18.08.06 Prohibition of Unapproved Hazardous Waste Incinerators

This is a new regulation that assures that with this new permitting procedure, all air quality and hazardous waste regulation requirements will continue to be met. The amendment prohibits the operation or construction of any hazardous waste incinerator that does not meet the requirements of all COMAR 10.51.05.15 and COMAR

[1] On July 9, 1984, EPA delegated interim authorization to the State of Maryland to issue Resource Conservation and Recovery Act (RCRA) hazardous waste incinerator permits, based on the fact that Maryland's hazardous waste regulations are substantially equivalent to RCRA requirements.

10.18.08 regulations. EPA is approving this regulation.

Conclusion

The Administrator's decision to approve this SIP revision is based on a determination that the amendments meet the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2).).

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Note. Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 25, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Subpart V—Maryland

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1070 is amended by adding paragraph (c) (82) as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(82) Revisions to the Code of Maryland Regulations (COMAR) were submitted by the Director of the Maryland Air Management Administration of March 14, 1984.

(i) *Incorporation by reference.* (A) Amendments to COMAR 10.18.02 (Permits, Approvals and Registration) and COMAR 10.18.08 (Control of Incinerators), as published in the Maryland Register on February 3, 1984 (proposed on November 11, 1983).

(ii) *Additional material.* (A) Letter from the MAMA dated November 29, 1984 clarifying that permit applications would only be accepted from incinerators subject to the hazardous waste facility regulations and that hazardous waste facility permits would be treated as air quality permits for all purposes.

[FR Doc. 85-15821 Filed 7-1-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-3-FRL-2858-1]

Approval of Revision of the West Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of a revision to the West Virginia State Implementation Plan (SIP). This revision consists of Regulation XIX, governing new source review in nonattainment areas. This revision was required to satisfy one of the conditions of approval of the Part D Plan of the Clean Air Act (45 FR 54042, August 14, 1980).

EFFECTIVE DATE: August 1, 1985.

ADDRESSES: Copies of the revision and accompanying support material are available for public inspection during normal business hours at the following location:

U.S. Environmental Protection Agency, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107, ATTN: Patricia Gaughan (3AM11)
West Virginia Air Pollution Control Commission, 1558 Washington Street East, Charleston, West Virginia 25311, ATTN: Carl G. Beard, II
Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC

FOR FURTHER INFORMATION CONTACT: Mr. Denis M. Zielinski (3AM11) at the Region III address stated above or telephone (215) 597–2906.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1980, EPA approved, with certain conditions, the West Virginia State Implementation Plan (SIP) revision for attaining the National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP) in the Steubenville-Weirton-Wheeling Interstate Air Quality Control Region (AQCR) 45 FR 54042, August 14, 1980). The revision was submitted to meet the requirements of Part D of Title I of the Clean Air Act. One of the conditions was that West Virginia adopt a permanent Regulation XIX, governing preconstruction review in nonattainment areas to satisfy the requirements of section 173 of the Clean Air Act.

On May 10, 1982, West Virginia proposed a permanent Regulation XIX. The State held a public hearing on July 9, 1982, and the West Virginia Air Pollution Control Commission (WVAPCC) adopted the regulation on August 11, 1982. Further, the WVAPCC filed the regulation with the Legislative Rulemaking Review Committee. The regulation was approved for promulgation by the 1983 West Virginia Legislature on April 27, 1983, with an effective date of May 27, 1983. As such Mr. Don R. Richardson, Chairman of the WVAPCC, submitted the regulation as a revision to the West Virginia SIP on April 29, 1983. On August 3, 1982 (47 FR 33522), EPA proposed the revised Regulation XIX concurrently with the State.

This new Regulation XIX replaces the previous temporary regulation which requires new source review and emission offsets as required by section 173 of the Clean Air Act. The temporary regulation, although in effect since 1979, was never incorporated into the West Virginia SIP. EPA approved the Part D SIP in 1980 without incorporating a new source review rule on the conditions that West Virginia maintain the temporary regulation in effect, adopt and submit as a SIP revision a permanent regulation, and submit all permits issued under the temporary regulation to EPA for incorporation into the SIP.

Interested parties desiring more specific details on the development of Regulation XIX are referred to the August 14, 1980 (45 FR 54042), final rulemaking on the Part D Plan and the proposed rulemaking notice of August 3, 1982 (47 FR 33522), which proposed approval of the regulation.

EPA Evaluation

The necessary changes to Regulation XIX discussed in the conditional approval (45 FR 54048, August 14, 1980) required that the temporary Regulation XIX be made permanent to satisfy the requirements of section 173 of the Clean Air Act. West Virginia amended the temporary regulation to be consistent with the EPA promulgations on the Emission Offset Policy and adopted the regulation as a permanent regulation.

EPA analyzed the proposed regulation and informed the Director of the WVAPCC of our comments in writing on May 22, 1982, and June 24, 1982. These comments were incorporated into EPA's statements at the public hearing of July 9, 1982, and made a part of the public hearing record. While EPA received no public comments in response to the August 3, 1982 proposed rule, the Agency did review the statements presented at the West Virginia public hearing. It has been determined that the State did not significantly change the regulation from that which EPA proposed for approval. The State incorporated all the EPA requested changes, as outlined in the letter of June 24, 1982.

The State adopted Regulation XIX with a definition of source consistent with the EPA "plantwide" definition as promulgated October 14, 1981 (46 FR 50771). The EPA rule has been the subject of litigation and was recently upheld by the Supreme Court. Consequently, the State's definition is now approvable, in that it will not interfere with attainment and maintenance of the relevant NAAQS. Regulation XIX improves the West Virginia Part D SIP so as to bring the new source review program to a level that meets the minimum requirements of EPA regulations relating to new source review. Since the SIP previously contained no new source review program, West Virginia could not rely upon any emissions reductions from review of new sources to demonstrate attainment or maintenance of the NAAQS.

A possible but unlikely problem could arise under the wording of § 2.25 of Regulation XIX, regarding the definition of "Nonattainment Area." The problem could occur during any period of time after West Virginia takes action to redesignate an area from Nonattainment to Attainment or Non-classified status but before EPA approves and promulgates the redesignation pursuant to section 107 of the Clean Air Act. A person proposing to construct a new source or undertake a modification in the area might argue that the permit for the source need not meet nonattainment permit requirements because of the redesignation even though EPA has not yet approved of the change and promulgated it. EPA does not believe that such an argument is valid and may take enforcement action against any person who attempts to commence construction or modification in the area based on such an argument. Also, for clarification purposes of section 12 of Regulation XIX, this section pertains to "netting out" under the new source review regulation and not for emissions trades or bubbles. All consent orders written in response to section 12 will be made federally enforceable.

Based upon the above, the Agency concludes that Regulation XIX as approved for promulgation by the West Virginia Legislature and as promulgated by the State of West Virginia on April 27, 1983, has not been significantly or substantively changed due to public comment. Since EPA did not receive any comments in response to its solicitation in the proposed rule of August 3, 1982 (47 FR 33522), the regulation, as promulgated and noting the discussion above is approvable as a revision to the West Virginia SIP and satisfies one of the conditions of the final approval of the Part D plan (45 FR 54042, August 14, 1980). The other condition relating to West Virginia Regulation VII has been addressed in a separate rulemaking action.

EPA Action

Based upon the evaluation, EPA approves Regulation XIX as promulgated by West Virginia on April 27, 1983, as a revision to the West Virginia SIP.

This notice is approved with the following understanding. Section 304 will not be used to exempt a major stationary source or major modification from the statewide compliance requirements. Also, the State will revise Regulation XIX to reflect this understanding of the exemption when this regulation comes up for State review.

The Administrator's decision to approve the revision is also based on a determination that the amendment meets the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans. Accordingly, this notice amends 40 CFR 52.2520 (Identification of Plan) of Subpart XX (West Virginia) by adding paragraph (c)(21) to incorporate this revision into the approved West Virginia SIP.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals under sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities.

Under section 307(b)(1) of the Clean Air Act, judicial review of the action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Note.—Incorporation by reference of the State Implementation Plan for the State of West Virginia was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 25, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Subpart XX—West Virginia

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 52.2520, Identification of Plan is amended by adding paragraph (c)(22) as follows:

§ 52.2520 Identification of Plan.

* * * * *

(c) * * *

(22) Amended Regulation XIX of the West Virginia Air Pollution Control Regulations submitted by the West Virginia Air Pollution Control Commission on April 29, 1983.

§ 52.2529 [Removed and reserved]

3. Section 52.2529 is removed and reserved.

[FR Doc. 85–15818 Filed 7–1–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 60 and 61

[A–2–FRL–2857–7]

National Emission Standards for Hazardous Air Pollutants and Standards of Performance for New Stationary Sources; Delegation of Authority to the State of New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegation of authority.

SUMMARY: This notice announces the delegation of authority by the Environmental Protection Agency to the State of New Jersey to implement and enforce additional source categories of the Standards of Performance for New Stationary Sources (NSPS) and revisions and amendments to the NSPS and National Emission Standards for Hazardous Air Pollutants (NESHAPS). This delegation was requested by the New Jersey Department of Environmental Protection (NJDEP). NSPS and NESHAPS are air pollution control requirements set under the Clean Air Act. NSPS are applicable to certain categories of new air pollution sources. NESHAPS are applicable to certain categories of both new and existing sources.

EFFECTIVE DATE: This action was effective November 1, 1984.

FOR FURTHER INFORMATION CONTACT: Francis W. Giaccone, Chief, Air Compliance Branch, Air & Waste Management Division, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264–9627.

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act directs the Administrator of the Environmental Protection Agency (EPA) to delegate EPA's authority to implement and enforce Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) to any state which has submitted adequate procedures. Nevertheless, the Administrator still retains concurrent authority to enforce the standards following delegation of authority to a state.

On September 14, 1984 EPA notified the NJDEP of four newly promulgated and one not previously delegated NSPS along with the revisions and amendments to existing NSPS promulgated between January 1, 1984 and June 30, 1984, and two newly promulgated NESHAPS along with revisions and amendments promulgated between July 1, 1983 and June 30, 1984. NJDEP accepted four NSPS, and revisions and amendments to existing NSPS and NESHAPS in a letter dated October 19, 1984 from the Commissioner of the NJDEP to the EPA Regional Administrator, Region II. The following provides a complete listing of NSPS and NESHAPS delegated to the NJDEP. The new categories now being delegated by today's action are identified with an asterisk (*). All revisions and amendments to the existing NSPS promulgated between January 1, 1984 and June 30, 1984 and to the existing NESHAPS promulgated between July 1, 1983 and June 30, 1984 are included here by reference.

NSPS Delegation

D Fossil-Fuel Fired Steam Generators for Which Construction Commenced After August 17, 1971 (Steam Generators and Lignite Fired Steam Generators)
Da Electric Utility Steam Generating Units for Which Construction Commenced After September 18, 1978
E Incinerators
F Portland Cement Plants
G Nitric Acid Plants
H Sulfuric Acid Plants
I Asphalts Concrete Plants
J Petroleum Refineries—(All Categories)
K Storage Vessels for Petroleum Liquids Constructed After June 11, 1973, and prior to May 19, 1978
Ka Storage Vessels for Petroleum Liquids Constructed After May 18, 1978
L Secondary Lead Smelters
M Secondary Brass and Bronze Ingot Production Plants
N Iron and Steel Plants
O Sewage Treatment Plants
P Primary Copper Smelters
Q Primary Zinc Smelters
R Primary Lead Smelters
S Primary Aluminum Reduction Plants
T Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants
U Phosphate Fertilizer Industry: Superphosphoric Acid Plants
V Phosphate Fertilizer Industry: Diammonium Phosphate Plants
W Phosphate Fertilizer Industry: Triple Superphosphate Plants
X Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
Y Coal Preparation Plants
Z Ferroalloy Production Facilities
AA Steel Plants: Electric Arc Furnaces
BB Kraft Pulp Mills
CC Glass Manufacturing Plants
DD Grain Elevators
EE Surface Coating of Metal Furniture
GG Stationary Gas Turbines
HH Lime Plants
KK Lead Acid Battery Manufacturing Plants
*LL Metallic Mineral Processing Plants
MM Automobile and Light-Duty Truck Surface Coating Operations
NN Phosphate Rock Plants
PP Ammonium Sulfate Manufacturing Plants
QQ Graphic Art Industry Publication Rotogravure Printing
RR Pressure Sensitive Tape and Label Surface Coating Operations
SS Industrial Surface Coating: Large Appliances
*TT Metal Coil Surface Coating
UU Asphalt Processing and Asphalt Roofing Manufacture
VV Equipment Leaks of Volatile Organic Compounds in Synthetic Organic Chemical Manufacturing Industry
WW Beverage Can Surface Coating Industry
XX Bulk Gasoline Terminals
*FFF Flexible Vinyl and Urethane Coating and Printing
*HHH Synthetic Fiber Production Facilities

NESHAPS Delegation

C National Emission Standard for Beryllium
D National Emission Standard for Beryllium Rocket Motor Firing
E National Emission Standard for Mercury
F National Emission Standard for Vinyl Chloride
M National Emission Standard for Asbestos (excluding Demolition and Renovation)

EPA's Findings

EPA's determination that the delegation be approved is based on the Agency's review of the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C; the State Public Records Act, N.J.S.A. 47:1A–1; and Title 7, Chapters 27 and 27B of the New Jersey Administrative Code. Based on that review, EPA determined that such delegation is, therefore, appropriate and so notified the Commissioner of the NJDEP, in a letter dated September 14, 1984. NJDEP subsequently accepted delegation of the additional categories in a letter dated October 19, 1984. This delegation of additional NSPS and NESHAPS is based on the conditions delineated in EPA's letter to the Commissioner of February 19, 1985. Copies of all correspondence and EPA's delegation letter are available for public inspection in the Office of the Air Compliance Branch at the Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Consequences of EPA's Action

Effective November 1, 1984, all correspondence, reports and notifications required by the delegated NSPS and NESHAPS should be submitted to the Offices of the New Jersey Department of Environmental Protection, Bureau of Enforcement Operations, Division of Environmental Quality at John Fitch Plaza—CN–027, Trenton, New Jersey 08625.

The Office of Management and Budget has exempted this action from the requirements of Section 3 of Executive Order 12991.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 7411).

List of Subjects in 40 CFR Parts 60 and 61

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: June 18, 1985.

Christopher J. Daggett,

Regional Administrator.

[FR Doc. 85-15819 Filed 7-1-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 86

[AMS-FRL-2855-5]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Appendix II of 40 CFR Part 86 outlines dynamometer calibration procedures for motor vehicle testing. This appendix contains references to sections that no longer exist in the Code of Federal Regulations. Since these same dynamometer calibration procedures are contained in § 86.118-78, Appendix II is no longer needed. Therefore, to eliminate the referencing error and redundant information, Appendix II is being removed.

EFFECTIVE DATE: July 2, 1985.

FOR FURTHER INFORMATION CONTACT: Gregory J. Dana, Office of Mobile Sources, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-7647.

List of Subjects in 40 CFR Part 86

Air pollution control.

Dated: June 24, 1985.

Lee M. Thomas,

Administrator.

PART 86—[AMENDED]

For the reasons set forth above, Part 86 of Title 40 is amended as follows:

1. The authority citation for 40 CFR Part 86 continues to read as follows:

Authority: 42 U.S.C. 7525. 42 U.S.C. 7601(a) CAA 206, 301(a).

Appendix II [Reserved]

2. Appendix II is removed and reserved.

[FR Doc. 85-15567 Filed 7-1-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

Connection of Terminal Equipment to the Telephone Network; Editorial Amendment of Certain Sections

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action corrects mechanical drawings for six and eight position plugs and jacks used for the connection of registered terminal equipment to the telephone network.

This action also eliminates certain non-essential dimensions, provides additional dimensions and tolerances, and provides improved gauging techniques for these connectors. It does not render obsolete existing tooling or stocks. Interchangeability of plugs and jacks manufactured to the original specifications and those of the new specifications is not affected by the drawing changes.

This action improves manufacturability, compatibility and long-term reliability of these connectors.

EFFECTIVE DATE: January 20, 1983.

FOR FURTHER INFORMATION CONTACT: William H. von Alven, Common Carrier Bureau, (202) 634-1833.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 68

Communications equipment, Telephone.

Publication of this item in the **Federal Register** was delayed pending final disposition of Gen. Docket 83-114, A Re-Examination of Technical Regulations. *(Repo t and Order,* 49 F.R. 48305, December 12, 1984.)

Order

In the matter of editorial amendments of §§ 68.314(2)(i) and 68.500 of the Commission's rules.

Adopted: January 13, 1983.
Released: January 20, 1983.

1. For the purpose of billing protection, Section 68.314 places a requirement that there be no data transmission during the first 2 seconds after the answering data terminal equipment goes into the off-hook mode. Section 68. 314(2), however, permits certain operations to take place during the 2-second interval, such as disabling echo suppressors, adjusting automatic gain controls, establishing syncronization and signaling the mode of operation of the receiving data equipment at the far end of the communications link. As has been pointed out in recent FCC/Industry Part 68 implementation meetings, § 68.314(2)(i) should be amended to include the disabling of the newer technology echo cancelling devices and that a preferable term would be "echo control devices."

2. Accordingly, we are amending § 68.314 (a)(2)(i) to read:

(i) Disabling echo control devices,

3. The attachment contains an editorial amendment of § 68.500 of the Rules dealing with the physical specifications for six and eight position miniature plugs and jacks. The objectives of this amendment are to make the specifications generic in nature, insure compatibility, minimize retooling impact, increase design freedom and improve manufacturability. The revisions do not obsolete existing tooling and stocks and are intended to be introduced on new or replacement tooling. The revisions also provide reference datums and improved gauging techniques. Non-essential dimensions have been eliminated while providing additional dimensions and tolerances. Interchangeability of plugs and jacks manufactured to the original specifications and to the new specifications is not affected by these drawing changes. These revisions were originally introduced by the American Telephone and Telegraph Company at the FCC-Industry meeting on the Implementation of Part 68 on October 15-16, 1980. Valuable comments were received from Industry during the past two years and have been accommodated in the revised specifications.

4. Authority for this action is contained in section 4(i) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's Rules. Since these amendments are editorial in nature, the public notice, procedure and effective date provisions of 5 U.S.C. do not apply.

6. Contact William H. von Alven, telephone (202) 634-1833, regarding the matters covered in this document.

7. In view of the above, it is ordered, that the rule amendments set forth herein be adopted effective January 20, 1983.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

PART 68—[AMENDED]

Accordingly, 47 CFR Part 68 is amended as follows:

1. The Authority citations for Part 68 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

§ 68.314 [Amended]

2. Section 68.314(a)(2)(i) is amended by removing the word "suppressors", and adding in place thereof the words "control devices".

3. Section 68.500 is amended as follows:

a. By adding an introductory paragraph to read as shown in Appendix A–1, attached.

b. By removing Figure 68.500(a)(1) and adding Figure 68.500(a)(1)(i) as shown in Appendix A–2.

c. By removing Figure 68.500(a)(2) and adding Figure 68.500(a)(2)(i) as shown in Appendix A–3.

d. By adding Figure 68.500(a)(2)(ii) as shown in Appendix A–4.

e. By adding plug specification notes for Figure 68.500(a)(2)(i) and 68.500(a)(2)(ii) as shown in Appendix A–5.

f. By removing Figure 68.500(a)(3) and adding Figure 68.500(a)(3)(i) as shown in Appendix A–6.

g. By adding contact specification notes for Figure 68.500(a)(3)(i) as shown in Appendix A–7.

h. By removing Figure 68.500(a)(4) and adding Figure 68.500(a)(4)(i) as shown in Appendix A–8.

i. By removing Figure 68.500(a)(5) and adding Figure 68.500(a)(5)(i) as shown in Appendix A–9.

j. By removing Figure 68.500(b)(1).

k. By removing Figure 68.500(b)(2) and adding Figure 68.500(b)(2)(i) as shown in Appendix A–10.

l. By removing Figure 68.500(b)(3) and adding Figure 68.500(b)(3)(i) as shown in Appendix A–11.

m. By adding jack specification notes for Figures 68.500(b)(2)(i) and 68.500(b)(3)(i) as shown in Appendix A–12 and Appendix A–13.

n. By removing Figure 68.500(c)(1) and adding Figure 68.500(c)(1)(i) as shown in Appendix A–14.

o. By removing Figure 68.500(c)(2) and adding Figure 68.500(c)(2)(i) as shown in Appendix A–15.

p. By adding Figure 68.500(c)(2)(ii) as shown in Appendix A–16.

q. By adding plug specification notes for figures 68.500(c)(2)(i) and 68.500(c)(2)(ii) as shown in Appendix A–17.

r. By removing Figure 68.500(c)(3) and adding Figure 68.500(c)(3)(i) as shown in Appendix A–18.

s. By adding contact specification notes for Figure 68.500(c)(3)(i) as shown in Appendix A–19.

t. By removing Figure 68.500(c)(4) and adding Figure 68.500(c)(4)(i) as shown in Appendix A–20.

u. By removing Figure 68.500(c)(5) and adding Figure 68.500(c)(5)(i) as shown in Appendix A–21.

v. By removing Figure 68.500(d)(2) and adding Figure 68.500(d)(2)(i) as shown in Appendix A–22.

w. By removing Figure 68.500(d)(3) and adding Figure 68.500(d)(3)(i) as shown in Appendix A–23.

x. By adding jack specification notes for Figures 68.500(d)(2)(i) and 68.500(d)(3)(i) as shown in Appendix A–24 and Appendix A–25.

y. By removing Figure 68.500(i)(1)(i) and adding Figure 68.500(i)(1)(i) as shown in Appendix A–26.

z. By removing Figure 68.500(i)(2) and adding Figure 68.500(i)(2)(i) as shown in Appendix A–27.

aa. By adding Figure 68.500(i)(2)(ii) as shown in Appendix A–28.

ab. By adding keyed plug specification notes for Figures 68.500(i)(2)(i) and 68.500(i)(2)(ii) as shown in Appendix A–29.

ac. By removing Figure 68.500(i)(3) and adding Figure 68.500(i)(3)(i) as shown in Appendix A–30.

ad. By adding contact specification notes for Figure 68.500(i)(3)(i) as shown in Appendix A–31.

ae. By removing Figure 68.500(i)(4) and adding Figure 68.500(i)(4)(i) as shown in Appendix A–32.

af. By removing Figure 68.500(i)(5) and adding Figure 68.500(i)(5)(i) as shown in Appendix A–33.

ag. By removing Figure 68.500(j)(2) and adding Figure 68.500(j)(2)(i) as shown in Appendix A–34.

ah. By adding jack specification notes for Figure 68.500(j)(2)(i) as shown in Appendixes A–35 and A–36.

The amended, added and revised portions of § 68.500 read as follows:

Appendix A–1

Subpart F—Connectors

§ 68.500 Specifications.

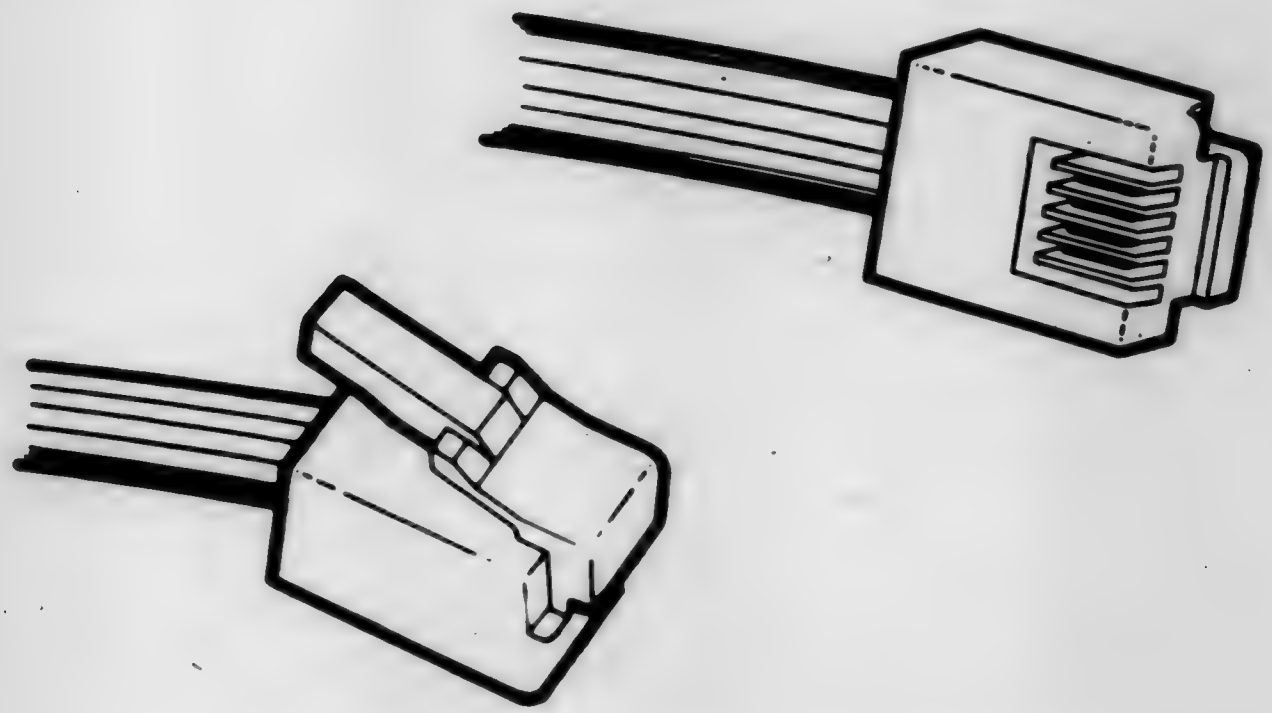
General. The plugs and jacks described in this section represent the standard connectors to be used for connections to the telephone network. The plug and jack designs shown are representative of generic types, and should not be interpreted as the only designs that may be used. Design innovation and improvement is expected; but for interchangeability to be maintained, alternative designs (the "or equivalent" permitted in Section 68.104) must be compatible with the plugs and jacks shown. The interface dimensions between mating plugs and jacks must be maintained. Hardware used to mount, protect, and enclose standard jacks is not described. The only requirement on connecting blocks, housings, dust covers, outdoor boxes, and the like that contain standard network jacks is that they accept standard plugs with cordage. For special purpose applications, plugs may be made longer than shown or adapted for direct use on equipment or apparatus without cordage. The sliding modular plug used on the back of many modular wall telephone sets is an example of such a special purpose application. It is the responsibility of the designers and manufacturers of communication equipment who use such plugs to assure that they are compatible with the hardware used to mount standard jacks with which they plan to interface.

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VOL 50 ISS 127 JL 2 1985 UMI

APPENDIX A-2

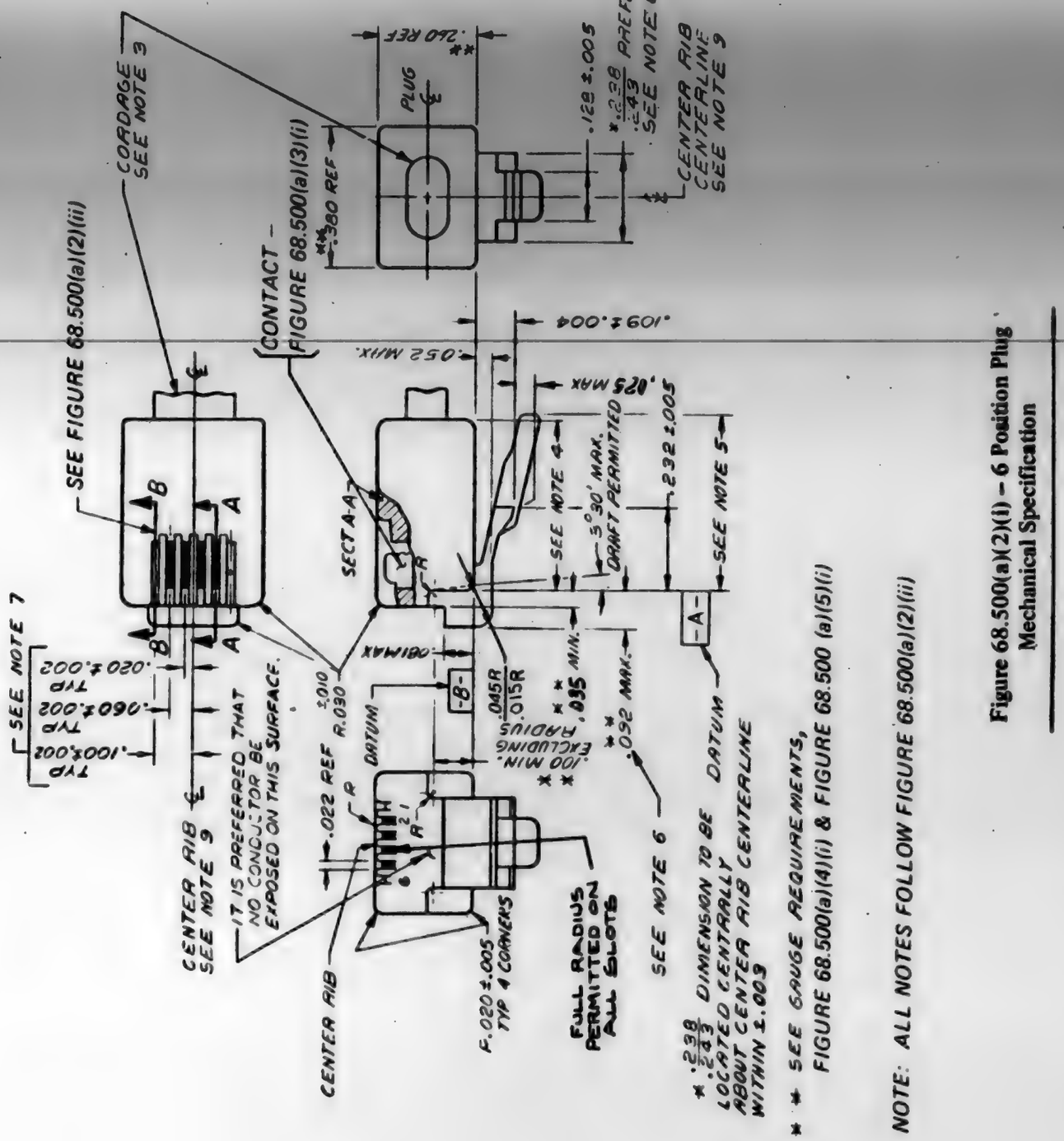
(a) Miniature 6-Position Plug:



(Note: This plug is depicted equipped with 4 contacts; it may be fabricated with its full 6 contact capability.)

Figure 68.500(a)(1)(i)–View

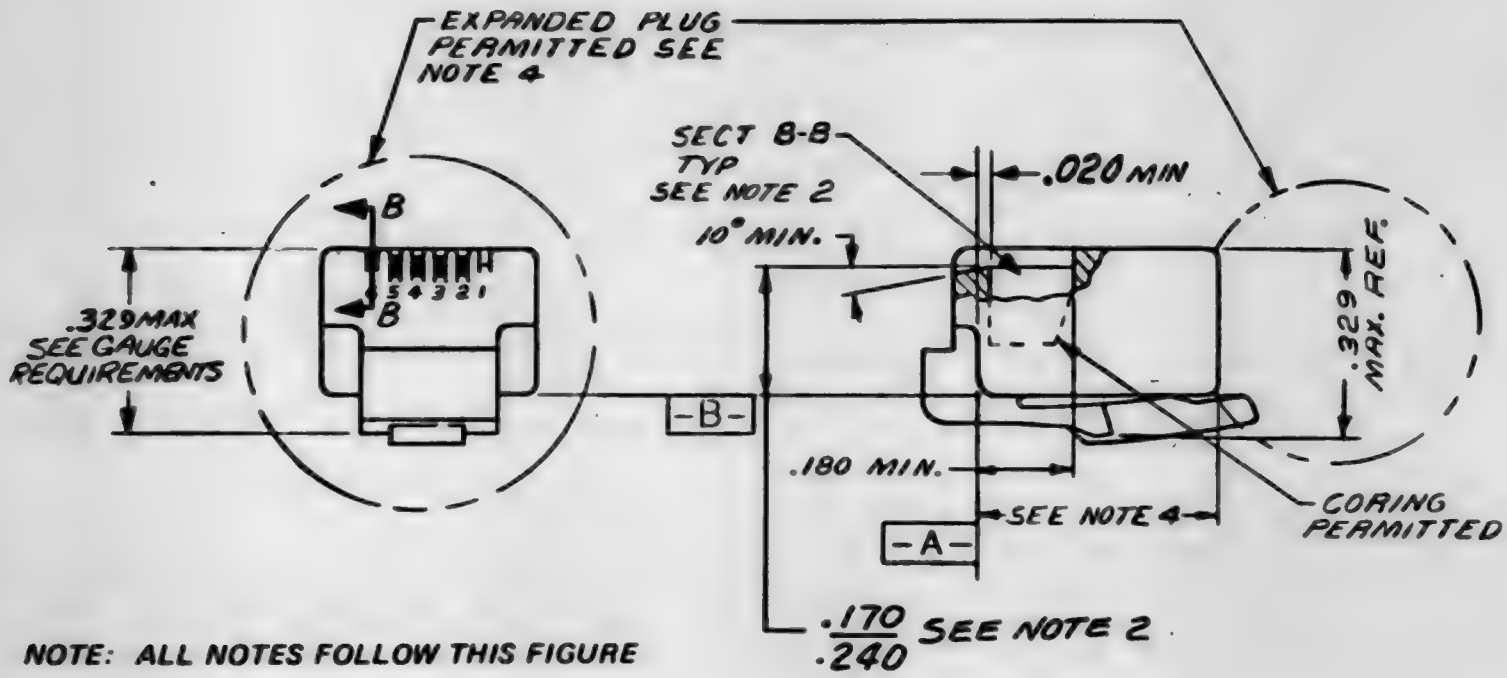
APPENDIX A-3



NOTE: ALL NOTES FOLLOW FIGURE 68.500(a)(2)(iii)

Figure 68.500(a)(2)(i) – 6 Position Plug
Mechanical Specification

APPENDIX A-4



NOTE: ALL NOTES FOLLOW THIS FIGURE

Figure 68.500(a)(2)(ii) – 6 Position Plug Mechanical Specification (Continued)

APPENDIX A-5

(a) 6-Position Plug, Mechanical Specifications (continued)

Notes: (Notes apply to Figures 68.500(a)(2)(i) & 68.500(a)(2)(ii)

1. All plugs must be capable of meeting the requirements of the plug go and no-go gauges.

2. Section BB applies to any jack contact receiving slot which does not contain a plug contact.

3. The preferred major cordage cross section is .100 inch max. thick by .200 inch max. wide, with rounded corners. It should exit the plug on the plug centerline. Other cordage configurations are permitted but may inhibit the special features of some network jack enclosures.

4. The standard plug length is .460 inch max. Plugs may be made longer than standard or adapted for direct use on special cords, adapters without cordage, and on apparatus or equipment subject to the limitations described in the Section 68.500 introductory paragraphs. Plugs longer than standard may inhibit the special features of some network jack enclosures.

5. A .474 inch minimum tab length is required. It is preferred that a maximum tab length be no longer than .520 inch. Longer tabs may be used with the same limitations as described in Note 4.

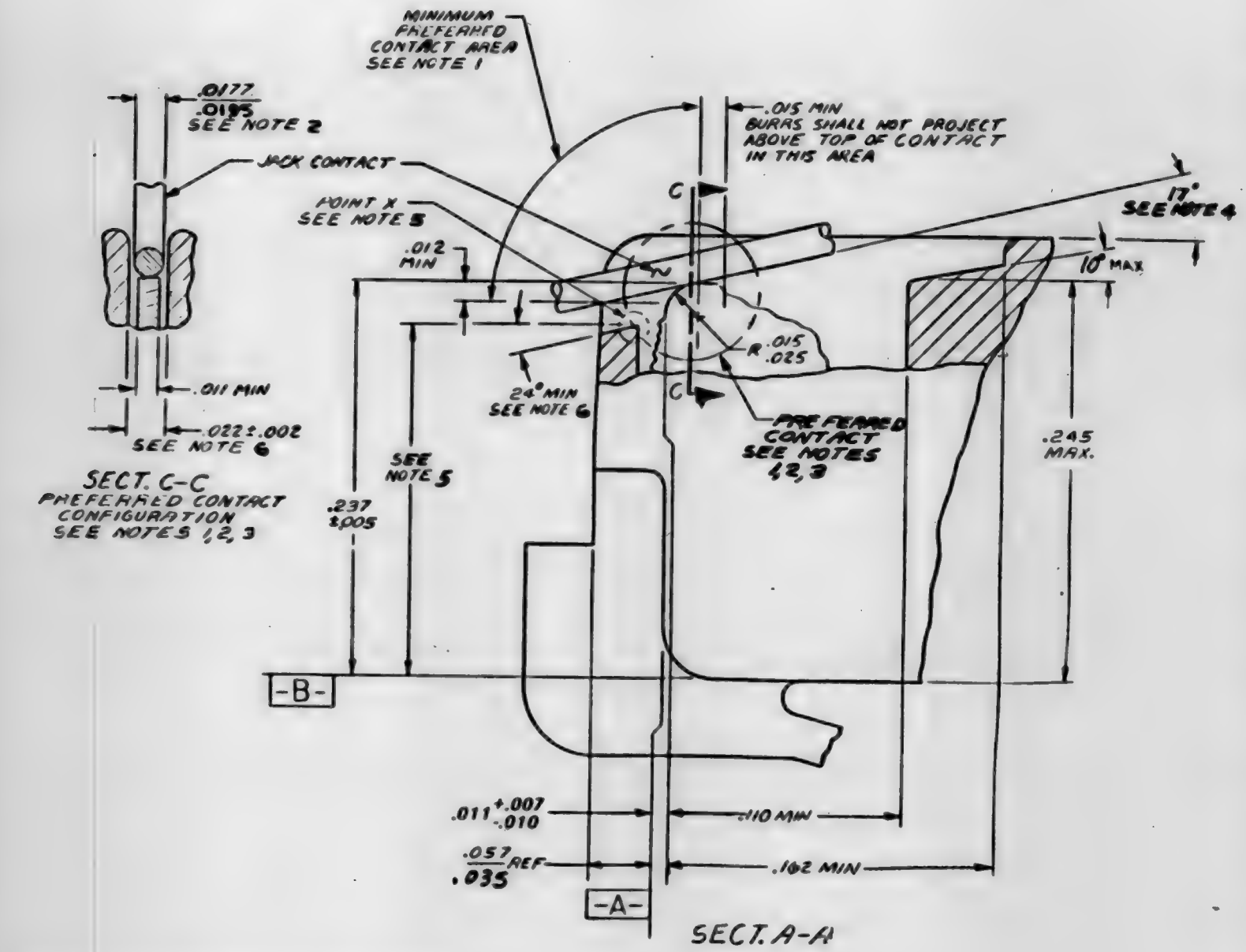
6. To obtain maximum plug guidance when 6-position plugs are inserted in 8-position jacks, it is desirable to extend the front plug nose to the .092 inch maximum.

7. These dimensions apply to the location of jack contact receiving slots. It is desirable that plug contacts be centered axially in these slots, but centering is not required.

8. The .238/.243 dimension is perferred to obtain maximum plug guidance in jacks with more than 6 conductors. A tolerance range of .233/.243 is permitted, but may create targeting problems in 8-position jacks.

9. The center rib centerline shall be coincident with the plug width (.380 ref.) centerline within ± .003 inch.

APPENDIX A-6



NOTE: ALL NOTES FOLLOW THIS FIGURE

NOTE: THE 8 POSITION PLUG/JACK CONTACT SPECIFICATION IS IDENTICAL

Figure 68.500(a)(3)(i) – 6 Position Plug Plug/Jack Contact Specification

APPENDIX A-7

(a) 6-Position Plug/Jack Contact Specification (continued)

Notes: (Notes apply to Figure 68.500(a)(3)(i))

1. The plug/jack contact interface should be hard gold to hard gold and should have a minimum gold thickness of 0.000050 inch on each side of the interface. The minimum contact force should be 100 grams. Any non-gold contact material must be compatible with gold and provide equivalent contact performance. A smooth, burr-free surface is required at the interface in the area shown.

2. The jack contact design is based upon .018 inch spring temper phospher bronze round wire in the modular plug blade and jack contact interface. Other contact configurations, that provide contact performance equal to or better than the preferred configurations and do not cause damage to the plug or jack are permitted. The preferred jack contact width is .0177/.0195 inches. Deviations from the preferred jack contact width are permitted for round contacts as well as noncircular cross sectional shapes but they must be compatible with existing plug configurations. The requirements of Note 1 apply to all possible contact areas.

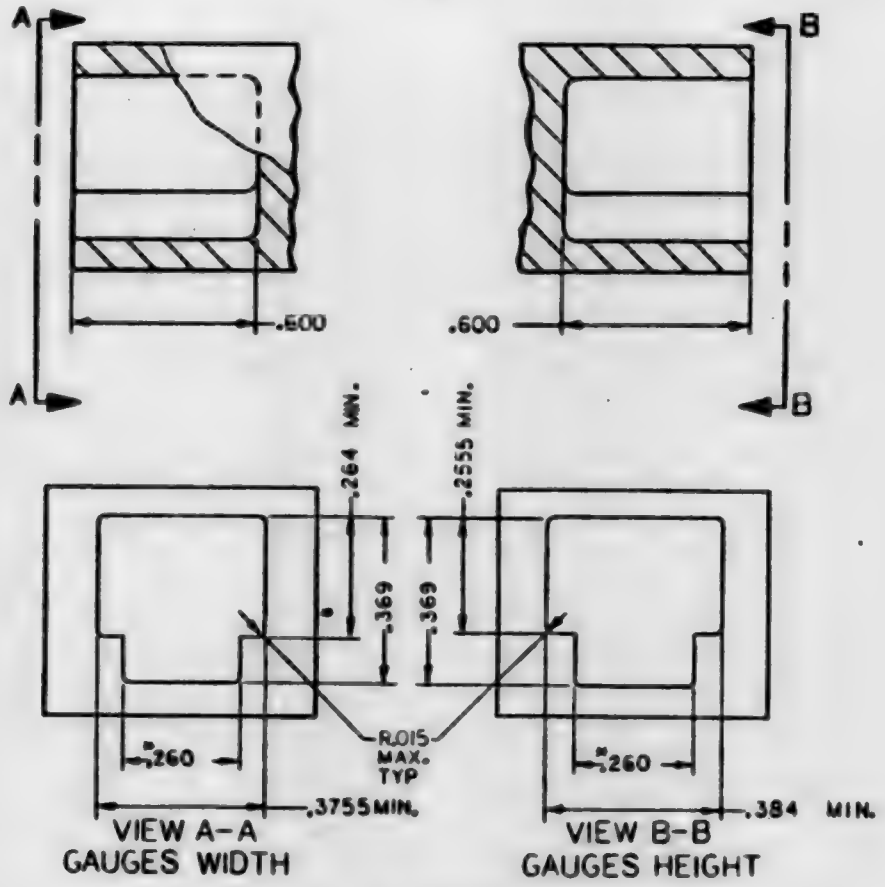
3. The configuration of the plug contact and the front plastic of the plug should prevent jack contacts from being damaged during plug insertion into jacks.

4. This is the suggested nominal contact angle between plugs and jacks with the plug latched into the jack. If this angle becomes greater than 24 degrees loss of electrical contact may occur between the plug and jack. If the nominal contact angle becomes less than 13 degrees, interference between jack contacts and the internal plastic in the plug may occur.

5. To avoid loss of electrical contact, the preferred dimension from datum B to the highest point "x" should be .200 inch max. A dimension greater than .211 inch may result in loss of electrical contact between plugs and jacks. The .211 inch max. shall be considered an absolute maximum.

6. The 24 degree min. angle applies only to plugs with front plastic walls higher than .190 inches.

APPENDIX A-8

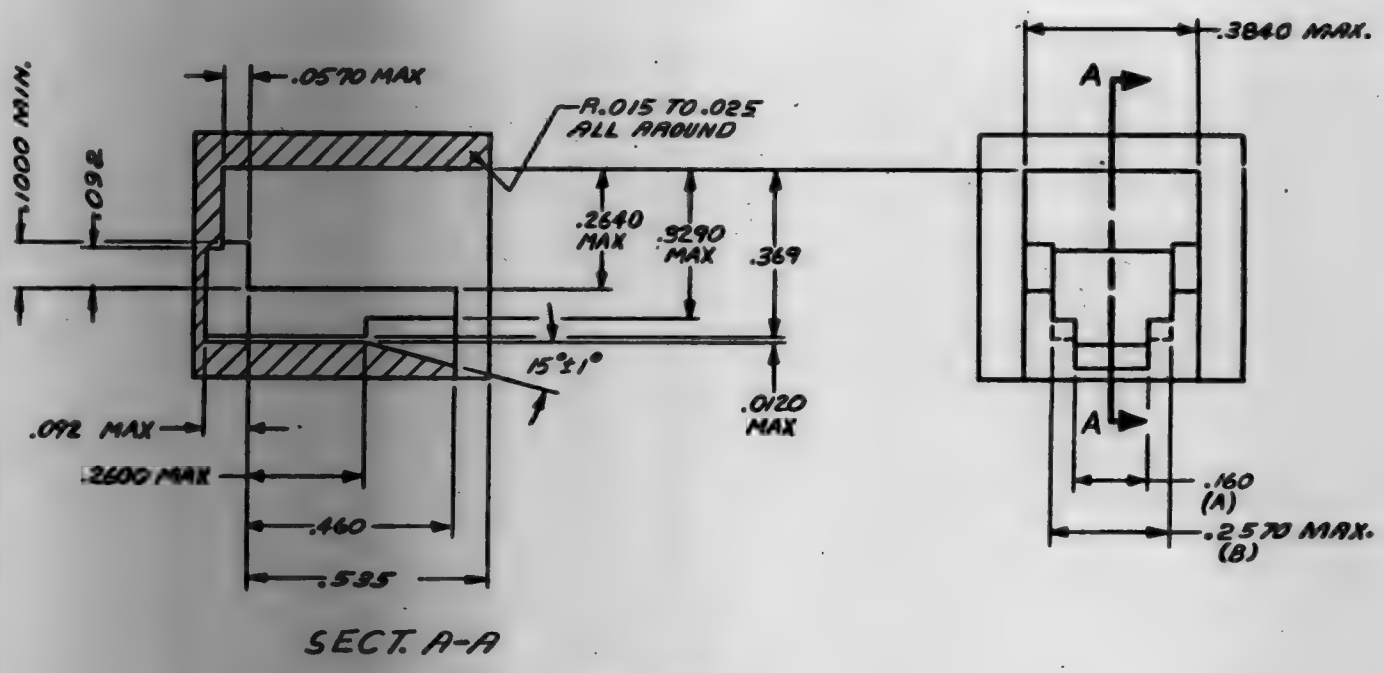


NO – GO GAUGE

1. The plug shall not be capable of entering the gauge more than .010 inch beyond Datum-A-(see figure 68.500 (a)(2)(i)) with 2.0 pounds insertion force.
2. Non-toleranced dimensions given to three places shall be within ±.002 inch.
3. *.260 Dimension to be centrally located with respect to .384 minimum and .3755 minimum within ±.002 inch.

Figure 68.500(a)(4)(i) – 6 Position Plug Minimum Plug Size

APPENDIX A-9



SECT. A-A

GO GAUGE

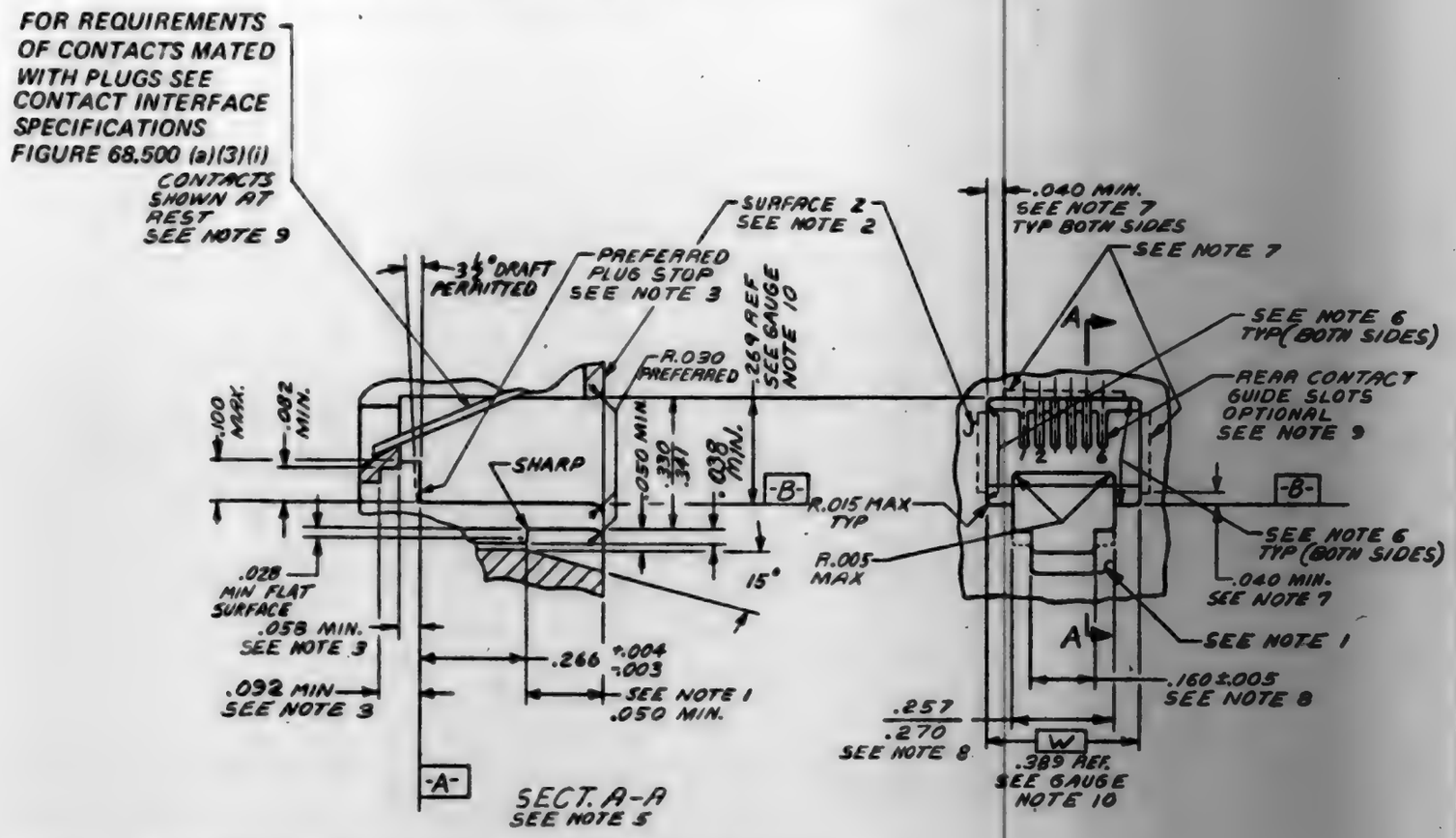
Notes:

1. The plug shall be capable of insertion and latching into the gauge with 5 pounds or less insertion force. Plug latching bar shall be depressed so as not to interfere with the plug entry. After insertion and latching, plug shall be capable of removal, with the latch depressed, with a removal force of 10 pounds or less applied at an advantageous angle.
2. Dimensions given to three decimal places shall be within ±.002 inch.
3. Dimensions (A) and (B) to be centrally located with respect to .3840 max. jack opening width within ±.001 inch.
4. Do not scale drawings for external configuration.

Figure 68.500(a)(5)(i) – 6 Position Plug
Maximum Plug Size

(b) Miniature 6-Position Jack:

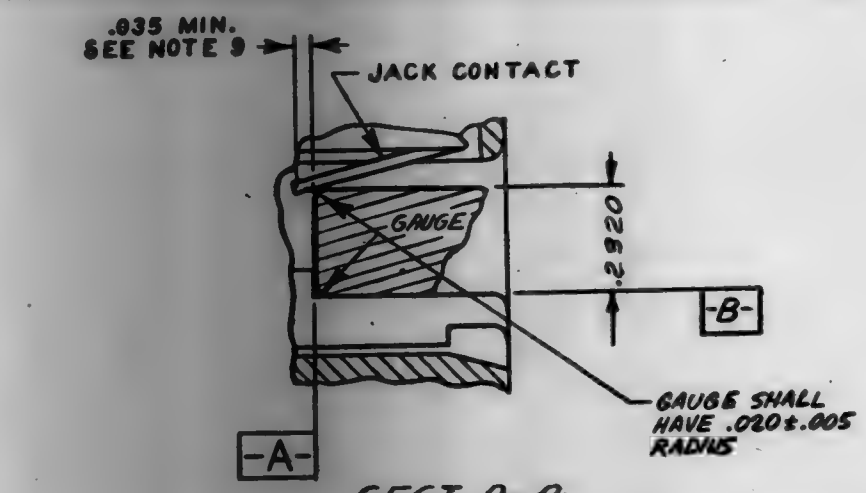
(Note: This jack is depicted equipped with 4 contacts; it may be fabricated with its full 6 contact capacity.)



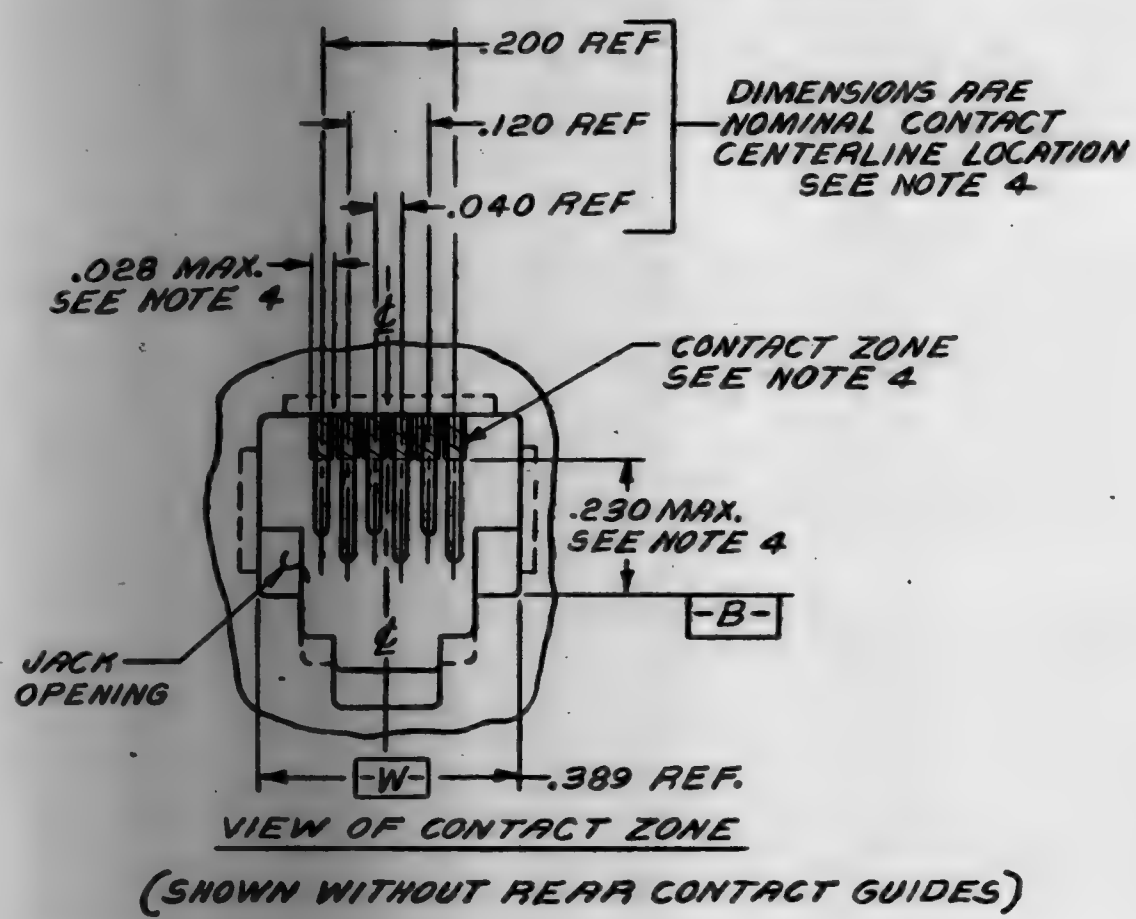
NOTE: ALL NOTES FOLLOW FIGURE 68.500 (b)(3)(i) UNLESS SPECIFIED.

Figure 68.500(b)(2)(i) – 6 Position Jack Mechanical Specification

APPENDIX A-11



SECT. A-A
(SHOWN WITHOUT REAR CONTACT GUIDES)



VIEW OF CONTACT ZONE
(SHOWN WITHOUT REAR CONTACT GUIDES)

NOTE: ALL NOTES FOLLOW THIS FIGURE

Figure 68.500(b)(3)(i) — 6 Position Jack Mechanical Specifications (Continued)

APPENDIX A-12

(b) 6-Position Jack, Mechanical Specifications (continued)

Notes: (Notes apply to Figures 68.500(b)(2)(i) & 68.500(b)(3)(i))

1. Front surface projections beyond the .050 min shall be configured so as not to prevent finger access to the plug release catch (Reference Figure 68.500(a)(2)(i), 6 - Position Plug, Mechanical Specifications). A catch length greater than .050 is beneficial in providing greater breakout strength.

2. Surface Z need not be planar or conincident with the surface under the plug release catch. Surface Z projections must not prevent insertion, latching, and unlatching of the standard 6-position plug described in Section 68.500(a).

3. The preferred plug stop surface is indicated. If some other internal feature is used as a plug stop, it must be located so that the axial movement of a latched plug is no greater than 0.045 inch.

4. To prevent mistargeting between the plug and jack contacts, the jack contacts should be completely contained in their individual contact zones, (.028 inch max wide), where they extend into the jack openings. There is no location requirement for jack contacts below these zones (.230 inch max), but adequate contact separation must be maintained to prevent electrical breakdown. These shaded contact zones should be centrally located, (include all locating tolerances), about the jack opening width .389 Ref, (Datum -W-). Contacts located outside of these zones may result in mistargeting between the jack and plug contacts.

5. All inside and outside corners in the plug cavity to be .015 inch radius max unless specified.

6. These surfaces shall have 0015' maximum draft.

7. Relief inside the dotted areas on 3 sides of the jack opening is permitted. The .269 Ref and .389 Ref Gauge Requirements must be maintained in each corner, (ref. 0.040 inch min), to assure proper plug/jack interface guidance. A .032 ± .005 relief on the top side, (opposite plug catch), is required on jacks in connecting blocks which mount and connect portable wall telephones so as to assure interface with the special purpose sliding modular plug used on many wall telephone sets.

APPENDIX A-13

(b) 6-Position Jack, Mechanical Specifications (continued)

NOTES: (continued)

8. 0.160 and .257/.270 inch dimensions to be centrally located to jack opening width -W- within ± 0.007 inch.

9. Minimum acceptable jack contact length. When contact guide slots are used, the contacts must always be contained inside the guide slots and the contacts must move freely in the slots so as not to restrain plug insertion or damage jack contacts.

10. Gauge Requirements:

Go: The jack shall be capable of accepting a 0.3840 x 0.2640 inch gauge and the gauge shall be capable of being removed with a maximum force of 2 pounds.

NO GO: The jack shall not accept either a 0.3940 x 0.254 inch horizontal width of opening gauge or a .2740 x .376 inch vertical height of opening gauge. However, if either gauge is accepted the force necessary to remove the gauge shall be minimum 3.0 ounces.

Removal forces do not include forces contributed by contact springs nor shall external forces be applied to the jack that will affect these removal forces.

Gauges shall have a 0.030 inch radius on the nose and a 0.015 inch radius on all edges with clearance provided for contacts.

(c) Miniature 8 - Position Plug, Unkeyed:

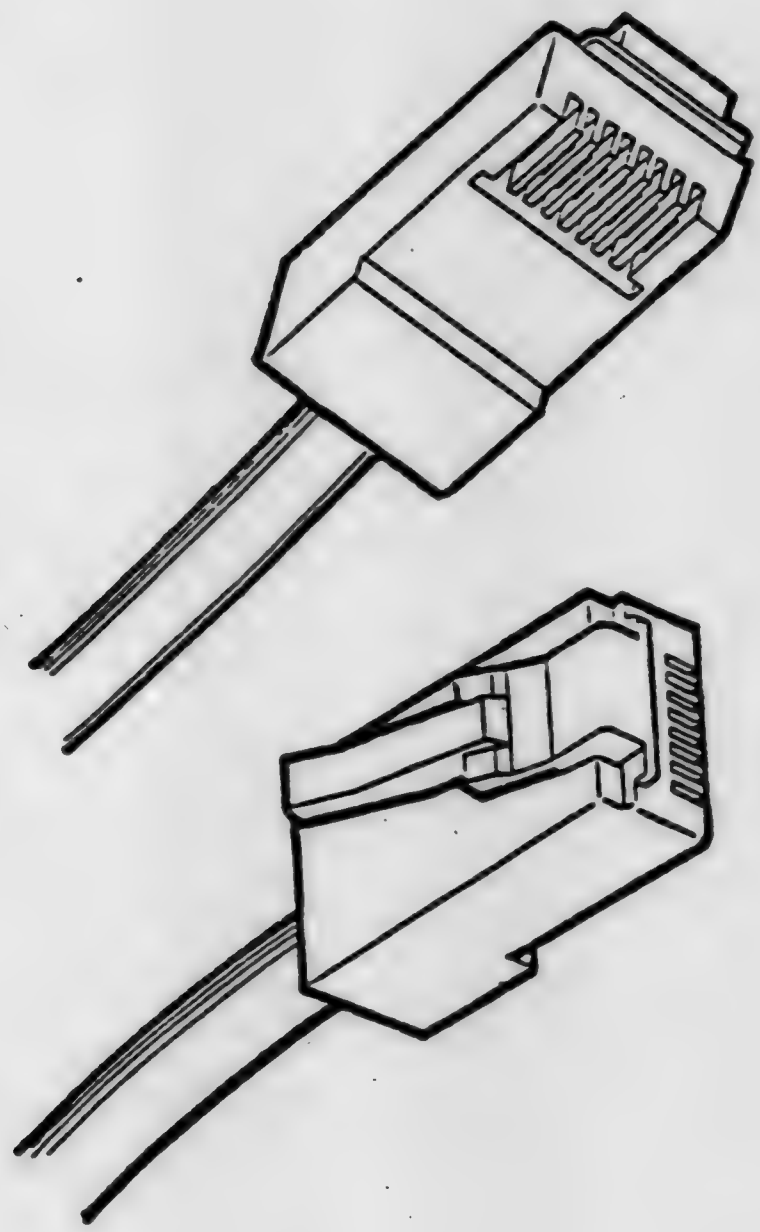
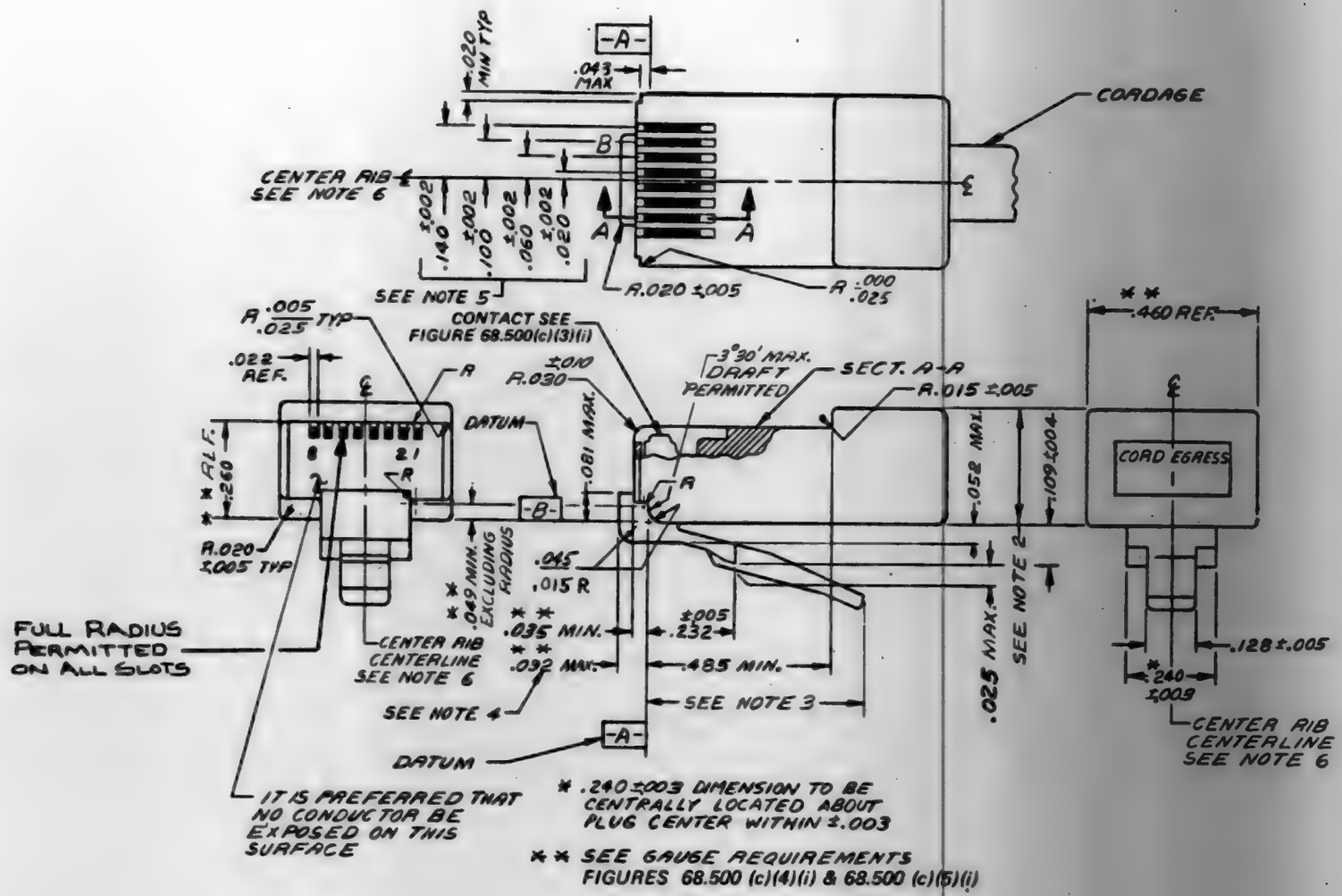


Figure 68.500(c)(1)(i) – View

VOL 50 ISS 127 JUL 2 1985 UMI

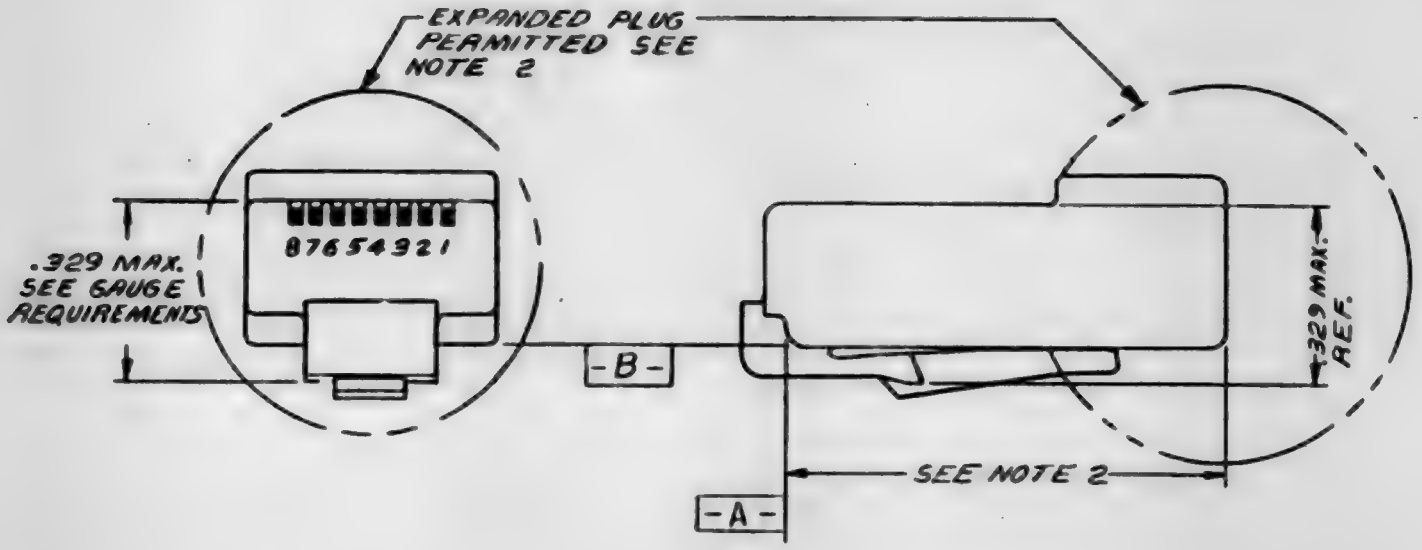
Note: This plug is depicted with its full 8 contact capacity. It may be fabricated with less than 8 contacts.



NOTE: ALL NOTES FOLLOW FIGURE 68.500 (c)(2)(ii)

Figure 68.500(c)(2)i–8 Position Unkeyed Plug, Mechanical Specification

APPENDIX A-16



NOTE: ALL NOTES FOLLOW THIS FIGURE

Figure 68.500(c)(2)(ii)–8 Position Unkeyed Plug, Mechanical Specification (Continued)

APPENDIX A-17

(c) 8-Position Unkeyed Plug, Mechanical Specification (continued)

Notes: (Notes apply to Figures 68.500(c)(2)(i) and 68.500(c)(2)(ii))

1. All plugs must be capable of meeting the requirements of the plug go and no-go gauges.

2. The standard plug height in the area shown is .315 inch maximum. The standard plug length is .910 inch maximum. Plugs may be made longer than standard or adapted for direct use on special cords, adapters without cordage, apparatus or equipment subject to the limitations described in the introductory paragraphs of 68.500. Plugs longer and/or higher than standard may inhibit the special features of some network jack enclosures.

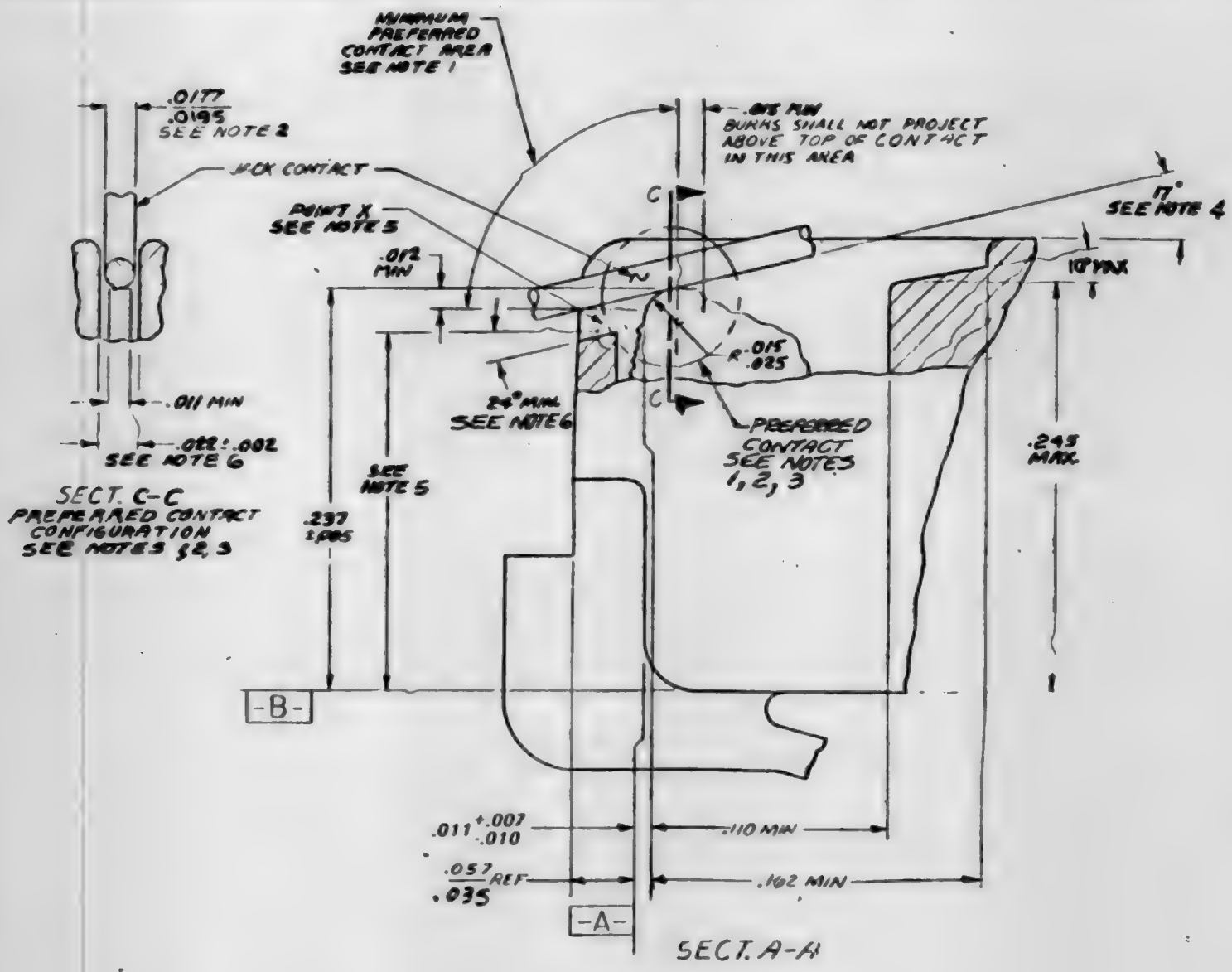
3. A .575 inch minimum tab length is required. It is preferred that a maximum tab length be no longer than .625 inch. Longer tabs may be used with the same limitations described in Note 2.

4. To obtain maximum plug guidance in jacks, it is desirable to extend the front plug nose to the .092 inch maximum.

5. These dimensions apply to the location of jack contact receiving slots. It is desirable that plug contacts be centered axially in these slots, but centering is not required.

6. The center rib centerline shall be coincident with the plug width (.460 ref.) centerline within ± .003 inch.

APPENDIX A-18



NOTE: ALL NOTES FOLLOW THIS FIGURE

NOTE: THE 6 POSITION PLUG/JACK CONTACT SPECIFICATION IS IDENTICAL

Figure 68.500(c)(3)(i)–8 Position Unkeyed Plug Plug/Jack Contact Specification

APPENDIX A-19

(c) 8-Position Plug/Jack Contact Specification (continued)

Notes: (Notes apply to Figure 68.500(c)(3)(i))

1. The plug/jack contact interface should be hard gold to hard gold and should have a minimum gold thickness of 0.000050 inch on each side of the interface. The minimum contact force should be 100 grams. Any non-gold contact material must be compatible with gold and provide equivalent contact performance. A smooth, burr-free surface is required at the interface in the area shown.

2. The jack contact design is based upon .018 inch spring temper phospher bronze round wire in the modular plug blade and jack contact interface. Other contact configurations that provide contact performance equal to or better than the preferred configurations and do not cause damage to the plug or jack are permitted. The preferred jack contact width is .0177/.0195 inches. Deviations from the preferred jack contact width are permitted for round contacts as well as noncircular cross sectional shapes but they must be compatible with existing plug configurations. The requirements of Note 1 apply to all possible contact areas.

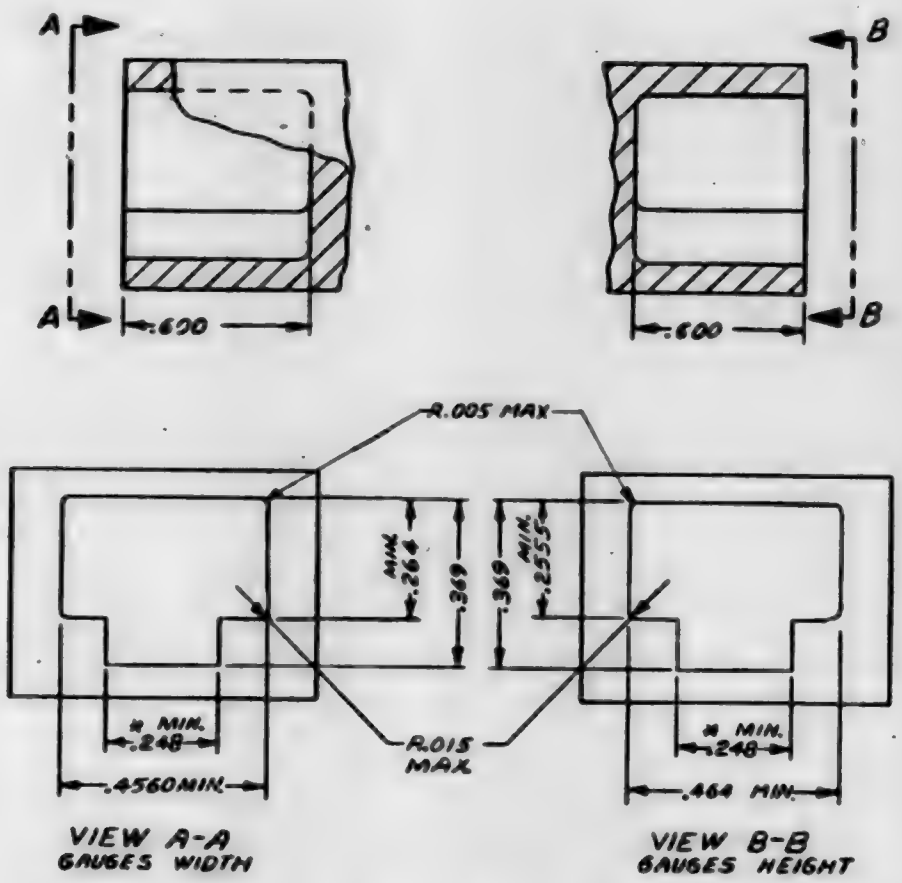
3. The configuration of the plug contact and the front plastic of the plug should prevent jack contacts from being damaged during plug insertion into jacks.

4. This is the suggested nominal contact angle betwen plugs and jacks with the plug latched into the jack. If this angle becomes greater than 24 degrees loss of electrical contact may occur between the plug and jack. If the nominal contact angle becomes less than 13 degrees, interference between jack contacts and the internal plastic in the plug may occur.

5. To avoid loss of electrical contact, the preferred dimension from datum B to the highest point "x" should be .200 inch max. A dimension greater than .211 inch may result in loss of electrical contact between plugs and jacks. The .211 inch max. shall be considered an absolute maximum.

6. The 24 degree min. angle applies only to plugs with front plastic walls higher than .190 inches.

APPENDIX A-20



NO – GO GAUGE

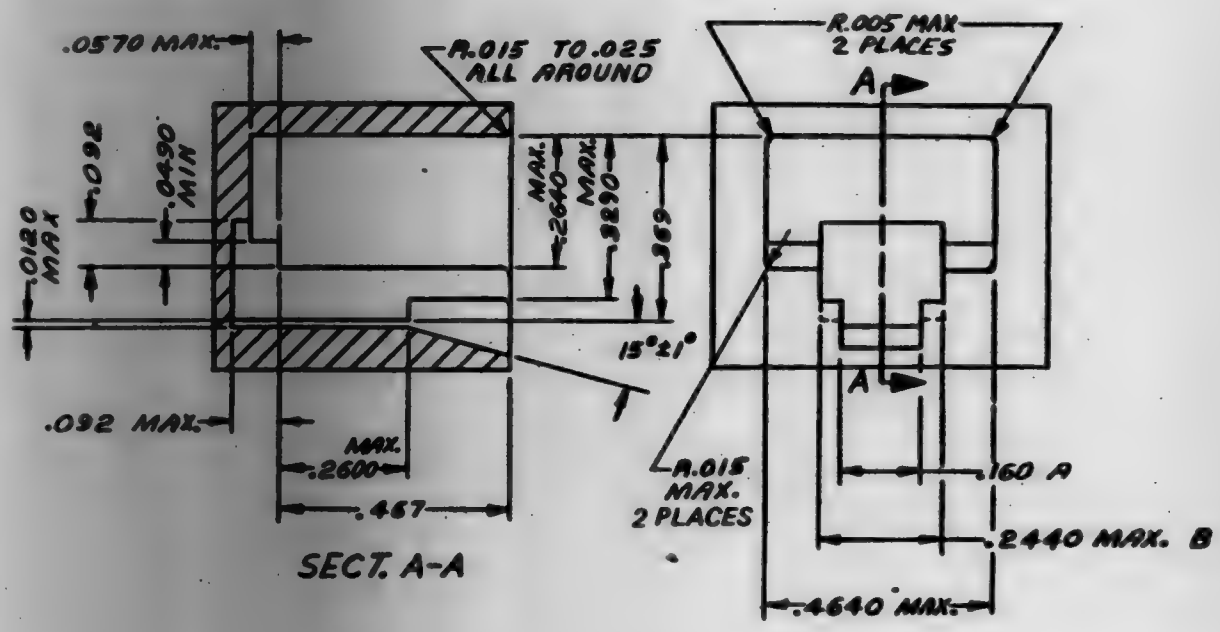
1. The plug shall not be capable of entering the gauge more than .070 inch beyond datum –A– (see Figure 68.500(c)(2)(i)) with 2.0 pounds insertion force.

2. Non-toleranced dimensions given to three places shall be within ± .002 inch.

3. * .248 dimension to be centrally located with respect to .464 minimum and .4560 minimum within ± .002 inch.

Figure 68.500(c)(4)(i)–8 Position Unkeyed Plug, Minimum Plug Size

APPENDIX A-21



GO GAUGE

Notes:

1. The plug shall be capable of insertion and latching into the gauge with 5 pounds or less insertion force. Plug latching bar shall be depressed so as not to interfere with the plug entry. After insertion and latching, plug shall be capable of removal, with the latch depressed, with a removal force of 10 pounds or less applied at an advantageous angle.

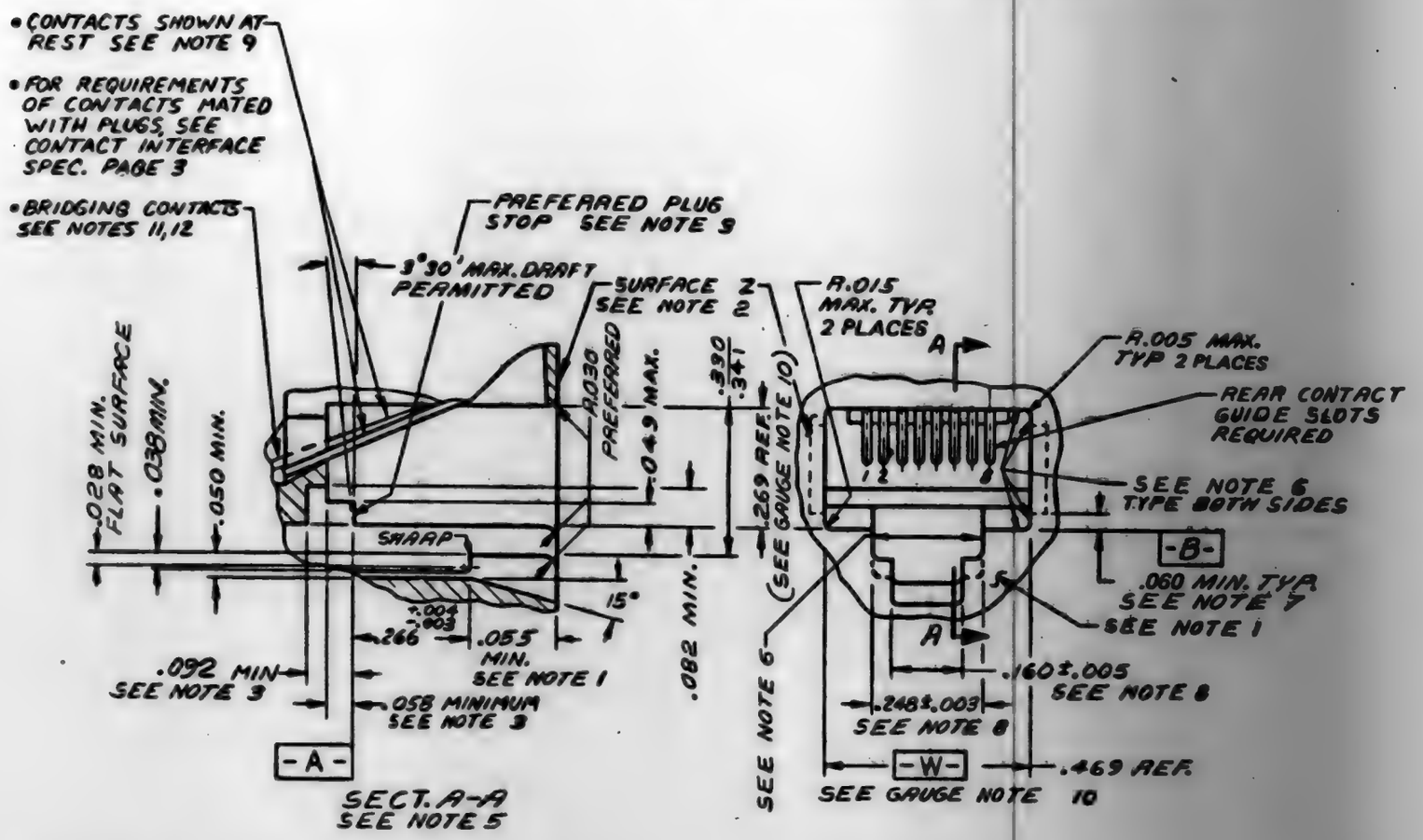
2. Dimensions given to three decimal places shall be within ± .002 inch.

3. Dimensions (A) and (B) to be centrally located with respect to .4640 max. jack opening width within ± .001 inch.

4. Do not scale drawings for external configuration.

Figure 68.500(c)(5)i–8 Position Unkeyed Plug, Maximum Plug Size

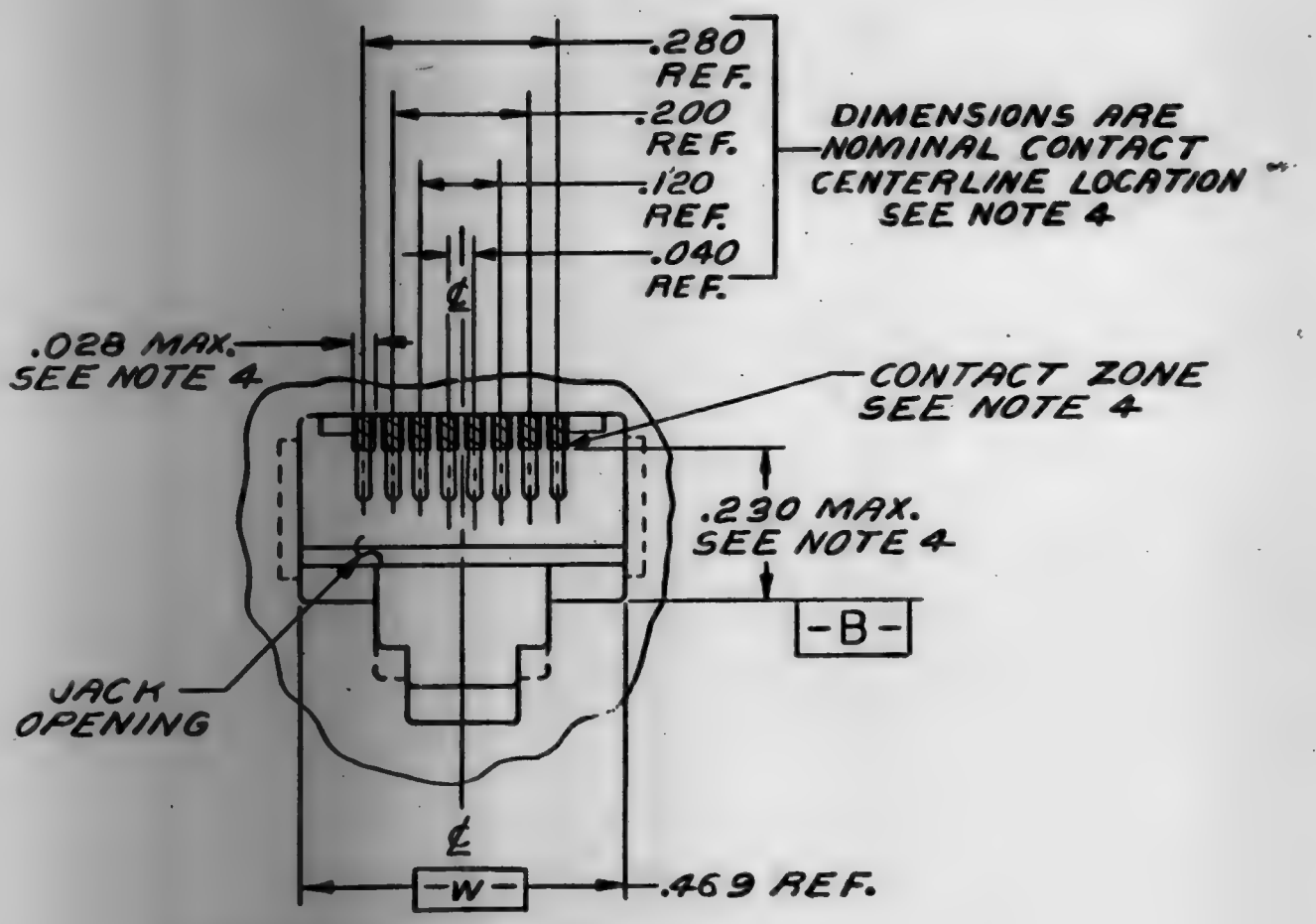
Note: This jack is depicted with 8 contacts. It may be fabricated with less than 8 contacts.



NOTE: ALL NOTES FOLLOW FIGURE 68.500(d)(3)(i)

Figure 68.500(d)(2)(i)–8 Position Series Jack, Mechanical Specification

APPENDIX A-23



VIEW OF CONTACT ZONE

NOTE: ALL NOTES FOLLOW THIS FIGURE

Figure 68.500(d)(3)(i)–8 Position Series Jack, Mechanical Specification (Continued)

APPENDIX A-24

(d) 8-Position Series Jack, Mechanical Specifications (continued)

Notes: (Notes apply to Figures 68.500(d)(2)(i) and 68.500(d)(3)(i))

1. Front surface projections beyond the .055 minimum shall be configured so as not to prevent finger access to the plug release catch (Reference Figure 68.500(a)(2)(i) and Figure 68.500(c)(2)(i), 6 & 8-Position Plug, Mechanical Specifications). A catch length greater than .055 is beneficial in providing for greater breakout strength and improved guidance when interfacing with a 6-position plug.

2. Surface Z need not be planar or coincident with the surface under the plug release catch. Surface Z projections must not prevent insertion, latching, and unlatching of the standard 8-position plug on Figure 68.500(c)(2)(i).

3. The preferred plug stop surface is indicated. If some other internal feature is used as a plug stop, it must be located so that the axial movement of a latched plug is no greater than 0.045-inch.

4. To prevent mistargeting between the plug and jack contacts, the jack contacts should be completely contained in their individual contact zones, (.028 inch max wide), where they extend into the jack openings. There is no location requirement for jack contacts below these zones (.230 inch max), but adequate contact separation must be maintained to prevent electrical breakdown. These shaded contact zones should be centrally located, (include all locating tolerances), about the jack opening width .469 Ref, (Datum -W-). Contacts located outside of these zones may result in mistargeting between the jack and plug contacts.

5. All inside and outside corners in the plug cavity to be .015 inch radius max unless specified.

6. These surfaces shall have $0^{o}15'$ maximum draft.

7. Relief inside the dotted areas on both sides of the jack opening is permitted. The .269 Ref and .469 Ref Gauge Requirements must be maintained in each of the corners indicated, (Ref. 0.060 inch min), to assure proper plug/jack interface guidance.

APPENDIX A-25

(d) 8-Position Series Jack, Mechanical Specifications (continued)

Notes: (continued)

8. 0.160- and 0.248-inch dimensions to be centrally located to jack opening width -W- within ± .005-inch.

9. The contact lengths shall be such that the contacts will always be contained inside the guide slots, and the contacts must move freely in the slots so as not to restrain plug insertion or damage jack contacts.

10. Gauge Requirements:

GO: The jack shall be capable of accepting a 0.4640-inch X 0.2640-inch gauge and the gauge shall be capable of being removed with a maximum force of 2.0 pounds.

NO GO: The jack shall not accept either a 0.4740-inch X 0.254-inch horizontal width of opening gauge or a 0.2740-inch X 0.456-inch vertical height of opening gauge. However, if the gauge is accepted, the force necessary to remove the gauge shall be minimum of 3.0 ounces.

Removal forces do not include forces contributed by contact springs nor shall external forces be applied to the jack that will affect these removal forces.

Gauges shall have a 0.030-inch radius on the nose and a 0.015-inch radius on all edges with clearance provided for contacts.

11. With no plug inserted, conductors 1 and 4 are bridged as well as conductors 5 and 8. With a miniature 8-position plug inserted into the jack, the bridge connectors are broken and a series connection can be made in both sides of the line. With a 6-position plug inserted, the bridged connections remain unbroken.

12. The jack contact/bridging interface should be hard gold to hard gold and should have a minimum gold thickness of 0.000050 inch on each side of the interface. The minimum contact bridging force should be 30 grams. Any non-gold contact material must be compatible with gold and provide equivalent contact performance.

APPENDIX A-26

(c) Miniature 8–position plug, keyed:

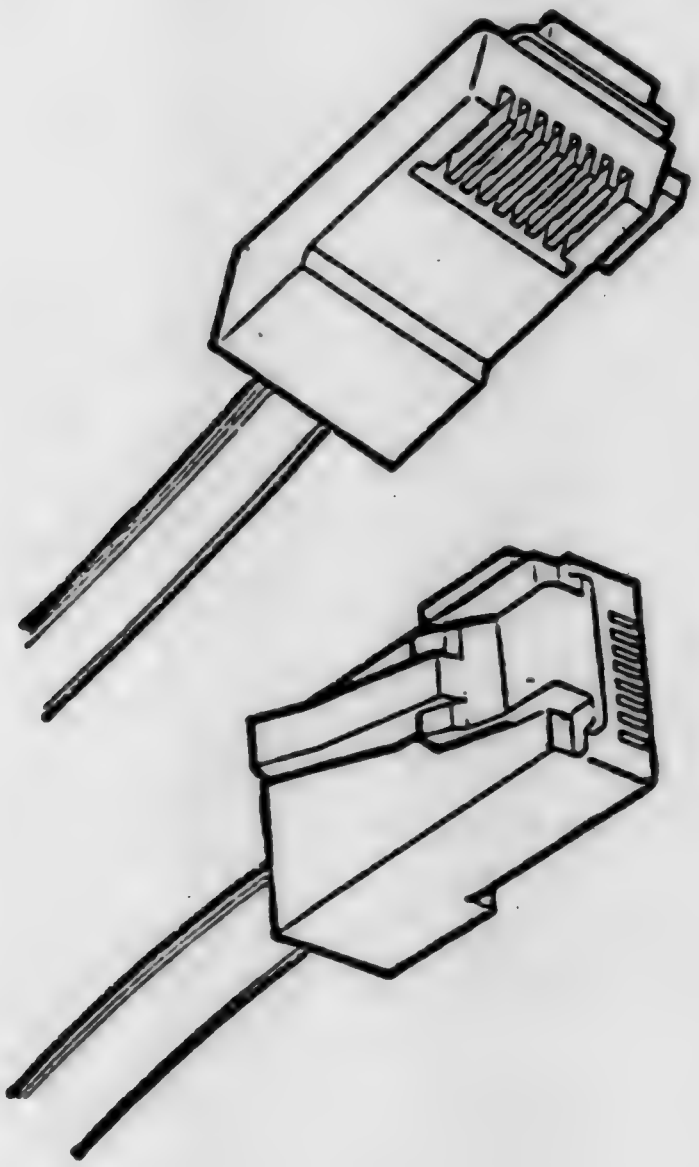
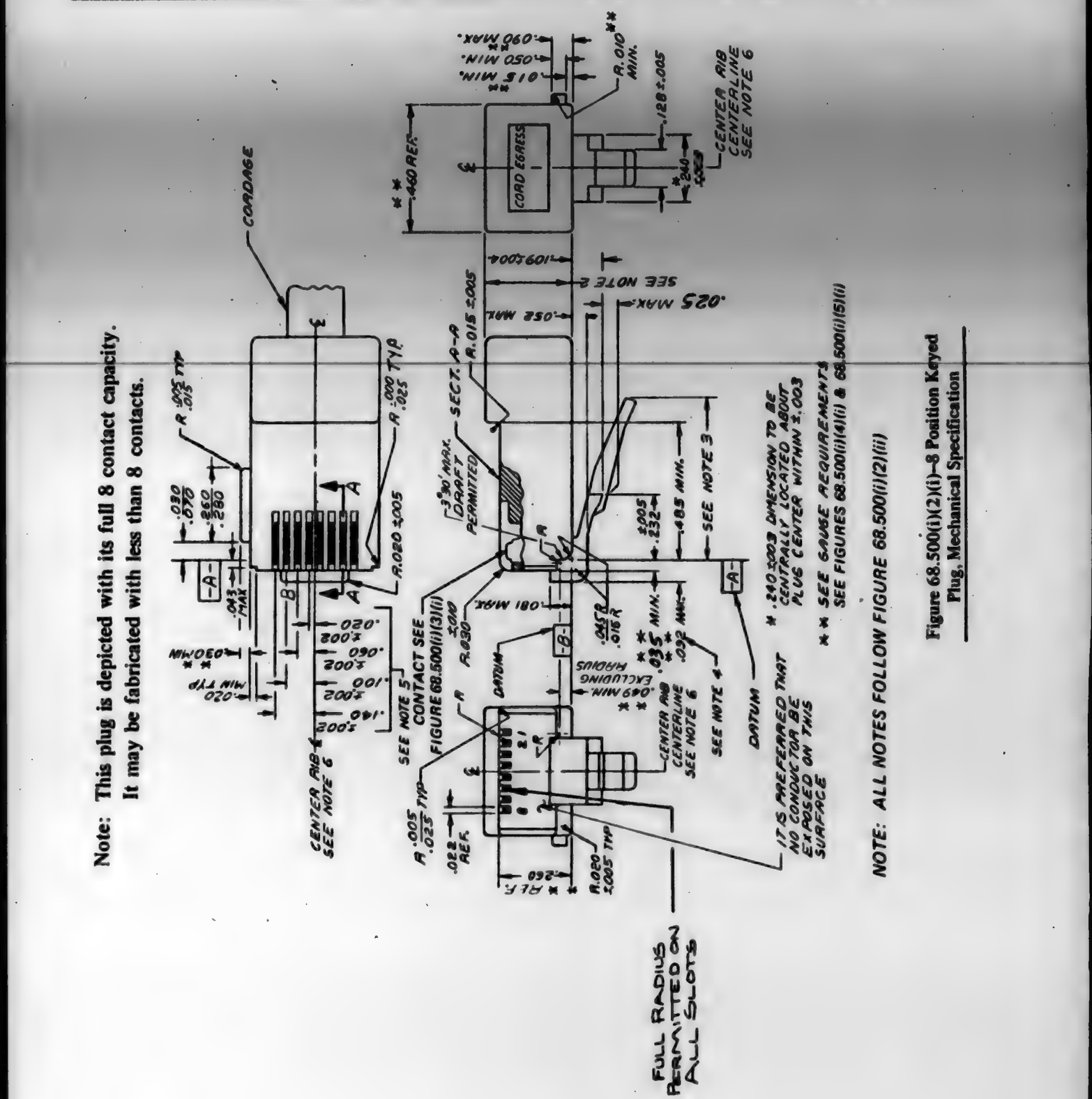


Figure 68.500(i)(1)(i)–View

APPENDIX A-27

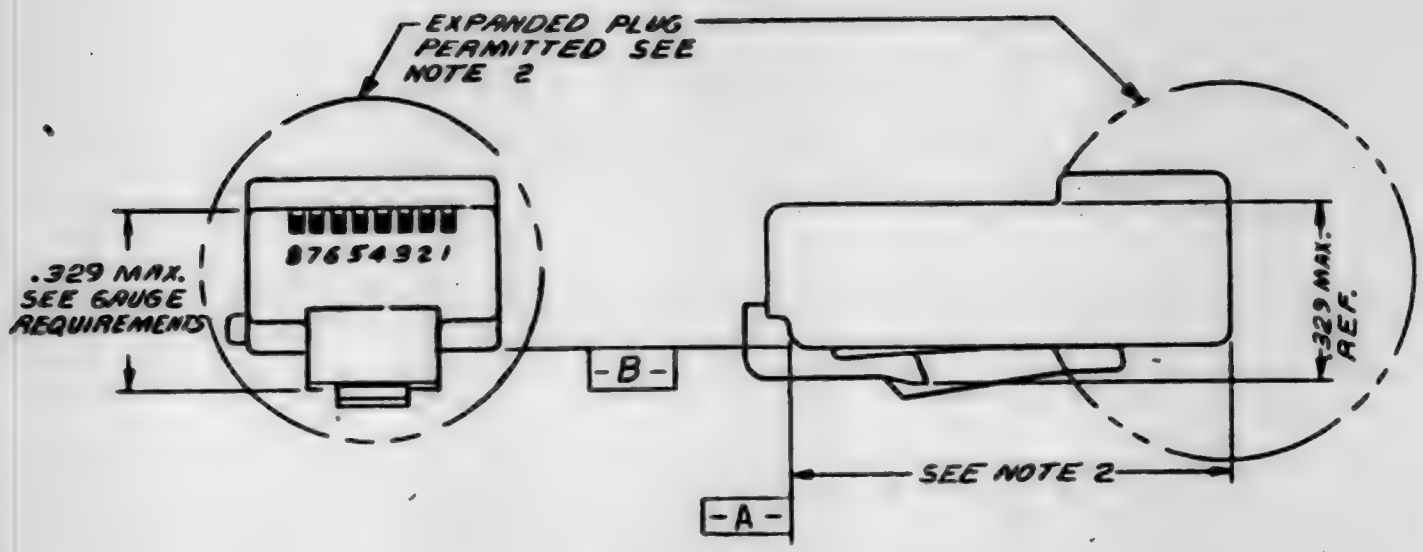


Note: This plug is depicted with its full 8 contact capacity.
It may be fabricated with less than 8 contacts.

NOTE: ALL NOTES FOLLOW FIGURE 68.500(i)(2)(iii)

Figure 68.500(i)(2)(i)–8 Position Keyed
Plug, Mechanical Specification

APPENDIX A-28



NOTE: ALL NOTES FOLLOW THIS FIGURE

Figure 68.500(i)(2)(ii)–8 Position Keyed Plug, Mechanical Specification (Continued)

APPENDIX A-29

(i) 8-Position Keyed Plug, Mechanical Specification (continued)

Notes: (Notes apply to Figures 68.500(i)(2)(i) and 68.500(i)(2)(ii))

1. All plugs must be capable of meeting the requirements of the plug go and no-go gauges.

2. The standard plug height in the area shown is .315 inch maximum. The standard plug length is .910 inch maximum. Plugs may be made longer than standard or adapted for direct use on special cords, adapters without cordage, apparatus or equipment subject to the limitations described in the introductory paragraph of 68.500. Plugs longer and/or higher than standard may inhibit the special features of some network jack enclosures.

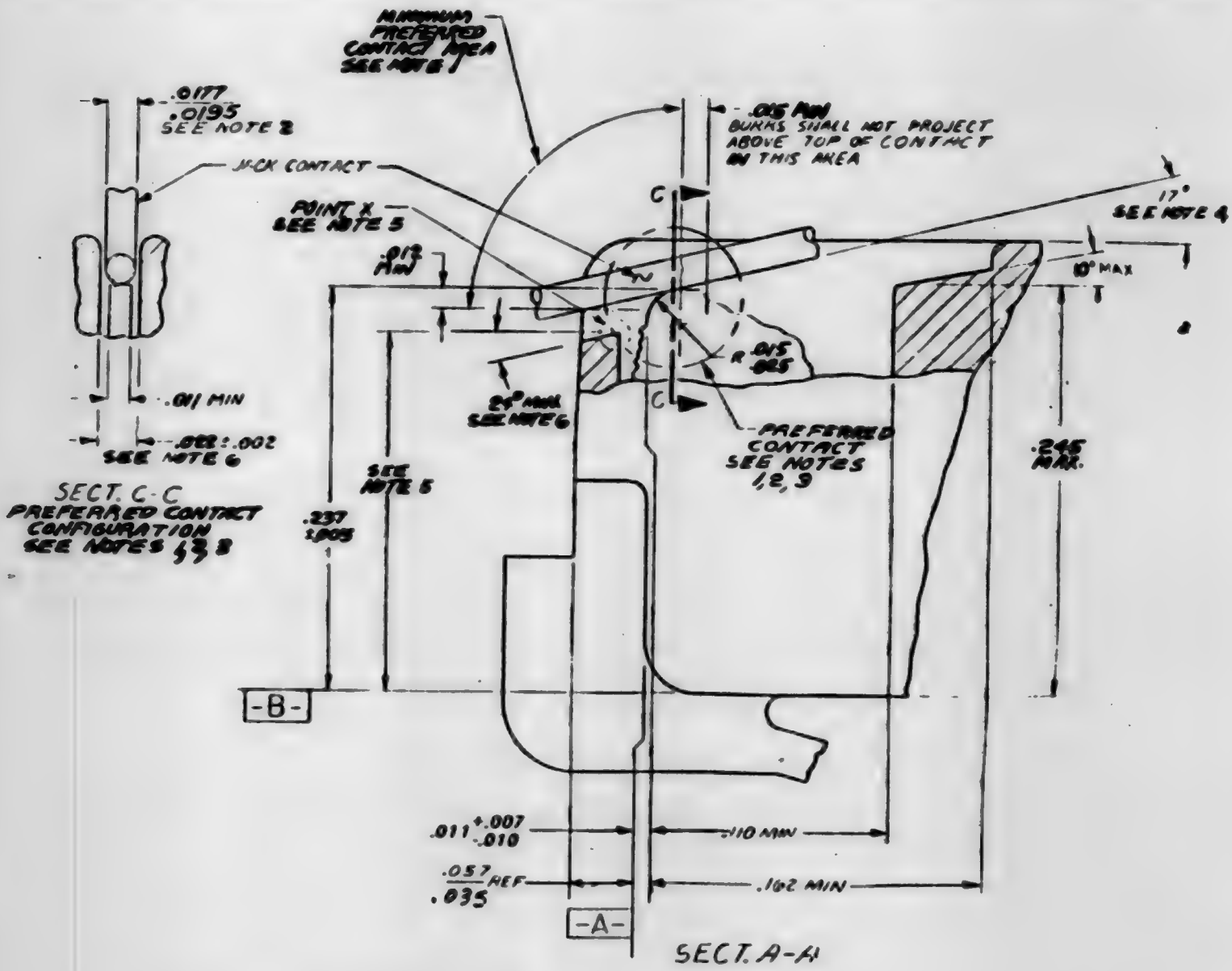
3. A .575 inch minimum tab length is required. It is preferred that a maximum tab length be no longer than .625 inch. Longer tabs may be used with the same limitations described in Note 2.

4. To obtain maximum plug guidance in jacks, it is desirable to extend the front plug nose to the .092 inch maximum.

5. These dimensions apply to the location of jack contact receiving slots. It is desirable that plug contacts be centered axially in these slots, but centering is not required.

6. The center rib centerline shall be coincident with the plug width (.460 ref.) center line within ± .003 inch.

APPENDIX A-30



NOTE: ALL NOTES FOLLOW THIS FIGURE

NOTE: THE 6 POSITION PLUG/JACK CONTACT SPECIFICATION IS IDENTICAL

Figure 68.500(i)(3)(i)–8 Position Keyed Plug, Plug/Jack Contact Specification

APPENDIX A-31

(i) 8-Position Plug/Jack Contact Specification (continued)

Notes: (Notes apply to Figure 68.500(i)(3)(i))

1. The plug/jack contact interface should be hard gold to hard gold and should have a minimum gold thickness of 0.000050 inch on each side of the interface. The minimum contact force should be 100 grams. Any non-gold contact material must be compatible with gold and provide equivalent contact performance. A smooth, burr-free surface is required at the interface in the area shown.

2. The jack contact design is based upon .018 inch spring temper phospher bronze round wire in the modular plug blade and jack contact interface. Other contact configurations that provide contact performance equal to or better than the preferred configurations and do not cause damage to the plug or jack are permitted. The preferred jack contact width is .0177/.0195 inches. Deviations from the preferred jack contact width are permitted for round contacts as well as noncircular cross sectional shapes but they must be compatible with existing plug configurations. The requirements of Note 1 apply to all possible contact areas.

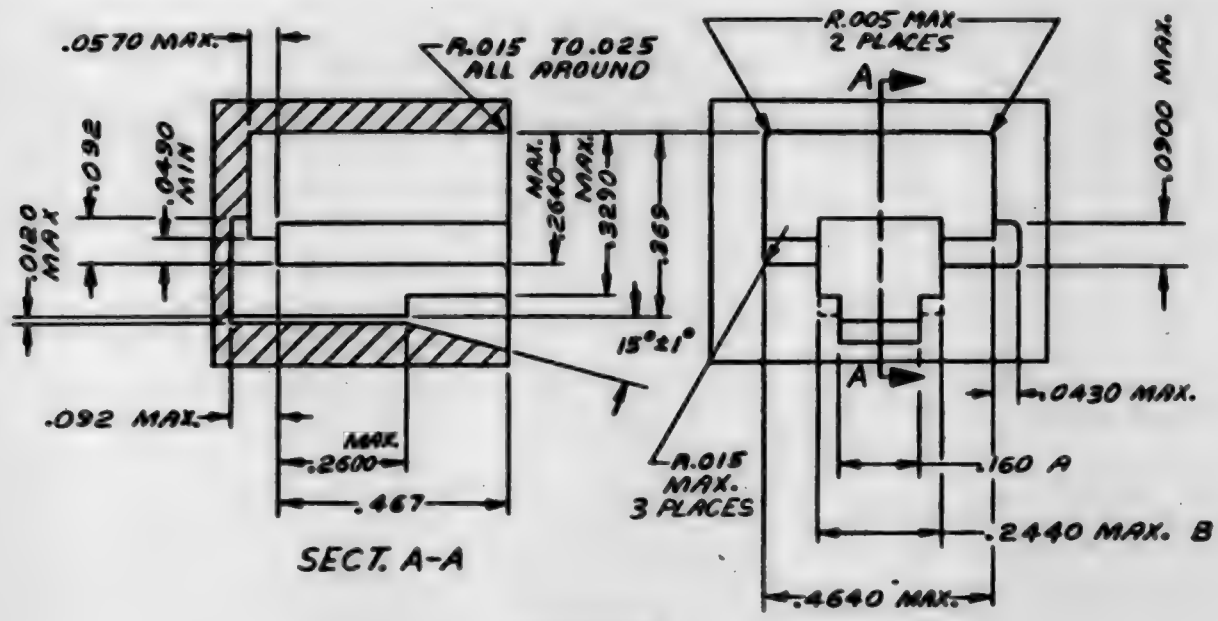
3. The configuration of the plug contact and the front plastic of the plug should prevent jack contacts from being damaged during plug insertion into jacks.

4. This is the suggested nominal contact angle betwen plugs and jacks with the plug latched into the jack. If this angle becomes greater than 24 degrees loss of electrical contact may occur between the plug and jack. If the nominal contact angle becomes less than 13 degrees, interference between jack contacts and the internal plastic in the plug may occur.

5. To avoid loss of electrical contact, the preferred dimension from datum B to the highest point "x" should be .200 inch max. A dimension greater than .211 inch may result in loss of electrical contact between plugs and jacks. The .211 inch max. shall be considered an absolute maximum.

6. The 24 degree min. angle applies only to plugs with front plastic walls higher than .190 inches.

APPENDIX A-32



GO GAUGE

Notes:

1. The plug shall be capable of insertion and latching into the gauge with 5 pounds or less insertion force. Plug latching bar shall be depressed so as not to interfere with the plug entry. After insertion and latching, plug shall be capable of removal, with the latch depressed, with a removal force of 10 pounds or less applied at an advantageous angle.

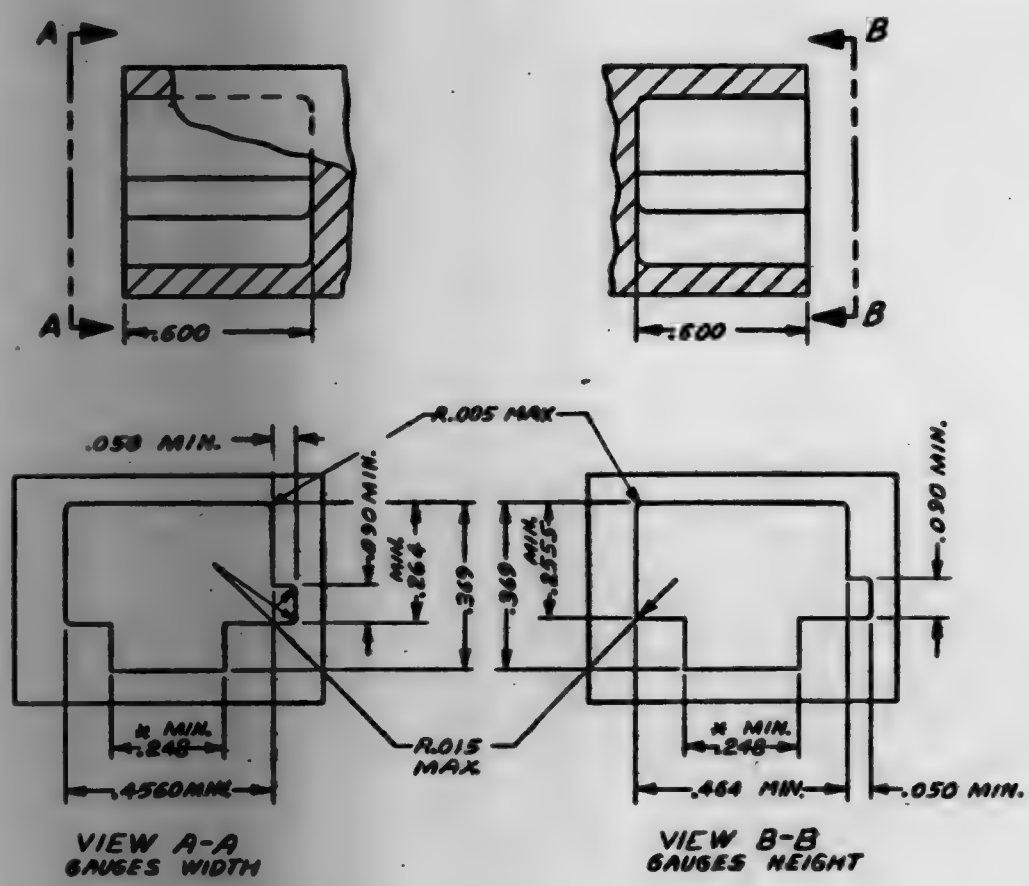
2. Dimensions given to three decimal places shall be within ± .002 inch.

3. Dimensions (A) and (B) to be centrally located with respect to .4640 max. jack opening width within ± .001 inch.

4. Do not scale drawings for external configuration.

Figure 68.500(i)(4)(i)-8 Position Keyed Plug Maximum Plug Size

APPENDIX A-33



NO – GO GAUGE

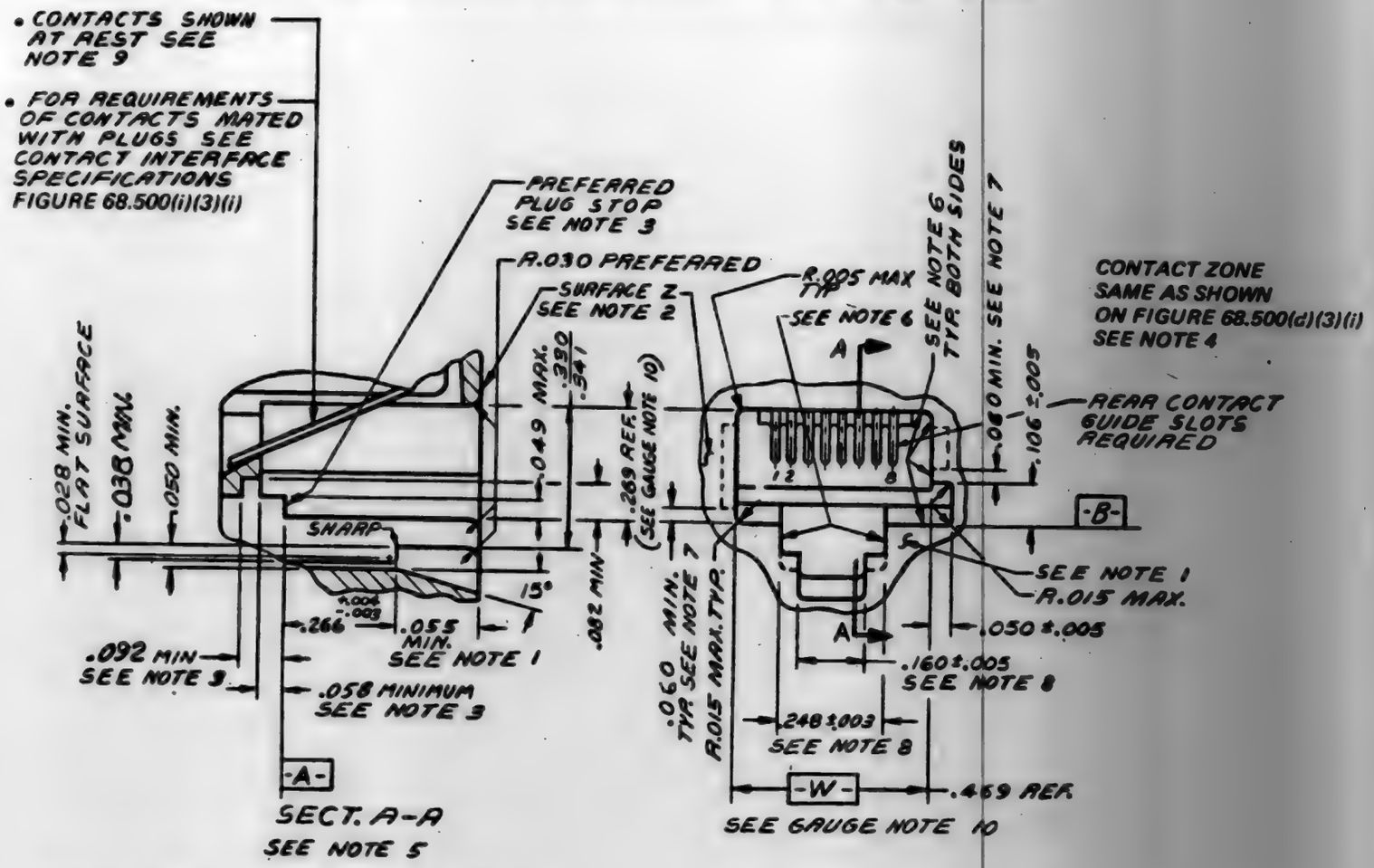
1. The plug shall not be capable of entering the gauge more than .010 inch beyond datum –A– (see Figure 68.500(i)(2)(i)) with 2.0 pounds insertion force.

2. Non-toleranced dimensions given to three places shall be within ± .002 inch.

3. * .248 dimension to be centrally located with respect to .464 minimum and .4560 minimum within ± .002 inch.

Figure 68.500(i)(5)i–8 Position Keyed Plug Minimum Plug Size

Note: This jack is depicted with all 8 contacts. It may be fabricated with less than 8 contacts.



NOTE: ALL NOTES FOLLOW THIS FIGURE

Figure 68.500(j)(2)(i)–8 Position Keyed Jack Mechanical Specification

APPENDIX A-35

(j) 8-Position Keyed Jack, Mechanical Specifications (continued)

Notes: (Notes apply to Figure 68.500(j)(2)(i))

1. Front surface projections beyond the .055 minimum shall be configured so as not to prevent finger access to the plug release catch (Reference Figure 68.500(i)(2)(ii) & 8-Position Plug, Mechanical Specifications). A catch length greater than .055 is beneficial in providing for greater breakout strength and improved guidance when interfacing with a 6-position plug.

2. Surface Z need not be planar or coincident with the surface under the plug release catch. Surface Z projections must not prevent insertion, latching, and unlatching of the standard 8-position plug on Figure 68.500(i)(2)(i).

3. The preferred plug stop surface is indicated. If some other internal feature is used as a plug stop, it must be located so that the axial movement of a latched plug is no greater than 0.045-inch.

4. To prevent mistargeting between the plug and jack contacts, the jack contacts should be completely contained in their individual contact zones, (.028 inch max wide), where they extend into the jack openings. There is no location requirement for jack contacts below these zones (.230 inch max), but adequate contact separation must be maintained to prevent electrical breakdown. These shaded contact zones should be centrally located, (include all locating tolerances), about the jack opening width .469 Ref, (Datum -W-). Contacts located outside of these zones may result in mistargeting between the jack and plug contacts.

5. All inside and outside corners in the plug cavity to be .015 inch radius max unless specified.

6. These surfaces shall have 0°15' maximum draft.

7. Relief inside the dotted areas on both sides of the jack opening is permitted. The .269 Ref and .469 Ref Gauge Requirements must be maintained in each of the corners indicated, (Ref. 0.060 inch min), to assure proper plug/jack interface guidance.

APPENDIX A-36

(j) 8-Position Keyed Jack, Mechanical Specifications (continued)

Notes: (continued)

8. 0.160- and 0.248-inch dimensions to be centrally located to jack opening width -W- within ± .005-inch.

9. The contact lengths shall be such that the contacts will always be contained inside the guide slots and the contacts must move freely in the slots so as not to restrain plug insertion or damage jack contacts.

10. Gauge Requirements:

GO: The jack shall be capable of accepting a 0.4640-inch X 0.2640-inch gauge and the gauge shall be capable of being removed with a maximum force of 2.0 pounds.

NO GO: The jack shall not accept either a 0.4740-inch X 0.254-inch horizontal width of opening gauge or a 0.2740-inch X 0.456-inch vertical height of opening gauge. However, if the gauge is accepted, the force necessary to remove the gauge shall be minimum of 3.0 ounces.

Removal forces do not include forces contributed by contact springs nor shall external forces be applied to the jack that will affect these removal forces.

Gauges shall have a 0.030-inch radius on the nose and a 0.015-inch radius on all edges with clearance provided for contacts.

[FR Doc. 85-15041 Filed 7-1-85; 8:45 am]
BILLING CODE 6712-01-C

47 CFR Part 73

[MM Docket No. 84-804; RM-4789, RM-4844]

Television Broadcast Stations in Sheridan and Casper, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns VHF Television Channel 9 to Casper, Wyoming, in response to a proposal filed by Jessica Longston. The assignment could provide a second VHF commercial channel to Casper. In addition, a conflicting proposal to assign Channel 9 to Sheridan, Wyoming, is denied.

EFFECTIVE DATE: July 29, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Sheridan and Casper, Wyoming [1]) (MM Docket No. 84-804, RM-4789, RM-4844).

Adopted: June 7, 1985.

Released: June 21, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 34257, published August 29, 1984, proposing the assignment of VHF Television Channel 9 to Sheridan, Wyoming, as that community's third commercial channel, in response to a petition filed by the Chrysostom Corporation ("Chrysostom").[2] Chrysostom filed comments reaffirming its interest in the assignment to Sheridan. Larry G. Fuss, Sr. ("Fuss") filed a petition for rule making which has been accepted as a counterproposal in this proceeding. Jessica Longston ("Longston") filed comments and a counterproposal. Reply comments were received from Chrysostom.

2. Casper (population 51,016),[3] seat of Natrona County (population 71,856), is located in east central Wyoming approximately 225 kilometers (140 miles) northwest of Cheyenne, Wyoming. Casper is presently served by Television Stations KTWO-TV, Channel 2, KCWY-TV, Channel 14, KXWY-TV, Channel 20 and is assigned noncommercial educational Channel *6 (vacant). Sheridan (population 15,146), seat of Sheridan County (population 25,048) is located in northern Wyoming approximately 165 kilometers (100 miles) southeast of Billings, Montana. Sheridan is served by Station KSWG-TV, Channel 12, which operates as a satellite of Station KOTA-TV, Rapid City, South Dakota. Channel 7 has been allocated to Sheridan and two applications for the channel are pending.

3. Longston opposes the assignment of Channel 9 to Sheridan and proposes that VHF Channel 9 be assigned instead to Casper, Wyoming, as its second commercial VHF service. Longston notes that Casper has over three times the population of Sheridan and yet has only one VHF commercial assignment. Longston also states that UHF Channel 40 is available and could be assigned to Sheridan and provide that community with a third commercial service.

4. Fuss filed a petition for rule making (RM-4844) requesting the assignment of VHF Television Channel 9 to Casper, Wyoming, as its fourth commercial service. That petition has been consolidated herein as a counterproposal.

5. The proposals for Casper and Sheridan are mutually exclusive as the two communities are 139 miles apart with 190 miles required for co-channel VHF stations. Channel 9 is the only VHF channel available to either community. The assignment of Channel 9 could provide a second commercial VHF service to Casper and a third such service to Sheridan.

6. In evaluating the public interest factors to determine which community should receive an additional VHF channel, the Commission generally considers (1) population, (2) location, and (3) number of reception services.[4] Casper has a larger population than Sheridan, based on the 1980 U.S. Census. The assignment of Channel 9 to Casper would provide a second commercial VHF service, or a third commercial VHF service to Sheridan. Our analysis indicates that neither community receives Grade B reception service from non-local stations and both communities are isolated from population centers. Thus, the only factor of decisional significance appears to be the relative populations. In that regard, Casper is substantially larger. In view of the above considerations, we believe the public interest would best be serve by assignment of VHF Channel 9 to Casper, Wyoming. Channel 9 can be assigned to Casper in compliance with the Commission's spacing requirements provided there is a site restriction 14.7 miles southwest of the community to prevent short spacing to KBHE-TV, Channel 9, Rapid City, South Dakota. Finally, since no interest in a UHF channel assignment for Sheridan has been expressed, no such channel has been adopted herein.

7. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective July 29, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the communities listed below:

City	Channel No.
Casper, Wyoming	2+, *6+, 9+, 14-, and 20-.

8. It is further ordered, that the petition of the Chrysostom Corporation for the assignment of Channel 9 to Sheridan is denied.

9. It is further ordered, that this proceeding is terminated.

10. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-15742 Filed 7-1-85; 8:45 am]

BILLING CODE 6712-01-M

[1] This community has been added to the caption.

[2] The Chrysostom Corporation is currently involved in a comparative hearing (MM Docket No. 84-87) which involves two applications for Channel 7 in Sheridan, Wyoming. Both applicants propose satellite service of their Casper stations. Chrysostom is the licensee of Station KCWY-TV (Channel 14), Casper, while Harriscope Broadcasting Corp., the other applicant, is licensee of Station KTWO-TV (Channel 2) Casper.

[3] Population figures are taken from the 1980 U.S. Census.

[4] Sixth Report and Order on Television Allocations, 41 F.C.C. 148, 187 (1952).

Proposed Rules

Federal Register
Vol. 50, No. 127
Tuesday, July 2, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection; Growers' Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This notice announces that a referendum will be conducted by mail during the period of July 15–19, 1985, of producers of Type 37, Virginia Sun-Cured tobacco, to determine producer approval of the designation of the Farmville, Virginia, tobacco market for the sale of Type 37 tobacco.

DATES: The referendum will be held July 15–19, 1985.

FOR FURTHER INFORMATION CONTACT: Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, Telephone Number—(202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of Farmville, Virginia, as an auction market for the sale of Type 37, Virginia Sun-Cured tobacco.

On March 4, 1985, an application was made to the Secretary of Agriculture to designate Farmville, Virginia, as an auction market for the sale of Type 37, Virginia Sun-Cured tobacco. This application, filed by a local grower cooperative, was made pursuant to the regulations promulgated under the Tobacco Inspection Act.

A Review Committee, established pursuant to § 29.3(h) of the regulations (7 CFR 29.3(h)), has reviewed and considered the application, the testimony presented at the hearing and the exhibits received in evidence. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on June 17, 1985.

Before a new market can be officially designated, a referendum is required to be held. The purpose of the referendum is to determine whether farmers who produce Type 37, Virginia Sun-Cured tobacco, are in favor of or opposed to the designation of Farmville, Virginia, as a market for Type 37 tobacco for the 1985 and succeeding crop years. The referendum will be conducted by mail during the period of July 15–19, 1985.

To be eligible to vote in the referendum the tobacco producer must have sold Type 37, Virginia Sun-Cured tobacco, during 1984. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by July 15, 1985, should immediately contact Lioniel S. Edwards at (202) 447–2567.

The referendum will be held in accordance with the provisions of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1312(c)) and the regulations set forth in 7 CFR Parts 29 and 717.

Dated: June 25, 1985.

Karen K. Darling,

Acting Assistant Secretary; Marketing & Inspection Services.

[FR Doc. 85–15794 Filed 7–1–85; 8:45 am]
BILLING CODE 3410–01–M

7 CFR Part 920

Kiwifruit Grown in California; Proposed Grade, Size, Pack, and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposal establishes grade, size, pack, and container requirements pursuant to the marketing order for kiwifruit grown in California. It is designed to provide for orderly marketing of kiwifruit for the benefit of producers and consumers.

DATES: Comments due by August 1, 1985.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 1079–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written material shall be submitted, and will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated as a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The proposed rule is issued under the marketing agreement and Order No. 920 (7 CFR Part 920) regulating the handling of kiwifruit grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal is based on the recommendations of the Kiwifruit Administrative Committee (hereinafter referred to as the "committee") and other available information.

At its April 23, 1985, meeting, the committee unanimously recommended grade, size, pack and container requirements for fresh shipments of kiwifruit. The committee reported that the lack of grade and size regulations last year resulted in numerous complaints from consumers and wholesale buyers that the quality of the fruit was poor and that California kiwifruit could not compete with the good quality kiwifruit from New Zealand. According to the committee, the shipment of low quality California kiwifruit caused average F.O.B. prices to decline and resulted in consumer dissatisfaction. The proposed mandatory minimum quality standards are intended to substantially improve wholesale buyer and consumer confidence during the 1985–86 season. In addition, this year's estimated crop of 5.5 to 6.0 million trays or tray equivalents (approximately 41.25–45.00 million pounds) is substantially larger than last year's crop of 4.265 million trays or tray equivalents (approximately 31.99 million pounds). In view of the estimated crop and current and prospective supply and demand conditions, the proposed implementation of minimum quality standards should provide for orderly marketing of

kiwifruit and improve returns to producers.

Pursuant to § 920.52, the proposal is to add § 920.302 to specify that on and after August 1, 1985, all kiwifruit must grade at least 85 percent U.S. No. 2, and be at least size 49 (size 49 means that an eight pound sample, representative of this size in the package or container, does not contain more than 64 pieces of fruit). The pack requirements would require that size 30 or larger cannot vary more than ⅛ inch in diameter, size 33 and 36 cannot vary more than ⅜ inch in diameter, and size 39 or smaller cannot vary more than ¼ inch in diameter, with additional provisions included for volume fill containers and size tolerance specifications. Lot stamping of containers is also proposed for all shipments, except those being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

Section 920.110 of the regulations under the order exempts the handling of kiwifruit under certain conditions from specified provisions of the order and the regulations. This exemption would apply to the requirements proposed herein provided that: (1) The net weight of such kiwifruit sold to any one person during any one day does not exceed 200 pounds; (2) the kiwifruit are for home use and not for resale; and (3) the kiwifruit are handled by the person who produced them and, the handling takes place on the premises where grown, at a packinghouse, retail stand, or any other outlet approved by the committee which is operated by said handler, or at a Certified Farmers Market.

This proposed rule provides a 30-day comment period. All comments received by the Docket Clerk within 30 days of the date of publication of this notice will be considered prior to the issuance of any final rule.

List of Subjects in 7 CFR Part 920

Marketing Agreements and Orders, Kiwifruit, California.

PART 920—[AMENDED]

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 920.302 is added to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) On and after August 1, 1985, no handler shall ship any kiwifruit unless such kiwifruit meet the following requirements:

(1) *Grade Requirements.* Fresh shipments of kiwifruit shall grade at least 85 percent U.S. No. 2: *Provided,* That not more than 8 percent be allowed for defects other than badly misshapen fruit.

(2) *Size Requirements.* Such kiwifruit are a minimum size 49 (size 49 means that an eight-pound sample representative of this size in the package or container, contains not more than 64 pieces of fruit): *Provided,* That size 30, 33, 36, and 39 mean that an eight-pound sample representative of these sizes in a package or container, contains not more than 34, 37, 41, and 46 pieces of fruit, respectively.

(3) *Pack Requirements.* Such kiwifruit shall be fairly uniform in size and shall be packed in boxes, flats, lugs, or cartons and arranged according to approved and recognized methods. Containers shall be well filled; contents tightly packed but not be excessively or unnecessarily bruised by overfilling or oversizing. Fruit in the shown face of the container shall be reasonably representative in size and quality of the contents. When packed in closed containers the size shall be indicated by marking the container with the numerical count. Fruit packed in containers with cell compartments, cardboard fillers or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed, and conform to the marked count. For the purposes of this section, "fairly uniform in size" means that size 30 or larger cannot vary more than ⅛ inch in diameter, size 33 and 36 cannot vary more than ⅜ inch in diameter, and size 39 or smaller cannot vary more than ¼ inch in diameter: *Provided,* That volume fill containers are exempt from numerical count markings on containers: *Provided further,* That "diameter" means the greatest dimension measured at right angles to a line from stem to blossom end: and *Provided further,* That not more than 10 percent, by count, of containers in any lot and not more than 5 percent, by count, of kiwifruit in any container may fail to meet these requirements.

(4) *Container Requirements.* Containers of kiwifruit shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except those that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

(b) The term "U.S. No. 2" means the same as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340).

Dated: June 20, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–15829 Filed 7–1–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The Immigration and Naturalization Service (INS) is proposing to amend § 103.2(b)(2) to incorporate a provision allowing the withholding of information relating to a pending civil or criminal investigation, or if such disclosure will, in the opinion of the District Director, compromise a confidential informant. Further, this amendment would correct current language by requiring consent of classifying authority prior to release of classified information.

DATE: Comments must be received on or before September 3, 1985.

ADDRESS: Please submit written comments, in duplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633–3048

For Specific Information: Paul W. Schmidt, Deputy General Counsel, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633–2895.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service (INS) is proposing to amend 8 CFR 103.2(b)(2) relating to the availability of Service records. Under the existing regulation, the INS may withhold material in an applicant's or petitioner's record of proceeding if that material affects national security. Recently INS has been faced with potential situations of having to disclose records of

proceedings even though such disclosures would damage pending criminal investigations and betray confidential informants. Proper administration requires that, in adjudicating applications for immigration benefits, the INS be able to withhold information when disclosure would prejudice a pending civil or criminal investigation or reveal a confidential informant. See *Jay* v. *Boyd*, 351 U.S. 345 (1956); *Suciu* v. *INS*, 755 F.2d 128 (8th Cir. 1985). The proposed regulation would also simplify the procedures relating to the use of classified information by eliminating the role of the regional commissioner and requiring that any revelation of classified information be approved in writing by the classifying authority. To the extent that the current regulation purports to allow the regional commissioner, without the permission of the classifying authority to reveal the general nature of the classified information, it is inconsistent with existing government security requirements pertaining to classified information.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, would not have a significant impact on a substantial number of small entities.

This rule is not a major rule as defined in section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Archives and records.

Accordingly, it is proposed to amend Chapter I of Title 8 of the Code of Federal Regulations as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 is revised to read as follows:

Authority: Sec. 501, 65 Stat. 290, sec. 103, 66 Stat. 173; 31 U.S.C. 483a, 8 U.S.C. 1103. Interpret or apply secs. 281, 382, 343, 344, 405, 66 Stat. 230, 252, 283, 284, 280; 8 U.S.C. 1351, 1443, 1454, 1455, 1101 and note; 7 U.S.C. 2243. § 103.2 also issued under Secs. 103, 221, 281–285 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1201, and 1301–1305).

2. In § 103.2, paragraph (b)(2) would be revised to read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(b) * * *

(2) *Inspection of evidence.* (i) An applicant or petitioner shall be permitted to inspect the record of proceedings which constitutes the basis for the decision, except as provided in paragraphs (b)(2) (ii) and (iii) of this section.

(A) If the decision will be adverse to the applicant or petitioner on the basis of derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of that fact, and offered an opportunity to respond to the evidence and to present evidence in his/her own behalf before the decision is rendered.

(B) Any response, explanation, rebuttal, or evidence presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

(ii) An applicant or petitioner shall not be permitted to inspect any information contained in the record or outside the record which is classified under Executive Order No. 12356 (47 FR 14874) as requiring protection from unauthorized disclosure in the interest of national security unless the classifying authority has agreed in writing to such disclosure.

(iii) An applicant or petitioner shall not be permitted to inspect any information contained in the record or outside the record if the relevation of such information will, in the opinion of the district director, prejudice a pending civil or criminal investigation or if such disclosure will, in the opinion of the district director, compromise a confidential informant.

(iv) Information coming within paragraphs (b)(2) (ii) and (iii) of this section shall only be used in the adjudication of an application after it has been personally reviewed by the district director or acting district director and he or she has determined that it is material to the decision. If the decision is based in whole or in part on information coming within paragraphs (b)(2) (ii) or (iii) above, the decision shall state that the required personal review took place and that such information was used.

Dated: June 13, 1985.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 85-15783 Filed 7-1-85; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561, 563, and 571

[No. 85-504]

Classification of Assets

Dated: June 21, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is proposing to adopt a new method of classifying certain commercial loans, and to revise its regulation regarding the reevaluation of assets by examination staff.

DATE: Comments must be received by August 30, 1985.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Jane W. Katz, Senior Policy Analyst, Office of Policy and Economic Research, (202) 377-6782; Francis E. Raue, Financial Analyst, Office of Examinations and Supervision, (202) 377-6360; or Susan McC. van den Toorn, Attorney, Office of General Counsel, (202) 377-6525, at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to section 403(b) of the National Housing Act ("NHA"), 12 U.S.C. 1726(b) (1982), the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), has the authority to conduct examinations of institutions the accounts of which are insured by the FSLIC ("insured institutions"). Section 403(b) of the NHA provides for such examinations of insured institutions that in the judgment of the Corporation may from time to time be necessary for its protection and the protection of other insured institutions, and permits the Corporation to have access to any information or report with respect to any examination made by any public regulatory authority and to furnish any additional information with respect thereto as the Corporation may require. Pursuant to this authority, the Board has the responsibility to examine and evaluate insured institutions' assets and to require regulatory reporting and treatment of assets for regulatory evaluation purposes. Section 403(b) of

the NHA also requires all insured institutions to provide adequate reserves established in accordance with regulations made by the Corporation. *See* 12 CFR 563.13 (1985).

The Garn-St Germain Depository Institutions Act of 1982 ("DIA") (Pub. L. No. 97-320, 96 Stat. 1469, effective October 15, 1982), granted new powers to federally chartered savings and loan associations and mutual savings banks ("federal associations"). The DIA amended the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. 1461–1470 (1982), to permit federal associations new authority in a broad range of activities, in order to provide such institutions the flexibility necessary to maintain their role of providing credit for housing. Section 325 of the DIA added a new section 5(c)(1)(R) to the HOLA [12 U.S.C. 1464(c)(1)(R)(1982)], which authorized federal associations to invest in secured or unsecured loans for commercial, corporate, business, or agricultural purposes. The legislative history of this provision indicates that Congress intended to authorize, to a limited extent, "commercial lending" similar to that practiced by national banks. In addition to this expanded authority granted to federal associations, many state-chartered insured institutions which have traditionally followed federal associations' investment authority have been granted commercial lending authority under state law.

The Board implemented the new federal commercial lending authority by adoption of final regulations on April 28, 1983. Board Resolution No. 83-241, 48 FR 23032 (May 23, 1983). In the past two years of experience in reviewing these loans and comparable assets held by state-chartered insured institutions, the Board has observed that its traditional methods of classifying loans is not an effective method to categorize most commercial lending agreements. The current classification system evolved in a manner to accommodate primarily home lending, which is keyed to the timely receipt of periodic repayments and other features of loans which are secured by real estate. The Board is concerned that this system may not adequately reflect the condition of commercial loans where payment schedules and other indicia of "current" status are of a different nature. The Board therefore believes it is necessary to look at other methods of evaluating these loans.

Although commercial lending has not yet become a significant activity for most institutions, the Board is aware of a heightening interest in commercial lending because of its profit potential and the ability of institutions to employ such loans to reduce interest-rate risk. The Board is determined, therefore, to ascertain an appropriate method of evaluating these assets before the scope of this activity increases further, and to choose a method that will serve to alert institutions and regulators on an early basis of any deterioration in the quality of commercial loan assets.

The proposed regulatory language would apply a new evaluation method only to commercial loans of the type described in section 5(c)(1)(R) of HOLA and 12 CFR 545.46 (1985), excluding commercial loans secured by first lient on real estate and other assets which could be described as "commercial, agricultural or business" loans but which have long been authorized investments for federal associations and many state-chartered associations and have been assessed under the "scheduled items" approach. However, the Board specifically solicits public comments on whether a new evaluation method, if adopted, should also apply to all or some of those categories, for example whether it should apply to commercial loans of all types, all loans that do not have regular payment schedules, other investments such as investment securities, investments in subsidiaries, miscellaneous other assets, etc.

In considering approaches to evaluating commercial loans, the Board has looked to the federal bank regulatory agencies' methodology because of their long-term involvement in reviewing this type of lending and their consequent development of a classification system to analyze the quality of commercial loans. Because of the effectiveness of that classification system in assessing bank commercial loans, and the availability of interpretive and other explanatory materials for the Board to draw upon in its discretion, the Board is proposing to adopt the basic concepts contained in the "Uniform Agreement on the Classification of Assets . . . Held by Banks" ("Uniform Agreement") issued in revised form on May 7, 1979, as Joint Statement of the Office of the Controller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System and the Conference of State Bank Supervisors. The May 7, 1979, Uniform Agreement further revised examination procedures first established in 1938 and revised on July 15, 1949.

The Board notes that the loan classifications set forth in the Uniform Agreement are by their nature expressions of different degrees of a common factor, *i.e.*, risk of nonpayment. All loans involve some risk, but the degree varies greatly. As proposed, "problem assets" would be classified as (1) Substandard, (2) Doubtful, or (3) Loss. Each of these categories is defined and discussed below, following in substantial part the Uniform Agreement language (in quotes) and training materials used by the banking agencies.

1. Substandard

A Substandard asset is inadequately protected by the current [net worth] and paying capacity of the obligor or of the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the [insured institution] will sustain some loss if the deficiencies are not corrected.

Weaknesses are to be based upon objective evidence and uncontrollable external factors. Jeopardy does not imply an ultimate loss but may show lack of timely liquidation. If the deficiencies are not corrected, the lending institution may sustain some loss.

Loans classified Substandard would exhibit one or more of the following characteristics:

- Collateral which is not subject to adequate inspection and verification;
- The primary source of repayment is gone and the lending institution is relying upon the secondary source;
- Loss does not seem likely, but sufficient problems have arisen to cause the lending institution to go to abnormal lengths to protect its position in order to maintain a high probability of repayment;
- Obligors are unable to generate enough cash flow for debt reduction;
- Deterioration in collateral; and
- Flaws in documentation, leaving a lending institution in a subordinated or unsecured position.

In addition, examiners could also consider the following in determining whether the Substandard classification is appropriate:

- Extension of loans beyond the original repayment terms;
- Deterioration in the borrower's affairs sufficient to cause the lending institution to look to the sale of collateral for repayment;
- Loans to unprofitable or undercapitalized business; and
- Special problems arising from conditions of a given industry.

2. Doubtful

An asset classified Doubtful has all the weaknesses inherent in one classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable.

The possibility of loss on a Doubtful loan is extremely high, but because of certain important and reasonably specific pending factors that may work to the strengthening of the asset, its classfication as an estimated loss is deferred until its more exact status may be determined.

Loans classified Doubtful would exhibit discernible loss potential where some, but not complete loss, seems very likely but there is still sufficient uncertainty that permits the asset to remain on the books (at its full value). In addition, a Doubtful loan could reflect the fact that the primary source of repayment is gone and doubt exists as to the quality of the secondary source of repayment.

Doubtful classification would most likely not be repeated at a subsequent examination because there should be enough time to resolve pending factors. If pending events did not occur and repayment is now deferred awaiting new developments, a Loss classification normally would be warranted.

3. Loss

Assets classified Loss are considered uncollectible and of such little value that their continuance as assets is not warranted. This classification does not mean that the asset has absolutely no recovery or salvage value, but rather it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may be effected in the future.

The Board wishes to note that while the proposed system necessarily entails a certain amount of subjectivity, because it is not based upon loan payment performance, it relies upon traditional factors weighed by commercial banks long active in this lending area and their regulators. It should also be noted that, as implemented by the bank regulatory agencies, in some circumstances a single loan could be divided among different categories.

The Uniform Agreement guides examiners in reviewing the classification of loans, classifying loans, and judging the adequacy of valuation allowances (reserves). The classification system is the basis upon which valuation allowances are established. For banks, 50 percent of the total of "doubtful" assets and 100 percent of the "loss" category are reserved or charged off.

The current treatment of problem assets employed by the Board is to include them in the classification of scheduled items (12 CFR 561.15 (1985)), under which loans are classified based primarily upon payment performance. An institution's regulatory net-worth requirement is increased by 20 percent of such scheduled items. As proposed, commercial loans classified as Substandard would be treated as a type of scheduled item, and the institution's regulatory net-worth requirement would be increased to reflect 20 percent of such loans. Commercial loans classified as Doubtful or Loss, however, would require establishment of a specific reserve (50 and 100 percent, respectively); the specific reserves would be drawn from the institution's net-worth accounts and would thus lower the amount of an institution's actual regulatory net worth, as specific reserves do not count as eligible net-worth items. While the proposed classification would require specific reserves for assets classified as Loss or Doubtful, the Board has directed the staff to investigate the need to propose non-specific (basket) reserves for all loans, regardless of classification.

These various proposed effects appear to differ from commercial bank treatment in a number of ways. First, bank assets classfied as Substandard do not require establishment of reserves, nor do they increase banks' net-worth requirements comparable to the extra reserve requirement for scheduled items. Second, the bank reserves established for assets classified as Doubtful and Loss do reduce retained earnings, a component of bank net worth, but are later added back in calculating bank reserves so there is no net additional reserve requirement as a result of the classification, as there would be for insured institutions establishing specific reserves under the proposal. However, unlike thrifts, banks are subject to variable net-worth requirements based upon the quality of their assets, as determined by bank regulators; additionally, in practice uncollectible loans are required to be promptly charged off, thus directly reducing bank net worth.

If the Board adopted a classification system for commercial loans substantially as proposed, it would monitor any further modifications to and interpretations of the Uniform Agreement of the banking agencies, and would consider on a case-by-case basis whether any such changes were appropriate to apply to the classification of assets of insured institutions.

With regard to the issue of delegation, it is the Board's intention that, as is currently the practice, the appropriate Principal Supervisory Agent or his designee would have authority to approve or disapprove the classification and reevaluation of particular loans.

The Board is also proposing to adopt a new Statement of Policy which would give insured institutions as much guidance as possible in classifying assets.

In addition, the Board is proposing to revise 12 CFR 563.17–2(b), the appraisal provision in the Board's Examinations and Audits regulation for insured institutions. Section 563.17–2 currently permits a reevaluation of an institution's assets as a part of the Board's examination process. It requires the use of appraisals in accordance with § 563.17–1 when the reevaluation involves real estate. The proposed change would allow for evaluations that take into consideration economic factors that directly affect the immediate value of the assets from the insured institution's point of view, other than direct appraisal of the property. For example, in reviewing a project, examiners would measure its continued viability including such factors as market concentration, whether over-building exists, the overall ability of the borrower to complete the project and whether there are adequate funds remaining in loans-in-process to complete the project. Tools which could be employed to make such evaluations could include market research and other available information pertaining to population changes, potential future growth, and changes in technology; a comparison of similar projects in comparable areas; industry averages on returns from comparable investments; the insured institution's track record with similar investments; and an analysis of the desirability of continued funding over the long term. An example of an evaluation approach that would be permitted under the proposed language would be, in connection with a project that has incurred unexpected costs prior to completion, a review of the use of loan proceeds for purposes other than completing the project. Such use of loan proceeds may result in inadequate funds remaining in loans-in-process to complete the project.

Finally, the Board is also taking this opportunity to propose several nonsubstantive changes to the title and text of § 563.17–2.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603

(1982), the Board is providing the following initial regulatory flexibility analysis:

1. *Reason, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rule would apply to all insured institutions.

3. *Impact of the proposed rules on small institutions.* It would have no differential effect on small institutions.

4. *Overlapping or conflicting federal rules.* There are no federal rules that would duplicate, overlap, or conflict with the proposed rules.

5. *Alternatives to the proposed rule.* The current system may provide for adequate classification of certain assets. The proposed method would appear to impose the least burden on the regulated industry while complying with the Board's stated objectives.

List of Subjects in 12 CFR Parts 561, 563 and 571

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposed to amend Parts 561, 563 and 571 of Subchapter D, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. The authority citation for Parts 561, 563 and 571 would continue to read as follows:

Authority: Secs. 401, 402, 403, and 407, 48 Stat. 1255, 1256, 1257, and 1260, as amended; 12 U.S.C. 1724, 1725, 1726, 1730. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 561.15 by revising paragraph (a) as follows:

§ 561.15 Scheduled items.

The term "scheduled items" means:

(a) Slow consumer credit, slow loans, and assets classified as "substandard" under § 561.16c of this Part (other than loans specified in paragraph (b) of this section).

* * * * *

3. Add a new § 561.16C as follows:

§ 561.16c Classification of certain assets.

(a) *Scope.* The classification system described in this section applies to the types of commercial loans defined in 12 U.S.C. 1464(c)(i)(R) that would not be eligible for inclusion elsewhere in 12 U.S.C. 1464(c).

(b) *Classifications*—(1) *Substandard.* A Substandard asset is inadequately protected by the current net worth and paying capacity of the obligor or of the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the insured institution will sustain some loss if the deficiencies are not corrected.

(2) *Doubtful.* An asset classified Doubtful has all the weaknesses inherent in one classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable.

(3) *Loss.* Assets classifiifed Loss are considered uncollectible and of such little value that their continuance as assets is not warranted. This classification does not mean that the asset has absolutely no recovery or salvage value, but rather it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may be effected in the future.

PART 563—OPERATIONS

4. Amend § 563.17–2 by revising the title and the beginning of the first sentence of paragraph (a), revising the title and text of paragraph (b), and adding new paragraph (e), as follows:

§ 563.17-2 Reevaluation of assets; adjustment of book value; adjustment charges.

(a) *Real estate owned.* Insured institutions shall appraise * * *.

(b) *Reevaluation of other assets.* In connection with each examination of an insured institution or service corporation, the Board examiner shall make such reevaluation of such institutions' or service corporations' assets (exclusive of insured or guaranteed loans) as he deems advisable or necessary.

(1) *Treatment of real estate loans.* Reevaluations of real estate may be based upon an appraisal as provided in § 563.17–1 of this Part (except that reevaluation of parcels of real estate that are similar in all essential respects may be based upon an appraisal of one or more of such parcels), or other appropriate evaluation methods as determined by the examiner.

(2) *Treatment of certain commercial loans.* This section shall apply to the assets defined in § 561.16c of this Subchapter. Assets classified as Substandard are included in the definition of scheduled items set forth at § 561.15 of this subchapter. Assets classified as Doubtful or Loss shall have specific loss reserves of 50 and 100 percent of book value, respectively, established for them.

* * * * *

(e) *Delegations and interpretations.* The Principal Supervisory Agent or his designee shall have authority to approve or disapprove the classification and reevaluation of assets made pursuant to this section. The Board's Office of Examinations and Supervision shall, from time to time, issue interpretations and other informational material regarding reevaluation of assets.

PART 571—STATEMENTS OF POLICY

5. Add a new § 571.1a as follows:

§ 571.1a Classification of certain assets.

This statement of policy provides guidance in the classification of assets as set forth in § 561.16c of this Subchapter.

(a) *Substandard.* A loan so classified must have a positive and well-defined weakness or weaknesses that jeopardize the liquidation of the debt. A Substandard debt is an asset inadequately protected by current net worth and paying capacity of the obligor, or pledged collateral, if any. It is characterized by the distinct possibility that the lending institution will sustain some loss if the deficiencies are not corrected. Weaknesses are to be based upon objective evidence and uncontrollable external factors. Jeopardy does not imply an ultimate loss but may show lack of timely liquidation. If the deficiencies are not corrected, the lending institution may sustain some loss. Loans classified Substandard would exhibit one or more of the following characteristics:

(1) Collateral which is not subject to adequate inspection and verification;

(2) The primary source of repayment is gone and the leading institution is relying upon the secondary source;

(3) A loss does not seem likely, but sufficient problems have arisen to cause the lending institution to go to abnormal lengths to protect its position in order to maintain a high probability of repayment;

(4) Obligors are unable to generate enough cash flow for debt reduction;

(5) Deterioration in collateral;

(6) Flaws in documentation, leaving a lending institution in a subordinated or unsecured position.

(7) In addition, Board examiners may also consider the following in determining whether a Substandard classification is appropriate:

(i) Extention of loans beyond the original repayment terms;

(ii) Deterioration in the borrower's affairs sufficient to cause the lending institution to look to the sale of collateral for repayment;

(iii) Loans to unprofitable or undercapitalized business;

(iv) Special problems arising from conditions of a given industry.

(b) *Doubtful.* (1) Loans classified "Doubtful" would exhibit discernible loss potential where some, but not complete loss, seems very likely but there is still sufficient uncertainty that permits the asset to remain on the books (at its full value). In addition, a Doubtful loan could reflect the fact that the primary source of repayment is gone and doubt exists as to the quality of the secondary source of repayment.

(2) Doubtful classification, would most likely not be repeated at a subsequent examination because there should be enough time to resolve pending factors. If pending events did not occur and repayment was deferred awaiting new developments, a Loss classification normally would be warranted.

(3) *Loss.* A loan classified as "Loss" is considered uncollectible and of such little value that continuance as an asset is not warranted. A loss classification does not mean that a loan doesn't have recovery or salvage value, but simply that it is not practical or desirable to defer writing off all (or a portion) of a basically worthless asset, even though partial recovery may be effected in the future.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-15838 Filed 7-1-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 170

[Docket No. 84N-0080]

Eligibility for Classification of Food Substances as Generally Recognized as Safe

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to recognize that a substance that was used in food prior to 1958 can be shown to be generally recognized as safe (GRAS) through experience based on its common use in food outside, as well as in, the United States. FDA is proposing this amendment in response to a recent court decision that declared invalid an agency regulation that had restricted the experience that could provide the basis for general recognition of safety to experience in the United States. FDA is also proposing to delineate the showing that must be made to establish that a substance is GRAS on the basis of its foreign use.

DATE: Written comments by September 3, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowan, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) states that a substance that may become a component or otherwise affect the characteristics of a food is a "food additive" unless it is GRAS (21 U.S.C. 321(s)). Section 201(s) of the act also states that the term "food additive" does not include:

(1) A pesticide chemical in or on a raw agricultural commodity; or

(2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or

(3) A color additive; or

(4) Any substance used in accordance with a sanction or approval granted prior to the enactment of this paragraph pursuant to this Act, the Poultry Products Inspection Act (21 U.S.C. 451 and the following) or the Meat Inspection Act or March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 and the following); or

(5) A new animal drug.

21 U.S.C. 321(s)(1)-(5).

According to the act, a substance is GRAS if it is generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures, or in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food, to be safe under the conditions of its intended use.

In 1974, FDA proposed to adopt definitions for the terms "common use in food" and "scientific procedures" (39 FR 34194, 34195; September 23, 1974). Only the former term is relevant to the present rulemaking.

The agency proposed to define "common use in food" to mean "a substantial history of consumption of a substance by a significant number of consumers in the United States." In the preamble to that proposal, the agency stated that it did not believe that use in a foreign country would support a GRAS determination based upon experience from common use. FDA explained that reported use in foreign countries often cannot be verified, and that the experience based on such use cannot be monitoried or evaluated. The agency also stated that food consumption patterns and differences between cultures make it impossible to assess whether a history of use abroad would be comparable to a history of use in the United States (39 FR 34195). The agency did not receive any comments on this definition , and as a result, on December 7, 1976 (41 FR 53600), FDA adopted the definition without change. This defintion ultimately was codified at 21 CFR 170.3(f).

On September 15, 1983, however, the United States Court of Appeals for the Ninth Circuit declared § 170.3(f) to be invalid. *Fmali Herb, Inc.* v. *Heckler,* 715 F.2d 1385 (9th Cir. 1983). The court ruled that by restricting "common use in food" to mean use only in the United States, FDA had imposed a restriction that did not comport with either the literal terms of the act or with the purpose of the common use in food exception, as articulated by the legislators (715 F.2d at 1390). Nevertheless, in striking down the regulation the court stated:

> Under section 201(s), the important inquiry is whether a substance added to food is "generally recognized among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown * * * to be safe under the conditions of its intended use." Experience based on common use in food serves only as a means of showing safety. If the foreign experience cited by the proponent does not clearly demonstrate safety, because of doubts about cultural comparability or the adequacy of public health data, then the substance must be deemed a food additive. As the overriding purpose of the Food, Drug, and Cosmetic Act is to protect the public health, the burden of proof of safety to be borne by a proponent of an ingredient is heavy * * *. In practice, evidence of foreign use of an ingredient, standing alone, may rarely or never be enough to establish safety. An FDA regulation establishing a threshold of evidence needed to constitute sufficient proof of safety based on common use would be entitiled to substantial judicial deference. * * *
>
> 715 F.2d at 1390-1391 (citations omitted).

II. Proposed Regulations

In response to the Ninth Circuit's decision, FDA has reevaluated its concerns about basing a conclusion that a substance that was in use before 1958 is safe solely on a history of common use outside the United States. The agency has attempted to determine whether there are circumstances in which these concerns could be allayed and thus in which a history of use outside the United States could be relied upon to establish the safety of such a substance. The following summarizes the agency's concerns and its tentative conclusions about those concerns.

A. Availability and Verifiability of Information About the History of Use of a Substance in Food

For a substance to be GRAS on the basis of a history of common use in food, there must be consensus among the community of qualified experts that the use of the substance is safe. For such a consensus to be possible, information about the use of the substance must be generally available. General availability is the result of documentation of the information, usually by publication.

The importance that FDA attaches to the availability of information about the safety of a substance in establishing that substance's GRAS status is evidenced by the fact that the agency incorporated a requirement of general availability into its current regulations (§ 170.30(c)).

In addition to being generally available, information on the history of use of a substance must be verifiable. To provide adequate evidence that a substance has been widely used, FDA believes that an independent source that confirms the history of the use of the ingredient must be available.

For substances with a history of use in food in the United States that pre-dates 1958, there usually is information available, much of it published, that documents the use of the substance in food. Moreover, FDA usually can verify quite readily the facts relating to the use of the ingredient. It can request that users of the substance supply use information, or it can utilize its network of regional offices to obtain such information.

It is more difficult to obtain information about, and to verify, the use of a substance outside the United States. Published information on the substance may not be available in the United States, or it may be written in a language other than English. Foreign language articles would have to be translated, and the translations authenticated. Distance and language barriers also make it difficult for FDA to locate sources outside the United States that could provide information about the substance and that could verify claims about its use.

Therefore, FDA has tentatively concluded that it is necessary to require that a claim that a substance is GRAS based on its common use in food outside the United States before 1958 be documented and be verified by evidence that corroborates the use of the substance. Such a claim must also demonstrate that the information that supports the GRAS status of the ingredient is generally available. FDA would consider the information to be "generally available" if it is widely available in the country in which use has occurred and readily available to interested qualified experts in this country. Finally, the information must demonstrate that the substance has in fact been used as a food ingredient and not as a drug, tonic, or folk remedy.

B. Adequacy of Information About the History and Circumstances of Use of a Substance

For experts qualified by scientific training and experience to be able to agree that a substance has been shown to be safe under the conditions of its intended use, they must be presented with evidence that is adequate to allow them ot make such a judgment about the ingredient. For them to make a judgment on the basis of evidence of experience based on common use in food, that evidence must include, although not necessarily be limited to, the following:

1. Data on the indentity of the substance and information to show how the substance is distingushed from similar substances.

2. Information on the production, storage, and handling of the substance and on the consequences if the substance is not handled properly.

3. Information on the use of the ingredient, such as its technical effect in food, the amount added, and the foods to which it is added.

4. Information on the cultural context of the use of the substance, such as who eats the substance, how often, on which occasions, with what other foods, or in lieu of what other foods.

5. Information on the dietary habits in the country where use of the substance occurs.

6. Information on the public health practices in the country where the use of the substance occurs. This includes information about the means, if any, by which the country records any public health problems associated with a food or food ingredient.

7. Information on reports of the consequences of consuming the substance abusively.

8. Information on any health problems associated with use of the ingredent in the country where use of the ingredient occurs.

FDA believes that these data represent the minimum amount of information necessary to permit an expert to determine (1) whether a substance has been in common use, and if so, (2) whether the experience with the ingredient in common use establishes that use of the ingredient is safe. These kinds of data are ordinarily generally available for substances having a history of common use in food in the United States. Much of this information is often totally lacking, however, for substances used in food outside the United States. Nevertheless, this information must be available to support a claim that a substance is GRAS on the basis of such use.

C. Determination of Safety Based on Information About the History and Circumstances of Use of a Substance

General recognition of safety requires not only the general availability of appropriate evidence on the subetance but also general agreement on the interpretation of the evidence. FDA believes that this general agreement can occur only when similarly qualified experts share an understanding of the concept of safety.

"Safety" is a conclusion based on evidence, but it is also a subjective and relative term. Although evidence used in a safety decision is concrete and includes such items as documentation of the use and of the experience of using the substance in food, the interpretation of the evidence reflects the training, experience, and cultural values of the person making the decision. These factors affect the decisions about the importance or weight assigned to various reports on the substance, judgments about the probability and seriousness of adverse effects resulting from exposure to the substance, and determinations about whether there are enough data to support a decision.

It is entirely possible for two groups of experts with similar training and experience in the evaluation of the safety of a food substance but who live in different cultures to disagree on a safety decision based upon experience through common use in food. Each group would be biased by the values held by its own culture.

Each society collectively decides to accept certain risks associated with consuming a particular food because it

decides that the benefits from consuming that food outweigh the risks. Among the factors that influence a society's selection of foods are the abundance (or conversely, the scarcity) of the food; religious taboos; the social significance, such as social rank, of consumption of a particular food; ignorance of nutritional principles; and religious or social ritual (resulting in the consumption of such foods as wine or tea). Thus, for example, a society may tolerate a food that has a known hazard associated with its consumption because the society has no economically feasible alternative.

Consequently, any decision made in another country that an ingredient whose use pre-dates 1958 is safe based upon experience through common use in food must be reviewed by the community of experts that historically has made safety assessments in this country and whose views reflect the values of this society. The need for review by this community of experts is quite independent of the quantity or quality of data supporting the decision or of the qualifications of the experts who rendered the original decision. The review needs to be performed to assure that the substance has been shown to be safe, as that term is understood in this country.

As a practical matter, general recognition among the community of experts in the United States that a substance is safe is not likely to be achieved unless information on that substance is distributed widely in the United States and thus is generally available to members of the community. The opinions of this diverse community would have to be obtained and examined to determine whether there is in fact consensus on the safety of the substance. Because information about the use of a substance may be generally available without being widely circulated in this country and because of the difficulties in demonstrating consensus, the appropriate alternative would be for the agency itself to judge whether a substance has been shown to be GRAS based upon its history of common use in food outside the United States. The experts at FDA are selected from the community of experts who are qualified to evaluate the safety of food ingredients, and, therefore, the opinions of FDA are representative of those held by the larger community. Moreover, FDA has been making determinations about the GRAS status of food ingredients since the passage of the Food Additives Amendment in 1958.

In making determinations about the GRAS status of food ingredients, FDA takes into account not only the advanced state of scientific expertise but also the high standard of living and degree of public health that have been attained in the United States. FDA has established a number of programs to ensure that the safety of the American food supply continues to meet these high standards. Among these programs are the petition procedures for GRAS affirmation, the comprehensive review of GRAS ingredients, and the adoption of safety criteria and guidelines for toxicological studies ("Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food," 1982). Through these actions, FDA has established a standard of rigor that must be met in an effort to demonstrate that a food or a food ingredient is safe. As a consequence, any substance whose safety has not been demonstrated by a showing of appropriate rigor may be considered by FDA not to have been shown to be safe. The showing that FDA is proposing to require in § 170.30(c)(2) applies this standard of rigor to GRAS claims that are based on common use of an ingredient outside the United States before 1958.

Moreover, FDA also is proposing to state in § 170.30(c)(2) that a person who claims that an ingredient in use before 1958 is GRAS on the basis of its common use outside the United States should petition the agency for concurrence in the ingredient's GRAS status. Although persons normally are free to make their own determination about whether a substance is GRAS, the agency believes that there are two signficant reasons why they should refrain from making such a determination for a substance with a history of use exclusively or primarily outside the United States until they have obtained FDA's concurrence that the ingredient is GRAS:

First, because information on the history and circumstances of use of a substance outside the United States is usually not widely circulated in this country, it cannot ordinarily be assumed that the community of experts in the United States generally recognizes that the safety of that substance has been established based upon its history of use abroad. Thus, it is necessary to obtain FDA's opinion as to whether general recognition of the safety of a substance exists among that community. If one introduces such a substance into interstate commerce without obtaining FDA's concurrence, one takes the risk that the substance will be found not to be GRAS and thus to be an illegal food additive.

Second, also because of the lack of circulation of information, FDA may not have any knowledge about many substances with a history of use outside this country. Consequently, in the absence of information about a substance, the agency may seize the substance or food containing the substance or detain these items when they are brought into the United States. Although it may ultimately be shown that the substance is GRAS, the seizure or detention of the substance will delay its use. Such a delay can be avoided if interested persons petition the agency before introducting the substance into interstate commerce.

In accordance with this discussion and the agency's tentative conclusions, FDA is proposing to revise its procedural regulations to establish that a substance in use before 1958 may in fact be eligible for GRAS status based upon its history and circumstances of use in food outside of the United States. The agency is revising the definition of "common use in food" in § 170.3(f) so that it no longer stipulates that consumption of the substance must have occurred only in the United States. The agency is proposing to add a new paragraph (c)(2) to § 170.30 that specifies the information that is required to establish that a substance is GRAS based upon a history of common use in food when that use has occurred exclusively or primarily outside of the United States. Proposed § 170.30(c)(2) requires verification of the history of common use in food and sufficient information about the use to determine the context in which the use occurred and to establish that use of the substance is safe within the meaning of the act. The proposed regulation also suggests that persons claiming GRAS status for an ingredient on the basis of its common use in food outside the United States obtain FDA concurrence that the substance is GRAS.

FDA is also proposing to revise the procedures for GRAS affirmation petitions in § 170.35 to make clear that a request for GRAS affirmation may be based upon either scientific procedures or a history of common use in food. The regulation currently stipulates that the petition be based upon scientific procedures.

The agency has determined under 21 CFR 25.24(b)(12) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses. FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal and has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 170

Administrative practice and procedure, Definitions, Food additives, Food additive safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 170 be amended as follows:

PART 170—FOOD ADDITIVES

1. The authority citation for 21 CFR Part 170 is revised to read as follows:

Authority: Secs. 201(s), 402, 409, 701(a), 52 Stat. 1046–1047 as amended , 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371(a)); 21 CFR 5.11.

2. In § 170.3 by revising paragraph (f), to read as follows:

§ 170.3 Definitions.

* * * * *

(f) "Common use in food" means a substantial history of consumption of a substance solely for food use by a significant number of consumers.

* * * * *

3. In § 170.30 by redesignating paragraph (c) as paragraph (c)(1) and by adding new paragraph (c)(2), to read as follows:

§ 170.30 Eligibility for classification as generally recognized as safe (GRAS).

* * * * *

(c) * * *

(2) A substance used in food prior to January 1, 1958, may be generally recognized as safe through experience based on its common use in food when that use occurred exclusively or primarily outside of the United States if the information about the experience establishes that the use of the substance is safe within the meaning of the Federal Food, Drug, and Cosmetic Act. Common use in food prior to January 1, 1985, that occurred outside the United States shall be documented by published or other information and shall be corroborated by information from a second, independent source that confirms the history and circumstances of use of the substance. The information used to document and to corroborate the history and circumstances of use of the substance must be generally available; that is, it must be widely available in the country in which the history of use has occurred and readily available to interested qualified experts in this country. Persons claiming GRAS status for a substance based on its common use in food outside of the United States should obtain FDA concurrence that the use of the substance is GRAS.

* * * * *

4. In § 170.35 by revising the introductory text of paragraph (c)(1), to read as follows:

§ 170.35 Affirmation of generally recognized as safe (GRAS) status.

* * * * *

(c)(1) Persons seeking the affirmation of GRAS status of substances as provided in § 170.30(e), except those subject to the NAS/NRC GRAS list survey (36 FR 20546), shall submit a petition for GRAS affirmation pursuant to Part 10 of this chapter. Such petition shall contain information to establish that the GRAS criteria as set forth in § 170.30(b) or (c) have been met, in the following form:

* * * * *

Interested persons may, on or before September 3, 1985, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 6, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85–15787 Filed 7–1–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–31–85]

Tax-Exempt Entity Leasing; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document provides proposed regulations regarding tax-exempt entity leasing. Changes to the applicable tax law were made by the Tax Reform Act of 1984. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to tax-exempt entity leasing; the text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 3, 1985. In general, the regulations are proposed to apply to leases involving tax exempt entities entered into after May 23, 1983, and to property placed in service by the taxpayer after May 23, 1983. The revisions to safe-harbor lease reporting requirements are proposed to apply to such lease agreements executed after June 30, 1985.

ADDRESS: Please mail or deliver comments to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–31–85), 1111 Constitutuon Avenue, N.W., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Robert Beatson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3590).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.48–12T, 1.168(f)(8)–1T, and 1.168(j)–1T to Part 1 of Title 26 of the Code of Federal Regulations. When § 1.48–12T is promulgated as a final regulation, it would be renumbered as § 1.48–12 of Part 1 of Title 26 of the Code of Federal Regulations. When § 1.168(f)(8)–1T is promulgated as a final regulation, it would be renumbered as § 1.168(f)(8)–1

of Part 1 of Title 26 of the Code of Federal Regulations. When § 1.168(j)–1T is promulgated as a final regulation, it would be renumbered as § 1.168(j)–1 of Part 1 of Title 26 of the Code of Federal Regulations. For the text of the temporary regulations, see FR Doc. 85–15846 (T.D. 8033) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains these additions to the Income Tax Regulations.

The proposed regulations provide needed guidance regarding the provisions of sections 168(j) and 7701(e) which were enacted by section 31 of the Tax Reform Act of 1984.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in the temporary regulations have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that person submitting comments on the requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Robert Beatson of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and the Treasury Department participated, however, in developing the regulations on matters of both substance and style.

Comments and Requests for a Public Hearing

Before adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. In particular, comments are invited concerning the rules for determining whether partnership allocations are qualified under section 168 (j) (9) (B). All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–15847 Filed 6–28–85; 9:48 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 33

Enforcement of Nondiscrimination on the Basis of Handicap in Department of Labor Programs

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Department of Labor.

DATE: To be assured of consideration, comments must be in writing and must be received on or before August 16, 1985.

ADDRESSES: Comments should be sent to William J. Harris, Director, Office of Civil Rights, 200 Constitution Avenue NW., Room N–4123, Washington, D.C. 20210; Telephone (202) 523–8927.

Comments received will be available for public inspection in Room N–4123, 200 Constitution Avenue NW., from 9:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Copies of this notice are available on tape for those with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Frederick Drayton, Chief, Division of Policy, Standards and Procedures, Office of Civil Rights, 200 Constitution Avenue NW., Washington, D.C. 20210; Telephone (202) 523–7001 (VOICE) or 523–7090 (TTY).

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed regulation is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Labor. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95–602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activitiy receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendment to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*

29 U.S.C. 794 (amendment italicized).

The substantive nondiscrimination obligations of the Department of Labor as set forth in this proposed rule are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Representative James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13901 (1978) (remarks by Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13897 (remarks of Rep. Brademas); *id.* at 38552 (remarks of Rep. Sarasin).

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed

to Executive agencies on April 15, 1983, and redistributed with revisions on April 13, 1984.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127), therefore, a regulatory impact analysis has not been prepared.

I have certified to the Chief Counsel for Advocacy, Small Business Administration, that this regulation affects only Department of Labor conducted programs and activities, and will not have a significant impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis

Section 33.1 Purpose.

Section 33.1 would state the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 33.2 Application.

The proposed regulation would apply to all programs or activities conducted by the Department of Labor. "Federally conducted programs or activities" refers to programs or activities carried out by a Federal agency either directly or through contractors acting on its behalf. In addition to employment, federally conducted programs and activities fall into two categories: Those involving general public contact as part of ongoing agency operations and those directly administered by agencies for program beneficiaries. Activities in the first category would include communication with the public (*e.g.*, telephone contacts, office walk-ins or interviews, oral or visual public information). The second category includes programs that provide Federal services or benefits (*e.g.*, coal mine workers' compensation, labor certification for alien workers).

All Department of Labor programs and activities covered by this regulation are conducted currently under 15 major administrative components (*i.e.*, administrations, offices, comissions, etc.).

Section 33.3 Definitions.

"Assistant Attorney General." "Assistant Attorney General" would refer to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Assistant Secretary for Administration and Management." "Assistant Secretary for Administration and Management" (ASAM) would refer to the Assistant Secretary for Administration and Management in the Department of Labor.

"Auxiliary aids." "Auxiliary aids" would mean services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the Department's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 33.11(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." The definition would identify those elements which must be present to enable the Department to determine the beginning of its obligation to investigate a complaint (*see* § 33.12(g)).

"Department." The term "Department" would be defined for clarity. The term would refer to the Department of Labor.

"Director." The term "Director" would refer to the Director, Office of Civil Rights.

"Facility." The definition of "facility" would be similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" would be deleted to clarify its coverage. The phrase "or interest in such property," would be deleted because the term "facility," as used in this regulation, would refer to structures and not to intangible property rights. It should, however, be noted that the regulation would apply to all programs and activities conducted by the Department regardless of whether the facility in which they conducted is owned, leased, or used on some other basis by the Department. The term "facility" would be used in §§ 33.6(b) and 33.9.

"Handicapped person." The definition of "handicapped person" would be identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

"Qualified handicapped person." The definition of "qualified handicapped person" would be a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (a) would deviate from existing regulations for federally assisted programs because of intervening court decisions. It would define "qualified handicapped person" with regard to any program under which a person is required to perform services or achieve a level of accomplishment. In such programs a qualified handicapped person would be one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition would reflect the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of the program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It concluded, therefore, that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We would incorporate the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the Department. The Department would be required to make modifications in order to enable a handicapped applicant to participate, but would not be required to offer a program of a fundamentally different nature. The test would be whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the Department does not offer. Although the revised definition would allow exclusion of some handicapped people from some programs, it would

require that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

We encourage comment on paragraph (a). The language we have proposed comes directly from the Supreme Court's interpretation of Section 504. However, so long as the definition of "qualified handicapped person" remains faithful to the statute and current case law, we are receptive to alternative language.

For programs or activities that do not fall under paragraph (a), paragraph (b) would adopt the existing definition of "qualified handicapped person" with respect to services in the coordination regulation for programs receiving Federal financial assistance (28 CFR 41.32(b)). Under this definition, a qualified handicapped person would be a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition would make it clear that, as used in this regulation, "Section 504" applies only to programs or activities conducted by the Department and not to programs or activities to which it provides Federal financial assistance.

Section 33.4 Self-evaluation.

The Department would have to conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this reulation. The process would include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The Department of Justice is considering whether and to what degree the Federal Advisory Committee Act (5 U.S.C. App.) is applicable to the proposed consultation requirement. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

Section 33.5 Notice.

Section 33.5 would require the Department to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and his regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Department's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 33.6 General prohibitions against discrimination.

Section 33.6 would be an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) would restate the nondiscrimination mandate of section 504. The remaining paragraphs in § 33.6 would establish the general principles for analyzing whether any particular action of the Department violates this mandate. These principles would serve as the analytical foundation for the remaining sections of the regulation. If the Department were to violate a provision in any of the subsequent sections, it would also have violated one of the general prohibitions found in § 33.6. When there is no applicable subsequent provision, the general prohibitions stated in this section would apply.

Paragraph (b)(1) would prohibit overt denials of equal treatment of handicapped persons. The Department would not be permitted to refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption would be permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, for example, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license or a certificate to inspect mines; but it might not be permissible to automatically disquality all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Therefore, paragraph (b)(1)(iii) would require that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 33.9–33.10) and communications (§ 33.11) would be specific applications of this principle.

Paragraph (b)(1)(iv) would permit the Department to provide different or separate aids, benefits, or services if necessary to ensure that the aids, benefits, or services are as effective as those provided to others, despite the mandate of paragraph (d) that the Department administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

Paragraph (b)(1)(v) would prohibit the Department from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board because of his or her handicap.

Paragraph (b)(1)(vi) would prohibit the Department from limiting, on the basis of handicap, a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(2) would require the Department to give qualified handicapped persons the option of participating in regular programs despite the existence of permissible separate or different programs. This language is intended to reinforce the concept of equal opportunity. It is also consistent with the requirement in paragraph (d) which would require that programs be conducted in the most integrated setting appropriate to the needs of qualified handicapped persons.

Paragraph (b)(3) would prohibit the Department from utilizing criteria or methods of administration that deny handicapped persons access to the Department's programs or activities. The phrase "criteria or methods of administration" would refer to official written departmental policies and the actual practices of the Department. This paragraph would prohibit both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but which deny handicapped persons an effective opportunity to participate.

Paragraph (b)(4) would specifically apply the prohibition enunciated in § 33.6(b)(3) to the process of selecting sites for construction of new facilities to be used by the Department. Paragraph (b)(5) would provide that sites at which

the Department owns or leases buildings at the time the regulations come into effect would be exempt from the prohibitions of paragraph (b)(4).

Paragraph (b)(6) would prohibit the Department from using criteria for the selection of procurement contractors that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (b)(7) would prohibit the Department from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certifications. A person would be a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 33.3).

In addition, the Department would not be permitted to establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. For example, the Department would have to comply with this requirement when establishing safety standards for the operations of licensees. In that case the Department would have to ensure that such standards do not discriminate against the employment of qualified handicapped persons in an impermissible manner.

Paragraph (b)(7) would not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the standards established by the Department of the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) would provide that programs conducted pursuant to Federal statute or Executive Order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Section 33.7 Employment.

Section 33.7 would prohibit discrimination on the basis of handicap in employment by the Department of Labor. This regulation is in accord with a recent decision of the Fifth Circuit which holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt* v. *United States Postal Service*, 662 F.2d 292 (5th Cir. 1981). Consistent with that decision, this section would provide that the standards, requirements and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employment in federally conducted programs or activities. In addition to this section, § 33.12(b) of this Part would also specify that the Department will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

Section 33.8 Program accesssibility: Discrimination Prohibited.

Section 33.8 would state the general nondiscrimination principle underlying the program accessibility requirements of §§ 33.9 and 33.10.

Section 33.9 Program accessibility: Existing facilities.

This regulation would adopt the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–41.58) with certain modifications. Thus, § 33.9 would require that the Department's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons, but would also make clear that the Department is not required to make each of its existing facilities accessible (§ 33.9(a)(1)). However, § 33.9, unlike 28 CFR 41.56–41.57, would place explicit limits on the Department's obligation to ensure program accessibility (§ 33.9(a)(2)).

Paragraph (a)(2) would, in general, codify recent case law that defines the scope of the Department's obligation to ensure program accessibility. This paragraph would provide that in meeting the program accessibility requirement the Department is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation would be provided in §33.11(e). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association (APTA)* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of paragraph (a)(2) would be an effort to conform the Department's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This paragraph would acknowledge, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs or administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, would not establish an absolute defense; it would not relieve the Department of all obligations to handicapped persons.

Although the Department would not be required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless would have to take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 33.9(a) would in most cases not result in undue financial and administrative burdens on the Department. However, whenever a Department official believes that the proposed accommodation would result in a fundamental alteration of the program or undue burdens, paragraph (b)(1) would require that the Department official prepare a report for the Secretary of Labor. The Department official would also be required to make reasonable efforts to ensure that the person(s) to be accommodated has an opportunity to provide information which would be relevant to the determination. Paragraph (b)(2) would provide that the burden of proving that compliance with § 33.9(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the Department. Paragraph (b)(3) would provide that the decision that compliance would result in such alteration or burdens must be made by the Secretary after considering all departmental resources available for use in the funding and operations of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. This decision would represent the final administrative decision of the Department, and, therefore, would be subject to judicial review.

Paragraph (d) would set forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the Department would have to give priority consideration to those that will be consistent with the provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities would be required only when there is no other feasible way to make the Department's program accessible. The Department would be able to comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits, as appropriate.

Paragraphs (e) and (f) would establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the Department would have to make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan would have to be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance would have to be taken within sixty days. The Department of Justice is considering whether and to what degree the Federal Advisory Committee Act (5 U.S.C. App.) is applicable to the proposed consultation requirement include in § 33.9(f).

Section 33.10 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under sections 504 and 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 33.10 would provide that those buildings that are constructed or altered by, on behalf of, or for the use of the Department shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with current standards for physical accessibility prescribed by the General Services Administration at 41 CFR Part 101–19.600 to 101–19.607 pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regualtion are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possible inconsistent standards.

Existing buildings leased by the Department after the effective date of this regulation would not be required to meet the new construction standard. They would be subject, however, to the requirements of § 33.9.

Section 33.11 Communications.

Section 33.11 would require the Department to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps would include procedures for determining when auxiliary aids are necessary under § 33.11(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the Department's program or activity. The would also include providing an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice would be given primary consideration by the Department (§ 33.11(a)(1)(i)). The Department would honor the choice unless it could demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 33.11(e). That paragraph would limit the obligation of the Department to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see* discussion of § 33.9(a)(2)). The Department would provide auxiliary aids at no cost to the handicapped person, unless not required by § 33.11(e).

It is our view that compliance with § 33.11 would in most cases not result in undue financial and administrative burdens on the Department. As under § 33.9, whenever a Department official believes that the proposed action would result in a fundamental alteration of the program or undue burdens, paragraph (e)(1) would require that the Department official prepare a report for the Secretary of Labor. Under this section, the Department official would also be required to make reasonable efforts to ensure that the person(s) to be accommodated has an opportunity to provide information which would be relevant to the determination. In determining whether financial and administrative burdens are undue, all departmental resources available for use in the funding and operations of the conducted program or activity should be considered. Paragraph (e)(2) would provide that the burden of providing that compliance with § 33.9(a) would fundamentally alter the nature of a program or activity or would result in under financial and administrative burdens rests with the Department. Paragraph (e)(3) would provide that the decision that compliance would result in such alteration or burdens must be made by the Secretary and must be accompanied by a written statement of the reasons for reaching the conclusion. This decision would represent the final administrative decision of the Department, and, therefore, would be subject to judicial review.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many

circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the Department would make clear to the public: (1) The communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities; (2) the oportunity to request a particular mode of communication; and (3) the Department's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The Department would have to ensure effective communication with vision impaired and hearing impaired persons involved in hearings conducted by the Department. Auxiliary aids would be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the Department could require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Department would need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 33.11(a)(1)(ii)). For example, the Department need not provide wheelchairs, eye glasses, or hearing aids to applicants or participants in its programs.

Paragraph (b) would require the Department to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) would require the Department to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Paragraph (d) would require the Department to take appropriate steps to ensure that information regarding section 504 rights and protections that is supplied to employees, applicants, participants, beneficiaries, and other interested persons under § 33.5 is effectively communicated to handicapped persons.

Section 33.12 Complaint handling procedures.

Paragraph (a) would specify that paragraphs (c) through (n) of this section establish the procedures for processing complaints other than those alleging discrimination in employment. Paragraph (b)(1) would provide that the Department will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791). Paragraph (b)(2) would provide that complaints which are based upon program inaccessibility will be handled in accordance with § 33.9(b) and 33.11(e), as applicable.

The Department would be required to accept and investigate all complaints which (1) are within the Department's jurisdiction, (2) have been timely filed, and (3) state an allegation(s) which, if true, would violate section 504 or its implementing regulations (§ 33.12(g)). If, during a complaint investigation, the Department official responsible for the program states that he or she believes that resolution of the complaint would require an accommodation which results in a fundamental alteration of the program or in undue burdens, § 33.12(g)(3) would provide that the matter will proceed in accordance with §§ 33.9(b) and 33.11(e), as applicable. That is to say, the Secretary of Labor (or designee), as head of the agency, would be required to make the determination that program accessibility will involve a fundamental alteration of the program or undue financial and administrative burdens. This finding represents final agency action and would be subject to judicial review. If the Department determines that it does not have jurisdiction over a complaint, it would promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate government entity (§ 33.12(f)).

Paragraph (h) would require that all parties be given the opportunity to resolve the complaint on an informal basis at any time prior to the issuance of the determination.

Paragraph (i) would require the Department, when informal resolution is not achieved, to provide to the parties, in writing, findings of fact and conclusions of law, the remedy or corrective action, as appropriate, if noncompliance is found, and notice of the right to appeal. One appeal within the Department would be provided. The appeal would not be heard by the same person who made the initial determination of compliance or noncompliance (§ 33.12(j)(1)). The determination on appeal would be based on the investigative file, the written record, and any other material submitted upon the request of the ASAM or his or her designee (§ 33.12(j)(2)).

Paragraph (k) would require that the ASAM issue a determination within 90 days of the receipt of the request for appeal. The ASAM's determination would represent the final administrative decision by the Department.

Paragraph (m) would permit the Department to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the Department to issue a final determination of compliance or noncompliance may not be delegated.

Paragraph (n) would require the Department to respond to requests by the Architectural and Transportation Barriers Compliance Board for information on the status of complaints alleging that a building subject to the Architectural Barriers Act or section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

Section 33.13 Intimidation and retaliation prohibited.

Section 33.13 would prohibit the discharge, intimidation, retaliation, threat, coercion or other discrimination against a person(s) who has exercised a privilege under this regulation.

List of Subjects in 29 CFR Part 33.

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Signed at Washington, D.C., this 25th day of June, 1985.

William E. Brock,

Secretary of Labor.

For the reasons set forth in the preamble, Title 29, Subtitle A of the Code of Federal Regulations is proposed to be amended as set forth below:

Part 33 is added to 29 CFR to read as follows:

PART 33—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF LABOR

Sec.

33.1 Purpose.
33.2 Application.
33.3 Definitions.
33.4 Self-evaluation.
33.5 Notice.
33.6 General prohibitions against discrimination.
33.7 Employment.
33.8 Program accessibility: Discrimination prohibited.
33.9 Program accessibility: Existing facilities.

Sec.
33.10 Program accessibility: New construction and alterations.
33.11 Communications.
33.12 Complaint handling procedures.
33.13 Intimidation and retaliation prohibited.

Authority: 29 U.S.C. 794.

§ 33.1 Purpose.

The purpose of this Part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 33.2 Application.

This Part applies to all programs or activities conducted by the Department of Labor.

§ 33.3 Definitions.

For purposes of this Part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Assistant Secretary for Administration and Management" (ASAM) means the Assistant Secretary for Administration and Management in the Department of Labor.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Department of Labor. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. Persons with manual impairments may need other specially adapted equipment.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the actions in sufficient detail to inform the Department of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Department" means the Department of Labor.

"Director" means the Director, Office of Civil Rights (OCR), Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, or his or her designee.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(a) "Physical or mental impairment" includes—

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(b) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) "Has a record of such an impairment" means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means—

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Department as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by the Department as having such an impairment.

"Qualified handicapped person" means—

(a) With respect to any program or activity of the Department under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that would result in a fundamental alteration in its nature;

(b) With respect to any other Department program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this Part, section 504 applies only to programs or activities conducted by Executive agencies and not to programs or activities which receive Federal financial assistance.

§ 33.4 Self-evaluation.

(a) The Department shall, within one year of (the effective date of this Part), evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Department shall proceed to make the necessary modifications.

(b) The Department shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 33.5 Notice.

The Department shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this Part and its applicability to the programs or activities conducted by the Department, and make such information available to them in such manner as the ASAM finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§ 33.6 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

(b) (1) The Department, in providing any aid, benefit, or service, may not, directly or through contractual, licensing or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Department may not deny a qualified handicapped person the opportunity to participate in regular programs or activities despite the existence of permissibly separate or different programs or activities.

(3) The Department may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The Department may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by DOL; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The provisions of paragraph (b)(4) of this section do not apply to sites or locations at which the Department owns or leases buildings on the date the regulations in this Part become effective.

(6) The Department, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(7) The Department may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the Department establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. This Part does not apply to the programs or activities of non-departmental entities that are licensed or certified by the Department of Labor.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this Part.

(d) The Department shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 33.7 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department. The definitions requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§ 33.8 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 33.9 and 33.10, no qualified handicapped person shall, because the Department's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

§ 33.9 Program accessibility: Existing facilities.

(a) *General.* The Department shall operate such program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the Department to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the Department to take any action that is can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(b) (1) If a Department official believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the official shall prepare a report for the Secretary of Labor which considers such factors as costs, funding, and resources. In preparing the report, the Department official shall make reasonable efforts to ensure that the person(s) to be accommodated in the particular program or activity has an opportunity to provide relevant information regarding any of the above factors.

(2) The decision that compliance would result in such alteration or burdens must be made by the Secretary after considering all departmental resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. This decision represents the final administrative decision of the Department.

(3) The Department has the burden of proving that compliance with paragraph (a) of this section would result in such aleration or undue burdens.

(c) If an action would result in such an alteration of such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure the qualified handicapped persons receive the benefits and services of the program or activity.

(d) *Methods.* The Department may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its program or activities readily accessible to and usable by handicapped persons. The Department is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Alterations to existing buildings shall be made in accordance with the provisions of § 33.10 of this Part. In choosing among available methods for meeting the requirements of this section, the Department shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(e) *Time period for compliance.* The Department shall comply with the obligations established under this section within sixty days of the effective date of this Part except that where structual changes in facilities are undertaken, such changes shall be made within three years of the effective date of this Part, but in any event as expeditiously as possible.

(f) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Department shall develop, within six months of the effective date of this Part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons and organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Department's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 33.10 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered after the effective date of this Part by, on behalf of, or for the use of the Department shall be designed, contructed, or altered so as to be readily accessible to and usable by handicapped persons in accordance with the requirements of the standards for physical accessibility prescribed by the General Services Administration at 41 CFR Part 101–19.600 to 101–19.607.

§ 33.11 Communications.

(a) The Department shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entitites, and members of the public.

(1) The Department shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Department.

(i) In determining what type auxiliary aid is necessary, the Department shall give primary consideration to the requests of the handicapped person.

(ii) The Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Department communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDDs), or equally effective telecommunication systems shall be used.

(b) The Department shall ensure that interested persons, including perons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Department shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The Department shall take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the Department's programs or activities. If the Department uses recruitment materials informational publications, or other materials which it distributes or makes available to participants, beneficiaries, referral sources, applicants, employees, or the public, it shall include in those materials or publications a statement of the policy described in § 33.6 and information as to complaint procedures. The requirements of this paragraph may be met either by including applicable inserts in existing materials and publication or by revising and reprinting such materials, as appropriate.

(e) This section does not require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(1) If a Department official believes that the proposed action would fundamentally alter the program or activities or would result in undue financial and administrative burdens, the official shall prepare a report for the Secretary of Labor which considers such facts as costs, funding, and resources. In preparing the report, the Department official shall make reasonable efforts to ensure that the person(s) to be accommodated in the particular program or activity has an opportunity to provide relevant information regarding any of the above factors.

(2) The decision that compliance would result in such alteration or burdens must be made by the Secretary after considering all departmental resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. This decision represents the final administrative decision of the Department.

(3) The Department has the burden of proving that compliance with paragraphs (a)–(d) of this section, as applicable, would result in such alteration or undue burdens.

(f) If an action required to comply with this section would result in such an alteration or such burdens, the Department shall take any other action

that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 33.12 Complaint handling procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by DOL.

(b) (1) Compliants alleging violations of section 504 with respect to employment shall be processed according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(2) Complaints based upon program inaccessibility in violation of section 504 will be governed by the procedures at §§ 33.9(b) and 33.11(e) of this Part, as applicable.

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Office of Civil Rights (OCR).

(d) All complaints must be filed within 180 days of the alleged act of discrimination. The Director may extend this time period for good cause.

(e) Where a complaint contains insufficient information, the Director shall seek the needed information from the complainant. If the complainant is unavailable after reasonable means have been utilized to locate him or her, or the information is not furnished within 30 days of the date of such request, the complaint may be dismissed upon notice sent to the complainant's last known address.

(f) If the Director receives a complaint over which DOL does not have jurisdiction, he or she shall promptly notify the complainant and shall make resonable efforts to refer the complaint to the appropriate government entity.

(g) The Director shall accept and investigate all complete complaints which are timely filed, are within the Department's jurisdiction, and state an allegation(s) which, if true, would violate section 504 or its implementing regulations.

(1) Where the director determines that the complaint will be investigated, he or she will notify the complainant(s) and the appropriate Department official(s).

(2) Such notification will advise the parties that a determination on the merits of the complaint will be issued within 180 days of the date of notification unless the matter is resolved informally prior to that time.

(3) If, during the course of the investigation, the Department official states that he or she believes that resolution of the complaint would require a fundamental alteration of the program or undue financial and administrative burdens, the complaint will proceed in accordance with §§ 33.9(b) and 33.11(e) of this Part, as applicable.

(h) At any time prior to the issuance of the determination the parties to the complaint may resolve the complaint on an informal basis. For this purpose, the Director shall furnish, to the extent permitted by law, a copy of the investigative file to the complainant and the appropriate Department official. If the complaint is resolved, the terms of the agreement shall be reduced to writing and entered as part of the official file by the Deputy Assistant Secretary for Administration and Management (Deputy ASAM).

(i) If informal resolution is not achieved, the Deputy ASAM shall issue a determination on the merits which notifies the parties to the complaint of the results of the investigation and includes—

(1) The findings of fact and conclusions of law;

(2) A remedy and/or corrective action, as appropriate, for each violation found; and

(3) A notice of the right to appeal to the Assistant Secretary for Administration and Management (ASAM).

(j)(1) An appeal of the Deputy ASAM's determination may be filed with the ASAM by any party to the complaint. Such appeal must be filed within 30 days of receipt of the determination. The ASAM may extend this time for good cause.

(2) Timely appeals shall be accepted and processed by the ASAM. The ASAM's determination shall be based upon the written record which may include, but is not limited to, the determination made by the Deputy ASAM, the investigative file, and any other materials submitted by the parties pursuant to a request from the ASAM.

(k) The ASAM shall notify all parties of his or her determination on the appeal within 90 days of the receipt of the appeal. The ASAM's determination represents the final administrative decision by the Department.

(l) The time limits cited in paragraphs (g)(2) and (k) of this section may be extended with the permission of the Assistant Attorney General.

(m) The Department may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

(n) The Director shall respond to requests by the Architectural and Transportation Barriers Compliance Board for information on the status of any complaint alleging that buildings that are subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (19 U.S.C. 792), are not readily accessible and usable to handicapped persons.

§ 33.13 Intimidation and retaliation prohibited.

No person may discharge, intimidate, retaliate, threaten, coerce or otherwise discriminate against any person because such person has filed a complaint, furnished information, assisted or participated in any manner in an investigation, review, hearing or any other activity related to the administration of, or exercise of authority under, or privilege secured by section 504 and the regulations in this Part.

[FR Doc. 85–15055 Filed 7–1–85; 8:45 am]

BILLING CODE 4510-23-M

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–700 A]

Powered Platforms for Exterior Building Maintenance; Reopening of Comment Period

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Reopening of comment period.

SUMMARY: The Occupational Safety and Health Adminstration (OSHA) is reopening the comment period to receive written comments on the Preliminary Regulatory Impact Assessment (PRIA), which was prepared for the proposed revision of the standard concerning powered platforms.

DATE: Written comments of this notice must be postmarked by August 1, 1985.

ADDRESS: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket S–700 A, Room N–3670, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, Washington, D.C. 20210, Telephone: (202) 523–7894.

Copies of the PRIA will be available from the Docket Office at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Room N3637, 200 Constitution Avenue NW., Washington, D.C. 20110. Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION:

OSHA published a Notice of Proposed Rulemaking on January 22, 1985 (50 CFR 2880) which proposed to revise the safety standards for powered platforms used to maintain building exteriors. Written coments and requests for a hearing were to be received by March 25, 1985. The deadline for comments were subsequently extended until June 3, 1985 (50 CFR 15756, April 22, 1985).

It has been brought to OSHA's attention that a copy of the PRIA was not available for public review in the OSHA Docket Office during the comment period. Subsequently, a copy of the PRIA was submitted to the record as Exhibit 8. In order to provide an opportunity for comment and to encourage the fullest development of the record, OSHA is reopening the period in which to file written comments on the PRIA. Copies of the PRIA will be available, upon request, from the Docket Office, Docket S–700 A, Room N3670, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210. Telephone: (202) 523–7894. Comments on the PRIA must be submitted to the Docket Office by August 1, 1985.

Submission of comments on other issues were to have been submitted to the Docket Officer by June 3, 1985.

Authority: This document was prepared under the direction of Robert A. Rowland, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

(Sec. 6(b), 84 Stat. 1593,(29 U.S.C. 655): 29 CFR Part 1911, Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, D.C. this 26th day of June 1985.

Robert O. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85–15800 Filed 7–1–85; 8:45 am]

BILLING CODE 4510–26–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM 85–2]

Rules of Practice and Procedure Governing Workpapers and Computer-Generated Evidence

June 18, 1985

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has reviewed certain of its rules of practice and procedure following the completion of Docket No. R84–1, the most recent omnibus postal rate case. Subpart A, Rules of General Applicability, 39 CFR 3001.1–43 and Subpart B, Rules Applicable to Requests for Changes in Rates or Fees, 39 CFR 3001.51–56 have been examined to ascertain whether improvements could be made which would reduce either the time or expense involved in analyzing evidence presented in support of proposed changes in rates or fees. We have identified three areas where amendments to our rules would expedite review of evidence submitted in future cases. We propose adding explanatory detail to Rule 54(o) of our Rules of Practice, which relates to workpapers submitted by the participants in our proceedings; making certain refinements to Rules 31(k)(3)(i) and Rule 54(h), which relate to computer-generated evidence submitted by participants; and making certain additional, technical amendments to Rule 54.

DATE: Comments must be received by August 16, 1985.

ADDRESS: Comments and correspondence relating to this notice should be sent to Charles L. Clapp, Secretary of the Commission, Suite 300, 1333 H Street, NW., Washington, D.C. 20268 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, D.C. 20268: (202) 789–6820.

SUPPLEMENTARY INFORMATION: When the Postal Service files a request for changes in rates, it submits a large amount of numerical data to the Commission. The numerical data relate to several different subjects. The Postal Service submits financial data concerning its expenditures during the most recently completed fiscal year; it submits statistical data that allocate the expenditures among classes of mail; it submits proposals for modifying the historical cost allocations to bring them into line with the Service's economic theories of ratemaking; it submits projections of the number of pieces of each type of mail that the Service expects to handle for several years in the future; it submits projections of its expenditures for several years into the future, and it allocates those projected expenditures among classes of mail.

Finally, the Postal Service submits proposed rates for all types of mail. These proposed rates are designed to ensure that each type of mail covers the projected expenditures that have been allocated to it as well as to ensure that the total revenues of the Postal Service equal the total costs of the Postal Service.

At the time of filing a request for changes in rates or classifications, the postal Service may submit tens of thousands of pages of testimony, exhibits workpapers, and library references. These documents are intended to explain each of the various kinds of data described above. The Commission is obliged to digest the Postal Service's initial filing and reach a decision on the Postal Service's proposed rates within ten months. During this ten months the Commission is also obliged to provide a hearing to any person who desires to participate in such a hearing and who is affected by the Postal Service's proposed rate changes. The hearing process may result in the generation of tens of thousands more pages of testimony, exhibits, workpapers and library references. Providing a hearing on, and then analyzing and evaluating, this "mountain" of data in the ten months allowed to the Commission is a formidable task.

A. Workpaper Rule

To expedite this process, the Commission has adoted several rules of practice. One of the rules that is essential to the expedited analysis of Postal Service filings is Rule 54(o)(4). This rule requires that parties' testimony be accompanied by workpapers that are sufficiently annotated to allow a reviewer to trace any number not derived in the testimony or workpaper itself, back to published documents or to primary data sources. Without more complete compliance with this rule, the Commission and the parties cannot expect to analyze future USPS evidentiary submissions efficiently and expeditiously. One purpose of this proposed rulemaking is to make the cross-reference and citation requirements of Rule 54(o)(4) plain and unmistakable.

Although there are numerous examples that could be used, we will examine Library Reference D–89 provided by Postal Service witness Reynolds in Docket No. R84–1 to illustrate the difficulty encountered by the analyst when requirements of Rule 54(o)(4) are not completely met.

In Docket No. R84–1 Postal Service witness Lee presented testimony on several cost reduction programs. Witness Lee testified that each of the several cost reduction programs would

produce savings in fiscal years 1983, 1984, and 1985. Witness Reynolds allocated the cost savings to classes and subclasses, and calculated indirect cost savings. Witness Reynolds' workpapers did not, however, show how half of the cost reduction programs' savings were allocated to Cost Component 3–1, Mail Processing Direct Labor. *Compare* Reynolds Workpapers 1A, pp. 171–72; 2A, pp. 201–02, and 4A, pp. 200–01 (single column of numbers for cost level changes) *with* Library Reference D–89 (multiple columns of numbers for cost level changes). Nor did witness Reynolds' workpapers identify the source of the dollar amounts of cost savings for the various cost reduction programs. *See* Reynolds Workpapers 5A, 5B, and 5C, Cost Segment 3.

The only information having a bearing on the sources and treatment of the savings resulting from cost reduction programs was the summary description in Section 1F of Witness Reynolds' direct testimony. USPS–T–19, pp. 16–18. But this description failed to identify the source of the dollar savings from cost reduction programs. Nor did it provide sufficient detail to enable a reviewer to replicate witness Reynolds' allocations to Cost Component 3–1.

Eventually Witness Reynolds stated, in response to an interrogatory, that the source of the dollar amount of savings from cost reduction programs was the workpapers of witness Lee. Witness Lee, in response to the same interrogatory, provided workpapers showing how the dollar value of the cost savings had been calculated from estimates of workhour savings. Witness Lee, however, did not provide any information on how the workhour savings had been derived. *See* Tr. 7/2212–17; 2305–10. *But see* Tr. 7/2190–91 (retro-fitted facer-canceler cost reduction explained but without precise quantification).

In addition to providing the source of the cost savings appearing in his Workpaper 5, witness Reynolds also provided a "representative numerical example" of how he allocated cost savings to classes and subclasses, and how he calculated indirect cost savings from cost reduction programs. Tr. 7/3025. But this "representative numerical example" did not show how cost reductions affecting Cost Component 3–1 had been allocated.

Almost three months after its request for new rates was filed, the Postal Service provided a document in response to an interrogatory showing separate allocations of individual cost reductions affecting Cost Component 3–1. *See* Library Reference D–89. Although Library Reference D–89 presents each separate distribution key that was used to allocate cost reductions within Cost Component 3–1, that document does not provide sources for those distribution keys. Only through an exhaustive and time-consuming examination of an enormous quantity of documentation for witness Reynolds' computer programs, was the Commission staff able to infer how some distribution keys had been developed.

This would not have been necessary if witness Reynolds' workpapers had complied fully with Rule 54(o)(4). That rule has two elements. One is a requirement that numbers, if not derived in the testimony or workpaper under consideration, be cross-referenced to other testimony or other published documents. The second element is the requirement that the workpaper cite the primary data source from which the number was obtained, if the number was not obtained from a published document. This is essentially what Library Reference D–89 provided by witness Reynolds consists of. It witness Reynolds' workpapers had complied with the intent of current Rule 54(o)(4), this essential information would have been available at the outset of the proceeding, rather than after the close of the discovery period.

Because of the failure of witness Reynolds to provide workpapers fully complying with Rule 54(o)(4), participants and the Commission staff had to devote significant amounts of time and resources to decode arcane computer-program documentation in order to discover the basic sources of data used for Postal Service cost projections. This should not be necessary, particularly where the Service has shown itself capable of producing easily understood spreadsheets like Library Reference D–89, and where current data-base management systems would allow the Service to include citations to source documents as part of its presentations of numerical data.

To make it clear what kind of cross-references and citations are required by Rule 54(o)(4), and to encourage the Postal Service to fully conform to it, we have provided an illustration of references and citations satisfying that Rule in Appendix A. Appendix A presents one year of cost projections for Cost Component 3–1, and is based on Library Reference D–89. In addition, we propose that the language of Rule 54(o)(4) be refined as indicated in the proposed text below.

B. Computer Evidence Rule

PRC Order No. 425 (47 FR 12794–97) adopted Rule 31(k)(3) of our Rules of Practice. That rule specifies certain information and documentation that is necessary to establish a proper foundation for the results of computer-based studies that parties propose to rely upon in our proceedings. In standardizing these foundation requirements for computer-based evidence the Commission had two main goals. One was to assure that computer-based evidentiary submissions will meet the threshold level of reliability that both civil and administrative proceedings require. The other was to minimize the area of dispute over what supplementary material must be provided with computer-based submissions, and the form in which it must be provided, in order to reduce the time and resources that such disputes consume in our proceedings.

As we have indicated in our discussion of Rule 54(o)(4), above, our general rate proceedings are detailed, complex and cover a wide range of issues. Yet they are also subject to a very tight 10-month statutory deadline. Consequently, parties ordinarily have discovery periods of as little as four-to-eight weeks (depending upon whether the computer-based submission is from the Postal Service or the intervenors) in which to analyze, test, and evaluate complex computer models before the witnesses supporting the model are presented for cross-examination.

Acknowledging this difficult circumstance, the basic objective of Rule 31(k)(3) is to put sufficient information and documenation in the hands of the participants at the outset of the discovery period to enable them to independently replicate computer-generated results offered in evidence. If this is not done, and a complex computer model is involved, neither the Commission nor the parties will be able to conduct meaningful cross-examination of the computer model by the time that the supporting witness is scheduled to appear. Because Rule 31 (unlike the filing requirements of Rule 54) is a general rule of evidence, these principles apply regardless of the identity of the sponsoring party.

Docket No. R84–1 was our first general rate proceeding under new Rule 31(k)(3). Our efforts to achieve the basic objective of the rule met with mixed results. With respect to the Postal Service's cost projection, or "roll forward", computer program, documentation was extensive and helpful, yet replication of the program results still required several months of diligent effort by the Commission staff, due to the format in which the Postal Service submitted its documentation.

With respect to the Postal Service's Mail Processing Cost Model (MPCM), however, critical documentation required by Rule 31(k)(3), including a hard copy listing of the MPCM source code, was never provided. As a result, authentication, replication and validation of the MPCM while Docket No. R84–1 was pending was impossible. Accordingly, the Commission struck the testimony that relied upon the MPCM from the record for lack of an adequate foundation. PRC Orfer No. 562 issued May 30, 1984, pp. 7–17.

There are several reasons why the objective of the Rule was frustrated with respect to the MPCM in Docket No. R84–1. In this rulemaking context, however, *past* failures to comply with Rule 31(k)(3) need not occupy us; we are concerned with potential future improvements. It has become apparent to the Commission that full compliance witht the Rule still might not have put parties in the position that the Rule intends, and that due process requires, despite the parties' diligent and good faith efforts to discover and analyze documentation needed to understand the Postal Service's computer-based evidence. Rule 31(k)(3) intends that parties be able to authenticate, replicate, and validate a computer-generated result by the time that such result is to be offered in evidence and cross-examination of the sponsoring witness is to take place.

Several parties, including Time, Inc., Magazine Publishers' Association (MPA), and Direct Marketing Association (DMA), undertook timely and extensive discovery in an effort to authenticate, replicate and validate the MPCM. *See* Order No. 562, issued May 30, 1984, p. 5–12. It became apparent that traditional discovery procedures, consisting of rounds or written interrogatories and follow up interrogatories, which can become interspersed with extensive motion practices, may be too cumbersome to elicit the technical information necessary to do this within the normal discovery period. It became apparent that for computer models of the MPCM's complexity, the parties are unlikely to be able to achieve the Rule's objective despite diligent and good faith discovery efforts, unless an expert thoroughly versed in the design and operation of the program is made available to answer the parties' technical question orally, in an informal conference setting, at the beginning of the discovery period.

Accordingly, we are proposing that a provision be added to the list of presumptively necessary information to be provided upon request, that is found in paragraphs (a) through (h) of current Rule 31(k)(3). That provision would be designated paragraph (i). It would make a technical conference procedure of a very specialized nature available to the party seeking to replicate the computer-generated result submitted by another party. Such a conference, in order to remain procedurally and substantively distinct from cross-examination, would be off-the-record, and carefully limited in scope to information that is reasonably necessary to allow independent replication of the program by the party requesting the conference. Questions that are not essential to determine what operations a program performs, how it performs them, and how an independent analyst may replicate them, would be addressed by traditional discovery procedures. Rather than this proposed addition to Rule 31(k)(3).

By describing such conferences as "off-the-record", the Commission means that although the proceedings of such a conference might be recorded, no information or data disclosed at such a conference could be admitted as record evidence without first clearing the same hurdles that any other information must clear before it may be admited into the record, i.e., being reflected in answers to formal written or oral cross-examination, requests for admissions, or stipulation. These have been in the past, and remain, the normal procedural ground rules for technical conferences generally in Commission proceedings. Therefore, the provision in proposed paragraph 31(k)(3)(i) differs from technical conferences generally in that its availability, and its specialized subject matter and scope, would be regularized by rule. The evidentiary procedures that would apply are those that apply to technical conferences generally.

Our experience with the MPCM controversy in Docket No. R84–1 also suggests that a refinement in the documentation requirements of Rule 31(k)(3) would be useful. In that docket, the Postal Service provided a computer tape purporting to contain the MPCM program and data files. It also provided a page of Job Control Language (JCL) statements with instruction for duplicating the tape. The Postal Service seemed to be under the impression that it had provided JCL of a quite different nature, i.e., JCL for executing the MPCM program. *See* PRC Order No. 562, issued May 30, 1984, pp. 9–12. Generalizing from this experience, we think that it will avoid confusion in the future if we spell out in the Rule what is expected in this regard.

Accordingly, we propose to add language at the end of section 31(k)(3)(i) that makes it clear that a hard copy listing and description of each machine-readable data- or program-file on the tape, or in the user area that a party provides, must be provided in response to the Rule. The additional language that we propose would also make it clear that hard-copy instructions for printing out any text-format data- or program-files (such as ASCII or EBCDIC) must be furnished, and that hard-copy instructions for executing any machine-code files (such as JCL) must be furnished whenever machine-readable files are provided in response to the Rule.

C. "Roll-Forward" Program

The "roll forward" program is the computer program that projects base-year costs to the test year in our major rate and classification proceedings. As we mentioned above, the "roll forward" program submitted by the Postal Service in Docket No. R84–1 was extensively documented, yet still required several months of analysis by Commission staff in order to replicate it.

The reasons that it could not be replicated by diligent and good faith efforts within the discovery period available in Docket No. R84–1 have less to do with specific deficiencies with the documentation under Rule 31(k)(3) than with the fact that the particular format selected for submitting the documentation was not conducive to independent analysis.

In Docket No. R84–1, the Postal Service's "roll-forward" computer program was documented with the following materials:

—USPS LR–D–37, RCA/Roll-Forward Systems Documentation. Describes the various operations performed by the USPS cost programs.

—USPS LR–D–36, Listing of Cobol Programs, Job Control Language, and Command Procedures used in RCA/Roll-Forward System. Lists the various USPS cost programs.

—USPS LR–D–39, Listing of Input Data Files Which Control Cost Development and Cost Reports. Lists numerical factors used in the roll-forward process.

—USPS LR–D–40, RCA/Roll-Forward Processing Information Reports. Lists all operation codes, numerical factor codes, and distribution keys used in calculating short-run and longer-run costs for each cost component in each time period.

—USPS–T–7, Workpapers of Bryan A. Bailey. Lists USPS Base Year

attributable costs by subclass and component.

—USPS–T–19, Workpapers of John A. Reynolds. Lists USPS attributable costs for FY 1983, FY 1984, Test Year Before Rates, and Test Year After Rates.

With a few minor exceptions, these voluminous (over 5,000 pages) documents provided enough information to allow the Commission staff or a party to independently replicate the Postal Service's cost forecasts shown in the workpapers of witness Bailey (USPS–T–7) and witness Reynolds (USPS–T–19). Based on the experience of the Commission staff, however, the process required to perform this replication was extremely tedious and time-consuming. As discussed below, we believe that this process could be simplified considerably if the Service provided certain additional documentation items.

Illustration of Replication Process

One of the first steps of the replication process is to create a file containing the Service's Base Year attributable cost matrix (shown in witness Bailey's Workpaper 9) in a format suitable for the user's particular computer system. The Postal Service provided a computer tape containing this Base Year Matrix in a format suitable for use on an IBM mainframe computer. A different machine format was required, however, for the Commission to be able to use its in-house microcomputer system for the roll-forward computations. The re-formatted Base Year data could be obtained either by 1) taking the Postal Service's tape to a data center utilizing an IBM mainframe, and then developing a procedure for copying the required data to a floppy disk compatible with the Commission's computer; or 2) keypunching the data directly into the Commission's computer. Both options would have required a significant amount of time and personnel resources; the Commission staff ultimately chose the second method because it appeared to be the quickest.

To illustrate the difficulties of replicating the various cost components using USPS Library References D–37, D–38, D–39, and D–40, as well as the two sets of workpapers, we will describe the steps required to perform the roll-forward calculations associated with a single "Effect", the Cost Level Effect, for a single cost component, Postmasters—EAS 22 and Below (Cost Segment 1). Frequent reference will be made to page 1 of the attached Appendix B, which is a copy of the first page of the Fiscal Year 1984 section of USPS LR–D–40. The format of this page is described at 2–3 of Appendix B.

The first row of the "Cost Level" column for this cost component indicates that a mathematical operation specified by Control Number (CN) 1 with operand (OP) 0001F should be performed.[1] By consulting the "User's Guide" in Section 1 of USPS LR–D–40, we find that Control Number 1 is used in Program ALA460. Turning to the narrative description of Program ALA460 in Section 14 of USPS LR–D–37, we find at page 90 that Control Number 1 is a subroutine in Progam ALA460 that multiplies a single component by a factor. This finding is confirmed by examining the relevant section of the COBOL program listing presented at 172–173 of USPS LR–D–38. After considerable searching through pages of unlabeled data files, we find a listing of file BEN2FACT at page 27 of the fourth section of USPS LR–D–39, where the constant factor associated with operand 0001F is seen to be 0.078209. We can now reach the hypothesis that the FY 1984 "Cost Level Effect" for this component is calculated by multiplying the FY 1983 total costs for the component by the above constant factor. This hypothesis is confirmed by checking with the numerical results shown at 65–68 of Workpaper 2A of USPS–T–19.

By following through another chain of documentation, we learn that the next row of the Cost Level column for this component (containing the entries "RT 083 0251T") simply indicates that the results of the above-described calculation should be added to column 0251, which is a column containing the total costs for the three components of Cost Segment 1.

It should be noted that the above calculations require only two "rows" or subroutine calls. To perform the complete roll-forward process for a single time period requires several thousand such subroutine calls, each one requiring the same search of the various library references to form a hypothesis concerning the actual calculation procedure, then computing hypothetical results, then comparing the hypothetical with the actual numerical results, and finally, restarting the procedure if the two sets of results fail to agree.

Proposed Modifications

The "roll forward" program is one that we expect to continue to be an essential part of any general rate filing submitted by the Postal Service. Because the reasons that we were unable to readily replicate the "roll forward" program had more to do with the particular format in which the Postal Service chose to cast its documentation, than with its compliance with Rule 31(k)(3), we think that the best approach for making "roll forward" programs that are submitted in future proceedings replicable within the discovery period is to standardize the format in which documentation for that particular program must be submitted, rather than try to adapt the general computer evidence rule to fit this unique problem. Therefore, we propose to standardize the format in which the "roll forward" program should be submitted, in order to expedite its replication in future proceedings.

1. *Annotated Glossary of Input Data Files.* One of the more time-consuming activities of the replication process for a particular time period was trying to locate the appropriate input data file or files containing the coding information and constant factors required for calculating the various cost components. OCA interrogatory T19–17 asked witness Reynolds for a "glossary of data files used in the roll-forward program." The response to this interrogatory mentioned where the name of each data file and the record formats for each kind of input data could be found. Mention was also made of the JCL (IBM Job Control Language) used to "create a complete set of all data files and programs used in the RCA/Roll-Forward System."

In our view this OCA interrogatory and the subsequent USPS response illustrate the need for an annotated glossary of data files to be submitted with the other documentation. For each time period of the roll-forward process, this glossary should contain the following:

a. The name of each input data file.

b. A general description of each file in relation to the roll-forward process (e.g., file BEN2FACT contains the constant factors used for various roll-forward effects).

c. The format for each kind of data record in the file.

d. For each distinct format type used in the file, a brief description of each data item included in the format.

Redundant information need not be included; for example, if certain files are virtually identical in two or more time periods, the above detailed information should only be provided for the first file, while subsequent file descriptions should refer to the documentation for the first file. This annotation

[1] This coding informaiton is also presented in Section 4 of USPS LR–D–39 in file VBL1 (page 15 of the second subsection), but in a more cryptic form.

requirement appears as proposed Rule 54(h)(5)(v)(a), below.

2. *Mathematical Description of Roll-Forward Subroutines.* As mentioned above, part of the replication process involves understanding the exact mathematical steps applied by each "roll-forward" subroutine. This understanding can be gained by examining a narrative description of the subroutine in USPS LR–D–37 or the COBOL program listing of the subroutine in USPS LR–D–38. For most subroutines, the narrative description is sufficiently detailed; in some complex cases, however, familiarity with the COBOL programming language would be necessary to "decode" the subroutine. To avoid the requirement that an interested party be familiar with a particular computer language, we believe that the steps performed in each subroutine should be described in the form of mathematical equations. With this approach, the equations could be understood and translated into a programming language of the user's choice.

To illustrate this alternative form of documentation, the narrative description of a particular USPS roll-forward subroutine is shown at page 4 of Appendix B, while the mathematical equation for the same subroutine is presented at page 5 of Appendix B (Subroutine 8). The source for the mathematical equation is PRC Library Reference 2 in Docket No. R80–1; this library reference presents documentation in equation form for all subroutines used in the Service's roll-forward model for Docket No. R80–1. The requirement that each subroutine in the roll-forward program be accompanied by the mathematical equation that it embodies appears as proposed rule 54(h)(5)(v)(b) below.

3. *Base Year Cost Matrix on an MS–DOS Diskette.* As discussed above, the Postal Service provided a copy of the Base Year attributable cost matrix and all other data files on several IBM-mainframe compatible computer tapes. The Postal Service should also provide to the Commission staff and those interested participants who rely on personal (micro) computers for their data processing needs, a copy of the Base Year matrix on a 5 inch floppy diskette in MS–DOS format.

We realize that the Service cannot be expected to provide copies of their data files in all possible machine formats. The MS–DOS format, however, is probably the leading candidate for an alternative format for those without convenient access to an IBM mainframe. It is compatible with the popular IBM line of personal computers as well as a variety of compatible machines. We note that the Postal Service itself submits its computer-generated data in our proceedings in several machine formats. Postal Service witness Tolley, for example, submitted an MS–DOS format diskette as a library reference in Docket No. R84–1. Given the mix of machine formats used by the Service itself, reformatting of some of the Postal Service's computer-generated submissions is unavoidable if the independent analyst is to replicate all of the Postal Service's computer-generated results. It therefore appears reasonable to require the Postal Service to perform the limited amount of machine reformatting of the "roll forward" program that is specified in proposed Rule § 3001.54(h)(5)(v)(c), below.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Rates and fares.

Wherefore, we propose that our Rules of Practice and Procedure be amended as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. In § 3001.31, paragraph (k)(3)(i) (introductory text) is revised; paragraph (k)(3)(i)(*i*) is added; and the undesignated text at the end of paragraph (k)(3)(i) is revised to read as follows:

§ 3001.31 Evidence.

* * * * *

(k) *Introduction and reliance upon studies and analyses—* * * *

(3) *Computer analyses.* (i) In the case of computer studies or analyses which are being offered in evidence, or relied upon as support for other evidence, a foundation for the reception of such materials must be laid by furnishing a general description of the program that includes the objectives of the program, the processing tasks performed, the methods and procedures employed, and a listing of the input and output data and source codes (or a showing pursuant to section (k)(3)(iii) hereof as to why such codes cannot be so furnished) and such description shall be furnished in all cases. For the purpose of completing such foundation, the following additional items shall be deemed presumptively necessary and shall be furnished upon request of a participant, the Commission, or the presiding officer, unless the presumption is overcome by an affirmative showing.

* * * * *

(*i*) an expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output.

Items (*d*) and (*f*) shall be provided either in the form of magnetic tape or through access to a time-sharing service, at the option of the provider. Any machine-readable data file or program file so provided must be identified and described in accompanying hard-copy documentation. Where such files are in text format, they must be accompanied by hard-copy instructions for printing them. Where such files are in machine code, they must be accompanied by hard copy instructions for executing them.

* * * * *

2. In § 3001.54 paragraph (h)(5)(v) is added; and paragraph (o)(4) is revised to read as follows:

§ 3001.54 Contents of formal requests.

* * * * *

(h) *Separation, attribution, and assignment of certain costs.*

* * * * *

(5) The cost forecasting or "roll forward" model shall be provided. It shall include the following items:

* * * * *

(v) If the "roll forward" model is submitted in the form of a computer-generated model, it shall include:

(*a*) An annotated glossary of input data files, to include, for each time period—

(i) the name of each input data file,

(ii) a general description of each file in relation to the "roll forward" process,

(iii) the format for each kind of data record in the file,

(iv) for each distinct format type used in the file, a brief description of each data item included in the format.

(*b*) A hard-copy description, in the form of a mathematical equation, of each subroutine in the program.

(*c*) A copy of the Base Year attibutable cost matrix on a 5-inch floppy diskette in MS–DOS format.

* * * * *

(o) *Workpapers.*

* * * * *

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from

published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc. The citations themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper.

* * * * *

By the Commission.

Charles L. Clapp,

Secretary.

Note. Appendices A and B will not appear in the Code of Federal Regulations.

BILLING CODE 7715-01-M

APPENDIX A

Ideal Rollforward Presentation (Comp. 3-1 Example) ($000)

		(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)
15		BY82	FY83 COST LEVEL FACTOR	FY83 COST LEVEL CHANGE	FY83 MAIL VOLUME FACTORS	FY83 MAIL VOLUME CHANGE	FY83 SUBTOTAL	FY83 INTER-MEDIATE KEY	FY83 QUAL. COM. COST REDUCTION	FY83 SCHED. & STAFFING COST RED.
21	1CL Lttr/Par	2802575	0.06206	173928	-0.006643	-19773	2956730	0.5721252	23	172
22	1CL Presort Lttr/Par	240804	0.06206	14944	0.21717	55541	311289	0.0602342	2	18
23	1CL Govt Postal Cards	5429	0.06206	337	0.18627	1074	6840	0.0013235	0	0
24	1CL Private Post Cards	49353	0.06206	3063	0.06541	3429	55844	0.0108058	0	3
25	1CL Presort Cards	5780	0.06206	359	0.07282	447	6586	0.0012743	0	0
26	Priority Mail	79074	0.06206	4957	0.04676	3967	88798	0.0171822	1	5
27	Express Mail	31195	0.06206	1936	0.27979	9270	42401	0.0082045	0	2
28	Mailgrams	7038	0.06206	437	-0.10643	-796	6679	0.0012924	0	0
29	2CL Within County	14568	0.06206	904	0.02146	332	15804	0.0030580	0	1
30	2CL Regular Rate Pubs	162368	0.06206	10077	0.02725	4716	177161	0.0342805	1	10
31	2CL Nonprofit Pubs	38280	0.06206	2376	-0.1685	-6050	33805	0.0065412	0	2
32	2CL Classroom Pubs	1525	0.06206	95	0.38093	617	2237	0.0004327	0	0
33	2CL Transient	10102	0.06206	627	-0.11043	-1185	9544	0.0018467	0	1
34	3CL Single Piece	59418	0.06206	3687	-0.16319	-10298	52807	0.0102181	0	3
35	3CL BRR Car Presort	146013	0.06206	9062	0.19875	30021	185896	0.0359706	1	11
36	3CL BRR Other	452764	0.06206	28099	0.06235	29982	510844	0.0988480	4	30
37	3CL BRN Car Presort	9227	0.06206	573	0.10495	1028	10828	0.0020952	0	1
38	3CL BRN Other	189705	0.06206	11773	-0.00311	-627	200851	0.0388646	2	12
39	4CL Parcels Zone Rate	74202	0.06206	4611	-0.01792	-1414	77499	0.0149960	1	5
40	4CL Bound Prnt Matter	10316	0.06206	640	0.0059	65	11021	0.0021325	0	1
41	4CL Spc Rate	63603	0.06206	3947	-0.11156	-7536	60014	0.0116127	0	4
42	4CL Library Rate	14786	0.06206	918	0.01102	173	15877	0.0030721	0	1
43	6 Penalty-USPS	19871	0.06206	1233	-0.05075	-1071	20033	0.0038764	0	1
44	6 Penalty-Other	108320	0.06206	6722	-0.05075	-5838	109204	0.0211308	1	6
45	6 Franked-Cong	7003	0.06206	435	-0.31228	-2323	5115	0.0009897	0	0
46	6 Franked-Other	2440	0.06206	151	-0.31221	-809	1782	0.0003448	0	0
47	Free Mail	3259	0.06206	202	0.22409	776	4237	0.0008198	0	0
48	I Surface Lttr/Card	22036	0.06206	1368	-0.02475	-579	22824	0.0044164	0	1
49	I Surface Other	15383	0.06206	955	-0.02475	-404	15933	0.0030830	0	1
50	I Surface Pub 2CL	1523	0.06206	95	-0.02475	-40	1577	0.0003052	0	0
51	I Surface Parcel Post	12046	0.06206	748	-0.02468	-316	12478	0.0024144	0	1
52	I Air Lttr/Card	46307	0.06206	2874	-0.02475	-1217	47964	0.0092809	0	3
53	I Air Other	7518	0.06206	467	-0.02476	-198	7787	0.0015067	0	0
54	I Air Parcel Post	4732	0.06206	294	-0.02493	-125	4900	0.0009482	0	0
55	Registry		0.06206	0	0.0375	0	0	0	0	0
56	Certified	24302	0.06206	1508	0.01515	391	26201	0.0050699	0	2
57	Insurance	139	0.06206	9	0.02147	3	151	0.0000291	0	0
58	COD	3318	0.06206	206	-0.12135	-428	3096	0.0005991	0	0
59	Special Delivery		0.06206	0	-0.12753	0	0	0	0	0
60	Money Orders		0.06206	0	0.04582	0	0	0	0	0
61	Stamped Envelopes		0.06206	0	0.00158	0	0	0	0	0
62	Special Handling	103	0.06206	6	-0.22107	-24	85	0.0000164	0	0
63	Post Office Box	658	0.06206	41	0.07976	56	755	0.0001460	0	0
64	Other	41098	0.06206	2600	0	0	44498	0.0086103	0	3
65	Long Run & Fixed		0.06206	0	0	0	0	0	0	0
66					0					
67	Total Attributable	4709881		297260		80836	5167977		41	303
68	Total Costs	4709881		297260		80836	5167977		41	303

Explanation of Sources and Derivations

Column	Rows	Source or Derivation
E	21-65:	Exh. USPS-_, page_, col._, row_
	67:	Exh. USPS-_, page_, col._, row_
	68:	Exh. USPS-_, page_, col._, row_
F	21-65:	Witness __, w/p_, vol._, page_, col._, row_
	67:	N/A
	68:	N/A
G	21-65:	Prod. cols. E & F
	67:	Sum rows 21-64
	68:	Sum rows 65 & 67
H	21-65:	Witness __, w/p_, vol._, page_, col._, row_
	67:	N/A
	68:	N/A
I	21-65:	Prod. cols. H & (sum cols. E & G)
	67:	Sum rows 21-64
	68:	Sum rows 65 & 67
J	21-65:	Sum cols. E, G, & I
	67:	Sum rows 21-64
	68:	Sum rows 65 & 67
K	21-65:	J(j)/J68, j=21 to 65
	67:	N/A
	68:	N/A
L	21-65:	K(j)/L68, j=21 to 65
	67:	Sum rows 21-64
	68:	Witness __, w/p_, vol._, page_, col._, row_
M	21-65:	K(j)/M68, j=21 to 65
	67:	Sum rows 21-64
	68:	Witness __, w/p_, vol._, page_, col._, row_

Ideal Rollforward Presentation (Comp. 3-1 Example) ($000)

I		(N)	(O)	(P)	(Q)	(R)	(S)	(T)	(U)	(V)
14										
15		FY83	FY83	FY83	FY83	BY82	FY83	FY83	FY83	FY83
16		MACHINE	FACE/CANCE	FACER	FACE/CANCE	FLAT	FLAT SORT.	FLAT	FLAT	FLAT
17		SCHED.	COST	CANCELLER	COST	SORTING	COST	SORTING	SORTING	SORTING
18		COST RED.	SUBTOTAL	KEY	REDUCTION	COST	VOL. EFF.	COST	KEY	COST RED.
19										
20										
21	1CL Lttr/Par	347	2956730	0.9792395	4317	224159	-1489	222670	0.4673574	15434
22	1CL Presort Lttr/Par	37				353	77	430	0.0009018	30
23	1CL Govt Postal Cards	1	6840	0.0022653	10		0	0	0	0
24	1CL Private Post Cards	7	55844	0.0184951	82		0	0	0	0
25	1CL Presort Cards	1					0	0	0	0
26	Priority Mail	10					0	0	0	0
27	Express Mail	5					0	0	0	0
28	Mailgrams	1					0	0	0	0
29	2CL Within County	2				3358	72	3430	0.0071992	238
30	2CL Regular Rate Pubs	21				35285	965	36250	0.0760845	2513
31	2CL Nonprofit Pubs	4				8521	-1436	7085	0.0148710	491
32	2CL Classroom Pubs	0				308	117	425	0.0008927	29
33	2CL Transient	1				2449	-270	2179	0.0045725	151
34	3CL Single Piece	6				12756	-2082	10674	0.0224041	740
35	3CL BRR Car Presort	22					0	0	0	0
36	3CL BRR Other	60				127608	7956	135564	0.2845333	9396
37	3CL BRN Car Presort	1					0	0	0	0
38	3CL BRN Other	24				30000	-93	29907	0.0627705	2073
39	4CL Parcels Zone Rate	9					0	0	0	0
40	4CL Bound Prnt Matter	1					0	0	0	0
41	4CL Spc Rate	7				1357	-151	1206	0.0025304	84
42	4CL Library Rate	2				377	4	381	0.0007999	26
43	6 Penalty-USPS	2				1975	-100	1875	0.0039349	130
44	6 Penalty-Other	13				17648	-896	16752	0.0351612	1161
45	6 Franked-Cong	1				203	-63	140	0.0002930	10
46	6 Franked-Other	0				663	-207	456	0.0009570	32
47	Free Mail	0				580	130	710	0.0014901	49
48	I Surface Lttr/Card	3				2965	-73	2892	0.0060691	200
49	I Surface Other	2					0	0	0	0
50	I Surface Pub 2CL	0				498	-12	486	0.0010193	34
51	I Surface Parcel Post	1					0	0	0	0
52	I Air Lttr/Card	6				3008	-74	2934	0.0061571	203
53	I Air Other	1					0	0	0	0
54	I Air Parcel Post	1					0	0	0	0
55	Registry	0					0	0	0	0
56	Certified	3					0	0	0	0
57	Insurance	0					0	0	0	0
58	COD	0					0	0	0	0
59	Special Delivery	0					0	0	0	0
60	Money Orders	0					0	0	0	0
61	Stamped Envelopes	0					0	0	0	0
62	Special Handling	0					0	0	0	0
63	Post Office Box	0					0	0	0	0
64	Other	5					0	0	0	0
65	Long Run & Fixed	0					0	0	0	0
66										
67	Total Attributable	506	3019414	1	4409	474071	2374	476445		33024
68	Total Costs	506	3019414		4409	474071	2374	476445		33024

Explanation of Sources and Derivations

Column	Rows	Source or Derivation
N	21-65:	K(j)/N68, j=21 to 65
	67:	Sum rows 21-64
	68:	Witness __, w/p_, vol._, page_, col._, row_
O	21-65:	Col. J, rows 21, 23, & 24
	67:	Sum rows 21-64
	68:	Sum rows 65 & 67
P	21-65:	O(j)/O68, j=21 to 65
	67:	N/A
	68:	N/A
Q	21-65:	Prod. P(j) & Q68, j=21 to 65
	67:	Sum rows 21-64
	68:	Witness __, w/p_, vol._, page_, col._, row_
R	21-65:	Witness __, w/p_, vol._, page_, col._, row_
	67:	Witness __, w/p_, vol._, page_, col._, row_
	68:	Witness __, w/p_, vol._, page_, col._, row_
S	21-65:	Prod. cols. H & R
	67:	N/A
	68:	N/A
T	21-65:	Sum cols. R & S
	67:	Sum rows 21-64
	68:	Sum rows 65 & 67
U	21-65:	T(j)/T68, j=21 to 65
	67:	N/A
	68:	N/A
V	21-65:	Prod. U(j) & V68, j=21 to 65
	67:	Sum rows 21-64
	68:	Witness __, w/p_, vol._, page_, col._, row_

Ideal Rollforward Presentation (Comp. 3-1 Example) ($000)

		(W)	(X)	(Y)	(Z)	(AA)	(AB)	(AC)	(AD)	(AE)
14										
15		BY82	FY83	FY83	FY83	FY83	FY83	FY83	FY83	FY83
16		LETTER	LETR. SORT	LETTER	LETTER	OCR	TOTAL	PRESORT	OTHER	TOTAL
17		SORTING	COST	SORTING	SORTING	SORTING	COST	MIGRATION	PROGRAM	COSTS
18		COST	VOL. EFF.	COST	KEY	COST RED.	REDUCTIONS	FACTORS	CHANGES	
19										
20										
21	1CL Lttr/Par	1123511	-7463	1116048	0.9476087	22734	43029	0.017048	49673	2963374
22	1CL Presort Lttr/Par		0	0	0	0	87	-0.006533	-2033	309169
23	1CL Govt Postal Cards	2166	403	2569	0.0021816	52	64		0	6776
24	1CL Private Post Cards	23402	1531	24933	0.0211697	508	600	0.00056	31	55276
25	1CL Presort Cards		0	0	0	0	1	-0.038842	-256	6329
26	Priority Mail		0	0	0	0	16		0	80781
27	Express Mail		0	0	0	0	8		0	42393
28	Mailgrams		0	0	0	0	1		0	6678
29	2CL Within County		0	0	0	0	241		0	15563
30	2CL Regular Rate Pubs		0	0	0	0	2545		0	174616
31	2CL Nonprofit Pubs		0	0	0	0	497		0	33308
32	2CL Classroom Pubs		0	0	0	0	30		0	2207
33	2CL Transient		0	0	0	0	153		0	9291
34	3CL Single Piece		0	0	0	0	750		0	52058
35	3CL BMM Car Presort		0	0	0	0	34		0	105061
36	3CL BMM Other		0	0	0	0	9490	-0.01571	-7076	493478
37	3CL BSP Car Presort		0	0	0	0	2		0	10026
38	3CL BSP Other		0	0	0	0	2110	-0.016332	-3246	195496
39	4CL Parcels Zone Rate		0	0	0	0	14		0	77485
40	4CL Bound Prnt Matter		0	0	0	0	2		0	11019
41	4CL Spc Rate		0	0	0	0	95		0	59920
42	4CL Library Rate		0	0	0	0	29		0	15047
43	6 Penalty-USPS	4843	-246	4597	0.0039033	94	227		0	19006
44	6 Penalty-Other	29262	-1485	27777	0.0235847	566	1747		0	107457
45	6 Franked-Cong	1998	-624	1374	0.0011666	28	39		0	5076
46	6 Franked-Other	540	-169	371	0.0003153	8	40		0	1743
47	Free Mail	67	15	82	0.0000696	2	52		0	4185
48	I Surface Lttr/Card		0	0	0	0	205		0	22620
49	I Surface Other		0	0	0	0	3		0	15930
50	I Surface Pub 2CL		0	0	0	0	34		0	1544
51	I Surface Parcel Post		0	0	0	0	2		0	12476
52	I Air Lttr/Card		0	0	0	0	212		0	47751
53	I Air Other		0	0	0	0	1		0	7785
54	I Air Parcel Post		0	0	0	0	1		0	4099
55	Registry		0	0	0	0	0		0	0
56	Certified		0	0	0	0	5		0	26196
57	Insurance		0	0	0	0	0		0	151
58	COD		0	0	0	0	1		0	3096
59	Special Delivery		0	0	0	0	0		0	0
60	Money Orders		0	0	0	0	0		0	0
61	Stamped Envelopes		0	0	0	0	0		0	0
62	Special Handling		0	0	0	0	0		0	85
63	Post Office Box		0	0	0	0	0		0	754
64	Other		0	0	0	0	8		0	44490
65	Long Run & Fixed		0	0	0	0	0		0	0
66										
67	Total Attributable	1185789	-8038	1177751		23991	62374		36293	5141896
68	Total Costs	1185789	-8038	1177751		23991	62374		36293	5141896

VOL 50 ISS 127 2 1985 JL UMI 05/07/85

Explanation of Sources and Derivations

Column	Rows	Source or Derivation
H	21-65:	Witness __, w/p_, vol._, page_, col._, row_
	67:	Witness __, w/p_, vol._, page_, col._, row_
	68:	Witness __, w/p_, vol._, page_, col._, row_
X	21-65:	Prod. cols. H & W
	67:	Sum rows 21-64
	68:	Sum rows 65 & 67
Y	21-65:	Sum cols. W & X
	67:	Sum rows 21-64
	68:	Sum rows 65 & 67
Z	21-65:	Y(j)/Y68, j=21 to 65
	67:	N/A
	68:	N/A
AA	21-65:	Prod. Z(j) & AA68, j=21 to 65
	67:	Sum rows 21-64
	68:	Witness __, w/p_, vol._, page_, col._, row_
AB	21-65:	Sum cols. L, M, N, Q, V, & AA
	67:	Sum rows 21-64
	68:	Sum rows 65 & 67
AC	21-65:	Exh. USPS-_, page_, col._, row_
	67:	N/A
	68:	N/A
AD	21-65:	Prod. col. AC & (sum cols. J & AB)
	67:	Sum rows 21-64
	68:	Sum rows 65 & 67
AE	21-65:	Sum cols. J, AB, & AD
	67:	Sum rows 21-64
	68:	Sum rows 65 & 67

10/21/83
ALA490P1

RCA/ROLLFORWARD DOCUMENTATION
SUMMARY OF OPERATIONS PERFORMED
(BY COMPONENT)

I	A-SHORT RUN			COST LEVEL			MAIL VOLUME			NON-VOL-B-L			ADD-WORKDAY			COST REDUCT.			OTHER			FACTOR			B-LONG RUN			D - ADJUST		
	CN	SEQ	OP	CN	SEQ	OP	CN	SEQ	OP	CN	SEQ	OP	CN	SEQ	OP	CN	SEQ	OP	CN	SEQ	OP	CN	SEQ	OP	CN	SEQ	OP	CN	SEQ	OP
COMPONENT: 0001 SEGMENT: 0001 TITLE HEADING: .POSTMASTERS.....EAS 22.....& BELOW.. •																														
R				01	001	0001F	06	002	0001V	01	001	0059F	16	001	099R	RT	033	0251T	RT	068	0251T				04	006	0525T			
				RT	083	0251T	RT	030	0251T	RT	034	0251T			0035F										04	012	0299T			
													RT	023	0251T															
COMPONENT: 0002 SEGMENT: 0001 TITLE HEADING: .POSTMASTERS.....EAS 23.....& ABOVE.. •																														
T				01	002	0002F	RT	030	0251T	01	002	0060F	16	001	099R	RT	033	0251T	RT	068	0251T				04	006	0525T			
				RT	083	0251T				RT	034	0251T			0035F										04	012	0299T			
													RT	023	0251T															
COMPONENT: 0003 SEGMENT: 0001 TITLE HEADING: ....GENERAL.....MANAGERS.....AT BMCS.. •																														
T				01	003	0003F	RT	030	0251T	RT	034	0251T	16	001	099R	RT	033	0251T	RT	068	0251T				04	006	0525T			
				RT	083	0251T									0035F										04	012	0299T			
													RT	023	0251T															
COMPONENT: 0004 SEGMENT: 0002 TITLE HEADING: .DIRECT LABOR.....AND.....OVERHEAD.. •SUPERVISION OF MAIL PROCESSING & WINDOW																														
R				02	004	0004F	21	011	0035S	21	015	0035S	21	004	0035S	21	015	0035S	21	055	0035S	04	001	0575T	04	006	0525T	04	040	0616T
				RT	083	0008T	RT	030	0008T	RT	034	0008T	RT	023	0008T	RT	033	0008T	RT	068	0008T	20	065	0564T	04	011	0294T	04	041	0617T
																								031T	04	182	0272T			
																								0085						
																						20	073	0563T						
																								031T						
																								100S						
COMPONENT: 0005 SEGMENT: 0099 TITLE HEADING: •																														
N				RT	083	0008T	RT	030	0008T	RT	034	0008T	RT	023	0008T	RT	033	0008T	RT	068	0008T									
COMPONENT: 0006 SEGMENT: 0099 TITLE HEADING: •																														
N				RT	083	0008T	RT	030	0008T	RT	034	0008T	RT	023	0008T	RT	033	0008T	RT	068	0008T									
COMPONENT: 0007 SEGMENT: 0002 TITLE HEADING: ....WINDOW.....SERVICE..... •SUPERVISION OF MAIL PROCESSING & WINDOW																														
R				02	004	0004F	21	012	0040S	21	016	0040S	21	005	0040S	21	016	0040S	RT	068	0008T	04	001	0575T	04	006	0525T			
				RT	083	0008T	RT	030	0008T	RT	034	0008T	RT	023	0008T	RT	033	0008T				20	065	0564T	04	011	0294T			
																								031T	04	196	0284T			
																								0085						
																						20	073	0563T						
																								031T						
																								100S						
COMPONENT: 0008 SEGMENT: 0002 TITLE HEADING: SUPERVISION.OF.MP.AND.WINDOW SERVICE(TOT) •SUPERVISION OF MAIL PROCESSING & WINDOW																														
R				RT	083	0252T	RT	030	0252T	RT	034	0252T	RT	023	0252T	RT	033	0252T	RT	068	0252T									

BILLING CODE 7715-01-C

RCA/Roll-Forward Documentation Report User's Guide

General

This report documents the operations of two computer programs as they perform 10 different cost distributing and forecasting steps. The report is created by a third computer program which reads the same data files that drive and control the cost distributing the forecasting programs. Thus, the report documents the RCA/roll-forward procedure as actually applied.

There are at least two lines in the report for every one of the 800 components [2] in the data matrix. The first line identifies the component number, cost segment [3] and title. This line is followed by another line, divided into 11 columns, which documents the input form and the processing of the component.

The first, one character, column of the report identifies the component's form of initial data input into the RCA/roll-forward procedure. An "R" indicates that the data is input by rate category; a "T" indicates that only a total is input; "M" indicates a factor input and "N" indicates that no initial input is required. Note, these inputs for the development of base-year costs are all shown in the manual input report in witness Bailey's workpapers. The inputs for the development of FY 1983, FY 1984 and the test year are the short-run distributed costs shown in Table 1 of the workpapers supporting witness Reynolds testimony.

The remaining columns of information document the processing of the component from initial short-run cost distribution, through the roll-forward steps and longer-run distributions, to final adjustments. There are 10 processing steps and thus, 10 columns of processing information for each component. The programs are directed to perform different mathematical operations on the components by control numbers input into the programs fom input data files. Each column of the report (after the first input form column) shows each control number, and thus each mathematical operation, performed on or with the component in each processing step. Also shown in each of these columns is the sequence number of the operation within the step and one or more operands associated with the control number.

The 10 processing steps are performed by programs ALA420 and ALA460. The control numbers mean different things to each program. These meanings are discussed in detail in the system documentation and are not discussed in this report guide. It is the purpose of this guide to explain the entries in the documentation report. The documentation report should be used together with the system documentation to gain a complete understanding of the detailed RCA/roll-forward procedure.

The remainder of this guide is divided into two parts. The first part explains the entries in the following columns: A–Short Run, Factor, B–Long Run and D–Adjust which are cost distribution steps performed by program ALA420. The second part discusses the Cost Level, Mail Volume, Non-Vol-W-L, Add-Workday, Cost Red and Other columns which are the roll-forward steps performed by program ALA460.

"7110-Routine-11"—Force Column to Equal a Control Number

General

This control routine increases or decreases the cost in a given cost component to equal a known amount. The R Cost Component remains fixed, and a C Cost component containing the difference is created.

Specific

This routine reads the Control file into CONTROL-REC6 to obtain a component number and (vector) factor table index. The selected component is read from the R Cost Table file. A grand total amount is determined by summing the non-total class amounts on that record. The grand total is subtracted from the indicated factor table amount, giving the amount to be distributed. This amount is divided by the grand total amount, giving a weight. Each non-total class amount on the R record is multiplied by the weight, giving the corresponding class amount on the C record. The Subtotal Routine is then performed. If the total amount on the C record is not equal to the distribution amount, the Rounding Error Routine is performed. The C record is then written to the C Cost Table file.

where X4 is chosen such that the total cost C(I9,J)=X(K)

If this condition is not met due to round-off error, subroutine 11B is used to increment (or decrement) some of the elements by one to obtain exact agreement.

Subroutine 8 (line 10000)

Input: N, K, $J_1, \ldots, J_N$

Similar to subroutine 7. Computes

$C(I,J)=R(I,J) * X4; J=J_1, \ldots, J_N$

with X4 chosen so that

$C(I9,J_1) + \ldots + C(I9,J_N)=X(K)$

If necessary, subroutine 12B is used to force the sum of total costs for components J_1 thru J_N to equal X(K)

Subroutine 11A (line 13000)

Input: J, K

Same as subroutine 7, but X4 is computed so that C(I9,J) + R(I9,J)=X(K)

Subroutine 11B (line 13150)

Subroutine 7 and 11 compute elements of G according to:

C(I,J)=R(I,J) * X4 with X4 chosen such that

C(I9,J)=X(K) (subroutine 7) or

Note.—Pursuant to Executive Order 12291, the Commission finds that the proposed rule changes do not constitute a "major rule." The cost of compliance should be small because parties relying upon computer studies will generally have the required information or expertise readily available. Nor will the changes have any adverse effects on competition, employment or the other factors listed in E.O. 12291.

[FR Doc. 85–15079 Filed 7–1–85; 8:45 am]

BILLING CODE 7715-01-M

[2] In this document, the term "component" means a record in one of the data files used in the RCA/Roll-Forward System. Most of these records contain cost data and correspond to "cost components", or subdivisions thereof, as described in Library Reference D–1. Some of these records, however, contain such noncost items as revenue, pieces and weight as well as totals, subtotals and distribution keys.

[3] Most of the records in the data files used in the RCA/Roll-Forward System contain cost information organized into cost segments and components as described in Library Reference D–1. There is other information in the data files, distribution keys, revenues, etc., that have been assigned dummy segment numbers for the purpose of this report. These segments are: (21) Components Crossing Segments; (96) Components Used For RCA/STAT Reports; (97) Components Used For Factor Calculation; (98) Distribution Keys; and (99) Unused Components.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 202 and 205

[FRL 2818–4]

Motor Carriers Engaged in Interstate Commerce; Noise Standards and Transportation Equipment Noise Emission Controls; Medium and Heavy Trucks

Correction

In FR Doc. 85–13003 beginning on page 25516 in the issue of Wednesday, June 19, 1985, in the second column under **DATE** in the fourth line, the date should read, "July 19, 1985."

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

Rights-of-Way, Principles and Procedures; Amendments Concerning Rights-of-Way Granted Prior to October 21, 1976

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the existing regulations in 43 CFR Part 2800 to clarify that its procedures apply to rights-of-way granted prior to October 21, 1976, under statutory provisions repealed by the Federal Land Policy and Management Act. This amendment would resolve questions raised since the promulgation of the existing regulations in 43 CFR Part 2800 on rights-of-way issued under the repealed statutes.

DATE: Comments should be submitted by September 3, 1985. Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Main Interior Bldg., Room 5555, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Theodore G. Bingham, (202) 343–5441.

SUPPLEMENTARY INFORMATION: In the period since the regulations in 43 CFR Part 2800 became effective, questions have arisen whether the procedures in these regulations apply to rights-of-way granted prior to the passage of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.). The Federal Land Policy and Management Act repealed several provisions of law granting authority to the Secretary of the Interior to grant rights-of-way over, upon, under or through the public lands, but not the authority granted by the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.). Title V of the Federal Land Policy and Management Act replaced the repealed authority with new authority to grant rights-of-way and also provided for the continuation of existing right-of-way grants. As a result of the passage of the Federal Land Policy and Management Act, the Department of the Interior promulgated new regulations covering right-of-way grants and temporary use permits to implement that Act. This proposed rulemaking would amend the existing regulations to make it clear that those rights-of-way granted prior to the enactment of the Federal Land Policy and Management Act are covered by the regulations in 43 CFR Part 2800 except in those instances where the regulations are inconsistent with the provisions of a specific right-of-way grant or the statute under which it was granted.

The principal author of this proposed rulemaking is Sheldon Weil, Division of Rights-of-Way, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This proposed rulemaking would clarify the Bureau of Land Management's authority to manage those rights-of-way issued on or before October 21, 1976, removing questions that have arisen about that authority. The proposed rulemaking will affect equally all holders of those rights-of-way that were issued on or before October 21, 1976.

There are no additional information collection requirements contained in this proposed rulemaking that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2800

Administrative practice and procedure, Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way.

Under the authority of section 310 and title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740, 1761–1771), it is proposed to amend Part 2800, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 2800—[AMENDED]

1. The authority citation for 43 CFR Part 2800 continues to read:

Authority: 43 U.S.C. 1761–1771.

§ 2800.0-1 [Amended]

2. Section 2800.0–1 is amended by removing the period at the end thereof and adding the phrase "and for the administration, assignment, monitoring and termination of right-of-way grants issued on or before October 21, 1976, pursuant to then existing statutory authority."

3. Section 2800.0–3 is revised to read:

§ 2800.0–3 Authority.

The regulations in this part are issued under the authority of section 310 and title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740, 1761–1771).

4. Section 2800.0–5(h) is revised to read:

§ 2800.0–5 Definitions.

* * * * *

(h) "Right-of-way grant" means an instrument issued pursuant to title V of the act, or issued on or before October 21, 1976, pursuant to then existing statutory authority, authorizing the use of a right-of-way over, upon, under or through public lands for construction, operation, maintenance and termination of a project.

* * * * *

5. A new § 2801.4 is added to read:

§ 2801.4 Right-of-way grants issued on or before October 21, 1976.

A right-of-way grant issued on or before October 21, 1976, pursuant to then existing statutory authority is covered by the provisions of this part unless the provisions of this part are inconsistent with the terms and conditions of the grant or the statute under which it was issued, in which event the terms and conditions of the grant or the then existing statute shall apply.

Dated: May 14, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85–15774 Filed 7–1–85; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6665]

Proposed Flood Elevation Determinations; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction with the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67.

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ALABAMA	
Citronelle (City), Mobile County	
West Fork Puppy Creek:	
About 0.52 mile downstream of Russell Road	*185
About 1.05 miles upstream of Russell Road	*225
Beaver Pond Branch:	
About 0.17 mile downstream of confluence of Sandy Fork	*180
About 1.95 miles upstream of confluence of Sandy Fork	*226
Bennett Creek:	
About 1.72 miles downstream of U.S. Highway 45	*189
About 0.16 mile upstream of U.S. Highway 45	*189
Little Creek:	
At corporate limits (about river mile 5.48)	*162
About 0.12 mile upstream of corporate limits (about river mile 5.60)	*165
Puppy Creek:	
About 0.09 mile downstream of downstream corporate limits (about river mile 12.81)	*215
At upstream corporate limits (about river mile 14.10)	*240
Cedar Creek:	
About 0.245 miles downstream of downstream corporate limits (about river mile 18.775)	*139
About 0.18 mile upstream of upstream corporate limits (about river mile 20.00)	*165
Maps available for inspection at City Hall, Citronelle, Alabama.	
Send comments to Honorable H.C. Bassett, Mayor, City of Citronelle, City Hall, P.O. Box 86, Citronelle, Alabama 36522.	
Creola (Town), Mobile County	
Mobile Bay: From downstream corporate limits to just downstream of Interstate 65 bridge over Mobile River	*11
Seymore Branch:	
At confluence with Gunnison Creek	*16
About 2,700 feet upstream of confluence of Seymore Branch Tributary	*23
Seymore Branch Tributary:	
At confluence with Seymore Branch	*19
About 1,550 feet upstream of confluence with Seymore Branch	*22
Mobile River:	
Just downstream of Interstate 65	*11
About 1,850 feet upstream of Interstate 65	*12
Jim Bell Branch:	
About 100 feet downstream of Interstate 65	*11
Just downstream of Creole-Axis Loop Road	*13
About 250 feet upstream of Creole-Axis Loop Road	*18
About 650 feet upstream of confluence of Unnamend Tributary	*19
Halls Branch:	
At mouth	*11
Just downstream of Burlington Northern Railroad	*14
Gunnison Creek:	
About 1.6 miles downstream of confluence Harpers Branch	*11
Just downstream of Burlington Northern Railroad	*18
Harpers Branch:	
At confluence with Gunnison Creek	*11
About 130 feet downstream of Jackson Street	*11
Just upstream of Lister Dairy Road	*19
At confluence of Cypress Pond Branch	*22
Cypress Pond Branch:	
At confluence with Harpers Branch	*22
About 1,320 feet upstream of Creole-Axis Loop Road	*23
Maps available for inspection at City Hall, Creola, Alabama.	
Send comments to Honorable Kenneth Moss, Mayor, Town of Creola, City Hall, P.O. Box 487, Creola, Alabama 36525.	
Satsuma (City), Mobile County	
Gunnison Creek: Within community	*11
Sweet Gum Creek: Within community	*11
Steele Creek:	
At mouth	*11
Just downstream of Burlington Northern Railroad	*11
About 2,350 feet upstream of Burlington Northern Railroad	*11
Hyde Swamp Branch:	
About 650 feet downstream of corporate limits	*20
At upstream corporate limits	*26
Mobile Bay/Mobile River: Along Spat Creek downstream of Catherine Drive	*11
Maps available for inspection at City Hall, Satsuma, Alabama.	
Send comments to Honorable Charles Little, Mayor, City of Satsuma, City Hall, Satsuma, Alabama 36572.	
CALIFORNIA	
Santa Cruz County (Unincorporated Areas)	
Aptos Creek: 20 feet upstream from center of State Highway 1 (Cabrillo Freeway)	*24
Arana Gulch: Intersection of Arana Gulch and center of State Highway 1 (Cabrillo Freeway)	*85
Carbonera Creek at Santa Cruz: 450 feet east from intersection of Plymouth Street and Emeline Avenue	*42
Carbonera Creek at Scotts Valley: 460 feet downstream from center of State Highway 17	*482
Corralitos Creek:	
50 feet upstream from center of Green Valley Road	*106
50 feet upstream from center of Brown Valley Road	*240
Coward Creek: Intersection of Coward Creek and center of Riverside Road	*40
Harkins Slough: Intersection of Harkins Slough and Harkins Slough Road	*14
Pajaro River: 200 feet upstream from center of State Highway 1	*27
Pajaro River—Without Consideration of Levee: Intersection of West Beach Street and Thurwachter Road	*14
Rodeo Creek Gulch: 190 feet upstream from center of State Highway 1	*76
Salsipuedes Creek: Intersection of College Road and Cutter Drive	*62
San Lorenzo River:	
150 feet upstream from center of Ocean Street	*66

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
110 feet upstream from center of Brimblecom Road	*492
Intersection of San Lorenzo River and center of McGarrigan Mill Road	*958
San Vicente Creek: 85 feet upstream from center of State Highway 1	*25
Schwans Lagoon: Intersection of Schwans Lagoon and center of East Cliff Drive	*13
Soquel Creek: Intersection of Soquel Drive and Porter Street	*40
Struve Slough: Intersection of Struve Slough and center of State Highway 1	*15
Thomasello Creek: Intersection of Thomasello Creek and center of Riverside Road	*54
Thompson Creek: 10 feet upstream from center of Riverside Road	*51
Watsonville Slough: Intersection of Watsonville Slough and center of Ford Street	*23
Zayante Creek: 50 feet upstream from center of Quail Hollow Road	*336
College Lake: Intersection of Laken Drive and Laken Court	*70
Lake Tynan: Along entire lake shoreline	*42
Pacific Ocean: Intersection of Beach Drive and Rio Del Mar Boulevard	*17

Maps available for inspection at County Planning Department, 701 Ocean Street, Santa Cruz, California.
Send comments to the Honorable Robley Levy, 701 Ocean Street, Santa Cruz, California 95061.

COLORADO

Federal Heights (Town), Adams County

Tributary M of Niver Creek: Intersection of Holiday Loop and Holiday Parkway	*5,335

Maps available for inspection at City Manager's Office, 2380 West 90th Avenue, Federal Heights, Colorado.
Send comments to the Honorable Lester M. Bauer, 2380 West 90th Avenue, Federal Heights, Colorado 80221.

Palisade (Town), Mesa County

Colorado River: 100 feet upstream from the center of U.S. Highway 6	*4,698

Maps available for inspection at Town Manager's Office, 175 East 3rd, Palisade, Colorado.
Send comments to the Honorable Larry McNeese, P.O. Box 128, Palisade, Colorado 81526.

FLORIDA

Flagler County (Unincorporated Areas)

Atlantic Ocean:	
About 150 feet west of shoreline from southern to northern county boundary	*9
Along shoreline from southern to northern county boundary	*13
Intracoastal Waterway:	
Along shoreline from southern county boundary to about 4,700 feet north	*4
Along shoreline from about 4,800 feet north of confluence of St. Joe Canal to the northern county boundary	*7
Middle Haw Creek:	
Just upstream of State Road 11	*13
About 1.55 miles upstream of confluence of Middle Haw Creek Tributary No. 2	*29
Middle Haw Creek Tributary No. 1:	
At confluence with Middle Haw Creek	*16
Just downstream of State Road 11	*16
Middle Haw Creek Tributary No. 2:	
At confluence with Middle Haw Creek	*26
Just upstream of Hudson Road No. 2	*31
Summerhaven Creek:	
At county boundary	*14
About 1.44 miles upstream of county boundary	*14
Bulow Creek:	
At county boundary	*6
Just downstream of Old Kings Road	*18
Bulow Creek Tributary:	
At confluence with Bulow Creek	*12
About 4,750 feet upstream of confluence with Bulow Creek	*20
Sweetwater Branch:	
Just upstream of State Road 304	*17
About 1 mile upstream of Hudson Road No. 12	*27
Black Branch:	
About 900 feet upstream of confluence with Haw Creek	*10
About 4,500 feet upstream of Old Haw Creek Road	*17
Graham Swamp:	
At confluence with Bulow Creek	*8
About 2,200 feet upstream of State Road 100	*13

Maps available for inspection at the County Engineer's Office, Courthouse Annex, P.O. Box 906, Bunnell, Florida.
Send comments to Honorable Thomas W. Durrance, Chairman, Flagler County Commission, Flagler County Courthouse, P.O. Box 787, Bunnell, Florida 32010.

Marineland (Town), Flagler County

Atlantic Ocean: Along Shoreline	*13
Intracoastal Waterway: Along Shoreline	*7

Maps available for inspection at the Administrative Office Building, Marineland, Florida.
Send comments to Honorable William Huck, Mayor, Town of Marineland, Rt. 1, P.O. Box 122, St. Augustine, Florida 32084.

ILLINOIS

Unincorporated Areas of Henderson County

Mississippi River:	
At downstream county boundary	*528
At upstream county boundary	*543

Maps available for inspection at the County Clerk's Office, Henderson County Courthouse, Oquawka, Illinois.
Send comments to Honorable John Weir, Chairman, Henderson County Board, Henderson County Courthouse, Oquawka, Illinois 61469.

Kewanee (City), Henry County

Prospect Street Creek:	
About 950 feet downstream of Maple Avenue	*783
About 500 feet upstream of Elm Street	*809
Mill Street Creek:	
About 1,600 feet downstream of East Street	*786
About 425 feet upstream of Acorn Street	*838

Maps available for inspection at the Clerk's Office, City Hall, 200 West Third, Kewanee, Illinois.
Send comments to Honorable Alfred Hill, Mayor, City of Kewanee, City Hall, 200 West Third, Kewanee, Illinois 61443.

MAINE

Phippsburg (Town), Sagadahoc County

Atlantic Ocean:	
Entire shoreline at Small Point	*16
Mainland shoreline north of Seal Island	*22
Marshy area surrounding Campbell Island	*10
Shoreline at Popham Beach	*15
Casco Bay:	
Shoreline at Head Cove	*10
Mainland shoreline east of Gooseberry Island	*16
Entire shoreline of Cape Small Harbor	*10
Shoreline at Sister Point	*15
Mainland shoreline east of Burnt Coat Island	*9
Kennebec River:	
Entire shoreline of Dix Island	*10
Entire shoreline of Mill Pond	*10
Entire western shoreline of Drummore Bay	*10
Entire shoreline of Fiddler Reach within community	*9
New Meadows River:	
Shoreline at Ridleys Landing Road (extended)	*9
Shoreline of Brighams Cove within the community	*9
Shallow Flooding:	#1-#2

Maps available for inspection at the Town Offices, Phippsburg, Maine (Hours are Wednesday Evenings from 7:00 p.m. to 9:00 p.m.).
Send comments to Honorable Robert C. Cummings, Chairman of the Board of Selectmen of the Town of Phippsburg, P.O. Box 25, Phippsburg, Maine 04562.

MASSACHUSETTS

Falmouth (Town), Barnstable County

Buzzards Bay:	
Shoreline at County Road (extended)	*19
Shoreline at Circle Drive (extended)	*22
Area 0.4 mile southeast of Crow Point	#2
Shoreline 1 mile southeast of Chappaquoit Point	*22
Shoreline 0.25 mile northeast of Hanlin Point	*24
Shoreline 700 feet south of Hanlin Point	*26
Shoreline 0.26 mile south of Hanlin Point	*22
Shoreline at north end of Racing Beach Avenue (extended)	*19
Shoreline at The Knob	*26
Shoreline 0.47 mile southeast of Gansett Point	*14
Shoreline at Gansett Point	*20
Shoreline 0.34 mile southwest of Gansett Point	*23
Shoreline 0.79 mile southwest of Gansett Point	*13
Shoreline 500 feet northwest of Penzance Point	*18
Vineyard Sound:	
Northwest shoreline of Ram Island	*12
Shoreline at Goenold Road (extended)	*17
Shoreline at Juniper Point	*21
Shoreline at Nobska Point	*27
Shoreline 1.3 miles north of Nobska Point	*17
Ponding area 400 feet east of intersection of Oyster Pond Road and Fay Road	*15
Shoreline 0.3 mile east of mouth of Falmouth Inner Harbor	*27
Shoreline of Devils Foot Island	*17

Maps available for inspection at the Town Clerk's Office, Town Hall, Falmouth, Massachusetts.
Send comments to Honorable Leonard L. Costa, Chairman of the Board of Selectment of the Town of Falmouth, Town Hall, 59 Town Hall Square, Falmouth, Massachusetts 02540.

Methuen (City), Essex County

Merrimack River:	
At downstream corporate limits	* 29
Approximately 300 feet downstream of Merrine Avenue (extended)	* 31
Approximately 600 feet upstream of Merrimack Road (extended)	* 33
At Olive Avenue (extended)	* 51
Upstream side of Interstate 93	* 52
At most upstream corporate limits	* 55
Bare Meadow Brook:	
At downstream corporate limits	* 29
Downstream side of Pleasant Valley Street	* 35
Upstream side of Chippy Lane	* 65
Upstream side of Hills Pond Dam	* 78
Hawkes Brook:	
At confluence with Bare Meadow Brook	* 29
Approximately 0.8 mile downstream of Washington Street	* 60
Upstream side of Washington Street	* 119
Upstream side of Howe Street	* 131
Upstream side of North Street	* 145
Bartlett Brook:	
At confluence with Merrimack River	* 53
Approximately 1.1 mile upstream of North Lowell Street	* 83
Peat Meadow Brook:	
At confluence with Spicket River	* 110
Upstream side of Danton Drive	* 115
Downstream side of Forest Street	* 134

Map available for inspection at the Conservation Agent's Office Methuen, Massachusetts.
Send comments to Honorable Richard Gladstone, Methuen City Manager, 90 Hampshire Road, Methuen, Massachusetts 01844.

Rowley (Town), Essex County

Atlantic Ocean:	
Entire Shoreline within corporate limits	* 14
Downstream side of Newburyport Turnpike bridge over the Mill River at northern corporate limits	* 8

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream side of Boston and Maine Railroad bridge over the Rowley River	*10
Downstream side of Boston and Maine Railroad bridge at southern corporate limits	*[illegible]
Mill River:	
Upstream side of Newburyport Turnpike	*9
Upstream side of Glen Street	*18
Downstream side of Mill Dam	*19
Upstream side of of Mill Dam	*[illegible]
Maps available for inspection at the Planning Board, Town Hall, Rowley, Massachusetts.	
Send comments to Honorable Wendell R. Hopkins, Chairman of the Board of Selectmen of the Town of Rowley, Town Hall, Rowley, Massachusetts 01969.	
MONTANA	
Lima (town), Beaverhead County	
Junction Creek: 25 feet upstream from the center of 3rd Avenue	*[illegible]
Maps available for inspection at the Town Hall, Lima, Montana.	
Send comments to the Honorable Louise Seybold, Box 184, Lima, Montana 59739.	
NEW JERSEY	
Elizabeth (City), Union County	
Elizabeth River:	
At confluence with Arthur Kill	[illegible]
Upstream Corporate Limits	*17
Arthur Kill:	
At Goethels Bridge	*9
At confluence with Newark Bay	*8
Newark Bay:	
At confluence with Arthur Kill	*8
At confluence with Elizabeth Channel	*9
Maps available for inspection at Municipal Engineers Office, City Hall, 3rd Floor, Windfield Scott Plaza, Elizabeth, New Jersey.	
Send comments to Honorable Thomas G. Dunn, Mayor of the City of Elizabeth, Union County, City Hall, Windfield Scott Plaza, Elizabeth, New Jersey 07201.	
Middlesex (Borough of), Middlesex County	
Raritan River:	
Approximately 2,000 feet downstream of confluence of Green Brook	*[illegible]
At confluence of Green Brook	*33
Green Brook:	
At its confluence with the Raritan River	*[illegible]
At upstream corporate limits	*[illegible]
Bound Brook:	
At its confluence with Green Brook	*43
At upstream corporate limits	*[illegible]
Ambrose Brook:	
At its confluence with Green Brook	*[illegible]
At upstream corporate limits	*[illegible]
Bonygutt Brook:	
At its confluence with Green Brook	*[illegible]
At upstream corporate limits	*[illegible]
Maps available for inspection at the Municipal Building, 1200 Mountain Avenue, Middlesex, New Jersey, c/o Mike Duffy, Construction Official.	
Send comments to Honorable Ronald S. Dobies, Mayor of the Borough of Middlesex, Middlesex County, 1200 Mountain Avenue, Middlesex, New Jersey 08846.	
NEW YORK	
Lattingtown (Village), Nassau County	
Long Island Sound:	
Shoreline at western corporate limits	*20
Intersection of Meadow and Pumpkin Drives	*13
Shoreline at Fox Point	*[illegible]
Approximately 900 feet northeast of intersection of Sheep and Fox Lanes	*12
Mill Neck Creek:	
Shoreline at Millard Drive (extended)	*12
Shoreline at southern corporate limits	*14

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Village Attorney's Office, Locust Valley, New York.	
Send comments to Honorable Clarence Michalis, Mayor of the Village of Lattingtown, Nassau County, 273 Basil Road, Locust Valley, New York 11560.	
North Salem (Town), Westchester County	
Titicus River:	
At confluence with Titicus Reservoir	*327
Upstream side of June Road	*343
Upstream side of New York Route 121	*377
Upstream side of dam	*455
Upstream side of Keeler Lane	*461
Upstream side of Norton Lane	*493
At upstream corporate limits	*496
Croot Brook:	
At confluence with Titicus River	*331
Approximately 1,600 feet downstream of New York Route 121	*356
Upstream side, most downstream crossing of Hawley Road	*386
Upstream side, most upstream crossing of Hawley Road	*452
Maps available for inspection at the Town House, c/o Town Clerk, North Salem, New York.	
Send comments to Honorable Jeanette McNamara, Supervisor of the Town of North Salem, Westchester County, Town House, North Salem, New York 10560.	
Patterson (Town), Putnam County	
East Brach Croton River:	
At downstream corporate limits	*429
At confluence with Haviland Hollow Brook	*431
At upstream corporate limits	*435
Haviland Hollow Brook:	
At confluence with East Branch Croton River	*431
Upstream side of Brimstone Road	*461
At upstream corporate limits	*503
Muddy Brook:	
At confluence with East Branch Croton River	*433
Upstream side of CONRAIL	*450
First crossing of upstream side of New York Route 311	*470
Upstream side of second crossing of New York Route 311	*516
Muddy Brook Tributary 1:	
At confluence with Muddy Brook	*433
Upstream side of New York Route 311	*454
Upstream side of New York Route 292	*550
At upstream corporate limits	*613
Stephens Brook:	
At confluence with East Branch Croton River	*433
Upstream side of New York Route 22	*462
Upstream side of Old New York Route 22	*475
Maps available for inspection at the Town Clerk's Office, Town Hall, Patterson, New York.	
Send comments to Honorable Michael Quisk, Supervisor of the Town of Patterson, Putnam County, Route 164 & 311, Patterson, New York 12563.	
Warwick (Village of), Orange County	
Wawayanda Creek:	
Approximately 300 feet downstream of corporate limits	*507
At Forester Avenue	*520
Approximately .6 mile upstream of upstream corporate limits	*521
South Tributary to Wawayanda Creek:	
At confluence with Wawayanda Creek	*520
At Stanley Deming Park Footbridge	*528
Approximately 300 feet upstream of State Route 17A	*537
Maps available for inspection at the Village Hall, 77 Main Street, Warwick, New York.	
Send comments to Honorable Nicholas Papaceno, Mayor of the Village of Warwick, Orange County, 77 Main Street, P.O. Box 389, Warwick, New York 10990.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
NORTH CAROLINA	
Carolina Beach (Town), New Hanover County	
Atlantic Ocean:	
Along Canal Drive from its intersection with Harper Avenue to its intersection with Clam Shell Lane	*10
Shoreline within Extraterritorial limits	*16
Cape Fear River: Within Extraterritorial limits	*10
Maps available for inspection at Town Hall, Carolina Beach, North Carolina.	
Send comments to Honorable Richard A. McLean, Town Manager, Town of Caroline Beach, P.O. Drawer V, Carolina Beach, North Carolina 28428.	
Kure Beach (Town), New Hanover County	
Atlantic Ocean:	
About 200 feet east of the intersection of U.S. Highway 421 and Dow Avenue	*14
About 50 feet east of the intersection of M Avenue and Atlantic Avenue	*14
Along shoreline	*16
Maps available for inspection at Town Hall, 115 North 3rd Street, Kure Beach, North Carolina.	
Send comments to Honorable Lee Wrenn, Mayor, Town of Kure Beach, P.O. Box 3, Kure Beach, North Carolina 28449.	
Wilmington (City), New Hanover County	
Spring Branch:	
At mouth	*9
About 5750 feet upstream of mouth	*18
Burnt Mill Creek:	
About 350 feet downstream of Seaboard Coast Line Railroad	*9
Just downstream of Hoggard Drive	*33
Greenfield Lake North Branch:	
At mouth	*10
Just upstream of East Lake Shore Drive	*14
About 150 feet upstream of 16th Street	*18
Greenfield Lake North Branch Tributary	
At mouth	*15
About 200 feet upstream of 16th Street	*24
Bradley Creek:	
About 300 feet upstream of Mallard Street	*13
About 2,650 feet upstream of Mallard Street	*21
Northeast Cape Fear River:	
From 3rd Street to confluence of Smith Creek	*9
Along Smith Creek from mouth to confluence of Spring Branch	*9
From mouth to 3rd Street	*10
Cape Fear River:	
Along shoreline	*10
Along Greenfield Lake shoreline	*10
Along Barnards Creek	*10
Atlantic Ocean: Along Hewletts Creek	*11
Maps available for inspection at City Hall, Wilmington, North Carolina.	
Send comments to Honorable William B. Harris, City Manager, City of Wilmington, P.O. Box 1810, Wilmington, North Carolina 28402.	
Wrightsville Beach (Town), New Hanover County	
Atlantic Ocean:	
Along Lumina Avenue	*11
About 1,250 feet southwest of the intersection of Short Street and Marina Street	*11
At intersection of Island Drive and U.S. 76	*11
Along Intercoastal Waterway	*12
About 250 feet southeast of South Channel Drive and North Channel Drive	*12
Along the shoreline	*17
Maps available for inspection at Town Hall, Wrightsville Beach, North Carolina.	
Send comments to Honorable Francis Russ, Mayor, Town of Wrightsville Beach, P.O. Box 626, Wrightsville Beach, North Carolina 28480.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
NORTH DAKOTA	
Mott (City), Hettinger County	
Cannonball River: At the intersection of Michigan Avenue and Railroad Avenue	*2,381
Maps available for inspection at Auditor's Office, 202 East 3rd, Mott, North Dakota.	
Send comments to the Honorable Ben Olien, P.O. 516, Mott, North Dakota 58646.	
OHIO	
Marysville (City), Union County	
Mill Creek:	
About 1,900 feet downstream of confluence of Infirmary Ditch	*871
About 1.5 miles upstream of Maple Street	*968
Maps available for inspection at City Hall, 111 West 6th Street, Marysville, Ohio.	
Send comments to Honorable Thomas O. Nueske, Mayor, City of Marysville, City Hall, 111 West 6th Street, Marysville, Ohio 43040.	
PENNSYLVANIA	
South Londonderry (Township), Lebanon County	
Killinger Creek:	
Killinger Creek at northern corporate limits	*415
Downstream side of U.S. Route 322	*448
Approximately 2,950 feet upstream of U.S. Route 322	*484
Maps available for inspection at the Township Municipal Building, West Market and Center Street, Cambelltown, Pennsylvania.	
Send comments to Honorable Warren Strohm, Chairman of the Board of Supervisors of the Township of South Londonderry, Lebanon County, West Market and Center Street, P.O. Box 396, Cambelltown, Pennsylvania 17010.	
PUERTO RICO	
Commonwealth of Puerto Rico, Rio Grande de Patillas and Rio Guamani Basin	
Rio Grande de Patillas: Along Puerto Rico Highway 3 and 181 as it crosses bridge over stream	*20.1
Quebrada Mamey: At the intersection of Calle Riggi and Calle Jesus T Pinero	*20.8
Rio Nigua (at Arroyo): At the intersection of Puerto Rico Highway 3 and Calle B	*16.2
Rio Nigua (at Pitahaya): Along Access road, 200 feet east of its intersection with Puerto Rico Highway 753	*60.3
Rio Guamani: At the intersection of Calle P Doria and Calle Monserrate	*62.8
Rio Seco: On Puerto Rico Highway 713, 700 feet north of its intersection with Puerto Rico Highway 3	*17.0
Rio Melenia: At intersection of Calle D and unnamed road, located 1,200 feet north of Puerto Rico Highway 3	*9.1
Caribbean Sea: At intersection of Calle San Felipe and Calle Munoz Rivera	*1.9
Rio Nigua (Shallow Flooding): At intersection of Calle Virgilio Sanchez and Calle General Brooke	#0.7
Rio Melenia (Shallow Flooding): At the intersection of Puerto Rico Highways 3 and 707	#0.9
Maps available for inspection at Planning Board, P.O. Box 41119, Minillas Station, D-Diego Avenue, Santurce, Puerto Rico.	
Send comments to the Honorable Rafael Hernandez Colon, La Fortaleza, San Juan, Puerto Rico.	
Commonwealth of Puerto Rico, Rio Piedras Basin	
Canal Puerto Nuevo: 20 meters upstream of Avenida Franklin D. Roosevelt (Puerto Rico Highway 23)	*5.0
Rio Piedras: Intersection of Calle Notre Dame and Calle Fordham	*9.0
Quebrada Margarita: Intersection of Calle Riverside and Calle San Patricio	*9.5
Quebrada Dona Ana: Intersection of Avenida De Diego and Calle 40	*15.2
Quebrada Josefina: Intersection of stream and Avenida De Diego	*19.7
Quebrada Guaracanal: At confluence with Quebrada del Ausubo	*23.7
Quebrada Capera: 10 meters upstream of Venus Gardens Entrance Road	*45.0
Quebrada Juan Mendez: Intersection of Calle Olot and Calle Cruz	*11.2
Atlantic Ocean: Intersection of Avenida Nemides and Calle Barbosa	*1.6
Maps available for inspection at Planning Board, P.O. Box 41119, Minillas Station, D-Diego Avenue, Santurce, Puerto Rico.	
Send comments to the Honorable Rafael Hernandez Colon, La Fortaleza, San Juan, Puerto Rico.	
WISCONSIN	
Unincorporated Areas of Lincoln County	
Wisconsin River:	
At southern county boundary	*1,224
Just upstream of Alexander Dam	*1,276
Just downstream of Grandfather Dam	*1,308
Just upstream of Grandfather Dam	*1,397
Just downstream of Grandmother Dam	*1,410
Just upstream of Grandmother Dam	*1,419
Just downstream of Tomahawk Dam	*1,429
Just upstream of Tomahawk Dam	*1,435
Just downstream of Kings Dam Powerplant	*1,435
Just upstream of Kings Dam Powerplant	*1,458
About 1.85 miles upstream of confluence of Trout Creek	*1,460
Prairie River:	
Just upstream of Ward Paper Company Dam	*1,269
Just downstream of Prairie Dell Dam	*1,355
Tomahawk River:	
About 0.35 mile upstream of Jersey City Dam	*1,451
Just downstream of Rice Dam	*1,454
Just upstream of Rice Dam	*1,463
At northern county boundary	*1,463
Spirit River:	
At mouth	*1,428
Just downstream of Spirit River Dam	*1,428
Just upstream of Spirit River Dam	*1,438
About 2.1 miles upstream of Faust Road	*1,442
Little Somo River:	
At confluence with Somo River	*1,440
Just downstream of U.S. Highway 8	*1,457
Somo River:	
At mouth	*1,435
At confluence of Little Somo River	*1,440
Maps available for inspection at the Zoning Administrator's Office, County Courthouse, 1110 East Main Street, Merrill, Wisconsin.	
Send comments to Honorable Neil LeMay, Chairman, County Board of Commissioners, County Courthouse, 1110 East Main Street, Merrill, Wisconsin 54442.	

Issued: June 24, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-15782 Filed 7-1-85; 8:45 am]

BILLING CODE 6718-03-M

LEGAL SERVICES CORPORATION

45 CFR Part 1620

Priorities in Allocation of Resources

AGENCY: Legal Services Corporation.

ACTION: Proposed rule; amendment.

SUMMARY: On January 4, 1985, the Legal Services Corporation republished Part 1620 of its regulations for public comment. Based upon comments received and recommendations of the Board's Operations and Regulations Committee, the Board of Directors on May 24, 1985, adopted proposed amendments to Part 1620 which pertains to priorities in the allocation of resources. The proposed amendments to the regulation are being published for further comment. Sixteen amendments are proposed. Of these amendments eight make major, substantive changes. One of these major amendments is a complete revision of the access provision. It clarifies that recipients, while attempting to ensure that all eligible clients have reasonably equal acces to legal services, may consider special legal requirements and that they need not establish quota systems or follow arbitrary standards in determining how to allocate their resources. The seven other major amendments provide that, in setting priorities, the governing bodies of recipients should contact eligible clients; that the governing bodies should consider the relative importance of the particular legal problems of the individual clients of the recipient; that the governing bodies should consider whether legal efforts will result in efficient and economic delivery of legal services; that the requirement of an initial written report is eliminated; that priorities shall be set periodically; that annual reports summarizing the review of priorities shall be made available to the public; and that recipients should include in their annual report a copy of the case acceptance policies and proceedings established under § 1620.4. The other eight amendments are of a technical nature.

DATE: Comments must be received on or before August 1, 1985.

ADDRESSES: Comments should be submitted to Office of General Counsel, Legal Services Corporation, 733 15th Street NW., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: On January 4, 1985, the Legal Services Corporation republished Part 1620 of its regulations for public comment (50 FR 512). Comments were received and considered. On May 24, 1985, the Corporation's Board of Directors, acting upon recommendations of its Operations and Regulations Committee, adopted proposed amendments to that Part.

Because substantive changes were made, the proposed amendments to the regulation are being published for comment.

The specific proposed amendments are discussed on a section-by-section basis below.

Section 1620.1 Purpose. The letter "s" has been added to the word "view" in recognition that eligible clients, staff, the private bar and other interested persons may not have identical opinions about the policies and plans of a recipient. Recipients should consider the opinions of all of these groups. The last half of the section, beginning with the words "it is further" has been deleted. The Board viewed this language as simply a confusing and unnecessary attempt to summarize the rest of the regulation.

Section 1620.2 Procedure. The first sentence of § 1620.2(a)(1) has been split in half by inserting a period (.) after the word "population", removing the words ", as well as" and inserting in their place the words "The appraisal shall also include". The words "to the extent feasible should include outreach to eligible clients which may include the use of such techniques as questionnaires and surveys." have been inserted after the words "interested persons". This change reflects the conviction of the Board that communicating with the client community is of vital importance in aiding recipients to establish priorities. To the extent feasible and cost-effective, programs should include outreach to eligible clients who might not otherwise be contacted, such as clients in nursing homes or other institutions, or who reside in locations that are isolated, difficult to reach or otherwise inaccessible. Programs may use a variety of techniques to conduct feasible outreach including, where practical, questionnaires and surveys.

In § 1620.2(a)(2), the words "in the development of the report required by § 1620.4(b)", have been removed. This change recognizes that former § 1620.4(b) has been deleted.

In subparagraph § 1620.2(b)(6) the word "individual" has been inserted in front of the word "clients" to encourage recipients to look at their clients not simply as a class subject to the uniform application of standard remedies but as people with diverse legal problems each of which is worthy of careful and particular attention.

The word "and" at the end of subparagraph (b)(7) of § 1620.2 has been removed and the word "; and" has been added to the end of subparagraph (b)(8) of § 1620.2 to accommodate the addition of a new subparagraph (b)(9).

Finally, a new subparagraph 1620.2(b)(9) has been added which is similar in language to Section 1007(a)(3) of the Legal Services Corporation Act. The new subparagraph would require recipients, in establishing their priorities, to consider whether "legal efforts will result in efficient and economic delivery of legal services." Programs should adopt priorities that enhance the efficient and economic delivery of legal services.

Section 1620.3 Access. This section has been substantially revised to emphasize that recipients may take a flexible approach in dealing with the issue of client access to legal services. It must, however be read in the context of the entire regulation. Programs may set priorities that favor certain types of services or cases, but they must make a reasonable effort to provide similar types of services to all clients who are in essentially similar legal and factual circumstances. In the first sentence the words "and shall make a reasonable effort to" have replaced the words "so as to substantially". This change recognizes that a recipient's goal is the economic and effective delivery of legal services, not the elimination of every possible disparity in client access. In promoting that goal, recipients may sometimes reasonably choose an option that does not produce substantially equal acess. The words "similar types" have replaced the words "the same type" because legal needs may differ from place to place within a recipient's service area. In some cases a recipient may be providing more effective service to all of its clients if it offers different types of services in different areas. The words "and level of representation to the maximum extent economically practical" have been removed because they were vague and misleading. When an attorney undertakes to represent a client, he or she gives that client the representation that best meets the client's needs.

At the beginning of the second sentence a new phrase, "If the governing body of the recipient so desires", has been added to emphasize that recipients have the option to be flexible. The word "the" has been added and the capital "T" in the word "Types" changed to a lower case "t" to conform to accepted standards of English usage and punctuation. The words "so as to take into account" replace the words "as required to meet", and the words "a higher incidence of a particular kind of legal problem, the considerably higher costs of providing services, or," replace the words "and level of representation may vary based on". This change as well reflects the Board's concern for recipient flexibility and its concern that recipients focus on the actual legal needs of clients and the most effective and economic way of delivering services to them. Some areas may have unusual legal needs that do not exist elsewhere. Accordingly, the governing body may provide different types of services to take into account different priorities in different parts of the recipient's service area (e.g. rural issues or special legal problems of particular client groups such as black lung cases among miners); a higher incidence of a particular kind of legal problem (e.g., in more urban areas or in institutional settings); the considerably higher costs of providing services (e.g., in remote or isolated areas); or differences in individual client financial resources. Under the regulation, recipients will be free to weigh the type and incidence of legal problems in their service areas against the relative costs of providing particular services in different geographical areas. As in § 1620.2(b)(6), the word "individual" is inserted before the word "client" to emphasize that, in establishing priorities, recipients should focus on people and not classes.

The last two sentences of § 1620.3 are removed and replaced with a new sentence: "Consistent with the methods of delivery that are most effective and economical and the factors of § 1620.2(b), allocation of resources shall be reasonably proportional to the distribution of eligible clients within the recipient's service area, but this part shall not be interpreted to require any rigid standard for dollar expenditures or number of clients served.". This new sentence clarifies the Board's decision that recipients be held to a reasonableness standard in resolving the issue of client access. Recipients do not have to set up quotas or use other arbitrary devices in determining how to apply their resources. The priorities regulation should not be read to require offices in every county, equal staff, or any rigid standard for dollar expenditures or number of clients served. It is the availability of services, not the physical location of resources, which is pivotal.

Section 1620.4 Implementation. Paragraph (b) of § 1620.4 is removed because the date June 30, 1984 has already passed and because, in the light of the requirement in § 1620.5 that there be an annual written report, the Board determined that it was unnecessary to require an initial written report. Because paragraph (b) has been eliminated and only one paragraph remains in the section, the characters "(a)" are removed from the beginning of § 1620.4.

Section 1620.5 Annual Review. The words "be set periodically and shall"

are inserted before the words "be reviewed" to indicate that, although recipients are not required to set priorities each year, they are required to do so periodically. The words "After the initial report described in § 1620.4(b)" are removed because an initial report is no longer required. The lower case "e" in the word "each" is changed to a capital "E" since "Each" now constitutes the first word of the second sentence. The words "and make available to the public" are inserted before the words "an annual report" to encourage accountability to the public. The word "and" before the word "mechanisms" is deleted as unnecessary. The words "policies and procedures established under § 1620.4 of these regulations as a result of the priority review and assessment" are substituted for the words "schedule adopted as a result of the priority review and assessment of the changes made in current operations of the recipient as a result of the priority review". The Board deleted the term "case acceptance schedule" because it was unclear. It determined that the Corporation's need to have information about the procedures recipients use in accepting cases could be met by requiring recipients to include in their annual reports copies of the case acceptance policies and procedures established under § 1620.4 of the regulation.

List of Subjects in 45 CFR Part 1620

Legal services.

PART 1620—[AMENDED]

For the reasons set out in the preamble, Part 1629 of Title 45, Code of Federal Regulations, is amended as set forth below: 1. The authority citation for Part 1620 continues to read as follows:

Authority: Sec. 1007(a)(2) Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996f(a)(2)).

§ 1620.1 [Amended]

2. Section 1620.1 is amended by adding the letter "s" to the word "view".

3. Section 1620.1 is further amended by inserting a period after the words "other provisions of Federal law" and removing the semicolon and all that follows it.

§ 1620.2 [Amended]

4. Paragraph (a)(1) of § 1620.2 is amended by removing the words ", as well as" and inserting in their place a period followed by the words "The appraisal shall also include".

5. Paragraph (1)(1) is further amended by removing the period following the word "persons" and inserting in its place the words ", and to the extent feasible should include outreach to eligible clients which may include the use of such techniques as questionnaires and surveys.".

6. Paragraph (a)(2) of § 1620.2 is amended by removing the words "in the development of the report required by § 1620.4(b)," after the words "setting of priorities,".

7. Paragraph (b)(6) of § 1620.2 is amended by inserting the word "individual" before the word "clients".

8. Paragraph (b)(7) of § 1620.2 is amended by removing the word "and" at the end of the paragraph.

9. Paragraph (b)(8) of § 1620.2 is amended by removing the period and inserting in its place a semicolon and the word "and".

10. Section 1620.2 is amended by adding at the end the following new paragraph (b)(9):

* * * * *

(b) * * *

(9) Whether legal efforts will result in efficient and economic delivery of legal services.

* * * * *

11. Section 1620.3 is revised to read as follows:

§ 1620.3 Access.

A recipient shall allocate resources consistent with the purposes and requirements of the Act, regulations, guidelines and instructions, including § 1620.2 of these regulations, and shall make a reasonable effort to provide that all potentially eligible clients in the recipient's service area have reasonably equal access to similar types of services. If the governing body of the recipient so desires, the types of services may vary so as to take into account different priorities in different parts of the recipient's service area, a higher incidence of a particular kind of legal problem, the considerably higher costs of providing services, or differences in individual client financial resources. Consistent with the methods of delivery that are most effective and economical and the factors of § 1620.2(b), allocation of resources shall be reasonably proportional to the distribution of eligible clients within the recipient's service area, but this part shall not be interpreted to require any rigid standard for dollar expenditures or number of clients served.

§ 1620.4 [Amended]

12. Section 1620.4 is amended by removing the paragraph designation (a) at the beginning of paragraph (a); and by removing paragraph (b) in its entirety.

§ 1620.5 [Amended]

13. Section 1620.5 is amended by inserting the words "be set periodically and shall" after the word "shall" in the first sentence of the introductory paragraph.

14. Section 1620.5, introdutory paragraph, is further amended by removing the words "After the initial report described in § 1620.4(b)" and by removing the lower case "e" in the word "each" and inserting in its place a capital "E".

15. Section 1620.5, introductory paragraph, is further amended by inserting the words "and make available to the public" before the words "an annual report".

16. Section 1620.5, introductory paragraph is further amended by removing the word "and" before the word "mechanisms".

17. Section 1620.5, introductory paragraph is further amended by removing the words "schedule adopted as a result of the priority review and assessment of the changes made in current operations of the recipient as a result of the priority review" and inserting in their place the words "policies and procedures established under § 1620.4 of these regulations as a result of the priority review and assessment".

Date: June 26, 1985.

Richard N. Bagenstos,

Acting General Counsel.

[FR Doc. 85-15719 Filed 7-1-85; 8:45 am]

BILLING CODE 6820-35-M

Notices

Federal Register
Vol. 50, No. 127
Tuesday, July 2, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COMMITTEE ON FEDERAL PAY

Meeting

The Advisory Committee on Federal Pay announces that public discussions of the adjustment in Federal pay for October 1985 have been scheduled for Wednesday, August 14, in Suite 600, 1730 K Street NW. They will start at 2:00 p.m.

These discussions are intended to give organizations representing Federal employees or any interested government officials an opportunity to express their views regarding the Pay Agent's proposals. Those wishing to discuss the Agent's proposals with the Committee should notify the Committee by August 9. The telephone number is 653–6193. Written comments should also reach the Committee by August 9—Suite 205, 1730 K Street, NW., Washington, D.C. 20006. Both written submissions and requests for an opportunity to discuss the issues should include a telephone number where the organization or official can be reached.

The Advisory Committee on Federal Pay, established as an independent agency by Section 5306 of Title 5, United States Code (Pub. L. 91–656, the Federal Pay Comparability Act), is charged with assisting the President in carrying out the policies on Section 5301 of Title 5, United States Code. The Committee's fundamental obligation is to present the President with an independent judgment respecting Federal pay. Section 5306 of Title 5 requires the Committee to make findings and recommendations to the President with respect to the annual adjustment in Federal pay, after considering the written views of employee organizations, the President's Agent, other officials of the Government of the United States, and such experts as the Committee may consult.

Lucretia Dewey Tanner,
Executive Director.

[FR Doc. 85–15793 Filed 7–1–85; 8:45 am]
BILLING CODE 6325–43–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1985–86 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination: 1985–86 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas.

SUMMARY: This notice sets forth the determination of the 1985–86 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventy-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: July 2, 1985.

FOR FURTHER INFORMATION CONTACT: C. Douglas Richardson, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447–4281.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." It has been determined that this notice will not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title-Commodity Loan and Purchases, Number-10051; as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 19115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Section 314 of the Agricultural Adjustment Act of 1938, as amended ("the 1938 Act"), provides that marketing quota penalties shall be assessed whenever a kind of tobacco is marketed which is in excess of the marketing quota established for the farm on which such tobacco is produced. Section 314 of the 1938 Act also provides that the rate of penalty per pound for a kind of tobacco shall be seventy-five (75) percent of the average market price for such tobacco for the immediately preceding marketing year. The Crop Reporting Board, Statistical Reporting Service, U.S. Department of Agriculture determines and announces annually the average market price for all kinds of tobacco.

Since the determination of 1985–86 marketing year rates of penalty reflect only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Accordingly, it has been determined that the rate of penalty for the 1985–86 marketing year for all kinds of tobacco subject to marketing quotas are as follows:

Rate of Penalty

(1985-86 Marketing Year)

Kinds of tobacco	Cents per pound
Burley	141
Flue-cured (types 11, 12, 13, and 14)	136
Fire-cured (types 21)	56

Rate of Penalty—Continued

[1985-86 Marketing Year]

Kinds of tobacco	Cents per pound
Fire-cured (types 22, 23, and 24)	117
Dark air-cured (types 35 and 36)	[illegible]
Virginia sun-cured (type 37)	71
Cigar-filler and binder (types 42, 43, 44, 53, 54, and 55)	81

Signed at Washington, D.C. on June 27, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-15828 Filed 7-1-85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

International Trade Administration

MCTL Implementation Technical Advisory Committee; Meeting Change

AGENCY: International Trade Administration, Commerce.

Federal Register citation of previous announcement: 50 FR 25436 June 19, 1985.

Previously announced time and date of the meeting: 9:30 a.m., July 10, 1985.

Changes in the meeting: 9:30 a.m., July 25, 1985, Room 5230.

Dated: June 27, 1985.

Margaret A. Cornejo,

Acting Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-15834 Filed 7-1-85; 8:45 am]

BILLING CODE 3510-DT-M

[C-503-001]

Sugar Content of Certain Articles From Australia; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on the sugar content of certain articles from Australia. The review covers the period January 1, 1984, through December 31, 1984, and one program.

As of July 1, 1984, there is no separate export sugar rebate for "approved fruit products" or "other approved products." Instead, the "approved products" category incorporates products previously listed as "approved fruit products" and "other approved products."

As a result of the review, the Department has preliminarily determined the average net subsidy to be Aus. $141.47 per metric ton of sugar content for "approved fruit products" during the period January 1 through June 30, 1984; Aus. $156.47 per metric ton of sugar content for "other approved products" during the period January 1 through June 30, 1984; and Aus. $217.05 per metric ton of sugar content for "approved products" during the period July 1 through December 31, 1984. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 2, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Marselian or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 30343) the final results of its last administrative review of the countervailing duty order on the sugar content of certain articles from Australia (T.D. 39541, March 24, 1923) and announced its intent to conduct the next administrative review. As required by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are all shipments of Australian "approved fruit products" and "other approved products."

The list of "approved fruit products" includes the following items: Jams, canned fruits, citrus peel, crystallized (or glace) fruits, certain fruit cordials and fruit juices containing not less than 25 percent pure Australian fruit juice.

The list of "other approved products" includes alcoholic beverages, biscuits, cakes, puddings, pastries and similar mixtures and ingredients used to make them, chemicals derived from cane sugar by hydrolysis, chemical preparations used as inhibitors or stabilizers, condiments, confectionary, desserts and ingredients used to make them, drink powders and crystals, essences and flavorings, ice block mixtures, leather, icing sugar mixture, maple syrup, medicines and drugs, mixtures used to make icings, fillings, dressings and other foods, processed cereal foods or vegetables, processed egg products, processed milk products, quick frozen fruits, soft drinks, soups, spreads, sweetened fruit pulp and other fruit products which are not "approved fruit products." Exceptions to the above are pure sugar and pure icing sugar (that is, not mixed with other manufacturing ingredients), golden syrup, treacle and molasses. These are regarded as sugar and sugar syrups.

As of July 1, 1984, there is no separate export sugar rebate for "approved fruit products" or "other approved products." Instead, the "approved products" category incorporates the products listed as "approved fruit products" and "other approved products" prior to July 1, 1984.

The review covers the period January 1, 1984, through December 31, 1984, and the program of rebate payments made under the Export Sugar Rebate System.

Analysis of the Program

Export sugar rebates are fixed and published by the Export Sugar Committee on a monthly basis and are granted when the world ("parity") price of sugar is lower than the price of sugar in Australia. The average rates for the period of review are set out under the *Preliminary Results of the Review.*

Preliminary Results of the Review

As a result of our review, we preliminarily detemine the average net subsidies to be Aus. $141.47 per metric ton of sugar content for "approved fruit products" during the period January 1 through June 30, 1984; Aus. $156.47 per metric ton of sugar content for "other approved products" during the period January 1 through June 30, 1984; and Aus. $217.05 per metric ton of sugar content for "approved products" during the period July 1 through December 31, 1984.

On September 10, 1982, the International Trade Commission ("the ITC") notified the Department that the Australian government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979. Should the ITC find that there is material injury or likelihood of material injury to an industry in the United States, the Department will instruct the Customs Service to assess countervailing duties in the amount of the estimated duties required to be deposited on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after September 10, 1982, and through the date of the

ITC's notification to the Department of its determination.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of Aus. $217.05 per metric ton of sugar content on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: June 26, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-15835 Filed 7-1-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

National Conference on Weights and Measures; Meeting

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of annual meeting of national conference on weights and measures.

SUMMARY: Notice is hereby given that the 70th Annual Meeting of the National Conference on Weights and Measures will be held Sunday, July 14 through Friday, July 19, 1985 at the J. W. Marriott Hotel, Pennsylvania Avenue and 14th Street, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States as well as associated Federal, industry, and consumer representatives. The annual meeting of the Conference brings together the enforcement officials, other government officials, and representatives of business, industry, trade associations and consumer organizations for the purpose of discussing and seeking consensus on subjects that relate to the fields of weights and measures technology, administration, and regulations.

Pursuant to authority in its Organic Act (15 U.S.C. 272 (5)), the National Bureau of Standards, as the sponsor of the National Conference on Weights and Measures, seeks to provide the technical basis for attaining nationwide uniformity among the States in the complex of laws, regulations, codes, methods, and the inspection and testing procedures that comprise regulatory control of commercial weighing and measuring activities by the States.

The public is invited to attend. A registration fee of $135.00 per person will be charged to pay for expenses of the meeting. The registration fee also includes membership in the National Conference on Weights and Measures for the fiscal year July 1, 1985 to June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Albert D. Tholen, Executive Secretary, National Conference on Weights and Measures, National Bureau of Standards, Gaithersburg, MD 20899, telephone —(301) 921-2401.

Dated: June 26, 1985.

Ernest Ambler,

Director.

[FR Doc. 85-15780 Filed 7-1-85; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Bilateral Textile Consultations With the Government of Thailand Concerning Categories 336 and 640

June 26, 1985.

On May 1, 1985, the Government of the United States, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 7, and August 8, 1983, as amended, requested the Government of Thailand to enter into consultations concerning exports to the United States of cotton dresses in Category 336 and men's and boys' woven shirts of man-made fibers in Category 640, produced or manufactured in Thailand and exported during the period which began on May 1, 1985 and extends through December 31, 1985.

The purpose of this notice is to announce that a solution was agreed upon in recent consultations between the two governments. The agreed levels will be announced after diplomatic notes have been exchanged.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-15814 Filed 7-1-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; Zero Coupon Long-Term Treasury Note Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in the Zero Coupon Long-term Treasury note. The Commodity Futures Trading Commission (Commission) has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, making available the proposed contract or public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before September 3, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CBT Zero Coupon Long-term Treasury note futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581 (202) 254-7227.

A copy of the terms and conditions of the proposed CBT Zero Coupon Long-term Treasury note futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be

obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations therunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBT in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by September 3, 1985.

Issued in Washington, D.C. on June 27, 1985.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85–15775 Filed 7–1–85; 8:45 am]

BILLING CODE 6351–01–M

Chicago Board of Trade; Proposed Amendments Relating to the Soybean Oil Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT") has submitted a proposal to amend its soybean oil futures contract. The proposed amendments would revise the procedure for establishing locational differentials for the soybean oil contract. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before August 1, 1985.

SUPPLEMENTARY INFORMATION: Under the contract's current rules, the delivery differential for each delivery location is calculated from the difference between the carload freight rate from that location to New York City as compared to the freight rate from Decatur, Illinois to New York City. The Exchange submits that this basis for establishing locational delivery differentials is unsatisfactory for two reasons: (1) Marketing patterns for crude soybean oil have changed so that movement from the midwestern production area to the eastern demand centers is no longer the dominant factor in pricing midwestern oil; and (2) with railroad deregulation, rail rate changes have become more frequent and rate levels have become uncertain.

Under the Exchange's proposal, five distinct delivery territories would be established, including a par delivery territory and discounts from par for the other territories. The CBT believes that the proposed territorial delivery differentials would ensure that all registered regular delivery capacity would be economically available for deliveries by better reflacting cash market relationships. The Exchange submits that warehouse receipts would tend to be issued throughout the territories and futures prices would tend to reflect the supply of and demand for all midwestern soybeam oil. The Exchange maintains that the proposed revisions would enhance the usefulness of the contract for hedging and price basing and guarantee an adequate deliverable supply of soybean oil for futures deliveries.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254–7303.

The new differentials would become effective after Commission approval for all contract months subsequently listed by the Exchange for trading, but would not be applicable to currently listed months.

In accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposal submitted by the CBT concerning its soybean oil futures contract is of major economic significance. Accordingly, the principal amendments being proposed by the CME are printed below, using bracketing to indicate deletions and italics to indicate additions:

* * * * *

1141.01 Delivery Points—[Crude Soybean Oil located in regular warehouses within an area not east of Indiana-Ohio boundary nor south of Louisville, KY, may be delivered in satisfaction of Soybean Oil futures contracts. Regular warehouses—(See Appendix 11A).] *Crude Soybean Oil may be delivered in satisfaction of Soybean Oil futures contracts from regular warehouses located in Illinois Territory, Eastern Territory, Eastern Iowa Territory, Southwest Territory or Northwest Territory as defined in this regulation and at the following price differentials:*

(a) Illinois Territory (That portion of the state of Illinois north of latitude 38°00′ N.) . . . at contract price.

(b) Eastern Territory (Those portions of the states of Indiana and Kentucky west of the Ohio-Indiana border and its extension and north of latitude 38°00′ N.) . . . at 1/100ths of one cent per pound under contract price.

(c) Eastern Iowa Territory (That portion of the state of Iowa east of longitude 93°50′ W.) . . . at 3/100ths of one cent per pound under contract price.

(d) Southwest Territory (Those portions of the states of Missouri and Kansas north of latitude 38°00′ N. and east of longitude 97°00′ W.) . . . at 4/100ths of one cent per pound under contract price.

(e) Northwest Territory (Those portions of the states of Minnesota south of latitude 45°10′ N., South Dakota south of latitude 45°10′ N. and east of 97°00′ W., Iowa west of longitude 93°50′ W., and Nebraska east of longitude 97°00′ W.) . . . at 5/100ths of one cent per pound under contract price.

Regular Warehouses—(See Appendix 11A).

[1141.02 Billing—When delivery is made at a point other than Decatur, Illinois, the Seller shall make an adjustment to Buyer by decreasing or increasing the amount due on delivery notice by the difference between carload freight rate that existed on July 30, 1981 from the point of delivery to New York, NY as compared with Decatur, Illinois to New York. (See Appendix 11B for rail freight rates).]

Other materials submitted by the CBT in support of the proposed amendment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such

comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission 2033 K Street, NW., Washington, D.C. 20581, by August 1, 1985.

Issued in Washington, D.C., on June 27, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-15776 Filed 7-1-85; 8:45 am]

BILLING CODE 6351-01-M

Chicago Board of Trade, Financial Times-Stock Exchange 100 Share Index Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in the Financial Times-Stock Exchange 100 Share Index. In accordance with sections 2(a)(1)(B)(iii) and 2(a)(1)(B)(iv)(II) of the Commodity Exchange Act, 7 U.S.C. 2a(iii), 2a(iv)(II) (1982), as amended, the Commodity Futures Trading Commission ("Commission") is making available the proposed contract for public inspection and comment.

DATE: Comments must be received on or before September 3, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC. 20581. Reference should be made to the CBT Financial Times-Stock Exchange 100 Share Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581 (202) 254-7227.

A copy of the terms and conditions of the proposed CBT Financial Times-Stock Exchange 100 Share Index futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBT in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by September 3, 1985.

Issued in Washington, D.C., on June 27, 1985.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85-15777 Filed 7-1-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation; Information Collection Activities Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection.

ADDRESSES: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green, Defense Acquisition Regulatory Council, 703-697-7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* This request covers the collection of information to be used in the certification of commercial pricing. The proposal requires potential contractors under certain Federal contracts to justify charging the Government more than the lowest price charged other customers for the same items of supply. This information is required by sec. 204 of Pub. L. 98-577 "Small Business and Federal Procurement Competition Enhancement Act of 1984", and sec. 1216 of Pub. L. 98-525 "Defense Procurement Reform Act of 1984".

b. *Annual reporting burden:* This is estimated as follows: Respondents, 4,765; responses, 47,560; and reporting and recordkeeping hours, 22,895.

Obtaining Copies of Proposals: Requestors may obtain copies from the FAR Secretariat (VR), Room 4041, GS Building, Washington, DC 20405.

Dated: June 25, 1985.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 85-15772 Filed 7-1-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command; Directorate of Personal Property; Intrastate Rate Acquisition Program

AGENCY: Military Management Command (MTMC), DoD.

ACTION: Recently, the General Accounting Office issued their final report on MTMC's Intrastate Rate Acquisition Program. The report states that the proposed expansion is reasonable; that it will facilitate rate solicitation, submission, and analysis; it will promote needed competition; and that it has the potential to reduce the Government's cost of moving household goods. Therefore, expansion to the remaining states, except Hawaii, is scheduled for April 1, 1986.

SUMMARY: The purpose of this notice is to inform Department of Defense approved intrastate household goods carriers of the mailing of MTMC (MT-PPC), letter dated July 1, 1985, announcing the expansion of the intrastate program and ensuring that participating carriers are informed of the Intrastate Rate Acquisition Program. The above reference letter contains general information necessary for preparation and submission of Individual Rate Tenders for movement of intrastate traffic effective 1 April 1986.

The rate solicitation (to be issued in October 1985) includes all rates and

charges. Carriers will tender rates and charges by expressing a percentage of line-haul and a percentage of packing/unpacking rates or a percentage of the single factor rate shown in the Rate Solicitation. Carriers will use MT-HQ Form 43 for filing individual rate tenders.

Incentive tonnage will be awarded to the low rate setter. Rate adjustment tenders will be allowed to provide carriers who file during the Increase/Decrease filing cycle, the option of adjusting to another carrier's offer. Only those carriers who file during the increase/decrease filing period can file during the rate adjustment period. However, the low cost carrier will be offered 50 percent of the tonnage awarded by an installation transportation office. Other carriers, adjusting to the low rate will share equally in the remaining tonnage. In the event two or more carriers establish the low rate, tonnage will be divided so each of the rate setters will receive equal amounts to the maximum extent possible.

COMMENTS: Written comments concerning this program will be considered if received not later than September 3, 1985.

ADDRESS COMMENTS TO: Commander, Military Traffic Management Command, Attn: Rate Acquisition Division (MT-PPC), Room 408, 5611 Columbia Pike, Falls Church, Virginia 22041-5050.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffry McKenzie or Mrs. Naomi King, Military Traffic Management Command, Attn: MT-PPC (Room 408), 5611 Columbia Pike, Falls Church, Virginia 22041-5050, (2022) 756-1190.

This request for comments and the resulting determinations are being made under the authority of 10 USC 2301-2314, DOD Directive 4500.9, and DOD 4500.34R.

Joseph R. Marotta,

Colonel, General Staff, Director of Personal Property.

[FR Doc. 85-15827 Filed 7-1-85; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Recreation User Fees; Notice of Change

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of change in recreation user fees.

SUMMARY: In accordance with the provisions of § 327.25 of the regulation governing public use of U.S. Army Corps of Engineers Water Resource Development projects, which appear in Title 36 Code of Federal Regulations, notice is hereby given of a change in the plan to charge recreation user fees at all Federal Government Recreation areas administered by the Corps of Engineers, in compliance with the requirements set by Congress for fees to be fair, equitable and comparable with both non-Federal public agencies and the private sector.

DATE: Effective July 2, 1985.

FOR FURTHER INFORMATION CONTACT: Darrell E. Lewis, Chief, Natural Resources Management Branch, U.S. Army Corps of Engineers, HQUSACE, ATTN: DAEN-CWO-R, Washington, D.C. 20314-1000.

SUPPLEMENTARY INFORMATION: Fees for camping are as follows: Single user unit camping fees will range from a minimum of $2, to an upper limit comparable to that charged by other public agencies and the private sector for similar facilities. The fee for sites equipped with electric other utility outlets will be higher than fees for sites without hookups. Group camp area fees will range from a minimum of $10, to a comparable upper limit, based on facilities available.

At each U.S. Army Corps of Engineers Water Resource Development Project where camping is permitted, at least one primitive campground, with designated campsites, sanitary facilities and vehicluar access, will be provided where no fee shall be charged.

Visitors to registered campers in fee campgrounds may be charged user fees for use of the specialized facilities. If charged, the fee shall not exceed 50 percent of the single user unit campsite fee.

A minimum fee of $25 may be charged for each special event permit issued.

A special facility permit fee may be charged for reserved group use of special recreation facilities such as group picnic shelters. This fee will be determined based on comparability with the other agencies and the private sector.

Fees are based on comparable charges made for similar facilities in the service area of the management unit at which the fee is charged. As such, these fees may vary from region to region.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85-15826 Filed 7-1-85; 8:45 am]

BILLING CODE 3710-63-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Rodgers Hydrocarbon Corporation and Ray V. Rodgers, Jr.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Rodgers Hydrocarbon Corporation, Ray V. Rodgers, Jr. This Proposed Remedial Order alleges violations in the amount of $2,782,495.73 plus interest in connection with the resale of uncertified and improperly certified crude oil in violation of the certification provision of 10 CFR Part 212 during the time period September 1977 through January 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from James F. Murphy, Economic Regulatory Administration, Department of Energy, 1403 Slocum, Second Floor, Dallas, Texas 75207 or by calling (214) 767-4646. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Room: 6F-078, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Washington, D.C., on the 31st day of May, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85-15804 Filed 7-1-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Remedial Order to O.K. Oil and Gas, Inc. and Jack D. Pointer, Jr.; Opportunity for Objection

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of energy hereby gives Notice that it issued a Proposed Remedial Order to O.K. Oil and Gas, Inc. (O.K. Oil) and Jack D. Pointer (Pointer), Oklahoma City, Oklahoma on May 6, 1985. The Proposed Remedial Order sets forth findings of fact and conclusions of law concerning O.K. Oil and Pointer's pricing of first sales of crude oil produced and sold in the United States, in excess of maximum lawful prices, in violation of the Phase IV petroleum Price Regulations, formerly at 6 CFR Part 150, and the Mandatory Petroleum price Regulations, as they appeared in 10 CFR Parts 210, 211, and 212. These regulations were in effect

prior to January 28, 1981. The amount of overcharges by O.K. Oil and Pointer on properties the ERA audited during the period October 1979 through December 1980, and interest thereon through August 31, 1983, totals not less than $516,185.64.

In accordance with 10 CFR 205.192(c), any person may obtain from the ERA a copy of the Proposed Remedial Order with confidential information, if any, deleted.

Within 15 days after the date of publication of this notice, any aggrieved person may file a Notice of Objection in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be determined to have admitted the findings of fact and conclusions of law as stated in the Proposed Remedial Order. If a Notice of Objection is not filed as provided by 10 CFR 205.193, the Proposed Remedial Order may be issued as a final order. Such Notice should be filed with: Office of Hearings and Appeals, U.S. Department of Energy, Room 6F–055, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of the Proposed Remedial Order may be obrained by written request addressed to: Carole J. Gorry, Acting Chief, Freedom of Information and Privacy Acts Activities Branch, U.S. Department of Energy, Forrestal Building, MA–232.1, 1000 Independence Avenue SW., Washington, DC 20585.

Copies of the Proposed Remedial Order may be obtained in person from: Office of Freedom of Information, Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, D.C., June 6, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration, Department of Energy.

[FR Doc. 85–15802 Filed 7–1–85; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Remedial Order to Total Petroleum, Inc., and Opportunity for Objection

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Total Petroleum, Inc. (Total). This Proposed Remedial Order charges Total with entering processing agreement arrangements with Vulcan Asphalt Refining Co., Inc. for the purpose of lowering its reported crude oil runs to stills so as to obtain Small Refiner Bias entitlement benefits. Total's actions were designed to and resulted in the circumvention and contravention of the Entitlements Program. Further, the PRO alleges that Total misreported its crude oil runs to stills. The violation period covered is September 1977 through May 1979. Total's entitlements violations equal $907,976, exclusive of interest.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from the Freedom of Information Public Reading Room (MA–232.1), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6020.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F–055, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with 10 CFR 205.193. Failure to file a Notice of Objection shall be deemed to be an admission of the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C., on the 17th day of June, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85–15803 Filed 7–1–85; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. PP–82]

Issuance of a Presidential Permit To the Joint Owners of the Highgate Project, Electric Facilities at the U.S.-Canadian International Border

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Issuance of a Presidential permit in Docket No. PP–82 authorizing the Joint Owners of the Highgate Project to construct, connect, operate, and maintain electric transmission facilities at the international border between the United States and Canada.

SUMMARY: The Economic Regulatory Administration (ERA) gives notice of the issuance of a Presidential permit on May 14, 1985, in Docket No. PP–82 to the Joint Owners of the Highgate Project to construct, connect, operate and maintain a 345 kilovolt (kV) international interconnection (to be operated at 120 kV) at the United States-Canadian Boundary.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Economic Regulatory Administration (RG–22), Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–5935

Lise Courtney M. Howe, Office of General Counsel (GC–41), Economic Regulatory Administration (RG–22), Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–2900.

SUPPLEMENTARY INFORMATION: On August 6, 1984, Vermont Electric Power Company, Inc. (VELCO) filed an application with ERA for a Presidential permit, pursuant to Executive Order No. 10485, as amended. VELCO requested authority to construct, connect, operate and maintain transmission facilities known as the Highgate Project in order to import 150–200 megawatts of electric power from Hydro-Quebec. These facilities consist of a back-to-back converter station in the town of Highgate, Vermont, and a 345 kV transmission line which will extend approximately 7.5 miles from the converter station to the U.S.-Canadian border where it will connect with similar facilities owned and operated by Hydro-Quebec. VELCO filed this application on behalf of the Joint Owners [1] of this project.

The Department of Energy (DOE) conducted an Environmental Assessment which concluded that the construction and operation of the proposed electrical facilities would have no significant impacts on the quality of the human environment. The DOE has issued a Finding of No Significant Impact, pursuant to requirements of the National Environmental Policy Act.

ERA determined that the operation of the facilities would not adversely impact the reliability of the electric bulk power supply system, and the Departments of State and Defense concurred in the issuance of the permit.

A copy of the Presidential permit is available for public inspection and copying at the DOE Freedom of Information Library, Room IE–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585,

[1] VELCO will construct, operate and maintain the facilities on behalf of the Joint Owners: Central Vermont Public Service Corp., Franklin Electric Light Co., Inc., Vermont Public Power Supply Authority, Green Mountain Power Corp., Vermont Electric Generation and Transmission Cooperative, Inc., Allied Power and Light Co., City of Burlington Electric Light Dept., Village of Johnson Electric Light Dept., and Rochester Electric Light and Power Co., Inc.

between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 14, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-15805 Filed 7-1-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-579-000 et al.]

Arizona Public Service Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Arizona Public Sevice Company

[Docket No. ER85-579-000]

June 28, 1985.

Take notice that on June 18, 1985, Arizona Public Service Company ("APS") tendered for filing a Notice of Cancellation of the Wholesale Power Agreement between Washington Water Power Company ("WWP") and APS, FERC Rate Schedule No. 84, which provides for the purchase of wholesale power.

APS requests to cancel said Agreement as of October 11, 1985, pursuant to its terms.

Copies of this filing have been served upon WWP and the Arizona Corporation Commission.

Comment date: July 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company

[Docket No. ER85-580-000]

June 27, 1985.

Take notice that on June 18, 1985 Arizona Public Service Company tendered for filing six (6) copies of the First Revised Exhibit B dated March 22, 1985 to the Wholesale Power Agreement between Arizona Public Service Company (APS) and Southern California Edison Company (SCE) FERC Rate Schedule No 120. This exhibit amends the anticipated contract demands for the years 1985–1988 and adds the years 1989 and 1990. This filing does no change the current rate level.

In past filings where similar revised contract demand exhibits to wholesale power supply agreements have been submitted, the Commission has waived the yearly requirement of filing these changes to every fifth year for informational purposes. Reference is made to Letter Orders dated August 10, 1979 in Docket ER79-474, August 25, 1980 in Docket ER80-426, and February 14, 1983 in Dockets ER82-231-000 and ER83-232-000.

APS, therefore, requests waiver of the formal filing requirements and corresponding filing fee. The next required filing of Exhibit B will then be made in 1990, if approved.

Copies of this filing have been served on the Arizona Corporation Commission and Southern California Edison.

Comment date: July 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Arizona Public Service Company

[Docket No. ER85-581-000]

June 27, 1985.

Take notice that on June 18, 1985, Arizona Public Service Company (APS) tendered for filing, pursuant to § 35.13(a)(2) of the Commission's Rules and Regulations, six (6) copies of the Ninth (9th) Revised Exhibit "A" to the wholesale Power Agreement between Arizona Public Service Company (APS) and San Carlos Indian Irrigation Project (SCIIP) FERC Rate Schedule No. 66. The exhibit amends the anticipated contract demands for the years 1985–1989. This filing does not change the current rate level.

In past filings where similar revised contract demand exhibits to wholesale power supply agreements have been submitted, the Commission has waived the yearly requirement of filing these changes to every fifth year for informational purposes. Reference is made to Letter orders dated August 10, 1979 in Docket ER79-474, August 25, 1980 in Docket ER80-426, and February 14, 1983, in Docket ER82-231-000 and ER83-232-000.

APS, therefore, requests waiver of the formal filing requirements and corresponding filing fee. The next required filing of Exhibit "A" will then be made in 1990, if approved.

Copies of this filing have been served on the Arizona Corporation Commission and San Carlos Indian Irrigation Project.

Comment date: July 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. The Cincinnati Gas & Electric Company

[Docket No. ER85-574-000]

June 27, 1985.

Take notice that the Cincinnati Gas and Electric Company (Cincinnati) tendered for filing on June 17, 1985, an Agreement, dated March 1, 1984, among Cincinnati, the Union Light, Heat and Power Company (Union) and East Kentucky Power Cooperative, Inc. (East Kentucky).

The new Agreement establishes a Concurrent Exchange Service rate schedule utilizing existing and, if needed, new 69 kV delivery points to serve the load center of Union and East Kentucky. The Agreement is to become effective at such time as the Agreement is approved by the Commission and the Concurrent Exchange Service rate schedule attached thereto is permitted to become effective and Cincinnati's and East Kentucky's systems become interconnected at 138kV.

The proposed rate schedule is not similar to others offered by Cincinnati or Union, since it is an initial schedules.

Cincinnati states that the reason for the new Agreement is for transfer service which should minimize or avoid supplemental or duplicative transmission facilities.

A copy of the filing was served upon The Union Light, Heat and Power Company, East Kentucky Power Cooperative, Inc., The Public Utilities Commission of Ohio and the Kentucky Public Service Commission.

Comment date: July 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power and Light Company

[Docket No. ER85-380-003]

June 26, 1985.

Take notice that on June 17, 1985, Florida Power and Light Company ("FPL") tendered for filing, pursuant to the Commission's order dated May 17, 1985, revised rates and cost support data which reflect the Commission's determination that summarily disallowed FPL's inclusion of accumulated deferred investment tax credits ("ADITC") as a separate component of its capital structure.

The Commission's granting of summary disposition on the ADITC issue affects, and requires revisions of, twenty-one transmission service agreements and Statements AP, AV, BG, Bk and BL as specified in § 35.13(h) of the Commission's Regulations. Enclosed herewith are appropriately revised versions of the affected transmission service agreements and the above-mentioned Statements. By separate filing, FPL is requesting reconsideration of the Commission's May 17 Order.

Copies of this letter and the accompanying documents are being

forwarded by mail this date to all parties of record in this proceeding.

Comment date: July 11, 1985, in accordance with Standard Paragraph H at the end of this notice.

6. Gulf States Utilities Company

[Docket No. ER85–582–000]

June 26, 1985.

Take notice that on June 19, 1985 Gulf States Utilities Company ("Gulf States") tendered for filing proposed changes in the fuel adjustment clauses applicable to its Rate Schedules WSD and WST. Under the proposed changes, the fuel adjustment clauses will not be affected by energy from facilities undergoing test operation.

The proposed changes are necessary to allow Gulf States to treat properly the value of test energy to be produced when Gulf States tests its River Bend Unit 1 nuclear plant. If the filing is accepted, fuel savings from test energy will be used to offset construction costs. The fuel clause, as modified, would yield the same value as if test energy were not available, and Gulf States would credit its CWIP account for the fair value of the test energy.

Comment date: July 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Kansas Gas and Electric Company

[Docket No. ER83–628–007]

June 27, 1985.

Take notice that on June 3, 1985, Kansas Gas and Electric Company (KEPCO) submitted for filing a compliance filing in accordance with Rule 602 of the Commission's Regulations. (18 CFR 385.602).

Kansas Gas and Electric submits copies of the following:

(1) ER83–628 Final Settlement Amendments to:

Customer	FERC rate sch. No.	Serv. sch.
KEPCo	151	A
KEPCo	151	B
KEPCo	151	D
KPL	93	M
Coffeyville	149	E
Mulvane	154	E
Neodesha	153	E
Wellington	156	E
Winfield	155	E

(2) Rate design derivation.

(3) Revenues reflecting the final settlement rates for the above customers and service schedules for the test year ended June 30, 1984.

(4) Cost of electric service and associated workpapers.

On August 1, 1984, KG&E submitted a settlement offer for DEPCo for Service Schedules A, B and D. The Commission accepted the settlement for Service Schedules A and B by letter order dated October 26, 1984 in Docket Nos. ER83–628–000 and ER84–131–002.

On October 12, 1984 KG&E submitted a Supplemental Settlement for KEPCo for Service Schedule D which was accepted by letter order dated December 14, 1984 in Docket Nos. ER83–628–003 and ER84–131–003. On January 15, 1985, KG&E submitted a settlement offer for the Kansas Cities. This settlement applied to partial requirements Cities for Service Schedules A and E, full requirements Cities, Kansas Power and Light Company and Missouri Public Service Company. This settlement was accepted by letter order dated March 19, 1985 in Docket Nos. ER83–628–006 and ER84–131–004.

These settlements were interim in nature subject to the following:

(1) Rate case treatment of the tax effect of AFUDC capitalized from August, 1979 through December, 1981 would be resolved in accordance with the final Commission order in ER82–412.

(2) Unfunded deferred tax liability would be resolved in accordance with the final Commission order in ER82–412.

(3) KEPCOo's present revenues would reflect compliance rates accepted by the Commission at the conclusion of ER82–412 for determination of the 6% increase attributable to CWIP.

Items (1) and (2) above apply to all settlement offers and item (3) above is applicable to the KEPCOo settlements.

The Commission's final order in ER82–412 dated April 3, 1985 resolved item (1) above against the Company, and item (2) in favor of the Company. Therefore, a reduction to rate base is required to comply with purposes only), no adjustment is required in this docket. The cost of service included herein incorporates adjustments for items (1) and (3) above. This cost of service is for KEPCo—firm power and all transmission customers.

The settlement filed on January 15, 1985 for Kansas Cities anticipated the Commission's decision in ER82–412 and incorporated a reduction to rate base for item (1). Therefore, no further change in rates is necessary for firm power rates for the cities.

Comment date: July 11, 1985, in accordance with Standard Paragraph H at the end of this notice.

8. Mississippi Power Company

[Docket No. ER85–572–000]

June 26, 1985.

Take notice that on June 3, 1985, Mississippi Power Company tendered for filing a copy of a contract supplement to the contract for electric service for resale between Mississippi Power Company and the Singing River Electric Power Association dated January 4, 1972.

Comment date: July 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Montana-Dakota Utilities Company

[Docket No. ER85–576–000]

June 26, 1985.

Take notice that on June 17, 1985, Montana-Dakota Utilities Company, a Division of MDU Resources Group, Inc. (MDU), tendered for filing in its FPC Electric Service Tariff No. 6, Contract Supplement 19 dated February 22, 1985, to its Interconnection Agreement, dated November 21, 1956, with United States Department of Energy, Western Area Power Administration (Western). The proposed changes would increase MDU's transformer capacity in Western's Miles City, Montana substation by replacement of such transformer, and updates the agreement to reflect current delivery and interconnection points between MDU's and Western's transmission systems.

MDU requests waiver of the notice requirement of § 35.3 of the Commission's Regulations and that the Supplements be made effective as of the date shown in the agreement.

Comment date: July 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER85–577–000]

June 26, 1985.

Take notice that Niagara Mohawk Power Corporation (Niagara), on June 17, 1985 tendered for filing as a rate schedule, and agreement between Niagara and Rochester Gas and Electric Corporation (RG&E) dated May 15, 1985.

Niagara presently has on file an agreement with RG&E dated April 1, 1979. The original Agreement is to provide transmission, service for the delivery of diversity power and energy from the Power Authority of the State of New York (PASNY), and RG&E. The diversity power and energy is in turn exchanged by PASNY with Hydro Quebec. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. 114. This agreement is being transmitted as a supplement to the existing agreement and supersedes Supplement No. 6.

The May 15, 1985 agreement, which is a supplement to the original agreement, revises the transmission rates. Niagara

requests waiver of the Commission's prior notice requirements in order to allow said agreement to become effective April 1, 1985.

Copies of the filing were served upon the following:

Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, NY 14649
Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12223

Comment date: July 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Company

[Docket No. ER85-578-000]

June 27, 1985.

Take notice that Niagara Mohawk Power Company (Niagara), on June 17, 1985 tendered for filing as a rate schedule, and agreement between Niagara and Rochester Gas and Electric Corporation (Rochester) dated May 15, 1985.

Niagara presently has on file an agreement with Rochester dated February 14, 1975. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. No. 92. This new agreement is being transmitted as a supplement to the existing agreement.

This supplement revises the transmission rate for transmitting FitzPatrick power and energy from the Power Authority of the State of New York to Rochester as provided for in terms of the original agreement. Niagara requests waiver of the Commission's prior notice requirements in order to allow said agreement to become effective as of September 1, 1985.

Copies of the filing were served upon the following:

Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, NY 14649
Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12223

Comment date: July 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Company

[Docket No. ER85-575-000]

June 26, 1985.

Take notice that Northern States Power Company (Minnesota), on June 17, 1985, tendered for filing the Diversity Exchange Agreement Between Northern States Power Company and Otter Tail Power Company (Diversity Exchange Agreement).

The Diversity Exchange Agreement is an initial rate schedule filing. The Diversity Exchange Agreement provides that NSP will provide Otter Tail Power Company power and energy during the winter season beginning in November 1990 for a period of fifteen years. The Agreement also provides that in consideration of the power and energy provided by NSP, Otter Tail Power Company will make available to NSP power and energy during the summer season for the same period of time.

NSP requests the Diversity Exchange Agreement become effective on November 1, 1990.

Comment date: July 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-15784 Filed 7-1-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-503-000]

The Brooklyn Union Gas Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility; Correction

June 20, 1985.

In Docket No. QF85-503-000 appearing in the **Federal Register** issue of June 6, 1985 on page 23826, make the following correction:

On page 23826, in the second column under Item 5, headed "The Brooklyn Union Gas Company", second paragraph, lines 13-14.

"The electric power production capacity will be 60 megawatts." is corrected to read "The electric power production capacity will be 60 kilowatts."

The application correctly read 60 kilowatts. The error occurred in transcribing the data for the notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-15786 Filed 7-1-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP84-441-02]

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.; Availability of the AVL-1 Pipeline Project Environmental Assessment and Adoption of Portions of the Tennessee/Boundary Looping Project: Final Environmental Impact Statement

June 27, 1985.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) has prepared an environmental assessment (EA) on the above referenced docket and adopted portions of the *Tennessee/Boundary Looping Project: Final Environmental Impact Statement* (Tennessee/Boundary FEIS) issued February 7, 1983. The staff has determined that construction and operation of the proposed AVL-1 facilities that were previously analyzed would cause no significant change in the environmental impact concluded that the new environmental impact identified in the Tennessee/Boundary FEIS. The staff has also concluded that the new facilities not previously analyzed would not result in significant impact to the environment. The proposed AVL-1 facilities include 75.4 miles of 8- through 30-inch-diameter pipeline loop, one new 7,000-horsepower compressor station, a total of 10,300 horsepower of additional compression at four existing compressor stations, one new meter station, and appurtenances. Alternatives are also considered.

The EA will be used in the regulatory decisionmaking process at the Commission and may be presented as evidentiary matter in formal hearings. Notice of the amended application was published in the **Federal Register** on February 19, 1985 (50 FR 6982). The period of time for filing motions to intervene or notices of intervention expired on February 22, 1985, subsequently extended to March 21, 1985, by notice issued March 1, 1985. Motions to intervene out of time can be filed with the Commission in accordance with the requirements of Rule 214(d) of

the Commission's Rules of Practice and Procedures, 18 CFR 385.214(d). Anyone desiring to file a protest should do so in accordance with 18 CFR 358.211.

The EA has been placed in the public files of the Commission and is available for public inspection in the FERC Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. Copies have been sent to the public, all parties to the proceeding, and Federal, state, and local officials, and are available in limited quantities from the FERC Division of Public Information.

Anyone wishing to do so, may file comments on the EA no later than July 24, 1985. Comments should be sent to the Office of the Secretary, FERC, 825 North Capitol Street, NE, Washington DC 20426. Additional information about the project is available from Mr. James P. Daniel, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulations, (202) 357–5364.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–15785 Filed 7–1–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1892–002 et al.]

Hydroelectric Applications; New England Power Co. et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Amendment of License.

b. Project No.: 1892–002.

c. Date Filed: May 13, 1985.

d. Applicant: New England Power Company.

e. Name of Project: Wilder.

f. Location: On the Connecticut River in Windsor and Orange Counties, Vermont and Grafton County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert King Wulff, New England Power Service, 25 Research Drive, Westborough, Massachusetts 01581.

i. Comment Date. August 12, 1985.

j. Description of Project: The project as licensed consists of: (1) A concrete gravity-type dam 59 feet high, comprising a 232-foot-long non-overflow section and a 526-foot-long spillway section with taintor gates and flashboards; (2) a 45-mile-long reservoir having a surface area of 3,100 acres at elevation 385 feet m.s.l., with 105 miles of shoreline and a total volume of about 55,000 acre-feet at full-pond elevation; (3) a powerhouse containing two 16,200-kW generating units; (4) transmission facilities consisting of: (a) Two generator leads to the 13.8-kV bus; (b) the 13.8-kV bus; (c) the two banks of 13.8/46-kV step-up transformers; (d) the 13.8/115-kV step-up transformer bank; and (e) the 115-kV appurtenances to connect to the 115-kV bus at which the Vermont Electric Power Company, Inc., and the 115-kV Wilder-Bellows Falls lines are connected; and (5) Appurtenant facilities. Project energy would be sold to the customers of the New England Power Company.

The Applicant proposes to amend the license by increasing the total installed capacity from 32,400 kW to 35,600 kW by installing a new unit at the fishway, and the average annual generation from 136,200,000 kWh to 148,850,000 kWh. The Applicant also proposes to add a new lead to the existing 13.8-kV bus.

k. This notice also consists of the following standard paragraphs: B, C & D1.

2 a. Type of Application: Transfer of License.

b. Project No.: 2851–004.

c. Date Filed: May 6, 1985.

d. Applicant: James River-Groveton, Inc. (Licensee) and Riegel Products Corporation (Transferee).

e. Name of Project: Natural Dam.

f. Location: Oswegatchie River, Village of Governeur, St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Donna L. Arey, McGuire, Woods and Battle, 1400 Ross Building, Richmond, Virginia 23219.

i. Comment Date: August 2, 1985.

j. Description of the proposed Transfer: The Applicants propose to transfer the license from James River-Groveton, Inc. (Licensee) to Riegel Products Corporation (Transferee) as part of a reorganization of the James River Corporation of Virginia of which the Licensee and Transferee are wholly owned members. The Natural Dam project consists of an existing dam, reservoir and powerhouse with turbine-generators with a total rated capacity of 1,020 kW.

Transferee has proposed to operate the project in accordance with the existing license. No change to the project operation has been proposed.

Transferee is a private corporation organized under the laws of the State of Virginia and has filed to be domesticated in the State of New York.

k. This notice also consists of the following standard paragraphs: B and C.

3 a. Type of Application: Exemption (5MW or less).

b. Project No.: 3988–003.

c. Date Filed: December 26, 1984.

d. Applicant: Charles A. Deyle.

e. Name of Project: Montgomery Creek Falls Power Project.

f. Location: On Montgomery Creek in Shasta County, California.

g. Filed Pursuant to: Section 408 of Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Mr. Charles A. Deyle, 1704 Soledad Way, San Diego, CA 92109.

i. Comment Date: July 31, 1985.

j. Description of Project: The proposed project would consist of: (1) An intake structure within the west bank of the creek at elevation 1,669 feet; (2) a 36-inch-diameter, 330-foot-long pipe; (3) a 36-inch-diameter, 100-foot-long penstock; (4) a powerhouse containing a single generating unit with a rated capacity of 100 kW to operate under a head of 67 feet; and (5) a 200-foot-long, 12-kV transmission line will connect the project with and existing Pacific Gas and Electric Company (PG&E) line east of the powerhouse.

k. Purpose of Project: Project energy will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D3a.

4 a. Type of Application: Minor License.

b. Project No.: 8712–000.

c. Date Filed: November 7, 1984.

d. Applicant: Phillip Leavitt Young.

e. Name of Project: Happy Corner.

f. Location: Perry Stream in Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Phillip Leavitt Young, P.O. Box 29, Pittsburg, New Hampshire 03592.

i. Comment Date: August 23, 1985.

j. Description of Project: The proposed project would consist of: (1) A new 12-foot-high, 72-foot-long stone and wood gravity dam; (2) a new reservoir with a normal water surface area of 6,825 square feet, no storage capacity at normal water surface elevation of 1,488 feet m.s.l. with; (3) 1.5-foot-high flashboards; (4) a new 60-inch-diameter, 300-foot-long steel penstock; (5) a new powerhouse containing one generating unit with a capacity of 80 kW; (6) a new transmission line, 600 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual generation would be 375,000 kWh.

k. Purpose of Project: Project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

5 a. Type of Application: Conduit Exemption.

b. Project No.: 8811–000.

c. Date Filed: December 21, 1984.

d. Applicant: Washington County Water Conservancy District.

e. Name of Project: Pah Tempe.

f. Location: Quail Creek Pipeline, near Hurricane, in Washington County, Utah.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. Wayne Wilson, Chairman, Washington County Water Conservancy District, 148 East Tabernacle, P.O. Box 503, St. George, UT 84770, (801) 673–4892.

i. Comment Date: August 5, 1985.

j. Description of Project: The proposed project would utilize the minimum flow release conduit of the Quail Creek Pipeline Project and would consist of a powerhouse, located approximately three miles downstream of the Virgin River Reservoir, containing a single Turgo impulse turbine-generator unit with a rated capacity of 1,200 kW and producing an estimated average annual generation of 10 GWh. Project power would be sold to Pacific Gas and Electric Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

6 a. Type of Application: 5 MW Exemption.

b. Project No.: P–8825–001

c. Date Filed: March 25, 1985.

d. Applicant: Morley Hydro Company.

e. Name of Project: Morley Dam.

f. Location: On the Little Muskegon River in Mecosta County, Michigan.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.

h. Contact Person: Gary F. Croskey, Morley Hydro Company, 336 University Drive, East Lansing, MI 48823.

i. Comment Date: July 31, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing dam 21-feet-high and 450-feet-long including spillway at elevation 883.4 feet NGVD owned by the Village of Morley; (2) an existing reservoir with a surface area of 56 acres and a storage capacity of 325 acre-feet at elevation 883.0 NGVD; (3) an existing powerhouse to be renovated to contain one turbine/generator with a rated capacity of 200 kW which would discharge flows directly into the Little Muskegon River; (4) an existing 12-kV transmission line 700 feet long; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 800,000 kWh operating under a net hydraulic head of 14 feet. The project power will be sold to the Consumers Power Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

1. Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

7 a. Type of Application: Preliminary Permit.

b. Project No: 8973–000.

c. Date Filed: February 25, 1985.

d. Applicant: Rocky Mountain Hydro, Inc.

e. Name of Project: Truckee Power.

f. Location: On the Truckee Canal, near Wadsworth, in Storey County, Nevada.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael L. Raisch, Rocky Mountain Hydro, Inc., 4065 South Roslyn Street, Denver, Colorado 80237, (303) 770–9191.

i. Comment Date: August 21, 1985.

j. Description of Project: The proposed project would utilize the excess capacity of the Truckee Canal to divert and additional portion of the Truckee River flow at the U.S. Bureau of Reclamation's Derby Diversion Dam to a proposed powerhouse located at the Gilpin Wasteway, a gated tunnel structure conveying excess canal flows back to the Truckee River. The proposed project would consist of: (1) A concrete intake structure on the Truckee Canal at the Gilpin Wasterway; (2) a 140-foot-long steel penstock; (3) a powerhouse containing a single Francis turbine-generator unit with a rated capacity of 1,500 kW and producing an estimated average annual generation of 6.5 GWh; and (4) a 1-mile-long, 60-kV transmission line to interconnect the project to an existing Sierra Pacific Power Company (SPPC) line. Project power would be sold to SPPC.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 24-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $80,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No: 9022–000.

c. Date Filed: March 12, 1985.

d. Applicant: JDJ Energy Company.

e. Name of Project: Lake Frances, Illinois River.

f. Location: On the Lake Frances and Illinois River in Adair County, Oklahoma.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Doyle W. Jones, P.O. Box 225, Jones Mill, Arkansas 72105.

i. Comment Date: August 12, 1985.

j. Competing Application: Project No. 9138, Date Filed: April 29, 1985.

j. Description of Project: The proposed project would consist of: (1) A 40-foot-high and 100-foot-long existing earthen dam including spillway at elevation 940 feet N.G.V.D. owned by the City of Siloam Springs; (2) an existing reservoir with a storage capacity of 8,550 acre-feet and a surface area of 570 acres at water surface elevation 920 feet N.G.V.D.; (3) an existing penstock channel 15 feet wide and 20 feet deep; (4) an existing powerhouse to be repaired and to contain a single turbine/generator unit with an installed capcity of 965 kW; (5) an existing tailrace channel 6 feet wide and 8 feet deep; (6) a new 480-volt transmission line, 1,500 feet long; and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 1,950,000 kWh operating under a hydraulic head of 20 feet. Project power would be sold to the City of Siloam Springs Electric Department.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include enconomic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $10,000.

9 a. Type of Application: Preliminary Permit.

b. Project No: 9078–000.

c. Date Filed: April 1, 1985.

d. Applicant: Highland Construction.

e. Name of Project: Cove Water Power Project.

f. Location: On Hatchet Creek in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Sam Nelson, 2675 Bechelli Lane, Suite 3, Redding, CA 96002.

i. Comment Date: August 21, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 80-foot-long diversion dam at elevation 2,240 feet; (2) a 48-inch-diameter, 11,500-foot-long penstock; (3) a powerhouse containing a single generating unit operating under a head of 944 feet and with an installed capacity of 5,000 kW; and (4) a 12-kV, 0.5-mile-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

The proposed project would be located downstream of the licensed Hatchet Creek Project No. 5931. However, the proposed project would not conflict with Project No. 5931.

k. Purpose of Project: A preliminary permit if issued, does not authorize construction. Applicant has requested a 24-month permit to conduct feasibility studies and prepare a license application at a cost of $20,000. No new roads would be constructed to conduct these studies.

The estimated 19 million KWh generated annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 9092–000.

c. Date Filed: April 5, 1985.

d. Applicant: Northern Power Company.

e. Name of Project: Bailey.

f. Location: Winooski River in Washington County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Geoffrey Shadroui, Northern Power Company, 121 Maple Avenue, Barre, VT 05641.

i. Comment Date: August 21, 1985.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers Bailey Dam and would consist of: (1) 3-foot-high flashboards; (2) a new reinforced concrete intake structure; (3) a new concrete powerhouse containing four generating units with a capacity of 74 kW each for a total installed capacity of 296 kW; (4) three new transmission lines, 300 feet long each; and (5) appurtenant facilities. The Applicant estimates the average annual generation would be 1,069,000 kWh.

k. Purpose of Project: Project power would be sold to the Green Mountain Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $5,000.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9128–000.

c. Date Filed: April 24, 1985.

d. Applicant: Charles H. Polk.

e. Name of Project: Thompson Creek.

f. Location: On Thompson Creek, a tributary to the Klamath River, near Seiad Valley, in Siskiyou County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles H. Polk, Thompson Creek Lodge, 52431 Highway 96, Seiad Valley, CA 96086, (916) 496–3657.

i. Comment Date: August 21, 1985.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 4-foot-high, 26-foot-long rock diversion structure located across Thompson Creek at elevation 1,420 feet msl; (2) a 5,000-foot-long, 6 foot by 4 foot diversion conduit; (3) a 42-inch-diameter, 840-foot-long steel penstock; (4) a powerhouse containing a single turbinegenerator unit with a rated capacity of 400 kW and an average annual generation of 1.44 GWh; and (5) a 1,000-foot-long, 12.5–kV transmission line interconnecting the project to an existing Pacific Power and Light Company (PP&L) line. Project power would be sold to PP&L. The project would be located on both private and Klamath National Forest lands.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 30-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $50,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 9156–000.

c. Date Filed: May 1, 1985.

d. Applicant: Silver Star Hydro, Ltd.

e. Name of Project: Sonora Peak Hydroelectric Project.

f. Location: On Silver and Wolf Creeks, within Toiyabe National Forest, in Mono County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy C. McDonald, P.O. Box 11154, Beverly Hills, CA 90213.

i. Comment Date: August 22, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high diversion dam on Silver Creek at elevation 8,300 feet; (2) a 5-foot-high diversion dam on Wolf Creek at elevation 8,300 feet; (3) a 27-inch-diameter, 9,000-foot-long pipeline would carry waters of Silver Creek and a 16-inch-diameter, 9,000-foot-long pipeline would carry waters of Wolf Creek to; (4) a 36-inch-diameter, 7,500-foot-long penstock; (5) a powerhouse to contain generating units with combined rated capacity of 5,800 kW, operating under a head of 1,540 feet; and (6) a 12.5-kV, 1-mile-long transmission line will connect the project with an existing Southern California Edison Company (SCE) line east of the powerhouse.

k. Purpose of Project: The estimated annual generation of 15 million kWh will be sold to SCE.

1. This notice also consists of the following standard-paragraphs: A5, A7, A9, B, C & D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 9173–000.

c. Date Filed: May 6, 1985.

d. Applicant: Rankin and Associates.

e. Name of Project: Oregon Water Power.

f. Location: On the Rock River in Ogle County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(r)–825(r).

h. Contact Person: Mr. Ronald A. Rankin, 1124A Bunker Hill Drive, Wheaton, Illinois 60187.

i. Comment Date: August 19, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing dam about 876 feet long and 12 feet high; (2) an impoundment with negligible storage capacity and normal water surface elevation of 678 feet, m.s.l.; (3) a demolished powerhouse that will be reconstructed to house 3 generators with a total installed capacity of 1,050 kW; (4) a new 12,000 volt transmission line about 500 feet long; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 8,500,000 kWh. The dam is jointly owned by the Illinois Department of

Conservation and the City of Oregon, Illinois.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to Commonwealth Edison.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $10,000.

14 a. Type of Application: Preliminary Permit.

b. Project No: 9176-000.

c. Date Filed: May 3, 1985.

d. Applicant: Long Lake Energy Corporation.

e. Name of Project: Lock 16.

f. Location: New York State Barge Canal, Montgomery County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul J. Elston, President, Long Lake Energy Corporation, 122 East 42nd Street, Suite 1901, New York, NY 10168.

i. Comment Date: August 12, 1985.

j. Competing Application: Project No. 8098.

Date Filed: November 1, 1984.

k. Description of Project: The proposed project would consist of: (1) An existing 4.5-foot-high, 360-foot-long steel and concrete movable dam; (2) a reservoir with a surface area of 236 acres, a storage capacity of 2,690 acre-feet, and a normal water surface elevation of 321.5 feet m.s.l.; (3) a new 400-foot-long navigation barrier; (4) a new 50-foot-wide, 1,000-foot-long power canal; (5) a new intake gate; (6) a new powerhouse containing two generating units with a capacity of 4,380 kW each for a total installed capacity of 8,760 kW; (7) a new 50-foot-wide, 200-foot-long tailrace; (8) a new transmission line, 500 feet long; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 31,410,000 kWh. The existing dam is owned by the New York State Department of Transportation.

l. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 12 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $400,000.

15 a. Type of Application: Preliminary Permit.

b. Project No: 9188-000.

c. Date Filed: May 13, 1985.

d. Applicant: Carlyle Hydro Associates.

e. Name of Project: Carlyle Dam Hydro.

f. Location: On the Kaskaskia River in Clinton County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: David M. Coombe, Synergics, Inc., 410 Severn Ave., Suite 409, Annapolis, MD 21403.

i. Comment Date: August 23, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Carlyle Dam and Reservoir and would consist of: (1) Two new steel penstocks, approximately 400 feet long and 13 feet in diameter; (2) a new reinforced concrete powerhouse, 75 feet by 70 feet, housing two new equal size turbine/generators, with a total installed capacity of 8,800 kW; (3) a proposed tailrace approximately 1,000 feet long and 150 feet wide; (4) a new 69-kV transmission line about 3,000 feet long; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 22 GWh.

k. Purpose of Project: The proposed market for the generated energy would be the Illinois Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

16 a. Type of Application: Preliminary Permit.

b. Project No: P-9189-000.

c. Date Filed: May 13, 1985.

d. Applicant: JDJ Energy Company.

e. Name of Project: Dale Hollow National Fish Hatchery Conduit.

f. Location: On Dale Hollow Lake in Clay County, Tennessee.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Doyle W. Jones, P.O. Box 225, Jones Mill, AR 72105.

i. Comment Date: August 21, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Dale Hollow Dam and Reservoir and the U.S. Fish and Wildlife Service's National Fish Hatchery and would consist of: (1) A proposed powerhouse 20 feet long and 20 feet wide to be located on the hatchery water supply conduit and which would contain one turbine/generator with an installed capacity of 98 kW; (2) a proposed 480-volt transmission line approximately 2000 feet long; (3) appurtenant facilities. The estimated average annual energy produced by the project would be 772,600 kWh operating under a hydraulic head of 80 feet. Project power would be sold to the Tri-County Electric Cooperative.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 24 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $10,000.

17 a. Type of Application: Preliminary Permit.

b. Project No.: P-9190-000.

c. Date Filed: May 13, 1985.

d. Applicant: JDJ Energy Company.

e. Name of Project: Wolf Creek National Fish Hatchery Conduit.

f. Location: On Lake Cumberland in Russell County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Doyle W. Jones, P.O. Box 225, Jones Mill, AR 72105.

i. Comment Date: August 22, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Dam and Reservoir and the U.S. Fish and Wildlife Service's National Fish Hatchery and would consist of: (1) A proposed powerhouse 20 feet long and 20 feet wide to be located on the hatchery water supply conduit and which would contain one turbine/generator with an installed capacity of 132 kW; (2) a proposed 480-volt transmission line approximately 600 feet long; and (3) appurtenant facilities. The estimated average annual energy produced by the project would be 1,040,700 kWh operating under a hydraulic head of 80 feet. Project power would be sold to the South Kentucky Rural Electric Cooperative.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 24 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $10,000.

185 a. Type of Application: Major License (5MW or Less).

b. Project No.: 3612–003.

c. Date Filed: June 29, 1984 and supplemented January 15, 1985.

d. Applicant: Brasfield Development, Ltd.

e. Name of Project: Brasfield Hydro Project.

f. Location: On the Appomattox River near Petersburg, Chesterfield and Dinwiddie Counties, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Kenneth Lever, Brasfield Development, Ltd., The Pierce Building, 18305 Minnetonka Boulevard, Wayzata, MN 55391.

i. Comment Date: August 26, 1985.

j. Description of Project: The proposed project would be operated run-of-river and would consist of: (1) An existing reinforced concrete dam approximately 57 feet high and 1,250 feet long; (2) an existing 3,060-acre reservoir containing 36,000 acre-feet of gross storage at normal pool elevation 158.0 feet m.s.l.; (3) a new powerhouse containing a 4600-kW generator; (4) an existing 13.2-kV transmission line interconnecting with VEPCO's power system; and (5) appurtenant facilities. The Applicant estimates that the average annual generation would be 23,700 MWh. The Applicant is the Permittee for Project No. 3812.

k. Purpose of Project: The power generated would be sold to Virginia Electric Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

19 a. Type of Application: Exemption–(5 MW or Less).

b. Project No.: P–8929–000.

c. Date Filed: February 4, 1985.

d. Applicant: Modular Hydro Research Corporation.

e. Name of Project: Tierckenkill Falls.

f. Location: On Mill Creek in Rensselaer County, New York.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. 2705 and 2708, as amended.

h. Contact Person: Mr. Robert A. Fraser, 22 High Street, Rensselaer, NY 12144.

i. Comment Date: August 2, 1985.

j. Description of Project: The proposed project would consist of: (1) The existing 69-foot-long, approximately 13-foot-high concrete gravity dam; (2) the existing small reservoir which has a gross storage capacity of 10 acre-feet at the normal maximum surface elevation of 130 feet m.s.l.; (3) a proposed 520-foot-long, 20-inch-diameter penstock; (4) a proposed 16-foot-long, 16-foot-wide powerhouse which will contain an installed generating capacity of 100 WK; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output will be 324 MWh. The Applicant is studying transmission arrangements for an interconnection with the Niagara Mohawk Power Corporation.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

1. Purpose of Project: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 9026-000.

c. Date Filed: March 15, 1985.

d. Applicant: Carex Hydro.

e. Name of Project: Lehman.

f. Location: Little Bush Kill Stream in Pike County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Don. R. King, AMMCO, 201 Woodycrest Avenue, Nashville, TN 37211.

i. Comment Date: August 3, 1985.

j. Description of Project: The proposed project would consist of: (1) A new intake structure at an elevation of 740 feet MSL, using no dam; (2) a 32-inch-diameter, 4,700-foot-long penstock; (3) a new powerhouse located on the right bank of the stream containing one generating unit with a capacity of 790 kW; (4) a new transmission line, 3,000 feet long; and (5) appurtenant facilities. The Applicant estimates the average annual generation to be 3,555,000 kWh.

k. Purpose of Project: Project power would be sold to Metropolitan Edison Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any

competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment data for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energey Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the partcular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an

agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: June 26, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15761 Filed 7-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-604-000 et al.]

Natural Gas Certificate Filings; United Gas Pipeline Co. et al.

June 25, 1985.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP85-604-000]

Take notice that on June 10, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-603-000 a request pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap to supply the distributor, Wilmut Gas and Oil Company, (Wilmut) gas volumes for resale in the Mount Olive service area, Covington County, Mississippi, under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United States that the sales tap would enable United to supply an estimated daily average of 1.4 Mcf of natural gas to Wilmut for resale to its residences in the Mount Olive service area, under United's Rate Schedule G-N.

United furthers states that it would construct and operate the proposed sales tap and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: August 9, 1985, in accordance with Standard Paragraph G at the end of this notice

2. ANR Pipeline Company, United Gas Pipe Line Company

[Docket No. CP85-554-000]

Take notice that on May 31, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48234, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-554-000 a joint applicant pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicants to exchange natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR and United request authority to exchange natural gas pursuant to an exhange of service agreement (agreement) entered into on May 30, 1985. Applicants state that the agreement provides for the receipt by United for the account of ANR of up to 150,000 Mcf of natural gas per day at a proposed interconnection of United's facilities (United interconnection) with a pipeline to be constructed by Mobile Bay Pipeline Company (MBPC) pursuant to authority being sought by MBPC, as successor in interest to United in the Mobile Bay Pipeline project, in an amendment to United's certificate application filed in Docket No. CP85-332-000. It is explained that the agreement provides that United would receive these volumes and redeliver equivalent volumes to ANR at an existing interconnection of the facilities of ANR and United in Rapides Parish, Louisiana (Rapides point), or such other points as may be mutually agreeable.

Applicants state further that the agreement provides that in exchange for such service, ANR would receive from United at the Rapides point up to 150,000 Mcf of gas per day and would redeliver up to 75,000 Mcf per day for United's account at the interconnection of the facilities of ANR and Northern Natural Gas Company, Division of InterNorth, Inc., near Greensburg, Kansas. It is explained that the balance of the 150,000 Mcf would be delivered to or for United's account at other points of interconnection as specified in the agreement, or such other points as may be mutually agreeable. The term of the agreement is 15 years and year to year thereafter.

Applicants state that no additional facilities would have to be constructed to perform the proposed exchange of services except for a tap on United's system at the United interconnection for the pipeline to be constructed by MBPC. Applicants state that this tap would be constructed under United's blanket certificate in Docket No. CP82-430-000.

Comment date: July 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Great Lakes Gas Transmission Company

[Docket No. CP85-605-000]

Take notice that on June 10, 1985, Great Lakes Transmission Company (Applicant), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP85-605-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the addition of Pellston, Michigan as a delivery point for one of its customers, Michigan Consolidated Gas Company (Mich Con), and the construction and operation of appurtenant meter station facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Mich Con has requested the delivery of additional sales volumes of gas of up to 840 Mcf per day at a point of interconnection of the facilities of Mich Con and Applicant to be constructed at Pellston, Michigan.

It is further alleged that the proposed service would not require a change in existing total contract quantity.

Applicant states that in order to perform the proposed service, it would construct a meter station and appurtenant facilities at an estimated cost of $129,800 at Pellston, Michigan. It is explained that to provide this service, Applicant and Mich Con have agreed to execute a new service agreement which would be identical to the existing service agreement in all aspects, with the exception of the addition of Pellston, Michigan, as a new delivery point.

Comment date: July 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Granite State Gas Transmission, Inc.

[Docket No. CP85-560-000]

Take notice that on June 4, 1985, Granite State Gas Transmission, Inc. (Applicant), 120 Royall Street, Canton, Massachusetts 02021, filed in Docket No. CP85-560-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to relocate its Portsmouth, New Hampshire delivery point to its affiliated distributor, Northern Utilities, Inc. (Northern Utilities), and for permission to abandon by sale and transfer a portion of an existing delivery lateral and a meter station and appurtenant facilities to Northern Utilities under the authorization issued

in Docket No. CP82-515-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that the Applicant owns and operates a short delivery lateral connecting with its mainline, together with a meter station at the terminus of the lateral, and that such facilities are utilized to deliver gas to Northern Utilities for retail distribution in Portsmouth, New Hampshire. Applicant states that the lateral was originally installed in 1956 and the meter station in 1961 and that the character of the area adjacent to the lateral has changed so that it could now be more appropriately utilized as part of and integrated with Northern Utilities' distribution facilities. It is asserted that Northern Utilities desires to acquire the lateral, upgrade it and establish direct connections to it for service to retail customers in Portsmouth or for extensions of its distribution system.

Applicant states that it would install a new meter station at the upstream end of the lateral, on the existing right-of-way, at an estimated cost of $42,682.10 and that when the meter station is operational, it would abandon, sell and transfer the portion of the lateral downstream from the new meter station, approximately 2,020 feet of 4-inch line, and the existing terminal meter station to Northern Utilities. It is averred that the portion of the lateral to be transferred is fully depreciated and the existing terminal meter station has an undepreciated balance of $13,498.93 for which Applicant would be reimbursed by Northern Utilities.

Applicant further states that the total volumes which it is authorized to deliver to Northern Utilities after approval of this request would not exceed the volumes authorized prior to approval. It is also stated that the relocation of the delivery point is not prohibited by Applicant's existing tariff pursuant to which sales are made to Northern Utilities and deliveries through the new delivery point would be made without detriment or disadvantaged to Applicant's order customer requirements nor would any abandonment of service result from approval of this request.

Comment date: August 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. The Inland Gas Company, Inc.

[Docket No. CP85-543-000]

Take notice that on May 24, 1985, The Inland Gas Company, Inc. (Applicant), 340 17th Street, Ashland, Kentucky 41101, filed in Docket No. CP85-543-000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon service by transfer of certain production properties, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it proposes to transfer all of its natural gas production properties, appurtenances and the service rendered thereby to its affiliate, Columbia Natural Resources, Inc. (CNR). Applicant further states that it does not believe the transfer requires abandonment authorization pursuant to section 7(b) of the NGA since CNR has concurrently filed an application pursuant to section 7(c) of the NGA for authorization to continue the identical service. Applicant requests that the Commission find Applicant's application for abandonment moot. Applicant states, however, that to the extent the Commission determines that abandonment authorization is required, Applicant is applying for the grant of such authorization pursuant to section 7(b) of the NGA.

Applicant states that the transfer of properties to CNR is necessary in furtherance of a general corporate reorganization of operations of the Columbia Gas System, Inc., along functional lines. Applicant indicates that the properties to be transferred include all of its Appalachian production properties that are committed or dedicated to interstate commerce within the meaning of the Natural Gas Policy Act of 1978 (NGPA) and which are not excluded from the Commission's NGA jurisdiction by operation of section 601(a)(1) of the NGPA. Applicant states that upon completion of the transfer all Appalachian exploration, development and production operations would be performed by CNR, while all gathering, interstate transportation and storage facilities and operations would remain with Applicant.

Comment date: July 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Kern River Gas Transmission Company

[Docket No. CP85-552-000]

Take notice that on May 31, 1985, Kern River Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85-552-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it: (1) To construct and operate an interstate natural gas pipeline system commencing at a proposed point of interconnection with facilities of Northwest Pipeline Corporation (Northwest) near Opal, Wyoming, and extending southwestward through a portion of Wyoming and through Utah and Nevada to its terminus near Bakersfield, California, (2) to transport natural gas up to the full capacity of its system, approximately 700,000 Mcf per day on summer day basis, on behalf of contract shippers for their enhanced oil recovery (EOR) and associated cogeneration operations in the heavy oil fields in the Kern County, California, area, and (3) to construct and operate supply and delivery lines and other appurtenant facilities, as necessary to render the authorized transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is a Texas general partnership and that its principal place of business is Houston, Texas. It is explained that the partnership is owned equally by Kern River Corporation, an affiliate of Tenneco Inc., and Williams Western Pipeline Company, an affiliate of The Williams Companies.

Applicant states that the purpose of the instant pipeline project is to provide natural gas transmission system for transportation of gas to the heavy oil producers in the Kern County area to be used in their EOR operations.

Applicant expects that the principal supplies for this project would come from uncommitted reserves in the Rocky Mountain area and western Canada. Applicant notes that through its proposed interconnection with Northwest, which extends from the San Juan basin northwesterly through the Rocky Mountain area to an interconnection with a Canadian pipeline, Westcoast Transmission Company Limited, at the United States-Canadian border near Sumas, Washington, Applicant would be able to provide the heavy oil producers with direct access to Rocky Mountain and Canadian supplies which, in Applicant's view, would have the greatest potential for providing uncommitted long-term supplies for transportation through Applicant's system. Applicant further notes that some of the heavy oil producers have their own gas supplies in these and other producing areas and may desire to have them transported for their own use.

Applicant states that the pipeline facilities which it proposes to construct and operate consist of a 36-inch diameter pipeline, commencing at a

point of interconnection with the mainline pipeline facilities of Northwest near Opal, Wyoming, and extending 762 miles to a point of bifurcation near Bakersfield, California. Applicant notes that from Opal, Wyoming, which is approximately 60 miles north of the Utah-Wyoming border, the 36-inch line would extend southwesterly through a portion of Wyoming and through Utah and Nevada into California to a point approximately 10 miles southeast of Bakersfield in Kern County, California, where it would divide into two 30-inch laterals, one extending approximately 47 miles west and the other extending approximately 28 miles north. Applicant further proposes to construct three compressor stations along the route: One of 17,200 horsepower near Opal, Wyoming; one of 9,100 horsepower near Fillmore, Utah; and one of 9,900 horsepower near Las Vegas, Nevada.

The total cost of Applicant's proposed project, as estimated by Applicant, would be $824,682,000 in 1985 dollars, including line pack, overheads, allowance for funds using during construction and regulatory fees.

Applicant also requests blanket certificate authority to construct and operate relatively minor supply and delivery lines and other appurtenant facilities, as become necessary to render the transportation service proposed herein.

Applicant requests authority to transport gas for contract shippers for the purposes previously described, up to the full capacity of its proposed system. It is estimated that this will be approximately 700,000 Mcf of gas on a summer day. Applicant points out that it proposes a transportation service only.

Applicant states that the transportation service would be provided in accordance with its proposed tariff which contains illustrative rates consisting of a stated demand rate for firm service and an authorized overrun rate based on the demand rate at a 100 percent load factor. Applicant adds that the illustrative rates are predicated on the estimated first year cost of service which reflects no depreciation expense and a 16 percent rate of return on equity. Applicant states that it is willing, if necessary to meet competitive conditions, to defer recovery of its investment in order to levelize the cost of service. Therefore, Applicant says, the illustrative rate and income calculations reflect no depreciation expense in the first year and only so much thereafter as can be recovered without increasing the overall cost of service beyond the first-year cost of service. Based on its illustrative cost of service and assuming deliveries at a 97 percent load factor of 679,000 Mcf of gas per day, Applicant's estimated unit cost of transportation is 66.4 cents per Mcf.

Applicant seeks authority to negotiate rate mechanisms and other terms of service to accommodate the individual needs of shippers, based on market conditions and consistent with its need to maintain the viability of its project and for recovery of its cost of service.

Applicant proposes to finance its project through a combination of partners' equity contributions and non-recourse debt and to capitalize the project with 70 percent debt and 30 percent equity.

Comment date: July 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. K N Energy, Inc.

[Docket No. CP85-609-000]

Take notice that on June 12, 1985, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP85-609-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap for the delivery of gas to an end-user under its certificates issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that the intended end-user is located in Haskell County, Kansas, and that the gas would be used to fuel irrigation equipment. It is indicated that the peak day and annual deliveries are estimated to be 25 Mcf of gas and 800 Mcf, respectively. Applicant states that the proposed sales tap would have no significant impact on its total peak day and annual deliveries and that such taps are not prohibited by any of its existing tariffs. Applicant further states that the gas would be priced in accordance with its currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction.

Comment date: August 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP85-586-000]

Take notice that on June 6, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85-586-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee to render an interruptible transportation service of up to 65,000 Mcf of natural gas per day for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to receive, at the onshore terminus of Tennessee's and Columbia Gulf Transmission Company's (Columbia Gulf) jointly-owned Project South Pass 77 facilities in Plaquemines Parish, Louisiana, up to 65,000 Mcf of natural gas for transportation and delivery to any or all of the following existing points: (1) An interconnection of Tennessee and Natural near Chalkey, Cameron Parish, Louisiana; (2) an interconnection of Natural and the tailgate of Mobil Oil Corporation's (Mobil) Cameron Meadows Gas Processing Plant, Cameron Parish, Louisiana; (3) an interconnection of Trunkline Gas Company and Tennessee near Kinder, Jefferson Davis Parish, Louisiana; (4) an interconnection of Natural and Tennessee in Wharton County, Texas; and (5) an interconnection of Natural and the tailgate of Mobil's LaGloria Gas Processing Plant, Jim Wells County, Texas. The Ysclosky Processing Plant, St. Bernard Parish, Louisiana, would be the point of delivery for plant volume reduction (PVR) if any of the gas transported must be processed.

Tennessee states that it is presently transporting the subject gas for Natural pursuant to § 284.221 of the Commission's Regulations and Tennessee's blanket certificate issued February 21, 1980, in Docket No. CP80-132. Reports of the transportation have been filed by Tennessee in Docket No. ST85-364-000.

Pursuant to the terms of the transportation agreement dated March 1, 1984, as amended January 24, 1985, Tennessee proposes to charge Natural—

(1) A volume charge of 16.61 cents for gas delivered at Chalkey, 17.89 cents for deliveries at Cameron Meadows, 24.66 cents for deliveries at Kinder, 30.12 cents for deliveries at Wharton County and 38.13 cents for deliveries at LaGloria.

(2) A PVR charge of 6.38 cents per Mcf for the PVR for deliveries at the Ysclosky plant.

(3) A minimum monthly bill consisting of a volume charge of 16.61 cents times the minimum bill volume multiplied by 66.66 percent of the quantity of gas transported as adjusted.

It is stated that in addition, Natural would provide Tennessee a daily volume of gas for fuel and unaccounted-for gas lost as follows: 1.2 percent for PVR gas, 1.91 percent of deliveries at Chalkey, Cameron Meadows and Kinder and 2.58 percent for deliveries at Wharton County and LaGloria.

Tennessee alleges the proposed service would benefit Natural since it would provide a means of attaching an offshore reserve of gas without the construction of costly duplicative pipeline facilities. Natural advises it would use the gas to maintain long-term reserve and deliverability base to assure future customer service.

Comment date: July 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP81-358-002]

Take notice that on June 7, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP81-358-002 a petition to amend the order issued in Docket No. CP81-358-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the addition of three delivery points to United Gas Pipe Line Company (United), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Transco states that pursuant to the aforementioned order Transco is transporting, on an interruptible basis, up to the dekatherm equivalent of 1,700 Mcf of natual gas per day for United. It is stated that the transportation agreement between the parties, dated November 25, 1980, provides for Transco to receive such quantities of gas from First Energy Corporation at an existing interconnection in Jefferson Davis County, Mississippi. Transco, it is stated, then redelivers equivalent quantities, less quantities retained for compressor fuel and line loss makeup, to United by displacement at an existing point of interconnection near Holmesville, Pike Country, Mississippi (Holmesville delivery point). Such gas is purchased by United in the Holiday Creek Field, Jefferson Davis County, Mississippi.

Transco states that for such transportation service, Transco charges United 3.5 cents per dt equivalent of gas delivered to the Holmesville delivery point, Transco's minimum onshore production area transportation charge.

Transco states that by amendatory agreement dated April 2, 1982, new delivery points to United have been added at the existing points of interconnection between Transco and United located at (1) Gibson, Terrebonne Parish, Louisiana (Gibson delivery point), (2) Victoria County, Texas (Victoria delivery point), and (3) Vinton, Calcasieu Parish, Louisiana (Vinton delivery point). By the subject petition, Transco requests that the order issued in Docket No. CP81-358-000 be amended to provide for the addition of the Gibson, Victoria, and Vinton delivery points.

Transco further states that Transco would charge United 4.3 cents per dt equivalent delivered to the Gibson, Victoria, or Vinton delivery points, Transco's transportation charge for backhaul deliveries from Mississippi to the production area, as approved by the Commission on October 11, 1984, in Docket No. RP84-126. Transco would continue to charge United 3.5 cents per dt equivalent of gas delivered to the Holmesville delivery point, it is explained.

Comment date: July 16, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Williston Basin Interstate Pipeline Company

[Docket No. CP85-613-000]

Take notice that on June 14, 1985, Williston Basin Interstate Pipeline Company (Williston Basin), 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP85-613-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon five sales taps under its certificate issued in Docket No. CP82-487-000, *et al.* pursuant to section 7 of the Natural Gas Act, as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to abandon five sales taps on its natural gas transmission system in Carbon and Yellowstone Counties, Montana. It is stated that Montana-Dakota Utilities Company, a division of MDU Resources Group, Inc. (MDU) is expanding its distribution system in Yellowstone County, Montana, and would no longer need the four taps located in Yellowstone County to serve its customers. It is further asserted that the fifth tap in Carbon County, Montana, is being abandoned because MDU's customer has terminated service and switched to propane. It is submitted that the abandonment of the sales taps would have no effect upon existing rates and no impact upon Williston Basin's peak-day and annual requirements.

Comment date: August 9, 1985, in accordance with Standard Paragarph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15762 Filed 7-1-85; 8:45 am]

BILLING CODE 6717-01-M

Availability of Environmental Assessment and Finding of No Significant Impact

June 26, 1985.

	Project No.
Cameron A. & Deanna Curtis Project No.	7350-000
William H. Lee	7478-000
Daniel M. Bates, et al	7961-000
Burr Courtright	8151-000
Burr Courtright	8150-000
Northwest Power, Inc.	8255-000
Hydrodynamics, Inc.	8359-001
Niagara Mohawk Power Corporation	8606-000
City of New York, Dept. of Environmental protection	8822-000
City of New York, Dept. of Environmental protection	8820-000
County of Toulumne	8931-000
City of Boulder	8962-000
G. Wesley White	8727-001
Worcester Hydro County	8242-001
Steven D. & Susan Atwill	8449-000
Christopher Anthony	8736-000
Municipality of Anchorage	8827-000
William K. Fay	8656-000
Hampshire Paper Company	2850-002
City of Covington, VA	3348-002
Pacific Gas & Electric Company	2310-016
Eastern States Energy & Resources, Inc.	4940-001
Niagara Mohawk Power Corporation	7320-000
Independence Electric Corporation	7895-000
Mississippi Power & Light Company	7425-001
Methuen Falls Hydro Electric Company	8093-000
Jerry B. Buckley	8118-000

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and have assessed the environmental impacts of the proposed developments.

EXEMPTIONS

Project No.	Project name	State	Water body	Nearest town	Applicant
7350-000	Denny Creek	OR	Denny Creek	Wilamette	Cameron A. and Deanna Curtis.
7478-000	Deep River Project	NC	Deep River	Coleridge	William H. Lee.
7961-000	Deer Creek	CA	Deer River	Hot Springs	Daniel M., Merrill J., Debbie Jo, & Mary Lou Bates.
8150-000	Chamberlins Ditch Pipeline	OR	Chamberlin Ditch Bear Creek	Wallowa	Burr Courtright.
8151-000	Clearwater Ditch and Chamberlin Pipeline Project.	OR	Clearwater Ditch/Bear Creek	Wallowa	Burr Courtright.
8255-000	Feypass-Bowman Transmission Line	CA	Not applicable	Sierra City	Northwest Power, Inc..
8359-001	Strawberry Creek	MT	Strawberry Creek	Livingston	Hydrodynamics, Inc..
8606-000	Schuylerville	NY	Fish Creek	Schuylerville and Victory	Niagara Mohawk Power Corporation.
8820-000	Downsville Dam Hydro	NY	East Branch Dela. River	Downsville	City of New York, Department of Environmental Protection.
8822-000	Merriman Dam Hydro	NY	Rondout Creek	Lackawack	City of New York, Department of Environmental Protection.
8931-000	Eureka Ditch-Penitencia Hills	CA	Eureka Ditch	Sonora	County of Toulumne.
8962-000	Kohler	CO	Kohler Reservior	Boulder	City of Boulder.
8727-001	Upper Pine Creek	MT	Pine Creek	Troy	G. Wesley White.
8242-001	Lagg's Mill	VT	North Brach of the Winooski	Worcester	Worcester Hydro Company.
8449-000	Bernardston Grain Mill	MA	Fall River	Bernardston	Steven D. Atwill and Susan Atwill.
8736-000	Pioneer Dam	ME	West Branch Sebasticook River	Pittsfield	Christopher Anthony.
8827-000	Eklutna and Ship Creek	AK	Eklutna Lake	Eklutna and Anchorage	Municipality of Anchorage.
8656-000	Bannister Mill Dam	MA	Sowall Brook	Boylston	william K. Fay.

LICENSES

Project No.	Project name	State	Water body	Nearest town	Applicant
2850-002	Emeryville	NY	Oswegatchie River	Fowler	Hampshire Paper Company.
3348-002	Gathright Dam	VA	Jackson River	Covington	City of Covington, Virginia.
2310-016 (Amend)	Wise 2 Powerhouse Creek, Auburn Ravine, and South Canal.	CA	Dry Creek, Rock	Auburn	Pacific Gas and Electric Company (License).
4940-001	Lock and Dam No. 1	KY	Barren River	Greencastle	Eastern States Energy & Resources, Inc.
7320-000	Chasm	NY	Salmon River	Malone	Niagara Mohawk Power Corporation.
7895-000 and 7425-001.	Pearl River/Ross R. Barnett	MS	Pearl River	Jackson	Independence Electric Corp./Mississippi Power & Light Company.
8093-000	Methuen Falls	MA	Spickett River	Methuen	Methuen Falls Hydro Electric Company.
8118-000	Jerry B. Buckley	DO	Clear Creek	Georgetown	Jerry B. Buckley.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15763 Filed 7-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-573-000]

The Cincinnati Gas & Electric Co.; Proposed Tariff Change

June 21, 1985.

The filing Company submits the following:

Take notice that The Cincinnati Gas & Electric Company (Cincinnati) tendered

for filing on June 14, 1985, a new Interconnection Agreement, dated March 1, 1984, between Cincinnati and East Kentucky Power Cooperative, Inc. (East Kentucky).

The new Interconnection Agreement is for a 138 kV interconnection with East Kentucky and contains rate schedules for Emergency Service, Interchange Service, Short Term Power Service, Limited Term Service and Diversity Power. The 138 kV Interconnection Agreement is to become effective at such time as the Agreement is approved by the Commission and the rate schedules attached thereto are permitted to become effective and Cincinnati's systems become interconnected at 138 kV.

The proposed rate schedules are similar to others offered by Cincinnati in other interconnection agreements, except for Diversity Power, which is an initial schedule.

Cincinnati states that the reason for the new Interconnection Agreement is to fix provisions for a 138 kV interconnection with East Kentucky for improved system reliability.

A copy of the filing was served upon East Kentucky Power Cooperative, Inc., The Public Utilities Commission of Ohio and the Kentucky Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before July 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15764 Filed 7-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8619-001]

Doe Run Creek Hydro Rehabilitation Association; Surrender of Preliminary Permit

June 26, 1985.

Take notice that Doe Run Creek Hydro Rehabilitation Association, Permittee for the proposed Doe Run Creek Project No. 8619, requested by letter dated May 24, 1985, that its preliminary permit be terminated. The preliminary permit was issued on March 12, 1985, and would have expired on August 31, 1986. The project would have been located in the Doe Run Creek in Meade County, Kentucky.

The Permittee filed the request on May 24, 1985, and the preliminary permit for Project No. 8619 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15765 Filed 7-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7101-001]

Eric H. Lange; Surrender of Preliminary Permit

June 26, 1985.

Take notice that Eric H. Lange, Permittee for the proposed Plainwell No. 1 Project, FERC No. 7101 has requested that his preliminary permit be terminated. The permit was issued on October 14, 1984, and would have expired on March 31, 1986. The project would have been located on the Kalamazoo River, in Allegan County, Michigan.

The Permittee filed the request on June 3, 1985, and the preliminary permit for Project No. 7101 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15766 Filed 7-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4657-005]

Montana Department of Natural Resources and Conservation; Surrender of Exemption From Licensing

June 26, 1985.

Take notice that the Montana Department of Natural Resources, Exemptee for the Painted Rock Dam Project No. 4657, requested by letter dated May 31, 1985, that its exemption be terminated because a power sales contract for the project could not be secured. The exemption was issued on July 6, 1982, and an extension of time was granted to June 1, 1985, to comply with Articles 3 and 5 of the exemption. The project would have been located within the Bitteroot National Forest on the West Fork Bitteroot River in Ravelli County, Montana. No construction of the project works has been performed, and no conditions are needed concerning the restoration of Federal lands pursuant to § 4.95(b) of the Commission's regulations.

The Exemptee filed the request on June 3, 1985, and the exemption for Project No. 4657 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15767 Filed 7-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4886-002]

Quincy-Columbia Basin Irrigation District et al.; Surrender for Preliminary Permit

June 26, 1985.

Take notice that the Quincy-Columbia Basin Irrigation District, East Columbia Basin Irrigation District, and the South Columbia Basin Irrigation District, Permittees for the Sand Hollow Project No. 4886, have requested that their preliminary permit be terminated. The preliminary permit for Project No. 4886 was issued on July 3, 1984, and would have expired on December 31, 1985. The project would have been located on Royal Branch Canal Wasteway in Grant County, Washington.

The Permittees filed the request on April 15, 1985, and the preliminary permit for Project No. 4886 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15768 Filed 7-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4887-002]

Quincy-Columbia Basin Irrigation District et al.; Surrender of Preliminary Permit

June 26, 1985.

Take notice that the Quincy-Columbia Basin Irrigation District, East Columbia Basin Irrigation District, and the South Columbia Basin Irrigation District, Permittees for the CCL4 Hydroelectric Project No. 4887, have requested that their preliminary permit be terminated. The preliminary permit for Project No. 4887 was issued on July 3, 1984, and would have expired on December 31, 1985. The project would have been located on CCL4 Wasteway and the DCC1 Wasteway in Grant County, Washington.

The Permittees filed the request on April 15, 1985, and the preliminary permit for Project No. 4887 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15770 Filed 7-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8172-001]

Quincy-Columbia Basin Irrigation District et al.; Surrender of Preliminary Permit

June 26, 1985.

Take notice that the Quincy-Columbia Basin Irrigation District, East Columbia Basin Irrigation District, and the South Columbia Basin Irrigation District, Permittees for the Royal Lake Project No. 8172, have requested that their preliminary permit be terminated. The preliminary permit for Project No. 8172 was issued on September 11, 1984, and would have expired on February 28, 1986. The project would have been located on Crab Creek Lateral Wasteway in Adams County, Washington.

The Permittees filed the request on April 15, 1985, and the preliminary permit for Project No. 8172 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15771 Filed 7-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-435-000, et al.]

Terra Resources, Inc., et al.; Applications for Abandonments of Service and Deletions of Acreage [1]

June 25, 1985.

Take notice that each of the applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should, on or before July 11, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI85-435-000 (CI76-1197), D, Mar. 25, 1985.	Terra Resources, Inc.	Transwestern Pipeline Company, So. Carlsbad Field, Eddy County, New Mexico.	(1)	
CI85-436-000, B, Apr. 19, 1985	do	Montana Dakota Utilities Co., Poison Creek Field, Fremont County, Wyoming.	(2)	
CI85-437-000, B, May 2, 1985	do	Trunkline Gas Company, Bayou Carlin Field, St. Mary Parish, Louisiana.	(2)	
CI85-438-000 (CI73-498), D, May 6, 1985.	do	Cities Service Company, Hugoton Field, Finney County, Kansas.	(3)	
CI85-439-000 (CI76-457), D, May 6, 1985.	do	State Line III Field, Moffat County, Colorado, Smith Ranch Field, Carbon County, Wyoming.	(4)	
CI85-440-000 (CI75-887), D, May 6, 1985.	CRA International, Ltd	Natural Gas Pipeline Co. of America, Twin & Spearman Field, Hansford Co., Texas.	(5)	
CI85-441-000, D, May 6, 1985	do	Northern Natural Gas Company, Farnsworth Field, Ochiltree County, Texas.	(6)	
CI85-442-000 (CI80-596 and RI71-430), D, May 7, 1985.	Terra Resources, Inc.	Tennessee Gas Pipeline Co., Division of Texaco, Sweet Bay Lake Field, Terrebonne Parish, Louisiana.	(7)	

[1] By assignment revised May 19, 1983, Terra did convey all its interest in lands covered by the referenced Gas Rate Schedule and herein requests complete abandonment of its GRS #58.
[2] Terra's leases either expired or were assigned and Terra has no remaining interest in the dedicated area.
[3] Lease No. 26192-00 covering the Northwest Quarter which Terra conveyed to Oxtex by assignment and furnished to the Commission in letter dated March 28, 1983.
[4] Terra did convey all of its leasehold in the dedicated area to Oxtex.
[5] CRA International, Ltd. did assign all its leases and acreage to Oxtex and requests that the Commission grant complete abandonment of its GRS #9.
[6] All Ltd. leases under GRS #4 either expired or were assigned to Oxtex.
[7] Terra's assignment to Oxtex furnished to the Commission on March 25, 1983 included all the remaining acreage held by Terra in the dedicated area.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 85-15771 Filed 7-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4349–003 et al.]

Hydroelectric Applications, Long Lake Energy Corp. et al. Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Major License (Over 5MW).

b. Project No.: 4349–003.

c. Date Filed: September 28, 1984.

d. Applicant: Long Lake Energy Corporation.

e. Name of Project: Moose River.

f. Location: On Moose River in the Town of Lyonsdale, Lewis County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Donald Hamer, Long Lake Energy Corporation, 122 East 42nd St., Suite 1901, New York, NY 10168

i. Comment Date: August 23, 1985.

j. Description of Project: The proposed project would consist of: (1) Two new 3-foot-high weirs totaling 200 feet in length; (2) an 8-acre reservoir at water surface elevation 1025 feet m.s.l.; (3) a 225-foot-long intake approach channel; (4) a new intake at the south bank of Ager's Falls; (5) a 910-foot-long, 13-foot-diameter tunnel; (6) a 4,130-foot-long, 13-foot-diameter steel penstock; (7) a 50-foot-diameter surge chamber; (8) a bifurcation; (9) two 80-foot-long, 9-foot-diameter penstocks; (10) a powerhouse containing two generating units, each rated at 5.90 MW for a total of 11.8 MW; (11) a 90-foot-long, 50-foot-wide tailrace; (12) a 700-foot-long access road; (13) a 700-foot-long, 115-kV transmission line; and (14) appurtenant facilities.

The application for license was filed pursuant to a preliminary permit.

k. Purpose of Project: Power generated would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C.

2 a. Type of Application: Minor License.

b. Project No: 6962–001

c. Date Filed: December 13, 1984.

d. Applicant: Yankee Hydro Corporation.

e. Name of Project: Dunn & McCarthy.

f. Location: Owasco Lake Outlet in the City of Auburn, Cayuga County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roger P. Swanson, Yankee Hydro Corporation, 66 East Fourth Street, P.O. Box 2027, Oswego, NY 13126.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 5-foot-high, 100-foot-long stone and concrete dam; (2) a reservoir having a surface area of 1.2 acres and a storage capacity of 4.5 acre-feet at surface elevation 650 feet m.s.l.; (3) a gated intake structure at the left (south) bank; (4) a 30-foot-wide, 1,050-foot-long canal; (5) a gated intake structure with trash racks and a by-pass flume; (6) a 72-inch-diameter, 140-foot-long steel penstock; (7) a powerhouse containing one generating unit with an installed capacity of 550 kW; (8) a 500-foot-long tailrace; (9) a switchyard; and (10) appurtenant facilities. The Applicant estimates that the average annual generation would be 2,300,000 kWh. The existing dam is owned by the State of New York.

k. Purpose of Project: Project power would be sold to the New York State Electric and Gas Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

3 a. Type of Application: Minor License.

b. Project No: 7276–002.

c. Date Filed: November 14, 1984.

d. Applicant: Donald S. Benson.

e. Name of Project: Fall Creek.

f. Location: On Fall Creek, tributary to the Snake River, in Power County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Lance D. Bingham, 165 Wright Brothers Drive, Salt Lake City, UT 84116.

i. Comment Date: August 23, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) An 8-foot-high, 15-foot-long reinforced-concrete diversion structure having stop logs control, a sluce gate and a screened canal intake structure; (2) a small reservoir having negligible storage volume at normal pool elevation 4,390 feet m.s.l; (3) a 5,000-foot-long canal; (4) a gated penstock intake structure; (5) a 385-foot-long, 30-inch-diameter coated-steel penstock; (6) a powerhouse containing a generating unit rated at 30-kW and a generating unit rated at 120-kW operated at a net head of 84 feet and at a flow of 28 cfs; and (7) an 8,000-foot-long, 12.5 kV transmission line.

This application has been accepted for filing as of May 16, 1983, the submittal date of the Applicant's originally accepted exemption application pursuant to Eagle Power Co., 28 FERC ¶ 61,061 issued July 18, 1984.

k. Purpose of Project: Project energy would be sold to Idaho Power Company. Applicant estimates that the average annual energy generation would be 1,202,400-kWh and that the project cost would be $315,800.

l. This notice also consists of the following standard paragraphs: A9, B, C, and D2.

4 a. Type of Application: Major License.

b. Project No.: 7728–003.

c. Date Filed: March 4, 1985.

d. Applicant: Robley Point Hydro Partners.

e. Name of Project: Robley Point.

f. Location: On the West Branch Feather River, near Stirling City, in Butte County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David C. Auslam, Jr., Auslam & Associates, Inc., 3327 Longview Drive, Suite 250, North Highlands, CA 95660.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) An intake structure located at a natural pool on the West Branch Feather River at elevation 2,450 feet msl (SW¼ of SE¼ of Sec. 3, T23N, R4E, MDB&M); (2) an 84-inch-diameter, 900-foot-long concrete pipe; (3) an 8-foot-diameter, 4,200-foot-long tunnel bored through Robley Point; (4) an 84-inch-diameter, 22,000-foot-long pipeline; (5) a steel surge tank located at elevation 2,360 feet msl; (6) an 84- to 72-inch-diameter, 3,000-foot-long penstock; (7) a powerhouse located at elevation 1,600 feet msl (SW¼ of SE¼ of Sec. 19, T23N, R4E, MDB&M) containing two turbine-generator units with an installed capacity of 20.1 MW and producing an estimated average annual generation of 55 GWh at a 31.2 percent plant factor; and (8) a 23,000-foot-long, 60-kV transmission line interconnecting the project to a Pacific Gas and Electric Company (PG&E) 60-kV line in the Town of Paradise. Project power would be sold to PG&E. The project would be partially located on Plumas National Forest lands. Applicant estimates the project cost at $32,906,600.

k. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

5 a. Type of Application: Minor License.

b. Project No.: 7758–001.

c. Date Filed: October 31, 1984.

d. Applicant: Holyoke Gas & Electric Department.

e. Name of Project: Number 4 Hydro.

f. Location: At the First and Second Level Canals of the City of Holyoke Canal System in Hampden County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: George E. Leary, Manager, Holyoke Gas & Electric Department, 70 Suffolk Street, Holyoke, MA 01040.

i. Comment Date: September 3, 1985.

j. Description of Project: The existing run-of-river project consists of: (1) Two 7-foot-diameter and 76-foot-long penstocks drawing water from the first level canal of the Holyoke Canal System; (2) a powerhouse with 2 turbine-generator units with a total rated capacity of 780 kW in the first floor of a 3-story brick building; (3) two 13-foot-wide and 300-foot-long tailraces discharging into the second level canal; (4) a 4.8 kV and 25-foot-long transmission line; and other appurtenances. The project generates an average of 3,148,800 kWh annually.

k. Purpose of Project: The project output is used in the normal operation of the Holyoke Gas & Electric Department.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C, and D1.

6 a. Type of Application: Major License (<5MW).

b. Project No.: 8468–000.

c. Date Filed: July 30, 1984.

d. Applicant: Clearwater Hydro Limited Partnership.

e. Name of Project: Clearwater.

f. Location: On Orofino Creek, in Clearwater County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles D. Cuddy, 125 Johnson Ave., P.O. Box 64, Orofino, Idaho 83544.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 6-foot-high, 65-foot-long concrete dam at elevation 1990 feet with negligible impoundment; (2) a 6,200-foot-long, 6.5-foot-diameter low pressure steel conduit on the right slope of the canyon; (3) a surge tank; (4) an 800-foot-long, 54-inch-diameter steel penstock; (5) a powerhouse containing four generating units with a combined capacity of 2.063 MW and an average annual generation of 9 GWh; and (6) a 3-mile-long transmission line, along an existing right-of-way north of Orofino Creek, to a Washington Water Power Company line. Project construction cost would be $2,600,000.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

7 a. Type of Application: Minor License.

b. Project No.: 8546–000.

c. Date Filed: August 23, 1984 as amended on January 4, 1985.

d. Applicant: Howard and Mildred Carter.

e. Name of Project: Pine Creek Hydroelectric.

f. Location: On Pine Creek, near Livingston, in Park County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Karl Knuchel, Attorney at Law, P.O. Box 953, Livingston, MT 59047.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high, 33-foot-long concrete diversion dam at elevation 5,510 feet; (2) a 6,800-foot-long, 20-inch-diameter polymer and steel pipeline; (3) a powerhouse containing one generating unit with an installed capacity of 340 kW at a design head of 390 feet; and (4) a 50-foot-long, 7.2-kV transmission line connecting to an existing Park Electric Coop. transmission line.

The Applicant estimates an average annual energy generation of 1.8 million kWh. The estimated cost of the project would be $490,000 in 1984 dollars.

k. Purpose of Project: The proposed project power would be sold to Park Electric Coop. or Montana Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 8706–000.

c. Date Filed: November 5, 1984.

d. Applicant: Kittitas Reclamation District.

e. Name of Project: Keechelus to Kachess.

f. Location: At the Bureau of Reclamation's Keechelus Dam on the Yakima River, in Kittitas County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Roy W. Johnson, 1819 12th Avenue, Seattle, WA 98122.

i. Comment Date: August 12, 1985.

j. Competing Application: Project No. 8335, Date Filed 6/1/84.

k. Description of Project: The proposed project would consist of: (1) A bifurcation valve structure at the existing outlet conduit of Keechelus dam; (2) a 25,500-foot-long, 6-foot-diameter pipeline; (3) a powerhouse containing a single generating unit with a capacity of 3,250 kW and an average annual generation of 21,700 MWh; and (4) a 4-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $70,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: The project power would be sold.

m. This notice also consists of the following standard paragraphs: A6, A9, B, C, and D2.

9 a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 8823–000.

c. Date Filed: December 24, 1984.

d. Applicant: City of New York.

e. Name of Project: Neversink.

f. Location: Neversink River in Sullivan County, New York.

g. Filed Pursuant to: Energy Security Act of 1980, section 408 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Mr. Joseph T. McGough, Jr., Commissioner, Department of Environmental Protection, City of New York, Municipal Building, Rm. 2358, New York, New York 10007.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 190-foot-high, 2,500-foot-long earth dam owned by the Applicant with a crest elevation of 1,460 feet msl; (2) an existing reservoir with a surface area of 1,750 acres, and a gross storage capacity of 142,000 acre-feet; (3) a proposed generating facility connected to the release line in the right abutment and containing a generating unit with a rated capacity of 475 kW; (4) a short length of transmission line tying into the existing New York State Electric & Gas system; and (5) appurtenant facilities. The Applicant estimates a 2,370 MWh average annual energy production.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and projects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 8917–000.

c. Date Filed: February 1, 1985.

d. Applicant: Hugh W. Adams.

e. Name of Project: Phillips Ditch.

f. Location: On Phillips Ditch an irrigation diversion from Goose Creek in Baker County, Oregon.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: G. L. Smith, P.O. Box 1016, Idaho Falls, ID 83401.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4.5-foot-high diversion dam; (2) a 250-foot-long, 30-inch-diameter pipeline; (3) a settling basin; (4) a 2500-foot-long, 24-inch-diameter penstock; (5) a powerhouse containing a single generating unit with a capacity of 260 Kw and a average annual generation of 1,339,880 kWh; and (6) a 1.25-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $10,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to C–P National or Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 8950–000.

c. Date Filed: February 13, 1985.

d. Applicant: James W. Caples.

e. Name of Project: Twelve Mile Creek.

f. Location: Twelve Mile Creek in Lemhi County, Idaho, within the Salmon National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: James W. Caples, 502 Broadway Place, Salmon, ID 83467.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high diversion dam at elevation 5,500 feet; (2) an 11,000-foot-long, 18-inch-diameter penstock; (3) a powerhouse containing a single generating unit with a capacity of 450 kW and an average annual generation of 2,956,500 kWh; and (4) a 1.0-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $5,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

12 a Type of Application: Preliminary Permit.

b. Project No.: 8981–000.

c. Date Filed: February 28, 1985.

d. Applicant: The Azure Mountain Power Company.

e. Name of Project: St. Regis Upper.

f. Location: St. Regis River in Franklin County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Matthew W. Foley, P.O. Box 593, Wadhams, New York 12980.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 8-foot-high, 120-foot-long dam owned by the town of Waverly; (2) an existing reservoir with a surface area of 29 acres, and a gross storage capacity of 200 acre-feet at water surface elevation 1,235 feet msl; (3) a proposed 8-foot-deep, 12-foot-wide, and 150-foot-long open flume; (4) a proposed generating unit with a rated capacity of 400-kW; and (5) a proposed 30-foot-long transmission line tying into the existing Niagara Mohawk system. The Applicant estimates a 1.4 million kWh average annual energy production.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

13 a Type of Application: 5 MW or less Exemption.

b. Project No.: 9009–000.

c. Date Filed: March 7, 1985.

d. Applicant: Pan Pacific Hydro, Incorporated.

e. Name of Project: Cherry Flat Hydroelectric.

f. Location: On Stuarts Fork Creek, near Weaverville, in Trinity County, California.

g. Filed Pursuant to: Section 408 of the Federal Energy Security Act, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Mr. James Tompkins, Pan Pacific Hydro, Incorporated, 16464 Plateau Circle, Redding, CA 96001.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed project would consist of: (1) An inlet structure in the south bank of Stuarts Fork Creek at elevation 2,830 feet; (2) a 5-foot-high, 7-foot-wide, 1,000-foot-long diversion tunnel; (3) a 2,000-foot-long, 60-inch-diameter penstock; (4) a powerhouse with a total installed capacity of 1,200 kW operating under a head of 85 feet; and (5) a 2.3-mile-long, 12-kV transmission line connected to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 5 million kWh to be sold to PG&E.

k. This notice also consists of the following standard paragraphs: This notice also consists of the following standard paragraphs: A3, A9, B, C and D3(a).

14 a. Type of Application: Conduit Exemption.

b. Project No.: 9070–000.

c. Date Filed: March 29, 1985.

d. Applicant: North Side Canal Company.

e. Name of Project: Bypass.

f. Location: On the Main Canal at its intersection with the Bypass Canal in Jerome County, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. John A. Rosholt, Nelson, Rosholt, Robertson, Tolman & Tucker, P.O. Box 1906, Twin Falls, ID 83301.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed project would consist of: (1) An intake canal; (2) a 21-foot-high intake structure; (3) a 48-foot-long penstock; (4) a powerhouse containing three 3,300-kW generators with an average annual generation of 26 GWh.

Purpose of Exemption—An Exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protests the Exemptee from permit or license applications that would seek to take or develop the project.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

15 a. Type of Application: Minor License.

b. Project No.: P-9068-000.

c. Date Filed: April 3, 1985.

d. Applicant: Lower Village Water Power Company.

e. Name of Project: Lafayette Street Dam Project.

f. Location: On the Sugar River in the Town of Claremont, Sullivan County, New Hampshire.

h. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Matthew J. Bonaccorsi, Lower Village Water Power Company, c/o Timothy Buzzell & Associates, Inc., Methodist Hill Road, Lebanon, NH 03766.

j. Comment Date: August 23, 1985.

j. Description of Project: The proposed project would consist of: (1) The existing 195-foot-long, 2-foot-high concrete weir, and a 100-foot-long, 6-foot-high concrete training wall Lafayette Street Dam; (2) installation of 1-foot-high flashboards on the weir section; (3) a reservoir having a surface area of 0.3 acre, a storage capacity of 2 acre-feet, and a normal water surface elevation of 423.1 feet m.s.l.; (4) a proposed gated intake structure; (5) a proposed 780-foot-long, 8-foot-diameter steel penstock; (6) a proposed powerhouse containing 2 generating units with a total installed capacity of 1350 kW; (7) a proposed 150-foot-long tailrace; (8) a proposed 280-foot-long 4.16kV transmission line; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 4,600,000 kWh. The existing dam and project facilities are owned by the Connecticut Valley Electric Company.

k. Purpose of Project: All project energy would be sold to the Connecticut Valley Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

16 a. Type of Application: Minor License.

b. Project No. 9103–000.

c. Date Filed: April 8, 1985.

d. Applicant: Emil G. Sitkei.

e. Name of Project: Cherry Creek.

f. Location: On Cherry Creek, tributary to the Willamette River, in Benton County, Oregon.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Emil G. Sitkei, Rt. 2, Box 117, Monroe, OR 97456.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 30-inch-high, 12-foot-long concrete-block steel-reinforced diversion dam having a 32-inch-long overflow-type spillway with crest elevation 480 feet and having a screened, gated intake structure; (2) a 630-foot-long, 12-inch-diameter underground aluminum pipeline; (3) a 420-foot-long, 10-inch-diameter underground plastic penstock; (4) a powerhouse containing a generating unit rated at 15-kW operated at a net head of 70 feet and at a flow of 4 cfs; (5) a pipe tailrace with spillway elevation 400 feet; and (6) a 230-foot-long, 220/240-volt underground transmission line.

k. Purpose of Project: Project energy would be used for farm operation and household needs. Excess energy would be sold to Consumer's Power, Inc. Applicant estimates that the average annual energy generation would be 55,440-kWh and that the project construction cost would be $10,000.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D2.

17 a. Type of Application: Preliminary Permit.

b. Project No. 9118–000.

c. Date Filed: April 19, 1985.

d. Applicant: Hydroenergy Corporation.

e. Name of Project: Dickinson Dam.

f. Location: On the Ashuelot River, in Cheshire County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Victor A. Engel, 145 Abbott Road, Concord, NH 03301.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) The existing 175-foot-long and 10-foot-high timer crib/rock fill Dickinson Dam with a spillway crest elevation of 456.2 feet mean sea level; (2) new 12-inch-high flashboards; (3) a reservoir with a surface area of 50 acres and storage capacity of 400 acre-feet; (4) a new intake structure and powerhouse at the east end of the dam with an installed capacity of 800 kW; (5) a short tailrace; (6) a new 200-foot-long transmission line; and (7) other appurtenances. Applicant estimates an average annual generation of 3,000,000 kWh. Existing facilities are owned by Homestead Woolen Mills, Inc.

k. Purpose of Project: Project energy would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 9141–000.

c. Date filed: April 29, 1985.

d. Applicant: McCallum-Hydromechanics.

e. Name of Project: North Grosvenorsdale.

f. Location: On the French River in Windham County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Anne L. Warner, Hydromechanics, 6–10, Pendleton LA, Londonderry, NH 03053.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 23-foot-high and 280-foot-long earthfill and stone masonry dam owned by Niuna-Thompson, Inc., (2) a reservoir with surface area of 60 acres at surface elevation of 371 feet mean sea level; (3) an existing 2,100-foot-long headrace canal; (4) an existing 500-kW turbine-generator unit inside a mill building; (5) an existing 900-foot-long tailrace; and (6) other appurtenances. Interconnections facilities are available at the site. Applicant estimates an average annual generation of 2,422,000 kWh.

k. Purpose of Project: Project energy would be sold to Northeast Utilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project

construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.

19 a. Type of Application: Preliminary Permit.

b. Project No.: P-8146-000.

c. Date filed: May 1, 1985.

d. Applicant: Stratford Associates.

e. Name of Project: Sprite Creek.

f. Location: On Sprite Creek, in Fulton County, near Stratford, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Thomas Forbes, P.O. Box 421, Mercer Island, WA 98040.

i. Comment Date: September 3, 1985.

j. Description of Project: The project would consist of: (1) An existing dam approximately 350 feet long and 40 feet high composed of natural rock and concrete; (2) an existing 936 acre reservoir with normal surface elevation of 1,543 feet m.s.l., and a storage capacity of 6,244 acre-feet; (3) approximately 18,500 feet of proposed 60-inch-diameter penstock; (4) a proposed powerhouse approximately 60 feet long and 30 feet wide, with a total capacity of 4,177 kW; (5) a proposed 12,500-volt transmission line approximately 5,500 feet in length; and (6) appurtenant facilities. Applicant estimates that the average annual energy generation would be 36,485,400 kWh. The owner of the dam is the New York State Department of Environmental Conservation.

k. Purpose of Project: The Applicant anticipates that energy will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates that the cost of the studies under permit would be $125,000.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 8256-000.

c. Date Filed: June 3, 1985.

d. Applicant: Randolph Hydro Associates.

e. Name and Project: Kaskaskia River.

f. Location: On the Kaskaskia River in Randolph County, Illinois.

g. Filed Pursuant: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Ave., # 600, Washington, DC 2005.

i. Comment Date: August 30, 1985.

j. Description of Project: The project would utilize the existing Corps of Engineers' Kaskaskia River Lock and Dam and Reservoir and would consist of the following: (1) a proposed penstock 100 feet long and about 9.9 feet in diameter; (2) a new powerhouse, 300 feet by 150 feet, housing one turbine/generator with an installed capacity of 3200kw; (3) a proposed tailrace, 200 feet long and 150 feet wide; (4) a new transmission line about 1500 feet long at 69kV; (5) appurtenant facilities. Applicant estimates that the average annual energy would be 10.3 GWh.

k. Purpose of Project: The applicant anticipates that project energy will be sold to the Illinois Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $125,00.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notice of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number

of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must be sent to the Applicant's representatives.

D3d. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments conerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: June 27, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–15833 Filed 7–1–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF85–529–000 et al.]

Christiansted Port Terminal Corp. et al. Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

June 27, 1985.

Take notice that the following filings have been made with the Commission.

1. Christiansted Port Terminal Corporation

[Docket No. QF85–529–000]

On June 4, 1985, Christiansted Port Terminal Corporation (Applicant), of Christiansted, Saint Croix, U.S. Virgin Islands 00820 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 80 kilowatt hydroelectric facility is located on the east fork of Crabtree Creek, in Mitchell County, North Carolina.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of

any other requirements of local, State, or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. Pacific Lighting Energy Systems (Milliken Avenue)

[Docket No. QF85-531-000]

On June 13, 1985, Pacific Lighting Energy Systems, (Applicant) of 6055 East Washington Boulevard, Suite 600, City of Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located on Milliken Avenue, San Bernardino County, California. The facility will produce electric power using biomethane in the form of landfill gas. The power production capacity of the facility will be 2,800 kW.

3. Pacific Lighting Energy Systems (Fontana)

[Docket No. QF85-532-000]

On June 13, 1985, Pacific Lighting Energy Systems, (Applicant) of 6055 East Washington Boulevard, Suite 600, City of Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located on Sierra Avenue, Fontana, San Bernardino County, California. The facility will produce electric power using biomethane in the form of landfill gas. The power production capacity of the facility will be 1,000 kW.

4. Pacific Lighting Energy Systems (Colton)

[Docket No. QF85-533-000]

On June 13, 1985, Pacific Lighting Energy Systems, (Applicant) of 6055 East Washington Boulevard, Suite 600, City of Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located on Tropica Rancho Road, Colton, San Bernardino County, California. The facility will produce electric power using biomethane in the form of landfill gas. The power production capacity of the facility will be 1,100 kW.

5. Pacific Lighting Energy Systems (Phoenix)

[Docket No. QF85-534-000]

On June 13, 1985, Pacific Lighting Energy Systems, (Applicant) of 6055 East Washington Boulevard, Suite 600, City of Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located at the corner of 27th Avenue and Lower Buckeye Road, Phoenix, Maricopa County, Arizona. The facility will produce electric power using biomethane in the form of landfill gas. The power production capacity of the facility will be 2,200 kW.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15832 Filed 7-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EL85-11-003 et al.]

Southern California Edison Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. EL85-11-003]

June 26, 1985.

Take notice that on May 29, 1985, Southern California Edison Company tendered for filing a refund plan pursuant to the Commission's order dated April 29, 1985.

Comment date: July 11, 1985, in accordance with Standard Paragraph H at the end of this notice.

2. Oklahoma Gas and Electric Company

[Docket No. EC85-17-000]

June 26, 1985.

Take notice that on June 20, 1985, Oklahoma Gas and Electric Company (Applicant), an Oklahoma Corporation with its principal office at 321 N. Harvey, P.O. Box 321, Oklahoma City, Oklahoma, 73101, filed an application pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations thereunder, for authorization to sell certain transmission and distribution lines and substations to Oklahoma Municipal Power Authority (OMPA).

The Company states it is engaged primilary in the generation, transmission, distribution and sale of electric energy in Oklahoma and western Arkansas. The facilities being sold and purchased are devoted to supplying service to OPMA participants only.

Comment date: July 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. The Washington Water Power Company

[Docket No. EC85-16-000]

June 27, 1985.

Take notice that on June 13, 1985, The Washington Water Power Company (the "Company"), a Washington corporation, qualified to transact business in the states of Washington, Idaho and Montana with its principal business office in Spokane, Washington, filed an application with the Federal Energy Regulatory Commission, pursuant to Section 203 of the Federal Power Act, seeking an order authorizing it to sell a 115 kV transmission line located in Grant County, Washington.

Comment date: July 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Centel Corporation

[Docket No. EC85-18-000]

June 27, 1985.

Take notice that Centel Corporation on June 21, 1985, tendered for filing an application seeking authority from the Federal Energy Regulatory Commission to purchase electric transmission substation equipment and facilities from Sunflower Electric Cooperative, Inc., 301 West 13th Street, Hays, Kansas 67601.

The land and related electric transmission substation equipment located at Spearville, Kansas and the equipment located at Mullergren substation near Great Bend, Kansas is used to provide 230/115 kV service to the Centel system.

Comment date: July 12, 1985, in accordance with Standard Pararaph E at the end of this notice.

5. Idaho Power Company

[Docket No. ES85-44-000]

June 25, 1985.

Take notice that on June 19, 1985, Idaho Power Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act, for the sale of not more than $100 million of long-term or intermediate term debt.

Comment date: July 18, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15831 Filed 7-1-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Restriction of Eligibility for Grant Award

AGENCY: Department of Energy.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), it is restricting eligibility for a grant award to certain universities in the University Reactor Sharing Program with an operating reactor at a power level of 1 kilowatt or greater.

FOR FURTHER INFORMATION CONTACT: Harold H. Young, ER-44, U.S. Department of Energy, Washington, D.C. 20545, (301) 353-3995.

SUPPLEMENTARY INFORMATION: Over the past years, DOE has used grants to provide funding to universities with reactor sharing programs. All of these institutions have reactors which operate at a power level of 1KW or greater. These grants help defray reactor operating costs associated with making the participating universities' facilities and equipment available for research and training to other non-reactor owning educational institutions. At this time, DOE will award grants to the following institutions:

University of Florida
Georgia Institute of Technology
Kansas State University
Massachusetts Inst. of Technology
University of Maryland
University of Michigan
University of Missouri-Col
University of Missouri-Rol
North Caroline State University
Ohio State University
Pennsylvania State University
Reed College
Texas A&M University
University of Virginia
Washington State University
University of Wisconsin
Purdue University
University of Illinois
State U. of New York, Buffalo
Oregon State University

These are the only institutions in the University Reactor Sharing Program that responsed to DOE's invitation to submit grant applications. These grants total $370,700 and will cover the period September 1, 1985 through August 31, 1986.

Issued in Washington, D.C., on June 26, 1985.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 85-15807 Filed 7-1-85; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-736-DR]

Puerto Rico; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA-736-DR), dated May 31, 1985, and related determinations.

DATE: June 25, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616.

The notice of a major disaster for the Commonwealth of Puerto Rico, dated May 31, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 31, 1985:

The Municipalities of Arecibo, Caguas, and Humacao for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-15781 Filed 7-1-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

North Community Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible advese effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *North Community Bancorp, Inc.*, Chicago, Illinois; to engage *de novo* through its subsidiary, Community Mortgage Company, Chicago, Illinois, in originating, processing and servicing mortgage loans.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dakota Bankshares, Inc.*, Fargo, North Dakota; to engage *de novo* through its subsidiary, Dakota Services, Inc., Fargo, North Dakota, in providing management consulting services to nonaffiliated banks. These activities will be conducted in North Dakota, South Dakota, Minnesota, Montana, New Mexico and Arizona.

Board of Governors of the Federal Reserve System, June 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15790 Filed 7-1-85; 8:45 am]

BILLING CODE 6210-01-M

Sun Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 24, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Sun Banks, Inc.*, Orlando, Florida and *SunTrust Banks, Inc.*, Atlanta, Georgia; to acquire 100 percent of the voting shares of Sun Bank/Flagler County, N.A., Palm Coast, Florida (in organization).

b. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Farmers and Merchants Bancorp*, Boswell, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers and Merchants Bank, Boswell, Indiana.

2. *Oak Lawn Financial Ltd.*, Oak Lawn, Illinois; to become a bank holding company by acquiring 80 percent or more of the voting shares of Oak Lawn Trust & Savings Bank, Oak Lawn, Illinois.

3. *Tri City Bankshares Corporation*, Oak Creek, Wisconsin; to acquire 100 percent of the voting shares of Tri City National Bank of Brookfield, Brookfield, Wisconsin (in organization).

4. *United Bancorp, Inc.*, Tecumseh, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of United Savings Bank of Tecumseh, Tecumseh, Michigan.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Brush Country Holding Company, Inc.*, Freer, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Freer Bancshares, Inc., Freer, Texas, thereby indirectly acquiring Brush Country Bank, Freer, Texas.

2. *Plaza Bankers, Inc.*, Austin, Texas; to acquire 100 percent of the voting shares of Plaza National Bank, Kerrville, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15789 Filed 7-1-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Captan With Benzocaine (Holiday® Itch Rid and VIP® Mercaptol); Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Pet Chemicals, Inc., providing for use of a topical spray containing captan with benzocaine (Holiday® Itch Rid and VIP® Mercaptol) as a topical treatment for dogs, cats, and horses for common fungal infections. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: July 24, 1985.

FOR FURTHER INFORMATION CONTACT: John K. Augsburg, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Pet Chemicals, Inc., 7781 NW. 73rd Ct., Miami Springs, FL 33166, is sponsor of NADA 30-290 for two products containing captan with benzocaine (Holiday® Itch Rid and VIP® Mercaptol) originally approved March 5, 1965. The products are used for the treatment of dogs, cats, and horses for ringworm and interdigital dermatitis caused by common fungal infestations, and acute moist eczema. Approval of this NADA has not been codified in 21 CFR Part 524. In a letter dated February 19, 1985, the sponsor requested withdrawal of approval of the NADA under 21 CFR 514.115 because the drug is not being manufactured.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 350(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 30–290 for captan with benzocaine (Holiday® Itch Rid and VIP® Mercaptol) is hereby withdrawn, effective July 12, 1985.

Dated: June 25, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85–15788 Filed 7–1–85; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Privacy Act of 1974; Proposed Amendment to System of Records

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of proposed new routine uses for an existing system of records.

SUMMARY: The Health Care Financing Administration (HCFA) is amending the system notice for its Study of the Comparative Effectiveness of State Approaches to Regulation of Medicare Supplemental Policies: Medigap, HHS/HCFA/ORD No. 09–70–0026, to add two new routine uses. We invite comments on these new routine uses.

EFFECTIVE DATES: The proposed new routine uses shall take effect without further notice August 1, 1985, unless comments received on or before that date cause a contrary decision.

ADDRESS: Please address comments to: Richard A. Demeo, HCFA Privacy Act Officer, Health Care Financing Administration, G–A–1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Judith A. Sangl, Office of Research and Demonstrations, 2–B–14 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 597–5717.

SUPPLEMENTARY INFORMATION: The notice for the Study of the Comparative Effectiveness of State Approaches to Regulation of Medicare Supplemental Policies: Medigap, HHS/HCFA/ORD No. 90–70–0026, was most recently published at 47 FR 45714 (1982). This system contains records of questionnaires administered to approximately 4800 Medicare beneficiaries. The questionnaire contains information on sociodemographic characteristics, knowledge of and experience with Medicare, number and type of private health insurance policies, identifying information about the policies held and purchasing behavior. The questionnaire also contains the beneficiary's health insurance claim number. The system contains copies of insurance policies for some, but not all beneficiaries, together with the policyholder's identifying number. A separate questionnaire completed by some, but not all, beneficiaries contains information concerning the respondent's knowledge of the risks of meeting insurance coverage for long term care services, the availability of insurance for such risks, the preferences for specific insurance benefits for long term care and their willingness to pay for those benefits. The purpose of this system of records is to provide information on consumers' purchasing behavior, the policies they hold and the circumstances of insurance sales transactions in order to analyze the effectiveness of varying State insurance regulation.

Information is also used to analyze the market potential for private long term care insurance. We are proposing to establish two new routine uses. First, we are proposing that the contractor which collected the original data be permitted to merge this data with the Medicare Bill File (HHS/HCFA/BDMS No. 09–70–0005, most recently published at 47 FR 45698 (1982)), either directly or through the Medicare Automated Data Retrieval System (MADRS) for each individual in the system. This merger of data would permit a better understanding of the relationship among utilization of health services, knowledge of Medicare and of private insurance and purchasing behavior. This was not feasible at the time the original system notice was issued. However, development of the MADRS system has made this analysis feasible at this time.

The second proposed routine use is for modifying the system notice to permit disclosure of records to an individual or organization for health research or evaluation. Because of the great wealth of data collected, many types of analyses may be performed, other than those already mentioned above. Upon HCFA's approval of the use of the data proposed by other researchers, this routine use would permit such additional analyses.

To comply with the technical requirements of the Privacy Act, we are proposing to establish the routine uses below adding to previously published uses (1), (2) and (3):

(4) To the contractor which performed the original data collection for the purpose of merging data from the Medicare Bill File or MADRS.

The contractor must agree:

a. Not to publish or otherwise disclose data in a form in which beneficiaries could be identified, and

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(5) To an individual or organization for health research or evaluation, if HCFA:

a. Determines that the proposed use does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the proposed use is to be made:

(i) Cannot be reasonably accomplished unless the record is provided in a form that identifies individuals.

(ii) Is of sufficient importance to warrant the effect on/or risk to the privacy of the individual by such limited additional exposure of the record might bring, and

(iii) There is a reasonable probability that the objective of the use would be accomplished;

c. Requires the recipient of the information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(ii) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from HCFA that is justified based on research objectives for retaining such information, and

(iii) Make no further use of the record except;

(a) For use in another research project, under emergency circumstances affecting the health or safety of any individual, following written authorization of HCFA.

(b) For disclosure to an identified person approved by HCFA for the purpose of auditing the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(c) When further approved by HCFA;

d. Secures a written statement by the recipient of the information attesting to

the recipient's understanding of an willingness to abide by these provisions.

These new routine uses are compatible with the purposes for which the information is collected. Using this information with Medicare Bill Data will permit a detailed analysis of utilization of health services and insurance knowledge and purchasing behavior. The same information may be used by other researchers to perform other types of analyses. Addition of these new routine uses can be accomplished with no reduction in beneficiaries' privacy because HCFA will impose requirements on recipients who must agree in writing to protect the data from unauthorized access and being disclosed in a form that permits identification of individuals.

This action does not require a report of altered system under 5 U.S.C. 552(o). The complete system notice is below. In addition, please note the new address for the system manager.

Dated: June 24, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

09-70-0026

SYSTEM NAME:

Study of the Comparative Effectiveness of State Approaches to Regulation of Medicare Supplemental Policies: Medigap HHS/HCFA/ORD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

SRI International, 333 Ravenswood Avenue, Menlo Park, California 94025.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries (age 65 and older) who reside in the eight participating States and disabled Medicare beneficiaries (under 65) nationwide.

CATEGORIES OF RECORDS IN THE SYSTEM:

Questionnaires administered to approximately 4,800 Medicare beneficiaries. These questionnaires will provide information on each beneficiary concerning sociodemographic characteristics, such as education, knowledge of and experience with Medicare, number and type of private health insurance policies, identifying information about the policies held and purchasing behavior. A copy of each insurance policy will be obtained from the beneficiary if possible or from the insurance company with the policyholder's consent. Questionnaires will show beneficiary name and health insurance claim name (HI claim number) or other unique identifier. Insurance policies will have policyholder's identifying number. The National Center for Health Services Research (NCHSR) questionnaire will be administered to the same study sample of Medicare beneficiaries and will provide information concerning each respondent's knowledge of the risks of needing insurance coverage for long term care services, the availability of insurance for such risks, the preferences for specific insurance benefits for long term care and their willingness to pay for those benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

HCFA authority is based on Section 1882 of the Social Security Act as amended by Section 507, paragraphs (f)(1) and (f)(2) of Pub. L. 98-265. NCHSR authority is based on Sections 304 and 305 of the Public Health Service Act, as amended by the Health Services Research, Health Statistics, and Medical Libraries Act of 1974, Pub. L. 93-353, and the Health Services Research, Health Statistics and Health Care Technology Act of 1978, Pub. L. 95-623.

PURPOSE OF THE SYSTEM:

The purpose of this system of records is to provide information on consumers' purchasing behavior, the policies they hold and the circumstances of insurance sales transactions in order to analyze the effectiveness of varying State insurance regulations on:

- Limiting marketing and agent abuse;
- Assuring the dissemination of such information to individuals entitled to benefits under this title (and to other consumers) as is necessary to permit informed choice;
- Promoting policies which provide reasonable economic benefits for such individuals;
- Reducing the purchase of unnecessarily duplicative coverage; and
- Improving price competition.

The purpose of the disabled beneficiary survey is to provide national estimates of the proportion of this population who have supplemental health insurance.

In addition the NCHSR system of records is to provide information on consumer's knowledge of the risks of needing long-term care, the availability of insurance for such risks, the preference for specific insurance benefits and their willingness to pay for those benefits. This information will be used to contribute to a study of the market potential for private long-term care insurance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The contractor will receive all information in the system from beneficiary questionnaires and their health insurance policies either in hard copy, magnetic tape, or cards and store it in a master file. The contractor will use this information to assess the comparative effectiveness of various State regulatory approaches to Medicare supplemental insurance. Once the beneficiary questionnaire information is linked with the health insurance policy information of the beneficiary, all personal identifiers will be removed from the file.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry which the congressional office makes at the request of that individual.

3. In the event of litigation, where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

(4) To the contractor which performed the original data collection for the purpose of merging data from the Medicare Bill File or MADRS. The contractor must agree:

(a) not to publish or otherwise disclose data in a form in which beneficiaries could be identified, and

(b) to safeguard the confidentiality of the data and to prevent unauthorized access to it.

(5) To an individual or organization for health research or evaluation, if HCFA:

a. Determines that the proposed use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the proposed use is to be made:

(i) Cannot be reasonably accomplished unless the record is provided in a form that identifies individuals.

(ii) *Is of sufficient importance to warrant the effect on/or risk to the privacy of the individual by such additional exposure of the record might bring, and*

(iii) *There is a reasonable probability that the objective of the use would be accomplished;*

c. Requires the recipient of the information to:

(i) *Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and*

(ii) *Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from HCFA that is justified based on research objectives for retaining such information, and*

(iii) *Make no further use of the record except:*

(a) For use in another research project, under emergency circumstances affecting the health or safety of any individual, following written authorization of HCFA.

(b) For disclosure to an identified person approved by HCFA for the purpose of auditing the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(c) When further approved by HCFA;

d. Secures a written statement by the recipient of the information attesting to the recipient's understanding of and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The contractor will store records in hard copy and magnetic tape form.

RETRIEVABILITY:

Records are indexed by Health Insurance claim number or other unique identifier.

SAFEGUARDS:

The contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. Authorized HCFA representatives will, upon request, be granted access to premises where records are kept for the purpose of inspecting physical security arrangements. However, no data will be released with identifying information. For computerized records, the contractor will initiate automated data processing (ADP) system security procedures required by the Department's ADP Systems Manual, Part 6, ADP Systems Security, e.g., use of passwords.

RETENTION AND DISPOSAL:

The contractor will hold hard-copy records, magnetic tapes, and cards until beneficiary specific data are received and compiled. All identifying information and hard-copy will then be destroyed thus protecting the confidentiality of all information collected. The contractor will retain all records for the life of the contract and then these records will become the custody of the Office of Research and Demonstrations, HCFA. The contractor will not retain any beneficiary based files. Data supplied to HCFA and NCHSR will not include beneficiary identifiers. No data which would possibly identify an individual will be supplied.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the systems manager at the address indicated above, specifying name, address and health insurance claim number. These notification and access procedures are in accordance with Department Regulations (45 CFR Part 5b).

RECORDS ACCESS PROCEDURES:

Individuals participating in the Survery may request their data records in writing. Access procedure is the same as the notification procedure. Requestor should reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR Part 5b)).

CONTESTING RECORD PROCEDURES:

An individual who wishes to contest the contents of any record in this system should contact the system manager and reasonably identify and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR Part 5b)).

RECORD SOURCE CATEGORIES:

Sources of information contained in this record system include Medicare beneficiaries, insurance companies, survey contractor and subcontractors (if any), and selected HCFA files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85-15779 Filed 7-1-85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES 24111 Louisiana]

Louisiana; Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatement of a terminated oil and gas lease.

SUMMARY:

1. Federal oil and gas lease ES 24111 terminated automatically by operation of law on April 1, 1985, (30 U.S.C. 188).

2. A petition for reinstatement of ES 24111 was filed by Exxon Corporation (Lessee) under Section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982, (96 Stat. 2447).

3. The lessee has met all the following requirements of reinstatement:

(a) $500—Reimbursement of Department Administrative Cost
(b) $805—Back Rental Payments
(c) $130—Estimated Publication Cost

4. The proposed reinstatement of the leas would be under the same terms and conditions of the original lease, except the rental will be increased to $5.00 per acre per year, and royalty increased to 16⅔ percent beginning April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Johnson, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 274-0160.

G. Curtis Jones, Jr.,
State Director.

[FR Doc. 85-14826 Filed 7-1-85; 8:45 am]

BILLING CODE 4310-GJ-M

[AA-6661-C]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue

conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, will be issued to Eklutna, Inc. for approximately 950 acres. The lands involved are within the Lake George-Recreation Area, in T. 16 N., R. 3 E., Seward Meridian, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the ANCHORAGE DAILY NEWS. Copies of the decision may be obtained by contracting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until August 1, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–15823 Filed 7–1–85; 8:45 am]

BILLING CODE 4310-JA-M

Emergency Coal Lease Application on Public Land in Carbon and Emery Counties; Public Meeting

June 24, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: Emergency Coal Lease Application on Public Land in Carbon and Emery Counties.

The Bureau of Land Management (BLM) intends to hold a public meeting concerning an application for coal leasing on public land under the "Emergency Leasing" provisions. The meeting is to provide the opportunity for the public to comment on and discuss the potential effects of mining the proposed leases, including impacts to the environment, other land uses, other economic activities, and community or regional services. Comments on the Fair Market Value and the Maximum Economic Recovery of the coal on the tracts under application will also be received.

The public meeting will be held at 7 p.m. on August 7, 1985 at the BLM office located at 900 North 700 East in Price, Utah. Written comments on Fair Market Value will be received through 30 days from the date of this notice.

A draft environmental assessment has been prepared by the Manti-LaSal National Forest which addresses the impacts of issuing an emergency coal lease applied for by Genwal Coal Company. The 278.16 acre tract (U–54762) is located on the Manti-LaSal National Forest in Carbon and Emery Counties approximately 5 miles west of Hiawatha, Utah. The coal would be mined from the existing Crandall Canyon Mine of Genwal Coal Company. The tract is described as follows:

T. 15 S., R. 7 E., SLM, Utah,
Sec. 31, SE¼SE¼;
Sec. 32, S½SW¼, SW¼SE¼.
T. 16 S., R. 7 E., SLM, Utah,
Sec. 5, Lots 2, 3, and 6.

Comments on Fair Market Value and Maximum Economic Recovery should address specific factors, including, but not limited to: the quantity and quality of the coal resource, the price that the mined coal would bring in the market place, the cost of producing the coal, the probable timing and rate of production, the interest rate at which anticipated income streams would be discounted, depreciation and other accounting factors, the expected rate of industry return and mining method. Documentation or similar market transactions, including location, terms and conditions, may also be submitted. Public comments will be utilized in establishing fair market value for the coal resources in the described lands as prescribed in 43 CFR 3422.1. Any proprietary information labeled as such and so stated on the first page of the submission will not be available to the public, if it meets exemptions in the Freedom of Information Act. Comments on Fair Market Value or Maximum Economic Recovery should be sent to the Utah State Director, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah, 84111–2303, and to the Deputy Minerals Manager—Resource Evaluation, Bureau of Land Management, Denver Service Center, Denver Federal Center, Denver, Colorado 80225, to arrive no later than 30 days of the date of this notice.

Additional information is available from the Moab District, P.O. Box 970, Moab, Utah 84532.

Kenneth V. Rhea,

Acting District Manager.

Dated: June 2, 1985.

[FR Doc. 85–15825 Filed 7–1–85; 8:45 am]

BILLING CODE 4310-DQ-M

[Serial No. I–16999 et al.]

Idaho; Order Providing for Opening of Public Land

In thirteen exchanges made under the provisions of Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following lands have been reconveyed to the United States:

Boise Meridian, Idaho

I–16999

T. 7 S., R. 40 E.,
Sec. 34, E½SE¼, SE¼NE¼;
Sec. 35, SW¼NW¼.
T. 8 S., R. 40 E.,
Sec. 3, SE¼NW¼, NE¼SW¼.

I–18530

T. 56 N., R. 2 E.,
Sec. 17, S½S½NW¼SE¼, SW¼SE¼;
Sec. 20, patented part of Almo No. 2 Lode of M.S. 3537 in the W½NE¼.

I–18951

T. 14 N., R. 21 E.,
Sec. 15, N½SW¼, SW¼SW¼, SE¼NW¼.

I–19307

T. 2 S., R. 18 E.,
Sec. 29, NW¼NE¼, E½NW¼, SW¼NW¼;
Sec. 30, S½NE¼, SE¼SW¼, N½SE¼, SW¼SE¼;
Sec. 31, W½NE¼, NE¼NW¼, N½SE¼, SE¼SE¼.
T. 3 S., R. 16 E.,
Sec. 5, SW¼NW¼;
Sec. 6, lots 1 and 7, E½SW¼, SE¼NE¼, N½SE¼;
Sec. 7, lot 1.

I–17821

T. 15 S., R. 26 E.,
Sec. 4, SE¼SW¼, S½SE¼;
Sec. 9, NE¼NE¼;
Sec. 10, N½NW¼, SE¼NW¼, SW¼NE¼.
T. 16 S., R. 26 E.,
Sec. 15, W½NE¼;
Sec. 23, NE¼NE¼.

I–18302

T. 8 S., R. 38 E.,
Sec. 23, SW¼NE¼, S½NW¼, NW¼SE¼;
Sec. 24, SE¼SW¼;
Sec. 25, N½NW¼;
Sec. 26, NE¼NE¼.
T. 9 S., R. 39 E.,
Sec. 17, E½SW¼.

I–13343

T. 2 N., R. 3 E.,
Sec. 10, NE¼NE¼SW¼, S½NW¼SE¼, E½SW¼SE¼;
Sec. 14, N½NW¼;
Sec. 15, N½NE¼NE¼, SE¼NE¼NE¼;
Sec. 23, N½NE¼NE¼;
Sec. 24, N½SW¼NW¼, NE¼NE¼SW¼, S½NE¼SE¼, N½NW¼SE¼, SW¼NW¼SE¼, SE¼SE¼.
T. 2 N., R. 4 E.,
Sec. 19, lot 4 except for 120 foot square parcel described as follows: Beginning at a point on the south line of section 19 from which the southwest corner of section 19 bears N 89°32'30" W. a

distance of 1146.15 ft.; from Point of beginning with metes and bounds S.89°32'30" E. 120.0 ft., N.0°27'30" E. 120.0 ft., N.89°32'30" W. 120.0 ft., S.0°27'30" W. 120.0 ft. to Point of Beginning;
Sec. 30, lots 1 and 2, W½SE¼NW¼, NE¼SW¼.

I–20304

T. 1 S., R. 20 E.,
Sec. 25, lot 2, NW¼SW¼.

I–18932

T. 1 S., R. 8 E.,
Sec. 6, lots 4 to 8 inclusive;
Sec. 15, lots 7 and 8;
Sec. 17, lots 1 to 6 inclusive, lots 9 and 10, SE¼NW¼, NW¼SE¼;
Sec. 18, lot 7;
Sec. 20, NE¼NE¼;
Sec. 21, NE¼NE¼, NW¼NW¼.

I–19496

T. 4 S., R. 43 E.,
Sec. 12, N½NW¼, W½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 13, NE¼, N½SE¼, SE¼SE¼, NE¼SW¼.
T. 4 S., R. 44 E.,
Sec. 18, lot 6;
Sec. 19, lot 1.

I–18849

T. 1 N., R. 40 E.,
Sec. 28, S½SE¼;
Sec. 29, N½NW¼;
Sec. 33, NE¼NE¼, SW¼NE¼, SE¼NW¼.

I–19537

T. 18 N., R. 24 E.,
Sec. 13, W½NE¼.
T. 18 N., R. 25 E.,
Sec. 18, SW¼SW¼.

I–20887

T. 1 N., R. 22 E.,
Sec. 20, SW¼NE¼, E½E½NW¼.

The area described contains 4,857.1 acres in Ada, Blaine, Bannock, Bonner, Bonneville, Camas, Caribou, Cassia, Custer, Elmore, Gooding, Lemhi, and Lincoln Counties, Idaho.

Subject to valid existing rights, provisions of existing withdrawals, and the requirements of applicable law, the following-described land is hereby open to operation of the public land laws, including the mining laws (Chap. 2, title 30 U.S.C.) and mineral leasing laws. All valid applications received at or prior to 9:00 a.m. on July 29, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Boise Meridian, Idaho

I–18536

T. 56 N., R. 2 E.,
Sec. 17, S½S½NW¼SE¼, SW¼SE¼;
Sec. 20, patented part of Almo No. 2 Lode of M.S. 3537 in the W½NE¼.

I–18951

T. 14 N., R. 21 E.,
Sec. 15, N½SW¼, SW¼SW¼, SE¼NW¼.

I–19367

T. 2 S., R. 16 E.,
Sec. 29, NW¼NE¼, E½NW¼, SW¼NW¼;
Sec. 30, S½NE¼, SE¼SW¼, N½SE¼, SW¼SE¼;
Sec. 31, W½NE¼, NE¼NW¼, N½SE¼, SE¼SE¼.
T. 3 S., R. 16 E.,
Sec. 5, SW¼NW¼;
Sec. 6, lots 1 and 7, E½SW¼, SE¼NE¼, N½NE¼;
Sec. 7, lot 1.

I–18302

T. 8 S., R. 38 E.,
Sec. 23, SW¼NE¼, S½NW¼, NW¼SE¼;
Sec. 24, SE¼SW¼;
Sec. 25, N½NW¼;
Sec. 26, NE¼NE¼.

I–13343

T. 2 N., R. 3 E.,
Sec. 10, NE¼NE¼SW¼, S½NW¼SE¼, E½SW¼SE¼;
Sec. 14, N½NW¼
Sec. 15, N½NE¼NE¼; SE¼NE¼NE¼;
Sec. 23, N½NE¼NE¼;
Sec. 24, N½SW¼NW¼, NE¼NE¼SW¼, S½NE¼SE¼, N½NW¼SE¼, SW¼NW¼SE¼, SE¼SE¼.
T. 2 N., R. 4 E.,
Sec. 19, lot 4 except for 120 foot square parcel described as follows: Beginning at a a point on the south line of section 19 from which the southwest corner of section 19 bears N.89°32'30" W. a distance of 1146.15 ft.; from Point of Beginning with metes and bounds S.89°32'30" E. 120.0 ft., N.0°27'30" E. 120.0 ft. N.89°32'30" W. 120.0 ft., S.0°27'30" W. 120.0 ft. to Point of Beginning;
Sec. 30, lots 1 and 2, W½SE¼NW¼, NE¼SW¼.

I–20204

T. 1 S. R. 20 E.,
Sec. 25, lot 2, NW¼SW¼.

I–18932

T. 1 S., R. 8 E.,
Sec. 6, lots 4 to 8 inclusive;
Sec. 15, lots 7 and 8;
Sec. 17, lots 1 to 6 inclusive, lots 9 and 10, SE¼NW¼, NW¼SE¼;
Sec. 18, lot 7;
Sec. 20, NE¼NE¼;
Sec. 21, NE¼NE¼, NW¼NW¼.

I–19406

T. 4 S., R. 43 E.,
Sec. 12, N½NW¼, W½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼.
Sec. 13, NE¼, N½SE¼, SE¼SE¼, NE¼SW¼.

I–19537

T. 18 N. R. 24 E.,
Sec. 13, W½NE¼.
T. 18 N., R. 25 E.,
Sec. 18, SW¼SW¼.

I–20887

T. 1 N., R. 22 E.,
Sec. 20, SW¼NE¼, E½E½NW¼.

Subject to valid existing rights, the provisions of existing withdrawals, and the requirement of applicable law, the land described below is hereby open to operation of the public land laws, but not the mining laws. All valid applications received prior to 9:00 a.m. on July 29, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Boise Meridian, Idaho

I–18999

T. 7 S., R. 40 E.,
Sec. 34, E½SE¼, SE¼NE¼;
Sec. 35, SW¼NW¼.
T. 8 S., R. 40 E.,
Sec. 3, SE¼NW¼, NE¼SW¼.

I–17821

T. 15 S. R. 28 E.,
Sec. 4, SE¼SW¼, S½SE¼;
Sec. 9, NE¼NE¼;
Sec. 10, N½NW¼, SE¼NW¼, SW¼NE¼.
T. 16 S., R. 28 E.,
Sec. 15, W½NE½;
Sec. 23, NE¼NE¼.

I–19496

T. 4 S. R. 44 E.,
Sec. 18, lot 6;
Sec. 19, lot 1.

I–18849

T. 1 N., R. 40 E.,
Sec. 28, S½SE¼;
Sec. 29, N½NW¼;
Sec. 33, NE¼NE¼, SW¼NE¼, SE¼NW¼.

Inquires concerning the lands should be addressed to the Chief, Realty Operations Section, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: June 24, 1985.

William E. Ireland,

Chief, Realty Operations Sections.

[FR Doc. 85–15824 Filed 7–1–85; 8:45 am]

BILLING CODE 4310–GG–M

[5–17440]

Sale of Public Lands—Los Angeles and San Diego Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Direct Sales of Public Land: Los Angeles County and San Diego County, California.

SUMMARY: The following described public lands have been examined and found suitable for disposal by direct sale at the appraised market value pursuant to Sections 203 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713). The lands will not be offered for sale until 60 days after the date of this notice.

Parcel No.	Serial No.	Legal description	Acres	Appraised value
LA-1	CA17297	T.5N., R.17W., SBM; Sec. 28: NW¼NW¼ Sec. 29: N½NE¼	120.00±	$3,000
SD-2	CA17298	T.12S., R.1W., SBM; Sec. 2: Lot 7	37.67±	26,000
SD-3	CA17299	T.12S., R.1W., SBM; Sec. 14: S½SE¼, NW¼SE¼,SW¼NE¼ Sec. 23: N½NE¼ Sec. 24: E½NW¼ T.12S., R.1E., SBM; Sec. 18: SE¼NW¼, NE¼SW¼	400.00±	332,000
SD-4	CA17300	T.10S., R.2W.,SBM; Sec. 19: NW¼NE¼	40.00±	100,000
SD-5	CA17301	T.11S., R.3W.,SBM; Sec. 9: Lot 19	16.35±	68,000
SD-6	CA17302	T.16S., R.1E., SBM; Sec. 34: Lots 18 & 19	1.06±	110
SD-7	CA17303	T.18S., R.7E., SBM; Sec. 5: SW¼NW¼, NW¼SW¼ Sec. 6: S½NE¼, E½SE¼ Sec. 7: E½NE¼, NW¼NE¼, E½NW¼, E½SE¼, SW¼SE¼ Sec. 8: W½SW¼ Sec. 17: Lots 5-8, N½NE¼, N½NW¼ Sec. 18: NE¼	1,049.77	50,000

Purpose: The purpose of these sales is to dispose of public lands which because of location, lack of administrative access and/or existing private residential developments in the areas, make them difficult and uneconomic to manage as part of the public lands and are not suitable for management by another federal agency or department. The public interest will be well served by offering these lands for sale. Because of the need to recognize historic use, access and land ownership patterns, the lands described above will be sold by direct sale, to the following parties:

Parcel LA–1 will be sold to Mr. Ben Gilmour, 30316 Gilmour Road, Saugus, California 91350.

Parcel SD–2 will be sold to Mr. Terry S. La Grone, 1909 David Drive, Escondido, California 92026.

Parcel SD–3 will be sold to the Recife Realty Company N.V., Inc., 555 Madison Avenue, New York, New York 10022.

Parcel SD–4 will be sold to Mr. James Boyd, 9360 West Lilac Road, Escondido, California 92125.

Parcel SD–5 will be sold to San Marcos County Water District, 788 San Marcos Blvd., San Marcos, California 92069.

Parcel SD–6 will be sold to the Nature Conservancy, 156 Second Street, San Francisco, California 94105.

Parcel SD–7 will be sold to Alexander Haagen III, 3500 Sepulveda Blvd, Manhattan Beach, California 90266.

Publication of this notice in the **Federal Register**, segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect shall terminate upon issuance of a patent, 270 days from the date of publication, whichever occurs first.

The lands described above have no known mineral values except for Parcel LA–1. conveyance of the available mineral interests will occur simultaneously with the sale of the surface estate. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests, and in addition to the purchase price, a $50 nonrefundable filing fee must be paid as required by section 209 of the Act of October 21, 1976 (43 U.S.C. 1719).

The designated purchasers shall submit a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior, BLM for not less than 10% of the appraised value of the California Desert District, 1695 Spruce Street, Riverside, California 92507, by 10:00 a.m. on September 4, 1985. The payment shall be enclosed in a sealed envelope clearly marked as follows:

"PUBLIC LAND SALE—DIRECT SALE NO. 2" (Parcel and Serial No.) September 4, 1985

The remainder of the full purchase price shall be submitted within 60 days from the sale date. Failure to submit the balance of the full purchase price within the above specified time limit shall result in cancellation of the sale and the deposit shall be forfeited. The land will then be offered competitively.

The authorized officer may refuse to accept an offer and withdraw a given parcel from sale, if he determines that consummation of the sale would be inconsistent with the provisions of any existing law, or consummation of the sale would encourage or promote speculation in public lands.

The terms and conditions applicable to the sale are:

1. All patents will reserve to the United States a right-of-way for ditches or canals constructed by the authority of the United States; Act of August 30, 1890 (43 U.S.C. 945).

2. The patent for Parcel LA–1 will reserve the oil and gas to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM Office.

3. The patent for Parcel LA–1 will reserve those rights granted to the lessee of oil and gas lease, CA 16339, under the terms and conditions of the Act of February 25, 1920 (30 U.S.C. 181, as amended).

4. The patent for Parcel SD–7 will reserve to the United States those rights for a fuel break/access road to the State of California, Division of Forestry under the authority of 44LD 513; Grant No. R–433.

5. The patent for Parcel SD–7 will be subject those rights for railroad purposes as have been granted to the San Diego and Arizona Railroad Company under the Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934–939); Grant No. EC–05267.

6. The patent for Parcel SD–7 will be subject to those rights for power transmission purposes as have been granted to the San Diego Gas and Electric Company under the Act of October 21, 1976 (43 U.S.C. 1761–71); grant no. CA–5865.

2. MINING CLAIMS:

The purchaser of Parcel SD–7 by accepting this land patent, further acknowledges that the property is encumbered by mining claims filed pursuant to the mining laws of the United States (20 U.S.C. 21 et. seq.) The conveyance of the property by this land patent is made subject to those claims, detailed below, and to any and all rights that the Holder thereof may have pursuant to the laws of the United States and the State of California.

The purchaser, by accepting this land patent further acknowledges that the rights of the Holder of said mining claims include the right to continue to prospect for mine, and remove locatable minerals under applicable law; the right to obtain a mineral patent to both surface and mineral estates within the mining claim if valid discovery was made prior to the date of the FLPMA patent, or the right to obtain patent to the mineral estate only if discovery is made subsequent to the patent. The United States of America by this conveyance does not intend to preclude the patentee, herein from challenging the

validity of any mining claim or other encumbrance located on the land conveyed. The purchaser, by accepting this land patent, will hereby waive any liability against the United States in the event of subsequent title litigation.

Mining Claims of Record: CAMC No. 25890 and 25891, Placer Claims, Claimant—June Byars.

Detailed information concerning the sales, including the environmental analysis and land report are available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

For a period of 45 days from the date publication of this notice in the Federal Register, interested parties may submit comments to the District Manager at the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: June 25, 1985.

H.W. Riecken,

Acting District Manager.

[FR Doc. 85-15878 Filed 7-1-85; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received the National Park Service before June 22, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 17, 1985.

Carol D. Shull,

Chief of Registration National Register.

CALIFORNIA

Los Angeles County

Los Angeles, *Montecito Apartments*, 6650 Franklin Ave.

San Joaquin County

Tracy, *Bank of Italy*, 628 Central Ave.

San Mateo County

Woodside, *Woodside Store*, 471 Kings Mountain Rd.

INDIANA

Tippecanoe County

Battle Ground, *Battle Ground Historic District*, Roughly bounded by Burnett Creek, Sherman Dr. and an open ridge on the SE

IOWA

Dubuque County

Dubuque, *Cathedral Historic District*, Roughly bounded by a bluffline running W. of Bluff St., W. 7th.

Greene County

Jefferson, *Gallup, George H., House*, 703 S. Chestnut St.

Keokuk County

Harper vicinity, *Saints Peter and Paul Roman Catholic Church*, SE of Harper

KENTUCKY

Campbell County

Dayton, *Dayton High School*, Eight & Walnut Sts.

LOUISIANA

Avoyelles Parish

Hamburg, *Lemoine, Thomas A., House*, LA 451

Moreauville, *Lemoine, Thomas A., House*, LA 451

Caddo Parish

Shreveport, *Shreveport Woman's Department Club Building*, 802 Margaret Pl.

Iberville Parish

Plaquemine, *Gay, Andrew H., House*, 1010 McDuffie St.

Jefferson Parish

Kenner, *Felix-Block Building*, 303 Williams Blvd.

Rapids Parish

Alexandria, *Overton, Senator John H., House*, 1128 8th St.

Kolin, *Welcek Farmstead*, LA 107

Tangipahoa Parish

Loranger vicinity, *Zemurray Lodge (Boundary Increase)*, LA 40

Webster Parish

Minden, *Drake House*, 1202 Broadway

MASSACHUSETTS

Bristol County

Attleboro, *Makepeace, D. E., Company*, 46 Pine St.

Essex County

Lynn, *Newhall, Lucian, House*, 281 Ocean St.

Middlesex County

Lincoln, *Lincoln Center Historic District*, Bedford, Lincoln, Old Lexington, Sandy Pond, Trapelo & Weston Rds.

Norfolk County

Brookline, *Richmond Court*, 1209–1217 Beacon St.

MISSISSIPPI

Pearl River County

Sharkey County

Dowling Bayou Archaeological Complex

NEVADA

Carson County

Carson City vicinity, *Stewart Indian School*, S. of Carson off US 395

NEW JERSEY

Passaic County

Little Falls, *Speer, Reynier, House*, 612 Upper Mountain Ave.

Sussex County

Newton, *Hill Memorial* 82 Main St.

NEW YORK

Allegany County

Alfred, *Alfred Village Historic District*, Sections of N. & S. Main, Church, Ford, Glenn, Park, Sayles, Terrace & W. University Sts.

Nassau County

East Williston, *East Williston Village Historic District*, Roughly bounded by E. Williston Ave., Roslyn Rd., Atlanta Ave. and Village Green.

Wayne County

Pultneyville, *Pultneyville Historic District*, Sections of Lake Rd. and Jay St.

NORTH CAROLINA

Montgomery County

Site 31 Mg22

PENNSYLVANIA

Adams County

East Berlin, *East Berlin Historic District*, Portions of King, Harrisburg and Abbottstown, St.

Allegheny County

Natrona, *Pennsalt Historic District*, Roughly bounded by Federal, Penn & Pond Sts., Philadelphia and Blue Ridge Aves.

Pittsburg, *Alpha Terrace Historic District*, 716–740 and 721–743 N. Beatty St.

Wilkinsburg, *Pennsylvania Railroad Station-Wilkinsburg*, Hay St. at Ross Ave.

Bedford County

Bedford Borough vicinity, *Chalybeate Springs Hotel*, Chalybeate Rd.

Berks County

Reading, *Meinig Glove Factory-Meinig, E. Richard, Co.*, 612–632 and 621–641 McKnight St.

Bucks County

Bristol, *Jefferson Avenue School*, Jefferson Ave. & Pond St.

Montgomery County

Abingdon, *Abingdon Township High School*, 1801 Susquehanna Rd.

Westmoreland County

East Huntingdon Township, *West Overton Historic District*, Frick Ave.
New Kensington, *Byerly House*, 115 Monk Rd.

TENNESSEE

Maury County

Culleoka vicinity, *Booker, Merritt H., House*, Scott Hollow Rd.

TEXAS

Dimmit County

Catarina vicinity, *Valenzuela Ranch Headquarters*, Valenzuela Creek.

Jefferson County

Port Arthur, *Port Arthur Federated Women's Clubhouse*, 1924 Lakeshore Dr.

WISCONSIN

La Crosse County

Swennes Archaeological District

Ozaukee County

Cedarburg, *Washington Avenue Historic District*, Roughly bounded by Elm, Cedar Creek, Hamilton Rd. and Washington Ave.

[FR Doc. 85-15844 Filed 7-1-85; 8:45 am]
BILLING CODE 4310-70-M

Wilson's Creek National Battlefield; Insignia Prescription

I hereby prescribe the Wilson's Creek National Battlefield "MISSOURI STATE GUARDSMAN" symbol, which is depicted below, as the official insignia of Wilson's Creek National Battlefield, a unit of the National Park System, United States Department of the Interior.

In making this prescription, I give notice that, under Section 701 of Title 18 of the United States Code, whoever, manufacturers, sells, or possesses any badge, identification card, or other insignia of the design herein prescribed, or any colorable imitation thereof, or photographs, prints, or in any manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined not more than $250 or imprisoned not more than six months, or both.

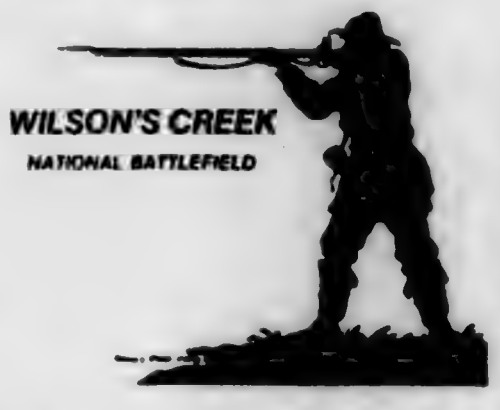
Notice is hereby given that in order to prevent proliferation of the distinctive "MISSOURI STATE GUARDSMAN" Insignia, and to assure against its use for purposes other than marking the tour road, marking interpretive exhibits and informational literature for battlefield visitors, and those purposes which, in the determination of the National Park Service, are consistent with the purpose for which the battlefield was established, the National Park Service will proceed to secure trademark registration under section 1115 of Title 15 of the United States Code for the Wilson's Creek National Battlefield "MISSOURI STATE GUARDSMAN" Insignia.

Dated: June 25, 1985.

Randall R. Pope,

Acting Regional Director, Midwest Region.

Wilson's Creek National Battlefield "MISSOURI STATE GUARDSMAN" symbol, as follows:



[FR Doc. 85-15842 Filed 7-1-85; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. MC-F-16372]

Burlington Northern Inc.—Control Exemption—Monkem Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Burlington Northern Inc. (BNI), a noncarrier holding company which controls Burlington Northern Railroad Company (BNRR), a class I railroad, Burlington Northern Motor Carriers (BNMC), a wholly-owned noncarrier subsidiary of BNI, and Monkem Company, Inc. (Monkem) a motor carrier subject to Commission regulation, have filed a petition for exemption under 49 U.S.C. 11343(e) in connection with an agreement between BNMC and Monkem under which Monkem would become a wholly-owned subsidiary of BNMC. As a result of the transaction BNI would control two common carriers: Monkem and BNRR. Acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers may be carried out only under Commission regulation or under an exemption from regulation. *See* 49 U.S.C. 11343(a)(5) and 11343(e).

DATES: Comments must be received by July 22, 1985.

ADDRESSES: Send comments (an original plus 10 copies) referring to Docket No. MC-F-16372 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Hebert J. Martin, Esq., Crowell & Moring, 1100 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: BNI, BNMC, and Monkem seek exemption under 49 U.S.C. 11343(e) and the Commission's regulation in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemption Filed by Motor Carriers of Property Under 49 U.S.C. 11343, 367 I.C.C. 113 (1983)*, 47 FR 53303 (November 24, 1982).

A copy of the petition may be obtained from petitioners' representative, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: June 26, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-15812 Filed 7-1-85; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-90X)]

Southern Pacific Transportation Co.—Abandonment Exemption—In Yuba County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 1903, *et seq.*, the abandonment by the Southern Pacific Transportation Company of 3.82 miles of track between Berg (milepost 144.42) and Yuba City (milepost 148.24), in Yuba County, CA, subject to standard labor protective conditions.

DATES: This exemption will be effective on August 1, 1985. Petitions to stay must be filed by July 12, 1985, and petitions for reconsideration must be filed by July 22, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB–12 (Sub-No. 90X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: June 24, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–15813 Filed 7–1–85; 8:45 am]

BILLING CODE 7035–02–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under OMB Review

June 27, 1985.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Pub. L. 96–511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the items contained in this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633–4312

- Reinstatement of a previously approved collection for which approval has expired

(1) Larry E. Miesse, 202/633–4312
(2) Federal Bureau of Investigation, Department of Justice
(3) Age, sex, race and ethnic origin of persons arrested
(4) DO–62/62a
(5) Monthly
(6) State and local governments. Needed to collect information regarding number of persons arrested by law enforcement agencies throughout the United States. Data are published in comprehensive annual "Crime in the United States."
(7) 1,371 respondents
(8) 8,226 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

- Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

(1) Larry E. Miesse, 202/633–4312
(2) Federal Bureau of Investigation, Department of Justice
(3) Return A—Monthly return of offenses known to the police
(4) DO–65/65a
(5) Monthly
(6) State or local governments. Needed to collect information regarding crimes and crimes-cleared throughout the United States. Data are published in comprehensive annual "Crime in the United States" and semiannual "Uniform Crime Reports."
(7) 1,481 respondents
(8) 8,886 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—393–4814
(1) Larry E. Miesse, 202/633–4312
(2) Federal Bureau of Investigation, Department of Justice
(3) Supplement to Return A—Monthly return of offenses known to the police
(4) DO–57/57a
(5) Monthly
(6) State or local governments. Needed to collect information regarding the value of property stolen and recovered throughout the United States. Data are published in comprehensive annual "Crime in the United States."
(7) 1,481 respondents
(8) 8,886 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—393–4814

Larry E. Miesse,

Agency Clearance Officer.

[FR Doc. 85–15064 Filed 7–1–85; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Consent Decree Judgment; United States v. Newell Companies, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below the two comments it received on a proposed consent decree judgment in *United States* v. *Newell Companies, Inc.*, Civil Action No. N–82–305 (PCD), United States District Court for the District of Connecticut, together with the response of the United States to those comments.

Copies of the response and two public comments are available on request for inspection and copying in Room 7233, Legal Procedure Unit, Department of Justice, Washington, D.C., and for inspection at the Offices of the Clerk of the United States District Court for the District of Connecticut, in Hartford.

Joseph H. Widmar,

Director of Operations Antitrust Division.

U.S. District Court District of Connecticut

United States of America, Plaintiff, v. *Newell Companies, Inc.*, Defendant.

[Civ. No. N 82–305 (PCD)]

Plaintiff's Response to the Comments of Thomas S. Taydus and Milton R. Aucoin

Plaintiff United States of America respectfully submits its response to the comments of Thomas S. Taydus and Milton R. Aucoin.

I. Introduction

On June 14, 1982, the United States filed a civil antitrust complaint alleging that the April 1981 acquisition of the Stanley Drapery Hardware Division of The Stanley Works by Newell Companies, Inc. ("Newell") violated section 7 of the Clayton Act, 15 U.S.C. 18. The complaint alleges that the effect of the acquisition may be substantially

to lessen competition in the manufacture and sale of drapery hardware in the United States. The complaint seeks the divestiture of the acquired business. Since the acquisition, Newell has operated the acquired business under the trade name Judd Drapery Hardware ("Judd").

On April 4, 1985, the United States filed with the Court a stipulation and proposed Final Judgment and a competitive impact statement. Because this is a civil antitrust action in which the United States is the plaintiff, the proposed consent judgment cannot be entered until the parties have complied with the requirements of section 2 of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), and the Court has determined that entry of the proposed Final Judgment is in the public interest.

The steps taken by the parties to comply with the Act are set out in the accompanying Certificate of Compliance with the Antitrust Procedures and Penalties Act. The stipulation, proposed Final Judgment, and competitive impact statement were published in the Federal Register on April 10, 1985. Summaries of those documents were published in The Washington Times on April 8–12 and 15–16, 1985, and in The Hartford Courant on April 9–15, 1985. The competitive impact statement and the newspaper notices invited members of the public to comment on the proposed Final Judgment, in accordance with 15 U.S.C. 16 (c), (d). Newell filed the statement required by 15 U.S.C. 16(g) on April 16, 1985.

The comment period required by 15 U.S.C. 16(c) expired on June 10, 1985. The government received only two comments during that period. They were submitted by Thomas S. Taydus [1] and Milton R. Aucoin.[2] The comments and the government's response have been submitted to the Federal Register for publication.

The parties have fulfilled their duties under the Antitrust Procedures and Penalties Act. The United States has carefully considered the comments submitted by Mr. Taydus and Mr. Aucoin and concluded that they do not warrant withdrawal of its consent to entry of the proposed Final Judgment. Thus the Court may enter the proposed Final Judgment if it finds the settlement to be in the public interest.

II. The Court's Public Interest Determination

Before making our specific response we briefly consider the applicable legal standard in this proceeding. The Antitrust Procedures and Penalties Act ("APPA" also referred to as the "Tunney Act"), 15 U.S.C. 16(b)–(h), clearly provides that the public interest is the relevant consideration in a case such as this. The governing provision, 15 U.S.C. 16(e) reads in full as follows:

(e) Public interest determination—
Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—
(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

In addressing the duties imposed by section 16(e), the Court must balance two considerations—the need to review the proposed judgment and the competing need to preserve the negotiated consent decree as a viable means of settling antitrust cases. Since the APPA was enacted in December 1974, there have been a number of decisions dealing with this balance, and certain principles have been clearly and consistently established.

First, the courts have fully recognized that an important goal of the Tunney Act was to ensure that the courts would be more than mere "rubber stamps," entering consent judgments with no examination of their results and no ventilation of the process that produced them. *See United States* v. *American Telephone and Telegraph Co.*, 552 F. Supp. 131, 148–49, 151 (D.D.C. 1982). To this end, the Act requires that the provisions of the proposed decree be explained by the Department of Justice, that the decree and the explanation be published, that interested third parties be permitted to tender comments, that the defendant reveal all non-attorney contacts with the government concerning the decree and that the Court make a specific "public interest" determination.

At the same time, the courts have taken care to emphasize that the Act does not require, and Congress did not intend, that a court replace the Department's judgment with its own, or with settlements proposed by third parties. It is, after all, the Department which is charged with enforcing the antitrust laws and protecting the public interest, a responsibility of which the Department was not relieved by the APPA:

> The APPA codifies the case law which established that the Department of Justice has a range of discretion in deciding the terms upon which an antitrust case will be settled. *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508 at 71,980 (W.D. Mo. 1977) (citations omitted).
>
> Preliminary negotiation over the content of the proposed final judgment is a function vested in the government in the first instance. *United States* v. *Strah Brewery Co.*, 1982–2 Trade Cas. ¶ 64,804 at 71,980 (D.D.C. 1982).
>
> In federal antitrust litigation, it is the United States, not private parties, which "must alone speak for the public interest." * * * Congress has vested in the United States the duty to protect the public interest. Any disagreement with the wisdom of the United States' decision concerning the adequacy of proposed relief does not indicate representation of the public interest. For these reasons, the courts have consistently denied intervention to private parties whose views about the proper terms for an antitrust settlement differed from those of the United States. *United States* v. *G. Heileman Brewing Co., Inc.*, 563 F. Supp. 642, 648 (D. Del. 1983) (citations omitted).
>
> The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. * *. * The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. *United States* v. *Bechtel Corp.*, 648 F.2d 660,666 (9th Cir. 1981) (citation omitted).

In recognition of the continuing role of the Department as the primary representative of the public interest, the courts have concluded that their discretion must necessarily be limited. Judge Harold Greene, in connection with the *AT&T* settlement, made the folowing obaervations:

> Where, as here, a court is evaluating a settlement, it is not as free to exercise its discretion in fashioning a remedy as it would be upon a finding of liability. * * * If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgement and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as a antitrust enforcement tool, despite Congress' directive that it be preserved. *See* S. Rep. No. 93–298, *supra*, at 6; H.R. Rep. No. 93.1463, *supra*, at 6.
>
> It follows that a lower standard of review must be applied in assessing proposed consent decrees than would be appropriate in other circumstances. H.R. Rep. No. 93–1463, *supra*, at 12. For these reasons, it has been said by some courts that a proposed decree must be approved even if it falls short of the

[1] Attached as Exhibit 1 to this document.
[2] Attached as Exhibit 2 to this document.

remedy the court would impose on its own, as long as it falls within the range of acceptability or is "within the reaches of public interest." * * * Although these decisions are not necessarily binding, this Court will follow a similar approach. *United States* v. *American Telephone and Telegraph Co., supra* at 151 (citations omitted).

A comprehensive analysis was undertaken by Judge Aldrich in one of the seminal decisions in this area:

Fear has been expressed that the act's "elaborate procedure * * * will prove counterproductive and may, indeed, undermine [by placing too great obstacles on the consent process] effective enforcement of our antitrust laws." * * * Courts' involvement in preventing potential harm to competition can become excessive. * * * I agree that in terms of the important role of the consent decree in antitrust procedure, too much tillage can destroy the garden.

Nor do I think Congress had, in fact, any contrary intention. The Senate Judiciary Committee reported that a high percentage of government antitrust actions are settled prior to trial, and recognized that the consent decree process was a "legitimate and integral part of antitrust enforcement." S. Rep., *ante*, at 3, 5. "Obviously, the consent decree is of crucial importance as an enforcement tool, since it premits the allocation of resources elsewhere." S. Rep. at 5. "[T]he Committee wishes to retain the consent judgment as a substantial antitrust enforcement tool." S. Rep. at 7. "The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24598 (1973). *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975) (citations omitted).

The review called for by Congress requires the Court to receive and evaluate comments and proposals submitted by interested third parties. It does not, however, require the Court to give deference to such proposals:

All of the foregoing issues and conflicting conditions relating thereto have been considered by the Court; each contention has been weighed on the scale of whether it tilts for or against "the public interest"; each has been considered in light of the special interest of the respective proponents thereof. None of the proponents strikes the Court as an advocate for "the public interest." Although each proponent has been of assistance to the Court in its consideration of "the public interest," none has offered a solution that meets "the public interest." The government in its role as protector of "the public interest" appears to have accomplished an acceptable result." *United States* v. *National Broadcasting Co., Inc.*, 449 F. Supp. 1127, 1141 (C.D. Cal. 1978).

See also United States v. *Mid-America Dairymen, Inc., supra* at 71,979–80; *United States* v. *Agri-Mark, Inc.*, 512 F. Supp. 737, 739 (D. Vermont 1981).

These principles were clearly affirmed by the court in the *Stroh Brewery* and *LTV Steel* litigation. In *Stroh*, the court, after reviewing the purposes of the Tunney Act, took note of the importance of consent decrees to effective antitrust enforcement and then adopted the *Gillette* standard of review:

Therefore, our function in reviewing antitrust consent decrees, as Senior Circuit Judge Baily Aldrich has stated in an oft-quoted opinion, is: "not . . . to determine whether this is the best possible settlement that could have been obtained if, say, the government had bargained a little harder. The Court is not settling the case. It is determining whether the settlement is within the reaches of the public interest. Basically . . . [we] must look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass."

* * * * *

Although we have authority to scrutinize consent decreess under the Tunney Act, the power to negotiate the terms of any particular consent decree is lodged in the Executive Branch. *United States v. Stroh Brewery Co.*, Civil Action No. 82–1059, slip op. at 4 (D.D.C. Nov. 10, 1982) (unpublished opinion by Judge Pratt). (citations omitted)

In *United States v. LTV Corp.*, 1984–2 Trade Cas.¶ 66,133 (D.D.C. 1984) the court discussed the appropriate standard of review.

The public interest is to be determined in the context of the anti-trust laws whose fundamental premise is the protection and safeguarding of free competition. The effect on competition of the proposed settlement is of paramount importance in the determination which we are required to make. Other factors, however, enter into the calculus. Any remedy should be framed with a view to causing the least possible injury to interests of the general public and relevant private interests. The court should consider the impact of the remedy in relation to other important public policies and avoid any unnecessary conflict or friction. It is not free, in making its public interest determination, to decide whether the settlement is the best that could have been reached or, if not, to substitute its own separate notions as to the proper remedy.

* * * * *

It is in light of this background that this court has considered the foregoing submissions and makes the following determination, as to whether the proposed settlement is "within the reaches of public interest." Id. at 66,342.

The United States has concluded, after considering the two comments filed in this matter, that the proposed Final Judgment is fully consistent with the public interest. The record now before the Court supports that conclusion. We therefore urge that the Court enter the proposed Final Judgment.

III. Response to Comments

Thomas S. Taydus is the current Account Executive for the Eastern Region for Judd. Mr. Taydus states in his comment that the proposed settlement is not good for either the employees of Judd or the consuming public. However, Mr. Taydus' comment is devoted mainly to assertions that Newell has violated the Hold Separate Order, entered by the Court on August 17, 1982. The purpose of these proceedings is to consider the adequacy of the proposed Final Judgment, not to determine whether there has been a violation of the Hold Separate Order. Thus, to the extent that Mr. Taydus' objection to the proposed Final Judgment is based on his conclusion that Newell has violated the Hold Separate Order, this objection is inappropriate.

Mr. Taydus does allege that the drapery hardware industry is more concentrated now than at the time of the acquisition, and asks what effect the proposed Final Judgment will have on that concentration. The United States responds that even assuming the drapery hardware market has become more concentrated, it would clearly be in the public interest at this time for Judd to be divested and reestablished as an independent competitor, with the expectation that the market would thereby become less concentrated. The proposed Final Judgment requires Newell to divest all of its ownership in, and control over Judd, within 180 days of the entry of the Final Judgment, to a purchaser who intends to operate Judd as a viable and ongoing business engaged in the manufacture and sale of drapery hardware. In order to ensure that divestiture will be effected in an expeditious manner, the parties have agreed that divestiture shall be accomplished through an independent broker previously selected by the parties. The independent broker has already commenced efforts to effect divestiture, and has contacted potential purchasers, some of whom have shown an interest in Judd. Thus, the United States believes that the way to deconcentrate the drapery hardware industry is by Newell's divestiture of Judd, which the proposed Final Judgment contemplates.

Mr. Taydus alleges throughout his comment that the United States has failed to investigate adequately claims of Newell's actions regarding the Hold Separate Order. That allegation is unfounded. In an effort to assure Newell's compliance with the terms of the Hold Separate Order, the United States took the following actions, among others: (1) The depositions of seven employees of Newell and Judd were taken; (2) Newell responded to both formal and informal interrogatories and

a request for documents; (3) all of Judd's current salesmen were interviewed, as were two of Judd's former salesmen; and (4) eight former and current Judd customers were interviewed. The United State has investigated and analyzed all of the information that it has received relating to possible violations of the Hold Separate Order and has determined that there is no justification for delaying the Court's entry of the proposed Final Judgment. Indeed, even if Newell did violate the provisions of the Hold Separate Order, the proper remedy would be a finding of contempt against Newell, not a rejection of the proposed Final Judgment.

The comment of Milton R. Aucoin, a former Judd salesman, makes the argument that it will now be more difficult to sell Judd because of the sales volume it lost. Although unstated, the implicit premise of Mr. Aucoin's comment is that Newell violated the Hold Separate Order and consequently, does not address the merits of the proposed Final Judgment. As such, it provides no basis upon which the Untied States would conclude that its consent to entry of the Final Judgment should be withdrawn.

IV. Conclusion

The United States has given careful attention to the two comments submitted in this case and concludes that the entry of the proposed Final Judgment is in the public interest. We therefore urge the Court, after consideration of the comments and the responses thereto, to enter the Final Judgment.

Dated: New York, New York, June 20, 1985.

Respectfully submitted,

Lowell L. Jacobs,

Martha E. Gifford,

Geoffrey Swaebe, Jr.,

Belinda L. Johnson,

Attorneys, Department of Justice Antitrust Division 29 Federal Plaza, Room 3630 New York, New York 10278 (212) 264–0659.

Exhibit 1

30 Bedard Avenue, Derry, New Hampshire 03038

May 27, 1985.

Mr. Ralph T. Giordano,

Chief, New York Field Office, Antitrust Division, Department of Justice, 26 Federal Plaza, Room 3630, New York, New York 10278

Dear Mr. Giordano: I am exercising my right to comment on the proposed Final Judgment of the United States vs Newell Companies, Inc. as published in the Federal Register, Vol. 50, No. 69, dated April 10, 1985. I am an employee of Judd Drapery Hardware and have been since July, 1970. I have a AS Degree in Engineering, a BS Degree in Management, and an MBA in Marketing and Management. I am presently the Account Executive for the Eastern Region.

The papers filed with the court do not address the fact that Judd Drapery Hardware's sales have gone from over $21,000,000 in 1982 to (a projected figure of) less than $3,000,000 for 1985. In fact, Judd's sales are so low I doubt that we are even covering our overhead. Our market share has decreased from 7.48% in 1980 to less than 2% today. A great majority of the accounts we lost were to Newell Drapery Hardware. In fact, I'll bet the only new business Newell Drapery Hardware acquired the last two years were Judd accounts.

Newell has violated the court order to *hold Judd separate from its other operations and to refrain from certain conduct that could impair Newell's ability to sell Judd as a separate, ongoing business enterprise.* I submit these violations were accomplished through a conspiracy between Cory Johnson, Judd's former president, and the management of Newell companies, to include Dan Ferguson and Bob Gilbert. I further submit that the Justice Department has failed to fully investigate Mr. Johnson's actions and Newell managements actions with respect to these illegal actions.

Newell ordered our former president, Cory Johnson, to let the S.E. Nichols Discounts Stores fall to Newell Drapery Hardware. Mr. Johnson, in turn, ordered Mr. Jerry McWeeny, our former Vice President of Sales, and Mr. Jim Guerin, our Eastern Regional Manager, to not make a counter offer (to Newell's) and to let Nichols fall to Newell. When Jim Guerin tried to make an appointment with the Nichol's buyer to discuss their switching to Newell, he was told by the buyer, Derick Pierce, that Newell had stated that he and Jerry McWeeny would not be allowed to make a counter offer. I informed Lowell Jacobs of the Justice Department of this illegal action more than two years ago and *to this day neither Mr. McWeeny nor Mr. Guerin has been questioned about this incident.* Could this be a case of "Conscious Parallelism" among Mr. Johnson, the Nichol's buyer, and Newell's management? It is my understanding that this is illegal as so declared in such cases as Interstate Circuit vs United States, 306 U.S. 208 (1939). Did the Justice Department apply the "Interstate formula" when they investigated (if they did) what Newell told Cory Johnson, Jerry McWeeny, Jim Guerin, and the Nichol's buyer?

I have questioned the remaining sales force and no one can cite one instance where Cory Johnson ever tried to keep an account from switching from Judd Drapery Hardware. In fact, he told me and other members of the sales force on several occasions that "if we must lose an account, I am glad it has gone to Newell." Now, we have discovered that Mr. Johnson was acting as a sales agent for Newell while he was still president of Judd.

Early this year, we lost the Liberty Distributors Group of DesPlaines, Illinois to Newell. Bob Grant, the Central Regional Manager, spoke with Don McDermitt of the Liberty Group about their switching from Judd to Newell. Mr. McDermitt stated that Mr. Johnson had convinced him that Judd Drapery Hardware would not be in business in the near future. This meeting took place in November, 1984, while Mr. Johnson was still president of Judd.

Shortly after we learned of the antitrust suit in 1982, I had a chance meeting with Cory Johnson in Wallingford. We spoke about the antitrust suit and Mr. Johnson told me that Newell was confident that the antitrust suit would never go to trial. I did not understand the true meaning of this conversation until I spoke recently with Bob Grant. Mr. Grant told me of a conversation he had had with Mr. Johnson concerning the antitrust suit.

Cory Johnson told Mr. Grant that Dan Ferguson had stated that it was Newell's intention that the antitrust suit would never see a court room. Further, Newell felt that if they could stall going to court long enough, they could take enough of our accounts so as to negate the suit or its impact. What did Mr. Johnson receive for his part in this conspiracy? He was rewarded with a consulting position with Newell and this was okayed by the Justice Department. Also, we were constantly firing people (more than 500) due to lost sales, and yet we could afford to purchase a Mercedes, company car, for Mr. Johnson. I would say he was well paid for his efforts.

I am not a lawyer, but I do know how to research a topic. It is my understanding that Inter-Corporate Conspiracies are illegal and have been so declared in such cases as; Timken Roller Bearing Company vs United States, 341 U.S. 593 (1951) and United States vs Yellow Cab Company, 332 U.S. 218 (1947). These cases show that common ownership does not immunize the corporation from the antitrust laws. The principle was applied to wholly-owned subsidiaries in Kiefer—Stewart Company vs Joseph E. Seagram and Sons, 340 U.S. 211 (1951). Further, I understand that sometimes a conspiracy or agreement in violation of Section 1 of the Sherman Act can be proved by direct evidence. Often, however, the evidence is only circumstantial and must be inferred from actions of the conspirators.

The Newell plan was well conceived and covered all aspects of Judd's business. To better explain how the plan worked, I will divide the discussion into the three following areas: *demoralization of Judd employees and the sales force in particular; Judd accounts were given the appearance that Judd would not be in business in the near future and Newell used knowledge and control of Judd's business to take Judd's accounts; and Newell changed the Judd product line so as to reduce our competitiveness in the market place and increase costs to the consumer.* I shall discuss each area and show examples of just how Newell implemented their plan and its effect on Judd.

Jerry McWeeny, our former vice president of sales, was the only member of management who was interested in keeping Newell from taking our accounts. The sales force learned that Mr. McWeeny was given a verbal thrashing for convincing two of our accounts, Federal Trading Company of Frederick, Maryland, and Family Dollar Stores, Inc. of Charlotte, North Carolina, to stay with Judd and not switch to Newell. When Mr. McWeeny continued to become an

obstacle to Newell's acquisition plans, he was offered to position with another Newell Division. When Mr. McWeeny accepted the new position, morale at Judd became nonexistant.

Mr. McWeany told me that Dan Ferguson convinced him that Newell could do whatever they pleased with respect to Judd and that the Justice Department would not try to stop them. He was convinced that Newell would continue to take accounts until there would not be enough left for anyone to purchase. In fact, Newell did not tell the Justice Department about Mr. McWeeny's leaving until after the fact. It is my understanding that Newell was to notify the Department of Justice *prior to taking any actions outside the ordinary course of business.* I refer you to the attached copy of J. Paul McGrath's letter (document #1) stating this fact. Mr. McWeeny can confirm that the Department was not notified until after the fact. *What action did the department take against Newell for violating the agreement?*

When I spoke with Lowell Jacobs in early 1984 about Mr. McWeeny's being able to leave, he was unaware that Newell was talking to Mr. McWeeny prior to 1984 about leaving Judd. Mr. Jacobs assured me that every account that Judd lost after January 1984 would be questioned to see if Mr. McWeeny's leaving affected their decision to leave Judd. *Mr. Jacobs should be able to furnish the court with his findings with respect to all accounts Judd lost since January, 1984.* He also stated that this was reflected in a letter to Newell. As soon as McWeeny left, we lost several accounts that he had convinced in the past to stay with us. Mr. McWeeny was a key management person with Judd, and the link between management and every Judd account and his leaving marked the beginning of the end in our ability to retain accounts.

Mr. McWeeny's leaving was magnified because prior to this Newell had ordered Cory Johnson to dismiss our engineering staff, our purchasing agent, our quality control manager, and marketing manager. We have gone from more than 500 employees to less than 30 today. The only person in an upper management capacity today is John Palmieri, who functions as both our president and comptroller. John has had no experience dealing directly with customers and no experience convincing a customer to stay with Judd. We have gone from 36 salesmen to a present figure of 4. In short, Newell has made sure that, regardless of the results of the antitrust suit, Judd will be left without an experienced management team that knows Judd's product, the market, or its customers. The stress on the remaining employees has been more than can be described in a few short sentences. We never know who will be fired next, and the stress is such that I have never been as sick as I have been these last two years. My resistance to colds has been non-existent.

The first thing that Newell did was to eliminate the bonus system for Judd sales personnel, while keeping the bonus system for Newell Drapery Hardware salesmen. *We have never had a sales meeting* since the antitrust suit was filed and yet the Newell sales force has at least one or two a year. These meetings are important to motivating your sales staff and handling problems in the field. When our expenses are larger than our travel checks, we must wait four to six weeks to receive our money. We never had this problem prior to the suit. We are due a review and raise each January first. Last year we did not even receive an increase that covered cost of living increases due to inflation. The last two years these raises were not paid until April. The company in effect uses our money while delaying payments to us. Our salaries were reduced when the bonus system was eliminated and we have been losing money ever since these changes in 1982. The antitrust suit was filed by the Justice Department in June of 1982 and the Judd employees did not learn of it until September of that year. These many things taken collectively all contribute to lowering morale and make you wonder if you should only do enough to get by because in the end no one cares about how Judd employees are treated.

When I was promoted to Account Executive, I did not receive the customary raise that went with such a promotion. I accepted more responsibility and yet my requests to discuss the matter were ignored. Still I have done an excellent job in my new position. Newell has taken less accounts from my territory than any other territory in the country. In short, Newell's plan was to remove all incentives from Judd salesmen so that they would not be motivated to look for new business or to try to save an account. When we were purchased by Newell we were ordered to stay out of all accounts that carry Newell Drapery Hardware. *To this day, that order has never been rescinded.*

Newell convinced the courts and the Justice Department that it was in everyone's best interest to combine sales forces. Judd was left with 8 salesmen, some salesmen were fired, and some were integrated with the Newell sales force. Newell was to provide direct in-store service for Judd's mass merchant accounts and smaller accounts. In short, Newell people were given access to Judd accounts and this is just what Newell wanted. I hear reports that Newell has offered bonuses to their salesmen if they convert a Judd account to Newell. The fox has been allowed to guard the chicken house! We have had constant problems with Newell giving our customers the same service levels that Judd provided prior to the integration.

We were told at the time of integration that Newell would never have access to Judd's major accounts through handling monthly calls on behalf of Judd. Newell had some of the original 8 salesmen fired when accounts were lost in a particular territory. This happened in the Western Region and Don Bunnett was the only person left in this territory. Don told people that he felt constant pressure and stress due to losing business to Newell. He died from a heart attack and yet had no history of a heart condition. I was assured by Lowell Jacobs that, as per the court agreement, Newell people would not have access to the remaining major accounts in this territory. I gave Mr. Jacobs Mike Eaton's name as a replacement for this position. Mr. Eaton was a top salesman for us, knew the territory and customers, and had not found a job since Newell ordered Judd to let him go several months earlier. Mr. Jacobs lied to me and Newell was given access to these accounts and converted them to Newell Drapery Hardware. *Yet another example of a clear violation of the hold separate order.*

Newell sought to learn as much as they could about our business. Because all the accounting functions were not transferred to Freeport, Illinois immediately, Newell tried other tactics to learn about our accounts. David Shoptaw had been our Southern Regional Account Executive until Newell took some accounts in his territory and then had Cory Johnson fire him. Then Newell called Mr. Shoptaw and told him they were interested in offering him a position with Newell. There was just one catch. David was to bring all the information he had about his former Judd accounts with him to the interview. When Mr. Shoptaw flew to Freeport without the information Newell wanted and refused to discuss his former accounts, Newell suddenly did not have a position for him.

My first contact with the Justice Department was May 13, 1983, after I became concerned that Newell was engaging in illegal activities with respect to the antitrust suit. After many months of getting many promises and no action from Lowell Jacobs, I contacted my Congressman, Norman D'Amours. When he was unable to get the Department to answer his concerns, he asked me to outline some of my concerns and to list just who the Department should be questioning with respect to my charges. I offer this document (document #2) at this time and shall refer to it from time to time. The Justice Department has had this document since the end of February, 1984 and should be able to tell the court what their findings were with respect to my questions.

Newell's favorite method of taking our accounts is to scare the account with the supposition that Judd is almost out of business and will be liquidated in the near future. Accounts are warned that they would lose sales if they do not switch to Newell before the mad rush is on to change all accounts to Newell. When the company that owns a division is telling such a story, the impact is one hundred times greater than if another competitor were telling the story. These stories were told to (in document #2) Jack Bonds and John Beck of Super Dollar, Ray Dischino and Pat Clarke of Pro Hardware, and Bob Rosen of Channel Home Centers to name a few. What did the Department find when they spoke to these people?

Jack Bonds and John Beck were so mad that Newell sent their Southern Regional Manager along with Ren Owens, our Southern Regional Manager, in to see them. Newell dismissed this supposition as overly agressive sales talk and apologized to these two men. Yet this same tone and innuendo have been used in every territory in the United States. Most buyers were willing to tell the Judd saleman about these discussions but felt they could not get involved because they would get in trouble with their own company. The Justice Department can use

subpoenas and grand jury testimony to get to the bottom of this issue. How many Newell sales people and how many Judd sales people have been questioned about this abuse? How many companies have been approached to ask their co-operation in determining the truth in this matter?

Has Newell ever opposed the Department speaking with accounts that have switched from Judd to Newell? If so, on what grounds? These suggestions that Judd would not be in business in the near future continue to this day. In February of this year, I received a call from my account, Somerville Lumber, and they were very upset. Richard Vowden, the Newell territory salesman, and James Manganello, Newell's Eastern Regional Sales Manager, had called on Ron Jerauld and George Rauseo of Somerville Lumber to try to get them to switch to Newell Drapery Hardward. Strangely enough, the lies and innuendo sounded just like they had in other territories across the country.

Messrs Jerauld and Rauseo were told that Judd was almost out of business and that our former vice president of sales and president had both been fired. It was also stated that Newell would be winning the antitrust suit at the end of the month, would take final control of Judd and would be liquidating the company. Jerauld and Rauseo were told that if they did not switch now, they could lose business as the rush was on to change everyone to the Newell packaging. *Does this sound familar?* Newell has hinted to other accounts that they knew how much the accounts were paying for our goods.

Mr. Manganello told Messrs Jerauld and Rauseo what their purchasers from Judd were for 1984. Neither man at Somerville knew how much their purchases were for 1984, but I confirmed from my records that they were given accurate information. They asked me how the Newell salesmen knew this information as their firm does not give out such information. The only way Mr. Manganello could have gotton this information was with the full blessing and consent of Newell's management. In short, *Newell was using knowledge of our business to take our business.* Another violation of the hold separate order? Mr. Manganello also stated that he knew what Somerville was paying for Judd Drapery Hardware and he would have been right but I just changed their pricing structure.

I reported this incident to John Palmieri, our current president, and told him that Newell was threatening my livelihood with these lies and use of Judd information and that I would sue if this pattern continued in my territory. I also reported the matter to Lowell Jacobs by letter on February 12, 1985. Mr. Jacobs subsequently spoke with Messrs. Jerauld and Rauseo and they confirmed my letter. What actions has Mr. Jacobs taken in this matter? Who was questioned about the use of Judd information? In fact, how many of Newell's sales force have been questioned about what they say or have said to Judd's accounts? Who is giving this information to the sales force?

Mr. Manganello brought someone (Messrs. Jerauld and Rauseo were so angry they did not remember his name) from Freeport into Somerville Lumber to apologize for what they called some sort of "misunderstanding" and to deny Mr. Manganello had stated Judd would not be in business in the near future. Their calling this account liars made them more angry than the first visit. After speaking with the various people in document #2 and the people from Somerville, the Department should have a clear picture that this "Judd will be liquidated in the near future" scenario was one that was encouraged by Newell's management. *Did Lowell Jacobs ever issue a letter to Newell to have them tell their sales force to stop this deceptive practice?* If not, why not?

On May 24, 1985, I received telephone calls from Laura Healy, the buyer at Decatur-Hopkins Company, and Stu Stucliffe, the buyer at MAR-LIN Distributors. Both individuals had just spoken with James Manganello, Newell's Eastern Regional Manager, and they were very upset!! Mr. Manganello told them that Newell manufactures 100% of Judd's product line and that because Judd is only a shell of a company, Newell is going to stop manufacturing Judd's product line. *Yet another example of the gross lies that Newell uses to scare our customers!!* These accounts were in a panic because they do not want to lose sales while trying to find another source of drapery hardware. I assured them that this was not true and that the court controls what Newell does and does not supply Judd, with respect to our product line. I then called Lowell Jacobs and informed him of Newell's attempts to take more accounts through deception and innuendo.

This latest attempt by Newell is very significant because Dan Ferguson of Newell is well aware of what Mr. Manganello told Somerville Lumber in February of this year. Yet, Mr. Ferguson did not order Mr. Manganello to stop this practice of lying and scaring Judd accounts. I feel this shows beyond a shadow of a doubt that Mr. Ferguson is behind Newell's program of deception and innuendo. The pattern continues to be the same in every case. Judd will not be in business in the near future so you better switch to Newell now or lose sales when the mad rush is on to switch everyone at one time. I ask again. What actions has the Justice Department taken to stop this illegal practice? It is my understanding that the Justice Department has those investigative tools needed to subpoena those individuals who have knowledge of illegal activity. Why have they not used those tools? It is my feeling that they hope Judd will cease to exist and thus absolve the Department of any need to explain why they did not act for more than two years to stop this practice of taking accounts through lies, knowledge of Judd's business, and control of Judd's business. What is the court's position on accountability?

Newell has been allowed to control what sales terms and terms of dating we at Judd are allowed to offer our accounts. We are only allowed to offer sales terms of a 2% discount if the bill is paid in 10 days, with the net due in 30 days. Newell has given Nichols Discount Stores (document #3) sales terms of 2% if the billed is paid in 60 days, with the net due in 75 days. At the same time, Jim Guerin has had shipment of goods stopped to an account that had not paid their bill in 30 days. If our accounts do not pay on time, Newell is on the telephone trying to get the payment. With terms of 2% 60 days, net 75 days, I am sure, we at Judd, could have kept many of our accounts and even gained new ones!

The standard within the drapery hardware industry is that we usually have a Spring and Fall promotion with our accounts. During this time accounts are given 30, 60, or 90 days dating (extra days to pay one's bill) as a part of the promotion. When we were a part of Stanley, *our management made the decision* as to the length of dating we would grant our accounts. This continued as a Judd management decision until the antitrust suit. Now we must submit to Newell in writing a request for any dating we offer an account. The most Newell ever granted my accounts was an extra 30 days (total of 60 days) dating, and yet my distributors complain that other Newell Divisions grant them more dating. In short, we have not been treated like the other Newell Divisions and this has hurt our image with accounts that carry products from other Newell Divisions.

Newell also offered our accounts their Newell Corporate Discount if they would switch to Newell Drapery Hardware. This is a program that offers an account a discount on products purchased *from all Newell Divisions.* The discount is based on how many different Newell Divisions a customer buys from and varies from 2% to 10%. The more divisions you buy from, the larger the discount. *We have never been allowed to offer this discount to any of our accounts.* While he was still with Judd, Jerry McWeeny told us he could not find out about this discount and that we were not allowed to offer this discount. All of our packaging states that we are a "Newell company" and yet we were not allowed to offer this important marketing tool. I have asked Lowell Jacobs to investigate Newell's abuse of this corporate discount and other concessions they granted our accounts to gain their business.

Mr. Jacobs should be able to tell the court (from document # 2) what he found at Channel Home Centers. I am sure Bob Rosen would tell him the same story he told Jim Guerin, Our Eastern Regional Manager. Namely, he would rather stay with Judd Drapery Hardware but needs the Newell Corporate Discount to satisfy his management. I am sure he told Mr. Jacobs how Newell wined and dined (in Freeport) the Channel management staff and consently stressed the Newell Corporate Discount. Our own entertainment budget was so small as to be non-existent, and we could not offer the "Discount" so we did not have an equal chance of saving the account. This account was finally lost to Newell when Jim could not deliver the Newell Corporate Discount.

A real classic is the story behind our losing the Heck's business. When we changd our name from Stanley Drapery Hardware to Judd Drapery Hardware, we spent thousands of dollars just in Heck's stores changing the name on their inventory. Shortly thereafter, we lost this account to Newell and Jim Guerin was not allowed to make a counter

offer to what Newell was offering Heck's to switch. In fact, Fred Copeland, Heck's buyer refused to discuss what Newell was offering. We now know why. We have been told that Newell offered Heck's the Newell Coprporation Discount, good sales terms, and a plan where Newell rents space in Heck's warehouse for Newel Drapery Hardware. Further, Heck's does not pay for the drapery hardware until the goods are shipped from Heck's warehouse to its stores. This latter deal is what is known in the industry as "goods to a dealer on consignment".

I reported these facts to Lowel Jacobs and told him that if he could get Newell to allow me to offer this same deal to customers, I could control the Northeast. It is my understanding of the law that any program you offer one account must be offered to all accounts. *How many of Newell's accounts have been offered the Newell Corporate Discount and how many are not aware of this program*?. How many of Newell's accounts have been offered goods on consignment and how many are receiving payment to store goods in their warehouse until the stores need goods? These are exteremely important questions and need to be answered if we are to determine if Newell is engaged in illegal activities in an attempt to gain Judd's business. Lowell Jacobs has been aware of these programs for more than a year so he should be able to tell the court if these programs are offered to all Newell acccounts. *I am prepared to answer this question. Is he?*

Before we leave this section, let me cite yet another of the many instances of false and misleading statements made to our accounts. Last year when I went to cover a merchandising show for another salesman, I found that the distributor, RKB Enterprises, Inc. of Elmira, New York, had switched to Newell Drapery Hardware. Jim Guerin, our Eastern Regional Manager, spoke with Don O'Shaughnessy, the buyer at RKB about their switching to Newell. It was learned that James Manganello, Newell's Eastern Regional Manager, was the individual who told Mr. O'Shaughnessy that Judd would be liquidated in the near future. RKB switched to Newell and changed their computer to reflect the Newell item numbers. During the interview with Jim Guerin, it was learned that the reason RKB did not call us was because *Mr. Manganello assured Mr. O'Shaughnessy that he was calling on him with the full knowledge and consent of Judd.*

Innuendo and deceit were used in conjunction with changes that Newell ordered made in our product line. These very changes, ordered by Newell, were cited to American Hardware Supply, among others, in their attempt to take our accounts. These changes inhibited our ability to compete effectively in the market place with the market leader, Kirsch Drapery Hardware. The changes were also cited by other competitors as an indication that we were offering the consumer less for more money. It is also important to point out that these changes concerned the marketing department to such an extent that we were warned to not discuss the changes unless and until specific questions were asked. This significant statement has never been issued on any other prior product changes!

Judd Drapery Hardware is the eldest maker of drapery hardware in the United States and, as such, set many of the standards upon which the industry is based. The standard size curtain rod in the industry is 28" to 48" and has been the Judd size for time immemorial. Our curtain rod size was changed by Newell to 28" to 46" and "thimbles" were removed from the rod. The thimble is a very important selling feature for the higher quality curtain rod and is so high lighted in the Kirsch catalog (document #4). It prevents the curtain from snagging on the end of the curtain rod during installation.

Center supports were also eliminated from the second size (45"–84") so that the consumer was forced to pay $1.35 for the privilege of supporting the center of the rod. The center support had been included for years, at no additional cost, and was consistent with the competition (document #4). The thimbles were also removed from this size rod. The net affect was that the consumer paid more for less because we did not reduce our prices to reflect the savings in less steel used in the rods and elimination of the thimbles and center supports. No, we raised prices! A consumer with a 48" window would now have to move up to the next larger curtain rod and pay between $1.00 and $1.50 more than they would have had to before Newell made the changes in the curtain rods.

Several of my accounts complained about the loss of the center supports and after they threatened to leave Judd, we were given new center supports for the rods. These new supports are a joke! They can be bent with your hands and are not of the same high quality we gave the consumer in the past. I find it very ironic that Newell offers the consumer the same high quality center support we once offered and yet we must offer, in essence, junk. The suggested retail for this poor support is $1.35 and K-Mart sells the Newell quality support for $.97. I am prepared to offer a comparison of our old support, the new one, and Newell's support.

Our ⅜", bright brass cafe rod has consistently been one of the top fifteen items in the product line. Newell had us raise the price of this item 20% and offer their equivalent rod at our old price. Our rod is more popular because it is unique to the industry and offers the consumer an alternative look. The rod is no longer priced competitively in the industry and this again meant that the consumer would pay more for Judd without receiving any increased benefits. Again, Newell had center supports removed from these and our 7/16" cafe rods. We were instructed to substitute the Newell cafe rod in those accounts where we met resistance to the 20% price increase.

We have had constant problems with quality control of those goods that Newell manufactures for us in Freeport. Newell was allowed to move some of our machinery to their facilities in Freeport and we were assured that they must continue to manufacture our product line to our high standards. This has not happened and Newell failed to respond to our many complaints on this issue. I ask the court to not take my word on this issue, but ask our former quality control engineer, Dieter Koss. He complained so much that Newell's management had Cory Johnson fire him.

We have had problems with everything from mismatching paint on products to problems with product poly bags not being sealed. A good example is our inexpensive traverse rod. The pulley housing has been manufactured with a blue, white finish and the track was a gray, white color. I have had many returns of this item. The sheer curtain rod is also a curtain rod extender and yet I can show you that the rods Newell made for us do not fit! I am sure that there are many memos written by Mr. Koss to Newell that verify the various problems we have had since Newell took over some of our product manufacturing. What steps did the Justice Department take to insure that Newell would continue to manufacture Judd products to the Judd quality standards? How was this situation monitored by the Justice Department? Was our quality control engineer ever contacted with respect to the quality of the goods Newell was manufacturing for Judd?

Newell switched the curtain rod (that they make for us) cartons to cheaper cartons and we received many complaints from customers. The cartons would collapse and damage the finish of the rods or the rods themselves. We had many returns due to this problem. The problem continued for some time and only stopped after I complained to Lowell Jacobs. This is yet another example of where Newell was not responsive to our problems even though it was costing us money on freight for returned shipments and repackaging of product. I feel that this ploy with the cartons was a deliberate attempt by Newell to anger our customers. They have been in business for many years and know what type of cartons are needed to protect drapery hardware during shipment.

To this day, Newell is still changing the face of Judd and our shipping cartons. Newell is changing the closure cards on our products from ones that are stapled to ones that are heat sealed. This means that we have some goods on the displays that have the old style closure cards and some with the new style. Any individual who knows anything about marketing presentation will tell you that the consumer gets the impression that you do not have uniform quality in your product line. Mixed signals are sent to the consumer when they see like products from the same company in different packaging.

Along with this slow change in product packaging is a slow change in product shipping cartons. The new cartons for the hooks are almot twice as large as our old cartons. Thus, they take up much more storage space for the same number of items. This move to larger cartons is a bunch of crap! They went to larger bags, which were not necessary. We were never given any input into these product changes!! What happened to that so call "hold separate order"? We are even getting many cartons that have Newell Drapery Hardware written on the outside. this leads to confusion and many telephone calls to correct the customer's impression. In short, since the elimination of the quality control engineer,

Newell has gotten away with more and more and no one cares!

Newell has a policy that it pays the shipping costs to a customer for any order which is larger than $450. This policy is so stated on their price sheets. Newell manufactures our curtain rods in Freeport and then ships them to us in Wallingford. It is my understanding that Newell charges Judd the cost of shipping these goods to Wallingford. Is this true, even when the value of the shipment is several times greater than the $450 minimum? Could it be that Newell is trying to pass costs onto Judd so that it will appear that we are not making a normal profit and thus Newell could eliminate more jobs at Judd? This is a very important question and one which Lowell Jacobs should be able to address, as I have asked it on more than one occasion.

Drapery hardware is one industry where the rate at which orders are filled is usually between 93% and 98%. For years, Judd has had a policy that several of our fastest selling items were to never be out of stock. It was a rare thing indeed to not ship the number of curtain rods needed for an order. This all changed when Newell was given the control of our curtain rod production. From March of 1983 to the first part of 1984, we were always out of several types of curtain rods. Back orders were as much as three months to some of my accounts. In September of 1983, I was told that the back orders for goods, from just Wallingford, was $53,000, and this was only one of the four shipping points. I offer document #5 which shows that on 1/30/84 we still had not filled 154 orders for a value of $57,111 from Wallingford. And this was during a slow time of the year!! Again, these problems contained until I complained to Lowell Jacobs. The shipment of goods has gotten mush better but we still, from time to time, are out of curtain rods. How many of these lost sales led to our work force being dismissed? How many customers did we lose because they felt we could no longer supply their needs in a timely fashion? What did the Justice Department find when they checked on why Newell could not deliver goods even when our sales were declining at a high rate?

At the time we were purchased by Newell, a new product was coming on the market in the form of a tear shade. There was no need for the shade to be cut in the store. The customer could take the shade home and tear off the excess by hand and thus fit the shade to the window himself. At the time of the acquisition, only Judd, Newell, and Clopay had such a tear shade. Thus, Newell now controlled two of the three tear shades on the market, and I find no mention of this fact in the antitrust suit or the proposed final judgement. During that period and even today, the tear shade does very well in the market.

Judd sales people were ordered to sell only the Newell tear shade to all newly opened shade accounts, and that order is still enforced today. If I want to sell an account that has never carried our shades the tear shade I have been instructed to sell is the Newell Magic Fit and not our Trim and Fit. Did the hold separate order cover the tear shade? I cannot help but wonder if Newell was trying to eliminate a better shade from the market. I offer document #6 which shows a laboratory test on our shade (called the Gitkin in this test), a Clopay shade and the Newell shade. These tests show that the Judd shade is a better shade.

We have a better shade and it is cheaper too! For the light filtering shade, the Judd shades are priced at $4.89, $9.69, and $12.29; while suggested retails for Newell's shades are $7.29, $11.19 and $15.29. For the room darkening, the Judd shares are prices at $6.79, $11.79, and $15.89; while Newell's suggested retails are $9.49, $15.39, and $19.99. As one can plainly see, the consumer is offered a better shade at a cheaper price! What does the Justice Department have to say with respect to Judd being forced to sell the Newell shade to new customers?

I have tried to outline for the court those areas which I feel should be addressed with respect to considering this proposed Final Judgement. There have been clear and multiple violations of the court's hold separate order, and I have stated where some of those violations occurred and who should be questioned with respect to those violations. There have also been clear violations of the antitrust laws with respect to a conspiracy to circumvent this antitrust suit by destroying Judd Drapery Hardware or removing enough accounts and personnel from Judd so as to render Judd a non-force in the market place. The settlement as proposed is not good for either the employees of Judd Drapery Hardware or the consuming public.

The Justice Department cites the Herfindahl-Hirschman Index in their initial petition to have Newell divest itself of Judd Drapery Hardware. I see no mention of what effect this proposal will have on that index or how much it has risen since Judd lost more than $17,000,000 in business. The sales figures for 1984, for each company, should be available, and Justice should know what accounts we have lost this year and to whom. So where does the index stand with this proposal? I maintain this industry is more concentrated now than ever before and that it is a direct result of the fact that Judd Drapery Hardware has been unable to compete with the other members of the industry. I put the blame for this inability to compete directly on the shoulders of the Justice Department.

Newell should have never had direct access to Judd's top management and the court should have appointed someone to oversee the company if it did not have faith in Judd's management. Newell should have never been able to dictate policy with respect to sales terms, dating, and who should and should not be fired from Judd. The Newell sales force should not have had access to Judd accounts through the monthly service calls. There was noting to insure that these individuals would not use their new positions to switch these accounts to Newell. Our sales force was paying its way before Newell came along so why did we need to combine sales forces?

I first approached the Justice Department on May 13, 1983, to advise them of what I considered illegal actions on the part of Newell Drapery Hardware. I have continued to supply them with information right up to May 24, 1985. Congressmen Norman D'Amours and Congressman Bruce Morrison have both contacted Attorney General, William French Smith and Assistant Attorney General, J. Paul McGrath to try to get the Department to investigate why Judd was losing so many accounts. What they got was that good old stand-by, "I am sorry but we cannot discuss an ongoing case".

In September, 1984, I approached the U.S. District Court, in Hartford, Connecticut with my concerns and my complaints about the actions (or should I say non-actions) of the Justice Department. I was told that my complaints were more properly directed to the Justice Department. Both William French Smith and J. Paul McGrath refused to speak with me and each time Lowell Jacobs would suddenly call to discuss my problem. *I am now back to this court to tell you that the Justice Department has not and does not care about violations with respect to Judd Drapery Hardware, that the Department did not investigate my complaints in an expeditious and judicious manner.* I am prepared to defend my charges in court and would like nothing better than to speak with the court about the facts in this case. I can assure the court that the other members of the sales force would also like to express their concerns to the court.

I respectfully request that the court enjoin Newell salesmen from speaking with Judd's remaining accounts until a comprehensive investigation is completed with respect to actions of the Justice Department and Newell Companies in this antitrust action. Further, I request that the court appoint an independent investigator, who shall have subpoena power and the use of such agencies as the FBI to investigate any and all violations in this case. In short, someone who is authorized to use civil investigative demands to acquire probative material or to convene a Grand Jury. I respectfully request that any decision with respect to this Proposed Final Judgment be held in abeyance until the independent investigator has filed his report with the court.

It is my fervent wish that the court will also have the investigator determine if it was in the best interest of returning Judd to an ongoing business, when Newell was allowed to sell the second, newer and more energy efficient, building in Wallingford. Further, I feel that no investigation could be complete unless a determination is made of Newell's management style with respect to buying business rather than requiring it in the competitive market. This is known in business circles facetiously as "defensive acquisition" but in essence is a means of not competing in the market place for new business. Newell purchased Mirro Corporation, number one in the cookware business, and then purchased Foley-A.S.C., number three in that same industry. Those two divisions have now been ordered to stay out of each other's accounts. Does this sound familiar? Is this another violation of the Inter-Corporate Conspiracy section of the antitrust laws? Every one of Newell's divisions have made acquisitions of businesses in the same product line these last two years. It seems this company cannot compete in the free market place for new business but must buy

market share and I feel this is significant to our division and what has happened to Judd Drapery Hardware.

Never in the history of the drapery hardware industry has one company been able (in sheer number of accounts) to take from another company the large number of accounts that Newell has taken from Judd these last two years. On average over the last seven years, Judd would probably gain three or four accounts and lose two or three. *Newell has never been able to take these accounts before they controlled our business and had knowledge of our business and I feel that says it all.* If the court does not order an investigation into these charges and allows the Proposed Final Judgment to stand, Newell will be rewarded for their actions and will not think twice about destroying another company like Judd Drapery Hardware.

I do not have those power granted to the Justice Department to investigate illegal activities. I can only point those activities out to the Department and hope that they act in a manner that is fair to all and provides equal protection under the law to small companies as well as the large ones. Other employees, both past and present, are willing to speak to the issues raised in this presentation but have not because they feared they would lose their jobs. I also fear for my job, but am prepared to fight for my rights in court, if Newell choses to fire me for speaking out in this matter. I am prepared to subpoena many individuals if I must go to court to save my job. Why has the Department not used its subpoena power to get at the truth in this matter?

It is my understanding that this subpoena tool is provided to insure that those individuals who have knowledge of illegal activities can be brought forth to testify as to their knowledge of said activities. We have many people in this case who have knowledge but do not want to get involved. *Why has the Department not forced these people to get involved so that we at Judd can stop living this hell on earth.* Many good, loyal employees with twenty and thirty years employment are now out of work because the Justice Department has failed to investigate how Newell has been able to take so many of our accounts and the blatant lies told to these accounts. The Department has not investigated the fact that Newell had one severance pay policy and then changed it when it realized that it could reduce the employees in such large numbers. The first few people that we released were paid under one policy and the later ones were paid under a different compensation plan. Is it legal to change such a policy in mid-stream? From an ethical and moral standpoint, is this the way you treat people who have worked for a company for twenty or thirty years? Newell does not care about the employees of Judd Drapery Hardware and never has shown that we were welcomed into the Newell Companies.

I respectfully hope the Court will consider what I have had to say with respect to the Proposed Final Judgment. I apologize if this document does not follow a given standard of presentation. I am not a lawyer, but I do know what is right and wrong and what is ethical and moral with respect to business practices. This court is our final hope for righting a large wrong and I respectfully request that the court considers the implications of its decision not only for Judd Drapery Hardware, but for all other companies that must deal with being acquired by Newell Companies.

Sincerely,

Thomas S. Taydus.

DOCUMENT NO. 1

Honorable Bruce A. Morrison,
House of Representatives, Washington, D.C. 20515

Dear Congressman Morrison: This letter further responds to your referral to the Department of Justice of correspondence from Mr. Tom Taydus, an employee of Judd Drapery Hardware Company (Judd). In that correspondence, Mr. Taydus alleges that the Newell Companies, Inc. (Newell), had acted to undermine the government's civil antitrust suit (*United States v. Newell Companies, Inc.*, Civil No. N 82-305, D. Conn.), challenging the 1981 acquisition by Newell of the drapery hardware business of The Stanley Works (now being operated as Judd) as a violation of section 7 of the Clayton Act. In that case, the government seeks the divestiture of Judd as an independent, ongoing manufacturer of drapery hardware. The case is currently being prepared for trial, and the court recently set trail for September of this year.

In answer to your question why the Department of Justice did not oppose this transaction before it was consummated, notification of this acquisition was not required under the Hart-Scott-Rodino premerger notification program. The Division learned of it shortly after the date on which it had been consummated, and accordingly, we could not sue to block it prior to that time.

Pending the conclusion of the *Newell* litigation, *the court has entered an order requiring Newell to hold Judd separate from Newell's other operations and to refrain from certain conduct that could impair Newell's ability to sell Judd as a separate, ongoing business enterprise should the court ultimately order divestiture.* Mr. Taydus alleges that Newell has taken actions designed to make the Judd business unsalable.

The staff of the Antitrust Division conducting this litigation received a letter directly from Mr. Taydus, dated May 13, 1983, outlining his allegations against Newell. The staff has studied all the information he has made available to us, including the extensive submission you referred to us. The staff has previously met with Mr. Taydus and has spoken on the telephone with him on numerous occasions. The staff's most recent contact with Mr. Taydus was on May 23, 1984.

Partly in response to information supplied by Mr. Taydus, the staff deposed or interviewed employees and customers of Newell and Judd. We also received and reviewed answers to interrogatories and documents from Newell. The staff continues to monitor closely Newell's obligations under the hold-separate order, as it prepares for the scheduled trial of this matter. In addition, *the hold-separate order requires Newell to notify us prior to taking any action outside the ordinary course of business, and we believe this provision should aid in monitoring the situation.* If we determine that Newell has acted or is about to act in a way that violates the hold-separate order, we will take whatever action is warranted by the circumstances.

I trust this inforamtion is responsive to your request and will enable you to respond to Mr. Taydus. Your interest in this matter, and in our antitrust law enforcement program, is greatly appreciated.

Sincerely,

J. Paul McGrath,
Assistant Attorney General, Antitrust Division.

Exhibit 2

May 20, 1985.

Mr. Ralph T. Giordano,
Chief, New York Field Office, Anti-Trust Division, Dept. of Justice

Dear Mr. Giordano: In regard to the suit United States v. Newell Companies Inc., Act 15 U.S.C. 16 (b) through (h) AntiTrust Suits—What happens to Employees Like myself who after 18 yrs. of service and age 52 job was terminated?

I was the No. 1 sales person and lost my job because Newell took all of my important Judd Accounts away from me and made them Newell accounts—then leaving one with hardly no accounts to call upon and no results no business.

Because of them doing what the government said not to do I as well as many others have no job.

Now they admitt they are wrong and took all the good accounts into Newell Companies—not much chance of them selling Judd and we the ex employees are out with nothing. Seems to me something should be done to make Newell take care of the people they let go by their wrong doings.

If they didn't take away all my Judd accounts and left me them, I still would have a job—and maybe some one would purchase Judd because they would have a volume business.

I wonder how the Government and the *LAW* will work for us?

Hope something can be done for us?

Thanks for listing.

Regards,

Milton R. Aucoin,

18 yr. Judd Drapery Hardware Co. No. 1 salesman.

Milton R. Aucoin, 3920 Florida St., Mandeville, LA 70448, (504) 626-8500

Certificate of Service

I hereby certify that on this 21st day of June 1985, I have served the foregoing Plaintiff's Response to the Comments of Thomas S. Taydus and Milton R. Aucoin by first class mail, postage prepaid, on William S. D'Amico, Esq., D'Amico,

Luedtke, Demarest & Golden, 1920 N Street, NW., Washington, D.C. 20036.
Lowell L. Jacobs,
Attorney, Department of Justice, Antitrust Division, 26 Federal Plaza, Room 3630 New York, New York 10278, (212) 264-0660.

[FR Doc. 85-15264 Filed 7-1-85; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Falk Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period June 17, 1985–June 21, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In the following case the investigation revealed that criterion (2) has not been met for the reason specified.

TA-W-15, 650; Falk Corporation, Milwaukee, WI

Domestic sales and production at the Milwaukee, WI plant of Falk Corporation increased in each quarter of 1984 compared to the corresponding quarter of 1983 and in the first quarter of 1985 compared to the same quarter of 1984.

Affirmative Determinations

TA-W-15, 761; Hyster Company, Danville, IL

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-15, 846; Vest, Incorporated, Fallston, NC

A certification was issued covering all workers of the firm separated on or after March 18, 1984 and before April 1, 1985.

TA-W-15, 796; Harrington and Richardson, Inc., Gardner, MA

A certification was issued covering all workers of the firm separated on or after February 13, 1984.

TA-W-15, 754; Plant #1 and #2, Anchor Hocking Corp., Lancaster, OH

A certification was issued covering all workers of Plants #1 and #2, Anchor Hocking Corp., Lancaster, OH separated on or after February 5, 1984.

TA-W-15, 858; Zeus Manufacturing Company, Washington, GA

A certification was issued covering all workers of the firm separated on or after June 1, 1984 and before May 31, 1985.

TA-W-15, 859; Zeus Manufacturing Company, Twilight Sewing Plant, Lincolnton, GA

A certification was issued covering all workers of the firm separated on or after June 1, 1984 and before May 31, 1985.

TA-W-15, 752; U.S. Steel Corp., Gary Works, Gary, IN

A certification was issued covering all workers engaged in employment related to the production of hot and cold rolled carbon steel sheet and strip, tin plate, and basic and semi finished steel separated on or after February 1, 1984

I hereby certify that the aforementioned determinations were issued during the period June 17, 1985–June 21, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC during normal business hours or will be mailed to persons who write to the above address.

Dated: June 25, 1985.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-15851 Filed 7-1-85; 8:45 am]
BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Alatex, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 12, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 12, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW, Washington, DC 20213.

Signed at Washington, DC this 24th day of June 1985.

Marvin. M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner Union workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Alatex, Inc. (ACTWU)	Andalusia, AL	6/18/85	6/14/85	TA-W-16,102	Dress shirts.
Andalo Manufacturing (ACTWU)	Andalusia, AL	6/18/85	6/14/85	TA-W-16,103	Dress shirts.
Connors, Ferrell, Damasheck, Inc., D.B.A. Connors Footwear (company)	Lisbon, NH	6/18/85	6/10/85	TA-W-16,104	Womens shoes.

APPENDIX—Continued

Petitioner Union workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
(The) Great Western Sugar Co. (workers)	Ft. Morgan, CO	6/18/85	6/7/85	TA-W-16,105	Process sugar beets.
J.P. Tanning Co., Inc. (workers)	Haverhill, MA	6/13/85	6/4/85	TA-W-16,106	Tanning and coloring of leather.
Mount Braddock Land Co. (UMWA)	Mount Braddock, PA	6/12/85	6/6/85	TA-W-16,107	Bituminous coal.
Pickens Footwear Co. (company)	Jasper, GA	6/18/85	6/13/85	TA-W-16,108	Women and mens boots and shoes.
Phoenix Forging Co (Boilermakers)	Catasauqua, PA	6/18/85	6/13/85	TA-W-16,109	Closed die ferrous alloy forgings, pipe flanges, transitional pipe flanges, pipe fittings and commercial valves, cold form threaded openings.
Stearns Roger Manufacturers, Inc. (Molders & Allied Wkrs)	Englewood, CO	6/18/85	6/7/85	TA-W-16,110	Heavy industrial equipment.
Westinghouse Electric Corp. (United Electrical)	Concordville, PA	6/14/85	6/14/85	TA-W-16,111	Gas and steam turbines.
West Point Pepperell Dixie Mill (wkrs)	LaGrange, GA	6/14/85	6/12/85	TA-W-16,112	Terrycloth towels.
Arcadian Corp. (OCAW)	Helena, AR	6/18/85	6/14/85	TA-W-16,113	Diammonium phosphate.
Bard Parker (company)	Hancock, NY	6/15/85	6/13/85	TA-W-16,114	Suction catheters, suction kits.
Commonwealth Aluminum Corp. (USWA)	Goldendale, WA	6/15/85	6/7/85	TA-W-16,115	Finished aluminum—ingot, billot, logs, etc.
Ephrata Apparel Co., Inc. (ACTWU)	Ephrata, PA	6/18/85	6/13/85	TA-W-16,116	Assembls children's clothing.
Flat River Glass Co. (workers)	Flat River, MO	6/18/85	6/12/85	TA-W-16,117	Cosmetic and pharmaceutical glassware.
Kent Plastics (UFCW)	Evansville, IN	6/17/85	6/13/85	TA-W-16,118	Small and large remote control housings, lens covers, battery cradles, video disc assemblies, aladdin pump-A-drink jugs.
Martin Marietta Corp. (USWA)	The Dalles, OR	6/18/85	6/7/85	TA-W-16,119	Finished aluminum—ingot, billot, logs, etc.
Oneita Knitting Mills (company)	Andrews, SC	6/18/85	6/13/85	TA-W-16,120	Knitwear.
Oneita Knitting Mills (company)	Fingerville, SC	6/18/85	6/13/85	TA-W-16,121	Knitwear.
Mars Bluff Industries (company)	Florence, SC	6/18/85	6/13/85	TA-W-16,122	Knitwear.
Hebron Textiles (company)	Cades, SC	6/18/85	6/13/85	TA-W-16,123	Knitwear.
U.S. Steel Mining Co., Inc., Leclrone Treating Plant (UMWA)	Leclrone, PA	6/18/85	6/13/85	TA-W-16,124	Mine post, lumber, header blocks, wooden wedges, railroad ties.

[FR Doc. 85-15852 Filed 7-1-85; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-85-19-C]

Keno Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Keno Coal Company, 1433 Poplar St., Kulpmont, Pennsylvania 17834 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its No. 1 Slope (I.D. No. 36-02257) located in Columbia County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that low- and medium-voltage resistance grounded systems include a fail-safe ground check circuit to monitor continuously the grounding circuit.

2. The mine generates 480-volt, 3-phase power with a diesel-powered generator, which energizes two 13 hp sump pumps. The power conductors are 2/0 copper and the grounding conductor, which is continuous from the surface grounding electrodes to the underground electrical equipment, is 1/0 copper.

3. There are no personnel in the mine while electrical circuits are energized. There is no high voltage and no portable or mobile equipment in the mine.

4. Water is pumped from the mine before or after personnel are in the mine. Pump repairs are made by outside contractors and not at the mine. Since there are no personnel in the mine during pumping, they are not exposed to energized frames of mining machinery.

5. As an alternate methods, petitioner proposes that:

a. No personnel will enter the mine while circuits are energized;

b. The pumps, which are controlled from the surface, will be locked out at the disconnect switch by the superintendent before personnel enter the mine; and

c. A warning sign of adequate size will be posted at the mine's entry.

6. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 1, 1985. Copies of the petition are available for inspection at that address.

Dated: June 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-15853 Filed 7-1-85; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

[Application No. D-5280] et al.

Proposed Exemptions; the McShane & Bowie Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington.

D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constititution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The McShane & Bowie Profit Sharing Plan (the Plan) Located in Grand Rapids, Michigan

[Application No. D-5280]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 38, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the loan of the lesser of $150,000 or 25% of the Plan's assets to McShane & Bowie (the Employer), under the terms set forth in this notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party. Section 408(d)(1) of the Act provides that the Department lacks authority to grant an exemption under section 408(a) of the Act for the lending of any part of the corpus or the income of a plan to an owner-employee. Therefore, the Department cannot grant an exemption under Title I for the subject loan. However, the Department can grant an exemption under Title II of the Act, pursuant to section 4975 of the Code.

Summary of Facts and Representations

1. The Plan is an HR-10 Profit Sharing Plan which has 15 participants and total assets with a current market value of approximately $610,420 as of January 31, 1985. The Employer is a partnership of attorneys engaged in the practice of law which has been in existence since 1950. All of the partners in the partnership are owner-employees of the Employer.

2. The Plan proposes to lend to the Employer the lesser of $150,000 or 25% of the Plan's assets at the time of the consummation of the loan. The loan shall be repaid according to the following schedule. Principal in an amount determined by the maker and all interest then accrued shall be paid on January 31, 1986 and on each January 31 thereafter until the entire balance of principal and interest is paid, provided that: (1) by January 31, 1989, an amount of principal must have been paid equal to the amount which would have been paid in the first four years on principal under an amortization schedule fully amortizing the original principal balance over 14 years with annual payments and an interest rate equal to 15%; (2) By January 31, 1994, an amount of principal must have been paid equal to the amount which would have been paid in the first nine years on principal under an amortization schedule fully amortizinag the original principal balance over 14 years with annual payments and an interest rate equal to 15%; (3) the entire balance of principal and interest shall be repaid no later than January 31, 1997; and (4) additional payments may be made at any time.

3. The interest rate for the subject loan will be at a fixed rate of 15% per annum. MetroBanc Federal Savings Banks, an independent bank located in Grand Rapids, Michigan, has represented that it would loan up to $200,000 to the Employer under the identical repayment terms as described above, without security, at an interest rate of either 15% per annum or a variable interest rate equal to one percent per annum in excess of MetroBank's prine interest rate in effect from time to time. The applicants have chosen the 15% fixed rate for the subject loan because such rate is currently higher than the one percent above prime rate, and thus is more advantageous to the Plan.

4. The collateral for the subject loan will be a first security interest in all the equipment and furnishings (the Property) in the Employer's offices. Mr. Bruce Wm. Broersma, SRPA, an independent appraiser in Grand Rapids, Michigan, has appraised the Property as having a fair market value of $313,792 as of April 29, 1985. The Employer will file a financing statement with the Community Clerk for Kent County, Michigan, evidencing the Plan's security interest in the Property. The Employer represents that it will insure the collateral and provide additional collateral that may be required so that the value of the collateral securing the loan will always be at least 150% of the outstanding balance of the loan.

5. The Plan's independent trustee is the Old Kent Bank and Trust Company of Grand Rapids, Michigan (the Bank). The applicants represent that the Bank is independent in that it has only a negligible commercial relationship with the Employer. Less than one percent of the total loans carried on the Bank's books are to the Employer and its partners. The Employer's deposits represent much less than one percent of the total deposits held by the Bank. Prior to the Plan making the subject loan, all indebtedness of the Employer to the Bank will be repaid, and no part of the proceeds of the proposed loan will be paid to the bank or its affiliates. The Bank represents that it has reviewed the proposed loan and has determined that such loan is appropriate for the Plan and in the Plan's best interest. The Bank represents that in addition to reviewing the specific terms and conditions of the proposed loan, it has examined the overall Plan investment portfolio, considered the foreseeable cash flow needs of the Plan, given consideration to the necessity of a sale of any Plan assets, examined the diversification of Plan assets in light of the proposed loan investment, and reviewed the terms of the proposed loan as such terms comport with the Plan's investment scheme. In addition, the Bank represents that it will monitor the proposed loan to insure repayment and will take appropriate action to enforce the Plan's rights under the loan. The Bank represents that it will call the loan at any time a default occurs in the loan payments.

6. In summary, the applicants represent that the proposed loan meets the criteria of section 4975(c)(2) of the Code because: 1) the loan will represent no more than 25% of the assets of the Plan; 2) a local independent bank would make the same loan to the Employer at identical terms without requiring any security; 3) an independent appraiser has appraised the collateral for the proposed loan as having a fair market value greater than two times the principal amount of the loan; 4) the Bank, the Plan's independent fiduciary, has determined that the proposed loan is appropriate for the Plan and in the Plan's best interest; and 5) the Bank will monitor the loan and take whatever action it deems appropriate to enforce the Plan's rights under the loan.

FOR FURTHER INFORMATION CONTACT: Gary H. Kefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Mortgage Asset Management Associates (Mortgage Associates) Located in Sausalito, California

[Application No. D-5403]

Proposed Exemption

The Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Section I—Exemption for Certain Transactions Involving the Purchase and Sale of Units in the Trust

The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the purchase and sale of units of the Trust between Mortgage Associates and an employee benefit plan that is participating in the Trust (Participating Plan) where Mortgage Associates provides or will provide investment management services and therefore is or will be a fiduciary, provided that:

(a) Each purchase or sale is authorized in writing by a fiduciary of a Participating Plan who is independent of Mortgage Associates and any of its affiliates;

(b) Not more than 10 percent of a Participating Plan's assets are invested in the Trust; and

(c) The applicable conditions set forth in Section IV of this exemption are met.

Section II—Transactions With Persons Who Are Parties in Interest With Respect to the Trust Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers

The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transaction between the Trust and a person who is a party in interest with respect to the Trust, if:

(a) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Trust or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both; and

(b) The person is not Mortgage Associates or any affiliate thereof.

Section III—Transactions With Persons Who Are Parties in Interest With Respect to a Participating Plan

The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transaction between the Trust and a person who is a party in interest with respect to a Participating Plan that has an interest in the Trust, if:

(a) The person is a party in interest (including a fiduciary) and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Trust;

(b) The person is not Mortgage Associates or any affiliate thereof;

(c) The person is a party in interest with respect to a Participating Plan, which Participating Plan's interest in the Trust, together with the interest(s) held by any other plans maintained by the same employer or employee organization, does not exceed 20 percent of the total assets of the Trust.

Section IV—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Mortgage Associates or its affiliates, the terms of the transaction are not less favorable to the Trust than the terms generally available in arm's-length transactions between unrelated parties.

(b) Mortgage Associates or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in subsection (c) of this section to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Mortgage Associates or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subsection (c) below.

(c)(1) Except as provided in paragraph (2) below and notwithstanding any provisions of subsections (a)(2) and (b) of section 503 of the Act, the records referred to in subsection (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Trust or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan, or any duly authorized employee or representative of such employer, or

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) above shall be authorized to examine trade secrets of Mortgage Associates or its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions and General Rules.

For purposes of this exemption,

(a) an "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partners in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

For the purposes of this subsection (a), the term "affiliate" shall not be limited to persons or entities that are in existence on the effective date of this exemption.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "Trust" means: (i) Any group trust that is currently managed by Mortgage Associates or its affiliates (the MAMA Trusts); or (ii) any group trust that may hereafter be established and managed by Mortgage Associates or its affiliates, provided that in all material respects such trusts will be similar to the MAMA Trusts.

(d) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or any acquisition is made, or a renewal that requires the consent of the Trust occurs on or after the date of granting of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction or holding exempt by virtue of Section III at such time as the interest of any Participating Plan exceeds the percentage interest limitations of Section III unless no portion of such excess results from the purchase of an additional interest in the Trust by such Participating Plan. For this purpose, purchases do not include the reinvestment of Trust earnings. Nothing in this subsection (d) shall be construed to exempt a transaction entered into by the Trust which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(e) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Trust as its proportionate interest in the total assets of the such trust as calculated on the most recent preceding valuation date of the Trust.

Preamble

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption (PTE) 80–51, (45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicant has requested relief are similar to those which are the subject of PTE 80–51.

The Department stated in PTE 80–51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

On March 13, 1984, the Department granted class relief (PTE 84–14, 49 FR 9494) for a number of transactions where the subject plan assets were under the management of a qualified professional asset manager which is independent of the parties in interest with whom it will deal. Mortgage Associates has reviewed the terms of this class exemption and represents that the transactions for which relief is requested appear to be outside the scope of that exemption.

Summary of Facts and Representations

1. The MAMA Trusts currently exist in two forms, an open-ended trust (MAMA Trust I) and a closed-ended version (MAMA Trust II). The MAMA Trusts have been organized as group trusts described in Rev. Rul 81–100, IRB 1981–13, 32, to offer tax exempt entities the opportunity to acquire beneficial interests in a geographically diversified pool of high quality mortgage loans secured by single family residential properties located throughout the United States. Only trusts that form a part of pension or profit-sharing plans qualified under Code section 401(a) and exempt from federal income tax under Code section 501(a), governmental plans described in Code section 414(d), and governmental units described in Code section 805(d)(6) will be permitted to invest in the MAMA Trusts.

2. Units in the MAMA Trusts have been offered to investors pursuant to private placement agreements and will not be registered under the Securities Act of 1933, as amended. The offering price for each unit is $500,000 with a minimum subscription by an investor of six units ($3,000,000). To purchase a unit in one of the MAMA Trusts, an investor must execute a subscription agreement and stand ready to make full payment in cash for the number of units one has committed to purchase within 30 days notice after the respective trust obtains commitments for a minimum subscription amount of $25,000,000. No underwriting or sales commissions will be deducted from the sales price paid by subscribers for the units, hence all proceeds will be available for investment by the MAMA Trusts. There will not be any future assessments to holders of a unit nor will beneficiaries be required to contribute further sums of capital to the MAMA Trusts. As required by Rev. Rul 81–100, neither the units nor any interest therein may be resold, transferred, assigned or otherwise disposed of or encumbered by an investor. An investor may seek to redeem units at the end of each calendar quarter (the Valuation Date) upon 90 days written notice (the redemption procurement varies slightly between the MAMA Trusts, the specifics for each trust are discussed below in paragraphs 12 and 13). The MAMA Trusts are structured as group trusts, not as real estate investment trusts. Moreover, the MAMA Trusts are not, and it is intended that they will not operate in such manner as to be classified as an "investment company" for purposes of the Investment Company Act of 1940.

3. The trustees of MAMA Trusts I are H. Robert Bartell, Jr. and Richard L. Heisel (MAMA Trust I Trustees). Mr. Bartell is currently the only trustee of MAMA Trust II; although, the trust agreement for such trust provides for up to three trustees (MAMA Trust II Trustees, the trustees of the MAMA Trusts are collectively referred to herein as the Trustees). The Trustees are officers or directors of Mortgage Associates. The Trustees receive no compensation as such from MAMA Trusts, but are eligible to be reimbursed for certain expenses. The Trustees may resign, in which case a unanimous vote

of the remaining trustees of the respective trust would be required to appoint any successor trustee. The Trustees may also be removed with or without cause by the vote or written consent of the beneficiaries holding 66⅔ percent of the outstanding units in the affected trust.

4. Pursuant to a written investment management agreement (the Agreement) entered into with the Trustees of the respective MAMA Trusts, Mortgage Associates, will provide investment management services. Mortgage Associates, a California corporation incorporated as Bartell Mortgage Management Associates, is a registered investment advisor under the Investment Advisors Act of 1940 specializing in the management of residential mortgage group trusts for tax-exempt employee benefit plans. Mortgage Associates expects to manage other group trusts that will be established in the future and operate in similar manner to either of the trusts described herein. Accordingly, the application has been submitted to cover current as well as future conduct in the operation of the subject group trusts. All investment decisions and conduct of the MAMA Trusts' operations will be carried out by Mortgage Associates as investment manager subject to the oversight of the Trustees. The MAMA Trusts intend to invest their assests in diversified pools of single family residential mortgage loans (the Mortgage Loans). The term "single family mortgage loans" means permanent loans (as opposed to construction and land development loans) secured by mortgages or deeds of trust on non-farm properties comprising one to four dwelling units, including individual condominiums, row houses, townhouses and other sepate dwelling units even when located in buildings containing five or more of such units. No more than 20 percent of the Mortgage Loans at the time of purchase by one of the MAMA Trusts will be secured by properties located in any one state. Mortgage Associates anticipates that the Mortgage Loans purchased for the MAMA Trusts will be primarily conventional mortgage loans but FHA insured and VA guaranteed loans may also be acquired. While all eligible Mortgage Loans must be repayable in monthly installments which reduce the principal balance of the loan to zero at final maturity, other financing of the loans may vary between MAMA Trust I and MAMA Trust II. (The differences between the two trusts are discussed below in paragraphs 12 and 13.)

All of the Mortgage Loans will be screened and underwritten to the specifications of the investment manager. At the time of its origination, each Mortgage Loan must have (a) met the terms to be eligible, through an established program for purchase by either the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA) or the Federal Home Loan Mortgage Corporation (FHLMC), except, however, with respect to the loan size criteria established by the FNMA, GNMA or FHLMC, and (b) been originated by a lender which had as one of its principal purposes in the normal course of business the origination of loans secured by real estate mortgages or deeds of trust and which qualifies for either (i) approval by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act; or (ii) approval by FNMA or FHLMC as a qualified "seller/servicer." The MAMA Trusts will purchase Mortgage Loans from eligible state and federally chartered savings and loan associations, mutual savings banks, commercial banks and similar financial institutions and from other organizations, principally brokerage firms and mortgage bankers. Pending investment of monies held by the MAMA Trusts in Mortgage Loans, short term investments will be made in certificates of deposit; bankers acceptances; interest bearing accounts maintained by banks, savings banks, savings and loan associations or similar institutions; high grade commercial paper; money market funds containing government obligations or other money market types of securities. The MAMA Trusts do not intend to borrow money, except that they may, under extraordinary circumstances, make short term borrowings to ensure adequate cash flow.

5. The MAMA Trusts will enter into trust agreements with Security Pacific National Bank or another commercial bank selected by Mortgage Associates having aggregate capital, surplus and retained earnings of not less than $100 million (the Bank). The Bank will agree to take delivery of and title to and hold on behalf of the respective MAMA Trust all related mortgage documents, including the original mortgages, assignments thereof in recordable form and title insurance policies (if applicable). The Bank will further agree to ascertain that all Mortgage Loans and related documents delivered to the Bank have been executed and received by the Bank and that the Mortgage Loans and related documents conform to the terms of the purchase agreements pursuant to which the respective MAMA Trust acquires such Mortgage Loans.

6. As investment manager, Mortgage Associates, will act as master servicer (Master Servicer) and will be responsible for supervising the local mortgage servicers who will perform the day-to-day servicing of the Mortgage Loans. Based on a uniform accounting system, the Master Servicer will provide the MAMA Trusts with consolidated monthly reports which will reflect collections, delinquencies, prepayments and prepaid installments from the Mortgage Loans. The local servicers will normally be the institutions which originated and sold the Mortgage Loans to the respective MAMA Trust; however, other qualified servicing institutions may be selected. The local servicer's primary compensation will be a negotiated percentage of the outstanding principal amount of the Mortgage Loan (e.g., .25 percent per annum). This servicing fee is typically deducted by the local servicer monthly, prior to remittance to the MAMA Trusts of all income, principal and other sums received on the Mortgage Loans being serviced.

7. The Mortgage Loans are individually protected by primary hazard insurance generally in an amount no less than the original amount of the Mortgage Loan. Depending on the location of the property collateralizing the Mortgage Loan, an additional special hazard insurance protecting against floods, earthquakes and mud flows may be required. Additionally, primary mortgage guarantee insurance policies, which protect against financial loss by reason of non-payment of principal and interest, will be required when the loan-to-value rates exceed a fixed percentage (generally 70 percent). At the discretion of Mortgage Associates, a mortgage pool insurance may be obtained for all or a portion of the Mortgage Loans. Instead of insuring each individual Mortgage Loan, this type of insurance will insure a pool of mortgages by providing that the insurer will settle individual claims of non-payment in full with no loss limit on the individual claims until the net claims reach a pre-set percentage of the original principal balance of the pool, losses above this pre-determined amount would then be borne by the respective MAMA Trust.

8. Pursuant to the Agreement, Mortgage Associates will receive from the MAMA Trusts an asset management fee at the rate of .35 percent per annum paid quarterly in advance on the beginning asset value of such trust for

each calendar quarter. This fee will cover all charges for investment decisions, asset valuations and reporting functions performed as investment manager. Except as described above, Mortgage Associates will receive no other compensation from the MAMA Trusts, or from others with respect to the business, assets or affairs of the MAMA Trusts, including, without limitation, commissions or fees with respect to the purchase of Mortgage Loans or short-term money market investments by the MAMA Trusts, insurance commission fees, foreclosure sale fees or commissions.[1] All expenses incidential to the establishment and operation of the MAMA Trusts will be paid by such trusts. Mortgage Associates, as investment manager, will pay its own expenses for compensation to employees, costs incurred in performing Master Servicer functions, costs relating to the preparation, printing and mailing of any private placement memorandum or other marketing materials, costs for preparation of quarterly valuation statements and other administrative expenses. The Agreement between the respective MAMA Trust and the Investment Manager, unless sooner terminated, is to remain in effect for the duration of such trust. Either of the MAMA Trusts may, at any time, terminate their respective Agreement.

9. The value of the Mortgage Loans held by the MAMA Trusts will be established by reference to market prices for such mortgage loans, if they are reasonably ascertainable from informed sources, including mortgage bankers, investment bankers or other sources of secondary mortgage market quotations. In the event certain of the Mortgage Loans are not actively traded and no market quotations are available, Mortgage Associates will set values based upon accepted valuation principles and reference to the market prices for investments with similar yield, risk and cash flow characteristics. Short-term money market investments will be valued at current market prices or, if shares of money market mutual funds, at their redemption prices. The value of units in the MAMA Trusts will be determined by dividing the aggregate value of the assets, less accrued liabilities, by the number of units outstanding on such Valuation Date.

10. The books of the respective MAMA Trusts will be certified annually by a firm of independent certified public accountants selected by the Trustees of the appropriate MAMA Trust. Reports containing the audited financial statements of such trusts will be sent to all beneficiaries including the Participating Plans at least annually. These statements will summarize all Mortgage Loan and short-term money market investment transactions during the year and include a listing of quarterly unit values. Additionally, on a quarterly basis Mortgage Associates will furnish a report of income and expenses for the respective MAMA Trust to its beneficiaries.

11. The decision to invest in the MAMA Trusts will be made by fiduciaries of the respective investor employee benefit plans. Neither Mortgage Associates nor any of its affiliates currently acts as an investment manager or advisor of any potential investor in the MAMA Trusts. If Mortgage Associates or an affiliate does become such a manager or advisor, it will not, in such fiduciary capacity, place managed assets or give investment advice to such potential investor to purchase units in the MAMA Trusts.[2]

The subscription agreeement executed by all Participating Plans for any of the MAMA Trusts provides at section 3.03 thereof that, ". . . as of the date such agreement is signed, the value of all securities owned by the respective purchaser of all issuers exempted from the Investment Company Act of 1940 solely on account of section 3(c)(1) of such act, including the investment of units in [the applicable MAMA Trust], does not exceed 10% of the value of the total assets of such party."

12. As noted above, MAMA Trust I is an open-ended trust, hence once the trust becomes operational it will have an indefinite term subject to a vote or the written consent of either a majority of the MAMA Trust I Trustees or the Participating Plans holding at least 66⅔ percent of the units in such trust. Once operational, MAMA Trust I expects to offer additional units to eligible investors on future Valuation Dates. The offering of additional units will be subject to the availability of acceptable Mortgage Loans. These additional units will be sold at the then current net asset value per unit. The Mortgage Loans to be acquired by MAMA Trust I will be limited to fixed-rate single family mortgage loans. The types of eligible mortgages include level payment mortgages, graduated payment mortgages and accelerated principal reduction mortgages. A Participating Plan may redeem all or any portion of its units on the Valuation Date by giving 90 day written notice to the MAMA Trust I Trustees. It is expected that mortgages of the type purchased for this trust will be readily marketable at most times; therefore, redemptions can normally be expected to be paid in cash.

13. As noted above, MAMA Trust II is a closed-end trust having an existence for a period of five years; however, by a vote or the written consent of a majority of the MAMA Trust II Trustees and the Participating Plans holding at least 66⅔ percent of the units, such trust may be extended for a period up to five additional years. The maximum number of units to be issued is limited to 400 and MAMA Trust II may have a maximum of 100 investors. No additional units will be offered for sale after the close of the initial subscription period stated in the placement agreement. The Mortgage Loans to be acquired by MAMA Trust II will have terms which provide for periodic adjustment of interest rates in accordance with changes in market levels of interest rates or in general price levels. The types of eligible mortgages include adjustable rate mortgages and price level adjusted mortgages. Because the adjustments in these mortgages may not reflect the full extent of such changes in the benchmark interest rate or price index levels, sales when such rates are below market may result in capital losses realized by such trust. A Participating Plan may redeem all or any portion of its units on the Valuation Date by giving 90 day written notice to the MAMA Trust II Trustees. It is expected that mortgages of the type purchased for this trust will not be readily marketable at all times; therefore, redemptions cannot normally be expected to be paid in cash and the Mortgage Loans themselves will frequently constitute the form of payment for redemption.

14. The Investment Manager expects that it will from time to time manage other accounts or funds which will invest in the same types of mortgages as either of the MAMA Trusts. Therefore, it

[1] The Department is not proposing an exemption for the receipt of investment management fees beyond that provided by Section 408(b)(2) of the Act.

[2] To the extent that, in the ordinary course of business, Mortgage Associates provides "investment advice" to a plan within the meaning of regulation 29 CFR 2510.3-21(c)(1)(ii)(B) and recommends an investment of a plan's assets in a MAMA Trust that it is establishing, the presence of an unrelated second fiduciary acting on the consultant/investment advisor's recommendations on behalf of the plan is not sufficient to insulate Mortgage Associates from fiduciary liability under 406(b) of the Act. [See Advisory Opinions 84-3A and 84-4A, issued by the Department on January 4, 1984.] The Department is unable to conclude that a fiduciary self-dealing of this type (if present) is in the interests or protective of the affected plans and their participants and beneficiaries and, accordingly has limited exemptive relief for the acquisition or sale of beneficial interests in the MAMA Trusts to section 406(a) violations only.

is possible that investments in certain of such mortgages may be appropriate for more than one trust or another individual account directed by the Investment Manager. If such overlap does occur, it is expected that investment opportunities will be allocated fairly between the several trusts taking into account; cash reserves, uncalled funds subscribed and held by a trust pending investment calls, and the geographical location of the investment opportunity. These hypothetical conflicts cannot arise in the case of MAMA Trust I and MAMA Trust II because of the different investment objectives in the two trusts (i.e. fixed verses varible rate mortgages). In the event additional trust are developed, no trust formed or operated by the Investment Manager will purchase Mortgage Loans from or sell Mortgage Loans to either the Investment Manager, any of its principals or an other trust under the sponsorship of the Investment Manager. Additionally, the Investment Manager, its officers, directors and employees and their affiliates shall not purchase any mortgage loans for themselves on a behalf of another individual account directed by the Investment Manager which makes similar investments to either of the MAMA Trusts so long as the respective MAMA Trust has uninvested funds (less appropriate reserves) available to purchase such mortgage loans.

15. Whenever a termination of a MAMA Trust occurs, the respective Trustees will attempt to reduce all outstanding trust assets to cash, the only allowable form of distributions on termination. At the present time, the secondary mortgage market presents ample opportunities for all cash dispositions of both fixed and adjustable rate mortgages. However, should market conditions in the future be such that disposition for cash of certain Mortgage Loans is determined to be unfeasible or not advantageous to the interests of the Participating Plans, the respective Trustees have been provided flexibility to dispose of certain assets, in whole or in part, in exchange for "evidence of indebtedness" from unrelated third parties. Such "evidences of indebtedness" will take the form of a purchase money obligation which would require payment of the full indebtedness thereunder within a period not to exceed three years and would be secured by the Mortgage Loans sold or other appropriate collateral. Accordingly, the final distribution of assets may be delayed, in some situations, until such "evidences of indebtedness" are totally converted to cash.

16. For purposes of this exemption request it has been assumed that the assets of the MAMA Trusts would constitute assets of the respective investing Participating Plans. Entities having a relationship to the MAMA Trusts would therefore also be deemed to have the same relationship to plans participating in such trust. Accordingly, Mortgage Associates would be a fiduciary with respect to each of the Participating Plans under section 3(21) of the Act and section 4975(e)(3) of the Code because as the investment manager to the respective MAMA Trusts, it will exercise authority and control repecting management and disposition of plan assets and render investment advice for a fee. Additionally, the local servicers of the Mortgage Loans are parties in interest or disqualified persons by virtue of their service provider role to the respective MAMA Trusts. Finally, where the borrower on the Mortgage Loan has a party in interest or disqualified person relationship to any of the Participating Plans, an extension of credit would exist between such plan and the mortgagor. The applicant has, therefore, sought exemptive relief because the MAMA Trusts would otherwise be restricted from dealing with a number of parties which would have the affect of limiting the MAMA Trusts' ability to prudently make investments and conduct its operations solely for the benefit of the Participating Plans.

17. In summary, the applicant represents that subject transactions meet the criteria of section 408(a) of the Act because: (a) any decision to invest the MAMA Trusts will be made by plan fiduciaries unrelated to the Trustees, the investment manager or any other related parties on the basis of a detailed private placement memorandum supplied prior to investment; (b) the servicing and acquisition transactions involving the Mortgage Loans will be based on clearly established standards and procedures and conducted on terms represented to be standard for the industry; (c) periodically information regarding the operation of the MAMA Trusts will be provided to fiduciaries of the Participating Plans and an independent public accountant will audit the operation of the MAMA Trust on an annual basis; and (d) each of the protections provided to the Participating Plans and their participants and beneficiaries by PTE 80–51 will be satisfied for transactions involving parties in interest to such plans execpt that the investment vehicle is not operated by a bank.

Notice to Interested Persons

Because the identity of the several employee benefit plans which may elect to participate in the MAMA Trusts are not known at this time and because all plan participants and beneficiaries of such plans would be interested persons, the Department has determined that the only practical form of notice is by publication in the **Federal Register**.

For Further Information Contact: Mr. Paul R. Antsen of the Department, telephone (202) 523–8753. (This is not a toll-free number.)

Profit Sharing Plan and Trust of Laboratory Medicine and Pathology, Inc. (the Plan) Located in Radford, Virginia

[Application No. D–5963]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the appliction of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed purchase by the Plan of a certain parcel of unimproved real property (the Property) located in Montgomery County, Virginia from Antonio and Enrique Perez (the Sons), the sons of Antonio and Ana Perez (the Perezes), the owners of the Plan sponsor and the Plan participants, for $25,000 cash, provided that such price is no more than the fair market value of the Property at the time of the sale.[3]

Summary of Fact and Representations

1. The Plan is a profit sharing plan with two participants, the Perezes. Antonio Perez is the Plan trustee. The Perezes are the owners of Laboratory Medicine and Pathology, Inc. (the Employer). As of August 31, 1984, the Plan had assets of $271,377.

2. The Property is an unimproved parcel of 74 acres located in Montgomery County, Virginia. The Property was acquired by the Sons from unrelated persons on April 11, 1979 for $18,000.

3. Ned Pugh, staff appraiser, and W.T. McCraw, real estate broker, of the independent real estate frim of McCraw

[3] Because the Perezes are the sole shareholders of the Plan sponsor and are the only Plan participants, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510 3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Real Estate of Radford, Virginia, appraised the Property on March 18, 1985 as having a fair market value of $25,900.

4. The applicant desires that the Plan purchase the Property for $25,000 in cash as long-term growth investment. The applicant represents that this investment, which represents approximately 9.2% of the Plan's assets, will not affect its liquidity needs as neither of the participants is expected to draw benefits from the Plan in the near future. The Plan will pay no fees or commissions with respect to the transaction.

5. The applicant represents that the Property is likely to appreciate substantially in value, giving the Plan an opportunity for a greater return on its investment.

6. The applicant represents that in the event other employees become participants in the Plan, the investment in the Property will be restricted to the accounts of the Perezes.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) because: (1) The Property will represent approximately 9.2% of the Plan's assets; (2) the Plan will pay no more than the fair market value of the Property as determined by an independent appraiser; and (3) the Perezes are the only participants in the Plan to be affected by the transaction and they have determined that is appropriate for and in the best interests of the Plan.

Notice to Interested Persons: Because the Perezes are the sole stockholders of the Plan sponsor and the sole participants in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the publication of this notice in the **Federal Register.**

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

Jahn Refrigeration Company, Inc. Defined Benefit Plan & Trust (the Plan) Located in Yoakum, Texas

[Application No. D-6022]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of 20 units (the Units) of Shelter Properties III (Shelter), a real estate limited partnership, to Rudolph Jahn (Mr. Jahn), a 30% shareholder in Jahn Refrigeration Company, Inc. (the Employer), and the Plan trustee, for the net asset value of the Units.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan, with 11 participants and $272,612.53 in assets as of April 30, 1984. Mr. Jahn is a participant in the Plan, the Plan trustee, and a 30% shareholder of the Employer.

2. The Units were purchased by the Plan on October 28, 1981 from Shelter Realty Corporation for $500 per Unit. The applicant represents that the Employer, Mr. Jahn, and the other participants in the Plan have no other ties with Shelter Realty Corporation.

3. The applicant represents that the investment in Shelter has resulted in a minimal investment return and asset appreciation for the Plan; that the investment is speculative and illiquid; and that there is no readily available market for the Units. Therefore, it is in the best interests of the Plan and its participants to dispose of the Units.

4. The latest appraisal of Shelter, performed by John McCraken and Associates, American of Institute of Real Estate Appraisers, independent appraisers, disclosed a net asset value of $553 per Unit as of December 31, 1984. The net asset value for the Units is therefore $11,060, which represents 4.06% of the Plan's assets.

5. Since there is no readily available market for the Units, Mr. Jahn proposes to purchase the Units for cash at their appraised net asset value. He will pay any costs associated with the proposed sale. This will allow the Plan to maximize its realization on a sale of the Units and to replace them with a more secure and higher yielding investment.

6. In summary, the applicant represents that the proposed transaction meets the statutory requirements of section 408(a) of the Act because: (a) This is a one time transaction for cash; (b) the Plan will receive the appraised net asset value of the Units; (c) the Plan will incur no costs with respect to the sale; and (d) the Plan will be able to reinvest the proceeds for the sale in a more secure, higher yielding investment.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code has not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 25th day of June, 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-15845 Filed 7-1-85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-43]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing July by 12, 1985. If you anticipate cmmenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Mike Weinstein, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20403.

FOR FURTHER INFORMATION CONTACT: Carl Steinmetz, NASA Agency Clearance Officer, (2020 454-2941.

Reports

Title: Radioactive Material Transfer Receipt.
Type of request: Extension.
Frequency of Report: On occasion.
Type of Respondent: Business or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.
Annual Responses: 500.
Annual Burden Hours: 290.

Abstract-Need/Uses: The NASA JSC 1625 form is used to furnish the necessary records on the possession, location, and use of radioactive material at temporary job sites throughout the U.S. for research and development purposes as well as launching of space vehicles.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 85-15773 Filed 7-1-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee (Public Law 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Dance/Inter-Arts/Touring-Presenting Initiative) to the National Council on the Arts will be held on July 19, 1985, from 9:00 a.m.—6:00 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on July 19, from 3:30-6:00 p.m. to discuss policy and guidelines.

The remaining sessions of this meeting on July 19, from 9:00 a.m.-3:30 p.m. are for the purpose of Panel review, discussin, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuánt to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 27, 1985.

[FR Doc. 85-15817 Filed 7-1-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Vogtle Electric Generating Plant Units 1 and 2; Meeting

The ACRS Subcommittee on Vogtle Electric Generating Plant Units 1 and 2 will hold a meeting on July 18 and 19, 1985, at the Augusta Hilton Hotel, 640 Board Street, Augusta, GA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, July 18, 1985—1:00 p.m. until the conclusion of business.

Friday, July 19, 1985—8:30 a.m. until the conclusion of business.

The Subcommittee will begin review of Georgia Power Company's application for an operating license for Vogtle Units 1 and 2.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Georgia Power Company, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. John Schiffgens (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 26, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-15836 Filed 7-1-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352]

Philadelphia Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is issuing exemptions from certain requirements of 10 CFR Part 50 to the Philadelphia Electric Company (the licensee) for the Limerick Generating Station, Unit 1 facility located in Montgomery and Chester Counties, Pennsylvania.

Environmental Assessment

A. Standby Gas Treatment System

Identification of Proposed Action: The exemption would allow a delay in the completion of those portions of the standby gas treatment system (SGTS) which serve the refueling floor area. This schedular exemption from the requirements of General Design Criterion 61, "Fuel Storage and Handling and Radioactivity Control" would require completion of the SGTS to the refueling floor area prior to start up following the first refueling outage. The exemption is in accordance with the licensee's requests dated September 21, 1984.

The Need for the Proposed Action: The exemption is required to facilitate the continued progress of the preoperational and startup testing programs.

Environmental Impacts of the Proposed Action: The secondary containment for Limerick, Unit 1 consists of (a) the reactor enclosure zone and (b) the refueling floor zone. According to FSAR Section 6.2.3 and 6.5.1.1.1, the SGTS is needed to maintain a 0.25 inch water gauge vacuum in each zone during secondary containment isolation conditions. This vacuum, along with the effluent treatment features of SGTS, mitigates offsite releases during either a LOCA or a fuel handling accident. The licensee has indicated that the refueling floor zone is completely isolated from the Unit 1 secondary containment zone and that the refueling zone is only relied upon during fuel handling. The licensee has further stated that there will be no irradiated fuel in the spent fuel pool until the first refueling outage. Thus this exemption would allow a delay in the completion of the SGTS to serve the refueling floor zone area until prior to the first refueling outage which would be the first time that irradiated fuel would be expected to be handled in the refueling floor zone area.

With respect to this exemption the increment of environmental impact is related solely to the potential increased probability and the magnitude of containment leakage from the Unit 1 secondary containment zone into the refueling floor zone during an accident which could lead to potentially higher radiological dose consequences. However, the potential increase due to the exemption being granted is small due to (a) the leak tight integrity of the primary containment as demonstrated during the preoperational containment integrated leak rate tests and (b) the maintenance of reactor enclosure secondary containment integrity in accordance with the Limerick Technical Specifications.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemptions, any alternative to this exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of plant operations and would result in unwarranted delays in power ascension.

B. Automatic Containment Isolation

Identification of Proposed Action: The exemption would allow a delay until prior to startup following the first refueling outage in (a) the installation of redundant automatic isolation valves for hydrogen recombiner lines and the requirement for implementation of automatic isolation signals to existing reactor enclosure cooling water inboard and outboard isolation valves in supply and return lines to the recirculation pumps and to existing drywell chilled water outboard isolation valves in the supply and return lines. These schedular exemptions from the requirements of General Design Criterion 56, Primary Containment Isolation, are in accordance with the licensee's request dated September 21, 1984.

The need for Proposed Action: The exemption is required to enable the licensee to fulfill its commitment to implement redundant automatic containment isolation provisions for these lines penetrating containment at the first refueling outage and to avoid unwarranted delay in the preoperational and startup testing programs.

Environmental Impact of the Exemptions: The increment of environmental impact is related to the potential increased probability and magnitude of leakage during an accident which could lead to potentially greater offsite radiological consequences. However the potential increase due to the exemption for the hydrogen recombiner isolation values is small since one automatic isolation valve is already included in the system design and the licensee has indicated that the closed piping of the recombiner system meets certain criteria for a second isolation barrier. Additionally, the potential increase due to the exemption for the additional automatic isolation signals is small since (a) the lines do not open directly to the containment atmosphere or to the reactor coolant pressure boundary and (b) special interim operating instructions have been provided to isolate the lines when required.

Alternatives to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the exemption, any alternative to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impact of plant operations and would result in unwarranted delays in power ascension.

C. Redundant Remote Shutdown Capability

Identification of Proposed Action: The exemption from the requirements of General Design Criterion 19, Control Room, would allow the use of jumpers and procedures for the operation of the B. Residual Heat Removal (RHR) pump, and B RHR Service Water (RHRSW) pump and the B Emergency Service Water (ESW) pump in lieu of transfer switches until the first refueling outage. The requested exemption is in accordance with the licensee's request dated October 25, 1984 as supplemented by letters dated April 18 and 22, 1985.

The Need for the Proposed Action: The exemption is required because of the design of the remote shutdown system. Should the control room become uninhabitable the plant would be shutdown using the remote shutdown system. Redundant safety-related trains of remote shutdown equipment are needed to meet this requirement. One train is presently complete in the Limerick plant. The functioning of the second train is dependent on the use of jumpering and lifting of leads in accordance with established procedures until installation of the transfer switches; thus the need for this exemption.

Environmental Impact of the Proposed Action: With respect to this exemption from GDC 19 the increment of environmental impact is related to the increased probability of not sustaining

operations to cool down the plant and maintain it in a cold shutdown condition under conditions where the control room is uninhabitable. The potential increase due to this exception is small and would result from the difference in probabilities of the operators being able to operate the pumps with transfer switches versus with the use of jumpering in accordance with established procedures. However, the initial probability of the operators being required to use these pumps in the remote shutdown mode during the period of the exemption is small due to the low probability of an event rendering the control room uninhabitable and the availability of the primary train of remote shutdown equipment.

Alternatives to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemptions, any alternative to these exemptions will have either no environmental impact or greater environmental impact. The principal alternative would be to deny the requested exemption.

This would not reduce the environmental impact of plant operation and would result in unwarranted delays in power ascension.

D. Containment Airlock Testing

Identification of Proposed Action: The exemption would eliminate the full pressure test required by Paragraph III.D.2(b)(ii) of Appendix J each time the air lock is opened during periods when containment integrity is not required and substitute a seal leakage test to be conducted at a pressure specified in the Technical Specifications. The exemption is in accordance with the licensee's request dated September 14, 1984.

The Need for the Action: The exemption is required to provide the licensee with greater plant availability over the lifetime of the plant.

Environmental Impact of the Action: The exemption would allow the substitution of an airlock seal test for an airlock pressure test while the reactor is in a shutdown or refueling mode. With respect to this exemption from Appendix J, the increment of environmental impact is related solely to the potential increased probability and the magnitude of containment leakage during an accident which could lead to potentially greater offsite radiological consequences. However, the potential increase due to this exemption is small and would result from the potential leakage path through the door mechanism which will not be measured by this modified test. Other tests every six months or when maintenance is performed on the airlock, will measure the leakage though the door mechanism.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the exemption, any alternative to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of plant operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

E. Leak Rate Testing of Main Steam Isolation Values

Identification of Proposed Action: The exemption would (1) allow testing of the main steam isolation valves (MSIV) to be conducted at a differential pressure less than that required by Paragraphs II.H.4 and III.C.2 of Appendix J, and (2) allow exclusion of the measured MSIV leakage rates from the summation for the local leak rate tests as otherwise required by Paragraph III.C.3 of Appendix J. The proposed exemptions are in accordance with the licensee's request dated September 14, 1984.

The Need for the Proposed Action: The exemption from Paragraphs II.H.4 and III.C.2 is required because, due to the design of the mainsteam isolation system, a testing of the MSIVs at the calculated peak internal containment design basis pressure, Pa, would lift the disc of the inboard MSIV and result in a meaningless test. In lieu of testing at pressure Pa the licensee proposes to test at one-half of Pa. The exemption from Paragraph III.C3 is requested because leakage that is to be collected by the MSIV leakage control system and processed by the standby gas treatment need not be included in the determination of direct containment leakage to the environs.

Environmental Impact of the Proposed Action: The exemption would allow the Appendix J Type C testing of the main steam isolation valves to be conducted at a differential pressure less than that required by Appendix J and would allow exclusion of the measured leakage from the combined local leak rate test results. With respect to these exemptions from Appendix J, the increment of environmental impact is related to the potential increased probability and the magnitude of leakage during an accident which could lead to potentially higher offsite radiological consequences. However, the potential increase due to the exemption granted for the reduced differential pressure testing and exclusion of the measured MSIV leakage from combined local leak rate test results will not result in an increase in doses beyond those already accounted for and determined in the Chapter 15 Accident Analysis of the Final Safety Analysis Report.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemptions, any alternative to these exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemptions. This would not reduce the environmental impact of plant operations and would result in unwarranted delays in power ascension.

F. Leak Rate Testing of Traversing Incore Probe Shear Valves

Identification of the Proposed Action: The exemption would allow substitution of alternate provisions to ensure isolation capability of the traversing incore probe (TIP) guide tubes. These provisions are in lieu of the leak rate testing otherwise required by Paragraphs II.H.1 and III.B.2 of Appendix J for the guide tube explosively actuated shear valves. The exemption is in accordance with the licensee's request dated September 14, 1984.

The Need for the Proposed Action: The exemption is required because it is impractical to leak rate test the shear valves since their destruction would be required.

Environmental Impacts of the Proposed Action: The requested exemption would allow substitution of other isolation provisions for the TIP guide tube shear valves in lieu of leakage rate testing otherwise required by Appendix J. With respect to this exemption from Appendix J, the increment of environmental impact is related to the potential increased probability and magnitude of containment leakage during an accident which could lead to potentially higher radiological consequences. However, there is no potential increase due to the exemption since leakage rate testing of a once actuated explosive shear value would not provide any practical information about the leak-tight integrity of the valve used to replace the actuated valve. Instead alternate provisions are included in the Technical Specifications which periodically: (a) Verify the continuity of the valves explosive charge, (b) initiate an explosive charge,

and (c) replace all explosive charges in accordance with a recommended lifetime.

Alternative to the Proposed Action: Because the staff has concluded that there is no environmental impact associated with the exemption any alternative to the exemption will have either no environmental impact or greater environmental impact.

The prinicipal alternative would be to deny the requested exemption. This would not reduce the environmental impact of plant operations and would provide no greater assurance of TIP shear valve leak-tight integrity.

G. Leak Rate Testing of Residual Heat Removal Relief Valves

Identification of Proposed Action: The exemption from the requirements of Paragraphs II.H.4 and III.B.2 of Appendix J would allow the initial local leak rate test on seven residual heat removal valves to be delayed until the first refueling outage. The requested exemption is in accordance with the licensee's request dated September 14, 1984.

The Need for the Proposed Action: The exemption is required because the existing design does not allow local leak rate testing of these valves. The licensee has stated that design changes to facilitate such local leak testing would have had an adverse impact on system turnover and plant startup. The exemption will allow the licensee to implement such design changes at the first refueling outage.

Environmental Impact of the Proposed Action: The requested exemption would not affect the environmental impact of the facility because, on the basis provided in the licensee's letter of September 14, 1985, the probability of an accident has not been increased nor has the probability of post-accident leakage been significantly increased. Therefore, the post-accident radiological consequences will not be significantly different than previously determined.

Alternative to the Proposed Action: Because we have concluded that there is no measurable environmental impact associated with the exemption, any alternatives to this exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of plant operations and would result in unwarranted delays in power operation.

H. Containment Inerting

Identification of the Proposed Action: The exemption would allow inerting of the containment in response to the requirements of 10 CFR Part 50.44 to be postponed from six months after initial criticality until either the conduct of the 100 percent thermal power trip test or 120 effective full power days of core burn-up is achieved. The exemption is in accordance with the licensee's request dated May 20, 1985.

The Need for the Proposed Action: The exemption is needed to permit completion of the startup test program with a non-inerted containment. A non-inerted containment during startup testing would facilitate containment entries on an as-needed frequency for identifying and correcting potential safety problems and would also provide greater safety to personnel entering the containment during this period.

Environmental Impacts of the Proposed Action: The increment of environmental impact is related to the potential increased consequences of an accident sequence that would have been mitigated by an inerted containment. However, the regulatory requirement from which an exemption is sought anticipated that power ascension test programs (PATP) could be completed within six months and consequently the core fission product inventory that would build up over the life of the power ascension test program was acceptable. While the regulation contemplated a six-month period, typical BWR programs have proven to actually require an average of 330 days. The Limerick Unit 1 plant, due to its extended shutdown after completing the five percent power testing program, will not complete the PATP prior to six months after initial criticality. With this simple stretch in time, no significant increase in core inventory occurs and the same effective core history is experienced.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the exemption, any alternative to the exemption will have either no impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of plant operation. Further, without the requested exemption, considerable delay to inert and reinert before and after containment entries and some hazard to personnel will be encountered. At this point in the PATP, to require inerting would significantly extend the time to complete the PATP and would produce unwarranted delays in power ascension.

Alternative Use of Resources: These actions in the granting of exemptions A through H above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement related to the Operation of the Limerick Generating Station, Units 1 and 2" dated April 1984.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's requests that support the requested exemptions A through H above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the requested exemptions.

Based upon the foregoing environmental assessment, we conclude that the requested actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for the exemptions as listed herein, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Bethesda, Maryland, this 27th day of June 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-15637 Filed 7-1-85; 8:45 am]

BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of a meeting of the Prospective Payment Assessment Commission scheduled for Thursday, July 18, 1985. The meeting will convene at 10:00 a.m. in the Hampton Room of the Shoreham Hotel, 2500 Calvert Street and Connecticut Avenue, NW., Washington, D.C., and will be open To the Public.

Donald A. Young,

Executive Director.

[FR Doc. 85-15541 Filed 7-1-85; 8:45 am]

BILLING CODE 6820-SW-M

DEPARTMENT OF TRANSPORTATION

[Docket No. 85-6-87]

Order To Show Cause; Cargolux Airlines International S.A.

AGENCY: Department of Transportation.

ACTION: Notice of Order To Show Cause, Order 85–6–87.

SUMMARY: By application filed May 17, 1984, as amended June 24 and October 3, 1984, Cargolux Airlines International S.A. (Luxembourg) requested renewal of its foreign air carrier permit. DOT proposes to issue Cargolux a permit for a five-year period to authorize: (1) Nonscheduled operations carrying property between Luxembourg and Houston/Miami/New York/San Francisco/Seattle; and (2) various charter flights.

Objections

All interested persons having objections to DOT's tentative findings and conclusions, as described in the order cited above, shall, NO LATER THAN July 23, 1985, file a statement (13 copies) of such objections with DOT and mail copies to the applicant, the Port of Seattle, the City of Houston, the Houston Chamber of Commerce, The Flying Tiger Line, Pan American World Airways, Transamerica Airlines, the Federal Aviation Administration, the Department of State, and the Ambassador of Luxembourg in Washington, D.C. A statement of objections must cite Docket 42206 and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, DOT will enter an order which will, suchect to disapproval by the President, make final DOT's tentative findings and conclusions and issue the proposed permit.

ADDRESSES: For objections:

Docket 42206, Documentary Services Division, C–55, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590

Applicant: Cargolux c/o Mr. George E. Farrell, Healey, Farrell & Lear, 1216 Sixteenth Street, NW., Washington, D.C. 20036

FOR FURTHER INFORMATION CONTACT: Allen Brown, Licensing Division, Office of Aviation Operations, DOT, (202) 755–3805.

For a copy of the Show-Cause Order contact Documentary Services Division, C–55, DOT.

Dated: June 25, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–15850 Filed 7–1–85; 8:45 am]

BILLING CODE 4910–62–M

Research and Special Programs Administration

[Docket No. 85–1W; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Grant of Waiver

The Tennessee Gas Pipeline Company petitioned the Materials Transportation Bureau (MTB) for a waiver from compliance with the requirements of 49 CFR § 192.553(d) to permit the maximum allowable operating pressure (MAOP) of five transmission line segments shown on drawings TO–T16–300–1–66, TO–T16–300–1–67, TO–T16–300–1–70, and TO–T16–300–1–70A to be increased to 975 psig from the current 880 psig. These line segments are located in Sussex and Passaic Counties in New Jersey, with two (2) Class 3 locations between mainline valves (MLV) 325–1 and 326–1, one (1) Class 3 location between MLV 326–1 and 327–1, and two (2) Class 3 locations between MLV 328–1 and 329–1, on the Company's 300–1 transmission line.

Line 300–1 was designed and constructed in 1955 in accordance with the "USAS B31.8 Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems," a code of industry consensus standards for safe gas piping systems. Pipe in line 300–1 is 24 inches in diameter, with a 0.375-inch wall thickness. It was manufactured according to API Standard 5LX, grade X52 requirements. The design pressure of the line sections involved is 975 psig, based on a design factor of 0.60.

When the Federal gas pipeline safety standards in 49 CFR Part 192 became effective in November 1970, the highest actual operating pressure of 880 psig (54 percent specified minimum yield strength) (SMYS) became the MAOP of the line section in accordance with § 192.619(a)(3). Subsequently, population density was determined under the requirements of § 192.607. This study showed the five locations described above to be Class 3 locations. Thereafter, the entire line section was hydrostatically tested to at least 1462 psig for 8 hours, without leakage, a pressure level equivalent to 90 percent of the pipe's SMYS.

Under the provisions of §§ 192.553 and 192.555 governing permissible increases in a pipeline's MAOP (uprating), the 1462 psig pressure test and other steps performed by the Company requalified all but the five Class 3 segments of the line section for operation at an MAOP of 975 psig (60 percent SMYS). The five Class 3 segments are restricted from operation at the higher MAOP by § 192.553(d), which provides in relevant part that "a new maximum allowable operating pressure established under this subpart may not exceed the maximum that would be allowed under this part for a new segment of pipeline constructed of the same materials in the same location." In accordance with § 192.619(a), the maximum for a new pipeline in a Class 3 location constructed of pipe like that in line 300–1 would be 812 psig, or the design pressure for such a pipeline based on a 0.50 design factor. In contrast, this limitation did not affect the establishment of a 975 psig MAOP for the remaining Class 2 portion of the line section, because a new pipeline of the same materials in the same Class 2 location would qualify for a 975 psig MAOP under § 192.619(a) based on a design factor of 0.60. After the 1462 psig pressure test was made, four other segments of the line section between MLV 325–1 and MLV 326–1 have changed from Class 2 to Class 3 locations. However, under the provisions of § 192.611(a), because they were previously tested to 90 percent of SMYS, these additional Class 3 segments may operate at their previously established MAOP of 975 psig. The § 192.553(d) limitation does not apply since these additional segments were uprated to 975 psig before the change in class location occurred.

In support of its waiver request, the Company states that the current 880 psig operating pressure is no longer adequate to meet its delivery demands for the 300–1 line. The proposed increased pressure is part of a filing that is currently under consideration by the Federal Energy Regulatory Commission (FERC) to provide additional service to New England customers. Approval by FERC is anticipated in sufficient time to deliver additional gas for the 1985–86 heating season. This increase in capacity can in part be provided by uprating the five Class 3 segments for which the waiver is sought to 975 psig, or alternatively by replacing the five segments with new pipe at an estimated cost of $1,204,300. The Company also points out that the line section involved has been coated and cathodically protected against corrosion since 1956, and electrical surveys and visual inspections have shown the section to have no significant deterioration since the pressure tests were made in 1971 and 1973.

In response to this petition, MTB issued a notice of a petition for waiver inviting interested persons to comment (50 FR 11987; March 26, 1985). In this notice, MTB stated that it believed that a waiver of § 192.553(d) to permit the

proposed uprating should be granted because the five Class 3 segments for which the waiver is sought are not materially different with respect to design, construction, maintenance, and leak history from similar Class 3 segments in the same line section that now have an MAOP of 975 psig. The distinguishing factor is merely the timing of the 1462 psig qualifying pressure test. Had it been performed before the five segments involved changed from Class 2 to Class 3, the segments could have been qualified under § 192.611(a) for the higher 975 psig MAOP without restriction by § 192.553(d). Comments were received from two pipeline operators and one industry organization in response to the invitation to comment and all supported the granting of the waiver. The commenters indicated that, under the conditions faced by the petitioner, there would not be any reduction in public safety and a waiver is the most logical course of action.

In consideration of the foregoing, MTB, by this order, finds that compliance with § 192.553(d) is unnecessary for the reasons set forth in Notice 1, and that the requested waiver would not be inconsistent with pipeline safety. Accordingly, effective immediately, Tennessee Gas Pipeline Company is granted a waiver from compliance with § 192.553(d) regarding the five Class 3 segments described above for the purpose of uprating to 975 psig.

(49 U.S.C. 1672; 49 CFR Part 1.53(a); Appendix A of Part 1, and Appendix A of Part 106)

Issued in Washington, DC, on June 27, 1985.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 85-15601 Filed 7-1-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

United States and India To Discuss Income Tax Treaty

The Treasury Department announced that representatives of the United States and India will meet in New Delhi during the week of July 22, 1985, to resume negotiations of a treaty to avoid double taxation.

There is presently no such treaty in effect between the United States and India. Prior negotiations, most recently in 1977, did not result in the conclusion of a treaty. Following preliminary discussions in Washington in April of 1985, the Government of India invited a U.S. delegation to New Delhi to resume negotiations.

The negotiations are expected to be based on the U.S. and Indian Model treaties and on the Model Convention prepared by the United Nations for treaties between developed and developing countries. The issues to be discussed will include the taxation by each country of income derived there by residents of the other country, whether from business activity, personal services or investment, as well as assurances of nondiscrimination in tax matters and provisions for administrative cooperation between the tax authorities of the two countries.

Interested persons are invited to send written comments and suggestions concerning the forthcoming negotiations to Steven R. Lainoff, International Tax Counsel, U.S. Treasury, Room 3064, Washington, D.C. 20220.

Dated: June 27, 1985.

Ronald A. Pearlman,

Assistant Secretary (Tax Policy).

[FR Doc. 85-15849 Filed 7-1-85; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 26, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Office listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB No.: 1545-0051
Form No.: IRS Form 990-C
Type of Review: Extension
Title: Farmers' Cooperative Association Income Tax Return

OMB No.: 1545-0070
Form No.: IRS Form 2350
Type of Review: Extension
Title: Application for Extension of Time to File U.S. Income Tax Return

OMB No.: 1545-0085
Form No.: IRS Form 1040A
Type of Review: Revision
Title: U.S. Individual Income Tax Return

OMB No.: 1545-0132
Form No.: IRS Form 1120X
Type of Review: Revision
Title: Amended U.S. Corporation Income Tax Form

OMB No.: 1545-0142
Form No.: IRS Form 2220
Type of Review: Revision
Title: Underpayment of Estimated Tax by Corporations

OMB No.: 1545-0172
Form No.: IRS Form 4562
Type of Review: Revision
Title: Depreciation and Amortization

OMB No.: 1545-0211
Form No.: IRS Form 5544
Type of Review: Extension
Title: Multiple Recipient Special 10-year Averaging Method

OMB No.: 1545-0257
Form No.: IRS Form 8109 and 8109A
Type of Review: Revision
Title: Federal Tax Deposit Coupon Book, FTD Reorder Form

OMB No.: 1545-0284
Form No.: IRS Form 5309
Type of Review: Extension
Title: Application for Determination of Employee Stock Owner's Plan

OMB No.: 1545-0675
Form No.: IRS Form 1040EZ
Type of Review: Revision
Title: U.S. Individual Income Tax Return

Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Office of the Comptroller of the Currency

OMB No.: 1557-0069
Form No.: OCC-8010-08 and OCC-8010-09
Type of Review: Revision
Title: Criminal Referral Form (Short and Long Versions)

Clearance Officer: Eric Thompson (202) 447-1177, Comptroller of the Currency, 6th Floor, L'Enfant Plaza, Washington, D.C. 20219

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Bureau of the Public Debt

OMB No.: 1535-0060
Form No.: PD 2488-1
Type of Review: Extension

Title: Certificate by Legal Representative(s) of Decedent's Estate During Administration, of Authority to Act and of Distribution Where Estate Holds Not Exceeding $1000 (face amount) United States Savings Bonds/Notes, Excluding Checks Representing Interest

Clearance Officer: Peter Lougesen (202) 376-4902, Bureau of the Public Debt, Room 445, 999 E Street, NW., Washington, D.C. 20226

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85-15790 Filed 7-1-85; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

[Delegation Order No. 85-5]

Authority Delegation to the General Counsel and Congressional Liaison

Pursuant to the authority vested in me as Director of the United States Information Agency by Reorganization Plan No. 2 of 1977, Executive Order 12047 of March 27, 1978, Executive Order 12048 of March 27, 1978, and Executive Order 12388 of October 14, 1982, I hereby delegate to the General Counsel and Congressional Liaison the following described authority:

1. To act as the Agency's chief legal officer;

2. To represent or obtain representation of the Agency in all proceedings before courts and administrative tribunals in the United States and its territories and possessions or in foreign countries and to be responsible for the conduct of settlement negotiations of all matters in litigation or dispute;

3. To ensure support by officers and employees of the Agency in processing appeals and ascertaining information to the extent required by any court or administrative tribunal and to require such officers and employees to cooperate in such support or to appear as witnesses at any hearing or trial;

4. To obtain the advice or testimony of any factual or expert witness or potential witness not employed by the Agency;

5. To render opinions on legal issues and questions arising in connection with any law or other authority applicable to Agency operations, actual or proposed;

6. To approve the form and legality of Agency contracts, grants, cooperative agreements, international agreements, interagency agreements or any other type of agreement to which the Agency is a party;

7. To seek advisory opinions from legal counsel within the United States, its territories and possessions or in foreign countries;

8. To consider, ascertain, adjust, determine, compromise, and settle tort claims against the Agency under the provisions of 28 U.S.C. 2672, as amended, and under section 804(5) of the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1474(5));

9. To request prosecutorial review by the Attorney General or his subordinates of activities of individuals relating to any aspect of Agency operations and programs, and to assist the Attorney General in any criminal prosecution or civil action involving the Agency;

10. To serve as the Designated Agency Ethics Official and under the Ethics in Government Act of 1978, as amended, and implementing regulations issued thereunder and to coordinate and manage any ethics programs established in fulfillment thereof. The Deputy General Counsel shall serve as Alternate Designated Agency Ethics Official;

11. To act as the ethics counsellor of the Agency under other statutes and authorities other than the Ethics in Government Act, as amended;

12. To approve attendance at meetings and the acceptance of payments and awards under the Government Employees Training Act, as amended (5 U.S.C. 4111);

13. To exercise the gift authority vested in the Director under section 25 of the State Department Basic Authorities Act of 1956, as amended, and under section 105(f) of the Mutual Educational and Cultural Exchange Act of 1961, as amended;

14. To designate Exchange Visitor Programs under the sponsorship of reputable United States or international agencies or organizations and designed to promote the interchange of persons, knowledge and skills, and the interchange of developments in the fields of eduction, the arts and sciences, and concerned with one or more foreign national participants, in order to promote mutual understanding between the people of the United States and the people of other countries;

15. To designate a Responsible Officer and alternates amont the officials of the sponsoring organization of an Exchange Visitor Program;

16. To grant or deny applications for favorable recommendations of the waiver of the foreign residency requirement imposed on persons admitted to the United States under section 101(a)(15)(j) of the Immigration and Nationality Act, to issue authoritative opinions concerning the applicability or interpretation of the Act, and to authorize extensions of duration of stay for such persons;

17. To exercise in full any authority vested in the Director by law as amended from time to time relating to Exchange Visitor Program designations, visa waiver review, and authorized periods of duration of stay;

18. To make any and all determinations regarding immunity from judicial seizure of culturally significant objects imported for temporary exhibition authorized in pursuance of Pub. L. 89-259 (22 U.S.C. 2459), and to publish such determinations and modifications thereof in the **Federal Register**;

19. To take custody and control of the Agency seal;

20. To certify official documents or records of the Agency by causing the Agency seal to be affixed thereto. The documents or records to which the seal is authorized to be affixed shall include, but shall not be limited to, international agreements; attestations of audiovisual materials as coming within the scope of the Beirut Agreement; copies of Agency documents or records to be filed with courts, administrative tribunals or other Governmental entities, both foreign and domestic, and in the discretion of the General Counsel, documents of official interest to private persons;

21. To cause the seal to be affixed to such other documents as determined to be necessary or desirable in the discretion in the General Counsel;

22. To make determinations and responses concerning compliance with initial requests for records under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a);

23. To assign or authorize the assignment of persons having special scientific, or other technical or professional qualifications, pursuant to Title III of the United States Information and Educational Exchange Act of 1948, as amended, to make any findings required by section 301 or to make any concurrence required by section 303 of the Act;

24. To obtain rights from copyright holders for the dissemination of publications or telecommunication programs whether by the Agency or under its sponsorship;

25. To exercise the function of section 108A of the Fulbright-Hays Act concerning the acceptance by a Federal

employee of grants and other forms of assistance provided by a foreign government to facilitate the participation of a Federal employee in a cultural exchange referred to in that section;

26. To act as liaison with Congress and to direct the Agency's relations with Congressional Committees, individual Members of Congress, and Congressional staff personnel on subjects of interest to the Agency;

27. To draft and to recommend legislation for and on behalf of the Agency, as well as to comment on existing, pending or proposed legislation;

28. To review and comment on regulations prepared by other Governmental entities;

29. To review, comment upon and to approve the legality and form of regulations prepared by other Agency elements;

30. To provide Members of Congress and Congressional staff members with comprehensive and complete information on the activities and programs proposed or undertaken by the Agency;

31. To organize and administer briefing seminars for Members of Congress and Congressional staff members to keep them informed of Agency programs and objectives;

32. To issue requisitions for personal property or for services (or both) to be acquired by the Agency's Chief Procurement Executive. This authority does not include the authority to make contracts;

33. To determine the extent that service by air carriers holding certificates under 49 U.S.C. 1371 is available for the purpose of 49 U.S.C. 1517(b) or reasonably available for the purposes of 49 U.S.C. 1517(b) (Fly America Act);

34. To approve and promulgate regulations concerning any aspect of the authority delegated under this Order;

35. To enter into interagency agreements to further the discharge of responsibilities set forth herein;

36. To administer oaths of office or any other oath required by law in connection with employment in the Executive Branch;

37. To redelegate any authority granted herein, together with the power of further redelegation, to the extent authorized by law; and

38. To take any action desirable or necessary to implement any authority granted herein.

39. In the event of a vacancy in the office, or during the incapacity or absence, of the General Counsel, the authority delegated hereunder may be exercised by the Acting General Counsel.

40. Notwithstanding any other provision of this delegation and to the extent permitted and authorized by law, the Director may at any time exercise any function or authority delegated herein.

This delegation is effective immediately and supersedes prior delegation orders made to the General Counsel and Congressional Liaison.

Dated: June 27, 1985.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 85-15840 Filed 7-1-85; 8:45 am]

BILLING CODE 8230-01-M

Cultural Property Advisory Committee; Meeting Agenda

The Cultural Property Advisory Committee will conduct a meeting in Room 840, 301 4th Street, SW., Washington, DC. on July 11. Agenda for the meeting is as follows:

Thursday, July 11

9:00 A.M.—Chairman's Remarks.

9:15 A.M.—Executive Director's Report.

9:30 A.M.—Briefing and discussion of the Committee's advisory role and proposed role for USIA.

10:15 A.M.—Public Affairs: Briefing and discussion of press and public relations concerns of the Committee and the Agency.

11:00 A.M.—Review of Customs Interim Regulations on Cultural Property Act.

12:00 A.M.—Lunch.

Closed to the Public

1:00 P.M.—Discussion of internal workings of Advisory Committee, proposed guidelines, receipt of State Party Requests and security measures and investigative techniques. The Committee will divide into subcommittees to discuss some of these matters.

5:00 P.M.—Adjournment.

Afternoon session of July 11 will be closed in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. 552 App. 2) and the Government in the Sunshine Act (5 U.S.C. 552b). The session will be closed because the discussion will involve investigative techniques and procedures for the handling of State Party requests, internal personnel rules and practice and information, the premature disclosure of which, would be likely to frustrate significantly implementation of proposed actions and policies (5 U.S.C. 552b (c) (7) (E), 5 U.S.C. 552 (c) (2), and 5 U.S.C. 552b (c) (9) (B)) respectively.

Members of the public wishing to attend the open session on Thursday, July 11 should contact Ms. Vicki Rose on 485-6612 by Noon on Wednesday, July 10. Public attendance will be limited due to the size of the meeting room, and must be arranged in advance because of controlled access to the USIA Building.

Dated: June 26, 1985.

Charles Z. Wick,

Director.

[FR Doc. 85-15792 Filed 7-1-85; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 127
Tuesday, July 2, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Commodity Futures Trading Commission	1–5
Federal Deposit Insurance Corporation	6
Federal Energy Regulatory Commission	7
Federal Reserve System	8
National Labor Relations Board	9
National Transportation Safety Board	10, 11
Nuclear Regulatory Commission	12
Pacific Northwest Electric Power and Conservation Planning Council	13

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, July 9, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Briefing on the National Futures Association.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 85–15910 Filed 6–28–85; 2:08 pm]
BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Friday, July 26, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Fourth Quarter Objectives, FY 1985.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 85–15911 Filed 6–28–85; 2:08 pm]
BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, July 26, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conferance Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Fourth Quarter Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 85–15912 Filed 6–28–85; 2:08 pm]
BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Monday, July 29, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Financial Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 85–15913 Filed 6–28–85; 2:08 pm]
BILLING CODE 6351–01–M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., Monday, July 29, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Report on Volume Investors Related Issues and proposed Regulatory Responses.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 85–15914 Filed 6–28–85; 2:08 pm]
BILLING CODE 6351–01–M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:08 p.m. on Wednesday, June 26, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt: (1) A resolution (a) making funds available for the payment of insured deposits made in Golden Pacific National Bank, New York (Manhattan), New York, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Friday, June 21, 1985; (b) accepting the bid of Hongkong and Shanghai Banking Corporation, Hong Kong, for the transfer of insured deposits of the closed bank; and (c) designating four insured, state-licensed, New York, New York, branches of Hongkong and Shanghai Banking Corporation as the agents of the Corporation for the payment of the insured deposits of the closed bank; and (2) an Order approving the applications of Hongkong and Shanghai Banking Corporation, Hong Kong, for Federal deposit insurance of deposits received at and recorded for the accounts of its state-licensed branches to be located at 241 Canal Street, 29 Bowery, 40–52 Main Street, and 87–03 Queens Boulevard, all located in New York (Manhattan), New York, and for consent for the branches to purchase certain assets of and to assume the liability to pay certain deposits made in Golden Pacific National Bank, New York (Manhattan), New York.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 27, 1985.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85-15876 Filed 6-28-85; 11:10 am]
BILLING CODE 6714-01-M

7

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 26435, June 28, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 28, 1985.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

RP-7—RP85-157-000, United Gas Pipe Line Company.

Kenneth F. Plumb,
Secretary.
[FR Doc. 85-15892 Filed 6-28-85; 11:33 am]
BILLING CODE 6717-01-M

8

FEDERAL RESERVE SYSTEM

(Board of Governors of the Federal Reserve System)

TIME AND DATE: 12:00 noon, Monday, July 8, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 28, 1985.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 85-15938 Filed 6-28-85; 4:02 pm]
BILLING CODE 6210-01-M

9

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 2:00 p.m., Tuesday, July 2, 1985.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Selection of Regional Director for Region 18, Minneapolis, Minnesota.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 254-0430.

Dated: Washington, D.C. June 27, 1985.

By direction of the Board.

John C. Truesdale,
Executive Secretary, National Labor Relations Board.
[FR Doc. 85-15873 Filed 6-28-85; 10:50 am]
BILLING CODE 7545-01-M

10

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9 a.m., July 9, 1985.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: The first four items on the agenda will be open to the public; the last two items will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report and Letters of Recommendation:* Loss of the U.S. Fishing Vessel AMAZING GRACE About 80 Nautical Miles East of Cape Henlopen, Delaware About November 14, 1984.
2. *Marine Accident Report:* Fire Aboard the Bahamian Passenger Ship M/V SCANDINAVIAN SUN, Port of Miami, Florida, August 20, 1984.
3. *Marine Accident Report:* Loss by Fire of the U.S. Passenger Vessel M/V FANTASY ISLANDER, in Charlotte Harbor, Florida, September 8, 1985.
4. *Proposed Letters of Recommendaton:* Concerning Daytime Running Lights.
5. *Opinion and Order:* Administrator v. Pacholke, Docket SE-6009 and 6010; disposition of respondent's appeal.
6. *Opinion and Order:* Administrator v. Wagner Docket SE-6379; disposition of respondent's appeal.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa (202) 382-6525.

Catherine T. Kaputa,
Federal Register Liaison Officer.
June 14, 1985.
[FR Doc. 85-15894 Filed 6-28-85; 4:13 pm]
BILLING CODE 7533-01-M

11

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-85-10]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 23575, June 4, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Wednesday, June 12, 1985.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following items were added to the agenda and discussed in open session.

1. *Proposal* to convene a public hearing in connection with the Derailment of a New York City Transit Authority Subway Train at the DeKalb Avenue Station in Brooklyn, New York, on May 14, 1985.
2. *Proposal* to hold a staff-conducted deposition proceeding in conjunction with the collapse of U.S. bridge spans near Mobile, Alabama, April 24, 1985.
3. *Proposal* for staff-conducted deposition in conjunction with the investigation of the Texas Eastern Pipeline Rupture and Fire near Beaumont, Kentucky, on April 27, 1985.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa.

Catherine T. Kaputa,
Alternate Federal Register Liaison Officer.
June 13, 1985.
[FR Doc. 85-15864 Filed 6-28-85; 10:35 am]
BILLING CODE 7533-01-M

12

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 1, 8, 15, and 22, 1985.

PLACE: Commissioners' Conference Room 1717 H Street, NW., Washington, D.C.

STATUS: OPEN AND CLOSED.

MATTERS TO BE CONSIDERED:

Week of July 1

Tuesday, July 2

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Wednesday, July 3

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of July 8—Tentative

Wednesday, July 10

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Fermi-2 (Public Meeting)

Thursday, July 11

9:30 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of July 15—Tentative

Thursday, July 18

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of July 22—Tentative

Tuesday, July 23

2:30 p.m.
Discussion of Threat Level and Physical Security (Closed—Ex. 1)

Wednesday, July 24

10:00 a.m.
Briefing on Accident Source Term Reassessment (Public Meeting)
1:30 p.m.
Briefing on Davis-Besse (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, July 26

10:00 a.m.
Briefing by Georgia Power (Vogtle) on Operational Readiness Review Pilot Program (Public Meeting)
2:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

ADDITIONAL INFORMATION: Affirmation of "Shoreham—Suffork County/New York State Motion for Stay of Low-Power License" (Public Meeting) was held June 24.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Andrew L. Bates,

Office of the Secretary.

June 27, 1985.

[FR Doc. 85–15918 Filed 6–28–85; 3:43 am]

BILLING CODE 7590-01-M

13

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

ACTION: Addition of item to meeting agenda.

SUMMARY:

DATE OF MEETING: June 26, 1985.

PLACE: Federal Building, South Auditorium, 915 Second Avenue, Seattle, Washington.

SUMMARY: The Government in the Sunshine Act, 5 U.S.C. 552b, requires **Federal Register** notice whenever an agency adds an item to its meeting agenda after the meeting has been publicly announced. At its June 26, 1985 meeting in Seattle, Washington, the Northwest Power Planning Council voted unanimously to add to its agenda "Council Decision Regarding Delegation of Authority to Approve Plan for Temporary John Day Fish Acclimation Ponds (Fish and Wildlife Program Measure 704(i)(2)". On June 19, 1985, notices of the Council's intent to make that addition were mailed to those individuals and entities on the Council's fish and wildlife consultation list. Such notice was also published in the **Federal Register** (50 FR 26,284; June 26, 1985).

CONTACT PERSON FOR MORE INFORMATION: Ms. Janie Pearcy, (503) 222–5161, 1–800–222–3355 (toll-free in Idaho, Montana and Washington) or 1–800–452–2324 (toll-free in Oregon).

Edward Sheets,

Executive Director.

[FR Doc. 85–15861 Filed 6–28–85; 8:45 am]

BILLING CODE 0000-00-M

VOL
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federal register

Tuesday
July 2, 1985

Part II

Department of Energy

Office of the Secretary
Office of Hearings and Appeals

Crude Oil Cases; Policy Statement and Order; Notices

DEPARTMENT OF ENERGY

Office of the Secretary

Restitutionary Policy of the Department of Energy in Crude Oil Cases Where Ultimate Victims of Violations of Price and Allocation Controls Cannot Be Identified

AGENCY: Department of Energy.

ACTION: Policy Statement.

SUMMARY: The Department of Energy (DOE) is announcing its policy concerning the exercise of its remedial authority under the Emergency Petroleum Allocation Act (EPAA), as amended, 15 U.S.C. 751 *et seq.*, in crude oil cases where the victims of violations of the EPAA cannot be identified.

FOR FURTHER INFORMATION CONTACT: James B. McCrae, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue, S.W., Room 6E–042, Forrestal Building, Washington, D.C. 20585 (202) 252–6667.

SUPPLEMENTARY INFORMATION: The DOE issues this Statement of Policy, as set forth more fully in the attached appendix, to clarify how it intends to exercise its remedial authority under the EPAA in crude oil cases where the victims of violations of that Act cannot be identified.* This statement is issued in conjunction with the findings of the DOE Office of Hearings and Appeals on referral from the District Court for the District of Kansas in *In re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378, that it is impossible to trace to the ultimate victims the effects of overcharges that have been spread through the entitlements program, 10 CFR 211.67. The DOE has concluded that in such crude oil cases where it is impossible to trace the effects of violations in order to make direct restitution to the specific persons injured by them, the overcharge moneys should be retained in an escrow account for a reasonable time to afford the Congress of the United States an opportunity to select the means for making indirect restitution. If Congress does not enact legislation providing a specific means for distribution of these moneys by the end of the next session (*i.e.*, the fall of 1986), then indirect restitution should be made to the whole population through payment to the general fund of the U.S. Treasury.

* DOE's Office of Hearings and Appeals is simultaneously announcing its intention to implement this policy and the policy announced at 50 FR 1918 (January 14, 1985).

Issued in Washington, D.C. on June 20, 1985.

William H. Mellor III,

Deputy General Counsel for Legislation and Regulations.

Appendix—Statement of Restitutionary Policy of the Department of Energy

This is the second of the two reports requested from the Department of Energy (DOE) by the court in its Order of May 7, 1985 in *In re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D.Kan., May 7, 1985). This report sets forth the DOE's policy of restitution for these crude oil overcharges in view of the findings of fact of the DOE's Office of Hearings and Appeals (OHA) in the first DOE report to the court, dated June 19, 1985.

After the DOE prevailed in the Temporary Emergency Court of Appeals on the validity of the DOE's stripper well regulations, the underlying lawsuit became an enforcement action concerned with the appropriate distribution of the declared overcharges that, for the most part, the plaintiffs had previously been required to deposit in an escrow account. Because this action had begun principally as a declaratory judgment and injunction action challenging the DOE's rulings and regulations during the period of price and allocation controls, the DOE had not had the opportunity to develop an institutional position with respect to the most appropriate means in a decontrolled economy to remedy the harm caused by the overcharges. Accordingly, the DOE sought to have this case remanded to the OHA so that OHA could apply its expertise to attempt to determine the specific incidence of the harm caused by the overcharges and to enable the Department to formulate an informed restitutionary policy in this case.

OHA has now completed its fact-finding regarding the first purchaser and refiner levels of the distribution chain. OHA's unequivocal conclusion is that it is impossible to trace the economic harm of the overcharges to particular firms or individuals. Indeed, none of the participants in the OHA proceeding attempted to trace the overcharges. Essentially, OHA concluded that direct purchasers (as such) generally did not absorb the overcharges because they were reimbursed by the entitlements programs.[1] Tracing of overcharges is impossible in view of the spreading effect of the entitlements program, the fungibility of refiner costs and the consequent inability of firms and OHA to determine which costs were passed through and which, if any, were retained, and the high proportion of cost passthrough, among other factors.

OHA's finding that it is impossible to trace crude oil cost increases that were equalized by the entitlements program, as were the cost increases in this case, is consistent with the conclusions of the two district courts that have previously determined that the harm resulting from crude oil miscertifications cannot be traced. In *United States* v. *Exxon Corp.*, the court found that "the broad scattering [through the working of the entitlements program and the passthrough regulations] of the ill effects of Exxon's wrongdoing renders impossible the tracing of the overcharges to their ultimate victims and the calculation of the precise damages suffered by each." 561 F. Supp. 816, 853 (D.D.C. 1983), *appeal docketed*, Nos. DC– 91 *et seq.* (TECA July 6, 1983). Similarly, in *United States* v. *Sutton*, the court found, based upon the testimony before it, that tracing the effects of crude oil miscertifications is impossible. *United States* v. *Sutton*, Energy Mgmt., Court Decisions 1981–84 (CCH) ¶ 26,501, at 29,632 (N.D.Okl. August 17, 1984), *appeal docketed*, Nos. 10–57, 10–58 (TECA October 12, 1984). OHA's exhaustive proceedings, which included 20 days of testimony and resulted in a 12,958 page record, confirmed these conclusions in a proceeding in which all potential claimants were afforded an opportunity to establish a means for tracing.

Since tracing is impossible, OHA extensively examined whether econometric modeling methods, the subject of most of the testimony at the hearing, could be used to estimate with a reasonable degree of reliability the extent to which overcharges were passed through at the various levels of distribution in the industry. Using the

[1] The record was found to be inconclusive as to whether some small proportion of the overcharges may have been absorbed by refiner-direct purchasers who were undercompensated in some months by the entitlements program. Further hearings would be required were that factual question determined to be material. Any "undercompensation" would also, of course, have to be reduced by overcompensation in other months and the amount passed through to others, but the OHA has found that that determination of this passthrough is impossible to make on an individual firm basis. Because the entitlements program utilized industry-wide averages and was not intended to equalize each individual refiner's crude oil costs exactly, it is likely that from time-to-time most, if not all, refiners' post-entitlements crude oil costs from miscertified stripper well oil deviated from the average. Therefore, as a matter of policy, especially since the entitlements program was never intended to compensate for any such undercompensation, the DOE recommends against further complicating the refund proceedings by undertaking such a problematical course.

method and the data that OHA found most reliable. OHA concluded that it is likely that refiners (as a class) passed through roughly 92 to 98 percent of all stripper well overcharges to their customers (as a class).

The reciprocal is, of course, a conclusion that refiners (as a class) may have absorbed roughly between two and eight percent of the overcharges. But, as the OHA repeatedly emphasized, this conclusion says nothing about the amount of the overcharges any particular refiner may have absorbed. Representing, as it does, nothing more than a rough average derived in turn from analysis of the limited data that has been collected regarding nationwide aggregate supply and demand sensitivity to price changes for crude oil, refining services and petroleum products, some refiners necessarily will have absorbed amounts less than the average while others obviously absorbed more. Nothing in the econometric models purports to answer the question of which refiners are above and which are below the average. Neither is it feasible, OHA has concluded, to answer that question through an attempt at direct tracing. Therefore, the one certainty is that it is impossible to determine to what extent any individual refiner did not pass through the proportionate share of the overcharges that was distributed to it in the first instance by the automatic operation of the entitlements program.

Since direct restitution based upon individual proof of harm is thus shown to be impossible, some other, indirect means of effectuating restitution must be used. While it might not be unlawful to make indirect restitution to refiners based upon some equitable distribution plan among refiners using a reasonable percentage figure between 2.7 and 8.1 percent, and excluding the share attributable to those producer-refiners who themselves violated the stripper well regulations,[2] the Department, as the agency charged with administering the price control enforcement program, has concluded that this is not the most desirable way to make restitution for the crude oil overcharges at issue in this case. The superficial appeal of putting a small part of the overcharge refunds into the hands of "real" firms fades in the face of the realization that the best efforts of economists and fact-finders still result in (1) great inexactitude in applying a modeling method establishing a range of best estimates of injury to the refiner class differing by a factor of three, and (2) any matching between the amount a particular refiner receives and the amount of harm suffered being purely coincidental.

Additionally, refunds based upon the econometric method developed by OHA would entail considerable administrative costs and very long delays before distribution. It could require further hearings or an individual claims procedure where innumerable direct purchasers could be given an opportunity to substantiate their individual claims. Moreover, hundreds of refiners would at least have to prove up their banks on a monthly basis to be eligible for a refund. Not only the OHA's present decision, but each of the hundreds of individual decisions might then be subjected to judicial challenges. Furthermore, the modeling method would require additional threshold hearings in an attempt to apply econometric methods to establish the most likely degree of overcharge absorption at the wholesaler and retailer levels of distribution for the proportion of petroleum products distributed through them and other downstream distributors.[3] Once this was accomplished, the ensuing individual claims procedures for the thousands of wholesalers and retailers would have to be conducted. Again, distribution most likely would be delayed substantially by numerous challenges in court.

The appropriateness of the burden, cost and delay of these further proceedings is problematic in view of the small percentage of the overcharges that would actually be distributed under such a method. OHA estimated that approximately two to eight percent of the overcharges were absorbed by refiners (more than half of which is attributable to those with unclean hands). OHA did not advance to the point where it could make an econometric examination of the probable degree of passthrough at the petroleum product wholesaler and retailer levels. However, given that OHA's rough estimates were based in part on national product data also applicable to downstream distributions, and that DOE's experience gained in the course of DOE enforcement audits and regulatory actions indicates that during the period when most of the stripper well violations occurred wholesalers and retailers were generally able to pass through their cost increases, it is unreasonable to assume that application of the OHA methodology to wholesalers and retailers as a class would result in a pass-through figure significantly less in magnitude than that for refiners. Thus, the econometric method would most likely distribute only a very small percentage of the overcharges, probably in the range of three to eleven percent (given the unclean hands of so many refiners). It thus appears that almost all overcharges were passed through to ultimate consumers regardless of whether those consumers purchased petroleum products directly from refiners or whether they purchased petroleum products through intermediaries. This conclusion, based upon the extensive OHA report, is consistent with the intended workings of the price control program and with the conclusions reached by the district courts in the *Sutton* and *Exxon* cases.

This means that any potential refunds to distributors of petroleum products would be quite small. For example, at the jobber level alone, assuming a four percent level of injury, the average refund to each of the 24,000 wholesalers and wholesaler-retailers (which does not include firms which are solely retailers) could be only about $800.[4] The

[2] Of course, plaintiffs in the *Stripper Well Litigation*, which include most of the largest integrated oil companies and account for more than half of the Nation's refining capacity, would be barred from receiving any portion of the refund by the doctrine of unclean hands. *Citronelle-Mobile Gathering, Inc.* v. *Edwards*, 669 F.2d 717, 723 (TEXA), *cert. denied*, 459 U.S. 877 (1982); *United States* v. *Exxon Corporation*, 561 F. Supp at 853 n.55.

[3] OHA found that such generic hearings would not be necessary for two classes of purchasers: consumers of petroleum products who purchased directly from refiners and large consumers who purchased products under contracts which provided for the passthrough of changes in entitlements program benefits. The latter class, if they were end-users, absorbed 100 percent of their *pro rata* share of overcharges, and the first group could be presumed to have absorbed roughly 98 percent. However, processing applications by such purchasers would be an unwieldy task since the number of direct purchasers from refiners, which includes (in addition to the airlines, public utilities, and the Federal Government) diverse groups of manufacturers and managers of large commercial buildings, could total tens of thousands of consumers. Moreover, even after administratively processing this large number of claims, there would be no more assurance that the money was actually getting back to the ultimate injured parties under this scheme than under other forms of indirect restitution. For example, while utilities would be subject to mandatory passthrough provisions to current customers, those customers are not necessarily the same as the injured customers who purchased products at the time of the violations. Similarly, the costs incurred by airlines were, at least in part, considered by the Civil Aeronautics Board in approving the airlines' fare structures during the period prior to deregulation. Now, however, in view of decontrol of the airlines, there is no merchanism to get this money back to those customers who paid the increased fares.

[4] The overcharges and interest are approximately one billion dollars. About 40 percent of all gasoline

Continued

same is true at the utility level. Even if one takes the best case, where a utility purchased from a refiner under a contract which passed through all entitlements costs, the refund to each customer is quite small. For example, Southern California Edison Company, in its comments before OHA, claimed to be the largest oil consuming utility in the Nation, having purchased about 330 million barrels of fuel oil during the entire control period under contracts providing for the direct flow through of the impact of entitlements from refiners to Edison. Since California Edison serves approximately nine million persons, its customers would receive on the average only about $1.20 even if all 330 million barrels were purchased in 1978–1980 when the primary violations occurred. Of course, even here there would be no tracing. Because the violation occurred years ago, many who were customers then will not be now. Conversely, many who would receive refunds now were not injured because they were not customers then.

This analysis leads DOE to the conclusion that the econometric modeling method of indirect restitution described by the OHA is neither compelled nor desirable. It is too inexact in determining injury to particular classes of claimants and yields no conclusions concerning the injury to individuals within any class. The governmental costs in resources and, more importantly, societal costs in years of continued litigation prior to distribution are unacceptably high. Moreover, the few instances in which it may be possible to make refunds that do not depend upon the econometic method are exceptions to the general rule. These exceptions, representing, as they do, only a small percentage of the overcharges, should not become the focus of DOE's and the court's restitutionary efforts in this case at the expense of the vast population of overcharged consumers.

In view of these conclusions, and because of the enormous amounts at issue in this and similar cases, DOE recommends that the stripper well overcharge monies be maintained in the escrow account to afford the Congress of the United States ample opportunity to select the means for making indirect restitution in crude oil cases like this where the entitlements program spread the effects of the overcharges nationwide and where it is impossible to trace the overcharges and make direct restitution to the specific persons injured by them. Indeed, both the Senate and the House of Representatives have, in the Budget Resolutions that each have passed, provided for the use of these and other petroleum overcharge funds that cannot be traced and refunded to specific overcharged persons (as is the case here) to fund programs aiding all citizens. Specifically, they would be used for federally funded programs, in substitution for other funds which would then be available for general appropriations or deficit reductions. Such legislation would provide a more systematic and predictable disbursement of the monies than continued independent decisions in DOE's many enforcement cases. The appropriations process was similarly used in 1982 as a vehicle for distributing oil overcharge monies under the Warner Amendment.[8]

Further Continuing Appropriations Act, Pub. L. No. 97–377, Section 155, 96 Stat. 1830, 1919 (1982).

The public policy decision as to the best means of providing indirect restitution to the general public should be made by the Congress on a uniform basis. Moreover, clear congressional guidance would reduce, if not eliminate, time-consuming and costly litigation over appropriate remedies.

If Congress does not enact legislation providing a specific means for distribution of these monies by the end of the next session (*i.e.*, the Fall of 1986) then the most effective means of making indirect restitution to the whole population, over which virtually all of the overcharges were spread, is through the government. This conclusion is consistent with the results reached by the district courts in the *Exxon* and *Sutton* cases and with the congressional will as evidenced in the Warner Amendment. More specifically, the monies should be paid to the general fund of the U.S. Treasury. As the Temporary Emergency Court of Appeals recently explained, payment to the general fund is a lawful and appropriate method of providing indirect restitution since "it will benefit the public." *Payne 22, Inc.* v. *United States*, No. DC–102 (TECA March 29, 1985). By reducing the Federal deficit, it tends to offset the nationwide inflationary impact of the original violation, thus benefiting the economy and citizens generally. This restitutionary nexus was also recognized by this court in its referral order:

> A direct refund to the United States Treasury would serve equitable and restitutionary goals. While such a remedy would not aid energy consumers as directly as refund to the states for use in energy programs, it would have certain advantages. It would involve virtually no administrative expense and would benefit the public at large by increasing federal revenues.

In re: The Department of Energy Stripper Well Exemption Litigation, 578 F. Supp at 595.

This approach is preferred to further *ad hoc* distribution to the states. If there is no legislation, the states, as a result of the decisions in *Exxon* and *Sutton*, will receive more than two billion dollars for use in certain federally-established energy programs. The Department of Energy, which is responsible for administering and overseeing most of these programs at the federal level, has concluded that the states cannot make effective use of additional monies (beyond those appropriated by Congress and awarded by the *Exxon* and *Sutton* courts) for these progams at this time. The need for the reduction in the federal deficit that would result from payment of these overcharges into the Treasury is well known, as is the benefit to all Americans that would result.

Dated: June 21, 1985.

Danny J. Boggs,

Deputy Secretary.

[FR Doc. 85–15855 Filed 7–1–85; 8:45 am]

BILLING CODE 6450–01–M

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in 1980 was distributed through jobbers. Assuming, for simplicity, the percentage of product distributed through jobbers to be the same for all petroleum products, about $490 million of the overcharges passed through the hands of jobbers. Assuming that jobbers (as a class) absorbed four percent of the overcharges that were passed on to them by their refiner-suppliers, the total amount absorbed by jobbers (as a class) would be about $19 million. Distributing this to all 24 thousand jobbers yields an average refund of about $800. Of course, the members of the jobber population will have changed substantially in the five years since decontrol, presenting yet further difficulties.

[8] The Administration also has formally submitted to the Congress a draft bill, the Petroleum Overcharge Restitution Act, to resolve the restitution issue that is independent of the adopted Budget Resolutions.

Office of Hearings and Appeals

Order Implementing Departmental Policy Regarding Crude Oil Overcharges

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Order implementing departmental policy regarding crude oil overcharges.

SUMMARY: The Order confirms DOE policy to hold crude oil overcharge funds in escrow pending Congressional action and implements a procedure to use an appropriate portion of crude oil overcharge funds to fund outstanding final entitlements exception relief

"receive orders" to firms with adjudicated hardship.

DATE AND ADDRESS: Claims and objections must be filed on or before August 1, 1985, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2094 (Mann); 252–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION:

Text of Order

Today, the Department of Energy (DOE) filed with the United States District Court for the District of Kansas its policy statement concerning the distribution of the funds in escrow representing overcharges in the *Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378, based on the factual findings made by this office which are simultaneously being submitted to the court. In light of these findings, DOE in its policy statement is recommending that the stripper well overcharges be placed in escrow to afford the Congress of the United States the opportunity to select the means of making indirect restitution. Alternatively, should Congress decline to act on the issue, DOE's policy will be that the monies should be paid to the general fund of the United States Treasury, for the benefit of all Americans.

The decision to place the overcharge funds in escrow pending Congressional action is now DOE policy. In the *Stripper Well Exemption* proceeding, of course, this office was acting solely as a finder of fact under the orders of the Kansas court, and the companion DOE policy statement is a recommendation to that court. However, as to the other overcharge funds representing entitlements-period crude oil miscertification violations being administered under the authority of 10 CFR Part 205, Subpart V, this office will apply that policy to refund proceedings involving those funds.

We are also announcing today that another previously-enunciated DOE policy now will be implemented by its own terms as a result of the factual findings made by this office. On January 9, 1985, DOE decided that, in view of the determination not to publish any further entitlements notices, those refiners with adjudicated final "receive orders" arising from the entitlements programs would be funded from overcharge money "[i]f OHA determines that a portion of [this] money corresponds to injury to refiners as a class. . . ." 50 FR 1919, 1921 (January 14, 1985). We have found in the stripper well proceeding that refiners, as a class, absorbed some part of crude oil overcharges.

The economic effects of the entitlements program were felt by all levels of the petroleum distribution chain during price controls. The economic incidence of net reductions in entitlements obligations as a result of exception relief during the program was identical to the incidence of crude oil overcharges during the program. Therefore, DOE has determined that it would be fair to use an appropriate portion of crude oil overcharge funds as a means to implement relief "to firms with adjudicated hardship." *Id.*

In view of the foregoing, any holder of a finally adjudicated entitlements receive order must, within 30 days of publication of this Order in the **Federal Register**, apply to this office for payment in accordance with the order. Moreover, any person alleging that it is adversely affected by this order must file any objection within 30 days.[1] Any person who subsequently receives a final adjudicated receive order will have 30 days from the date of the order to make an application for payment.

Dated: June 21, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85–15854 Filed 7–1–85; 8:45 am]

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[1] Because of the litigation concerning the entitlements program, *Texaco Inc.* v. *DOE*, TECA Nos. 3–44 through 49, any payment pursuant to this order will be placed in an interest-bearing escrow account pending the outcome of that litigation.

VOL
50
ISS.
127
JL
2.
1985
UMI

federal register

Tuesday
July 2, 1985

Part III

Department of Health and Human Services

Health Care Financing Administration

45 CFR Parts 405 and 412

Medicare Program; FY 1986 Prospective Payments for Inpatient Hospital Services; Notice of Public Meeting

Privacy Act; Modification of System of Records; Notice of Expansion

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

45 CFR Parts 405 and 412

[BDM-016-N]

Medicare Program; FY 1986 Prospective Payments for Inpatient Hospital Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: The Health Care Financing Administration will hold a public briefing to present the data and methodology used to develop the FY 1986 prospective payment system rates. Emphasis will be on the recalibration of the diagnosis-related group weights, the new wage index, and justification for no increase in the FY 1986 payment rates that were presented in the proposed rule published June 10, 1985.

DATE: The public meeting will be held on Tuesday, July 2, 1985, beginning at 9:00 a.m. e.d.t.

ADDRESS: The public meeting will be held in Conference Rooms, 303 and 305A, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Roland King, (301) 594–2826.

SUPPLEMENTARY INFORMATION: On June 10, 1985, we published a notice of proposed rulemaking in the **Federal Register** (50 FR 24386) to propose changes to the Medicare inpatient hospital prospective payment system and the FY 1986 prospective payment rates. The proposed changes in the prospective payment system included changes to some of the diagnosis-related groups (DRGs) that are used to classify Medicare patients discharges for purposes of payment and a recalibration of all the DRG weights using 1984 patient billing and charge data.

We have received requests that we make available to the public all the data and analytical assumptions that were used to calculate the proposed DRG classifications and weights and the proposed payment rates. We believe that a public meeting is the most efficient and equitable manner in which to present this material to the interested parties. Therefore, on July 2, 1985, HCFA will make available all the relevant data and knowledgeable staff members will explain how the data are set up and the specific parameters that were used in developing the data. See the notice of modification of system of records published elsewhere in this issue of the **Federal Register** for a discussion of these data and the fees that are required for procurement of the data.

Dated: June 28, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85–15893 Filed 6–28–85; 11:41 am]

BILLING CODE 4120-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BDM-017-N]

Privacy Act of 1974; Modification of System of Records

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of expansion in an existing system of records.

SUMMARY: The Health Care Financing Administration is expanding the data in the Medicare Provider Analysis and Review (MEDPAR) file, which is a part of its Medicare Bill File (Statistics) system, #09–70–0005.

EFFECTIVE DATE: This notice is effective July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Glenn J. Martin, Office of Information Resources Management, G–A–2 Meadows East Building, 6300 Security Boulevard, Baltimore, MD 21207, (301) 594–7170.

SUPPLEMENTARY INFORMATION: The notice for the Medicare Bill File (Statistics) system, #09–70–0005, was most recently published in the **Federal Register** on December 24, 1984 (49 FR 49942). This system contains records on bills for services furnished to persons enrolled in the hospital insurance or supplementary medical benefits part of the Medicare program. Also included are demographic data on beneficiaries, diagnosis and surgery data, and provider characteristics. Data in this file are used primarily for statistical and research purposes.

Effective with data for Federal fiscal year 1984, the HCFA Medicare Provider Analysis and Review (MEDPAR) file will no longer be based on hospital bills of a 20 percent sample of Medicare beneficiaries discharged from short-stay hospitals. Instead, the MEDPAR file will include data from hospital bills for 100 percent of those discharges. In addition, the MEDPAR file will include secondary diagnoses and procedures. In the system notice for the Medicare Bill File (Statistics) System, #09–70–0005 as published in the **Federal Register** on December 24, 1984, the categories of records in the system was described as including "diagnosis and surgery codes on a sampling of the population" (49 FR 49943). This is corrected to read "diagnosis and procedure codes" and references to a sampling should be struck.

The modified MEDPAR file available under routine use (5) of the systems notice for the Medicare Bill File (statistics) HHS, HCFA, BDMS–09–70–0005 will also be based on 100 percent of Medicare beneficiary discharges and will include the additional information on diagnoses and procedures. Entities that request release of these data from the expanding modified MEDPAR file and that meet the criteria for release of the data (see 49 FR 49943, December 24, 1984 for a description of these criteria) will be required to pay a $2500 fee before receiving the data in order to cover the cost of producing the data.

This action does not require a report of altered system under 5 U.S.C. 552a(o).

Dated: June 28, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85–15879 Filed 6–28–85; 11:41 am]

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VOL
50

ISS
127

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27213-274

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Vol. 50, No. 127

Tuesday, July 2, 1985

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Law numbers and dates	523-5282
	523-5266

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Library	523-4986
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FEDERAL REGISTER PAGES AND DATES, JULY

26961-27212.....1
27213-27408.....2

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12523.....26963

Proclamations:
5356.....26961

5 CFR

771.....26965

7 CFR

52.....26965
226.....26972
400.....26976
930.....27213
979.....26976
991.....26977
1427.....26978

Proposed Rules:
Ch. X.....27003
29.....27288
51.....27004
920.....27288

8 CFR

Proposed Rules:
103.....27289

10 CFR

9.....27214

Proposed Rules:
50.....27006

12 CFR

403.....27215

Proposed Rules:
561.....27290
563.....27290
571.....27290

14 CFR

39.....26979
71.....26980

Proposed Rules:
39.....27009, 27012
71.....27013, 27014
75.....27014

16 CFR

13.....26981

17 CFR

269.....26981

19 CFR

4.....26981

20 CFR

200.....27222

21 CFR

101.....26984

Proposed Rules:
170.....27294
201.....27016
211.....27016
514.....27016
559.....27016
1002.....27024

26 CFR

1.....27222, 27231
602.....27222, 27231

Proposed Rules:
1.....27297

29 CFR

1952.....27233

Proposed Rules:
33.....27298
1910.....27307

30 CFR

Proposed Rules:
913.....27025

31 CFR

51.....26987

32 CFR

Parts 1-39.....26987
199.....26988

33 CFR

110.....26988
117.....26989
150.....26989
166.....26989

Proposed Rules:
117.....27026, 27029

35 CFR

101.....26990
103.....26990
121.....26990

38 CFR

1200.....27196
1202.....27196
1250.....27196

37 CFR

Proposed Rules:
1.....27030

39 CFR

Proposed Rules:
3001.....27308

40 CFR

52 ..... 26991, 27244–27247
60 27248
61 27248
86 27250
600 27172

Proposed Rules:

52 27030
202 27321
205 27321
600 27168

41 CFR

Chs. 1–49 26987
105–63 26992
201–1 27142
201–2 27142
201–8 27142
201–11 27142
201–16 27142
201–20 27142
201–21 27142
201–23 27142
201–24 27142
201–26 27142
201–30 27142
201–31 27142
201–32 27142
201–38 27142
201–39 27142
201–40 27142

42 CFR

412 27208

43 CFR

Proposed Rules:

2800 27322

44 CFR

64 ..... 26993, 26994

Proposed Rules:

67 27322

45 CFR

Proposed Rules:

405 27406
412 27406
1620 27326

46 CFR

153 26996

47 CFR

68 27250
73 27287

48 CFR

504 26996
533 26998

49 CFR

Proposed Rules:

Ch. X 27031
571 27032

50 CFR

17 26999

LIST OF PUBLIC LAWS

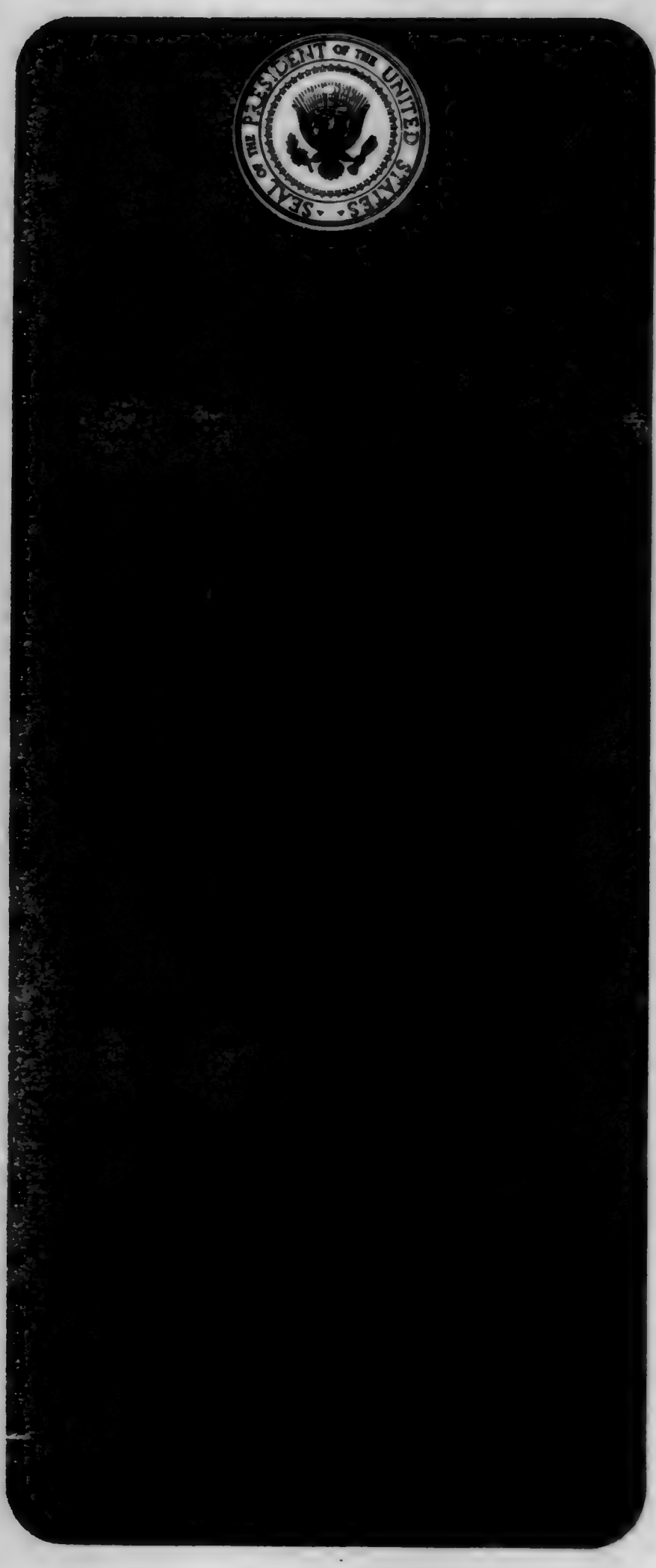
Last List July 1, 1985

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S.J. Res. 87/Pub. L. 99–57

To provide for the designation of July 19, 1985, as "National P.O.W. M.I.A. Recognition Day". (June 27, 1985; 99 Stat. 101) Price: $1.00

VOL
50
ISS
127
JL
2
1985
UMI



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(ISSN 0097-6326)

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7-3-85
Vol. 50 No. 128
Pages 27409-27670

federal register

Wednesday
July 3, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, New York, NY, and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

Administrative Practice and Procedure
Justice Department

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Safety

Community Development
Economic Development Administration

Credit Unions
National Credit Union Administration

Exports
International Trade Administration

Fisheries
National Oceanic and Atmospheric Administration

Foreign Assets
Foreign Assets Control Office

Government Employees
United States Information Agency

Government Procurement
Defense Department
General Services Administration
National Aeronautics and Space Administration

CONTINUED INSIDE

VOL 50 ISS 128 JUL 3 1985 UMI

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: July 8 and 9; at 9 a.m. (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 a.m. (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

WHEN: September (two dates to be announced later).

Selected Subjects

Income Taxes
Internal Revenue Service

Loan Programs—Agriculture 27409
Commodity Credit Corporation
Farmers Home Administration

Loan Programs—Health
Public Health Service

Loan Programs—Housing and Community Development
Farmers Home Administration

Marketing Agreements 27412
Agricultural Marketing Service 27411

Milk Marketing Orders
Agricultural Marketing Service 27411

Over-the-Counter Drugs
Food and Drug Administration

Pesticides and Pests
Environmental Protection Agency

Radio and Television Broadcasting 27471
Federal Communications Commission

Small Businesses
Small Business Administration

Surface Mining
Surface Mining Reclamation and Enforcement Office 27482

27491

27490

27413

27560

27482
27481
27482

Contents

Federal Register
Vol. 50, No. 128
Wednesday, July 3, 1985

The President
EXECUTIVE ORDERS
27409 Generalized System of Preferences, amendments (EO 12524)

Executive Agencies

Agricultural Marketing Service
RULES
Milk marketing orders:
27412 Southern Michigan
27411 Oranges (Valencia) grown in Arizona and California
27411 Peaches grown in Washington; interim

Agriculture Department
See also Agricultural Marketing Service; Commodity Credit Corporation; Farmers Home Administration.
NOTICES
27471 Agency information collection activities under OMB review

Army Department
See also Engineers Corps.
NOTICES
Military traffic management:
27482 Unaccompanied baggage, international program; procurement solicitation

Centers for Disease Control
NOTICES
27491 Cardiovascular fetotoxicity and functional teratogenesis; NIOSH meeting
27490 Vessel sanitation inspection program; inquiry

Commerce Department
See Economic Development Administration; Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration.

Commodity Credit Corporation
RULES
Loan and purchase programs:
27413 Sugar beets and sugarcane

Defense Department
See also Army Department; Engineers Corps.
RULES
Federal Acquisition Regulation (FAR):
27560 Planning for future competition, integrity of unit prices, etc. (Circular 84–10); interim
NOTICES
Meetings:
27482 DIA Scientific Advisory Committee
27481 Electron Devices Advisory Group
27482 Science Board task forces (2 documents)

Economic Development Administration
RULES
27419 Economic development and adjustment assistance grants; designation of areas; notification of public officials; interim

Energy Department
See also Energy Information Administration; Federal Energy Regulatory Commission.
NOTICES
Patent licenses, exclusive:
27488 Battelle Memorial Institute

Energy Information Administration
NOTICES
Forms; availability, etc.:
27483 Oil and gas reserve system (EIA–23/23P/64A); inquiry

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
27483 James River Channel Restoration Project, SD

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
27462 Illinois
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
27463 Thiodicarb
Pesticides; tolerances in animal feeds:
27456 Thiodicarb
NOTICES
Toxic and hazardous substances control:
27489 Premanufacture exemption approvals

Farmers Home Administration
RULES
Loan and grant programs:
27414 Closing loans secured by chattels
27416 Disaster loan assistance programs; memorandum of understanding with SBA
27415 Rural housing (Section 502) policies, procedures and authorizations; interest credit agreement renewals

Federal Aviation Administration
PROPOSED RULES
27528 Airport radar services areas
NOTICES
Airport noise compatibility program:
27523 Los Angeles International Airport, CA
Procurement:
27523 Commercial activities performance (OMB A–76 implementation)

Federal Communications Commission
RULES
Radio and television broadcasting:
27438 Multiple and cross-ownership of AM, FM, TV, and CATV systems

NOTICES
27526 Meetings; Sunshine Act

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
27487 El Paso Natural Gas Co.
27487 Gas Gathering Corp.
27488 Jan Energy Co.
27488 Midwestern Gas Transmission Co.
27484 Northern Natural Gas Co.
27484 Small Hydro East
27489 Southern Natural Gas Co.
27485 Southern Natural Gas Co. et al.
27486 Texas Gas Transmission Corp.
27486 UER Marketing Co.
Natural gas companies:
27485 Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
27490 Indiana National Corp. et al.
27490 J. Carl H. Bancorporation

Fiscal Service
NOTICES
Interest rates:
27525 Renegotiation Board and prompt payment rates

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
27421 Tylosin
27422 Tylosin and sulfamethazine
PROPOSED RULES
Human drugs:
27552 Smoking deterrent drug products (OTC)
NOTICES
Human drugs:
27492 Oral proteolytic enzymes; approval withdrawn; effective date stayed
Meetings:
27491 Advisory committees, panels, etc.; date change, etc.

Foreign Assets Control Office
RULES
Foreign assets control:
27435 Embargo programs; technical amendments

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
27471 Michigan
27472 New York
27472 North Carolina
27472 Wisconsin

General Services Administration
RULES
Federal Acquisition Regulations (FAR):
27560 Planning for future competition, integrity of unit prices, etc. (Circular 84–10); interim

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Public Health Service.

Health Care Financing Administration
PROPOSED RULES
Medicare:
27489 Hospital inpatient services, prospective payments (Diagnosis Related Groups); correction

Indian Affairs Bureau
PROPOSED RULES
27456 Tribal government:
Rolls of Indians, preparation; correction

Interior Department
See also, Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office.
NOTICES
Meetings:
27492 National Strategic Materials and Minerals Program Advisory Committee

Internal Revenue Service
RULES
Income taxes:
27427 Funded welfare benefit plans, treatment
PROPOSED RULES
Income taxes:
27457 Capital gains tax and passive investment income tax with respect to corporations
27456 Funded welfare benefit plans, treatment; cross reference
NOTICES
Organization and functions:
27525 District Counsel, Anchorage, AK

International Trade Administration
RULES
Export licensing:
27420 Commodity control list; police-model helmets; foreign policy controls
NOTICES
Antidumping:
Steel wire nails from—
27479 China
27475 Poland
27480 Yugoslavia
Countervailing duties:
27476 Deformed steel bars for concrete reinforcement from South Africa
27478 Portland hydraulic cement and cement clinker from Mexico
27473 Foreign buyer program and domestic trade show support

International Trade Commission
NOTICES
27495 Agency information collection activities under OMB review
Import investigations:
27495 Apparatus for disintegration of urinary calculi
27496 Cellular mobile telephones and subassemblies from Japan
27497 Dried salted codfish from Canada

27498
27499
27498
27496
27500
27526
27501
27500
27501
27428
27492
27493
27566
27493
27560
27501
27417
27451

27498 Iron construction castings from Brazil, Canada, India, and China
27499 Oil country tubular goods from Austria
27498 64K Dynamic random access memory components from Japan
27496 Steel-consuming industries, effects of restraining U.S. imports on
27500 12-volt lead-acid type automobile storage batteries from Korea
27526 Meetings; Sunshine Act

Interstate Commerce Commission
NOTICES
Motor carriers; control, purchase, and tariff filing exemptions, etc.:
27501 Aluminum Co. of America
Rail carriers:
27500 Atchison, Topeka & Santa Fe Railway Co.; passenger train operation
Railroad services abandonment:
27501 Burlington Northern Railroad Co.

Justice Department
RULES
27428 Public safety officers' death benefits

Labor Department
See Mine Safety and Health Administration.

Land Management Bureau
NOTICES
Environmental statements/resource management plans:
27492 Walker Resource Area, NV
Sale of public lands:
27493 California; correction

Mine Safety and Health Administration
PROPOSED RULES
Metal and nonmetal mine safety and health:
27566 Loading, hauling, and dumping standards; hearings

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
27493 Chevron U.S.A. Inc.

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulations (FAR):
27560 Planning for future competition, integrity of unit prices, etc. (Circular 84–10); interim
NOTICES
Meetings:
27501 Advisory Council

National Credit Union Administration
RULES
Federal credit unions:
27417 Operational systems; CFR Part removed

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
27451 Lamps, reflective devices, and associated equipment; replaceable bulb headlamp systems; correction

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
27470 Atlantic swordfish; correction
27470 Northern anchovy
NOTICES
Marine mammals:
27481 Taking incidental to commercial fishing operations

National Park Service
NOTICES
27493 World heritage properties list; U.S. nominations

Nuclear Regulatory Commission
NOTICES
27502 Export and import license applications for nuclear facilities or materials
27502 Operating licenses, amendments; no significant hazards consideration; bi-weekly notices

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings:
27518 Losses and Goals Advisory Committee
27519 Resident Fish Substitutions Advisory Committee

Public Health Service
PROPOSED RULES
Personnel:
27465 National Health Service Corps private practice loans

Securities and Exchange Commission
NOTICES
Applications, etc.:
27519 Eaton & Howard Balanced Fund
27519 Johnstown American Companies
27521 Merrill Lynch Natural Resources Trust

Small Business Administration
RULES
Small business size standards:
27416 Real estate agents; interim

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission:
27461 Oklahoma

Trade Representative, Office of United States
NOTICES
Import quotas and exclusions, etc.:
27518 Nonrubber footwear

Transportation Department
See Federal Aviation Administration; National Highway Traffic Safety Administration.

Treasury Department
See also Fiscal Service; Foreign Assets Control Office; Internal Revenue Service.

NOTICES
Meetings:
27524 Debt Management Advisory Committee

United States Information Agency
RULES
27422 Foreign Service Officers; appointment
NOTICES
Meetings:
27525 Public Diplomacy, U.S. Advisory Commission

Separate Parts in This Issue

Part II
27528 Department of Transportation, Federal Aviation Administration

Part III
27552 Department of Health and Human Services, Food and Drug Administration

Part IV
27580 Department of Defense, General Services Administration, National Aeronautics and Space Administration

Part V
27588 Department of Labor, Mine Safety and Health Administration

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
11888 (Amended by EO 12524)..... 27409
12524..... 27409

7 CFR
908..... 27411
921..... 27411
1040..... 27412
1435..... 27413
1941..... 27414
1944..... 27415
1945 (2 documents)..... 27414, 27416

12 CFR
723..... 27417

13 CFR
121..... 27418
302..... 27419

14 CFR
Proposed Rules:
71..... 27528

15 CFR
376..... 27420
399..... 27420

21 CFR
558 (2 documents)..... 27421, 27422

Proposed Rules:
357..... 27552
561..... 27452

22 CFR
501..... 27422

25 CFR
Proposed Rules:
61..... 27458

26 CFR
1..... 27427

Proposed Rules:
1 (2 documents)..... 27456, 27457

29 CFR
32..... 27428

30 CFR
Proposed Rules:
56..... 27566
57..... 27566
936..... 27461

31 CFR
500..... 27435
505..... 27435
515..... 27435
520..... 27435
535..... 27435
540..... 27435

40 CFR
Proposed Rules:
52..... 27462
180..... 27463

42 CFR
Proposed Rules:
23..... 27465
405..... 27468
412..... 27468

47 CFR
73..... 27438
76..... 27438

48 CFR
7..... 27560
15..... 27560
19..... 27560
34..... 27560
52..... 27560

49 CFR
571..... 27451

50 CFR
Proposed Rules:
630..... 27470
662..... 27470

VOL
50
ISS
128
JUL
3
1985
UMI

Federal
Vol. 50,
Wednesd

Title 3—

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Federal Register
Vol. 50, No. 128
Wednesday, July 3, 1985

Presidential Documents

Title 3—

The President

Executive Order 12524 of July 1, 1985

Amending the Generalized System of Preferences

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Title V of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2461 *et seq.*), as amended, section 604 of the Trade Act (19 U.S.C. 2483), and section 503(a)(2)(A) of the Trade Agreements Act of 1979 (93 Stat. 251), and as President of the United States of America, in order to designate, as provided by section 504(c)(6) of the Trade Act (19 U.S.C. 2464(c)(6)), those countries that will be considered to be least-developed beneficiary developing countries not subject to the limitations on preferential treatment of eligible articles for purposes of the Generalized System of Preferences (GSP), after taking into account the considerations in sections 501 and 502(c) of the Trade Act (19 U.S.C. 2461 and 2462(c)); and to modify as provided by sections 504 (a) and (c) of the Trade Act (19 U.S.C. 2464 (a) and (c)) the limitations on preferential treatment of eligible articles from countries designated as beneficiary developing countries, it is hereby ordered as follows:

Section 1. In order to designate the countries that will be considered to be least-developed beneficiary developing countries, general headnote 3(c) of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) is modified by adding the following new paragraph 3(c)(iv):

"(iv) The following beneficiary countries are designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the Trade Act of 1974:

Bangladesh
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Cape Verde
Central African Republic
Chad
Comoros
Djibouti
Equatorial Guinea
Gambia
Guinea
Guinea-Bissau
Haiti
Lesotho
Malawi
Maldives
Mali
Nepal
Niger
Rwanda
Sao Tome and Principe
Sierra Leone
Somalia
Sudan
Tanzania
Togo
Uganda
Western Samoa
Yemen Arab Republic (Sanaa)

Whenever an eligible article is imported into the customs territory of the United States directly from one of the countries designated as a least-developed beneficiary developing country, it shall be entitled to receive the duty-free treatment provided for in subdivision (c)(ii) of this headnote without regard to the limitations on preferential treatment of eligible articles in section 504(c) of the Trade Act, as amended (19 U.S.C. 2464(c))."

Sec. 2. Annex II of Executive Order No. 11888 of November 24, 1975, as amended, listing articles that are eligible for benefits of the GSP when imported from any designated beneficiary developing country, is further amended by inserting in numerical sequence "734.56".

Sec. 3. Annex III of Executive Order No. 11888, as amended, listing articles that are eligible for benefits of the GSP when imported from all designated beneficiary countries except those specified in general headnote 3(c)(iii) of the TSUS, is further amended by striking out "734.56".

Sec. 4. General headnote 3(c)(iii) of the TSUS, listing articles that are eligible for benefits of the GSP except when imported from the beneficiary countries listed opposite those articles, is modified by striking out "734.56 . . . Haiti".

Sec. 5. The amendments made by this Order shall be effective with respect to articles both: (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on or after July 4, 1985.

Ronald Reagan

THE WHITE HOUSE,
July 1, 1985.

[FR Doc. 85-16100
Filed 7-2-85; 11:00 am]
Billing code 3195-01-M

Rules

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ACTION: Fi

SUMMARY:
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Rules and Regulations

Federal Register
Vol. 50, No. 128
Wednesday, July 3, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 350, Amdt. 1; Valencia Orange Reg. 351]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Amendment 1 of Regulation 350 increases the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 28-July 4, 1985. Regulation 315 establishes the quantity of such fruit that may be shipped to market during the period July 5–11, 1985. The amendment and regulation are needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATE: Regulation 350, Amendment 1 (§ 908.650) is effective for the period June 28–July 4, 1985. Regulation 351 (§ 908.651) is effective for the period July 5–11, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* These rules have been reviewed under USDA procedures and Executive Order 12291 and have been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities.

The amendment and the regulation are issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The actions are based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the act.

The amendment and the regulation are consistent with the marketing policy for 1984–85. The committee met publicly on June 25, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified weeks. The committee reports the demand for Valencia oranges has improved slightly but not enough to justify shipments at a level equal to the shipping schedule which was set in March. The committee is expected to modify its shipping schedule next week.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulations are based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the amendment and the regulation of an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the amendment and regulation and their effective dates.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Oranges (Valencia).

1. The authority citation for Part 7 CFR Part 908 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

PART 908—[AMENDED]

2. Section 908.650 is added to read as follows:

§ 908.650 Valencia Orange Regulation 350.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period June 28, 1985, through July 4, 1985, are established as follows:

(a) District 1: 180,000 cartons;
(b) District 2: 270,000 cartons;
(c) District 3: Unlimited cartons.

3. Section 908.651 is added to read as follows:

§ 908.651 Valencia Orange Regulation 351.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period July 5, 1985, through July 11, 1985, are established as follows:

(a) District 1: 200,000 cartons;
(b) District 2: 300,000 cartons;
(c) District 3: Unlimited cartons.

Dated: June 27, 1985

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–15902 Filed 7–2–85; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 921

Handling of Fresh Peaches Grown in Designated Counties in Washington; Interim Amendment of the Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes the grade requirements for certain shipments of Washington peaches. These changes are designed to maximize the marketing of fresh peaches of suitable quality in the interest of producers and consumers.

EFFECTIVE DATE: July 1, 1985. Comments are due by July 31, 1985. The Director of the **Federal Register** approves the incorporation by reference of Washington Standards for Peaches in 7 CFR 921.318.

ADDRESS: Interested persons are invited to submit written comments concerning this interim rule. Comments must be

sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: This interim final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The interim final rule is issued under the marketing agreement and order No. 921 (7 CFR Part 921) regulating the handling of fresh peaches grown in designated counties in Washington, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action was recommended by the Washington Fresh Peach Marketing Committee.

This action lowers minimum grade requirements applicable to fresh shipments of Washington peaches during the period July 1, 1985, through March 31, 1986 by permitting the handling of peaches grading Washington No. 2, if packed in a western lug box.

Effective since August 1, 1981, § 921.318 provides the minimum grade, size, pack and container regulations applicable to peaches handled under the marketing order. Currently, it provides that such peaches grade at least Washington Extra Fancy Grade, except that peaches which grade Washington Fancy Grade or better may be handled if they are packed in the western lug box or the standard peach box. However, the committee believes that there is a demand for lower grade peaches shipped to local markets for home canning and immediate consumption. The committee believes that the less restrictive Washington No. 2 grade for peaches shipped in the western lug box would best further that objective as that container is not used for interstate shipments. This action would make available additional quantities of peaches of lower quality not permitted to be shipped under current order regulations. In order to maximize consumption of the 1985 crop of peaches, it is advantageous to establish this change by July 1, 1985. Such an effective date this year, with an opportunity for the public to comment on the interim rule for 30 days following its issuance, would allow the committee and handlers the opportunity to observe the effect of this relaxation of restrictions on the marketing of peaches for the entire 1985 season.

An interim rule was effective during the period August 6, 1984, through March 31, 1985, which contained the same relaxation of restrictions as stated in this interim rule. However, shipments of Washington peaches were well underway by August 6, 1984, and there was insufficient time for the committee to evaluate the effect of this relaxation of grade requirements.

The Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective date of this interim final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared policy of the act. Shipments of Washington peaches are expected to begin on or about the effective date of this rule. Interested persons were given an opportunity to submit information and views on the changes at an open meeting at which the committee recommended implementation of the requirements specified in this rule. Handlers have been apprised of the provisions and effective date of the changes. In addition, this change represents a relief of restrictions by making more peaches available for sale, and no useful purpose is served by delaying the issuance of this interim final rule. The interim final rule provides a 30-day comment period. All comments received will be considered prior to finalization of this rule. It is found that this rule will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 921

Agricultural Marketing Service, Marketing Agreements and orders, Washington, Peaches, Incorporation by reference.

1. The authority citation for 7 CFR Part 921 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 921—[AMENDED]

2. Section 921.318 is amended by revising paragraph (a)(1) to read as follows:

§ 921.318 Peach Regulation 18.

(a) * * *

(1) *Minimum grade.* Such peaches shall grade at least Washington Extra Fancy Grade: *Provided,* That peaches which grade Washington Fancy Grade or better may be handled if they are packed in the western lug box or the standard peach box: And *Provided further,* That for the period ending March 31, 1986, peaches which grade Washington No. 2 Grade or better may be handled if they are packed in the western lug box.

* * * * *

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

June 27, 1985.

[FR Doc. 85–15903 Filed 7–2–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1040

Milk in the Southern Michigan Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends for the months of June through August 1985 the requirement in the Southern Michigan Federal milk order that a cooperative association deliver to pool distributing plants at least 50 percent of its members' producer milk in order to qualify its supply plants as pool plants under the order. The suspension was requested by a cooperative association that represents producers supplying milk to the fluid market. The action is needed to ensure that dairy farmers who historically have been associated with the Southern Michigan market will continue to share in the market's fluid milk sales.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Suspension: Issued June 7, 1985, published June 13, 1985 (50 FR 24779).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to insure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southern Michigan marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on June 13, 1985, (50 FR 24779) concerning a proposed suspension of certain provisions of the order. Interested parties were afforded opportunity to file data, views, and arguments thereon. No comments were received in opposition to the proposed action.

After consideration of all relevant information, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of June through August 1985 the following provisions of the order do not tend to effectuate the declared policy of the Act;

1. In § 1040.7(b)(2) the words "if transfers from such supply plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section are:"

2. In § 1040(b)(2), paragraphs (i) and (ii).

Statement of Consideration

This action makes inoperative for the months of June through August 1985 the provisions requiring a cooperative association to deliver at least 50 percent of its members' producer milk to pool distributing plants, either through its supply plants or directly from farms, in order to qualify the supply plants as pool plants. The suspension was requested by Michigan Milk Producers Association (MMPA), which represents producers supplying the market.

This action is needed because milk production in this market has substantially increased since the end of the milk diversion program on March 31, and at the same time, Class I sales have remained about the same. Market data indicates that milk production increased approximately 8.7 percent from March to May 1985. At the same time, Class I utilization, as a percentage of producer milk, decreased from 43.0 percent to 39.4 percent.

The production of butter, condensed milk and other Class III uses increased from 211.4 million pounds in March to 212.6 million pounds in April 1985 and to 248.7 million in May 1985, or approximately 17.0 percent from April to May. MMPA submitted data to show that most of this April to May increase can be attributed to their members' milk. For this same period, MMPA indicated that their sales to fluid milk plants remained unchanged.

With the closing of schools and the elimination of the lunch programs, Class I utilization for June 1985 is expected to be even lower, and the situation is not expected to improve much during the balance of the summer. For the month of May 1985, MMPA was not able to pool its members' milk under the 50 percent pooling requirements without excluding one of their supply plants from their pooling unit. The order provides that a cooperative association may combine its supply plants into a unit in order to meet the 50 percent pooling requirement.

Because of the above, it is inappropriate to maintain the qualification requirement for a cooperative association to deliver to distributing plants at least 50 percent of its members' producer milk in order to qualify its supply plants as pool plants under the order.

If the provisions were not suspended for the months of June through August 1985, MMPA would encounter considerable difficulty in pooling certain supply plants and the milk of producers who historically have been associated with the Southern Michigan fluid market. Without the suspension milk would be shipped in an inefficient and costly manner merely to assure its continued pooling under the order. This would disrupt the orderly marketing of milk in the Southern Michigan marketing area.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions in the marketing area in that substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views, or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

PART 1040—[AMENDED]

The authority citation for Part 1040 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

It is therefore ordered, That the following language in § 1040.7(b)(2) is suspended for the months of June through August 1985.

§ 1040.7 [Temporarily suspended in part]

1. In § 1040.7(b)(2) the words "if transfers from such supply plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section are:"

2. In § 1040.7(b)(2), paragraphs (i) and (ii).

Effective date: July 3, 1985.

Signed at Washington, D.C. on: June 28, 1985.

Alan T. Tracy,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–15985 Filed 7–2–85; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1435

[Amdt. 1]

Price Support Loan Program for 1983 Through 1985 Crops Sugar Beets and Sugarcane

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations which govern the Price Support Loan Program for 1983 Through 1985 Crops Sugar Beets and Sugarcane to provide that sugar loan maturity dates may be extended for a period agreed upon by the Commodity Credit Corporation and the processor but in no event to a date later than September 30 following the date of loan disbursement.

EFFECTIVE DATE: June 28, 1985. Comments must be received on or before July 29, 1985 in order to be assured of consideration.

ADDRESS: Interested persons may send comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 447–8480.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1435) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 25 and have been assigned OMB Number 0560–0093.

This interim rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified "not major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this interim rule applies are: Title—Commodity Loans and Purchases; Number-10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation with respect to the price support loan program has been completed. It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Extending Sugar Loan Maturity Dates

The Agriculture and Food Act of 1981 (the "1981 Act") amended section 201 of the Agricultural Act of 1949 to require that the Secretary of Agriculture support prices of the 1983 through 1985 crops of sugarcane and sugar beets through nonrecourse loans. In general, price support loans for the 1983 through 1985 crops of sugar beets and sugarcane mature on the last day of the sixth month following the month in which the loan is disbursed, but in no event later than September 30 following disbursement of the loan. The 1984-crop sugar price support loans are maturing monthly. Current marketing conditions indicate a substantial likelihood that sugar pledged as loan collateral by sugar processors may be forfeited to CCC upon loan maturity. In order to allow market conditions to strengthen and thereby increase the possibility that sugar processors will redeem their collateral at loan maturity, the regulations at 7 CFR Part 1435 are being amended to provide that sugar loan maturity dates may be extended for a period agreed upon by CCC and the processor, but in no event to a date later than September 30.

Need for Immediate Action

Since 1984-crop sugar price support loans are maturing monthly and there is a need for prompt action, it has been determined that prior notice and opportunity for public comment on the subject matter of this rule are impracticable and contrary to the public interest. Therefore, this final rule shall become effective June 28, 1985. However, comments with respect to this interim rule are requested and should be submitted on or before July 29, 1985 in order to be assured of consideration. This interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

List of Subjects in 7 CFR Part 1435

Loan programs/agriculture, Price support programs, Sugar.

Interim Rule

PART 1435—[AMENDED]

Accordingly, the regulations at 7 CFR Part 1435 are amended as follows:

1. The authority citation for Part 1435 continues to read as follows:

Authority: Secs. 201 and 401 *et seq.* of the Agricultural Act of 1949, as amended (7 U.S.C. 1446, *et seq.*)

2. Section 1435.115 is amended by revising paragraph (d) to read as follows:

§ 1435.115 Availability, disbursement, and maturity of loans.

* * * * *

(d) *Maturity of Loans.* Except as provided in paragraph (b) of this section, a loan will mature on the last day of the sixth month following the month in which the loan is disbursed, but in no event later than September 30 following disbursement of the loan. Loan maturity dates may be accelerated by CCC in accordance with § 1435.117(b)(3) of this subpart. Norwithstanding the foregoing, CCC and the processor may agree upon an earlier maturity date or a later maturity date (but in no event later than September 30 following disbursement of the loan) if such maturity date will not impair the effectiveness of the support program, as determined by CCC.

Signed at Washington, D.C., on June 28, 1985.

John R. Block,
Secretary.

[FR Doc. 85–15949 Filed 6–28–85; 4:53 pm]
BILLING CODE 3410–05–M

Farmers Home Administration

7 CFR Parts 1941 and 1945

Closing Loans Secured by Chattels

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations for closing loans secured by chattels to provide for a change in administrative instructions. This action is necessary because the form Security Agreements (Crops) is being obsoleted and its function is being assumed by Security Agreement (Chattels and Crops). The intended effect is to remove references to obsolete Form FmHA 440–4A, "Security Agreement (Crops)" and allow Form FmHA 440–4, "Security Agreement (Chattels and Crops)" to assume its function.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT:

Jane Corbett, Loan Officer, Farm Real Estate and Production Division, Farmers Home Administration, USDA, 14th and Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 447–5044.

SUPPLEMENTARY INFORMATION:

This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loan, grants, benefits, or contracts notwithstanding the exemption in 5 U:S.C. 533, with respect to such rules. The amended regulation removes references to obsolete Form FmHA 440–4A, "Security Agreement (Crops)," and allows Form FmHA 440–4, "Security Agreement (Chattels and Crops)," to serve the same function as Form FmHA 440–4A in addition to its present use. This form was completed by FmHA personnel and its deletion is an internal control on avoiding the duplication of forms used for the same purposes. Therefore, this action is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

The Catalogue of Federal Domestic Assistance Titles and Numbers are:

Emergency Loans—10.404 and Farm Operating Loans—10.406.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983).

This final action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1941—OPERATING LOANS

1. The authority citation for Part 1941 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

2. In Exhibit A of Subpart A, Paragraph C is amended by removing the entry for Form FmHA "440–4A . . . Security Agreement (Crops) . . . (*)" under the heading 'Docket Preparation'."

Subpart B—Closing Loans Secured by Chattels

3. Section 1941.57 is amended by revising Paragraph (c)(1) to read as follows:

§ 1941.57 Security instruments.

* * * * *

(c) *Security instrument forms.* (1) Form FmHA 440–25, "Financing Statement," or Form FmHA 440A–25, "Financing Statement (Carbon-Interleaved)"; and Form FmHA 440–4, "Security Agreement (Chattels and Crops)," will be used to obtain security interests in chattel property in States which have adopted the Uniform Commercial Code (UCC), unless a State supplement requires the use of other forms.

* * * * *

PART 1945—EMERGENCY

4. The authority citation for Part 1945 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301, 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Emergency Loans Policies, Procedures, and Authorizations

5. Exhibit A of Subpart D is amended by removing the entry for Form FmHA "440–4A . . . Security Agreement (Crops) . . . (*)" in the listing of forms under Paragraph IV. D.

Dated: June 3, 1985.

Dwight O. Calhoun,

Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85–15900 Filed 7–2–85; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 1944

Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding Section 502 rural housing (RH) loans to authorize FmHA State Directors to contract for the annual review and processing of Interest Credit Agreement (ICA) renewals. This action is necessary to ensure timely processing of interest credit renewals within the 3-month annual review period. The intended effect is to ensure that all necessary information is collected from eligible RH borrowers and submitted to the FmHA Finance Office to update the borrowers' accounts prior to expiration of the existing ICA.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT:

Ruth Smith, Senior Loan Specialist, Realty, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5338, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–1488.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves contracts and internal Agency management. FmHA County Supervisors currently are responsible for the annual renewal of approximately 300,000 ICAs. They must personally interview each of these borrowers to assure that all necessary information is collected and that all sources of income are verified and used to calculate the amount of interest credit. For increased efficiency in the Agency management of the interest credit program, FmHA State Directors will be authorized to contract with contractors for the purpose of expediting interest credit renewals. The contractor will not be authorized to approve or disapprove an ICA. This should enable the County Supervisors in those FmHA County Offices with large RH caseloads to render better assistance to RH borrowers eligible for interest credit.

It is the policy of this Department to publish for comment rules relating to

public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only the mechanical processing of ICA's and as such is a matter of internal Agency management. Thus publication for comment is unnecessary.

The Catalog of Federal Domestic Assistance program affected by this action is: 10.410 Low Income Housing Loans.

This action does not adversely affect any FmHA programs or projects which are subject to intergovernmental consultation.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

For the reasons stated in the preamble, Subpart A of Part 1944, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

1. The authority citation for Subpart A of Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

2. In Section 1944.34, the introductory paragraph of paragraph (h)(3) is revised to read as follows:

§ 1944.34 Interest credit.

* * * * *

(h) * * *

(3) *Interest credit renewal.* Pursuant to delegations of procurement authority included in FmHA Instruction 2024–A (available in any FmHA office), State Directors are authorized to enter into contracts for the review and processing of interest credit renewals after prior approval by the Administrator. Contractors are responsible for interest credit renewal actions covered by the contract. Contractors will not be given the authority to approve or disapprove Interest Credit Agreements.

* * * * *

Dated: June 11, 1985.

Dwight O. Calhoun,

Acting Associate Administrator.

[FR Doc. 85–15899 Filed 7–2–85; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 1945

Memorandum of Understanding Between the Small Business Administration and the Farmers Home Administration

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its Memorandum of Understanding (MOU) between FmHA and the Small Business Administration (SBA) pertaining to Disaster Loan Assistance Programs for disasters commencing on or after October 1, 1983. This action is necessary because of recent changes in the SBA Act, as amended by Public Laws 98–270 and 98–369. The intended effect of this action is to delineate circumstances and prescribe procedures for FmHA and SBA field offices to consider and follow when referring certain farm loan applicants from one Agency to the other for disaster loan assistance, based on declared/designated disasters that occurred on or after October 1, 1983. Adoption of the procedures set forth in the MOU are necessary to avoid undue delay and expense to applicants and duplication of effort by the signatory agencies.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Morris Monesson, Deputy Director, Emergency Division, FmHA, USDA, Room 5420, South Agriculture Building, Washington, D.C. 20250, Telephone (202) 382–1632. Alternate Contact: John Gleason, Senior Loan Officer, FmHA, USDA, Room 5424, Telephone (202) 382–1651.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. The MOU pertains to the circumstances that would necessitate the referral of a disaster loan applicant to SBA or the acceptance of an applicant from SBA for loans based on disasters that occurred on or after October 1, 1983. The MOU also pertains to the procedures for FmHA and SBA field offices to follow when referring loan applicants from one Agency to the other.

It is the policy of this Department to publish, for comment, rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking, since it involves only internal Agency management and publication for comment is unnecessary.

This action does not directly affect any FmHA programs or projects which are subject to 7 CFR Part 3015, Subpart V, "Intergovernmental Review of Federal Programs" review.

This document has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190; an Environmental Impact Statement is not needed.

This action affects the following FmHA program as listed in the Catalog of Federal Domestic Assistance: 10.404—Emergency Loans.

List of Subjects in 7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1945—EMERGENCY

1. The authority citation for Part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70

Subpart D—Emergency Loan Policies, Procedures and Authorizations

2. Exhibit B–1 of Subpart D of Part 1945 is added to read as follows:

Memorandum of Understanding Between the Small Business Administration (SBA) and the United States Department of Agriculture (USDA)—Farmers Home Administration

[FmHA] Pertaining to Disaster Loan Assistance Programs for Disasters Commencing on or after October 1, 1983.

This Memorandum of Understanding between Farmers Home Administration and the Small Business Administration results from Public Laws 98–270 and 98–368. This legislation extended section 18(a) of the Small Business Act to October 1, 1987. The relevant portion of section 18(a) states that an agricultural enterprise shall not be eligible for physical disaster loan assistance from SBA unless it is declined for, or would be declined for, emergency loan assistance from FmHA at *substantially similar interest rates.*

Pub. L. 98–270 also reduced SBA's interest rates to a maximum of 8 percent for those borrowers deemed to have credit available elsewhere and 4 percent for those borrowers without credit available elsewhere. These interest rate reductions have partially rendered section 18(a) inoperative, as SBA and FmHA interest rates on loans to borrowers with credit available elsewhere are no longer substantially similar. Adoption of the procedures set forth in this Memorandum of understanding are necessary to avoid undue delay and expense to applicants and duplication of effort by the signatory agencies.

The following procedures are applicable to agricultural enterprises seeking *physical disaster loan* assistance from SBA or emergency (EM) actual loss loan assistance from FmHA for disaster which commenced on or after October 1, 1983, and are so declared a "Major Disaster" by the President or declared a disaster area by the Administrator of SBA.

1. Applicants making application to SBA for physical disaster loans, or to FmHA for EM loans, exceeding $100,000, whether or not they can obtain credit elsewhere, may file directly with FmHA or with SBA, without a letter of referral, because SBA interest rates to applicants who have credit available elsewhere and to those who have no credit available elsewhere for amounts exceeding $100,000 are substantially lower than those of FmHA. However, if during SBA's processing of an application from an applicant unable to get credit elsewhere, it becomes apparent that the applicant's loan eligibility at SBA is for less than $100,000, the loan application will be returned to the applicant with advice that it be submitted to FmHA.

2. Applicants making application to SBA for physical disaster loans of $100,000 or less will be referred to FmHA for assistance.

3. Applicants making application to FmHA for EM actual loss loans of $100,000 or less will:

a. If FmHA finds that an applicant has credit available elsewhere, be referred to SBA, by letter, stating that other credit is available to the applicant. A determination by FmHA that the applicant has credit available elsewhere will be accepted and binding on SBA.

b. If they do not meet FmHA's minimum loss requirements (physical and/or production losses), be referred to SBA, by letter, stating that the FmHA minimum loss criterion, has not been met. (In cases where applicants' loses were sustained from disasters commencing prior to October 1, 1983, applicants will be advised that SBA has substantially similar minimum loss criteria as does FmHA; and therefore, such applicants will *not* be referred to SBA for the reason of not having sufficient losses to qualify for an EM loan.)

c. If determined ineligible by FmHA for a credit reason(s) such as poor credit history, insufficient cash flow or inadequate collateral, not be referred to SBA.

d. If they are found ineligible by FmHA for a reason(s) of their status, such as: Certain aliens; corporations, partnerships, and cooperatives not being primarily engaged in farming; or farm owners who do not operate their own farms, be referred to SBA, by letter, stating the specific reason(s) for ineligibility, regardless of the amount of the loan requested, or whether credit is or is not available elsewhere, or no matter when the disaster commenced.

This Memorandum of Understanding supplements but does not replace the Memorandum of Understanding between the two Agencies, dated September 26, 1980. That Memorandum of Understanding continues in effect and is applicable only for disasters commenced between July 31, 1980, and September 30, 1983. Any physical disaster loan applications received by SBA from agricultural enterprises as a result of disasters which commenced on or after October 1, 1982, but prior to October 1, 1983, which SBA accounts subsequent to the date of the signing of this Memorandum of Understanding, will be processed by SBA under its regulations in effect at the time of the commencement of the disaster; and are subject to the procedures set forth in paragraphs 1, 2, and 3 above.

Dated: June 10, 1985.

James C. Sanders,
Administrator, Small Business Administration.

Dated: January 23, 1985.

Charles W. Shuman,
Administrator, Farmers Home Administration.

Dated: January 31, 1985.

Dwight O. Calhoun,
Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85–15901 Filed 7–2–85; 8:45 am]
BILLING CODE 3410–07–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 723

Federal Credit Unions; Operational Systems; Removal of CFR Part

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This action deletes Part 723, Operational Systems, from the National Credit Union Administration's Rules and Regulations. While serving a useful purpose at the time of the promulgation, the rule has been found to be of little importance in today's environment.

EFFECTIVE DATE: July 3, 1985.

ADDRESS: National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Martin F. Kushner, Office of Programs. Telephone: (202) 357–1065.

SUPPLEMENTARY INFORMATION:

Background

Part 723, Operational Systems, was adopted in 1974 when credit unions were experimenting with numerous programs relating to electronic funds transfer systems. Since these sytems were new to credit unions, it was necessary for NCUA to closely monitor the programs and determine their potential impact on the credit union industry. The regulation, as currently written, requires parties to submit pilot programs to NCUA for evaluation and approval. After a review of the program NCUA can designate the proposal as a pilot program and establish one or more pilot credit unions.

Significant statutory and regulatory changes governing credit union activities have occurred since this regulation was adopted. The direction of these changes has been to permit the board of directors of each federal credit union to determine the types of services,

consistent with the powers stated in section 107 of the Federal Credit Union Act (12 U.S.C. 1757), it wishes to offer to its members. Throughout the deregulatory process, federal credit union officials have continually demonstrated the ability to make sound business decisions, taking into account the overall safety and soundness of their credit union.

Accordingly, there is no longer a demonstrated need to retain a regulation that could limit the creativity of credit union management and stifle innovative ideas. Federal credit union officials should feel free to experiment with new services as long as they remain cognizant of the limitations imposed by the Federal Credit Union Act and the NCUA Rules and Regulations and consider the impact of any new programs on the overall safety and soundness of their credit union. When considering any new program, credit union officials should develop a detailed plan, obtain a legal opinion if necessary, and perform a cost analysis. When there is any doubt of the legality of a new program, credit unions are encouraged to contact their regional office of the NCUA to obtain an opinion on the propriety of the program or service.

Regulatory Procedures

The NCUA Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions. Since the elimination of the regulation will reduce regulatory burden and does not create any negative impact on credit unions, the NCUA Board is issuing a final rule without seeking comments from the public.

Paperwork Reduction Act

This rule eliminates a paperwork requirement currently in place and, thereby, reduces the paperwork burden of federal credit unions.

List of Subjects in 12 CFR Part 723

Operational systems, Credit unions.

PART 723 [REMOVED]

Accordingly, Title 12 CFR Part 723 is removed.

By the National Credit Union Administration on the 12th day of June 1985.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 85-15895 Filed 7-2-85; 8:45 am]

BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Size Standard for Real Estate Agents

AGENCY: Small Business Administration.

ACTION: Emergency interim final rule.

SUMMARY: SBA is establishing an interim emergency size standard for the real estate agent industry of $1 million. This size standard is necessary because there is no standard for this industry. It is needed to establish eligibility for real estate firms for SBA financial assistance programs.

DATE: Effective July 3, 1985. Comments must be received August 2, 1985.

ADDRESS: Address all comments to: Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street, NW., Room 500, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Harvey D. Bronstein, Economist, Size Standards Staff, (202) 653-6373.

SUPPLEMENTARY INFORMATION: SBA is establishing a size standard for the real estate agent industry, SIC-6531 on an emergency basis in response to requests for Economic Injury Disaster Loans (EIDL). The Agency intends to consider public comments before establishing a permanent size standard. Because of the urgency of disaster lending, however, time does not permit the issuance of a proposed rule before implementing this final rule. By law, EIDL loans are limited to small business, so a size standard is necessary to determine the eligibility of real estate agent firms for financial assistance.

When examining the characteristics of an industry for size standards purposes, SBA normally relies on generally accepted published statistical sources such as the Census Bureau, Internal Revenue Service, and others for a description of industry structure. Data on the number of firms, average firm size by sales and employees, distribution and range of firm sizes, and so on, are essential for this task. Because the normal statistical sources provide little or no data on real estate agents, SBA had to turn to trade sources to obtain comparable information.

The National Association of Realtor's (NAR) publications "Profile of Real Estate Firms; 1984," "Membership Profile 1984," and "Real Estate Brokerage 1981," have proved quite helpful. The Association says it has 100,000 members which are companies, most of which are real estate agent firms; this is estimated as covering three-quarters of all firms in the industry. Another source which counts numbers of firms is Dun & Bradstreet, which estimates 75,000 in 1982. Based on information presented in the "Profile of Real Estate Firms", SBA has composed the following table on firm size distribution.

REAL ESTATE FIRMS BY SALES FORCE SIZE CATEGORIES, 1984

Size of sales force (percent)	5 or less persons	6-10	11-20	21-50	Over 50
Firms	50	23	18	8	3
Cumulative	50	73	90	97	100
Sales force	10	12	18	17	45
Cumulative	10	22	39	56	100

These data were compiled from a survey of NAR members in which the sample size was 1200 out of 6500 firms contacted at random. Average firm size as measured in salespersons was 10.

Within certain exceptions, SBA usually tries to express size standards in dollars, based on annual receipts. In the real estate agent industry, receipts are based on fees and commissions. These receipts are distributed to the firm's salespersons and to other participating firms in a real estate transaction. The residual from these distributions is termed "Company Dollars"[1] and according to NAR represents about 40 percent of the gross amount of fees and commissions.

NAR's 1981 report provides detailed financial information on real estate agent firms. Its sample size, 417 firms, is much smaller than the 1984 report and is also biased, as it is overly-representative of real estate agent firms with better than average financial performance. However, because it is the latest report with such detailed information, its results can be useful. The report shows average firm size of $271,000 in net receipts or Company Dollars and 23.5 salespersons, for firms in this sample. On a per salesperson basis, this is $11,500 in Company Dollars. These company dollars would represent $28,800 in gross commissions for 1981—

[1] Company Dollars as defined by NAR represent "the funds remaining from Gross Income after all sales and listing commissions, including those to co-brokerage firms have been distributed."

Derived by Gross Commissions=	Company Dollar
	0.4

Adjusting this amount for inflation to 1984 results in $33,000 in gross commissions.

The 1984 "Membership Profile" indicates that median gross personal income per salesperson is $15,000, based on a mix of one-quarter part-time and three-quarters full-time salespersons. Since the salesperson's share of the firm's total commissions is about 45 percent, the average salesperson brings in about $33,000 in gross commissions. Also, in discussions with NAR economists and real estate agent firms, it is believed that the current nationwide average gross commissions or receipts per salesperson are about $35,000. Because this estimate is reasonably close to the other derived figures, this amount will be used to transpose the firm size categories in the above table from salespersons to receipts.

In the 1981 report, NAR informally recognized four size categories of real estate agent firms: small, medium, large, and very large. These are not NAR's official size categories nor were they rigorously determined. They were used for analytical purposes only. Measured in terms of full-time equivalent sales persons, the categories, respectively, were: 10 or fewer, 11 to 30, 30 to 60, and over 60 salespersons.

In determining a size standard, SBA considered various alternatives. The most commonly used size standard in services is $3.5 million. This would be approximately equivalent to 100 salespersons and would fall in the extreme upper end of the size distribution. Clearly $3.5 million is inappropriate.

The above table also allows examination of a 50 salespersons size standard. Firms at or below this size include 97 percent of all firms and 55 percent of sales. It is equivalent to about $1.8 million in receipts. At this size, such firms would probably do business from 3 or 4 establishments according to NAR estimates. A 50 salesperson firm is well within the large size category used by NAR in its 1981 study. In addition, while not a goal, SBA's size standards for all industries in aggregate cover approximately 40 percent of sales. Fifty-five percent of industry sales would be included by firms at a 50 salesperson size standard.

A threshold in the firm size distribution occurs between the small and large NAR size categories at between 10 and 30 salespersons. A size standard of 30 salespersons would include those in NAR's small category, but only reach 69 percent of firms. In general, SBA size standards reach 97 to 98 percent of firms.

Consequently, SBA is setting this emergency size standard at the dollar equivalent of 30 salespersons, $1 million (based on fees and commissions). This is below NAR's large size category. Also, firms below this size standard include about 93 percent of all firms and 45 percent of industry sales. Such a firm would typically operate two establishments.

SBA's intent in measuring firm size for this standard is that all sales and listing commissions and fees to the firm from all sources including other brokers be included as receipts. The term "Company Dollar," although widely used in this industry, is a net figure and does not indicate firm size for SBA purposes.

Pursuant to the authority of 5 U.S.C. 553(b)(B), this regulation is being promulgated as a final rule. Due to the urgent nature of disaster assistance, SBA has determined that it is necessary to establish this size standard quickly to facilitate the efficient operation of the disaster program. Publishing a proposed rule and providing an opportunity to comment before it can be promulgated in final form would delay the necessary assistance to the disaster victims, and thus, would be contrary to the public interest. SBA, however, intends to accept public comments on this interim emergency rule and will review them in preparing a permanent size standard.

SBA has determined that this regulation is a nonmajor rule as defined by Executive Order 12291. The intent of this action is to define the universe of real estate agent businesses eligible for financial assistance including EIDL loans. In FY 1984, SBA made a total of $85 million of EIDL loans in all industries at an average loan size of $77,000. The maximum loan size permitted is $500,000. Because all industries together accounted for $85 million in loans, the present action pertaining to only one industry will have an impact of far less than $100 million per year. In addition, this regulation is not likely to result in a major increase in costs or prices or have a significant adverse effect on the United States economy.

SBA certifies pursuant to section 608 of the Regulatory Flexibility Act, 5 U.S.C. that this interim final rule is being published pursuant to an emergency for the reasons indicated above, and the SBA is therefore waiving the requirements of section 603 of the Regulatory Flexibility Act. SBA will publish a final regulatory analysis of its final size standard in compliance with section 604 of the Regulatory Flexibility Act, when the final size standard is published. SBA also certifies that this regulation contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 13 CFR Part 121

Small businesses.

Accordingly, pursuant to the authority contained in section 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6).

1. The authority for Part 121 is revised to read as follows:

Authority: Secs. 3(a) and 5(b)(6), Small Business Act, (15 U.S.C. 632(a) and 634(b)(6).

2. Section 121.2(c)(2) is amended by adding the following entry to the table in Division H, Major Group 65.

§ 121.2 [Amended]

(c) * * *

(2) * * *

* * * * * *

DIVISION H—FINANCE, INSURANCE AND REAL ESTATE, MAJOR GROUP 65—REAL ESTATE

6531	Real estate agents and managers.	$1 million (as measured by gross fees and commissions).

* * * * *

Dated: June 21, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-15865 Filed 7-2-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 50582-5082]

13 CFR Part 302

Designation of Areas; Notification of Officials

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule.

SUMMARY: This rule amends EDA's regulations concerning notification by the Assistant Secretary of Commerce for Economic Development to local, State, and national officials of redevelopment area qualifying status, designation status and modification or termination.

The amendments concern the time when notification is to be given. Time for giving notice and circumstances for such notice are being changed to promote inclusiveness and promptness.

DATES: *Effective Date:* July 3, 1985.

Comments by: September 3, 1985.

ADDRESS: Send comments to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Walter Archibald, Director, Office of Compliance Review, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Room 7329, Washington, D.C. 20230, (202) 377–2710.

SUPPLEMENTARY INFORMATION: EDA is amending 13 CFR Part 302 on area designation at Subpart D—Notice as to when the Assistant Secretary is to notify local, State and national officials. Section 302.50(c) concerning notice of termination, is being revised to add a time for notice of modification. Notice of termination or modification (except for minor boundary changes) will be given at the conclusion of the annual review of area eligibility. If minor boundary changes are being made, notice will be given whenever such actions occur. Section 302.50(d) concerning notice of qualification for area designation status, is being changed to state that notice of qualification will be given by the Assistant Secretary whenever statistics are received warranting such qualification.

Because this rule relates to grants, benefits, or contracts, it is exempt from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553).

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the APA and all other relevant laws.

However, because the Department is interested in receiving comments from those who will benefit from amendments to the rule being issued in final, this rule is being issued as interim final. Public comments on the interim final rule are invited and should be sent to the address listed in the "**ADDRESS**" section above.

Comments received by September 3, 1985 will be considered in promulgating a final rule.

Since notice and an opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Because this rule is exempt from the requirements of section 553 of the APA, it can be and is being made immediately effective upon publication.

Under Executive Order (E.O.) 12291 the Department must judge whether a regulation is "major" within the meaning of Section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96–511).

List of Subjects in 13 CFR Part 302

Community development.

PART 302—[AMENDED]

1. The authority for Part 302 continues to read as follows:

Authority: Sec. 701, Pub. L. 89–136, 79 Stat. 570 (42 U.S.C. 3211); sec. 1–105, DOC Organization Order 10–4, as amended (40 FR 56702, as amended).

2. 13 CFR Part 302 Subpart D is amended by revising paragraphs (c) and (d) of section 302.50 to read as follows:

§ 302.50 Notification of public officials.

* * * * *

(c) Notice of termination or of modification (other than minor boundary adjustments) of area qualification or designation status, will be given at the conclusion of the annual review of area eligibility. Notice of minor boundary adjustment will be made whenever such actions occur.

(d) Notice of qualification will be given whenever statistics are received by EDA warranting such qualification.

* * * * *

Dated: May 20, 1985.

Paul W. Bateman,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 85–15880 Filed 7–2–85; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

15 CFR Parts 376 and 399

[Docket No. 50455–5055]

Foreign Policy Controls; Police-Model Helmets

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Office of Export Administration maintains the Commodity Control List, which includes all commodities subject to Department of Commerce export controls, including controls maintained for foreign policy reasons.

Police-Model helmets are currently controlled for reasons of foreign policy (human rights/crime control) under ECCN 5999B. However, it has been determined that some policy-model helmets are lined with materials currently controlled under ECCNB 1746A and should, more appropriately, be classified under this entry.

This rule amends the Export Administration Regulations to state that police-model helmets containing 50% or more aromatic polyamide fiber by value are included in ECCN 1746A and are also subject to foreign policy controls for reasons of human rights/crime control.

EFFECTIVE DATE: This rule is effective July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Usrey, Exporter Assistance Division, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–3856).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking

requirements, the Office of Export Administration has determined that:

1. Since this regulation involves a foreign affairs function of the United States, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring a notice of proposed rulemaking, an opportunity for public participation and a delay in effective date are inapplicable.

2. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. but does not impose any additional burden. The collection of this information has been approved by the Office of Management and Budget under control number 0625–0001.

3. Because a notice of proposed rulemaking is not required to be published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act, 5 U.S.C. 601(2) and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Flexibility Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Parts 376 and 399

Exports.

Accordingly, the Export Administration Regulations (15 CFR Part 376 and 399) are amended as follows:

1. The authority citation for 15 CFR Part 376 is revised and 15 CFR Part 399 continues to read as follows:

Authority: Secs. 203, 206, Pub. L. 95–223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704). Executive Order No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Presidential Notice of March 28, 1985 (50 FR 12513 March 29, 1985).

PART 376—[AMENDED]

§ 376.14 [Amended]

2. Paragraph (a) of § 376.14 is amended by revising the phrase—"5680B, 4799B, 5998B and 5998B."—to read—"5680B, 1746A (police-model helmets containing 50% or more aromatic polyamide fiber by value only), 4799B, 5998B, and 5999B."

PART 399—[AMENDED]

§ 399.1 [Amended]

3. In Commodity Group 7, "Chemicals, Metalloids, Petroleum Products and Related Materials," of the Commodity Control List (Supplement No. 1 to § 399.1), ECCN 1746A is amended by revising the *GLV $ Value Limit* paragraph and the *Reason for Control* paragraph; and by adding a *Special Foreign Policy Controls* paragraph and a *Technical Data* paragraph, reading as follows:

1746A Polymeric substances and manufacturers thereof, as described in this entry.

* * * * *

GLV $ Value Limit: For police-model helmets containing 50% or more aromatic polyamide fiber by value, the $ value limit is $100 only to Australia, Japan, New Zealand and members of NATO and $0 to all other destinations. For items other than such police-model helmets, the $ value is $100 to Country Groups T&V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: * * *

Reason for Control: National security; crime control (foreign policy). Foreign policy controls under this entry apply only to police-model helmets.

Special Licenses Available: * * *

Special Foreign Policy Controls: Foreign policy controls apply to police-model helmets controlled by this ECCN to any destination except Australia, Japan, New Zealand and members of NATO. (See ECCN 5999B for foreign policy controls on all other police model helmets.)

Technical Data: Export of technical data related to police-model helmets containing 50% or more aromatic polyamide fiber by value require a validated license to all destinations except Australia, Japan, New Zealand and members of NATO.

* * * * *

Dated: April 2, 1985.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 85–15874 Filed 7–2–85; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Old Monore Elevator & Supply Co., Inc., providing for the manufacture of 5–, 20–, and 40-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Old Monroe Elevator & Supply Co., Inc., Old Monroe, MO 63369, is the sponsor of a supplement to NADA 119–261 submitted on its behalf by Elanco Products, Co. The supplement provides for the manufacture of 5–, 20–, and 40-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1)(i) through (vi). The firm presently holds an approval under NADA 119.261 for the manufacture of a 10-gram-per-pound tylosin premix for such use. The supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24 (d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an

environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.625 is amended by revising paragraph (b)(69) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(69) To 026948: 5, 10, 20, and 40 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

Dated: June 25, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–15866 Filed 7–2–85; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Wayne Feed Division, Continental Grain Co. The NADA provides for manufacturing premixes containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine used to make finished swine feeds.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Wayne Feed Division, Continental Grain Co., P.O. Box 459, Libertyville, IL 60048, is sponsor of NADA 131–958 submitted on its behalf by Elanco Products Co. The NADA provides for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use to subsequently make finished swine feeds. The resulting feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, preventing swine dysentery (vibrionic), and controlling swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.630 [Amended]

2. In § 558.630 *Tylosin and sulfamethazine* in paragraph (b)(10) by adding numerically the number "034936."

Dated: June 26, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85–15866 Filed 7–2–85; 8:45 am]

BILLING CODE 4160–01–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 501

Appointment of Foreign Service Personnel

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: The United States Information Agency is amending its regulations covering the appointment of Foreign Service personnel. These amendments establish the new procedures for employment in the Foreign Service in the United States Information Agency.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Ballow, Chief, Policies and Services Staff, Office of Personnel, United States Information Agency, Washington, D.C. 20547, (202) 485–2645.

SUPPLEMENTARY INFORMATION: The Foreign Service Act of 1980, enacted October 17, 1980, revised, among other provisions, the types of and requirements for Foreign Service appointment and realigned the Foreign Service salary structure. USIA published proposed regulations on April 24, 1985 (50 FR 16096) to implement the new legislation which became effective February 15, 1981. No comments were received during the comment period which ended May 24, 1985. Therefore, Chapter V, Part 501 is amended to update the mid-level FSO Candidate program; add a new section regarding the appointment of Overseas Specialists; substitute experience requirements for minimum age for mid-level entry as an FSO Candidate; revise the maximum age requirement; and cross-reference Part 11 of Title 22 regulations governing eligibility for appointment as a Foreign Service Officer and the junior level Career Candidate program, prescribed jointly by the Department of State and USIA. Typographical errors have been corrected, but the meaning and intent of the regulations have not been changed.

List of Subjects in 22 CFR Part 501

Government employees.

E.O. 12291 Federal Regulation

USIA has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, this rule relates solely to Agency personnel and falls under section I(a)(3) of E.O. 12291.

Dated: June 21, 1985.

Charles Z. Wick,

Director, United States Information Agency.

Accordingly, 22 CFR, Chapter V, Part 501, has been revised and is published in its entirety.

PART 501—APPOINTMENT OF FOREIGN SERVICE OFFICERS

Sec.

501.1 Policy.
501.2 Eligibility for appointment as Foreign Service Officer.
501.3 Noncompetitive interchange between Civil Service and Foreign Service.
501.4 Junior Level Career Candidate Program (Class 6, 5, or 4).
501.5 Mid-Level FSO Candidate Program (Class 3, 2, or 1).
501.6 Appointment of Overseas Specialists.
501.7 Appointment as Chief of Mission.
501.8 Reappointment of Foreign Service Officers and Career Overseas Specialists.
501.9 Interchange of FSOs between USIA and other Foreign Affairs Agencies.

Authority: Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.).

§ 501.1 Policy.

It is the policy of the United States Information Agency that Foreign Service Officers occupy positions in which there is a need and reasonable opportunity for interchangeability of personnel between the Agency and posts abroad, and which are concerned with (a) the conduct, observation, or analysis of information and cultural activities, or (b) the executive management of, or administrative responsibility for, the oversees operations of the Agency's program.

§ 501.2 Eligibility for appointment as Foreign Service Officer.

Cross-reference: The regulations governing eligibility for appointment as a Foreign Service Officer are codified in Part 11 of this title.

§ 501.3 Noncompetitive interchange between Civil Service and Foreign Service.

(a) An agreement between the Office of Personnel Management and the Agency under the provisions of Executive Order 11219 (3 CFR 1964–65 Comp. p. 303) provides for the noncompetitive appointment of present or former Foreign Service employees as career or career conditional Civil Service employees.

(b) Under this agreement former career personnel of the Agency's Foreign Service (FSCR, FSRU, FSIO, FSS, FSO, or FP) and such present personnel desiring to transfer, are eligible, under certain conditions, for noncompetitive career or career-conditional appointment in any Federal agency that desires to appoint them. The President has authorized the Office of Personnel Management by executive order to waive the requirements for competitive examination and appointment for such Agency career Foreign Service personnel.

(c) A present or former Civil Service employee may be appointed on a competitive basis in any Foreign Service class for which the employee has qualified under the provisions of section 3947 of title 22, United States Code.

§ 501.4 Junior Level Career Candidate Programs (Class 6, 5, or 4).

Cross-reference: The regulations governing the junior level Career Candidate program are codified in Part 11 of this title.

§ 501.5 Mid-level FSO Candidate Program (Class 3, 2, or 1).

(a) *General.* The mid-level FSO Candidate program, under the provisions of section 306 of the Foreign Service Act of 1980, supplements the junior-level Career Candidate program to meet total requirements for Foreign Service Officers at the mid-level in the Foreign Service. Foreign Service limited appointments of FSO Candidates are made to Class 3, 2, or 1 for a period not to exceed five years. Occasionally, appointments may be offered at the Class 4 level. The FSO Commissioning Board will determine whether FSO Candidates have performed at a satisfactory level and demonstrated the required level of growth potential and competence, and will make a recommendation on commissioning as Foreign Service Officers. FSO Candidates who are not recommended for commissioning prior to the expiration of their limited appointment will be separated from the mid-level program.

(b) *Sources of Applicants.* (1) The United States Information Agency draws a significant number of FSO Candidates from Agency employees who apply, and are found qualified by the Board of Examiners for the Foreign Service (BEX).

(2) The Agency also draws Candidates from outside applicants who possess skills and abilities in short supply in the Foreign Service and who have capabilities, insights, techniques, experiences, and differences of outlook which would serve to enrich the Foreign Service and enable them to perform effectively in assignments both abroad and in the United States. Minority applicants are recruited for mid-level entry under the COMRAT program. Appointment from sources outside the Agency is limited and based on intake levels established in accordance with total USIA FSO workforce and functional requirements. Such appointments are based on successful completion of the examination process, and existing assignment vacancies.

(c) *Eligibility Requirement.* (1) *USIA Employees.* On the date of application, employees must have at least three years of Federal Government service in a position of responsibility in the Agency. A position of responsibility is defined as service as an Overseas Specialist at Class 4 or above or as a Domestic Specialist at GS–11 or above within the Agency. The duties and responsibilities of the position occupied by the applicant must have been similar or closely related to those of a Foreign Service Officer in terms of knowledge, skills, abilities, and overseas experience. Agency Domestic and Overseas Specialists must be no more than 58 years of age on the date of redesignation or appointment as an FSO Candidate.

(2) *Applicants Under Special Recruitment Programs.* Minority and women applicants must be no more than 58 years of age, must have approximately nine years of education or experience relevant to work performed in USIA, must be knowledgeable in the social, political and cultural history of the U.S. and be able to analyze and interpret this in elation to U.S. Government policy and American life.

(3) *Outside Applicants.* On the date of appointment, applicants must be no more than 58 years of age, with nine years of relevant work experience and/or education, or proficiency in a language for which the Agency has a need, or substantial management expertise. Relevant work experience is defined as public relations work, supervisory or managerial positions in communications media, program director for a museum or university-level teacher of political science, history, English or other relevant disciplines. Appointments from these sources for the limited vacancies available are made on

a competitive basis to fill specific Service needs after ensuring that the vacancies cannot be filled by Foreign Service Officers already in the Foreign Service Officer Corps.

(d) *Application Procedures.* (1) Applicants must complete Standard Form 171, Application for Federal Employment; Form DSP–34, Supplement to Application for Federal Employment; a 1,000 word autobiography; a statement affirming willingness and capacity to serve at any post worldwide; and transcripts of all graduate and undergraduate course work and forward them to the Special Recruitment Branch, Office of Personnel (M/PDSE).

(2) The filing of an application for the Foreign Service does not in itself entitle an applicant to examination. The decision to proceed with an oral examination is made by a Qualifications Evaluation Panel after determining the applicant's eligibility for appointment and reviewing the applicant's qualifications including his/her performance, and administrative files (or equivalents), claimed language proficiency and other background or factors which may be related to the work performed by FSOs. An oral examination is given only in those cases where the applicant is found to possess superior qualifications, proven ability, and high potential for success in the Foreign Service.

(e) *Examination Process.* (1) *Written Examination.* A written examination will not normally be required of applicants for FSO Candidate appointments. However, if the volume of applications for a given class or classes is such as to make it infeasible to examine applicants orally within a reasonable time, such applicants may be required to take an appropriate written examination prescribed by the Board of Examiners. Those who meet or exceed the passing level set by the Board of Examiners on the written examination will be eligible for selection for the oral examination.

(2) *Oral Examination.* (i) Applicants approved by the Qualifications Evaluation Panel for examination will be given an oral examination by a panel of Deputy Examiners approved by the Board of Examiners. The oral examination is designed to enable the Board of Examiners to determine whether applicants are functionally qualified for work in the Foreign Service at the mid-level, whether they would be suitable representatives abroad of the United States, whether they have the potential to advance in the Foreign Service, and whether they have the background and experience to make a contribution to the Foreign Service. The oral examination is individually scheduled throughout the year and is normally given in Washington, D.C. At the discretion of the Board of Examiners, it may be given in other American cities, or at Foreign Service posts, selected by the Board.

(ii) The panel will orally examine each applicant through questioning and discussion. There will also be a writing exercise and an in-basket test. Applicants taking the oral examination will be graded according to the standards established by the Board of Examiners. The application of anyone whose score is at or above the passing level set by the Board will be continued. The application of anyone whose score is below the passing level will be terminated. The applicant may, however, reapply in 12 months by submitting a new application.

(3) *Foreign Language Requirement.* All applicants who pass the oral examination will be required to take a subsequent test to measure their fluency in foreign languages, or their aptitude for learning them (MLAT) for which a score of 50 points (on a scale of zero to eighty) is necessary to qualify for further processing. No applicant will be recommended for career appointment who has not demonstrated such a proficiency or aptitude. An applicant may be selected, appointed and assigned without first having demonstrated required proficiency in a foreign language, but the appointment will be subject to the condition that the employee may not receive more than one promotion and may not be commissioned as an FSO until proficiency in one foreign language is achieved.

(4) *Medical Examination.* Those applicants recommended by the Board of Examiners for an FSO candidacy, and their dependents who will reside with them overseas, are required to pass a physical examination at the Department of State Medical Division.

(5) *Security and Suitability Considerations.* A background investigation or appropriate security clearance update will be conducted on each applicant, and no application may be continued until a security clearance has been granted.

(6) *Class of Appointment.* The Board of Examiners fixes the entry level for appointment as an FSO candidate.

(7) *Certification for Appointment.* After completion of all aspects of the examination, the Board of Examiners certifies to the Agency successful candidates for appointment as FSO Candidates. Determinations of duly constituted panels of examiners and deputy examiners are final, unless modified by specific action of the Board of Examiners for the Foreign Service.

(8) *FSO Candidate Registers.* (i) After approval by the Board of Examiners, and certification as to suitability and security clearance by the Agency's Director of Security, successful applicants will have their names placed on a register for the class for which they have been found qualified. Appointments to available openings will be made from the applicants entered on the register for the class of the position to be filled. Inclusion on the register does not guarantee eventual assignment and appointment as an FSO Candidate. Applicants who have qualified but have not been appointed because of lack of openings will be dropped from the register 18 months after the date of placement on it (or the completion of an inside applicant's current overseas tour, whichever is longer). Such applicants may reapply for the program, but will be required to repeat the entire application process, including BEX testing.

(ii) Any applicant on the register who refuses an assignment offer will be removed from the Register and will not be eligible to reapply for the program for seven years.

(iii) The Board of Examiners may extend the eligibility period when such extension is in its judgment justified in the interest of the Foreign Service.

(f) *Appointment as an FSO Candidate.* (1) An FSO Candidate will be given a four-year Foreign Service limited appointment. Agency Career Overseas Specialists will be redesignated as FSO Candidates for a period of four years. The appointment or redesignation may be extended for one year, but must be terminated at the end of the fifth year. The purpose of the FSO Candidacy is to permit on-the-job evaluation of an individual's suitability and capacity for effective service as a Foreign Service Officer.

(2) FSO Candidates will be assigned to Generalist positions overseas, and will compete for promotion with other Generalist officers under the Annual Generalist Selection Boards. FSO Candidates at the Class 1 level may not compete for promotion into the Senior Foreign Service prior to commissioning as an FSO.

(3) The FSO Candidacy may be terminated during the four-year period for unsatisfactory performance (22 U.S.C. 4011) or for such other cause as will promote the efficiency of the Service (22 U.S.C. 4010).

(g) *Commissioning as a Foreign Service Officer.* (1) Upon completion of three years' service (most of which will have been overseas), the FSO Candidate

will be eligible for commissioning as a Foreign Service Officer. The FSO Commissioning Board will review all FSO Candidates appointed on or after March 1, 1980 and will recommend on tenure.

(2) The criterion used for deciding whether to recommend commissioning of FSO Candidates is the Candidate's demonstrated potential to perform effectively as a Foreign Service Officer in a normal range of generalist assignments up through the Class 1 level. No quota or numerical limit is placed on the number of affirmative decisions.

(3) If recommended for commissioning, and having satisfied the language proficiency requirements, the name of the FSO Candidate will be forwarded to the President and the Senate and, upon approval, the FSO Candidate will be commissioned as an FSO.

(4) If the FSO Commissioning Board does not recommend commissioning of the FSO Candidate during its review, it may recommend extension of the FSO Candidacy to allow for a future review. Under no circumstances will an FSO Candidacy be extended to a total of more than five years.

(5) Candidates not recommended for commissioning or who have not satisfied the language proficiency requirement will be separated from the Service at the expiration of their appointment. However, FSO Candidates who were appointed from within the Agency with career status as a Domestic or Overseas Specialist may exercise reappointment rights to their previous category in lieu of separation.

§ 501.6 Appointment of Overseas Specialists.

(a) *General.* Members of the Agency's Foreign Service appointed as Overseas Specialists serve on rotational U.S.-overseas assignments in the following types of positions: General Administration; Publication Writers and Editors; Exhibit Managers; Printing Specialists; English Teaching Specialists; Correspondents; Engineers for the Voice of America; Regional Librarian Consultants; and Secretaries. Appointees serve a trial period of service as Specialist Candidates under Foreign Service limited appointments (or redesignation) for a period not to exceed five years. Appointments are made to F.S. classes 3 through 1. Specialist Candidates are given career appointments as Overseas Specialists based on the recommendations of Specialist Selection Boards. Specialist candidates not recommended for tenuring will be separated from the Foreign Service, or reinstated in the Civil Service.

(b) *Sources of Applicants.* Qualified USIA domestic employees comprise a significant recruitment source for Overseas Specialist appointments. Such employees will be given priority consideration over outside applicants when applying for Overseas Specialist positions, when qualifications are otherwise equal.

(c) *Eligibility Requirements.* All applicant must be citizens of the United States, and must be at least 21 years of age and no more than 58 years of age at the time of appointment. The 21-year age requirement may be waived by the Director, Office of Personnel (M/P or VOA/P) when she or he determines that the applicant's services are urgently needed. USIA employee applicants must also have at least three years of Federal government experience and occupy a position at the GS–11 level (or equivalent) or above (GS–10 for Electronic Technicians in the Voice of America). All applicants must be available for worldwide assignment to positions in their occupational category.

(d) *Application Procedures.* (1) Applications for all specialties except secretarial should include a current SF–171, Application for Federal Employment; a DSP–34, Supplement to Application for Federal Employment; university transcripts; a 1,000 word autobiographical statement which should include mention of the qualifications the applicant would bring to the job and reason for desiring to work for the Agency; and a statement affirming willingness and capacity to serve at any post worldwide.

(2) *Special Requirements for Foreign Service Secretaries.* Secretarial applicants must submit a current SF–171, Application for Federal Employment, and a 250 word essay on a commonly understood subject to demonstrate grammatical competence. The following specific requirements must be met by applicants: Ability to type accurately at 60 words per minute; four years of secretarial or administrative experience (business school or college training may be substituted for up to two years of required work experience); and attainment of an acceptable score in verbal ability and spelling tests. Applicants will subsequently be given a written examination to measure administrative aptitude.

(e) *Examination Process*—(1) *Application Review.* All applications are to be sent to the Special Recruitment Staff, Office of Personnel (M/PDSE), or to the Foreign Personnel Advisor (VOA/PF) for Voice of America positions.

(2) *Qualifications Evaluation Panel.* A Qualifications Evaluation Panel will evaluate the applicant's qualifications including his/her performance and administrative files (or equivalent), claimed language proficiency and other background or factors which may be related to the work performed by an Overseas Specialist Officer in the relevant specialty.

(3) *Oral Examination.* (i) Applicants who are passed on by the Qualifications Evaluation Panel to the Board of Examiners will be given an oral examination to evaluate the applicant's total qualifications for service as an Overseas Specialist in the desired functional specialty.

(ii) The Board panel examining all candidates except those of the Voice of America will consist of one USIA Overseas Specialist and two BEX Deputy Examiners. For VOA candidates, the panel will consist of the Foreign Personnel Advisor, a BEX Deputy Examiner assigned to the Voice of America, and a Deputy Examiner assigned to the Board of Examiners.

(iii) The panel will examine each applicant through questioning and discussion. Hypothetical problem-solving exercises, a writing exercise and an in-basket test may also be required. The panel will also recommend the F.S. entry level for appointment. If the panel's recommendation is unfavorable, the application process will be discontinued. An unsuccessful applicant may apply again in 12 months.

(4) The same medical and security requirements applicable to FSO Candidates pertain to Specialist Candidates.

(5) *Overseas Specialist Candidate Register.* If an applicant is successful in the examination, and medical and security clearances have been successfuly completed, his/her name will be added to the appropriate Overseas Specialist Register for a period of 18 months, or completion of an inside candidate's current tour of duty overseas, whichever is longer, at the Foreign Service class determined in the examination process and based on previous experience. Inclusion on the register does not guarantee eventual assignment and appointment as an Overseas Specialist Candidate.

(f) *Appointment as a Specialist Candidate.* (1) When the Office of Personnel identifies an overseas vacancy which cannot be filled from the existing ranks of Overseas Specialists, applicants on the Overseas Specialist register will be considered for the assignment. An applicant will not be appointed unless an overseas position

has been identified and a need for the individual in the Foreign Service has been certified by the Director, Office of Personnel (M/P or VOA/P). Any applicant selected from the Register who refuses an assignment offer will be dropped from the Register and precluded from reapplying for a period of seven years.

(2) Applicants will be given a Foreign Service limited appointment (or redesignation) for a period of four years at the Foreign Service Class determined in the examination process. The purpose of this untenured appointment is to allow the Agency to evaluate and assess the Specialist Candidate's abilities and future potential prior to offering career appointment as an Overseas Specialist. The limited appointment may be extended for one additional year, but must be terminated at the end of the fifth year if the Candidate does not obtain career tenure.

(3) The Candidate will receive the orientation and training necessary to serve overseas and will be assigned overseas in a position in his or her specialty. USIA Civil Service employees selected as Overseas Specialist Candidates will be appointed only if the Agency element to which they are currently assigned is willing to affirm in writing that a position at the appropriate level will be made available for the employee should the candidacy end unsuccessfully. USIA Civil Service applicants will be appointed as Overseas Specialist Candidates on or about the date of their departure for post of assignment or upon assumption of an assignment (which has been identified and will follow a period of orientation in Washington). The Agency may also assign a Candidate to a U.S.-based position for an initial assignment of up to 24 months when the Candidate will spend the majority of his/her time traveling overseas and will, except for the U.S. basing, be fully functioning as an Overseas Specialist. Specialist Candidates will compete for promotion by the Annual Overseas Specialist Selection Board with other officers in the same specialty and at the same class level. Specialist Candidates at the Class 1 level are ineligible for promotion into the Senior Foreign Service.

(4) The Specialist candidacy may be terminated a any time for unsatisfactory performance (22 U.S.C. 4011) or for such cause as will promote the efficiency of the Service (22 U.S.C. 4010).

(g) *Career Appointment as an Overseas Specialist.* In accordance with section 3946 of title 22 United States Code, the decision to offer a Specialist Candidate a career appointment will be based on the recommendation made by the Annual Overseas Specialist Selection Board which reviews all employees in the Candidate's occupational category and class level.

(1) *Eligibility.* Specialist Candidates who have performed at least two years of overseas service will be eligible for review for career status at the time of the Candidate's third Board review. Candidates serving an initial tour in the U.S. but spending the majority of time working overseas will be credited with up to one year's overseas service, but no more than half of the time based in the U.S. If a Specialist Candidate is not recommended for career status during the initial review, the Candidate may be reviewed again when the next Annual Overseas Specialist Selection Board convenes if the initial Board so recommends.

(2) *Selection Board Review.* The Selection Board(s) will review the official performance file of the eligible Specialist Candidates and in accordance with established precepts, will determine whether the Candidates should be recommended for career appointment as Overseas Specialists. Recommendations by the Board will be based on the Candidate's demonstrated aptitude and fitness for a career in the Foreign Service in their occupational specialties. No quota or numerical limit is placed on the number of positive career status decisions that can be made by Selection Boards. The Specialist candidacy will be terminated if the Candidate fails to be recommended for career status after a second Board review for tenuring. Candidates may be terminated earlier than the expiration of their limited appointment if so recommended by the Board and approved by the Director, Office of Personnel (M/P or VOA/P). Specialist Candidates recommended for career status by the Selection Board will be given Foreign Service career appointments (or redesignation) as Overseas Specialist, to take effect within one month of the Board's recommendation.

§ 501.7 Appointment as Chief of Mission.

(a) *Appointment by President.* Chiefs of mission are appointed by the President, by and with the advice and consent of the Senate. They may be career members of the Foreign Service or they may be appointed from outside the Service.

(b) *Recommendation of Foreign Service Career Members.* On the basis of recommendations made by the Director of USIA, the Secretary of State from time to time furnishes the President with the names of Foreign Service career members qualified for appointment as chiefs of mission. The names of these officers, together with pertinent information concerning them, are given to the President to assist him in selecting qualified candidates for appointment as chiefs of mission.

(c) *Status of Foreign Service Career Members Appointed as Chiefs of Mission.* Foreign Service career members who are appointed as chiefs of mission retain their career status as Foreign Service career members.

§ 501.8 Reappointment of Foreign Service Officers and Career Overseas Specialists.

The President may, by and with the advice and consent of the Senate, reappoint to the Service a former Foreign Service Officer who is separated from the Service. The Director (USIA) may reappoint to the Service a former career Overseas Specialist.

(a) *Requirements for Reappointment.* (1) On the date of application, each applicant must be a citizen of the United States.

(2) No applicant will be considered who has previously been separated from the Foreign Service pursuant to Section 608 or 610 of the Foreign Service Act of 1980 (or predecessor Sections 633, 635, or 637 of the Foreign Service Act of 1946, as amended); or who resigned or retired in lieu of selection out or separation for cause.

Note.—This requirement will not apply where it has been determined by the Foreign Service Grievance Board under 3 FAM 660 or by the Director, Office of Personnel, that the separation or the resignation or retirement in lieu of selection out or separation for cause was wrongful; where reappointment is determined by the Director, Office of Personnel, as an appropriate means to settle a grievance or complaint of a former Foreign Service career member on a mutually satisfactory basis; or where reappointment is the indicated redress in a proceeding under 3 FAM 130 "Equal Employment Opportunity."

(b) *Application.* Apply by letter addressed to the Director, Office of Personnel. Include the standard application forms, SF–171, Application for Federal Employment; and DSP–34, Supplement to Application for Federal Employment; and a brief resume of work and other experience since resignation from the Foreign Service. Whenever the Director, Office of Personnel, finds that the reappointment of one or more former Foreign Service Career Members may be in the best interest of the Service, all application forms, along with the available personnel files, will be referred as appropriate to the Board of Examiners for the Foreign Service which will conduct an advisory evaluation of the qualifications of each applicant.

(c) *Nature of Evaluation.* (1) The Board of Examiners' advisory qualifications evaluation of FSO applicants (i) will be based on a review of all pertinent information relating to the applicant's record of employment in the Foreign Service and to subsequent experience, as well, and (ii) will take into consideration among other factors, the rank of the applicant's contemporaries in the Service in recommending the class in which the applicant will be reappointed under section 308 of the Foreign Service Act of 1980.

(2) In consultation with the Foreign Service Personnel Division (M/PF or VOA/PF) and officials from the pertinent Agency elements, the Overseas Specialist applicant's total qualifications and experience will be evaluated based on the application and an interview. On the basis of this review and the recommendations of the appropriate officials, the personnel office will determine whether the application should be continued and, if so, will recommend the appointment class.

(d) *Medical Examination and Security Investigation.* Qualified applicants and their dependents who will accompany them overseas will be given a physical examination. A security investigation will also be conducted. The reappointment action is subject to completion of a satisfactory security investigation and satisfactory medical examination of the applicant and his/her dependents.

(e) *Selection for Reappointment.* The Director, Office or Personnel (M/P or VOA/P), taking into consideration (1) the qualifications and experience of each applicant as outlined in the qualifications evaluation performed by the Board of Examiners for the Foreign Service or the personnel office, (2) future placement and growth potential, and (3) the needs of the Service for the applicant's skills determines which applicant, or applicants, are qualified for reappointment and the appointment class that is considered to be appropriate. An Overseas Specialist may not be reappointed until and unless an overseas assignment has been identified. The Director, Office of Personnel (M/P or VOA/P) is responsible for initiating appointment action. Any voluntary applicant who refuses an offer of reappointment will not be considered for reappointment again.

§ 501.9 Interchange of FSOs Between USIA and Other Foreign Affairs Agencies.

Foreign Service Officers (FSOs) desiring transfer from one agency to another may apply under the following provisions:

(a) *Applications.* Applications for interchange appointments should be sent to the Board of Examiners for the Foreign Service, Department of State, Washington, D.C. 20520.

(b) *Certification and Approval.* (1) When a Foreign Service Officer of another Foreign Affairs Agency wishes to transfer to the U.S. Information Agency, a certification of need is required from the Director, Office of Personnel, USIA, and approval is required by the Director of Personnel for the other Agency for the officer's release to USIA.

(2) When a USIA FSO wishes to transfer to another Foreign Affairs Agency, a certification of need is required from the Director of Personnel of the other Agency, and approval is required by the Director, Office of Personnel, USIA, for the officer's release to that Agency.

(3) A review by the Board of Examiners for the Foreign Service will certify the eligibility of candidates for exchange. BEX will notify the Office of Personnel, USIA when a Foreign Service Officer of another Agency has been approved for transfer and USIA will process the necessary employment papers.

(4) A new FSO appointment for officers transferring between another Foreign Affairs Agency and USIA is not required.

[FR Doc. 85-15760 Filed 7-2-85; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8034]

Treatment of Funded Welfare Benefit Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to welfare benefit funds maintained pursuant to a collective bargaining agreement. This action is necessary because of changes to the applicable law made by the Tax Reform Act of 1984. The regulations provide guidance concerning limits on contributions to and reserves of a welfare benefit fund maintained pursuant to a collective bargaining agreement. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: The temporary regulations apply to contributions paid or accrued after December 31, 1985, and are effective after December 31, 1985.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:EE) (202) 566-4396 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to limits on contributions to and the reserves of welfare benefit funds maintained pursuant to a collective bargaining agreement under section 419A(f)(5) of the Internal Revenue Code of 1954 (Code), as added to the Code by section 511 of the Tax Reform Act of 1984 (26 U.S.C. 419A). The temporary regulations will remain in effect until superseded by final regulations on his subject.

Format

These temporary regulations are presented in the form of questions and answers. Taxpayers may rely on them for guidance pending the issuance of final regulations. No inference should be drawn regarding issues not expressly raised, or by the inclusion or exclusion of certain questions.

Written comments are requested regarding current funding practices and requirements of collectively bargained welfare benefit funds, and the need for special rules in selected situations, such as for collectively bargained funds maintained by employers in declining industries. In addition, comments are requested regarding appropriate rules for allocating the assets of a welfare benefit fund between employees covered by a collective bargaining agreement and other employees.

Nonapplicability of Executive Order 12291.

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly,

the Regulatory Flexibility Act does not apply and a Regulatory Impact Analysis is not required for this rule.

List of Subjects in 26 CFR 1.401–0—1.425–1

Income taxes, Employee benefit plans Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Para. 2. A new §1.419A–2T is added immediately following § 1.419–1 to read as follows:

§ 1.419A–2T Qualified asset account limitation for collectively bargained funds. (Temporary)

Q–1: What account limits apply to welfare benefit funds that are maintained pursuant to a collective bargaining agreement?

A–1: Contributions to a welfare benefit fund maintained pursuant to one or more collective bargaining agreements and the reserves of such a fund generally are subject to the rules of sections 419, 419A, and 512. However, neither contributions to nor reserves of such a collectively bargained welfare benefit fund shall be treated as exceeding the otherwise applicable limits of section 419(b), 419A(b), or 512(a)(3)(E) until the earlier of: (i) The date on which the last of the collective bargaining agreements relating to the fund in effect on, or ratified on or before, the date of issuance of final regulations concerning such limits for collectively bargained welfare benefit funds terminates (determined without regard to any extension thereof agreed to after the date of issuance of such final regulations), or (ii) the date 3 years after the issuance of such final regulations.

Q–2: What is a welfare benefit fund maintained pursuant to a collective bargaining agreement for purposes of Q&A–1?

A–2: (1) For purposes of Q&A–1, a collectively bargained welfare benefit fund is a welfare benefit fund that is maintained pursuant to an agreement which the Secretary of Labor determines to be a collective bargaining agreement and which meets the requirements of the Secretary of the Treasury as set forth in paragraph 2 below.

(2) Notwithstanding a determination by the Secretary of Labor that an agreement is a collective bargaining agreement, a welfare benefit fund is considered to be maintained pursuant to a collective bargaining agreement only if the benefits provided through the fund were the subject of arms-length negotiations between employee representatives and one or more employers, and if such agreement between employee representatives and one or more employers satisfies section 7701(a)(46) of the Code. Moreover, the circumstances surrounding a collective bargaining agreement must evidence good faith bargaining between adverse parties over the welfare benefits to be provided through the fund. Finally, a welfare benefit fund is not considered to be maintained pursuant to a collective bargaining agreement unless at least 50 percent of the employees eligible to receive benefits under the fund are covered by the collective bargaining agreement.

(3) In the case of a collectively bargained welfare benefit fund, only the portion of the fund (as determined under allocation rules to be provided by the Commissioner) attributable to employees covered by a collective bargaining agreement, and from which benefits for such employees are provided, is considered to be maintained pursuant to a collective bargaining agreement.

(4) Notwithstanding the preceding paragraphs and pending the issuance of regulations setting account limits for collectively bargained welfare benefit funds, a welfare benefit fund will not be treated as a collectively bargained welfare benefit fund for purposes of Q&A–1 if and when, after July 1, 1985, the number of employees who are not covered by a collective bargaining agreement and are eligible to receive benefits under the fund increases by reason of an amendment, merger, or other action of the employer or the fund. In addition, pending the issuance of such regulations, for purposes of applying the 50 percent test of paragraph (2) to a welfare benefit fund that is not in existence on July 1, 1985, "90 percent" shall be substituted for "50 percent".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

M. Eddie Heironimus,
Acting Commissioner of Internal Revenue.

Approved: June 28, 1985

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

[FR Doc. 85–15940 Filed 7–1–85; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 32

Public Safety Officers' Death Benefits

AGENCY: Office of Justice Programs, Justice.

ACTION: Final regulation.

SUMMARY: The regulations covering public safety officers' death benefits and the appendix to those regulations are being amended to comply with statutory amendments to the Public Safety Officers' Benefits [PSOB] Act. The Bureau of Justice Assistance has been authorized to administer the PSOB program. As a nomenclature change, this Bureau has been substituted for the "Law Enforcement Assistance Administration" as the administering agency. Other changes to the regulation include provision of coverage to Federal public safety officers; changes to facilitate transactions with the Department of Labor; and clarification of "gross negligence" and "intoxication" standards.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Charles A. Lauer, 202–724–7792.

SUPPLEMENTARY INFORMATION: Proposed regulations were published for comment on March 19, 1985. One comment was received from a State police department addressing several technical issues relating to the measurement of a decedent's blood alcohol level. The department's comments will be helpful in reviewing specific claims but did not warrant a change in the proposed regulations.

Two changes reflecting the coverage of Federal public safety officers have been made in the final regulations. The heading and text of § 32.5 has been amended to state that the Bureau of Justice Assistance will give substantial weight to the investigative findings of not only State and local agencies, but Federal agencies as well. In addition, § 32.6(b) has been amended to clarify that deaths of Federal public safety

officers are covered only if they result from injuries sustained on or after October 12, 1984.

The final regulations also include the following amendments proposed on March 19.

1. The Justice Assistance Act of 1984, Title II of Pub. L. 98–473, 98 Stat. 1837 (Oct. 12, 1984) eliminated the Law Enforcement Assistance Administration and created a bureau which administers the Public Safety Officers' Benefits Program called the Bureau of Justice Assistance. Accordingly, the references to the "Administration" have been replaced by the term "Bureau of Justice Assistance" or "Bureau" to reflect the statutory change in the organization's terminology.

2. An amendment to the benefits payable section, section 1201(e), is intended to facilitate our financial transactions with the Department of Labor with respect to benefits payable under 5 U.S.C. 8191. It relieves the Department of Labor of the administrative burden of reimbursing the Department of Justice for amounts it paid to PSOB survivors who are also eligible for section 8191 benefits. The Department of Labor need no longer make actual disbursements to the Bureau of Justice Assistance, every time a claim is paid under both programs. (The 5 U.S.C. 8191 program is a benefits program for the families of State and local law enforcement officers that is administered by the Department of Labor.) As explained by the Senate Judiciary Committee Report on S. 241 (96th Cong.), at 58, "under the new language the Department of Labor need only keep internal records of payments that would have been made under the section 8191 program, but for the PSOB Act, until such time as those payments exceed the benefits awarded to the beneficiary in question under PSOB. At that time, the Department of Labor will begin to makes whatever actual payments may still be due section 8191 beneficiaries. The amendment codifies a recommendation of the General Accounting Office." (S. Rept. No. 96–142 (May 14, 1979))

3. An additional circumstance has been added to the Act under which a benefit will not be paid to a public safety officer's survivors. If a public safety officer was performing his or her duties in a grossly negligent manner at the time of his or her death (section 1202(3)) no benefit shall be paid. This clarification of "line of duty" death changes the rule of law established in *Harold v. United States*, Ct. Cl. 424–79 (Decided Sept. 10, 1980), in which the court ordered payment to a law enforcement officer because the PSOB Act contained no provision which expressly denied benefits to survivors of an officer when his death was caused by his own negligence.

4. The definition of "intoxication" has been amended to reflect statutory amendments to section 1203(4) of the Act. Under the predecessor Act, coverage was denied if it could be shown that intoxication was the proximate cause of death. Establishing or disproving "proximate cause" was extremely difficult. As a result, some claims had to be paid where officers were highly intoxicated. This new amendment eliminates the causation requirement and instead replaces it with a two-tiered approach in which blood alcohol levels are determinative of intoxication.

5. The PSOB Act now covers Federal law enforcement officers and fire fighters killed in the line of duty in the same manner as it covers State and local public safety officers. This amendment is applicable to covered Federal public safety officers who were killed in the line of duty after October 11, 1984. This death benefit to survivors of Federal public safety officers is in addition to death benefits that may be received under the Federal employee workers' compensation law (FECA), 5 U.S.C. 8191.

This order is not a rule within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. This order is not a "major rule" as defined by section 1(b) of Executive Order No. 12291, 3 CFR Part 127 (1981). The collection of information requirements contained in the proposed regulation have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 28 CFR Part 32

Administrative practice and procedure.

For the reasons set out in the preamble, Title 28 CFR Part 32, is revised as set forth below:

PART 32—PUBLIC SAFETY OFFICERS' DEATH BENEFITS

Subpart A—Introduction

Sec.
32.1 Purpose.
32.2 Definitions.

Subpart B—Officers Covered

32.3 Coverage.
32.4 Reasonable doubt of coverage.
32.5 Findings of State, local, and Federal agencies.
32.6 Conditions on payment.
32.7 Intentional misconduct of the officer.
32.8 Intention to bring about death.
32.9 Voluntary intoxication.

Subpart C—Beneficiaries

32.10 Order of priority.
32.11 Contributing factor to death.
32.12 Determination of relationship of spouse.
32.13 Determination of relationship of child.
32.14 Determination of relationship of parent.
32.15 Determination of dependency.

Subpart D—Interim and Reduced Payments

32.16 Interim payment in general.
32.17 Repayment and waiver of repayment.
32.18 Reduction of payment.

Subpart E—Filing and Processing of Claims

32.19 Persons executing claims.
32.20 Claims.
32.21 Evidence.
32.22 Representation.

Subpart F—Determination, Hearing, and Review

32.23 Finding of eligibility or ineligibility.
32.24 Request for a hearing.

Appendix to Part 32—PSOB Hearing and Appeal Procedures.

Authority: Secs. 801(a) and 1204(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473).

Subpart A—Introduction

§ 32.1 Purpose.

The purpose of this regulation is to implement the Public Safety Officers' Benefits Act of 1976 which authorizes the Office of Justice Programs, Bureau of Justice Assistance to pay a benefit of $50,000 to specified survivors of public safety officers found to have died as the direct and proximate result of a personal injury sustained in the line of duty. The Act is Part J of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473.

§ 32.2 Definitions.

(a) "The Act" means the Public Safety Officers' Benefits Act of 1976, 42 U.S.C. 3796, et seq., Pub. L. 94–430, 90 Stat. 1346 (September 29, 1976), as amended.

(b) "Bureau" means the Bureau of Justice Assistance of the Office of Justice Programs (hereinafter referred to as the Bureau or BJA).

(c) "Line of duty" means any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is obligated or authorized by rule, regulations, condition of employment or service, or

law to perform, including those social, ceremonial, or athletic functions to which the officer is assigned, or for which the officer is compensated, by the public agency he serves. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires.

(d) "Direct and proximate" or "proximate" means that the antecedent event is a substantial factor in the result.

(e) "Personal injury" means any traumatic injury, as well as diseases which are caused by or result from such an injury, but not occupational diseases.

(f) "Traumatic injury" means a wound or the condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.

(g) "Occupational disease" means a disease which routinely constitutes a special hazard in, or is commonly regarded as a concomitant of the officer's occupation.

(h) "Public safety officer" means any individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or a firefighter.

(i) "Law enforcement officer" means any individual involved in crime and juvenile delinquency control or reduction, or enforcement of the law, including but not limited to police, corrections, probation, parole, and judicial officers.

(j) "Firefighter" includes any individual serving as an officially-recognized or designated member of a legally-organized volunteer fire department.

(k) "Child" means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is:

(1) Eighteen years of age or under;

(2) Over eighteen years of age and a student, as defined in section 8101 of Title 5, United States Code; or

(3) Over eighteen years of age and incapable of self-support because of physical or mental disability.

(l) "Stepchild" means a child of the officer's spouse who was living with, dependent for support on, or otherwise in a parent-child relationship, as set forth in § 32.13(b) of the regulations, with the officer at the time of the officer's death. The relationship of stepchild is not terminated by the divorce, remarriage, or death of the stepchild's natural or adoptive parent.

(m) "Student" means an individual under 23 years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(1) A school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(2) A school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body;

(3) A school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited for credit on the same basis as if transferred from an institution so accredited; or

(4) An additional type of educational or training institution as defined by the Secretary of Labor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four months and if the student shows to the satisfaction of the Bureau that the student has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which in the judgment of the Bureau the student is prevented by factors beyond the student's control from pursuing the student's education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(n) "Spouse" means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.

(o) "Dependent" means any individual who was substantially reliant for support upon the income of the deceased public safety officer.

(p) "Intoxication" means a disturbance of mental or physical faculties—

(1) Resulting from the introduction of alcohol into the body as evidenced by (i) a post-mortem blood alcohol level of .20 per centum or greater or (ii) a post-mortem blood alcohol level of at least .10 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to the officer's death; or

(2) Resulting from drugs or other substances in the body.

(q) "Public agency" means the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States, or any unit of local government, department, agency, or instrumentality of any of the foregoing.

(r) "Support" means food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for maintenance of the person supported.

Subpart B—Officers Covered

§ 32.3 Coverage.

In any case in which the Bureau determines under regulations issued pursuant to this part, that a public safety officer, as defined in § 32.2(h), has died as the direct and proximate result of a personal injury sustained in the line of duty, the Bureau shall pay a benefit of $50,000 in the order specified in § 32.10, subject to the conditions set forth in § 32.6.

§ 32.4 Reasonable doubt of coverage.

The Bureau shall resolve any reasonable doubt arising from the circumstances of the officer's death in favor of payment of the death benefit.

§ 32.5 Findings of State, local, and Federal agencies.

The Bureau will give substantial weight to the evidence and findings of fact presented by State, local, and Federal administrative and investigative agencies. The Bureau will request additional assistance or conduct its own investigation when it believes that the existing evidence does not provide the Bureau with a rational basis for a decision on a material element of eligibility.

§ 32.6 Conditions on payment.

(a) No benefit shall be paid—

(1) If the death was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about the officer's death;

(2) If the public safety officer was voluntarily intoxicated at the time of the officer's death;

(3) If the public safety officer was performing the officer's duties in a

grossly negligent manner at the time of the officer's death;

(4) To any individual who would otherwise be entitled to a benefit under this part if such individual's actions were a substantial contributing factor to the death of the public safety officer; or

(5) To any individual employed in a capacity other than a civilian capacity.

(b) The Act applies only to deaths occurring from injuries sustained on or after September 29, 1976, except that deaths of Federal public safety officers are covered only if they result from injuries sustained on or after October 12, 1984.

§ 32.7 Intentional misconduct of the officer.

The Bureau will consider at least the following factors in determining whether death was caused by the intentional misconduct of the officer:

(a) Whether the conduct was in violation of rules and regulations of the employer, or ordinances and laws; and

(1) Whether the officer knew the conduct was prohibited and understood its import;

(2) Whether there was a reasonable excuse for the violation; or

(3) Whether the rule violated is habitually observed and enforced;

(b) Whether the officer had previously engaged in similar misconduct;

(c) Whether the officer's intentional misconduct was a substantial factor in the officer's death; and

(d) The existence of an intervening force which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

§ 32.8 Intention to bring about death.

The Bureau will consider at least the following factors in determining whether the officer intended to bring about the officer's own death:

(a) Whether the death was caused by insanity, through an uncontrollable impulse or without conscious volition to produce death;

(b) Whether the officer had a prior history of attempted suicide;

(c) Whether the officer's intent to bring about the officer's death was a substantial factor in the officer's death; and

(d) The existence of an intervening force or action which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

§ 32.9 Voluntary intoxication.

The Bureau will apply the following evidentiary factors in cases in which voluntary intoxication is at issue in an officer's death.

(a) The primary factor in determining intoxication at the time the injury occurred, from which death resulted, is the post-mortem blood alcohol level.

(1) Benefits will be denied if the decedent had a post-mortem blood alcohol level of .20 per centum or greater; or

(2) Benefits will be denied if the decedent has a post-mortem blood alcohol level of at least .10 per centum but less than .20 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to his death.

(b) Convincing evidence includes, but is not limited to: Affidavits or investigative reports demonstrating that the decedent's speech, movement, language, emotion, and judgment were normal (for the officer) immediately prior to the injury which caused the death.

(c) In determining whether an officer's intoxication was voluntary, the Bureau will consider:

(1) Whether, and to what extent, the officer had a prior history of voluntary intoxication while in the line of duty;

(2) Whether and to what degree the officer had previously used the intoxicant in question; and

(3) Whether the intoxicant was prescribed medically and was taken within the prescribed dosage.

Subpart C—Beneficiaries

§ 32.10 Order of priority

(a) When the Bureau has determined that a benefit may be paid according to the provisions of Subpart B and § 32.11 of Subpart C, a benefit of $50,000 shall be paid in the following order or precedence:

(1) If there is no surviving child of such officer, to the surviving spouse of such officer;

(2) If there are a surviving child or children and a surviving spouse, one-half to the surviving child or children of such officer in equal shares, and one-half to the surviving spouse;

(3) If there is no surviving spouse, to the child or children of such officer, in equal shares; or

(4) If none of the above, to the dependent parent or parents, in equal shares.

(b) If no one qualifies as provided in paragraph (a) of this section, no benefit shall be paid.

§ 32.11 Contributing factor to death.

(a) No benefit shall be paid to any person who would otherwise be entitled to a benefit under this part if such person's intentional actions were a substantial contributing factor to the death of the public safety officer.

(b) When a potential beneficiary is denied benefits under subsection (a), the benefits shall be paid to the remaining eligible survivors, if any, of the officer as if the potential beneficiary denied benefits did not survive the officer.

§ 32.12 Determination of relationship of spouse.

(a) Marriage should be established by one (or more) of the following types of evidence in the following order of preference:

(1) Copy of the public record of marriage, certified or attested, or by an abstract of the public record, containing sufficent data to identify the parties, the date and place of the marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(2) Official report from a public agency as to a marriage which occurred while the officer was employed with such agency;

(3) The affidavit of the clergyman or magistrate who officiated;

(4) The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage;

(5) The affidavits or sworn statements of two or more eyewitnesses to the ceremony;

(6) In jurisdictions where "common law" marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived; or

(7) Any other evidence which would reasonably support a belief by the

Bureau that a valid marriage actually existed.

(b) BJA will not recognize a claimant as a "common law" spouse under § 32.12(a)(6) unless the State of domicile recognizes him or her as the spouse of the officer.

(c) If applicable, certified copies of divorce decrees of previous marriages or death certificates of the former spouses of either party must be submitted.

§ 32.13 Determination of relationship of child.

(a) *In general.* A claimant is the child of a public safety officer if the individual's birth certificate shows the officer as the individual's parent.

(b) *Alternative.* If the birth certificate does not show the public safety officer as the claimant's parent, the sufficiency of the evidence will be determined in accordance with the facts of a particular case. Proof of the relationship may consist of—

(1) An acknowledgement in writing signed by the public safety officer; or

(2) Evidence that the officer has been identifed as the child's parent by a judicial decree ordering the officer to contribute to the child's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the officer was the informant and was named as the parent of the child; or

(ii) Affidavits or sworn statements of persons who know that the officer accepted the child as his; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the officer's knowledge the officer was named as the parent of the child.

(c) *Adopted child.* Except as may be provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

(d) *Stepchild.* The relationship of a stepchild to the deceased officer shall be demonstrated by—

(1) Evidence of birth to the spouse of the officer as required by paragraphs (a) and (b) of this section; or

(2) If adopted by the spouse, evidence of adoption as required by paragraph (c) of this section; or

(3) Other evidence, such as that specified in § 32.13(b), which reasonably supports the existence of a parent-child relationship between the child and the spouse;

(4) Evidence that the stepchild was either—

(i) Living with; or

(ii) Dependent for support, as set forth in § 32.15; or

(iii) In a parent-child relationship, as set forth in § 32.13(b), with the officer at the time of the officer's death, and

(5) Evidence of the marriage of the officer and the spouse, as required by § 32.12.

§ 32.14 Determination of relationship of parent.

(a) *In general.* A claimant is the parent of a public safety officer if the officer's birth certificate shows the claimant as the officer's parent.

(b) *Alternative.* If the birth certificate does not show the claimant as the officer's parent, proof of the relationship may be shown by—

(1) An acknowledgement in writing signed by the claimant before the officer's death; or

(2) Evidence that the claimant has been identified as the officer's parent by judicial decree ordering the claimant to contribute to the officer's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as:

(i) A certified copy of the public record of birth or a religious record showing that the claimant was the informant and was named as the parent of the officer; or

(ii) Affidavits or sworn statements of persons who know the claimant had accepted the officer as the claimant's child; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the officer's knowledge the claimant had been named as the parent of the child.

(c) *Adoptive Parent.* Except as provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the claimant as the officer's parent will suffice.

(d) *Step-parent.* The relationship of a step-parent to the deceased officer shall be demonstrated by—

(1)(i) Evidence of the officer's birth to the spouse of the step-parent as required by § 32.13 (a) and (b); or

(ii) If adopted by the spouse or the step-parent, proof of adoption as required by § 32.13(c); or

(iii) Other evidence, such as that specified in paragraph (b) of this section, which reasonably supports a parent-child relationship between the spouse and the officer; and

(2) Evidence of the marriage of the spouse and the step-parents, as required by § 32.12.

§ 32.15 Determination of dependency.

(a) To be eligible for a death benefit under the Act, a parent or a stepchild not living with the deceased officer at the time of the officer's death shall demonstrate that he or she was substantially reliant for support upon the income of the officer.

(b) The claimant parent or stepchild shall demonstrate that he or she was dependent upon the decedent at either the time of the officer's death or of the personal injury that was a substantial factor in the officer's death.

(c) The claimant parent or stepchild shall demonstrate dependency by submitting a signed statement of dependency within a year of the officer's death. This statement shall include the following information—

(1) A list of all sources of income or support for the twelve months preceding the officer's injury or death;

(2) The amount of income or value of support derived from each source listed; and

(3) The nature of support provided by each source.

(d) Generally, the Bureau will consider a parent or stepchild "dependent" if he or she was reliant on the income of the deceased officer for over one-third of his or her support.

Subpart D—Interim and Reduced Payments

§ 32.16 Interim payment in general.

(a) Whenever the Bureau determines upon a showing of need and prior to final action that the death of a public safety officer is one with respect to which a benefit will probably be paid, the Bureau may make an interim benefit payment not exceeding $3,000 to the individual entitled to receive a benefit under Subpart C of this part.

(b) The amount of an interim payment under this Subpart shall be deducted

from the amount of any final benefit paid to such individual.

§ 32.17 Repayment and waiver of repayment.

Where there is no final benefit paid, the recipient of any interim benefit paid under § 32.16 shall be liable for repayment of such amount. The Bureau may waive all or part of such repayment considering for this purpose the hardship which would result from such repayment.

§ 32.18 Reduction of payment.

(a) The benefit payable under this part shall be in addition to any other benefit that may be due from any other source, except—

(1) Payments authorized by section 12(k) of the Act of September 1, 1916, as amended (D.C. Code, Sec. 4–622);

(2) Benefits authorized by section 8191 of Title 5, United States Code, providing compensation for law enforcement officers not employed by the United States killed in connection with the commission of a crime against the United States. Such beneficiaries shall only receive benefits under such section 8191 that are in excess of the benefits received under this part; and

(3) The amount of the interim benefit payment made to the claimant pursuant to § 32.16.

(b) No benefit paid under this part shall be subject to execution or attachment.

Subpart E—Filing and Processing of Claims

§ 32.19 Persons executing claims.

(a) The Bureau shall determine who is the proper party to execute a claim in accordance with the following rules—

(1) The claim shall be executed by the claimant or the claimant's legally designated representative if the claimant is mentally competent and physically able to execute the claim.

(2) If the claimant is mentally incompetent or physically unable to execute the claim; and

(i) Has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or other representative, or

(ii) Is in the care of an institution, the claim may be executed by the manager or principal officer of such institution.

(3) For good cause shown, such as the age or prolonged absence of the claimant, the Bureau may accept a claim executed by a person other than one described in paragraphs (a)(1) and (a)(2) of this section.

(b) Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of such person's authority to execute the claim on behalf of such claimant in accordance with the following rules—

(1) If the person executing the claim is the legally-appointed guardian, committee, or other legally-designated representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(2) If the person executing the claim is not such a legally-designated representative, the evidence shall be a statement describing such person's relationship to the claimant or the extent to which such person has the care of such claimant or such person's position as an officer of the institution of which the claimant is an inmate or patient. The Bureau may, at any time, require additional evidence to establish the authority of any such person to file or withdraw a claim.

§ 32.20 Claims.

(a) Claimants are encouraged to submit their claims on BJA Form 3650/1, which can be obtained from: Public Safety Officers' Benefits Program, Bureau of Justice Assistance, Washington, DC 20531.

(b) Where an individual files Form 3650/1 or other written statement with the Bureau which indicates an intention to claim benefits, the filing of such written statement shall be considered to be the filing of a claim for benefits.

(c) A claim by or on behalf of a survivor of a public safety officer shall be filed within one year after the date of death unless the time for filing is extended by the Director for good cause shown.

(d) Except as otherwise provided in this part, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for pursuant to the regulations in this part, shall be in writing and shall be signed by the claimant or the person legally designated to execute a claim under § 32.19.

§ 32.21 Evidence.

(a) A claimant for any benefit or fee under the Act and the regulations shall submit such evidence of eligibility or other material facts as is specified by these regulations. The Bureau may at any time require additional evidence to be submitted with regard to entitlement, the right to receive payment, the amount to be paid, or any other material issue.

(b) Whenever a claimant for any benefit or fee under the Act and the regulations has submitted no evidence or insufficient evidence of any material issue or fact, the Bureau shall inform the claimant what evidence is necessary for a determination as to such issue or fact and shall request the claimant to submit such evidence within a reasonable specified time. The claimant's failure to submit evidence on a material issue or fact as requested by the Bureau shall be a basis for determining that the claimant fails to satisfy the conditions required to award a benefit or fee or any part thereof.

(c) In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of such record, or other public official authorized to certify the copy.

§ 32.22 Representation.

(a) A claimant may be represented in any proceeding before the Bureau by an attorney or other person authorized to act on behalf of the claimant pursuant to § 32.19.

(b) No contract for a stipulated fee or for a fee on a contingent basis will be recognized. Any agreement between a representative and a claimant in violation of this subsection is void.

(c) Any individual who desires to charge or receive a fee for services rendered for an individual in any application or proceeding before the Bureau must file a written petition therefore in accordance with paragraph (e) of this section. The amount of the fee the petitioner may charge or receive, if any, shall be determined by the Bureau on the basis of the factors described in paragraphs (e) and (g) of this section.

(d) Written notice of a fee determination made under this section shall be mailed to the representative and the claimant at their last known addresses. Such notice shall inform the parties of the amount of the fee authorized, the basis of the determination, and the fact that the Bureau assumes no responsibility for payment.

(e) To obtain approval of a fee for services performed before the Bureau, a representative, upon completion of the proceedings in which the representative rendered services, must file with the Bureau a written petition containing the following information—

(1) The dates the representative's services began and ended;

(2) An itemization of services rendered with the amount of time spent in hours, or parts thereof;

(3) The amount of the fee the representative desires to charge for services performed;

(4) The amount of fee requested or charged for services rendered on behalf of the claimant in connection with other claims or causes of action arising from the officer's death before any State or Federal court or agency;

(5) The amount and itemization of expenses incurred for which reimbursement has been made or is expected;

(6) The special qualifications which enabled the representative to render valuable services to the claimant (this requirement does not apply where the representative is an attorney); and

(7) A statement showing that a copy of the petition was sent to the claimant and that the claimant was advised of the claimant's opportunity to submit his or her comments on the petition to BJA within 20 days.

(f) No fee determination will be made by the Bureau until 20 days after the date the petition was sent to the claimant. The Bureau encourages the claimant to submit comments on the petition to the Bureau during the 20-day period.

(g) In evaluating a request for approval of a fee, the purpose of the public safety officers' benefits program—to provide a measure of economic security for the beneficiaries thereof—will be considered, together with the following factors—

(1) The services performed (including type of service);

(2) The complexity of the case;

(3) The level of skill and competence required in rendition of the services;

(4) The amount of time spent on the case;

(5) The results achieved;

(6) The level of administrative review to which the claim was carried within the Bureau and the level of such review at which the representative entered the proceedings;

(7) The amount of the fee requested for services rendered, excluding the amount of any expenses incurred, but including any amount previously authorized or requested;

(8) The customary fee for this kind of service; and

(9) Other awards in similar cases.

(h) In determining the fee, the Bureau shall consider and add thereto the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. No amount of reimbursement shall be permitted for expenses incurred in obtaining medical or documentary evidence in support of the claim which has previously been obtained by the Bureau, and no reimbursement shall be allowed for expenses incurred by the claimant in establishing or pursuing the claimant's application for approval of his fee.

Subpart F—Determination, Hearing, and Review

§ 32.23 Finding of eligibility or ineligibility.

Upon making a finding of eligibility, the Bureau shall notify each claimant of its disposition of his or her claim. In those cases where the Bureau has found the claimant to be ineligible for a death benefit, the Bureau shall specify the reasons for the finding. The finding shall set forth the findings of fact and conclusions of law supporting the decision. A copy of the decision, together with information as to the right to a hearing and review shall be mailed to the claimant at his or her last known address.

§ 32.24 Request for a hearing.

(a) A claimant may, within thirty (30) days after notification of ineligibility by the Bureau, request the Bureau to reconsider its finding of ineligibility. The Bureau shall provide the claimant the opportunity for an oral hearing which shall be held within sixty (60) days after the request for reconsideration. The claimant may waive the oral hearing and present written evidence to the Bureau within sixty (60) days after the request. The request for hearing shall be made to the Director, Public Safety Officers' Benefits Program, BJA, Washington, D.C. 20531.

(b) If requested, the oral hearing shall be conducted before a hearing officer authorized by the Bureau to conduct the hearing, in any location agreeable to the claimant and the hearing officer.

(c) In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by Chapter 5 of the Administrative Procedures Act, but must conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose the hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

(d) Pursuant to 42 U.S.C., the hearing officer may, whenever necessary:

(1) Issue subpoenas;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Receive evidence at any place in the United States.

(e) If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing officer may adjourn the hearing and, at any time prior to mailing the decision, reopen the hearing for the receipt of such evidence.

(f) A claimant may withdraw his or her request for a hearing at any time prior to the mailing of the decision by written notice to the hearing officer so stating, or by orally so stating at the hearing. A claimant shall be deemed to have abandoned his or her request for a hearing if he or she fails to appear at the time and place set for the hearing, and does not, within 10 days after the time set for the hearing, show good cause for such failure to appear.

(g) The hearing officer shall, within thirty (30) days after receipt of the last piece of evidence relevant to the proceeding, make a determination of eligibility. The determination shall set forth the findings of fact and conclusions of law supporting the determination. The hearing officer's determination shall be the final agency decision, except when it is reviewed by the Director under paragraph (h) or (i).

(h) The Director may, on his or her own motion, review a determination made by a hearing officer. If the Director decides to review the determination, the Director shall:

(1) Inform the claimant of the hearing officer's determination and his or her decision to review that determination; and

(2) Give the claimant 30 days to comment on the record and offer new evidence or argument on the issues in controversy.

The Director, in accordance with the facts found on review, may affirm or reverse the hearing officer's determination. The Director's determination shall set forth the findings of fact and conclusions of law supporting the determination. The Director's determination shall be the final agency decision.

(i) A claimant determined ineligible by a hearing officer under paragraph (g) may, within thirty (30) days after notification of the hearing officer's determination:

(1) Request the Director to review the record and the hearing officer's determination; and

(2) Comment on the record, and offer new evidence or argument on the issues in controversy.

The Director shall make the final agency determination of eligibility within thirty (30) days after expiration of the comment period. The notice of final determination shall set forth the findings of fact and conclusions of law supporting the determination. The Director's determination shall be the final agency decision.

(j) No payment of any portion of a death benefit, except interim benefits payable under § 32.16, shall be made until all hearings and reviews which may affect that payment have been completed.

Appendix to Part 32—PSOB Hearing and Appeal Procedures

a. *Notification to Claimant of Denial.* These appeal procedures apply to a claimant's [1] request for reconsideration of a denial made by the Public Safety Officers' Benefits (PSOB) Office (the PSOB Office). The denial letter will advise the claimant of the findings of fact and conclusions of law supporting the PSOB Office's determination, and of the appeal procedures available under § 32.24 of the PSOB regulations. A copy of every document in the case file that (1) contributed to the determination, and (2) was not provided by the claimant shall also be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The attached material might typically include medical opinions offered by the Armed Forces Institute of Pathology, legal memoranda from the Office of General Counsel of the Office of Justice Programs, or memoranda to the file prepared by PSOB Office staff. A copy of the PSOB regulations shall also be enclosed.

b. *Receipt of Appeal.* 1. When an appeal has been received, the PSOB Office will assign the case, and transmit the complete case file to a hearing officer. Assignments will be made in turn, from a standing roster, except in those cases where a case is particularly suitable to a specific hearing officer's experience.

2. The PSOB Office will inform the claimant of the name of the hearing officer, request submission of all evidence to the hearing officer, and send a copy of this appeals procedure. If an oral hearing is requested, the PSOB Office will be responsible for scheduling the hearing and making the required travel arrangements.

3. The PSOB Office will be responsible for providing all administrative support to the hearing officer. An attorney from the Office of General Counsel (OGC) who has not participated in the consideration of the claim will provide legal advice to the hearing officer. The hearing officer is encouraged to solicit the advice of the assigned OGC attorney on all questions of law.

4. Prior to the hearing, the hearing officer shall request the claimant to provide a list of expected witnesses, and a brief summary of their anticipated testimony.

[1] As used in this procedure, the word "claimant" means a claimant for benefits or, where appropriate, the claimant's designated representative.

c. *Designation of Hearing Officers.* A. In an internal instruction the BJA Director designated a roster of hearing officers to hear PSOB appeals.

1. The hearing officers are specifically delegated the Director's authority to:

(i) Issue subpoenas;

(ii) Administer oaths;

(iii) Examine witnesses; and

(iv) Receive evidence at any place in the United States the officer may designate.

d. *Conduct of the Oral Hearing.* A. If requested, an oral hearing shall be conducted before the hearing officer in any location agreeable to the officer and the claimant.

1. The hearing officer shall call the hearing to order and advise the claimant of (1) the findings of fact and conclusions of law supporting the initial determination; (2) the nature of the hearing officer's authority; and (3) the manner in which the hearing will be conducted and a determination reached.

2. In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules or procedures, or by Chapter 5 of the Administrative Procedure Act, but must conduct the hearing in such a manner as to best ascertain the rights of the claimant.

3. The hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim.

4. Evidence may be presented orally or in the form of written statements and exhibits. All witnesses shall be sworn by oath or affirmation.

5. If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing may be adjourned and, at any time prior to the mailing of notice of the decision, reopened for the receipt of such evidence. The officer should, in any event, seek to conclude the hearing within 30 days from the first day of the hearing.

6. All hearings shall be attended by the claimant and his or her representative, and such other persons as the hearing officer deems necessary and proper. The wishes of the claimant should always be solicited before any other persons are admitted to the hearing.

7. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

8. The hearing will be deemed closed on the day the hearing officer receives the last piece of evidence relevant to the proceeding.

9. If the claimant waives the oral hearing, the hearing officer shall receive all relevant written evidence the claimant wishes to submit. The hearing officer may ask the claimant to clarify, or explain the evidence submitted, when appropriate. The hearing officer should seek to close the record no later than 90 days after the claimant's request for reconsideration.

e. *Determination.* 1. A copy of the transcript shall be provided to the claimant, to the PSOB Office, and OGC after the conclusion of the hearing.

2. The hearing officer shall make his, or her, determination no later than the 30th day after the last piece of evidence has been received. Copies of the determination shall be made available to the PSOB Office and OGC for their review.

3. If either the PSOB Office or OGC disagrees wth the hearing officer's final determination, that office may request the Director to review the record. If the Director agrees to review the record, the Director will send the hearing officer's determination, all comments received form the PSOB Office, OGC, or other sources (except where disclosure of the material would result in an unwarranted invasion of privacy), and notice of his or her intent to review the record, to the claimant. The Director will also advise the claimant of his or her opportunity to offer comments, new evidence, and argument to the Director within 30 days after the receipt of notification. The Director shall seek to advise all parties of the final agency decision within 30 days after the expiration of the comment period.

4. If the PSOB Office and OGC agree with the hearing officer's determination, or the Director declines to review the record, the hearing officer's determination will be the final agency decision, and will be sent to the claimant by the PSOB Office immediately.

5. If the hearing officer's determination is a denial, all material that (1) contributed to the determination and (2) was not provided by the claimant shall be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The claimant will be given an opportunity to request the Director to review the record and the hearing officer's decision and to offer comments, new evidence, or arguement to the Director within 30 days. The Director shall advise all parties of the final agency decision within 30 days after the expiration of the comment period.

6. The PSOB Office will provide administrative support to the hearing officer and the Director throughout the appeal process.

Lois Haight Herrington,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 85-15815 Filed 7-2-85; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 500, 505, 515, 520, 535, and 540

Embargo Program Regulations; Technical and Clarifying Amendments

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is making a number of technical and clarifying amendments to the regulations implementing the embargo

programs it administers. None of the changes will alter the manner in which the office administers any of these programs.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202/376-0395.

SUPPLEMENTARY INFORMATION: Notices of approval pursuant to the Paperwork Reduction Act are being inserted into each set of regulations. Section 505.10 is being amended to update its citations. Sections 500.101 and 515.101 are being amended to clarify their effect and to delete references to 8 CFR Chapter II, which no longer exists. Section 500.201(d) is being amended to eliminate a reference to the People's Republic of China (the "PRC") which is no longer subject to the Foreign Assets Control Regulations. Section 500.206 is being removed because it relates to the PRC and is therefore obsolete. The definition of "national" in §§ 500.302(a)(1) and 515.302(a)(1) is being changed to reflect more accurately the Office's application of that term. Section 515.301 is being amended to correct a typographical error. Section 500.321 is being amended to delete "The Panama Canal Zone" from the definition of "United States," in order to reflect the change in the status of the Canal Zone under the Panama Canal Treaty. Section 500.329 and § 515.329 are being amended to clarify their meaning. Sections 500.413 and 500.414 are being removed because they relate solely to § 500.541, which no longer exists. Section 515.413 is being amended to delete a reference to § 515.541, which no longer exists. Sections 500.505, 500.506 and 500.507 and §§ 515.505, 515.506 and 515.507 are being removed and replaced by new §§ 500.505 and 515.505, in order to simplify and clarify the operation of these licenses. Section 500.528(b) is being amended to simplify its operation in accordance with current office practice. Section 515.559(b) is being amended to update its citations. Section 515.560(i) is being removed because it no longer has any effect. Subsections 500.561 (d) and (e) are being removed because they relate to the PRC, which is no longer subject to the Foreign Assets Control Regulations.

Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedures Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Similarly, because the amendments are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 19, 1981, dealing with Federal Regulations.

List of Subjects in 31 CFR Parts 500, 505, 515, 530, 535, and 540

Foreign assets, Foreign trade.

PART 500—[AMENDED]

31 CFR Part 500 is amended as follows:

1. The "Authority" paragraph for Part 500 continues to read as follows:

Authority: Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5, E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748, unless otherwise noted.

2. Section 500.101 is revised to read as follows:

§ 500.101 Relation of this part to other laws and regulations.

(a) This part is independent of Parts 505, 515, 520, 530, 535 and 540 of this Chapter. No license or authorization contained in or issued pursuant to one of those parts, or any other provision of law, authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction prohibited by any law other than the Trading With the Enemy Act, 50 U.S.C. App. 5(b), as amended, the Foreign Assistance Act of 1961, 22 U.S.C. 2370, or any proclamation, order, regulation or license issued pursuant thereto.

3. Section 500.201(d) is revised to read as follows:

§ 500.201 Transactions involving designated foreign countries or their nationals; effective date.

* * * * *

(d) The term "designated foreign country" means a foreign country in the following schedule, and the terms "effective date" and "effective date of this section" mean with respect to any designated foreign country, or any national thereof, 12:01 a.m. eastern standard time of the date specified in the following schedule, except as specifically noted after the country or area.

Schedule

(1) North Korea, i.e., Korea north of the 38th parallel of north latitude: December 17, 1950.

(2) Cambodia: April 17, 1975.

(3) North Vietnam, i.e., Vietnam north of the 17th parallel of north latitude: May 5, 1964.

(4) South Vietnam, i.e., Vietnam south of the 17th parallel of north latitude: April 30, 1975, at 12:00 p.m. e.d.t.

§ 500.206 [Removed]

4. Section 500.206 is removed.

5. Section 500.302(a)(1) is revised to read as follows:

§ 500.302 National.

(a) The term "national" shall include:

(1) A subject or citizen of a country or any person who has been domiciled in or a permanent resident of that country at any time on or since the "effective date," except persons who were resident or domiciled there in the service of the U.S. Government.

* * * * *

6. Section 500.321 is revised to read as follows:

§ 500.321 United States; Continental United States.

The term "United States" means the United States and all areas under the jurisdiction or authority thereof, including U.S. trust territories and commonwealths. The term "continental United States" means the states of the United States and the District of Columbia.

7. Section 500.329 is revised to read as follows:

§ 500.329 Person subject to the jurisdiction of the United States.

The term "person subject to the jurisdiction of the United States" includes:

(a) Any individual, wherever located, who is a citizen or resident of the United States;

(b) Any person within the United States as defined in § 500.330;

(c) Any corporation organized under the laws of the United States or of any state, territory, possession, or district of the United States; and

(d) Any corporation, partnership, or association, wherever organized or doing business, that is owned or controlled by persons specified in paragraphs (a) or (c) of this section.

§ 500.413 [Removed]

8. Section 500.413 is removed.

§ 500.414 [Removed]

9. Section 500.414 is removed.

10. Section 500.505 is revised to read as follows:

§ 500.505 Certain persons unblocked.

(a) The following persons are hereby licensed as unblocked nationals:

(1) Any individual resident in the United States who is not a specially designated national; and

(2) Any corporation, partnership or association that would be a designated national solely because of the interest therein of an individual licensed in paragraph (a) or (b) of this section as an unblocked national.

(b) Individual nationals of a designated country who take up residence in the authorized trade territory may apply to the Office of Foreign Assets Control to be specifically licensed as unblocked nationals.

(c) The licensing of any person as an unblocked national shall not suspend the requirements of any section of this Chapter relating to the maintenance or production of records.

§ 500.506 [Removed]

11. Section 500.506 is removed.

§ 500.507 [Removed]

12. Section 500.507 is removed.

13. Section 500.528(b) is revised to read as follows:

§ 500.528 Certain transactions with respect to blocked foreign patents, trademarks and copyrights authorized.

* * * * *

(b) Payments effected pursuant to the terms of paragraphs (a)(4) and (5) of this section may not be made from any blocked account.

* * * * *

§ 500.561 [Amended]

14. Section 500.561 is amended by removing paragraphs (d) and (e).

15. New § 500.901 is added to read as follows:

Subpart I—Miscellaneous Provisions

§ 500.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 500.517(c), 500.527(c), 500.549, 500.550 (a) and (b), 500.551, 500.552, 500.554 (a) and (b), 500.556 (a) and (b), 500.557, 500.558, 500.559, 500.560, 500.561, 500.562, and 500.801 have been approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned control number 1505–0075.

PART 505—[AMENDED]

31 CFR Part 505 is amended as follows:

1. The "Authority" paragraph for Part 505 is amended to read as follows:

Authority: Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5, E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp. p. 748, unless otherwise noted.

2. Section 505.10(b) is revised to read as follows:

§ 505.10 Prohibitions.

* * * * *

(b) The merchandise is included in the Commodity Control List of the U.S. Department of Commerce (15 CFR Part 399) and identified by the code letter "A" following the Export Control Commodity Numbers, or of a type the unauthorized exportation of which from the United States is prohibited by regulations issued under the Arms Export Control Act of 1976, 22 U.S.C. 2778, or the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq., or successor acts restricting the export of strategic goods.

Schedule

Albania	Lithuania
Bulgaria	North Korea
Cambodia (Kampuchea)	Outer Mongolia
Czechoslovakia	People's Republic of China
Estonia	Poland and Danzig
German Democratic Republic	Romania
East Berlin	Tibet
Hungary	U.S.S.R.
Latvia	Vietnam

PART 515—[AMENDED]

31 CFR Part 515 is amended as follows:

1. The "Authority" paragraph for Part 515 is revised to read as follows:

Authority: Sec. 5, 40 Stat. 415, as amended, 50 U.S.C. App. 5; Sec. 620(a), 75 Stat. 445, 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp., p. 748.

2. Section 515.101 is revised to read as follows:

§ 515.101 Relation of this part to other laws and regulations.

(a) This part is independent of Parts 500, 505, 520, 530, 535, and 540 of this Chapter. No license or authorization contained in or issued pursuant to one of those parts, or any other provision of law, authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction prohibited by any law other than the Trading With the Enemy Act, 50 U.S.C. App. 5(b), as amended, the Foreign Assistance Act of 1961, 22 U.S.C. 2370, or any proclamation, order, regulation or license issued pursuant thereto.

3. Section 515.302(a)(1) is amended to read as follows:

§ 515.302 National.

(a) The term "national" shall include:

(1) A subject or citizen of a country or any person who has been domiciled in or a permanent resident of that country at any time on or since the "effective date," except persons who were resident or domiciled there in the service of the U.S. Government.

* * * * *

§ 515.311 [Amended]

4. Section 515.311 is amended by changing the comma following the word "bankers" to an apostrophe, so that the sentence reads" . . . bankers' acceptances . . . ."

5. Section 515.329 is revised to read as follows:

§ 515.329 Person subject to the jurisdiction of the United States.

The term "person subject to the jurisdiction of the United States" includes:

(a) Any individual, wherever located, who is a citizen or resident of the United States;

(b) Any person within the United States as defined in § 515.330;

(c) Any corporation organized under the laws of the United States or of any State, territory possession, or district of the United States; and

(d) Any corporation, partnership, or association, wherever organized or doing business, that is owned or controlled by persons specified in paragraphs (a) or (c) of this section:

6. Section 515.413 is revised as follows:

§ 515.413 Furnishing technical advice to American-owned foreign firms.

Section 515.201 of the regulations does not prohibit an engineering firm in the United States from providing technical assistance to a person in a third country with respect to specifications, quality control, etc., although such advice may result in purchases by that third country of goods of Cuban origin. However, the engineering firm may not itself procure any such goods for its own account or for that of the foreign person.

7. Section 515.505 is revised to read as follows:

§ 515.505 Certain persons unblocked.

(a) The following persons are hereby licensed as unblocked nationals.

(1) Any individual resident in the United States who is not a specially designated national; and

(2) Any corporation, partnership or association that would be a designated national solely because of the interest therein of an individual licensed in paragraph (a) or (b) of this section as an unblocked national.

(b) Individual nationals of a designated country who have taken up residence in the authorized trade territory may apply to the Office of

Foreign Assets Control to be specifically licensed as unblocked nationals.

(c) The licensing of any person as an unblocked national shall not suspend the requirements of any section of this Chapter relating to the maintenance or production of records.

§ 515.506 [Removed]

8. Section 515.506 is removed.

§ 515.507 [Removed]

9. Section 515.507 is removed.

10. Section 515.559(b) is revised to read as follows:

§ 515.559 Transactions by American-owned or controlled foreign firms with Cuba.

* * * * *

(b) The term "strategic goods" means any item, regardless of origin, of a type included in the Commodity Control List of the U.S. Department of Commerce (15 CFR Part 399) and identified by the code letter "A" following the Export Control Commodity Numbers, or of a type the unauthorized exportation of which from the United States is prohibited by regulations issued under the Arms Export Control Act of 1976, 22 U.S.C. 2778, or under the Atomic Energy Act of 1954, 42 U.S.C. 2011, et seq., or successor acts restricting the export of strategic goods.

* * * * *

§ 515.560 [Amended]

11. Section 515.560(i) is removed, and replaced by the notation "[reserved]."

12. New § 515.901 is added to read as follows:

Subpart I—Miscellaneous Provisions

§ 515.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 515.527(c), 515.542(c), 515.543, 515.544 (a) and (b), 515.545(a) (1) and (2), 515.545(b), 515.546, 515.547, 515.548, 515.549 (a) and (b), 515.550, 515.551(a) (1), (2) and (3), 515.552(a) (1) (2) and (3), 515.553, 515.554, 515.555, 515.556, 515.557, 515.558, 515.559, 515.560, 515.565, and 515.801 have been approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned control number 1505–0075.

PART 520—[AMENDED]

31 CFR Part 520 is amended as follows:

1. The "Authority" paragraph for Part 520 continues to read as follows:

Authority: Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5; E.O. 8389, Apr. 10, 1940, 5 FR 1400, as amended by E.O. 8785, June 14, 1941, 6 FR 2897, E.O. 8832, July 26, 1941, 6 FR 3715, E.O. 8963, Dec. 9, 1941, 6 FR 6348, E.O. 8998, Dec. 20, 1941, 6 FR 6785, E.O. 9193, July 6, 1942, 7 FR 5205; 3 CFR, 1943 Cum. Supp.; E.O. 10349, Apr. 28, 1952, 17 FR 3789, 3 CFR, 1949–1953 Comp., p. 871; E.O. 11281, May 13, 1966, 31 FR 7215, 3 CFR, 1966 Supp., unless otherwise noted.

2. New § 520.901 is added as follows:

Subpart I—Miscellaneous Provisions

§ 520.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 520.205(e) (1) and (5) and 520.801 have been approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned control number 1505–0075.

PART 535—[AMENDED]

31 CFR Part 535 is amended as follows:

1. The "Authority" paragraph for Part 535 continues to read as follows:

Authority: Secs. 201–207, 91 Stat. 1626; 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; unless otherwise noted.

2. New § 535.905 is added to read as follows:

§ 535.905 Paperwork Reduction Act notice.

The information collection requirements in §§ 535.568 and 535.801 have been approved by the Office of Management and Budget and assigned control number 1505–0075.

PART 540—[AMENDED]

31 CFR Part 540 is amended as follows:

1. The "Authority" paragraph for Part 540 continues to read as follows:

Authority: Sections 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12513.

2. New § 540.901 is added to read as follows:

Subpart I—Miscellaneous Provisions

§ 540.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 540.504, 540.505, 540.540, 540.541, 540.601, and 540.602 have been approved by the Office of Management and Budget and assigned control number 1505–0089.

Dated: June 27, 1985.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Edward T. Stevenson,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85–15919 Filed 7–2–85; 8:45 am]

BILLING CODE 4810–25–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[Docket Nos. 20521, 20548, etc.; FCC 85–252]

Multiple and Cross-Ownership of AM, FM, TV, and CATV Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission, on reconsideration, revises in part the standards for exempting from attribution limited partnership interests in broadcast, cable television, and newspaper properties in the application of the media multiple ownership rules. In addition, the Commission, on its own motion, clarifies certain matters relating to the aggregation of ownership interests and revises certain reporting requirements relating to the attribution standards. This action is necessary to eliminate ambiguities and apparent inconsistencies in the present attribution standards, to simplify the regulatory structure relating to attribution and to provide additional guidance to persons who are subject to these rules.

EFFECTIVE DATE: July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Laurel Bergold, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Radio broadcasting, Television.

47 CFR Part 76

Cable television.

Memorandum Opinion and Order

In the matter of Corporate Ownership Reporting and Disclosure by Broadcast Licensees, Docket No. 20521; Amendment of §§ 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, Docket No. 20548; Amendment §§ 73.35, 73.240, 73.636 and 76.501 of the Commission's Rules relating to Multiple Ownership of AM, FM, and Television Stations and CATV Systems, BC Docket No. 78–239; and Reexamination of the Commission's Rules and Policies Regarding

the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities, MM Docket No. 83-46, RM-3653, RM-3685, and RM-4045.

Adopted: May 9, 1985.
Released: June 24, 1985.

By the Commission: Commissioner Rivera not participating.

1. Before the Commission are petitions for reconsideration of the *Report and Order* (*"Report"*) [1] in the above-captioned proceedings filed by the American Council of Life Insurance ("Council") and Michael Couzens, P.C. ("Couzens") as well as various oppositions filed against these petitions.[2] After careful review of the petitions, the responsive pleadings and our *Report*, we are persuaded to modify our attribution policy as it relates to limited partnerships. Specifically, we eliminate a threshold requirement that nonattributable limited partnership interests conform to the Revised Uniform Limited Partnership Act of 1976 ("RULPA") [3] and clarify the meaning of the further requirement contained in our *Report* that the holders of such interests not be materially involved in the management or operation of the partnership. We also extend the temporary one year exception for "passive investors" (*i.e.*, investment companies, insurance companies and bank trust departments) whose interests exceed the benchmark as a result of involuntary acquisitions to interests acquired as a result of the prudent exercise of creditors rights. We decline, however, to make any other changes requested by the petitioners in the policies established in the *Report*. In addition, by our own motion, we clarify, *inter alia*, certain matters relating to the aggregation of ownership interests and revise certain reporting requirements.

I. Introduction

2. By the attribution rules the Commission evaluates whether or not a specific ownership or positional interest conveys a degree of influence or control to its holder sufficient to warrant limitation by the media multiple ownership rules. The attribution rules in essence constitute the means by which the media multiple ownership rules are implemented.[4]

3. In its *Report*, the Commission made a number of revisions to the standards governing the means by which it attributes interests in broadcast, cable television and newspaper properties and to the manner in which these interests are reported. Eliminating the distinction between "closely held" and "widely held" corporations, the Commission increased the basic ownership benchmark for attribution to five percent and raised the benchmark for "passive investors" to ten percent.[5] The Commission determined that interests at or above these benchmarks established a rebuttable presumption of a "cognizable interest" but an exception was made for certain interests acquired involuntarily on a temporary basis. In order to reflect the more attenuated interest in the licensee in situations where the ownership interest of an individual or entity is separated by intervening corporations, the Commission also adopted a "multiplier" approach in determining attribution in vertical ownership chains.[6] In addition, the Commission determined that interests held in licensees in the form of non-voting stock, whether or not convertible to voting stock; warrants, debentures and other convertible interests; and debt and lease back arrangements would not be attributed to the owner.

4. With respect to trusts, the Commission determined that the attribution would be evaluated on a case-by-case basis but specified the criteria which would be used in making such evaluations. The Commission generally reaffirmed that officers and directors would be attributed interests in their licensees, but established a mechanism whereby officers and directors who are neither directly or indirectly involved in the activities of the broadcast licensee can be relieved of this interest.

5. The Commission made a number of determinations with respect to matters relating to limited partnerships. Comparing a typical limited partner to a holder of debt or non-voting stock, the Commission found that a typical limited partnership interest confers no influence or control over the license and therefore "can be safely exempted from the effects and implications of the attribution rules."[7] Tacitly recognizing, however, that this lack of influence or control may not exist in all limited partnerships, the Commission determined that it was necessary to established a mechanism by which "to verify appropriate insulation of the general partner from any possibility of control or influence by the limited partners."[8] The Commission found that the provisions of the RULPA constituted an appropriate threshold verification standard and exempted from attribution the limited partnership interests of businesses conforming to this statute.[9] As a further requirement, the Commission held that "[a]ny limited partner relieved of attribution . . . may not be involved in any material respect in the management or operation of the

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[1] *Report and Order* in MM Docket No. 83-46, 97 FCC 2d 997 (1984) [hereinafter referred to as *"Report"*].

[2] The National Association of Broadcasters ("NAB"); McKenna, Wilkinson & Kittner ("McKenna") and William R. Varecha ("Varecha") each filed an opposition to Couzens' petition. The National Cable Television Association, Inc. ("NCTA") filed an opposition to Council's petition. Couzens filed a reply to the oppositions of the NAB, McKenna and Varecha.

[3] Revised Uniform Limited Partnership Act section 101 *et seq.* (1976).

[4] The Media multiple ownership rules involve constraints on media ownership. These rules have both national and local dimensions.

The national network/cable ownership rule prohibits an individual or entity from owning, operating or controlling a national television network and cable television system. 47 CFR 76.501(a)(1) (1984). The Commission has proposed deletion of this rule. *Notice of Proposed Rule Making* in CT Docket No. 82-434, 91 FCC 2d 76 (1982). Under the national 12 station rule, an individual or entity is generally prohibited from owning, operating or controlling more than 12 AM, 12 FM and 12 television stations as well as television stations which, in the aggregate, can reach more than 25 percent of the national audience. *Report and Order* in Gen. Docket No. 83-1009, FCC 84-350 (released August 3, 1984), *reconsid. granted in part*, FCC 84-638 (released Feb. 1, 1985), *appeal docketed sub nom. National Association of Black Owned Broadcasters v. FCC*, No. 85-1139 (D.C. Cir. filed Mar. 4, 1985).

In addition to these national rules, there are four local media multiple ownership rules. The duopoly rule procribes any individual or entity from owning, operating or controlling two or more broadcast stations in the same service area if the stations' primary service signal contours overlap. The one-to-a-market rule in effect limits common ownership, operation or control of a radio and television station in the same market. The newspaper/broadcast cross-ownership rule, a variant of the one-to-a-market rule, similarly prohibits any individual or entity from owning, operating, or controlling a broadcast station and a daily newspaper in the same market. The broadcast/cable cross-ownership rule proscribes common ownership of a colocated broadcast and cable television system. 47 CFR 73.3555 (a)-(c), 76.501 (1984). The substance of the latter rule has recently been incorporated into the Communications Act. Cable Communications Policy Act of 1984, section 613(a), Pub. L. No. 98-549, 98 Stat. 2779 (1984).

[5] The Commission also determined that it was unnecessary to attribute an interest to minority shareholders of a corporate licensee in situations where that licensee has a single majority voting stockholder.

[6] While the Commission generally determined to adopt the proposal to multiply successive ownership interest in vertical ownership situations, it declined to utilize this multiplier approach in situations where any link represents a percentage interest which exceeds 50 percent.

[7] *Report*, 97 FCC 2d at 1022.

[8] *Id.* at 1023.

[9] *Id.* The Commission determined that limited partnerships which did not conform to the provisions of RULPA would be accorded noncognizable status upon the submission of the limited partnership agreement to the Commission with an explanation as to how the agreement satisfies its concerns. *Id.*

broadcast, cable television, or newspaper entity concerned."[10]

6. The Commission applied the attribution rules adopted in its *Report* to each of the media multiple ownership rules. No modification was made, however, in the attribution rules applicable to the cable/telephone cross-ownership rule.[11]

II. Decision on Reconsideration

A. Summary of Pleadings

7. While most elements of the Commission's decision have not been challenged, the Commission has been asked to reconsider three aspects of its *Report*. Specifically, we have been requested: (1) To extend the scope of this proceeding to encompass the attribution rules applicable to our cable/telephone cross-ownership rule, (2) to "clarify" that the concept of a "distress acquisition" encompasses interests temporarily acquired as a result of the prudent and necessary exercise of foreclosure, conversion or creditor rights and (3) to revise our treatment of limited partners so that such persons are treated as cognizable owners under the attribution rules.

1. Telephone/Cable Cross-Ownership Rule

8. Council requests the Commission to revise the attribution standards applicable to the telephone/cable cross-ownership rule. Council states that the Commission expressed an intention to establish a comprehensive framework for the attribution standards applicable to all of the Commission's multiple ownership rules but nonetheless failed to include attribution standards for telephone/cable ownership rules within the scope of its order. Citing the capital intensive nature of both industries, technological developments and the AT&T divestiture, Council asserts that the rationales underlying the liberalization of the attribution standards applicable to the media multiple ownership rules should apply with equal or greater force to the telephone/cable cross-ownership rule. While Council acknowledges that the *Notice of Proposed Rule Making ("Notice")*[12] did not expressly propose revisions to the telephone/cable ownership rule, it concludes that extention of the new attribution standards to this rule would not run afoul of the notice requirements of the Administrative Procedure Act[13] since the *Notice* expressed the Commission's intention to undertake a comprehensive review of the attribution standards. Even if the Commission were to conclude that its *Notice* did not provide the requisite statutory notice, however, Council contents that the Commission should still take steps in this proceeding to extend the revised attribution standards to the telephone/cable ownership rule. Specifically, it suggests that the Commission by order provide the public with notice of its intention to take the action requested by Council, afford parties the opportunity to comment on this proposal and extend the attribution standards applicable to the media multiple ownership rules to the telephone/cable cross-ownership rule unless substantial and compelling reasons to refrain from acting in this manner are presented by the commenting parties.

9. NCTA opposes Council's request that the attribution standards promulgated in the Commission's *Report* be made applicable to the telephone/cable cross-ownership rule. NCTA asserts that the Commission's objective in establishing attribution benchmarks for the multiple ownership rules was to determine that degree of ownership which will provide the potential ability to influence programming decisions. NCTA contends that purpose underlying the telephone/cable cross-ownership rule is to prevent a telephone carrier from using its monopoly control over telephone service to adversely affect telephone company customers and competing cable operators. Since the purposes underlying these two rules are entirely different, NCTA states that there is no reason to assume that the attribution benchmarks established for the media multiple ownership rules should be automatically extended to the telephone/cable ownership rule. In addition, NCTA takes issue with Council's alternative proposal that the Commission issue a further order announcing its intention to incorporate the attribution standards established in its *Report* to the cable/telephone cross-ownership rule, stating that only a full rule making proceeding would permit the Commission to obtain the information necessary to determine the propriety of revising the ownership benchmarks for that rule.

2. Temporary Involuntary Acquisitions

10. In its petition, Council also requests the Commission to "clarify" the scope of the exception accorded to the involuntary acquisition of stock on a temporary basis which exceeds the benchmark. Council urges the Commission to modify its characterization of such interests as "involuntary," stating that this description could be interpreted to exclude certain "distress" acquisitions which are necessary to protect the assets of the company or the interests of its shareholders or policyholders. Council urges the Commission to specify that interests acquired "as a result of the prudent and necessary exercise of foreclosure, conversion, creditor or other similar rights"[14] are within the scope of this exception. No parties in this proceeding opposed Council's request.

3. Limited Partnership Interests

11. In its petition, Couzens requests the Commission to reconsider its decision to exempt limited partners from the definition of cognizable ownership and to treat limited partners in the same manner as voting shareholders. Couzens notes that neither voting shareholders nor limited partners conduct the day-to-day business affairs of their respective entities but that both types of owners, through the retention of specific types of power, may exercise a significant amount of indirect control. For example, Couzens states that the power of a limited partner to elect or remove general partners is comparable to the power of voting shareholder to elect or remove directors. Couzens compares the power of voting shareholders to dissolve the corporation or sell substantially all of the corporate assets to the power of limited partners to terminate the partnership or approve the sale of its assets. Couzens also contends that the power of a voting shareholder to approve amendments to the Articles of Incorporation or to adopt, amend or repeal the bylaws is similar to the power of a limited partner to amend the partnership agreement.

12. Couzens asserts that reliance on the provisions of the RUPLA is impractical, stating that the Commission has failed to consider the administrative resource impact in the use of a standard which would require the Commission to make difficult "control" determinations. Couzens also suggests that if the *Report* is interpreted to adopt the uniform law as it may be subsequently amended, the Commission may have impermissibly delegated its authority. In contrast, Couzens asserts that if the *Report* is interpreted to adopt the current

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[10] *Id.*

[11] 47 CFR 63.54 (1984).

[12] *Notice of Proposed Rule Making* in MM Docket No. 83-46, FCC 83-46 (released Feb. 15, 1983), 48 FR 10082 (Mar. 10, 1983) [hereinafter referred to as *"Notice"*].

[13] 5 U.S.C. 553(b) (1982).

[14] "Petition for Reconsideration in Part," filed by American Council of Life Insurance (June 8, 1984) at 7-8.

provisions of the uniform act, the Commission's standard is one which is likely to be revised. In addition, Couzens states that the Commission's treatment of limited partnership interests as noncognizable conflicts with the congressional intent that partnership interests should be recognized in computing media ownership and minority ownership preferences under the statutory changes authorizing the Commission to award licenses by a process of random selection.[15]

13. McKenna, NAB and Varecha each urge the Commission to reaffirm the noncognizable status of limited partnership interests.[16] Each of these parties notes that limited partnerships can provide a useful source of capital to the broadcast industry and asserts that the standard established by the Commission's *Report* is appropriate.

14. Varecha takes issue with Couzens' contention that limited partners possess powers similar to those of corporate shareholders. He contends that the ability of a limited partner to replace a general partner is at most a contingent control right since Commission approval under section 310(d) of the Communications Act must be obtained prior to such a transfer.[17] In contrast, Varecha states that the power of the shareholders to replace the entire board of directors ordinarily does not require any Commission scrutiny since such a change by itself does not constitute a change in ownership or control under section 310(d).

15. Varecha also notes that the shareholders are the owners of the corporation and that the board of directors serve at the discretion and solely for the benefit of the shareholders. In contrast, Varecha states that since both the general partners and the limited partners are joint owners, it is unusual for partnership agreements to permit a limited partner to replace a general partner without cause. Moreover, Varecha contends that a limited partner who takes part in the control of the business risks unlimited liability whereas the efforts of a corporate shareholder to influence or control the business do not entail such a risk.

16. Defending the Commission's determination to use the RULPA as a standard, NAB asserts that the method in which "control" is defined under that statute would not permit the limited partner, by virtue of his or her ownership status, to unduly influence the licensee's operations, such as its programming decisions, in a manner which would concern the Commission. NAB contends that the power to manage the entity is given to the general partners and that the specific activities permitted to limited partners under the statute constitute extraordinary matters which would not enable the limited partner to affect programming decisions on a regular basis. NAB asserts that the role of a limited partner is analogous to that of a holder of debt or nonvoting stock in a corporation and, therefore, should not be subject to the attribution rules. Similarly, McKenna asserts that the limited partners in most limited partnerships have virtually no power over partnership affairs.

17. Each of the three parties opposing Couzens' petition emphasizes that conformance to the provisions of the RULPA is merely a threshold standard. They note that, in addition to compliance with the model statute, a limited partner seeking nonattributable status is also required to refrain from any material involvement in the management or operation of the business. The opponents to Couzens' petition assert that this additional requirement will sufficiently assure that limited partners will not engage in the types of activities which would warrant attribution of their interests for purposes of the media multiple ownership rules.

18. Finally, NAB and Varecha take issue with Couzens' contention regarding the conflict between the Commission's treatment of the ownership interests of limited partners as noncognizable and the congressional intent to recognize partnership interests in computing preferences under the lottery statute. These parties state that at most the congressional statements concerning the method of computing preferences were addressed in a context which differed materially from the issues regarding which interests will be attributed for purposes of the media multiple ownership rules and consequently are not dispositive in determining the standards which should be established in this proceeding.

19. Noting that the revised model act does not specify the types of actions which would constitute participation by a limited partner in the affairs of the business, in its reply, Couzens again urges the Commission to withdraw its reliance upon the provisions of the RULPA as a standard in determining whether or not a limited partner should be relieved from attribution. In addition, it takes issue with the view that the *Report* requires exempt limited partners to refrain from material involvement in the business. It asserts, instead, that compliance with the provisions of the RULPA, while inappropriate, is in fact the sole standard promulgated in the *Report*. Addressing Varecha's contentions regarding the limitations imposed by the Communications Act on the ability of a limited partner to remove a general partner, Couzens asserts that this removal power is atypical and that influence by a limited partner can be exercised in other ways. Couzens warns against reliance upon the powers of a "typical" limited partnership, pointing out that an exemption from attribution for limited partnership interests will be used in the future by persons who wish to avoid the strictures of the multiple ownership rules. In addition, Couzens reiterates its position that the lottery statute reflects a legislative intent that limited partnership interests be attributed.

20. Apparently modifying in part its initial position that all limited partnership interests should be attributable, Couzens states that "the oppositions are persuasive that such a result is too harsh."[18] It asserts that the Commission should exempt from attribution limited partnership interests where the applicant demonstrates that the "Articles of Limited Partnership" do not include any powers of the limited partners to participate in the conduct of the business.

B. Discussion of the Issues on Reconsideration

1. Telephone/Cable Cross-Ownership Rule

21. We are not persuaded by Council's suggestion that we should address in this proceeding—either by action in this *Order* or by issuance of supplementary notice and subsequent order—the issue of attribution standards applicable to the telephone/cable cross-ownership rule. First, contrary to Council's contention, we do not believe that the scope of the *Notice* in this proceeding can reasonable be deemed to encompass this issue. We note in this regard that the *Notice* announced our intention to review the attribution standards applicable to what we specifically characterized as the "media

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[15] 47 U.S.C. 309(i) (1982).

[16] Should the Commission determine that additional assurances of non-involvement may be desirable, NAB asserts that the Commission should expand the non-involvement requirement contained in the *Report* to include those activities with which it is concerned. NAB expressly states that the Commission may wish to consider withdrawing its reliance on RULPA in favor of a certification approach.

[17] 47 U.S.C. 310(d) (1982).

[18] "Reply," filed by Michael Couzens, P.C. (July 27, 1984) at 7.

multiple ownership rules."[19] Furthermore, in an earlier phase of this proceeding, Council specifically recognized that the attribution standards governing the telephone/cable cross-ownership rule were not raised in the *Notice*. In fact, in its comments responding to the *Notice*, Council characterized the telephone/cable cross-ownership rule as "[t]he only ownership rule conspicuously *absent* from the scope of this wide-ranging proceeding."[20]

22. Secondly, we do not believe it is either necessary or appropriate to expand the scope of this proceeding in order to consider the attribution issues raised by Council. Traditionally, we have addressed the attribution standards applicable to the media multiple ownership rules separately from consideration of the appropriate attribution standards governing the telephone/cable cross-ownership rule.[21] We have done so largely because these two categories of multiple ownership rules relate at least in part to different industries, affect the interests of different parties, and have disparate underlying objectives.[22] Council has advanced no convincing reason to alter this approach. In addition, we have recently adopted a *Report and Order* in MM Docket No. 84-1296 which, *inter alia*, specifically declined to impose the media ownership attribution standards in cable/telephone cross-ownership situations.[23] For these reasons, therefore, we shall not use this proceeding to expand the telephone/cable cross-ownership attribution rule.

2. Involuntary Acquisitions of Stock on a Temporary Basis

23. On reconsideration we are persuaded to grant Council's request that we clarify the "involuntary" acquisition exception to the attribution rules to include all interests temporarily acquired "as a result of the prudent and necessary exercise of foreclosure, conversion, creditor or other similar rights."[24] Notwithstanding our use of the term "involuntary" to limit the scope of the exception, Council suggests that the exception encompasses certain "voluntary" acquisitions which "are compelled by circumstances to protect company assets and the interests of the company's policyholders and shareholders."[25] In the absence of adverse comment to Council's suggestion and upon further reflection on the circumstances leading to the exercise of creditors rights, a grant of Council's request is justified.

24. We conclude that the interpretation espoused by Council is not inconsistent with the purposes underlying our attribution rules. As noted above, we adopted an attribution benchmark for "passive investors" that is higher than the benchmark applicable to non-passive investors.[26] The higher benchmark applied to the interests of passive investors reflects the fact that this type of investor generally obtains stock solely for investment purposes and possesses no interest in controlling the management or policies of the corporation.[27] Yet in adopting this benchmark, we necessarily recognized the need to attribute ownership of voting stock held even by passive investors in certain circumstances. We determined that "merely voting or trading large blocks of stock can affect the management of a company"[28], even where the investor has no intention of exercising any influence or control over the corporation. We concluded that this would often result in situations where a passive investor held voting stock in blocks of 10 percent or more.

25. Notwithstanding this requirement, we determined that passive investors could exceed the 10 percent benchmark for a period not exceeding one year without incurring an attributable interest in the involuntary acquisition of stock in certain narrowly defined situations. The two situations described in our *Report* which trigger the exception are the acquisition by an insurance company resulting from the recapitalization of a company in which it has invested and the acquisition by a bank trust department resulting from the execution of an estate.[29] Common to both situations is the element of lack of control. A creditor has no control over whether or not a company in which it has invested will become bankrupt and require recapitalization. Similarly, a bank trust department has no control over the type and extent of a testator's stock holdings at the time of his or her death. Because the institutional investor is unable to either predict with reasonable certainty or take action to timely prevent the acquisition of interests which would place it in violation of the media multiple ownership rules, we provided a temporary exception to the attribution rules in this type of limited circumstance.

26. The acquisitions described in Council's petition are similiar to those described in our *Report*. Although the acceptance of collateral or similar actions which give rise to foreclosure, conversion or creditor rights is within the control of the passive investor, the exercise of those rights is not triggered by events within its control. The institutional investor has fiduciary responsibilities to its investors to maximize the investment and would be in most instances constrained to exercise foreclosure actions. In any event, a one year temporary exception will satisfy the Commission's concerns that a passive investor is not using the foreclosure process to violate the multiple ownership rules and unlawfully concentrate the programming decisions of licensees in itself with concomitant detrimental effects on media diversity. While the institutional investor could structure the transaction, by utilizing a qualified trust or other insulating mechanism, so that the interest acquired is exempt from attribution, that appears to be a cumbersome and costly mechanism to impose on investors who

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[19] *Notice*, *supra* n.12 at para. 3.

[20] "Comments" filed by the American Council of Life Insurance (April 25, 1983) at 16 (emphasis added).

[21] The attribution standards applicable to the telephone/cable cross-ownership rule were addressed in the *Final Report and Order* in Docket No. 18509, 21 FCC 2d 307, *reconsid. granted in part*, 22 FCC 2d 748 (1970), *aff'd sub nom. General Telephone Co. of the Southwest v. United States*, 499 F.2d 846 (5th Cir. 1971). That order did not address any issue relating to the attribution standards applicable to the media ownership rules. Similarly, when the Commission has revised the attribution standards applicable to the media multiple ownership rules, it has chosen not to consider revisions to the attributions standards applicable to the telephone/cable cross-ownership rule. *See, e.g., Report and Order* in Docket No. 20520, 50 FCC 2d 970 (1976), *reconsid. granted in part*, 65 FCC 2d 336 (1977), *aff'd sub nom. National Citizens Committee for Broadcasting v. FCC*, 559 F.2d 189 (D.C. Cir.), *cert. denied*, 434 U.S. 987 (1977).

[22] A common objective underlying each of the media multiple ownership rules is to promote diversity of program and service viewpoints and to encourage diversity of expression of the communications media. *See, e.g., Report and Order* in Docket No. 8907, 18 FCC 288, 291 (1953); *Second Report and Order* in Docket No. 18110, 50 FCC 2d 1046 (1975). The objective underlying the telephone/cable cross-ownership rule, in contrast, is to prevent a telephone company from abusing its control over its monopoly services and facilities in the competitive CATV market. For example, all CATV systems have to use the telephone company's pole lines or conduit space, and the telephone/cable cross-ownership rule reflects the Commission's concern that were a telephone company permitted to own a CATV systems in its operating area, it could discriminate against competing CATV systems in providing access to these facilities. *Final Report and Order* in Docket No. 18509, *supra* n.24.

[23] *Report and Order* in MM Docket No. 84-1296, FCC 85-179 (released April 19, 1985).

[24] "Petition for Reconsideration in Part," *supra* n.14 at 7.

[25] *Id.*

[26] *See Report*, 97 FCC 2d at 1013.

[27] *Id.* at 1012-13.

[28] *Id.* at 1013.

[29] *Id.* at 1017.

are merely exercising fiduciary responsibilities. In short, like the situations described in our *Report*, exercise of creditor rights by passive investors is triggered by events not within its control. Therefore, a temporary one year exception to the effects of the multiple ownership rules is warranted.

3. Limited Partnerships

27. *Non-Attributable Status for Properly Insulated Limited Partnership Interests.* On reconsideration, we affirm our initial determination to relieve from attribution limited partnership interests in entities that sufficiently insulate the limited partner from influence or control of partnership affairs. We remain convinced that the exemption of properly insulated limited partnership interests furthers the public interest; this exemption not only facilitates the infusion of capital into broadcasting enterprises but, in addition, it eliminates unnecessary and potentially costly regulation while still maintaining the intergrity of the diversity rationale underlying the multiple ownership rules.

28. Although under state law, a limited partner is required to participate in certain matters relating to the business,[29] the performance of none of these mandatory functions—either singly or in the aggregate—by itself provides the limited partner with an ownership interest of concern to us for purposes of the multiple ownership rules. For example, the mere fact that the limited partner has the right to certain records and data concerning the company [30] does not empower that partner to influence or control the company's affairs. Similarly, while the limited partner does have to agree to the provisions of the certificate of limited partnership [32] and, under the Uniform Limited Partnership Act of 1916 ("ULPA"), authorize amendments to that document [33], this power does not inexorably lead to influence or control over the business of the partnership. Nor, in our view, is mandatory participation by the limited partners in the admission of new general partners,[34] by itself, sufficient to require the attribution of a limited partnership interest.[35] Likewise, exercise of the other mandatory rights of a limited partner—such as the right to seek a judicial dissolution or winding up of the business [36], the right to compensation or a share in the company's profits,[37] and a right to bring a derivative suit on behalf of the partnership in situations where the general partner refuses to take this action [38]—would not, *per se*, materially involve the limited partner in the management or operation of the business for purposes of the multiple ownership diversity concerns. Moreover, by distinguishing between influential and non-influential ownership interests, the exemption is consistent with the objectives underlying the attribution rules.

29. In support of its assertion that we should presumptively attribute all limited partnership interests, Couzens compares the powers of a holder of a limited partnership interest to that of a voting shareholder. We find, however, that a limited partnership is a distinct form of business association with unique characteristics [39] that justify the differential treatment of limited partnership interests for attribution purposes. Perhaps the most critical distinction between a limited partnership interest and a voting shareholder's interest is the broad flexibility given to the partners of a limited partnership to determine the powers of a limited partner. Unlike the rights accorded to a typical corporate shareholder, the partners have the ability to insulate the limited partner's participation in the business by the inclusion of specific restrictions in the partnership agreement or the certificate of limited partnership.

30. Further, we disagree with Couzens' contention that our decision not to presumptively attribute all limited partnership interests in applying our media multiple ownership rules is inconsistent with the expressed intent of Congress and our own interpretation of that intent. In this connection, Couzens refers to the Conference Report [40] accompanying the lottery amendments to the Communications Act [41] and to the Commission's reading of that Report in its decisions implementing the lottery provisions.[42] Couzens correctly points out that this legislative history, and our subsequent actions in light thereof, have resulted in our generally attributing limited partnership interests in computing lottery preferences.[43] The Conference Report, however, is devoid of any reference concerning the attribution standards governing the media multiple ownership rules. Moreover, in our lottery decisions, we expressly noted that the attribution rules established for determining lottery preferences were "not identical" to those used in applying the media multiple ownership rules.[44] In sum, we do not believe that Congressional intentions or our decisions in the lottery context constrain our treatment of limited partnership interests in the distinct context of applying our media multiple ownership rules.[45]

31. We also disagree with Couzens' assertion that "the Commission's insistence on lack of control by the limited[ ] [partner]" is on a "collision course" [46] with the development of limited partnership law. The Commission does not "insist" that a limited partner lack control over the business. A company which is controlled by a limited partner is free to enter the broadcasting field; it is able to obtain construction permits and

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[29] In regulating limited partnerships, forty-nine states, the District of Columbia and the Virgin Islands have adopted either the Uniform Limited Partnership Act of 1916 [UNIFORM LIMITED PARTNERSHIP ACT (1916)] ("ULPA") or its successor, RULPA, *supra* n.3.

[30] RULPA sections 105, 305; ULPA section 10.

[31] *Id.*

[32] ULPA section 25(b). The revised act does not require all partners to sign amendments to the certificate of limited partnership. RULPA section 204(a)(2).

[33] *See* RULPA section 401; ULPA section 9(e).

[34] This is particularly true in light of our clarification in this *Order* that for such interest to be noncognizable under the "no material involvement" standard, the general partner must possess a veto over such admissions. *See* para. 40, *infra*.

[35] *See* ULPA section 10; RULPA section 602. The RULPA provides that all partners can consent to a non-judicial dissolution. RULPA section 801.

[36] *See, e.g.*, ULPA section 10.

[37] *See* RULPA section 1001. There is no comparable provisions in the ULPA.

[38] Similarly, the activities which limited partners are required to perform under state law and the ability of the partners to prescribe, within wide boundaries, the powers of a limited partner differentiates a limited partnership interest from those interests which are automatically exempted from our attribution rules.

[40] H.R. Rep. No. 765, 97th Cong., 2d Sess. 45 (1982).

[41] 47 U.S.C. 309(i) (1982).

[42] *Second Notice of Proposed Rule Making* in Gen. Docket No. 81-768, 91 FCC 2d 911, 924 (1982); *Second Report and Order* in Gen. Docket No. 81-768, 93 FCC 2d 952, 976 (1983).

[43] *Second Report and Order* in Gen. Docket No. 81-768, *supra* n.45.

[44] *Id.* at n.35.

[45] We also reject Varecha's contention that *Anax Broadcasting, Inc.*, 87 FCC 2d 483 (1981), a transfer of control case, requires us to exempt all limited partnership interests from attribution. In *Anax*, the limited partners were restricted to a purely passive role in the business by virtue of the specific terms of the limited partnership agreement. *Id.* at 486. As a consequence, the mere fact that we found that a transfer of specific interests governed by a restrictive limited partnership agreement in *Anax* did not constitute a transfer of control for purposes of section 310(d) does not support the broad proposition that all limited partners are *de jure* incapable of exercising any material influence or control over partnership affairs for purposes of the diversity concerns underlying the multiple ownership rules. *See also Wometco Enterprises, Inc.*, FCC 85-30 (released February 6, 1985), *appeal docketed sub nom. Traylor v. FCC*, No. 85-1099 (D.C. Cir., filed February 15, 1985).

[46] "Petition for Reconsideration," filed by Michael Couzens, P.C. (June 4, 1984) at 10.

broadcast licenses from the Commission on the same basis as any other company. The sole effect of the attribution criteria adopted in this proceeding is that the interest of the "active" limited partner in the limited partnership is counted in the application of the multiple ownership rules.

32. Moreover, the trend in limited partnership law is neither to mandate nor restrict the powers accorded to limited partners. As we noted above, the modern trend, as reflected in the RULPA, is to give the partners flexibility in determining intra-partnership relations. Our decision to condition an exemption from attribution upon the adoption of appropriate restrictions on the activities of a limited partner is fully consistent with modern limited partnership law as long as these restrictions do not conflict with any requirements of the applicable limited partnership statute. Because the relevant state statutes permit the partners to agree to the restrictions which would permit exemption from attribution under our rules, the "inconsistency" cited by Couzens does not exist.

33. Finally, while retaining its position that limited partnership interests should be cognizable, Couzens suggests that we should ameliorate even what Couzens characterizes as the "harsh" result of automatically attributing all limited partnership interests by permitting an applicant to demonstrate that the "Articles of Limited Partnership" do not empower the limited partner to participate in the conduct of the business. We will not adopt this *ad hoc* waiver approach. Not only would it impose regulatory burdens on limited partners who in fact lack the ability to materially influence partnership affairs, but it would also require the Commission to make costly administrative determinations on specific requests filed by individual applicants. We find that the better approach is the one adopted herein in which we specify the criteria which would insulate a limited partner from active involvement in the business and grant an exemption from our attribution rules upon certification by the licensee that the limited partner is in compliance with these criteria.[47] It addresses Couzens' legitimate concern that influential limited partnership interests be attributed but does so in a manner which promotes administrative efficiency and avoids unnecessary regulation.

34. *Appropriate Standard for Assessing A Cognizable Interest.* Although we decline to establish a rule that presumptively attributes all limited partnership interests, we are also not altering our determination that some types of limited partnership interests should be cognizable. While many limited partners may not possess the ability to signficantly influence or control partnership affairs, all limited partners are not similiarly insulated.[48] No party in this proceeding has disputed that an exemption from attribution for limited partners that have the power to participate actively in the business would contravene our regulatory objectives nor has any party opposed our determination that a mechanism is needed to assure that the interests of such limited partners remain cognizable.[49] The major dispute among the parties is the proper standard to effectuate these uncontroverted goals. Accordingly, in this section, we shall address in turn the two standards established in our *Report* to determine whether or not a specific limited partnership interest is cognizable under our attribution rules: the "conformance to RULPA" standard and the "no material involvement" standard.

35. *"Conformance-to-RULPA" Standard.* Upon further reflection, we have determined that the threshold standard established in our *Report* exempting from attribution those limited partnerships which conform to the provisions of the RULPA is inappropriate. We note that both the petitioner, Couzens, and one of the parties opposing the petition, NAB, have suggested that we consider withdrawing our reliance upon the revised model act. There are three reasons why we find that this threshold standard should be eliminated.

36. First, it is unnecessary for us to have two disparate standards which both address the criteria used to determine which limited partnership interest should be exempted from attribution. As explained *infra*, we believe our requirement that all exempted limited partners refrain from any material involvement in their company's management and operations, particularly as clarified on reconsideration, is sufficient by itself to meet out objectives. The retention of the threshold standard interposes an unnecessary layer of complexity into our regulatory process, making the attribution rules unduly complicated and imposing unwarranted regulatory burdens. The elimination of this standard, therefore, will simplify our regulatory processes without harm to the objectives underlying our rules.

37. Second, we find that the provisions of the RULPA fail to provide the persons subject to the standard with adequate guidance. There has been no uniform interpretation of the statute and, moreover, the scope of permissive activities, in large part, is not contained in the statute at all but rather is determined by the terms of individual partnership agreements. In addition, the apparent inconsistency between RULPA and the "no material involvement" standard interjects ambiguity and confusion into the attribution process.

38. Third, we have determined that reliance on the provisions of the RULPA is inconsistent with the objectives underlying the attribution rules. Contrary to our initial finding, we now believe that the mere fact that a limited partnership conforms to the provisions of the RULPA does not provide meaningful assurance that the limited partner will lack the ability to significantly influence or control partnership affairs.

39. While the RULPA specifies that a limited partner can participate in any of the "safe harbor" activities enumerated in that model statute without being deemed to have taken part in the "control" of the business,[50] it is clear that exercise of many of these activities could involve the limited partner in the affairs of the partnership to a far greater

[47] *See* paras. 44–48, *infra*.

[48] Our experience in assessing the ownership structures of broadcast licensees reflects that the role of limited partners varies significantly in different broadcast entities. *Compare Decision* in BC Docket No. 79–288, 90 FCC 2d 583 (1982) (general partner has sole responsibility for all management functions) and *Anax Broadcasting Inc.*, 87 FCC 2d 483, 486 (1981) (limited partners required to maintain a purely passive role) *with Merrimack Valley Broadcasting*, 92 FCC 2d 508, 508, 615 (1982) (the two limited partners are full time sales manager and full time traffic sales manager, respectively) and *Greater Wichita Telecasting Inc.*, 90 FCC 2d 1040, 1052, *reconsid. denied*, 92 FCC 2d 780 (1982) [limited partner is in "vital" position as assistant station manager].

[49] While several parties, citing a statement in our *Report*, emphasize that the "typical" limited partner has no significant involvement in the management of the company (*Report*, 97 FCC 2d at 1022), we do not find this to be determinative. First, a tacit assumption underlying this statement is that certain "atypical" limited partners have significant management responsibilities and we find that a standard is necessary to separate these limited partners from those that are effectively isolated from participation in partnership affairs. Second, we anticipate that multiple owners, in their evaluation of different types of business organizations, will properly take into consideration the rules we adopt in this proceeding. If these persons perceive that there are specific advantages in establishing "atypical" limited partnerships due to the revision of the attribution rules adopted in this proceeding, we can expect the number of "active" limited partners to increase significantly.

[50] RULPA section 303(b).

degree than is appropriate for one who has been granted a total exemption from attribution on the basis of the "passive" nature of his or her equity holding. For example, under the "safe harbor" provisions, a limited partner could act as a manager of a broadcast station. He or she could also perform as a consultant to assess the appropriate programming format or to choose individual programs for the broadcast station. The safe harbor provisions permit a limited partner to "advise" the general partner on the type of programming he or she wants for the station or on any other matters relating to the business. If this "advice" is not adopted, the limited partner could participate in a decision to remove the general partner.[51] In fact, under the "safe harbor" provisions, a limited partner in certain instances could possess the preemptory power to remove a general partner [52] at any time and for any reason.

40. Moreover, the "safe harbor" provisions are merely examples of activities which the model act permits the limited partners to perform.[53] The statute expressly sanctions the performance of activities in addition to the "safe harbor" provisions and the judicial standards used in accessing the scope of these "additional" activities stem from a different policy rationale than those policies underlying the attribution rules.[54]

41. Furthermore, the model act, by its express terms, permits a limited partner to retain limited liability and to participate "in the control of the business" [55] as long as this participation "is not substantially the same as the exercise of the powers of a general partner" [56] and creditors have no actual knowledge of this control. The RULPA, therefore, makes distinctions between different degrees of "control." As long as creditors lack the requisite knowledge, the statute actually permits a limited partner to exercise a "little" control without giving up the benefits of limited liability.

42. In sum, while the performance of many of the "safe harbor" activities by a limited partner would be fully consistent with the RULPA, these activities would allow for the possibility of influence or control that would warrant attribution of the limited partner. The fact that the limited partner who exercised these powers would nonetheless be attributed under our "no material involvement" standard, only serves to illustrate that the retention of RULPA as a standard both unduly complicates our regulatory scheme and is unnecessary for the achievement of our regulatory objectives. We conclude that the continued use of the RULPA as a threshold criterion in attribution determinations for limited partnership interests is no longer advisable and we herein eliminate it.[57]

43. *"No Material Involvement" Standard.* In our *Report*, we determined that no limited partner relieved from attribution could be:

> Involved in any material respect in the management or operation of the broadcast, cable television, or newspaper entity concerned.[58]

Although Couzens erroneously disputes its existence [59], no party has questioned the propriety of this standard. In fact, the three parties substantively addressing this standard agree that it provides an appropriate mechanism to enable the Commission to verify that limited partners who are relieved from attribution will lack the ability to influence or control partnership affairs. We agree with this assessment and therefore affirm that a limited partner, to be exempt from attribution, must refrain from involvement in any material respect in the management or operation of the media activities.

44. Nonetheless, we believe it appropriate to provide additional guidance to limited partners as to what kind of insulation is sufficient to exempt a limited partnership interest from attribution. This will enable limited partners who wish to take advantage of our exclusion to include within their partnership agreement [60] the appropriate

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[51] We disagree with Varecha's assertion that, because the transfer of a general partnership interest is subject to Commission approval under Section 310 of the Communications Act, the contingent power of a limited partner to remove a general partner is *per se* insufficient to constitute "control." *See* 47 U.S.C. 310(d) (1982). While not finding that prior Commission approval of the replacement of a general partner would be necessary for purposes of Section 310, a general partner is likely to follow the advice of a limited partner if he or she knows that the limited partner possesses the power of removal even if his or her replacement is subject to Commission approval. Therefore, the power of removal, even if it is a "contingent" right, potentially provides a limited partner with the ability to control, or at least to materially influence, partnership affairs. Moreover, the power of removal is merely one of a number of "safe harbor" provisions contained in the RULPA. The revised act permits limited partners to engage in other activities which provide them with the ability to control or materially influence the business.

[52] Section 303(b)(5)(v) of RULPA specifies that the limited partner does not participate in the control of the business by voting on the removal of a general partner and section 302 provides that the right to vote can be "on a per capita *or other* basis." RULPA sections 302, 303(b)(5)(v) [emphasis added]. If the partnership agreement specifies that the right to vote on the removal of a general partner is to be based on the percentage of equity contribution and if the limited partner contributed a majority of the capital, the power of the limited partner to remove the general partner would be absolute.

[53] *RULPA* at section 303(c).

[54] In evaluating activities beyond the scope of the "safe harbor" provisions, the courts have adopted either the "creditor reliance" standard or the "powers" standard. *See, generally,* M. Piece, "Limited Partner Control and Liability Under the Revised Uniform Limited Partnership Act", 32 Southwest L.J. 130 (1979). The sole purpose underlying the "creditor reliance" standard is to provide partners with discretion in determining the powers of limited partners so long as this discretion does not result in injury to third parties. This standard does not prevent limited partners from becoming intimately involved in all aspects of the business as long as third parties are not misled to their detriment. Because the "creditor reliance" test is unconcerned with the potential of the limited partner to materially influence or control the management or operations of the business, that policy diverges from the rationale underlying the attribution rules. *See, e.g., Frigidaire Sales Corporation v. Union Properties,* 14 Wash. App. 634, 544 P.2d 781 (1976), *aff'd,* 88 Wash. 2d 400, 562 P.2d 244 (1977).

The "powers" standard, which is the other criterion used in interpreting the "control" test, is also inadequate in assessing whether or not a particular interest should be subject to attribution under the media multiple ownership rules. Although this standard, unlike the "creditor reliance" standard, does evaluate the actions and powers of the limited partners, the line drawn by certain courts applying the "powers" test permit the holder of a limited partnership interest to possess the type of power over partnership affairs which we find inconsistent with an exemption from our attribution rules. For example, some of the cases applying this standard permit the limited partner to influence or control the operations of the business as long as the general partner possesses the authority to check or to countermand the actions of the limited partner. *See, e.g., Silvola v. Rowlett,* 129 Colo. 552, 272 P.2d 287 (1954).

[55] RULPA section 303(a).

[56] *Id.*

[57] In light of this holding, there is no need for us to consider Couzens' arguments that reliance on the provisions of the RULPA is an impermissible delegation of authority or that the standard is impractical or administratively burdensome.

[58] *Report,* 97 FCC 2d at 1023. *See* 47 CFR 73.3555, NOTE 2(f) (1984).

[59] The "no material involvement" standard is expressly embodied in the text of our *Report* (*Report,* 97 FCC 2d at 1023), in the recodification of the substantive attribution rules [47 CFR 73.3555 NOTE 2(f)(1984)] and in the revision of the regulations prescribing the reporting of attributable interests. 47 CFR 73.3615(a) (1984).

[60] As the drafters of the RULPA have indicated, "the certificate of limited partnership is confined principally to matters respecting the addition and withdrawal of partners and of capital, and other important issues are left to the partnership agreement." RULPA, Commissioner's Comment to section 101, 6 U.L.A. 182 (1983 Supp.). Consequently, we expect that the safeguards insulating an exempt limited partner typically will be contained in the partnership agreement. We are not precluding partners, however, from incorporating these safeguards in the certificate of limited partnership, if they so choose.

safeguards which, in turn, would permit a licensee to make the requisite certification. Not only will our guidelines provide greater certainty, but they will also lessen the need for the Commission to make costly *ad hoc* administrative determinations regarding the adequacy of specific unsulating mechanisms.

45. In establishing these standards, we reiterate that our intention is neither to restrict nor to prohibit, as a general matter, the types of business activities in which limited partners may engage. If a limited partner is willing to have his or her interest in the partnership attributed, we have no intention, by this order, of scrutinizing in any manner the activities of that partner. Consequently, we do not purport to prescribe either the kind or extent of involvement of an attributed limited partner in partnership affairs.

46. Moreover, depending upon the extent, type and location of their other media interests, we expect that certain limited partners would choose to incorporate within their partnership agreement the insulating provisions necessary to qualify for an exemption from attribution, whereas other limited partners would elect to acquire or retain the capacity to influence the partnership notwithstanding the application of our attribution rules. Indeed, it is likely that different limited partners, within the same company, may reach different conclusions regarding the need for an exemption from attribution. As a consequence, compliance with the requirements described below is restricted in scope to those limited partners who wish to qualify for an attribution exemption. We also wish to make clear that these guidelines are not incorporated into our rules and serve only to indicate the type of insulation the Commission will consider in evaluating challenges to the exclusion.

47. We believe that it is appropriate to provide the partners of a limited partnership with flexibility in the manner in which they draft their limited partnership agreement. For example, the partners, by establishing separate classes of limited partners or prescribing limitations applicable only to specified limited partners, could formulate an agreement in which the requisite insulating provisions were limited in scope to those partners desiring an exemption from attribution. In such a situation, the licensee would be able to make the certification necessary to exempt the specific partners who meet our "no material involvement" standard notwithstanding the fact that there may be other limited partners in the same partnership who do not qualify for an exemption. Limited partners who are not adequately insulated would simply be reported by the licensee as holding a cognizable ownership interest.

48. To be relieved from attribution, the limited partnership agreement should specify that the exempt limited partner [61] cannot act as an employee of the limited partnership if his or her functions, directly or indirectly, relate to the media enterprises of the company.[62] For example, the interest of a limited partner who acted as a station manager would be attributed. We will also require the limited partnership agreement to bar an exempt limited partner from serving, in any material capacity, as an independent contractor or agent with respect to the partnership's media enterprises. By way of illustration, an exempt limited partner could not hold a management contract for the station or act as an agent for the station in procuring programming. Moreover, the partnership agreement should restrict exempt limited partners from communicating with the licensee or the general partner on matters pertaining to the day-to-day operations of its business.[63]

49. The partnership agreement should also contain several provisions relating to the voting power of the limited partner. The partnership agreement may permit the exempt limited partners to vote on the admission of additional general partners, but the agreement should empower the general partner to veto any such admission.[64] In addition, the partnership agreement should either prohibit the exempt limited partner from voting on the removal of a general partner or limit this right to situations where the general partner is subject to bankruptcy proceedings, as described in sections 402 (4)–(5) of the RULPA [65] or is adjudicated incompetent by a court of competent jurisdiction.

50. Moreover, with the exception of permitting a limited partner to make loans to, or act as a surety for the business, the agreement should also bar the exempt limited partner from performing any services to the limited partnership materially relating to its media activities.[66] In addition, the agreement should also state, in express terms, that the exempt limited partner is prohibited from becoming actively involved in the management or operation of the media businesses of the partnership.[67] Finally, in determining the appropriate attribution of interests to a limited partner, we will scrutinize the close familial relationships of that partner. In this regard, while we have held that a "familial/business relationship, *standing alone*, is insufficient to create a presumption of common control for purposes of applying the mutiple ownership rules," [68] we have evaluated the facts and circumstances in specific cases to determine whether or not it was appropriate to attribute interests on the basis of a close familial relationship.[69] We will continue to follow this approach in dealing with attribution based on familial relationships generally. With respect to the specific situation in which a marital relationship is involved, we have previously determined that the interest held by one spouse are to be presumptively attributed to the other.[70]

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[61] If the limited partner is not a natural person, these restrictions apply to the constituent parts of the limited partner, e.g., its directors, officers, partners, etc. Where applicable, in vertical chain situations, our multiplier will be used. *See* 47 CFR 73.3555, NOTE 2(d) (1984).

[62] While a limited partner can also be a general partner (*see* RULPA § 303(a)), the interest of such a person in the business is attributable by virtue of the general partnership interest.

[63] This requirement is generally comparable to the requirement that we imposed upon persons taking advantage of our "passive investor" benchmark. In our *Report*, we imposed the requirement that passive investors "refrain[] from contact or communication with the licensee on any matters pertaining to the operation of its stations. . . ." *Report*, 97 FCC at 1013. Compliance with the provision we adopt here would restrict a limited partner from voting on any matters relating to the day-to-day operations of the business.

[64] The RULPA specifies that the written consent of each partner is necessary for the admission of new general partners into the business. RULPA § 401. Therefore, under RULPA, the power to veto the admission of new general partners is given to both the limited partners and the general partners.

[65] RULPA § 402(4)(5). This restriction is analogous to our determination concerning trusts. In our *Report*, we stated that a person who "holds the unrestricted power to replace a trustee . . . [will] have the assets of that trust attributed to him, unless such power is contingent upon some event beyond that person's control." *Report*, 97 FCC 2d at 1024.

[66] The RULPA, but not the ULPA, permits the contribution of the limited partner, in whole or in part, to be in the form of services. *See* RULPA sections 101(2), 201 (5)–(6); ULPA § 4.

[67] If a limited partner relieved from attribution subsequently acts in a manner which contravenes the insulating provisions of the partnership agreement or the certificate of limited partnerships, or if that partner subsequently becomes materially involved in the management or operations of the partnership, the Commission will attribute the limited partnership interest of the noncomplying limited partner.

[68] *Alabama Radio Corporation and Deep South Broadcasting Co.*, 69 FCC 2d 1238, 1283 n.9 (1978) (emphasis in original). *See* KTRB Broadcasting Co., 46 FCC 2d 605, 607 (1974) and *Alexander Klein*, 80 FCC 2d 423, 428 (1981).

[69] *See, e.g., East Arkansas Broadcasters, Inc.*, FCC 60-1283, 20 RR 934 (1960).

[70] *Alexander Klein*, 80 FCC 2d at 428 (1981); *Lady Sarah McKinney Smith*, 59 FCC 2d 398, 401 (1976); *Waters Broadcasting Corp.*, 88 FCC 2d 1218–19.

Continued

Notwithstanding the nearly conclusive statute the Commission has accorded this presumption in the past,[71] we will henceforth permit this presumption to be rebutted, on a case-by-case basis, in appropriate circumstances. We find that the inclusion of the above restrictions in the limited partnership agreement, coupled with proper consideration of close familial relationships, provide sufficient insulation to permit the licensee or cable television system to certify that the limited partner could not be involved in any material respect in the management or operation of the business.[72]

III. Clarification and Revision on Our Own Motion

51. On our own motion, we raise certain matters addressed in our *Report*. Specifically, we clarify matters concerning the single majority stockholder exception and revise certain requirements governing the reporting of ownership interests.[73] Additionally, we clarify the applicability of the divestiture requirements of § 76.501 of our rules in situations where interests grandfather under the cable cross-ownershp provisions pass to an heir or legatee.

52. *Aggregation Policy.* Under our aggregation policy a person with stock in several separate acounts has a cognizable interest if the sum of these accounts is equal to or exceeds the benchmark standard, even if each account, when considered in isolation, is below the benchmark.[74] The reason for this policy is to prevent persons from "evading our ownership constraint by breaking down their interests into non-cognizable discrete investments."[75] While it is clear that we aggregate separate accounts to determine whether or not a person has an attributable interest, in our *Report* it is not clear whether we aggregate separate accounts to determine whether a single person owns majority voting stock in the corporation, thereby exempting from attribution all other corporate shareholders, regardless of the size of their stock interests.

53. As long as the single majority stockholder interest is reflected on the face of the ownership report,[76] discrete interests will be aggregated in determining the applicability of the "single majority stockholder" exception.[77] The rationale underlying the exception is that the minority corporate stockholders, "even acting collaboratively, would be unable to direct the affairs or activities of the licensee on the basis of their shareholdings."[78] The inability of the minority corporate shareholders to direct the affairs of the corporation is not dependent upon whether the single majority shareholder possesses majority interest by virtue of a single majority account or by virtue of two or more stock accounts which, in the aggregate, exceed 50 percent of the voting shares of the corporation. Moreover, fundamental fairness dictates that if we aggregate discrete interests in determining whether a person is subject to attribution, we should similarly aggregate discrete interests in determining whether or not a person is exempt from attribution. Therefore, for both attribution and reporting purposes, we will aggregate discrete interests in application of the "single majority stockholder" rule.

54. Because of the potential in limited instances for the multiplier and aggregation rules to result in more than one single majority stockholder, modification of the aggregation rule in certain situations is necessary.[79] Accordingly, only those *de jure* control interests in intermediate corporations and direct interests in licensees will be aggregated in determining whether a party has standing as a single majority stockholder.[80]

55. In addition, clarification is needed as to the manner in which we implement our aggregation policy in a situation where the same person owns both "passive investor" and general

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rev'd on other grounds, 88 FCC 2d 1204, 1206 (1981), *set aside*, 91 FCC 2d 1280 (1982), *aff'd sub nom. West Michigan Broadcasting Co. v. Fcc*, 735 F.2d 601 (D.C. Cir. 1984), *cert. denied*, Case No. 84-7000 (March 4, 1985).

[71] *Id.*

[72] There are a number of powers which a limited partner may exercise consistent with these guidelines. A limited partner exempt from the attribution rules can exercise all of the powers mandated by either of the uniform acts. For example, he or she may determine the contents of the certificate of limited partnerships as well as amendments to that document. Subject to the veto of the general partner, the exempt limited partner can vote on the admission of new partners. He or she can petition for a judicial dissolution upon the conditions specified by state law or file derivative suits on behalf of the partnership.

In addition to these activities, there are other powers which a limited partner can possess and still qualify for an exemption from attribution. An exempt limited partner may vote on the removal of a partner who is adjudicated an incompetent by a court of competent jurisdiction or is subject to bankruptcy proceedings as described in section 402 (4)–(5) of the RULPA. RULPA section 402 (4)–(5). The exempt limited partner may make loans to, or act as surety for, the business. He or she may vote on the sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the business other than in the ordinary course of the business. In addition, the exempt limited partner can vote on a change in the nature of the business or petition the Commission for authority to effectuate an assignment or transfer of control of the company. An exempt limited partner can be a customer of the partnership. Moreover, the exempt limited partner, *inter alia*, can also provide services to the limited partnership as long as those activities do not materially relate to the media activities of the partnership.

[73] There is also a matter concerning ownership reports which does not require revision but warrants clarification. In our revisions to § 73.3615, we specified that licensees owning multiple stations with different anniversary dates could file a single report on the date of their choice as long as the reports are not more than one year apart. 47 CFR 73.3615(a) (1984). If the licensee selects the anniversary date of a station and subsequently sells that station, it can select the anniversary date of another station as the date for the filing of its ownership report so long as its reports are not filed more than one year apart.

[74] *See Report*, 97 FCC 2d at 1020.

[75] *Notice, supra* n.12 at para. 36.

[76] Licensees are required to report all interests which exceed the benchmark standard. In addition, they are required to report discrete interests of a person below the benchmark but which aggregated exceed the benchmark in situations where those interests are known to the licensee. *Report*, 97 FCC 2d at 1028–29. Therefore, if the discrete interests constituting a majority share are either at or above the benchmark or below the benchmark but known to the licensee, they are subject to the reporting requirements and a minority shareholder can take advantage of the automatic "single majority stockholder" exclusion. If the discrete interests constituting the majority stockholding interest are below the benchmark standard and unknown to the licensee, the minority shareholder cannot take advantage of the "single majority" exclusion. In such a situation, however, the minority shareholder can seek to rebut the presumption that the interest should be deemed cognizable. *See id.* at 1010–11.

[77] Under this rule, if an individual owns 100 percent interest in corporation A, which in turn owns 35 percent stock of a licensee corporation and the same individual owns 100 percent interest in corporation B, which in turn owns 20 percent stock of the same station, that individual will be deemed to be a "single majority stockholder" in the broadcast station and all other stockholders of the licensee corporation will be relieved from attribution.

[78] *Report*, 97 FCC 2d at 1008–09.

[79] For example, assume X has a 60% interest in Corporation A which in turn has a 40% interest in a licensee. X also has a 49% interest in Corporation B which in turn has a 49% interest in the licensee. Under the typical application of the multiplier and aggregation rules, X would be attributed with a 64% interest in the licensee [Corporation A's 40% interest in the licensee added to the product of Corporation B's 49% interest in the licensee and X's 49% interest in Corporation B (49% × 49% = 24%)]. Assume, however, that Z owns the remaining 11% of the licensee directly and the remaining 51% interest in Corporation B. Under these circumstances Z would be attributed with Corporation B's 49% and his own 11% for a total ownership interest in the licensee of 60%. Unless the aggregation procedures are modified, both X and Z could be considered a single majority stockholder.

[80] In the example described in footnote 79 above, Z's *de jure* control of Corporation B would result in the attribution to Z alone of Corporation B's 49% interest in the licensee which, when added to Z's 11% direct interest, would render Z the single majority stockholder. X's 49% interest in Corporation B would be disregarded for purposes of determining the single majority stockholder.

investment interests.[81] In this type of situation a bipartite standard will be applied in order to ascertain whether or not the interests are attributable. First, the "passive investor" and general benchmark interests will be separately aggregated. If the sum of either group is equal to or exceeds the benchmark established in our *Report* for that type of investment, the holder of the interests has an investment which is cognizable under the attribution rules. Second, if the two sums individually are below the relevant benchmarks, these two sums will be added and the interests will be attributed if the total is equal to or exceeds the higher "passive investor" benchmark of ten percent of the stock of the corporation.[82] Moreover, the licensee will be required to report any such subbenchmark interests which, if aggregated in the manner prescribed above, exceed the attribution benchmarks where those interests are known to the licensee.

56. *Single Majority Stockholder Exemption.* The "single majority stockholder" exception unlike other attribution exemptions, is based upon the quantity of stock held by a third person rather than upon the extent or nature of the holder's own stock interests. As a consequence, a minority interest in excess of the otherwise applicable attribution benchmark that qualifies for an exemption from attribution by virtue of the single majority stockholder exception may become cognizable if the majority stockholder effectuates a transfer or assignment which results in no single individual or entity holding more than fifty percent of the voting stock. The availability of the single majority stockholder exemption, therefore, may be eliminated by actions of persons other than the holder of that exemption.

57. Because the imposition of unnecessary restraints upon the alienability of stock interests disserves the public interest, we will not consider the existence of the single majority stockholder exemption in evaluating assignments or transfers requested by the majority stockholder. As a consequence, we will not prevent or delay a single majority stockholder from assigning or transferring stock merely because the interest of a minority stockholder may become cognizable as a result of such an assignment or transfer.

58. Our concern with unreasonable restraints upon the alienability of stock interests, however, does not imply that we will fail in our obligation to vigorously enforce our media multiple ownership rules. A minority stockholder who relies upon the single majority stockholder exception has an affirmative obligation to assure that the interests which he or she possesses are consistent with the limitations embodied in our ownership rules. Specifically, a minority stockholder has the responsibility to take any corrective action necessary in the event that the elimination of the availability of the single majority stockholder exception places him or her in violation of the media multiple ownership rules. For example, he or she could effectuate a partial assignment or transfer of the non-conforming ownership interests or place the interest in a trust which qualifies for an exemption from attribution. Given that the loss of a previously available single majority shareholder exemption may be relatively precipitous and beyond the control of the minority stockholder, we will afford a transition period of up to one year in which the affected minority stockholder may cure any resulting violation.

59. *Ownership Reports.* On our own motion, we make four types of revisions to the scope of the data which we require to be submitted in the ownership reports.[83] Two types of changes are corrections of inadvertent errors made in the revisions of the text of § 73.3615 of our rules. The other two changes concern the persons required to file ownership reports.

60. First, our *Report* specifies that changes will be made to the reporting requirements "to correspond to the new attribution standards and methods adopted herein."[84] Yet the language of our rule concerning the reporting requirements in vertical ownership situations does not completely effectuate this intent.[85] We therefore revise § 73.3615 of our rules to conform the reporting requirements to the substantive attribution rules.

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[81] Persons holding interests qualifying for "passive investor" status are subject to the 10 percent benchmark with respect to that interest whether or not that person is included within the definition of a "passive investor." For example, an individual holding the majority stock of an insurance company which in turn owns 8 percent stock in a broadcast station does not have a cognizable interest in the station. While the individual may not come within the strict definition of "passive investor," his or her indirect ownership interest in the station is wholly the result of the ownership of an entity which qualifies for "passive investor" treatment. As a consequence, the individual is subject to the 10 percent "passive investor" benchmark. A contrary rule would produce the anomalous result of having the owner of a more remote interest being subject to a more rigorous standard than the owner of a direct interest.

[82] For example, assume that an individual owns a majority of stock in the following four companies: (1) An insurance company, which in turn owns 4 percent of the stock of the licensee corporation; (2) an investment company, which in turn owns 2 percent of the stock the licensee corporation; (3) Corporation A, which in turn owns 2 percent of the stock of the licensee corporation and (4) Corporation B, which in turn owns 1 percent of the stock of the licensee corporation. To determine whether or not this individual has an attributable holding, one first adds the 4 percent holding of the insurance company and the 2 percent holding of the investment company and ascertains that the 6 percent total is below the 10 percent "passive investor" benchmark. Similarly, the 2 percent stock holding of Corporation A is added to the 1 percent stock holding of Corporation B; the 3 percent total is below the 5 percent benchmark. Under the second part of the standard, the 6 percent "passive investment" total is added to the 3 percent "non-passive investment" total to ascertain that the sum of these figures is less than 10 percent. The owner of these holdings, therefore, is not deemed to have an attributable interest in the licensee. If this person, however, subsequently acquires majority stock interest in a bank, the trust department of which in turn owns 3 percent of the stock of the licensee, the holdings of this person would be attributable because the total of the 9 percent sum of the "passive investment" stock and the 3 percent general investment stock exceeds 10 percent; the interests are subject to attribution even though the separate "passive investment" and "general investment" sums do not exceed their respective benchmarks.

[83] It is proper for us to make these revisions on our own motion. We note that the *Notice* specified that the type of information that we require licensees to submit in an ownership report is within the scope of this proceeding. *See, e.g., Notice, supra* n.12 at para. 40. In addition, both the Administrative Procedure Act and our own regulations exempt rules of practice and procedure from the notice and comment rulemaking requirements. 5 U.S.C. 553(b)(A) (1982); 47 CFR 1.412(a)(5) (1984). In *Revision of Application for Construction Permit for Commercial Broadcast Station*, FCC 81-278 (released October 19, 1981), 50 RR 2d 381 (1981), we held that revisions to the information required in the application for a construction permit, Form 301, was exempt from the notice of comment rulemaking requirements of the Administrative Procedure Act. Section 73.3615, which prescribes the scope and material to be included in the ownership report, Form 323, is such a rule. As we stated in revising Form 301 on our own motion, "we are changing neither substantive law or policy nor any underlying Commission requirement pertaining to ultimate public interest finding. Rather, we are revising the form and manner in which this information is submitted." *Id.* at 381.

[84] *Report*, 97 FCC 2d at 1020.

[85] The language of the revised rules adopted in our *Report* does not incorporate an exception to the use of a "multiplier" in situations where a link in the ownership chain represents a percentage interest which exceeds 50 percent; require the reporting of corporate shareholders, officers and directors who have an attributable interest through means of a corporate partner at the second link of the vertical ownership chain; or require reporting of attributable interests above the second link. In the revisions to Section 73.3615, we also clarify that the "multiplier" is applicable only to corporate ownership interests rather than to all types of interests in a vertical ownership chain held by corporations. For example, the "multiplier" does not apply to any ownership interests in a partnership whether or not that interest is held by a corporation.

61. Second, we are deleting the term "partner" which was inadvertently added to § 73.3615(a)(3)(i) of our rules as revised in our *Report*. By its terms, § 73.3615(a)(3)(i) elicits information on corporations, associations, trusts, estates and receiverships. Since the preceding provision, § 73.3615(a)(2), specifically deals with partnerships, we find it unnecessary to request information on partners in § 73.3615(a)(3)(i).[86]

62. Third, upon further reflection, we have decided to revise the scope of the exemption granted to "50/50 partnerships" from the requirement that ownership reports be filed annually.[87] While we continue to believe that it is appropriate to exempt many "50/50 partnerships," we will require the filing of annual reports for such partnerships which do not consist entirely of natural persons. This minor modification is necessary in order to assure that we are made aware of changes to attributable interests in the partners in situations where assignment or transfer applications are not required. For example, annual reports would provide information on changes in the officers or directors of a corporate partner.

63. In addition, we have determined to extend this reporting exemption to encompass all partnerships consisting entirely of natural persons. Our rules require prior Commission approval of an assignment or transfer of any partnership interest.[88] Because we will obtain adequate ownership information on natural person partnerships in the context of the assignment and transfer process, we believe that we can safely eliminate the annual reporting requirement as it applies to all partnerships composed entirely of natural persons.

64. Fourth, upon further reflection, we have decided to revise in one respect the reporting requirements imposed upon permittees. Our regulations currently require a permittee to file an initial Ownership Report shortly after the grant of its application for a construction permit.[89] Traditionally, we had also required that a permittee both file an ownership report on an annual basis and within thirty days inform the Commission of any ownership change affecting the information contained in that report by means of a supplemental ownership report. In our *Report*, we determined that the annual reporting and supplemental filing requirements were unnecessary to achieve our regulatory objectives and, as a consequence, eliminated these reporting requirements. While we remain convinced on reconsideration that the reduction in the reporting burdens on permittees is warranted, there is one modification which in our view should be made to the revised reporting requirements now applicable to permittees. In light of the substantial effort necessary for the construction of broadcast facilities, it is likely that significant time will elapse between the filing of the initial Ownership Report and the commencement of commercial broadcasting. Consequently, we believe that supplemental information should be filed when the permittee applies for a broadcast license. We believe that the slight administrative burden associated with the filing of a single updated report or the certification of the accuracy of the existing Report is clearly outweighed by our increased ability to enforce the media multiple ownership rules. Therefore, we will require a permittee, at the time at which it applies for a station license, to file an updated Ownership Report or to certify that the data contained in its current Ownership Report are unchanged.

65. *Divestiture of Cable Interests Transferred to Heirs or Legatees.* Finally, as a ministerial matter, we are taking the opportunity presented by our amendment of the attribution notes to § 76.501 of the rules to add a note to that section clarifying another matter. The added note makes explicit our position that cable interests grandfathered under the cable cross-ownership provisions need not be divested when those interests are transferred to an heir or legatee, whether by will or by intestacy, provided that the degree or extent of cross-ownership would not be increased by such transfer. The broadcast multiple ownership rules have long contained a note that specifically provides for such a divestiture exception,[90] and nothing suggests that the result would or should be different where cable interests are involved. Our action here serves simply to memorialize our view in this regard and to thereby remove any uncertainty which might exist on this issue.

66. As prescribed by the Regulatory Flexibility Act, [91] we have prepared a final regulatory flexibility analysis ("FRFA") which outlines the effect of the substantive rules adopted in this *Memorandum Opinion and Order* on small entities. The FRFA is contained in Appendix D.

67. The requirements contained in this *Memorandum Opinion and Order* have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burden on the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

68. Accordingly, it is ordered, that Parts 73 and 76 of the Commission's Rules and Regulations are amended effective July 31, 1985, as set forth in the attached Appendices A, B, and C.

69. It is further ordered, that the "Petition for Reconsideration in Part" filed by the American Council of Life Insurance is granted to the extent described herein and is otherwise denied.

70. It is further ordered, that the "Petition for Reconsideration" filed by Michael Couzens, P.C., is granted to the extent described herein and is otherwise denied.

71. It is further ordered, that the Secretary shall cause this *Memorandum Opinion and Order* to be printed in the Federal Communications Commission Reports.

72. Authority for the actions taken herein is contained in Sections 4(i), 4(j), 303 and 405 of the Communications Act of 1934, as amended.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

The authority citation for part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).

2. 47 CFR 73.3555 **Note 2** is amended by revising paragraph (g) and by adding paragraph (i) to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

Note 2: * * *

* * * * *

(g)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly in the management or operation of the media-related activities of the partnership and the licensee or system so certifies.

(2) In order for a licensee or system to make the certification set forth in paragraph (a)(1) of this section, it must verify that the partnership agreement or certificate of

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[86] 47 CFR 73.3615(a)(3)(i) (1984).

[87] *Report*, 97 FCC 2d at 1032.

[88] *See* 47 CFR 73.3540(a), (f)(6) (1984).

[89] 47 CFR 73.3615(b) (1984).

[90] *See* § 73.3555, Note 4 (formerly §§ 73.35, Note 8; 73.240, Note 8 and 73.636, Note 8).

[91] *See* 5 U.S.C. § 601 *et seq.* (1982).

limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. The criteria which would assure adequate insulation for purposes of this certification are described in the *Memorandum Opinion and Order* in MM Docket No. 83-46, FCC 85-252 (released June 24, 1985). Irrespective of the terms of the certificate of limited partnership or partnership agreement, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners in the management or operation of the media-related businesses of the partnership.

* * * * *

(i) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through "passive investors" is equal to or exceeds 10 percent; or

(2) the sum of the interests other than those held by or through "passive investors" is equal to or exceeds 5 percent; or

(3) the sum of the interests computed under paragraph (i)(1) of this section plus the sum of the interests computed under paragraph (i)(2) of this section is equal to or exceeds 10 percent.

* * * * *

Appendix B

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).

2. 47 CFR 73.3615 is amended by revising the introductory text of paragraph (a), (a)(1), the introductory text of (a)(2), the introductory text of (a)(3), (a)(3)(i), (a)(3)(iv)(B), and (b) to read as follows:

§ 73.3615 Ownership reports.

(a) Each licensee of a commercial AM, FM, or TV broadcast station shall file an Ownership Report on FCC Form 323 once a year, on the anniversary of the date that its renewal application is required to be filed. Licensees owning multiple stations with different anniversary dates need file only one Report per year on the anniversary of their choice, provided that their Reports are not more than one year apart. A licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership Reports shall provide the following information as of a date not more than 60 days prior to the filing of the Report:

(1) In the case of an individual, the name of such individual;

(2) In the case of a partnership, the name of each partner and the interest of each partner. Except as specifically noted below, the names of limited partners shall be reported. A limited partner need not be reported, regardless of the extent of its ownership, if the limted partner is not materially involved, directly or indirectly, in the management or operation of the licensee and the licensee so certifies.

* * * * *

(3) In the case of a corporation, association, trust, estate or receivership, the data applicable to each:

(i)(A) The name, residence, citizenship, and stockholding of every officer, director, trustee, executor, administrator, receiver and member of an association, and any stockholder which holds stock accounting for 5 percent or more of the votes of the corporation, except that an investment company, insurance company, or bank trust department need be reported only if it holds stock amounting to 10 percent or more of the votes, provided that the licensee certifies that such entity has made no attempt to influence, directly or indirectly, the management or operation of the licensee, and that there is no representation on the licensee's board or among its officers by any person professionally or otherwise associated with the entity.

(B) A licensee shall report any separate interests known to the licensee to be held ultimately by the same individual or entity, whether those interests are held in custodial accounts, by individual holding corporations or otherwise, if, when aggregated:

(*1*) The sum of all interests except those held by or through "passive investors" is equal to or exceeds 5 percent; or

(*2*) The sum of all interests held by or through "passive investors" is equal to or exceeds 10 percent; or

(*3*) The sum of the interests computed under paragraph (a)(3)(i)(B)(*1*) of this section plus the sum of the interests computed under paragraph (a)(3)(i)(B)(*2*) of this section is equal to or exceeds 10 percent.

(C) If the majority of the voting stock of a corporate licensee is held by a single individual or entity, no other stockholding need be reported for that licensee;

* * * * *

(iv) * * *

(B) Where X is not a natural person and has attributable ownership interest in the licensee under § 73.3555 of the rules, regardless of its position in the vertical ownership chain, an Ownership Report shall be filed for X which, except as specifically noted below, must contain the same information as required of a licensee. If X has a voting stockholder interest in the licensee, only those voting interests of X that are cognizable after application of the "multiplier" described in Note 2(d) of § 73.3555 of the rules, if applicable, shall be reported. If X is a corporation, whether or not its interest in the licensee is by virtue of its ownership of voting stock, the officers and directors shall be reported. With respect to those officers and directors whose duties and responsibilities are wholly unrelated to the licensee, and who wish to be relieved of attribution in the licensee, the name, title and duties of these officers and directors, with statements properly documenting that their duties do not involve the licensee, shall be reported.

* * * * *

(b) Except as specifically noted below, each permittee of a commercial AM, FM or TV broadcast station shall file an Ownership Report on FCC Form 323 (1) within 30 days of the date of grant by the FCC of an application for original construction permit and (2) on the date that it applies for a station license. The Ownership Report of the permittee shall give the information required by the applicable portions of paragraph (a) of this section. A permittee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and it is accurate, in lieu of filing a new Report.

* * * * *

Appendix C

47 CFR Part 76 is amended as follows:

1. The authority citation for Part 76 continues to read:

Authority: Secs. 7, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).

2. 47 CFR 76.501(a) Note 2 is amended by revising paragraph (g) and by adding new paragraph (i) as follows:

§ 76.501 Cross-ownership.

* * * * *

(a) * * *

Note 2: * * *

* * * * *

(g)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the licensee or system so certifies.

(2) In order for a licensee or system to make the certification set forth in paragraph (g)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. The criteria which would assure adequate insulation for purposes of this certification are described in the *Memorandum Opinion and Order* in MM Docket No. 83-46, FCC 85-252 (released June 24, 1985). Irrespective of the terms of the certificate of limited partnership or partnership agreement, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners in the management or operation of the media-related businesses of the partnership.

* * * * *

(i) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through "passive investors" is equal to or exceeds 10 percent; or

(2) The sum of the interests other than those held by or through "passive investors" is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (i)(1) of this section plus the sum of the interests computed under paragraph (i)(2) of this section is equal to or exceeds 10 percent.

* * * * *

3. 47 CFR 76.501(a) is amended by adding a new Note 4 as follows:

§ 76.501 Cross-ownership.

* * * * *

(a) * * *

Note 4: Paragraph (a)(2) of this section will not be applied so as to require the divestiture of ownership interests proscribed herein solely because of the transfer of such interests to heirs or legatees by will or intestacy, provided that the degree or extent of the proscribed cross-ownership is not increased by such transfer.

Appendix D

Final Regulatory Flexibility Analysis[1]

1. *Need for and Objective of the Rule.* The reasons that the Commission determined to revise the standards by which it assesses whether or not to attribute limited partnership interests were to eliminate ambiguities and apparent inconsistencies in the present attribution standards, to simplify the regulatory structure relating to attribution and to assure that the interests of limited partners which do in fact possess the ability to materially influence business affairs are taken into account in the application of the media multiple ownership rules. Small entities benefit from the clarification and simplification of the attribution standards relating to limited partnership interests.

2. *Issues Raised in Response to the Initial Regulatory Flexibility Analysis.* No party to this proceeding raised any issue specifically in response to either the Initial Regulatory Flexibility Analysis contained in the *Notice of Proposed Rulemaking* or the Final Regulatory Flexibility Analysis contained in the *Report and Order.*

3. *Significant Alternatives Considered and Rejected.* The Commission considered the proposal to presumptively attribute all limited partnership interests. Recognizing, however, that many limited partners lack the ability to materially influence the management or operations of the company in which they have invested, the Commission determined that this approach would impose unnecessary costs both upon limited partners and the Commission's processes.

The Commission rejected the notion that it would retain the threshold standard that exempts limited partnership interests which, *inter alia,* conform to the provisions of the Revised Uniform Limited Partnership Act of 1976 ("RULPA"). Because the *Report and Order* requires that a person seeking an exemption from attribution for a limited partnership interest to refrain from any material involvement in the management or operations of the business, the Commission found that retention of the "conformance to RULPA" standard was unnecessary. It also determined that the use of two disparate standards for assessing when a limited partnership interest is exempt from attribution tends to engender confusion and uncertainty. It found that the "conformance to RULPA" standard failed to provide a clear framework by which persons holding limited partnership interests could readily ascertain whether or not their interests were cognizable and that the activities permitted by this standard were in fact inconsistent with the policies underlying the attribution standards.

4. *Public Dissemination of this Document.* The attached *Memorandum Opinion and Order,* which includes this Final Regulatory Flexibility Analysis, is publicly available. This document can be obtained at the Federal Communications Commission, Office of Public Affairs, Room 202, 1919 M St. NW., Washington, D.C. 20554.

[FR Doc. 85-15735 Filed 7-2-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Section 604 of the Regulatory Flexibility Act, *inter alia,* requires an agency to prepare a final regulatory flexibility analysis in instances in which it is required to provide notice of a rule change and in fact promulgates a final rule. 5 U.S.C. 604(a) (1982). *See* 5 U.S.C. 553(b) (1982). The rule changes concerning the manner in which the Commission attributes limited partnership interests, but not the revisions to the data which are required to be submitted in an Ownership Report, are within the scope of section 604(a). *See* n.83, *supra.*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 13]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

Correction

In FR Doc. 85-12357 beginning on page 21052 in the issue of Wednesday, May 22, 1985, make the following corrections:

1. On page 21056, in the first column, in § 571.108 the third and fourth lines from the bottom should read:

S4.1.1.36 * * *

(a) * * *

2. Also on page 21056, in the third column, the Standard number at the beginning of the next to last line should read "S4.1.1.37".

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 50, No. 128
Wednesday, July 3, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP OH5275, 3H5378/P369; PH-FRL 2859-5]

Thiodicarb; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a feed additive regulation to permit thiodicarb and its metabolite in or on the commodities cottonseed hulls and soybean hulls. The proposed regulation to establish the maximum permissible level for residues of this insecticide in or on these commodities was requested by Union Carbide Agricultural Products Co., Inc.

DATE: Comments, identified by the document control numbers [FAP OH5275, FAP 3H5378/P369] must be received on or before August 2, 1985.

ADDRESS:

Written comments by mail to:
Information Services Section, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 230, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Product Manager (12), Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of October 28, 1980 (45 FR 71421), which announced that Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, Research Triangle Park, NC 27709, had submitted a food additive petition (FAP OH5275) to EPA proposing that 21 CFR Part 561 be amended by adding a regulation under section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA) establishing a tolerance for residues of the insecticide thiodicarb (dimethyl *N, N'*-[thiobis [(methylimino) carbonyloxy]]bis[ethanimidothioate]) in or on the feed commodities soybean hulls at 0.4 part per million (ppm) and cottonseed hulls at 0.8 ppm.

No comments were received in response to the notice of filing.

Subsequently, the petition was amended to include the metabolite methomuyl (*S*-methyl *N*-[methylcarbamoyl]oxy] thioacetimidate) in the tolerance expression.

The petition was later amended to withdraw the request for a feed additive tolerance on soybeans because the tolerance proposal for the raw agricultural commodity soybeans was withdrawn. A new tolerance was proposed for the raw agricultural commodity soybeans resulting in the need for a new food additive proposal for soybean hulls.

In the Federal Register of February 2, 1983 (48 FR 4717), EPA issued a notice that announced that Union Carbide Agricultural Products Co., Inc., had submitted a food additive petition (FAP 3H5378) to EPA proposing that 21 CFR Part 561 be amended by adding a regulation under section 409 of the FFDCA establishing a tolerance for residues of the insecticide thiodicarb and its metabolite methomyl in or on the feed commodity soybean hulls at 0.8 ppm.

No comments were received in response to the notice of filing;

The metabolism studies in livestock show that thiodicarb is metabolized in steps by thiolysis to methomyl, followed by hydrolysis to methomyloxime, which is subsequently metabolized to acetonitrile. Acetonitrile is then metabolized to acetamide, which is then hydrolyzed to acetic acid that enters the intermediary metabolism cycle of these animals, and is ultimately expired as carbon dioxide. Plant metabolism studies show that thiodicarb is likewise metabolized to methomyl oxime and then to acetonitrile and carbon dioxide, both of which are volatilized. Conversion of thiodicarb to acetamide in plants has not been studied. However, because of the long pre-harvest intervals (30-day phi for cottom and 60 day phi for soybeans) and the low level of detectable parent residues on cotton and soybeans, EPA does not expect detectable levels of acetamide to occur in cottonseed and soybean hulls as a result of the proposed use. A feeding study shows that detectable residues of thiodicarb and its methomyl metabolite will not occur in eggs, milk, fat and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep as a result of the proposed use on cotton and soybeans. However, residues of acetonitrile and acetamide could be present in tissues, eggs, and milk at maximum estimated levels of 0.002 ppm. Acetamide has been characterized as a carcinogen.

I. Toxicology of Acetamide

Four studies have been conducted with acetamide that have demonstrated a possible oncogenic effect. The first study was conducted by F. T. Dessau and B. Jackson in 1955. Two groups of Rockland albino rats were treated with a 40-percent solution of acetamide at a rate of 4,000 mg/kg (equivalent to 40,000 ppm for younger rats or 80,000 ppm for older rats) by intubation 5 days/week for a period of 117 days (Group I) and 205 days (Group II). Histopathological examination showed hepatocellular irregularities in 5 of the 8 rats in Group I and in 3 of 5 rats in Group II, which were absent in the 10 control animals. These irregularities consisted of a greater variability of cellular and nuclear size, giant nuclei, and the presence of numerous mitoses, some of unusual appearance. Benign

hepatocellular adenomas were also found in two treated animals in Group II.

Dessau and Jackson conducted a second study in 1961, with three groups of male Wistar albino rats. The test duration was 12 months. Test material was administered in a diet of ground Wayne Laboratory Blox. Group I consisted of 50 treated and 50 control animals. The treated animals were administered a diet containing 5 percent (50,000 ppm) acetamide. Group II consisted of four subgroups each consisting of 25 rats. The three treated subgroups received a 5 percent (50,000 ppm), 2.5 percent (25,000 ppm), and 1.25 percent (12,500 ppm) diet of acetamide. The fourth subgroup received a control diet. Group III consisted of 99 animals. These animals were initially fed a 5-percent diet of acetamide, and each week two rats were taken off the test diet and placed on a control diet for the remainder of the testing period. In Group I, 48 animals were evaluated with hepatomas found in 4 of the animals. In Group II, 1 of 18; 6 of 22; and 4 of 24 examined rats given a diet containing 5, 2.5, and 1.25 percent acetamide, respectively, exhibited hepatomas. In Group III, hepatomas were found in 22 of the 81 rats examined. No hepatomas were found in any of the control animals of Group I or II.

In a study conducted by J.H. Weisburger, R.S. Yamamoto, R.M. Glass, and H.H. Frankel in 1969, 24 male Wistar rats were administered 2.5 percent (25,000 ppm) acetamide in a diet of Wayne Laboratory Blox. Eleven animals were given the basal diet and served as controls. Hepatomas were found in 2 of 8 treated and 0 of 4 control animals that were sacrificed after 12 months. The 16 animals remaining in the treated group were maintained on the basal diet for an additional 3 months. Hepatomas were found in 7 of 16 treated and 0 of 7 control rats that were sacrificed after 15 months. The authors also tested a 2.5 percent acetamide diet supplemented with 5.6 percent arginine and showed that arginine protects against the development of hepatomas in rats.

The fourth study with acetamide was conducted by R.W. Fleischman et al. in 1980, with one test group of Fisher rats and two test groups of C57B1/6 mice. Test animals were administered acetamide in a diet of ground Wayne Laboratory Blox for 12 months and continued on a controlled diet of Wayne Blox pellets for an additional 4 months. Rats were administered 2.36 percent (23,600 ppm) acetamide. Mice in Groups I and II were administered 1.18 percent (11,800 ppm) and 2.36 percent acetamide, respectively. In acetamide-treated rats, neoplastic nodules were noted in 1 of 47 males examined and 3 of 48 females examined. Hepatocellular carcinomas were noted in 41 of 47 treated male rats and 33 of 48 female rats examined. There were no abnormalities noted in the 50 male or the 49 female control animals. Malignant lymphomas were noted in 7 of 50 male mice examined in the low-dose group and 7 of 46 male mice examined in the high-dose group versus 0 and 95 of the matched controls. There were no abnormalities noted in female mice from either test group.

The Agency has evaluated the acetamide studies and found each of them to have deficiencies when compared with current standards for oncogenicity testing. Only a small number of male rats were used and/or examined in three of the four studies in the test groups, or the controls, or both. None of the studies provide a definitive dose-response relationship, and none of the studies meet EPA criteria for technical adequacy. In all studies, the exposure rates were extremely high. This may have been responsible for the excessive weight loss and mortality noted in several of the studies. Oxytetracycline (Terramycin) was administered to test animals in the study conducted by Weisburger et al. (1969). This raises questions on the quality of the animals used and the possibility of adversely influencing the results of the experiment. In the study conducted by R. W. Fleischman et al. in 1980, the results in mice are not considered valid. In this study, males and females fed the low dose (1.18%) diet were from a different supplier than those given the high dose (2.36%) or control diet, and males from two suppliers were pooled as controls. Also, the animals were placed on test over a period of 13 months: These critical flaws preclude any meaningful interpretation of the results of this study. On the other hand, it does not appear that the technical flaws in the rat study by Fleischman *et al* should be considered substantially worse than those of Weisburger et al or Jackson and Dessau. Of the studies, the Fleischman study offers the longest duration (i.e., 16 months) and is the only one which investigated acetamide-induced changes in females as well as males. Although the incidence of response in females was not as great as in males, significant incidences of hepatocellular carcinomas were demonstrated in both sexes.

Although none of the four acetamide studies meet current standards for oncogenicity testing, the studies collectively demonstrate that, at least under certain conditions, long-term dietary administration of acetamide at high doses is associated with the occurrence of liver tumors in rats.

There is evidence that dietary factors and/or species-specific metabolic processes may be involved in the mechanism of the oncogenic responses which were elicited under the conditions of the experiments cited above. For example, all of these experiments were conducted using laboratory chow which was obtained from the same supplier; however, Weisburger *et al* cited a personal communication in which Jackson reported that acetamide did not cause liver tumors in rats when a basal diet from a different supplier was used. Also, Weisburger *et al* reported that addition of arginine to the diet provided almost complete protection against acetamide-induced hepatic tumors in rats.

However, the Agency believes it is prudent to assume for present purposes that acetamide is a possible human carcinogen. Therefore, this document is being published as a proposed rule and provides the public with a 30-day public comment period. EPA encourages comments on the Agency's proposed method for establishing the requested food additive tolerances for thiodicarb and its metabolite methomyl.

The Agency has evaluated the data submitted in the petitions and other relevant material on thiodicarb. The toxicological data considered in support of the tolerances include a 2-year rat feeding/oncogenicity study with thiodicarb that was negative for oncogenic effects at the levels tested (1.0, 3.0, and 10.0 mg/kg/day) and has cholinesterase and chronic toxicity no-observed-effect levels (NOEL) of 10.0 and 3.0 mg/kg/day, respectively; a mouse oncogenicity study that was negative at the levels tested (1.0, 3.0, and 10.0 mg/kg/day); a 6-month dog feeding study with a ChE and subchronic NOEL of 15.0 mg/kg/day; a rat teratology study that was negative at 30.0 mg/kg/day, the highest dose tested (HDT); a mouse teratology study that was negative at 200 mg/kg/day (HDT) and also had a NOEL of 200 mg/kg/day for fetotoxicity; a 3-generation rat reproduction study with a NOEL of 10.0 mg/kg/day (HDT); and an acute delayed neurotoxicity study that was negative at 680 mg/kg (HDT). Short-term assays indicated no mutagenic potential.

II. Section 409 Tolerances

Under section 301 et seq. of FFDCA (21 U.S.C. 321 et seq.), it is unlawful to introduce into (or deliver or receive in)

interstate commerce any food that is adulterated. The term "food" includes "articles used for food or drink for man or other animals" and "articles used for components of any such article" (21 U.S.C. 321(f)).

FFDCA section 402(a)(2)(C) states that a food shall be deemed adulterated "if it is, or bears or contains, any food additive which is unsafe within the meaning of [FFDCA] section 409: *Provided*, That where a pesticide chemical has been used on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under [FFDCA section 408] and such raw agricultural commodity has been subjected to processing such as * * * milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of sections 406 and 409, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity."

Thiodicarb is intended to be applied to the raw agricultural commodities cotton and soybeans. The hulls of cottonseed and soybeans, separated in the milling process, are used as animal feed. Cottonseed hulls and soybean hulls are thus processed foods. Thiodicarb and, presumably, cottonseed hulls and soybean hulls will be distributed and sold in interstate commerce. Although the Agency proposes to establish tolerances under FFDCA section 408 for thiodicarb and its metabolites on cottonseed and soybeans, the thiodicarb residue levels on cottonseed hulls and soybeans hulls are greater than the proposed tolerance levels on their parent raw agricultural commodities. Accordingly, the proviso to FFDCA section 402(a)(2)(C) does not apply, and separate food additive regulations must be set for thiodicarb on cottonseed hulls and soybean hulls in order for those products not to be adulterated within the meaning of FFDCA section 402(a)(2)(C).

Finally, EPA's regulations (40 CFR 162.7(d)(3)(v) and 162.184(a)(4)) allow the issuance of a registration providing for use of a pesticide product that will result in residues on food or feed only if any clearances required by the FFDCA have first been obtained.

The EPA Administrator is vested with responsibility for issuing food additive regulations concerning pesticide chemicals by Reorganization Plan No. 3 of 1970. Section 409 states that a food additive regulation may be issued either in response to a petition or upon the Administrator's own initiative. A food additive regulation must prescribe the conditions under which the additive may be safely used, and may to that end specify the maximum quantity which may be used or permitted to remain in or on food, the manner in which the additive may be added to or used in or on food, and any other requirements deemed necessary to assure the safety of the additive's use. FFDCA section 409(c)(1)(A). Under FFDCA section 409(c)(3), a food additive regulation may not be issued if a fair evaluation of the data before the Administrator "fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe" (this is known as the "general safety clause").

In addition to the requirement of the general safety clause, section 409(c)(3) also contains a specific criterion, called the "Delaney clause," which (with an important exception discussed later in this document) provides that "no additive will be deemed to be safe if it is found to induce cancer when ingested by man or animal." The Food and Drug Administration, which has responsibility for administering FFDCA section 409 with respect to all food additives other than pesticides (and which, prior to EPA's creation in 1970, also had responsibility for pesticide food additives) has interpreted the term "additive" in section 409 as applying not only to the parent food additive compound (here, thiodicarb) but also to other substances formed by metabolism of the parent compound (here, acetamide). (See the FDA document entitled "Criteria and Procedures for Evaluating Assays for Carcinogenic Residues," published in the Federal Resistor of March 20, 1979 (44 FR 17070, 17081–82).) For the purposes of this analysis, EPA adopts FDA's interpretation, for the reason set forth by FDA in that document. Thus, although long-term feeding studies in which thiodicarb was administered to animals did not demonstrate any evidence of oncogenicity, the potential oncogenicity of acetamide, a metabolite of thiodicarb, also must be considered with respect to the Delaney clause. As stated earlier in this document, acetamide has been shown to induce cancer in animal feeding studies. This conclusion is not changed by the fact that the animals received extremely high doses of acetamide, nor by the deficiencies in the conduct of the studies, although EPA cannot conclude from the studies that humans would be likely at risk from ingestion of acetamide residues at the levels that would result from the proposed use of thiodicarb. For purposes of FFDCA section 409, therefore, EPA will analyze acetamide as a substance "found to induce cancer when ingested by * * * animal[s]."

The Delaney clause's prohibition on the issuance of a food additive regulation for a substance which has been shown to induce cancer in animals is subject to an important exception with respect to pesticides such as thiodicarb which will be present in the feed of cattle or other animals which are raised for the production of eggs, meat, or milk for human consumption. FFDCA section 409(c)(3)(A) states that the Delaney clause "shall not apply with respect to the use of a substance as an ingredient of feed for animals which are raised for food production, if the [Administrator] finds (i) that, under the conditions of use and feeding specified in the proposed labeling and reasonably certain to be followed in practice, such additive will not adversely affect the animals for which such feed is intended, and (ii) that no residue of the additive will be found (by methods of examination prescribed or approved by the [Administrator] by regulations * * *) in any edible portion of such animal after slaughter or in any food yielded by or derived from the living animal."

FDA has analyzed extensively the meaning of this exception (commonly referred to as the "DES proviso") in a document published in the Federal Register of March 20, 1979 (44 FR 17070). In that document, FDA concluded that the proviso should be implemented by requiring that residues of an oncogenic compound should not be allowed to be present in the total diet of humans unless it can be verified by analytical methodology that if such residues do occur they will be present at a level less than that which, by use of prescribed methods of extrapolation from animal bioassay data and a series of conservative assumptions, yields an excess cancer risk level that is deemed insignificant (which FDA sets at the level of one in a million, or 1×10^{-6}). The FDA approach then goes on to set forth a requirement for analytical methodology that will allow FDA to determine whether residues in any edible tissue (meat, milk, or eggs) will bear residue levels in excess of those which would be equivalent to the allowable total diet residue level.

EPA believes that the overall approach to implementation of the "DES proviso" set forth by FDA is a reasonable one, and, with the exceptions discussed later in this

document, proposes to adopt the reasoning and methodology of the FDA document in deciding whether to promulgate the food additive regulation proposed for thiodicarb.

Under FDA's approach, the allowable level of the residue of concern in the total diet, denominated S_o, can be expressed as follows:

$$S_o = \frac{\text{(Allowable excess risk from residue in total diet)}}{\text{(Food factor for total diet)(Extrapolation slope)}}$$

A dose/response probability slope for acetamide has been calculated and extrapolated to the residue levels under consideration. Using this slope $(3.30\times10^{-8}\ \text{ppb})^{-1}$, a food factor of 1 (i.e., the entire diet), and choosing an allowable risk of 1×10^{-6} the associated residue for acetamide in the total diet S_o can be derived:

$$S_o = \frac{1\times10^{-6}}{(1)(3.30\times10^{-8}\ \text{ppb})^{-1}} = 30.0\ \text{ppb}$$

Thus, using the procedures for risk extrapolation specified in the FDA document, an individual's diet (estimated to be 1,500 gm/day) could contain up to 30 ppb acetamide, and the excess lifetime cancer risk would not exceed 1×10^{-6}.

The FDA approach incorporates a series of conservative assumptions to be used in calculating the residue levels to be allowed in the total diet and in individual food items. The approach assumes that: (1) Response is linear to dose even at very low dose levels; (2) each member of the public should be protected from an individual excess risk of a certain level; (3) an individual will consume the commodity in question every day for a lifetime; (4) each quantity of the commodity consumed will contain the regulated food additive or metabolite at levels just under the prohibited level; and (5) other competing causes of illness or death to humans should be disregarded in the computation.

The 1979 FDA document also acknowledges the difficulty of choosing the appropriate level of risk deemed to be insignificant, noting that it had considered levels ranging from 1 in 20,000 to 1 in 100,000,000. FDA concluded that "the acceptable risk level should: (1) Not significantly increase human cancer risk and (2) subject to that constraint, be as high as possible in order to permit the use of carcinogenic animal drugs and food additives as decreed by Congress." In choosing the 1 in 1 million figure, FDA noted that "[a] risk figure significantly higher than 1 in 1 million, for example 1 in 10,000, might present a significant additional risk of cancer to the public." (44 FR 10792–10793)

Using FDA's procedure for calculation of allowable levels in target tissues, S_m, one finds that $S_m = SS_o/T$, where T is the fraction of the total diet represented by an individual edible tissue. One of the most significant conservative assumptions made by FDA is that eggs constitute 33 percent of the daily diet of humans; meat constitutes 33 percent of the daily diet of humans; and milk constitutes 100 percent of the daily human diet. Thus,

Commodity	T	SS_m
Milk	1	S_o=30 ppb.
Meat	⅓	S_o=90 ppb.
Eggs	⅓	S_o=90 ppb.

These levels are the maximum concentrations of acetamide that can be permitted in each of the individual edible tissues. The allowable residue of acetamide in milk using FDA's approach is 30 ppb based on milk constituting 100 percent of the total diet. Since meat is assumed to constitute 33 percent of the total diet, it may contain three times this level, or 90 ppb. Eggs are also assumed to constitute 33 percent of the diet and could likewise contain 90 ppb of acetamide.

For meat, the liver was chosen as the target tissue. (A target tissue is the tissue selected to monitor for residues in the target animal.) Studies in which thiodicarb was fed to cattle and poultry showed that acetamide, if present, would occur in greater concentration in the liver than in any other tissue. Beef liver was found to contain 17× the concentration of acetamide as compared to meat (muscle). In poultry, the liver contained 6× the concentration of acetamide found in muscle. Thus, the allowable level for acetamide in beef liver is 1,560 ppb (17×90 ppb) and that in poultry liver is 540 ppb (6×90 ppb). These concentrations in these commodities, considering the dietary consumption of meats and livers, would not present an excess cancer risk greater than 1×10^{-6} utilizing the experimental data discussed previously.

EPA has estimated that at the proposed tolerance levels, acetamide would be present in cattle liver and poultry liver at maximum concentrations of 1.8 ppb and 0.06 ppb, respectively. These acetamide levels are well below the above allowable levels for beef liver and poultry liver as calculated under the SOM procedure.

Union Carbide has submitted an analytical method (gas-liquid chromatography using a nitrogen-phosphorus specific detector) for detection of residues of acetamide in beef and poultry liver. The lowest limits of reliable measurement for acetamide in beef and poultry liver are 770 ppb and 400 ppb, respectively. A copy of this method will be made available upon written request sent to the Information Services Section at the address listed above.

EPA proposes to find that this method is adequate to detect residues of acetamide in beef and poultry liver that would represent an unreasonable risk of cancer to consumers of meat (muscle tissue) within the meaning of the 1979 FDA document.

EPA has estimated the maximum expected levels of acetamide in milk and eggs resulting from thiodicarb use on cotton and soybeans to be 0.3 ppb and 0.07 ppb, respectively. The levels are well below those calculated using the SOM procedures, i.e., 30 and 90 ppb as shown above. Union Carbide has submitted data showing that acetamide residues are present in milk and eggs from animals not exposed to thiodicarb. The source of the acetamide is unknown. These data consisted of samples purchased at local grocery stores in 11 States. The acetamide residues in these samples ranged from approximately 275 to 500 ppb in milk (average 400) and 75 to 350 ppb in eggs (average 170). The maximum acetamide residues in milk (0.3 ppb) and eggs (0.07 ppb) that will result from the proposed use of thiodicarb on cotton and soybeans are much lower than these "background" levels and are also much lower than the levels which would result in a cancer risk of 1×10^{-6}.

Union Carbide has requested that the Agency waive the requirement for a method of analyzing for residues of acetamide in milk and eggs. Based on these data, the Agency tentatively concludes that acetamide is ubiguitous in milk and eggs. However, the Agency is directing its Analytical Chemistry Section to obtain milk samples (pasteurized and unprocessed/unpasteurized) and analyze for acetamide residues using USDA's pesticide-free dairy cattle. These data are being developed during this comment period and they may help the Agency to determine whether acetamide is of pesticide origin. Based on the results of this work, the Agency may conclude that further action is necessary. A regulatory method capable of measuring acetamide residues at levels equivalent to a 1×10^{-6} risk level would be futile, since the amount of ubiguitous acetamide present would mask the expected negligible conbtribution of acetamide from use of thiodicarb on cotton and soybeans. Therefore, the Agency is prepared to waive at this time the requirement of regulatory analytical methods for analysis of acetamide in milk and eggs under the SOM policy contingent upon the work being conducted in order to confirm the presence of acetamide in milk and eggs.

The Agency has determined that Union Carbide has satisfied the provisions of the "DES proviso." Accordingly, EPA believes that it would be proper to issue the proposed food additive tolerances for thiodicarb.

The data submitted in the petition and all other relevant material have been evaluated. Based on the information considered by the Agency, it is concluded that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136 et seq.). Therefore, it is proposed that the feed additive regulation be established as set forth below.

A related proposed rule (PP 0F2413, 3F2793/P368) proposing to establish tolerances for cottonseed at 0.4 ppm and soybeans at 0.2 ppm under FFDCA section 408 appears elsewhere in this issue of the Federal Register.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition and document control number [FAP OH5275, 3H5378/P369]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Information Service Section at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

Dated: June 28, 1985.

Marcia E. Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 561—[AMENDED]

Therefore, 21 CFR Part 561 is amended as follows:

1. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 561.380 is revised, to read as follows:

§ 561.380 Thiodicarb.

Tolerances are established for residues of thiodicarb (dimethyl, *N, N'*-[thiobis[(methylimino) carbonyloxy]]bis [ethanimidothioate] and its metabolite methomyl in or on the following processed feeds when present therein as a result of application of this insecticide to growing crops:

Feed	*Part per million*
Cottonseed hulls	0.8
Soybean hulls	0.8

[FR Doc. 85-16086 Filed 7-2-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 61

Preparation of Rolls of Indians

Correction

In FR Doc. 85-14397 beginning on page 25082 in the issue of Monday, June 17, 1985, make the following corrections:

1. On page 25087, in the third column, in § 61.4(b)(2), the date "October 15, 1985" in the sixth line should read "(120 days from date of publication)".

2. On the same page and in the same column, in the first line of § 61.4(b)(3), "applicant" should read "application".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-66-84]

Treatment of Funded Welfare Benefit Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations relating to contributions to and reserves of welfare benefit funds maintained pursuant to a collective bargaining agreement. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 3, 1985. The regulations are proposed to be effective for contributions paid or accrued after December 31, 1985.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attn: CC:LR:T (EE-66-84), 1111 Constitution Avenue NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal

Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T (EE–66–84), telephone: 202–566–4906 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations provide guidance concerning the limits on contributions to and the reserves of welfare benefit funds maintained pursuant to a collective bargaining agreement under section 419A(f)(5) of the Internal Revenue Code of 1954 (Code), as added to the Code by section 511 of the Tax Reform Act of 1984 (26 U.S.C. 419A). The proposed regulations are issued under the authority contained in section 7805 of the Code (26 U.S.C. 7805). For the text of the temporary regulations, see FR Doc. 85–15940 published in the Rules and Regulations portion of this issue of the Federal Register.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting the temporary regulations referred to in this document as final regulations, consideration will be given to any written comments that are submitted (preferably 8 copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

List of Subjects in 26 CFR 1.401–0—1.425–1

Income taxes, Employee benefit plans, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

M. Eddie Heinemann,
Acting Commissioner of Internal Revenue.

[FR Doc. 85–15941 Filed 7–1–85; 8:45 am]
BILLING CODE 4830–01–M

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26 CFR Part 1

[LR–267–82]

Capital Gains Tax and Passive Investment Income Tax With Respect to Certain S Corporations; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to a tax imposed on capital gains of certain S corporations and a tax imposed on the excess net passive income of certain S corporations that have accumulated earnings and profits from subchapter C years. Changes to the applicable law were made by the Subchapter S Revision Act of 1982, as amended by the Technical Corrections Act of 1982 and the Tax Reform Act of 1984. The regulations would provide the public with the guidance needed to comply with the law as amended by these Acts.

DATE: Written comments and requests to comment orally at a public hearing must be delivered or mailed by September 3, 1985. The amendments under section 1374 are generally proposed to be effective for taxable years beginning after December 31, 1982, and the amendments under section 1375 are generally proposed to be effective for taxable years beginning after 1981.

ADDRESS: Send comments and requests to comment orally at a public hearing to: Commissioner of Internal Revenue, Attn: CC:LR:T (LR–267–82), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: John G. Schmalz of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attn: CC:LR:T) (202–566–3516, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 1374 and 1375 of the Internal Revenue Code of 1954. Generally, these proposed regulations are proposed to conform the Income Tax Regulations to section 2 of the Subchapter S Revision Act of 1982 (96 Stat. 1669), as amended by section 305(d)(3) of the Technical Corrections Act of 1982 (96 Stat. 2400) and sections 102(d)(1), 474(r), and 721 (e) and (v) of the Tax Reform Act of 1984 (98 Stat. 623, 844, and 971).

In General

Section 1374 imposes a tax on the capital gains of certain S corporations. The tax is imposed for any taxable year in which the S corporation has a net capital gain in excess of $25,000 for the taxable year if the amount of the net capital gain exceeds 50 percent of the taxable income for such year and the taxable income for such year is in excess of $25,000.

The amount of the tax is generally 28 percent of the amount of the net capital gain in excess of $25,000. However, in no case will the tax imposed by section 1374 on the corporation exceed the tax that would have been imposed by section 11 on the corporation if the corporation were not an S corporation. Section 1374(c) contains exceptions to the tax imposed by section 1374(a) and a special rule in the case of property with a substituted basis. Section 1374(d) and § 1.1374A–1(d) define the term "taxable income" for purposes of section 1374.

Section 1375 imposes a tax on the excess net passive income of certain S corporations that have subchapter C earnings and profits. This tax can generally be avoided by the corporation distributing its subchapter C earnings and profits before the close of the taxable year. The tax is computed by multiplying the excess net passive income by the highest rate of tax specified in section 11(b). Section 1375(b) and § 1.1375A–1(b) define the term "excess net passive income." A special rule contained in section 1375(c) ensures that a net capital gain that is taken into account under section 1375 in computing the passive income tax will not also be taken into account in determining the capital gains tax under section 1374. Section 1375(d) provides that the tax imposed by section 1375 may be waived in certain limited cases where an S corporation determined in good faith that it had no subchapter C earnings and profits at the end of a taxable year and it is later determined that it did have such earnings and profits. Section 1.1375A–1(d) provides rules concerning this waiver.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are

submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. If one is requested, a public hearing will be held and a notice of time and place for the public hearing will be published in the Federal Register.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule under Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constituted regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is John G. Schmalz of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.1361A–1—1.1388–1

Income taxes, Small business, Subchapter S corporation, Cooperatives.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *.

§§ 1.1361–1 through 1.1361–16 [Removed]

Par. 2. Sections 1.1361–1 through 1.1361–16 are removed.

Par. 3. There are inserted immediately after § 1.1348–3 the following new §§ 1.1361A–0, 1.1374A–1, and 1.1375A–1 to read as follows:

§ 1.1361A–0 Effective date.

(a) Except as otherwise provided in the regulations, the provisions of §§ 1.1374A–1 and 1.1375A–1 apply to taxable years beginning after December 31, 1982.

(b) The provisions of §§ 1.1371–1 through 1.1378–3 apply to a qualified casualty insurance electing small business corporation and to a qualified oil corporation for taxable years beginning after December 31, 1982, and the provisions of §§ 1.1374A–1 and 1.1375A–1 shall not apply. See section 6(c) (2), (3), and (4) of the Subchapter S Revision Act of 1982.

§ 1.1374A–1 Tax imposed on certain capital gains.

(a) *General rule.* Except as otherwise provided in paragraph (c) of this section, if for a taxable year beginning after 1982 of an S corporation—

(1) The net capital gain of such corporation exceeds $25,000, and

(2) The net capital gain of such corporation exceeds 50 percent of its taxable income (as defined in paragraph (d) of this section) for such year, and

(3) The taxable income of such corporation (as defined in paragraph (d) of this section) for such year exceeds $25,000,

section 1374 imposes a tax (computed under paragraph (b) of this section) on the income of such corporation. The tax is imposed on the S corporation and not on the shareholders.

(b) *Amount of tax.* The amount of tax shall be the lower of—

(1) An amount equal to the tax, determined as provided in section 1201(a)(2), on the amount by which the net capital gain of the corporation for the taxable year exceeds $25,000, or

(2) An amount equal to the tax which would be imposed by section 11 on the taxable income of the corporation (as defined in paragraph (d) of this section) for the taxable year were it not an S corporation.

No credit shall be allowable under part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (other than under section 34) against the tax imposed by section 1374(a) and this section. See section 1375(c)(2) and § 1.1375A–1(c)(2) for a special rule that reduces the amount of the net capital gain of the corporation for purposes of this paragraph (b) in cases where a net capital gain is taxed as excess net passive income under section 1375. See section 1374(c)(3) and paragraph (c)(1)(ii) of this section for a special rule that limits the amount of tax on property with a substituted basis in certain cases.

(c) *Exceptions to taxation*—(1) *New corporations and corporations with election in effect for 3 immediately preceding years*—(i) *In general.* If an S corporation would be subject to the tax imposed by section 1374 for a taxable year pursuant to paragraph (a) of this section, the corporation shall, nevertheless, not be subject to such tax for such year, if:

(A) The election under section 1362(a) which is in effect with respect to such corporation for such year has been in effect for the corporation's three immediately preceding taxable years, or

(B) An election under section 1362 (a) has been in effect with respect to such corporation for each of its taxable years for which it has been in existence,

unless there is a net capital gain for the taxable year which is attributable to property with a substituted basis within the meaning of paragraph (c)(1)(iii) of this section.

(ii) *Amount of tax on net capital gain attributable to property with a substituted basis.* If for a taxable year of an S corporation either paragraph (c)(1)(i) (A) or (B) of this section is satisfied, but the S corporation has a net capital gain for such taxable year which is attributable to property with a substituted basis (within the meaning of paragraph (c)(1)(iii) of this section), then paragraph (a) of this section shall apply for the taxable year, but the amount of tax determined under paragraph (b) of this section shall not exceed a tax, determined as provided in section 1201 (a), on the net capital gain attributable to property with a substituted basis.

(iii) *Property with substituted basis.* For purposes of this section, the term "property with a substituted basis" means:

(A) Property acquired by a corporation ("the acquiring corporation") during the period beginning 36 months before the first day of the acquiring corporation's taxable year and ending on the last day of such year;

(B) The basis of such property in the hands of the acquiring corporation is determined in whole or in part by reference to the basis of any property in the hands of another corporation; and

(C) Such other corporation was not an S corporation throughout the period beginning the later of:

(1) 96 months before the first day of the acquiring corporation's taxable year, or

(2) The time such other corporation came into existence,

and ending on the date such other corporation transferred the property, the basis of which is used to determine, in whole or in part, the basis of the property in the hands of the acquiring corporation.

(iv) *Existence of a corporation.* For purposes of this section, a corporation shall not be considered to be in existence for any taxable year which precedes the first taxable year in which such corporation has shareholders or acquires assets or begins business, whichever is first to occur.

(v) *References to prior law included.* For purposes of this paragraph (c), the term "S corporation" shall include an electing small business corporation under prior subchapter S law, and the term "election under section 1362 (a)" shall include an election under section 1372 of prior subchapter S law.

(iv) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). M Corporation was organized and began business in 1977. M subsequently made an election under section 1362 (a) which was effective for its 1984 taxable year. If such election does not terminate under section 1362 for its taxable years 1984, 1985, and 1986, M is not subject to the tax imposed by section 1374 for its taxable year 1987, or for any subsequent year for which such election remains in effect, unless it has, for any such year, an excess of net long-term capital gain over net short-term capital loss attributable to property with a substituted basis. If there is such an excess for any such year, and the requirements of paragraph (a) of this section are met, M will be subject to the tax for such year. If there is no such excess for any year after 1986, M will not be subject to the tax for any such year even though the requirements of paragraph (a) of this section are met.

Example (2). N corporation was organized in 1983, and was an S corporation for its first taxable year. N is not subject to the tax imposed by section 1374 for 1983, or for any subsequent year for which its original election under section 1362 (a) has not terminated under section 1362 (d), unless, for any such year, it has an excess of net long-term capital gain over net short-term capital loss attributable to property with a substituted basis and the requirements of paragraph (a) of this section are met.

(2) *Treatment of certain gains of options and commodities dealers*—(i) *Exclusion of certain capital gains.* For purposes of this section, the net capital gain of any options dealer or commodities dealer shall be determined by not taking into account any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from any section 1256 contract or property related to such a contract.

(ii). *Definitions.* For purposes of this paragraph (c)(2)—

(A) *Options dealer.* The term "options dealer" has the meaning given to such term by section 1256(g)(8).

(B) *Commodities dealer.* The term "commodities dealer" means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(C) *Section 1256 contracts.* The term "section 1256 contracts" has the meaning given to such term by section 1256(b).

(iii) *Effective dates*—(A) *In general.* Except as otherwise provided in this paragraph (c)(2)(iii) this paragraph (c)(2) shall apply to positions established after July 18, 1984, in taxable years ending after such date.

(B) *Special rule for options on regulated futures contracts.* In the case of any option with respect to a regulated futures contract (within the meaning of section 1256), this paragraph (c)(2) shall apply to positions established after October 31, 1983, in taxable years ending after such date.

(C) *Elections with respect to property held on or before July 18, 1984.* See §§ 1.1256 (h)-1T and 2T for rules concerning an election to have this paragraph (c)(2) apply to certain property held on or before July 18, 1984.

(d) *Determination of taxable income*—(1) *General rule.* For purposes of this section, taxable income of the corporation shall be determined under section 63(a) as if the corporation were a C corporation rather than an S corporation, except that the following deductions shall not apply in the computation—

(i) The deduction allowed by section 172 (relating to net operating loss deduction), and

(ii) The deductions allowed by part VIII of subchapter B (other than the deduction allowed by section 248, relating to organization expenditures).

For any taxable year in which a tax under this section is imposed on an S corporation, the S corporation shall attach a Form 1120 completed in accordance with this paragraph (d) to its tax return filed for such taxable year.

(2) *Special rule for net capital gains taxed as excess net passive income under section 1375.* See section 1275(c)(2) and § 1.1375A–1(c)(2) for a special rule that reduces the taxable income of the corporation for purposes of section 1374(b)(2) and § 1.1374A–1(b)(2) in cases where a net capital gain is taxed as excess net passive income under section 1375.

(e) *Reduction in pass-thru for tax imposed on capital gain.* See section 1366(f)(2) for a special rule reducing the S corporation's long-term capital gains and the corporation's gain from sales or exchanges of property described in section 1231 for purposes of section 1366 (a) by an amount of tax imposed under section 1374 and this section.

(f) *Examples.* The following examples illustrate the principles of this section and assume that a tax will not be imposed under section 1375:

Example (1). Corporation M is an S corporation for its taxable year beginning January 1, 1983. For 1983, M has an excess of net long-term capital gain over net short-term capital loss in the amount of $30,000. However, its taxable income for the year is only $30,000 as a result of other deductions in excess of other income. Thus, although the excess of the net long-term capital gain over the net short-term capital loss exceeds $25,000 and also exceeds 50 percent of taxable income, M is not subject to the tax imposed by section 1374 for 1983 because its taxable income does not exceed $25,000.

Example (2). Corporation N is an S Corporation for its 1983 taxable year. For 1983, N has an excess of net long-term capital gain over net short-term capital loss in the amount of $30,000, and taxable income of $65,000. Thus, although N's net capital gain ($30,000) exceeds $25,000, it does not exceed 50 percent of the corporation's taxable income for the year (50 percent of $65,000, or $32,500), and therefore N is not subject to the tax imposed by section 1374 for such year.

Example (3). Assume that Corporation O, an S corporation, is subject to the tax imposed by section 1374 for its taxable year 1983. For 1983, O has an excess of net long-term capital gain over net short-term capital loss in the amount of $73,000, and taxable income within the meaning of section 1374, which includes capital gains and losses, of $100,000. The amount of tax computed under paragraph (b)(1) of this section is 28 percent of $48,00 ($73,000—$25,000), or $13,440. Since this is lower than the amount computed under paragraph (b) (2) of this section, which is $25,750 ($3,750+$4,500+$7,500+$10,000), $13,440 is the amount of tax imposed by section 1374.

Example (4). Assume that in example (3) the taxable income of O for 1983 is $35,000. This results from an excess of deductions over income with respect to items which were not included in determining the excess of the net long-term capital gain over the net short-term capital loss. In such case, the amount of tax, computed under paragraph (b)(2) of this section, is $5,550. Since this is lower than the amount computed under paragraph (b)(1) of this section, $5,550 is the amount of tax imposed by section 1374.

Example (5). Corporation P, an S corporation, for its taxable year 1983 has an

excess of net long-term capital gain over net short-term capital loss in the amount of $65,000 and has taxable income of $80,000. P's election under section 1362 has been in effect for its three immediately preceding taxable years, but P, nevertheless, is subject to the tax imposed by section 1374 for 1983 since it has an excess of net long-term capital gain over net short-term capital loss (in the amount of $20,000) attributable to property with a substituted basis. The tax computed under paragraph (b)(1) of this section, $11,200 (28 percent of $40,000 ($65,000–$25,000)), is less than the tax computed under paragraph (b)(2) of this section, $17,750. However, under the limitation provided in paragraph (c) of this section which is applicable in this factual situation, the tax imposed by section 1374 for 1983 may not exceed $5,600 (28 percent of $20,000, the excess of net long-term capital gain over net short-term capital loss attributable to property with a substituted basis).

§ 1.1375A–1 Tax imposed when passive investment income of corporation having subchapter C earnings and profits exceed 25 percent of gross receipts.

(a) *General rule.* For taxable years beginning after 1981, section 1375(a) imposes a tax on the income of certain S corporations that have passive investment income. In the case of a taxable year beginning during 1982, an electing small business corporation may elect to have the rules under this section not apply. See the regulations under section 1362 for rules on the election. For purposes of this section, the term "S corporation" shall include an electing small business corporation under prior law. This tax shall apply to an S corporation for a taxable year if the S corporation has—

(1) Subchapter C earnings and profits at the close of such taxable year, and

(2) Gross receipts more than 25 percent of which are passive investment income.

If the S corporation has no subchapter C earnings and profits at the close of the taxable year (because, for example, such earnings and profits were distributed in accordance with section 1368), the tax shall not be imposed even though the S corporation has passive investment income for the taxable year. If the tax is imposed, the tax shall be computed by multiplying the excess net passive income (as defined in paragraph (b) of this section) by the highest rate of tax specified in section 11(b).

(b) *Definitions*—(1) *Excess net passive income*— (i) *In general.* The term "excess net passive income" is defined in section 1375(b)(1), and can be expressed by the following formula:

$$ENPI = NPI \times \frac{PII - (.25 \times GR)}{PII}$$

Where:
ENPI = excess net passive income
NPI = net passive income
PII = passive investment income
GR = total gross receipts

(ii) *Limitation.* The amount of the excess net passive income for any taxable year shall not exceed the corporation's taxable income for the taxable year (determined in accordance with section 1374(d) and § 1.1374A–1(d)).

(2) *Net passive income.* The term "net passive income" means—

(i) Passive investment income, reduced by

(ii) The deductions allowable under chapter 1 of the Internal Revenue Code of 1954 which are directly connected with the production of such income (other than deductions allowable under section 172 and part VIII of subchapter B).

For purposes of the preceding sentence, to be directly connected with the production of income, an item of deduction must have proximate and primary relationship to the income. Expenses, depreciation, and similar items attributable solely to such income qualify for deduction.

(3) *Other definitions.* The terms "subchapter C earnings and profits," "passive investment income," and "gross receipts" shall have the same meaning given these terms in section 1362(d)(3) and the regulations thereunder.

(c) *Special rules*—(1) *Disallowance of credits.* No credit is allowed under part IV of subchapter A of chapter 1 of the Code (other than section 34) against the tax imposed by section 1375(a) and this section.

(2) *Coordination with section 1374.* If any gain—

(i) Is taken into account in determining passive income for purposes of this section, and

(ii) Is taken into account under section 1374, the amount of such gain taken into account under section 1374(b) and § 1.1374A–1(b) (1) and (2) in determining the amount of tax shall be reduced by the portion of the excess net passive income for the taxable year which is attributable (on a pro rata basis) to such gain. For purposes of the preceding sentence, the portion of excess net passive income for the taxable year which is attributable to such capital gain is equal to the amount determined by multiplying the excess net passive income by the following fraction:

$$\frac{NCG}{NPI}$$

Where:
NCG = net capital gain
NPI = net passive income.

(d) *Waiver of tax in certain cases*—(1) *In general.* If an S corporation establishes to the satisfaction of the Commissioner that—

(i) It determined in good faith that it had no subchapter C earnings and profits at the close of the taxable year, and

(ii) During a reasonable period of time after it was determined that it did have subchapter C earnings and profits at the close of such taxable year such earnings and profits were distributed,

the Commissioner may waive the tax imposed by section 1375 for such taxable year. The S corporation has the burden of establishing that under the relevant facts and circumstances the Commissioner should waive the tax. For example, if an S corporation establishes that in good faith and using due diligence it determined that it had no subchapter C earnings and profits at the close of a taxable year, but it was later determined on audit that it did have subchapter C earnings and profits at the close of such taxable year, and if the corporation establishes that it distributed such earnings and profits within a reasonable time after the audit, it may be appropriate for the Commissioner to waive the tax on passive income for such taxable year.

(2) *Corporation's request for a waiver.* A request for waiver of the tax imposed by section 1375 shall be made in the form of a ruling request and shall contain all relevant facts to establish that the requirements of paragraph (d)(1) of this section are met. Such request shall contain a description of how and on what date the S corporation in good faith and using due diligence determined that it had no subchapter C earnings and profits at the close of the taxable year, a description of how and on what date it ws determined that the S corporation had subchapter C earnings and profits at the close of the year and a description (including dates) of any steps taken to distribute such earnings and profits. If the earnings and profits have not yet been distributed, the request shall contain a timetable for distribution and an explanation of why such timetable is reasonable. On the date the waiver is to become effective, all subchapter C earnings and profits must have been

distributed. Send requests for a waiver to: Internal Revenue Service, Associate Chief Counsel (Technical), Attention: CC:IND:S, 1111 Constitution Avenue, Washington, D.C. 20224.

(e) *Reduction in pass-thru for tax imposed on excess net passive income.* See section 1366(f)(3) for a special rule reducing each item of the corporation's passive investment income for purposes of section 1366(a) if a tax is imposed on the corporation under section 1375.

(f) *Example.* The following example illustrates the principles of this section:

Example. Assume Corporation M, an S coporation, has for its taxable year total gross receipts of $200,000, passive investment income of $100,000, $60,000 of which is interest income, and expenses directly connected with the production of such interest income in the amount of $10,000. Assume also that at the end of the taxable year Corporation M has subchapter C earnings and profits. Since more than 25 percent of Corporation M's total gross receipts are passive investment income, and since Corporation M has subchapter C earnings and profits at the end of the taxable year, Corporation M will be subject to the tax imposed by section 1375. The amount of excess net passive investment income is $45,000 ($90,000×(50,000/100,000)). Assume that the other $40,000 of passive investment income is attributable to net capital gain and that there are no expenses directly connected with such gain. Under these facts, $20,000 of the excess net passive income is attributable to the net capital gain ($45,000×($40,000/$90,000)). Accordingly, the amount of gain taken into account under section 1374(b)(1) and the taxable income of Corporation M under section 1374(b)(2) shall be reduced by $20,000.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-15950 Filed 7-2-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM) Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a hearing on material submitted by the Oklahoma Department of Mines in response to requirements placed upon the State by the Director of OSM, and published in the April 12, 1984 Federal Register (49 FR 14674–14689). The material consists of two documents. The first document is a detailed plan addressing the permitting aspects of the Oklahoma program and the second document is the State's plan for implementing and maintaining the inspection and enforcement components of the approved State program.

This notice sets forth times and locations that the material is available for public inspection, the comment period during which interested persons may submit written comments on the documents and information pertinent to the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on August 2, 1985 will not necessarily be considered. A public hearing on the material as well as other aspects of the Oklahoma program will be held on July 29, 1985 at the address listed below under "**ADDRESSES**". Any person interested in making an oral or written presentation at the hearing should contact Mr. Robert Markey at the OSM Tulsa Field Office by 4:00 p.m. on July 18, 1985.

ADDRESSES: The public hearing will be held at the Federal Building, 125 South Main Street, Muskogee, Oklahoma 74401.

Written comments should be mailed or hand-delivered to: Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103.

See "**SUPPLEMENTARY INFORMATION**" for addresses where copies of the material and administrative record on the Oklahoma program are available. Each requestor may receive, free of charge, one copy of each of the two documents submitted by contacting the OSM Tulsa Field Office listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103, Telephone: (918) 581–7923.

SUPPLEMENTARY INFORMATION: Copies of the Oklahoma submission, the Oklahoma program, and the administrative record on the Oklahoma program are available for review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103.

Office of Surface Mining Reclamation and Enforcement, 1100 L Street, NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343–4855.

Oklahoma Department of Mines, Suite 107, 4040 North Lincoln, Oklahoma City, Oklahoma 73105.

Background

Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Oklahoma program can be found in the January 19, 1981, Federal Register (46 FR 4910), in the April 2, 1982 Federal Register (47 FR 14152), in the May 4, 1983 Federal Register (48 FR 14674), and in the March 18, 1985 Federal Register (50 FR 10759).

Additional information pertinent to the action taken by the Director, OSM, under the authority of 30 CFR Part 733 with regard to the status of Oklahoma's permanent regulatory program was published in the April 12, 1984 Federal Register (49 FR 14674).

In the April 12, 1984 Federal Register notice, the Director, OSM published his findings and decision concerning the status of the Oklahoma permanent regulatory program. Based on his evaluation and findings, the Director determined that certain aspects of the approved Oklahoma program were not being administered in full compliance with the Surface Mining Control and Reclamation Act (SMCRA). To ensure that the adverse effects of surface mining was controlled as required by SMCRA and the State program, OSM assumed responsibility for enforcement of the inspection and enforcement provisions of the approved program, effective April 30, 1984. The Director also placed certain requirements upon Oklahoma as a prerequisite to resuming full authority to implement the provisions of the Oklahoma program. Among the remedial action requirements placed upon the State, the Director required the State to submit to OSM a detailed plan to resume full authority for implementing the inspection and enforcement functions of the approved program. The State was also required to submit to OSM a detailed plan addressing all elements of the permitting process as required by the Oklahoma permanent regulatory program. Lastly, the April 12, 1984 Federal Register stated that the Director would consider returning full program authority to Oklahoma only after submission of the two plans discussed above and submission of a written petition to the

Director requesting the return of authority to the State.

On November 2, 1984, the Oklahoma Department of Mines submitted to OSM a document entitled, *Petition to Resume State Inspection and Enforcement Actions.* (See OK–649 for petition). The State submitted this petition to partially fulfill the requirements placed upon it by the Director in Section 30 CFR 936.19 as published in the April 12, 1984 Federal Register. The document, signed by the Deputy Chief Mine Inspector of the Oklahoma Department of Mines and the Governor of Oklahoma, formally petitions the Office of Surface Mining to return full program authority to the State upon conclusion of the required public hearing.

The State also submitted to OSM on May 13, 1985, a document entitled *Oklahoma Permitting Plan.* (See OK–670). The Plan addresses Oklahoma's systems and procedures for processing permit applications, calculating bond amounts, releasing or forfeiting bonds and adding and training qualified staff.

Oklahoma also submitted to OSM on June 7, 1985, its *Inspection and Enforcement Plan.* (See OK–671). The plan is a detailed narrative addressing the procedures for implementing and administering the various components of the States inspection and enforcement requirements.

The requirement to submit the two detailed plans discussed above was part of the remedial action requirements placed upon the State by the Director at 30 CFR 936.16 in his April 12, 1984 decision concerning the status of the Oklahoma program.

OSM is seeking comment on the *Oklahoma Permitting Plan* and the *Oklahoma Inspection and Enforcement Plan* submitted by the State of Oklahoma to partially satisfy the "733" requirements placed upon it.

The full text of both documents submitted by the Oklahoma Department of Mines for OSM's consideration is available for public review at the addresses listed under **ADDRESSES.**

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that the existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 27, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85–15904 Filed 7–2–85; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–2858–5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA proposes to disapprove several revisions to the Illinois State Implementation Plan (SIP) for ozone. These proposed SIP revisions request extended compliance schedules for Arvey Corporation (Arvey), Moore American Graphics (Moore American) and Meyercord Company (Meyercord). In the March 20, 1984, Federal Register (49 FR 10277), USEPA proposed to disapprove these actions because IEPA did not have an approvable 1982 attainment demonstration for ozone. USEPA today is proposing to disapprove these SIP revisions because the State has not demonstrated that these compliance schedules are as expeditious as practicable.

DATE: Comments on these revisions and on the proposed action must be received by August 2, 1985.

ADDRESSES: Copies of the SIP revisions are available at the following addresses for review. (It is recommended that you telephone Uylaine E. McMahan, at (312) 353–0396, before visiting the Region V office): U.S. Environmental Protection Agency, Region V, Air and Radiation Agency, 230 South Dearborn Street (5AR–26), Chicago, Illinois 60604.

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26) USEPA, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 353–0396.

SUPPLEMENTARY INFORMATION: On May 2, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for seven laminators and coaters operated by Arvey in Chicago, Illinois. This proposed revision is in the form of a February 10, 1983, Opinion and Order of the Illinois Pollution Control Board (IPCB) (PCB 82–6). This Opinion and Order grants a variance from the existing SIP requirements until December 31, 1984, and provides a legally enforceable compliance schedule.

On May 27, 1983, IEPA submitted a proposed revision to its ozone SIP for three laminators and four coaters operated by Moore American in Bridgeview, Illinois. This proposed revision is in the form of an April 12, 1983, Opinion and Order of the IPCB (PCB 82–1). This Opinion and Order grants a variance from the existing SIP requirements until December 31, 1983, and provides a legally enforceable compliance schedule.

On April 20, 1983, IEPA submitted a proposed revision to its ozone SIP for pressure sensitive elastomeric films, mylar polyester on silicone release paper, and protective film overcoats with either heat reactive or pressure sensitive adhesives applied by Meyercord at its facility in Chicago, Illinois. This proposed revision is in the form of a March 10, 1983, Opinion and Order of the IPCB (PCB 82–53). This Opinion and Order grants a variance from the existing SIP requirements until January 31, 1986, and provides a legally enforceable compliance schedule.

Under the existing federally approved SIP, each coating line unit for the sources listed above is subject to the emission control requirements contained in Rule IPCB Rule 205(n)(1)(C) of Chapter 2: Air Pollution of the IPCB rules and Regulations. IPCB Rule 205(n)(1)(C) limits volatile organic

compound (VOC) emissions to 2.9 pounds of VOC per gallon. Final compliance was required by December 31, 1982.

These sources are all located in the Chicago urban ozone nonattainment area, which has until December 31, 1987, to attain the ozone national ambient air quality standard. USEPA may approve compliance date extensions for bources in such an area, if the State demonstrates that the extended compliance date is as expeditious as practicable, and will not prevent the area from attaining the ozone standard as expeditiously as practicable, but no later than the end of 1987.

In the March 20, 1984 **Federal Register** (49 FR 10277), USEPA proposed to disapprove these proposed SIP revisions because the Illinois ozone SIP lacked an approvable attainment demonstration for the Chicago nonattainment area. The attainment demonstration contained in the State's 1982 ozone SIP was proposed for disapproval in the February 3, 1983, **Federal Register**. Subsequently, on August 15, 1984, USEPA proposed to approve the State's 1982 SIP attainment demonstration.

In response to USEPA's March 20, 1984, Notice of Proposed Rulemaking, IEPA commented that the reasons advanced by USEPA for disapproval of the proposed compliance schedule changes in the March 20, 1984, Notice of Proposed Rulemaking, no longer existed, because Illinois had submitted an approvable 1982 Ozone SIP attainment demonstration. IEPA commented that USEPA should, therefore, approve the proposed compliance date extension, without reproposal. If, however, there were alternative grounds for disapproval not stated in the March 20, 1984, Notice, the State commented that USEPA should repropose in a rulemaking which identified and addressed these grounds.

Today, USEPA is publishing this supplemental notice of proposed rulemaking on Arvey, Moore American and Meyercord, which identifies alternative grounds for disapproval which were not discussed in the earlier proposed rulemaking.

Proposed Actions

Two major elements which need to be considered in USEPA's review of proposed compliance data extensions are the expeditiousness of the schedule and the likelihood of success associated with the proposed compliance plan.

USEPA is proposing to disapprove these SIP revisions because the State did not provide adequate documentation that the sources had been proceeding expeditiously to develop complying coatings. USEPA's review of each source is summarized below:

Arvey Corporation

Arvey did not adequately document that they had been proceeding expeditiously to develop complying coatings. Only limited information regarding past compliance efforts was submitted. Based upon the limited information contained in the submittal, it is doubtful that Arvey has been proceeding expeditiously. Furthermore, Arvey's efforts to reformulate complying adhesives and coatings have clearly failed, as evidenced by their decision to utilize add-on control equipment to achieve compliance. Therefore, there is no basis for granting Arvey a compliance date extension based upon its reformulation program.

Arvey's program to achieve compliance by April 1, 1985, through use of incineration was not submitted as a SIP revision. However, Arvey could have readily achieved compliance by December 31, 1982, through the use of add-on controls.

Moore American Graphics

Moore American requested a variance for a period of 1 year, with the possibility of further extensions needed due to the supplier's difficulty in producing a working alternative low-solvent technology. Moore American has asserted that numerous tests were conducted in developing acceptable water-based coatings. However, the documentation provided by the IEPA, indicated two tests were recorded, one on November 5, 1982, and a second in the following month.

To obtain a compliance date extension, the State must demonstrate that the compliance plan (reformulation to low-solvent coatings) is as expeditious as practicable. IN USEPA's judgment, it is not likely that this plan has a significant likelihood of success. Conducting only two tests since the surface coating regulations have been adopted (1979) cannot be considered expeditious progress.

Meyercord Company

Meyercord did not adequately document that they had been proceeding expeditiously to develop complying coatings during 1979, 1980, and 1981. Meyercord's proposed compliance date extension to January 31, 1986, is not expeditious because the company is now using an afterburner to achieve compliance as of December 31, 1984. In USEPA's judgment, they could have readily achieved compliance by December 31, 1982, through use of an afterburner.

In summary, this compliance date extension is not approvable because Meyercord's reformulation program was not documented to be either expeditious or likely to be sufficient to fully achieve complaince successfully, and the company is now using an afterburner to achieve compliance.

Additional information concerning USEPA's analysis of each SIP submittal and the detailed basis for USEPA's proposed disapproval is contained in the technical support documents available at USEPA's Region V office.

USEPA is providing a 30-day comment period on this supplemental notice of proposed rulemaking. Public comments received on or before August 2, 1985 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Under 5 U.S.C. Section 605(b), I certify that this proposed disapproval will not have a significant economic impact on a substantial number of small entities because it applies to three sources: Arvey Corporation, Moore American, and Meyercord Company.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons, intergovernmental relations.

(Secs. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))

Dated: March 26, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-15923 Filed 7-2-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP OF2413, 3F2793/P368; PH-FRL 2859-8]

Thiodicarb; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the establishment of tolerances for residues of the insecticide thiodicarb and its metabolites in or on the raw agricultural commodities cottonseed and soybeans. This proposed regulation to establish the maximum permissible level for residues of this insecticide in or on the

commodities was requested by Union Carbide Agricultural Products Company, Inc.

DATE: Comments must be received on or before August 2, 1985.

ADDRESSES:

Written comments by mail to:
Information Services Section, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 2460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Product Manager (12), Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–2386.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of October 28, 1980 (45 FR 71421), which announced that Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, Research Triangle Park, NC 27709, had submitted a pesticide petition (OF2413) to EPA proposing that 40 CFR Part 180.407 be amended by establishing a tolerance for residues of the insecticide thiodicarb (dimethly N, N'-[thiobis[(methylimino—carbonyloxy]]bis[ethanimidothioate]) in or on the raw agricultural commodities cottonseed at 0.4 part per million (ppm), soybean seed at 0.1 ppm, and soybean straw at 0.2 ppm.

No comments were received in response to the notice of filing.

Subsequently, this petiton was amended to include the metabolite methomyl (*S*-methyl *N*-[(methylcarbamoyl)oxy]thioacetimidate) in the tolerance expression.

This petition was later amended by Union Carbide to withdraw its request for a tolerance on soybean seed and soybean straw. This resulted in a separate petition for soybeans.

In the Federal Register of February 2, 1983 (48 FR 4717), EPA issued a notice that announced that Union Carbide Agricultural Products Co., Inc., had submitted a pesticide petition 3F2793) to EPA proposing that 40 CFR Part 180.407 be amended by establishing a tolerance for residues of the insecticide thiodicarb and its metabolite methomyl in or on the raw agricultural commodity soybeans at 0.2 ppm.

No comments were received in response to the notice of filing.

The scientific data submitted in the peititions and other relevant material have been evaluated. A discussion of the toxicological data considered in support of these tolerances can be found in a companion proposed rule (FAP OH5275, 3H5378/P369) published elsewhere in this issue of the Federal Register.

Based on a 2-year rat feeding study showing a no adverse effect level (NOEL) at a dose of 3.0 mg/kg/day and using a safety factor of 100, the acceptable daily intake (ADI) of thiodicarb for humans is 0.03 mg/kg of body weight/day. The theoretical maximum residue contribution in the human diet from the proposed tolerances and a previously established tolerance is 0.0452 mg/day, which represents 2.5 percent of the ADI of the chemical.

The metabolism of thiodicarb in plants and animals is adequately understood for purposes of the proposed tolerances. A study in livestock shows that acetamide, a potential carcinogen, is produced as a part of the metabolism process for thiodicarb. Conversion of thiodicarb to acetamide in plants has not been studied, although detectable levels of acetamide are not expected in cottonseed and soybeans as a result of the proposed use.

Detectable residues of thiodicarb and its methomyl metabolite are not expected in fat, meat or meat by-products of cattle, goats, hogs, horses, poultry, or sheep, or in milk or eggs as a result of the proposed uses. However, residues of acetamide could be present at levels up to 0.002 ppm.

Four studies have been conducted with acetamide that have demonstrated an oncogenic effect in rats. Descriptions of these studies can be found in the companion proposed rule published elsewhere in this Federal Register. The Agency has conducted a quantitative risk assessment using the multi-stage procedures. The results of the most recent study (Fleischman *et al.*, 1980) with respect to male rats provide the basis for the most conservation estimation of risk. Based on this study the Agency has calculated an upper bound estimate of total dietary risk of approximately 10^{-6} [C] from acetamide as a result of the use of thiodicarb on the commodities cotton and soybeans. The quantitative designation "10^{-6}" indicates that the risk of developing cancer is one in a million greater than the risk if one was not exposed through the diet to thiodicarb. However, this number represents the upper bound estimate of excess oncogenic risk at the 95 percent confidence level and the actual risk may be lower. The qualitative designation "C" refers to EPA's weight-of-the evidence classification which in this case shows acetamide to be a "possible human carcinogen". The assessment is also based on the following assumptions:

1. The metabolic pathway of thiodicarb in humans is presumed to be the same as that found in test animals, and the highest value of risk obtainable from the animal data is applicable to humans.

2. All consumed residues of thiodicarb are converted to acetamide (this is unlikely as suggested by the available data mentioned later in this document).

3. The total production of cotton and soybeans in the United States will be treated with thiodicarb, and all cotton and soybean components will contain thiodicarb residues at the full tolerance level.

As stated above, however, EPA believes that the actual risk is less that 10^{-6}. The available metabolism data suggest that significant portions of thiodicarb consumed by animals are not converted to acetamide, but these data were not sufficient to quantify adequately the portions that are not converted to acetamide. Therefore, the full tolerance levels of thiodicarb were used as the exposure levels in determining the total dietary exposure to acetamide. The toxicology data base for thiodicarb includes two valid oncogenicity studies that were negative for oncogenic effects. Further, it is the Agency's opinion that the four oncogenicity studies on acetamide are insufficient to fully address the oncogenic potential of acetamide. (Refer to the companion document published in this issue of the Federal Register for a discussion of these studies.)

There are no regulatory actions pending against the registration of thiodicarb. On the basis of the available

studies on acetamide and the chronic oncogenicity studies for thiodicarb, the Agency has concluded that the human risk posed by the use of thiodicarb on cotton and soybeans does not raise prudent concerns of unreasonable adverse effects and that a special review under 40 CFR 162.11 is not warranted.

An analytical method, liquid chromatography, is available to determine residues of thiodicarb and its methomyl metabolite. Based on the above information the Agency has determined that the proposed tolerances for residues of the pesticide in or on the commodities would protect the public health.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP OF2413, 3F2793/P368]. All written comments filed in response to this petition will be available in Rm. 236, CM 2, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations proposing the establishment of new tolerance or raising tolerance levels or establishing exemptions for tolerance requirements do not have a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 28, 1985.

Marcia E. Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. By amending § 180.407 by adding and alphabetically inserting the raw agricultural commodities cottonseed and soybeans, to read as follows:

§ 180.407 Thiodicarb; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Cottonseed	0.4
Soybeans	0.2

[FR Doc 85-16057 Filed 7-2-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 23

National Health Service Corps; Private Practice Entrance and Startup Loans

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes new regulations (Subparts B and C of Part 23, 42 CFR) to implement the provisions of section 338E of the Public Health Service (PHS) Act (42 U.S.C. 254p) regarding special loans for former National Health Service Corps (NHSC) members to enter private practice and the provisions of section 338C of the PHS Act (42 U.S.C. 254n) regarding private practice startup loans. The law requires that the Secretary of Health and Human Services shall, by regulation, set interest rates and repayment terms for private practice option (PPO) special loans. This notice also makes several technical corrections to Subpart A of 42 CFR Part 23.

DATE: Comments must be received by August 2, 1985.

ADDRESS: Comments must be addressed to Director, Office of Policy Coordination, Bureau of Health Care Delivery and Assistance, Room 13-27, 5600 Fishers Lane, Rockville, Maryland 20857. Comments will be available for examination by the public between 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays, at this address.

FOR FURTHER INFORMATION CONTACT: Mr. James Corrigan, Associate Bureau Director for Legislation and Policy, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7A-05, Rockville, Maryland 20857, (301) 443-2380.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, made a number of significant changes in those sections of the PHS Act which are the legislative authorities for the NHSC program. Section 2709(a) of Pub. L. 97-35 transferred sections 755 and 755 from title VII of title III of the PHS Act and redesignated them as sections 338C and 338E respectively. Section 2709(f) of Pub. L. 97-35 amended section 338E of the PHS Act to authorize the Secretary to make loans to scholarship individuals who have completed 2 years of their NHSC obligation and agreed to enter private practice in a health manpower shortage area (HMSA). Section 2709(d)(3) of Pub. L. 97-35 amended the PHS Act by adding section 338C(e)(1) to authorize the Secretary to make arrangements for the use, lease or acquisition of equipment and supplies for individuals who have completed less than 2 years of their NHSC obligation and have agreed to enter private practice in a HMSA. The update to the list of HMSAs was most recently published in the Federal Register at 48 FR 37822 (August 19, 1983).

Loans to Former Corps Members

The PPO special loan under section 338E of the PHS Act is a one-time loan of $12,500 or $25,000 which may be used for acquiring equipment and supplies, renovating facilities, and for hiring nurses and other personnel to provide health services. A loan may be made to a former NHSC member who has (1) completed at least 2 years of obligated service in the NHSC, (2) agreed in writing to engage in the private full-time clinical practice of his or her profession in a HMSA for a period of 1 or 2 years depending on the amount of the loan, (3) agreed in writing to conduct his or her practice in accordance with the provisions of section 338C(b)(1) of the PHS Act, and (4) agreed to additional conditions as required by the Secretary.

Section 338E(c) requires the Secretary to prescribe by regulation the interest rates and repayment terms for these loans. The regulations relating to PPO special loans to former Corps members are proposed in subpart B of Part 23.

Private Practice Startup Loans

Private practice startup loans (PPSL) under section 338C(e) of the PHS Act very slightly from section 338E loans in terms of eligibility, use of loan funds, and the length of the period of the practice obligation. Startup loans are made to persons with scholarship obligations who select the PPO as their first assignment or who have completed less than 2 years of their NHSC scholarship obligation as assigned NHSC personnel. These loan funds may

only be used for the purchase or lease of equipment and supplies needed for the provision of health services. In return for the loan funds, the borrower incurs a practice obligation which, unlike section 338E loans, may not exceed the remaining period of the borrower's NHSC scholarship service obligation. The regulations implementing the PPSL program have been proposed in Subpart C of Part 23.

Specific information on application procedures and forms for either of these programs may be obtained by writing to the Director, National Health Service Corps, 5600 Fisher Lane, Rockville, Maryland 20857.

Interest Rate

A number of established interest rates were examined in an attempt to determine which one would represent an adequate return on the principal under competitive market conditions, be attractive to the potential borrower to encourage selection of the PPO, and be easily identifiable by the public so that potential applicant can make informed choices and so that these regulations will not need to be amended as the rate changes. The Federal Reserve discount rate was considered because it is markedly lower than commercial rates but still represents a fair return for the Government. The Federal Reserve discount rate does not fluctuate significantly over time and is, therefore, easy to forecast. Also, the discount rate is routinely published in newspapers. At this time, the Federal Reserve discount rate is 9 percent.

The Office of Management and Budget (OMB) has recently published a revised circular No. A–70 regarding "Federal Credit Policy" requiring Federal managers to relate credit assistance more closely to financial markets. The Treasury Current Value of Funds (CVF) rate was considered and selected because this rate more closely satisifies the requirements of OMB Circular No. A–70. The CVF is favorable rate which would promote NHSC program objectives by encouraging scholarship recipients to apply for these loans and thereby extending the period of time service is provided to persons in health manpower shortage areas.

The CVF is an annual rate which fluctuates with market conditions and may be adjusted quarterly if market conditions increase or decrease by 2 percent or more. The rate is accessable through annual publication in the **Federal Register** and through the Treasury Department. The current CVF rate is 9 percent.

Loan Repayment Terms

The loan repayment terms in these regulations represent standard terms that are generally used in financial markets and are consistent with departmental guidelines for loan agreements. Interest would be charged at the Treasury Current Value of Funds rate in effect on April 1 immediately preceding the date on which the loan is awarded and would accrue from the date the loan is made. The borrowers would pay only interest for the first 2 years of the loan and, beginning with the third year, would pay interest plus principal for the remaining period of the loan. Although the proposed regulations provide for a maximum loan repayment period of 10 years, loans are currently being made with 5-year repayment schedules. The Secretary may exercise forbearance, upon the request of the individual; however, in no event will borrower be given more than 10 years, from the date the loan was made, to repay the loan.

Default

Under these regulations, a borrower may be placed in default of his or her loan agreement for: (1) The failure to make scheduled payments; (2) the failure to meet the terms and conditions of the loan agreement or promissory note; or (3) the institution of bankruptcy proceedings. In the event of default, the Secretary would be authorized to accelerate payment of the loan. Collection of the debt would be in accordance with the Departmental Claims Collection regulations set forth in 45 CFR Part 30. Debt collection mechanisms authorized under 45 CFR Part 30 include, but are not limited to: (1) Assessing interest and penalty and administrative cost charges on overdue debts; (2) reporting overdue debts to credit reporting agencies; (3) referring overdue debts to a collection agency and/or the Department of Justice; and (4) pursuing administrative or salary offset. Nothing in these PPO Loan regulations should be construed to result in the abrogation of any authority the Secretary would have under 45 CFR Part 30.

Corrections to Subpart A

In addition to the establishment of subparts B and C, there are five areas in the existing regulation at 42 CFR Part 23, Subpart A, that require technical correction:

1. Section 23.4(b)(5), as published, erred by indicating that applicants for assignment of Corps personnel *must* request startup loans. This section would be amended to indicate that such applicants *may* request startup loans.

2. Section 23.6 would be amended to delete the statement that the values assigned to the criteria for determining the entities to which NHSC personnel will be assigned will be published annually in the **Federal Register**. The publication requirements are too cumbersome and meet no perceived need.

3. Section 23.6(b) would be amended to delete paragraph (2), the factor related to the use of physician assistants, nurse practitioners, or expanded function dental auxiliaries, from consideration in determining the entities to which NHSC personnel will be assigned. This factor has been deleted from the PHS Act by section 2703(c) of Pub. L. 97–35.

4. Section 23.7(a)(3) would be amended by deleting "(a)(3)" immediately after "section 334" so that it would be applicable to entities which are small health centers, as well as those which are not. This would be consistent with the provisions of section 334 of the PHS Act, as recently amended by Pub. L. 98–194.

5. Section 23.10(a) be amended by specifying that it applies to the waiver of the reimbursement requirements of section 334(a)(3) of the PHS Act; and new § 23.10 (b) and (c) would be added describing the waiver of the reimbursement requirements of sections 334(f)(1) and 334(b)(5)(A) of the PHS Act, as recently added by Pub. L. 98–194. The current § 23.10(b) would be renumbered as § 23.10(d) and amended to reflect the new authority provided by Pub. L. 98–194 to grant prospective waivers.

Determination Concerning Impact of the Rule

The Secretary certifies, pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not have a significant economic impact on a substantial number of small entities. The reason for the Secretary's certification is that the regulation will affect only a small number health care providers and patients treated by those providers; therefore, the Department has determined that this notice of proposed rulemaking does not require preparation of a regulatory flexibility analysis.

The Secretary has also determined, in accordance with Executive Order 12291 of February 17, 1981, entitled "Federal Regulation," that the proposed rule does not constitute a "major rule" because it will not: have an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for

consumers, any industries, any governmental agencies or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Sections 23.4(b)(5), and 23.34 (a), (f), (h), and (i) of this proposed rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 23

Government employees, Health professions, Loan programs, Manpower, Scholarships and fellowships.

Accordingly, 42 CFR Part 23 is amended as set forth below.

Dated: February 21, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

Approved: May 6, 1985.

Margaret M. Heckler,

Secretary.

PART 23—NATIONAL HEALTH SERVICE CORPS

1. The authority citation for Part 23 is revised to read as follows:

Authority: Secs. 333, 338E(c), and 338C(e)(1), Public Health Service Act. 90 Stat. 2272, as amended, 95 Stat. 905, 97 Stat. 1345 (42 U.S.C. 254f et seq.), 95 Stat. 912 (42 U.S.C. 254p(c)), 95 Stat. 910 (42 U.S.C. 254n(e)(1)).

Subpart A is proposed to be amended as follows:

1. In § 23.4(b), paragraph (b)(5) is revised to read as follows:

§ 23.4 How must an entity apply for assignment?

* * * * *

(b) * * *

(5) If an entity wishes to request an interest free loan (not to exceed $50,000) under section 335(c) of the Act to assist the applicant in establishing the practice of the assigned National Health Service Corps personnel, a detailed justification of the amount requested must be included.

* * * * *

§ 23.6 [Amended]

2. In § 23.6, (a) the word "and" is added before the word "third" and the words "and fourth" are removed in the second sentence of the introductory text of paragraph (b); (b) paragraph (b)(2) is removed, and paragraphs (b)(3) and (b)(4) are redesignated (b)(2) and (b)(3) respectively; and (c) the last sentence which follows paragraph (b)(4) is removed.

§ 23.7 [Amended]

3. In § 23.7(a)(3), "(a)(3)" is removed immediately after "section 334."

§ 23.10 [Amended]

4. In § 23.10:

(a) in the introductory text to paragraph (a), "section 334" is removed and "section 334(a)(3)" is inserted in lieu thereof;

(b) the current paragraph "23.10(b)" is renumbered as "23.10(d)" and "a prospective or retrospective" is inserted before "waiver."

(c) a new paragraph (b) is added:

* * * * *

(b) The Secretary may waive in whole or in part the reimbursement requirements of section 334(f)(1) of the Act if he or she determines that the National Health Service Corps site is a small health center (as defined by section 334(f)(5) of the Act) that needs all or part of the amount otherwise payable to—

(1) expand or improve its provision of health services;

(2) increase the number of individuals served;

(3) renovate or modernize facilities for its provision of health services;

(4) improve the administration of its health service programs; or

(5) establish a financial reserve to assure its ability to continue providing health services;

(d) a new paragraph (c) is added:

* * * * *

(c) Where the Secretary determines that a National Health Service Corps site is eligible for a waiver under paragraph (a)(1) or (2) of this section, the Secretary may waive the application of the reimbursement requirements of section 334(a)(3) of the Act and apply the reimbursement requirements of section 334(f)(1) of the Act. The Secretary may waive in whole or in part the reimbursement requirements of section 334(f)(1) for such a site if he or she determines that the National Health Service Corps site meets the requirements of paragraph (a)(1) of this section. Funds retained by a National Health Service Corps site as a result of such waiver must be used for the purposes set forth in paragraphs (b) (1) through (5) of this section.

It is further proposed to add Subparts B and C to Part 23 to read as follows:

Subpart B—Private Practice Special Loans for Former Corps Members

Sec.

23.21 Definitions.
23.22 What is the purpose of a private practice loan?
23.23 Who is eligible to receive a private practice option loan?
23.24 In what amounts are loans made?
23.25 How will interest rates for loans be determined?
23.26 How is the loan repaid?
23.27 What happens if scheduled payments are late?
23.28 What events constitute default?
23.29 What happens in the case of default?
23.30 May the loan be prepaid?
23.31 May loan payments be postponed or waived?
23.32 What conditions are imposed on the use of the loan funds?
23.33 What security must be given for these loans?
23.34 What other conditions are imposed?
23.35 What criteria are used in making loans?

Subpart C—Private Startup Loans

23.41 What conditions are applicable to loans under this subpart?

Subpart B—Private Practice Special Loans for Former Corps Members

§ 23.21 Definitions.

As used in this subpart, terms have the same meanings as those given to them in Subpart A, § 23.2. In addition:

"National Health Service Corps scholarship recipient" means an individual receiving a scholarship under the Public Health and National Health Service Corps Scholarship Training Program authorized by section 225 of the Act as in effect on September 30, 1977, and repealed on October 1, 1977, or a scholarship under the NHSC Scholarship Program authorized by section 338A of the Act, formerly section 751 of the Act.

"Private full-time clinical practice" means the provision of ambulatory clinical services for a minimum of 40 hours per week for at least 45 weeks a year, including the provision of hospital coverage services appropriate to meet the needs of patients treated and to assure continuity of care. The 40 hours per week must be performed in no less than 4 days per week with no more than 12 hours of work being performed in any 24-hour period.

§ 23.22 What is the purpose of a private practice loan?

The purpose of the private practice loan is to assist NHSC scholarship recipients in establishing private full-time clinical practices in designated health manpower shortage areas.

§ 23.23 Who is eligible to receive a private practice option loan?

(a) Eligibility for loans is limited to NHSC scholarship recipients who have completed at least 2 years of their service obligations at a NHSC site. NHSC scholarship recipients remain eligible for loans under this subpart for 1 year after they have completed their service obligations at a NHSC site.

(b) Scholarship recipients who are in arrears 31 days or more on a Health Professions Student Loan (42 U.S.C. 294m *et seq.*), Health Education Assistance Loan (42 U.S.C. 294 *et seq.*), Nursing Student Loan (42 U.S.C. 297a *et seq.*), or any other Federally guaranteed or direct student loan are ineligible for this loan program.

(c) NHSC scholarship recipients who have received loans under either this Subpart or Subpart C of this Part are ineligible for loans under this Subpart.

§ 23.24 In what amounts are loans made?

The Secretary may make loans either in the amount of $12,500, if the recipient agrees to practice in accordance with the loan agreement for a period of at least 1 year but less than 2 years, or $25,000, if the recipient agrees to practice in accordance with the loan agreement for a period of at least 2 years.

§ 23.25 How will interest rates for loans be determined?

Interest will be charged at the Treasury Current Value of Funds (CVF) rate in effect on April 1 immediately preceding the date on which the loan is approved and will accure from the date the loan funds are disbursed to the borrower.

§ 23.26 How is the loan repaid?

Payments shall be made at monthly intervals, beginning 1 month from the date of the loan disbursement, in accordance with the repayment schedule established by the Secretary and set forth in the loan agreement. Only interest payments are required during the first 2 years. The repayment schedule may be extended in accordance with § 23.31(a).

§ 23.27 What happens if scheduled payments are late?

(a) Failure to make full payment of principal and/or interest when due will subject the borrower to the assessment of administrative costs and penalty charges, in addition to the regular interest charge, in accordance with 45 CFR Part 30.

(b) Failure to make full payment of principal and/or interest when due may result in the Secretary placing the borrower in default of the loan. See § 23.28(a).

§ 23.28 What events constitute default?

The following events will constitute defaults of the loan agreement:

(a) Failure to make full payment of principal and/or interest when due, and continuance of that failure for a period of sixty (60) days, or a lesser period of time if the Secretary determines that more immediate action is necessary in order to protect the interests of the Government.

(b) Failure to perform or observe any of the terms and conditions of the loan agreement and continuance of that failure for a period of sixty (60) days.

(c) The institution of bankruptcy proceedings, either voluntary or involuntary, under any State or Federal statute, which may adversely affect the borrower's ability to comply with the terms and conditions of the agreement or the promissory note.

§ 23.29 What happens in the case of a default?

(a) In the event of default, the Secretary may declare the entire amount owed (including principal, accrued interest and any applicable charges) immediately due and payable. Collection of the amount owed will be made in accordance with 45 CFR Part 30.

(b) The borrower is not entitled to written notice of any default and the failure to deliver written notice of default in no way affects the Secretary's right to declare the loan in default and take any appropriate action under the loan agreement or the promissory note.

(c) The failure of the Secretary to exercise any remedy available under law or regulation shall in no event be construed as a waiver of his or her right to exercise that remedy if any subsequent or continued default or breach occurs.

§ 23.30 May the loan be prepaid?

The borrower shall have the option to prepay the balance of any part of the loan, together with accrued interest, at any time without prepayment penalty.

§ 23.31 May loan payments be postponed or waived?

(a) Whenever health, economic, or other personal problems affect the borrower's ability to make scheduled payments on the loan, the Secretary may allow the borrower an extension of time or allow the borrower to make smaller payments than were previously scheduled; however, interest will continue to accrue at the rate specified in the promissory note until the loan is repaid in full. The loan must be fully repaid within 10 years after it was made.

(b) No waiver, full or partial, of repayment of the loan will be granted; except that the obligation of a borrower to repay a loan shall be cancelled upon the death or total and permanent disability of the borrower, as determined by the Secretary.

(c) In order to make a determination under paragraph (a) or (b) of this section, the Secretary may require supporting medical, financial, or other documentation.

§ 23.32 What conditions are imposed on the use of the loan funds?

(a) The borrower must use the total amount of the loan to purchase or lease, or both, equipment and supplies, to hire authorized personnel to assist in providing health services and/or to renovate facilities for use in providing health services in his or her private practice. Equipment and supplies purchased and/or leased, personnel hired and facilities renovated shall be limited to the items requested in the loan application and approved by the Secretary.

(b) The borrower must expend the loan funds within 6 months from the date of the loan or within such other time as the Secretary may approve. Documentation of the expenditure of funds must be furnished to the Secretary upon request.

§ 23.33 What security must be given for these loans?

The Secretary may require the borrower to pledge to the Secretary a security interest in specified collateral.

§ 23.34 What other conditions are imposed?

(a) The borrower must sign a loan agreement describing the loan and practice conditions, and a promissory note agreeing to repay the loan plus interest.

(b) The borrower must agree to enter into private full-time clinical practice in a HMSA for the time period specified in the loan agreement.

(c) The borrower must accept assignment, for the time period specified in the loan agreement, under section 1842(b)(3)(B)(ii) of the Social Security Act as full payment for all services for which payment may be made under part B of title XVIII of that Act.

(d) The borrower must enter into an appropriate agreement, for the time period specified in the loan agreement, with the State agency which administers the State plan for medical assistance under title XIX of the Social Security Act to provide services to individuals entitled to medical assistance under the plan.

(e) During the time period specified in the loan agreement, the borrower must provide health services to individuals at the usual and customary rate prevailing in the HMSA in which services are provided; however, services must be provided at no charge or at a nominal charge to those persons unable to pay for these services.

(f) The borrower must keep and preserve all documents, including bills, receipts, checks, and correspondence which affect the operation of the private practice and the expenditure of loan funds for the period of the practice obligation specified in the loan agreement plus 3 years. Accounts will be maintained under one of the accounting principles identified by the Secretary in the loan agreement.

(g) The borrower must provide the Secretary and the Controller General of the United States, or their representatives, access during normal working hours to accounts, documents, and records for the purposes of audit or evaluation; and must permit the Secretary or his or her representative to inspect the private practice at reasonable times during the period of the practice obligation specified in the loan agreement plus 3 years. All information as to personal facts and circumstances about recipients of services shall be held confidential, and shall not be divulged without the individual's consent except as may be required by law or as may be necessary to provide medical service to the individual or to provide for medical or fiscal audits by the Secretary or his or her designee with appropriate safeguards for confidentiality of records.

(h) For the entire period of loan repayment, the borrower must acquire, maintain, and when requested, must provide the Secretary with copies of policies of insurance on equipment and supplies in amounts adequate to reasonably protest the borrower from risk, including public liability, fire, theft, and worker's compensation.

(i) If the Secretary retains a security interest pursuant to § 23.33, the borrower must keep and preserve all documents which affect that security interest for the period of the loan repayment and allow the Secretary or his or her designee access, during normal working hours, to those documents.

(j) The borrower must maintain the loan proceeds in a separate account from his or her other transactions and must agree to draw upon this account and expend the loan proceeds in accordance with § 23.32.

(k) The Secretary may impose other conditions which he or she deems appropriate under law or regulation to protect the Government's interests.

§ 23.35 What criteria are used in making loans?

Approval of loan applications will be based on the criteria set forth below:

(a) The need in the HMSA for the applicant's health profession as determined under section 332 of the Act;

(b) The applicant's need for the loan funds; and

(c) The comments from State or local health professional societies on the appropriateness of the applicant's intended private practice; and

(d) The applicant's credit worthiness and projected financial ability to repay the loan.

Subpart C—Private Startup Loans

§ 23.41 What conditions are applicable to loans under this subpart?

The regulations set out in Subpart B of this part are fully applicable to loans awarded under section 338C(e)(1) of the Public Health Service Act, except as noted below:

(a) *Eligibility.* (1) In lieu of § 23.23(a), the following applies to loans made under this subpart:

(i) Eligibility for loans is limited to NHSC scholarship recipients who plan to enter private practice and have not begun fulfilling their scholarship service obligation or are currently fulfilling their scholarship service obligation under section 338B of the Act and have completed less than 2 years of this obligation.

(2) In lieu of § 23.23(c), the following applies to loans made under this subpart:

(i) NHSC scholarship recipients who have received loans under either this subpart or subpart B of this Part are ineligible for loans under this subpart.

(b) *Loan amounts.* (1) In lieu of § 23.24, the following applies to loans made under this subpart:

(i) The Secretary may make loans in the amount of $12,500 if the recipient agrees to practice in accordance with the loan agreement for a period of at least 1 year but less than 2 years or the remaining period of the borrower's NHSC scholarship servcie obligation, whichever is shorter.

(ii) The Secretary may make loans in the amount of $25,000 if the recipient agree to practice in accordance with the loan agreement for a period of at least 2 years or the remaining period of the borrower's NHSC scholarship service obligation, whichever is shorter.

(c) *Use of funds.* (1) In lieu of § 23.32(a), the following applies to loans made under this subpart:

(i) The borrower must use the total amount of the loan only to purchase or lease, or both, the equipment and supplies needed for providing health services in his or her private practice. Equipment and supplies purchased and/or leased shall be limited to the items requested in the loan application and approved by the Secretary.

[FR Doc. 15537 Filed 7-2-85; 8:45 am]

BILLING CODE 4160-17-M

Health Care Financing Administration

42 CFR Parts 405 and 412

[BERC-315-CN]

Medicare Program; Changes to the Inpatient Prospective Payment System and Fiscal Year 1986 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects technical errors that appeared in the proposed rule published June 10, 1985, which set forth changes to the Medicare inpatient hospital prospective payment system and the prospective payment rates of FY 1986.

FOR FURTHER INFORMATION CONTACT: Philip Cotterill, (301) 594-8994.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-13972 beginning on page 24366 in the issue of Monday, June 10, 1985, make the following corrections in the table presented in the top half of page 24438:

1. In the column titled "Proposed Wage Index", the percent change for the West North Central Census Region, "−0.23." is corrected to read "0.23."

2. In the column titled "Proposed DRG Weights", the percent change for Rural Hospitals, 0-99 Beds, "−0.11" is corrected to read "−1.13."

Section 1102, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ww)

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance)

Dated: July 1, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-16079 Filed 7-2-85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 50581-5081]

Foreign Fishing and Atlantic Swordfish Fishery

Correction

In FR Doc. 85-13122 beginning on page 23159 in the issue of Friday, May 31, 1985, make the following correction.

§ 630.25 [Corrected]

On page 23167, third column, in § 630.25(c), fifth line, insert the following after "described in":

"§ 630.21 during the VSC is not allowed when the quota established under".

BILLING CODE 1505-01-M

50 CFR Part 662

[Docket No. 50603-5102]

Northern Anchovy Fishery; Preliminary Determination

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary determination.

SUMMARY: This notice announces the preliminary determination of estimated spawning biomass and harvest quotas for the northern anchovy *(Engraulis mordax)* fishery in the fishery conservation zone (FCZ) for the 1985–1986 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and implementing regulations. These regulations require the announcement of the estimated spawning biomass and preliminary determination of harvest quotas to be made on or about July 1 each year. A final determination will be announced on or about August 1, 1985. Public comments on the estimated spawning biomass and preliminary determination are invited.

DATES: Comments must be received on or before July 20, 1985.

ADDRESS: Comments should be addressed to Mr. E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. Comments also may be made at the next meeting of the Pacific Fishery Management Council on July 10, 1985, at the Holiday Inn-Crowne Plaza 5985 West Century Boulevard, Los Angeles, California.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Craig (Fishery Biologist, NMFS), 213-548-2518.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the Southwest Fisheries Center, NMFS, the Director of the Southwest Region, NMFS (Regional Director) has made a preliminary determination that the spawning biomass of the central subpopulation of northern anchovy is estimated to be 521,000 metric tons (mt). This preliminary determination is based on Administrative Report Number LJ-84-18, Southwest Fisheries Center, NMFS. The report, currently under review, documents the method used to estimate the 1985 central subpopulation of northern anchovy.

The biomass estimate is derived from a method of estimating stock abundance based on egg production which has been found to be more accurate and cost-effective than the original larvacensus method used since the FMP was implemented in 1978 through 1983. Amendment 5 to the FMP, effective April 8, 1984 (49 FR 9572, March 14, 1984), changed certain management measures for determination of commercial harvest quotas and adopted the improved stock estimates. It also deleted the reduction quota reserve established by Amendment 4, because the uncertainty inherent in the larva-census method is substantially reduced by using the egg production method.

The Regional Director has made the following preliminary determinations for the 1985–1986 fishing season, applying the formulas in the FMP and in § 662.20 to calculate the harvest quotas and expected processing levels:

1. The total U.S. harvest quota or optimum yield (OY) of northern anchovy is 144,900 mt plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes is 140,000 mt.

a. Of the total reduction harvest qouta, 9,072 mt is reserved for the reduction fishery in subarea A (north of Pt. Buchon). The Maximum reduction fishery in subarea A is the total reduction quota minus the amount taken in subarea B.

b. The reduction quota for subarea B (south of Pt. Buchon) is 130,928 mt. The reduction fishery in subarea B may be limited to less than this amount if more than 9,072 mt is taken in subarea A.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as dead bait and direct human consumption) is 4,900 mt. However, non-reduction fishing is not limited until the total catch in both the reduction and non-reduction fisheries reaches the total harvest quota of 144,900 mt.

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing (DAP) capacity for the reduction and non-reduction industry is 49,000 mt.

6. The amount allocated to joint venture processing is zero because there is no history of, nor are there applications for, joint ventures.

7. The domestic annual harvest (DAH) capacity for the reduction fishery is 49,000 mt.

8. The FMP states that the total allowable level of foreign fishing (TALFF) in the FCZ will be based upon the U.S. portion of the OY minus the DAH and minus that amount of expected harvest in the Mexican fishery zone which is in excess of that allocated by the FMP. Since DAH plus this excess harvest totals more than the U.S. OY, the TALFF is zero.

A summary of the information on which this preliminary determination is based has been provided to the Pacific Fishery Management Council (Council). Consultations with the Council will continue through July. In addition, the Regional Director will consider, until July 31, any evidence received from domestic land-based processors that the preliminary DAP should be modified. A final determination of the harvest quotas will be announced on or about August 1, 1985.

List of Subjects in 50 CFR Part 662

Fish, Fisheries, Fishing.

(16 U.S.C. 1801 *et seq.*)

Dated: June 28, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-15963 Filed 7-2-85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 128
Wednesday, July 3, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 28, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was puiblished. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of reponses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Research Service

Fruit Germplasm Resources Inventory
ARS 185
Once every 3 years
State of local governments; Farms; 500 responses 3,500 hours; not applicable under 3504(h)
Dr. Miklos Faust (307) 344-3567

- Animal and Plant Health Inspection Service

Federal Plant Pest and Noxious Weed Regulations
PPQ Forms 525 and 526
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; 5,815 responses: 765 hours; not applicable under 3504(h)
L.M. Sedgwick, Jr. (301) 436-8584

- Rural Electrification Administration

Accounting System Requirements for REA Telephone Borrowers
REA Bulletin 461-1
Recordkeeping
Non-profit institutions; Small businesses or organizations; 929 recordkeepers; 241,940 hours; not applicable under 3504(h)
Roland Heard (202) 382-8227

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 85-15835 Filed 7-2-85; 8:45 am]
BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 22-85]

Foreign-Trade Zone 70; Detroit, Mi; Application for Subzone at Mazda Auto Plant in Flat Rock

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70, requesting special-purpose subzone status for the automobile manufacturing plant of Mazda Motor Manufacturing (USA) Corporation (MMUC) in Flat Rock, Michigan, adjacent to the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 10, 1985.

The proposed subzone would be located at Gibralter Rd. and Interstate 75 in Flat Rock, Wayne County, Michigan, where a 350 acre facility is under construction. It will employ 3500 persons to produce compact automobiles. At the outset, about half the value of the auto will involve foreign parts and material such as engines, transmissions, steering gears, brake assemblies, steel and some subframe components. The company plans to substantially increase domestic sourcing over the next few years. Some exports are expected.

Zone procedures will allow Mazda to avoid duty payments on the foreign parts used in its exports. On its domestic sales the company will be able to take advantage of the same duty rate available to importers of finished autos. The duty rates on most of the components ranges from 2.0 to 8.0 percent whereas the duty rate on finished autos is 2.6 percent. Subzone status will be an important factor in full utilization of this plant.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli, (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; William Morandini, District Director, U.S. Customs Service, North Central Region, 477 Michigan Ave., Detroit, MI 48226; and Colonel Raymond T. Beurket, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, MI 48231. Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 9, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 445 Federal Bldg, 231 W. Lafayette, Detroit, MI 48226
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529,

14th and Pennsylvania NW., Washington, D.C. 20230

Dated: June 27, 1985

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-15891 Filed 7-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 20-85]

Foreign-Trade Zone 23, Erie County, NY; Application for Subzone, Greater Buffalo Press Ink Making Plant in Chautauqua County

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Erie, New York, grantee of Foreign-Trade Zone 23, requesting special-purpose subzone status for the ink manufacturing facilities of Greater Buffalo Press, Ltd. (GBP), in Chautaugua County, New York, adjacent to the Buffalo Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 10, 1985. A bill is pending in the N.Y. Legislature concerning the applicant's authority to make this application (N.Y. State Senate Bill 5927).

The proposed subzone would involve a site for GBP's ink making plant on a site on Stegelska Ave. in Dunkirk, and for a new facility under construction on a 51-acre parcel on Middle Road to the north of Dunkirk Airport in Sheridan. The plant produces color inks for GBP's high-speed comic and commercial newspaper supplement printing operations in the U.S. and Canada. With the new facility, the company would expand its operations to supply foreign and domestic printers with its ink products. The dry color pigments used in GBP's ink making process are sourced abroad.

Zone procedures would exempt GBP from duty payments on the foreign materials used in inks which are exported. On inks used domestically, the company would be able to take advantage or the same duty rate available to importers of ink. The rate on pigments is 22.8 percent, whereas the one on printing ink is 1.9 percent. The cost savings from zone procedures would help improve the international competitiveness of GBP's domestic facilities.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer Street, Boston, MA 02110; and Colonel Robert R. Hardiman, District Engineer, U.S. Army Engineer District Buffalo, 1776 Niagara Street, Buffalo, New York 14207.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 6, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 1312 Federal Building, 111 West Huron Street, Buffalo, New York 14202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, D.C. 20230.

Dated: June 27, 1985.

John J. Da Ponte Jr.,

Executive Secretary.

[FR Doc. 85-15888 Filed 7-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 18-85]

Foreign-Trade Zone 57; Mecklenburg County, NC; Application for Subzone at IBM Printer and Electronic Equipment Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the North Carolina Department of Commerce, grantee of Foreign-Trade Zone 57, requesting special-purpose subzone status for the printer and electronic equipment manufacturing plant of International Busines Machines Corporation (IBM) in Mecklenburg County, North Carolina, adjacent to the Charlotte, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 5, 1985.

The plant is located at Interstate 85 and W. T. Harris Blvd. in Mecklenburg County. The 1168-acre facility is used to produce electronic banking equipment, printers, and electronic assemblies, employing 5000 persons. Foreign-sourced parts comprise up to 5.0 percent of finished product value and include items such as motors, power supplies, mechanical parts and electronic components. Some 16 percent of the finished products are exported.

Zone procedures will allow IBM to avoid duty payment on the foreign parts used in its exports. On domestic sales, the company would be able to take advantage of the same duty rate available to importers of these finished products. The duty rates on the imported components used by IBM range from 4.0 to 11.0 percent, whereas the rates for the finished equipment range from 4.0 to 4.3 percent. Subzone status will help make products made at this plant more competitive with those produced abroad.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Howard C. Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 S.E. 5th St., Miami, FL 33131; and Colonel Wayne A. Hanson, District Engineer, U.S. Army Engineer District Wilmington, P.O. Box 1890, Wilmington, NC 28402.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 6, 1985. A copy of the application is available for public inspection at each of the following locations.

U.S. Customs Service, Port Director's Office, 3224 Piper Lane. Charlotte, NC 28219

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, D.C. 20230

Dated: June 27, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-15889 Filed 7-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 21-85]

Foreign-Trade Zone 41, Milwaukee, WI; Application for Expansion of Subzone 41E for Bay Shipbuilding in Manitowoc

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone of Wisconsin, Ltd. (FTZW), grantee of Foreign-Trade Zone 41, requesting an expansion of Subzone 41E to include a

site in Manitowoc, Wisconsin, within the Manitowoc Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 20, 1985.

On May 6, 1985, the Board approved Subzone 41E for the shipbuilding facility of Bay Shipbuilding Corporation located in Sturgeon Bay, Wisconsin (Board Order 301, 50 FR 20251). Similar status is now being requested for 5 equipment storage and handling warehouses within a complex located in Manitowoc Harbor, Manitowoc, Wisconsin, which are used for some of the shipyard's storage and handling requirements. The complex is owned by the Manitowoc Company, Bay Shipbuilding's parent.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr., Chairman, Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Clinton P. Littlefield, District Director, U.S. Customs Service, North Central Region, 628 E. Michigan St., Milwaukee, WI 53202; and Colonel Raymond T. Beurket, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, MI 48231.

Comments concerning the proposed subzone expansion are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 2, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 517 East Wisconsin Ave., Milwaukee, WI 53202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, D.C. 20230

Dated: June 27, 1985.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 15890 Filed 7–2–85; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

Foreign Buyer Program; Support for Domestic Trade Shows

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Implementation of the Foreign Buyer Program.

SUMMARY: This notice sets forth objectives, circumstances and application review criteria associated with the Department's program to support domestic U.S. trade shows.

DATE: These administrative procedures were effective May 10, 1985.

ADDRESS: Export Promotion Services/ Foreign Buyer Program, U.S. and Foreign Commercial Service (US&FCS), International Trade Administration, U.S. Department of Commerce, Room 2806, 14th and Constitution Avenue, NW., Washington, D.C. 20230 (202/377–0872).

FOR FURTHER INFORMATION CONTACT: Director, Marketing Development Division, Export Promotion Services, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, D.C. 20230 (202/377–0872).

SUPPLEMENTARY INFORMATION:

Introduction

The International Trade Administration of the Department of Commerce is pleased to announce a change in the Trade Fair Certification Program and the establishment of the new Foreign Buyer Program.

The new Foreign Buyer Program has been established to select and promote leading trade shows in the United States in high-export potential industries. This program supplants the Trade Fair Certification Program for domestic (U.S.) shows.

The Foreign Buyer Program was created in order to give hands on assistance to U.S. companies interested in exporting, through increased counseling, market analysis and overseas promotion to potential buyers, agents and distributors. Shows selected for inclusion in the Foreign Buyer Program will provide a venue for U.S. companies interested in exporting and expanding their products into international markets.

The Trade Fair Certification Program will continue to function as it has in the past, but will shift to certify only overseas shows. However, domestic trade fairs taking place before December 31, 1986, are still eligible for Domestic Trade Fair Certification if applications are received no later than *August 31, 1985.*

As part of its mission to foster, promote and develop U.S. commerce, the Department has for many years assisted U.S. firms participating in domestic trade shows to meet with potential foreign buyers, agents and distributors.

In keeping with this policy, the Department has implemented the Foreign Buyer Program. Under this program, the Department will select and promote domestic trade shows in high-export potential industries in order to bring foreign buyers together with U.S. firms. The program will also assist show organizers in identifying and recruiting new-to-market/new-to-export firms to exhibit in these trade shows. Selection of a trade show is one-time, e.g., a trade show organizer seeking selection for a recurring event, must submit a new application for selection for each occurrence of the event.

Because of limited resources available, the Department will limit selection to 10 events during fiscal year 1986 and 15 events in fiscal year 1987. The Department will select those events which in its judgment most clearly and best meet the Department's objectives as well as satisfying the general selection criteria. For this reason, an event not selected should not be viewed as a finding that the event will not be successful in promoting U.S. exports.

Selection and Logo. Each successful applicant will be provided copies of an official U.S. Department of Commerce logo and/or logo of the U.S. and Foreign Commercial Service for use in its advertising promotional materials. Selection is intended to indicate that the Department has found these events to be leading international trade shows worthy of the participation by U.S. exporting firms and promotion in overseas markets by U.S. Embassies and Consulates. Selection does not extend or characterize the event as a U.S. Government guarantee of the success or the proper performance of the undertakings of the organizer as to participants or other persons or organizations, nor does selection imply an official endorsement of one trade event organizer over others.

Department of Commerce Support of Foreign Buyer Program Events. The support provided for selected events may differ slightly depending on the specific needs identified and agreed upon by the Department and the show organizer. Services will include but may not be limited to special overseas marketing efforts by staff of the Foreign Commercial Service, such as contacting key foreign government and private sales prospects, publicity in appropriate Departmental periodicals and the identification of both new-to-market/ new-to-export U.S. companies by US&FCS account executives and trade specialists in District Offices.

General Selection Criteria. Subject to Departmental budget and resource

constraints, selection will be granted to those events which, in the judgment of the Department, most clearly and best meet the following criteria:

a. Export Potential: The products and services to be promoted at the trade show should be from U.S. industries which have high export potential as determined by U.S. Department of Commerce Sources.

b. International Interest: Trade shows will be selected which meet the needs of a significant number of overseas markets covered by the U.S. and Foreign Commercial Service, correspond to marketing opportunities as identified by these posts, and which warrant the attention and promotional efforts by those overseas posts. Previous foreign audience attendance at the show may be used as an indicator.

c. Scope: The event must offer a broad spectrum of U.S. products and/or services to U.S. exhibitors. Trade shows with a majority of American firms exhibiting will be given preference.

d. Stature: The trade show must be clearly recognized within and by the industry it covers, as a leading event for the promotion of that industry's products and services both domestically and internationally and as a show place for the latest technology or techniques in that industry.

e. Exhibitor Interest: There must be a clearly demonstrated interest on the part of U.S. exhibitors to receive international business visitors during the trade show. A significant number of these exhibitors should be new-to-export or seeking to expand into additional foreign markets.

f. Logistics: The trade show site, facilities transportation services and availability of accommodations must be in keeping with the stature of an international-class trade show.

g. *Cooperation:* Successful applicants will be required to enter into a Memorandum of Understanding which sets forth the Specific actions to be performed by the show producer/owner and the USDOC. There must be a willingness on the part of the trade show organizer to cooperate with the US&FCS to further ITA export expansion goals.

Specific Department Actions. For selected shows the Department of Commerce will:

a. Designate an account executive as central point of contact to work with the show organizer on all aspects of promotion abroad and foreign buyer assistance at the show. The Account Executive will work with the show organizer to develop a promotion marketing plan and overall promotional timetable which will identify activities to be undertaken and dates by which each activity should be completed.

b. Advise and work closely with all interested U.S. Embassies and Consulates to assure maximum trade show promotion.

c. Promote industry trade show participation through announcements in key domestic and international publications (e.g., regional, posts and embassy commercial newsletters, *Business America, Export Promotion Calendar* and *Commercial News USA).*

d. Provide show organizer with specifications for a multi-language brochure; distribute brochure to appropriate U.S. Embassies and Consulates.

e. Survey U.S. companies exhibiting at the event to solicit and encourage them to meet with foreign buyers attending the show. Compile this information into a "*Export Interest Directory*", which will contain the name of the U.S. company, products wishing to export and area of business interest (agent/distributor/immediate sales etc.), geographic area(s) of world holding major interest of the company, among other pertinent information. This document will be printed and distributed to all U.S. Embassy and Consular posts worldwide sixty (60) days prior to the event.

f. If available, provide Show Organizer with mailing addresses of potential new-to market/new-to export exhibitors.

g. Review with the show organizer potential support by appropriate trade associations, state development agencies, banks, transportation companies, chambers of commerce, and other organizations.

h. Provide a final show report to both the show organizer and promoting Embassies/ Consulates not later than 90 days after the show ends.

1. Request US&FCS Domestic Offices to provide export or marketing counseling to those American participants which have indicated a need for such counseling prior to the event.

Services Provided at Trade Show Site

An account excutive will provide management of on-site registration to foreign buyers and post-organized groups, facilitate matching foreign buyers with interested exhibitors, and counsel potential exporting firms exhibiting at trade show about available US&FCS products and services.

Request US&FCS Domestic Office to provide a trade specialist for export counseling assistance to U.S. firms at the show.

Participate, as appropriate, in special export service seminars specifically aimed at new-to market/new-to-export firms exhibiting at trade show.

Encourage with local bank and financial institutions to have a representiative available to provide export finance counseling.

Provide counseling to exhibitors in a designated area in the International business Center where information on all US&FCS products and services will be available.

Specific Responsibilities of the Show Organizer

Designate an official authorized to work with the US&FCS account executive on all aspects of the show promotion.

Provide the US&FCS with a current list of exhibitors, with name and address of appropriate contact. The name of contact should, if possible, be the descision maker of the exhibiting firm on international matters. The exhibitor list should be on gummed mailing labels.

Produce a multilingual promotional brochure in the quantities specified by the account executive. Draft of brochure must be approved by the account executive prior to printing. These brochures are needed not less than 6 months prior to the show.

If available, provide to the US&FCS names and addresses of foreign attendees to previous shows. Provide a list of per-registered foreign attendees at the current show, including names, addresses, and business interests. Both lists to be provided by country and on a mutually agreed date.

Establish a system whereby US&FCS account executive are assured access to all foreign attendees at time of registration.

Establish an International Business Center (IBC) at the show in a prominent location. The IBC should include (a) a separate registration area for foreign vistors (b) appropriate furniture and office equipment, (c) interpreters, (d) registration staff and support. The IBC must be given high visibility in show catalog/program, floor plans, and by strategically placed signs at the exhibition entrance and on the exhibition floor.

At an agreed date following the show, provide the US&FCS with a registration printout of the names and addresses of the foreign attendees, by country.

When, Where and How To Apply for Selection in the Foreign Buyer Program

Interested applicants who meet the basic criteria outlined in this

announcement, should write a letter on company or association letterhead and submit three (3) complete sets of sample promotional material. Letters and promotional materials should be submitted eighteen (18) months in advance of the event.

Applications will be processed by the Marketing Development Division of Export Promotion Services and final selection of events will be made by an International Trade administration (ITA) Committee, comprised of representatives from Trade Development, International Economic Policy and U.S. and Foreign Commerial Service. For Fiscal Year 1986 show selection announcements will be made by October 1, 1986. FBP shows selected for fiscal year 1987 will be announced in spring 1986.

Note.—Applications will be accepted after October 1, 1985 or earlier upon approval from the Office of Management and Budget (OMB) of information collection.

Fee: The Department will charge a fee of $1000 for shows selected and promoted during fiscal year 1986. The user fee is subject to change beginning in fiscal year 1987.

Robert A. Taft,

Acting Manager for Export Promotion Services.

[FR Doc. 15808 Filed 7-2-85; 8:45 am]

BILLING CODE 3510-25-M

[A-455-502]

Certain Steel Wire Nails From Poland

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain steel wire nails from Poland are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 22, 1985, and we will make our preliminary determination on or before November 12, 1985.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, International Trade Administraton, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1766.

SUPPLEMENTARY INFORMATION:

The Petition

On June 5, 185, we received a petition in proper form filed by 10 domestic steel wire nail manufacturers on behalf of the U.S. domestic producers of such merchandise. The petitioners are the Atlantic Steel Company, Atlas Steel & Wire Corporation, Continental Steel Corporation, Davis Walker Corporation, Dickson Weatherproof Nail Company, Florida Wire & Nail Company, Keystone Steel & Wire Company, Northwestern Steel & Wire Company, Virginia Wire & Fabric Company, and Wire Products Company. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Poland are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United Stats industry.

The petitioners base the United States price on 1984 and 1985 price quotations received by unrelated U.S. purchasers for steel wire nails produced in Poland.

Petitioners claim that Poland is a state-controlled economy country within the meaning of the Act. It alleges that the state-controlled nature of the industry and the consequent ability to set prices without regard to production costs does not permit a reliable calculation of foreign market value based either on sales or offers of sales of the product under investigation in Poland or to counties other than the United States. Therefore, petitioners request that the Department of Commerce choose a surrogate country to establish foreign market value. The petitioners choose Greece and Italy as the non-state-controlled economy surrogate countries whose prices should be used as the basis for determining foreign market value.

To support their allegations of sales at less than fair value, petitioners construct the value of steel wire nails. In so doing, petitioners rely on U.S. producers' cost of production information including costs of steel wire and other material and fabrication inputs, adjusting labor rates to reflect an average of those in the proposed surrogate countries.

Based on the comparison of the adjusted U.S. price of steel wire nails imported from Poland with the adjusted cost of production of steel wire nails produced in Poland, the petitioners allege dumping margins ranging from 78.2 percent to 83.6 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on certain steel wire nails from Poland and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain steel wire nails from Poland are being, or are likely to be, sold in the United States at less than fair value.

In the course of our investigation, we will determine whether the economy of Poland is state-controlled to an extent that sales of such or similar merchandise in the home market or to third country markets do not permit determination of foreign market value. If it is determined to be a state-controlled economy, we will then choose a non-state-controlled economy surrogate country for purposes of determining foreign market value. If our investigation proceeds normally, we will make our preliminary determination by November 12, 1985.

Scope of Investigation

The merchandise covered by the petition consists of one-piece steel wire nails from Poland as currently provided for in the *Tariff Schedules of the United States* (TSUSA) under item numbers 646.25 and 646.26, and similar steel wire nails of one-piece construction, whether at, over or under .065 inch in diameter as currently provided for in item number 646.3040; two-piece steel wire nails provided for in item number 646.32; and steel wire nails with lead heads provided for in item number 646.36.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an

administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 22, 1985, whether there is a reasonable indication that imports of certain steel wire nails from Poland are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to statutory procedures.

Dated: June 25, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-15883 Filed 7-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-005]

Deformed Steel Bars for Concrete Reinforcement From South Africa; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determinantion to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce believes there exist changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty order on deformed steel bars for concrete reinforcement ("rebars") from South Africa. The review covers the period from October 1, 1984. The Department notified the petitioner, Industrial Siderurgica, that absent an affirmative statement of interest, the Department would revoke the countervailing duty order. We received no response from the petitioner. This absence of an affirmative statement of interest, after notification, provides a reasonable basis for the Department to revoke the order. Therefore, we intend to revoke the order. In accordance with the Department's notification, the revocation will apply to all rebars entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara Williams or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 47900) a countervailing duty order on deformed steel bars for concrete reinforcement from South Africa.

In a letter dated April 4, 1985, the Department requested an affirmative statement of interest in the order from the petitioner, Industrial Siderurgica. We stated that if we received no response by May 4, 1985, we would assume that Industrial Siderurgica was no longer interested in maintenance of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of South African rebars. Such merchandise is currently classifiable under items 606.7900 and 606.8100 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the absence of the petitioner's affirmative statement of interest in continuation of the countervailing duty order on rebars from South Africa, after notification, provides a resonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on this product effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of rebars from South Africa which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and sections 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: June 27, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-15881 Filed 7-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-013]

Portland Hydraulic Cement and Cement Clinker From Mexico; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on portland hydraulic cement and cement clinker form Mexico. The review covers the period July 1, 1983, through December 31, 1983, and 19 programs.

As a result of the review, the Department has preliminarily determined the bounty or grant to be zero or *de minimis* for four firms and 3.49 percent *ad valorem* for all other firms for the period of review. Interested

parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Alan Long, Stephen Nyschot or Norman Kreutter, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telepone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 21, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 43063) a countervailing duty order on portland hydraulic cement and cement clinker form Mexico and announced its intent to conduct an administrative review of the order. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Mexican portland hydraulic cement and cement clinker other than white, non-staining. Such merchandise is currently classifiable under items 511.1420 and 511.1440 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1983, through December 31, 1983, and 19 programs: (1) FOMEX; (2) Article 94 of the Banking Law; (3) CEPROFI; (4) FONEI; (5) NDP preferential discounts; (6) accelerated and immediate depreciation allowances; (7) NAFINSA; (8) border zone valued added tax; (9) FONEP; (10) state tax incentives; (11) FOMIN; (12) FOGAIN; (13) import duty reduction and exemptions; (14) export services offered by IMCE; (15) FIDEIN; (16) preferential vessel and freight rates; (17) commercial risk insurance; (18) government-financed technology development under the National Development Plan; and (19) CEDI.

Analysis of Programs

1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program since August 1, 1983. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: pre-export (production) financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants since these loans are given only on merchandise destined for export. We found that the annual interest rate that financial institutions changed borrowers for FOMEX pre-export financing, denominated in Mexican pesos, was either 7 or 8 percent during the period of review. The annual interest rate for FOMEX export financing, denominated in the currency of the importing country, ranged from 3.5 to 10 percent during the period of reveiw.

Since we lacked information on effective FOMEX interest rates in this case, we chose nominal peso and dollar rates as our benchmarks. For peso-denominated loans we used as a benchmark for the commercial interest rate in Mexico the average of the nominal interest rates published monthly by the Banco de Mexico in the *Indicadores Economicos*. For dollar-denominated loans, we used interest information obtained from the U.S. Federal Reserve Board. Based on this information, we preliminarily determine that, during the period of review, comparable peso-denominated loans were available commercially at 64.43 percent and comparable dollar-denominated loans were available at 12.66 percent. Using the weighted-average FOMEX pre-export and export rates, 7.73 percent and 5.76 percent, we found the resulting interest differentials during the review period to be 56.70 percent for peso-denominated loans and 6.90 percent for dollar-denominated loans.

Two exporters of this merchandise used these programs during the period of review. Because one of them, Cementos Anahuac del Golfo, was able to tie all FOMEX loans to exports to specific countries, we used only its FOMEX loans on U.S. shipments and allocated the benefits over only the value of U.S. shipments during the period of review. Since the other, Comentos de Chihuahua, could not tie its FOMEX pre-export loans to exports to specific countries and had no FOMEX export loans, we used all of its pre-export loans and allocated the benefits over all exports. We then weight averaged the resulting *ad valorem* benefits by each company's proportion of the value of Mexican exports to the U.S. of this merchandise (excluding exports from firms with zero or *de minimis* aggregate benefits). On this basis, we preliminarily determine the benefit from FOMEX pre-export loans to be 1.36 percent, and from FOMEX export loans to be 1.24 percent, for a total benefit during the review period of 2.60 percent *ad valorem*.

On April 1, 1984, the Banco de Mexico raised the interest rates for FOMEX pre-export and export financing to 19.30 percent and 7.10 percent, respectively. To calculate the estimated duty deposit rate, we compared the new FOMEX interest rates to our most recent commercial benchmarks. The interest differential for peso-denominated loans is 42.40 percent, and for dollar-denominated loans, 7.02 percent. On this basis, we preliminarily find, for purposes of cash deposits of estimated countervailing duties, a FOMEX beneift of 2.26 percent *ad valorem*.

2) Article 94 of the Banking Law

The Banco de Mexico determines the precentages of deposits at credit institutions that those institutions must depost at the Banco de Mexico and must invest in other types of assets. Section 2 of Article 94 of the General Law of Credit Institutions and Auxiliary Organizations ("the Banking Law") establishes that up to 25 percent of a bank's total deposits must be funneled as loans into specially designated sectors of economic activity. Loans granted under section 2 are obtained at below-market interest rates.

In Circular 1842/79, the Banco de Mexico established 12 categories of industries that are eligible to obtain financing under section 2 of Article 94. Most categories carry their own maximum interest rates, set by the Banco de Mexico. Category 12 consists only of exports of manufactured products and during the period of review carried a maximum interest rate equal to the Costo Procentual Promedio minus 5 points, which is below the comparable commercial rate.

We consider financing obtained at the preferential interest rate under category 12 to constitute an export bounty or grant because it is given only on merchandise destined for export. Producers of portland hydraulic cement and cement clinker received financing under category 12 during the period of review. To calculate the benefit from these peso-denominated loans, we used as a benchmark the same average commercial interest rate as for the FOMEX pre-export loans. The resulting interest differential for these Article 94 loans during the review period is 11.23 percent.

Since these article 94 loans are based on shipments to specific countries, we allocated the benefits that each company received on its exports to the U.S. over the value of that company's total exports of the merchandise to the U.S. during the period of review. We then weight averaged the resulting *ad valorem* benefits by each company's proportion of the value of Mexican exports to the U.S. of this merchandise

(excluding exports from firms with zero or *de minimis* aggregate benefits). On this basis, we preliminarily determine the benefit from Article 94 loans to be 0.13 percent *ad valorem*.

3) CEPROFI

Certificates of Fiscal Promotion ("CEPROFI") are tax certificates that are used to promote the goals of the National Development Plan ("NDP") and are granted in conjunction with investments in designated industrial activities and geographic regions. CEPROFI certificates can be used to pay a variety of federal tax liabilities.

Article 25 of the decree that established the basic authority for the issuance of CEPROFI's, published in the *Diario Oficial* on March 6, 1979, requires each recipient to pay a 4 percent supervision fee. The 4 percent supervision fee is "paid in order to qualify for, or to receive," the CEPROFI's. Therefore, it is an allowable offset from the gross bounty or grant, as defined by section 771(6)(A) of the Tariff Act.

Portland hydraulic cement and cement clinker firms received CEPROFI benefits under three provisions: "Category I," which makes CEPROFI certificates available for manufacture and processing of construction and capital goods; "Category II," which makes CEPROFI certificates available for particular industrial activities; and a third provision, which makes CEPROFI certificates available for the purchase of Mexican-made equipment.

The Department held in the final affirmative countervailing duty determination on bricks from Mexico (49 FR 19564, May 8, 1984) that a CEPROFI certificate granted for the purchase of Mexican-made equipment was not a bounty or grant since such certificates are available to any company that purchases Mexican-made equipment.

We consider the other two types of CEPROFI certificates to be domestic subsidies and we allocated the benefits each company received from the Category I and Category II CEPROFI programs, less the 4 percent supervision fee, over the total value of each firm's sales to all markets during the period of review. We then weight averaged the resulting *ad valorem* benefits by each company's proportion of the value of Mexican exports to the U.S. of this merchandise (excluding exports from firms with zero or *de minimis* aggregate benefits). On this basis, we preliminarily determine the benefit from the CEPROFI program to be 0.47 percent *ad valorem*.

4) FONEI

The Fund for Industrial Development ("FONEI") is a specialized financial development fund, administered by the Banco de Mexico, which grants long-term loans at below-market rates. FONEI loans are available under various programs having different eligibility requirements. The plant expansion program is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the NDP, which include industrial decentralization. We consider this FONEI loan program to confer a bounty or grant because it restricts loan benefits to those enterprises located outside the Zone IIIA.

Only Cementos de Chihuahua had FONEI loans for plant expansion outstanding during the period of review. Cementos de Chihuahua received a ten-year fixed-rate loan in October 1973, a ten-year variable-rate loan in September 1981, and an eight-year variable-rate loan in September 1982.

We used as our benchmark for the fixed-rate FONEI loan granted in 1973 the commercial rate for comparable peso-denominated loans in 1973, 14 percent. Cementos de Chihuahua completed the repayment of the 1973 FONEI loan on October 1, 1983. We determine that the benefit from this loan is the interest savings realized by Cementos de Chihuahua during the period of review.

We treated the variable rate FONEI loans as a series of short-term loans. To calculate the benefits from these peso-denominated loans, we used as a benchmark the same average commercial interest rate as for FOMEX pre-export loans.

We allocated the benefits resulting from the fixed- and variable-rate FONEI loans over the total value of Cementos de Chihuahua's sales to all markets. We then weight averaged the resulting *ad valorem* benefits by each company's proportion of the value of Mexican exports to the U.S. of this merchandise (excluding exports from firms with zero or *de minimis* aggregate benefits). On this basis we preliminarily determine the benefit from FONEI loans to be 0.04 percent *ad valorem*.

5) NDP Preferential Discounts

Preferential discounts are granted under the NDP to companies located in specific regions or engaged in certain priority activities. During the period of review, Cementos de Chihuahua received credits equal to a 15 percent discount on its purchases of natural gas, and Cementos Portland Nacional received credits equal to a 10 percent discount on its purchases of heavy fuel oil.

The Department allocates benefits from preferential programs such as this to the period in which cash savings occur. (*See* final affirmative countervailing duty determination on carbon black from Mexico (48 FR 29564, June 27, 1983)). We consider the benefits from this program to be equal to the total value of the credits received. We allocated the total value of the credits received by each firm during the period of review over the value of that firm's sales to all markets during the period. We then weight averaged the resulting *ad valorem* benefits by each company's proportion of the value of Mexican exports to the U.S. of this merchandise (excluding exports from firms with zero or *de minimis* aggregate benefits). On this basis, we preliminarily determine the benefit from preferential discounts to be 0.25 percent *ad valorem*.

6) Accelerated and Immediate Depreciation

For purposes of economic development, the Mexican Treasury Department may grant accelerated depreciation allowances and immediate depreciation allowances to industries in certain geographic regions or to industries for certain designated industrial activities. Cementos Anahuac and Cementos Anahuac del Golfo used accelerated and/or immediate depreciation in 1983. To calculate the resulting benefits, we deducted the amount of depreciation otherwise allowable from total depreciation. During 1983, Cementos Anahuac and Cementos Anahuac del Golfo had no taxable income after normal adjustments against which to apply accelerated and immediate depreciation. Therefore, we preliminarily determine that there were no countervailable benefits from either the accelerated or immediate depreciation programs during the period of review.

7) NAFINSA

Nacional Financiera, S.A. ("NAFINSA") is an investment bank that acts as a financial agent of the federal government. Among other activities, NAFINSA provides long-term loans to companies for industrial projects.

Cementos de Chihuahua had two NAFINSA long-term loans outstanding during the period of review. The Department held such loans not to be countervailable in the final affirmative

countervailing duty determination on oil country tubular goods from Mexico (49 FR 47054, November 30, 1984).

8) Border Zone Value Added Tax

The Mexican Treasury Department mandates a 6 percent value added tax ("IVA") for taxable activities within 20 kilometers of an international boundary or in the free zones of Baja California, portions of Sonora and portions of Campeche. There is an IVA of 15 percent in the remainder of the country.

Petitioners allege that the lower IVA rate in effect for certain regions of Mexico constitutes a countervailable subsidy program since it is not generally available. The Department held such reduced IVA rates not to be countervailable in the final affirmative countervailing duty determination on lime from Mexico (49 FR 35672, September 11, 1984). We have no information which would now lead us to alter that decision.

9) Other Programs

We also examined the following programs and preliminarily find that exporters of portland hydraulic cement and cement clinker did not use them during the review period:

(A) National Pre-investment Fund for Studies and Projects ("FONEP");

(B) State tax incentives;

(C) National Industrial Development Fund ("FOMIN");

(D) Guarantee and Development Fund for Medium and Small Industries ("FOGAIN");

(E) Import duty reductions and exemptions;

(F) Export services offered by the Mexican Institute of Foreign Commerce ("IMCE");

(G) Trust for Industrial Parks, Cities, and Commercial Centers ("FIDEIN");

(H) Preferential vessel and freight rates;

(I) Commercial risk insurance;

(J) Government-financed technology development under the NDP; and

(K) Tax Rebate Certificates ("CEDI").

Preliminary Results of Review

As a result of our review, we preliminarily determine the bounty or grant to be zero for Comentors Guadalajara, Cementos Mexicanos, and Cementos Ahahuac and 0.40 percent *ad valorem* for Cementos Hidalgo. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*. For all other firms, we preliminarily determine the bounty or grant to be 3.49 percent *ad valorem*.

The Department intends to instruct the Customs Service to assess no countervailing duties on shipments of this merchandise from the four firms with a zero or *de minimis* rate of benefit, and countervailing duties of 3.49 percent of f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouses, for consumption on or after July 8, 1983, the date of the Department's affirmative preliminary determination, and exported on or before December 31, 1983.

The Department intends to instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments from the four firms and to collect 3.15 percent of the entered value on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final rusults of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1765(a)(1)) and section 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: June 27, 1985.

Alan F. Holmer,

Deputy Assistant Secretary Import Administration.

[FR Doc. 85-15882 Filed 7-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[T570-503]

Certain Steel Wire Nails From the People's Republic of China (PRC)

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain steel wire nails from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 22, 1985, and will make our preliminary determination on or before November 12, 1985.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1766.

SUPPLEMENTARY INFORMATION:

The Petition

On June 5, 1985, we received a petition in proper form filed by 10 domestic steel wire nail manufacturers on behalf of the U.S. domestic producers of such merchandise. The petitioners are the Atlantic Steel Company, Atlas Steel & Wire Corporation, Continental Steel Corporation, Davis Walker Corporation, Dickson Weatherproof Nail Company, Florida Wire & Nail Company, Keystone Steel & Wire Company, Northwestern Steel & Wire Company, Virginia Wire & Fabric Company, and Wire Products Company. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners base the United States price on 1984 and 1985 price quotations received by unrelated U.S. purchasers of Chinese steel wire nails.

Petitioners claim that the PRC is a state-controlled economy country within the meaning of the Act. They allege that the state-controlled nature of the industry and the consequent ability to set prices without regard to production costs prevent a reliable calculation of foreign market value based either on sales or offers of sales of the product under investigation in the PRC or to

countries other than the United States. Therefore, petitioners request that the Department of Commerce choose a surrogate country to establish foreign market value. The petitioners choose India and Singapore as the non-state-controlled economy surrogate countries whose prices should be used as the basis for determining foreign market value.

To support their allegations of sales at less than fair value, petitioners construct the value of steel wire nails. In so doing, petitioners rely on U.S. producers' cost of production information including costs of steel wire and other material and fabrication imputs, adjusting labor rates to reflect an average of those in the proposed surrogate countries.

Based on the comparison of the adjusted U.S. price of steel wire nails imported from the PRC with the adjusted cost of production of Chinese steel wire nails, the petitioners allege average dumping margins ranging from 60.1 percent to 85.8 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on certain steel wire nails from the PRC and have fund that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain steel wire nails from the PRC are being, or are likely to be, sold in the United States at less than fair value.

In the course of our investigation, we will determine whether the economy of the People's Republic of China is state-controlled to an extent that sales of such or similar merchandise in the home market or to third country markets do not permit determination of foreign market value. If it is determined to be a state-controlled economy, we will then choose a non-state-controlled economy surrogate country for purposes of determining foreign market value. If our investigation proceeds normally, we will make our preliminary determination by November 12, 1985.

Scope of Investigation

The merchandise covered by the petition consists of: One-piece steel wire nails as currently provided for in the *Tariff Schedules of the United States* (TSUSA) under item numbers 646.25 and 646.26, and similar steel wire nails of one-piece construction, whether at, over or under .065 inch in diameter as currently provided for in item number 646.3040; two-piece steel wire nails provided for in item number 646.32; and, steel wire nails with lead heads provided for in item number 646.36.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 22, 1985, whether there is a reasonable indication that imports of certain steel wire nails from the PRC are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 25, 1985.

[FR Doc. 85-15884 Filed 7-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-479-501]

Certain Steel Wire Nails From Yugoslavia

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain steel wire nails from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this merchandise are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 22, 1985, and we will make our preliminary determination on or before November 12, 1985.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1766.

SUPPLEMENTARY INFORMATION:

The Petition

On June 5, 1985, we received a petition in proper form filed by 10 domestic steel wire nail manufacturers on behalf of the U.S. industry producing such merchandise. The petitioners are the Atlantic Steel Company, Atlas Steel & Wire Corporation, Continental Steel Corporation, Davis Walker Corporation, Dickson Weatherproof Nail Company, Florida Wire & Nail Company, Keystone Steel & Wire Company, Northwestern Steel & Wire Company, Virginia Wire & Fabric Company, and Wire Products Company. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Yugoslavia are being, or are likely to be sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners base the United States price aon 1984 and 1985 price quotations received by unrelated U.S. purchasers for steel wire nails produced in Yugoslavia.

For foreign market value, petitioners construct a value for Yugoslavian steel wire nails based on U.S. producers' material and fabrication costs adjusted for differences in labor costs based on prevailing labor rates in Greece as an economy comparable to Yugoslavia, as Yugoslavian labor rates were not publicly available.

Based on a comparison of U.S. price and foreign market value using the foregoing methodology, the petitioners allege an average dumping margin of 88.1 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information

reasonably available to the petitioners supporting the allegations.

We examined the petition on certain steel wire nails from Yugoslavia and have found that it meets the requirements of section 732 (b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain steel wire nails from Yugoslavia asre being, or are likely to be, sold in the United States at less then fair value. If our investigation proceeds normally, we will make our preliminary determination by November 12, 1985.

Scope of Investigation

The merchandise covered by the petition consists of one-piece steel wire nails as currently provided for in the *Tariff Schedules of the United States* (TSUS) under item numbers 646.25 and 646.26, and similar steel wire nails of one-piece construction, whether at, over or under .065 inch in diameter as currently provided for in item number 646.3040; two-piece steel wire nails provided for in item number 646.32; and steel wire nails with lead heads provided for in item number 646.36.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrived at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 22, 1985, whether there is a reasonable indication that imports of certain steel wire nails from Yugoslavia are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 25, 1985.

[FR Doc. 85-15885 Filed 7-2-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Receipt of Application for a Small Take—Commercial Fishing Exemption

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the Fishery Conservation Zone of the United States, as authorized by the Marine Mammal Protection Act of 1972 as amended (16 U.S.C. 1361–1407) (MMPA).

The South Atlantic Fishery Management Council has applied on behalf of fishermen participating in the swordfish gillnet fishery of the North Atlantic Ocean, for a small take exemption to the general permit requirements of the MMPA. This exemption is permitted by section 101(a)(4) of that act. The applicant requests on annual total take of 100 marine mammals (75 North Atlantic, 25 Gulf of Mexico/Caribbean Sea) of the following species:

Atlantic white-side dolphil—*Lagenorhynchus acutus*
Bottlenosed dolphin—*Tursiops truncatus*
Common dolphin—*Delphinus delphis*
Dwarf sperm whale—*Kogia simus*
False killer whale—*Pseudorca crassidens*
Goosebeaked whale—*Ziphius cavirostris*
Minke whale—*Balaenoptera acutorostrata*
Northern bottlenosed whale—*Hyperoodon ampullatus*
Pilot whale—*Globiocephala spp.*
Pygmy killer whale—*Feresa attenuata*
Pygmy sperm whale—*Kogia breviceps*
Risso's (Grampus) dolphin—*Grampus griseus*
Rough-toothed dolphin—*Steno bredanensis*
Spinner dolphin—*Stenella longirostris*
Spotted dolphin—*Stenella plagiodon*
Striped dolphin—*Stenella coeruleoalba*

If this exemption is granted, the Council will be responsible for collecting reports on incidental takes. Gillnet vessels not carrying a U.S. government observer will be required to keep detailed logs concerning location, date of entanglement and species and number of marine mammals killed, seriously injured or released uninjured. The Council will submit a report annually on the takings.

The application is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC;
Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930–3799; and
Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Interested parties may submit written comments on the application within thirty (30) days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235.

Dated: June 27, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 85-15982 Filed 7-2-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 9:00 a.m., Tuesday, 30 July 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended (5 U.S.C.

App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: June 28, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-15946 Filed 7-2-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATES: August 7, 1985 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, D.C.

FOR FURTHER INFORMATION CONTACT: Lt Col Harold D. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Space Activities.

Dated: June 28, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-15945 Filed 7-2-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Conflict Environment; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Conflict Environment will meet in closed session on 12-13 September and 17-18 October 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue to receive classified briefings on Conflict Environment and to discuss preparation of their report.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: June 28, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-15944 Filed 7-2-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow-on Forces Attack; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Follow-on Forces Attack will meet in closed session on 24-25 July and 5-6 September 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to examine the technical and programmatic aspects as well as conceptual applications of the capabilities and systems to accomplish attacking follow-on forces.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: June 28, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-15943 Filed 7-2-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Military Traffic Management; International Program

AGENCY: Military Traffic Management Command (MTMC) Army, DOD.

ACTION: Notice of expansion of the solicitation for movement of international commercial air unaccompanied baggage (UB) under the Direct Procurement Method (DPM). The DPM commercial air solicitation was first announced in the **Federal Register** dated October 3, 1984 (49 FR 39095).

SUMMARY: The MTMC conducted a test for movement of DPM UB via commercial air from Ft. Benning, Georgia, and Ft. Sill, Oklahoma, to Frankfurt, Germany. The test period covered 6 months (April 1-September 30, 1985).

Results of the test concluded that this is an effective and efficient method for movement of UB. As a result, MTMC has elected to expand the DPM Air Solicitation program worldwide.

This solicitation will standardize the service performed by the commercial air freight forwarders/carriers. The solicitation will eliminate the present Memorandum of Understanding, dated January 14, 1981, between certain air carriers and MTMC. Carriers/forwarders will be requested to submit single factor rates to include the following services:

a. Pickup shipment at origin contractor's facility.

b. Land transportation to origin airport.

c. Air transportation from airport at origin to destination area.

d. Land transportation from destination airport to destination contractor's facility.

e. Processing of shipment through appropriate customs.

f. Expeditious movement and delivery to ultimate destination warehouse as directed by the installation transportation officer.

The air freight forwarders/carriers submitting the most favorable offer will be awarded all traffic moving via DPM commercial air, between the origin/destination points. Estimated tonnages will be provided. However, there is no guarantee that any tonnages will move under this solicitation. The government reserves the right to use any method of shipment, i.e., DPM MAC, Code J, and Code 8.

Rates submitted will be for a 6-month period with an option for cancellation at designated periods within the cycle.

The solicitation package will be distributed in July for rates effective October 1, 1985.

FOR FURTHER INFORMATION CONTACT: LTC Robert P. Coleman or Ms. Naomi King, HQ, Military Traffic Management Command, Attn: MT-PPC (Room 406), 5611 Columbia Pike, Falls Church, Virginia 22041-5050, (202) 756-2577.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 85-15936 Filed 7-2-85; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for the Proposed James River Channel Restoration Project

AGENCY: U.S. Army Corps of Engineers, Omaha District.

Sponsor: South Dakota Department of Water and Natural Resources, Pierre, South Dakota.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The proposed action is to restore the flow capacity of the James River to near the 1922 capacity, to improve recreational access and to preserve natural and cultural values along the river. The South Dakota Department of Water and Natural Resources has applied to the Corps of Engineers for permits under section 404 of the Clean Water Act and Section 10 of the River and Harbor Act of 1899.

2. Flow capacity of the channel will be increased by selected removal of accumulated sediment, log jams and debris and man-made obstructions. Methods of clean out include hydraulic and mechanical dredging, and snagging and clearing.

3. Alternatives being evaluated by the applicant include:

a. Remove log jams, debris and man-made obstructions only

b. Remove log jams, debris, man-made obstructions and accumulated sediment deposits

c. Construct high flow channel by-passes and remove log jams, debris, and man-made obstructions where needed

d. No action

All of the above alternatives, except no action, assume acquisition of public areas for recreation and conservation purposes. Rights to these areas will be acquired from adjacent landowners through donations or easements and fee purchases from willing sellers.

Alternatives available to the Corps of Engineers include:

a. Approve the permit application

b. Denial of the permit application

c. Approve the permit application with some modification

4. Since 1980 the sponsor has conducted public meetings in order to develop a feasible project, and has obtained state and local funding support. In late 1984 the sponsor received a federal permit to conduct a test dredging operation in an upper reach of the river near Stratford, South Dakota. Dredging and environmental monitoring operations began in late 1984 and are continuing in 1985. The purpose of the dredging test is to determine operational and environmental feasibility. A federal and state agency EIS scoping meeting was held on May 22–23 to address concerns relating to fish and wildlife, water quality, stream hydraulics, and riparian and wetland ecosystems. Additional scoping of issues to be addressed in the EIS is desired from local agencies and the general public at this time.

In additional to meeting the requirements of the National Environmental Policy Act, the project must comply with section 10 of the River and Harbor Act of 1899, with the Historic Preservation Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, section 404 of the 1977 Clean Water Act, the National Wild and Scenic River Act, Executive Order 11988 regarding Flood Plains, Executive Order 11593 regarding Protection and Enhancement of the Cultural Environment, Executive Order 11990 regarding Wetlands, and CEQ Memorandum of August 1976, Analysis of Impacts on Prime and Unique Farmlands.

5. Scoping meetings for the DEIS are scheduled for 12:30 pm and 7:00 pm on Thursday, July 18 and Friday, July 19 in four cities along the James River.

The meeting schedule is as follows:

Thursday, July 18, 12:30 pm

Sheraton Motor Inn, 1400 8th Avenue, Northwest, Aberdeen, South Dakota

3rd Avenue and Wisconsin Southwest, Huron, South Dakota

Friday, July 19, 12:30 pm

Mitchell Holiday Inn, Havens and Ohlman, Mitchell, South Dakota

Friday, July 19 7:00 pm

Sheraton Motor Inn, East Highway 50, Yankton, South Dakota

The participation of the public and all interested government agencies is invited.

The Omaha District estimates that the DEIS will be released for public review in early 1986.

ADDRESS: Questions about the proposed action, DEIS, or scoping meetings should be directed to Richard Gorton: Chief, Environmental Analysis Branch; Omaha District, CE; 6014 U.S. Post Office and Courthouse; Omaha, Nebraska 68102–4978, phone (402) 221–4598.

Dated: June 24, 1985.

Arvid L. Themeen,

Chief, Planning Division, Omaha District, CE.

[FR Doc. 85–15677 Filed 7–2–85; 8:45 am]

BILLING CODE 3710-03-M

DEPARTMENT OF ENERGY

Energy Information Administration

Oil and Gas Reserve System Forms; Request for Comments

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Request for comments on the extension of the Oil and Gas Reserve System Forms.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Energy Information Administration (EIA), as required by the Paperwork Reduction Act of 1980, conducts a consultation program to provide the general public with an opportunity to comment on proposed and continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

At this time EIA solicits comments on the extension of its Oil and Gas Reserve System forms. The three forms which constitute the Oil and Gas Reserve system are described in the Supplemental Information Section of this Notice. They are the Form EIA–23, "Annual Survey of Domestic Oil and Gas Reserve," the Form EIA–23P, "Oil and Gas Well Operator Update Report," and the Form EIA–64A, "Annual Report of the Origin of Natural Gas Liquids Production." Interested persons are asked to review these forms, especially the proposed elimination of schedule B of Form EIA–23, and provide comments to the contact person described below.

DATES: Written comments must be received by EIA within 30 days of the publication of this notice.

ADDRESS: Comment should be sent to Mr. Paul Chapman at the address listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Chapman, Dallas Field Office, Office of Oil & Gas, Energy Information Administration, 1114 Commerce Street, Room 804, Dallas, Texas 75242–2899, Telephone (214) 767–2200.

SUPPLEMENTARY INFORMATION:

I. Background
II. Request for Comment

I. Background

In accordance with provisions of the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is responsible for carrying out comprehensive national

energy data programs including the compilation and dissemination of economic and statistical information. EIA's Oil and Gas Reserves system in designed to provide information for use by the Congress, Federal and State agencies, industry, and other interested parties on the status of proved reserves of crude oil, natural gas and lease condensate. In keeping with its responsibilities, EIA is planning to request a 3-year extension of the three forms used to gather information for this system.

The Form EIA–23 collects information on the proved reserves of crude oil, natural gas, and lease condensate from a sample of operators of domestic crude oil and/or gas wells. All data, except for natural gas commitment status information, are reported on a total operated basis. The total operated reporting basis of schedule A includes total reserves and production associated with wells operated by an individual operator. Schedule B of the form collects natural gas commitment status data on a gross working interest ownership basis, which includes the respondents' working interest in a given property plus the proportionate share of any royalty interest associated with the working interest. EIA is proposing the elimination of the Schedule B, in the absence of a convincing rationale for its continuation, as a means of reducing respondent burden.

The Form EIA–23P, "Oil and Gas Well Operator Update Report," is designed to determine the status (active or inactive) and approximate level of production for domestic oil and gas well operators currently on the operator frame for the Form EIA–23. Removal of inactive firms and knowledge of the approximate size of active operators is necessary to reduce both the sample size and the sampling errors of future EIA–23 surveys. Form EIA–64A, "Annual Report of the Origin of Natural Gas Liquids Production," is designed to collect information on the volume of natural gas received and the natural gas liquids extracted at gas processing plants, by areas of origin, and the total gas skrinkage resulting from the natural gas liquids extracted by the plants. EIA does not proprose, at this time, any changes to either Form EIA–23P or EIA–64A.

II. Request for Comments

EIA invites the public to comment on this proposal within 30 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses.

(As a potential respondent)

(1) Taking into consideration the proposed change in Form EIA–23, how many hours, including time for review, computation, preparation, and administrative review, will it take your firm to complete and submit each of the three forms.

(2) Again, taking into consideration the proposed change to Form EIA–23, estimate the cost of filing these forms, including direct and indirect cost associated with the data collection. Direct costs should include all one-time and recurring costs, such as development, assembly, equipment ADP, and other administrative costs.

(3) Do you know of any other Federal State or local agencies which collect similar data? If yes, please identify these agencies.

(4) Do you support the proposed change to Form EIA–23? Are there additional changes that you would recommend?

(5) Apart from the proposed change to Form EIA–23, are there any other changes or modifications that you would recommend for Form EIA–23, or Form EIA–23P, or Form EIA–64?

(6) What other suggestions do you have for improving these three forms?

(As a potential user)

(1) Do you need data at the levels of aggregation that would be available using the modified Form EIA–23; that is, do the categories, frequency, and geographic detail reflect your needs?

(2) Do you need any of the elements of information that would be eliminated by this proposal? For what purposes would you use these data?

(3) How could these forms be improved to better meet your specific data needs?

(4) Are there alternative sources of data? Do you now use them? What are their deficiencies?

EIA is also interested in receiving comments on the need for the collection of this information. Comments or summaries of comments will be provided in EIA's submission to the Office of Management and Budget requesting a 3-year extension of these data collections and will become a matter of public record.

Issued in Washington, D.C. on June 28, 1985.

Dr. H. A. Merklein,

Administrator, Energy Information Administration.

[FR Doc. 85–15947 Filed 7–2–85; 8:45 am]

BILLING CODE 6455-01-M

Federal Energy Regulatory Commission

[Docket No. RP85–113–001]

Northern Natural Gas Co., Division of InterNorth, Inc.; Request for Waiver

June 26, 1985.

Take notice that on June 3, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) requested a waiver of the provisions of order No. 399, requiring lump-sum payments to each jurisdictional customer to flow through Btu refunds received from first sellers. Northern asserts that its total Btu refund is de minimis, that the rate impact is insignificant, and that administrative costs clearly outweigh the benefits of lump-sum refunds. Northern proposes to include the Btu refund in its next regularly scheduled PGA filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–15920 Filed 7–2–85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7328–001]

Small Hydro East; Surrender of Preliminary Permit

June 28, 1985

Take notice that Small Hydro East, Permittee for the proposed Crystal Falls Project No. 7328, requested by letter dated May 29, 1985, that its preliminary permit be terminated. The preliminary permit was issued on June 18, 1984, and would have expired on November 30, 1985. The project would have been located on the Phillips Brook in Coos County, New Hampshire.

The Permittee filed the request on May 29, 1985, and the preliminary permit for Project No. 7328 shall remain in effect through the thirtieth day after

issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15930 Filed 7-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-153-000 et al]

Southern Natural Gas Co. et al.; Filing of Pipeline Refund Reports and Refund Plans

June 26, 1985.

Take notice that pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before July 3, 1985. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
5/15/85	Southern Natural Gas Co.	RP85-153-000	Report.[1]
5/20/85	Locust Ridge Gas Co.	RP84-88-006	Do.
5/21/85	Natural Gas Pipeline Co. of America.	RP85-89-001	Do.[1]
5/31/85	South Georgia Natural Gas Co.	RP85-9-000	Do.[1]
5/10/85	....do	RP81-25-004	Do.
5/10/85	....do	RP80-136-008	Do.
5/10/85	Transcontinental Gas Pipe Line Corp.	TA85-3-29-005	Do.
6/19/85	Cimarron Transmission Co.	RP85-100-001	Do.[1]
6/20/85	Tennessee Gas Pipeline Co.	RP85-94-002	Do.[1]
6/20/85	Arkansas Oklahoma Gas Corp.	RP85-105-001	Do.[1]

[1] Refunds resulting from Btu Measurement Adjustments. Each company will retain its basic Docket No. and Sub-Docket Nos. will be assigned to any future Btu refund reports.

[FR Doc. 85-15931 Filed 7-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI64-106-002 et al.]

Sun Exploration and Production Company et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

June 28, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 16, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and dated filed	Applicant	Purchaser and location	Price per 1,000 ft	Pressure base
CI64-106-002, D, June 17, 1985	Sun Exploration and Production Company, P.O. Box 2880, Dallas, Texas 75221-2880.	Northern Natural Gas Company, Ozona, *et al.* Field, Crockett County, Texas.	(1)	
CI84-476-001, E, June 21, 1985	Anadarko Production Company (Succ. in Interest to Sun Exploration & Production Company), P.O. Box 1330, Houston, Texas 77251-1330.	Trunkline Gas Company, East Cameron Block 338, Offshore Louisiana, OCS-G-2063.	(2)	14.73
CI85-507-000, (G-17918), B, June 14, 1985.	Union Texas Petroleum, A Division of Allied Corporation, P.O. Box 2120, Houston, Texas 77252-2120.	Lone Star Gas Company, Sec. 4-T2N-R4W, Carter—Knox Field, Stephens County, Oklahoma.	(3)	
CI85-508-000 (CI75-289), B, June 17, 1985.	Sun Exploration and Production Company	Northern Natural Gas Company, Mocane Field, Beaver County, Oklahoma.	(4)	
CI85-510-000 (CI80-95), B, June 17, 1985.	Geo. Oil and Gas Company of Houston, P.O. Box 2511, Houston, Texas 77001.	Northwest Pipeline Corporation, Blue Cloud Field, Rio Blanco County, Colorado.	(5)	
CI85-511-000, B, June 18, 1985	Hufo Oils, 1016 Andrews Highway, Midland, Texas 79701.	Panhandle Eastern Pipe Line Company, Panhandle Moore Field, Moore County, Texas.	(6)	
CI85-512-000, B, June 18, 1985	....do	Panhandle Eastern Pipe Line Company, Panhandle Carson Field, Carson County, Texas.	(6)	
CI85-517-000, A, June 19, 1985	Fairmont Oil Corporation, 6 East 43rd Street, New York, N.Y. 10017.	Natural Gas Pipeline Company of America, Vermilion Block 277, Offshore Louisiana.	(7)	14.73
CI85-518-000, A, June 19, 1985	Case-Pomeroy Oil Corporation, P.O. Box 1511, Midland, Texas 79702.	....do	(7)	14.73
CI85-519-000 (CI66-1224), B, June 20, 1985.	Tennsco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Montana-Dakota Utilities, Rattlesnake Field, Washakie County, Wyoming.	(8)	
CI62-462-000, D, June 24, 1985	Sun Exploration and Production Company	Northern Natural Gas Company, Sitka Field, Clark County, Kansas.	(9)	
CI66-470-002, D, June 24, 1985	....do	Arkansas Louisiana Gas Company, Red Oak-Norris Field, LeFlore County, Oklahoma.	(10)	
CI66-470-003, D, June 24, 1985	Sun Exploration and Production Company, P.O. Box 2880, Dallas, Texas 75221-2880.	Arkansas Louisiana Gas Company, Red Oak Field, LeFlore County, Oklahoma.	(11)	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft	Pressure base
CI85-502-000 (CI79-237), B, June 10, 1985.	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77252.	Gas Gathering Corporation, Bayou Bouillon Field, St. Martin Parish, Louisiana.	(13).....	.....

[1] Assignment of C. E. Davidson lease to Vernon E. Faulconer.
[2] By assignment, executed on 6-14-84, effective 5-1-84, Applicant acquired 3.168371% of working interest in East Cameron Block 336, Offshore, Louisiana, OCS-G-2063, which was dedicated under a contract dated 11-11-76 by and between Clark Oil Producing Company (predecessor in interest to Sun) and Trunkline Gas Company.
[3] Union Texas's interest in the lease dedicated to R.S. 54 was assigned to Singer-Fleischaker Oil Co.—effective 1-1-69. The primary term of the contract expired on 1-26-79.
[4] Assignment of acreage under contract to P. F. Beeler.
[5] Sale of dedicated properties to Quinoco Petroleum, Inc. on 1-1-84.
[6] Seller and Purchaser have mutually agreed to termination of the basic gas contract.
[7] Applicant is filing under Gas Purchase Contract dated 3-14-85.
[8] Termination of contract.
[9] Quitclaim and Bill of Sale to Egret Energy Corporation of Section 13, T33S, R22W, Clark County, Kansas.
[10] Partial Assignment and Bill of Sale to Kaser-Francis Oil Company of Johnnie Reimer Unit and James Craig Unit.
[11] Partial Assignment and Bill of Sale to John R. Dean of Fisher Gas Unit.
[12] Gas Gathering Corporation (G.G.C.) advised Gulf that their resale contract with Transcontinental Gas Pipe Line Corporation (Transco) expired on 4-26-85 but was extended to 6-1-85. G.G.C. also advised Gulf that G.G.C. could not recommend the acceptance of an offer being made by Transco for an additional five year period beginning 6-1-85 and advised that if Gulf did not wish to agree to the offer made by Transco, G.G.C. could not accept Gulf's natural gas after 6-1-85. G.G.C. further indicated that if Gulf approved they would agree to an alternative market with Monterey Pipe Line Company (Monterey). G.G.C. stated that it is their intention to file on abandonment for their sale of natural gas to Transco and requested Gulf do the same to enable them to sell the gas they purchase from Gulf to Monterey.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 85-15932 Filed 7-2-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-2-18-000 and TA85-2-18-001]

Texas Gas Transmission Corp.; Notice of Proposed Changes in FPC Gas Tariff

June 25, 1985.

Take notice that Texas Gas Transmission Corporation (Texas Gas) on June 21, tendered for filing Forty-Ninth Revised Sheet No. 7 and Twelfth Revised Sheet No. 7-B to its FPC Gas Tariff, Third Revised Volume No. 1.

The tariff sheets are proposed to be effective July 1, 1985, and reflect primarily the impact of Texas Gas' exercise of "market-out" provisions in certain gas purchase agreements effective July 1, 1985.

Texas Gas requests waiver of the notice requirements to make its rates effective July 1, 1985. Waiver of the PGA time-of-filing requirements is also requested to permit the proposed rates to become effective outside of the semi-annual schedule in effect for Texas Gas.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-15933 Filed 7-2-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI85-521-000]

UER Marketing Co.; Application for Blanket Limited Term Certificate and Limited Partial Abandonment Authorization

June 27, 1985.

Take notice that on June 21, 1985, UER Marketing Company, P.O. Box 1478, 600 Travis, Houston, Texas 77001, filed an application pursuant to Sections 4 and 7 of the Natural Gas Act, 15 U.S.C. Sections 717c, 717f, and the provisions of 18 CFR Part 157, for a blanket limited-term certificate of public convenience and necessity authorizing UER Marketing to conduct a short-term spot sales marketing program, hereinafter referred to as USA, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval would (1) authorize the sale of natural gas for resale in interstate commerce; (2) permit limited-term, partial abandonment of certain natural gas sales; (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by pipeline companies able and willing to participate in the USA program; and (5) confer pre-granted abandonment authorization for the transportation service allowed under the requested certificate. UER Marketing also requests the Commission to declare that, with respect to UER Marketing and its activities, the Commission will assert Natural Gas Act jurisdiction only over sales for resale and tranportation not otherwise exempt from the NGA.

Under the USA program, UER Marketing proposes to sell natural gas qualifying for the section 102, 103, 107, and 108 rates under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. Sections 3301-3432. Only contractually committted gas will be sold. UER Marketing and participating producers will seek temporary releases of gas from the purchasers in order to meet market demand for natural gas sales. Releasing purchasers will be absolved from take-or-pay liability. Arrangements for transporting the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before *July 15, 1985,* file with the Federal Energy Regulatory Commission, in Washington, DC. 20426, petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Person's wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-15934 Filed 7-2-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. PR85-58-004]

El Paso Natural Gas Co.; Tariff Filing

June 28, 1985.

Take notice that on June 25, 1985 El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act and in accordance with the Stipulation and Agreement in Settlement of Rate Proceedings ("Stipulation and Agreement") filed concurrently by El Paso at Docket Nos. PR85-58-000, RP85-129-000, RP85-130-000, RP85-140-000, and CP79-224-005 and 006, the revised and original tariff sheets to its FERC Gas Tariff identified on the attached Appendix.

El Paso states that the tendered tariff sheets serve to implement the settlement of rate and other issues as agreed to in the Stipulation and Agreement and requests that the Commission grant such waiver of its rules, regulations and orders as may be necessary to permit the tendered tariff sheets to become effective July 1, 1985, as provided for in said Stipulation and Agreement.

El Paso states that copies of the filing have been served upon all parties of record in Docket Nos. RP85-58-000, RP85-129-000, RP85-130-000, RP85-140-000, and CP79-224-005 and 006, and, otherwise, upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before July 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

Appendix—El Paso Natural Gas Company

First Revised Volume No. 1

First Revised Sheet No. 1
Substitute Fourth Revised Sheet No. 100
Original Sheet No. 101
Original Sheet Nos 102 through 199 [1]
First Revised Sheet No. 200
Substitute First Revised Sheet No. 210
First Substitute Second Revised Sheet No. 211
First Substitute Second Revised Sheet No. 212
Substitute Second Revised Sheet No. 213
Substitute First Revised Sheet No. 220
Substitute Third Revised Sheet No. 221
Substitute Second Revised Sheet No. 222
Substitute Second Revised Sheet No. 223
Substitute Second Revised Sheet No. 224
First Revised Sheet No. 225
First Revised Sheet No. 230
Substitute First Revised Sheet No. 231
First Revised Sheet No. 232 [1]
First Revised Sheet No. 240
Original Sheet Nos. 242 through 249 [1]
Original Sheet No. 250
Original Sheet No. 251
Original Sheet No. 252
Original Sheet No. 253
Original Sheet No. 254
Original Sheet No. 255
Original Sheet No. 256
Original Sheet Nos. 257 through 299 [1]
Substitute First Revised Sheet No. 355
Substitute First Revised Sheet No. 356

Original Volume No. 1-A

First Revised Sheet No. 1
First Revised Sheet No. 20
Original Sheet No. 21 [1]
Original Sheet No. 22
Original Sheet No. 23 [1]
Original Sheet No. 24
Original Sheet Nos 25 through 99 [1]
First Revised Sheet No. 101
First Revised Sheet No. 102
First Revised Sheet No. 103
First Revised Sheet No. 104 [1]
Original Sheet Nos. 105 through 109 [1]
Original Sheet No. 110
Original Sheet No. 111
Original Sheet No. 112
Original Sheet No. 113
Original Sheet No. 114
Original Sheet No. 115
Original Sheet No. 116
Original Sheet Nos. 117 through 119 [1]
Original Sheet No. 120
Original Sheet No. 121
Original Sheet No. 122
Original Sheet No. 123
Original Sheet No. 124
Original Sheet Nos. 125 through 199 [1]
Original Sheet No. 309 [1]
Original Sheet No. 310
Original Sheet No. 311
Original Sheet No. 312
Original Sheet No. 313
Original Sheet No. 314
Original Sheet No. 315
Original Sheet No. 316
Original Sheet No. 317
Original Sheet No. 318
Original Sheet No. 319
Original Sheet Nos. 320 through 399 [1]

Third Revised Volume No. 2

Substitute Twenty-ninth Revised Sheet No. 1-D
First Substitute Fourteenth Revised Sheet No. 1-D.2
Second Revised Sheet No. 1-E

Original Volume No. 2A

Substitute Thirtieth Revised Sheet No. 1-C

[1] These tariff sheets are not attached to the Stipulation and Agreement being filed concurrently herewith and are tendered as part of this filing for pagination purposes only.

[FR Doc. 85-15926 Filed 7-2-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-1-13-002]

Gas Gathering Corp.; Corrected Filing

June 25, 1985.

Take notice that on June 3, 1985, Gas Gathering Corporation (GGC) tendered for filing a corrected FERC Form No. 542-PGA with supporting data which included Twenty-third Revised Sheet 8 of 8 to its FERC Gas Tariff, Rate Schedule No. 2—Supplement No. 24. The revised sheet reflects an effective date of January 1, 1985. GGC states that the changes rectify certain errors discovered through various meetings and discussions among GGC, the Commission Staff, and GGC's sole jurisdictional sale for resale customer, Transcontinental Gas Pipe Line Corporation, the only parties involved in the above-referenced proceeding. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until June 18, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15927 Filed 7-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-515-000]

Jan Energy Co.; Application for Commission Authorization Relating to JanGas

June 28, 1985.

Take notice that on June 19, 1985, Jan Energy Company (Jan), of 322 E. Lancaster Avenue, Wayne, Pennsylvania 19087, filed an application for certain authorizations required in connection with the proposed "JanGas".

Jan specifically requests that the Commission grant the following: (1) Authority for the sale of gas by Jan for resale in interstate commerce, specified in Tenneco Oil Co., *et al.*, 28 FERC ¶ 61,363 (September 28, 1984), modified, 29 FERC ¶ 61,334 (December 21, 1984); (2) blanket abandonment authority permitting the temporary release of gas to producers who elect to participate in JanGas; (3) permission for Jan to fulfill certain reporting requirements contained in the Commission's generic SMP order except those contained in Ordering Paragraph (V), Subparagraphs (2), (5)[5] and [7]; (4) permission to assume the Part 284 reporting requirements normally imposed on pipelines; (5) a declaration that participation in JanGas will not alter the existing jurisdictional status under the NCA of participating intrastate and Hinshaw pipelines; and (6) waiver of the 48-hour post transaction requirement set forth in 18 CFR 284.4.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 15, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15928 Filed 7-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-166-000]

Southern Natural Gas Co.; Compliance Filing

June 28, 1985.

Take notice that on June 25, 1985, Southern Natural Gas Company (Southern) tendered for filing First Revised Sheet No. 30D to its FERC Gas Tariff, Sixth Revised Volume No. 1. Southern states that this filing is being made pursuant to Ordering Paragraph (B) of the Federal Energy Regulatory Commission's June 7, 1985 order in Docket No. CP85-464-000 and that the revised sheet sets forth the rates to be effective under its Flexible Discount Rate Schedule during July of 1985. Southern is requesting an effective date of July 1, 1985.

Southern indicates that copies of the filing have been mailed to all its jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15924 Filed 7-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-5-5-602]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 28, 1985.

Take notice that on June 26, 1985, Midwestern Gas Transmission Company (Midwestern) filed Substitute Fourteenth Revised Sheet No. 5 Original Volume No. 1 of its FERC Gas Tariff, to be effective, under certain conditions, July 1, 1985.

Midwestern states that the purpose of the filing is to reflect PGA rate adjustments for its Southern System based on (1) rate changes filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and (2) various purchases of gas directly from producer-suppliers. Midwestern states that Substitute Fourteenth Revised Sheet No. 5 will replace Fourteenth Revised Sheet No. 5 filed in Docket Nos. TA85-5-5-600 on May 31, 1985 to be effective July 1, 1985 provided the Commission permits the rates reflected in Natural Gas Pipeline Company of America's June 19, 1985 PGA to become effective.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-15925 Filed 7-2-85; 8:45 am]

BILLING CODE 6717-01-M

Office of General Counsel

Intent To Grant Partially Exclusive Patent License; Battelle Memorial Institute

Notice is hereby given of an intent to grant to Battelle Memorial Institute, of Columbus, Ohio, a partially exclusive license to practice the invention described in U.S. Patent No. 4,376,598, entitled "In-Situ Vitrification of Soil," and corresponding patent applications in Great Britain, France, Canada, Italy, Japan, and Federal Republic of Germany. The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be partially exclusive, i.e. limited to fields of use other than radioactive waste management and subject to a license and other rights retained by the U.S. Government. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously in a field of use other than radioactive waste management.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, D.C. on June 27, 1985.

J. Michael Farrell,

General Counsel.

[FR Doc. 85-15945 Filed 7-2-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59185A; FRL-2868-6

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of two applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-85-48, and TME-85-49. The test marketing conditions are described below.

EFFECTIVE DATE: June 26, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611E, 401 M St., SW., Washington, D.C. 20460, (202-382-3396).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test market exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-85-48 and TME-85-49. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. The production volume, use and the number of customers must not exceed that specified in the applications.

The following additional restrictions apply to TME-85-48, and TME-85-49. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T-85-48

Date of Receipt: May 15, 1985.

Notice of Receipt: May 24, 1985 (50 FR 21509).

Applicant: Solvio Engineered Materials Company.

Chemical: Aluminum arsenate.

Use: Controlled doping of silicon wafers.

Production Volume: 500 pounds.

Number of Customers: 100.

Worker Exposure: During manufacture, 2 workers may be exposed dermally up to 2 hours per day for less than 10 days. During use 1-2 workers per site at up to 100 sites may be exposed dermally for 1-2 hours per day for less than 10 days.

Test Marketing Period. Twelve months.

Commencing on: June 26, 1985.

Risk Assessment: EPA identified moderate to high health and environmental concerns based on acute and chronic toxicity of arsenate salts. Because of the nature of the use for the substance, and because the substance has a negligible vapor pressure and will be handled in a cast solid form, no significant human exposure is expected under test marketing conditions. In addition, the chemical is not expected to be absorbed through the skin. EPA identified no releases to water for the TME substance. Therefore, the TME substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

T-85-49

Date of Receipt: May 15, 1985.

Notice of Receipt: May 24, 1985 (50 FR 21503).

Applicant: Solvio Engineered Materials Company.

Chemical: Yttrium arsenate.

Use: Controlled doping of silicon wafers.

Production Volume: 500 pounds.

Number of Customers: 100.

Worker Exposure: During manufacture, 2 workers may be exposed dermally up to 2 hours per day for less than 10 days. During use, 1-2 workers per site at up to 100 sites may be exposed dermally for 1-2 hours per day for less than 10 days.

Test Marketing Period: Twelve months.

Commencing on: June 26, 1985.

Risk Assessment: EPA identified moderate to high health and environmental concerns based on acute and chronic toxicity of arsenate salts. Because of the nature of the use for the substance, and because the substance has a negligible vapor pressure and will be handled in a cast solid form, no significant human exposure is expected under test marketing conditions. In addition, the chemical is not expected to be absorbed through the skin. EPA identified no releases to water for the TME substance. Therefore, the TME substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 26, 1985.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 85-15920 Filed 7-2-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Indiana National Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 25, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Indiana National Corporation,* Indianapolis, Indiana, to acquire through its wholly-owned subsidiary, Indian Mortgage Company 21.1 percent of the voting shares of Keystone Mortgage Corporation, Indianapolis, Indiana, thereby engaging in the production of single family mortgage loans pursuant to § 225.25(b)(1). These activities would be conducted in Indianapolis, Indiana and Greenwood, Indiana.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Nebanco, Inc.,* Wallace, Nebraska, to retain shares of American Corporation, North Platte, Nebraska, thereby acting as agent (or underwriter) with respect to insurance limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act.

Board of Governors of the Federal Reserve System, June 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15887 Filed 7-2-85; 8:45 am]

BILLING CODE 6210-01-M

J. Carl H. Bancorp.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the Offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 26, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *J. Carl H. Bancorporation,* Earling, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers Trust and Savings Bank, Earling, Iowa.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15888 Filed 7-2-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Vessel Sanitation Inspection Program

AGENCY: Centers for Disease Control (CDC), Public Health, HHS.

ACTION: Request for public comment.

SUMMARY: CDC is considering making changes in the Vessel Sanitation Inspection Program relating to sanitation inspections of cruise ships and other passenger vessels. Public comment is requested on the proposed changes.

DATE: Comments must be received on or before October 1, 1985.

ADDRESS: Comments may be mailed to Director, Division of Quarantine, Centers for Disease Control, 1600 Clifton Rd., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Laurence S. Farer, M.D., Director, Division of Quarantine, Center for Prevention Services, CDC, 1600 Clifton Rd., Atlanta, Georgia 30333.

SUPPLEMENTARY INFORMATION: The CDC Vessel Sanitation Inspection Program is conducted under the authority of Sections 361(a) and 366(c) of the Public Health Service Act (42 U.S.C. 264(a) and 269(c)), and Title 42, Part 71, of the Code of Federal Regulations.

For many years the Public Health Service has conducted sanitation inspections of passenger cruise vessels. This Vessel Sanitation Inspection Program is designed to minimize health risks, especially those which might lead to gastrointestinal disease outbreaks, for

American travelers and the American public.

Although gastrointestinal disease outbreaks at sea are not common, passenger ships are unique in having a large aggregation of people in a relatively isolated situation, in being the only source of food and water for passengers and crew while at sea, and in having limited medical facilities.

The current program, under the auspices of CDC's Division of Quarantine, is based on the World Health Organization's "Guide to Ship Sanitation," augmented by CDC recommendations for sanitation and surveillance developed in collaboration with industry representatives. Unannounced inspections, performed semi-annually, now focus on the following six areas; Water, refrigeration, food preparation, potential contamination of food, personal cleanliness of food handlers, and the vessel's cleanliness and state of repair. Vessels which fail to meet the CDC standard (score of 85 or above out of a possible total score of 100) receive unannounced reinspections at more frequent intervals. A summary of the results of these inspections is published every 2 weeks and distributed to local health departments, the media, and the travel industry. Detailed inspection reports are available on request.

At the represent time, CDC is reviewing the procedures for these inspections. The following changes are being considered:

(1) Revision of the inspection scoring system: The current system is based on 42 inspection items, 32 of which are critical for meeting the CDC standard. The proposed system is based on 37 inspection items, 11 of which are critical for meeting the CDC standard.

(2) Revision of the method for restoring credit for certain deficiencies corrected during the inspection: The current method restores full credit for deficiencies corrected during the inspection. The proposed method restores full credit only for correction of structural or equipment deficiencies, and partial credit for correction of deficiencies of a behavioral nature which may be subject to recurrence.

(3) Implementation of an affidavit procedure for vessel management to obtain restoration of credit by attesting to correction of certain deficiencies subsequent to the inspection. There is no provision in the current program for ship management to attest to the correction of any deficiency by affidavit.

(4) Implementation of a review system to allow vessel management to contest a deficient item or an inspection score. There is no formal review procedure in the current program.

(5) Publication of numerical scores for vessels not meeting the CDC standard. Presently, published results indicate only if CDC standard was or was not met.

Comment is requested on the proposed changes in the Vessel Sanitation Inspection Program. Interested parties may receive copies of the current inspection form, the biweekly publication containing inspection results, and a proposed staff manual containing the changes, by writing to the address above.

Dated: June 25, 1985.

Donald R. Hopkins, M.D.

Acting Director, Centers for Disease Control.

[FR Doc. 85-15870 Filed 7-2-85; 8:45 am]

BILLING CODE 4160-18-M

Cardiovascular Fetotoxicity and Functional Teratogenesis; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: July 19, 1985.

Time: 9 a.m.–12 noon.

Place: Auditorium, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To review and discuss a proposed study which will examine the effects of ethylene glycol monomethyl ether on ornithine decarboxylase activity in the neonatal and fetal rat. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Mark Toraason, Ph.D., Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684–8357; Commercial: 513/684–8357.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-15921 Filed 7-2-85; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice of the Ophthalmic Devices Panel to reflect a change in the agenda and the meeting date. The panel will meet on July 15 only. The announcement of the Ophthalmic Devices Panel meeting, which was published in the Federal Register of June 24, 1985 (50 FR 26051), is revised to read as follows:

Ophthalmic Devices Panel

Date, time, and place. July 15, 9 a.m., North Auditorium, Health and Human Services Bldg., 330 Independence Ave. SW. (entrance on C St.), Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12:30 p.m.; closed committee deliberations, 12:30 p.m. to 4:30 p.m.; Mary Elizabeth Jacobs, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7320.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 1, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses (IOL's) and neodymium:yttrium-aluminum-garnet (nd:YAG) lasers. The committee will also discuss PMA's for contact lenses and other ophthalmic devices, and requirements for PMA approval. Comments received on the discussion held at the May 13 panel meeting on ultraviolet light (UV) effects on the eye and labeling issues for UV-absorbing IOL's and the draft contact lens solution guidelines will also be

discussed. Copies of the revised contact lens guidelines will be available to interested persons.

Closed committee deliberations. The committee will review trade secret or confidential commercial information regarding a PMA for an IOL. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dated: June 27, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-15807 Filed 7-2-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 75N-0139]

Oral Proteolytic Enzymes; Withdrawal of Approval of New Drug Applications; Temporary Stay of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice that, with respect to the drug products Papase, Chymoral, Ananase, and Avazyme, the Commissioner's decision withdrawing approval of certain oral proteolytic enzyme products has been temporarily stayed so that the drug sponsors can seek a judicial stay pending appeal.

ADDRESS: The parties' submissions, the Commissioner's decision, including the final order, and all other documents related to the decision may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert J. Rice, Jr., Division of Regulations Policy (HFF-221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 11, 1985 (50 FR 24581), FDA announced the availability of the decision by the Commissioner of Food and Drugs to withdraw approval of the new drug applications for five drug products containing oral proteolytic enzymes, effective July 1, 1985. The NDA's are for Orenzyme, Chymoral, Papase, Ananase, and Avazyme.

Warner-Lambert Company (NDA 12-293, Papase), Armour Pharmaceutical Company (NDA 12-178, Chymoral), William H. Rorer, Inc. (NDA 12-527, Ananase), and Wallace Laboratories, Division of Carter-Wallace, Inc. (NDA 12-626, Avazyme) petitioned for a stay of the effective date of the Commissioner's decision, pending judicial review of the decision. Merrill-Dow Pharmaceuticals, Inc. (NDA 11-783, Orenzyme) indicated that it did not intend to seek a stay.

By letters dated June 21 and June 24, 1985, the Commissioner denied those petitions for a stay on the basis that the criteria for granting a stay in 21 CFR 10.35(e) had not been met. In the exercise of this discretion, the Commissioner granted a limited, temporary stay so that the drug sponsors have an opportunity to seek a judicial stay. With respect to each petitioning firm, the temporary stay will expire automatically on July 10, 1985, if by that date the firm has not petitioned the Court of Appeals for a stay, accompanied by a request for expedited briefing and consideration. If the firm does so petition on or before that date, the temporary stay will continue in effect until the court rules on the request for a stay.

The parties' submissions and the agency's orders are on public display in the Dockets Management Branch (address above).

FDA is providing notice of the Commissioner's decision to grant a limited, temporary stay in accordance with § 10.35(f) of the regulations.

Dated: June 28, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-15968 Filed 7-1-85; 10:33 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

National Strategic Materials and Minerals Program Advisory Committee Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet on Wednesday, July 17, 1985 from 9:00 a.m. until 12:00 noon, or until business is concluded. The meeting will convene in Room 7000 A & B, Main Interior Building, 18th & C Streets, NW, Washington, D.C.

It will be open to the public, however, facilities and space to accomodate members of the public are limited.

The proposed agenda is:

9:00—10:00—Chairman's introductory remarks; discussion of accomplishments and goals

10:00-10:30—Briefing on Office of Technology Assessment report "Strategic Materials: Technologies to Reduce U.S. Import Vulnerability"

10:30—Conclusion—Reports from working groups; new business, discussion of future agenda

Statements are invited from groups and members of the general public who have an interest in mining, minerals or materials issues. To ensure that time will be available to hear such statements, prospective witnesses are requested to notify the Committee contact (see below) of their intention to appear. Written statements for the record should be submitted prior to August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Gully Walter, Department of the Interior, Washington, D.C. Room 6650, (202) 343-2136.

Dated: June 21, 1985.

Gully Walter,

For Executive Director.

[FR Doc. 85-15905 Filed 7-2-85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[INT FMP/FEIS 85-21]

Availability of the Proposed Walker Resource Management Plan and Final Environmental Impact Statement, Carson City District, NV

June 26, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Proposed Walker Resource Management Plan and Final Environmental Impact Statement, Carson City District, Nevada.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the National Environmental Policy Act, the Carson City District of the Bureau of Land Management has prepared a combined final environmental impact statement and proposed resource management plan for the Walker resource management planning area. Wilderness recommendations in the plan are preliminary and subject to change during administrative review.

SUPPLEMENTARY INFORMATION: The proposed resource management plan is designed to guide future management actions within the Walker resource management planning area. The planning area encompasses 1.9 million acres of public land largely in Mineral County, and parts of Lyon and Douglas Counties of Nevada. The document describes the proposed resource management plan and contains written and oral comments received during the public review period and responses to

those comments, and changes which were made as a result of public comment.

A 30-day public review period will end August 9, 1985. During that period any portion of the plan, with the exception of the wilderness recommendations, may be protested as outlined in 43 CFR, 1610.5–2. All protests should be sent to: Director, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John Matthiessen, Walker Resource Area Manager, Bureau of Land Management, 1050 E. William St., Ste. 335, Carson City, NV 89701, (702) 882–1631.

Copies of the draft document are available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, 18th and C Streets, Washington, DC 20240
Bureau of Land Management, Elko District Office, 2002 Idaho Street, Elko, Nevada 89801, (702) 738–4071
Bureau of Land Management, Nevada State Office, 300 Booth Street, Reno, Nevada 89520, (702) 784–5448
Bureau of Land Management, Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada 89102, (702) 385–6403
Bureau of Land Management, Winnemucca District Office, 705 East 4th Street, Winnemucca, Nevada 89445, (702) 623–3676
Carson City Library, 900 N. Roop Street, Carson City, Nevada 89701
Government Publications Dept., University of Nevada, Reno, Reno Library, Reno, Nevada 89557
Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, (702) 289–4865
Bureau of Land Management, Carson City District Office, 1050 E. William Street, Suite 335, Carson City, Nevada 89701, (702) 882–1631
Bureau of Land Management, Battle Mountain District Office, North 2nd and Scott Streets, Battle Mountain, Nevada 89820, (702) 635–5181
University of Nevada, Reno, Getchell Library, Reno, Nevada 89507
University of Nevada, Las Vegas, James R. Dickinson Library, 4505 Maryland Parkway, Las Vegas, Nevada 89154
Mineral County Library, 1st and D Streets, Hawthorne, Nevada 89415
Lyon County Library, 20 Nevin Way, Yerington, Nevada 89447
Nevada State Library, Library Building, Carson City, Nevada 89710

Edward F. Spang,

State Director, Nevada.

[FR Doc. 85–15860 Filed 7–2–85; 8:45 am]

BILLING CODE 4310-HC-M

Sale of Public Lands; Siskiyou County, CA

Correction

In FR Doc. 85–8506 beginning on page 14029 in the issue of Tuesday, April 9, 1985, make the following correction:

On page 14029, in the table, in the fourth land description from the bottom, "NE¼SW¼, NW¼SE¼" should have read "SW¼SW¼".

BILLING CODE 1505-01-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5062, Block 861, Mobile Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Pascagoula, Mississippi.

DATE: The subject DOCD was deemed submitted on June 18, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD fom the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0675.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: June 20, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–15865 Filed 7–2–85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Potential 1986 U.S. World Heritage Nominations

AGENCY: National Park Service, Interior.

ACTION: Notice and request for public comment.

SUMMARY: On March 4, 1985, the Department of the Interior, through the National Park Service, set forth in a public notice the process and schedule that will be used in calendar year 1985 to identify and prepare U.S. nominations to the World Heritage List (50 FR 8680). In addition, the March 4 notice identified the criteria and requirements that U.S. properties must satisfy before nomination of World Heritage status, and solicited public comments and suggestions regarding cultural and natural properties that should be considered as potential U.S. nominations this year. This notice announces and invites comment on the potential 1986 U.S. World Heritage nominations as described below.

In addition, responses to the March 4 notice identified properties which are not presently included on the U.S. Indicative Inventory of Potential Future Nominations to the World Heritage List;

normally a prerequisite to be considered for nomination. Due to the lateness of comments received on these properties, the Department will continue to study the properties in question regarding their suitability for possible addition to the U.S. Indicative Inventory. The Federal Interagency Panel for World Heritage will review the properties at its July meeting and will make final recommendations regarding possible additions to the Inventory. Proposed additions to the Inventory will be announced in the **Federal Register** with a request for review and comment.

DATES: Written comments or recommendations regarding any property listed herein as a potential 1986 U.S. World Heritage nominations must be received within 30 days after publication of this notice to ensure full consideration. The final list of proposed 1986 nominations will be selected from among the potential nominations, and will be published in the **Federal Register**. A draft nomination document will be prepared for any property selected as a proposed nomination. In November 1985, the Federal Interagency Panel for World Heritage will review the accuracy, completeness, and suitability of the draft 1986 nomination(s) documentation and will make recommendations to the Assistant Secretary of the Interior for Fish and Wildlife and Parks. The Assistant Secretary subsequently transmits any approved nomination(s) on behalf of the United States to the World Heritage Committee Secretariat, through the Department of State, by December 15 for evaluation by the World Heritage Committee in a process that could lead to inscription on the World Heritage List by fall 1986. Notice of transmittal of U.S. nominations will be published in the **Federal Register**.

Decisions with regard to possible additions to the U.S. Indicative Inventory will be based upon comments received and upon further study and will be announced in the final **Federal Register** notice, as outlined above, of this year's procedure.

ADDRESS: Written comments or recommendations should be sent to the Director, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, D.C. 20013-7127. Attention: World Heritage Convention-773.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Wright, Associate Director, Planning and Development, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, D.C. 20013-7127, Telephone: (202) 343-5741.

SUPPLEMENTARY INFORMATION: The Convention Concerning Protection of the World Cultural and Natural Heritage, now ratified by the United States and 85 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world.

Participating nations identify and nominate their sites for inclusion on the World Heritage List, which currently includes 186 cultural and natural properties. The World Heritage Committee judges all nominations against established criteria.

Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, and rehabilitation of World Heritage properties situated within its borders.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515; 16 U.S.C. 470a-1, a-2). On May 27, 1982, the Interior Department published in the **Federal Register** the policies and procedures which it uses to carry out this legislative mandate (47 FR 23392). The rules contain additional information on the Convention and its implementation in the United States, and identify the specific requirements that U.S. properties must satisfy before they can be nominated for World Heritage status, i.e., the property must have previously been determined to be of national significance, its owner must concur in writing to its nomination, and its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment.

The Federal Interagency Panel for World Heritage assists the Department in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks, and includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, and the U.S. Fish and Wildlife Service within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; National Oceanic and Atmospheric Administration, Department of Commerce; Forest Service; Department of Agriculture; the U.S. Information Agency, and the Department of State.

Potential 1986 U.S. World Heritage Nominations

The Department of the Interior, through the National Park Service, has identified the following as potential 1986 U.S. nominations to the World Heritage List. A brief description is provided for each potential nomination, along with the World Heritage criteria that it appears to satisfy. The final list of proposed 1986 U.S. nominations to the World Heritage List will be selected from among the potential nominations included herein. Identification of a property as a potential 1986 nomination does not confer World Heritage status on it. A draft nomination document will be prepared for each property that is ultimately selected as a proposed 1986 nomination. The Department encourages all interested parties to comment and make recommendations on the potential nominations, as these comments and additional evaluation will serve as the basis for identifying proposed 1986 nominations.

The following have been identified as potential 1986 U.S. World Heritage nominations:

I. Cultural Properties

Polynesian

Nan Madol, Island of Ponape. (6°55' N; 158°15' E). A prehistoric city, dating from 900-1400 A.D., constructed of large carved basalt blocks. The site is the best preserved, and most impressive, monument to Polynesian culture. *Criteria:* (iii) Bears a unique or at least exceptional testimony to a civilization which has disappeared.

Hawaiian

Pu'uhonua O Honaunau National Historical Park, Hawaii. (19°25' N; 155°55' W). This area (formerly known as City of Refuge National Historical Park) includes sacred ground, where

vanquished Hawaiian warriors, noncombatants, and kapu breakers were granted refuge from secular authority. Prehistoric housesites, royal fishponds, and spectacular shore scenery are features of the park. *Criteria:* (iii) Bears unique or at least exceptional testimony to a civilization which has disappeared; (vi) directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance.

II. Natural Properties

Hawaiian Islands

Hawaii Volcanoes National Park, (19°20′ N; 155°20′ W). Contains outstanding examples of active and recent volcanism, along with luxuriant vegetational development at its lower elevations. *Criteria:* (i) An outstanding example illustrating the earth's evolutionary history, (ii) an outstanding example of significant geological processes, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Haleakala National Park, Hawaii. (20°40′ N; 156°10′ W). Ranging from sea level to 3000 m, has a great variety of habitats. Of international botanical significance, over 95 percent of the species, and 20 percent of the genera of flowering plants are found nowhere else on earth. Criteria: (i) An outstanding example representing major stages of the earth's evolutionary history, (ii) outstanding example representing ongoing biological evolution; (iii) contains superlative natural beauty.

North America Warm Deserts

This proposal incorporates five U.S. properties into a potential theme nomination. At the request of the Federal Interagency Panel, the Department will begin discussions with the Mexican Government regarding possible cooperation in assessing the representation of this theme on the World Heritage list. The U.S. properties are:

Big Bend National Park, Texas. (29°25′ N; 103°11′ W). With many excellent examples of mountain systems and deep canyons formed by a major river. A variety of unusual geological formations are found here with many vegetation types—dry coniferous forests, woodland, chaparral, and desert—associated with them. Criteria: (ii) An outstanding example of significant geological processes and biological evolution, and (iii) contains superlative natural phenomena, formations, and areas of exceptional natural beauty.

Saguaro National Monument, Arizona. (32°10′ N; 110°40′ W). Giant saguaro cactus, unique to the Sonoran Desert of southern Arizona and northwestern Mexico, reach up to 50 feet in height in the cactus forests in this park. Criteria: (ii) An outstanding example of biological evolution; (iii) contains superlative natural phenomena.

Organ Pipe Cactus National Monument, Arizona. (32°0′ N; 112°50′ W). Contains block-faulted mountains separated by wide alluvial valleys, along with playas, lava fields, and sands. It includes representative examples of the Sonoran Desert found in this region and nowhere else in the United States. Criteria: (ii) An outstanding example of biological evolution; (iii) contains superlative natural phenomena.

Joshua Tree National Monument. California. (33°50′ N; 116°0′ W), located at the junction of Mohave and Sonoran Deserts, contains an unusually rich variety of desert plants, including extensive stands of Joshua trees, set amongst striking granitic formations. Criteria: (ii) An outstanding example of biological evolution; (iii) contains superlative natural phenomena and formations.

Death Valley National Monument, California/Nevada. (36°30′ N; 117°0′ W). A large desert area, which is nearly surrounded by high mountains, contains the lowest point in the Western Hemisphere. It is highly representative of Great Basin/Mohave Desert (mountain and desert) ecosystems. Criteria: (ii) An outstanding example of significant geological processes and biological evolution; (iii) contains superlative natural phenomena.

Sierra Nevada

Sequoia/Kings Canyon National Parks, California. (36°40′ N; 118°30′ W). A combination of two adjoining national parks, this tract includes Mount Whitney, the tallest mountain in the United States outside of Alaska, Mineral King Valley, and two enormous canyons of the Kings River. Groves of giant sequoia, the world's largest living things, are found here. Criteria: (ii) An outstanding example of significant geological processes and biological evolution; (iii) contains superlative natural phenomena and areas of exceptional natural beauty.

Dated: June 7, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-15037 Filed 7-2-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-221]

Certain Apparatus for the Disintegration of Urinary Calculi; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Gary J. Rinkerman, Esq. and Denise T. DiPersio, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorneys in the above-cited investigation.

The Secretary is requested to publish this notice in the **Federal Register.**

Dated: June 21, 1985.

Respectfully submitted.

Arthur Wineburg,

Office of Unfair Import Investigations.

[FR Doc. 85-15086 Filed 7-2-85; 8:45 am]

BILLING CODE 7020-02-M

Agency Form Submitted for OMB Review

AGENCY: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of information collection: The proposed information collection is a "generic clearance" under which the Commission can issue questionnaires for the following types of investigations: countervailing duty, antidumping, escape clause, escape clause review, market disruption and "interference with programs of the USDA."

Summary of proposal:

(1) Number of forms submitted: three.

(2) Title of forms: *Sample Producer's Sample Importer's and Sample Purchaser's questionnaires* (i.e., the "samples" are an aggregate of the information that is likely to be collected in a series of questionnaires issued under the generic clearance).

(3) Type of request: extension.

(4) Frequency of use: on occasion.

(5) Description of respondents: Businesses or farms that produce, import and/or purchase products under investigation.

(6) Estimated annual number of respondents: 4,000.

(7) Estimated total annual number of hours to complete the forms: 100,000.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in

a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the proposed forms and supporting documents may be obtained from Debra Baker (tel. no. 202–523–0284). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Ms. Francine Picoult). If you anticipate commenting on the proposal but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Ms. Picoult's telephone number is (202) 395–7231. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW. Washington, DC 20436).

Issued: June 27, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–15952 Filed 7–2–85; 8:45 am]

BILLING CODE 7020-02-M

[332–214]

Effects of Restraining U.S. Steel Imports on the Exports of Selected Steel-Consuming Industries

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: June 25, 1985.

FOR FURTHER INFORMATION CONTACT: Jose Mendez (202–523–1792), Research Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436 (telephone 202–523–0275).

Background

The Commission instituted the investigation No. 332–214 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) following receipt on May 2, 1985 of a request therefore from the Committee on Finance of the United States for the purpose of gathering and obtaining information on the effects of restraining U.S. steel imports on the exports of selected U.S. steel consuming industries. In accordance with the Committee's request, the study will first identify the domestic export industries that are most dependent upon steel inputs, including but not limited to producers of steel products such as steel shipping containers, drums and barrels. For the identified industries, it will then undertake an assessment of the effects of the steel import restraints on their costs of production, exports, and investment decisions.

Public Hearing

A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC, beginning at 10:00 a.m., on October 8, 1985. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on September 23, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs. The deadline for filing prehearing briefs is September 25, 1985.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested parties are invited to submit written statements concerning the investigation. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be received no later than September 25, 1985. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Posthearing briefs must be submitted not later than the close of business on October 15, 1985. A signed original and 14 true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's Rules (19 CFR 201.8).

Hearing-imparied persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

Issued: June 26, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–15953 Filed 7–2–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–207 (Final)]

Cellular Mobile Telephones and Subassemblies Thereof From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigations and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–207 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of cellular mobile telephones and subassemblies thereof, classified under items 685.28 and 685.32 of the Tariff Schedules of the United States,[1] which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before August 19, 1985, and the Commission will make its final injury determination by October 9, 1985, (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b)).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: June 11, 1985.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–523–0296), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC. 20436.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of cellular mobile telephones from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on

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[1] These tariff items were enacted in the Trade and Tariff Act of 1984, Pub. L. 98–573, effective January 1, 1985; item 685.29, referenced in investigation No. 731–TA–207 (Preliminary) was stricken from the TSUS.

November 5, 1984 by Motorola Inc., Schaumburg, IL. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (49 FR 50316, Dec. 27, 1984).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on August 20, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on September 5, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on August 21, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on August 29, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is September 2, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the tme the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on September 12, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before September 12, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commisson.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.202).

Issued: June 24, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 15956 Filed 7–2–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-199 (Final)]

Certain Dried Salted Codfish From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission [2] determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that the establishment of an industry in the United States is materially retarded by reason of imports from Canada of certain dried heavy salted codfish, provided for in item 111.22 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective January 29, 1985, following a preliminary determination by the Department of Commerce that imports of certain dried heavy salted codfish from Canada were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 21, 1985 (50 FR 7236). The hearing was held in Washington, DC, on May 20, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 27, 1985. The views of the Commission are contained in USITC Publication 1711 (July 1985), entitled "Certain Dried Salted Codfish from Canada: Determination of the Commission in Investigation No. 731–TA–199 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 27, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–15957 Filed 7–2–85; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler dissenting.

[Investigation No. 731-TA-270 (Preliminary)]

64K Dynamic Random Access Memory Components From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-270 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of 64K dynamic random access memory devices (64K DRAMs), of the N-channel metal oxide semiconductor type, provided for in item 687.74 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 8, 1985.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT: George L. Deyman (202-523-0481), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on June 24, 1985, by Micron Technology, Inc., Boise, ID, on behalf of merchant manufacturers of 64K DRAMs.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on July 15, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact George L. Deyman (202-523-0481) not later than July 11, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before July 18, 1985, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 5, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: June 28, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-15960 Filed 7-2-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-249 (Preliminary) and 731-TA-262 through 265 (Preliminary)]

Iron Construction Castings From Brazil, Canada, India, and the People's Republic of China

Determinations

On the basis of the record [1] developed in investigation No. 701-TA-249 (Preliminary), the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of certain heavy iron construction castings,[2] [3] provided for in item 657.09 of the Tariff Schedules of the United States (TSUS), which are alleged to be subsidized by the Government of Brazil. In addition, the Commission determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury,[3] or that the establishment of an industry in the United States is materially retarded,[4] by reason of imports from Brazil of certain light iron construction castings,[5]

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] For the purposes of this investigation, the term "certain heavy iron construction castings" is limited to manhole covers, rings and frames; catch basin grates and frames; and cleanout covers and frames. Such castings are used for drainage or access purposes for public utility, water, and sanitary systems.

[3] Chairwoman Stern and Commissioner Lodwick found only a reasonable indication of a threat of material injury to the heavy iron construction castings industry.

[4] Chairwoman Stern and Commissioner Eckes found a reasonable indication of a threat of material injury to the light iron construction castings domestic industry.

[5] For the purposes of this investigation, the term "certain light iron construction castings" is limited to valve, service, and meter boxes. Such castings are placed below ground to encase water, gas or other valves, or water or gas meters.

provided for in TSUS item 657.09, which are alleged to be subsidized by the Government of Brazil.

On the basis of the record[6] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C 1673b(a)), that there is a reasonable indication that industries in the United States are materially injured by reason of imports from Brazil (investigation No. 731–TA–262 (Preliminary)),[7][8] Canada (investigation No. 731–TA–263 (Preliminary)), India (investigation No. 731–TA–264 (Preliminary)), and the People's Republic of China (investigation No. 731–TA–265 (Preliminary)) of certain heavy and light iron construction castings,[9][10] provided for in TSUS item 657.09, which are alleged to be sold in the United States at less than fair value (LFTV).[11]

Background

On May 13, 1985, petitions, were filed with the Commission and the Department of Commerce by counsel on behalf of the Municipal Castings Fair Trade Council alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of certain iron construction castings from Brazil and by reason of imports from Brazil, Canada, India, and the People's Republic of China of such castings which are being sold at LTFV. Accordingly, effective May 13, 1985, the Commission instued preliminary countervailing duty and antidumping investigations under the provisions of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 22, 1985 (50 FR 21148). The conference was held in Washington, DC, on June 5, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 27, 1985. The views of the Commission are contained in USITC Publication 1720 (June 1985), entitled "Iron Construction Castings From Brazil, Canada, India, and the People's Republic of China," Determinations of the Commission in Investigations Nos. 701–TA–249 and 731–TA–262 through 265 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations.

Issued: June 28, 1985.

By order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 85–15958 Filed 7–2–85; 8:45 am]

BILLING CODE 7020–02–M

[6] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[7] Commissioner Eckes found a reasonable indication of a threat of material injury to the domestic industry from imports of light iron construction castings from Brazil (investigation No. 731–TA–262 (Preliminary)).

[8] Chairwoman Stern finds only a reasonable indication of threat of material injury regarding imports from Brazil, and a reasonable indication of material injury or that regarding imports from Canada, India, and the People's Republic of China.

[9] For the purposes of these investigations, the term "certain heavy iron construction castings" is limited to manhole covers, rings and frames; catch basin grates and frames; and cleanout covers and frames. Such castings are used for drainage or access purposes for public utility, water, and sanitary systems.

[10] For the purposes of these investigations, the term "certain light iron construction castings" is limited to valve, service, and meter boxes. Such castings are placed below ground to encase water, gas or other valves, or water or gas meters.

[11] Commissioner Lodwick found a reasonable indication of a threat of material injury to the domestic industries from the subject imports in investigations Nos 731–TA–262, 263, 264, and 265 (Preliminary).

[Investigation No. 701–TA–240 (Final)]

Oil Country Tubular Goods From Austria

AGENCY: International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701–TA–240 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Austria of oil country tubular goods,[1] provided for in items 610.32, 610.37, 610.39, 619.40, 610.42, 610.43, 610.49, and 610.52 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Austria. Unless this investigation is extended, Commerce will make its final subsidy determination by August 7, 1985 and the Commission will make its final injury determination by September 23, 1985 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–523–0368), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Austria of oil country tubular goods. The investigation was requested in a petition filed on February 28, 1985 by United States Steel Corp. In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed

[1] For purposes of this investigation, "oil country tubular goods" includes drill pipe, causing, and tubing for drilling oil or gas wells, of carbon or alloy steel, whether such articles are welded or seamless, whether finished or unfinished, and whether or not meeting American Petroleum Institute (API) specifications.

during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 16173, April 24, 1985).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing, staff report, and written submissions.—The Commission will hold a public hearing in connection with this investigation; the time and place of the hearing will be announced at a later date. A public version of the prehearing staff report in the investigation will be placed in the public record prior to the hearing, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21). The dates for filing prehearing and posthearing briefs and the date for filing other written submissions will also be announced at a later date.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20, as amended by 49 FR 32569, Aug. 15, 1984).

Issued: June 24, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-15959 Filed 7-2-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-261 (Preliminary)]

12-Volt Lead-Acid Type Automotive Storage Batteries From the Republic of Korea

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured, or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea (Korea) of 12-volt lead-acid type automotive storage batteries, provided for in item 683.05 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 8, 1985, a petition was filed with the Commission and the Department of Commerce by General Battery International Corporation, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of 12-volt lead-acid type automotive storage replacement batteries from Korea. Accordingly, effective May 8, 1985, the Commission instituted preliminary antidumping investigation No. 731-TA-261 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 15, 1985 (50 FR 20301). The conference was held in Washington, DC, on May 30, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 24, 1985. The views of the Commission are contained in USITC Publication 1710 (June 1985), entitled "12-Volt Lead Acid Type Automotive Storage Batteries from the Republic of Korea: Determination of the Commission in Investigation No. 731-TA-261 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 28, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-15961 Filed 7-2-85; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-84]

Rail Carriers; Atchison, Topeka & Santa Fe Railway Co.; Passenger Train Operation

To: The Atchison, Topeka and Santa Fe Railway Company.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between New Orleans, Louisiana and Los Angeles, California, and between Chicago, Illinois and Los Angeles, California, via San Antonio, Texas. The operation of these trains requires the use of the tacks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks near Tucson, Arizona, are temporarily out of service because of a derailment. An alternate route is available via The Atchison, Topeka and Santa Fe Railway Company between Los Angeles, California and El Paso, Texas, via Barstow, California.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided April 29, 1982, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c), The Atchison, Topeka and Santa Fe Railway Company (ATSF) is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Los Angeles, California, via Barstow, California, and a connection with Southern Pacific Transportation Company at El Paso, Texas.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the

compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:00 p.m. (MDT), June 12, 1985.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. (EDT), June 13, 1985, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon The Atchison, Topeka and Santa Fe Railway Comapny and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., June 12, 1985.

Interstate Commerce Commission.

Bernard Gaillard,

Agent

[FR Doc. 85-15876 Filed 7-2-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. MC-F-16291]

Aluminum Co. of America—Continuance in Control—Rea Magnet

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Aluminum Company of America (Alcoa), a non-carrier holding company and Rea Magnet Wire Company, Inc. (Rea Magnet), a wholly-owned subsidiary which seeks initial carrier authority under Docket No. MC-183733, have filed a petition for exemption under 49 U.S.C. 11343(e) to allow Alcoa to continue in control of Rea Magnet upon Rea Magnet obtaining motor carrier status. Alcoa presently controls four short-line railroads, the Bauxite and Northern Railway Company, the Massena Terminal Railroad Company, the Point Comfort and Northern Railway Company, and the Rockdale Sandow & Southern Railroad Company as well as two motor carriers, the Buckeye Molding Company (Buckeye) (No. MC-153900) and the Penn Way Trucking Company (Penn Way) MC-180522). Approval for Alcoa's existing control of Buckeye and Penn Way was obtained in prior proceedings docketed as Nos. MC-F-15741 and MC-F-16017 respectively. As a result of Alcoa's continued control of Rea Magnet, once the latter becomes a regulated carrier, Alcoa will then be in control of seven common carriers. Continuance in control of a carrier, by a person that is not a carrier but that controls any number of carriers, may be carried out only under Commission regulation or under an exemption from regulation. See 49 U.S.C. 11343(a)(5) 11343(e).

DATES: Comments must be received by July 23, 1985.

ADDRESSES: Send comments (an original plus 10 copies) referring to Docket No. MC-F-16291 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: Paula J. Jesion, Esq., Sullivan & Associates, 180 North Michigan Avenue, Suite 1700 Chicago, IL 60601

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Alcoa and Rea Magnet seek exemption under 49 U.S.C. 11343(e) and the Commission's regulation in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property, Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

A copy of the petition may be obtained from petitioners' representative, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: June 28, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-15898 Filed 7-2-85; 8:45 am]

BILLING CODE 7035-1-M

[Docket No. AB-6 (Sub-No. 236)A]

Burlington Northern Railroad Co.—Abandonment—Between Zeeland, ND and Eureka, SD

The Commission has found that the public convenience and necessity permit Burlington Northern Railroad Company (BN) to abandon BN's 19.22-mile rail line between milepost 44.8 near Zeeland, ND and milepost 25.58 at Eureka, SD. The certificate authorizing this abandonment will be effective within 30 days, unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85-15897 Filed 7-2-85; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-44]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council.

DATE AND TIME: July 24, 1985, 9 a.m. to 5 p.m., and July 25, 1985, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Federal Building 6, Maryland Avenue SW, Washington, DC 20546, Room 7002.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASAs programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of twenty-five members. Standing committees containing additional members report to the Council and provide advice in the substantive areas

of aeronautics, life sciences, space applications, space and earth sciences, space systems and technology, and history, as they relate to NASA's activities.

Visitors will be admitted to the meeting room up to its capacity, which is approximately 60 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of meeting: Open.

Agenda

July 24, 1985

9 a.m.—Introduction to Meeting
9:10 a.m.—Agency Program Planning Overview
9:30 a.m.—Space Science and Applications Planning
11:15 a.m.—Space Station Planning
1 p.m.—Space Flight Planning
2 p.m.—Tracking and Data Systems Planning
3:45 p.m.—Aeronautics and Space Technology Planning
4:30 p.m.—Commercial Programs Planning
5 p.m.—Adjourn

July 25, 1985

8:30 a.m.—NASA Institutional Planning
9:30 a.m.—Planning Discussion
10 a.m.—NASA University Program
11:30 a.m.—History Committee Report
1 p.m.—Other Business
3 p.m.—Adjourn

L. W. Vogel,

Director, Logistics Management and Information Programs Division, Office of Management.

June 27, 1985.

[FR Doc. 85-15859 Filed 7-2-85; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses to Export and Import Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export and import licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 26th day of June 1985 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson, Acting Assistant Director,

Export/Import and International Safeguards, Office of International Programs.

NRC EXPORT APPLICATIONS

Name of applicant, date of application, date received, application No.	Material type	Material in kilograms		End-Use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., June 25, 1985, June 25, 1985.	93 percent enriched uranium....	4.911	4.582	HEU for use as fuel in McMaster Nuclear Reactor.....	Canada.

[FR Doc. 85-15917 Filed 7-2-85; 8:45 am]

BILLING CODE 7590-01-M

Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration; Bi-Weekly Notice

Background

Pursuant to Pub. L. 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on June 19, 1985 (50 FR 25480), through June 24, 1985.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By August 2, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and

any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all pubilc and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner had made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(4).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of amended request: April 15, 1983, as revised May 14, 1985.

Description of amendment request: The May 14, 1985 submittal supersedes the April 15, 1983 submittal which was previously noticed in the **Federal Register** on August 23, 1983 (48 FR 38390). The proposed amendment would revise the Technical Specifications by incorporating revised radiological effluent and environmental monitoring limiting conditions for operation, action statements and surveillance requirements. The proposed changes are in response to NRC requests of July 11, and November 15, 1978. The proposed changes are intended to implement the design objectives and requirements of 10 CFR 50.34(a), 10 CFR 50.36a, 10 CFR Part 20, 10 CFR Part 50 Appendix A General Design Criteria 60 and 64 and 40 CFR Part 190.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). One such amendment

involves a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The change proposed by the licensee is intended to implement: 10 CFR 50.34(a), which pertains to Design Objectives for equipment to control releases of radioactive materials in effluents from nuclear power reactors; 10 CFR 50.36a, which pertains to Technical Specifications of effluents from nuclear power reactors; 10 CFR Part 20, which pertains, in part, to the controlled release of radioactive materials in liquid and gaseous effluents; 10 CFR Part 50, Appendix A, General Design Criteria 60, which pertains to control of releases of radioactive materials to the environment, and 64, which pertains to monitoring radioactively releases; and 40 CFR Part 190, which pertains to radiation doses to the public from operations associated with the entire uranium fuel cycle. This amendment, therefore, reflects changes to make the Pilgrim license conform to changes in the regulations. Since the licensee is presently obligated by these regulations to control and limit offsite releases of radioactive materials to levels which are as low as is reasonably achievable, the license change will only result in very minor changes in facility operations which are clearly in keeping with the regulations.

Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W.S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Branch Chief: Domenic B. Vassallo.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: November 1, 1984, as supplemented on May 16, 1985.

Description of amendment request: The proposed amendment requests changes that are primarily administrative in nature. Included are: (1) Modification of the calibration frequency of dose-rate measuring instruments, (2) re-numbering of a previously motor-operated valve whose operator has been modified to convert to a manually-operated valve (this change is administrative since the valve will continue to remain in the locked-open position), (3) addition of H4 fuel to the Table of Core Operation Limitations (this change is editorial since H4 fuel is identical to H3 fuel values currently included in the table), and (4) other minor editorial or typographical corrections.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (1) of actions not likely to involve a significant hazards consideration relates to a purely administrative change to the Technical Specifications such as a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. This example applies to changes (2), (3) and (4) described above. Thus, the staff proposes to determine that the changes involve no significant hazards consideration.

The staff has examined the proposed change regarding calibration frequency for dose-rate measuring instruments. Additional supporting information was obtained via telephone calls with the licensee. This information was then formally submitted to the NRC by letter dated May 16, 1985. The proposed modification would reduce the required calibration frequency of portable gamma monitors on the high range scales

(20R/hr) from once every 3 months to once every 6 months. Calibration on these high range scales must be done by shipping the instruments offsite to a calibration facility. Due to the high source intensity necessary to calibrate these scales, background radiation results in radiation exposure to laboratory personnel during the calibration process. Thus, calibration on these scales should not be performed too frequently. Based upon the above discussion, the staff proposes to determine that the proposed change would not involve a significant hazards consideration determination since it (1) does not involve a significant increase in the probability or consequences of a previously evaluated accident, (2) does not create the possibility of a new or different kind of accident from an accident previously evaluated, and (3) does not involve a significant reduction in a margin of safety.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumer Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: John A. Zwolinski.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: June 14, 1985.

Description of amendment request: The proposed amendment would change the existing Technical Specification for heatup, cooldown, and hydrostatic test of the reactor vessel by adjusting the pressure/temperature limits to account for the effects of irradiation of the Palisades reactor vessel materials. The methodology of Regulatory Guide 1.99, Revision 2 is used as the basis for the new, more restrictive limits.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to changes constituting an additional limitation, restriction, or control not presently included in the technical specifications. Although there are pressure/temperature limits presently included in the technical specifications, the changed limits are more restrictive to account for increased irradiation of the reactor vessel and to maintain the margin of safety. Revised pressure/temperature limits are required to meet the reactor vessel fracture toughness requirements in 10 CFR Part 50, Appendix G. This would result in a higher temperature requirement for the corresponding reactor vessel pressure. Use of the proposed new limits, since they place more stringent limits on operation, would maintain the required margin of safety to the nil-ductility transition temperature for the reactor vessel material.

Therefore, since the proposed changes are similar to example (ii), the staff proposes to determine that the proposed changes would not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: John A. Zwolinski.

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of amendment request: July 11, 1984.

Description of amendment request: Resulting from the review of Multi-Plant Action Item B-24, Venting and Purging of Containment while at Full Power, the NRC requested on April 30, 1984 that Dairyland Power Cooperative (the licensee) submit revised technical specifications (TS) for containment ventilation isolation valve operability and isolation time, limiting conditions for operation, surveillance requirements, and periodic replacement of resilient valve seats. These TS and related bases for the specifications were submitted by the licensee on July 11, 1984.

Existing TS at La Crosse require that for containment integrity to exist, all penetrations required to be isolated during accident conditions must be capable of being closed by an operable containment automatic isolation valve or closed by at least one manual valve, blind flange, or deactivated automatic valve secured in the closed position. The reactor building isolation system must be tested for proper operation prior to every cold startup, but not required more often than at 30-day intervals. In addition to these existing requirements, the licensee's July 11, 1984 request proposed additional TS including (1) operability of containment ventilation valves based upon isolation time, (2) limiting conditions for operation when valves are found to be inoperable, (3) surveillance requirements which include testing after maintenance or repair and periodic replacement of resilient valve seat rings and (4) associated bases for these specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for making these determinations by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (ii) of actions involving no significant hazards consideration relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The proposed changes fall within this example since they are all additional requirements not currently included in the TS. On this basis, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Attorney for licensee: O.S. Heistand, Jr., Esquire, Morgan, Lewis & Bockius, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski.

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: April 23, 1985.

Description of amendment request: The amendments would revise the Technical Specifications for operation of the auxiliary feedwater system: (1) To delete the requirement that the Motor Driven Auxiliary Feedwater Pumps be automatically started in Mode 3 due to a loss of main feedwater pump signal, (2) to add statements for ACTION to be taken if more than one auxiliary feedwater pump is inoperable, (3) to clarify surveillance requirements to allow acceptance of discharge pressures based on calculational adjustments of test data to account for variations from a fluid temperature of 60 °F, and (4) to correct surveillance requirements by deleting verification of pumps starting from the control room and by verification of correct valve position for non-automatic and automatic valves depending upon the operation condition at the time of verification. The amendments would also make an administrative change to add the term "independent" to the Unit 2 Technical Specification to accurately describe the Auxiliary Feedwater Pumps.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether the license amendments involve no significant hazards considerations by providing certain examples (48 FR 14871). One of these examples (vi) is a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan. The changes to delete the requirement that the Motor Driven Auxiliary Feedwater Pumps be automatically started in Mode 3 due to a loss of main feedwater pump signal, to clarify the surveillance requirements to allow calculational adjustments to discharge pressures to account for variations from a fluid temperature of 60°F, and to correct surveillance requirements for starting pumps from the control room and verification of correct valve position depending upon the operation conditions are all directly related to this example as follows. During normal plant startup upon entering Mode 3, the "loss of main feedwater pump" instrumentation trip logic now automatically starts the Motor Driven Auxiliary Feedwater Pumps although delivery to the steam generators is not required. When water is required, it is usually added slowly at the direction of the operator. This acceptable operation has been recognized by the staff and was corrected in the later versions of the Westinghouse Standard Technical Specifications. The change to allow acceptance of discharge pressures based on calculational adjustments of test data to account for variations from a fluid temperature of 60 °F is to allow comparison of pump performance corrected for water density effects on discharge pressure. The staff has found the calculational adjustments acceptable but only if the fluid temperature measurement techniques are demonstrated to be substantially improved (See S. Varga, NRC, letter to J. Dolan, IMEC, dated April 11, 1985). The last changes under this example would remove the requirement to start the pumps from the control room (actually a redundant requirement to the definition of Operability under Section 1.6. of the Technical Specifications) and to verify the correct position of valves depending upon operating conditions. Non-automatic valves can be verified to be in their correct position at any time but automatic values in the auxiliary feedwater systems may be at any position until reactor power reaches about 10% at which time the valves in the flow path can be verified fully open and the pumps in automatic control. The staff has recognized this acceptable operation and the later versions of the Westinghouse Standard Technical Specifications have been corrected. Another example (ii) provided by the Commission is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The proposed change to add statements for ACTION to be taken if more than one auxiliary feedwater pump is inoperable is directly related to this example. The current Technical Specifications address actions if only one pump is inoperable; the proposed change will address different requirements if two or all three of the pumps are inoperable.

The Commission has also provided an example (i) of a purely administrative change to technical specifications. The change to the Unit 2 description of the

Auxiliary Feedwater System to include the word "independent" will make both Units the same and consistent with the wording of the Standard Technical Specification. This change is directly related to the example. On this basis, the Commission proposed to determine that the amendments involve no significant hazards considerations.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: May 10, 1985.

Description of amendment request: The proposed amendments would revise the Technical Specifications relating to the electrical power systems and in response to the Generic Letter No. 83–28, add surveillance requirements to periodically test the undervoltage trip attachments and shunt trip attachments. The changes to the electrical power system would more precisely identify the required battery banks, define the full electrolyte level as up to the bottom of the maximum level indication mark, define shutdown for battery service tests to be MODES 5 or 6, for Unit 1 eliminate a surveillance pertaining to battery recharging time to be consistent with the Unit 2 requirements, eliminate the battery service test if a performance discharge test is performed, delete a footnote which designates when AC power sources are turned off or on as a result of a design change in the critical reactor instrumentation distribution design, and delete references to tie breakers and standby circuits to connect battery trains.

Basis for proposd no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether amendments involve no significant hazards consideration by providing certain examples (48 FR 14871). One of these examples (i) is a purely administrative change to Technical Specifications. Three of the proposed changes are somewhat related to this example in that the changes all involve minor clarification of statements with example in that the changes all involve minor clarification of statements with no change in intent or requirements. These are the changes to more precisely identify the required battery banks, the change to define the full electrolyte level up to the bottom of the maximum level indicator mark, and the change to define shutdown for battery service tests to be MODES 5 or 6. Another example (ii) is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed change to add surveillance requirements for the Undervoltage Trip Attachments and Shunt Trip Attachments is directly related to this example. Generic Letter 83.28 proposed these attachments and appropriate surveillance requirements as a means of satisfying a portion of the NRC concerns following the anticipated transients without scram event at the Salem facility.

The remaining four proposed changes are related to the example (iv) which is a change which may either result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The change on Unit 1 to eliminate a surveillance pertaining to battery recharging time is also accompanied by the addition of a surveillance requirement for new batteries which is consistent with the Unit 2 requirement. The results of the new Unit 1 surveillance requirement is clearly within the criteria found acceptable by the staff for the Unit 2 requirements. The change to eliminate the battery service test if a performance discharge test is performed would result is less actual testing, however, the performance discharge test profile envelopes the battery service test profile and completion of the performance discharge test ensures adequate capacity to meet the requirements of the battery service test. The staff has previously found this acceptable and the Standard Technical Specifications acknowledge deletion of the battery service test it the performance discharge test is performed. The third change related to this example is the deletion of a footnote which requires an AC power source be turned off when certain batteries are undergoing a load test. The licensee has redesigned the critical reactor instrumentation distribution (CRID) system so that the GRID cabinets continue to receive 120 Volt power from two sources but the inverter supplying power to the CRID will no longer connect both sources. The inverter can load the batteries alone without interference from the second AC source, therefore, there is no need to have this second source turned off. The redesign of the CRID supply involves adding a transformer and separating the 600V AC supply from the inverter. This new equipment is in addition to previous equipment and on this basis may increase the probability of an accident but the system design is in accordance with previously acceptable criteria. The last change under this example (iv) is the change to delete references to the tie breakers and standby circuits to connect battery trains. Mechanical interlocks could not be provided for the manually operated switches, therefore, the tie breakers between trains were disconnected. Disconnecting the tie breakers removes a licensee backup system which might be used in the event of a complete loss of one battery but the NRC has not given credit to ties between trains and considers the disconnect to improve safety by assuring redundancy and separation of equipment. On the above basis, the Commission proposes to determine that the amendments involve no significant hazards consideration.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Mississippi Power & Light Company, Middle South Energy, Inc., Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 15, 1985.

Description of amendment request: The amendment would revise Figure 6.2.1–1 "Offsite Organization" and Figure 6.2.2–1 "Unit Organization" in the Technical Specifications by deleting the positions of Manager, Nuclear Human Resources, and Administrative Supervisor, respectively. The responsibilities and functions of the Manager, Nuclear Human Resources, would be assigned to a new position of Manager of Employment in the Mississippi Power & Light (MP&L) Company's Personnel Department. The responsibilities of the Administrative Supervisor would be assigned to a new position of Personnel Supervisor reporting to the Manager of Employment The new position of Manager of

Employment would be enhanced by the addition of two positions for nuclear recruiting while retaining the responsibilities of the present position of the Manager of Nuclear Human Resources. The Personnel Supervisor and staff would remain on site and would continue to provide personnel services for the plant under the Manager of Employment.

Basis for proposed no significant hazards consideration determination: The primary function of the Manager, Nuclear Human Resources, is to recruit and develop employees for the Nuclear Production Department (NPD) of MP&L. The change would place this position (with the title changed to Manager of Employment) under the MP&L Personnel Department thereby making the entire resources of the Personnel Department available to support the functions of this position. The Manager of Employment would be the same person now assigned to the position of Manager, Nuclear Human Resources. The Manager of Employment would retain responsibility for three positions conducting NPD position task analyses and would be given responsibility for two new positions having responsibility for recruiting employees for the Grand Gulf Nuclear Station and other nuclear-related activities. The Personnel Supervisor and staff at Grand Gulf Nuclear Station will continue to provide personnel services for the plant under the Manager of Employment. The proposed change would increase the availability to the Nuclear Production Department of MP&L's resources in recruitment and development of employees. Because this change would not affect plant equipment design, safety criteria or safety analyses and would enhance human resource management, this change does not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated, nor does it involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell, and Reynolds, 1200 17th Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Elinor G. Adensam.

Northeast Nuclear Energy Company et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit 2, New London County, Connecticut

Date of amendment request: May 28, 1985.

Description of amendment request: The proposed changes to the Technical Specifications would make changes relative to fire protection systems including fire detectors, fire water pump diesels, spray and/or sprinkler systems, hose stations, and penetration fire barriers.

Revisions to Section 3/4.3.7 and Table 3.3–10 are proposed to reflect the installation of additional fire detection instrumentation in the Auxiliary Building and Containment. Action and Surveillance Requirements for the instrumentation located in containment have been added. Specific Surveillance Requirements for supervised and non-supervised instrumentation circuits have also been incorporated.

Revision to Surveillance Requirement Section 4.7.9.1.3 pertaining to the diesel driven fire pumps is made to reflect the as-built design of the diesel starting system which uses two independent 12-volt batteries.

The list of spray and/or sprinkler systems in Section 3.7.9.2 has been updated to reflect additions to the plant fire protection systems.

Technical Specification Section 3/4.7.9.3, Fire Hose Stations, is revised, in part, to reflect provisions of the Standard Technical Specifications (STS) for Combustion Engineering nuclear steam supply systems (NUREG–0212, Revision 2) and the operability for fire hose stations in Containment during operational MODES 5 and 6. Specifically, the licensee intends to locate fire hose station equipment outside Containment when in MODES 1–4. Table 3.7–2 has also been updated to include new hose stations.

Revision to Technical Specification Section 3/4.7.10. Penetration Fire Barriers, is made to reflect the need to protect redundant safe shutdown related systems and equipment as required by Appendix R to 10 CFR Part 50. The Applicability statement has been revised to account for different equipment requirements during various plant operating MODES as specified in other portions of the Technical Specifications. The Action statement for a non-functional fire barrier reflects the STS with slight modifications to the frequency of a fire watch patrol given an operable fire detection or suppression system on *both* sides of a non-functional fire barrier. In addition, a third provision is proposed for the Action statement which requires a temporary fire barrier/penetration seal be installed for a period not to exceed 30 days. If the barrier cannot be repaired within the specified time period, the licensee proposes to provide the Commission a special report outlining the cause of the barrier inoperability and the plans and schedules for restoring the barrier to functional status. A Special Report category is proposed to be added to Section 6.9.2. The Surveillance Requirements of Section 4.7.10 pertaining to fire barrier penetration seals are revised to reflect a reduction in the numbers of seals subject to visual inspection. Should any of the seals in the inspection sample be nonfunctional, additional inspections are to be performed.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for making a no significant hazards consideration determination (48 FR 14870). Example (i) of this guidance is a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed wording change to Surveillance Requirement Section 4.7.9.1.3 reflects the as-built battery design of two 12-volt batteries rather than the 24-volt battery. This change is similar to example (i) of the guidance by correcting an error. The addition made to Section 6.9.2 provides consistency throughout the Technical Specifications by listing a reporting requirement committed to in another Section and is therefore similar to Example (i).

Example (ii) of the guidance relates to a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. The inclusion of additional surveillance and control equipment would be similar to example (ii); therefore, the additional fire detection instrumentation included in Table 3.3–10 and the additional spray and/or sprinkler systems contained in Section 3.7.9.2 would be included under this example.

Example (vi) of the guidance relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a

change resulting from the application of a small refinement of a previously used calculational model or design method. The changes to Sections 3/4.3.3.7 and 3/4.7.9.3 are consistent with the STS as endorsed by Chapter 16 of the Standard Review Plan and, therefore, are similar to example (vi). The proposed changes to Section 3/4.7.10 are consistent with Draft Revision 3 of the STS and are within the acceptance criteria specified in the Standard Review Plan and are therefore similar to example (VI).

The revised Surveillance Requirements in Section 3/4.7.10 take into account operating experience with penetration seal material and manufacturer's technical data on seal degradation over time. Operating experience and manufacturer's data indicate that there is no degradation with age and there are virtually no maintenance requirements for fire barrier penetration seals when properly installed. Plant design changes receive a fire protection review. This review specifically addresses the need to reinstate any new or existing fire barrier penetration seals as part of the work closeout requirements. This provision provides assurance that maintenance and construction work will not result in non-functional fire barriers. Semi-annual fire inspections conducted by American Nuclear Insurers, fire inspections by the licensee's Fire Protection Engineering Section and monthly inspections conducted by Millstone Station Services personnel provide a random check of penetration seals above and beyond the proposed Surveillance Requirements of Specification 4.7.10.b. For the reasons stated above, the proposed changes to the Surveillance Requirements in Section 3/4.7.10 would not involve a significant increase in the probability or consequences of an accident previously evaluated. For these same reasons, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated or involve a significant reduction in a margin of safety.

Based on the above considerations, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: Edward J. Butcher, Acting.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit, 1 Washington County, Nebraska

Date of amendment request: June 6, 1985.

Description of amendment request: The amendment would add new technical specifications addressing the surveillance requirements related to the licensee's solid radioactive waste Process Control Program (PCP). Specifically, the requirements will state that the PCP shall be used to verify the solidification of radioactive waste.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples, (ii), of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the technical specifications. The proposal to add technical specifications addressing the surveillance requirements related to the licensee's solid radioactive waste PCP comes under example ii because there are presently no surveillance requirements. Based upon the above, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: Leboeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, D.C. 20036.

NRC Branch Chief: Edward J. Butcher, Acting.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: April 23, 1985.

Description of amendment request: The amendment would revise the Technical Specifications Sections 2.1, 2.3, 3.1, 3.10 and 5.3. The proposed changes are in support of the Cycle 4/5 refueling, which is scheduled to commence on June 7, 1985. The Cycle 4/5 refueling would involve the first of a three-phase fuel design transition from the Westinghouse 15X15 low parasitic (LOPAR) design to the 15X15 Optimized Fuel Assembly (OFA) design and an introduction of Wet Annular Burnable Absorber (WABA) rods into the core.

The OFA fuel design results in an increased rod drop time of 2.4 seconds, as compared to a 1.8 second rod drop time for the LOPAR assembly. The accident re-analyses necessitated by the increased rod drop time have been submitted for review. The re-analyses have been performed assuming asymmetric steam generator tube plugging levels. The proposed Technical Specification revisions also include a modified F delta H limit equation reflecting an increased partial power multiplier and a provision for the use of WABA rods in the core.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration relates to a change which either may result is some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (Example vi). The amendment would allow the first of a three-phase fuel design transition from the Westinghouse 15X15 LOPAR fuel design to the 15X15 OFA design and an introduction of WABA rods into the core. To demonstrate full compatibility of the OFA and LOPAR fuel assemblies, the licensee has provided mechanical, nuclear, thermal-hydraulic, and accident evaluations. The results of the licensee's evaluations appear to be consistent with the criteria specified in the Standard Review Plan sections involving Fuel System Design (4.2), Nuclear Design (4.3), Thermal and Hydraulic Design (4.4), and Accident Analysis (Chapter 15) and were performed using methods previously reviewed and approved by the staff. Therefore, the staff proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Steven A. Varga.

Public Service Co. of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: May 22, 1985.

Description of amendment request: The proposed change to the Technical Specifications incorporates a new requirement which will allow the performance of Xenon stability testing. The purpose of the testing is to show that power perturbations will be dampened.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The examples of actions that are considered not likely to involve significant hazards considerations include changes that constitute an additional limitation, restriction, or control not presently included in the Technical Specifications. Since the proposed change adds a requirement to provide controls during the performance of a test, which is part of the originally required rise-to-power testing, the staff proposes to determine that the proposed action does not involve a significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201.

NRC Branch Chief: Eric H. Johnson.

Southern California Edison Company et al., Docket Nos. 50–361 and 50–362 San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: January 25, 1984 and August 7, 1984 (Reference PCN–97).

Description of Amendment Request: The proposed change would revise Technical Specification 3/4.6.4.1, "Hydrogen Monitors," which concerns the operability of hydrogen monitors and defines periodic tests to verify operability. These monitors would be used to measure hydrogen concentration within the containment following an accident. The proposed change consists of three parts as follows:

(a) T.S. 3.6.4.1 states that the two independent hydrogen monitors must be operable and defines the actions to be taken when one monitor is inoperable. Since T.S. 3.6.4.1. does not address inoperablity of both monitors, plant shutdown would be required in accordance with the technical specifications. The proposed change adds an action statement to T.S. 3.6.4.1 which provides conditions under which both hydrogen monitors could be inoperable and shutdown would not be required. A period of forty-eight hours will be allowed during which at least one hydrogen monitor must be returned to operable status. If this condition is not met, the plant must be shutdown within the following six hours.

(b) The proposed change would add an action statement to T.S. 3.6.4.1 which will provide an exception to the applicability of T.S. 3.0.4 when only one hydrogen monitor is operable. T.S. 3.0.4 prohibits upward mode changes while relying on the provisions of the action statement. Since Modes 1 and 2 (Power Operation and Start-up, respectively) require that two hydrogen monitors be operable, the plant may not enter Mode 1 or Mode 2 if one of the hydrogen monitors is inoperable. The proposed exception to T.S. 3.0.4 will allow the plant to enter a higher operational mode with one of the two hydrogen monitors inoperable.

(c) T.S. 4.6.4.1 requires that the hydrogen monitors must be tested regularly by performing channel functional tests and channel calibrations. A channel functional test involves the simulation of a signal to the hydrogen monitor. Channel calibration entails verification of the hydrogen monitor's accuracy by applying known concentrations of hydrogen to the monitor's sensor. Currently, T.S. 4.6.4.1 requires that 1% and 4% hydrogen concentration gases be used. During the channel calibration some of the containment isolation valves are required to be open, which reduces containment integrity for the period of calibration.

The proposed change to T.S. 4.6.4.1 would substitute a 0% hydrogen concentration gas for the 1% hydrogen concentration gas used for channel calibration. The 0% hydrogen concentration gas requires less testing time than the 1% hydrogen concentration gas, thereby minimizing the time period during which the containment isolation valves are open and increasing containment integrity. In addition, the hydrogen monitor manufacturer (General Electric) recommends the use of a 0% hydrogen concentration gas and one other concentration of hydrogen gas (e.g., 4%) for channel calibration.

Basis for Proposed No Significant Hazards Considerations Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP). Example (i) relates to a purely administrative change to technical specifications: for example, correction of an error.

SRP Section 6.2.5 "Combustible Gas Control In Containment," provides acceptance criteria for hydrogen monitors. SRP 6.2.5 references NUREG–0737 "Clarification of TMI Action Plan Requirements" for specific requirements for hydrogen monitors. NUREG–0737 requires technical specifications for the hydrogen monitors. Acceptable mode technical specifications satisfying the NUREG–0737 requirements were provided to licensees in NRC Generic Letter 83–37 dated November 1, 1983.

NRC Generic Letter 83–37 delineates the NRC staff requirements for Technical Specifications for hydrogen monitors and provides an action statement which allows both hydrogen monitors to be inoperable with the condition that at least one monitor must be restored to operable status within seventy-two hours. The proposed change described in part (a) above, would allow both hydrogen monitors to be inoperable for a period of forty-eight hours during which at least one monitor must be restored to operable status. This proposed change is consistent with Generic Letter 83–37, but is more restrictive in that it allows only forty-eight hours for the restoration of the hydrogen monitor's operability, rather than seventy-two hours. Because proposed change (a) above is consistent with Generic Letter 83–37, it meets the acceptance criteria of SRP Section 6.2.5 and is similar to Example (vi) of 48 FR 14870.

The hydrogen monitors constitute post-accident monitoring instrumentation performing the same general function as the accident monitoring instrumentation in T.S. 3.3.3.6. Technical Specification 3.3.3.6, "Accident Monitoring Instrumentation," provides an exception to the applicability of T.S. 3.0.4 while complying with the action statements for any of the accident monitoring instruments covered by T.S. 3.3.3.6. Consistent with technical specifications for other accident monitoring instrumentation, the proposed change will allow an exception to T.S. 3.0.4 but only with one hydrogen monitor inoperable, whereas T.S. 3.3.3.6 would

otherwise provide an exception to T.S. 3.0.4 with either one or both hydrogen monitors inoperable. Because proposed change (b) above, achieves consistency within the technical specifications, it is similar to example (i) of 48 FR 14870.

The hydrogen monitor manufacturer (General Electric) recommends the use of a 0% hydrogen concentration gas and one other concentration of hydrogen gas (e.g., 4%) for channel calibration. The proposed change described in part (c), above, calls for the use of the manufacturer-recommended concentrations of hydrogen gas for channel calibration, rather than the use of the currently specified 1% and 4% hydrogen concentration gases. Proposed change (c) above, meets the no significant hazards criteria established in 10 CFR 50.92 in that operation with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously conducted. Specifically, the proposed change will result in equal or better calibration, thereby giving readings that are at least as good as the previous method of calibration.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. This instrument does not perform any pre-accident function. Therefore, it meets this criteria.

(3) Involve a significant reduction in a margin of safety. The proposed change does not reduce a safety margin, since the monitor's function will not be impaired by calibration in accordance with the manufacturer's recommendation.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770, and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Southern California Edison Company et al., Docket Nos. 50–361 and 50–362 San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: March 18, 1985 (Reference PCN–188).

Description of Amendment Request: The proposed change would revise Technical Specification 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation." Technical Specification 3/4.3.2 requires that Engineered Safety Features Actuation System (ESFAS) instrumentation channels be operable and defines a number of functional tests and response time tests that must be conducted periodically in order to verify operability. Specification 3/4.3.2 identifies the instruments required for the Toxic Gas Isolation System (TGIS). The TGIS is actuated when concentrations of toxic gases (e.g. chlorine, butane/propane or ammonia) in the control room supply ducts exceed the concentration setpoints. Upon receipt of a TGIS signal, the control room heating ventilation and air conditioning (HVAC) system is automatically isolated. The setpoints are selected such that the toxic gas concentration in the control room will not exceed allowable limits during the first two minutes after the detector responds. This provides adequate protection for the control room operators by allowing sufficient time to don protective gear.

Recently, Amendments 29 and 18 to the operating licenses for San Onofre Nuclear Generating Station Unit 2 and 3, respectively, deleted the requirement for TGIS carbon dioxide instrumentation. Analysis in support of this amendment demonstrated that the maximum control room concentration of carbon dioxide at any time without control room isolation would be 11,000 ppm. The carbon dioxide instrumentation was deleted because the licensee demonstrated that the protective action limit of 50,000 ppm for carbon dioxide would never be exceeded. However, through an oversight Amendments 29 and 18 did not delete all references to carbon dioxide instrumentation from the technical specifications, but only deleted the reference to the carbon dioxide instrumentation from Table 3.3–4, "ESFAS Instrumentation Trip Values." The TGIS carbon dioxide instrumentation is also included in Table 3.3–3, "ESFAS Instrumentation," and Table 4.3–2, "ESFAS Instrumentation Surveillance Requirements". The proposed change corrects this oversight by deleting the remaining references to the TGIS carbon dioxide instrumentation from these tables.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a purely administrative change to the technical specifications: For example a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature. The proposed change described above, by deleting the remaining references to TGIS carbon dioxide instrumentation, which should have been removed by Amendments 29 and 18, corrects an error and achieves consistency within the technical specifications. Therefore the proposed change is similar to example (i) of 48 FR 14870 and thus the NRC staff proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of amendment request: May 17, 1985.

Description of amendment request: The purpose of the proposed amendment request is for: (1) A one-time extension for the performance of Type C tests on 59 containment isolation valves (this would require a one-time exemption from Appendix J to Part 50), (2) deletion of isolation time requirements from Table 3.6–1 for the main steam isolation valves and main feedwater isolation valves, and (3) editorial changes to valve function descriptions and system designators in Table 3.6–1.

Basis for proposed no significant hazards considerations determination: (1) Appendix J to Part 50 requires that Type C tests by performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. The 59 containment isolation valves were last tested between August and December of 1983. The licensee has requested an exemption that would result in the testing being performed during the first refueling outage for Callaway, currently, scheduled to occur during April-June of 1986. The licensee's amendment application addresses the

short length of exposure of the subject valves to an operating environment and the favorable previous local leak rate test measurements. Based on these considerations, the approximately eight month extension in time for the performance of Type C tests will not involve a significant increase in the probability of valve failure and will, therefore, not increase the probability or consequences of any previously analysed accident.

Since the proposed extension will not impact isolation valve integrity, will not affect the method of plant operation, and will not affect equipment important to safe operation, the proposed amendment does not create the possibility of a new and different accident from any previously evaluated. Since the length of exposure to an operating environment is small and the previous local leak rate test measurements were favorable, the proposed amendment will not significantly reduce any margins of safety.

(2) and (3) On April 6, 1983 the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve significant hazards considerations. This amendment request is similar to the example of a purely administrative change to the technical specifications that may involve a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The isolation time requirements for the main steam and main feedwater isolation valves are more appropriately addressed in other sections of the technical specifications, and the editorial changes to valve function descriptions are purely administrative in nature. The proposed changes to the technical specifications satisfy the criteria of this example.

Based on the foregoing, the requested amendment does not present a significant hazards.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: B.J. Youngblood.

Virginia Electric and Power Company et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virgina

Date of amendments request: February 14, 1985.

Description of amendments request: The proposed change would eliminate from the NA-1&2 Technical Specifications (TS) the rod bow penalty on the nuclear enthalpy hot channel factor. The proposed change is made possible by an improved fuel rod bowing evaluation methodology that has demonstrated that the presently specified rod bow penalty on 17x17 R-grid fuel can be reduced. This improved methodology has been reviewed and approved by the NRC in its letter dated December 29, 1982 from C. O. Thomas (NRC) to E. P. Rahe, Jr., (Westinghouse) and entitled "Acceptance for Referencing of Licensing Topical Report WCAP-8691(P)/WCAP-8692(NP)". The total retained DNBR Margin for 17x17 fuel is quantified to be 9.1%. The new R-grid rod bow penalties when added together are substantially less than 9.1%. Therefore, removal of the presently specified TS rod bow penalty is compensated for by implementation of the NRC-approved rod bow penalties.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the no significant hazards consideration by providing certain examples (48 FR 14870). Example (vi) of a no significant hazards consideration involves a change which may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system as specified in the Standard Review Plan. Although the instant amendment would permit a reduction of the retained DNBR margin due to the removal of the rod bow penalty on the nuclear enthalpy hot channel factor, the reduction is compensated for by implementation of the NRC-approved rod bow penalties, which provides for adequate and for some factors with additional available margin. On this basis, the staff proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Branch Chief: Edward J. Butcher, Acting.

Wisconsin Pubic Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 30, 1985.

Description of amemdment request: License amendment would provide revised Techncial Specifications (T.S.) to direct the plant Quality Control Group to report to higher level plant management. In addition, would eliminate blank T.S. pages and would incorporate other minor administrative and editorial changes in T.S.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870) of actions likely to involve no significant hazards consideration. Examples of actions involving no significant hazards consideration are changes that relate to:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature, and

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

The changes eliminating blank T.S. pages and other minor administrative and editorial changes are encompassed in example (i).

The T.S. change to direct the Quality Control Group to report to a higher level of plant management enhances the authority of this group and represents an additional control not presently included in the T.S., as indicated in example (ii).

Since the application for amendment involves proposed changes that are similar to examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library-Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Steven E. Keane, Esquire, Foley and Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Branch Chief: Steven A. Varga.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: June 11, 1985.

Description of amendment request: The proposed amendment would revise the technial specifications to update the pressure/temperature limit curves for hydrostatic and leak rate testing and for heatup and cooldown rates. All of these curves are being updated to show the required limitations out to 22.0 effective full power years.

Date of publication of individual notice in Federal Register: June 18, 1985 (50 FR 25384).

Expiration date of individual notice: July 18,1985.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

NRC Branch Chief: John A. Zwolinski.

Florida Power Corporation et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: February 27, 1985, as revised May 24, 1985, and June 7, 1985

Brief description of amendment: The amendment would move the Fire Service System tables from the Technical Specifications (TSs) to the Fire Protection Plan (FPP) to allow timely implementation of operability and surveillance requirements. The affected Technical Specifications are the Fire Detection Instrumentation (TS 3.3.3.7), Deluge and Sprinkler Systems (TS 3.7.11.2) and Fire Hose Stations (TS 3.7.11.4). Also a Fire Protection license condition would be added requiring that the FPP not be changed so as to significantly decrease the level of fire protection in the plant without the Commission's approval and that all changes be submitted annually to the Commission along with the updated FSAR. *See* 10 CFR 50.71.

Date of publication of individual notice in Federal Register: June 14, 1985 (50 FR 24969).

Expiration date of individual notice: July 15, 1985.

Local Public Document Room location: Crystal River Public Library, 668 NW First Avenue, Crystal River, Florida.

Florida Power Corporation et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: April 25, 1985.

Brief description of amendment: The amendment would revise the Technical Specifications (TSs) to support the operation of Crystal River Unit 3 at full rated power during the upcoming Cycle 6 operation. The proposed amendment requests changes in the following areas:

1. Reactor core safety limits and trip setpoints for reactor thermal power and axial power imbalance.
2. Minimum boric acid and borated water volumes.
3. Regulating and axial power shaping rod group insertion limits.
4. Axial power imbalance limits.
5. Reactor Protection System response time testing requirements.
6. Deletion of specific requirements pertaining to Cycle 5.

In support of the license amendment request for operation of Crystal River Unit 3 during Cycle 6, the licensee submitted, as an attachment to the application, a Babcock & Wilcox (B&W) Report, BAW-1860, dated April 1985. A summary of the Cycle 6 operating parameters along with a safety analysis are included therein.

For Cycle 6 Crystal River Unit 3 will operate with 60 fresh fuel assemblies similar to the fuel used in Cycle 5. Additionally, Cycle 6 will incorporate longer less absorbing Inconel (gray) axial power shaping rods (APSRs) instead of the silver-indium-cadmium (black) APSRs used used previously.

The NOODLE code was used in determining core physics parameters and the LYNX-T code, which uses crossflow methods, in the thermal-hydraulic analyses. Other analytical methods have been used and accepted for previous cores.

Date of publication of individual notice in Federal Register: June 13, 1985 (50 FR 24940).

Expiration date of individual notice: July 15, 1985.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on the assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission,

Washington, D.C. 20555, Attention: Director, Division of Licensing.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: December 14, 1984.

Brief description of amendment: The amendment revises the Technical Specifications to incorporate the requirements to perform augmented inservice inspection of the IP-2 reactor vessel during the second ten year inspection interval. The augmented inspection is required as a result of a flaw indication reported on the IP-2 reactor vessel during the cycle 6/7 refueling outage. In accordance with Section XI of the ASME Code the amendment requires the inspection to be performed at a frequency of three times over the next ten years. Should any additional inspection demonstrate that the flaw in within the Section XI allowable for which no augmented inspection is required, the amendment allows the requirement for augumented inspection to become void.

Date of issuance: June 6, 1985.

Effective date: June 6, 1985.

Amendment No.: 95.

Facilities Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 7984)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: November 8, 1984, which supersedes previous submittals dated October 27, 1981, December 15, 1981 and December 16, 1983.

Brief description of amendment: The amendment incorporates technical specification changes to add a description of an operating requirements for the new stack gas monitoring system.

Date of issuance: June 10, 1985.

Effective date: June 10, 1985.

Amendment No. 75.

Facility Operating License No. DPR-6. This amendment revised the license and the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 7984).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: November 14, 1984.

Brief description of amendment: The amendment modifies the Technical Specifications to include the recently modified Reactor Enclosure Treated Waste Line Isolation Valve, CV-4049, as an automatic containment isolation valve in the list of automatic containment isolation valves which are local leak rate tested.

Date of issuance: June 7, 1985.

Effective date: June 7, 1985.

Amendment No. 74.

Facility Operating License No. DPR-6. This amendment revised the license and the Technical Specifications.

Date of initial notice in Federal Register: February 27, 1985 (50 FR 7985).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room Location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of application for amendment: September 29, 1982.

Brief description of amendment: Revises technical specifications regarding reactor coolant system safety valves to incorporate new requirements for operability and surveillance testing.

Date of Issuance: June 7, 1985.

Effective date: June 7, 1985.

Amendment No. 43.

Provisional Operating License No. DPR-45. Amendment revised the Appendix A Technical Specifications.

Date of initial notice in Federal Register: October 26, 1983 (48 FR 49583).

The Commission's related evaluation for the license amendment is contained in a Safety Evaluation dated June 7, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of application for amendment: October 18, 1984 as revised on January 10, 1985.

Brief description of amendment: Modifies license conditions to remove specific quantity limitations for radioactive byproduct, source, or special nuclear material used for sample analysis or instrumental calibration or associated with radioactive apparatus or components.

Date of Issuance: June 5, 1985.

Effective date: June 5, 1985.

Amendment No. 42.

Provisional Operating License No. DPR-45. Amendment revised the license.

Date of initial notice in Federal Register: March 27, 1985 (50 FR 12143).

The Commission's related evaluation for the license amendment is contained in a Safety Evaluation dated June 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: November 3, 1983 and supplemented by letters dated July 31, 1984 and March 21, 1985.

Brief description of amendment: The only requirements left in Appendix B are those that have to do with infrared aerial photography and soil sampling, and related administrative requirements. The amendment eliminates Appendix B in its entirety, leaving Appendix A, which becomes the only appendix to the Beaver Valley Unit 1 Operating License.

Date of issuance: June 24, 1985.

Effective date: June 25, 1985.

Amendment No. 93.

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in the Federal Register: September 28, 1984, (49 FR 38398).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 24, 1985.

No significant hazards consideration comments received. None.

An Environmental Assessment has been prepared in accordance with 10 CFR 50.12(b) and a finding of No Significant Impact made dated June 21, 1985 (50 FR 25806).

Local Public Document Room locations: B.F. Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: July 19, 1984, as supplemented by the agreement in meeting minutes dated February 22, 1985.

Brief description of amenmdent: The amendment authorizes Appendix A Technical Specification (TS) changes pertaining to the primary containment atmosphere to (1) reduce the maximum oxygen limit from less than 5% to less than 4% in TS 3.5.A.6 and add appropriate text to its Bases and (2) correct a typographical spelling error in the Bases of TS Section 4.5.

Date of issuance: June 7, 1985.

Effective date: June 7, 1985.

Amendment No. 86.

Provisional Operating License No. DPR-16. Amendment revised the Appendix A Technical Specifications.

Date of initial notice in the **Federal Register:** March 27, 1985 (50 FR 12145).

The Commission's related evaluation of the amendment is contianed in a Safety Evaluation dated June 7, 1985.

No significant hazards consideration comments received. No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Indiana and Michigan Electric Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan.

Date of application for amendment: March 1, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to account for increased flow in the pump bypass line. The specific changes add to footnote to the Safety Injection System single pump flow requirements to (1) indicate combined loops 1, 2, 3, and 4 cold leg flow is to be less than or equal to 640 gpm to be consistent with the containment analysis and (2) total flow, including miniflow, is not to exceed 700 gpm to be consistent with the limits in the ECCS analysis.

Date of issuance: June 24, 1985.

Effective date: June 24, 1985.

Amendment No. 84.

Facility Operating License No. DPR-58. Amendment revised the Technical Specifications.

Date of initial notice in the **Federal Register:** May 21, 1985 (50 FR 20981).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 24, 1985.

No significant hazards consideration comments received. None.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Iowa Electric Light and Power Company, Docket No. 50-311, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: December 5, 1984, as supplemented January 24, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to (1) permit changing the well cooling water backwash automatic valves to manual valves and to keep them locked shut, (2) correct some inconsistencies in the present specifications and as-built logic circuits for Groups 6 and 7 containment isolation valves, and (3) make the Technical Specifications clearer and more complete.

Date of issuance: June 11, 1985.

Effective date: June 11, 1985.

Amendment No. 123.

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in the **Federal Register:** February 27, 1985 (50 FR 7992).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 11, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: October 1, 1984.

Brief description of amendment: The revision to the Technical Specifications adds Limiting Conditions for Operation and surveillance requirements for the Control Room Air Treatment System, updates the testing requirements for the absorber filters that are a part of the Control Room Air Treatment and the Emergency Ventilation systems, and changes the testing frequencies for the above mentioned system.

Date of issuance: June 11, 1985.

Effective date: June 11, 1985.

Amendment No.: 73.

Facility Operating License No DPR-63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 7998).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 11, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Northeast Nuclear Energy Company et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: February 6, 1985 as supplemented June 5 and June 11, 1985.

Brief description of amendment: The revisions to the Technical Specifications modify the allowable region of operation when the core power distribution is monitored by the Excore Detector Monitoring System. These revisions reflect changes in Cycle 7 operating characteristics and allow operation in fuel Cycle 7.

Date of issuance: June 19, 1985.

Effective date: June 19, 1985.

Amendment No.: 99.

Facility Opeating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1985 (50 FR 12132 at 12150). The June 5, 1985 letter provided the final Cycle 7 reload characteristics and the June 11, 1985 letter provided a Technical Specification page which was inadvertently left out of the February 6, 1985 submittal and provided addition clarfication. Neither letter revised the initial noticing action.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1985.

No significant hazards Consideration comments received: No.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut.

Northeast Nuclear Energy Company et al., Docket No 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: April 2, 1985.

Brief description of amendment: This amendment modified the Technical Specifications by changing the chlorine detection system setpoint, eliminating the date associated with Regulatory Guide 1.95, changing the control room emergency ventilation system flow rate, specifying the removal efficiency of the charcoal adsorber, and the insertion of control room radiation monitoring information.

Date of issuance: June 19, 1985.

Effective date: June 19, 1985.

Amendment No.: 100.

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 23, 1985 (50 FR 15997 at 16007). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1985.

No significant hazards consideration comments received: No.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: October 1, 1981.

Brief description of amendments: The changes to the Technical Specifications permit the following:

(1) Changes in the "Remarks" column of Table 3.2.B to provide indication that an interlock applies to both the Residual Heat Removal (RHR) and Core Spray Systems.

(2) A clarification pertaining to the Suppression Chamber High Level trip setting in accordance with Mark I containment studies (Table 3.2.B).

(3) A revision concerning the surveillance requirements for the Primary Containment Isolation Signal (PCIS) and Low Pressure Coolant Injection (LPCI) interlock switch to correct an error by requiring more stringent requirements (Table 4.2.B).

(4) Correct the calibration frequency for Reactor Level Instrumentation which had inadvertently been changed under previous amendments (Table 4.2.F).

(5) A revision to Appendix B thermal mapping reporting frequency from 30 days to annually. In addition, this section is revised to more clearly specify the required events necessary to initiate thermal mapping monitoring and exempt data collection during periods when river and weather conditions preclude safe data gathering (Appendix B, Section 3.1).

Date of issuance: June 10, 1985.

Effective Date: June 10, 1985.

Amendment Nos.: 109 and 112.

Facility Operating Licenses Nos. DPR-44 and DPR-56. Amendments revised the Technical Specifications.

Date of initial notice in the Federal Register: April 25, 1984 (49 FR 17868).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Street, Harrisburg, Pennsylvania.

Public Service Electric and Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit 2, Salem County, New Jersey

Date of application for amendment: October 15, 1984.

Brief description of amendment: The amendment revises the sodium hydroxide test flow rate for Unit 2 to agree with the value for Unit 1.

Date of issuance: June 13, 1985.

Effective Date: June 13, 1985.

Amendment No.: 38.

Facility Operating License No. DPR-75: Amendment revised the Technical Specifications.

Date of initial notice in the Federal Register: April 23, 1985 (50 FR 16011).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 13, 1985.

No significant hazards consideration comments have been received: No.

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Rochester Gas and Electric Corpration, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: December 19, 1983.

Brief description of amendment: The amendment revises the second and subsequent 10 year interval start dates of the Quality Group B and C programs of the Inservice Inspection Program and the program for High Energy Piping Outside Containment, to coincide with the interval of the Quality Group A program. The change also incorporates inspections intervals for the Inservice Pump and Valve Testing Program, with corresponding interval start dates for the second and subsequent intervals.

Date of issuance: June 19, 1985.

Effective Date: June 19, 1985.

Amendment No.: 5.

Facility Operating Licenses No. DPR-18 Amendment revised the Technical Specifications.

Date of initial notice in the Federal Register: April 25, 1984 (49 FR 17871).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Rochester Gas and Electric Corporation, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne, County, New York

Date of amendment request: March 30, 1984.

Description of amendment request: The amendment will bring the Technical Specifications into conformance with 10 CFR 50.72, 50.73, and 50.49.

Date of issuance: June 7, 1985.

Effective date: June 7, 1985.

Amendment No.: 4.

Facility Operating License No. DPR-18. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 23, 1984 (49 FR 21837).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry H. Voigt, Esquire, LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue, NW., Suite 1100, Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski.

Southern California Edison Company, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: April 9, 1985.

Brief description of amendment: The amendment requires that a steam generator inspection be performed during the refueling outage scheduled to begin no later than November 30, 1985.

Date of issuance: June 5, 1985.
Effective date: June 5, 1985.
Amendment No.: 89
Provisional Operating License No. DPR–13: Amendment revised the license condition 3.E.
Date of initial notice in **Federal Register:** May 1, 1985 (50 FR 18587).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1985.
No significant hazards consideration comments received: No.
Local Public Document Room location: San Clemente Public Library, 242 Avendia Del Mar, San Clemente, California 92672.

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Date of amendment request: March 14, 1985.
Brief Description of amendment request: This amendment revises the WNP–2 license by modifying the Technical Specifications to provide relief, for one time only, from the surveillance requirement 4.4.3.2.2, of leak testing three of the eighteen Reactor Coolant System Pressure Isolation Valves. These valves are designated RCIC–V–66, RCIC–V–13 and RHR–V–23 and are identified in Table 3.4.3.2–1 of the Technical Specifications.
Date of issuance: June 12, 1985.
Effective date: June 12, 1985..
Amendment No.: 10.
Facility Operating License No. NPR–21: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 9, 1985, (50 FR 19596) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 12, 1985.
No significant hazards consideration comments received: None.
Local Public Document Room Location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: November 30, 1984.
Brief description of amendment: Change to nuclear peaking factor resulting from use of higher burnup fuel.
Date of issuance: June 20, 1985.
Effective date: June 20, 1985.
Amendment No.: 62.
Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 31, 1984 (49 FR 50829)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 1985.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of Wisconsin, Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By August 2, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be extertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: May 24, 1985.

Brief description of amendment: This amendment extends the time that one of the emergency diesel generators can be inoperative during the month of May 1985 by 3 days.

Date of issuance: June 5, 1985.

Effective date: May 24, 1985.

Amendment No. 88.

Provisional Operating License No. DPR–20. The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards considerations are contained in a Safety Evaluation dated June 5, 1985.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

Local Public Document Room location: Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: June 14, 1985.

Brief description of amendment: The amendment revises the Amendment No. 121 effective date from May 28, 1985 to July 31, 1985.

Date of issuance: June 20, 1985.

Effective date: June 20, 1985.

Amendment No.: 125.

Facility Operating License No. DPR–49. Amendment revised the license.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment and final determination of no significant hazards are contained in a Safety Evaluation dated June 20, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of application for amendment: May 14, 1985.

Brief description of amendment: This amendment authorized a change in Techical Specification ¾.3.3.10 and 4.11.1.1.1 to provide for steam generator blowdown through the Circulating Water System (CWS) with an automatic termination feature and to define the sampling and analysis program for steam generator blowdown through the CWS or the Waterford 3 waste pond.

Date of Issuance: June 18, 1985.

Effective Date: May 16, 1985.

Amendment No.: 1.

Facility Operating License No.: NPF–38 Amendment revised the Technical Specifications.

Press release issued requesting comments as to proposed no signficant hazards consideration: No.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated June 18, 1985.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

Local Public Document Room Location: University of New Orleans

Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Bethesda, Maryland this 26th day of June 1985.

For the Nuclear Regulatory Commission.

Edward J. Butcher,

Acting Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85-15016 Filed 7-2-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Section 201 Investigation Regarding Imports of Nonrubber Footwear

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the President has received the recommendation of the United States International Trade Commission (ITC) regarding imports of nonrubber footwear pursuant to section 201 of the Trade Act of 1974. Public comments are due by c.o.b. Monday, July 15, 1985.

SUPPLEMENTARY INFORMATION: On July 1, 1985 the ITC reported its finding in an investigation of Nonrubber Footwear, Inv. No. TA-201-55 to the President pursuant to section 201 of the Trade Act of 1974 (19 U.S.C. 2251). The ITC determined that imports of nonrubber footwear provided for in items 700.05 through 700.45, inclusive, 700.56, 700.72 through 700.83, inclusive, and 700.95 of the Tariff Schedules of the United States (TSUS) are causing substantial injury to a domestic industry in the United States.

Pursuant to section 201(d)(1), the Commission found and recommended (Vice Chairman Liebler dissenting) the amount of increase in, or imposition of, any duty or import restriction necessary to remedy the injury to the industry.

Chairwoman Stern and Commissioner Eckes, Lodwick, and Rohr recommended the imposition of a quota of 474 million pairs on imports of nonrubber footwear with a customs value of over $2.50 per pair. They recommended that the quota remain at that level for the first two years of the relief period, to be increased by three (3) percent in the third year, by six (6) percent in the fourth year, and by nine (9) percent in the fifth year.

Nonrubber footwear valued at $2.50 or less per pair would be exempt from this relief.

To implement the quota, the Commission recommended that import licenses be sold through an auctioning system.

Commissioners Eckes, Lodwick, and Rohr recommended that the quota be imposed retroactively to June 1, 1985.

Chairwoman Stern and Commissioner Rohr recommended the division of the 474 million pair quota into three specific segments to provide more effective relief to those parts of the industry which have been most injured by imports. This would restrict the imports within the quota accordingly:

(1) That a 214 million pair ceiling be placed on nonathletic footwear with a customs value of over $5.00;

(2) That a 110 million pair floor be reserved for all athletic footwear (of any value); and

(3) That the remaining 150 million pair portion of the quota be made available to all footwear valued by customs between $2.51 and $5.00. This portion of the quota would also be open for bidding by athletic footwear.

After receiving the ITC's recommendation, the President must (1) determine what method and amount of import relief he will provide or (2) determine that the provision of import relief is not in the national economic interest and if so what whether he will direct expeditious consideration of adjustment assistance petitions. Under 19 U.S.C. 2252, the President has 60 days to make his decision regarding import relief.

In determining whether to provide import relief and the method and amount of relief, the President must take into account, in addition to other consideration he may deem relevant, the following factors:

(1) The probable effectiveness of the import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition; and other consideration relevant to the position of the industry in the nation's economy;

(2) The effect of import relief on consumers and on competition in the domestic market for such articles;

(3) The effect of import relief on the international economic interest of the United States;

(4) The impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(5) The geographic concentration of imported products marketed in the United States;

(6) The extent to which the U.S. market is a focal point for exports of such articles by reason of restraints on exports of such articles, or on imports of such articles into, third country markets; and

(7) The economic and social costs which would be incurred by taxpayers, communities and workers if import relief were or were not provided

The Office of the United States Trade Representative (USTR) chairs the Trade Policy Committee (TPC). The USTR with the advice of the TPC will issue a recommendation to the President regarding what action, if any, he should take with respect to the ITC's report and findings.

USTR welcomes briefs and comments from interested parties and interested members of the public regarding the imposition of import relief. Twenty (20) copies of any brief or comment must be filed in conformity with 15 CFR 2003.2 with the Secretary, Trade Policy Staff Committee, Room 500, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20506. Briefs should be submitted as soon as possible but in any case no later than c.o.b. Monday, July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Hiram Lawrence, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20506; telephone (202) 395-3475.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 85-16114 Filed 7-2-85; 11:32 am]

BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Losses and Goals Advisory Committee; Meeting

AGENCY: Losses and Goals Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Review draft chapters of Losses Statement;
- Discussion of Glossary of Terms;
- Review fish loss data collection form;
- Discussion of stock selection issue paper;
- Other, and
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Losses and Goals Advisory Committee.

DATE: July 22, 1985, 9:30 a.m.

ADDRESS: The meeting will be held at the Council's Hearing Room, 850 SW Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT:
John Marsh, 503–222–5161.

Edward Sheets,
Executive Director.

[FR Doc. 85–15863 Filed 7–2–85; 8:45 am]
BILLING CODE 6820–86–M

Resident Fish Substitutions Advisory Committee; Meeting

AGENCY: Resident Fish Substitutions Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Discussion of draft resident fish substitutions issue paper;
- Update of resident fish productivity report;
- Other, and
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Resident Fish Substitutions Advisory Committee.

DATE: July 19, 1985, 9:30 a.m.

ADDRESS: The meeting will be held at the Council's Hearing Room, 850 SW. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT:
John Marsh, 503–222–5161.

Edward Sheets,
Executive Director.

[FR Doc. 85–15862 Filed 7–2–85; 8:45 am]
BILLING CODE 6820–86–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14501]

Eaton & Howard Balanced Fund; Application for Order Declaring That Applicant Has Ceased To Be an Investment Company

June 25, 1985.

Notice is hereby given that Eaton & Howard Balanced Fund ("Applicant"), 24 Federal Street, Boston, MA 02110, filed and application on May 30, 1985, pursuant to section 8(f) of the Investment Company Act of 1940 ("Act") for an order of the Commission declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

According to the application, Applicant was organized as a trust and registered under the Act as an open-end, diversified management investment company. On December 10, 1984, the Trustees of Applicant approved an Agreement and Plan of Reorganization ("Plan") pursuant to which substantially all of Applicant's assets were transferred to Eaton Vance Investors Fund, Inc. ("Fund"), a registered open-end, diversified management investment company, in exchange for capital stock of the Fund. The application states that Applicant and the Fund were both members of a group of twenty-three investment companies which employ Eaton Vance Management, Inc. ("EVM") as their investment adviser. Applicant and the Fund both engaged Eaton Vance Distributors, Inc., a wholly-owned subsidiary of EVM, as their principal underwriter to distribute their shares. It is stated that the Plan was approved by Applicant's shareholders pursuant to a shareholder solicitation which was concluded on April 15, 1985.

According to the application, on the date of the exchange, April 26, 1985, the Fund acquired Applicant's net assets valued at $56,291,415.55, in exchange for 7,011,789.166 shares of capital stock of the Fund. Applicant states that it distributed to its shareholders shares of the Fund received in the exchange in proportion to their ownership interests. Applicant states further that it now has no assets, securityholders, debts or outstanding liabilities remaining and is not now a party to any litigation or administrative proceeding. In addition, Applicant represents that it is not now engaged, nor proposes to engage, in any business activities other than those necessary to wind up its affairs.

Applicant further states that on May 23, 1985, a certificate of the Trustees was filed with the Secretary of the Commonwealth of Massachusetts terminating its legal existence. As a consequence of such filing, Applicant's existence ceased under Massachusetts law except for such purposes as are necessary to close its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 21, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85–15908 Filed 7–2–85; 8:45 am]
BILLING CODE 8010–01–M

[Release No. IC–14506; 812–6081]

Johnstown American Companies; Application

June 24, 1985.

Notice is hereby given that Johnstown American Companies ("Applicant" or the "Company"), 5775–A Peachtree Dunwoody Road, Atlanta, Georgia 30343, a Massachusetts business trust, filed an applicant of February 19, 1985, and amendments thereto on April 25 June 13, 1985, pursuant to section 3(b)(2) of the Investment Company Act of 1940 ("Act"), for an order declaring that Applicant is not an investment company, or, in the alternative, pursuant to section 6(c) of the Act exempting Applicant until March 31, 1988, from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicant represents that it is a real estate service organization with operations in over 100 cities and 26 states, primarily in the Southeast and Southwest, that provides directly or through its wholly-owned subsidiaries a broad range of real estate services to property owners and lending institutions. Applicant was formed by a corporate reorganization and combination ("Reorganization") on March 15, 1983, of Johnstown Financial Corporation ("JFC") and Lane Company (Lane") with Hamilton Investment Trust ("Hamilton"). At the time of Reorganization, both JFC and Lane were closely-held companies primarily engaged in managing real estate properties owned by other persons. Hamilton, formed in 1971 as a publicly owned real estate investment trust, ceased its qualification as a real estate investment trust in 1978. JFC and Lane

at the time of Reorganization were, respectively, 80% and 100% owned by Johnstown American Enterprises, Inc. ("Enterprises"); the remaining 20% of JFC was owned by certain officers and shareholders of Consolidated Capital Equities Corporation ("Consolidated"), a sponsor of real estate programs in the form of investment trusts or limited partnerships.

Applicant states JFC was organized in 1977 by John Lie-Nielson, chairman and chief executive officer of the Company. JFC managed Consolidated's properties and Mr. Lie-Nielson has served as Consolidated's Vice President, President and Director; Mr. Lie-Nielson is presently a director of Consolidated.

Applicant continues to manage Consolidated's properties. The Reorganization was effected by the exchange of Hamilton shares for shares of JFC and Lane so that JFC and Lane became wholly-owned by Hamilton, and Hamilton's name was changed to Johnstown American Companies. Following the Reorganization JFC was liquidated into Applicant, and Enterprises, owning approximately 61.5% of Applicant, made a distribution of all the common shares and class B common shares to Enterprise's shareholders. Applicant, as a result of the distribution, is no longer a subsidiary of Enterprises.

Applicant states that in October, 1983, Applicant made a public offering of common shares with net proceeds of $8,588,000 ("1983 Offering"). The proceeds, together with financial resources from operations, were used by Applicant to acquire additional property management firms and firms offering services that complement those of Applicant. For an aggregate price of approximately $27,150,000, Applicant acquired eight condominium management companies, four commercial management companies, two brokerage and leasing companies, Johnstown Mortgage Company ("Mortgage"), a full service mortgage banking company acquired from affiliates, and a marketer of new condominiums and townhouses. In 1984, Applicant organized an Atlanta-based commercial brokerage company, an appraisal and consulting company, a retail carpet and installation company and a resort property management firm.

Applicant states that as of November 30, 1984, Applicant and its subsidiaries managed 751 apartment and condominium communities with approximately 128,000 units and 81 commercial, office and industrial buildings with approximately 5,700,000 square feet of leasable space. Applicant believes, based on industry surveys, that it is the leading manager of residential units in the United States. Revenue from management fees for the year ended August 31, 1984, was $12,292,000, constituting 30% of Applicant's and its subsidiaries' total revenues; brokerage revenue on a consolidated basis totaled approximately $9,691,000, representing 23% of total revenues; carpet sales and installation revenue was approximately $8,757,000, representing 21% of total revenue; and $731,000, constituting 16% of total revenue, was earned from construction supervision, security administration, and other consulting services. Applicant and its subsidiaries as of November 30, 1984, employed approximately 4,000 persons, including 3,100 employees who, as on-site management employees, had their payroll and benefits charged directly to the owners of such properties as a cost related to operation of such properties.

Applicant states that it sold $35,000,000 of notes through an underwritten public offering in February, 1985 ("1985 Offering"). Proceeds from the 1985 Offering will be used to acquire real estate service and other related businesses. Pending acquisition of such businesses, Applicant intends to invest the proceeds in money market instruments of investment grade. Prior to the 1985 Offering, investment securities as defined in the Act comprised less than 30% of Applicant's total assets on an unconsolidated basis; however, after the 1985 Offering, and the investment of the proceeds thereof entirely in money market instruments, the value of Applicant's investment securities will exceed 40% of Applicant's total assets on an unconsolidated basis and it will therefore fall within the definition of an investment company under section 3(a)(3) of the Act. Applicant asserts that because it is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities, Applicant qualifies for the Act's section 3(b)(1) exemption and should be granted an order of exemption pursuant to section 3(b)(2) of the Act.

According to the application, on November 30, 1984, Applicant's investment securities consisted primarily of investments in mutual funds and money-market funds suitable for meeting the cash management needs of Applicant, commercial paper and certificates of deposits, and mortgage note receivables from affiliates, officers and employees, acquired at the time of Reorganization. Applicant has disposed of most of the mortgage note receivables acquired. Applicant represents that it does not intend to increase significantly the ratio of investment securities to total assets on any permanent or long-term basis, and that historically Applicant has been, and will continue to be, primarily engaged in the real estate service business.

Applicant states that no mention of Applicant's investments or investment policies has ever been made in press releases. Applicant also states that all written communications with shareholders or the investment community have related primarily to acquisitions and other developments of Applicant, and none have mentioned Applicant's investments except to briefly note receipt of interest and other income, to discuss the business of Mortgage, or to discuss loans made by Applicant to partnerships to which it renders management services. Applicant states it has made loans to Mr. Lie-Nielson or Applicant's President George H. Lane, III, on a secured basis, to assist in the purchase of properties by privately-held partnerships for which Mr. Lie-Nielson or Mr. Lane serves as general partner. Applicant believes these financial services are an important addition to revenue and income because they produce acquisition fees, management fees, financing fees and sales commissions. In addition, the properties held by such partnerships are managed by Applicant and its subsidiaries. Applicant states its practice is to limit the amount of such loans to 100% of the purchase price of the property to be acquired by such partnerships and that the loans are on a recourse basis against the partnership and its properties.

Applicant represents that none of its officers engage in securities trading or portfolio management, other than customary cash management activities. Applicant also represents that no employee of the Applicant or its subsidiaries spends a significant amount of time managing investments. Intermittently, Applicant states, it retains outside consultants for advice concerning investments and cash management in order to maximize the yield to Applicant of its existing cash and short-term investments.

Income from investments for the fiscal year quarter ending November 30, 1984, Applicant states, represented 3% of the total revenue and 12% of the total income, respectively, of Applicant on a consolidated basis. Investment income as a percentage of income is significantly higher than as a percentage of revenue because Applicant has no expenses associated with investment income. Applicant states that investment income increased after the

1983 Offering and the investment of its proceeds, but that subsequently the percentage income from investments declined as a result of acquisitions and increasing operating revenues and income of Applicant. A similar trend is expected to develop with respect to the investment of the proceeds of the 1985 Offering. Applicant believes that the fact that only a relatively small portion of its revenues is derived from investments demonstrates that Applicant historically has not engaged in the business of an investment company. Applicant further represents that its history demonstrates it is not acting, nor is it intending to act, as an investment company by temporarily investing the proceeds of the 1985 Offering in short-term securities pending application of such proceeds to acquisitions and Applicant's business.

Applicant also asserts that 260 of its employees are considered corporate-level employees and 50% of these employees have their salaries, benefits and support costs reimbursed to Applicant and its subsidiaries by the managed properties to the extent such employees render services to the respective managed properties. Applicant represents that no employee of Applicant or its subsidiaries spends a significant portion of time managing investments, and substantially all of the employees' time relates to operations of Applicant.

Applicant concludes that it relied on Rule 3a–2 after the 1983 Offering, and that therefore it cannot rely on Rule 3a–2 presently. Applicant states that the five factors of Applicant's historical development, its public statements, the activities of its officers and directors, the nature of its assets and the source of its income, demonstrate that Applicant is primarily engaged in the real estate service business and is not primarily engaged in the business of investing, reinvesting, owning, holding or trading in securities.

Applicant also states that it is negotiating to purchase Consolidated Capital Equities Corporation at a price in excess of $150,000,000. Although no definite agreements have been executed, Applicant expects the transaction to close during the summer of 1985. Cash payable at the closing, Applicant estimates, will be $75,000,000. To the extent that the proceeds of the 1985 Offering are not utilized in connection with this transaction, Applicant expects that the balance of the proceeds will be expended in connection with other acquisitions not later than August 31, 1986.

Applicant requests that in the alternative to an order under section 3(b)(2) of the Act, the Commission issue an order pursuant to section 6(c) of the Act, exempting Applicant until March 31, 1986, from all provisions of the Act. In support of this request, Applicant represents that it will take all actions necessary to ensure that on or before March 31, 1986, the aggregate value of the assets held by Applicant that represent investment securities, as defined by the Act, will not exceed 40% of the value of Applicant's total assets (exclusive of U.S. Government Securities and cash items) on an unconsolidated basis. Applicant maintains that its contemplated operations are not susceptible to abuses of the sort that the Act was designed to remedy, and that requested relief is both necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes and policies underlying the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 19, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–15907 Filed 7–2–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14597; 812–6120]

Merrill Lynch Natural Resources Trust; Application for an Order Exempting Applicant From Provisions

June 24, 1985.

Notice is hereby given that Merrill Lynch Natural Resources Trust ("Applicant"), 633 Third Avenue, New York, New York 10017, registered under the Investment Company Act of 1940 ("Act") as an open-end, nondiversified management investment company, filed an application on May 23, 1985, and an amendment thereto on June 19, 1985, for an order of the Commission, pursuant to section 6(c) of the Act, exempting Applicant from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and Rule 22c–1 thereunder to the extent necessary to permit Applicant to assess a contingent deferred sales load on certain redemptions of its shares and to permit a waiver of the contingent deferred sales load with respect to certain types of redemptions. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the complete text of the applicable provisions.

Applicant, organized as a Massachusetts business trust with investment objectives of long-term growth of capital and preservation of shareholders' purchasing power, states that it proposes to offer its shares without a sales load being deducted at the time of purchase but subject to a contingent deferred sales charge upon certain redemptions. Applicant represents that the proceeds from the contingent deferred sales charge will be paid to Merrill Lynch Funds Distributor, Inc. ("Distributor") and will be used in whole or in part by the Distributor to defray the cost of paying sales commissions to account executives on the sale of Applicant's shares. Applicant further states that payments by Applicant to the Distributor under a plan of distribution ("Plan"), adopted by Applicant, pursuant to Rule 12b–1 under the Act, may also be used in whole or in part by the Distributor for this purpose. Applicant's distribution fee is calculated on the basis of 1.0% per annum of its average daily net assets, so that, according to the application, the combination of the contingent deferred sales charge and the Plan facilities Applicant's ability to sell its shares without a sales load being deducted at the time of purchase.

Applicant states that the contingent deferred sales charge will not be imposed on redemptions of shares which were purchased more than four years prior to redemption or on shares derived from reinvestment of distributions. Applicant states further that no contingent deferred sales charge will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation, so that, with respect to the redemption of shares purchased during the preceding four years, capital appreciation on the particular shares being redeemed will not be subject to a deferred sales

charge. Such a charge will be imposed, however, on the amount paid for such shares by the redeeming shareholder. Applicant represents that in determining whether a contingent deferred sales charge is applicable it will be assumed that a redemption is made first of shares derived from reinvestment of distributions, second of shares purchased more than four years prior to the redemption, and third of shares purchased during the preceding four years.

Applicant states that it intends to waive the contingent deferred sales charge on the following redemptions: (1) Redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code ("Code"), of a shareholder, and (2) redemptions in connection with certain distributions from IRA's or other qualified retirement plans.

Applicant represents that where a contingent deferred sales charge is imposed, the amount of the charge will depend on the number of years since the investor made the purchase payment from which an amount is being redeemed, according to the following table:

Year since purchase payment made	Contingent deferred sales charge as a percentage of amount redeemed
First	4.0
Second	3.0
Third	2.0
Fourth	1.0
Fifth and thereafter	(*)

* None.

Applicant states that, in determing the rate of any applicable contingent deferred sales charge, it will be assumed that a redemption is made of shares held by the investor for the longest period of time within the applicable four year period.

Applicant represents that the contingent deferred sales charge in no way restricts a shareholder from receiving his proportionate share of the current net assets of Applicant, but merely defers the deduction of a sales charge and makes it contingent upon an event which may never occur. Nevertheless, to avoid any uncertainty with respect to the interpretation of section 2(a)(32) of the act, Applicant requests an exemption from the provisions of that section to the extent necessary to permit Applicant to qualify as an open-end company under section 5(a)(1) of the Act.

Applicant contends that the contingent deferred sales charge is functionally a sales charge because it is paid to the Distributor to reimburse it for expenses related to offering Applicant's shares for sale to the public. Applicant asserts that the contingent nature of the proposed charge makes the purchaser better off than if a sales load were imposed at time of sale, since, in the case of the contingent charge, the shareholder enjoys the possibility that he will have to pay only a reduced sales charge, or no sales charge at all. Applicant further asserts that because the contingent charge will never be imposed on an amount in excess of the market value of the shares being redeemed, an investor whose account declines in value may ultimately pay a lower sales charge than if a conventional sales charge were imposed at the time of purchase. Moreover, because the charge is imposted only on amounts representing purchase payments (not on increases in value of the shares or on shares purchased through reinvestment) the purchaser can be no worse off with a contingent deferred sales charge of the nature proposed than if, instead, a conventional sales load were charged at the time of purchase. Applicant states that the deferral of the sales charge, and its contingency upon the occurrence of an event which might not occur, does not change the nature of the charge, which is in every other respect a sales charge. Accordingly, Applicant requests an exemption from the provisions of section 2(a)(35) of the Act to the extent necessary to implement the proposed charge.

Applicant states that when a redemption of its shares is effected, the price of the shares on redemption will be based on current net asset value; the contingent deferred sales charge will merely be deducted at the time of redemption in arriving at the shareholder's proportionate redemption proceeds. Accordingly, Applicant requests an exemption from the provisions of section 22(c) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit Applicant to implement the proposed contingent deferred sales charge.

Applicant states that an exemption from the provisions section 22(d) is required to permit the contingent deferred sales charge to be waived in certain circumstances because the waiver provision could result in Applicant's shares being sold at other than a uniform offering price, under circumstances not specifically exempted from section 22(d) of the Act by virtue of Rule 22d–1 thereunder. Accordingly, Applicant requests an exemption from the provisions of section 22(d) of the Act to the extent necessary to permit Applicant to waive the contingent deferred sales charge under the circumstances specified above.

Applicant contends that the imposition of the contingent deferred sales charge is fair and is in the best interests of its shareholders. Applicant asserts that the proposed charge permits shareholders to have the advantages of greater investment dollars working for them from the time of their purchase of Applicant's shares than if a sales load were imposed at the time of purchase. Applicant asserts that the imposition of the contingent deferred sales charge under the circumstances described above is appropriate in light of the relationship between the deferred sales charge and the Plan adopted by Applicant. Applicant further contends that, where amounts attributable to shares purchased less than four years ago are redeemed and thus no longer contribute to the annual distribution charge, it is fair (1) to impose on the withdrawing shareholder a lump sum payment reflecting approximately the amount of distribution expense which has not been recovered through payments by Applicant and (2) to remove the assets on which the contingent deferred sales charge was imposed from the base amount on which Applicant's distribution fee is calculated.

Applicant asserts that the waiver of the contingent deferred sales charge in the extraordinary circumstance of death or total disability of the investor is justified on considerations of fairness; in addition, with respect to waivers effected in connection with certain distributions from IRA's or other qualified retirement plans, such distributions are those which are permitted to be made without penalty, pursuant to the Code.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 15, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-15906 Filed 7-2-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

OMB Circular No. A-76; Performance of Commercial Activities

ACTION: Notice of A-76 Review and Schedule.

SUMMARY: In compliance with the Office of Management and Budget (OMB) Circular Number A-76, subject, "Performance of Commercial Activities, the Federal Aviation Administration hereby publishes its A-76 review and schedule of functions pertaining to the Aviation Standards National Field Office which is headquartered at the Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma, with offices throughout the United States and internationally.

Organization	Functions	Review start date
Aviation Standards National Field Office.	Evaluation, Currency and Transportation.	June 1985.
	Flight Inspection/ Logistics.	Dec.
	Aircraft Maintenance ...	July 1985.

This review will be conducted under a Department of Transportation contract awarded in May 1985 to perfrom required OMB Circular A-76 reviews of commercial activities. The designated contractor for this review is Arthur Young, 1025 Connecticut Avenue, NW., Washington, D.C. 20036. This announcement is an advance notification to alert interested persons and businesses of our plans.

FOR FURTHER INFORMATION CONTACT: Michael L. Evans, (202) 426-3070, FAA, Office of Aviation Policy and Plans, 800 Independence Avenue, SW., Washington, D.C. 20591 or John M. Howard, (405) 686-2306, FAA, Deputy Director, Aviation Standards National Field Office, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, Oklahoma 73125.

Issued in Washington, D.C. on June 14, 1985.

Harvey B. Safeer,

Director of Aviation Policy and Plans.

[FR Doc. 85-15856 Filed 7-2-85; 8:45 am]

BILLING CODE 4910-13-M

FAA Approval of Noise Compatibility Program; Los Angeles International Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Los Angeles International Airport (LAX) under the provisions of Title I of the Aviation Safety and Noise Abatement (ASNA) Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). The FAA accepted the noise exposure maps for LAX submitted under Part 150 on October 15, 1984. The LAX noise compatibility program received partial approval by the Administrator effective April 13, 1985. A majority of noise mitigation actions proposed in the program were approved. Other program elements were either disapproved outright or disapproved pending submission of details sufficient to permit an informed analysis under section 104(b) of the ASNA Act. In addition, two program elements relating to flight procedures were neither approved nor disapproved, but will receive further study by the FAA, as permitted by the ASNA Act.

DATE: The effective date of the FAA's approval of the LAX noise compatibility program is April 13, 1985.

FOR FURTHER INFORMATION CONTACT: Ellis A. Ohnstad, Airport Planning Officer, AWP-611, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 536-6250. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Los Angeles International Airport, effective April 13, 1985.

Under section 104(a) of the Aviation Safety and Noise Abatement (ASNA) Act of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The ASNA Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and the FAA.

Los Angeles International Airport submitted to the FAA on May 28, 1983, the noise exposure maps, descriptions, and other documentation produced during an airport noise control and land use compatibility (ANCLUC) study conducted at LAX from October 1980 through June 1984. the LAX noise exposure maps were accepted by the FAA on October 15, 1984. Notice of that acceptance was published in the **Federal Register** on November 20, 1984.

The Phase Three Report, Volume I of the LAX ANCLUC study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the ASNA Act and in Part 150. The FAA began its review of the program on October 15, 1984, and was required by a provision of the ASNA Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 40 proposed actions for noise mitigation, both on and off the airport. The FAA has completed its review and determined that the procedural and substantive requirements of the ASNA Act and Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator and became effective on April 13, 1985. The overall approval includes approval, disapproval or deferral of determination with respect to each of the 40 proposed actions.

Outright approval was granted for 28 specific program elements. On-airport actions include an airport noise monitoring and management program, pilot awareness programs, airport noise limits and use restrictions. Off-airport elements include noise insulation, navigation and easements, a neighborhood improvement program and preventive land use planning. FAA's approval of these noise compatibility measures involves the determination that the program actions to be implemented do not create an undue burden on interstate or foreign

commerce, are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses, provide for revision when appropriate, and are consistent with the requirements of Part 150, Appendix B. Such approval does not constitute FAA environmental approval of specific projects, nor does it represent a commitment to fund or implement elements of the program.

Three specific program elements were disapproved pending submission to the FAA of additional details to permit an informed analysis under section 104(b) of the ASNA Act. These disapprovals do not reflect FAA opposition of the noise mitigation objectives of the proposals or of the concepts on which they are based. Rather, as described above, the ASNA Act contemplates approval or disapproval within the 180-day review period. Lacking adequate detail for a proper evaluation, the FAA has disapproved these actions. This does not foreclose additional FAA review if additional information is submitted by the airport operator.

The FAA has disapproved outright three noise mitigation measures proposed in the LAX Noise Compatibility Program for the following reasons. One was disapproved because it relates to facilities used exclusively for helicopters which are not covered under Part 150. The second recommends a passenger facility charge which is currently prohibited by federal law. The third measure would establish a commitment by FAA to fund projects in the program, an obligation which is specifically denied in Part 150.

The FAA has deferred judgement on two program elements addressing revisions to flight procedures for noise mitigation. These will receive further FAA review and technical evaluation before approval or disapproval. Finally, there is no action required on four action elements since they are informational statements rather than program recommendations.

Each airport noise compatibility program developed in accordance with the Part 150 is a local program, not a federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

The noise compatibility program was developed in accordance with the provisions and procedures of Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act 1982. Where federal funding is sought, requests for project grants must be submitted to the FAA Western-Pacific Region, Airports Division.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator and effective as of April 13, 1985. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Los Angeles International Airport.

Issued in Hawthorne, California, on June 10, 1985.

Wayne C. Newcomb,

Acting Director, Western-Pacific Region.

[FR Doc. 85-15857 Filed 7-2-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, D.C. on July 10, 1985, of the following debt management advisory committee: Public Securities Association, U.S. Government and Federal Agencies, Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on July 10 and the preparation of a written report to the Security of the Treasury on July 22, 1985. The immediate needs of the Treasury require that the meeting be held as soon as possible.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-5, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b (c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory

committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: June 26, 1985.

John J. Niehenke,

Acting Assistant Secretary (Domestic Finance).

[FR Doc. 85-15954 Filed 7-2-85; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate

The Renegotiation Board previously published the rate of interest determined by the Secretary of the Treasury pursuant to section 105(b)(2) of the Renegotiation Act of 1951, as amended. Since the Renegotiation Board is no longer in existence, the Department of the Treasury is publishing the current rate of interest. Also, pursuant to section 2(b)(1) of Pub. L. 97-177, dated May 21, 1982, the Secretary of the Treasury is responsible for computing and publishing the interest rate to be used in cases under the Prompt Payment Act.

Therefore, notice is hereby given that, pursuant to the above-mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1985 and ending on December 31, 1985, is 10-⅜ percent per annum.

Dated: June 28, 1985.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-15915 Filed 7-2-85; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

Establishment of Office; District Counsel; Anchorage, AK

AGENCY: Chief Counsel, Internal Revenue Service, Treasury.

ACTION: Establishment of office.

SUMMARY: As a result of the increasing legal casework in the State of Alaska, the Chief Counsel of the Internal Revenue Service will open a new office in Anchorage, to be known as the District Counsel, Anchorage, effective July 8, 1985.

Jean Owens,

Deputy Chief Counsel.

[FR Doc. 85-15951 Filed 7-2-85; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy; Meeting

The United States Advisory Commission on Public Diplomacy will conduct a meeting in Room 600, 301 4th Street SW. on July 10 from 9:30 AM to 12:30 PM.

The meeting will be closed to the public from 11:00 AM-12:30 PM, because it will involve a discussion of classified information relating to USIA's security policies and the Inman report on "Combating Terrorism." (5 U.S.C. 552b(c)(1)) Premature disclosure of this information is likely to significantly frustrate implementation of proposed Agency action, because there will be a discussion of future Agency policy and programs. (5 U.S.C. 522b(c)(9)(B))

The Commission will meet from 10:00 AM-10:15 AM with Mr. William Anderson, Director of USIA's Office of Pubic Liaison, and from 10:15 AM to 11:00 AM with Dr. Guy Brown, Director of USIA's Office of Cultural Centers and Resources, for a discussion of USIA's book programs. These portions of the meeting are open to the public. Please call Gloria Kalamets, (202) 485-2468, if you plan to attend because entrance to the building is controlled.

Dated: June 28, 1985.

Charles Z. Wick,

Director.

[FR Doc. 85-15942 Filed 7-2-85; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 128
Wednesday, July 3, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Communications Commission	1
International Trade Commission	2

1

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission will hold a Special Open Meeting on the subject listed below on Monday, July 8, 1985, which is scheduled to commence at 10:00 A.M., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

Mass Media—1—Title: Notice of Inquiry on tender offers and proxy contests involving publicly traded corporate licensees. SUMMARY: The Commission will consider adopting a Notice of Inquiry as to policies and procedures to be used in connection with tender offers and proxy contests, in light of the requirements of section 310(d) of the Act requiring prior Commission approval of assignments of licenses or tranfers of control of corporations holding FCC licenses.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

William J. Tricarico,
Secretary, Federal Communications Commission.
July 1, 1985.

[FR Doc. 85-16033 Filed 7-1-85; 2:43 pm]
BILLING CODE 6712-01-M

2

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-26]

TIME AND DATE: Wednesday, July 3, 1985, at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
5. Investigation 731-TA-202 [Final] (Tubular steel framed stacking chairs from Italy)—briefing and vote.
6. Investigation 731-TA-206 [Final] (Fabric and expanded neoprene laminate from Japan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,
Secretary.
[FR Doc. 85-15955 Filed 6-28-85; 5:14 pm]
BILLING CODE 7020-02-M

federal register

Wednesday
July 3, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Areas; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWA-1]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Airport Radar Service Areas (ARSA) at 14 locations. Each location is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before October 1, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204, Airspace Docket No. 85-AWA-1, 800 Independence Avenue, SW., Washington, D.C. 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul C. Smith, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information, Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings for all proposed ARSA locations in order to receive additional input with respect to the proposal. The schedule of times and places of the hearings is listed in Appendix A. In some instances, meetings on adjacent ARSA locations are combined in one proceeding for the convenience of the public. Also, an effort has been made not to schedule meetings at the same time on separate locations in the same region, so that commenters will be able to attend all meetings in which they may have an interest. Persons who plan to attend any of the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The dates, times, and places for each meeting are listed in Appendix A. There will be no admission fee or other charge to attend and particpate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of any meeting is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at each meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted at the discretion of the FAA representative. Participants submitting handout materials should present an original and two copies to the presiding officer for approval before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR were the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH.

ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD, (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect. This is the first such notice.

Related rulemaking

This notice proposes ARSA designation at 14 of the locations identified as candidates for an ARSA in the preamble to Amendment No. 71–10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register.**

The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at each of the locations at which ARSA's are proposed in this notice. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a feeling shared among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR section 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the satellite are excluded from the two-way radio communications requirement of section 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at the following 14 locations:

Albany County Airport, NY
Anchorage International Airport, AK
Bradley International Airport, Windsor Locks, CT
Capital City Airport, Harrisburg, PA
Corpus Christi International Airport, TX
Harrisburg International Airport, PA
Long Island MacArthur Airport, Islip, NY
Pensacola Naval Air Station, FL
Pensacola Regional Airport, FL
San Antonio International Airport, TX
Syracuse Hancock International Airport, NY
Theodore Francis Green State Airport, Providence, RI
Tulsa International Airport, OK
Whiting Naval Air Station, FL

Each of the above locations is a public or military airport at which a nonregulatory TRSA is currently in effect. The proposed locations are depicted on charts in Appendix B to this notice.

The FAA has published a final rule (50 FR 9252; March 6, 1985) which defines ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The final rule provides in part that any aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, §§ 71.14 and 71.501, and Part 91, §§ 91.1 and 91.88.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Regulatory Evaluation

The FAA has conducted a detailed Regulatory Evaluation of the proposed ARSA implementation program which is included in the regulatory docket. The methodology and major findings of that evaluation are presented below.

a. Costs

Costs which potentially may result from the ARSA program fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA rather than a TRSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

Each of these cost factors is discussed further below:

(1) *Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.* The FAA does not expect to incur any additional air traffic controller staffing costs, controller training costs, or facility equipment costs. FAA believes that the additional traffic which will participate in radar services at ARSA's can be accommodated through more efficient use of personnel at current authorized staffing levels. Participation in TRSA's is already quite high, and the greater flexibility afforded controllers through the reduced separation standards will enable them to handle the additional traffic without requiring additional personnel beyond present authorizations. FAA expects to train its controller force in ARSA procedures during regularly scheduled briefing sessions. Airports where TRSA's are currently in operation already have automated terminal radar systems installed. Therefore, FAA does not expect to incur any additional training or equipment procurement costs. Essentially, the FAA is modifying its terminal radar procedures in the ARSA program in a manner which will make more efficient use of existing resources, and consequently does not expect to incur any appreciable implementation costs.

(2) *Costs associated with the revision of charts, notification of the public, and pilot education.* Chart revisions of the type required to depict an ARSA are made routinely during charting cycles, and are considered an ordinary cost of doing business. Therefore, the FAA does not expect to incur any additional charting costs as a result of the ARSA program. Further, pilots will obtain charts depicting ARSA's as they are published during these charting cycles. Because pilots are required to use current charts, they also will not incur any additional costs.

Much of the need to provide public notification and pilot education about ARSA procedures will be met as a part of this rulemaking proceeding during the informal public meetings which will be held for each proposed ARSA location. However, once the decision has been made to establish an ARSA through a final rule issued in this proceeding, the FAA will distribute a Letter to Airmen to all pilots residing in the vicinity of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA will also issue an Advisory Circular explaining ARSA's. The total one-time cost of distributing Letters to Airmen and the Advisory Circular is estimated to be approximately $50,000 for the entire ARSA program. The prorated one-time cost for those airports being considered in this rulemaking is approximately $5,000.

(3) *Additional operating costs for circumnavigating or overflying an ARSA.* FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services will choose to avoid the mandatory participation airspace of an ARSA rather than participate. Delay costs will be incurred by these pilots equal to the additional aircraft variable operating cost and the value of lost crew and passenger time resulting from the deviation. Many pilots will elect to overfly the ARSA, and although this will not result in any appreciable delay, an additional fuel burn will result from the need to temporarily climb above the 4,000 feet AGL ceiling of the ARSA (which will be offset somewhat by the descent).

The unit delay costs used throughout this regulatory evaluation to develop total annual costs are presented in Table 1. For those aircraft expected to overfly the ARSA rather than deviate around it, FAA estimates that a single-engine piston airplane will burn about an additional half gallon of fuel, a multi-engine piston airplane will burn about one additional gallon, and that the price of aviation gasoline is approximately $2.00 per gallon.

TABLE 1.—AVERAGE AIRCRAFT VARIABLE OPERATING COSTS AND VALUE OF PASSENGER TIME USED TO ESTIMATE ANNUAL DELAY COSTS [1]

(1984 dollars)

Aircraft type (abbreviation)	Aircraft hourly variable operating cost [2]	Avg. No. passengers (pax)/total hourly value of time [3]	Total hourly delay costs
Single-engine piston (SEP)	$29.22	2 pax/$44.42	$83.64
Multi-engine piston (MEP)	118.07	3 pax/$66.63	184.70
Multi-engine turboprop (METP)	354.32	3 pax/$66.63	420.95
Executive jet (EXJ)	1036.84	4 pax/$88.84	1125.48
Air Carrier (AC)	2588.77	90 pax/$1998.90	4587.67
Helicopter (HELI)	138.27	3 pax/$66.63	204.90
Military jet (MILJ)	1853.87		1953.87
Military helicopter (MILH)	195.14		195.14
Military transport (MILTRP) [4]	1994.79		1994.79

[1] One minute average delay per day = 6.063 hours delay per year. Delay time estimates for aircraft which alter flight paths to avoid the ARSA are based upon average cruising speeds of 120 KTS for single-engine piston, 190 KTS for multi-engine piston, and 110 KTS for helicopters.

[2] Aircraft variable operating costs include crew salaries for all aircraft except single and multi-engine piston.

[3] Based upon $22.21 per hour average value of passenger time.

[4] Variable operating cost of air carrier 4-engine turboprop transport used as proxy for military transport.

Source: *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs*, FAA Office of Aviation Policy and Plans, September 1981 (Report #FAA-APO-81-3 and revision #APO-84-3). Values have been adjusted for inflation and are expressed in 1984 dollars.

The Office of Aviation Policy and Plans (APO) requested ATC personnel at each of the proposed ARSA sites to eliminate, based upon their familiarity with local traffic patterns, the number of daily flights which might circumnavigate or overfly the ARSA. Air Traffic Operations Service personnel also provided input on these estimates. The estimated number of daily flights affected, extent of deviation, and type of aircraft, are presented for each site in Table 2, which follows at the end of this section and summarizes the various potential impacts of establishing an ARSA for each site. FAA estimates that the total annual circumnavigation and overflight costs for the candidate ARSA sites proposed in this notice will be approximately $73 thousand.

(4) *Delay costs resulting from operations within an ARSA rather than*

a TRSA. FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA because of the additional traffic which the radar facilities will be handling. However, FAA believes that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and resources to take fullest advantage of the efficiencies which an ARSA will permit. Followup studies of the Austin and Columbus lead sites, completed by the FAA Office of Aviation Policy and Plans (APO) and by Engineering & Economics Research Inc. (EER), both indicated that delay was not a significant problem (the clearance delivery delay attributable to the ARSA at Austin was later alleviated through procedural changes and a redistribution of personnel).[1] Nevertheless, the FAA has attempted to estimate delay costs which might temporarily result from establishing ARSA's at the airports being considered in this proposal. These delay estimates should be regarded as the worst case situation which might follow the initial establishment of an ARSA. ATC personnel at each of the proposed sites, as well as Air Traffic Operations Service personnel, provided estimates of three categories of delay, *in comparison to the existing TRSA*, which might result from the ARSA: Clearance delivery and/or departure delay for aircraft departures, sequencing delay during peak periods for arriving aircraft, and delay in establishing radar contact before entering the ARSA might result from frequency congestion, controller overload, or greater participation of nontransponder equipped aircraft.

The estimated number of daily flights affected, duration of delay, and type of aircraft, are presented for each site in Table 2. FAA estimates that the total annual delay costs for the candidate ARSA sites proposed in this notice will be approximately $152 thousand.

(5) *The need for some operators to purchase communications avionics.* Because of the requirement that radio communications be maintained in the mandatory participation airspace of the ARSA, some operators who previously could operate without radios from satellite airports located within that portion of the proposed ARSA which will extend down to the surface will find it necessary to install two-way radios. FAA expects that the costs resulting from these aircraft will be minimal because in most instances the proposed ARSA provides airspace exclusions and cutouts for satellite airports within 5 nautical miles of the ARSA center. However, in a few instances, operators of nonradio equipped (NORDO) aircraft will need to install radios. FAA estimates that the average total cost of equipping a NORDO aircraft with an inexpensive 720 channel transceiver, including installation, is approximately $2,300. The annual expense to an aircraft operator who financed the cost over a four-year period at a 15 percent interest rate would be $751. NORDO aircraft are shown in the "Miscellaneous" column of Table 2 for those proposed sites where ATC personnel have identified locally based aircraft which might be affected. FAA estimates that the total annual radio installation costs for affected aircraft at the candidate ARSA sites will be approximately $4,500 (only San Antonio identified possible NORDO aircraft).

(6) *Miscellaneous costs.* At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. The exclusions in most cases will alleviate adverse impacts on local fixed-based operators and airport operators, but ATC personnel at the proposed ARSA sites have attempted to identify where such potential problems may exist. For example, at some locations replacing a TRSA with an ARSA may necessitate relocating a student practice area further away from the flight school airport, and additional operating costs will be incurred travelling the greater distance to and from the practice area. Other miscellaneous operations which might be affected include glider and ultralight operations.

[1] *An Analysis of the Impact of the Airport Radar Service Area (ARSA)*, FAA Office of Aviation Policy and Plans, November 1984 (Report #FAA-APO-85-1); and *National Airspace Review–Airport Radar Service Area Operational Confirmation Report*, Engineering & Economics Research, Inc. (EER), Report No. DOT/FAA/AT-84/2, October 1984.

TABLE 2.—Docket 85-AWA-1, Estimated Average Daily Flight Deviations, Overflights, Delay and Miscellaneous Impacts for Proposed ARSA Sites

Site name	Daily flight deviations (dev) or overflights (OV)	Daily clearance delivery and/or departure delay	Daily arrival sequencing delay	Daily radar contact delay	Miscellaneous
Albany	0	0	0	3 SEP/1 MEP.1 min	0
Anchorage	10 SEP—OV	5 SEP/2 MEP—2 min	0	0	0
Bradley	15 SEP/5 MEP—5NM	0	0	0	0
Capital City Airport, Harrisburg			See Harrisburg		
Corpus Christi	0	0	0	0	0
Harrisburg (includes Harrisburg Int'l./ Capital City)	0	0	0	0	0
Long Island Mac Arthur	10 SEP/5 MEP—7NM	0	0	0	0
Pensacola Naval Air Station			See Pensacola Regional		
Pensacola Regional (also includes Pensacola NAS and Whiting NAS)	0	0	0	0	0
San Antonio	[illegible]—7 NM	15 SEP/10 MEP/5 METP—4 min. (360 days per year)	0	0	6 NORDO
Syracuse	0	0	0	5 SEP—0.5 min.	0
Theo. F. Green (Providence)	675 SEP/675 MEP—7 NM (annual count).	10 SEP/10 MEP—2 min	7 SEP/3 MEP—1 min	15 SEP—1 min	0
Tulsa	[illegible]	0	0	0	0
Whiting Naval Air Station		See Pensacola Regional			

These impacts would be indicated in the "Miscellaneous" column of Table 2 for sites where they have been identified. However, no such impacts are anticipated at any of the candidate ARSA sites proposed in this notice. Respondents are requested to comment upon any special local operations which might be affected by an ARSA either during the public meetings or through written comments submitted to the docket.

Overall total annual costs, by cost category, of establishing ARSA's at the airports proposed in this notice are

summarized in Table 3 below. The maximum total annual cost of establishing ARSA's at these sites, if an ARSA is established at each site proposed, is estimated to be approximately $235 thousand. However, this maximum is expected to diminish significantly as controllers and pilots gain experience in ARSA operations. Delay will be reduced, and in many cases, traffic will ultimately flow more smoothly and expeditiously than in existing TRSA's.

Table 3.—Maximum Annual Costs of Establishing ARSA's at Proposed Sites

[1984 dollars]

1. FAA controller and equipment costs	$0
2. Chart revision, pilot education (one time)	5,000
3. Circumnavigation and overflight	73,000
4. Departure, sequencing, and radar contract delay	152,000
5. Radio transceivers/miscellaneous	4,500
Total costs	234,500

b. Benefits

Much of the benefit which will result from the ARSA program is nonquantifiable, and will result from simplifying and standardizing ARSA configurations and operating procedures. The standardization and simplicity of the ARSA concept is expected to alleviate many of the problems identified by the NAR task group. In addition, once experience has been gained in ARSA operations, traffic is expected to move more efficiently and expeditiously than it currently does within a TRSA.

Although many of the benefits of the ARSA program are nonquantifiable, FAA has attempted to make some preliminary estimates of the savings in time and money which might be realized as a result of the greater flexibility allowed air traffic controllers in handling traffic within an ARSA. These estimated savings may or may not offset the delay which some sites anticipate after the initial establishment of an ARSA, but are expected to eventually provide overall time savings which exceed delay as controllers gain experience with ARSA operating procedures. ATC personnel at Columbus, OH, where an ARSA has been in operation for approximately a year and a half, report that this has been their experience.

To develop these estimates of savings, FAA used procedures similar to those discussed in the previous section for estimating delay costs. Local ATC personnel, together with the Air Traffic Operations Service, estimated for each candidate ARSA site the number of daily operations and the types of aircraft involved which might save time, *in comparison to operations within a TRSA*, as a result of the reduced separation standards of the ARSA. Time savings estimates were made for both arrivals and departures, and are presented for each site in Table 4.

TABLE 4.—ESTIMATED AVERAGE DAILY TIME SAVINGS FOR PROPOSED ARSA SITES

Site name	Daily departure time savings	Daily arrival time savings
Albany	0	7 SEP/4 MEP—1 min.
Anchorage	0	0
Bradley	0	0
Capital City Airport, Harrisburg	See Harrisburg	
Corpus Christi	33 SEP/17 MEP—1 min	33 SEP/17 MEP—1 min.
Harrisburg	38 SEP—1 min	5 SEP—2.5 min.
Long Island Mac Arthur	0	10 SEP/5 MEP—1 min.
Pensacola Naval Air Station	See Pensacola Regional	
Pensacola Regional (also includes Pensacola NAS and Whiting NAS)	0	0
San Antonio	150 SEP—4 min./50 MEP—2 min./15 EXJ/5 AC—1 min. (250 days per year).	60 SEP/30 MEP/10 METP—4 min. (260 days per year).
Syracuse	0	0
Theo. F. Green (Providence)	0	0
Tulsa	0	300 SEP/200 MEP—1.5 min.
Whiting Naval Air Station	See Pensacola Regional [b]	

NOTE.—Aircraft abbreviations from Table 1.

FAA estimates that the total annual value of time savings for the candidate ARSA sites proposed in this notice will be approximately $525 thousand for departures and $883 thousand for arrivals, yielding about $1.4 million in overall savings. (The unit costs used to estimate the value of time savings are the same as those used to estimate delay costs presented in Table 1.)

Some of the benefits of the ARSA program cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. Establishment of ARSA's at the sites proposed in this notice will contribute to these overall improvements.

ARSA's have the potential for reducing the number of near midair collisions (NMAC's). In its 1984 study of midair and near midair collison data, the Office of Aviation Safety found that approximately 15 percent of reported NMAC's occurred in TRSA airspace.[a] The study found that about half of all NMAC's occurred at altitudes between 1,000 and 5,000 feet, that over 85 percent of NMAC's occurred when visibility was 5 miles or greater, and that the largest number of NMAC reports are associated with IFR operators under radar control conflicting with VFR traffic during VFR flight conditions below 12,500 feet. Further, the majority of reported NMAC's occurring within or in the near vicinity of TRSA's involve either an air carrier or military aircraft as one of the aircraft (which partially reflects the practice of air carrier and military pilots to report NMAC incidents, when they do occur, more frequently than general aviation pilots). The mandatory participation requirements of the ARSA may help alleviate such conflicts where they currently are occurring in TRSA airspace. Further, the EER and APO studies of the ARSA confirmation sites (see note 1) indicate that NMAC's may be reduced by approximately 35 to 40 percent.

Although no quantifiable benefits can be attributed to a reduction in near midair collisions, near midair and actual midair collisions result from similar causal factors, and a reduction in near midair collisions suggests that a reduction in actual midair collisions, which can involve substantial losses, may also be expected as a result of the ARSA program.

The APO study of the ARSA confirmation sites (note 1) included a detailed analysis to determine if a reduction in midair collision risk might result from replacing a TRSA with an ARSA. The collision risk analysis was based upon the experience at the Columbus confirmation site, where recorded radar data were available, and focused on conditions of fairly heavy

[a] *Selected Statistics Concerning Near Midair and Midair Collisions*, FAA Office of Aviation Safety—Safety Analysis Division (ASF–200), August 31, 1984. The data base used in this study is currently under revision to correct problems in reporting procedures which have recently been identified. Although the total numbers of reported NMAC's have been revised upward, the relative distribution of incidents which occur in various operating environments has not changed significantly.

VFR activity because the ARSA will affect procedures used to handle VFR traffic in the terminal radar area. The analysis determined that there was no compression of traffic in the airspace immediately around, under, and over the ARSA, and in the absence of compression, the mandatory participation requirement for all aircraft operating within the ARSA resulted in a 75 percent reduction in midair collision risk. Further, even under the pessimistic assumption that the changes in separation standards would completely eliminate the effectiveness of controller-initiated avoidance maneuvers, and the pilot would only have the benefit of radar traffic advisories, the study found that the mandatory pilot participation required in the ARSA still provided a 63 percent reduction in midair collision risk in comparison to the TRSA.

FAA has examined National Transportation Safety Board midair collision accident records for the period between January 1978 and October 1984. This review indicated that approximately one to two midair collisions occurred per year throughout the United States which either could have been prevented, or the probability of their occurrence would have been greatly reduced, had an ARSA, rather than a TRSA, been in effect where these accidents occurred. Because the circumstances observed at the Columbus confirmation site may not necessarily be found at other TRSA locations, the 75 percent reduction in midair collision risk measured at Columbus may not be achieved at other ARSA sites. Therefore, the FAA conservatively estimates that implementation of the ARSA program nationally may result in an average reduction in midair collision risk of only 50 percent at TRSA locations that are replaced with ARSA's.

Reducing by 50 percent the one to two midair collisions per year where an ARSA could have made a difference would result in the prevention of one midair collision nationally every 1 to 2 years. The quantifiable benefits of preventing a midair collision can range from less than $100 thousand, resulting from the prevention of a minor accident between general aviation aircraft, to quantifiable benefits of as much as $100 million to $300 million, resulting from the prevention of a midair collision involving an air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in this notice will contribute to this improvement in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the proposal are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of both the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period. Nevertheless, to the extent that these costs and benefits have been quantified, the overall total annual time savings benefit of $1.4 million is approximately six times greater than the estimated $235 thousand in overall annual costs for the candidate ARSA sites proposed in this notice. Further, both the Austin and Columbus confirmation sites went through initial adjustment periods, but now experience almost no delay as a result of ARSA procedures. Baltimore-Washington is currently progressing along a similar learning curve.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the group of candidate ARSA sites proposed in this notice typify the beneifts which FAA expects to achieve nationally from the ARSA program. These benefits will be achieved without any additional controller staffing or radar equipment costs of the FAA.

In addition to these operational efficiency improvements, establishment of the proposed ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects the ARSA program to produce long term, ongoing benefits which will far exceed its costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by implementation of the ARSA program are the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude almost every satellite airport located within the 5-nautical-mile ring to avoid adversely impacting their operations, and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports which establish special procedures for operating to and from these airports. In this manner, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program.

Further, because the FAA expects that any delay problems which may initially develop following implementation of an ARSA will be transitory, and because the airports which will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type which use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis in not required under the terms of the RFA.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is the ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived for ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airport radar service areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.501 is amended as follows:

Albany County Airport, NY [New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Albany County Airport (lat. 42°44'53" N., long. 73°48' 12" W.), and that airspace extending upward from 2,400 feet MSL to 4,300 feet MSL within a 10-mile radius of the Albany County Airport from the 046°T(060°M) bearing from the airport clockwise to the 096°T(110°M) bearing from the airport and that airspace extending upward from 2,000 feet MSL to 4,300 feet MSL within a 10-mile radius of the airport from 096°T(110°M) bearing from the airport clockwise to the 046°T(060°M) bearing from the airport.

Anchorage International Airport, AK [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Anchorage International Airport (lat. 61°10'39" N., long. 149°59'38" W.) excluding that airspace below 3,000 feet MSL in a quadrant beginning at the airport to a point where the 350°T(325°M) bearing from the airport intersects the 5-mile arc, clockwise to the 090°T(065°M) bearing from the airport to the point of origin, and excluding that airspace below 700 feet MSL in a quadrant beginning at a point where the 118°T(093°M) bearing from the airport intersects the 5-mile arc, clockwise to the 243°T(218°M) bearing from the airport to the point of origin; and that airspace extending upward from 1,400 feet MSL to 4,100 feet MSL within a 10-mile radius of the Anchorage International Airport from the 141°T(116°M) bearing from the airport clockwise to the 350°T(235°M) bearing from the airport and that airspace extending upward from 3,000 feet MXL to 4,100 feet MSL within a 10-mile radius of the airport from the 350°T(325°M) bearing from the airport clockwise to the 141°T(116°M) bearing from the airport.

Bradley International Airport, Windsor Locks, CT [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Bradley International Airport (lat. 41°56'20" N., long. 72°41'01" W.) excluding Skylark Airport (lat. 41°55'45" N., long. 72°34'30" W.) and Simsbury Airport (lat. 41°55'00" N., long. 72°46'40" W.) and Bancroft Airport (lat. 41°52'00" N., long. 72°37'00" W.); and that airspace extending upward from 2,100 feet MSL to 4,200 feet MSL within a 10-mile radius of Bradley International Airport.

Capital City Airport, Harrisburg, PA [New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Capital City Airport (lat. 40°13'01" N., long. 76°51'06" W.) to the points where the 5-mile arc joins a 5-mile arc from the Harrisburg International Airport, PA (lat. 40°11'36" N., long. 76°45'40" W.) Airport Radar Service Area (ARSA), and that airspace extending upward from 2,600 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the Capital City Airport to the lines extending from the points where the 5-mile arc and the 10-mile arc of the Capital City Airport and the Harrisburg International Airport ARSA's join.

Corpus Christi International Airport, TX [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Corpus Christi International Airport (lat. 27°46'12" N., long. 97°30'03" W.), and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of the Corpus Christi International Airport. This airport radar service area is effective during the specific days and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Harrisburg International Airport, PA [New]

That airspace extending upward from the surface to 4,300 feet MSL within a 5-mile radius of the Harrisburg International Airport (lat. 40°11'36" N., long. 76°45'40" W.) to the points where the 5-mile arc joins a 5-mile arc from the Capital City Airport, PA (lat. 40°13'01" N., long. 76°51'06 W.) Airport Radar Service Area (ARSA), and that airspace extending upward from 2,100 feet MSL to and including 4,300 feet MSL to the lines extending from the points where the 5-mile and 10-mile arcs from the Harrisburg International Airport and Capital City Airport ARSA's join.

Long Island MacArthur Airport, Islip, NY [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Long Island MacArthur Airport (lat. 40°47'44" N., long. 73°06'00" W.), and that airspace extending upward from 1,300 feet MSL to 4,100 feet MSL within a 10-mile radius of the airport; excluding that airspace from the surface to and including 600 feet MSL within 1 mile west of Bayport Aerodrome (lat. 40°45'30" N., long. 73°03'15" W.) and parallel to Runway 18-36 from south of the Sunrise Highway southbound to the 5-mile radius of the Long Island MacArthur Airport, counterclockwise to south of Nichols Road thence northbound along Nichols Road to south of and parallel to the Sunrise Highway westbound to the beginning point.

Pensacola NAS, FL [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Navy Pensacola Airport (lat. 30°21'12" N., long. 87°19'12" W.) excluding that airspace extending upward from the surface to and including 700 feet MSL within a 1-mile radius of the Ferguson Airport (lat. 30°23'55" N., long. 87°20'55" W.) and 1 mile either side of the 330°T(328°M) bearing from the Ferguson Airport, and that airspace extending upward from 1,200 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the Navy Pensacola Airport, excluding that Airspace within the Pensacola Regional Airport, FL, Airport Radar Service Area.

Pensacola Regional Airport, FL [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Pensacola Regional Airport (lat. 30°28'23" N., long. 87°11'15" W.), and that airspace extending upward from 1,300 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the Pensacola Regional Airport, excluding that airspace within the inner circle of the Pensacola NAS, FL, Airport Radar Service Area.

San Antonio International Airport, TX [New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the San Antonio International Airport (lat. 29°32'00" N., long. 98°28'10" W.), and that airspace extending upward from 2,200 feet MSL to 4,800 feet MSL within a 10-mile radius of the San Antonio International Airport from the 278°T(271°M) bearing from the airport clockwise to the 008°T(001°M) bearing from the airport and that airspace extending upward from 2,000 feet MSL to 4,800 feet MSL within a 10-mile radius of the airport from the 008°T(001°M) bearing from the airport clockwise to the 278°T(271°M) bearing from the airport.

Syracuse Hancock International Airport, NY [New]

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5–mile radius of the Syracuse Hancock International Airport (lat. 43°06'44" N., long. 76°06'32" W.) excluding that airspace within a 0.75-mile radius of the center (lat. 43°10'45" N., long. 76°07'30" W.) of Michael Field, Cicero, NY, and that airspace extending upward from 1,600 feet MSL to and including 4,400 feet MSL within a 10-mile radius of the Syracuse Hancock International Airport from the 245°T(257°M) bearing from the airport clockwise to the 120°T(132°M) bearing from the airport and that airspace extending upward from 2,700 feet MSL to and including 4,400 feet MSL within a 10-mile radius from the 120°T(132°M) bearing from the airport clockwise to the 178°T(190°M) bearing from the airport and that airspace extending upward from 2,300 feet MSL within a 10-mile radius of the airport from the 178°T(190°M) bearing from the airport clockwise to the 245°T(257°M) bearing from the airport.

Theodore Francis Green State Airport, Providence, RI [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Theodore Francis Green State Airport (lat. 71°25'41" N., long. 41°43'27" W.), and that airspace extending upward from 1,300 feet MSL to 4,100 feet MSL within a 10-mile radius of Theodore Francis Green State Airport from 015°T(030°M) bearing from the airport clockwise to the 195°T(210°M) bearing from the airport, and that airspace extending upward from 1,700 feet MSL to 4,100 feet MSL within a 10-mile radius of the airport from 195°T(210°M) bearing from the airport clockwise to the 015°T(030°M) bearing from the airport.

Tulsa International Airport, OK [New]

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Tulsa International Airport (lat. 36°11'54" N., long. 95°53'16" W.) excluding that airspace within a 1-mile radius of Harvey Young Airport (lat. 36°08'12" N., long. 95°49'08" W.) and that airspace extending upward from 2,100 feet MSL to and including 4,700 feet MSL within a 10-mile radius of Tulsa International Airport.

Whiting NAS, FL [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the center of the Navy Whiting Complex (lat. 30°42'40" N., long 87°01'30" W.), and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the Navy Whiting Complex, excluding that airspace within the boundary of Restricted Area R–2915 and that airspace within the Pensacola Regional Airport, FL, Airport Radar Service Area and excluding that airspace within a 1-mile radius of the Milton "T" Airport (lat. 30°36'15" N., long. 86°59'40" W.) extending upward from the surface to and including 700 feet MSL.

Issued in Washington, D.C., on June 25, 1985.

James Burns, Jr,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

Appendix 1.—Public Meeting Schedule

The schedule for the informal airspace meetings is as follows:

Albany County Airport, NY, ARSA
Date: July 24, 1985
Time: 7:00 p.m.
Location: Stonehedge B.C. Room, Turf Inn, 205 Wolf Road, Albany, NY

Anchorage International Airport, AK, ARSA
Date: August 17, 1985
Time: 2:00 p.m.
Location: Performing Arts Center, Anchorage Community College, 2533 Providence Drive, Anchorage, AK

Bradley International Airport, Windsor Locks, CT, ARSA
Date: August 15, 1985
Time: 7:00 p.m.
Location: Connecticut Air National Guard Auditorium, Bradley Air National Guard Base, East Grandby, CT

Capital City Airport, Harrisburg, PA, ARSA
Date: July 18, 1985
Time: 7:00 p.m.
Location: Central Penn Business School, C.P. Theatre, College Hill Road, Summerdale, PA

Corpus Christi International Airport, TX, ARSA
Date: September 11, 1985
Time: 7:00 p.m.
Location: Holiday Inn—Airport, 5549 Leopard Street, Corpus Christi, TX

Harrisburg International Airport, PA, ARSA
Date: July 18, 1985
Time: 7:00 p.m.
Location: Central Penn Business School, D.P. Theatre, College Hill Road, Summerdale, PA

Long Island MacArthur Airport, Islip, NY, ARSA
Date: August 10, 1985
Time: 9:00 a.m. to 1:00 p.m.
Location: Quality Inn, 3845 Veteran's Memorial Highway, Ronkonkoma, NY

Pensacola NAS, FL, ARSA
Date: August 14, 1985
Time: 7:30 p.m.
Location: Pensacola Junior College, Auditorium Building, Room 250 Pensacola, FL

Pensacola Regional Airport, FL, ARSA
Date: August 14, 1985
Time: 7:30 p.m.
Location: Pensacola Junior College, Auditorium Building, Room 250 Pensacola, FL

San Antonio International Airport, TX, ARSA
Date: July 17, 1985
Time: 7:30 p.m.
Location: Holiday Inn, 77 Loop 410 NE, San Antonio, TX

Syracuse Hancock International Airport, NY, ARSA
Date: September 18, 1985
Time: 7:00 p.m. to 10:00 p.m.
Location: Airport Inn, Walnut Room, Syracuse Hancock International Airport, North Syracuse, NY

Theodore Francis Green State Airport, Providence, RI, ARSA
Date: August 7, 1985
Time: 7:00 p.m.
Location: 243rd Army Guard Battalion, Airport Road, T.F. Green Airport Warwick, RI

Tulsa International Airport, OK, ARSA
Date: August 20, 1985
Time: 7:30 p.m.
Location: Holiday Inn—East, I–244 and Garnett Road, Tulsa, OK

Whiting NAS, FL, ARSA
Date: August 14, 1985
Time: 7:30 p.m.
Location: Pensacola Junior College, Auditorium Building, Room 250 Pensacola, FL.

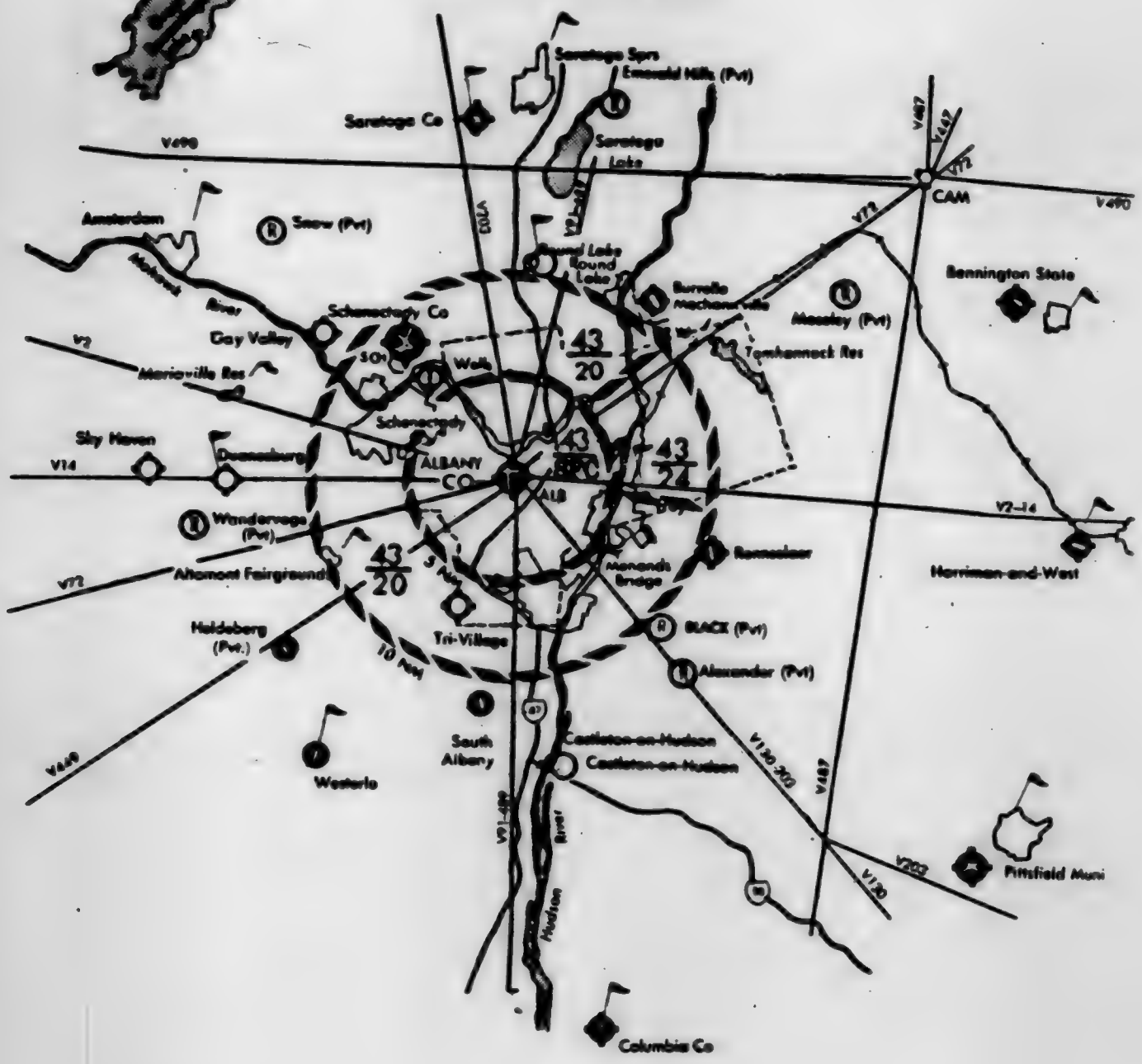
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Appendix 2

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

ALBANY, NEW YORK
ALBANY COUNTY AIRPORT
FIELD ELEV. 285' MSL



LEGEND

VFR CHECKPOINT

ARSA

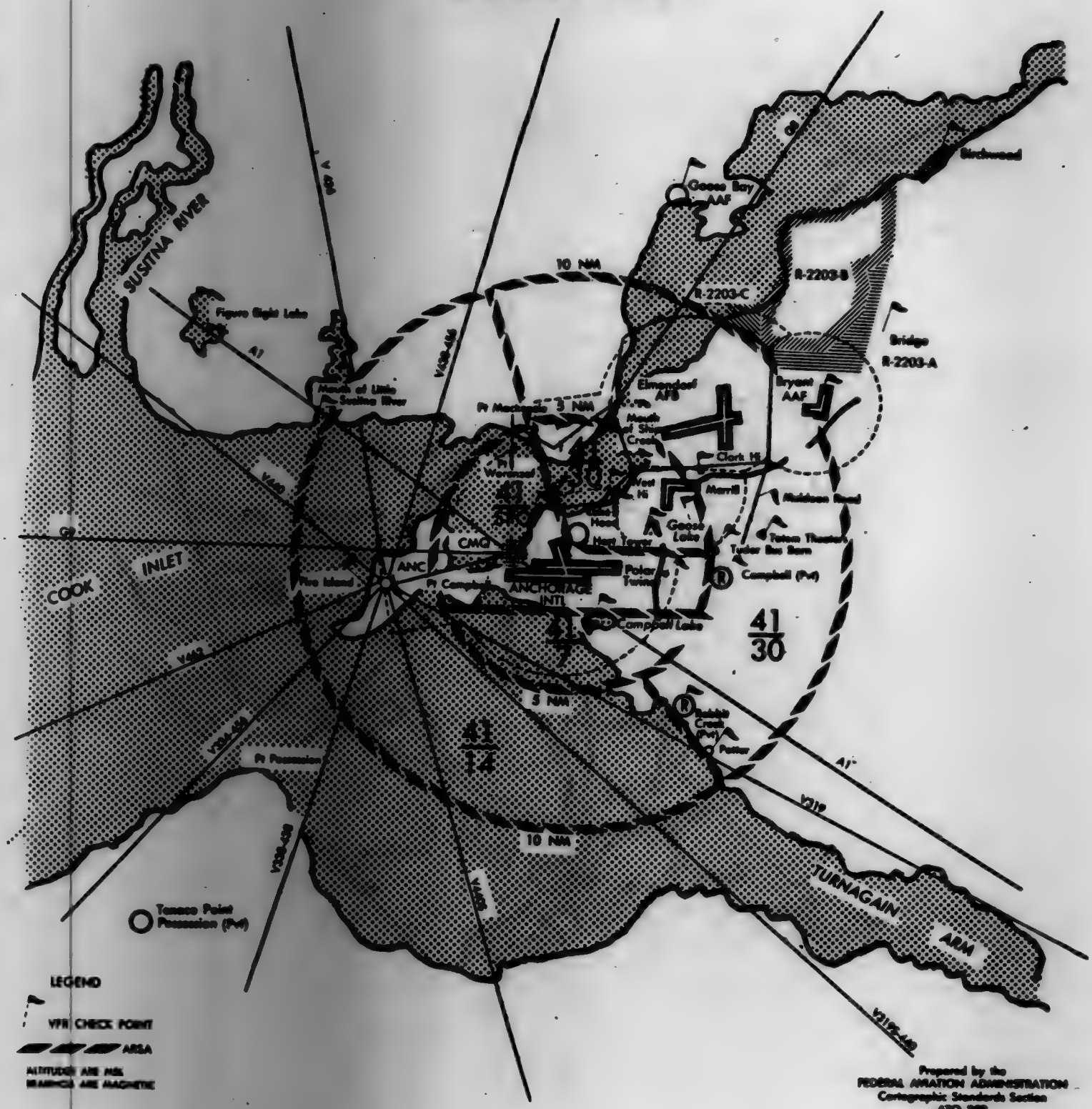
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

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Cartographic Standards Section
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2

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

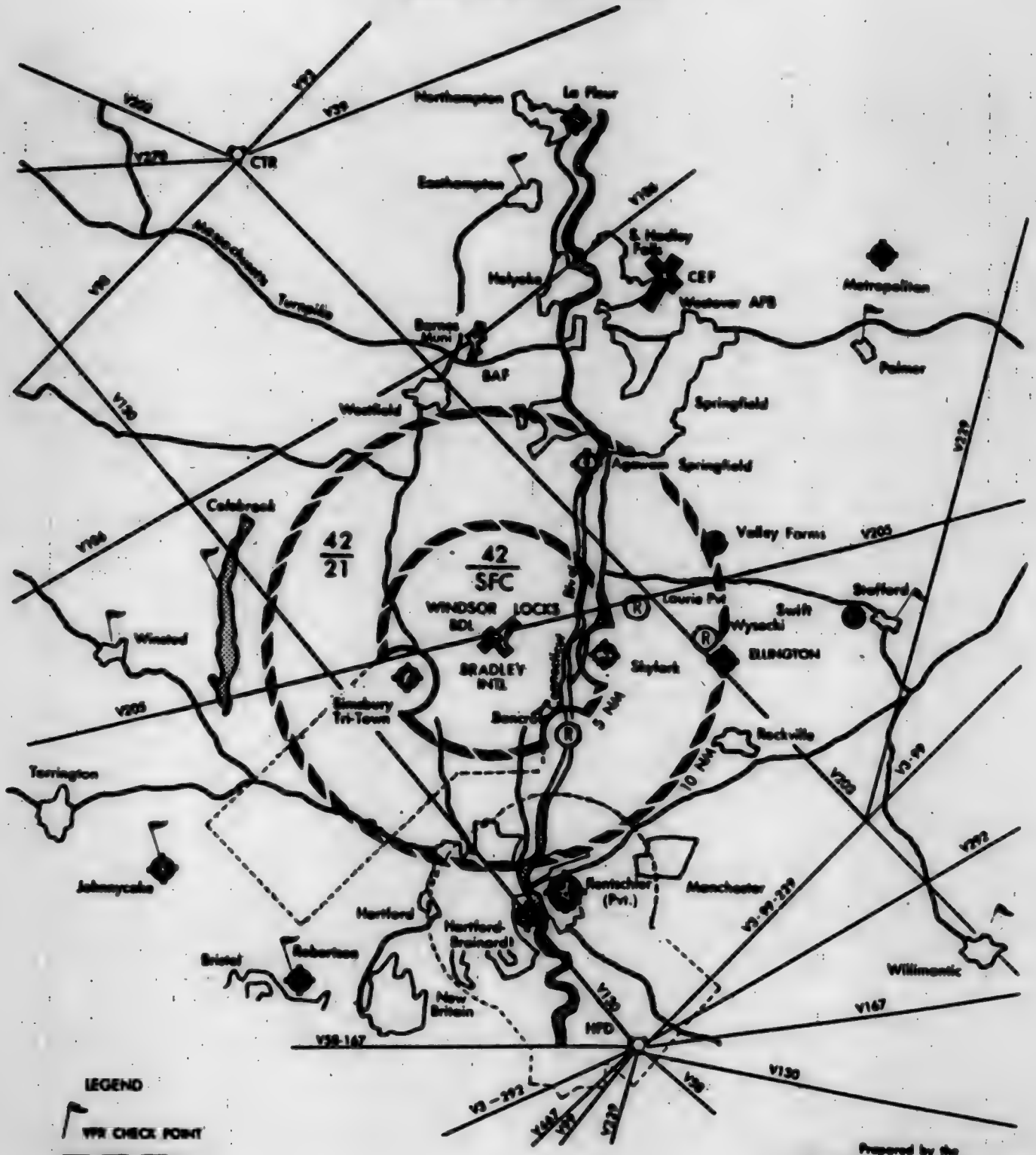
ANCHORAGE, ALASKA
ANCHORAGE INTERNATIONAL AIRPORT
FIELD ELEV. 144' MSL



3

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

WINDSOR LOCKS, CONNECTICUT
BRADLEY INTERNATIONAL AIRPORT
FIELD ELEV. 174' MSL

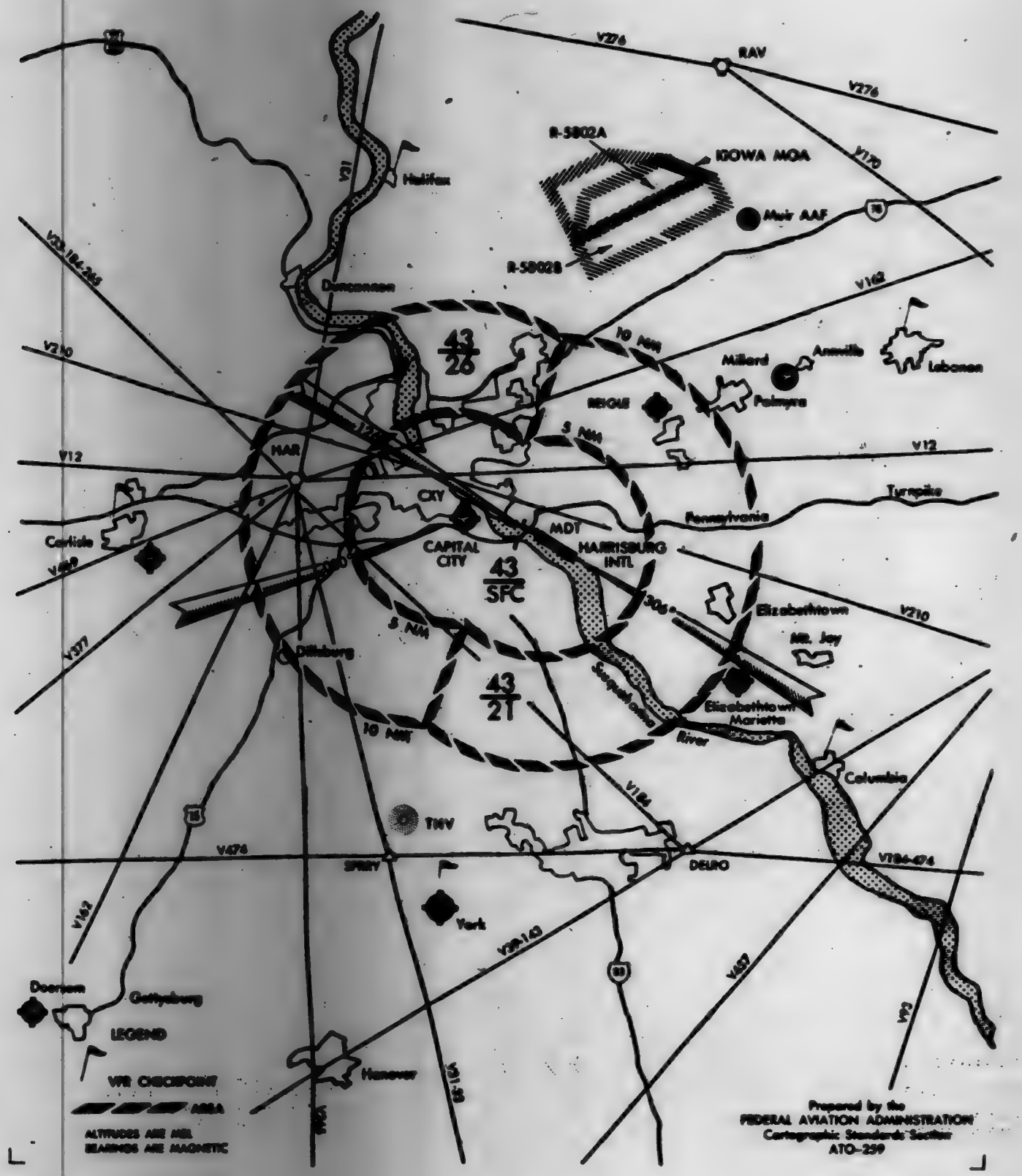


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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

HARRISBURG, PENNSYLVANIA
CAPITAL CITY AIRPORT
FIELD ELEV. 347' MSL

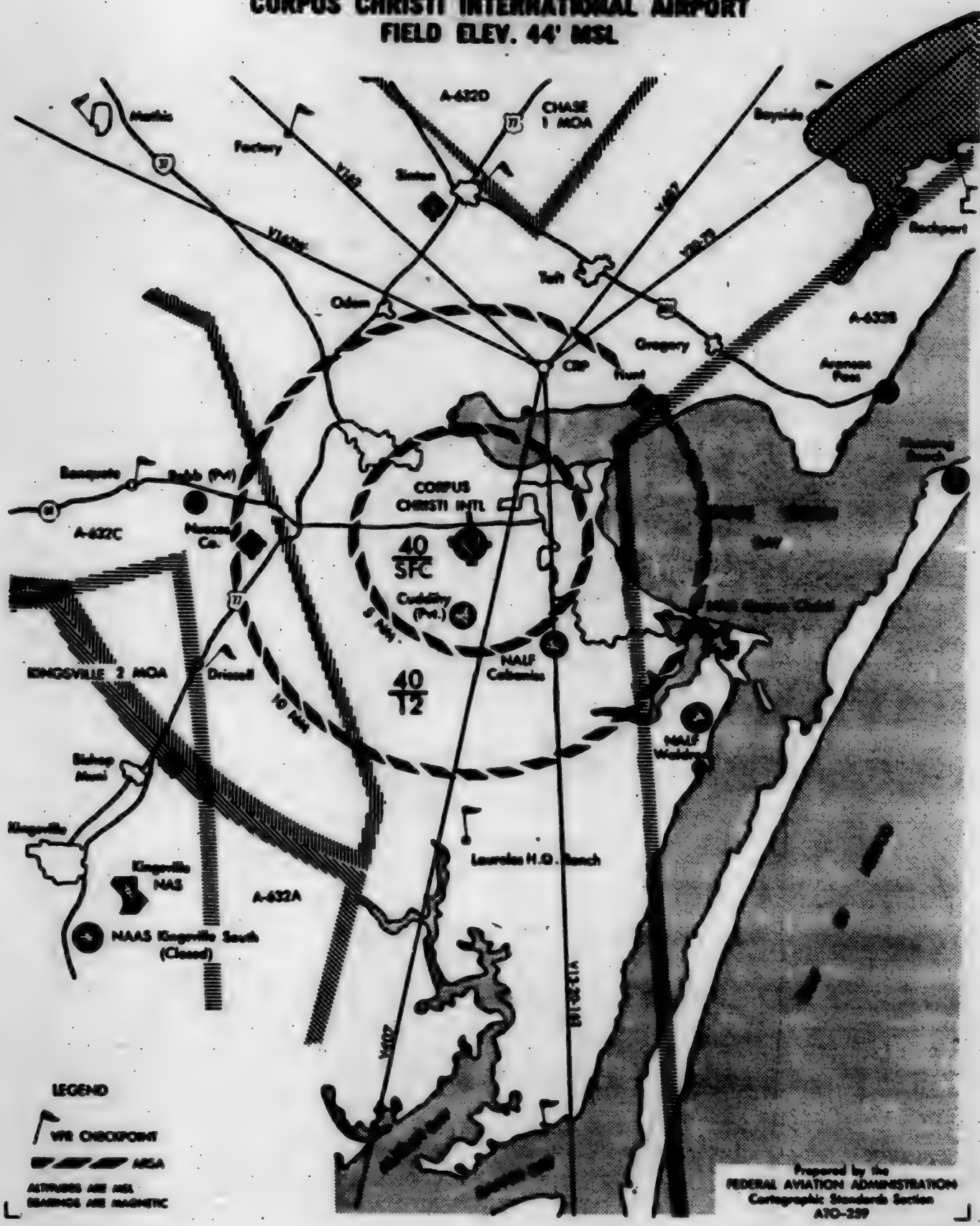


5

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

CORPUS CHRISTI, TEXAS
CORPUS CHRISTI INTERNATIONAL AIRPORT
FIELD ELEV. 44' MSL

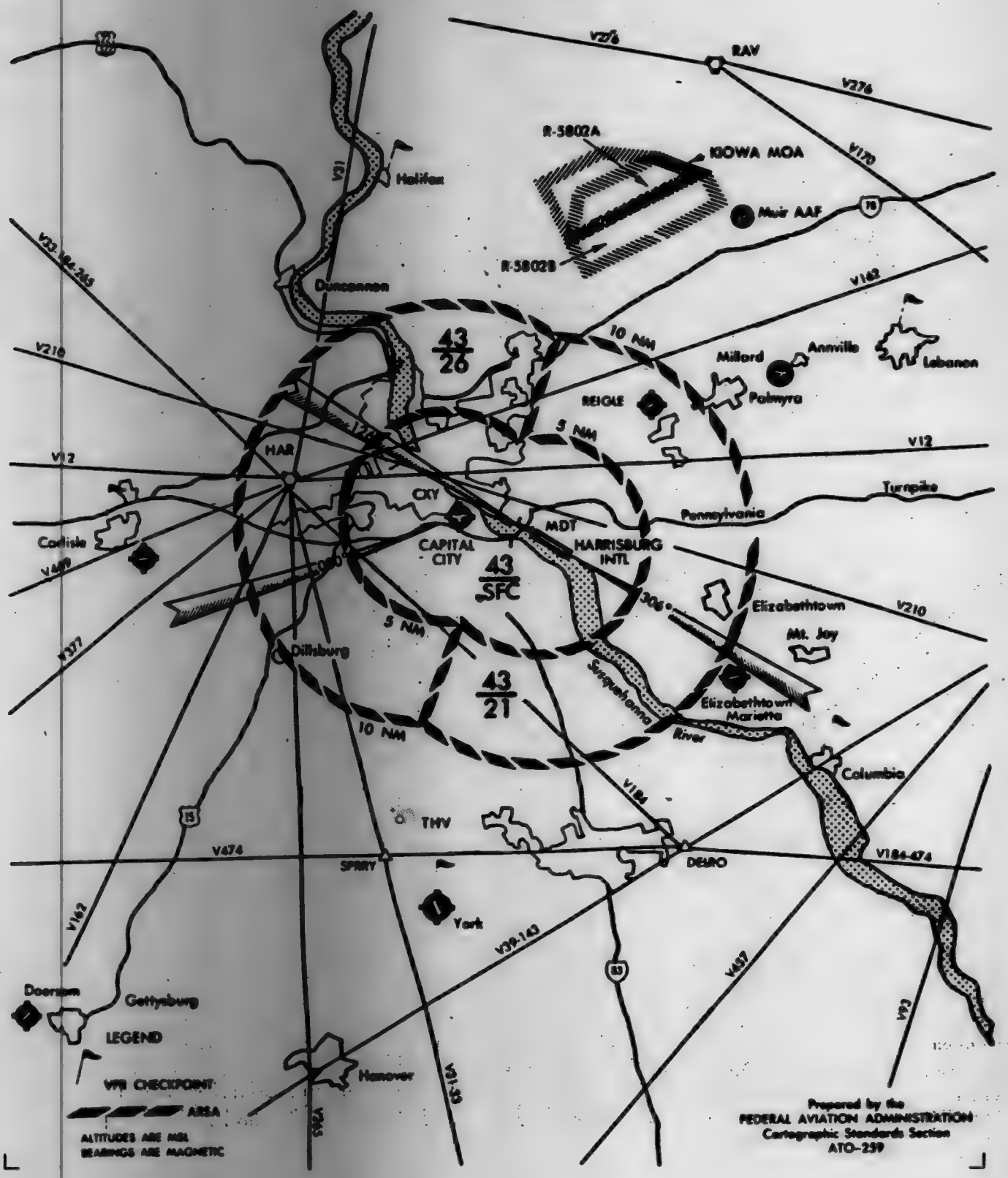


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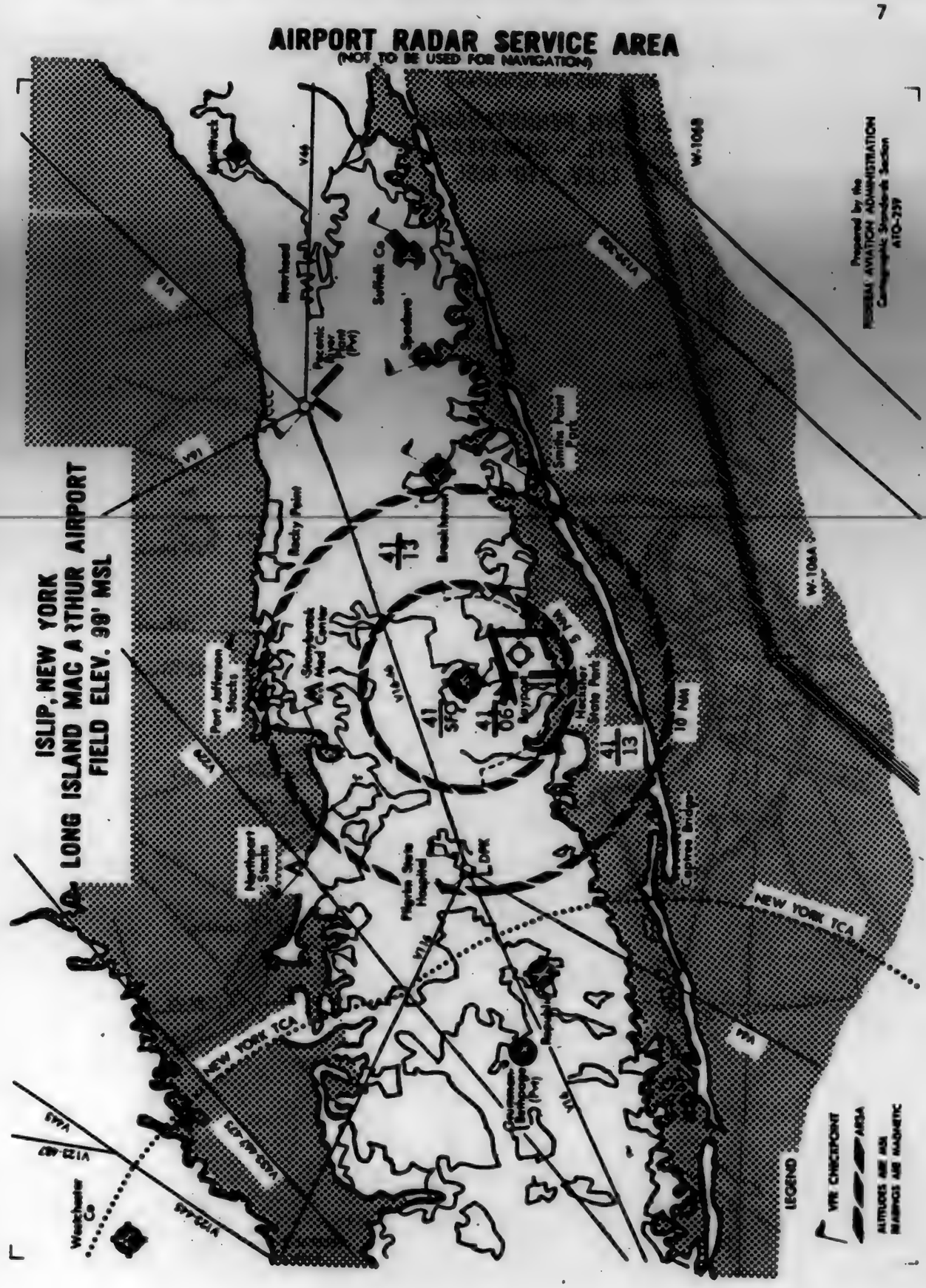
AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

MIDDLETOWN, PENNSYLVANIA
HARRISBURG INTL. - OLMSTEAD FIELD
FIELD ELEV. 310' MSL



7

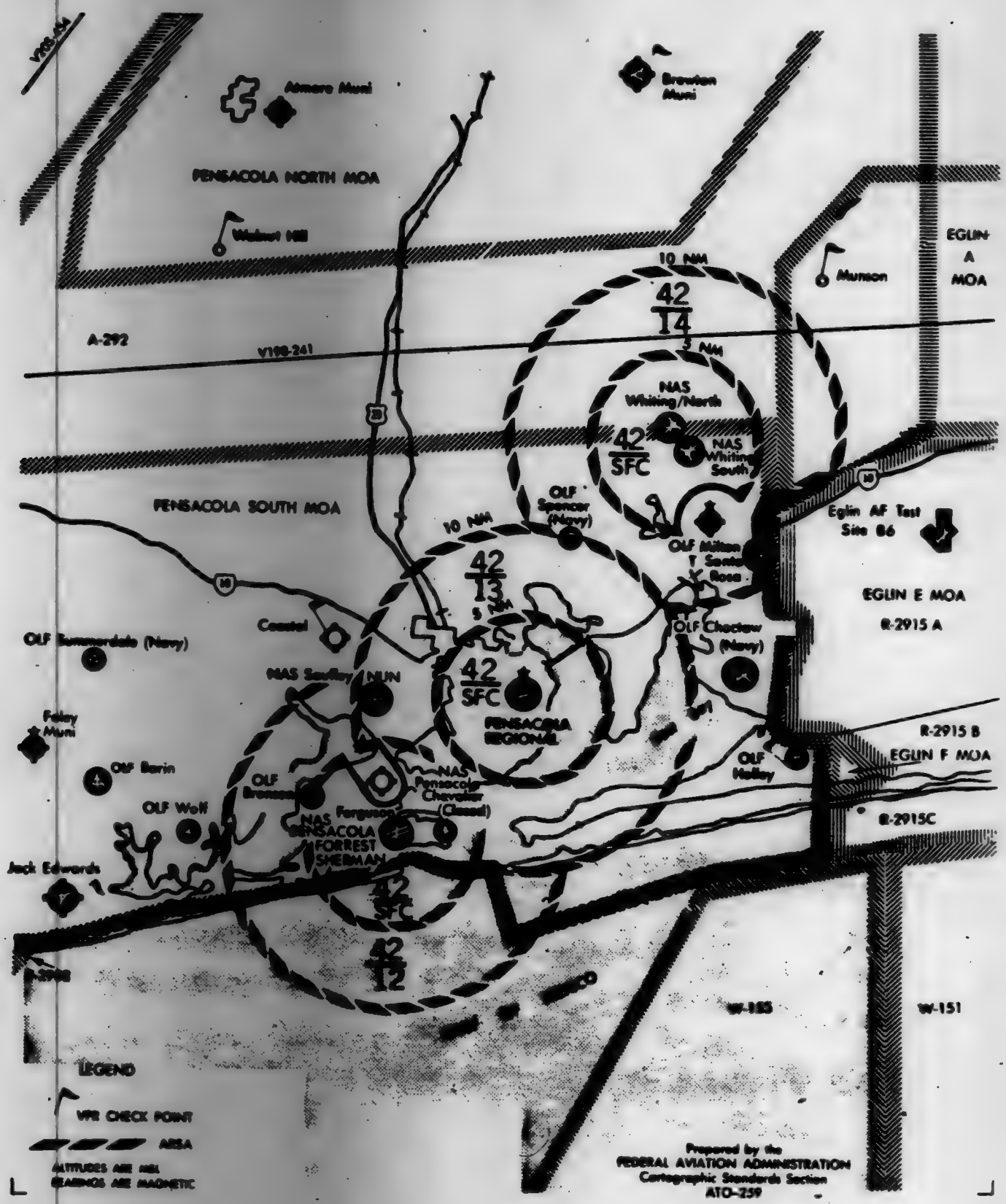

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)
ISLIP, NEW YORK
LONG ISLAND MACARTHUR AIRPORT
FIELD ELEV. 99' MSL
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V16
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V123
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V485
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Riverhead
Patchogue
Smithtown
Port Jefferson
Northport
Stacks
Sunken Meadow
Rocky Point
Brookhaven
Hauppauge
Plainview
Bethpage
Hicksville
Roosevelt Field
Mineola
Hempstead
Freeport
Jones Beach
Captree Bridge
Hecksher State Park
Pilgrim State Hospital
Smithtown Point Port
Westchester Co
Republic Airport (FRG)
Suffolk Co
Speonk
Montauk
DPK
ISP
BWP
JFK
LGA
41/06
41/13
SFO
10 NM
NEW YORK TCA
LEGEND
VFR CHECKPOINT
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

8

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

PENSACOLA, FLORIDA
NAS PENSACOLA
FIELD ELEV. 30' MSL

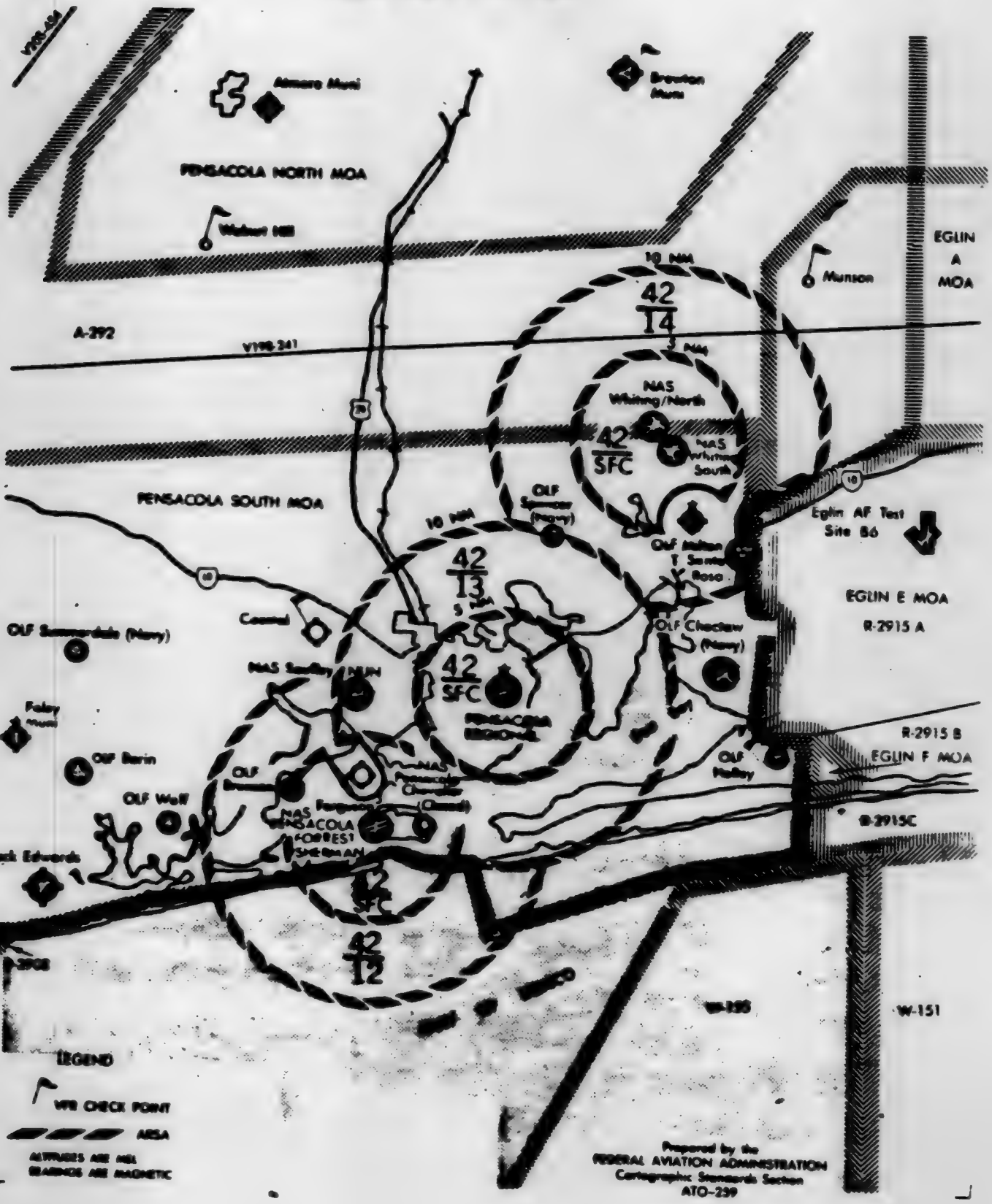


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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

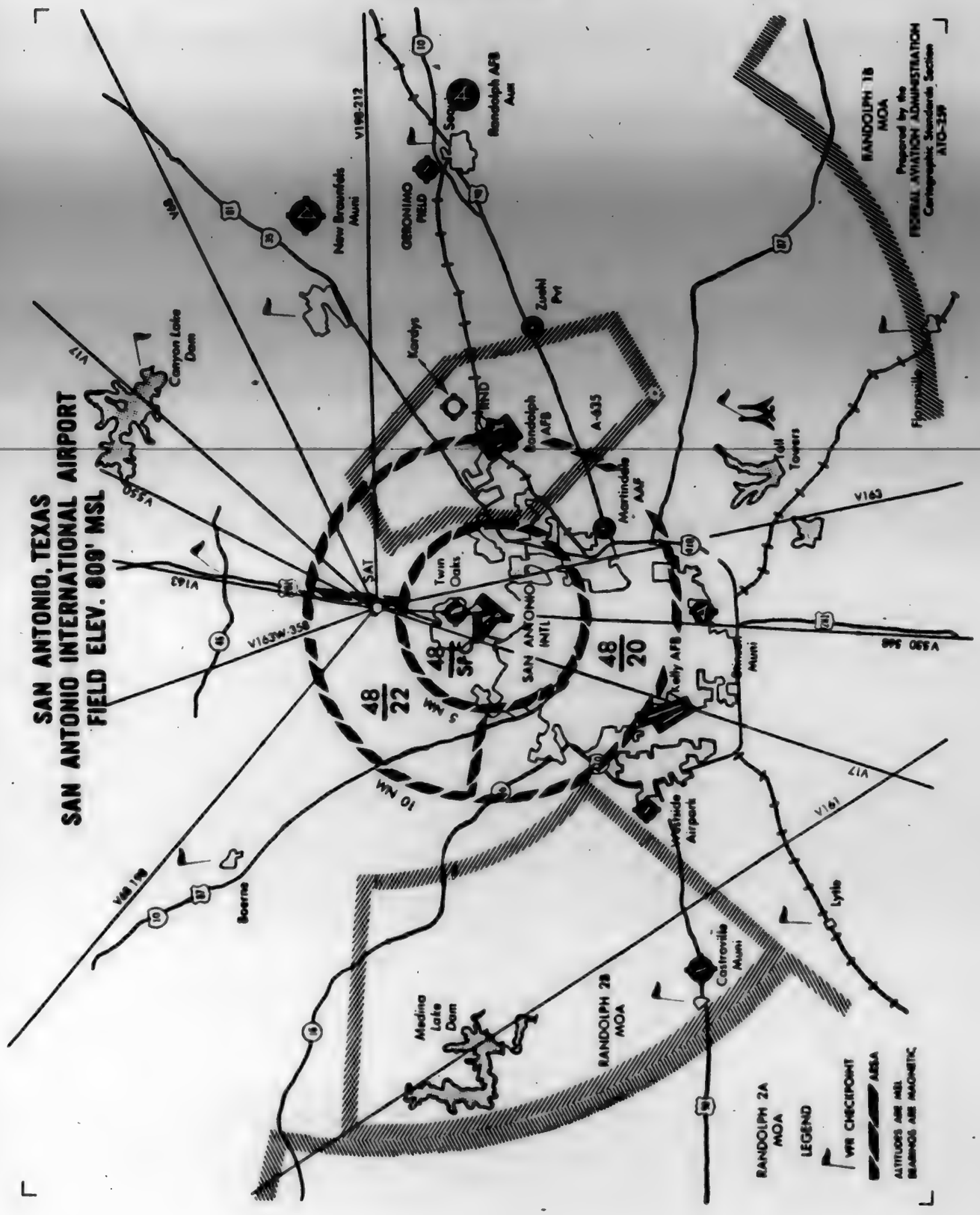
PENSACOLA, FLORIDA
PENSACOLA REGIONAL AIRPORT
FIELD ELEV. 121' MSL



10

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)



11

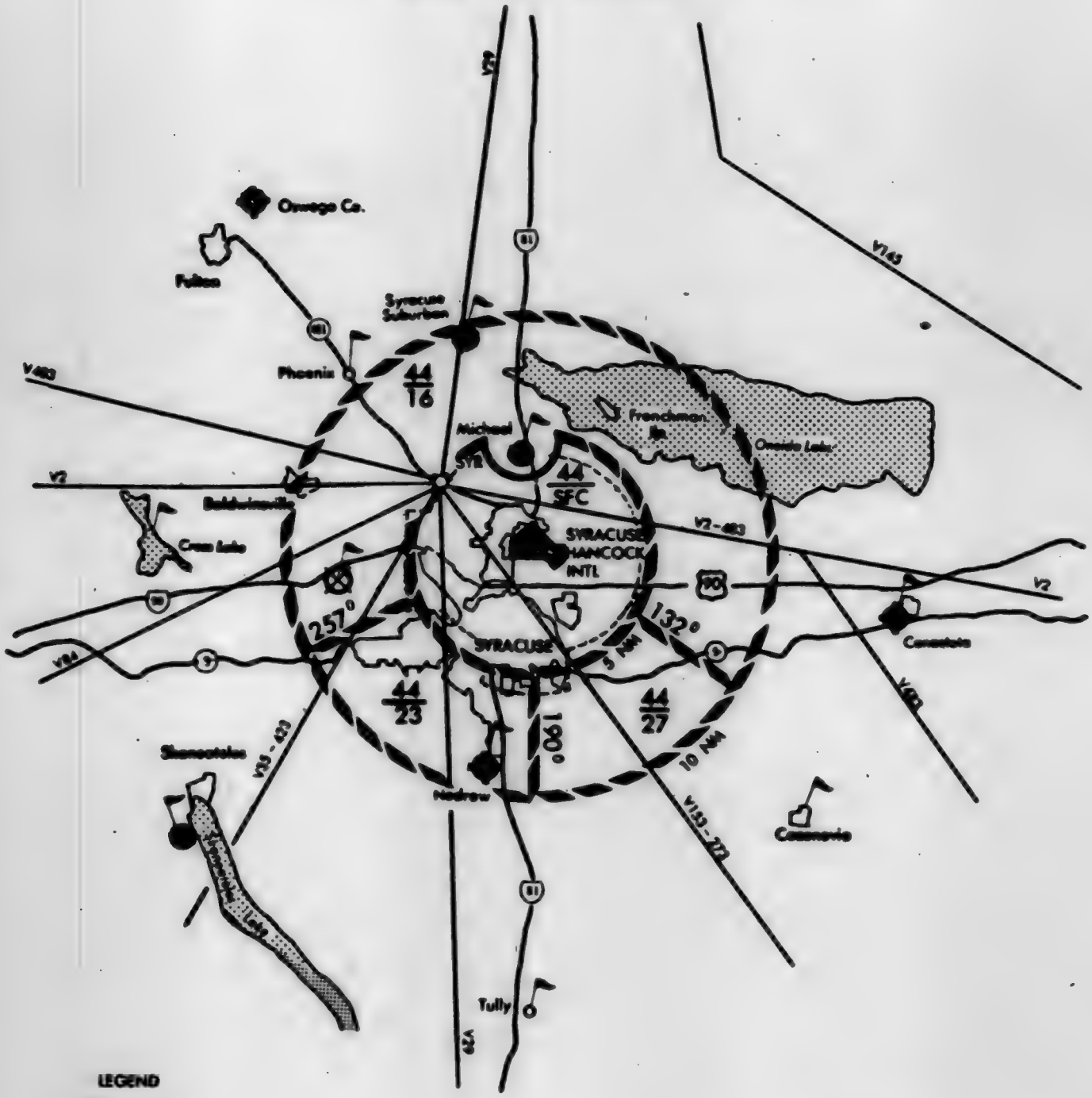
AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

SYRACUSE, NEW YORK

SYRACUSE HANCOCK INTERNATIONAL AIRPORT

FIELD ELEV. 421' MSL



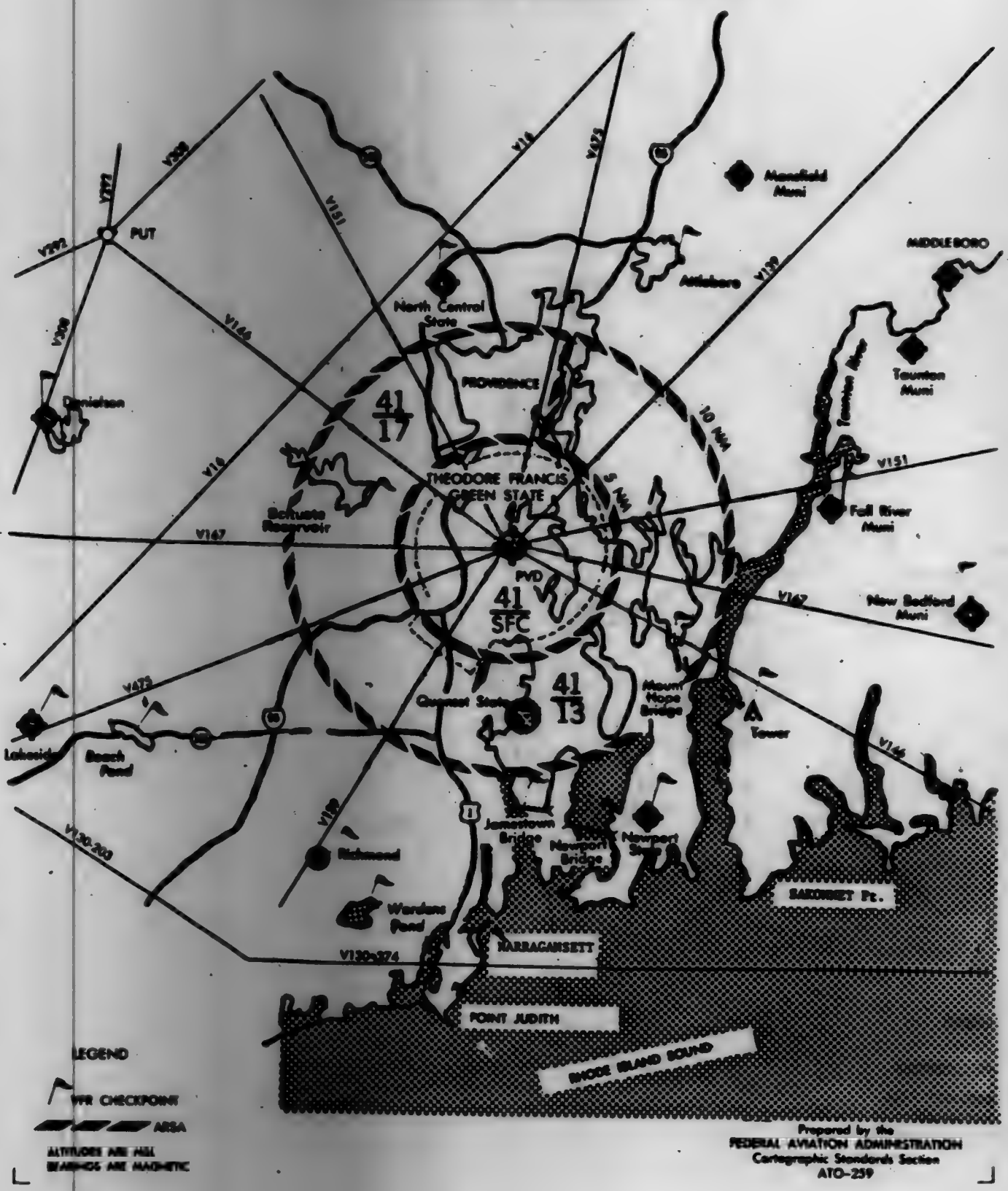
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12

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

PROVIDENCE, RHODE ISLAND
THEODORE FRANCIS GREEN STATE AIRPORT
FIELD ELEV. 58' MSL

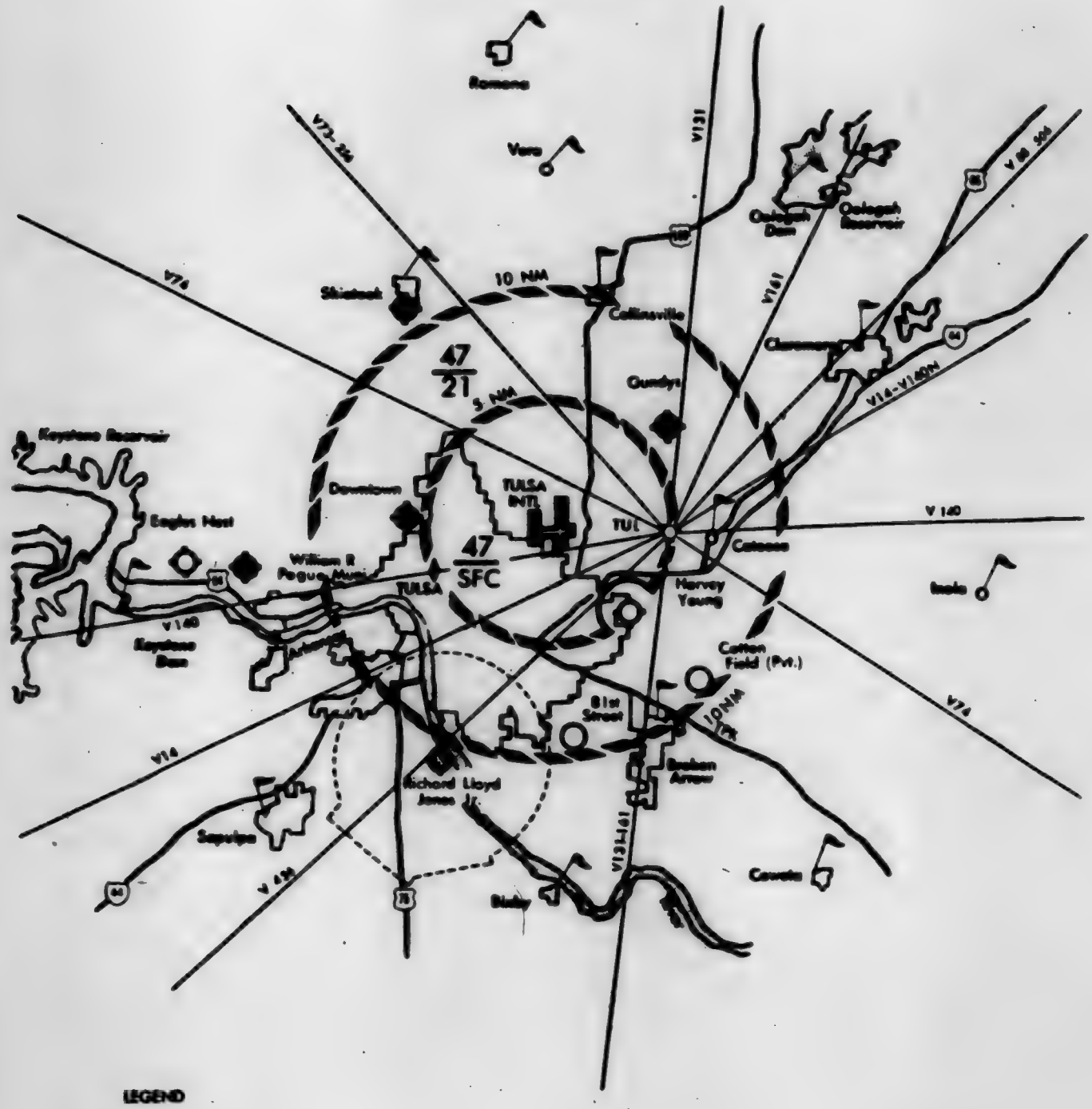


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13

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

TULSA, OKLAHOMA
TULSA INTERNATIONAL AIRPORT
FIELD ELEV. 676' MSL



LEGEND

VFR CHECKPOINT

ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

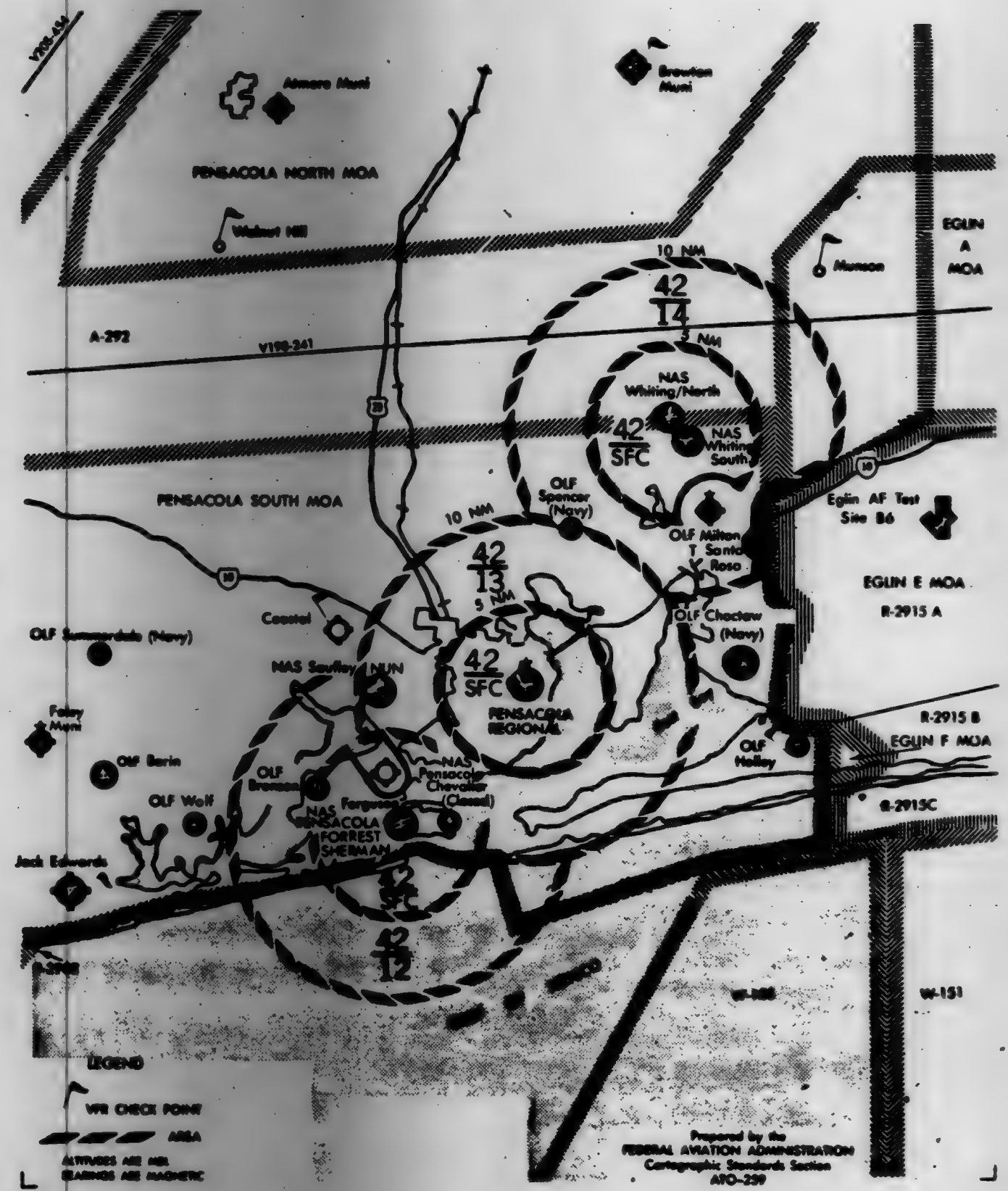
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14

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

NAS WHITING
FIELD ELEV. 178' MSL



[FR Doc. 85-15608 Filed 7-2-85; 8:45 am]

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VOL
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ISS
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federal register

Wednesday
July 3, 1985

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 357

Smoking Deterrent Drug Products for Over-the-Counter Human Use; Tentative Final Monologue; Proposed Rule

VOL 50 ISS 128 JUL 3 1985 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 81N-0027]

Smoking Deterrent Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) smoking deterrent drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal in part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by September 3, 1985. New data by July 3, 1986. Comments on the new data by September 3, 1986. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs (21 CFR 330.10). Written comments on the agency's economic impact determination by October 31, 1985.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1982 (47 FR 490) FDA published, under §330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC smoking deterrent drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by April 5, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by May 5, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information. In response to the advance notice of proposed rulemaking, two drug manufacturers and one consumer submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

In order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10), the present document is designated as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Part 357 (21 CFR Part 357), FDA states for the first time its position on the establishment of a monograph for OTC smoking deterrent drug products. Final agency action on this matter will occur with the publication at a future date of a final rule for OTC smoking deterrent drug products.

This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC smoking deterrent drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

The OTC procedural regulations (21 CFR 330.10) have been revised to conform to the decision in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). (See the **Federal Register** of September 29, 1981; 46 FR 47730.) The Court in *Cutler* held that the OTC drug review regulations were unlawful to the extent that they authorized the marketing of Category III drugs after a final monograph had been established. Accordingly, this provision has been deleted from the regulations, which now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph.

Although it was not required to do so under *Cutler*, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (Old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug products that are subject to the monograph and that contain nonmonograph conditions, i.e., conditions that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved new drug application (NDA). Further, any OTC drug products subject to this monograph that are repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC smoking deterrent drug products (published in the **Federal Register** of January 5, 1982; 47 FR 490), the agency suggested that the conditions included in the monograph (Category I) be effective 6 months after the date of publication of the final monograph in the **Federal Register**. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written,

ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 6 months after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products may have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the Federal Register. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace. However, if the agency determines that any labeling for a condition included in the final monograph should be implemented sooner, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

In the event that new data submitted to the agency during the alloted 12-month comment and new data period are not sufficient to establish "monograph conditions" for OTC smoking deterrent drug products, the final rule will declare these products to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act, for which new drug applications approved under section 505 of the act and 21 CFR Part 314 are required for marketing. Such rule will also declare that in the absence of an approved new drug application, these products would be misbranded under section 502 of the act. The rule will then be incorporated into 21 CFR Part 310, Subpart E—Requirements for Specific New Drugs or Devices, instead of into an OTC drug monograph in Part 357.

I. The Agency's Tentative Conclusions on the Comments

1. One comment cited an apparent inconsistency between the Panel's recommended objective of a clinical study and the indications recommended by the Panel for smoking deterrent drug products. Under the Panel's proposed testing guidelines, effectiveness is measured only in terms of the number of subjects who "stopped smoking," yet the allowable label claims are couched in such terms as "a temporary aid" and "helps stop temporarily." The comment stated that if the protocol is designed to measure only such absolutes as "stops smoking" then labeling claims that are consistent with those results should also be allowed.

Several comments objected to the position taken by the Panel that "reduction of the number of cigarettes smoked or limited cessation of smoking" is not an aid to stopping smoking and is of little value. The comments argued that a reduction in smoking has not been scientifically demonstrated to be of no help in aiding one to stop smoking. The comment stated that a significant reduction in the number of cigarettes smoked indicates that an aversion to cigarettes has been established and that a substance that could do this, with supplemental motivation, would fulfill its function as a "temporary aid."

The agency recognizes that the Panel's recommended primary objective of a clinical study, i.e., to determine the effectiveness of the drug under study in aiding one to stop smoking, may appear to be inconsistent with the recommended indications for use and with the definition of smoking deterrents where terms such as, "a temporary aid," "helps stop temporarily," etc. are used. Although the desired effect of the drug is to stop the user of the drug from smoking by altering the tobacco taste so that smoking becomes unpleasant and undesirable or by producing tobacco satiety without smoking, the Panel believed that the labeling should reflect and emphasize to the consumer that the product is only for temporary use. However, the agency recognizes that there may be confusion with respect to two of the Panel's recommended Category I labeling indications, i.e., "Helps you stop the cigarette urge temporarily," and "Helps you stop smoking cigarettes temporarily," because the placement of the word "temporarily" does not adequately reflect the intended use and effect of the drug. For this reason the agency is not including these two indications in the tentative final monograph. The agency believes that recommended §§ 357.850(b)(1) and (4), i.e., "A temporary aid to those who want to stop smoking cigarettes," and "A temporary aid to breaking the cigarette habit," more accurately reflect the intended use of the product. The agency has also revised the definition of smoking deterrent to read as follows: *"Smoking deterrent.* A substance that is used temporarily to help those individuals who want to stop smoking (become cigarette free) or to break the cigarette habit."

The agency is aware that recent reports in the literature have indicated that reduction in smoking, or controlled smoking, should be considered as an alternative to abstinence, because of the generally disappointing outcomes of traditional abstinence-oriented smoking-treatment studies (Refs. 1, 2, and 3). One such report analyzed a number of subjects throughout the period of follow-up that were either abstinent or nonabstinent after undergoing treatment. The authors concluded that abstinence and reduction are not necessarily different points on the same continuum, but rather that abstinence and smoking reduction should be treated as two potentially discrete treatment outcomes (Ref. 4). Reduction in smoking may be achieved by decreasing the number of cigarettes smoked or by switching to a low nicotine-low tar (LN/LT) cigarette. However, evidence on the effects of controlled smoking on the health of the individual smoker has been contradictory. Some studies indicate that although smokers may reduce the number of cigarettes smoked or progressively switch to LN/LT cigarettes, they inadvertently increase their puff volume, puff frequency, or depth of inhalation and thereby increase smoke-related health risks (Refs. 5 through 8). Other studies suggest that smokers who reduce the numbers of cigarettes or switch to LN/LT cigarettes do not compensate by increasing puff volume, frequency, or depth of inhalation (Refs. 1, 2, 3, 9, 10, and 11). Even so, there is insufficient evidence to show that a significant reduction in smoking will lead to cessation or that reduction will lower the health risks associated with smoking (Ref. 8). If sufficient evidence becomes available demonstrating that a reduction in smoking results in a significant health benefit to consumers, then well-controlled studies to establish the safety and efficacy of smoking deterrent drug products in reducing smoking will be needed. These studies should include appropriate objective measurements that account for compensatory behavior

in smoking and should be of sufficient length so that the results are meaningful.

Because of a lack of adequate data, the agency is not including smoking reduction claims in this tentative final monograph. Should sufficient data regarding reduction claims become available before the publication of the final monograph, the agency will consider including reducing in smoking claims in the final monograph.

References

(1) Prue, D. M., et al., "Carbon Monoxide Levels and Rates of Consumption After Changing to Low Tar and Nicotine Cigarettes," *Behaviour Research and Therapy*, 21:201–207, 1983.

(2) Prue, D. M., et al., "Brand Fading: The Effects of Gradual Changes to Low Tar and Nicotine Cigarettes on Smoking Rate, Carbon Monoxide, and Thiocyanate Levels," *Behavior Therapy*, 12:400–416, 1981.

(3) Foxx, R. M., and R. A. Brown, "Nicotine Fading and Self-Monitoring for Cigarette Abstinence or Controlled Smoking," *Journal of Applied Behavior Analysis*, 12:111–125, 1979.

(4) Poole, A. D., et al., "The Rapid-Smoking Technique: Subject Characteristics and Treatment Outcome," *Behavior Research and Therapy*, 20:1–7, 1982.

(5) Herning, R. I., et al., "How a Cigarette is Smoked Determines Blood Nicotine Levels," *Clinical Pharmacology and Therapeutics*, 33:84–90, 1983.

(6) Ho-Yen, D. O., et al., "Why Smoke Fewer Cigarettes?" *Pharmacology Biochemistry and Behavior*, 17:1905–1907, 1982.

(7) Russell, M. A. H., "Realistic Goals for Smoking and Health—A Case for Safer Smoking," *Lancet*, 1:254–257, 1974.

(8) "The Changing Cigarette. A Report of the Surgeon General," U.S. Department of Health and Human Services, DHHS Publication No. (PHS) 81–50156., U.S. Government Printing Office, Washington, DC, 1981.

(9) Foxx, R. M., and E. Axelroth, "Nicotine Fading, Self-Monitoring and Cigarette Fading to Produce Abstinence or Controlled Smoking," *Behavior Research and Therapy*, 21:17–27, 1983.

(10) Stitzer, M. L. and G. E. Bigelow, "Contingent Reinforcement for Reduced Carbon Monoxide Levels in Cigarette Smokers," *Addictive Behaviors*, 7:403–412, 1982.

(11) Bernard, H.S., and J.S. Efran, "Case Histories and Shorter Communications: Eliminating Versus Reducing Smoking Using Pocket Timers," *Behavior Research and Therapy*, 10:399–401, 1972.

2. Several comments objected to the Panel's recommended guidelines for developing protocols for evaluating OTC smoking deterrents. The comments gave the following reasons: (1) The recommended guidelines are unduly detailed and demanding and impose costly drug testing; (2) the guidelines require that all smoking deterrents meet the same criteria and do not allow for differences in mechanism of action and length of use time; (3) the guidelines do not include a parameter for assessing the subjects compliance to therapeutic regimen or control for the significant variability of tar, nicotine, and other ingredients found in different types of cigarettes; (4) the guidelines fail to establish the meaning of the terms "clinically significant," as they do "statistically significant;" (5) the measurements of thiocyanate and cotinine should be preferred because measurements for carbon monoxide are not a reliable indication of smoking; and (6) the requirement that two separate clinical trials should be conducted by different investigators at different geographical sites is excessive for old drugs not subject to an NDA.

The agency has not addressed specific testing guidelines in this document. In revising the OTC drug review procedures relating to Category III, published in the **Federal Register** of September 29, 1981 (46 FR 47730), the agency advised that tentative final and final monographs will not include recommended testing guidelines for conditions that industry wishes to upgrade to monograph status. Instead, the agency will meet with industry representatives at their request to discuss testing protocols. On the same date, the agency also published in the **Federal Register** a policy statement relating to a number of matters involving the testing of Category III ingredients (46 FR 47740) including meetings with industry or other interested persons. (See also part II. paragraph 2 below—Testing of Category II and Category III conditions.)

3. One comment stated that the labeling of a lobeline sulfate-containing product did not include warnings or cautions against the use of the product while taking other medications. The individual submitting the comment reported personally experiencing the symptoms of vomiting, faintness, blurred vision, stomach cramping, and dehydration after taking a lobeline sulfate-containing product for a week while also taking Dyazide(®) and Valium(®). The comment urged the agency to establish rules requiring manufacturers and distributors to label the products clearly as to identity, contraindications or precautions, and particularly to include warnings concerning interactions with other medications.

The agency agrees with the comment that the labeling of OTC drug products should contain the necessary information needed to use the drug safely. Under current regulations, all OTC drug products are required to list the active ingredients on the label. The agency has fully evaluated the case report submitted in the comment. However, the facts in the case are such that a clear association between concomitant use of the drugs and the symptoms that occurred cannot be established. The agency is aware, however, that lobeline sulfate can cause gastrointestinal side effects and notes that for this reason some marketed products include buffering ingredients. In addition, in its discussion on the safety of lobeline sulfate (47 FR 496) the Panel noted that the symptoms of stomach ache, severe heartburn, nausea, vomiting, and faintness have been reported from a single dose of 8 milligrams (mg) lobeline sulfate. Because lobeline sulfate can cause side effects, the agency believes that a warning may be appropriate.

However, because lobeline sulfate is not Category I at this time, the agency is not proposing a warning statement in this tentative final monograph. In the event that lobeline sulfate reaches monograph status the agency will consider including a warning statement in a final monograph at that time.

4. One comment objected to the Panel's Category II classification of silver nitrate on the basis that it was not able to locate any significant body of data demonstrating the safety and effectiveness of silver nitrate when used as an OTC smoking deterrent. The firm submitting the comment stated that it has been active in developing a mouthrinse utilizing silver nitrate as an active ingredient for use as an OTC smoking deterrent. The comment submitted two studies that it contends clearly demonstrate the efficacy of silver nitrate as a smoking deterrent (Ref. 1). The comment also asserted that the Panel failed to discuss smoking deterrents in aqueous mouthrinse form, which it contended is more appropriate and more effective in treating the problem of smoking. Additionally, the comment stated that because silver appears to have a low systemic toxicity and because the Panel did not list any potential safety problem with respect to the use of silver nitrate in a smoking deferrent drug product, the findings of safety with respect to silver acetate should be also applied to silver nitrate. The comment requested that silver nitrate be reclassified from Category II to the same Category as that for silver acetate so that testing already begun may be completed.

The agency notes that the Panel's report does not discuss nor does the recommended monograph require that

smoking deterrent active ingredients be administered in any specified oral form. The only requirement for form of administration of an OTC drug is that the vehicle of administration be safe and that it not interfere with the safety and effectiveness of the active ingredient.

The agency further notes that although the studies submitted were intended as support for the safety and efficacy of silver nitrate, the drug used in the studies was described as a povidone-silver-nitrate preparation (Ref. 1). Therefore, the studies cannot be used in support of silver nitrate as an OTC smoking deterrent. Because no data were submitted to the Panel and no data have been submitted to the agency to support the use of silver nitrate as a single active ingredient for use as an OTC smoking deterrent, the agency concurs with the Panel that silver nitrate should be Category II. Additionally, the agency is not aware of the marketing in the United States of any OTC smoking deterrent drug product containing povidone-silver nitrate as an active ingredient. Accordingly, the agency is unable to determine at this time that the ingredient is generally recognized as safe and effective as an OTC smoking deterrent. Morever, povidone-silver nitrate has not been marketed to a material extent or for a material time in the United States for use OTC smoking deterrent drug products. Therefore, the agency considers this ingredient to be a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)). The ingredient may not be marketed as a smoking deterrent until FDA has approved an NDA for such use.

References

(1) Comment No. C00001, Docket No. 81N–0027, Dockets Management Branch.

II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions.

1. *Summary of ingredient categories.* The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and concurs with the Panel's classification of these ingredients. For the convenience of the reader the following table is included as a summary of the categorization of OTC smoking deterrent active ingredients.

Smoking deterrent active ingredients	Panel	Agency
Cloves, ground	II	II
Coriander, ground	II	II
Eucalyptus oil	II	II
Ginger, ground Jamaica	II	II
Lemon oil, terpeneless	II	II
Licorice root extract	II	II
Lobeline (in the form of lobeline sulfate or its pharmacological equivalent as natural lobelia alkaloids or *Lobelia inflata* herb.	III	III
Menthol	II	II
Methyl salicylate	II	II
Povidone-silver nitrate		New drug
Quinine ascorbate	II	II
Silver acetate	III	III
Silver nitrate	II	II
Thymol	II	II

The agency is not aware of any data demonstrating the safety and effectiveness of any ingredient not listed above for OTC use as a smoking deterrent drug product including those listed in the Panel's report at 47 FR 492, part I, paragraph C.2. Therefore, the agency classifies all other ingredients as Category II for this use.

2. *Testing of Category II and Category III conditions.* The Panel recommended testing guidelines for OTC smoking deterrent drug products (47 FR 498). The agency is offering these guidelines as the Panel's recommendations without adopting them or making any formal comment on them. Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any smoking deterrent ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). This policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency Changes.

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. The indications "Helps you stop the cigarette urge temporarily" and "Helps you stop smoking cigarettes temporarily" have not been included in the monograph. (See comment 1 above.)

2. The definition of smoking deterrent has been changed. (See comment 1 above.)

3. Because there are no Category I ingredients and because the purpose of an OTC drug monograph is to set forth those specific conditions under which OTC drugs are generally recognized as safe and effective and not misbranded, the agency is not proposing in this tentative final monograph the labeling recommended by the Panel in § 357.650(b)(6) (mechanism of action labeling). Should data establishing the safety and effectiveness of any smoking deterrent active ingredient be submitted during the allotted 12-month comment and new data period, the agency will consider appropriate mechanism of action claims for inclusion in the final monograph.

4. The statement "This product's effectiveness is directly related to the user's motivation to stop smoking cigarettes" has not been included in the tentative final monograph. The agency believes the statement is unnecessary because it is similar to information already contained in the indications.

During the course of the OTC drug review, the agency has maintained that the terms that may be used in an OTC drug product's labeling are limited to those terms included in a final OTC drug monograph. (This policy has become known as the "exclusivity rule.") The agency's position has been that it is necessary to limit the acceptable labeling language to that developed and approved through the OTC drug review process in order to ensure the proper and safe use of OTC drugs. The agency has never contended, however, that any list of terms developed during the course of the review exhausts all the possibilities of terms that appropriately can be used in OTC drug labeling. Suggestions for additional terms or for other labeling changes may be submitted as comments to proposed or tentative final monographs within the specified time periods or through petitions to amend monographs under § 330.10(a)(12).

During the course of the review, FDA's position on the "exclusivity rule" has been questioned many times in comments and objections filed in response to paticular proceedings and in correspondence with the agency. The agency has also been asked by The Proprietary Association to reconsider its position. In a notice published in the **Federal Register** of July 2, 1982 (47 FR 29002), FDA announced that a hearing would be held to assist the agency in resolving this issue. On September 29, 1982, FDA conducted an open public forum at which interested parties presented their views. The forum was a legislative type administrative hearing

under 21 CFR Part 15 that was held in response to a request for a hearing on the tentative final monographs for nighttime sleep-aids and stimulants (published in the Federal Register of June 13, 1978; 43 FR 25544).

After considering the testimony presentd at the hearing and the written comments submitted to the record, in the Federal Register of April 22, 1985 (50 FR 15810), FDA proposed to change its exclusivity policy for the labeling of OTC drug products. As proposed, manufacturers may select one of the following options:

(1) The label and labeling would contain within a boxed area designated "APPROVED USES" the specific wording on indications for use established under an OTC drug monograph. The boxed area would be required to be displayed in a prominent and conspicuous location. As under the present policy, the labeling in the boxed area would be required to be stated in the exact language of the monograph. However, with this option a statement that the information in the box was published by the Food and Drug Administration would appear either in the box or reasonably close by. At the manufacturer's option, the designation of the boxed area and the statement that the labeling was established by FDA could be combined.

(2) As a complete alternative to using the boxed area designated "APPROVED USES," the proposal would for the first time allow manufacturers an option to use other truthful and nondeceptive statements relating only to the indications established in an applicable monograph subject to the prohibitions in section 502(a) of the act against misbranding by the use of false or misleading labeling. If this alternative is selected, the manufacturer would not be able to use a boxed area or include a statement that the indications are endorsed by the Food and Drug Administration.

(3) As third alternative, manufacturers could use both a boxed area with the monograph language and also, elsewhere in the labeling, use other non-monograph language that meets the statutory standards of truthfulness and accuracy.

Regardless, other aspects of OTC drug labeling, such as the statement of identity, warnings, and directions, would continue to be required to comply with the monograph, including following any exact language established in the monograph.

The proposal to change the exclusivity policy provides for 90 days of public comment. After considering all comments submitted, the agency will announce its final decision on this matter, in a future issue of the Federal Register.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that none of these rules, including this proposed rule for OTC smoking deterrent drug products, is a major rule.

For purposes of the Regulatory Flexibility Act, Public Law 96–354, the economic assessment concluded that, while the average economic impact of the overall OTC drug review on small entities will not be significant, the possibility of larger-than-average impacts on some small firms in some years might exist. Therefore, the assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose a significant impact on a substantial number of small entities. The analysis identified the possibilities of reducing burdens on small firms through the use of (a) relaxed safety and efficacy standards or (b) labels acknowledging unproven safety or efficacy. However, the analysis concluded that there is no legal basis for any preferential waiver, exemption, or tiering strategy for small firms compatible with the public health requirements of the Federal Food, Drug, and Cosmetic Act. Nevertheless, to avoid overlooking any problems or feasible possibilities of relief peculiar to this group of products, the agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC smoking deterrent drug products. Comments regarding the economic impact of this rulemaking should be accompanied by appropriate documentation. The agency previously invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC smoking deterrent drug products. No comments on economic impacts were received.

Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by October 31, 1985. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before September 3, 1985 submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before October 31, 1985. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the Federal Register.

Interested persons, on or before July 3, 1986 may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before September 3, 1986. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the Federal Register of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final rule, the agency will ordinarily consider only data submitted prior to the closing of the

administrative record on September 3, 1986. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final rule is published in the Federal Register, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 357

OTC drugs, Anthelmintic drug products, Cholecystokinetic drug products, Deodorant drug products for internal use, Orally administered drug products for fever blisters, Poison treatment drug products, Smoking deterrent drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act it is proppsed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 357 by adding new Subpart G to read as follows:

PART 357—MISCELLANEOUS INTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

* * * * *

Subart G—Smoking Deterrent Drug Products

Sec.
357.601 Scope.
357.603 Definition.
357.610 Smoking deterrent active ingredients. [Reserved]
357.650 Labeling of smoking deterrent drug products.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371) (5 U.S.C. 553); 21 CFR 5.11.

Subpart G—Smoking Deterrent Drug Products

§ 357.601 Scope.

(a) An over-the-counter smoking deterrent drug product in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this subpart and each general condition established in § 330.1.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 357.603 Definition.

As used in this subpart:

Smoking deterrent. A substance that is used temporarily to help those individuals who want to stop smoking (become cigarette free) or to break the cigarette habit.

§ 357.610 Smoking deterrent active ingredients. [Reserved]

§ 357.650 Labeling of smoking deterrent drugs products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "smoking deterrent."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following: "A temporary aid to those who want to" (select one or both of the following: "stop smoking cigarettes" or "break the cigarette habit"). Other truthful and nonmisleading statements describing only the indications for use that have been established and listed above, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the prohibitions in section 502(a) of the act against false or misleading labeling and the prohibition in section 301(d) of the act against the introduction into interstate commerce or unapproved new drugs.

(c) *Warnings.* [Reserved]

(d) *Directions.* [Reserved]

Interested persons may, on or before September 3, 1985 submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before October 31, 1985. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the Federal Register.

Interested persons, on or before July 3, 1986 may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before September 3, 1986. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the Federal Register of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final rule, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on September 3, 1986. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final rule is published in the Federal Register, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

Dated: February 8, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85–15780 Filed 7–2–85; 8:45 am]

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Wednesday
July 3, 1985

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 7, 15, 19, 34, and 52
Federal Acquisition Regulation; Interim Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 15, 19, 34, and 52

[Federal Acquisition Circular 84-10]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule and request for comment.

SUMMARY: Federal Acquisition Circular (FAC) 84-10 amends the Federal Acquisition Regulation (FAR) with respect to the following: Planning for Future Competition, Integrity of Unit Prices, Certification of Commercial Pricing, Small Business Subcontracting Policy, and Definition of Major System.

DATES: *Effective Date:* July 3, 1985. Comments must be received on or before August 2, 1985. Please cite FAC 84-10 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: General Services Administration, ATTN: FAR Secretariat (VR), 18th & F Streets, NW., Room 4041, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The FAR revisions in FAC 84-10 are required by the Defense Procurement Reform Act of 1984 (Title XII of the Department of Defense Authorization Act, 1985, Pub. L. 98-525), and the Small Business and Federal Procurement Competition Enhancement Act of 1984, (Pub. L. 98-577).

B. Determination To Issue a Temporary Regulation

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that the regulations in FAC 84-10 must be issued as temporary regulations in compliance with section 22 of the Office of Federal Procurement Policy Act, as amended.

C. Regulatory Flexibility Act

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this temporary rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act and, therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 48 CFR Parts 7, 15, 19, 34, and 52

Government procurement.

Dated: July 1, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84-10]

The material contained in FAC 84-10 is effective immediately.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Mary Ann Gilleece,

Deputy Under Secretary (Acquisition Management).

Dwight Ink,

Acting Administrator.

Federal Acquisition Circular (FAC) 84-10 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—Planning for Future Competition

FAR Part 7, Acquisition Planning, is amended to implement section 1213 of Pub. L. 98-525 and section 201 of Pub. L. 98-577.

The revisions (a) require that the contracting officer, prior to contracting, review the acquisition history of the supplies or services and the description of the supplies, and (b) specify new requirements applicable to planning for the solicitation of a major system development contract or a major system production contract.

Item II—Integrity of Unit Prices

FAR Part 15, Contracting by Negotiation, and Part 52, Solicitation Provisions and Contract Clauses, are amended to implement section 1245 of Pub. L. 98-525 and section 501 of Pub. L. 98-577.

Under the new coverage, offerors/contractors (a) are required to distribute costs within contracts on a basis that ensures that unit prices of supplies are in proportion to the item's base cost, (b) may be required to identify supplies that they will not manufacture or to which they will not contribute significant value, and (c) are required to flow the requirements down to subcontractors.

Item III—Certification of Commercial Pricing

FAR Part 15, Contracting By Negotiation, and Part 52, Solicitation Provisions and Contract Clauses, are amended to implement section 1216 of Pub. L. 98-525 and section 204 of Pub. L. 98-577 regarding commercial pricing for supplies.

Under the new coverage offerors/contractors in certain acquisitions are required to certify that the prices offered for those items of supply that the contractor offers for sale to the public are no higher than any lower price charged to any other customer during the preceding 60 days, or submit a written justification for any differences.

Item IV—Small Business Subcontracting Policy

FAR Part 19, Small Business and Small Disadvantaged Business Concerns, and Part 52, Solicitation Provisions and Contract Clauses, are amended to implement section 402 of Pub. L. 98-577.

The revision will affect the subcontracting programs of firms doing business with the Government. It widens the area where subcontracting possibilities are considered to exist, further specifies the types of acquisitions that are to be considered for contracting and subcontracting with small and small disadvantaged business concerns, and states the policy of the United States that its prime contractors establish procedures to ensure timely payments to small and small disadvantaged subcontractors.

Item V—Definition of Major System

FAR Part 34, Major System Acquisition, is amended to include in the FAR the definition of "major system" that is specified in Sec. 1211 of the Defense Procurement Reform Act of 1984 (Title XII of the Department of Defense Authorization Act, 1985, Pub. L. 98-525), which is essentially the same as the definition specified in section 102 of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Pub. L. 98-577).

1. Therefore, 48 CFR Parts 7, 15, 19, 34, and 52 are amended as set forth below. The authority citation for 48 CFR Parts 7, 15, 19, 34, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137, and 42 U.S.C. 2453(c).

PART 7—ACQUISITION PLANNING

2. Section 7.103 is amended by adding paragraph (k) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(k) Assuring that the contracting officer, prior to contracting, reviews:

(1) The acquisition history of the supplies and services; and

(2) A description of the supplies, including, when necessary for adequate description, a picture, drawing, diagram, or other graphic representation.

3. Section 7.106 is added to read as follows:

7.106 Additional requirements for major systems.

(a) In planning for the solicitation of a major system (see Part 34) development contract, planners shall consider requiring offerors to include, in their offers, proposals to incorporate in the design of a major system—

(1) Items which are currently available within the supply system of the agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source; and

(2) Items which the Government will be able to acquire competitively in the future if they are likely to be needed in substantial quantities during the system's service life.

(b) In planning for the solicitation of a major system (see Part 34) production contract, planners shall consider requiring offerors to include, in their offers, proposals identifying opportunities to assure that the Government will be able to obtain, on a competitive basis, items acquired in connection with the system that are likely to be acquired in substantial quantities during the service life of the system. Proposals submitted in response to such requirements may include the following:

(1) Proposals to provide the Government the right to use technical data to be provided under the contract for competitive future acquisitions, together with the cost to the Government, if any, of acquiring such technical data and the right to use such data.

(2) Proposals for the qualification or development of multiple sources of supply for competitive future acquisitions.

(c) In determining whether to apply paragraphs (a) and (b) above, planners shall consider the purposes for which the system is being acquired and the technology necessary to meet the system's required capabilities. If such proposals are required, the contracting officer shall consider them in evaluating competing offers. In noncompetitive awards, the factors in paragraphs (a) and (b), above may be considered by the contracting officer as objectives in negotiating the contract.

PART 15—CONTRACTING BY NEGOTIATION

4. Sections 15.812, 15.812–1, and 15.812–2, are added to read as follows:

15.812 Unit prices.

15.812–1 General.

(a) Although direct and indirect costs are generally allocated to contracts in accordance with the Cost Accounting Standards of Part 30 (when applicable) and the Contract Cost Principles and Procedures of Part 31, for the purpose of pricing all items of supplies, distribution of those costs within contracts shall be on a basis that ensures that unit prices are in proportion to the item's base cost (manufacturing or acquisition costs). Any method of distributing costs to line items that distorts the unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost.

(b) When contracting by negotiation, without full and open competition, contracting officers shall require that offerors identify in their proposals those items of supply which they will not manufacture or to which they will not contribute significant value. The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected (see 15.804–3(b)). The information need not be requested in connection with the award of contracts under the General Services Administration's competitive multiple award schedule program. Such information shall be used to determine whether the intrinsic value of an item has been distorted through application of overhead and whether such items shall be considered for breakout. The contracting officer may require such information in any other negotiated contracts when appropriate.

15.812–2 Contract clause.

The contracting officer shall insert the clause at 52.215–26, Integrity of Unit Prices, in all solicitations and contracts other than small purchases under Part 13 or involving construction or architect-engineer services under Part 36 or utility services under Subpart 8.3. The contracting officer shall insert the clause with its *Alternate I* when contracting without full and open competition or when prescribed by agency regulations.

5. Sections 15.813, 15.813–1, 15.813–2, 15.813–3, 15.813–4, and 15.813–5 are added to read as follows:

15.813 Commercial pricing certificates.

15.813–1 Policy.

The Government should not purchase items of supply offered for sale to the public at a price that exceeds the lowest price at which such items are sold by the contractor unless the price difference is clearly justified by the seller or unless exempt under 15.813–3. To this end, 10 U.S.C. 2323 and 41 U.S.C. 253e require an offeror to certify that the price offered is not more than its lowest difference and providing justification for that difference.

15.813–2 Applicability.

(a) Except as provided in 15.813–3, commercial pricing certificates are required to be submitted with any offer/proposal covering any item or items that are offered for sale to the public which is submitted in connection with any of the following:

(1) Contracts not awarded on the basis of full and open competition.

(2) Contract modifications including contract modifications for additional items but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(3) Orders under the provisioning line item of a contract or under a Basic Ordering Agreement or under a similar arrangement.

(b) If the contract, modification or order is awarded without a definitive price, such as a letter contract or an unpriced order, the commercial pricing certificate is not required prior to award but rather will be submitted with the offer or proposal furnished to definitize the price.

(c) Notwithstanding any limitations contained in (a) above, the contracting officer may require a commercial pricing certificate whenever it is necessary to protect the interests of the Government. Examples could be where adequate price competition does not exist despite full and open competition or where a modification issued pursuant to the Changes clause results in a substitution of commercial items for non-commercial items.

15.813–3 Exemptions from commercial pricing certificates.

(a) For civilian agencies, not including NASA, a certificate of commercial pricing is not required in connection

with the acquisition of items unless the items being acquired are individual parts, components, subassemblies, assemblies or subsystems integral to a major system, and other property which may be replaced during the service life of the system, including spare parts and replenishment spare parts, but not including packaging or labeling associated with shipment or identification of an item.

(b) The contracting officer shall not ordinarily require a certificate of commercial pricing when—

(1) The simplified small purchase prodedures of Part 13 are being used;

(2) An order is placed under an indefinite delivery type contract (a certificate is required in connection with the award without full and open competition of an indefinite delivery type contract);

(3) The contracting officer determines that obtaining the commercial pricing certificate is not appropriate because of (i) national security considerations; or (ii) differences in quantities, quality, delivery, or other terms and conditions of the contract from commercial contract terms; or

(4) The contracting officer determines that no commercial items are included in the contract, modification or order.

15.813–4 Procedures.

(a) When commercial pricing certificates are required in accordance with 15.813–2 above, the contracting officer shall require the contractor to submit the certificate as set forth in the clause at 52.215–32, Certification of Commercial Pricing. The contracting officer should assess market conditions for the items expected to be covered by the certificate to determine whether the standard 60-day time period specified in the certificate is appropriate. If the frequency of price fluctuations or other circumstances persuade the contracting officer that a shorter or longer period is appropriate, the time period should be modified accordingly.

(b) The contracting officer shall request submission of a new certificate when the validity of the certificate originally submitted with an offer/proposal becomes doubtful prior to award due to submission of a new or revised proposal or as a result of discussions.

(c) If, before agreement on price, the contracting officer learns that the certificate is inaccurate, incomplete, or misleading, the contracting officer shall immediately bring the matter to the attention of the offeror/contractor, request a new certificate, and negotiate accordingly.

(d) If, after award, the contracting officer learns or suspects that commercial prices offered were defective, the contracting officer shall request, as appropriate, an audit to evaluate the commercial prices under authority of paragraph (b) of the clause at 52.215–32. If the contracting officer determines that a certificate is inaccurate, incomplete or misleading, the Government is entitled to a price adjustment for the overcharge (see paragraph (c) of the clause at 52.215–32).

(e) Individual or class determinations made under 15.813–3(b)(3) or (b)(4) will be documented in the contract file.

(f) Possession of a contractor's Certificate of Commercial Pricing is not a substitute for examining and analyzing a contractor's proposal.

15.813–5 Contract clause.

The contracting officer shall insert the clause at 52.215–32, Certification of Commercial Pricing, in all solicitations and contracts unless exempted under 15.813–3(a) or (b)(1).

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

6. Section 19.201 is amended by revising the first sentence of paragraph (a) to read as follows:

19.201 General policy.

(a) It is the policy of the Government to place a fair proportion of its acquisitions, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems, with small business concerns and small disadvantaged business concerns. * * *

* * * * *

7. Section 19.702 is amended by adding a second sentence to the introductory text to read as follows:

19.702 Statutory requirements.

* * * * *

It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

* * * * *

PART 34—MAJOR SYSTEM ACQUISITION

8. Section 34.001 is added to read as follows:

34.001 Definition.

"Major system" means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software or any combination thereof, but exclude construction or other improvements to real property. A system shall be considered a major system if—

(a) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for the acquisition exceeds $300,000,000 (based on fiscal year 1980 constant dollars);

(b) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a "major system" established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled "Major Systems Acquisition", whichever is greater; or

(c) The system is designated a "major system" by the head of the agency responsible for the system.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Section 52.215–26 is added to read as follows:

52.215–26 Integrity of Unit Prices.

As prescribed in 15.812–2, insert the following clause:

Integrity of Unit Prices (June 1985)

(a) Any proposal submitted for the negotiations of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost.

(b) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value when requested by the Contracting Officer.

(c) The Contractor shall insert the substance of this clause in all subcontracts.

(End of clause)

Alternate I (JUN 1985). As prescribed in 15.812–2, substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value.

10. Section 52.215–32 is added to read as follows:

52.215–32 Certification of Commercial Pricing.

As prescribed in 15.813–5, insert the following clause: The 60-day period may be changed by the contracting officer in accordance with 15.813–4(a):

Certification of Commercial Pricing (Jun 1985)

(a) The Offeror/Contractor shall execute and submit to the Contracting Officer the following certificate with any offer/proposal as required by section 15.813–2 of the Federal Acquisition Regulation (FAR) or as requested by the Contracting Officer:

Certificate of Commercial Pricing

(1) Unless justified in (2) below, by submission of this offer/proposal, the Offeror /Contractor certifies that the prices offered for those items of supply (whether or not separately identified) that the Contractor offers for sale to the public are no higher than any lower price charged to any other customer, including any governmental instrumentality, during the preceding 60 days.

(2) All items for which prices offered are higher than any lower price charged to any other customer during the preceding 60 days are identified below (including the amount(s) by which such offered prices are higher) and a written justification for the differences is attached.

Items	Price Differences

(List as necessary)

Offer/Proposal No. _____

Firm _____

Name _____

Title _____

Date _____

(End of certificate)

(b) The Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all books, records, documents and other data of the Contractor related to the pricing of the commercial items covered by this offer/ proposal. The contractor shall make these books, records, documents and other data available for examination, audit, or reproduction until three years after final payment under this contract.

(c) If any price, including profit or fee negotiated in connection with this contract, or any cost reimbursable under this contract has increased because the certification in paragraph (1) of the Certificate or the information provided as justification in paragraph (2) of the Certificate was inaccurate, incomplete, or misleading, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(End of clause)

11. Section 52.219–8 is amended by inserting a colon in the introductory text following the word "clause", and removing the remainder of the sentence; by removing paragraphs (a) and (b); by removing in the title of the clause the date "(APR 1984)" and inserting in its place "(JUN 85)"; by revising paragraph (a) of the clause; and by removing the three derivation lines following "(End of clause)" to read as follows:

52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.

As prescribed in 19.708(a), insert the following clause:

Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (Jun 1985)

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

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[FR Doc. 85–15089 Filed 7–2–85; 8:45 am]
BILLING CODE 6820–61–M

VOL
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federal register

Wednesday
July 3, 1985

Part V

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57
Metal and Nonmetal Mines; Public Hearings

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Metal and Nonmetal Mining; Public Hearings

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold public hearings on its proposal to revise existing safety standards for loading, hauling and dumping at metal and nonmetal mines. The hearings will be held in St. Paul, Minnesota; Phoenix, Arizona; and Birmingham, Alabama; and are in response to requests received from the public. Each hearing will cover the major issues raised by commenters in response to the proposed rule.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to each hearing date. However, immediately before each hearing begins, any unalloted time will be made available to persons making late requests.

The public hearings will be held at the following locations on the dates indicated, beginning at 9:00 a.m.:

August 5, 1985: St. Paul, Minnesota
August 7, 1985: Phoenix, Arizona
August 9, 1985: Birmingham, Alabama

ADDRESSES: The hearings will be held at the following locations:

1. August 5, 1985—Bishop Henry Whipple Federal Building, Room 196, Ft. Snelling, St. Paul, Minnesota 55111.

2. August 7, 1985—Federal Building and Courthouse, 7th Floor Hearing Room, 230 North First Avenue, Phoenix, Arizona 85025.

August 9, 1985—Birmingham-Jefferson Civic Center, North Meeting Room B, Number One Civic Center Plaza, 21st Street and 10th Avenue, North, Birmingham, Alabama 35203.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On December 18, 1984, MSHA published proposed revisions to its existing safety standards in 30 CFR Parts 55, 56, and 57 for loading, hauling and dumping at metal and nonmetal mines (49 FR 49202). All of the metal and nonmetal standards, including those for loading, hauling and dumping, were recodified as Parts 56 and 57 on January 29, 1985 (50 FR 4048). The comment period for the proposed rule on loading, hauling and dumping closed on March 22, 1985. In the comments filed to the proposed rule, MSHA received requests to hold public hearings.

The purpose of the public hearings is to receive relevant comment and to answer questions concerning the proposal. The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

Each hearing will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of each hearing for rebuttal statements. A verbatim transcript of each proceeding will be taken and made part of the rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until August 23, 1985.

Issues

Commenters requested clarification or revision of many specific provisions of the proposed rule. Some of the provisions of the rule received extensive comment. These issues are outlined in this notice and MSHA specifically solicits additional comment on them, in addition to any other aspects of the proposal.

Scope of Subpart H

Several comments concerned the scope of proposed Subpart H. Some commenters wanted to limit the scope of this Subpart to mobile equipment that is specifically used for loading, hauling and dumping. Other commenters believed that MSHA needed to clarify and emphasize the applicability of these standards to all types of mobile equipment.

MSHA notes that while many of the loading, hauling and dumping standards address hazards which are directly related to various types of mobile equipment, others are less directly related. Some of the standards within this Subpart address hazards which may exist independently from mobile equipment. For example, standards directly related to mobile equipment include those requiring the correction of defects affecting safety (56/57.9100) and effective brakes on self-propelled equipment (56/57.9202). Standards less directly related to mobile equipment would include the provisions relating to shelter holes (57.9363) and suspended loads (56/57.9208). Examples of standards involving hazards which may exist independently of mobile equipment include those relating to stockpile faces (56/57.9405) and chute hazards (56/57.9501).

MSHA is aware of the concern of commenters who believe that the standards would be clarified if the scope of the subparts were limited to certain types of mining equipment. This concern was also expressed in the rulemaking for Machinery and Equipment (Subpart M). Since the existing standards in Subparts H and M do not have these limitations upon their scope, the approach of limiting the scope of individual standards based on the nature of the mining equipment would necessitate the repetition of many standards. MSHA's approach to the standards review project has been to address standards on a hazard-oriented basis.

MSHA agrees with the commenters that the standards should be organized to facilitate their understanding and use. After the rulemaking for all the subparts contained in the metal and nonmetal standards review project has been completed, MSHA will examine the standards to assure that the subparts are organized in the most meaningful and effective way. This overview of the organization of the standards may result in the rearrangement of standards among the subparts.

Deletion of Standards

Some commenters objected to the proposed deletion of existing standards 56/57.9053 which require the removal of water, debris, or spilled material that present hazards to moving equipment. These commenters did not believe that existing standards 56/57.4104, combustible waste, and 56/57.200003,

housekeeping, fully addressed these hazards.

Travelways

The proposal included a new standard for Subpart J, Travelways and Escapeways, which would address restricted clearance hazards for persons walking along travelways. MSHA proposed to add this standard to Subpart J and limit the restricted clearance requirement in Subpart H to hazards associated with mobile equipment.

Commenters suggested that restricted areas be marked with reflectorized spray paint. Other commenters believed that the standard should be limited to usual and frequently used travelways and that it should not apply to obstructions above 6'6".

Definitions

Commenters suggested alternative language to the proposed definitions for mobile and self-propelled equipment. For example, to clarify the scope of the mobile equipment standards, one commenter suggested that the definition for self-propelled equipment be: "mobile equipment capable of moving itself." MSHA solicits further comment on these proposed terms.

Mobile Equipment

Safety defects. Proposed standards 56/57.9100(a) require that mobile equipment defects which affect safety be corrected in a timely manner to prevent the creation of a hazard to persons. Section 56/57.9100(b) requires defective equipment to be tagged or marked and removed from service if continued operation would be hazardous to persons.

Some commenters believed paragraph (a) was vague and that a more definite procedure for correcting defects should be specified. Commenters also recommended that MSHA allow operators to isolate defective equipment in a designated maintenance area in lieu of tagging or marking. MSHA solicits comments as to how equipment would be identified as defective if this recommendation were adopted.

Traffic control. Proposed standards 56/57.9101 require mine operators to establish and post rules governing speed, right-of-way, and direction of movement. Visible warning signs or signals must be placed at appropriate locations on roadways.

Commenters believed that more specific language or examples were needed to clarify the phrases "appropriate locations" and "visible signs or signals." Other commenters believed that the more approriate term for equipment covered by this standard was "self-propelled" rather than "mobile." Commenters also questioned MSHA's application of the word "roadway" because they were concerned that the standard could be applied in underground areas. MSHA notes that the existing standards (56/57.9071) apply to underground as well as surface locations. Commenters also suggested adding a paragraph to specifically exclude rail equipment from the scope of this standard.

Transporting persons. Proposed standards 56/57.9102 list restrictions on transporting persons in equipment.

Commenters believed work platforms and shaft buckets should be excluded from the prohibition against transporting persons in or on dippers, forks, clamshells, or buckets. Several commenters objected to the requirement that prohibits persons from riding in beds of mobile equipment or railcars unless they are seated and provisions are made for their secure travel. They believed that this requirement was unclear and that the proposed wording did not allow for alternative compliance.

Commenters suggested that MSHA consider excluding brakemen from the requirement which restricts certain riding locations on trains and allow car droppers to ride between cars if restraining belts are used for their safety. Commenters were also concerned that the requirement which prohibits transporting persons in mobile equipment with tools, materials or equipment unless the items are secured would not allow persons to carry small hand tools while they were being transported. They believed that by permitting small materials, tools, and equipment to be hand-carried, these items would be sufficiently secured. MSHA agrees that this suggestion has merit.

Loading, hauling and unloading of equipment or supplies. Proposed standards 56/57.9104 require that equipment or supplies be loaded, secured and unloaded to prevent falling or shifting.

Commenters were concerned about the word "secured," and stated that in situations where supplies are transported separately from persons, no hazard would exist from unsecured loads. Other commenters believed that the proposed requirement would restrict the methods permitted for unloading equipment or supplies. These commenters believed that the standard should allow unloading to be performed in a manner which would not "create a hazard to persons," noting that some supplies are unloaded by "dropping" the load after all persons are in the clear. MSHA notes that the standard is not intended to restrict customary unloading techniques. The standard is directed toward improper unloading techniques which could result in unplanned shifting or falling of equipment or supplies.

Minimizing spillage. Proposed standards 56/57.9106 require mined material to be loaded to minimize spillage.

Commenters stated that the standard should also require loads to be centered to ensure vehicle stability.

Securing movable parts. Proposed standards 56/57.9108(a) require that booms, buckets, forks, and similar movable parts on mobile equipment be secured in a safe travel position when moving between work places. Paragraph (b) requires that these parts be secured or lowered to the ground when mobile equipment is unattended or not in use.

Commenters suggested that MSHA use the word "positioned" instead of "secured" to more accurately describe the requirements of the standard. They also suggested that the method of securing be consistent with the type of equipment involved.

Parking procedure for unattended equipment. Proposed standards 56/57.9109 require certain procedures to be followed to secure mobile equipment when it is left unattended.

Commenters believed that because of the diverse methods for securing mobile equipment, this standard should contain performance language to prevent inadvertent movement rather than specific procedures. They believed that such an approach would ensure that equipment would be parked safely while allowing flexibility for different types of equipment. Commenters also questioned whether the additional securing procedure for equipment parked on a grade applies to slight or minimal grades.

Blocking equipment in a raised position. Proposed standards 56/57.9110 require mobile equipment and its raised components to be blocked or mechanically secured prior to working on, under, or from it. It also requires that the equipment be blocked to prevent rolling. Special provisions apply to equipment which is specifically designed as an elevated mobile work platform.

Commenters believed that the provisions relating to raised components would prohibit the use of forklifts equipped with work baskets and the use of front-end loader buckets as work stations. MSHA notes that the proposed standard would allow work to be performed from such equipment as long as the raised portion has been blocked

or mechanically secured to prevent accidental lowering. Commenters also believed blocking to prevent rolling should not be required if the equipment is on a level surface, and the brakes has been applied. Some commenters also urged that the term "load-locking devices" be defined. Additionally, several commenters favored excluding cranes from the scope of this standard until MSHA reviews its hoisting standards. MSHA agrees and did not intend to include cranes within the scope of this proposed standard.

Tire repair. Proposed standard 56/57.9111 set forth safety procedures and devices to be used during tire repair.

Many commenters questioned the need to deflate both tires on a dual wheel if only one tire is in need of repair, stating that such a requirement would increase the degree of hazard. Other commenters suggested that MSHA follow OSHA's tire repair standards contained in 29 CFR Part 1910 and 29 CFR Part 1926. MSHA intends to further review the applicability of the OSHA tire repair standards.

Warning devices. Proposed standards 56/57.9112 require warning devices where hazards to persons on mobile equipment may be created.

Some commenters believed that the standard should allow persons to walk behind or beside vehicles for short distances as an alternative to attaching warning flags to extended loads. Other commenters believed the requirement for marking restricted clearance areas should only pertain to roadways having these hazards. Commenters also suggested that this standard exclude rail equipment on the basis that it is adequately covered in 56.9330, clearance for surface rail equipment.

Self-Propelled Equipment

Inspection of self-propelled equipment. Proposed standards 56/57.9200 require inspection of self-propelled equipment and recording of defects that affect safety.

Commenters believed there should be no obligation to record defects if those defects are corrected immediately. Other commenters believed that all defects should be recorded and that the records should be maintained for 30 to 90 days to provide a source of information concerning equipment repair, and for use in accident investigations.

Operators stations on self-propelled equipment. Proposed standards 56/57.9201 address safety hazards associated with operator's stations on self-propelled equipment.

The proposal provides, in part, that if damaged windows "obscure operating visibility" or expose the equipment operator to "hazardous environmental conditions" certain actions must be taken. Commenters requested that MSHA define these phrases. MSHA solicits suggestions regarding these terms.

Brakes. Proposed standards 56/57.9202 set forth minimum brake performance requirements for self-propelled equipment and provide for testing in certain instances.

Many comments were directed toward MSHA's proposal to test some types of vehicles when there is cause to believe that the service brakes are not capable of stopping the equipment. Several commenters requested that the scope of this standard be limited to vehicles manufactured in 1976 or after. Other commenters believed the testing requirements should only apply to haulage vehicles, or vehicles manufactured after the effective date of the final rule. Additionally, some commenters believed the standard should exclude vehicles which normally operate at low speeds, as well as fork-lifts and air or battery-powered equipment. Commenters believed agricultural tractors should be tested under different criteria. Commenters also believed that underground vehicles should be exempt from the testing procedure. Commenters believed that the proposed testing conditions were unsafe, too rigorous and would create controversy. Several commenters also believed that some types of vehicles should be tested without any load, and that the term "fully loaded" was vague.

Commenters recommended that the distance table be extended for vehicles weighing more than 600,000 pounds, and others believed the instances in which testing would be conducted should be more specifically set forth. Commenters also believed the performance requirement for parking brakes should be limited to holding vehicles on a 15% grade.

At this point in the rulemaking, MSHA agrees that underground equipment should not be tested. As discussed in the proposal, MSHA has conducted field studies and additional brake tests. The results of these tests, including video tapes, will be made available for viewing during the public hearings. Additional comment on the issues of brake performance, testing and scope is specifically solicited.

Berms. Proposed standards 56/57.9203 require berms or guards on the banks of elevated roadways.

Commenters suggested that alternatives be allowed for infrequently traveled roads which are only used by small service or maintenance vehicles. Based on these comments, MSHA is considering permitting alternative compliance on these types of roads if additional safety precautions are taken. For example, such precautions could include: (1) Locked gates at the entrance points to the road; (2) signs warning that the road is not bermed; (3) reflectors installed at 25-foot intervals along the perimeter of the elevated locations; (4) a maximum posted speed of 15 mph; (5) using vehicles equipped with two-way radios together with a check-in/check-out system; and (6) periodic updating of road hazards for drivers who use these roads. MSHA solicits additional comment on these alternatives, or other measures needed to assure equivalent safety.

Some commenters requested that the required berm height be further clarified and stated that berms of mid-axle height was an excessive requirement. Additionally, several commenters believed that the scope of the berm standard should be limited to only those roadways which are used for ore haulage.

Dust control. Proposed standards 56/57.9204 address hazards which may be created where dust impairs visibility.

Commenters believed that the standard should only require dust control measures to be taken when impairments to visibility are present, stating that the reference to situations where hazards to persons "may be created" was too speculative and subjective.

Falling object protective structures (FOPS). Proposed standards 56/57.9209 require FOPS for certain types of self-propelled equipment.

Several commenters believed that this standard should incorporate by reference ANSI standard B 56.6–1976, which addresses FOPS for rough terrain forklift trucks, in addition to the proposal's incorporation of ANSI 56.1, Section 420 (1975) and SAE J 231 (January, 1981). Other commenters believed the existing standard's reference to "substantial canopies" was adequate, and that the standard should allow either approach for compliance. Some commenters also favored excluding undergound equipment from the scope, while others believed it should be expanded to include many other types of equipment such as loaders and drill rigs. A few commenters believed that FOPS identification information should be filed at the mine office as an alternative to the proposed labeling requirement.

Roll-over protective structures (ROPS). Proposed standards 56/57.9230

require ROPS and seat belts for certain types of self-propelled equipment.

Commenters requested that the scope be expanded to include various types of underground equipment. Commenters also believed that repaired ROPS should only be recertified by the manufacturer, and that only the manufacturer should specify the proper nuts and bolts to be used to attach ROPS. As an alternative to labeling, commenters requested that the standard permit ROPS information to be kept at the mine office.

Commenters stated that the seat belt requirement should be expanded to include haulage trucks. Commenters also requested that grader operators be exempt from the seat belt requirement since they often stand while performing their work. Many commenters believed that while the requirement to wear seat belts is laudable, it would be difficult to enforce.

Horns and Back-up Alarms. Proposed standards 56/57.9231 set forth requirements for horns and back-up alarms on surface equipment.

Commenters believed that back-up alarms were not necessary for some types of equipment, such as track-type bulldozers, and excavators with 360° rotation capability. Several commenters also believed that horns are unnecessary for slow moving equipment, such as dozers, graders, skid-steer loaders, bobcats, or small personnel carriers. Other commenters believed the horn requirement should only apply to wheel-mounted equipment that has an obstructed view to the front.

In its preamble, MSHA asked for comment on the merit of using wheel-mounted bell alarms for highway-use vehicles. Commenters expressed support for this alternative.

Rail Equipment

Brakes. Proposed standards 56/57.9300 require braking systems on railroad cars to be maintained in functional condition. MSHA wishes to clarify that locomotives are intended to be included within the scope of this standard.

Some commenters suggested that the standard permit alternative means of stopping and holding railroad cars. MHSA solicits comments on these alternative means. Other commenters believed the standard should only apply to railroad cars that are used for braking.

Railroad crossings. Proposed standards 56/57.9313 require permanent railroad crossings to be posted with warning signs or be guarded when trains pass. The crossings must also be planked or filled between the rails.

Commenters questioned the applicability of planking and filling crossings in underground operations.

Train movement during shift changes underground. Proposed standard 57.9362 addresses train movement while persons are changing shifts.

Commenters believed the standard should also apply to open pit operations for both rail and truck haulage traffic.

Shelter holes. Proposed standard 57.9363 requires shelter holes at adequate intervals, specifies the minimum width and depth clearances, and prohibits storage in shelter holes.

Commenters believed that shelter holes could be used for storage if 40 inches of clearance were maintained, and that MSHA's exclusion of their use for storage would require numerous new shelter holes to be constructed. MSHA notes that the proposed standard would not require more shelter holes than the existing standard. However, because the proposal does not allow storage in shelter holes, new storage facilities may have to be constructed in some operations. MSHA solicits specific comment on the impact of this standard, including the number of new facilities and any associated costs of construction.

Dumping Locations and Facilities

Restraining devices. Proposed standards 56/57.9402 require restraining devices, such as berms and bumper blocks, to be provided at dumping locations to prevent overtravel.

Some commenters believed that the requirement to prevent overtravel would be inconsistent with MSHA's proposed berm definition, which requires that berms be capable of moderating or limiting the force of a vehicle to impede its passage over the bank of a roadway.

Unstable ground. Proposed standards 56/57.9404 address the hazards of unstable ground for mobile equipment operating at dumping locations.

Some commenters believed that this standard should expressly include a requirement for periodic inspection of ground stability at dumping locations.

Trimming of stockpile and muckpile faces. Proposed standards 56/57.9405 address hazardous overhangs on stockpile and muckpile faces.

Commenters raised an issue of whether the standard should also require barricading or guarding of stockpile and muckpile overhangs until they have been trimmed.

Safety Devices and Procedures

Air valves for pneumatic equipment. Proposed standards 56/57.9700 require that a manually operated quick-close master air valve be installed on all types of pneumatic-powered equipment.

Some commenters believed this standard should be limited to self-propelled equipment used for loading, hauling and dumping.

Warnings prior to starting or moving equipment. Proposed standards 56/57.9701 require equipment operators to sound a warning prior to starting or moving equipment.

Commenters requested clarification of the types of equipment covered by this standard, and suggested that the scope be limited to self-propelled equipment.

Dated: June 28, 1985.

Daivd A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 85-16002 Filed 7-2-85; 8:45 am]

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VOL
50
ISS
128
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26961-27
27213-27
27409-27

Reader Aids

Federal Register

Vol. 50. No. 128

Wednesday, July 3, 1985

INFORMATION AND ASSISTANCE

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PUBLICATIONS AND SERVICES

Daily Federal Register	
General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408
Code of Federal Regulations	
General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419
Laws	
Indexes	523-5282
Law numbers and dates	523-5282
	523-5266
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230
United States Government Manual	523-5230
Other Services	
Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

26961-27212.....1
27213-27408.....2
27409-27570.....3

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
11888 (Amended by EO 12524).....27409
12523.....26963
12524.....27409
Proclamations:
5350.....26961

5 CFR

771.....26965

7 CFR

52.....26965
226.....26972
400.....26976
908.....27411
921.....27411
930.....27213
979.....26976
991.....26977
1040.....27412
1427.....26978
1435.....27413
1941.....27414
1944.....27415
1945.....27414, 27416
Proposed Rules:
Ch. X.....27003
29.....27286
51.....27004
920.....27286

8 CFR

Proposed Rules:
103.....27286

10 CFR

9.....27214
Proposed Rules:
50.....27006

12 CFR

403.....27215
723.....27417
Proposed Rules:
561.....27290
563.....27290
571.....27290

13 CFR

121.....27418
302.....27419

14 CFR

39.....26979
71.....26980
Proposed Rules:
39.....27009, 27012
71.....27013, 27014, 27526
75.....27014

15 CFR

376.....27420
399.....27420

16 CFR

13.....26981

17 CFR

286.....26981

19 CFR

4.....26981

20 CFR

200.....27222

21 CFR

101.....26984
558.....27421, 27422
Proposed Rules:
170.....27294
201.....27016
211.....27016
357.....27552
514.....27016
559.....27016
561.....27452
1002.....27024

22 CFR

501.....27422

25 CFR

Proposed Rules:
61.....27456

28 CFR

1.....27222, 27231, 27427
602.....27222, 27231
Proposed Rules:
1.....27287, 27456, 27457

30 CFR

32.....27428

39 CFR

1952.....27233
Proposed Rules:
23.....27298
1910.....27307

29 CFR

Proposed Rules:
56.....27568
57.....27568
913.....27025

836.....27461

31 CFR

51.....26967
500.....27435
505.....27435
515.....27435
520.....27435
535.....27435
540.....27435

32 CFR

Parts 1–39.....26967
199.....26968

33 CFR

110.....26968
117.....26969
150.....26969
166.....26969

Proposed Rules:

117.....27026, 27029

35 CFR

101.....26990
103.....26990
121.....26990

36 CFR

1200.....27196
1202.....27196
1250.....27196

37 CFR

Proposed Rules:

1.....27030

39 CFR

Proposed Rules:

3001.....27308

40 CFR

52.....26991, 27244–27247
60.....27248
61.....27248
86.....27250
600.....27172

Proposed Rules:

52.....27030, 27462
180.....27463
202.....27321
205.....27321
600.....27188

41 CFR

Chs. 1–49.....26967
105–63.....26992
201–1.....27142
201–2.....27142
201–6.....27142
201–11.....27142
201–16.....27142
201–20.....27142
201–21.....27142
201–23.....27142
201–24.....27142
201–26.....27142
201–30.....27142
201–31.....27142
201–32.....27142
201–36.....27142
201–39.....27142
201–40.....27142

42 CFR

412.....27208

Proposed Rules:

23.....27465
405.....27469
412.....27469

43 CFR

Proposed Rules:

2800.....27322

44 CFR

64.....26993, 26994

Proposed Rules:

67.....27322

45 CFR

Proposed Rules:

405.....27406
412.....27406
1620.....27326

46 CFR

153.....26996

47 CFR

68.....27250
73.....27287, 27438
76.....27438

48 CFR

7.....27560
15.....27560
19.....27560
34.....27560
52.....27560
504.....26996
533.....26996

49 CFR

571.....27451

Proposed Rules:

Ch. X.....27031
571.....27032

50 CFR

17.....26999

Proposed Rules:

630.....27470
662.....27470

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 2, 1985

VOL
50

ISS
128

JL
3

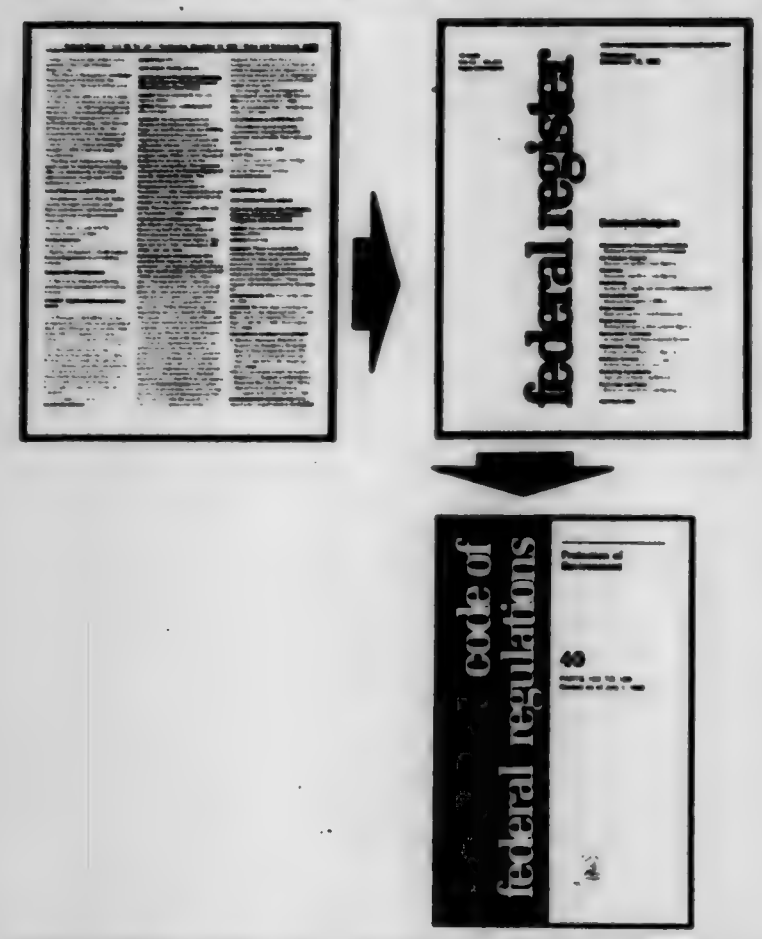
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VOL
50
ISS
128
JUL
3
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1985

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7-5-85
Vol. 50
Pages 27

7-5-85
Vol. 50 No. 129
Pages 27571-27812

federal register

Friday
July 5, 1985

Selected Subjects

Anchorage Grounds
Coast Guard

Aviation Safety
Federal Aviation Administration

Bridges
Coast Guard

Civil Defense
Federal Emergency Management Agency

Crop Insurance
Federal Crop Insurance Corporation

Electric Utilities
Federal Energy Regulatory Commission

Endangered and Threatened Species
Fish and Wildlife Service

Government Procurement
General Services Administration

Government Property Management
General Services Administration

Hunting
Fish and Wildlife Service

Loan Programs—Business
Small Business Administration

Marine Safety
Coast Guard

CONTINUED INSIDE

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Selected Subjects

Meat and Meat Products
Agricultural Marketing Service
Food Safety and Inspection Service

Medicare
Health Care Financing Administration

Metric System
Commerce Department

Motor Vehicle Safety
National Highway Traffic Safety Administration

Museums
Arts and Humanities, National Foundation

Radio Broadcasting
Federal Communications Commission

Social Security
Social Security Administration

Television Broadcasting
Federal Communications Commission

Trade Practices
Federal Trade Commission

Contents

Federal Register
Vol. 50, No. 120
Friday, July 5, 1985

Agricultural Marketing Service
RULES
Meats, prepared meats, and meat products; grading, certification, and standards:
27571 Fee increase

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation; Federal Crop Insurance Corporation; Food Safety and Inspection Service; Soil Conservation Service.

Air Force Department
NOTICES
Meetings:
27650 Scientific Advisory Board

Arts and Humanities, National Foundation
RULES
Museum Services Institute:
27584 Conservation grants
27586 Museum assessment and general operating support program
NOTICES
Meetings:
27704 Dance Advisory Panel (2 documents)
27704 Design Arts Advisory Panel
27704 Media Arts Advisory Panel
27705 Program Initiative for Interdisciplinary Artists Review Committee

Blind and Other Severely Handicapped, Committee for Purchase From
NOTICES
27650 Procurement list, 1985; additions and deletions

Coast Guard
RULES
Anchorage regulations:
27580 Illinois
Drawbridge operations:
27582 Mississippi
27582 New Jersey
Ports and waterways safety:
27583 Isthmus Cove, Santa Catalina, CA; regulated navigation area
Regattas and marine parades:
27579 Barnegat Bay Air Brook Classic
PROPOSED RULES
Anchorage regulations:
27622 Michigan
27623 New York
Drawbridge operations:
27624 Louisiana
Equipment, construction, and materials; specifications and approval:
27628 Lifesaving equipment; inflatable liferafts, stability; hearing and extension of time

Commerce Department
See also National Technical Information Service; Patent and Trademark Office.
RULES
Productivity, technology, and innovation:
27577 Metric conversion policy for Federal agencies

Commodity Credit Corporation
NOTICES
Loan and purchase programs:
27647 Milk price support program

Defense Department
See Air Force Department.

Education Department
NOTICES
Education Appeal Board hearings:
27650 Applications for review

Employment Standards Administration
NOTICES
27714 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (CA, CT, DE, DC, KS, KY, MI, MT, NY, OH, TN, and VA)

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.
NOTICES
Meetings:
27652 National Petroleum Council

Environmental Protection Agency
NOTICES
Environmental statements; availability, etc.:
27681 Agency statements; comment availability
27681 Agency statements; weekly receipts
Toxic and hazardous substances control:
27674 4,4'-Methylenedianiline

Federal Aviation Administration
RULES
Airworthiness directives:
27575 Canadair
27576 Short Brothers Ltd.
PROPOSED RULES
Airworthiness directives:
27601 Lockheed-California
27602 McDonnell Douglas

Federal Communications Commission
PROPOSED RULES
Radio and television broadcasting:
27629 Single majority stockholder and minority incentive provisions reexamination; advance notice
NOTICES
27682 Rulemaking proceedings; petitions filed, granted, denied, etc.

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance; various commodities:
27601 Sugarcane; withdrawn

Federal Deposit Insurance Corporation
NOTICES
27711 Meetings; Sunshine Act (3 documents)

Federal Election Commission
NOTICES
27712 Meetings; Sunshine Act

Federal Emergency Management Agency
PROPOSED RULES
Preparedness:
27627 Civil defense; State and local emergency management assistance; emergency operations plans

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities (Federal Power Act) and Public Utility Regulatory Policies Act:
27604 Electricity sales-for-resale and transmission service; advance notice
NOTICES
Electric rate and corporate regulation filings:
27655 Northern Indiana Public Service Co. et al.
Hearings, etc.:
27663 Bonneville Power Administration
27656 Kansas Gas & Electric Co.
27660 New England Power Co.
27662 Utah Power & Light Co. et al.
Natural gas certificate filings:
27652 ANR Pipeline Co. et al.
Natural gas companies:
27659 Small producer certificates, applications (Morris Mizel & Mizel Resources et al.)

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
27700 Prince George's County, MD

Federal Home Loan Bank Board
NOTICES
Applications, etc.:
27682 Citizens Savings & Loan Association
Receiver appointments:
27682 Century Savings Association of Kansas

Federal Maritime Commission
NOTICES
27683 Agreements filed, etc.
Freight forwarder licenses:
27682 S.T.S. International, Inc., et al.
27683 Tiger Intermodal, Inc., et al.

Federal Reserve System
NOTICES
27684 Agency information collection activities under OMB review
Bank holding company applications, etc.:
27684 Citicorp
27685 MCORP et al.
27685 Verbanc Financial Corp. et al.

Federal Trade Commission
RULES
Prohibited trade practices:
27578 Craftmatic/Contour Organization, Inc., et al.

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
27637 Findings on petitions, etc.
Migratory bird hunting:
27636 Early season, proposed frameworks; doves, pigeons, woodcock, etc.

Food and Drug Administration
NOTICES
Human drugs:
27688 Single-entity coronary vasodilators, nitroglycerin buccal tablets
Laser variance approvals, etc:
27687 International Laser, Inc., et al.
27696 Laser Media, Inc., et al.

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
27573 Pump-cured bacon, alpha-tocopherol as N-nitrosamine inhibitor; and lecithin as emulsifier in meat food products

General Services Administration
RULES
Acquisition regulations (GSAR):
27589 Competition in contracting requirements, etc.
PROPOSED RULES
Property management:
27625 Transportation documentation and audit; commercial bills of lading submission under cost reimbursement-type-contracts
27626 Transportation documentation and audit; privately owned personal property Government bill of lading (Form 1203)

Health and Human Services Department
See also Food and Drug Administration; Health Care Financing Administration; Social Security Administration.
NOTICES
27686 Agency information collection activities under OMB review

Health Care Financing Administration
RULES
Medicare:
27714 Direct medical education costs; payment limit
NOTICES
Medicare:
27691 Cytotoxic Leukocyte testing; exclusion from coverage
27734 Home health agency costs per visit; schedule of limits

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
27674 Decisions and orders
Remedial orders:
27673 Objections filed
27666- Special refund procedures; implementing and
27671 inquiry (3 documents)

Indian Affairs Bureau
NOTICES
Irrigation projects; operation and maintenance charges:
27697 Crow Irrigation Project; MT
Liquor and tobacco sale or distribution ordinance:
27696 Duckwater Shoshone Tribe, NV

Interior Department
See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service.
NOTICES
27693 Privacy Act; systems of records

Internal Revenue Service
PROPOSED RULES
Excise taxes:
27621 Crude oil windfall profit tax; front-end tertiary oil; withdrawn

Interstate Commerce Commission
NOTICES
Motor carriers:
27702 Compensated intercorporate hauling operations; intent to engage in
Motor carriers; control, purchase, and tariff filing exemptions, etc.:
27701 Burlington Northern, Inc.
Railroad operation, acquisition, construction, etc.:
27702 Chesapeake & Ohio Railway Co.

Justice Department
NOTICES
Grants; availability, etc.:
27768 Cuban entrants; planned secondary resettlements from South Florida
27769, 27770 Haitian entrants; planned secondary resettlements from South Florida (2 documents)

Labor Department
See Employment Standards Administration; Mine Safety and Health Administration.

Land Management Bureau
NOTICES
Oil and gas leases:
27700 North Dakota
Opening of public lands:
27700 Montana
Sale of public lands:
27698 Arizona
27698 California
Sale or lease of public lands:
27697 Nevada

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modifications:
27702 Bartley & Bartley Coal Co.
27703 BethEnergy Mines Inc.
27703 K & L Coal Corp.
27703 Texas Utilities Mining Co.

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
27700 Kerr-McGee Corp.
27700 ODECO Oil & Gas Co.
27701 Tenneco Oil Exploration & Production Co.
Outer Continental Shelf operations:
27701 Leasing maps and official protraction diagrams; availability
27798 Western Gulf of Mexico; lease sale
27810 Western Gulf of Mexico; leasing systems

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
27632 Child restraint systems; anchorages; proceeding terminated
27633 Child restraint systems; restraints with tether strap
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
27709 Firestone Tire & Rubber Co.

National Technical Information Service
NOTICES
Patent licenses, exclusive:
27648 Eli Lilly & Co.
27649 SEMicro Corp.
27648 Sterling Drug, Inc.

National Transportation Safety Board
NOTICES
27705 Accident reports, safety recommendations, and responses, etc.; availability

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
27706 Advanced Medical Systems, Inc.
Environmental statements; availability, etc.:
27707, 27708 Consumers Power Co. (2 documents)

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
27712 Meetings; Sunshine Act

Patent and Trademark Office
NOTICES
Mask works; interim protection for nationals, domiciliaries, and sovereign authorities:
27649 Canada

Railroad Retirement Board
NOTICES
27708 Agency information collection activities under OMB review

Small Business Administration
PROPOSED RULES
27754 Loans to State and local development companies

Social Security Administration
PROPOSED RULES
Social security benefits and supplemental security income:
27615 Cost-of-living increases; delayed retirement credits, and maximum family benefits

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
27648 Howard Creek Watershed, WV

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration.

Treasury Department
See also Internal Revenue Service.
NOTICES
Bonds, Treasury:
27710 2005 series
Boycotts, international:
27709 Countries requiring cooperation; list
Notes, Treasury:
27709 F–1992 series
27710 M–1989 series

Veterans Administration
RULES
Adjudication; pensions, compensation, dependency, etc.:
27584 Pension rates and income limitations; cost-of-living adjustments; correction
NOTICES
Procurement:
27710 Commercial activities, performance; productivity review and cost comparison review schedules (OMB A–76 implementation); correction

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Separate Parts in This Issue

Part II
27714 Department of Labor, Employment Standards Administration, Wage and Hour Division

Part III
27722 Department of Health and Human Services, Health Care Financing Administration

Part IV
27734 Department of Health and Human Services, Health Care Financing Administration

Part V
27754 Small Business Administration

Part VI
27768 Department of Justice

Part VII
27778 Department of Justice

Part VIII
27788 Department of Justice

Part IX
27798 Department of the Interior, Minerals Management Service

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
54.....27571
Proposed Rules:
417.....27601

9 CFR
318.....27573

13 CFR
Proposed Rules:
108.....27754

14 CFR
39 (2 documents).....27575, 27576
Proposed Rules:
39 (2 documents).....27601, 27602

15 CFR
19.....27577

16 CFR
13.....27578

18 CFR
Proposed Rules:
35.....27604
290.....27604

20 CFR
Proposed Rules:
404.....27615
416.....27615

26 CFR
Proposed Rules:
51.....27621

33 CFR
100.....27579
110.....27580
117 (2 documents).....27582
165.....27583
Proposed Rules:
110 (2 documents).....27622, 27623
117.....27624

38 CFR
3.....27584

41 CFR
Proposed Rules:
101–41 (2 documents).....27625, 27626

42 CFR
405.....27722
412.....27722

44 CFR
Proposed Rules:
302.....27627

45 CFR
1180 (2 documents).....27584, 27585

46 CFR
Proposed Rules:
160.....27628

47 CFR
Proposed Rules:
73.....27629

48 CFR
552.....27589
553.....27589
570.....27589

49 CFR
Proposed Rules:
571 (2 documents).....27632, 27633

50 CFR
Proposed Rules:
17.....27637
20.....27638

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Rule

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DEPART

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7 CFR Pa

Changes
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AGENCY: A
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ACTION: F

SUMMARY
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Rules and Regulations

Federal Register
Vol. 50, No. 129
Friday, July 5, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends § 54.27 of the regulations governing the grading and certification of meats, prepared meats, and meat products (7 CFR 54.27) by increasing the fees and changing the method of charging for voluntary Federal meat grading and certification services to reflect increased program operating costs and to more equitably distribute the program's overtime costs.

EFFECTIVE DATE: July 14, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene M. Martin, Chief; Meat Grading and Certification Branch, Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th Street and Independence Avenue, SW., Room 2638–S; Washington, D.C. 20250. (Telephone 202/382–1113.)

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under USDA procedures established to implement Executive Order 12291 and was classified as a nonmajor rule pursuant to section 1(b) (1), (2), and (3) of that Order. Accordingly, a regulatory impact analysis is not required. This action also was reviewed under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*). William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities.

This rule raises fees to cover increased costs of providing voluntary Federal meat grading and certification services. This rule also changes the method of charging for services to more equitably distribute the program's overtime cost by directly assessing the premium hourly charges to those users of the service whose plant operational schedules require overtime service. However, on a nationwide basis, the new fee and the method of charging for premium hours will not measurably affect the average cost per unit graded and/or certified currently borne by all entities using the services. Consequently, these two changes will not significantly affect a substantial number of meatpackers, meat processors, consumers, or any small entities and will not affect normal competition in the marketplace.

Background

The Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat which they desire. The AMA also authorizes the collection of fees from users of Federal meat grading and certification services which are approximately equal to the cost of providing services. The hourly fees for service are based on projected annual program operating costs and the estimated hours of service—revenue hours—provided to users of the service. Program operating costs include salaries and fringe benefits of meat graders, supervision, travel, training, and all administrative costs of operating the program. Revenue hours include base hours—service performed between 6 a.m. and 6 p.m., Monday through Friday; premium hours—service performed before 6 a.m. or after 6 p.m., in excess of 8 hours per day, Monday through Friday, and any time on Saturday or Sunday; and holiday hours—service performed on Federal legal holidays. As program operating costs increase or revenue hours decrease, the hourly fee rates must be adjusted so that the program remains financially self-supporting as required by law.

The Agency projects that the total revenue earned during fiscal year 1985 will be less than the amount earned during fiscal year 1984 because of a reduction in the number of hours meat grading and certification services are utilized by meatpackers and meat processors. The projected decline in revenue hours, including premium hours, primarily results from meat industry automation, reduced operations of smaller plants, and the Agency's increased use of statistical sampling in meat certification operations.

To offset the projected reduction in revenue, the Agency was able to reduce operating expenses in such areas as (1) contracted services for training, (2) employee travel and subsistence costs, and (3) administrative costs. These actions enabled the Agency to reduce total program operating expenses. However, these cost savings were more than offset by the increase in employee salary and fringe benefits and by the increase in the Agency's contribution to social security and medicare taxes. Both of these cost increases were mandated by Congress. Because employee salary and fringe benefits comprise approximately 80 percent of the total Meat Grading and Certification Branch annual operating expenses, total program operating costs increased. The Agency is unable to effect further nonsalary cost reductions to offset these cost increases without adversely affecting the program's ability to provide timely and uniform grading and certification services. Consequently, the Agency must increase the hourly fee rates for meat grading and certification services.

Comments

On March 25, 1985, the Agricultural Marketing Service (AMS) published in the **Federal Register** (50 FR 11814) an interim final rule increasing the fees for Federal meat grading and certification services effective March 31, 1985. This rule was implemented on an interim basis without a prior proposal because increased revenues were needed immediately to cover the increased costs of providing service. Simultaneously, AMS published in the **Federal Register** (50 FR 11816) a proposal to change the criteria for charging for services during certain premium hours. The interim rule and the proposed rule were published with requests for comments as a means of providing full public participation in the rulemaking process. Comments on

these amendments were requested by April 30, 1985. During the 30-day comment period, the Agency received four letters in response to the interim final rule and proposed rule. Two letters were received from meat associations, one letter from a meat packing and processing firm, and one letter from a national farm organization.

Discussion of Comments

The comments reflected an overall dissatisfaction with the fee increase and expressed the view that any increase during the current economic plight of the meat industry was excessive and not justifiable. The comments contained general observations on increasing the fee rates and suggested that USDA take action to reduce program operating expenses in lieu of increasing the fees.

The Agency acknowledges the need for and importance of cost reduction efforts and is continually looking for and implementing effective and viable cost reduction procedures compatible with its ability to continue providing the type and amount of service requested by the meat industry. During the past several years, the Agency has reduced both the direct and indirect costs and improved the efficiency of meat grading and certification services to help offset increasing costs. For example, the Agency has been able to reduce its grading staff by approximately 15 percent over the past 2 years. This staff reduction was achieved even though the total volume of meat graded and certified has remained about the same. This staff reduction resulted in an estimated $1.8 million savings in the industry's cost for meat grading and certification services. During the same time period, further reductions in program operating costs have occurred as a result of (1) closed field offices, (2) reduced supervisory and Washington staff positions, (3) reduced Agency and Department support service costs, and (4) reduced meat grader training and travel costs. These reductions have decreased program operating costs by approximately $1.3 million. As a result of these cost reductions, the Agency has kept meat grading and certification fee rate increases to a minimum and well below overall price increases nationwide. Further reductions at this time would adversely affect the program's ability to provide timely and uniform grading and certification services.

One commenter was also concerned that the increased fee rate may render grading and certification economically unfeasible for users of the service. The Agency believes that the financial impact of the fee rate increase on the industry and the consumer will be minimal. Even though meatpackers and meat processors will pay more per hour for service, the meat industry as a whole will be using less total hours of service. However, since the total volume of meat graded and certified is expected to remain about the same, the cost per unit for grading and certification services to the industry will continue to be less than two-tenths of a cent per pound.

One commenter expressed concern about the $3 per hour increase—from $5 to $8 per hour—in the premium hourly rate. The commenter questioned why the premium hourly rate was being increased by 12 percent when the base hourly rate was being increased by only 3.1 percent. The premium hourly rate was increased proportionally more than the base rate to more accurately reflect current program costs for providing services during premium hours. The differential between the premium rate and the base rate has not been adjusted in 4 years, despite Federal employee pay increases and other increases in program costs during that time.

The premium hourly rate for meat grading and certification service is established by estimating the program's additional costs for providing service during these premium time periods. This method provides an equitable assessment of program costs to those establishments directly responsible for these additional costs. The $8 an hour difference is comprised of approximately 80 percent for grader salary costs, 15 percent for additional supervisory salary and travel costs, and 5 percent for administrative and overhead costs. The premium hourly rate differential usually includes the following costs: (1) Employee overtime—an additional amount equal to half of the employee's base hourly pay rate, (2) employee night differential entitlements—an additional amount equal to 10 percent of the employee's base hourly pay rate, (3) employee night differential and overtime pay entitlements for work performed in excess of 8 hours per day or 40 hours per week at the night differential rate, (4) estimated costs for additional supervision and related travel for periods outside the established workday, and (5) estimated administrative costs attributed to assignments during premium hours.

The actual additional cost for each assignment varies depending upon the employee's pay level, overtime and/or night differential entitlements, estimated additional supervision and related travel costs, and estimated administrative costs. However, to avoid the additional administrative burden and costs associated with a variety of premium rates which reflect each assignment possibility, only one premium rate is charged for service during premium hours. This method of charging has proven to be the most efficient administrative billing system at the least possible cost to the users of the service.

As an additional alternative to increasing the difference between the base and premium rates, the Agency considered a greater increase in the base hourly rate to cover the added cost of providing services during premium hours. However, this alternative would have resulted in an inequity of charges by requiring all users of the service to pay a portion of the program's overtime operating costs.

One commenter urged the Agency to look carefully at its ratio of graders to supervisors and stated that the present ratio of graders to supervisors appears to be unjustified. The commenter cited a grader/supervisor ratio of 7 to 1. It is assumed that the commenter was basing that ratio on all Branch management personnel, rather than just the first-line supervisors. The Agency considers only the first-line supervisors in its grader/supervisor ratio because only such supervisors work closely with graders on a day-to-day basis. Other higher level supervisors are responsible primarily for overall program management and administration. The present ratio of graders to first-line supervisors is approximately 11 to 1, which is about the same as a year ago. This ratio, however, does not include supervision of intermittent (part-time) employees or cross-utilized employees who are used to provide more cost-effective service to the industry. There has been a significant increase in the cross-utilization of employees in the past 2 years which has contributed to lower costs for grading and certification services to the meat industry. Unlike fulltime journeymen meat graders, both groups of employees require considerably more on-the-job training and supervision. When these employees are considered with the full-time employees, the ratio of graders to first-line supervisors is about 14 to 1. Additionally, the overall workload of first-line supervisors has been affected by recent cost-saving changes in employee training, i.e., reducing the length of new employee training and discontinuing journeymen grader refresher training. These changes shifted a significant amount of training responsibility to the first-line supervisors. This increased workload

ultimately affects the number and type of employees a supervisor can effectively supervise. Any immediate reduction in the Agency's supervisory staff would hamper its ability to provide the necessary amount of onsite supervision for grading and certification work and to respond to industry requests for supervisory reviews in a timely manner. Likewise, reductions in the supervisory staff may limit the program's ability to implement new cost-saving procedures or expand existing ones. Nevertheless, the Agency will continue to review and evaluate the grader/supervisor ratio and effect reductions in field supervisory positions as circumstances and conditions permit.

One commenter objected to the proposed ruling which would change the method of charging for overtime hours to include all hours over 8 hours between 6 a.m. and 6 p.m., Monday through Friday, as opposed to the current method of charging base hours for all hours of service performed between 6 a.m. and 6 p.m., Monday through Friday. This commenter suggested that the Agency negotiate with its labor union so that overtime pay would not be paid until after a 40-hour regular workweek has been completed. The Agency's hourly pay rates and the overtime pay entitlements are governed by Title 5 of the U.S. Code and the Fair Labor Standards Act. These laws require the Agency to pay eligible employees overtime pay for all hours worked over 8 hours per day, as well as over 40 hours per week. Consequently, there are occasions when the Agency must pay meat graders at an overtime salary rate while users of the service are being charged only the base hourly rate. For example, a plant utilizing a meat grader for 10 hours per day, Monday through Friday; between the hours of 6 a.m. and 6 p.m., currently is charged for 10 hours at the base hourly rate each day. The meat grader providing such services is paid for 8 hours at a base salary rate and for 2 hours at an overtime salary rate. As a result, the Agency is unable to recover its costs through the present method of charging for these premium hours. However, as a means of reducing these overtime costs, the Agency has been exploring alternative tours of duty. These alternative tours of duty have been a topic of previous collective bargaining sessions with the union, and such alternative tours may be reconsidered, pending the resolution of an issue regarding workweek.

In view of the foregoing, it has been decided that the base hourly rate for voluntary Federal meat grading and certification services for 8 hours or less of work performed between 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays, will be increased from $25.60 to $26.40 per hour. The premium hourly rate for work performed in excess of 8 hours per day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday, except on Federal legal holidays, the hourly fee will be increased from $30.60 to $34.40. The holiday hourly rate for Federal legal holidays will be increased from $51.20 to $52.80.

Pursuant to the authority in 5 U.S.C. 553, it has been determined that other public procedure and notice with respect to these amendments are impractical and unnecessary and good cause is found for making these amendments effective as a final rule less than 30 days after publication of this document in the **Federal Register**. The premium hourly rate will be charged for those hours worked in excess of 8 hours per day beginning July 1, 1985.

Accordingly, the section of the regulations appearing in 7 CFR Part 54 relating to hourly fees for Federal grading and certification of meat, prepared meats, and meat products is amended as set forth below:

List of Subjects in 7 CFR Part 54

Meat and meat products, Grading and certification, Beef, Veal, Lamb, and Pork.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622, 1624).

2. 7 CFR 54.27(a) is revised to read as follows:

§ 54.27 Fees and other charges for service.

* * * * *

(a) *Fees Based on Hourly Rates.* Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including the official grader's travel and certificate(s) preparation time in connection with the performance of service. A minimum charge of one-half hour shall be made for service pursuant to each request, notwithstanding that the time required to perform service may be less than 30 minutes. The base hourly rate shall be $26.40 per hour for 8 hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays; $34.40 per hour for work performed in excess of 8 hours per day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday, except on Federal legal holidays; and $52.80 per hour for all work performed on Federal legal holidays.

* * * * *

Done at Washington, D.C.: June 28, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-16068 Filed 7-3-85; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 84-024-F]

Alpha-Tocopherol as an N-nitrosamine Inhibitor in Pump-Cured Bacon; Lecithin as an Emulsifier in Meat Food Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been petitioned by Hoffman-LaRoche Inc. and the Diamond Crystal Salt Company to amend the Federal meat inspection regulations to permit the use of d- and dl-alpha tocopherol as an inhibitor of N-nitrosamine formation in pump-cured bacon products. In conjunction with these petitions FSIS has also been petitioned by Diamond Crystal Salt Co. to amend the Federal meat inspection regulations to allow lecithin as an emulsifying agent to incorporate the d- and dl-alpha-tocopherol into pumping solutions used in bacon processing. Additionally, FSIS has been petitioned by Central Soya Company to allow lecithin as an emulsifier in meat food products. All of these substances are either listed by the Food and Drug Administration (FDA) as "generally recognized as safe" (GRAS) for use in foods or are approved food additives. This final rule amends the Federal meat inspection regulations to permit the use of d- and dl-alpha-tocopherol as an inhibitor of N-nitrosamine formation in pump-cured bacon and the use of lecithin as an emulsifier in meat food products. The petitioners have supplied the Agency with sufficient information to satisfy the requirements of 9 CFR 318.7(a)(2).

ADDRESS: Written comments to: U.S. Department of Agriculture, Food Safety and Inspection Service ATTN: Annie Johnson, FSIS Hearing Clerk, Room 3803, South Agriculture Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Jones, Chief, Standards Branch, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, USDA, Washington, DC 20250, (202) 447-7503.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices to consumers; to individual industries; to Federal, State, or local government agencies; or to geographic regions. This final rule will not have a significant adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises in domestic or export markets.

This final rule provides for the optional use of d- and dl-alpha-tocopherol as a nitrosamine inhibitor in pump-cured bacon and the use of lecithin as an emulsifying agent in processed meat food products. Current regulations do not provide for the use of these substances for the purposes intended. Industry will benefit from this action by gaining the opportunity to use an additional nitrosamine inhibitor and dispersing and emulsifying agents and the public will benefit through the introduction of safe, functional ingredients into the food supply.

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This final rule will impose no new compliance or reporting requirements on industry. The promulgation of this rule will merely authorize the discretionary use of an additional nitrosamine inhibitor in bacon and an additional emulsifier in processed meat food products.

Comments

This is a final rule consistent with the provisions of § 318.7 of the Federal meat inspection regulations (9 CFR 318.7). As such, comments have not been solicited. However, interested persons should inform the Administrator of any facts which raise questions about this action within the 60 day period between the publication and effective date of this rule.

Background

Alpha-Tocopherol: The Department has been petitioned by Hoffman-LaRoche Inc., Nutley, New Jersey and Diamond Crystal Salt Company, St. Clair, Michigan to amend existing regulations to allow the use of d- and dl-alpha tocopherol as a nitrosamine inhibitor in pump-cured bacon products. The petitioners assert that this substance is effective as a blocking agent in preventing the formation of N-nitrosamines in bacon.

Researchers at the USDA Eastern Regional Research Center (ERRC) in Philadelphia, Pennsylvania demonstrated in 1973 that the incorporation of ascorbate and/or erythorbate into the curing mixture used to prepare frankfurters, greatly reduced the amount of nitrosodimethylamine (NDMA) in the end product. The mechanism of this protective effect by ascorbic acid is currently believed to be the ability of ascorbic acid to successfully compete with susceptible amines for the available nitrite ion.

In 1978, the USDA published a final rule for pump-cured bacon (43 FR 20992; May 16, 1978; 9 CFR 318.7(b) (1)&(2)), which requires sodium ascorbate or sodium erythorbate to be used at a level of 550 parts per million (ppm) as an inhibitor of nitrosamine formation.

Much effort has gone into developing means of suppressing N-nitrosamine formation in fried pumped bacon by the use of appropriate blocking agents. In 1976, the American Meat Institute conducted a study which demonstrated that d- and dl-alpha-tocopherol was effective in preventing nitrosamine formation. In 1977, researchers at ERRC also demonstrated that d- and dl-alpha-tocopherol was an effective blocking agent for the formation of nitrosamines.

In 1979 Bharucha et al. (J. Agr. Food Chemistry 27:63, 1979) postulated that the essential, but probably not the only, requirements for a potential blocking agent in bacon are:

1. The ability to trap nitrous oxide radicals
2. Lipophilicity
3. Nonvolatility in steam
4. Heat stability up to 174 degrees C.

Consequently, several compounds have been identified as being effective in inhibiting nitrosamine formation in bacon. These are:

1. Ascorbic/erythorbic acids and their sodium salts
2. Ascorbyl palmitate
3. Ascorbic acid acetals
4. Piperazine
5. Proply gallate
6. TBHQ
7. Alpha-tocopherol

In 1980 Hoffman-LaRoche filed a petition with the FDA proposing affirmation that d- and dl-alpha-tocopherol is generally recognized as safe for use in blocking N-nitrosamine formation in bacon. FDA published a Notice of Filing (45 FR 74061; November 7, 1980) inviting interested parties to review and comment on the petition.

The FDA published a final rule affirming d- and dl-alpha-tocopherol as generally recognized as safe (GRAS) for use as inhibitors of nitrosamine formation in pump-cured bacon (49 FR 13346; April 4, 1984). Subsequently, Hoffman-LaRoche, Inc. renewed its request to USDA and Diamond Crystal Salt Company petitioned the USDA to allow the use of d- and dl-alpha-tocopherol in pump-cured bacon. The substance of the individual petitions is as follows:

Hoffman-LaRoche

(a) The d- and dl-alpha-tocopherol would be applied to the surface of the bacon by spraying, brushing or dipping the bacon with or in a solution of d- and dl-alpha-tocopherol in vegetable oil.

(b) The use of d- and dl-alpha-tocopherol would be *mandatory* at a level of 500 ppm.

Diamond Crystal Salt

(a) The d- and dl-alpha-tocopherol would be incorporated into the pump solution by using silicon dioxide and lecithin as dispersing and emulsifying agents.

(b) The use of d- and dl-alhpa-tocopherol would be allowed as an *optional* ingredient at a level of 500 ppm in addition to the use of ascorbate/erythorbate in pump-cured bacon.

Discussion

The Department has required sodium ascorbate or sodium erythorbate to be included in pump-cured bacon at a level of 550 ppm and sodium nitrite at 120 ppm since June 15, 1978. These substances, in combination with reduced nitrite levels, have proven to be effective in reducing nitrosamine formation. The Department has received no information which would indicate that it is necessary to require the mandatory addition of other nitrosamine inhibitors. The evidence, however, does indicate that d- and dl-alpha-tocopherols do aid in the inhibition of nitrosamine formation, particularly in the lipid phase of the bacon. Therefore,

the Administrator finds good reason to permit the addition of d- and dl-alpha-tocopherol as an optional ingredient in addition to the required ascorbate/erythorbate. The bacon processors would therefore have the option of adding an additional nitrosamine inhibitor if they desire.

The Administrator is aware that research has been carried out by the American Meat Institute (AMI) and Hoffman-LaRoche on the efficacy of the surface application of alpha-tocopherols as nitrosamine inhibitors. However, the only data available to the Department is from the 1979 Proceedings of the Meat Industry Research Conference (William J. Mergens and Harold L. Newmark, page 79). This material refers to the spraying of individual slices of bacon with d- and dl-alpha-tocopherol. It is difficult to extrapolate the data from single slices to whole slabs of bacon. The Administrator has determined that additional information is needed to support the efficacy of the surface application of d- and dl-alpha-tocopherol as an inhibitor of nitrosamine formation. Therefore, surface application will be the subject of further rulemaking.

The data submitted to support the claims of efficacy for d-and dl-alpha-tocopherol is available for review at the Standards and Labeling Division at the address given above.

Lecithin: The Department has been petitioned by Diamond Crystal Salt Company and Central Soya, Fort Wayne, Indiana to amend existing regulations to allow the use of lecithin as an emulsifier in various processed meat food products. Lecithin is currently allowed in some meat food products and the petitioners have supplied data supporting their claims that lecithin is effective as an emulsifier in various other meat food products. Under 9 CFR 318.7(c)(4), the chart allows lecithin to be used as an emulsifier in oleomargarine and shortening. The Administrator has determined that the use of lecithin in those products, where it is shown to be efficacious, will not affect the wholesomeness of the product or render it adulterated.

In the **Federal Register** of July 19, 1983 (48 FR 32749), the Administrator published a final rule announcing new procedures for the approval of substances to be used in the preparation of processed meat food and poultry products. Under that rule and upon a showing that a substance has been listed as GRAS by the Food and Drug Administration, or as a food additive or color additive appropriate for the proposed use in processed meat and poultry products, that use of the substance will be permitted upon a further determination by the Administrator that the proposed use is compatible with FDA requirements and is both suitable and functional for that particular product and is used at the lowest level necessary to accomplish the technical effect.

The substances for which approval has been requested are listed as GRAS by the FDA or are food additives for which the FDA has determined that the requested use is appropriate for the intended product. Both d- and dl-alpha-tocopherol were affirmed as GRAS (49 FR 13346; April 4, 1984) and are listed in 21 CFR 184.1890. Lecithin is affirmed as GRAS and is listed in 21 CFR 184.1400.

Based upon available data, the Administrator finds that the use of these substances as described in meat food products will not result in a product which is unwholesome, adulterated or misbranded, provided that these substances are added only in the amounts permitted or in the case of lecithin in the amounts sufficient to accomplish the stated technical effect and are indicated on the label, in accordance with 9 CFR 317.2(f)(1).

Therefore, the Administrator is amending the Federal meat inspection regulations to include these substances in the chart of approved substances in Part 318.7(c)(4) (9 CFR 318.7(c)(4)). In addition, reference to footnote number 2 (pre-existing in Part 318.7(c)(4) currently at the end of the chart) will be included in the chart informing interested persons where to write for information as to the specific products for which use of these substances is approved.

List of Subjects in 9 CFR Part 318

Food additives, Food labeling, Meat, Meat products, Preparation of products.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 (9 CFR 318) continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 21 U.S.C. 601 *et seq.*; unless otherwise stated.

2. In § 318.7(c)(4) (9 CFR 318.7(c)(4), the entry for the substance *lecithin* under the class of substances "emulsifying agents," under the "products column," shall be changed to read "oleomargarine, shortening, various meat food products," and the entry under the "amount" column shall be changed to read "0.5 percent in oleomargarine; use in other products—sufficient amount for emulsification.[2]"

3. In § 318.7(c)(4) (9 CFR 318.7(c)(4), the following entries shall be added to the "Miscellaneous" class of substances:

Substance	Purpose	Products	Amount
•	•	•	•
d- and dl-alpha-tocopherol.	To inhibit nitrosamine formation.	Pump-cured Bacon.	500 ppm.
•	•	•	•

Done at Washington, D.C. on: June 6, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-16006 Filed 7-3-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-90-AD; Amdt. 39-5087]

Airworthiness Directives; Canadair Model CL-600-1A11 (CL-600) and CL-600-2A12 (CL-601) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires removing paint from the lower wing center section if the surface is not properly finished. This surface must be finished using aluminum loaded paint or left unpainted. This action is necessary to provide adequate lightning protection for the lower wing center section surface.

EFFECTIVE DATE: August 12, 1985.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to Canadair Limited, 1800 Laurentien Blvd., Saint-Laurent, Quebec H4R 1K2, Canada, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require the removal of improper paint from the lower wing surface of certain Model CL-

600 and CL-601 airplanes and repainting, if desired, with paint as specified in Canadair Alert Service Bulletins A600-0416 (CL-600 airplanes) or A601-0069 (CL-601 airplanes), was published in the Federal Register on March 12, 1985 (50 FR 9808).

Interested parties have been afforded an opportunity to participate in the making of this amendment. The manufacturer, who submitted the only comment received, stated that the painting instructions in the proposed rule implied that the wing gravity filler caps should be painted with aluminum loaded paint even though the service bulletins specified polyurethane or epoxy enamels. The commenter also noted that the effectivity of CL-601 airplanes includes those with serial numbers 3001 through 3030. The FAA acknowledges these comments and has made editorial changes to reflect them in the final rule.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the editorial changes previously noted.

It is estimated that 50 airplanes will be affected by this AD, that it will take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Materials are estimated at $600 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $110,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model CL-600 or CL-601 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Canadair: Applies to all Canadair Model CL-600-1A11 (CL-600) and CL-600-2A12 (CL-601) airplanes as specified in Canadair alert service bulletins A600-0416 dated July 30, 1984, or A601-0069 dated July 30, 1984, certificated in any category. Compliance is required as indicated unless already accomplished. To provide adequate lightning protection for the wing center section lower skin and the wing gravity filler caps, accomplish the following:

A. Within 30 days after the effective date for this AD, unless the center wing fuel tank lower skin surface and the gravity filler fuel caps are unpainted or have been painted in accordance with Canadair Alert Service Bulletin A600-0416 dated July 30, 1984 (for CL-600 airplanes), or A601-0069 dated July 30, 1984 (for CL-601 airplanes), install a placard, which may be locally manufactured, on the left hand main instrument panel using letters of ⅛-inch minimum height, which reads as follows: "NOT APPROVED FOR FLIGHT INTO AREAS WHERE LIGHTNING CONDITIONS ARE KNOWN TO EXIST."

B. Within the next six calendar months after the effective date of this AD, ensure that the center wing fuel tank lower skin surface and the wing gravity filler fuel caps are either unpainted or painted in accordance with the above service bulletins, as applicable.

C. Upon completion of paragraph B., remove placard installed in accordance with paragraph A.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective August 12, 1985.

Issued in Seattle, Washington, on June 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-15981 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-04-AD; Amdt. 39-5088]

Airworthiness Directives; Short Brothers Ltd. Model SD3-30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Short Brothers Ltd. Model SD3-30 series airplanes which requires the installation of a new torsion spring on the flight crew seat harness inertia reel assemblies. Cases of spring failures have occurred which caused failure of the rewind function. This function is necessary to ensure that the crew member is properly restrained by the harness.

EFFECTIVE DATE: August 12, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which would require the installation of a new torsion spring on the flight crew seat harness inertia reel assemblies on certain Short Brothers Ltd. Model SD3-30 airplanes was published in the Federal Register on April 8, 1985 (50 FR 13814).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 55 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts are estimated at $80 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $6600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model SD3-30 airplanes are operated by

small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Short Brothers Ltd: Applies to Model SD3-30 airplanes as listed in Short Brothers Service Bulletin SD3-25-37, dated June 1984, certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished. To assure proper operation of the crew seat harness, accomplish the following:

A. Install the improved crew seat harness torsion spring assembly in accordance with Short Brothers Ltd. Service Bulletin SD3-25-37, dated June 1984.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective August 12, 1985.

Issued in Seattle, Washington, on June 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-15962 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 19

[Docket No. 50699-5069]

Metric Conversion Policy for Federal Agencies

AGENCY: Office of the Secretary, Assistant Secretary for Productivity, Technology and Innovation, Commerce.

ACTION: Final rule.

SUMMARY: The Assistant Secretary for Productivity, Technology and Innovation of the Department of Commerce has decided to include in the *Code of Federal Regulations* current Federal agency policy for the facilitation of voluntary transition to use of the metric system of measurement by agencies, industry and the public. Inclusion of this material in the Code will make it easier for agencies and the public to find information and references about Federal agency policy and resources concerning use of the metric system. This rule revises 15 CFR Part 19 headings and authority and adds a new Subpart B for this metric policy statement.

While this policy statement is issued in final form, without a formal comment period, public comments are welcome on a continuing basis.

The policy set out below was stated in a prior notice: "Metric Conversion Policy for Federal Agencies," 46 FR 24455, April 30, 1981. The statement of policy has been taken directly from the prior notice. It has been revised solely to bring the references and text up to date and to eliminate redundancy. No change of policy is intended, and no new program initiatives are announced.

EFFECTIVE DATE: July 5, 1985.

FOR FURTHER INFORMATION CONTACT: G.T. Underwood, Director, Office of Metric Programs, Room 4082, U.S. Department of Commerce, Washington, D.C., 20230; Phone (212) 377-0944.

SUPPLEMENTARY INFORMATION:

Background

When the Act of July 28, 1866 (14 Stat. 339; 15 U.S.C. 204-5) was adopted, the use of the metric system was legally recognized for the United States. On May 28, 1878, the United States ratified the Treaty of the Meter (20 Stat. 709), which provided for an International Bureau for Weights and Measures, an International Committee for Weights and Measures, and a General Conference on Weights and Measures. The International System (SI) has become internationally accepted for weights and measures, and has come into increasing use in the United States. On December 23, 1975, the President signed the Metric Conversion Act of 1975 (Pub. L. 94-168; 15 U.S.C. 205a), which declared that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the United States.

The Act also established an independent body called the United States Metric Board and authorized the use of such committees and advisory panels as needed to implement the Act. The principal committee for policy coordination for the Federal Government is the Interagency Committee on Metric Policy (ICMP). Each agency also designates a "metric coordinator" to serve as a member of the Metrication Operating Committee (MOC), which reports to the ICMP.

On October 1, 1982, the responsibility for implementing the policies of the Metric Conversion Act was assigned to the Secretary of Commerce because the Metric Board had ceased to function for lack of funding. The Secretary's responsibility is delegated to the Assistant Secretary for Productivity, Technology and Innovation.

On January 8, 1980, the Interagency Committee on Metric Policy (ICMP) announced a "Metric Conversion Policy for Federal Agencies" (45 FR 1840) which provided guidance for coordination and compatibility of Federal actions with those of the private sector. Following receipt of comments, the policy as revised was published on April 30, 1981 (46 FR 24455).

Rulemaking Requirements

Under 5 U.S.C. 553(b)(A), this general statement of policy is not subject to the notice and opportunity for comment requirements of the Administrative Procedure Act. Furthermore, pursuant to 5 U.S.C. 553(d)(2), this general statement of policy is not subject to the delayed effective date requirement of the act and will be effective immediately upon publication in the **Federal Register**.

Under Executive Order 12291 the Department must judge whether a regulation is major within the meaning of section 1 of the Order and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. This policy statement is not a major rule because it is not likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore a Regulatory Impact Analysis will not be prepared.

This action is exempt from the analysis requirements of the Regulatory Flexibility Act because notice and opportunity for comment are not required for this action by section 553 of the Administrative Procedure Act or any other law. Therefore, no initial or final

regulatory flexibility analysis will be prepared.

This policy statement does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 19

Science and technology, Metric system.

1. For the reasons set out in the preamble, the table of contents of Part 19 is amended by revising the heading for Part 19; by designating §§ 19.1 through 19.7 as Subpart A and adding a heading for Subpart A; by adding a new Subpart B; and by revising the authority citation. As amended, the table of contents for Part 19 reads as follows:

PART 19—PRODUCTIVITY, TECHNOLOGY AND INNOVATION

Subpart A—Promotion of Private Sector Industrial Technology Partnerships

Sec.
19.1 Purpose.
19.2 Definitions.
19.3 Assistance to industrial technology partnerships.
19.4 Antitrust considerations.
19.5 Coordination/cooperation with other Federal agencies.
19.6 Proprietary data.
19.7 Amendment of procedures.
19.8–19.19 [Reserved]

Subpart B—Metric Conversion Policy for Federal Agencies

19.20 Purpose.
19.21 Definition.
19.22 General policy.
19.23 Guidelines.
19.24 Recommendations for agency organizations.
19.25–19.199 [Reserved]

Authority: 15 U.S.C. 1512 and 3710, 15 U.S.C. 205a, and DOO 10–1.

2. Part 19 is amended by designating §§ 19.1 through 19.7 as Subpart A, adding a heading for Subpart A, and by adding a new Subpart B to read as follows:

Subpart A—Promotion of Private Sector Industrial Technology Partnerships

* * * * *

Subpart B—Metric Conversion Policy for Federal Agenices

§ 19.20 Purpose.

This provides policy and guidelines for coordination for Federal agencies to deal with increasing use of the metric system within the Federal Government, consistent with voluntary conversion in State and local governments and in the private sector.

§ 19.21 Definition.

The term "metric system", as used in this Part 19, means the International System of Units established by the General Conference on Weights and Measures in 1960, as interpreted or modified from time to time for the United States by the Secretary of Commerce under authority of the Metric Conversion Act of 1975 and the Metric Education Act of 1978. (The last revision as of the date of this publication may be found in National Bureau of Standards publication NBS LC 1132, April 19, 1982, which may be obtained from the Technical Information and Publications Division, National Bureau of Standards, Gaithersburg, Maryland 20899.)

§ 19.22 General policy.

(a) Federal agencies shall coordinate and plan for the increasing use of the Metric System in the United States consistent with the objectives of the Metric Conversion Act and metric conversion trends in the Nation. Federal agencies shall encourage and support an environment which can accommodate metrication, and when taking initiatives, will act with consideration for metrication in State and local governments and in the private sector.

(b) Each federal agency shall be responsible for developing plans, establishing the necessary structure, and allocating sufficient resources to carry out this policy following the guidelines set out below.

§ 19.23 Guidelines.

(a) Coordinate and plan for metric conversion, taking into account the interests, views and conversion plans of other Federal agencies, State and local governments, and the private sector;

(b) Identify areas where metrication is dependent upon the agency's initiative, and take action that reflects the needs of the United States and that does not unduly restrict competition;

(c) Identify areas where metrication is dependent upon initiatives outside the agency that affect the agency, and take appropriate internal action;

(d) Assist in resolving metric-related problems brought to the attention of the agency that are associated with agency actions, programs and responsibilities.

(e) Identify measurement-sensitive agency policies and procedures and ensure that regulations, standards, specifications, procurement policies and appropriate legislative proposals do not impose barriers to voluntary use of the metric system;

(f) Consider the cost effects of metric use in agency policies, programs and actions;

(g) Provide for full public involvement and timely information about significant metrication policies, programs and actions;

(h) Consider, in procurement, acceptance without prejudice of metric goods and services when they are offered at competitive cost and meet the needs of the Government; and

(i) Consider particularly the effects of agency metric policies and practices on small business.

§ 19.24 Recommendations for agency organization.

Each agency should:

(a) Participate as appropriate in the Interagency Committee on Metric Policy (ICMP), which coordinates and provides policy guidance regarding the U.S. Government's efforts in accommodating voluntary metric conversion.

(b) Designate a senior official to be responsible for intra-agency metric policy and to represent the agency on the ICMP.

(c) Designate such official as may be appropriate to represent the agency in the Metrication Operating Committee (MOC), a committee subordinate to the ICMP.

(d) Maintain liaison with private sector groups involved in planning for or coordinating voluntary use of the metric system.

(e) Provide for adequate employee awareness and understanding of agency metric policies and programs.

§§ 19.25–19.199 [Reserved]

Dated: June 20, 1985.

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 85–15939 Filed 7–3–85; 8:45 am]

BILLING CODE 3510–18–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C–3156]

Craftmatic/Contour Organization, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires two Bensalem, Pa. sellers of electric adjustable beds and their individual owner, among other things, to cease denying responsibility of their

written warranties; failing to fully and promptly honor valid warranty claims; and failing to disclose relevant information concerning any other guarantor. The firms are required to clearly and prominently disclose in advertisements and promotional materials offering any product warranty, either the nature and extent of all material limitations and exclusions of the warranty (including any requirement that consumers seeking to obtain warranty performance are obliged to arrange for shipping and/or pay shipping charges) or a statement advising that the warranty contains major limitations and exclusions and should be consulted by the prospective buyer prior to purchase. The order also bars the companies from disseminating to their door-to-door sellers written promotional materials that do not contain copies of all written warranties offered and disclose to prospective buyers that the sales representative has copies of such warranties available for the consumer's inspection. The companies are further required to comply fully with the Pre-Sale Availability Rule; maintain specified records concerning warranty performance for a period of four years; and provide their current distributors and retailers with a copy of the order and the attached notice.

DATE: Complaint and Order issued June 13, 1985.[1]

FOR FURTHER INFORMATION CONTACT: FTC/H-238, Rachel Miller, Washington, D.C. 20580. (202) 523-1670.

SUPPLEMENTARY INFORMATION: On Tuesday, January 15, 1985, there was published in the **Federal Register**, 50 FR 2065, a proposed consent agreement with analysis in the Matter of Craftmatic/Contour Organization, Inc., Craftmatic Comfort Mfg. Corp., corporations, and Stanley Kraftsow, individually and as an officer and director of said corporations, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.10-1 Availability of merchandise and/or services; § 13.160 Promotional sales plans; § 13.205 Scientific or other relevant facts; § 13.287 Warranties; § 13.287-5 Limitations or exclusions. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-37 Formal regulatory and/or statutory requirements; § 13.533-45 Maintain records; § 13.533-75 Warranties. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1647 Guarantees; § 13.1740 Scientific or other relevant facts; § 13.1777 Warranties.—Services: § 13.1835 Cost; § 13.1843 Terms and conditions. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1852 Formal regulatory and/or statutory requirements.

List of Subjects in 16 CFR Part 13

Electric adjustable beds, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190; 15 U.S.C. 2310)

Emily H. Rock,

Secretary.

[FR Doc. 85-16010 Filed 7-3-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85-06]

Regatta; Barnegat Bay Air Brook Classic, Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the annual Barnegat Bay Air Brook Classic. This powerboat race is being sponsored by the Barnegat Bay Power Boat Racing Association of Bricktown, NJ. This regulation is needed to provide for the safety of participants and spectators on navigable waters during the event.

EFFECTIVE DATE: This regulation becomes effective on August 17, 1985.

FOR FURTHER INFORMATION CONTACT: LT D.R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: On April 25, 1985, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (50 FR 16313). Interested persons were requested to submit comments, and one comment was received.

Drafting Information

The drafters of this notice are LT D.R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The annual Barnegat Bay Air Brook Classic is a powerboat race sponsored by the Barnegat Bay Power Boat Racing Association of Bricktown, NJ. This event is traditionally held each year on the fourth Saturday in August. Because of the annual nature of this event, the Coast Guard has decided to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations.

Thereafter the Coast Guard will provide the public with full and adequate notice of this annual powerboat race by publication in the Third District Local Notice to Mariners. This event is well known to the residents of the communities surrounding Tom's River and Barnegat Bay. There will be one (1) 80 mile race sanctioned by the National Power Boat Association. Between 45-60 powerboats will compete during the day reaching speeds of 65-80 mph. The oval track has been laid out so that there should be little or no interference with vessel traffic in the Intercoastal Waterway (I.C.W.). Access to and from any section of Tom's River and Barnegat Bay will not be restricted. The sponsor is providing in excess of 40 patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the race course area and will establish spectator anchorages for what is expected to be a large spectator fleet. Mariners are urged to use extreme caution when transiting the area due to the large number of spectators, and should adhere closely to the charted I.C.W. The Coast Guard will issue a safety voice broadcast to advise the general public of this event.

Discussion of Comments

One comment was received from the sponsor of another event which is scheduled for the same date as this powerboat race. This person thought that the sponsor of the Air Brook Classic

was being given a permanent permit to hold this event. The promulgation of this regulation as a permanent part of the Code of Federal Regulations does not relieve the event sponsor of the requirement to apply for a permit to hold this event each year. The Coast Guard will issue or deny the permit based on the sponsor's annual application and ability to run a safe event. The boating public will be informed of any changes in dates or cancellation of the event by publication in the **Federal Register** and by an announcement in the Third District Local Notice to Mariners. The comment also pointed out a potential conflict between the two events. The locations of both events are separated by a distance of approximately one half mile. The Coast Guard will issue a safety voice broadcast to advise mariners of both events so that neither event will be affected by transiting vessels passing through the area to view either of the events. The sponsor of the Air Brook Classic has agreed to assemble his vessels a little further to the south so as to ensure a good separation of these two events. At the request of the sponsor, August 18, 1985 has been approved as a rain date, should the event be postponed due to inclement weather on August 17, 1985.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding § 100.302 to read as follows:

§ 100.302 Barnegat Bay Air Brook Classic, Toms River, NJ.

(a) *Regulated Area.* Barnegat Bay, New Jersey in the area bounded by 39 degrees 55 minutes north latitude on the north, 39 degrees 50 minutes north latitude on the south, the Intercoastal Waterway (I.C.W.) on the west and Island Beach on the east.

(b) *Effective Period.* This regulation will be effective from 10:00 a.m. to 3:00 p.m. on August 17, 1985, and thereafter annually on the fourth Saturday in August unless otherwise specified in the Third District Local Notice to Mariners and in a **Federal Register** notice. In case of postponement due to weather, the approved rain date is the following day and this regulation is effective for the same time period.

(c) *Special Local Regulations.* (1) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No spectator or press boats shall be allowed out onto or across the race course without Coast Guard escort.

(3) The sponsor shall anchor race committee boats on each turn. Checkpoints shall be positioned so that race participants will pass no closer than 200 feet from the I.C.W. A line of committee boats shall be positioned to separate the race course from the I.C.W.

(4) Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with mariners transiting the I.C.W. The spectator fleet shall be held behind buoys or committee boats provided by the sponsor in the following areas:

(i) Between the race course and the I.C.W. in the area to the west of the race course.

(ii) Between the race course and Island Beach State Park in the area north of Tices Shoal.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(6) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: June 19, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-16022 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD09-83-02]

Special Anchorage Areas; Chicago Harbor, IL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the boundaries of the "Grant Park" special anchorage areas in Chicago Harbor, Illinois. The City of Chicago project to straighten the Lake Shore Drive S-curve required the demolition of the structure which was the reference point for the legal description of the special anchorage areas. The project also required landfill which has covered part of the special anchorage area. This action will describe the location and size of the special anchorage areas as they actually are used at the present time.

EFFECTIVE DATE: August 5, 1985.

FOR FURTHER INFORMATION CONTACT: Ensign George H. Burns, Marine Port and Environmental Safety Branch, Ninth Coast Guard District, 1240 E. 9th St., Cleveland, OH 44199, or phone (216) 522-7084.

SUPPLEMENTARY INFORMATION: On 1 April 1985 the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (50 FR 12835). Interested persons were requested to submit comments and 3 comments were received.

Drafting Information

The drafters of this regulation are Ensign George H. Burns III, project officer, Marine Port And Environmental Safety Branch and Lieutenant R.A. Pelletier, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

There were three comments received concerning this regulation. All were from federal agencies. Two commenters expressed the concern that the

boundary descriptions in the proposed rule were too complex for practical use. It is agreed that the average boater would have difficulty interpreting the technical description in the proposed rule and plotting it on a chart of the area. However, it will not be necessary to do so. The new area will eventually be shown on new charts. In effect the whole area within the inner breakwalls will be Special Anchorage Area with several designated channels to provide access. Furthermore, boaters wishing to utilize these areas must first be assigned mooring space by the Chicago Park District, which is thoroughly familiar with the bounds of the anchorage.

One commenter stated that the new alignment for the areas should offer increased boater safety and a better flow of vessel traffic within the Grant Park Marina.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The economic impact is minimal because this regulation merely describes the areas as they are presently being used.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulation

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Part 110 is amended by revising § 110.63 to read as follows:

§ 110.63 Chicago Harbor, IL.

(a) *Grant Park North-A.* Beginning at a point 2,120 feet South of the intersection of the North line of the Chicago Yacht Club bulkhead, as constructed in 1927, and the harbor line approved by the Department of the Army on August 3, 1940, along the West side of the harbor, said harbor line runs parallel to the overall alignment of said Grant Park bulkhead between its North and South ends, said intersection is approximately 800 feet South of the South face of the former Naval Armory Dock, and 100 feet East of said bulkhead, that point being approximately on the harbor line; thence North along a straight line parallel to said harbor line and bulkhead, 1,705 feet to a point that is 100 feet East of said harbor line and 150 feet East of the Grant Park bulkhead; thence East at a right angle, 150 feet; thence North at a right angle, parallel to the first described line, passing 100 feet East of the Chicago Yacht Club bulkhead, 440 feet; thence Northeasterly 850 feet to a point 1,070 feet East of the aforesaid Grant Park bulkhead; thence Southeasterly 740 feet to a point 1,600 feet East of said harbor line; thence Southerly 1,960 feet to a point approximately 1,555 feet East of said harbor line and about 1,560 feet East of said Grant Park bulkhead; thence Southwesterly 295 feet to a point 1,180 feet due East, in a direction perpendicular to the West line hereof, from the point of beginning; and thence West to the point of beginning.

(b) *Grant Park North-B.* Beginning at a point 145 feet North of the North line of the Chicago Yacht Club bulkhead, as constructed in 1927, and 320 feet East of the harbor line approved by the Department of the Army on August 3, 1940, along the West side of the harbor, said Chicago Yacht Club bulkhead extends due East, perpendicular to the Grant Park bulkhead's overall alignment between its North and South ends, said bulkhead runs parallel to the aforesaid harbor line and is approximately 800 feet South of the South face of the former Naval Armory Dock, said point is 20 feet East of the East face of the Chicago Park District jetty; thence North parallel to said jetty, 230 feet to a point 20 feet South of the South face of the Lake Shore Drive bulkhead, said bulkhead runs Easterly and Westerly in a curved direction; thence Easterly along a line parallel to said curved bulkhead to a point 20 feet Southwest and perpendicular to a line extended along the Southwest side of the Columbia Yacht Club pier to said curved bulkhead; thence Southeasterly parallel to said extended line, 160 feet; thence Southwesterly to the point of beginning.

(c) *Grant Park North-C.* Beginning at a point 970 feet North of the North line of the Chicago Yacht Club bulkhead, as constructed in 1927, which extends due East and perpendicular from the harbor line approved by the Department of the Army on August 3, 1940, said Chicago Yacht Club bulkhead line is approximately 800 feet South of the South face of the former Naval Armory Dock, and 1,170 feet East of said harbor line, said point of beginning is 20 feet East of the East face of the Columbia Yacht Club pier and 20 feet South of the South face of a breakwater, which runs in a East and West direction; thence East along a line parallel to the South face of said East-West breakwater, 540 feet to a point 20 feet West of the West face of a breakwater, which runs in a North and South direction; thence South along a line parallel to the West face of said North-South breakwater, approximately 965 feet; thence Northwesterly to a point 20 feet Southeast and perpendicular to the Southeast side of the aforesaid Columbia Yacht Club pier; thence Northerly along a line parallel to the East face of said pier to the point of beginning.

(d) *Grant Park South.* Beginning at a point 2,220 feet South of the intersection of the North line of the Chicago Yacht Club bulkhead, as constructed in 1927, and the harbor line approved by the Department of the Army on August 3, 1940, along the West side of the harbor, said harbor line runs parallel to the overall alignment of the Grant Park bulkhead between its North and South ends, said intersection is approximately 800 feet South of the South face of the former Naval Armory Dock, and 100 feet East of said Grant Park bulkhead, that point being approximately on the harbor line; thence East, perpendicular to the overall alignment of the Grant Park bulkhead, and perpendicular to said harbor line, 1,180 feet; thence Southeasterly 330 feet to a point 1,510 feet East of said Grant Park bulkhead and 225 feet South of an extension of the first described line; thence South perpendicular to the first described line, 220 feet; thence Southwesterly 2,375 feet along a line generally 100 feet Northwesterly from and parallel to the Northwesterly face of the narrow section of the U.S. Inner Breakwater; thence Northwesterly 100 feet to a point 150 feet East of said Grant Park bulkhead (or 100 feet East of the aforesaid harbor line), and 4,570 feet South of the North line of the aforesaid Chicago Yacht Club bulkhead; and thence North 2,350 feet of the point of beginning.

Note.—The Chicago Park District controls the location and type of any moorings placed in the special anchorage areas in this section.

Dated: June 24, 1985.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 85–16018 Filed 7–3–85; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD3 85-04]

Drawbridge Operation Regulations; Raccoon Creek, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of New Jersey Department of Transportation, the Coast Guard is changing the regulations governing the Route 130 Bridge across Raccoon Creek at Bridgeport, New Jersey by permitting restricted operation of the draw between 7 a.m. and 11 p.m. from November 30 to March 1. This change is being made because of the bridge's close proximity to the railroad bridge .2 miles further upstream and because the bridge logs show relatively few openings from 7 a.m. to 11 p.m. during the months of December, January and February in 1982 through 1984. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on August 19, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION: On March 14, 1985, the Coast Guard published proposed rules (50 FR 10251) concerning this amendment. The Commander, Third Coast Guard District, also published the proposal as a Public Notice dated March 25, 1985. In each notice interested persons were given until April 29, 1985 to submit comments.

The Route 130 regulations are being changed to conform with those of the CONRAIL bridge because of the two bridges' close proximity. The CONRAIL drawbridge regulations were recently revised in the **Federal Register** of January 22, 1985 (50 FR 2785). Coast Guard analysis of the Route 130 bridge logs show that between 7 a.m. and 11 p.m. between November 30 and March 1, there were 0 openings in 1982, 4 in 1983, and 2 in 1984. These openings were for commercial vessels which came in and left a couple of hours later. Openings for these vessels will be provided if at least four hours advance notice is given. The existing requirements for four hours notice from 11 p.m. to 7 a.m. year-round remain in effect.

Since the regulations for the two drawbridges are being made identical, the whole section is being revised to simplify and consolidate the regulations. No substantive change is being proposed for the CONRAIL railroad bridge.

Drafting Information

The drafters of this notice are Lucas A. Dlhopolsky, project manager, and Mary Ann Ariaman, project attorney.

Discussion of Comments

One comment was received from another Federal agency indicating no objection to the proposed regulations. Accordingly these regulations are adopted as proposed.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The limited commercial activity during the winter months will be accommodated by the four hours advance notice. The bridge logs indicated no recreational vessels requested an opening during the winter months. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.741 is revised to read as follows:

§ 117.741 Raccoon Creek.

The draws of the Route 130 highway bridge, mile 1.8 and the CONRAIL railroad bridge, mile 2.0, both at Bridgeport shall open on signal March 1 through November 30 from 7 a.m. to 11 p.m. At all other times, the draws shall open on signal if at least four hours notice is given. The draws shall open at all times as soon as possible for passage of a public vessel of the United States.

Dated: June 25, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-16020 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD8-85-05]

Drawbridge Operation Regulations; Back Bay of Biloxi, MS

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Mississippi State Highway Department (MSHD), the Coast Guard is changing the regulation governing the operation of the bascule span bridge over the Back Bay of Biloxi, mile 0.4, on US 90 between Biloxi and Ocean Springs, Harrison and Jackson Counties, Mississippi, to provide that the draw need not open for passage of vessels from 6:30 to 7:05 a.m.; 7:20 to 8:05 a.m.; 4:00 to 4:45 p.m.; and 4:55 to 5:30 p.m., Monday through Friday except holidays. The draw would continue to open on signal outside these rush hour periods. The bridge presently is required to open on signal at all times. This change is being made because frequent openings of the drawspan during these rush hours result in backup of overland traffic along US 90, a major roadway in the area. This action will accommodate the needs of vehicular traffic during peak morning and afternoon traffic periods and will still provide for the reasonable needs of navigation. Additionally, this document corrects the wording of the regulation governing the drawbridge of S15, Back Bay of Biloxi, mile 3.0, to show that the bridge actually is located on Interstate Highway 110.

EFFECTIVE DATE: This regulation becomes effective on August 5, 1985.

SUPPLEMENTARY INFORMATION: On April 11, 1985, the Coast Guard published a proposed rule (50 FR 14258) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a public notice dated April 23, 1985. In each notice interested persons were given until May 28, 1985 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Comments

In response to the public notice, 23 letters were received. Two letters

offered no objections. Twenty-one letters favored the proposed operating schedule. Of the 21 letters, two also commented on other aspects of the proposed regulation. One asked if the closure hours could be extended. There is a significant drop in traffic count after the proposed closure times which does not justify an extension of the closure period. The second letter requested consideration of closure regulations for waterway traffic at the Poppa Ferry and I–110 bridges, located at mile 8.0 and 3.0. Data provided by MSHD show that the Poppa Ferry bridge, which opens on signal at all times, averages only eight openings per day, while the I–110 bridge, with its 60-foot vertical clearance in the closed position, averages one opening every five or six days. The number of openings at these two bridges is not considered significant to warrant closure periods.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this change is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels will be affected by the proposed bridge closure periods, as evidenced by the bridge opening statistics which show that the bridge averages only 1.6 openings during each rush hour period. Moreover, a 10 to 15-minute break during each rush hour period would allow for an opening of the draw to pass all waiting vessels, and will ensure that the average delay to vessels will not exceed 23 minutes. The vessels that transit the bridge are mainly repeat users and scheduling their passage outside of the rush hours, when the draw opens on signal, should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard is changing Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

2. Section 117.675 is amended to read as follows:

§ 117.675 Back Bay of Biloxi.

(a) The draw of the US 90 bridge, mile 0.4, between Biloxi and Ocean Springs shall open on signal; except that, from 6:30 a.m. to 7:05 a.m., 7:20 a.m. to 8:05 a.m., 4:00 p.m. to 4:45 p.m., and 4:55 p.m. to 5:30 p.m, Monday through Friday except holidays, the draw need not open for the passage of vessels.

(b) The draw of the I–110 bridge, mile 3.0 at Biloxi, shall open on signal if at least six hours notice is given.

Dated: June 24, 1985.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85–16024 Filed 7–3–85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD11–85–01]

Regulated Navigation Area; Isthmus Cove, Santa Catalina Island, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is designating a regulated navigation area in Isthmus Cove, Santa Catalina Island, California. This action is being taken to protect divers participating in underwater scientific research and underwater scientific research equipment from possible injury or damage resulting from indiscriminate anchoring activities.

EFFECTIVE DATE: August 5, 1985.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) James E. Mahoney, Marine Safety Division, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822. Phone Number: (213) 590–2301.

SUPPLEMENTARY INFORMATION: On February 25, 1985 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (50 FR 7613). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this notice are Lieutenant (junior grade) J.E. Mahoney, project officer, and Lieutenant C.M. McNally, project attorney, Eleventh Coast Guard District Legal Office.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The designation of a regulated navigation area will not adversely affect any known commercial enterprise. This measure will protect divers participating in underwater scientific research and underwater scientific research equipment from possible injury or damage resulting from anchoring activities.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Regulated navigation area.

Final Regulations:

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding § 165.1110 to read as follows:

§ 165.1110 Isthmus Cove, Santa Catalina Island, CA.

(a) The following is a Regulated Navigation Area—The waters of Isthmus Cove, enclosed by the shore and a line beginning at latitude 33°26′39″ N., longitude 118°29′19″ W.; thence northeasterly to latitude 33°26′50″ N., longitude 118°29′06″ W.; thence east northeasterly to latitude 33°26′57.5″ N., longitude 118°28′33.5″ W.; thence southeasterly to latitude 33°26′55″ N., longitude 118°28′32″ W.; thence southwesterly to latitude 33°26′53.5″ N., longitude 118°28′35″ W.

(b) No vessel may anchor in this area.

(c) For the purposes of this section, "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(33 U.S.C. 1225, 1231; 49 CFR 1.46(n)(4))

Dated: July 1, 1985.

F.P. Schubert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 85–16021 Filed 7–3–85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 3

Cost-of-Living Adjustment; Pension and Parents' DIC

AGENCY: Veterans Administration.

ACTION: Final regulatory amendments; correction.

SUMMARY: This document corrects an error in the income limit for a veteran with one or more dependents in need of aid and attendance which was published in the Federal Register of June 19, 1985, on pages 25415–25417.

EFFECTIVE DATE: December 1, 1984.

FOR FURTHER INFORMATION CONTACT: Celia Fasone, Paperwork Management and Regulations Service, (202) 389–2340.

§ 2.216 [Amended]

Accordingly, FR Doc. 85–14700, published at 50 FR 25415 is hereby corrected by changing the figure in § 3.20(a)(4) from $8,231 to $9,231.

Dated: June 28, 1985.

Nancy McCoy,

Chief, Directives Management Division.

[FR Doc. 85–16017 Filed 7–3–85; 8:45 am]

BILLING CODE 8320-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Institute of Museum Services; Conservation Grants to Museums

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final guidelines and standards.

SUMMARY: The Institute of Museum Services issues final guidelines and standards relating to a program of Federal financial assistance for conservation projects in museums. The guidelines and standards implement the Museum Services Act. They state eligibility conditions and other terms for the administration of the museum conservation program.

EFFECTIVE DATE: These guidelines and standards are effective on July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Kristine Ramaekers, Institute of Museum Services, Room 510, 1100 Pennsylvania Ave., NW., Washington, D.C. 20506. (202–786–0539).

SUPPLEMENTARY INFORMATION:

1. General Background

The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended on December 4, 1980 and May 31, 1984.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board and a Director.

The fiscal year 1985 appropriation for IMS, contained in Pub. L. 98–473 (Oct. 12, 1984), makes available $3,430,000 for museum conservation.

During fiscal year 1984 IMS operated a program of assistance for conservation projects pursuant to the Department of Interior and Related Agencies Appropriations Act, 1984, Pub. L. 98–146. IMS issued guidelines and standards for the operation of this program during fiscal year 1984 only. 49 FR 3860 (Jan. 31, 1984). It is therefore necessary to establish guidelines and standards for the further conduct of the program to facilitate proper and efficient administration of the appropriated funds. Proposed guidelines and standards were published on January 30, 1985. 50 FR 4237. No comments were received by the deadline date for receipt of comments. After review by the National Museum Services Board, these guidelines and standards are published in final form as set forth below.

The guidelines and standards are included as part of the IMS regulations (which are codified in 45 CFR Part 1180). Further information regarding the program is contained in the agency's application package.

2. Highlights of the Program

The IMS conservation program was established through a line item in the fiscal year 1984 appropriation. The House Committee report contained language regarding the structure of the program. H.R. Rept. No. 98–253, 98th Cong. 1st Sess. 113 (1983).

In recommending the appropriation for fiscal year 1985, the House Committee report stated:

> The amount recommended by the Committee continues the initiative for conservation grants. . . . This will provide a maximum of $25,000 to be matched equally in addition to any general operating support an institution may receive. This will allow . . . institutions to provide for conservation programs either by hiring new staff or through contracting. The Committee expects the Board to continue the 1984 program guidelines with employment of a special panel to review this grant program. (H.R. Rept. No. 98–986, 98th Cong. 2d Sess. 121 (1984)).

The development of the guidelines and standards in this document has been carried out in light of this language.

In summary, the program provides grants to museums of up $25,000 for conservation projects on a matching basis. Therefore, a museum must supply at least 50 percent of the project costs from non-federal sources. Grants are made only to museums. The project period may not exceed two years.

3. Paragraph by Paragraph Analysis

A paragraph by paragraph analysis was published in the preamble to the proposed guidelines and standards, 50 FR 4236, and is not repeated here. With the exception of one clarifying revision to paragraph (d) of the guidelines and standards, no changes have been made in the text of § 1180.20 as published in proposed form.

4. Executive Order 12291

These guidelines and standards have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

5. Regulatory Flexibility Act Certification

The Director certifies that these guidelines and standards will not have a significant economic impact on a substantial number of small entities.

To the extent that they affect States and State agencies they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These guidelines and standards will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision. They impose minimal requirements to ensure the proper expenditure of grant funds.

List of Subjects in 45 CFR Part 1180

Museums, National boards.

(Catalog of Federal Domestic Assistance No. 43.301, Museum Services Program)

Dated: July 1, 1985.

Susan Phillips,

Director, Institute of Museum Services.

Dated: June 26, 1985.

Peter H. Raven,

Chairman, National Museum Services Board.

The Institute of Museum Services amends Subchapter E of Chapter XI of Title 45 of the Code of Federal Regulations as follows:

PART 1180—GRANTS REGULATIONS

1. The authority citation for 45 CFR Part 1180 continues to read as follows:

Authority: Museum Services Act (20 U.S.C. 961–68), as amended, and Pub. L. 97–100, 95 Stat. 1414; Pub. L. 97–394, 96 Stat. 1994, unless otherwise noted.

2. The heading for Subpart A and section 1180.20 is revised as set forth below.

Subpart A—General Operating Support; Conservation Grants

§ 1180.20 Guidelines and standards for conservation projects.

(a) *Scope.* The guidelines and standards in this document apply to all aspects of the IMS conservation grant program including the submission of applications by museums for conservation grants, to the award, review and approval of such applications by IMS, and to the carrying out of conservation grants awarded by IMS.

(b) *Applicability of regulations.* (1) Except as otherwise provided in these guidelines, Subparts A–C of this part, Part 1180 of Title 45 CFR, (45 CFR 1180.1–1180.58) (IMS Grants Regulations), as amended, including §§ 1180.35, 1180.41, 1180.45, 1180.48, and 1180.49, apply to the IMS conservation grant program.

(2) Sections 1180.11(d) does not apply. A museum which applies for a conservation grant need not submit a long-range plan.

(3) Section 1180.16(b), which provides that IMS normally does not make grants for more than 10 percent of a museum's operating budget, does not apply to conservation grants.

(4) Section 1180.18 (relating to maintenance of effort) does not apply.

(5) In addition to submitting the final report required by § 1180.17, a grantee must submit an interim report in accordance with a schedule set forth in the grant award document. An applicant that has received a prior conservation grant from IMS the performance of which has not been completed may be required to submit an additional performance report or submit an interim report early.

(c) *Definition.* As used in these guidelines, the term "conservation" includes, but is not limited to, the following functions, as applied to art, history, natural history, science and technology, and living collections:

(1) Technical examination of materials and surveys of environmental and collection conditions;

(2) Provision, insofar as practicable, of optimum environmental conditions for housing, exhibition, monitoring, reformating, nurturing and transportation of objects;

(3) Physical treatment of objects, specimens and organisms, for the purpose of stabilizing, conserving and preserving their condition, removal of inauthentic additions or accretions, and physical compensation for losses; species survival activities; and

(4) Research and training in conservation.

(d) *Applicants.* Under the Museum Services Act only a museum may receive a grant. (20 U.S.C. 965(a)). See § 1180.3 of the IMS regulations for the definition of "museum". A museum may apply for and receive only one conservation grant under this program in a fiscal year.

(e) *Types of conservation projects funded.* IMS considers applications to carry out conservation projects such as:

(1) Projects to conduct or obtain training in conservation (including training of persons for careers as professional conservators; training or upgrading of practicing conservators and conservation technicians in the use of new materials and techniques; and training of persons to become conservation technicians).

(2) Projects to conduct research in conservation (including developmental and basic research).

(3) Projects to develop improved or less costly methods of conservation or both.

(4) Projects related to museum conservation needs not regularly addressed by other Federal funding agencies.

(5) Projects to meet the conservation needs of museums which are unable to maintain their own individual conservation facilities, such as the use of regional conservation centers or mobile conservation facilities. Because grants are made only to museums, organizations which operate regional conservation centers but which are not museums are ineligible for a direct grant. However, a museum or a group of museums may use a grant to obtain services from a center.

(6) Projects to conserve particular objects in a museum's collection (including plants and animals) or to meet the conservation needs of a particular museum (through such activities as the employment of conservators and the procurement of conservation services or equipment).

(f) *Limits on Federal funding.* See also paragraph (1) (allowable costs) (1) IMS makes a conservation grant which obligates no more than $25,000 in Federal funds. A conservation grant is not included in the maximum amount which a museum may expect to receive from IMS for a fiscal year, as set forth pursuant to § 1180.9 of the regulations. Therefore, a museum may receive, for example, a General Operating Support grant for the amount specified pursuant to that section and an additional $25,000 for a conservation grant in a fiscal year. A museum may not receive more than $25,000 for a conservation grant.

(2) IMS makes conservation grants only on a matching basis. This means that at least 50% of the costs of a conservation project must be met from non-federal funds. Principles in applicable OMB circulars regarding cost sharing or matching apply. See, e.g. OMB Circular A–102, Attachment F.

(g) *Application requirements.* Application requirements in § 1180.11(a), (b), and (c) apply. An application shall describe when, during the term of the grant, the applicant plans to complete each objective or phase of the project. Where appropriate, IMS may require an applicant to submit a dissemination plan.

(h) *Procedures for review of applications.* (1) IMS uses the procedures stated in this paragraph to review applications for conservation projects.

(2) IMS evaluates all eligible applications for conservation projects in accordance with applicable criteria. (See paragraph (i) below.) The Director expects to use panels of experts to review at least a portion of the applications for conservation grants. Depending upon the number of applications received as well as other factors, the Director may also use field reviewers to evaluate applications before submission of applications to the panels. In addition, the Director may use technical experts to provide technical advice regarding certain applications. See generally § 1180.12 of the IMS regulations.

(3) IMS evaluates applications for conservation projects separately from applications for general operating support.

(i) *Criteria.* This paragraph sets forth the criteria which IMS uses in evaluating and reviewing applications for conservation grants. Panelists and field reviewers are instructed to use only these criteria in the evaluation and review of these applications.

(1) The following programmatic criteria apply to the evaluation and review of conservation grants:

(i) What is the importance of the object or objects to be conserved? What is the significance of the object or objects to the museum's collection and/or audience?

(ii) What is the need for the project, including the relationship of the project to the conservation needs and priorities of the applicant museum as reflected in a survey of conservation needs or similar needs assessment?

(iii) What are the applicant's plans to use and maintain the anticipated results or benefits of the project after the expiration of Federal support?

(iv) Does the applicant plan to devote adequate financial and other resources to the project without inhibiting its ongoing activities?

(2) The following technical criteria apply to the evaluation and review of applications for conservation grants:

(i) What is the nature of the proposed project with respect to project design and management plan?

(ii) To what extent does the application exhibit knowledge of the technical area to which the conservation project relates and employ the most promising or appropriate methods or techniques of conservation? To what extent is the conservation project likely to use, develop or demonstrate improved, more efficient, or more economic methods of conservation?

(iii) Does the project have an adequate budget to achieve its purpose? Is the budget reasonable and adequate in relation to the objectives of the project?

(iv) What are the qualifications of the personnel the applicant plans to use on the project and the proposed time that each such person is obligated to commit to the project?

(j) *Duration of grant.* IMS makes a conservation grant under this section for a period of not to exceed two years.

(k) *Grant condition.* An applicant which has received a grant in a prior fiscal year under the IMS conservation grant program may not receive a grant in a subsequent fiscal year under this section until required reports have been submitted regarding the performance of the previous grant.

(l) *Allowable and unallowable costs.* (1) Section 1180.10 of the IMS regulations, which applies to conservation grants, sets forth the rules applicable to determining the allowability of costs under IMS grants and refers readers to the OMB circulars containing applicable cost principles which govern Federal grants generally.

(2) In general such costs as compensation for personal services, costs of materials and supplies, rental costs, and other administrative costs specifically related to a conservation project are allowable under a conservation grant in accordance with applicable cost principles.

(3) Costs of alterations, repairs and restoration to an existing facility are allowable when they are related to a conservation project under a conservation grant in accordance with applicable cost principles.

(4) Costs of equipment are generally allowable if related to a conservation project but do require the specific approval of the Director as indicated in the grant award document.

(5) A grantee may award a stipend to an individual for training in connection with a conservation project. Stipends and allowances may be paid at rates and under conditions established by the Director consistent with policies of other agencies in the Foundation or other agencies or instrumentalities of the United States providing comparable assistance with respect to conservation.

(6) Costs of new construction are unallowable. For example, a museum may not a use a conservation grant to construct a new building or an addition to an existing building to improve the environment in which its collections are housed.

[FR Doc. 85-16004 Filed 7-3-85; 8:45 am]
BILLING CODE 7036-01-M

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45 CFR Part 1180

Institute of Museum Services; Federal Financial Assistance

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final rules.

SUMMARY: The Institute of Museum Services issues amendments to regulations relating to certain of its programs of Federal financial assistance. The regulations as amended implement the Museum Services Act. The amendments make technical and other changes in the eligibility conditions and other terms for the administration of the General Operating Support and Museum Assessment programs for museums and remove unneeded provisions.

EFFECTIVE DATE: These regulations are effective July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Kristine Ramaekers, Institute of Museum Services, Room 510, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, (202-786-0539).

SUPPLEMENTARY INFORMATION:

1. General Background

The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended on December 4, 1980 and May 31, 1984.

The purpose of the Act is stated in section 202 as follows:

It is the purpose [of the Museum Services Act] to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and postsecondary education and with programs of non-formal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic and scientific heritage, and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board and a Director.

The Act provides that the National Museum Services Board shall consist of fifteen members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from among the appointed members. Members are broadly representative of various museums, including museums relating to science, history, technology, art, zoos, and botanical gardens; of the curatorial, educational and cultural resources of the United States; and of the general public. In addition to the members appointed by the President, the following serve as members of the Board; the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the Secretary of the Smithsonian Institution, and the Director of the National Science Foundation. The Board has the responsibility for establishing the general policies of the Institute. The Director is authorized, subject to the policy direction of the Board, to make grants under the Act to museums.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation), Pub. L. 97-100, December 23, 1981, Pub. L. 97-394, December 30, 1982, Pub. L. 98-306, May 31, 1984.

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public and providing education programs to the public.

2. Need for Amendments

IMS regulations for the IMS General Operating Support (GOS) and Special Project Support (SP) programs were published in full on June 17, 1983 (48 FR 27727). Amendments were published for FY 1984 on April 10, 1984, 49 FR 14108 (miscellaneous amendments) and June 15, 1984, 49 FR 24731 (deferral of certain requirements). Regulations for the Museum Assessment Program were published on January 26, 1984 at 49 FR 3182. Further amendments to these regulations are needed in order to implement policy directions of the Board with respect to these programs.

3. Proposed Amendments and Response to Public Comment

A notice proposing revised regulations for the museum services program was published on October 5, 1984. 49 FR 39346. The preamble to the notice of proposed rulemaking contained an amendment by amendment analysis explaining the purpose of each amendment. 49 FR 39347. That discussion is not repeated here. Public comment was invited on the proposed changes. 49 FR 39348. One comment was received, as described below. The Institute has considered that comment and has again reviewed the proposed amendments to determine the necessity and appropriateness of the proposed changes for carrying out the fiscal year 1985 competition for General Operating Support and Museum Assessment. In light of this consideration and review, following consultation with the National Museum Services Board, the Institute has determined that the amendments to the regulations should be adopted as proposed in the October 5, 1984 notice. The final regulations set forth below reflect this determination.

The one comment received regarding the proposed regulations questioned why § 1180.5 (f) and (g) were proposed to be deleted. Section 1180.5(g), as set forth in the June, 1983 regulations, precludes the receipt of IMS funds by applicants which also receive challenge grants from other federal agencies (such as the National Endowment for the Arts or the National Endowment for the Humanities) under certain circumstances. As indicated in the preamble to the proposed rule, Congress included language in the fiscal year 1984 appropriation act to preclude the enforcement of that section on the ground that current levels of funding render it unnecessary. Pub. L. 98–146 (1983). Legislative reports relating to the fiscal year 1985 appropriation indicate continuing concern regarding such administrative restrictions. *See* Pub. L. 98–473 (1984); H.R. Rept No. 98–888, 98th Cong. 2d Sess. 121 (1984); Sen. Rept. No. 98–578, 98th Cong. 2d Sess. 124 (1984). Under these circumstances, the current regulations of the Institute have been amended to delete section 1180.5(g).

With respect to § 1180.5(f), relating to receipt of assistance in more than three out of five years, the Institute believes that the rule is now unnecessary in view of the current level of funding. In addition, the Institute believes that other steps which it has taken effectively deal with the concern addressed by the commenter (increasing the opportunity for participation in IMS funding by small museums or museums which have not previously received an IMS grant). In the most recent competition for General Operating Support, for example, 22 percent of the recipients were institutions which had not previously received awards, although § 1180.5(f) did not apply to that competition. In addition, about 35 percent of the GOS awards made for fiscal year 1984 were made to museums with budgets under $150,000.

Accordingly, in keeping with the proposed regulations, the final regulations set forth below delete the sections in question.

4. Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

5. Regulatory Flexibility Act Certification

The Director certifies that these amendments will not have a significant economic impact on a substantial number of small entities.

To the extent that they affect States and State agencies they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These amendments will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision. They impose minimal requirements to ensure the proper expenditure of grant funds.

List of Subjects in 45 CFR Part 1180

Grant programs, Museums, National boards, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance No. 43.301, Museum Services Program)

Dated: June 20, 1985.

Susan Phillips,

Director, Institute of Museum Services.

Dated: June 20, 1985.

Peter H. Raven,

Chairman, National Museum Services Board.

The Institute of Museum Services amends Part 1180 of Subchapter E of Chapter XI of Title 45 of the Code of Federal Regulations as set forth below:

SUBCHAPTER E—INSTITUTE OF MUSEUM SERVICES

PART 1180—GRANTS REGULATIONS

1. The authority citation for 45 CFR Part 1180 continues to read as follows:

Authority: Museum Services Act (20 U.S.C. 961–68), as amended, and Pub. L. 97–100, 95 Stat. 1414; Pub. L. 97–394, 96 Stat. 1994, unless otherwise noted.

2. Section 1180.3(d) is revised to read as follows:

§ 1180.3 Definition of museum.

* * * * *

(d)(1) Except as set forth in paragraph (d)(2) of this section, an institution exhibits objects to the general public for the purposes of this section if such exhibition is a primary purpose of the institution.

(2) An institution which does not have as a primary purpose the exhibition of objects to the general public but which can demonstrate that it exhibits objects to the general public on a regular basis as a significant, separate, distinct, and continuing portion of its activities, and that it otherwise meets the requirements of this section, may be determined to be a museum under this section. In order to establish its eligibility, such an institution must provide information regarding the following:

(i) The number of staff members devoted to museum functions as described in paragraph (a) of this section.

(ii) The period of time that such museum functions have been carried out by the institution over the course of the institution's history.

(iii) Appropriate financial information for such functions presented separately from the financial information of the institution as a whole.

(iv) The percentage of the institution's total space devoted to such museum functions.

(v) Such other information as the Director requests.

(3) The Director uses the information furnished under paragraph (d)(2) of this section in making a determination

regarding the eligibility of such an institution under this section.

3. Section 1180.5 is revised to read as follows:

§ 1180.5 Eligibility and burden of proof—Who may apply.

(a) A museum located in any of the fifty States of the Union, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, Guam, or the District of Columbia may apply for a grant under the Act.

(b) No museum is eligible to apply for funding available under the Act unless it has provided museum services, including exhibiting objects to the general public on a regular basis, for at least two years prior to application.

(c) A public or private nonprofit agency which is responsible for the operation of a museum may, if necessary, apply on behalf of the museum.

(d) A museum operated by a department or agency of the Federal Government is not eligible to apply.

(e) An applicant has the burden of establishing that it is eligible for assistance under these regulations.

§§ 1180.8, 1180.11(f) and 1180.14 [Removed]

4. Sections 1180.8, 1180.11(f), and 1180.14 (relating to Special Projects) are removed and reserved. The table of contents is revised accordingly.

5. Section 1180.9(a) is revised to read as follows:

§ 1180.9 Likely size of grants and allocation of funds among activities.

(a) It is anticipated that no museum will receive for General Operating Support more than an amount to be specified by notice in the **Federal Register** for each fiscal year.

* * * * *

6. Section 1180.11(c)(4) is revised to read as follows:

§ 1180.11 Basic requirements which a museum must meet to be considered for funding.

* * * * *

(c) * * *

(4) The Director is authorized to defer the audit requirement set forth in paragraph (c)(2) in the case of a museum with non-federal operating income of $50,000 or less, exclusive of the value of non-cash contributions (in the fiscal period preceding the fiscal period for which the deferral is requested) if the Director finds that exceptional circumstances justify a deferral and that the grant of the deferral will not be inequitable to other applicants. A deferral may be granted only upon those conditions and in light of those assurances which the Director deems appropriate in order to ensure that the purposes of this paragraph are achieved. The authority to grant deferrals, unless renewed under this paragraph, expires on September 30, 1985.

7. Section 1180.12 is revised to read as follows and the table of contents is revised accordingly:

§ 1180.12 How applications are judged.

(a) To select grantees and determine the amount of their awards, IMS rates competitive applications under the applicable criteria stated in § 1180.13. Normally, these applications are first evaluated by field reviewers, panels of experts, or both. Final determinations as to the award of grants are made by the Director after review by the Board.

(b) To achieve diversity in the distribution of assistance, the Institute may consider the location, size and discipline of the applicant in addition to the criteria in § 1180.13.

8. Section 1180.16(b) is revised to read as follows:

§ 1180.16 IMS share of the costs of a proposal.

* * * * *

(b) Subject to the amount specified under § 1180.9(a), IMS normally does not make grants for more than: (1) 10 percent of a museum's non-federal operating income for its most recently completed fiscal year for which financial information is available or (2) $5,000, whichever is greater. (See § 1180.11). A different figure may be specified by notice published in the **Federal Register**. Non-federal operating income may be increased by an amount reflecting the reasonable and conservative value of non-cash contributions to the museum in such most recently completed fiscal year.

* * * * *

9. Subpart D of Part 1180 is revised to read as follows and the table of contents is revised accordingly:

Subpart D—Museum Assessment

Sec.

1180.70 Purpose of program.
1180.71 Eligibility.
1180.72 Allowable costs.
1180.73 Form of assistance: Limitation on amount.
1180.74 Conditions of participation.
1180.75 Funding and award procedures.
1180.76 Responsibility of a museum.

Subpart D—Museum Assessment

§ 1180.70 Purpose of program.

The Director of the Institute of Museum Services makes grants under this subpart to assist museums in carrying out institutional assessments. The grants enable museums to obtain technical assistance in order to evaluate their programs and operations by generally accepted professional standards. The Director may make grants for separate categories of assessment activities and establish conditions for receipt of assistance for such separate categories.

§ 1180.71 Eligibility.

(a) A museum as defined in § 1180.3 may apply for assessment assistance under this subpart.

(b) A museum which receives a grant for assessment assistance under this subpart for a fiscal year may not receive another grant for the same category of assessment assistance in the same or a subsequent fiscal year.

§ 1180.72 Allowable costs.

A museum may use a grant under this subpart for expenses of institutional assessment, such as registration fees, surveyor honorariums, travel and other expense of a surveyor, and technical assistance materials.

§ 1180.73 Form of assistance; limitation on amount.

(a) The Director makes payments to a museum under this subpart in advance.

(b) The amount of a grant to a museum under this subpart may not exceed $1,000.

§ 1180.74 Conditions of participation.

The Director considers an application by a museum on a form supplied by IMS for a grant under this subpart for assessment assistance only if:

(a) The museum requests assessment from an appropriate professional organization as defined in this section, and

(b) That organization notifies IMS that the request for the assessment assistance is complete and that the museum is eligible to participate. An appropriate professional organization for purposes of this subpart means: (1) The American Association of Museums or (2) other professional organizations that are determined to be capable of arranging for a program of assessment services for a category of museums and are so designated by notice published in the **Federal Register**.

§ 1180.75 Funding and award procedures.

(a) The Director approves applications meeting the requirements of this subpart on first-come, first-served basis, in the order in which it is determined by IMS that such requirements (including all application requirements) have been met.

(b) There are no selection criteria.

(c) Section 1180.16 (IMS share of the cost of a proposal) does not apply to grants under this subpart.

(d) A museum receiving assistance under this subpart need not submit a financial report or a performance report.

(e)(1) Except as provided in § 1180.71 and paragraph (e)(2) of this section Subparts A, B, and C of Part 1180 of Title 45 CFR do not apply to the Museum Assessment Program.

(2) The following sections do apply to the Museum Assessment Program: Sections 1180.5(a); 1180.5(c); 1180.5(d); 1180.5(e); 1180.15; 1180.44; 1180.47; and 1180.51–1180.57.

§ 1180.76 Responsibility of a museum.

Except in unusual circumstances, a museum which receives a grant under this subpart must take the steps normally expected of it to complete the assessment process for which it has received assistance. Section 1180.13(i) (a criterion for evaluation of general operating support applications) applies to the use of funds under this subpart.

(20 U.S.C. 961–966)

[FR Doc. 85–16005 Filed 7–3–85; 8:45 am]
BILLING CODE 7036–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 552, 553 and 570

[APD 2800.12 CHGE 12]

General Services Administration Acquisition Regulation; Competition in Contracting Act

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5 is amended to implement the Competition in Contracting Act of 1984 (CICA), Title VII of Pub. L. 98–369, with respect to the acquisition of leasehold interests in real property. In addition, miscellaneous other changes unrelated to the CICA are included in this final rule. The intended effect is to implement CICA and to provide procedures and guidance to GSA contracting activities.

EFFECTIVE DATE: July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4754.

SUPPLEMENTARY INFORMATION: On March 7, 1985, the General Services Administration published in the **Federal Register** (50 FR 9293, March 7, 1985) a GSAR Notice No. 5–82f inviting comments from interested parties. No public comments were received. The comments received from various GSA offices have been reviewed, reconciled, and incorporated, when appropriate, into this final rule.

Impact

This is not a major rule as defined in Executive Order 12291. Therefore, preparation of a regulatory impact analysis was not necessary. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The changes made in this final rule will primarily impact GSA contracting officers rather than lessors or prospective lessors. Therefore, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 552, 553, and 570

Government procurement.

1. The authority citation for 48 CFR Parts 552, 553 and 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. The Table of Contents for Part 552 is amended by adding entries for Sections 552.270–14 thru 552.270–30 and by revising the entries for Sections 552.270–1 thru 552.270–13 as set forth below:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 552.2—Text of Provisions and Clauses

Sec.

* * * * *
552.270–7 [Reserved]
552.270–8 [Reserved]
552.270–9 [Reserved]
552.270–10 Definitions.
552.270–11 Subletting the Premises.
552.270–12 Maintenance of Premises.
552.270–13 Damage by Fire or Other Casualty.
552.270–14 Condition Report.
552.270–15 Applicable Codes and Ordinances.
552.270–16 Inspection of Premises.
552.270–17 Failure in Performance.
552.270–18 Lessor's Successors.
552.270–19 Alterations.
552.270–20 Proposals for Adjustment.
552.270–21 Changes.
552.270–22 Liquidated Damages.
552.270–23 Operating Costs.
552.270–24 Tax Adjustment.
552.270–25 Adjustment for Vacant Premises.
552.270–26 If Minimum Not Delivered.
552.270–27 Delivery and Condition.
552.270–28 Time Extensions.
552.270–29 Termination for Default.
552.270–30 Progressive Occupancy.
* * * * *

Authority: 40 U.S.C. 486(c).

552.270–1 thru 552.270–11 [Redesignated as 552.270–10 thru 552.270–20]

3. Sections 552.270–1 thru 552.270–11 are redesignated as Sections 552.270–10 thru 552.270–20.

552.270–12 [Redesignated as Section 552.270–4]

4. Section 552.270–12 is redesignated as Section 552.270–4.

552.270–13 [Redesignated as Section 552.270–3]

5. Section 552.270–13 is redesignated as Section 552.270–3.

6. Section 552.270–1 and 552.270–2 are added to read as follows:

552.270–1 Preparation of Offers.

As prescribed in GSAR 570.701–1, insert the following provision:

Preparation of Offers (June 1985)

(a) Offerors are expected to read all parts of this solicitation.

(b) Offers must be (1) submitted on the forms prescribed and furnished by the Government as a part of this solicitation or on copies of those forms, and (2) signed. The person signing an offer must initial each erasure or change appearing on any offer form. If the offeror is a partnership, the names of the partners composing the firm must be included with the offer.

(c) Offers will be construed to be in full and complete compliance with this solicitation unless the offer describes any deviation in the offer.

(End of Provision)

552.270-2 Explanation to Prospective Offerors.

As prescribed in GSAR 570.701-2, insert the following provision:

Explanation to Prospective Offerors (June 1985)

Any prospective offeror desiring an explanation or interpretation of the solicitation should request it in writing. Oral explanations or instructions given to a prospective offeror will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors, if that information is necessary in submitting offerors or if the lack of it would be prejudicial to any other prospective offeror.

(End of Provision)

7. Section 552.270-3 is amended by revising the section title, the introductory text, the title of the provision, and paragraph (b)(1) of the provision to read as follows:

552.270-3 Late Submissions, Modifications, and Withdrawals of Offers.

As prescribed in GSAR 570.701-3, insert the following provision:

Late Submissions, Modifications, and Withdrawals of Offers (June 1985)

* * * * *

(b) * * *

(1) The date of the mailing of a late offer or modification sent either by registered or certified mail is the U.S. Postal Service postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer or modification will be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request that the postal clerk place a hand canceled postmark on both the receipt and the envelope or wrapper.)

* * * * *

8. Section 552.270-4 is amended by revising the introductory text, the title of the provision, and paragraph (a), (a)(1), and (b) of the provision to read as follows:

552.270-4 Historic Preference.

As prescribed in GSAR 570.701-4, insert the following provision:

Historic Preference (June 1985)

(a) Preference will be given to offers of space in buildings on, or formally listed as eligible for inclusion in the National Register of Historic Places and to historically significant buildings in historic districts listed in the National Register. Such preference will be extended to historic buildings and will result in award if:

(1) The offer for space meets the terms and conditions of this solicitation as well as any other offer received. (It is within the discretion of the Contracting Officer to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicitation to maintain the historical integrity of the building such as high ceilings, wooden floor, etc.); and

* * * * *

(b) If more than one offer of an historic building is received and they meet the above criteria, an award will then be made to the lowest priced historic property offered.

9. Sections 552.270-5, 552.270-6 are added and sections 552.270-7, 552.270-8, and 552.270-9 are reserved as follows:

552.270-5 Lease Award.

As prescribed in GSAR 570.701-5, insert the following provision:

Lease Award (June 1985)

(a) The Government will award a lease resulting from this solicitation to the responsible offeror, whose offer conforming to the solicitation, will be most advantageous to the Government, price and other factors specified elsewhere in this solicitation, considered.

(b) The Government may (1) reject any or all offers, (2) accept other than the lowest priced offer, and (3) waive informalities and minor irregularities in offers received.

(c) Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Government.

(d) The unconditional acceptance of an offer establishes a valid contract.

(End of Provision)

552.270-6 Parties to Execute Lease.

As prescribed in GSAR 570.701-6, insert the following provision:

Parties To Execute Lease (June 1985)

(a) If the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, an authenticated copy of his power of attorney, or other evidence to act on behalf of the Lessor, must accompany the lease.

(b) If the Lessor is a partnership, the lease must be signed with the partnership name, followed by the name of the legally authorized partner signing the same.

(c) If the Lessor is a corporation, the lease must be signed with the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government, evidence of this authority so to act must be furnished.

(End of Provision)

552.270-7 thru 552.270-9 [Reserved]

10. Section 552.270-10 is revised to read as follows:

552.270-10 Definitions.

As prescribed in GSAR 570.702-1, insert the following clause:

Definitions (June 1985)

(a) The terms "contract" and "Contractor" shall mean "lease" and "Lessor," respectively.

(b) If the lease is a sub-lease, the term "Lessor" means the sub-lessor.

(c) The term "Lessor shall provide" means the Lessor shall furnish and install.

(End of Clause)

11. Section 552.270-11 and 552.270-12 are amended by revising the introductory text and the clause titles to read as follows:

552.270-11 Subletting the Premises.

As prescribed in GSAR 570.702-2, insert the following clause:

Subletting the Premises (June 1985)

* * * * *

552.270-12 Maintenance of Premises.

As prescribed in GSAR 570.702-3, insert the following clause:

Maintenance of Premises (June 1985)

* * * * *

12. Section 552.270-13 and 552.270-14 are revised to read as follows:

552.270-13 Damage by Fire or Other Casualty.

As prescribed in GSAR 570.702-4, insert the following clause:

Damage by Fire or Other Casualty (June 1985)

If the said premises be destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenantable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days thereafter; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage.

(End of Clause)

552.270-14 Condition Report.

As prescribed in GSAR 570.702-5, insert the following clause:

Condition Report (June 1985)

A joint physical survey and inspection report of the demised premises will be made as of the effective date of this lease, reflecting the then present condition, and will be signed on behalf of the parties hereto.

(End of Clause)

13. Section 552.270-15 is amended by revising the introductory text and clause title to read as follows:

552.270-15 Applicable Codes and Ordinances.

As prescribed in GSAR 570.702-6, insert the following clause:

Applicable Codes and Ordinances (June 1985)

* * * * *

14. Section 552.270–16, 552.270–17, and 552.270–18 are revised to read as follows:

552.270–16 Inspection of Premises.

As prescribed in GSAR 570.702–7, insert the following clause:

Inspection of Premises (June 1985)

At all times after receipt of offers, prior to or after acceptance of any offers, or during any construction, remodeling, or renovation work, the premises and the building or any parts thereof, upon reasonable and proper notice, must be accessible for inspection by the Contracting Officer, or by architects, engineers, or other technicians representing him, to determine whether the essential requirements of the solicitation or the lease requirements are met. Additionally, the Government reserves the right, upon reasonable notice, to inspect and perform bulk sampling and analysis of suspected asbestos-containing materials and to monitor the air for asbestos fibers in the space offered or under lease as well as other areas of the building deemed necessary by the Contracting Officer.

(End of Clause)

552.270–17 Failure in Performance.

As prescribed in GSAR 570.702–8, insert the following clause:

Failure in Performance (June 1985)

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are dependent. In the event of failure by the Lessor to provide any of these items, the Government may by contract or otherwise perform the service, maintenance, utility, or repair, and charge to the Lessor any cost incurred by the Government that is related to the performance of such service, maintenance etc., including any administrative costs, and deduct such cost from any rental payments. Alternately, the Government may reduce rental payments by the corresponding value of the contract requirement not performed, as determined by the Contracting Officer. These remedies are not exclusive and are in addition to any other remedies which may be available under this contract or in the law.

(End of Clause)

552.270–18 Lessor's Successors.

As prescribed in GSAR 570.702–9, insert the following clause:

Lessor's Successors (June 1985)

The terms and provisions of this lease and the conditions herein bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns.

(End of Clause)

15. Section 552.270–19 is amended by revising the introductory text and the clause title to read as follows:

552.270–19 Alterations.

As prescribed in GSAR 570.702–10, insert the following clause:

Alterations (June 1985)

* * * * *

16. Section 552.270–20 is revised and Sections 552.270–21 thru 552.270–30 are added to read as follows:

552.270–20 Proposals for Adjustment.

As prescribed in GSAR 570.702–11, insert the following clause:

Proposals for Adjustment (June 1985)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds $25,000. The proposal, including all subcontractor work, will contain at least the following details—

(1) Material quantities and unit costs,
(2) Labor costs (identified with specific item or material to be placed or operation to be performed),
(3) Equipment costs,
(4) Workman's compensation and public liability insurance,
(5) Overhead,
(6) Profit, and
(7) Employment taxes under FICA and FUTA.

(End of Clause)

Alternate I (June 1985)

For the acquisition of leasehold interests in real property of 10,000 square feet or more, add paragraphs (c) and (d) to the basic clause.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding $100,000 in cost—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.804–2),
(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds $100,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.804–4), and
(3) The agreement for "Price Reduction for Defective Cost or Pricing Data" must be signed and returned (48 CFR 15.804–8).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

(End of Clause)

552.270–21 Changes.

As prescribed in GSAR 570.702–12, insert the following clause:

Changes (June 1985)

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:

(1) Specifications.
(2) Work or services.
(3) Amount of space.
(4) Facilities or space layout.

(b) If any such change causes an increase or decrease in the Lessor's cost of, or the time required for, performance under this contract, whether or not changed by the order, the Contracting Officer shall modify the lease by (1) making an equitable adjustment in the rental rate, (2) making a lump sum price adjustment, or (3) revising the delivery schedule.

(c) If such change causes an increase in costs under this contract, the Lessor shall submit any "proposal for adjustment" (hereafter referred to as proposal) under the clause at 552.270–20, Proposal for Adjustment.

(d) Adjustments for operating expenses in vacant leased premises will be in accordance with the clause at 552.270–25, Adjustment for Vacant Premises.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause.

(f) No services or work for which an additional cost or fee will be charged by the Lessor will be furnished without the prior written authorization of the Contracting Officer or a designated representative of the Contracting Officer.

552.270–22 Liquidated Damages.

As prescribed in GSAR 570.702–13, insert the following clause:

Liquidated Damages (June 1985)

In case of failure on the part of the Lessor to complete the work within the time fixed in the lease contract or letter of award, the Lessor shall pay the Government as fixed and agreed liquidated damages, pursuant to this clause, the sum of $——— for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all of the space ready for occupancy by the Government.

(End of Clause)

552.270–23 Operating Costs.

As prescribed in GSAR 570.702–14, insert the following clause:

Operating Costs (June 1985)

(a) Beginning with the second year of the lease and each year after, the Government shall pay adjusted rent for changes in costs for cleaning services, supplies, materials, maintenance, trash removal, landscaping, water, sewer charges, heating, electricity, and certain administrative expenses attributable to occupancy. Applicable costs listed on GSA Form 1217, Lessor's Annual Cost Statement, when negotiated and agreed upon, will be used to determine the base rate for operating costs adjustment.

(b) The amount of adjustment will be determined by multiplying the base rate by the percent of change in the Cost of Living Index. The percent change will be computed by comparing the index figure published for the month prior to the lease commencement

date with the index figure published for the month which begins each successive 12-month period. For example, a lease which commences in June of 1985 would use the index published for May of 1985 and that figure would be compared with the index published for May of 1986, May of 1987, and so on, to determine the percent change. The Cost of Living Index will be measured by the U.S. Department of Labor revised Consumer Price Index for Wage Earners and Clerical Workers, U.S. City Average, All Items Figure, (1967=100) published by the Bureau of Labor Statistics. Payment will be made with the monthly installment of fixed rent. Rental adjustments will be effective on the anniversary date of the lease. Payment of the adjusted rental rate will become due on the first workday of the second month following the publication of the Cost of Living Index for the month prior to the lease commencement date.

(c) If the Government exercised an option to extend the lease term at the same rate as that of the original term, the option price will be based on the adjustment during the original term. Annual adjustments will continue.

(d) In the event of any decreases in the Cost of Living Index occuring during the term of occupancy under the lease, the rental amount will be reduced accordingly. The amount of such reductions will be determined in the same manner as increases in rent provided under this clause.

(e) The offer must clearly state whether the rental is firm throughout the term of the lease or if it is subject to annual adjustment of operating costs as indicated above. If operating costs will be subject to adjustment, it should be specified on block 19 of GSA Form 1364, Proposal to Lease Space, contained elsewhere in this solicitation.

(End of Clause)

552.270-24 Tax Adjustment.

As prescribed in GSAR 570.702–15, insert the following clause:

Tax Adjustment (June 1985)

(a) The Government shall pay additional rent for its share of increases in real estate taxes over taxes paid for the calendar year in which its lease commences (base year). Payment will be in a lump sum and become due on the first workday of the month following the month in which paid tax receipts for the base year and the current year are presented, or the anniversary date of the lease, whichever is later. The Government will be responsible for payment only if the receipts are submitted within 60 calendar days of the date the tax payment is due. If no full tax assessment is made during the calendar year in which the Government lease commences, the base year will be the first year of a full assessment.

(b) The Government's share for the tax increase will be based on the ratio of the square feet occupied by the Government to the total rentable square feet in the building. If the Government's lease terminates before the end of a calendar year, payment will be based on the percentage of the year in which the Government occupied space. The payment will not include penalties for non payment or delay in payment. If there is any variance between the assessed value of the Government's space and other space in the building, the Government may adjust the basis for determining its shares of the tax increase.

(c) The Government may contest the tax assessment by initiating legal proceedings on behalf of the Government and the Lessor or the Government alone. If the Government is precluded from taking legal action, the Lessor shall contest the assessment upon reasonable notice by the Government. The Government shall reimburse the Lessor for all costs and shall execute all documents required for the legal proceedings. The Lessor shall agree with the accuracy of the documents. The Government shall receive its share of any tax refund. If the Government elects to contests the tax assessment, payment of the adjusted rent shall become due on the first workday of the month following conclusion of the appeal proceedings.

(d) In the event of any decreases in real estate taxes occurring during the term of occupancy under the lease, the rental amount will be reduced accordingly. The amount of any such reductions will be determined in the same manner as increases in rent provided under this clause.

(End of Clause)

552.270-25 Adjustment for Vacant Premises.

As prescribed in GSAR 570.702–10, insert the following clause:

Adjustment for Vacant Premises (June 1985)

(a) If the Government fails to occupy any portion of the leased premises or vacates the premises in whole or in part prior to expiration of the firm term of the lease, the rental rate will be reduced.

(b) The rate will be reduced by that portion of the costs per square foot of operating expenses not required to maintain the space. Said reduction must occur after the Government gives 30 calendar days prior notice to the Lessor, and must continue in effect until the Government occupies the premises or the lease expires or is terminated.

(End of Clause)

552.270-26 If Minimum Not Delivered.

As prescribed in GSAR 570.702–17, insert the following clause:

If Minimum Not Delivered (June 1985)

If delivered space contains less than the minimum square footage, the Government may cancel the lease. If such cancellation occurs, the Government may exercise its legal rights including charging the Lessor and its surety the increased cost of providing replacement space.

(End of Clause)

552.270-27 Delivery and Condition.

As prescribed in GSAR 570.702–18, insert the following clause:

Delivery and Condition (June 1985)

Unless the Government elects to have the space occupied in increments, the space must be delivery ready for occupancy as a compete unit. The Government reserves the right to determine when the space is ready to occupy.

(End of Clause)

552.270-28 Time Extensions.

As prescribed in GSAR 570.702–19, insert the following clause:

Time Extensions (June 1985)

The lease will not be terminated nor the Lessor charged with resulting damage if delays arise from unforeseeable causes beyond the control of the Lessor and/or his contractors, subcontractors, suppliers, or another Government contractor. However, the Lessor shall notify the Contracting Officer, in writing, of any delay within 10 calendar days after it begins. The Contracting Officer shall ascertain the facts, determine the extent of the delay, and grant extensions when justified.

(End of Clause)

552.270-29 Termination for Default.

As prescribed in GSAR 570.702–20, insert the following clause:

Termination for Default (June 1985)

If the Lessor fails to prosecute the work required to deliver the leased premises ready for occupancy by the Government with such diligence as will ensure delivery of the leased premises within the time required by the lease agreement, or any extension of the specified time, or if the Lessor fails to complete said work within such time, the Government may, by written notice to the Lessor, terminate the lease agreement. Regardless of whether the lease is terminated, the Lessor and his sureties shall be liable for any damage to the Government resulting from his failure to deliver the premises ready for occupancy within the specified time.

(End of Clause)

552.270-30 Progressive Occupancy.

As prescribed in GSAR 570.702–21, insert the following clause:

Progressive Occupancy (June 1985)

The Government shall pay rent only when the entire premises or suitable units are ready for occupancy. If the agency occupies the space in partial increments, rent will accrue or be paid on a pro rata basis. Rental payments shall become due on the first workday of the month following the month in which an increment of space is occupied, except that should an increment of space be occupied after the fifteenth day of the month, the payment due date will be the first weekday of the second month following the month in which it was occupied. The commencement date of the firm term will be a composite determined from all dates of incremental occupancy.

(End of Clause)

17. The table of contents for Part 553 is amended by adding entries for

Sections 533.370–3516 and 553.370–3518 as set forth below:

PART 553—FORMS

Subpart 553.3—Illustrations of Forms

* * * * *

Sec.

553.370–3516 GSA Form 3516, Solicitation Provisions (Acquisition of Leasehold Interests in Real Property)

553.370–3518 GSA Form 3518, Representations and Certifications (Acquisition of Leasehold Interests in Real Property)

* * * * *

Authority: 40 U.C.S. 486(c).

18. Section 553.173 is amended by adding the following to the list of forms referenced in paragraph (c).

553.173 Responsibility for the maintenance of forms.

* * * * *

(c) * * *

GSA Form No.	Responsible office
3516	P
3517	P
3518	P

* * * * *

19. The table of contents for Parts 570 is amended by revising the entries for sections within Subparts 570.3, 570.6, and 570.7 to read as set forth below:

PART 570—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

Subpart 570.3—Special Aspects of Contracting For Leasehold Interests Less Than 10,000 Square Feet

Sec.

570.300 Scope of subpart.
570.301 Definitions.
570.302 Purpose.
570.303 Policy.
570.304 Procedures.
570.304–1 General.
570.304–2 Market survey.
570.304–3 Advertising.
570.304–4 Soliciting offers.
570.304–5 Negotiation and award.
570.304–6 Inspection and certification.

* * * * *

Subpart 570.6—Special Aspects of Contracting for Lease Alterations

570.600 Scope of subpart.
570.601 General.
570.602 Alterations by the Lessor.
570.602–1 Justifications and approval requirements.
570.602–2 Procedures.
570.603 Alterations by the Government.

Subpart 5707.7—Solicitation Provisions and Contract Clauses

570.701 Solicitation provisions.
570.701–1 Preparation of offers.
570.701–2 Explanation to prospective offerors.
570.701–3 Late submission, modifications, and withdrawal of offers.
570.701–4 Historic preference.
570.701–5 Lease award.
570.701–6 Parties to execute lease.
570.701–7 Reserved.
570.701–8 Reserved.
570.701–9 Reserved.
570.702 Contract clauses.
570.702–1 Definitions.
570.702–2 Subletting the premises.
570.702–3 Maintenance of premises.
570.702–4 Damage by fire or other casualty.
570.702–5 Condition report.
570.702–6 Applicable codes and ordinances.
570.702–7 Inspection of premises.
570.702–8 Failure in performance.
570.702–9 Lessor's successors.
570.702–10 Alterations.
570.702–11 Proposals for adjustment.
570.702–12 Changes.
570.702–13 Liquidated damages.
570.702–14 Operating costs.
570.702–15 Tax adjustment.
570.702–16 Adjustment for vacant premises.
570.702–17 If minimum not delivered.
570.702–18 Delivery and condition.
570.702–19 Time extensions.
570.702–20 Termination for default.
570.702–21 Progressive occupancy.

Authority: 40 U.S.C. 486(c).

20. Section 570.101, 570.102, 570.105, and 570.106 are revised to read as follows:

570.101 Applicability.

(a) The requirements of this part apply to the acquisition of leasehold interests in real property.

(b) The requirements of this part do not apply to the acquisition of leaseshold interests in real property by the power of eminent domain or donation.

(c) The requirements of this part do not apply to the acquisition of leasehold interest in bare or unimproved land.

(d) The GSAR applies to the acquisition of leasehold interests in real property only to the extent specified in this part and § 501.103(b).

570.102 Definitions.

(a) "Acquisition" means the acquiring by lease with appropriated funds of an interest in improved real property for use by the Federal Government whether the space is already in existence or must be constructed. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, market survey, solicitation, award of lease, lease performance, lease administration, and those technical and management functions directly related to the process of fulfilling agency space needs by contract.

(b) "Contract" means lease.

(c) "Contractor" means lessor.

(d) "Fair Rental" means the amount of the rental which reasonably can be expected to be paid for the lease of real property as established by competition and/or by a value estimate based on accepted real property appraisal procedures.

(e) "Lease" or "leasehold interests in real property" means a conveyance to the Government of the right of exclusive possession of real property for a definite period of time by a landlord. It may include services provided by the landlord such as heating, ventilation, air conditioning, utilities, custodial services, and other related services furnished by the landlord.

(f) "Lessee" or "tenant" means the United States of America.

(g) "Lessor" or "landlord" means any individual, firm, partnership, trust, association, or other legal entity which leases property to the Government.

(h) "Rent and related services" means the consideration paid for the use of leased property plus the costs of operational services such as heat, light, and janitor services whether furnished by the lessor, the Government, or both.

(i) "Small business" means a concern including affiliates, which is organized for profit, is independently owned and operated, is not dominant in the field of leasing commercial real estate, and has annual average gross receipts of $10 million or less for the preceding three fiscal years.

(j) "Space" means the premises leased, or to be leased. The quantity of space is most often expressed in terms of square feet.

(k) "Solicitation for Offers (SFO)" means invitation for bids in sealed bidding or request for proposals in negotiations.

(l) "Substantially as follows" or "substantially the same as", when used in the prescription of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accomodate requirements that are peculiar to an individual acquisition; provided, that the variation includes the salient features of the FAR/GSAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR/GSAR provision or clause or related coverage on the subject matter.

570.105 Competition.

(a) The competition requirements of FAR Part 6 and GSAR Part 506 apply to the acquisition of leasehold interest in real property.

(b) Contracts involving the acquisition of leasehold interests in real property

shall be awarded through the use of competitive procedures (sealed bidding or negotiation), unless the use of other than full and open competition is permitted by one of the exceptions in FAR 6.302.

(c) The acquisitions of leased space through other than full and open competition must be held to the smallest number practicable and be justified in writing and approved in accordance with FAR 6.303, 6.304, and GSAR 506.304.

570.108 Methods of contracting.

(a) *Sealed bidding.* The use of sealed bidding in connection with the leasing of real property is generally not feasible, unless a building site has been preselected and a building is to be constructed on the site in accordance with Government furnished plans and specifications for lease to the Government. When using sealed bidding procedures, the provisions of FAR Part 14 and GSAR Part 514 must be followed.

(b) *Negotiation.* The negotiated method of contracting is normally the best suited for acquiring space through a lease contract because it is necessary to conduct discussions with responding offerors about their proposals and factors other than price must be considered in making the award.

21. Section 570.201 and 570.202 are revised to read as follows:

570.201 Market surveys.

In order to promote full and open competition with due regard for the nature of the space to be acquired, a market survey must be conducted for all proposed acquisitions of space. The survey may be conducted by Government employees or by contractor personnel. The market survey must include—

(a) Solicitation of information on the availability of space through the use of circulars or newspaper advertisements and consultations (telephonically or in person) with realtors, brokers, owners, and others, as appropriate.

(b) An inspection of all offered and other available locations that appear to meet the minimum requirements regarding quantity, quality, availability, and probable cost.

(c) Documentation of the survey findings for each location inspected, including the reasons for unacceptability and identity of the interested parties that should be forwarded a solicitation for offers.

570.202 Advertising.

(a) Government space requirements for blocks of space of 10,000 or more square feet must be publicized in local newspapers and/or periodicals unless exempt under FAR 5.202 or GSAR 505.202. Requirements for blocks of space of less than 10,000 square feet may be publicized when the contracting officer determines such advertising will serve to promote competition.

(b) When the Government proposes the acquisition of leasehold interests in a building to be constructed on a preselected site, the proposed acquisition shall be publicized (synopsized) in the Commerce Business Daily (CBD) at least 15 days prior to issuance of the SFO.

(c) For further information on advertising and synopsizing refer to FAR Part 5 and Part 505 of this regulation.

22. Section 570.203 is amended by revising the introductory text of paragraph (a), (a)(2), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(5), (a)(7), (a)(7)(iii), (a)(7)(iv), (a)(8), (a)(9), (b), and (c) to read as follows:

570.203 Solicitation for offers (SFO).

(a) The SFO is the basis for the entire lease negotiation process and must be made a part of the lease. SFO's must contain the information necessary to enable the prospective offeror to prepare a proposal. Each solicitation, as a minimum, must—

(1) * * *

(2) Contain a description of the minimum requirements of the Government, including—

(i) A description of the required space.

(ii) Specifications. The type of specification shall depend upon the nature of the space needs of the agency and the market available to satisfy such needs. Specifications may be stated in terms of function, performance, or design requirements. The specification shall be drafted to promote full and open competition and shall include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(iii) Any special requirements.

* * * * *

(5) Advise that offers will be evaluated based only on the initial lease term, unless otherwise specified.

* * * * *

(7) Identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and state the relative importance the Government places on those evaluation factors and subfactors. Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation must inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors.

* * * * *

(iii) When lump sum payments for initial tenant alterations are solicited, the lowest offer as to price will be determined by adding to the annual square foot rate (or the composite square foot rate) the result of the lump sum amount amortized over the firm term of the lease (i.e., divided by number of years in the term) divided by the square footage offered.

(iv) The factors that will be considered in evaluating proposals should be tailored to each acquisition and include only those factors that will have an impact on the award decision. The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of the contracting officer. However, price or cost to the Government must be included as an evaluation factor in every case. Other evaluation factors that may apply to a particular acquisition are the availability of public transportation, the availability of adequate food service within a reasonable distance, the use of renewable energy, and any other relevant factors.

(8) Include provisions and clauses substantially the same as those listed on the matrix at GSAR 552.370 when the prescription for use of the provision or clause requires its use. The omission of any provision or clause when its prescription requires its use constitutes a deviation which must be approved in accordance with the procedures in Subpart 501.4. Approval may be granted to deviate from provisions or clauses that are mandated by statute (e.g. FAR 52.203–5, Covenant Against Contingent Fees; FAR 52.203–1, Officials Not to Benefit, FAR 52.215–1, Examination of Records by the Comptroller General, etc.) in order to modify the language of the provision or clause. However, deviations to omit such provisions and clauses may not be granted, unless the statute provides for waiving the requirements of the clause.

(9) Include appropriate forms as prescribed in Subpart 570.8.

(b) The initial release of SFO's must be made to all prospective offerors at the same time.

(c) Copies of each SFO must be maintained at the issuing office until an award has been made. A reasonable number should be duplicated and made available upon request to individuals and firms having an interest.

23. Section 570.205 is revised to read as follows:

§ 570.205 Negotiations.

(a) Negotiations will be conducted with all offerors that are within the competitive range. The contracting officer shall determine the competitive range on the basis of cost and other factors that were stated in the solicitation and shall include in the competitive range all offers that have a reasonable chance of being selected for award. When there is doubt as to whether an offer is in the competitive range, the offer should be included.

(b) The content and extent of the negotiations is a matter of the contracting officer's judgement based on the particular facts of each acquisition. The contracting officer shall—

(1) Control all discussions;

(2) Advise the offeror of deficiencies in its offer so that the offeror is given an opportunity to satisfy the Government's requirements;

(3) Attempt to resolve any uncertainties concerning the offer;

(4) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process; and

(5) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its offer that may result from the discussion.

(c) No indication may be given to any offeror of a price which must be met since such practice constitutes an auction technique which is to be avoided. Likewise, no offeror should be advised of his relative standing with other offerors.

(d) After receipt of offers, no information regarding the number or identity of the offerors participating in the negotiation may be made available to anyone whose official duties do not require such knowledge.

(e) Negotiations must be closed by establishing a date and time for closing of negotiations and requesting in writing that offerors submit a "best and final offer" by that date.

(f) Negotiations may not be conducted after the closing date for best and final offers unless negotiations are reopened with all offerors in the competitive range.

(g) Negotiations must be confidential and reflect complete agreement on all items and conditions of the lease contract. Information regarding the transaction will not be announced or made available until after the contract is awarded.

(h) A written negotiation record must be placed in the lease file.

24. Section 570.206 is amended by revising paragraph (a) to read as follows:

570.206 Evaluating offers.

(a) An abstract of final offers must be prepared to aid in the analysis of offers received.

* * * * *

25. Section 507.208 is revised to read as follows:

570.208 Preaward requirements.

Before making a lease award, the following actions are required—

(a) *Cost or pricing data.* (1) Cost and pricing data are required under the circumstances described in FAR 15.804–2.

(2) The exemptions from and waivers of submission of certified cost or pricing data are outlined in FAR 15.804–3. The competition exemption applies when adequate price competition, as defined in FAR 15.804–3(b), is obtained. The market price exemption from submission cost or pricing data may be applied to proposed leases where there is evidence that the price is based on an established market price for similar space leased to the general public. A market survey and an appraisal conducted in accordance with accepted real property appraisal procedures may be used as evidence to establish the market price. The contracting officer may grant an exemption and need not require the prospective lessor submit a Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when there is evidence, before solicitation, that there is an acceptable established market price (see FAR 15.804–3(e)(3)).

(3) In exceptional cases, the requirement for submission of certified cost or pricing data may be waived in accordance with FAR 15.804–3(i) and GSAR 515.804–3.

(4) When certified cost or pricing data are required, the contracting officer shall follow the procedural requirements in FAR 15.804–6.

(5) In the event the proposed lessor refuses to provide the data, when required, the contracting officer shall follow the procedures in GSAR 515.804–70.

(b) *Appraisal.* When the annual net rental exceeds $2,000, an appraisal of the fair rental must be obtained for the property to be leased.

(c) *Proposal evaluation.* (1) The contracting officer shall use cost or price analysis to evaluate the offers in accordance with the general guidance provided in FAR 15.805. The contracting officer shall document the lease file to demonstrate that the fair rental value has been properly established and show how it relates to the proposed contract rental.

(2) The lease file must also document the evaluation of other award factors listed in the solicitation. The file should include the basis for evaluation, an analysis of each offer, and a summary of findings.

(d) *Financial responsibility.* (1) A determination must be made that the prospective offeror is financially responsible with respect to the lease being considered. The contracting officer's signature on the contract is deemed to be an affirmative determination. The market survey will constitute adequate support for the determination, unless new construction is involved.

(2) When the offer involves new construction, the contracting officer shall request the Credit and Finance Branch, Region 2, to evaluate the offeror's financial status, unless the offeror has been evaluated and found satisfactory within the past year. The contracting officer shall consider the information provided by the Credit and Finance Branch and make a determination as to the lessor's financial responsibility.

(3) In other cases where the contracting officer has reason to question the lessor's financial ability to perform, a responsibility check must be requested from the Credit and Finance Branch.

(4) All documents generated as a result of financial responsibility checks must be placed in the permanent lease file.

(e) In order to comply with the warranty requirement of 41 U.S.C. 254(a) concerning contingent fees, the requirements of FAR Subpart 3.4 and Subpart 503.4 must be followed.

(f) Applicable certifications as prescribed in § 552.370 shall be reviewed for compliance with regulations.

(g) Leases must be cleared in accordance with the requirements of GSA Order, Contract Clearance (APD 2800.1B).

26. Section 507.209 is amended by revising paragraph (a) and adding paragraph (c) and (d) to read as follows:

570.209 Award.

(a) An award will be made to the responsible offeror whose proposal is most advantageous to the Government

considering price and other factors included in the solicitation.

* * * * *

(c) Unsuccessful offerors will be notified in writing, of the award.

(d) All proposals received in response to a solicitation may be rejected if the head of the contracting activity determines that action is in the public interest. This authority may be redelegated.

27. Section 570.210 is amended by revising paragraph (b) to read as follows:

570.210 Inspection and certification.

* * * * *

(b) Certify that the space is in substantial compliance with the Government's requirements and specifications prior to occupancy.

28. Subparts 570.3, 570.4, 570.5, 570.6, and 570.7 are revised to read as follows:

Subpart 570.3—Special Aspects of Contracting for Leasehold Interests in Real Property

570.300 Scope of subpart.

This subpart prescribes policies and procedures for the acquisition of leasehold interests in real property when blocks of space of less than 10,000 square feet are required.

570.301 Definitions.

"Small lease" means an acquisition of leasehold interest in real property involving blocks of space of less than 10,000 square feet using the procedures prescribed in this subpart.

"Small lease procedure" means the method prescribed in this subpart for making small leases using a simplified process and a short form lease contract.

570.302 Purpose.

The purpose of this subpart is to prescribe simplified procedures for small leases in order to reduce administrative costs while providing for the efficient and economical acquisition of leasehold interests in real property.

570.303 Policy.

The procedures prescribed in this subpart should be used to the maximum extent practicable for acquisition of leasehold interests in real property involving blocks of space aggregating less than 10,000 square feet.

570.304 Procedures.

570.304-1 General.

(a) The small lease procedures contemplate the contracting officer or a representative will visit the area where space is required to—

(1) locate and inspect buildings where space may be available to satisfy the Government's requirements;

(2) present a proposed short form lease to prospective offerors together with a notice identifying all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and stating the relative importance the Government places on the evaluation factors or subfactors;

(3) ask the prospective offerors to review the proposed lease and provide an offer;

(4) negotiate directly with the offerors while on location; and

(5) award the lease.

(b) This procedure does not eliminate the requirements for legal review, contract clearance, etc. if the lease would be subject to such requirements based on the amount of the transaction or the nature of the agreement.

570.304-2 Market survey.

A market survey must be conducted in accordance with GSAR 570.201. The market survey is a crucial aspect of the small lease procedure.

570.304-3 Advertising.

Requirements may be publicized in local newspapers and/or periodicals when the contracting officer determines such advertising will serve to promote competition. For further information on advertising, refer to FAR Part 5 and Part 505.

570.304-4 Soliciting offers.

(a) Offers must be solicited by presenting each prospective offeror with a proposed short form lease and a notice identifying all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and stating the relative importance the Government places on the evaluation factors or subfactors.

(b) The proposed lease must describe the Governments requirements and include applicable provisions and contract clauses substantially the same as those listed on the matrix at GSAR 552.370.

570.304-5 Negotiation and award.

The policies and procedures in GSAR 570.205, GSAR 570.208 and GSAR 570.209 must be followed.

570.304-6 Inspection and certification.

A Government representative shall inspect the space and certify that the space is in substantial compliance with the Government's requirements and specifications prior to occupancy.

Subpart 570.4—Mistakes, Protests, Miscellaneous

570.401 Disclosure of mistakes after award.

When a mistake in a lessor's offer is not discovered until after award, the mistake must be handled as provided in FAR 14.406-4 and Subpart 514.4.

570.402 Protests.

Protests regarding the award of lease contracts must be handled as provided in FAR Subpart 33.1 and GSAR Subpart 533.1.

570.403 Awards to Federal employees.

(a) Offers to lease space received from officers or employees of the Government must be handled as provided in FAR Subpart 3.6.

(b) The head of the contracting activity may authorize an exception under the circumstances in FAR 3.602.

Subpart 570.5—Special Aspects of Contracting for Continued Occupancy in Leased Space

570.501 Renewal options.

(a) *Exercise of options.* Before exercising an option, the provisions of GSAR Part 517 must be followed.

(b) *Notification.* When a contracting officer determines that it is in the best interest of the Government to continue to lease a property, the lessor must be notified within the time frame required by the lease.

(c) *Market survey.* When the right to renew a lease exists, a renewal must be based on a market survey and other applicable considerations. Surveys should focus on the prevailing rental rates for comparable space.

(d) *Reappraisal.* The original appraisal must be updated (e.g., by memorandum) or a new appraisal performed when the annual net rental exceeds $2,000.

(e) *Cancellation.* When a determination is made that a lease which has an automatic renewal clause is no longer required, the lessor will be notified in writing that the lease has been canceled.

570.502 Succeeding leases.

(a) *General.* Succeeding leases for the continued occupancy of space in a building may be entered into when a cost-benefit analysis has been conducted and the results indicate that an award to an offeror other than the present lessor would result in substantial relocation and duplication costs to the Government that are not expected to be recovered through competition.

(b) *Procedure.*—(1) *Advertising.* The contracting officer shall publish a notice in local newspapers and/or periodicals when blocks of space of 10,000 or more square feet are involved. The notice should normally (i) indicate the Government's lease is expiring, (ii) describe the agency's needs in terms of type and quantity of space, (iii) indicate the Government is interested in considering alternative space if economically advantageous, (iv) advise prospective offerors that the Government will consider the cost of moving, alterations, etc., when deciding whether it should relocate, and (v) tell interested parties who to contact if they are interested in providing space to the Government.

(2) *Market Survey.* A market survey shall be conducted in accordance with GSAR 570.201.

(3) *Competition determination.*

(i) If no potential acceptable locations are identified through the notice or the market survey, the contracting officer may prepare a justification to negotiate directly with the present lessor. The justification must be prepared and approved in accordance with FAR 6.3 and GSAR 506.3 and should fully document the efforts to locate alternative sources.

(ii) If potential acceptable locations are identified through the advertisement or market survey and relocation costs (including estimated moving costs, telecommunications costs, and the estimated cost of alterations, amortized over the first term of the lease) are not significant enough to preclude recovery of such costs through competition, the contracting officer may proceed to develop a formal SFO and negotiate with all interested parties in accordance with the procedures in GSAR 570.2 or GSAR 570.3.

(iii) If potential acceptable locations are identified through the advertisement or market survey and substantial relocation costs are involved, the contracting officer shall conduct a cost-benefit analysis to determine whether the duplication of costs to the Government could be recovered through competition. The cost-benefit analysis must give consideration to the prices of other potentially available properties, relocation costs, and other appropriate considerations. The prices for other potentially available properties must be established by requesting the prospective offeror to provide an informational quotation for standard space for comparison purposes. The prices quoted for standard space will be adjusted by the Government for special requirements. A formal solicitation for offers (SFO) is not required for the purpose of obtaining the informational quotation. The contracting officer shall provide a general description of the Government's needs when requesting informational quotations. If oral quotations are provided, the record must be documented to reflect the following information, as a minimum: the name and address of the firm solicited, the name of the firm's representative providing the quote, the price(s) quote, the description of the space and services for which the quote is provided, the name of the Government employee soliciting the quotation, and the date of the conversation. The informational quotations shall be compared to the present lessor's price, adjusted to reflect the anticipated price for a succeeding lease. Based on the results of the cost-benefit analysis, the contracting officer will—

(A) Prepare a justification for approval in accordance with FAR 6.3 and GSAR 506.3 to support the determination to negotiate with the present lessor for continued occupancy because it is likely that award to any other offeror would result in substantial duplication of costs to the Government that are not expected to be recovered through competition, or

(B) Develop a formal SFO and negotiate with all interested parties in accordance with the procedures in Subpart 570.2 or 570.3.

570.503 Expansion requests.

(a) When the expansion space needed is within the general scope of the lease, the space may be acquired through a modification to the lease.

(b) When the expansion space needed is outside the general scope of the lease, the contracting officer must determine whether it is more prudent to provide the expansion space by supplemental agreement to the existing lease or to satisfy the requirement through relocation. A market survey shall be conducted to determine whether suitable alternate locations are available. If the market survey reveals alternate locations which can satisfy the total requirement, a cost-benefit analysis shall be performed to determine whether it is in the Government's best interest to relocate. This analysis may include—

(1) The cost of the alternate space compared to the cost of expanding at the existing location,

(2) The cost of moving,

(3) The cost of duplicating existing improvements, and

(4) The cost of the unexpired portion of the firm term lease (unless a termination is possible, in which case the actual cost of such an action should be used).

(c) If no suitable alternative location is available and the cost of the space exceeds $25,000, a justification may be prepared for approval in accordance with FAR 6.3 and GSAR 506.3 in order to negotiate a Supplemental Lease Agreement to provide expansion space, provided the original lease term is not extended. When the cost is $25,000 or less, the contracting officer must prepare the justification for inclusion in the file.

570.504 Superseding leases.

(a) Consideration should be given to the execution of a superseding lease which would replace the existing lease when the changes or modifications to the space contemplated are so numerous or detailed as to cause complications, or would substantially change the present lease.

(b) The justification and approval requirements in FAR 6.3 and GSAR 506.3 must be complied with before negotiating a superseding lease if the amount of the lease for the firm term exceeds $25,000. When the cost is $25,000 or less, the contracting officer must prepare a justification for inclusion in the file.

570.505 Lease extensions.

(a) The justification and approval requirements in FAR Subpart 6.3 and GSAR Subpart 506.3 must be complied with before negotiating a Supplemental Lease Agreement exceeding $25,000 to extend the term of the lease to provide for continued occupancy on a short term basis (usually not to exceed 1 year). For extensions of $25,000 or less the contracting officer must prepare the justification for inclusion in the contract file.

(b) FAR 6.302–1 provides for contracting without providing for full and open competition when the property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy the needs of the agency. This authority may be used to extend the term of a lease by supplemental agreement in situations such as the following:

(1) When the agency occupying the leased space is scheduled to move into other Federally controlled space but unexpected delays are encountered in preparing the new space for occupancy.

(2) When unexpected delays which are outside of GSA's control (i.e., protests, etc.) are encountered in acquiring replacement space.

(3) When various agencies occupying leased space are being consolidated and

it is necessary to extend the terms of some leases to establish a common expiration date.

Subpart 570.6—Special Aspects of Contracting for Lease Alterations

570.600 Scope of subpart.

This subpart prescribes policies and procedures for contracting for alterations of real property leased by GSA.

570.601 General.

(a) Although the Government generally has a contractual right to alter the space leased, normally most alterations are acquired through a modification to the lease because they fall within the general scope of the lease and it is in the Government's interest to acquire the alterations from the lessor.

(b) As the need for alterations arise during the term of a lease contract, the contracting officer must examine each project and make a determination as to whether the alterations fall within the general scope of the lease and may be acquired through a modification to the lease. The primary test is whether the work should be regarded as fairly and reasonably an inseparable part of the lease requirement originally contracted for. If the alterations are outside the general socpe, the contracting officer must make a decision to acquire the alterations through a separate contract, through a Supplemental Lease Agreement, or to request the work be performed by Federal employees.

570.602 Alterations by the Lessor.

570.602-1 Justifications and approval requirements.

(a) The justification and approval requirements in FAR Subparts 6.3 and GSAR 506.3 must be complied with before negotiating directly with the lessor for any alteration project exceeding $25,000 which is outside the general scope of the lease contract.

(b) Before negotiating directly with the lessor for any alteration project of $25,000 or less, which is outside the general scope of the lease, the contracting officer shall document, in writing, the reasons for the absence of competition.

570.602-2 Procedures.

(a) *Scope of work.* A scope of work must be prepared for all alteration projects.

(b) *Independent Government estimate.* An independent Government estimate must be prepared for all alteration projects, including changes to alteration agreements with lessors.

(c) *Request for proposal.*

(1) The lessor shall be provided with a scope of work, including any plans and specifications which have been developed, and shall be requested to submit a proposal. The request for proposal should indicate whether progress payments will be made and provide for retainage, when appropriate.

(2) The proposal shall be requested to be submitted in such detail that a cost or price analysis can be made.

(3) The requirements for the submission of certified cost or pricing data outlined in FAR 15.804–2 apply to alteration projects over $100,000. The procedural requirements at FAR 15.804–6 must be followed when requesting cost and pricing data. Exemptions from or waivers to submission or certified cost or pricing data must be processed in accordance with the requirements of FAR 15.804–3 and GSAR 515.804–3. If the lease does not include the clauses at FAR 52.215–22 and 52.215–24 or the clauses at FAR 52.215–23 and 52.215–25, the modification to the lease for the alterations must add the clauses at FAR 52.215–23 and 52.215–25 if cost and pricing data is submitted.

(d) *Audits.* Unless the cost or pricing data requirement is exempt or waived in accordance with FAR 15.804–3 and GSAR 515.804–3, an audit must be requested for negotiated alterations to be performed during the term of the lease which exceed $500,000. Initial space alterations are considered in the award of the lease contract. Therefore, when the lease is exempted from the requirement for submission of cost or pricing data, the initial space alterations fall under that exemption.

(e) *Evaluation of proposals.* (1) Determine whether the proposal will meet the Government's requirements.

(2) Analyze cost as compared to the independent estimate and the audit.

(3) Analyze profit in accordance with FAR Subpart 15.9 if the project exceeds $25,000.

(4) Document analysis leading to negotiation objectives developed from (1) through (3) of this paragraph.

(f) *Price negotiations.* (1) The contracting officer is responsible for exercising sound judgment and may make reasonable compromises as necessary.

(2) The negotiated price should provide the lessor with the greatest incentive for efficient and economical performance.

(3) Negotiations shall be documented by a price negotiation memorandum.

(g) *Award.* Alterations may be procured using the GSA Form 276, Supplemental Lease Agreement, or the GSA Form 300, Order for Supplies or Services (alteration project of $25,000 or less) provided a reference is made to the lease and the provisions of Section 332 of the Economy Act of June 30, 1932, (47 Stat. 412), as amended, are met.

(h) *Inspection and payment.* Final payment for alterations shall not be made until the work is—

(1) Inspected by a qualified Government employee or independent Government contractor, and

(2) Certified as completed in a satisfactory manner.

570.603 Alterations by the Government.

When the Government elects to exercise its rights to make the alterations rather than contract directly with the lessor, the work may be performed by Federal employees or may be contracted out using all of the standard contracting procedures that would apply to a construction contract if the work were to be performed on Federal property. If the Government decides to contract for the work, the lessor, as well as all other prospective contractors, should be invited to submit an offer for the project.

Subpart 570.7—Solicitation Provisions and Contract Clauses

570.701 Solicitation provisions.

570.701-1 Preparation of offers.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270–1, Preparation of Offers, in solicitations for leasehold interests in real property.

570.701-2 Explanation to prospective offerors.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270–2, Explanation to Prospective Offerors, in solicitations for leasehold interests in real property.

570.701-3 Late submissions, modifications, and withdrawals of offers.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270–3, Late Submissions, Modifications, and Withdrawals of Offers, in solicitations for leasehold interests in real property.

570.701-4 Historic preference.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270–4, Historic Preference, in solicitations for leasehold interests in real property when the market survey indicates that space is available in both historic and non-historic buildings.

570.701-5 Lease award.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270-5, Lease Award, in solicitations for leasehold interests in real property.

570.701-6 Parties to execute lease.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270-6, Parties to Execute Lease, in solicitations of leasehold interests in real property.

570.701-7 [Reserved]

570.701-8 [Reserved]

570.701-9 [Reserved]

570.702 Contract clauses.

570.702-1 Definitions.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-10, Definitions, in solicitations and contracts for leasehold interests in real property.

570.702-2 Subletting the premises.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-11, Subletting the Premises, in solicitations and contracts for leasehold interests in real property.

570.702-3 Maintenance of premises.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-12, Maintenance of premises, in solicitations and contracts for leasehold interests in real property.

570.702-4 Damage by fire or other casualty.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.207-13, Damage by Fire or Other Casualty, in solicitations and contracts for leasehold interests in real property.

570.702-5 Condition report.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-14, Condition Report, in solicitations and contracts for leasehold interests in real property.

570.702-6 Applicable codes and ordinances.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-15, Applicable Codes and Ordinances, in solicitations and contracts for leasehold interests in real property.

570.702-7 Inspection of premises.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-16, Inspection of Premises, in solicitations and contracts for leasehold interests in real property.

570.702-8 Failure in performance.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-17, Failure in Performance, in solicitations and contracts for leasehold interests in real property.

570.702-9 Lessor's successors.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-18, Lessor's Successors, in solicitations and contracts for lease-hold interests in real property.

570.702-10 Alterations.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-19, Alterations, in solicitations and contracts for leasehold interests in real property.

570.702-11 Proposals for adjustment.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-20, Proposals for Adjustment, in solicitations and contracts for leasehold interests in real property. If the lease is for 10,000 square feet or more, the contracting officer shall use the clause with its Alternate I.

570.702-12 Changes.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-21, Changes, in solicitations and contracts for leasehold interests in real property.

570.702-13 Liquidated damages.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-22, Liquidated Damages, in solicitations and contracts for leasehold interests in real property when there is a critical requirement that the delivery date be met and an actual cost cannot be established for the loss to the Government resulting from late delivery.

570.702-14 Operating costs.

If the contracting officer determines operating cost escalation is necessary, a clause substantially the same as the clause at GSAR 552.270-23, Operating Costs, must be included in solicitations and contracts for leasehold interests in real property.

570.702-15 Tax adjustment.

If the contracting officer determines tax escalation is necessary, a clause substantially the same as the clause at GSAR 552.270-24, Tax Adjustment, must be included in solicitations and contracts for leasehold interests in real property.

570.702-16 Adjustment for vacant premises.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-25, Adjustment for Vacant Premises, in solicitations and contracts for leasehold interests in real property.

570.702-17 If minimum not delivered.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-26, If Minimum Not Delivered, in solicitations and contracts for leasehold interests in real property.

570.702-18 Delivery and condition.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-27, Delivery and Condition, in solicitations and contracts for leasehold interests in real property.

570.702-19 Time extensions.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-28, Time Extensions, in solicitations and contracts for leasehold interests in real property.

570.702-20 Termination for default.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-29, Termination for Default, in solicitations and contracts for leasehold interests in real property.

570.702-21 Progressive occupancy.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-30, Progressive Occupancy, in solicitations and contracts for leasehold interests in real property.

29. Section 570.801 is amended by revising paragraph (b) to read as follows:

570.801 Standard forms.

* * * * *

(b) Page 1 of the standard Form 2-B, U.S. Government Lease for Real Property (Short Form), may be used to award leases for less than 10,000 square feet. Page 2 of the form should not be used because the clauses are obsolete.

30. Section 570.802 is revised to read as follows:

570.802 GSA forms.

(a) GSA Form 276, Supplemental Lease Agreement, should be used to amend existing leases which involve the acquisition of additional space or partial release of space, revisions in the terms of a lease, rental payments, payments for overtime services, restoration settlements, and alterations.

(b) GSA Form 387, Analysis of Values Statement, should be used to demonstrate that the fair rent value of the leased space is proper.

(c) GSA Form 1364, Proposal To Lease Space To The United States of America, may be used to obtain offers from prospective offers.

(d) GSA Form 3516, Solicitation Provisions, should be included as a part of all solicitations for the acquisition of leasehold interests in real property.

(e) GSA Form 3517, General Clauses, should be included as a part of all solicitations and contracts for the acquisition of leasehold interests in real property.

(f) GSA Form 3518, Representations and Certifications, should be included as a part of all solicitations for the acquisition of leasehold interest in real property.

Dated: June 13, 1985.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 85-16046 Filed 7-3-85; 8:45 am]

BILLING CODE 6820-61-M

Proposed Rules

Federal Register
Vol. 50, No. 129
Friday, July 5, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 417

[Docket No. 2516S]

Sugarcane Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: The Federal Crop Insurance Corpration (FCIC) hereby publishes this notice for the propose of withdrawing a Notice of Proposed Rulemaking (NPRM) revising and reissuing the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1986 and succeeding crop years. The intent of this notice is to withdraw the NPRM because sufficient time was not available to complete the period for public comment and issue a final rule for filing under the provisions of 7 CFR Part 417. The authority for this action is contained in the Federal Crop Insurance Act, as amended.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Croporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On Thursday, May 30, 1985, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 50 FR 23017, proposing to revise and reissue the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1986 and succeeding crop years.

The provisions of 7 CFR Part 417 provided that any changes in the terms and conditions of the contract will be available at the service office by May 31.

On Thursday, May 30, 1985, FCIC published an Interim Rule in the **Federal Register** at 50 FR 22969, amending the Sugarcane Crop Insurance Regulations (7 CFR Part 417) effective for the 1985 crop year only, by extending the date for filing contract changes from May 31, 1985 to June 30, 1985.

FCIC could not meet the extended date of June 30 for filing changes.

For the reasons stated above, the Notice of Proposed Rulemaking, published on May 30, 1985, at 50 FR 23017 is hereby withdrawn.

Done in Washington, D.C., on June 18, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 27, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 18056 Filed 7–3–85; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–60–AD]

Airworthiness Directives; Lockheed-California Company Model L–1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would require initial and subsequent periodic inspections for accumulated water in elevator trailing edge panels. This AD is required because a significant amount of water in the trailing edge of the elevator can create an unbalance, which can cause a flutter instability to occur within the normal flight envelope. This condition, if not corrected, can result in major structural damage to the airplane.

DATE: Comment must be received no later than August 1, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–60–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63–11, U–33, B–1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548–2828.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–60–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Lockheed L–1011 elevator assembly was delivered with two types on non-metallic trailing edges. Lockheed Airplane Serial Numbers –1001 through –1101 used fiberglass panels, and Airplane Serial Number –1102 through

–1250 used Kevlar/Nomex honeycomb panels. It has been reported that significant quantities of water were found entrapped in some of the Kevlar/Nomex honeycomb elevator trailing edge panels of the L–1011. The weight of this accumulated water could cause an unacceptable unbalance of the elevator, which could result in flutter and could lead to serious airframe structural damage within the normal flight envelope of the airplane.

Since this situation is likely to exist or develop on other airplanes of this same type design, an AD is proposed to require periodic inspections for accumulated water in elevator trailing edge panels.

It is estimated that 100 airplanes of U.S. registry will be affected by this AD, that it would take approximatly 11 manhours per airplane to accomplish the required inspection, and that the average labor cost would be $40 per manhour. For airplanes that require replacement elevator trailing edge panels, the cost for parts is approximately $3,000 per airplane and would require approximately 157 manhours for installation. Based on these figures, the total cost impact of the AD is estimated to be $972,000.

For these reasons, the FAA has determined that this document involves (1) a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model L–1011 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1,354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L–1011 series airplanes, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To prevent the potential of major structural damage to the airplane due to flutter divergence as a result of water retention in the elevator trailing edge panels, accomplish the follows:

(a) Within 300 hours time-in-service after the effective date of this AD, inspect the elevator trailing edges for water entrapment in accordance with Lockheed Service Bulletin 093–55–026 dated November 20, 1984 or later FAA approved revision:

1. If no water is detected and the trailing edge has less than 20,00 hours time-in-service, reinspect in accordance with paragraph (a) at intervals not to exceed 3,500 hours time-in-service.

2. If no water is detected and the trailing edge has 20,000 or more hours time-in-service, reinspect in accordance with paragraph (a) at intervals not to exceed 7,000 hours time-in-service.

3. If water is present and the calculated or measured unbalance is within allowable limits, reinspect in accordance with paragraph (a) at intervals not to exceed 1,100 hours time-in-service.

4. If water is present and the total elevator unbalance cannot be brought within allowable limits, replace the trailing edge panel or panels before further flight.

(b) If the trailing edge is replaced by a trailing edge part number 1580585–103 or –105, within the next 3,500 hours time-in-service inspect in accordance with paragraph (a) and reinspect in accordance with paragraph (a)(1), (a)(2) or (a)(3).

(c) Modification of the elevator trailing edge in accordance with Lockheed Service Bulletin 093–55–027 dated November 20, 1984, or later FAA-approved revision, constitutes terminating action for the repetitive inspections required by paragraphs (a)(1), (a)(2), and (a)(3), above.

(d) Alternative means of compliance with this AD which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base for accomplishment of inspections or modifications required by this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63–11, U–33, B–1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on June 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–15078 Filed 7–3–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 85–NM–59–AD]

Airworthiness Directives; McDonnell Douglas Model DC–4, C54–DC, and C54 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require inspection, rework of the control horn and repair, if necessary, of the elevator trim tab spars on McDonnell Douglas Model DC–4, C54–DC and C54 (Military) series airplanes. This AD is prompted by reports of cracks in the elevator trim tab spar which, if uncorrected, could result in loss of elevator trim tab control in flight.

DATE: Comments must be received no later than August 26, 1985.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–59–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle C. Davis, Aerospace Engineer, Airframe Section, ANM–172W, FAA, Northwest Mountain Region, Western Aircraft Certification Office; telephone (213) 536–6032. Mailing Address: FAA, Northwest Mountain Region, Western Aircraft Certification Office, ANM–172W, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-59-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA has received several reports of cracks found in the left- and right-hand elevator trib tab spars at the trim tab control horn attach point during inspections of the McDonnell Douglas Model DC-4, C54-DC, and C54 (Military) series airplanes. A subsequent examination by the manufacturer of a tab with cracks in the spar has led to the conclusion that the cracks were initiated as a result of the edges of the base of the steel tab control horn riding in the top and bottom radius of the tab spar to which it is attached.

According to the manufacturer, if the tab should become free because of a complete failure of the horn or spar, both the elevator and tab would oscillate, with the oscillation magnitude of the elevator significantly less than that of the tab. The potential for severe damage would occur to the tab with subsequent damage to the elevator. In the worst condition, flutter could occur and there would be difficulty with control of the aircraft.

Since this condition is likely to exist or develop on other airplanes of the same type design, this proposed AD would require inspection, rework of the control horn, and repair, if necessary, of the elevator trib tab spars on McDonnell Douglas Model DC-4, C54-DC and C54 (Military) series airplanes.

It is estimated that 110 airplanes of U.S. registry would be affected by this AD, that it would take approximately 15 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this proposed AD on the U.S. fleet is estimated to be $66,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-4 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354 (a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.85; and 49 CFR 1.47.

2. By adding the following new airworthiness directive.

McDonnell Douglas (Douglas Aircraft Company): Applies to all McDonnell Douglas Model DC-4 and C54-DC series and all C54 military models eligible or to be made eligible for civil use, certificated in all categories. Compliance required within 100 flight hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent loss of the elevator trim tab control in flight, accomplish the following:

A. Perfrom a dye penetrant inspection for cracks in the left and right-hand elevator trim tab spars at station 81.5 (approximately), in accordance with the instructions of paragraph D. of this AD. Note that AD 48-06-05 requires, in part, the replacement of an originally designed aluminum control horn, P/N 2114427, with a steel control horn, P/N 2357165.

B. If no cracks are found in the trim tab spar, rework and reinstall the steel control horn (previously identified as P/N 2357165) in accordance with the instructions of paragraph D. of this AD.

C. If cracks are found in the trim tab spar, accomplish prior to further flight: (1) The rework of the control horn in accordance with the instructions of paragraph D. of this AD, and (2) a repair of the cracked spar. McDonnell Douglas Service Rework Drawing J060282 Revision B, dated January 30, 1985, or equivalent approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region, describes an acceptable means of repair.

D. Instructions for inspection of spar and rework of control horn:

1. Remove elevator trim tab in accordance with DC-4 Maintenance Manual (M/M) Flight Control Group, paragraph 3.15.1.

2. Remove elevator trim tab control horn, P/N 2357165, from trim tab spar station 81.5 (approximately).

3. Strip top coat and primer from the area of the spar at station 81.5 (approximately) in accordance with normal shop practice.

4. Using dye penetrant procedures, inspect for cracks in the tab spar radius in accordance with normal shop practice.

5. Rework the steel control horn base by chamfering the upper and lower edges to 0.06 ± 0.03 inches $\times$ $45° \pm 5°$ and leave no sharp edges.

6. Protect the worked areas with two applications of zinc chromate primer or equivalent.

7. Reinstall flight control system components in accordance with DC-4 M/M Volume VI, paragraph 3.15, Elevator Trim Tab.

8. Required fastener hardware, their torque values, and torque slippage indication instructions are given in the DC-4 M/M, DC-4 Service Bulletin #83 and AD 51-09-02.

Note 1.—If a DC-4 M/M is not available, the equivalent section of the C-54 M/M may be used.

Note 2.—Repetitive inspections, the attachment fasteners with their torque values, and torque slippage indication requirements of Airworthiness Directives AD 48-06-05 and AD 51-09-02 remain applicable and are not intended to be changed by the requirements of this AD.

E. Prior to issuance of a Certificate of Airworthiness for military aircraft being converted for civil certification, the airplane must be inspected, parts reworked, and if cracks are found, a repair accomplished, in accordance with the requirements of this AD.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

G. Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this proposal who have already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long

Beach, California 90846, Attention: Director, Publication and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 15000 Aviation Boulevard, Hawthorne, California.

Issued in Seattle, Washington, on June 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-15077 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 290

[Docket No. RM85-17-000 (Phase II)]

Regulation of Electricity Sales-for-Resale and Transmission Service

June 28, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing the second phase of a Notice of Inquiry to evaluate its policies toward wholesale electricity transactions and transmission service. This second phase notice explores the Commission's regulation of wholesale electric requirements service. The notice focuses particular attention on the pricing and risk allocation policies towards requirements service. The first phase, issued previously, addresses the Commission's regulation of coordination transactions and transmission service.

The Commission's objective for both phases is to investigate how its policies promote or impede efficiency in electricity markets. The Commission also seeks to determine whether these policies could be changed to further promote efficiency in the electric utility industry.

DATES: Comments must be filed by 4:30 p.m. EDT on September 6, 1985. A public conference will be held on October 16 and 17, 1985. Requests to participate in the conference must be received by September 6, 1985.

ADDRESS: Comments and requests to participate in the conference should refer to Docket No. RM85-17-000 (Phase II) and be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: David E. Mead, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capital St., NE., Washington, D.C. 20426, (202) 357-8024.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) announces the second phase of a broad inquiry into the regulation of electric utilities selling in wholesale markets. This inquiry seeks to explore how the Commission's regulations affect efficiency in electricity markets and how they might be modified to improve efficiency.

Phase I [1] of this inquiry explores possible changes in our regulation of transmission and coordination services, two of the major areas of our electric jurisdiction. Phase II addresses requirements services, a third major area of our jurisdiction.

Efficiency in requirements markets may be affected particularly by our policies regarding pricing and risk allocation. Thus, Phase II seeks comments regarding how our regulation of requirements service, especially as it relates to pricing and risk allocation, affects efficiency and how it might be changed to encourage greater efficiency.

II. Description of Requirements Service

Requirements service is a long-term firm supply of capacity and energy to meet all or part of another utility's load. It is used by buyers as a substitute for acquiring and operating sufficient generation resources to meet their own loads. Buyers then resell the power to end-use customers or to other utilities.

Wholesale requirements service is typically provided at transmission level voltages, which are generally higher than the distribution level voltages characteristic of retail sales. In addition, wholesale suppliers serve a relatively small number of distributor customers, while retail suppliers serve a large number of end-use customers.

Requirements service can be categorized as either full or partial. Full requirements service involves a commitment to meet the total current and projected load of the buyer. Full requirements service may also be sold to serve a utility that owns generation facilities if those facilities are not connected to all of the utility's service territories. Partial requirements service meets only a portion of a distributor's load. Thus, it is provided to distributors that own or have access to some generation but not enough to supply the entire load connected to that generation. This service is usually intended to provide either base load power (where the buyer owns or has access to peaking capacity) or peaking service (where the buyer has base load generation). In some cases, the service is limited by a maximum contract demand.

The long-term and relatively open-ended nature of the commitment to provide firm power makes wholesale requirements service very similar to retail service from the seller's perspective. Because of these characteristics, anticipated requirements sales affect the planning process and influence investment and resource acquisition decisions. The kinds of pricing and risk allocation issues that arise in requirements rate cases at the Commission are similar to those that confront state regulators: rate design, rate of return, cost and load estimation, allocating plant abandonment costs, and rate treatment of construction work in progress (CWIP), to name but a few.

III. Pricing

A. Efficiency and Pricing

The Federal Power Act [2] (FPA) requires us to establish just and reasonable rates. To satisfy this obligation, we have a fundamental obligation to regulate entities under our jurisdiction in a way that promotes the greatest possible degree of economic efficiency. As a federal appeals court has said in *Northern Natural Gas Company* v. *F.P.C.*, 399 F. 2d 953, 959 (D.C. Cir. 1968):

> [T]he basic goal of direct governmental regulation through administrative bodies . . . [is] to achieve the most efficient allocation of resources possible.

To fulfill this obligation, this inquiry seeks to determine how our policies affect economic efficiency in the electric utility industry. By economic efficiency, we mean allocating and using resources in a way that most benefits society.[3] Economic theory suggests that efficiency requires two conditions. First, production and delivery should occur at minimum cost. This is productive efficiency. Second, resources should be allocated where they have the highest value. This is allocative efficiency.[4]

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[1] Regulation of Electricity Sales-for-Resale and Transmission Services (Phase I), 50 FR 23445 (June 4, 1985).

[2] Federal Power Act, section 205 and section 206.

[3] This is the generally accepted definition in economic theory. *See*, for example, Paul Joskow and Richard Schmalensee, *Markets for Power*, The MIT Press, 1983, pp. 79-90; and James M. Griffin and Henry B. Steele, *Energy Economics and Policy*, Academic Press, New York, 1980, pp. 33-62.

[4] Economic efficiency may also be constrasted with other, narrower types of efficiency. For example, energy efficiency is concerned only with minimizing energy use, even at the expense of

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One of the effects of our pricing policies is to apportion risk between utility investors and ratepayers. How risk is apportioned can affect productive efficiency. Risk apportionment is discussed in the next section.

Allocative efficiency is influenced largely by the way in which prices are set. This is because customers base their consumption decisions on the prices they must pay, among other factors. To be efficient resource allocators, prices should signal to customers the economic cost of their purchase decisions. Economic theory suggests that marginal cost is the correct signal. Marginal cost is the cost of producing an additional unit of a good or service.

We are concerned that allocative inefficiencies may result when prices stray from marginal cost. For example, if prices are less than marginal costs, individuals may choose to increase usage even when the resulting benefits are less than the costs of supplying the extra service. Conversely, if prices exceed marginal costs, individuals may choose to reduce usage even when the foregone benefits are greater than the costs avoided by not supplying the increment of electricity.

In a recent case involving Wisconsin Electric Power Company (WEPCO),[5] we accepted WEPCO's proposal to design its rates based on marginal cost pricing principles. The court remanded our order [6] on the grounds of inadequate record support. This inquiry creates a broader forum in which to reexamine marginal cost pricing in comparison with our existing pricing policies.

Congress recognized the importance of reexamining traditional ratemaking methods in enacting the Public Utility Regulatory Policies Act of 1978 (PURPA).[7] Title I of PURPA required state regulatory commissions and non-regulated utilities to consider for potential adoption a number of "federal standards" established in the act.[8] The most far-reaching of these standards is that rates charged to each customer class shall, to the maximum extent practicable, reflect the cost of providing electric service to each such class.[9]

Section 115 defined further this "cost of service" standard. The cost of service method considered shall "to the maximum extent practicable . . . permit identification of differences in cost-incurrence" for each customer class "attributable to daily and seasonal time of use of service" and to "differences in customer demand and energy components of costs." [10] As to the latter, commissions and non-regulated utilities were required "to take into account the extent to which total costs of service are likely to change if additional capacity is added to meet peak demand" and "additional kilowatt-hours of energy" are delivered to customers.[11]

Economic theory suggests that these standards can be met only through rates based upon the marginal cost of service. However, Congress did not specifically make that determination. Rather, Congress left to state commissions and non-regulated utilities the decision as to which costing methodologies provide the most appropriate basis for reflecting these standards in the context of the retail rate designs in each particular state or utility system, and for meeting, in this context, the three broad purposes to Title I of PURPA set forth in section 101, *viz.*, end-user conservation, utility system efficiency and equitable rates.

The "efficiency" purpose is defined in section 101 of PURPA as "the optimization of the efficiency of use of facilities and resources by electric utilities." [12] The conservation purpose reflects the elimination of wasteful use of energy, i.e., that use which entails a commitment of resources valued in excess of the value of the electricity to end-users. Together, the efficiency and conservation purposes of section 101 encompass both the notions of productive efficiency and allocative efficiency described above, the yardsticks against which we suggest our own ratemaking policies and practices should be measures.

PURPA did not require that these "federal standards" be adopted. However, state commissions and non-regulated utilities were required to determine their propriety and to consider their adoption through public evidentiary hearings and to articulate their determinations in writing.[13] Many states, in implementing PURPA, conducted a detailed examination of the basic issues of electricity pricing, including the determination as to the most appropriate costing methodology on which to base rate structures and how that methodology should be applied in the retail ratemaking context.

We were not required by PURPA to conduct a similar examination. However, we believe the time has come for us to conduct a fundamental review of the pricing of requirements service. We recognize that the requirements service area may raise different considerations and that different costing methods may affect the various interests quite differently in this area from in the retail context. However, we believe that the experience of the states in making the initial rate structure or pricing determinations under the Title I process, and in the ongoing process of refining the costing methodology adopted, may yield some valuable insights for our own inquiry. We invite state commissions and others involved in the state PURPA Title I processes to share these insights with us.

It is important to send consumers the right price signals for basic energy commodities. We have already initiated inquiries about this for the natural gas industry [14] and for bulk power coordination and transmission services.[15] We are now prepared to continue the process for wholesale electric requirements service.

B. Current Pricing of Requirements Service

Our regulations permit the development of requirements rates that are either differentiated on a time-of-use basis or are time invariant. Furthermore, a filing utility may base its rate proposal on marginal or incremental cost,[16] fully

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nonenergy cost increases. Engineering efficiency is concerned with the limited goal of minimizing the physical quantities of resources required in a particular production process. See "Energy Accounting vs. the Market", *The Resources for the Future Bulletin*, Resources for the Future, Washington, D.C., October 1975, pp. 4–5; and *The EPRI Journal June/July 1977*, pp. 35–36.

Basing our decisions on economic efficiency considerations is not new to us. For example, in Opinion No. 191, 25 FERC 61,056 (1983), we based our decision regarding whom to award a license to operate and maintain a hydroelectric project on a number of criteria, including economic efficiency. There we noted that " . . . the goal of economic efficiency is enhanced by assigning hydro power to its highest-value use."

[5] *Wisconsin Electric Power Co.*, FERC (1983) Opinion No. 186.

[6] Electricity Consumers Resources Council v. Federal Energy Regulatory Commission *et. al.*, 747 F. 2d 1511 (Nov. 20, 1984).

[7] 16 U.S.C. 2601 *et seq.*

[8] 16 U.S.C. 2621.

[9] 16 U.S.C. 2621(d)(1). Other standards required that time-of-day, seasonal and interruptible rates, and load management techniques, if cost-justified, be offered to each class of customers; and that non cost-based declining block rates be prohibited. *See 16 U.S.C. 2621 (d)(2)–(6) and § 2625.*

[10] 16 U.S.C. 2625(a)

[11] *Id.*

[12] 16 U.S.C. 2611.

[13] 16 U.S.C. 2621(a)–(c).

[14] Interstate Transportation of Gas for Others, 50 FR 114 (Jan 2, 1985); and Natural Gas Pipeline Ratemaking, Risk, and Financial Implications after Partial Decontrol, 50 FR 3801 (Jan. 28, 1985); and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 24,130 (June 7, 1985).

[15] Regulation of Electricity Sales-for-Resale and Transmission Services (Phase I) 50 FR 23,445 (June 4, 1985).

[16] In this Notice, we use the terms marginal cost and incremental cost interchangably. Both terms

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distributed embedded cost, or noncost considerations. Fully distributed costs represent the apportionment of average accounting (or embedded) costs of financing, depreciating, and operating production, transmission and distribution capacity to all requirements customers. Despite this breadth of options, nearly all of the requirements rate approved by us have been based on fully distributed embedded costs, and the large majority of those rates lack any provision for differentiation by time-of-use.

We are concerned that our current ratemaking policies may be sending the wrong signals and hindering efficiency. Our concern stems, in part, from the seeming inconsistency between the pricing of requirements and coordination services. In most of the coordination rate schedules and tariffs on file with us, the price of energy is keyed to some measure of incremental running costs. Considerable evidence [17] seems to suggest that costs vary systematically over time, due to differences in the level of usage over time as well as other factors. With our approval, coordination rate schedules often provide for prices to vary on an hourly basis. Thus, buyers of coordination service see a time variation in cost through the structure of their rates; buyers of requirements service do not. Possibly, there may be a benefit to shielding requirements customers from price signals that show how the cost of producing electricity varies over time. However, rational regulatory policy requires us to weight any such benefit that may exist against the costs that it creates.

We are concerned that the present approach to pricing requirements service may lead to several types of inefficiencies. First, wholesale customers may make inefficient decisions regarding where to acquire bulk power. If a wholesale customer has the flexibility to choose from among more than one source of power, it will likely choose the source that charges the lowest price. But if the prices of the various sources of electricity do not reflect their respective marginal costs, then the customer's choice of supply sources may not be the source that can generate the desired increment most cheaply.

For example, consider a distribution utility that has the flexibility to purchase bulk power from two different sources. The first source is a supplier with whom the distributor has a requirements service agreement. This first supplier generates much of its supply from plants with low variable costs (e.g., nuclear plants with variable cost of 15 mills per kilowatt-hour (kWh)) and the remainder from plants with high variable costs (e.g., gas turbine plants with variable cost of 60 mills per kWh). Assume that its average variable cost (and thus, its energy rate) is 30 mills per kWh. The second source of bulk power is from the coordination market. The second supplier generates all of its power from coal steam plants, whose incremental cost is 25 mills per kWh.[18]

Suppose that the distributor needed to purchase an increment of power during a particular hour and that this hour was during the off-peak for the first supplier. As a result, this supplier could generate the increment from its baseload nuclear plant at an incremental cost of 15 mills per kWh. But the energy rate (based on average costs) for that increment of power would be 30 mills. The second supplier, who enjoys the pricing flexibility accorded to coordination market participants, would be willing to supply the increment of power for any price between 25 mills, its incremental cost, and 30 mills, the price charged by its competitor, the requirements supplier. Thus, the distributor would purchase the increment from the coordination supplier, since that supplier could offer a price lower than the requirements supplier's 30 mill rate.

But the requirements supplier could have produced the increment at a lower cost, since its incremental cost during the hour (15 mills) would have been lower than that of the coordination supplier (25 mills). If the requirements supplier's rates had been based on marginal costs, the distributor might have purchased from the supplier that could have produced the increment of electricity more cheaply. The distributor and its customers would have reaped the benefit of that decision: the price paid by the distributor would have been 15 mills instead of the coordination supplier's price of 25–30 mills. But average cost pricing interfered with the efficient choice and raised the distributor's purchased power costs.

Many requirements customers appear to have at least some choice among alternative sources of bulk power (although some service agreements between requirements suppliers and their customers may impose certain limits on the ability of the customers to swing between alternate supply sources while the service agreement is effective). Some have choices among alternative suppliers, as in the example above. Others can generate power from their own facilities as well as purchase power from requirements suppliers. Available information [19] indicates that slightly more than half of all wholesale requirements sales are to partial requirements customers, who by definition have access to alternate sources of bulk power for at least some portion of their load. Because of this large potential for choice among alternate suppliers, it is important that prices accurately communicate the relevant costs so that customers can make the most efficient choices.

Pricing requirements power at average embedded costs may produce a second inefficiency when requirements customers can sell power in coordination markets. Some requirements customers may be entitled, by virtue of contract demands,[20] to purchase more power than they actually need. They can then resell the power in coordination markets when the market price for coordination power exceeds the average cost energy rate these customers pay.[21] This produces no inefficiencies as long as the requirements supplier's marginal cost of generating the power is less than the decremental cost of the utility that buys from the requirements customer.[22] But inefficiencies may result if the marginal cost of generating the power is greater than the decremental cost of the coordination buyer. In essence,

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refer to similar concepts, namely the additional cost of producing an additional unit of a good or service. However, we are aware that some distinguish between the two terms in relation to the size of the additional unit produced. For example, in *The Economics of Regulations, Vol. I*, John Wiley & Sons, Inc., (New York: 1970), p. 66, Alfred Kahn defines marginal cost as the additional cost of producing an additional infinitesimally small unit of output, while he defines incremental cost as the additional cost of producing an additional finite (and possibly large) unit of output.

[17] *See* J. Robert Malko, Darrell Smith, and Robert Uhler, *Costing for Ratemaking*, Electric Power Research Institute (RDS No. 85), 1981, pp. IV–15 to IV–17.

[18] This example assumes equal access to each supply source and equal transmission costs.

[19] In 1977 (the most recent year for which data are published), wholesale sales to partial requirements customers were 108 billion kWh of electricity while sales to full requirements customers were 100 billion kWh. *See Statistics of Privately Owned Utilities in the United States for the year ended December 31, 1977*, p. 1300.

[20] Contract demand is the maximum amount of electricity that a buyer is entitled to purchase during a given period.

[21] At times, the marginal cost of generating requirements power will be greater than the average cost energy rate and, at other times, it will be less than the rate.

[22] It does, however, shift coordination market profits away from the requirements supplier to the requirements customer.

relatively expensive power would be displacing cheaper power.[23]

In this latter situation, average cost pricing (compared with marginal cost pricing) may benefit some, but it may disadvantage others. The purchaser of the coordination power could benefit from average cost pricing, since it could obtain power at a price cheaper than the purchaser's decremental cost. In addition, the requirments customer could benefit to the extent that it resold the power at a price greater than the price it paid for the power. However, since the incremental cost of generating the power by the requirements supplier exceeded the price received, either the supplier's shareholders took a loss on the sale, or else the supplier's other customers made up the loss through higher rates. (For example, the requirements supplier's fuel adjustment clause might permit the supplier to pass through the unrecovered portion of fuel costs in higher energy rates.)

A third inefficiency may result from the effect of average cost pricing on end use consumption. When the prices paid by a wholesale requirements distributor customer do not reflect the generating supplier's marginal costs, then the prices charged by the distributor to its own retail customers cannot accurately reflect those marginal generation costs. As a result, end users may not make efficient consumption decisions. They may consume too much electricity when marginal costs exceed prices and too little electricity when prices exceed marginal costs.

We are intent on evaluating our present policies toward requirements service and exploring alternatives, particularly marginal cost pricing. Our primary interest in this inquiry is in general issues rather than details. However, to sufficiently evaluate the merits of marginal cost pricing as a general principle, certain major implementation issues must be explored. Nevertheless, we do not think it advisable at this stage to consider questions of detail. If, after this inquiry, we are convinced of the merits of marginal cost pricing as a general principle, then we anticipate one or more follow-up proceedings to address more detailed questions. These questions might include how best to measure marginal costs, how precisely to reflect them in requirements rates, whether marginal cost principles should be applied in all circumstances, and other implementation questions. We have chosen this strategy because we do not want to burden the industry, its customers, and other commenters with detailed implementation questions until we first satisfy ourselves that the marginal cost approach in principle is reasonable and desirable.

C. Alternatives to Current Pricing Methods

1. Timing and Cost Basis of Rates

a. *Time-of-Use and Marginal Cost Principles.* We would like to explore alternatives to our current pricing methods. First, we wish to consider whether to require prices to vary by time-of-use. As discussed earlier, considerable evidence seems to suggest that costs vary systematically over time. For example, when demand is low and only a portion of capacity is needed, utilities usually generate electricity from plants with the lowest variable costs. When additional capacity is needed to supply peak period demands, plants with higher variable costs are also used. Thus, variable costs tend to be lower in off-peak periods than in peak periods. In light of this tendency, we are concerned that non-time-differentiated prices may not convey proper signals to customers.

Second, we wish to consider whether electricity prices should be set based on marginal costs. As explained above, the economic cost of additional consumption is marginal cost. We are concerned that if prices do not reflect marginal costs, individuals may make purchase decisions that produce benefits that are less than costs. As a result, too few or too many resources may be devoted to electricity production and delivery.

In practice, it appears useful to think of marginal costs as having an energy and a capacity component. Marginal energy costs can be defined as the "cost of fuel and variable operating and maintenance expenses incurred in providing an additional kilowatt-hour of electricity."[24] If increments of load are supplied by purchased power, the purchaser's marginal energy cost is usually defined as the cost of the purchased power. Where a utility participates in a centrally dispatched power pool, it appears that the pool's rather than the company's marginal energy cost may be the more appropriate measure.

Marginal capacity cost is the cost of capacity needed to serve an increment of demand. Marginal capacity costs vary depending on a number of factors, such as the level of capacity utilization and the length of the time horizon, as well as other factors. When significant existing capacity is unused, there is no marginal capacity cost to serve an additional increment of demand. The reason is that the costs of installing the existing capacity have already been incurred, and no further capacity costs would result from using otherwise idle capacity. But when capacity is fully utilized and power is unavailable for purchase from other sources, further increases in demand create positive marginal capacity costs. The magnitude of these costs depend on whether the short-run or the long-run is considered, among other things. In the short-run (i.e., in a time frame too short to install additional capacity), an increase in demand cannot be satisfied by increasing supply from existing capacity. Instead, the increase in demand from one customer can only be satisfied by reducing consumption from other customers. The short-run marginal capacity cost incurred to satisfy the increment of demand of the first customer would be a cost of opportunity. That is, it would be the cost imposed on, or the benefits foregone by, the other customers whose opportunity to consume was reduced to satisfy the first customer's demand. These costs are also referred to as shortage costs, since they arise from a shortage of capacity. In the long-run (i.e., in a time frame long enough to install additional capacity), marginal capacity cost is the cost of installing an additional amount of capacity.

A number of issues arise regarding the proper measurement of marginal cost. For example, one issue concerns whether prices should reflect short-run or long-run marginal costs. Another issue concerns whether prices should reflect the costs of a utility's existing mix of generating plants or the costs of a different plant mix, capable of supplying the utility's load at the lowest possible total cost. We wish to explore these issues in our inquiry.

When setting prices, we accept as given that the revenue requirement, i.e., the allowed revenue targeted to be collected by a utility, will be tied to the embedded costs expected to be incurred by the utility. However, if all prices charged by a utility were based on marginal costs, the resulting total revenue expected to be collected from those rates could differ from the total embedded cost revenue requirement. To abide by the embedded cost revenue requirement constraint, at least some adjustments would need to be made to marginal cost prices. A number of

[23] At least one report has concluded that this occurred in Florida. *See* Stanley Besen and Jan Paul Acton, *The Economics of Bulk Power Exchanges*, the Rand Corporation, May 1985, p. 50. This report was prepared under a contract with the Commission and is available from our Division of Public Information.

[24] 18 CFR 290.303(a).

adjustment, or reconciliation, mechanisms have been suggested in other forums.[26] We are interested in exploring what adjustments to marginal cost pricing would create the smallest distortions to efficiency.

A number of criticisms of marginal cost pricing have been raised. Some critics contend that if the prices of related goods differ from marginal costs, then society may not benefit from marginal cost based electricity prices.[26] These critics argue, for example, that electricity competes with other fuels such as oil and gas in many end uses. End users make their choices based on the relative prices of the competing energy sources. If the prices of alternate energy sources do not reflect their respective marginal costs, then pricing electricity according to marginal cost will not necessarily result in efficient choices by end users. Expensive electricity could displace a fuel whose marginal costs were lower because the alternate fuel price was above its marginal cost. Or a fuel with relatively high marginal costs could displace less costly electricity because the price of the alternate fuel was below its marginal cost.

Of course, this line of argument, sometimes called the theory of the second best, does not refute the hypothesis that marginal cost pricing for electricity could result in more efficient purchasing decisions by wholesale electric customers among alternate sources of bulk power, described in Section III. B. above. Nor does it refute the hypothesis that marginal cost pricing could improve efficiency in coordination markets, also discussed in Section III. B. above. But it does speak to the potential efficiency effects of marginal cost pricing in retail markets. This line of reasoning presents a serious argument against marginal cost electricity pricing whenever it can be shown that average embedded cost electricity prices would result in greater efficiency than marginal cost electricity prices as a result of the prices of related goods deviating significantly from their respective marginal costs.

According to another line of criticism, setting wholesale electricity prices based on marginal costs would not increase efficiency if those price signals were not transmitted through to retail rates.[27] This line of argument cannot stand by itself, since the potential efficiencies of marginal cost wholesale pricing relating to better wholesale purchasing decisions and improved coordination transactions [28] do not depend on transmitting signals to retail rates. But the argument does relate to the effect of marginal cost pricing on efficiency in retail markets. It would appear that marginal cost pricing of wholesale rates would not improve efficiency in retail markets if the wholesale price signals were not transmitted through to retail rates. On the other hand, retail rates cannot fully reflect marginal costs unless wholesale rates also reflect marginal costs. For this reason, those responsible for setting retail rates may not be motivated to adopt marginal cost pricing principles if wholesale rates are not based on marginal costs.[29]

A third criticism of marginal cost pricing relates to the so-called "price squeeze" issue. A price squeeze occurs when the wholesale prices of a seller of both wholesale and retail power discriminate against a wholesale customer, resulting in a potential anticompetitive burden on that customer. In past Commission decisions,[30] comparisons of rates of return have generally been used to determine whether price discrimination exists.

A major reason why such price discrimination may arise is that retail and wholesale electricity rates are regulated by different authorities. Retail rates are regulated by the state commissions while we regulate wholesale bulk power rates. Since the different regulatory authorities may use different methods to set retail and wholesale rates, different rates of return for wholesale and retail service may result, and thus a price squeeze could possibly result.

Of particular concern to our present inquiry, rate methodologies could differ if we were to require wholesale rates to be based on marginal costs while certain state commissions base rates on average embedded costs. In such a circumstance, it is theoretically possible that the effective rate of return embodied in the wholesale rate of an integrated utility could exceed the rate of return embodied in the bulk power component of that utility's retail rate. This could be true despite the fact that the marginal cost-based wholesale rate was just and reasonable. Under these circumstances, a price squeeze might exist. The reason is that, because of the comparatively high prices paid by a wholesale customer of the integrated utility, that customer might suffer a competitive disadvantage in selling power to retail customers that is unrelated to its efficiency as a distributor.[31]

Of course, many different methods exist to design rates based on average embedded costs. As a result, our existing pricing policies, which are based on average embedded costs, could also result in price squeeze to the extent that they differ from state commission policies.

In addition, to the extent that marginal cost-based rates increase the price squeeze potential for some customer classes, the potential price squeeze for other customer classes would be reduced. The reason is that the total revenue requirement of a utility under marginal cost rates would continue to be the same embedded cost revenue requirement presently used for average cost rates. As a result, any increases in revenue collections due to increased rates from one or more customer classes would be offset by decreases in rates and revenues from one or more other customer classes.

We do not know at present what would be the net effect or marginal pricing on the potential for price squeeze. Thus, we wish to investigate in this inquiry whether marginal cost pricing of wholesale power would create or exacerbate price squeeze and, if so, how that should influence our decisions regarding marginal cost pricing.

To aid in our evaluation of these issues, we invite comments on the following questions:

1. Do the costs of providing wholesale requirements service vary systematically by time-of-use? If so, is there any reason why we should not establish prices for requirements service that vary by time of use? Are there any benefits from continuing to set prices that do not vary by time-of-use?

2 a. In determining whether to adopt time-of-use marginal cost pricing for wholesale requirements service, should we be concerned if any wholesale customers cannot reflect those time-of-

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[26] Electric Utility Rate Design Study, *Costs and Rates Workbook, Part I: Textbook*, September 1981, pp. 9–10 to 9–21.

[26] Electric Utility Rate Design Study, *Rate Design and Load Control: Issues and Directions—A Report to the National Association of Regulatory Utility Commissioners*, November, 1977, pp. 45–46, 143–144, and 152–153.

[27] *See* for example, Brief of the Municipal Intervenors Opposing Exceptions, *Wisconsin Electric Power Company*, Docket No. ER80–567, p. 32 (June 15, 1982).

[28] Discussed in Section III. B. above.

[29] Of course, marginal cost-based wholesale rates would not prevent other rate forms at the retail level.

[30] *See*, e.g., 8 FERC 61,198 (1979), Opinion No. 62.

[31] For a contrary view as to whether price squeeze is a potential problem, *see* Paul L. Joskow, *Mixing Regulatory and Antitrust Policies in the Electric Power Industry: The Price Squeeze and Retail Market Competition*, October, 1983, MIT Energy Laboratory Working Paper (MIT-EL 83–023 WP).

use marginal cost prices in their retail rates? What harm would be done by adopting marginal cost pricing for wholesale requirements sales if those signals were not transmitted through to retail rates and/or if retail customers did not respond to these price signals?

b. What harm would be done by adopting marginal cost pricing if wholesale customers could not or did not respond efficiently to marginal cost-based wholesale rates?

3 a. Would prices based on average embedded costs encourage greater efficiency in wholesale requirements markets than prices based on marginal costs?

b. Do the prices of fuels or other goods (i) that are substitutes to or complements of electricity, or (ii) that are inputs to the production of electricity, significantly differ from their respective marginal costs? If so, would average cost pricing for wholesale electricity encourage greater efficiency than marginal cost pricing when the prices of these related goods are not based on marginal costs?

c. Should we establish wholesale electricity prices based on marginal costs in areas where retail rates are not based on marginal principles?

4. Is it possible that marginal cost pricing could worsen the load factors of some utilities? If so, explain how this result would occur and whether this result would be harmful to the utility or its customers?

5. If wholesale prices were based on marginal costs, would price squeeze situations develop in a significant number of markets? If so, what significance should this have on our decisions regarding whether to require wholesale prices to be based on marginal costs? Should we permit state policies, because of their price squeeze effects, to dictate our implementation of the Federal Power Act?

6. If wholesale requirements prices are based on marginal costs, should these prices be based on short-run or long-run marginal costs? Why?

7 a. Given that the revenue requirement would be based on embedded costs, what adjustments should be made to marginal cost prices so as to cause the least distortion to efficiency and avoid the Federal Power Act proscription against undue discrimination? Explain your answer.

b. Would a pricing system based on average embedded costs encourage greater efficiency in wholesale requirements markets than a pricing system based on marginal costs with such adjustments?

b. *Data Needs.* The data that must accompany electric rate filings are set forth in our regulations.[33] At present, our regulations do not require the submission of accounting or marginal cost data that would allow for the calculation of time-differentiated rates if they are not proposed by the applicant.[33] Therefore, if we require utilities to charge time-differentiated average or marginal cost rates, we will also have to modify our regulations to require filing data showing how electricity costs vary by time-of-production.

The specific kinds of data required to derive marginal cost rates could differ depending on the specific method used to estimate marginal costs. We will not inquire here as to the data needs that are unique to each specific method of estimating marginal costs. That investigation would be more efficiently made later, if and when we decide to investigate the detailed question of specific estimating methods. However, we do wish to explore in this inquiry what data needs are common to all the major specific methods used to estimate marginal cost.

We are sensitive to imposing additional data burdens on electric utilities. In recent years, we have made a concerted effort to reduce the amount of data that utilities must report.[34] However, it is inevitable that new data will be required if time-differentiated electric rates are to be developed and reviewed. Our intention would be to keep these additional data to a minimum. We expect that the net increase will not be burdensome if the new data reduce or eliminate data presently being collected.

To aid us in determining the data needed to implement marginal cost pricing, we request comments on the following questions:

8. Assume that the Commission continues to use embedded or accounting costs to establish an overall revenue requirement, but rate structure will be time-differentiated and based on marginal costs (*i.e.*, TDMC rates).

a. Which of the marginal cost data set developed under Section 133 of PURPA (18 CFR Part 290, Subparts C and Subpart F, section .502) would be useful for developing new rate case filing requirements regardless of the specific method used for measuring marginal costs? What data items could be eliminated? What data items should be added? How frequent and current should these data filings be?

b. Which of the existing data requirements in 18 CFR 35.13 could be eliminated or modified if we adopt TDMC rates?

c. Several state commissions require their jurisdictional utilities to provide marginal cost data in retail rate cases.[35] Could any of these data filing requirements serve as a model for the data that would have to be collected by this Commission? Are the data requirements keyed to a particular marginal cost method or are they suitable (as was intended in 18 CFR Part 290, Subpart C) for several different methods?

d. What load data would be required to develop TDMC rates?

9. Assume that, from an overall revenue requirement based on embedded costs, rates will be designed that are time-differentiated and based on average accounting costs (i.e., TDAC rates).

a. Would the time-differentiated accounting data set developed under Section 133 of PURPA (18 CFR Part 290, Subpart B and Subpart E, Section .501) be useful for developing new rate case filing requirements? What data items could be eliminated? What data items should be added?

b. Which of the existing rate case filing requirements in 18 CFR 35.15 could be eliminated or modified if the Commission adopted TDAC rates?

c. Please identify any state commission data filing requirements for TDAC rates that could serve as a model for this Commission?

d. What load data would be required to develop time-differentiated rates based on accounting costs? Do TDAC rates requre more load data than TDMC rates? Please explain.

2. *Rate Forms and Billing Determinants*

To promote efficiency, prices must of course accurately reflect the relevant costs of providing service. But that is not enough. Promoting efficiency requires that prices satisfy at least two other tests.

First, billing determinants must match the service and period for which the prices were intended to apply. Billing determinants are the units of service (e.g., the kWh of electricity consumption

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[33] 18 CFR 35.13.

[33] Time-differentiated accounting and marginal cost data must be provided under the regulations that we developed to comply with section 133 of PURPA. 18 CFR Part 290. At present, about 200 utilities are exempted from these regulations.

[34] *See*, e.g., Order No. 390, 3 FERC Statutes and Regulations, ¶ 30,586 (August 3, 1984); and Order No. 335, 3 FERC Statutes and Regulations ¶ 30,485 (September 27, 1983).

[35] It appears that marginal cost data is required in Arizona, California, Connecticut, the District of Columbia, Idaho, Illinois, Maryland, Nevada, New Mexico, New York, Oregon, Virginia, and Wisconsin.

of the kW of peak demand) for which a customer is billed at the relevant rate. It does no good to calculate the costs that should underlie the prices for one period and then charge that price for purchases in a different period instead of the first period.

Second, customers must see in advance what prices will apply for purchases in each period. Customers cannot make efficient purchasing decisons if they do not know the prices to be charged until after the purchases are made.

We are concerned that our existing policies may not always meet these tests. If not, we wish to explore whether our pricing policies could be improved.

Currently, wholesale requirements power is usually sold under a two-part, demand-energy rate form. Customers pay energy charges based on their total purchases of electricity. The rationale for this has been that energy charges are designed to recover variable costs, and variable costs are incurred whenever electricity is delivered. Customers pay demand charges based on some measure of their peak rate of purchase. The rationale for this has been that demand charges are designed to recover capacity costs, and the total capacity of a system is designed to meet expected peak purchases rather than total purchases.

A customer's total demand bill is equal to the product of a demand rate and some measure of the customer's peak rate of purchase. A number of measures of the peak rate of purchase are currently employed. The most common is the noncoincident peak demand measure. This measure selects the customer's own purchase which does not coincide with when the utility's total deliveries were at their highest rate. Since the time of the customer's purchase peak does not necessarily coincide with the time of the utility's systemwide peak rate delivery, this billing method is named the noncoincident peak method.

We are concerned that this system of billing demand charges may not be transmitting the proper price signals. Under the noncoincident peak billing method, once a demand rate is established, a customer's demand bill is dependent only on its own maximum rate of purchase. Thus, the noncoincident peak billing method encourages a customer to reduce its maximum rate of purchase, whenever that may occur. It provides no direct incentive to reduce its purchases at the time of the supplying utility's system peaks [36] except to customers whose own peaks coincide with the utility's peaks. However, to discourage uneconomical use of capacity and to promote efficiency, prices should signal the systemwide peak periods when capacity is nearly fully utilized. Under the noncoincident peak billing method, billing determinants (*i.e.*, noncoincident purchase peaks) may not match the service and period for which the demand charge was intended to apply (*i.e.*, purchases during the systemwide peaks). Thus, the noncoincident peak billing method may improperly discourage purchases when the utility has spare capacity and yet fail to signal to customers through higher prices when the utility is approaching a capacity constraint.

The use of demand ratchets may create similiar problems. A demand ratchet sets a floor on a customer's demand billing determinant. That floor for any month is a specified percentage of the customer's highest rate of purchase over one or more preceding months. This floor renders the customer's demand charge fixed for purchase levels up to the floor. The customer incurs no extra demand charges for increasing the rate of consumption up to the floor. As a result, at times when capacity is scarce and a customer is purchasing below its floor, the demand ratchet prevents the demand charge mechanism from signaling the existence of scarce capacity to that customer. Put another way, once the floor is set for a period, a customer is given no price signal as to the cost that its demand is imposing upon the utility system at any level below the floor.

A less common billing method is the coincident peak method. Under this method, a customer's total demand bill is the product of the demand rate and the customer's rate of purchase during the utility's systemwise peak rate of delivery. However, the customer does not know when the systemwise peak occurred until after the billing period has ended. Thus, the customer may not know in advance when it should try to economize on its purchases. Moreover, the systemwise peak is defined as the actual maximum rate of delivery during the billing period. However, the actual systemwide maximum rate of delivery may be substantially less than the system's potential capacity to generate and deliver electricity. Thus, even if this "peak" period were known in advance, it might be inefficient for customers to economize on the use of capacity during these "peak" periods if demand is substantially less than system capacity at the time of that "peak."

One possible alternative pricing method would be for the utility to announce, in advance, those time periods when it expects its capacity to be nearly fully utilized. Customers' demand bills would be based on their purchases during these periods.

A second alternative would be to eliminate demand charges. In their place, a time-varying one-part rate could be employed. Customers' bills for a given period could be calculated by multiplying the rate in effect for the period, announced in advance, by the customer's purchases in that period. Rates for periods when significant spare capacity was expected could be based on only the appropriate variable costs for those periods.[37] (If appropriate, these rates could vary among periods of spare capacity.) Rates for periods when capacity was expected to be nearly fully utilized would be set at a level to recover not only variable costs but also the appropriate level of capacity costs.

Under either of these two methods, customers would be told, in advance, the time periods when the utility's capacity was expected to approach full utilization. And they would be given financial incentives through the pricing system to economize on their purchases during those periods.

In light of this discussion, we request responses to the following questions:

10 a. Should we continue to employ the two-part rate form for wholesale requirements sales? Why?

b. If so, what billing determinants for assessing demand charges to customers would most effectively promote effeciency? (Possible options include, e.g., noncoincident peak demands; coincident peak demands, established at the end of the billing period; and purchases during a period, announced in advance, when the seller's capacity utilization rate is expected to exceed some specified level.) State the reasons for your answer.

c. Do demand ratchets promote efficiency? Why or why not?

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[36] In certain circumstances, some customers may have an indirect incentive to reduce their coincident peak purchases. In designing demand rates for each customer class, fixed costs are allocated to each class based on the coincident peak demand of the class. Thus, the efforts to reduce coincident peak consumption by a large customer within a class might perceptibly reduce the demand rate of the entire class, if the customer could know in advance the time of the system peak.

[37] If rates were based on marginal costs and marginal variable costs exceeded average variable costs, then total revenues collected during these periods would recover not only all variable costs, but some capacity costs as well.

d. Alternatively, should we abandon the two-part rate form in favor of time-varying one-part rates? Why or why not? What benefits do two-part rates have over one-part rates?

3. Relationship to the Fuel Adjustment Clause

The prices charged by jurisdicational utilities typically are not changed between general rate filings to reflect cost changes. However, an exception may be made for fuel costs and economic purchased power expenses.[38] Changes in these costs may be used to adjust prices, typically monthly, under our fuel adjustment clause (FAC) regulations.[39]

Out FAC regulations were instituted during the 1970's,[40] at a time when fuel costs were becoming increasingly volatile and unpredictable. One original motivation for the FAC was to significantly reduce the possiblity that utilities could substantially over- or underrecover their costs when fuel costs are volatile. In addition, if fuel costs change frequently and substantially, then requirements rates without an FAC might not accurately communicate current fuel costs.

We are concerned that the existing FACs may be creating inefficiencies in requirements markets. Our concerns relate to the effects of the FAC both on sending accurate and usable price signals to customers and on providing incentives for utilities to minimize their costs. The first concern is addressed in this section. The second concern is discussed more fully in the risk allocation section below.

Currently, under non-time-differentiated rates based on average embedded costs, the monthly fuel adjustment to prices is equal to the change in the overall average fuel costs for the month. A utility typically selects from a number of methods to determine the fuel cost adjustment. Under some methods, the utility estimates the average fuel costs it expects to incur in the current month and adjusts a later month's fuel charge if actual fuel costs are subsequently found to differ from the estimate. Under other methods, the fuel cost component of rates in the current month is equal to the actual average fuel cost incurred in a previous month.

Under the first set of methods, which is presently the more common set of methods, the purchaser does not know at the time of purchase the full cost of purchasing power. Instead, the customer must wait until after the supplier has compared actual fuel costs with revenue collected and has presented the required adjustment to the customer. We are concerned that customers may be unable to make efficient purchasing decisions if they do not know in advance the prices that will apply to their purchases.

Under the second set of methods, historical fuel prices enter into the calculation of current energy rates. However, to promote efficiency, prices should instead communicate contemporaneous costs. We are concerned that these types of FACs may impede communication of accurate price signals.

We also wish to inquire whether the conditions that originally motivated the FAC regulations, i.e., significant fuel cost volatility, continue to exist to a degree sufficient to justify the FAC.

In light of this discussion, we invite comments on the following questions.

11. What conditions, if any, exist a present to justify continuation of a fule adjumstment clause? Explain how a fuel adjustment clause improves efficiency when the cited conditions exist.

12. If any FAC is retained, is there any benefit to allowing suppliers to true-up after the billing period, that is, to adjust customers bills after the end of the billing period to compensate for fuel clause revenue collections that exceeded or fell short of actual fuel costs?

13. For those utilities that base their present fuel adjustment clause on historical costs, are there any reasons why these clauses should not be modified to reflect only estimates of contemporaneous fuel and economic purchased power costs? If so, what are these reasons?

4. Pricing Flexibility

Commission-approved rates for requirements service are generally fixed. They are not merely rate ceilings or floors. Thus, utilities may not charge rates that are different from those that are approved by us.[41] Obtaining our approval to change rates is time consuming. Currently, new rates generally become effective only after a period between sixty-one days and seven or more months has elapsed after filing. This delay reduces the seller's flexibility to respond to changing market conditions. As a result, potentially beneficial purchases and sales may not occur.

For example, consider the situation of the distributor described in Section III. B. above. In that example, the requirements supplier was capable of supplying the power at a lower incremental cost than the coordination supplier. However, the comparatively high fixed energy rate charged by the requirements supplier caused the distributor to purchase the power from the coordination supplier. But the distributor might have purchased the increment of power from the requirements supplier if that supplier had been allowed the flexibility to lower its energy rate below the 25 mill incremental cost of the coordination supplier. Such flexibility could have benefitted both the distributor and the requirements supplier: The distributor could have obtained cheaper power, and the requirements supplier could have made the sale at a price above its incremental costs. In sum, overall economic efficiency would have increased.

Such flexibility could be beneficial even if rates were designed based on marginal costs, for the following reason. Even if rates were time-differentiated and based on marginal costs, the structure of rates would of necessity apply, at a minimum, for a number of months. During that interval, actual marginal costs in certain subperiods could frequently differ from the rate levels established.

For example, consider a hypothetical utility that adopted a time-differentiated rate structure based on marginal costs. Assume that this rate structure included a relatively high energy rate for consumption during weekdays between 8 a.m. and 8 p.m. (the peak period) and a relatively low energy rate for consumption during all other times (the off-peak period). Actual marginal costs for most utilities frequently vary on an hourly basis or even more frequently. Thus, actual marginal costs for the utility in this example could be lower than the peak period energy rate during certain hours of the peak period and higher than the energy rate during other hours, especially if the rate remains in effect for many months. Allowing rate flexibility, especially downward flexibility, could encourage economically beneficial sales that might not otherwise transpire.

One way to increase pricing flexibility would be to establish price zones. Then any price within that zone charged by

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[38] Economic power is defined as power or energy purchased over a period of twelve months or less where the total cost of the purchase is less than the buyer's total avoided variable cost. *See* 18 CFR 35.14(a)(11)(i).

[39] 18 CFR 35.14.

[40] Order No. 517, *Order Amending §35.14 of the Regulations under the Federal Power Act*, 52 FPC 1304 (1974).

[41] Of course, fixed energy rates can be adjusted for changes in fuel costs or certain purchased power costs under our fuel cost adjustment regulations. *See* 18 CFR 35.14.

the seller would be deemed just and reasonable. Prices could be quickly changed within prescribed limits without additional filings.

To aid us in our investigation of this matter, we request responses to the following questions:

14. Should we allow flexible prices within a pre-approved zone? Why or why not? If so, how should the boundaries of that zone be determined? Should we establish only price ceilings and permit any price below the ceiling to be charged?

15a. How would efficiency be affected by requiring the seller to charge the same price within the zone, or below the ceiling, to all customers within a customer class at any given time?

b. Suppose that a utility were allowed to offer different prices to different customers within a customer class at any given time. Would any customers be harmed by this policy as long as any revenue shortfall resulting from differing prices being charged below the Commission-approved ceiling came entirely at the expense of the utility?

5. Recovery of Capital Costs Over Time

In both regulated and unregulated industries, the total cost of plant is not recovered in any single year. Instead, it is recovered over a number of years. In unregulated industries, recovery of plant costs through prices varies over time with market conditions. But under our existing ratemaking practices, the total cost of plant installed to serve wholesale requirements customers is allocated and recovered in rates over time according to a relatively fixed formula.

Specifically, the capital costs allocated under our regulations to any given year can be subdivided into three general components: return of capital (depreciation expense), return on capital (rate of return multiplied by net invested capital), and taxes. Generally, the depreciation expense component in each year is obtained using the straight line method, that is, by dividing the total original cost of an investment by its expected useful life. The return on capital component for any given year is calculated by applying a rate of return to the net invested capital or rate base, which includes the depreciated original cost of investment. The depreciation expense for a given investment tends to be relatively constant over time. But the net depreciated original cost of that investment declines over time as accumulated depreciation increases. Thus, the return on capital component for a given investment tends to decline over time. As a result, the proportion of the total capital cost of a given investment recovered in any year from customers tends to decline continuously over time. Moreover, this pattern of capital cost recovery is completely insensitive to economic conditions, such as excess capacity.

Economic theory suggests that investors can expect to recover the costs of economic investment over the life of the investment. But economic theory suggests nothing *a priori* about the time pattern of that cost recovery. It certainly does not suggest that capital costs in efficient markets must be recovered in the fixed fashion currently used to set electric utility revenue requirements. To the contrary, recovery of capital costs in unregulated competitive markets varies with market conditions. When demand is relatively low, such as during recessions, efficient markets recover relatively small amounts of capital costs. By contrast, capital cost recovery increases substantially when demand is high relative to capacity.

We wish to explore whether we should permit more flexibility regarding the recovery of capital costs over time. For example, in setting the annual revenue requirement, we could allow flexibility to utilities in calculating depreciation expense, rather than requiring adherence to the straight line method. The proportion of total lifetime depreciation allowed in setting any particular annual revenue requirement might be based on expectations of market conditions during the period that the rates would be in effect, and therefore, on the expected relationship between load and capacity.

To aid us in our inquiry of this issue, we request responses to the following questions:

16 a. What benefit would result if we allowed more flexibility in the timing of capital cost recovery? If flexibility is desirable, how should this be accomplished?

b. What benefits, if any, would result from limiting the frequency with which utilities could change the amount of capital costs recovered in rates?

c. Suppose that utilities were permitted flexibility in recovering capital costs between rate filings. What benefits, if any, would result from allowing utilities to bank any unrecovered capital costs for future recovery?

17. What benefits would result from continuing the current fixed method of recovering capital costs over time?

IV. Risk Allocation

A. Importance of Regulatory Allocation of Risk

Much of the previous discussion in this Notice has addressed ways to encourage greater allocative efficiency, especially through changes in our pricing policies. However, we also seek ways to encourage greater productive efficiency.

Economic theory and common sense both suggest that risk allocation can affect the incentives to minimize costs. A firm is more likely to work to minimize its cost if its financial health is at stake. It is generally accepted that the potential for profit and the fear of financial loss create strong incentives for unregulated firms to hold down costs. Thus, firms that bear significant business risk are more likely to produce efficiently than those are sheltered from this risk.

In unregulated competitive sectors of the economy, business risk initially lies with the investors of the selling firm. Any shifting of business risk to the seller's customers occurs by mutual voluntary agreement and, presumably, takes place because the buyer is better able to carry out activities that minimze costs or is able to bear risk more cheaply. By contrast, in areas under our jurisdiction, regulatory policies largely determine the allocation of risk between the buyers and sellers.

To illustrate this distinction, consider an unregulated firm that begins construction on a project that appears to be an economic investment, based on the best information available when construction begins. But suppose that subsequent events render the investment uneconomic prior to completion and further construction ceases. The costs of the partially completed project would be borne by the firm, unless some prior voluntary agreement with an outside party (for example, an insurance company or a customer) specified that the outside party would bear some or all of those costs.

By contrast, suppose a regulated utility under our jurisdiction abandoned a partially completed project that appeared prudent at the beginning of construction. Much of the costs of this abandoned project would be borne by the utility's customers. This arrangement would occur despite the lack of any prior voluntary agreement by customers to bear these costs. We are concerned that such involuntary shifting of risk may reduce firms' incentives to invest and operate efficiently. However, we also wish to consider whether this

concern should be balanced against the regulatory obligation to serve and the unique risks that this obligation may impose on regulated firms. We wish to explore when the public interest would be served by requiring any party to bear more risk than it would accept voluntarily.

One goal of economic regulation has been to induce monopolies to behave more like competitive firms. In practice, however, regulation generally has shifted some risk from regulated firms to customers. Past Commission opinions [42] dealing with a number of issues, such as fuel cost adjustment clauses, rate design, and plant abandonment, have either explicitly or implicitly made judgements about how risk should be shared between jurisdictional utilities and customers, as well as among different customer classes.

We wish to explore whether the current allocation of risk is dulling incentives to reduce costs. If our policies affecting risk have impeded efficiency, we seek to determine whether we should alter those policies.

To aid in this investigation, we request comments on the following questions:

18 a. Does the present allocation of risk reduce incentives for jurisdictional utilities to operate efficiently? Why or why not?

b. Does shifting risk to customers reduce a jurisdictional utility's incentives to minimize costs and/or transmit proper price signals? If not, why not?

c. How is the public interest served by the traditional allocation of risk between sellers and buyers of requirements service?

19. In general terms, when is the public interest served by allocating any business risk away from jurisdictional utilities and onto customers? What are the important factors that bear on this allocation of risk? How, if at all, should the obligation to serve affect the allocation of risk? Do customers ever have greater opportunities for risk diversification than their supplying utilities (e.g., through greater diversification of investments)? If so, how should this factor enter into the generals questions or risk allocation?

20. Does the current existence of capacity in excess of peak demands arise, partly or wholly, from the past allocation of risk?

21. Could a regulatory system be developed that allows the allocation of risk to be determined through mutual agreement of jurisdictional utilities and customers? For example, would the public interest be served if all business risk were initially allocated to sellers but any voluntary agreement by a customer to bear some of that risk were accepted by us? How would such a regulatory system produce more efficient behavior?

B. Specific Regulatory Policies Affecting Risk Sharing

A number of our current policies affect how risk is shared between jurisdictional utilities and customers and may thereby affect the incentives for efficient resource use. We are concerned that many of these policies may not hold utilities fully accountable for the consequences of their decisions. For example, under our existing pricing practices, demand rates ordinarily are designed to recover the full cost of capacity, regardless of the level of expected capacity utilization. This is accomplished in the design of the demand rate by spreading total capacity costs over expected peak purchases. If peak purchases subsequently decline, utilities can request an increase in the demand rate to recover capacity costs over a smaller level of expected peak purchases. This policy appears to shift much of the cost of capacity underutilization onto customers. We are concerned that this policy may blunt incentives for utilities to make efficient investment decisions. We are also concerned that it may reduce incentives for utilities to hold down their capital and operating costs, and hence their prices, in order to increase capacity utilization.

In addition, this policy may send price signals that impede allocative efficiency. Under this policy, demand rates are high, thereby possibly improperly discouraging capacity use, when capacity is idle. Yet when capacity is scarce, demand rates are low, thereby possibly improperly encouraging capacity use.

We would like to explore these concerns more fully. We also would like to explore alternatives to this policy. One alternative might be to design the demand rate based on some fixed target capacity utilization rate, with appropriate consideration for adequate reserve margins. Under this alternative, the demand rate might be calculated by spreading the total costs recoverable in the demand charge over a kW level equal to some fixed target level of capacity utilization. This capacity utilization rate would not change over time. Thus, if a utility's actual capacity utilization rate was less than the target, the utility would underrecover allowed costs. But the utility would not be allowed to request higher demand rates in a subsequent rate filing based on the lower actual utilization rate. Conversely, the utility could overrecover allowed costs if the actual utilization rate exceeded the target. But the demand rate would not be lowered in a subsequent rate case to reflect the higher actual utilization rate.

This alternative would tend to increase the incentives for utilities to make efficient investment decisions and to take steps to increase capacity utilization. This alternative, by itself, would also tend to levelize the demand rate over time. As a result, the alternative demand rate would tend to be lower than the existing rates when capacity was idle. This would tend to encourage use of idle capacity. In addition, the alternative demand rate would tend to be higher than the existing rate when capacity was fully utilized. This would tend to discourage uneconomic demand for scarce capacity.

If utilities were also granted flexibility in recovering capital costs over time (discussed in Section III, c.5., above), additional benefits might result. Specifically, during periods when a utility expected its capacity utilization rate to be below the target, it would expect to underrecover its allowed costs. To minimize the underrecovery, it would have an incentive to include a relatively small amount of capital costs in its cost of service for these periods. This would tend to lower the demand rate, thereby encouraging greater use of otherwise idle capacity.

Conversely, during periods when capacity utilization was expected to exceed the target, the utility would expect to overrecover its allowed costs. To take full advantage of this opportunity, the utility would have an incentive to include a relatively large amount of capital costs in its costs of service. This would tend to increase the demand rate, thereby discouraging uneconomic demand for scarce capacity.

In summary, this alternative, combined with flexibility in capital cost recovery over time, might tend to make demand rates more responsive to market conditions. Demand rates would tend to be lower when demand was low and higher when demand was high than under our current pricing policies.

Our plant abandonment policies may also affect risk allocations, as we alluded in the previous section. In contrast to competitive firms, which bear the full consequences of their

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[42] *See, e.g.* Order No. 517, 52 FPC 1304 (1974); Order No. 352, 25 FERC 61,378 (1983); *New England Power Co.*, Opinion No. 49, 8 FERC 61,054 (1974); and *Northern States Power Co.*, 17 FERC 61,199 (1981).

operating and investment decisions, jurisdictional utilities are allowed under present policies to recover the return of capital through amortization when a plant under construction is abandoned, as long as the costs are deemed prudently incurred. This policy causes the risk of such failures to be shared by customers and investors. The more rapidly these costs are amortized, the larger is the portion of risk borne by the customers. We are concerned that as customers bear a significantly greater amount of the risk, then incentives may be reduced for jurisdictional utilities to avoid embarking upon questionable construction projects or to stop work on partially constructed ones after their economic value has become unclear. Policies that do not hold utilities fully accountable for the consequences of their decisions may also reduce incentives to minimize construction costs.

Risk may also be shifted to customers through the use of fuel adjustment clauses. The automatic adjustment for fuel costs shifts the risk of higher fuel costs into customers, especially those customers who cannot switch to alternative energy sources. We are concerned that it may also decrease the incentive for the jurisdictional utility to search for the lowest cost fuel, since fuel cost decreases must be passed on to customers.

To aid in our evaluation of these policies, we request comment on the following questions:

22 a. Should demand rates continue to be designed based on expected peak purchases, even when expected peak purchases are significantly less than capacity? Why?

b. Alternatively, should demand rates be designed based on a target capacity utilization rate that would not vary with actual peak period capacity utilization? If so, how should that target capacity utilization rate be determined? If not, what harmful effects would result from this policy? What effect would allowing flexibility in recovering capital costs over time have on the desirability of using target capacity utilization rates to design demand rates?

23 a. What policy regarding the distribution of the costs of abandoned plants between utilities and customers would most encourage efficienty? Why?

b. Would this policy depend on whether the plant is jointly owned by more than one utility? If so, how?

c. What factors, other than economic efficiency, should be used to determine how abandoned plant costs should be distributed between utilities and customers?

d. Even if the decision to begin construction was prudent and the abandonment decision was timely, how would the public interest be served if we continued to allow these costs to be amortized and recovered from ratepayers?

e. Assuming the public interest is served, what factors should be considered to determine the proper amortization period?

24 a. If some of the risk of increased fuel costs were shifted onto the jurisdictional utility (e.g., by fixing the entire energy rates (including the fuel portion) between general rate filings), would this alternative policy encourage the minimization of fuel costs?

b. What benefits would result from continuing to allow automatic rate adjustments for changes in fuel costs?

c. Are there alternative policies regarding the recovery of fuel costs that would better encourage the minimization of fuel and other costs? If so, what are they, and how would they encourage cost minimization?

V. Request for Public Comments

A. Procedure for Filing Written Comments

We invite all interested persons to submit written comments, data, views or arguments on issues raised in this Notice. While we desire comments on the specific questions posed in this Notice, we also encourage parties to comment on any aspect of the issues raised in the discussion. Commenters should not feel obligated to respond to every question. Responses can be limited to the questions that address the commenters' principal concerns. To the extent that several groups of individuals may have similar interests, they are encouraged to file joint comments.

To facilitate our comment analysis and preparation for the public conference, we urge commenters to provide a 3–5 page executive summary of their positions on the issues raised. Additionally, commenters should double space their comments, provide a concise description identifying themselves, use the same numbering system as our inquiry when answering questions, and indicate by "N/A" when they have not answered a question.

All comments must be received by us prior to 4:30 p.m. EDT on September 6, 1985. Comments must be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should reference Docket No. RM85–17–000 (Phase II). An original and 14 copies should be filed.

All comments will be placed in the public file that has been established in this docket and that is available for public inspection in the Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. during regular business hours. Copies of comments will be available for purchase.

B. Public Conference

A public conference to discuss the issues in Phase II will be convened at 10.00 a.m. on October 16 and 17, 1985 in Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol St., NW., Washington, D.C. 20426. The Phase II public conference will not be of a judicial or evidentiary nature. Persons requesting to speak will be divided into participant panels and will be permitted time to present prepared remarks. There will be no cross examination of persons presenting statements. However, Commissioners may question these persons. In addition, anyone may submit to the presiding officer questions to be asked of persons on the participant panels. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. Any further procedural rules will be announced by the presiding officer at the conference. Transcripts of the conference will be available in the public file for this proceeding, Docket No. RM85–17–000 (Phase II) in our Office of Public Information, and may be ordered from that office.

Requests to participate in the conference should be submitted in writing on or before September 6, 1985 to the Office of the Secretary, and they should state the amount of time required for the oral presentation. These requests must be filed separately from any comments filed in this proceeding. Persons participating at the conference should bring 50 copies of their statements to the conference. A list of the participants in the conference will be available in our Office of Public Information and at the hearing room on the morning the conference is convened.

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 290

Electric utilities, Penalties, Reporting and recordkeeping requirements, Uniform system of accounts.

By director of the Commission.
Lois D. Cashell,
Acting Secretary.
[FR Doc. 85-16057 Filed 7-3-85; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Federal Old-Age, Survivors and Disability Insurance; Supplemental Security Income for the Aged, Blind and Disabled; Cost-of-Living Increases; Delayed Retirement Credits; and Maximum Family Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: In these proposed regulations, we explain that cost-of-living increases in Old-Age, Survivors, and Disability Insurance (OASDI) benefits are no longer necessarily based solely on price increases. Now, we must also consider wage increases if the balance in the Social Security Trust Funds falls below a certain level. However, cost-of-living increases in Supplemental Security Income (SSI) benefits will continue to be based solely on the Consumer Price Index (CPI) increase percentage. The period for measuring these increases and their effective date are also changed.

We also explain how old-age insurance benefits and some survivor benefits are increased because of credit to the insured worker for delayed retirement, and how we are modifying the computation of maximum benefits payable to a family where one or more children are entitled based on the earnings of more than one worker.

These rules are based on sections 111, 112, 114, 201, 331, and 401 of Pub. L. 98-21 (the Social Security Amendments of 1983), as amended by section 2661(k) of Pub. L. 98-369 (the Deficit Reduction Act of 1984).

DATE: Comments must be submitted on or before September 3, 1985.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-6785.

SUPPLEMENTARY INFORMATION:

Cost-of-Living Increases

Since 1975, beneficiaries under the Old-Age, Survivors, and Disability Insurance (OASDI) programs have been entitled to cost-of-living increases in their monthly benefits for June (payable in July) of each year because prices increased by at least 3.0 percent over those of the previous year. When OASDI benefits were increased, benefits under the Supplemental Security Income (SSI) program were increased by the same percentage, effective in July. The basis for these increases has been the Consumer Price Index (CPI) for urban wage earners and clerical workers, as published by the Department of Labor, for the first calendar quarter of each year.

Recently, the National Commission on Social Security Reform and the Congress realized that the expected deficits in the Social Security Trust Funds would be caused in part by the fact that price increases, as measured by the CPI, exceeded wage increases in recent years. Thus, cost-of-living increases in benefits based on the CPI drew more from the Trust Funds than was put in the Funds by payroll taxes on wage increases. Congress dealt in part with the expected deficits by changing the method and the time for computing cost-of-living increases. These provisions are included in sections 111 and 112 of the Social Security Amendments of 1983 (the Amendments).

As one way of dealing with the expected deficits in the Trust Funds, Congress provided in section 111 of the Amendments that the OASDI cost-of-living increase for 1983 must be deferred from June until December (payable in the January check) and that increases in future years will also be effective in December. We explain this in proposed revisions to §§ 404.270 and 404.271. Additionally, the SSI increase, which is based on the OASDI increase, was deferred until January 1984 (payable on December 30, 1983) and will be effective in January in future years.

As required by the Social Security Act (the Act), we published notice of the cost-of-living increases by publishing in the **Federal Register** on June 13, 1983, a 3.5 percent increase for December 1983 for OASDI benefits and for January 1984 for SSI benefits (48 FR 27150). In that notice, we also published increased SSI benefit amounts effective with July 1983, as provided for in section 401 of the Amendments. Those increased SSI amounts were further increased by the cost-of-living increase in January 1984. Then on October 31, 1984, we published a notice of a cost-of-living increase of 3.5 percent for December 1984 for OASDI benefits and for January 1985 for SSI benefits (49 FR 43775).

Another significant step for dealing with the expected deficits is a revised method of computing the cost-of-living increase for OASDI benefits, as provided in section 112 of the Amendments. We explain this revised method in the proposed changes to §§ 404.272-404.275.

When the OASDI fund ratio is 15.0 percent or more in any year from 1984 through 1988 and 20.0 percent or more in any year after 1988, we will determine whether there will be a cost-of-living increase for December of that year and the amount of any increase by using the CPI as we have done since 1975, except that we will use the third quarter figures instead of the first quarter. For years after 1984, the OASDI fund ratio is the ratio of the assets in the OASDI Trust Funds on January 1 of a given year to the estimated expenditures from the Funds in the same year. For 1984 only, we will use the estimated assets in the OASDI Trust Funds on December 31, 1984 (this is discussed further in another notice). In each year, the ratio will be rounded to the nearest 0.1 percent. Although not explicitly provided in the Act, we believe that this is what Congress intended because the Act states the 15.0 and 20.0 threshold ratios with one-decimal accuracy.

When the OASDI fund ratio is less than the specified percent for a given year, we will determine whether there will be a benefit increase for that year and the amount of any increase by using the smaller of the increase in prices for one year to the next as measured by the CPI or the increase in wages as measured by the average wage index (AWI). The AWI is the average of the annual total wages of all workers that we use for computing primary insurance amounts for insured workers, as explained in Subpart C of Part 404 of these Regulations.

Note.—In Pub L. 98-604, Congress waived the requirement that the increase in the appropriate index (CPI or AWI) must be at least 3.0 percent in order for a cost-of-living increase in OASDI or SSI benefits to occur. Since the waiver applies only to cost-of-living increases payable in January 1985, the waiver

is not discussed in the proposed revisions to the regulations. In fact, the January 1985 increase is 3.5 percent, as published in the **Federal Register** on October 31, 1984 (49 FR 43775).

Congress further decided that beneficiaries who must accept smaller increases when the OASDI fund ratio is low should, after the ratio exceeds a certain level, have their benefits increased to the level the benefits would have reached if all increases had been based on increases in the CPI. Therefore, there is a "catch-up" provision, which we explain in the proposed § 404.278, so that when the OASDI fund ratio exceeds 32.0 percent, an additional cost-of-living increase can be paid. However, the additional increase will be paid only to the extent that it would not result in the OASDI fund ratio for the year after the year in which the increase is effective being reduced to less than 32.0 percent and only to the extent it is needed to bring the benefits up to the level they would have reached if they had been increased based on the CPI.

As provided in the Amendments and modified by the Deficit Reduction Act of 1984, we will compute the additional increase based on the differences between the compounded percentage benefit increases for the cost-of-living increases that were paid based on the AWI and the compounded percentage benefit increases that would have been paid based on the CPI if the OASDI fund ratio had not been below a specified percentage.

In proposed revisions to § 416.405, we are updating the rule on how we compute the cost-of-living increase for SSI benefits. We explain that, as provided in section 401 of the Amendments, the SSI benefits will continue to be increased by the same percentage by which title II-benefits are being incresed based on the CPI, or would be increased if the CPI had been the basis for the Title II increase. Also, in § 416.405, we are deleting an erroneous reference to § 416.414. Further, we are updating the benefit amounts in §§ 416.410, 416.412, and 416.413.

Delayed Retirement Credit

We are introducing into Subpart D of Part 404 rules on the delayed retirement credit. We removed similar rules from Subpart C when it was recodified in 1982 (47 FR 30731, July 15, 1982). We are now rewriting those former rules to make them easier to understand, and we are also adding provisions relating to section 114 of the 1983 Amendments which increase the amount of the credit.

The delayed retirement credit is basically a percentage increase in the benefit amount of a worker who does not receive old-age insurance benefits in one or more months after the month in which he or she reaches retirement age, either because he or she continued to work or simply did not apply for benefits. (65 is the current retirement age but it will gradually increase in the next century to 67.) Any credit earned by the worker also extends to benefits for the worker's surviving spouse or surviving divorced spouse.

The Act states that the amount of the delayed retirement credit as a percentage increase in benefits is based on the year when the worker becomes eligible for old-age insurance benefits. The age of eligibility is 62. However, in these regulatons, we discuss the credit in terms of a percentage increase when the worker reaches age 65 because that is the current retirement age at which the worker begins to earn the credit.

Before the 1983 Amendments, the credit was one-fourth of one percent of the worker's monthly benefit amount times the number of months beginning with the month of reaching age 65 and ending with the month before reaching age 72 for which the worker was fully insured but did not receive benefits. This rate was applicable to workers who reach age 65 at any time after 1981. Section 114 of the Amendments provides in effect that for persons who attain age 65 in 1990 or later, the one-fourth of one percent rate will be increased by one-twenty-fourth of one percent in each even year until the rate reaches two-thirds of one percent for persons reaching age 66 in 2009 and later. The Amendments also lower from 72 to 70 the age at which the credits can no longer be earned. This lower age applies effective January 1984. This change in the age limit is consistent with the lowering to 70 the age at which deductions for earnings are no longer applicable to working beneficiaries.

Child's Benefit Amounts

We are rewording and clarifying the rules in §§ 404.353 and 404.407 to provide that a child entitled to benefits on the earnings record of more than one worker may receive a benefit based on the record with a smaller primary insurance amount if that record yields the highest benefit for the child and if paying the child on that record does not adversely affect other beneficiaries. These changes will make the rules read consistent with section 202(k)(2)(A) of the Act and with the way we have been implementing this provision of law.

Section 202(k)(2)(A) of the Act requires, as a general rule, that we pay the simultaneously entitled child on the earnings record which yields the highest primary insurance amount. However, if paying this child on a record with a lower primary insurance amount results in a higher benefit amount for the child and will not adversely affect the benefit amount of any other person on any earnings record on which the simultaneously entitled child is entitled, then we must pay the child on the record which yields the lower primary insurance amount. The persons entitled on the earnings record on which the simultaneously entitled child will not be paid will be paid as though that child is not entitled on that record.

The current language of §§ 404.353 and 404.407 focuses only on the adverse effects on other beneficiaries being paid on the record with the lower primary insurance amount. Thus, the current rules do not reflect our current interpretation of the Act. Under our interpretation of the Act, we consider the other beneficiaries entitled on any earnings records. Thus, if the individual benefit being paid to the other beneficiary (or beneficiaries) would not be reduced, the child is paid on the record with the lower primary insurance amount.

Maximum Family Benefits

The Act provides that when a child is entitled to benefits on more than one worker's record, the maximum family benefit amounts payable on each record are combined. Under the Act as in effect before the 1983 Amendments, the total payable was the smaller of the sum of the maximums on each record or 1.75 times the highest primary insurance amount possible under the average indexed monthly earnings method (see § 404.210) based on the contribution and benefit base (which we publish each year) for each year for which the combined maximum benefits are payable. This meant that a new primary insurance amount (and thus a new maximum family benefit amount) had to be computed each January for that year for certain beneficiaries.

The new primary insurance amount was based on wage increases as reflected in the contribution and benefit base, and did not consider price increases which were the basis for the cost-of-living increase in the previous year. Therefore, if wage increases were greater or lesser than price increases, the new primary insurance amount was greater or lesser than the former primary insurance amount which had been increased by the percentage of the most recent cost-of-living increase. The effect on the maximum family benefit amount,

after multiplying the new primary insurance amount by 1.75, was a decrease for current beneficiaries when wages did not rise as much as prices, and thus a decrease in benefit amounts. Conversely, there was a windfall increase in benefits when wages rose faster than prices.

To eliminate these inequitable fluctuations in maximum family benefit amounts, the 1983 Amendments provide in section 331 that the maximum family benefit amount is the smaller of the sum of the maximums or 1.75 times the highest primary insurance amount possible for January 1983 (or if later, January of the year a child becomes entitled on more than one record) based on one-twelfth of the contribution and benefit base for that year. Thereafter, that primary insurance amount and the resulting maximum family benefit amount after multiplying the primary insurance amount by 1.75 will be increased only on the basis of cost-of-living increases, instead of on changes in the contribution and benefit base. We explain this provision in the proposed addition of paragraph (f) § 404.403.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under E.O. 12291. The provisions for shifting the cost-of-living adjustment from June to December (July to January for SSI) are expected to reduce OASDI program expenditures by almost more than $27 billion and SSI by about $840 million for the fiscal years 1984–1988. Although this rule technically qualifies as a major rule under terms of Executive Order 12291, these provisions are required by Pub. L. 98–21 and since HHS has no discretion in implementing them, the Office of Management and Budget has granted a waiver from the requirement to conduct a regulatory impact analysis.

Paperwork Reduction Act

The proposed regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they affect only benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance, 13.803 Social Security—Retirement Insurance, 13.805 Social Security—Survivors Insurance, 13.807 Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors, and disability insurance.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: December 27, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: February 27, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Subparts C, D, and E of Part 404 and Subpart D of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart C of Part 404 continues to read as follows:

Authority: Secs. 205, 215, and 1102 of the Social Security Act, as amended; 53 Stat. 1368, as amended; 64 Stat. 506, as amended; 49 Stat. 647; 42 U.S.C. 405, 415, and 1302.

2. The authority citation for Subpart D of Part 404 continues to read as follows:

Authority: Secs. 202, 205, 216, 223, 228, 1102 of the Social Security Act, 49 Stat. 623, 53 Stat. 1368, 64 Stat. 492, 70 Stat. 815, 80 Stat. 67, 49 Stat. 647; sec. 5, Reorganization Plan No. 1 of 1953. 67 Stat. 631; 42 U.S.C. 402, 405, 416, 423, 428, and 1302; and 5 U.S.C. Appendix.

3. The authority citation for Subpart E of Part 404 continues to read as follows:

Authority: Secs. 205, 207, and 1102, 53 Stat. 1368, as amended, 79 Stat. 379, as amended, 49 Stat. 647, as amended; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18; 42 U.S.C. 405, 427, 1302, unless otherwise noted.

§ 404.270 [Amended]

4. Section 404.270 is amended by changing "June" to "December" in the first sentence.

§ 404.271 [Amended]

5. Section 404.271 is amended by changing the cross-reference in paragraph (a) to § 404.380 and by changing "June" to "December" in paragraph (c).

6. Section 404.272 is revised to read as follows:

§ 404.272 Indexes we use to measure the rise in the cost-of-living.

(a) *The bases.* To measure increases in the cost of living for annual automatic increase purposes, we use either:

(1) The revised Consumer Price Index (CPI) for urban wage earners and clerical workers as published by the Department of Labor, or

(2) The average wage index (AWI), which is the average of the annual total wages that we use to index (i.e., update) a worker's past earnings when we compute his or her primary insurance amount (§ 404.211(c)).

(b) *Effect of the OASDI fund ratio.* Which of these indexes we use to measure increases in the cost-of-living depends on the Old-Age, Survivors, and Disability Insurance (OASDI) fund ratio.

(c) *OASDI fund ratio for years after 1984.* For purposes of cost-of-living increases, the OASDI fund ratio of the combined assets in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (see section 201 of the Social Security Act) on January 1 of a given year, to the estimated expenditures from the Funds in the same year. The January 1 balance consists of the assets (i.e., government bonds and cash) in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, plus Federal Insurance Contributions Act (FICA) and Self-Employment Contributions Act (SECA) taxes transferred to these trust funds on January 1 of the given year, minus the outstanding amounts (principal and interest) owed to the Federal Hospital Insurance Trust Fund as a result of interfund loans. Estimated expenditures are amounts we expect of interfund loans. Estimated expenditures are amounts we expect to pay from the Old-Age and Survivors Insurance and the Disability Insurance Trust Funds during the year, including the net amount that we pay into the Railroad Retirement Account, but excluding principal repayments and interest payments to the Hospital Insurance Trust Fund and transfer payments between the Old-Age and Survivors Insurance and the Disability Insurance Trust Funds. The ratio as calculated under this rule is rounded to the nearest 0.1 percent.

(d) *Which index we use.* We use the CPI if the OASDI fund ratio is 15.0 percent or more for any year from 1984 through 1988, and if the ratio is 20.0 percent or more for any year after 1988. We use either the CPI or the AWI, depending on which has the lower percentage increase in the measuring period (see § 404.274), if the OASDI fund

ratio is less than 15.0 percent for any year from 1984 through 1988, and if the ratio is less than 20.0 percent for any year after 1988. For example, if the OASDI fund ratio for 1986 is 17.0 percent, the cost-of-living increase effective December 1986 is based on the CPI.

7. Section 404.273 is revised to read as follows:

§ 404.273 When automatic cost-of-living increases are to be made.

We make automatic cost-of-living increases when the applicable index, either the CPI or the AWI, rises by 3.0 percent or more over a specified measuring period (see the rules in § 404.274). If the cost-of-living increase is to be based on an increase of 3.0 percent or more in the CPI, the increase becomes effective in December of the year in which the measuring period ends. If the increase is to be based on an increase of 3.0 percent or more in the AWI, the increase becomes effective in December of the year after the year in which the measuring period ends.

8. Section 404.274 is revised to read as follows:

§ 404.274 Measuring the increase in the indexes.

(a) *General.* Depending on the OASDI fund ratio, we measure the rise in one index or in both indexes during the applicable measuring period (described in paragraphs (b) and (c) of this section) to determine whether there will be an automatic cost-of-living increase and if so, its amount.

(b) *Measuring period based on CPI.* For the increase effective December 1984 and later years, the measuring period we use for finding the amount of the CPI increase—

(1) Begins with—

(i) Any calendar quarter in which an *ad hoc* benefit increase is effective; or, if later,

(ii) the third calendar quarter of any year in which the last automatic increase became effective; and

(2) Ends with the third calendar quarter of the following year, but only if the CPI has increased by at least 3.0 percent (after rounding to the nearest one-tenth of one percent) since the beginning of the measuring period. (If the CPI increase is less than 3.0 percent, we extend the measuring period to the third quarter of the next year, doing so repeatedly until the 3.0 percent level is reached.) If this measuring period ends in a year after the year in which an *ad hoc* increase was enacted into law or took effect, there can be no cost-of-living increase based on this measuring period and we will apply the rule in paragraph (d) of this section.

(c) *Measuring period based on AWI.* The measuring period we use for finding the amount of the AWI increase—

(1) Begins with—

(i) The calendar year before the year in which an *ad hoc* benefit increase is effective; or, if later,

(ii) the calendar year before the year in which the last automatic increase became effective; and

(2) Ends with the following year, but only if the AWI has increased by at least 3.0 percent (after rounding to the nearest one-tenth of one percent) in that one-year period. (If the AWI increase is less than 3.0 percent, we extend the measuring period to the next year, doing so repeatedly until the 3.0 percent level is reached.) If this measuring period ends in a year in which an *ad hoc* increase was enacted into law or took effect, there can be no cost-of-living increase based on this measuring period and we will apply the rule in paragraph (d) of this section.

(d) *When no automatic cost-of-living increase is possible.* No automatic cost-of-living increase is possible for the calendar year that immediately follows a year in which an *ad hoc* increase was enacted into law or took effect. The measuring period for the next automatic cost-of-living increase—

(1) Where the measuring period is based on the CPI,

(i) Begins with the calendar quarter in which the *ad hoc* increase took effect; and

(ii) Ends with the third calendar quarter of the next year in which the CPI has risen by at least 3.0 percent if an *ad hoc* increase was not enacted or effective in the preceding year. (If the CPI increase is less than 3.0 percent, or an *ad hoc* increase was enacted or effective in the prior year, we extend the end of the measuring period to the third quarter of the following year, doing so repeatedly until the 3.0 percent level is reached in a year which does not immediately follow an *ad hoc* increase year.)

(2) Where the measuring period is based on the AWI,

(i) Begins with the calendar year before the year in which the *ad hoc* increase took effect; and

(ii) Ends with the next calendar year in which the AWI has increased by at least 3.0 percent and in which an *ad hoc* increase is not enacted or effective. (If the AWI increase is less than 3.0 percent, we extend the end of the measuring period to the following year, doing so repeatedly until the 3.0 percent level is reached in a year in which an *ad hoc* increase is not enacted or effective.)

9. Section 404.275 is revised to read as follows:

§ 404.275 Amount of automatic cost-of-living increases.

(a) *Based on CPI.* When the average of the CPI of the three months of the quarter ending the measuring period is at least 3.0 percent higher than the average of the CPI for the three months of the quarter in which the measuring period began, we compute an automatic cost-of-living increase percentage to be effective beginning with benefits payable for December of the year in which the measuirng period ended. To compute the average of the CPI, the three monthly CPI figures (which are published to one decimal place) are added, and the total is divided by 3 and then rounded to the nearest 0.1. If the CPI is the applicable index (see § 404.272(d)), we apply the increase (rounded to the nearest one-tenth of one percent) to the amounts described in § 404.271. We round the resulting amounts to the next lower multiple of $0.10 if not already a multiple of $0.10.

(b) *Based on AWI.* When the AWI for the year which ends the measuring period is at least 3.0 percent (rounded to the nearest 0.1) higher than the AWI for the year which begins the measuring period, that percent is the automatic cost-of-living increase which is due beginning with benefits payable for December of the year after the measuring period ended. If the AWI is the applicable index (see § 404.272(d)), we apply that percentage increase to the amounts described in § 404.271. We round the resulting amounts to the next lower multiple of $0.10 if not already a multiple of $0.10.

(c) *Additional increase.* See § 404.278 for the additional increase which might be possible.

§ 404.277 [Amended]

10. Section 404.277, as proposed for amendment at 48 FR 10696 dated March 14, 1983, is further amended in paragraph (b) by changing "June" to "December" each place it appears.

11. A new section 404.278 is added to read as follows:

§ 404.278 Additional cost-of-living increase.

(a) *General.* In addition to the cost-of-living increase explained in § 404.275 for a given year, we will further increase the amounts in § 404.271 if—

(1) The OASDI fund ratio is more than 32.0 percent in the given year in which a cost-of-living increase is due; and

(2) In any prior year, the cost-of-living increase was based on the AWI as the lower of the CPI and the AWI (or would have been based on the AWI except

that it was less than the required 3.0 percent increase).

(b) *Measuring period for the additional increase*—(1) *Beginning.* To compute the additional increase, we begin with—

(i) In the case of certain uninsured beneficiaries age 72 and older (see § 404.380), the last calendar year in which a cost-of-living adjustment was based on the AWI rather than the CPI;

(ii) For all other individuals and for maximum benefits payable to a family, the year in which the insured individual became eligible for old-age or disability benefits to which he or she is currently entitled, or died before becoming eligible.

(2) *Ending.* The end of the measuring period is the year before the first year in which a cost-of-living increase is due based on the CPI and in which the OASDI fund ratio is more than 32.0 percent.

(c) *Compounded percentage benefit increase.* To compute the additional cost-of-living increase, we must first compute the compounded percentage benefit increase (CPBI) for both the cost-of-living increases that were paid during the measuring period and for the increases that would have been paid if the CPI had been the basis for the increases. The CPBI is—

(1) The product of the annual benefit increases, expressed as decimals rather than as percentages, plus 1 for each decimal;

(2) Less 1;

(3) Multiplied by 100.

(d) *Computing the CPBI.* The computation of the CPBI is as follows—

(1) Take the actual cost-of-living increase percentage (expressed as a decimal) for each year in the measuring period and increase each decimal by 1 (e.g., 4.6 percent becomes 1.046);

(2) Multiply the resulting decimal for the first year by the decimal for the second, then multiply that product by the decimal for the third year, and continue until the last decimal has been multiplied by the product of the preceding decimals;

(3) Subtract 1 from the last product;

(4) Multiply the remaining product by 100. The result is what we call the *actual* CPBI.

(5) substitute the cost-of-living increase percentage(s) that would have been used if the increase(s) had been based on the CPI, (for some years, this will be the percentage that was used) and do the same computations as in paragraphs (d)(1) through (4). The result is what we call the *assumed* CPBI.

(e). *Computing the additional cost-of-living increase.* To compute the percentage increase, we—

(1) Subtract the actual CPBI from the assumed CPBI;

(2) Add 100 to the actual CPBI;

(3) Divide the answer from paragraph (e)(1) of this section by the answer from paragraph (e)(2), of this section, multiply the quotient by 100, and round to the nearest 0.1. The result is the additional increase percentage, which we apply to the appropriate amount described in § 404.271 after that amount has been increased under § 404.275 for a given year. If that increased amount is not a multiple of $0.10, we will decrease it to the next lower multiple of $0.10.

(f) *Restrictions on paying an additional cost-of-living increase.* We will pay the additional increase to the extent necessary to bring the benefits up to the level they would have been if they had been increased based on the CPI. However, we will pay the additional increase only to the extent payment will not cause the OASDI fund ratio to drop below 32.0 percent in the year after the year in which the increase is effective.

12. A new section 404.313 is added to read as follows:

§ 404.313 Using delayed retirement credit to increase old-age benefit amount.

(a) *General.* (1) If you do not receive old-age benefits for the month you reach age 65 (retirement age) or for any later month before the month in which you reach age 70 (72 before 1984), you may earn delayed retirement credits which may increase your benefit amount when you retire. You earn delayed retirement credits for each of those months for which you are fully insured and are eligible for but do not receive old-age benefits, either because of your work or earnings, or because you have not applied for benefits. If you were entitled to old-age benefits before age 65 you may still earn delayed retirement credit for months beginning with age 65 in which your beneifits were reduced to zero because of your work or earnings.

(2) Age 65 is retirement age, the age at which entitlement to full retirement benefits may begin, and is the age at which you may begin to earn delayed retirement credits. Age 65 is the retirement age for people who reach that age before the year 2003. For people who reach age 65 after 2002, retirement age will gradually increase from 65 to 67, depending on each person's date of birth.

(b) *How we determine delayed retirement credits.* (1) *General.* The amount of the delayed retirement credit depends on the year you reach age 65, and the number of months you are eligible for and do not receive old-age benefits from age 65 up to age 70 (72 before 1984). We total these months, which need not be consecutive, multiply the total by the applicable percent as provided in paragraphs (b) (2), (3), and (4) of this section, multiply your benefit amount by this product, and round to the next lowest multiple of $0.10 if the answer is not already a multiple of $0.10. The result is your delayed retirement credit which we add to your benefit amount and round the sum to the next lowest multiple of $1.00 if it is not already a multiple of $1.00.

(2) *Before 1982.* If you reach age 65 before 1982, your delayed retirement credit equals one-twelfth of one percent of your benefit amount times the number of months after 1970 in which you are age 65 or older and for which you are eligible but do not receive old-age benefits.

(3) *After 1981 and before 1990.* If you reach age 65 after 1981 and before 1990, your delayed retirement credit equals on-fourth of one percent of your monthly benefit amount times the number of months in which you are age 65 or older and for which you are eligible but do not receive old-age benefits.

(4) *Beginning with 1990.* If you reach age 65 in 1990 or later, the rate of the delayed retirement credit (i.e., one-fourth of one percent as stated in paragraph (b)(3) of this section) is increased by one-twenty-fourth of one percent on each even year through 2006. Thus, depending on when you reach age 65, your delayed retirement credit percent will be as follows:

Year you reach age 65	Delayed retirement credit percent
1990	7/24 of 1 percent.
1991	Do.
1992	1/3 of 1 percent.
1993	Do.
1994	9/24 of 1 percent.
1995	Do.
1996	5/12 of 1 percent.
1997	Do.
1998	11/24 of 1 percent.
1999	Do.
2000	1/2 of 1 percent.
2001	Do.
2002	13/24 of 1 percent.
2003	Do.
2004	7/12 of 1 percent.
2005	Do.
2006	15/24 of 1 percent.
2007	Do.
2008 and later	5/8 of 1 percent.

Example. Alan was qualified for old-age benefits when he reached age 65 in January 1983, but decided not to apply for old-age benefits immediately because he was still working. When he became age 66 in January 1984, he stopped working and applied for these benefits beginning with that month. Based on his earnings, his primary insurance amount was $226.50, and his full monthly old-age benefit amount would have been rounded to $226.00 if no delayed retirement credits were added. However, he did not receive benefits for the 12 months from the month in

which he became 65 (January 1983) until the first month in which he stopped working (January 1984). Therefore, his monthly old-age benefit of $226.50 (before rounding to the lower dollar) was increased by three percent (one quarter of one percent times 12 months) to yield a total $233.20, which rounded to the next lower multiple of $0.10 is $233.20 and rounded to the next lower multiple of $1 is $233.

(c) *Effective date of delayed retirement credit.* If you are entitled to benefits, we examine our records after the end of each calendar year to determine whether you have earned the delayed retirement credit (i.e., whether there were months in which you were fully insured and eligible for benefits, but did not receive them). Any increase in your benefit amount due to the delayed retirement credit is effective beginning with January of the year after the credit is earned. If you are age 65 or older and eligible for old-age benefits but have not applied, we compute the delayed retirement credit for the year(s) before you applied and pay it to you as part of your first benefit check. The delayed retirement credit for the year you applied and later years is added to your benefits beginning with the following January. However, in either case, in the year in which you attain age 70 (72 before 1984), we compute the credit through the month you reach that age and add it to your benefit amount beginning with that month.

(d) *Delayed retirement credit and special minimum primary insurance amounts.* We do not add any delayed retirement credit to your old-age benefit if your benefit is based on the special minimum primary insurance amount described in § 404.260. We add the delayed retirement credit only to old-age benefits based on your regular primary insurance amount, i.e., as computed under one of the other provisions of Subpart C of this Part. If the sum of your benefit is based on the regular primary insurance amount plus your delayed retirement credit is higher than the benefit based on your special minimum primary insurance amount, we pay the higher amount to you. However, if the special minimum primary insurance amount is higher than the regular primary insurance amount without the delayed retirement credit, we use the special minimum primary insurance amount to determine the family maximum and the benefits of others entitled on your earnings record.

(e) *Effect of delayed retirement credit on other benefits*—(1) *Surviving spouse or surviving divorced spouse.* If you earned delayed retirement credits during your lifetime, we compute your surviving spouse's or surviving divorced spouse's benefit based on your regular primary insurance amount plus the amount of the delayed retirement credit. All delayed retirement credits, including credits in the year of death, can be used in computing your surviving spouse's or surviving divorced spouse's benefit beginning with the month of death. We compute the delayed retirement credit up to, but not including, the month of death.

(2) *Other family members.* We do not use your delayed retirement credits to increase the benefits of other family members entitled on your earnings record.

(3) *Family maximum.* The delayed retirement credits are added to your benefit after we compute the family maximum. However, your delayed retirement credits which are used to compute your surviving spouse's or surviving divorced spouse's benefits are added to the spouse's benefits before we reduce for the family maximum.

13. Section 404.353 is amended by revising the second sentence in paragraph (b) to read as follows:

§ 404.353 Child's benefit amounts.

* * * * *

(b) * * * If your benefit before any reduction would be larger on an earnings record with a lower primary insurance amount and no other person entitled to benefits on any earnings record would receive a smaller benefit as result of your receiving benefits on the record with the lower primary insurance amount, you will receive benefits on that record. See § 404.407(d) for a further explanation. * * *

§ 404.403 [Amended]

14. Section 404.403 is amended by:

A. Revising the title paragraph (e) to read "Person entitled on more than one record for years after 1978 and before 1984."

B. Revising the cross-reference in paragraph (e)(1) to read "§ 404.353(b)."

C. Adding a new paragraph (f) to read as follows:

* * * * *

(f) *Person entitled on more than one record for years after 1983.* (1) If any person entitled to monthly benefits on the earnings record of an insured individual would, except for the limitation described in § 404.353(b), be entitled to child's insurance benefits on the earnings record of one or more other insured individuals, the total benefits payable to all persons on the earnings record of any of those insured individuals may not be reduced to less than the smaller of—(i) the sum of the maximum amounts of benefits payable on the earnings records of all the insured indivuduals, or (ii) 1.75 times the highest primary insurance amount possible for January 1983, or if later, January of the year that the person becomes entitled or reentitled on more than one record. This highest primary insurance amount possible for that year will be based on the average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year. Thereafter, the total monthly benefits payable to persons on the earnings record of those insured individuals will then be increased only when monthly benefits are increased because of cost-of-living adjustments (see § 404.270 ff).

(2) The rule in paragraph (e)(2) of this section also applies after 1983.

15. Section 404.407 is amended by revising paragraph (d) to read as follows:

§ 404.407 Reduction because of entitlement to other benefits.

* * * * *

(d) *Child's insurance benefits.* A child may, for any month, be simultaneously entitled to a child's insurance benefit on more than one individual's earnings if all the conditions for entitlement described in § 404.350 are met with respect to each claim. Where a child is simultaneously entitled to child's insurance benefits on more than one earnings record, the general rule is that the child will be paid an amount which is based on the record having the highest primary insurance amount. However, the child will be paid a higher amount which is based on the earnings record having a lower primary insurance amount if no other beneficiary entitled on any record would receive a lower benefit because the child is paid on the record with the lower primary insurance amount. (See § 404.353(b)).

PART 416—[AMENDED]

16. The authority citation for Subpart D of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1611, 1612, 1617, and 1631 of the Social Security Act as amended; 49 Stat. 647, as amended, 86 Stat. 1466, 86 Stat. 1468, 86 Stat. 1475 (42 U.S.C. 1302, 1382, 1382a, and 1383).

17. Section 416.405 is revised to read as follows:

§ 416.405 Cost-of-living adjustments in benefits.

Whenever benefits amounts under Title II of the Act (Part 404 of this chapter) are increased by any percentage effective with any month as

a result of a determination made under section 215(i) of the Act, each of the dollar amounts in effect for such month under §§ 416.410, 416.412, and 416.413, as specified in such sections or as previously increased under this section or under any provision of the Act, will be increased. We will increase the unrounded yearly SSI benefit amount by the same percentage by which the title II benefits are being increased based on the Consumer Price Index, or, if greater, the percentage they would be increased if the rise in the Consumer Price Index had been the basis for the title II increase. (See §§ 404.270–404.277 for an explanation of how the title II cost-of-living adjustment is computed.) If the increased annual SSI benefit amount is not a multiple of $12, it will be rounded to the next lower multiple of $12.

18. Section 416.410 is revised to read as follows:

§ 416.410 Amount of benefits; eligible individual.

The benefit under this part for an eligible individual who does not have an eligible spouse, who is not in a certain kind of institution (see § 416.211), and who is not a qualified individual (as defined in § 416.221), shall be payable at the rate of $3,900 per year ($325 per month) after rounding, effective for the period beginning January 1, 1985. This rate is the result of a 3.5 percent cost-of-living adjustment (see § 416.405) to the December 1984 rate. For the period January 1, 1984 through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $3,768 per year ($314 per month). For the period July 1, 1983, through December 31, 1983, the rate payable was $3,651.60 per year ($304.30 per month), as provided by the Social Security Amendments of 1983 (Pub. L. 98–21, section 401). For the period July 1, 1982, through June 30, 1983 the rate, as increased by the 7.4 percent cost-of-living adjustment, was $3,411.60 yearly ($284.30 monthly). The monthly rate is reduced by the amount of the individual's income which is not excluded pursuant to Subpart K of this part.

19. Section 416.412 is revised to read as follows:

§ 416.412 Amount of benefits; eligible couple.

The benefit under this Part for an eligible couple, neither of whom is in a certain kind of institution (see § 416.211) nor is a qualified individual (as defined in § 416.221) shall be payable at the rate of $5,856 per year ($488 per month) after rounding, effective for the period beginning January 1, 1985. This rate is the result of a 3.5 percent cost-of-living adjustment (see § 416.405) to the December 1984 rate. For the period January 1, 1984 through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $5,664 per year ($472 per month). For the period July 1, 1983, through December 31, 1983, the rate payable was $5,476.80 per year ($456.40 per month), as provided by the Social Security Amendments of 1983 (Pub. L. 98–21, § 401). For the period July 1, 1982, through June 30, 1983, the rate, as increased by the 7.4 percent cost-of-living adjustment, was $5,116.80 yearly ($426.40 monthly). The monthly rate is reduced by the amount of the couple's income which is not excluded pursuant to Subpart K of this part.

20. Section 416.413 is revised to read as follows:

§ 416.413 Amount of benefits; qualified individual.

The benefit under this Part for a qualified individual (defined in § 416.221) is payable at the rate for an eligible individual or eligible couple plus an increment for each essential person (defined in § 416.222) in the household, reduced by the amount of countable income of the eligible individual or eligible couple as explained in § 416.420. A qualified individual will receive an increment of $1,956 per year ($163 per month) after rounding, effective for the period beginning January 1, 1985. This rate is the result of a 3.5 percent cost-of-living adjustment (see § 416.405) to the December 1984 rate, and is for each essential person (as defined in § 416.222) living in the household of a qualified individual. (See § 416.532.) For the period January 1, 1984 through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $1,884 per year ($157 per month). For the period July 1, 1983, through December 31, 1983, the rate was $1,830 per year ($152.50 per month), as provided by the Social Security Amendments of 1983 (Pub. L. 98–21, § 401). For the period July 1, 1982, through June 30, 1983, the rate, as increased by the 7.4 percent cost-of-living adjustment, was $1,710 yearly ($142.50 monthly). The total benefit rate, including the increment, is reduced by the amount of the individual's or couple's income that is not excluded pursuant to Subpart K of this part.

[FR Doc. 85–16078 Filed 7–3–85; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[LR–68–80]

Front-End Tertiary Oil Under the Crude Oil Windfall Profit Tax Act of 1980; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the treatment of front-end tertiary oil under the Crude Oil Windfall Profit Tax Act of 1980 that was published in the Federal Register for December 5, 1980 (45 FR 80551).

FOR FURTHER INFORMATION CONTACT: David R. Haglund of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3297)).

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the notice of proposed rulemaking that was published in the Federal Register for December 5, 1980 (45 FR 80551). That notice contained proposed amendments (§ 51.4994–2) to the Excise Tax Regulations (26 CFR Part 51) under section 4994(c) of the Internal Revenue Code of 1954. The regulations related to the treatment of front-end oil under the Crude Oil Windfall Profit Tax Act of 1980. A number of comments were received concerning the notice and a public hearing was held on February 24, 1981. Due to the fact that the front-end oil exemption expired on September 30, 1981, and the limited applicability of the proposed rules, it has been determined that such notice should be withdrawn. However, no inference should be drawn with respect to the positions taken in the proposed regulations because of the withdrawal of the notice.

Drafting Information

The principal author of this document is David R. Haglund of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document, both in matters of substance and style.

Withdrawal of Proposed Amendments

The proposed amendments to 26 CFR Part 51 relating to the treatment of front-end oil tertiary oil under the Crude Oil Windfall Profit Tax Act of 1980 published in the **Federal Register** for December 5, 1980 (45 FR 80551), are hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-16029 Filed 7-3-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD09 85-05]

Anchorage Grounds; Detroit River, Detroit, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to designate two anchorages on the U.S. side of the international boundary in the Detroit River. The proposed anchorages will be in the vicinity of Belle Isle, and the Rouge River. Past experience has shown that the existing Ojibway Anchorage on the Canadian side of the Detroit River has been unable to hold all vessels desiring anchorage space, paritcularly during spring ice conditions. The creation of these two anchorages will increase the area available for safe vessel mooring, and provide a holding area in the event U.S. authorities need to detain a vessel.

DATE: Comments must be received on or before August 19, 1985.

ADDRESSES: Comments must be mailed to Commander (mpes), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, OH 44199. The comments will be available for inspection and copying at Marine Safety Division, Room 2019, 1240 East Ninth Street, Cleveland, OH. Normal Office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ensign George H. Burns III, Ninth Coast Guard District, Marine Port and Environmental Safety Branch, Telephone Number (216) 522-3919.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD09 85-05) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Ensign George H. Burns III, Project Officer, and Lieutenant Raymond A. Pelletier, project attorney, 9th Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Coast Guard received information that indicated a potential need for designated anchorages on the U.S. side of the international boundary in the Detroit River. Captain of the Port Detroit, Michigan, has evaluated the needs of the marine industry and Captain of the Port Detroit with respect to such anchorages. Based on this evaluation the Coast Guard believes that the creation of two anchorage areas is desirable.

The two proposed anchorages would be located downstream from Belle Isle, and adjacent to the Mouth of the Rouge River. These choices were developed after a careful survey of the river was taken and after consultation with various marine interests such as shipmasters, registered pilots, towing vessel operators, representatives of the Corps of Engineers, the Wayne County Port Authority, and the Canadian Coast Guard.

The following concerns can be addressed by the establishment of one or perhaps two anchorages in the Detroit River:

1. The designated anchorages (Ojibway Anchorages) located in Canadian waters across from National Steel are limited in size. There are time such as the 1984 ice jam in the St. Clair River when more anchorage space is needed.

2. The present river regulations (33 CFR 162.136) state that vessels shall be anchored in the Detroit River so as not to swing into the channel or across steering courses. Since the limits of the channel in the Detroit River vary and may extend almost to the river bank, safe anchorages are not always obvious. Creation of these anchorages will therefore increase navigational safety.

3. There is a high level of background lighting generally throughout this area. Consequently, ships not anchored in designated anchorages may not be identified by personnel aboard transiting vessels. By encouraging vessels to use designated anchorages the risk of collisions involving anchored vessels is reduced.

4. In the event that a vessel is arrested by a federal order or is detained by U.S. Customs, the U.S. Attorney or the Coast Guard, it would be advantageous to allow the vessel to proceed to a designated anchorage until the issue is resolved. Technically, if a vessel is directed to the Ojibway Anchorage, it is in Canadian waters and out of the control and jurisdiction of U.S. authorities.

The reasons for selecting the Belle Isle and Rouge River locations are as follows:

1. *Belle Isle Anchorage*—This area was chosen because it has good water, good holding ground and is well clear of the main shipping channel passing Belle Isle. In the past this location has been used by vessels waiting for more favorable conditions to proceed with a voyage. The area was examined by the Coast Guard in 1978, and it was surveyed by the Corps of Engineers in that same year. One high spot was found and removed.

Two minor potential objections to the location have been identified. First, the anchorage might encroach on the small boat channel behind Belle Isle. This is not considered to be a problem because the height restrictions under the Belle Isle Bridge prevent large commercial tugs and pleasure boats from using the channel. When the channel is used, small boats tend to hug the mainland shoreline and therefore would not be hampered by a vessel in anchorage. The second concern is one of possible interference with commercial concerns along the shoreline. Little activity takes place at the facilities along this portion of the river. The Huron Cement Company is the only facility that has any waterborne activity and it is not felt that a vessel, properly anchored, would interfere with their operations. Future plans for this shoreline area call for development of city owned parks and relocation of commercial interests such as Huron Cement.

2. *River Rouge Anchorage*—This location was chosen for its close proximity to the center of commercial

activity in the Port of Detroit. It also has good holding ground and is considered to be clear of the tracks used by vessels in the main channel. It does not block any shoreside interests and it is another area vessels have traditionally anchored awaiting for a berth or to transit the Rouge River.

The following potential objections have been identified and are discussed below:

a. *Nearness to Mouth of River Rouge*—based on past experience this is not considered a problem by masters of vessels normally using the Rouge.

b. *Nearness to submerged pipeline*—if a vessel is properly anchored and observing proposed regulations this submergd pipeline (43 ft. below LWD) should not be a problem.

c. *Proximity to channel*—the anchorage would be located at one of the wider portions of the river. Anchored vessels would be in clear sight of vessels coming from either direction and would be clear of steering courses.

If the two areas described are implemented it is not felt that anchorage buoys will be necessary. There are adequate fixed reference on both shorelines for vessels to properly fix their positions.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The Detroit River is a major waterway bounded by municipal and industrial areas that have been exposed to waterborne commerce for some time. The creation of these anchorages will be in locations which are adjacent to areas that already frequently are exposed to use by the types of vessels that will moor in the anchorages. Furthermore, the regulations that will apply to the utilization of these areas are requirements that are common to the practice of good seamanship. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110.

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 110 is amended by adding § 110.206 to read as follows:

§ 110.206 Detroit River, Michigan.

(a) *The anchorage grounds*—(1) *Belle Isle Anchorage.* The area in the Detroit River immediately downstream from Belle Isle on the U.S. side of the International Boundary lying within the following boundaries: beginning at a point bearing 250°T, 5400 feet from the James Scott Memorial Fountain (42 20'6"N, 82 59'57"W) at the West end of Belle Isle; then 161°T, 8000 feet; thence 251°T, 4000 feet; thence 341°T, 800 feet; thence 071°T, 4000 feet to the point of origin

(2) *River Rouge Anchorage.* The area in the Detroit River immediately down river form the entrance to the Short Cut Canal, River Rouge, on the U.S. side of the International Boundary lying within the following boundaries: beginning at a point bearing 153°T, 450 feet from the Detroit Edison Cell Light 2; thence 110°T, 700 feet; thence parallel to the international boundary line 200°T, 2600 feet; thence 290°T, 700 feet to Great Lakes Steel Shoal Lighted Buoy 3; thence 020°T, 2600 feet to the point of origin.

(b) *The regulations* (1) Anchorage is prohibited outside of established anchorages except in case of emergency. In an emergency, if it becomes necessary to anchor a vessel outside an established anchorage, the vessel shall be anchored so that it does not interfere with or endanger any facility or other vessel. The master or person in charge of the vessel shall notify the Captain of the Port of the location of the emergency anchoring by the most expeditious means and shall move the vessel as soon as the emergency is over.

(2) Anchors must not be placed outside the anchorage areas, nor shall any vessel be so anchored that any portion of the hull or rigging shall at any time extend outside the boundaries of the anchorage areas.

(3) The Belle Isle Anchorage area is for the temporary use of vessels of all types, but especially for naval and merchant vessels awaiting berths, weather or other conditions favorable to the resumptions of their voyage.

(4) In the River Rouge Anchorage the requirements of commercial ships conducting bunkering operations shall take precedence. Vessels conducting bunkering operations will notify the Captian of the Port at least four hours in advance and at the completion of operations.

(5) No vessel may be anchored unless it maintains a continuous bridge watch, guards and answers channel 16 FM and channel 12 FM (VTC SARNIA sector frequency), maintains an accurate position plot and can take appropriate action to ensure the safety of the vessel. structures and other vessels.

(6) Vessels may not anchor in the Belle Isle Anchorage for more than 72 hours or the River Rouge Anchorage for more than 12 hours without permission of the Captain of the Port.

(7) Nothing in this section relieves the owner or person in charge of any vessel from the penalties for obstructing or interfering with navigation or navigational aids or for failing to comply with the navigation laws for lights, day shapes, or fog signals or the obligation to comply with any other applicable laws and regulations.

Dated: June 24, 1985.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 85-16019 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CG09-85-10]

Special Anchorage Area; Niagara River, Youngstown, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard, at the request of public and private interests in the town of Youngtown, New York, is proposing to expand an existing Special Anchorage Area in the Niagara River adjacent to Youngstown, New York. Increasing boater traffic and the lack of suitable mooring space within the river necessitates the expansion of this area.

The expansion of this area will provide the needed space to accommodate boating interests in a safe manner.

DATE: Comments must be received on or before August 19, 1985.

ADDRESSES: Comments should be mailed to Commander (mpes), Ninth Coast Guard District, 1240 East Ninth Street Rm 2019, Cleveland Ohio 44199. Normal Office hours are between 8:00 a.m. and 4:00 p.m., Monday through

Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ensign George H. Burns III, Marine Port and Environmental Safety Branch, 1240 East Ninth St., Cleveland OH 44199, (216) 522-3919.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD09-85-10) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Ensign George H. Burns III, Marine Port and Environmental Safety Branch, project officer and Lieutenant Raymond A. Pelletier, Project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulation

The village of Youngstown, New York, in conjunction with the Youngstown, New York Yacht Club, and marine interests within the area has requested that additional special anchorage space be created adjacent to the town of Youngstown, New York in the Niagara River.

Increasing boater traffic in this area has created a need for additional mooring space in the river. Due to the physical characteristics of the river itself ie., relatively deep water, strong current and poor bottom composition, vessel anchoring is not recommended for most vessels. It is anticipated that 25 to 40 seasonally permanent moorings will be placed in this area once approval has been received from the U.S. Army Corps of Engineers.

Control and assignment of mooring space in this area is planned to be undertaken by the Youngstown Harbor Committee which will be established by the village of Youngstown. By expanding this additional Special Anchorage Area boater safety will be increased as the need for attempting to anchor under unfavorable river conditions will be minimized.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The economic impact is minimal because this regulation merely expands an existing anchorage.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulation

PART 110—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 110.85 is amended by revising paragraph (a) and adding a note to read as follows:

§ 110.85 Niagara River; Youngstown, New York.

(a) *Area 1.* Beginning at a point at the intersection of the south line of Swain Street extended with the east shoreline of the Niagara river at Latitude 43°14'33" N, longitude 79°03'7.5" W; thence westerly to a point at latitude 43°14'33" N, longitude 79°03'9.5" W; thence Southerly to a point at latitude 43°14'15.5" N, longitude 79°03'10" W; thence westerly to a point at latitude 43°4'15.5" N, longitude 79°03'17" W; thence northerly to a point at latitude 43°14'54.5" N, longitude 79°03'14" W; thence southeasterly to a point at latitude 43°14'52.3" N, longitude 79°03'09" W; thence southerly to a point at latitude 43°14'51.4" N, longitude 73°03'09" W; thence easterly to a point at latitude 43°14'51.5" N, longitude 79°03'6.5" W; thence along the shoreline to the point of beginning.

* * * * *

Note.—The Youngstown Harbor Commission controls the location, type, and assignment of moorings placed in the special anchorage areas in this section.

Dated: June 21, 1985.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard, Commander Ninth Coast Guard District.

[FR Doc. 85-16023 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD8-85-08]

Drawbridge Operation Regulations; Tigre Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge over Tigre Bayou, Mile 2.3, on LA330 near Delcambre, Vermilion Parish, Louisiana, by requiring that at least four hours advance notice be given for an opening of the draw at all times. Presently, the draw is required to open on signal for 5 a.m. to 9 p.m. and on 12 hours advance notice from 9 p.m. to 5 a.m. This proposal is being made because of infrequent requests for opening the draw. This action should relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw from 5 a.m. to 9 p.m., while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before August 19, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other material referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested pesons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and given reasons for concurrence with or

any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulations

Vertical clearance of the bridge in the closed position is 5.0 feet above high water and 8.0 feet above low water. Navigation through the bridge consists of shrimp/fish boats and an occasional pleasure craft. Data submitted by the LDOTD show that this traffic through the bridge has steadily declined, as follows:

(1) For the years 1980 through 1984, there were 766, 511, 593, 374, and 124 bridge openings, respectively.

(2) In 1984, between 5 a.m. and 9 p.m., the period when the bridge now has to open on signal, there were 122 bridge openings—an average of 10.0 openings per month or an average of one opening every three days. In 1983, there were 366 openings for the same time period.

(3) In 1984, between 9 p.m. and 5 a.m., the period when the bridge now is on 12 hours advance notice, there were two openings for naviation. In 1983, there were eight openings for the same time period.

Considering the few openings involved, the Coast Guard feels that the current on site attendance at the bridge between 5 a.m. and 9 p.m. is not warranted and that bridge can be placed on four hours advance notice for an opening at all times. This will provide relief to the bridge owner, while still providing for the reasonable needs of naviation.

The advance notice for opening the draw would be given by placing a collect call at any time to the LDOTD District Office at Lafayette, Louisiana, telephone (318) 233–7404. From afloat, this contact may be made by radiotelephone through a public coast station.

The LDOTD recognizes that there may be an unusual occasion to open the bridge on less than four hours notice for an emergency or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

Econmic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The econimic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass this bridge as evidenced by the 1984 bridge opening statistics which show that the bridge averaged only one opening every three days. These vessels can reasonalby given four hours advance notice for a bridge opening by placing a collect call to the bridge owner at any time. Mariners requiring the bridge openings are mainly repeat users and scheduling their arrival at the bridge at the appointed time should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The Authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

2. Section 117.507 is revised to read as follows:

§ 117.507 Tigre Bayou.

The draw of the S330 bridge, mile 2.3 near Delcambre, shall open on signal if at least four hours notice is given. The draw shall open on less that four hours notice for an emergency and shall on signal should a temporary surge in waterway traffic occur.

Dated: June 24, 1985.

T.T. Matteson,

Captain, U.S. Coast Guard Commander, 8th Coast Guard District, Acting.

[FR Doc. 85–16025 Filed 7–3–85; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–41

Submission of Commercial Bills of Lading Covering Transportation Services Under Cost Reimbursement-Type Contracts

AGENCY: Office of the Comptroller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations (FPMR) by requiring contractors doing business with the United States Government to submit cost reimbursement-type contract (CRTC) commercial bills of lading to GSA for audit.

DATE: Written comments must be received by no later than 4 p.m. August 5, 1985.

ADDRESS: Comments should be sent to General Services Administration (BWCP), 18th and F Streets, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures and Review Branch, Office of Transportation Audits, 202 (FTS) 786–3014.

SUPPLEMENTARY INFORMATION: Before 1975, the U.S. General Accounting Office (GAO) audited Standard Form (SF) 1103's, U.S. Government Bills of Lading, SF 1169's, U.S. Government Transportation Requests, as well as commercial bills of lading submitted by contractors doing business with the Government on cost reimbursement-type contracts (CRTC's). Effective October 12, 1975, these transportation audit functions were transferred from GAO to the General Services Administration (GSA) (General Accounting Office Act of 1974, Pub. L. 93–604) and transportation audit procedures formerly set forth in 4 CFR Subchapter D-Transportation were established in 41 CFR chapter 101.

The requirement that contractors submit CRTC commercial bills of lading to GAO for audit, however, resided in Federal procurement regulations rather than in 4 CFR Subchapter D–Transportation. For that reason, it was not made a part of 41 CFR 101. Consequently, some certifying and paying offices are unaware that CRTC commercial bills of lading are subject to GSA's transportation audit. This amendment to 41 CFR 101–41 clarifies GSA's audit function. GSA has determined that this rule is not a major rule for the purposes of Executive Order

12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–41

Accounting, Claims, Freight, Freight forwarders, Railroads, Transportation.

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

GSA proposes to amend Part 101–41 as follows:

1. The authority citation for 41 CFR 101–41 continues to read as follows:

Authority: 31 U.S.C. 3720, and 40 U.S.C. 486(c).

2. The table of contents for Part 101–41 is amended by adding the following:

Sec.

101–41.807–4 Submission of commercial bills of lading convering transportation services by contractors using cost reimbursement-type contracts.

Subpart 101–41.8—Transportation Disbursement Procedures

3. Section 101–41.807–4 is added to read as follows:

§101–41.807–4 Submission of commercial bills of lading convering transportation services by contractors using cost reimbursement-type contracts.

(a) Legible copies of commercial bills of lading (CBL's) and other supporting documents for transportation services, for the account of and on which the United States will assume freight charges that were paid by a Federal agency's cost reimbursement-type prime contractors and their first-tier cost reimbursement-type subcontractors, are to be submitted to GSA for audit on a quarterly basis by the Federal agency's prime contractors.

(b) Each cost reimbursement-type prime contractor shall forward the copies of CBL's for each calendar quarter, no later than the last day of the following quarter, in one package to General Services Administration, Attn: BWAA/C, 18th and F Streets, NW., Washington, D.C. 20405. The shipment shall include the required documents for all first-tier cost reimbursement-type subcontractors. If, however, the inclusion of the transportation documents of any such subcontractors in the shipment is not practicable, such documents are to be transmitted in a separate package.

(c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly by the contractor to GSA. The contractor shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.

(d) A statement prepared in duplicate by the sender shall accompany each shipment of transportation documents. The copy, duly signed and acknowledging receipt of the shipment, will be returned by GSA. The statement should show:

(1) The name and address of the prime contractor.

(2) The contract symbol and number.

(3) The name and address of the field office or Headquarters office administering the contract.

(4) The total number of bills submitted.

(5) A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid showing the contractor's voucher or check numbers.

Dated: June 17, 1985.

Raymond A. Fontaine,

Comptroller.

[FR Doc. 85–16040 Filed 7–3–85; 8:45 am]

BILLING CODE 6820–AB–M

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41 CFR Part 101–41

Reduce Number of Copies in Standard Form 1203, U.S. Government Bill of Lading—Privately Owned Personal Property, Set

AGENCY: Office of the Controller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to reduce the number of copies in the Standard Form (SF) 1203, U.S. Government Bill of Lading—Privately Owned Personal Property (POPPGBL), set, from nine to six by eliminating the following: SF 1206—Freight Waybill, Carrier's Copy, and two copies of SF 1203–A, Memorandum Copy. The increased use of state of the art printers that can print only six copies necessitates reducting the present set.

COMMENT DATE: Written comments must be received no later than 4 p.m. August 5, 1985.

COMMENTS: Written comments should be sent to General Services Administration, (BWCP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures and Review Branch, Office of Transportation Audits [202] 786–3014.

SUPPLEMENTARY INFORMATION: The POPPGBL was promulgated by GSA at the request of the Department of Defense (DOD) through its traffic manager, the Military Traffic Management Command (MTMC). The nine-part form was specifically designed to fill the informational and distributive needs for DOD's household goods movements. Section 101–41.302(b) of the Code of Federal Regulations (CFR) indicates that the use of SF 1203 is mandatory for DOD and optional for other Federal agencies. MTMC states that current state-of-the-art printers cannot process nine copies at one time. Most are rated for six copies. MTMC requests that GSA amend the regulations by reducing the POPPGBL set from nine parts to six parts.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–41

Accounting, Claims, Freight, Freight forwarders, Government property management, Moving of household goods, Transportation.

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

GSA proposes to amend 41 CFR Part 101–41 as follows:

1. The authority citation for 41 CFR 101–41 continues to read as follows:

Authority: 31 U.S.C. 3728, and 40 U.S.C. 486(c).

Subpart 101-41.3—Freight Transportation Services Furnished for the Account of the United States

2. Section 101-41.302-1 is amended by removing and reserving paragraph (z) as follows:

§ 101-41.302-1 Listing of forms.

* * * * *

(z) [Reserved].

* * * * *

3. Section 101-41.302-2 is amended by revising paragraph (c) and removing paragraph (e) as follows:

§ 101-41.302-2 Description and distribution of bills of lading.

* * * * *

(c) The U.S. Government Bill of Lading—Privately Owned Personal Property (POPPGBL) is a six-part form available in either snap-out or computer pin-feed formats. The sets are carbon-interleaved for simultaneous preparation. The POPPGBL is arranged in the following order:

(1) SF 1203 (original) is given to the carrier upon tender of the shipment for use as supporting documentation and is to be submitted with the voucher covering the transportation charges involved.

(2) SF 1204 (shipping order) is retained by the carrier's agent at the shipping point.

(3) SF 1203-A (memorandum copy), one of two copies, for use by the shipper for fiscal or administrative purposes. The remaining memorandum copy follows SF 1203-B.

(4) SF 1205 (freight waybill (original)) is given to the origin carrier and is either carried to destination or is otherwise sent to destination in compliance with origin carrier's instructions. It also serves as the substitute billing document when the original POPPGBL is lost or destroyed.

(5) SF 1203-B (memorandum copy-consignee) is given to the consignee (property owner) at time of pickup.

(6) SF 1203-A (memorandum copy) same as (3).

Subpart 101.41.49—Illustration of Forms

§ 101-41.4901-1208 [Removed]

4. Section 101-41.4901-1208 is removed.

Dated: June 12, 1985.

Raymond A. Fontaine,

Comptroller.

[FR Doc. 85-16080 Filed 7-3-85; 8:45 am]

BILLING CODE 6820-AB-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 302

Civil Defense; State and Local Emergency Management Assistance Program (EMA)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking is designed to elicit comment on two changes to 44 CFR Part 302.

One change is to rename and redefine *operational plans* as *emergency operations plans* (EOP's) and to add the requirement for EOP's to conform with the requirements of Civil Preparedness Guide (CPG) 1-8, "Guide for the Development of State and Local Emergency Operations Plans," and CPG 1-8A, and "Guide for the Review of State and Local Emergency Operations Plan."

The second change is to permit States to submit primary annual submission documents in amounts not to exceed their tentative allocation amounts and for those primary annual submissions to be approved as final annual submissions under certain prescribed conditions.

DATE: Comments are due September 3, 1985.

ADDRESS: Send Comments to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Edward E. Sergent, Office of Emergency Management Preparedness, Federal Emergency Management Agency, Washington, D.C. 20472 (202-646-3509).

SUPPLEMENTARY INFORMATION: The change in procedures will allow States to accelerate the process for receiving FEMA approval of documents of obligation for all or a portion of their annual EMA fund allocation upon appropriation by Congress and allotment of the funds. The last sentence in § 302.5B(5) "Allocations and Reallocations" is being revised. Rather than "certain standards applicable to the allocation of the reserve fund" being set forth in Civil Preparedness Guide (CPG) 1-3 they will be promulgated annually. This change is being made based on the premise that the amount of the EMA appropriation will likely vary from year to year (and consequently the amount of the reserve fund) as will circumstances in the various states; therefore, the Director should have the option to annually determine the basis for distribution of the reserve fund in accordance with current information as to civil defense needs.

Implementing Guidance

These regulations refer to CPG 1-3 throughout, and the fact that it is available from FEMA regional offices. However, FEMA is continuing to rely upon actual notice, through distribution of CPG 1-3 to all participating State and local governments and requiring certification of receipt thereof.

Nonapplicability

As Federal funding to which these regulations will be applicable is less than $100,000,000 annually, the regulation is not considered to be a major regulation requiring a regulatory analysis under Executive Order 12291. The regulation also is applicable to States to whom the funding is made available, and thus is not subject to the requirements of the Regulatory Flexibility Act, which is concerned with small entities. No regulatory flexibility analysis will be prepared.

Collection of Information

Sections 302.3 and 302.5 concern documentation of eligibility. These sections of the rule contain collection of information requirements which have been approved by Office of Management and Budget under the provisions of section 3504(h) of the Paperwork Reduction Act and under OMB No. 3067-0123 and 0138.

Comments

Comments on these matters are solicited and should be submitted to the above address in writing. Two copies are requested.

Upon receipt of and action on these suggestions, a final rule will be published in the Federal Register. The target date for this issuance is September 30, 1985.

List of Subjects in 44 CFR Part 302

Civil defense, Grants programs, National defense.

Accordingly, it is proposed to amend Chapter 1, Subchapter E, Part 302, Code of Federal Regulations as follows:

PART 302—CIVIL DEFENSE-STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (EMA)

1. The authority citation for Part 302 is revised to read as follows:

Authority: 50 U.S.C. App. 2251 *et seq.*, Reorganization Plan No. 3 of 1978; E.O. 12148.

§ 302.2 [Amended]

2. In § 302.2, paragraph (n) is amended by removing "(See Appendix B of CPG 1–3)" and adding ("See Appendix B of CPG 1–32 *Financial Assistance Guidelines* and CPG 2–12 *Financial Guidelines for State Comprehensive Cooperative Agreements.*)"

3. In § 302.2, paragraph (o) is amended by removing "(See Appendix A of CPG 1–3)" and adding "(See Appendix A of CPG 1–3 *Financial Assistance Guidelines;* and CPG 2–12 *Financial Guidelines for State Comprehensive Cooperative Agreements.*)"

4. In § 302.2, paragraph (p) is revised and an OMB Control Number is added to the end of the section to read as follows:

* * * * *

(p) *Emergency Operations Plan (EOP).* State or local government Emergency Operations Plans identify the available personnel, equipment, facilities, supplies, and other resources in the jurisdiction and state the method or scheme for coordinated actions to be taken by individuals and government services in the event of natural, manmade and attack-related disasters. (Approved by OMB under control number OMB 3067–0123)

* * * * *

§ 302.3 [Amended]

5. In § 302.3, the introductory paragraph is amended by removing "emergency operational plan" and adding "emergency operations plan" in place thereof.

6. In § 302.3, paragraph (b) is revised to read as follows:

* * * * *

(b) *Emergency Operations Plans (EOPs).* (1) Each participating State shall have an EOP approved by the Regional Director and complying with the criteria therefor set forth in this part and in CPG 1–3, "Guide for the Development of State and Local Emergency Operations Plans" and in CPG 1–8A, "Guide for the Review of State and Local Emergency Operations Plans," which plan must provide for coordinated actions to be undertaken throughout the State in the event of attack and in the event of other disasters.

(2) Each subgrantee jurisdiction shall have a local EOP which conforms with the criteria therefor set forth in CPG 1–3 and CPG 1–5 "Objectives for Local Civil Preparedness", CPG 1–8 and CPG 1–8A, and which has been approved by the local chief executive or other authorized official and accepted by the Governor or other authorized State official as being consistent with the State's EOP. (Approved by the Office of Management and Budget under Contol No. 3067–0123)

§ 302.5 [Amended]

7. In § 302.5 paragraph (b)(5) is amended by revising the last sentence to read follows: "Certain factors to be applicable to the allocation of the reserve fund will be determined and promulgated annually, based upon how such amount may best be used to increase the civil defense capability of the Nation."

8. In § 302.5, paragraphs (f) through (j) are removed and paragraphs (f) through (m) added.

* * * * *

(f) In September of each year the Director will make a tentative allocation to the States. This will include adjustments for States that have indicated they will not be using the total of the formula distribution amount. States can then revise their earlier plans and applications to more nearly reflect the level of funding expected to become available.

(g) A State may provide to the Regional director a primary annual submission in an amount not to exceed its tentative allocation.

(h) By September 30 (or as soon thereafter as feasible), the Director will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds. This allocation for each State may include any additional amounts from the reserve portion of the EMA funds, and shall be in accordance with the regulations in this part and CPG 1–3.

(i) Upon the appropriation becoming available, and if requested by a State, the Regional Director may approve such State's primary annual submission (if found to meet all requirements in this part and CPG 1–3) in an appropriate amount which does not exceed the amount of the State's share of the Director's formal allocation of the Federal appropriation. An award document obligating Federal funds on the basis of the approved primary annual submission may be executed in accordance with the provisions of CPG 1–3 and CPG 2–12, "Financial Guidelines for State Comprehensive Cooperative Agreements".

(j) Based on and within 60 days after notification of its formal allocation, each State shall provide to the Regional Director a final annual submission which meets all requirements in this part and CPG 1–3. If no changes are necessary, a State and the Regional Director may adopt in writing the State's primary annual submission as its final annual submission. If no award document was executed based on a State's primary annual submission, such document will be executed on the basis of that State's approved final annual submission.

(k) With regard to any State whose award document was executed pursuant to a primary annual submission covering only part of its formal allocation, upon approval (by the Regional Director) of the final annual submission (including a revised statement of work supporting the additional funding request) the Regional Director shall execute an amended award document obligating the balance of such State's formal allocation.

(l) In the event a State fails to provide an approvable final annual submission on time, the Director may reallocate that State's share of the funds or portions thereof, as appropriate among the other States in such amounts as in the Director's judgment will best assure adequate development of the civil defense capability of the Nation.

(m) In addition, the Director may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with an approved annual submission and award document.

Dated: June 27, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85–15869 Filed 7–3–85; 8:45 am]

BILLING CODE 6718–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 80–113]

Lifesaving Equipment; Improved Standards for the Stability of Inflatable Liferafts

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: On January 11, 1985 the Coast Guard published in the **Federal Register** a Notice of Proposed Rule Making dealing with requirements for improving the stability of the inflatable liferafts used aboard merchant vessels and drill rigs of U.S. registry (50 FR 1558). At the time the Coast Guard was not planning to conduct a public hearing. The Coast Guard, on the basis of several written comments, has determined that a public hearing is now desirable. In conjunction with the decision to hold the public

hearing scheduled below, the comment period is reopened and extended.

DATE: The Coast Guard will hold a public hearing on the above subject on Thursday, September 12, 1985, 9:30 a.m. to 12:00 noon, Washington, D.C. Attendance is open to the public. Persons wishing to present oral testimony at the hearing should notify the Executive Secretary of the Coast Guard Marine Safety Council no later than the day before the hearing. Written comments must be received by October 14, 1985.

ADDRESS: The public hearing will be held at U.S. Coast Guard Headquarters, Room 2415, 2100 Second Street SW., Washington, D.C. 20593. Written comments intended for presentation at the public hearing should be mailed or delivered to the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Captain C.M. Holland, Executive Secretary, Marine Safety Council (G-CMC/21), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593, telephone (202) 426-1477.

B. G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85-16027 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-192; FCC 85-304]

Radio and Television Broadcasting; Reexamination of the Single Majority Stockholder and Minority Incentive Provisions

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The Federal Communications Commission initiates a rulemaking to explore the interaction between the "single majority stockholder" exception to its attribution standards and the "minority incentive" component of its national broadcast multiple ownership rule. Specifically, the Commission will consider whether or not a conflict exists in the simultaneous application of these two policies and, if so, what changes, if any, in either or both of these rules are appropriate.

DATES: Comments and reply comments should be submitted by August 7, 1985 and August 22, 1985, respectively.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Laurel R. Bergold, Mass Media Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Notice of Proposed Rulemaking

In the matter of reexamination of the "Single Majority Stockholder" and "Minority Incentive" provisions of § 73.3555 of the Commission's Rules and Regulations.

Adopted: June 7, 1985.
Released: July 1, 1985.

By the Commission: Commissioner Rivera issuing a separate statement; Commissioner Patrick concurring in the result.

1. By this *Notice of Proposed Rule Making* the Commission, acting on its own motion,[1] seeks comments concerning the interaction between the "single majority stockholder" exception to our ownership attribution standards [2] and the "minority incentive" provisions added to our national multiple ownership rules [3] pursuant to our recent order in the "twelve station" proceeding.[4] Specifically, we wish to determine whether and to what extent these two provisions, as now written, may operate at cross-purposes and what changes to such provisions might be warranted to remedy any conflict.

2. Through its attirbution policies, the Commission evaluates whether a specific type of interest conveys to the holder the ability to materially influence or control the business affairs of our licensees and, as a consequence, what ownership interests are counted in the application of the media multiple ownership rules. One component of these attribution policies is the "single majority stockholder" exception concerning corproations in which a single person owns more than fifty percent of the voting stock. The exception exempts from attribution the ownership interests of all non-majority stockholders,[5] regardless of whether or not such stockholder's ownership interest would otherwise be cognizable. The rationale underlying this exception is that the interest of the single majority stockholder is so great that "the [non-majority] interest holders, even acting collaboratively, would be unable to direct the affairs or activities of the licensee on the basis of their shareholdings." [6]

3. Subsequent to the adoption of the "single majority stockholder" exception to the attribution policies, the Commission, announced its decision on reconsideration in the multiple ownership proceeding. In reconsidering its decision to relax the "seven station" rule and to permit an individual or single entity to hold a cognizable interest in up to twelve stations in each broadcast service, the Commission decided to include certain "minority incentives" in the new multiple ownership rules.[7] Specifically, in order to foster investment in minority-controlled broadcasting companies, we determined to permit group owners otherwise subject to the twelve station limit to:

> Utilize a maximum numerical cap of 14 stations provided that at least two of the stations in which they hold cognizable interests are minority controlled. Group owners having a cognizable interest in at least one minority controlled television or radio station may utilzie a maximum numerical cap of 13 stations.[8]

4. The Commission also created a comparable incentive with respect to the maximum national audience reach limitation on television station ownership added to the multiple ownership rules on reconsideration in the "twelve station" proceeding. Thus, while a person would generally be restricted from owning cognizable interests in television stations which, in the aggregate, could reach more than 25 percent of the national audience, this limitation was increased by five percent as long as any interest in excess of 25 percent can be directly attributed to

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[1] 47 CFR 1.411 (1984).

[2] *See* 47 CFR 73.3555, Note 2(b); § 76.501, Note 2(b) [1984]; and *Report and Order* in MM Docket No. 83-46, 97 FCC 2d 997, 1008-09 (1984), *reconsid. granted in part*, FCC 85-252 (released June 24, 1985).

[3] *Memorandum Opinion and Order* in Gen. Docket No. 83-1009, FCC 84-638 (released February 1, 1985) at Appendix A [to be codified at 47 CFR 73.3555(d)].

[4] *Memorandum Opinion and Order* in Gen. Docket No. 83-1009, *supra* n.3.

[5] In order to avoid confusion, we shall use the term "minority" herein to refer to a member or members of an identified minority group, such as Hispanics, and the term "non-majority" to refer to interest holders possessing less than a 50% ownership interest.

[6] *Report and Order* in MM Docket No. 83-46, *supra* n.a at 1008-09.

[7] *Report and Order* in Gen. Docket No. 83-1009, FCC 84-350 (released August 3, 1984), *reconsid. granted in part*, FCC 84-638 (released February 1, 1985), *appeal docketed sub nom. National Association of Black Owned Broadcasters v. FCC*, No. 85.1139 (D.C. Cir. filed March 4, 1985).

[8] *Memorandum Opinion and Order* in Gen. Docket No. 83-1009, *supra* n.3 at para. 45.

minority-controlled stations.[9] For purposes of these provisions, "minority-controlled" broadcast stations are defined as those in which more than 50 percent of the equity interest is owned in the aggregate by persons who are members of a minority group.[10]

5. Our intention, of course, in permitting increased levels of multiple ownership only where minority-controlled stations are involved is to encourage investment in and support for these stations, thereby advancing our broad policy objective of promoting minority ownership of broadcasting facilities.[11] It has been suggested, however, that in practice the availability of the "single majority stockholder" exception may potentially operate to dilute the effectiveness of the minority incentives by significantly reducing the number of cases where they might be attractive for use in the financing of a broadcast enterprise.[12] Our concern in this regard is heightened by the fact that, in some respects, the "single majority stockholder" exception is broader than the "minority incentive" provisions and may, therefore, be more attractive to investors. For example, because the exception operates as a total exemption from attribution, it permits a person investing in companies that have a single majority stockholder to obtain significant interests in broadcast stations without regard to any numerical or audience reach limitations. Moreover, the scope of the exception extends to all of the media multiple ownership rules; it is not limited to the national ownership rules adopted in the "twelve station" proceeding. Finally, in utilizing the "single majority stockholder" exception, there are no restrictions on the types of persons holding the majority interest.

6. On the other hand, several characteristics of the "single majority stockholder" exception restrict its usefulness in comparision to the "minority incentive" provisions for certain purposes and under various conditions. In this regard, we note that there are certain types of investments which may qualify for preferential treatment under the "minority incentive" rule but fail to meet the criteria for an absolute exclusion from attribution under the "single majority stockholder" rule. For example, a person seeking to invest in a non-corporate business entity cannot take advantage of the "single majority stockholder" exception because that exclusion, by its express terms, applies only to corporate ownership interests. In addition, the "single majority stockholder" exception is limited to situations in which more than 50 percent of the voting stock is owned by a single person. Under the "minority incentive" policy, in contrast, ownership interests of minority group owners are aggregated in computing control and, consequently, there is no requirement that any one person possess an equity interest in the business that exceeds 50 percent.

7. More importantly, the "single majority stockholder" exception is limited to ownership interests. As a consequence, our rules attribute the interest of a non-majority stockholder who would otherwise qualify for an exemption under the "single majority stockholder" rule when that stockholder occupies a position within the corporate structure that is cognizable independent of any equity holdings. For example, notwithstanding the existence of the "single majority stockholder" exception, the interest of a person who both holds a non-majority ownership interest in a company with a single majority stockholder and occupies the position of a corporate officer or director is cognizable. In contrast, the relaxed numerical and audience reach caps of the "minority incentive" rules are available to a person investing in minority-controlled enterprises even if he or she is also a corporate officer or director. Therefore, relative to use of the "single majority stockholder" rule, an investment in a minority-controlled company may be attractive to persons occupying—or desiring to retain the option to occupy—cognizable corporate positions. This aspect of the "minority incentive" provisons may constitute a substantial advantage over the "single majority stockholder" approach in the view of significant investors because it affords them a means short of majority stock control by which to ensure the continued viability of their investment.

8. To the extent that an investment meets the criteria for the less restrictive limitations contained in the "minority incentive" program but does not qualify for a "single majority stockholder" exception, the policy underlying the adoption of specific minority incentives in the "twelve station" proceeding may be effectuated without any alteration of our existing rules. Given the foregoing considerations, we are not prepared at this time to make a determination that the "single majority stockholder" exception, as applied to the national broadcast media multiple ownership rules, appreciably undercuts our "minority incentive" provisions. We believe it is appropriate, however, to seek comments concerning this possibility.

9. In evaluating the interrelationship of these two provisions and in fashioning possible remedies for any real conflict between them, several additional considerations should be noted. First, traditionally it has not been the purpose of the attribution rules to facilitate minority ownership of broadcast facilities. Rather, the purpose of these rules is to establish a regulatory line of demarcation between those interests which could confer upon their owner the ability to materially influence or control the licensee's editorial decisions and consequently should be deemed cognizable under the media multiple ownership rules and those interests which are non-influential in nature and therefore are appropriately exempt from attribution. The adoption of the "single majority stockholder" exception reflects a neutral determination by the Commission that the stockholders that qualify for this exception do not in fact possess an influential ownership interest which should be deemed cognizable under the media multiple ownership rules.[13] There is nothing either in our experience with this exception or in our decision to revise the national multiple ownership rules in the "twelve station" proceeding which would lead us to question this determination. To the extent, therefore, that narrowing or eliminating the "single majority stockholder" exception suggests itself as a solution in this proceeding, such an approach would result in the attribution of non-influential ownership interests and would arguably be at odds with the objectives underlying the attribution rules.[14]

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[9] *Id.* at App. A [to be codified at 47 CFR 73.3555(d)(2)]. Minority group members are persons who are Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander. *Id.* at App. A [to be codified at 47 CFR 73.3555(d)(3)(D)].

[10] *Id.* at App. A [to be codified at 47 CFR 73.3555(d)(3)(C)].

[11] *See, e.g., Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1978); *Policy Statement and Notice of Proposed Rule Making* in Gen. Docket No. 82-707, 92 FCC 2d 849 (1982).

[12] We recognized this potential conflict at the time we adopted the minority incentive provisions in the "twelve station" proceeding. As a result, we specifically instructed the staff to prepare this *Notice of Proposed Rule Making* to examine the relationship between the minority ownership incentives and the "single majority stockholder" exception. *See Report and Order* in Gen. Docket No. 83-1009, *supra* n.6 at n.60.

[13] *Report and Order* in MM Docket No. 83-46, 97 FCC 2d at 1005-09.

[14] Any limitation on the scope or availability of the "single majority stockholder" exception imposed as a result of this proceeding would be prospective only. The interests of investors relying on the exception prior to any possible modification thereof would remain noncognizable for purposes of our multiple ownership rules.

10. Furthermore, we note that this proceeding only addresses the "single majority stockholder" exception as it applies to the rules adopted in the "twelve station" proceeding and, consequently, any changes to that attribution standard which we might adopt in this proceeding would of necessity result in disparate attribution standards for the national and local media multiple ownership rules.[15] In our *Report and Order* in the attribution proceeding, we determined, as a policy matter, that the same attribution standards should be applicable to all media multiple ownership rules. We explained that these rules:

> Are designed to prevent any party from influencing the broadcasting practice of more than a predetermined number of outlets in various geographic configurations. The attribution standards, in turn, are designed to measure what ownership interests will confer that amount of influence or control which must be limited. The determination that a certain stock interest or other position might confer such influence or control is equally valid regardless of the particular context of rule in which it is applied.[16]

11. By the institution of this rule making, we invite parties to comment on all matters raised in this *Notice*. We specifically request persons, however, to provide their views on the following issues:

(1) Whether the "single majority stockholder" rule, in operation, substantially affects the efficacy of the "minority incentives" established in the "twelve station" proceeding; and

(2) If the availability of the "single majority stockholder" exception does in fact appreciably undermine effective implementation of the current "minority incentive" provisions, what changes to either or both of these provisions are advisable.[17]

12. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 7, 1985, and reply comments on or before August 22, 1985. All relevant and timely comments will be considered by the Commission before any final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and any supporting documents. If participants want each Commissioner to receive a personal copy of their pleadings, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Docket Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

13. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral argument) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written pleading in the proceeding must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must state by docket number the proceeding to which its relates. *See generally*, § 1.1231 of the Commission's rules. 47 CFR 1.1231.

14. As prescribed by the Regulatory Flexibility Act,[18] an initial regulatory flexibility analysis ("IRFA"), set forth in the attached Appendix, outlines the expected impact of the proposals described in this *Notice* on small entities. We invite parties to this proceeding to submit written comments on the IRFA. These comments are to be filed in accordance with the same filing deadlines as the comments on the substantive aspects of this *Notice*. A party may file comments on the IRFA and the other matters raised by the *Notice* in the same document, but any person availing himself or herself of this option must place the IRFA response under a separate heading. The Secretary shall cause a copy of this *Notice*, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.[19]

15. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

16. Authority for this proposed rule making is contained in sections 1, 4(i) and (j), 303 and 403 of the Communications Act of 1934, as amended.

17. For further information concerning this proceeding, contact Laurel R. Bergold, Mass Media Bureau, (202) 632–7792.

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[15] Moreover, we have indicated that the local media ownership rules are the primary vehicle by which we address the concerns of diversity and economic concentration in an ownership context. *See, e.g., Report and Order* in MM Docket No. 84–19, 98 FCC 2d 578 *reconsid. denied*, FCC 85–225 (released May 8, 1985), *appeal docketed sub nom. National Association for Better Broadcasting v. FCC*, No. 84–1274 (D.C. Cir. filed June 29, 1984) at paras. 20–22. In fact, although we have retained a national broadcast multiple ownership rule to avoid the possibility of an abrupt and disruptive restructuring of the broadcasting industry, we have concluded, as a policy matter, that there is no need to retain a presumptive national multiple ownership rule. *See Memorandum Opinion and Order* in Gen. Docket No. 83–1009, *supra* n.3. at para. 50. Yet, if we determine to eliminate the "single majority stockholder" rule as applied to the national multiple ownership rule, we will have the arguably anomalous situation of less stringent attribution standards for the vitally important local multiple ownership rules than are applied to their less important national counterpart.

[16] *Report and Order* in MM Docket No. 83–46, 97 FCC 2d at 1032–33.

[17] In addressing this issue, we invite parties to comment upon the factors which we should consider in balancing our objective of effectively advancing our minority ownership policies against our interest in maintaining rational and uniform attribution criteria, and the relative weight we should assign to each factor. In striking this balance, commenters should bear in mind that we do not consider the multiple ownership rules to comprise the primary means by which the Commission undertakes to further its minority ownership objectives. As we stated in adopting the "minority incentive" provisions:

> In the *Report and Order*, we observed that the national multiple ownership rules were not primarily intended to function as a vehicle for promoting minority ownership in broadcasting. In this regard, we noted that the Commission has instituted various policies such as tax certificates, distress sale benefits and lottery preferences to promote minority ownership in communications. We continue to believe that these policies, as opposed to our multiple ownership rules, should serve as the primary mechanisms to promote minority ownership in television and radio broadcasting.

Memorandum Opinion and Order in Gen. Docket No. 83–1009, *supra* n.3 at para. 45 [footnote omitted].

[18] 5 U.S.C. 601 *et seq.* (1982).

[19] 5 U.S.C. 603(a) (1982).

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

Initial Regulatory Fexibility Analysis

1. *Reason that Action Is Contemplated.* The Commission is concerned that the existance of the "single majority stockholder" exception in the attribution rules (47 CFR 73.3555) may have the potential to dilute the specific incentives designed to facilitate the minority ownership of broadcast facilities adopted in *Memorandum Opinion and Order* in Gen. Docket No. 83–1009, FCC 85–175 (released February 1, 1985). As a consequence, the Commission deems it appropriate to explore the interaction between these "minority incentives" and the "single majority stockholder" exception.

2. *Objective of the Proposed Rule and the Legal Basis Therefor.* The dual objectives in this proceeding are to assure the effective implementation of the minority incentive program adopted in Gen. Docket No. 83–1009 while maintaining a viable mechanism for the attribution of interests in the application of the media multiple ownership rules. The legal basis for the institution of this rule making is contained in section 1, 4(i) and 4(j), 303, and 403 of the Communications Act of 1934, as amended.

3. *Description, Potential Impact and Number of Small Entities Affected.* The rule changes considered in this rule making could modify in one respect the attribution standards governing broadcast licensees and those holding significant interests in such licensees as these standards are applied to the national broadcast multiple ownership rules. In addition, they could alter the minority incentives to the national multiple ownership rule adopted in Gen. Docket No. 83–1009. Many of the current and prospective minority-controlled broadcast licensees are small entities. The minority incentive program facilitates investment in minority-controlled small businesses. To the extent that the viabilty of the minority incentive program is enhanced as a result of any rule changes adopted in this proceeding, minority-controlled small entities will have increased opportunities for investment capital which, in turn, will enhance their financial viability.

4. *Recording, Recordkeeping and Other Compliance Requirements.* To the extent that the rules adopted in this proceeding restrict or eliminate the "single majority stockholder" exception, the reporting burden of those entities no longer exempt from attribution would increase thereby creating a corresponding increase in the reports filed with the Commission.

5. *Federal Rules which Overlap, Duplicate or Conflict with This Proposal.* None.

6. *Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with the Stated Objectives.* None.

Separate Statement of Commissioner Henry M. Rivera

June 7, 1985.

Re: Notice of Proposed Rulemaking Reexamining Single Majority Stockholder and Minority Incentive Provisions of Rule § 73.3555

I am pleased that the Commission has begun this rulemaking. The minority ownership incentive adopted by the Commission's 12 station reconsideration decision [1] can give a much-needed boost to the flagging involvement of minorities in broadcasting. That was certainly our intent in adopting the incentive (as well as the intent of the House and Senate legislative proposals on which the December 1984 reconsideration was based). As this Notice of Proposed Rulemaking explains, however, our attribution rules—specifically, the single majority stockholder provision—may indirectly undermine or defeat this minority incentive. To avoid taking away with the attribution rules what the Commission intended to give with the 12 station reconsideration order, it is essential that we examine the interplay of these rules.[2]

The Notice has described the potential conflict between these rules. Both provisions relieve holders of 49 percent interests in broadcast licenses from our multiple ownership rules. Unlike the minority ownership incentive, however, the single majority stockholder rule does not limit who may hold the remaining 51 percent interest to minority group members. In addition, the single majority stockholder rule can be used to avoid *any* broadcast multiple ownership restriction and to acquire large interests in an unlimited number of properties, while the minority incentive applies only to the 12 station rule, and only allows parties to acquire two stations of five percent viewers penetration more than the limits contained in that rule. The minority incentive does have some advantages over the single majority stockholder rule—for example, it exempts officers and directors from attribution where its standards are otherwise met. Nevertheless, the relief provided by the single majority stockholder rule to broadcast investors is significant and, in some ways, far superior to that offered by the majority ownership provision. Consequently, there is a substantial question as to whether the minority ownership incentive will provide the positive inducement the Commission intended unless one or both of these rules is modified.

If the comments confirm these tentative views, the Commission has a number of options for remedial action. Deleting the single majority stockholder rule is the most obvious solution. The provision was adopted by the Commission on its own motion, with only a cursory rationale.[3] It is far from integral to the new attribution scheme adopted last year.[4] Its repeal would be a small price to pay for preserving the integrity and promise of our new minority ownership initiative. Alternatively, it may be possible to revise the minority incentive to make it more attractive to those seeking relief from our multiple ownership rules. Whatever the proper course, I am satisfied that this proceeding gives us the necessary vehicle for corrective action.

[1] *Memorandum Opinion and Order* in General Docket No. 83–1000, FCC 84–638 (released Feb. 1, 1985).

[2] *See id.* at note 60 and Separate Statement of Commissioner Henry M. Rivera Concurring in Part, Dissenting in Part, at nn. 17–19 and accompanying text.

[3] *Attribution of Ownership Interests*, 97 FCC 2d 997, 1008–09 (1984).

[4] *See id.*

[FR Doc. 85–16034 Filed 7–3–85; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80–18; Notice 3]

Federal Motor Vehicle Safety Standards; Anchorages for Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates rulemaking action to require the installation of child restraint tether anchorages in vehicles. The agency proposed the tether anchorage requirement to reduce the widespread misuse of tethered child restraints resulting from parents failing to attach

the tether to the vehicle. Subsequent to issuance of that notice, in approximately 50 percent of all domestic and imported cars, manufacturers have voluntarily installed provisions for tether straps. In addition, there has been a substantial shift in the marketplace away from tethered restraints. At present, only booster seats and one model of the plastic shell-type of child restraint currently use a tether.

The agency has decided that the appropriate way to reduce problems created by tether misuse is to propose an amendment, published elsewhere in today's **Federal Register**, to Standard No. 213, *Child Restraint Systems*, to require all child restraints to pass a 30 mile per hour simulated crash test without a tether attached. This will ensure that all child restraints provide an adequate level of safety even if they are designed to be used with a tether strap.

This action does not terminate the other portion of the Standard No. 210 proposal concerning the installation of anchorages at the right front passenger seating position in vehicles with automatic restraint systems, which will be addressed further by the agency at another time.

DATES: The termination of the tether anchorage rulemaking is effective on July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Vladislav Radovich, Office of Vehicle Safety Standards, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. Telephone (202) 426–2264.

SUPPLEMENTARY INFORMATION: On December 11, 1980 (45 FR 81625), NHTSA issued a notice of proposed rulemaking to amend Standard No. 210, *Seat Belt Assembly Anchorages* (49 CFR 571.210) to require anchorages in certain vehicles for child restraint tether straps. In addition, the notice proposed requiring vehicles equipped with automatic restraint systems at the right front designated seating position, which can not be used for the securing of child restraints, to have separate anchorages at that position for the installation of Type 1 lap belts.

There were over seventy comments responding to the notice, representing a diverse range of views concerning the need for and the probable effectiveness of both the proposed lap belt and tether anchorages. The following discussion addresses the major comments and explains the agency decision concerning the tether anchorage proposal. The agency will subsequently issue a separate notice addressing the safety belt anchorage proposal.

Termination of Tether Anchorage Proposal

The purpose of the tether anchorage proposal was to encourage tether strap use by making it possible for motorists to attach easily the tether straps on their child restraint systems to their vehicle. There was a substantial disagreement among the parties submitting comments on the tether anchorage proposal. Of the individuals and organizations commenting on the proposal, 55 supported the need for such anchorages, although some of these commenters recommended changes in such items as the anchorage strength, location, hardware, and configuration requirements. Six commenters, however, opposed any tether anchorage requirement, arguing that the agency had not established a need for such anchorages and the probable low rate of use of tether straps does not justify the cost of the proposed requirement.

Since issuance of the proposal, there have been several significant events that have taken place that have led the agency to re-evaluate the need for a tether anchorage requirement. Since 1980, there has been a continual shift in the child restraint market toward untethered seats. At the present time, there are approximately two million shell-type child restraints produced annually; only one model of those restraints requires a tether to comply with the requirements of Standard No. 213, *Child Restraint Systems*. (Two manufacturers of shell-type child restraints are now offering a tether strap on some child restraints as an option for added safety; however, those restraints comply with Standard No. 213 without the use of the tethers.) There are also approximately 1.2 million booster seats currently sold, with about ⅓ of those seats now designed to comply with Standard No. 213 without the use of a tether; the remaining booster seats currently require the use of a tether to comply. The agency notes that at the time of this proposal all booster seats required a tether.

In addition, motor vehicle manufacturers have increasingly been voluntarily providing provisions, such as indentations to identify anchorage points and pre-drilled or threaded holes, in their vehicles to facilitate the attachment of tether straps. At present, American Motors, Chrysler, Ford, General Motors, Honda, Nissan, and Toyota offer some type of provision in some of their vehicles for installation of tether anchorages. The number of passenger cars with provisions for tether straps now accounts for approximately one half of all U.S. and imported car sales. The agency encourages all manufacturers to provide tether anchorages in all their vehicles used for the transportation of children.

Finally, the Society of Automotive Engineers (SAE) is actively engaged in developing a voluntary industry recommended practice for child restraint tether anchorages. The agency has provided SAE with relevant test data for use in developing its standard.

With the movement away from tethered child restraints and the increased voluntary provision of tether anchorages by vehicle manufacturers, the agency believes that there is not a need for a Federal motor vehicle safety standard to require tether anchorages. At the same time, the agency recognizes that the failure to attach tether straps continues to be a major misuse problem with child restraints that require them. After considering the most effective ways to promote child safety, the agency has decided to propose amending Standard No. 213 to require all child restraints to meet the performance requirements of the standard in a 30 mile per hour crash test without the use of tethers. Manufacturers could still provide tethers for use with their restraints to provide additional protection. A separate notice in today's **Federal Register** fully discusses the agency's reasons for the proposed amendment. The agency believes that the overall safety benefits derived from eliminating the need for tethers are greater than the potential benefits from requiring the installation of tether anchorages in motor vehicles, and the benefits to be realized from today's proposal are more certain to be achieved than those speculative benefits associated with a rule requiring installation of tether anchorage hardware.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on June 28, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85–15987 Filed 7–3–85; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 571

[Docket No. 74–09; Notice 17]

Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Standard No. 213, *Child restraint systems*, by requiring those child restraints equipped with a tether strap to pass the 30 mile per hour (mph) test without attaching the tether strap, and by eliminating the requirement that tethered restraints be subjected to the 20 mph test. Currently, all child restraints are tested in a 30 mph test while the test dummy is restrained in the child restraint and while the restraint is attached to the test vehicle seat in accordance with the child restraint manufacturer's instructions. In the case of restraints with tether straps, those tethers are secured to the vehicle seat in accordance with the manufacturer's instructions. Child restraints with tether straps or fixed or movable surfaces that help to restrain the occupant's forward movement in the event of a crash are also tested in a 20 mph test. In that second test, child restraints with tether straps are tested while attached to the test vehicle seat only by a vehicle lap belt and child restraints with such fixed or movable surfaces are tested with the test dummy unrestrained by any belts by the child restraint.

The purpose of the second test is to ensure that a minimum level of safety is provided by child restraints which have safety features likely to be misused or unused by some owners.

The proposal to require tethered restraints to pass the 30 mph test without attaching the tethers is based on consistent survey results showing that child restraints equipped with a tether strap continue to be used in most instances without the tether strap being attached to the vehicle. This means that a child riding in the restraint with the tether strap unattached may not be as safe in the event of a crash as is a child riding in a restraint which can provide 30 mph crash protection without the use of a tether strap. NHTSA has established that the minimum level of safety to be afforded by child seats is protection in a 30 mph frontal crash, and has permitted the two-tier testing for tethered seats only on the assumption that the tether straps would generally be attached. Now that the agency has collected extensive data showing that tethers are rarely attached properly, the agency now believes that this amendment is necessary to ensure that children riding in child restraints with unattached tethers will be provided crash protection at least as good as that provided by seats designed without a tether. To ensure that tethered restraints can provide this level of protection in the manner they are actually used by the public, this notice proposes that tethered restraints be tested in a 30 mph crash with the tether strap unattached.

The proposal to exempt tethered restraints from the 20 mph test is based on this agency's desire to avoid unnecessary testing requirements. If tethered restraints are required to pass the 30 mph test without attaching the tethers, this proposal assumes that they could also pass the less severe 20 mph test under the same conditions. Since the 20 mph test would simply be a less severe test for the tethered restraints, this notice proposes that tethered restraints no longer be subject to the 20 mph test.

Additionally, this notice proposes to amend the test procedures of Standard No. 213 to specify that child restraints being tested for compliance shall be mounted in an outboard seating position, instead of the currently specified center seating position. Many newer vehicles have only one passenger seating position in the front and only two in the rear. All of these positions are outboard. Thus, the current testing from the center seating position is not representative of the way child restraints will be positioned in many vehicles. This amendment would also make the testing more economical since the placing of child restraints in each outboard seating position means that two child restraints could be evaluated in each test.

DATES: *Effective date:* This rule would become effective 180 days after a final rule is published in the **Federal Register**.

Comment closing date: Comments on this notice must be received by the agency on or before August 19, 1985.

ADDRESS: Comments on this notice must refer to Docket No. 74–09, Notice 17 and should be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, D.C. 20590. Docket hours are from 8:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Vladislav Radovich, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, (202–426–2264).

SUPPLEMENTARY INFORMATION: Standard No. 213, *Child restraint systems*, currently provides two test configurations applicable to child restraints. First, a 30 mph frontal crash test is conducted for all child restraints. In that test, the restraints are installed according to the child restraint manufacturer's instructions for installing the restraints in a motor vehicle. This is test configuration I in section S6.1.2.1.1 of Standard No. 213.

Second, a 20 mph test is conducted for two types of restraints. One is a child restraint equipped with an anchorage belt. Anchorage belts, more commonly referred to as tether straps, are supplemental belts used to attach the child restraint to the vehicle. The other type is a restraint with a fixed or movable surface which helps to restrain the child's forward movement in the event of a crash. This type of child restraint provides protection by use of its own belt system and a shield which can be used independently. These two types of child restraints are tested with only a standard vehicle lap belt holding the child restraint to the vehicle seat and without holding the test dummy in place by means of the restraint's belt system. This test, called test configuration II in section S6.1.2.1.2 of Standard No. 213, is intended to take into account the possible misuse or nonuse of the tether strap and the restraint's own belt system by ensuring that these two types of child restraints offer some minimal level of protection even when they are not properly used.

The improper use of child restraints equiped with tether straps has been a very difficult problem. When the tether strap is attached properly, these child restraints generally offer the best protection for child occupants, particularly for children sitting in the front seat and for children involved in side impacts. Agency testing has also shown that tethered restraints with the tethers attached generally allow less occupant excursion and lower head and chest accelerations than untethered restraints in 30 mph frontal crashes.

However, those restraints which are not equipped with a tether strap generally offer better protection than do tethered restraints when the tethers are not attached properly to the vehicle. The information available to NHTSA indicates that tether straps are usually not attached when the child restraints are used by the public. The most recent study done for the agency on this topic (Cynecki and Goryl, "The Incidence and Factors Associated with Child Safety Seat Misuse", December 1984, DOT HS–806 676) found that nearly 85 percent of the observed toddler child restraints with tethers did not have the tether strap attached, and 62 percent of booster seats did not have the tether attached. The study recommended that the best solution for this problem would be to redesign the restraints and seats to eliminate the need for tether straps.

This situation is not new; that is, the type of restraint which offers the

greatest protection when used properly is rarely used in that fashion. Moreover, the recommendation in the Cynecki and Goryl report that tethered child restraints be redesigned to eliminate the need for tethers is not new. NHTSA published a final rule substantially upgrading the performance requirements for child restraints at 44 FR 72131, December 13, 1979. A number of commenters to the proposal which preceded that final rule stated that, since most people do not attach the tether straps, tethered restraints should be tested in the 30 mph frontal crash with an unattached tether strap. It was argued that this would ensure that tethered child restraints would offer the same level of safety protection as do untethered restraints when tested in the way both types of restraints would be used, that is, attached to the vehicle by means of a lap belt only.

At the time of that rulemaking, however, over 70 percent of child restraint sales were tethered restraints. Since public awareness of the importance of using child restraints was growing, but not nearly as large as it is today, it seemed inappropriate to issue a rule which would have the effect of requiring the redesign of most child restraints then on the market. Further, as noted above, properly used tethered restraints offered the greatest possible protection to the occupants of child restraints. NHTSA expected at that time that as public knowledge and awareness of child restraints grew, proper use of tethered restraints would also grow.

The premises for not adopting a more stringent test in 1979 are no longer valid. First, the expectation of increased proper use has not been realized. Surveys conducted for the agency since 1979 have consistently shown that tethered restraints do not have the tether strap attached more than 80 percent of the time. Even more troublesome is the fact that 78 percent of persons not using the tether strap *knew that its use was necessary* (see the Cynecki and Goryl report cited earlier). More than three-fourths of persons not attaching tether straps know that such attachment is necessary for their child's protection but still do not attach the tethers. In the face of this, NHTSA no longer has a basis for maintaining its previous position that tether use will increase as knowledge of the need for such use increases.

Second, the proportion of new child restraints equipped with tether straps has declined dramatically. At present, only one out of 26 child seat models (less than one percent of child seat production) and 6 of 9 booster seat designs in production (about 67 percent of current production) use tether straps. Thus, the impact on the child restraint market will be substantially less.

In these circumstances, NHTSA has reexamined whether it is still reasonable to allow tethered restraints to be tested in only a 20 mph crash in the way they are used by most of the public while requiring untethered restraints to be tested in a 30 mph crash in the way they are typically used. As noted above, these differing requirements have resulted in untethered restraints offering better protection for child occupants than tethered restraints with the tether unattached. As a result of the agency's reexamination of this question and its desire to ensure that all child restraints can properly protect children in the event of a crash, this notice proposes that all restraints be tested in test configuration I when attached to the standard vehicle seat using only the standard seat lap belt. The effect of this proposal would be to require that tethered restraints afford the same level of protection to child restraint occupants as do untethered restraints in the manner both are used by the public, i.e., without attaching any tether straps.

Under this proposal, a tether strap would become a supplementary safety device for maximum protection of the child occupant in the restraint, instead of a necessary device for adequate protection. Given the proven increased protection afforded by attached tethers, the agency has no intention of interfering with the practice, currently followed in the case of at least two models of child seats, of offering tether straps as an option for extra protection. But, given the low level of tether strap use and the high level of awareness that those straps must be used, the agency does not believe that tether straps can continue to be permitted as a device necessary for adequate protection of children.

As an adjunct to this proposal to require all types of child restraints to satisfy the criteria of test configuration I when secured to the vehicle seat only by means of a lap belt, this notice proposes to amend test configuration II so that it applies only to restraints with fixed or movable surfaces in front of the child. This proposal is based on the fact that tethered restraints would now be subject to a 30 mph crash with the tether unattached. If those restraints can pass that test, they would presumably pass a 20 mph test with the tether unattached. Hence, there is no reason to require duplicative testing under less severe conditions.

The proposed elimination of a 20 mph test with the tether strap unattached is based on the apparent redundancy of this less stringent test. However, the proposed requirement that tethered child seats will have to pass only the 30 mph test with the tethers unattached could theoretically result in situations where the restraint might allow excessive occupant submarining when the upper portion of the restraint and/or the upper body of the child is restrained by tethers. NHTSA specifically requests comments as to whether this situation could occur for tethered seats and whether an additional 30 mph compliance test with the tethers properly attached should continue to be required for tethered restraints. Tests or other data are requested from the public.

Adoption of this proposal requiring tethered restraints to satisfy the criteria of test configuration I without attaching the tether strap would have differing impacts on the different types of child restraints, i.e., child seats, booster seats, and child harnesses. For child seats, only one model currently in production uses a tether strap to pass the requirements of the 30 mph crash test. A child seat is a restraint that uses a plastic shell around the child, and has a shield, belts or the like also attached to the shell in order to restrain the child in the event of a crash. All but the one model of child seat noted above are now untethered, although two models offer tether straps as an option for extra protection. The preliminary data available to the agency suggests that the one child seat model which currently uses a tether strap to satisfy the test configuration I criteria would have to be redesigned if this proposal were adopted as a final rule.

Booster seats are generally platforms used to elevate older children in the vehicle so that the child can see out of the vehicle and so that the child can safely use the existing vehicle belt system or a special harness that comes with a booster seat. About two-thirds of the current total production of booster seats use a tether strap in order to pass test configuration I requirements, and would probably have to be redesigned to pass the 30 mph test without attaching a tether strap. However, such a redesign would be feasible as is shown by the one-third of current production booster seats which do not need a tether strap to pass the 30 mph crash test.

This proposal would not affect the way in which child harnesses are tested. Child harnesses are harnesses which are attached to a child and then anchored to the vehicle by means of a tether strap.

These restraints were more popular several years ago, and only one model of child harness is currently in production. These restraints are tested in test configuration I (the 30 mph test) with the tether strap properly secured, and are the only tethered restraints not required to be subjected to test configuration II without attaching the tether. The reason for this differing treatment is the agency's opinion that it would be obvious to users of child harnesses that if the tether were not attached, the child would be completely unrestrained in the event of a crash. Hence, the potential for misuse of these tethered restraints seems to be significantly less.

The agency's data on the non-use and misuse of tether straps did not study the extent to which the tethers are improperly used on child harnesses. Therefore, NHTSA has no basis for amending the test procedures applicable to child harnesses at this time. The agency may address this topic in a future rulemaking action, if there are data which show non-use and misuse of tethers on child harnesses.

This proposal would also make some less significant changes to the standard. The test procedures for test configurations I and II require that the child restraint being evaluated be installed at the center seating position. However, the number of new vehicles being produced without a front or rear center seating position is steadily growing. This trend means that the test procedures are increasingly less representative of the conditions which will likely be encountered in actual use. Further, if the standard were amended to specify testing at the outboard seating positions, two child restraints could be evaluated in the same test. The current requirement to use the center seating position permits only one child restraint to be evaluated in each test. Hence, a change to specify the use of the outboard seating positions could reduce somewhat the testing costs for both the agency and the child restraint manufacturers. This notice proposes that such a change be made.

These proposed amendments would necessitate some corresponding changes to the labeling requirements in S5.5 and the installation instructions in S5.6. Currently S5.5.2(j) requires that all restraints equipped with a tether strap be labelled with the direction that the tether strap be secured as specified in the manufacturer's instructions. To encourage the continued use of a supplementary tether strap, even though it is not necessary for compliance purposes, this notice proposes that the phrase "For extra protection in frontal and side impacts" be added to the beginning of those instructions. This change would affirm the extra safety value of a tethered restraint with the tether attached, while also conveying the fact that the tether strap is just a supplementary safety device.

Section S5.6.1 requires the installation instructions provided by the child restraint manufacturers to state that, in most vehicles, the rear center seating position is the safest seating position for installing a child restraint. This has resulted in numerous inquiries to the agency by consumers wanting to know the safest seating position in cars with only two rear seating positions. To eliminate this confusion, this notice proposes that the instructions be modified to state that, for maximum safety protection, the child restraint system should be placed in a rear seating position in a vehicle with two rear seats and in the center rear seating position in a vehicle with three rear seats.

Finally, the agency has received many queries in the past year from child restraint and automobile manufacturers and safety groups regarding the meaning of section S5.6.2. That section requires the installation instructions to "specify in general terms the types of vehicles, seating positions, and vehicle lap belts with which the system can or cannot be used". This has been erroneously interpreted as requiring child restraint manufacturers to state the specific vehicles and the specific seating positions and specific vehicle lap belts with which the child restraint can or cannot be used.The agency's intent was that the installation instructions specify the *types* of vehicles (e.g., passenger cars, pickup trucks, vans, buses, etc.), the *types* of seating positions (e.g., front, rear, bench, folding, bucket, side facing, rear facing, etc.) and the *types* of vehicle lap belts (e.g., diagonal, lap-shoulder, emergency locking, etc.). To clarify this intent, the language of S5.6.2 is proposed to be amended.

Costs and Other Impacts

NHTSA has analyzed this proposal and determined that it is not "major" within the meaning of Executive Order 12291. It is, however, "significant" within the meaning of the Department of Transportation regulatory policies and procedures, because of the high level of public and Congressional interest. If adopted, the proposal to require tethered restraints to pass the 30 mph test without attaching the tether strap might well require a redesign of those restraints. Such a redesign would impose additional costs on the purchasers of those restraints of between two and six dollars per restraint, for a total additional consumer cost of between $1.6 million and $4.9 million. The costs for child restraint manufacturers would be somewhat lower than the consumer costs. These costs would be partially offset by a reduction of testing costs for child restraint manufacturers, estimated at $2000 for each child restraint model, as a result of the proposed exemption of tethered restraints from the 20 mph test. These figures are well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order. NHTSA estimates that the more stringent requirements for tethered restraints would prevent at least 54 injuries annually under the current child restraint usage rates. A preliminary regulatory evaluation regarding these impacts has been prepared and placed in Docket No. 74–09; Notice 17. A copy of this evaluation may be obtained free of charge by any interested person by writing the Docket Section at the address given at the beginning of this notice or by calling the Docket Section at (202) 426–2768.

The agency has also considered the impacts of this proposed action on small entities, as required by the Regulatory Flexibility Act. I certify that this proposed action would not have a significant economic impact on a substantial number of small entities. Three of the manufacturers of restraints which currently use tethers to pass the 30 mph test may qualify as small businesses. The redesign costs for these models could result in price increases as small as two dollars per restraint or as large as six dollars per restraint. However, even with these higher prices, these models would still be priced competitively with the restraints of other manufacturers which do not use a tether strap to pass the 30 mph test. Thus, the effect of the proposed action would not be significant. These impacts are detailed in the preliminary regulatory flexibility analysis included in the preliminary regulatory evaluation.

Finally, the NHTSA has considered the environmental implications of this proposal in accordance with the National Environmental Policy Act and determined that it would not significantly affect the human environment if it were adopted as a final rule.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR

553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR 571.213, *Child restraint systems*, be amended to read as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.213 [Amended]

2. S5.5.2(j) would be revised to read as follows:

S5.5 *Labeling.*

* * * * *

S5.5.2 The information specified in paragraphs (a) through (l) of this section shall be stated in the English language and lettered in letters and numerals that are not smaller than 10 point type and are on a contrasting background.

* * * * *

(j) In the case of each child restraint system equipped with an anchorage strap, the statement:

FOR EXTRA PROTECTION IN FRONTAL AND SIDE IMPACTS, SECURE THE TOP ANCHORAGE STRAP PROVIDED WITH THIS CHILD RESTRAINT AS SPECIFIED IN THE MANUFACTURER'S INSTRUCTIONS.

* * * * *

3. S5.6.1 would be revised to read as follows:

S5.6.1 The instructions shall state that, for maximum safety protection, child restraint systems should be installed in a rear seating position in vehicles with two rear seating positions and in the center rear seating position in vehicles with such a seating position.

4. S5.6.2 would be revised to read as follows:

S5.6.2 The instructions shall specify in general terms the types of vehicles, types of seating positions, and types of vehicle lap belts with which the system can or cannot be used.

5. S6.1.2.1 would be revised to read as follows:

S6.1.2.1 *Test configuration.*

S6.1.2.1.1. *Test configuration I.* In the case of each child restraint system other than a child harness, install a new child restraint system at an outboard seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system in accordance with S5.6, except that the restraint shall be secured to the standard vehicle seat using only the standard vehicle lap belt. A child harness shall be installed at an outboard seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system in accordance with S5.6.

S6.1.2.1.2. *Test configuration II.* In the case of each child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, install a new child restraint system at an outboard seating position of the standard seat assembly using only the standard seat lap belt to secure the system to the standard seat.

Issued on June 28, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-15968 Filed 7-3-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Two Petitions, and of Review of Three Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and review.

SUMMARY: The Service announces findings that a petition to determine endangered status for the Samoan fruit bat and that a petition to determine endangered status for the Puerto Rican crested toad, Caribbean coot, West Indian ruddy duck, and West Indian whistling duck have presented substantial information indicating that such action may be warranted. The Service also announces reviews of the status of the Samoan fruit bat, Caribbean coot, and West Indian ruddy duck.

DATE: Relevant information or comments may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be submitted to the Asssociate Director—Federal Assistance (OES), U.S. Fish and Wildlife Service, Washington, D.C. 20240. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982, requires the Service to make a finding on whether a petition to add a species to the Lists of Endangered and Threatened Wildlife and Plants, or to remove or reclassify a species, presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, such a finding is to be made

within 90 days of receipt of the petition, and the finding is then to be promptly published in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. Recently, the Service received and made findings on the following two petitions.

1. A petition from Professor Paul Alan Cox of Brigham Young University, dated November 19, 1984, and received by the Service on November 27, 1984, requests determination of endangered status for the Samoan fruit bat (*Pteropus samoensis samoensis*), which is found in American Samoa and Western Samoa. Observations by the petitioner, who spent several years studying this bat in the field, suggest that it has become extremely rare through destruction of its habitat and killing by people for use as food. The Service has made the finding that this petition does present substantial information indicating that the requested action may be warranted.

2. A petition from the Commonwealth of Puerto Rico, dated December 27, 1984, and received by the Service on January 3, 1985, requests determination of endangered status for the Puerto Rican crested toad (*Peltophryne* [=*Bufo*] *lemur*), Caribbean coot (*Fulica caribaea*), ruddy duck (*Oxyura jamaicensis*), and West Indian Whistling duck (*Dendrocygna arborea*). The toad is known from Puerto Rico and, historically, from Virgin Gorda, British Virgin Islands. The birds are found in most of the West Indies. For purposes of the finding, the petition is considered to cover only the West Indian subspecies of the ruddy duck (*O. j. jamaicensis*). The petition indicates that all four species have declined in numbers in Puerto Rico, and other information available to the Service supports this suggestion. Although more data will be needed before any of these species can be formally proposed for addition to the List of Endangered and Threatened Wildlife, the Service has made the finding that the petition does present substantial information indicating that the requested action may be warranted.

As required in the case of a positive finding, the Service hereby initiates status reviews of the Samoan fruit bat, Caribbean coot, and West Indian ruddy duck. Reviews of the Puerto Rican crested toad and West Indian whistling duck are already in progress, as those species were covered by the Service's Review of Vertebrate Wildlife in the **Federal Register** of December 30, 1982 (47 FR 58454–58460). The Service plans to include all four species in a forthcoming revised Review of Vertebrate Wildlife.

Section 4(b)(3)(B) of the Act requires that within 12 months of receipt of a petition found to present substantial information, a finding be made as to whether the petitioned action is not warranted, warranted, or warranted but precluded by other listing activity. All comments and information received in response to the status reviews of the Samoan fruit bat, Puerto Rican crested toad, Caribbean coot, West Indian ruddy duck, and West Indian whistling duck will be considered in making such findings regarding these species.

The authors of this notice are George E. Drewry, Ronald M. Nowak, and Jay M. Sheppard, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

Authority: Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 28, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–15088 Filed 7–3–85; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements proposed rules published on March 14, 1985 (50 FR 10276), and June 4, 1985 (50 FR 23459), which notified the public that the U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish hunting regulations for certain migratory game birds during 1985–86, and provided information on certain proposed regulations.

This proposed rulemaking provides frameworks or outer limits for dates and times when shooting may begin and end, and the number of birds that may be taken and possessed in early seasons for migratory bird hunting. These are hunting seasons that open prior to October 1 and relate to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; woodcock; common snipe; rails; common moorhens; purple gallinules; September teal; sea-ducks; experimental September duck seasons in Florida, Iowa, Kentucky and Tennessee; experimental early goose framwork in a portion of Michigan; special sand-hill crane—Canada goose season in southwestern Wyoming; sand hill cranes in the Central Flyway and Arizona; and special extended falconry seasons. The frameworks for Alaska, Puerto Rico and the Virgin Islands will appear in a separate **Federal Register** document scheduled for publication on or about July 11. Supplemental rulemakings for some late hunting seasons, defined as those seasons opening on or about October 1 are also addressed. These generally related to the times and places where certain waterfowl may be hunted.

The Service annually prescribes hunting regulations frameworks to the States for season selection purposes. The primary purpose of this proposed rule is to facilitate establishment of early season migratory bird hunting regulations for the 1985–86 season. The Service noted that in the June 4, **Federal Register** revised guidelines for migratory bird hunting on Federal Indian Reservations were proposed.

DATES: The comment period for the proposed early season frameworks will end on July 15, 1985, except that for Alaska, Hawaii, Puerto Rico and the Virgin Islands the comment period closed on June 20, 1985. The comment period for late season proposals will close on August 19, 1985.

A Public Hearing on Late Season Regulations will be held August 1, 1985, starting at 9 a.m.

ADDRESSES: Address comments to Director (FWS/MBMO), Rm. 3552 U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. The August 1 Public Hearing will be held in the Auditorium of the Department of the Interior Building on C Street, between 18th and 19th Streets, NW., Washington, D.C. Notice of intention to participate in this hearing should be sent in writing to the Director (FW/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Comments received on the supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of

Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202) 254–3207.

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons, and regulations for Alaska, Hawaii, Puerto Rico and the Virgin Islands. Early seasons are those that open before October 1; late seasons open about October 1 or later. Regulations are developed independently for the early and late seasons, and Alaska and insular areas. The early season regulations relate to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; common moorhens; purple gallinules; woodcock; common snipe; sea ducks in the Atlantic Flyway; teal in September in the Central and Mississippi Flyways; experimental duck seasons opening in September in Florida, Iowa, Kentucky and Tennessee; an experimental early goose season in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; a special sandhill crane-Canada goose season in southwestern Wyoming; and some special extended falconry seasons. Late seasons include the general waterfowl seasons; special seasons for scaup and goldeneyes; extra scaup and teal in regular seasons; coots; and other special extended falconry seasons. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Certain general procedures are followed in developing regulations for both the early and late seasons. Initial regulatory proposals are announced in a **Federal Register** document published in March and opened to public comment. These proposals are supplemented as necessary, with additional **Federal Register** notices. Following termination of comment periods and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the **Federal Register**. Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the **Federal Register**, amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows. On March 14, 1985, the Service published for public comment in the **Federal Register** (50 FR 10276) a proposal to amend 50 CFR Part 20, with comment periods ending as noted earlier.

On June 4, 1985, the Service published for public comment a second document (50 FR 23459) which provided supplemental proposals for both early and late season migratory bird hunting regulations frameworks, with comment periods ending July 15, 1985, for remaining early season proposals, and August 19, 1985, for late season proposals.

This document is the third in a series of proposed, supplemental and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for early season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours and daily bag and possession limits for the 1985–86 season. All pertinent comments on the March 14 proposals received through June 20, 1985, have been considered in developing this document. In addition, new proposals for certain early season regulations are provided for public comment. Comment periods on this third document are specified above under DATES. Final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands are scheduled for publication in the **Federal Register** on or about July 11, 1985, and for early seasons for other areas of the United States on or about July 26, 1985.

On June 20, 1985, a public hearing was held in Washington, D.C., as announced in the **Federal Register** of March 14 (50 FR 10276) and June 4 (50 FR 23459), 1985, to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, common moorhens, purple gallinules, common snipe and sandhill cranes. Proposed hunting regulations were discussed for these species and for migratory game birds in Alaska, Puerto Rico and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; experimental duck seasons in September in Florida, Iowa, Kentucky and Tennessee; experimental early goose framework in a portion of Michigan; and experimental sandhill crane-Canada goose season in southwest Wyoming; special sea duck seasons in the Atlantic Flyway; and special extended falconry seasons.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals on March 14, 1985, in the **Federal Register** (50 FR 10276).

Presentations at Public Hearing

A number of reports were given on the status of various migratory bird species for which early hunting seasons are being proposed. These are briefly reviewed as a matter of public information, and to facilitate the Service's response to public comments at the Public Hearing on June 20 and in correspondence. Unless otherwise noted, persons making the presentations are Service employees.

Mr. David Dolton, Mourning Dove Specialist, presented the status of the 1985 mourning dove population. New methods of analysis for mourning dove call-count data were used this year for the first time and included survey information gathered over the last 20 years. Population indices for mourning doves heard in the Central and Eastern Management Units showed significant increases from 1984 to 1985 as follows: Eastern, 14.8 to 16.8; Central, 21.2 to 24.2 average doves heard per route. No significant difference was found in the Western Unit although the index decreased from 11.5 to 10.5. The 1985 indices for the combined hunting states in the Eastern Unit and the combined hunting and nonhunting states in the Central Unit also showed significant increases from 1984. Trends were calculated for 5, 10, 15, and 20-year intervals. Estimates indicated downward trends in the Eastern Management Unit as a whole, the nonhunting states of the unit, and the Western Management Unit for all time periods. In the hunting states of the Eastern Unit and throughout the entire Central Management Unit, a downward trend was found during the most recent 5-year period; no trend was indicated for the other time periods. Trends for doves seen over the 20-year interval generally agree with trends for doves heard.

Mr. Ronnie R. George, Texas Parks and Wildlife Department, reported on the status of white-winged and white-tipped doves in Texas. Approximately 244,000 white-winged doves are nesting in native brush habitat in 1985, an increase of 8% over the 225,000 birds counted in 1984. The population nesting in citrus has declined 54% from 253,000 whitewings in 1983 to 117,000 in 1985. This decline has resulted from the severe freeze of December 1983 that

reduced available nesting habitat from 52,000 acres of citrus in 1983 to 25,000 acres in 1985, a 52% reduction. Overall, the Lower Rio Grande Valley population is at its lowest level since 1963 (30% below the long-term average).

In upper south Texas, whitewing breeding populations have remained stable except in the area of Medina Lake where the population has increased from 35,000 birds in 1984 to 49,000 birds in 1985 (a 40% increase).

The 1985 call-count survey of white-tipped doves indicated a 12% decline from 1984 (from 0.59 to 0.52 doves per route). This decline occurred primarily in citrus habitat but was largely compensated for by increased nesting in native brush habitat.

Because of the declines in white-winged and white-tipped numbers as a result of reduced citrus habitat, the Texas Parks and Wildlife Department recommended that the normal 4-day (2 weekends) Special White-winged Dove Season be reduced to a single weekend (September 7–8). It is anticipated that this change will result in a significant reduction in the harvest of white-winged and white-tipped doves. Existing aggregate bag limits for dove species are recommended to remain unchanged.

Mr. Roy Tomlinson, Southwest Dove Coordinator, conveyed information received from the Arizona Game and Fish Department about white-winged dove status in Arizona. White-winged dove populations in Arizona declined during the late 1960s and 1970s because of nesting habitat loss, changes in agricultural practices, and overharvest. Under restricted hunting season regulations during the past 5 years, the populations have stabilized at a low level. In 1985, the whitewing call-count survey revealed 37.5 birds heard per route, an increase of 21% from 1984 and 5% from the 19-year average. The annual harvest in Arizona has varied between 135,000 and 182,000 whitewings during the past 4 years. No regulations changes are anticipated for the 1985 hunting season.

Mr. John Tautin, Woodcock Specialist, reported on the 1985 status of American woodcock. The most significant findings were from the recently conducted singing-ground survey. This cooperative survey of woodcock breeding populations in the United States and Canada indicated an increase of 7.8% among woodcock of the Eastern Region (Atlantic Flyway) since 1984. However, this population remains at a low level and has declined significantly over the long-term. In the Central Region (Mississippi Flyway and portions of the Central Flyway) the survey indicated that woodcock increased 8.1% since 1984. The Central Region population peaked in the late 1970s, declined in recent years, and is now near its long-term average level.

Dr. James C. Bartonek, Pacific Flyway Representative, summarized the harvests and status of the two populations of band-tailed pigeons. Harvest of the Four-Corners Population is comparatively small and constant, about 5,000 birds. Harvest of the Pacific Coast Population in California and Washington in 1984 decreased over 1983 as a result of birds being widely dispersed. A harvest survey was not conducted in Oregon. Censusing pigeons at mineral springs in Oregon during late summer provides an index to the population. This annual census indicates an increase over 1983 and an increasing trend since the mid 1970s.

Mr. Havey W. Miller, Central Flyway Representative, reported on the status of sandhill cranes. The mid-continent population generally exceeds 500,000 birds, as measured by intensive surveys including aerial photography) of major springtime concentrations in Nebraska, and is increasing. Approximately 6,700 hunters harvested 11,000 cranes in the Central Flyway during the 1984–85 hunting season.

In the Pacific Flyway, sandhill cranes are harvested primarily in Alaska, where the take has been increasing and is now estimated to be about 1,800 per year. In addition, investigations on the Yukon-Kuskokiwm Delta suggest a harvest ranging from 1,000 to 2,000 cranes per year by subsistence hunters. The breeding population appears to be stable. During 1981–84, limited experimental seasons in the Wilcox Area of Arizona resulted in harvests ranging from 40 to 70 cranes. During special sandhill crane-Canada goose seasons in Lincoln County, Wyoming the past 3 years, an average of 133 cranes and 142 gese were harvested. The Rocky Mountain Population of greater sandhill cranes, to which some of the Arizona cranes and all the western Wyoming cranes belong, was estimated at above 15,000 birds in March 1985 and is either stable or increasing slightly.

Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, stated that, in 1984, the Service proposed guidelines for migratory bird hunting regulations on Federal Indian Reservations. Following review of comments from the States and a number of tribes, the Service proposed revised guidelines in the June 4, 1985, **Federal Register** (at 50 FR 23467). A draft environmental assessment has been prepared that addresses Indian hunting rights and evaluates impacts that the proposed guidelines would likely have on migratory bird harvest and population status. The revised guidelines and assessment have been sent to State Fish and Wildlife Agencies and to the Indian tribes that responded last year.

The Service believes that the revised guidelines will accommodate tribal requests for more flexibility in migratory bird hunting regulations without detrimental effects on the resource and anticipates that special migratory bird hunting regulations may be established on several Federal Indian reservations for the 1985–86 hunting season. As a safeguard, most such seasons will be established experimentally pending their evaluation.

Comments Received at Public Hearing

Six individuals presented statements at the Public Hearing on proposed early season regulations. The comments are summarized below and, where appropriate, the Service has provided a response.

Mr. John M. Anderson, representing the National Audubon Society, stated that proposed frameworks appeared to be in line with the status of mourning doves; however, the Society was alarmed over the long-term downward trend in some populations and he urged research on possible causes. He expressed concern over the status of white-winged and white-tipped doves in the Lower Rio Grande Valley and suggested that, while the decrease probably was related to the 1983 freeze of citrus trees, hunting seasons should be closed or limited to one weekend. Mr. Anderson urged extreme caution where sandhill crane seasons overlapped whooping crane migrations. He suggested that shooting hours start later to aid identification and that closing sandhill crane hunting seasons when whooping cranes were present would be beneficial but would not assure protection of those that arrive in the evening and depart the next morning. Mr. Anderson supported the proposed restrictive seasons on woodcock and encouraged reserach to determine reasons for their decline. He also commented on the decreased populations of geese breeding in Alaska and supported the recently developed Yukon-Kuskokwim Delta Goose Management Plan.

Response. National Audubon Society's endorsement of the proposed mourning dove hunting regulations frameworks and its concern over the long-term downward trend in some populations is noted.

The Service agrees that the severe freeze of citrus in Texas during December 1983 is responsible for the current decline of white-winged doves and that hunting has had no detrimental effect on the population. The restriction to a 2-day special whitewing season during 1985 (rather than full closure) in Texas is deemed sufficient to safeguard the reduced population. This restriction should also benefit white-tipped dove populations that are hunted concurrently during the whitewing seasons.

The dates and areas open for sandhill crane hunting have been developed to reduce overlap with migrations of whooping cranes. Furthermore, cooperative programs to monitor migrations are in effect and contingency plans have been developed to protect whooping cranes that might occur in any hunting areas. The Service and cooperating conservation agencies will continue to exercise caution as suggested. The Environmental Assessment *Proposed Shooting Hours Regulations* dated August 1, 1977, indicated that hunters are reasonably competent at identifying birds during the period before sunrise when cranes usually fly from roosting sites. However, the Service and cooperating agencies will continue to monitor crane hunting activity during this period. The Service notes that a considerable proportion of the sightings of whooping cranes during migrations has been reported by hunters.

Mr. Ronnie R. George, representing the Central Flyway Council, supported and endorsed the following regulations changes for the 1985–86 hunting season:

1. Conversion of the just-completed 3-year experimental hunting season for sandhill cranes in Lincoln County, Wyoming to an operational season.

2. Adoption of proposed basic regulation frameworks for all migratory species in the Central Management Unit that are not covered by other specific recommendations.

Mr. George, as representative of the Texas Parks and Wildlife Department, recommended a 2-day white-winged dove hunting season during September 7 and 8, 1985, in that portion of Texas designated as the Special White-winged Dove Area. The daily bag and possession limits would remain the same as last year (i.e., 10 doves in the aggregate, no more than 2 of which could be mourning doves nor 2 of which could be white-tipped doves). The reduction of from 4 to 2 days is offered in response to reduced whitewing populations due to decreased citrus nesting habitat as the result of a severe freeze in 1983. This recommendation is consistent with current white-winged and white-tipped dove population objectives in Texas.

The Texas Department is also considering movement of the eastern portion of the boundary between the Central and South Mourning Dove Hunting Zones from its present location along U.S. Highway 87 between San Antonio and Post Lavaca northward to Interstate 10 between San Antonio and Orange to better reflect natural boundaries between ecological regions in the State. The decision, however, will be made at a later date, pending receipt of additional data and comments from the public.

Response: The Service concurs that the recently-completed 3-year experimental sandhill crane season has proven to be successful in reducing depredation problems and in providing recreational activity without adverse effects to the crane population in Wyoming. Therefore, it is proposed to allow a similar season during 1985–86 on an operational basis.

The Service concurs that restricted hunting regulations should be imposed for white-winged doves in 1985. The Texas proposal of a reduction from 4 to 2 days is considered adequate to limit harvest commensurate with reduced whitewing populations in 1985. The Service notes, however, that if further population reductions occur in 1986, that additional restrictions or closure will be considered for the 1986–87 hunting season.

The Service proposes to allow Texas the option of changing the boundary between the Central and South Mourning Dove Hunting Zones.

Dr. Albert M. Manville, II, representing Defenders of Wildlife, discussed that organization's preferred strategies for duck harvests during the forthcoming late seasons. He recommended that restrictions be taken in Alaska to further reduce harvest of five goose populations that have been declining. Additionally, these geese should be protected from disturbance by man during their reproductive period. He was supportive of the Service's recent efforts to address the problem of lead poisoning in bald eagles. He questioned the advisabilty of pre-dawn [sic] hunting of sandhill cranes because of difficulty in distinguishing them from young whooping cranes. Concern was expressed about having sandhill crane and tundra swan hunting seasons occurring at times and places that whooping cranes occur. The Service was commended for the proposed restrictive regulations on hunting woodcock. He requested that the Service re-examine its position regarding the September 1st opening of seasons for hunting mourning doves as related to nesting and recommended a north-to-south system of zoning in which seasons would be set to accommodate latitudinal differences in breeding chronology of doves.

Response: The strategies for duck harvest preferred by Defenders of Wildlife will be considered by the Service during the process of establishing late-season regulations.

Dr. Manville's statements concerning geese in Alaska will be addressed in the upcoming Federal Register document of final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands.

His concern about shooting hours and the hunting of either sandhill cranes or tundra swans, as related to the possibility of mistakenly shooting whooping cranes, has been previously discussed in our response to Mr. Anderson (above) and in the Federal Register of July 12, 1982 (47 FR 30165), July 7, 1983 (48 FR 31269) and July 9, 1984 (49 FR 28029). Because no new information has been presented, it does not appear that further response is necessary at this time.

The Service has responded previously in a number of Federal Register documents to concerns about September hunting of mourning doves (see 47 FR 30164–30165 of July 12, 1982, 48 FR 14712 and 48 FR 31269 of April 5 and July 7, 1983, respectively, and 49 FR 28029 of July 9, 1984). The results of an extensive study of mourning dove nesting indicated that September hunting does not have a demonstrable adverse effect on mourning dove populations. The appropriateness of the present mourning dove management units was discussed previously on July 1, 1980 (45 FR 44541) and on July 12, 1982 (47 FR 30164). The 3 current management units reasonably delineate dove population segments that are largely independent of each other. These units provide an opportunity to deal with specific population issues.

Mr. Dale Sheffer, speaking on behalf of the Pennsylvania Game Commission and the Northeastern Association of Fish and Wildlife Agency Directors, endorsed the Service's proposed restrictive regulations on hunting woodcock but recommended that New Jersey not be panalized 10 days of hunting should they choose to zone.

Response: The Service appreciates the cooperation and support of state conservation agencies and private organizations in this important endeavor to adjust harvest opportunities to a level commensurate with the population status of Eastern woodcock. To assure

that the proposed changes are effective, and because Eastern woodcock remain at a low level, the Service believes it inappropriate to make exception and dispense with the long-standing 10-day penalty taken by New Jersey for selecting its option to zone.

Mr. Charles Kelley, representing the Southeastern Association of Fish and Wildlife Agencies, stated that the recent cooperative study by many States and the Service concluded that hunting of mourning doves in September had no demonstrable adverse effects on dove populations throughout the United States. Thus, the requests by protectionist groups to limit hunting of mourning doves to dates after September have no valid justification. Mr. Kelley also stated that the Southeastern Association strongly supports the Service's proposed mourning dove regulations for 1985 and also the restrictive regulations on woodcock hunting.

Ms. Jennifer Lewis, representing the Humane Society of the United States (HSUS) and the World Society for the Protection of Animals (WSPA), reiterated objections of these organizations to hunting of mourning doves in September. She asserted that shooting adult doves while they are nesting, leaves the young to die of exposure, starvation and predation. Ms. Lewis also expressed several concerns and recommendations regarding hunting seasons on waterfowl and columbid species in Puerto Rico.

Response: The Service's position concerning September hunting of mourning doves is discussed in the response to Dr. Manville's comments. The same comments were made by Ms. Lewis last year and responded to in the July 9, 1984, **Federal Register** (49 FR 28029). Ms. Lewis' recommendations concerning migratory bird hunting in Puerto Rico will be addressed in the upcoming **Federal Register** document of final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico and the Virgin Islands.

Written Comments Received

The supplemental proposed rulemaking, which appeared in the **Federal Register** dated June 4, 1985, (50 FR 23459), summarized 21 comments which had been received by May 3, 1985. Since then, 2 additional comments on early season proposals have been received. They are summarized below and numbered in the order in the March 14, 1985, **Federal Register**. These responses originated from 2 States.

23. *Mourning Doves:* The Texas Parks and Wildlife Department (letter of May 14, 1985) requested the option of changing the eastern portion of the boundary between the Central and South Mourning Doves Zones. The Georgia Department of Natural Resources (letter of May 14, 1985) also requested a minor change in the boundary separating their North and South Dove Zones.

The Service accepts Texas' request for the option of changing the Central South Zone boundary as discussed above in response to Mr. Ronnie R. George's comments on behalf of the Texas Parks and Wildlife Department at the June 20, 1985, Public Hearing. The Service also accepts the minor boundary change in Georgia and has incorporated them in the proposed frameworks.

Public Comment Invited

Based on the results of migratory game bird studies now in progress having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours and bag and possession limits for designated migratory game birds in the United States.

The Director intends that finally adopted rules be as responsible as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlied is contrary to the public interests.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

All relevant comments on these early season proposals received no later than July 15, 1985, and on late season proposals received by August 19, 1985, will be considered. The Service will attempt to acknowledge received comments, but substantive responsive to individual comments may not be provided.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these environmental assessments are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act," and "by taking such action necessary to insure that any action authorized, funded, or carried . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

The Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 18, 1985, Mr. Conrad A. Fjetland, Acting Chief, Office of Endangered Species, gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of

conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. Examples of such consideration include areas in Alaska and the Pacific Flyway closed to Canada goose hunting for protection of the endangered Aleutian Canada goose, and closed areas in Puerto Rico for protection of the Plain pigeon and Puerto Rican parrot.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the Federal Register dated March 14, 1985 (at 50 FR 10282), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities and under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. As noted in the early FR publication, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed.

Authorship

The primary author of this proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Proposed Regulations Frameworks for 1985–86 Early Hunting Seasons on Certain Migratory Birds

Pursuant to the Migatory Bird Treaty Act, The Secretary of the Interior has approved proposed frameworks which prescribe season lengths, limits, shooting hours and outside dates within which States may select seasons for mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens; purple gallinules; September teal seasons; experimental duck seasons opening in September in Iowa, Florida, Kentucky, and Tennessee; sea ducks (scoters, eider and oldsquaw) in certain defined areas of the Atlantic Flyway; sandhill cranes; sandhill cranes-Canada geese in southwestern Wyoming; experimental early goose framework in a portion of Michigan; and special extended falconry seasons. For the guidance of State conservation agencies, these frameworks are summarized below.

Notice

Any State desiring its hunting seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens, purple gallinules, sandhill cranes or special extended falconry seasons to open in September must make its selection no later than July 26, 1985. States desiring these seasons to open after September 27 may make their selections at the time they select regular waterfowl seasons. Season selections for the 4 States offered experimental September duck seasons must also be made by July 26, 1985.

Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than July 26, 1985. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates: All dates noted are inclusive.

Shooting Hours: Between ½ hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1985, and January 15, 1986, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively, or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Shooting Hours: Between ½ hour before sunrise and sunset daily.

Zoning: Alabama, Georgia, Illinois, Louisiana and *Mississippi,* may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama—South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

Georgia—The Northern Zone shall be that portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence, east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River the Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line.

Illinois—U.S. Highway 36.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana, and Mississippi may commence no earlier than September 20, 1985.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively, or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning: In addition to the basic framework and the alternative, Texas may select hunting seasons for each of 3 zones described below.

North Zone—That portion of the State north of line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then southeast on U.S. Highway 87 to port Lavaca (*or*, as an option from San Antonio: then northeast on Interstate 10 to Orange).

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones.

Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 2-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1985 and January 25, 1986; the South zone between September 20, 1985 and January 25, 1986.

C. Except during the special 2-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves, (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

Western Management Unit

(Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting Seasons, and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively, or

In all states except Arizona, not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

White-Winged Doves

Outside Dates: Arizona, California, Nevada, New Mexico, and *Texas* (except as shown below) may select hunting seasons between September 1 and December 31, 1985. *Florida* may select hunting seasons between September 1, 1985 and January 15, 1986.

Arizona may select a hunting season of not more than 29 consecutive days running concurrently with the first period of the split mourning dove season. The daily bag limit may not exceed 12 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

In the *Nevada* counties of Clark and Nye, and in the *California* counties of Imperial, Riverside and San Berardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24, respectively, with a 70-day season, or 15 and 30 if the 60-day option for mourning doves is selected; however, in either season, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 2 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate including no more than two mourning doves and two white-tipped doves per day; and the possession limit may not exceed 20 white-winged, mourning and white-tipped doves in the aggregate including no more than four mourning doves and four white-tipped doves in possession, and

In addition, *Texas* may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1985, and January 25, 1986, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-winged doves.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1985, and January 15, 1986, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected); however, in either season, the bag and possession limits of white-winged doves may not exceed 4 and 8 respectively.

Band-Tailed Pigeons

Pacific Coast States and Nevada: California, Oregon, Washington and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

Outside Dates: Between September 1, 1985, and January 15, 1986.

Hunting, Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with a bag and possession limit of 5. Each band-tailed pigeon hunter in Nevada must have in possession while hunting a permit issued by the State for the purpose of collecting harvest and hunter participation data.

Zoning: California may select hunting seasons of 30 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

Four-Corners States: Arizona, Colorado, New Mexico and Utah.

Outside Dates: Between September 1 and November 30, 1985.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: New Mexico may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1985, in the North Zone and October 1 and November 30, 1985, in the South Zone.

Rails

(Clapper, King, Sora and Virginia)

Outside Dates: States included herein may select seasons between September 1, 1985, and January 20, 1986, on clapper, king, sora and Virginia rails as follows:

Hunting Seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits: In *Rhode Island, Connecticut, New Jersey, Delaware,* and *Maryland,* 10 and 20 respectively, singly or in the aggregate of these two species. In *Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina,* and *Virginia,* 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits: In the Atlantic, Mississippi and Central [1] Flyways and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway,[2] 25 daily and 25 in possession, singly or in the aggregate of the two species.

Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1985, and January 31, 1986. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1985, and February 28, 1986.

Hunting Seasons, and Daily Bag and Possession Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates: Between September 1, 1985, and February 28, 1986. In *Maine, Vermont, New Hampshire, Massachusetts Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland* and *Virginia* the season must end no later than January 31.

Hunting Seasons, and Daily Bag and possession Limits: Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of Montana, Wyoming, Colorado and New Mexico. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

Common Moorhens and Purple Gallinules

Outside Dates: September 1, 1985, through January 20, 1986, in the Atlantic and Mississippi Flyways and September 1, 1985, through January 19, 1986, in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway seasons may be the same as the duck seasons. Seasons may be split. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively; except in the Pacific Flyway the daily bag and possession limits may not exceed 25 coots and common moorhens, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway

Seasons not to exceed 58 days between September 1, 1985, and February 28, 1986, may be selected in the following States: *Colorado* (the Central Flyway portion except the San Luis Valley); *Kansas; Montana* (the Central Flyway portion except that area south of I–90 and west of the Bighorn River); *North Dakota* (west of U.S. 281); *South Dakota*; and *Wyoming* (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1985 and February 28, 1986 may be selected in the following States: *New Mexico* (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); *Oklahoma* (that portion west of I–35); and *Texas* (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary).

Bag and Possession Limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill cranes season must obtain and have in his possession while hunting, a valid Federal sandhill crane hunting permit.

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[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher and Park, and all counties west thereof.

Special Seasons in the Pacific Flyway: Arizona may select a sandhill crane season subject to the following conditions:

1. The season may not exceed 6 days in November 1985.

2. The hunting area is confined to Game Management Units 30A, 30B, 31, and 32.

3. Each hunter must otbain and have in possession while hunting a special permit issued by the State. No more than 200 permits may be issued. Each permittee may take 2 sandhill cranes per season.

4. Emergency closures for all crane hunting may be invoked as necessary.

Special Sandhill Crane-Canada Goose Season

Wyoming may select a season(s) on sandhill cranes and Canada geese subject to the following conditions:

1. Outside dates for the season(s) are September 1–22, 1985.

2. Hunting will be by State permit, with 125 permits issued for the Bear River drainage and 125 permits issued for Star Valley, all in Lincoln County. Each permittee may take 2 sandhill cranes and 3 Canada geese per season.

3. Emergency closures for all crane hunting may be invoked as necessary.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1985, and January 20, 1986.

Hunting Seasons, and Daily Bag and Possession Limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season: In the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in *Maine, New Hampshire, Massachusetts, Rhode Island* and *Connecticut*; in those coastal waters of the State of *New York* lying in Long Island and Block Island Sounds, and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters of *New York* lying south of Long Island; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in *New Jersey, South Carolina,* and *Georgia*; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in *Delaware, Maryland, North Carolina* and *Virginia*; and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

Deferred Selection: Any State desiring its sea duck season to open in September must make its selection no later than July 28, 1985. Any State desiring its sea duck season to open after September may make its selection at the time it selects the waterfowl season.

September Teal Season

Outside Dates: Between September 1 and September 30, 1985, an open season on all species of teal may be selected by *Alabama, Arkansas, Colorado* (Central Flyway portion only), *Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico,* (Central Flyway portion only), *Ohio, Oklahoma, Tennessee* and *Texas* in areas delineated by State regulations.

Hunting Seasons, and Bag and Possession Limits: Not to exceed 9 consecutive days, with bag and possession limits of 4 and 8, respectively.

Shooting Hours: From sunrise to sunset daily.

Deadline: States must advise the Service of season dates and special provisions to protect non-target species by July 20, 1985.

Special September Duck Seasons

Iowa September Duck Season: Iowa may experimentally hold a portion of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. In 1985, the 5-day season segment may commence no earlier than September 21, with daily bag and possession limits being the same as those in effect during the 1985 regular duck season.

Tennessee, Kentucky and Florida September Duck Seasons: Experimental 5-consecutive-day duck seasons may be selected in September by *Tennessee, Kentucky,* and *Florida* subject to the following conditions:

1. In *Kentucky* and *Tennessee* the seasons will be in lieu of September teal seasons; in *Florida* the season will be in lieu of the extra teal option.

2. In all States, the daily bag limit will be 4 ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit;

Experimental September Goose Season

Michigan—In the counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee and Ontonagon, the framework opening date for geese is September 26. Season length and limits for geese in this area will be established later with other regulations for the regular waterfowl season.

Special Falconry Regulations

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note. In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September seasons, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Dated: July 1, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–16121 Filed 7–3–85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 129
Friday, July 5, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1984-85 Milk Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of milk price support level and Commodity Credit Corporation purchase prices.

SUMMARY: This Notice of Determination provides that the level of price support for milk containing 3.67 percent milkfat for the period July 1, 1985, through September 30, 1985, shall be $11.60 per hundredweight. It also establishes prices at which butter, cheese and nonfat dry milk (NDM) will be purchased by the Commodity Credit Corporation (CCC) in order to support the price of milk at that level.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Indulis Kancitis, Dairy Division, ASCS–USDA, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013: (202–447–3385).

The Final Regulatory Impact Analysis regarding the actions of this Notice of Determination is available from Charles N. Shaw, Dairy/Sweeteners Group, ASCS–USDA, P.O. Box 2415, Washington, D.C. 20013: (202) 447–7601.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "major" since the provisions of this notice will have an effect on the economy exceeding $100 million.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

The Regulatory Flexibility Act is not applicable to this notice since CCC is not required to publish a notice of proposed rulemaking with respect to the subject matter of this notice. Section 102(b) of the Dairy and Tobacco Adjustment Act of 1983 (Pub. L. 98–180) requires that the provisions of section 210(d) of the Agricultural Act of 1949, as amended by the 1983 Act, be implemented without regard to the provisions requiring notice and other public procedures for public participation in rulemaking as set forth in 5 U.S.C. 553, or in any directive of the Secretary of Agriculture.

The notice is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as water quality or air quality. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is required.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

On April 3, 1985, a notice was published in the **Federal Register** (50 FR 13258) establishing the level of price support at $12.10 per hundredweight for milk containing 3.67 per centum milkfat for the period April 1, 1985, through September 30, 1985. That level of price support was established pursuant to provisions of section 201(d) of the 1949 Act, as amended by section 102 of the 1983 Act.

Section 201(d), as amended, further provides that if the Secretary of Agriculture estimates on July 1, 1985, that for the twelve-month period beginning on that date the CCC net price support purchases of dairy products would be in excess of five billion pounds milk equivalent, the Secretary may reduce the price support rate in effect on that date in the amount of 50 cent per hundredweight.

CCC supports the price of milk through the purchase of nonfat dry milk, butter and cheese. It is estimated that if the level of price support were continued at $12.10, CCC net price support purchases of such products for the twelve-month period beginning July 1, 1985, would be 12.2 billion pounds, milk equivalent. Since this estimate of CCC net price support purchases exceeds 5 billion pounds, milk equivalent, it has been determined that the level of price support in effect on July 1, 1985, shall be reduced from $12.10 per hundredweight by the amount of 50 cents per hundredweight. This notice implements that reduction.

It has been further determined that a level of support of $11.60 effective July 1, 1985, will assure an adequate supply of pure and wholesome milk to meet current needs. The reduction in the level of price support to $11.60 per hundredweight is needed to bring about a reduction in the currently excessive purchases and costs of the program. Even with the reduction in the price support level, it is expected that CCC net purchases for the twelve month period beginning July 1, 1985, will be 10.7 billion pounds milk equivalent.

Accordingly, the price of milk shall be supported, effective July 1, 1985, at a rate equivalent to $11.60 per hundredweight for milk containing 3.67 per centum milkfat.

It has been determined that the purchase by CCC of butter, cheese and nonfat dry milk produced on or after July 1, 1985, at the prices set forth in this notice will support the price of milk at a rate equivalent to $11.60 per hundredweight for milk containing 3.67 per centum milkfat.

Determination

Accordingly, the level of support for milk and the prices at which CCC will purchase the products of milk shall be as follows:

(a) The level of support for the period July 1, 1985, through September 30, 1985, shall be $11.60 per hundredweight for milk containing 3.67 percent milkfat.

(b) Effective July 1, 1985, CCC purchase prices for butter, cheese and nonfat dry milk shall be as follows:

	Dollars per pound	
	Products produced before July 1, 1985 and graded and offered by July 15, 1985	Products produced on or after July 1, 1985 or not graded and offered by July 15, 1985
Butter, 54- and 68-lb. blocks[1] (U.S. Grade A or higher)	1.4325	1.3975
Nonfat dry milk (spray), 50-lb. bags (U.S. Extra Grade, but not more than 3.5 percent moisture):		
Nonfortified	0.8475	.8075
Fortified (Vitamins A and D)	0.8575	.8175
Cheddar cheese, standard moisture basis[2]		
40- and 60-pound blocks, U.S. Grade A or higher (No vat shall contain more than 38.5 percent moisture)	1.2875	1.2400
500 lb. in fiber barrels, U.S. Extra Grade (No vat shall contain more than 38.5 percent moisture)	1.2450	1.1975

[1] Single nationwide price for butter at all locations.
[2] The cheese price will be adjusted for moisture content, except that the price adjustment for cheese with a moisture content of less than 34 percent will not exceed that for cheese with a moisture content of 34 percent.

(c) Any further adjustment in the level of support or CCC purchase prices will be announced by the Secretary of Agriculture in a notice published in the Federal Register.

Authority: (Sec. 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446(d)); and secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b and 714c))

Signed at Washington, D.C. on June 28, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-15993 Filed 7-3-85; 8:45 am]

BILLING CODE 3410-05-M

Soil Conservation Service

Howard Creek Watershed, WV; Intent To Prepare Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare a environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Howard Creek Watershed, Greenbrier County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia, 26505, telephone: 304-291-4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for watershed protection and flood prevention. Alternatives under consideration to reach these objectives include conservation land treatment, nonstructural measures, earth dam and channel work.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting was held at 9:00 a.m., Thursday, April 4, 1985, in the Conference Room of the Soil Conservation Service Field Office, Lewisburg, West Virginia, to determine the scope of the evaluation of the proposed action. Further information on the proposed action, or the scoping meeting may be obtained from Rollin N. Swank, State Conservationist, at the above address or telephone 304-291-4151.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. The State of West Virginia's process regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Rollin N. Swank,

State Conservationist.

June 20, 1985.

[FR Doc. 85-16053 Filed 7-3-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Technical Information Service

Intent To Grant Exclusive Patent License; Eli Lilly & Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Eli Lilly and Company, having a place of business in Greenfield, Indiana, an exclusive right to manufacture, use and sell products embodied in the invention entitled "Plant Growth Promoting Brassinosteroids," U.S. Patent 4,346,226. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the day of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other material relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-16045 Filed 7-3-85; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Lehn & Fink Products Group

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Lehn & Fink Products Group, Sterling Drug, Inc., having a place of business in Montvale, New Jersey, and exclusive right to manufacture, use and sell products embodied in the inventions entitled "Cockroach Repellents," U.S. Patent Application SN 6-625,266 and SN 6-625,329 and "Insect Repellents," U.S. Patent Application SN 6-625,328. The patent rights in these inventions have been assigned to the United States of America.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the day of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other material relating to the proposed license must be submitted to the Office of

Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-16047 Filed 7-3-85; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; SEMicro Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to SEMicro Corporation, having a place of business in Rockville, Maryland, an exclusive right to manufacture, use and sell products embodied in the invention entitled "Bond Testing Apparatus," U.S. Patent 4,491,014. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the day of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not service the public interest.

Inquiries, comments and other material relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-16046 Filed 7-3-85; 8:45 am]

BILLING CODE 3510-04-M

Patent and Trademark Office

Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of Canada

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Issuance of interim order.

SUMMARY: The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks, by Amendment 1 to Department Organization Order 10–14, the authority under section 914 of title 17 of the United States Code (the copyright law) to make findings and issue orders for the interim protection of mask works.

On June 12, 1985, the Patent and Trademark Office received petitions for the issuance of an interim order with respect to Canada from the Canadian Manufacturers' Association, the Electrical and Electronics Manufacturers Association of Canada, the Canadian Business Equipment Manufacturers Association, and the Canadian Advanced Technology Association which included supporting information from the Government of Canada. Comments on the petitions were requested on or before June 25, 1985. Comments were received from the Semiconductor Industry Association (SIA) and the Information Industry Association (IIA).

In their comments, the IIA and the SIA supported the issuance of an interim order. SIA urged that, in view of the short period for comments, any order issued should be limited to 60 or 90 days. The Commissioner has determined that this period is unrealistically short in view of the good faith efforts and reasonable progress in Canada toward providing protection for mask works of U.S. nationals and domiciliaries, and has determined that an order should issue for one year from the date of signature of the order.

EFFECTIVE DATE: The effective date of this order shall be June 12, 1985, the date of receipt of the petitions.

Termination Date: This order shall terminate on June 27, 1986, one year from its date of signature.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557–3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded
>
> (A) having or representing the predetermined three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 provides for a 10-year term of protection for original mask works, measured from the earlier of their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, are eligible for protection provided that they are registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works eligible for protection under basic criteria set out in 17 U.S.C 902. First, the owner of the mask works must be a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of a mask work to which the United States is also a party, or a stateless person wherever domiciled; second, the mask work must be first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries, and sovereign authorities of foreign nations if the Secretary finds:

> (1) That the foreign nation is making good faith efforts and reasonable progress toward—
>
> (A) Entering into a treaty described in section 902(a)(1)(A); or
>
> (B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and
>
> (2) That the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

In the Memorandum from the Minister of Consumer and Corporate Affairs, published as part of the Notice of Initiation of Proceeding at page 25288 of the Federal Register, on June 18, 1985, the Minister lays out the activities that his Government is undertaking to develop legislation for the protection of mask works. The fact that the petition for the issuance of this order has been submitted by four major Canadian industrial associations shows the strong industry support for these activities. The activities of the Canadian Government constitute good faith efforts toward developing legislation for the protection of mask works. The activities are in an early stage of development, consequently a one-year order will be issued to permit a review of the progress toward mask work protection in Canada.

There have been no allegations that Canadian nationals, domiciliaries, or sovereign authorities are engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works.

Granting an interim order for Canada will promote international comity in the protection of mask works. Accordingly, I find that the conditions for the issuance of an interim order have been fulfilled with respect to Canada.

The record supports the conclusion that Canada is engaged in good faith efforts to develop effective legislation to protect semiconductor chip products. However, we recognize that the activities in Canada are in a preliminary stage of development. We have determined that, a review of progress would be appropriate, but the order should be long enough to permit Canada to make significant progress toward developing its own legislative proposals. Accordingly, this order will endure one year from its date of signature. This will permit a review of progress on a timely basis without unduly burdening either the parties to this proceeding or the Government.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Canada

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10-14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 8, 1985, I find that: Canada is and has, since June 12, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); Canadian nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Canada are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 12, 1985, and this order shall terminate on June 27, 1986, one year from its date of signature.

Dated: June 27, 1985.

Margaret M. Lawrence,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 85-16006 Filed 7-3-85; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Proposed Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1985 services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: August 7, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Services

Commissary Shelf Stocking and Custodial, Oakland Army Base, Oakland, California

Commissary Shelf Stocking and Custodial, Scott Air Force Base, Illinois

Commissary Shelf Stocking and Custodial, Fort Monmouth (Ocean Port), New Jersey

C. W. Fletcher,

Executive Director.

[FR Doc. 85-16008 Filed 7-3-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 26, 1985.

The USAF Scientific Advisory Board Arnold Engineering Development Center Advisory Group will meet at the Arnold Engineering Development Center Headquarters, Arnold Air Force Station, TN, August 12 through 14, 1985, from 8:00 AM to 4:30 PM each day to review aerodynamic test facilities and equipment and to discuss technology issues and plans for engineering test support.

This meeting will concern matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (9)(B) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

[FR Doc. 85-16054 Filed 7-3-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Education Appeal Board

AGENCY: Department of Education.

ACTION: Notice of applications for review accepted for hearing by Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (Board) between April 15, 1985, and June 15, 1985. A summary of each appeal has been included to help potential

intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: Orman W. Ketcham, Acting Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB–6), Washington, D.C. 20202. Telephone: (202) 245–7835.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Education Appeal Board has authority to conduct: (1) Audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most programs administered by the Department of Education (ED). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most ED administered programs that involve: (a) A determination that a grant is void, (b) the disapproval of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees. Final regulations governing Board jurisdiction and procedures were published in the Federal Register on May 18, 1981, at 46 FR 27304 (34 CFR Part 78).

Applications Accepted

Vocational Rehabilitation

Appeal of Multi Resource Centers, Incorporated, (Minnesota), Docket No. 6–(181)–85, Audit Control No. 05–30055.

Multi Resource Centers, Incorporated (MRC), Minneapolis, Minnesota, appealed a final audit determination issued by the Grants and Contracts Service (GCS). The underlying audit reviewed costs claimed under grants from the Rehabilitation Services Administration during the period September, 1981, through September, 1982.

Costs were disallowed because documentation of the charges was allegedly inadequate, the matching requirement allegedly was not met, and some costs allegedly were not directly related to the grant.

The Department seeks a refund of $81,912. MRC has refunded $3,792 leaving $78,120 at issue.

Appeal of the Arizona Department of Economic Security, Docket No. 7–(182)–85, Audit Control No. 09–41527.

The Arizona Department of Economic Security (Arizona) requested review of a final audit determination made by the Regional Commissioner of the Rehabilitation Services Administration. The final audit determination was based on a single audit of Arizona for fiscal years 1980 and 1981 conducted by Arthur Anderson and Company.

Costs were disallowed which allegedly were not adequately documented nor allocated in accord with OMB Circular A–87.

The Department seeks a refund of $103,654. Arizona does not dispute $13,168 of the disallowance. The sum of $90,486 remains at issue.

Appeal of the New Jersey Division of Vocational Rehabilitation Services, Docket No. 12–(187)–85.

The New Jersey Division of Vocational Rehabilitation Services has appealed the denial of its request to incur an expenditure of $7,765 during the term of its grant. A subgrantee, Social Service Federation, desired to purchase a lift-equipped van to provide transportation to its clients. The Grants and Contractors Service denied the request.

Miscellaneous Programs

Appeal of Solidaridad Humana, (New York), Docket No. 8–(183)–85, Audit Control No. 09–40107.

Solidaridad Humana, New York, requested review of a final audit determination issued by the Grants and Contracts Service. The underlying audit reviewed costs claimed under a Title VII bilingual education grant during Fiscal Year 1983.

Space costs were disallowed because the cost allegedly were not adequately documented. Indirect costs allegedly exceeding the rate of eight percent also were disallowed.

The Department seeks a refund of $6,615. Solidaridad Humana concedes the disallowance of $111 for supplies. The sum of $6,504 remains at issue.

Appeal of the State of California, Docket No. 9–(184)–85, Audit Control No. 09–30062.

California has appealed a final audit determination of the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed reimbursements to local educational agencies for indirect costs incurred in administering the migrant education program for the period June 1, 1980, through August 31, 1981.

Indirect cost which allegedly exceeded the allowable indirect cost rate were disallowed.

The Department seeks a refund or $221,928. California disputes this liability.

Appeal of the Illinois States Library, Docket No. 10–(185)–85, Audit Control Nos. 05–30006 and 05–30009.

The Illinois State Library (Illinois) requested review of a final audit determination issued by the Assistant Secretary for Educational Research and Improvement. The audit reviewed costs charged under the Library Services and Construction Act for the period July 1, 1977, through December 31, 1980.

Cost, were disallowed for allegedly inadequate documentation, because funds allegedly were not available for obligation, and because allegedly the charges were unrelated to improving public library services.

The Department seeks a refund of $10,993,530. Illinois contests this liability.

Appeal of the Texas Education Agency, Docket No. 11–(186)–85, Audit Control No. 06–30010.

The Texas Education Agency (Texas) appealed a final audit determination issued by the Grants and Contracts Service. The underlying audit reviewed the administration of grants at Texas' Education Service Centers for the period September 1, 1979, through August 31, 1981.

Restricted indirect costs claimed for Fiscal Year 1981 were disallowed because allegedly the cost rate was overstated and the rate was improperly applied to pass-through funds.

The Department seeks a refund of $227,300. Texas disputes this liability.

Appeal of the State of Michigan, Docket No. 13–(188)–85, Audit Control No. 05–24907.

Michigan requested review of a final audit determination issued by the Assistant Secretary for Vocational and Adult Education. The final audit determination was based on an audit of vocational-technical education services during the period February 1, 1976, through June 30, 1980, conducted by the Michigan Office of Auditor General.

Equipment cost were disallowed because supplemental awards for the purchases allegedly were made in excess of formula-derived funding levels. Cooperative education costs were disallowed because priority allegedly was not given to funding local educational agencies with high rates of dropouts or youth unemployment.

The Department seeks a refund of $275,207. Michigan contests this liability.

Appeal of the State of New Jersey, Docket No. 14–(189)–85, Audit Control No. 02–35011.

New Jersey appealed a final audit determination issued by the Assistant Secretaries for Elementary and Secondary Education and Special Education and Rehabilitative Services. The underlying audit was organization-wide audit of the New Jersey Department of Education for the period July 1, 1979, through June 30, 1981, conducted by the New Jersey Division of State Auditing.

Salary and fringe benefit costs, allegedly inadequately documented, were disallowed.

The Department seeks a refund of $1,505,289. New Jersey disputes this liability.

Intervention

Final regulations establishing intervention procedures for the Education Appeal Board in 34 CFR 78.43 provide that an interested person, group, or agency may, upon application to the Board Chairman, intervene in appeals before the Education Appeal Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If application to intervene is approved, the intervenor becomes a party to the proceedings.

Applications to intervene, or questions, should be addressed to Orman W. Ketcham, Acting Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB–60), Washington, D.C. 20202. Telephone: (202) 245–7835.

(20 U.S.C. 1234)

(Catalog of Federal Domestic Assistance No. not applicable)

Dated: July 1, 1985

A. Wayne Roberts,

Deputy Under Secretary, Intergovernmental and Interagency Affairs.

[FR Doc. 85–16158 Filed 7–3–85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Coordinating Subcommittee on U.S. Petroleum Refining; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Petroleum Refining will meet in July 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Petroleum Refining will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The U.S. Petroleum Refining Coordinating Subcommittee will hold its seventh meeting on Thursday, July 18, 1985, starting at 9:00 a.m., in the Livingston Room of the Four Seasons Hotel, 1300 Lamar Street, Houston, Texas.

The tentative agenda for the U.S. Petroleum Refining Coordinating Subcommittee meeting is as follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discussion of study assignments.
3. Review of task group assignments.
4. Discussion of any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the U.S. Petroleum Refining Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitiate the orderly conduct of business. Any member of the public who wishes to file a written statement with the U.S. Petroleum Refining Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the Public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on June 27, 1985.

Donald L. Bauer,

Acting Assisting Secretary for Fossil Energy.

[FR Doc. 85–16002 Filed 7–3–85; 8:45 am]

BILLING CODE 6540-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP85–538–000 et al.]

ANR Pipeline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP85–538–000]

June 27, 1985

Take notice that on May 24, 1985 ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85–538–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate certain facilities in order to transport and delilver up to 115,000 billion Btu's natural gas per day and to exchange portions of such gas with Northwest Pipeline Corporation (Northwest) and El Paso Natural Gas Company (El Paso), all as more fully set forth in the application on file with the Commission and open for public inspection.

Applicant states that it has entered into a gas purchase contract with Exxon Corporation (Exxon) dated May 1, 1984, which provides for the purchase of some 430 Bcf of gas reserves in Sublette and Lincoln Counties, Wyoming, (referred to as the LaBarge field gas) and a daily contract quantity of 1,000 Mcf of gas for every 5,000,000 Mcf of reserves. Such gas, it is explained, would be delivered by Exxon to Applicant at the tailgate of Exxon's existing, but partially complete, Shute Creek processing plant in Lincoln County, Wyoming.

Applicant requests authority to construct and operate an undivided twenty-five percent interest in a proposed 17.53 mile 20/inch pipeline and appurtenant facilities (residue pipeline) which Northwest proposes to construct from the tailgate of Exxon's Shute Creek plant to a point of interconnection on its 30-inch Opal lateral, all in Lincoln County, Wyoming, as more fully described in Northwest's application pending in Docket No. CP85–349–000 and filed on March 8, 1985. (See Commission's Notice of Application issued April 16, 1985.)

Applicant states that it would reimburse Northwest an estimated $2,123,000 for its undivided twenty-five percent interest ownership in Northwest's proposed residue pipeline. Additionally, Applicant says it would reimburse Northwest monthly for the full cost of service attributable to

Northwest's seventy-five percent interest in the proposed residual pipeline.

Applicant states that Northwest would operate the proposed residue line on behalf of itself and Applicant and would transport the LaBarge gas on a firm basis and/or exchange such gas on a best efforts basis up to a combined maximum 115 billion Btu's of natural gas per day.

Applicant requests authorization to exchange gas with Northwest and El Paso in order to receive the LaBarge gas into its pipeline system. Applicant states that it has executed a gas transportation and exchange agreement with Northwest dated January 23, 1985, and a gas exchange agreement with El Paso dated October 11, 1984.

It is explained that Applicant proposes to tender up to 115 billion Btu's per day of the LaBarge gas to Northwest at the interconnection of Northwest's proposed residue pipeline and its existing Opal lateral in Lincoln County, Wyoming, in exchange for thermally equivalent Northwest volumes tendered to Applicant at existing pipeline interconnections between Applicant and Northwest in Oklahoma. It is further explained that for volumes not exchanged, Northwest would transport and redeliver thermally equivalent volumes to El Paso at existing interconnections near Ignacio, Colorado, and/or Colorado Interstate Gas Company (CIG) near Green River, Wyoming.

It is further explained that El Paso would receive up to 75 billion Btu per day from Northwest for Applicant's account at the Northwest/El Paso Ignacio interconnection and exchange thermally equivalent volumes with Applicant at a future point of interconnection between El Paso and Applicant in Roger Mills County, Oklahoma. Applicant states it has been advised that El Paso, in the near future, would construct, own, and operate such interconnecting facilities. The agreement with El Paso provides for the exchange of gas without charge to either party, it is stated.

Incident to the proposed exchange with El Paso, Applicant requests authority to construct and operate a tap on its existing 16-inch line in Roger Mills County, Oklahoma. The proposed tap is estimated to cost $28,265.

Applicant states that up to 40 billion Btu's per day of the LaBarge gas which is not exchanged with Northwest or El Paso would be tendered by Northwest to CIG for Applicant's account at an existing point of interconnection between Northwest and CIG near Green River, Wyoming. Applicant also states that CIG is currently transporting and exchanging natural gas pursuant to Applicant's existing FERC Rate Schedule X–86 and that the LaBarge gas tendered by Northwest to CIG for Applicant's account would be delivered to Applicant under such existing rate schedule.

Comment date: July 18, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket No. CP84–239–002]

June 28, 1985.

Take notice that on June 10, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP84–239–002 an amendment to its request filed in Docket No. CP84–239–000 pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to reflect an increase in the volume of natural gas transported on behalf of Middletown Paperboard Co., a Division of Newark Boxboard Co. (Middletown), under the authorization issue in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Texas Gas requests amendment of the authorization in Docket No. CP84–239–000 to reflect an amendment dated May 24, 1985, between Texas Gas and Middletown to their transportation agreement of December 27, 1983, which provides for an increase in the volume of gas transported under the agreement from a maximum contract demand of 1,300 Mcf per day to 1,500 Mcf per day.

Comment date: August 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America.

[Docket No. CP85–551–000]

June 28, 1985.

Take notice that on May 31, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP85–551–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Jones and Laughlin Steel Company (J & L) under the certificate issued in Docket No. CP82–402–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport a maximum of 15 billion Btu of natural gas per day for J & L from Custer, Woodward, Caddo, Washita and possibly Beaver Counties, Oklahoma, to Cook County, Illinois. Natural states that it would charge transportation fees of 27.2 cents, 27.2 cents, 27.9 cents, 28.2 cents and 28.6 cents per million Btu of gas received from these receipt points, respectively, and that in addition, J & L would pay the Gas Research Institute's surcharge funding unit per million Btu as shown on Sheet No. 5 of Natural's FERC Gas Tariff, Volume No. 1.

It is explained that previously, Natural was authorized in Docket No. CP85–298–000 to provide essentially the same transportation service to LTV Steel Company, predecessor to J & L, but at a maximum daily volume limitation of 10 billion Btu's per day.

Natural states that it commenced this additional service on April 1, 1985, pursuant to § 157.209(e)(1) of the Regulations for a 120-day period that would terminate on July 30, 1985. Natural states that should authorization in § 157.209(e) be extended past June 30, 1985, Natural proposes to continue this service for the period of extension authorized in § 157.209(e), or until January 1, 1987, whichever period is less.

Natural also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Natural will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: August 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP85–561–000]

June 28, 1985.

Take notice that on June 4, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP85–561–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing increased

deliveries of natural gas to Anderson Clayton Foods (Anderson Clayton), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to deliver an additional 500 Mcf of natural gas per day on an interruptible basis to Anderson Clayton at its plant in Jacksonville, Illinois. It is said that currently, Panhandle delivers 3,000 Mcf per day pursuant to Amendment No. 2, dated December 31, 1984, to the Industrial Gas Contract dated March 12, 1984.

Comment date: July 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP85-612-000]

June 28, 1985.

Take notice that on June 13, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77011, filed in Docket No. CP85-612-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Consolidated Gas Transmission Corporation (Consolidated), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to transport on a firm basis gas reserves available to Consolidated in the Gulf of Mexico. Tennessee would receive the volumes at points in Allen and Acadia Parishes, Louisiana, and at other mutually agreeable receipt points, and deliver the volumes to Consolidated at specified delivery points on Consolidated's pipeline system in West Virginia, Ohio, Pennsylvania, and New York.

Tennessee states that it would transport and deliver gas to Consolidated in those rate zones in which Consolidated purchases gas from Tennessee at or above the minimum bill level (currently 66-2/3 percent of the monthly component of Consolidated's annual volumetric limit). Authorization is sought to transport quantities of gas up to an amount equal to the difference between the daily volumes purchased by Consolidated from Tennessee in the rate zone and the contract demand for the zone.

Tennessee proposes to charge Consolidated for the transporation service a rate equal to the non-gas component of Tennessee's CD commodity rate for the zone in which the gas is delivered. Tennessee would retain 5.05 percent of the volumes it receives for transportation for fuel and use requirements.

Comment date: July 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Mobile Bay Pipeline Company

[Docket No. CP85-332-001]

June 28, 1985.

Take notice that on May 31, 1985, Mobile Bay Pipeline Company (MBPC), P.O. Box 1478, Houston, Texas 77001, successor in this proceeding to United Gas Pipe Line Company (United), filed in Docket No. CP85-332-001 an amendment pursuant to section 7(c) of the Natural Gas Act, to the application for a certificate of public convenience and necessity heretofore filed by United in Docket No. CP85-332-000 regarding the construction and operation of approximately 24.5 miles of 30-inch pipeline (the Mobile Bay pipeline), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

MBPC requests authority to construct and operate approximately 24.5 miles of 30-inch pipeline from the tailgate of the Mobil Oil Exploration and Producing Southeast, Inc. (MOEPSI), processing plant to United's existing system, all in Mobile County, Alabama. MBPC also requests authority to transport natural gas for ANR Pipeline Company (ANR).

MBPC asserts that it is a general partnership formed by affiliates of ANR and United for the purpose of constructing, owning, and operating the Mobile Bay pipeline to transport significant natural gas reserves anticipated to be produced in the Mobile Bay area, offshore Alabama, and delivered to the Mobile Bay pipeline.

MBPC states that the total estimated cost of the proposed facilities is $18,105,000 which would be financed through equal equity contributions of 40 percent by MBPC's partners, with the balance through the use of long-term financing. It is asserted that the proposed facilities would initially provide transportation for ANR for up to 70,000 Mcf of natural gas per day and that the throughput is expected to increase to 268,000 Mcf per day in the third year of operation and by the sixth year up to 600,000 Mcf per day.

MBPC advises that it has entered into a transporation agreement with ANR for a 15-year term of service. The proposed transporation rate for the initial interim two-year transportation service has a commmodity charge of 5.2 cents per Mcf of gas transported. It is explained that for the first year of operation after the interim period and continuing during the term of the service a demand rate per Mcf of the contract demand would be charged. The demand rate would recover certain unrecovered costs incurred during the interim period of operation, it is asserted.

Comment date: July 19, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP85-600-000]

June 28, 1985

Take notice that on June 10, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, P.O. Box 1206, Lombard, Illinois 60148, filed in Docket No. CP85-600-000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon a 39-mile segment of 30-inch interstate pipeline and the transportation of gas through the segment and for a certificate of public convenience and necessity authorizing the construction and operation of approximately 53.9 miles of 24-inch and 30-inch pipeline and one compressor station for the purpose of interconnecting Natural's existing Amarillo and Gulf Coast lines to the proposed facilities of Texoma Interstate Pipeline Company (Texoma), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Natural states that its Amarillo and Gulf Coast lines do not interconnect in the producing regions of Texas and Oklahoma and that over the years it has experienced periods of gas supply imbalance between the two lines which have restricted the supply available to meet market requirements. Natural states further that while there is a primary need to move gas supplies from the Amarillo to Gulf Coast systems, the proposed facilities would also be designed to move gas in the opposite direction in order to increase Natural's operational flexibility.

Natural further states that the most efficient and economical proposal to attain this operational flexibility would be to interconnect its Amarillo and Gulf Coast systems through an arrangement with Texoma which, in a companion application filed at Docket No. CP85-601-000, is requesting authorization, *inter alia*, to acquire, construct, and operate interstate pipeline facilities and to transport gas for Natural through such facilities.

Natural proposes to construct and operate approximately 53.9 miles of 24-

inch and 30-inch pipeline in Carter, Garvin, and Murray Counties, Oklahoma, and Upshur, Gregg, and Harrison Counties, Texas, and certain compressor facilities at a new compressor station in Carter County, Oklahoma, to interconnect its existing Amarillo and Gulf Coast mainlines with Texoma. Natural also proposes to abandon a 39-mile interstate segment of converted 30-inch oil pipline located in Bryan County, Oklahoma, and Fannin and Lamar Counties, Texas. Natural states that such segment would be acquired by Texoma as a part of the 212-mile interstate pipeline transportation system proposed by Texoma in its application.

Natural states that the estimated cost of the proposed pipeline and compressor facilities (including $914,000 in non-jurisdictional facilities) is $36,943,000 (exclusive of filing fees) which cost would initially be financed with funds on hand, borrowings under Natural's revolving credit arrangements or short-term financing.

Comment date: July 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16064 Filed 7-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-570-000 et al.]

Northern Indiana Public Service Co. et al.; Electric Rate and Corporate Regulation Filings

June 28, 1985.

Take notice that the following filings have been made with the Commission:

1. Northern Indiana Public Service Company

[Docket No. ER85-570-000]

Take notice that on June 13, 1985, Northern Indiana Public Service Company (Company) tendered for filing as initial rate schedules, service agreements with the Towns of Argos and Bremen providing for:

Service Schedule C—Operating Reserves.

The Company requests an effective date of July 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon the Towns of Argos and Bremen and the Public Service Commission of Indiana.

Comment date: July 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Union Electric Company

[Docket No. ER85-571-000]

Take notice that on June 13, 1985, Union Electric Company (Union Electric) tendered for filing First Amendment dated February 20, 1985, to the Interconnection Agreement of February 18, 1972 between Central Illinois Public Service Company, Illinois Power Company, and Union Electric Company.

Union Electric states the purpose of the Amendment is to provide for a new Service Schedule G, Term Energy.

Union Electric requests an effective date of April 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: July 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER85-583-000]

Take notice that on June 20, 1985, Niagara Mohawk Power Corporation (Niagara), tendered for filing as a rate schedule, an agreement between Niagara and the Rochester Gas and Electric Corporation (Rochester) dated May 15, 1985.

Niagara presently has on file an agreement with Rochester dated April 12, 1973 last amended on May 22, 1984. This agreement is designated as Niagara Power Corporation Rate Schedule F.E.R.C. No. 76. This new agreement is being transmitted as a supplement to the existing agreement.

The original April 12, 1973 agreement states that Niagara will provide for the transmission of power and energy to and from the Power Authority of the State of New York at the Blenheim-Gilboa Pumped Storage Plant for Rochester. This supplement revises the rate to be paid by Rochester for the use of Niagara's facilities. The monthly charge will be updated on October 1 of each succeeding year using Niagara's most recent annual fixed charges.

Niagara requests an effective date of October 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Rochester Gas & Electric Corporation and the Public Service Commission of the State of New York.

Comment date: July 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Electric & Gas Company

[Docket No. ER85-584-000]

Take notice that on June 20, 1985, South Carolina Electric & Gas Company

(SCE&G) tendered for filing a proposed change in its 1973 service contract with rural electric cooperatives. Under the proposed change all rights held under the contract by Palmetto Electric Cooperative, Inc. are assigned to Central Electric Power Cooperative, Inc.

The proposed change arises from an agreement between Palmetto and Central assigning the above contract rights. The agreement has been approved by the Administrator of the Rural Elecrification Administration. The proposed effective date is December 3, 1979, and SCE&G and therefore requests waiver of the Commission's notice requirements.

Comment date: July 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Louisiana Power & Light Company

[Docket No. ER85-585-000]

Take notice that on June 20, 1985, Louisiana Power & Light Company (LP&L) tendered for filing a Notice of Cancellation of an Agreement dated October 3, 1984 providing for the transmission of up to 5 mw of power and energy to the City of Minden, Louisiana from the City of Lafayette, Louisiana (City).

LP&L requests an effective date of July 31, 1985, and therefore requests waiver of the Commission's notice requirements.

A copy of this filing was mailed to the City of Lafayette, Louisiana.

Comment date: July 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER85-569-000]

Take notice that on June 11, 1985, Portland General Electric Company in accordance with the Commission's order of May 26, 1977, accepting for filing Portland General Electric Company's FPC Electric Tariff Original Volume 1, and director Lawrence R. Anderson's letter of March 23, 1984 in Docket No. ER84-268-000, submitted for filing a summary of Portland General Electric Company's non-firm energy sales under the above Tariff for April of 1985 together with a proposed Notice of Filing for use by the Commission. In addition, a new service agreement under that Tariff with Eugene Water and Electric Board is filed herewith.

Portland General Electric Company hereby applies for waiver of the notice requirements pursuant to section 205(d) of the Federal Power Act and § 35.11 of the Commission's regulations and requests this filing be made effective May 31, 1985, a date prior to the date of this filing. Waiver of the notice requirement is not expected to have an adverse impact upon Portland General Electric Company or any other rate schedules or upon any of the purchasers described in this filing.

Copies of this filing have been served upon all parties with executed service agreements, all parties to the Inter-company Pool Agreement (revised), the intervenors in Docket ER 77-131 and the Oregon Public Utility Commissioner.

Comment date: July 12, 1985, in accordance with standard Paragraph E at the end of this notice.

7. MDU Resources Group, Inc.

[Docket No. ES85-43-000]

Take notice that on June 19, 1985, MDU Resources Group, Inc. (Applicant) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, proposing to issue and sell not more than $50 million of First Mortgage Bonds.

Comment date: July 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. The Detroit Edison Company

[Docket No. ES85-45-000]

Take notice that on June 24, 1985, The Detroit Edison Company filed an Application, pursuant to Section 204 of the Federal Power Act, seeking authorization to issue from time to time, on or before September 30, 1987, in a aggregate principal amount not to exceed $1.2 billion at any one time outstanding, short-term debt securities and promissory notes bearing final maturities not to exceed two years.

Comment date: July 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16063 Filed 7-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-461-000]

Kansas Gas and Electric Co.; Order Accepting for Filing and Suspending Rates, Granting Interventions, Denying Motion To Reject, Granting Waiver, Denying Motion for Joint Hearing, and Establishing Hearing and Price Squeeze Procedures

Issued: June 28, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa and Charles G. Stalon.

On April 29, 1985, Kansas Gas and Electric Company (KG&E) filed:[1] (1) A proposed increase in rates for firm power service to 15 full requirements municipal customers,[2] seven partial requirements municipal customers,[3] Missouri Public Service Company (MPSC) and Kansas Electric Power Cooperative (KEPCO); (2) an increase in rates for transmission service to eight municipal customers,[4] the Kansas Power and Light Company (KP&L) and KEPCO; (3) proposed new service schedules for Maintenance and Emergency Service (ME), Reserve Capacity (RC), Supplemental Energy (SE) and System Control and Load Dispatching Service (SC) to KEPCO; and (4) proposed SC service schedules to ten municipal customers.[5] In addition,

[1] *See* Attachment for rate schedule designations.

[2] The City of Mindenmines, Missouri and the Cities of Arcadia, Arma, Blue Mound, Bronson, Elsmore, Erie, Girard, Haven, La Harpe, Moran, Mount Hope, Mulberry, Oxford and Savonburg, Kansas. Pursuant to the terms of their contracts, rate increases to the full requirements municipal customers (with the exception of Cities of Girard and Oxford) may become effective only on a prospective basis after a final Commission order.

[3] The Cities of Augusta, Burlington, Coffeyville, Mulvane, Neodesha, Wellington and Winfield, Kansas.

[4] The Cities of Chanute, Coffeyville, Fredonia, Iola, Mulvane, Neodesha, Wellington and Winfield, Kansas.

[5] The Cities of Augusta, Burlington, Chanute, Coffeyville, Fredonia, Iola, Mulvane, Neodesha, Wellington and Winfield, Kansas. KG&E states that the proposed service schedules ME and RC to KEPCO are required to replace KEPCO's ownership share of Wolf Creek when the plant is unavailable, while Service Schedule SE is needed to supplement KEPCO's firm takes. Additionally, KG&E states that the proposed new Service Schedule SC is designed to recover the costs of maintaining spinning reserves and the cost of scheduling and dispatching power resources of the generating municipal customers and KEPCO.

KG&E proposes to cancel an unused transmission service schedule for the City of Chanute and an expired peaking power service schedule with KEPCO.

The proposed firm rates would result in an overall increase in revenues of approximately $3.4 million (23%), based upon the 12 month test period ending December 31, 1985. KG&E requests an effective date for the firm power rates of the later of June 30, 1985, or the date the utility's Wolf Creek Nuclear Station (Wolf Creek) enters commercial service for those customers whose contracts allow unilateral rate changes. KG&E requests the same effective date for all new service schedules. For all customers (except the City of Erie) whose contracts permit only prospective rate changes, KG&E requests that the proposed rates become effective on the date of the final Commission order herein. Because the City of Erie's (Erie) contract expires on November 10, 1986, and KG&E expects that this date will precede a final Commission order, the company requests an effective date of November 11, 1986, for Erie. In the event that the commercial operations of Wolf Creek is delayed beyond 120 days from the filing date, KG&E requests waiver of the notice requirements.

Notice of the company's filing was published in the Federal Register,[6] with comments due on or before May 20, 1985. Timely motions to intervene were filed by the Kansas Municipal Utilities (Cities) [7] and, jointly, by KEPCO and its member cooperatives (collectively referred to as KEPCO). Cities request a five month suspension. In support, they raise several cost of service issues. [8] Cities also request rejection of Service Schedule SC for the Cities of Chanute, Iola and Fredonia, Kansas, on the ground that the firm power rates to these cities are fixed rates under the *Mobil-Sierra* [9] doctrine, and that KG&E's filing of Service Schedule SC is an attempt to circumvent the fixed rates. In addition, Cities request that a joint hearing be convened with the Kansas Corporation Commission as to the prudence of KG&E's investment and inclusion in rate base of Wolf Creek. They state that expedited procedures under Rule 717 of the Commission's Rules of Practice and Procedure (18 CFR 385.717) should not be established in this docket due to the complexity of the issues. Lastly, Cities allege price discrimination and price squeeze.

KEPCO requests a five month suspension for firm power and transmission rates, and that Service Schedules RC, ME, SE and SC be suspended, to become effective upon commencement of operation of Wolf Creek. In support, KEPCO raises several cost of service issues.[10] In addition, KEPCO requests that the Commission institute price squeeze procedures.

On May 31, 1985, the Kansas Power and Light Company (KP&L) filed an untimely motion to intervene. KP&L requests that the Commission set KG&E's transmission tariff for hearing. KP&L alleges that the proposed rates for transmission service are excessive. In addition, KP&L objects to the requirement that it purchase power from KG&E to make up line losses. On June 6, 1985, the State Corporation Commission of the State of Kansas (Kansas Commission) filed an untimely motion to intervene. The Kansas Commission does not, however, raise any specific issues in its pleading.

On June 4, 1985, KG&E filed timely answers to the interventions of Cities and KEPCO. While not opposing the interventions, KG&E objects to KEPCO's cooperative members being granted intervenor status. The company denies that a five month suspension is warranted. Further, KG&E states that Cities' and KEPCO's price squeeze allegations should be rejected and that Cities' request for joint hearings with the Kansas Commission should be denied. With respect to Rate Schedules RC, ME, SE and SC, KG&E contends they are initial rates not subject to suspension because they provide for a new service to KEPCO and its members. KG&E also denies that it has violated contractual agreements with its customers.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely, unopposed motions to intervene serve to make Cities and KEPCO parties to this proceeding.

Notwithstanding the company's opposition to the intervention of KEPCO's cooperative members, we find that good cause exists to grant their motion to intervene. KEPCO's cooperative members are served by KG&E and have a direct interest in the outcome of this proceeding. Further, given their interests, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay, we shall grant KP&L's and the Kansas Commission's untimely motions to intervene.

We disagree with Cities' claim that KG&E's filing of Rate Schedule SC as to the Cities of Chanute, Iola, and Fredonia violates contractual provisions with those customers which prohibit further Rate Schedule A rate increases. These three cities are partial requirements customers who require transmission service from KG&E for power and energy generated outside KG&E's load control area. Service Schedule SC is proposed by KG&E to recover scheduling and dispatching costs related to the outside power being transmitted. Schedule SC specifically excludes firm demands, which are covered by Schedule A, from the billing demand. Therefore, we find that SC billings are not additional charges for firm service and do not violate fixed rates for firm service. Accordingly, we shall deny Cities' motion to reject Schedule SC.

We disagree with KG&E's characterization of Schedules ME, RC, SE and SC as initial rate schedules. KG&E is already providing transmission service to KEPCO under the transmission agreement filed in Docket No. ER82–257. The instant filing represents an additional service to KEPCO and, thus, constitutes a change in rate subject to the Commission's suspension and refund powers under section 205 of the Federal Power Act.

Our preliminary review of the company's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful. Accordingly, we shall accept KG&E's rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. In the instant

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[6] 50 *FD* 20280 (1985).

[7] Kansas Municipal Utilities include the Cities of Augusta, Burlington, Chanute, Coffeyville, Girard, Iola, Mulvane, Neodesha, Wellington and Winfield, Kansas, who are partial requirements customers of KG&E, and the Cities of Arcadia, Arma, Blue Mound, Elsmore, Erie, Haven, La Harpe, Moran, Mount Hope, Mu lberry, Oxford and Savonburg, Kansas, who are full requirements customers of KG&E.

[8] The issues raised include: (1) Excessive rate of return; (2) improper allocation of transmission costs; (3) improper calculation of deferred tax procisions; and (4) improper depreciation rates.

[9] *United Gas Pipeline Co.* v. *Mobil Gas Service Corp.*, 350 U.S. 332 (1956); *FPC* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

[10] The issues raised include: (1) Inaccurate in-service date for Wolf Creek; (2) improper allocation of Wolf Creek costs to KEPCO; (3) excessive rate of return; (4) excessive fuel stock; (5) improper treatment of deferred tax deficiency; (6) improper depreciation rates for Wolf Creek; (7) excessive operation and maintenance expense projections; and (8) rate design.

proceeding, our review indicates that the proposed increased rates for firm power and transmission service and the proposed rates for Service Schedules ME, SC, RC and SE may not produce substantially excessive revenues. Accordingly, for those customers whose contracts permit unilateral rate changes, we shall accept the instant submittal for filing and suspend it to become effective on the later of July 1, 1985, or the commercial operation date of Wolf Creek. For those customers (except Erie) whose contracts permit only prospective rate changes, we shall accept the rates for filing to become effective on the date of the final Commission order herein. We shall accept the rates for service to Erie to become effective on November 12, 1986, subject to refund. Finally, we shall accept the cancellations of service schedules for the City of Chanute and KEPCO to become effective on June 30, 1985.

As noted, the company requests waiver of the notice requirements. We conclude that good cause exists to waive these requirements because this will serve to match Wolf Creek's commercial operation date with the effectiveness of the rates.

We shall deny Cities' motion for a joint hearing with the Kansas Commission on the Wolf Creek prudence issue. As stated in Rule 1304(a) of the Commission's Rules of Practice and Procedure (18 CFR 385.1304(a)), joint boards are designed for use in "unusual cases," and as a means of relief to the Commission when it might find itself unable to hear and determine cases before it, in the usual course, without undue delay. KG&E's sales to Cities are subject to the exclusive jurisdiction of this Commission. We, therefore, see no reason why this Commission, acting in its usual capacity, cannot adequately decide the issues raised in this proceeding. Further, since the Kansas Commission has intervened, it is a party to the proceeding and thus, could not simultaneously act as a judge or advisor on the Wolf Creek prudence issue. For these reasons, we believe it would be inappropriate to institute either of the two types of joint hearings mentioned in Rule 1305 of the Commission's Rules of Practice and Procedure (18 CFR 1305).[11]

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Co.*, 6 FERC ¶ 61,131 (1979), we shall phase the price squeeze raised by the intervenors.

The Commission Orders:

(A) The motion to intervene of DEPCO's member cooperatives, KP&L, and the Kansas Commission are hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Cities' motion to reject Schedule SC for the Cities of Chanute, Iola and Fredonia is hereby denied.

(C) KG&E's request for waiver of the notice requirements is hereby granted.

(D) The firm power, transmission, and Service Schedule ME, SC, RC, and SE rates to the Cities of Girard, Oxford, Augusta, Burlingtron, Chanute, Coffeyville, Fredonia, Iola, Mulvane, Neodesha, Wellington, and Winfield, Kansas, MPSC, KP&L and KEPCO one hereby accepted for filing to become effective on the later of July 1, 1985, or the commercial operation date of the Wolf Creek Nuclear Station, subject to refund.

(E) The rates to the City of Erie, Kansas, are hereby accepted for filing to become effective on November 12, 1986, subject to refund.

(F) The rates to the City of Mindenmines, Missouri, and the Cities of Arcadia, Arma, Blue Mound, Bronson, Elsmore, Haven, La Harpe, Moran, Mount Hope, Mulberry, and Savonburg, Kansas are hereby accepted for filing to become effective prospectively on the date of the final Commission order herein.

(G) The proposed cancellations of service schedules for the City of Chanute, Kansas and KEPCO are hereby accepted for filing to become effective, without suspension or hearing, on June 30, 1985.

(H) KG&E shall advise the Commission within fifteen (15) days after the in-service date of Wolf Creek.

(I) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of KG&E's rates.

(J) Cities' request for a joint hearing concerning Wolf Creek is hereby denied.

(K) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(L) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(M) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(N) Docket No. ER85-461-000 is hereby terminated. The evidentiary proceedings established herein are designated as Docket No. ER85-461-001.

(O) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

ATTACHMENT—KANSAS GAS & ELECTRIC COMPANY RATE SCHEDULE DESIGNATIONS

[Docket No. ER85-461-000]

Designation	Other party	Description
(1) Supplement No. 5 to Rate Schedule FPC No. 124 (Supersedes Supplement No. 14).	City of Arcadia	PWM-785.
(2) Supplement No. 16 to Rate Schedule FPC No. 114 (Supersedes Supplement No. 15).	City of Arma	PWM-785.
(3) Supplement No. 14 to Rate Schedule FPC No. 117 (Supersedes Supplement No. 13).	City of Blue Mound	PWM-785.
(4) Supplement No. 13 to Rate Schedule FPC No. 120 (Supersedes Supplement No. 12).	City of Bronson	PWM-785.
(5) Supplement No. 11 to Rate Schedule FPC No. 116 (Supersedes Supplement No. 10).	City of Elsmore	PWM-785.
(6) Supplement No. 16 to Rate Schedule FPC No. 122 (Supersedes Supplement No. 15).	City of Haven	PWM-785.

[11] With regard to concurrent hearings, Rule 1305(g) specifically provides that cooperation between two or more commissions in such a hearing precludes either from taking the position of an advocate or litigant.

ATTACHMENT—KANSAS GAS & ELECTRIC COMPANY RATE SCHEDULE DESIGNATIONS—Continued

[Docket No. EP85-461-000]

Designation	Other party	Description
(7) Supplement No. 15 to Rate Schedule FPC No. 115 (Supersedes Supplement No. 14).	City of La Harpe	PWM-785.
(8) Supplement No. 15 to Rate Schedule FPC No. 125 (Supersedes Supplement No. 14).	City of Mediamore	PWM-785.
(9) Supplement No. 14 to Rate Schedule FPC No. 116 (Supersedes Supplement No. 13).	City of Moran	PWM-785.
(10) Supplement No. 14 to Rate Schedule FPC No. 123 (Supersedes Supplement No. 13).	City of Mount Hope	PWM-785.
(11) Supplement No. 15 to Rate Schedule FPC No. 119 (Supersedes Supplement No. 14).	City of Mulberry	PWM-785.
(12) Supplement No. 10 to Rate Schedule FPC No. 121 (Supersedes Supplement No. 9).	City of Savonburg	PWM-785.
(13) Supplement No. 5 to Rate Schedule FERC No. 159 (Supersedes Supplement No. 4).	City of Erie	PWM-785.
(14) Supplement No. 6 to Rate Schedule FERC No. 157 (Supersedes Supplement No. 5).	City of Girard	PWM-785.
(15) Supplement No. 8 to Rate Schedule FERC No. 135 (Supersedes Supplement No. 7).	City of Oxford	PWM-785.
(16) Supplement No. 9 to Rate Schedule FERC No. 152 (Supersedes Supplement No. 8).	City of Missouri Public Service Company	PWM-785.
(17) Supplement No. 4 to Supplement No. 15 to Rate Schedule FPC No. 83.	Kansas Power and Light Company	Revised Rates under Service Schedule M.
(18) Supplement No. 16 to Rate Schedule FERC No. 151 (Cancels Supplement No. 7).	Kansas Electric Power Cooperative	Revised Rates under Service Schedules A, B, and D and Cancellation of Service Schedule C.
(19) Supplement No. 17 to Rate Schedule FERC No. 151.	...do	Service Schedule RC.
(20) Supplement No. 18 to Rate Schedule FERC No. 151.	...do	Service Schedule SC.
(21) Supplement No. 19 to Rate Schedule FERC No. 151.	...do	Service Schedule ME.
(22) Supplement No. 20 to Rate Schedule FERC No. 151.	...do	Service Schedule SE.
(23) Supplement No. 19 to Rate Schedule FERC No. 134.	City of Augusta	Revised Rates under Service Schedule A.
(24) Supplement No. 20 to Rate Schedule FERC No. 134.	...do	Service Schedule SC.
(25) Supplement No. 10 to Rate Schedule FERC No. 144.	City of Burlington	Revised Rates under Service Schedule A.
(26) Supplement No. 11 to Rate Schedule FERC No. 144.	...do	Service Schedule SC.
(27) Supplement No. 1 to Supplement No. 20 to Rate Schedule FERC No. 128 (Cancels Supplement No. 5).	City of Chanute	Amendment to and Revised Rates under Service Schedule E and Cancellation of Service Schedule T.
(28) Supplement No. 21 to Rate Schedule FERC No. 128.	...do	Service Schedule SC.
(29) Supplement No. 12 to Rate Schedule FERC No. 149.	City of Coffeyville	Amendment to and Revised Rates under Service Schedules A and E.
(30) Supplement No. 13 to Rate Schedule FERC No. 149.	...do	Service Schedule SC.
(31) Supplement No. 1 to Supplement No. 14 to Rate Schedule FPC No. 87.	City of Fredonia	Amendment to and Revised Rates under Service Schedule E.
(32) Supplement No. 15 to Rate Schedule FPC No. 87.	...do	Service Schedule SC.
(33) Supplement No. 1 to Supplement No. 13 to Rate Schedule FPC No. 39.	City of Iola	Amendment to and Revised Rates under Service Schedule E.
(34) Supplement No. 14 to Rate Schedule FPC No. 88.	...do	Service Schedule SC.
(35) Supplement No. 12 to Rate Schedule FERC No. 154.	City of Mulvane	Amendments to and Revised Rates under Service Schedules A and E.
(36) Supplement No. 13 to Rate Schedule FERC No. 154.	...do	Service Schedule SC.
(37) Supplement No. 12 to Rate Schedule FERC No. 153.	City of Neodesha	Amendments to and Revised Rates under Service Schedules A and E.
(38) Supplement No. 13 to Rate Schedule FERC No. 153.	...do	Service Schedule SC.
(39) Supplement No. 17 to Rate Schedule FERC No. 156.	City of Wellington	Amendment to and Revised Rates under Service Schedules A and E.
(40) Supplement No. 18 to Rate Schedule FERC No. 156.	...do	Service Schedule SC.
(41) Supplement No. 12 to Rate Schedule FERC No. 155.	City of Winfield	Amendments to and Revised Rates under Service Schedules A and E.
(42) Supplement No. 13 to Rate Schedule FERC No. 155.	...do	Service Schedule SC.

[FR Doc. 85-16058 Filed 7-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS72-413 et al.]

Morris Mizel & Mizel Resources, a Grantor Trust, et al.; Applications for Small Producer Certificates[1]

July 1, 1985.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before July 15, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS72-413	3-25-85[1]	Morris Mizel and Mizel Resources, a Grantor Trust.
CS85-76-000	5-28-85	The Estate of Taft Millard and Millard Corporation.
CS85-78-000	6-10-85	Will McCasland, Inc.
CS85-79-000	6-10-85	Cherry Ventures, Inc.
CS85-80-000	6-11-85	Solar Petroleum, Inc.
CS85-81-000	6-10-85	Master Petroleum & Development Company, Inc.
CS85-83-000	6-03-85	Tejas Power Corporation.
CS85-84-000	6-17-85	Hicks Oil & Gas, Inc.
CS85-85-000	6-17-85	B.R. Eubanks, M.D. (Diamond Oil International
CS85-86-000	6-17-85	Hicks Production Company.

[1] Letter dated March 19, 1985, requesting that Mizel Resources, a Grantor Trust be added as small producer certificate co-holder.

[FR Doc. 85-16059 Filed 7-3-85; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket Nos. ER85-475-000, ER85-476-000, and ER85-493-000]

New England Power Co.; Order Accepting for Filing and Suspending Rates, Granting Withdrawal, Noting and Granting Interventions, Granting and Denying Waivers, Granting and Denying Motions for Summary Disposition, Consolidating Dockets, and Disapproving Automatic Equity Clauses

Issued: June 28, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa and Charles G. Stalon.

On May 1, 1985, New England Power Company (NEPCO) tendered for filing a proposed superseding Transmission and Interconnection Agreement providing for transmission service to the Vermont Electric Power Company, Inc. (VELCO) that would result in an increase of approximately $650,000 (Docket No. ER85-475-000). On the same date, NEPCO also tendered for filing a revision to its FERC Electric Tariff Original Volume No. 3 that would result in an increase of approximately $690,000 for transmission of nonfirm energy entitlements to tariff customers (Docket No. ER85-476-000). On May 8, 1985, NEPCO tendered for filing an agreement to begin transmission service to its affiliate, Narragansett Electric Company (Docket No. ER85-493-000) that would result in annual revenues of approximately $7,000. NEPCO requests a waiver of the 60-day notice requirement in order to allow the proposed rates in Docket No. ER85-475,000 to become effective May 1, 1985. It requests an effective date of July 1, 1985 for the proposed rates in Docket Nos. ER85-476-000 and ER85-493-000.[1]

Notice of NEPCO's filing in Docket Nos. ER85-475-000 and ER85-476-000 was published in the **Federal Register**[2] with comments due on or before May 2, 1985. Notice of NEPCO's filing in Docket No. ER85-493-000 was published in the **Federal Register**[3] with comments due on or before May 31, 1985.

VELCO filed a timely motion to intervene in Docket No. ER85-475-000. It requested that the filing be suspended for one day and that a hearing be ordered to permit NEPCO to file additional evidence in support of its positions on several issues. It objected to waiver of the 60-day notice provision and requested summary dismissal of NEPCO's filing only if a hearing is not set. VELCO raises a variety of cost of service and rate design issues.[4] Central Vermont Public Service Corporation (Central Vermont) also filed a timely motion to intervene in this docket.

On June 6, 1985, NEPCO filed an answer. While not opposing the motions to intervene, the request for a one-day suspension, or the request for a hearing, NEPCO argued that there is good cause to waive the 60-day notice provision. NEPCO asserts that each of VELCO's objections lack merit.

NEPCO's municipal customers (Municipal Customers) filed a timely motion to intervene in Docket No. ER85-476-000. They requested a five-month suspension. They also requested summary rejection of NEPCO's proposed treatment of Investment Tax Credits (ITCs). On May 24, 1985, Boston Edison Company (Boston Edison) filed an untimely motion to intervene in this docket, stating that there was good cause for the late filing because it was not served with a copy of NEPCO's filing. The Municipal Customers and Boston Edison raise a variety of cost of service and rate design issues.[5]

On June 6, 1985, NEPCO filed an answer to the Municipal Customers' and Boston Edison's pleadings. While not opposing the motions to intervene, NEPCO opposes summary judgment on the ITC issue. It also opposes a five month suspension or rejection of the filing. It asserts that a one-day suspension is more appropriate. NEPCO asserts that the intervenors' objections to the filing are unwarranted.

On June 11, 1985, the Municipal Customers filed a motion for leave to file a response to NEPCO's June 6 answer. However, the Commission's rules[6] do not allow such an answer. Therefore, we deny the motion.

No interventions were filed in Docket No. ER85-493-000.

On June 27, 1985, NEPCO filed a motion to withdraw its filing in Docket No. ER85-493-000. As grounds for its request, NEPCO states that Narragausett Electric Company will not receive the allocation of power from the New York Power Authority for which the transmission service was needed.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure,[7] the timely motions to intervene make VELCO and Central Vermont parties to the proceeding in Docket No. ER85-475-000 and make the Municipal Customers parties to the proceeding in Docket No. ER85-476-000. Furthermore, we find that good cause exists to grant Boston Edison's untimely intervention in Docket No. ER85-476-000, given its direct interest as a transmission customer in the outcome of this proceeding and the apparent absence of any undue prejudice or delay.

We shall grant NEPCO's motion to withdraw its filing in Docket No. ER85-493-000. To the extent necessary, we shall waive the Commission's regulations so as to allow the withdrawal.

We find that summary disposition is warranted with respect to one aspect of the remaining dockets. In this filing, NEPCO has proposed a variable rate of return formula [8] which is unacceptable for several reasons. The proposed equity return provision provides for equity adjustment based on such things as the percentage increase in the GNP price deflator and a dilution allowance which compensates shareholders for equity sold below market price as well as other indices. NEPCO's use of historical market indicators and average equity premiums is a form of risk premium analysis which is inappropriate.[9] There

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[1] *See* Attachment for rate schedule designations.

[2] 50 FR 20583, 20584 (May 17, 1985).

[3] 50 FR 21343 (May 23, 1983).

[4] The issues raised include: (1) NEPCO's use of a formula for computing a rate of return on equity; (2) a provision which limits VELCO's right to transmit power on NEPCO's facilities to entitlements to be used to serve VELCO's load; (3) the use of a "reserve factor" to adjust VELCO's rate; and (4) alleged lack of specificity as to how the loads for which VELCO will be billed will be measured.

[5] The issues raised include: (1) The formula for computing a rate of return on equity; (2) the treatment of Investment Tax Credits (ITCs); (3) the allocation of Administrative and General (A&G) expense; and (4) an allegedly excessive estimate of support revenues and expenses as a result of including transmission support payments for a unit which is not yet in service.

[6] 18 CFR 385.213(a)(2).

[7] 18 CFR 385.214.

[8] The formulistic equity return is computed to reflect (1) the current weighted average return on three money market indicators: the yield to maturity for Moody's "A" rated Public Utility Bonds; the yield to maturity for 10-year Constant Maturity Treasury Bonds; and the annualized percentage increase in the Gross National Product (GNP) price deflator plus (2) a risk premium equal to the difference between the most recent 20-year average yield for the money market indicators listed above and the most recent 20-year average annual yield for Moody's Electric Utility Common Stocks, including the ten-year growth in share dividends for such stocks. The proposed formula for computation of equity return also contains a provision (dilution allowance) which compensates NEPCO's shareholders for the sale of common equity shares at a market price below book value.

[9] *See* Consolidated Gas Supply Corporation, 24 FERC ¶ 61,046 (July 12, 1983).

is no direct relationship between historical risk premiums and a current cost of equity under constantly changing financial conditions, and NEPCO has not even attempted to demonstrate one. The formula provides that, if any of the indices used are discontinued or modified, NEPCO may substitute an unspecified similar index. The formula provides that, if the resulting return on equity for two consecutive months is lower than the average of returns approved within the most recent twelve months by the state regulatory commissions of the investor-owned utilities reported in the Argus Service Publication, NEPCO may substitute such average return on equity.[10] This adjustment would not only subordinate this Commission's regulation to that of state commissions, but it is also an implicit admission by NEPCO that its risk premium formula determination may not produce a proper return on equity. Finally, market price to book value is already reflected in the market indicators utilized and use of a dilution allowance results in a doubling of costs. As a result of these objections to NEPCO's proposed formula for rate of return, we shall reject the return formula and accept for filing a rate which incorporates a fixed return on common equity of 15.55% (the initial result of the formula).[11] NEPCO shall file an appropriate rate schedule and cost support within 30 days.

Further, we hereby announce our intention to reject all future rate filings which contain a formula rate which automatically adjusts the return on common equity. Automatic adjustment clauses are exceptions to the notice and filing requirements of the Federal Power Act. Even where we have permitted the use of a full cost of service formula, we have not allowed the equity return to be adjusted automatically.[12]

The use of an automatic formula rate for return on equity is inconsistent with our recent generic approach to equity return for electric utilities. In part 37 of our regulations, we have provided for the determination of the average cost of common equity for the jurisdictional operations of electric utilities and a quarterly indexing procedure to update the estimate and establish a benchmark rate of return on common equity for use in individual rate cases.[13] Despite the availability of the quarterly update, the benchmark return on equity used to evaluate a rate is the one which is in effect when a rate filing is made, not a quarterly changing benchmark throughout the duration of the rate. In other words, in RM80–36–000, we thoroughly analyzed our approach to determining rate of return on equity. In light of the fact that the Commission has so recently visited the question and selected a generic approach which does not include automatically adjusting equity returns, we believe it would be administratively wasteful to continue to consider this issue in case by case adjudications. We shall therefore reject filings containing automatic equity clauses at the threshold as patently deficient.[14]

We shall deny the Municipal Customers' request for summary disposition on the ITC issue in Docket No. ER85–476–000. Although NEPCO is not crediting these transmission customers with a ratable portion of ITC, this is not uncommon in the industry in the pricing of nonfirm services such as the tariff PTF service here. Utilities typically share ITC benefits only with their firm customers on whose behalf the investment which qualifies for ITC was undertaken. This in no way results in a flowing of the ITC to retained earnings.

Our preliminary examination of NEPCO's filings and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC § 61,189 (1982), we explained that, where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the rates in these three dockets, as revised with regard to the rate of return in Docket No. ER85–476–000 as ordered below, may not yield substantially excessive revenues. NEPCO requests waiver of the 60-day notice provision in Docket No. ER85–475–000 on the grounds that the services which would be covered by the unexecuted Transmission and Interconnection Agreement between NEPCO and VELCO were previously covered by an Interconnection Contract which expired on May 1, 1985. NEPCO states that the parties are still negotiating about the terms and conditions of the service. This does not constitute good cause for a waiver, however. NEPCO could have filed the unexecuted Agreement earlier. Thus, we shall deny the waiver. Therefore, we shall suspend the rates in Docket Nos. ER85–475–000 and ER85–476–000 for one day from 60 days after filing to become effective on July 2, 1985, subject to refund.

We find that common questions of law and fact may be presented in Docket Nos. 85–475–000 and ER85–476–000. As a result, we shall consolidate those dockets for purposes of hearing and decision.

The Commission orders:

(A) Boston Edison Company's untimely motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Summary rejection is hereby ordered, as noted in the body of this order, with respect to NEPCO's proposed formula for rate of return. NEPCO is hereby directed to submit within 30 days of the date of this order rate schedule amendments incorporating a fixed return on common equity of 15.55% and appropriate cost support.

(C) The Municipal Customer's motion for summary rejection of NEPCO's filing in Docket No. ER85–476–000 is hereby denied.

(D) NEPCO's request in Docket No. E85–475–000 for waiver of the 60-day notice provision is hereby denied.

(E) NEPCO's motion to withdraw its filing in Docket No. ER85–493–000 is hereby granted. The Commission waives its regulations to the extent necessary to permit withdrawal. Docket No. ER85–493–000 is terminated.

(F) NEPCO's proposed rates in Docket Nos. ER85–475–000 and ER85–476–000 are hereby accepted for filing as

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[10] The *Argues Service Publication* lists the rate of return allowances by state commissions for various investor-owned utilities.

[11] We note that in Docket Nos. ER82–599–000 and ER82–600–000, the Commission accepted NEPCO's submission of this equity return formula. *See*, 20 FERC ¶ 26,403; 20 FERC ¶ 61,286 (1982). Acceptance of the filings does not constitute approval, however. 18 CFR 35.4 (1984). In any event, equity financing constituted approximately 10% of total capital in those filings. The impact of the equity return formula on the overall charge, therefore, was minimal. In the present filings, by contrast, 41% of total capital consists of equity. We also note that, on December 19, 1984, the Director of the Commission's Office of Electric Power Regulation accepted, under delegated authority, a filing by NEPCO (Docket No. ER85–75–000) which also contained the equity return formula, but stated that the utility would be required to file a new request for return on common equity as a change in rate in the event the formula produced an increase in return. That action also does not constitute approval and was without prejudice to any subsequent action by the Commission. In light of the significant impact of the equity provision in these filings, and the fact that NEPCO's formula operates in a manner and contains elements contrary to Commission precedent, we find summary disposition of the formula to be appropriate in this proceeding.

[12] The exceptions are noted in n. 11, above.

[13] 50 FR 21802 (1985) to be codified at 18 CFR 37).

[14] *See* 18 CFR 35.5.

modified by summary disposition, and are suspended for one day from 60 days after filing to become effective on July 2, 1985, subject to refund.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of NEPCO's rates.

(H) Docket Nos. ER85-475-000 and ER85-476-000 are hereby consolidated for purposes of hearing and decision.

(I) Subdocket -000 in Docket Nos. ER85-475-000 and ER85-476-000 are hereby terminated, and Docket Nos. ER85-475-001 and ER85-476-001 are assigned to the hearing ordered in paragraph (G).

(J) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within fifteen (15) days from the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Such conference shall be held for purposes of establishing a procedural schedule, includng the submission of NEPCO's case-in-chief. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(K) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

ATTACHMENT.—NEW ENGLAND POWER COMPANY RATE SCHEDULE DESIGNATIONS

Designation	Other party	Description
Docket No. ER85-475-001		
(1) Rate Schedule FERC No. 321 (Supersedes Rate Schedule FERC No. 101).	Vermont Electric Power Company	Transmission and Interconnection Agreement.
(2) Supplement No. 1 to Rate Schedule FERC No. 321.	do	Exhibit A, Non-PTF Delivery Points and Facilities.
(3) Supplement No. 2 to Rate Schedule FERC No. 321.	do	Exhibit B, Non-PTF Rate.
(4) Supplement No. 3 to Rate Schedule FERC No. 321.	do	Exhibit C, PTF Delivery Points.
(5) Supplement No. 4 to Rate Schedule FERC No. 321.	do	Exhibit D, PTF Rate.
(6) Supplement No. 5 to Rate Schedule FERC No. 321.	do	Exhibit F, Interconnections.
Docket No. ER85-476-000		
(7) Second Revised Sheet No. 1 of Schedule II under FERC Electric Tariff, Original Volume No. 3 (Supersedes First Revised Sheet No. 1) and Original Sheet Nos. 1.1-1.7.	Tariff Customers	PTF Rate Provisions and Appendix A (Determination of PTF Rate).

[FR Doc. 85-16060 Filed 7-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-486-000, ER84-571-001 and Docket No. EL85-28-000]

Utah Power & Light Co. and City of Provo, Utah; Order Accepting for Filing and Suspending Rates, Granting Waivers, Noting Intervention, Establishing Hearing Procedures, and Terminating Dockets

Issued: June 28, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa and Charles G. Stalon.

On May 6, 1985, Utah Power & Light Company (Utah) filed: (1) An Interconnection Agreement with Mother Earth Industries, Inc. (Mother Earth); (2) an Interconnected Operation Agreement with the City of Provo, Utah (Provo); and (3) a Transmission Service Agreement with Provo. The agreements provide for Utah to wheel power and energy from Mother Earth to Provo and provide emergency backup service.[1] The contracts were executed on December 20, 1984, and service is expected to commence on or about June 1, 1985. Utah requests waiver of the notice requirements to permit an effective date coincident with the date service commences under the agreements.

On April 29, 1985, Provo attempted to file the same agreements on its own initiative in Docket No. EL85-28-000. Provo attempted to file the agreements on its own initaitive because of its concern that Utah had failed to make a timely filing and that this might jeopardize service.

Notice of Utah's filing was published in the **Federal Register,**[2] with comments due on or before May 28, 1985. Provo filed a timely motion to intervene. Provo requests that the Commission expedite acceptance of Utah's filing, initiate an investigation of the proposed rates, and permit Provo to seek, within 30 days, consolidation of this docket with the proceedings in Docket No. ER84-571-001. Provo states that upon acceptance of the agreement in Docket No. ER85-486-000, it will withdraw its application in Docket No. EL85-28-000. In support, Provo states that the proposed rates may be unjust and unreasonable, but it does not wish to delay the commencement of service under the agreements.

Discussion

Pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 285.214), the timely motion to intervene serves to make Provo a party to this proceeding.

The proposed Interconnection Agreement with Mother Earth provides for the interconnection of Mother Earth's geothermal facility with Utah's transmission system for the purpose of wheeling power and energy to Provo and specifies the associated rights and obligations of the parties. The agreement specifies no rates since these have been incorporated in Provo's agreement with Utah. The agreement states however, that if additional facilities are later deemed necessary due to voltage changes and/or additional tap lines, and if Mother Earth fails within a reasonable time to install the necessary facilities, Utah will do so and Mother Earth will reimburse Utah for the actual costs incurred. Because the proposed Interconnection Agreement includes no rate provisions, and the contractual provisions do not appear to be unreasonable, we shall accept the agreement, without suspension or hearing, to become effective on the date service commences.

Utah characterizes its submittals for Provo as an initial rate. Utah, however, presently wheels power and energy for

[1] *See* Attachment for affected customers and rate schedule designations.

[2] 50 FR 20820 (1985).

Provo's entitlement in Hunter Unit No. 1 under Rate Schedule FERC No. 125. Utah's submittal therefore represents the provision of additional services to Provo, and, thus, a change in rate subject to the Commission's suspension and refund authority under the Federal Power Act.

With respect to the two agreements applicable to Provo, our preliminary review of Utah's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept Utah's rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our preliminary examination indicates that Utah's rates for service to Provo may produce substantially excessive revenues. In ordinary circumstances, we would suspend Utah's rates for the maximum statutory period. However, we note that Provo desires service to commence as soon as possible. We believe therefore that a nominal suspension period is appropriate. Further, in light of the affected customer's request, we find that good cause exists to waive the notice requirements. Accordingly, we shall suspend Utah's rates for service to Provo, to become effective upon the commencement of service, subject to refund.

We find that common questions of law and fact may be presented in Docket No. ER84–571–001. As a result, we shall consolidate this docket with No. ER84–571–001 for purposes of hearing and decision. Because the relief sought by Provo in Docket No. EL85–28–000 was to direct Utah to file the agreements submitted in Docket No. ER85–486–000, the former docket has become moot. We shall therefore terminate Docket No. EL85–28–000.

The Commission orders:

(A) Utah's request for waiver of the notice requirements is hereby granted.

(B) Utah's proposed Interconnection Agreement with Mother Earth is hereby accepted for filing, to become effective, without suspension or hearing, on the date service under the agreement commences.

(C) Utah's rates for service to Provo are hereby accepted for filing and suspended, to become effective on the date service under the agreements commences, subject to refund.

(D) Utah shall advise the Commission within fifteen (15) days of the date service commences under the agreements with Mother Earth and Provo.

(E) Pursuant to authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a)— of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Utah's rates for service to Provo.

(F) Docket Nos. ER85–486–000 and EL85–28–000 are hereby terminated. The evidentiary proceedings ordered herein shall be assigned Docket No. ER85–486–001.

(G) Docket Nos. ER85–486–001 and ER84–571–001 are hereby consolidated for purposes of hearing and decision.

(H) The administrative law judge designated to preside in Docket No. ER84–571–001 shall determine procedures best suited to accommodate consolidation of this docket with the pending proceeding.

(I) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Lois D. Cashell,

Acting Secretary.

ATTACHMENT—UTAH POWER & LIGHT COMPANY, DOCKET NO. ER85–486–000

[Rate Schedule Designation]

Designation	Other party	Description
(1) Rate Schedule FERC No. 134	Mother Earth Industries, Inc	Interconnection Agreement.
(2) Supplement No. 1 to Rate Schedule FERC No. 134	....do	Exhibits A-E.
(3) Rate Schedule FERC No. 135	City of Provo, Utah	Interconnected Operation Agreement.
(4) Supplement No. 1 to Rate Schedule FERC No. 135	....do	Exhibit A.
(5) Supplement No. 2 to Rate Schedule FERC No. 135	....do	Service Schedule RS-RP, Emergency Capacity.
(6) Rate Schedule FERC No. 136	....do	Transmission Service Agreement.
(7) Supplement No. 1 to Rate Schedule FERC No. 136	....do	Attachment C, pl Stated Monthly Rate.

[FR Doc. 85–16062 Filed 7–3–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EF85-2011-000 and EF85-2021-000]

United States Department of Energy—Bonneville Power Administration; Order Granting Interim Approval of Rates, Granting Interventions, Denying Motions To Reject, and Denying Motion for Partial Summary Disposition

Issued June 28 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgians Sheldon, A.G. Sousa and Charles G. Stalon.

On May 1, 1985, the Bonneville Power Administration (BPA) filed proposed wholesale power and transmission rates in Docket Nos. EF85–2011–000 and EF85–2021–000 respectively. BPA requests interim approval of these rates as of July 1, 1985, pursuant to section 7(i)(6) of the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act), 16 U.S.C. 839e(i)(6), and the Commission's Rules for the Confirmation and Approval of the Rates of the Bonneveille Power Administration, 18 CFR Part 300. In addition, BPA reqeusts final confirmation and approval of these rates pursuant to section 7(a)(2) of the Regional Act, 16 U.S.C. 839e(a)(2), for the period July 1, 1985, through June 30, 1990.

BPA also requests extension of the Commission's approval of the Hanford Contract Rate Formula and the ET–2, UFT–2, FPT–83.3, TGT–1 and UFT–83 transmission rates. BPA states that the Hanford rate and the RTGT–1 and UFT83 wheeling rate schedules are formula rates and asks approval for these rates through June 30, 1990. BPA seeks approval for the ET–2, UFT–2 and FPT–83.3 rate schedules through October 1, 1987, noting that these rates are referenced in existing agreements, and that they are not subject to ajdustment by BPA at present.

BPA asserts that the proposed rates would provide for an overall decrease in power revenues of approximately $50 million and an overall decrease in transmission revenues of approximately $21 million in comparison with revenues which would have been collected under current rates in Fiscal year 1987. Some of the proposed rates are higher than

rates currently in effect for the same service, while others are lower than rates currently in effect.

Notice of the filing was published in the Federal Register [1], with comments due on or before May 28, 1985. Seventeen separate timely pleadings were filed by individual petitioners or groups of petitioners.[2]

All petitioners have requested intervenor status in these proceedings. In the comments filed, a number of petitioners contend that BPA's proposed rates do not comply with the statutory standards set forth in the Regional Act. As a result, some of the petitioners have requested that the Commission disapprove BPA's proposed rate schedules.

Southern California Edison Company, San Diego Gas & Electric Company, Los Angeles Department of Water and Power, and the Cities of Glendale, Burbank and Pasadena, California (Southern California utilities) filed separate joint motions to intervene in Docket Nos. EF85–2011–000 and in EF85–2021–000. In their motion to intervene in Docket No. EF85–2011–000, the Southern California utilities urge that the Commission not grant interim approval to BPA's proposed rates applicable to the Southern California utilities. In particular, the Southern California utilities claim that BPA's nonfirm NF–85 rate is not cost-based, that the NF–85 rate will be discriminatory in effect, that it does not adequately define nonfirm energy and that the NF–85 rate schedule allows nonfirm energy to be sold under firm energy rate schedules. The Southern California utilities challenge BPA's SS–85 shared-the-savings rate schedule as contrary to applicable precedent and statutes and without record justification. The Southern California utilities also challenge BPA's SE–85 and SP–85 rate schedules as not properly cost-based and based on inadequately defined terms. The Southern California utilities contend that BPA should be required to file its Intertie Access Policies (dealing with the Pacific Northwest Intertie Line) before any approval, interim or otherwise, is given to BPA's proposed rates. Lastly, the Southern California utilities also ask for an opportunity to file further comments before the Commission grants final approval to any of BPA's proposed rates or before the Commission orders a hearing on BPH's 7(k) rates. In their motion to intervene in Docket No. EF85–2021–000, the Southern California utilities allege an interest in the outcome of the docket but do not raise specific issues.

Pacific Gas and Electric Company (PG&E) filed separate motions to intervene in the two BPA dockets. In its motion to intervene in docket No. EF85–2011–000, PG&E urges that the Commission reject BPA's proposed extraregional surplus and nonfirm rates because BPA is allegedly attempting to subsidize rates to customers in the Pacific Northwest from its sales to customes outside that region to the extent that the extraregional rates are in excess of actual costs for such service. PG&E also urges that BPA's proposed nonfirm and surplus firm rates be set for hearing pursuant to section 7(k) of the Regional Act.

The California Energy Commission (CEC) urges that the Commission deny interim approval of all of BPA's proposed rates and instead proceed directly to a full review of the proposed rates pursuant to sections 7(a)(2) and 7(k) of the Regional Act. The CEC asserts further that the Commission reject all of BPA's proposed rates because the review of BPA's rates for service in the Pacific Northwest is intertwined with the question of whether BPA's rates for service outside the Pacific Northwest are proper. The CEC also urges that interim approval of BPA's proposed rates for extraregional sales would seriously undermine the cost-effectiveness of a proposed new transmission line between the Pacific Northwest and California that, if completed, would have significant benefits for both regions. The CEC further urges that the Commission should deny interim approval of BPA's proposed shared-the-savings SS–85 rate even if the Commission decides to give interim approval to the proposed NF–85 rate. The CEC contends that BPA has failed to establish the SS–85 rate on a record basis as required by the Regional Act and that BPA has not provided answers to a number of questions as to how BPA will administer the SS–85 rate, also that interim approval is not justified. The CEC also alleges that BPA has failed to provide record basis for the inclusion of the costs of the residential exchange program in the costs on which the Standard rate of the NF–85 rate schedule is based. The CEC makes the same contention with respect to BPA's inclusion of costs of the Washington Public Power Supply System (WPPSS) in its nonfirm rates.

The Association of Public Agency Customers (APAC), made up of industrial customers of various of BPA's publicly-owned wholesale customers, filed motions to intervene in Docket Nos. EF85–2011–000 and EF85–2021–000. In its motion to intervene in Docket No. EF85–2011–000, APAC urges the Commission to deny interim approval of BPA's proposed wholesale power rates on the ground that these rates do not comply with the requirements of the Regional Act. In an accompanying motion APAC asks the Commission to deny interim approval of the wholesale power rates or, in the alternative, to disapprove summarily BPA's proposed wholesale firm power rates. APAC bases its requests on various alleged defects in BPA's development of its wholesale firm power rates, including use of 1939 water conditions in computing the amount of the revenue credit from nonfirm sales. APAC contends that BPA's use of these historically low water conditions in computing the revenue credit to the firm energy costs from nonfirm sales is contrary to the provisions of the Regional Act, and that the firm wholesale rates are therefore *per se* unlawful

APAC, in its motion to intervene in Docket No. EF85–2021–000, alleges an interest in the outcome of the proceeding and urges generally that BPA's transmission rates should be set at a level that will recover the costs incurred by BPA in providing transmission service, so that no cross-subsidization may occur.

The Association of Northwest Gas Utilities (ANGU) moved to intervene in Docket No. EF85–2011–000. ANGU urges that BPA's proposed nonfirm rates, particularly the NF–85 and SS–85 rates, are not high enough to meet the statutory standards governing approval of BPA's rates and that the nonfirm rates, other than the NF–85 Standard Rate, will result in unjust discrimination, predatory pricing, and violation of federal antitrust policies.

BPA's Direct Service Industrial customers (DSIs) filed motions to intervene in Docket Nos. EF85–2011–000 and EF85–2021–000. In their motion in EF85–2011–000, the DSIs generally allege that although the proposed rates are in some cases excessive, the fact that some of the proposed rates represent decreases from rates presently in effect, and the fact that the proposed rates will be subject to refund if put into effect on an interim basis, justify putting the proposed rates into effect on an interim basis. The DSIs urge that a further reasonable opportunity to comment on the proposed rates be given before the Commission addresses the question of granting final approval to the proposed rates. The DSIs' motion to intervene in Docket No. EF85–2021–000 alleges an

[1] 50 *FR* 19443 (1985).

[2] See Attachment A for a complete list of intervenors.

interest in the question of BPA's transmission rates and the allocation of BPA's transmission costs. The Hanna Nickel Smelting Company, a DSI customer, filed a separate motion to intervene in Docket No. EF85–2011–000 in which it alleges an interest in the outcome of the proceeding but does not raise any specific issues with regard to BPA's proposed rates.

Idaho Power Company, Pacific Power & Light Company, Portland General Electric Company, Puget Sound Power & Light Company, Utah Power & Light Company, and Washington Water Power Company all filed motions to intervene in Docket Nos. EF85–2011–000 and EF85–2021–000, generally alleging that the BPA Administrator's decision justifying BPA's proposed rates contains substantive and procedural errors, that BPA's rates in both dockets are erroneously developed, and that they are not cost-justified. Pacific Power & Light Company also alleges that BPA's proposed rates impose rate schedule provisions not authorized by contract.

The Public Generating Pool, made up of Pacific Northwest municipal electric utilities with their own generating capacity, filed a motion to intervene in Docket Nos. EF85–2011–000 and EF85–2021–000 in which it alleges that BPA's nonfirm rates should be developed on a share-the-savings basis and that BPA's rates were erroneously developed. The Public Power Council, made up of various BPA publicly and cooperatively-owned customers, filed a motion to intervene in Docket No. EF85–2011–000 in which it alleges an interest in the outcome of the proceeding but does not raise any specific issues. The Western Public Agencies Group, made up of publicly-owned utilities in Washington and Oregon that depend primarily upon BPA for electric service, moved to intervene in Docket Nos. EF85–2011–000 and EF85–2021–000, alleging an interest in the outcome of the proceedings but not raising any specific substantive issues.

BPA filed a response to the arguments in the motions to intervene of CEC and the Southern California utilities that BPA's proposed rates should be denied interim approval. BPA states that the Commission need not hold a hearing on the proposed rates under section 7(k) of the Regional Act before granting interim approval to them. BPA cites a previous Commission order [3] and the availability of refunds in support of putting the proposed rates into immediate effect on an interim basis. BPA also cites the provisions of the Regional Act as imposing specific ratemaking guidelines on BPA as of July 1, 1985, and thus requiring interim approval of BPA's proposed rates as of that date. BPA also contends that the Southern California utilities' criticisms of the SP–85 and SE–85 rates are addressed to rate design issues and thus beyond the scope of the Commission's review of BPA's firm rates. BPA also cites a prior Commission order [4] in support of the proposition that no reason has been shown to believe that BPA will in fact sell nonfirm energy under a firm energy rate schedule, with the result that there has been no basis shown to make firm energy rate schedules the subject of section 7(k) proceeding. BPA also alleges that it has provided sufficiently specific implementation criteria for the SP–85 and SE–85 rate schedules, that challenges to BPA implementation of its rates are outside the jurisdiction of the Commission, that its proposed nonfirm energy rates do not undermine the cost-effectiveness of the proposed Northwest-California transmission line, that its shared-savings SS–85 rate is supported by the record, and that its NF–85 rate schedule is specifically designed to recover the costs of producing nonfirm energy. In particular, BPA asserts, the NF–85 costs properly include the costs of the residential exchange program and BPA's cost for the WPPSS projects. BPA also asserts that its NF–85 nonfirm energy rate schedule is not discriminatory. With respect to intertie Access Policy, BPA contends that its development is not a ratemaking action, that it is therefore not subject to Commission review, that the policy is the subject of a pending declaratory order docket, Docket No. EL85–6–000, and that the policy has recently been affirmed on judicial review.[5]

In response to the ANGU motion to intervene, BPA asserts that its proposed rates are sufficient to ensure repayment of federal investments and that they do not result in unjust discrimination, predatory pricing or violations of the antitrust laws. In response to APAC's contentions regarding BPA's use of 1939 water levels in developing its costs and sales, BPA contends that it was necessary to use the assumption of 1939 water conditions in order to provide a sufficient protection against rates so low as not to recover BPA's costs and, hence, in violation of the requirement that BPA's rates be consistent with sound business principles.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make the movants parties to this proceeding.[6]

As noted above, BPA has requested approval of these rates on a final basis as of July 1, 1985. In the alternative, BPA seeks interim approval as of that date.

Due to the complexities of the filing, we are unable to make a determination at this time with respect to BPA's request for final approval. Therefore, our current review will be limited to consideration on an interim basis which, necessarily, is a more limited review process than the review of rates for confirmation and approval on a final basis.

The Commission's regulations, in Part 300, set forth the standards to be used in considering appropriate action with respect to a request by the Administrator for interim approval of rates. Our initial review suggests that the wholesale power and transmission rate schedules proposed in the filing are developed at a level which, assuming accurate cost and revenue estimates and provided that all amortization payments are made on a timely basis, would produce the needed revenues to allow BPA to meet its financial obligations. Thus, on its face, BPA's system power and transmission rates appear to comply with the applicable provisions of the Regional Act. This observation, of course, is based upon the limited analysis possible without the benefit of more comprehensive public comments and an in-depth Commission analysis. We shall deny at this time the requests for summary rejection of various BPA rates. We are not persuaded by the information provided that the later availability of refunds will constitute an inadequate remedy for the concerns raised. These findings, however, are without prejudice to our further consideration of the issues raised in the pleadings and, if appropriate, disapproval of BPA's rates at a later date. A more detailed review of BPA's proposed rates will be conducted for purposes of determining whether the rates should be confirmed and approved on a final basis. We shall grant BPA's request for approval of the proposed wholesale power and transmission rates

[3] U.S. Dep't of Energy—Bonneville Power Admin., 20 FERC ¶ 61,389 at 61,794 (1982).

[4] U.S. Dep't of Energy Bonneville Power Admin., 23 FERC ¶ 61,161 at 61,354 (1983).

[5] *Department of Water and Power of the City of Los Angeles* v. *BPA*, No. 84–7618 (9th Cir., April 24, 1985).

[6] We find good cause to grant the motion of the Western Public Agencies Group to intervene in Docket Nos. EF85–2011–000 and EF85–2021–000, given that it was filed only one day out-of-time.

on an interim basis until the Commission acts to approve or disapprove the rates on a final basis.

In light of the limited time in which parties were permitted to file comments on BPA's filing, we shall allow additional periods during which parties may comment and respond to initial comments on any and all issues related to final confirmation and approval of BPA's rates. In particular, the parties are invited to comment on the need for a section 7(k) hearing before this Commission.

The Commission orders:

(A) The untimely motion to intervene of the Western Public Agencies Group is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) The motions to reject BPA's proposed rates or to deny interim approval or, in the alternative, to disapprove summarily of certain BPA proposed rates are hereby denied without prejudice.

(C) BPA's proposed wholesale power and transmission rates are hereby permitted to be placed into effect on an interim basis, subject to refund with interest as set forth in Part 300 of the Commission's regulations, pending final confirmation and approval, or disapproval, of BPA's proposed wholesale power and transmission rates and charges.

(D) Within thirty (30) days of the date of this order, all parties who wish to do so shall file additional comments regarding final confirmation and approval of BPA's proposed rates. The parties should specifically delineate in their comments any and all issues that they feel should be set for hearing under section 7(k) of the Regional Act, in light of the Commission's interpretation of the Regional Act set forth in its September 1, 1982 order resolving the scope of the Commission's jurisdiction (20 FERC ¶ 61,292). Parties may file comments in response to initial comments within thirty (30) days after the date on which initial comments are due. All timely initial and responsive comments will be considered by the Commission in determining the ultimate disposition of BPA's proposed rates.

(E) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-16061 Filed 7-3-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a $5,148.33 consent order fund to members of the public. This money is being held in escrow following the settlement of any enforcement proceeding involving City Service, Inc. of Kalispell, Montana (Case No. HEF-0050).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to City Service, Inc. Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. All comments should conspicuously display a reference to Case No. HEF-0050.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Office of Hearings and Appeals, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a consent order entered into by City Service, Inc. of Kalispell, Montana and the DOE which settled possible regulatory violations in the firm's sales of motor gasoline during the consent order period, October 1, 1979 through December 31, 1979.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the escrow account funded by City Service pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of City Service motor gasoline during the consent order period may file claims for refunds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals located in Room 1E-234, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Dated: June 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 25, 1985.

Name of Firm: City Service, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF-0050.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who were injured by alleged or adjudicated overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with City Service, Inc. (City Service) of Kalispell, Montana. City Service is a reseller-retailer who sells motor gasoline in the state of Montana. The firm was therefore subject to the DOE price regulations set forth in 10 CFR 212.93. An ERA audit of City Service's operations during the period October 1, 1979 through December 31, 1979 revealed possible violations of the Mandatory Petroleum Price Regulations. In order to settle all claims and disputes between City Service and the DOE regarding the firm's compliance with the DOE price regulations in sales of motor gasoline during the audit period, the firm

entered into a consent order with the DOE on July 9, 1980. The consent order covers City Service's sales of motor gasoline during the three-month audit period (hereinafter the consent order period). In executing the consent order, City Service agreed to refund $1,892.17 directly to its retail customers and to remit $5,148.33 to the DOE in settlement of its potential liability for alleged pricing violations in transactions with its wholesale customers. *See* Consent Order ¶¶ 6 and 7. This Proposed Decision and Order concerns the distribution of the $5,148.33 that the firm remitted to the DOE, plus the interest which has accrued on that money.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily persons who were injured by alleged or adjudicated violations, or is unable to ascertain the amounts of such persons' injuries. After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the City Service consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

City Service has identified its wholesale customers who purchased motor gasoline from the firm during the consent order period and thus may have been injured by City Service's alleged pricing practices. These customers are listed in the Appendix to this Proposed Decision and Order. We believe that these were the parties who were most likely injured by City Service's pricing practices that were alleged to be in violation of the price regulations. These firms are resellers (wholesalers and retailers) of the motor gasoline purchased from City Service. In prior refund proceedings, we have generally required resellers of a consent order firm's products to demonstrate that during the consent order period they would have maintained their prices for the petroleum products at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased the product from the consent order firm, market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition, the reseller is generally required to show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank does not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

As in many prior special refund cases, we propose to adopt certain presumptions. First, we will adopt a presumption that the effects of the alleged price violations were dispersed equally in all sales of motor gasoline sold by City Service during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we propose to adopt a presumption of injury with respect to small claims. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. *See* 10 CFR 205.282(e). The presumptions we propose to adopt in this case are used to permit reseller claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata or volumetric refund presumption assumes that the alleged overcharges were spread equally over all gallons of motor gasoline marketed by City Service to its wholesale customers. In the absence of better information, this presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. A volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of products sold by the consent order firm during the consent order period. In the present case, the volumetric refund amount is $0.011727 per gallon, exclusive of interest ($5,148.33 consent order fund divided by 439,000 gallons of motor gasoline sold at wholesale during the consent order period).[1]

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the City Service consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in prior refund decisions, there may be considerable expense involved in gathering the data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. The use of the small claims presumption is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants purchased motor gasoline from City Service and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claims presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumption we propose to adopt, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[2]

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[1] However, we recognize that the impact on an individual purchaser could have been greater than this volumetric refund amount, and we propose that any purchaser be allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the amount determined using the volumetric presumption. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,074 at 88,233–34 (1984); *Sid Richardson Carbon & Gasoline Co., and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,184 (1984) and cases cited therein.

[2] We propose that resellers who made only spot purchases from City Service be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Continued

Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a theshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the maximum refund amount for any one claimant will be fairly low, and the time period of the consent order was distant, we find that the establishment of a presumption of injury for all claims of $5,000 is reasonable. *See Texas Oil & Gas Corp.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

IV. Distribution of Consent Order Funds

Although the ERA audit files do not identify all of City Service's customers or the amount of money they should receive in a Subpart V proceeding, City Service has recently provided the OHA with the addresses of its wholesale customers during the consent order period as well as the approximate gallons of City Service motor gasoline purchased by each of those customers. Since this information appears accurate and complete and the ERA audit files do not identify any other wholesale customers of City Service, we believe it is appropriate to use this information to determine eligibility for refunds in this proceeding. Accordingly, we propose to limit eligibility for refunds in this proceeding to those firms identified by City Service and listed in the Appendix to this Proposed Decision. We also propose to use the designated volumes in calculating refunds. *Cf. Marion Corp.*, 12 DOE ¶ 85,014 (1984) (refunds to customers identified in NOPV). We specifically solicit comments on the accuracy of the volumes stated in the Appendix, as well as comments regarding our proposal to use these amounts. We note that in the event we elect to use the volumes listed in the Appendix, we propose to require the claimants to certify the accuracy of their volumes.

Refund applications in this proceeding should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process in the Federal Register and to notify the firms listed in the Appendix of this proceeding. In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by City Service, Inc. pursuant to the consent order executed on July 9, 1980, will be distributed in accordance with the foregoing decision.

APPENDIX.—WHOLESALE CUSTOMERS OF CITY SERVICE, INC.: HEF-0050

Customer	Approximate volumes
Robert Berry, Main & 4th Street, Kalispell, MT 59901	50,000
Lloyd Mangnall, 437 Electric Avenue, Bigfork, MT 59902	50,000
Myrtle Smith, Neighborhood Store, Creston, MT 59902	12,000
Ron Millard, P.O. Box 436, Whitefish, MT 59937	80,000
Orvel Clarke, Main & Center Street, Kalispell, MT 59901	96,000
Slim Hoylman, 425 W. Utah, Kalispell, MT 59901	75,000
Richard Lawrence, Somers, MT 59932	15,000
Lakeside Mercantile, Lakeside, MT 59922	15,000
Lynn Hadley, Marion, MT	6,000
Jim Brown, Plains, MT 59859	40,000

[FR Doc. 85-16013 Filed 7-3-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals; DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $113,853 in consent order funds to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Pasco Petroleum Company, Inc. a reseller-retailer of petroleum products, located in Phoenix, Arizona.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0146.

FOR FURTHER INFORMATION CONTACT: Angela Foster, Office of Hearings and Appeals, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Pasco Petroleum Company, Inc. (Pasco). The Pasco consent order settled alleged pricing violations in the firm's sales of motor gasoline to customers during the period November 1, 1973 through April 30, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Pasco pursuant to the consent order. In this case, the DOE has tentatively decided that the consent order funds should be distributed in two stages. In the first stage, OHA proposes that a portion of the consent order fund should be distributed to seven first purchasers after each has filed an application for refund. The purchasers were identified by a DOE audit and were allotted funds based on presumptions of injury which the DOE has utilized in past proceedings. However, applications for refund will also be accepted from purchasers not identified by the DOE audit. In the event that money remains in the Pasco escrow account after all first-stage claims have been disposed of, the DOE will determine an alternative plan for distributing these funds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the

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Vickers, 8 DOE at 85,396-97. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that it was not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimant who was a spot purchaser must submit additional evidence to establish that it was unable to exercise discretion as to where and when it made the purchase(s) on which its refund claim is based.

proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: June 24, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 24, 1985.

Name of Firm: Pasco Petroleum Co., Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0146.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable to readily identify those persons who likely were injured by alleged overcharges or to readily ascertain the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1982), *and Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with the consent order which it entered with Pasco Petroleum Co., Inc. (Pasco). Pasco is a "reseller" of "covered products" as those terms were defined in 10 CFR 212.31, and is located in Phoenix, Arizona. A DOE audit of the firm's records revealed possible violations of the Mandatory Petroleum Price Regulations with respect to sales of motor gasoline during the period November 1, 1973 through April 30, 1974 (audit period). In order to settle all claims and disputes between Pasco and the DOE regarding the firm's sales of motor gasoline during the audit period, Pasco and the DOE entered into a consent order on September 1, 1981. The consent order refers to ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, the consent order states that Pasco does not admit that it committed any such violations. Finally, according to the Pasco consent order, the alleged overcharges affected two classes of customers, and Pasco agreed to place $ 113,853, which includes interest to date of deposit, in an escrow account for DOE to distribute to these two groups of purchasers. Of the funds which Pasco placed in the escrow account, $3,638 represents sales made to the firm's wholesale customers, and $110,215 represents sales made to its retail customers through company-owned stations. The consent order funds were paid in full on August 27, 1981. This Decision concerns the distribution of the consent order funds that were deposited in the Pasco escrow account, plus accrued interest to date.

II. Proposed Refund Procedures

The purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of alleged or actual violations of the DOE regulations. 10 CFR Part 205, Subpart V. In order to effect restitution in this proceeding, we have determined to rely in part on the information contained in the ERA audit files. This approach is warranted based upon our experience in prior Subpart V cases where all or most of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.,* 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a more precise determination with respect to the identity of the allegedly overcharged parties is possible.

A. Refunds to Identified Purchasers

During the DOE's audit of Pasco, seven wholesale purchasers were identified by ERA as having allegedly been overcharged. We know that the DOE audit files do not necessarily provide conclusive evidence as to the identity of all possible refund recipients or the refund that may be appropriate. However, the information contained in the audit files may reasonably be used for guidance. *See Armstrong & Associates/City of San Antonio,* 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion,* we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned either among the customers identified by the audit, or to their downstream purchasers. *See, e.g., Bob's Oil Co.,* 12 DOE ¶ 85,024 (1984); *Brown Oil Co.,* 12 DOE ¶ 85,028 (1984); *and Reinhard Distributors, Inc.,* 12 DOE ¶ 85,137 (1984). The first purchasers identified by the audits, along with the respective shares of the settlement amount allotted to each by ERA, are listed in the Appendix to this decision.

Identification of first purchasers is only the initial step in the distribution process. We must also determine whether these first purchasers were actually injured, or whether any or part of the alleged overcharges were passed on. In addition to the information in the record at this time, we propose to adopt certain presumptions in order to determine a purchaser's level of injury and thereby distribute the escrow accounts in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in this case are used to permit claimants to participate in the refund process without disproportionate expense, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund procedures, in this case we propose to adopt a presumption of injury with respect to small claims.

There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expense involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure certainly can be time-consuming and expensive. In the case of small claims, the cost to the firm

of gathering this factual information, and the cost to OHA of analyzing it, may exceed the expected refund amount. Failure to adopt simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows OHA to process a large number of routine refund claims quickly, and to use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Pasco and were in the chain of distribution where the alleged overcharges occurred. Therefore, they were affected by the alleged overcharges, at least, initially. The presumption eliminates the need for a claimant to submit, and the OHA to analyze, detailed proof of what happened downstream of that initial impact.

Under the small claim presumption which we propose to adopt, a claimant who is a reseller or retailer would not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Other refund decisions have expressed the threshold either in terms of purchase volumes or dollar amounts. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not to exceed the amount of the refund to be gained. In this case, where the consent order fund is small, the refund amount is fairly low, and the time period of the consent order, is many years past, establishing a threshold of $5,000 would be reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein. After analysis of the information in the record, it appears that all of Pasco's customers listed on Appendix A made small purchases of the firm's products.

On the basis of the considerations discussed above, we propose to distribute a portion of the escrow funds to the wholesale purchasers listed in Appendix A in the amounts specified, plus accrued interest to date. The share of the escrow fund which the listed purchasers in Appendix A may may receive represents 30% of the amount each was allegedly overcharged, and is consistent with the terms of the Pasco consent order, which settled for 30% of the total amount of alleged overcharges identified by the audit. In order to actually receive a refund each customer will still be required to file an application for refund. (*See* discussion *infra*).

B. Refunds To Other Purchasers

As discussed above, this Decision concerns the distribution of $113,853.00 that Pasco deposited into the escrow account, plus accrued interest to date. Since the refunds tentatively allotted to identified wholesale purchasers total only $3,638, the remaining portion of the Pasco consent order funds may be distributed among purchasers other than those identified by the ERA audit, and repurchasers, who may have been injured by the alleged overcharges. To assist other potential claimants in deciding whether to apply for a refund, we propose to utilize the small claim presumption discussed above and, in addition, to adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Pasco during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the pro rata amount determined by the volumetric presumption. *See, e.g., Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

Using a volumetric approach in this proceeding means that a portion of the Pasco consent order amount would be allocated to each gallon of product which a successful claimant purchased from Pasco. The average per gallon refund, or volumetric refund amount, in this proceeding is $0.004093 per gallon.[1]

Potential applicants that were not identified by the ERA audit of Pasco may use this volumetric figure to estimate the refund to which they may be entitled. Previous experience with Subpart V proceedings indicates that to the extent such other purchasers come forward as first-stage refund claimants, they would be either resellers (including retailers) or end-users. As we stated above, in order to qualify for a refund, resellers generally would be required to establish that they absorbed the alleged overcharges. However, those reseller claimants applying for a refund under $5,000 will not be required to demonstrate injury. *See* discussion, *supra*.

In addition to the presumptions we are adopting, we are making a finding that end-users of ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharge settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984) and cases cited therein. We have concluded that end-users of Pasco petroleum products need only document their purchase volumes from Pasco to make a sufficient showing that they were injured by the alleged overcharges. If additional meritorious claims are filed, we will adjust the figures listed in the Appendix accordingly. Actual refunds will be determined only after analyzing all appropriate claims.[2]

Finally, we propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the modest benefits of restitution in those situations. *See, e.g.,*

[1] This per gallon factor is computed by dividing the $113,853.00 available for distribution under the Pasco consent order by 27,813,597 gallons, which represents Pasco's total sales of all covered products during the consent order period.

[2] Purchasers identified in the ERA audit of Pasco as having allegedly been overcharged may also submit information to show that they are entitled to larger refunds than those indicated in Appendix A.

Uban, supra at 85,225. *See also* 10 CFR 205.286(b).

In order to receive a refund, each claimant will be required either to submit a schedule of its monthly purchases of motor gasoline from Pasco, or to submit a statement verifying that it purchased motor gasoline from Pasco and is willing to rely on the data in the audit file. Claimants must indicate, as well, whether they have previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying the Pasco proceeding. Purchasers not identified by the ERA audit will be required to provide specific information concerning the date, place, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

III. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage refund procedure is completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Pasco Petroleum Co., Inc. pursuant to the consent order executed on September 1, 1981, will be distributed in accordance with the foregoing decision.

APPENDIX A.—PASCO PETROLEUM COMPANY, INC.

First purchasers	Portion of settlement amount [1]
Quick Petroleum Company, 2922 W. Mariposa, Phoenix, Arizona 85017	$934
Brennan Petroleum Company, 202 E. Southern, Mesa, Arizona 85202	22
Gas-O-Tron, 6335 N. 7th Street, Phoenix, Arizona 85014	22
Shepherd Bro's., 2724 W. Glendale, Phoenix, Arizona 85021	22
Harry Jordan, Box 4, Wittmann, Arizona 85361	42
Whiting Bro's., 3301 N. Haydn, Scottsdale, Arizona 8523	22
Herb Eads, Box 41, Lake Havasu City, Arizona 86403	2,573

[1] Does not include interest. Actual refunds will include interest which has accrued on these amounts since DOE received the Pasco consent order's funds on August 27, 1981.

[FR Doc. 85-16014 Filed 7-3-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a total of $34,986.99 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving GGC, Inc. of Hobbs, New Mexico (Case No. HEF-0076) and Goodman Oil Company of Boise, Idaho (Case No. HEF-0082).

DATE: AND ADDRESS: Comments must be filed within 30 days of publications of this notice in the **Federal Register** and should be addressed to either the GGC, Inc. or Goodman Oil Company Consent Order Proceeding Office, of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. All comments should conspicuously display a reference to the applicable case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to two consent orders entered into by the DOE and GGC, Inc, of Hobbs, New Mexico and Goodman Oil Company of Boise, Idaho, which settled possible regulatory violations in the firms' sales of motor gasoline during their respective consent order periods, September 1, 1979 through July 31, 1980 and July 25, 1979 through December 31, 1979.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the escrow accounts funded by GGC and Goodman pursuant to the consent orders. The DOE has tentatively established procedures under which purchasers of motor gasoline from the consent order firms during the consent order period may file claims for refunds. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of these comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: June 26, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 26, 1985.

Names of Firms: Zia Fuels (GGC Corp.) and Goodman Oil Company.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0076 and HEF-0082.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. See 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable readily to ascertain the persons who were injured or the amounts that such persons may be eligible to receive as a result of enforcement proceedings. *See Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982). For a more detailed discussion of Subpart V, see

Office of Enforcement, 8 DOE ¶ 82,597 (1981). Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed Petitions for the Implementation of Special Refund Procedures in connection with two consent orders, entered into with Zia Fuels (GGC Corp.) (GGC) of Hobbs, New Mexico on November 2, 1980 [1] and Goodman Oil Company (Goodman) of Boise, Idaho on September 2, 1981.

I. Background

GGC and Goodman both sell motor gasoline to other motor gasoline marketers (resellers and retailers) and in bulk to commercial and farm accounts (end-users). GGC and Goodman were therefore reseller-retailers subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212.

DOE audits of the firms' operations revealed possible regulatory violations with respect to the firms' pricing of motor gasoline. In order to settle all claims and disputes concerning GGC and Goodman's compliance with the DOE price regulations in sales of motor gasoline during their respective consent order periods, the firms and the DOE executed consent orders whereby the firms agreed to remit the alleged overcharges to the DOE for later disbursement. The consent orders refer to the DOE's allegations of regulatory violations, but note that no findings of violation were made. Additionally, the consent orders state that the firms do not admit that they committed any such violations. The consent order amounts and periods are set forth below:

Firm	Escrow amount	Consent order period
GGC	[1] $25,420.99	Sept. 1 1979 to July 31, 1980.
Goodman	9,566.00	July 25, 1979 to Dec. 31, 1979.

[1] This amount represents the $23,748.00 consent order amount plus $1,672.99 interest which accrued prior to GGC's completion of its payments.

According to information in the ERA files regarding these firms, GGC sold motor gasoline in the states of New Mexico and Texas, and Goodman sold motor gasoline in the states of Idaho, Washington, and Oregon.[2] This Proposed Decision concerns the distribution of the funds that were deposited in the escrow accounts, plus accrued interest.

II. Jurisdiction

The Subpart V procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. After reviewing the records in this proceeding, we have concluded that it is difficult to identify potentially injured parties and to ascertain readily the extent to which such parties were injured by GGC and Goodman's alleged pricing practices. Under these circumstances, Subpart V provides a useful mechanism for devising a procedure to effect restitution. The OHA therefore proposes to grant the ERA's petitions and accept jurisdiction over the funds received by the DOE pursuant to the GGC and Goodman consent orders.

III. Proposed Refund Procedures

We propose that the GGC and Goodman consent order funds be distributed to claimants who satisfactorily demonstrate that they were injured by the firms' alleged regulatory violations. We expect that claimants in the GGC and Goodman refund proceedings will fall into two general categories: (i) resellers and retailers (hereinafter collectively referred to as resellers) who resold either GGC or Goodman motor gasoline and (ii) individuals or firms that consumed either GGC or Goodman motor gasoline for their own use (end-users).

To demonstrate injury, a reseller claimant must provide evidence that it would have maintained its prices for the motor gasoline purchased from GGC or Goodman at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased motor gasoline from the consent order firm, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition, a reseller will be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices.[3] *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982). The maintenance of banks will not, however, automatically establish injury. *See, e.g., Tenneco Oil Co./Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982).

As in many prior special refund cases, we propose to adopt certain presumptions. First, we will adopt a presumption that the effects of the alleged price violations were dispersed equally in all sales of motor gasoline sold by the consent order firm during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. *See* 10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of motor gasoline marketed by the consent order firm. In the absence of better information, this presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. A volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of products sold by the consent order firm during the consent order period.

Based on the information available to us at this time in the Goodman proceeding, the volumetric refund amount is $0.0022958 per gallon, exclusive of interest ($9,566 consent order fund divided by 4,166,667 gallons, the estimated volume of motor gasoline sold by Goodman during the five-month consent order period). In the GGC proceeding, the volumetric refund amount is $0.012378 per gallon, exclusive of interest ($25,420.99 consent order fund divided by 2,053,726 gallons of motor

[1] In its audit of Zia Fuels, the ERA found that the firm and another entity, Morris Oil Company, were controlled by Garland Morris of GGC, Inc. and that the two firms engaged in intercompany sales of motor gasoline. As a result, the ERA concluded that both firms should be audited under the single firm concept. See 10 CFR 212.31 (definition of "firm.") Accordingly, the GGC consent order covers both Morris Oil Company and Zia Fuels' operations during the consent order period.

[2] At the time of the DOE audit, in addition to reselling gasoline to wholesale customers, Goodman operated three retail service stations in Payette, Weiser, and Grandview, Idaho. Sales from those retail outlets are not covered by the consent order, which mentions only sales from Goodman's bulk plants.

[3] In the present cases, the consent order periods are subsequent to the amendment to the price rule which eliminated the banking requirement for retailers effective July 15, 1979. 44 FR 42541 (July 19, 1979). Therefore, retailer applicants will not be required to submit bank information.

gasoline sold during the consent order period.)[4]

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practives settled in either consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expense involved in gathering the data needed to support a detailed claim of injury. In order to substantiate such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund.

Under the small claims presumption we are proposing to adopt, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is below a threshold level.[5] Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose to follow the same approach in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In the case of the GGC and Goodman refund proceedings where the time period of the consent order is distant and, particularly in the case of Goodman, the volumetric refund amount is small, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable.[6] *See Texas Oil & Gas Corp.; Marion Corp.*, 12 DOE ¶ 85,014 (1985).

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We therefore propose that end-users of GGC or Goodman motor gasoline need only document their purchase volumes from the consent order firm to make a sufficient showing that they were injured by the alleged overcharges.

As in previous cases, we propose to establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban*, 9 DOE at 85,225.

Refund applications in the GGC and Goodman proceedings should not be filed until after issuance of a final Decision and Order. Detailed procedues for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. We have contacted the consent order firms for assistance in identifying the potential claimants. While GGC and Goodman have provided us with some information concerning their business operations, we do not yet have a complete list of their respective customers.[7] We may also place notices of these refund proceedings in local newspapers in GGC and Goodman's marketing areas.

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be disbursed in a number of different ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is Therefore ordered that:

(1) The refund amount remitted to the Department of Energy by GGC, Inc. d/b/a Zia Fuels and Morris Oil Company pursuant to the consent order executed on November 2, 1980, will be distributed in accordance with the foregoing decision.

(2) The refund amount remitted to the Department of Energy by Goodman Oil Company pursuant to the consent order executed on September 2, 1981, will be distributed in accordance with the foregoing decision.

[FR Doc. 85-16015 Filed 7-3-85; 8:45 am]

BILLING CODE 6450-01-M

[4] We recognize that the impact on an individual purchaser could have been greater than the applicable volumetric refund amount, and we propose that any purchaser be allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the amount determined using the volumetric presumption. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233-34 (1984); *Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./ Siouxland Propane Co.*, 12 DOE ¶85,054 at 88,164 (1984) and cases cited therein.

[5] If a reseller made only spot purchases from the consent order firm, however, we propose that, absent evidence to the contrary, it should not receive a refund because it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make spot purchases and would therefore not have made spot purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, 8 DOE ¶ 82,597 at 85,396-97 (1981). We believe that the same rationale holds true in the present case. Accordingly, in addition to demonstrating injury, a spot purchaser which files a claim should submit evidence to establish that it is inappropriate to presume that the firm had discretion as to where and when it made the purchase(s) on which its refund claim is based.

[6] As in prior refund cases, resellers whose refund calculated according to the volumetric factor exceeds the threshold amount may elect to apply for a refund based on the threshold amount without being required to demonstrate injury. In view of the small amount of money in the Goodman consent order fund, we believe that it is likely all Goodman claimants will fall below the $5,000 threshold and thus will not be required to make a detailed showing of injury.

[7] GGC has provided this Office with the addresses of Zia Fuels' customers during the consent order period. At this date, we do not have any information concerning Morris Oil Company's customers.

Objections to Proposed Remedial Orders Filed Week of May 27 Through May 31, 1985

During the week of May 27 through May 31, 1985, the notices of objection to proposed remedial orders listed in the

Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 24, 1985.

Petroleum Supply, Inc., and Don Ragland, Houston, Texas; HRO–0293 crude oil

On May 28, 1985, Petroleum Supply, Inc. and Don Ragland (PSI), 8705 Katy Freeway, Houston, Texas, filed a Notice of Objections to an Amended Proposed Remedial Order (APRO) which the Dallas Office of the Economic Regulatory Administration (ERA) issued to PSI on March 28, 1985. In the APRO, the ERA found that during May 1977 through December 1977 PSI charged prices in excess of its maximum lawful selling price in violation of 10 CFR 212.10 and 210.93, and engaged in conduct that (1) circumvented or contravened or resulted in the circumvention or contravention of applicable regulations in violation of 10 CFR 205.202, and (2) enabled the firm to obtain a higher price for crude oil than permitted by the regulations in violations of 10 CFR 210.62(c). The APRO also alleges that PSI violated 10 CFR 212.186, 210.62(c) and 205.202 during January through June 1978 by charging prices in excess of the firm's actual purchase prices without performing any functions traditionally and historically associated with resale of crude oil. According to the APRO, the violations resulted in overcharges of $335,169.58

Rodgers Hydrocarbon Corporation, Wichita Falls, Texas; HRO–0294 crude oil

On May 28, 1985, the State of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711 filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas Office of the Economic Regulatory Administration issued to Rodgers Hydrocarbon Corporation on April 26, 1985. In the PRO, the Dallas Office found that during the period September 1977 through January 1980, Rodgers Hydrocarbon Corporation resold uncertified and improperly certified crude oil in violation of the certification provisions of 10 CFR Part 212. According to the PRO, the violation resulted in $2,782,695.73 of overcharges.

[FR Doc. 85–16012 Filed 7–3–85; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decisions and Orders; Week of May 27 Through May 31, 1985

During the week of May 27 through May 31, 1985, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 24, 1985.

Bale Oil Company, Horse Cave, Kentucky; HEE–0140 reporting requirements

Bale Oil Company filed an Application for Exception from the provisions of the Form EIA–782B reporting requirement. The exception request, if granted, would relieve Bale Oil Company of its monthly reporting obligation. On May 28, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

Budny Fuel Oil Company, Trenton, New Jersey; HEE–0135 reporting requirements

Budny Fuel Oil Company filed an Application for Exception from the Form EIA–821 reporting requirement. The exception request, if granted, would prospectively relieve the firm of the obligation to file this annual report. On May 28, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

Ed Joyce Fuel & Feeds, Geraldine, Montana; HEE–0143 reporting requirements

Ed Joyce Fuel & Feeds filed an Application for Exception from the provisions of the Form EIA–782B reporting requirement. The exception request, if granted, would relieve Ed Joyce Fuel & Feeds of its monthly reporting obligation. On May 28, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be granted.

[FR Doc. 85–16016 Filed 7–3–85; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL #2716–1; OPTS–81001]

4,4'-Methylenedianiline; Decision To Report to the Occupational Safety and Health Administration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has reasonable basis to conclude that the manufacture and use of 4,4'-methylenedianiline (4,4'-MDA) present an unreasonable risk of injury to the health of exposed workers. EPA has further determined that this risk may be prevented or reduced to a sufficient extent by action taken by the Occupational Safety and Health Administration (OSHA) under the Occupational Safety and Health Act (OSHAct). EPA is submitting to OSHA a report under sec. 9(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2608(a), that describes the risks of 4,4'-MDA and requests that OSHA respond to EPA within 180 days of the publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW, Washington, D.C. 20460. Toll free: (800–424–9065). In Washington, D.C.:

(554–1404). Outside U.S.A.: (Operator 202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

4,4'-Methylenedianiline (4,4'-MDA) is a chemical produced at a rate of approximately 400 million pounds per year and used primarily (approximately 98 percent) to manufacture methylenediphenyl diisocyanate (MDI). MDI is used to make polyurethane foams and elastomers. The remainder of the 4,4'-MDA produced is used to make products such as epoxy resins, wire coatings, and dyes. Exposure can occur from either dermal or respiratory contact with the chemical. There are approximately 600 workers exposed to 4,4'-MDA during the manufacture of 4,4'-MDA and its conversion to MDI, and several thousand workers are potentially exposed in the non-MDI uses. No evidence exists of significant non-occupational exposure to 4,4'-MDA.

The EPA published in the Federal Register of April 27, 1983 (48 FR 19078) its determination, under sec. 4(f) of TSCA, 15 U.S.C. 2603(f), that there may be a reasonable basis to conclude that 4,4'-MDA presents a significant risk of serious harm to humans from cancer. This is known as the 4(f) threshold determination. Under sec. 4(f), EPA has 180 days from receipt of the information that led to the threshold determination to "initiate appropriate action" to prevent or reduce the risk from the chemical of concern or to announce that the risk is not unreasonable.

The sec. 4(f) threshold determination notice for 4,4'-MDA was based primarily on a draft report of a study undertaken by the National Toxicology Program (Ref. 10). The study demonstrated that the dihydrochloride salt of 4,4'-MDA is carcinogenic in both sexes of rats and mice at two oral dose levels, and thus provides a basis to conclude that 4,4'-MDA presents a risk of cancer in exposed humans. That study plus: (1) A lack of any mandatory workplace standard; (2) the apparent inadequacy of the voluntary workplace standard set by the American Conference of Governmental Industrial Hygienists (ACGIH) of 0.1 parts per million (ppm) or 0.81 milligrams per cubic meter (mg/m^3) [1], (3) evidence that some manufacturers and processors may be exceeding even the ACGIH limit; and (4) the fact that several thousand workers may be exposed, formed the basis for the sec. 4(f) threshold determination.

[1] At an exposure level of 0.1 ppm, the added risk of cancer from inhalation of 4,4'-MDA was estimated to be as high as 4×10^{-3}.

Within the designated 180-day statutory time frame, EPA "initiate[d] appropriate action." The initiation consisted of the issuance of an Advance Notice of Proposed Rulemaking (ANPR) published in the Federal Register of September 20, 1983 (48 FR 42898). The ANPR announced the joint effort by the EPA and the OSHA to initiate regulatory action to determine and implement the most effective means of controlling exposures to 4,4'-MDA. An announced intention of the ANPR was to determine which agency's statute provided a better basis for regulation. The ANPR invited views and data from interested parties in four major areas.

First, the Agency requested detailed information on the operations used to manufacture and process 4,4'-MDA, the potential for exposure at each stage, including air and work surface monitoring data, and descriptions of workplace practices. Second, EPA requested detailed descriptions of the non-MDI uses of 4,4'-MDA and updated information on the identity of processors and users. Third, the Agency requested information on the availability, costs, technical and economic suitability, and toxicity of substitutes for 4,4'-MDA. Finally, EPA invited comments and information on methods of controlling exposure. In response to the ANPR, comments from six parties were received.

Five sets of comments were from industry sources. Information was submitted on uses, exposure, control methods, substitute products, and other relevant areas. The comments raised two major issues: (1) That the hypothetical exposure levels underlying EPA's quantitative risk assessment used to support the sec. 4(f) threshold determination were erroneously high; and (2) that the problem, being primarily a workplace problem, should be regulated by OSHA. The sixth comment was from the Natural Resources Defense Council which urged adoption of a regulatory strategy that induced industry to develop control methods based on exposure avoidance, with the employer bearing the burden of protection rather than the worker.

Following the issuance of the ANPR, the Agency continued its regulatory investigation by conducting assessments of exposure in the non-MDI use segments, risk control methods and costs, and the availability of substitutes for 4,4'-MDA or its products. EPA considered various regulatory options, including prohibiting the use of 4,4'-MDA in some or all uses and imposing various forms of exposure controls in the workplace. As a result of the information submitted in response to the ANPR and other information developed by EPA, the Agency has determined that a workplace standard may prevent or reduce risks to a sufficient extent, and appears technically and economically feasible.

Based on the entire record developed during EPA's regulatory investigation, the Agency has reasonable basis to conclude that the unregulated manufacture and use of 4,4'-MDA present an unreasonable risk of injury to human health, and has determined that the risk may be prevented or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act (OSHAct). Therefore, pursuant to sec. 9(a) of TSCA, the Agency is issuing this report and is requesting OSHA to determine if the risks described in the report may be prevented or reduced to a sufficient extent by action taken under the OHSAct and, if so, to issue an order declaring whether the activities described in the report present the risk described. A response from OSHA to the Administrator of EPA is requested within 180 days of publication of this report in the Federal Register. EPA believes that is sufficient time for OSHA to evaluate the scientific matters and policy requirements. In particular, OSHA will have to evaluate the data relating to significant risk and evaluate the technical and economic feasibility of control options in affected industries.

II. Legal Authorities

TSCA provides EPA with broad authority to assess and regulate chemical substances in the environment, in the workplace, and in commercial products. Under sec. 6(a) of TSCA, EPA is authorized to impose regulatory controls if the Agency finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance presents or will present an unreasonable risk of injury to human health or the environment. To determine whether a risk is unreasonable, EPA balances the probability that harm will occur from the chemical substance under consideration against the social and economic costs to society of placing restrictions on the chemical. Specifically, as stated in sec. 6(c) of TSCA, this conclusion incorporates consideration of:

1. The effects of the chemical substance on the health of humans.

2. The magnitude of human exposure to the chemical substance.

3. The benefits of the chemical substance for various uses.

4. The availability of substitutes for such uses.

5. The reasonably ascertainable economic consequences of regulation, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

The Agency realizes that no single mathematical formula can be used to calculate unreasonable risk, since the amount and nature of the information will differ in each case. Instead, EPA applies a general approach on a case-by-case basis, weighing quantitative information with qualitative factors, and applying generally accepted principles of responsible public health administration and prudent public policy.

Under section 9(a)(1) of TSCA, the Administrator is required to submit a report to another Federal agency when two determinations are made. The first determination is that the Administrator has reasonable basis to conclude that a chemical substance or mixture presents or will present an unreasonable risk of injury to health or the environment. The second determination is that the unreasonable risk may be prevented or reduced to a sufficient extent by action taken by another Federal agency under a Federal law not administered by EPA. Section 9(a)(1) provides that where the Administrator makes these two determinations, EPA must provide an opportunity to the other Federal agency to assess the risk described in the report, to interpret its own statutory authorities, and to initiate an action under the Federal laws that it administers.

Accordingly, section 9(a)(1) requires a report requesting the other agency: (1) To determine if the risk may be prevented or reduced to a sufficient extent by action taken under its authority, and (2) if so, to issue an order declaring whether or not the activities described in the report present the risk described in the report.

Under section 9(a)(2), EPA is prohibited from taking any action under section 6 or 7 with respect to the risk reported to another Federal agency pending a response to the report from the other Federal agency. There would be no similar restriction on EPA for any risks associated with a chemical substance or mixture that is not within the section 9(a)(1) determinations and therefore not part of the report submitted by EPA to the other Federal agency.

The second agency may take one of five possible actions set out below. The Administrator may not take any action under section 6 or 7 with respect to such risk if the other agency either:

(1) Issues an "order" within the EPA deadline, stating that the activities EPA has described do not present the "unreasonable risk" EPA has attributed to them; or

(2) "Initiates" within 90 days of its response to EPA action to "protect against" the risk identified by EPA.

On the other hand, EPA may take further action if the other agency either:

(1) Determines that its law does not authorize action to prevent or reduce the unreasonable risk to a sufficient extent; or

(2) Explicitly defers to EPA despite the existence of adequate authority on its part (unless its own statutory authority precludes such action), presumably on the ground that action by EPA is preferable on practical or public policy grounds; or

(3) Does nothing, in which case EPA, once the deadline has expired, remains free to act as before.

III. Findings Under Section 9(a)

In this unit, EPA discusses the findings used to support its decision to refer 4,4'-MDA to OSHA. Units A through C are a summary of the factors used to assess the potential risks to workers exposed to 4,4'-MDA. Details of the evidence used to estimate the risks from exposure to 4,4'-MDA, and of the conclusions reached based on that evidence, are presented in the EPA support document "Risk Characterization for 4,4'-Methylenedianiline". Units D and E are a summary of the benefits of the continued use of 4,4'-MDA, and the potential consequences of regulatory action. Units F and G present the conclusions with respect to the unreasonable risk determination and the determination that the risk can be reduced to a sufficient extent by OSHA.

A. The Effects of the Chemical Substance on Health

In conducting risk assessments of suspect carcinogens, EPA generally evaluates the overall weight of evidence including both primary and secondary evidence of carcinogenicity. As specified in the EPA Proposed Guidelines for Carciogen Risk Assessment (Ref. 3), primary evidence derives from long-term animal studies and available epidemiological data. Secondary, or supplemental, evidence includes structure-activity relationships, the results of short-term tests, pharmacokinetic studies, comparative metabolism studies, and other toxicological responses which may be relevant.

Based upon the weight of available evidence, EPA classifies 4,4'-MDA as a probable human carcinogen. The Guidelines cited above give this classification when

> evidence of human carcinogenicity from epidemiological studies ranges from almost 'sufficient' to 'inadequate.' To reflect this range, the category is divided into higher (Group B1) and lower (Group B2) degrees of evidence. Usually, category B1 is reserved for agents for which there is at least limited evidence of carcinogenicity to humans from epidemiological studies. In the absence of adequate data in humans, it is reasonable, for practical purposes, to regard agents for which there is sufficient evidence of carcinogenicity in animals as if they presented a carcinogenic risk to humans. Therefore, agents for which there is inadequate evidence from human studies and sufficient evidence from animal studies, [as with 4,4'-MDA] would usually result in a classification of B2.

1. Animal Studies.

There is sufficient evidence of carcinogenicity in animals to support the cited classification of 4,4'-MDA. In NTP bioassays the dihydrochloride of the chemical was found to be carcinogenic upon oral administration in both sexes of two species (rats and mice) and caused tumors at multiple sites in each species. Significantly increased incidences of tumors were observed in the thyroid and the liver in both sexes of both species. The sites of response in the mouse also included the adrenal glands (males), and the lung and lymph nodes (females). Several extremely rare tumor types with very low spontaneous incidence were also observed in this study. These included one bile duct adenoma in a male rat (spontaneous incidence in historical control rats of 0/3633), transitional cell papillomas of the urinary bladder in three female rats (spontaneous incidence in historical controls of 3/3644), and granulosa-cell tumors, including one carcinoma, in five female rats (11 such tumors and one such carcinoma in 3462 historical control rats). Observation of these rare tumors in this single study in test groups consisting of only 50 animals is a sign of chemical specificity and is highly significant evidence of the carcinogenic potential of 4,4'-MDA. Thyroid tumors in rats were also observed in a limited bioassay performed by Hiasa et al. (Ref. 4). In another study of rats treated with 4,4' -MDA by subcutaneous injection, Steinhoff and Grundmann (Ref. 11) concluded that the results suggested carcinogenic activity. Other studies on the oncogenic potential of 4,4' -MDA have been conducted, but were not

adequate in design or performance for conclusions to be reached.

2. Epidemiological Studies

Only one epidemiology study is available. This proportional mortality study was reported in 1983 by the National Institute of Occupational Safety and Health (NIOSH) (Ref. 7). It was conducted at a site of manufacture of helicopters where exposure to epoxy resins and curing agents, including 4,4' -MDA, was measured. NIOSH studied the death notices and available death certificates of deceased active or retired workers for the years 1968–1980 for workers who had been employed for 10 years or longer. Of that number, 179 white male workers had worked at least one month in areas where the would potentially have been exposed to one or more of the epoxy resins and curing agents. NIOSH studied information on the 179 white male deaths that occurred from all causes and found a significant excess of bladder cancer-related deaths over the expected proportion. This excess remained significant in analysis of only the cancer deaths.

3. Structure-Activity Relationship

Structure-activity considerations are strongly supportive evidence of the human carcinogenic potential of 4,4' -MDA. The chemical is a member of the structural class of bis 4-aminobenzenes in which two benzene rings are separated by —CH_2—, —O—, or —S— groups. Members of this structural class included 4,4' -oxydianiline, 4,4' -thiodianiline, and 4,4' -methylenebis (N,N-dimethylaniline), all of which have been found to cause neoplasms in the liver and thyroid of rodents, as does 4,4' -MDA. Other members of this class, 4,4' -methylene bis (2-methylaniline), and benzidine, the structural analogue of 4,4' -MDA in which they methylene bridge between the aromatic rings is absent, have been associated with an increased risk of bladder tumors in humans.

4. Absorption

Further support for EPA's conclusion that the chemical poses a cancer hazard to humans is the fact that the chemical is absorbed by the human body. 4,4' -MDA is known to be absorbed by humans through the skin in workplace settings. Information from the United States, Canada and France attests to the dermal absorption of the chemical, and the scientific literature documents cases of the liver toxicity of 4,4' -MDA following dermal exposure along with detection of the chemical in the urine of workers exposed by this route.

It is expected that 4,4' -MDA will also be absorbed through the lung. Since the chemical has been shown to penetrate human skin and to be absorbed through the human gastrointestinal tract (in the so-called Epping Jaundice Incident), EPA believes it reasonable to anticipate that the chemicals will penetrate lung tissue as well.

5. Mutagenicity

In short-term tests, 4,4'-MDA has been shown to be a gene mutagen in prokaryotic systems. The chemical induces sister chromatid exchanges in femoral bone marrow of male mice; it does not induce chemosomal aberations *in vitro* in human peripheral lymphocytes. (A mixture of positive and negative results is not unusual in tests for genotoxicity since the tests measure different endpoints.) In addition, the compound binds covalently to DNA *in vitro* in the livers of treated mice, indicating its ability to interact with macromolecules of *in vivo*.

6. Summary

Taken together, the strongly positive results in the NTP cancer bioassay in the dihydrochloride salt of 4,4'-MDA, evidence of the carcinogenicity in animals and of humans 4,4'-MDA structural analogues, the demonstrated ability of 4,4'-MDA to induce bladder tumors in animals and suggested evidence of MDA-induced bladder tumors in humans, and data indicating the ability of 4,4'-MDA to interact with genetic material, lead to the conclusion that this chemical is carcinogenic in animals and is probably carcinogenic in humans.

B. The Magnitude of Human Exposure

Exposure of human populations to a chemical substance is one element of the determination of its risk. The general risk is the probability that a certain event (in this case, cancer) would occur at certain levels of exposure. The following units present levels and duration of worker exposure in different workplace conditions.

1. Populations of Concern

The two major use categories of 4,4'-MDA, MDI production and non-MDI use and processing, present two different exposure situations. The manufacture of 4,4'-MDA and its conversion to MDI takes place in an enclosed system. Exposure during the manufacture and conversion processes would be limited to inhalation of vapors and contact with liquid releases or with material deposited on surfaces as a result of condensation of vapors. The filling of containers with liquid or solid 4,4'-MDA is a source of exposure through the inhalation of dust and through dermal contact.

The non-MDI uses of 4,4'-MDA present the potential for dermal contact and inhalation of dust resulting from the removal of 4,4'-MDA from the containers and formulation of products. Incidences of exposure in the non-MDI workplaces are expected to be greater because the operations are not enclosed and because more handling of the chemical and products is required.

a. *4,4'*-MDA and MDI production. 4,4'-MDA is produced in the United States by six companies at seven locations. The Chemical Manufacturers Association (CMA) reports that at these facilities about 600 workers are exposed to 4,4'-MDA for varying durations.

b. *Non-MDI uses.* The identified non-MDI uses of 4,4'-MDA are:

(1) A curing agent for epoxy resins.

(2) An intermediate in the production of tetraglycidyl methylenedianiline (TGMDA), a speciality epoxy resin used in military aircraft and missiles.

(3) A coreactant in polyurethane production.

(4) An intermediate in the production of polyester-imide wire enamels.

(5) A component of PMR–15 polyimide, used in jet engine components.

(6) An intermediate for dyes.

The number of plants involved in the non-MDI uses of 4,4'-MDA is not known. Likewise, the number of workers exposed in the workplace is not known. Respondents to a survey of the non-MDI industry, conducted by CMA, indicated that a total of 1,371 employees in 79 locations were potentially exposed to 4,4'-MDA. Those who responded accounted for 85 percent of all 4,4'-MDA used for non-MDI purposes and 47 percent of the 4,4'-MDI sold by the producers and importers for use outside of their plants. On the other hand, the National Occupational Hazard Survey reports (Ref. 6) that an estimated 13,000 workers nationwide may experience some workplace exposure to 4,4'-MDA.

2. Exposure Information

Three major sources of exposure information are used in this assessment: (1) Air monitoring data submitted voluntarily by manufacturers and processors (Ref. 1); (2) air monitoring data compiled by an EPA contractor (Ref. 9) for manufacturers, processors and users; and (3) measurements made by the NIOSH during visits to a 4,4'-MDA manufacturing plant that makes 99 percent assay product and to a facility that uses 4,4'-MDA as a curing agent for epoxy-coated, filament-wound pipe (Refs. 5 and 6). The estimates of dermal

exposure to 4,4'-MDA used in this assessment in both MDI and non-MDI manufacturing facilities are based on data from the NIOSH visits. Those references are available in the public record.

Dermal exposure data are derived from measurements made by NIOSH (Refs. 5 and 6). A golf glove-like device was used to monitor both direct contact with contaminated surfaces by the palm, and general work environmental deposition on the other body surfaces by collecting the chemical on the back of the hand.

Several different analytical methods have been used to measure airborne concentrations of 4,4'-MDA. One, known as the Marcali colorimetric method, measures other aromatic amines and isocynates that may also be present, resulting in a high reading. Other methods may record low results due to sample losses. The Agency has assumed that the available data provide upper and lower bounds on actual exposure levels and are therefore reasonable for estimating risks.

Estimates of the inhalational exposures that the workers experience in a 4,4'-MDA/MDI manufacturing plant can be made using information supplied by the manufacturers of 4,4'-MDA (Ref. 1). The data include ranges and averages of 8-hour Time Weighted Average (TWA) air concentration measurements in the workplace.

C. Risk Estimates

Several assumptions regarding human exposure were used to estimate total lifetime average daily doses (LADDs) [2] and human carcinogenic risk. The assumptions were based on what EPA believes to be reasonable exposure situations and workplace practices. The LADDs were calculated for each combination of exposure concentration, exposure duration, frequency and extent, and percent absorption. The LADDs were then applied to calculate the increased lifetime carcinogenic risk for a single individual using the Crump multistage model (Ref. 2) and tumor incidence data on all tumors that occurred in the test animals of the NTP bioassay at statistically significant rates. The multistage model has been in wide use in EPA since 1980, and is used by EPA's Carcinogen Assessment Group to set air and water quality criteria and standards.

For estimating the rate of dermal absorption of 4,4'-MDA, methylene bis(w-choroaniline) (MBOCA) was used as an analogue. Not only is MBOCA a good structual analogue, but is also has similar physicochemical properties which can be used to make inferences regarding the penetrating potential 4,4'-MDA. Sufficent information is available on MBOCA to make general conclusions about the absorption of 4,4'-MDA.[3]

Eight different situations were designed to estimate the effects of various workplace situations on the existing risk to workers. The exposure situations are explained in detail in the draft support document "Risk Characterization for 4,4'-Methylenedianiline." They include one 4,4'-MDA/MDI manufacturing case and seven 4,4'-MDA user/processing cases. In every case except one, actual monitoring data were used to calculate dermal and inhalational exposures. The major differences in the user/processing cases were in the assumed duration of dermal exposure before washing and in the use of protective equipment. In the one case that did not use actual monitoring data, an assumed 8-hour TWA exposure level of 0.001 ppm (0.0081 mg/m^3) was used to estimate the effect of a workplace standard. Individual tumor sites were used to evaluate the risks to exposed workers. Pooling tumor sites would increase the risk estimates in each case by approximately a factor of two. The risk estimates are reported as a range, dependent upon the selection of tumor site, test animal, and statistical confidence level (maximum likelihood estimate or upper 95% confidence limit).

The results of the NTP bioassay, the evidence of the NIOSH proportional cancer mortality ratio study, and the strong structural relationship between 4,4'-MDA and other recognized human carcinogens, combined with generally accepted methods of estimating human risk based on well designed and well executed animal studies, allow a reasonable estimate of the levels of risk that result from certain situations to be made. More importantly for this analysis, relative risks that result in different exposure situations can be compared.

1. 4,4'-MDA/MDI Manufacturing

For the approximately 300 workers exposed for 8 hours per week or less, the NTP data indicate inceased lifetime cancer risk levels ranging from about 2 in 10,000 to about 4 in 1,000. For the 9 to 20 hours exposure per week group, numbering about 150 workers, the risk levels range from about 9 in 10,000 to about 1 in 100. For 40 hours per week group of about 150 workers, the risk levels range from about 1 in 1,000 to about 3 in 100.

2. 4,4'-MDA Use/Processing

For the workers who may be exposed for 8 hours per day during 40-hour week in facilities that use or process 4,4'-MDA under conditions where no protective clothing is used, and little or no attention is paid to washing off 4,4'-MDA that might be deposited on the skin, the individual lifetime risks could be in the range of 1 in 100 to 1 in 10, base on individual tumor site data from the NTP bioassay. The risks could be even higher if dermal exposure occurs for longer times or over greater body area than the arms, neck, and face.

If workers handle 4,4'-MDA while wearing latex gloves for 6 hours per day during a 40-hour work week without any hand washing during the day, the estimated lifetime risk levels that would be experienced range from about 9 in 10,00 to about 1 in 100.

The majority of the workers exposed to 4,4'-MDA are expected to handle 4,4'-MDA only briefly during the workday. They can experience a wide range of estimated risks from dermal exposure, depending on how promptly they wash off any deposited material. Washing within 15 minutes of exposure would subject a worker to estimated increased lifetime risk levels ranging from about 5 in 100,000 to about 8 in 10,000. If washing is delayed for 6 hours, the estimated risk levels rise from about 1 in 1,000 to about 1 in 100.

3. Hypothetical Workplace Standard.

If workers were exposed under the conditions of a workplace standard, which is based on 10 hours per week of dermal exposure, 40 hours per week of inhalation exposure at 0.001 ppm (0.0081 mg/m^3), and use of protective clothing and good industrial hygiene practices, the estimated increased lifetime risk levels would range from about 1 in 100,000 to about 2 in 10,000.

D. The benefits of 4,4'-MDA

EPA estimates that 400 million pounds of 4,4'-MDA are produced annually in the United States for a range of uses. About 98 percent of domestic production

[2] The LADD is the amount of chemical that the worker is expected to absorb over this or her working career divided by the expected lifetime of the worker and by the worker's body weight. This number is used to relate the expected daily dose that a worker received to the dose that the test animals received in the NTP bioassay, and permits the comparison of observed tumor rates in test animals with possible tumor rates in exposed workers.

[3] In order to reduce the uncertainty of using MBOCA data, and to provide a basis for possible regulatory monitoring, EPA is conducting dermal absorption studies on Fisher rats, Hartley guinea pigs and Rhesus monkeys. The results of the study, expected in early 1985, will be provided to OSHA.

is used as a feedstock for the manufacture of 4,4'-methylenediphenyl diisocyanate. MDI is used as an intermediate to manufacture polyurethane products, including rigid foams used for construction, insulating and packaging purposes, and to produce coatings, adhesives and elastomeric man-made fibers. No substitutes exist for 4,4'-MDA in the production of MDI. The benefits of MDI include its low cost compared to alternative intermediates used to manufacture polyurethane forms, and its outstanding physical properties (abrasion and chemical resistance, light-weight, and strength) associated with MDI-based elastomers and coatings.

Other benefits of 4,4'-MDA derive from its use as a reactive intermediate in the manufacture of epoxy resins, wire coatings, polyurethane coreactants, dyes and pigments, and high temperature-resistant resins. In epoxy resin applications, the chemical is used both as a curing agent and the unique intermediate for the production of the high performance epoxy resin, tetraglycidyl methylene dianiline (TGMDA). Here also, 4,4'-MDA's advantage over competitive substances derives from its low cost and the desirable properties it imparts to the resulting products. TGMDA, for example, is used to produce high performance structural materials for aerospace applications, and no substitute for TGMDA is commercially available.

Functionally analogous chemicals are potential substitutes for the non-MDI uses of 4,4'-MDA, but their feasibility cannot be fully evaluated without product testing. EPA's analysis, supported by comments, concludes that these chemicals would generally not be technically or economically feasible. See the support document "4,4'-Methylenedianiline Use and Substitutes Analysis" for a complete discussion on substitutes.

E. The Reasonably Ascertainable Consequences of Potential Regulation

This unit concentrates on the regulatory measures that could be used to control exposure in the workplace. As discussed below, EPA has concluded that workplace control methods appear both technologically and economically feasible to control 4,4'-MDA exposure within acceptable limits. A workplace standard could include engineering controls, such as the use of general or local ventilation, and personal protective equipment, such as gloves, masks, and coveralls.

1. Engineering Controls

Industrial ventilating systems offer one method for reducing exposures to a toxic material such as 4,4'-MDA. The protection provided by ventilation would not be sufficient in situations where skin contact is also a problem. Although either local exhaust ventilation or higher volume general dilution air systems can be used, the ideal situation is to have the operation completely enclosed, providing access and working openings only as needed. A chemical laboratory hood or "glove box" arrangement, connected to a local exhaust system, is an example of a local exhaust system used when handling highly toxic material. The cost of such equipment is relatively high, however, and their use could be awkward or impractical in many of the industrial situations in which 4,4'-MDA is used. This might arise either because of the quantities that are handled or because the 4,4'-MDA is simply being introduced into another process or reactor.

The costs of ventilation systems for controlling 4,4'-MDA emissions are very site specific and depend upon such factors as the size of the operation and the physical design of the filling mechanism. Because the specifics of plant design at reprocessing facilities are not known the costs of such equipment cannot be accurately estimated.

The filling of containers (drums, barrels, bags, etc.) with dry 4,4'-MDA or with liquid forms presents a potentially significant source of exposure. Both inhalation and skin contact could result from dusting, spills or inhalation of vapors of the heated, molten product. Relatively standardized engineering designs are available to control these problems.

The costs of these engineering controls can be estimated because suitable off-the-shelf equipment is available. Various hooding arrangements are in use in industry to draw dust particles away from the worker during material handling operations (i.e., transport, mixing with other chemicals, and small packaging operations).

2. Personal Protective Equipment and Industrial Hygiene Practices

Personal protective equipment and industrial hygiene practices are effective ways to protect the worker from exposure to 4,4'-MDA in certail situations. Equipment that may be considered include impervious gloves and protective clothing (including footwear). The information available to EPA indicates that eye protection and respirators are already available.

Virtually all of the acute exposures to 4,4'-MDA reported in the literature have been dermal with primary contact at the hands. While cotton work gloves are commonly used in industries using 4,4'-MDA, this practice cannot be recommended since cotton gloves trap and retain 4,4'-MDA particles close to the skin resulting in a greater risk than if no gloves had been used. Gloves that are impervious to 4,4'-MDA are recommended. Our information indicates that polyvinyl chloride (PVC), natural latex, and polyethylene are the best candidates for personal protective equipment.

Because polyethylene is impervious to 4,4'-MDA, polyethylene-coated Tyvek® was the material chosen to estimate the cost of protective clothing. For the calculation of annual cost per worker it was estimated that coveralls would be changed daily.

The importance of prompt washing of exposed skin areas following exposure is shown in the exposure reduction estimates. An after-work shower is another important measure in reducing exposure, as is the availability of separate work clothes and street clothes storage locker facilities to avoid cross-contamination and track-out problems for workers and their families.

An example of exposure reduction using personal protective equipment and industrial hygiene practices is a study of exposures in a facility of the Rhone-Poulenc Industrie in France (Ref. 9). This source provided only qualitative information regarding workplace environment exposures, but did present quantitative information on levels of 4,4'-MDA in the workers' urine. During a period in which labor and management were apparently unaware of the significance of dermal exposures, workers wore "divers' suits" to protect against inhalation exposure. During this time (1970), 14.9 percent of urine samples tested showed levels of 4,4'-MDA of at least 200 ug/L.

Gradually heightened awareness of the significance of the dermal exposure route revealed that 4,4'-MDA dust was being inadvertently allowed to contaminate the "divers' suits" and the general workplace environment. As this problem was uncovered and corrected, the levels of 4,4'-MDA in workers' urine and the frequency with which it was found in those samples both fell. By 1978, 2.7 percent of samples were found to contain 20–80 ug/L of 4,4'-MDA, 2.0 percent contained 80–200 ug/L, and 4.0 percent contained over 200 ug/L of the chemical. From 1978 through 1980

further improvements in industrial hygiene resulted in urine monitoring results that showed 0.9 percent of samples containing 20–80 ug/L, with no samples containing higher levels.

This case demonstrates both the extent to which workers can be exposed through a lack of precaution and the feasibility of reducing exposures through improved workplace practices.

3. Costs of Controls

EPA has prepared a preliminary economic analysis of the costs associated with the imposition of workplace controls (consisting of engineering controls and personal protective equipment) on both the manufacturers of 4,4'-MDA and on the non-MDI users of 4,4'-MDA. The analysis ("Preliminary Economic Impact Analysis of the Effect of TSCA Regulatory Action on 4,4'-Methylenedianiline") presents fully the methodology, data, and assumptions used in arriving at the costs. In summary, the imposition of workplace controls that approximate the hypothetical standard of 0.001 ppm (0.0081 mg/m^3) used to estimate the risk reductions described in paragraph III.C above, would result in an annual incremental cost of $1.1 million to the non-MDI users of MDA and $0.63 million to the 4,4'-MDA manufacturers.

F. Unreasonable Risk Determination

Available evidence indicates that 4,4'-MDA is a carcinogen to mice and rats and a probable human carcinogen. Using the results of that study, with reasonable assumptions of inhalational and dermal absorption rates, estimates were made of the existing risk to workers from cancer. Depending upon the industrial hygiene measures, protective equipment, and engineering controls being employed, risks can range from approximately 1 in 10 in uncontrolled circumstances to 1 in 100,000 in very tightly controlled circumstances. Workplace standards that employ all three can reduce risks to within a range of 2 in 10,000 to 1 in 100,000. Considering that probably less than 10,000 workers are potentially exposed to 4,4'-MDA, most for less than 40 hours per week, the actual risk will be lower.

The Agency's best estimate of the costs of requiring a workplace standard throughout the industry is an annual incremental $1.1 million to the non-MDI users of 4,4'-MDA and $0.63 million to the manufacturers. Considering that at existing risk levels, between 100 and 1,000 excess cancers could be avoided over a 40-year work period by the imposition of workplace standards, the cost per worker protected of between $80,000 and $800,000 is reasonable. The Agency does not anticipate that the costs of controls will have any impact on the national economy or on small businesses. EPA therefore believes that the existing manufacturing and uses of 4,4'-MDA present an unreasonable risk of injury to the health of exposed workers.

G. Unreasonable Risk May Be Prevented or Reduced to a Sufficient Extent by Action Taken Under OSHAct

All known exposure to 4,4'-MDA occurs in the workplace. The OSHAct is the primary statute for protecting the health and safety of workers, and, as such, provides OSHA with broad authority to regulate chemical risks in the workplace. In general, OSHA must show that existing risks are significant and that proposed controls are technically and economically feasible. OSHA has a number of regulatory options, including establishing a permissible exposure limit and/or requiring use of personal protective equipment, labeling, worker exposure monitoring, medical surveillance, and other industrial hygiene practices.

As discussed in the units on Findings and Unreasonable Risk Determination, a workplace standard can reduce unreasonable risks from 4,4'-MDA manufacture, processing and use to a sufficient extent. The requirement of such a workplace standard is clearly within the statutory authority of OSHA. Furthermore, OSHA has experience and expertise in enacting and enforcing these types of regulations. EPA therefore determines that the unreasonable risk of injury to the health of exposed workers may be reduced or prevented by actions taken by OSHA under the Federal law it administers.

IV. Conclusion

Based upon the information in this report, and the supporting documents from which the information was extracted, the Administrator of EPA has concluded that the manufacture and use of 4,4'-MDA, as currently practiced, present an unreasonable risk of cancer to workers. The Administrator has also determined that such risk may be eliminated or reduced to a sufficient extent by actions taken under the OSHAct. Therefore, under requirements of sec. 9 of TSCA, the Agency is requesting OSHA to:

1. Determine if the risk described in this report may be prevented or reduced to a sufficient extent by action taken under the OSHAct; and,

2. If so, issue an order declaring whether or not the risk described in this report is unreasonable.

We ask that OSHA respond to our request for the determination and order within 180 days of the date of the publication of this notice in the **Federal Register**. In accordance with sec. 9, the response from OSHA must be accompanied by a detailed statement of OSHA's findings and conclusions and must be published in the **Federal Register**.

V. Public Record

EPA established a record for this notice (docket number OPTS-91001). The record for the ANPR (OPTS-84000A) and for the sec. 4(f) (OPTS-84000) are included in the new record. Nonconfidential information along with a complete index is available for inspection in the Office of Toxic Substances reading room from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays. The Agency also maintains a record of confidential information that is not a part of the public record. The Public Information Office is located in Rm. E–107, 401 M St. SW., Washington, D.C. 20460. This record includes basic infomation considered by the Agency in developing the ANPR and this notice. The Agency will supplement the record with additional information as it is received.

A. References

(1) CMA, 1983. Response of the Chemical Manufacturers Association Methylenedianiline Panel to EPA's Section 4(f) Designation for MDA. June 27, 1983.

(2) Crump, K.S., 1981. An Improved Procedure for Low-Dose Carcinogenic Risk Assessment from Animal Data. J. Environ, Path. and Toxicol. 5:2, 675–684 (1981).

(3) **Federal Register**, November 23, 1984. 49:46294.

(4) Hiasa, Y., Kitahori, Y., Enoki, N., Konishi, N., and Shimoyama, T. 4,4'-Diaminodiphenylmethane; Promoting Effect on the Development of Thyroid Tumors in Rats Treated with N-bis (2–hydroxypropyl) Nitrosamine. J.N.C.I. 72: 471–476 (1984).

(5) NIOSH, 1984a. Industrial Hygiene Survey Report of Olin Corporation, Moundsville, WV. Dr. Mark Boeniger, Industrial Hygiene Section National Institute for Occupational Safety and Health, Cincinnati, OH. March 1984.

(6) NIOSH, 1984b. Industrial Hygiene Survey Report of A.O. Smith/Inland Corporation, Little Rock, AR. Dr. Mark Boeniger, Industrial Hygiene Section, National Institute for Occupational Safety and Health, Concinnati, OH. February 1984.

(7) NIOSH, 1983. Health Hazard Evaluation Report. HETA 82–146–1388 Boeing Vertol Company, Philadelphia, PA. November 1983.

(8) NOHS, 1983. Aniline, 4,4'–Methylenedi- National Occupational Hazard Survey

Observed Exposures Weighted to National Estimates of Exposure for 1980. June, 1983.

(9) PEDCo, 1983. PEDCo Environmental, Inc. 11499 Chester Road, Cincinnati, OH., 45246–0100. Exposure to and Control of 4,4 '–Methyleqedianiline. Contract No. 68–02–3935. Work Assignment 1–5. October 1983.

(10) NTP, 1983. Carcinogenesis Studies of 4,4 '–Methylenedianiline Dihydorchloride in F344/N Rats and B6C3F1 Mice. National Toxicology Program Technical Report, Series, No. 248. NTP–81–143, NIH Publication No. 83–2504. June 1983.

(11) Steinhoff, D. and Grundmann, E., 1970. Carcinogenic Action of 4,4 '–Diaminodiphenylmethane and 2,4 '–Diaminodiphenylmethane. Naturwissenschaften 57, 247 (1970).

(12) Vaudaine, M., Lery, N., Diter, J.N., Droin, M. and Charnaillard, C., 1982. Diamino-Diphenyl Methane: An Example of Toxic Agent Monitoring in the Workplace at Rhone-Poulenc Industrie. J. Toxicol. Medicale 2: 207 (1982).

B. Support Documents

(1) Alternative Methods to Control Exposures to 4,4'-MDA: Prepared by PEDCo. Environmental, Inc., March 1984.

(2) Exposure to and Control of 4,4'-Methylenedianiline; prepared by PECDo. Environmental, Inc., October 1983.

(3) Exposure Assessment for Methylenedianiline (MDA); prepared by Versar, Inc., September 1983.

(4) 4,4'-Methylenedianiline Use and Substitutes Analysis; prepared by ICF, Inc., July 1984.

(5) Preliminary Economic Impact Analysis of the Effect of Regulatory Action on 4,4'-Methylenedianiline; prepared by ICF, Inc., July 1984.

(6) Draft Risk Characterization for 4,4'-Methylenedianiline; prepared by the Office of Toxic Substances, EPA, J.W. Hirzy, December 1984.

(7) The Use of Polymeric Films as a Packaging Material for 4,4'-MDA; prepared by PEDCo. Environmental, Inc., February, 1984.

Copies of all references and support documents are available for inspection in Rm. E–107, at the EPA address given above. OSHA's response to EPA will also be inserted in the public record upon its receipt.

Dated: June 28, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85–16095 Filed 7–3–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2859–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 17, 1985 through June 21, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–AFS–F65012–MI, Rating EC1, Huron and Manistee Nat'l Forests, Land and Resource Mgmt. Plan, MI. **SUMMARY:** EPA believes that the Bear Swamp area should be managed as a semiprimitive, non-motorized area to preserve the opportunity for high quality semiprimitive experiences without man-made intrusions. The lack of habitat for fish and wildlife species that avoid human activities appears to be in conflict with the indicated planning goals. EPA also expressed concern with the selection of an alternative which would allow for development of the Tower Mountain area for downhill skiing without any apparent further analysis of the impact of such a development.

Final EISs

ERP No. F–MMS–A02198–00, 1985 S. Atlantic OCS Oil and Gas Lease Sale No. 90, Offshore VA, NC, SC, GA, FL. **SUMMARY:** Many of EPA's major concerns expressed at the DEIS stage have been removed in the FEIS because the proposed Sale has been reshaped to delete sensitive lease tracts. Our remaining major concerns stem from the offering of 113 blocks in the Southern Block Group which includes shallow water shrimp and scallop beds. Imposing the environmentally protective stipulations, along with selecting Alternative 4, which defers leasing of the Southern Block Group, would remove EPA's major environmental concerns.

ERP No. F–SCS–L36098–ID, Little Lost River Flood Prevention Plan, ID. **SUMMARY:** EPA made no formal comments. EPA believes that the FEIS adequately responds to the issues raised in our comments on the DEIS.

ERP No. F–SFW–L64026–AK, Bristol Bay Region, Cooperative Mgmt. Plan, AK. **SUMMARY:** EPA suggested that the series of agreements, to formally link the BBRMP and the State of Alaska Area Plan, pursue personnel allocations and adequate funding to carry out agency responsibilities as thy relate to the BBRMP.

Regulations

ERP No. R–FCC–A86218–00, 47 CFR Part 1, Biological Effects of Radiofrequency Radiation and the Potential Effects of a Reduction in the Allowable Level of Radiofrequency Radiation, Amendment of NEPA Regs. (50 FR 10814). **SUMMARY:** EPA supports the basic thrust of the final order amending FCC's rules to provide for the evaluation of human exposure to radiofrequency radiation in the environmental analysis required by NEPA and to establish exposure levels as one trigger for such environmental reviews. Concerns were raised with the categorical exclusions that are proposed in this notice. Many of the systems proposed as categorical exclusions can produce exposures that may exceed the exposure limits recommended by the ANSI guidelines and therefore should be subject to some level of environmental analysis to determine these potential impacts.

Dated: July 2, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85–16096 Filed 7–3–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2858–9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075

Availability of Environmental Impact Statements filed June 24, 1985 Through June 28, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850267, FSuppl, COE, NC, Manteo (Shallowbag) Bay Project, Dredging, Design, Dare County, Due: August 15, 1985, Contact: Richard Jackson (919) 343–4745.

EIS No. 850268, Final, EPA, FL, Southwest Orange County Wastewater Facilities Construction, Grant, Southwest Orange County, Due: August 5, 1985, Contact: Robert Cooper (404) 881–3776.

EIS No. 850269, Final, MMS, CA, Point Pedernales Field Offshore Oil and Gas Outer Continental Shelf Development Projects, Approval, Central Santa Maria Basin, Santa Barbara County, Due: August 5, 1985, Contact: Donna Brewer (213) 688–4480.

EIS No. 850270, Draft, FHW, KY, US 31E/150 (Bardstown-Louisville Road) Reconstruction, Brentlinger Road to US 31E/150, Jefferson, Bullit, Spencer, and Nelson Counties: Due: August 19,

1985, Contact: Donald Ecton (502) 584–7163.

EIS No. 850271, Draft, AFS, UT, ID, Sawtooth National Forest, Land and Resource Management Plan and Wilderness Designation, Due: October 5, 1985, Contact: Rowland Stoleson (208) 737–3200.

EIS No. 850272, Draft, FHW, HI, Moanalua Road Improvement, Pali Momi Street to Aiea Interchange, Honolulu County, Due: August 26, 1985, Contact: H. Kusumoto (808) 546–5150.

EIS No. 850273, Draft, CDB, MA, Tent City Development, Parcells 11A and 11B, South End Urban Renewal Area, UDAG, Suffolk County, Due: August 19, 1985, Contact: Richard Mertens (617) 722–4300.

EIS No. 850274, Final, BLM, NV, Walker Resource Area, Mina and Walker Units, Land and Resource Management Plan, Lyon, Douglas, and Mineral Counties, Due: August 5, 1985, Contact: Thomas Owen (702) 882–1631.

EIS No. 850275, Draft, FHW, OR, Mt. Hood Highway/US 26 Improvements, Wildwood to Rhododendon, Clackamas County, Due: August 29, 1985, Contact: Dale Wilken (503) 399–5749.

EIS No. 850276, Draft, AFS, NM, Lincoln National Forest Land and Resource Management Plan, Chave, Eddy, Lincoln and Otero Counties, Due: October 18, 1985, Contact: James Abbott (505) 473–6030.

EIS No. 850277, DSuppl, DOE, CO, Hayden to Blue River 345kV Transmission Line Project, Blue River to Gore Pass Portion, Operation, Construction, and Maintenance, Grand and Summit Counties, Due: August 19, 1985, Contact: Bill Melander (303) 224–7231.

EIS No. 850278, Draft, CDB, MI, Cobo Hall Convention Center, Renovation and Expansion, UDA and CDB Grants, Wayne County, Due: August 31, 1985, Contact: Thomas Andrews (313) 224–6380.

EIS No. 850279, Draft, AFS, WY, Shoshone National Forest, Land and Resource Management Plan, Due: October 3, 1985, Contact: Stephen Mealey (307) 527–6241.

Amended Notices

EIS No. 850237, Draft, AFS, NM, Western Spruce Budworm Management Program, Santa Fe National Forest, Published FR 5–13–85—Officially Withdrawn.

EIS No. 850235, Draft, AFS, NM, Alvarado Realty Land Exchange, Cibola National Forest, Acquisition, Bernalillo County, Due: August 3, 1985, Published FR 6–21–85—Incorrect due date.

EIS No. 850240, Final, UMT, WA, Downtown Seattle Transit Project, Seattle Business District, King County, Due: July 15, 1985, Contact: Terry Ebersole (206) 442–4210, Published FR 6–21–85—Incorrect phone number.

Dated: July 2, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85–16097 Filed 7–3–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1522]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

June 28, 1985.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202 FM Table of Assignments. (Colonial Heights, Tennessee)

Filed By: Timothy K. Brady, Attorney for Murray Communications on 6–5–85.

Subject: Amendment of §§ 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications. (MM Docket No. 84–750)

Filed By: Eric R. Hiding on 6–4–85.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–16035 Filed 7–3–85; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Century Savings Association of Kansas, Shawnee Mission, KS; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Century Savings Association of Kansas, Shawnee Mission, Kansas, on June 28, 1985.

Dated: July 1, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85–16040 Filed 7–3–85; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–441]

Citizens Savings and Loan Association, Rocky Mount, NC; Final Action Approval of Conversion Application

Dated: June 28, 1985.

Notice is hereby given that on June 24, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Citizens Savings and Loan Association, Rocky Mount, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–16039 Filed 7–3–85; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; S.T.S. International, Inc., et al.; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

S.T.S. International, Inc., 4219 Richmond Street, Philadelphia, PA 19137, Officers: William D. Staffieri, President/Director, D. Frazier Crane, Secretary/Director

Arthur L. Phillips, d.b.a. ALPS International, 2455 3rd Street, San Francisco, CA 94107

Brahm & Krenz International, Ltd., c/o 345 E. Parkway Estates Drive, Oak Creek, WI 53134, Officers: Delphin P. Brahm, President, Leo G. Krenz, Secretary

Boaz Export Crating Co., 15133 Jacintoport Blvd., Channelview, TX 77530, Officers: Danny Ray Boaz, President/Director, Ina Boaz, Secretary, Yoshikuni Unno, Vice President

Astral International Shipping Services, Inc., 2 Canal Street, I.T.M. Building, New Orleans, LA 70130, Officer: Thomas Mantis, President

By the Federal Maritime Commission.

Dated: June 28, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-15983 Filed 7-3-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Tiger Intermodal, Inc., et al.; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2572
Name: Tiger Intermodal, Inc.
Address: 211 E. Ocean Blvd.
Date Revoked: June 5, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2472
Name: Miguel M. Alvarado dba Exporters Service
Address: 4851 Homestead Ave., #110, Houston, TX 77028
Date Revoked: June 12, 1985
Reason: Failed to maintain a valid surety bond

License Number: 484
Name: George Ager dba George Ager Shipping Co.
Address: 33 Rector Street, 9th Floor, New York, NY 10006
Date Revoked: June 15, 1985
Reason: Failed to maintain a valid surety bond

License Number: 1351
Name: Hudsons International, Inc.
Address: 402 West Sixth Street, Houston, TX 77007
Date Revoked: June 17, 1985
Reason: Surrendered license voluntarily

License Number: 2819
Name: Deborah J. Puglisi dba Lincoln Customhouse Brokers and International Freight Forwarders
Address: 1499 W. Palmetto Park Rd., Boca Raton, FL 33432
Date Revoked: June 19, 1985
Reason: Voluntarily requested revocation

License Number: 1954
Name: Mover's International, Inc.
Address: P.O. Box 1294, Lynnwood, WA 98036
Date Revoked: June 20, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2106
Name: Marien, Inc.
Address: 2250 N.W. 98th Ave., #216A, Miami, FL 33172
Date Revoked: June 20, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2215
Name: North Atlantic Freight Forwarders, Inc.
Address: 148-23 94th Avenue, Jamaica, NY 11435
Date Revoked: June 23, 1985
Reason: Failed to maintain a valid surety bond

License Number: 1545
Name: Reliance Forwarding Corporation
Address: 4304 Ludlow Street, Philadelphia, PA 19104
Date Revoked: June 24, 1985
Reason: Voluntarily requested revocation.

Eugene P. Stakem,

Deputy Director, Bureau of Tariffs.

[FR Doc. 85-15984 Filed 7-3-85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 222-002451-006.
Title: Seattle Marine Terminal Equipment Agreement.

Parties:
Port of Seattle (Port)
Sea-Land Service, Inc. (Sea-Land)

Synopsis: Agreement No. 222-002451-005, Crane Termination Agreement, between the parties, provided for the purchase of one Port owned container crane at Terminal 5, Seattle by Sea-Land for relocation to Alaska. Sea-Land has determined that it no longer requires use of the crane in Alaska and desires to sell the crane for use by the Virginia Port Authority in the State of Virginia. The Port has no objection to Sea-Land relocating crane No. 3 to the State of Virginia instead of the State of Alaska. Agreement No. 222-002451-006 amends Agreement No. 222-002451-005 to allow the relocation.

Agreement No.: 202-009548-029.
Title: United States Atlantic and Gulf/Eastern Mediterranean and North African Freight Conference.

Parties:
Constellation Lines S.A.
Farrell Lines, Inc.
Prudential Lines, Inc.
Lykes Bros. Steamship Co.

Synopsis: The proposed amendment would change the name of the agreement to reflect the addition of U.S. Gulf ports to the scope of the agreement and would also add minilandbridge authority for cargoes moving from U.S. Atlantic and Gulf coastal points via Atlantic and Gulf ports to destinations within the agreement's scope. The parties have requested a shortened review period.

Agreement No.: 224-010772.
Title: New York Terminal Agreement.

Parties:
The Port Authority of New York and New Jersey (Port Authority)
United States Lines, Inc. (USL)

Synopsis: Agreement No. 224-010772 provides for the lease of the land and premises at the Howland Hook Marine Terminal, New York Harbor, by the Port Authority to USL. The agreement will run for 35 years after the third anniversary of its effective date as determined by the Commission. The parties have requested a shortened review period for the agreement.

Agreement No.: 224-010773.
Title: New York Terminal Agreement.

Parties:
The City of New York (City)
The Port Authority of New York and New Jersey (Port Authority)
United States Lines, Inc. (USL)

Synopsis: Pursuant to Federal Maritime Commission Agreement No. T-4144, the City leased to USL land and terminal facilities at the Howland Hook Terminal in New York Harbor. Agreement No. 224-010733 provides that USL will assign its interest in the present lease, as covered by Agreement No. T-4144, to the Port Authority with

the consent of the City. The Port Authority will be responsible to the City to continue paying the rentals for a period expiring 35 years after the third anniversary of the effective date of the agreement as determined by the Commission. The parties have requested a shortened review period for the agreement.

Agreement No.: 221–010774.

Title: Savannah Terminal Agreement.

Parties:

Georgia Ports Authority (Georgia)

Evergreen Marine Corporation (Taiwan) Ltd. (Evergreen)

Synopsis: Agreement No. 221–010774 provides that the Authority will grant exclusive use of paved container storage space at the Authority's Garden City Terminal in Savannah, Georgia. The initial term of the lease shall begin on the first day of the first month following the determination of the effective date of the agreement by the Commission, and it shall run for three years. Evergreen shall have the option to extend the lease for two additional years. Evergreen guarantees a minimum of 50,000 short tons of wharfage on containerized cargo shipped across the premises during each year of the agreement, and 100,000 short tons during each of the option years. Evergreen shall pay wharfage at lesser rates as provided for in the agreement when the tonnage requirements are met. The parties have requested a shortened review period for the agreement.

Agreement No.: 222–010775.

Title: Los Angeles Terminal Equipment Agreement.

Parties:

City of Los Angeles (City)

American President Lines, Ltd. (APL)

Synopsis: Agreement No. 222–010775 provides for the use by the City of a Paceco container crane located at Berth 93 in the Port of Los Angeles. The crane is owned by Wells Fargo Equipment Leasing Corporation and leased to APL. The agreement provides that the City will make the crane available at tariff rates to users of Berth 93. APL will receive the tariff revenues less an administrative charge of eight and one-half percent as provided in section 11.2 of the agreement for services provided by the City.

By Order of the Federal Maritime Commission.

Dated: July 1, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–16065 Filed 7–3–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under OMB Review

June 28, 1985.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposal to approve under OMB delegated authority the extension without revision of the following reports:

1. Report title: Survey of Terms of Bank Lending (STBL)

Agency form number: FR 2028A, 2028A–S, 2028B

OMB Docket number: 7100–0061

Frequency: Quarterly

Reporters: Commercial banks

Small businesses are affected.

General description of report: This information collection is voluntary 12 U.S.C. 248(a)(2) and is given confidential treatment 5 U.S.C. 552(b)(4).

The STBL collects information on interest rates, including the prime rate, and selected nonprice terms of lending on individual loans to business and farmers from a sample of insured commercial banks.

Board of Governors of the Federal Reserve System, June 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–15998 Filed 7–3–85; 8:45 am]

BILLING CODE 6210–01–M

Citicorp; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such

as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 24, 1985.

A. **Board of Governors of the Federal Reserve System,** (William W. Wiles, Secretary) Washington, DC 20551.

1. *Citicorp,* New York, New York; to engage through its subsidiary, Citicorp Futures Corporation, New York, New York, in the provision of futures commission merchant and futures advisory services to non-affiliated persons with respect to stock index and other financially related futures contracts and options thereon. This application may be inspected at the Federal Reserve Bank of New York. The provision of futures commission merchant services with respect to stock index futures contracts and options thereon has been approved by Board Order as permissible for bank holding companies. *J.P. Morgan & Co. Incorporated,* 71 Federal Reserve Bulletin 251 (1985). The provision of futures advisory services with respect to stock index future contracts and options thereon has not previously been approved by the Board.

Board of Governors of the Federal Reserve System, June 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-15999 Filed 7-3-85; 8:45 am]

BILLING CODE 6210-01-M

MCORP et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) of the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 24, 1985.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCORP,* Dallas, Texas and *MCORP Financial, Inc.,* Wilmington, Delaware; to engage *de novo* through a subsidiary, MPACT Merchant Services Corp, Wilmington, Delaware, in the provision of data processing services to merchants, primarily to process paper arising from credit card transactions and to banks and other financial institutions that collect or process merchant paper.

Board of Governors of the Federal Reserve System, June 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16000 Filed 7-3-85; 8:45 am]

BILLING CODE 6210-01-M

Verbanc Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 26, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Verbanc Financial Corp.,* Bellows Falls, Vermont; to become a bank holding company by acquiring 100 percent of the voting shares of Bellows Falls Trust Company, Bellows Falls, Vermont.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Central Arkansas Bancshares, Inc.,* Malvern, Arkansas; to acquire 100 percent of the voting shares of First Financial Bancshares, Inc., Arkadelphia, Arkansas, thereby indirectly acquiring Merchants & Planters Bank & Trust Co., Arkadelphia, Arkansas.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Pioneer Bank Shares, Inc.,* Duluth, Minnesota; to become a bank holding company by acquiring 83.7 percent of the voting shares of Pioneer National Bank, Duluth, Minnesota.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Weslayan Bancshares, Inc.,* Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Weslayan Bank, N.A., Houston, Texas.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice

President) 101 Market Street, San Francisco, California 94105:

1. *Southern Arizona Bancorp,* Yuma, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Southern Arizona Bank of Yuma, Yuma, Arizona.

Board of Governors of the Federal Reserve System, June 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16001 Filed 7-3-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted as OMB since the last list was published on June 28, 1985.

Public Health Service

Office of the Assistant Secretary for Health

Subject: Involuntary Child and Spousal Support Allotments; Public Health Service Commissioned Personnel—Reinstatement (0937-0123)
Respondents: Individuals or households

National Institutes of Health

Subject: Survey of the Last Days of Life—Extension (0925-0203)
Respondents: Individuals or households
OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Color Additive Certification—Existing Collection
Respondents: Businesses, small businesses

Subject: Quick Turnaround Research Services—FDA 1986 Multipurpose Survey—New
Respondents: Individuals or households
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

Subject: Court Ordered Regulations Prospective: Payment Amounts and Administrative Review—New
Respondents: Businesses, or other for-profit institutions, non-profit institutions, small businesses or organizations

Subject: Quarterly Medicaid Workload Report—HCFA-441—New
Respondents: State/local governments

Subject: Freedom of Choice: Waivers of and Exception to State Plan Requirements 42 CFR 431.54(f)(3) and 431.55(b)(2)—Extension (0938-0295)
Respondents: State/local governments

Subject: Pacemaker Related Data—HCFA-497—New
Respondents: Businesses, non-profit institutions or other for-profit institutions

Subject: Ambulatory Surgical Center Payment Rate Survey—HCFA-452—New
Respondents: State/local governments, businesses or other for-profit institutions, small businesses or organizations

OMB Desk Officer: Fay S. Iudicello.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Dated: July 1, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-16003 Filed 7-3-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket Nos. 78P-0148 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for nine organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers, Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the nine organizations listed in the table below a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the products, and by procedures for personnel who will operate the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date/ termination date
78P-0146 (extension)	Laser Media, Inc., 3048 Armacost Ave. Los Angeles, CA 90025.	Laser Media, Inc. LM and LMS laser projection systems and laser shows assembled and produced by Laser Media, Inc. which incorporate any of these projectors and/or the Stingray and Chromaray Model Series projectors.	May 6, 1985, May 9, 1988.
80P-0151 (extension	Guptill Arena, Route 1, Cohoes, NY 12407	Laser light shows manufactured and produced by Guptill Arena incorporating a Science Faction Model SFC-2003 laser projector.	Mar. 27, 1985, June 10, 1987.
80P-0174 (amendant)	Laser Artistry, Inc. 9156 North 70th St., Milwaukee, WI, 53223.	Laser light shows produced by Laser Artistry Inc. which incorporate the Model L-100 laser projector or the Model LMS laser projector manufactured by Laser Media.	Mar. 25, 1985, Oct. 30, 1986.
81P-0044 (extension)	Laser Art Productions, 909 East Trafficway St., Springfield, MO 65802.	Laser Art Productions laser light show incorporating the Model Series LAP-285 laser projectors using a krypton, argon, helium-neon, and/or helium-cadmium laser with a medium power of up to 6 watts.	Apr. 29, 1985, Apr. 9, 1986.
81P-0360 (extension)	Laser Affiliates/L.A.S.E.R. 2047 Blucher Valley Rd., Sebastopol, CA 95472.	Laser Affiliates/L.A.S.E.R. Laser Light Shows incorporating Class II, III, and/or IV helium-neon, argon, helium-cadmium, and/or krypton laser projectors..	Apr. 4, 1985, Dec. 8, 1986.
82P-0206	Ad Laser, Inc., 310 Via Vera Cruz, Suite 107, San Marcos, CA 92069.	Laser light shows and displays manufactured, assembled and assembled, and produced by Ad Laser, Inc., which incorporate the Model ALS-001 projector.	Apr. 29, 1985, Apr. 29, 1988.
83P-0085 (amendment and extension).	Hill Development Services Co, 2728 Martin Luther King, Jr. Way Berkely, CA 94703.	Laser light shows assembled and produced by Hill Development Services Co. incorporating the class IV Laserscope II krypton, the APS-1 argon, and the CP-1 argon/krypton laser projectors.	Mar. 27, 1985, Mar. 27, 1987.
83V-0144 (extension)	Stone Mountain Memorial Assn., P.O. Box 778 Stone Mountain, GA 30086.	Stone Mountain Memorial Association's fixed location laser light show "Night on Stone Mountain" and for mobile shows assembled and produced by Stone Mountain Productions incorporating the Laser Media Model LM argon and krypton projectors and the Model LMS argon projector.	May 31, 1985, May 31, 1987.
85V-0048	Laser Associates, Inc., Box 5010, Woodland Hills, CA 91365.	Class IV Laser Associates Model Lasertainer Mark I laser effects projector containing a mixed gas argon/krypton laser for laser light shows assembled and produced by Laser Associates, Inc.	Apr. 2, 1985, Apr. 2, 1986.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for

Director, Devices and Radiological Health (21 CFR 5.86).

Dated: June 27, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–15969 Filed 7–3–85; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 83V-0141 et al.]

Availability of Approved Variances for Laser Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for various models of laser products manufactured by two organizations. One of the laser products is used in a variety of medical, dental, biological, agricultural, and cosmetic applications while the other is used to provide a pattern of alignment lines for positioning of the patient prior to YAG laser surgery.

DATES: The effective dates and termination dates of the variances are listed in the table below under "SUPPLEMENTARY INFORMATION."

ADDRESS: Except for information regarded by law or regulation as confidential, the applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the organizations listed in the table below a variance from the requirements of the performance standard for laser products (21 CFR 1040.10). FDA has granted approval for the listed products to vary as specified from that portion of § 1040.10(f)(6) requiring a beam attenuator to reduce laser radiation output to below Class I limits. All other provisions of § 1040.10 remain applicable to the listed laser products.

CDRH has determined that: (a) The requirement of § 1040.10(f)(6) is not appropriate for the product; and (b) suitable means of radiation safety and protection are provided by the existing equipment design and by conditions imposed by the terms of the variances. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Laser product	Effective date/termination date
83V-0141	International Laser, Inc., 17451/2 B.N. Orangethorpe Pk., Anaheim, California 92801.	Bio-Max HeliumNeon Laser, Models 600 and 610.	May 21, 1985–May 21, 1987 or upon completion of the approved investigational clinical trials, whichever occurs first.
84V-0445	HGM Medical Laser Systems, Inc. 1826 South 3850 West Salt Lake City, Utah 84104.	Q-Switched Nd:YAG capsulatory laser incorporating a HeNE laser aiming beam.	Apr. 29, 1985–Apr. 29, 1990.

Except for information regarded as confidential under 42 U.S.C. 263i(e) or 21 CFR 1010.4(c)(4), the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that

office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control of Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: June 27, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85-15971 Filed 7-3-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 77N-0240; DESI 1786]

Certain Single-Entity Coronary Vasodilators—Nitroglycerin Buccal Tablets; Drug Efficacy Study Implementation; Revocation of Exemption; Announcement of Marketing Conditions

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking the temporary exemption for single-entity coronary vasodilator drug products containing nitroglycerin in controlled-release buccal tablet form. The exemption has permitted the products to remain on the market beyond the time limit scheduled for implementation of the Drug Efficacy Study. FDA also announces the conditions for marketing these products for the indications for which they are now regarded as effective.

DATES: The revocation of exemption is effective July 5, 1985; the deadline for full approval of conditionally approved new drug applications based on satisfactory bioavailability supplements is June 30, 1986; other supplements are due on or before September 5, 1985.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 77N-0240 (DESI 1786), directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to the conditionally approved abbreviated new drug applications (identify with ANDA number): Division of Generic Drugs (HFN-230), Rm. 16-70, Center for Drugs and Biologics.

Original abbreviated new drug applications: Division of Generic Drugs (HFN-230), Rm. 16-70, Center for Drugs and Biologics.

Requests for information on conducting bioavailability/bioequivalence tests: Division of Bioequivalence (HFN-250), Center for Drugs and Biologics.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 1786) published in the **Federal Register** of February 25, 1972 (37 FR 4001), FDA announced its evaluation of reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, on certain coronary vasodilator drugs. FDA classified controlled-release tablets of nitroglycerin as possibly effective for indications relating to the management, prophylaxis, or treatment of anginal attacks.

Notices published in the **Federal Register** of August 26, 1977 (42 FR 43127), October 21, 1977 (42 FR 56156), and September 15, 1978 (43 FR 41282), amended earlier notices of December 14, 1972 (37 FR 28623) and July 11, 1973 (38 FR 18477) by temporarily exempting nitroglycerin in controlled-release forms from the time limits established for completing certain phases of the Drug Efficacy Study Implementation (DESI) program. The temporary exemption (under Category I) also applied to nitroglycerin in tropical ointment and conventional oral forms. The amending notices established conditions for marketing these products, including requirements for both bioavailability and clinical studies. The availability of guides and methods for conducting bioavailability and clinical effectiveness studies and the specific conditions under which the products could be marketed were published in the August 26, 1977 notice. Conditions were established for marketing of identical, similar, or related products (21 CFR 310.6) whether or not they had been marketed or whether or not they were subjects of approved new drug applications (NDA's). An abbreviated NDA (ANDA) was required for marketing of products not the subject of an NDA. The conditions provided for such products to be conditionally approved, pending the results of ongoing studies.

In the September 15, 1978 notice, FDA announced a change in the previously published conditions for testing and marketing single-entity coronary vasodilators. The change eliminated the requirement that each manufacturer conduct or participate in effectiveness studies and allowed a drug to remain on or enter the market even though its manufacturer was not conducting clinical studies of effectiveness, provided that some other manufacturer was conducting such studies on a product containing the same chemical entity in a similar dosage form. The notice also extended the dates for completing ongoing studies.

In response to the exempting notices, a number of firms submitted data and information to support effectiveness of the various nitroglycerin dosage forms exempt under Category I. Upon completing its evaluation of data submitted for nitroglycerin oral controlled-release tablets and capsules, the agency announced its conclusion that these dosage forms of nitroglycerin are effective for prevention of angina pectoris in a notice published in the **Federal Register** of September 7, 1984 (49 FR 35428).

The agency has completed its review of the data submitted for the buccal form of nitroglycerin and found that the data provide substantial evidence of effectiveness. This notice announces that conclusion and the conditions under which the products may be marketed.

Accordingly, the temporary exemption as it pertains to nitroglycerin in controlled-release buccal tablet form is hereby revoked.

Certain other nitroglycerin products remain exempt under Category I and will be the subjects of future **Federal Register** notices.

Forest Laboratories, Inc., submitted data to support the effectiveness of nitroglycerin buccal tablets. Two studies provide substantial evidence of the effectiveness of this dosage form in angina pectoris. The studies are double-blind, randomized, placebo-controlled, crossover trials involving exercise testing in a total of 31 patients. The data demonstrate significant improvement in exercise tolerance for 3 hours (and as long as 5 hours in some patients) after single doses (1–5 mg) of buccal nitroglycerin given prophylactically. Data from additional controlled clinical trials submitted (included a trial of rest and exercise invasive hemodynamics in 60 patients) show that buccal nitroglycerin has demodynamic effects similar to sublingual nitroglycerin the first 3 minutes after administration, and therefore may be useful for aborting an

acute attack of angina pectoris. Other submitted studies provide further supportive evidence of the effectiveness of buccal nitroglycerin in the treatment of angina pectoris. Among these is a placebo-controlled trial presenting evidence that buccal nitroglycerin continues to significantly improve treadmill time for up to 5 hours following a single dose in patients who have received a two-week course of the drug. The following studies provide substantial evidence of effectiveness:

1. Reichek, N., et al., "Angina Prophylaxis with Buccal Synchron Nitroglycerin: A Rapid Onset Long-Acting Nitrate," *Advances in Pharmacotherapy*, 1:143–154, 1982.

2. Lichstein, E., et al., "Efficacy of Buccal Synchron Nitroglycerin in Patients with Angina Pectoris," *Advances in Pharmacotherapy*, 1:166–173, 1982.

List of ANDA's

The following ANDA's, previously conditionally approved on the basis of safety, but not effectiveness, are subject to the finding and conditions stated in this notice:

1. ANDA 86–604; Sustachron Buccal Tablets containing 5 milligrams (mg) nitroglycerin per tablet; Forest Laboratories, Inc., 300 Prospect St., Inwood, NY 11696.
2. ANDA 87–171; Sustachron Buccal Tablets containing 2.5 mg nitroglycerin per tablet; Forest Laboratories.
3. ANDA 87–286; Sustachron Buccal Tablets containing 1 mg nitroglycerin per tablet; Forest Laboratories.
4. ANDA 87–322; Sustachron Buccal Tablets containing 1.5 mg nitroglycerin per tablet; Forest Laboratories.
5. ANDA 87–323; Sustachron Buccal Tablets containing 2 mg nitroglycerin per tablet; Forest Laboratories.
6. ANDA 87–615; Sustachron Buccal Tablets containing 3 mg nitroglycerin per tablet; Forest Laboratories.
7. ANDA 87–734; Susadrin Transmucosal Tablets containing 1 mg nitroglycerin per tablet; Merrell Dow Pharmaceuticals, Inc., subsidiary of The Dow Chemical Co., 2110 East Galbraith Rd., Cincinnati, OH 45215.
8. ANDA 87–735; Susadrin Transmucosal Tablets containing 2 mg nitroglycerin per tablet; Merrell Dow Pharmaceuticals.
9. ANDA 87–758; Susadrin Transmucosal Tablets containing 3 mg nitroglycerin per tablet; Merrell Dow Pharmaceuticals.

New Drug Status

A drug product that contains nitroglycerin in buccal (controlled-release) tablet form is regarded as a new drug (21 U.S.C. 321(p)), and an approved new drug application is required for marketing it. The new drug applications listed above represent ANDA's conditionally approved under the temporary exemption that allowed these products to be marketed while effectiveness studies were conducted. None of these applications is approved on the basis of effectiveness of the drug product. Therefore, supplemental new drug applications are now required to revise the labeling and to provide additional information necessary for full approval of the ANDA's on the basis of effectiveness, as well as safety.

In addition to the holders of the applications specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address above).

Conditions for Approval and Marketing

FDA has reviewed all available evidence and concludes that single-entity nitroglycerin in buccal controlled-release tablet form is effective for the indications in the labeling conditions below. The agency is prepared to approve abbreviated new drug applications for products containing nitroglycerin in this dosage form and supplements to conditionally approved abbreviated new drug applications under the conditions described in this notice.

A. *Form of drug.* The drug is in controlled-release tablet form suitable for transmucosal administration.

B. **Labeling conditions.** 1. The label bears the statement "Caution: Federal law prohibits dispensing without prescription."

2. The drug is labeled to comply with all requirements of the Federal Food, Drug, and Cosmetic Act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The general outline of the labeling is set forth below; the labeling should be considered a guideline, to be adjusted to reflect individual product differences:

Product Name (Nitroglycerin) Package Insert

Description

Nitroglycerin, an organic nitrate, is a vasodilator which has effects on both arteries and veins. [Product Name] buccal tablets is a controlled-release nitroglycerin preparation, formulated in an inert polymer base, which delivers nitroglycerin through the oral mucosa over a sustained period of time. The [Product Name] buccal tablet, when placed under the upper lip or in the buccal pouch, adheres to the mucosa. As the tablet gradually dissolves it releases nitroglycerin to the systemic circulation over a 3 to 5 hour period.

The chemical name for nitroglycerin is 1,2,3,-Propanetriol, trinitrate. The compound has a molecular weight of 227.09. The chemical structure is: (To be inserted by manufacturer or distributor)

Clinical Pharmacology

The principal pharmacological action of nitroglycerin is relaxation of vascular smooth muscle, producing a vasodilator effect on both peripheral arteries and veins with more prominent effects on the latter. Dilation of the post-capillary vessels, including large veins, promotes peripheral pooling of blood and decreases venous return to the heart, thereby reducing left ventricular end-diastolic pressure (pre-load). Arteriolar relaxation reduces systemic vascular resistance and arterial pressure (after-load).

The mechanism by which nitroglycerin relieves angina pectoris is not fully understood. Myocardial oxygen consumption or demand (as measured by the pressure-rate product, tension-time index and stroke work index) for a given level of external exercise is decreased by both the arterial and venous effects of nitroglycerin and, presumably, a more favorable supply-demand ratio is achieved. While the large epicardial coronary arteries are also dilated by nitroglycerin, the extent to which this action contributes to relief of exertional angina is unclear.

Nitroglycerin is rapidly metabolized, principally by a liver reductase to form glycerol nitrate metabolites and inorganic nitrate. Two active major metabolites, the 1, 2 and 1, 3 dinitroglyicerols, the products of hydrolysis, appear to be less potent than nitroglycerin as vasodilators but have longer plasma half-lives. The dinitrates are further metabolized to mononitrates (biologically inactive with respect to cardiovascular effects) and ultimately glycerol and carbon dioxide. There is extensive first-pass deactivation by the liver of swallowed nitroglycerin following gastrointestinal absorption.

Adequate studies defining the pharmacokinetics of [Product Name] have not been reported. The clinical relevance of nitroglycerin blood levels has not been established, since therapeutic levels of the drug and metabolites have not been defined.

Therapeutic doses of buccal nitroglycerin have been shown to reduce systolic and mean arterial blood pressures for up to two hours, and pressure is most reduced when the patient assumes upright posture. The fall in blood pressure is seen 1–2 minutes after buccal administration. Buccal nitroglycerin may reduce abnormally elevated left ventricular end-diastolic pressure (LVEDP), a hemodynamic occurrence during acute episodes of angina pectoris and this effect can be seen about one minute after dosing.

Pulmonary artery pressures can be reduced for up to 3 hours.

Indications and Usage

[Product Name] is indicated for the treatment and prevention of angina pectoris due to coronary artery disease. Controlled clinical trials have demonstrated that single doses of this form of nitroglycerin are effective in improving exercise tolerance in patients with exertional angina pectoris. Double-blind, placebo-controlled trials have shown significant improvement in bicycle exercise time until chest pain for 3–4 hours after administration of titrated doses (1–5 mg; to give 10 mmHg drop in resting systolic blood pressure or a 10 beat/min increase in heart rate) of buccal nitroglycerin. Duration of anti-anginal effect relates directly to time to tablet dissolution. A significant anti-anginal effect can persist for about 5 hours in patients in whom the tablet has not completely dissolved by this time.

Because of the relatively rapid absorption of nitroglycerin from the oral mucosa, [Product Name] may be used for acute prophylaxis, by administration a few minutes before situations likely to provoke anginal attacks.

Controlled clinical trials have shown that therapeutically equivalent doses of buccal nitroglycerin and sublingual nitroglycerin produce similar hemodynamic effects in angina pectoris patients during the first 3 minutes after dosing. [Product Name] may therefore be tried for aborting an acute attack of angina pectoris.

Contraindications

Nitroglycerin is contraindicated in patients who have shown purported hypersensitivity or idiosyncracy to it or other nitrates or nitrites.

Warnings

Benefits of [Product Name] during the early days of acute myocardial infarction have not been established. If one elects to use nitrates in early infarction, careful clinical assessment and hemodynamic monitoring should be instituted because of the potential deleterious effects of hypotension.

Precautions

General

Severe hypotensive response, particularly with upright posture, may occur even with small doses of nitroglycerin. The drug therefore should be used with caution in subjects who may have volume depletion from diuretic therapy or in patients who have low systolic blood pressure (e.g., below 90 mm Hg). Paradoxical bradycardia and increased angina pectoris may accompany nitroglycerin-induced hypotension.

Nitrate therapy may aggravate the angina caused by hypertrophic cardiomyopathy.

Tolerance to this drug and cross-tolerance to other nitrates and nitrites may occur. Tolerance to the vascular and antianginal effects of nitrates has been demonstrated in clinical trials, in experience through occupational exposure, and in isolated tissue experiments. The importance of tolerance to the appropriate use of buccal nitroglycerin in the management of patients with angina pectoris has not been determined. In controlled clinical trials in angina pectortis patients, sustained therapy with some nitrate preparations has resulted in significantly less improvement and shorter duration of improvement in exercise time than has been seen when therapy was initiated. However, a controlled study of 2 weeks of repetitive doses of buccal nitroglycerin showed no significant tolerance as measured by treadmill performance.

In industrial workers continuously exposed to nitroglycerin, tolerance clearly occurs. Moreover, physical dependence also occurs since chest pain, acute myocardial infraction, and even sudden death have occurred during temporary withdrawal of nitroglycerin from the workers. In clinical trials in angina patients, there are reports of angina attacks being more easily provoked and of rebound in the hemodynamic effects soon after nitrate withdrawal. The relative importance of these observations to the routine, clinical use of [Product Name] is not known, but it seems prudent to gradually withdraw patients from nitroglycerin when the therapy is being terminated, rather than stopping the drug abruptly.

Information for Patients

[Product Name] should be placed under the upper lip or in a buccal pouch and permitted to dissolve slowly over a 3–5 hours period. It should not be chewed or swallowed. The tablet should not be placed under the tongue. [Product Name] beings to release medication immediately upon contact with the mucosa and will continue to release nitroglycerin until it dissolves. The time to dissolution of [Product Name] increases as patients familiarize themselves with its presence. The rate of dissolution of the tablet may be increased by touching the tablet with the tongue or drinking hot liquids.

Headache may occur during initial therapy with nitroglycerin. Headache is usually relieved by the use of standard remedies, or by lowering the dose, and tends to disappear after the first week or two of use.

Drug Interactions

Alcohol may enhance sensitivity to the hypotensive effects of nitrates. Nitroglycerin acts directly on vascular muscle. Therefore any other agent that directly or indirectly acts on vascular smooth muscle can be expected to have decreased or increased effect depending upon the agent.

Marked symptomatic, orthostatic hypotension has been reported when calcuim channel blockers and organic nitrates were used in combination. Dose adjustments of either class of agents may be necessary.

Carcinogenesis, Mutagenesis, Impairment of Fertility

No long-term studies in animals have been performed to evaluate carcinogenic potential of [Product Name]; neither has its mutagenic potential been studied. It is also not known whether nitroglycerin can affect reproduction capacity.

Pregnancy

Pregnancy Category C. Animal reproduction studies have not been conducted with [Product Name]. It is also not known whether nitroglycerin can cause fetal harm when administered to a pregnant woman. Nitroglycerin should be given to a pregnant woman only if clearly needed.

Nursing Mothers

It is not known whether nitroglycerin is excreted in human milk. Because many drugs are excreted in human milk, caution should be exercised when [Product Name] is administered to a nursing woman.

Pediatric Use

Safety and effectiveness in children have not been established.

Adverse Reactions

Adverse reactions to [Product Name], particularly headache and hypotension, are generally dose-related. In clinical trials at various doses of nitroglycerin, the following adverse effects have been observed:

Headache, which may be severe and persistent, is the most commonly reported side effect of nitroglycerin, with an incidence in the order of 50% in some studies. Cutaneous vasodilation with flushing may occur. Transient episodes of dizziness and weakness, as well as other signs of cerebral ischemia associated with postural hypotension may occasionally develop. An occasional individual may exhibit marked sensitivity to the hypotensive effects of nitrates and severe responses (nausea, vomiting, weakness, restlessness, pallor, persipiration, and collapse) may occur even with therapeutic doses of nitrates. Drug rash and/or exfoliative dermatitis have been reported in patients receiving nitrate therapy. Nausea and vomiting can occur, but appear to be uncommon. Clinical trials of one to several months duration have not shown evidence of significant injury to the oral mucosa with repetitive use of [Product Name].

Overdosage

Signs and symptoms

Nitrate overdosage may result in: severe hypotension, persistent throbbing headache, vertigo, palpitation, visual disturbance, flushing and perspiring skin (later becoming cold and cyanotic), nausea and vomiting (possibly with colic and even bloody diarrhea), syncope (especially in the upright posture), methemoglobinemia with cyanosis and anorexia, initial hpernea, dyspnea and slow breathing, slow pulse (dicrotic and intermittent), haert block, increased intracranial pressure with cerebral symptoms of confusion and moderate fever paralysis and coma followed by clonic convulsions and possibly death due to circulatory collapse.

Treatment of Overdosage

Remove any residue of the buccal [Product Name] tablet and wipe the gum clean at the site of insertion. Keep the patient recumbent in a shock position and comfortably warm. Gastric lavage may be of use if the medication has only recently been swallowed. Passive movement of the extremities may aid venous return. Administer oxygen and artificial ventilation if necessary. If methemoglobinemia is present, administration of methylene blue (1%

solution), 1–2 mg/kg intravenously, may be required.

Methemoglobin

Case reports of clinically significant methemoglobinemia are rare at conventional doses of organic nitrates. The formation of methemoglobin is dose-related and in the case of genetic abnormalities of hemoglobin that favor methemoglobin formation, even conventional doses of organic nitrates could produce harmful concentrations of methemoglobin.

Warnings

Epinephrine is ineffective in reversing the severe hypotensive events associated with overdose. It and related compounds are contraindicated in this situation.

Dosage and Administration

The usual starting dose for [Product Name] is 1.0 mg placed on the oral mucosa between the lip and gum above the upper incisors or between the cheek and gum. The tablet should be allowed to dissolve undisturbed. [Product Name] should be incrementally titrated upward until a dose effective in controlling angina is determined or until side effects limit the does. In ambulatory patients the magnitude of incremental dose should be guided by measurements of standing blood pressure. In the event [Product Name] does not afford prompt relief of an acute anginal attack, sublingual nitroglycerin is recommended.

The interval between doses of [Product Name] for prophylactic therapy in angina pectoris is generally 3 to 5 hours. The physical presence of the tablet, as it dissolves, may serve as an indicator of continued nitrate coverage. Bedtime usage of [Product Name] is not recommended because of the risk of aspiration.

It is recommended that for prophylaxis of angina attacks, patients be started on 1.0 mg [Product Name] every 5 hours (e.g., 8 a.m., 1 p.m., and 6 p.m.), during waking hours, and their response to treatment assessed over the following 4 to 5 days. If angina occure while the tablet is in place, the dosage shofld be increased to the next tablet strength. If angina occurs after the tablet has dissolved, the frequency of dosing should be increased (e.g., every 4 hours).

Clinical experience indicates that patients are able to talk, eat, and drink while using [Product Name]. Hot drinks may increase the rate of dissolution of the tablet. A single controlled clinical trial demonstrating the effectiveness of maintenance therapy with [Product Name] for 2 weeks has been reported.

How Supplied

(To be inserted by manufacturer or distributor)

C. *Marketing status.* 1. Marketing a drug product that is now the subject of a conditionally approved abbreviated new drug application may be continued provided that, on or before September 3, 1985, the holder of the application has submitted a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted (21 CFR 314.70(b)(3)).

2. In addition, to permit full approval on the basis of effectivness, as well as safety, of the abbreviated applications that are now conditionally approved on the basis of safety only, the holder of each such application is required to supplement its application to provide acceptable in vitro dissolution tests and in vivo bioavailability/bioequivalence (measuring plasma or serum concentrations of parent compound and its principal metabolites) studies on the drug product in accord with item D below. To furnish adequate time for review, bioavailability data should be submitted on or before January 2, 1986. For any application not fully approved by June 30, 1986, the agency will begin proceedings to withdraw the previous approval based only on safety and to remove those products from the market.

3. Approval of an abbreviated new drug application (21 CFR 314.55) must be obtained before marketing such products. Such an abbreviated new drug application is required to contain evidence from in vivo bioavailability studies as described in item D below. Evidence from in vitro dissolution testing is also required. Marketing drug products before approval of a new drug application will subject those products, and those persons who caused the products to be marketed, to regulatory action.

D. *Bioavailability requirements.* 1. As stated in the **Federal Register** of August 23, 1977 (42 FR 42311), the provision of 21 CFR 320.22(c) waiving bioavailability data for certain drugs does not necessarily apply to drug products first announced as effective in DESI notices published after January 7, 1977. This is the first notice announcing that buccal nitroglycerin (controlled-release) is effective, and the agency has determined that because of actual or potential bioequivalence problems, it should be added to the list of drugs for which bioavailability data are not waived.

2. Under the exempting notices, manufacturers were allowed to demonstrate bioavailability via an acceptable bio-screen, e.g., the digital plethysmography (DPG) method, and, as a condition for marketing, could show only that sufficient drug had been absorbed to elicit a positive measurable indication of pharmacologic activity. At that time, sensitive methodology for determination of blood levels of the various organic nitrate coronary vasodilators had not been fully developed. Suitable methodology is now available for assessing bioavailability and defining the pharmacokinetics of nitroglycerin through blood level determinations.

3. Studies are currently under way that are intended to establish the absolute and relative bioavailability of buccal nitroglycerin. The products used in these studies have been selected as standards because acceptable clinical efficacy data are available for them. Manufacturers who submit new applications or who hold previously approved or conditionally approved applications for other formulations will be required to match these standards by performing bioavailability/bioequivalence studies (blood level versus time for parent drug and major metabolites). Failure of a product to match the standards may require clinical dose ranging studies as a condition for marketing. Requests for guidance on conducting dissolution tests and bioavailability/bioequivalence studies are to be addressed to the Division of Biopharmaceutics at the address given above.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: June 27, 1985.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 85–19970 Filed 7–3–85; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BERC-231-NR]

Medicare Program; Exclusion of Cytotoxic Leukocyte Testing From Medicare Coverage

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of ruling.

SUMMARY: This ruling announces that cytotoxic leukocyte testing for food allergies is excluded from Medicare coverage because available evidence does not show that these tests are safe and effective.

FOR FURTHER INFORMATION CONTACT: Mary Louise McIntyre (301–594–6719).

SUPPLEMENTARY INFORMATION:

I. Background

On August 19, 1983, we published a notice in the **Federal Register** (48 FR 37716) proposing to exclude certain food

allergy testing and treatment procedures from Medicare coverage. The procedures we proposed to exclude were the cytotoxic leukocyte test, sublingual, intracutaneous and subcutaneous provocative and neutralization testing, and neutralization therapy. We based these proposed exclusions on information received from the Public Health Service (PHS).

The PHS had recommended that these procedures not be covered by Medicare because their effectiveness had not been demonstrated by acceptable clinical evidence. The complete National Center for Health Care Technology (NCHCT) evaluations and recommendations were provided as appendices to our proposed notice.

Section 1862(a)(1) of the Social Security Act (the Act) prohibits payment for any expenses incurred for items or services "which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member". HCFA has interpreted this statutory provision to exclude from Medicare coverage those medical and health care services and items that are not demonstrated to be safe and effective by acceptable clinical evidence. We proposed to exclude the procedures listed in our August 19, 1983 notice from Medicare coverage under the authority of section 1862(a)(1) of the Act.

II. Discussion of Public Comments on the Proposed Notice

Over 19,000 commenters responded to our proposed notice. We received comments from individuals, physicians, medical laboratories, professional medical societies and other organizations, and members of Congress. Almost all the comments concerned whether Medicare should cover food allergy testing and treatment procedures and the effect of this decision on third party payors. Our response to these comments are discussed below:

• *Comment:* The vast majority of comments were testimonial in nature, and expressed the opinion that the food allergy testing and treatment procedures in question should not be excluded from Medicare coverage. These commenters stated that the procedures are effective in controlling allergies.

Response: While most of the comments were testimonial in nature, we also received a small body of new scientific studies and papers related to testing and treatment procedures other than cytotoxic leukocyte testing. Some of this material was presented to support a finding that the procedures in question are safe and effective and some of it was presented to support an opposite finding.

The American Academy of Otolaryngic Allergy, Inc. endorses intracutaneous and subcutaneous provocative food allergy testing techniques and neutralization therapy and has submitted studies that support its views. The Society for Clinical Ecology and the Pan-American Allergy Society also presented studies supporting the efficacy of these modalities. Conversely, the Joint Council of Allergy and Immunology finds these food allergy procedures to be unproven and has submitted studies supporting its view. The Joint Council's sponsoring organizations are the American Academy of Allergy and Immunology, the American College of Allergists, the American Association for Clinical Immunology and Allergy, and the American Association of Certified Allergists. Due to the complexity of the issues involved and the lack of consensus in the medical community, we are still evaluating this new material and its implications for sublingual, intracutaneous and subcutaneous provocative and neutralization tests, and neutralization therapy.

Out of the more than 19,000 commenters, approximately 170 specifically mentioned cytotoxic leukocyte testing. These commenters oppose the elimination of Medicare coverage for this procedure. Their opposition is testimonial in nature and included no scientific studies supporting the efficacy of cytotoxic leukocyte testing for food allergy. Further, the Food and Drug Administration (on page 2 of its Compliance Policy Guide 7124.27 dated 03/19/85) states that the consensus of scientific opinion is that the cytotoxic test is unreliable as a diagnostic tool and is not generally recognized by qualified experts as effective.

Therefore, based on all information available to us, we have determined that cytotoxic leukocyte testing lacks an acceptable scientific rationale, specificity, sensitivity, and evidence of clinical effectiveness. We see no reason to revise our position on this particular procedure.

• *Comment:* Many commenters are concerned that private insurance companies will follow Medicare's lead and also exclude food allergy testing and treatment procedures from coverage. These commenters believe that affected individuals will not be able to afford the treatments on their own. They stated that without the treatments, many individuals will not be able to hold steady employment and will be forced to apply for disability under the Social Security program.

Response: The majority of individuals commenting on our proposed notice appear to be individuals who are not entitled to Medicare benefits and who have private insurance policies that currently over the food allergy tests and treatments in question. We could identify only 210 commenters as current Medicare beneficiaries based on the background information and other statements provided in the individual letters that we received. While we recognize that private health insurers sometimes adopt policies similar to those of Medicare, we have no legal control over the coverage provided by private insurers. Medicare policies are applicable only to the Medicare program and have no statutory or regulatory relationship to private insurers and third party payors.

Comment: One commenter stated that we had ignored the requirements of the Regulatory Flexibility Act.

Response: This is not a final rule required to be published under section 5 U.S.C. 553; rather, it is an agency general statement of policy or interpretation. Therefore, the Regulatory Flexibility Act does not apply.

III. Determinations

• We have determined that available evidence does not show that cytotoxic leukocyte testing for food allergies is safe and effective. Therefore, we are excluding this procedure from Medicare coverage.

• We are still evaluating information concerning sublingual, intracutaneous and subcutaneous provocative and neutralization tests, and neutralization therapy for food allergies. We will publish a notice in the Federal Register when our evaluation is completed.

IV. Ruling

We plan to compile and publish all HCFA Rulings in the "Health Care Financing Administration Rulings" Booklet which will be indexed for citation purposes. When this ruling is republished in the booklet, it will be known as HCFAR–85–1. The test of the ruling is as follows:

Exclusion of Cytotoxic Leukocyte Testing From Medicare Coverage
HCFAR–85–1

Purpose: This ruling announces HCFA's decision to exclude Medicare coverage of cytotoxic leukocyte testing for food allergies.

Citations: Section 1862(a)(1) of the Social Security Act, 42 U.S.C.

1395y(a)(1); 42 CFR 401.108; 42 CFR 405.310(k).

Pertinent History: We published a notice in the Federal Register on August 19, 1983 (48 FR 37718) proposing to exclude certain food allergy testing and treatment procedures from Medicare coverage. We received more than 19,000 comments on the notice, approximately 170 specifically mentioned cytotoxic leukocyte testing. These commentecs oppose the elimination of Medicare coverage for this procedure. Their opposition is testimonial in nature and included no scientific studies supporting the efficacy of cytotoxic leukocyte testing for food allergies. Further, the Food and Drug Administration (on page 2 of its Compliance Policy Guide 7124.27 dated 03/19/85) states that the consensus of scientific opinion is that the cytotoxic test is unreliable as a diagnostic tool and is not generally recognized by qualified experts as effective. Therefore, based on all information available to us, we have determined that cytotoxic leukocyte testing lacks an acceptable scientific rationale, specificity, sensitivity, and evidence of clinical effectiveness.

Ruling: Cytotoxic leukocyte testing for food allergies is excluded from Medicare coverage because available evidence does not show that these tests are safe and effective.

Effective Date: August 5, 1985.

Cross-References: Identical instructions can be found in the following HCFA publications: Part A Intermediary Manual (HCFA Pub. 13–3), Chapter II, Coverage Issues Appendix, section 50–2; Medicare Carriers Manual (HCFA Pub. 14–3), Chapter II, Coverage Issues Appendix, section 50–2; Hospital Manual (HCFA Pub. 10), Coverage Issues Appendix, section 50–2.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: June 13, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85–16080 Filed 7–3–85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision of Notices of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is revising five notices describing systems of records maintained by the Geological Survey. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the previous publication of the material in the Federal Register.

The notice titled "Accounts Receivable—Interior, GS–3", previously published in the Federal Register on October 12, 1983 (48 FR 46450), is being revised to delete references to the Minerals Management Service (MMS). Such records being maintained by MMS are covered in a system of records notice (MMS–8) published in the Federal Register on August 1, 1984 (49 FR 30800).

The notice titled "Contract Files—Interior, GS–5", previously published on June 23, 1983 (48 FR 28747), is being revised to correct a typographical error in the description of the categories of individuals covered by the system. Also, existing routine use (6) dealing with disclosures to consumer reporting agencies is being removed from the "routine use" section of the notice, and is being published separately as prescribed in guidelines issued by the Office of Management and Budget (OMB) on March 30, 1983, July 5, 1983, and July 22, 1983, pertaining to the Debt Collection Act of 1982 (P.L. 97–365).

The notice titled "RELOS Records—Interior, GS–6", previously published on April 11, 1977 (42 FR 19056), is revised to remove references to carpool information, and to correct the entries concerning notification, access, and amendment procedures.

The notice titled "Cartographic Information Customer Records—Interior, GS–15", previously published on June 23, 1983 (48 FR 28748), is revised to reflect that the records are stored by account number, and indexed by name and zip code. The existing routine use (4) dealing with disclosures to consumer reporting agencies is being removed from the "routine use" section of the notice, and is being published separately as prescribed in the OMB guidelines referenced above.

The notice titled "Computer Services Users—Interior, GS–16", previously published on June 23, 1983 (48 FR 28749), is revised to reflect that the records are stored on magnetic disks. The existing routine use (6) dealing with disclosures to consume reporting agencies is being removed from the "routine use" section of the notice, and is being published separately as prescribed in the OMB guidelines referenced above.

The five revised notices are published in their entirety below, and are effective July 5, 1985.

Dated: June 21, 1985.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/USGS–3

SYSTEM NAME:

Accounts Receivable-Interior, GS–3.

SYSTEM LOCATION:

Geological Survey, National Center, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Debtors owing money to the Geological Survey, including employees, former employees, business firms, institutions and private individuals. (The records contained in this system which pertain to individuals contain principally proprietary information concerning sole proprietorships. Some of the records in the system which pertain to individuals may reflect personal information, however. Only the records reflecting personal information are subject to the Privacy Act. The system also contains records concerning corporations and other business entities. These records are not subject to the Privacy Act.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, SSN, ID number, amount owed, invoice or bill number, reason for the debt, and any other information on debts owed to the Bureaus.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–09; FPMR 101–7; Treasury Fiscal Requirements Manual; Pub. L. 97–365.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to bill persons and firms owing money to the Geological Survey. Disclosures outside the Department of the Interior may be made to: (1) The Office of Personnel Management for reporting purposes; (2) to the U.S. Department of Justice when related to litigation or anticipated litigation; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (4) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual;

(5) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit; (6) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract grant or other benefit.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual form in file folders.

RETRIEVABILITY:

By individual name and Social Security number.

SAFEGUARDS:

Handling by authorized personnel only.

RETENTION AND DISPOSAL:

Retained until payment received and account audited, then disposed of in accordance with Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Branch of Financial Management, Geological Survey, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

A written and signed request from the requester seeking information about him/her is required and is submitted to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access should be addressed to the System Manager and must meet the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Petitions for amendment should be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Subject individual, contracting officer, accounting records.

INTERIOR/USGS-5

SYSTEM NAME:

Contract Files-Interior, GS-5.

SYSTEM LOCATION:

The primary location of this system of records is in the Branch of Procurement and Contracts, Geological Survey, National Center, Reston, VA 22092. These records are also maintained in several Survey administrative field offices. A listing of these locations may be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contracts with the Geogogical Survey. (The records contained in this system which pertain to individuals contain principally proprietary information concerning sole proprietorships. Some of the records in the system which pertain to individuals may reflect personal information, however. Only the records reflecting personal information are subject to the privacy Act. The system also contains records concerning corporations and other business entities. These records are not subject to the Privacy Act.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of contract information, from inception of requirement, through contract award, contract administration and completion of the contract. Copies of contractor and technical and cost proposals, documentation pertaining to the award, contract, miscellaneous correspondence, and information on debts owned by a contractor as a result of overpayment, default, disallowed costs or other contractual obligation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 481.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is in awarding and administering contracts through their completion. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee; or the issuance ofa security clearance, license, contract, grant or other benefit.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders.

RETRIEVABILITY:

By name of individual contractor and by contract number.

SAFEGUARDS:

Proprietary technical and cost information maintained separately in locked cabinet.

RETENTION AND DISPOSAL:

Retained and disposed of according to GSA General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Procurement Policy Section, Branch of Procurement and Contracts, Geological Survey, Department of the Interior, National Center, Reston, VA 22092.

NOTIFICATION PROCEDURES:

A written and signed request stating that the requester seeks information concerning records pertaining to him must be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Requests for access shall be addressed to the System Manager, signed by the requester and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information comes from the individual contractor.

INTERIOR/USGS–6

SYSTEM NAME:

RELOS Records—Interior, GS–6.

SYSTEM LOCATION:

Branch of Administrative Services, Geological Survey, National Center, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Survey employees in the Washington Metropolitan Area.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individual employees, social security numbers, office telephones, location codes, room numbers, mail stop numbers, organization codes, parking permit numbers, names of individuals who qualify for preferential parking due to handicap or position.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3101, 40 U.S.C. 483(b).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of these records are: (a) To prepare the bureau telephone directories; (b) to issue parking permits; (c) to prepare space occupancy reports. Disclosure outside the Department of the Interior may be made: (1) to the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual and computerized form.

RETRIEVABILITY:

By name or social security number.

SAFEGUARDS:

Records kept in locked cabinets for use of Branch of Administrative Services personnel only.

RETENTION AND DISPOSAL:

Retained until obsolete, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Branch of Administrative Services, Geological Survey, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records should be addressed to the System Manager. A written, signed request stating that the individual seeks information concerning his/her records is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

INTERIOR/USGS–15

SYSTEM NAME:

Cartographic Information Customer Records-Interior, GS–15.

SYSTEM LOCATION:

(1) National Cartographic Information Center (NCIC), National Mapping Division, Geological Survey, Reston, VA 22092. (2) NCIC Field Offices (for specific locations contact the System Manager.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested Cartographic Information directly from, or whose requests have been forwarded to the National Cartographic Information Center or its sponsored field centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, address, customer's inquiry, response to inquiry, appropriate accounting entries, and information on debts owed the Bureau as a result of customer orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Executive Order 3206. (2) OMB Circular A–16. (3) 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is for reference by Survey and Survey contract employees in processing customer inquiries, orders, and complaints. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license; to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders, correspondence recorded on microfilm and key information recorded on magnetic tape in some instances.

RETRIEVABILITY:

Stored by account number, indexed by name and zip code.

SAFEGUARDS:

Maintained in GS areas occupied by GS personnel during working hours with building locked and/or guarded during off hours.

RETENTION AND DISPOSAL:

Original hard copy destroyed after three years or sooner if recorded on

microfilm. Indexes and microfilm maintained at least three years (longer if useful to operations or if active).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, National Cartographic Information Center (NCIC), National Mapping Division, GS, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Customers on whom record is maintained and GS or GS contract information researchers.

INTERIOR/USGS–18

SYSTEM NAME:

Computer Services Users—Interior, GS–18.

SYSTEM LOCATION:

U.S. Geological Survey, Information Systems Division, National Center, Mail Stop 801, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of Computer Services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, computer user number, work location, and information on debts owed to the Bureau as a result of computer services billed to users or customers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is: (a) To bill computer users; (b) to mail information to computer users. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk.

RETRIEVABILITY:

By individual user's name.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are periodically updated and obsolete records are deleted from magnetic disks.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Division, U.S. Geological Survey, Mail Stop 801, National Center, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written, signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual users of computer services.

[FR Doc. 85–16011 Filed 7–3–85; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Indian Affairs

Duckwater Shoshone Tribe, Nevada; Ordinance Providing for the Introduction, and Use of Alcohol

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Duckwater Shoshone Tribal Council duly adopted Ordinance 85–D–06 on March 29, 1985. The ordinance provides for the introduction and use of alcohol within the areas of Indian country under the jurisdiction of the Duckwater Shoshone Tribe. The ordinance reads as follows:

Sidney L. Mills,

Acting Deputy Assistant Secretary—Indian Affairs.

Ordinance of the Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada

Ordinance No: 85–D–06

Ordinance To Establish the Duckwater shoshone Tribal Liquor Ordinance

Be It Enacted By the Duckwater Tribal Council:

Whereas, under the Tribal Constitution, the Duckwater Shoshone Tribal Council is charged with the responsibility for the promotion of the welfare of the tribal membership; and

Whereas, the Duckwater Shoshone Tribe is hereby authorized under Article VI, section I (f) of the Duckwater Shoshone Constitution and Article II, section I of the By-laws to adopt this ordinance; and

Whereas, the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, makes the Federal Indian Liquor Laws inapplicable to; any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State of Nevada in which such act or transaction occurs and with an ordinance duly adopted by the Tribe having jurisdiction over such area of Indian country; certified by the Secretary of the Interior and published in the Federal Register.

Now Therefore Be It Enacted and Ordained, that the introduction and possession of intoxicating beverages shall be lawful within Indian country

under the jurisdiction of the Duckwater Shoshone Tribe, provided, that;

Section 1. Conformity with Laws of Nevada within their Respective Geographic Boundaries.

That such introduction and possession are in conformity with both laws of the State of Nevada and this ordinance.

Section 2. Sale of Intoxicating Beverages.

No person shall engage in the sale of intoxicating beverages within the Indian country under the jurisdiction of the Duckwater Shoshone Tribe.

Section 3. Possession of Intoxicating Beverages.

(a) The possession of an intoxicating beverage will be disallowed on special days and or activities as designated by the Duckwater Shoshone Tribe, including but not limited to: Spiritual gatherings and elections.

(b) Possession of intoxicating beverages will only be allowed in the homes of private individuals and not in the general public of the Duckwater Shoshone Tribe. Boundaries for the private individuals will be within Eleven Hundred Feet from the homes.

(c) Intoxicating beverages may be allowed in specified areas of the general public on special occasions, enacted by Tribal Resolutions.

(d) Transportation of intoxicating beverages will be allowed only when said beverages are unopened.

Section 4. It shall be unlawful for any person to furnish any alcoholic beverage to any person under the age of twenty-one (21) years or to leave or to deposit any alcoholic beverages with the intent that the alcoholic beverages shall be procured by any person under the age of twenty-one (21) years.

Section 5. Any Indian who violates any of the provisions of the ordinance shall be deemed guilty of an offense and upon conviction thereof shall be punished by a fine of not more than $300.00 or by imprisonment of not more than sixty (60) days or both such fine and imprisonment: Provided, however, that any person under the age of eighteen (18) years may, in the discretion of the judge, be treated as a juvenile and have the charge(s) disposed of pursuant to applicable juvenile law and procedures.

Section 6. When any provisions of this ordinance is [sic] violated by a non-Indian, he or she shall be referred to the State and/or Federal authorities for prosecution under applicable laws.

Section 7. The possession of intoxicating beverages shall be subject to patrol by the Duckwater Tribal Police, for the purpose of enforcing tribal laws, and by State and County Officers for the purposes of enforcing State laws and against non-Indians.

Section 8. All prior Tribal Ordinances relating to intoxicating beverages by the Duckwater Shoshone Tribe are hereby repealed.

Ceritification

The undersigned, as Chairman and Secretary of the Duckwater Tribal Council, do hereby certify that the Duckwater Tribal Council is composed of five (5) members of whom 5 were present at a Special meeting held on the 29th day of March, 1985; and the foregoing tribal governing ordinance was duly adopted by a vote of 5 For, 0 Against and 0 Abstention.

Jerry Millette,

Chairman, Duckwater Tribal Council.

Attest:

Perline Thompson,

Secretary, Duckwater Tribal Council.

[FR Doc. 85-15980 Filed 7-3-85; 8:45am]

BILLING CODE 4310-02-M

Crow Indian Irrigation Project, MT; Annual Operation and Maintenance Charges and Related Information

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Public notice.

SUMMARY: This notice sets forth changes to the operation and maintenance charges and related information applicable to Indian owned lands served by the Two Leggins Water Users Association.

The annual assessment rate per acre for Indian owned lands served by the Two Leggins Water Users Association will change from $5.20 to $5.70, with each Water Users paying a minimum of $20.00.

This notice does not change the other per acre assessments of $10.50 for all regularly presently assessed lands, the $0.30 for the presently assessed lands served by the Willow Creek Storage Facilities, the $2.20 for all Indian owned lands served by the Bozeman Trail Ditch Company, and the $1.20 for all Indian owned lands served by the Two Leggins Drainage Association.

EFFECTIVE DATE: This notice shall become effective when published and remain in effect until changed by public notice.

FOR FURTHER INFORMATION CONTACT: Walter R. Egged, Bureau of Indian Affairs, Crow Indian Agency, MT. 59022; telephone number: (406) 638-2671, ext. 112.

SUPPLEMENTARY INFORMATION: This notice issued pursuant to 25 CFR 171.1 under authority delegated to the Assistant Secretary for Indian Affairs and the Deputy Assistant Secretary of the Interior in 209 DM 8. This authority is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 385. The current operation and maintenance changes were established by notice published in the **Federal Register** (50 FR 7661).

At the annual meeting of the Two Leggins Water User's Association, held on Saturday, February 9th, 1985, at Hardin MT, the Water Users, by unanimous vote, elected to raise the current operation and maintenance rate to $5.50 per acre for each presently assessed acre. The Crow Irrigation Project administrates the Indian owned lands served by the Two Leggins Water User's Association, therefore inconjunction with the above raise annual assessment of Indian owned lands was set at $5.70 per acre, with $0.20 acre being assessed for an administrative fee.

The minimum fee of $20.00 for each Water Users will remain in affect as in previous years. This annual operation and maintenance charges on Indian owned presently assessed land will be for calender year 1985 and subsequent years until further notice. This notice does not change the per acre assessment on the regularly presently assessed lands and those served by Willow Creek Storage Facilities as well as the Indian owned lands served by the Two Leggins Drainage Association and the Bozeman Trail Ditch Company.

This notice also does not change any assessment or collect date, any penalties or any other related items other than those listed above.

Norris M. Cole,

Acting Area Director.

[FR Doc. 85-16074 Filed 7-3-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[N-42005]

Realty Action; Non-Competitive Lease/Sale of Public Land; Nevada

The following described land in the City of Las Vegas, Clark County, Nevada, has been determined to be suitable for disposal by sale pursuant to Pub. L. 96-586 and/or lease pursuant to section 302 of the Federal Land Policy and Management Act (90 Stat. 2762; 43 U.S.C. 1732) at not less than fair market value. The lands will not be offered for

sale and/or lease until 60 days after the date of this notice.

Mount Diablo Meridian

T. 20 S., R. 60 E.,
Sec. 15, NE¼NE¼, NW¼NE¼, SW¼NE¼, W½NE¼SE¼NE¼, SE¼NE¼SE¼NE¼, E½SE¼NE¼, SW¼SE¼SE¼NE¼, S½N½N½SW¼, S½N½SW¼, N½SW¼SW¼, SE¼SW¼SW¼, N½SW¼SW¼SW¼, SE¼SW¼, N½SE¼, N½S½SE¼, W½SW¼SW¼SE¼, N½S½SE¼SE¼, SE¼SW¼SE¼SE¼, SW¼SE¼SE¼SE¼.

Comprising 430 acres (gross).

This notice supercedes and amends the notice of June 13, 1984 (published in FR/Vol 49, No. 121/June 21, 1984) in so far as the above described land is concerned. The land is inititally being offered as a direct sale and/or lease to the City of Las Vegas. The City of Las Vegas has identified a need to diversify the economic base of the area as the economy of southern Nevada has historically been predicated upon the tourist industry. In order to obtain this diversification, the City proposes to develop a high-tech industrial park along with other compatible uses. Currently, there is no such high-tech park in southern Nevada and an interest has been expressed by high-tech firms to locate in Las Vegas. The size and location of this parcel within the infrastructure of Las Vegas makes it uniquely suited to accommodate such a use. There is no private land in the vicinity with similar characteristics. The direct sale and/or lease of the parcel to the City of Las Vegas would provide for the orderly development of a high-tech park and would be of a great economic benefit to the community. The direct sale of this parcel would be in the public interest.

The land has not been used and is not required for any federal purpose. The sale is consistent with the Bureau's planning system.

In the event of a sale, conveyance of the available mineral interest will occur simultaneously with the sale of the land. The mineral intersts being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will consitute and application for conveyance of those mineral interests. The City of Las Vegas will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interest.

Patent and/or lease when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All oil and gas, sodium and potassium leaseable mineral depoits shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Las Vegas District Office, 4765 Vegas Drive P.O. Box 26569, Las Vegas, NV 89126.

And will be subject to:

1. Those rights for powerline purposes which have been granted to Nevada Power Company, it successors or assigns, by Permit No. Nev-043546, under the Act of February 15, 1901, 31 Stat. 790.

2. Those rights for powerline purposes which have been granted to Nevada Power Company, its successors or assigns by Permit No. Nev–061618, under the Act of March 4, 1911, 36 Stat. 1253.

3. Those rights for Federal Aid Highway purposes which have been granted to the State of Nevada, Department of Transportation, its successors or assigns, by Permit No. Nev–062275, under the Act of August 27, 1958, 72 Stat. 885.

4. Those rights for powerline and telephone line purposes which have been granted to the Las Vegas, Valley Water District, its successors or assigns, by Permit No. N–17000, under Public Law 83–666, 68 Stat. 864.

5. An easement for streets, roads and utilities in accordance with the transportation plan for the City of Las Vegas.

If the City of Las Vegas chooses not to proceed with a non-competitive lease and/or sale, the land may be sold utilizing competitive bidding procedures. Specific sale information and procedures will be made available to the pubic prior to the sale.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126–0569. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer consummation of the sale would not be fully consistent with FLPMA, Pub. L. 96–586 or other applicable laws.

Dated: June 25, 1985.

William C. Calkins,

Acting District Manager.

[FR Doc. 85–15974 Filed 7–3–85; 8:45 am]

BILLING CODE 4310–HC–M

[A–9272]

Sale of Public Lands; Cancellation of Realty Action; Coconino County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of Notice of Realty Action—Sale, Public Lands in Coconino, County, Arizona.

SUMMARY: On April 25, 1985, the following public land was offered for sale pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act in Volume 50, Number 80, page 16359 of the **Federal Register:**

Gila and Salt River Meridian, Coconino County, Arizona

T. 27 N., R. 9 E.,
Sec. 6, lots 3 thru 10, inclusive, SE¼NW¼, E½SW¼, N½SE¼, and SE¼SE¼.

Containing 463.46 acres, more or less.

During the public comment period, the State of Arizona requested that the land described above be set aside for land exchange purposes. Whereas the proposal to offer the public land for sale was by Bureau Motion and since the exchange of the public land would potentially serve the public benefit, the Notice of Realty Action, as published on April 25, 1985, is hereby cancelled.

Marlyn V. Jones,

District Manager.

Dated: June 25, 1985.

[FR Doc. 85–15990 Filed 7–3–85; 8:45 am]

BILLING CODE 4310–32–M

Clear Lake Resource Area; Realty Action; Sale of Public Land in Glenn, Colusa, Yolo and Napa Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Sale of Public Lands.

SUMMARY: The following described land has been examined, and through the development of land use planning decisions based on public input, resource considerations, regulations,

and Bureau policies, it has been determined that the proposed sale of these parcels is consistent with section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713). The lands are difficult and uneconomic to manage as part of the public lands, and not suitable for management by another Federal department or agency. Each parcel will be separately offered for sale on September 11, 1985, at no less then the appraised fair market value. Parcels 1, 2, 3, 5 and 6 will be offered by competitive bid, and bids must include all of the land in the parcel. Parcel 4 will be offered by direct sale to an adjacent landowner.

Publication of this notice in the **Federal Register** segregates the public lands from appropriation under the public land laws, including the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of publication, whichever occurs first.

The parcels to be offered September 11, 1985 include:

Parcel	Case No.	County	Legal description	Acres	FMV
1	CA 17006	Glenn	T. 20 N., R. 7 W., M.D.M. Sec. 2, W½SE¼, Sec. 11, NW¼NE¼	120	$42,000
2	CA 17007	Glenn	T. 18 N., R. 6 W., M.D.M. Sec. 24, SE¼NE¼	40	8,000
3	CA 17008	Colusa	T. 18 N., R. 6 W., M.D.M. Sec. 34, lots 2, 7	69.23	16,000
4	CA 17009	Yolo	T. 12 N., R. 3 W., M.D.M. Sec. 29, lot 2	2.82	1,100
5	CA 17010	Napa	T. 7 N., R. 5 W., M.D.M. Sec. 30, lot 4	12.55	25,000
6	CA 17011	Napa	T. 7 N., R. 3W., M.D.M. Sec. 1, W½ lot 2 of NE¼ Sec. 1, W½ lot 2 of NE¼	78.38	78,000

Federally owned mineral interests of *no known value* will be conveyed with the property. A bid on the property will also constitute an application for conveyance of those mineral interests being offered for conveyance in the sale.

DISPOSITION OF MINERAL INTERESTS

Parcel	Serial No.	Minerals reserved to the United States
1	CA 17006	Oil and gas and locatable minerals.
2	CA 17007	Oil and gas.
3	CA 17008	Oil and gas and salable minerals.
4	CA 17009	Oil and gas.
5	CA 17010	Locatable minerals.
6	CA 17011	Oil and gas.

Sealed bids will be accepted if received at the Ukiah District Office, 555 Leslie Street, (P.O. Box 940), Ukiah, California 95482 prior to 10:00 a.m. on Wednesday, September 11, 1985. The sealed bids will be opened and publicly declared at the Ukiah District Office Conference Room on September 11, 1985 beginning at 10:00 a.m. All unsold parcels will be reoffered competitively by sealed bid on November 13, 1985 at the same time and place.

If the parcels remain unsold after the November 13, 1985 date, they will again be offered for sale by sealed bid at the same time on the third Wednesday of each month thereafter until the parcels are sold or until September 11, 1986.

Each sealed bid shall be accompanied by certified check, postal money order, bank draft, or cashier's check made payable to the Department of Interior-BLM for no less than 20 percent of the bid price (43 CFR 2711.3–1(d)) plus the $50.00 filing fee for mineral conveyance (43 CFR 2720.1–2(c)). Failure to deposit this $50.00 (nonrefundable to the declared high bidder) filing fee will result in disqualification as the high bidder. The sealed bid envelopes must be marked on the front lower left corner "Clear Lake Resource Area, September 1985, Land Sale, Parcel Number ———." If two or more qualified sealed bids for the same amount are received, then the apparent successful bidder will be determined by drawing.

The successful bidder shall submit the remainder of the full purchase price within 180 days of the sale date. Failure to submit the balance of the full bid within the above specified time limit shall result in cancellation of the sale and the deposit shall be forfeited.

All bidders must be United States citizens; corporations must be authorized to own real property in the State of California; political subdivisions of the State and State instrumentalities must be authorized to hold property. Proof of meeting these requirements shall accompany bids. Upon disqualification of an apparent bidder, the next high bid will be honored.

The BLM will reject or accept any and all offers, or withdraw any land or interest in land from sale, if in the opinion of the Authorized Officer consummation of the sale would not be in the best interest of the United States. Availability for sale will not preclude the parcel from being considered for other actions.

Sale terms and conditions applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States (Act of August 30, 1890 (43 U.S.C. 945)).

2. The minerals specified above shall be reserved to the United States together with the right of prospect for, mine, and remove the minerals. A more detailed description incorporated in the patent document is available for review in this office.

3. Parcel 2 will be subject to those rights granted by oil and gas lease CA 9988 under the Act of February 25, 1920, as amended (41 Stat. 437; 30 U.S.C. Sec. 181).

4. Parcel 4 will be subject to those rights granted by oil and gas lease CA 9817 under the Act of February 25, 1920, as amended (41 Stat. 437; 30 U.S.C. Sec. 181).

5. A reservation for a 22 kv transmission line will be incorporated into the patent for Parcel 6.

6. The parcels may have development restrictions placed on them by the County Planning Departments. This information is outlined in the Land Reports available in the Ukiah District Office.

Detailed information concerning the sale, including the environmental assessment, land report and photographs are available for review at the Ukiah District Office, at the address indicated above.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 940, Ukiah, California 95482.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT:
Cathie Dokken, (707) 462–3873.

Dated: June 24, 1985.

Van W. Manning,
District Manager.

[FR Doc. 85–15976 Filed 7–3–85; 8:45 am]

BILLING CODE 4310–84–M

[M 45993–A and M 45993–B]

Opening Order; Flathead and Lincoln Counties, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Order Providing for Limited Opening of Five Public Land Islands in Flathead and Lincoln Counties, Montana.

SUMMARY: This order will open the below-described lands to the operation of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869, et seq.):

Principal Meridian, Montana

M 45993–A:

T. 32 N., R. 23 W.,
Sec. 20, lots 8, 9 and 10.
Containing 1.79 acres.

M 45993–B:

T. 27 N., R. 20 W.,
Sec. 27, lots 10 and 11.
Containing 0.2 acres.

SUPPLEMENTARY INFORMATION: The three islands described in M 45993–A are located in Lower Stillwater Lake north of Whitefish, Montana. The two islands described in M 45993–B are located in Horseshoe Lake south of Libby, Montana. Since all of the islands are very small but have high recreation and wildlife values, they should be kept in public ownership to protect these values and allow for public use of them. They are also over 100 miles from any other BLM-managed land.

An application has been received from the State of Montana, Department of Fish, Wildlife and Parks, for transfer of all five islands under the Recreation and Public Purposes (R&PP) Act. The lands are currently being classified for transfer under the R&PP Act to the State of Montana.

ADDRESS: For further information contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657–6082.

DATE: On January 26, 1982, a Notice of filing of plat of survey was published in the **Federal Register** (47 FR 3624), but none of the islands were opened to the operation of any public land or mining laws.

At 9 a.m. on July 29, 1985, the above-described lands will be open to the operation of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869, et seq.).

John A. Kwiatkowski,
Deputy State Director, Division of Lands and Renewable Resources.
June 26, 1985.

[FR Doc. 85–16073 Filed 7–3–85; 8:45 am]
BILLING CODE 4310-DN-M

Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease M 56067(ND) Acquired, Divide County, North Dakota, was timely filed and accompanied by the required rental accuring from the date of termination, March 1, 1985.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $7 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: June 25, 1985.

Cynthia L. Embretson,
Chief, Fluids Adjudication Section.

[FR Doc. 85–16072 Filed 7–3–85; 8:45 am]
BILLING CODE 4310-85-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordiantion Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 044, Block 69, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conduced from onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on June 26, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 27, 1985.

John L. Rankin,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–16071 Filed 7–3–85; 8:45 am]
BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Kerr McGee Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Kerr McGee Corporation, Unit Operator of the Ship Shoal Block 28 Federal Unit Agreement No. 14–08–001–2942, submitted on June 17, 1985, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Ship Shoal Block 28 Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service

is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: June 27, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region

[FR Doc. 85-15970 Filed 7-3-85; 8:45 am]

BILLING CODE 4310-MR-M

Approval of Outer Continental Shelf Official Protraction Diagrams

1. Notice is hereby given that, effective with this publication, the following revised Outer Continental Shelf Official Protraction Diagrams, approved on the dates indicated, are available at the Minerals Management Service, Alaska OCS Region, Anchorage, Alaska. In accordance with Title 30, Code of Federal Regulations, these protection diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic area represented.

Outer Continental Shelf Protraction Diagrams

	Description	*Revised date*
NN 3-1	Akutan North	May 21, 1985.
NN 3-3	Akutan	Mar. 5, 1985.

2. Copies of these diagrams are for sale at two dollars ($2.00) per sheet by the Records Manager, Minerals Management Service, Alaska OCS Region, P.O. Box 101159, Anchorage, Alaska 99510-1159. Checks or money orders should be made payable to the Department of the Interior—Minerals Management Service.

Alan D. Powers,

Regional Director.

[FR Doc. 85-16089 Filed 7-3-85; 8:45 am]

BILLING CODE 4301-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6737, Block 87, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on June 21, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 24, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-15972 Filed 7-3-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. MC-F-16452]

Burlington Northern, Inc.; Control Exemption; Monroe Trucking Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Burlington Northern, Inc. (BN) and Burlington Northern Motor Carriers, Inc. (BNMC) filed a petition to exempt under 49 U.S.C. 11343(e) their acquisition of control of Monroe Trucking Inc. (Monroe) from the prior approval requirements of 49 U.S.C. 11343, *et seq.*

DATE: Comments must be received by July 29, 1985.

ADDRESSES: Send comments (an original plus 10 copies) referring to Docket No. MC-F-16452 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioners' representative: Hebert J. Martin, Esq., Cromwell & Moring, 1100 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: BN is a non-carrier holding company; BNMC is a wholly-owned non-carrier subsidiary of BN. BN also owns the Burlington Northern Railroad Company (BNRR), a Class I railroad. Monroe holds contract carrier authority under Permit No. MC-154821.

BNMC and Monroe have entered into an agreement for Monroe to become a wholly-owned subsidiary of BNMC. As a result of the transaction, BN would commonly control Monroe and BNRR, requiring Commission approval under 49 U.S.C. 11343, *et seq.*

BN, BNMC and Monroe seek exemption under 49 U.S.C. 11343(e) and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

A copy of the petition may be obtained from petitioners' representative, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: June 28, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Darlene Proctor,

Acting Secretary.

[FR Doc. 85-16037 Filed 7-3-85; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice, as required by 49 U.S.C. 10524(b)(1), that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: CMI International, Inc., 28240 Grand River, Farmington, Michigan 48024.

2. Wholly-owned subsidiaries which will participate in the operations and respective states of incorporation:

(i) CMI-Dearborn, Inc., 5353 Wilcox, Montague, Michigan 49437, a Michigan corporation

(ii) CMI-Noren, Inc., 14638 Apple Drive, Fruitport, Michigan 49415, a Michigan corporation

(iii) CMI Permanent Mold, Inc., 374 N. State Street, Sparta, Michigan 49345 and
51650 C.R. 133, Bristol, Indiana 46507, a Michigan corporation

(iv) CMI-Southfield, Inc., 19400 W. Eight Mile Road, Southfield, Michigan 48075 and
26290 W. Eight Mile Road, Southfield, Michigan 48034, a Michigan corporation

(v) CMI-Transportation, Inc., South U.S. 131, P.O. Box 336, White Pigeon, Michigan 49099, a Michigan corporation

(vi) CMI-Wabash Cast, Inc., Route 24 West, Wabash, Indiana 46992, an Indiana Corporation

(vii) Seaton SSK Engineering, Inc., 553 N. Court Street, Augres, Michigan 48703, a Michigan corporation

(viii) CMI-Engineering, Inc., 26290 W. Eight Mile Road, Southfield, Michigan 48034, a Michigan corporation

(ix) CMI-Wheels, Inc., 1870 River Forks Drive, Huntington, Indiana 46750, an Indiana Corporation

1. Parent corporation and address of principals office: Cargill, Incorporated, P.O. Box 9300, Minneapolis, Minnesota 55440

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal office and place of Incorporation:

(a) Caprock Industries, Inc., P.O. Box 948, Gruver, Texas 79040—Delaware

(b) Cargill Marine and Terminal, Inc., P.O. Box 9300, Minneapolis, Minnesota 55440—Delaware

(c) C. Tennant, Sons & Co., of New York, P.O. Box 9300, Minneapolis, Minnesota 5544—Delaware

(d) Excel Corporation, P.O. Box 2519, Wichita, Kansas 67219—Delaware
Subsidiary of Excel Corporation: (1) Excel Transportation, Inc., P.O. Box 2519 Wichita, Kansas 67219—Kansas

(e) Hohenberg Bros. Company, 286 South Front Street, Memphis, Tennessee 38101—Tennessee
Subsidiary of Hohenberg Bros. Company: (1) R.T. Hoover & Co., Inc. 817 Texas Avenue, El Paso, Texas 79999—Texas

(f) Leslie Salt Co., 7200 Central Avenue, Newark, California 94560—Delaware

(g) Mid-State Metals, Inc., 15407 McGinty Road West, Wayzata, Minnesota 55391—Illinois

(h) North Star Steel Company, 2901 Metro Drive Suite 330, Minneapolis, Minnesota 55420—Minnesota
Subsidiary of North Star Steel Company: (1) Magnimet Corporation, P.O. Box 28, Monroe, Michigan 48161—Michigan

(i) North Star Steel Texas, Inc., 465 Orleans, Beaumont, Texas 77704—Delaware

(j) Young's Inc., Rural Route 1 Roaring Spring, Pennsylvania 16673—Pennsylvania

(k) Zelrich Steel Company, Inc., P.O. Box 29667, Dallas, Texas 75229—Texas

(l) Sunny Fresh Foods, Inc., P.O., Box 5613, Minneapolis, Minnesota 55440—Delaware

1. Parent corporation and address of principal office: Davis Concrete Company, 204 West Nash, P.O. Box 1478, Grapevine, Texas 76051.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Denco Materials Inc., 204 West Nash, P.O. Box 1478, Grapevine, Texas 76051 (Texas)

(ii) Gainesville Sand and Gravel Company, 204 West Nash, P.O. Box 1478, Grapevine, Texas 76051 (Texas).

James H. Bayne,

Secretary.

[FR Doc. 85-16036 Filed 7-3-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30689]

The Chesapeake & Ohio Railway Co.; Trackage Rights; Consolidated Rail Corp.

Consolidated Rail Corporation has agreed to grant overhead trackage rights to The Chesapeake and Ohio Railway Company at Grand Rapids, MI. The trackage rights will be effective upon the Commencement Date specified in the subject Trackage Rights Agreement.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: June 27, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Darlene Proctor,

Acting Secretary.

[FR Doc. 85-16038 Filed 7-3-85; 8:45 am]

BILLING CODE 7035-02-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-85-43-C]

Bartley & Bartley Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bartley & Bartley Coal Company, P.O. Box 142, Rockhouse, Kentucky 41561 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 7 Mine (I.D. No. 15-02384), located in Pike County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 7 Mine is in the No. 1 Elkhorn seam and ranges from 40 to 48 inches in height. The coal seam has consistent ascending and descending grades creating dips in the coal bed.

3. petitioner states that the use of canopies would restrict the equipment operator's vision and damage the room supports, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 5, 1985. Copies of the petition are available for inspection at that address.

Dated: June 27, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-16084; Filed 7-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-42-C]

BethEnergy Mines Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines Inc., Martin Tower, Bethlehem, Pennsylvania 18016 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 106 (I.D. No. 46-03887), and Mine No. 106T (I.D. No. 46-06741) both located in Upshur County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that padlocks be used to prevent mine scoop battery connector tightening rings from loosening and disconnecting the battery plugs.

2. As an alternate method, petitioner, proposes that:

a. Spring-loaded, metal locking devices be used in lieu of padlocks;

b. These locking devices will be designed, installed, and used to prevent the threaded rings securing the battery plugs to the battery receptacles from unintentionally loosening;

c. The fabricated metal brackets will be securely attached to the battery receptacles and locking devices will be securely attached to the bracket; and

d. Equipment operators and maintenance personnel of the affected machines will receive training in the proper use of the locking device and in the hazards of breaking battery plug connections.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (August 5, 1985. Copies of the petition are available for inspection at that address.

Dated: June 27, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-16084 Filed 7-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-22-C]

K&L Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

K&L Coal Corporation, 742 Coal Street, Trevorton, Pennsylvania 17881 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its No. 1 Slope (I.D. No. 36-06649) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine, which also has no history of an ignition, explosion, mine fire or harmful quantities of carbon dioxide and other noxious or poisonous gases.

2. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

3. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

4. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 5, 1985. Copies of the petition are available for inspection at that address.

Dated: June 27, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-16082 Filed 7-3-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-63-C]

Texas Utilities Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Texas Utilities Mining Company, Skyway Tower, 400 North Olive Street, L.B. 85, Dallas, Texas 75201 has filed and amendment to a petition for modification. On August 23, 1982, Texas Utilities submitted a petition to modify the application of 30 CFR 77.201-1 (methane tests) to its Martin Lake Strip (I.D. No. 41-02632) located in Panola County, Texas; its Monticello Strip (I.D. No. 41-01900) located in Titus County, Texas; and its Sulphur Springs Strip (I.D. No. 41-02776) located in Hopkins County, Texas. On October 14, 1983,

MSHA published notice of the petition in the **Federal Register** (48 FR 46871), allowing interested parties 30 days to submit comments. On March 19, 1984, the petitioner submitted a request to amend the originally submitted petition for modification and MSHA published notice of this amendment in the **Federal Register** (49 FR 15159) on April 17, 1984 allowing interested parties 30 days to submit comments. On June 17, 1985, the petitioner submitted another request to amend the petition for modification to stipulate a new proposed alternate method of compliance, as follows:

3. As an alternate method, petitioner proposes to install a low-level methane detection system with specified conditions to continuously monitor for methane in all surface coal handling facilities.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 5, 1985. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: June 27, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 16081 Filed 7–3–85 8:45 am]

BILLING CODE 4510–43–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel (Services Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Services Section) to the National Council on the Arts will be held on July 22, 1985, from 9:00 a.m.–6:00 p.m. and on July 23, 1985, from 9:00 a.m.–6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

If time permits, a portion of this meeting will be open to the public on July 23, from 4:00–6:00 p.m. to discuss policy and guidelines.

The remaining sessions of this meeting on July 22, from 9:00 a.m.–6:00 p.m., and on July 23, from 9:00 a.m.–4:00 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 26, 1985.

[FR Doc. 85–15994 Filed 7–3–85; 8:45 am]

BILLING CODE 7537–01–M

Dance Advisory Panel (Presenters Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Presenters Section) to the National Council on the Arts will be held on July 20, 1985, from 9:00 a.m.–8:00 p.m. and on July 21, 1985, from 9:00 a.m.–6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

If time permits, a portion of this meeting will be opened to the public on July 21, from 4:00–6:00 p.m. to discuss policy and guidelines.

The remaining sessions of this meeting on July 20, from 9:00 a.m.–6:00 p.m., and on July 21, from 9:00 a.m.–4:00 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 26, 1985.

[FR Doc. 85–15997 Filed 7–3–85; 8:45 am]

BILLING CODE 7537–01–M

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Communication Section) to the National Council on the Arts will be held on July 15–16, 1985, from 9:00 a.m.–5:30 p.m in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on July 16, 1985, from 4:00–5:30 p.m. to discuss policy issues.

The remaining sessions of this meeting on July 15, 1985, from 9:00 a.m.–5:30 p.m. and on July 16, 1985, from 9:00 a.m.–4:00 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 26, 1985.

[FR Doc. 85–15991 Filed 7–3–85; 8:45 am]

BILLING CODE 7537–01–M

Media Arts Advisory Panel (National Services Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts

Advisory Panel (National Services Section) to the National Council on the Arts will be held on July 22–23, 1985, from 9:15 a.m.–6:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 26, 1985.

[FR Doc. 85–15996 Filed 7–3–85; 8:45 am]

BILLING CODE 7537-01-M

Program Initiative for Interdisciplinary Artists Review Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee (Pub. L. 92–463), as amended, notice is hereby given that an ad hoc meeting of the Review Committee for the Program Initiative for Interdisciplinary Artists, a joint program with the Rockefeller Foundation will be held on July 17, 1985, from 9:00 a.m.–5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on July 17, 1985, from 4:00–5:30 p.m. to discuss policy issues.

The remaining sessions of this meeting on July 17, 1985, from 9:00 a.m.–4:00 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980 these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

June 26, 1985.

[FR Doc. 85–15995; Filed 7–3–85; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Responses to Safety Recommendations Availability

NATIONAL TRANSPORTATION SAFETY BOARD—RESPONSES TO SAFETY RECOMMENDATIONS

Recommendation No.	Respondent	Date	Subject
Aviation			
A–84–102	Federal Aviation Administration (FAA)	June 13, 1985	Procedures during ground operations in restricted visibility conditions.
A–85–28 thru –30	FAA	June 13, 1985	Eastern Aero Marine Model GA–12 flotation devices.
A–82–91 thru –93	FAA	June 13, 1985	Human performance guidelines, criteria, and training.
A–84–66	FAA	June 13, 1985	Stall avoidance system on Fairchild Swearingen Models SA 226 and SA 227 airplanes.
A–83–80 and –81	FAA	June 11, 1985	Tactile aisle markers and emergency exit indications.
A–83–44	FAA	June 11, 1985	Main landing gear trunnions on affected Cessna Model 402C, 414A, and 421C airplanes.
A–77–70	FAA	June 11, 1985	Installations of approved shoulder harnesses at all seat locations.
A–84–123 and –124	FAA	June 10, 1985	Degradation of pilot performance as a result of automation.
A–80–52	FAA	June 10, 1985	Requirement for pilots to file for an alternate airport on an IFR flight plan based on ceiling and visibility forecasts.
A–85–15, –16, and –17	FAA	June 10, 1985	Development of a mechanical/aural/visual alert device for use by local and ground controllers and training of air traffic control personnel.
A–83–5 thru –7	FAA	May 30, 1985	Bladder-type fuel cells; Cessna flush plastic fuel caps.
A–84–97	FAA	May 30, 1985	Detection of cracks during early stages in CF 6–50 stage 1 high pressure turbine disks.
A–84–85	FAA	May 28, 1985	Inspection of strut housing assembly and replacement of landing gear upper bearing retaining pins.
A–84–7	FAA	May 28, 1985	Modification of flame tube suspension systems in Rolls Royce Dart 520 and 530 series engines.
A–85–23 thru –25	FAA	May 22, 1985	Marvel-Schebler Model MA3, MA4, and MA6 series carburetors; installation of one-piece combination primary and main venturi.
A–85–2 and –3	FAA	May 20, 1985	Horizontal stabilizer attachment on EMB–110P1 and –110P2 model airplanes.
A–78–1	FAA	May 20, 1985	Attenuation effects of various levels of precipitation and icing on airborne radomes of x- and c-band radar.
A–85–20 thru –22	FAA	June 3, 1985	Bellanca Models 7GC 7GCA, 7GCB, 7GCBA, 7HC, 7KC, 7KCAB, 7ECA, 7GCAA, 7GCBC, 8KCAB, and 8GCBC.
Highway			
H–84–70	State of Georgia; Office of the Governor	May 30, 1985	Licensing procedures for applicants of commercial or noncommercial bus licenses.
H–85–4 thru –6	Maryland State Dept. of Education	May 15, 1985	School bus crossings at railroad grades.
H–83–61	Nissan Motor Corp.	June 12, 1985	Nissan Child Safety Seat; labeling modification.
H–84–77 thru –86	Governor of Colorado	June 7, 1985	Drunken driving programs.
H–84–70	Governor of North Caroline	June 4, 1985	Minimum age requirement for operators of commercial buses.
H–84–11 thru –14	Governor of Georgia	May 16, 1985	Administrative revocation of licenses of drunk drivers; sobriety checkpoints.
H–84–12	California Office of Traffic Project	May 28, 1985	Gaze nystagmus training project.
H–83–46, –48	Louisiana Superintendent of Education	May 15, 1985	School bus safety.
Marine			
M–84–41, –42	U.S. Coast Guard	June 4, 1985	Loading standards for ocean towing vessels.
M–83–76 and –77	Delaware Office of the Governor	May 22, 1985	Role of alcohol and drugs in recreational boating.
M–84–48 thru –57	U.S. Coast Guard	May 16, 1985	Drillships; flooding of.
M–83–76	District of Columbia	May 21, 1985	Alcohol and drugs; recreational boating.
M–83–76 and –77	North Carolina Office of the Governor	May 9, 1985	Alcohol and drugs; recreational boating.
M–82–18	Prudential Lines, Inc	May 23, 1985	Reduced visibility situations.
M–85–26	American Waterways Operations, Inc	May 29, 1985	Towing vessel operator training.

NATIONAL TRANSPORTATION SAFETY BOARD—RESPONSES TO SAFETY RECOMMENDATIONS—Continued

Recommendation No.	Respondent	Date	Subject
Railroad			
R-84-19	New York City Transit Authority	June 10, 1985	Standards for track maintenance.
R-85-12	Federal Railroad Administration	June 3, 1985	Inspection of DOT Specification 112 tank cars.
R-84-46	Federal Railroad Administration	June 3, 1985	Passenger car interior design.
R-84-12 and -14	Association of American Railroads	May 30, 1985	Disengaged excess flow valve seals.
R-85-17	Electro-Motive	June 3, 1985	Asterisk locomotive axle.
R-83-17 and -18	Federal Highway Administration	June 6, 1985	Transportation of hazardous materials.
R-85-25 through -34	New York City Transit Authority	May 16, 1985	Provision of fire extinguishers on all subway trains (at motorman and conductor position); fire prevention.
R-82-35, -39, and -42	New York City Transit Authority	June 5, 1985	Train control systems.
R-83-60 and -61	Chicago and Northwestern	June 7, 1985	Employee familiarity with operating rules.
R-83-61	Houston Belt & Terminal Railway Company	May 14, 1985	Employee familiarity with operating rules.
R-83-60 and -61	Illinois Central Gulf	May 16, 1985	Employee familiarity with operating rules.
Pipeline			
P-84-48	Columbia Gas	June 3, 1985	Reporting of pipeline failures.
P-83-17	Truckline Gas Company	May 15, 1985	Operation and maintenance plan.
Intermodal			
I-85-5 and -6	Chemical Waste Management, Inc	June 10, 1985	Safe transportation of hazardous materials.
I-85-10 and -11	Research and Special Programs	May 31, 1985	Hazards of waste material shipment.
I-85-15	International Assn. of Chiefs of Police, Inc	May 21, 1985	Radius of evacuation zones in hazardous materials incidents.

The Safety Board has revised the format of these notices of availability to reduce significantly the cost of preparing and printing this information. Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge.)

Catherine T. Kaputa,
Federal Register Liaison Officer.
June 25, 1985.
[FR Doc. 85-15907 Filed 7-3-85; 8:45 am]
BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30-16055, License No. 34-19069-01, EA 85-60]

Advanced Medical System, Inc., Order Modifying License

I

Advanced Medical Systems, Inc., One Factory Row, Geneva, Ohio, 44041 (the "licensee") is the holder of byproduct material License No. 34-19069-01 issued by the Nuclear Regulatory Commission (the "NRC") pursuant to 10 CFR Part 30. The license authorizes, among other things, possession and use of 150,000 curies of cobalt-60 as solid metal for processing, for redistribution to authorized recipients, and research and development of sealed sources. This license was issued on November 2, 1979 and was due to expire on November 30, 1984. The license has continued in effect because the licensee submitted a timely renewal application which is currently being reviewed by the NRC.

II

The NRC conducted a special onsite safety inspection on February 21 and 22, 1985 in response to an apparent overexposure that the licensee reported to the NRC by letter dated Fabruary 24, 1985. The licensee provided additional information in letters dated April 17 and 25, 1985. The inspection also addressed telephone allegations received by the NRC Region III office on January 22, 1985. Four violations of NRC regulatory requirements and license conditions were identified. The violations which are described in the Notice of Violation and Proposed Imposition of Civil Penalties issued on this date involved: (1) A 2.9 rem whole body dose to an individual who entered the licensees hot cell facility during the fourth quarter of 1984; (2) failure to read dosimeters at appropriate intervals to assure that actual doses did not exceed anticipated doses (a measure which the licensee had specifically proposed as corrective action following a previous overexposure); (3) failure to calibrate dosimeters at required intervals; and (4) failure to make such surveys as were necessary to adequately evaluate the radiation hazards incident to the use of radioactive materials in the licensee's hot cell facility. Specifically, the only surveys were made at the hot cell door and showed radiation levels of 17.5 R/hr and 18 R/hr. These surveys did not accurately reflect the 81 R/hr radiation levels inside the hot cell.

An Enforcement Conference was held on March 13, 1985, in the NRC Region III office between the licensee's Radiation Safety Officer (RSO) and the Region III staff. A second Enforcement Conference was held by telephone on April 12, 1985 between the licensee's President, the RSO, and the NRC Region III staff. During the conferences the licensee agreed to take interim corrective actions until the radiation safety program could be upgraded. The conferences included a discussion of a previous similar overexposure that occurred during the fourth quarter of 1982 and resulted in the imposition of a $4,000 civil penalty on July 13, 1983. The NRC Region III staff concluded that the licensee had not adequately implemented corrective actions to prevent another overexposure after the previous enforcement action. The licensee agreed to discontinue all entries into the hot cell facility until improvements, acceptable to the NRC Region III staff, had been made in the licensee's radiation safety program. The NRC Region III office issued a Confirmation of Action letter, dated March 15, 1985, to document the NRC's understanding of the licensee's commitment. The licensee agreed to expand on these proposals and submit them in writing to the NRC Region III Administrator for review and approval.

By letters dated March 27 and April 4, 1985 and a telephone conversation on April 3, 1985, the licensee submitted proposed revisions to Procedure No. ISP-14, "Entering the Hot Cell." Based on this submittal and further conversations with licensee representatives, the licensee agreed that:

1. No individual shall enter the hot cell unless that individual has been adequately trained in accordance with Draft Procedure No. ISP-14, "Entering the Hot Cell," dated March 27, 1985.

2. No individual shall enter the hot cell without an alarming dosimeter.

When an alarming dosimeter alarms, an individual shall immediately leave the hot cell, retreat to a the Isotope Shop Area, and shall not reenter the cell until the exposure is assessed and a determination is made that reentry is allowable.

3. The in-cell monitor (Victoreen 500 electrometer with remote probe, Model 550–6A) that was calibrated by Victoreen and a new probe that was recently purchased will both be calibrated on a six month basis.

4. Each time the hot cell door is opened an before individuals are permitted to enter the hot cell a complete radiation survey of the hot cell will be performed remotely using a calibrated instrument and probe.

5. The RSO shall be physically present to supervise the operation and to verify that the hot cell entry operation is reasonably safe to prevent an overexposure.

The NRC Region III Staff has reviewed the licensee's submittal. To provide reasonable assurance that the potential for significant personnel exposure will be reduced and to ensure continued implementation of the licensee's commitments, I have determined that the public health, safety, and interest require the licensee's commitments be confirmed by an immediately effective Order.

III

Accordingly, pursuant to sections 81 and 161b of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204, Parts 20 and 30, it is hereby ordered, effective immediately, that:

The licensee shall implement the radiation safety program described in numbered paragraphs 1 through 5 of Section II of this Order.

The Regional Administrator may relax or rescind any of the above conditions for good cause upon written application by the licensee.

IV

The licensee or any other person adversely affected by this Order may request a hearing on this Order within 25 days of the date of issuance of this Order. Any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of any request shall also be sent to the Executive Legal Director at the same address and the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. A request for hearing shall not stay the effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland this 28 day of June 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85–16077 Filed 7–3–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the technical requirements of Appendix R to 10 CFR Part 50 to Consumers Power Company (the licensee), for the Palisades Plant, located in Van Buren County, Michigan.

Environmental Assessment

Identification of Proposed Action

The exemption would provide an alternative to the requirement to separate redundant cables and equipment and associated non-safety circuits of redundant trains installed inside containment by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards.

The Need for the Proposed Action

The proposed exemption is needed because the features described in the licensee's request regarding the existing level of fire protection and proposed modifications at the plant are the most practical method of meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemption would provide a degree of fire protection equivalent to that required by Appendix R such that there would be no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases would not be greater than previously determined. Neither does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemptions. This would not reduce the environmental impacts associated with fire protection modifications and would result in a much larger expenditure of licensee resources to comply with the Commission's regulations.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement related to operation of the Palisades Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated July 20, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Bethesda, Maryland, this 25th day of June 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 85-16075 Filed 7-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the technical requirements of Appendix R to 10 CFR Part 50 to Consumers Power Company (the licensee), for the Palisades Plant, located in Van Buren County, Michigan.

Environmental Assessment

Identification of Proposed Action

The exemption would provide an alternative to the requirement to install fixed suppression systems in the Engineered Safeguards Panel Room and the Corridor on the 590'-0" elevation of the Reactor Building between the Charging Pump Room and the 1-0 Switchgear Room. Alternate shutdown capability in accordance with Appendix R has been provided for each area above.

The Need for the Proposed Action

The proposed exemption is needed because the features described in the licensee's request regarding the existing level of fire protection and proposed modifications at the plant are the most practical method of meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemption would provide a degree of fire protection equivalent to that required by Appendix R such that there would be no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases would not be greater than previously determined. Neither does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemptions. This would not reduce the environmental impacts associated with fire protection modifications and would result in a much larger expenditure of licensee resources to comply with the Commission's regulations.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement related to operation of the Palisades Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated July 16, 1984, and in supplements dated July 20, 1984, August 10, 1984, October 1, 1984, December 28, 1984, March 19, 1985, and June 19, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Bethesda, Maryland, this 25th day of June 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 85-16076 Filed 7-3-85; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Survivor Questionnaire.

(2) Form(s) submitted: RL-94-F.

(3) Type of request: Revision of a currently approved collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 26,500.

(7) Annual reporting hours: 4,605.

(8) Collection description: Under Section 6 of the Railroad Retirement Act, benefits are payable to the survivors or the estates of deceased railroad employees. The collection obtains information about the survivors, if any, payment of burial expenses and administration of estate when unknown to the Board. The information will be used to determine whether and to whom benefits are payable.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 85-16055 Filed 7-3-85; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Envionmental Impact Statement; Prince Georges County, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advice the public that FHWA has assumed the lead agency role for the relocation of Calvert Road between US Route 1 and MD Route 201 in Prince George's County, Maryland. The Urban Mass Transit Administration is a cooperating agency. An enviromental impact statement will be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., Field Operations Engineer, Federal Highway Administration, The Rotunda—Suite 220, 711 W. 40th Street, Baltimore, Maryland 21211–2187, Telephone: 301/962–4010, and/or Mr. William E. Boye, Chief, Inspections Division, Prince Georges County Department of Public Works and Transportation, County Administration Building, Upper Marlboro, Maryland 20772, Telephone: (301) 952–4100.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration and the Prince Georges County Department of Public Works and Transportation, is preparing and environmental impact statement on a proposal to close the existing Calvert Road at-grade crossing of the B&O Railroad in conjunction with the construction of the Metor E Line. The proposal would consider alternatives to maintain sufficient east-west roadway capacity between U.S. Route 1 and Route 201 in the College Park area. In addition to the No-Build alternate which would result in the severing of Calvert Road by the Metro construction, three alternatives will be considered for bypassing the existing crossing and a fourth will consider depressing Calvert Road beneath the railroad and proposed Metro. A public information meeting and an alternates public meeting have been held. A public hearing will be scheduled upon completion of the Draft EIS, with the time and place to be announced by public notice. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to the proposal are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.)

Issued on: June 25, 1985.

Emil Elinsky,

Division Adminstrator Baltimore, Maryland.

[FR Doc. 85–15973 Filed 7–3–85; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. IP85–8; Notice 2]

Firestone Tire & Rubber Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Firestone Tire & Rubber Company, of Akron, Ohio, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.)* for a noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires—Passenger Cars." The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 15, 1985, and an opportunity was afforded for comment (50 FR 14789).

Paragraph S4.3.5 of Standard No. 109 requires each tire with a maximum inflation pressure of 60 psi to have permanently molded into or onto both sidewalls, in letters and numerals not less than ½ inch high (12.7 mm), the words, "Inflate to 60 psi." Ohtsu Tire & Rubber Company of Japan produced approximately 22,000 T105/80D13 bias tubeless Tempa spare tires for the Firestone Tire & Rubber Company that failed to comply with this requirement of Standard No. 109 of which 19,000 could have been mounted in vehicles shipped to the United States. The requisite information is presented in characters only 7 mm. high. Petitioner argued that the information is clearly legible, and consumers will not be misled. The tires were produced from July 15, 1984, through February 24, 1985, and all molds involved have been corrected.

No comments were received on the petition.

In establishing paragrah S4.3.5, NHTSA required that the words "Inflate to 60 psi" be added because these tires, unlike most with which consumers are familiar, are not designed for use at inflation pressures lower than the maximum inflation pressures. Although letters 12.7 mm in size would be easier to read, characters 7 mm in size should be legible to a person inflating the tire. The agency granted an identical petition by Toyo Rubber Industry, Co. Ltd. on October 28, 1982 (47 FR 47959).

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety and its petition is hereby granted.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on July 1, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–16051 Filed 7–3–85; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott; Bahrain et al.

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954].

Bahrain	Saudi Arabia
Iraq	Syria
Jordan	United Arab Emirates
Kuwait	Yemen, Arab Republic
Lebanon	Yemen, Peoples Democratic, Republic of
Libya	
Oman	
Qatar	

Ronald A Pearlman,

Assistant Secretary for Tax Policy.

[FR Doc. 85–16009 Filed 7–3–85; 8:45 am]

BILLING CODE 4810–25–M

[Supplement to Department Circular—Public Debt Series—No. 20–85]

Treasury Notes, Series F–1992

Washington, June 27, 1985.

The Secretary announced on June 26, 1985, that the interest rate on the notes designated Series F–1992, described in Department Circular—Public Debt Series—No. 20–85 dated June 19, 1985, will be 10⅜ percent. Interest on the

notes will be payable at the rate of 10¾ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-16030 Filed 7-3-85; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 19-85]

Treasury Notes, Series M-1989

Washington, June 26, 1985.

The Secretary announced on June 25, 1985, that the interest rate on the notes designated Series M-1989, described in Department Circular—Public Debt Series—No. 19-85 dated June 19, 1985, will be 9-5/8 percent. Interest on the notes will be payable at the rate of 9-5/8 percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-16031 Filed 7-3-85; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 21-85]

Treasury Bonds of 2005

Washington, June 28, 1985.

The Secretary announced on June 27, 1985, that the interest rate on the bonds designated Bonds of 2005, described in Department Circular—Public Debt Series—No. 21-85 dated June 19, 1985, will be 10¾ percent. Interest on the bonds will be payable at the rate of 10¾ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-16032 Filed 7-3-85; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Schedule of Productivity Improvement (A-76) Reviews for the Department of Medicine and Surgery

Correction

In FR Doc. 85-14007 beginning on page 24859 in the issue of Thursday, June 13, 1985, make the following corrections:

1. On page 24863, in the table, in the first column under Field facility, insert the heading "Dietetic Foods" preceding Region No. 1.

2. On page 24865, in the table, under Region No. 5, in the entry for Minneapolis, MN, in the fourth column under Inplementation date, "1987" should read "May 1987".

3. On page 24866, in the table, under Region No. 4 (Laundry and Dry cleaning Services), in the entry for Chillicothe, OH, in the fourth column, the "PWS complete" date should read "June 1986"; also, in the first column under Field facility, in the fifth entry, "Marion, WI" should read "Marion, IN".

4. On page 24869, in the table, in the first column, under Region No. 1, in the entry for Bedford, MA, the "MEO complete" date should read "January 1986", the "Solicitation issued" date should read "July 1986", the "Bid closing date" should read "November 1986", and under "Implementation of contract/MEO" insert the date "January 1987".

BILLING CODE 1505-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 129
Friday, July 5, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Deposit Insurance Corporation	1-3
Federal Election Commission	4
Pacific Northwest Electric Power and Conservation Planning Council	5

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:22 p.m. on Friday, June 28, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and assumption of the liability to pay deposits made in First Bank and Trust, Tracy City, Tennessee, which was closed by the Commissioner of Financial Institutions for the State of Tennessee on Friday, June 28, 1985; (2) accept the bid for the transaction submitted by First National Bank of Shelbyville, Shelbyville, Tennessee; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeing, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: July 1, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85-16107 Filed 7-2-85; 11:15 am]
BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, July 8, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: July 1, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85-16108 Filed 7-2-85; 11:15 am]
BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, July 8, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Pensacola Loan and Savings Bank, an operating noninsured industrial savings bank located at 180 North Palafox Street, Pensacola, Florida.

Lyndon Guaranty Bank of New York, a proposed new bank to be located at 1600 W. Ridge Road, Rochester, New York.

Bay Loan and Investment Corporation, a proposed new bank to be located at 414 Main Street, East Greenwich, Rhode Island.

Application for consent to purchase assets and assume liabilities:

Citizens First National Bank of New Jersey, Ridgewood, New Jersey, for consent to purchase certain assets of and assume the liability to pay deposits made in the Barnegat Branch, Forked River Branch, Manahawkin Branch, Ship Bottom Branch, Tuckerton Branch, and Crestwood Branch of Jersey

Shore Savings and Loan Association, Toms River, New Jersey, a non-FDIC-insured institution.

Memorandum re: Revisions to Appendix E of the delegations of authority to the Division of Liquidation.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: July 1, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–10109 Filed 7–2–85; 11:15 am]

BILLING CODE 6714-01-M

4

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 9, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, July 11, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Draft AO 1985–18
  Richard C. Semak, Office of Government Affairs, Automobile Club of Michigan Political Action Committee
Revisions to 11 CFR 110.1 and 110.2:
  Summary of comments and announcement of public hearing
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR DOC 85–10142 Filed 7–2–85; 2:25 p.m.]

BILLING CODE 6715-01-M

5

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: July 10–12, 1985, 9:00 a.m.

PLACE: Sheraton Missoula Hotel, 200 South Pattee Street, Missoula, Montana.

MATTERS TO BE CONSIDERED:

- Council Consideration of Entering Rulemaking on an Amendment Regarding the Council's Model Conservation Standards.
- Staff Presentation of the Draft 1985 Power Plan and Council Consideration of Entering Rulemaking on the Draft.
- Council Business.

Public comment will follow each item.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–10093 Filed 7–2–85; 9:27 am]

BILLING CODE 0000-00-M

federal register

Friday
July 5, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA83–5119	Sept. 16, 1983.
Connecticut: CT85–3023	June 7, 1985.
Delaware: DE85–3021	Apr. 19, 1985.
District of Columbia: DC84–3009	Apr. 6, 1984.
Kansas:	
KS84–4009	May 10, 1985.
KS84–4052	Aug. 24, 1984.
Kentucky:	
KY84–1009	Mar. 16, 1984.
KY84–1011	Mar. 23, 1984.
Michigan: MI83–2020	Mar. 18, 1983.
Montana: MT83–5101	Feb. 18, 1983.
Ohio: OH85–5028	June 21, 1985.
Tennessee:	
TN83–1088	Nov. 25, 1983.
TN83–1087	Do.
TN84–1023	Aug. 31, 1984.
TN84–1024	Do.
Virginia:	
VA85–3020	Apr. 5, 1985.
VA82–3034	Dec. 3, 1982.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

New York: NY83–3044 (NY85–3038)	Aug. 26, 1983.

Signed at Washington, D.C. this 28th day of June 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. CA83-5119 - Mod. #10
(48 FR 41702 - September 16, 1983)
San Diego County, California

	Basic Hourly Rates	Fringe Benefits
Add:		
Carpenters:		
Work on single family homes and apartments up to and including three stories	$14.00	$4.27

DECISION NO. DC84-3009-MOD. #17
(49 FR 13800-April 6, 1984
DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES

	Basic Hourly Rates	Fringe Benefits
ADD:		
LABORERS:		
Building Construction Only		
vibrator operators, pipelayers, or tile layers, operators of jackhammers		
Arlington & Fairfax Counties, Virginia	10.84	2.05
Remaining Areas	11.87	2.05
DELETE:		
LABORERS:		
Building Construction Only		
vibrator operator of jackhammers		

DECISION NO. CT85-3023 - MOD. #1
(50 FR 24109 - June 7, 1985)
Statewide Connecticut

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS; CEMENT MASONS; CEMENT FINISHERS; MARBLE MASONS; PLASTERERS; STONE MASONS; TERRAZZO WORKERS; TILE SETTERS:		
Heavy & Highway		
Area 1	14.00	3.15
Area 3	13.80	3.35
CARPENTERS; MILLWRIGHTS; PILEDRIVERMEN; LATHERS; RESILIENT FLOOR LAYERS:		
Areas 1 & 2	15.58	2.55
Area 3	15.10	3.05
Area 4	14.40	3.80
Area 5	14.45	3.80
Area 6	15.75	2.43
LABORERS (HIGHWAY - In the City of Hartford: Contracts for repairing or paving streets, roads, sidewalks, parking lots and/or curbing, except state and interstate highways)	13.15	2.90
LABORERS (HIGHWAY - except contracts for repairing or paving streets, roads, sidewalks, parking lots and/or curbing in the City of Hartford other than state and interstate highways & HEAVY CONSTRUCTION):		
Group 1	13.15	2.90
Group 2	13.40	2.90
Group 3	13.65	2.90
Group 4	13.90	2.90

DECISION NO. DE85-3021 - MOD. #2
(50 FR 15693 - April 19, 1985)
Statewide Delaware

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS - Building Construction:		
New Castle County		
Class 1	12.67	3.63
Class 2	12.92	3.63
Class 3	13.17	3.63
Class 4	13.67	3.63
Class 5	13.92	3.63
Kent & Sussex Cos.		
Class 1	11.62	3.63
Class 2	11.87	3.63
Class 3	12.12	3.63
Class 4	12.22	3.63
Class 5	12.87	3.63
LABORERS - Heavy Const.		
New Castle County:		
General laborers, asphalt tamper, asphalt raker, concrete pitman, landscaper, planter, puddler railroad trackman, rubber magazine tender, seeder & arboriate and Signalman	10.42	3.63
Pipelayers	10.57	3.63
Blasters, caissons, and cofferdams (open air below 8 ft. where excavations for circular caissons and cofferdams are 8 ft. or more below level of natural grade adjacent to start point) diamond point drills, form setters, gunite nozzle operators, and wagon drills	10.72	3.63
tenders, railroad trackman, signal men	8.37	3.63
Ripelayers	8.52	3.63
Wagon drill, diamond point drill, gunnite nozzlemen, form setters, blasters, caisson & coffer dams (open air below 8')	8.67	3.63

DECISION NO. KS84-4009
MOD. #1 -(50FR 19853)
May 10, 1985

Douglas, Jefferson, Leavenworth, Miami and Shawnee Counties, Kansas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Laborers:		
Zone 1		
Group A	$7.95	$2.30
Group B	8.20	2.30
Zone 2		
Group A	8.75	2.30
	9.00	2.30
Zone 3		
Group A	9.10	2.40
Group B	9.35	2.40
Zone 4		
Group A	7.95	2.30
Group B	8.20	2.30

MODIFICATION P. 3

DECISION NO. KY84-1008
Mod # 3
Boone, Campbell, Kenton, & Pendleton Cos., Kentucky
(49 FR 10000 - March 16, 1984)
CHANGE:
LABORERS:
Pendleton County:

	Basic Hourly Rates	Fringe Benefits
Laborers - Light Commercial *(SEE SCOPE OF WORK)	$ 8.20	2.20
Laborers - Other Bldg Construction:		
Group I	$10.15	2.20
Group II	10.55	2.20
Group III	10.75	2.20
Group IV	10.85	2.20
Group V	11.35	2.20
Group VI	11.65	2.20

*SCOPE OF WORK:
Laborers - Light Commercial - Includes Bowling Alley Bldgs; Banks-20,000 sq ft or less; Churches; Funeral Homes; Resturants; Fast Food Outlets; Skating Rinks; Recreational Bldgs - 20,000 sq ft or less; Storage Bldgs - 20,000 sq ft or less; Open Face Shopping Centers that encompass 10 stores or less; Individual Retail Stores - 20,000 sq ft or less; Service Stations; Nursing Homes; Pre-Med Treatment or Doctor's Bldgs; Office Bldgs - 20,000 sq ft or less; & Metal Bldgs - 20,000 sq ft or less.

DECISION NO. KY84-1011
Mod # 4
(49 FR 11066 - March 23, 1984)
Fayette & Franklin Cos., Kentucky

CHANGE:
LABORERS:

	Basic Hourly Rates	Fringe Benefits
Laborers - Light Commercial *(See Scope of Work)	$ 8.20	2.20
Laborers - Other Building Construction:		
Group I	$10.15	2.20
Group II	10.55	2.20
Group III	10.75	2.20
Group IV	10.85	2.20
Group V	11.35	2.20
Group VI	11.65	2.20

*SCOPE OF WORK:
Laborers - Light Commercial - Includes Bowling Alley Bldgs; Banks-20,000 sq ft or less; Churches; Funeral Homes; Resturants; Fast Food Outlets; Skating Rinks; Recreational Bldgs - 20,000 sq ft or less; Storage Bldgs - 20,000 sq ft or less; Open Face Shopping Centers that encompass 10 stores or less; Individual Retail Stores - 20,000 sq ft or less; Service Stations; Nursing Homes; Pre-Med Treatment or Doctor's Bldgs; Office Bldgs - 20,000 sq ft or less; & Metal Bldgs - 20,000 sq ft or less.

MODIFICATION P. 4

DECISION NO. KS84-4052
MOD. # 3 (49FR33780)
August 24, 1984
Sedgwick County, Kansas
CHANGE:

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$13.25	$1.79

DECISION NO. MI83-2020 - MOD. #6
(48 FR 11615 - March 18, 1983)
Genesee, Huron, Lapeer, etc., Counties, Michigan
CHANGE:

	Basic Hourly Rates	Fringe Benefits
Plumbers & Pipefitters: Remainder of Counties: Plumbers ONLY: Work on single family homes and apartments up to and including 2 stories; also strip stores, remodeling existing supermarket; restaurant work (plumbing contracts $25,000 or less), convenience stores, industrial park type warehouse buildings up to 50,000 sq. ft. with or without an additional 10,000 sq. ft. of office space, 1 store retail or office buildings up to 10,000 sq. ft., tenant work up to 10,000 sq. ft. per tenant	$13.90	$3.20
Plumbers: All other work	15.09	6.43

DECISION NO. MT83-5101 - Mod. #7
(48 FR 7370 - February 18, 1983)
Statewide, Montana
Change:

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: Area 2:		
Lineman	$17.68	$1.50+ 3%%
Cable Splicers	19.68	1.50+ 3%%
Pole Sprayer	15.71	1.50+ 3%%
Line Equipment Op.	15.07	1.50+ 3%%
Jackhammer, Compressorman	13.06	1.50+ 3%%
Groundman "A"	12.26	1.50+ 3%%
Tree Trimmer	16.30	1.50+ 3%%
Powderman	13.06	1.50+ 3%%
Head Grounman and Groundman "B" are not Applicable		

DECISION NUMBER OH85-5028 - MOD. #1
(50 FR 25831 - June 21, 1985)
Adams, Allen,...Wood, & Wyandot Counties, Ohio

	Basic Hourly Rates	Fringe Benefits
Change:		
Cement Masons:		
Area 8	$17.70	$2.65
Electricians:		
Area 15	17.50	3.1%+ 2.00
Glaziers:		
Area 9	16.70	1.52
Ironworkers:		
Area 8	16.96	5.36
Area 11	20.62	4.13
Millwrights:		
Area 7	16.65	3.70
Painters:		
Area 14:		
Brush; Roller	13.00	.76+k
Drywall Finishers & Paperhangers	14.00	.76+k
Sandblasters; Spray $1.00 Premium		
Area 16:		
Brush; Roller; Washing; Wallcovering; & Paperhanging	16.00	
Open Structural Steel Taping; Beding; Finishing & Sanding	16.50	
Spray; Sandblasting; Hopper Tender; Swing Stage; & Window Jacks	16.75	
Pipefitters; Plumbers; & Steamfitters:		
Area 16: Plumbers	17.00	
Plasterers:		
Area 7	20.73	4.00
Sheet Metal Workers:		
Area 9	18.45	1.65
Soft Floor Layers:		
Area 5	20.21	4.40
Footnote:		
k. $50.00 per year per employee	16.60	2.625
Delete:		
Line Construction:		
Area 10:		
Wage rates & Area Description		
Area 15:		
Wage rates		
Add:		
Line Construction:		
Area 10:		
Linemen; Cable Splicers; Operators: Hole Digging Equipment, Cranes, Hydraulic Lift or Bucket	$17.48	3 1/2%+ $2.40
Operators: Line Truck with Winch or Pole & Steel Handling	13.11	3 1/2%+ 2.40
Operators: Non-Specialized Trucks & Miscellaneous Equipment; Groundmen-Truck Drivers	10.49	3 1/2%+ 2.40
Area 15:		
Cable Splicers; Operators: All Mechanized Equipment; & Linemen	19.32	3 1/2%+ 1.00
Groundmen	10.66	3 1/2%+ 1.00
Area Descriptions:		
Line Construction:		
Area 10: Clinton, Darke, Greene, Miami, Montgomery, Preble, & Warren (Wayne, Clear Creek, & Franklin Twps.) Cos.		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. TN83-1088		
Mod # 6		
(48 FR 53272 - November 25, 1983)		
Shelby County, Tennessee		
CHANGE:		
BOILERMAKERS	$16.20	4.105
DECISION NO. TN83-1087		
Mod # 9		
(48 FR 53270 - November 25, 1983)		
Hamilton, Marion, Polk & Rhea Counties, Tennessee		
CHANGE:		
BOILERMAKERS	$16.20	4.105
DECISION NO. TN84-1023		
Mod # 3		
(49 FR 34644 - August 31, 1984)		
Carter, Greene, Hawkins, Johnson, Sullivan, Unicoi & Washington Cos., TN		
CHANGE:		
BOILERMAKERS	$16.20	4.105
DECISION NO. TN84-1024		
Mod # 4		
(49 FR 34645 - August 31, 1984)		
Anderson, Knox, Monroe & Roane Cos., Tennessee		
CHANGE:		
BOILERMAKERS	$16.20	4.105
DECISION NO. VA85-3020-MOD. #2		
(50 FR 13706-April 5, 1985)		
HENRICO and the Independent city of RICHMOND		
CHANGE:		
CARPENTERS, including LATHERS and SOFT FLOOR LAYERS	12.35	2.15
PILEDRIVERMEN AND DOCKBUILDERS	12.35	2.15
DECISION NO. VA82-3034-MOD. #10		
(47 FR 54746-December 3, 1982)		
The Cities of CHESAPEAKE, PORTSMOUTH, & VIRGINIA BEACH		
CHANGE:		
CARPENTERS, including LATHERS and SOFT FLOOR LAYERS	12.35	2.11
PILEDRIVERMEN & DOCKBUILDERS	12.35	2.11
DELETE:		
LATHERS	10.75	.25

SUPERSEDEAS DECISION

STATE: NEW YORK COUNTY: STEUBEN

DECISION NO. NY85-3036 DATE: Date of Publication
Supersedes Decision No. NY83-3044 dated August 26, 1983, in 48 FR 38963
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories); Heavy (except water well drilling) and Highway Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.18	4.09
BOILERMAKERS	18.50	4.79
BRICKLAYERS; CEMENT MASONS (BUILDING); PLASTERERS; MARBLE MASONS; TILE AND TERRAZZO WORKERS	14.50	17.28
CARPENTERS:		
Area 1:		
Carpenters	13.26	3.085
Millwrights & Piledrivers	13.36	3.085
Carpenters & Piledrivers (Heavy & Highway)	14.355	3.34+a
Area 2:		
Carpenters & Soft Floor Layers	12.81	3.08
Light commercial - up to and including $90,000	10.25	3.08
Millwrights & Piledrivers	13.06	3.08
Carpenters (Heavy & Highway)	14.76	2.985+a
Area 3:		
Carpenters and Soft Floor Layers	12.30	3.08
Millwrights and Piledrivers	12.45	2.87
Carpenters and Piledrivers (Heavy and Highway)	14.76	2.985+a
CEMENT MASONS (HEAVY & HIGHWAY)	15.28	2.13
ELECTRICIANS	17.00	3.15+ 3%+b
GLAZIERS	10.92	1.68
IRONWORKERS:		
Area 1:		
Structural, Ornamental, Reinforcing, Machinery Movers, Riggers, Rodmen, Fence Erectors & Stone Derrickmen	16.51	4.21
Sheeters	16.76	4.21
Sheeters, Bucker-up	16.64	4.21
Area 2	14.75	3.38
LABORERS (BUILDING)	11.27	1.35
LABORERS (HEAVY & HIGHWAY):		
Group 1	13.79	1.70+c
Group 2	13.99	1.70+c
Group 3	14.19	1.70+c
Group 4	14.39	1.70+c
MARBLE, TILE & TERRAZZO FINISHERS	13.05	4.99
PAINTERS:		
Area 1:		
Brush	11.10	2.20
Toothpick Staging over 25'; Structural Scaffold over 39'	10.30	1.45
Paperhangers; Vinyl Hangers	10.40	1.45
Swing Chair, Swing Scaffold; Power Grinder with Respirator	10.55	1.45
Epoxy - Brush & Roll	10.60	1.45
Stilts	10.80	1.45
Spray	10.90	1.45
Structural Steel; Steeplejack (over 100'); Sandblasting; Steam-cleaning (acid or hi-pressure water)	11.05	1.45
Spray - Epoxy	11.55	1.45
Area 2:		
Basic	11.00	2.70
Steel above 20'; Ladder or Scaffold over 30' high; Spray; All toxic coating; Taping; Wall covering hanging	11.60	2.70
Bridges	12.25	2.70
PLUMBERS; STEAMFITTERS:		
Area 1	17.74	5.225
Area 2	15.80	3.40
POWER EQUIPMENT OPERATORS (BUILDING)		
Group 1-A	16.18	4.55+d
Group 1-B	16.43	4.55+d
Group 1-C	16.68	4.55+d
Group 1-D	16.93	4.55+d

DECISION NO. NY85-3036

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (BUILDING) Continued		
Group 1-E	17.43	4.55+d
Group 1-F	17.93	4.55+d
Group 1-G	18.43	4.55+d
Group 1-H	18.93	4.55+d
Group 2	16.18	4.55+d
Group 3	15.73	4.55+d
Group 4	14.20	4.55+d
POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY)		
Group 1	16.26	4.35+e
Group 2	15.70	4.35+e
Group 3	14.11	4.35+e
Group 4	12.71	4.35+e
ROOFERS	13.79	2.99
SHEET METAL WORKERS	14.95	2.16+ 3%
SPRINKLER FITTERS	16.92	2.83
TRUCK DRIVERS (HEAVY & HIGHWAY):		
Township of Wayland:		
Group 1	13.74	2.80+f
Group 2	13.79	2.80+f
Group 3	13.84	2.80+f
Group 4	13.99	2.80+f
Group 5	14.14	2.80+f
Remainder of County		
Group 1	13.81	2.73+f
Group 2	13.86	2.73+f
Group 3	13.91	2.73+f
Group 4	14.06	2.73+f
Group 5	14.21	2.73+f

WELDERS: Receive rate prescribed for craft to which welding is incidental

FOOTNOTES:
a. C and D
b. Employer shall work 4 hours and receive 8 hours pay on Christmas Eve
c. Paid Holidays: A through F, provided the employee has worked the day before and after the Holiday
d. Paid Holidays: A through F, providing employee works the working day immediately preceding the Holiday, or on the scheduled work day immediately following the Holiday
e. Paid Holidays: A through F, providing the employee works the day before and the day after the Holiday
f. Paid Holidays: A through F, provided the employee has worked the day before and after the Holiday

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

AREA DESCRIPTIONS

CARPENTERS
Area 1: Townships of Prattsburg and Pulteney, Village of Hammondsport.
Area 2: Townships of Troupsburg, Hartsville, Fremont, Wayland, Jasper, Hornellsville, Avoca, Cohocton, Canisteo, Howard, Pansville, Wheeler, Cameron, Greenwood, West Union, and Bath- west of a line drawn from the Bath-Cameron Road (Route #10) then west on Turnpike Road to Shannon Road, north on Shannon Road to Knight Settlement Road, south on Knight Settlement Road to Cochrane Road, west on Conchrean Road to Campbell-Creek Road to Route 53, north on Route 53 to the Wheeler Township Line.
Area 3: Remainder of the County.

IRONWORKERS:
Area 1: Townships of Atlantic and South Dansville.
Area 2: Remainder of County.

PAINTERS:
Area 1: Townships of Cameron, Bath, Thurston, Bradford, Campbell, Erwin, Lindley, Hornby, City of Corning, Caton, Addison and Rathbone.
Area 2: Remainder of County.

PLUMBERS; STEAMFITTERS:
Area 1: Townships of Avoca, Canisteo, Cohocton, Dansville, Fremont, West Union, Greenville, Hartsville, Hornellsville, Howard, Wheeler, Jasper, Prattsburg, Pulteney, Troupsburg, Wayland, Woodhull, Cameron, Rathbone and Tuscarora.
Area 2: Remainder of County.

LABORERS
HEAVY and HIGHWAY CONSTRUCTION

Group 1: Laborers; Drill Tenders; Outboard and Hand Boats.

Group 2: Bull Float; Chain Saw; Concrete Aggregate; Bin Concrete Bootman; Gin Buggy; Hand or Machine Vibrator; Jackhammer; Mason Tender; Mortor Mixer; Pavement Breaker; Handlers or all Steel Mesh; Small Generators for Laborers' Tools; Installation of bridge drainage pipe; Pipelayers; Vibrator type Rollers; Tamper; Drill Doctor; Tail or Crew Operator on Asphalt Paver; Water Pump Operator (1½" and single diaphram); Nozzle (Asphalt, Gunnite, Seeding and Sandblasting); Laborers on Chain Link Fence Erection; Rock Splitter and Power Unit; Pusher type Concrete Saw and all other gas, electric, oil and air tool Operators; Wrecking Laborer.

Group 3: All Rock or Drill Machine Operators (except Quarry Master and similar type); Acetylene Torch Operator; Asphalt Raker; Powderman.

Group 4: Blasters; Form Setter; Stone or Granite Curb Setters.

POWER EQUIPMENT OPERATORS
BUILDING CONSTRUCTION

Group 1: Cranes:
A - 121 feet and under
B - Between 121 - 151 feet
C - Between 151 - 201 feet
D - Between 201 - 251 feet
E - Between 251 - 301 feet
F - Between 301 - 351 feet
G - Between 351 - 401 feet
H - Between 401 - 451 feet

Group 2: Air Tugger; Backhoe; Clamshell; Dragline; Shovel and similar Machines over 3/8 cu. yd. capacity (factory rating); Big Generator Plant; Bridge Crane (all types); Cableway; Caisson Auger and similar type Machine; Climbing and/or Tower Crane (all kinds and all types); Derrick; Dredge; Forklift (with factory rating of 15 feet or more of lift); Hoist (on steel erection); Mucking Machine; Ross Carrier (and similar types); Three drum Hoist (when all drums are in use).

Group 3: "A" Frame Truck; Back Filling Machine; Barber Green and similar type Loader; Belt Crete and similar type Machine; Bituminous Spreading Machine; Bulldozer; Carry-all type Scraper; Compressors, 4 not to exceed 1200 C.F.M. combined capacity, 3 or less with more than 1200 C.F.M., but not to exceed 200 C.F.M.; Concrete Mixer; Concrete Pump; Core Drill; Crane-Hoe-Shovel (3/8 yd. capacity or less)(factory rating); Dinky Locomotive (all types); Elevating type Grader; Elevator; Fine Grade Machine (all kinds); Front End Loader; Forklift (with factory rating of less than 15 ft. of lift); High Pressure Boiler (over 15 lbs. pressure); Hoist (1 or 2 drums); Motor Grader; Maintenance Engineer; Post Hole Digger; Sheepsfoot Roller; Side Boom; Stone Crusher; Submersible Electric Pump, when used in lieu of Well Point System; Tandem Roller; Tournedozer and similar types; Tournapull; Tower Mobile and similar kinds Trenching Machine; Vibratory type Roller and similar equipment of all kinds; Welder; Well Drill; Well Point System.

Group 4: Any combination (not to exceed 3 pieces of equipment); Pumps; Welding Machines or Mechanical Conveyors (over 12 ft. in length); Belt Crete Generator; Compressors - 3 or less not to exceed 1200 C.F.M. combined capacity; Fireman; Longitudinal Float; Mechanical Heater; Roller (Fill and Grade); Rubber-tired Tractor; Oilers.

Federal Register / Vol. 50, No. 129 / Friday, July 5, 1985 / Notices 27719

POWER EQUIPMENT OPERATORS
HEAVY and HIGHWAY CONSTRUCTION

Group 1: Automated Concrete Spreader (CMI); Automatic Fine Grader; Backhoe (except tractor mounted, rubber tired); Belt Placer (CMI type); Backtop Plant (automated); Cableway; Caisson Auger; Central Mix Concrete Plant (automated); Cherry Picker (over 5 tons capacity); Concrete Pump (8" or over); Crane; Cranes and Derricks (steel erection); Dragline; Dredge; Dual Drum Paver; Excavator (all purpose-hydraulically operated) (Gradall or similar); Fork Lift (factory rated 15 ft. and over); Front End Loader 4 cu. yds. and over); Head Tower (Sauerman or equal) Hoist (2 or 3 drums); Mine Hoist; Mucking Machine or Mole; Over Head Crane (Gantry or Straddle type); Piledriver; Power Grader; Quarry Master (or equivalent); Scraper; Shovel; Sideboom; Skip Form Paver; Tractor drawn Belt type Loader; Truck Crane; Tunnel Shovel.

Group 2: Backhoe (tractor mounted, rubber tired); Bituminous Spreader and Mixer; Blacktop Plant (non-automated); Blast or Rotary Drill Truck or Tractor mounted); Boring Machine; Cage-hoist; Central Mix Plant (non-automated and all Concrete Batching Plants); Cherry Picker (5 tons capacity and under); Compressors (4 or less, exceeding 2000 C.F.M. combined capacity); Concrete Paver (over 16S); Concrete Pump (under 8"); Crusher; Diesel power unit; Drill Rigs (tractor mounted); Front End Loader (under 4 cu. yd.); Hi-pressure Boiler (15 lbs. and over); Hoist (one drum); Kolman Plant Loader and similar type Loaders; Locomotive Maintenance/Engineer/Greaseman/Welder; Mixer for stabilized base Self-monorail Machine; Plant Engineer; Pump Crete; Ready Mix Concrete Plant; Refrigeration equipment (for Soil Stabilization); Road Widener; Roller (all above Subgrade); Tractor with Dozer and/or Pusher; Trencher; Tuggerhoist; Winch; Winch Cat.

Group 3: A-Frame Truck; Compressors (4 not to exceed 2000 C.F.M. combined capacity or 3 or less with more than 1200 C.FM. but not to exceed 2000 C.F.M.); Compressors (any size but subject to other provisions for Compressors); Dust Collectors; Generators; Pumps; Welding Machines (4 of any type of combination); Concrete Pavement Spreaders and Finishers; Conveyor; Drill-core; Drill-well; Electric Pumps used in conjunction with Well Point Systems; Farm Tractor with accessories; Fine Grade Machine; Fork Lift (under 15 ft.); Gunite Machine; Hammers (Hydraulic-self-propelled); Post Hole Digger and Post Driver; Power Sweeper; Roller (Grade and Fill); Submersible Electric Pump (when used in lieu of Well Point System); Tractor with tower accessories; Vibratory Compactor; Vibro Tamp; Well Point.

POWER EQUIPMENT OPERATORS (Cont'd)
HEAVY and HIGHWAY CONSTRUCTION (Cont'd)

Group 4: Aggregate Plant; Boiler (used in conjunction with production); Cement and Bin Operator; Compressors (3 or less not to exceed 1200 C.F.M. combined capacity); Compressor (any size, but subject to other provisions for Compressors); Dust Collectors; Generator Pumps; Welding Machines (3 or less of any type or combination); Concrete Paver or Mixer (16S and under); Concrete Saw (self-propelled); Fireman; Form Tamper; Hydraulic Pump (jacking system); Lighting Plants; Mulching Machine; Oiler Parapet (Concrete or Pavement Grinder); Power Broom (towed); Power Heaterman; Revinius Widener; Shell Winder; Steam Cleaner; Tractor.

Group 5: Master Mechanic.

TRUCK DRIVERS - Township of Wayland
HEAVY and HIGHWAY CONSTRUCTION

Group 1: Pickups; Panel Trucks; Flatboy Material Trucks (straight jobs); Single Axle Dump Trucks; Dumpster; Greasers; Truck Tireman.

Group 2: Tandems; Batch Trucks and Mechanics.

Group 3: Semi-trailers; Low-boy Trucks; Asphalt Distributors Trucks; Agitator; Mixer Trucks and Dumpcrete type vehicles; Truck Mechanic.

Group 4: Specialized Earth Moving Equipment, Euclid type or similar off-highway equipment, where not self-loaded, and Straddle (Ross) Carrier.

Group 5: Off-highway Tandem Back-dump; Twin engine equipment double hitched equipment where not self loaded.

Remainder of County

Group 1: Pickups; Panel Trucks; Flatboy Material Trucks (straight jobs); Single Axle Dump Trucks; Dumpsters; Material Checker and Receivers; Greasers; Truck Tiremen; Mechanic Helpers and Part Chaser.

Group 2: Tandems; Batch Trucks; Mechanics and Dispatcher.

Group 3: Semi-trailers; Low-boy Trucks; Asphalt Distributors Trucks; Agitator; Mixer trucks and Dumpcrete type vehicles; Truck Mechanic.

Group 4: Specialized Earth Moving Equipment, Euclid type or similar off-highway equipment, where not self loaded, and Straddle (Ross) Carrier.

Group 5: Off-highway Tandem Back-dump; Twin engine equipment and double hitched equipment where not self loaded.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

[FR Doc. 85-15909 Filed 7-3-85; 8:45 am]
BILLING CODE 4510-27-C

federal register

Friday
July 5, 1985

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 412

Medicare Program; Limit on Payments for Direct Medical Education Costs; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 412

[BERC-338-F]

Medicare Program; Limit on Payments for Direct Medical Education Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule imposes a one year limit on the amount the Medicare program will reimburse providers for their direct costs of approved medical education activities for cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986. The limit is tied to Medicare utilization and is based on the lesser of a provider's allowable cost of approved medical educational activities during the cost reporting period subject to the limit, or during a base year. The base year is the provider's cost reporting period beginning on or after October 1, 1983 but before October 1, 1984. It is our belief that this change will help ensure that Medicare pays for only those costs that are necessary in the efficient delivery of health services to Medicare beneficiaries.

EFFECTIVE DATE: The regulations are effective for cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Elstein, (301) 597-1750.

SUPPLEMENTARY INFORMATION:

I. Background—Current Policy

Medicare has historically paid a share of the net cost of approved medical educational activities. Our regulations at 42 CFR 405.421 define approved educational activities to mean formally organized or planned programs of study usually engaged in by providers in order to enhance the quality of care in an institution. These activities include approved training programs for physicians, nurses, and certain paraprofessionals (for example, radiology technicians).

Since the inception of the Medicare program, we have shared in the costs of approved medical educational activities, as defined above, on a reasonable cost basis. Section 1861(v)(1)(A) of the Social Security Act (the Act) defines reasonable cost as the cost actually incurred, excluding any cost unnecessary in the efficient delivery of needed health services to Medicare beneficiaries. Section 405.421 of the regulations further specifies that the allowable cost of approved educational activities is the net cost, which is determined by deducting tuition revenues from total costs.

Under sections 1886 (a)(4) and (d)(1)(A) of the Act, the costs of approved medical educational activities are excluded from the calculation of the payment rate under the prospective payment system for inpatient hospital services. The Medicare program continues reimbursement for these costs on a reasonable cost basis. In addition, hospitals excluded from the prospective payment system that have approved medical education programs continue to be reimbursed as described in § 405.421.

Thus, costs related to the actual operation of an approved program, such as salaries of interns and residents, are excluded from the "operating costs of inpatient hospital services." These costs are treated as a pass-through cost that is excluded from the calculation of the prospective payment rate and is reimbursed separately on a reasonable cost basis. Costs of on-the-job training, maintenance of a medical library and certain other activities are considered normal operating costs and are included in the calculation of the prospective payment rate.

We also note that section 1886(d)(5)(B) of the Act and § 412.115(b) of our regulations (formerly § 405.477(d)(2) and recently redesignated at 50 FR 12759 on March 29, 1985) specify that hospitals with "indirect costs" for medical education will receive an additional payment amount under the prospective payment system. As used in section 1886(d)(5)(B) of the Act, "indirect costs of medical education" means those additional operating (that is, patient care) costs incurred by hospitals with medical education programs (for example, added costs caused by the ordering of an increased number of tests by interns and residents in hospitals with approved programs). This final rule does not apply to indirect medical educational payments. It applies only to the costs of approved educational activities as defined in § 405.421. Therefore, in order to avoid confusion in the discussion below, when we use the phrase "direct medical education costs," we are referring to the reimbursement authorized by § 405.421.

On May 21, 1985, we published a proposed rule (50 FR 21026) in which we proposed to revise § 405.421 to establish a one year limit, effective for cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986, on the amount of Medicare reimbursement for the cost of approved medical educational activities. The provisions of the proposed rule, the comments received, our responses to the comments and the changes we made in response to comments are discussed below.

II. Summary of the Proposed Rule

Under the authority of section 1861(v)(1)(A) of the Act, we proposed to amend § 405.421(a) to establish a one year limit on the amount Medicare would reimburse a provider for the cost of approved educational activities. For cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986, a provider would be paid, under the terms of the proposed rule, a share (based on its Medicare utilization in the current year) of the lesser of its net allowable direct costs for medical education in the current year or the net allowable direct costs recognized by Medicare for the base year. If a provider's Medicare utilization increases after the base year, Medicare's payment for approved education activities in the limit year would be higher than the base year. Conversely, if Medicare utilization decreases than Medicare's payment for these activities will decrease. We proposed that the base year should be the provider's cost reporting year that began on or after October 1, 1983 and before October 1, 1984. This year was chosen as the base year because it allows us to use the most recent data available. The limit, as proposed, would affect both Part A (Hospital Insurance) and Part B (Supplementary Medical Insurance) payments because the limit would be calculated based on the net cost of approved educational activities before these costs are apportioned between inpatient and outpatient cost centers.

As stated in the proposed rule (50 FR 21027) we intend to maintain Medicare payments for direct medical education for subsequent years at levels fiscally equivalent to the limits in this regulation.

III. Responses to Comments

During the comment period, we received comments on the proposed rule from 114 commenters including medical schools, hospitals, medical groups, hospital associations, and other professional associations. The comments and our responses to them are discussed below.

Comment: Several commenters questioned whether State and local communities and private philanthropies can or will assume a greater proportion of the costs of medical education. One

commenter observed that it is unreasonable to expect States to help to pay for the training of health care professionals beyond their own immediate needs in the absence of Federal subsidization. Some commenters remarked that the Federal Government should not consider making changes to Medicare's policy regarding reimbursement for medical education costs without first looking at the availability of other funding sources. Other commenters said that there is little incentive to seek philanthropic funding when Medicare offsets allowable costs by these funds.

Response: As noted in the preamble to our proposed rule, we believe that after 20 years of very generous support by the Medicare program, that it is time to implement the Congressional intent that local communities assume a greater role in the costs of medical education. We also believe that States and local communities will provide additional sources of funding for those programs that they consider necessary. We further believe it is unlikely that either local governments or private philanthropies will increase their support so long as the Federal government continues to provide virtual open-ended funding. In addition, in view of the estimated surplus of doctors projected in virtually all specialties by 1990, we do not anticipate that this proposed freeze will have an adverse effect on the supply of physicians.

In the prospective payment regulations published in the **Federal Register** on January 3, 1984, (49 FR 234), we eliminated the offset of restricted grants and gifts against provider costs effective with cost reporting periods beginning on or after October 1, 1983. Therefore, hospitals do have the incentive to seek philanthropic funding.

Comment: Several commenters pointed out that other third-party payors look to Medicare in determining their payment policy and, therefore, that the adoption of a Medicare limit on direct medical education costs could have far reaching effects on other sources of reimbursement. Some of these commenters expressed concern that providers might try to shift to other payors some of the costs not reimbursed by Medicare, in order to make up the loss in Medicare reimbursement.

Response: While it is possible that other third-party payors may take similar actions to limit payments for medical education programs, any such actions would be based on independent decisions. We have no control over actions taken by independent third-party payors in formulating their payment policies, nor are we attempting to influence their payment policies. Other third-party payors may choose to follow our example, ignore it, or make alterations in their payment policies entirely different from our policies. Similarly, while we expect providers to take some action to lessen the effects of Medicare's limit on their costs, these actions (in addition to being speculative) are not within our control. Moreover, we cannot dictate what actions other third party payors may take.

Comment: Many commenters stated that Medicare has a responsibility for training professionals to serve present and future Medicare beneficiaries. They expressed concern that our proposal to limit direct medical education costs would curtail the training of future practitioners.

Response: Medicare has traditionally reimbursed hospitals for the net allowable costs they incur for approved educational programs on the basis that these programs enhance the quality of patient care provided in a hospital. Under the terms of this final rule, Medicare will continue to pay over $1 billion for the costs of graduate medical education. However, we have determined that for the next year increased support is not necessary for the efficient delivery of health services to Medicare beneficiaries. Also, we believe that the time has come for the community, including medical schools as well as State and local governments, to pay a greater share of these costs and to encourage hospitals to be more cost conscious in their decisions regarding the scope of their graduate medical education programs.

Comment: Some teaching hospitals claimed that they have a mix of patients within certain diagnosis related groups (DRGs) who require more intensive care and longer stays and, thus, these hospitals incur higher costs in caring for these patients than non-teaching hospitals. Other commenters noted that teaching hospitals serve a disproportionate share of patients with low incomes or minority patients. Consequently, a curtailment in Medicare reimbursement for medical education will place a particularly heavy financial burden on these hospitals.

Response: We have seen no conclusive evidence indicating that teaching hospitals are more likely to encounter more expensive cases within particular DRGs than similar nonteaching hospitals. The Rand Corporation is engaged in a study to determine whether there are significant severity of case differences among different types of hospitals. This study is expected to be completed by December 1985. We also do not yet have accurate data on whether hospitals serving a significantly disproportionate number of low income patients (whether or not members of minority groups) experience higher Medicare costs per case due to the provision of care to these patients. In any case, the direct costs of approved educational activities are reimbursed by Medicare outside of the DRGs because these costs are incurred only by certain hospitals, not because of the intensity of care that patients receive in these hospitals. If teaching hospitals do have higher costs than nonteaching hospitals, that are not covered by the pass through for direct medical education costs, then these higher costs are recognized in the indirect medical education adjustment authorized under section 1886(d)(5)(B) of the Act, which is not affected by this rule. In addition, section 1886(d)(5)(A) of the Act provides additional payments for hospitals that have cases known as "outliers", that either are extraordinarily long or costly compared to most discharges classified in the same DRG. Teaching hospitals receive a large portion of outlier payments that helps them to recover some of the additional costs of these cases.

Comment: Many commenters stated that it would be inappropriate to change Medicare's long-standing support for medical education through regulations rather than by statute, and asked us to delay the regulations until the Congress has considered legislation. Some commenters suggested that we delay action on this issue until Congress has reviewed the area of health manpower.

Response: Except for the services of interns and residents, there is no statutory provision requiring Medicare to pay for the direct costs of medical education. Medicare has authorized payment of a share of these costs by regulation because the Congressional committee reports that accompanied the original Medicare legislation, the Social Security Amendments of 1965 (Pub. L. 89–97) suggested that Medicare should share in these costs initially with the expectation that the community will later assume the costs of medical education. It is our belief that, after many years of generous support for medical education, for which there was no statutory requirement, it is appropriate for us to use the regulatory process to alter the amount of reimbursement by placing a limit on the overall reimbursement of direct medical education costs.

Although we are statutorily mandated under sections 1861(b)(6) and 1832(a)(2)(B)(i) of the Act to reimburse hospitals for the services of interns and residents, our payment for these costs is

subject to the general limitations described in section 1861(v)(1)(A) of the Act, which excludes payments for costs that are unnecessary in the efficient delivery of needed health services to Medicare beneficiaries. It is our belief that, in light of the current surplus of physicians in certain specialties and the low inflation rate, it is unnecessary for hospitals to increase the aggregate costs of their training programs in order to provide services of adequate quality to Medicare patients. Thus, under the authority of section 1861(v)(1)(A) of the Act, we believe a limit on Medicare reimbursement for direct medical education costs is warranted.

While a number of members of Congress have introduced bills dealing with medical education, it appears these bills have the effect of ending the practice of open-ended funding of direct medical education. Current law enables us to limit reimbursement to those costs that are necessary for the efficient delivery of health services. If and when Congress takes legislative action, we will make any necessary changes in our policy.

Comment: Several commenters stated that selection of cost reporting periods beginning during Federal fiscal year (FY) 1984 as the base year upon which the limit is based is arbitrary. One of these commenters questioned how Medicare reimbursement for direct medical education costs during the base year compared with other years.

Response: We selected cost reporting periods beginning during FY 1984 as the base year, which is the first year of the prospective payment system, because they are the most recent cost reporting years which will be available when this final regulation becomes effective. Preliminary data show that compared with previous cost reporting years, Medicare payments for approved medical education programs during this period will be greater than in any other comparable period.

Comment: Many commenters pointed out that the proposed policy change does not take into account situations in which hospitals have made prior commitments to faculty and students, or made decisions, prior to the publication of the proposed rule, to increase their educational programs effective for years after the base year.

Response: We do not believe that the effects of a one year limit will severely jeopardize existing programs. The Medicare program will still be making substantial payments for direct medical education costs. We believe that it is inevitable that, when limits are applied to payments, some providers will be disadvantaged because they have made previous commitments to pay certain costs that may be in excess of the limits and thus not reimbursed. However, if we waited until there were no hospitals that wished to expand their programs, the costs of medical education would continue to rise with little consideration being given to the *efficient* delivery of needed services to Medicare beneficiaries. Since the period to which the limit will apply has not yet begun, we believe that hospitals have the opportunity to reduce overhead costs and thereby minimize the impact of the limit without cutting faculty and student programs. We believe that it is time for hospitals to realize that they cannot continue to expand their educational programs assuming that there will be virtually unlimited funding from the Medicare program.

Comment: Several commenters recommended as an alternative to the proposed rule that we eliminate support for graduates of foreign medical schools.

Response: We do not wish to eliminate Medicare payments for graduates of foreign medical schools at this time because the elimination of payments for these graduates could have a disproportionately adverse effect on those hospitals and specialties, such as physical and rehabilitative medicine, that depend to a great extent on these graduates.

Comment: Some commenters expressed concern that our proposal on direct medical education costs is not simply a limit on medical education costs but constitutes a rollback of costs for some providers. These commenters maintain that those hospitals whose base year cost reporting period began before July 1, 1984, fare worse under the limit than those hospitals whose base year cost reporting period began between July 1, 1984 and September 30, 1984.

Response: We recognize that the limit on direct medical education costs may have differing impacts on hospitals depending on the month in which their cost reporting period begins. For some hospitals the limit will be effective at the start of their third year under the prospective payment system, while other hospitals will have the limit effective for their second prospective payment year. In response to public comment on this issue, we are amending § 405.421(a) to provide for an adjustment to the net allowable costs of those hospitals whose base year precedes the limit year by two years to reflect inflationary changes between the base year and the year prior to the limit year. We explored a number of alternative approaches that could be used to update these net allowable costs before selecting the approach we will use. We decided to allow hospitals whose cost reporting periods began during the period from October 1983 through June 1984 to have their base year costs adjusted to reflect changes in the Consumer Price Index for All Urban Consumers (CPI–U). The CPI–U includes the cost of salary increases for interns and residents and we believe it represents a suitable factor for updating base-year costs. The updating factors to be used are based on annual changes in the CPI–U and are presented below in part IV of this preamble. The following example demonstrates how the updating process works. A hospital whose base year cost reporting period began October 1, 1983 had net allowable costs of $1 million for approved education activities for its base year, an updating factor of 4.20% would be applied to these costs. Thus the hospital's base year costs for approved education activities would be updated to $1,042,000 ($1 million × 104.2%). Those hospitals whose base year cost reporting period began in the month of July, August or September 1984 will not have their costs updated, since their base years occurred immediately prior to the year to which the limit applies.

Comment: Many commenters noted that our proposal limiting payments for direct medical education costs does not provide for any market basket or inflationary increases in the medical education area or for changes in volume. One commenter also noted that by not including a provision for inflationary increases, we are suggesting that the costs for the base year were reasonable for efficient care, but that cost increases for the current year are unreasonable even if caused by inflationary factors beyond a hospital's control.

Response: Other than to provide for an adjustment for those hospitals whose base year precedes by two years the cost reporting period to which the limit will apply, as explained above, we are not providing for any adjustment to recognize inflationary increases because we do not believe that such an adjustment is appropriate. We believe that inflation over the years for graduate medical education has increased faster than the overall rate of inflation, and that a one-year limit on these costs would reduce some of this difference rather than leaving hospitals behind the growth of inflation. We believe that any increase in Medicare reimbursement above the base year level, other than for changes in Medicare utilization, which is taken into consideration, would not be necessary in the efficient delivery of health services to Medicare

beneficiaries. During the year for which these limits apply, we do not believe that a failure to recognize general inflationary increases will have a significant adverse impact on hospitals.

Comment: One commenter stated that a limit applied to individual hospitals indicates a misunderstanding of the functioning of the marketplace of residency slots and individuals seeking to fill them. This commenter suggests that, because of year-to-year fluctuations in the number of resident slots filled in a particular hospital, it would be better to allow each hospital to pass through the costs associated with its average salary paid in some base period multiplied by the number of filled resident slots.

Response: The limit we are imposing on direct medical education costs applies not only to the salaries of interns and residents, but also to the costs of approved nursing and paramedical programs, overhead costs of approved programs, and certain teaching-related compensation costs of physicians. We believe that our current approach of imposing a one-year limit on direct medical education costs is adequate for the short run. We believe this approach allows providers enough flexibility in managing their medical education programs to lessen the problem raised by the commenter, and is relatively simple to administer.

Comment: One commenter suggested that, instead of imposing an overall limitation on direct medical education costs, we control the volume of growth and the percentage of growth. This commenter recommended that we conduct a study on the types of education within medical specialties. This commenter further recommended that we impose tougher licensing requirements on graduates of foreign medical schools.

Response: We expect that an overall limit on Medicare's payment for direct medical education costs will help to control the volume and percentage of growth in the numbers of physicians and nurses. We believe that an advantage of imposing an overall payment limitation to these costs, rather than the imposition of strict criteria to control growth, is that the use of an overall payment limitation permits hospitals and the medical profession freedom to determine how to keep costs within the limit.

As to the commenter's recommendation that we study the types of education required for the various medical specialties, it is our belief that such a study would not provide us with a significantly better understanding of the costs of graduate medical education and the impact that a limit on these costs would have on medical specialties.

Finally, concerning the commenter's recommendation that we impose stricter licensing requirements on graduates of foreign medical schools, we note that the licensing of physicians is a function of the States. Neither the Federal Government nor the Medicare program have the authority to impose additional requirements on States in this regard, or to alter existing State standards for licensing physicians.

Comment: One commenter noted that the application of reasonable compensation equivalents (RCEs) to the salaries of teaching physicians provides a sufficient incentive to hospitals to limit their expenditures for medical education.

Response: The enactment of the prospective payment system sharply curtailed the application of RCEs to hospitals. RCEs apply only to the compensation costs providers incur for the services of physicians furnished to a provider that are not payable through the prospective payment system. While teaching physician costs are included under RCEs, the RCEs do not affect most costs associated with medical education programs. Therefore, we believe that an additional effort should be made to control these costs and that, consequently, the limit on direct costs of medical education is justifiable.

Comment: One commenter pointed out that section 1833(a)(2)(B) of the Act requires outpatient services to be reimbursed at 80 percent of reasonable costs. This commenter claimed that our proposal limiting direct medical education costs ignores the intent of Congress in enacting this section of the law. Another commenter expressed the belief that our proposal will have an impact on those hospitals that are shifting services to the outpatient setting, since outpatient costs are already being reimbursed at 80 percent of reasonable costs.

Response: Under section 1833(a)(2)(B) of the Act, Part B payments for approved medical education activities are limited to the lesser of the reasonable costs for these services or the customary charges for these services less applicable copayment amounts, but is no case may payment exceed 80 percent of reasonable cost. Because we are authorized by section 1861(v)(1)(A), of the Act to impose limits on reasonable costs we do not believe that our proposed limit is in any way contrary to section 1833(a)(2)(B) of the Act. Hospitals are allowed to bill Medicare beneficiaries for coinsurance amounts at 20 percent of charges, as well as any unmet Part B deductible amounts. The limit on direct medical education costs will be applied to the net cost of approved education activities before these costs are apportioned to inpatient or outpatient cost centers.

Comment: One commenter noted that the proposed rule provided no insight into the costs that HCFA believes are unreasonable and provided no rationale for its opinion that these costs are unreasonable. Another commenter indicated that without specific statutory authority the proposed rule changes the definition of reasonable costs by arbitrarily capping reimbursement for direct medical education costs.

Response: We did not state that costs incurred by individual hospitals for medical education are necessarily unreasonable. Rather we stated that, based on section 1861(v)(1)(A) of the Act, HCFA has authority to establish limits on reasonable costs based on estimates of the costs *necessary* in the efficient delivery of health services to Medicare beneficiaries. We believe that the current policy does not provide adequate incentive to providers to hold costs down, that Congress did not intend that Medicare should indefinitely reimburse a full share of direct medical education costs and that the surplus of physicians indicates that a portion of the direct medical education costs is not necessary in the efficient delivery of health services to Medicare beneficiaries.

Comment: Some commenters urged that the limits be implemented for only one year.

Response: This final rule specifies that this limit will be in effect for one year.

Comment: One commenter agreed that the Graduate Medical Education National Advisory Committee (GMENAC) study referred to in the proposed rule reflected their own experience as to the availability of physicians. Some commenters claimed that there is a maldistribution of certain specialties in rural areas that must be considered in future medical education planning.

Response: We do not believe that the distribution of the available surplus of physicians in various specialties is dependent upon the amount of Medicare payment for medical education. To the extent that providers respond to this change in payment by deleting certain residency programs, the total number of physicians trained in each specialty may change. However, the geographic distribution of medical personnel will still depend upon the individual physician's decision. Hospitals in rural areas will have the same chance to provide employment incentives to

physicians in different specialties that are available under current payment mechanisms.

Comment: One commenter said that the statement in the proposed rule that the number of registered nurses (RNs) increased by 83 percent in the period between 1970 and 1982 is misleading. Although the number of RNs did increase during these years, this was a response to vigorous recruiting campaigns to remedy a severe shortage of RNs in the industry. Additionally, the need for RNs to serve the Medicare population will increase as the percentage of elderly in the total population increases.

Response: We recognize that there are a number of reasons for the dramatic increase in the number of RNs in this period. As we stated in the preamble of the proposed rule, we will continue to review the entire area of graduate medical education.

Comment: Some commenters stated that the numbers and types of available residency programs should be decided by the medical profession and not by HCFA. They expressed concern that our proposal would threaten the quality of health care by selectively reducing particular types and numbers of residency programs, and interpreted our proposal as an attempt to decrease the number of physicians.

Response: There is nothing in this rule that dictates the numbers or types of residency programs that should be available. In the regulatory impact analysis of the proposed rule we stated that we specifically rejected the option of identifying and attempting to control surplus specialities. Our goal is to avoid having Medicare pay for costs that are determined to be unnecessary in the efficient delivery of health care to Medicare beneficiaries. Training large numbers of additional physicians when there already is a surplus of physicians will result in payment for unnecessary costs. We believe that the imposition of a one year limit on direct medical education costs will not affect the quality of health care. The proposed rule cited the surplus of physicians as one reason why the quality of health care should not be affected by a one year limit on these costs.

Comment: Two commenters noted that the proposed rule states that 53 percent of total medical education costs are paid to teaching hospitals in two of the nine census regions—the Mid-Atlantic and the East-North Central regions. They pointed out that the economic recovery in these two areas is lagging behind the nation's economy as a whole, and that State and local governments in these areas are not in a position to increase their funding for direct medical education costs to make up for reduced Federal funding.

Response: In the regulatory impact analysis for the proposed rule, we noted that the impact of a limit on direct medical education costs would vary depending on whether a hospital was located in an urban area versus a rural area and the census region the hospital was located. The impact would also vary depending on the number and types of programs affiliated with each hospital, the rate of growth in a hospital's medical education costs, and the action each hospital takes to control the costs of its programs. Thus, we are aware that certain hospitals will be more significantly affected than others.

These commenters' statements imply that adjustments should be granted to the two census regions where the majority of medical education costs are paid because of economic conditions that are unique to those areas. While we understand the commenters' concern, we do not believe that these economic factors should be considered in establishing policies for a national health care program. If adjustments were allowed for the reasons the commenters cite, then similar arguments could be presented for additional adjustments in other areas (such as hospitals with large graduate medical education programs compared to smaller programs) where the impact of the proposed limit will vary. We continue to believe, as expressed in the proposed rule, that the expected benefits of a limit on direct medical education costs to the Medicare program and the public outweigh the possible adverse effects on hospitals.

We also note that the two census regions cited as being most significantly disadvantaged by a limit have also been the regions most benefited by our generous payments for medical education in the past. Furthermore, a report published in February 1985, by the National Association of State Budget Officers and the National Governors' Association stated, "The strongest recovery (from the recession) is apparently experienced in the Great Lakes and most Mid-Atlantic States where the manufacturing sector was hard hit by the recession, but is now showing a strong recovery." Finally, since these are the regions with the greatest concentration of teaching facilities, it is our belief that they will continue to receive the greatest percentage of Medicare's payments for direct medical education costs, and for indirect costs as well.

Comment: Two commenters stated that base year costs should be retroactively adjusted when appeals of these costs are resolved in the provider's favor.

Response: If an appeal of base year costs is resolved in favor of a provider, we would increase the allowable base year costs for the purpose of applying the limit. Similarly, if the base year costs are reduced, the allowable direct medical education costs for the limit year would be decreased.

Comment: Several commenters requested that our policy change regarding reimbursement for direct medical education costs be delayed until a more definitive policy regarding health manpower levels is developed. One of these commenters stated that for the past three years the Department of Health and Human Services has been suggesting that State and local communities increase their share of responsibility for health education. This commenter recommended that the limit be delayed until October 1986 in order to ameliorate the impact on hospitals, States and local communities.

Response: We do not agree that the imposition of the limit should be delayed. As one commenter pointed out, we have been saying for over three years that the Federal Government should reduce its funding for medical education costs. The delay of the limit until October 1986 would continue the policy of paying for costs that are not necessary in the efficient delivery of health services to Medicare beneficiaries. A delay of the limit until October 1986 would necessitate the use of a later base year than the one proposed. A later base year would include many costs that result from inefficiency and would result in greater costs to the Medicare Trust Funds.

Comment: Some commenters said that, even though the proposed rule indicated that direct medical education costs are reimbursed at 100 percent of reasonable cost, Medicare's reimbursable share of these costs is substantially less than a provider's total cost for medical education. One commenter expressed concern that § 405.452 no longer applied for the purpose of apportioning education costs and stated that a new technique would have to be used. Another commenter remarked that there was no definition of Medicare utilization in the proposed rule and suggested that Medicare utilization be based upon adult discharges rather than Medicare days in order to prevent hospitals from being penalized for reducing Medicare days.

Response: The Medicare principles of reimbursement described in §§405.401–405.466 of our regulations will continue

to apply to direct medical education costs. These regulations describe the principles that are to be applied to determine Medicare's share of allowable cost. The intent of the proposed rule was to establish a one year limit on the amount Medicare will reimburse a provider for direct medical education costs. It was not the intent of the proposed rule to change the Medicare principles of reimbursement that apply to direct medical education costs.

The example used in the proposed rule (50 FR 21027) may have been overly simplified. The rate of Medicare utilization used in the example represented Medicare's overall share of allowable cost computed after applying the Medicare principles of reimbursement applicable to the various types of services rendered. It is the type of service (for example, ancillary, routine, or other service costs) that determines the Medicare principles of reimbursement that are used to determine Medicare's share of allowable costs. The example was intended to show that Medicare's liability fluctuates based on the utilization of services by Medicare beneficiaries and not to change the method of determining Medicare utilization. Thus, if a provider's Medicare utilization increased after the base year, its Medicare reimbursement for the limit year would be higher than the amount of reimbursement for the base year. Conversely, if the provider's Medicare utilization decreased subsequent to the base year, Medicare's reimbursement for the limit year would be proportionately less than the amount reimbursed in the base year. In addition, to the extent that hospitals operate a variety of medical education programs in the year that the limit applies and total allowable costs for those programs exceed the aggregate limit, Medicare's financial participation in each of those programs for the limit year will be based on the proportion of each program's share of total allowable direct medical education costs in the absence of the limit. The aggregate limit will be prorated based on these proportions. In implementing this policy we will ask the Medicare fiscal intermediaries to carefully compare the provider's base period cost report to their cost report for the year the limit applies.

Comment: Representatives of several teaching hospitals and medical schools noted that residents in teaching hospitals provide highly sophisticated medical care to Medicare beneficiaries at a reasonable cost. These commenters further noted that without residents it will be much more expensive for teaching hospitals to provide a high level of care.

Response: These commenters apparently believe that Medicare will cease to support medical education activities. As previously stated, under the limit we are imposing, Medicare will continue to make substantial payments for medical education activities. We are simply imposing a limitation on payments for these activities in the hope of encouraging hospitals to use their available resources more efficiently. We do not believe that most hospitals will drop their residency programs simply because Medicare imposes a one year limit on the reimbursement for these activities.

Comment: Some commenters stated that the application of a limit to the training of paramedical and nursing personnel presents special problems because of the difficulty in recruiting qualified personnel in these professions. These commenters claimed that our proposal would make it difficult for hospitals to continue the education process for these professions. One commenter supported the proposed limit, except this commenter did not believe that the limit should be applied to graduate nursing education programs and in particular should not be applied to nurse anesthetists.

Response: Under the limit we are imposing, Medicare will continue to pay hospitals for the costs incurred in connection with training programs for paramedics and nurses, including nurse anesthetists. Payment for these types of programs is made on a reasonable cost basis for provider-operated programs under the direct medical education pass through and through the DRG payment for the cost of those programs that a hospital participates in but does not operate. The limit we are imposing will simply rule out the recognition of increases in the costs of provider-operated programs.

Comment: One commenter stated that the proposed rule was incorrect in implying that there is an over supply of nurses. The commenter states that twice as many nurses with baccalaurate degrees and three times as many nurses with graduate degrees will be needed as compared to the supply available in the year 1990. This commenter also noted that nursing shortages exist in certain geographic areas, in various health care settings, within institutions, and in specialty nursing. A national organization questioned HCFA's reliance on the GMENAC report which projected a future surplus of physicians. This organization also pointed out that the GMENAC report did not address nursing or allied health personnel.

Response: We believe that the GMENAC findings regarding the supply of physicians is valid. We did not state in our proposed rule that there was an oversupply of nurses nor did we rely on GMENAC for projections regarding the supply of nurses or allied health personnel. Instead, we noted only that the percentage of registered nurses had increased by 83 percent during the period from 1970 to 1982. This data was based on the May 1984 Report to the President and Congress on the status of health personnel in the United States prepared by the Public Health Service. As previously stated, we think one of the major advantages to a limit as opposed to other alternatives is that a limit allows hospitals control in determining if any necessary cuts will be applied. We do not believe that a limit will have any impact on nursing shortages in the areas mentioned. Shortages of this kind will probably continue to exist regardless of the funding provided by Medicare or any other sources.

Comment: Some commenters noted that our impact analysis pointed out that urban hospitals will be affected significantly more than rural hospitals because urban hospitals now receive most of the Medicare expenditures for costs of medical education trainings programs and they also receive a higher average amount for their training programs. These commenters believe that urban hospitals can more readily absorb the cuts in Medicare funds whereas rural hospitals with smaller residency programs will be more severely affected by a limit. These commenters recommended that rural hospitals with single residency programs in primary care specialties should be exempted from the limit. One commenter noted that the primary care residencies will be most severely affected and this will adversely affect the maldistribution of physicians in rural areas.

Response: We do not with these commenters' suggestion that rural hospitals with single residency programs in primary care specialties should be exempted from the limit. We believe a limit must be applied to all teaching programs. To permit exceptions based on a hospital's location or the type of residency programs it administers would disadvantage other facilities and not be in keeping with our stated goal of only making payment for services that are necessary in the aggregate for the delivery of health services to Medicare beneficiaries. As we noted in the

proposed rule, to the extent that the community finds that additional support is required for medical education costs, it is essential that the community provide this support. Also, as stated in the proposed rule, we believe it would be intrusive and beyond our authority if Medicare were to attempt to identify surplus medical specialties and to impose limits by types of specialties.

Comment: One commenter pointed out the important role that interns and residents play in providing care to indigent and aged patients in teaching hospitals. This commenter said that the resultant physician charges are less than would be the case had an attending physician rendered the service.

Response: Medicare policy has long recognized the respective roles of attending phyicians and interns and residents in furnishing patient care in teaching hospitals. However, it has never been our understanding that the decision as to whether to treat individual patients by means of an attending physician directing a resident in patient care or to permit a resident to be the primary physician on a case was based on a patient's health insurance. The situation as has been presented to us by the graduate medical education community is that, in teachings hospitals, "attending physicians" involve interns and residents in the care of their patients. The attending physician personally examines the patient and is present when the intern or resident performs any major or complex procedure in the treatment of a patient. Because of this intimate involvement in the patient's care, Part B of Medicare pays for the physician's services as if the physician had actually performed the services. The level of payment made for attending physicians' services has historically been at the prevailing limit of charges made in the locality. We have not seen any data indicating that attending physician are not involved in the care of most Medicare beneficiaries, and would welcome any information on the extent to which interns and residents practice independently in cases in which no Part B charge is rendered.

Comment: One commenter stated that if funding for medical education must be withdrawn, it should be at the medical school level. This commenter believes that curtailing residency programs before curtailing the production of medical students will result in large numbers of partially trained physicians.

Response: The type of funding cited by this commenter comes from government programs other than Medicare and is outside the purview of this regulation. The Administration's proposed budget would cut these types of grants for the next fiscal year. However, we do not agree that several years should pass before there is any attempt to limit Medicare's costs for medical education programs. Further, the limit we are adopting applies to nursing and paramedical programs as well as graduate medical education, and we believe that hospitals should be able to choose where their priorities lie among the various types of educational activities.

Comment: One commenter recommended that we revise the limit in order to allow providers to convert clinic and emergency room visits to be treated as inpatient services for the purpose of determining the utilization adjustment.

Response: We do not believe it is necessary to revise that limit for the purpose of determining the utilization adjustment. Section 405.421(g) of our regulations describes the calculation of the net costs of approved educational activities. This section provides that total costs be reduced by tuition revenues. Once the net costs are determined in accordance with § 405.421(g), these costs are allocated to the appropriate patient care cost centers. The application of the limit we are imposing requires that the lesser of the allowable costs for the limit year or the base year is allocated to the appropriate patient care cost center.

Comment: Two commenters expressed concern that the proposed rule did not address situations in which providers may have implemented medical education programs after their base year began.

Response: We understand that there may be rare situations in which a provider's first medical education program began after the start of its base year. For example, a hospital with a cost reporting period that began January 1, 1984, initiated a program of training interns and residents in July 1984. In that situation, a part of the base year would not reflect medical education costs since the program was in effect only from July through December 1984. In response to public comments for those hospitals that started programs for the first time in either the base year or before July 1, 1985, we are amending the regulation to provide for possible exceptions to the limits. Only those hospitals that can document that they began their *initial* programs for medical education after their base year began may qualify for the exceptions. For those hospitals who are granted exceptions for new programs, we would establish a base year for the purpose of applying the limit based on the allowable costs incurred for the time that the new program existed. These base year costs would be adjusted as appropriate to make them comparable to the base year of other providers. This exception will not apply to providers that replace, add to, or expand existing programs.

Comment: One commenter questioned whether the proposed rule applies only to those hospitals that are paid under the prospective payment system.

Response: The limit would affect all hospitals that participate in the Medicare program who report direct medical education costs on their cost reports. Thus, hospitals excluded from the prospective payment system such as psychiatric and rehabilitation hospitals would also be subject to the limit.

Comment: One commenter recommended that all approved educational activities should be reimbursed based on 100 percent of reasonable costs regardless of the setting in which the training is furnished.

Response: This recommendation would require a change in the law. Section 1833(a) of the Act generally limits Medicare's reimbursement for outpatient provider costs to the lesser of 80 percent of reasonable costs, or customary charges not to exceed 80 percent of the reasonable costs.

Comment: One commenter noted that although we encourage training for geriatric health care, we have not provided any incentives, such as special funding, to encourage training in this area.

Response: As the proposed rule pointed out, we recognize that certain medical specialties are in excess of the national need while there are shortages in other specialties. However, we believe that identification of excess specialties within a particular hospital would be difficult administratively and would be intrusive to individual hospital operations. Therefore, we continue to believe that an overall limit applied equally to all approved medical educational activities is preferable. Because most of our beneficiaries are aged, we naturally encourage an increase in training for geriatricians. However, we have chosen not to provide special incentives for specific specialties because we continue to believe that individual hospitals should be free to manage their educational programs in order to meet the needs of the communities they serve.

Comment: One commenter noted that although the limit will be effective for only one year, the proposed rule suggests that it will be continued into the future or that some other form of

limit will be imposed. This commenter believes that this uncertainty makes it impossible for hospitals to make future commitments and plans for medical education programs.

Response: We are aware of the various problems facing hospitals because of the uncertainties regarding reimbursement for medical education that currently exist. As noted in the proposed rule, Congress is considering the entire area of financing medical education. We cannot forecast what actions Congress will take regarding reimbursement for medical education. It is because of the Congressional interest in this area that we decided to impose this limit for a one-year period. It is our belief that a one-year limit on these costs is an appropriate solution to the rising costs of medical education activities at this time, the benefits of which offset the perceived problem.

Comment: One commenter recommended that Congress establish a commission to study and recommend alternative sources of funding for clinical training programs. This commenter further recommended that we not finalize any regulations concerning reimbursement for medical education until the Congressional commission completes its study.

Response: As noted above, Congress is currently considering the issue of financing medical education. We are aware that other alternatives may be adopted or that legislation may be passed that will have an impact on our limit. However, we do not believe that possible future actions should delay our implementation of a one-year limit now. For the reasons cited in the proposed rule, we believe that the Medicare program is currently paying for costs that are in excess of those necessary for the efficient delivery of health care services to Medicare beneficiaries. Therefore, it is our belief that a limit on the amount Medicare reimburses a provider for direct medical education costs is necessary and proper at this time.

Comment: Some commenters recommended that more favorable treatment be given to those teaching hospitals whose graduate medical education programs emphasize training for primary care specialties rather than nonprimary care specialties. One commenter specifically suggested that we apply a limit only to those institutions that have not met a target ratio of primary care to nonprimary care specialty positions, and that the limit be applied only to the nonprimary care residency positions within that institution.

Response: As noted in the impact analysis of the proposed rule, we rejected this approach. We continue to believe that decisions as to the type and size of medical education programs within a particular hospital are best left to the individual hospital and to its medical staff. As to the commenter's suggestion regarding applying the limit only to those institutions that have not met a specific target ratio, we believe that the fact that a hospital's qualifying ratio could change several times over the course of a year would complicate reimbursement to an extent that this suggestion would not be justified by any favorable results that might be achieved.

Comment: Two commenters questioned our authority under section 1861(v)(1)(A) of the Act for promulgating the proposed cost limit. In particular, they claimed that it was necessary to follow the same procedures used in regulations which in the past imposed limits on routine inpatient operating costs pursuant to section 1861(v)(1)(A) of the Act. The commenters stated that these had identified specific costs subject to the limits, and had used statistical methods to define which costs were inefficient.

Response: Unlike previous limits on costs issued under the authority of section 1861(v)(1)(A) of the Act, which were concerned with the efficiency of each individual hospital, these limits are concerned with Medicare beneficiaries' need in the aggregate, for trained physicians and other health professionals. With the exception of the services of interns and residents, the Medicare statute does not require reimbursement of direct medical education costs at all. Rather, in accordance with a suggestion in the original legislation's committee report, Medicare has voluntarily shared in education costs incurred by hospitals.

The advent of the prospective payment system, together with the projected surplus of physicians and the fast rising costs of medical education in general, has focused our attention on direct medical education costs. Under the prospective payment system Medicare makes the same fixed payment to a nonteaching hospital as to a similarly situated teaching hospital to cover the operating costs of services rendered to a Medicare patient. In addition, however, Medicare makes further payments to cover the direct (and indirect) medical education costs of the teaching hospital. Since the basic payment is sufficient to provide adequate services to Medicare beneficiaries in the nonteaching hospital, a question is raised as to how the payment of direct medical education costs can be considered necessary in the efficient delivery of health services to Medicare beneficiaries.

Therefore, we have determined that at a minimum, this situation calls for limits that will stop the rapidly increasing cost of Medicare's contribution to medical education. Medicare's beneficiaries are more than adequately served by the present aggregate level of medical education and, we believe, would continue to be adequately served at the levels resulting from the limits we are adopting.

Comment: A number of commenters claimed that the proposed cost limit would not reduce the physician surplus, and that Medicare payment policy is not the appropriate vehicle for making policy with respect to manpower needs.

Response: It is not Medicare's purpose to control or reduce the surplus, or to limit the numbers of physicians or other health care professionals. This limit is addressing the specific Medicare purpose of not paying for costs which are necessary in the efficient delivery of services to Medicare beneficiaries.

Comment: A number of commenters stated that the 30 day comment period was not enough time for public comment, and that HCFA has allowed itself insufficient time in which to review and evaluate public comments carefully.

Response: We believe that it is necessary to impose a limit on medical education costs as soon as possible. A delay in the effective date, in order to provide additional time for public comment, would have an adverse impact on the Federal Government's duty to assure that only necessary and proper payments are made. Were we to delay the implementation of this limit, our experience indicates that the absence of constraint would result in the continued escalation of the cost of medical education programs. This would result in further payment for costs that are not necessary for the efficient delivery of services to Medicare beneficiaries. We believe that we have given careful consideration to all comments that we received on the proposed rule, and therefore, we are confident that we had sufficient time to evaluate all public comments.

IV. Summary of Changes to the Proposed Rule

Based on comments received and other considerations, we are making the following substantive changes to the proposed rule.

We are amending the limit as proposed in § 405.421(a)(2), to provide

an adjustment to the net base year costs of those providers whose base year cost reporting year began before July 1, 1984. These providers will have their net base year costs updated to reflect changes that occurred in the CPI–U in their base years. Without this change, a provider whose cost reporting period begins January 1, 1986, would have had its costs limited to the costs it incurred for the period January 1, 1984 through December 31, 1984 (that is, two years previously). None of the costs incurred by this provider in 1985 would have been considered. In view of the fact that 1985 costs in general were higher than 1984 costs, this provider would have had its costs rolled back to 1984 levels. However, if the provider's cost reporting period had begun July 1, 1985, its costs would have been limited to those costs incurred for the base year July 1, 1984 to June 30, 1985 (that is, the year preceding the limit year). Thus, the July provider does not experience a rollback of costs as is experienced by the January provider. In order to ameliorate this situation, we have revised the limit provision by allowing an adjustment to base year costs for those providers whose base year cost reporting period began during the period October 1983 through June 1984. The base year costs of these providers will be updated to reflect the increase in the overall rate of inflation that existed during the base year.

The updating factor is tied to changes in the CPI–U, a generally accepted measure of inflation. It is our belief that the CPI–U is an appropriate means of updating costs for direct medical education because this index includes the salaries of professionals, clerical workers and blue collar workers. Another reason for using the CPI–U is that a large proportion of direct medical education cost increases are attributable to stipends paid to interns and residents.

The base year costs will be adjusted using an updating factor tied to the month the base year cost reporting period began. Included below are the updating factors that will be used. As indicated, the factor for a cost reporting period beginning on June 1, 1984 and ending on May 31, 1985 will be supplied to the intermediaries as soon as we have the information for the CPI–U.

Cost reporting period	Update factors
10/1/83 to 9/30/84	4.20
11/1/83 to 10/31/84	4.03
12/1/83 to 11/30/84	3.86
1/1/84 to 12/31/84	3.57
2/1/84 to 1/31/85	3.62
3/1/84 to 2/28/85	3.74
4/1/84 to 3/31/85	3.66
5/1/84 to 4/30/85	3.75
5/1/84 to 5/31/85	(1)

[1] To be supplied.

We have also added a new provision to § 405.421(a)(2) that will allow us to recognize costs incurred by providers who initiated approved educational programs for the first time after the beginning of their base year. This provision will apply to those providers that initiated medical education programs after the start of their base year but before July 1, 1985. Under this provision we will apply the limit using a base period adjusted in order to be reasonably comparable to the base year applicable to other providers, that will take into account the costs incurred for the approved educational programs. If a provider's cost reporting period reflects medical education costs for a period less than a full year, we will adjust these costs for the purpose of making them comparable to the costs of other providers with a full year's cost in their base period. Thus, these providers will not be disadvantaged by the fact that their programs were not in operation during the full base period. This provision will not be applied to providers who expand or add to existing programs.

V. Regulatory Impact Analysis

A. Introduction

In developing a final Regulatory Impact Analysis, Executive Order 12291 requires us to publish an analysis that discusses relevant costs, benefits, and alternatives considered. For purposes of this final rule, we are presenting the impact analysis contained in the proposed rule, as it clearly addresses these issues. Additionally, we are publishing an updated budget savings estimate that reflects our adjustment of the net base year cost of those providers whose base year cost reporting period begin before July 1, 1984. Finally, section 604 of the Regulatory Flexibility Act (5 U.S.C. 604) describes the requirements for preparing a final regulatory flexibility analysis. We believe that the final regulatory impact analysis provided below, together with the rest of the preamble, meets the requirements of both the Executive Order and the Regulatory Flexibility Act.

We have determined that this final rule is a major rule because the budget impact will exceed $100 million annually. Furthermore, as noted in the proposed rule, we have determined that a substantial number of participating providers with graduate medical education programs for interns and residents, nurses, or certain paraprofessionals will be affected significantly by this final rule, to a degree dependent on the interaction of several considerations.

B. Background

Historically Medicare has paid for a share of providers' costs associated with medical education programs. Under the prospective payment system, we have been reimbursing hospitals on a reasonable cost basis for Medicare's share of their direct medical education costs. This payment is in addition to their prospective payments. Hospitals that are excluded from the prospective payment system (for example, phychiatric hospitals and rehabilitation hospitals) are also reimbursed on a reasonable cost basis for approved medical education programs.

We estimate that in Federal fiscal year (FY) 1984 there were Medicare expenditures of $1.127 billion to 1660 hospitals for their direct medical education costs. Ninety-seven percent of the payments were received by urban hospitals with more than 100 beds. Fifty-three percent of total direct medical education expenditures were paid to hospitals in two of the nine census regions: The Mid-Atlantic region (New York, Pennsylvania and New Jersey) and the East North Central region (Illinois, Michigan, Wisconsin, Ohio and Indiana).

C. Costs and Benefits

1. *Provider Costs.* The limit imposed by this final rule will affect all participating hospitals reporting direct medical education costs on their cost reports. We estimate Federal savings of $125 million in FY 1986 as a result of implementing the limit on our payment for Part A and Part B direct medical education costs. The projected savings represent the difference between estimated expenditures absent the limit and estimated expenditures under the limit. While the estimated savings represent a very small percentage reduction in Medicare's total payments to hospitals, the FY 1986 projected savings represents an estimated eight percent reduction in the estimated $1.560 billion in payments that hospital medical education programs would receive in FY 1986 absent this limit.

The impact on an individual hospital will vary depending on the interaction of several factors. First, our data show that urban hospitals will be affected significantly more than rural hospitals with similar training programs. This is due to the fact that urban hospitals receive most of the Medicare

expenditures for the cost of these training programs, and that urban hospitals also receive a higher average amount of reimbursement for their programs. a related factor in determining the potential impact on individual hospitals is the location of a hospital among the nine census regions. We noted that our cost report data show a marked differential impact among the census regions, with hospitals in the Mid-Atlantic and East North Central regions along receiving 53 percent of Medicare expenditures for medical education programs. Due to the variations in training expenses as well as amounts of reimbursement received by hospitals in each region, we believe that this rule will result in differential impacts on hospitals among and within the nine census regions.

Finally, we believes that the limit will affect hospitals differently depending on the amount of reimbursement to each hospital, the number and types of programs affiliated with each hospital, the rate of growth in their medical education costs, and the actions they have been taking to control the costs of their training programs. Many hospitals report costs for the maintenance of one type of training program, usually for physicians. About one-quarter of affected hospitals report costs for a combination of two types of training programs, primarily physician and nursing school combinations. Limiting our payment to affected hospitals may lead to changes in numbers of programs, their size or their specialty make-up. However, we are unable to predict what specific actions affected hospitals will take in response to this payment limitation.

2. *Program Benefits.* In the proposed rule, we noted that although this rule may have at least a temporarily adverse economic impact on affected hospitals, we believe that significant benefits to the Medicare program will result. In addition to avoiding payment of unnecessary costs, we believe that by limiting our reimbursement, current fiscal incentives will be modified to encourage greater attention to the appropriateness of educational activities being undertaken and to the development of more cost-effective approaches to medical education activities. The present cost reimbursement methodology does not adequately ensure that unnecessary costs are not incurred in providing medical education. Further, costs that are not constrained by some form of limit, continue to increase more rapidly than costs that are subject to a limits such as the section 223 limits or the prospective payment system. Therefore, one effect of the limit contained in this rule will be to permit more prudent management of the Medicare Hospital Insurance Trust Fund by changing current fiscal incentives that create unnecessary expenditures.

3. *Provider Benefits.* We believe that after 20 years of program experience, States and localities, medical schools, and private philanthropy should assume more responsibility for the costs of medical education as was originally intended by Congress. We believe that the limit contained in this rule will provide an incentive for the medical education community to examine its priorities and begin to restructure residencies and other programs for health professional other than physicians to meet the changing environment of the health care market place. We believe that greater attention to the training of geriatric health care professionals is important, and urge the medical education community to consider the needs of our aged beneficiaries.

This final rule continues our participation in medical education programs, although limited to recent levels, rather than at the increased levels projected without this rule. Though we are limiting our reimbursement, we will continue reimbursing providers for a portion of their incurred direct medical education costs.

D. Alternatives Considered

In preparing a final regulatory impact analysis and regulatory flexibility analysis, we are required to describe significant alternatives that could achieve the same goal and the reasons for not adopting these alternatives. One option we considered in the proposed rule was continuing the current policy concerning direct medical education costs. However, this approach would have continued the excessive reimbursement and inappropriate incentives of the current system, and would be contrary to the Administration's effort to control the rate of increase in Medicare expenditures and still provide high quality care to beneficiaries. The incentives inherent in the current approach invariably lead to paying for unnecessary costs incurred in the delivery of health care services. We believe, therefore, that the current approach to paying hospitals for medical education costs needed to be changed.

A second alternative we considered was to pay only for the services of interns and residents. This option was rejected due to the difficulty of identifying such costs on the cost reports discretely from other direct costs of medical education, and because we believe that an overall payment limitation gives providers more flexibility while providing adequate protection to the Medicare Hospital Insurance Trust Fund. However, for the future, we may revise the cost reporting form to elicit discrete data on costs for interns and residents.

A third alternative we considered was to control the rate of increase in Medicare expenditures for medical education by paying for these costs under the prospective payment system. However, the requirements stated in section 1886(a)(4) of the Act, precluded us from doing this.

A fourth alternative that we considered was to reduce Medicare's contribution to the medical educational costs of specialties considered to be in excess of national needs. The geographic distribution of physician specialists is variable making the identification of surplus specialties problematic at the national level. Consequently, we believe that a limit on overall payment for medical education costs, which allows individual hospitals to manage their educational programs in ways they believe best meet the needs of their patients and the local community, is far superior to our attempting to identify surplus specialties or to determine the appropriate size and nature of specific medical education programs. This latter approach would have been unduly intrusive and could, for example, involve the setting of quotas.

E. Summary

As noted in the introduction to this analysis and in the proposed rule, we conclude that the annual economic impact of this rule will significantly affect a substantial number of providers and medical schools and will result in an annual economic impact exceeding $100 million annually. However, we believe that the expected benefits to the program and the public will offset costs incurred by the providers and that, based on a consideration of alternatives that could achieve the same goal, we believe this final rule maximizes net benefits to affected parties while including the least net cost to society in general. Therefore, for the reasons stated in this analysis, we believe that this rulemaking adheres to the intent of Executive Order 12291 and the Regulatory Flexibility Act.

F. Paperwork Burden

The changes contained in this rule do not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

VII. Other Required Information

A. Waiver of Delayed Effective Date

Although we are not required to publish our rules 30 days before their effective dates, we customarily do so. However, we believe that in this case, the public interest requires that these regulations be effective July 1, 1985, without a 30-day delay in effective date. The revisions to §§ 405.421 and 412.113, imposing a limit on Medicare's reimbursement for a provider's direct medical education costs, are effective for cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986. We have a duty to administer the Medicare Trust Funds in a manner that precludes payment for costs that are unnecessary in the efficient delivery of health services to Medicare beneficiaries. In this light, we believe that a limit on Medicare reimbursement, as discussed above, is justifiable and, in order to gain the greatest benefit to the Trust Funds, must be implemented as soon as possible. In addition, all providers and intermediaries affected by this limitation were notified by the May 21, 1985 proposed rule (50 FR 21026) of our intention to limit these costs for those cost reporting periods. Therefore, we believe further delay in the effective date is unnecessary and contrary to the public interest and we find good cause to waive the delay in the effective date of this final rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMOs), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Cancer hospitals, Christian Science sanatoria, Discharges and transfers, Inpatient hospital services, Medicare, Outlier cases, Prospective payment referral centers, Renal transplantation centers, Sole community hospitals.

42 CFR Chapter IV is amended as set forth below:

A. Part 405, Subpart D is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

1. The authority citation for Subpart D continues to read as follows:

Authority: Secs. 1101, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

2. Section 405.421 is amended by revising paragraph (a) to read as follows:

§ 405.421 Cost of educational activities.

(a) *Reimbursement*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, a provider's allowable cost may include its net cost of approved educational activities, as calculated under paragraph (g) of this section.

(2) *Limit applicable to cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986.* (i) For cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986, a provider's net cost of approved educational activities, as calculated under paragraph (g) of this section, incurred during a cost reporting period is limited, under the authority of section 1861(v)(1)(A) of the Act, to the lesser of the provider's net cost of its program—

(A) For that cost reporting period; or

(B) For a base year that consists of the provider's cost reporting period that began on or after October 1, 1983 but before October 1, 1984. For providers whose cost reporting periods began during the months of October 1983 through June 1984, the provider's net cost of its program is adjusted by an updating factor. The factor is based on the increase in the overall rate of inflation, according to the Consumer Price Index for All Urban Consumers, that occurred during the provider's base year.

(ii) For providers that did not have approved educational activities as of the first day of the cost reporting period that would otherwise be its base year defined in paragraph (a)(2)(i)(B) of this section, and that initiated such activities after the first month of that cost reporting period, but prior to July 1, 1985, we will establish a base period for applying the limit described in this section. The base period will include allowable costs the provider incurred for approved educational activities prior to July 1, 1985, adjusted in order to be reasonably comparable to the base years of other providers.

(3) *Apportionment.* Once the net cost is determined under this section, it is subject to apportionment for Medicare utilization as described in § 405.403.

* * * * *

B. Part 412 is amended as set forth below.

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1871 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395hh, 1395ww).

2. Section 412.113 is amended by revising paragraph (b) to read as follows:

§ 412.113 Payments determined on a reasonable cost basis.

* * * * *

(b) *Direct medical education costs.* Payment for the cost of approved medical educational activities as defined in § 405.421 of this chapter is made on a reasonable cost basis (except with respect to activities defined in § 405.421(d) of this chapter). For cost reporting periods beginning on or after July 1, 1985, but before July 1, 1986, payment for these reasonable costs is limited as described in § 405.421(a) of this chapter. For cost reporting periods beginning before October 1, 1986, the costs of medical education must be determined consistently with the treatment of such costs for purposes of determining the hospital-specific portion of the transition payment rate in Subpart E of this part.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program)

Dated: June 27, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 28, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-15984 Filed 7-1-85; 9:37 am]

BILLING CODE 4120-01-M

federal register

Friday
July 5, 1985

Part IV

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Schedule of Limits on Home Health Agency Costs per Visit for Cost Reporting Periods Beginning On or After July 1, 1985

VOL 50 ISS 129 JUL 5 1985 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-278-FN]

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1985

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice sets forth a schedule of limits on home health agency (HHA) costs that may be reimbursed under the Medicare program. The schedule is an update of the limits to take into account more recent data and the effects of inflation on HHA operating costs, and it applies to HHA costs for entire cost reporting periods beginning on or after July 1, 1985. The notice also explains the revised methodology for computing the cost limits for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1988.

EFFECTIVE DATE: The schedule of limits is effective for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986. The revised methodology for computing the limits is effective for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1988.

FOR FURTHER INFORMATION CONTACT: V. Judith Thomas, (301) 594–9234.

SUPPLEMENTARY INFORMATION:.

I. General Information

In the **Federal Register** on May 14, 1985 (50 FR 20178), we issued for public comment a proposed schedule of limits on HHA costs that may be reimbursed under the Medicare program, effective for cost reporting beginning on or after July 1, 1985. In addition, we requested public comments on proposed changes to the methodology we use to calculate the limits beginning on or after July 1, 1985 and before July 1, 1986.

In this notice, we are issuing the final schedule of cost limits effective for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986. In addition, a summary of the comments we received on both the proposed limits and the proposed changes to the methodology, and our responses to those comments, are presented below.

II. Limits on HHA Costs

Section 1861(v)(1) of the Social Security Act (the Act) authorizes the Secretary to set prospective limits on allowable costs incurred by a provider of services that may be reimbursed under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This provision of the statute is implemented under regulations at 42 CFR 405.460.

Under this authority, we have maintained limits on home health agency (HHA) per visit costs since 1979. The schedule set forth below replaces the schedule that we published in the **Federal Register** on July 2, 1984 (49 FR 27272), which was applicable to cost reporting periods beginning on or after July 1, 1984 through cost reporting periods beginning June 30, 1985.

In developing the limits contained in this schedule, we proposed four changes to the methodology that was used for the schedule of limits effective July 1, 1984.

III. Provisions of the Proposed Limits

A. Continuing Provisions

The proposed schedule of limits provided for continued use of methodology that had been used in prior HHA costs limit notices as follows:

1. MSA/NECMA Classification System

The classification system is based on whether an HHA is located within or outside a metropolitan statistical area (MSA) or New England county metropolitan area (NECMA), as defined by the Executive Office of Management and Budget. These designations are the same as those used for the July 1, 1984 schedule except for the following:

- Two new urban areas have been added; Naples, FL (comprised of Collier County) and Santa Fe, NM (comprised of Los Alamos and Santa Fe Counties).
- The Kansas City, KS and the Kansas City, MO urban areas have been combined into one urban area, the Kansas City, MO–KS area.
- The Alton-Granite City, IL, the East St. Louis-Belleville, IL, and the St. Louis, MO-IL urban areas have been combined into one urban area, the St. Louis, MO-IL area.

2. Use of an Add-on Adjustment for Hospital-Based HHAs

The proposed notice provided for an "add-on" adjustment of the freestanding HHA limit for each hospital-based discipline to account for the higher costs associated with Medicare cost-finding requirements for administrative and general (A&G) costs.

3. Use of HHA Market Basket Index

An input price (market basket) index was developed from the price of goods and services purchased by HHAs to account for the impact of changing labor and price levels on HHA costs. The market basket index was first introduced effective July 1, 1980, and is used to adjust HHA cost data to the midpoint of the first cost reporting period to which the limits will apply. (The midpoint of a cost reporting period beginning July 1, 1985 is December 31, 1985.)

4. Adjustment of the Limits for Inaccurate Economic Forecasts

We proposed to adjust the limits retroactively if the estimated market basket index rate differs from the actual rate by more than 3/10 of one percentage point.

5. Use of a Wage Index for Adjusting HHA Cost Data

A wage index, developed from 1982 hospital wages, was used to adjust the labor-related portion of the limits and the A&G add-on to reflect differing wage levels among the areas in which HHAs are located. The employee wage portion of the market basket index and the employee benefits portion of the market basket, plus a factor representing a proportionate share of contract services, were used to determine the labor component of all HHA per visit costs used to set the limits.

6. Use of Cost-of-Living Adjustment for Alaska, Hawaii, Puerto Rico, and the Virgin Islands

We proposed to apply a cost of living adjustment to the nonlabor portion of the limits for HHAs in Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

B. Proposed Changes to the Methodology

In the proposed notice, we stated that the following changes to the methodology used in calculating the HHA cost limits would take effect July 1, 1985.

1. Elimination of Outlier Costs

The data base we used for the proposed notice was comprised of data from the second year of the single-method cost report. Reporting accuracy had increased significantly from the first year reports, probably due to a greater familiarity with the new cost reporting forms.

Despite the improved accuracy of the cost report data, we continued to find some per visit costs that were abnormal. Since these aberrant costs appeared to

result from errors in completing the cost report, we defined minimum and maximum outlier cost per visit values for each discipline.

We proposed to use an accepted statistical technique (logarithmic transformation) to normalize the distribution of per visit costs for each service. We proposed to eliminate those per visit costs that were more than plus or minus two standard deviations from the mean of the log-transformed cost per visit values. (For example, for the urban skilled nursing service group, we proposed to exclude costs above $118.65 per visit and below $20.67 per visit.)

2. Inclusion of "New HHA" Costs in Limits

In calcualating the July 1, 1984 schedule of limits, we excluded from the data base the cost per visit values for "new" agencies; that is, those agencies that had participated in the Medicare program for less than three full years. This was done to exclude the high costs that result from unique, nonrecurring expenditures in the initial years of an agency's operation.

In subsequent analyses, we determined that using the Medicare certification date to exclude "new HHAs" may eliminate some HHAs that, although they are new to the Medicare program, have actually been in operation for several years. Further analysis of the cost report data indicated that the per visit costs of many of these "new" agencies are within a normal range. Therefore, we proposed to include all agencies with 12-month cost reporting periods whose costs are within the outlier cutoff points.

3. Establishment of the Limits at a Percentage of the Mean

We proposed a change in the methodology concerning how the cost limits are established. In the previous schedules, limits were set at a percentile of the labor-related component of per visit costs and the nonlabor component of per visit costs. We proposed that the limits be set at 120 percent of the mean labor-related and nonlabor per visit costs effective July 1, 1985. In addition, we indicated that we might set the limits at 115 percent of mean cost, effective July 1, 1986 and at 112 percent of mean cost, effective July 1, 1987.

Since the single-method cost report provides a degree of homogeneity in per visit costs not previously available, we stated our belief that the use of the mean, a widely accepted measure of central tendency, would result in limits that are more representative of the costs incurred by efficiently operated agencies.

4. Application of the Limits by Discipline

We proposed to revise the HHA cost limit methodology to apply the limits to the cost incurred for each home health discipline, rather than to the aggregate cost of all visits. We observed that it is desirable for the costs and revenues related to each service to be managed independently. In addition, we stated that a change to application of the limits by discipline fulfills the intent of Congress as expressed in the Conference Committee Report accompanying the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). That report stated, "Although home health agency reimbursement limits are currently being imposed as a single aggregate limit, the conference committee urges the Secretary, as soon as feasible, to begin to impose the limits by type of service." (H.R. Rep 97–208, 97th Congress, 1st Session 949 (1981))

IV. Analysis and Responses to Comments

We received 87 letters concerning the proposed notice from HHAs, national and State HHA associations, associations representing other providers of health services, Members of Congress and other interested parties.

A discussion of the comments and our responses follows:

A. Elimination of Outlier Costs

Comment: Several commenters objected to the exclusion of any per visit costs from the costs used to calculate the limits.

Response: Section 1861(v)(1) of the Act requires that HCFA base the HHA cost limits on estimates of the costs *necessary* in the *efficient* delivery of needed health care (emphasis added). We do not believe that reported per visit costs of $13 for skilled nursing, $7 for physical therapy, or $8 for speech pathology accurately reflect the necessary cost of delivering these services. Neither do we believe that per visit costs of $700 for skilled nursing, $740 for physical therapy, or $726 for occupational therapy represent costs incurred in the efficient delivery of these services. Rather, these extremely low and high costs reflect a failure to properly classify and allocate costs on the Medicare cost report or, in the case of some of the high costs, a failure to operate efficiently. Their exclusion is appropriate to prevent these aberrant costs from affecting the values of the limits.

In response to several requests, we have included below the range of low costs per visit (less than two standard deviations below the mean) and high costs per visit (greater than two standard deviations above the mean) that were excluded from the costs used to establish the limits for each discipline.

Type of visit	Costs per visit	
	Low	High
MSA (NECMA)		
Skilled nursing care	$13.11—20.63	$118.65—539.29
Physical therapy	7.49—20.22	98.24—493.14
Speech pathology	8.10—22.93	107.31—348.28
Occupation therapy	10.36—21.30	102.05—725.94
Medical social services	5.85—18.86	241.85—856.46
Home health aide	6.79—12.63	67.77—391.56
Non-MSA:		
Skilled nursing care	13.30—24.05	123.35—521.82
Physical therapy	8.48—21.67	138.44—740.67
Speech pathology	11.85—24.86	137.84—618.46
Occupation therapy	12.37—22.87	140.74—340.26
Medical social services	10.77—13.53	388.35—899.36
Home health aide	6.22—12.53	79.84—802.58

Comment: One commenter questioned the appropriateness of the proposed change to the method used to define outlier costs.

Response: In analyzing the distribution of wage index adjusted per visit costs, we found that the distributions for each discipline are highly peaked (suggesting a high degree of central tendency) and skewed right. This type of distribution is not unusual for economic data, as the adjusted per visit costs can be very large, but cannot be less than zero. Had we defined outlier points as plus or minus two standard deviations from the mean of the per visit costs for each discipline, none of the extremely low costs would have been excluded, as minus two standard deviations from the mean was less than zero for all disciplines.

However, the distribution of this type of data is generally log-normal; that is, the natural logarithms of the cost per visit values are much closer to a normal distribution than is the distribution of the actual costs themselves. We tested this hypothesis by determining the extent to which each distribution deviated from normality before and after log-transformation. In all cases, the deviation from normality (Kolomogorov-Smirnov D-Statistic) of the log-transformed distributions was significantly lower. Therefore, we defined the outlier cutoff points as plus or minus two standard deviations from the mean of the log-transformed cost per visit values, thereby esliminating extreme values from both ends of the distribution. This provision eliminated approximately 600 of the approximately 12,200 costs per visit values in the data base.

B. Inclusion of the Costs of New HHAs in the Limits

Comment: One commenter stated that, by including the costs of new HHAs in the costs used to determine the limits, this notice was eliminating the exception provided for new HHAs.

Response: The purpose of this notice is to promulgate a revised schedule of limits, and it contains no revision to § 405.460(f)(7), which allows an exception to the limits for new HHAs.

C. Establishment of the Limits as a Percentage of the Mean

Comment: Several commenters questioned the appropriateness of the change from a percentile to a percent of the mean as the basis for the limits.

Response: We had been planning, for some time, to reevaluate the methodology used to establish the limits when more accurate data from the single method cost report became available. The data used to establish these limits are comprised exclusively of data from the second year of use of the single method cost report.

One per visit cost variations due to geographic variations in prevailing wage levels were reduced by the wage index adjustment, we found a high degree of homogeneity in the resulting costs. Since a large majority of HHAs is incurring similar costs for the same type of service, we find that the mean is an appropriate measure. This results in a basis for the limits that is reflective of the high degree of central tendency in the distribution of per visit costs.

Comment: A number of commenters argued for a level higher than 120 percent of the mean.

Response: In determining an appropriate level to propose for the limits, we considered several other levels. However, 120 percent of the mean was the highest level considered. The high degree of central tendency exhibited by the distributions of per visit costs does not support the use of a margin greater than 20 percent to accommodate cost variations not accounted for by the limits methodology. That is, with the wage index adjustment controlling for variations in prevailing wage levels, we found, for all disciplines, that a majority of providers incur similar costs for the same services.

For cost reporting periods beginning on or after July 1, 1985, we considered adopting levels at 115 percent of the mean and, alternatively, at 112 percent of the mean, both of which could be supported by the distribution of the data. However, we chose 120 percent of the mean for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986, 115 percent of the mean for cost reporting periods beginning on or after July 1, 1986 and before July 1, 1987, and 112 percent of the mean for cost reporting periods beginning on or after July 1, 1987 and before July 1, 1988. We chose these levels because these levels will provide additional incentives for efficient operation of HHAs, while avoiding the adverse impact of a sudden, large decrease in the limits.

Several commenters compared the proposed July 1, 1985 limits to those effective July 1, 1984 to argue for a higher level for the proposed limits. In comparing the July 1, 1985 limits to those effective July 1, 1984, it should be noted that the actual rates of inflation for 1984 and those currently projected for 1985 are lower than the projected rates of inflation for those two years that were used in developing the July 1, 1984 limits.

Comment: Several commenters stated that the HHA cost limits methodology should take into account the fact that prospective payment for hospitals is resulting in the discharge of patients to home health care who require a more intense and costly level of care (including high technology services) than was the case before the prospective payment system went into effect.

Response: We have received allegations of individual instances of hospitals discharging patients who require a more intense level of care in the initial portion of their home care treatment than generally was needed for patients discharged from hospitals prior to the prospective payment system. However, we find no indication in any of the data available to us of an identifiable trend in increased costs per visit related to an increase in the provision of high technology services or the inception of the prospective payment system. We are monitoring many aspects of prospective payment and its effect, if any, on posthospital care.

D. Use of a Single Level for all Limits Versus Use of Different Levels for Different Disciplines

Comment: The few commenters who addressed this issue expressed a concern about the basis that would be used to determine the appropriate level for different disciplines. It was suggested that the level used for skilled nursing should be higher than that used for the other five disciplines. Medical social services was identified as a discipline for which a lower level would be appropriate. Another suggestion was that the level of the limit should be inversely related to volume. It was also suggested that the level for each discipline should be related to the projected number of HHAs with costs in excess of the limit for that discipline.

Response: There appear to be diverse opinions within the industry on this question, and we intend to continue studying possible alternatives. If we find evidence that supports a change in methodology, we will publish a proposed notice for public comment.

E. Application of the Limits by Discipline.

Comment: A number of commenters questioned whether the data used to develop the limits were sufficiently accurate to allow application of the limits by discipline.

Response: As discussed above, we find that the improvement in the quality of the cost reporting has provided us with data of sufficient accuracy to allow application of the limits by discipline, enabling us to follow the intent of Congress as expressed in the Conference Committee Report (H.R. Rep. 97–208, 97th Congress, 1st Session 949 (1981)) accompanying Pub. L. 97–35.

Comment: A number of commenters argued that per discipline application of the limits should be delayed to allow agencies additional lead time to adjust their operating plans.

Response: We find that providers have been afforded more than adequate advance notice of this change. In the *original* Schedule of limits (44 FR 31815, June 1, 1979) we stated, "When all providers are using a uniform method of cost finding and apportionment, we *will* apply the per visit limit for each discipline to the costs per visit of that discipline" (emphasis added). In each of the five notices of limits subsequently published, we reaffirmed this intention. In the notice establishing the present schedule of limits (49 FR 27274, July 2, 1984), we stated that data from the first year of use of the single method cost report were available, and the only reason we were not applying those limits by discipline was because of the obvious errors made in completing the cost report due to the first year of use. Because these limits are applied to the average annual costs per visit of each discipline, providers have, at a minimum, the entire 12 months of their fiscal year to make whatever management changes are necessary to accommodate the effect of per discipline application.

Comment: Commenters stated that agencies would stop offering services in those disciplines that were over the limit

Response: Agencies with per visit costs in excess of the limits for one or

more, but not all, disciplines will fall into one of four categories.

The first category is comprised of HHAs with excess costs attributable to inefficient operation. These agencies will have to identify and correct the causes of their higher costs if they are to avoid disallowances.

The second category consists of those agencies whose excessive cost in a discipline is caused by a failure to properly classify costs. For example, in the case of most of the approximately 40 HHAs whose costs per visit for medical social service were excluded from the limits calculation as an outlier cost, there was an apparent failure to differentiate between activities related to specific patients (visiting costs) and activities on behalf of the agency or all patients (administrative costs). In these situations, improved recordkeeping will result in the proper classification of costs, with the result, in many instances, of all disciplines being below their respective limits.

In the third category are agencies whose excessive cost is attributable to the fact that the demand for a given discipline is insufficient to allow the efficient utilization of a full time employee. In these instances, agencies could reduce their cost by changing to part-time employment, by providng the services under arrangement with an allied medical professional, or by making other changes in their pattern of service delivery. Either action would have the effect of immediately reducing the excessive cost that was caused by idle capacity.

The fourth category consists of agencies in areas where the prevailing charge for services under arrangements is such that the agency is unable to provide the service at a cost below the limit. In these instances, the agency may apply for and receive a special labor market exception under the provisions of § 405.432(f)(2). These excessive costs may also be considered for an exception under the provisions of § 405.460(f).

Comment: Several commenters stated that per discipline application of the limits will remove an element of flexibility that providers need to accommodate circumstances such as the provision of uncompensated care and providing home health services to patients with unusually intense care needs.

Response: We recognize that there will be valid circumstances not anticipated by the limits methodology that will cause a provider to incur cost in excess of that allowed by the limits, and we provide for these extraordinary situations through the exceptions process. However, it is not in the interest of either beneficiaries or the Medicare program for HHAs to continue to subsidize high cost disciplines with lower cost disciplines, without investigating the possibility of reducing the higher costs. Rather, it is desirable for all agencies to monitor continually the cost of providing each discipline and to take steps to control the cost of any discipline as soon as there are indications that costs are increasing. We are aware of well managed agencies that monitor per discipline cost on a monthly and even, in some cases, weekly basis. These agencies are generally able to provide services consistently at a cost below the limits for each discipline they offer. To summarize we believe that per discipline application of the limits will give all agencies an incentive to improve their management controls, with immediate and ongoing benefit to all home health care patients through a reduction in cost and a moderation in the future rate of increase in cost.

F. Publication of Limits at 115 Percent of the Mean Effective July 1, 1986 and 112 Percent of the Mean Effective July 1, 1987

Comment: Some commenters suggested that HCFA needs to determine the effect of per discipline application of the limits at 120 percent of mean cost before proceeding with reductions to 115 percent and then 112 percent.

Response: We expect that the application of the limits by discipline will result in continuing improvements in management, recordkeeping, and cost reporting by most HHAs. Setting the limits at 120 percent of mean cost will provide a further incentive to contain costs through improved efficiency. This improvement in efficiency should result in a moderation in the rate of increase in average per visit costs. Because we expect improvements resulting from modifications in provider behavior to continue, we believe that the margin above the mean allowed in future schedules of limits can be reduced without adversely affecting efficiently operated HHAs. Therefore, we provide in this notice for limits set at 115 percent of mean cost, effective July 1, 1986, and at 112 percent of mean cost, effective July 1, 1987. Under section 2319 of the Deficit Reduction Act of 1984, Pub. L. 98–369, 112 percent of the mean is the upper limit that Congress determined is appropriate for efficiently operated skilled nursing facilities, and we believe that the same percentage is equally applicable to HHAs. The 115 percent limit is a transition amount.

Were we to agree not to change the level of the limits until a study of the impact could be completed, the earliest date by which we could begin an analysis would be March 1988, when more than 50 percent of the cost reports subject to the July 1, 1985 limits will have been filed and available to us. Under these circumstances, the earliest we could promulgate limits at 115 percent of the mean would be January 1, 1989, and promulgation of limits at 112 percent of the mean would be delayed until July 1, 1991.

Comment: the numerous commenters who addressed this issue were unanimous in their opposition to the proposal. Several commenters objected to the publication of future limits using current data and economic estimates. They were of the opinion that limits should not be proposed unless they were based on the data that would be the basis for the final schedule of limits.

Response: In this final notice, we have not included the schedules of limits that will apply beginning July 1, 1986 and July 1, 1987, respectively, because the schedules will be based on the latest available cost data adjusted by the latest estimates in the market basket index. However, we are setting the limits at 115 percent of mean cost for 12-month cost reporting periods beginning on or after July 1, 1986 and before July 1, 1987 and at 112 percent of mean cost for 12-month cost reporting periods beginning on or after July 1, 1987 and before July 1, 1988. Thus, we are putting into place the three-year methodology that we proposed, although we are not now publishing the schedules for the last two years.

G. Comments on Other Elements of the Proposed Limits Methodology

Comment: Comments were received questioning the adequacy and reliability of the data that were the basis for the limits.

Response: The data base is comprised of data from every 12-month HHA cost report available as of September 30, 1983. Because of the lead time necessary for extraction and analysis prior to publication of a proposed notice, these data are the latest practicable. As discussed above, the quality of the data improved significantly from the quality of the data contained in previous data bases. No other source of national data on the cost of home health care approaches the scope, depth, and accuracy of this data base.

Comment: Several commenters suggested that the data used to determine the relative importance of the categories of cost in the market basket

index were out of date and do not reflect current industry experience.

Response: The 1977 data are the latest available that are of sufficient scope to allow the development of reliable weights for the various categories of costs. As discussed in the proposed notice, the market basket is a Laspeyres price index, which allows the relative importance of each category to change over time in accordance with changes in the price variables of each category. As a consequence, the relative importance values used in this final notice take into account all changes in the price variables since the construction of the index.

Since the introduction of the input price index in 1980, it has been our intention to review the weights periodically. To this end, we expanded the amount of cost report data extracted for these limits and will begin a study of these data in the immediate future. If we find that changes in the construction of the market basket are indicated, the changes will be incorporated in the next update of the schedule of limits.

Comment: One commenter questioned the accuracy of the percentage of contract services used in determining the labor-related portion of per visit cost.

Response: Since the contract service category is composed of labor-related and nonlabor elements, only a portion of the relative importance of this category is appropriately included with the relative importance of the employee wage and benefit categories in determining the labor-related portion of per visit costs. The portion of contract services that is labor-related is determined by assuming that the relative importance of the labor-related and nonlabor elements of this category is the same as that of the sum of the other categories. Therefore, of the 6.87 percent relative importance given contract services, 5.47 percent was deemed to be labor-related and was included with the relative importance values of wages and fringe benefits in determining the percentage of per visit costs that was labor-related.

Comment: Comments were received questioning the definitions of the MSAs used in the proposed notice. One comment specifically concerned the definition of the Chicago MSA.

Response: The responsibility for the development and promulgation of all policy related to MSAs, including the criteria used in determining the MSA to which a country will be assigned, rests solely with the Executive Office of Management and Budget. Comments on MSA designations should be directed to: Office of Information and Regulatory Affairs, Executive Office of Management and Budget, Washington, D.C. 20503

The definition of the Chicago MSA included in the proposed notice was correct. Any additional questions should be directed to the address above.

Comment: Several commenters are concerned that the wage indexes were affected by changes in the level of fringe benefits in some areas and also that the indexes did not increase with increases in local wage levels.

Response: The wage indexes are based on reported hospital wages, and are not affected by any changes in the level of fringe benefits paid. The wage indexes are not used as a measure of the absolute wage level in any one area of the country; rather, they measure the prevailing wage level in each area *relative* to the national average for all areas. The index for a given area will increase and decrease from year to year as the prevailing hospital wage level for that area increases and decreases *relative* to the national average.

Comment: One commenter asked why we are not using the new wage index developed for the prospective payment system. In addition, several commenters questioned the accuracy of the wage indexes and the limits for rural (non-MSA) areas.

Response: As noted in the proposed notice, we are considering a survey-based hospital wage index for use with the hospital prospective payment system. In the June 10, 1985 proposed rule concerning changes to the prospective payment system for fiscal year 1986, comments were requested regarding the use of this wage index (50 FR 24377). As no decision has been made on this issue, it would be premature to adopt the survey-based wage index for this schedule of limits. If a decision is made to use the survey-based wage index for the hospital prospective payment system, we may use this index in future schedules of HHA limits. However, we are also exploring the feasibility of developing an HHA industry-specific wage index system from the employee wage and compensation analysis data taken from the Medicare cost reports.

We have retained separate MSA (urban) and non-MSA (rural) schedules of limits so that the limits reflect the differences in operating environments in these two types of locales. Therefore, rural providers are subject to limits based on data from peer providers operating in similar circumstances. The separate, rural limits should reflect the circumstances unique to this environment.

The wage indexes used in this final notice are based on the latest BLS data available in time to allow the incorporation of the indexes in the limits methodology. If we discover that we or BLS have made any error that results in an incorrect wage index for any area, we will direct the Medicare intermediaries to recalculate the limits.

Comment: Comments were received supporting and opposing the use of an add-on adjustment for hospital-based HHAs.

Response: The basis and the purpose of the add-on have been discussed in detail in previous notices (see 47 FR 42904, September 29, 1982 and 49 FR 27272, July 2, 1984). In summary, the add-on is intended to recognize legitimately incurred hospital overhead cost allocated to the HHA in excess of the HHAs consumption of hospital overhead resources. We do not intend to give a hospital-based provider a financial advantage over a freestanding HHA. Rather, the add-on is intended to make the limits neutral as to the ownership status of an HHA. For example, one of the ways this is accomplished under existing policy is excluding from costs subject to the limits the return on owner's equity paid to proprietary providers.

We are also clarifying that the hospital overhead cost that is the basis for the add-on was not included in the costs used in determining the prospective payment rate for inpatient hospital services.

Comment: Several comments were received questioning the continued use of a hospital cost reporting form for hospital-based HHAs that creates the need for an add-on. These commenters suggested that all HHAs be required to file the same form.

Response: Since requiring use of the single method cost report for all HHAs would require a change in the regulations, we are unable to adopt this comment at this time. However, we are considering proposing such a change.

Comment: Commenters stated that the limits for home health aide services should be applied on a per hour rather than per visit basis.

Response: Since 1980, Medicare regulations at § 405.452(a)(3) have required the determination of reimbursable costs on a per visit basis for all six disciplines.

Comment: A number of commenters stated that the limits methodology should include an adjustment for variations in intensity of care (that is, a case-mix adjustment).

Response: While we recognize that some individual cases will require a

level of care more intense that is required on the average, there are no data currently available that demonstrate a significant variation in average intensity of care among HHA's. The cost per visit reported by each agency is the average cost of all visits for a year, and all agencies will have some cases that require more intense levels of care. However, we know of no information that demonstrates that differences in cost per visit among otherwise similar agencies are attributable to differences in the average intensity of care required by the patients of the agencies. We are studying this issue.

Comment: Several commenters observed that the limits should provide positive incentives, as well as negative, to contain costs. It was suggested that the limits should reward providers with costs for a discipline below the limit for that discipline, as well as penalize those providers with costs in excess of the limits.

Response: Section 1861(v)(1) of the Act currently requires that reimbursement for home health services be based on reasonable cost subject to an upper limit. Therefore, in the absence of a change in the statute, we cannot implement such a change. We are in agreement with the sentiment expressed by these commenters, that a desirable system of reimbursement should provide for both positive and negative incentives to contain costs. It is for this reason that we continue actively to investigate the feasibility of developing a prospective payment system for home health services. A prospective payment system without retroactive settlement based on incurred costs, by its very nature, automatically rewards efficient operation with a profit, while it penalizes inefficient operation with a loss.

Comment: Numerous commenters were quite concerned about the effect of the proposed limits in combination with the cap on HHA reimbursement contained in the President's Budget.

Response: The refinements to the HHA limits methodology contained in this notice are consistent with the intent of the President's Budget.

Comment: Several commenters questioned the inclusion of capital-related costs in per visit costs subject to the limits.

Response: Capital-related costs are excluded from costs subject to the hospital limits and diagnosis-related group rates under the prospective payment system, and the skilled nursing facility limits, because these costs are a significant component of total cost and vary significantly among facilities. In the case of an HHA, these costs are, on the average, less than three percent of total agency costs and do not tend to exhibit the degree of variation found in capital-related costs of providers of inpatient services. Therefore, we find no compelling reason to exclude this portion of costs from the control established by the cost limits.

Comment: We received a number of other comments concerning various elements of the methodology used in both this and previous schedules of limits.

Response: As has been true of all schedules of limits, the limits in this schedule represent our best estimate of the cost necessary in the efficient delivery of needed health services. The methodology used in this notice incorporates all feasible refinements to improve the accuracy of the limits. We intend to continue studying various aspects of the home health industry. As information that allows further refinements to the limits methodology becomes available, we will include these refinements as proposed changes to future schedules of limits.

Comment: Several commenters asserted that the 30-day comment period did not provide enough time for the public to comment effectively on so many complex, critical policies.

Response: The Administrative Procedure Act (5 U.S.C. 553) does not specify a minimum time for the length of a public comment period. The courts have consistently held that a 30-day comment period is sufficient. In addition, we provided a 30-day comment period for the schedule of limits that took effect July 1, 1984 and, as with the many regulations we propose, we find that a 30-day comment period is sufficient.

We received 87 items of correspondence from HHAs and other interested parties. The issues raised covered a broad range of concerns, as demonstrated by our discussion of the comments throughout this document. Therefore, we do not believe that the length of the comment period was inappropriate. However, any time we receive letters from the public, we consider the issues raised. If we were to be convinced that future changes to the limits methodology should be made, we would propose them in the **Federal Register.**

V. Changes to the Proposed Notice

A. Corrections of Errors in Cost Report Data

Subsequent to preparation of the proposed notice, the cost report data were subjected to four additional computerized edits. Each of these edit runs identified additional errors in the data that were corrected prior to the next edit run. As a consequence, the cost report data base is the most accurate available source of data for use in estimating the cost incurred by an efficiently operated HHA.

B. Update of Market Basket Index

The market basket index was updated immediately prior to the determination of the final limit values. This update incorporated both the latest available information on changes in each category of input price and any changes in assumptions on economic trends. Since the actual and estimated annual rates of increase in section VIII.A of this final notice are based on information more current than the actual and estimated annual rates of increase that was available when the proposed notice was prepared, the newer rates more accurately reflect the economic environment that will prevail during the period these limits will be in effect.

C. Wage Indexes Based on Later Wage Data

The wage indexes used in the proposed notice were based on hospital industry wage data for 1982. When the proposed notice was prepared, these 1982 data were the latest data available. We stated in the proposed notice that, if later data were available in time for use in the final notice, we would use the later data in developing the final schedule of limits. The BLS was able to develop wage indexes from data for calendar year 1983 in time for us to incorporate them in the final limits methodology. Since the wage indexes in this final notice are based on later data, they should be a more accurate measure of geographic variations in prevailing wage levels than the wage indexes used in the proposed notice.

D. Schedules Effective July 1, 1986 and July 1, 1987

We are setting the limits at 115 percent of mean cost for 12-month cost reporting periods beginning on or after July 1, 1986 and before July 1, 1987 and at 112 percent of mean cost for 12-month cost reporting periods beginning on or after July 1, 1987 and before July 1, 1988. However, in this final notice, we have not included the schedules of limits that will apply beginning July 1, 1986 and July 1, 1987, respectively, because the schedules will be based on the latest available cost data adjusted by the latest estimates in the market basket index. Thus, we are putting into place the three-year methodology that we

proposed, although we are not now publishing the schedules for the last two years.

VI. Provisions of the Limits Effective July 1, 1985, July 1, 1986 and July 1, 1987

The limits methodology contained in this final document is the same as that contained in the proposed schedule of limits with one exception: This final notice does not include the schedule for limits set at 115 percent of mean cost, effective July 1, 1986 or the schedule for limits set at 112 percent of mean cost, effective July 1, 1987. We have not now included the schedules of limits that will apply beginning July 1, 1986 and July 1, 1987, respectively, because the schedules will be based on the latest available cost data adjusted by the latest estimates in the market basket index.

To summarize, the new schedule of limits effective July 1, 1985 provides for the following:

A. A classification system based on whether an HHA is located within an MSA or NECMA or a non-MSA area. (See Table III A, below, for the listing of MSA/NECMA areas.)

B. The use of a single schedule of limits for hospital-based and freestanding agencies. This single limit is based on the cost experience of freestanding agencies. We have provided for an "add-on" adjustment of the freestanding HHA limit (which is equal to 10.7037 percent of the mean for the MSA group and 11.5050 percent for the non-MSA group) for each hospital-based discipline to account for the higher A & G costs resulting from Medicare cost allocation requirements. That is, the labor-related portion of the add-on, adjusted by the appropriate wage index, plus the nonlabor portion, will be added to each freestanding limit to determine the per discipline limits for hospital-based agencies.

C. The use of the following market basket index developed from the price of goods and services purchased by HHAs to account for the impact of changing wage and price levels on HHA costs. The limit values contained in this schedule, which differ from those in the proposed schedule, reflect the latest available actual and projected rates of inflation in HHA expenses. The categories used were identified through an analysis of 1977 Medicare cost reports and other available home health industry surveys. The categories of expenses are weighted according to the estimated proportion of HHA costs attributable to each category.

The categories used in the market basket contained in this schedule have not changed from those used for the July 1, 1984 schedule. However, the relative cost shares used change over time because of differences in the rate of increase in the various price variables. Categories with higher rates of price increases receive higher weights and vice versa.

In developing the market basket index, we obtained historical and projected rates of increase in the resource prices for each category. The price variables and the source of the forecast for calendar years 1984 through 1986 are identified in the third and fourth columns of the updated market basket included in this notice.

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, WEIGHTS, FORECASTERS, AND PRICE VARIABLE USED

Cost categories	Relative [1] importance 1986	Forecaster of [2] percent changes (1984-86)	Price variable used
Wages and salaries	65.22	DRI-CFS	Average hourly earnings of nonsupervisory private hospital workers. (SIC 806) Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly).
Employee benefits	8.90	DRI-TL	Supplements to wages and salaries per worker in nonagricultural establishments. Source: For supplements to wages and salaries—U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business* (monthly). For total employment—U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings (monthly).
Transportation	4.64	DRI-TL	Transporation component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Office costs	2.87	DRI-TL	Services component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Medical nursing supplies and rental equipment	2.48	HCFA-HHS	Medical equipment and supplies component of the Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Nonrental space occupancy	1.33	DRI-TL	Composite Fuel and other Utilities Index. Source: HHS-HCFA, Community Hospital Input Price Index.
Rent	1.21	DRI-CFS	Residential rent component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Miscellaneous	8.48	DRI-TL	Consumer Price Index for all items, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review.*
Contract services	5.87	HHS	Weighted mean of price variables for the preceding eight items.
Total	100.00		

[1] Relative cost weights for 1977 were derived from special studies by HCFA using primarily data from HCFA Medicare cost reports and data from the Council of Home Health Agencies and Community Health Services. A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. The relative importance values change over time in accordance with price changes for each price variable. Cost categories with relatively higher price increases get higher relative importance values and vice versa.
[2] DRI-TL refers to Data Resources, Inc., Trendlong (TL 0485), 29 Hartwell Avenue, Lexington, Massachusetts 02173; DRI-CFS refers to Data Resources, Inc., Cost Forecasting Service (CFS-852), 1750 K Street NW., Washington, D.C. 20006.

D. An adjustment to the limits if the estimated market basket rate differs from the actual rate by more than 3/10 of one percentage point (that is, higher or lower).

E. The use of a wage index that was developed from hospital wages for the calendar year 1983. As noted above, the index was developed from data supplied by the BLS for the hospital group, a standard BLS reporting category. The wage index is used to adjust the labor-related portion of the limits and the A & G add-on to reflect differing wage levels among the areas (MSA/NECMA and non-MSA) in which HHAs are located. The employee wage portion of the market basket index (65.22 percent) and the employee benefits portion (8.90 percent), plus a factor representing a proportionate share of contract services (5.47 percent), is used to determine the labor component (79.59 percent) of all HHA per visit costs used to set the limits.

Should the Executive Office of Management and Budget announce changes in the MSA designations before July 1, 1985, we will recalculate the wage indexes for the affected areas and direct our intermediaries to use these revised indexes in determining the limits for HHAs they service.

F. Separate treatment of the labor-related and non-labor components of per visit costs. The separate components of cost are calculated by obtaining actual HHA cost data for each agency and

increasing those data by the actual and projected increases in the HHA market basket. We then separate each HHA's per visit costs into labor and nonlabor portions, and divide the labor portion by the wage index value for the agency's location to control for the effect of wage geographic variations in prevailing wage levels. Separate means are computed for the labor and nonlabor components of per visit costs. For each comparision group, the resulting amounts are shown in Table I.

G. The use of a cost of living adjustment to the nonlabor portion of the limits for HHAs in Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

H. Limits that are applied to the per visit cost of each type of service: skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide.

VII. Application of Limits to State Medicaid Rates

Methods of reimbursement for HHAs under Medicaid are determined by the individual State agencies. There is no existing regulatory requirement that Medicare cost limits be applied to payment rates for HHA services under Medicaid. Therefore, Medicare cost limits for HHAs apply to Medicaid payments only in those States that choose to incorporate the limits into their State plans for payment for home health services.

VIII. Methodology for Determining Cost Per Visit Limits

A. Data

The limit values were determined by extracting actual cost per visit data from Medicare cost reports for periods ending on or before September 30, 1983. We then adjusted the data using the latest available market basket factors to reflect cost increases occurring between the cost reporting periods contained in our data base and December 31, 1985 (the midpoint of the first cost reporting period to which the limits will apply). The annual percentage increases used to compute the per visit costs are:

Calendar year	Percent increase
1982	[1] 10.1
1983	[illegible]
1984	[illegible]
1985	[2] 5.1
1986	[2] 4.0

[1] Final rate.
[2] Forecasted increases. The projected rate of increase in the market basket index will be adjusted to the actual inflation rate if the actual rate of increase differs from the estimated rate by more than 1/10 of one percentage point. We will notify the Medicare intermediaries of the actual rate of increase and advise them to adjust each HHA's cost limit at the time of final settlement.

B. Deflation by Wage Index

After adjustment by the market basket index, we divided each HHA's per visit costs into labor and nonlabor portions. The labor portion of costs (79.59 percent) was determined by using the 74.12 percent employee wage and benefit factor from the market basket, plus 5.47 percent, which represents a proportionate share of the market basket relative importance for contract services. We then divided the labor portion of per visit costs by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

C. Adjustment for "Outliers"

We transformed all per visit cost data into their natural logarithms and grouped them by type of service and MSA and non-MSA locations, in order to determine the mean cost and standard deviation for each group. We then eliminated all "outlier" costs, retaining only those per visit costs within two standard deviations from the mean in each service.

D. Basic Service Limit

A basic service limit equal to 120 percent of the mean labor and nonlabor portions of the per visit costs of freestanding HHAs is calculated for each type of service. (See Table I.)

IX. Computing the Adjusted Limit

A. Adjustment of Limits by Wage Index

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA, the Medicare fiscal intermediary first multiplies the labor-related component of the limit for the comparison group by the appropriate wage index. (See Tables I, III A and III B.) The adjusted limit applicable to an HHA is the sum of the nonlabor component plus the adjusted labor-related component.

Example—Calculation of Adjusted Occupational Therapy Limit for a Freestanding HHA in Dallas, TX

Labor component (table I)	$42.40
Wage index (table IIIA)	×1.0969
Adjusted labor component	46.51
Nonlabor component (table I)	+12.01
Adjusted occupational therapy limit	58.52

B. Adjustment for Reporting Year

If an HHA has a cost reporting period beginning on or after August 1, 1985, the adjusted per visit limit for each service is revised by a factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

For example, an HHA's cost reporting period begins January 1, 1986. As calculated in the example in section IX A of this notice, the labor adjusted per visit limit for occupational therapy for this HHA's group is $58.52.

Computation of Revised Limit for Occupational Therapy

Adjusted per visit limit	$58.52
Adjustment factor from table IV	×1.0198
Revised per visit limit	59.68

In this example, the revised adjusted per visit limit for occupational therapy applicable to this HHA for the cost reporting period beginning January 1, 1986, is $59.68 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact that projections are computed to the midpoint of a cost reporting period. For cost reporting periods of other than 12 months in duration, the calculation must be done specifically for the midpoint of the cost reporting period. In such cases, the intermediary for the HHA must obtain this adjustment factor from HCFA.

C. Adjustment for Hospital-Based Agencies

If an HHA participates in the Medicare program as part of a hospital that is required to file a HCFA–2552 cost report (see Provider Reimbursement Manual, HCFA Pub. 15–2, Chapter 12), and qualifies as hospital-based in accordance with the requirements specified in the schedule of limits published June 5, 1980 (45 FR 38014), the HHA will be considered a hospital-based agency and will be entitled to an adjustment of the per visit limit to account for higher administrative and general costs resulting from the Medicare cost allocation requirements. The intermediary will compute the adjusted cost limit as described in the example following Table II.

X. Schedule of Limits Effective July 1, 1985

The schedule of limits set forth below applies to 12-month cost reporting

periods beginning on or after July 1, 1985 and before July 1, 1986. The intermediaries will compute the adjusted limits using the wage indexes published in Tables III A and III B and notify each HHA they service of its applicable limits.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Medical supplies that are not routinely furnished in conjunction with patient care visits and are directly identifiable as services to an individual patient (that is, medical supplies for which a separate charge is made, in addition to the per visit charge) are excluded from the per visit cost if they meet all of the following criteria—

- The common and established practice of comparable HHAs in the area is to charge separately for the items;
- The HHA follows a consistent charging practice for Medicare and non-Medicare patients receiving the item;
- Generally, the item is not frequently furnished to patients;
- The item is directly identifiable to an indiviaual patient and its costs can be identified and accumulated in a separate cost center; and
- The item is furnished at the direction of the patient's physician and is specifically identified in the plan of treatment.

This explanation of nonroutine medical supplies is consistent with instructions for reporting the cost of these supplies on the revised HHA cost report, forms HCFA–1728 and HCFA–2552K. The reasonable cost of durable medical equipment and supplies that are not routinely furnished in conjunction with patient care visits will be reimbursed without regard to the schedule of limits.

Before the limits are applied at cost settlement, the provider's actual costs will be reduced by the amount of individual items of cost (for example, administrative compensation or contract services) that are found to be excessive under Medicare principles of provider reimbursement. In this regard, the fiscal intermediaries will review the various reported costs against such screens as the cost guidelines for physical therapy under arrangements (see § 405.432) and against the limitation on costs that are substantially out of line with those of comparable agencies (see § 405.451).

TABLE I.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES [1]

Type of visit	Limit	Labor portion	Nonlabor portion
MSA (NECMA) location:			
Skilled nursing care	$53.41	$41.84	$11.57
Physical therapy	51.31	40.17	11.14
Speech pathology	58.09	45.42	12.67
Occupational therapy	54.41	42.40	12.01
Medical social services	80.64	62.86	17.98
Home health aide	34.61	27.03	7.58
Non-MSA location:			
Skilled nursing care	58.39	47.79	10.60
Physical therapy	59.96	49.19	10.79
Speech pathology	68.64	55.86	12.06
Occupational therapy	65.69	53.68	13.01
Medical social services	81.55	66.77	14.78
Home health aide	34.11	27.51	6.20

[1] Nonlabor component of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands will be increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.150
Maui, Lanai, and Molokai	1.200
Hawaii (island)	1.125
Puerto Rico	1.075
Virgin Islands	1.125

TABLE II.—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES

	A and G add-on	Labor portion	Nonlabor portion
MSA (NECMA) location:			
Skilled nursing care	$6.07	$4.71	$1.36
Physical therapy	5.05	3.89	1.16
Speech pathology	6.06	4.67	1.39
Occupational therapy	5.52	4.23	1.29
Medical social services	8.42	6.47	1.95
Home health aide	3.88	3.01	.87
Non-MSA location:			
Skilled nursing care	6.66	5.46	1.20
Physical therapy	6.25	5.13	1.12
Speech pathology	8.42	6.88	1.54
Occupational therapy	6.08	5.03	1.05
Medical social services	11.87	9.67	2.20
Home health aide	3.92	3.20	.72

Example.—A hospital-based agency in New York City has a wage index of 1.3378. It provides the following services: Skilled Nursing, Physical Therapy, Home Health Aides.

The published limits for that agency are:

	Limit		Add-on	
	Labor portion	Nonlabor portion	Labor portion	Nonlabor portion
SN	$41.84	$11.57	$4.71	$1.36
PT	40.17	11.14	3.89	1.16
HHA	27.03	7.58	3.01	.87

CALCULATION OF HOSPITAL-BASED LIMIT WITH ADD-ON

	SN	PT	HHA
Limit labor portion	$41.84	$40.17	$27.03
Add-on labor portion	+4.71	+3.89	+3.01
Total labor portion	46.55	44.06	30.04
Wage index	×1.3378	×1.3378	×1.3378
Adjusted labor portion	62.27	58.94	40.19
Limit nonlabor portion	11.57	11.14	7.58
Add-on nonlabor portion	+1.36	+1.16	+.87
Adjusted limits	75.20	71.24	48.64

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	0.9133
Taylor, TX	
Aguadilla, PR	.5539
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	1.0600
Portage, OH	
Summit, OH	
Albany, GA	1.9206
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.9035
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0727
Bernalillo, NM	
Alexandria, LA	1.0018
Rapides, LA	
Allentown-Bethlehm, PA-NJ	1.0017
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	1.1006
Blair, PA	
Amarillo, TX	1.0400
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2360
Orange, CA	
Anchorage, AK	1.5702
Anchorage, AK	
Anderson, IN	.9606
Madison, IN	
Anderson, SC	.8852
Anderson, SC	
Ann Arbor, MI	1.2703
Washtenaw, MI	
Anniston, AL	.9076
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	.9826
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	.6036
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	.9343
Buncombe, NC	
Athens, GA	.8343
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.9733
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0988
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	.9826
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.0215
Kane, IL	
Kendall, IL	
Austin, TX	1.1088
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.1887
Kern, CA	
Baltimore, MD	1.0325
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9478
Penobscot, ME	
Baton Rouge, LA	1.0477
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	1.0131
Calhoun, MI	
Beaumont-Port Arthur, TX	1.0620
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.1031
Beaver, PA	
Bellingham, WA	1.1800
Whatcom, WA	
Benton Harbor, MI	.8716
Berrien, MI	
Bergen-Passaic, NJ	1.0181
Bergen, NJ	
Passaic, NJ	
Billings, MT	1.0288
Yellowstone, MT	
Biloxi-Gulfport, MS	.8701
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9600
Broome, NY	
Tioga, NY	
Birmingham, AL	1.0088
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9900
Burleigh, ND	
Morton, ND	
Bloomington, IN	.9185
Monroe, IN	
Bloomington-Normal, IL	.9404
McLean, IL	
Boise City, ID	1.0414
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1312
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	.9902
Boulder, CO	
Bradenton, FL	1.0519
Manatee, FL	
Brazoria, TX	.8775

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Brazoria, TX	
Bremerton, WA	[1] .8434
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1497
Fairfield, CT	
Brownsville-Harlingen, TX	.9250
Cameron, TX	
Bryan-College Station, TX	1.0513
Brazos, TX	
Buffalo, NY	.9933
Erie, NY	
Burlington, NC	.8514
Alamance, NC	
Burlington, VT	[1] 1.0053
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	.8232
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	.9697
Carroll, OH	
Stark, OH	
Casper, WY	[1] 1.0104
Natrona, WY	
Cedar Rapids, IA	[1] .9185
Linn, IA	
Champaign-Urbana-Rantoul, IL	1.0274
Champaign, IL	
Charleston, SC	1.0127
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.1369
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	.9480
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	1.0144
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	.9667
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Chicago, IL	1.1729
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0344
Butte, CA	
Cincinnati, OH-KY-IN	1.0339
Dearborn, IN	
Boone, KY, Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.8386
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.2337
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0066
El Paso, CO	
Columbia, MO	1.0009
Boone, MO	
Columbia, SC	.9390
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.8823
Russell, AL	
Chattahoochee, GA	

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Muscogee, GA	
Columbus, OH	1.0530
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.9328
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.8925
Allegany, MD	
Mineral, WV	
Dallas, TX	1.0969
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	[1] .8823
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	.9828
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0828
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	1.0024
Volusia, FL	
Decatur, IL	1.0025
Macon, IL	
Denver, CO	1.0024
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.0632
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.1661
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.9092
Dale, AL	
Houston, AL	
Dubuque, IA	.9486
Dubuque, IA	
Duluth, MN-WI	.9437
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.9942
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.9419
El Paso, TX	
Elkhart-Goshen, IN	.9185*
Elkhart, IN	
Elmira, NY	1.0350
Chemung, NY	
Enid, OK	.9777
Garfield, OK	
Erie, PA	1.0215
Erie, PA	
Eugene-Springfield, OR	.9799
Lane, OR	
Evansville, IN-KY	1.0336
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0219
Clay, MN	
Cass, ND	
Fayetteville, NC	[1] .9472
Cumberland, NC	
Fayetteville-Springdale, AR	.8180

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Washington, AR	
Flint, MI	1.2322
Genesee, MI	
Florence, AL	.8166
Colbert, AL	
Lauderdale, AL	
Florence, SC	.8723
Florence, SC	
Fort Collins-Loveland, CO	1.0285
Larimer, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0666
Broward, FL	
Fort Myers-Cape Coral, FL	.9787
Lee, FL	
Fort Pierce, FL	1.0209
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.9582
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	[1].9306
Okaloosa, FL	
Fort Wayne, IN	.9281
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	1.0223
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1791
Fresno, CA	
Gadsden, AL	.8247
Etowah, AL	
Gainesville, FL	.9575
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.1360
Galveston, TX	
Gary-Hammond, IN	1.1581
Lake, IN	
Porter, IN	
Glens Falls, NY	.8287
Warren, NY	
Washington, NY	
Grand Forks, ND	.9576
Grand Forks, ND	
Grand Rapids, MI	1.0030
Kent, MI	
Ottawa, MI	
Great Falls, MT	[1] 1.0998
Cascade, MT	
Greeley, CO	[1] 1.0412
Weld, CO	
Green Bay, WI	.9974
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.9478
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9013
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9368
Washington, MD	
Hamilton-Middletown, OH	1.0187
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	1.0705
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-New Middletown-Britain-Bristol, CT	1.1460
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.9146
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1217
Honolulu, HI	
Houma-Thibodaux, LA	.9209
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.1473
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	1.0209
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.9248
Madison, AL	
Indianapolis, IN	1.0760
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.0046
Johnson, IA	
Jackson, MI	[1] 1.0062
Jackson, MI	
Jackson, MS	.8769
Hinds, MS	
Madison, MS	
Rankin, MS	
Jacksonville, FL	1.0197
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	[1].7823
Onslow, NC	
Janesville-Beloit, WI	.9504
Rock, WI	
Jersey City, NJ	1.0558
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.9362
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	1.0247
Cambria, PA	
Somerset, PA	
Joliet, IL	1.1197
Grundy, IL	
Will, IL	
Joplin, MO	1.0228
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2477
Kalamazoo, MI	
Kankakee, IL	1.0117
Kankakee, IL	
Kansas City, MO-KS	1.0475
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	[1] 1.0144
Kenosha, WI	
Killeen-Temple, TX	.8766
Bell, TX	
Coryell, TX	
Knoxville, TN	.9193
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9984
Howard, IN	
Tipton, IN	
LaCrosse, WI	[1].9796
LaCrosse, WI	
Lafayette, LA	1.0085
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9018
Tippecanoe, IN	
Lake Charles, LA	1.0512
Calcasieu, LA	
Lake County, IL	1.0953
Lake, IL	
Lakeland-Winter Haven, FL	.8716
Polk, FL	
Lancaster, PA	1.0776
Lancaster, PA	
Lansing-East Lansing, MI	1.0459
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	[1].8542
Webb, TX	
Las Cruces, NM	[1].8423
Dona Ana, NM	
Las Vegas, NV	1.2618
Clark, NV	
Lawrence, KS	[1].9409
Douglas, KS	
Lawton, OK	[1] 1.0286
Comanche, OK	
Lewiston-Auburn, ME	[1].9668
Androscoggin, ME	
Lexington-Fayette, KY	.9808
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	1.0035
Allen, OH	
Auglaize, OH	
Lincoln, NE	.7913
Lancaster, NE	
Little Rock-North Little Rock, AR	1.0491
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8700
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.0104
Lorain, OH	
Los Angeles-Long Beach, CA	1.3160
Los Angeles, CA	
Louisville, KY-IN	1.1027
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	1.0152
Lubbock, TX	
Lynchburg, VA	.8955
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	1.0467
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0693
Dane, WI	
Manchester-Nashua, NH	.9613
Hillsboro, NH	
Merrimack, NH	
Mansfield, OH	.9240
Richland, OH	
Mayaguez, PR	.8689
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
San Germán, PR	
McAllen-Edinburg-Mission, TX	.8980
Hidalgo, TX	
Medford, OR	.9923
Jackson, OR	
Melbourne-Titusville, FL	.9814
Brevard, FL	
Memphis, TN-AR-MS	1.0492
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Miami-Hialeah, FL	1.1568
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0902
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.1519
Midland, TX	
Milwaukee, WI	1.0309
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.0722
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.9336
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1590
Stanislaus, CA	
Monmouth-Ocean, NJ	1.0718
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.9281
Ouachita, LA	
Montgomery, AL	.9534
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	1.0023
Delaware, IN	
Muskegon, MI	1.0568
Muskegon, MI	
Naples, FL	1.1559
Collier, FL	
Nashville, TN	1.1643
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2360
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9641
Bristol, MA	
New Haven-West Haven-Waterbury-Meriden, CT	1.0852
New Haven, CT	
New London-Norwich, CT	1.0617
New London, CT	
New Orleans, LA	1.0186
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.2378
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1801
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8685
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9730
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.3334
Alameda, CA	
Contra Costa, CA	
Ocala, FL	1.0058
Marion, FL	
Odessa, TX	1.0457
Ector, TX	
Oklahoma City, OK	1.0480
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0758
Thurston, WA	
Omaha, NE-IA	.9622
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	1.0286
Orange, NY	
Orlando, FL	1.0135
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	1.0013
Daviess, KY	
Oxnard-Ventura, CA	1.1859
Ventura, CA	
Panama City, FL	1.0955
Bay, FL	
Parkersburg-Marietta, WV-OH	1.0302
Washington, OH	
Wood, WV	
Pascagoula, MS	1.1340
Jackson, MS	
Pensacola, FL	1.0063
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	1.1391
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.1796
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0869
Maricopa, AZ	
Pine Bluff, AR	1.0092
Jefferson, AR	
Pittsburgh, PA	1.1529
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0278
Berkshire, MA	
Ponce, PR	.8883
Juana Diaz, PR	
Ponce, PR	
Portland, ME	.9692
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1393
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	.9132
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.1219
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	.8991
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Statewide, RI	
Washington, RI	
Provo-Orem, UT	.9243
Utah, UT	
Pueblo, CO	1.1232
Pueblo, CO	
Racine, WI	1.0078
Racine, WI	
Raleigh-Durham, NC	1.0295
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Reading, PA	1.0412
Berks, PA	
Redding, CA	1.0844
Shasta, CA	
Reno, NV	1.2472
Washoe, NV	
Richland-Kennewick, WA	.9749
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.9472
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1320
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.9799
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0277
Olmsted, MN	
Rochester, NY	1.0207
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.0479
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2022
El Dorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.1063
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.9117
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	.9037
Buchanan, MO	
St. Louis, MO-IL	1.0653
Clinton, IL	

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0268
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.3264
Monterey, CA	
Salt Lake City-Ogden, UT	.9409
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.9599
Tom Green, TX	
San Antonio, TX	.9518
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.1558
San Diego, CA	
San Francisco, CA	1.3993
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.3539
Santa Clara, CA	
San Juan, PR	.6151
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luquillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1123
Santa Barbara, CA	
Santa Cruz, CA	1.2056
Santa Cruz, CA	
Santa Fe, NM	1.0716
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.1632
Sonoma, CA	
Sarasota, FL	1.0007
Sarasota, FL	
Savannah, GA	.9861
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	1.0029
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1398
King, WA	
Snohomish, WA	
Sharon, PA	1.0431
Mercer, PA	
Sheboygan, WI	.8771
Sheboygan, WI	
Sherman-Denison, TX	.9107
Grayson, TX	
Shreveport, LA	1.0691
Bossier, LA	
Caddo, LA	
Sioux City, IA–NE	1.0034
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	.8779
Minnehaha, SD	
South Bend-Mishewaka, IN	.9756
St. Joseph, IN	
Spokane, WA	1.0916
Spokane, WA	
Springfield, IL	1.1340
Menard, IL	
Sangamon, IL	
Springfield, MO	.8380
Christian, MO	
Greene, MO	
Springfield, MA	1.0331
Hampden, MA	
Hampshire, MA	
State College, PA	1.0972
Centre, PA	
Steubenville-Weirton, OH–WV	.8624
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1738
San Joaquin, CA	
Syracuse, NY	1.0457
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0883
Pierce, WA	
Tallahassee, FL	.9041
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	1.0189
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.8955
Clay, IN	
Vigo, IN	
Texarkana, TX-Texarkana, AR	1.0004
Miller, AR	
Bowie, TX	
Toledo, OH	1.1218
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	1.1128
Shawnee, KS	
Trenton, NJ	1.0485
Mercer, NJ	
Tucson, AZ	1.0982
Pima, AZ	
Tulsa, OK	1.0490
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.0015
Tuscaloosa, AL	
Tyler, TX	1.0081
Smith, TX	
Utica-Rome, NY	.9690
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2754
Napa, CA	
Solano, CA	
Vancouver, WA	[1] 1.0617
Clark, WA	
Victoria, TX	[1] .9200
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9914
Cumberland, NJ	
Visalia-Tulare-Portarville, CA	1.0758
Tulare, CA	
Waco, TX	.9614
McLennan, TX	
Washington, DC–MD–VA	1.1678
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9208
Black Hawk, IA	
Bremer, IA	
Wausau, WI	[1] .9362
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0331
Palm Beach, FL	
Wheeling, WV–OH	.9659
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1195
Butler, KS	
Sedgwick, KS	
Wichita Falls, TX	.8979
Wichita, TX	
Williamsport, PA	.9930
Lycoming, PA	
Wilmington, DE–NJ–MD	1.0866
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.9193
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	.9489
Worcester, MA	
Yakima, WA	.9926
Yakima, WA	
York, PA	.9973
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.1231
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0610
Sutter, CA	
Yuba, CA	

[1] Approximate value for area.

TABLE IIIB.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	.7787
Alaska	1.4473
Arizona	.9256
Arkansas	.7500
California	1.0117
Colorado	.8658
Connecticut	1.0053
Delaware	.9116
Florida	.8640
Georgia	.8306
Hawaii	1.1564
Idaho	.8728
Illinois	.8915
Indiana	.8458
Iowa	.8092
Kansas	.8321
Kentucky	.8542
Louisiana	.8623
Maine	.8785
Maryland	.9165
Massachusetts	1.0305
Michigan	.9362
Minnesota	.8692
Mississippi	.8016
Missouri	.8261
Montana	.8775
Nebraska	.7258
Nevada	1.0113
New Hampshire	1.0360
New Mexico	.9719
New York	.8747
North Carolina	.8588
North Dakota	.8309
Ohio	.9162
Oklahoma	.8776
Oregon	.9513

TABLE IIIB.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Pennsylvania	[illegible]
Puerto Rico	.5693
Rhode Island	[illegible]
South Carolina	[illegible]
South Dakota	.7621
Tennessee	.7768
Texas	.8423
Utah	.7823
Vermont	.8846
Virginia	[illegible]
Virgin Islands	[illegible]
Washington	.9562
West Virginia	.9866
Wisconsin	[illegible]
Wyoming	.9658

[1] Approximate value for area.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTORS [1]

If the HHA cost reporting period begins—	The adjustment factor is—
Aug. 1, 1985	[illegible]
Sept. 1, 1985	[illegible]
Oct. 1, 1985	[illegible]
Nov. 1, 1985	[illegible]
Dec. 1, 1985	[illegible]
Jan. 1, 1986	[illegible]
Feb. 1, 1986	[illegible]
Mar. 1, 1986	[illegible]
Apr. 1, 1986	1.0323
May 1, 1986	[illegible]
June 1, 1986	[illegible]

[1] Based on compounded projected market basket inflation rates of 4.0 percent for 1986 and 5.0 percent for 1987. These adjustment factors are subject to change based on later estimates of cost increases.

XI. Waiver of Delayed Effective Date

Although we are not required to publish our regulations 30 days before their effective dates, we customarily do so. However, we believe that, in this case, the public interest requires that this schedule of limits take effect July 1, 1985, without a 30-day delay in the effective date.

Through our proposed notice published May 14, 1985, we notified all HHAs affected by this schedule of limits not only of our intention to change our methodology but also of our intention to apply the new limits for cost reporting periods beginning on or after July 1, 1985.

In our last schedule of limits published on July 2, 1984 (49 FR 27276) we stated that "The schedule of limits . . . applies to the 12-month cost reporting period beginning on or after July 1, 1984 and remains in effect until publication of the new limits effective July 1, 1985." Absent publication of these limits effective July 1, both HHAs and intermediaries would be without specific guidance from HCFA about which limits apply for HHAs with cost reporting periods that begin on or after July 1, 1985 but before the delayed effective date. We believe that the accompanying confusion, disruption, and uncertainty to both the government and the provider community would not be in the public interest. Further, it would be administratively impracticable for HCFA to develop and publish an additional set of cost limits to be applied to HHAs that begin their cost reporting periods between July 1, 1985 and the delayed effective date.

In addition, because one-third of the participating HHAs begin their cost reporting periods on July 1, a delay in the effective date would mean that these cost limits would not apply to one-third of the HHAs until July 1, 1986. Delaying the effective date would thus permit these providers to avoid the Congressionally-mandated "by discipline" limits (see H.R. Rep. 208, 97th Congress, 1st Session 949 (1981)) based only on the fortuitous circumstance of when their cost years begin and would have a disproportionate effect on other HHAs with later cost periods. This result would also prejudice the public interest since savings to the Medicare Trust Fund would be lost and desirable changes in HHA behavior that will be brought about by this final notice would be delayed for one-third of the HHAs. We expect that the limits contained in this final notice will decrease the amount of inappropriate payment to HHAs and thereby increase the soundness of the Trust Fund. This result is clearly in the interest of Medicare beneficiaries as well as the Medicare program.

Although some HHAs commented that they need time to prepare for the schedule of limits contained in this notice, we believe that the process of HHAs' "tightening up" on their costs will be an ongoing one for all HHAs. All HHAs, regardless of when their cost reporting periods begin, will have, at a minimum, their entire cost reporting period (that is, 12 months) to bring their costs within the limits.

For all of the reasons stated, we find good cause to waive a delay in the effective date.

Therefore, we believe delay in the effective date of this schedule of limits would be unnecessary and contrary to the public interest, and we find good cause to waive a delay in the effective date.

XII. Regulatory Impact Analyses

A. Requirements

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–611), we prepare and publish a regulatory flexibility analysis for regulations, including notices such as this, unless the Secretary certifies that the notice would not have a significant economic impact on a substantial number of small entities. All HHAs are considered small entities under the Regulatory Flexibility Act (RFA).

In the proposed notice published on May 14, 1985, we explained that although the limits are not expected to have an incremental impact in FY 1986 exceeding $100 million, they would provide a strong incentive for significant behavioral changes by participating HHAs, thus resulting in significant changes in the industry. Further, the proposed limits would clearly have had a significant economic impact on a substantial number of HHAs. Therefore, we determined that both an initial regulatory impact analysis and an initial regulatory flexibility analysis were required, and published an initial combined analysis for public review and comment in the proposed notice.

The following discussion, in combination with the rest of this notice, constitutes both a final regulatory impact analysis in accordance with section 3 of E.O. 12291, and a final regulatory flexibility analysis, in accordance with section 604 of the RFA. This analysis, in combination with the other sections of this notice, responds to comments on the initial analysis and on the impacts that commenters claimed that the proposed limits would have on HHAs.

B. Summary of Comments Received on Impact of the Proposed Limits

Many of the comments received related, either directly or indirectly, to impact, as is obvious from the analysis in section IV of this notice. Most of the commenters asserted in one manner or another that the proposed limits would be too low, either as a result of per discipline application, or because of the percent of the mean proposed. Some specifically discussed the behavior

changes that they believed would result from the proposed limits. Others addressed the effects that they believed the limits would have on employees, beneficiaries, and the quality of care.

To the extent that particular comments dealt with the methods and data used to establish the limits, we have responded to them in section IV above. The discussion below responds to commenters' concerns with the expected effects of the limits.

C. Estimated Impact on Expenditures for HHA Services

We estimate that HHA limits set at 120 percent of the mean will result in a major impact on the HHA industry and yield total Medicare savings of about $105 million for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986.

Due to the staggered beginning dates of HHA cost reporting periods, those savings will be distributed among three Federal fiscal years (FYs) as follows:

	Million
Fiscal year:	
1985	7
1986	86
1987	12
Total	105

Note that these estimated savings are *not* just projected disallowances of costs in excess of the limits. We do not expect actual disallowances under these limits to be $105 million. Rather, the savings represent the difference between projected expenditures without any limits and projected expenditures with these limits. Although the savings include potential disallowances of costs in excess of the limits, we anticipate that over 50 percent of the savings will result from projected behavior changes on the part of HHAs, reducing costs per visit.

Of the total savings, about $47 million will be incremental savings in addition to the savings that would result from a continuation of the limits that are already in place. The incremental savings will be distributed among three Federal fiscal years as follows:

	Million
Fiscal year:	
1985	3
1986	38
1987	6
Total	47

These additional savings will result from refinements to the methodology, the use of more recent data, the level at which the limits are set, and incorporating the most recent estimates of Medicare home health utilization and expenditures.

We expect that the application of the limits by discipline will result in continuing improvements in management, recordkeeping, and cost reporting by most HHAs. Setting the limits at 120 percent of mean cost for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986 will provide a further incentive to contain costs through improved efficiency. This improvement in efficiency should result in a moderation in the rate of increase in average per visit costs. Because we expect improvements resulting from modifications in provider behavior to continue, we believe that the margin above the mean allowed in future schedules of limits can be reduced without adversely affecting efficiently operated HHAs. Therefore, we provide in this notice for limits set at 115 percent of mean cost, effective July 1, 1986, and at 112 percent of mean cost, effective July 1, 1987. (Under section 2319 of the Deficit Reduction Act of 1984, Pub. L. 98–369, 112 percent of the mean is the upper limit that Congress determined is appropriate for an efficiently operated skilled nursing facility.)

We estimate that setting the limits at 120 percent, at 115 percent, and at 112 percent will yield total savings of approximately $443 million for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1988. These savings will be distributed among the Federal fiscal years as follows:

	Million
Fiscal year:	
1985	7
1986	86
1987	135
1988	191
1989	22
Total	443

Of the total savings, about $247 million will be incremental savings in addition to the savings that would result from a continuation of the limits that are already in place. The incremental savings will be distributed as follows:

	Million
Fiscal year:	
1985	3
1986	40
1987	71
1988	119
1989	14
Total	247

D. HHAs Affected

As of May 31, 1985, there were about 5,640 HHAs participating in Medicare. Of these, more than 4,600 were freestanding agencies and about 1,000 were hospital-based agencies. We do not have reliable cost data on all of these HHAs since a significant number of these HHAs began operations within the last 18 months. However, we do have an accurate and detailed data base covering 2,624 HHAs, which represent about 50 percent of the present total population. This data base is comprised of all cost reports filed by HHAs that had 12-month cost reporting periods during the year that ended September 30, 1983.

We used the available data to study the impact that these limits could have on affected HHAs. Because we are not able to predict all of the behavior changes that HHAs may adopt when these limits are implemented, we cannot estimate how many HHAs may eventually have costs disallowed because they exceed the limits. However, *if the behavior of affected HHAs does not change*, more than 70 percent of the HHAs in our data base would exceed these limits in at least one discipline. This indicates that more than 70 percent of the HHAs currently participating in the Medicare program can be expected to change their behavior in response to the provisions of this notice, thus avoiding or minimizing the disallowance of costs in excess of the limits.

In the proposed notice, we pointed out that if this 70 percent figure were applied to all HHAs participating in the Medicare program, it would seem that around 3800 HHAs could exceed the limits for one or more disciplines during cost reporting periods beginning on or after July 1, 1985. Many commenters apparently did not realize that this projection assumed that HHA behavior did not change, and responded as if we believed that 70 percent of all HHAs would actually exceed their limits. However, the proposed notice carefully pointed out that, *because* these limits give about 70 percent of all HHAs a strong financial incentive to change their behavior, we anticipate that those HHAs that finally experience actual disallowances will be in the minority. The reasons for this are discussed in section XII E, below.

Individual HHAs frequently commented that the proposed limits would disadvantage them more than the other classifications of HHAs with which they compete. This was typically claimed by rural HHAs and by

freestanding HHAs, despite the table we published showing that more urban hospital-based HHAs would be affected than any other group.

The following table shows our latest estimate of how the impact of these limits will be distributed among urban and rural, hospital-based and freestanding HHAs in the data base.

TABLE.—DISTRIBUTION OF IMPACT OF LIMITS SET AT 120 PERCENT OF THE MEAN, ASSUMING NO BEHAVIOR CHANGE

Type	Location								
	Urban			Rural			All		
	Number in data base	Number over a limit	Percent over	Number in data base	Number over a limit	Percent over	Number in data base	Number over a limit	Percent over
Hospital-based HHAs	261	218	83.9	192	141	73.4	453	360	79.5
Freestanding HHAs	1,412	971	68.8	959	672	70.1	2,371	1,643	69.3
All HHAs	1,673	1,190	71.1	1,151	813	70.6	2,824	2,003	70.9

E. Expected Changes in Behavior

Under existing limits, an HHA will exceed its limits only if its aggregate cost per visit exceeds its aggregate limit. Under the per discipline limits, high-cost disciplines will no longer be subsidized by low-cost ones, with the result that many HHAs that would have been below continued aggregate limits will exceed one or more of the per discipline limits, *if they do not change their behavior.* However, HHAs have many opportunities to minimize or avoid the impact of per discipline limits by changing their behavior. Therefore, we do not believe that these changes will actually result in that large an increase in the number of HHAs experiencing disallowances.

We expected that many of the HHAs commenting on the proposed notice would assess the impact of the proposed limits by comparing them directly to their current patterns of reported per visit costs. We were concerned that this sort of analysis could result in agencies believing that they would exceed one or more discipline limits by more than need be the case, and, in the proposed notice, explained changes that could result in minimization or complete avoidance of disallowances. As explained in a response to a public comment in section IV.E of this notice, a number of agencies, which are apparently adversely affected by application of the limits by discipline, will be able to reduce or escape such impact merely by classifying their costs correctly.

Although more than 70 percent of HHAs are projected to be over at least one limit (at 120 percent of the mean) if no management changes occur, we expect less than half will eventually experience actual disallowances of costs in excess of these limits. The limit for *each discipline* is set well above the average cost for that discipline. As the table below shows, a substantial majority of HHAs will be able to furnish each service at a cost below the limit. Of 12,142 total disciplines in the data base, only 4382, or 36.1 percent, are projected to exceed the applicable limit at 120 percent of the mean.

Discipline	Number of HHAs in data base	Number of HHAs over limit	Percent of HHAs over limit
Skilled nursing care	2,819	1,173	41.6
Physical therapy	2,383	799	33.5
Speech pathology	1,738	585	33.7
Occupational therapy	1,332	422	31.7
Medical social services	1,218	426	35.0
Home health aides	2,672	977	36.6

As noted in the proposed notice, we expect HHA behavior to change both in terms of management and cost reporting. In general, an HHA will have increased incentives to ensure that each type of service it furnishes is delivered efficiently and cost-effectively. For example, an HHA could more carefully control the input costs for any discipline over the limits. We expect many HHAs to review more closely salaries (particularly administrative salaries), staffing levels, staff productivity, time on site per visit, travel time, and administrative costs. We believe greater emphasis also will be placed on the accurate classification on the cost report of cost by function. This also should provide HHAs with more accurate information on the relative cost-effectiveness of each of the disciplines they furnish, which will encourage improved management and increased agency productivity for those HHAs with disciplines that would exceed the limits if they did not modify their behavior.

As noted in Section XII. C above, the increased efficiency which will result from these changes should allow for a reduction in the margin above the mean allowed in future schedules without adversely affecting efficiently operated HHAs. Since all agencies will be aware of the reduction in the level of the limits to 115 percent of the mean on July 1, 1985 and to 112 percent of the mean on July 1, 1987, they have more than an adequate amount of time to make necessary changes in their operations. Therefore, we do not anticipate any significant increase in the number of agenices experiencing actual disallowances as a result of the reductions in the level of the limits in July 1986 and July 1987. In addition, more accurate cost reports will improve the quality of the data we collect on HHA costs, which will benefit our program administration and afford a better basis for policy development.

Some HHAs commented that one of the strategies an agency could adopt would be to discontinue furnishing any discipline for which the costs exceeded the per visit limit. It was suggested that this would be a common and widespread response if per discipline limits were issued in final. We agree that it is inevitable that some HHAs would consider this, but we do not believe it would be widespread. As noted in the proposed notice, we expect about 1100 agencies to exceed the aggregate limits for cost reporting periods beginning on or after July 1, 1984 and before July 1, 1985. These agencies certainly experience as strong an incentive to discontinue a high-cost discipline as would an HHA with only one discipline over a limit.

Application of a limit to each discipline's cost separately will not affect HHAs that have no costs in excess of the limits. However, those HHAs that currently benefit from the ability to subsidize high-cost disciplines by low-cost disciplines, as permitted under the existing limits, will be more likely to have their disallowed costs increased by the use of per discipline limits. As discussed above, there are many ways an HHA could reduce its costs and thus avoid incurring the full disallowance it would otherwise experience under these limits.

Per discipline limits will have the most severe impact on those HHAs that have costs over the limits for *all* the disciplines they furnish. These HHAs will have to make substantial changes in their operations in order to minimize the effect of the limits. We expect that some high-cost HHAs may determine that both the amount of their costs in excess of the limits and the operational changes necessary to bring these costs down are unacceptable, and thus may choose to

cease participating in the Medicare program. However, we wish to point out that HHAs have increased greatly in numbers and diversity of services furnished in recent years. As noted in the proposed notice, we believe that there will still be more than a sufficient number of HHAs to serve the beneficiary population, even if a number of the higher cost HHAs eventually choose to cease providing services to Medicare patients.

F. Effects on Quality of and Access to Services for Beneficiaries

A number of commenters asserted that implementation of the limits as proposed would adversely affect beneficiaries' access to services and the quality of the HHA services they did receive. These comments were often linked to statements concerning the effect of the prospective payment system for inpatient hospital services on the demand for HHA services. Many commenters claimed that hospital patients are being discharged earlier and sicker, and with greater need for HHA services. They argued that these limits will result in fewer services being furnished to beneficiaries at the same time that more services are needed.

We recognize that the average inpatient length of stay is decreasing, that patients are being discharged earlier, and that the volume of home health services has increased over the last few years. The trends of decrease in length of stay and increase in home health services utilization both pre-date the inception of the prospective payment system. Nonetheless, it is reasonable to consider that the incentives of that system have contributed to both trends to some extent. However, we do not believe it is reasonable to imply that these trends, in conjunction with per discipline limits on HHA costs, must necessarily result in adverse health outcomes for Medicare beneficiaries.

These limits will be applied to payment for per visit costs. They will not affect the number of visits an agency may furnish. Earlier discharges may be expected, in some cases, to result in more frequent visits in the immediate post-hospitalization period. Thus, the trend of decreasing length of stay is likely to increase the demand for HHA services. However, increases in the volume of services, in themselves, should not increase costs per visit. Rather, increases in volume of services should afford opportunities to achieve economies of scale. Such economies, in turn, afford an agency the opportunity to use the resulting savings to either reduce its own per visit expenditures, increase the quality of its services, or both.

Given the recent trends of growth in HHA services, both in terms of numbers of HHAs and volume of services, we do not expect these limits to greatly affect the availability of or access to services for beneficiaries.

G. Alternatives Considered

As is made clear in other parts of this final notice, there were many points at which we considered various alternatives in developing these limits. In particular, each of the provisions of the methodology summarized in section III of this notice could have been handled differently, just as we could have chosen a different percentage of the mean at which to set the limits. We considered commenters' suggestions that we defer implementation of per discipline limits until July 1, 1986. Further, we have reconsidered our proposal to promulgate limits at 115 percent of the mean in 1986 and 112 percent in 1987 in this final notice.

The number of possible alternative schedules of limits and strategies for implementation is very large. Nonetheless, we recognize that the impact of these limits is primarily dependent on two choices we have made among the alternatives considered: the application of the limits on a per discipline basis, and the setting of the limit level at a particular percent of the mean for each discipline. In both cases, we have discussed the basis of our choices in section III, above.

It is difficult to assess the impacts of these decisions separately. In estimating the savings we expect to achieve under these limits, we assumed that many of the HHAs that benefit from cross-subsidization between disciplines would be able to avoid or minimize their costs in excess of the limits. Thus, we would attribute only about $14 million of the incremental savings to the effect of application of the limits by discipline. However, the behavior changes adopted by HHAs in response to these limits are one of the probable effects of the limits, as we discussed above.

The greatest portion of the quantifiable impact of these limits, that is, of the estimated savings, must be attributed to setting the limits at 120 percent of the mean. At the 120 percent level, even if we were to apply the limits on an aggregate basis, approximately 38 percent of participating HHAs would be expected to have costs in excess of the limits. We believe that much of the existing cost variation among HHAs is not attributable to factors related to costs necessary for the efficient delivery of needed health services. Other providers of services, which experience the same uncontrollable differences in the costs of their inputs as do HHAs, do not exhibit the same proportion of high-cost services.

As stated in the proposed notice, we have come to believe that it is necessary to provide high-cost HHAs increased incentives to bring their expenditures into line with the costs incurred by efficiently operated HHAs. Some commenters responded adversely to this statement, alleging that our own analysis showed that 70 percent of all HHAs would be adversely affected, and that this widespread impact must affect more than just the high-cost services and agencies. We must point out, again, that not all changes of behavior can reasonably be characterized as adverse impacts. As pointed out above, the limit for *each discipline* is set at 120 percent of the mean cost per visit for that discipline. By definition, our methodology results in limits for a discipline that are set well above the average costs, based on the actual reported costs of a substantial proportion of participating HHAs. Given the data available to us, we do not think the current range in per visit costs is justified. Thus, we are setting the proposed limits at 20 percent above mean cost per visit, and reducing them to 15 percent and 12 percent above mean cost, respectively, for subsequent cost reporting periods. Use of a percentage accommodates input cost variables not accounted for by the methodology, and allows HHAs an extended period over which they can bring their costs under better controls, while at the same time ensuring that we reimburse only those costs necessary for the efficient delivery of services.

H. Conclusion

In summary, the changes in methodology, improved data, and an updated market basket index result in limits that will yield greater program savings than would result from merely inflating previous limits. However, the benefits expected to result from these limits are not confined to the Medicare savings. An HHA that brings its cost down to the limits, or below, should benefit from improved management. The beneficiaries and other patients it serves could be expected to benefit in turn.

The Medicare program savings resulting from these limits will be experienced as costs by the affected HHAs. Further, some economizing measures adopted by HHAs in response to these limits, such as measures that could affect access to or quality of care, could be viewed as adverse consequences, or costs. However, we believe the limit levels are reasonable

and we expect the majority of HHAs to be able to furnish services within them. Also, § 405.460(f) provides an exceptions process that allows for adjustment of a provider's limits under specific conditions described in that section. Therefore, we conclude that these limits will result in benefits greater than anticipated costs, are not unnecessarily burdensome, and otherwise meet the regulatory standards required by E.O. 12291 and the Regulatory Flexibility Act.

XIII. Paperwork Burden

This final notice does not impose information collection requirements. Consequently, it does not need to be reviewed by EOMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

(Sec. 1861(v) of the Social Security Act (42 U.S.C. 1395x(v)); 42 CFR 405.460)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: June 27, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 28, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85–15985 Filed 7–1–85; 9:37 am]

BILLING CODE 4120-01-M

VOL
50

ISS
129

JUL
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1985

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federal register

Friday
July 5, 1985

Part V

Small Business Administration

13 CFR Part 108
Loans to State and Local Development Companies; Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

[Rev. 4; Amdt. 134]

Loans to State and Local Development Companies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: 13 CFR Part 108 delineates regulations for development companies. These proposed rules strengthen the current regulations for development companies in general and 503 certified development companies (CDC) specifically. In addition, recent experience has warranted the addition of new provisions for 503 companies.

DATE: Comment must be received on or before September 3, 1985.

ADDRESS: Written comments, in duplicate, may be sent to the Office of Economic Development, Small Business Administration, Room 720, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, Office of Economic Development, (202) 653-6076.

SUPPLEMENTARY INFORMATION:

Background

The Development Company programs were established and authorized under the Small Business Investment Act of 1958 to provide a source of long term financing for small business concerns and their growth, modernization and expansion. These programs essentially provide fixed asset financing which is a basis for expanding employment and increasing the economic base of an area.

Originally, the SBA's development company activities were limited to the State Development Company program (501 or SDC Program) and the Local Development Company program (502 or LDC Program). Although both were direct loan programs, the 502 program is now a guaranty loan program. The 501 program requires a special legislative act of a state legislature creating the SDC. A 502 company has a local focus and serves an area smaller than a state. The 502 program was designed to assist small businesses in acquiring fixed assets while 501 program loans can be made for a broader range of uses.

In 1980, the Certified Development Company Program (503 or CDC program) was established. While the 503 program is for the same purpose as the 502 program, it is innovative in its funding mechanism. The 503 program provides funds through a long term fixed rate debenture issued by a CDC and guaranteed by SBA. The Federal Finance Bank purchases all debentures. The debentures carry maturities of 15, 20, and 25 years and a fixed interest rate, based on treasury rates for like maturities plus an additional fraction of a percent to cover administrative expenses. Although the debenture is 100% guaranteed, the debenture proceeds can finance no more than 50% (SBA has established and administrative limit of 40%) of the total cost of a given project. Of the remaining project costs, 10% must be provided by the 503 company and 50% by a private sector lender. The structuring of this financing results in an active participation by private sector lending institutions and government. This cooperative effort is strengthened by the membership requirements that must be met by a 503 company, including representation from private lending institutions, appropriate level(s) of local government, local business concerns, and community groups. The Agency views the 503 program as a private sector-public sector partnership which has a non-profit approach to furthering economic development in its area of operations.

Rules Applying to All Development Companies

These proposed rules amend the current rules pertaining to development company programs in general and add requirements specific to the 503 program.

Section 108.1 is amended by adding a new subsection which requires that financing provided under Part 108 must demonstrate a "significant impact" on the community in which the project is located. "Significant impact" is defined.

Section 108.2 is amended by adding definitions of a certified development company, a 503 debenture, a 503 loan, and the SIC code. The definition of "plant" is revised for clarity with respect to leasehold improvements.

Proposed § 108.4 thru § 108.7 would regroup operational and reporting requirements applicable to all development companies operating pursuant to Title V of the Small Business Investment Act. In addition, proposed § 108.4 would define a prohibit self-dealing transactions without prior SBA approval. Proposed § 108.5 would require development companies to report any litigation involving the company or its officers, directors or employees in an official capacity and to produce, at their own expense, any documents requested by SBA. Section 108.6 is reserved for future use.

Proposed § 108.8 would regroup eligibility requirements presently applicable to all development company financings, including those found in Part 120 of the existing regulations. In addition, § 108.8(e) sets forth new criteria applicable to construction or modification of facilities on leased real estate. These criteria would require a long term lease to the small concern and that SBA be granted a collateral position to fully secure its exposure.

Proposed § 108.9 would change the existing regulation relating to projects which include funds resulting from tax-exempt financings. Such projects would not be eligible for section 503 financing unless the Agency's lien position would be equal or superior to that of the portion so financed. In addition, any such tax exempt obligations issued by the 503 company must also be subordinate to SBA's position.

Proposed § 108.10 is a savings provision which would assure the legality of transactions consummated prior to promulgation of regulatory changes.

Rules Applicable to 503 Development Companies

Proposed § 108.503 would set forth the objectives of the 503 program to ensure that the intent and purpose of the program is fulfilled by requiring each project to meet at least one of the following economic development objectives: (1) A project requirement of one (1) job opportunity for each $15,000 of 503 debentures; (2) project(s) that contribute to the community's economic development by stimulating other business development, bringing new income into the area or diversifying and/or stablizing the area's economy or (3) contributing to a national objective, (i.e., increased productivity, expansion of exports, minority business development, assisting manufacturing firms, or assisting businesses in distressed areas). These requirements are intended to permit flexibility in those cases where a project does not meet the formula requirement of one (1) job opportunity per $15,000 of debenture amount. The $15,000 requirement is based on data from the current portfolio. This section also provides for the monitoring of job opportunities actually created.

Proposed § 108.503–1 would clarify operational requirements that must be met by 503 companies. The SBA grants 503 companies a right to issue guaranteed debentures. The Agency is meeting its fiduciary responsibilities to the taxpayers by establishing rules for the operations of 503 companies, including capability requirements and permissible activities. 503 companies

would be required to put economic development ahead of private profit. A major factor is the composition of membership in the 503 company. In order to ensure an active mix and wide cross-section of commercial lending expertise and local community and business involvement, specific membership requirements, including those governing the Board of Directors, are proposed in these rules. The rules pertaining to the professional staff of the 503 company would continue to allow, as now, contracting for services relating to the staff functions.

This section would also address area of operations, expansion of area of operations, concentration of 503 companies, and propose to codify current practice.

Proposed § 108.503–2 is technical and delineates the certification process for 503 company certification and expansion of its area of operations as well as the disposition of the certificate. Public Notice of the intent to certify a company would be required under the proposed rules, in order to ensure local awareness and to provide for public comment, consistent with the objective of local community involvement.

Proposed § 108.503–3 outlines the operational requirements for 503 companies and would require the Annual Report to include an assessment of the needs of the community and the 503 company's accomplishments in meeting those needs. This Section would also include a requirement that a CDC maintain a diversified portfolio.

The proposed rule would increase the minimum level of activity to ensure that a 503 company continues to play an active role in its community.

Proposed § 108.503–4 defines projects eligible and ineligible for section 503 financing. Projects primarily for investment purposes are inconsistent with general SBA policy. Limited use assets are not a best use of SBA resources because they cannot easily and effectively be redeveloped for alternative uses in the event of failure of a specialized small concern.

Any business would be ineligible unless the owners have demonstrated management capability. The 503 Program is primarily designed and intended to assist existing healthy small businesses for their growth, modernization or expansion.

Proposed § 108.503–5 would clarify which costs may be included in the Project Cost and thereby furnished with 503 funds. In addition, it would set forth certain costs which could be included in the amount of the debenture, even through such costs are not Project Costs.

Proposed § 108.503–6 would set forth the amounts which the 503 company may require the small concern to pay.

Proposed § 108.503–7 sets forth requirements for interim financing for the construction of fixed assets. This section codifies present practice in financing construction in this program.

Proposed § 108.503–8 would impose certain limitations on the private sector portion of the financing. These limitations are proposed to protect the Agency's interest as well as the interest of the small concern.

Proposed § 108.503–9 would set forth the amount, maturity and interest rate of the debenture, as well as loan conditions, closing procedures, and potential prepayment premiums. These provisions would add 10 year debentures for machinery, equipment and leasehold improvements, provide a minimum debenture size of $25,000, and codify other present practices in the 503 program.

Proposed § 108.503–10 would restate the present requirement regarding the 503 Company's injection in the project with no change in substance from the existing regulation.

Proposed § 108.503–11 would codify SBA's existing practice regarding use by the 503 companies of a Central Fiscal Agent for disbursement and repayment of debentures. This provision would also codify the present practice of utilizing Reserve and Escrow Accounts. The interest earned on these accounts accrues to the benefit of the small concern but constitutes a funded reserve for loss. Such accounts are necessary to coordinate monthly loan payment dates with semi-annual debenture payment dates and to forestall delinquency in debenture payments.

Proposed § 108.503–12 would codify loan closing responsibilities.

Proposed § 108.503–13 would set forth loan and debenture servicing procedures, prohibitions and fees. In addition, it would prohibit assumption of 503 loans without the Agency's consent and would permit deferments under specified conditions.

Proposed § 108.503–14 would codify responsibility for foreclosure and the liquidation of assets.

Proposed § 108.503–15 would set forth the Agency's review procedures and provide procedures for suspension or revocation of a 503 company's certificate. In addition, this section would permit the Agency to charge a fee for such audits.

Regulatory Impact

SBA has determined that this proposal taken as a whole does not constitute a major rule for the purposes of Executive Order 12291. In this regard we are certain that the annual effect of this rule on the economy will be less than $100 million. In addition, this proposed rule, if promulgated as final, will not result in a major increase in costs or price to consumers, individual industries, Federal, State and local government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity or innovation.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, certain provisions of this proposal, if promulgated in final form, may have a significant economic impact on a substantial number of small entities. The following analysis of those provisions is provided within the context of the review prescribed by the Regulatory Flexibility Act (5 U.S.C. 603).

1. Proposed § 108.8 incorporates eligibility requirements already applicable which are in Part 120 of the regulations. Part 120 applies to all SBA financial assistance to businesses.

In addition, it clarifies the Agency's policy regarding loans to third parties who rent premises to an eligible concern. Since lessors are not eligible for assistance, the agency will not approve such a project unless the eligible concern's interest in the property is tantamount to ownership.

The legal basis for this change is 15 U.S.C. 687(c). The provision itself will involve no reporting or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this proposal. An exemption from coverage of this rule for small entities would not be feasible or consistent with the applicable statutory provisions.

2. Proposed § 108.9 would change the existing regulation to provide that SBA would not participate in projects which include funds resulting from tax-exempt financings unless the Agency's lien position would be equal or superior to the lien position of the portion of the project so financed. The Agency has decided that subordination of its position to such "tax-exempt" portion of the project results in a double subsidy to such project which is not intended by section 503 of the Small Business Act.

The legal basis for this change is 15 U.S.C. 687(c). The provision itself will involve no reporting or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this proposal. An exemption from coverage of this rule for small entities would not be feasible or consistent with the applicable statutory provisions.

3. Proposed § 108.503 and § 108.503–4 would constrain 503 eligibility for projects involving "limited use" assets and projects which involve types of businesses found by the Agency to have a high rate of failure or low economic impact.

The legal basis for this change is 15 U.S.C. 687(c). The provision itself will involve no reporting or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this proposal. An exemption from coverage of this rule for small entities would not be feasible or consistent with the applicable statutory provisions.

4. Proposed § 108.503–8 would permit a 503 company to require an applicant small concern to deposit with the CDC the sum of $1000 or 1½% of the amount of the requested debenture, whichever is less. This deposit would be refunded if the small concern does not voluntarily withdraw its application. The deposit is intended to compensate the 503 company for processing applications which are later withdrawn when an applicant finds other financing or changes its plans.

This section also permits the 503 company to charge a small concern (or a lender) a one-time fee, not to exceed 1½% of the non-Federal portion of the permanent financing, for procuring such financing if permitted by a written agreement executed by the 503 company and the small concern.

The legal basis for this change is 15 U.S.C. 687(c). The provision itself will involve no reporting or recordkeeping requirements. There are no other Federal rules which overlap or otherwise duplicate this proposal. An exemption from coverage of this rule for small entities would not be feasible or consistent with the applicable statutory provisions.

All other significant changes contained herein affect only the 503 company.

The following sets forth the collection of information or recordkeeping requirements which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Subsection		OMB approval Nos.
§ 108.4(a)	Fiscal Year	3245-0192
§ 108.4(c)	Good character	3245-0192, 3245-0178
§ 108.5(a)	Records	3245-0074
§ 108.5(b)	Preservation of Records	3245-0192
§ 108.5(c)	Litigation Reports	3245-0192
§ 108.5(d)	Reporting Changes Not Subject to SBA Prior Approval	3245-0192
§ 108.5(e)	Reports to Owners or Members	3245-0192
§ 108.5(f)	Document Availability	3245-0192
§ 108.503(b)	Objectives	3245-0071
§ 108.503(c)	Monitoring	3245-0074
§ 108.503-1(a)	General	3245-0073
§ 108.503-1(c)	Area of Operations	3245-0073, 3245-0192
§ 108.503-1(d)	Membership	3245-0073
§ 108.503-2(a)	Application for Certification	3245-0073
§ 108.503-2(b)	Public Notice	3245-0192
§ 108.503-2(c)	Transfer and Surrender of Certification	3245-0192
§ 108.503-3(c)	Level of Activity	3245-0192
§ 108.503-3(d)	Records	3245-0192
§ 108.503-3(f)(1)	Reporting Requirements	3245-0074
§ 108.503-3(f)(2)	Reporting Requirements	3245-0074
§ 108.503-3(f)(3)	Reporting Requirements	3245-0178, 3245-0192
§ 108.503-5(d)	Expenditures Made in Anticipation of a 503 Loan	3245-0192
§ 108.503-6(b)	Deposits	3245-0192
§ 108.503-6(d)	Disclosure of Charges to SBA	3245-0071
§ 108.503-7(a)	Certification of Project Completion	3245-0192
§ 108.503-7(c)	Use of Construction Escrow Account	3245-0192
§ 108.503-8(b)	Terms of Private Sector Financing	3245-0192
§ 108.503-9(a)	Application	3245-0071, 3245-0192
§ 108.503-13(b)	Specific Servicing Functions	3245-0192
§ 108.503-15(c)	Operational Review	3245-0192

List of Subjects in 13 CFR Part 108

Equal employment opportunity, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

PART 108—[AMENDED]

Part 108—Loans to State and Local Development Companies would be amended as follows:

1. The authority citation for Part 108 continues to read as follows:

Authority: Sec. 5, Pub. L. 85–536, secs. 210, 308, Pub. L. 85–699, unless otherwise noted.

2. The table of contents for Part 108 would be amended by adding §§ 108.4 through 108.10 numerically under the centerheading "General", by removing §§ 108.503 through 108.503–8 and by adding a new centerheading entitled "Assistance under Section 503", consisting of new §§ 108.503 through 108.503–15.

* * * * *

General

Sec.

* * * * *

108.4 Operational requirements.
108.5 Records and reports.
108.6 [Reserved].
108.7 Violations based on false filings and nonperformance of agreements with SBA.
108.8 Borrower requirements and prohibitions.
108.9 Participation with tax exempt financing.
108.10 Savings clause.

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Assistance Under Section 503

108.503 Program objectives.
108.503–1 Eligibility requirements for 503 companies.
108.503–2 Certification.
108.503–3 Operational requirements for 503 companies.
108.503–4 Project eligibility.
108.503–5 Eligible and ineligible uses of 503 loan proceeds.
108.503–6 Costs which may be charged to the small concern by the 503 company.
108.503–7 Interim financing.
108.503–8 Private sector financing.
108.503–9 503 Debenture financing.
108.503–10 503 Company injection.
108.503–11 Central fiscal agent.
108.503–12 Loan closing.
108.503–13 Servicing loans and debentures.
108.503–14 Liquidation of 503 loans and security.
108.503–15 Oversight and evaluation; suspension and revocation.

3. Section 108.1 would be amended by adding a new paragraph (b) and by redesignating existing paragraph (b) as (c). New paragraph (b) would read as follows:

§ 108.1 Policy.

* * * * *

(b) Financing provided under this part must demonstrate to SBA's satisfaction that it will result in significant impact in the community where the business or project is located. "Significant impact" may be demonstrated (1) on the basis of jobs being created or retained which would not have been possible without such financing; (2) community economic development being demonstrated including diversification or stabilization of the economy within the community, or, (3) achieving a national objective such as: Increased productivity through the modernization of existing facilities necessary to retain jobs, expansion of exports, expansion of minority business development, assisting manufacturing firms (SIC Codes 20–49), and assisting businesses in distressed areas. Loans made to acquire plant, as defined in § 108.2(i) of this part, shall be made in conformity with the same program objectives as set forth under § 108.503(b)–(d) for the 503 program.

* * * * *

§ 108.2 [Amended]

4. Section 108.2 *Definitions* would be amended by revising paragraph (c) thereof as follows:

* * * * *

(c) "Small business concern" or "small concern" means a business concern which qualifies as small under Part 121 of this Chapter.

5. Section 108.2 *Definitions* would be further amended by adding new paragraph (d)(3) to read as follows:

* * * * *

(d) * * *

(3) A certified development company (hereafter sometimes referred to as "503 company") is a development company as defined in paragraphs (d) (1) or (2) of this section which meets the requirements of § 108.503 of this part and is certified by SBA to operate pursuant to section 503 of the Small Business Investment Act, 15 U.S.C. 697.

* * * * *

6. Section 108.2 *Definitions* would be further amended by adding new paragraphs (g), (h), and (i); redesignating present paragraph (h) as (j). Such new and revised subsections to read as follows:

* * * * *

(g) "503 debenture" means a debenture issued by a 503 company and guaranteed by SBA ("503 guaranty") for sale, the proceeds of which are to be used to make one or more loans to small concerns pursuant to § 108.503–5 of this part.

(h) "503 loan" means a loan made to a small business concern from the proceeds of a 503 debenture.

(i) "plant" means any long-term fixed asset which may include land, buildings, machinery, and equipment employed or to be employed by the small business concern in the conduct of its business whether it be of an industrial or commercial nature.

7. Section 108.2 *Definitions* would be further amended by adding a new paragraph (k) to read as follows:

* * * * *

(k) "SIC Code" means the Standard Industrial Classification Manual as prepared by the Office of Management and Budget and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

8. Sections 108.4, 108.5, 108.6, 108.7, 108.8, 108.9, and 108.10 would be added immediately after § 108.3 to read as follows:

§ 108.4 Operational requirements.

(a) *Fiscal year.* Each development company shall establish a fiscal year which shall not be changed without SBA prior written approval.

(b) *Place of business.* Each development company shall maintain a reasonably accessible place of business, shall have a separately listed telephone number, and shall be open to the public during normal business hours.

(c) *Good character.* A development company shall possess continuing good character. Such character will be deemed to exist where all the directors, officers, employees and members or shareholders possess good character. Officers, directors, and the manager of day-to-day operations of a development company shall file SBA Form 912 Statement of Personal History. Good character shall be deemed absent if any one of the listed persons is (1) currently incarcerated, on parole or probation, (2) is under indictment for, or has been formally charged with or convicted of a felony, or (3) suffered an adverse final civil judgment in a case involving a breach of trust or the violation of a law or regulation protecting the integrity of business transactions or relationships, or (4) made a misrepresentation or false statement to SBA, as defined in § 108.7(a)(2). Any change affecting this requirement shall be promptly reported to SBA.

(d) *Prohibition of Self-dealing.* (1) Self-dealing by the development company, its board of directors, members, employees, and other related parties (as hereafter defined) to the prejudice of the small concern, the development company, or SBA is prohibited.

(2) The development company's loan application to SBA shall contain a full disclosure statement from the development company and from the small concern relative to all relationships described in § 120.102–10 of this Chapter, between the small concern and the development company, any person employed by the development company or regularly serving the company [e.g. professional staff as defined in § 108.503–1(b)(3)] or its associate [as defined in § 120.2–2 of this Chapter], all herein refered to as "related parties", that exist or have existed within six months prior to the date of the development company's application. Where no such relationships exist, the development company and the small concern shall so certify.

(3) Without prior written approval of SBA, a development company shall not permit a relationship to exist or to be created between the development company or related parties and a small concern to be assisted under this Part or while such assistance is outstanding, if such relationship could constitute a conflict of interest, or the appearance thereof, as between the development company or related parties and the small concern. As examples of such relationships and for illustrative purposes only, the following relationships are prohibited without prior SBA approval:

(i) A development company shall not, directly or indirectly, provide financial assistance to a small concern in which the development company or a related party has any financial interest.

(ii) A development company shall not require a small concern to purchase real or personal property, or services (including insurance and legal services) from the development company, a related party, or a designee of either.

(iii) A development company shall not provide financial assistance to be used in repaying or refinancing an existing debt due the development company or a related party unless SBA shall have first made a written determination, upon the basis of evidence in the file, that:

(A) The terms of the existing indebtedness are causing undue hardship to the small concern; and,

(B) Refinancing extension or modification of the outstanding indebtedness is not available.

(e) *Compliance with other laws.* Development companies and projects financed with federal assistance are subject to all applicable laws, including (without limitation) the civil rights laws (see Part 112, 113, and 116 of these Regulations, as well as Part 117 when adopted).

(Reporting and recordkeeping requirements in paragraph (a) have been approved by the Office of Management and Budget under control number 3245–0192. Reporting and recordkeeping requirements in paragraph (c) have been approved by the Office of Management and Budget under control numbers 3245–0192 and 3245–0178)

§ 108.5 Records and reports.

(a) *Records.* Financial records of a development company including books of accounts are to be maintained in accordance with generally accepted accounting principles. All financial records and minutes of meetings of members, stockholders, directors, executive committees or other officials, and all documents and supporting material relating to a development company's transactions shall be kept at its principal office and shall be currently posted (within 45 days): *Provided, however,* That portfolio items held by a custodian pursuant to written agreement shall be excepted from this requirement. Financial reports furnished to SBA shall make complete disclosure of matters relevant to the Act and regulations.

(b) *Preservation of records.* (1) Each development company shall preserve, for the periods required by the Internal Revenue Service and generally accepted accounting practices and in a manner

that permits the immediate location of such records, such documents which are the basis for or related to the financial statements (including 503 loans) required from development companies.

(2) Notwithstanding the provisions of paragraphs (b)(1), a miniaturized reproduction of any records may be substituted for the original and preserved for the required time in the required manner: *Provided, however,* That the development company shall:

(i) Cause a duplicate reproduction to be made on a current basis and stored separately from the original reproduction for the time required;

(ii) At all times have available facilities for clear projection and the production of clear facsmile enlargements.

(c) *Litigation reports.* When a development company becomes a party to litigation or other legal proceedings, (including any action by the development company, or by a security holder thereof in a personal or derivative capacity, against an officer, director, employee or other member of such development company in an official capacity) it shall file a written report by certified mail with SBA within 10 working days, describing the proceedings, the identity of and the development company's relationship to other parties involved and, upon request by SBA, submit copies of the pleadings and other documents specified. Where such proceedings have been terminated by settlement or final judgment, the development company shall promptly advise SBA of the terms thereof.

(d) *Changes to be reported.* Any change of a development company's name, address, telephone number, officers, directors, membership, professional staff or Articles, not otherwise requiring SBA prior approval, shall be reported to SBA with an SBA Form 912 where applicable (see § 108.4(c)) not later than thirty days after these events. A development company shall submit notice of changes to SBA via Certified Mail or other form of delivery from which a receipt of acceptance is obtained. Reports and requests filed pursuant hereto shall be deemed approved unless the development company is otherwise notified by SBA within sixty days after receipt thereof. Approval shall be contingent upon full disclosure of all relevant facts, subject to any conditions SBA may prescribe.

(e) *Reports to owners or members.* In addition to other specified reporting requirements, the development company shall furnish the SBA field office with a copy of any general notice, letter, or other publication concerning the financial operations of the development company or any of its portfolio concerns provided to its owners or members.

(f) *Expense of documents.* A development company shall make available, at its own expense, documents or copies requested by SBA.

(Reporting and recordkeeping requirements in paragraph (a) have been approved by the OMB under control number 3245–0074. Reporting and recordkeeping requirements in paragraphs (b), (c), (d), (e), and (f) have been approved by the OMB under control number 3245–0192)

§ 108.6 [Reserved]

§ 108.7 Violations based on false filings and nonperformance of agreements with SBA.

(a) The following shall constitute a violation of these regulations:

(1) Nonperformance of any of any the requirements of any note issued to, or assigned to, SBA or of any written agreement with SBA.

(2) Document(s) submitted to SBA which include a false statement knowingly made, a misrepresentation, or intentional failure to state a material fact necessary in order to make a statement not misleading in the light of the circumstances under which the statement was made.

(b) A violation of these regulations by a small concern shall allow SBA to accelerate any indebtedness of such concern issued to, held or guaranteed by SBA or, in the case of a lease assigned to or held by SBA, to terminate such lease.

§ 108.8 Borrower requirements and prohibitions.

(a) *Principals of concern receiving assistance.* The availability of personal resources of the owner or owners of the small concern shall not disqualify such concerns for assistance under development company progams.

(b) *Credit requirements.* Section 120.103–2 (except paragraph (g)) of this Chapter also apply to development company assistance.

(c) *Eligible concerns.* A development company loan may be approved only to assist an identifiable small concern in accomplishing a sound business purpose. Whether the small concern is a proprietorship, partnership, or corporation is not a determining factor with respect to eligibility. A business may qualify as small, provided it meets the requirements of Part 121 of this Chapter.

(d) *Eligibility of passive small concerns ("alter ego").* A concern is ineligible if it is a passive business (i.e. one not requiring a regular and continuous activity): *Provided, however,* That such passive small concern may be assisted if the applicant acquires the plant with the proceeds of a 503 loan and leases it to an otherwise eligible small operating concern, and all of the following conditions are met;

(1) The applicant concern is a business that is organized for profit.

(2) The operating small concern is an eligible small business and the proposed use of proceeds would be eligible for such assistance if the operating small concern were the owner of the property that is owned or to be owned by the applicant.

(3) The proceeds of the loan to be used to benefit directly such applicant will be used only to acquire or improve real or personal property for the use of such operating small concern of the entire facility.

(4) The ownership interest(s) in the applicant shall be completely identical with and in the same proportion as the ownership interest(s) in such operating small business concern, and this identity of interests shall remain unchanged until the 503 loan is repaid in full or sooner if SBA gives approval to a change.

(5) Collateral includes an assignment of the lease between the applicant and the operating small concern and a lien on the property itself. The lease shall be for a term of not less than the term of the 503 loan.

(6) The operating small concern must be either a guarantor or co-borrower, and the owners of the operating small concern and of the applicant must also guarantee the loan.

(7) The operating small concern must lease the entire facility and may sublease a part under conditions set forth in § 108.503–4(a).

(e) *Leasehold improvements.* In order to be eligible for development company assistance to construct or modify a facility on leased land, (except as in paragraph (d) or if the land is owned by the development company) the remaining term of the lease must be of such duration so as to be tantamount to ownership of the asset, or the remaining term of the lease must equal or exceed the greater of the useful life of the facility or the term of the debenture. In such instances, financing is permitted for the construction or conversion of a plant on said leased land: *Provided, however,* That the land owner allows the SBA to secure lien positions on the land and improvements sufficient to fully secure its exposure. Where granting a lien position is not possible because, for example, the lessor is a governmental or quasi-governmental entity, utility or trust, assistance may nevertheless be provided where there is

a valid, assignable lease with a remaining life two times the term of the debenture. In those instances where the remaining term of the lease is equal to or greater than the useful life of the facility and no lien on the property is obtainable, such financing may be considered if other collateral sufficient in value to fully protect the interests of government is offered.

(f) *Ineligible concerns.* A development company shall not assist a small concern:

(1) If such small concern is to be relocated and such relocation could result in a substantial increase of unemployment in any area of the country or could result in the small concern's avoidance of its obligations;

(2) If the loan is intended to finance a plant that is not located in the United States or its possessions;

(3) If the loan to be made with the proceeds of a debenture guaranteed by SBA will provide funds to an enterprise primarily engaged in the business of lending or investing; or to any otherwise eligible enterprise for the purpose of financing investments not related or essential to the enterprise. This requirement prohibits the granting of financial assistance to banks, life insurance companies, finance companies, factors, investment companies and other businesses whose stock in trade is money and who are engaged in placing capital or providing financing in a way intended to secure profits from its employment.

(g) *Other loan eligibility requirements.* Sections 120.101–2 and 120.102–1, 120.102–5, and 120.102–9 of this chapter shall apply to loans made or guaranteed under this part.

(h) *Availability of other financing.* Application for financial assistance will not be accepted for processing and no assistance may be extended unless the development company can demonstrate to the satisfaction of SBA that the desired financing is not available from non-Federal sources on reasonable terms. Evidence shall exist which indicates that such financing necessary to complete the project is not available to the small concern, on terms comparable to the development company programs contained in this Part.

§ 108.9 Participation with tax exempt financing.

A development company may use debenture or loan proceeds to make loans for projects also financed through obligations the income of which is exempt from Federal income taxes: *Provided, however,* That SBA's lien position shall not be subordinate to loans made from the proceeds of such tax-exempt obligations. Should the development company be authorized to issue such tax-exempt obligations, the SBA loan or debenture shall not be subordinated to such tax-exempt obligation.

§ 108.10 Savings clause.

The legality of transactions consummated pursuant to provisions of these regulations in effect at that time shall be governed thereby, notwithstanding subsequent changes. Nothing herein shall bar SBA enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

9. Sections 108.503 through 108.503–8 would be removed and a new centerheading "Assistance under Section 503", consisting of §§ 108.503 through 108.503–15 would be added to read as follows:

Assistance Under Section 503

§ 108.503 Program objectives.

(a) *Statute.* The relevant statutory provisions will be found at 15 U.S.C. 697.

(b) *Objectives.* The purpose of this program is to foster economic development in both urban and rural areas by providing a portion of long term fixed-asset financing for small business projects through the guaranty by SBA of debentures issued by 503 companies. In order to qualify for such guaranty, the 503 company must demonstrate to SBA's satisfaction that the project will have significant impact in its community. Subject to paragraph (c) of this section, each project shall achieve at least one of the following three economic development objectives:

(1) *Jobs.* To effect, at a minimum, one "job opportunity" per $15,000 of 503 debenture assistance. The job opportunity estimate shall be based on objective data and the basis for such estimate shall be submitted with the application for guaranty (SBA Form 1244). "Job opportunity" means:

(i) Full time (or equivalent) permanent employment created as a direct result of the project within two years of the sale of the debenture, or

(ii) Full time (or equivalent) permanent employment retained that would have been lost to the community but for the project.

(2) *Community or area development.* A project which is expected to stimulate other business development in the community, bring new income into the area, or assist the community in diversifying and stabilizing its economy. Applications for such projects shall be accompanied by written documentation demonstrating the community impact. Such project may be approved only if the average job opportunity costs for the 503 company's 503 portfolio do not exceed $15,000 per job opportunity.

(3) *National objectives.* A project which will result in increased productivity through the modernization of existing facilities necessary to retain jobs, expansion of exports, expansion of minority business development, assisting manufacturing firms (SIC codes 20–49), and assisting businesses in distressed areas as defined by the U.S. Department of Labor. Such project may be approved only if the average job opportunity costs for the 503 company's 503 portfolio do not exceed $15,000 per job opportunity.

(c) *Job opportunity average.* The 503 company shall maintain an average of at least one job opportunity per $15,000 of 503 financing. This average shall be based on 503 job opportunities actually provided within the first two years after the project is complete and shall be measured at the end of the 503 company's fiscal year.

(d) *Monitoring.* On an overall basis, the 503 company shall promote and carry out activities consistent with the aforementioned objectives. Each 503 company shall monitor the job opportunities provided by its 503 loans. Each 503 company shall report in its Annual Report the job opportunities actually provided by each project computed in accordance with paragraph (c) of this section, and shall justify an investment average in excess of $15,000 per job opportunity, setting forth measures to reduce such average (See § 108.503–3(f)(2)). The 503 company shall maintain, and have available in its records for SBA inspection, a certification from the small business concern assisted that supports the job opportunity figures which shall be based on its employment data.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the OMB under control number 3245–0071. Reporting and recordkeeping requirements in paragraph (c) have been approved by the OMB under control number 3245–0192. Reporting and recordkeeping requirements in paragraph (d) have been approved by the OMB under control numbers 3245–0192 and 3245–0074)

§ 108.503–1 Eligibility requirements for 503 companies.

(a) *General.* SBA is authorized to guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified development company. The full faith and credit of the United States is

pledged to the payment of all amounts so guaranteed. Such debentures (herein sometimes referred to as 503 debentures) will be issued within certain limits solely for the purpose of assisting identifiable small business concerns to finance plant acquisition, construction, conversion, or expansion, including the acquisition of land. Plant construction includes the acquisition and installation of machinery and equipment. For the purpose of this section, development companies qualified to participate in this program (herein referred to as "503 companies") shall be formally certified by SBA on the terms and conditions contained herein, consistent with the intent of Congress. To qualify, a development company must demonstrate to the satisfaction of SBA, each of the following.

(b) *Organizational requirements.* The purpose of a 503 company shall be to foster economic development in its area of operations; any benefits flowing to shareholders, members or other related parties shall be merely incidental to such purpose. Each 503 company shall be organized as a non-profit corporation under applicable laws and shall be in good standing. Those 503 companies organized on a for-profit basis and certified by SBA or those having an application for certification on a for-profit basis pending prior to the effective date of these regulations shall be allowed to continue as participants. Each applicant for certification and each 503 company shall demonstrate to SBA's satisfaction as a condition of such company's participation in the program that it has:

(1) *Management.* Adequate management ability in its Board of Directors, officers and professional staff to direct and administer its functions prudently. An executive director or other person managing day-to-day operations is considered an officer of the 503 company. Legal and accounting functions may be contracted out.

(2) *Board of directors.* The Board of Directors shall be composed of individuals are are involved in the economic development of the area of operation and chosen from the membership by the stockholders or members to represent at least three of the four elements specified in paragraph (d)(2) of this section. However, no single element may control. The board members shall be responsible officials of the organizations they represent and at least one of these directors must possess commercial lending experience. Such board shall meet at least quarterly to make management decisions for the 503 company, and shall be responsible for the loan making and servicing decisions of the staff, as specified in paragraph (d)(3) of this section. Regardless of the number of board members, a quorum of such Board shall never be less than five members. For a quorum, one member must possess commercial lending experience or the 503 company must document that a commercial lender, or loan review committee including commercial lender(s), has favorably recommended approval of loan or servicing actions.

(3) *Professional staff.* Each 503 company shall have a full-time professional staff. The number of personnel may vary but there must be at least one qualified person available during regular business hours. Such staff shall be adequate and qualified by training and/or experience satisfactory to SBA to market the 503 program throughout its area of operations, package and process loan applications, assist in closing loans, and service the 503 company's loan portfolio. The marketing, packaging, processing, and servicing functions may be contracted out only if those performing the functions have prior related experience and training and are qualified individuals or organizations who reside or do business in the 503 company's area of operation. Any contract for these functions shall be approved annually by SBA and shall prohibit self serving actions which would increase costs to a small business borrower.

(4) *Management service.* A 503 company shall have the ability to provide, or cause to be provided, management advice and services to small concerns.

(5) *Financial capability.* A 503 company shall have the ability to sustain its operations on a continuous basis from reliable sources of funds, such as income from services rendered, contributions from government or other financial sponsorship or from the 503 company's capital. Applicant shall submit with its application (SBA Form 1246) a budget for the 503 company's operations approved by its Board of Directors which demonstrates that adequate resources will be available to perform the 503 company functions. Where the professional staff functions are provided by a 503 company's affiliate as defined in Part 121.3(a), the approved budget of such affiliate may be substituted.

(c) *Area of operations.* (1) A 503 company shall be certified to operate in a defined area which shall not exceed the boundaries of its State of incorporation: *Provided, however,* That such company may (i) operate in more than one State if a state line bisects a contigous economic area, as determined by SBA, in which case such company may operate within such area, or (ii) with SBA prior approval expand its area to include a Territory or possession of the United States.

(2) The proposed area of operation shall be sufficient to support the level of activity prescribed by § 108.503–3(c) but not greater than can be sustained by their membership and staff, and as permitted by this subsection. An applicant shall demonstrate the need for its services in its proposed area of operation to SBA's satisfaction. Such showing shall discuss why another 503 company is needed in a given area if a 503 company already operates there, provide a plan to avoid duplication or overlap, and demonstrate how the applicant proposes to meet the three objectives specified in § 108.503(b) without specialization in a particular industry or form of enterprise. The applicant shall also provide evidence that it will receive the active support of the government for its area, e.g. city government for citywide 503 companies, county government for countywide operations, etc.

(3) There shall be no limit on the number of citywide, county, or multi-county 503 companies per State, subject to paragraphs (c) (1) and (2) of this section: *Provided, however,* That no State shall be permitted more than one statewide 503 company.

(4) Application for expansion of the area of operations. (i) Application for expansion of area of operations shall be by written request to the SBA District Office or Branch Office serving the area in which the 503 company's headquarters are located, containing the following:

(A) Definition of the new area of operation.

(B) Justification of the need for expansion to the new area, including:

(*1*) Identification of existing 503 companies in area;

(*2*) Description of the services the 503 company can provide that others are not providing, and

(*3*) Description of the adequacy of the 503 company's staffing to serve the proposed area.

(C) A list of proposed members, by sub-area and groups as proposed.

(D) A certified copy of the Resolution of the Board of Directors to expand as proposed.

(E) A projection of the 503 company's activity in existing and new areas for the next two years.

(ii) Prior to approval, SBA shall provide notice to all 503 Companies

presently servicing the proposed area, allowing 30 days for comment.

(iii) A 503 company proposing to expand shall also provide public notice as set forth in § 108.503–2(b).

(d) *Membership.* The 503 company must be representative of the State, or subdivision thereof, in which the company operates. Evidence of such representation shall include the following:

(1) The 503 company must have at least 25 members or stockholders. Members or stockholders must be geographically representative of the 503 company's area of operations. No person or concern may own or control more than ten percent of the 503 company's stock or voting membership.

(2) The membership must be representative of the following four groups:

(i) *Government* representation must be from the level of government corresponding to the area of operations, unless prohibited by law. Such representation shall be from the government organization responsible for economic development functions. For example, a multi-county 503 company shall have representation or evidence of support from each county government or from a regional government council encompassing its area of operation, and a statewide 503 company shall have representation or evidence of support from the State government department responsible for economic development. Where prohibited by law, another form of active government participation satisfactory to SBA may be chosen. A county or multi-county 503 company should also have representation or evidence of support from the major cities in its proposed area. Multi-county 503 companies certified by SBA prior to the effective date of these Regulations shall have 18 months from the effective date of these Regulations to comply with this requirement.

(ii) *Private-sector lending institutions* representative of the area of operation such as banks, savings and loan institutions and others in the business of providing commercial long-term fixed asset financing;

(iii) *Community organizations* such as chambers of commerce operating within the area of operations, foundations, trade associations, colleges, universities and other organizations dedicated to economic development;

(iv) *Business concerns* that are representative of the area and the business population within the area.

(3) Local 503 companies may have a representative in the membership of broader based 503 companies (e.g., Statewide or Multi-county) that include the local 503 company's area of operation.

(e) *Permissible functions of a 503 company.* A 503 company shall provide financial assistance in participation with SBA only under Title V of the Small Business Investment Act and this Part. Such company may also help small concerns obtain other assistance from SBA by preparing loan applications, facilitating management and procurement assistance, and obtain assistance from other government and non-government programs. 503 companies are encouraged to marshall resources for the benefit of small business in a manner that will result in community economic development. A 503 company is not prohibited from participating in the 501 or 502 loan program if such company meets the qualifications set forth in § 108.501 or § 108.502. A Small Business Investment Company (SBIC) licensed by SBA may not be certified as a 503 company.

(f) *Required functions of a statewide 503 company.* A 503 company operating on a statewide basis shall comply with the eligibility and operational requirements for all 503 companies. In addition, such company shall:

(1) Foster economic development throughout the State.

(2) Demonstrate its compatibility with and relationship to existing 503 companies and;

(3) Provide development company assistance to those areas not being served by a 503 company.

(g) *Prohibition.* No officer, director, or manager of a 503 company may be an officer, director or manager of any other 503 company, except that the Board of Directors of a 503 company covering a broader area of operations may include a member or director of a local 503 company within the area of operations.

(Reporting and recordkeeping requirements in paragraph (a) have been approved by the OMB under control number 3245–0071. Reporting and recordkeeping requirements in paragraphs (b), (c), and (d) have been approved by the OMB under control number 3245–0073. Reporting and recordkeeping requirements in paragraph (c) have been approved by the OMB under control number 3245–0192)

§ 108.503–2 Certification.

(a) *Application for certification.* Application for certification as a 503 company shall be submitted on SBA Form 1246 hereby made a part of these regulations, to the SBA field office serving the area in which the prospective 503 company's headquarters are located. The field office shall forward the application and its recommendation, through the Regional Office, to the Director, Office of Economic Development, for final determination of eligibility. Qualified companies shall receive a certificate evidencing eligibility for participation in this program.

(b) *Public notice.* The proposed 503 company shall publish a notice in a newspaper of general circulation in the city, county or counties of the proposed area of operation, and shall furnish a certified copy to SBA within 10 days of the date of publication. Such notice shall include such appropriate information including the name and location of the proposed company, its purpose and area of operation, and the names and addresses of its officers, directors, and members. The public shall be afforded reasonable opportunity for the submission of written comments to the local SBA office.

(c) *Transfer and surrender of certificate.* A Certificate may not be transferred without SBA's prior written approval. Request for approval shall be accompanied by a plan to transfer the 503 company's portfolio to another 503 company or a participant in another SBA lending program for servicing. Upon receipt of the 503 company's request for transfer or in the event the 503 company surrenders its Certificate to SBA, SBA may conduct an examination or investigation of its affairs pursuant to § 310 of the Small Business Investment Act as amended. The 503 company's name will be removed from the published list of 503 companies.

(Reporting and recordkeeping requirements in paragraph (a) have been approved by the OMB under control number 3245–0073. Reporting and recordkeeping requirements in paragraphs (b) and (c) have been approved by the OMB under control number 3245–0192)

§ 108.503–3 Operational requirements for 503 companies.

(a) *Responsibilities.* A 503 company shall: (1) Offer its services to the business community in its area of operation and cooperate with financial institutions; (2) package and process loan applications; (3) close and service loans; (4) offer management services and (5) maintain the eligibility requirements set forth in § 108.503–1.

(b) *Diversified 503 Loan Portfolio.* A 503 company shall not concentrate its 503 loan portfolio in any one industry or type of business nor shall such portfolio be concentrated in new businesses. A "new business" is an entity which, together with any predecessor of such entity, has been in business for less than 2 years.

(c) *Level of activity.* In order to meet the needs of small business in its area of operation, a 503 company shall conduct active operations. For the purposes of this section, such company shall be presumed to be inactive if, during any full fiscal year, it has not provided financing under Title V of the Small Business Investment Act to at least two small concerns: *Provided, however,* That written justification for inactivity, acceptable to SBA, may rebut the presumption. Examples of acceptable justification may include recent entry into the program, a large number of small concerns assisted in the preceding fiscal year, or demonstration to SBA's satisfaction that the 503 Company has achieved its goals and has had a significant impact on its operating area.

(d) *Records.* The 503 company shall develop a system to ensure the following information and documents relating to its 503 loan portfolio are available for review at its principal office:

(1) A separate file for each 503 loan which shall contain all documents and material relating to the loan application submitted to SBA including the loan authorization and all correspondence relating to such loan prior to closing; all documents relating to the loan closing, including documents relating to the sale of debentures, evidence of the 503 company's injection and the amortization schedules; financial statements of the small concern, related correspondence, evidence of field visits, conditions of the collateral, and evidence of payment of taxes and insurance, and other items that have been reviewed.

(2) Rules for records and reports under § 108.5 also apply.

(e) *Accounting treatment for 503 loans and debentures.* For accounting purposes, a 503 company shall classify a 503 loan as an asset and a 503 debenture as a liability. Interest on the loan shall be income and interest on the debenture shall be an expense to the 503 company. The Reserve Account established by the Central Fiscal Agent (CFA) (See § 108.503–11) plus all interest earned thereon shall be classified as trust fund receipts which are a liability of the 503 company owed to the small concern. There shall be a corresponding long term asset equal to the aggregate of the Reserve Account. Interest earned on the Escrow Account established by the CFA is to be treated by the 503 company as a funded reserve for loss. Accordingly, the asset will be reflected as a noncurrent asset and the liability will be reflected as a trust fund receipt. At the discretion of SBA, the Reserve Account and interest on Escrow Account will be applied to delinquent accounts. Amounts in the Reserve Account that exceed the requirement established by SBA (see § 108.503–11 (b) and (c)) will be returned to the borrower or applied to the outstanding loan balance.

(f) *Reporting requirements.* (1) Each 503 company shall submit to the SBA field office serving the area where its headquarters are located, within 90 days after the end of its fiscal year, an annual report, in duplicate, containing financial, operational, management, and other information. SBA may require, within a stated period, additional or interim reports of a similar nature. The Report shall be prepared in accordance with the Guide for the Preparation of the Annual Report (SBA Form 1253). The financial statements contained in the annual report shall accompany a report of an opinion audit conducted in accordance with generally accepted auditing standards and submitted by a qualified independent public accountant; *Provided, however,* That financial statements of 503 companies with an outstanding portfolio of 503 loans less than $4 million may be submitted on no less than a "review" basis, as defined in "Statements on Standards for Accounting and Review Services #1 (published by the American Institute for Certified Public Accountants).

(2) The operational section of the Annual Report shall contain an assessment of needs and resources available as well as an explanation of the 503 company's 503 loan activity and other accomplishments for the year then ended and plans for the next year.

(3) Any change in stockholdings or membership in a 503 company, its board of directors, or in the information affecting the character status of the company (see § 108.4(c) and § 108.5) shall be promptly reported to SBA. In addition, Statements of Personal History (SBA Form 912) and personal resumes shall be filed on all new officers and directors and professional staff of a 503 company. Personal resumes for directors may be waived. Any changes in the 503 company's professional staff shall be reported in writing promptly to the SBA office serving the area of operations.

(4) SBA shall not process 503 loan applications from a 503 company while a required report is outstanding or, in the opinion of SBA, incomplete.

(5) See also § 108.503–13(b).

(g) *Restriction on equity participation.* The 503 company may not provide assistance to a small concern in which either such 503 company or its associates (as defined in § 120.2–2 of this chapter) own an equity interest, nor may a 503 company or any of its associates acquire an equity interest in any concern assisted by such 503 company.

(h) *Substitution of a 503 company.* A 503 company in good standing may assume all or part of the portfolio of another 503 company within its area of operations or contiguous thereto where the original 503 company is unable or unwilling to service its portfolio and such assumption is approved by SBA. An assumption shall not be approved if the transferee does not have a demonstrated capability to service such loans. See §108.503–2(c).

(Reporting and recordkeeping requirements in paragraphs (c), (d), and (f) have been approved by the OMB under control number 3245–0192. Reporting and recordkeeping requirements in paragraph (f) have been approved by the OMB under control number 3245–0178. Reporting and recordkeeping requirements in paragraph (f) have been approved by the OMB under control number 3345–0074)

§ 108.503–4 Project eligibility.

(a) *Eligible projects.* The proceeds of 503 debentures are to be used for the purpose of assisting identifiable small concerns to finance plant acquisition, construction, conversion, or expansion, including the acquisition of land. Plant construction includes the acquisition and installation of machinery and equipment. Each project must comply with § 108.503(b). Section 120.101–1 (b), (c) and § 120.130–2 and § 120.107–7 of this Chapter also apply. Up to fifteen (15) percent of the total project may be leased if (1) the project is to construct a new facility, (2) reasonable projections of growth indicate the applicant concern will need additional space within three years and (3) it is not feasible to build an addition to the building in the future. In purchasing existing facilities, at least 51% of the space must be occupied by the applicant concern and the balance may be leased to another concern, provided that proceeds from the 503 loan are not used to remodel or convert the rental space.

(b) *Ineligible projects.* Ineligible projects include, but are not limited to:

(1) Those whose purpose is to finance the acquisition, construction, improvement, or operation of real property which is, or is to be, held primarily for sale or investment and is not to be used in connection with the applicant's otherwise eligible business.

(2) Assets so limited in potential use or marketability that they could not be resold in the event of failure of the borrower, or if sold, the price could result in a substantial loss on the 503 debenture. Such financing may be considered if other collateral sufficient

in value to fully protect the interests of government is offered.

(3) Applicant businesses of any kind, where the majority of owners, or the management does not have demonstrated management capability.

(4) Airplanes and automotive equipment (cars and trucks of any kind).

(c) *Restrictions*—(1) *Working Capital.* Proceeds from the sale of a 503 debenture may not be used for working capital purposes or to refinance prior obligations of the small concern, unless a portion of the funds are needed to replace expenditures made in anticipation of a 503 loan (see § 108.503–5(d)).

(2) *Statutory Ceiling.* Proceeds from the SBA 7(a) loan program shall not (i) be used to replace working capital invested in the 503 project by the small concern as the 503 company's injection, nor (ii) be used to finance part of the 503 project. No such loan shall be approved if the total amount outstanding for the benefit of any small concern from the Business Loan and Investment Fund established under Section 4(c) of the Small Business Act, exceeds $500,000.

(3) *Small Business Investment Companies (SBICs)* may (i) provide joint financing in projects, (ii) provide financing to the small concern who then invests in the project, or (iii) replace funds invested by the small concern, *provided:*

(A) such funds shall be considered to be from federal sources as defined in § 108.503–9(a), and;

(B) such funds shall be subordinated to the 503 loan, and;

(C) such funds shall not be repaid at a faster rate than the debenture.

§ 108.503–6 Eligible and ineligible uses of 503 loan proceeds.

(a) *Project cost.* Project cost shall include the fixed asset(s) to be financed and professional fees directly attributable and essential to the project (e.g. surveying, engineering, architectural, title insurance and related costs, etc.). Administrative costs (reserve account, processing fees etc.), while not included in project cost, may be included in the 503 debenture amount (see § 108.503–9(a)(2)). For the purpose of determining the total project cost, eligible costs include those necessary to acquire, construct, convert or expand assets, including but not limited to: land, site improvements (e.g. grading, streets, parking lots, utilities, landscaping), buildings, machinery and equipment, and remodeling/conversion of buildings.

(b) *Contingency reserve.* A contingency reserve not to exceed 10% of construction costs is allowable for projects involving construction. The debenture amount will be reduced in $1,000 increments by the amount that the unused contingency fund exceeds 2% of the debenture amount.

(c) *Ineligible costs.* The following costs shall not be construed as part of the project cost under the 503 program and they may not be financed by the 503 debenture:

(1) Management services. While a small concern may engage a management firm for continuous assistance or counseling, the cost is ineligible for purposes of 503 project cost determination.

(2) Financing costs and fees (e.g. finders fees, commitment fees, application fees, origination fees, etc.) whether on the 503 loan or on the private sector loan.

(3) Cost and fees associated with tax exempt financing such as trustee fees, underwriting fees, advertising costs and interest thereon.

(4) Franchise fees and other costs that do not contribute directly to the physical asset.

(d) *Expenditures made in anticipation of a 503 loan.* When an expenditure is made in anticipation of a 503 loan prior to notice to SBA, it may not be included in project cost unless the applicant files a written notice with the 503 company and SBA within 60 days after expenditure. When notice is given to SBA prior to an expenditure, there is no time limitation

(Reporting and recordkeeping requirements in paragraph (d) have been approved by the OMB under control number 3245–0192)

§ 108.503–8 Costs which may be charged to the small concern by the 503 company.

(a) *Charges and fees.* The following charges or fees on the 503 loan are permitted:

(1) Administrative costs of the loan. These costs may be recovered by charging a processing fee not to exceed one and one-half percent (1.5%) of the amount of the debenture, payable at closing. These costs shall cover loan packaging, processing, and other administrative functions performed by the 503 company's non-legal professional staff through loan closing.

(2) Legal fees related to loan closing: *Provided, however,* That legal fees of counsel representing the 503 company in excess of $2,500 shall be borne by the 503 company unless approved by SBA in writing. Such fees shall be based on time and hourly charges and shall be collected by the 503 company and paid to its closing attorney.

(3) A periodic service charge not to exceed 2 percent (2.0) per annum on the original outstanding balance of the 503 loan: *Provided, however,* That a service charge in excess of one-half of one (0.5) percent shall require the prior written approval of SBA, based on evidence satisfactory to SBA, of substantial need.

(b) *Deposits.* A 503 company may require a maximum deposit of $1,000 or 1 and ½% of the amount of the 503 debenture, whichever is less, at the time it accepts an application for processing. A written agreement shall specify that the small concern shall receive a refund of the deposit when the 503 debenture proceeds are disbursed by the Central Fiscal Agent (see § 108.503–11) if the loan is approved, or within 10 days of denial if the loan is not approved. If the small concern decides to withdraw its application prior to funding, the 503 company is authorized to deduct administraive costs incurred in the packaging and processing of the loan request that are reasonable, necessary and documented before refunding any balance of the deposit.

(c) *Additional charge for private sector financing.* 503 companies may charge a one-time fee not to exceed 1½% of the non-Federal permanent financing (exclusive of purchase money mortgages and 503 company injection) for services actually rendered by the 503 company pursuant to a written agreement setting forth the services to be performed by the 503 company. This amount, which is not included in eligible project costs, may be paid by the private sector lender or the small concern, but not both.

(d) *Disclosure of charges to SBA.* The loan application submitted to SBA by the 503 company shall disclose the full amount of all fees and charges, together with names of the recipients and a description of the services rendered.

(Reporting and recordkeeping requirements in paragraphs (a) and (b) have been approved by the OMB under control number 3245–0192. Reporting and recordkeeping requirements in paragraph (d) have been approved by the OMB under control number 3245–0071.)

§ 108.503–7 Interim financing.

(a) *Certification of project completion.* Interim financing, except for that portion provided by injection, may be necessary for those projects involving construction or significant remodeling. Except as provided in paragraph (c) of this section, projects financed in part by a 503 loan must be completed in accordance with terms and conditions of the authorization before SBA issues its guarantee of the 503 debenture. Following completion of the project, the interim lender shall certify to the 503 company that, to the best of its knowledge, no adverse change in the condition of the small concern has

occurred since the issuance of the 503 authorization. The small concern shall certify to the 503 company that there has been no change in the condition of the small concern and shall furnish current interim financial statements. Before SBA issues its guaranty of the 503 debenture, the 503 company shall issue an opinion that to the best of its knowledge no adverse change has intervened since SBA approval, including but not limited to:

(1) Deterioration of the borrower's financial condition to the extent that it would endanger the borrower's ability to meet debt service on the 503 loan.

(2) Fraud or misrepresentation as defined by § 108.7(a)(2) of this Part by the small concern in the loan application and financial exhibits submitted to SBA.

(3) A filing under the Bankruptcy Code by or against the small concern.

(4) Assignment of the small concern's assets for the benefit of its creditors.

(5) Receivership of the small concern, imposed by a third party creditor.

(6) Forfeiture of the corporate charter of the small concern.

(7) Discontinuance of the business.

(b) *Source of interim financing.* There are no restrictions on the source of interim financing provided:

(1) The terms and conditions of such financing are acceptable to SBA; and

(2) The interim lender is not associated with the small concern. (See § 120.2–2 of this chapter.)

(3) If the interim lender lacks the experience or qualifications to monitor construction and/or progress payments properly, the SBA may require the interim loan to be managed by a third party such as a bank or professional construction manager.

(4) A 503 company with adequate financial capacity may provide interim financing and shall not be restricted by § 108.503–6.

(c) *Use of construction escrow account.* If acquisition of machinery and equipment or other portions of a project (e.g. a parking lot) represents a relatively minor portion of the total project cost and it has been contracted for delivery at a specified price and date, but cannot be installed or delivered prior to acquisition or completion of the plant, the 503 debenture may be sold and the proceeds authorized for acquisition of such assets may be held in escrow by the Central Fiscal Agent (see § 108.503–11) or a local title insurance company or bank. After approval by the 503 company and the SBA, disbursement from such accounts shall be supported by invoices and made payable jointly to the small concern and the supplier in order to assure authorized use of debenture proceeds. Funds at a local institution remaining undisbursed after 1 year shall be returned to the Central Fiscal Agent.

(Reporting and recordkeeping requirements has been approved by the OMB under control number 3245–0192)

§ 108.503–8 Private sector financing.

(a) *General.* The maximum private participation shall be required in each project. Financing for at least fifty percent of the cost of each project, as defined in § 108.503–5, shall be derived from non-Federal sources, which are not associates of the small concern, as defined in § 120.2–2 of this chapter. No more than half of that non-Federal financing may be derived from other Government sources: *Provided, however,* That obligations issued by a governmental unit, the income of which is exempt from Federal income taxation and which are not backed by the credit or taxing power of a governmental unit, shall be deemed non-governmental. (See § 108.9)

(b) *Terms of private sector financing.* (1) The maturity of the non-Federal or private sector financing shall be at least seven years when the debenture is for a term of 10 years (i.e. for machinery, equipment, and leasehold improvements) and the greater of ten years or half the maturity of the 503 debentures for all other purposes. Balloon payments must be justified in the loan report and clearly identified in the loan authorization. Under no circumstances may a balloon payment be due in less than 10 years. The SBA must determine in writing that the balloon payment will not adversely affect the small concern's ability to satisfy its financial obligation to SBA.

(2) If private sector financing is subordinate to the 503 loan, prepayment shall be permitted only with prior SBA written approval and where, in SBA's opinion, it will substantially benefit the small concern.

(3) SBA shall not participate in a financing unless the interest rate on the non-Federal and/or private sector financing is legal and reasonable.

(4) SBA shall not participate in a financing unless the terms and conditions of the private financing are acceptable to SBA.

(5) SBA shall not participate in a financing unless the private lender has the capacity of or has arranged for servicing adequate to protect SBA's interests.

(6) The non-Federal or private lender shall agree to notify SBA in writing within 30 days after a default and 30 days prior to a foreclosure sale.

(Reporting and recordkeeping requirements have been approved by the OMB under control number 3245–0192)

§ 108.503–9 503 debenture financing.

(a) *Application.* Upon application (SBA Form 1244) to the field office serving the area where the small concern is located, SBA may guarantee debentures (SBA Form 1242) of the 503 company. The proceeds of such debenture shall be used to finance part of a fixed asset project for a small concern on either a loan or lease basis subject to the following conditions:

(1) *Purpose.* Subject to § 108.503(b), such debenture is issued for the purpose of assisting an identifiable small concern in accomplishing a sound business purpose in compliance with the regulations of this Part.

(2) *Amount.* The aggregate amount of such debenture shall not exceed the amount of the loan or loans to be made from the proceeds of the debenture other than any excess attributable to the permitted administrative costs (as specified in § 108.503–5) of such loan. The minimum amount 503 debenture that may be guaranteed by SBA shall not be less than $50,000 unless SBA determines that a smaller debenture is reasonable and necessary. In no case shall a debenture be less than $25,000.

(3) *Interest rate.* The interest rate on 503 debentures shall be a rate determined by the purchaser, but not less than a rate determined from time to time by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable U.S. obligations with comparable maturities. Such rate can be obtained from the appropriate SBA field office.

(4) *Maturity.* The maturity of the 503 debenture shall be 15, 20, or 25 years, except that debentures issued for the purchase of machinery, equipment, or leasehold improvements may be for a term of 10 years..

(5) *Subordination.* SBA may permit the subordination of the 503 debenture(s) to any other debt or obligation of the 503 company: *Provided, however,* That any debt or obligation incurred by such company to satisfy the injection requirement (§ 108.503–10) shall be subordinated to the 503 debenture. (See also § 108.9.)

(6) *Multiple loan debenture.* A 503 company that has demonstrated management ability, adequate financial capacity, and has shown an active use of this program may, with SBA Central Office prior approval, be allowed to issue a 503 debenture to fund more than one loan.

(7) *Collateral.* All loans to small concerns provided from the proceeds of a 503 debenture shall be so secured (as determined by SBA) as to reasonably assure repayment. SBA shall require that the 503 company's injection pursuant to § 108.503–10 be subordinated to the loan made from the proceeds of the 503 debenture. In the event of default on the debenture, the liability of the 503 company shall be limited to all payments made by the small concern to the 503 company and the collateral securing the defaulted loan. All collateral shall be insured against such hazards and risks as SBA may require and the insurance policies shall provide for notice to the 503 company and to SBA in the event of their impending lapse.

(8) *Proof of use of proceeds.* At the time of closing of the debenture, the 503 company shall submit evidence satisfactory to SBA that the proceeds will be used in accordance with the statutory purposes. Such evidence shall include, but not be limited to a certification (SBA Form 1429) that proceeds will be used for eligible project costs and, if the Plant is owned by the development company, proof that the small concern has the right to use the Plant for at least as long as the term of the debenture.

(9) *503 loan conditions.* (i) A 503 loan may not exceed the lesser of forty percent of total project cost (as defined in § 108.503–5), or an amount which, together with the outstanding balance of all other SBA financings to any one small business concern and its affiliates under Section 7(a), 15 U.S.C. 636(a), does not exceed $500,000: *Provided, however,* That for good cause shown, SBA may authorize a 503 loan up to fifty percent. Such cause shall be deemed to exist if a project meets all three objectives of § 108.503(b) and it can be demonstrated to SBA's satisfaction that without such authorization the project would be lost to the community.

(ii) Each loan to be made from the debenture proceeds shall be approved by SBA.

(iii) The terms and conditions shall be sufficient to assure timely payments by the 503 company on the debenture. Payments received after the 15th of each month shall be subject to a late payment fee equal to 5% of the late amount or $100, whichever is greater, payable to the CFA for remittance to holder. Such amount shall be assessed for each month the payment is not made. Late payments will not be accepted unless accompanied by such late payment fee.

(10) *503 lease conditions.* All conditions applicable to 503 loans set forth in this part shall be equally applicable to the leasing of assets by the 503 company to a small concern. In addition, the lease agreement between the 503 company and the small concern shall be for a term at least as long as the term of the 503 debenture; and the rent paid by the small concern during the term of the debenture shall be sufficient to retire principal and interest on all debts incurred by the 503 company in financing this project, and all related expenses, and may include a reasonable return on the 503 company's investment. (See also § 108.503–6 of this part.)

(11) *Loan/Debenture prepayment.* If the small concern exercise its right to prepay the 503 loans, a 503 company shall prepay the 503 debenture in an amount sufficient to repay the outstanding balance of the debenture with interest and any premium that may be required by the holder.

(b) [Reserved]

(Reporting and recordkeeping requirements have been approved by the OMB under control numbers 3245–0192 and 3245–0071)

§ 108.503–10 503 company injection.

The 503 company shall be required to inject into each project an amount equal to at least ten percent of the project cost, as defined in § 108.503–5 (exclusive of administrative costs). Such injection may come from any source, including the borrower small concern and such injection shall be subordinated to the 503 debenture. For the purpose of this paragraph, the 503 company may inject cash and property valued at fair market value received as a contribution to the 503 company or in exchange for shares of non-voting stock issued by the 503 company. Contributions or loans to the 503 company for such company's injection into a project may not be conditioned on the granting of voting rights, stock options, or any other interest in the 503 company or the small concern. The interest on such injection shall not exceed a rate which is legal and reasonable, and such injection shall not be repaid at a faster rate than the 503 loan.

§ 108.503–11 Central fiscal agent.

(a) *Services of a Central Fiscal Agent.* SBA shall appoint a Central Fiscal Agent (CFA) to act for the 503 company as the disbursement, collection and payment agent for 503 debentures and loans. The 503 company shall, in consideration of SBA's guaranty of the debenture, contract with the CFA as its agent and abide by the CFA procedures established to receive and disburse proceeds from the sale of the debenture, to receive from the small concern 503 loan payments and remit such payments pursuant to SBA's instructions. Each small concern receiving a 503 loan shall abide by these CFA procedures. The CFA may charge a processing fee as well as a monthly service fee, payable by the small concern, which shall be in addition to the 503 company's servicing fee. The CFA service fee shall be negotiated pursuant to a contract between the CFA and SBA and shall be published from time to time in the **Federal Register.** In negotiating any changes in fees, the Agency will accept public comments on these notice and consider these comments in establishing these fees.

(b) *Accounts maintained by the CFA.* (1) Escrow Account. The monthly installment received from the small concern shall be placed in an interest bearing Escrow Account, subject to withdrawal to meet the required semi-annual payment on the 503 debenture.

(2) *Reserve account.* Upon sale of the debenture, an amount equal to two montly payments shall be placed in an interest bearing Reserve Account. The Reserve Account and any interest earned/accrued shall not be available to the small concern until the loan and the debenture have been fully paid: *Provided, however,* That when the balance of the account exceeds the outstanding balance of the 503 loan, such excess funds may be released to the small concern. In addition, sufficient funds from the Reserve Account may be released at the small concern's request to meet the small concern's Federal income tax liability relating to earnings on the Reserve Account if there is no shortage in the Reserve Account, and all monthly installments are current. A small concern may make this request through its 503 company to the appropriate SBA field office at least 45 days prior to the filing of its Federal Income Tax Return. Such requests shall not be processed in amounts of less than $100.00.

(c) *Reserve and escrow account balances.* Any balance in either or both the Reserve and Escrow Accounts shall be used to make debenture payments in the event the small concern is delinquent in meeting its monthly payments. Any remaining balance in either Account shall be remitted to the small concern within 30 days after the 503 loan is paid in full.

§ 108.503–12 Loan closing.

The closing of the loan between the small concern and the 503 company is the responsibility of the 503 company. The debenture closing is the responsibility of the 503 company and the SBA.

§ 108.503–13 Servicing loans and debentures.

(a) *General.* The 503 company shall service the 503 loan according to the related instruments and the loan authorization until paid in full, subject to the conditions specified herein.

(b) *Specific servicing functions.* The 503 company shall conform to servicing standards of prudent lending. (1) The 503 company shall submit to SBA a quarterly written report on accounts in its portfolio which are sixty (60) days or more past due, explaining the reason(s) for non-payment, the steps that the 503 company is taking to bring the account(s) current, and advice regarding the payment status of all other financing involved in the project(s). Special interim reports on individual firms will be provided by the 503 upon request by SBA. (2) The 503 company shall review the financial statements, the small concern's payment of taxes and insurance, U.C.C. filings, and shall make field visits as necessary, or as requested by SBA. (3) Any other adverse trend, condition or information shall be reported to SBA promptly.

(c) *Prohibitions.* Without the prior written consent of SBA, the 503 company shall not: (1) Make or consent to any substantial alteration in the terms of any 503 loan instrument; (2) make or consent to release of collateral; (3) accelerate the maturity of any note; (4) sue upon any loan instrument; (5) waive any claim against any borrower, guarantor, obligor, or standby creditor arising out of any loan instrument; (6) directly or indirectly charge or receive any bonus, fee, commission, or other payment or benefit in connection with the making and servicing of any loan, except as authorized under this Part; (7) increase the amount of any prior lien on property securing the 503 loan; (8) require or obtain any funds, certificates of deposit, compensating balance not under the unrestricted control of the small concern, or any other agreement establishing any preference in favor of the 503 company. "Preference" as used herein, shall include but shall not be limited to any arrangement whereby the 503 company obtains a position superior to the position of SBA in the repayment of its injection pursuant to § 108.503–10.

(d) *Servicing fee.* The 503 company's monthly service fee (§ 108.503–6) may be accrued without interest but not collected by the 503 company in the event: (1) The small business concern's monthly payment is not made in a timely manner (within 30 days of due date); (2) the Reserve Account contains less than two full monthly payments; (3) other default by the small concern receiving assistance; or (4) of failure by the 503 company to comply with the reporting and servicing requirements contained in this Part. If the 503 company does not comply with the reporting and servicing requirement within 90 days from their respective due dates, such fees shall be paid to SBA.

(e) *Servicing deficiencies.* SBA shall provide written notice to the 503 company of any sevicing or collection deficiencies. Such notice shall state the deficiencies and action to be taken that will correct such deficiencies. Should the 503 company fail to take such action, expenses and administrative costs incurred by SBA to correct such deficiencies may be assessed to and must be paid by the 503 company computed on a daily basis, not to exceed $250 per day, *Provided, however,* That this amount shall be reduced by the amounts paid to SBA pursuant to subsection (d)(4) above.

(f) *Termination of fees.* If the 503 company persists in its failure to take corrective action pursuant to paragraph (e) of this section, SBA shall have the right, pending suspension or revocation pursuant to § 108.503–15(d), to take over servicing of all or part of the 503 company's portfolio or require the 503 company to assign all or part of its portfolio to another 503 company. In such event, the assignor 503 company shall have no rights to any further fees which shall be paid to the transferee. If SBA does the servicing it shall collect the fees. In addition, the 503 company's processing authority will be temporarily suspended.

(g) *Assumption of a 503 loan.* A 503 loan may not be assumed by another small concern without SBA's prior written approval. Such approval shall not be unreasonably withheld.

(h) *Deferments.* The SBA may allow a deferment of monthly payment(s) under the following conditions:

(1) All lenders to the project [see § 108.503–4(a)] shall agree to defer payments due them on their financing.

(2) In the event the SBA advances funds for semi-annual debenture payment(s), the small concern shall remain liable for all unpaid principal and interest. The portion of SBA's advance consisting of SBA's payment of interest on the debenture shall be added to the principal balance of the Note.

(Reporting and recordkeeping requirements have been approved by the OMB under control number 3245–0192)

§ 108.503–14 Liquidation of 503 loans and security.

When and as authorized by SBA, a 503 company shall participate in activities relating to foreclosure and liquidation of assets securing 503 loans.

§ 108.503–15 Oversight and evaluation; suspension and revocation.

(a) *Compliance audit.* Each 503 company shall be subject to periodic compliance audits conducted, supervised or coordinated by the SBA Office of the Inspector General. The 503 company shall make all books and records and other pertinent materials available for review and copying for purposes of the conduct of the audit.

(b) *Fees.* Except for the first audit, the 503 company shall be assessed for each audit based on an hourly rate prescribed by the SBA's Inspector General but not to exceed $35. SBA may waive the audit fee where the 503 company has less than $10 million in outstanding balances in 503 debentures or where such 503 company's operations have been suspended or are in receivership, or where a 503 company is audited more frequently than every three years.

(c) *Operational review.* Each 503 company shall be subject to an operational review by SBA. 503 companies with a portfolio of 5 or more loans shall be subject to at least an annual review. The 503 company shall cooperate with SBA by making its staff, records, and facilities available at the Agency's request.

(d) *Suspension and revocation of eligibility*—(1) *Violations.* SBA reserves the right to revoke the eligibility of any 503 company from participation in the program, or to immediately suspend temporarily the eligibility of any 503 company, in the case of a violation of law, SBA regulations including but not limited to the good character requirement of § 108.4(c), terms of a debenture or any agreement with SBA: *Provided, however,* That such revocation or suspension shall not invalidate any guarantee previously issued by SBA. Suspension and revocation proceedings for such purpose shall be conducted in accordance with the provisions of Part 134 of this Chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.033.

(Reporting and recordkeeping requirements have been approved by the OMB under control number 3245–0192)

(Catalog of Federal Domestic Assistance Program Nos. 59.013 State and Local Development Company Loans and 59.036 Certified Development Company Loans)

Dated: March 20, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85–15680 Filed 7–3–85; 8:45 am]

BILLING CODE 8025–01–M

federal register

Friday
July 5, 1985

Part VI

Department of Justice

Community Relations Service; Availability of Funding for Planned Secondary Resettlement of Haitian Entrants From Designated Urban Areas of South Florida

DEPARTMENT OF JUSTICE

Community Relations Service; Availability of Funding for Planned Secondary Resettlement of Haitian Entrants From Designated Urban Areas of South Florida

AGENCY: Community Relations Service (CRS), Justice.

ACTION: Notice of Availability of funding for grants to assist interested Haitian Entrants in Designated Urban Regions (DUR) of South Florida to resettle to favorable communities outside the State of Florida.

SUMMARY: This announcement governs the award of grants to public or private non-profit organizations or agencies, and under certain conditions, to for-profit organizations or agencies, to provide eligible Haitian Entrants currently residing in Designated Urban Regions of South Florida with an opportunity to relocate in a planned way, to communities outside the State of Florida which offer more favorable and long-term employment opportunities.

Planned Secondary Resettlement (PSR) differs from "secondary migration" in that PSR involves a considered assessment of the resettlement area prior to relocation, identification of employment opportunities in the areas of resettlement, delivery of comprehensive supportive services, and a coordinated transition from the area of recruitment to the area of resettlement with notification of appropriate government authorities and other pertinent organizations or entities.

DATE: Closing Date: 5:00 p.m., Eastern daylight time; August 20, 1985.

Proposals will be evaluated by an independent grant review panel on the basis of weighted criteria listed in this Notice. All funding decisions are at the discretion of the Director, Community Relations Service. Grants will be awarded subuject to the availability of funds.

Authorization: Authority for this activity is contained in Title V, Section 501(c) of the Refugee Education Assistance Act of 1980 (P.L. 96-422).

Available funds: Approximately $450,000 will be available for this grant program in Fiscal Year 1985. The Director estimated that these funds could support up to two grant awards at an average cost of $225,000 each. The anticipated range of financial support for these grants is $150,000 to $300,000 depending upon the distance between sending and receiving sites, the size of the populations to be resettled, the number of sending sites and receiving sites to be involved. These anticipated ranges are intended to serve as benchmarks only. These estimates do not bind the Community Relations Service to any specific number of grants or to any specific level of funding.

Future fiscal year funding for this grants program will be contingent upon Federal appropriations. If adequate funds are available, the Director, CRS, anticipates continuation of this program.

Awards normally will not exceed a 24 month program performance period for recruitment, resettlement, and ongoing services.

Eligible Applicants

Non-profit organizations incorporated under State law, which have demonstrated experience in the resettlement of or provision of services to Cuban/Haitian Entrants or similar populations, are eligible to apply for funds under this PSR program.

For-profit organizations, incorporated under State law, which have demonstrated experience in the resettlement of or provision of services to Cuban/Haitian Entrants or similar populations, and which can clearly demonstrate that only costs and not profits, fees, or other elements above costs have been requested, are also eligible to apply.

If an Entrant group or an organization representing Entrants interested in relocating to a favorable site wishes to participate in PSR, they are encouraged to establish linkages with an established non-profit or profit organization or agency which would act as the primary applicant.

Any combination of eligible organizations may join together to submit an application so long as one organization is clearly identified as the responsible applicant.

The geographical location of the applicant is not restricted to its selected areas of recruitment or resettlement; however, the applicant must be able to show that its network of local affiliates or its subcontractor(s) or subgrantee(s) will be able to effectively deliver services.

Eligible Client Population

Under the terms of this announcement, the eligible client population will consist of Haitians who:

1. Have not had a prior secondary resettlement opportunity.
2. Live or work within DUR I or II.
3. Fall within one of the following categories:

a. Domestic units comprised of two or more eligible, employable adults with dependent children.

b. Domestic units comprised of a single, eligible, employable adult with dependent children.

c. Single, eligible, employable adults without dependent children.

4. Meet the definition of Cuban/Haitian Entrant as defined below:

Definition of Cuban/Haitian Entrant

(A) A Cuban/Haitian Entrant is defined by Title V, Section 501(e) (P.L. 96-422) as:

(1) Any individual granted parole status as a Cuban-Haitian Entrant (Status Pending) or granted any other special status subsequently established under the Immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(2) Any other national of Cuba or Haiti—

(A) who—

(i) Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) Has an application for asylum pending with Immigration and Naturalization Service; and

(B) With respect to whom a final, nonappealable, and legally enforceable order of exclusion or deportation has not been entered.

Adult Haitians who do not meet the definition of Cuban/Haitian Entrant as defined above cannot be considered for participation in this program.

Other eligible adults who meet all the above criteria except for employability and are members of a domestic unit will be considered for participation in this program at the discretion of the Community Relations Service.

Priority will be given to the resettlement of domestic units with dependent children, especially domestic units in which all family members are Entrants. This assistance program will focus resources on the resettlement of eligible employable adults and their dependents.

Information used to determine the legal status and program eligibility of potential candidates for resettlement under PSR will be treated as confidential.

Recruitment Areas: Designated Urban Regions

Applicants may submit one application which addresses the recruitment, resettlement processes and program services for Entrants from one

or both of the designated geographical areas outlined below.

A maximum of three recruitment sites or areas may be selected within each Designated Urban Region (DUR) as outlined below, and a total of two resettlement sites may be chosen for relocation.

DUR I is defined as the geographic territory of Dade and Broward counties which includes and lies north of metropolitan Miami as far as and including Fort Lauderdale, and which lies east of the Florida Turnpike. Homestead and Florida City are *not* included in this geographic area as they are considered to be rural migrant areas.

DUR II includes the geographic territory of Broward, Palm Beach, Martin and St. Lucie counties which lies north of Fort Lauderdale and east of the Florida Turnpike, as far as and including Fort Pierce. Belleglade and Indiantown are *not* included in this geographic area as they are considered to be rural migrant areas.

An applicant may submit an application for Entrant recruitment within:

1. *DUR I*—with a maximum of three recruitment areas within DUR I and a maximum of two resettlement sites outside the State of Florida.

2. *DUR II*—with a maximum of three recruitment areas within DUR II and a maximum of two resettlement sites outside the State of Florida.

3. *BOTH DUR I AND DUR II*—with a maximum of six (6) recruitment sites (a maximum of three in each DUR) and a maximum of two resettlement sites outside the State of Florida.

Applicants must specify for which DUR they are submitting an application. If the applicant wishes to submit an application for recruitment and resettlement covering both DURs, only one proposal need be submitted.

If an applicant chooses to submit an application for recruitment from both DUR I and II, the applicant must submit separate, detailed recruitment and resettlement plans, following the programmatic guidelines outlined below, for each DUR and for each resettlement site.

A minimum of 25 eligible clients and a maximum of 50 eligible clients may be resettled in each resettlement site, if two resettlement sites are chosen. If only one resettlement site is selected, a minimum of 25 and a maximum of 75 eligible clients may be resettled in this single site.

It is expected that applicants will design their programs realistically so that the scope of recruitment and resettlement does not exceed the organizational capacity of the primary applicant and its subcontractor(s)/subgrantee(s) or local affiliates to perform the required services.

Awards for this grant program will be competitive for the recruitment within and resettlement from the DURs. Resettlement sites may receive clients from either DUR, if an applicant is awarded both DURs.

Supplementary Information

Purpose and Scope

The purpose of this announcement is to provide an opportunity for Haitian Entrants residing within designated urban regions of South Florida who have been unable to find full-tme, permanent employment to relocate to other areas of the United States that offer favorable prospects for employment. Clients are eligible for services for one year from the date they are selected for the program.

Planned Secondary Resettlement serves two major objectives:

1. To increase financial self-sufficiency among Haitian Entrants.

2. To ease the burden upon areas heavily impacted by Entrant populations while increasing the use of under-utilized communities.

Services provided under these grants will have the specific goals of assisting Entrants to attain self-sufficiency through a resettlement experience that focuses upon permanent employment and social adaptation to the site where Entrants are resettled. Each client will receive services for a period of one year from the date of selection for the program.

Characteristics of Resettlement Sites

It is expected that resettlement sites proposed for PSR will have demonstrably favorable economic and social conditions for Entrant resettlement. In general, the following conditions are required to be present in the proposed resettlement site:

- The availability of full-time permanent employment at skills levels appropriate to PSR clients.
- Safe and sanitary housing which is available and affordable to the Entrant.
- The capacity to provide needed services such as job placement, English language training opportunities and other social services on a timely and appropriate basis.
- An expanding job market in skill areas in which PSR clients would be qualified or could be trained.
- A minimum of racial discrimination or community tension likely to have an adverse effect upon Entrants.
- Available low-cost health care services.

The existence of a stable community of the same ethnicity as the Entrants or similar socio-cultural background is highly desirable, but not mandatory.

Resettlement supported by PSR grants must be directed to assisting Entrants to relocate to communities which provide significantly better opportunities for full-time, permanent employment of eligible adults than exist in their current communities of residence or work. No grants will be awarded to support resettlement in areas where the job market is insufficient to accommodate the relocated Entrants or where the unemployment rate is significantly above the national average.

CRS will not entertain proposals which include resettlement into states or areas impacted by Entrants unless the applicant can guarantee permanent, full-time employment and service delivery in such areas. Resettlement within the State of Florida is not permissible under this Notice.

Proposals designating other areas experiencing Entrant impact such as New York, New Jersey and California will be carefully evaluated as to their appropriateness as PSR sites.

Characteristics of Recruitment Areas

Recruitment areas must lie within the Designated Urban Regions, as previously outlined above. The term "area" rather than "site" is used as recruitment may either occur within the vicinity of a particular community or within a radius of the applicant's or subcontractor(s)'/subgrantee(s)' administrative office.

It is expected that applicants will provide a rationale for the selection of recruitment area(s) based upon:

1. The assessed needs of the Haitian Entrants in the area in terms of: (a) Available employment, (b) affordable housing, and (c) available social services.

2. The size and composition of Haitian populations in these areas.

3. The ability of the applicant to recruit effectively from these areas.

Application Contents

Program Design

The application should set forth in detail the following:

1. Organization/Agency Capability: An overview of the applicant agency, agency qualifications, and agency history including agency philosophy, goals, and history of experience with respect to the resettlement of and/or delivery of services to Entrants or similar populations. (A brief program

description and the number of clients served should be included.)

Identification of the organization(s)/agency(ies) proposed for participation in the PSR project in the recruitment areas within the DUR(s) and at the resettlement site(s); a description of their qualifications in relation to responsibilities; and the mechanism for coordination among these agencies.

2. Target Population: A description of the proposed resettlement population in terms of the criteria for acceptance into the program, the number of clients to be resettled at each resettlement site, and estimates of numbers expected to be recruited within the DUR(s).

3. Identification of Site(s): Identification of DUR(s); recruitment areas/sites within DUR(s) and the resettlement sites.

4. Management Plan: A plan which: (a) identifies the agency/organization which will have overall fiscal and program responsibility, (b) identifies the organizational structure and lines of authority, (c) describes the overall proposed staffing plan and staff qualifications for the entire project, and (d) includes a comprehensive plan for coordination of activities between the recruitment and resettlement components.

5. Program Phases: A narrative description of proposed program phases (recruitment, initial resettlement, and ongoing resettlement services), including a time-line (in months) or flow chart with milestones from start-up to termination, and a plan for the phased resettlement of Entrants into the resettlement community.

Recruitment Areas/Sites—Requirements and Program Services

The application should set forth in detail for each recruitment area/site:

1. The identification of the agency responsible for recruitment at each area/site, agency staffing patterns and agency qualifications.

2. A description of the characteristics of the selected recruitment areas/sites within the DUR and the basis for the selection.

3. A description of linkages with applicant organization and with agency(ies) responsible for resettlement site operations. A plan for the coordination of the delivery of services and continuity of services between the recruitment area and resettlement site(s).

4. A description of strategies for:
a. Client outreach.
b. Client recruitment.
c. Client selection.
d. Client retention in the area of recruitment.

5. A description of the criteria for selection based upon such criteria as:
a. Prior employment history.
b. Personal motivation.
c. Need.
d. English language ability.
e. Health.
f. Education.

6. A description of recruitment processing and intake procedures.

7. The proposed time table for the resettlement of Entrants upon acceptance into the program.

8. A description of the client case record.

9. A description of health screening activities for Entrants accepted into the program, including a plan for the treatment of any minor illnesses prior to resettlement.

10. A description of how the recruitment agency and resettlement agency will jointly develop individualized service plans which will set forth the services to be delivered at the site of resettlement.

11. A description of the process to provide orientation to clients about the resettlement site(s) and the available services at the resettlement site(s).

12. A plan for transporting clients from the recruitment area(s) to the resettlement site(s).

13. A plan for initial reception at the site(s) of resettlement.

Resettlement Site Program Design and Services

For each resettlement site, the application must set forth in detail the following:

1. Identification of the agency/organization responsible for resettlement; this agency's staffing patterns and its qualifications.

2. A detailed qualitative and quantitative assessment of the proposed resettlement community(ies) with particular regard to:

(a) Availability of immediate or imminent prospects for full-time permanent employment consistent with the skill levels of the participants.

(b) Current level of employment and unemployment in various job markets.

(c) Location of housing which is safe, sanitary, available and affordable to the Entrants.

(d) Availability of affordable health and mental health care services.

(e) Availability of supportive social services for the target population, including daycare.

(f) Availability of community:
1. Employment services.
2. English language training services.
3. Vocational training services.
4. Vocational English language training services.

(g) A description of the community, its racial, ethnic and sociocultural composition, including a description of existing refugee populations.

(h) Availability of educational services for dependent children.

(i) A discussion of the level of community receptivity regarding the Entrants to be resettled.

(j) A discussion of the presence or absence of an established Haitian population and/or established Haitian assistance association(s).

3. *Core Services*—these services will enable participating Entrants to meet basic transportation, food and shelter expenses during the initial resettlement period (usually 30 days and under extraordinary circumstances up to 60 days). The following core services are required to be provided to the client either in the form of a resettlement allowance or by direct payment of expenses by the resettlement agency:

(a) Reasonable transportation and moving costs from the site of recruitment to the site of resettlement.

(b) Living expenses during the initial resettlement period of time, including food, shelter, utilities and local transportation costs.

(c) One-time security deposits for housing and utilities.

(d) Essential furnishings/utensils.

(e) Stipends (in the absence of immediate employment income).

4. On-going Resettlement Services (provided during and after initial resettlement)—The applicant is required to set forth a detailed plan for the organization, delivery and coordination of services including:

(a) *Employment*—a plan for the development of employment resources prior to the arrival of clients; the job development, placement, upgrading services and job counseling activities.

(b) *On-the-Job Training*—a plan for developing options for on-the-job training, including subsidization of up to ½ of an Entrant's salary during a training period of up to 90 days, to an employer who guarantees job placement at the end of the training period.

(c) *Vocational Education*—fund for employed Entrants who wish to upgrade skills for employment mobility (this fund should not be used in lieu of employment).

(d) *English Language Training*—with an emphasis upon survival and vocational English Language Training.

(e) Orientation to the resettlement site and the community resources which are available to the clients.

(f) Individual and group counseling (costs associated with client legal

services are not allowable expenditures under this Notice).

(g) A plan to provide access to affordable health care services for up to one year, or until the Entrant has obtained medical coverage through his/her employer.

(h) Day care services for children that enables eligible employable adults to obtain and sustain employment.

(i) *Emergency assistance*—provision for one month's rent, food, transportation, utility payments etc., in cases of dire need.

(j) Crisis intervention services.

5. A description of the plan for tracking and monitoring client progress on a regular basis.

6. Development of a case record system which will include all significant decisions and events relating to the client, and, at a minimum includes the following information:

(a) Identifying data including family composition.

(b) Initial screening and intake forms.

(c) Case management plan developed in conjunction with agency responsible for recruitment.

(d) Case history/social history.

(e) Medical services, if available.

(f) Individual counseling plans.

(g) Program/case notes and incident reports.

(h) Evaluation and progress reports.

(i) Current employment data/information.

(j) Summary of program and client responsibilities signed by the Entrant.

(k) Copy of Form I-94.

(l) Referrals to other agencies.

(m) Final case report.

7. Identification of measures the agency will take or has taken, to assure and maintain community receptivity and support and/or reduce community opposition to the program.

8. Identification of voluntary and donated resources, including letters of intent from the agency or entity providing the resource.

9. Description of the local social service network.

10. A plan for program evaluation including identification of the evaluative criteria.

Administrative Requirements

Applicants are required to submit the following material as an addendum to the program proposal:

1. Agency Administration and Organization

(a) Agency organizational chart describing the agency as a whole and the organizational relationship of the proposed resettlement program to other agency programs.

(b) Comprehensive organizational chart of the proposed resettlement and recruitment components and their relationship.

(c) Copies of articles of incorporation.

(d) IRS status as a non-profit agency, if applicable.

(e) List of officers and board members, if applicable.

(f) List of professional affiliations and certifications.

2. Organizational Standards/Policies and Policies Regarding Clients

(a) Personnel handbook and standards of conduct.

(b) Statement regarding professional and agency liability.

(c) Copy of program rules/regulations.

(d) Copy of policy regarding the confidentiality of client information and records.

(e) Discussion of the method to be used to inform clients of program rules, regulations and policies, including the confidentiality of client information.

3. Staff

(a) Job/position descriptions and resumes (if individuals have been identified for certain positions) for all personnel to be hired for both the recruitment and resettlement components, including documented evidence of the availability of bi-lingual and/or bi-cultural personnel; (b) Resumes and qualifications of program consultants must also be included.

4. Community Support at Resettlement Sites

(a) Letters of program support from local political representatives, social service agencies, merchants, potential employers, etc. Letters should reflect writers' awareness of program's intent, potential federal funding source and location of project. Letters should also contain a recommendation or comment regarding the proposed resettlement program.

(b) Verification that the applicant has notified the applicable State Refugee Coordinator of the organization's intent to submit a proposal.

(c) A listing of service providers to whom clients will be referred, including name, address and description of service(s) to be provided.

Finance and Budget

Applicants are required to submit the following materials as an addendum to the proposal:

1. A copy of the latest financial audit of the applicant.

2. A description of the Financial Management System of the applicant.

3. A listing of other Federal, State, local or foundation grants or contracts, etc., being administered by the applicant. This material should include information regarding the funding source, grant or contract number, level of financial support, purpose of grant or contract, grant/contract performance period, and name, address and telephone number of grant and/or contracts officer (Federal, State or local).

4. Subgrants and/or Subcontracts.

(a) Identify all proposed services which are to be subgranted/subcontracted.

(b) Provide relevant background material regarding the proposed subgrantee/subcontractor.

(c) Provide letters from the proposed subgrantee(s)/subcontractor(s) indicating their commitment and the specific services to be provided.

Budget

The proposed budget will be examined by the Grants Officer to verify the costs data, to evaluate specific elements of costs and to determine if costs are necessary, reasonable and allowable under applicable statutes and regulations. The following budget structure should be used to provide appropriate costs breakdowns. Detailed costs justification should also be attached to the budget for each budget category:

Personnel

Show salaries and wages only. Fees and expenses for consultants should be included in line "other". The name and title, salary amounts and level of effort must be identified for each position. A current vitae is required for each position.

Fringe Benefits

Submit a current copy of the negotiated fringe benefit rate. If fringe benefits are applicable to direct salaries and wages and treated as part of the indirect cost rate negotiation agreement, leave blank.

Travel

Use only for travel (domestic) of employees on the grant. Include estimated cost breakout for airfare, per diem, number of days, number of persons traveling and purpose of travel. Travel for consultants should not go in this line, nor should local transportation (i.e., where no out-of-town trip is involved).

Equipment

Use only for non-expendable personnel property, which is defined as follows:

Non-expendable personal property means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. A grantee may use its own definition of non-expendable personal property provided that such definition would at least include all tangible personal property. Personal property means property of any kind except real property.

Each item of non-expendable personal property costing $1,000 and each item of general purpose equipment costing over $500 must be identified and explained (i.e., office equipment and furnishings which are usable for activities other than the technical, specialized aspects of the grant program).

Supplies

Include all tangible personal property except that which is included in the equipment line. Requests in excess of $500 per category of tangible personal property (supply) must be identified and explained.

Contractual

Use for procurement contracts (except those which belong on other line items such as equipment, supplies, and construction). It must not include payments to individuals such as stipends, consulting fees, benefits etc.

Renovation

Costs for alteration and renovation must be explained in detail.

Entrant Cost

All costs directly related to entrants such as stipends, and allowances, temporary housing, essentials, furnishings and utensils, food or food allowances, personal items, clothing, local transportation, assistance payments, medical services, etc., must be identified and explained.

Other

All direct costs not clearly covered in categories listed above i.e., consulting costs, local transportation, space and equipment rental, and van usage must be identified and explained. Request for any item identified in the Office of Management and Budget Circular (OMB A–122) which require approval by the CRS Grants Officer must be identified and explained. Costs for space rental should be identified by square feet. Also identify utilities and breakout costs per month.

Indirect Cost

Identify and explain indirect cost items.

Screening Criteria

CRS will screen all applications submitted pursuant to this Notice. Screening shall be done to determine whether an application is sufficiently complete to warrant consideration and review by the CRS Grant Review Panel. An application may be rejected if:

1. The application omits:

a. Detailed assessments of the proposed resettlement community(ies).

b. The rationale for the selection of recruitment areas within the DURs.

c. A comprehensive management plan, including a plan for the coordination of activities between the recruitment and resettlement components.

d. Documented written evidence of community support for the resettlement program.

e. Comprehensive information regarding subcontractor(s) and/or subgrantees.

f. Job/position descriptions for all personnel to be hired for both the recruitment and resettlement components of the program.

g. Organizational charts describing the agency as a whole and organizational charts of the proposed recruitment and resettlement components.

h. A comprehensive line-item budget with appropriate descriptive narrative.

i. A copy of the latest financial audit of the applicant.

2. The application is from an ineligible applicant.

3. The application is received after the closing date.

Criteria for Evaluating Applications

Grant applications will be evaluated according to the following criteria:

1. The quality of the proposal's project management and staffing plans as demonstrated by:

- The adequacy of the plan for program management and the plan for coordination between the recruitment and resettlement components of the program.
- The adequacy of the qualifications of organizations participating in the project in relation to proposed rules, and the extent to which these organizations have demonstrated track records as providers of services to Haitian Entrants or similar populations.
- The extent to which the applicant has a demonstrated capacity for effective fiscal management and accountability.
- The extent to which subgrantee(s)/subcontractor(s) have a demonstrated capacity for effective fiscal and program management and accountability.
- The adequacy of the plans for staff supervision of each agency/organization participating in the project.
- The adequacy of the staffing plans in terms of the relationship between the proposed functions and responsibility of the staff in the project, and the education and relevant experience required for the position.
- Clear organizational charts delineating organizational relationships and levels of authority, including the identification of the staff position accountable for the overall management, direction and progress of the program. (20 points)

2. The extent to which the qualitative and quantitive assessment of the resettlement site(s) provides justification for their selection as demonstrated by:

- The availability of full-time permanent employment opportunities at skills levels appropriate to Haitian PSR clients.
- The level of employment and unemployment in various job markets.
- The availability of housing which is safe, sanitary and affordable to the client.
- The availability of affordable health care services.
- The capacity of the community to provide: (1) employment services, (2) English language training, (3) vocational training, (4) educational and social services (including daycare) on a timely and appropriate basis. (15 points)

3. *Program Services*—The applicant's response to the required program services, including a description of program resources which demonstrates:

- The capacity of the program to offer services which meet the needs of the clients.
- Utilization of resources in a manner which promotes and fosters cultural identification and mutual support.
- The capacity to provide and sustain full-time permanent employment.
- Sensitivity to the issues of culture, race, ethnicity and native language.
- Preparation for and achievement of personal and financial independence for Entrants in an expeditious and effective manner. (15 points)

4. The degree to which the applicant has provided written documented evidence of community support and acceptance of the program at the site(s) of resettlement. (10 points)

5. The extent to which the assessment of the recruitment site(s)/area(s) provides justification for their selection as demonstrated by:

- The assessed needs of the Haitian Entrants in the site(s)/area(s) of recruitment in terms of: (1) available

employment; (2) affordable, safe and sanitary housing; (3) available social services.

• The size and composition of the Haitian population in the proposed recruitment site(s)/area(s).

• The ability of the applicant to effectively recruit clients from the proposed recruitment site(s)/area(s). (12 points)

6. The adequacy of client recruitment, client outreach and client retention strategies. (10 points)

7. The adequacy of the applicant's response regarding the requirements and program services for each recruitment area/site as demonstrated by:

• The agency staffing plan and staff qualifications.

• The description of linkages with the applicant organization and with the agency(ies) responsible for resettlement site operations.

• The adequacy of the proposed services.

• The adequacy of the methodology for the identification and selection of program participants.

• The description of the plan to provide health screening services to program participants.

• The description of:

a. Processing and intake procedures.

b. Orientation activities.

c. The plan for transporting clients to the site(s) of resettlement.

• The adequacy of the plan for developing individual client service/case plans. (10 points)

8. The reasonableness of the proposed budget and budget narrative, for both the recruitment and resettlement components, in relation to the proposed program activities. (5 points)

9. The plan for project evaluation, including the methodology and criteria for evaluating the program. (3 points)

Application Request and Submission

Eligible applicants may request grant applications from the Community Relations Service (CRS), Department of Justice (DOJ), Grants Management Office, Room 370; 5550 Friendship Boulevard; Chevy Chase, Maryland 20815; Attention Cynthia Bowie, (301) 492-5810. For program related information, contact either Kenneth Leutbecker, (301) 492-5809 or 1-800 424-9304 or Jay LaRoche, (305) 350-4261.

Applicants must submit a signed original and two (2) copies of the proposal to the Attention of Cynthia Bowie, Grants Management Office, Community Relations Service.

Applications Delivered by Mail

An applicant must show proof of mailing consisting of one of the following:

1. A legible dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping lable, invoice or receipt from a commercial carrier.

If an application is sent through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with the local post office.

Applicants are encouraged to use registered or at least first class mail. Each late applicant will be notified that the application will not be considered.

Applications postmarked on or before August 20, 1985 shall be considered timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Justice, Community Relations Service, Room 370, 5550 Friendship Boulevard; Chevy Chase, Maryland 20815.

The Grants Management Office will accept hand-delivered applications between 9:00 a.m. and 5:00 p.m., Eastern Daylight Time daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 5:00 p.m., Eastern Daylight Time, on the closing date.

Applicable Regulations

The following codes and regulations apply to grants awarded through this notice:

Title 41—Code of Federal Regulations
Title 28—Code of Federal Regulations
Part 42, Subpart C—Non-discrimination in Federally assisted programs, Title VI of the Civil Rights Act of 1964
Part 42, Subpart D—Non-discrimination in Federally assisted programs-implementation of Section 815(c)(1) of the Justice System Improvement Act of 1979
Part 42, Subpart G—Non-discrimination based on handicap in Federally assisted programs
Part 42, Subpart H—Procedures for complaints of employment discrimination filed against recipients of Federal financial assistance.
Office of Management and Budget (OMB) Circular A-110
Office of Management and Budget (OMB) Circular A-122

Records and Reports

CRS Grantees are required to maintain all Entrant records, program and financial information and/or data for a three (3) year period after the end date of the program performance period.

At the conclusion of the three (3) year retention period, CRS will instruct the grantee regarding the final disposition of Entrant records, program and financial information and/or other data.

Grantees shall, within thirty (30) days following the end of each calendar quarter, furnish to the Senior Grants Management Specialist, CRS, an original and two copies of both the Financial Status Report (SF 269) and the Federal Cash Transaction Report (SF 272).

Within ninety (90) days of the end date of the project performance and budget periods, Grantees are required to submit to the Senior Grants Management Specialist, CRS, an original and two copies of a final Financial Status Report (SF 269).

Grantees shall, within thirty (30) days following the end of each calendar quarter, provide the designated CRS Program Officer with a quarterly program progress report.

Gilbert G. Pompa,
Director, Community Relations Service.
July 1, 1985.

Intergovernmental Review

Application Requirements

Pursuant to Executive Order 12372, Intergovernmental Review of Federal Programs, all states have the option of designing procedures for review and comment on Federally assisted programs. Each applicant is required to notify each state in which it is proposing activities under Planned Secondary Resettlement Program and to comply with the state(s) established review procedures. This may be done by contacting the applicable state Single Point of Contract (SPOC). Following is a list of SPOCs:

State Single Point of Contact List

Alabama

Mrs. Donna J. Snowden SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3485 Norman Bridge Road, P.O. Box 2939, Montgomery, Alabama 36105-0939

Arizona

Office of Economic Planning and Development, State of Arizona

Note.—Correspondence and questions concerning the state's E.O. 12372 process should be directed to:

Jo Stephens, Director, Local Government Assistance, Attn: Arizona State Clearinghouse, 1700 West Washington, Room 205, Phoenix, Arizona 85007, Tel. (602) 255–5004

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–2311

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445–0282

Colorado

State Clearinghouse Division of Local Government, 1313 Sherman Street, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence and questions concerning the State's E.O. 12372 should be directed to:

Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–4298

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804
For information contact: Hawaii State Clearinghouse, Tel. (808) 548–3085

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–6630

Indiana

Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa

Office for Planning and Programming, Capital Annex, 532 East 12th Street, Des Moines, Iowa 50139, Tel. (515) 281–3864

Kansas

Judy Krueger, Office of the Secretary, Kansas Department of Human Resources, 401 Topeka Avenue, Topeka, Kansas 66603, Tel. (913) 296–5075

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Michael J. Jefferson, Department of Urban and Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 925–3722

Maine

State Planning Office, Attn: Intergovernmental Review Process, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 383–7875

Massachusetts

Executive Office of Communities and Development, 100 Cambridge Street, Rm. 1401, Boston, Massachusetts 02202, Tel. (617) 727–7078

Michigan

John H. Reurink, Director, Management Services Bureau, Department of Commerce, P.O. Box 30004, Lansing, Michigan 48909, Tel. (517) 373–0933

Minnesota

Thomas N. Harren, Minnesota State Planning Agency, Capitol Square Building, Rm. 101, 550 Cedar Street, St. Paul, Minnesota 55101, Tel. (612) 296–3698

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202
For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3150

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129, Capitol Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834 or 751–2345

Montana

Agnes Zipperian, Intergovernmental Review Clearinghouse, C/O Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, Nebraska 68509, Tel. (402) 471–2414

Nevada

Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420.

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420.

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN, 806, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note.—Correspondence and questions concerning the State's E.O. process should be directed to:

Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Peter C. Pence, Director, Management and Contracts Review Division, Department of Finance and Administration, State of New Mexico,

515 Don Gaspar, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215
For Information Contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466–0699

Oklahoma

Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Executive Building, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 1288, Harrisburg, Pennsylvania 17108, Attn: Charles Griffiths, Executive Director, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2858

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pandleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 758–2417

South Dakota

Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1678

Texas

Bob McPherson, State Planning Director, Office of the Governor, Austin, Texas 78711, Tel. (512) 475–6156

Utah

Michael B. Zuhn, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Robert H. Kirby, Intergovernmental Review Officer, Department of Planning and Budget, P.O. Box 1422, Richmond, Virginia 23211, Tel. (804) 786–1921

Washington

Ken Black, Washington Department of Community Development, Ninth and Columbia Building, Olympia, Washington 98504, Tel. (206) 753–2200

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster Street, CEF 2, Madison, Wisconsin 53702, Tel. (608) 266–1212

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to:

Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, WI 53707, Tel. (608) 266–8349

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

Virgin Islands

Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–0001

District of Columbia

Pauline Schneider, Director, Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004, Tel. (202) 727–6265

Puerto Rico

Ms. Patria G. Custodio, Chairman, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico, Tel. (809) 727–4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, DM 96950.

State Requirements

Comments and recommendations relative to applications submitted under this solicitation should be mailed no later than 60 days after the date of publication, addressed to:

Richard Gutierrez, Coordinator, Immigration and Refuge Affairs, Community Relations Service, 5550 Friendship Blvd., Suite 330, Chevy Chase, MD 20815

[FR Doc. 85–16041 Filed 7–3–85; 8:45 am]
BILLING CODE 4410–01–M

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federal register

Friday
July 5, 1985

Part VII

Department of Justice

Community Relations Service; Availability of Funding for Planned Secondary Resettlement of Haitian Entrants From the Designated Migrant Region of South Florida

DEPARTMENT OF JUSTICE

Community Relations Service; Availability of Funding for Planned Secondary Resettlement of Haitian Entrants From the Designated Migrant Region of South Florida

AGENCY: Community Relations Service (CRS), Justice.

ACTION: Notice of Availability of funding for grants to assist interested Haitian Entrants from the Designated Migrant Region (DMR) of South Florida to resettle to favorable communities outside the State of Florida.

SUMMARY: This announcement governs the award of grants to public or private non-profit organizations or agencies, and under certain conditions, to for-profit organizations or agencies, to provide eligible Haitian Entrants currently residing in the Designated Migrant Region (DMR) of South Florida with an opportunity to relocate in a planned way, to communities outside the State of Florida which offer more favorable and long-term employment opportunities.

Planned Secondary Resettlement (PSR) differs from "secondary migration" in that PSR involves a considered assessment of the resettlement area prior to relocation, identification of employment opportunities in the areas of resettlement, and a coordinated transition from the area of recruitment to the area of resettlement with notification of appropriate government authorities and other pertinent organizations or entries.

DATE: Closing Date: 5:00 p.m., Eastern Daylight Time; August 20, 1985.

Proposals will be evaluated by an independent grant review panel on the basis of weighted criteria listed in this Notice. All funding decisions are at the discretion of the Director, Community Relations Service. Grants will be awarded subject to the availability of funds.

Authorization: Authority for this activity is contained in Title V, Section 501(c) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422).

Available funds: Approximately $450,000 will be available for this grant program in Fiscal Year 1985. The Director estimates that these funds could support up to two grant awards at an average cost of $225,000 each. The anticipated range of financial support for these grants is $150,000 to $300,000 depending upon the distance between sending and receiving sites, the size of the populations to be resettled, the number of sending sites and receiving sites to be involved. These anticipated ranges are intended to serve as benchmarks only. These estimates do not bind the Community Relations Service to any specific number of grants or to any specific level of funding. Future fiscal year funding for this grant program will be contingent upon Federal appropriations. If adequate funds are available, the Director, CRS, anticipates continuation of this program.

Awards normally will not exceed a 24 month program performance period for recruitment, resettlement, and on-going services.

Eligible Applicants

Non-profit organizations incorporated under state law, which have demonstrated experience in the resettlement of or provision of services to Cuban/Haitian Entrants or similar populations, are eligible to apply for funds under this PSR program.

For-profit organizations, incorporated under state law, which have demonstrated experience in the resettlement of or provision of services to Cuban/Haitian Entrants or similar populations, and which can clearly demonstrate that only costs and not profits, fees, or other elements above costs have been requested, are also eligible to apply.

If an Entrant group or an organization representing Entrants interested in relocating to a favorable site wishes to participate in PSR, it is encouraged to establish linkages with an established non-profit or for profit organization or agency which would act as the primary applicant.

Any combination of eligible organizations may join together to submit an application so long as one organization is clearly identified as the responsible applicant.

The geographical location of the applicant is not restricted to its selected areas of recruitment or resettlement; however, the applicant must be able to show that its network of local affiliates or its subcontractor(s) or subgrantee(s) will be able to effectively deliver services

Eligible Client Population

Under the terms of this announcement, the eligible client population will consist of Haitians who:

1. Have not had a prior secondary resettlement opportunity.
2. Live or work within the DMR.
3. Fall within one of the following categories:

a. Domestic units comprised of two or more eligible, employable adults with dependent children.

b. Domestic units comprised of a single, eligible, employable adult with dependent children.

c. Single, eligible, employable adults without dependent children.

4. Meet the definition of Cuban/Haitian Entrant as defined below.

Definition of Cuban/Haitian Entrant

(A) A Cuban/Haitian Entrant is defined by Title V, section 501(e) (Pub. L. 96–422) as:

(1) Any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the Immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(2) Any other national of Cuba or Haiti—

(A) who—

(i) Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) Has an application for asylum pending with Immigration and Naturalization Service; and

(B) With respect to whom a final, nonappealable, and legally enforceable order of exclusion or deportation has not been entered.

Adult Haitians who do not meet the definition of Cuban/Haitian Entrant, as defined above, cannot be considered for participation in this program.

Other eligible adults who meet all the above criteria except for employability and who are members of a domestic unit will be considered for participation in this program at the discretion of the Community Relations Service.

Priority will be given to the resettlement of domestic units with dependent children, especially domestic units in which all family members are Entrants. This assistance program will focus resources on the resettlement of eligible employable adults and their dependents.

Information used to determine the legal status and program eligibility of all potential candidates for resettlement under PSR will be treated as confidential.

Recruitment Area: Designated Migrant Region

Applicants may submit one application which addresses the recruitment, resettlement processes and program services for Entrants living or

working within the Designated Migrant Region.

A maximum of three recruitment sites or areas may be selected within the DMR as outlined below, and a total of two resettlement sites may be chosen for relocation.

For the purpose of this Announcement, the Designated Migrant Region is defined as:

The migrant labor areas of South Florida including and lying north of Florida City and Homestead, and west of the Florida Turnpike and south of the city of Orlando. It is expected that major sites/areas of recruitment would be the communities of Immokolee, Belleglade, Indiantown, Homestead, Florida City and other communities with concentrated populations of Haitian migrant workers.

Applicants must specify the areas/sites of recruitment and include detailed recruitment plans for the targeted areas/sites. Applicants must also specify the areas/sites of resettlement and must include detailed resettlement plans for the targeted areas/sites.

A minimum of 25 eligible clients maybe resettled in each resettlement site, for a total of 50, if two resettlement sites are chosen. A maximum of 50 eligible clients may be resettled if a single site is selected.

It is expected that applicants will design their programs realistically so that the scope of recruitment and resettlement does not exceed the organizational capacity of the primary applicant and its subcontractor(s) or subgrantee(s) or local affiliates to perform the required services.

Awards for this grant program will be competitive.

Supplementary Information

Purpose and Scope

The purpose of this announcement is to provide an opportunity for Haitian Entrants residing within the Designated Migrant Region of South Florida who have been unable to find full-time, permanent employment to relocate to other areas of the United States that offer favorable prospects for employment.

Clients are eligible for services for one year from the date they are selected for the program.

Planned Secondary Resettlement serves two major objectives:

1. To increase financial self-sufficiency among Haitian Entrants.

2. To ease the burden upon areas heavily impacted by Entrant populations while increasing the use of under-utilized communities.

Services provided under these grants will have the specific goals of assisting Entrants to attain self-sufficiency through a resettlement experience that focuses upon permanent employment and social adaptation to the site where Entrants are settled. Each client will receive services for a period of one year from the date of selection for the program.

Characteristics of Resettlement Sites

It is expected that resettlement sites proposed for PSR will have demonstrably favorable economic and social conditions for Entrant resettlement. In general, the following conditions are required to be present in the proposed resettlement site:

- The availability of full-time permanent employment at skills levels appropriate to PSR clients.
- Safe and sanitary housing which is available and affordable to the Entrants.
- The capacity to provide needed services such as job placement, English language training opportunities and other social services on a timely and appropriate basis.
- An expanding job market in skill areas in which PSR clients would be qualified or could be trained.
- A minimum of racial discrimination or community tension likely to have an adverse effect upon Entrants.
- Available low-cost health care services.

The existence of a stable community of the same ethnicity as the Entrants or similar socio-cultural background is highly desirable, but not mandatory.

Resettlement supported by PSR grants must be directed to assisting Entrants to relocate to communities which provide significantly better opportunities for full-time permanent employment of eligible adults than exist in their current communities or residence or work. No grants will be awarded to support resettlement in areas where the job market is insufficient to accommodate the relocated Entrants or where the unemployment rate is significantly above the national average.

CRS will not entertain proposals which include resettlement into states or areas impacted by Entrants unless the applicant can guarantee permanent full-time employment and service delivery in such areas. Resettlement within the State of Florida is not permissible under this Notice.

Proposals designating other areas experiencing Entrant impact such as New York, New Jersey and California will be carefully evaluated as to their appropriateness as PSR sites.

Characteristics of Recruitment Areas

Recruitment areas must lie within the Designated Migrant Region, as outlined above. The term "area" rather than "site" is used, as recruitment may either occur within the vicinity of a particular community or within a radius of the applicants' or subgrantee(s)'/subcontractor(s)' administrative office.

It is expected that applicants will provide a rationale for the selection of recruitment area(s) based upon:

1. The assessed needs of the Haitian Entrants in the area in terms of: (a) available employment, (b) safe, sanitary and affordable housing and, (c) available social services.

2. The size and composition of Haitian populations in these areas.

3. The ability of the applicant to recruit effectively from these areas.

Application Content

Program Design

The application should set forth the following:

1. Organization/Agency Capability: An overview of the applicant agency, agency qualifications and agency history, including agency philosophy, goals, and history of experience with respect to the resettlement of and/or delivery of services to Entrants or similar populations. (A brief program description and the number of clients served should be included.)

Identification of the organization(s)/agency(ies) proposed for participation in the PSR project in the recruitment areas within the DMR and at the resettlement site(s); a description of their qualifications in relation to responsibilities; and the mechanism for coordination among these agencies.

2. Target Population: A description of the proposed resettlement population in terms of the criteria for acceptence into the program, the number of clients to be resettled at each resettlement site, and estimates of numbers expected to be recruited within the DMR.

3. Identification of Site(s): Identification of recruitment areas/sites within the DMR and resettlement sites.

4. Management Plan: A plan which: (a) identifies the agency/organization which will have overall fiscal and program responsibility, (b) identifies the organizational structure and lines of authority, (c) describes the overall proposed staffing plan and staff qualifications for the entire project, and (d) includes a comprehensive plan for coordination of activities between recruitment and resettlement components.

5. Program Phases: A narrative description of proposed program phases (recruitment, initial resettlement and on-going resettlement services), including a time-line (in months) or flow chart with milestones from start-up to termination and a plan for the phased resettlement of Entrants into the resettlement community.

Recruitment Areas/Sites—Requirements and Program Services

The application should set forth in detail for each recruitment area/site:

1. The identification of the agency responsible for recruitment at each area/site, agency staffing patterns and agency qualifications.

2. A description of the characteristics of the selected recruitment areas/sites within the DMR and the basis for the selection.

3. A description of linkages with applicant organization and with agency(ies) responsible for resettlement site operations. A plan for the coordination of the delivery of services and continuity of services between the recruitment area and resettlement site(s).

4. A description of strategies for:

a. Client outreach.

b. Client recruitment.

c. Client selection.

d. Client retention in the area of recruitment.

5. A description of the criteria for selection based upon such criteria as:

a. Prior employment history.

b. Personal motivation.

c. Need.

d. English language ability.

e. Health.

f. Education.

6. A description of recruitment processing and intake procedures.

7. The proposed time table for the resettlement of Entrants upon acceptance into the program.

8. A description of the client case record.

9. A description of health screening activities for Entrants accepted into the program, including a plan for the treatment of any minor illnesses prior to resettlement.

10. A description of how the recruitment agency and resettlement agency will jointly develop individualized service plans which will set forth the services to be delivered at the site of resettlement.

11. A description of the process to provide orientation to clients about the resettlement site(s) and the available services at the resettlement site(s).

12. A plan for transporting clients from the recruitment area(s) to the resettlement site(s).

12. A plan for initial reception at the site(s) of resettlement.

Resettlement Site Program Design and Services

For each resettlement site, the application must set forth in detail the following:

1. Identification of the agency/organization responsible for resettlement; this agency's staffing patterns and its qualifications.

2. A detailed qualitative and quantitative assessment of the proposed resettlement community(ies) with particular regard to:

(a) Availability of immediate or imminent prospects for full-time permanent employment consistent with the skill levels of the participants.

(b) Current level of employment and unemployment in various job markets.

(c) Location of housing which is safe, sanitary, available and affordable to the Entrants.

(d) Availability of affordable health and mental health care services.

(e) Availability of supportive social services for the target population, including daycare.

(f) Availability of community:

1. Employment services.

2. English language training services.

3. Vocational training services.

4. Vocational English language training services.

(g) A description of the community, its racial, ethnic and socio-cultural composition, including a description of existing refugee populations.

(h) Availability of educational services for dependent children.

(i) A discussion of the level of community receptivity regarding the Entrants to be resettled.

(j) A discussion of the presence or absence of an established Haitian population and/or established Haitian assistance association(s).

3. Core Services—these services will enable participating Entrants to meet basic transportation, food and shelter expenses during the initial resettlement period (usually 30 days and under extraordinary circumstances up to 60 days). The following core services are required to be provided to the client either in the form of a resettlement allowance or by direct payment of expenses by the resettlement agency:

(a) Reasonable transportation and moving costs from the site of recruitment to the site of resettlement.

(b) Living expenses during the initial resettlement period of time, including food, shelter, utilities and local transportation costs.

(c) One-time security deposits for housing and utilities.

(d) Essential furnishing/utensils.

(e) Stipends (in the absence of immediate employment income).

4. On-going Resettlement Services (provided during and after initial resettlement)—The applicant is required to set forth a detailed plan for the organization, delivery and coordination of services including:

(a) *Employment*—a plan for the development of employment resources prior to the arrival of clients; the job development, placement, upgrading services and job counseling activities.

(b) *On-The-Job Training*—a plan for developing options for on-the-job training, including subsidization of up to ½ of an Entrant's salary during a training period of up to 90 days, to an employer who guarantees job placement at the end of the training period.

(c) *Vocational Education*—fund for employed Entrants who wish to upgrade skills for employment mobility (this fund should not be used in lieu of employment).

(d) *English Language Training*—with an emphasis upon survival and vocational English Language Training.

(e) Orientation to the resettlement site and community resources which are available to the clients.

(f) Individual and group counseling (costs associated with client legal services are not allowable expenditures under this Notice).

(g) A plan to provide access to affordable health care services for up to one year, or until the Entrant has obtained medical coverage through his/her employer.

(h) Day care services for children that enables eligible employable adults to obtain and sustain employment.

(i) *Emergency assistance*—provision for one month's rent, food, transportation, utility payments etc., in cases of dire need.

(j) Crisis intervention services.

5. A description of the plan for tracking and monitoring client progress on a regular basis.

6. Development of a case record system which will include all significant decisions and events relating to the client, and, at a minimum includes the following information:

(a) Identifying data including family composition.

(b) Initial screening and intake forms.

(c) Case management plan developed in conjunction with agency responsible for recruitment.

(d) Case history/social history.

(e) Medical services, if available.

(f) Individual counseling plans.

(g) Program/case notes and incident reports.

(h) Evaluation and progress reports.
(i) Current employment data/information.
(j) Summary of program and client responsibilities signed by the Entrant.
(k) Copy of Form I-94.
(l) Referrals to other agencies.
(m) Final case report.

7. Identification of measures the agency will take or has taken, to assure and maintain community receptivity and support and/or reduce community opposition to the program.

8. Identification of voluntary and donated resources, including letters of intent from the agency or entity providing the resource.

9. Description of the local social service network.

10. A plan for program evaluation including identification of the evaluative criteria.

Administrative Requirements

Applicants are required to submit the following material as an addendum to the program proposal:

1. Agency Administration and Organization

(a) Agency organizational chart describing the agency as a whole and the organizational relationship of the proposed resettlement program to other agency programs.
(b) Comprehensive organizational chart of the proposed resettlement and recruitment components and their relationship.
(c) Copies of articles of incorporation.
(d) IRS status as a non-profit agency, if applicable.
(e) List of officers and board members, if applicable.
(f) List of professional affiliations and certifications.

2. Organizational Standards/Policies and Policies Regarding Clients

(a) Personnel handbook and standards of conduct.
(b) Statement regarding professional and agency liability.
(c) Copy of program rules/regulations.
(d) Copy of policy regarding the confidentiality of client information and records.
(e) Discussion of the method to be used to inform clients of program rules, regulatins and policies, including the confidentiality of client information.

3. Staff

(a) Job/position descriptions and resumes (if individuals have been identified for certain positions) for all personnel to be hired for both the recruitment and resettlement components, including documented evidence of the availability of bi-lingual and/or bi-cultural personnel; (b) Resumes and qualifications of program consultants must also be included.

4. Community Support at Resettlement Sites

(a) Letters of progam support from local political representatives, social service agencies, merchants, potential employers, etc. Letters should reflect writers' awareness of program's intent, potential federal funding source and location of project. Letters should also contain a recommendation or comment regarding the proposed resettlement program.
(b) Verification that the applicant has notified the applicable State Refugee Coordinator of the organization's intent to submit a proposal.
(c) A listing of service providers to whom clients will be referred, including name, address and description of service(s) to be provided.

Finance and Budget

Applicants are required to submit the following materials as an addendum to the proposal:

1. A copy of the latest financial audit of the applicant.
2. A description of the Financial Management System of the applicant.
3. A listing of other Federal, State, local or foundation grants or contracts, etc., being administered by the applicant. This material should include information regarding the funding source, grant or contract number, level of financial support, purpose of grant or contract, grant/contract performance period, and name, address and telephone number of grant and/or contracts officer (Federal, State or local).
4. Subgrants and/or Subcontracts.
(a) Identify all proposed services which are to be subgranted/subcontracted.
(b) Provide relevant background material regarding the proposed subgrantee/subcontractor.
(c) Provide letters from the proposed subgrantee(s)/subcontractor(s) indicating their commitment and the specific services to be provided.

Budget

The proposed budget will be examined by the Grants Officer to verify the costs data, to evaluate specific elements of costs and to determine if costs are necessary, reasonable and allowable under applicable statutes and regulations. The following budget structure should be used to provide appropriate costs breakdowns. Detailed costs justification should also be attached to the budget for each budget category:

Personnel

Show salaries and wages only. Fees and expenses for consultants should be included in line "other". The name and title, salary amounts and level of effort must be identified for each position. A current vitae is required for each position.

Fringe Benefits

Submit a current copy of the negotiated fringe benefit rate. If fringe benefits are applicable to direct salaries and wages and treated as part of the indirect cost rate negotiation agreement, leave blank.

Travel

Use only for travel (domestic) of employees on the grant. Include estimated cost breakout for airfare, per diem, number of days, number of persons traveling and purpose of travel. Travel for consultants should not go in this line, nor should local transportation (i.e., where no out-of-town trip is involved).

Equipment

Use only for non-expendable personnel property, which is defined as follows:

Non-expendable personal property means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. A grantee may use its own definition of non-expendable personal property provided that such definition would at least include all tangible personal property. Personal property means property of any kind except real property.

Each item of non expendable personal property costing $1,000 and each item of general purpose equipment costing over $500 must be identified and explained (i.e., office equipment and furnishings which are usable for activities other than the technical, specialized aspects of the grant program).

Supplies

Include all tangible personal property except that which is included in the equipment line. Requests in excess of $500 per category of tangible personal property (supply) must be identified and explained.

Contractual

Use for procurement contracts (except those which belong on other line items such as equipment, supplies, and construction). It must not include

payments to individuals such as stipends, consulting fees, benefits etc.

Renovation

Costs for alteration and renovation must be explained in detail.

Entrant Cost

All costs directly related to entrants such as stipends, and allowances, temporary housing, essentials, furnishings and utensils, food or food allowances, personal items, clothing, local transportation, assistance payments, medical services, etc., must be identified and explained.

Other

All direct costs not clearly covered in categories listed above i.e., consulting costs, local transportation, space and equipment rental, and van usage must be identified and explained. Request for any item identified in the Office of Management and Budget Circular (OMB A–122) which require approval by the CRS Grants Officer must be identified and explained. Costs for space rental should be identified by square feet. Also identify utilities and breakout costs per month.

Indirect Cost

Identify and explain indirect cost items.

Screening Criteria

CRS will screen all applications submitted pursuant to this Notice. Screening shall be done to determine whether an application is sufficiently complete to warrant consideration and review by the CRS Grant Review Panel. An application may be rejected if:

1. The application omits:

a. Detailed assessments of the proposed resettlement community(ies).

b. The rationale for the selection of recruitment areas within the DMRs.

c. A comprehensive management plan, including a plan for the coordination of activities between the recruitment and resettlement components.

d. Documented written evidence of community support for the resettlement program.

e. Comprehensive information regarding subcontractor(s) and/or subgrantees.

f. Job/position descriptions for all personnel to be hired for both the recruitment and resettlement components of the program.

g. Organizational charts describing the agency as a whole and organizational charts of the proposed recruitment and resettlement components.

h. A comprehensive line-item budget with appropriate descriptive narative.

i. A copy of the latest financial audit of the applicant.

2. The application is from an ineligible applicant.

3. The application is received after the closing date.

Criteria for Evaluating Applications

Grant applications will be evaluated according to the following criteria:

1. The quality of the proposal's project management and staffing plans as demonstrated by:

- The adequacy of the plan for program management and the plan for coordination between the recruitment and resettlement components of the program.
- The adequacy of the qualifications of organizations participating in the project in relation to proposed roles, and the extent to which the organizations have demonstrated track records as providers of services to Haitian Entrants or similar populations.
- The extent to which the applicant has a demonstrated capacity for effective fiscal management and accountability.
- The extent to which subgrantee(s)/subcontractor(s) have a demonstrated capacity for effective fiscal and program management and accountability.
- The adequacy of the plans for staff supervision of each agency/organization participating in the project.
- The adequacy of the staffing plans in terms of the relationship between the proposed functions and responsibility of the staff in the project, and the education and relevant experience required for the position.
- Clear organizational charts delineating organizational relationships and levels of authority, including the identification of the staff position accountable for the overall management, director and progress of the program. (20 points)

2. The extent to which the qualitative an quantitative assessment of the resettlement site(s) provides justification for their selection as demonstrated by:

- The availability of full-time permanent employment opportunities at skills levels appropriate to Haitian PSR clients.
- The level of employment and unemployment in various job markets.
- The availability of housing which is safe, sanitary and affordable to the client.
- The availability of affordable health care services.
- The capacity of the community to provide: (1) employment services, (2) English Language training, (3) vocational training, (4) educational and social services (including daycare) on a timely and appropriate basis. (15 points)

3. *Program Services*—The applicant's response to the required program services, including a description of program resources which demonstrates:

- The capacity of the program to offer services which meet the needs of the clients.
- Utilization of resources in a manner which promotes and fosters cultural identification and mutual support.
- The capacity to provide and sustain full-time permanent employment.
- Sensitivity to the issues of culture, race, ethnicity and native language.
- Preparation for and achievement of personal and financial independence for Entrants in an expeditious and effective manner. (15 points)

4. The degree to which the applicant has provided written documented evidence of community support and acceptance of the program at the site(s) of resettlement. (10 points)

5. The extent to which the assessment of the recruitment site(s)/area(s) provides justification for their selection as demonstrated by:

- The assessed needs of the Haitian Entrants in the site(s)/area(s) of recruitment in terms of: (1) Available employment; (2) affordable, safe and sanitary housing; (3) available social services.
- The size and composition of the Haitian population in the proposed recruitment site(s)/area(s).
- The ability of the applicant to effectively recruit clients from the proposed recruitment site(s)/area(s). (12 points)

6. The adequacy of client recruitment, client outreach and client retention strategies. (10 points)

7. The adequacy of the applicant's response regarding the requirements and program services for each recruitment area/site as demonstrated by:

- The agency staffing plan and staff qualifications.
- The description of linkages with the applicant organization and with the agency(ies) responsible for resettlement site operations.
- The adequacy of the proposed services.
- The adequacy of the methodology for the identification and selection of program participants.
- The description of the plan to provide health screening services to program participants.
- The description of:

a. Processing and intake procedures.

b. Orientation activities.

c. The plan for transporting clients to the site(s) of resettlement.

• The adequacy of the plan for developing individual client service/case plans. (10 points)

8. The reasonableness of the proposed budget and budget narrative, for both the recruitment and resettlement components, in relation to the proposed program activities. (5 points)

9. The plan for project evaluation, including the methodology and criteria for evaluating the program. (3 points)

Application Request and Submission

Eligible applicants may request grant applications from the Community Relations Service (CRS), Department of Justice [DOJ], Grants Management Office, Room 370; 5550 Friendship Boulevard; Chevy Chase, Maryland 20815; Attention Cynthia Bowie, (301) 402–5810. For program related information, contact either Kenneth Leutbecker, (301) 492–5809 or 1–800 424–9304 or Jay LaRoche, (305) 350–4261.

Applicants must submit a signed original and two (2) copies of the proposal to the Attention of Cynthia Bowie, Grants Management Office, Community Relations Services.

Applications Delivered by Mail

An applicant must show proof of mailing consisting of one of the following:

1. A legible dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice or receipt from a commercial carrier.

If an application is sent through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with the local post office.

Applicants are encouraged to use registered or at least first class mail. Each late applicant will be notified that the applications will not be considered.

Applications postmarked on or before August 20, 1985 shall be considered timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Justice, Community Relations Service, Room 370, 5550 Friendship Boulevard; Chevy Chase, Maryland 20815.

The Grants Management Office will accept hand-delivered applications between 9:00 a.m. and 5:00 p.m., Eastern Daylight Time daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 5:00 p.m., Eastern Daylight Time, on the closing date.

Applicable Regulations

The following codes and regulations apply to grants awarded through this notice:

Title 41—Code of Federal Regulations

Title 28—Code of Federal Regulations

Part 42, Subpart C—Non-discrimination in Federally assisted programs, Title VI of the Civil Rights Act of 1964

Part 42, Subpart D—Non-discrimination in Federally assisted programs-implementation of Section 815(c)(1) of the Justice System Improvement Act of 1979

Part 42, Subpart G—Non-discrimination based on handicap in Federally assisted programs

Part 42, Subpart H—Procedures for complaints of employment discrimination filed against recipients of Federal financial assistance

Office of Management and Budget (OMB) Circular A–110

Office of Management and Budget (OMB) Circular A–122

Records and Reports

CRS Grantees are required to maintain all Entrant records, program and financial information and/or data for a three (3) year period after the end date of the program performance period.

At the conclusion of the three (3) year retention period, CRS will instruct the grantee regarding the final disposition of Entrant records, program and financial information and/or other data.

Grantees shall, within thirty (30) days following the end of each calendar quarter, furnish to the Senior Grants Management Specialist, CRS, an original and two copies of both the Financial Status Report (SF 269) and the Federal Cash Transaction Report (SF 272).

Within ninety (90) days of the end date of the project performance and budget periods, Grantees are required to submit to the Senior Grants Management Specialist, CRS, an original and two copies of a final Financial Status Report (SF 269).

Grantees shall, within thirty (30) days following the end of each calendar quarter, provide the designated CRS Program Officer with a quarterly program progress report.

Gilbert G. Pompa,

Director, Community Relations Service.

July 1, 1985.

Intergovernmental Review

Application Requirements

Pursuant to Executive Order 12372, Intergovernmental Review of Federal Programs, all states have the option of designing procedures for review and comment on Federally assisted programs.

Each applicant is required to notify each state in which it is proposing activities under Planned Secondary Resettlement Program and to comply with the State(s) established review procedures. This may be done by contacting the applicable State Single Point of Contact (SPOC). Following is a list of SPOCs:

State Single Point of Contact List

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3485 Norman Bridge Road, P.O. Box 2939, Montgomery, Alabama 36105–0939

Arizona

Office of Economic Planning and Development, State of Arizona

Note.—Correspondence and questions concerning the state's E.O. 12372 process should be directed to: Jo Stephens, Director, Local Government Assistance, Attn: Arizona State Clearinghouse, 1700 West Washington, Room 205, Phoenix, Arizona 85007, Tel. (602) 255–5004.

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–2311

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445–0282

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division,

Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence and questions concerning the State's E.O. 12372 should be directed to: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–4296

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804

For information contact: Hawaii State Clearinghouse, Tel. (808) 548–3085

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa

Office for Planning and Programming, Capital Annex, 532 East 12th Street, Des Moines, Iowa 50139, Tel. (515) 281–3864

Kansas

Judy Krueger, Office of the Secretary, Kansas Department of Human Resources, 401 Topeka Avenue, Topeka, Kansas 66603, Tel. (913) 296–5075

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Michael J. Jefferson, Department of Urban and Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capitol Station, Baton Rouge, Louisiana, 70804, Tel. (504) 925–3722

Maine

State Planning Office, Attn: Intergovernmental Review Process, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 2120–2365, Tel. (301) 383–7875

Massachusetts

Executive Office of Communities and Development, 100 Cambridge Street, Rm. 1401, Boston, Massachusetts 02202, Tel. (617) 727–7078

Michigan

John H. Reurink, Director, Management Services Bureau, Department of Commerce, P.O. Box 30004, Lansing, Michigan 48909, Tel. (517) 373–0933

Minnesota

Thomas N. Harren, Minnesota State Planning Agency, Capitol Square Building, Rm. 101, 550 Cedar Street, St. Paul, Minnesota 55101, Tel. (612) 296–3696

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202

For information contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (801) 359–3150

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129, Capitol Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834 or 751–2345

Montana

Agnes Zipperian, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

Policy Research Office, P.O. Box 94601, Room 1321, State Capitol, Lincoln, Nebraska 68509, Tel. (402) 471–2414

Nevada

Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420.

New Hampshire

Devid G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN, 806, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note.—Correspondence and questions concerning the State's E.O. process should be directed to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Peter C. Pence, Director, Management and Contracts Review Division, Department of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, New Mexico 67503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor—State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215

For Information Contact: Mr. Leondard E. Roberts, Deputy Director, Tel. (614) 466–0699

Oklahoma

Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Executive Building, 155 Cottage Street, N.E., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 1288, Harrisburg, Pennsylvania 17108, Attn: Charles Griffiths, Executive Director, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2658

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pandleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 758–2417

South Dakota

Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1678

Texas

Bob McPherson, State Planning Director, Office of the Governor, Austin, Texas 78711, Tel. (512) 475–6156

Utah

Michael B. Zuhn, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Robert H. Kirby, Intergovernmental Review Officer, Department of Planning and Budget, P.O. Box 1422, Richmond, Virginia 23211, Tel. (804) 786–1921

Washington

Ken Black, Washington Department of Community Development, Ninth and Columbia Building, Olympia, Washington 98504, Tel. (206) 753–2200

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster Street, CEF 2, Madison, Wisconsin 53702, Tel. (608) 266–1212

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, WI 53707, Tel. (608) 266–8340

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

Virgin Islands

Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–0001

District of Columbia

Pauline Schneider, Director, Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004, Tel. (202) 727–6265

Puerto Rico

Ms. Patria G. Custodio, Chairman, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico, Tel. (809) 727–4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, DM 96950

State requirements

Comments and recommendations relative to applications submitted under this solicitation should be mailed no later than 60 days after the date of publication, addressed to:

Richard Gutierrez, Coordinator, Immigration and Refugee Affairs, Community Relations Service, 5550 Friendship Blvd., Suite 330, Chevy Chase, MD 20815

[FR Doc. 85–16042 Filed 7–3–85; 8:45 am]
BILLING CODE 4410–01–M

VOL
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ISS
129

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federal register

Friday
July 5, 1985

Part VIII

Department of Justice

Community Relations Service; Availability of Funding for Planned Secondary Resettlement of Cuban Entrants From South Florida

DEPARTMENT OF JUSTICE

Community Relations Service; Availability of Funding for Planned Secondary Resettlement of Cuban Entrants From South Florida

AGENCY: Community Relations Service (CRS), Justice.

ACTION: Notice of Availability of funding for grants to assist interested Cuban Entrants from South Florida to resettle to favorable communities outside the State of Florida.

SUMMARY: This announcement governs the award of grants to public or private non-profit organizations or agencies, and under certain conditions, to for-profit organizations or agencies, to provide eligible Cuban Entrants currently residing in South Florida with an opportunity to relocate in a planned way, to communities outside the State of Florida which offer more favorable and long-term employment opportunities.

Planned Secondary Resettlement (PSR) differs from "secondary migration" in that PSR involves a considered assessment of the resettlement area prior to relocation, identification of employment opportunities in the areas of resettlement, delivery of comprehensive supportive services, and a coordinated transition from the area of recruitment to the area of resettlement with notification of appropriate government authorities and other pertinent organizations or entities.

DATE: Closing Date: 5:00 p.m., Eastern Daylight Time; August 20, 1985.

Proposals will be evaluated by an independent grant review panel on the basis of weighted criteria listed in this Notice. All funding decisions are at the discretion of the Director, Community Relations Service. Grants will be awarded subject to the availability of funds.

Authorization: Authority for this activity is contained in Title V, section 501(c) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422).

Available Funds: Approximately $300,000 will be available for this grant program in Fiscal Year 1985. The Director estimates these funds could support one grant award. This estimate does not bind the Community Relations Service to any specific level of funding; however, the estimate serves as notification of the maximum amount of funding which could be awarded under this notice.

Future fiscal year funding for this grants program will be contingent upon Federal appropriations. If adequate funds are available, the Director, CRS, anticipates continuation of this program.

Awards normally will not exceed a 24 month program performance period for recruitment, resettlement, an on-going services.

Eligible Applicants

Non-profit organizations incorporated under State law, which have demonstrated experience in the resettlement of or provision of services to Cuban/Haitian Entrants or similar populations, are eligible to apply for funds under this PSR program

For-profit organization incorporated under State law which have demonstrated experience in the resettlement of or provision of services to Cuban/Haitian Entrants or similar populations, and which can clearly demonstrate that only costs and not profits, fees, or other elements above costs have been requested, are also eligible to apply.

If an Entrant group or an organization representing Entrants interested in relocating to a favorable site wishes to participate in PSR, they are encouraged to establish linkages with an establishment non-profit or profit organization or agency which would act as the primary applicant.

Any combination of eligible organizations may join together to submit an application so long as one organization is clearly identified as the responsible applicant.

The geographical location of the applicant is not restricted to its selected areas of recruitment or resettlement; however, the applicant must be able to show that its network of local affiliates or its subcontractor(s) or subgrantee(s) will be able to effectively deliver services.

Eligible Client Population

Under the terms of this announcement, the eligible client population will consist of Cubans who:

1. Are currently residing in the State of Florida.

2. Have not had a prior secondary resettlement opportunity.

3. Fall within one of the following categories.

a. Domestic units comprised of two or more eligible, employable adults with dependent children.

b. Domestic units comprised of a single, eligible, employable adult with dependent children.

c. Single, eligible, employable adults without dependent children.

4. Meet the definition of Cuban/Haitian Entrant as defined below:

Definition of Cuban/Haitian Entrant

(A) A Cuban/Haitian Entrant is defined by Title V, section 501(e) (Pub. L. 96–422) as:

(1) Any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the Immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(2) Any other national of Cuba or Haiti—

(A) Who—

(i) Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) Has an application for asylum pending with Immigration and Naturalization Service; and

(B) With respect to whom a final, nonappealable, and legally enforceable order of exclusion or deportation has not been entered.

Adult Cubans who do not meet the definition of Cuban/Haitian Entrant as defined above, cannot be considered for participation in this program.

Adult Cubans who meet all the above criteria except for employability and are members of a domestic unit will be considered for participation in this program at the discretion of the Community Relations Service.

Priority will be given to the resettlement of domestic units with dependent children, especially domestic units in which all family members are Entrants. This assistance program will focus resources on the resettlement of eligible employable adults and their dependents.

Information used to determine the legal stafus and program eligibility of potential candidates for resettlement under PSR will be treated as confidential.

Recruitment Area: South Florida

Applicants shall submit one application which addresses the recruitment, resettlement processes and program services for Cuban Entrants. There is no geographical restriction upon areas of recruitment, except that the areas fall within what is generally referred to as South Florida (areas south of or east of Lake Okeechobee).

A maximum of three sites or areas may be selected for client recruitment. A maximum of two resettlement sites may be chosen for relocation.

A minimum of 25 eligible clients and a maximum of 50 eligible clients may be resettled in each resettlement site, if two resettlement sites are chosen. A maximum of 50 clients may be resettled at the site, if only one resettlement site is selected by the applicant.

It is expected that applicants will design their programs realistically so that the scope of recruitment and resettlement does not exceed the organizational capacity of the primary applicant and its subcontractor(s)/subgrantee(s) or local affiliates to perform the required services.

The applicant must submit separate, detailed plans for each recruitment area/site selected. The application must also specify the area(s)/site(s) of resettlement and must include detailed plans for the targeted area(s)/site(s) of resettlement.

Awards for this grant program will be competitive.

Supplementary Information

Purpose and Scope

The purpose of this announcement is to provide an opportunity for Cuban Entrants residing within South Florida who have been unable to find full-time, permanent employment to relocate to other areas of the United States that offer favorable prospects for employment.

Clients are eligible for services for one year from the date they are selected for the program.

Planned Secondary Resettlement serves two major objectives:

a. To increase financial self-sufficiency among Cuban Entrants.

1. To ease the burden upon areas heavily impacted by Entrant populations while increasing the use of under-utilized communities.

Services provided under these grants will have the specific goals of assisting Entrants to attain self-sufficiency through a resettlement experience that focuses upon permanent employment and social adaptation to the site where Entrants are resettled. Each client will receive services for a period of one year from the date of selection for the program.

Characteristics of Resettlement Sites

It is expected that resettlement sites proposed for PSR will have demonstrably favorable economic and social conditions for Entrant resettlement. In general, the following conditions are required to be present in the proposed resettlement site:

- The availability of full-time permanent employment at skills levels appropriate to PSR clients.
- Safe and sanitary housing which is available and affordable to the Entrant.
- The capacity to provide needed services such as job placement, English language training opportunities and other social services on a timely and appropriate basis.
- An expanding job market in skill areas in which PSR clients would be qualified or could be trained.
- A minimum of racial discrimination or community tension likely to have an adverse effect upon Entrants.
- Available low-cost health care services.

The existence of a stable community of the same ethnicity as the Entrants or similar socio-cultural background is highly desirable, but not mandatory.

Resettlement supported by PSR grants must be directed to assisting Entrants to relocate to communities which provide significantly better opportunities for full-time permanent employment of eligible adults than exist in their current communities of residence or work. No grants will be awarded to support resettlement in areas where the job market is insufficient to accommodate the relocated Entrants or where the unemployment rate is significantly above the national average.

CRS will not entertain proposals which include resettlement into states or areas impacted by Entrants unless the applicant can guarantee permanent full-time employment and service delivery in such areas. Resettlement within the State of Florida is not permissible under this Notice.

Proposals designating other areas experiencing Cuban Entrant impact such as New York, New Jersey, Texas and California will be carefully evaluated as to their appropriateness as PSR sites.

Characteristics of Recruitment Areas

Recruitment areas must lie within the geographic area generally known as South Florida, as previously outlined above. The term "area" rather than "site" is used as recruitment may either occur within the vicinity of a particular community or within a radius of the applicant's or subcontractor(s)/subgrantee(s) administrative office.

It is expected that applicants will provide a rationale for the selection of recruitment area(s) based upon:

1. The assessed needs of the Cuban Entrants in the area in terms of: (a) Available employment, (b) safe, sanitary and affordable housing and (c) available social services.

2. The size and composition of Cuban populations in these areas.

3. The ability of the applicant to recruit effectively from these areas.

Application Contents

Program Design

The application should set forth in detail the following:

1. Organization/Agency Capability: An overview of the applicant agency, agency qualifications, and agency history, including agency philosophy, goals, and history of experience with respect to the resettlement of and/or delivery of services to Entrants or similar populations. (A brief program description and the number of clients served should be included.)

Identification of the organization(s)/agency(ies) proposed for participation in the PSR project in the recruitment areas within South Florida and at the resettlement sites; a description of their qualifications in relation to responsibilities; and the mechanism for coordination among these agencies.

2. Target Population: A description of the proposed resettlement population in terms of the criteria for acceptance into the program, the number of clients to be resettled at each resettlement site, and estimates of numbers expected to be recruited within South Florida.

3. Identification of Site(s): Identification of recruitment areas/sites within South Florida and the resettlement sites.

4. Management Plan: A plan which (a) identifies the agency/organization which will have overall fiscal and program responsibility, (b) identifies the organizational structure and lines of authority, (c) describes the overall proposed staffing plan and staff qualifications for the entire project, and (d) includes a comprehensive plan for coordination of activities between the recruitment and resettlement components.

5. Program Phases: A narrative description of proposed program phases (recruitment, initial resettlement, and ongoing resettlement services), including a time-line (in months) or flow chart with milestones from start-up to termination, and a plan for the phased resettlement of Entrants into the resettlement community.

Recruitment Areas/Sites—Requirements and Program Services

The application should set forth in detail for each recruitment area/site:

1. The identification of the agency responsible for recruitment at each area/site, agency staffing patterns and agency qualifications.

2. A description of the characteristics of the selected recruitment areas/sites within South Florida and the basis for the selection.

3. A description of linkages with applicant organization and with agency(ies) responsible for resettlement site operations. A plan for the coordination of the delivery of services and continuity of services between the recruitment area and resettlement site(s).

4. A description of strategies for:
a. Client outreach.
b. Client recruitment.
c. Client selection.
d. Client retention in the area of recruitment.

5. A description of the criteria for selection based upon such criteria as:
a. Prior employment history.
b. Personal motivation.
c. Need.
d. English language ability.
e. Health.
f. Education.

6. A description of recruitment processing and intake procedures.

7. The proposed time table for the resettlement of Entrants upon acceptance into the program.

8. A description of the client case record.

9. A description of health screening activities for Entrants accepted into the program, including a plan for the treatment of any minor illnesses prior to resettlement

10. A description of how the recruitment agency and resettlement agency will jointly develop individualized service plans which will set forth the services to be delivered at the site of resettlement.

11. A description of the process to provide orientation to clients about the resettlement site(s) and the available services at the resettlement site(s).

12. A plan for transporting clients from the recruitment area(s) to the resettlement site(s).

13. A plan for initial reception at the site(s) of resettlement.

Resettlement Site Program Design and Services

For each resettlement site, the application must set forth in detail the following:

1. Identification of the agency/organization responsible for resettlement; this agency's staffing patterns and its qualifications.

2. A detailed qualitative and quantitative assessment of the proposed resettlement community(ies) with particular regard to:
(a) Availability of immediate or imminent prospects for full-time permanent employment consistent with the skill levels of the participants.
(b) Current level of employment and unemployment in various job markets.
(c) Location of housing which is safe, sanitary, available and affordable to the Entrants.
(d) Availability of affordable health and mental health care services.
(e) Availability of supportive social services for the target population, including daycare.
(f) Availability of community:
1. Employment services.
2. English language training services.
3. Vocational training services.
4. Vocational English language training services.
(g) A description of the community, its racial, ethnic and socio-cultural composition, including a description of existing refugee populations.
(h) Availability of educational services for dependent children.
(i) A discussion of community receptivity regarding the Entrants to be resettled.
(j) A discussion of the presence or absence of an established Cuban population and/or established Cuban assistance association(s).

3. *Core Services*—these services will enable participating Entrants to meet basic transportation, food and shelter expenses during the initial resettlement period (usually 30 days and under extraordinary circumstances up to 60 days). The following core services are required to be provided to the client either in the form of a resettlement allowance or by direct payment of expenses by the resettlement agency:
(a) Reasonable transportation and moving costs from the site of recruitment to the site of resettlement.
(b) Living expenses during the initial resettlement period of time, including food, shelter, utilities and local transportation costs.
(c) One-time security deposits for housing and utilities.
(d) Essential furnishings/utensils.
(e) Stipends (in the absence of immediate employment income).

4. On-going Resettlement Services (provided during and after initial resettlement)—The applicant is required to set forth a detailed plan for the organization, delivery and coordination of services including:
(a) Employment—a plan for the development of employment resources prior to the arrival of clients; the job development, placement, upgrading services and job counseling activities.
(b) On-The-Job Training—a plan for developing options for on-the-job training, including subsidization of up to ½ of an Entrant's salary during a training period of up to 90 days, to an employer who guarantees job placement at the end of the training period.
(c) Vocational Education—fund for employed Entrants who wish to upgrade skills for employment mobility (this fund should not be used in lieu of employment).
(d) English Language Training—with an emphasis upon survival and vocational English Language Training.
(e) Orientation to the resettlement site and the community resources which are available to the clients.
(f) Individual and group counseling (cost associated with client legal services are not allowable expenditures under this Notice).
(g) A plan to provide access to affordable health care services for up to one year, or until the Entrant has obtained medical coverage through his/her employer.
(h) Day care services for children that enables eligible employable adults to obtain and sustain employment.
(i) Emergency assistance—provision for one month's rent, food, transportation, utility payments etc., in cases of dire need.
(j) Crisis intervention services.

5. A description of the plan for tracking and monitoring client progress on a regular basis.

6. Development of a case record system which will include all significant decisions and events relating to the client, and, at a minimum includes the following information:
(a) Identifying data including family composition.
(b) Initial screening and intake forms.
(c) Case management plan developed in conjunction with agency responsible for recruitment.
(d) Case history/social history.
(e) Medical services, if available.
(f) Individual counseling plans.
(g) Program/case notes and incident reports.
(h) Evaluation and progress reports.
(i) Current employment data/information.
(j) Summary of program and client responsibilities signed by the Entrant.
(k) Copy of Form I–94.
(l) Referrals to other agencies.
(m) Final case report.

7. Identification of measures the agency will take or has taken, to assure and maintain community receptivity and support and/or reduce community opposition to the program.

8. Identification of voluntary and donated resources, including letters of intent from the agency or entity providing the resource.

9. Description of the local social service network.

10. A plan for program evaluation including identification of the evaluative criteria.

Administrative Requirements

Applicants are required to submit the following material as an addendum to the program proposal:

1. Agency Administration and Organization

(a) Agency organizational chart describing the agency as a whole and the organizational relationship of the proposed resettlement program to other agency programs.

(b) Comprehensive organizational chart of the proposed resettlement and recruitment components and their relationship.

(c) Copies of articles of incorporation.

(d) IRS status as a non-profit agency, if applicable.

(e) List of officers and board members, if applicable.

(f) List of professional affiliations and certifications.

2. Organizational Standards/Policies and Policies Regarding Clients

(a) Personnel handbook and standards of conduct.

(b) Statement regarding professional and agency liability.

(c) Copy of program rules/regulations.

(d) Copy of policy regarding the confidentiality of client information and records.

(e) Discussion of the method to be used to inform clients of program rules, regulations and policies, including the confidentiality of client information.

3. Staff

(a) Job/position descriptions and resumes (if individuals have been identified for certain positions) for all personnel to be hired for both the recruitment and resettlement components, including documented evidence of the availability of bi-lingual and/or bi-cultural personnel; (b) Resumes and qualifications of program consultants must also be included.

4. Community Support at Resettlement Sites

(a) Letters of program support from local political representatives, social service agencies, merchants, potential employers, etc. Letters should reflect writers' awareness of program's intent, potential federal funding source and location of project. Letters should also contain a recommendation or comment regarding the proposed resettlement program.

(b) Verification that the applicant has notified the applicable State Refugee Coordinator of the organization's intent to submit a proposal.

(c) A listing of service providers to whom clients will be referred, including name, address and description of service(s) to be provided.

Finance and Budget

Applicants are required to submit the following materials as an addendum to the proposal:

1. A copy of the latest financial audit of the applicant.

2. A description of the Financial Management System of the applicant.

3. A listing of other Federal, State, local or foundation grants or contracts, etc., being administered by the applicant. This material should include information regarding the funding source, grant or contract number, level of financial support, purpose of grant or contract, grant/contract performance period, and name, address and telephone number of grant and/or contracts officer (Federal, State or local).

4. Subgrants and/or Subcontracts.

(a) Identify all proposed services which are to be subgranted/subcontracted.

(b) Provide relevant background material regarding the proposed subgrantee/subcontractor.

(c) Provide letters from the proposed subgrantee(s)/subcontractor(s) indicating their commitment and the specific services to be provided.

Budget

The proposed budget will be examined by the Grants Officer to verify the costs data, to evaluate specific elements of costs and to determine if costs are necessary, reasonable and allowable under applicable statutes and regulations. The following budget structure should be used to provide appropriate costs breakdowns. Detailed costs justification should also be attached to the budget for each budget category:

Personnel

Show salaries and wages only. Fees and expenses for consultants should be included in line "other". The name and title, salary amounts and level of effort must be identified for each position. A current vitae is required for each position.

Fringe Benefits

Submit a current copy of the negotiated fringe benefit rate. If fringe benefits are applicable to direct salaries and wages and treated as part of the indirect cost rate negotiation agreement, leave blank.

Travel

Use only for travel (domestic) of employees on the grant. Include estimated cost breakout for airfare, per diem, number of days, number of persons traveling and purpose of travel. Travel for consultants should not go in this line, nor should local transportation (i.e., where no out-of-town trip is involved).

Equipment

Use only for non-expendable personnel property, which is defined as follows:

Non-expendable personal property means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. A grantee may use its own definition of non-expendable personal property provided that such definition would at least include all tangible personal property. Personal property means property of any kind except real property.

Each item of non-expendable personal property costing $1,000 and each item of general purpose equipment costing over $500 must be identified and explained (i.e., office equipment and furnishings which are usable for activities other than the technical, specialized aspects of the grant program).

Supplies

Include all tangible personal property except that which is included in the equipment line. Requests in excess of $500 per category of tangible personal property (supply) must be identified and explained.

Contractual

Use of procurement contracts (except those which belong on other line items such as equipment, supplies, and construction). It must not include payments to individuals such as stipends, consulting fees, benefit, etc.

Renovation

Costs for alteration and renovation must be explained in detail.

Entrant Cost

All costs directly related to entrants such as stipends, and allowances, temporary housing essentials, furnishings and utensils, food or food allowances, personal items, clothing, local transportation, assistance payments, medical services, etc., must be identified and explained.

Other

All direct costs not clearly covered in categories listed above i.e., consulting

costs, local transportation, space and equipment rental, and van usage must be identified and explained. Request for any item identified in the Office of Management and Budget Circular (OMB A–122) which require approval by the CRS Grants Officer must be identified and explained. Costs for space rental should be identified by square feet. Also identify utilities and breakout costs per month.

Indirect Cost

Identify and explain indirect cost items.

Screening Criteria

CRS will screen all applications submitted pursuant to this Notice. Screening shall be done to determine whether an application is sufficiently complete to warrant consideration and review by the CRS Grant Review Panel. An application may be rejected if:

1. The application omits:

a. Detailed assessments of the proposed resettlement community(ies).

b. The rationale for the selection of recruitment areas within South Florida.

c. A comprehensive management plan, including a plan for the coordination of activities between the recruitment and resettlement components.

d. Documented written evidence of community support for the resettlement program.

e. Comprehensive information regarding subcontractor(s) and/or subgrantees.

f. Job/position descriptions for all personnel to be hired for both the recruitment and resettlement components of the program.

g. Organizational charts describing the agency as a whole and organizational charts of the proposed recruitment and resettlement components.

h. A comprehensive line-item budget with appropriate descriptive narrative.

i. A copy of the latest financial audit of the applicant.

2. The application is from an ineligible applicant.

3. The application is received after the closing date.

Criteria for Evaluating Applications

Grant applications will be evaluated according to the following criteria:

1. The quality of the proposal's project management and staffing plans as demonstrated by:

- The adequacy of the plan for program management and the plan for coordination between the recruitment and resettlement components of the program.
- The adequacy of the qualifications of organizations participating in the project in relation to proposed roles, and the extent to which these organizations have demonstrated track records as providers of services to Cuban Entrants or similar populations.
- The extent to which the applicant has a demonstrated capacity for effective fiscal management and accountability.
- The extent to which subgrantee(s)/subcontractor(s) have a demonstrated capacity for effective fiscal and program management and accountability.
- The adequacy of the plans for staff supervision of each agency/organization participating in the project.
- The adequacy of the staffing plans in terms of the relationship between the proposed functions and responsibility of the staff in the project, and the education and relevant experience required for the position.
- Clear organizational charts delineating organizational relationships and levels of authority, including the identification of the staff position accountable for the overall management, direction and progress of the program. (20 points)

2. The extent to which the qualitative and quantitative assessment of the resettlement site(s) provides justification for their selection as demonstrated by:

- The availability of full-time permanent employment opportunities at skills levels appropriate to Cuban PSR clients.
- The level of employment and unemployment in various job markets.
- The availability of housing which is safe, sanitary and affordable to the client.
- The availability of affordable health care services.
- The capacity of the community to provide: (1) Employment services, (2) English Language training, (3) vocational training, (4) educational and social services (including daycare) on a timely and appropriate basis. (15 points)

3. *Program Services*—The applicant's response to the required program services, including a description of program resources which demonstrates:

- The capacity of the program to offer services which meet the needs of the clients.
- Utilization of resources in a manner which promotes and fosters cultural identification and mutual support.
- The capacity to provide and sustain full-time permanent employment.
- Sensitivity to the issues of culture, race, ethnicity and native language.
- Preparation for and achievement of personal and financial independence for Entrants in an expeditious and effective manner. (15 points)

4. The degree to which the applicant has provided written documented evidence of community support and acceptance of the program at the site(s) of resettlement. (10 points)

5. The extent to which the assessment of the recruitment site(s)/area(s) provides justification for their selection as demonstrated by:

- The assessed needs of the Cuban Entrants in the site(s)/area(s) of recruitment in terms of: (1) Available employment; (2) affordable, safe and sanitary housing; (3) available social services.
- The size and composition of the Cuban population in the proposed recruitment site(s)/area(s).
- The ability of the applicant to effectively recruit clients from the proposed recruitment site(s)/area(s). (12 points)

6. The adequacy of client recruitment, client outreach and client retention strategies. (10 points)

7. The adequacy of the applicant's response regarding the requirements and program services for each recruitment area/site as demonstrated by:

- The agency staffing plan and staff qualifications.
- The description of linkages with the applicant organization and with the agency(ies) responsible for resettlement site operations.
- The adequacy of the proposed services.
- The adequacy of the methodology for the identification and selection of program participants.
- The description of the plan to provide health screening services to program participants.
- The description of:

a. Processing and intake procedures.

b. Orientation activities.

c. The plan for transporting clients to the site(s) of resettlement.

- The adequacy of the plan for developing individual client service/case plans. (10 points)

8. The reasonableness of the proposed budget and budget narrative, for both the recruitment and resettlement components, in relation to the proposed program activities. (5 points)

9. The plan for project evaluation, including the methodology and criteria for evaluating the program. (3 points)

Application Request and Submission

Eligible applicants may request grant applications from the Community Relations Service (CRS), Department of Justice (DOJ), Grants Management Office, Room 370; 5550 Friendship

Boulevard; Chevy Chase, Maryland 20815; Attention Cynthia Bowie, (301) 492–5810. For program related information, contact either Kenneth Leutbecker, (301) 492–5809 or 1–800 424–9304 or Jay LaRoche, (305) 350–4261.

Applicants must submit a signed original and two (2) copies of the proposal to the Attention of Cynthia Bowie, Grants Management Office, Community Relations Service.

Applications Delivered by Mail

An applicant must show proof of mailing consisting of one of the following:

1. A legible dated U.S. Postal Service postmark.
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
3. A dated shipping label, invoice or receipt from a commerical carrier.

If an application is sent through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with the local post office.

Applicants are encouraged to use registered or at least first class mail. Each late application will be notified that the applicant will not be considered.

Applications postmarked on or before August 20, 1985 shall be considered timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Justice, Community Relations Service, Room 330, 5550 Friendship Boulevard; Chevy Chase, Maryland 20815.

The Grants Management Office will accept hand-delivered applications between 9:00 a.m. and 5:00 p.m., Eastern Daylight Time daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 5:00 p.m., Eastern Daylight Time, on the closing date.

Applicable Regulations

The following codes and regulations apply to grants awarded through this notice:

Title 41—Code of Federal Regulations
Title 28—Code of Federal Regulations
Part 42, Subpart C—Non-discrimination in Federally assisted programs, Title VI of the Civil Rights Act of 1964
Part 42, Subpart D—Non-discrimination in Federally assisted programs—implementation of Section 815(c)(1) of the Justice System Improvement Act of 1979
Part 42, Subpart G—Non-discrimination based on handicap in Federally assisted programs
Part 42, Subpart H—Procedures for complaints of employment discrimination filed against recipients of Federal financial assistance
Office of Management and Budget (OMB) Circular A–110
Office of Management and Budget (OMB) Circular A–122

Records and Reports

CRS Grantees are required to maintain all Entrant records, program and financial information and/or data for a three (3) year period after the end date of the program performance period.

At the conclusion of the three (3) year retention period, CRS will instruct the grantee regarding the final disposition of Entrant records, program and financial information and/or other data.

Grantees shall, within thirty (30) days following the end of each calendar quarter, furnish to the Senior Grants Management Specialist, CRS, an original and two copies of both the Financial Status Report (SF 269) and the Federal Cash Transaction Report (SF 272).

Within ninety (90) days of the end date of the project performance and budget periods, Grantees are required to submit to the Senior Grants Management Specialist, CRS, an original and two copies of a final Financial Status Report (SF 269).

Grantees shall, within thirty (30) days following the end of each calendar quarter, provide the designated CRS Program Officer with a quarterly program progress report.

Gilbert G. Pompa,

Director, Community Relations Service.

July 1, 1985.

Intergovernmental Review

Application Requirements

Pursuant to Executive Order 12372, Intergovernmental Review of Federal Programs, all states have the option of designating procedures for review and comment on Federally assisted programs.

Each applicant is required to notify each state in which it is proposing activities under Planned Secondary Resettlement Program and to comply with the state(s) established review procedures. This may be done by contacting the applicable state Single Point of Contact (SPOC). Following is a list of SPOCs:

State Single Point of Contact List

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3485 Norman Bridge Road, P.O. Box 2939, Montgomery, Alabama 36105–0939

Arizona

Office of Economic Planning and Development, State of Arizona

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: Jo Stephens, Director, Local Government Assistance, Attn: Arizona State Clearinghouse, 1700 West Washington, Room 205, Phoenix, Arizona 85007, Tel. (602) 255–5004.

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–2311

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445–0282

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–4290.

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804

For information contact: Hawaii State Clearinghouse, Tel. (808) 548–3085

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5804

Iowa

Office for Planning and Programming, Capital Annex, 532 East 12th Street, Des Moines, Iowa 50130, Tel. (515) 281–3864

Kansas

Judy Krueger, Office of the Secretary, Kansas Department of Human Resources, 401 Topeka Avenue, Topeka, Kansas 66603, Tel. (913) 296–5075

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40610, Tel. (502) 564–2382

Louisiana

Michael J. Jefferson, Department of Urban and Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capital Station, Baton Rouge, Louisiana 70804, Tel. (504) 925–3722

Maine

State Planning Office, Attn: Intergovernmental Review Process, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21210–2365, Tel. (301) 383–7875

Massachusetts

Executive Office of Communities and Developent, 100 Cambridge Street, Rm. 1401, Boston, Massachusetts, 02202, Tel. (617) 727–7078

Michigan

John H. Reurink, Director, Management Services Bureau, Department of Commerce, P.O. Box 30004, Lansing Michigan 48909, Tel. (517) 373–0933

Minnesota

Thomas N. Harren, Minnesota State Planning Agency, Capital Square Building, Rm. 101, 550 Cedar Street, St. Paul, Minnesota 55101, Tel. (612) 296–3985

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg, 500 High Street, Jackson, Mississippi 39202

For information contact: Mr. Marlen Baucum, Department of Planning and Policy, Tel. (601) 359–3150

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Room 129, Capital Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834 or 751–2345

Montana

Agnes Zipperian, Intergovernmental Review Clearinghouse, C/O Office of the Lieutenant Governor, Capital Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

Policy Reserch Office, P.O. Box 94601, Room 1321, State Capitol Lincoln, Nebraska 68509, Tel. (402) 417–3614

Nevada

Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (7023) 885–4420

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420

New Hampshire

Devid G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 806, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note.—Correspondence and questions concerning the State's E.O. process should be directed to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025.

New Mexico

Peter C. Pence, Director, Management and Contracts Review Divison, Department of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor—State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215

For information contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466–0698

Oklahoma

Office of Fedral Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Executive Building, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 1323, Harrisburg, Pennsylvania 17108, Attn: Charles Griffiths, Executive Director, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Province, Rhode Island 02907, Tel. (401) 277–2656

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pandleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 758–2417

South Dakota

Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1678

Texas

Bob McPherson, State Planning Director, Office of the Governor, Austin, Texas 78711, Tel. (512) 475–6156

Utah

Michael B. Zuhn, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Buidling, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Robert H. Kirby, Intergovernmental Review Officer, Department of Planning and Budget, P.O. Box 1422, Richmond, Virginia 23211, Tel. (804) 786–1921

Washington

Ken Black, Washington Department of Community Development, Ninth and Columbia Building, Olympia, Washington 98504, Tel. (206) 753–2200

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster Street, CEF 2, Madison, Wisconsin 53702, Tel. (608) 266–1212

Note—Correspondence and questions concerning the State's E.O. 12372 process should be directed to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, WI 53707, Tel. (608) 266–8349.

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574.

Virgin Islands

Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–0001

District of Columbia

Pauline Schneider, Director, Office of Intergovernmental Relations, Room 416, District Building, Washington, D.C. 20004, Tel. (202) 727–6265

Puerto Rico

Ms. Patria G. Custodio, Chairman, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico, Tel. (809) 727–4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, DM 96950

State Requirements

Comments and recommendations relative to applications submitted under this soliciation should be mailed no later than 60 days after the date of publication, addressed to: Richard Gutierrez, Coordinator, Immigration and Refugee Affairs, Community Relations Service, 5550 Friendship Blvd., Suite 330, Chevy Chase, MD 20815

[FR Doc. 85–16043 Filed 7–3–85; 8:45 am]
BILLING CODE 4410–01–M

VOL
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ISS
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1985

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federal register

Friday
July 5, 1985

Part IX

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Western Gulf of Mexico; Sale 102

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Western Gulf of Mexico
Oil and Gas Lease Sale 102

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act of 1953 (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 3301 North Causeway Boulevard, Metairie, Louisiana 70002. Bids may be delivered in person to the above address during normal business hours (8:00 a.m. to 4:00 p.m., c.s.t.) until the Bid Submission Deadline at 10:00 a.m., c.s.t., August 13, 1985. Hereinafter, all times cited in this Notice refer to Central Standard Time (c.s.t.) unless otherwise stated. Bids will not be accepted on the day of Bid Opening, August 14, 1985. Delivery by mail should be addressed to P.O. Box 7944, Metairie, Louisiana 70010, and must be received by the Bid Submission Deadline. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10:00 a.m., August 13, 1985. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m. August 14, 1985. Bid Opening Time will be 9:00 a.m. August 14, 1985, at the New Orleans Convention Center, Ballroom, in New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 50 FR 13390 on April 3, 1985.

3. Method of Bidding. Tract numbers will not be used. A separate bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 102, (map number(s), map name(s), and block number(s)), not to be opened until 9:00 a.m., c.s.t., August 14, 1985," must be submitted for each block or prescribed bidding unit bid upon. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 102, NG 15-1, East Breaks, Block 701, not to be opened until 9:00 a.m., c.s.t., August 14, 1985." For those blocks which must be bid upon together as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear in the label on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portion of a block or bidding unit as described in paragraph 12 will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico Regional Office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in percent to a maximum of five decimal places, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus of $150 or more per acre, or fraction thereof. All leases resulting from this sale will provide for a yearly rental payment of $3 per acre, or fraction thereof. All leases awarded will provide for a minimum royalty of $3 per acre, or fraction thereof. The bidding systems to be utilized for this sale apply to blocks or bidding units as shown on map 2 (see paragraph 12). The following bidding systems will be used.

(a) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

(b) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 16-2/3 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (June 1982), and the Affirmative Action Representation Form, Form 1140-7 (June 1982). See paragraph 14, "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid will be deposited by the Government in an interest bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $150 or more per acre, or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, or other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment by electronic fund transfer (EFT) utilizing the Federal Reserve Communications System and the Treasury Financial Communications System, payable to the Department of the Interior--MMS.

The RD will provide more detailed instructions on making the EFT payments when bidders are qualified to submit bids for the sale. Bidders are referred to 30 CFR 218.155.

11. Leasing Maps/Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Leasing Maps/Official Protraction Diagrams which may be purchased from the Gulf of Mexico Regional Office (see paragraph 14).

(a) Outer Continental Shelf Leasing Maps--South Texas Set.
This set of maps sells for $5.00.

Map 1	South Padre Island Area
Map 1A	South Padre Island Area, East Addition
Map 2	North Padre Island Area
Map 2A	North Padre Island Area, East Addition
Map 3	Mustang Island Area
Map 3A	Mustang Island Area, East Addition
Map 4	Matagorda Island Area

(b) Outer Continental Shelf Leasing Maps--East Texas Set.
The following set of maps sells for $7.00.

Map 5	Brazos Area
Map 5A	Brazos Area, South Addition
Map 6	Galveston Area
Map 6A	Galveston Area, South Addition
Map 7	High Island Area
Map 7A	High Island Area, East Addition
Map 7B	High Island Area, South Addition
Map 7C	High Island Area, East Addition, South Extension
Map 8	Sabine Pass Area

(c) Outer Continental Shelf Official Protraction Diagrams.
These diagrams sell for $2.00 each.

NG 14-3	Corpus Christi	(approved January 27, 1976)
NG 14-6	Port Isabel	(approved January 27, 1976)
NG 15-1	East Breaks	(approved January 27, 1976)
NG 15-2	Garden Banks	(approved December 2, 1976)
NG 15-4	Alaminos Canyon	(approved March 26, 1976)
NG 15-5	Keathley Canyon	(approved December 2, 1976)

12. Description of the Areas Offered for Bids.

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, bisected by administrative lines such as the Federal/State jurisdictional line, the section 8(g) line, or a combination of such lines. In these cases, the following supplemental documents to this Notice of Sale are available from the Gulf of Mexico Regional Office (see paragraph 14(a)).

(1) Western Gulf of Mexico Lease Sale 102 - Final.
Unleased Split Blocks.

(2) Western Gulf of Mexico Lease Sale 102 - Final.
Unleased Acreage of Blocks with Aliquots Under Lease.

(3) Western Gulf of Mexico Lease Sale 102 - Final.
Unleased Blocks Split by the 8(g) Line.

(b) References to maps 1, 2, and 3 in this Notice refer to the following maps which are available on request from the Gulf of Mexico Regional Office.

Map 1 entitled "Western Gulf of Mexico Lease Sale 102, Stipulations, Lease Terms, and Warning Areas, Final."

Map 2 entitled "Western Gulf of Mexico Lease Sale 102, Bidding Systems and Bidding Units, Final," refers largely to Royalty Rates and Bidding Units.

Map 3 entitled "Western Gulf of Mexico Lease Sale 102, Detailed Maps of Biologically Sensitive Areas, Final," pertains to areas referenced in Stipulation No. 2.

(c) In several instances two or more blocks have been joined together into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their acreages appears on map 2.

(d) The areas offered for leasing include all those blocks shown on the Leasing Maps and Official Protraction Diagrams listed in paragraph 11 (a), (b), and (c), except for those blocks or partial blocks which are in water depths greater than 2,400 meters (as shown on map 1 above) and those blocks or partial blocks described as follows.

(1)

WESTERN GULF OF MEXICO LEASE SALE 102
WESTERN GULF OF MEXICO LEASED LANDS

Descriptions of Blocks Listed Represent All Federal Acreage Leased Unless Otherwise Noted

S. Padre Island

1031
1032
1039
1040
1049
1062
1063
1069
1070
1104-
(Landward of
8(g) line)
1111
1112
1125
1133

S. Padre Island,
East Addition

1117
A-62
A-64
A-65
A-70
A-71
A-72
A-73
A-78

N. Padre Island

884
887
888
894
895
897
898
905
906
908
909
913
914

N. Padre Island
(continued)

919
936
937
938
946
947
956
960
965
966
967
968
969
976
999
1000-
(Landward of
8(g) line)
1006
1007
1008
1021

N. Padre Island,
East Addition
(continued)

A-33
A-40
A-41
A-42
A-48
A-66
A-81
A-83
A-87
A-88
A-89
A-92
A-93

Mustang Island

727
728
738
739
740
742
743
752
753
754
757
758
759
762
763
764
765
766
768

Mustang Island
(continued)

769
777
778
780
781
782
784
787
788
791
796
800
803
805
809
811
813
822
823
825
827
830
831
834
836
838
843
846
847
849
850
873
874
1A-1
1A-2
1A-6
1A-10
1A-11

Mustang Island
(continued)

A-12
A-14
A-15
A-16
A-18
A-19
A-20
A-21
A-22
A-23
A-25
A-26
A-30
A-31
A-34
A-43
A-51
A-52
A-54
A-60
A-61
A-83
A-84
A-85
A-90
A-94
A-101
A-103
A-104
A-107
A-110
A-111
A-113
A-117
A-118
A-121
A-122

Mustang Island,
East Addition
(continued)

A-124
A-129
A-135
A-138
A-139
A-140
A-151
A-152
A-153
A-162
A-164

Matagorda Island

487
518
519
520
526
527
528
529
534
535
536
557
560
566
567
568
569
586
587
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592
599
600
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602
603
604

Matagorda Island (continued)	Matagorda Island (continued)	Brazos (continued)	Brazos (continued)	Galveston (continued)	Galveston (continued)
605	697	457	A-40	243-	320
606	698	466	A-41	(Landward of	321
607	699	475		8(g) line)	323
616	700	476	Brazos,	255	326
617	701	478	South Addition	257	328
618	702	479		270	329
619	703	488	A-47	271	331
620	704	489-	A-50	272-	332
622	705	(Landward of	A-52	(Seaward of	333
623	710	8(g) line)	A-53	8(g) line)	343
624	711	490	A-54	274	344
631	712	491	A-65	282	345
632	713	492	A-66	288-	346
633	715	494	A-67	(S½NE¼NE¼;	347
634-	716	497	A-68	SE¼NW¼NE¼;	348
(Seaward of	717	498	A-70	S½NE¼;	349
8(g) line)	718	501	A-73	E½E½SW¼; SE¼)	350
635	A-1	502	A-74	289-	354
636	A-4	504	A-76	(SW¼NW¼NW¼;	356
638	A-7	510	A-78	W½SW¼NW¼;	357
639		512	A-79	SE¼SW¼NW¼;	361
640	Brazos	514	A-89	SW¼SE¼NW¼;	362
649		515	A-102	SW¼; W½SE¼)	363
651	335	517	A-105	295-	384
652	341	530	A-118	(S½NE¼NE¼;	388
653	342	534	A-119	NW¼NE¼;	389
654	364-	535	A-132	W½SW¼NE¼;	390
655	(Landward of	550	A-133	NE¼SW¼NE¼;	391
656	8(g) line)	551		N½SE¼NE¼;	392
657	376-	552	Galveston	W½; W½NW¼SE¼;	393
658	(Landward of	578		S½SE¼)	421
664	8(g) line)	585	144	296-	422
665	378	608	151	(NE¼;	424
666	397	615	180	NE¼NE¼NW¼;	426
667	398	A-3	181	S½NE¼NW¼;	427
668	399	A-7	189 (SE¼)	S½SW¼NW¼;	428
669	412	A-9	190 (W½)	SE¼NW¼;	461
670	415	A-10	191-	N½S½;	464
671	417	A-16	(Portion seaward	NE¼SW¼SW¼;	465
672	435-	A-17	of 8(g) line)	N½SE¼SW¼;	503
676	(Seaward of	A-19	192	N½SW¼SE¼;	A-3
677	8(g) line)	A-20	209	SE¼SE¼)	A-4
678	436	A-22	210	298	A-16
680	437	A-23	211	300	A-18
681	438	A-24	213	301	A-20
682	439	A-28	223	302	A-24
684	449	A-30	239	303	A-35
685	450	A-33	241	304	A-37
686	451	A-34	242-	313	A-38
687	452	A-37	(Landward of	318	A-57
689	453	A-38	8(g) line)	319	A-58
694	455	A-39			

Galveston (continued)

A-84
A-97
A-99
A-111
A-113

Galveston, South Addition

A-114
A-115
A-116
A-126
A-127
A-129
A-131
A-142
A-156
A-162
A-178
A-192
A-194
A-217
A-219
A-224
A-226
A-227
A-248
A-252
A-253

High Island

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88
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93
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114
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117
133
134
135-
(N½; N½S½;
SW¼SW¼;
W½SE¼SW¼;
NE¼SE¼SW¼;
N½S½SE¼)
136-
(E½; E½NE¼SW¼;
S½SE¼SW¼)
138
139
140
141 (E½)
142
143
154
155 (W½)
158
159
160-
(NE¼; NE¼NW¼;
E½SE¼NW¼;
N½SE¼;
N½SE¼SE¼)

High Island (continued)

161-
(NW¼NE¼NW¼;
S½NE¼NW¼;
W½NW¼;
SE¼NW¼;
NE¼NE¼SW¼;
W½NE¼SW¼;
NW¼SW¼;
NW¼SW¼SW¼)
162
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A-1
A-3
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A-12
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A-21
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A-24

High Island (continued)

A-34
A-38
A-39
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A-69
A-82
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A-141
A-142
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A-161
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A-165

High Island, South Addition

A-411
A-412
A-413
A-414
A-415
A-416
A-417

High Island, South Addition (continued)

A-422
A-424
A-433
A-435
A-437
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High Island, South Extension (continued)

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A-579
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A-585

High Island, South Addition (continued)

A-306
A-307
A-308
A-309
A-311
A-314
A-315
A-316

High Island, East Addition

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A-181
A-185
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A-194
A-198
A-214
A-215
A-231
A-234
A-237
A-240
A-241
A-244

High Island, East Addition (continued)

A-256
A-257
A-258

High Island, East Addition, South Extension

A-267
A-268
A-269
A-270
A-271
A-273
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A-276
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High Island, East Addition, South Extension (continued)

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A-401
A-402
A-403

Sabine Pass

17
18
43
44

Corpus Christi

569
570
700
743
744
920
921
964
968
1098

East Breaks

74
106
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East Breaks (continued)

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211
217
239
244
245
250
251
252
259
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Garden Banks (continued)

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Garden Banks (continued)

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Garden Banks (continued)

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Port Isabel

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Garden Banks

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(2) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, dated October 19, 1981, no bids will be accepted on the following blocks:

Blocks A-375 and A-398.

(3) Although currently unleased and shown on Official Protraction Diagrams or Leasing Maps as indicated, no bids will be accepted on the following blocks:

South Padre Island Area, Texas Map No. 1, Block 1163

South Padre Island Area, East Addition, Texas Map No. 1A, Blocks 1162 through A-90

Port Isabel - NG 14-6, Blocks 948 through 968 and 991 through 1012

Alaminos Canyon - NG 15-4, Blocks 925 through 942 and 969 through 1009

Keathley Canyon - NG 15-5, Blocks 969 through 978.

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on map 1 and will be on Form MMS-2005 (August 1982). Copies of the lease form are available from the Gulf of Mexico Regional Office.

(b) The applicability of Stipulations Nos. 1 through 4 that will be included in leases resulting from this sale is as shown on map 1 and supplemented by references in this Notice.

Stipulation No. 1--Protection of Cultural Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Cultural resource" means any site, structure, or object of historic or prehistoric archaeological significance. "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes a cultural resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any cultural resource that may be affected by operations. The report, prepared by an archaeologist and geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent cultural and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that a cultural resource may be present, the lessee shall either:

(i) Locate the site of any operations so as not to adversely affect the area where the cultural resource may be; or

(ii) Establish to the satisfaction of the RD that a cultural resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that a cultural resource is likely to be present on the lease and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the cultural resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any cultural resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the cultural resource until the RD has told the lessee how to protect it.

Stipulation No. 2--Protection of High Relief Banks.

(This stipulation will be included in leases located in the areas so indicated on maps 1 and 3 described in paragraph 12. The high relief banks with their appropriate "no activity" isobaths are listed below.)

Bank Name	Isobath (meters)
Hysterious Bank[1]	74, 76, 78, 80, 84
Blackfish Ridge[1]	70
Dream Bank[2]	78, 82
Southern Bank[2]	80
Hospital Bank[2]	70
North Hospital Bank[2]	66
Aransas Bank[2]	70
South Baker Bank[2]	70
Baker Bank[2]	70
Big Dunn Bar[1]	65
Small Dunn Bar[1]	65
32 Fathom Bank[1]	52
Stetson Bank	62
Claypile Bank[1]	50
Applebaum Bank	85
Coffee Lump[1]	Various
West Flower Garden Bank[4]	100 (defined by ### system)
East Flower Garden Bank[4]	100 (defined by ### system)
MacNeil Bank	82
29 Fathom Bank	64
28 Fathom Bank	85
Geyer Bank	85
Elvers Bank[3]	85
Bright Bank[3]	85
18 Fathom Lump[3]	85
Razak Bank[3]	85
Sidner Bank[3]	85
Parker Bank[3]	85

[1] Low Relief Banks - only paragraph (a) of the stipulation applies.

[2] Other South Texas Banks - paragraph (c) of the stipulation shall not apply; for production and development operations only, the provisions of paragraph (b) shall apply in both the "1-Mile Zone" and the "3-Mile Zone."

[3] Central Gulf of Mexico bank with a portion of its "1-Mile Zone" and/or "3-Mile Zone" in Western Gulf of Mexico.

[4] Flower Garden Banks - has a "4-Mile Zone" rather than a "3-Mile Zone"; in the "1-Mile Zone," paragraph (c)(2) of the stipulation shall apply in addition to paragraph (b); in the "4-Mile Zone," only paragraph (b) shall apply.

(a) No structures, drilling rigs, pipelines, or anchoring will be allowed within the isobaths (i.e., the "no activity zone" shown on map 3) of the banks listed above.

(b) Operations within the area shown as "1-Mile Zone" on map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a down-pipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "3-Mile Zone" on map 3 shall be restricted as specified in either (1) or (2) below at the option of the lessee.

(1) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a down-pipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(2) The operator (lessee) shall submit a monitoring plan. The monitoring plan will be designed to assess the effects of oil and gas exploration and development operations on the biotic communities of the nearby banks.

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified, independent scientific personnel, and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the Regional Director (RD) on a schedule established by the RD, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided that surface disposal of drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank are being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the RD shall require shunting as specified in subparagraph (1) above or other appropriate operational restrictions.

Stipulation No. 3--Military Warning Areas.

(This stipulation will be included in leases located within each warning area, as shown on map 1 described in paragraph 12.)

Warning Areas Command Headquarters
Western Planning Area

Warning Areas	Warning Areas Command Headquarters
W-228	Naval Air Training Command Naval Air Station Corpus Christi, Texas
W-602	Director of Training Deputy Chief of Staff, Operations Headquarters Strategic Air Command Offutt AFB, Nebraska

(a) Hold Harmless

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property which occurs in, on, or above the Outer Continental Shelf (OCS), to any person or persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the table above.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated warning areas in accordance with requirements specified by the commander of the command headquarters listed in the table above to the degree necessary to prevent damage to or unacceptable interference with Department of Defense flight, testing, or operations activities conducted within individual, designated warning areas. Necessary monitoring, control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(c) Operational Controls

The lessee agrees that, prior to operating, or causing to be operated on its behalf, boat or aircraft traffic in individual, designated warning areas, the lessee shall coordinate and comply with instructions from the commander of the individual command headquarters listed in the table above. Such coordination and instruction will provide for positive control of boats and aircraft operating in the warning areas at all times.

Stipulation No. 4--8-Year Lease Term.

(This stipulation will be included in leases on blocks in the 400-meter to 900-meter depth range as shown on map 1.)

For each oil and gas lease in the 400-meter to 900-meter water depth range the lessee must commence the drilling of an exploratory well within 5 years of the date the lease becomes effective. The exploratory well shall meet the depth and other criteria established in an approved exploratory plan.

14. Information to Lessees.

(a) Information on Supplemental Documents. For copies of the various documents identified as available from the Gulf of Mexico Regional Office, prospective bidders should contact the Public Information Unit at the address stated in paragraph 2, either in writing or by telephone (504) 838-0519 or 838-0527. For additional information, contact the Regional Supervisor for Leasing and Environment at the address stated in paragraph 2 or by telephone at (504) 838-0755 or 838-0765.

(b) Information on Navigation Safety. Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et. seq.). U.S. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

Prospective bidders should be aware of a Coast Guard study of port access routes in the Gulf of Mexico. Notice of this study was published in the Federal Register on March 19, 1984, at 49 FR 10127, with additional references on April 12, 1984, at 49 FR 14538, and on July 10, 1984, at 49 FR 28074. The purpose of this study was to evaluate alternative routing measures for the Galveston Approach area. In the Western Gulf of Mexico, the following blocks in the High Island Area (Maps 7 and 7A of the East Texas Set) were affected:

A-40 to A-48; A-52 to A-59; A-61; A-67 to A-68; A-70 to A-80; A-212 to A-214; and A-219 to A-223.

The results of this Coast Guard study were published as a Notice in the Federal Register on March 11, 1985, at 50 FR 9682.

For additional information, prospective bidders should contact Lt. Commander F. V. Newman, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130 (Phone: (504) 589-6901).

Prospective bidders should be aware of the MMS-permitted lightering facility located in the Mustang Island Area, Blocks 825, 826, and 827.

(c) Information on MOU with DOT on Pipelines. Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding (MOU) dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) Information on Unitization. Bidders are advised that, in accordance with section 16 of each lease offered, the lessor may require a lessee to operate under a unit, pooling, or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with a different royalty rate or a net profit share payment.

(e) Information on 10-Year Leases. For those blocks identified as having lease terms with an initial period of 10 years, bidders are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to the MMS either an exploration plan or a general statement of exploration intention prior to the end of the ninth lease year.

(f) Information on Affirmative Action. Revision of Department of Labor regulations on Affirmative Action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, August 1982), would be deleted from leases resulting from this sale. In addition, existing stocks of the Affirmative Action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Pending the issuance of revised versions of Forms 1140-7 and 1140-8, submission of Form 1140-7 (June 1982) and Form 1140-8 (June 1982) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing Affirmative Action forms.

(g) Information on Ordnance Disposal Areas. Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on map 1 described in paragraph 12. These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi disposal area range from approximately 600 to 900 meters. Water depths in the East Breaks disposal area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards. Lessees are advised of an Environmental Protection Agency dumping site located in portions of Alaminos Canyon, East Breaks, Garden Banks, and Keathley Canyon.

(h) Information on Shallow Hazards. Federal regulation (30 CFR 250.34) requires a lessee to conduct shallow hazards and other geological and geophysical surveys that are necessary for the evaluation of activities to be carried out under a proposed exploration or development/production plan or activities being carried out under an approved plan.

Data collection by the lessee on a lease, and when necessary, off a lease, will be analyzed and submitted by the lessee and then reviewed and, when necessary, reanalyzed by the RD to ensure that drilling, development, and production activities can be conducted in an acceptable manner with minimum risk or damage to human, marine, and coastal environments. Based on the review and analysis of the data received and other available data and information, the RD either approves or requires modification to an exploration or development/production plan or application for permit to drill, or recommends that the Director, MMS, temporarily prohibit or suspend the conduct of exploration or development/production activities, according to provisions of the OCS Lands Act, as amended, and appropriate regulations. Existing regulations authorize the RD to take whatever steps are necessary to assure safe operations offshore, whether shallow hazards are delineated before or after the lease sale.

(i) Information on Stipulation No. 4. Any lease issued for a term of 8 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, if, within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated, or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria, or if there is not a suspension of operations in effect, etc. For further information, see Federal Register Notice (50 FR 13289) published April 3, 1985, subject: "Notification of Outer Continental Shelf (OCS) Programwide Policy of Water-Depth Criterion for Longer Primary Lease Terms for OCS Oil and Gas Leases."

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico OCS Orders, as of their effective dates, and any other applicable OCS Order as it becomes effective.

16. Bid Adequacy Procedures.

(a) The following information is provided to lessees on technical modifications to the bid adequacy procedures.

(1) The development of block and bidding unit (hereinafter referred to as block or blocks) evaluation inputs for drainage and development blocks will be shifted, when possible, to the presale period.

Since drainage and development blocks are quite likely to receive bids, the presale work will result in little wasted effort and would allow earlier decisions on acceptance of such bids.

(2) Nonviability determinations in Phase 1 for wildcat and proven blocks receiving three or more adjusted bids will be discontinued.

(3) The average number of bids parameter in Phase 1 will be calculated using only viable wildcat and proven blocks receiving one or two adjusted bids and all wildcat and proven blocks receiving three or more adjusted bids.

The change conforms with (2) above.

(4) The Geometric Average Evaluation of the Tract (GAEOT) in Phase 2 will only be applied to wildcat and proven blocks receiving two adjusted bids and all blocks receiving three or more adjusted bids. The GAEOT will not be applied to two-bid drainage and development blocks.

This change eliminates the anomalous situation in which a high bid on a drainage and development block is rejected because of a second high bid close to the high bid whereas it would have been accepted if the second high bid was much less. Acceptance or rejection of bids on two-bid drainage and development blocks will be based on the Mean of the Range of Values (MROV) and Discounted Mean of the Range of Values (DMROV) without averaging, which is appropriate since the MMS has excellent data on development and drainage blocks.

The first three changes are procedural modifications designed to reduce workload requirements. The fourth change places more reliance on the MMS block value estimates on two-bid drainage and development blocks.

Previous changes in the February 1983 bid adequacy procedures were made in February, March, and July 1984. The following complete set of bid adequacy procedures incorporates those earlier changes and this most recent set of changes.

(b) The bid adequacy procedures provide for the application of criteria in a two-phased process for bid adequacy determination.

(1) Phase 1 provides for the application of criteria designed to partition blocks receiving bids into three general categories:

those receiving bids which the MMS has identified as being nonprospective (nonviable);

those where opportunities for strategic underbidding, information asymmetry, collusion, and other noncompetitive practices might most likely

occur and where the Government has the most detailed and reliable data; and

those where the competitive market forces can be relied upon to assure fair market value.

Based on these categories, the following three Phase 1 criteria are applied to all blocks receiving bids:

High bids on all blocks classified by the MMS as being either development or drainage will be referred directly for further evaluation in Phase 2.

All legal high bids judged by the MMS not to be located on a viable prospect will be accepted.

After screening for anomalous bids, all legal high bids will be accepted for wildcat and proven blocks receiving three or more bids and more than the average number of bids for viable wildcat and proven blocks receiving one or two adjusted bids and all wildcat and proven blocks receiving three or more adjusted bids, i.e., whichever is more.

(Note: Anomalous bids will not be included in the bid number in either Phase 1 or Phase 2. Anomalous bids include all but the highest bid submitted for a block by the same company, bidding alone or jointly, and the lowest bid on a block when it is less than one-eighth of the next lowest bid. The "one-eighth rule" can exclude no more than one bid for a given block.)

After applying the Phase 1 criteria for bid acceptance, the RD, if he should determine that an unusual bidding pattern exists and affects blocks which would be accepted by the Phase 1 criteria, and if the unusual bidding pattern can be documented, has the discretionary authority, after consultation and coordination with the Solicitor, to pass those blocks so identified to Phase 2 for further analysis.

Phase 1 is conducted block-by-block and is generally completed within 3 days of the bid opening.

(2) Phase 2 provides for the application of criteria designed to further determine bid adequacy on a block-specific basis. All prospective wildcat and proven blocks which are not accepted in Phase 1 are passed to Phase 2 for further evaluation. After further mapping and/or analysis are completed in Phase 2, the viability determinations of these blocks can be reviewed, using the same procedures to determine viability that were applied in Phase 1. Those wildcat and proven blocks which are subsequently determined to be nonviable can be eliminated from the set of blocks undergoing a full-scale MONTCAR run and the high bids on them accepted. All of the remaining blocks, including all drainage and development blocks, receive further evaluation by comparing the high bids with the MROV and the DMROV. All blocks in Phase 2 which received three or more adjusted bids and wildcat and proven blocks which received two adjusted bids will be compared to the GAEOT. In addition, if in the judgement of the RD a block is or may be subject to drainage, the relevant costs due to delays associated with bid rejection are considered in the bid adequacy determination. While it is expected that most evaluations would be undertaken based upon geological and geophysical data and analyses available at the time of the sale, additional analyses can be undertaken postsale at the discretion of the RD.

The bid adequacy recommendations developed in Phase 2 are normally completed sequentially over a period ranging between 3 and 60 days after the sale. The RD has the discretionary authority to extend this period up to 90 days after the sale when necessary to assure a thorough evaluation.

Acting Director, Minerals Management Service
John B. Rigg

Approved:

Acting Secretary of the Interior
Ann McLaughlin

Date

21

[FR Doc. 85-16000 Filed 7-3-85; 8:45 am]
BILLING CODE 4310-MR-C

VOL 50 ISS 129 JUL 5 1985 UMI

Billing Code: 4310-MR

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf
Western Gulf of Mexico

Notice of Leasing Systems, Sale 102

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding systems to be used. In the Outer Continental Shelf (OCS) Sale 102, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16 2/3-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12 1/2-percent royalty on all remaining unleased blocks.

a. Bonus Bidding with a 16 2/3-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and

imposes greater risks on the lessee than systems with higher contingency payments, but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. Bonus Bidding with a 12 1/2-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Western Gulf of Mexico (Sale 102) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12 1/2-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Western Gulf of Mexico (Sale 102) Bidding Systems and Bidding Units, Final." This map is available from the Minerals Management Service, Gulf of Mexico Region, 3301 North Causeway Boulevard, Metairie, Louisiana 70002.

John B. Rigg

Acting Director

Approved:

Acting Secretary of the Interior

JUN 28 1985

[FR Doc. 85-16091 Filed 7-3-85; 8:45 am]
BILLING CODE 4310-MR-C

Reader Aids

Federal Register
Vol. 50, No. 129
Friday, July 5, 1985

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PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230
United States Government Manual	523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

26961-27212	1
27213-27406	2
27409-27570	3
27571-27812	5

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
11888 (Amended by EO 12524) 27409
12523 26963
12524 27409
Proclamations:
5356 26961

5 CFR

771 26965

7 CFR

52 26965
54 27571
226 26972
400 26976
908 27411
921 27411
930 27212
979 26976
991 26977
1040 27412
1427 26978
1435 27413
1941 27414
1944 27415
1945 ..... 27414, 27416
Proposed Rules:
Ch. X 27003
29 27286
51 27004
417 27601
920 27288

8 CFR

Proposed Rules:
103 27289

9 CFR

318 27573

10 CFR

9 27214
Proposed Rules:
50 27006

12 CFR

403 27215
723 27417

Proposed Rules:
561 27290
563 27290
571 27290

13 CFR

121 27418
302 27419
Proposed Rules:
108 27754

14 CFR

39 ..... 26979, 27575, 27576
71 26980

Proposed Rules:
39 ..... 27009, 27012, 27601, 27602
71 ..... 27013, 27014, 27526
75 27014

15 CFR

19 27577
376 27420
390 27420

16 CFR

13 ..... 26981, 27578

17 CFR

286 26981

18 CFR

Proposed Rules:
35 27604
290 27604

19 CFR

4 26981

20 CFR

200 27222
Proposed Rules:
404 27615
416 27615

21 CFR

101 26984
558 ..... 27421, 27422
Proposed Rules:
170 27284
201 27016
211 27016
357 27552
514 27016
559 27016
561 27452
1002 27024

22 CFR

501 27422

25 CFR

Proposed Rules:
61 27458

26 CFR

1 ..... 27222, 27231, 27427
602 ..... 27222, 27231

Proposed Rules:
1 ..... 27297, 27456, 27457

51 27621

28 CFR

32 27428

29 CFR

1952 27233

Proposed Rules:

33 27298
1910 27307

30 CFR

Proposed Rules:

56 27566
57 27566
913 27025
936 27461

31 CFR

51 26987
500 27435
505 27435
515 27435
520 27435
535 27435
540 27435

32 CFR

Parts 1-39 26987
199 26988

33 CFR

100 27579
110 ..... 26988, 27580
117 ..... 26989, 27582
150 26989
165 27583
166 26989

Proposed Rules:

110 ..... 27622, 27623
117 ..... 27026, 27029, 27624

35 CFR

101 26990
103 26990
121 26990

36 CFR

1200 27196
1202 27196
1250 27196

37 CFR

Proposed Rules:

1 27030

38 CFR

3 27584

39 CFR

Proposed Rules:

3001 27308

40 CFR

52 ..... 26991, 27244-27247
60 27248
61 27248
86 27250
600 27172

Proposed Rules:

52 ..... 27030, 27462
180 27463
202 27321
205 27321
600 27188

41 CFR

Chs. 1-49 26987
105-63 26992
201-1 27142
201-2 27142
201-8 27142
201-11 27142
201-16 27142
201-20 27142
201-21 27142
201-23 27142
201-24 27142
201-26 27142
201-30 27142
201-31 27142
201-32 27142
201-38 27142
201-39 27142
201-40 27142

Proposed Rules:

101-41 ..... 27625, 27626

42 CFR

405 27722
412 ..... 27208, 27722

Proposed Rules:

23 27465
405 27469
412 27469

43 CFR

Proposed Rules:

2800 27322

44 CFR

64 ..... 26993, 26994

Proposed Rules:

67 27322
302 27627

45 CFR

1180 ..... 27584, 27586

Proposed Rules:

405 27406
412 27406
1620 27326

46 CFR

153 26996

Proposed Rules:

160 27628

47 CFR

66 27250
73 ..... 27287, 27438
76 27438

Proposed Rules:

73 27629

48 CFR

7 27560
15 27560
19 27560
34 27560
52 27560
504 26996
533 26996
552 27569
553 27569
570 27589

49 CFR

571 27451

Proposed Rules:

Ch. X 27031
571 ..... 27032, 27632, 27633

50 CFR

17 26999

Proposed Rules:

17 27637
20 27638
630 27470
662 27470

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 2, 1985

VOL
50

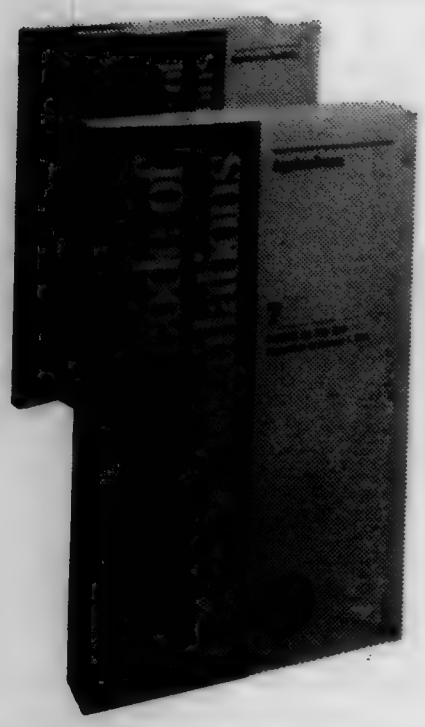
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VOL. 50 ISS. 129 JUL 5 1985 UMI



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federal register

Monday
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7-8-85
Vol. 50
Pages

7-8-85
Vol. 50 No. 130
Pages 27813-27926

federal register

Monday
July 8, 1985

Selected Subjects

Animal Drugs
Food and Drug Administration

Bridges
Coast Guard

Customs Duties and Inspection
Customs Service

Grant Programs—Education
Veterans Administration

Loan Programs—Veterans
Veterans Administration

Marine Mammals
National Oceanic and Atmospheric Administration

Marketing Agreements
Agricultural Marketing Service

Penalties
Customs Service

Postal Service
Postal Service

Reporting and Recordkeeping Requirements
Treasury Department

Security Measures
Federal Aviation Administration

Underground Mining
Surface Mining Reclamation and Enforcement Office

Wine
Alcohol, Tobacco and Firearms Bureau

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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VOL 50 ISS 130 JUL 8 1985 UMI

Contents

Federal Register
Vol. 50, No. 130
Monday, July 8, 1985

Agricultural Marketing Service
RULES
27814 Hops of domestic production
27813 Lemons grown in California and Arizona
27813 Nectarines, peaches, and plums grown in California

Agriculture Department
See also Agricultural Marketing Service; Forest Service.
NOTICES
Program payments; income tax exclusion; primary purpose determination:
27835 Wellton-Mohawk Irrigation and Drainage District irrigation improvement program, AZ
27836 Rangeland grasshopper and Mormon cricket; emergency declaration

Alcohol, Tobacco and Firearms Bureau
RULES
Alcoholic beverages:
27819 Wine bottlers; registry numbers

Army Department
NOTICES
Meeting:
27841 Army Science Board

Arts and Humanities, National Foundation
NOTICES
Meetings:
27885 Challenge/Advancement Ad Hoc Review Committee
27885 Humanities Panel

Centers for Disease Control
NOTICES
Grants and cooperative agreements:
27850 Acquired Immunodeficiency Syndrome (AIDS); surveillance and associated epidemiologic investigations; correction

Civil Rights Commission
NOTICES
Meeting; State advisory committees:
27836 New Jersey

Coast Guard
PROPOSED RULES
Drawbridge operations:
27832 Louisiana

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration.

Customs Service
RULES
Merchandise entry:
27816 Entry numbers
PROPOSED RULES
Recordkeeping, inspection, search and seizure:
27829 Violations of 19 U.S.C. 1592, prior disclosures
Tariff classifications:
27831 Backpacking tents, imported; advance notice
NOTICES
27886 Imported goods value; interest charges

Defense Department
See also Army Department.
NOTICES
27840 Travel per diem rates, civilian personnel; changes

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
27855 Turet, Lee A., D.D.S.

Education Department
NOTICES
27841 Agency information collection activities under OMB review

Employment and Training Administration
RULES
Job Training Partnership Act and targeted jobs tax credit programs:
27818 Lower living standard income level determination; correction

Energy Department
See also Federal Energy Regulatory Commission.
NOTICES
Atomic energy agreements; subsequent agreements:
27842 European Atomic Energy Community (2 documents)
27842 European Atomic Energy Community et al.
Trespassing on Department property:
27843 Oak Ridge operating sites, TN

Environmental Protection Agency
RULES
Air quality implementation plans; preparation, adoption and submittal:
27892 Stack height requirements
NOTICES
Meetings:
27848 State-FIFRA Issues Research and Evaluation Group Task Force
Toxic and hazardous substances control:
27844 Confidential information and data transfer to contractors
27847 Premanufacture exemption applications
27845, 27846 Premanufacture notices receipts (2 documents)

Equal Employment Opportunity Commission
NOTICES
27888 Meetings; Sunshine Act

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
27924 Federal air marshalls, transportation; final rule and request for comments

Federal Communications Commission
NOTICES
27888 Meetings; Sunshine Act

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
27816 Pipelines; blanket certificates for routine transactions and sales, etc.; effective date, etc.

Federal Maritime Commission
NOTICES
27889 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
27848 Citizens Financial Group, Inc., et al.
27849 Jefferson Holding Corp. et al.
27849 Verbanc Financial Corp. et al.

Federal Trade Commission
NOTICES
27889 Meetings; Sunshine Act (2 documents)

Fine Arts Commission
NOTICES
27840 Meetings

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
27818 Ivermectin paste
NOTICES
Food for human consumption:
27850 National Shellfish Sanitation Program Manual of Operations; shellfish growing areas sanitation; draft availability

Forest Service
NOTICES
Meetings:
27836 South Kaibab Grazing Advisory Board

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health; Public Health Service.

Health Resources and Services Administration
NOTICES
Grants availability, etc.:
27851 Community health centers

Historic Preservation, Advisory Council
NOTICES
Programmatic memorandums of agreement:
27835 National Park Service; planning and leasing activities

Immigration and Naturalization Service
RULES
27816 Residence, physical presence, and absence; listing of American institutions of research; correction

Interior Department
See Land Management Bureau; Surface Mining Reclamation and Enforcement Office.

Internal Revenue Service
NOTICES
27887 Tax counseling program for the elderly; application packages; availability

International Trade Administration
NOTICES
Antidumping:
27836 Heavy salted codfish from Canada
Countervailing duties:
27837 Steel products from South Africa
Meetings:
27839 Importers and Retailers' Textile Advisory Committee
Trade adjustment assistance determination petitions:
27838 General Pneumatic Products Corp. et al.

Interstate Commerce Commission
PROPOSED RULES
Procedure and administration:
27834 Intramodal rail competition; oral argument
NOTICES
Rail carriers;
27854 Product and geographic competition; guidelines; oral argument
27853 U.S. Steel Corp.; tariff charges exemption and refund petition
Railroad operation, acquisition, construction, etc.:
27855 Colorado & Eastern Railroad Co.
27855 Missouri Pacific Railroad Co.
27854 Missouri-Kansas-Texas Railroad Co.
Railroad services abandonment:
27854 Burlington Northern Railroad Co.

Justice Department
See Drug Enforcement Administration; Immigration and Naturalization Service.

Labor Department
See Employment and Training Administration; Pension and Welfare Benefit Programs Office.

Land Management Bureau
RULES
Public land orders:
27827 Alaska
NOTICES
Sale of public lands:
27853 California (2 documents)

National Aeronautics and Space Administration
NOTICES
Meetings:
27864 National Commission on Space

National Institutes of Health
NOTICES
Meetings:
27852 National Digestive Diseases Advisory Board
27852 National Heart, Lung, and Blood Advisory Council

National Oceanic and Atmospheric Administration
RULES
Marine mammals:
27914 North Pacific fur seals; subsistence taking; interim

NOTICES
Permits:
27839, 27840 Marine mammals (3 documents)

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
27866 Consumers Power Co.
27868 Iowa Electric Light & Power Co. et al.
Environmental statements; availability, etc.:
27865 Consumers Power Co.
Nuclear wste transportation:
27866 Spent nuclear fuel regulation; seminar

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
27856 Incline Glass, Inc., et al.
27863 Ted McWilliams, Inc. Profit Sharing Plan, et al.

Postal Service
RULES
International Mail Manual; Express Mail Service:
27827 Panama

Public Health Service
NOTICES
National toxicology program:
27852 8-Hydroxyquinoline; toxicology and carcinogenesis studies

Securities and Exchange Commission
PROPOSED RULES
Securities:
27829 Internationalization of world securities market; extension of time
NOTICES
27868, 27871 Agency information collection activities under OMB review (2 documents)
Applications, etc.:
27870 Central & South West Corp.
27869 Central & South West Corp. et al.
27868 Great-West Life & Annuity Insurance Co. et al.
27870 Jersey Central Power & Light Co.
27889 Meetings; Sunshine Act
Self-regulatory organizations; proposed rule changes:
27871-27873 American Stock Exchange, Inc. (4 documents)
27875 National Association of Securities Dealers, Inc.
27875, 27880 New York Stock Exchange, Inc. (2 documents)
27881 Options Clearing Corp.
27882 Pacific Stock Exchange, Inc.
27882 Philadelphia Stock Exchange, Inc.
Self-regulatory organizations; unlisted trading privileges:
27871 Philadelphia Stock Exchange, Inc.

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent and interim regulatory programs:
27910 Subsidence control; surface structure and facilities protection

Transportation Department
See also Coast Guard; Federal Aviation Administration.
NOTICES
27884 Agency information collection activities under OMB review
Aviation proceedings:
27883 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Customs Service; Internal Revenue Service.
RULES
Currency and foreign transactions; financial reporting and recordkeeping:
27821 Foreign financial agencies
NOTICES
Committees; establishment, renewals, terminations, etc.:
27885 Debt Management Advisory Committee
Meetings:
27885 Debt Management Advisory Committee

Uniformed Services University of the Health Sciences
NOTICES
27889 Meetings; Sunshine Act

Veterans Administration
RULES
Vocational rehabilitation and education:
27825 Educational assistance; eligibility
PROPOSED RULES
Loan guaranty:
27833 Defaults on loans; reporting time extension

Separate Parts in This Issue

Part II
27892 Environmental Protection Agency

Part III
27910 Department of the Interior, Office of Surface Mining Reclamation and Enforcement

Part IV
27914 Department of Commerce, National Oceanic and Atmospheric Administration

Part V
27924 Department of Transportation, Federal Aviation Administration

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
910.....27813
916.....27813
917.....27813
991.....27814

8 CFR
316a.....27816

14 CFR
108.....27924

17 CFR
Proposed Rules:
240.....27829

18 CFR
157.....27816
389.....27816

19 CFR
142.....27816
Proposed Rules:
162.....27829
177.....27831

20 CFR
626.....27818
627.....27818
628.....27818
629.....27818
630.....27818

21 CFR
520.....27818

27 CFR
4.....27819

30 CFR
Proposed Rules:
817.....27910

31 CFR
103.....27821

33 CFR
Proposed Rules:
117.....27832

38 CFR
21.....27825
Proposed Rules:
36.....27833

39 CFR
10.....27827

40 CFR
51.....27892

43 CFR
Public Land Orders:
5150 Revoked in part by PLO 6607.....27827
5179 Revoked in part by PLO 6607.....27827
5180 Revoked in part by PLO 6607.....27827
5186 Revoked in part by PLO 6607.....27827
6607.....27827

49 CFR
Proposed Rules:
1132.....27834

50 CFR
215.....27914

VOL 50 ISS 130 8 1985 J.L UMI

Rules and Regulations

Federal Register
Vol. 50, No. 130
Monday, July 8, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 523]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 325,000 cartons during the period July 7–13, 1985. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period July 7–13, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on July 2, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand continues to be good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 910.823 is added to read as follows:

§ 910.823 Lemon Regulation 523.

The quantity of lemons grown in California and Arizona which may be handled during the period July 7, 1985, through July 13, 1985, is established at 325,000 cartons.

Dated: July 3, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–16313 Filed 7–5–85; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Parts 916 and 917

[Nectarine Reg. 14, Amdt. 7 Peach Reg. 14, Amdt. 7, and Plum Reg. 19, Amdt. 7]

Nectarines, Pears, Plums and Peaches Grown in California; Amendment of Size and Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends size and grade requirements for shipments of fresh nectarines, peaches, and plums grown in California. These requirements are necessary to promote the marketing of suitable quality and sizes of such fresh fruit in the interest of producers and consumers.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under the Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under the marketing agreements, as amended, and Marketing Orders 916 and 917, as amended (7 CFR Parts 916 and 917), regulating the handling of nectarines, pears, plums, and peaches grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Shipments of these California fruits are regulated by grade and size under Nectarine Regulation 14 (7 CFR Part 916), Peach Regulation 14 (7 CFR Part 917), and Plum Regulation 19 (7 CFR Part 917), all

initially issued in July 1981. Because these regulations do not change substantially from season to season, they were issued on a continuing basis subject to amendment, modification or suspension as may be recommended by the applicable committee and approved by the Secretary. This final rule is based upon recommendations and information submitted by the committees and other available information.

This final rule amends the size requirements for nectarines and peaches by deleting from size regulation on Bonjour variety of peaches and the Honey Gold variety of nectarines which are no longer produced commercially. It also amends grade requirements for the Kelsey and Tragedy varieties of plums by permitting shipment of such plums which fail to meet U.S. No. 1 grade on account of healed, stem-end cracks. This action recognizes the tendency of these varieties of plums to develop stem-end cracks as the trees mature. This condition does not adversely affect the quality of the fruit.

It is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. This amendment relieves restrictions on fresh shipments of California nectarines, peaches, and plums and shipments of such commodities are currently underway. Handlers have been apprised of such provisions and require no additional time to comply therewith.

List of Subjects

7 CFR Part 916

Marketing agreements and orders, Nectarines, California.

7 CFR Part 917

Marketing agreements and orders, Pears, Plums, Peaches, California.

1. The authority citations for 7 CFR Parts 916 and 917 continue to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Paragraph (a)(4) introductory text of § 916.356 is revised to read as follows:

§ 916.356 Nectarine Regulation 14.

(a) * * *

(4) Any package or container of Ambrosia, Autumn Delight, Autumn Grand, Bob Grand, Clinton-Strawberry, Early Sun Grand, Fairlane, Fantasia, Firebrite, Flamekist, Flavortop, Flavortop I, Gold King, Granderli, Hi-Red, Independence, Kent Grand, Late Le Grand, Le Grand, Moon Grand, Niagara Grand, P–R Red, Red Diamond, Red Free, Red Grand, Regal Grand, Richards Grand, Royal Giant, Ruby Grand, September Grand, Tasty Free, Tom Grand, Larry's Grand, Son Red, Spring Red, Late Tina Red, Red Jim, Summer Beaut, Sparkling Red, Star Grand, Summer Grand, Sun Grand, Sherri Red or 20 G 836 variety of nectarines unless:

* * * * *

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

3. Paragraph (a)(4) introductory text of § 917.459 (50 FR 12217) is revised to read as follows:

§ 917.459 Peach Regulation 14.

(a) * * *

(4) Any package or container of Babcock, Coronet, Early Coronet, Early Royal May, Firecrest, First Lady, Flavorcrest, Flavor Red, Golden Lady, Honey Red, JJK–1, June Crest, June Lady, May Crest, May Lady, Merrill Gem, Merrill Gemfree, Redhaven, Redtop, Regina, Royal May, Springcrest, Spring Lady, Willie Red, or 50–178 variety of peaches unless:

* * * * *

4. Paragraph (b) of § 917.460 (50 FR 12217) is amended to read as follows:

§ 917.460 Plum Regulation 19.

(a) * * *

(b) No handler shall ship any lot of packages or containers of Tragedy or Kelsey plums unless such plums grade U.S. No. 1 with additional tolerance of 10 percent for defects not considered serious damage, except that healed cracks emanating from the stem-end which do not cause serious damage shall not be considered as a grade defect with respect to such grade: *Provided,* That internal discoloration not considered serious damage will be permitted; and *Provided further,* That maturity shall be determined by the application of color standards by variety or such other tests as determined to be proper by the Federal or Federal-State Inspection Service.

* * * * *

Dated: July 1, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–16067 Filed 7–5–85; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 991

Hops of Domestic Production; Marketing Policy for the Period August 1 to December 31, 1985; Establishment of Salable Quantity and Allotment Percentage; Additional Time for Transferring Allotment Bases; and Waiver of Bona Fide Effort Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of hops that may be freely marketed from the 1985 crop, provides a later date for producers to transfer allotment bases, and waives the bona fide effort requirement. These marketing policy actions are under the marketing order for domestic hops, and are intended to avoid undue disruption within the hop industry and to maintain continuity in the marketing of hops, through the end of the 1985 calendar year.

DATES: Additional time for transferring allotment bases effective July 8, 1985; salable quantity and allotment percentage and waiver of bona fide effort requirement effective August 1, 1985 through December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking on all of these amendments and that good cause exists for not postponing the effective date of the portion of this action providing a later date for producers to transfer allotment bases, until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) The final date for transferring allotment bases, expired April 1, and this action allows producers who need allotment base for the 1985–86 marketing year to acquire it; (2) because of the late selection of Hop

Administrative Committee (HAC) members, all of the HAC recommendations were delayed this year; and (3) the cultural practices for 1985 crop hops have already begun and hop producers need to arrange for allotment base transfers which they normally do earlier in the season.

The establishment of a salable quantity and allotment percentage, the additional time for producers to transfer allotment base, and suspension of the bona fide effort requirement, are in accordance with the provisions of Marketing Order No. 991, as amended (7 CFR Part 991) regulating the handling of hops of domestic production. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions were recommended in part, by the Hop Administrative Committee (HAC) which works with the Department in administering the marketing order program.

Pursuant to §§ 991.36 and 991.37 of the order, the salable quantity and allotment percentage for the portion of the 1985–86 marketing year, between August 1 and December 31, 1985, are based upon the following estimates:

(1) Total domestic consumption of 43,500,000 pounds of hops;

(2) Minus imports of 15,500,000 pounds of hops, to result in domesic consumption of U.S. hops of 28,000,000 pounds;

(3) Plus total exports of 28,000,000 pounds of hops, to equal 56,000,000 pounds total usage of U.S. hops;

(4) Plus 2,500,000 pounds to adjust for weight loss of hops processed into pellets and extract;

(5) Minus inventory adjustment of 6,500,000 pounds;

(6) Plus as adjustment of 6,492,000 pounds to provide for adequate supplies should some producer allotments not be fully produced; and

(7) This rusults in a salable quantity of 58,492,000 pounds.

The allotment percentage of 97 percent is computed by subtracting from this salable quantity a total of 1,000,000 pounds for additional allotment bases for hops of the Fuggle variety granted pursuant to § 991.36(b) and § 991.136(c) and dividing the remainder by 59,269,877 pounds, the total of all other allotment bases.

This volume regulation will have little effect on the marketing of 1985 crop hops due to the burdensome stocks and inactive market currently facing the industry. It makes available a quantity of hops higher than current market needs but it endeavors to accommodate those producers who have high value future contracts.

Section 991.146(c) of Subpart—Administrative Rules and Regulations (7 CFR 991.130—991.939) currently provides that a producer can transfer all or part of his allotment base to another producer only if the transfer is effective prior to the issuance of annual allotment to the transferor or prior to April 1, whichever is earlier. The later than normal establishment of the salable quantity and allotment percentage for the portion of the marketing year between August 1 and December 31, 1985, makes it necessary to change the April 1 cutoff date to July 31, 1985, for the 1985 calendar year. This will enable producers to transfer base pursuant to § 991.46. Pursuant to § 991.38(a)(5) of the order, the right of each producer to retain all or part of this allotment base depends on his continuing to make a bona fide effort to produce his annual allotment. If a producer fails to make a bona fide effort to produce his annual allotment, his allotment base must be reduced by an amount equivalent to the unproduced proportion. Paragraph (a)(5) also authorizes the HAC, with approval of the Secretary, to waive the bona fide effort requirement.

The HAC recommended waiving the bona fide effort requirement because it concluded that its implementation would result in additional and unneeded production. Currently, the hop market is inactive and an oversupply of hops exists, and enforcement of the bona fide effort requirement for the period between August 1 and December 31 could further depress the market.

Subsequent to HAC's marketing policy meeting, a number of views were received from hop producers in opposition to an allotment percentage of 97 percent. All of the producers recommended suspension of volume regulations for the 1985–86 marketing year, and these comments were considered in evaluating the recommendation. In view of the current supply and marketing conditions, failure to issue volume control regulations at this late date would only exacerbate the industry's problems by further depressing market conditions.

After consideration of all relevant matter presented, the information and recommendations of the HAC, the views received, and other available information, it is found that: (1) To establish a salable quantity of 58,492,000 pounds resulting in an allotment percentage of 97 percent; (2) to change the cutoff date for producers to transfer allotment bases from April 1 to July 31 for the 1985 calendar year; and (3) to waive the bona fide effort requirement for the period from August 1 and December 31, 1985, will allow the industry the time to adjust to the changed conditions that may occur with the termination of the marketing order at the end of the calendar year.

List of Subjects in 7 CFR Part 991

Marketing agreements and orders, Hops.

1. The authority citation for 7 CFR Part 991 continues to read as follows:

Authority: Secs. 1–19, 48 stat. 31, as amended; 7 U.S.C. 601–674.

PART 991—HOPS OF DOMESTIC PRODUCTION

Subpart—Administrative Rules and Regulations

Therefore, the Subpart—Administrative Rules and Regulations (7 CFR 991.130—991.939) is amended by revising §§ 991.146(c) and § 991.939 and adding a new § 991.223 as follows: (Sections 991.223 and 991.939 will not be published in the Code of Federal Regulations).

2. Section 991.146(c) is revised to read as follows:

§ 991.146 Transfer of allotment bases.

* * * * *

(c) Whenever a producer transfers all or part of his allotment base to another producer, the annual allotment referable to such transferred allotment base, or part thereof, shall be issued to the transferee only if the transfer is effective prior to the issuance of an annual allotment to the tranferor or prior to April 1, whichever is the earlier: *Provided,* That for the 1985 calendar year that date shall be July 31 instead of April 1.

3. A new § 991.223 is added to read as follows:

§ 991.223 Allotment percentage and salable quantity for hops during the portion of the marketing year between August 1 and December 31, 1985.

The allotment percentage during the portion of the marketing year between August 1 and December 31, 1985, shall be 97 percent, and the salable quantity shall be 58,492,000 pounds.

4. Section 991.939 is revised to read as follows:

§ 991.939 Waiver of bona fide effort requirement for a portion of the 1985–86 marketing year.

The bona fide effort requirement provided for in § 991.38(a)(5) shall be waived for the portion of the 1985–86 marketing year between August 1 and December 31, 1985.

Dated: July 2, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85-16166 Filed 7-5-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 316a

Residence, Physical Presence and Absence

Correction

In FR Doc. 85-15376 beginning on page 26547 in the issue of Thursday, June 27, 1985, make the following correction:

§ 316a.2 [Corrected]

On page 26548, first column, "§ 3165a.2" should have read "§ 316a.2".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 157 and 389

[Docket Nos. RM81-19-000, RM81-29-000]

Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors

Issued: July 1, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of effective date and OMB control number.

SUMMARY: On June 17, 1985, the Federal Energy Regulatory Commission issued a final rule in Docket Nos. RM81-19-000 and RM81-29-000, 50 FR 25,701 (June 21, 1985) extending its blanket transportation program. This notice states the OMB control number for §§ 157.209(e)(3) and (e)(4) promulgated by this final rule and the effective date of this rule.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas P. Gross, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8522.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1985), require that OMB approve certain information collection requirements imposed by agency rule. On June 28, 1985, OMB approved the information collection requirements of §§ 157.209(e)(3) and (e)(4) and issued Control Number 1902-0060 for that section. Therefore, the final rule in Docket Nos. RM81-19-000 and RM81-29-000 will become effective July 1, 1985.

PART 389—[AMENDED]

Accordingly, Part 389, Chapter 1, Title 18, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by inserting "§§ 157.209(e)(3) and (e)(4)" in numerical order in the Section column, and "0060" in the corresponding position in the OMB Control Number column.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-16120 Filed 7-5-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 142

[T.D. 85-112]

Customs Regulations Amendment Relating to Entry Numbers

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document informs the public of changes in the assignment and format of entry numbers used by the international trade community in submitting entry documentation for processing by the Customs Service. The changes are one of the numerous initiatives Customs has undertaken relating to the development of a comprehensive integrated Automated Commercial System. When fully implemented, the changes will ensure entry processing efficiency.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Richard J. Bonner, Duty Assessment Division (202-535-4155), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Customs has undertaken numerous initiatives relating to the development of a comprehensive integrated Automated Commercial System (ACS). When fully developed, this system will provide an efficient means for accomplishing the current and future entry processing needs of Customs, other government agencies, and the international trade community. Currently, many formal entries received by Customs are prepared on computers. More international trade businesses are planning to use computers as part of automating the preparation of import documentation.

To ensure entry processing efficiency for both Customs and entry preparers, changes in the assignment and format of entry type codes and entry numbers are desirable.

Accordingly, by notice published in the **Federal Register** on January 13, 1984 (49 FR 1740), Customs proposed new procedures for both entry type codes and entry numbers and invited interested parties to submit comments. Although comments were received on both procedures, Customs published a final rule as T.D. 85-5 in the **Federal Register** on January 11, 1985 (50 FR 1499), which concerned only the changes to entry type codes. Those comments relating to the entry number proposal were still being analyzed. That analysis is now complete and the final changes to the entry numbers are the subject of this document.

Current Procedure

Customs entries are indentified by a 9-digit number in the following format:

FY-NNNNNN-C

FY represents the current fiscal year, NNNNNN is a sequential number, and C is a check digit computed from the first 8 digits.

For each fiscal year, Customs issues blocks of entry numbers to brokers and importers for each district and port. Issuing and controlling these numbers has become an administrative burden to Customs and the importing community. The issuance process at the beginning of each fiscal year is particularly time consuming and costly.

Discussion of Comments

Several of the seven commenters that responded to the notice raised issues pertaining to the proposed change to entry numbers. A discussion and analysis of these comments is as follows:

Comment: Customs must allow adequate implementation time for entry filers to make the necessary changes.

Analysis: Customs has considered and appreciates the time necessary for entry filers to make the necessary changes. Accordingly, the implementation date for the new entry number procedure is being delayed until October 1, 1985. This schedule allows both the trade and Customs adequate time for preparation.

Comment: Customs should assign separate entry filer codes at each location in which a broker or importer files entry documentation. An entry filer might also choose to combine certain offices under a single code while other districts have separate numbers.

Analysis: For Customs purposes, each business entity must be identified with a 3 character national entry filer code as part of the entry number. It should not be necessary to identify the filing locations by means of the entry number since the 4 digit Customs district/port code associated with all entries accomplishes this. Since entry filers have been given the flexibility to individually structure and allocate the 7 digits following the entry filer code in any convenient manner, the entry filer's organization or office location code can be included within the 7 digits.

Comment: Customs should calculate the entry number check digits and make them available to non-automated brokers and importers.

Analysis: To gain the maximum flexibility for the new entry number procedure, entry filers will necessarily take responsibility for assigning and controlling their own numbers. Since Customs cannot predetermine the range of organization of the numbers needed by individual entities, the entry filers, their data processors and forms producers must be responsible for check digit computation. The technical specifications related to computing the check digit and printing the number on the forms are available to brokers, importers, and forms suppliers upon request.

Comment: The numeric series of codes (000–999) should be reserved for use by airlines in order to be compatible with the existing 3 digit airline codes.

The formula for computing the check digit should include only the last 7 digits in order that it be compatible with the air waybill check digit used by airlines.

Analysis: Because the entry number is the basic method for storing and accessing data in the ACS, the accuracy rate for keying data to the system will be enhanced by assigning the numeric series of entry file codes to the largest category of users. Broker companies are the source of the majority of Customs entries. Therefore, it has been decided to reserve the numeric series of entry filer codes for broker companies and importers having significant entry volumes.

The check digit must be computed using the entire entry number including the entry filer code to ensure uniqueness and keying accuracy. Customs has decided to delay use of the entry number for in-bond transactions until analysis regarding the assignment of entry filer codes and the related check digit computation for carriers is completed. Carriers will not use the new entry number for in-bond entries at this time but will be required to use the new entry number for other types of entries.

Comment: One carrier proposed that the entry number format be expanded from 11 to 14 characters by including a 3 character alpha carrier identification code for air shipments.

Analysis: The 11 character entry number provides the largest volume entry filers with enough to last at least a decade without duplication. Expansion of the entry number by 3 characters would significantly increase data entry and computer storage cost for the trade, Customs, the Census Bureau and other Government agencies.

Comment: Blank or slash (/) should be used instead of the hyphen to separate components of the entry number. The placement of the hyphen on typewriter/data entry keyboards is more awkward and slower to use than is the space bar or slash key.

Analysis: Inasmuch as many of the entries presented to Customs are prepared on automated equipment, the separator character can be generated automatically without the need for keying. The hyphen separator is considered to be more readable than either the blank or the slash.

Accordingly, after consideration of all the comments and a further review of the matter, Customs has determined to adopt the amendments relating to entry numbers as follows:

New Procedure

For the past two years, Customs has been working with the trade community to develop a new entry numbering concept which is simple, flexible, and easy to manage. Customs has now completed the administrative details for implementing this concept. Accordingly, § 142.3a, Customs Regulations (19 CFR 142.3a), relating to the procedure for the assignment of entry numbers by Customs is being deleted. Beginning October 1, 1985, the new number, including hyphens, will be shown on entry documentation that currently requires the old (current) entry number. These include the Immediate Delivery Application (Customs Form 3461), the Entry Summary (Customs Form 7501) and the broker or importer prepared Informal Entry (Customs Form 5119A). Customs is also planning to implement use of the new entry number on other entry documents which currently are unnumbered or use various other numbering schemes. These include the pre-numbered Informal Entry (Customs Form 5119A) and the Transportation Entry (Customs form 7512). Use of the new entry number on these forms will not occur until after October 1, 1985, when Customs can complete development of these capabilities and add them to the ACS. New procedures such as these will also require coordination with the trade community. Specific details and technical specifications for the new entry number and its placement on Customs entry documentation will be available to entry preparers and forms printing companies in sufficient time to order the required forms and make necessary procedural changes.

The following format must be used when showing the new entry number:

XXX–NNNNNNN–C

XXX represents an entry filer code, NNNNNNN is a unique number which will be assigned by the entry filer, and C is a check digit computed from the first 10 characters.

An increasing number of Customs entries are now prepared by automated procedures. For those entries, Customs will require that the full entry number, including the filer code and the check digit, be printed in machine-readable format on the entry form. For non-automated entries, Customs will require that the entry number, including the filer code and the check digit, be pre-printed in machine-readable format on the entry form. The technical specifications related to computing the check digit and printing the number on the forms are available to brokers, importers, forms suppliers, and other interested parties by contacting Richard J. Bonner at Customs Headquarters (202–535–4155).

Entry Filer Code (XXX)

Entry Filer Code (XXX)

The entry filer code will be the only portion of the entry number that will be assigned and controlled by Customs. A unique 3 character (alphabetic, numeric, or alpha-numeric) code will be assigned to all licensed broker companies currently filing Customs entries. A code will also be assigned to importers

currently filing a significant number of entries on a regular basis. The entry preparer will use this code nationwide as the beginning 3 characters of the number for all Customs entries, regardless of where the entries are filed. The entry filer code will replace the 3 digit importer/broker numbers currently assigned by Customs districts. An entry filer code assignment will not be made for intermittent importers. However, entry forms, pre-printed with a Customs assigned entry number, will be available for sale at local Customs offices. Brokers and importers who have not been notified of their entry filer code assignment by June 30, 1985, should immediately contact Mr. Bonner.

Entry Preparer Assigned Number (NNNNNNN)

For each entry, the entry preparer will assign a unique number. This number may be assigned in any manner convenient provided the same number is not assigned to more than one transaction. This number will not be associated with a fiscal year or a Customs district/port. The numbers need not be assigned or used in sequence.

As each entry is received, Customs will record the unique number assigned to the transaction, and will not allow the use of the same number on any subsequent transaction. A duplicate number will result in Customs rejecting the transaction.

Check Digit (C)

The entry preparer will compute the check digit using a formula provided by Customs. These specific details will be made available when the entry filer codes are issued.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, *et seq.*), it is hereby certified that the changes set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 142

Customs duties and inspection, Imports.

Amendment to the Regulations

PART 142—ENTRY PROCESS

1. The authority citation for Part 142 is revised to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Part 142 is amended by removing § 142.3a.

William von Raab,

Commissioner of Customs.

Approved: June 13, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-16138 Filed 7-5-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 628, 629, and 630

Job Training Partnership Act and Targeted Jobs Tax Credit Programs; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of Lower Living Standard Income Level; correction.

SUMMARY: This is to correct errors contained in the document which set forth revised determinations of lower living standard income levels for the Job Training Partnership Act and Targeted Jobs Tax Credit Program, published at 50 FR 24508, June 11, 1985.

There were errors contained in Table 4 on page 24508. Therefore, we are hereby publishing a corrected Table 4 as set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Telephone: 202-376-6093.

Accordingly, FR Doc. 85-14051, is amended by correcting Table 4 to read as follows:

TABLE 4.—70 PERCENT OF UPDATED 1985 LLSIL, BY FAMILY SIZE

Family size					
One	Two	Three	Four [1]	Five	Six
$6,350	$10,480	$14,280	$17,830	$20,800	$24,330
6,030	9,880	13,570	16,750	19,770	23,120
5,730	9,380	12,980	15,910	18,770	21,960
5,340	8,790	12,010	14,830	17,500	20,470
(4,890)	8,010	11,000	13,580	16,020	18,740
(4,810)	7,880	10,820	13,360	15,760	18,440
(4,720)	7,740	10,630	13,120	15,480	18,110
(4,700)	7,710	10,580	13,060	15,410	18,020
(4,670)	7,650	10,510	12,970	15,300	17,900
(4,630)	7,580	10,420	12,870	15,190	17,760
(4,630)	7,580	10,410	12,850	15,160	17,730
(4,590)	7,530	10,340	12,760	15,060	17,610
(4,550)	7,460	10,240	12,640	14,920	17,440
(4,510)	7,390	10,140	12,520	14,770	17,280
(4,470)	7,330	10,060	12,420	14,660	17,140
(4,460)	7,320	10,040	12,400	14,630	17,110
(4,430)	7,260	9,970	12,310	14,530	16,990
(4,420)	7,250	9,950	12,290	14,500	16,960
(4,380)	7,180	9,860	12,170	14,360	16,790
(4,370)	7,160	9,830	12,130	14,310	16,740
(4,360)	7,150	9,820	12,120	14,300	16,730
(4,350)	7,130	9,780	12,060	14,250	16,670
(4,330)	7,100	9,740	12,030	14,200	16,600
(4,320)	7,080	9,720	12,000	14,160	16,560
(4,290)	7,030	9,650	11,910	14,050	16,440
(4,280)	7,010	9,620	11,880	14,020	16,390
(4,180)	6,850	9,400	11,610	13,700	16,020
(4,170)	6,840	9,390	11,590	13,680	15,990
(4,150)	6,800	9,340	11,530	13,610	15,910
(4,110)	6,730	9,240	11,410	13,460	15,750
(4,100)	6,720	9,230	11,390	13,440	15,720
(3,950)	6,470	8,890	10,970	12,940	15,140

[1] Figures provided above in this notice are for a family size of four persons. To use this table, the appropriate figure should be found in the family size of four column. Then one may read across the row for family sizes other than four in the appropriate columns.

Signed at Washington, D.C., this 24th day of June 1985.

Roberts T. Jones,

Acting Deputy Assistant Secretary of Labor.

[FR Doc. 85-16063 Filed 7-5-85; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Ivermectin Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories, providing for additional uses of Eqvalan® (ivermectin) paste for treating and controlling certain parasites in horses.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, has filed a supplement to NADA 134–314 for Eqvalan® (ivermectin) paste. The supplement provides for additional uses of the paste for the control and treatment of certain parasites in horses. The supplement is approved and the regulations are amended to reflect this approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(4).

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. In § 520.1192 by revising paragraph (c)(2) to read as follows:

§ 520.1192 Ivermectin paste.

* * * * *

(c) * * *

(2) *Indications for use.* It is used in horses for the treatment and control of large strongyles (adult) (*Strongylus equinus*), (adult and arterial larval stages) (*Strongylus vulgaris*), (adult and migrating tissue stages) (*Strongylus edentatus*), (adult) (*Triodontophorus* spp.); small strongyles, including those resistant to some benzimidazole class compounds (adult and fourth stage larvae) (*Cyathostomum* spp., *Cylicocyclus* spp., *Cylicodontophorus* spp., *Cylicostephanus* spp.); pinworms (adult and fourth stage larvae) (*Oxyuris equi*); ascarids (adult) (*Parascaris equorum*); hairworms (adult) (*Trichostrongylus axei*); large mouth stomach worms (adult) (*Habronema muscae*); stomach bots (oral and gastric stages) (*Gastrophilus* spp.); lungworms (adults and fourth stage larvae) (*Dictyocaulus arnfieldi*); intestinal threadworms (adults) (*Strongyloides westeri*); summer sores caused by *Habronema* and *Draschia* spp. cutaneous third stage larvae; and dermatitis caused by neck threadworm microfilariae (*Onchocerca* spp.).

* * * * *

Dated: June 28, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85–16105 Filed 7–5–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF–209; Ref: Notice No. 547]

Registry Number of American Bottler of Wine

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the labeling regulation in 27 CFR 4.35, by eliminating the requirement that the registry number of the American bottler be shown in direct conjunction with the name and address of the bottler. ATF believes that the bottler's registry number requirement is unnecessary, since the consumer is still sufficiently informed as to who is responsible for the bottling of the wine and where the bottling of the wine occurred.

EFFECTIVE DATE: August 7, 1985.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta or Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202–566–7626.

SUPPLEMENTARY INFORMATION:

Background

The proposal to require the registry number of the American bottler, as well as the basic permit number of the U.S. importer for wines bottled in a foreign country, first appeared in Notice No. 304 Amended (42 FR 30517, June 15, 1977). This proposal was made as a result of testimony at public hearings, and written comments received, in response to Notice No. 304 (41 FR 50004, November 12, 1976).

The intent of this provision was to disclose to any interested party, the true name of the American bottler. A bottler may bottle wine under a myriad of trade names, but all of the trade names would have the same registry number. To implement this provision, the Bureau intended to make available to the public, periodically updated lists of wine bottlers and their permit or registry numbers, as applicable.

Following the publication of Notice No. 304 Amended, hearings were held in San Francisco, California, and Washington, DC. Thereafter, on August 23, 1978, ATF published a final rule, Treasury Decision ATF–53 (43 FR 37672, 54624).

As stated in T.D. ATF–53, the Bureau believed it important that more precise information concerning who is responsible for bottling and where the bottling took place be used on wine labels. Therefore, as amended, § 4.35 required that there be stated on labels of American wine, the name and address of the bottler (the "address" being the actual place where the wine was bottled or packed). In addition, this section required the registry number of the American bonded winery, bonded wine cellar, taxpaid wine bottling house, or distilled spirits plant at which the wine was bottled, be shown on the label in direct conjunction with the name and address of the bottler, in type as conspicuous as the name and address (section 4.35(d)). U.S. importers were not required to state their permit number on labels of foreign bottled wine.

The above requirements, specifically relating to the actual place where the wine was bottled, and the registry

number requirement, applied to American wines bottled after December 31, 1982.

Wawszkiewicz Court Case

Certain regulations promulgated in T.D. ATF–53 were challenged in court. *Wawszkiewicz* v. *Department of the Treasury*, 480 F.Supp. 739 (D.D.C. 1979), *aff'd in part, rev'd in part* and *remanded with directions*, 670 F.2d 296 (D.C. Cir. 1981). Since the Court of Appeals' decision was handed down in late December 1981, ATF, subsequent to an industry member's petition, determined that the wine industry did not have sufficient time to redesign labels and introduce them into the market place before the January 1, 1983 mandatory compliance date.

Thereafter, a notice was published (Notice No. 433, 47 FR 51423, November 15, 1982), proposing to delay certain regulations, including the provisions of sections 4.35(a), (c) and (d), from January 1, 1983, until January 1, 1985. This extension was accomplished in Treasury Decision ATF–120, published in the Federal Register on January 21, 1983 (48 FR 2762).

Wine Institute Petition

In a petition dated March 30, 1984, the Wine Institute requested ATF to remove the registry number requirement (§ 4.35(d)) from the regulations. The petitioner maintained that the appearance of the registry number serves no useful purpose, and will result in costly label revisions. The petitioner also maintained that the requirement is discriminatory against American bottlers of wine since American wine importers are not required to include their permit number on the label, as was originally proposed in Notice No. 304 Amended. In addition, the Wine Institute believed that the bottler's name and address requirement sufficiently satisfies the statutory mandate, as specified in section 5(e) of the Federal Alcohol Administration Act (FAA Act), in regard to providing the customer with adequate information about the bottler.

Notice No. 547

ATF considered the comments made by the Wine Institute in their petition. ATF adopted the registry number requirement because, as mentioned, it believed the registry number would provide the consumer with more precise information regarding who is responsible for the bottling and where the bottling occurred. The petition, however, raised some concerns regarding the need for further information on the label regarding the bottler, other than the name and address already provided.

Therefore, ATF published Notice No. 547 (49 FR 42577, October 23, 1984) proposing, in part, to take regulatory action on the bottler's registry number requirement, § 4.35(d). ATF requested comment on whether that requirement should be removed from the regulations, or should the American importers of foreign bottled wines also be required to label their basic permit number, or should the registry or permit number be required only when a trade name, other than the corporate name, is used on labels of wine. The comment period for this issue closed on January 22, 1985.

ATF also proposed in Notice No. 547 to extend the compliance date of § 4.35(d) from January 1, 1985, to January 1, 1987, to allow sufficient time for the rulemaking process to be completed. The comment period for this issue closed on November 7, 1984. Subsequently, a final rule was published on January 7, 1985 (T.D. ATF–194, 50 FR 758), extending the compliance date of § 4.35(d) until January 1, 1987.

Analysis of Comments

In response to Notice No. 547, four comments were received. One commenter believed that the registry number requirement should be retained, since it would aid any interested person in identifying who is responsible for the particular wine product.

Another commenter, representing the interests of New Zealand wine producers and exporters, stated that requiring the U.S. importer's permit number on labels of wine bottled outside the U.S. would constitute a non-tariff trade barrier.

A third commenter had no objection to either requiring the registry number or, for that matter, eliminating it. However, if required, this commenter believed it should be mandatory in all instances, for U.S. importers of foreign bottled wine, as well as American bottlers of wine. In addition to that, the commenter stated the registry number requirement should be stated whether a corporate *or* trade name was used.

The fourth commenter, the Wine Institute, representing 493 member wineries, stated that the registry number requirement should be eliminated. In addition to the reasons previously mentioned in their petition to remove the registry number requirement, the Wine Institute offered two more. One referred to their belief that the registry number on a label might lead a consumer into thinking that such a number represented some form of approval, similar to the "meat inspection seal on canned ham." Another point that was brought out in the Wine Institute's comment revolved around the issue of "label clutter." Since the registry number would convey no meaningful information to the consumer per se, the Wine Institute contends that it is useless information, and thus, as was brought out in the hearings subsequent to Notice No. 304 Amended, makes it more difficult to produce a wine label with aesthetic and graphic qualities.

Having analyzed the comments received in response to Notice No. 547, and having re-examined the rulemaking record subsequent to the publication of Notice No. 304 Amended (where the registry number requirement was first proposed), AFT now believes that further information on the label regarding the bottle is unnecessary. As a result of T.D. ATF–53, the address where the actual bottling took place must appear on the label in conjunction with the bottler's name. ATF believes this will provide the consumer with more precise information as to where the wine was actually bottled than the registry number. Should the need arise for a consumer to contact the responsible bottler (or importer), that information will still appear on the label.

Therefore, ATF is eliminating the registry number requirement from the regulations. With the elimination of the registry number requirement, the issue of a non-tariff trade barrier becomes moot. Since the elimination of the registry number becomes effective on August 7, 1985, the January 1, 1987 compliance date for bottler's registry number is no longer applicable.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant

economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause: a significant increase in reporting recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

Copies of the petition, the notice of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, D.C.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Drafting Information

The principal author of this document is James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for Part 4 continues to read as follows:

Authority: August 29, 1935, Chapter 814, sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205), unless otherwise noted.

Par. 2. Section 4.35 is amended by removing the reference to the registry number ", BW–CA–10001" in paragraph (c); and by revising paragraph (d) as follows:

§ 4.35 Name and address.

* * * * *

(d) *Trade or operating names.* The trade or operating name of any person appearing upon any label shall be identical with a name appearing on the basic permit or notice.

Signed: May 10, 1985.

W.T. Drake,

Acting Director.

Approved: June 13, 1985.

John M. Walker, Jr.,

Assistant Secretary, (Enforcement and Operations).

[FR Doc. 85–16164 Filed 7–5–85; 8:45 am]

BILLING CODE 4810-31-M

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31 CFR Part 103

Amendments to Implementing Regulations Currency and Foreign Transactions Reporting Act

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule.

SUMMARY: This final rule establishes a regulatory procedure through which the Secretary of the Treasury, exercising the authority conferred by 31 U.S.C. 5314, can require financial institutions in the United States to submit reports of financial transactions with foreign financial agencies. When the Secretary issues a reporting requirement in the nature of a regulation in accordance with the procedure established by this final rule, such regulation will specify the transactions, the time period, and the classes of financial institutions required to report.

EFFECTIVE DATE: August 7, 1985.

FOR FURTHER INFORMATION CONTACT: Robert J. Stankey, Jr., Office of the Assistant Secretary (Enforcement & Operations), (202/566–8022).

SUPPLEMENTARY INFORMATION:

Background

The Currency and Foreign Transactions Reporting Act (Pub. L. 91–508, Title II (Oct. 26, 1970), as amended, codified in 31 U.S.C. 5311 *et seq.*), empowers the Secretary of the Treasury to require financial institutions to keep certain records and file certain reports. The reporting requirements are described in general terms in the statute. Title 31, United States Code, section 5313, authorizes the Secretary to require reports of domestic transactions involving monetary instruments or domestic currency. Section 5314 authorizes the Secretary to require reporting of accounts in, and transactions with, foreign financial agencies. Section 5316 authorizes the Secretary to require reports of exports or imports of monetary instruments exceeding $10,000.

Since implementing regulations first became effective in 1972, reporting of currency transactions under section 5313 has been limited to filing by domestic financial institutions of reports on transactions exceeding $10,000. (See 31 CFR 103.22.) The only reporting requirement imposed under section 5314 has been the disclosure of foreign financial accounts. (See 31 CFR 103.24.) The reports of exported or imported monetary instruments exceeding $10,000 required by section 5316 call for the disclosure of limited information only. (See 31 CFR 103.23.)

In the thirteen years since these reporting requirements were drafted, there has been a significant growth in international business dealings, including an enormous increase in the amounts of narcotics and other controlled substances smuggled into the United States, and the international transportation of funds that are profits of these illegal activities and serve to finance them. The government's responsibility to enforce the laws respecting these and other illegal activities demands the development of new regulatory techniques to provide necessary information without unduly burdening commerce.

The Secretary is authorized by 31 U.S.C. 5314 to require reports not only of accounts in, but also of transactions with, foreign financial agencies. Section 5314(a) authorizes the Secretary, to the extent he deems necessary, to require such reports to contain:

(1) The identity and address of participants in a transaction or relationship;

(2) The legal capacity in which a participant is acting;

(3) The identity of real parties in interest; and

(4) a description of the transaction.

In requiring such reports, however, the Secretary is directed to consider the need "to avoid impeding or controlling the export or import of monetary instruments and . . . to avoid burdening unreasonably a person making a transaction with a foreign financial agency." To this end, subsection 5314(b) authorizes the Secretary to prescribe:

(1) A reasonable classification of persons subject to or exempt from a requirement under this section or a regulation under this section;

(2) A foreign country to which a requirement or a regulation under this section applies if the Secretary decides applying the requirement or regulation to all foreign countries is unnecessary or undesirable;

(3) The magnitude of transactions subject to a requirement or a regulation under this section;

(4) The kind of transactions subject to or exempt from a requirement or a regulation under this section; and

(5) Other matters the Secretary considers necessary to carry out this section or a regulation under this section.

In recognition of limits on the government's current ability to monitor adequately international transactions with foreign financial agencies, the Treasury Department published a notice of proposed rulemaking in the **Federal Register** on April 5, 1984, proposing a regulatory amendment to 31 CFR Part 103. (See 49 FR 13548.) That amendment, as adopted by this final rule, establishes a new procedure, authorized by 31 U.S.C. 5314, under which the Secretary may issue reporting requirements, in the nature of regulations, requiring limited classes of financial institutions to report limited numbers of financial transactions. Notice of such reporting requirements will either be published in the **Federal Register** or will be served personally upon members of the affected classes of financial institutions to provide actual notice in compliance with 5 U.S.C. 553.

This final rule does not require any financial institution to file any new report. Rather, it describes (i) the procedure for issuing future regulations containing reporting requirements, (ii) the classes of financial institutions that may be subject to future reporting requirements; (iii) the universe of information that may be subject to reporting requirements; (iv) the reasons for the new reporting requirements; (v) the authority for the issuance of the reporting requirements; and (vi) the limitations upon the scope and use of such future reporting requirements.

Future reporting requirements will be issued in response to money-flow and banking patterns of criminal, tax or regulatory interest to the Treasury.

Notice and Comment

The Treasury Department's notice of proposed rulemaking invited comments on the proposed rule for 60 days ending on June 4, 1984. The Department received 27 comments in response to that notice from 17 individual financial institutions, seven banking industry associations, one credit card company, the Department of Justice and the President's Commission on Organized Crime. Although several of these comments were received a few days after the close of the comment period, the Department has considered all of the comments received in formulating the final rule. The following summarizes the comments and sets forth Treasury's responses.

Cost of Compliance

Comment: Many commenters feared that complying with future reporting requirements would create onerous administrative costs either because new recordkeeping would have to be implemented or existing recordkeeping would have to be revised. This was especially felt to be the case as to reporting information not routinely recorded during the normal course of business. In addition, retrieving discrete information from a voluminous ongoing flow of data was argued to be prohibitively expensive.

Response: In light of these comments, Treasury has reviewed its anticipated information reporting needs and has decided to delete the authority under (proposed) 31 CFR 103.25(b) requiring the reporting of credit card charges. Otherwise, Treasury finds that there is a need to retain the authority to require reporting of the other types of information listed in new § 103.25(b).

Treasury has a statutory obligation in fashioning reporting requirements to consider the need to "avoid burdening unreasonably" international financial transactions. The Department notes that this final rule lists the universe of information for which reports may be required; however, ordinarily, only a few items from that list will be included in any given reporting requirement, as necessary. Moreover, Treasury anticipates that most of the information it selects already will be recorded by the financial institution during its normal course of business. Further, Treasury stands ready to work with the banking community to develop convenient and mutually acceptable reporting methods.

Because each reporting requirement will be tailored to specific information needs, no standard reporting form has been prepared. When the Secretary promulgates a reporting requirement, he may prescribe the manner in which the required information is to be reported. However, in response to comments received concerning the possible administrative burden on reporting institutions, Treasury has added a provision to the final rule that authorizes the Secretary to permit a designated institution to report in a different manner from that prescribed if the institution demonstrates to the Secretary that the form of the required report is unnecessarily burdensome on the institution; that a report in a different form will provide Treasury with all the information the Secretary deems necessary; and that submission of the information will not unduly hinder the effective administration of this Part.

As a result, the administrative cost of responding to any given future reporting requirement promulgated pursuant to this new procedure will not be unreasonably burdensome.

Treasury notes that the Department must take those steps it deems necessary to combat the rapidly increasing use of international financial transactions to further money laundering, narcotics trafficking and tax evasion. Any administrative burden that may be imposed on the banking community by reports required under this new procedure is reasonable in light of these important concerns.

Comment: Comments also were received to the effect that compliance costs would put those financial institutions required to report at a competitive disadvantage in relation to financial institutions not required to report.

Response: Since Treasury anticipates that its reporting requirements will be for discrete information over very limited periods of time, the resulting administrative cost will not be so great as to place responding institutions at a competitive disadvantage.

Over time, most financial institutions engaging in substantial international financial transactions probably will be subjected to one or more reporting requirements. Consequently, the costs of compliance will be shared by like competitors. To the extent that financial institutions are not subjected to reporting requirements it probably will be due to their lack of international activity. Such institutions will not receive a competitive advantage because they do not compete for international financial business.

Comment: Several commenters sought reimbursement from the government for the administrative costs of complying with future reporting requirements.

Response: The Currency and Foreign Transactions Reporting Act does not authorize the Treasury Department to expend public funds for such reimbursement. However, as indicated above, Treasury stands ready to work with the banking community to develop convenient and mutually acceptable reporting methods to mitigate the administrative burden on financial institutions.

Privacy Considerations

Comment: Many commenters felt that the future reporting requirements would violate the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*) by

requiring the disclosure of individually identifiable account information.

Response: The Right to Financial Privacy Act was enacted to prohibit government access for law enforcement purposes to information held by financial institutions without, in most cases, first providing notice and an opportunity to contest such access to the individual whose records were being sought. However, this prohibition does not apply to the disclosure of information "required to be reported in accordance with any Federal statute or rule promulgated thereunder." 12 U.S.C. 3413(d). Information reported pursuant to this new procedure clearly fits within the section 3413(d) exception.

Nevertheless, Treasury believes it would be inappropriate to use the reporting provisions of 31 U.S.C. 5314 to gather information to further ongoing law enforcement investigations of particular individuals. In such cases, those information collection procedures addressed by the Right to Financial Privacy Act would continue to apply. Treasury believes those procedures better balance the rights due individuals involved in disputes with the government and the legitimate demands of society that its laws be enforced.

Information collected under the new procedure should help uncover suspicious financial patterns that then can be investigated by way of established information collection procedures. In recognition of this purpose, the new procedure explicitly prohibits the imposition of future reporting requirements intended to further ongoing investigations of individuals.

Comment: Several commenters were concerned that future reporting requirements might violate the privacy laws of foreign countries, and that compliance would put financial institutions in violation of those laws, or drive financial business overseas to shield transactions from disclosure to the United States government.

Response: This regulatory procedure authorizes the reporting of information about transactions between domestic financial institutions and foreign financial agencies. It is not concerned with wholly foreign transactions. To the extent foreign financial agencies wish to conduct transactions that either originate or culminate within the United States, they are obliged to conduct such transactions in compliance with United States law. Treasury finds the nominal burden placed on such transactions to be justified by the strong national interests served by this regulatory procedure.

Treasury disagrees that the threat of future reporting requirements will have a deleterious effect on the ability of domestic financial institutions to compete with foreign financial agencies in the international financial market. No empirical substantiation for this concern has been offered. To the contrary, Treasury has perceived no impact on foreign business activity in the United States due to existing recordkeeping and reporting requirements, and sees no reason to believe that foreign businessmen or bankers will now forsake the American market out of fear of these limited reporting requirements.

Comment: Several comments suggested that internal bank customer privacy guidelines would require the disclosure of any future reporting requirements to affected customers which, in turn, would frustrate the purpose of the reporting requirements.

Response: Treasury anticipates that future reporting requirements will have limited durations commencing immediately upon receipt by the affected financial institutions. Consequently, even if internal privacy guidelines require notice to customers of these reporting requirements, such notice normally should not reach the customers until well into the short periods covered by the reporting requirements. The reporting periods should be short enough to minimize the likelihood that customers will find it worthwhile to disrupt their patterns of financial activity in order to avoid such reporting requirements.

Rulemaking Sufficiency

Comment: Several commenters argued that the proposed rule did not afford a meaningful opportuntity to comment upon the scope of future reporting requirements.

Response: Treasury believes that this rulemaking process provided ample opportunity to comment on the scope of future reporting requirements. The notice of proposed rulemaking clearly specified the universe of information proposed to be subject to future reporting requirements, and that universe has not been altered in this final rule except to delete certain categories of information, as discussed above.

In order to comply with the statutory mandate to avoid needless or unreasonable burdens on reporting institutions, the proposed rule contemplated that future information requests would be limited to discrete subsets of the universe of persons and transactions potentially subject to reporting. Narrowing future reporting requirements as contemplated by this rulemaking is consistent with the statutory mandate, but precludes a precise description of reporting requirements, because their nature depends on future events and conditions prevailing at the time of issuance. Merely because a given reporting requirement may be imposed on a narrower class of persons or transactions than could otherwise be subject to the reporting requirement does not make the notice of proposed rulemaking impermissibly vague. As a result, Treasury believes that this rulemaking process has given sufficient description of those persons and transactions that are subject to future reporting requirements.

Moreover, the adequacy of the notice of proposed rulemaking to air relevant issues concerning the scope of future reporting requirements is confirmed by the ample comments that were received in response to the notice of proposed rulemaking. Concerns were raised with regard to the breadth of information potentially subject to a reporting requirement, anticipated operational difficulties, costs, privacy issues, burdens on commerce, etc. Treasury discerns no difference between the concerns that have been expressed over the instant regulatory procedure and the concerns that might arise over future reporting requirements. They are one and the same, and have been adequately addressed through this rulemaking process.

Treasury believes the notice of proposed rulemaking adequately informed interested parties of the addition of a reporting requirement for financial institutions, identified the universe of persons and transactions that could be subject to future reporting requirements, explained the reasons why reports were necessary to carry out the purposes of the Act, identifiifed the authority for the requirement, and advised affected persons that a report would not be required until actual notice was given by Treasury. As a result, Treasury believes that this rulemaking process has given sufficient notice of the subjects and issues involved in this rule as well as any future regulations that might be issued as described in this rule.

Regulatory Impact Analysis

This regulatory amendment is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will

not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Consequently, a Regulatory Impact Analysis has not been prepared.

Regulatory Flexibility Analysis

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Almost all of the information that could be the subject of a reporting requirement is already being maintained in response to existing recordkeeping regulations. Given the focused nature of the contemplated reports, the clerical costs incurred by the specified group of financial institutions in filing the reports is anticipated to be relatively small. Consequently, a Regulatory Flexibility Analysis has not been prepared.

Paperwork Reduction Act

The collection of information requirements contained in the final Rule have been approved by the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

(OMB Control No. 1505-0063)

Drafting Information

The principal author of this document was Terry Thiele, Office of the General Counsel, Department of the Treasury. However, personnel from other Treasury offices participated in its development.

List of Subjects in 31 CFR Part 103

Banks and banking, Currency, Electronic funds transfers, Foreign banking, Investigations, Law enforcement, Drug traffic control, Reporting requirements, Taxes.

Amendment

PART 103—[AMENDED]

31 CFR Part 103 is amended as set forth below:

1. The authority citation for Part 103 is revised to read as follows:

Authority: Sec. 21 of the Federal Deposit Insurance Act, Pub. L. 91-508, Title I, 84 Stat. 1114, 1116 (12 U.S.C. 1829b, 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5322).

2. A new definition is added to 31 CFR 103.11 after the definition of *Foreign bank* to read as follows:

§ 103.11 [Amended]

* * * * *

Foreign bank. * * *

Foreign financial agency. A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

* * * * *

3. Sections 103.25 and 103.26 are renumbered as sections 103.26 and 103.27 and, a new § 103.25 is added to read as follows:

§ 103.25 Reports of transactions with foreign financial agencies.

(a) *Promulgation of reporting requirements.* The Secretary, when he deems appropriate, may promulgate regulations requiring specified financial institutions to file reports of certain transactions with designated foreign financial agencies. If any such regulation is issued as a final rule without notice and opportunity for public comment, then a finding of good cause for dispensing with notice and comment in accordance with 5 U.S.C. 553(b) will be included in the regulation. If any such regulation is not published in the **Federal Register**, then any financial institution subject to the regulation will be named and personally served or otherwise given actual notice in accordance with 5 U.S.C. 553(b).

(b) *Information subject to reporting requirements.* A regulation promulgated pursuant to paragraph (a) of this section shall designate one or more of the following categories of information to be reported:

(1) Checks or drafts, including traveler's checks, received by respondent financial institution for collection or credit to the account of a foreign financial agency, sent by respondent financial institution to a foreign country for collection or payment, drawn by respondent financial institution on a foreign financial agency, drawn by a foreign financial agency on respondent financial institution—including the following information.

(i) Name of maker or drawer;

(ii) Name of drawee or drawee financial institution;

(iii) Name of payee;

(iv) Date and amount of instrument;

(v) Names of all endorsers.

(2) Wire or electronic fund transfers received by respondent financial institution from a foreign financial agency or sent by respondent financial institution to a foreign financial agency—including the following information:

(i) Name of foreign financial agency;

(ii) Name, address and account number of account being credited or debited by respondent financial institution;

(iii) Name of respondent financial institution;

(iv) Date and amount of each transfer;

(v) Any other information normally appearing on respondent financial institution's internal wire or electronic fund transfer entries.

(3) Loans made by respondent financial institution to or through a foreign financial agency—including the following information:

(i) Name of borrower;

(ii) Name of person acting for borrower;

(iii) Date and amount of loan;

(iv) Terms of repayment;

(v) Name of guarantor;

(vi) Rate of interest;

(vii) Method of disbursing proceeds;

(viii) Collateral for loan.

(4) Commercial paper received or shipped by the respondent financial institution—including the following information:

(i) Name of maker;

(ii) Date and amount of paper;

(iii) Due date;

(iv) Certificate number;

(v) Amount of transaction.

(5) Stocks received or shipped by respondent financial institution—including the following information:

(i) Name of corporation;

(ii) Type of stock;

(iii) Certificate number;

(iv) Number of shares;

(v) Date of certificate;

(vi) Name of registered holder;

(vii) Amount of transaction.

(6) Bonds received or shipped by respondent financial institution—including the following information:

(i) Name of issuer;

(ii) Bond number;

(iii) Type of bond series;

(iv) Date issued;

(v) Due date;

(vi) Rate of interest;

(vii) Amount of transaction;

(viii) Name of registered holder.

(7) Certificates of deposit received or shipped by respondent financial institution—including the following information:

(i) Name and address of issuer;

(ii) Date issued;

(iii) Dollar amount;

(iv) Name of registered holder;

(v) Due date;

(vi) Rate of interest;

(vii) Certificate number;

(viii) Name and address of issuing agent.

(c) *Scope of reports.* In issuing regulations as provided in paragraph (a) of this section, the Secretary will prescribe:

(1) A reasonable classification of financial institutions subject to or exempt from a reporting requirement;

(2) A foreign country to which a reporting requirement applies if the Secretary decides that applying the requirement to all foreign countries is unnecessary or undesirable;

(3) The magnitude of transactions subject to a reporting requirement; and

(4) The kind of transaction subject to or exempt from a reporting requirement.

(d) *Form of reports.* Regulations issued pursuant to paragraph (a) of this section may prescribe the manner in which the information is to be reported. However, the Secretary may authorize a designated financial institution to report in a different manner if the institution demonstrates to the Secretary that the form of the required report is unnecessarily burdensome on the institution as prescribed; that a report in a different form will provide all the information the Secretary deems necessary; and that submission of the information in a different manner will not unduly hinder the effective administration of this part.

(e) *Limitations.* (1) In issuing regulations under paragraph (a) of this section, the Secretary shall consider the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency.

(2) The Secretary shall not issue a regulation under paragraph (a) of this section for the purpose of obtaining individually identifiable account information concerning a customer, as defined by the Right to Financial Privacy Act (12 U.S.C. 3401 *et seq.*), where that customer is already the subject of an ongoing investigation for possible violation of the Currency and Foreign Transactions Reporting Act, or is known by the Secretary to be the subject of an investigation for possible violation of any other Federal law.

(3) The Secretary shall not issue a regulation pursuant to paragraph (a) of this section requiring a financial institution to report transactions that were both completed and reflected in its records prior to the date it received notice of the reporting requirement.

(Approved by the Office of Management and Budget under Control No. 1505-0063)

Dated: May 31, 1985.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-16007 Filed 7-5-85; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Eligibility

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: These regulations implement those provisions of the Veterans' Compensation and Program Improvements Amendments of 1984 which affect people eligible to receive benefits under the dependents' educational assistance program or the GI Bill. The regulations deal with situations when someone is eligible for educational assistance under more than one of the programs administered by the VA (Veterans Administration). These regulations will acquaint the public with the way in which the VA is implementing the new provisions of law.

EFFECTIVE DATE: March 2, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, D.C. 20420, (202) 389-2092.

SUPPLEMENTARY INFORMATION: On pages 49858 and 49859 of the **Federal Register** of December 24, 1984 there was published a notice of intent to amend various regulations in order to implement some provisions of the Veterans' Compensation and Program Improvements Amendments of 1984. Interested people were given 30 days to submit any comments, objections or suggestions. The VA received no comments, objections or suggestions.

In an internal review of the proposal, however, it was discovered that the proposed change to § 21.4022(a) was in conflict with a provision of the proposed change to § 21.1022(a). The VA has rewritten § 21.4022(a) in order to eliminate that conflict. The remainder of the proposal has been made final without change.

The VA has made these regulations retroactively effective March 2, 1984. Retroactive effect is justified for the following reasons. Many of these regulations are liberalizing since they relieve several restrictions. These regulations are interpretive rules which construe the meaning of some of the provisions of Pub. L. 98-223.

Moreover, the VA finds that good cause exists for making these regulations, like the sections of law they implement, retroactively effective on March 2, 1984. To achieve the maximum benefit of this legislation for the affected individuals it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The VA has determined that these regulations are not major rules as that term is defined by Executive Order 12291, entitled Federal Regulation. The regulations will not cause a major increase in costs or prices for anyone. They will have an effect on the economy of less that $100 million annually. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs has certified that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because these changes affect only individual benefit recipients. Furthermore, any impact will be the result of the underlying law. It will not result from the regulations themselves.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 7, 1985.

By direction of the Administrator.
Everett Alvarez, Jr.,
Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration is amending 38 CFR Part 21 to read as set forth below:

1. Section 21.1022 is revised as follows:

§ 21.1022 Nonduplication—programs administered by the VA.

(a) *Chapters 32 and 34.* A person who is eligible for educational assistance under chapter 34 is not eligible for educational assistance under chapter 32. Certain veterans who are eligible for educational assistance under chapter 34 may waive that entitlement in order to receive educational assistance under chapter 32. See §21.1040(f). (38 U.S.C. 1602(1); Pub. L. 98–223

(b) *Chapter 34 and other programs administered by the VA.* An individual may not receive educational assistance allowance under 38 U.S.C. ch. 34 concurrently with benefits under any of the provisions of law listed in this paragraph for the same program. If a veteran is eligible for educational assistance under any of the provisions of law listed in this paragraph, he or she must elect which benefit he or she wishes to receive for each program of education the veteran wishes to pursue. These provisions of law are:

(1) 38 U.S.C. ch. 31,
(2) 38 U.S.C. ch. 35,
(3) 10 U.S.C. ch. 107,
(4) Section 903 of the Department of Defense Authorization Act, 1981, or
(5) The Hostage Relief Act of 1980. (38 U.S.C. 1781; Pub. L. 98–223)

2. In § 21.1040, paragraphs (a)(1), (b) and (e) are revised and paragraph (f) is added to read as follows. The heading of paragraph (a) is included for the convenience of the public

§ 21.1040 Basic eligibility.

* * * * *

(a) *Service.* * * *

(1) Served on active duty (including active duty for training that qualifies as active duty under §21.1021(b)) for a continuous period of 181 days or more, any part of which occurred after January 31, 1955, and before January 1, 1977. (38 U.S.C. 1602(1), 1652; Pub. L. 98–223)

* * * * *

(b) *Periods excluded.* In computing the 181 days service, there will be excluded any period during which he or she:

(1) Was assigned full time by the service department to a civilian school for a course of education which was substantially the same as established courses offered to civilians.

(2) Served as a cadet or midshipman at one of the service academies, or

(3) Is not entitled to credit for service for the periods of time specified in § 3.15 of this chapter. (38 U.S.C. 1602(1), 1652; Pub. L. 98–223)

* * * * *

(e) *Persons on active duty.* Educational assistance may be afforded a person while on active duty if he or she:

(1) Has not waived eligibility through election to receive educational assistance under 38 U.S.C. ch. 32 (as provided in paragraph (f) of this section), and

(2) Meets the requirements applicable to a discharged veteran under paragraphs (a) and (b) of this section, and, if the serviceperson has had a previous period of active duty upon which his or her eligibility is based, meets the requirements applicable to a discharged veteran under paragraph (d) of this section. (38 U.S.C. 1602(1), 1652; Pub. L. 98–223)

(f) *Waiver of eligibility through election to receive educational assistance under 38 U.S.C. ch. 32.* (1) A veteran who is eligible for educational assistance under 38 U.S.C. ch. 34 may waive that eligibility through making an election to receive educational assistance under 38 U.S.C. ch. 32. The veteran can make that election only if he or she—

(i) Served a period of active duty for training for at least 181 consecutive days at least 1 day of which was before January 1, 1977, and

(ii) Began the qualifying period of active duty of 1 consecutive year or more after December 31, 1976.

(2) If the veteran makes an election and negotiates a check for educational assistance under 38 U.S.C. ch. 32, the veteran's election is irrevocable. He or she is no longer eligible for educational assistance under 38 U.S.C. ch. 34 (38 U.S.C. 1602(1), 1652; Pub. L. 98–223)

3. Section 21.3022 is revised as follows:

§ 21.3022 Nonduplication—programs administered by the VA.

A person who is eligible for educational assistance under 38 U.S.C. ch. 35 and is also eligible for assistance under any of the provisions of law listed in this section, must elect which benefit he or she will receive for each program of education that person will pursue. The election is subject to the conditions specified in § 21.4022. The provisions of law are:

(a) 38 U.S.C. ch. 31.
(b) 38 U.S.C. ch. 32.
(c) 38 U.S.C. ch. 34.
(d) 10 U.S.C. ch. 107.
(e) Section 903 of the Department of Defense Authorization Act, 1981, or
(f) The Hostage Relief Act of 1980. (38 U.S.C. 1781; Pub. L. 98–223)

§ 21.3023 [Amended]

4. Section 21.3023 is amended by removing the words "wife, husband, widow or widower" and inserting the words "spouse or surviving spouse" in the heading and the text of paragraph (d).

§ 21.3024 [Amended]

5. Section 21.3024 is amended as follows:

A. By removing the words "child, wife, husband, widow or widower" and inserting the words "child, spouse or surviving spouse" in the heading of paragraphs (a)(1) and (b)(1).

B. By removing the words "veteran, wife, husband and child—widow, widower and child" and inserting the words "veteran, spouse and child—surviving spouse and child" in the heading of paragraphs (a)(2) and (b)(2).

C. By removing the words "widow or widower" and inserting the words "or surviving spouse" in the text of paragraphs (a)(2) and (b)(2).

D. By removing the words "widow, or widower" and inserting the words "surviving spouse" in the text of paragraphs (a)(3).

6. In § 21.4020, paragraph (a)(4) is revised and paragraphs (a) (5), (6) and (7) are added as follows:

§ 21.4020 Two or more programs.

(a) * * *

(4) 38 U.S.C. chs. 32, 34, 35 and 36 and the former chapter 33;

(5) 10 U.S.C. ch. 107;

(6) Section 903 of the Department of Defense Authorization Act, 1981, and

(7) The Hostage Relief Act of 1980. (38 U.S.C. 1795(a); Pub. L. 98–223)

* * * * *

8. In § 21.4022, the heading is changed and paragraph (a) is revised as follows:

§ 21.4022 Nonduplication—programs administered by the VA.

(a) *Election.* A veteran or eligible person who is eligible for education or

training under more than one of the provisions of law listed in this paragraph based on his or her own service or based on the service of another person must elect which benefit he or she will receive for each program of education he or she wishes to pursue. Except for an election between 38 U.S.C. ch. 32 and ch. 34 which is irrevocable once a check has been negotiated, the person may reelect at any time. The provisions of law are:

(1) 38 U.S.C. ch. 31,
(2) 38 U.S.C. ch. 32,
(3) 38 U.S.C. ch. 34,
(4) 38 U.S.C. ch. 35,
(5) 38 U.S.C. ch. 107.
(6) Section 903 of the Department of Defense Authorization Act, 1981, or
(7) The Hostage Relief Act of 1980. (38 U.S.C. 1781; Pub. L. 96–223)

* * * * *

[FR Doc. 85–16136 Filed 7–5–85; 8:45 am]

BILLING CODE 8320–01–M

POSTAL SERVICE

39 CFR Part 10

Express Mail International Service to Panama

AGENCY: Postal Service.

ACTION: Final action on Express Mail International Service to Panama.

SUMMARY: Pursuant to an agreement with the postal administration of Panama, the Postal Service intends to begin Express Mail International Service with Panama at postage rates indicated in the tables below. Service is scheduled to begin on August 7, 1985.

EFFECTIVE DATE: August 7, 1985.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, (202) 245–4414.

SUPPLEMENTAL INFORMATION: By a notice published in the **Federal Register** on May 31, 1985 [50 FR 23146], the Postal Service announced that it was proposing to begin Express Mail International Service to Panama. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1), and which are to become effective on the date service begins. No comments were received. Accordingly, the Postal Service states that it intends to begin International Express Mail Service with Panama on August 7, 1985 at the rates indicated in the table below.

Lists of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

PART 10—[AMENDED]

The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552(a), 39 U.S.C. 401, 404, 407, 408.

Panama.—Express Mail International Service

Custom designed service [1]		On demand service [2]	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
1	$31.00	1	$23.00
2	34.80	2	26.80
3	38.60	3	30.60
4	42.40	4	34.40
5	46.20	5	38.20
6	50.00	6	42.00
7	53.80	7	45.80
8	57.60	8	49.60
9	61.40	9	53.40
10	65.20	10	57.20
11	69.00	11	61.00
12	72.80	12	64.80
13	76.60	13	68.60
14	80.40	14	72.40
15	84.20	15	76.20
16	88.00	16	80.00
17	91.80	17	83.80
18	95.60	18	87.60
19	99.40	19	91.40
20	103.20	20	95.20
21	107.00	21	99.00
22	110.80	22	102.80
23	114.60	23	106.60
24	118.40	24	110.40
25	122.20	25	114.20
26	126.00	26	118.00
27	129.80	27	121.80
28	133.60	28	125.60
29	137.40	29	129.40
30	141.20	30	133.20
31	145.00	31	137.00
32	148.80	32	140.80
33	152.60	33	144.60
34	156.40	34	148.40
35	160.20	35	152.20
36	164.00	36	156.00
37	167.80	37	159.80
38	171.60	38	163.60
39	175.40	39	167.40
40	179.20	40	171.20
41	183.00	41	175.00
42	186.80	42	178.80
43	190.60	43	182.60
44	194.40	44	186.40

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the **Federal Register** as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85–16152 Filed 7–5–85; 8:45 am]

BILLING CODE 7715–12–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6607

[F–82319]

Alaska; Partial Revocation of Public Land Order Nos. 5150, 5179, 5180 and 5186; Withdrawal of Public Lands for Addition to the Arctic National Wildlife Refuge

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes four public land orders as they affect approximately 325,000 acres of public lands withdrawn for a transportation and utility corridor, classification, and protection of the public interest. This order simultaneously withdraws the same lands from surface entry and mining but not mineral leasing and makes it a part of the Arctic National Wildlife Refuge (ANWR) for a 20-year period. However, oil and gas leasing is prohibited by the Alaska National Interest Lands Conservation Act unless and until authorized by an Act of Congress.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, BLM, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, (907) 271–5060.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and subsection 1326(a) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), 94 Stat. 2371, 2488; 16 U.S.C. 3213(a), it is ordered as follows:

1. Public Land Order Nos. 5150, 5179, 5180 and 5186, as amended, modified and corrected are hereby revoked, insofar as they affect the following described lands:

Fairbanks Meridian (Unsurveyed)

T. 37 N., R. 17 E., fractional.
T. 36 N., R. 18 E.,
  Secs. 1 to 18, inclusive.
T. 37 N., R. 18 E., fractional.
T. 36 N., R. 19 E.
T. 37 N., R. 19 E., fractional,
  Sec. 28, those lands lying outside of ANWR;
  Secs. 29 to 33, inclusive;
  Sec. 34, those lands lying outside of ANWR.
T. 36 N., R. 20 E.,
  Secs. 1 to 4, inclusive;
  Secs. 5 and 6, those lands lying outside of ANWR;
  Secs. 7 to 36, inclusive.
T. 36 N., Rs. 21 to 24 E.

T. 35 N., R. 25 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 25 E.
T. 35 N., R. 26 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 26 E.
T. 35 N., R. 27 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 27 E.,
Secs. 19 to 36, inclusive.
T. 35 N., R. 28 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 28 E.,
Secs. 19 to 36, inclusive.
T. 35 N., R. 29 E.,
Secs. 1 to 18, inclusive.
T. 36 N., R. 29 E.,
Secs. 19 to 36, inclusive.
T. 35 N., R. 30 E., fractional,
Secs. 6, 7, and 18.
T. 36 N., R. 30 E., fractional,
Secs. 19, 30, and 31.

Umiat Meridian (Unsurveyed)

T. 14 S., R. 36 E.,
Secs. 30, 31, and 32, those lands lying outside of ANWR.
T. 15 S., R. 36 E.,
Sec. 5, those lands lying outside of ANWR;
Secs. 6 and 7;
Secs. 8 and 17, those lands lying outside of ANWR;
Secs. 18, 19 and 20;
Secs. 21 and 28, those lands lying outside of ANWR;
Secs. 29 to 32, inclusive;
Sec. 33, those lands lying outside of ANWR.
T. 16 S., R. 36 E.,
Sec. 4, those lands lying outside of ANWR;
Secs. 5 to 8, inclusive;
Secs. 9 and 16, those lands lying outside of ANWR;
Secs. 17 to 20, inclusive.
Secs. 21, 22, 25, 26, and 27, those lands lying outside of ANWR;
Secs. 28 to 36, inclusive.
T. 17 S., R. 36 E., fractional.
T. 16 S., R. 37 E.,
Secs. 31 to 34, inclusive, those lands lying outside of ANWR;
T. 17 S., R. 37 E., fractional,
Secs. 1 to 4, inclusive, those lands lying outside of ANWR;
Secs. 5 and 6.

The areas described aggregate approximately 325,000 acres.

2. Effective immediately subject to valid existing rights, the lands described in paragraph 1 are hereby withdrawn from settlement, sale, location, and entry under the public land laws, including the United States mining laws but not the mineral leasing laws. However, pursuant to section 1003 of ANILCA, 16 U.S.C. 3143, no leasing or other development leading to production of oil and gas shall be undertaken until authorized by an Act of Congress. The lands are hereby reserved for the U.S. Fish and Wildlife Service as an addition to ANWR as established by Public Land Order No 2214, enlarged by subsection 303(2) of ANILCA, 94 Stat. 2371 at 2390, and by donation from the State of Alaska under subsection 1302(i) of ANILCA, 16 U.S.C. 3192.

3. The State of Alaska concurred in the decision to add these lands to ANWR.

4. The above described lands are subject to all the terms and conditions of Public Land Order No. 2214 as modified and amended by ANILCA.

Robert N. Broadbent,

Assistant Secretary of the Interior.

[FR Doc. 85-16195 Filed 7-5-85; 8:45 am]

BILLING CODE 4310-84-M

Proposed Rules

Federal Register
Vol. 50, No. 130
Monday, July 8, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22190; File No. S7-16-85]

Request for Comments on Issues Concerning Internationalization of the World Securities Markets

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period for concept release.

SUMMARY: The Commission has extended from June 30, 1985 to September 30, 1985 the deadline for submitting comments on the internationalization concept release which the Commission published on April 18, 1985 (50 FR 16302, April 25, 1985).

DATE: Comments to be received by September 30, 1985.

ADDRESS: Persons wishing to submit comments should file three copies with John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. All comments should refer to File No. S7-16-85 and will be available for inspection at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Andrew E. Feldman, Esq., (202) 272-2414, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

The Commission has extended from June 30, 1985 to September 30, 1985 the deadline for submitting comments in response to the Commission's April 18, 1985 request for comments on issues concerning the internationalization of the world securities markets.[1] The Commission has extended the deadline in order to afford an additional opportunity for public comment.

By the Commission.

John Wheeler,
Secretary.
June 28, 1985.

[FR Doc. 85-16130 Filed 7-5-85; 8:45 am]
BILLING CODE 8010-01-M

[1] Securities and Exchange Act Release No. 21958 (April 16, 1985), 50 FR 16302.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 162

Proposed Customs Regulations Relating to Prior Disclosures of Violations of 19 U.S.C. 1592

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide for further clarifications and changes to the regulations relating to prior disclosures of violations of 19 U.S.C. 1592. The document would provide that a person is presumed to have knowledge of the commencement of a formal investigation of a violation if, before the claimed prior disclosure of the violation, an import specialist, regulatory auditor, inspector or other Customs officer, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592, so informed the person concerning the type of or circumstances of the disclosed violation. The document also would provide that a prior disclosure may not be made after a determination by any Customs officer that there is reasonable cause to believe that there has been a violation of 19 U.S.C. 1592, and that the Customs officer provides notice to the person.

These proposed amendments are necessary to provide for more effective enforcement of the regulations concerning 19 U.S.C. 1592 violations.

DATE: Comments must be received on or before September 6, 1985.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Robert J. Pisani or Charles D. Ressin, Commercial Fraud & Negligence Penalties Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202-566-8317).

SUPPLEMENTARY INFORMATION:

Background

Section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) provides for penalties and penalties procedures when by fraud, gross negligence or negligence, merchandise is entered, introduced, or attempted to be entered or introduced into the commerce of the U.S., by means of any material false document, written or oral statement or act, and/or any material omission; or when a person aids or abets any other person in the entry, introduction, or attempted entry or introduction of merchandise by such means.

Section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), provides for the remission or mitigation of fines, penalties, and forfeitures by the Secretary of the Treasury.

By T.D. 84-18, published in the **Federal Register** on January 13, 1984 (49 FR 1672), Customs amended the regulations relating to section 592 penalty and penalty procedures to, among other things, clarify the requirements and criteria applicable to prior disclosures of violations of section 592. As amended by T.D. 84-18, § 162.74(a), Customs Regulations (19 CFR 162.74(a)), provides that a prior disclosure may be made if the person concerned discloses the circumstances of a violation in writing to the district director before, or without knowledge of, the commencement of a formal investigation, and makes a tender of any actual loss of duties. Experience gained over the past year, however, reveals that further clarification and changes to § 162.74 are needed.

Section 162.74(f), Customs Regulations (19 CFR 162.74(f)), as amended by T.D. 84-18, provides that a person who claims lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. Pursuant to this section, a person is presumed to have had knowledge of the commencement of a formal investigation of a violation of § 592 if before the claimed prior disclosure of the violation:

(1) An investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(2) An investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the disclosed information.

The presumption of knowledge may be rebutted by evidence that, notwithstanding the inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

Section 162.74(f) is subject to the interpretation that the presumption of knowledge of the commencement of a formal investigation is limited to those circumstances where a Customs investigating agent, and not other Customs personnel, notifies the person of the type of or circumstances of a violation of section 592. To provide for more effective efforcement of the prior disclosure regulations, Customs is proposing that this presumption be extended to those circumstances where an import specialist, regulatory auditor, inspector, or other Customs officer, having reasonable cause to believe that there has been a violation of section 592, so notifies the person(s) concerning the type of or circumstances of the disclosed violation. Accordingly, it is proposed to amend § 162.74(f) to include this provision.

Section 162.74(g), Customs Regulations (19 CFR 162.74(g)), as amended by T.D. 84–18, provides that a prior disclosure may not be made after a determination by an authorized Customs officer that there is resonable cause to believe that there has been a violation of section 592 and that a claim for monetary penalty shall be issued without commencement of a formal investigation. Such determination is evidenced by any one or more of the following:

(1) By the issuance of a per-penalty notice;

(2) By the issuance of a penalty notice if a pre-penalty notice is not required;

(3) In the case of violations involving merchandise accompanying persons entering the U.S. or commercial merchandise inspected in connection with entry, by oral notification to the person of the officer's finding of a violation; or

(4) In the case of the seizure of merchandise under section 592, by the act of seizure.

It has now been determined that the existing wording of this regulation unduly restricts Customs in the performance of its enforcement duties. The determination as to whether there exists reasonable cause to believe a violation of section 592 has occurred appears to be limited to only certain authorized Customs officers. Often, however, this determination can be made by any Customs officer. Further, § 162.74(g)(3) is limited to situations which generally involve only inspectors, thus denying other Customs officers who may have detected the violation from providing oral or written notification to the violator.

To remedy this problem Customs is proposing that § 162.74(g) be amended to clarify that a prior disclosure will be precluded, notwithstanding the fact that a formal investigation has not been commenced, after *any* Customs officer determines that there is a violation of section 592, and gives notice as evidenced by the four outlined circumstances. The violator, however, may still make a prior disclosure of the circumstances of a violation which has not been discovered by Customs.

It is noted that § 162.74, as amended by T.D 84–18, contains an error in paragraph (a)(1), in which parenthetical reference is made to "§ 162.71(e) of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592)". The reference to section 592 inside the parenthesis should be removed and a reference to Part 162 inserted, in its place. The correct reference in the parenthesis should be to § 162.71 of Part 162.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66) sections 466, 584, 592, 613, 618, 46 Stat. 718, 748, 750, as amended 757, as amended, 759 (19 U.S.C. 1466, 1584, 1592, 1613, 1618).

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other customs offices participated in its development.

List of Subjects in 19 CFR Part 162

Customs duties and inspection, Administrative practice and procedures, Penalties.

Proposed Amendments

It is proposed to amend Part 162, Customs Regulations (19 CFR Part 162), as set forth below.

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. It is proposed to amend § 162.74(a)(1) by removing the words "section 592, Tarriff Act of 1930, as amended (19 U.S.C. 1592)" inside the parentheses, and inserting, in their place the words "this Part."

2. It is proposed to amend § 162.74 by redesignating paragraphs (f)(1) and (f)(2) as paragraphs (f)(2) and (f)(3), respectively, and by adding a new paragraph (f)(1), and by revising paragraph (g), to read as follows:

§ 162.74 Prior disclosure.

* * * * *

(f) *Proof of lack of knowledge.* A person who claims a lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if before the claimed prior disclosure of the violation:

(1) An import specialist, regulatory auditor, inspector or other Customs officer, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592, so informed the person

concerning the type of or circumstances of the disclosed violation; or

* * * * *

(g) *No prior disclosure after Customs discovery.* Notwithstanding that a formal investigation has not been commenced, a prior disclosure of the circumstances of a violation of 19 U.S.C. 1592, is precluded after a determination by any Customs officer that there is reasonable cause to believe that such violation has been committed. Such a determination shall be evidenced by one of the following:

(1) By the issuance of a pre-penalty notice;

(2) By the issuance of a penalty notice if a pre-penalty notice is not required;

(3) By oral or written notification to the alleged violator by the Customs officer who detected the violation; or

(4) By the act of seizure, under 19 U.S.C. 1592(c)(5), of the merchandize involved in the violation.

William von Raab,

Commissioner of Customs.

Approved: June 13, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-16137 Filed 7-5-85; 8:45 am]

BILLING CODE [illegible]

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19 CFR Part 177

Proposed Revision of Guidelines Concerning Tariff Classification of Imported Backpacking Tents

AGENCY: U.S. Customs Service.

ACTION: Proposed revision of guidelines; solicitation of comments.

SUMMARY: Pursuant to a court decision that recognized backpacking as a sport, Customs developed a set of guidelines to be used to determine which imported backpacking tents qualify as sports equipment for tariff purposes. Those guidelines established parameters concerning the material, capacity, dimensions, and weight of tents. However, it has come to Customs attention that technological advances involving tent material and construction methods may have rendered the existing guidelines obsolete. Tents now manufactured for purposes other than backpacking may qualify as backpacking tents using these guidelines. This document proposes new guidelines for the classification of backpacking tents and invites public comment on these guidelines.

DATE: Comments (preferably in triplicate) must be received on or before September 6, 1985.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Evelyn Suarez, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Customs is currently reviewing its guidelines used to determine whether or not imported backpacking tents qualify as sports equipment for tariff classification purposes. those guidelines, published in C.S.D. 79-108 (August 21, 1978), are as follows:

(1) Backpacking tents must be composed of dacron or nylon.

(2) Such tents must be designed for no more than 4 persons.

(3) If designed for 1 or 2 persons, the tents must weigh no more than 10 pounds, including all accessories necessary to pitch the tent, and have a carry size of no more than 24 inches in length and 8 inches in diameter.

(4) If designed for 3 or 4 persons, the tents must weigh no more than 15 pounds, including all accessories necessary to pitch the tent, and have a carry size of no more than 36 inches in length and 12 inches in diameter.

Tents meeting these guidelines are currently classified as sport equipment, not specially provided for, in item 735.20, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), at a rate of duty of 5.52% ad valorem. Prior to the issuance of these guidelines, Customs had been classifying backpacking tents under item 389.60, TSUS, a residual provision for articles of textile materials. However, in *The Newman Importing Co., Inc. v. United States*, 76 Cust. Ct. 143, C.D. 4646 (1976), the court held that backpacking was a sport and tents used in pursuit of backpacking could be considered sports equipment. Consequently, it became necessary to distinguish between tents used for backpacking and tents designed for other purposes. Accordingly, Customs developed the guidelines set forth in T.D. 79-108 for backpacking tents.

Since those guidelines were issued in 1978, technological advances in tent material and construction methods have occurred which permit tent manufacturers to produce lightweight camping tents for general recreational use, so-called family or car camping tents. These lightweight camping tents fall within the specifications of the 1978 guidelines and therefore, for Customs purposes, are classified in item 735.20, TSUS, although the tents were not "specially designed" for backpacking within the meaning of *Newman Importing*, supra. Tents not designed as sports equipment for backpacking should be classified under the provision for tents and sleeping bags, of manmade fiders, in item 388.11, TSUS, at a current rate of duty of 15% ad valorem.

Proposed Guidelines

To qualify for classification as "sport equipment" under item 735.20, TSUS, Customs is of the opinion that a tent must meet the following guidelines:

(1) It must be specially designed for the sport of backpacking.

(2) It must be composed of nylon or polyester fabric.

(3) If designed for 1 or 2 persons, the tent must meet the following criteria:

(a) Have a floor area of 45 square feet or less;

(b) Weigh 8½ pounds or less, including tent bag and all accessories necessary to pitch the tent;

(c) Have a carry size of 30 inches or less in length and 9 inches or less in diameter. If other than cylindrical in shape, the tent package must not exceed 1,900 cubic inches.

(4) If designed for 3 or 4 persons, the tent must meet the following criteria:

(a) Have a floor area of 65 square feet or less;

(b) Weigh 12 pounds or less, including tent bag and all accessories necessary to pitch the tent;

(c) Have a carry size of 30 inches of less in length and 10 inches or less in diameter. If other than cylindrical in shape, the tent package must not exceed 2,350 cubic inches.

Any tent with a floor space of more than 65 square feet and a standing height of more than 60 inches is a tent designed for general recreational use.

Comments

Before making a determination on this matter, Customs will consider any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on regular business days, at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

Because the proposed revisions if adopted, could change the amount of duties assessed on the articles, and could be of interest to the domestic industry as well as importers, Customs is publishing this notice and providing an opportunity to comment as provided by section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: June 13, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-16140 Filed 7-5-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-85-10]

Drawbridge Operation Regulations; Company Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the vertical lift bridge over Company Canal, mile 8.1, on LA24 at Bourg, Terrebonne Parish, Louisiana, by requiring that at least four hours advance notice be given for an opening of the draw between 10 p.m. and 6 a.m. The draw would continue to open on signal from 6 a.m. to 10 p.m. Presently, the draw is required to open on signal at all times.

This proposal is being made because of the infrequent requests for opening the draw during the proposed advance notice period. This action should relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw from 10 p.m. to 6 a.m., while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before August 22, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 5.2 feet above high water and 8.2 feet above low water. Navigation through the bridge consists of commercial boats (largely oil related), shrimp/fish boats and recreational craft. Data submitted by the LDOTD show that this traffic through the bridge is infrequent, during the period under discussion, as noted below:

(1) In 1984, between 10 p.m. and 6 a.m., the proposed advance notice period, there were 139 bridge openings—an average of 11.6 openings per month or an average of one opening about every three days. In 1983, for the same time period, there were 137 bridge openings—an average of 11.4 openings per month or an average of one opening about every three days.

(2) The total number of openings in 1984, 1983, 1982, 1981, and 1980 were 1154, 1142, 1250, 1513, and 1180, respectively.

Considering the few openings involved between 10 p.m. and 6 a.m., the Coast Guard feels that the current on site attendance at the bridge between 10 p.m. and 6 a.m. is not warranted and that the bridge can be placed on a four hours advance notice for an opening during this period. This will provide relief to the bridge owner, while still providing for the reasonable needs of navigation.

The advance notice for opening the draw would be given by placing a collect call during normal working hours to the LDOTD office in Houma, Louisiana, telephone (504) 851-0900 or at any time to the LDOTD District Office in Lafayette, Louisiana, telephone (318) 233-7404.

The LDOTD recognizes that there may be an unusual occasion to open the bridge on less than four hours notice for an emergency or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass this bridge during the advance notice period of 10 p.m. to 6 a.m., as evidenced by the 1983 and 1984 bridge opening statistics which show that the bridge averaged one opening about every three days. These vessels can reasonably give four hours advance notice for a bridge opening by placing a collect call to the bridge owner at any time. Mariners requiring the bridge openings are mainly repeat users and scheduling their arrival at the bridge at the appointed time should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulation, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

§ 117.438a [Redesignated as § 117.438]

2. Section 117.438a is redesignated as § 117.438, the text is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§117.438 Company Canal.

* * * * *

(b) The draw of the S24 bridge, mile 8.1 at Bourg, shall open on signal; except that, from 10 p.m. to 6 a.m. the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Dated: June 24, 1985.

T.T. Matteson,

Acting Captain, U.S. Coast Guard, Commander, 8th Coast Guard District.

[FR Doc. 85–16028 Filed 7–5–85; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Extension of Reporting Time for Defaults on Loans

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The VA (Veterans Administration) is proposing to amend the reporting requirement on defaulted vendee loans that have been purchased by investors with a repurchase agreement. Currently holders of such loans must submit to the VA a notice of default within 30 days after a loan has become two full installments in default. It is proposed to extend the reporting period to 60 days.

DATES: Comments must be received on or before August 5, 1985. The VA proposed to make these regulations effective 30 days after publication as final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of Veterans Benefits, Veterans Administration, Washington, DC 20420, (202) 389–3668.

SUPPLEMENTARY INFORMATION: When a VA-guaranteed loan goes into default and is subsequently foreclosed, the VA has the option of either paying the guaranteed portion of the loan, or if it is in the best interest of the VA, to acquire and resell the property securing the loan. When the VA resells the property, many times it is with VA financing as a vendee loan. Periodically vendee loans are sold to investors. These loans, known as "4600" loans, are sold to investors with a repurchase agreement pursuant to 38 CFR 36.4600. If the loan goes into default and the default cannot be cured, the VA takes back the loan and makes a case payment to the holder of the loan consisting of the price paid to the VA when the loan was purchased, less repayments received by the holder which were applied to the principal, plus any advances made by the holder to cover maintenance, repairs, taxes, assessments, etc.

As part of the repurchase agreement, purchases of loans sold by the VA must agree to report to the VA within 30 days after the loan has become two full installments in default. The VA is now proposing to extend the reporting time to 60 days. The additional 30 days will provide holders more time to service defaulted loans and effect cures of them. The result of the extended reporting period should be less defaults reported to the VA which are subsequently cured. This process will save the holder and the VA time and paperwork.

Therefore, it is proposed to change 38 CFR 36.4600(c)(1) to require holders of "4600" loans to report defaults within 60 days after a loan is two installments late instead of 30 days.

Ultimately it is up to the holder of the loan when to report a default to VA, within the prescribed reporting period, depending on the individual circumstances involved in each loan. If the loan is determined insoluble, holders should continue to report the default to VA as soon as possible.

The Administrator hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, title 5, Untied States Code, sections 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604. These proposed regulations will have no impact on small organizations or small government entities. Small businesses may be affected slightly by the proposed regulations due to relaxation of the reporting requirement, but not to an economically significant degree.

The proposed regulations have been reviewed under Executive Order 12291, entitled Federal Regultaion, and are not considered major regulation changes as defined in the Executive Order. These regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program Number 64.114)

These amendments are proposed under authority granted the Administrator by sections 210(c) and 1820 of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: June 19, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

§ 36.4500 [Amended]

In 38 CFR Part 36, LOAN GUARANTY, § 36.4600 is amended by removing the word "hereby" from paragraph (a); by changing the number "30" to "60" in the text and adding the cite "(38 U.S.C. 210(c), 1820)" at the end in paragraph (c)(1); and by changing the title "Secretary of Housing and Urban Development" to "Federal Emergency Management Agency" in paragraph (c)(3).

[FR Doc. 85–16135 Filed 7–5–85; 8:45 am]

BILLING CODE 8320–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1132

[Ex Parte No. 445; Sub-1]

Intramodal Rail Competition

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rules; notice of Oral Argument.

SUMMARY: The Commission has proposed alternate sets of rules to govern its handling of competitive access issues, *i.e.*, joint rates and through routes, reciprocal switching, and terminal trackage rights [50 FR 21319, April 2, 1985]. One set of rules has been proposed in an agreement between the Association of American Railroads (AAR) and the National Industrial Transportation League (NITL). This was clarified by a later agreement between AAR and the Chemical Manufacturers Association (CMA), and will be referred to as the AAR/NITL/CMA proposal. A second set of rules has been proposed by Railroads Against Monopoly (RAM), and will be referred to as the RAM proposal. The underlying issues are discussed in the Commission's decision served March 28, 1985. Because of the importance of the proposed guidelines, oral argument will be held on July 18, 1985, in Washington, D.C.

DATES: Oral argument will be held beginning at 9:30 a.m. on July 18, 1985. People seeking to participate must contact the appropriate coordinators by July 10, 1985. By July 12, 1985, the coordinators will advise the Commission's Secretary of those persons who will participate in the oral argument.

ADDRESSES: The oral argument will be heard in Hearing Room A at the Interstate Commerce Commission Building, 12th and Constitution Avenue, NW., Washington, D.C.

If you desire to participate:

(i) In support of the AAR/NITL/CMA proposal, please contact: R. Eden Martin, 1722 Eye Street, NW., Washington, DC 20036, (202) 347–7170.

(ii) In support of the RAM proposal, please contact: John J. Mullenholz, 900 17th Street, NW., Washington, DC 20006, (202) 463–8400.

(iii) In opposition to the AAR/NITL/CMA proposal or RAM proposal, please contact: Louis E. Gitomer, Interstate Commerce Commission, Washington, DC 20423, (202) 275–7245.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The Commission has proposed to adopt rules to govern its handling of competitive access issues. More than 60 parties have filed comments. Due to the differing positions taken and the significance of this proceeding, parties will be given an opportunity to argument their written comments. In holding this oral argument, the Commission is seeking further clarification of the issues raised in the written comments and replies.

The oral argument will be divided into two parts: (i) Argument on the AAR/NITL/CMA proposal; and (ii) argument on the RAM proposal.

The first part of the argument is scheduled for 80 minutes. The first 40 minutes will be devoted to argument in favor of the AAR/NITL/CMA proposal. This time will be coordinated by R. Eden Martin. No participant will be allotted less than 10 minutes. The second 40 minutes will be devoted to argument in opposition to the proposal. This time will be coordinated by Louis E. Gitomer. Again, no participant will be allotted less than 10 minutes.

The second part of the argument is scheduled for 80 minutes. The first 40 minutes will be devoted to argument in favor of the RAM proposal. This time will be coordinated by John J. Mullenholz. No participant will be allotted less than 10 minutes. The second 40 minutes will be devoted to argument in opposition to this proposal. This time will be coordinated by Louis E. Gitomer. Again, no participant will be allotted less than 10 minutes.

It is recognized that not all of the parties who filed comments and replies will be able to participate in the oral argument. However, through consolidation of positions via a single spokesperson, all parties should be able to present their views to the Commission. At the time of argument, participants may supplement their oral presentations with written remarks.

This notice is issued under authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: June 28, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85–16190 Filed 7–5–85; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 50, No. 130
Monday, July 8, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Amendments to Programmatic Memoranda of Agreement Regarding Planning and Leasing Activities of the National Park Service

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: This notice provides information about and invites comments on proposed amendments to existing Programmatic Memoranda of Agreement. The amendments will shift some responsibility for implementing the Agreements from the Associate Director, Cultural Resources, to the Regional Directors of the National Park Service.

DATE: Comments due August 7, 1985.

ADDRESS: Thomas F. King, Director, Office of Cultural Resource Preservation, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave. NW., Room 803, Washington DC 20004, Attention Michael Quinn. Telephone: (202) 786–0505.

Dated: July 1, 1985.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 85–16161 Filed 7–5–85; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

State of Arizona Wellton-Mohawk Irrigation and Drainage District; Determination of Primary Purpose for Amounts That May Be Excluded From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all federal cost-share payments under the Wellton-Mohawk Irrigation and Drainage District (WMIDD) Irrigation Improvement Program have been made primarily for the purposes of water conservation and reduction of the Wellton Mohawk return flow to the Colorado River system. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. This determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Project Manager, Wellton Projects Office, Route 1, Box 1, Wellton, Arizona 85356, (602) 785–3342, or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 382–1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1984, 26 U.S.C. 126, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments made to persons under authorized conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. . . ." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14 and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The WMIDD Irrigation Improvement Program is authorized under Pub. L. 93–320, Title I. It is funded through federal appropriations to provide financial assistance to owners of selected farmlands to help them develop and install various water conservation practices on their land. Cost-share payments are made exclusively to improve the water use efficiency on the farms, with a subsequent reduction in the WMIDD ground water return flow to the Colorado River system, a priority objective of Pub. L. 93–320, Title I, the *Colorado River Basin Salinity Control Act of 1974.*

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Department Regulation No. 1512–1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individual, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A WMIDD Irrigation Improvement Program "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, or the General Manager, Wellton-Mohawk Irrigation and Drainage District, Route 1, Box 19, Wellton, Arizona 85356.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the WMIDD Irrigation Improvement Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under the program are for soil and water conservation, protecting or restoring the environment, or providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits recipients to exclude from gross income, for federal income tax purpose, all or part of such payments made under the WMIDD Irrigation Improvement Program after September 30, 1979.

Signed at Washington, D.C., on July 1, 1985.

John R. Block,

Secretary.

[FR Doc. 85-16118 Filed 7-5-85; 8:45 am]

BILLING CODE 3410-01-M

[Docket No. 85-325]

Rangeland Grasshopper and Mormon Cricket; Declaration of Emergency Because of Rangeland Grasshopper and Mormon Cricket

Whereas, a serious infestation of rangeland grasshopper and Mormon cricket is occurring in parts of Arizona, Colorado, Idaho, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, and may occur in California, Kansas, and Nevada, and

Whereas, these ravenous insects are capable of rapidly destroying rangeland and of moving onto adjacent cropland where they can quickly inflict catastrophic damage to thousands of acres of cropland,

Whereas, outbreaks of grasshoppers resulting from favorable weather conditions for survival have exceeded projections and funds previously reprogrammed for controlling grasshoppers,

Now, therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. 953 (7 U.S.C. 147b), I declare that there is an emergency which threatens segments of agricultural production industries of this country, particularly the grain, potato, bean, hay and livestock industries, and I authorize the transfer and use of such sums as may be necessary from appropriations or other funds available to the agencies or corporations of the Department of Agriculture for the conduct of a program to be conducted on Federal, State, and privately owned rangeland to control and to prevent the dissemination of the rangeland grasshopper and Mormon cricket.

Effective date: This declaration of emergency shall become effective June 18, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-16167 Filed 7-5-85; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Southwestern Region; South Kaibab Grazing Advisory Board; Meeting

The South Kaibab Grazing Advisory Board will meet at 9:00 a.m., Friday, August 2, 1985, at the Supervisor's Office, 800 South 6th Street, Williams, Arizona.

The purpose of this meeting is:

1. Development of allotment management plans.

2. Utilization of range betterment funds.

The meeting will be open to the public. Persons who wish to attend should notify: Forest Supervisor, Kaibab National Forest, 800 South 6th Street, Williams, Arizona 86046. Telephone: (602) 635-2681.

Those attending may express their views when recognized by the chairman.

June 20, 1985.

Leonard A. Lindquist,

Forest Supervisor.

[FR Doc. 85-16165 Filed 7-5-85; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

New Jersey Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on August 7, 1985, at the Quality Inn, Route 1, South, North Brunswick, New Jersey. The purpose of the meeting is to select Committee activities for the program year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Stephen Balch or Ruth Cubero, Director of the Eastern Regional Office at (212) 264-0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 2, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-16066 Filed 7-5-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-402]

Antidumping Duty Order; Certain Heavy Salted Codfish From Canada

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The United Stated Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that certain dried heavy salted codfish from Canada is being sold at less than fair value and that sales of this product are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of this product made on or after January 29, 1985, the date on which the Department published its preliminary determination of sales at less than fair value in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made after the date of publication of this antidumping duty order in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are currently provided for in item 111.22 of the *Tariff Schedules of the United States, Annotated* (TSUSA). The term "certain dried heavy salted codfish" covers dried heavy salted codfish, which may be whole, processed by removal of heads, fins, viscera, scales, vertebral columns, or any combination thereof but not otherwise processed, not in airtight containers.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on January 29, 1985, the Department published its preliminary determination that there was reason to believe or suspect that certain dried heavy salted codfish from Canada was being sold in the United States at less than fair value. On June 4, 1985, the Department published its final determination that these imports were being sold at less than fair value.

On June 27, 1985, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that imports of certain dried heavy salted codfish are materially injuring a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs Unites States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain dried heavy salted codfish from Canada, with the exception of that

produced by Granville Gates who has been excluded from this investigation.

These antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after January 29, 1985, the date on which the Department published its "Preliminary Determination of Sales at Less Than Fair Value" notice in the **Federal Register**.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	[illegible] mission No.	Weighted-average margin [per cent]
Canadian Saltfish Corporation	A-122-[illegible]-001	20.75%
National Sea Products	A-122-[illegible]-002	1.27
United Maritime Fishermen	A-122-[illegible]-003	20.75
Sable Fish Packers, Ltd	A-122-[illegible]-004	10.98
Sans Souci Seafoods	A-122-[illegible]-005	3.40
R.I. Smith	A-122-[illegible]-006	1.45
All other manufacturers/producers/exporters	A-122-[illegible]-000	16.30

This determination constitutes an antidumping order with respect to certain dried heavy salted codfish from Canada pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex 1 of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-16117 Filed 7-5-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-007]

Certain Steel Products from South Africa; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant and administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty order on certain steel products from South Africa. The review covers the period from October 1, 1984. The petitioners and the domestic interested party to this proceeding have notified the Department that they are no longer interested in the countervailing duty order. These affirmative statements of no interest provide a reasonable basis for the Department to revoke the order. Therefore, we intend to revoke the order. In accordance with the petitioners' notifications, the revocation will apply to all certain steel products entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Philip Otterness of Al Jemmot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 39379) a countervailing duty order on certain steel products from South Africa.

In letters dated May 8, 1984, and May 2, 1985, United States Steel Corporation, Republic Steel Corporation, Inland Steel Company, Jones & Laughlin Steel, Inc., National Steel Corporation, and Cyclops Corporation, the petitioners in this proceeding, informed the Department that they were no longer interested in the order and stated their support of revocation of the order. The Department received a similar letter from the other domestic interested party to the proceeding, Bethlehem Steel Corporation. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of South African carbon steel structural shapes, hot-rolled carbon steel plate, hot-rolled carbon steel sheet, cold-rolled carbon steel sheet, galvanized carbon steel, hot-rolled carbon steel bars, hot-rolled alloy steel bars, and cold-formed carbon steel bars. The products are fully described in the appendix to this notice. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty order on certain steel products from South Africa provide a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on this product effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of certain steel products from South Africa which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results

of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: June 27, 1985.

Alan F. Holmer,

Deputy Assistant Secretary Import Administration.

Appendix—Description of Products

For purposes of this review:

1. The term *"carbon steel structural shapes"* covers hot-rolled, forged, extruded or drawn, or cold-formed or cole-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule 6, Part 2 of the Tariff Schedules of the United States Annotated ("TSUSA"), for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any tubular products set forth in the TSUSA, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8015, 609.8035, 609.8041, or 609.8045 of the TSUSA. Such products are generally referred to as structural shapes.

2. *The term "hot-rolled carbon steel plate"* covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620, 607.6625, or 607.9400 of the TSUSA; and hot- or cold-rolled carbon steel plate which has been coated or plated with zinc, including any meterial which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710 or 608.1100 of the TSUSA. Semifinished products of solid rectangular cross section with a width at least four times the thickness in the "as cast" condition or processed only through primary mill hot rolling are not included.

3. The term *"hot-rolled carbon steel sheet"* covers the following hot-rolled carbon steel products. Hot-rolled carbon steel sheet is a hot-rolled carbon steel product, whether or not corrugated or crimped, whether or not pickled, and whether or not painted or varnished; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 8 inches in width and in coils or, if not in coils, under 0.1875 inch in thickness and over 12 inches in width as currently provided for in items 607.6610, 607.6710 through 607.6740, 607.8320, 607.8342, or 607.9400 of the TSUSA. *PLEASE NOTE THAT THE DEFINITION OF HOT-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEMS 607.6610 AND 607.8320).*

4. The term *"cold-rolled carbon steel sheet"* covers the following cold-rolled carbon steel products. Cold-rolled carbon steel sheet is a cold-rolled carbon steel product, whether or not corrugated or crimped and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width and in coils or, if not in coils, under 0.1875 inch in thickness; as currently provided for in items 607.8320 or 607.8350 through 607.8360 of the TSUSA. *PLEASE NOTE THAT THE DEFINITION OF COLD-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEM 607.8320).*

5. The term *"galvanized carbon steel sheet"* covers hot- or cold-rolled carbon steel sheet which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710, 608.0730, 608.1100, 608.1310, 608.1320, or 608.1330 of the TSUSA. *NOTE THAT THE DEFINITION OF GALVANIZED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEMS 608.0710 and 608.1100).* Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc is not included.

6. The term *"hot-rolled carbon steel bars"* covers hot-rolled carbon steel products of solid section which have cross secions in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, not cold-formed, and not coasted or plated with metal, as currently provided for in items 606.8310, 606.8330, or 606.8350 of the TSUSA.

7. The term *"hot-rolled alloy steel bars"* covers hot-rolled alloy steel products, other than those of stainless or tool steel, of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, not cold-formed, as currently provided for in item 606.9700 of the TSUSA.

8. The term *"cold-formed carbon steel bars"* covers cold-formed carbon steel products of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, as currently provided for in items 606.8805 or 606.8815 of the TSUSA. Cold-formed carbon steel bars does not include cold-rolled carbon steel products cut to length, of any cross-sectional dimension less than 0.703 inch in maximum cross-sectional dimension, or if of rectangular cross section, not over 0.25 inch in the thickness and not over 0.50 inch in width.

[FR Doc. 85-16116 Filed 7-5-85; 8:45 am]

BILLING CODE 3510-DS-M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance; General Pneumatic Products Corp. et al.

Petitions have been accepted for filing on the dates indicated from the following firms: (1) General Pneumatic Products Corporation, 11460 Dorsett Road, Maryland Heights, Missouri 63043, producer of pneumatic hand tools (June 6, 1985); (2) Riley Creek Lumber Company, P.O. Box 631, Laclede, Idaho 83841, producer of softwood lumber and logs (June 7, 1985); (3) Acraloc Corporation, 113 Flint Road, Oak Ridge, Tennessee 37830, producer of food packaging machinery (June 7, 1985); (4) The Sanibel Company, 1090 East 16th Street, Hialeah, Florida 33010, producer of women's skirts and shirts (June 7, 1985); (5) Elston Electronics Corporation, 35 Lehigh Street, Geneva, New York 14456, producer of video display monitors (June 10, 1985); (6) Jorge Saavedra, Inc., 15421 Electronic Lane, Huntington Beach, California 92649, producer of men's and women's shirts, shorts, jackets, caps, and arm and leg warmers (June 10, 1985); (7) Bennett-Ireland, Inc., 23 State Street, Norwich, New York 13815, producer of fireplace equipment and accessories (June 10, 1985); (8) Great Lakes Industry, Inc., P.O. Box 6219, Jackson, Michigan 49204, producer of components for agricultural and construction equipment (June 11, 1985); (9) Leather Art Manufacturing Company, 18 Marshall Street, South Norwalk, Connecticut 06854, producer of belts, watchbands and small leather goods (June 12, 1985); (10) Batavia Turf Farms, 7939 Bank Street Road, Batavia, New York 14020, producer of onions and

sod (June 13, 1985); (11) Goldberger Doll Manufacturing Company, Inc., 538 Johnson Avenue, Brooklyn, New York 11237, producer of dolls (June 13, 1985); (12) Lumured Corporation, 292 East Smith Street, Woodbridge, New Jersey 07095–0217, producer of handbags (June 14, 1985); (13) Aquino Sailcloth, Inc., P.O. Box 96, City Island, New York 10464, producer of fabric sails (June 14, 1985); (14 Stephen Bond, R.D. #1, Box 36, Hector, New York 14841, producer of grapes (June 19, 1985); (15) Super Doll Corporation, 476 Jefferson Street, Brooklyn, New York 11237, producer of doll components (June 20, 1985); (16) Fulford Manufacturing Company, 107 Stewart Street, Providence, Rhode Island 02901, producer of metal stampings, jewelry findings and other metal products (June 25, 1985); and (17) Sierra Grinding Wheel, Inc., P.O. Box 422, Jackson, Wisconsin 53037, producer of grinding wheels and stones (June 27, 1985).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Charles L. Smith,

Acting Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 85–16115 Filed 7–5–85; 8:45 am]

BILLING CODE 3510–DR–M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on July 17, 1985, 10:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:30 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982)) and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with a limited number of seats available. A notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: July 1, 1985.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–16119 Filed 7–5–85; 8:45 am]

BILLING CODE 3510–DR

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Hagenbeck Tierpark (P356)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Hagenbeck Tierpark, D–2000 Hamburg 54.

b. Address (Stellingen), West Germany.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: Atlantic bottlenose dolphin (*Tursiops truncatus*) 4.

4. Type of Take: Capture for permanent maintenance.

5. Location of Activity: Southeast Texas coast or Mississippi Sound.

6. Period of Activity: Four (4) years.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

i. A certification from such appropriate government agency verifying the information set forth in the application;

ii. A certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. A statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Bezirksamt Eimsbuttel Veterinaramt Hamburg have been found appropriate and sufficient to allow consideration of this permit application.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilitites are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammel Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should

set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: July 1, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-16174 Filed 7-5-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Withdrawal of Application; Cold Spring Harbor Fish Hatchery and Aquarium

On March 8, 1985, notice was published in the **Federal Register** (50 FR 9482) that an application had been filed by the Cold Spring Harbor Fish Hatchery & Aquarium, P.O. Box 535, Route 25A, Cold Spring Harbor, New York 11724 for a permit to take seventy-four (74) shortnose sturgeon (Acipenser brevirostrum) from the Hudson River, New York, from April through June 1985.

Notice is hereby given that on June 20, 1985 that application was withdrawn and the withdrawal request has been acknowledged and accepted without prejudice by the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Bldg., Gloucester, Massachusetts 01930-3799.

Dated: July 1, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc 85-16172 Filed 7-5-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Montreal Zoological Park

On April 12, 1985, notice was published in the **Federal Register** (50 FR 14409) that an application had been filed by Montreal Zoological Park, Montreal, Quebec, Canada for a permit to take marine mammals for the purpose of scientific research and/or public display.

Notice is hereby given that on June 27, 1985 as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3000 Whitehaven Street, NW., Washington, DC; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: July 1, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-16173 Filed 7-5-85; 8:45 am]

BILLING CODE 3510-22-M

THE COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Wednesday, July 31, 1985 at 10:00 in the Commission's offices at 708 Jackson Place, NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington including buildings, memorials, parks, etc., also matters of design referred by other agencies of the government. Access for handicapped persons will be through the main entrance to the New Executive Office Building on 17th Street between Pennsylvania Avenue and H Street, NW.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 566-1066.

Dated in Washington, D.C., July 1, 1985.

Charles H. Atherton,

Secretary.

[FR Doc. 85-16162 Filed 7-5-85; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 128. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 128 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: July 1, 1985.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 128 to the Heads of the Executive Departments and Establishments

Subject: Table of maximum per diem rates in lieu of subsistence for United States Government civilian officers and employees for official travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and possessions of the United States

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated August 17, 1966, subject: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702(a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 127 except for the cases identified by asterisks (*) which rates are effective on the date of this Bulletin.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$10
Anaktuvuk Pass	160
Anchorage	110
Atqasuk	110
Barrow	130
Bethel	110
Coldfoot	122
College	114
Cordova	124
Deadhorse	131
Dillingham	114
Dutch Harbor—Unalaska	105
Eielson AFB	104
Elmendorf	110
Fairbanks	104
Ft. Richardson	110
Ft. Wainwright	104
Juneau	106
Ketchikan	113
Kodiak	120
Kotzebue [2]	123
Murphy Dome [3]	104
Nuatak	123
Nome	136
Noorvik	123
Petersburg	113
Point Hope	160
Point Lay	170
Prudhoe Bay	131
Sand Point	103
Shemya AFB [3]	30
Shungnak	123
Sitka-Mt. Edgecombe	113
Skagway	113
Spruce Cape	126
St. Mary's	100
Tanana	126
Valdez	126
Wainwright	165
Wrangell	113
Yakutat	100
All other Localities [2]	90
American Samoa	81
Guam M. I	91
Hawaii:	
Hawaii, Island of	83
Oahu	94
All other islands	85
Johnston Atoll [3] [4]	23
Midway Islands [3] [4]	13
Puerto Rico:	
Bayamon:	
December 16 to May 15	132
May 16 to December 15	99
Caolina:	
December 16 to May 15	
May 16 to December 15	
Fajardo (including Luquillo):	
December 16 to May 15	132
May 16 to December 15	99
Ft. Buchanan (including GSA Service Center, Guaynabo):	
December 16 to May 15	132
May 16 to December 15	99
Ponce (including Ft. Allen NCS)	92
Roosevelt Roads:	
December 16 to May 15	132
May 16 to December 15	99
Sabana Seca:	
December 16 to May 15	132
May 16 to December 15	99
San Juan (including San Juan Coast Guard Units):	
December 16 to May 15	132
May 16 to December 15	99
All other localities	111
Virgin Islands of U.S.:	
December 12 to April 30	126
May 1 to November 30	93
Wake Island [3]	20
All other Localities	20

[1] Commercial facilities are not available. The per diem rate covers charges for meal in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[3] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 1, 1985.

[FR Doc. 85-16044 Filed 7-5-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name Of The committee: Army Science Board (ASB).

Dates Of meeting: Tuesday, July 30, 1985.

Times Of meeting: 0800-1700 hours.

Place: Hay Group, Inc., Washington, DC.

Agenda: The Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for AirLand Battle—Chair and three subpanel Chairs (Active/U.S. Army Reserve, Army National Guard, and Mobilization Base/Industrial Perspective)—will meet to draft a final report. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-16099 Filed 7-5-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 7, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: July 2, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Pell Grant Program Student Validation Roster
Agency Form Number: ED 255–4
Frequency: As necessary
Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Reporting Burden: Responses: 1,000; Burden Hours: 12,000
Recordkeeping Burden: Recordkeepers: 1,000; Burden Hours: 500

Abstract: The Student Validation Roster is prepared by the Department and sent to participating postsecondary educational institutions to determine the accuracy of the Pell Grant recipient data previously submitted on the Student Aid Report. A school notates corrections on this roster and returns it to the Department for subsequent updating of the Department data which is then processed for end-of-year adjustments to the Pell authorization level at that school.

Office of Educational Research and Improvement

Type of Review Requested: Extension
Title: State-Level Personnel Exchange (Elementary-Secondary)
Agency Form Number: ED 2428–1, 2428–2
Frequency: Quarterly
Affected Public: State or local governments
Reporting Burden: Responses: 40; Burden Hours: 60
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The National Center for Education Statistics (NCES) was mandated by Pub. L. 93–380, as amended, to "assist State and local educational agencies in improving and automating their statistical and data collection activities". As part of its assistance program, NCES has established a State-Level Personnel Exchange to facilitate the interchange of information and expertise among States.

[FR Doc. 85–16157 Filed 7–5–85; 8:45 am]

BILLING CODE 4000–1–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Peaceful Uses of Atomic Energy; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the supply of the following material:

Contract Number WC–EU–276, for the loan of 42 grams of plutonium-242 to the European Transuranium Institute, Karlsruhe, the Federal Republic of Germany, for use in basic energy sciences, including neutron and photoemission. The material will be returned to the United States upon completion of the studies.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: July 1, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85–16132 Filed 7–5–85; 8:45 am]

BILLING CODE 6450–01–M

Peaceful Uses of Atomic Energy; Proposed Subsequent Arrangements; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the shipment of 6 kilograms of irradiated fuel from the HMI Reactor in Berlin, West Germany to the USDOE Idaho facilities for processing and storage of recovered uranium under contract number DE–AC09–77SR01014.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: July 1, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85–16133 Filed 7–5–85; 8:45 am]

BILLING CODE 6450–01–M

Peaceful Uses of Atomic Energy; Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the:

a. Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community

(EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended;

b. Agreement for Cooperation Between the Government of the United States and the International Atomic Energy Agency (IAEA) Concerning Peaceful Uses of Atomic Energy, as amended;

c. Agreement for Cooperation between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy; and,

d. Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Indonesia Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above mentioned agreements involve approval of the following sales:

a. (1) Contract Number S–EU–844, to the Societe Centrale de L'Uranium des Minerais et Metaux Radioactif (SCUMRA), France, 51.0 grams of normal uranium (26 grams as solid metal and 25 grams of U_3O_8), for use as standard reference material.

(2) Contract Number S–EU–845, to the Comitato Nazionale Per La Ricerca E Per Lo Sviluppo Dell'Energie Alternative, Italy, 1.0 gram of depleted uranium solid oxide, 3 grams of enriched uranium solid oxide, and 3 grams of enriched uranium nitrate solution, for use as standard reference material.

(3) Contract Number S–EU–846, to the Resident Representative of the United Nations Development Programme, for IAEA project GRE/1/032, Demokritos Research Centre, Greece, 1.3024 grams of normal uranium (pitchblende and monazite ores) and 0.76647 grams of thorium (monzanite ore), for use as standard reference material.

(4) Contact Number S–EU–847, to AERE Harwell, England, 0.02 grams of solid plutonium nitrate, for use as standard reference material.

(5) Contract Number S–EU–848, 250,000 curies of tritium to Amersham International, England, for use in production of labelled compounds for resale and for resale in bulk gaseous form.

(6) Contract Number S–EU–850, to Kraftwerk Union AG, West Germany, 4 grams of uranium as oxide containing U–234 enriched to 99%+, for use in fission ionization detectors for boiling water reactors to compensate the burnup of 235 by the breeding effect.

(7) Contract Number S–EU–851, to Levy Hills Laboratories, Ltd., England, 3,000 grams lithium enriched to 95–96% Li-6 as lithium carbonate, for use in the manufacture of glass scintillators which will be used for the production of neutron detectors in the United States and the United Kingdom.

(8) Contract Number S–EU–852, to Universite de Clermont II, France, one gram of enriched uranium solid U_3O_8 (0.9911%), for use as standard reference material.

(9) Contract Number S–EU–853, to GSI, West Germany, 480 grams of thorium metal, for use in ion source of UNILAC heavy ion accelerator to produce a high energetic beam of thorium ions.

(10) Contract Number WC–EU–278, to Universitaet zu Koeln, West Germany, 99.8 grams of depleted uranium to continue the experimentation begun during Dr. Michael S. Wire's thesis work at Los Alamos National Laboratory.

b. (1) Contract Number S–IA–137, to the Safeguards Analytical Laboratory, International Atomic Energy Agency, Vienna, Austria, approximately 50 grams of uranium, enriched to an average of 25% in U–235, 12.53 grams of plutonium, and 0.49 grams of U–233, for use as standard reference material.

(2) Contract Number S–IA–138, to the Institute of Isotopes of the Hungarian Academy of Sciences, 1.019 grams of normal uranium (pitchblende and monzanite ore) and 0.020 grams of thorium (monzanite orde), for use as standard reference material.

c. Contract Number S–CA–374, to Rio Algom Limited, Canada, 339.165 grams of normal uranium solid oxide, for use as standard reference material.

d. Contract Number S–IE–6, to National Atomic Energy Agency, Indonesia, 0.0197 grams of normal uranium (monzanite ore) and 0.5567 grams of thorium (monzanite ore), for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: July 1, 1985.

George J. Bradley, Jr.

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85–16134 Filed 7–5–85; 8:45 am]

BILLING CODE 6450–01–M

Oak Ridge Operating Sites, TN: Trespassing on DOE Property

The Department of Energy (DOE), successor agency to the Atomic Energy Commission, is authorized pursuant to section 229 of the Atomic Energy Act of 1954, as amended; section 104 of the Energy Reorganization Act of 1974 as implemented by 10 CFR Part 860; and section 301 of the Department of Energy Organization Act to prohibit unauthorized entry and the unauthorized introduction of weapons or dangerous materials into and upon its nuclear sites. By Notice dated October 19, 1965, appearing at pages 13285–13287 of the **Federal Register** (FR Doc. 65–11108), the Atomic Energy Commission prohibited unauthorized entry into and upon several Oak Ridge operating sites, including the Y–12 Plant Site (p. 13286). This Notice amends the site description of the Y–12 Plant Site to add 2,300 acres to the 534 acres to which unauthorized access was prohibited by the 1965 Notice. Notices stating the pertinent prohibition of 10 CFR 860.3 and 860.4 and penalties of 10 CFR 860.5 will be posted at all entrances of said tract and at intervals along its perimeters as provided in 10 CFR 860.6.

The site description of the Y–12 Plant Site is hereby amended to read as follows:

The DOE installation known as the Y–12 Plant Site, said site being a tract of land primarily in Anderson County, Tennessee, and also being a tract of land primarily in Anderson Country, Tennessee, and also being in the southern part of the City of Oak Ridge, said tract being described more particularly as follows:

Beginning at an iron pin in the southern boundary line of the minimum geographic area limit, said iron pin also being in the southern property line of Lot 3 Block 23CB, City of Oak Ridge and located N. 82°18' W., 56.89 feet from the southeast property corner of Lot 3, Block 23CB, City of Oak Ridge, said southeast property corner also located in the west right-of-way of the South Illinois Wye; thence S. 11°26' E, 487.80 feet to an iron pin west of Scarboro Road; thence continuing west of Scarboro Road S. 11°26' E., 194.24 feet to an iron pin; thence S. 29°23' E., 204.08 feet to an iron pin; thence S. 29°22' E., 36.83 feet to a railroad spike; thence S. 11°30' E., 206.90 feet to a railroad spike; thence S. 08°03' E., 75.73 feet to a railroad spike; thence S. 04°47' E., 441.04 feet to a railroad spike; thence S. 02°35' W., 77.53 feet to an iron pin; thence S. 26°52' W., 72.73 feet to an iron pin; thence S. 47°34' W., 47.01 feet to an iron pin; thence S. 05°52' E., 89.99 feet to an iron pin; thence continuing west of Scarboro Road N. 87°45' E., 52.66 feet to an iron pin; thence S. 18°29' W., 136.06 feet to an iron pin; thence S. 07°52' W., 182.88 feet to an iron pin: thence S. 22°47' E., 427.19 feet to an iron pin in the boundary line of Parcel 300; thence with the boundary line of Parcel 300 S. 36°39' E., 542.83 feet to an iron pin; thence leaving said boundary line and continuing west of Scarboro Road S. 61°13' E., 406.20 feet to an iron pin; thence S. 06°33' W., 63.63 feet to an iron pin; thence S.

70°46' E., 81.88 feet to an iron pin; thence S. 49°31' E., 69.78 feet to an iron pin; thence S. 33°36' E., 125.66 feet to an iron pin; thence S. 30°48' E., 265.71 feet to an iron pin; thence S. 25°49' E., 284.16 feet to an iron pin; thence continuing west of Scarboro Road S. 22°45' E., 250.39 feet to an iron pin; thence S. 20°40' E., 547.68 feet to an iron pin; thence S. 06°50' E., 134.63 feet to an iron pin; thence S. 03°36' W., 306.18 feet to an iron pin; thence leaving the west side of Scarboro Road S. 87°16' W., 3086.34 feet to an iron pin; thence N. 55°50' W., 403.13 feet to an iron pin; thence N. 55°35' W., 348.00 feet to an iron pin; thence N. 02°30' W., 245.30 feet to an iron pin; thence N. 83°21' W., 6659.61 feet to an iron pin; thence S. 59°56' 2872.86 feet to an iron pin; thence S. 26°50' E., 2298.36 feet to an iron pin; thence S. 14°32' E., 562.02 feet to an iron pin; thence S. 70°55' W., 1154.52 feet to an iron pin; thence S. 06°34' W., 786.66 feet to a railroad spike in the north side of Old Bethel Valley Road; thence with the north side of Old Bethel Valley Road S. 87°22' W., 479.87 feet to a PK nail; thence S. 86°59' W., 435.48 feet to a railroad spike; thence S. 87°28' W., 428.96 feet to a PK nail; thence S. 87°10' W., 344.08 feet to a railroad spike; thence S. 87°22' W., 412.59 feet to a PK nail; thence S. 87°13' W., 392.08 feet to a railroad spike; thence S. 87°19' W., 434.37 feet to a PK nail; thence S. 87°23' W., 421.41 feet to a railroad spike; thence S. 87°03' W., 318.59 feet to a PK nail; thence S. 86°42' W., 128.75 feet to a railroad spike; thence N. 84°21' W., 195.52 feet to a PK nail; thence continuing with the north side of Old Bethel Valley Road N. 81°11' W., 241.32 feet to a PK nail; thence N. 83°43' W., 183.12 feet to a railroad spike; thence N. 86°45' W., 394.06 feet to a PK nail; thence N. 86°07' W., 248.44 feet to a PK nail; thence S. 87°15' W., 198.87 feet to a railroad spike; thence S. 78°57' W., 220.70 feet to a PK nail; thence S. 70°09' W., 182.60 feet to a PK nail; thence S. 67°32' W., 198.55 feet to a PK nail; thence S. 71°02' W., 215.67 feet to a PK nail; thence S. 78°50' W., 186.72 feet to a PK nail; thence S. 89°11' W., 224.43 feet to a PK nail; thence N. 86°00' W., 627.21 feet to a railroad spike; thence N. 88°23' W., 544.89 feet to a PK nail; thence N. 89°41' W., 188.96 feet to a PK nail; thence continuing with the north side of Old Bethel Valley Road S. 87°06' W., 181.25 feet to a railroad spike; thence S. 83°56' 255.84 feet to a PK nail; thence S. 79°13' W., 182.54 feet to a PK nail; thence S. 77°17' W., 371.30 feet to an iron pin; thence leaving the north side of Old Bethel Valley Road N. 09°28' W., 330.80 feet to an iron pin; thence N. 01°55' W., 600.33 feet to an iron pin; thence N. 72°02' W., 777.95 feet to an iron pin; thence N. 08°04' E., 2282.54 feet to an iron pin; thence N. 45°00' E., 547.40 feet to an iron pin; thence N. 86°19' E., 1242.58 feet to an iron pin; thence N. 21°07' W., 943.40 feet to an iron pin; thence N. 36°52' W., 300.00 feet to an iron pin; thence N. 84°41' W., 863.71 feet to an iron pin; thence N. 58°24' W., 305.29 feet to an iron pin; thence N. 16°20' W., 505.96 feet to an iron pin; thence N. 14°17' W., 236.66 feet to an iron pin on the south side of Bear Creek Road; thence with the south side of Bear Creek Road S. 79°29' W., 225.73 feet to an iron pin; thence leaving said south side and crossing to the north side of Bear Creek Road N. 09°36' W., 45.44 feet to an iron pin; thence leaving the north side of Bear Creek Road N. 04°53' W., 223.24 feet to an iron pin; thence S. 85°47' W., 56.99 feet to an iron pin; thence N. 00°36' W., 898.71 feet to an iron pin south of a power line; thence with the south side of the power line S. 84°49' W., 547.51 feet to an iron pin; thence crossing the power line N. 25°01' W., 1897.57 feet to an iron pin; thence N. 90°00' E., 3500.00 feet to an iron pin; thence S. 15°27' W., 1367.82 feet to an iron pin on the north side of a power line; thence with the north side of a power line N. 84°58' E., 4661.93 feet to an iron pin; thence N. 74°48' E., 3768.39 feet to an iron pin; thence N. 89°39' E., 2594.62 feet to an iron pin; thence N. 88°15' E., 868.53 feet to an iron pin; thence leaving the north side of the power line N. 22°11' E., 156.07 feet to an iron pin; thence N. 12°42' E., 193.40 feet to an iron pin; thence N. 22°55' E., 220.78 feet to an iron pin; thence S. 81°16' E., 343.55 feet to an iron pin; thence S. 08°09' E., 327.01 feet to an iron pin; thence S. 19°19' W., 152.45 feet to an iron pin on the north side of a power line; thence with the north side of the power line N. 88°26' E., 746.74 feet to an iron pin; thence S. 82°51' E., 3124.59 feet to an iron pin; thence leaving the north side of the power line N. 77°25' E., 416.30 feet to an iron pin; thence N. 01°17' E., 346.56 feet to an iron pin; thence N. 44°16' E., 976.48 feet to the common iron pin property corner for Parcels 462 and 571, said iron pin also being in the southern bondary line of the minimum geographic area limit; thence with the southern boundary line of the minimum geographic area limit S. 89°17' E., 1596.71 feet to City of Oak Ridge concrete monument No. 417; thence continuing with the south boundarly line of the minimum geographic area limit S. 82°18' E., 411.71 feet to the point of beginning and containing 2834.09 acres, more or less.

Dated at Washington, D.C., this 18th day of June, 1985.

Don Ofte,

Principal Deputy Assistant Secretary for Defense Programs.

[FR Doc. 85-15806, Filed 7-5-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140063; BH-FRL 2860-7]

Access To Confidential Business Information by CRC Systems, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA will authorize CRC Systems, Inc. for access to information which has been submitted under the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATE: Access to CBI under this contract will occur no sooner than July 18, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll-Free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: The Office of Toxic Substances (OTS) has developed and is using several automated systems for processing information submitted to EPA under various sections of TSCA. These systems were developed to support the Test Rules Development Program and the Premanufacture Notice (PMN) review program by providing the capacity to retrieve information about chemical substances similar to those under review. The volume and administration of data in these programs has changed over time, as have EPA's uses for automated support systems. Under contract no. 68-01-6690, CRC Systems, Inc. (CRC) of 4020 Williamsburg Court, Fairfax, VA 22032, will evaluate that new OTS program needs and will develop detailed systems designs to meet those needs. CRC will also study computer hardware currently in use and make recommendations on upgrading equipment for more efficient processing. The work to be performed under this contract is a continuation of the work performed under contract No. 68-01-6746, previously announced in the Federal Register of November 17, 1983 (48 FR 52357).

Some submitters of TSCA information contained in the computer systems to be analyzed by CRC have claimed their submissions, or portions thereof, to be confidential. In the course of performing the above-mentioned contract functions, CRC personnel will need to review computer printouts and computer screens which may contain information from such submissions. Therefore, in accordance with 40 CFR 2.306(j), EPA has determined that CRC personnel will require access to CBI submitted under TSCA in order to perform work successfully under this contract.

EPA is issuing this notice to inform all submitters of information under TSCA that it will authorize CRC personnel, on a need-to-know basis, for access to TSCA CBI submitted under these sections of the Act. Such access will be permitted only to the extent necessary to evaluate the computer systems under review. CRC employees so authorized will have access to TSCA CBI only on EPA premises. Authorized contractor personnel will be briefed on appropriate security procedures and will be required to sign non-disclosure agreements before being given access to TSCA CBI.

CRC has been authorized for access to TSCA CBI under the "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. CRC's CBI access authorization under this contract is scheduled to expire on September 30, 1987.

Dated: July 1, 1985.

E.F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 85-16147 Filed 7-5-85; 8:45 am]

BILLING CODE [illegible]

[OPTS-51578; TSH-FRL 2860-6]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-three PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-1104, 85-1105, 85-1106, 85-1107, 85-1108, 85-1109 and 85-1110—September 18, 1985.

P 85-1111 and 85-1112—September 21, 1985.

P 85-1113, 85-1114, 85-1115, 85-1116, 85-1117, 85-1118, 85-1119, 85-1120, 85-1121, 85-1122, 85-1123, 85-1124, 85-1125, 85-1126, 85-1127, 85-1128, 85-1129, 85-1130, 85-1131, and 85-1132—September 22, 1985.

P 85-1133, 85-1134, 85-1135 and 85-1136—September 23, 1985.

Written comments by:

P 85-1104, 85-1105, 85-1106, 85-1107, 85-1108, 85-1109 and 85-1110—August 19, 1985.

P 85-1111 and 85-1112—August 22, 1985.

P 85-1113, 85-1114, 85-1115, 85-1116, 85-1117, 85-1118, 85-1119, 85-1120, 85-1121, 85-1122, 85-1123, 85-1124, 85-1125, 85-1126, 85-1127, 85-1128, 85-1129, 85-1130, 85-1131, and 85-1132—August 23, 1985.

P 85-1133, 85-1134, 85-1135 and 85-1136—August 24, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51578]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-1104

Manufacturer. Rohm and Haas Company.

Chemical. (G) Ammonium Polyacrylate/methacrylate acid esters.

Use/Production. (S) Rheology modifier for intermediate leather coatings. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85-1105

Manufacturer. Rohm and Haas Company.

Chemical. Substituted ammonium polyacrylate/methacrylate acid esters.

Use/Production. (S) Rheology modifier for intermediate leather coatings. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85-1106

Importer. Confidential.

Chemical. (G) Alkenyl acetate.

Use/Import. (G) Ingredients for use in consumer products; highly dispersive use. Import range: 100-1,000 kg/yr.

Toxicity Data. Acute oral: > 5.0 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant; Ames test: Non-mutagenic; Photoallergy test: No evidence of photoallergy; Repeated insult patch test: No evidence of irritation and sensitization.

Exposure. Use: dermal, a total of 6 workers, up to 2 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Confidential.

P 85-1107

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public file.

Use/Production. (G) A component of formulations for open, non-dispersive use. Prod. range: 500-4,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Less than or equal to 2.05 kg released to land. Disposal by landfill.

P 85-1108

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polystyrylpyridine resin.

Use/Production. (S) Industrial matrix resin for graphite or glass laminates used in fire blocking applications and kevlar composites use for structural and non-structural applications. Prod. range: Confidential.

Toxicity Data. Acute oral: > 1,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Not a primary irritant, Eye—Essentially no irritation.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85-1109

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polystyrylpyridine resin.

Use/Production. (S) Industrial matrix resin for graphite or glass laminates used in fire blocking applications and kevlar composites used for structural and non-structural applications. Prod. range: Confidential.

Toxicity Data. Acute oral: > 1,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Not a primary irritant, Eye—Essentially no irritation.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85-1110

Manufacturer. Eastman Kodak Company.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (G) Contained use in an article. Prod. range: 2 kg/yr

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and inhalation, a total of 7 workers, up to 0.4 hr/day, up to 5 da/yr.

Environmental Release/Disposal. Less than 0.03 kg/batch released to water. Less than 0.03 kg/batch

biological treatment with less than 1 kg/batch incinerated and navigable waterway.

P 85-1111

Importer. Sumitomo Corporation of America.
Chemical. (S) Phenyl tribromomethyl sulfone.
Use/Import. (G) Additive to increase photo-sensibility. Import range: Confidential.
Toxicity Data. Acute oral: 4.855 g/kg.
Exposure. Processing and use: dermal, a total of 4 workers, up to 1 hr/da, up to 70 da/yr.
Environmental Release/Disposal. No release. Disposal by anti-pollution system.

P 85-1112

Manufacturer. Confidential.
Chemical. (G) Further clarification needed before information can be released to public file.
Use/Production. (G) Polyacrylate for use in adhesive emulsions. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 85-1113

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Acrylic resin used in paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-1114

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Acrylic resin used in paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-1115

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Acrylic resin used in paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-1116

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Acrylic resin used in paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-1117

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Base used for reaction to form epoxy polyester. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-1118

Manufacturer. Confidential.
Chemical. (G) Epoxy polyester.
Use/Production. (S) Epoxy polyester converted to paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-1119

Importer. Marubeni American Corporation.
Chemical. (G) High molecular weight linear saturated polyester.
Use/Import. (S) Modifier for thermosetting resins and adhesives for film lamination. Import range: 300,000-120,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85-1120

Importer. Marubeni American Corporation.
Chemical. (G) High molecular weight linear saturated polester.
Use/Import. (S) Coating for metal sheet. Import range: 50,000-150,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85-1121

Importer. Marubeni American Corporation.
Chemical. (G) High molecular weight linear saturated polester.
Use/Import. (S) Hot melt adhesive powder for thermofusible interlining. Import range: 50,000-150,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85-1122

Manufacturer. Products Research and Chemical Corporation.
Chemical. (S) Polymer of ethanol, 2,2'-thiobis, ethanol, 2-mercapto, oxirane, methyl and phenol, 4,4'-thiobis.
Use/Production. (S) Industrial thermosetting polymer in sealants adhesives and coatings and a site-limited intermediate for plasticizer in rubber and sealant compositions. Prod. range: 500,000-1,800,000 kg/yr.
Toxicity Data. Acute oral: > 5 g/kg; Irritation: Skin—Not a primary irritant, Eye—Non-irritant/non corrosive.
Exposure. Manufacture and processing: dermal, a total of 62 workers, up to 2.0 hr/da, up to 100 da/yr.
Environmental Release/Disposal. 0.5 to 5 kg/batch released to land. Disposal by landfill.

P 85-1123

Manufacturer. Confidential.
Chemical. (S) Humic acids, magnesium salts.
Use/Production. (G) Highly dispersive and non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air, water, land.

P 85-1124

Manufacturer. Confidential.
Chemical. (S) Humic acids, magnesium chloride complex.
Use/Production. (G) Highly dispersive and non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air, water, land.

P 85-1125

Manufacturer. Confidential.
Chemical. (S) Humic acids, magnesium sulfate complex.
Use/Production. (G) Highly dispersive and non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers.
Environmental Release/Disposal. No release to air, water, land.

P 85-1126

Manufacturer. Confidential.
Chemical. (S) Humic acids, manganese salts.

Use/Production. (G) Highly dispersive and non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal and inhalation, a total of 3 workers.

Environmental Release/Disposal. No release to air, water, land.

P 85–1127

Manufacturer. Confidential.

Chemical. (S) Humic acids, manganese chloride complex.

Use/Production. (G) Highly dispersive and non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted

Exposure. Manufacture: dermal and inhalation, a total 3 workers.

Environmental Release/Disposal. No release to air, water, land.

P 85–1128

Manufacturer. Confidential.

Chemical. (S) Humic acids, manganese sulfate, complex.

Use/Production. (G) Highly dispersive and non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal and inhalation, a total of 3 workers.

Environmental Release/Disposal. No release to air, water, land.

P 85–1129

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (G) Polyurethane and castable urethane resin for open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1130

Manufacturer. Confidential.

Chemical. (G) Acrylate-substituted phenoxy resin.

Use/Production. (G) Coating for open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1131

Manufacturer. Confidential.

Chemical. (G) Acrylate-substituted vinylchloride copolymer resin.

Use/Production. (G) Coating for open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1132

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 4 workers, up to 1 hr/da, up to 12 da/yr.

Environmental Release/Disposal. 1 to 10 kg/batch released to land.

P 85–1133

Manufacturer. Confidential.

Chemical. (S) Polymer of: Propylene glycol, isophthalic acid, adipic acid and 12-hydroxystearic acid.

Use/Production. (S) Commercial protective coatings, Prod. range: 150,000 lb/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 5 workers, up to 4 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 10 lbs/batch released to land. Disposal by landfill.

P 85–1134

Manufacturer. National Starch and Chemial Corporation.

Chemical. (G) Polyvinylacetate copolymer.

Use/Production. (S) Pinder for nonwovens. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1135

Importer. Confidential.

Chemical. (G) Alkyl phenol blocked isocyanate, prepolymer.

Use/Import. (S) Industrial and commercial plasticizing additive for 2-component epoxy coatings. Import range: 10,000–30,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 20 workers, 4 industrial sites.

Environmental Release/Disposal. No release.

P 85–1136

Importer. Confidential.

Chemical. (G) Ketoxime blocked urethane polymer of an aromatic diisocyanate, alkane polyols, alkanedioic acid.

Use/Import. (S) Coating to impart leather like appearance. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: inhalation.

Environmental Release/Disposal. No data submitted.

Dated: July 1, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–16143 Filed 7–5–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59199 BH–FRL 2860.4]

Certain Chemicals Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemptions.

DATE: Written comments by: July 23, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–59199]" and the specific TME number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street, SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-54

Close of Review Period. August 7, 1985.

Manufacturer. Confidential.

Chemical. (G) Substituted phenoxy alkyl acid ester.

Use/Production. (G) Destructive use intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 15 workers, up to 1 hr/da.

Environmental Release/Disposal. Release to water with 0.2 to 0.4 kg to process and product samples. Disposal by publicly owned treatment works (POTW), RCRA incineration or approved landfill.

T 85-55

Close of Review Period. August 8, 1985.

Manufacture. Confidential.

Chemical. (G) Amino modified aromatic polyether.

Use/Production. (G) Performance additive for an industrial coating. Prod. range: 1,050 kg/6 mos.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 20 workers, up to 4 hrs/da, up to 13 da/yr.

Environmental Release/Disposal. 0.3 to 15 kg/batch released to land. Disposal by incineration and landfill.

T 85-56

Close of Review Period. August 10, 1985.

Manufacture. Confidential

Chemical. (S) Humic acids, chromium (3+) salts.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the TME substance submitted.

Exposure. Manufacture: dermal, and inhalation, a total of 3 workers.

Environmental Release/Disposal. No release to air, water and land.

Dated: July 1, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-16145 Filed 7-5-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59721; TSH-FRL 2960-5]

Dimethyl Terephthalate, Alkane Diols and Trimellitic Anhydride Polymer Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides a summary of it.

DATE: Close of Review Period: Y 85-99, July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-99

Manufacturer. The Goodyear Tire & Rubber Company.

Chemical. (G) Dimethyl terephthalate, alkane diols and trimellitic anhydride polymer.

Use/Production. (S) Industrial polyester for coating applications. Prod. range: 100,000-2,000,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: inhalation, a total of 3 workers, up to 6 hrs/da, up to 150 da/yr.

Environmental Release/Disposal. 213 to 299 kg/batch released to air with trace to non-detectable to water. Disposal by on-site lagoon system, incineration and industrial landfill.

Dated: July 1, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-16144 Filed 7-5-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00206; PH-FRI 2860-3]

Open Meeting of the EPA SFIREG Applicator Certification and Training Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA State FIFRA Issues Research and Evaluation Group (SFIREG) Applicator Certification and Training Task Force will hold a public meeting.

DATE: Wednesday, July 17, 1985, beginning at 8:30 a.m. and ending approximately at 4 p.m.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 17, Washington Information Center, 401 M St., SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Betty L. Winter, Office of Pesticides and Toxic Substances (TS-788), Environmental Protection Agency, Rm. E-639A, 401 M St., SW., Washington, D.C. 20460, (202-382-2916).

SUPPLEMENTARY INFORMATION: The discussion topic for this meeting will be recommendations for improving current applicator certification and training programs and the restricted use classification.

Dated: June 28, 1985

Marcia E. Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-16146 Filed 7-5-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Citizens Financial Group, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) of (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) of (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a

company engaged in a nonbanking activity that is listed in and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 26, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Citizens Financial Group, Inc.*, Providence, Rhode Island; to acquire Delmar Financial Company, and Delmar Insurance and Management Company, both located in Clayton, Missouri, thereby engaging in making, acquiring and servicing residential and commercial mortgage loans; and acting as agent with respect to insurance limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Huntley Bancshares, Inc.*, Huntley, Illinois; to acquire Roberts Insurance and Tax Service, Huntley, Illinois, thereby engaging in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to section 4(C)(8)(C)(i) of the Act. These activities would be performed within a ten mile radius of the Village of Huntley, McHenry County, Illinois.

Board of Governors of the Federal Reserve System, July 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16111 Filed 7-5-85; 8:45 am]

BILLING CODE 6210-01-M

Jefferson Holding Corp. et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Jefferson Holding Corp.*, Chicago, Illinois; to engage *de novo* directly in commercial and non-residential mortgage lending activites. These activities would be performed in the city of Chicago and its surrounding metropolitan area.

B. Federal Reserve Bank of San Francisco (Harry W. Green Vice President) 101 Market Street, San Francisco, California 94105:

1. *Area Financial Corporation*, Redwood City, California; to engage *de novo* directly in acting as agent with respect to insurance limited to to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act.

Board of Governors of the Federal Reserve System, July 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16112 Filed 7-5-85; 8:45 am]

BILLING CODE 6210-01-M

Verbanc Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 26, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Verbanc Financial Corp.*, Bellows Falls, Vermont; to become a bank

holding company by acquiring 100 percent of the voting shares of Bellows Falls Trust Company, Bellows Falls, Vermont.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First Jersey National Corporation*, Jersey City, New Jersey; to acquire an additional 36.3 percent of the voting shares of The Broad Street National Bank of Trenton, Trenton, New Jersey.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta Georgia 30303:

1. *Commerce Corporation*, St. Francisville, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Feliciana Commerce Corporation, St. Francisville, Louisiana, thereby indirectly acquiring Bank of Commerce & Trust Company, St. Francisville, Louisiana.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Salem Bancorp, Inc.*, Salem, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Salem, Salem, Indiana.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Stockmen's Bancorp*, Kingman, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of The Stockmen's Bank, Kingman, Arizona.

Board of Governors of the Federal Reserve System, July 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 16113 Filed 7-5-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control Cooperative Agreements; Preventive Health Services; Acquired Immunodeficiency Syndrome (AIDS) Surveillance and Associated Epidemiologic Investigations; Availability of Funds for Fiscal Year 1985

Correction

In FR Doc. 85-14714, beginning on page 25325, in the issue of Tuesday, June 18, 1985, make the following corrections:

1. On page 25325, in the third column, in the second line of the paragraph under the heading *"B. Cooperative Activities"*, "CDE" should read "CDC".

2. On page 25326, in the first column, in the eleventh line, "a project" should read "each budget".

BILLING CODE 1505-01-M

Food and Drug Administration

[Docket No. 84N-0241]

Availability of Second Draft of National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a second draft of the updated version of the National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas. FDA is distributing this draft to State shellfish control officials, shellfish industry members, and other interested persons associated with the Interstate Shellfish Sanitation Conference (ISSC). The agency will provide the draft to other interested persons for review and comment upon request.

DATE: Comments by August 7, 1985.

ADDRESSES: The second draft, entitled "National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas," is available for review at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of the second draft are available from, and written comments should be sent to, the Center for Food Safety and Applied Nutrition, Shellfish Sanitation Branch (HFF-344), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-485-0149. Requests should identify the document as "Second Draft, National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas."

FOR FURTHER INFORMATION CONTACT: J. David Clem, Center for Food Safety and Applied Nutrition (HFF-344), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0149.

SUPPLEMENTARY INFORMATION: FDA is responsible for the Federal administration of the National Shellfish Sanitation Program (NSSP). The NSSP is a voluntary program involving State shellfish control agencies, the shellfish industry, and FDA. Through international bilateral agreements, seven foreign countries also participate in the NSSP.

The NSSP is concerned with the sanitary control of fresh and fresh frozen molluscan shellfish (oysters, clams, and mussels) offered for sale in interstate commerce. The program has been in existence since 1925. In the interest of assuring uniform administrative and technical control, the NSSP has developed and maintained recommended shellfish control practices. These control practices have been published in the form of a three part manual of operations. The last NSSP Manual of Operations was published in 1965.

In 1982 interested State officials and members of the shellfish industry formed the ISSC. The purpose of the ISSC is to provide a formal structure wherein State regulatory authorities can establish updated guidelines for shellfish controls that will assure sources of safe and sanitary shellfish. The ISSC establishes procedures for the uniform application of those guidelines.

FDA and the ISSC entered into a memorandum of understanding in March 1984 (see 49 FR 12751; March 30, 1984). This agreement provides, among other things, that FDA will publish revisions to the NSSP Manual of Operations. In this context, the second draft of the NSSP Manual of Operations, Part I, Sanitation of Shellfish Growing Areas, is being provided to the ISSC for review and comment. FDA will also welcome comments from any interested person.

A working draft was reviewed and discussed at the ISSC second annual meeting held in Orlando, Florida, August 14 to 16, 1984. FDA announced the availability of this working draft and distributed copies to interested persons before that meeting (see 49 FR 31774; August 8, 1984). FDA provided additional information about its efforts to revise the NSSP Manual of Operations in the **Federal Register** of February 26, 1985 (50 FR 7797).

The ISSC has scheduled its third annual meeting for August 12 to 15, 1985, in Cherry Hill, New Jersey. The second draft likely will be one of the topics discussed at the meeting. Those persons interested in obtaining more information about this meeting should contact Mr. Richard Thompson, Chairman, Interstate Shellfish Sanitation Conference, 2902 Dillionhill Dr., Austin, TX 78745, phone c/o Texas Department of Health, 512–458–7510.

Dated: July 3, 1985.

Mervis H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–16241 Filed 7–3–85; 1:23 pm]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Availability of Funds To Provide Technical and Nonfinancial Assistance

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) has determined that up to a total of $3 million in funds under section 330(f)(1) of the Public Health Service (PHS) Act, 42 U.S.C. 254c(f)(1), are available under the Department's Fiscal Year 1985 appropriation, Pub. L. 98–619, for funding grants to entities for the provision of certain technical and nonfinancial assistance to community health centers (CHCs).

DATE: To receive consideration, applications for grants to provide such assistance to CHCs must be received by the close of business on July 25, 1985 in the appropriate regional office (see Appendix for listing of regional offices).

FOR FURTHER INFORMATION CONTACT: Application information may be obtained from, an applications should be mailed to, the appropriate Regional Health Administrator (see Appendix).

SUPPLEMENTARY INFORMATION: HRSA has determined that up to a total of approximately $3 million is available under section 330(f)(1) of the PHS Act for the award of grants to entities, including State and regional primary care associations, to enable them to provide certain technical and nonfinancial assistance to CHCs, as described below.

Section 330(f)(1) provides as follows:

"The Secretary may provide (either through the Department of Health and Human Services or by grant or contract) all necessary technical and other nonfinancial assistance (including fiscal and program management assistance and training in such management) to any public or private nonprofit enfity to assist it in developing plans for, and in operating as, a community health center, and in meeting requiremnts of subsection (e)(2)."

The HRSA has decided to make these funds available under this notice in order to provide assistance to CHCs in the following areas: (1) The initiation of new shared services activities involving specific CHCs within a State or region; and (2) the enhancement of the clinical capability of centers within a State or region.

Shared services activities may include, but are not limited to, assistance to CHCs in developing or sharing managment information systems, cost accounting systems, marketing, and joint or bulk purchasing. Activities involved in developing shared services for CHCs could include mailing or pertinent materials, establishing meetings and workshops, and providing on-site assistance. Clinical activities could involve, but are not limited to, training and orientation for health center medical directors, continuing medical education, and participation in perinatal initiatives.

Evaluation of the applications will be based on: (1) Demonstration of the capability an experience of the organization in carrying out similar or related activities; (2) demonstration of the need and value of the specific shared services activities to identified community health centers; (3) the extent to which the appicant has the support of and/or experience working with the CHCs to which it is seeking to provide assistance; (4) demonstration of the applicant's capability to address clinical issues and to interact with medical directors of CHCs; (5) knowledge and awareness of specific State and local issues affecting CHCs; and (6) the ability of the applicant to carry out its grant proposal effectively and in a cost-efficient manner.

In determining which grants to approve and the amount of the awards, HRSA intends to take into account the extent to which such grants will provide for an appropriate distribution of resources throughout the country. Grants awarded under the Notice will be subject to the requirements of the Departmental Grants Administration Regulations at 45 CFR Part 74.

The applications are subject to the provision of Executive Order 12372, as implemented by 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages to be made available by regional offices will contain a listing of States which have chosen to set up such a review system and will provide the points of contact in such a review system and will provide the points of contact in such States for that review. Applicants are encouraged to contact such States as soon as possible in the application process to discuss their plans and to submit their applications to such States as soon as possible so that the State review can be performed in a timely manner. By regulation, interested States are allowed 60 days for review of competing applications and 30 days for non-competing applications. At the latest, States should receive applications at the same time they are due in the regional office.

Catalog of Federal Domestic Assistance Number 13.224.

Dated: July 2, 1985.

John H. Kelso,

Acting Administrator.

Appendix

Regional Health Administrators.

Edward J. Montminy, Regional Health Administrator, PHS—Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203. (617) 223–6827.

Vivian Chang, M.D., Regional Health Administrator, PHS—Region II, 26 Federal Plaza building, New York, New York 10007. (212) 264–2560.

William Lassek, M.D., Regional Health Administrator, PHS—Region III, P.O. Box 13716, Philadelphia, Pennsylvania 19101. (215) 595–6637.

George A. Reich, M.D., M.P.H., Regional Health Administrator, PHS—Region IV, 101 Marietta Tower, Atlanta, Georgia 30323. (404) 221–2316.

E. Frank Ellis, M.D., Regional Health Administrator, PHS—Region V, 300 S. Wacker Drive, Chicago, Illinois 60606. (312) 353–1385.

Sam Bell, Regional Health Administrator, PHS—Region VI, 1200 Main Tower Building, Dallas, Texas 75202. (214) 767–3879.

Youn Bock Rhee, Regional Health Administrator, PHS—Region VII, 601 East 12th Street, Kansas City, Missouri 64106. (816) 374–3291.

Audrey Nora, M., Regional Health Administrator, PHS—Region VIII, 1961 Stout Street, Denver, Colorado 80294. (303) 844–6163.

Sheridan L. Weinsten, M.D., Regional Health Administrator, PHS—Region IX, 50 United Nations Pl., San Francisco, California 94102. (415) 556–5810.

Dorothy H. Mann, Regional Health Administrator, PHS—Region X, 2901 Third Avenue, Seattle, Washington 98121. (206) 442–0430.

[FR Doc. 85–16256 Filed 7–5–85 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board and certain of its subcommittees on July 9, 1985, 8:30 a.m. to adjournment, at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue the evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will posted in the hotel lobby.

Further information, times and meeting locations of the subcommittees may be obtained by contacting Mr. Raymond Kuehne, Executive Director, National Digestive Diseases Advisory Board, Federal Building, Room 616, Bethesda, Maryland 20205, (301) 496–6045. The agenda and rosters of the members can also be obtained from his office. Summaries of the meeting may be obtained by contacting Carole A. Frank, Committee Management Office, NIADDK, National Institutes of Health, Room 9A46, Building 31, Bethesda, Maryland 20205, (301) 496–6917.

Dated: June 24, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–16100 Filed 7–5–85; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; National Heart, Lung, and Blood Advisory Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a public briefing meeting to be sponsored by the National Heart, Lung, and Blood Advisory Council, National Institutes of Health, September 30, 1985, at the Los Angeles Airport Marriot Hotel, 5855 West Century Boulevard, Los Angeles, California 90045.

The meeting will be open to the public from 9:00 a.m. to adjournment for the purpose of informing biomedical scientists, administrators, volunteer health organizations, and the public about the status of the National Heart, Lung, and Blood Institute and about possible strategies for achieving and maintaining a balance of program mechanisms and for protecting the number of reserach grants awarded by the Institute. This briefing meeting is designed as an educational effort that will also provide the opportunity for the Council and the National Heart, Lung, and Blood Institute to hear directly from those interested in and concerned about the future of the Institute's extramural programs.

Those who wish to speak at this briefing meeting must submit a written request to Dr. Jay Moskowitz, address given at the end of this notice, no later than September 3, 1985. The request to speak must include the following:

(1) The name of the person who wishes to address the Council; (2) the professional affiliation of the requesting speaker, if appropriate; (3) a brief summary of the statement that would be presented; and (4) the address and telephone number where the requesting speaker can be reached during business hours.

Speakers will be selected from the constituencies who look to the Institute to advance knowledge about heart, lung, and blood diseases and from others whose interests correspond to the extramural programs of the National Heart, Lung, and Blood Institute.

Each speaker will be allowed about ten minutes. Additional written comments of any length may be submitted, at any time, for distribution to the Council. The results of this meeting, including the texts of the speakers and all other materials submitted, will be available in the winter of 1985.

Further information concerning the meeting and the results of this briefing meeting can be obtained from:

Dr. Jay Moskowitz
Public Briefing Meeting
National Heart, Lung, and Blood Advisory Council
National Heart, Lung, and Blood Institute
Building 31, Room 5A–03
Bethesda, Maryland 20205 (301/496–7548)

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: June 24, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–16101 Filed 7–5–85; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 8-Hydroxyquinoline

The HHS' National Toxicology Program today announces the availability of the technical report describing toxicology and carcinogenesis studies of 8-hydroxyquinoline, a white to off-white crystal or crystalline powder used as an analytical reagent and an antimicrobial agent in medicine, fungicides, and insecticides, as a preservative in cosmetics and tobacco, a chemical intermediate in dye synthesis, and a precipitating reagent in nuclear power plant liquid waste effluent.

Carcinogenesis studies of 8-hydroxyquinoline (99% pure) were conducted by administering the chemical in feed to groups of 50 male and 50 female F344/N rats and B6C3F1 mice at concentrations of 0, 1,500, or 3,000 ppm for 103 weeks. These concentrations were selected because the chemical at higher concentrations resulted in reduced feed consumption, decreases in mean body weights, and deaths in the 15-day and 13-week studies. The average daily doses were estimated to be 73 and 143 mg/kg for male rats, 89 and 166 mg/kg for female rats, 217 and 396 mg/kg for male mice, and 349 and 619 mg/kg for female mice.

Under the conditions of these dietary studies, there was *no evidence of carinogenicity* for male and femal F344/N rats or for male and female B6C3F1 mice given 8-hydroxyquinoline for two years at the concentrations specified above.

Copies of *Toxicology and Carcinogenesis Studies of 8-Hydroxyquinoline in F344/N Rats and B6C3F1 Mice (Feed Studies) (T.R. 276)* are available without charge from the NTP Public Information Office, M.D. B2–04, P.O. Box 12233, Research Triangle Park, NC, 27709. Telephone: (919) 541–3991. FTS: 629–3991.

Dated: July 1, 1985.

David P. Rall,

Director.

[FR Doc. 85–16102 Filed 7–5–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Cancellation of Sale and Termination of Segregation

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of Sale and Termination of Segregation.

SUMMARY: The Bureau of Land Management published a Notice of Realty Action, CA 15731, in vol. 49, No. 121, pages 25529–30 of the Federal Register on June 21, 1984. This action terminates the segregative effect created by the aforementioned Notice of Realty Action and cancels the sale of public lands. Effective at 10:00 a.m. on July 10, 1985 the segregative effect imposed by Notice of Realty Action CA 15731 will be lifted from the following described land:

San Bernardino Meridian

CA 15369 T. 11 S., R. 2 N., SBM Sec. 25, Lots 1 thru 16 inclusive;
CA 15370 T. 1 S., R. 2 W., SBM Sec. 26, W½NE¼, E½NW¼;
CA 15371 T. 11 S., R. 2 W., SBM Sec. 22, NE¼SE¼;
CA 15372 T. 11 S., R. 2 W., SBM Sec. 23, NW¼SE¼;
CA 15373A T. 12 S., R. 1 W., SBM Sec. 4, SW¼, NW¼SE¼;
CA 15374 T. 13 S., R. 1 W., SBM Sec. 21, Lots 9, 16, 17, 24, 25;
CA 15375 T. 13 S., R. 1 W., SBM Sec. 21, Lots 27 thru 32 inclusive;
CA 15379 T. 14 S., R. 1 E., SBM Sec. 8, NE¼SW¼;
CA 15381 T. 10 S., R. 1 W., SBM Sec. 5, Lot 1;
CA 15382 T. 13 S., R. 1 W., SBM Sec. 22, W½SW¼NW¼SE¼, W½NW¼SW¼SE¼, S½SW¼SE¼;
CA 15384 T. 10 S., R. 3 W., SBM Sec. 33, NW¼NW¼;
CA 15385 T. 13 S., R. 1 W., SBM Sec. 20, W½SW¼SE¼;
CA 15386 T. 8 S., R. 2 E., SBM Sec. 14, NW¼NW¼.

Dated: July 1, 1985.

Wes Chambers,

Acting District Manager.

[FR Doc. 85–16122 Filed 7–5–85; 8:45 am]

BILLING CODE 4310–40–M

Sale of Public Lands in San Diego County, CA; Modification

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action—Withdrawal of Sale Parcels from Public Sale, Notice of Realty Action, CA 16395.

SUMMARY: This document modifies the legal description of public lands offered for sale in the June 5, 1985 publication of the Federal Register, Vol. 50, No. 106, Page 23771. This action withdraws the public lands, described below, from competitive sale:

County/ parcel No.	Serial No.	Legal description	Acres/ ac.±
SD–37	CA17250	T.12 S., R.1 W., SBM; Sec. 4: SW¼NW¼SE¼	200.00 ac.±
SD–45	CA17258	T.11 S., R.2 W., SBM; Sec. 22: NE¼SE¼	40.00 ac.±
SD–46	CA17259	Sec. 25: Lots 1–16	71.20 ac.±
SD–57	CA17270	T13 S., R.1 E., SBM; Sec. 1: NE¼SE¼, S½SE¼, Sec. 12: NE¼ T.13 S., R.2 E., SBM; Sec. 7: Lots 1 & 2	360.69 ac.±
SD–61	CA17274	T.14 S., R.2 E., SBM; Sec. 5: Lots 2–6, S½NW¼	170.02 ac.±

BACKGROUND INFORMATION: The public lands described in this document are being withdrawn from competitive sale as a result of Bureau-benefitting land exchange proposals involving the Santa Fe Southern Pacific Company and BLM and the 3250 Corporation and BLM. The purpose of these proposed exchanges will be to consolidate public land holdings and improve resource management for the areas affected.

The publication of this Notice in the Federal Register shall segregate the public lands described herein from all other forms of appropriation and entry under the public land laws and the mining laws for a period of two years. The exchanges are expected to be consummated before the end of that period.

FOR ADDITIONAL INFORMATION: The Bureau of Land Management, Southern California Metropolitan Project, 1695 Spruce Street, Riverside, California 92507.

The publication date of this Notice will commence the 45 day comment period. For a period of 45 days after publication of this Notice in the Federal Register, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this Realty Action and issue a Final Determination. In the absence of any action by the State Director, this Realty Action will become the Final Determination of the Department of the Interior.

Dated: July 1, 1985

Wes Chambers,

Acting District Manager.

[FR Doc. 85–15858 Filed 7–5–85; 8:45 am]

BILLING CODE 4310–40–M

INTERSTATE COMMERCE COMMISSION

[Docket No. 39994]

Petition of United States Steel Corporation Pursuant to 49 U.S.C. 10505, for Exemption From Tariff Charges and for an Order Requiring Payment of Reparations Contingent Upon an Adverse Ruling in Docket No. 39879

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption and refund request.

SUMMARY: Petitioner, United States Steel Corporation (USS), requests the Interstate Commerce Commission if it rules adversely to USS in Docket No. 39879, United States of America—Petition for Declaratory Order: (1) to grant an exemption to USS from the tariff charges which would then be applicable to the lake cargo coal movements to its Duluth Works from August 8, 1969 to May 31, 1979, and (2) to authorized and order Chesapeake and Ohio Railway Company; Penn Central Transportation Company and Consolidated Rail Corporation; and Norfolk & Western Railway Company, which have not paid refund claims assertedly filed by USS for certain 1974–1979 lake cargo coal movements to the Duluth Works, to pay such claims.

DATES: The exemption and refund request is consolidated for decision with Docket No. 39879 pursuant to the oral hearing order of Administrative Law Judge Paul S. Cross on June 18, 1985. The proceeding in Docket No. 39879 is subject to a November 5, 1985, date for the closing of the evidentiary record. Persons seeking leave to particpate as parties in the exemption and refund proceeding (Docket No. 39994) should file their initial, comments not later than August 2, 1985.

ADDRESS: Send pleadings referring to Docket No. 39994 to: (1) Case Control branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative; Wayne Emery, 600 Grant Street, Room 1501, Pittsburgh, PA 15230.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 275–7429.

SUPPLEMENTARY INFORMATION: Additional information is contained in the petition which is available for inspection at the Washington, DC offices of the Interstate Commerce Commission.

By the Commission, Paul S. Cross, Administrative Law Judge.

James H. Bayne,

Secretary.

[FR Doc. 85-16192 Filed 7-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 339 (Sub-3)]

Product and Geographic Competition; Notice of Oral Argument on Proposed Change in Guidelines

AGENCY: Interstate Commerce Commission.

ACTION: Proposed change in guidelines; Notice of Oral Argument.

SUMMARY: The Commission is considering a proposal to supplement its evidentiary guidelines for examining product and geographic competition in market dominance determinations [50 FR 13090, April 2, 1985]. The proposal, which resulted from an agreement between the Association of American Railroads (AAR), the American Paper Institute (API), and the National Industrial Transportation League (NITL), would: (1) Place the burden of proving the existence of effective geographic or product competition on the railroads in all cases; (2) establish that the showing of geographic or product competition with respect to a receiver would not, standing alone, establish the existence of such competition with respect to a producer and vice versa; and (3) make certain changes in the wording of current guidelines 3 and 6, consolidate current guidelines 4, 5, and 8, delete current guideline 9, and revise guideline 10 to encompass only long-term contracts made before October 1, 1980.

DATES: Oral argument will be held at 2:00 p.m. on July 18, 1985. Parties wishing to participate should contact the appropriate coordinator by July 10, 1985. On July 12, 1985, the coordinators will provide to the Office of the Secretary an ordered list of persons that will participate in the oral argument. The Commission will issue a schedule of appearances.

ADDRESSES: The oral argument will be heard in Hearing Room A at the Interstate Commerce Commission Building, 12th and Constitution Avenue, NW., Washington, D.C.

If you desire to participate:

(i) In support of the proposal, please contact: R. Eden Martin, 1722 Eye Street, NW., Washington, D.C. 20036, (202) 429-4000.

(ii) In opposition to the proposal, please contact: William L. Slover, 1224 17th Street, NW., Washington, D.C. 20036, (202) 347-7170.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: The proposal under consideration was an outgrowth of discussions between railroads and shipper/receivers in a subconference of Ex Parte No. 456, *The Staggers Act of 1980—Conference of Interested Parties.* The proposal initially was suggested to the Commission in a petition filed by AAR and was also supported by API and NITL. The proposal to supplement the Commission's evidentiary guidelines for examining product and geographic competition was described in a decision served April 1, 1985. Approximately 39 parties have filed comments. Due to the extensive and diverse nature of the comments received and the significance of this proceeding, parties will be given an opportunity to augment their written comments. In holding this oral argument, the Commission is seeking further clarification and explanation of the issues raised in the written comments.

The oral argument is scheduled for one hour and twenty minutes. The first forty minutes will be devoted to argument in favor of the AAR/NITL/API agreement that forms the basis of the Commission's proposal. This time will be coordinated by R. Eden Martin, 1722 Eye Street, NW., Washington, DC 20006, (202) 429-4000. No participant will be allotted less than 10 minutes. The second forty minutes will be devoted to argument in opposition to the AAR/NITL/API agreement. This time will be coordinated by William L. Slover, 1224 17th Street, NW., Washington, DC 20036, (202) 347-7170. Again, no participant will be allotted less than 10 minutes.

It is recognized that not all of the parties who filed comments and replies will be able to participate in the oral argument. However, through consolidation of positions via a single spokesperson, all parties should be able to present their views to the Commission. At the time of argument, participants may supplement their oral presentations with written remarks.

This notice is issued under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: June 28, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-16191 Filed 7-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-258)]

Burlington Northern Railroad Co.; Abandonment in Ashland, Bayfield and Douglas Counties, WI; Notice of Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 61.75-mile rail line between Ashland, WI (milepost 0.0) and Allouez, WI (milepost 61.75) in Ashland, Bayfield, and Douglas Counties, WI. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27(b).

James H. Bayne,

Secretary.

[FR Doc. 85-16189 Filed 7-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30872]

Exemption; Missouri-Kansas-Texas Railroad Co.—Trackage Rights—Burlington Northern Railroad Co.

Burlington Northern Railroad Company has agreed to continue to grant overhead trackage rights to Missouri-Kansas-Texas Railroad Company between Paola, KS, and Kansas City, MO, a distance of approximately 43 miles. The trackage rights renewal will be effective on June 15, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: June 19, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-16194 Filed 7-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30683]

Missouri Pacific Railroad Co.—Trackage Rights Exemption—Consolidated Rail Corp.

Missouri Pacific Railroad Company has entered into an agreement for overhead trackage rights over Consolidated Rail Corporation track between East St. Elmo, IL, milepost 154.1 and St. Elmo, IL, milepost 157.5 a distance of 3.4 miles. The trackage rights agreement will be effective on June 25, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: June 20, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-16193 Filed 7-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30684]

Colorado and Eastern Railroad Co.; Purchase (Portion); Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Debtor at Ottumwa, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 the acquisition of a rail line in Ottumwa, IA by the Colorado and Eastern Railroad Company subject to standard employee protective conditions.

DATES: This exemption will be effective on July 8, 1985.

Petitions to reopen must be filed by July 29, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30684 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Gary W. Flanders, 76 South Sierra Madre, Suite 230, Colorado Springs, CO 80903.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: June 27, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-16220 Filed 7-5-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 84-26]

Lee A. Turet, D.D.S.; Grant of Registration

On June 22, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Lee A. Turet, D.D.S. of 339 East Fordham Road, Bronx, New York 10458 and 164-10 84th Avenue, Apt. 1M, Jamaica, New York 11432 (Respondent) proposing to deny his application for registration, executed on December 18, 1983, as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's conviction on June 3, 1980, in the Supreme Court of Suffolk County, New York, of Attempted Criminal sale of a controlled substance. This violation of New York Penal Law § 220.31 is a felony relating to controlled substances.

By letter dated July 16, 1984, Respondent requested a hearing on the issues raised by the Order to Show Cause. The hearing in this matter was held in Washington, D.C. on January 31, 1985. Administrative Law Judge Francis L. Young presided. On April 10, 1985, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent 's counsel submitted a letter on April 25, 1985, stating that should the Acting Administrator deny Respondent's application for registration, the Respondent would take exception to such denial. Judge Young transmitted the record of these proceedings to the Acting Administrator on May 9, 1985. The Acting Administrator has considered this record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in April of 1979, an undercover investigation of Respondent was initiated by the narcotics section of the Suffolk County (New York) police department based upon information from a confidential informant. While acting in an undercover capacity, a police officer purchased controlled substances from Respondent on four separate occasions during the period April 21, 1979, through June 23, 1979. On April 21, 1979, Respondent sold the undercover officer six Quaalude tablets, containing methaqualone for $30.00. Subsequently, on May 15, 1979, Respondent sold the officer 50 Ionamin tablets, containing phentermine for $75.00. On May 23, 1979, Respondent sold the officer 100 Ionamin tablets for $135.00. At this meeting, Respondent asked the officer if he would be interested in buying some cocaine. The officer said that he would be interested. Respondent, however, never did produce any cocaine for sale to the officer. Finally, on June 23, 1979, Respondent agreed to sell the officer a quantity of Ionamin tablets for $375.00. Respondent handed over 272 Ionamin tablets to the officer and Respondent was then arrested. On all occasions, the tablets were produced from a prescription bottle bearing Respondent's name. At the time of the events described above, methaqualone was a Schedule II controlled substance and phentermine was a Schedule IV controlled substance. Methaqualone has since been transferred to Schedule I.

On September 28, 1979, Respondent was indicted by a grand jury in Suffolk County, New York on three counts of criminal sale of a controlled substance and four counts of criminal possession of a controlled substance. On the same day, in a separate indictment, Respondent was indicted with a co-defendant on one count of criminal possession of a controlled substance. All of these counts were based on the sales to the undercover officer outlined above. Respondent pled guilty to one count of attempted criminal sale of a controlled substance. This is a felony offense relating to controlled substances. Respondent was sentenced on June 3, 1980, to 60 days in the Suffolk County Jail and five years probation. Therefore, there is a lawful basis for the denial of Respondent's application. 21 U.S.C. 824(a)(2).

The Administrative Law Judge further found that at the time of the sales to the undercover officer, Respondent was an undergraduate student in college. Respondent admitted that at that time he was personally abusing controlled substances. During his period of probation Respondent was subjected to periodic urinalysis. There was no indication that any of the tests were positive. Respondent was discharged by his probation officer on March 8, 1983.

In June of 1983, Respondent was issued a "Relief from Civil Disabilities" by a Justice of the Supreme Court of the State of New York. This relief, which is granted only upon recommendation of the probation department, removes certain civil disabilities which one convicted of a crime may have under state law. This relief is temporary until June 3, 1985, and then becomes permanent unless revoked prior to that date.

Subsequent to his conviction, Respondent obtained a Bachelor of Science degree and then attended and graduated from dental school in June 1983. In applying to the States of New York and New Jersey for a dental license, Respondent truthfully disclosed his conviction. Both states granted him a license.

Respondent currently practices general dentistry in a practice with two other dentists. The Administrative Law Judge concluded that the ability to prescribe and administer Schedules III, IV and V controlled substances is absolutely essential to an effective general dentistry practice while the ability to prescribe and administer Schedule II controlled substances is desirable but not necessary.

At the hearing in this matter, Respondent offered the testimony of several character witnesses. Respondent also testified in his own behalf. The witnesses stated that even though they are aware of Respondent's conviction, they have the utmost confidence in Respondent as both a dentist and a human being. By affidavit, one of the dentists who employs Respondent testified that Respondent has displayed the highest professional ethics. The dentist further stated that it is imperative that Respondent be able to dispense medications to his patients.

Judge Young concluded that an absolute denial of Respondent's application would not be appropriate in this case. Respondent's illegal activities occurred six years ago. It appears that since that time Respondent has attempted to change his lifestyle. He successfully completed his probation and graduated from dental school. There is no evidence that since 1979, Respondent has ever been arrested or charged with any crime. Additionally, there is no evidence that he has abused any controlled substance since 1979. Respondent has gained the respect of his colleagues. However, the Administrative Law Judge further concluded that the facts leading to Respondent's conviction justify withholding Schedule II registration now.

Consequently, following Government Counsel's suggestion, the Administrative Law Judge recommended that Respondent be granted a registration limited to Schedules III, IV and V controlled substances. This registration should be conditioned upon Respondent's making monthly reports to the New York DEA Field Division of all controlled substances he prescribed, administers and dispenses. These conditions should continue until DEA feels confident that Respondent can be entrusted with a full, unconditional registration.

The Acting Administrator adopts the recommended ruling, findings of fact and conclusions of law of the Administrative Law Judge in their entirety. The Acting Administrator is charged with protecting the public from the diversion of controlled substances into the illicit market. The Acting Administrator believes that given the positive changes in Respondent's lifestyle and the issuance of a limited registration, the risk of such diversion by Respondent is slight.

Accordingly, based on the foregoing reasons, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application of Lee A. Turet, D.D.S. for registration under the Controlled Substances Act, be, and it hereby is granted in Schedules III, IV and V. the Acting Administrator further orders that this registration is conditioned upon Dr. Turet submitting monthly reports to the New York DEA Field Division of all controlled substances he prescribes, administers and dispenses. These reports shall continue until such time as DEA believes that Dr. Turet can be entrusted with a full, unconditional registration.

Dated: July 1, 1985.

John C. Lawn,

Acting Administrator.

[FR Doc. 85-16110 Filed 7-5-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D-5945 et al.]

Proposed Exemptions; Incline Glass, Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below.

Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Incline Glass, Inc. Money Purchase Pension Plan (the Money Purchase Plan) and Incline Glass, Inc. Defined Benefit Pension Plan (the Pension Plan; together, the Plans) Located in Incline Village, Nevada

[Application Nos. D–5945 & D–5946]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale by the Plans of a parcel of improved real property (the Property) to Patrick and Ann Geary (the Gearys), parties in interest with respect to the Plans; provided that all terms of the transaction are at least equivalent to those which the Plans could obtain in an arm's-length transaction with an urelated party.

Summary of Facts and Representations

1. The Money Purchase Plan is defined contribution pension plan with 17 participants and total assets of $331,380 as of December 31, 1984. The Pension Plan is a defined benefit pension plan with 14 participants and total assets of $415,278 as of December 31, 1984. The Plans are sponsored by Incline Glass, Inc. (the Employer), a Nevada corporation engaged in the manufacture and sale of glass and glass products. The trustees of the Plans are the Gearys, who are the sole shareholders of the Employer.

2. During 1983, principals of the Employer determined that the Employer required additional office and warehouse facilities. After consulting with the accountants for the Plans, the Gearys determined that the Plans would acquire unimproved real property and construct thereon the new facilities needed by the Employer. Toward this end, on January 19, 1984 the Plans purchases a parcel of unimproved land (the Land) located at 2080 E. Greg Street in Sparks, Nevada, for a purchase price of $120,000. The Plans purchased the Land from G.D.B. Associates (G.D.B.) a partnership which is unrelated to the Plans. On March 5, 1984, the Plans entered into a contract with Kemp Construction, Inc., a party unrelated to the Plans, for the improvement of the Land with a 19,500 square-foot office and warehouse facility. The improvements were completed on July 20, 1984 at a total cost to the Plans of $412,885. The Land and the improvements (together, the Property) were appraised on March 15, 1985 by Stephen Johnson, MAI and Dudley Meyer, SRA (Johnson and Meyer), professional real estate appraisers with the firm of SRJ & Associates of Reno, Nevada, who found that as of that date the Property had a fair market value of $625,000. The Property is encumbered by a first deed of trust (the Mortgage) which secures a January, 1984 loan of $40,000 by the Plans from G.D.B. The terms of the loan which the Mortgage secures provide for monthly payments of interest only at the rate of two percent above the prime rate of the First Interstate Bank of Nevada, N.A., commencing March 1, 1984, with the full principal of $40,000 due on March 1, 1986. On August 1, 1984, the Employer commenced occupation of the Property under a triple net lease (the Lease) executed on the same date and continues to occupy the Property under the Lease. In recognition of the Lease's status as a prohibited transaction under section 406 of the Act, the Gearys wish to purchase the Property from the Plans and assume the Mortgage.

3. At all times during each phase of the Plans' acquisition and development of the Property and its Lease to the Employer, the Plans' interests have been represented by the Gearys, who were the sole fiduciaries of the Plans. The Gearys have appointed the First Interstate Bank of Nevada, N.A. (the Bank) as the new trustee of each Plan and to represent the interests of the Plans with respect to the transaction proposed herein. The Bank represents that the funds on deposit from and the loans to the Employer and the Gearys constitute less than one percent of the total deposits and outstanding loans of the Bank. The Bank will represent the Plans for all purposes in the proposed sale of the Property and transfer of the Mortgage to the Gearys and will require such transaction to occur under the terms and conditions described herein. The Bank represents that it has reviewed the proposed transaction, the Gearys' application for an exemption, and the financial statements of the Plans. Based on this review, the Bank has determined that the proposed transaction is in the best interests of the Plans for the following reasons: (1) It will terminate an ongoing transaction which is prohibited by the Act; (2) Because of the particular improvements on the Property, a flow of income from rental of the Property cannot be relied on; (3) Income from reinvestment of the cash to be obtained by the Plans as the purchase price of the Property will equal, if not exceed, the projectecd income from rental of the Property; and (4) Since the Property constitutes approximately 75 percent to the Plan's assets, a sale of the Property will remedy this lack of diversification of the assets of the Plans.

4. As a purchase price for the Property, the Gearys will pay the Plans cash in the amount of the Property's fair market value according to Johnson and Meyer's appraisal, less $40,000, which is the amount of principal which remains outstanding under the Mortgage which will be assumed by the Gearys. The Gearys will pay all costs related to the proposed sale. The purchase price will be allocated between the Plans according to the proportion of each Plan's ownership interests in the Property. Accordingly, the Pension Plan holds a 55.62 percent interest in the Property and the Money Purchase Plan holds a 44.38 percent interest in the Property, and each Plan will receive a corresponding percentage of the purchase price. Since the execution of the Lease on August 1, 1984, the Employer has paid the Plans monthly rental for the Property in the amount of $4,500, as specified in the Lease. Johnson and Meyer's appraisal of March 15, 1985 included an analysis of the Property's fair market rental value and concluded that as of that date the property's fair market rate was $5,850.00. Accordingly, the Employer has agreed to pay $5,850.00 as monthly rental for the

Property commencing April 1, 1985 until the Plan's proposed sale of the Property to the Gearys. For each month under the Lease prior to March 31, 1985, the Employer has also agreed to pay the Plans $1,350.00, which is the difference between the monthly rental previously paid and that determined by Johnson and Meyer to be the monthly fair market rental rate, plus interest at a rate determined by the Bank. The Gearys recognize that the Lease of the Property by the Employer from the Plans, commencing August 1, 1984 through the Plan's proposed sale of the Property to the Gearys, constitutes a prohibited transaction under the Act and the Code for which no exemption relief is proposed. Accordingly, they represent that the Employer will pay all excise taxes which are applicable under section 4975(a) of the Code by reason of such prohibited transaction within 60 days of the publication in the Federal Register of a final notice of the granting of the exemption proposed herein.

5. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act for following reasons: (1) I will enable the Plans to achieve greater diversification of assets by disposing of a parcel of real property which constitutes a high percentage of Plan assets; (2) The Plans will be relieved of their remaining obligations under the Mortgage; (3) The Gearys will pay all costs related to the transaction; (4) The Employer will pay the Plans additional rental, plus interest, for each month of the Lease commencing August 1, 1984 through March 31, 1985 and will pay the Plans the full appraised monthly fair market rental rate commencing April 1, 1985 until the consumation of the proposed sale transaction; and (5) The interests of the Plans for all purposes in the sale transaction will be represented by a new and independent trustee, the Bank, which has determined that the proposed transaction will be in the Plans' best interest.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Big City Productions, Inc. Pension Trust (the Plan) Located in New York, New York

[Application No. D-6029]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed series of loans (the Loans) of no more than twenty-five percent (25%) of the fair market value of the assets of the Plan as of the date the Loans are made to Big City Productions, Inc., the employer and sponsor of the Plan (the Employer), provided that the terms and conditions of the Loans are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party; and (2) the guarantee of the Loans by Steven Steigman (Mr. Steigman), a party in interest with respect to the Plan.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted will expire in ten years after the inception of the first of the Loans. Should the applicant wish to continue entering into loan transactions or to extend the maturity date of any existing Loans beyond the ten year period prescribed in this exemption, the applicant may submit another application for exemption relief.

Summary of Facts and Representations

1. The Employer, a New York State corporation since 1967, is engaged in print photography and the production of television commericals. All of the stock of the Employer is owned by Mr. Steigman who is also a participant of the Plan and serves as president of the Employer.

2. The Plan is a defined benefit pension plan with assets as of April 30, 1983, totaling $734,000. The Plan has six (6) participants as of December 31, 1983. The trustees (the Trustees) of the Plan are Mr. Steigman and Ms. Peggy Flaum, who is not an employee or shareholder of the Employer.

3. The Plan proposes to make a series of Loans to the Employer provided that the amount of any one of the Loans plus the outstanding balances of any existing Loans does not exceed 25% of the fair market value of the Plan's assets on the date any such Loans are made. The Employer proposes to use the proceeds from the Loans to add new space and renovate its sound stages in order to establish itself firmly in the industry.

4. The proposed Loans will bear a floating interest rate equal to Citibank's prime interest rate, published seven days prior to the payment date, plus an additional three percent (3%) per annum compounded semi-annually, provided the interest rate will never drop below 12% per annum. Repayment will be made by the Employer in equal semi-annual installments where each installment will be equal to 1/20th of the initial principal amount plus the accrued interest on the unpaid principal amount. The Employer will be entitled to repay all or a portion of the outstanding principal amount on any installment payment date. The Loans will be evidenced by a promissory note signed by Mr. Steigman, as president of the Employer for the benefit of the Plan. The maturity date for the first of the Loans will be for a term of ten (10) years. The maturity date of any of the other Loans in the series will not extend beyond that maturity date.

5. The Loans will be secured by a first mortgage which will be recorded on the parcel of improved real property (the Property) owned by Mr. Steigman and located at 5 East 19th Street, New York, New York. The Property is currently being leased as principal offices to the Employer on a year to year basis with an annual net rental of $80,000. Mr. William A. Lustig of Wilcox Real Estate Co., an independent, licensed real estate broker at 36 East 23rd Street New York, New York represents that as of March 23, 1984, the appraised value of the Property was $1,200,000. The Employer represents that it will maintain fire and extended coverage insurance on the Property during the term of the Loans and will designate the Plan as loss payee on such insurance policies.

The Loans will be further secured by the personal guarantee of Mr. Steigman. Mr. Louis J. Biscotti, C.P.A., president of Biscotti & Co., C.P.A., P.C., 265 Sunrise Highway, Rockville Centre, New York, who serves as an accountant for Mr. Steigman and who is a Plan Trustee, represents that as of April 30, 1984, Mr. Steigman's net worth exclusive of the value of the Property, exceeds $3 million. The terms of the Loans will provide that rental payments on the Property will be assigned to the Plan upon the default of any loan payment.

6. Mr. David Appel (Mr. Appel), president of David Appel Associates, Inc., 95 Madison Avenue, New York, New York has agreed to serve as the independent fiduciary for the Plan with respect to the Loans. Mr. Appel represents that he is qualified to serve in this capacity by virtue of his experience as an auditor for the Internal Revenue Service Employee Plan Division, as a consultant to a major pension administration and actuarial firm, as an advisor to over 150 pension clients on all aspects of pension administration, and because of his educational background in accounting, finance, and taxation.

Mr. Appel represents that he is independent, even though he has in the past advised the Employer on pension matters, because less that 1% of his aggregate annual gross receipts are attributable to the Employer. Mr. Appel states that he has been advised by Norman Seidenfeld, Esq. about the duties, responsibilities, and liabilities imposed by the Act on fiduciaries. Mr. Appel further represents that he understands his obligation to act solely for the Plan and its participants and beneficiaries.

Before agreeing to become a fiduciary with respect to the subject transactions, Mr. Appel reviewed other investments available in the market, the Plan's current asset mix, the Plan's funding and benefit payment projections, and consulted with the appraiser of the Property. Mr. Appel has concluded it is prudent and in the best interest of the participants and beneficiaries of the Plan to enter into the Loans for the following reasons:

(a) The ability of the Plan's other assets to adequately meet the projected benefit payments over the term of the Loans;

(b) The need for the Plan to diversify its assets;

(c) The fact that the aggregate outstanding balance of the Loans will not exceed 25% of the value of all the Plan's assets at the time any one of the Loans is executed;

(d) The high fixed return to the Plan on the Loans of 3% above Citibank prime rate on a floating basis with a minimum 12% annual rate;

(e) The personal guarantee of Mr. Steigman, who has substantial assets.

(f) The security on the Loans represented by the fair market value of the Property which is substantially more than three times the amount which is permitted on the Loans, and which is closer to six times such amount; and

(g) The value of the Property and the assignment of rental proceeds upon default of the semi-annual payments, which will constitute at least 150% of the outstanding balance of all the Loans. Mr. Appel further represents that he will not permit any additional collateral except the Property and the assignment of rents thereof to be pledged and states that should the value of such collateral fall below 150% of the outstanding balance on all of the Loans, he will exercise his authority to reduce such balance to the extent necessary to maintain at least a ratio of 150% at all times.

In performing his fiduciary duties, Mr. Appel has agreed that he will not approve any of the Loans regardless of the interest rate until he has verified to his satisfaction that at the inception of each of the Loans the interest rate and the other terms of the Loans have been made at a fair market value which is at least the same as those that would have been made as of the date of any of the Loans by an independent third party lender in an arm's-length loan transaction with the Employer and that the outstanding balance of any such Loans does not exceed 25% of the fair market value of the assets of the Plan as of the date such Loans are made. Mr. Appel further agrees: (1) To monitor the Loans not less than twice each year; (2) to confirm that the payments on the Loans are timely made; (3) to verify that the Property is adequately insured; and (4) to verify the adequacy of the security. In the event the Employer defaults in performing the obligations under the terms of the Loans, Mr. Appel represents that he will take whatever actions are necessary or appropriate to correct the default, collect penalties, and/or accelerate payment on the Loans, including retaining counsel for the Plan to institute legal action.

7. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Loans will be approved, monitored, and enforced by an independent fiduciary;

(b) The Loans will be secured by the value of the Property and the assignment of rents which at all times will be at least equal to 150% of the outstanding balances on the Loans;

(c) The exemption will be for a 10 year period from the date of the inception of the first of the Loans;

(d) The personal guarantee of Mr. Steigman further secures the Loans;

(e) The aggregate outstanding balances of the Loans will constitute no more than 25% of the Plan's assets;

(f) The Plan's independent fiduciary has determined that the Loans are prudent and in the best interest of the participants and beneficiaries of the Plan.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Professional Golfers Association of America Pension Plan Trust (the Plan) Located in Palm Beach, Florida

[Application No. D–6065]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the past sale out of the Plan of common stock of IBM, Masco, and Outboard Marine (the Stock) to a pension trust, American Resources, Inc. Retirement Trust (the American Trust), and a foundation account, the Edward C. Stuart Foundation (the Foundation), which were managed by Colonial Trust Company, N.A., a trustee for the Plan and fiduciary for the American Trust.

Effective Date: If the proposed exemption is granted, it will be effective June 1, 1984.

Summary of Facts and Representations

1. Established on January 1, 1970, the Plan is a qualified multi-employer defined benefit pension plan with a fixed contribution schedule and with approximately $9.2 million in assets on May 31, 1984. The Plan is sponsored by the Professional Golfers Association of America (the P.G.A.), an association with headquarters in Palm Beach, Florida, which is composed of some 14,000 golf professionals and assistant professionals. Approximately 650 of such golf professionals are participants in the Plan and are employees of contributing employers to the Plan, such as golf clubs and driving ranges located throughout the United States. The President, Vice President, Secretary/Treasurer, and three non-golf professionals or staff members of the P.G.A., serve on the Board of Trustees (the Board) which functions as the named fiduciary for the Plan. The current members of the Board and their relationship to the P.G.A. are as follows:

Mickey Powell, President, P.G.A.
James Ray Carpenter, Vice President, P.G.A.
Patrick Riley, Secretary/Treasurer, P.G.A.
Marshall Dann, P.G.A. Advisory Board
Richard Becker, P.G.A. Advisory Board
George Chane, P.G.A. Advisory Board

None of the members of the Board are Plan participants.

The Board is responsible under the terms of the Plan documents for the general administration of the Plan and for the establishment of a funding method for the Plan consistent with the requirements of law. According to section 9 of the Plan documents, the Board has discretion to select an investment advisor or agent and may appoint a corporate trustee (the Corporate Trustee) for the purpose of investing or reinvesting funds held in trust (the Funds) for use in providing benefits and paying expenses for the Plan. The terms of the trust agreement

(the Indenture) direct the Corporate Trustee to hold the Funds and to apply them "from time to time in accordance with the Indenture and the directions of the Board." The Indenture empowers the Corporate Trustee to buy, sell, convert, redeem, exchange, or otherwise dispose of any personal property or securities of the Plan. It is represented that effective January 1, 1983, the Board appointed Colonial Trust Company, N.A. (Colonial) as the Corporate Trustee. It is represented that the Board retained investment policy discretion for the Plan and appointed Colonial for the management of individual securities under policy guidelines.

2. As part of its assets on May 31, 1984, the Plan owned fourteen issues of common stock which represented 12.5% of the Plan's portfolio or $1,150,000 in market value. The remaining assets were invested in an insurance company guaranteed investment contract for $5,550,000 and in United States government securities. It is represented that Colonial was directed by the Board to liquidate the Plan's holdings in common stock, in order to invest the proceeds in government obligations and to follow a fixed income, maximum security posture. Accordingly, Colonial sold eleven of the Plan's fourteen issues on the market for a total value of $943,000. Of the three remaining issues, the Plan owned 800 shares of IBM, 2,700 shares of Masco, and 3,600 shares of Outboard Marine. Colonial represents that of the remaining three issues of the Stock, all were exchange listed shares with active trading.

3. Colonial seeks exemptive relief for the sale on June 1, 1984, of 200 shares of IBM, 1,200 shares of Masco, and 900 shares of Outboard Marine to the American Trust, and for the sale to the Foundation of 500 shares of IBM, 1,200 shares of Masco, and 2,500 shares of Outboard Marine. The sale to the American Trust and to the Foundation constituted 2.26% of the Plan's total portfolio and was a cash sale in the amount of $207,000. Colonial asserts that the Plan received a net gain of $39,948 on the sale of the Stock.

It was orally represented that Colonial had discretionary authority to direct the investments for the American Trust and for the Foundation. Further, Colonial represents that the American Trust and the Foundation were in no way related to the Plan and that the Stock was purchased as part of overall common stock acquisition programs by the American Trust and the Foundation which were managed by Colonial. Colonial maintains that it has received no benefit or increase in fee from either of the sales and that both the Plan, as the selling account, and the American Trust and the Foundation, as the purchasing accounts (the Purchasing Accounts) benefited by saving brokerage commissions of $.15 per share or approximately $900. Further, Colonial did not increase its fees obtained from the Purchasing Accounts as the total dollar amount of the asset base of each portfolio did not change as a result of the sales of the Stock into the Purchasing Accounts.

4. On June 1, 1984, in order to determine the fair market value of the Stock, Colonial placed market orders through the brokerage firm, Pain Webber, Inc., for 100 shares of IBM, 300 shares of Masco, and 300 shares of Outboard Marine owned by the Plan and received a price per share of $106¼, $26, and $20⅞ respectively. Subsequent to the sales to the Purchasing Accounts, it is represented that the price range quoted in the Wall Street Journal (WSJ) applicable to the date of sale June 1, 1984, was as follows:

Stock	Low	High
IBM	$107⅛	$106⅝
Masco	26	26⅝
Outboard Marine	20⅞	21⅛

For each issue of the Stock sold to the Purchasing Accounts the Plan received at least the low price from the range of high and low prices as published in the WSJ on the day after the date of sale.

6. In summary, Colonial represents that the past sales of the Stock satisfied the criteria of section 408(a) of the Act as follows:

(1) The decision concerning the sale out of the Plan of the Stock was made by the Board and the sale into the Purchasing Accounts was made by Colonial;

(2) The price of the Stock was determined on the date of the sale by market orders placed through the brokerage firm of Paine Webber for a smaller amount of the same Stock owned by the Plan;

(3) The Plan received not less than the low price for the Stock as published in the WSJ on the day after the date of the sale;

(4) The sales of the Stock were a one time transaction for cash;

(5) Neither the Plan nor the Purchasing Accounts paid commissions to Colonial on the sales;

(6) The Plan experienced a net gain on the sales of the Stock; and

(7) The Plan purchased with the proceeds of the sales of the Stock government obligations that afford the Plan a fixed income and maximum security.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Tony's Auto Parts, Inc. Money Purchase Pension Plan (the Pension Plan) and Tony's Auto Parts, Inc. Profit Sharing Plan (the Profit Sharing Plan; Collectively, the Plans) Located in Marrero, LA

[Applications Nos. D-6091 and D-6092]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to loans (the Loans) by the Pension Plan and the Profit Sharing Plan, not exceeding 25 percent of each Plan's assets, to Bertucci Properties (the Partnership), a party in interest with respect to the Plans, provided the terms and conditions of the Loans are at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans consist of the Pension Plan and the Profit Sharing Plan. As of January 31, 1985, the Pension Plan and the Profit Sharing Plan had total assets having a fair market value of $642,490 and $224,530, respectively. Also on January 31, 1985, each Plan had 24 common participants. The trustee of the Plans and decision-maker with respect to overall investments is the The First National Bank of Jefferson Parish.

2. Tony's Auto Parts, Inc. (the Employer), which maintains its principal place of business at Francis Street and Westbank Expressway in Marrero, Louisiana, is engaged in the sale of automobile parts and accessories. The Employer presently leases a one-story warehouse facility and the surrounding land (the Real Property) from the Partnership. The Partnership is composed of the officers and shareholders of the Employer as well as their spouses. The purpose of the Partnership is to invest in and develop real property similar to the subject Real Property. As of December 31, 1984, the

Partnership had total assets with a book value of $595,777.

3. An exemption is requested to permit the Plans to make two loans to the Partnership that will not exceed 25 percent of each Plan's assets. The Loans will enable the Partnership to provide long-term financing for the Real Property. The Loans, which will be evidenced by a promissory note, will provide for repayment in monthly installments of principal and interest for a 15 year term. The Loans will initially carry interest at the rate of 12½ percent for the first five years. At the end of each five year period, the interest rate will be adjusted by Jefferson Guaranty Bank (Jefferson) which will serve as the independent fiduciary for the Plans with respect to the proposed Loans. At each five year interval, the renegotiated interest rate will be one percentage point above the interest rate for a five year U.S. Treasury Note and it will feature a floor of 12 percent per annum.[1]

4. The Loans will be secured by a first mortgage on the Real Property. The deed to the Real Property will be recorded in favor of the Plans. In addition, the Real Property will be insured against casualty loss and the Plans will be designated as loss payees of such insurance. At all times, the value of the collateral will equal 150 percent of the combined outstanding balance of the Loan. If the value of the collateral ever falls below this level, Jefferson will either require the individual partners to pledge some of their personal assets as additional security or it will accelerate the Loan payments.

5. On February 13, 1985, Mr. Wayne Sandoz (Mr. Sandoz), an independent fee appraiser, member of the National Association of Real Estate Appraisers and president of Wayne Sandoz and Associates, Inc., placed the fair market value of the Real Property at $735,000. Mr. Sandoz also placed the fair market rental value of the Real Property at $72,450 per year.

6. As stated above, Jefferson will serve as the independent fiduciary for the Plans with respect to the proposed Loans. The exemption application states that although no principals of the Employer or partners in the Partnership sit on the board of directors of the bank, a limited commerical relationship exists. For example, the exemption application explains that the Employer maintains a checking account with Jefferson and Messrs. Joe and Peter Bertucci, who are officers of Employer, owe a total balance of $180,000 to the bank. However, the exemption application points out, these deposits and loans when aggregated represent less than one percent of the total deposits and loans of the bank.

Jefferson believes the Loans are appropriate transactions for the Plans and in the best interests of their participants and beneficiaries. Jefferson finds the Loan terms are based on customary business practices in the New Orleans, Louisiana area and are in accordance with commercially reasonable terms provided by local banks. Jefferson also finds that the proposed Loan terms are no less favorable to the Plans than those obtainable in a similar transaction with an unrelated party in the New Orleans area.

In addition, Jefferson represents that it has reviewed Mr. Sandoz' appraisal and finds the appraisal adequate and sufficient for a determination of the fair market value of the Real Property. Based on the appraisal, Jefferson has determined that the Real Property has a fair market value equal to at least 150 percent of the amount of the Loans.

Moreover, Jefferson has determined that there are sufficient remaining assets of the Plains to pay timely all anticipated benefits. In this regard, Jefferson has examined the overall investment portfolio for the Plans, considered each Plan's cash flow needs, given consideration to the necessity of a sale of these assets, examined the diversification of each Plan's assets in light of the proposed investment and reviewed the terms of the Loan as such terms comport with the Plans' investment scheme.

In addition to the duties described briefly in items 3 and 4 above, Jefferson will have final authority to determine whether the Plan will make the Loans. It will also monitor the Loans throughout their existence, serve as collecting agent and take all actions that are necessary and proper to enforce and protect the interests of the Plans and their participants and beneficiaries.

7. In summary, it is represented that the proposed Loans will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Loans will not represent more than 25 percent of the assets of each Plan; (b) Colonial, a competitor bank, has certified that the proposed Loan terms are competitive with, comparable to and reflective of current market lending conditions in the Greater New Orleans area; (c) the Loans will be secured by a first mortgage on the Real Property which has a fair market value that is greatly in excess of the total Loan amount; (d) Jefferson, as independent fiduciary, has determined that the Loans are in the best interests of the Plans and their participants and beneficiaries; and (e) Jefferson will completely monitor the repayment of the Loans and will enforce the Partnership's obligations thereunder.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[1] Colonial Bank of New Orleans, Louisiana (Colonial), which has no present business relationship with any of the parties or their spouses, certifies that the proposed Loan terms are competitive with, comparable to and reflective of current market conditions in the New Orleans area.

B.J. LaClair, M.D., P.A. Profit Sharing Plan and Trust Agreement (the Plan) Located in Sarasota, Florida

[Application No. D-6117]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of certain real property (the Property) by the Plan to Barry J. LaClair, M.D. and Rita C. LaClair, husband and wife and parties in interest with respect to the Plan, provided that the sale price of the Property is not less than the higher of either $210,000 or the fair market value on the date of the sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with five participants and, as of December 31, 1984, its total assets were $689,250. The assets of the Plan were all investments in securities and cash except for the Property, which consists of two adjoining parcels of real property located at 3575 Bayou Louise Lane, Sarasota, Florida. There are two trustees for the Plan, Barry J. LaClair, M.D. and wife, Rita C. LaClair (the Trustees).

2. The Trustees are requesting an exemption from the prohibited transaction provisions of the Act which will permit the sale of the Property by the Plan to the Trustees for cash in an amount not less than the higher of either $210,000 or the fair market value on the date of the sale. An updated appraisal will be made at the time of the closing by the qualified independent appraiser, Mr. David P. Bouverat. Mr. Bouverat, who represents that he has been a full-

time appraiser since 1971 and has no connections with the Plan, the Trustee, or the Property, is an associate appraiser in the firm of Professional Appraisal Services, 2080 Ringling Boulevard, Sarasota, Florida. As of February 14, 1985, Mr. Bouverat represented that the Property had a fair market value of $210,000. The Trustees represent that the Plan purchased the Property for investment purposes in 1971 for $35,186 and through 1984 incurred net expenses on the Property in the sum of $8,764. Under the law of Florida, the Sarasota County Property Appraiser determined that, as of January 1, 1984, the fair market value of the Property was $139,350. The Trustees represent that the purpose for the proposed sale is to permit the Plan to realize the optimum return on the Property and diversify its investments by converting approximately one-third its assets from non-income producing real property to more liquid, income producing investments. The Plan has no other prospective purchasers and can void all selling expenses by conveying the Property to Barry J. LaClair, M.D. and his wife. All expenses for the proposed sale will be paid by the purchasers. Neither Barry J. LaClair, M.D., nor his wife, Rita LaClair, jointly or individually, own any land which is adjoining or in the immediate vicinity of the Property; and, therefore, the proposed sale of the Property will have no impact, financially or otherwise, upon properties owned by the LaClairs. Since it appears that the market for real estate sales have declined and stabilized at diminished values, it is represented that denial of the exemption application would result in a potential economic loss to the Plan and its participants and beneficiaries. The existing structure on the Property is in ruins and is represented by the qualified independent appraiser to have no value. From 1971 through 1975, the Property produced a net income of $2,468, and since 1975 the Property has had no income.

3. In summary, the applicant represents that the transaction for which the exemption is requested satisfies the criteria of section 408(a) of the Act because (a) the sale will be a one-time transaction for cash; (b) the Plan will sell the Property at the highest price which can be realized from a sale of the Property on the open market to any other potential buyer; (c) the Plan will pay no expenses incurred in the sale; and (d) the Plan will be able to diversify its investments and invest in income producing investments and profit from the sale.

For Further information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-7901. (This is not a toll-free number.)

Thomas R. Williams Self-Employed Defined Benefit Retirement Plan (the Plan) Located in Atlanta, Georgia

[Application No. D-6129]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted the sanctions resulting from the applciation of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed contributions of common stock of First Atlanta Corporation (Atlanta) to the Plan by Mr. Thomas R. Williams (Mr. Williams) [1], the Plan's sponsor, provided that the terms and conditions of each proposed contribution is no less favorable to the Plan than those available in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit Keogh plan covering only Mr. Williams, who is the Plan's sponsor. The First National Bank of Atlanta serves as the Plan's trustee (the Trustee). Mr. Williams is a director of Atlanta, which owns 100% of the stock of the Trustee. Mr. Williams also serves as an officer of the Trustee.

2. Mr. Williams proposes to contribute shares of Atlanta common stock to the Plan. The common stock of Atlanta is publicly held and is listed on the New York Stock Exchange. The shares of Atlanta common stock contributed to the Plan will be valued at the closing market price quoted on the New York Stock Exchange on the date of such contribution. The Plan will not incur any sales commissions or other expenses or charges in connection with the contribution of the Atlanta common stock.

3. Mr. Williams represents that he will not take a federal income tax deduction greater than the fair market value of the Atlanta common stock when contributed to the Plan, plus the amount of cash, if any, contributed to the Plan. Mr. Williams represents that at no time will he contribute Atlanta common stock to the Plan, which when added to the value of all other Atlanta common stock then held by the Plan, would cause the total value of Atlanta common stock to exceed 25% of Plan assets.

4. The applicant represents that there is little chance of there being a Plan participant other than Mr. Williams. If, however, there is ever another such participant, Mr. Williams will establish a separate defined benefit plan for such employee containing provisions comparable to those contained in the Plan.

5. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 4975 (c)(2) of the Code because:

(a) Contributions of Atlanta common stock will be valued at the stock's quoted closing market price on the day of contribution;

(b) Mr. Williams will not take a federal income tax deduction greater than the fair market value of the stock when contributed to the Plan;

(c) No sales commissions or other expenses will be incurred by the Plan with respect to any contribution;

(d) The total value of Atlanta stock contributed to the Plan will not exceed 25% of its total assets; and

(e) Mr. Williams, who is the only person affected by the transactions, desires that the transactions be consummated.

Notice to Interested Persons

Because Mr. Williams is the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to other persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of the notice of proposed exemption.

For Further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things

[1] Since Mr. Williams is the only participant in the Plan there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory of administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 2nd day of July, 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 16153 Filed 7-5-85; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 85-118; Exemption Application No. D-4238 et al.]

Grant of Individual Exemptions; Ted McWilliams, Inc. Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth in a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and procedures set forth in ERISA Procedures 75-1 (40 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Ted McWilliams, Inc. Profit Sharing Plan Located in Pittsburgh, PA

[Prohibited Transaction Exemption 85-119; Exemption Application No. D-5236]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code, shall not apply to the lease of certain real property by the Plan to Ted McWilliams, Inc. for a ten-year period beginning July 1, 1984, provided that the terms of the lease are as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 25, 1985 at 50 FR 16370.

Effective Date: This exemption is effectively July 1, 1984.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Arnett Brokerage Profit-Sharing Plan (the Plan) Located in Lubbock, Texas

[Prohibited Transaction Exemption 85-120; Exemption Application No. D-5439]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code, shall not apply to the lease of certain improved real property by the Plan to Arnett Brokerage Company, the Plan sponsor, provided the terms of the lease are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: August 22, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 15, 1985 at 50 FR 10556.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202 523-8881. (This is not a toll-free number.)

Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Profit Sharing Plan) and Smart Chevrolet Co. Employees Retirement Plan (the Retirement Plan) (collectively the Plans) Located in Pine Bluff, Arkansas

[Prohibited Transaction Exemption 85-121; Exemption Application Nos. D-5669 and D-5870]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed loans (the Loans) by the Plans to Motors Finance Company (Motors), a party in interest with respect to the Plans, provided that the terms and

conditions of the Loans are at least as favorable as those which the Plans could receive in similar transactions with an unrelated party; and (2) the guarantee of the Loans by Smart Chevrolet Company and the individual partners of Motors.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1985 at 50 FR 15244.

Comments and Hearing Requests: The applicant notified the Department that the name of the First Arkansas Bankstock Corporation has been changed to Worthen Banking Corporation. The Department notes the correction and has determined that the proposed exemption should be granted as corrected.

Temporary Nature of Exemption

The Department has determined that in order to conform this exemption to existing policy, the exemption will bet temporary in nature and will expire seven years after the date of grant with respect to the making of any of the Loans. Subsequent to the expiration of the exemption, the Plans may hold the Loans for a period of 90 days provided such Loans were made duirng the seven-year period. Should the applicant wish to continue entering into Loans beyond the seven-year period, the applicant may submit another application for exemption.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Littonian Shoe Company Profit Sharing and Retirement Plan (the Littonian Plan) and the Employees Retirement Income Plan of the Community National Bank of Southern Pennsylvania (the Community Plan) Located in Gettysburg, Pennsylvania

[Prohibited Transaction Exemption 85–122; Exemption Application No. D–5837]

Exemption

The restrictions of sections 406(A), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975 (c)(1) (A) through (E) of the Code, shall not apply to: (1) The sale, on June 8, 1984, by the Littonian Plan and the Community Plan of certain real estate mortgage participations (the Participation Interests) to Community National Bank (Community); and (2) the proposed sale by the Community Plan to Community of two other Participation Interests, provided the total price paid for the Participation Interests was not or will not be less than their fair market value at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 19 1985 at 50 FR 15060.

Effective Date: This exemption is effective June 8, 1984.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Bartlemay & Associates, Inc., Money Purchase Pension Plan and Trust (the Plan) Located in Richmond, Indiana

[Prohibited Transaction Exception 85–123; Exemption Application No. D–5968]

Exemption

The restrictions of sections 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply, effective January 13, 1975, to the purchase by the Plan of an interest in a land holding real estate partnership (BCJ Realty Interest) from Louis M. Jaffe for $39,000 and the sale of the BCJ Realty Interest to I.V. Bartlemay on December 29, 1984 for $64,340 in cash, provided that the amounts paid and received by the Plan were not greater than or less than (respectively) the fair market values on the respective dates of acquisition and sale.

Effective Date: The exemption is effective January 13, 1975.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 25, 1985 at 50 FR 16368.

For Further Information Contact: Paul R. Antsen of the Department, telephone (202) 523–8753. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(C)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 2nd day of July, 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–16154 Filed 7–5–85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[85–45]

National Commission on Space; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the National Commission on Space (NCS).

DATE AND TIME: July 25, 1985, 8:30 a.m. to 6:30 p.m.; July 26, 1985, 8:30 a.m. to 3:00 p.m.

ADDRESS: Lyndon B. Johnson Space Center, Building 1, Room 966, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mrs. Mechthild E. "Mitzi" Peterson, National Commission on Space, Suite 3212, L'Enfant Plaza East, SW, Washington, DC 20024 (202)/453–8685).

SUPPLEMENTARY INFORMATION: The National Commission on Space was established to study existing and proposed U.S. space activities; formulate an agenda for the U.S. civilian space program; and identify long-range goals, opportunities, and policy options for civilian space activity for the next twenty years. The Commission, chaired by Dr. Thomas O. Paine, consisits of 15 voting members. The meeting will be open to the public up to the seating capacity of the room (approximately 70 persons including Commission members and other participants).

Type of Meeting: Open

July 25, 1985

8:30 a.m.—Introductory Remarks.
8:45 a.m.—Shuttle and Space Station Programs.
1:00 a.m.—Space Station Challenges.
1:00 a.m.—Medical Operations and Life Sciences.
2:00 p.m.—Tours of JSC Projects/Facilities.

July 26, 1985

8:30 a.m.—Advanced Missions and Projects.
10:45 a.m.—Lunar and Extraterrestrial Resources.
1:00 p.m.—Executive Session.
3:00 p.m.—Adjourn.

L.W. Vogel,

Director, Logistics Management and Information Programs Division, Office of Management.

July 2, 1985.

[FR Doc. 85-16141 Filed 7-5-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

1. Date: July 22-23, 1985
Time: 9:00 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review Challenge Grants applications from Museums and Historical Organizations, for projects beginning after December 1, 1985.

2. Date: July 25, 1985
Time: 9:00 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review Challenge Grants applications from Museums and Historical Organizations, for projects beginning after December 1, 1985.

3. Date: July 29-30, 1985
Time: 9:00 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review Challenge Grants applications from Small Colleges, for projects beginning after December 1, 1985.

4. Date: July 18-19, 1985
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after January 1, 1986.

5. Date: July 22-23, 1985
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after January 1, 1986.

6. Date: July 26, 1985
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after January 1, 1986.

7. Date: July 29, 1985
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after January 1, 1986.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of Section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call (202) 786-0322.

Susan H. Metts,

Acting Advisory Committee Management Officer.

[FR Doc. 85-16158 Filed 7-5-85; 8:45 am]

BILLING CODE 7536-01-M

Challenge/Advancement Ad Hoc Review Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Ad Hoc Review Committee to the National Council on the Arts will be held on July 24-26, 1985, from 9:30 a.m.-5:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-16163 Filed 7-5-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Doc. No. 50—155]

Consumers Power Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption

from requirements of 10 CFR 50.44(c)(3)(iii) to Consumers Power Company (the licensee) for the Big Rock Point Plant, located at the licensee's site in Charlevoix County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.44(c)(3)(iii) which requires that high point vents be provided to the reactor coolant system, for the reactor vessel head, and for other systems required to maintain adequate core cooling if the accumulation of noncondensible gases would cause the loss of function of these systems.

The Need For The Proposed Action

Although the licensee has already installed vents on the emergency condenser in response to this regulation, these vents are not operational because the installation of seismic supports and test connections and the development of operating procedures have not been completed.

By letter dated April 19, 1983, Consumers Power Company requested an exemption from the requirements of 10 CFR 50.44(c)(3)(iii) on the basis that the emergency condenser is not used or needed to mitigate the consequences of accidents which might result in the generation of noncondensible gases.

Environmental Impacts of the Proposed Action

Since the emergency condenser is not normally used (no credit taken for its use in the licensing analysis for the Big Rock Point Plant) in accident scenarios which might result in the generation of significant amounts of noncondensible gases, the proposed exemption will not cause post-accident radiological releases to differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require the emergency condenser vents to be fitted with seismic supports and test connections and for operating procedures to be developed and implemented. Such actions would not enhance the protection of the environment and would result in diversion of utility engineering resources from other work of higher safety significance.

Alternative Use of Resources

This action does not involve the use or resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding Of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated April 19, 1983. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at North Central Michigan College, 1515 Harvard Street, Petosky, Michigan 49770.

Dated at Bethesda, Maryland, this 25th day of June 1985.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-16169 Filed 7-5-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co. (Palisades Plant); Order Modifying License To Confirm Additional Licensee Commitments on Emergency Response Capability

I

Consumer Power Company (CPC) (the licensee) is the holder of Provisional Operating License No. DPR-20 which authorizes the operation of the Palisades Plant (the facility) at steady-state power levels not in excess of 2530 megawatts thermal. The facility is a pressurized water reacter (PWR) located in Van Buren County, Michigan.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modification, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

CPC responded to Generic Letter 82–33 by letter dated April 14, 1983. By letters dated September 13 and 16, 1983, and April 2, 1984, CPC modified several dates as a result of negotiations with the NRC staff. In these submittals, CPC made commitments to complete the basic requirements. CPC's commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. The staff found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On June 12, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed CPC's Commitments. By letter dated June 29, 1984, as supplemented July 17, 1984, CPC requested that the completion dates for the Regulatory Guide 1.97 requirements (Items 3a. and 3b. of the Table attached to the June 12, 1984, Order) be extended. By letter dated August 23, 1984, the NRC granted this extension.

IV

The June 12, 1984, Order stated that for those requirements for which CPC committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the June 12, 1984 Order, as modified by NRC letter dated August 23, 1984, CPC's letters dated June 29, 1984, as supplemented July 17, 1984, July 31, 1984, and April 22, 1985, provided completion schedules for the following requirements:

1. Safety Parameter Display System (SPDS):

1b. SPDS fully operational and operators trained.

2. Detailed Control Room Design Review (DCRDR):

2b. Submit a summary report to the NRC including a proposed schedule for implementation.

4. Upgrade Emergency Operating Procedures (EOPs):

4b. Implement the upgraded EOPs.

The attached Table summarizing CPC's schedular commitments for the above items was developed by the NRC staff from the information provided by CPC. The staff reviewed CPC's June 29, July 17, July 31, 1984 and April 22, 1985 letters and discussed the dates with the licensee.

The NRC staff finds that these dates are reasonable and achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of CPC's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that license DPR–20 is modified to provide that the licensee shall: Implement the specific items described in the Attachment to this Order in the manner described in CPC's submittals noted in Section IV herein no later than the dates in the Attachment.

Extension of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

VI

The licensee or any other person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section V of this Order.

This Order is effective upon issuance.

Dated in Bethesda, Maryland, this 1st day of July 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

PALISADES PLANT.—LICENSEE'S ADDITIONAL COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirements	Licensee's completion schedule (or status)
1a. Safety parameter display system (SPDS).	1b. SPDS fully operational and operators trained.	December 1986.
2. Detailed control room design review (DCRDR).	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	August 1986.
4. Upgraded emergency operating procedures (EOPs).	4b. Implement the upgrade EOPs.	December 1986.

[FR Doc. 85–16168, Filed 7–5–85; 8:45 am]

BILLING CODE 7590–01–M

Seminar on the Regulation of Spent Nuclear Fuel Transportation

From July 31 to August 2, 1985, the Nuclear Regulatory Commission and the Department of Transportation will jointly sponsor a seminar on the regulation of spent nuclear fuel transportation for designated State, local and Indian representatives. The seminar will be conducted at the Americana Congress Hotel, 520 South Michigan Avenue, Chicago, Illinois. The seminar is open to the public for attendance and observation and will take place from 9:00 a.m. to 5:15 p.m. on Wednesday, July 31; from 8:30 a.m. to 1:30 p.m. on Thursday, August 1; and from 9:00 a.m. to noon, Friday, August 2. If you plan to attend or have questions regarding this seminar, please contact Dr. Stephen Salomon at (301) 492–9881.

Dated at Bethesda, Maryland, this 1st day of July, 1985.

For the Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 85–16171 Filed 7–5–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-331]

Iowa Electric Light and Power Co., Central Iowa Power Cooperative, and Corn Belt Power Cooperative, and Corn Belt Power Cooperative (Duane Arnold Energy Center); Exemption

I

Iowa Electric Light and Power Company, et al. (the licensee) is the holder of Facility Operating License No. DPR-49 which authorizes the operation of the Duane Arnold Energy Center at steady state reactor power levels not in excess of 1658 megawatts thermal. The facility consists of a boiling water reactor located at the licensee's site near Palo in Linn County, Iowa. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

Section 50.48 of 10 CFR Part 50 requires that licensed operating reactors be subject to the requirements of Appendix R of 10 CFR Part 50. Appendix R contains the general and some of the specific requirements for fire protection programs at licensed nuclear facilities. On February 17, 1981, the fire protection rule for nuclear power plants, 10 CFR 50.48 and Appendix R, became effective. Section III.J of Appendix R of the rule requires that emergency lighting units with at least an 8-hour battery power supply shall be provided for all areas needed for operation of safe shutdown equipment. The objective of this requirement is that in the event of a fire, adequate lighting will be available to assure that the plant can be safely shutdown. As a result of its internal review, the licensee found that it could not assure that a battery power source for the control room lighting would be available for more than 90 minutes. The licensee has therefore requested an exemption from the literal requirements of Section III.J, and wishes to use 90-minute batteries backed by Division I and Division II diesels in lieu of the 8-hour battery requirements of Section III.J for the control room. The diesel generators will power the emergency lighting after the battery power is exhausted. Half the essential lighting in the control room will be powered by the Division I diesel generator and lighting distribution system and half by Division II. There is no single fire outside the control room that can disable both Division I and Division II lighting in the control room.

Based on its review of the above information, the staff has concluded that, in the event of a fire, the 90-minute batteries will provide sufficient illumination in the control room to enable the operators to shut the plant down. Beyond the 90 minutes, either or both the Division I and Division II diesel generators will continue to power sufficient control room lighting for more than 8 hours. The underlying purpose of Section III.J will, therefore, be served by operating in the proposed manner. Therefore, the exemption request to Section III.J of Appendix R should be granted.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

Therefore, the Commission hereby approves (to the extent indicated) the following exemption:

Exemption is granted from the requirements of Section III.J of Appendix R to 10 CFR 50 pertaining to the need for providing emergency lighting with at least an 8-hour battery power supply for powering control room essential lighting.

The proposed use of emergency diesel-backed sources in lieu of an 8-hour battery power supply, as cited in Section II above, is acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this Exemption will have no significant impact on the environment (50 FR 20862, May 20, 1985).

A copy of the Safety Evaluation associated with this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the local public document room located at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401. A copy may be obtained upon request when addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 1st day of July, 1985.

For The Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-16170 Filed 7-5-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, and Information Services, 450 Fifth Street, NW., Washington, D.C. 20549

Extension

Rule 17f-5 [17 CFR 270.17f-5]
File No. 270-259

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17f-5, regulating custody of investment company assets located outside the United States.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

June 25, 1985.

[FR Doc. 85-16127 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14603; Filed No. 812-6141]

Application and Opportunity for Hearing, Great-West Life & Annuity Insurance Co. et al.

June 28, 1985.

Notice is hereby given the Great-West Life & Annuity Insurance Company (the "Company"), the Great-West Life Assurance Company ("Great-West"), and Pinnacle Series Account (the "Account") (the Company, Great-West, and the Account are collectively referred to as "Applicants"), at Solarium North Building, 7400 E. Orchard, Englewood, Colorado 80111, filed an application on June 25, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicants from sections 26(a)(2) and 27(c)(2) of the Act to permit the deduction of certain charges in connection with Applicants' offering of single premium variable life insurance policies. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are

summarized below, and to the Act and rules thereunder for the text of relevant provisions.

Applicants state that the Company, a wholly-owned subsidiary of Great-West, is a stock life insurance company organized under the laws of Kansas. Applicants state that the Account will be used to invest monies held under single premium variable life insurance policies, and that it is registering as a unit investment trust under the Act. Applicants state that the Account will invest solely in shares of the Maxim Series Fund (the "Fund"), a diversified, open-end management investment company.

Applicants state that under the policies, the Company will allocate the entire single premium payment to the Account and thereafter, on the first valuation date in each month during the first ten policy years, the Company will deduct an amortized initial charge in equal monthly installments. Applicants submit that the amortized initial charge consists of the sales charge and the state premium tax charge, which are 8.0% and 2.0%, respectively. In addition, on the first valuation date in each month until the policy is surrendered, a cost of insurance charge will be deducted, and the cost of insurance rate varies according to the attained age, sex, and premium class of the insured. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit these deductions.

Applicants assert that under Rule 6e–2, they could deduct the components of the amortized initial charge from the single premium prior to allocating monies to the Account, but by deducting these charges over the first ten policy years, there is an increase in the amount invested on a policyowner's behalf. This, Applicants submit, is in the policyowner's best interest, assuming typical investment performance.

With respect to the cost of insurance charge, Applicants state that under the policies, this charge is deducted monthly based on the net amount at risk under each policy. Applicants assert that in this fashion, each policy is assessed only the insurance charges commensurate with the risks under the policy. If, instead, this charge were deducted from the single premium payment, Applicants state they would be forced to make a large deduction based on assumptions about the length of time the policy would be in force, investment performance, and other factors necessary to determine the net amount at risk over the life of the policy. Applicants assert that their approach is more equitable and benefical to policyowners since it increases the amount invested on their behalf. Moreover, if required to deduct the cost of insurance from a single premium, Applicants assert it is likely that an insurance company would find it necessary to levy a risk charge to compensate it for the risk that its deduction would produce insufficient cost of insurance charges. Applicants further represent that the proposed method of collecting cost of insurance charges from cash value does not provide a means for assessing larger charges.

For the reasons stated above, Applicants submit that the requested relief from sections 26(a)(2) and 27(c)(2) is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 18, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–16123 Filed 7–5–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35–23750; 70–7122]

Central and South West Corp. and West Texas Utilities Co.; Proposed Tender Offer and Issuance and Sale of First Mortgage Bonds

June 28, 1985.

Central and South West Corporation ("CSW"), a registered holding company, and its wholly owned electric utility subsidiary, West Texas Utilities Company ("West Texas"), have filed an application-declaration with the Commission subject to sections 6(a), 7, 9(a), 10, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 thereunder.

West Texas previously issued $15 million of first mortgage bonds, Series J, 15¼% due November 15, 2011 ("Bonds") and $30 million of its 16⅛% Debentures, Series 1982, due June 1, 2012 (collectively "Securities"). The Bonds may not be redeemed at a lower cost of money prior to November 15, 1986 and the Debentures may not be so redeemed prior to June 1, 1987. Because there has been a dramatic reduction in long term interest rates since the Securities were issued, West Texas believes that a refunding of the Securuties would benefit the Company's ratepayers by reducing the present interest costs to West Texas. Because the Securities cannot presently be called due to refunding restrictions of the Securities, West Texas proposes to repurchase for cash a substantial portion of the Securities through a tender offer ("Tender Offer") to the holders of the Securities. West Texas will hold open the offer for ten days, and requests authority to extend the offer period if Security holdes or market conditions require. West Texas believes that a Tender Offer for the Bonds would be approximately 119% of the principal amount, plus accrued interest. Similarly, a Tender Offer for the Debentures would be approximately 122% of the principal amount, plus accrued interest. The actual prices will be based on a number of factors, including the coupon rate of the Securities (on which date the Company, depending on then prevailing interest rates, may be presumed to call the Securities), the call price on such expiration date and the present market rates for similar bonds. Based upon limited information the Bonds and Debentures have recently bid at prices of 118.68% to 117.35% and 122.07% to 120.73% of the principal amount thereof, respectively.

West Texas proposes to retain Solomon Brothers Inc. as the company's tender agent and dealer-manager for the Tender Offer. As dealer-manager, Solomon Brothers will not itself become obligated to purchase or sell any of the Securities. It will act merely as the Company's agent disseminating the offer and receiving responses thereto. The dealer-manager's fee will be $2.50 per $1,000 principal amount of Securities ($67,500), plus reimbursement of out of pocket expenses in an amount not to exceed $20,000, and reimbursement of attorney fees not to exceed $15,000. As is customary, West Texas will be required to indemnify the dealer-manager for certain liabilities as

provided in the contract with the dealer-manager.

Depending on the amount of Securities tendered and the price paid for the tendered Securities, it will be necessary for West Texas to issue up to approximately $55 million aggregate principal amount of first mortgage bonds ("New Bonds") in order to fund the purchase of the tendered Securities. The New Bonds will be offered by competitive bidding in one or more series with up to a 30-year maturity period. West Texas requests the flexibility to issue a shorter maturity for the New Bonds should market conditions so dictate. The price to be paid to West Texas for the New Bonds (exclusive of any accrued interest which will be added to such price) will not be less than 98%, nor more than 101.75%, of the principal amount of the New Bonds. The New Bonds will be redeemable, but not earlier than five years from issue if it is part of a refunding at an effective interest cost lower than that of the particular series of the New Bonds. The New Bonds will be authenticated under the Indenture against available unused net expenditures aggregating approximately $148 million at April 30, 1985 and previously returned first mortgage bonds.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 22, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16124 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-22749; 70-7113]

Central and South West Corp.; Proposal To Create Credit Subsidiary; Exception From Competitive Bidding

June 28, 1985.

Central and South West Corporation ("CSW"), 2121 San Jacinto Street, Dallas, Texas 75266-0164, a registered holding company, has filed an application-declaration with this Commission pursuant to sections 6, 7, 9, 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50 thereunder.

CSW proposes to organize a new corporation, CSW Credit, Inc. ("Credit"), to be wholly owned by CSW. The initial purpose of Credit will be the purchase of accounts receivable (factoring) of its operating companies, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company, and Transok, Inc., at a discount and the financing of these purchases with debt.

Notice of the proposed transaction was given on May 21, 1985 (HCAR No. 23600). The Commission, by this subsequent Notice, is changing the date for interested persons to comment or request a hearing to July 15, 1985.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 15, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16126 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-22751; 70-6803]

Jersey Central Power and Light Co.; Proposed Acquisition of Customers' Notes Related to Financing of Conservation Measures

June 28, 1985.

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, and electric utility subsidiary of General Public Utilities Corporation, a registered holding company, has filed with this Commission a further post-effective amendment to its application in this proceeding pursuant to sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

On December 1, 1982, the New Jersey Board of Public Utilities ("NJBPU") ordered all New Jersey utilities, including JCP&L, to develop and institute programs for financing the purchase and installation of storm windows, insulation, weatherstripping, caulking, attic ventilating fans, automatic day/night theromstats, and other conservation measures by their electric heating residential customers. In accordance therewith, JCP&L was authorized by this Commission to acquire from time to time until December 31, 1989, up to $2 million of obligations of its customers and to incur up to $60,000 of administrative and other related expenses (HCAR No. 23121 (November 16, 1983) and HCAR No. 23486 (November 19, 1984)).

The post-effective amendment states that on May 8, 1984, the NJBPU issued an order approving a Stipulation of Settlement entered into among JCP&L, the New Jersey Department of the Public Advocate, and the staff of the NJBPU, and ordering JCP&L to institute certain conservation programs including *inter alia* (A) an Electric Heat Conversion Program to provide financing for those electric heating customers with older, less efficient homes to convert to gas, oil, or other alternative heating systems, and (B) a Solar Water Heating Conversion Program to provide financing for electric hot water heating customers to convert to solar domestic water heating systems. Under these programs, the residential customer would arrange to have the work performed by certain eligible contractors who would be paid with funds borrowed by the customer from participating banks. Interest on such loans would range between zero percent and the prevailing market rate, depending upon the income level of the customer. The amount and term for

repayment of each such loan would range up to a maximum of $6,000 and 8 years, respectively. Notes executed by customers evidencing such loans made by the lending banks would be acquired by JCP&L with the loans being serviced and collected by such banks for JCP&L. The amounts of such acquisitions are included in the $2 million limit heretofore authorized in this proceeding.

The amended application and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 24, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as now amended or as it may be further amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16125 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 27, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following security:

AZP Group, Inc.

Common Stock, $2.50 par value, (File No. 7-8465) This security is listed and registered on one or more other national securities exchange and is reporting in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 19, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16126 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

Agency Information Collection Activities Under OMB Review

Agency Clearance Officer: Kenneth Fogash, (202) 272-2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs, and Information Services, Washington, D.C. 20549.

Extension

Proposed Amendment to Rule 4-08 of Regulation S-X 17 CFR 210.4-08

SEC File No. 270-3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for approval a proposed amendment regarding disclosures of repurchase and reverse repurchase transactions.

The potential respondents include all entities that engage in such transactions and file registration statements or reports pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, or the Investment Company Act of 1940.

Submit comments to OMB Desk Officer: Katie Lewin (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

June 27, 1985.

[FR Doc. 85-16188 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22188; SR-Amex-81-12]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

June 28, 1985.

The American Stock Exchange, Inc. ("Amex") submitted on July 27, 1981, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange of 1934 ("Act") and Rule 19b-4 thereunder, to amend Amex Rule 421 ("Discretion as to Customers' Accounts"), which regulates member organization supervision of discretionary accounts. The proposal would delete the present requirement that each discretionary order must be initialed on the day entered by a general partner, officer or manager of the member organization who has been delegated written authority to give such approval and who is not exercising the discretionary authority.[1] The proposal would retain the requirement that discretionary accounts receive frequent supervisory reviews, but these reviews no longer would have to be conducted by a general partner or officer of the member organization. Finally, the proposal would add requirements that each discretionary order must be so identified on the order at the time of entry and that each member organization must maintain a written statement of its supervisory procedures governing discretionary accounts.[2]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 18037, August 14, 1981) and by publication in the **Federal Register** (46 FR 42386, August 20, 1981). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the

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[1] In its filing the Amex stated that member organizations that do not have advanced monitoring capabilities will be required to retain their present order approval procedures as part of their internal surveillance system.

[2] The Amex further stated that (1) it will require its member organizations to maintain written supervisory procedures for handling discretionary accounts and (2) that these written procedures will be reviewed by Amex field examiners in their periodic compliance examinations to determine whether the procedures are satisfactory and are being complied with. *See* letter from J. Bruce Ferguson, Assistant Vice President, Amex, to Thomas Etter, Attorney, Division of Market Regulation, dated June 6, 1985.

requirements of Section 6 and the rules and regulations thereunder.[3]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16181 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22187; SR-Amex-85-14]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

June 28, 1985.

The American Stock Exchange, Inc. ("Amex") submitted on April 26, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Amex Rule 576 ("Transmission of Proxy Material to Customers"), Commentary .80, to increase by $.10 certain Amex "approved charges by member organizations" to issuers for reimbursement of expenses associated with forwarding annual reports and proxy materials to beneficial owners. The charge for forwarding annual reports would be increased $.10 to $.20 (plus postage) per customer, and a new minimum annual report fowarding charge of $3.00 per issuer would be added to the rule. Charges for forwarding proxy follow-up material would be increased from $.30 to $.40 (plus postage) per customer, when mailed to all beneficial owners, and from $.50 to $.60 (plus postage) per customer, when mailed only to beneficial owners who have not responded to an initial mailing. The rule's basic $.60 charge for forwarding a proxy statement and annual report, when mailed as a unit, would remain unchanged.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22051, May 20, 1985) and by publication in the **Federal Register** (50 FR 21535, May 24, 1985). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16182 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22185; Amex-85-24]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 19, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is filing for Commission approval of a six month extension of the pilot procedure under the Exchange's equities allocations procedures which permits a newly listed company which so desires to select the specialist unit for its stock from a list of seven specialist units selected by the Exchange's Committee on Equities Allocations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A, Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* In June 1984, the Commission approved on a twelve-month pilot basis a "modified" equities allocation procedure proposed by the Exchange in order to increase the involvement of a newly listed company in the selection of the specialist unit in its stock.[1] The modified procedure, which was instituted in July 1984, has been available to companies as an alternative to the allocation which permits company participation in the selection process to a limited extent (the "limited participation procedure").[2] The modified procedure pilot is scheduled to terminate at the end of June 1985, and the Exchange is now requesting the Commission to approve a six month extension of the modified procedure upon its expiration.

The modified procedure was designed to address several concerns voiced by prospect companies. In the Exchange's efforts to list new companies, it became clear that the selection of a specialist is extremely important to prospect companies, and the ability to be more directly involved in the selection process and to be reassigned to another specialist if dissatisfied with the specialist's performance could serve as incentives to listing.

If a company chooses to participate in the modified procedure, the Allocations Committee selects a list of seven specialist units based on the same performance-related criteria it uses for every allocation, and the company selects its specialist from that list. A company must remain with its initial specialist for at least 120 days. After that time, but during the first 12 months after listing, the company may request that the stock be reallocated should it become dissatisfied with its specialist. This is the case whether or not a company has participated in the selection process. The companay is expected to furnish an explanation of

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[3] The Commission notes that the language added to Amex Rule 421 by this proposed rule change would be similar to the existing text of New York Stock Exchange ("NYSE") Rule 406(b), which has been in effect since April 3, 1975.

[1] *See* Securities Exchange Act of 1934 Release No. 34-21062, dated June 18, 1984.

[2] Under the limited participation procedure, the Exchange's Committee on Equities Allocations ("Allocations Committee") submits a list of ten eligible specialist units to the company, which has the right to eliminate three units from further consideration. The Allocations Committee then reconvenes to make its final selection from the remaining seven units.

the basis for its dissatisfaction, and if after counseling the company and the specialist unit such a change were still desired, the Exchange would reallocate the stock within 30 days. In any such reallocation, the Exchange would follow the limited participation allocation procedures as described above in footnote 2. Should a company so desire, the Allocations Committee may also select a specialist unit without any company participation. A company may invoke the reallocation request once during the year period following its listing.

Since its implementation, every company which has listed on the Exchange has chosen to participate in the selection process.[3] The Exchange believes, based on its experience under the pilot, that in many instances the availability of the new procedure has been of importance in listing companies. No newly listed company has requested a reallocation of the stock after it has become eligible to invoke the reallocation request.

The Exchange believes that the modified procedure has reasonably fulfilled its purposes: To assist the Exchange in attracting new listing and to preserve strong incentive for quality specialist performance.

During the pilot, a preponderance of allocations have been made to better performing units and the allocations have been distributed among a representative group of higher-rated units. It is the Exchange's view that the modified procedure has rewarded superior performance and provided incentives for specialists to continue to provide high quality markets and to improve performance.

(2) *Basis.* The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the proposed procedure is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change also furthers the purposes of section 11A(a)1)(C)(ii) in that it will stimulate fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

[3] As of April 12, 1985, a total of 46 companies have selected the specialist units for their stocks under the modified procedure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition. Rather, the proposed rule change, by rewarding superior performance, will enhance competition among Exchange specialists, and, by improving the ability of the Exchange to attract prospect companies which desire greater participation in the specialist selection process, will enhance competition among markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) to avoid interruption of the pilot program, which is scheduled to terminate on June 30, 1985. The Exchange anticipates that, at the close of the six month period, it will request permanent approval of the modified equities allocations procedures.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the pilot program is scheduled to expire on June 30, 1985. The Commission believes that accelerated approval is appropriate to allow the pilot program to proceed uninterrupted and to permit the Commission to further review the adequacy of Amex's procedures under the pilot. In addition, the Commission believes that a six month extension to December 31, 1985 will provide the Amex with opportunity to continue to assess the impact of the allocation procedures prior to requesting permanent approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16184 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22184; SR-Amex-85-15]

Self-Regulatory Organizations; Notice of Proposed Rule Change by American Stock Exchange, Inc.; Relating to Proposed Amendment of Section 140 of the Amex Company Guide

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 29, 1985, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is proposing to amend Section 140 of the Amex Company Guide to provide for a reduction in the Exchange's original

[1] The Amex filed Amendment No. 1 to the proposed rule change on May 31, 1985, to provide an expanded discussion of the purpose and statutory basis of the filing.

listing fee schedule for Canadian Companies listed on the Toronto Stock Exchange that seek to list on the Amex.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* On April 3, 1985, the Exchange submitted for SEC approval a joint plan between the Amex and the Toronto Stock Exchange ("TSE") implementing an electronic trading linkage between the two exchanges in dually-traded stocks.[2] The linkage is expected to commence on a pilot basis in approximately seven of the most actively traded issues. As experience is gained with the linkage, the pilot will eventually be expanded to include all inter-listed securities.

A potential benefit of the linkage arrangement to the Amex is the possibility that some Canadian companies listed on the TSE and also traded over-the-counter in the United States may decide to list on the Amex in order to obtain the benefits of the linkage for their shareholders. As an additional incentive to listing, the Exchange believes it is appropriate to offer a reduced original listing fee to all Canadian companies who list on the TSE or any other Canadian stock exchange.[3] A reduced fee for these Canadian companies is warranted based on the fact that they have already paid an original listing fee to the Canadian market for trading in their shares. While they may be seeking to expand the market for their shares, they may hesitate to pay a substantial additional fee to list on the Amex, particularly since the Canadian market usually remains the primary market in inter-listed securities. For the year up to March 29, 1985, the Canadian market has been the dominant market in 23 out of 37 inter-listed securities. Even where trading volume on the Amex has exceeded that on the Canadian exchange, the Canadian volume is in many cases substantial and often approaches that on the Amex. In view of these considerations, the Amex has decided to permit Canadian companies to list on the Amex by paying an original listing fee substantially below that applicable to domestic companies.

In reviewing the pricing options available, the Exchange believes that the simplest alternative would be to retain the existing rate structure, based upon the number of shares to be listed, and apply a fixed percentage reduction. In analyzing Toronto's listing fees, the yardstick against which Canadian companies are likely to judge reasonableness, it appears that a 50% reduction to current rates, subject to a $30,000 overall maximum, would bring Amex fees closely in line with expectations in Canada.

The following example demonstrates the manner in which the 50% reduction would apply:

Present schedule		Revised schedule (50% reduction)	
One time charge	$15,000	One time charge	$7,500
Listing of 2,000,000 shs. @ 1¢ per share	20,000	Listing of 2,000,000 shs. @ 1/2¢ per share	10,000
Total Fee for 2,000,000 shs.	35,000	*Total Fee* for 2,000,000 shs.	17,500
Listing of next 2,000,000 shs. @ 1/2¢ per share	10,500	Listing of next 2,000,000 shs. @ 1/4¢ per share	5,000
Total Fee for 4,000,000 shs.	45,000	*Total Fee* for 4,000,000 shs.	22,500
Listing of next 6,000,000 shs. @ 1/4¢ per share	15,000	Listing of next 6,000,000 shs. @ 1/8¢ per share	7,500
Total Fee for 10,000,000 shs.	60,000	*Total Fee*—10,000,000 shs.	*30,000

*Maximum fee.

To test the impact of reduced listing rates in Canada, it is proposed that these reductions be instituted on a pilot basis for a period of one year from the effective date of the linkage.

(2) *Basis.* The proposed amendment is consistent with section 6(b) of the Exchange Act in general and furthers the objectives of section 6(b)(4) in particular, in that it is intended to provide for the equitable allocation of reasonable listing fees among the companies that seek to list on the Exchange. As the Canadian companies are already listed on a Canadian stock exchange, a reduction for such companies in the fee normally charged by the Exchange to list on the Amex does not appear to unfairly discriminate among issuers as proscribed by section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Other

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

[2] *See* Securities Exchange Act Release No. 22201 (April 30, 1985); 50 FR 19507 (May 8, 1985).

[3] In proposing this change, the Exchange would be following an existing precedent in which reduced rates are already extended to foreign issuers who register and trade American Depository Receipts ("ADRs") in this country.

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16165 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22202; File No. SR-NASD-80-10]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Withdrawal of Consent to Deferral of Commission Action as to Portion of Proposed Rule Change

On June 17, 1985, the National Association of Securities Dealers, Inc. ("NASD") withdrew its consent to a deferral of that aspect of the NASD options proposal (File No. SR-NASD-80-10) relating to the trading on NASDAQ of options on exchange-listed stocks which are not "covered securities" under Rule 19c-3 under the Securities Exchange Act of 1934 ("Act") (*i.e.*, those securities that were listed on an exchange after April 26, 1979),[1] and are otherwise eligible for options trading, if standardized options are not traded on such securities at the time the NASDAQ option is introduced. The NASD also requested Commission consideration of this aspect of its filing "at the earliest opportunity." [2]

Copies of the letter and the NASD's filing are available at the Commission and at the NASD. Interested persons are invited to submit comments to the Commission by July 18, 1985 by sending six copies of such comments to the Secretary of the Commission, 450 5th Street, NW., Washington, D.C. 20549.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 1, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16173 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22183; File No. SR-NYSE-85-25]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to New Rule 98, Implementing Guidelines and Other Rule Amendments To Facilitate Diversified Member Organizations Becoming "Approved Persons" of Specialist Member Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 20, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of new Rule 98, implementing "Guidelines", and other rule amendments to facilitate diversified member organizations becoming "approved persons" of specialist member organizations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Introduction

From time to time, the Exchange has received indications from member organizations that are not now in the specialist business on the Exchange that they are interested in entering that business. There is currently no policy which prevents such firms from entering the business directly or associating with an existing specialist member organization. The basic difficulty that arises, however, is that many of the potential new entrants into the specialist business are diversified organizations involved in many, if not all, aspects of the securities business generally, such as underwriting, proprietary trading in listed stocks and their overlying options, etc. Under current regulations, these diversified member organizations would have to curtail many of their present activities in securities in which they might become registered, or in which an associated specialist member organization was registered.

The Exchange has developed a "functional regulation" proposal that attempts to balance the Exchange's and the Commission's regulatory concerns with the practical business needs of diversified member organizations. As discussed below, the Exchange believes that adoption of this proposal will result in significant benefits for the NYSE market.

The basic philosophy of the functional regulation proposal is that regulations appropriately imposed on a specialist member organization need not also be imposed on an associated member organization, provided that proper safeguards (essentially a formal organizational separation and specified internal controls), acceptable to the Exchange are in place.

Restrictions on "Approved Persons" of Specialist Member Organizations

The 1975 amendments to the Securities Exchange Act (the "Act") and the regulations thereunder generally require the Exchange to enforce compliance by members and persons associated with members with the Act, certain of those regulations, and applicable Exchange Rules. Under

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[1] *See* Rule 19c-3 under the Act, 17 CFR 240.19c-3 (1984).

[2] Letter from John J. Flood, Senior Attorney, NASD to Alden Adkins, Division of Market Regulation, dated June 17, 1985.

[1] The Commission intends to publish a release describing NYSE's proposed Rule 98 and the American Stock Exchange's ("Amex") proposed changes to Amex Rules 190 and 193, and requesting public comment on the issues raised by such rule changes. (For Amex's proposed rule change incorporating exemptive guidelines for establishing an Exchange-approved "Chinese Wall" between an affiliated upstairs firm and a specialist unit, *see* Securities Exchange Act Release No. 21916 (April 2, 1985); 50 FR 14056 (April 9, 1985) (File No. SR-Amex-85-1)). Prospective commentators are urged to consider whether they would prefer to respond to this NYSE filing or to the Commission's separate release.

Article I, Section 3(g) of the Exchange Constitution, certain persons associated with a member or member organization are deemed to be "approved persons" of that member or member organization. Section 3(g) provides:

(g) The term "approved person" means a person who is not a member or an allied member or an employee of a member firm or member corporation, who has become an approved person as provided in the rules of the Exchange and who is either:

(i) A person who controls a member, member firm or member corporation, or

(ii) A person engaged in a securities or kindred business who is controlled by or under common control with a member, member firm or member corporation.

The terms "control", "person" and "engaged in a securities or kindred business" as used herein shall be defined in the rules of the Exchange.

The term "control" is defined in Exchange Rule 2 as follows:

The term "control" means the power to direct or cause the direction of the management or policies of a person whether through ownership of securities, by contract or otherwise. A person shall be presumed to control another person if such person, directly or indirectly,

(i) Has the right to vote 25 percent or more of the voting securities,

(ii) Is entitled to receive 25 percent or more of the net profits, or

(iii) Is a director, general partner or principal executive officer (or person occupying a similar status or performing similar functions) of the other person.

Any person who does not so own voting securities, participate in profits or function as a director, general partner or principal executive officer of another person shall be presumed not to control such other person. Any presumption may be rebutted by evidence, but shall continue until a determination to the contrary has been made by the exchange.

An organization entering into a "control" relationship, as defined above, with a specialist member organization would be deemed to be an "approved person" of the specialist member organization. Such a "control" or "approved person" relationship may arise where an organization becomes associated with an existing specialist member organization, or where it establishes a specialist member organization as a separate subsidiary or affiliate.

Currently, approved persons of specialist member organizations are subject to a number of Exchange Rules, which, among other matters, place restrictions on transactions effected for their accounts in specialty stocks on the Exchange, require that speciality stock options be used only for "hedging" purposes, prohibit "popularizing" of specialty stocks, and prohibit any "business transactions" with an issuer of a specialty stock. These restrictions are particularly set forth in the following Exchange Rules for which exemptive relief would be provided by the functional regulation proposal.

Rule 104 provides that a specialist may not effect any purchase or sale of a security in which he is registered for the account of an approved person associated with his organization, unless such transaction is reasonably necessary to permit the specialist to maintain fair and orderly markets.

Rule 104.13 provides that any transaction for the account of an approved person associated with a specialist, in any stock in which the specialist is registered, must be for investment purposes and effected in a stabilizing manner.

Rule 105 provides that an approved person associated with a specialist member organization may trade in options overlying a specialty stock for hedging purposes only.

Rule 113.20 prohibits that an approved person who is associated with a specialist member organization from "popularizing" a stock in which a specialist in the member organization is registered.

Rule 460 prohibits a specialist and an associated approved person from engaging in "business transactions" with a company in whose stock the specialist is registered.

Regulatory Concerns

The trading restrictions discussed above were adopted to ensure that approved persons of specialist member organizations would not be placed in a more advantageous position vis-a-vis other market participants because of their association with a specialist member organization, and their possible access to confidential information concerning the specialist's "book" or the specialist's trading activities. The restrictions are also designed to minimize potential conflicts of interest between an approved person's trading for its own account and an associated specialist's trading to meet his market-making responsibilities under Exchange Rules.

The restrictions against popularizing are addressed to concerns about potential conflict of interest and the potential for market manipulation that may arise when an approved person makes recommendations, solicits orders, etc. in a stock in which an associated specialist may have a significant dealer position. The restrictions against "business transactions" with an issuer are addressed to potential conflicts of interest that may arise if an approved person were to have an interest in the financial viability of a company in whose securities an associated specialist makes a market.

The functional regulation proposal attempts to ensure that these regulatory objectives are not compromised, while at the same time providing enough flexibility so that the association of a member organization with a specialist member organization may be viewed as a viable business proposition for those interested in such an association.

While the Exchange anticipates that member organizations may, in particular, be interested in becoming approved persons of specialist member organizations, the functional regulation proposal and the proposed rule changes discussed herein would also be appropriate should a non-member broker or dealer or a non-broker or dealer organization desire to be associated with a specialist member organization as an approved person.

New Rule 98 and Implementing Guidelines

New Rule 98 provides essentially that an approved person which established a formal organizational separation between itself and an associated specialist member organization, and adopted internal controls and otherwise conducted its operations in conformity with "Guidelines" promulgated by the Exchange would be entitled to an exemption from the restrictions in Rules 104, 104.13, and 105, as noted above, and would be entitled to an exemption from Rules 113.20 and 460 to the extent indicated in those Rules as they are proposed to be amended.

The following are the principal elements of a functional regulation program acceptable to the Exchange as specified in the Guidelines:

- Formal organizational separation between approved person and associated specialist member organization;
- Only general managerial oversight permitted by approved person—no influence on specialist's particular marketmaker decisions;
- Confidential treatment of specialist's "book", information regarding trading positions, and information derived from margin and clearing arrangements;
- Generally, only those responsible for exercising managerial oversight, such as the approved person's chief executive officer, chief operational officer, chief financial officer and senior officer responsible for overseeing the specialist member organization may have access to privileged information

concerning the specialist member organization;

- Confidential treatment of information derived from business transactions between the approved person and the issuer of any specialty stock;
- Separate books, records, and financial accounting;
- All applicable capital requirements met separately;
- Approved person's proprietary orders sent to the Exchange (other than those which are part of a cross to position a block of stock for a customer, or orders left with the specialist) must be handled by an unaffiliated broker;
- Specialist member organization cannot give any market information to a broker associated with the approved person that it would not give to any other broker. The specialist member organization cannot initiate the giving of information to an associated broker, but may respond to an request for such information;
- An individual can be associated with both the approved person and the specialist member organization only for managerial oversight purposes; and
- No individual associated with the approved person may act as Competitive Trader or Registered Competitive Market Maker in a specialty stock.

As indicated above, the "Guidelines" require that the approved person and the specialist member organization be formally structured as two separate entities to avoid, to the greatest extent possible, the perception that conflict of interest problems are present. The Exchange notes that the Securities and Exchange Commission, in another context, recently indicated its preference for the "separate subsidiary" concept in an rule-making proposal suggesting that banks seeking to engage in certain securities activities could most appropriately do so through separate broker-dealer subsidiaries. (SEC Release No. 34–20357). The Commission's philosophy in this regard is that the two entities should be regulated according to their functional activities, and that regulations appropriately imposed on a broker-dealer need not also be imposed on the parent bank. Similarly, the Exchange's basic philosophy as to the functional regulation concept is that regulations appropriately imposed on specialist member organizations need not also be imposed on an associated approved person, provided proper safeguards, as per the Guidelines, are in place.

The Exchange believes that the internal controls specified in the Guidelines will maintain the confidentiality of material market information and minimize potential conflicts of interest. Internal controls to accomplish these purposes are well-known in the securities industry and have proven effective in various contexts within broker-dealer organizations, and the Exchange believes that properly structured and monitored internal controls will prove similarly effective in minimizing conflicts of interest between an approved person and an associated specialist member organization.

Exchange Approval Required

An approved person and an associated specialist member organization seeking the exemptions discussed above provided by Rule 98 must submit to the Exchange a written statement describing how the respective organizations intend to meet the requirements specified in the Guidelines. The written statement must specify, at a minimum:

- The specific kinds of internal controls to be adopted to satisfy the conditions stated in paragraph (b) of the Guidelines.
- The audit and compliance procedures to be adopted to ensure that the internal controls are maintained.
- The identity of individuals in senior management positions of the approved person (and their titles/levels of responsibility) to whom information about the specialist member organization's trading activities and stock positions is to be made available, the purposes for which it is to be made available, and the format in which, and frequency with which, it is to be made available.
- If applicable, a statement of the duties, and reasons why dual affiliation is necessary, as to any individual who will serve as an officer, director, partner or employee of both entities.

If, after reviewing the written statement submitted, the Exchange determines that the organizational structure, internal controls, and compliance and audit procedures are acceptable under the Guidelines, the Exchange shall so inform the approved person and the associated specialist member organization, at which point the exemptions provided by Rule 98 should be available. Absent such prior written approval by the Exchange, the exemptions provided by Rule 98 should not be available. It is not mandatory that an approved person seek the exemptions provided by Rule 98. If it chooses not to do so, it would simply remain, as at present, subject to the restrictions in the Rules noted above.

To emphasize the Exchange's commitment to maintaining the integrity of its market under the functional regulation proposal, the Exchange's Board of Directors, in approving Rule 98, adopted a resolution stating that any breach of the Rule and the implementing Guidelines would be considered "an extremely serious matter." The Board directed the Exchange staff, in any case brought alleging a breach of Rule 98 and the Guidelines, to seek as a penalty the de-registration of the specialists in the specialist member organization's most "profitable" stocks. The Board further directed the Exchange staff, in any such case where the Exchange Hearing Panel found for the staff but declined to impose such penalty, to appeal the sufficiency of whatever penalty the Hearing Panel did impose to the Board.

The "Popularizing" Exemption

An approved person entitled to the exemptions provided in Rule 98, would be permitted, as specified in Rule 113.20 as proposed to be amended, to popularize a specialty stock, if it makes appropriate disclosures that an associated specialist makes a market in the stock, may have an inventory position in the stock, and may be on the opposite side of public orders executed on the Floor of the Exchange in the stock. The Exchange believes that this approach should protect investors by providing them with sufficient information as to the existence of a possible conflict of interest. In the Exchange's view, this approach is entirely consistent with the underlying philosophy of the Securities Exchange Act, which places emphasis on providing adequate *disclosures* to investors.

Business Transactions With the Issuer of a Specialty Stock

The Exchange is proposing to amend Rule 460 to clarify the applicability of that Rule to an approved person of a specialist member organization, and to enable an approved person entitled to the exemptions provided by Rule 98 to engage in business transactions with an issuer of a specialty stock generally, and to engage in underwritings of a specialty stock to the extent permitted in Rule 460.20

Essentially, an approved person entitled to the exemptions provided by Rule 98 would be permitted to act as member of an underwriting syndicate or selling group, but not as a managing underwriter, for a distribution of equity or convertible securities of an issuer in whose securities an associated specialist is registered. When the

approved person is acting as a syndicate or selling group member as permitted, the associated specialist member organization must "give up the book" to another specialist member organization, which shall act as a full-time relief specialist for the period during which SEC Rule 10b–6 is applicable to the regular specialist member organization. The full-time relief specialist member organization would trade for its own account, not for the account of the regular specialist member organization, in meeting marketmaking responsibilities under Exchange Rules during the applicable Rule 10b–6 period. The approved person may act as an underwriter, in any capacity, for a distribution of nonconvertible debt securities of an issuer in whose securities an associated specialist is registered, and the specialist member organization would not be required to "give up the book" in such instance.

The Exchange is concerned that the possible public perception of a potential conflict of interest between an approved person, acting as underwriter, and its associated specialist member organization, acting as marketmaker, may result in some questioning of the integrity of trading on the Exchange in the security being distributed. The Exchange believes that any such public perception in this regard is likely to focus most particularly on instances where the approved person is acting as a managing underwriter, and thus has a greater financial stake in the successful outcome of the distribution than a syndicate or selling group member. To minimize any possible concerns that might arise in this area, the Exchange has determined not to provide exemptive relief at this time under the functional regulation proposal for an approved person to act as a managing underwriter of a stock, or security convertible into that stock, in which an associated specialist is registered.

The Exchange does believe, however, that exemptive relief as to such underwritings of a stock, or a security covertible into that stock, is appropriate where the approved person is acting only as a member of a syndicate or selling group. In such instances, the approved person's risk/reward is usually a good deal less than that of the managing underwriter. Thus, the Exchange believes that public perception of a potential conflict of interest would not be likely to arise in such cases, to any significant degree, particularly since participation in underwriting syndicates or selling groups is generally understood to be a common business practice for most major diversified member organizations. In any event, to the extent there is any public perception of a conflict of interest in this regard, the Exchange believes that SEC Rule 10b–6, which calls for participants in a distribution of securities to be "out of the maket" for specified periods, should be sufficient to address the matter. As noted above, Rule 10b–6 would require the specialist member organization associated with the approved person acting as syndicate or selling group member to "give up the book" during the applicable Rule 10b–6 period. The effect of Rule 10b–6 is simply that a specialist member organization would not be "at the heart of the market" for the critical period when potential conflicts of interest are most likely to arise.

The Exchange does not believe that an approved person entitled to the exemptions provided by Rule 98 should be subject to any restrictions on the scope of its underwriting activity as to distributions of nonconvertible debt securities. Specialists are not registered in such debt issues on the Exchange, and are obviously not in a position, as specialists, to trade to influence the price of the debt security being distributed, and, in any event, the price movements in such debt security are not related to price movements in the issuer's stock or securities convertible into that stock. Thus, the Exchange does not believe that there are any real or perceived conflicts of interest between an approved person and an associated specialist member organization in this situation.

The Act and Commission Rules Promulgated Thereunder

The Exchange notes that a number of provisions of the Act and of the rules promulgated thereunder by the Commission include language that might, under ordinary circumstances, justify the interpretation that a parent organization and its controlled subsidiary should be considered one and the same organization for purposes of the provision. For example, several such provisions prohibit any person from engaging in specified activity "directly or indirectly". Such language might ordinarily be thought to require that activity of the kind prohibited that is engaged in "directly" by the parent, or "indirectly" by the parent through its controlled subsidiary, must be combined for the purpose of determining whether the parent has violated the provision. Other provisions require a person to take certain action, such as the filing of a report with the Commission, whenever the person, "directly or indirectly", acquires the "beneficial ownership" of certain securities. Still others refer to the "net" securities position of a person without indicating whether or not the positions of the parent and its controlled subsidiary are to be aggregated in determining the parent's "net" position.

The Exchange is in the process of attempting to identify the provisions of rules promulgated under the Act that it believes should be reviewed as to their potential applicability should an approved person acquire control of a specialist member organization pursuant to the functional regulation proposal. The Exchange hopes to discuss this matter with the Commission's staff in order to be familiar with the staff's position with respect to these provisions. In general, however, the Exchange believes that, for the purposes of the Act and the rules promulgated thereunder, where the exemptions provided for in Rule 98 are available, an approved person that controls a specialist member organization and the specialist member organization should be viewed as unaffiliated organizations. Each separately would be subject, of course, to the provisions of the Act and the rules thereunder, but their activities and securities positions should not be required to be aggregated. The Exchange believes that this treatment is justified as a direct result of the formal organizational separation and the internal controls that will be required by the Exchange's functional regulation proposal. Indeed, it would be inconsistent with that proposal to treat the approved person parent and its controlled specialist member organization as one and the same. Such an interpretation would require that the separation that is sought to be assured by the Exchange's functional regulation proposal be breached routinely in order for the approved person and its controlled specialist member organization to be sure that on an aggregated basis the approved person or the specialist member organization is not violating an Act provision or regulation.

Market Surveillance

The Exchange believes that the functional regulation proposal contains sufficient safeguards that satisfactorily address concerns dealing with possible market manipulation and potential conflicts of interest. In addition, the Exchange wishes to emphasize that the overall "surveillance environment" today is much more sophisticated than it was when the Rules for which exemptive relief is being proposed herein were first adopted. The Exchange has both on-line and off-line automated

surveillance capability, and monitors trading on both a real-time and next-day basis. The Commission itself recently acknowledged the significant technological changes with respect to market surveillance when it terminated its Market Oversight and Surveillance System project. Central among the Commission's reasons for concluding the project were the Exchange's development of the Central Collection and Reporting System (with other self-regulatory organizations) and the Intermarket Surveillance Information System, and its substantial progress towards achieving a complete and accurate audit trail. SEC, *Final Report to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce regarding the Market Oversight and Surveillance System (January 15, 1985).*

The Exchange believes that today's sophisticated surveillance capabilities, coupled with member organizations' audit and compliance procedures, provide sufficient means for detecting unusual trading activity by specialist member organizations and any approved persons associated with them. In the Exchange's view, the functional regulation proposal is thus a regulatorily sound approach for facilitating the entry into the specialist business of diversified member organizations.

Benefits of the Functional Regulation Proposal

As noted above, the Exchange believes that the functional regulation proposal responds, in a regulatorily viable manner, to the interest expressed by a number of member organizations in entering the specialist business without being subject to undue restrictions on their other lines of business. In addition to satisfying this interest of member organizations, the functional regulation proposal has two major benefits for the Exchange market in general:

(1) It will strengthen the capital base of the auction market system.

(2) It will stimulate competition among marketmakers on the Exchange.

Capital. Large diversified organizations have the capital to expand their businesses, and broad experience with all aspects fo the modern financial services industry. If such organizations enter the specialist business, they can reasonably be expected to provide additional capital for marketmaking on the Exchange. Such additional capital, in turn, should add to the depth and liquidity, and thereby the overall quality, of the Exchange's market.

The Exchange notes that while specialists' capital is, on the whole, more than adequate to meet the needs of today's markets, some concerns have been raised that the increasing "institutionalization" of the market, and the increasing volatility of trading, will require specialists to commit greater capital, and be willing to assume some additional market risk in accommodating large-size orders and minimizing short-term price fluctuations, in the future. The current specialist system would benefit significantly from the additional capital contributions of large diversified organizations which have the financial resources to devote to specializing and, because of their diversified nature, have a somewhat greater ability to assume risk than an organization whose business consists exclusively of specializing. To help ensure that any such additional capital contributions are used for strengthening the overall capital base of the Exchange's auction market system, paragraph (b)(vi) of the Guidelines provides that the specialist member organization's capital must be dedicated exclusively to specializing activities, and must not be at risk for any liabilities of the approved person.

Competition. The functional regulation proposal can be expected to stimulate and enhance competition within the specialist community and attract new specialist "talent" to the Floor. Today, specialist memer organizations compete to be allocated the securities of companies that become newly-listed on the Exchange. Such allocations, in many ways a "lifeblood" of the specialist business, are awarded on the basis of demonstrated, high-quality marketmaking performance. Well-capitalized diversified organizations can be expected to add to this competition for new allocations, and such enhanced competition should lead to a higher level of overall market quality on the Exchange.

In addition, as noted in Item 4 below, the functional regulation proposal will remove a burden on competition, not justified under the Act, as between the Exchange and other market centers.

Statutory Basis

Since, as noted above, the entry into the specialist business of diversified organizations is expected to have beneficial effects on the overall Exchange market, the proposed rule changes can be said to promote the purposes of section 6(b)(5) of the Act in that they "remove impediments to and perfect the mechanism of a free and open market . . . and, in general, protect investors and the public interest."

By permitting diversified member organizations to enter a business as to which they are currently effectively excluded by regulation, the proposed rule changes promote the purposes of section 6(b)(5) in that they "are not designed to permit unfair discrimination between . . . brokers or dealers . . ." In this regard as well, the proposed rule changes promote the purposes of section 6(b)(8) in that they remove a "burden on competition" as to specializing on the Exchange not necessary to further the purposes of the Act.

By removing a burden on competition, as discussed in Item 4 below, as between the Exchange and other market centers, the proposed rule changes promote the purposes of section 11A(a)(1)(C)(ii), which calls for "fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets."

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not justified in furtherance of the purposes of the Act. In fact, as discussed above, by facilitating the entry into the specialist business by diversified organizations, the proposed rule changes can be said to enhance competition in marketmaking on the Exchange.

The Exchange notes further that the functional regulation proposal can be said to remove a burden on competition in that, today, diversified organizations can enter the specialist business, either directly or by becoming associated with a specialist organization, on a regional exchange without being subject to many of the regulatory restrictions that apply to specializing on the Exchange, including the restrictions for which exemptive relief would be provided by the functional regulation proposal. Quite simply, a diversified broker-dealer firm can today enter the specialist business on a regional exchange without being subject to regulations that would impede its other business activities. In fact, several major diversified organizations have recently entered the specialist business on regional exchanges. The Exchange believes that the disparity in regulation has the effect of directing diversified firms that want to enter the specialist business, but which do not want to disrupt their other lines of business, to become specialists in other markets rather than on the Exchange. In the Exchange's view, this disparity in regulation thus effectively imposes a two-fold burden on competition: as between the Exchange and other market centers, and as between existing

specialist member organizations on the Exchange and diversified organizations that wish to enter the specialist business in this market. The Exchange believes that the functional regulation proposal, by providing exemptive relief from certain specialist regulations, will effectively provide a "fairer field of competition" in both regards, and thereby remove a burden on competition that is not justified under the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

In a Special Membership Bulletin dated July 26, 1984, the Exchange described a functional regulation proposal similar in basic concept and in most "technical" respects to the one being filed herein, and requested comment from members and member organizations on the desirability of the Exchange's adopting the proposal, and the practicality of the particular "technical" details. The Exchange received 12 letters, on behalf of 13 commentators, in response to this Special Membership Bulletin. Nine of the commentators, including four major diversified firms, Merrill Lynch, Dean Witter, Paine Webber, and Prudential-Bache, supported the functional regulation concept. Three commentators expressed opposition to the concept. One commentator, the Security Industry Association, did not take a formal position on the matter, but expressed several concerns that are noted below.

Those who commented in favor of the functional regulation proposal generally believed that it would (i) satisfactorily address potential conflict of interest concerns; (ii) strengthen the capitalization of the specialist system and add to the depth and liquidity of trading on the Exchange; and (iii) enhance competition among marketmakers on the Exchange.

Those who commented in opposition to the functional regulation proposal contended generally that (i) it would not satisfactorily address conflict of interest concerns; (ii) it might result in an undue concentration of member organizations in the specialist business on the Exchange; and (iii) it might result in institutional investors directing order flow in a particular stock only to a member organization associated with the specialist member organization registered in that stock. For the reasons stated in its Rule 19b–4 filing with the Commission, the Exchange believes that its functional regulation proposal does satisfactorily address conflict of interest concerns, and will not necessarily result in either an undue concentration of member organizations in the specialist business on the Exchange, or any monopolization of institutional order flow in a stock by a member organization associated with the specialist member organization registered in that stock.

The comments received on the functional regulation proposal are summarized in detail in the Exchange's Rule 19b–4 filing with the Commission, along with the Exchange's responses to particular questions and issues raised by each commentator.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–16178 Filed 7–5–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–22186; File No. SR–NYSE–85–23]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Material Designated as Paragraphs 2128A and 2128B of the Exchange Rules Regarding Clarification of the Definition of the Term "Sales Sheet" as an Official Exchange Publication

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule changes would define the term "sales sheet" contained in footnotes to Paragraphs 2128A and 2128B of the Exchange Rules as the list of transactions published by The New York Stock Exchange or its authorized agents.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The purpose of the proposed rule changes is to revise the definition of the term "sales sheet"

contained in footnotes to Paragraphs 2128A and 2128B of the Exchange Rules.

The proposed rule changes are necessary in order to reflect the Exchange's intent that the definition of the term "sales sheet" not be unduly restricted to a list of transactions published by one named corporate entity. The footnote, as presently worded, gives one publisher, Francis Emory Fitch, Inc., a unique and exclusive status.

The proposed revision would redefine "sales sheet" to en- compass the list of transactions published by the New York Stock Exchange or its authorized agents, and would thus eliminate the exclusive status afforded to one publisher by the existing rule.

(2) *Statutory Basis.* The statutory basis for the proposed rule changes are section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("The Act") which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

These rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 1, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16183 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22174; File No. SR-OCC-85-8]

Self-Regulatory Organizations; Options Clearing Corp.; Proposed Rule Change

Options Clearing Corporation ("OCC") on May 29, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934. OCC's proposal would amend Article VI, section 7 of OCC's By-Laws and section 7 of OCC's Restated Participant Exchange Agreement ("PEA") to clarify the responsibility for losses resulting from a Participant Exchange's untimely submission of a matched trade report to OCC. The Commission is publishing this notice to solicit comments on the proposed rule change.

Under OCC's current By-Laws, OCC is not obligated on any Exchange transaction until it accepts the transaction [1] and such acceptance is subject to OCC's prior receipt of a matched trade report reflecting the transaction.[2] OCC's proposal would amend Article VI, section 7 of its By-Laws to require that OCC's obligation to accept an Exchange transaction is subject to receipt of a matched trade report before such time as OCC specifies.[3] Additionally, the proposal would provide that OCC would not be obligated to any purchaser or writer for losses resulting from an Exchange's untimely filing of a matched trade report or from any error in a matched trade report as filed.

OCC's proposal would also amend section 7 of the PEA. That Section currently provides that a Participant Exchange's obligation to indemnify OCC for losses regulating from untimely reports does not apply to a delay caused by a Clearing Member in the filing of trade information with the Exchange. Under OCC's proposal, this provision would be deleted.

OCC's believes the proposed rule change is necessary because a Participating Exchange's failure to submit a timely matched trade report to OCC could expose Clearing Members to financial loss. If OCC delays its nightly processing to accommodate receipt of an untimely report, OCC might be unable to deliver its own reports to Clearing Members, including assignment notices, until after the opening of trading on the day after trade date. In this situation, Clearing Members carrying cash-settled options could incur losses.[4] Alternatively, if OCC proceeds with its nightly processing before receiving the untimely report, exercise notices for long positions opened on the previous day would be rejected because those positions would not yet appear on OCC's books. When OCC subsequently processes the untimely report, the holders of the long positions, instead of

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[1] OCC By-Law Article VI, Section 5.

[2] OCC By-Law Article VI, Section 7.

[3] OCC's Restated Participant Exchange Agreement between OCC and its five Participant Exchanges provides that each Exchange must submit to OCC a daily report of matched trades prior to such time as OCC may prescribe, but not earlier than 7:00 P.M. Central Time on trade date. OCC requires Participant Exchanges to submit those reports to OCC by 1:00 A.M. Central Time the day after trade date.

[4] For example, when the short leg of an index option spread is assigned, the assigned Clearing Member is exposed to market risk on the long leg until that leg is closed out or until the short leg is re-opened. If that Clearing Member is not notified of the assignment until after the opening of trading on the next day, it could sustain a loss on the long leg if the market moves adversely between the opening and the time when the Clearing Member learns of the assignment.

being exercised, still would be holding open positions and, consequently, would be subject to market risk.[5] Conversely, because OCC would have no record of closing purchases, exercise notices might be assigned to short positions that the writers had attempted to close. Thus, when the late report is processed, the closing purchases would be converted to opening purchases which entail market risk.

OCC believes that the proposed rule change is consistent with section 17A of the Act in that it promotes the safeguarding of securities and funds in OCC's custody or for which OCC is responsible. OCC believes that the proposal will protect OCC against potential financial exposure from events over which OCC has no control.

Copies of all documents relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. and at OCC's principal office.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, please send six copies of your comments to the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, by July 29, 1985. Please refer to File No. SR–OCC–85–8.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

June 26, 1985.

[FR Doc. 85–16180 Filed 7–5–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22193; File No. SR–PSE–85–11]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc. ("PSE"); Order Approving Proposed Rule Change

The Pacific Stock Exchange, Inc. ("PSE") submitted a proposed rule change on May 20, 1985, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to exempt options on Convergent Technologies, Inc. ("CVGT") an over-the-counter ("OTC") stock, from the exchange's listing standards based on price.[3] The Commission solicited comments on the proposed rule change, but received none.[4]

Currently, PSE Rule VI, section 12(a)(iv) provides, in pertinent part, that the exchange may list options on those underlying securities for which the market price per share of the underlying security shall have been at least $10.00 on each business day of the three calendar months preceding the date of selection. Because of the lower per share market price of CVGT stock, PSE's current listing standards would prohibit an overlying option from being listed on the exchange.[5]

Nevertheless, in its filing, PSE recites the Commission's previously stated belief that it might be appropriate to permit options trading on stocks such as CVGT, which has a lower per share market price than required by the exchange's current listing standards.[6] In this connection, the Commission indicated that the substantial trading volume and exceptionally high market values of OTC stocks such as CVGT appear to be sufficient to protect against the speculative abuse or manipulative potential which the price per share criterion is designed to address.[7]

PSE further states that it believes the proposed rule change is consistent with the provisions of the Act and, in particular, section 6(b)(5) thereof, in that the rule change will permit investors in CVGT stock to obtain the hedging benefits of trading standardized options in an auction market and that the capitalization, volume, and number of shareholders of CVGT stock counterbalance the lower per share market price of CVGT stock.

For the reasons stated above, and in Securities Exchange Act Release No. 22026, the Commission finds that PSE's proposal to exempt CVGT securities from the exchange's listing and delisting criteria regarding price is consistent with Section 6 of the Act.[8]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 1, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–16179 Filed 7–5–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22191; SR–Phlx–85–14]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Approval; Relating to the Extension of Applicability of Allocation and Specialist Evaluation Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 5, 1985 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. Text of Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx") or ("Exchange") hereby proposes to extend the applicability of its allocation and evaluation rules (Rules 500 through 506) through September 30, 1985.[1] These rules govern

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[5] That risk would be substantial to holders of options on equity securities that were the subject of a tender offer when the previous day was the expiration date of that offer.

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b–4 (1984).

[3] Recently, the Commission approved a PSE proposed rule change to permit the trading on PSE of standardized options on securities that are not listed and registered on a national securities exchange under section 12(a) of the Act but are designated as Tier I National Market System Securities pursuant to Rule 11Aa2–1(b)(1) of the Act. *See* Security Exchange Act Release No. 22103 (May 31, 1985), 50 FR 24076 (June 7, 1985).

[4] The proposal was noticed for comment in Securities Exchange Act Release No. 22070 (May 22, 1985), 50 FR 23095 (May 30, 1985).

[5] In its filing, PSE indicates that its delisting standards also would jeopardize listing CVGT options.

[6] *See* Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310, 20325 n.150 (May 15, 1985), and accompanying text.

[7] *Id.*

[8] The Commission similarly approved a proposed rule change submitted by the Chicago Board Options Exchange, Inc. ("CBOE") to exempt MCI Communications ("MCI") from CBOE's listing and delisting standards based on price. *See* Securities Exchange Act Release No. 22154 (June 17, 1985) 50 FR 25809 (June 21, 1985).

As a general matter, however, the Commission believes that such ad hoc listings of additional options in the absence of amendments to self-regulatory organizations' ("SROs") general eligibility criteria for underlying securities are inappropriate. In this regard, the Commission understands that the options SROs are working together to develop uniform listing criteria that would apply generally to CVGT, MCI, and other similarly situated underlying securities. The Commission expects that such revised criteria will be submitted by the exchanges in the near future.

[1] *See* letter from Philip Becker, Vice President and Associate General Counsel to Michael Cavalier, Branch Chief, Division of Market Regulation, dated June 10, 1985.

the Exchange's pilot program providing for evaluations of and stock allocations to Phlx specialists, alternate specialists and registered options traders.

These rules were first approved by the Commission on October 1, 1982 and were to continue in effect only through October 1, 1984. Under Rule 506, these rules can be extended only pursuant to further approval by the Commission. Most recently, in November 1984, the Commission granted an extension until April 1, 1985.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to extend the Exchange's allocation and evaluation pilot program to September 30, 1985 to enable it to study alternative rule proposals regarding these topics.

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 ("Act") in that it will facilitate transactions in securities and promote just and equitable principles of trade.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act in order to permit the pilot procedures, already in place, to be extended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the pilot program was scheduled to terminate on April 1, 1985. The Commission believes that it is appropriate to extend the Exchange's allocation and evaluation pilot program while the Phlx continues to evaluate its procedures and consider alternative proposals prior to requesting permanent approval of its rules.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted July 29, 1985.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16177 Filed 7-5-85; 8:45 am]

BILLING CODE 8010-01-M

[3] *See* Securities Exchange Act Release No. 21460, (November 2, 1984); 49 FR 44660, (November 13, 1984).

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.); Week Ended June 28, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a Show-Cause Order, a Tentative Order, or in appropriate cases a Final Order without further proceedings.

Date filed	Docket No.	Description
June 28, 1985	43225	Best Airlines, Inc., c/o William L. Howard, Suite 1200, 1000 Connecticut Avenue, NW., Washington, D.C. 20036. Application of Best Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property and mail as follows: Between the co-terminals, Hartford, CT, and Philadelphia, PA and the terminal, Nassau, Bahamas. Conforming Applications, Motions to Modify Scope and Answers may be filed by July 26, 1985.
June 28, 1985	43184	Atlantic Gulf Airlines, c/o Stephen L. Gelband, Hewes, Morella, Gelband & Lamberton, 1010 Wisconsin Ave., NW., Washington, D.C. 20007. Additional information filed with respect to the application of Atlantic Gulf Airlines for foreign air transportation. Answers may be filed by July 26, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-16159 Filed 7-5-85; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB May 30, 1985 to June 19, 1985

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period May 30, 1985—June 19, 1985 to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, DC 20590, telephone (202) 426–1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from May 30, 1985 to June 19, 1985:

DOT No: 2580
OMB No: New
By: United States Coast Guard
Title: Vessel Reporting Requirements
Form: None
Frequency: On occasion
Respondents: The person in charge of a vessel regulated under Title 46 CFR.

Need/Use: These reports are needed to increase the likelihood of timely assistance being available to vessels in distress, especially those that cannot communicate their destress to the vessel's owner or others in a position to help. The information will be used by Coast Guard to determine if the vessel reported is in distress, and if so, take action to provide needed assistance.

DOT No: 2581
OMB No: New
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 541, Federal Motor Vehicle Theft Prevention Standard
Forms: None
Frequency: Once per car
Respondents: Manufacturers of new cars and replacement parts.

Need/Use: Manufacturers of certain passenger motor vehicles are required to mark major component parts of high theft lines with the Vehicle Identification Number (VIN) or derivative thereof. Manufacturers of certain replacement major parts must mark these parts with the letter "R".

DOT No: 2582
OMB No: 2133–0018
By: Maritime Administration
Title: 46 CFR Part 298—Title XI Obligation Guarantees
Forms: MA–163 and Attachments
Frequency: On Occassion
Respondents: Ship Owners and Ship Operators.

Need/Use: Applicants for assistance must provide additional information for MARAD evaluation of their proposed projects.

DOT No: 2583
OMB No: UPWP (2132–0031) TIP (2132–0529)
By: Urban Mass Transportation Administration
Title: Unified Planning Work Program and the Transportation Plan and Transportation Improvement Program
Forms: None
Frequency: Annually/Biennially
Respondents: State, local governments and Metropolitan Planning Organization (MPO)

Need/Use: UPWP describes transportation planning activities to be funded during the next two year period using Federal Highway Administration and Urban Mass Transportation Administration planning funds. This information is used for the grant review and approval process. TIP/AE and Transportation Plan is used by State and MPO's as the basis for making investment decisions and as a management tool regarding the use of Federal and Non-Federal capital funds.

DOT No: 2584
OMB No: 2106–0041
By: Civil Aeronautics Board (OST/P–40)
Title: Part 204—Data to Support Fitness Determinations
Forms: None
Frequency: On occasion
Respondents: Air Carriers

Need/Use: This information sets forth the fitness data that must be submitted by applicants for certificate authority, including those proposing a substantial change in operations; and by commuter carriers, including those providing or proposing to provide Essential Air Service.

DOT No: 2585
OMB No: 2125–0025
By: Federal Highway Administration
Title: Highway Safety Improvement Program and Priorities
Forms: None
Frequency: Recordkeeping/Annually
Respondents: State highway agencies

Need/Use: For the Federal Highway Administration to evaluate its overall highway safety improvement program, and to determine the use of Federal-aid funds for projects proposed by States, and to comply with Congressional reporting requirements.

DOT No: 2586

OMB No: 2125–0010
By: Federal Highway Administration
Title: Bid Price Data
Forms: PR–45
Frequency: On occasion
Respondents: State Highway Agencies

Need/Use: For FHWA to monitor changes in purchasing power of the Federal-aid highway construction dollar, so that changes in highway construction prices can be measured and funding level recommendations to Congress can be justified.

DOT No: 2587
OMB No: 2127–0501
By: National Highway Traffic Safety Administration
Title: Incentive Grants Criteria for Alcohol Traffic Safety Program
Forms: None
Frequency: Annually
Respondents: States

Need/Use: Alcohol Incentive Grant Program is amended to include (1) projects to combat drugged driving as one criteria a state can use to qualify for an incentive grant, (2) encouraging States to enact laws specifying minimum sentencing standards for persons of drunk driving by establishing an additional grant.

DOT No: 2586
OMB No: 2120–0082
By: Federal Aviation Administration
Title: Compliance Plan—FAR Part 91, Subpart E
Forms: None
Frequency: Annually
Respondents: Operators of aircraft operated under FAR Parts 91, 121, 123, 125, covered by Subpart E

Need/Use: The Federal Aviation Act of 1958. Section 611 authorizes the issuance of regulations to control aircraft noise. 14 CFR 91 publishes requirements for noise abatement. Information collected shows air carrier noise compliance plans and statutes.

DOT No: 2589
OMB No: 2130–0505
By: Federal Railroad Administration
Title: Steam Locomotive Inspection
Forms: None
Frequency: Recordkeeping, on occasion, monthly and annually
Respondents: Railroads

Need/Use: Inspections are required for steam locomotives to detect defects and assure compliance with the Locomotive Inspection Act.

Issued in Washington, DC, on July 1, 1985.

Jon H. Seymour,

Acting Assistant Secretary for Administration.

[FR Doc. 85–16160 Filed 7–5–85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92–463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on July 30 and July 31, 1985 of the following debt management advisory committee: Public Securities Association, U.S. Government and Federal Agencies Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on July 30 and the preparation of a written report to the Secretary of the Treasury on July 31, 1985.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92–463, and vested in me by Treasury Department Order 101–5, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92–463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552(b)(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: July 2, 1985.

John J. Niehenke,

Acting Assistant Secretary (Domestic Finance).

[FR Doc. 85–16196 Filed 7–5–85 am]

BILLING CODE 4810-25-M

Debt Management Advisory Committee; Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, enacted October 6, 1972, 5 U.S.C. App. I) the Secretary of the Treasury has approved continuation of the following industry committee as an advisory committee:

Title: (1) Government and Federal Agencies Securities Committee of the Public Securities Association.

Purpose: The committee is utilized by the Secretary of the Treasury and his staff for advice in carrying out Federal financing and public debt management. It considers commercial and financial information, advises the Secretary of the Treasury and his staff and makes reports and recommendations.

Statement of Public Interest: The membership of this committee represents a cross section of the financial community. The members are intimately acquainted with commercial and financial information and day-to-day market factors relevant to Treasury debt management operations. It is in the public interest to insure that the Secretary of the Treasury and his staff have this supplemental information in order to manage the public debt.

Authority for this committee will expire on June 11, 1987.

Dated: July 2, 1985.

John J. Niehenke,

Acting Assistant Secretary (Domestic Finance).

[FR Doc. 85–16197 Filed 7–5–85; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 85-111]

Treatment of Interest Charges in the Customs Value of Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Customs position.

SUMMARY: This document serves as notice to the general public that Customs is changing its position regarding the treatment of interest charges in the customs value of imported goods. A recent decision by the Committee on Customs Valuation of the General Agreement on Tariffs and Trade (GATT) indicates that interest charges included in the price actually paid or payable for imported merchandise are not to be considered as part of the customs value where: (1) The interest charges are identified separately from the price of the goods; (2) the financing arrangement was in writing; and (3) where required, the buyer can demonstrate that the goods undergoing appraisement are actually sold at the price declared, and the claimed rate of interest does not exceed the level for such transaction prevailing in the country where and when the financing was provided. In view of this decision, Customs has reconsidered its prior administrative decisions regarding the dutiability of interest payments, and has determined that under the Trade Agreements Act of 1979 (Pub. L. 96-36) most interest payments are not part of the dutiable value of merchandise provided certain criteria are met.

EFFECTIVE DATE: This decision is retroactive to April 25, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce N. Shulman, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1984, the Committee on Customs Valuation of the General Agreement on Tariffs and Trade (GATT) adopted a decision regarding the treatment of interest charges in the customs value of imported goods (reprinted below as Annex A). The decision indicates that interest charges included in the price actually paid or payable for imported merchandise are not to be considered as part of the customs value interest where:

A. The interest charges are identified separately from the price actually paid or payable for the goods;

B. The financing arrangement in question was made in writing;

C. Where required by Customs, the buyer can demonstrate that

—The goods undergoing appraisement are actually sold at the price declared as the price actually paid or payable, and

—The claimed rate of interest does not exceed the level for such transaction prevailing in the country where and when the financing was provided.

Prior to the adopton of the above decision, in various administrative determinations the U.S. Customs Service had taken the position that only those interest payments which were part of an "overall financing arrangement," or those which were paid by a buyer to a third party unrelated to a seller and which did not accrue to the seller's benefit, were not dutiable. All other interest payments associated with imported goods, including those paid to a seller and relating to the purchase of specific goods, were considered dutiable.

In view of the GATT decision, the Customs Service decided to reconsider its position regarding the dutiability of interest payments. Our reevaluation resulted in a determination that whether or not interest payments are included in the price actually paid or payable for merchandise, they should be considered nondutiable provided that criteria based on the GATT decision were met. Accordingly, Customs personnel were informed on April 25, 1985, through the issuance of the memorandum reprinted below, that our position regarding the dutiability of interest payments had been changed.

On April 26, 1984, the Committee on Customs Valuation of the General Agreement on Tariffs and Trade (GATT) adopted a decision regarding the treatment of interest charges in the customs value of imported goods. This Committee administers the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the GATT Valuation Agreement), to which the United State is a signatory, and which was enacted into domestic legislation in the Trade Agreements Act of 1979 (Pub. L. 96-36) (the TAA). In view of the above decision, Customs Service Headquarters has reassessed its position previously taken in TAA rulings 14, 31 and 43 with respect to the dutiability of interest charges. In brief, our previous rulings held that only those interest payments which were part of an "overall financing arrangement" (TAA 43), or those which were paid by a buyer to a third party unrelated to a seller and which did not accrue to the seller's benefit (TAA 31) were not dutiable. All other interest payments associated with imported goods, including those paid to a seller and relating to the purchase of specific goods (TAA 14 and 31) were considered dutiable.

Our experience under the above rulings indicated that it was impossible in many instances to distinguish interest payments relating to the purchase of specific goods from interest payments made as a part of an overall financing arrangement. More importantly however, we have reevaluated our prior determinations interpreting the TAA regarding the dutiability of interest payments, and have concluded that interest payments, whether or not included in the price actually paid or payable for merchandise, should not be considered part of dutiable value provided the following criteria are satisfied:

A. The interest charges are identified separately from the price actually paid or payable for the goods;

B. The financing arrangement in question was made in writing;

C. Where required by Customs, the buyer can demonstrate that

—The goods undergoing appraisement are actually sold at the price declared as the price actually paid or payable, and

—The claimed rate of interest does not exceed the level for such transaction prevailing in the country where, and at the time, when the financing was provided.

Inquiries regarding the criteria in "C" shall be considered satisfied, *inter alia*, if the claimed charges for interest and principal are consistent with those usually reflected in sales of identical or similar merchandise. If the claimed amount of interest is inconsistent with that usually reflected in sales of identical or similar merchandise, or is inconsistent when compared to the level for such transaction prevailing in the country where, and at the time when the financing was provided, only that amount which is consistent shall be allowed as non-dutiable, the excess being disallowed.

This decision also applies to entries of merchandise appraised under a method other than transaction value. Additionally, this decision shall apply to all entries under Customs jurisdiction on which liquidation has not become final, including currently unliquidated entries and protested entries which have not been finally disposed of.

Pursuant to the above memorandum issued to its field personnel on April 25, 1985, Customs will now consider interest payments satisfying the criteria in the

memorandum not to be part of the customs value of imported merchandise.

Annex A—General Agreement on Tariffs and Trade; Committee on Customs Valuation; Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods

Adopted by the Committee on April 26, 1984

The Parties to the Agreement on Implementation of Article VII of the GATT agree as follows:

Charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the customs value provided that:

(a) The charges are distinguished from the price actually paid or payable for the goods;

(b) The financing arrangement was made in writing;

(c) Where required, the buyer can demonstrate that

—Such goods are actually sold at the price declared as the price actually paid or payable, and

—The claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when the finance was provided.

This Decision shall apply regardless of whether the finance is provided by the seller, a bank or another natural or legal person. It shall also apply, if appropriate, where goods are valued under a method other than the transaction value.

Each party shall notify the Committee of the date from which it will apply the Decision.

Robert P. Schaffer,

Acting Commissioner of Customs.

Approved June 20, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-16139 Filed 7-5-85; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

Availability of Application Packages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Availability of Application Packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 1986 Tax Counseling for the Elderly program.

DATES: Application packages are available from IRS at this time. The deadline for submitting an application package to the IRS for the 1986 Tax Counseling for the Elderly program is August 8, 1985.

ADDRESS: Application Packages may be requested by contracting: Internal Revenue Service, Tax Counseling for the Elderly Program, Taxpayer Service Division D:R:T:I, Room 7217, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Johnell Hunter of the Taxpayer Service Division, Internal Revenue Service, 1111 Constitution Ave., N.W., Room 7215, Washington, DC 20224, (202) 566-4904, not a toll-free call.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly program is contained in section 163 of the Revenue Act of 1978 (92 Stat. 2810). Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the Internal Revenue Service authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Applications are being solicited before the FY 1986 budget has been approved and, therefore, cooperative agreements will be entered into subject to funds being appropriated. Subject to funding, volunteers may receive reimbursement for expenses incurred in training and in providing tax return assistance, and sponsoring agencies and organizations may receive reimbursement for administrative expenses. The Tax Counseling for the Elderly program is referenced in the Catelog of Federal Domestic Assistance in Section 21.006.

Walter M. Alt,

Director, Taxpayer Service Division.

[FR Doc. 85-16028 Filed 7-5-85; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 130
Monday, July 8, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Equal Employment Opportunity Commission	1
Federal Communications Commission	2
Federal Maritime Commission	3
Federal Trade Commission	4, 5
Securities and Exchange Commission	6
Uniformed Services University of the Health Sciences	7

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, July 15, 1985, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

Closed

1. Litigation Authorization, GC Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: July 3, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued July 3, 1985.

[FR Doc. 85-16299 Filed 7-3-85; 3:05 pm]

BILLING CODE 6750-06-M

2

FEDERAL COMMUNICATIONS COMMISSION

July 5, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, July 12, 1985, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—Title: Tariff F.C.C. No. 270, 1.544 Mpbs Channels for connection with interstate communications systems. Summary: The Commission will consider applications for review of a decision by the Common Carrier Bureau that intraexchange private line channels used for both interstate and intrastate communications must be furnished under an F.C.C. tariff.

Common Carrier—2—Title: In the Matter of International Communication Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRUs in International Facilities and Assignment of Data Network Identification Codes. Summary: The Commission will consider comments filed in response to its Notice of Inquiry in this proceeding.

Mass Media—1—Title: Amendment of Part 73 of the Commission's Rules Regarding Network Affiliation Contracts (Docket No. 85-5). Summary: The Commission will consider a *Report and Order* which would eliminate the filing of network affiliation contracts with the Commission for radio licensees, but retain the requirement for television licensees that affiliate with national networks.

Mass Media—2—Title: Amendment of AM Technical Rules; Docket No. 84-752. Summary: The Commission will consider a Further Notice of Proposed Rule Making in Docket No. 84-752 inviting comments on rule amendments that would increase the power of Class IV AM stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands, eliminate the distinctions between Class III-A and Class III-B AM stations, and prescribe the method for using Figure 1a of Section 73.190(r) of the rules to calculate the field strength of skywave signals within 100 km of the transmitter.

Mass Media—3—Title: Request of Four-O, Inc., permittee of UHF Station WXXV-TV, Gulfport, Mississippi, to delete the condition, imposed upon the grant of its application for a construction permit, requiring a principal of the permittee to divest himself of his interests in radio stations licensed to that community. Summary: The Commission will consider the request of Four-O, Inc., to delete a divestiture condition imposed on the grant of its application for a construction permit in order to ensure compliance with the Commission's multiple ownership rules. The request is made pursuant to Note 4 of Section 73.3555 of the Commission's Rules, which permits applications for UHF stations to be considered on a case-by-case basis to determine whether common ownership of radio/television combinations in the same market would be in the public interest.

Mass Media—4—Title: "Application for Review" and "Motion for Stay" (CSR-2326) filed January 22, 1985, by Miami Cablevision. "Petition for Reconsideration" (CSR-2529) filed January 18, 1985, by the Cities of Grandview and Sunnyside, Washington. "Petition for Reconsideration" (CSR-2567) filed January 28, 1985, by the City of Atchison, Kansas. "Application for Review" (CSR-2684) filed January 22, 1985, by the Connecticut Cable Television Association, Inc. "Petition for Declaratory Ruling" (CSR-2801) filed December 28, 1984, by Media General Cable of Fairfax, Inc. Summary: The referenced special relief petitions seek Commission review and/or interpretation of the action taken by the Chief, Video Services Division, Mass Media Bureau, pursuant to delegated authority, in *City of Southfield, Michigan, et al.* (Mimeo No. 1442), released December 19, 1984, which dismissed as moot all those petitions pending before the Commission which dealt with franchise fee issues.

Mass Media—5—Title: News distortion and personal attack complaint filed by the American Legal Foundation. Summary: The Commission will consider whether CBS Inc., during the "Pentagon/Underground" segment of the series, "Our Times' with Bill Moyers," distorted its presentation concerning the combat suitability of two major weapon systems. In addition, the Commission will examine the complainant's personal attack allegations concerning the Pentagon's program managers.

Mass Media—6—Title: News distortion, Fairness Doctrine and Personal Attack Complaints of Central Intelligence Agency and American Legal Foundation and Petition for Declaratory Ruling of American Civil Liberties Union. Summary: The Commission will consider Bureau's January 10, 1985 ruling that ABC had not violated Fairness Doctrine, personal attack rule or news distortion policy in connection with 1984 segments of "ABC World News Tonight". The Commission will also consider whether government agencies have standing to file complaints in these areas.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

Issued: July 5, 1985.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-16273 Filed 7-3-85; 3:13 pm]

BILLING CODE 6712-01-M

3

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—July 10, 1985.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Portions closed to the public:

1. Docket No. 85–8: In the Matter of the Independent Action Provisions of the Atlantic and Gulf/West Coast of South America Conference Agreement—Consideration of replies submitted in response to Notice of Filing of Petition.

2. Fact Finding Investigation No. 13: Military Household Goods Rates on Vessel Operating Common Carriers—Consideration of Report and Recommendations of Investigative Officer.

3. Docket No. 83–41: Wilmington Stevedores, Inc., v. Port of Wilmington, Delaware—Consideration of exceptions and replies to exceptions relative to the Administrative Law Judges' initial decision.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523–5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc 85–16271 Filed 7–3–85; 3:06 pm]

BILLING CODE 6730–01–M

4

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Monday, July 8, 1985.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Discussion of Proposed Streamlining Procedures in Pre-Appeal Stages of Commission Adjudications.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523–1892, Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 85–16216 Filed 7–3–85; 10:49 am]

BILLING CODE 6750–01–M

5

FEDERAL TRADE COMMISSION

TIME AND DATES: 10:00 a.m., Monday, July 8, 1985.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Consideration of proposed changes to the Commission's Rules of Practice to encourage negotiated resolutions of discovery disputes, including changes to Rules 2.7(d)(4), 3.22(f), 3.34, and 3.37, 16 CFR 2.7(d)(4), 3.22(f), 3.34, and 3.37 (1985).

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523–1892, Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 85–16217 Filed 7–3–85; 10:49 am]

BILLING CODE 6750–01–M

6

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities Exchange Commission will hold the following meetings during the week of July 8, 1985.

An open meeting will be held on Wednesday, July 10, 1985, at 2:30 p.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Wednesday, July 10, 1985, at 2:30 p.m., will be:

1. Consideration of whether to order an evidentiary hearing on an application filed by Narragansett Catpital Corporation, a venture capital company registered under the Investment Company Act of 1940 ("Act") as a closed-end, management investment company, its senior management, and certain entities affiliated with those parties. The application requests an order of the Commission granting certain exemptions from the Act to permit the senior management to take over Narragansett in a leveraged buyout that ultimately would result in a privately-held firm not subject to the Act. For further information, contact Glen Payne at (202) 272–3018.

2. Consideration of whether to amend Rule 6e–3(T) under the Investment Company Act of 1940. The amendments would revise conditions under which insurance company separate accounts issuing flexible premium variable life insurance are permitted to charge for incidental insurance and coverage substandard underwriting risks. The amendments also alter the treatment of these charges under the sales load provisions of the rule. For further information, contact Robert E. Plaze at (202) 272–2622

3. Consideration of whether to adopt Rule 203(b) (3)–1 under the Investment Advisers Act of 1940 which would specify certain situations in which a limited partnership, rather than each of its limited partners, would be counted as a "client" of a general partner acting as investment adviser to the partnership for purposes of an exemption from registration provided by the Act. For further information, please contact Thomas S. Harman at (202) 272–2030.

4. Consideration of whether to propose for public comment an amendment to Rule 6–07 of Regulation S–X which would require registered open end management investment companies to account for net costs incurred as a result of a 12b–1 plan as expenses. For further information, please contact Forrest R. Foss at (202) 272–7310.

The subject matter of the closed meeting scheduled for Wednesday, July 10, 1985, following the 2:30 p.m. open meeting, will be:

Settlement of injunctive actions.

Access to investigative files by Federal, State, or Self-Regulatory authorities

Institution of injunctive action.

Formal orders of investigation.

Administrative proceeding of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Regulatory matter regarding financial institution.

Opinion.

At times changes in commission priorities require alterations in the scheduling of meeting items. Fore further information and to ascertain what, if any, matters have been added; deleted or postponed, please contact: David Martin at (202) 272–2179.

John Wheeler,

Secretary.

July 3, 1985.

[FR Doc. 85–16240 Filed 7–3–85; 1:13 pm]

BILLING CODE 8010–01–M

7

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 8:00 a.m., 15 July 1985.

PLACE: Uniformed Services University of the Health Sciences, Room D3–001, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" [5 U.S.C. 552b(e)(3)].

MATTERS TO BE CONSIDERED:

8:00—Meeting—Board of Regents

(1) Approval of Minutes—15 April 1985
(2) Faculty Appointments
(3) Report—Admissions
(4) Report—Associate Dean for Operations:
  (a) Budget
  (b) Briefing: Medical Aspects of Advanced Laser Technology
(5) Report—President, USUHS:
  (a) University Awards
  (b) Faculty Compensation
  (c) F. Edward Hebert School of Medicine—Agreements for Reciprocal Exchange Programs
  (d) Graduate Education—Certification of Graduate Students
  (e) Continuing Education
  (f) Informational Items
  (g) Briefing on University Research Program
(6) Comments: Members, Board of Regents
(7) Comments: Chairman, Board of Regents

New Business

SCHEDULED MEETINGS: October 21, 1985.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295-3049..

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 3, 1985.

[FR Doc. 85-16280 Filed 7-3-85; 3:44 pm]

BILLING CODE 3810-01-M

VOL 50 ISS 130 JUL 8 1985 UMI

federal register

Monday
July 8, 1985

Part II

Environmental Protection Agency

40 CFR Part 51
Stack Height Regulation; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-2847-6]

Stack Height Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Section 123 of the Clean Air Act, as amended, requires EPA to promulgate regulations to ensure that the degree of emission limitation required for the control of any air pollutant under an applicable State implementation plan (SIP) is not affected by that portion of any stack height which exceeds good engineering practice (GEP) or by any other dispersion technique. A regulation implementing section 123 was promulgated on February 8, 1982, at 47 FR 5864. Revisions to the regulation were proposed on November 9, 1984, at 49 FR 44878. Today's action incorporates changes to the proposal and adopts this regulation in final form.

EFFECTIVE DATE: This regulation becomes effective on August 7, 1985.

FOR FURTHER INFORMATION CONTACT: Eric O. Ginsburg, MD–15, Office of Air Quality Planning and Standards, EPA, Research Triangle Park, North Carolina 27711. Telephone (919) 541–5540.

SUPPLEMENTARY INFORMATION:

Docket Statement

Pertinent information concerning this regulation is included in Docket Number A–83–49. The docket is open for public inspection between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA Central Docket Section, West Tower Lobby, Gallery One, 401 M Street, SW., Washington, D.C. Background documents normally available to the public, such as **Federal Register** notices and Congressional reports, are not included in the docket. A reasonable fee may be charged for copying documents.

Background

Statute

Section 123, which was added to the Clean Air Act by the 1977 Amendments, regulates the manner in which techniques for disperson of pollutants from a source may be considered in setting emission limitations. Specifically, section 123 requires that the degree of emission limitation shall not be affected by that portion of a stack which exceeds GEP or by "any other dispersion technique." It defines GEP, with respect to stack heights as:

> the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies or wakes which may be created by the source itself, nearby structures or nearby terrain obstacles . . . [Section 123(c)].

Section 123 further provides that GEP stack height shall not exceed two and one-half times the height of the source (2.5H) unless a demonstration is performed showing that a higher stack is needed to avoid "excessive concentrations." As the legislative history of section 123 makes clear, this reference to a two and one-half times test reflects the established practice of using a formula for determining the GEP stack height needed to avoid excessive downwash. Finally, section 123 provides that the Administrator shall regulate only stack height credits—that is, the portion of the stack height used in calculating an emission limitation—rather than actual stack heights.

With respect to "other dispersion techniques" for which emission limitation credit is restricted, the statute is less specific. It states only that the term shall include intermittent and supplemental control systems (ICS, SCS), but otherwise leaves the definition of that term to the discretion of the Administrator.

Thus the statute delegates to the Administrator the responsibility for defining key phrases, including "excessive concentrations" and "nearby," with respect to both structures and terrain obstacles, and "other dispersion techniques." The Administrator must also define the requirements of an adequate demonstration justifying stack height credits in excess of the 2.5H formula.

Rulemaking and Litigation

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques. Information concerning the development of the regulation was included in Docket Number A–79–01 and is available for inspection at the EPA Central Docket Section. This regulation was challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc.; the Natural Resources Defense Council, Inc.; and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F. 2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulation, reversing certain portions and upholding other portions. Further discussion of the court decision is provided later in this notice.

Administrative Proceedings Subsequent to the Court Decision

On December 19, 1983, EPA held a public meeting to take comments to assist the Agency in implementing the mandate of the court. This meeting was announced in the **Federal Register** on December 8, 1983, at 48 FR 54999. Comments received by EPA are included in Docket Number A–83–49. On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. While the petition was pending before the court, the mandate from the U.S. Court of Appeals was stayed. On July 2, 1984, the Supreme Court denied the petition (104 S.Ct. 3571), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within 6 months. The promulgation deadline was ultimately extended to June 27, 1985, in order to provide additional opportunities for public comment, to allow EPA to hold a public hearing on January 8, 1985, and to provide additional time for EPA to complete its analysis of rulemaking alternatives.

Documents

In conjunction with the 1982 regulation and this revision, EPA developed several technical and guidance documents. These served as background information for the regulation, and are included in Dockets A–79–01 and A–83–49. The following documents have been or will be placed in the National Technical Information Service (NTIS) system and may be obtained by contacting NTIS at 5285 Port Royal Road, Springfield, Virginia 22161.

(1) "Guideline for Use of Fluid Modeling to Determine Good Engineering Stack Height," July 1981, EPA, Office of Air Quality Planning and Standards, EPA–450/4–81–003 (NTIS PB82 145327).

(2) "Guideline for Fluid Modeling of Atmospheric Diffusion," April 1981, EPA, Environmental Sciences Research Laboratory, EPA–600/8–81–009 (NTIS PB81 201410).

(3) "Guidance for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulation)," June 1985, EPA, Office of Air Quality Planning and Standards, EPA-450/4–80–023R.

(4) "Determination of Good Engineering Practice Stack Height—A

Fluid Model Demonstration Study for a Power Plant," April 1983, EPA, Environmental Sciences Research Laboratory, EPA–600/3–83–024 (NTIS PB83 207407).

(5) "Fluid Modeling Demonstration of Good-Engineering-Practice Stack Height in Complex Terrain," April 1985, EPA Atmospheric Sciences Research Laboratory, EPA/600/3–85/022 (NTIS PB85 203107).

In addition, the following documents are available in Docket A–83–49.

"Economic Impact Assessment for Revisions to the EPA Stack Height Regulation," June 1985.

"Effect of Terrain-Induced Downwash on Determination of Good-Enginering-Practice Stack Height," July 1984.

Program Overview

General

The problem of air pollution can be approached in either of two ways: through reliance on a technology-based program that mandates specific control requirements (either control equipment or control efficiencies) irrespective of ambient pollutant concentrations, or through an air quality based system that relies on ambient air quality levels to determine the allowable rates of emissions. The Clean Air Act incorporates both approaches, but the SIP program under section 110 uses an air quality-based approach to establish emission limitations for sources. Implicitly, this approach acknowledges and is based on the normal dispersion of pollutants from their points of origin into the atmosphere prior to measurements of ambient concentrations at ground level.

There are two general methods for preventing violations of the national ambient air quality standards (NAAQS) and prevention of significant deterioration (PSD) increments. Continuous emission controls reduce on a continuous basis the quantity, rate, or concentrations of pollutants released into the atmosphere from a source. In contrast, dispersion techniques rely on the dispersive effects of the atmosphere to carry pollutant emissions away from the source in order to prevent high concentrations of pollutants near the source. Section 123 of the Clean Air Act limits the use of dispersion techniques by pollution sources to meet the NAAQS or PSD increments.

Tall stacks, manipulation of exhaust gas parameters, and varying the rate of emissions based on atmospheric conditions (ICS and SCS) are the basic types of dispersion techniques. Tall stacks enhance dispersion by releasing pollutants into the air at elevations high above ground level, thereby providing greater mixing of pollutants into the atmosphere. The result is to dilute the pollutant levels and reduce the concentrations of the pollutant at ground level, without reducing the total amount of pollution released. Manipulation of exhaust gas parameters increases the plume rise from the source to achieve similar results. ICS and SCS vary a source's rate of emissions to take advantage of meteorologic conditions. When conditions favor rapid dispersion, the source emits pollutants at higher rates, and when conditions are adverse, emission rates are reduced. Use of dispersion techniques in lieu of constant emission controls results in additional atmospheric loadings of pollutants and can increase the possibility that pollution will travel long distances before reaching the ground.

Although overreliance on dispersion techniques may produce adverse effects, some use of the dispersive properties of the atmosphere has long been an important factor in air pollution control. For example, some stack height is needed to prevent excessive pollutant concentrations near a source. When wind meets an obstacle such as a hill or a building, a turbulent region of downwash, wakes, and eddies is created downwind of the obstacle as the wind passes over and around it. This can force a plume rapidly to the ground, resulting in excessive concentrations of pollutants near the source. As discussed previously, section 123 recognizes these phenomena and responds by allowing calculation of emission limitations with explicit consideration of that portion of a source's stack that is needed to ensure that excessive concentrations due to downwash will not be created near the source. This height is called GEP stack height.

Summary of the Court Decision

Petitions for review of EPA's 1982 regulation were filed in the D.C. Circuit within the statutory time period following promulgation of the regulation. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulation, reversing certain portions and upholding others, The following is a summary of the court decision.

The EPA's 1982 rule provided three ways to determine GEP stack height. One way was to calculate the height by using a formula based on the dimensions of nearby structures. The other two were a *de minimis* height of 65 meters, and the height determined by a fluid modeling demonstration or field study. The court endorsed the formula as a starting point to determine GEP height. However, it held that EPA has not demonstrated that the formula was an accurate predictor of the stack height needed to avoid "excessive concentrations of pollutants due to downwash. Accordingly, the court directed EPA to re-examine in three ways the conditions under which exceptions to the general rule of formula reliance could be justified.

First, the 1982 rule allowed a source to justify raising its stack above formula height by showing a 40-percent increase in concentrations due to downwash, wakes, or eddies, on the ground that this was the percentage increase that the formula avoided. The court found this justification insufficient, and remanded the definition to EPA with instructions to make it directly responsive to health and welfare considerations.

Similarly, the 1982 rule allowed a source that built a stack to less than formula height to raise it to formula height automatically. Once again, the court required more justification that such a step was needed to avoid adverse health or welfare effects.

Finally, the court directed EPA either to allow the authorities administering the stack height regulations to require modeling by sources in other cases as a check on possible error in the formula, or explain why the accuracy of the formula made such a step unnecessary.

The 1982 rule provided two formulae to calculate GEP stack height. For sources constructed on or before January 12, 1979, the date of initial proposal of the stack height regulations, the applicable formula was 2.5 times the height of the source or other nearby structure. For sources constructed after that date, the rule specified a newer, refined formula, the height of the source or other nearby structure plus 1.5 times the height or width of that structure, whichever is less (H+1.5L). The EPA based its decision to include two formulae on the unfairness of applying the new formula retroactively. In its examination of this issue, the court specified four factors that influence whether an agency has a duty to apply a rule retroactively. They are:

1. Whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law,
2. The extent to which the party against whom the new rule is applied relied on the former rule,
3. The degree of burden which a retroactive order imposes on a party, and
4. The statutory interest in applying a new rule despite the reliance of a party on the old standard.

719 F.2d at 467 (citations omitted). Applying this analysis to the two formulae, the court upheld EPA's basic decision.

However, the court also held that sources constructed on or before January 12, 1979, should not be automatically entitled to full credit calculated under the 2.5H formula unless they could demonstrate reliance on that formula. The court remanded this provision for revision to take actual reliance on the 2.5H formula into account.

The statute limits stack height credit to that needed to avoid excessive concentrations due to downwash caused by "nearby" structures or terrain features. The 1982 regulation defined "nearby" for GEP formula applications as five times the lesser of either the height or projected width of the structure causing downwash, not to exceed one-half mile. No such distance limitation was placed on structures or terrain features whose effects were being considered in fluid modeling demonstrations or field studies. The court held that section 123 explicitly applies the "nearby" limitation to demonstrations and studies as well as formula applications, and remanded the rule to EPA to apply the limitation in both contexts.

The 1982 rule defined "dispersion techniques" as those techniques which attempt to affect pollutant concentrations by using that portion of a stack exceeding GEP, by varying emission rates according to atmospheric conditions or pollutant concentrations, or by the addition of a fan or reheater to obtain a less stringent emission limitation. The court found this definition too narrow because any technique "significantly motivated by an intent to gain emissions credit for greater dispersion" should be barred. 719 F.2d 462. As a result, the court directed EPA to develop rules disallowing credit for all such dispersion techniques unless the Agency adequately justified exceptions on the basis of administrative necessity or a *de minimis* result.

The GEP formulae established in the 1982 rule do not consider plume rise, on the ground that plume rise is not significant under downwash conditions. In its review of this provision, the court affirmed this judgment by EPA.

The 1982 rule addressed pollutant concentrations estimated to occur when a plume impacts elevated terrain by allowing credit for stack height necessary to avoid air quality violations in such cases. However, the court ruled that section 123 did not allow EPA to grant credit for plume impaction in setting emission limits, and reversed this part of the regulation.

The preamble to the 1982 regulation provided a 22 month process for State implementation of the regulation. The court found this period to be contrary to section 406(d)(2) of the Clean Air Act and reversed it.

The regulation, following the statute, excluded stacks "in existence" on or before December 31, 1970, from the GEP requirements. However, the regulation did not prohibit sources constructed after December 31, 1970, from receiving credit for tying into pre-1971 stacks. Although the court upheld EPA's definition of "in existence," it noted that EPA had failed to address the tie-in issue. Accordingly, the court remanded this issue to EPA for justification.

One other provision of the regulation was challenged in the *Sierra Club* suit: The exclusion of flares from the definition of "stack." In its review of this provision, the court held that EPA had acted properly.

Other provisions of the stack height regulation, such as the *de minimis* stack height established under § 51.1(ii)(1), were not challenged in the suit and thus remain in effect.

Summary of the November 9, 1984, Notice of Proposed Rulemaking

In the November 9, 1984, notice responding to the court decision, EPA proposed to redefine a number of specific terms, including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and proposed to modify some of the bases for determining GEP stack height. The following is a summary of the revisions that were proposed.

Excessive Concentrations

The Court of Appeals held that EPA erred in defining "excessive concentrations" due to downwash, for purposes of justifying a stack greater than formula height, as nothing more than a 40-percent increase in pollutant concentrations over what would occur in the absence of downwash. It remanded this issue to EPA to relate the definition to some absolute level of air pollution that could be interpreted to endanger health and welfare, and thus to be "excessive."

The EPA proposed two alternative approaches to defining "excessive concentrations." First, EPA requested comment on whether the 40-percent approach adopted as part of the 1982 regulation in fact protects against the dangers to health and welfare envisioned by Congress when it enacted section 123. In the event that such a showing could not be made, EPA proposed a two-part definition of excessive concentrations, requiring that the downwash, wakes, or eddies induced by nearby structures or terrain features result in increases in ground-level pollutant concentrations that:

(a) Cause or contribute to an exceedance of a NAAQS or applicable PSD increment, and

(b) Are at least 40 percent in excess of concentrations projected to occur in the absence of such structures or terrain features.

Definition of GEP Stack Height

EPA proposed to find that the traditional (2.5H) and refined (H+1.5L) formulae remained proper methods for calculating GEP stack height except EPA proposed to revise its regulation to allow EPA, the State or local air pollution control agency discretion to require a further demonstration using a field study or fluid model to demonstrate GEP stack height for a source in a case where it was believed that the formula may not reliably predict GEP height. In the case of structures that are porous or aerodynamically smoother than block-shaped structures, it would require a source to demonstrate the downwash effects of such structures using a field study or fluid model before receiving credit for stack height based on the structures. EPA also proposed generally to allow sources to raise existing stacks up to formula GEP height without further demonstrations with the exception noted above for discretionary modeling.

Reliance on the 2.5H Formula

In its 1982 rules, EPA allowed sources built before January 12, 1979, the date on which it proposed the refined H+1.5L formulae, to calculate their emission limits based on the traditional 2.5H formula that existed previously. The court approved this distinction, but ruled that it should be limited to sources that "relied" on the traditional formula, suggesting, for example, that sources that had claimed credit for stacks far taller than the formula provided could not be said to have "relied" on it.

In response to the court decision, EPA proposed to revise its regulation to require that for stacks in existence on January 12, 1979, sources demonstrate that they actually relied on the 2.5H formula in the design of their stacks before receiving credit for that height in setting their emission limitations. In the proposal, EPA requested comment on what it should consider as acceptable evidence of such reliance.

Definition of "Nearby"

In its 1982 rules, EPA allowed sources that modeled the effects of terrain obstacles on downwash to include any terrain features in their model without limiting their distance from the stack. The court, though persuaded that this was a sensible approach, since it allowed the model to best approximate reality, ruled that Congress had intended a different result, namely that terrain features beyond ½ mile from the stack should not be included in the model.

In response, EPA proposed to revise § 51.1(ii)(3) of its regulation to limit the consideration of downwash, wakes, and eddy effects of structures and terrain features to those features classified as being "nearby" as defined in § 51.1(jj). Under this proposal, structures and terrain features would be considered to be "nearby" if they occur within a distance of not more than 0.8 km (½ mile); terrain features that extend beyond 0.8 km could be considered if, at a distance of 0.8 km, they achieved a height greater than or equal to 40-percent of the GEP stack height calculated by applying the GEP formula to actual nearby structures. In other words, a terrain feature would be said to "begin" within ½ mile if it reached at least the height of nearby buildings within that distance. Such features could be considered only out to a distance equal to 10 times the maximum height of the feature, not to exceed 2 miles.

The EPA proposed two options for distinguishing between sources constructed before and after the date of promulgation of these revisions. The first option would treat both categories of sources the same. The second option would limit the consideration of terrain for new sources to only those portions of terrain features that fall *entirely* within 0.8 km, thereby removing the possibility of including features extending beyond ½ mile.

Finally, EPA proposed three alternatives for conducting fluid modeling to evaluate the downwash effects of nearby terrain features. These alternatives described various ways of limiting terrain in the model beyond the proposed distance limitations.

To establish a baseline for comparison, two alternatives would initially model the stack on a flat plane with no structure or terrain influences. To analyze downwash effects, the first approach would then insert nearby terrain, with all terrain beyond the distance limit "cut off" horizontally. The second approach would gradually smooth and slope the terrain beyond the distance limit, down to the elevation of the base of the stack.

The third approach would proceed in a somewhat different manner. A baseline would be established by modeling all terrain beyond the distance limit, smoothing and sloping nearby terrain to minimize its influence. To analyze downwash effects, the nearby terrain would then be inserted into the model and the difference in effect measured to determine appropriate downwash credit for stack height.

Definition of "Dispersion Techniques"

In the 1982 rules, EPA identified two practices, in addition to stacks above GEP and ICS/SCS, as having no purpose other than to obtain a less stringent emission limitation. In so doing, it allowed credit for any other practice that had the result of increasing dispersion. The court concluded that Congress had intended, at a minimum, to forbid any dispersion enhancement practice that was significantly motivated by an intent to obtain additional credit for greater dispersion, and remanded the question to EPA for reexamination.

The EPA proposed to revise its definition of "dispersion techniques" generally to include, in addition to ICS, SCS, and stack heights in excess of GEP, any techniques that have the effect of enhancing exhaust gas plume rise. Combining several existing stacks into one new stack can have such an effect. However, such combinations also often have independent economic and engineering justification. Accordingly, EPA requested comment on defining the circumstances under which the combining of gas streams should not be considered a dispersion technique, and proposed to allow sources to take credit in emission limitations for such merging where a facility was originally designed and constructed with merged gas streams or where the merging occurs with the installation of additional controls yielding a net reduction in total emissions of the affected pollutant. The EPA retained exclusions from its definition of prohibited dispersion techniques for smoke management in agricultural and silvicultural prescribed burning programs and also proposed to exclude episodic restrictions on residential woodburning and debris burning.

New Sources Tied into Pre-1971 Stacks

Section 123 exempts stacks "in existence" at the end of 1970 from its requirements. EPA's general approach to implementing this language was upheld by the court. However, in its 1982 rule EPA had also allowed this credit to sources built after that date that had tied into stacks built before that date. EPA failed to respond to comments objecting to this allowance, and so the court remanded the question to EPA for the agency to address.

Upon reexamination, EPA saw no convincing justification for granting credit to these sources. Consequently, for sources constructed after December 31, 1970, with emissions ducted into grandfathered stacks of greater than GEP height and for sources constructed before that date but for which major modifications or reconstruction have been carried out subsequently, EPA proposed to limit stack height credit to only so much of the actual stack height as conforms to GEP. Sources constructed prior to December 31, 1970, for which modifications are carried out that are not classified as "major" under 40 CFR 51.18(j)(i), 51.24(6)(2)(i), and 51.21(6)(2)(i) would be allowed to retain full credit for their existing stack heights.

Plume Impaction

In its 1982 rules, EPA allowed stack height credit for "plume impaction," a phenomenon that is distinct from downwash, wakes and eddies. The court, though sympathetic to EPA's policy position, reversed this judgment as beyond the scope of the statute. Accordingly, EPA proposed to delete the allowance of plume impaction credit from its regulation in compliance with the court decision. However, EPA also recognized that sources in complex terrain face additional analytical difficulties when attempting to conduct modeling to determine appropriate emission limitations. Consequently, EPA requested comment on whether any allowance should be made for implementation problems that may result from the application of revised GEP stack height assumptions and, if so, how such allowance should be made.

State Implemetation Plan Requirements

EPA's 1982 rules gave states a total of 22 months to revise their rules and to establish source emission limitations based on new stack height credits. The court found this, too, to go beyond the language of the statute. In response, EPA stated in the proposal that States would be required, pursuant to section 406(d)(2)(b) of the Clean Air Act, to review their rules and existing emission limitations, revising them as needed to comply with the new regulation within 9 months of the date of its promulgation.

Response to Public Comments on the November 9, 1984, Proposal

The EPA received over 400 comments during the public comment period and at the public hearing, addressing a number of aspects of the proposed regulation.These comments have been consolidated according to the issues raised and are discussed, along with EPA's responses, in a "Response to Comments" document included in the rulemaking docket. Certain comments can be characterized as "major" in that they address issues that are fundamental to the development of the final regulation. These comments are summarized below, along with EPA's responses. Additional discussion of the issues raised and further responses by EPA can be found in the "Response to Comments" document.

I. Maximum Control of Emissions in Lieu of Dispersion

A central legal and policy question addressed in this rulemaking was raised in the comments of the Natural Resources Defense Council (NRDC) and the Sierra Club. They contend that section 123 requires all sources to install the maximum feasible control technology before receiving any credit for the dispersive effects of a stack of any height, or for other practices that may enhance pollutant dispersion.

The NRDC argument is summarized fully in the Response to Comments document together with EPA's response. Very briefly, NRDC contends that litigation prior to the 1977 Clean Air Act Amendments had established that dispersion can never be used as an alternative to emission control, and that this understanding was carried forward and strengthened in the 1977 Clean Air Act Amendments. Accordingly, no rule that does not require full control of emissions as a prerequisite to any stack height credit would be consistent with Congressional intent.

EPA disagrees. During the 8 years between 1977 and NRDC's comments, a period covering two Administrations and three Administrators, NRDC's position has never been either adopted by EPA or seriously advocated before it. The pre-1977 cases cited by NRDC do not bar all stack credit, but only credit for stacks beyond the historical norm. Finally, the text and legislative history of section 123 contain essentially no support for NRDC's "control first" position.

II. Discussion of Other Major Issues

The EPA's position on the "control first" comments provides the necessary background against which the remaining major issues in this rulemaking are discussed. These issues are: the definition of "excessive concentrations" due to downwash, wakes, and eddies; the definition of "nearby;" and the definition of "dispersion technique." A question that affects several of these decisions, and that is addressed where it arises, concerns the extent to which any changes made in the stack heights regulations should be applied prospectively rather than retroactively.

This discussion of "excessive concentrations" is in turn divided into a discussion of the physical characteristics of downwash, followed by a discussion of the significance of those characteristics as they pertain to the GEP formulae, to stacks above formula height, to stacks being raised to formula height, and to stacks at formula height being modeled at the choice of the administering authorities.

Definition of "Excessive Concentrations"

The Physical Nature of Downwash. A number of commenters, including the Utility Air Regulatory Group (UARG), have argued that the court decision does not obligate EPA to revise the definition adopted in the 1982 regulation, but only directs EPA to ensure that the 40-percent criterion protects against concentrations due to downwash that could be related to health and welfare concerns. They point out that when emissions from a source become trapped in the wake region produced by the source itself or upwind structures and terrain features, those emissions are brought rapidly to earth, with little dilution. This, the commenters argue, can produce short-term peak concentrations at groundlevel that are many times greater that the concentration levels of the NAAQS. Because their duration is relatively short, averaging these concentrations over the times specified by the NAAQS does not result in NAAQS violations. Nonetheless, the commenters argue that these concentrations should be regarded as nuisances that section 123 was specifically enacted to avoid. Accordingly, the commenters held that EPA would be justified in retaining the 40-percent criterion without requiring that such increases result in exceedances of the NAAQS.

These same commenters argued that severe hardships would result if EPA's second proposed definition of "excessive concentrations" is adopted, and that, by limiting stack height credit to that just necessary to avoid exceedance of NAAQS or PSD increments, the definition would act to limit actual stack design and construction in a way that would increase the likelihood of NAAQS or PSD exceedances. This would occur, they argue, because, by building only so tall a stack as they can receive credit for, sources would be eliminating a "margin of safety" that would normally be provided otherwise. Furthermore, it was argued that, due to the changing nature of background air quality, inclusion of absolute concentrations such as the NAAQS or PSD increments in the definition would render determinations of GEP stack height constantly subject to change.

NRDC argued on the other hand that only a violation of air quality standards can be considered the type of "excessive concentration" for which downwash credit can be justified, the EPA had failed to specify the health or welfare significance of the short-term peaks that it might consider as meeting this description, and that in any event UARG's attempt to show that short stacks could cause a large number of short-term peaks was technically flawed in several different ways.

Response. Extensive discussion of the downwash phenomenon, as well as the aerodynamic effects of buildings and terrain features on windflow patterns and turbulence, is contained in the technical and guidance documents previously listed in this notice. To summarize briefly, numerous studies have shown that the region of turbulence created by obstacles to windflow extends to a height of approximately 2.5 times the height of the obstacle. Pollutants emitted into this region can be rapidly brought to the ground, with limited dilution. Though this tendency decreases the higher vertically within the downwash region that the plume is released, because of the highly unpredictable nature of downwash and the lack of extensive quantitative data, it is extremely difficult to reliably predict plume behavior within the downwash region. As noted in the comments submitted, the distinguishing features of downwash do not show up well over an averaging time as long as 1 hour or more. Pollutant concentrations resulting from downwash can arise and subside very quickly as meteorological conditions, including wind speed and atmospheric stability vary. This can result in short-term peaks, lasting up to 2 minutes or so, recurring intermittently for up to several hours, that significantly exceed the concentrations of the 3- and 24-hour NAAQS. Little quantitative information is available on the actual levels of these peaks, or on the frequency of their occurrence since most stacks have been

designed to avoid downwash and because downwash monitoring is not typically conducted.

A number of modeling and monitoring studies in the record assess the significance of downwash when plumes are released into the downwash region. The most important of these are a number of studies cited in the November 9 proposal showing that for sources with sulfur dioxide (SO_2) emission rates of 4 to 5 pounds per million British Thermal Units (lb./mmBTU), stacks releasing the plume into the downwash region can significantly exceed the 3-hour NAAQS.

The utility industry submitted monitoring results from four sites showing that facilities with short stacks (ranging from 23 to 89 percent of formula height) generated many short-term peaks in the vicinity of the plant at concentrations at least 2 times the highest concentration of the 3-hour SO_2 standard, i.e., 1 ppm for up to 10 minutes. Those concentrations are the maximum that could be recorded by the monitors used. There is no way to determine from these data the true peak ground-level concentrations.

The NRDC, in commenting on this subject, has argued that downwash-related concentrations are largely theoretical, since stacks have generally been built to avoid downwash, and that actual concentrations occur under other meteorological conditions such as "inversion breakup fumigations" and "looping plums," that can equal these "theoretical" concentrations predicted under downwash.[1] The NRDC also criticized the utility data on numerous technical grounds.

EPA's studies indicate that, when stacks are significantly less than GEP formula height, high short-term concentrations can indeed occur due to downwash that are in the range of the values reported by the utility industry. Concentrations produced by the other conditions cited by NRDC, though high, may be lower by an order of magnitude, and occur less frequently by as much as two orders of magnitude, than those produced by downwash.[2] As stack height approaches the height determined by the GEP formula, the expected frequency and severity of short-term peaks due to downwash becomes less certain. This is to be expected, since it is the purpose of a formula height stack to avoid excessive downwash. While it might theoretically be possible for EPA to revise the GEP formula downward (e.g., from H+1.5L to H+1.2L, or some other value), such a revision would have little purpose. By moving the release point further into the downwash region, such a change would increase the probability of high downwash-caused peaks. On the other hand, such relatively small changes in stack height are not likely to appreciably affect the emission limitation for the source. This is because emission limitations are calculated based on physical stack height and associated plume rise under atmospheric conditions judged most controling for the source. Increasing or decreasing stack height by a small fraction will not greatly change the rate or extent of dispersion and thus will not affect the ground-level concentration. Moreover, as EPA noted in its November 9 proposal, no data presently exist on which to base a revision to the formula.

The NRDC submitted data to EPA which it believed to support the conclusions that it urged EPA to adopt concerning short-term peak concentrations under other meterological conditions.[3] However, these data were not presented in a form that could be readily interpreted, and EPA has thus far been unable to draw any conclusions from them.[4]

In reviewing NRDC's comments on building downwash, EPA agrees that there is great uncertainty about our present understanding of this phenomenon, and this is supported by the range and variation of downwash effects observed in recent studies. However, no information has been presented which would convince EPA to abandon the present GEP formulae in favor of any alternative.

The health and welfare significance of downwash concentrations that result in violations of the ambient standards are documented and acknowledged in the standards themselves. The significance of short-term peaks at the levels that EPA's analyses predict is more judgmental. However, a number of studies cited in EPA's "Review of the National Ambient Air Quality Standards for Sulfur Oxides: Assessment of Scientific and Technical Information" (EPA–450/5–82–007, November 1982), indicate that concentrations of one ppm sustained for durations of 5 minutes or more can produce bronchoconstriction in asthmatics accompanied by symptoms such as wheezing and coughing. Such concentrations are well within the range of concentrations that can result from downwash. When sources meet the ambient standards, the frequency of occurrence for these concentrations under the other conditions cited by NRDC is substantially lower than for downwash when stacks are less than GEP.

GEP Formula Stack Height. Some commenters, including NRDC, stated that EPA cannot justify retention of the traditional (2.5H) and refined (H+1.5L) GEP formulae based simply on their relationship to the 40-percent criterion, and argued that the formulae provide too much credit in many or most cases. This, they argue, results in allowing sources to obtain unjustifiably lenient emission limitations.

Other commenters argued that Congress explicitly reaffirmed the traditional GEP formula, and that EPA should allow maximum reliance on it (and, by implication, on the refined formula that was subsequently derivied from it).

Response. The use of EPA's refined formula as a starting point for determining GEP was not called into question by any litigant in the *Sierra Club* case. The court's opinion likewise does not question the use of the formula as a starting point. A detailed discussion of the court's treatment of the formula, showing how it endorsed the formula's presumptive validity, is contained in the Response to Comments document.

Despite this limited endorsement, EPA might need to revisit the formula on its own if its reexamination of the "excessive concentration" and modeling issues indicated that the formula clearly and typically misstated the degree of stack height needed to avoid downwash concentrations that cause health or welfare concerns.

However, no such result has emerged from our reexamination. Stacks below formula height are associated with downwash-related violations of the air quality standards themselves where emission rates significantly exceed the levels specified by NSPS. Even where emissions are low, downwash conditions at stacks below formula height can be expected, unlike other conditions, to generate numerous short-term peaks of air pollution at high levels

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[1] In "inversion breakup fumigation," an inversion layer dissipates due to heating of the ground, letting the pollutants that were trapped in it descend suddenly to ground level. In "looping plumes," a plume is brought down to the ground close to the source in the form of intermittent puffs under very unstable atmospheric conditions.

[2] "Comments on Peak Ground-Level Concentrations Due to Building Downwash Relative to Peak Concentrations Under Atmospheric Dispersion Processes," Alan H. Huber and Francis Pooler, Jr. June 10, 1985.

[3] Memorandum from David G. Hawkins, NRDC, to William F. Pedersen, Jr. Office of General Counsel, USEPA, May 29, 1985.

[4] Memorandum from Alan H. Huber, ASRL, to David Stonefield, OAQPS, June 21, 1985.

that raise a real prospect of local health or welfare impacts.

As EPA stated in the proposal, it is impossible to rely primarily on fluid modeling to implement the stack height regulations, particularly under the timetable established by the court. 49 FR 44883 (November 9, 1984). No commenter other than NRDC even suggested a different formula that in their eyes would be better, and NRDC's suggestions were premised on their "control first" position, which EPA has found inconsistent with the statute and has rejected. EPA considers the refined formula to be the state-of-the-art for determining necessary stack height.

Given the degree of presumptive validity the formula already possesses under the statute and the court opinion, we believe that this record amply supports its reaffirmation.

Stacks Above GEP Formula Height. The EPA's 1976 stack height guidelines [cite] imposed special conditions on stacks above formula height—the installation of control technology—that were not imposed on lower stacks. Similarly, EPA's 1973 proposal had made credit above formula height subject to a vaguely defined "detailed investigation" (38 FR 25700). The legislative history of the 1977 Clean Air Act Amendments cautioned that credit for stacks above formula height should be granted only in rare cases, and the Court of Appeals adopted this as one of the keystones of its opinion. The court also concluded that Congress deliberately adopted very strict requirements for sources locating in hilly terrain.

For these reasons, EPA is requiring sources seeking credit for stacks above formula height and credit for any stack height justified by terrain effects to show by field studies or fluid modeling that this height is needed to avoid a 40-percent increase in concentrations due to downwash and that such an increase would result in exceedance of air quality standards or applicable PSD increments. This will restrict stack height credit in this context to cases where the downwash avoided is at levels specified by regulation or by act of Congress as possessing health or welfare significance.

To conduct a demonstration to show that an absolute air quality concentration such as NAAQS or PSD increment will be exceeded, it is necessary to specify an emission rate for the source in question.[5] The EPA believes that in cases where greater than formula height may be needed to prevent excessive concentrations, sources should first attempt to eliminate such concentrations by reducing their emissions. For this reason EPA is requiring that the emission rate to be met by a source seeking to conduct a demonstration to justify stack height credit above the formula be equivalent to the emission rate prescribed by NSPS applicable to the industrial source category. In doing this, EPA is making the presumption that this limit can be met by all sources seeking to justify stack heights above formula height. Sources may rebut this presumption, establishing an alternative emission limitation, on a case-by-case basis, by demonstrating to the reviewing authority that the NSPS emission limitation may not feasibly be met, given the characteristics of the particular source.[6] For example, it may be possible for a source presently emitting SO_2 at a rate of 1.8 lb./mmBTU to show that meeting the NSPS rate of 1.2 lb./mmBTU would be prohibitive in that it would require scrapping existing scrubber equipment for the purpose of installing higher efficiency scrubbers. Similarly, a source may be able to show that, due to space constraints and plant configuration, it is not possible to install the necessary equipment to meet the NSPS emission rate. In the event that a source believes that downwash will continue to result in excessive concentrations when the source emission rate is consistent with NSPS requirements, additional stack height credit may be justified through fluid modeling at that emission rate.

A source, of course, always remains free to accept the emission rate that is associated with a formula height stack rather than relying on a demonstration under the conditions described here. The third alternative mentioned in the proposal—using the actual emission limit for the source—has been rejected because, to the extent that limit relied on greater than formula height, it would amount to using a tall stack to justify itself.

The EPA's reliance on exceedances, rather than violations of the NAAQS and PSD increments, is deliberate. Fluid modeling demonstrations are extremely complicated to design and carry out, even when the most simple demonstration criteria—that is, a percentage increase in concentrations, with no consideration of absolute values—are assumed. Adding consideration of an absolute concentration such as a NAAQS or PSD increment substantially complicates this effort further and introduces the scientific uncertainties associated with predicting an exceedance of a 3-hour or 24-hour standard based on 1 hour or less of modeling data. Using an hour or less of modeling values, based on one set of meteorological data, to draw the distinction between only one exceedance of the standard during the 8760 hours in a year, and the two or more that constitute a violation pushes that uncertainty beyond reasonable limits. EPA therefore does not find the additional difficulties that would be created by requiring violations instead of exceedances to be warranted. That is particularly so here, given that the regulations require sources seeking credit above the formula to be well-controlled as a condition of obtaining such credit.

Use of an absolute concentration in the test of "excessive concentrations" can lead to problems of administering the program, in that it can have a "zoning" effect. Since a source can only get stack height credit to the extent that it is needed to avoid a PSD increment or NAAQS exceedance, an emissions increase in the area of that source may increase concentrations beyond the controlling limit, thereby making it difficult for new sources to locate in the area, or for sequential construction of additional emitting units at the source in question.

This effect cannot be avoided under any test for "excessive concentrations" that is tied to absolute concentrations. However, that effect will be mitigated by the fact that the use of this approach is voluntary and limited to sources wishing to rely on fluid modeling to justify stack height credit. Moreover, the effects of downwash tend to occur very near the source, usually on fenced company property. Since concentrations measured at such locations are not used to evaluate NAAQS attainment or PSD increment consumption, new sources wishing to locate in the area are less likely to be affected.

Sources planning sequential construction of new emitting units at one location or contemplating future expansion can reduce the uncertainties noted above by initially obtaining permits for the total number of units anticipated and by planning for expansion in the calculation of necessary physical stack height. In the latter instance, only the allowable stack height credit would be revised as

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[5] In contrast, if the test of "excessive concentrations" involved a simple percentage increase, there would be no need to specify an emission rate, since the increase in concentration caused by downwash is independent of emission rates.

[6] The EPA will rely on its Best Available Retrofit Technology Guideline in reviewing any rebuttals and alternative emission limitations.

expansion is carried out—not actual stack height.

An additional theoretical complication is presented when an absolute concentration is used where meteorological conditions other than downwash result in the highest predicted ground-level concentrations in the ambient air. In such cases, a source that has established GEP at a particular height, assuming a given emission rate, may predict a NAAQS violation at that stack height and emission rate under some other condition, e.g., atmospheric stability Class 'A.' Reducing the emission rate to eliminate the predicted violation would result in stack height credit greater than absolutely necessary to avoid an excessive concentration under downwash. However, reducing stack height places the source back in jeopardy of a NAAQS violation under the other meteorological condition, and so on, "ratcheting" stack height credit and emission rates lower and lower. The EPA has eliminated this "ratcheting" potential in the GEP guideline by providing that, once GEP is established for a source, adjusting the emission rate to avoid a violation under other conditions does not require recalculation of a new GEP stack height.

EPA is making this part of the regulations retroactive to December 31, 1970. In the terms of the court's retroactivity analysis, stacks greater than formula height represent a situation that Congress did affirmatively "intend to alter" in section 123. Moreover, EPA regulatory pronouncements since 1970 have placed a stricter burden on sources raising stacks above formula height than on others.

No source is precluded from building a stack height greater than formula height if such height is believed to be needed to avoid excessive downwash. However, the design and purpose of section 123 prohibit SIP credit for that effort unless a relatively rigorous showing can be made.

Given the ability of sources to avoid modeling and rely on validity of the GEP formulae and requirement for further control of emissions in conjunction with stack heights in excess of formulae height, the result predicted by UARG—exceedances of the NAAQS or PSD increments due to inadequate stack height—is highly unlikely.

The potential effect of changes in background air quality on stack height credit is not substantially different from the effect that such changes in background can have on source emission limitations in nonattainment areas. In the first case, however, sources may be able to address these effects through greater stack height if such changes affect the concentrations under downwash. Moreover, the possibility that shifting background air quality can yield different calculations of GEP is significantly limited by the fact that consideration of background in GEP calculations is restricted to those cases where credit for greater than formula height is being sought or sources are seeking to raise stacks to avoid excessive concentrations.

Raising Stacks Below Formula Height to Formula Height. In response to EPA's proposal to allow automatic credit for GEP formula height, several commenters have argued that EPA has failed to adequately respond to the court's directive to "reconsider whether, in light of its new understanding of 'excessive concentrations,' demonstrations are necessary before stack heights may be raised, even if the final height will not exceed formula height."

Response. Raising a stack below formula height to formula height is not, in EPA's judgment, subject to the same statutory reservations as building stacks greater than formula height. However, as the court has cautioned, it may still be necessary for these sources to show that raising stacks is necessary to avoid "excessive concentrations" that raise health or welfare concerns.

For these reasons, sources wishing to raise stacks subsequent to October 11, 1983, the date of the D.C. Circuit opinion, must provide evidence that additional height is necessary to avoid downwash-related concentrations raising health and welfare concerns. These rules allow sources to do this in two ways.

The first way is to rebut the presumption that the short stack was built high enough to avoid downwash problems; i.e., to show, by site-specific information such as monitoring data or citizen complaints, that the short stack had in fact caused a local nuisance and must be raised for this reason. The EPA believes that both the historical experience of the industry and the data on short-term peaks discussed earlier show that short stacks can cause local nuisances due to downwash. However, where a source has built a short stack rather than one at formula height, it has created a presumption that this is not the case. General data on short-term peaks may not be strong enough to support, by themselves and in the abstract, a conclusion that the stack must be raised to avoid local adverse effects. Instead, that proposition must be demonstrated for each particular source involved.

In the event that a source cannot make such a showing, the second way to justify raising a stack is to demonstrate by fluid modeling or field study an increase in concentrations due to downwash that is at least 40-percent in excess of concentrations in the absence of such downwash and in excess of the applicable NAAQS or PSD increments. In making this demonstration, the emission rate in existence before the stack is raised must be used.

Since raising stacks to formula height is not subject to the same extraordinary reservations expressed by Congress and the court with respect to stacks being raised above formula height, EPA does not believe that the use of presumptive "well-controlled" emission rate is appropriate here. As discussed in EPA's response to NRDC's "control first" argument, the basic purpose of section 123 was to take sources as it found them and, based on those circumstances, to assure that they did not avoid control requirements through additional dispersion. Use of a source's actual emission rate in this instance is consistent with that basic purpose and, absent special indications of a different intent, should be used in stack height calculations.

The EPA believes that it is most unlikely that any source with a current emission limitation has failed to claim full formula credit for a stack of formula height. Accordingly, the question whether a source can receive stack height credit up to formula height will involve only sources that want to actually raise their physical stack, not sources that simply want to claim more credit for a stack already in existence. A source will presumably not go to the trouble of raising an existing stack without some reason. If a source cannot show that the reason was in fact the desire to avoid a problem caused by downwash, then the inference that it was instead a desire for more dispersion credit is hard to avoid. A nuisance caused by downwashed emissions could include citizen or employee complaints or property damage. A source would be expected to show that complaints of this nature were reasonably widespread before getting credit under this section.

The EPA does not intend to make this rule retroactive to stacks that "commenced construction" on modifications that would raise them to formula height prior to October 11, 1983. Applying the court's retroactivity analysis, it appears:

1. The new rule does depart from prior practice. The EPA's 1973 proposed rule affirmatively encouraged sources with shorter stacks to raise them to formula

height.[7] Though EPA's 1976 guideline can be read as imposing a "control first" requirement on some stack height increases, its general thrust gave automatic credit for all stacks that met the "2.5" times formula.[8] Automatic permission was similarly set forth in the 1979 proposal, in the 1981 reproposal, and in the 1982 final rule. Only a notice published in 1980, but later withdrawn, departs from this trend, requiring the use of field studies or fluid modeling demonstrations to justify stack height increases up to GEP formula height.[9] Even then, the notice would have made this policy prospective in its application.

2. Sources that raised stacks in reliance on this past EPA guidance assuming the availability of dispersion credit cannot be distinguished from the sources, in the example approved by the court, that built stacks to the traditional formula in an identical expectation of dispersion credit.

3. It cannot be said that the raising of stacks to formula height is a practice that Congress "affirmatively sought to end." It is not mentioned in the text of the statute or its legislative history. Further, as the court has already noted, the statute attributes a degree of presumptive validity to the formula on which sources that raise their stacks will have relied.

Discretion to Require Fluid Modeling. Several commenters argued that EPA's proposal to allow agencies to require the use of fluid modeling was unnecessary, since EPA had already documented the validity of the GEP formulae. Furthermore, these commenters argue that this allowance would make fluid modeling the rule, rather than the exception. This would result, the commenters state, because it was their expectation that agencies or environmental groups would nearly always call for fluid modeling demonstrations during the permit application and review process.

Other commenters stated that providing the discretion to require fluid modeling was appropriate, since EPA had failed to demonstrate that the GEP formulae represented the minimum height necessary to avoid excessive concentrations.

Response. The Court of Appeals directed EPA to reexamine whether its rules should allow States, as a matter of discretion, to require even sources that planned to rely on the formula to show instead by fluid modeling that a stack this high was required to avoid dangers to health and welfare caused by downwash. The court suggested that EPA should include such a provision unless it could find that the formula was so accurate, or tended so much to err on the low side, as to make discretionary authority to adjust formula height downward unnecessary.

The EPA believes that the court was mistaken in its conclusion that a stack at formula height is likely to generate downwash concentrations as great as 40 percent only in uncommon situations. In fact, EPA's observations indicate that when stacks are built to GEP formula height, an increase in concentrations due to downwash can still be expected to occur that is between 20 and 80 percent greater than the concentration that would occur in the absence of building influences.[10]

Nevertheless, in response to the court's remand, EPA is including in this final rule a provision for the authority administering these rules to require field studies or fluid modeling demonstrations, even for stacks built to formula height, in cases where it believes that the formula may significantly overstate the appropriate stack height credit.[11]

While EPA believes the formula is a reasonable rule of thumb indicating the stack height needed to avoid some probability of a standards violation and a significantly greater probability of a local nuisance, actual results in any given case may vary somewhat based on specific circumstances. The EPA has attempted to minimize this possibility within the limits of available data by identifying two particular situations in which it believes that the formulae may not be reliable indicators of GEP: Porous structures and buildings whose shapes are aerodynamically smoother than the simple block-shaped structures on which the formulae are based.[12]

However, EPA acknowledges that other situations, of which the Agency is not presently aware, may arise wherein the formulae may not be adequate.

The EPA intends to "grandfather" any source that relied on the formula in building its stack before the date of EPA's 1979 proposal from the effect of this discretionary reexamination requirement.

Only in that proposal did EPA first suggest that such a discretionary reexamination provision might be included in the final rule. The retroactivity analysis set out earlier therefore supports exempting stacks built in reliance on EPA guidance before that date from discretionary reexamination. Indeed, a failure to "grandfather" these sources would lead to the paradoxical result that a source that had built a GEP stack under the traditional EPA formula would have its direct reliance interests protected by the "grandfather" provision previously upheld by the court, but could then lose that "grandfathered" credit through a case-specific demonstration requirement showing that the traditional formula was somewhat inaccurate—the very reason behind the change in the formula properly found non-retroactive by EPA earlier.

Given this background, EPA believes that the effect on emissions of including or of excluding a provision for discretionary determinations from this rule is likely to be very small. Building stacks above formula height, and raising stacks below formula height to formula height, are covered by regulatory provisions already discussed. The only case left for discretionary determinations to address is the building of stacks at formula height in the post-1979 period. However, all major sources built since that time are already controled to SO_2 emission rates no greater than 1.2 lb./mmBTU—and, not uncommonly much less—under various EPA regulations. All new power plants on which construction "commenced" since 1971 must meet EPA's NSPS mandating an emission rate no greater than this level. That standard was tightened for all power plants on which construction "commenced" after 1979. In addition, all "major" sources built since 1977 in areas subject to the Act's PSD requirements have had to install best available control technology. That technology must require the greatest degree of emission control that is achievable considering technology, economics, and energy impacts.[13]

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[7] "The use of stack height up to the level of good engineering practice is encouraged by EPA in order to avoid local nuisances." (38 FR 25700).

[8] 41 FR 7451 (February 18, 1976); Guideline Sections B.1, C.1(2), C.2(2).

[9] 45 FR 42270 (June 24, 1980); specific discussion of stack height credit is discussed at 42281–2.

[10] Guideline for Determination of Good Engineering Practice Stack Height, pp 20–23. This is further illustrated in Figures 5 and 6.

[11] Quite apart from any such regulatory provision, States have authority to require such demonstrations, on the terms outlined or on stricter or more lenient terms, under the savings provisions of section 116 of the Clean Air Act.

[12] Earlier EPA guidance, although expressing reservations about the accuracy of the formula when applied to rounded structures, allowed its use for certain tapered structures and cooling towers. "Guideline for Determination of Good Engineering Practice Stack Height," July 1981 at 38–40. For this reason, EPA will grandfather any credits for such structures that were granted prior to November 9, 1984. Since EPA guidance has never allowed credit for porous structures, the restriction in this rule for such structures applies to all stacks in existence since December 31, 1970.

[13] Clean Air Act section 169

If such sources had to show that use of a formula height stack was needed to avoid exceedances of the NAAQS or PSD increments, that might prove difficult for many of them. The likelihood of such exceedances tends to decrease as the emission rate for the source decreases. By the same token, the incremental emission reductions available from the sources that are at issue here tend to be small and among the most expensive available. In terms of emission reductions, little is at stake where these sources are concerned.

Accordingly, the rules will require such sources, if a reviewing authority calls for a demonstration, to the rules show that the use of a formula stack height is needed to avoid a 40-percent increase in concentrations due to downwash. This will provide a rough check on whether the formula, as applied in the particular case at issue, produces the result it was designed to produce.

The EPA is not providing here for sources to justify their formula height stacks by arguing that the height in excess of that needed to avoid NAAQS violations is needed to avoid a local nuisance. The discretionary modeling requirement is designed for application to stacks before they were built. Beyond that, there is no way to determine based on the *absence* of a local nuisance that a formula height stack is not too tall, in the way that the *presence* of a nuisance shows that a stack under formula height in fact is too short. Accordingly, there will be no way, as there was with short stacks being raised, to determine from actual experience whether a local nuisance would occur at a shorter stack height. Though avoiding local nuisance is a legitimate purpose for which stacks are built, it would be very difficult to show by modeling what stack height was needed to avoid it.

Some commenters have misunderstood EPA's allowance of discretion to require fluid modeling as requiring such modeling whenever *any* individual or entity called for such a demonstration. This discretion rests explicitly with the reviewing agencies who have always had the prerogative to require more stringent analyses in the SIP process, and no obligation is implied for these agencies to require fluid modeling simply because it has been called for by some individual during the permit review process. It is EPA's expectation that technical decisions to require such additional demonstrations would be based on sound rationale and valid data to show why the formulae may not be adequate in a given situation. In any case, given the burden of reviewing a fluid modeling demonstration, an agency is not likely to exercise this option absent sufficient justification. Consequently, EPA disagrees with the commenters' contention that fluid modeling will supplant the use of the GEP formulae, except in what EPA believes will be unusual instances.

Reliance on the 2.5H Formula. In limiting the applicability of the 2.5H formula to those cases where the formula was actually relied upon, the November 9 proposal defined such reliance in terms of stack design. A number of comments indicated that actual stack design and construction may ultimately be control, not by the 2.5H engineering rule, but by construction materials specifications. Consequently, while 2.5H rule may have provided an initial starting point in stack design, the rule may not have dictated final stack height. In other cases, it was argued that a number of source owners may have constructed their stacks in excess of what was determined to be minimum GEP for precautionary reasons, for process requirements, or in anticipation of additional growth in the area surrounding the facility, even though emission limitations for these sources would have been limited then, as now, to formula height. Consequently, it was argued that EPA should allow sources to demonstrate reliance on the formula in the calculation of emission limits as well as in the design of the stack.

In response to EPA's request for comments on what evidence should be considered acceptable in determining reliance on the 2.5H formula, some commenters urged EPA to consider reconstructed evidence, e.g., affidavits from design engineers or copies of correspondence indicating past reliance on EPA guidance. Other commenters stated that "reliance" should be very strictly construed, that EPA should be circumspect in its review of reliance demonstrations, and that only contemporaneous documentary evidence, such as blueprints and facility design plans, be accepted as evidence.

Response. The EPA is in general agreement with the view that reliance should be considered in relation to the emission limitation for the source, not the design. Since section 123 specifically prohibits EPA from regulating actual stack heights and rather regulates stack height credits used in setting emission limitations, it would be illogical to require that sources demonstrate reliance on the 2.5H formula for actual stack design. Moreover, such an approach would contradict principles of sound planning, in that it would penalize those sources that have built taller stacks in anticipation of facility expansion or other growth in the area that could influence GEP determinations.

If a stack has been built taller than 2.5H formula provides, while the emission limitation has been calculated assuming 2.5H credit, a convincing demonstration has been made that the source properly relied on the formula. Conversely, if the emission limitation for the source is based on some other stack height credit, such as 2.8H, 3.5H or some other number, it would be difficult to show that the GEP formula had in fact been relied on.

In some cases the emission limit information may be unavailable or inconclusive. In such cases, EPA will allow reliance on reconstructed evidence of construction intent.

In comments submitted during the public comment period and in response to questions raised by EPA at the public hearing held on January 8, 1985, industry representatives repeatedly stated that contemporaneous evidence of reliance on the 2.5H formula, such as facility design plans, dated engineering calculations, or decision records are rarely, if ever, retained for more than a few years after construction of the facility is completed. Consequently, they argued that most cases of legitimate reliance would be denied if contemporaneous evidence were required in order to retain for the 2.5H formula.

The EPA agrees. Additionally, credit afforded by the 2.5H formula in excess of that resulting from the use of the H+1.5L derivative is likely to be small, except when the building on which stack height credit is based is substantially taller than it is wide. Finally, it is EPA's view that the court did not intend that sources be subject to a rigorous or overly stringent of reliance, but only that they be accorded a reasonable opportunity to show reliance on the 2.5H formula. For these reasons, EPA will allow the submission of reconstructed, i.e., noncontemporaneous documentary evidence to demonstrate reliance on the 2.5H formula.

Definition of "Nearby". Comments were submitted by UARG and others, arguing that, effectively, no limitation should be placed on the consideration of terrain-induced downwash. Alternatively, some of these commenters argued that the court decision requires that a limitation be adopted that does not apply any distance restriction of ½ mile in modeling terrain effects such as is

applied to structures in the use of GEP formulae, but rather allows consideration of all terrain that results in the same downwash effect as those structures within ½ mile of the stack.

Other commenters have argued that the court decision and legislative history preclude EPA from allowing consideration of any terrain beyond a distance of ½ mile, regardless of where it begins.

Response. For the reasons summarized below, EPA does not accept either the interpretation that the court decision authorizes EPA to adopt a definition based solely on effect, or that it limits consideration exclusively to terrain features falling entirely within ½ mile.

When Congress discussed the allowance of credit for stack height to address downwash, it stated that the term "nearby" was to be "strictly construed," noting that if the term were to be interpreted "to apply to man-made structures *or terrain features* ¼ to ½ mile away from the sources or more, the result could be an open invitation to raise stack heights to unreasonably high elevations and to defeat the basic underlying committee intent." [14]

In its opinion, the court held that EPA could not give unlimited credit when modeling terrain features because that would conflict with the Congressional intention to impose artificial limits on that credit. The court was not presented with, and did not address, the question of what to do about terrain features that "began" within ½ mile and extended outside it. The approach adopted by EPA carried out this congressional purpose to impose an artificial limit but at the same time reflects the real facts more closely than an absolute ½ mile limitation.

Unlike man-made structures, terrain features do not have readily definable dimensions other than height. For this reason, EPA has defined "nearby" as generally allowing inclusion of consideration of terrain features that fall within a distance of ½ mile of the stack. EPA's definition will permit consideration of such terrain that extends beyond the ½ mile limit if the terrain begins within ½ mile, allowing that portion within 10 times the maximum height of the feature, not to exceed 2 miles, as described in the proposal.

To define when a terrain feature "begins" within ½ mile, EPA has related terrain height at the ½ mile distance to the maximum stack height that could be justified under the other two methods for determining GEP. Accordingly, EPA will require that terrain features reach a height at the ½ mile distance limit of either 26 meters (i.e., 85 meters divided by 2.5) or 40 percent of the stack height determined by the GEP formulae applied to nearby buildings.

Treatment of New versus Existing Sources Under the Definition of "Nearby". In the proposal, EPA requested comment on whether new sources should be treated differently from existing sources and presented two options for addressing them.

Few comments were received on these options. Several questioned the logic of distinguishing between new and existing sources in the regulations. One commenter argued that new and existing sources should both be subject to the strict ½ mile limit proposed under one option for new sources only. This has already been discussed under EPA's response to comments on the general definition of "nearby" and is not addressed further here.

Response. New sources are initially subject to more stringent control requirements than many existing sources. Consequently, it is less likely that the emission limitations and stack height credits for these sources will be affected by terrain features. Furthermore, EPA believes that the effect of applying a more restrictive distance limitation will be insignificant and will result only in minor changes in siting, rather than substantial relocation of sources. For this reason, EPA has selected the second option, treating new and existing sources identically under the definition of "nearby."

EPA is giving this definition of "nearby" retroactive application to December 31, 1970. The court's decision makes clear its conclusion that Congress affirmatively focused on this issue and decided thus making application as of the enactment date proper.

Definition of Other Dispersion Techniques. The EPA received many comments on the proper scope of the definition of "dispersion techniques," and perhaps more on the appropriate bounds of the exclusions. Industry commenters generally argued that EPA had improperly proposed to deny consideration for plume-enhancement effects that are "coincidental" with techniques and practices routinely carried out for sound engineering and economic reasons. They argued that EPA should prohibit credit only when a technique or practice was decisively motivated by a desire for dispersion credit. Such an approach would create a "but for" test using the intent of the source owner or operator as the basis for EPA's decisions.

Other commenters argued that EPA must use a test based purely on *effects*, prohibiting credit where a technique or practice has the effect of enhancing dispersion, regardless of any other justification.

Response. In the final regulation, EPA has rejected the polar positions discussed above. The argument that dispersion *effects* are forbidden regardless of motive is discussed and rejected as a part of the general response to the argument that only "well-controlled" sources can receive any dispersion credit.

Conversely, a pure "but for" test runs the risk of creating exclusions that effectively swallow the rule itself. The EPA judges that few, if any, circumstances are likely to arise in which some other benefit or justification cannot be asserted as the basis for a practice, and therefore for such an exclusion.

Where prospective evaluation of merged gas streams, or combined stacks, is concerned, there is no reason to assume the serious administrative burdens investigating such claims might entail. The court directed EPA to apply an intent test "at a minimum," and left it free to take an approach that may be less generous toward credit for combined stacks. Since sources in the future will be able to plan against the background of rules that define permissible credits precisely, little unfairness results from a restrictive approach.

When retrospective application is concerned, however, the retroactivity analysis spelled out by the court directs that an intent-based test be employed as described later.

Accordingly, after considering the record on these matters, EPA has determined to take a "middle-ground" approach to this question. The final regulation retains the same broad prohibition found in the proposal on increasing exhaust gas plume rise by manipulation of parameters, or the combining of exhaust gases from several existing stacks into one stack, with several classes of exclusions. These exclusions recognize the existence of independent justifications based on engineering and/or economic factors, and include:

(1) Demonstration of original facility design and construction with merged gas streams;

(2) Demonstration that merging after July 8, 1985 is part of a change in operation that includes the installation of pollution controls and results in a net reduction in allowable emissions of the pollutant for which credit is sought; or

[14] H.R. Report, No. 294, 95th Cong., 1st Sess. 93 (1977).

(3) Demonstration that merging before July 8, 1985 was part of a change in operation that included the installation of control equipment, or was carried out for sound economic or engineering reasons. An allowable emissions increase creates the presumption that the merging was not carried out for sound economic or engineering reasons.[15]

Of these exclusions, the first is identical to the proposal, and the second and third are modifications of the second exclusion included in the proposal, with a refinement based on prospective/retroactive application.

The first exclusion was retained for the reasons stated in the proposal. After reviewing the comments submitted, EPA determined that its previous conclusion—that standard practice in designing and constructing facilities routinely includes venting emissions from several units into a common or multiflued stack—is correct. Sound engineering and economic reasons, based on costs of constructing and maintaining separate stacks, availability of land, and cost savings for pollution control equipment support facility design and construction considerations. Even if air pollution requirements did not exist at all, sources would have incentives to use as few stacks as possible.

Since *increasing* plume rise, rather than plume rise itself, is a "dispersion technique" and original design and construction define the initial base, such original design and construction of merged gas streams is not considered a dispersion technique. Moreover, in designing the facility, a source can usually choose to build one larger unit rather than several smaller units. Therefore, prohibiting credit for original design generally only effect the design of units and not the plume rise.

Objections have been raised to applying this logic to sources which are constructed over a period of time, but use a single stack. However, the same factual arguments just listed would apply is the same, if the original design included provision for the additional units in the plans for the facility, and in the design and construction of the stack. In such a case, the later units merged into the stack would be included within the exclusion.

In addition, it would be logically very difficult to apply a rule denying credit to original design stacks. EPA or the State would have to assume how many stacks would have been built absent a desire for dispersion credit, where they would have been located, and how high they would have been. Since these alternative stacks would be purely hypothetical, there would be no clear way of answering these questions; the answer would simply have to be selected arbitrarily from the wide range of possible answers. This problem is absent when existing stacks have been combined.

In contrast, EPA finds changes from the original design of a facility in order to include merged stacks to require a narrower judgment. The EPA concluded that, where prospective application is concerned, the exclusion should be available only to sources that combine stacks reduces allowable emissions of the pollutant for which the credit is granted. There are obvious economic advantages in combining stacks to reduce the number of emission control units that must be purchased. In addition, the installation of pollution control for the pollutant in question provides substantial assurance that the purpose of the combination is not to receive a more lenient emission limit.

However, given past EPA guidance on merging of stacks, EPA has concluded that retroactive application of this test would not be proper. The EPA guidance documents uniformly took the view that merging of separate stacks into a single stack "is generally not considered a dispersion technique" absent other factors such as excessive use of fans or other devices.[16] Each document provided guidance to a source of a Regional Office regarding the proper treatment of merged stacks in calculating emission limitations. Considering these statements, EPA must consider the standards expressed by the court, as previously discussed in this notice, in judging the propriety of a differing standard for retroactive application. Given the nature and applications of the guidance which it issued in the past, EPA judges the first two criteria—that is, whether the new rule represents an abrupt departure from well-established practice, and whether the parties against whom the new rule is applied relied on the former rule—to be satisfied. In addition, applying the prospective criteria to past practice would require significant changes in fuel and/or control equipment for parties whose emission limits were based on previous guidance. Finally, and particularly where sources have not been allowed to increase their previous emissions as a result of the combining of stacks, EPA does not judge the statutory interest to be overriding in this instance, since the rule even in its retrospective version only exempts sources that can show a reasonable non-dispersion enhancement ground for combining stacks, and thereby implements the "intent" test suggested by the court. On the other hand, EPA has never suggested that combined stacks that *cannot* meet such a test are proper. Sources whose actual emissions are increased, or whose emission limitations are relaxed in connection with the combining of stacks create a strong presumption that the combination was carried out in order to avoid the installation of controls. Such combinations would indeed run counter to the statutory purpose, and retrospective application of a test that forbids them is therefore proper.

Exemptions from the Definition of Dispersion Techniques. The EPA received numerous comments in response to its request for input on what consideration, if any, should be given to excluding sources from the definition of "Dispersion Techniques" whose emissions are below a specified level or whose stacks are less than the *de minimis* height. These commenters argued that combining gas streams in particular often had an economic justification independent of its effects on dispersion, and therefore should not be generally forbidden. Other comments stated that, in considering any such exclusion, EPA should consider the effect on total atmospheric loadings.

Response. Some limitation on the number of sources affected by the definition at "dispersion techniques" necessary for EPA to carry out the stack height program. There are currently estimated to be over 23,000 sources of SO_2 in the United States with actual emissions exceeding 100 tons per year. It would not be possible for EPA or States to review the emission limits of even a significant fraction of this number within a reasonable time period. Twenty-two thousand of these sources have emissions less than 5,000 tons per year and contribute a total of less than 13 percent of the total annual SO_2 emission.[17] For this reason, and for reasons of administrative necessity discussed earlier, EPA is adopting an exemption from prohibitions on manipulating plume rise for facilities with allowable SO_2 emissions below

[15] In cases where no emission limit existed for a source prior to the merging, such merging is not to result in any increase in the actual emissions that occured prior to the merging.

[16] Memorandum from Darryl Tyler to Steven Rothblatt, August 20, 1980. See also letter from Walt Barber from Howard Ellis, October 6, 1983, and from David Stonefield to Joseph Paisie, June 27, 1980.

[17] Memorandum from Eric Ginsburg, OAQPS to David Stonefield, "Stratification of SO_2 Point Sources by Size," June 25, 1985.

5,000 tons per year. The EPA believes the effect of this exemption on total SO_2 emissions to be *de minimis* in nature. Even if these sources were able to increase their emission rates as the result of an exemption from the definition of dispersion techniques, their combined effect would not be significant. Indeed, because these sources are exempt on the basis of their annual emissions, there exists an upper limit to the extent to which they may obtain relaxed emission limitations, i.e., to maintain an exemption, the annual emissions of a source may never exceed 5,000 tons per year. For these reasons, the 5,000 ton limit passes a *de minimis* test even more clearly than the 65-meter limit included without challenge in the prior version of this rule. Moreover, EPA believes that a large majority of these sources would not be inclined to seek less stringent emission limitations, in part because a substantial portion of them are limited by State and local fuel use rules.

The EPA believes at this time that a *de minimis* size exemption is justified only for sources of SO_2 and that the number of small sources for which emission limitations for other pollutants are a significant concern would not support a similar exemption. The EPA will continue to review the need for such exemptions and, if deemed appropriate, will propose them for review and comment at a later date.

Plume Impaction. The EPA received a number of comments requesting that credit for plume impaction be retained on the grounds that eliminating such credit would have severe impacts on existing sources. Several approaches were offered for overcoming plume impaction effects in modeling to determine emission limitations based on GEP stack height. Generally, these approaches focused on modifying the stack-terrain relationship represented in the models. Several commenters argued along these lines that the court recognized and approved of EPA's attempt to avoid the effects of plume impaction, but only disapproved of EPA's regulatory method in allowing sources to avoid impaction. These commenters argued that the court did not preclude EPA from allowing credit to avoid plume impaction, but only from allowing credit for stack height in excess of GEP; this, it was argued, could be remedied in a way that was consistent with the court decision by incorporating impaction avoidance within the definition of GEP. It was also suggested that EPA give its "interim approval" to the use of certain refined complex terrain models, in particular the Rough Terrain Display Model (RTDM), to calculate emission limitations for sources affected by changes to the stack height regulation.

Response. The EPA agrees that the court was cognizant of the problem of plume impaction and noted that there was much to recommend EPA's allowance of credit for impaction avoidance. However, the allowance of credit for plume impaction was not remanded to EPA for revision or reconsideration, but was reversed by the court as exceeding EPA's authority.

The EPA does not agree that it would be possible to redefine GEP in a manner that allowed credit for avoiding impaction, since GEP is explicitly defined in terms of preventing excessive concentrations due to downwash, wakes, and eddies. Plume impaction is a phenomenon completely unrelated to downwash and, rather, is a consequence of effluent gases being emitted at an insufficient height to avoid their striking downwind hillsides, cliffs, or mountainsides prior to dilution. Manipulation or "adjustment" of modeling parameters to avoid predicting theoretical plume impaction where actual stacks have been constructed above GEP would be tantamount to granting the same impaction credit that was invalidated by the court. Furthermore, EPA believes that the manipulation of modeling parameters for no other reason than to avoid an undesirable result is technically indefensible.

The EPA is in the process of revising its "Guideline on Air Quality Models." A number of individuals commenting on the guideline have requested that EPA approve the use of the RTDM model as a preferred technique. Further discussion of this issue can be found in documents associated with EPA's action on the modeling guideline (Docket No. A–80–46). With respect to the revised stack height regulation, EPA has not rejected the use of RTDM. To the extent that appropriate and complete data bases and information on model accuracy are available, EPA may approve the use of RTDM on a case-by-case basis when executed in accordance with the guideline requirements. Sponsors of RTDM and presently developing more extensive support for broader applications of the model. When such support is received and reviewed by EPA, consideration will be given to allowing more general use of RTDM in regulatory activities such as compliance with the stack height rule.

Timetable for State Implementation. A number of commenters stated that it was not possible to conduct the necessary analyses, prepare and submit revised State rules and source-specific emission limitations within the 9-month timeframe referred to in the November 9 proposal. A variety of alternative schedules were proposed by these commenters for consideration by EPA.

Response. As with EPA's previous allowance of credit for plume impaction, the timetable for preparation and submittal of revised SIP's was not an issue remanded by the court. The EPA is in agreement that these revisions to the stack height regulation will require significant efforts by State and local agencies, individual emission source owners and EPA Regional and Headquarters offices in order to comply within the 9-month timeframe required by section 406(d)(2) of the 1977 Clean Air Act Amendments. It was based on this concern that EPA originally provided a two-step process for States to follow in revising their plans and submitting them to EPA for approval. However, the court found that this effort was explicitly contrary to section 406(d)(2) and ordered EPA to follow the 9-month schedule provided in the Clean Air Act.

New Sources Tied into Pre-1971 Stacks. As indicated earlier, in response to the court opinion, EPA proposed to deny "grandfathered" status to post-1970 sources tying into pre-1971 stacks. Some commenters stated that EPA was in no way prohibited from allowing credit for new sources ducted into pre-1971 stacks exceeding GEP height. Rather, they indicated that EPA simply had to provide justification for such allowance.

Other commenters indicated general support for EPA's proposal with respect to new sources tying into grandfathered stacks, but suggested that several expansions or clarifications be provided, most notably that, in addition to new and major modified sources, reconstructed sources not be allowed greater than GEP stack height credit when tying into greater than GEP stacks.

Response. In further review of this issue, EPA can find no convincing rationale to allow sources constructed after December 31, 1970, to avoid GEP restrictions simply by ducting their emissions into a stack that is "grandfathered" under section 123. On the contrary, the intent of section 123 to limit credit for stack height in excess of GEP suggests that EPA should not allow credit for such stack height except to honor financial commitments made prior to the end of 1970. Sources in existence after that date should be treated equally under the regulation and not allowed to avoid legitimate control requirements

through the use of "grandfathered" stack heights.

Sources undertaking major modification, or reconstruction become subject to additional control requirements under the Clean Air Act and are treated as "new sources" for the purpose of new source review and PSD requirements. EPA finds it appropriate that GEP requirements should be invoked at the time that other requirements for new, modified, or reconstructed sources become applicable.

Summary of Modifications to EPA's Proposal Resulting from Public Comments

Based on comments received during the public comment period, EPA has made a number of revisions to its proposed regulation in addition to those discussed above. These revisions are summarized below.

Section 51.1(hh)(2)(B)(ii) of the regulation has been clarified to require sources merging gas streams after July 8, 1985 to achieve a net reduction in allowable emissions. This change was made to make it clear that the effects of merging should not be used as a way of achieving compliance with present emission limits and to avoid penalizing sources who are presently emitting at less than allowable levels.

Section 51.1(hh)(2)(B)(iii) allows credit for a source that merged gas streams in a change of operation at the facility prior to July 8, 1985 that included the installation of control equipment or had other sound engineering or economic reasons. Any increase in the emission limitation, or in the previous actual emissions where no emission limitation existed created a presumption that those sound reasons were not present.

Section 51.1(hh)(2)(E) has been added to exclude from the definition of prohibited "dispersion techniques" the use of techniques affecting final exhaust gas plume rise where the resulting total allowable emissions of SO_2 from the facility do not exceed 5,000 tons per year.

Section 51.1(ii)(1) has been revised to specify that the 65 meter *de minimis* height is to be measured, as in other determinations of GEP stack height, from the ground-level elevation at the base of the stack. This does not represent a substantive change in the rule or in its application relative to past practices, but rather a simple clarification.

Section 51.1(ii)(2) has been revised to require that source owners demonstrate that the 2.5H formula was relied on in establishing the emission limitation.

Section 51.1(ii)(3) has been revised as discussed elsewhere in this notice to specify that an emission rate equivalent to NSPS must be met before a source may conduct fluid modeling to justify stack height credit in excess of that permitted by the GEP formulae.

Section 51.1(jj) now defines "nearby" for purposes of conducting field studies or fluid modeling demonstrations as 0.8 km (½ mile), but allows limited consideration of terrain features extending beyond that distance if such features "begin" within 0.8 km, as defined in the regulation.

Section 51.1(kk) has been revised to provide separate discussions of "excessive concentrations" for the separate situations discussed earlier in this preamble. As that discussion makes clear, EPA believes that the differing categories of sources subject to this rule are best addressed by requirements that vary somewhat with those circumstances. This definition embodies that approach.

Section 51.12(k) has been corrected to provide that the provisions of § 51.12(j) shall not apply to *stack heights* in existence before December 31, 1970. The proposal had incorrectly stated that ". . . § 51.12 shall not apply to *stacks* existence. . . ."

Program

This regulation does not limit the physical stack height of any source, or the actual use of dispersion techniques at a source, nor does it require any specific stack height for any source. Instead, it sets limits on the maximum credit for stack height and other dispersion techniques to be used in ambient air modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. Sources are modeled at their actual physical stack height unless that height exceeds their GEP stack height. The regulation applies to all stacks in existence and all dispersion techniques implemented since December 31, 1970.

State Implementation Plan Requirements

Pursuant to section 406(d)(2) of the Clean Air Act Amendments of 1977, EPA is requiring that all States (1) review and revise, as necessary, their SIP's to include provisions that limit stack height credits and dispersion techniques in accordance with this regulation and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or by any other dispersion techniques. For any limitations that have been so affected, States must prepare revised limitations consistent with their revised SIP's. All SIP revisions and revised emission limitations must be submitted to EPA within 9 months of promulgation of this regulation.

Interim Guidance

In its proposal, EPA stated that it would use the proposed regulation to govern stack height credits during the period before promulgation of the final regulation. The EPA further stated that any stack height credits that are granted based on this interim guidance would be subject to review against the final rules and may need to be revised. Consequently, with these final rules, EPA is requiring that any actions that were taken on stack heights and stack height credits during this interm period be reviewed and revised as needed to be consistent with this regulation.

Regulatory Flexibility Analysis

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have significant economic impacts on a substantial number of small entities. This rule is structured to apply only to large sources; i.e., those with stacks above 65 meters (213 feet), or with annual SO_2 emissions in excess of 5,000 tons, as further noted in the rule. Based on an analysis of impacts, electric utility plants and several smelters and pulp and paper mills will be significantly affected by this regulation.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. EPA's analysis of economic impacts predicts a potential cost to emission source owners and operators exceeding $100 million; therefore, this is a major rule under Executive Order 12291. However, due to the promulgation deadline imposed by the court, EPA did not have sufficient time to develop a full analysis of costs and benefits as required by the Executive Order. Consequently, it is not possible to judge the annual effect of this rule on the economy. A preliminary economic impact analysis and subsequent revision were prepared and are in the docket.

For any facility, the air quality and economic impact of the stack height regulation generally depends on the extent to which the actual stack at that facility conforms to GEP stack height.

Thus, when the regulation is applied to large sources, i.e., those with stack height greater than GEP and emissions greater than 5,000 tons per year, it will have the potential for producing emission reductions and increased control costs.

A preliminary evaluation of the potential air quality impacts and a cost analysis of the regulation was performed at the time of proposal. The impacts identified were established in isolation of other regulatory requirements. The report predicted a range of impacts, from a "low impact" scenario that presumed that many potentially affected sources would be able to justify their existing stack heights, configurations, and emission limitations to a "high impact" scenario which assumed that all of the potentially affected sources would be required to reduce their emissions to some degree.

In the development of its final rulemaking action, EPA refined its evaluation of potential impacts, producing revised estimates of the probable costs of the changes to the regulation and expected reductions in SO_2 emissions. As a result of this refinement, EPA estimates that the rule will yield reductions in SO_2 emissions of approximately 1.7 million tons per year. The annualized cost of achieving these reductions will be aproximately $750 million, and the capital cost is expected to be approximately $700 million.

This regulation was reviewed by the Office of Management and Budget, and their written comments and any responses are contained in Docket A-83-49.

Judicial Review

The EPA believes that this rule is based on determinations of nationwide scope and effect. Nothing in section 123 limits its applicability to a particular locality, State, or region. Rather, section 123 applies to sources wherever located. Under section 307(b)(1) of the Clean Air Act [42 U.S.C. 7607(b)(1)], judicial review of the actions taken by this notice is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia and within 60 days of the date of publication.

List of Subjects in 40 CFR Part 51

Air pollution control, Ozone, Sulfur dioxide, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

Dated: June 27, 1985.

Lee M. Thomas,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Part 51 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 110, 301(a), and 123, Clean Air Act as amended (42 U.S.C. 7410, 7601(a) and 7423).

2. Section 51.1 is amended by revising paragraphs (hh), (ii), (jj), and (kk) as follows:

§ 51.1 Definitions.

* * * * *

(hh)(1) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) Using that portion of a stack which exceeds good engineering practice stack height;

(ii) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(2) The preceding sentence does not include:

(i) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of exhaust gas streams where:

(A) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(B) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

(iii) Smoke management in agricultural or silvicultural prescribed burning programs;

(iv) Episodic restrictions on residential woodburning and open burning; or

(v) Techniques under § 51.1(hh)(1)(iii) which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

(ii) "Good engineering practice" (GEP) stack height means the greater of:

(1) 65 meters, measured from the ground-level elevation at the base of the stack;

(2) (i) For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required under 40 CFR Parts 51 and 52,

$$H_g = 2.5H,$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

(ii) For all other stacks,

$$H_g = H + 1.5L,$$

where

H_g = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s)

provided that the EPA, State or local control agency may require the use of a field study or fluid model to verify GEP stack height for the source; or

(3) The height demonstrated by a fluid model or a field study approved by the EPA State or local control agency, which ensures that the emissions from a stack do not result in excessive

concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(jj) "Nearby" as used in § 51.1(ii) of this part is defined for a specific structure or terrain feature and

(1) for purposes of applying the formulae provided in § 51.1(ii)(2) means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (½ mile), and

(2) for conducting demonstrations under § 51.1(ii)(3) means not greater than 0.8 km (½ mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (H_t) of the feature, not to exceed 2 miles if such feature achieves a height (H_t) 0.8 km from the stack that is at least 40 percent of the GEP stack height determined by the formulae provided in § 51.1(ii)(2)(ii) of this part or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(kk) "Excessive concentration" is defined for the purpose of determining good engineering practice stack height under § 51.1(ii)(3) and means:

(1) for sources seeking credit for stack height exceeding that established under § 51.1(ii)(2), a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program (40 CFR 51.24 and 52.21), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the authority administering the State implementation plan, an alternative emission rate shall be established in consultation with the source owner or operator;

(2) for sources seeking credit after October 1, 1983, for increases in existing stack heights up to the heights established under § 51.1(ii)(2), either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in paragraph (kk)(1) of this section, except that the emission rate specified by any applicable State implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the authority administering the State implementation plan; and

(3) for sources seeking credit after January 12, 1979 for a stack height determined under § 51.1(ii)(2) where the authority administering the State implementation plan requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by the equations in § 51.1(ii)(2), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

3. Section 51.1 is further amended by removing paragraphs (ll) and (mm).

§ 51.12 [Amended]

4. Section 51.12 is amended by removing paragraph (l).

5. Section 51.12(j) is amended by removing "and (l)" from the first sentence.

6. Section 51.12(k) is revised as follows:

(k) The provisions of § 51.12(j) shall not apply to (1) stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in §§ 51.18(j)(1)(v)(a), 51.24(b)(2)(i) and 52.21(b)(2)(i), were carried out after December 31, 1970; or (2) coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

§ 51.18 [Amended]

7. Section 51.18(l) is amended by removing "and (l)" from the first sentence.

[FR Doc. 85-16094 Filed 7-5-85; 8:45 am]
BILLING CODE 6560-50-M

VOL
50

ISS
130

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federal register

Monday
July 8, 1985

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 817

Permanent Program Performance Standards; Underground Mining Activities; Subsidence Control; Proposed Rule

VOL 50 ISS 130 JL 8 1985 UMI

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 817

Permanent Program Performance Standards; Underground Activities; Subsidence Control

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to revise portions of its subsidence control rules relating to the protection of surface structures and facilities. This rulemaking is done pursuant to the Court's order in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79-1144 (D.D.C.) (Memorandum Opinion filed Oct. 1, 1984).

In conjunction with the comments on the proposed reclamation standard for structures damaged by subsidence, OSM also seeks comments on the deletion from the former 1979 rule of the requirement regarding a pre-subsidence survey and monitoring the degree of material damage to structures.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. eastern time on September 16, 1985.

Public Hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, D.C.; Denver, Colorado; and Pittsburgh, Pennsylvania at local time on September 9, 1985. OSM will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. OSM will accept requests for public hearings until 5:00 p.m. eastern time on August 26, 1985.

ADDRESSES: *Written Comments:* Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, D.C.; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 10 Parkway Center, Pittsburgh, Pennsylvania. The addresses for any hearings scheduled in other States will be announced prior to the hearings.

Requests for Public Hearings: Submit in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Mr. C.Y. Chen, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: 202-343-1501 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The time, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. C.Y. Chen (see **"FOR FURTHER INFORMATION CONTACT"**) in writing of the desired hearing location by 5:00 p.m. eastern time on August 19, 1985. If no one has contacted Mr. C.Y. Chen to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only a few people express an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

On March 13, 1979, OSM promulgated permanent program rules (44 FR 14902) as required by section 501(b) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.* In the 1979 rules, 30 CFR 817.121, 817.122, 817.124, and 817.126 established performance standards relating to subsidence control and reclamation at underground coal mines. The requirements for a pre-subsidence survey and a subsidence control plan as part of the permit application were established by 30 CFR 784.20.

Section 817.124 of the 1979 rule set forth requirements for the correction of subsidence-caused damage to both structures and surface lands without reference to State law. The 1979 rule required that underground operators mitigate the subsidence-related material damage by restoring the land to its premining capabilities, and by restoring, rehabilitating, removing and replacing, or purchasing damaged structures or facilities or alternatively, by compensating surface structure owners through the purchase of a noncancellable, premium prepaid insurance policy or other means designed to cover the amount of diminution in value caused by subsidence. 44 FR 14902, 15440 (March 13, 1979).

Industry plaintiffs challenged the restoration requirement of former 30 CFR 817.124 in *In Re: Permanent Surface Regulation Litigation*, No. 79-1144 (D.D.C. 1980) (*In Re: Permanent (I)*), and based their attack on the argument that Congress intended the insurance requirement of section 507(f) of the Act as the exclusive means for setting operator responsibility for subsidence damage. The Court rejected their argument and held that the prior rules for remedying the effects of subsidence "find support in the Act. The restoration requirement is consonant with section 515(b)(2) of the Act." *In Re: Permanent (I), supra*, February 26, 1980 Opinion at 63-64. The Court also held that the compensation requirement of the 1979 rules, which extended to surface structures and facilities, was "an insurance mechanism authorized by section 507(f)" of the Act. *Id* at 64.

On April 16, 1982, OSM proposed permanent program rules (47 FR 16604) to amend 30 CFR 784.20, 817.121, 817.122, 817.124 and 817.126 pertaining to subsidence control. On June 1, 1983, OSM promulgated the final permanent

rules on subsidence control. 30 CFR 784.20, 817.121 and 817.122. (48 FR 24638).

The June 1, 1983, rule at 30 CFR 817.121(c)(2) (48 FR 24652) made operators responsible to correct material damage to any structures and facilities resulting from subsidence to the extent required by State law. The rule at 30 CFR 817.121(c)(1) (48 FR 24652) required the operator to correct, to the extent technologically feasible, all subsidence-caused material damage to surface lands without regard to State law. In essence, the 1983 rule retained the land restoration requirement of the former rule, but changed the requirement to repair structures.

In the case of *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79-1144 (D.D.C.), citizen and environmental groups, industry and States challenged a number of OSM rulemaking proceedings, including provisions of the June 1, 1983, subsidence control rules.

On October 1, 1984, the Court issued a memorandum opinion. *In Re: Permanent Surface Mining Litigation (II)*, No. 79-1144 (D.D.C. 1984) (*In Re: Permanent (II)*, October Op.). Finding the Secretary's reading of the statute "reasonable," the Court upheld the land restoration requirements of § 817.121(c)(1) against an industry challenge that the regulation infringes on State laws which provide for remedies in contract and tort for subsidence damage to land. October Op. at 6-7. The Court reasoned that while these State remedies might "redress injuries suffered by private parties" they do not redress injury to the "land itself." *Id.* at 6. As the Court cautioned, private parties should not be able to circumvent Congress intent by forming contracts. The Court held that the Act was passed not only to protect individual property rights, but also to protect this Nation's land from the surface effects of underground mining for "generations yet unborn." *Id.* at 7. Therefore, the Court found that any State remedy inconsistent with the requirement of section 515(b)(2) to restore land materially damaged by subsidence would be preempted by the Act. *Id.*

On the other hand, the Court held that the 1983 final rule, 30 CFR 817.121(c)(2) (48 FR 24652), requiring operators to redress subsidence-caused material damage to structures only to the extent required by State law, represented a "radical change" from both the earlier rule and the 1982 proposed rule, 30 CFR 817.121(c), 47 FR 16604, 16610 (April 16, 1982), which both required such redress irrespective of State law. October Op. at 10. Accordingly, the Court remanded 30 CFR 817.121(c)(2) to the Secretary for proper notice and comment. *Id.* at 10-11.

The Court also found that the 1979 rule requiring the subsidence control plan to include the results of a pre-subsidence survey of structures, and a detailed description of any monitoring proposed to measure subsidence near structures, 30 CFR 784.20(d), 44 FR 14902, 15369 (March 13, 1979), was deleted in the 1983 final rule without adequate notice. October Op. at 14. Because the Court believed this regulation relates to the issue of whether the operator must restore structures materially damaged by subsidence, the Court ordered the Secretary to request additional public comments on this deletion in conjunction with the comments on 30 CFR 817.121(c)(2). *Id.*

On February 21, 1985, in accordance with the Court's ruling, OSM suspended a portion of 30 CFR 817.121(c)(2). 50 FR 7274, February 21, 1985.

III. Discussion of Proposed Rule

Proposed § 817.121(c)(2)

OSM has decided to repropose § 817.121(c)(2) of the 1983 rule which limits the requirement to correct subsidence-caused material damage to structures and facilities to the degree imposed by State law. OSM's authority for the proposed rule derives, in part, from section 507(f) of the Act, which makes the operator's obligation to compensate the property owner contingent upon his obligation to undertake such remedial measures under State law.

The proposed rule is supported by both law and policy. As discussed below, the Surface Mining Act does not require operators to repair subsidence-caused material damage to structures irrespective of State law. OSM is not asserting that it could not impose such a standard, but only that the law does not require it and that such a sweeping responsibility is inappropriate.

Section 516(b)(1) of the Act requires underground mine operators to prevent subsidence-caused material damage and to maintain the value and use of "surface lands" to the "extent technologically and economically feasible." This provision does not itself require the restoration of either land or structures damaged by subsidence. However, through section 516(b)(10), the surface mining performance standards of section 515 may be made applicable to any surface impacts of underground mining not specified in section 516(b). Section 515(b)(2) requires the surface coal mining operator to "restore the land affected" to a condition capable of supporting premining uses. There is no similar explicit mandate from Congress to require restoration of structures materially damaged by subsidence.

The word "land," as it is used in section 515(b)(2) may be interpreted to refer to land in its unimproved or natural state. *See* 48 FR 24044. This interpretation of land as a natural resource is consistent with the use of that term in other provisions of the Surface Mining Act. For instance, in order to protect the "stability of the land," the Act requires the suspension of underground coal mining under "buildings" if imminent danger exists. Section 516(c). Also, when setting reclamation priorities for abandoned mine lands, Congress distinguished between the "restoration of land and water resources * * * previously degraded by adverse effects of coal mining practices" and the repair of "facilities adversely affected by coal mining practices." Section 403.

If Congress meant to include structures and facilities in section 515(b)(2), it certainly would have enumerated such. Nothing in the plain wording of section 515(b)(2) suggests that its application to structures as well as to land is mandated. To the contrary, as suggested by the Court in upholding the land restoration requirements of 30 CFR 817.121(c)(1), there is a sound basis for distinguishing between the restoration requirement for land and that for structures. *See* October Op. at 5-6.

In policy, as well as law, there is clear reason to distinguish the protection provided for land and structures. Where an underground mine operator purchases from the surface owner the right to subside the land, the individual's property rights are protected, but the long term public interest in the land is not protected. Thus, § 817.121(c)(1) functions to prevent this injury to the land by assuring that in all cases, irrespective of private contract, this valuable natural resource will be restored to its premining capabilities, to the extent technologically feasible.

On the other hand, there is no overriding environmental or public interest in protecting a building or structure that its owner does not seek to protect. For example, some jurisdictions allow an operator to purchase the right to subside a structure owned by the surface owner. In such an instance, the parties have worked out a mutually agreeable solution to account for private damage. The operator should not have to recompensate the surface owner as the 1979 rules required. The proposed rule leaves this determination to State law.

While private parties may not be motivated to protect the environment, they have a great incentive to protect structures that they own. State law has traditionally provided remedies in contract and tort for those parties who own subsidence-damaged structures. Accordingly, there is no clear need for OSM to step in and protect owners of these structures in the absence of clear congressional mandate.

At least one State has passed legislation which specifically addresses subsidence under structures. Pennsylvania's Bituminous Mine Subsidence and Land Conservation Act of 1966, 52 Pa. Stat. Ann. section 1406 *et seq.* (Purdon's) establishes certain classes of protected structures. For instance, if a materially damaged occupied dwelling were in existence on the date of enactment of the Pennsylvania statute, the operator would have to repair the dwelling or compensate the owner for the diminution in value. The proposed rule would allow a State, such as Pennsylvania, to choose to protect selected classes of structures. *See* 48 FR 24045.

Deletion of § 784.20(d)

In addition to remanding § 817.121(c)(2) of the 1983 rule on the grounds of the Administration Procedure Act, the Court ordered OSM to request comments on the deletion of 30 CFR 784.20(d), 44 FR 14902 (March 13, 1979), from the 1983 final rule. October Op. at 14. Former 30 CFR 784.20(d) required the subsidence control plan to contain:

> A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including such measure as—
>
> (1) The results of pre-subsidence survey of all structures and surface features which might be materially damaged by subsidence.
>
> (2) Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

OSM deleted former 30 CFR 784.20(d) from the 1983 final rule, in part, to avoid unnecessary duplication. *See* 47 FR 16605 (April 16, 1982). The existing 1983 rule requires a premining survey, "which shall show whether structures or renewable resource lands exists * * * and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands." 30 CFR 784.20. OSM, therefore, considers the pre-subsidence survey requirement of former § 784.20(d)(1) redundant.

OSM also deleted 30 CFR 784.20(d)(2) (1979) which required a description of monitoring, if any, near structures or other features to measure the degree of probable subsidence damage to such structures or features. Section 784.20(d)(5), adopted in 1983, retains the substance of former 30 CFR 784.20(b)(3)(v) of the 1979 rule and requires a detailed description of monitoring, if any, to detect the commencement of subsidence and the degree of subsidence and measures to be taken by the operator to prevent or reduce material damage. The new rule focuses on the prevention of subsidence and material damage. Accordingly, although the 1983 rule eliminated the language of former § 784.20(d)(2), the current rule continues to require a detailed description of subsidence control measures to prevent or minimize subsidence, including monitoring where appropriate. The 1979 rule, which contained the qualifying phrase "if any" did not impose an absolute monitoring requirement near structures. OSM believes the 1983 rule essentially provides the same degree of discretion as the former rule. Comments are requested on this issue time.

The Court was of a preception that the need to monitor subsidence near structuress is linked to the issue of whether operators must restore structures materially damaged by subsidence. *In Re: Permanent (II), supra,* October Op. at 14. In this regard, commenters are urged to consider whether a more specific requirement for monitoring subsidence near structures is required or whether the monitoring provision of § 784.20(d)(5) is sufficient. At this time, OSM believes that the monitoring provision contained in § 784.20(b)(3)(v) is adequate, regardless of whether the obligation to repair structures is governed by State law.

IV. Procedural Matters

Federal Paperwork Reduction Act

There are no information collection requirements in the proposed rule requiring submittal to the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The determination was made previously in June 1983 in connection with the earlier adoption of this rule and continues to be valid. *See* 48 FR 24649 (June 1, 1983).

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. This too is a continuation of a determination made in June 1983. *See* 48 FR 24649 (June 1, 1983).

National Environmental Policy Act

OSM has determined that the proposed rule is covered adequately by the existing environmental impact statement titled "Final Environmental Impact Statement, OSM–EIS–1: Supplement," and that the preparation of any additional environmental documents under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), is not required.

List of Subjects in 30 CFR Part 817

Coal mining, Environmental protection, Underground mining.

Accordingly, it is proposed that 30 CFR Part 817 be amended as set forth below.

Dated: April 26, 1985.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Management.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

1. The authority citation for Part 817 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 817.121, paragraph (c)(2) is revised to read as follows:

§ 817.121 Subsidence control.

* * * * *

(c) The operator shall—* * *

(2) To the extent required under State law, either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a noncancellable preminum-prepaid insurance policy.

* * * * *

[FR Doc. 85–16155 Filed 7–5–85; 8:45 am]

BILLING CODE 4310-05-M

federal register

Monday
July 8, 1985

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 215

Subsistence Taking of North Pacific Fur Seals; Emergency Interim Rule and Request for Comment

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 50705-5105]

Subsistence Taking of North Pacific Fur Seals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule and request for comment.

SUMMARY: The NMFS issues and requests comment on an emergency interim rule regarding the subsistence taking of North Pacific fur seals (*Callorhinus ursinus*) by Indians, Aleuts, and Eskimos who live on the Pribilof Islands. This rule places restrictions upon the subsistence and handicraft taking of fur seals allowed under the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361, or alternatively under the Fur Seal Act (FSA), 16 U.S.C. 1151, and provides that the harvest may be suspended once the subsistence needs of the Pribilovians have been satisfied. Additionaly, technical changes are made to update the regulations and bring them into conformity with the 1983 amendments to the FSA. Lastly, the NMFS states its intention to propose a permanent rule by September 30, 1985, and requests comment on the alternative approaches.

EFFECTIVE DATES: This emergency rule is effective July 3, 1985; the expiration date will be published in the **Federal Register**. Comments on this rule must be received on or before July 23, 1985. Comments on the rulemaking approach that should be followed in promulgating a permanent rule must be received by August 7, 1985.

ADDRESS: Comments should be addressed to the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235. A copy of the environmental assessment for this rule is available from the Office of Protected Species and Habitat Conservation from the same address.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 202-634-1792.

SUPPLEMENTARY INFORMATION:

Background

Since 1957, a harvest of fur seals on the Pribilof Islands has been conducted under the authority of the Interim Convention on Conservation of North Pacific Fur Seals (Convention). The parties to the Convention are the United States, Canada, Japan, and the Soviet Union. The Convention came into force on October 14, 1957, and was extended in 1963, 1969, 1976, and 1980. Prior to the present Convention, harvests were conducted pursuant to the 1911 Convention for the Preservation and Protection of Fur Seals. The 1911 treaty was interrupted prior to World War II by the withdrawal of Japan, but the Pribilof Islands seal herd was protected between 1941 and 1957 by a provisional agreement between the United States and Canada.

Under the terms of the 1980 extension of the Convention, the Convention expired on October 14, 1984. On October 12, 1984, the parties to the Convention signed a protocol that, upon acceptance by all four parties, would extend the Convention until October 13, 1988. Japan, Canada, and the Soviet Union have ratified the 1984 protocol. On March 20, 1985, the President transmitted the protocol to the Senate, requesting its advice and consent regarding ratification. On June 28, 1985, the Senate adjourned until July 8, 1985, without taking action on the protocol. Although action on the protocol is expected in the near future, it will not occur before July 8, 1985, the date on which the 1985 fur seal harvest is scheduled to begin.

At its April 1985 meeting in Tokyo, the North Pacific Fur Seal Commission (Commission) recommended that up to 22,000 subadult male fur seals be commercially harvested on St. Paul Island in 1985. Additionally, the Commission recommended that a subsistence take of up to 329 fur seals be allowed on St. George Island. Under section 106 of the FSA, 16 U.S.C 1158, the Secretary of State, with the concurrence of the Secretary of Commerce, is authorized to accept or reject, on behalf of the United States, recommendations made by the Commission. The Secretary of State, with the concurrence of the Secretary of Commerce, will be advising the Commission that given the present status of the Convention as it relates to the United States and given the continuing deliberations of the United States Senate on a Resolution of Ratification, it would not be appropriate to accept or reject the Commission's April 1985 recommendations.

The subsistence needs of the Pribilovians have traditionally been met from seals taken in the commercial harvest since the level of the commercial harvest historically had exceeded the estimated subsistence needs of the islanders. This is because the level of the commercial take is set by a biological determination of the number of subadult male fur seals in the population which exceeds that necessary for meeting the full reproductive potential of the herd. In contrast, the level of the subsistence harvest of fur seals is dependent on the subsistence needs of the Pribilovians, but can be regulated as is necessary for the conservation, management, and protection of the population.

A limited subsistence take of fur seals has been authorized on St. George Island, but has been minimized to accommodate fur seal population research. The resultant shortfall in meeting the St. George residents' subsistence requirements has been offset by providing them with meat from the St. Paul commercial harvest.

Applicable Laws

Two statutes are potentially applicable to the taking of fur seals on the Pribilof Islands absent the Convention, the MMPA and the FSA. Both statutes provide for the subsistence taking of fur seals by Alaskan Indians, Aleuts, and Eskimos, but their provisions are not identical. The interplay between the two statutes is such that no clear determination can be made as to which of the competing subsistence regimes should be given precedence.

Section 101(b) of the MMPA, 16 U.S.C. 1371(b), provides that marine mammals may be taken by any Indian, Aleut or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) Is for subsistance purposes; or

(2) Is done for the purposes of creating and selling authentic native articles of handicrafts and clothing . . .; and

(3) In each case, is not accomplished in a wasteful manner.

Notwithstanding this provision, the Secretary of Commerce may prescribe regulations to limit the taking of marine mammals by Alaskan Natives if he determines the species to be depleted. Any regulations issued under the MMPA to restrict the native taking rights must be promulgated by formal, on the record, rulemaking after an opportunity for an agency hearing.

Subsistence is defined under the MMPA regulations at 50 CFR 216.3 as

The use of marine mammals taken by Alaskan natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

The FSA provides for the subsistence take of fur seals under section 103, 16 U.S.C. 1153. Under the terms of section 103(a)

> Indians, Aleuts, and Eskimos who dwell on the coasts of the North Pacific Ocean are permitted to take fur seals [if] . . . the seals are taken for subsistence uses as defined in section 109(f)(2) of the [MMPA] (16 U.S.C. 1379), and only in canoes . . . propelled entirely by oars, paddles, or sails, and manned by not more than five persons each, in the way hitherto practiced and without the use of firearms.

It is arguable that this section does not apply to the Pribilovians since they have harvested fur seals on land for nearly 200 years and have not "hitherto practiced" canoe based hunting.

Section 103(b) of the FSA states that—

> Indians, Aleuts, and Eskimos who live on the Pribilof Islands are authorized to take fur seals for subsistence purposes as defined in section 109(f)(2) of the [MMPA] (16 U.S.C. 1379), under such conditions as recommended by the Commission and accepted by the Secretary of State. . . .

No such limitations on the subsistence harvest rights of the Pribilovians have been recommended by the Commission and accepted by the Secretary of State.

Subsistence purposes allowed pursuant to section 109(f)(2) of the MMPA differ slightly from the permissible takings authorized by MMPA section 101(b). Section 109(f)(2) defines "subsistence uses" as—

> The customary and traditional uses of rural Alaska residents of marine mammals for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicrafts articles out of nonedible byproducts of marine mammals taken for personal or family consumption; and for barter, or sharing for personal or family consumption.

Section 101(b) allows the taking of marine mammals for the creation of handicrafts and clothing for sale, whereas section 109(f)(2) only permits handicraft articles to be made if the marine mammals were initially taken for consumption.

The definition of subsistence contained in the regulations which implement section 101(b) of the MMPA allow for marine mammal parts to be used by anyone who depends upon the taker to provide them with subsistence. In contrast, section 109(f)(2) allows personal or family consumption, or barter, or sharing for personal or family consumption.

Section 105(a) of the FSA empowers the Secretary of Commerce to "prescribe such regulations with respect to the taking of fur seals on the Pribilof Islands . . . as he deems necessary and appropriate for the conservation, management, and protection of the fur seal population. . . ." It is under this broad authority that these regulations are issued whether the details of the subsistence harvest are governed by the native exception of the MMPA or the subsistence provisions of the FSA.

Need for Emergency Regulations

The Pribilof Island fur seal population is currently declining at the rate of 6.5 percent annually and is below levels which would result in maximum productivity. Extensive research conducted by the parties to the Convention indicates that a harvest of females, pups, or harem bulls could have a disasterous effect on the already declining fur seal population. One of the suspected causes of the population decline observed during the 1970s is the female harvests which occurred between 1956 and 1968. In contrast, it is believed that a harvest of subadult males at levels which allow for the future reproductive needs of the population will not have a negative impact on long term population trends.

As long as the native taking is unregulated, the harvest of fur seals for subsistence purposes is unrestrained. Without this emergency interim rule, the age and sex classes of fur seals that may be taken would not be limited. Females, pups, and harem bulls would be subject to harvesting as well as the subadult male fur seals that have been the sole target of the commercial harvest for the past 16 years. Absent this regulation, the harvesting would not be limited in time and place, but could continue as long as seals were available at any location where they congregate. Also, firearms could be used for a subsistence hunt without the restrictions contained in this rule.

This rule provides harvest restrictions to ensure that none of the haulout areas of the bachelor males is overharvested. Hauling grounds on St. Paul Island may be harvested only once each week. Since, at any one time, many of the subadult male seals are away from the islands and feeding at sea, the rotation of harvest sites is intended to allow a sufficient number of young seals to escape the harvest to return to breed in later years.

Under this emergency rule, only taking by traditional havesting methods is allowed. These methods have been determined to be painless and humane by a number of prominent veterinarians, including the Panel on Euthanasia of the American Veterinary Medical Association. By restricting the harvest to traditional techniques, taking will be humane and it is believed that the disruption of the fur seal rookeries will be minimized and that the risks of mistakenly taking female seals will be reduced.

The longstanding fur seal research program would be jeopardized without the provisions of this rule. It is this scientific program which is seeking the causes of the observed decline in the fur seal population. If an unrestricted harvest is permitted on St. George Island, much valuable data providing insight into the possible effect of the harvest and other information on the population decline would be lost.

As the Environmental Impact Statement on the Convention (EIS), issued in February 1985 states at p. 15,

> Regulation of the take in terms of season, sex and length limits and killing techniques, ensures that only those seals not needed as replacements for the breeding stock are taken, and that the harvest is carried out in the most humane way possible without undue stress to the animals.

Pursuant to their rights under the native taking provisions of either the MMPA or the FSA, the Pribilovians have indicated their intent to begin harvesting fur seals on July 8, 1985. Because of the potentially disastrous effects of an unrestrained harvest on the fur seal population and the disruption of a valuable scientific research program, the Assistant Administrator for Fisheries has determined that it is essential to have these regulations in place by July 8.

As it was not known that the Senate would fail to act on ratification of the protocol before the scheduled start of the harvest, it was not possible previously to issue these regulations. In light of the imminent harm which is likely to befall the fur seal population in the absence of this rule it is impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these regulations, under the provisions of 5 U.S.C. 553(b) and (d).

If the MMPA alone, rather than the FSA, were the appropriate vehicle for regulating the 1985 harvest of fur seals, NOAA would be still compelled to issue these regulations under the general authority of section 105(a) of the FSA. Any limitations of the harvest under the terms of MMPA section 101(b) require promulgation through formal rulemaking. Although formal rulemaking procedures may be expedited, regulations could not possibly be in place to manage this year's harvest.

Discussion of Regulatory Provisions

Definitions. Several definitions are added to § 215.2 to accompany the

substantive regulatory changes of other sections. Also, the definition of "director" and "convention" are deleted since the former term is obsolete and the latter is defined in the FSA. The most important definitional additions are those for "subsistence", and "wasteful manner". The definition of "wasteful manner" is functionally identical to that for the same term used in the MMPA regulations at 50 CFR 216.3. The only modifications are the restriction of the definition to the Pribilof Islands and to the taking of fur seals and a change to conform to the definition of subsistence used in this rule. The definition of subsistence is taken from section 109(f)(2) of the MMPA. Definitions also are added for "Assistant Administrator", "handicraft articles", "Pribilovians", and "Protocol".

Conforming provisions. The penalty provisions of § 215.3 are amended to bring them into conformity with changes made to the enforcement section of the FSA in 1983. This is merely a technical amendment and no discretion is exercised in its adoption.

Sections 215.11, 215.12, and 215.13 are amended to reflect a nomenclatural change in the structure of the NMFS. The title of Director has been replaced by that of Assistant Administrator. To avoid the confusion which may result from having dual titles for the same position in the regulations, the regulations are updated to conform to current practice.

Subsistence Harvest of Fur Seals

Section 215.31 states the general conditions under which fur seals may be harvested by Pribilovians. The MMPA management scheme of section 109 (f)(2), as referenced in section 103 of the FSA, is adopted in this rule. Its definition of subsistence provides the most harmonious resolution of the conflicting provisions of the two acts and is more restrictive. Under this rule permissible takings must be for subsistence purposes as defined in section 109(f)(2) of the MMPA. Subsistence under this rule includes the customary and traditional use of fur seals for food, shelter, fuel, clothing, tools, or transportation. Subsistence purposes also include use of seal parts for barter or sharing for personal or family consumption. Additionally, handicraft articles may be made and sold if they are fashioned from nonedible byproducts of marine mammals taken for personal or family consumption.

In adopting this definition, the NMFS intends to allow seals to be transferred to other Alaskan Natives to the extent such transfers have traditionally been done if the recipients will put the seal part to a subsistence use. Transfers of this type are particularly important under the terms of this rule. To provide for the continuation of important scientific research which is designed to yield data essential to the management and conservation of fur seals, the harvest on St. George Island is limited to 329 seals, a number below any credible estimate of that island's subsistence needs. So as not to place unreasonable subsistence limitations on the St. George Islanders, provisions are made whereby they may obtain fresh meat from St. Paul Island. This rule provides that seal meat may readily be transferred from harvesters on St. Paul Island to St. George natives.

Nonedible byproducts of fur seals taken for personal or family consumption may be used for making traditional and customary handicrafts articles. As far as the NMFS is aware, no tradition of creating such items exists on the Pribilof Islands. Under the definition of handicraft articles in § 215.2(c) of this rule, items which may be created and sold under this authority must have been commonly produced on or before October 14, 1983, must be composed in some significant respect of natural materials, and must be significantly altered from their natural form. It should be emphasized that this authority does not give the Pribilovians carte blanche to establish a handicrafts industry. Before sales are allowed under this provision, the Pribilovians should make a showing that any handicraft articles that they plan to make and sell were customarily produced prior to October 14, 1983, and otherwise fit within the regulatory definition.

Perhaps the most difficult provision of this rule to apply, and undoubtedly the most controversial, is § 215.31(c) which requires that any takings may not be accomplished in a wasteful manner. There are three facets to the definition of the term "wasteful manner". First, it means any taking which is likely to result in the killing of fur seals beyond those needed for subsistence purposes. Second, wasteful manner includes takings which result in the waste of a substantial portion of the fur seal. Lastly, it means the employment of a taking method which is not likely to assure the killing and retrieval of the fur seal.

The harvesting method employed by the Pribilovians has been shown to be a very effective means of taking fur seals that virtually guarantees that the targeted seals will be killed and retrieved. Provided that the traditional harvesting techniques are followed, the provisions of the last prong of the wasteful manner definition is satisfied.

In order to determine if taking is wasteful under the first criterion, the level of taking which is necessary to meet the subsistence and handicraft needs of the Pribilovians must be established. Also, it should be noted that the second standard of wastefulness closely relates to this determination. As part of accurately estimating subsistence needs, one must have some idea of what portion of a fur seal is reasonably usable for subsistence purposes. These determinations are crucial to the operation of this rule since the Assistant Administrator is authorized by § 215.32(a) to suspend the harvest when he determines that the subsistence needs of the Pribilovians have been satisfied or that the harvest is otherwise being conducted in a wasteful manner.

Since the commercial harvest of fur seals on the Pribilof Islands has historically exceeded the subsistence needs of the Pribilovians, no accurate record exists of the extent of that need. Whereas the levels of the commercial harvest have been documented each year, no such figures are available concerning the eventual fate of non-commercial seal parts. The excess availability of seal carcasses for subsistence has resulted in the selective use of prime seal meat portions and the discard or other use of less desirable parts.

Although the NMFS has no data on the amount of seal meat actually consumed by Pribilovians, estimates may be derived from a variety of historical records (summarized in Veltre and Veltre, 1983), from extrapolations based on certain subsistence use data recently recorded for St. George Island, and from testimony and written reports provided by contemporary Pribilovians. Two assumptions have been used in the following discussions of subsistence estimates: (1) That the current *native* population is 483 on St. Paul Island and 153 on St. George Island (U.S. Bureau of Census, 1980); and (2) that a subadult male fur seal dresses to 25 pounds of meat. *See* Hearings before the Committee on Expenditures in the Department of Commerce, "Investigations of the Fur Seal Industry," 63rd Cong. 2d Sess. (1914) at 514. It should be noted that the population figure for the Pribilofs that is used in these calculations does not include Alaskan Natives who are not permanent residents but who have traditionally shared in the meat from the harvests. Thus, the resultant estimates

may, to some degree, understate subsistence needs.

In one of the earliest discussions of subsistence needs, Elliot (1881) made the following observation concerning Pribilovians on St. Paul Island:

> (T)hey consume on an average fully 500 pounds a day the year round; and they are, by the permission of the Secretary of the Treasury, allowed every fall to kill 5,000 or 6,000 seal pups, or an average of 22 to 30 young "kitickie" for each man, woman, and child in the settlements. The pups will dress 10 pounds each. This shows an average consumption of nearly 600 pounds of seal-meat by each person, large and small, during the year.

If 600 lbs. of seal meat per person per year is still required for subsistence purposes then 15,264 seals, would be required annually. (600 lbs. x 636 people/25 lbs. per seal.) Alternatively, Osgood *et al.* (1914) found that "the total amount of seal meat needed for one native for a year is 17.5 carcasses. This amounts to not more than one pound of meat free of bone per day for each person." This equates to 11,130 seals to feed a native population of 636. (17.5 carcasses per person x 636 people.)

If seal meat is the sole source of animal protein, however, there is some evidence that one pound per person per day may be insufficient. A recent article in the Arctic Policy Review (January 1985, pp. 5–8) noted that 1.2 pounds of whale meat is needed to satisfy daily animal protein requirements of Eskimos of the far north. Thus, if the nutritional value of seal meat is equivalent to that of whale meat, approximately 21 carcasses per person may be the necessary subsistence take, using Osgood's figure that 17.5 carcasses yields one pound of meat per person per day. This higher estimation of nutritional needs leads to a subsistence harvest of 13,356 animals. (21 carcasses per person x 636 people.)

Also in support of a higher subsistence need is a statement made by Mr. George Clark in 1914. He stated that "a ration of a little over 1 pound of meat a day through the year [was] a ridiculously small allowance." *See* Hearings before the Committee on Expenditures in the Department of Commerce, "Investigation of the Fur Seal Industry," 63rd Cong. 2d Sess. (1914) at 477.

Yet another historic estimate can be drawn from the harvest records of 1912–1917. During this period, the commercial harvest was suspended and only a taking for food was allowed. The average number of seals taken per year throughout these years for "subsistence" was 4,581. The Aleut population during this period averaged 309 for St. Paul and St. George Islands combined. If that rate of taking is extrapolated, the 1985 subsistence need is 9,429. (4,581 seals/309 residents x 636 present residents.) In using this calculation, one should bear in mind the contemporary statement by Mr. Clark that 5,000 seals is an inadequate allowance to meet the food demands of 300 island residents.

Limited data exist on the use of fur seal meat for food by contemporary Pribilovians on St. George Island. Since 1973, the St. George seal harvest has been restricted to about 350 seals annually. However, St. George residents have been allowed to collect additional meat from the harvest on St. Paul to satisfy their subsistence needs. In 1984, for example, 3,200 pounds of fresh seal meat and 3,000 pounds of frozen meat were shipped to St. George Island. This is equivalent to 248 seals (6,200 lbs./25 lbs. per seal), assuming no selection for certain more desirable cuts of meat. However, Pribilovians are known to prefer certain seal parts, such as foreflippers (Veltre and Veltre, 1983). In 1980, for example, the approximately 8,500 pounds of seal meat shipped to St. George Island reportedly included 2,680 flippers (from 1,340 seals). The addition of 350 seals taken on St. George that year results in a St. George subsistence estimate of 1,690 seals. If 1,690 are required by the 153 residents of St. George then about 5,335 are needed on St. Paul Island, for a total need of 7,025 seals. (1,690 seals x 483 people on St. Paul/153 people on St. George.) Alternatively, a subsistence need on St. George Island of 3,000–4,000 has been claimed by island residents (letter to Carmen Blondin from Iliodor Philemonof, February 27, 1984). This estimate is the basis for the 12,000 annual need estimate presented in the EIS at 37.

Veltre and Veltre (1983) report a rough estimate provided by the Tanadgusix Corporation that six kilograms per week is the amount of fur seal consumed per household on St. Paul. They conclude: "Thus, about 30,000 kg of seal meat are used in St. Paul each year, or about 60 kg per person per year." Using assumptions described earlier, this figure equates to 3,358 seals needed annually. (60 kg. x 2.2 lbs. per kg. x 636 people/25 lbs. per seal.) This estimate, of course, assumes a 100 percent utilization of available meat, rather than selection of only certain parts for consumption.

In testimony before the Senate Committee on Foreign Affairs (June 13, 1985), St. Paul Privilovians provided an estimate based upon a house to house survey on the Islands, that 15,170 seals are required to meet subsistence needs on both islands. This figure is presumed to supply sufficient prized seal parts, including flippers, hearts and livers, to satisfy the cultural needs of the Pribilof households.

According to Pribilovian representatives, satisfying subsistence needs on the islands will be particularly important this year. Because the NMFS, pursuant to the 1983 Fur Seal Act amendments, has withdrawn most financial support for and employment of the Pribilovians, fur seal meat may be more important than in previous years. Families may be expected to eat more, rather than less, seal meat in the winter and spring of 1985–1986 than they have in the recent past. In addition, the use of freezing facilities allows more seals to be used than in past years when preservation was by salting, which necessarily limited seal intake. On the other hand some of the estimates based upon historical information may be excessive since food sources other than those available in the past are currently utilized and patterns of seal meat usage may have been significantly altered.

Under the terms of this rule, not only must the subsistence harvest not exceed the subsistence needs of the Pribilovians, but there must be substantial use made of each seal taken. Because of the wide range of the estimates of subsistence need (3,358 to over 15,000), this element of the "wasteful manner" definition takes on added importance. Since no one target number may be set for the subsistence needs, the NMFS believes that the best way to ensure that the harvest is accomplished in a non-wasteful manner is to monitor the use of those seals which are taken.

The NMFS representatives that will be on the Pribilof Islands during the harvest will collect three types of information to aid in making the findings required by § 215.32(a). Each day it will be noted how many seals are killed. Then, with the cooperation of the Pribilovians, the NMFS officials will weigh the total amount of meat taken from the carcasses for subsistence uses. At the end of each day's harvest, a survey will be made of the remaining carcasses to see that substantial utilization has been made of each animal taken. Substantial use of a carcass will mean that it has been dressed out and that the front flippers, shoulders, and most other readily obtainable and utilizable tissues and organs have been removed for subsistence uses. If this monitoring program indicates that the carcasses are not being fully utilized or suggests that the subsistence needs of the islanders

have been satisfied, the Assistant Administrator intends to exercise his authority under § 215.32(a) to suspend the harvest.

Additional research will be conducted to assist in more accurately estimating subsistence needs. During the period of the harvest, an unbiased estimate of the average percentage of utilization of seal carcasses will be made. Based upon a random sample of no less than 25 fur seals, the following data will be collected:

1. The weight of the entire animal immediately following exanguination.
2. The weight of the pelt with blubber still attached.
3. The weight of the organs and tissues removed for food purposes, and
4. The weight of any additional carcass parts that are removed.

Section 215.32(b)(1) Provides that only traditional methods of harvesting may be used to take fur seals. These methods consist, in part, of organized drives of subadult male fur seals from the haulout sites to killing fields located some distance inland. Drives are conducted only in the early morning hours when the temperature is low and the stress placed upon the seals in minimal. Once at the killing fields, the driven animals are separated into smaller groups and selected individuals are stunned by a sharp blow to the head with a long club. The stunning is followed immediately by exsanguination.

Limiting the harvest to the use of traditional methods will ensure that humane methods are used, will minimize the disruption to rookeries which may result from other methods of taking, and will lessen the risk that female seals will be taken. Since the discontinuation of the female harvest in 1968, this method of harvesting has resulted in an accidental taking of females well below one percent of the total take.

Section 215.32(b)(2) clarifies that only subadult male fur seals may be taken. The Scientific Committee of the Commission has recommended that only this component of the fur seal population be harvested. The rule specifies that no adult fur seals or pups may be taken. Because of difficulties in distinguishing between immature male and female fur seals, the rule provides for the occasional accidental taking of a subadult female fur seal which may arise during the harvest. Intentional taking of subadult females, however, is not allowed.

The integrity of NOAA's research effort on fur seals will be maintained only if the traditional harvesting methods are followed. The fur seal research program has yielded much valuable data necessary for the management and conservation of the fur seal, and a major goal of the program is to determine the cause of the continuing decline in the fur seal population.

Assuring that the harvest of North Pacific fur seals is conducted consistently from year to year is important for the quantity and quality of research in several ways. The harvest is currently the only source of information available for estimating the mortality rates of juvenile males on St. Paul Island. Data from the harvest have been used to monitor the rate of entanglement in debris and to determine body weight, body length, tooth size, levels of toxic substances and changes in the age structure of the male portion of the population. These data are also used to assess the status of the population, to monitor population trends, to evaluate rates of population interchange between the island and to seek explanations for the observed dynamics of the population. The harvest has also been used to retrieve tags applied for various research purposes.

To insure that new data are comparable to existing data and not confounded by procedural changes, it is advisable to maintain as much continuity in the harvest methods as possible. General features of the harvest such as time of day, length of season, beginning and ending dates, numbers of rounds, and driving methods, as well as other aspects of the harvest procedures, should remain constant over time in order to enable the comparison of current conditions with historic conditions. It is important, in this regard, that the order of harvest rounds remain unchanged from year to year, although the harvest should be started on a different haulout site each year. Where possible, every effort should be made to ensure that the specific procedures of the harvest follow historic practices.

This rule seeks to accommodate the research requirements to the extent possible. The schedule that would have been followed had there been a commercial harvest this year is incorporated into the regulations at § 215.32(b)(3). It should be stressed that this rule authorizes only the subsistence taking of fur seals even though the methods and schedule employed are derived from the commercial harvest.

Although not specified in the regulations, the following practices are considered to be encompassed by the phrase "traditional harvesting methods." Animals should be arranged in rows for scientific sampling, and certain numbers of living animals should be made available for tagging and release by research scientists as consistent with previous practices. Every attempt should be made to achieve a proportional harvest that reflects the relative abundance of 2, 3, 4 and 5-year olds in the population; no age class selectivity should be made. An age-neutral harvest is necessary for estimating survival rates, one of the most important pieces of information produced by the harvest generated research.

Aside from research motives, the commercial harvest schedule has been adopted to avoid an unacceptable taking of female fur seals. Under this rule, no fur seals may be taken on St. Paul Island after August 5, 1985. After approximately the first week in August, immature fur seals begin to arrive on St. Paul Island in significant numbers. Also, the harem structure breaks down in early August and many females begin using the haulout areas. Extending the harvest period would likely result in a marked increase in the accidental take of female seals. As Illustrated by the population decline which followed the female harvests of the 1950s and 1960s, any increase in the taking of females is likely to have a detrimental effect on the fur seal population.

The provisions applicable to the St. George Island harvest are drawn from past practice and the recommendations of the Commission. They are incorporated into this rule primarily to safeguard the research program which has been conducted on the Pribilof Islands since 1973. So as not to jeopardize this research, which compares the dynamics of harvested and unharvested populations, it has been recommended that the harvest level on St. George not exceed 329 animals. As with St. Paul Island, only subadult males may be taken. Restrictions are also placed on the location of drives and number of seals that may be taken per day.

The harvest restrictions placed upon St. George Island are strict and do not allow its residents to take enough fur seals to satisfy their subsistence requirements. It should be noted, however, that this allotment is consistent with the harvest levels that have been permitted on St. George since 1973. To mitigate the burden placed on St. George residents, the Department of Commerce will provide free air transportation between St. George and St. Paul Islands at least once a week throughout the duration of the St. Paul harvest to allow St. George residents to obtain additional quantities of fresh meat for subsistence purposes. This service was provided during the 1984 harvest and appeared to satisfy the needs of the St. George natives.

Section 215.33 governs the disposition of fur seal parts to any person other than an Alaskan Native. Fur seal parts, under this rule may be transferred from the taker to other Alaskan Natives in accordance with section 109(f)(2) of the MMPA.

There are only three situations in which fur seal parts may be transferred or sold to anyone other than an Alaskan Native. Parts that have first been transformed into an article of handicraft may be sold to non-natives if they have been fashioned from the nonedible byproducts of seals taken for a subsistence purpose. Skins that have been retained from the subsistence take for conversion into handicrafts may be transferred to a registered tannery for processing, as long they are returned directly to the Pribilovian from whom they were obtained. Skins from fur seals that were taken for subsistence purposes, if not used for that purpose, may be transferred to the United States Government which will hold the skins in storage pending a final determination of the disposition.

Given the fact that the United States Senate has not yet acted finally on a resolution of ratification, the Convention is not presently in force. Were the Senate to give its advice and consent to the Protocol extending the Convention, the obligations which the United States has had under the Convention would be rejuvenated. The principal obligations stated in an abbreviated fashion are:

1. Coordination of scientific research and cooperation in investigating fur seal resources;

2. Prohibition of pelagic sealing by any person or vessel subject to U.S. jurisdiction;

3. Prohibition of trade in fur seal skins taken in violation of the Convention; and

4. Delivery to Canada and Japan of 15 percent each of the fur seal skins taken under the recommendations of the Commission.

The Commission's recommendations are based upon the findings of the Scientific Committee of which U.S. scientists are active participants. The United States has consistently taken the position that it can accept or reject the recommendations of the Commission, pursuant to section 108 of the Fur Seal Act Amendments of 1983, 16 U.S.C. 1158. If the United States were to reject the Commission's recommendations it is the consensus of the Parties that there is a duty to consult with the other Parties to the Convention. Since the Convention is under active consideration by the United States, the U.S. Government has not been in a position to accept or reject the recommendations of the Commission.

At this juncture it would be inappropriate to assume that the Senate will not pass a resolution of ratification. However, while the Protocol is pending advice and consent in the United States Senate, no commercial harvest will be conducted. Even so, it appears that a substantial number of fur seals will be harvested to fulfill the subsistence needs of the Pribilof Islanders, and further that it would be inappropriate to discard the skins from the seals killed for subsistence purposes. What use those skins will be put to at a later date—whether for use in native Alaskan handicrafts or other subsistence uses, or to satisfy rejuvenated obligations under the Convention—is not a matter which needs to be determined immediately. It is appropriate, however, to treat the skins in such a manner that none of the various options are foreclosed. Comments are invited on this subject.

Certain uses of fur seal parts now in existence incidental to the commercial harvest would not be allowed under this regulation. No part of a fur seal may be sold to a non-native unless it is a nonedible byproduct of a seal taken for personal or family consumption that has first been converted into an article of handicraft as defined in § 215.2(d). For example, the bacula of male seals (sealsticks) cannot be sold as aphrodisiacs and excess seal meat cannot be converted into dog food.

The Pribilovians are not required to transfer skins to the U.S. Government but may do so to assist the U.S. in meeting treaty obligations which may be resurrected. Before the skins can be stored for the U.S., initial processing, including removal of blubber, washing, soaking in brine, salting, and packing for storage, must be done. In acknowledgment of this additional effort as well as special accommodations for scientific research, agreements may be entered into pursuant to section 205(F) and 207 of the FSA.

No reporting requirements are placed upon the Pribilovians under this rule. However, § 215.34 requires those who take fur seals to cooperate with NMFS representatives in compiling scientific information and information regarding the extent of taking and uses to which seal parts are being put. The compilation and analysis of this information is essential to the Assistant Administrator's monitoring of the harvest and will be used to determine the point at which subsistence needs have been satisfied. This data may also be used as evidence that the harvest is or is not otherwise being conducted in a wasteful manner.

Other than the portions of this rule which make technical or nondiscretionary amendments not subject to notice and comment rulemaking under 5 U.S.C. 553, this rule is only interim in nature. Pursuant to § 215.35, Subpart D will cease to have effect once the emergency has passed, either when permanent regulations are promulgated or when the protocol enters into force.

If no action is taken by the Senate to ratify the protocol it will be necessary to issue permanent regulations to replace this interim emergency rule. Even if the protocol is ratified it may be necessary to promulgate such regulations, depending upon the terms of the ratification.

Arguments can be made that the FSA or the MMPA is the appropriate authority under which to regulate the subsistence taking of fur seals. In the absence of a functioning Convention, it is not clear what force should be afforded various provisions of the FSA. Some section obviously have an authority independent of the Convention, others may not.

The provisions of section 113(a) of the MMPA further confuses the issue of determining which statute should govern the subsistence harvest. Section 113(a) states that the provisions of the MMPA—

> Shall be deemed to be in addition to and not in contravention of the provisions of any existing international treaty, convention, or agreement, or any statute implementing the same, which may otherwise apply to the taking of marine mammals.

If it is determined that section 113(a) is inapplicable to the current situation, the competing provisions of the FSA and the MMPA must otherwise be reconciled.

Before issuing proposed regulations for the long-term management of a subsistence harvest of fur seals, NOAA, in consultation with other Federal agencies, will make a determination of the more appropriate authority under which to issue such a rule. Because of the complexity of the legal interplay between the statutes and the diversity of interested parties, NOAA solicits comments on this issue. Any comments which address the choice of the applicable statute for the permanent regulation of the taking of fur seals must be received by August 7, 1985.

If NOAA determines that the MMPA is the appropriate authority under which to manage the taking of fur seals, regulations will be issued in compliance with the terms of section 101(b) of the MMPA. Pursuant to that section, the subsistence or handicraft taking of fur seals may only be regulated if the

Secretary of Commerce determines the species to be depleted. The MMPA defines "depleted", among other things, to mean "any case in which the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under . . . this act, determines that a species or population stock is below its optimum sustainable population. . . ."

A status review of the North Pacific fur seal conducted pursuant to the Endangered Species Act of 1973, and published in the Federal Register on March 6, 1985, (50 FR 9232) contained findings on the current population status in relation to its optimum sustainable population (OSP). Since the current population is below 50 percent of the levels observed in the 1940's and early 1950's, the population is believed to be below a level which can maintain maximum net productivity, the lower bound of the OSP range as defined at 50 CFR 216.3.

Since a finding of depletion is a condition precedent to regulation under the MMPA, the NMFS, in order to facilitate issuance of permanent regulations in the most timely manner, is requesting comments on and any data relevant to the issue of depletion. Comments must be received on or before August 7, 1985.

Recognizing the interim nature of these emergency regulations, the NMFS intends to proceed with due diligence to issue permanent regulations as soon as possible. To allow the NMFS time to consider any comments received on this emergency rule or on other issues on which information is requested, and to analyze data on subsistence needs which will be developed during the 1985 harvest, the NMFS intends to issue proposed permanent regulations by September 30, 1985.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the Marine Mammal Protection Act, the Fur Seal Act, and other applicable law.

The Assistant Administrator also finds that, due to the imminence of the harvest, the failure of the Senate to take action on the 1984 protocol prior to the date upon which the harvest will begin, and the likelihood that an unrestricted harvest of fur seals will occur unless NOAA acts to restrict it, good cause justifying promulgation of these rules on an emergency basis exists and also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of section 553(b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Assistant Administrator at the address listed above. This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act. This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

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Osgood, W.H., E.A. Preble, and G.H. Parker. 1914. The Fur Seals and Other Life of the Pribilof Islands, Alaska, in 1914. Bulletin of the Bureau of Fisheries, Vol. XXXIV, 1914.

Veltre, D. and M. Veltre. 1983. The Northern fur Seal: A subsistence and commercial resource for Aleuts of the Aleutian and Pribilof Islands, Alaska. Paper presented at the symposium Megagauna of the Seas: Large Sea Mammal Hunting and Use Among Native Societies at the XIth International Congress of Anthropological and Ethnological Sciences, Vancouver, Canada, 20–25 August, 1983.

List of Subjects in 50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Island, Reporting and recordkeeping requirements.

Dated: July 2, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 215—[AMENDED]

Accordingly, 50 CFR Part 215 is amended as follows:

1. The authority citation is revised to read:

Authority: 16 U.S.C. 1151–1175, 16 U.S.C. 1361–1384.

2. Section 215.2 is revised to read as follows:

§ 215.2 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part 215:

(a) "Act" means the Fur Seal Act, as amended, 16 U.S.C. 1151–1175.

(b) "Assistant Administrator" means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(c) "Fur seal" means north Pacific fur seal, scientifically known as *Callorhinus ursinus*.

(d) "Handicraft articles" means items made by an Indian, Aleut, or Eskimo from the nonedible byproducts of fur seals taken for personal or family consumption which were commonly produced on or before October 14, 1983, and are composed wholly or in some significant respect of natural materials, and are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tanner registered pursuant to 50 CFR 216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

(e) "Public display" means, with respect to fur seals, display, whether or not for profit, for the purposes of education or exhibition.

(f) "Pribilovians" means Indians, Aleuts, and Eskimos who live on the Pribilof Islands.

(g) "Protocol" means the 1984 Protocol Amending the Interim Convention on Conservation of North Pacific Fur Seals.

(h) "Subsistence uses" means the customary and traditional uses of fur seals taken by Pribilovians for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fur seals taken for personal for family consumption; and for barter, or sharing for personal or family consumption.

(i) "Wasteful manner" means any taking or method of taking which is likely to result in the killing of fur seals beyond those needed for subsistence uses or which results in the waste of a substantial portion of the fur seal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a fur seal or which is not immediately followed by a reasonable effort to retrieve the fur seal.

3. Section 215.3 is revised to read as follows:

§ 215.3 Penalties.

(a) *Criminal penalties.* Any person who knowingly violates any provision of the Act or of any permit issued thereunder or regulation contained in this Part shall, upon conviction, be fined not more than $20,000 for such violation, or be imprisoned for not more than one year, or both.

(b) *Civil penalties.* Any person who violates any provision of the Act or of any permit issued thereunder or regulation contained in this Part may be assessed a civil penalty of not more than $10,000 for each such violation.

§§ 215.11 through 215.13 [Amended]

4. Sections 215.11, 215.12, and 215.13 are amended such that wherever the word "Director" appears it is replaced by the phrase "Assistant Administrator."

5. A new Subpart D is added to Part 215 to read as follows:

Subpart D—Takings for Subsistence Purposes

Sec.
215.31 Allowable take of fur seals.
215.32 Restrictions on taking.
215.33 Disposition of Fur Seal Parts.
215.34 Cooperation with federal officials.
215.35 Effective date.

§ 215.31 Allowable take of fur seals.

Pribilovians may take fur seals on the Pribilof Islands if such taking is:

(a) For subsistence uses, and

(b) In each case, not accomplished in a wasteful manner.

§ 215.32 Restrictions on taking.

(a) The Assistant Administrator is authorized to suspend the take provided for in § 215.31 when he determines that the subsistence needs of the Probilovians have been satisfied or that the harvest is otherwise being conducted in a wasteful manner.

(b)(1) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including organized drives of subadult male fur seals to killing fields and separation into smaller groups for selective stunning followed immediately by exsanguination.

(2) Only subadult male fur seals may be taken. Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(3) The following schedule and take limits apply:

(i) *St. Paul Island*—Any harvest of fur seals on St. Paul Island will be conducted in accordance with the following provisions:

(A) The harvest season will begin on July 8, 1985, and will consist of 19 harvest days. The harvest will terminate when seals have been harvested on 19 days, on August 5, 1985, upon the expiration of this rule, or upon suspension of the harvest by the Assistant Administrator under the provisions of § 215.32(a) whichever occurs first.

(B) A five-day per week harvest schedule will be maintained during the course of the harvest schedule season. Seals may be driven from the following haulouts according to the following schedule:

Monday—Zapadni
Tuesday—Reef
Wednesday—Northwest Point
Thursday—Polovina, Little Polovina, Lukanin, Kitovi
Friday—English Bay

(C) Only male subadult seals 124.5 centimeters or less in length may be taken.

(D) Seals with blue, yellow, or pink roto-tags may not be taken.

(E) Seals with entangling debris may only be taken if so directed by scientists studying fur seal entanglement.

(ii) *St. George Island* Any harvest of fur seals on St. George Island shall be conducted in accordance with the following provisions:

(A) Fur seals may only be taken at the east haulout area of the North Rookery. No more than two drives may be conducted per week and no more than 50 seals may be taken per day.

(B) Only subadult male seals 124.5 centimeters or less in length may be taken.

(C) The total take on St. George Island shall not exceed 329 seals in 1985. To meet their subsistence needs, air transportation between St. George and St. Paul Islands will be made available to St. George native residents free of charge at least once per week during the St. Paul harvest to allow them to obtain additional quantities of fresh meat, if needed for subsistence uses.

§ 215.33 Disposition of Fur Seal Parts.

(a) No part of a fur seal taken for subsistence uses may be sold or transferred to any person other than an Alaskan Native, as that term is defined in 50 CFR 216.3, unless:

(1) It is a nonedible byproduct which has been transformed into an article of handicraft, or

(2) It is being sent by a Pribilovian to a tannery registered under 50 CFR 216.23(c) for the purpose of processing, and will be returned directly to the Pribilovian, or

(3) It is a skin from a fur seal which was taken for subsistence uses, in which case it may be transferred to the United States Government.

(b)(1) Any skins which are transferred to the United States Government will be held pending a determination of their final disposition.

(2) The United States may enter into an agreement as authorized by sections 205(f) and 207 of the Act, 16 U.S.C. 1165(f) and 1167, to ensure the initial processing of transferred skins which is required for their preservation or to provide for assistance in conducting research efforts.

§ 215.34 Cooperation with federal officials.

Pribilovians who take fur seals for subsistence uses shall, consistent with 5

CFR 1320.7(k)(3), cooperate with the National Marine Fisheries Service's representatives on the Pribilof Islands who are responsible for compiling on a daily basis the following information:

(a) The number of seals taken each day,

(b) The weight of meat taken for subsistence uses,

(c) The extent of the utilization of fur seals taken, and

(d) Other information determined by the Assistant Administrator to be necessary for determining the subsistence needs of the Pribilovians or for making determinations under § 215.32(a).

§ 215.35 Effective date.

Subpart D shall cease to have effect

Upon promulgation of a permanent rule; or

Upon ratification or provisional application of the Protocol,

whichever occurs first.

[FR Doc 85-16251 Filed 7-3-85; 3:42 pm]

BILLING CODE 3510-22-M

VOL 50 ISS 130 JL 8 1985 UMI

federal register

Monday
July 8, 1985

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 108

Transportation of Federal Air Marshals; Final Rule With Request for Comments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. 24714; Amdt. No. 108-2]

Transportation of Federal Air Marshals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule with request for comments.

SUMMARY: This emergency regulation requires each certificate holder to whom the airplane operator security rules apply to carry Federal Air Marshals, in the number and manner specified by the Administrator, on designated scheduled and public charter passenger operations. This regulation is needed to respond to recent terrorist activity against U.S. civil aviation. It is intended to ensure that U.S. civil aviation and U.S. citizens are not impeded by international terrorism.

DATES: Effective date of this amendment is July 8, 1985.

Comments must be received on or before August 11, 1985.

ADDRESS: Send comments on this final rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24714, 800 Independence Avenue, SW., Washington, D.C. 20591; or deliver comments in duplicate to: Federal Aviation Administration Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Hunter, Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 426-8798.

SUPPLEMENTARY INFORMATION:

Comments Invited

Because of the emergency need for this regulation, it is being adopted without notice and public comment. However, the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide notice and an opportunity to comment to the public on such emergency regulations after their issuance. Accordingly, interested persons are invited to comment on this final rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-204, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before August 11, 1985, will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number ." The postcard will be date and time stamped and returned to the commenter.

Background

The June 14, 1985, hijacking of Trans World Airlines Flight 847 resulting in the murder and torture of U.S. citizens is the latest of a continuing series of terrorist attacks against U.S. aviation and U.S. interests, Government officials, and tourists in Europe and the Middle East during the 1980's. Accordingly, it has become necessary to undertake certain actions necessary to protect U.S. aviation in addition to those already mandated by Part 108 of the Federal Aviation Regulations. To that end, the Secretary of Transportation has directed the FAA to undertake immediately certain actions necessary to protect U.S. airline flights in high-risk areas and to expand the FAA Federal Air Marshal Program to the extent necessary to ensure safety aboard U.S. air carriers traveling in all threatened areas.

The purpose of this final rule is to ensure that Federal Air Marshals are used effectively and efficiently aboard those high-risk flights that the Federal Aviation Administrator determines should be protected.

Federal officers were first used in the early 1960's to combat the initial spate of hijackings of U.S. aircraft to Cuba. Following the hijacking and destruction of four airliners in the Jordanian desert in 1970, "sky marshals" were used in significant numbers on threatened domestic and international flights. After the implementation of 100 percent passenger screening in 1970, their use in large numbers was considered unnecessary. Since then these Federal officers have been used from time to time when their special understanding of aviation security was needed to fulfill an inflight security function.

There have always been certain critical elements in the effective and efficient use of Federal Air Marshals. They include ensuring that marshals will be carried aboard those flights that intelligence information indicates are seriously threatened. This sometimes requires carriage with very short notice and the "bumping" of a passenger holding a reservation. Also critical to the effectiveness of the marshal is his or her location in the passenger cabin. It is important that the marshal or marshals be able to select their seats so that they may observe and respond to any incident.

This need for access to specific flights was recognized in 1970 when the Civil Aeronautics Board (CAB) adopted a rule requiring the free transportation of these officers. That rule is currently contained in § 223.3 of Title 14 of the Code of Federal Regulations, which has been transferred from the CAB to the Department of Transportation (DOT) (50 FR 451; January 4, 1985). Section 223.3 provides that every air carrier shall carry, without charge, on any aircraft that it operates, among other persons, "security guards who have been assigned to the duty of guarding such aircraft against unlawful seizure, sabotage or other unlawful interference, upon the exhibition of such credentials as may be prescribed by the Administrator of the Federal Aviation Administration."

Section 223.3 has not been completely successful in meeting the need to properly position marshals. Some air carriers have denied seating to marshals to accommodate full-fare passengers. "Dead heading" marshals, who need to reposition themselves for immediate reassignment, are not expressly covered by the rule. Finally, it does not require the carrier to assign the marshal the seat he or she selects.

The Final Rule

New § 108.14 provides that each certificate holder shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled passenger operation and public charter passenger operation specified by the Administrator. In administering the Federal Air Marshal Program, the FAA intends to provide maximum coordination with the air carriers involved. This will be done through a national coordinating center. Consistent with the specific threat to be met, as much notice as possible will be given of the flights on which marshals will be carried. It is expected that only

in an extreme emergency will it be necessary to deny a confirmed passenger transportation on a particular flight in order to carry a Federal Air Marshal.

The FAA also plans to carefully coordinate the repositioning of marshals with the air carriers. It may be occasionally necessary, however, to provide priority transportation to a marshal to position him or her for response to a specific threat condition. In such an emergency, it may be necessary to deny transportation to a confirmed passenger. The FAA will make every effort to avoid such a situation.

Sections 108.14(b) and (c) make it clear that on designated flights marshals must be carried on a first priority basis and be assigned a seat selected by the marshal. While the marshal may have some flexibility in accepting certain seating, the final decision as to seat selection must be made by the marshal.

Finally, § 108.14 restates the provision in § 223.3 that transportation of Federal Air Marshals while on duty shall be without charge.

Need for Immediate Adoption

Because of the need to respond immediately to the heightened threat to aviation safety from terrorist hijacking and sabotage of international flights, I find that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this amendment effective in less than 30 days.

Economic Assessment

Because of the emergency need for this regulation, no regulatory evaluation has been prepared. In accordance with section 11(a) of the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), a regulatory evaluation will be prepared and placed in the public docket, unless an exception is granted by the Secretary of Transportation. For this same reason and in accordance with section 8(a)(1) of Executive Order 12291, I find that following the procedures of that Executive Order is impracticable.

Because none of the certificate holders affected by this regulation is a small entity, this regulation will not have a significant economic impact on a substantial number of small entities.

Conclusion

In accordance with section 8(a)(1) of Executive Order 12291, because of the emergency need for this regulation, the procedures in that Executive Order have not been followed. In view of the substantial public interest in the matter of aviation security as a result of the current threat situation, this regulation is considered significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since no small entities will be affected by the proposed rule, it is certified that, under the criteria of the Regulatory Flexibility Act, the rule will not have a significant economic impact on a substantial number of entities. A copy of the regulatory evaluation to be prepared for this project will be placed in the public docket, unless an exception is granted by the Secretary of Transportation.

List of Subjects in 14 CFR Part 108

Transportation, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Airlines, Law enforcement officers, Police, Security measures.

The Amendment

PART 108—[AMENDED]

Accordingly, Part 108 of the Federal Aviation Regulations (14 CFR Part 108) is amended as follows, effective July 8, 1985:

1. The authority citation for Part 108 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1358, 1421, and 1424; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

2. By adding a new § 108.14 to read as follows:

§ 108.14 Transportation of Federal Air Marshals.

(a) Each certificate holder shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled and public charter passenger operation designated by the Administrator.

(b) Each Federal Air Marshal shall be carried on a first priority basis and without charge while on official duty, including repositioning flights.

(c) Each certificate holder shall assign the specific seat requested by a Federal Air Marshal who is on official duty.

Issued in Washington, D.C., on July 3, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-16300 Filed 7-5-85; 8:45 am]

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VOL
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FEDERA
26961-27
27213-27
27409-27
27571-27
27813-27

Reader Aids

Federal Register

Vol. 50, No. 130

Monday, July 8, 1985

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Corrections	523-5237
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Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

26961-27212	1
27213-27408	2
27409-27570	3
27571-27812	5
27813-27926	8

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
11888 (Amended by EO 12524) 27409
12523 26963
12524 27409

Proclamations:
5356 26961

5 CFR

771 26965

7 CFR

52 26965
54 27571
226 26972
400 26976
908 27411
910 27813
916 27813
917 27813
921 27411
930 27213
979 26976
991 ..... 26977, 27814
1040 27412
1427 26978
1435 27413
1941 27414
1944 27415
1945 ..... 27414, 27416

Proposed Rules:
Ch. X 27003
29 27288
51 27004
417 27601
920 27288

8 CFR

316a 27816

Proposed Rules:
103 27289

9 CFR

318 27573

10 CFR

9 27214

Proposed Rules:
50 27006

12 CFR

403 27215
723 27417

Proposed Rules:
561 27290
563 27290
571 27290

13 CFR

121 27418
302 27419

Proposed Rules:
108 27754

14 CFR

39 ..... 26979, 27575, 27576
71 26980
108 27924

Proposed Rules:
39 ..... 27009, 27012, 27601, 27602
71 ..... 27013, 27014, 27528
75 27014

15 CFR

19 27577
376 27420
399 27420

16 CFR

13 ..... 26981, 27578

17 CFR

288 26981

Proposed Rules:
240 27829

18 CFR

157 27816
389 27816

Proposed Rules:
35 27604
290 27604

19 CFR

4 26981
142 27816

Proposed Rules
162 27829
177 27831

20 CFR

200 27222
626 27818
627 27818
628 27818
629 27818
630 27818

Proposed Rules:
404 27615
416 27615

21 CFR

101 26984
520 27818
558 ..... 27421, 27422

Proposal Rules:
170 27294
201 27016
211 27016

357.....27552
514.....27016
559.....27016
561.....27452
1002.....27024

22 CFR

501.....27422

25 CFR

Proposed Rules:
61.....27456

26 CFR

1.....27222, 27231, 27427
602.....27222, 27231

Proposed Rules:

1.....27297, 27456, 27457
51.....27621

27 CFR

4.....27819

28 CFR

32.....27426

29 CFR

1952.....27233

Proposed Rules:

33.....27298
1910.....27307

30 CFR

Proposed Rules:

56.....27566
57.....27566
817.....27910
913.....27025
936.....27461

31 CFR

51.....26987
103.....27821
500.....27435
505.....27435
515.....27435
520.....27435
535.....27435
540.....27435

32 CFR

Parts 1-39.....26987
199.....26988

33 CFR

100.....27579
110.....26988, 27580
117.....26989, 27582
150.....26989
165.....27583
166.....26989

Proposed Rules:

110.....27622, 27623
117.....27026, 27029, 27624, 27832

35 CFR

101.....26990
103.....26990
121.....26990

36 CFR

1200.....27196
1202.....27196
1250.....27196

37 CFR

Proposed Rules:

1.....27030

38 CFR

3.....27584
21.....27825

Proposed Rules:

36.....27833

39 CFR

10.....27827

Proposed Rules:

3001.....27308

40 CFR

51.....27892
52.....26991, 27244-27247
60.....27248
61.....27248
86.....27250
600.....27172

Proposed Rules:

52.....27030, 27462
180.....27463
202.....27321
205.....27321
600.....27188

41 CFR

Chs. 1-49.....26987
105-63.....26992
201-1.....27142
201-2.....27142
201-8.....27142
201-11.....27142
201-16.....27142
201-20.....27142
201-21.....27142
201-23.....27142
201-24.....27142
201-26.....27142
201-30.....27142
201-31.....27142
201-32.....27142
201-38.....27142
201-39.....27142
201-40.....27142

Proposed Rules:

101-41.....27625, 27626

42 CFR

405.....27722
412.....27206, 27722

Proposed Rules:

23.....27465
405.....27469
412.....27469

43 CFR

Public Land Orders:

5150 Revoked in part by PLO 6607.....27827
5179 Revoked in part by PLO 6607.....27827
5180 Revoked in part by PLO 6607.....27827
5186 Revoked in part by PLO 6607.....27827
6607.....27827

Proposed Rules:

2800.....27322

44 CFR

64.....26993, 26994

Proposed Rules:

67.....27322
302.....27627

45 CFR

1180.....27584, 27586

Proposed Rules:

405.....27406
412.....27406
1620.....27326

46 CFR

153.....26996

Proposed Rules:

160.....27628

47 CFR

68.....27250
73.....27287, 27438
76.....27438

Proposed Rules:

73.....27629

48 CFR

7.....27560
15.....27560
19.....27560
34.....27560
52.....27560
504.....26996
533.....26996
552.....27589
553.....27589
570.....27589

49 CFR

571.....27451

Proposed Rules:

Ch. X.....27031
571.....27032, 27632, 27633
1132.....27834

50 CFR

17.....26999
215.....27914

Proposed Rules:

17.....27637
20.....27638
630.....27470
682.....27470

LIST OF PUBLIC LAWS

Last List July 2, 1985

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 1699 / Pub. L. 99-58

Energy Policy and Conservation Amendments Act of 1985. (July 2, 1985; 99 Stat. 102) Price $1.00

S. 413/Pub. L. 99-59

To extend the provisions of title XII of the Merchant Marine Act, 1936, relating to war risk insurance. (July 3, 1985; 99 Stat. 110) Price: $1.00

H.J. Res. 159/Pub. L. 99-60

Commemorating the 75th Anniversary of the Boy Scouts of America. (July 3, 1985; 99 Stat. 111) Price: $1.00

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$5.50	Apr. 1, 1985
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
4	12.00	Jan. 1, 1985
5 Parts:		
1–1199	13.00	Jan. 1, 1984
1–1199 (Special Supplement)	None	Jan. 1, 1984
1200–End, 6 (6 Reserved)	7.50	Jan. 1, 1985
7 Parts:		
0–45	14.00	Jan. 1, 1985
46–51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1985
53–209	14.00	Jan. 1, 1985
210–299	13.00	Jan. 1, 1985
300–399	8.00	Jan. 1, 1985
400–699	12.00	Jan. 1, 1985
700–899	14.00	Jan. 1, 1985
900–999	14.00	Jan. 1, 1985
1000–1059	12.00	Jan. 1, 1985
1060–1119	9.50	Jan. 1, 1985
1120–1199	8.00	Jan. 1, 1985
1200–1499	13.00	Jan. 1, 1985
1500–1899	7.50	Jan. 1, 1985
1900–1944	12.00	Jan. 1, 1985
1945–End	13.00	Jan. 1, 1985
8	7.50	Jan. 1, 1985
9 Parts:		
1–199	13.00	Jan. 1, 1985
200–End	9.50	Jan. 1, 1985
10 Parts:		
0–199	17.00	Jan. 1, 1985
200–399	9.50	Jan. 1, 1985
400–499	12.00	Jan. 1, 1985
500–End	14.00	Jan. 1, 1985
11	7.50	Jan. 1, 1985
12 Parts:		
1–199	8.00	Jan. 1, 1985
200–299	14.00	Jan. 1, 1985
300–499	9.50	Jan. 1, 1985
500–End	14.00	Jan. 1, 1985
13	13.00	Jan. 1, 1985
14 Parts:		
1–59	16.00	Jan. 1, 1985
60–139	13.00	Jan. 1, 1985
140–199	7.50	Jan. 1, 1985
200–1199	15.00	Jan. 1, 1985
1200–End	8.00	Jan. 1, 1985
15 Parts:		
0–299	6.50	Jan. 1, 1985
300–399	13.00	Jan. 1, 1985
400–End	12.00	Jan. 1, 1985
16 Parts:		
0–149	9.00	Jan. 1, 1985
150–999	10.00	Jan. 1, 1985
1000–End	13.00	Jan. 1, 1985
17 Parts:		
*1–239	20.00	Apr. 1, 1985
240–End	13.00	Apr. 1, 1984
18 Parts:		
1–149	12.00	Apr. 1, 1984
150–399	15.00	Apr. 1, 1984
400–End	7.00	Apr. 1, 1985
19	21.00	Apr. 1, 1985
20 Parts:		
1–399	8.00	Apr. 1, 1985
400–499	16.00	Apr. 1, 1985
500–End	14.00	Apr. 1, 1984
21 Parts:		
1–99	9.00	Apr. 1, 1985
100–169	11.00	Apr. 1, 1985
170–199	13.00	Apr. 1, 1985
200–299	4.25	Apr. 1, 1985
300–499	14.00	Apr. 1, 1984
500–599	16.00	Apr. 1, 1985
600–799	6.50	Apr. 1, 1985
800–1299	10.00	Apr. 1, 1985
1300–End	5.50	Apr. 1, 1985
*22	21.00	Apr. 1, 1985
23	14.00	Apr. 1, 1985
24 Parts:		
0–199	11.00	Apr. 1, 1985
200–499	19.00	Apr. 1, 1985
500–699	6.50	Apr. 1, 1985
700–1699	12.00	Apr. 1, 1984
1700–End	9.00	Apr. 1, 1985
25	18.00	Apr. 1, 1985
26 Parts:		
*§§ 1.0–1.169	21.00	Apr. 1, 1985
§§ 1.170–1.300	12.00	Apr. 1, 1985
§§ 1.301–1.400	7.50	Apr. 1, 1985
§§ 1.401–1.500	15.00	Apr. 1, 1985
§§ 1.501–1.640	12.00	[2] Apr. 1, 1984
§§ 1.641–1.850	11.00	Apr. 1, 1985
§§ 1.851–1.1200	14.00	Apr. 1, 1984
§§ 1.1201–End	17.00	Apr. 1, 1984
2–29	15.00	Apr. 1, 1985
30–39	9.50	Apr. 1, 1985
40–299	18.00	Apr. 1, 1985
300–499	11.00	Apr. 1, 1985
500–599	8.00	[1] Apr. 1, 1980
600–End	4.75	Apr. 1, 1985
27 Parts:		
1–199	13.00	Apr. 1, 1984
200–End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0–99	14.00	July 1, 1984
100–499	6.50	July 1, 1984
500–899	14.00	July 1, 1984
900–1899	7.50	July 1, 1984
1900–1910	15.00	July 1, 1984
1911–1919	5.50	July 1, 1984
1920–End	14.00	July 1, 1984
30 Parts:		
0–199	13.00	July 1, 1984
200–699	5.50	July 1, 1984
700–End	13.00	July 1, 1984
31 Parts:		
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Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	18.00	July 1, 1984
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–629	13.00	July 1, 1984
630–699	12.00	July 1, 1984
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1000–End	6.00	July 1, 1984
33 Parts:		
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34 Parts:		
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35	7.50	July 1, 1984
36 Parts:		
1–199	9.00	July 1, 1984
200–End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0–17	14.00	July 1, 1984
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
52	14.00	July 1, 1984
53–80	18.00	July 1, 1984
81–99	14.00	July 1, 1984
100–149	9.50	July 1, 1984
150–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–424	13.00	July 1, 1984
425–End	14.00	July 1, 1984
41 Chapters:		
1, 1–1 to 1–10	13.00	July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3–6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10–17	9.50	July 1, 1984
18, Vol. I, Parts 1–5	13.00	July 1, 1984
18, Vol. II, Parts 6–19	13.00	July 1, 1984
18, Vol. III, Parts 20–52	13.00	July 1, 1984
19–100	13.00	July 1, 1984
101	15.00	July 1, 1984
102–End	9.50	July 1, 1984
42 Parts:		
1–60	12.00	Oct. 1, 1984
61–399	8.00	Oct. 1, 1984
400–End	18.00	Oct. 1, 1984

Title	Price	Revision Date
43 Parts:		
1–999	9.50	Oct. 1, 1984
1000–3999	14.00	Oct. 1, 1984
4000–End	8.00	Oct. 1, 1984
44	13.00	Oct. 1, 1984
45 Parts:		
1–199	9.50	Oct. 1, 1984
200–499	6.50	Oct. 1, 1984
500–1199	13.00	Oct. 1, 1984
1200–End	9.50	Oct. 1, 1984
46 Parts:		
1–40	9.50	Oct. 1, 1984
41–69	9.50	Oct. 1, 1984
70–89	6.00	Oct. 1, 1984
90–139	9.00	Oct. 1, 1984
140–155	9.50	Oct. 1, 1984
156–165	10.00	Oct. 1, 1984
166–199	9.00	Oct. 1, 1984
200–499	13.00	Oct. 1, 1984
500–End	7.50	Dec. 31, 1984
47 Parts:		
0–19	13.00	Oct. 1, 1984
20–69	14.00	Oct. 1, 1984
70–79	13.00	Oct. 1, 1984
80–End	14.00	Oct. 1, 1984
48 Chapters:		
1 (Parts 1–51)	13.00	Oct. 1, 1984
1 (Parts 52–99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
3–6	12.00	Oct. 1, 1984
7–14	14.00	Oct. 1, 1984
15–End	12.00	Oct. 1, 1984
49 Parts:		
1–99	7.50	Oct. 1, 1984
100–177	14.00	Nov. 1, 1984
178–199	13.00	Nov. 1, 1984
200–399	13.00	Oct. 1, 1984
400–999	13.00	Oct. 1, 1984
1000–1199	13.00	Oct. 1, 1984
1200–1299	13.00	Oct. 1, 1984
1300–End	3.75	Oct. 1, 1984
50 Parts:		
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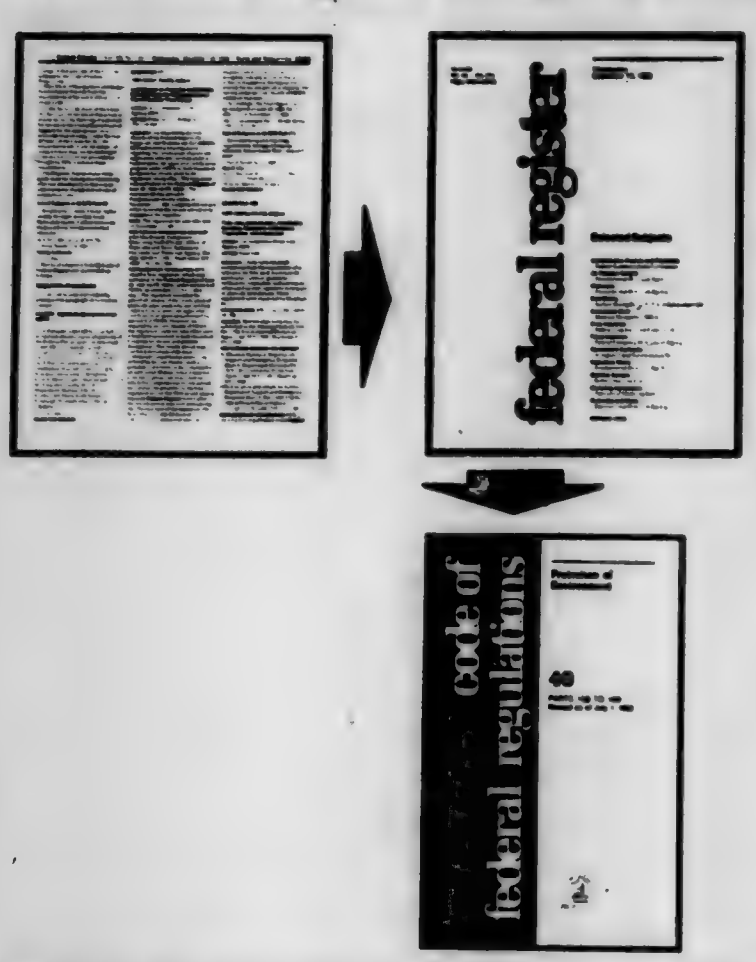
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7-9-85
Vol. 50
Pages 2

7-9-85
Vol. 50 No. 131
Pages 27927-28082

federal register

Tuesday
July 9, 1985

Selected Subjects

Accounting
Securities and Exchange Commission

Aviation Safety
Federal Aviation Administration

Bridges
Coast Guard

Crop Insurance
Federal Crop Insurance Corporation

Endangered and Threatened Species
Fish and Wildlife Service

Exports
Animal and Plant Health Inspection Service

Government Property Management
General Services Administration

Imports
Animal and Plant Health Inspection Service

Investment Companies
Securities and Exchange Commission

Marketing Agreements
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

CONTINUED INSIDE

VOL 50 ISS 131 JUL 9 1985 UMI

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Selected Subjects

Organization and Functions (Government Agencies)
Federal Communications Commission 27928

Postal Service
Postal Service 27972

Public Utilities
Securities and Exchange Commission

Radio
Federal Communications Commission

Radio Broadcasting
Federal Communications Commission

Securities
Securities and Exchange Commission 27929, 27928

Surface Mining
Surface Mining Reclamation and Enforcement Office 27973

Trade Practices
Federal Trade Commission 28005, 28005

27999, 28059

27990, 27991

28004

28003

27947

Contents

Federal Register
Vol. 50, No. 131
Tuesday, July 9, 1985

Agricultural Marketing Service
RULES
27928 Oranges (Valencia) grown in Arizona and California
PROPOSED RULES
Milk marketing orders:
27972 Oregon-Washington

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation; Food and Nutrition Service; Forest Service; Rural Electrification Administration; Soil Conservation Service.

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
27929 Honolulu, HA; designated port; interim
27928 Sheep and goats from Canada
PROPOSED RULES
Exportation and importation of animals and animal products:
27973 African swine fever; import restriction exemptions; correction

Army Department
NOTICES
Meetings:
28005 Military personal property claims symposium
28005 Science Board (2 documents)

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
27999 Rhode Island
28059 Meetings; Sunshine Act

Coast Guard
PROPOSED RULES
Drawbridge operations:
27990 Alabama
27991 Florida

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration.

Consumer Product Safety Commission
NOTICES
28004 Agency information collection activities under OMB review
28003 Di(2-ethylhexy) phthalate; report availability, etc.

Customs Service
RULES
Merchandise, special classes:
27947 Cultural Property Implementation Act Convention amendments; interim; correction

Defense Department
See also Army Department.
RULES
Federal Acquisition Regulation (FAR):
27969 Competition in contracting requirements; protest procedures; interim; correction
NOTICES
Meetings:
28004 DIA Scientific Advisory Committee; cancellation
28004 Education Benefits Board of Actuaries
28004 Electron Devices Advisory Group

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
28045 Mallinckrodt, Inc.

Economic Regulatory Administration
NOTICES
Remedial orders:
28007 Apache Oil Co., Inc.
28008 Erickson Refining Corp.
28008 North American Petroleum Co. et. al.

Education Department
NOTICES
Grants; availability, etc.:
28005 College assistance migrant program
28007 Handicapped education program training personnel; correction
28006 High school equivalency program

Employment and Training Administration
NOTICES
Adjustment assistance:
28047 Alta Products Corp.; termination
28048 Amax Chemical Corp. et al.
28047 Halomet, Inc., et al.

Energy Department
See Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission.

Energy Research Office
NOTICES
Meetings:
28017 Energy Research Advisory Board
28016 Savannah River Plant; health effects and epidemiological studies; report availability

Environmental Protection Agency
NOTICES
Meetings:
28017 Science Advisory Board

Equal Employment Opportunity Commission
NOTICES
28059 Meetings; Sunshine Act (2 documents)

Farm Credit Administration
RULES
27930 Farm credit system; examinations, audits, and investigations; effective date
27931 Federal land bank and production credit association charters; mergers and consolidations; effective date

Federal Aviation Administration
RULES
Airworthiness directives:
27931 British Aerospace
27932 Dassault-Breguet
27933 Garrett
27934 Standard instrument approach procedures
27934 Transition areas
NOTICES
28057 Exemption petitions; summary and disposition

Federal Communications Commission
RULES
Common carrier services:
27953 Cellular applications; use of random selection or lotteries instead of comparative hearings; correction
Organization, functions, and authority delegations:
27952 Managing Director; official title and authority
Radio broadcasting:
27954 Noncommercial, educational FM broadcast stations; reception protection for TV channel 6 broadcasts
Radio services, special:
27968 Maritime services; medical advisory frequencies
NOTICES
28021 Agency information collection activities under OMB review
Hearings, etc.:
28021 Air Beep of Florida, Inc., et al.
28018 Aircall Northwest, Inc., et al.
28022 Cope, James M., et al.
28022 Digital Paging Systems, Inc., et al.
28021 Elkton Broadcasters, Inc., et al.
28023 Great Arizona Broadcasting Co. et al.
28021 KAYS Inc. et al.
28018 Omaha Channel 54, Inc., et al.
28019 Tulsa Broadcasting Group et al.

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
27927 County listing removal
PROPOSED RULES
Crop insurance; various commodities:
27971 County listing updates; withdrawn

Federal Deposit Insurance Corporation
NOTICES
28059 Meetings; Sunshine Act

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
28008 American Electric Power Service Corp.
28009 Arizona Public Service Co.
28009 Bishop Marketing Corp.
28009 Equitable Gas Co. et al.
28012 Portland General Electric Co.
28012 Southwestern Electric Power Co.
28014 Tenngasco Gas Supply Co. et al.
28015 United Gas Pipe Line Co.
28015 United Gas Pipe Line Co. et al.
Natural gas companies:
28014 Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend (Sun Exploration & Production Co. et al.)

Federal Home Loan Bank Board
NOTICES
28025 Agency information collection activities under OMB review

Federal Reserve System
NOTICES
28026 Agency information collection activities under OMB review
Bank holding company applications etc:
28025 One Valley Bancorp of West Virginia, Inc., et al.
28025 Ruston Bancshares, Inc.
28059, 28060 Meetings; Sunshine Act (3 documents)

Federal Trade Commission
RULES
28062 Funeral industry practices; staff guidelines
28081 Funeral industry practices; staff guidelines; comment analysis
Warranties:
27936 Informal dispute settlement procedures; exemption

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
27992 Least Bell's vireo; hearing and comment period reopened
NOTICES
28040 Marine mammal permit applications

Food and Drug Administration
NOTICES
Food additive petitions:
28033 Angus Chemical Co.
28034 B.F. Goodrich Co.
Medical devices; premarket approval:
28033 Bausch & Lomb Inc.
28034 Toxicological research; neurotoxicity and behaviorial dysfunction; symposium and workshop

Food and Nurition Service
NOTICES
Child nutrition programs:
27994 Child care food program; national average payment rates, etc.
27995 School lunch, breakfast, and special milk programs; national average payments/maximum reimbursement rates

Forest Service
NOTICES
Environmental statements; availability, etc.:
27997 Gallatin National Forest, MT
Meetings:
27997 Mono Basin National Forest Scenic Area Advisory Board
27997 Mount St. Helens Scientific Advisory Board
27997 Small business timber set-aside program; correction

General Services Administration
RULES
Contract Appeals Board procedure rules (acquisition regulations):
27969 Procurement of automatic data processing goods and services; interim; correction
Federal Acquisition Regulation (FAR)
27969 Competition in contracting requirements; protest procedures; interim, correction
Property management:
27951 Transportation and traffic management; use of travel agents and travel management centers; temporary
NOTICES
Federal Information Resources Management Regulation:
28032 Looseleaf edition; ordering procedures

Health and Human Services Department
See Food and Drug Administration.

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office.

International Trade Administration
NOTICES
Export privileges, action affecting:
28001 Behrens, Kurt, et al.
28001 Fife, Denis, J., et al.
Scientific articles;' duty fee entry:
27999 Harvard School of Public Health et al.

Justice Department
See also Drug Enforcement Administration.
NOTICES
Meetings:
28044 Attorney General's Commission on Pornography
Pollution control; consent judgments:
28044 Service Hardware & Drilling Co.

Labor Department
See Employment and Training Administration.

Land Management Bureau
NOTICES
Alaska native claims selection:
28037 AHTNA, Inc.
Committees; establishment, renewals, terminations, etc.:
28035 District Advisory Councils; nominations
Exchange of lands:
28038, 28039 Oregon (3 documents)
Leasing of public lands:
28037 Colorado
Meetings:
28037 Vernal District Grazing Advisory Board
Patent of public lands:
28036 Washington
Recreation management restrictions, etc.:
28036 Montrose District, CO
Survey plat filings:
28037 Colorado
Withdrawal and reservation of public lands:
28040 Nevada

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
28040 Tenneco Oil Exploration & Production Co.

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
27969 Competition in contracting requirements; protest procedures; interim; correction

National Archives and Records Administration
RULES
27951 Records management; correction

National Oceanic and Atmospheric Administration
NOTICES
Permits:
28002 Experimental fishing; Pacific Coast groundfish

National Park Service
NOTICES
Concession contract negotiations:
28043 Craftsmen's Guild of Mississippi, Inc.
28044 White Sands Concession, Inc.
Historic Places National Register; pending nominations:
28040 Arizona et al.
28042 National Historic Landmarks; proposed boundaries

National Science Foundation
NOTICES
Meetings:
28049 Astronomical Sciences Advisory Panel

Nuclear Regulatory Commission
NOTICES
Meetings:
28049 Three Mile Island Unit 2 Decontamination Advisory Panel
28060 Meetings; Sunshine Act

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Power plan amendments:
28049 Columbia River Basin fish and wildlife program; inquiry

Personnel Management Office
NOTICES
Senior Executive Service:
28049 Performance Review Board; membership

Postal Service
PROPOSED RULES
Domestic Mail Manual:
27992 Postage meters not set during 6 month period; examination

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
27997 Arizona Electric Power Cooperative, Inc.

Securities and Exchange Commission
RULES
27947 African Development Bank, primary offerings; correction
Investment companies and securities:
27937 Quarterly reporting forms and filing obligations for registered investment companies; withdrawal and incorporation into semi-annual report (Form N-SAR), etc.
Securities:
27940 Persons deemed not to be brokers
PROPOSED RULES
Financial statements (Regulation S-X):
27973 Repurchase and reverse repurchase transactions; disclosure amendments; proposed rule and advance notice
Investment companies:
27952 Portfolio instruments; acquisition and valuation
Public utility holding companies:
27981 Application and declaration filings; proposed notice of proceeding initiated
Securities:
27981 Tender offers; equal treatment of security holders; withdrawn
27986 Tender offers, third-party; equal treatment of security holders

Small Business Administration
NOTICES
28054 Agency information collection activities under OMB review
28052 Intergovernmental review of agency programs and activities
License surrenders:
28054 Blackburn-Sanford Venture Capital Corp.
28054 Clifton Capital Corp.
Meetings:
28053 Computer Security and Education Advisory Council
Meetings; regional advisory councils:
28054 California (2 documents)

Soil Conservation Service
NOTICE
Environmental statements; availability, etc.:
27998 Central Middle School, VA
27998 Looney-Mill Creek Watershed, VA
27999 Rivermont School, VA
Watershed projects; deauthorization of funds:
27999 Lick Creek Watershed, TN

State Department
NOTICES
Meetings:
28055 International Radio Consultative Committee
28055 International Telegraph and Telephone Consultative Committee
28055 Shipping Coordinating Committee
28055 UNESCO Reform Observation Panel

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission:
27947 Texas

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
28002 Indonesia
Export visa requirements; certification, etc.:
28003 Taiwan

Transportation Department
See also Coast Guard; Federal Aviation Administration.
NOTICES
Aviation proceedings; hearings, etc.:
28056 Calypso Wings, Inc.
28056 Pacific Division transfer case
28056 Texas Air Corp. et al.

Treasury Department
See Customs Service.

United States Information Agency
NOTICES
Art objects, importation for exhibition:
28058 Diego Rivera: A retrospective
28058 Treasures of the Holy Land: Ancient Art from the Israel Museum

Separate Parts in This Issue

Part II
28062 Federal Trade Commission

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Ch. IV.....27927
908.....27928
Proposed Rules:
Ch. IV.....27971
1124.....27972

9 CFR
91.....27929
92.....27928
Proposed Rules:
94.....27973

12 CFR
611.....27930
617.....27931

14 CFR
39 (3 documents)...27931-27933
71.....27934
97.....27934

15 CFR
453 (2 documents)...28062, 28001
703.....27936

17 CFR
239.....27937
240 (2 documents)...27937, 27940
249.....27937
270.....27937
274.....27937
288.....27947
Proposed Rules:
210.....27973
240 (2 documents)...27976, 27681
250.....27981
259.....27981
270.....27982

19 CFR
12.....27947
178.....27947

30 CFR
943.....27947

33 CFR
Proposed Rules:
117 (2 documents)...27990, 27991

36 CFR
1228.....27951

39 CFR
111.....27992

41 CFR
101-40.....27951

47 CFR
0.....27952
22.....27953
73.....27954
81.....27968
83.....27968

48 CFR
12.....27969
33.....27969
52.....27969
6101.....27969

50 CFR
Proposed Rules:
17.....27992

VOL
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AGENCY
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ACTION:

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Rules and Regulations

Federal Register
Vol. 50, No. 131
Tuesday, July 9, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Ch. IV

[Docket No. 0027A]

Crop Insurance Regulations—Various (General Amendment—Appendix)

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the crop insurance regulations in Chapter IV of Title 7 of the Code of Federal Regulations, effective for the 1985 and succeeding crop years, by removing the "Appendix" list of counties designated for crop insurance from all crop insurance regulations promulgated by FCIC. Publication of the lists is not necessary since information as to the availability of crop insurance may be obtained from local FCIC service offices. The intended effect of this rule is to reduce the length of the documents and lower the administrative costs involved in the printing and codification of these county listings in the Federal Register and Code of Federal Regulations (CFR). The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: August 8, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review dates established for these regulations are contained in the supplementary material accompanying the last republication of each regulation in the Federal Register.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

It has been the practice of FCIC, when publishing each of its regulations for insuring crops, to include an Appendix listing those counties where such crop insurance is available. The provisions requiring such publication were made part of each regulation in subsection .1 (Example: § 418.1 Availability of wheat crop insurance).

Merritt W. Sprague, Manager, FCIC, has determined that, due to the increasing number of counties where FCIC offers crop insurance on a variety of crops, the costs of printing in the Federal Register and subsequent costs involved in codification in the Code of Federal Regulations (CFR), have become excessive and outweigh whatever benefit is derived from codification.

Information regarding the availability of crop insurance in any given county is presently available from FCIC service offices at the local level, making the publication of these lists unnecessary.

On Friday, February 1, 1985, FCIC published a notice of proposed rulemaking in the Federal Register at 50 FR 4693, amending Chapter IV of Title 7 of the Code of Federal Regulations, effective for the 1985 and succeeding crop years, to remove the "Appendix" list of counties designated for crop insurance from all crop insurance regulations promulgated by FCIC pertaining to individual crops or groups of crops. The public was given 60 days in which to submit written comments on the proposed rule, but no comments were received.

List of Subjects in 7 CFR Ch. IV

Crop insurance, Various crops.

Final Rule

PART 400—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends all crop insurance regulations promulgated under such authority (7 CFR Part 400 *et seq.*) referred to herein, to remove the Appendix and all references to such appendix therein, effective for the 1985 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Part 400 *et seq.*, continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Parts 402, 404, 406, 409, 410, 411, 413, 414, 415, 416, 417, 418, 419, 423, 426, 427, 429, 430, 439, 440, 441, 442, 444, 445, and 446 are revised by removing Appendix A.

3. 7 CFR Parts 402.1, 403.1, 404.1, 408.1, 409.1, 410.1, 411.1, 413.1, 414.1, 415.1, 416.1, 417.1, 418.1, 419.1, 423.1, 426.1, 427.1, 429.1, 430.1, 439.1, 440.1, 441.1, 444.1, 445.1, and 446.1 are revised to read as follows:

§ _____ Availability of (name of crop) crop insurance.

Insurance shall be offered under the provisions of this subpart on (name of crop) in counties within limits prescribed by, and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

4. 7 CFR Parts 402.6, 403.6, 404.6, 408.6, 409.6, 410.6, 411.6, 413.6, 414.6, 415.6, 416.6, 417.6, 423.6, 426.6, 429.6, 430.6, 439.6, 440.6, 441.6, 442.6, 444.6, 445.6, and 446.6 are revised to read as follows:

§ _____ The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the (name of crop) crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service office.

Done in Washington, D.C., on June 27, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 27, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-16237 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 352]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 352 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period July 12–July 18, 1985. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 352 (§ 908.652) is effective for the period July 12–July 18, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1984–85. The committee met publicly on July 2, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified week. The committee reports that demand is steady for fruit of all sizes; nevertheless, they report a severe fruit transportation problem due to significant competition from other summer fruits.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for Part 7 CFR Part 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 908.652 is added to read as follows:

§ 908.652 Valencia Orange Regulation 352.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period July 12, 1985, through July 18, 1985, are established as follows:

(a) *District 1:* 200,000 cartons;

(b) *District 2:* 300,000 cartons;

(c) *District 3:* Unlimited cartons.

Dated: July 3, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-16314 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-050]

Sheep and Goats From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the importation into the United States of sheep and goats from Canada. The regulations require as a condition of importation that such sheep and goats be accompanied by a health certificate representing that the animals are free from communicable diseases and exposure thereto. Prior to the effective date of this document, the regulations provided for issuance of the health certificate by a salaried veterinarian of the Canadian Government. This document amends the regulations to provide that the health certificate for such animals be either: (1) Issued by a salaried veterinarian of the Canadian Government or (2) issued by a veterinarian authorized by the Canadian Government to issue such certificates and subsequently endorsed by a salaried veterinarian of the Canadian Government, thereby representing that

the veterinarian issuing the certificate was authorized to do so. It has been determined that determinations necessary to issue the certificate can be adequately done by any veterinarian who is authorized by the Government of Canada to do so, and that the provisions are adequate to ensure that such sheep and goats are free from communicable diseases and exposure thereto without imposing an unwarranted burden on the animal health authority of the Canadian Government.

EFFECTIVE DATE: August 8, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. A. A. Furr, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases.

With respect to the importation into the United States of sheep and goats from Canada, prior to the effective date of this document, the regulations in § 92.21 provided, with certain exceptions, that these animals shall be accompanied by a certificate issued by a salaried veterinarian of the Canadian Government stating certain specified information concerning the health of the animals.

A document published in the Federal Register on March 21, 1985 (50 FR 11376–11377), proposed to amend these regulations. Specifically, it was proposed to amend § 92.21 to provide the certificate could be either: (1) Issued by a salaried veterinarian of the Canadian Government or (2) issued by a veterinarian authorized by the Canadian Government to issue such certificates and subsequently endorsed by a salaried veterinarian of the Canadian Government, thereby representing that the veterinarian issuing the certificate was authorized to do so.

The document of March 21, 1985, invited the submission of written comments on or before May 20, 1985. No comments were received. Based on the rationale set forth in the proposal, the regulations are amended as proposed.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is not anticipated that this change will have any significant effect on the number of sheep and goats imported into the United States from Canada.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Quarantine, Transportation.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMALS AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.21 [Amended]

2. In § 92.21(a) the introductory text is amended to read as follows: "Sheep and goats offered for importation from Canada shall be accompanied by a certificate either issued by a salaried veterinarian of the Canadian Government or issued by a veterinarian authorized by the Canadian Government to issue such certificates and subsequently endorsed by a salaried veterinarian of the Canadian Government, thereby representing that the veterinarian issuing the certificate was authorized to do so. The certificate shall state:"

Done at Washington, D.C., this 2nd day of July 1985.

J.K Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–16228 Filed 7–8–85; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 91

[Docket No. 85–059]

Ports Designated for Expovtation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Inspection and Handling of Livestock for Exportation" regulations by adding Honolulu, Hawaii, to the list of ports designated as ports of embarkation and by adding the Hawaii State Quarantine Station as the export inspection facility for that port. The effect of this action is to add an additional port through which animals may be exported. This action is necessary because it has been determined that the export inspection facility of the Hawaii State Quarantine Station for the port at Honolulu meets the requirements of the regulations for inclusion in the list of export inspection facilities.

DATES: Effective date is July 9, 1985.

Written comments must be received on or before September 9, 1985.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to docket number 85–059. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. George Winegar, Import/Export Animals and Products Staff, VS, APHIS, USDA, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8383.

SUPPLEMENTARY INFORMATION:

Background

This document amends the "Inspection and Handling of Livestock for Exportation" regulations in 9 CFR Part 91 (referred to below as the regulations) which regulate the exportation of animals from the United States. Pursuant to a request from the Hawaii State Quarantine Station, this

document amends § 91.14 by adding Honolulu, Hawaii, to the list of ports designated as ports of embarkation and by adding the Hawaii State Quarantine Station as the export inspection facility for that port. With certain exceptions, all animals exported are required to be exported through ports designated as ports of embarkation.

To receive approval as a port of embarkation, a port must have export inspection facilities available for inspecting, holding, feeding, and watering animals prior to exportation in order to ensure that the animals meet certain requirements specified in the regulations. The regulations provide that approval of each export inspection facility shall be base on compliance with specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

It has been determined that the Hawaii State Quarantine Station meets the requirements of § 91.14(c). This facility is located at 99–762 Moanalua Road, Aiea, Hawaii 96701. Therefore, it is necessary to add Honolulu, Hawaii, to the list of ports designated as ports of embarkation and the Hawaii State Quarantine Station as the export inspection facility for the port of Honolulu.

Executive Order 12291 and Regulatory Flexibility Act

This document has been reviewed in conformance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individuals industries, Federal, State, or local government agencies, or geographic regions; and will not have any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that, compared with the total number of animals exported annually from the United States, less than one percent of the total number of animals will be exported annually through the port of Honolulu.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of APHIS for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. The export inspection facility at the port being added to the list of designated ports of embarkation has met the standards for export inspection facilities set forth in § 91.14(c) of the regulations. The addition of this port and export inspection facility must be made promptly in order to inform exporters so that they can make appropriate plans to export their animals and avoid unnecessary restrictions on the exportation of animals.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are unnecessary, and good cause is found for making this interim rule effective upon publication. Comments are being solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the Federal Register.

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, 9 CFR Part 91 is amended as follows:

1. The authority citation for Part 91 is revised to read as set forth below and the authority citations following all the sections in Part 91 are removed:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 91.14 paragraphs (a)(3) through (14) are redesignated as paragraphs (a)(4) through (15), respectively, and a new paragraph (a)(3) is added to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(3) *Hawaii.*

(i) Honolulu—airport and ocean port.

(A) Hawaii State Quarantine Station, 99–762 Moanalua Road, Aiea, Hawaii 97601, (808) 487–5351.

* * * * *

Done at Washington, D.C., this 2nd day of July 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–16227 Filed 7–8–85; 8:45 am]

BILLING CODE 3410-34-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final new and amended regulations concerning amendments to charters of Federal land bank associations and production credit associations and procedures for effecting mergers and consolidations of such associations (50 FR 20396, May 16, 1985). These new and amended regulations improve the procedures for amending association charters and effecting mergers and consolidations. In addition, the merger and consolidation procedures set forth the requirements for disclosure of information to voting stockholders to ensure that they are adequately informed regarding association merger or consolidation proposals.

The final rule was published on May 16, 1985, and provided that notice of the actual effective date would be subsequently published (50 FR 20396). In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of this rule was June 24, 1985.

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT:

Rose M. Ferguson, Office of Examination and Supervision, (703) 883–4430

or

Kenneth L. Peoples, Office of the General Counsel, (703) 883–4024, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090

(Secs. 1.13, 2.10, 4.12, 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621 (12 U.S.C. 2031, 2091, 2183, 2243, 2246 and 2552))

Frederick R. Medero,

Acting Governor.

[FR Doc. 85–16205 Filed 7–8–85; 8:45 am]

BILLING CODE 6705–01–M

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12 CFR Part 617

Examinations, Audits, and Investigations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation dealing with the frequency of examinations and audits of each Farm Credit System institution by the FCA (50 FR 20091, May 14, 1985). Examinations and audits of each Federal land bank association were required to be performed once each 18 months; this final regulation extends the time period between required examinations and audits to once each 36 months.

The final rule was published on May 14, 1985, and provided that notice of the actual effective date would be subsequently published (50 FR 20091). In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of this rule was June 22, 1985.

EFFECTIVE DATE: June 22, 1985.

FOR FURTHER INFORMATION CONTACT: John C. Moore, Assistant Deputy Governor, Office of Examination and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4401.

(Secs. 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246 and 2252))

Frederick R. Medero,

Acting Governor.

[FR Doc. 85–16204 Filed 7–8–85; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–NM–36–AD; Amdt. 39–5082]

Airworthiness Directives; British Aerospace Model BAC 1–11 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to British Aerospace Model BAC 1–11 400 series airplanes which requires repetitive inspections, functional tests, and replacement of components, if necessary, of the ground spoiler (lift dumper) activating mechanism on British Aerospace BAC 1–11 400 series airplanes. There have been two incidents reported where one ground spoiler deployed during approach, causing an uncommanded roll.

DATES: Effective August 15, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Standardization Branch, ANM–113, telephone (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has classified British Aerospace BAC 1–11 Service Bulletin 27–A–PM5890 as mandatory. Two incidents have occurred in service where, following depressurization of the No. 1 hydraulic system, one ground spoiler (lift dumper) deployed during approach, causing the aircraft to roll. Ground spoilers are normally held in position by No. 1 hydraulic system pressure. In the event of a pressure loss, the ground spoilers are held in place by mechanical locks. Excessive wear or corrosion can degrade the mechanical locks so that reservoir pressure on the full area side of the actuator piston is sufficient to extend the ground spoiler.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspections of the ground spoiler activating mechanism was published in the Federal Register on April 8, 1985 (50 FR 13810). The comment period closed on May 28, 1985, and interested persons have been afforded an opportunity to participate in the making of this amendment. Only one comment was received. The commenter, the manufacturer, indicated that the British Aerospace Model BAC 1–11 airplane has "lift dumpers (ground spoilers)" and "spoilers." To avoid confusion, the commenter suggested that the terms "ground spoilers" or "lift dumpers" be used in the AD when referring to the part affected by the required inspection. The FAA concurs and the terminology in the final rule has been changed accordingly.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

It is estimated that 25 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $300 per airplane. Based on these figured, the total cost impact of this AD on U.S. operators is estimated to be $13,500.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, British Aerospace Model BAC 1–11 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1–11 series 400 airplanes certificated in any category. Compliance is required as indicated. To prevent asymmetrical deployment of ground spoilers (lift dumpers) accomplish the following, unless previously accomplished within the last 1000 landings or one year, whichever occurred earlier:

A. Within the next 100 landings or 30 days after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 5,000 landings from the last

inspection, inspect the ground spoiler mechanical locks for misalignment, and adjust if necessary, in accordance with the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 27-A-PM5890, dated December 21, 1983.

From the results of the inspection above:

1. If two or more mechanical locks out of the four per ground spoiler are found unserviceable, perform an operational check of the ground spoilers prior to further flight and thereafter at intervals not to exceed 600 landings or 150 days, whichever occurs earlier, until defective components are replaced in accordance with the accomplishment instructions of the service bulletin.

2. If one mechanical lock out of the four per ground spoiler is found unserviceable, perform an operational check of the ground spoilers prior to further flight and thereafter at intervals not to exceed 2,500 landings in accordance with the accomplishment instructions of the service bulletin until defective components are replaced.

3. If the mechanical lock system fails the operational check conducted in accordance with paragraphs A.1. or A.2., above, the locks must be repaired or the ground spoilers rendered inoperative in accordance with the accomplishment instructions of the service bulletin prior to further flight.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective August 15, 1985.

Issued in Seattle, Washington, on July 1, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-16199 Filed 7-8-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-117-AD; Amdt. 39-5090]

Airworthiness Directives; Dassault-Breguet Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection for proper installation of passenger oxygen mask presentation boxes on Dassault-Breguet Mystere-Falcon 50 airplanes. The AD is prompted by a report of improper installation of the passenger oxygen mask presentation box in this airplane, which, if uncorrected, could cause the lanyard to hang up when pulled to initiate the flow of oxygen into the mask.

DATES: Effective August 15, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from AiResearch Aviation, 4150 Donald Douglas Drive, Long Beach, California 90808. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Eierman, Aerospace Engineer, Systems & Equipment Section, ANM-173W, FAA, Northwest Mountain Region, Western Aircraft Certification Office; telephone (213) 536-6388. Mailing address: FAA, Northwest Mountain Region, Western Aircraft Certification Office, ANM-173W, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require inspection for proper installation of passenger oxygen mask presentation boxes on Dassault-Breguet Mystere-Falcon 50 airplanes was published in the **Federal Register** on April 5, 1985 (50 FR 13611). The comment period for the proposal closed on May 28, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Only one comment was received and the commenter concurred with the AD.

It is estimated that 20 airplanes of U.S. registry will be affected by this AD, that it would take approximately 2.5 manhours per airplane to accomplish the required actions, and the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD on the U.S. operators is estimated to be $2,000.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Dassault-Breguet Mystere-Falcon 50 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new AD:

Dassault-Breguet: Applies to Mystere-Falcon 50 airplanes, serial numbers as follows: 014, 020, 035, 038, 039, 041, 045, 051, 053, 059, 069, 079, 081, 086, 087, 099, 105, 108, 124, 125; certificated in all categories.

Compliance required within 90 days from the effective date of this AD, unless previously accomplished.

To prevent a lanyard hang-up when the lanyard is pulled to initiate the flow of oxygen into the oxygen mask, accomplish the following:

A. Each passenger emergency oxygen mask presentation box not located on the fuselage vertical center line must be inspected for orientation. Accomplish by manually opening the presentation box cover lids and inspecting to ensure that the presentation boxes are installed with the oxygen inlet fitting in the side of the oxygen box in the inboard position (pointed toward the fuselage center line). Any box not installed with this orientation must be removed and reinstalled in such a way that it is rotated 180° so that the inlet fitting is in the inboard position.

Note.—AiResearch Aviation Service Bulletin No. 9.1 pertains to this subject.

B. Alternate inspections, modifications, or other actions which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to ferry airplanes to a maintenance base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to AiResearch Aviation, 4150 Donald Douglas Drive, Long Beach, California 90808. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft

Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

This amendment becomes effective August 15, 1985.

Issued in Seattle, Washington, on July 1, 1985.

Wayne J. Barlow,
Acting Director, Northwest Mountain Region.

[FR Doc. 85-16200 Filed 7-8-85; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-115-AD; Amdt. 39-5091]

Airworthiness Directives; Garrett Model GTCP331-200A and -200AC Auxiliary Power Units Installed on Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which provides for the modification of the fan assembly on Garrett Auxiliary Power Units (APU) installed on Boeing Model 757 and Boeing Model 767 series airplanes. This action is prompted by reports of thirteen failures of the APU cooling fan, two of which were uncontained. This conditions, if not corrected, could result in a potential fire hazard.

DATES: Effective August 15, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Garrett Turbine Engine Company, Post Office Box 5217, Phoenix, Arizona 85010. This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Moring, Aerospace Engineer, Propulsion Section, ANM-174W, FAA, Northwest Mountain Region, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles Cafifornia 90009, telephone (213) 536-6382.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring modification of the fan assembly on Garrett auxiliary power units GTCP331-200A and -200AC installed on Boeing Model 757 and 767 series airplanes was published in the **Federal Register** on January 29, 1985, (50 FR 3916). The comment period for the proposal closed on March 18, 1985.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Due consideration has been given to the five comments received.

One commenter stated that the AD is unwarranted and that the failure of the APU cooling fan could not result in a fire. The FAA does not agree with the commenter because of instances from service history in which debris from the fan disintegration damaged, in one case, the APU electrical wire bundle and, in two other cases, caused leaks in the APU engine oil system.

Several comments were received which requested an extension of the compliance time until the regularly scheduled shop vist of the APU. It is not the intent of the FAA to disrupt schedule flight operations to incorporate the cooling fan modification. However, the manufacturer has notified the FAA that sufficient parts and modification facilities are now available at no cost to the operator to accomplish this modification. Furthermore, changing the fan assembly with the APU installed on the airplane is estimated to take thirty minutes. This is not considered an unreasonable burden. Therefore, the proposed compliance time is unchanged.

One commenter requested to be permitted to continue the inspections at 250 hour intervals until the APU comes into the shop for regularly scheduled maintenance. Testing by the manufacturer has established that high cycle fatigue failure of the cooling fan may occur in a matter of minutes. Consequently, the FAA has determined that inspection at 250 hour intervals would not be adequate to detect and preclude failure of the cooling fan assembly.

One commenter recommended that all aircraft approved under FAR 121.161 for two engine extended range (ER) operation have this AD incorporated prior to dispatch for such operations. The dispatch of extended range aircraft is beyond the scope of this AD and must be considered separately from this rulemaking action.

It is noted that the NPRM addressed this APU installation in Boeing 757 and 767 series airplanes. If the operators of other airplanes seek registration in the United States with the GTCP331 series APU installed, an amendment to this AD to include these airplanes would be considered.

It is estimated that 230 airplanes of U.S. registry will be affected by this AD. It will require approximately 0.5 manhour per airplane to accomplish the required modification. The average labor charge is $40 per hour. Modification parts will be furnished by the manufacturer at no charge. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $4,600.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adopting of the rule as proposed.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model 757 and 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Aviation safety, Aircarft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11-89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Garrett Turbine Engine Company [GTEC] (formerly AiResearch Manufacturing Company of Arizona): Applies to GTEC Models GTCP331-200A and -200AC Auxiliary Power Units (APU) installed on Boeing Model 757 and Boeing Model 767 series airplanes with fan assembly, Garrett Part Number 3862160-3 and -4 installed. Compliance is required as indicated, unless already accomplished.

To prevent the possibility of an uncontained APU cooling fan failure, accomplish the following:

A. Upon removal of the cooling fan assembly, Garrett Part No. 3862160-3 or -4, from an affected GTCP331-200A or -200AC

Auxiliary Power Unit (APU) for any reason, or within 1,000 airplane operating hours after the effective date of this AD, or prior to September 15, 1985, whichever comes first, incorporate the new fan assembly with the improved fan containment housing as specified in Section 2.A., "Accomplishment Instructions," of GTEC Service Bulletin GTCP331-49-5548, dated August 9, 1984, or equivalent approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance with this AD which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a maintenance base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Garrett Turbine Engine Company, Post Office Box 5217, Phoenix, Arizona 85010. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 15000 Aviation Boulevard, Hawthorne, California.

This amendment becomes effective August 15, 1985.

Issued in Seattle, Washington, on July 1, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-16201 Filed 7-8-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AGL-11]

Alteration of Transition Area—Shell Lake, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the Shell Lake, Wisconsin, transition area to accommodate existing conditions and to ensure that the Shell Lake Municipal Airport instrument approach procedure will be contained within controlled airspace.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 G.m.t., September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7300.

SUPPLEMENTARY INFORMATION: The current description of the Shell Lake, Wisconsin, transition area indentifies a "bearing to" in lieu of a "bearing from" the Shell Lake NDB (SSQ) and, as a result, does not properly describe the airspace required for the Shell Lake NDB Runway 31 instrument procedure. This action reduces the radius of the designated airspace area from 6.5 to 5 miles around Shell Lake Municipal Airport, eliminates the northwest extension, and designates the necessary southeast extension from the 5-mile radius to 8.5 miles southeast of the Shell Lake NDB.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

History

On Tuesday, April 30, 1985, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Shell Lake, Wisconsin, transition area (49 FR 18271).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Shell Lake, Wisconsin, transition area to accommodate the existing Shell Lake NDB Runway 31 standard instrument approach procedure.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); (14 CFR 11.65 for NPRMs and 11.69 for final rule); 49 CFR 1.47.

2. By amending § 71.181 as follows:

§ 71.181 [Amended]

Shell Lake, WI

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Shell Lake Minicipal Airport (latitude 45°43'48" N., longitude 91°55'14" W.) and within 3 miles each side of the 139° bearing from the Shell Lake NDB (latitude 45°43'55" N., longitude 91°55'05" W.) extending from the 5-mile radius to 8.5 miles southeast of the Shell Lake NDB.

Issued in Des Plaines, Illinois, on June 26, 1985.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 85-16202 Filed 7-8-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 24707; Amdt. No. 1298]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable

airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The Large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects 14 CFR Part 97

Approaches, Aviation safety, Standard instrument.

Issued in Washington, D.C. on June 28, 1985.

John S. Kern,

Acting Director of Flight Operations.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. By Amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TRACAN SIAPs identified as follows:

* * * *Effective September 26, 1985*

Honolulu, HI—Honolulu Intl, VOR or TACAN Rwy 4R, Orig.
Honolulu, HI—Honolulu Intl, VOR or TACAN Rwy 8L, Orig., cancelled
Honolulu, HI—Honolulu Intl, VOR or TACAN Rwy 8R, Amdt. 1 cancelled
Honolulu, HI—Honolulu Intl, VOR or TACAN-A, Orig.
Honolulu, HI—Honolulu Intl, VOR/DME or TACAN-B, Orig.
Kahului, HI—Kahului, VOR/DME or TACAN-A, Amdt. 4
Kamuakakai, Molokai, HI—Molokai, VOR or TACAN-A, Amdt. 11
Lanai City, HI—Lanai, VOR or TACAN Rwy 3, Amdt. 3
Lanai City, HI—Lanai, VOR or TACAN-A, Amdt. 7

* * * *Effective August 29, 1985*

Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 6, Amdt. 15
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 14, Amdt. 14
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 24, Amdt. 17
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 32, Amdt. 13
Janesville, WI—Rock County, VOR Rwy 4, Amdt. 24
Janesville, MI—Rock County, VOR/DME Rwy 22 (TAC), Amdt. 2
Manitowoc, WI—Manitowoc County, VOR Rwy 17, Amdt. 10
Manitowoc, WI—Manitowoc County, VOR Rwy 35, Amdt. 9

* * * *Effective August 15, 1985*

Selma, AL—Craig Field, VOR Rwy 32, Amdt. 2
Tallahassee/Havana, FL—Tallahassee Commercial, VOR-A, Amdt. 4
Bloomington, IN—Monroe County, VOR Rwy 6, Amdt. 14
Bloomington, IN—Monroe County, VOR Rwy 17, Amdt. 9
Bloomington, IN—Monroe County, VOR Rwy 24, Amdt. 8
Bloomington, IN—Monroe County, VOR Rwy 35, Amdt. 11
Manteo, NC—Dare County Regional, VOR Rwy 16, Amdt. 1

* * * *Effective August 1, 1985*

Saginaw, MI—Tri County, VOR Rwy 5, Amdt. 14
Saginaw, MI—Tri County, VOR Rwy 14, Amdt. 13
Saginaw, MI—Tri County, VOR Rwy 23, Amdt. 14
Saginaw, MI—Tri County, VOR Rwy 32, Amdt. 9

* * * *Effective June 24, 1985*

Shreveport, LA—Shreveport Downtown, VOR Rwy 14, Amdt. 13

The FAA published an Amendment in Docket No. 24669, Amdt. No. 1296 to part 97 of the Federal Aviation Regulations (VOL 50 FR No. 117 Page 25211; dated Tuesday, June 18, 1985) under Section 97.23 effective July 18, 1985, which is hereby amended as follows:

Sioux Falls, SD—Joe Foss Field,, VOR or TACAN Rwy 33, Admt. 7. changed to:
Sioux Falls, SD—Joe Foss Field,, VOR/DME or TACAN Rwy 33, Admt. 7

3. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

* * * *Effective Sepember 28, 1985*

Honolulu, HI—Honolulu Intl, LDA/DME Rwy 26L, Amdt. 4
Kahului, HI—Kahului, LOC/DME (BC) Rwy 20, Amdt. 6

* * * *Effective August 15, 1985*

Marshfield, WI—Marshfield Muni, SDF Rwy 34, Amdt. 4

* * * *Effective June 24, 1985*

Shreveport, LA—Shreveport Downtown, LOC Rwy 14, Amdt. 3

4. By amending § 97.27 NDB and NFB/DME SIAPs identified as follows:

* * * *Effective September 28, 1985*

Honolulu, HI—Honolulu Intl, NDB Rwy 8L, Amdt. 17

* * * *Effective August 29, 1985*

Marysville, KS—Marysville Muni, NDB Rwy 33, Amdt. 2
Jackson, MI—Jackson County-Reynolds Field,, NDB Rwy 24, Amdt. 10

* * * *Effective August 15, 1985*

Bloomington, IN—Monroe County, NDB Rwy 35, Amdt. 3
Manteo, NC—Dare County Regional, NDB Rwy 4, Amdt. 2
Manteo, NC—Dare County Regional, NDB Rwy 16, Amdt. 2
Hemingway, SC—Hemingway-Stuckey, NDB Rwy 11, Amdt. 2
Kingstree, SC—Williamsburg County, NDB Rwy 14, Amdt. 2
Manning, SC—Clarendon County, NDB Rwy 1, Amdt. 1
Moncks Corner, SC—Berkeley County, NDB Rwy 5, Amdt. 1
Madisonville, TN—Monroe County, NDB Rwy 5, Amdt. 2
McMinnville, TN—Warren County Memorial, NDB Rwy 5, Amdt. 4
McMinnville, TN—Warren County Memorial, NDB Rwy 23, Amdt. 4
Morrisville, VT—Morrisville-Stowe State, NDB-B, Orig.
Marshfield, WI—Marshfield Muni, NDB Rwy 4, Amdt. 12
Marshfield, WI—Marshfield Municipal, NDB Rwy 16, Amdt. 8

* * * *Effective August 1, 1985*

Monticello, IA—Monticello Muni, NDB-A, Amdt. 2
Saginaw, MI—Tri City, NDB Rwy 5, Amdt. 8

5. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

* * * *Effective September 28, 1985*

Honolulu, HI—Honolulu Intl, ILS Rwy 4R, Amdt. 10
Honolulu, HI—Honolulu Intl, ILS Rwy 8L, Amdt. 19

* * * *Effective August 29, 1985*

Jackson, MI—Jackson County-Reynolds Field, ILS Rwy 24, Amdt. 10
Janesville, WI—Rock County, ILS Rwy 4, Amdt. 8

* * * *Effective August 15, 1985*

Bloomington, IN—Monroe County, ILS Rwy 35, Amdt. 3
Minot, ND—Minot Intl, ILS Rwy 31, Amdt. 7

* * * *Effective August 1, 1985*

Saginaw, MI—Tri City, ILS Rwy 5, Amdt. 10
Saginaw, MI—Tri City, ILS Rwy 23, Amdt. 1

* * * *Effective June 21, 1985*

Coatesville, PA—Chester County G.O. Carlson, ILS Rwy 29, Amdt. 3

* * * *Effective June 13, 1985*

Niagara Falls, NY—Niagara Falls Intl, ILS Rwy 28R, Amdt. 21

6. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *Effective August 1, 1985*

Saginaw, MI—Tri City, RADAR-1, Amdt. 9

7. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective August 1, 1985*

Monticello, IA—Monticello Muni, RNAV Rwy 31, Orig.

[FR Doc. 85-16332 Filed 7-8-85; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 703

Rule on Informal Dispute Settlement Procedures

AGENCY: Federal Trade Commission.

ACTION: Final approval of exemption.

SUMMARY: The Commission has given final approval to its tentative grant of a limited exemption from the Rule on Informal Dispute Settlement Procedures, 16 CFR Part 703 (Rule 703), to the Ford Consumer Appeals Board (FCAB) program. The exemption, which is for a two-year trial period, extends the Rule's 40-day time limit for arbitration decisions to 60 days. This extension allows the FCAB program to use mediation prior to arbitration as part of its dispute resolution procedure.

DATE: Final approval of the exemption was granted on June 13, 1985.

FOR FURTHER INFORMATION CONTACT: David W. Koch, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 523-3911.

SUPPLEMENTARY INFORMATION: The Commission has decided to grant a limited exemption from Rule 703, for a two-year trial period, to the Ford Consumer Appeals Board (FCAB) program. The exemption extends the Rule's time limit for arbitration decisions from 40 days to 60 days. This extension will allow the FCAB up to 20 days to pursue mediation prior to conducting arbitration. The Commission has placed the following conditions on the exemption:

1. Consumers are not required to participate in mediation. Consumers may terminate mediation before the process begins or at any time during the process and still obtain a decision from the mechanism.

2. Upon notification from the consumer that he or she elects to cease mediation and start the arbitration process, the mechanism must render a decision within 40 days of such notification or within 60 days of the date the mechanism first received notification of the dispute, whichever is less.

3. The procedures required by conditions 1 and 2 must be disclosed clearly and conspicuously to the consumer after the mechanism has received notice of the dispute and prior to beginning the mediation process.

The Commission published a notice in the **Federal Register** (49 FR 28411, July 12, 1984) announcing its tentative decision to grant the exemption with

conditions and seeking comments on whether this exemption and the conditions are appropriate. No comments were received in response to this notice.

The grant of this limited exemption does not require Ford to modify its existing warranty to state that the FCAB is permitted to complete arbitrations within the time frame set forth in the exemption, rather than the 40-day period set forth in rule 703. However, in accordance with condition 3, the 20-day period for mediation and the consumer's right to decline to take part in mediation must be disclosed to consumers after the FCAB has received notice of the dispute and before the mediation process begins. This method of disclosure recognizes that requiring Ford to amend its warranty in order to take advantage of the exemption would effectively nullify the exemption. Moreover, the consumer's option to reject mediation and demand an arbitration decision within 40 days negates the necessity of amending the underlying warranty documents.

The Commission believes mediation to be an effective and relatively inexpensive method of resolving disputes. For that reason, the Commission believes that it is in the public interest to grant this exemption in order to encourage further use of mediation processes.

By direction of the Commission.

Emily H. Rock,

Secretary

[FR Doc. 85-16148 Filed 7-8-85; 8:45 am]

BILLING CODE 6735-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240, 249, 270 and 274

[Release Nos. 33-6531; 34-22194; IC-14390; File Nos. S7-1-85; S7-2-85]

Withdrawal of Quarterly Reporting Forms and Filing Obligations of Certain Registered Investment Companies of; Incorporation Quarterly Reporting Obligations in Form N-SAR; Adoption of Conforming Amendments to Registration Forms; Related Rule Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is rescinding the quarterly reporting obligations of certain registered investment companies and incorporating them into form N-SAR, the semi-annual reporting form for such companies. The Commission is also adopting amendments to the instructions of the registration statement forms for open-end and closed-end investment companies which change the way in which registrants calculate their portfolio turnover rate to conform to the method used in calculating that rate in their semi-annual reports. In addition, the Commission is adopting certain technical amendments to delete references to the quarterly reporting obligations of certain registered investment companies and to provide references to form N-SAR where appropriate.

EFFECTIVE DATE: August 8, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Gibbs, Attorney, Office of Regulatory Policy, (202) 272-2048; or Elizabeth M. Knoblock, Special Counsel, Office of Regulatory Policy, (202) 272-2040.

SUPPLEMENTARY INFORMATION: The Commission is incorporating the contents of form N-1Q [17 CFR 274.1061], the quarterly report form for registered investment companies, into form N-SAR [17 CFR 274.101], the semi-annual report form for registered investment companies, as items 77 and 102 and withdrawing form N-1Q. The Commission is also withdrawing form N-27D-2 [17 CFR 274.127d-2], the quarterly report form for issuers of periodic payment plan certificates. In addition, the Commission is rescinding rules 13a-12 [17 CFR 240.13a-12] and 15d-12 [17 CFR 240. 15d-12] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] ("1934 Act"), and rules 27d-3 [17 CFR 270.27d-3], 30b1-1 [17 CFR 270.30b1-1] and 30b1-2 [17 CFR 270.30b1-2] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] ("1940 Act"), which require the filing of forms N-1Q or N-27D-2. Temporary rules 30b1-5(T) [17 CFR 270.30b1-5(T)] and 27d-4(T) [17 CFR 270.27d-4(T)] under the 1940 Act, which temporarily suspended those quarterly reporting obligations, are also rescinded and rules 30b1-3 [17 CFR 270.301-3] and 30b1-4 [17 CFR 270.30b1-4], which require the filing of semi-annual reports, are redesignated as rules 30b1-1 and 30b1-2. Rules 2a-7 [17 CFR 270.2a-7] and 10f-3 [17 CFR 270.10f-3] under the 1940 Act are amended to replace references to form N-1Q with references to form N-SAR. Similarly, rules 13a-11 [17 CFR 240.13a-11], 13a-13 [17 CFR 240.13a-13], 13a-16 [17 CFR 240.13a-16], 15d-11 [17 CFR 240.15d-11] 15d-13 [17 CFR 240.15d-13] and 15d-16 [17 CFR 240.15d-16] under the 1934 Act are revised to eliminate references to the withdrawn reporting form.

The Commission is also adopting amendments to instruction 12 to item 3 of form N-1A [17 CFR 239.15A], the registration statement of open-end management investment companies and instruction 12 to item 3 of form N-12 [17 CFR 239.14], the registration statement for closed-end management investment companies. The amendments to forms N-1A and N-2 are intended to conform the manner in which registrants are required to calculate their portfolio turnover rate to the manner prescribed in the instructions to item 71 of form N-SAR. Although the standardized calculation of portfolio turnover rate will not be required until thirty days after publication, investment companies filing forms N-1A and N-2 in the interim may use that method.

Discussion

The Commission recently adopted form N-SAR,[1] a new semi-annual reporting form for registered investment companies. Upon consideration of a commentator's suggestion,[2] the Commission temporarily incorporated the contents of form N-1Q, the quarterly report form of registered management investment companies, into items 77 and 102 of form N-SAR and proposed for public comment the withdrawal of form N-1Q. The Commission also temporarily suspended the obligation of investment companies to file quarterly reports on forms N-1Q and N-27D-2 by adopting two temporary rules. Rule 30b1-5(T) suspended the obligation to file form N-1Q. Similarly, rule 27d-4(T) suspended the reporting requirements of form N-27D-2. The Commission also proposed the withdrawal of form N-27D-2, the quarterly report form for certain face-amount certificate companies.

In a separate release, the Commission also proposed amending the instructions for calculating portfolio turnover rate in item 3 of forms N-1A and N-2 to conform to the manner in which it is calculated in form N-SAR.[3] In response to the two proposals, the Commission received three comment letters: one favoring the incorporation of form N-1Q into form N-SAR, the other two discussing the conforming amendments. This release addresses the two

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[1] Investment Company Act Release No. 14290, January 4, 1985, 50 FR 1442.

[2] That commentator described form N-1Q as "unwieldy," "expensive," and "time-consuming," and urged the Commission to withdraw the form and incorporate any necessary items into form N-SAR. *Id.* at 1445.

[3] Investment Company Act Release No. 14300, January 4, 1985, 50 FR 1542.

proposals and the comments received thereon separately, first addressing the proposed incorporation of form N–1Q into form N–SAR.

Incorporation of Form N–1Q into Form N–SAR

The Commission has decided to incorporate form N–1Q as set forth in items 77 and 102 and the accompanying instructions in form N–SAR, permanently. The one commentator which commented on the incorporation of form N–1Q into form N–SAR supported such incorporation and stated that it would relieve investment companies of an unnecessary and duplicative filing requirement.[4] The Commission has also added to items 77 and 102 three sub-items with accompanying instructions. Those sub-items require reporting of any transactions to be reported pursuant to rule 2a–7 [17 CFR 270.2a–7] (items 77N and 102M), transactions effected pursuant to rule 10f–3 [17 CFR 270.10f–3] (sub-items 77O and 102N), and any information required to be filed pursuant to an exemptive order (items 77P and 102O).[5]

The Commission is also withdrawing forms N–1Q and N–27D–2. As a result of withdrawing those forms, the Commission is rescinding rules 27d–3, 30b1–1, 30b1–2, 30b1–5(T) and 27d–4(T) under the 1940 Act relating to the quarterly reporting requirements for registered investment companies and redesignating rules 30b1–3 and 30b1–4 under the 1940 Act as rules 30b1–1 and 30b1–2. The Commission is also rescinding rules 13a–12 and 15d–12 under 1934 Act which prescribed the duty to file such quarterly reports. In addition, rules 2a–7 and 10f–3 under the 1940 Act are amended to insert references to form N–SAR in place of existing references to form N–1Q and under 13a–11, 13a–13, 13a–16, 15d–11, 15d–13 and 15d–16 under the 1934 Act are revised to eliminate references to the withdrawn reporting forms.

Conforming the Calculation of Portfolio Turnover Rate in Forms N–1A and N–2 With Form N–SAR

The Commission proposed amendments to the instructions for forms N–1A and N–2, the registration statements for open-end and closed-end investment companies, to conform the method of calculating a registrant's portfolio turnover rate with the method prescribed in form N–SAR. Two comments were received on that proposal.

One commentator supported the Commission's action, stating that it will reduce the administrative burden on investment companies and provide more coherent reporting to investors. However, the commentator noted that certain per share tables required by the affected item of both forms N–1A and N–2 must be presented for a period of up to ten years and that it was unclear from the proposing release whether the Commission intended to require investment companies to recalculate the portfolio tunover rate data for previous years to make the presentation of that data consistent for the entire period.

The Commission does not believe that a *pro forma* restatement of the portfolio turnover rate as set forth in the per share tables should be mandatory. Thus, a new subsection (e) has been added to instruction 12 of item 3 in both forms which provides that if the portfolio turnover rate for periods prior to 1985 is not calculated in the same manner as now required, a footnote to that item should so state.

The other commentator proposed an alternative method for calculating the portfolio turnover rate.[6] However, the Commission is adopting the method originally proposed. The calculation of the portfolio turnover rate as set forth in form N–SAR, and now adopted in forms N–1A and N–2, was developed to allow the Commission and investors to monitor the dollar value movement of investments through an investment company's portfolio. This gives the Commission and investors important information on the rate at which securities are replaced in the portfolio and the consequent dealer spreads or commissions involved in a fund's purchase or sale of such securities. In addition, since all investment companies are required to report the portfolio turnover rate in the same manner on all forms filed with the Commission, investors can make a meaningful comparison of portfolio turnover rates among the various investment companies.

List of Subjects in 17 CFR Parts 239, 240, 249, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Form and Rule Amendments

Forms N–2 and N–1A are amended pursuant to the authority granted the Commission in sections 7, 10 and 19 of the Securities Act of 1933 [15 U.S.C. 77g, 77j and 77s] and sections 8, 30, and 38 of the Investment Company Act of 1940 [15 U.S.C. 80a–8, 29, 37]. Forms N–1Q and N–27D–2 are withdrawn, rules 13a–12, 15d–12, 27d–3, 30b1–1, 30b1–2, 30b1–5(T) and 27d–4(T) are rescinded and rules 13a–13, 13a–16, 15d–13 and 15d–16 are revised pursuant to sections 13, 15(d) and 23(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78m, 78o(d) and 78w(a)] and sections 8, 30 and 38 of the Investment Company Act of 1940 [15 U.S.C. 80a–8, 29, 37]. Rules 2a–7 and 10f–3 are revised pursuant to sections 80a–2, 10 and 38 of the Investment Company Act of 1940 [15 U.S.C. 2, 10, and 37].

Parts 239, 240, 249, 270 and 274 of Chapter II, Title 17 of the Code of Federal Regulations are amended as set forth below:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Exchange Act of 1933, 15 U.S.C. 77a, *et seq.*, * * *

2. The authority citation for Part 274 continues to read, in part, as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1, *et seq.*, * * *

3. By revising paragraphs b. and d. and by adding paragraph e. in instruction 12 to item 3 of form N–2 described in §§ 239.14 and 274.11a–1 to read as follows:

§ 239.14 Form N–2 for closed-end management investment companies registered on Form N–8A.

§ 274.11a–1 Form N–2, registration statement of closed-end management investment companies.

* * * * *

[4] The commentator noted, however, that the filing of reports regarding transactions effected pursuant to rule 10f–3 [17 CFR 270.10f–3] under the 1940 Act has been omitted from the form.

[5] Previously, both rules 2a–7 and 10f–3 required all transactions effected pursuant to those rules to be reported on form N–1Q. While the commentator discussed only rule 10f–3, the Commission believes all information previously required to be filed on form N–1Q, including information required to be filed by exemptive order, should be filed on form N–SAR.

[6] The Commission adopted, in form N–SAR, a portfolio turnover rate calculation which excludes from both the numerator and the denominator all short-term securities and includes all long-term securities, even U.S. Government long-term securities. While the commentator did not object to the exclusion of short-term securities from the numerator, he believed that excluding short-term securities from the denominator was misleading and suggested using "average total assests" as the divisor. However, that figure would not measure portfolio turnover because include other non-portfolio data such as cash, receivables and pre-paid expenses. The Commission believes that to exclude short-term securities from the numerator and not exclude them from the denominator would result in a misleading portfolio turnover rate.

Item 3. *Condensed Financial Information* (Prospectus *only*).

(a) Furnish the following information for the Registrant, or for the Registrant and its subsidiaries consolidated as prescribed in rule 6-03 [17 CFR 210.6-03] of Regulation S-X:

* * * * *

Instructions

* * * * *

12. The portfolio turnover rate to be shown at caption 12 shall be calculated in accordance with the following instructions:

a. * * *

b. For purposes of this Item, there shall be excluded from both the numerator and denominator all securities, including options, whose maturity or expiration date at the time of acquisition were one year or less. All long-term securities, including long-term U.S. Government securities, should be included. Purchases shall include any cash paid upon the conversion of one portfolio security into another. Purchases shall also include the cost of rights or warrants purchased. Sales shall include the net proceeds from the sales of rights or warrants. Sales shall also include the net proceeds of portfolio securities which have been called, or for which payment has been made through redemption or maturity.

c. * * *

d. Short sales which the registrant intends to maintain for more than one year and put and call options where the expiration date is more than one year from the date of acquisition should be included in purchases and sales for purposes of this Item. The proceeds from a short sale should be included in the value of the portfolio securities which the registrant sold during the reporting period and the cost of covering a short sale should be included in the value of the portfolio securities which the registrant purchased during the period. The premiums paid to purchase options should be included in the value of the portfolio securities which the registrant purchased during the reporting period and the premiums received from the sale of options should be included in the value of the portfolio securities which the registrant sold during the period.

e. If periods prior to 1985 are not calculated on the same basis as that required above, a footnote to this item should so state.

* * * * *

4. By revising paragraphs b. and d. and by adding paragraphs e. in instruction 12 to item 3 of form N-1A described in §§ 239.15A and 274.11A to read as follows:

§ 239.15A Form N-1A, registration statement of open-end management investment companies.

§ 274.11A Form N-1A, registration statement of open-end management investment companies.

* * * * *

Item 3. *Condensed Financial Information.*

(a) Furnish the following information for the Registrant, or for the Registrant and its subsidiaries consolidated as prescribed in rule 6-03 [17 CFR 210.6-03] of Regulation S-X.

* * * * *

Instructions

* * * * *

12. The portfolio turnover rate to be shown at caption 12 shall be calculated in accordance with the following instructions:

a. * * *

b. For purposes of this Item, there shall be excluded from both the numerator and denominator all securities, including options, whose maturity or expiration date at the time of acquisition were one year or less. All long-term securities, including long-term U.S. Government securities, should be included. Purchases shall include any cash paid upon the conversion of one portfolio security into another. Purchases shall also include the cost of rights or warrants purchased. Sales shall include the net proceeds from the sale of rights or warrants. Sales shall also include the net proceeds of portfolio securities which have been called, or for which payment has been made through redemption or maturity.

c. * * *

d. Short sales which the registrant intends to maintain for more than one year and put and call options where the expiration date is more than one year from the date of acquisition are included in purchases and sales for purposes of this Item. The proceeds from a short sale should be included in the value of the portfolio securities which the registrant sold during the reporting period and the cost of covering a short sale should be included in the value of the portfolio securities which the registrant purchased during the period. The premiums paid to purchase options should be included in the value of the portfolio securities which the registrant purchased during the reporting period and the premiums received from the sale of options should be included in the value of the portfolio securities which the registrant sold during the period.

e. If periods prior to 1985 are not calculated on the same basis as that required above, a footnote to this item should so state.

* * * * *

PART 240—RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23 as amended, 15 U.S.C. 78w, * * *

6. By revising paragraph (b) of § 240.13a-11 to read as follows:

§ 240.13a-11 [Amended]

* * * * *

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to Rule 13a-16 (17 CFR 240.13a-16), issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to Rule 30b-1-1 (17 CFR 270.30b1-1) under the Investment Company Act of 1940.

§ 240.13a-12 [Removed]

7. By removing § 240.13a-12.

8. By revising paragraph (b)(1) of § 240.13a-13 to read as follows:

§ 240.13a-13 [Amended]

* * * * *

(b) * * *

(1) Investment companies required to file reports pursuant to § 270.30b1-1;

* * * * *

9. By revising paragraph (a)(1) of § 240.13a-16 to read as follows:

§ 240.13a-16 [Amended]

(a) * * *

(1) Investment companies required to file reports pursuant to Rule 30b1-1 [17 CFR 270.30b1-1];

* * * * *

10. By revising paragraph (b) of § 240.15d-11 to read as follows:

§ 240.15d-11 [Amended]

* * * * *

(b) This rule shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to Rule 15d-16 (17 CFR 240.15d-16), issuers of American depositary receipts for securities of any foreign issuer, or investment companies required to file periodic reports pursuant to Rule 30b1-1 (17 CFR 270.30b1-1) under the Investment Company Act of 1940.

§ 240.15d-12 [Removed]

11. By removing § 240.15d-12.

12. By revising paragraph (b)(1) of § 240.15d-13 to read as follows:

§ 240.15d-13 [Amended]

* * * * *

(b) * * *

(1) Investment companies required to file reports pursuant to § 270.30b1-1;

* * * * *

13. By revising paragraph (a)(1) of § 240.15d-16 to read as follows:

§ 240.15d-16 [Amended]

(a) * * *

(1) Investment companies required to file reports pursuant to Rule 30b1-1 [17 CFR 270.30b1-1];

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

14. The authority citation for Part 249 continues to read, in part, as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, * * *

15. By revising form N–SAR, described in §§ 249.330 and 274.101, by redesignating items 77N and 102M and the instructions thereto as items 77Q and 102P, respectively, and by adding items 77N, 77O, 77P, 102M, 102N and 102O and corresponding instructions as follows:

§ 249.330 Form N–SAR, semi-annual report of registered investment companies.

§ 274.101 Form N–SAR, semi-annual report of registered investment companies.

* * * * *

Item 77. * * *

N. Actions required to be reported pursuant to Rule 2a–7 ☐
O. Transactions effected pursuant to Rule 10f–3 ☐
P. Information required to be filed with the registrant's periodic reports pursuant to existing exemptive orders ☐
Q. Exhibits ☐

* * * * *

Item 102. * * *

M. Actions required to be reported to Rule 2a–7 ☐
N. Transactions effected pursuant to Rule 10f–3 ☐
O. Information required to be filed with the registrant's periodic reports pursuant to existing exemptive orders ☐
P. Exhibits ☐

* * * * *

General Instructions

* * * * *

Sub-item 77N: Actions required to be reported pursuant to Rule 2a–7.

A Registrant relying on Rule 2a–7 [17 CFR 270.2a–7] to use the amortized cost method of valuation is required by paragraph (a)(2)(vi) of that rule to report any action taken by the board of directors to eliminate or reduce any material dilution or other unfair results to investors caused by a deviation from the fund's amortized cost price per share that exceeds ½ of 1 percent. If any such action was taken during the reporting period, this item should be checked and an exhibit attached, describing with specificity the nature and circumstances of such action.

Sub-item 77O: Transactions effected pursuant to Rule 10f–3.

Rule 10f–3 [17 CFR 270.10f–3] provides a limited exemption from section 10(f) of the Act, provided, *inter alia*, that all transactions effected pursuant to the rule are reported on form N–SAR. If any such transactions were effected during the reporting period, this item should be checked and an exhibit attached setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information of materials upon which the determination described in paragraph (h)(3) of rule 10f–3 was made.

Sub-item 77P: Information required to be filed with the registrant's periodic reports pursuant to existing exemptive orders.

If any actions were taken during the reporting period which were required to be reported on Form N–1Q pursuant to an exemptive order, that information must now be reported in this sub-item of Form N–SAR.

Sub-item 77Q: Exhibits.

In addition to the materials provided pursuant to sub-items 77C through 77P, if any, and subject to Rule 201.24 of the General Rules of Practice regarding incorporation by reference, the following exhibits shall be filed as part of this form, if not previously filed:

* * * * * *

Sub-item 102M: Information required to be reported pursuant to Rule 2a–7.

See instructions to sub-item 77N.

Sub-item 102N: Transactions effected pursuant to Rule 10f–3.

See instructions to sub-item 77O.

Sub-item 102O: Information required to be filed with the registrant's periodic reports pursuant to existing exemptive orders.

See instructions to sub-item 77P.

Sub-item 102P: Exhibits.

In addition to the materials provided pursuant to sub-items 102B through 102O, if any, and subject to Rule 201.24 of the General Rules of Practice regarding incorporation by reference, the following exhibits shall be filed as part of Form N–SAR, if not previously filed:

* * * * *

§ 249.331 [Removed]

16. By removing § 249.331.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

17. The authority citation for Part 270 continues to read, in part, as follows:

Authority: Secs. 38, 40; 15 U.S.C. 80a–37

* * *

18. By revising paragraph (a)(2)(vi) of § 270.2a–7 to read as follows:

§ 270.2a–7 [Amended]

(a) * * *
(2) * * *

(vi) If any action was taken pursuant to paragraph (a)(2)(ii)(C) of this section, the money market fund will report such action on Form N–SAR [17 CFR 274.101] covering the period in which the action was taken and attach a statement to the form describing with specificity the nature and circumstances of such action; or

* * * * *

19. By revising paragraph (g) of § 270.10f–3 to read:

§ 270.10f–3 [Amended]

* * * * *

(g) The existence of any transactions effected pursuant to this rule shall be reported on the Form N–SAR [17 CFR 274.101] of the investment company and a written record of each such transaction, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or materials upon which the determination described in paragraph (h)(3) of rule 10f–3 was made shall be attached thereto;

* * * * *

20. By removing §§ 270.27d–3, 270.27d–4(T), 270.30b1–1, 270.30b1–2 and 270.30b1–5(T).

21. By redesignating §§ 270.30b1–3 and 270.30b1–4 as 270.30b1–1 and 270.30b1–2, respectively.

Final Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis with regard to the rescission of rules 27d–4(T) and 30b1–5(T) and the withdrawal of forms N–1Q and N–27D–2. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the release proposing the rule at 50 FR 1442 (January 11, 1985). Anyone who wishes to obtain a copy of the Final Regulatory Flexibility Analysis should contact William C. Gibbs in the manner specified above.

Pursuant to 5 U.S.C. 605(b), the Chairman of the Commission previously certified that the proposed amendments to forms N–2 and N–1A will not have a significant economic impact on a substantial number of small entities. No comments were received on that certification.

Dated: July 1, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85–16247 Filed 7–8–85; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Part 240

[Release No. 22172; File No. S7–19–84]

Persons Deemed Not To Be Brokers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting Rule 3a4–1 specifying a non-exclusive safe harbor under which persons associated with an issuer of securities who participate in sales of that issuer's securities will not be considered to be acting as "brokers" as that term is defined in the Securities Exchange Act of 1934. Accordingly, these persons would not be required to register with the Commission pursuant to Section 15 of that Act. The Commission is adopting the Rule in order to provide guidance concerning the applicability of the

broker-dealer registration requirement in situations where an issuer chooses to sell its securities through its associated persons.

EFFECTIVE DATE: Rule 3a4–1 will become effective July 9, 1985.

FOR FURTHER INFORMATION CONTACT: Susan J. Walters, Esq., (202) 272–2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission today announced the adoption of Rule 3a4–1 (17 CFR 240.3a4–1) under the Securities Exchange Act of 1934 (the "Act").[1] Rule 3a4–1 was most recently proposed for public comment in May, 1984.[2] The Rule provides a non-exclusive safe harbor from the broker-dealer registration provisions of the Act for certain associated persons of issuers. The Rule specifies that an associated person of an issuer must meet three preliminary conditions and any one of three alternative conditions in order to take advantage of the safe harbor.

As stated in the 1984 Release, a person acting on behalf of an issuer in buying or selling that issuer's securities may, depending upon the circumstances, be a broker within the meaning of the Act. The term "broker," as defined in section 3(a)(4) of the Act, generally includes any person engaged in the business of effecting transactions in securities for the account of others. Section 15(a) of the Act requires broker-dealers to register with the Commission unless an exemption is available and comply with applicable provisions of the securities laws.[3]

Questions concerning the need for broker-dealer registration frequently have arisen when an issuer proposes to sell its securities through its officers, partners or employees rather than incurring the costs of employing the services of a registered broker-dealer. The staff has historically responded to these questions by providing interpretive advice or issuing no-action letters. The Commission believes that a safe harbor rule is an appropriate and efficient way to provide guidance in this area.

Commentators generally supported adoption of the proposed Rule. In particular, they noted that the Rule would be useful in clarifying an aspect of broker-dealer registration. Upon review of the reproposed Rule and consideration of the comments received, the Commission has determined to adopt the Rule substantially as proposed, to make some clarifications as described in this Release and to adopt some suggested modifications to the Rule.[4]

The broker-dealer registration and associated regulatory requirements of the Act, as well as those of the self-regulatory organizations, provide important safeguards to investors. Investors are assured that registered broker-dealers and their associated persons have the requisite professional training and that they must conduct their business according to regulatory standards. Registered broker-dealers are subject to a comprehensive regulatory scheme designed to ensure that customers are treated fairly, that they receive adequate disclosure and that the broker-dealer is financially capable of transacting business. Exemptions from registration have traditionally been narrowly drawn in order to promote both investor protection and the integrity of the brokerage community. At the same time, however, the Commission recognizes that there are situations where imposition of the registration requirement would be inappropriate.

Compliance with the conditions to the safe harbor of Rule 3a4–1 is not the exclusive means by which associated persons of issuers may sell that issuer's securities without registration as broker-dealers. Accordingly, paragraph (b) of the Rule provides that no presumption shall arise that a person associated with an issuer has violated section 15(a) in connection with the sale of the issuer's securities if the conditions of the Rule are not met. The Commission recognizes that there may be other facts and circumstances that justify a conclusion that registration as a broker-dealer is not required even though all the conditions of the Rule have not been satisfied. The staff will continue to provide interpretive guidance to those whose activities are not clearly within the provisions of the Rule. Rule 3a4–1, however, does provide legal certainty to those persons whose activities meet the conditions of the Rule.

II. Rule 3a4–1

A. Scope of the Rule

Rule 3a4–1 provides a safe harbor from broker-dealers registration for associated persons of an issuer. The term "associated person of an issuer" is defined in paragraph (c)(1) of the Rule as any natural person who is a partner, officer, director or employee of the issuer, of a corporate general partner of a limited partnership that is the issuer or of a company or partnership that controls, is controlled by or under common control with the issuer.[5] The term "associated person of an issuer" includes certain persons affiliated with a corporate general partner of a partnership which is the issuer. These persons are included because most partnerships issuing securities are controlled solely by one or more corporate general partners. The Commission has concluded that in those circumstances where officers, directors, or employees of a corporation are engaged in the sale of securities issued by a limited partnership in which the corporation is a general partner, and the sales are conducted in a manner consistent with the limitations and restrictions set forth in Rule 3a4–1, such persons should not be deemed to be brokers. Similarly, the Commission believes that it is also appropriate to include employees of companies or partnerships in a control relationship with the issuer within the scope of the Rule.

The term "associated person of the issuer" also includes employees of an investment adviser to an issuer that is an investment company registered under the Investment Company Act of 1940. The investment adviser must be registered under the Investment Advisers Act of 1940. This part of the

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[1] 15 U.S.C. 78 *et seq.*

[2] Securities Exchange Act Release No. 20943 (May 9, 1984), 49 FR 20512 (May 15, 1984) ("1984 Release"). Rule 3a4–1 was initially proposed for public comment in Securities Exchange Act Release No. 13196 (Jan. 21, 1977), 42 FR 5084 (Jan. 27, 1977).

[3] Section 15(a)(1), 15 U.S.C. 78*o*(a)(1), provides that: [i]t shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of . . . interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with section 15(b) of the Act (15 U.S.C. 78*o*(b)).

[4] The Commission received eight comment letters regarding reproposed Rule 3a4–1. File No. S7–19–84 contains these public comment letters as well as a summary of comments prepared by the staff of the Commission.

[5] While Rule 3a4–1 focuses on the activities of natural persons, it also may have an impact on their employers. For example, if the employees of a corporate general partner sell securities of the issuer-limited partnership in compliance with Rule 3a4–1, neither the employees nor the corporate general partner would be required to register as a broker-dealer. However, where a corporate general partner, through its employees, sells the issuer-limited partnership's securities and pays the employees a sales commission, the corporate general partner is acting as a broker-dealer and must register as such. The employees would be associated persons of the broker-dealer.

definition of associated person reflects comments received on the original rule proposal and codifies the position taken by the staff in its no-action letters.[6] Several commentators on the 1984 Release questioned whether the definition should be further expanded to include third party affiliates of the investment adviser. The Commission believes any relief from the broker-dealer registration requirement for such third party affiliates is best handled through the no-action letter process on a case-by-case basis.

Paragraph (a)(3) of the Rule excludes associated persons of an issuer, who, at the time of their participation in the sale of the issuer's securities, are associated persons of a broker or dealer.[7] Paragraph (c)(2) of the Rule defines the term "associated person of a broker or dealer" as it is defined in section 3(a)(18) of the Act.[8] These persons have been excluded from the scope of the Rule for two reasons. First, integration of the brokerage activities performed by them in the course of their employment with the broker-dealer and the sales of securities effected on behalf of the issuer would lead to the conclusion that, in most circumstances, such persons would be brokers within the meaning of the Act. Second, the potential for abusive sales tactics or confusion of investors stemming from the dual affiliation of the associated person would appear to warrant regulatory supervision.[9]

Commentators on the original proposal suggested that the scope of the Rule should be expanded to cover attorneys, accountants, insurance brokers, financial service organizations, and financial consultants who for a fee assist promoters and other issuers in the sale of securities. One commentator on the reproposed Rule, however, stated that such "independent agents" should not have the protection of the safe harbor and should be required to register as broker-dealers. The Commission has concluded that it would not be appropriate to expand the scope of the Rule to cover such persons, although the staff of the Division of Market Regulation may provide interpretive advice on a case-by-case basis. Insofar as they are retained by an issuer specifically for the purpose of selling securities to the public and receive transaction-based compensation, these persons are engaged in the business of effecting transactions in securities for the account of others. Accordingly, these persons should register as broker-dealers.

The safe harbor of the Rule is available in the context of all sales of securities of the issuer by a person associated with that issuer in a transaction on behalf of that issuer. The term "sale," as used in paragraph (a) of the Rule, includes "any contract to sell or otherwise dispose of" securities and thus would include transactions that are part of any public or private offering.[10] The term "securities of the issuer" is intended to cover the issuer's sale of its own securities through its associated persons. The Rule does not address situations where an issuer's employees assist potential buyers and sellers in connection with secondary market transactions in the issuer's securities.[11]

B. The Preliminary Requirements Applicable to Associated Persons

Paragraph (a) of the Rule contains three preliminary conditions that must be met by associated persons in order to take advantage of the safe harbor. The associated person must not be subject to a statutory disqualification, must not receive, directly or indirectly, commissions or transaction-based compensation in connection with the sale of the issuer's securities, and must not be an associated person of a broker or dealer.

Paragraph (a)(1) specifies that the associated person may not be subject to a statutory disqualification, as that term is defined in section 3(a)(39) of the Act, at the time of his participation in the sale of the issuer's securities. In the 1984 Release, the Commission requested comments on whether the application of the statutory disqualification provision of the Rule should be narrowed to disqualifications relating to sales of securities or other broker-dealer activities. The two commentators that addressed this point did not favor narrowing the requirement. The Commission has concluded that any person subject to proceedings or convicted of any of the violations described in section 3(a)(39) of the Act should not be able to rely on the safe harbor from broker-dealer registration. The Commission believes that there is added potential for abusive practices in the sale of an issuer's securities in circumstances where persons who are subject to a statutory disqualification participate without assurance of adequate supervision or regulatory oversight.

Paragraph (a)(2) specifies that the associated person may not be compensated in connection with the sale of the issuer's securities by the payment of commissions or other remuneration based on transactions in securities.[12] In determining whether an associated person is a "broker," the receipt of transaction-based compensation often indicates that such a person is engaged in the business of effecting transactions in securities. Compensation based on transactions in securities can induce high pressure sales tactics and other problems of investor protection which require application of broker-dealer regulation under the Act.

Whether a particular compensation arrangement is "other remuneration" based either directly or indirectly on transactions in securities depends on all of the particular facts and circumstances. For example, in determining whether a particular compensation arrangement involving the

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[6] Letters dated June 27, 1983, from Linda Lewis, Attorney, Office of Chief Counsel, Division of Market Regulation, to Lawrence, Lawrence, Kamin & Saunders; Oct. 10, 1974, from Francis R. Snodgrass, Chief Counsel, Division of Market Regulation to CNA Management Corporation, and LaSalle Fund Inc. [1970–1971 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 77,999 (Dec. 31, 1970).

[7] If an associated person of an issuer is also a registered broker-dealer, the federal securities laws would require such a person to disclose adequately to all purchasers his affiliation with the issuer. *See, e.g.*, Rule 15c1–5.

[8] The term associated person of a broker or dealer means: any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, except any person associated with a broker or dealer whose functions are solely clerical or ministerial. . . .

[9] In the past, the staff has not objected to the sale of an issuer's securities by a person associated with a broker-dealer where the broker-dealer does not participate in the sale but assumes full responsibility for the activities of its associated person and the affiliation is fully disclosed to investors. In such a situation, the associated person of the broker-dealer is supervised by the broker-dealer and is qualified to sell securities under applicable rules of the federal securities laws. Therefore, the safe harbor of Rule 3a4–1 is not necessary or available to such persons. The staff will continue to handle such situations on a case-by-case basis. Under the rules of the self-regulatory organizations, the associated person is required to provide prior written notice to the broker-dealer employer of his intention to effect transactions on behalf of others outside the scope of his employment. The member may also request copies of all documents and statments relating to the transaction. *See* Rules of Fair Practice Art. III, Section 27, NASD Manual (CCH), ¶ 2177 and NASD Notice to Members, 85–21 (March 28, 1985) (proposing amendments to Section 27). The New York Stock Exchange imposes a similar requirement on associated persons of its members. *See* NYSE Rule 346.

[10] *See* section 3(a)(14) of the Act.

[11] In such circumstances, questions also may arise concerning the application of the registration provisions of the Securities Act of 1933 ("1933 Act").

[12] In response to comments received, the language of this paragraph has been modified to make it clear that the associated person may not be compensated, "directly or indirectly," by the payment of commissions or other remuneration based on transactions in securities.

payment of bonuses would not be permissible under the Rule, the following factors may be relevant: (1) When the offering commences and concludes; (2) when the bonus is paid; (3) when it is determined that a bonus will be paid; (4) when associated persons are informed of the issuer's intention to pay bonus; and (5) whether the bonus paid to particular associated persons varies with their success in selling the issuer's securities.

Paragraph (a)(3) specifies that the associated person must not be, at the time of his participation, an associated person of a broker or dealer. Paragraph (c)(2) of the Rule defines an "associated person of a broker or dealer." One commentator suggested that, as an additional preliminary requirement, the Rule should not be available to a person who was an associated person of a broker-dealer or investment adviser within the previous twelve months. This twelve month requirement was proposed as a condition to the second alternative of the safe harbor. The effect of this suggestion to include the twelve month requirement in the preliminary requirement would be to require all persons formerly engaged in the securities business to wait one year before helping an issuer sell its securities under the safe harbor of Rule 3a4–1. The rationale for the one year limitation, as stated in the 1984 Release, is particularly important under the second alternative, which allows full public sales solicitations. The one year limitation would appear to impose an unnecessary burden under the first alternative, where sales are limited to certain financially sophisticated persons and to sales in other limited circumstances, or the third alternative, where "cold call" type solicitation is not permissible.

Finally, one commentator suggested that the Rule should include limitations based on the issuer's volume of sales in relations to its size. It would be difficult to create a volume limitation that would be equitable to all issuers. Furthermore, the other restrictions contained in Rule 3a4–1 are sufficient to ensure that the concerns underlying broker-dealer registration are not applicable. Therefore, no such change has been included in the Rule.

C. The First Alternative Available to Associated Persons

The safe harbor provided by Rule 3a4–1 is available to an associated person of an issuer if, in addition to meeting the preliminary requirements of paragraphs (a)(1)–(3), he meets the conditions to one of three alternatives set forth in paragraphs (a)(4)(i)–(iii).

The first alternative in paragraph (a)(4)(i) is available to an associated person of an issuer if he restricts his participation in any of four ways. Paragraph (a)(4)(i)(A) of the Rule specifies that associated persons of an issuer may offer and sell securities to various financial institutions and intermediaries, such as registered broker-dealers.[13] The Commission believes it is appropriate to include within the safe harbor sales to such institutions and intermediaries given the level of their financial sophistication.

One commentator stated that this provision generally should not be available to so-called "wholesalers," that is, employees of issuers that market securities to registered broker-dealers, but who do not have any contact with potential investors. This commentator suggested that the Rule should not be available in this context unless the broker-dealer takes the securities for investment purposes. If the employees do not receive transaction-based compensation and otherwise meet the requirements of Rule 3a4–1, the Commission does not believe that the Rule should exclude such persons, particularly in light of the fact that in such circumstances the ultimate sales to the public will be made through registered broker-dealers.[14]

In the 1984 Release, the Commission requested comments on whether sales to other persons or entities should be included in the Rule, such as sales to all categories of "accredited investors," as defined in Rule 501(a) under the Securities Act of 1933 (the "1933 Act"). The commentators were divided on whether the first alternative should be extended to include sales to all "accredited investors." Two commentators concluded that an accredited investor is capable of requiring an issuer to make full disclosure about the issue and of protecting himself from any selling pressures exerted by the issuer's employees. Two other commentators argued that the 1933 Act provisions are related to the need for informational disclosure to potential purchasers and not to the need for registration of securities professionals.

The Commission has determined not to include sales to all 1933 Act accredited investors. The fact that the Commission has concluded that, under limited circumstances, investors do not need the protections afforded by registration under the 1933 Act does not dictate a conclusion that a broad exemption from broker-dealer registration is appropriate. Existing Commission rules and those of the self-regulatory organizations that ensure adequate supervision, among other things, seem no less important in this context than in others.

As reproposed, paragraph (a)(4)(i)(B) of the Rule provided a safe harbor for transactions in securities exempt from registration under sections 3(a)(7) and 3(a)(9) of the 1933 Act.[15] The Commission requested comments on whether this alternative should be explanded to include sales of all securities exempt under section 3(a) of the 1933 Act. One commentator suggested that securities exempt under sections 3(a)(3), 3(a)(6), 3(a)(10) and 3(a)(11) should be included within the safe harbor. The Commission has decided that the addition of securities covered by section 3(a)(10) of the 1933 Act would be appropriate.[16] Transactions in such securities, like transactions in securities covered by sections 3(a)(7) and 3(a)(9), are sufficiently restricted that application of the broker-dealer regulatory scheme is not necessary.

The Commission has not expanded the safe harbor to include all other 1933 Act exempt securities.[17] The purpose of

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[13] The Rule also includes sales to registered investment companies (or registered separate accounts), insurance companies, banks, savings and loan associations, and trust companies or similar institutions supervised by a state or federal banking authority and registered investment advisers which are either trustees or are authorized in writing to make investment decisions for trusts.

[14] This part of the Rule is consistent with previous staff interpretations. *See, e.g.*, letter to Ballard & Cardell Corp. (Sept. 14, 1973).

[15] Section 3(a)(7) exempts "certificates issued by a receiver or debtor in possession in a case under title 11 of the United States Code, with the approval of the court." 15 U.S.C. 77c(a)(7). Section 3(a)(9) exempts "except with respect to a security exchanged in a case under title 11 of the United States Code, any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange." 15 U.S.C. 77c(a)(9).

[16] Section 3(a)(10) exempts "except with respect to a security exchanged in a case under title 11 of the United States Code, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval." 15 U.S.C. 77c(a)(10).

[17] Persons who effect only transactions in securities exempt under sections 3(a)(3), 3(a)(8) and 3(a)(11) of the 1933 Act are already exempt from the broker-dealer registration provisions of the Act. The

Continued

the securities registration provisions of the 1933 Act (or exemption from registration) is not the same as the purpose of the broker-dealer registration requirement of the Act. Regardless of the amount of disclosure provided to investors, investors need the additional protection offered by the Act including the assurance that the salesman who offers the securities understands and appreciates both the nature of the security and the needs of the buyer.[18]

Paragraph (a)(4)(i)(C) and (a)(4)(i)(D) of the Rule remain unaltered. Paragraph (a)(4)(i)(C) provides a safe harbor for securities transactions in connection with reorganizations reclassifications, and acquisitions which are "made pursuant to a plan submitted for the approval of security holders who will receive securities of the issuer." Paragraph (a)(4)(i)(D) of the Rule includes within the safe harbor sales by associated persons pursuant to a pension, profit-sharing, or other similar employee benefit plans and dividend reinvestment plans.

D. The Second Alternative Available to Associated Persons

The safe harbor provided by Rule 3a4–1 is also available to an associated person of an issuer if that person meets the conditions set forth in paragraph (a)(4)(ii), the second alternative. Those conditions generally require that the associated person primarily perform substantial duties for the issuer otherwise than in connection with transactions in securities; that the associated person was not a broker or dealer or an associated person of a broker or dealer within the preceding twelve months; and that the associated person has not participated in selling an offering to securities on behalf of any issuer within the preceding twelve months other than in reliance of paragraphs (a)(4)(i) or (a)(4)(iii) of Rule 3a4–1. The Rule as adopted contains a limited exception to this one year prohibition for certain sales of securities registered under Rule 415 of the 1933 Act.

Paragraph (a)(4)(ii)(A) of the Rule provides the safe harbor to associated persons who either perform, or are intended to perform, substantial duties for the issuer otherwise that in connection with transactions in securities. Thus, it would not be available to person hired by the issuer specifically for the purpose of selling securities, or to associated persons who sell securities on behalf of the issuer as a primary responsibility or on a frequent basis. Whether the associated person's duties otherwise than in connection with the sale of securities, are "substantial" can be measured in terms of a percentage of time worked and the volume or work performed on matters not related to the sale of securities. The Rule does not provide that a specific period of time should be used in determining whether the associated person performs substantial other duties. That time period will depend on all of the relevant facts and circumstances.

The safe harbor generally would be available to associated persons participating in an initial offering of an issuer where, because of the "start-up" nature of the issuer, the associated persons are not engaged in any activities other than those relating to the offering. The safe harbor would be available to such associated persons if they will primarily perform or are intended to perform substantial other duties for the issuer at the end of the offering.

Paragraph (a)(4)(ii)(B) of the Rule specifies that the associated person may not have been a broker or dealer or an associated person of a broker or dealer within the preceding twelve months.[19] Such persons may have the incentive to solicit former clients and to capitalize on any trust relationship that had been established with those persons in connection with securities transactions. Even assuming full disclosure by these persons of their changed status, (*i.e.*, that they are no longer registered securities professionals), their solicitation or recommendation may unduly influence the former client's investment decision. In addition, the securities sales activities by such persons would lead frequently to the conclusion that such persons were engaged in the business of effecting securities transactions and should be registered as broker under the Act.

One commentator noted that the Rule as reproposed was not clear with respect to whether the term "broker-dealer" applied to registered "issuer-dealers" under state law. Paragraph (c)(2) of the Rule has been amended to clarify that employees or former employees of such "issuer-dealer" or similar entity may use the safe harbor. The staff will provide interpretive advice to those issuers that request such advice.

Paragraph (a)(4)(ii)(C) of the Rule specifies that the associated person may not have sold securities on behalf of any issuer within the previous twelve months other than in reliance on paragraph (a)(4)(i) or (a)(4)(iii) of the Rule. The Commission continues to believe this one year limitation on sales under the second alternative is necessary.

Historically, the frequency with which persons engage in transactions in securities has been a factor in making a determination as to whether those persons are engaged in that business within the meaning of the statutory definition. The Commission continues to believe that broker-dealer registration is appropriate and necessary with respect to persons who are regularly engaged in the sale of securities, such as promoters of limited partnership interests. Accordingly, the condition that the person relying on the safe harbor not have sold securities on behalf of any issuer during the preceding twelve months, coupled with the requirement that the person perform substantial other duties on behalf of the issuer, will preclude the continuous, repeated or multiple sales of securities by persons absent broker-dealer registration.[20]

The Commission has, however, determined that the one year limitation on sales under the second alternative should be modified for certain sales of securities registered under Rule 415 of the 1933 Act. Rule 415 allows issuers to register certain securities and place them "on the shelf" for periods in excess of one year.[21] Rule 3a4–1 as reproposed in 1984 would limit those issuers that wished to take advantage of the safe harbor to a one year shelf offering. Therefore, the Commission has amended paragraph (a)(4ii)(C) of Rule

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Act, in language similar to section 3(a)(3) of the Securities Act, excludes from the definition of security "any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited." In addition, 1933 Act section 3(a)(8) securities are not defined as securities under the Act. Finally, section 15(a) of the Act contains an exemption from broker-dealer registration for a broker or dealer whose activities are "exclusively intrastate". Section 3(a)(11) of the 1933 Act also exempts intrastate offerings.

[18] *See, e.g.*, Securities and Exchange Commission, *Report of Special Study of Securities Markets*, Part I, 88th, H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963).

[19] In response to concerns raised by several commentators, paragraph (a)(4)(ii)(B) does not include former investment advisers.

[20] There would be substantial broker-dealer concerns raised where an issuer might choose to "rotate" employees every twelve months to sell securities. Under those circumstances, it may be doubtful whether in fact the employees had substantial duties for the issuer other than the sale of securities.

[21] The amount of securities that can be registered for offerings pursuant to Rule 415(a)(1) (viii)—(x) is limited to the amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years of the initial effective date. Other 415 offerings are not subject to time provisions.

3a4–1 to allow any issuer that engages in Rule 415 offerings to take advantage of the full offering periods possible under that rule. Thus, for Rule 415 offerings, the twelve month restriction on sales by associated persons would begin at the end of the Rule 415 offering. For example, an associated person of an issuer that sold securities on the first day allowed under the Rule 415 offering could continue to sell those securities until the entire offering was closed even if the offering lasted over twelve months. At the close of the Rule 415 offering, the twelve month restriction would apply and that associated person would not be able to sell securities for any issuer, except in reliance on paragraphs (a)(4)(i) or (a)(4)(iii) of Rule 3a4–1 for the succeeding twelve month period. During that succeeding twelve month period, the associated person would be prohibited from using the safe harbor to sell securities of any issuer, including, for example, other issues sold involving the same general partner.

Commentators on the reproposed Rule made several suggestions to expand Rule 3a4–1 to allow continuous distributions of securities by certain classes or groups of issuers. Two commentators suggested that mutual funds should be allowed to conduct continuous distributions under paragraph (a)(4)(ii). Most mutual funds currently distribute their products either through independent broker-dealers or through their own special purpose broker-dealers. The industry argued that since they are already heavily regulated, the extra regulation under section 15(a) of the Act is unnecessary. The broker-dealer regulatory scheme, however, provides protection to investors not available under the Investment Company Act of 1940 or the Investment Advisers Act of 1940. The Commission believes that broker-dealer registration and regulation is necessary when the associated persons of an issuer engage in active sales promotion of the issuer's securities on a continuous basis.[22]

Commentators also suggested that certain special purpose broker-dealers such as consumer finance companies and investment company affiliates be allowed to conduct their business without registration as broker-dealers. These commentators suggested that the Commission eliminate the twelve month limitation between sales in the second alternative. The Commission believes that where issuers are using employees to sell their securities on a near continuous basis, the policy reasons underlying registration apply. In particular, the protections available under the broker-dealer regulatory scheme are necessary to ensure that investors obtain reliable advice and service from those persons selling securities. Therefore, the Commission has not adopted this suggestion.

One commentator noted that the Rule could be interpreted to permit an issuer's employees to make only one sale to a customer, instead of being able to participate in a complete offering. The language of Rule 3a4–1 now specifies that associated persons may participate in an offering to its completion, at which time the twelve month restriction would begin.

E. The Third Alternative Available to Associated Persons

The third alternative under Rule 3a4–1 is available to associated persons of an issuer who conducts only "passive" sales efforts. Of the six commentators that discussed the third alternative, four approved of the alternative and two urged that such passive sales should not be allowed or should be limited to sales by officers and directors. The two commentators that objected to passive sales stated that sales abuses were possible since persons responding to investor inquiries by telephone could pressure the investor into purchasing securities in a manner similar to the "cold calls" that the third alternative of the Rule does not permit. These commentators also raised concerns regarding difficulties in ensuring compliance with the passive sales condition without inspections by the NASD or the Commission. The four commentators that approved of the alternative did not perceive any such problems and suggested some expansion of the Rule.

The Commission has retained the third alternative with some modifications designed to address the commentators' concerns. With these modifications, the limited sales activity identified in this alternative does not raise significant potential for abuse. Moreover, because of the issuer's potential liability under the securities laws for wrongful conduct of its employees, the issuer has a strong incentive to carefully circumscribe the sales activities of those persons.[23]

Paragraph (a)(4)(iii)(A) allows associated persons of an issuer to prepare and deliver any written communications through the mails or other similar means that do not involve oral solicitation by the associated person of potential purchasers. This activity would include the drafting or editing of sales literature. In order to provide some control over the content of the written communications, however, all such communications must be approved by a partner, officer or director of the issuer. Oral solicitation of a potential purchaser by the associated person would make this alternative unavailable.

Paragraph (a)(4)(iii)(B) of the Rule provides that associated persons can respond to inquiries from potential purchasers in conversations initiated by the purchaser in response to the issuer's original written communication. This provision is intended to permit associated persons to provide information in response to inquiries from potential purchasers about the issuer and the offering. This part of the Rule has been modified to limit permissible responses to information contained in the registration statement filed with the Commission under the 1933 Act or other offering document.[24] This provision does not encompass "cold calls" or telephone solicitations of the public.[25] In response to commentators' requests for clarification, however, the term "conversation" has been changed to "communication." The broader term "communication" is used to clarify that associated persons of an issuer that receive oral or written communications from potential purchasers in response to previously sent written communications may respond either orally or in writing to such investor-initiated communications.

One commentator suggested that meetings between investors and associated persons of the issuer concerning the issuer and its securities should be permitted under the third alternative. Since this alternative is

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[22] The staff has, however, issued no-action letters regarding the application of the broker-dealer registration requirement to the sales force of investment companies, including associated persons of a registered investment adviser, where their activities were limited to passive sales. *See supra* n. 6, at 6.

[23] Among other things, the antifraud provisions of the federal securities laws prohibit misrepresentations and omissions of material fact in connection with the sale of securities. *See* section 17 of the 1933 Act and section 10(b) of the Act. In addition, the issuer might be liable for a violation of section 15(a) of the Act if its associated persons' activities are not within the safe harbor and they would otherwise be required to register as broker-dealers.

[24] As discussed below, however, paragraph (a)(4)(iii)(C) of the Rule allows associated persons to perform ministerial or clerical work involved in effecting transactions. This would include responding to questions of a clerical or ministerial nature.

[25] For examle, while the Rule would permit associated persons to respond to inquiries from potential purchasers, the mere fact of an inquiry would not jujstify additional telephone contact with that customer beyond the contact necessary to respond to the customer inquiry.

designed to allow primarily passive sales activities, the Commission believes such meetings should not be specifically included in the Rule. In some instances, these kinds of meetings could be used to pressure investors into purchasing securities. Nevertheless, there may be some circumstances where meetings with investors that are not solicited by the issuer could be permitted without raising broker-dealer registration concerns. The staff will consider such circumstances on a case-by-case basis through the no-action letter process.

Paragraph (a)(4)(iii)(C) of the Rule allows associated persons to perform the ministerial or clerical work involved in effecting transactions. This provision is intended to clarify that associated persons of an issuer will not be deemed to be brokers if they restrict their participation to activities such as bookkeeping entries and arranging for the delivery of stock certificates after a securities transaction has been consummated.

III. Certain Findings, Effective Date and Statutory Basis

Section 23(a)(2) of the Act [26] requires the Commission, in adopting rules under the Act, to consider the anticompetitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered proposed Rule 3a4–1 in light of the standards cited in section 23(a)(2) and believes that adoption of the amendments will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), interested persons were given an opportunity to submit written views on proposed Rule 3a4–1. After consideration of the relevant matters presented, the proposed Rule concerning persons deemed not to be brokers is adopted substantially as proposed with some technical changes for clarity. In response to commentator's suggestions, the proposed Rule has been amended to clarify that both direct and indirect compensation based on transactions in securities make the exemption unavailable. The Rule also now allows, under certain circumstances, sales of Rule 415 securities without broker-dealer registration. The issues with respect to the scope of the safe harbor have been thoroughly considered during the comment period. Extended delay in adopting the Rule would be costly to investors and issuers.

Rule 3a4–1 grants an exemption from broker-dealer registration. Therefore, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d), Rule 3a4–1 will become effective immediately upon publication in the **Federal Register**.

IV. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. § 603 regarding Rule 3a4–1. The Analysis notes that the objective of the Rule is to codify past staff positions on the issuer's exemption and provide guidance for future issuers. The Analysis states that no commentators referred to the Initial Regulatory Flexibility Analysis in discussing the application of Rule 3a4–1 to issuers.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Susan J. Walters, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, (202) 272–2848.

V. Statutory Basis

The Securities and Exchange Commission, acting pursuant to the Act, particularly Sections 3, 15 and 23 thereof (15 U.S.C. 78c, 78*o*, and 78w) hereby amends Chapter II, Title 17 of the Code of Federal Regulations by adding § 240.3a4–1 thereto.

List of Subjects in 17 CFR Part 240

Securities brokers.

Text of Rule 3a4–1

Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is revised to read as follows:

Authority: Section 23, 48 Stat. 901, as amended (15 U.S.C. 78w); Section 240.3a4–1 also issued under Secs. 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121 as amended. §§ 240.12b–1 to 240.12b–36 also issued under Secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C. 78c, 781, 78m, 78o. §§ 240.14c–1 to 240.14c–101 also issued under Sec. 14, 48 Stat. 895; 15 U.S.C. 78n. §§ 240.15b10–1 to 240.15b10–9 also issued under Secs. 15, 17, 48 Stat. 895, 897, Sec. 203, 49 Stat. 704, Secs. 4, 8, 49 Stat. 1379, Sec. 5, 52 Stat. 1076, Sec. 6, 78 Stat. 570; 15 U.S.C. 78o, 78q, 12 U.S.C. 241 nt.

2. In Part 240, § 240.3a4–1 is added as follows:

§ 240.3a4–1 Associated persons of an issuer deemed not to be brokers.

(a) An associated person of an issuer of securities shall not be deemed to be a broker solely by reason of his participation in the sale of the securities of such issuer if the associated person:

(1) Is not subject to a statutory disqualification, as that term is defined in section 3(a)(39) of the Act, at the time of his participation; and

(2) Is not compensated in connection with his participation by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities; and

(3) Is not at the time of his participation an associated person of a broker or dealer; and

(4) Meets the conditions of any one of paragraphs (a)(4) (i), (ii), or (iii) of this section.

(i) The associated person restricts his participation to transactions involving offers and sales of securities:

(A) To a registered broker or dealer; a registered investment company (or registered separate account); an insurance company; a bank; a savings and loan association; a trust company or similar institution supervised by a state or federal banking authority; or a trust for which a bank, a savings and loan association, a trust company, or a registered investment adviser either is the trustee or is authorized in writing to make investment decisions; or

(B) That are exempted by reason of sections 3(a)(7), 3(a)(9) or 3(a)(10) of the Securities Act of 1933 from the registration provisions of that Act; or

(C) That are made pursuant to a plan or agreement submitted for the vote or consent of the security holders who will receive securities of the issuer in connection with a reclassification of securities of the issuer, a merger or consolidation or a similar plan of acquisition involving an exchange of securities, or a transfer of assets of any other person to the issuer in exchange for securities of the issuer; or

(D) That are made pursuant to a bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for employees of an issuer or a subsidiary of the issuer;

(ii) The associated person meets all of the following conditions:

(A) The associated person primarily performs, or is intended primarily to perform at the end of the offering, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in securities; and

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[26] 15 U.S.C. 78w(a)(2).

(B) The associated person was not a broker or dealer, or an associated person of a broker or dealer, within the preceding 12 months; and

(C) The associated person does not participate in selling an offering of securities for any issuer more than once every 12 months other than in reliance on paragraphs (a)(4)(i) or (a)(4)(iii) of this section, except that for securities issued pursuant to Rule 415 under the Securities Act of 1933, the 12 months shall begin with the last sale of any security included within one Rule 415 registration.

(iii) The associated person restricts his participation to any one or more of the following activities:

(A) Preparing any written communication or delivering such communication through the mails or other means that does not involve oral solicitation by the associated person of a potential purchaser; *provided, however,* that the content of such communication is approved by a partner, officer or director of the issuer;

(B) Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser; *provided, however,* that the content of such responses are limited to information contained in a registration statement filed under the Securities Act of 1933 or other offering document; or

(C) Performing ministerial and clerical work involved in effecting any transaction.

(b) No presumption shall arise that an associated person of an issuer has violated section 15(a) of the Act solely by reason of his participation in the sale of securities of the issuer if he does not meet the conditions specified in paragraph (a) of this section.

(c) *Definitions.* When used in this section:

(1) The term "associated person of an issuer" means any natural person who is a partner, officer, director, or employee of:

(i) The issuer;

(ii) A corporate general partner of a limited partnership that is the issuer;

(iii) A company or partnership that controls, is controlled by, or is under common control with, the issuer; or

(iv) An investment adviser registered under the Investment Advisers Act of 1940 to an investment company registered under the Investment Company Act of 1940 which is the issuer.

(2) The term "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial and any person who is required under the laws of any state to register as a broker or dealer in that state solely because such person is an issuer of securities or associated person of an issuer of securities shall not be included in the meaning of such term for purposes of this section.

By the Commission.

John Wheeler,

Secretary.

June 27, 1985.

[FR Doc. 85-16129 Filed 7-8-85; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR PART 288

[Release Nos. 33-6589; 34-22158; 39-996; AFDB-1]

Primary Offerings by the African Development Bank

Correction

In FR Doc. 85-15200, beginning on page 26190 in the issue of Tuesday, June 25, 1985, make the following correction: On page 26192, third column, in the eighth and ninth lines of the Regulatory Flexibility Act Certification, remove ", if promulgated,".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12 and 178

[T.D. 85-107]

Interim Customs Regulations Amendments Concerning Convention on Cultural Property Implementation Act

Correction

In FR Doc. 85-15142, beginning on page 26193 in the issue of Tuesday, June 25, 1985, make the following correction: On page 26193, first column, in the first line of the **"DATES"** paragraph, "Effective July 25, 1985" should have read "Effective June 25, 1985".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Approval of Permanent Program Amendments From the State of Texas Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of amendments to the Texas regulatory program (hereinafter referred to as the Texas program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On August 31, 1984, Texas submitted to OSM an amendment to its program which consisted of modifications to the Texas regulations pertaining to effluent limitations and prime farmland (PFL).

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined, with one exception, that the amendments meet the requirements of SMCRA and the Federal regulations.

Accordingly, the Director is approving these amendments in accordance with 30 CFR 732.17. The Federal rules at 30 CFR Part 943 which codify decisions concerning the Texas program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: July 9, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, Room 3014, 333 West 4th Street, Tulsa, Oklahoma 74103; Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Texas State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the condition of approval of the Texas program can be found in the February 27, 1980 **Federal Register** (45 FR 12998). On August 31, 1984, the

Director, Surface Mining and Reclamation Division of the Railroad Commission of Texas (RCT), submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. OSM announced receipt of the amendment and initiated a public comment period on September 25, 1984 (49 FR 37641). The public comment period ended on October 25, 1984. A public hearing scheduled for October 24, 1984, was not held because no one expressed a desire to present testimony.

During its review of Texas' proposed amendment, OSM identified the following concerns:

1. Texas' proposed rules 051.07.04.138(b) and .184(b) would eliminate the definition of "frequently flooded" ("during the growing season, more often than once in two years, and the flooding has reduced crop yields") which corresponds to the U.S. Soil Conservation Service (SCS) criteria in 7 CFR 657.5(a)(2) (iv) and (vi). Since 30 CFR 701.5 defines prime farmland as those lands defined in 7 CFR 657, deviation from these criteria requires concurrence of the SCS State Conservationist (see 7 CFR 657.4(a)(2)). OSM asked Texas to clarify that the RCT's interpretation of the State prime farmland criteria for negative determination purposes will conform with the SCS criteria at 7 CFR 657.5(a)(2).

2. The proposed rule 051.07.04.138(d) and .184(d) did not require the soil survey performed pursuant to the PFL reconnaissance inspection to be of the detail used by the SCS for operational conservation planning, as in 30 CFR 785.17(b)(3).

3. Proposed rule 051.07.04.201(b)(1), did not specify where the SCS National Soils Handbook is available for review.

4. Texas' proposed rule 051.07.04.201(b)(1)(B) vests authority for approval of alternative representative soil profiles with the Railroad Commission of Texas. The Federal rule at 30 CFR 785.17(c)(1)(ii) permits only the SCS State Conservationist to make such a decision.

5. Texas included requirements in rule 051.07.04.201(c)(1) and .624(a) which apply only to the SCS and which Texas cannot enforce.

6. The prime farmland (PFL) exemption for long-term use of certain surface facilities proposed at 051.07.04.620(a)(1) cannot be approved for facilities associated with surface mines. In *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144, U.S.C. D.C., October 1, 1984), Judge Flannery found that OSM rule 30 CFR 823.11(a) improperly extended the exemption to include facilities associated with surface mining operations.

7. Proposed Texas rule 051.07.04.620(a)(2) which was based on 30 CFR 823.11(b) cannot be approved because Judge Flannery held that the PFL exemption for permanent water impoundments violates section 510(d)(1) of SMCRA.

8. Regulations related to the Texas proposed effluent limitations were unclear in circumstances where the Environmental Protection Agency (EPA) standards contained in 30 CFR 434 are more stringent. OSM requested clarification that EPA standards would prevail and that any discharges of process or other wastewater authorized under proposed Texas rules 051.07.04.340(d)(3) and .510(c)(3) must still comply with applicable State and Federal effluent limitations.

9. The Texas rules used but did not define, the term "support facilities."

10. OSM requested clarification of proposed paragraph 051.07.04.340(a)(8) concerning effluent limits for discharges of water from areas disturbed by surface mining activities.

11.OSM identified some typographical errors and errors of omission.

OSM notified Texas of these concerns in a letter dated January 10, 1985, and Texas responded in a letter dated February 8, 1985, by submitting additional information and explanation and a revised draft of the amended rules, addressing OSM's concerns. On March 7, 1985, OSM announced in the **Federal Register** a reopening and extension of the public comment period to allow the public an opportunity to review and submit comments on the new material (50 FR 9287). This comment period ended March 22, 1985.

II. Director's Findings

A. General Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 that the amendments submitted by Texas on August 31, 1984, as amended on February 8, 1985, meet the requirements of SMCRA and the Federal regulations, with the exception of the definition of "support facilities" in Texas rule 051.07.04.008 on which action is being deferred. Only those provisions of particular interest or concern are discussed in the specific findings which follow. Discussion of only those provisions for which specific findings are made does not imply any deficiency in any provision not discussed. The provisions not specifically discussed, including non-substantive modifications, are found to be no less stringent than SMCRA and no less effective than the Federal rules. All of the amended provisions are cited at the end of this notice in the amendatory language for section 943.15.

B. Specific Findings.

1. Texas has amended paragraphs (a)(7) through (d)(3) of rule 051.07.04.340 of the Texas Coal Mining Regulations (TCMR) to establish the maximum limits for effluent in discharges of water from areas disturbed by surface mining activities. The rule requires that discharge of water shall be made in compliance with all applicable Federal and State laws and regulations, and at a minimum, with the standards established in the rule. In response to a concern raised by OSM, Texas responded in a letter clarifying that where the EPA standards at 30 CFR 434 are more stringent than the limits established in the Texas rules, the EPA standards will apply. The Director is satisfied that Texas will apply EPA criteria for all discharges covered in this rule and that the allowance in (d)(3) for discharge of process or wastewater will only be made as long as EPA standards are achieved by the discharges. OSM had also raised a concern that paragraph (a)(8) of proposed rule 051.07.04.340 was unnecessary and that the second sentence could be construed as an exemption from compliance with subsection (c). Texas responded by deleting paragraph (a)(8) from the final rule. Therefore, the Director finds the rule no less effective than 30 CFR 816.42 which applies EPA standards for discharges from areas disturbed by surface mining activities.

2. Texas has amended rule 051.07.04.501 to parallel rule 051.07.04.340, except that rule 051.07.04.510 applies to discharges from areas disturbed by underground mining activities. The underground mining rule does not contain a counterpart to 051.07.04.340(c), but the Director finds that it is not necessary to provide separately for discharges from reclamation areas since "underground mining activities" includes reclamation activities and therefore applicable state and federal laws would apply. Therefore, the Director finds the Texas rule no less effective than 30 CFR 817.42, the Federal counterpart.

3. Texas has amended the following definitions in rule 051.07.04.008, in connection with amendments to rules for prime farmland: "cropland," "historically used for cropland," "prime farmland," "soil horizons," and "topsoil". Texas has also added a definition of "support facilities." The definition of "cropland" is changed to

clarify that cropland does not include land on which quick cover crops are grown primarily for erosion control. The definition of "historically used for cropland" is changed so that lands that would likely have been used for cropland for five of the 10 preceding years but for some unrelated fact of ownership or control, can be considered prime farmland. The definition of "prime farmland" has been changed to closely resemble the Federal definition. The definition of "topsoil" is changed to reflect the addition of the E horizon to the soil horizons.

The proposed definition of "support facilities" was added to rule 051.07.04.008 in the February 8, 1985 modifications in response to OSM's concern that Texas used the term in its proposed rules without having defined the term. The proposed definition is similar to the Federal definition at 30 CFR 701.5. However, the Court in Round I of *In re: Permanent Surface Mining Regulation Litigation II* remanded the Federal definition of support facilities, holding that support facilities should be regulated based upon a functional, rather than a geographic proximity, test. The last line of both the Federal rule and the Texas proposed rule states " 'resulting from or incident to' an activity connotes an element of proximity to that activity." This is contrary to the court's opinion. Therefore, the Director is deferring action on the proposed definition of "support facilities" contained in Texas proposed rule 051.07.04.008. Texas will be notified by letter of the need to further revise the definition of "support facilities" under the provisions of 30 CFR 732.17. With the exception noted above, the Director finds the amended definitions no less than their Federal counterparts in 30 CFR 701.5.

4. Texas has amended rule 051.07.04.138, prime farmland investigation, by deleting the language which defined "frequently flooded" in paragraph (b)(4). OSM expressed concern with this deletion and requested clarification that Texas' interpretation of the State prime farmland criteria for negative determination purposes will conform with the U.S. Department of Agriculture Soil Conservation Service (SCS) criteria at 7 CFR 657.5(a)(2), as modified by the Texas State Conservationist. In its response dated February 8, 1985, Texas stated that "the [Railroad] Commission's interpretation of its prime farmland criteria for negative determination purposes will conform with the SCS criteria at 7 CFR 657.5(a)(2), as modified by the Texas State Conservationist." The other changes to this section do not render the rules less effective than the Federal rules. Therefore, the Director finds this section no less effective than the Federal requirements at 30 CFR 785.17(b).

5. Texas has amended the requirements for prime farmland investigation for underground mines in 051.07.04.184, to correspond with the amendments to 051.07.04.138. Therefore, the Director finds 051.07.04.184 no less effective than the requirements in 30 CFR 785.17(b), for the reasons stated above.

6. Texas has amended rule 051.07.04.201 concerning application contents for prime farmland to more closely resemble the current Federal requirements in 30 CFR 785.17(c) and (d). The Texas rule contains similar requirements to the Federal rule. OSM identified a concern with proposed TCMR 051.07.04.201(b)(1) in that the rule did not contain a sentence identifying where the National Soils Handbook, published by SCS and establishing the acceptable procedures for the conduct of soil surveys, was available for review. In its February 8, 1985 submission in response to OSM's concerns, Texas has added language to paragraph (b)(1) which satisfactorily addresses this concern. Another concern raised by OSM was that paragraph (b)(1)(B) vested authority for approval of alternative representative soil profiles with the RCT rather than the SCS State Conservationist, as the Federal rule requires. Texas has satisfactorily addressed this concern in its final rule which requires approval by the SCS and by the RCT. A third concern was that paragraph (c)(1), which states the role of the SCS in carrying our responsibilities under this rule section, served no purpose and may have proven unenforceable since it required action by the SCS. In response, Texas stated that the paragraph is for informational purposes, and has deleted the language that required SCS action. Therefore, the Director finds that Texas rule 051.07.04.201 is no less effective than 30 CFR 785.17(c) and (d).

7. Texas has amended rule 051.07.04.620 concerning prime farmland applicability and special requirements. The amended provisions cover requirements in 30 CFR 823.11. In a letter to the State, OSM pointed out that the proposed Texas rule contained provisions similar to those in a Federal rule which was remanded by the U.S. District Court for the District of Columbia in Round II of the suit entitled *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144). The court held that the PFL exemption for long-term use of certain surface facilities found in 30 CFR 823.11(a) was improperly extended to surface mines, and that the PFL exemption for permanent water impoundments in 30 CFR 823.11(b) violates section 510(d)(1) of SMCRA. OSM advised the State that these exemptions could not be approved, in light of the court decision. Texas responded by deleting the language granting these exemptions from its amended rule. Therefore, the Director finds the rule no less effective than the Federal rules.

8. Texas has amended rule 051.07.04.621 to more closely track the Federal requirements for removal of PFL soils. The rule previously provided that such substitution could be approved if an equal or greater productive capacity will result. The rule now provides for removal of other suitable soils materials in lieu of topsoil segregation, only where such materials will create a final soil having a greater productive capacity than the pre-mining soil. Therefore, the Director finds the rule no less effective than 30 CFR 823.12 of the Federal requirements.

9. Texas has amended its requirements for PFL soil stockpiling in rule 051.07.04.622 to contain the same requirements included in the Federal rule for PFL soil stockpiling at 30 CFR 823.12. Therefore, the Director finds the Texas requirements no less effective than the Federal requirements.

10. Texas has amended its requirements for PFL soil replacement in 051.07.04.624 to closely resemble the current Federal requirements in 30 CFR 823.14. The Director finds the Texas rule no less effective than the Federal rule.

11. Texas has amended its requirements for PFL revegetation and restoration of soil productivity in rule 051.07.04.625. The rules closely resemble the current Federal rules in 30 CFR 823.15, revegetation and restoration of soil productivity. The Director finds the Texas rules no less effective than the Federal rules.

12. Texas has proposed to repeal 051.07.04.623, which established an alternative to separate soil horizon removal and stockpiling for prime farmland. The rule provided that the RCT could allow the permittee to remove, store and replace all soil overburden without regard to soil horizons if it was documented that equivalent or higher yields would result. Since there is no Federal counterpart to this rule, its removal does not render the Texas program less effective than the Federal program.

III. Public Comments

Responses to requests for comment were received from the following Federal agencies: the Department of Labor, Mine Safety and Health Administration, the Department of Agriculture, Soil Conservation Service (SCS) and Forest Service, the Department of Interior Fish and Wildlife Service, Bureau of Reclamation and National Park Service, the Advisory Council on Historic Preservation, the Army Corps of Engineers, and the Environmental Protection Agency. Only the SCS and the Advisory Council on Historic Preservation commented on the substance of the proposed rule. The other agencies acknowledged the opportunity to comment but did not offer substantive comments.

The SCS noted that iron limitations from disturbed areas are higher than suggested EPA criteria for fresh water organisms. The Texas effluent limitations rules require at a minimum that EPA standards for discharges from mined areas are met.

The SCS suggested additional language for Texas rules 051.07.04.138(d) and 051.07.04.184(d) to require that soil surveys made by the applicant be made in accordance with certain SCS standards. In its February 8, 1985, modified submission, Texas added language to these rules to require that "soil surveys of the detail used by the U.S. Soil Conservation Service for operational conservation planning shall be used to identify and locate prime farmland soils." This language tracks the language in 30 CFR 785.17(b)(3).

The SCS stated that rules 051.07.04.138 (b)(2) through (b)(4) and 051.07.04.184 (b)(2) through (b)(4) are redundant. Redundancy of paragraphs does not necessarily render the rules less effective than the Federal rules, and in this case, the Director finds the Texas rules no less effective than the Federal rules.

The SCS suggested a language change to Texas rule 051.07.04.201(b)(1)(B)(ii). However, since the Texas rule is virtually identical to the Federal counterpart 30 CFR 785.17(c)(1)(ii), the Director finds the rule no less effective than the Federal rule.

The SCS questioned the basis for the current yield in rule 051.07.04.625(b)(7). Since the rule requires concurrence by the U.S. Soil Conservation Service as to current yields, it is assumed that the basis will be discussed with SCS prior to determination of current yields.

The SCS stated that rule 051.07.04.620(a)(1) does not specify the "minimal amount of land" in quantitative terms. The Federal rule also uses the term "minimal amount of lands," in 30 CFR 823.11(a), and therefore, the Director has determined that the Texas rule is no less effective.

The SCS commented that at amended rule 051.07.04.201(b)(3), for depths of excavation exceeding the soil survey mapping, the need to correlate geologic investigation data should be defined. However, since the Texas rule contains the requirements found in the Federal counterpart, 30 CFR 785.17(c)(3), the Director finds it no less effective and will not require Texas to add this requirement.

The SCS commented that State rules should be established after consultation with SCS. SCS said that the rules were too similar to Federal regulations and that the rules make it appear as though the SCS is being placed in the position of regulatory authority. OSM encourages consultation with the SCS in the formulation of rules, but also requires that the State rules be no less effective than the Federal rules, which include requirements for consultation and/or concurrence by the SCS.

The SCS also offered comments on certain provisions which are being deleted by Texas in this amendment and rule 051.07.04.623, which was proposed for deletion from the Texas regulatory program in this amendment. Since SCS comments were not suggesting retention of the material, they are not discussed herein.

The Advisory Council on Historic Preservation (the Council) submitted comments concerning preservation of historic properties. The Council stated that it understood that OSM is considering approval of the Texas program, as amended, for use in regulating coal mining in Texas. The Council stated that implementation of the State program will likely result in adverse effects upon properties included in or eligible for the National Register of Historic Places.

OSM is not, in this action, considering approval of the Texas program. The Texas program was approved on February 27, 1980 (45 FR 12998). OSM in this action is approving certain amendments to the Texas program. Since the Director finds the Texas amendments no less effective than the counterpart Federal rules, and since the Texas rules contained in the amendment do not relate to program provisions on the consideration of places listed in or eligible for listing in the National Register of Historic Places, the Director has not responded to the Council's comments in this notice.

Comments were also received from the Texas Agricultural Extension Service of the Texas A&M University System. The commenter stated that some of the effluent limitations standards established in the rules were "overly restrictive or ill-conceived," and gave specific examples. The Texas rules require that discharges from areas disturbed by mining activities meet the stricter of either the EPA standards or the Texas standards for effluent limitations. The Director has determined that this is no less effective than the Federal requirements at 30 CFR 816.42 and 817.42 which reference the EPA standards. The Director cannot approve standards which would be less effective than the EPA requirements.

The Texas Agricultural Extension Service also provided a comment concerning the prime farmland rules for revegetation and restoration of soil productivity in rule 051.07.04.625. The commenter said, in reference to paragraphs (b)(7) and (b)(8), that "procedures do not exist today to scientifically adjust yields based on differences in non-mined prime farmland soils and other soils that produce the reference crop, or to make adjustments for disease, pest or weather-induced variations."

The referenced paragraphs of the Texas rules correspond to Federal provisions in 30 CFR 823.15 (b)(7) and (b)(8). The Texas rules are no less effective than the Federal rules. The rules provide discretionary use of the yield adjustment and require concurrence of the U.S. Soil Conservation Service when used. As OSM stated in the preamble to its May 12, 1983 rules for prime farmland: "Adjustments in reference yields for disease and pests could be needed to account for unusual conditions in the measurement period that are beyond an operator's control and that skew comparisons. . . . OSM and SCS agree that these factors potentially can have a large local effect on crop yields." (48 FR 21460, May 12, 1983)

The commenter also objected to the requirement in rule 051.07.04.624(f), that the surface soil layer be replaced in a manner that protects the surface from wind and water erosion before it is seeded or planted. The commenter said that this paragraph could require mulches or other artificial barriers on the surface of the soil prior to seeding or planting regardless of how soon it would be seeded or planted.

The Texas rule does not mention mulch or other stabilizers but says that the soil shall be replaced in a manner that protects the surface from erosion. The Director does not find any conflict with Federal requirements for

replacement of soil, and has approved the rule.

IV. Director's Decision

The Director, based on the above findings, is approving the Texas regulatory amendments as submitted on August 31, 1984, and modified on February 8, 1985, with the exception of the definition of "support facilities" contained in rule 051.07.04.008, under the provisions of 30 CFR 732.17. The Federal rules at 30 CFR Part 943 are being amended to implement this decision.

V. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 17, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 943—TEXAS

30 CFR Part 943 is amended as follows:

1. The authority citation for Part 943 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 943.15 is amended by adding a new paragraph (c) as follows:

§ 943.15 Approval of regulatory program amendments.

* * * * *

(c) The following amendments submitted August 31, 1984, as modified February 8, 1985, are approved effective July 9, 1985: revisions amending Texas coal mining regulations at 051.07.04.340, 051.07.04.510, 051.07.04.008 except for the definition of "support facilities," 051.07.04.136, 051.07.04.184, 051.07.04.201, 051.07.04.620, 051.07.04.621, 051.07.04.622, 051.07.04.624 and 051.07.04.625; and repeal of section 051.07.04.623.

[FR Doc. 85–16272 Filed 7–8–85; 8:45 am]

BILLING CODE 4310-05-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

Establishment of NARA Regulations Relating to Records Management

Correction

In FR Doc 85–15628 beginning on page 26930 in the issue of Friday, June 28, 1985, make the following correction on page 26935. In the first column, in § 1228.188(a), in the 31st line "type" should read "tape".

BILLING CODE 1505-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–40

[FPMR Temp. Reg. A–24, Supp. 1]

Use of Travel Agents and Travel Management Centers (TMC's) by Federal Executive Agencies

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Temporary Regulation.

SUMMARY: This supplement amends FPMR Temp. Reg. A–24 to extend the expiration date and to add certain provisions to reflect GSA's experience gained from Federal agency use of the TMC program. Accordingly, this supplement: (a) Prohibits employees from using a TMC unless their agency authorizes its use: (b) specifies additional kinds of information needed by GSA to properly evaluate an agency request for establishing a TMC; (c) establishes individual GSA project coordinators to act as liaisons between the TMC and the requesting agency; (d) requires certain additional internal procedures for agencies to develop before using the services of a TMC; and (e) revises Attachment A to update telephone numbers for several GSA regional Customer Service Bureaus.

DATES: Effective date: May 25, 1985; expiration date: May 25, 1986, unless otherwise canceled or extended.

ADDRESS: Comments should be addressed to: General Services Administration, Office of Transportation (FT), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Charles T. Angelo, Travel and Transportation Services Division (FTE), FTS 557–1281/(703) 557–1281.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations Temporary Regulation A–24, Supplement 1

June 17, 1985.

To: Heads of Federal agencies.

Subject: Use of travel agents and travel management centers (TMC's) by Federal executive agencies.

1. *Purpose.* This supplement amends FPMR Temporary Regulation A–24 to extend the expiration date and to revise certain provisions of the regulation listed in paragraph 4 in view of the experience of the General Services Administration (GSA) with Federal agency use of the TMC's.

2. *Effective date.* This regulation is effective May 25, 1985.

3. *Expiration date.* This regulation expires May 25, 1986, unless sooner superseded or canceled.

4. *Explanation of changes.*

a. Paragraph 8 is revised to read as follows:

"8. *Establishment of TMC's.*

a. At the request of Federal agencies, GSA will contract for TMC's in any location where the volume of travel justifies the need for such services and acceptable bidders are available. Generally, GSA will secure services through local travel agents and SATO's; however, areas with dispersed

Federal employees or with a limited number of travel agents may have to be served by more distant firms.

b. Employees are not authorized to use a TMC unless their agency has initially made the decision to use a TMC and has established internal procedures for their use (see par. 12d)."

b. Paragraph 10 is revised to read as follows:

"10. *Agency requests for establishment of TMC's.* The following information is required by GSA to properly evaluate a request to establish a TMC. Requests should be directed to the appropriate GSA regional Customer Service Bureau shown in attachment A having jurisdiction over the State where travel management services are required. For each location to be served, agencies should provide:

a. The name and address of the agency or agencies desiring to use the proposed TMC, including the name and telephone number of an agency representative designated to act as liaison;

b. An estimate of official airline travel (number of tickets and total dollar cost) based on immediate prior year's travel records and an estimate of the percentage of international travel, if any;

c. Number of Federal agency employees;

d. Any special travel requirements that should be included in GSA's solicitation, such as a high percentage of complex international travel."

c. Paragraph 11 is revised to read as follows:

"11. *GSA responsibilities.*

a. GSA, through the appropriate GSA regional Customer Service Bureau, will acknowledge receipt of agency requests immediately and provide an estimated date of evaluation. If further details are needed, subsequent meetings between GSA and agency liaison personnel will be arranged.

b. GSA will handle all required procurement processes, including solicitation development, selection of the successful bidder, and award and administration of the contract.

c. A regional GSA project coordinator will be appointed to act as the primary liaison person between the requesting agency and the TMC contractor."

d. Paragraph 12 is revised to read as follows:

"12. *Agency responsibilities.*

a. Agencies may be requested to participate with GSA on a technical review panel to evaluate proposals from travel agents in the selection process.

b. Agencies will be requested to participate on a local oversight committee to review TMC performance, to coordinate agency and TMC procedures, and to provide GSA with requested information. The local oversight committee participation may be on a rotating or permanent basis.

c. Agencies are required to comply with the terms of the GSA contract and may not make separate contractual arrangements with TMC's.

d. Before a TMC begins service, requesting agencies must establish, as a minimum, certain internal procedures. Since many agencies have numerous field offices participating in the program, it is recommended that they standardize the following:

(1) Establish requirements for certification of official travel. (For example, some agencies require that a copy of the travel authorization be exchanged for each ticket received at the point of delivery; other agencies provide travelers with an accounting code to use when ordering tickets);

(2) Establish billing and payment procedures, including ticket refunds. (For example, an agency with a national or centralized finance office may require field offices to return unused tickets to that office which will, in turn, make a request to the TMC for ticket refunds, rather than field offices returning tickets directly); and

(3) Advise subordinate offices of appropriate TMC billing and payment procedures.

e. Agencies shall provide the TMC with the following information for each location where the service will be performed:

(1) The names and telephone numbers of agency liaison personnel designated to work locally with the TMC contractor and the GSA project coordinator;

(2) Specific ticket delivery locations or "control points," including names and telephone numbers of personnel authorized to accept tickets; and

(3) Notify the TMC of any special or unusual agency travel policies or travel-related requirements.

f. Transactions with a TMC are comparable to those made directly with a carrier. Therefore, transactions between the agency and the TMC are governed by applicable audit regulations. For example, when an agency uses Government Transportation Requests (GTR's) they shall be made out in the name of the TMC, not the carriers. Similarly, unused tickets purchased from the TMC shall be returned directly to the TMC for refunds.

g. Agencies shall remain responsible for employees' compliance with the Federal Travel Regulations, including the mandatory use of the contract airline city-pair program and restrictions on first-class air travel.

h. Agencies shall comply with the "Prompt Payment Act of 1982 and make timely payments to the TMC."

e. Attachment A is revised to update the telephone number of several GSA regions.

5. *Comments and recommendations.* Comments and recommendations concerning the provisions of this regulation may be submitted to the General Services Administration, Office of Transportation (FT), Washington, DC 20406, within 90 calendar days of publication.

Dwight Ink,

Acting Administrator of General Services.

ATTACHMENT A.—AREAS OF JURISDICTION GSA REGIONAL CUSTOMER SERVICE BUREAU

Region	Jurisdiction	Address	Telephone
1	CT, MA, ME, NH, RI, VT	GSA (1FBT), J.W. McCormack, Post Office and Court House, Boston, MA 02109.	FTS 223-2735; COML 617-223-2735.
2	NJ, NY, Puerto Rico, and Virgin Islands.	GSA (2FBT), 26 Federal Plaza, New York, NY 10278.	FTS 264-1259 COML 212-264-1259.
3	DE, MD (Note A), PA, VA (Note B), WV.	GSA (3FBT), 9th & Market Streets, Philadelphia, PA 19107.	FTS 597-5084; COML 215-597-5084.
4	AL, FL, GA, KY, MS, NC, SC, TN.	GSA (4FBT), 75 Spring Street, SW., Atlanta, GA 30303.	FTS 242-5121; COML 404-221-5121.
5	IL, IN, MI, MN, OH, WI	GSA (5FBT), 230 S. Dearborn Street, Chicago, IL 60604.	FTS 353-5375; COML 312-353-5375.
6	IA, KS, MO, NE	GSA (6FBT), 1500 E. Bannister Road, Kansas City, MO 64131.	FTS 926-7519; COML 816-926-7519.
7	AR, LA, NM, OK, TX	GSA (7FBT), 819 Taylor Street, Fort Worth, TX 76102.	FTS 334-2733; COML 817-334-2733.
8	CO, MT, ND, SD, UT, WY.	GSA (8FBT), Denver Federal Center, Building 41, Denver, CO 80225.	FTS 776-7676; COML 303-236-7676.
9	American Somoa, AZ, CA, GU, HI, NV, Northern Mariana Islands, Pacific Trust Territories.	GSA (9FBT), 525 Market Street, San Francisco, CA 94105.	FTS 454-8295; COML 415-974-8295.
10	AK, ID, OR, WA	GSA (10FBT), GSA Center, Auburn, WA 98002.	FTS 396-7455; COML 206-931-7455.
NCR	DC, MD (Note C), VA (Note D).	GSA (WFBT), 7th & D Streets, SW, Washington, DC 20407.	FTS 472-1626; COML 202-472-1626.

Note A.—Except for those counties under NCR jurisdiction as listed in Note C.
Note B.—Except for those cities and counties under NCR jurisdiction as listed in Note D.
Note C.—Counties Prince Georges and Montgomery only.
Note D.—Cities of Alexandria, Fairfax, Manassas, and Manassas Park, and counties of Arlington, Fairfax, Loudoun, and Prince William only.

[FR Doc. 85-16328 Filed 7-8-85; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Editorial Amendments to Part 0

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: This action (Order) makes certain editorial amendments to the Commission Rules. The purpose of these amendments is to change the official title and authority of the Executive Director.

EFFECTIVE DATE: August 9, 1985.

FOR FURTHER INFORMATION CONTACT: Donald L. McClure, Office of General Counsel, (202) 254–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Administrative practice and procedure.

Order

In the matter of editorial amendments to Part 0 of the Commission's Rules.

Adopted: June 27, 1985.
Released: July 5, 1985.

By Office of Managing Director.

1. The purpose of this Order is to make certain editorial amendments to the Commission's Rules which have been rendered necessary by an earlier Commission Order which changed *inter alia*, the official title and authority of the Executive Director, see 46 FR 59975, Dec. 8, 1981, as amended at 47 FR 41380, Sept. 20, 1982; 48 FR 15630, April 12, 1983.

2. The initial amendment is to Part 0 of the Commission's Rules. More specifically, 47 CFR 0.5, 0.11, 0.332(c), (e), 0.401(a)(2), 0.445(g) and 0.455(f) are amended to reflect the title change from the "Office of Executive Director" to the "Office of Managing Director." Moreover, 47 CFR 0.5(b)(1), 0.182, 0.183(a), 0.185, 0.185(a)-(b), 0.186(b)(7) and 0.231(a)-(d), (f)-(h) are amended to also reflect the modification from the "Executive Director" to the "Managing Director."

3. Authority for these amendments is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended. 47 U.S.C 154(i) and 303(r).

4. In view of the fact that the proposed revisions involve rules of agency organization, prior publication of a Notice of Proposed Rule Making under the provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. 553(b)3)(A), is unnecessary.

5. Accordingly, it is ordered, that effective August 9, 1985 Part 0 of the Commission's Rules is amended as set forth in the attached Appendix. This action is taken pursuant to delegated authority contained in 0.231(d) of the Commission's Rules. 47 CFR 0.231(d).

Edward J. Minkel,
Managing Director.

Appendix

PART 0—[AMENDED]

Chapter I of Title 47 of the Code of Federal Regulations is hereby amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

2. Wherever there appears in the sections listed below, the words "Executive Director" are changed to read "Managing Director."

0.5 (a)(1)
0.11
0.182
0.183(a)
0.185 introductory text and 0.185(a)
0.186(b)(7)
0.231 (a)–(d) and (f)–(h)
0.332 (c) and (e)
0.401 (a)(2)
0.445(g)
0.455(f)

3. In addition, § 0.5(b)(1) is revised to read as follows:

§ 0.5 [Amended]

* * * * *

(b) * * *

(1) The Managing Director. The Managing Director is directly responsible to the Commission, works under the supervision of the Chairman, and assists him in carrying out the Commission's organizational and administrative responsibilities. His principal role is to see that other staff units work together and promptly dispose of the matters for which they are responsible.

[FR Doc. 85–16295 Filed 7–8–85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 22

[CC Docket No. 83–1096]

Selection From Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the specifications for microfiche copies of an application for an initial cellular construction permit for markets beyond the top-120 that appeared at pages 20771 and 20772 in the Federal Register of Monday May 20, 1985 (50 FR 20771, 20772).

FOR FURTHER INFORMATION CONTACT: Lawrence R. Krevor, (202) 632–6450.

Erratum

In the Matter of Amendment of the Commission's Rules To Allow the Selection From Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings (CC Docket No. 83–1096).

Released: June 24, 1985.

In the Memorandum Opinion and Order on Reconsideration, (FCC 85–117) in the above-captioned matter, released May 3, 1985, the specifications for microfiche copies of an initial cellular construction permit for markets beyond the top-120 were incorrectly described. Accordingly, footnote 77 and § 22.913(c) are corrected to read as follows:

[77] The two microfiche copies must be in a format similar to that used for the Federal Register: 4 by 6 inches positive or negative copy microform, 24x reduction, readably labeled at the top, enclosed in a paper jacket. The two microfiche copies must be in a clearly labeled envelope accompanying the original appliction.

§ 22.913 Content and Form of Applications.

* * * * *

(c) Copies. Each applicant for an initial construction permit in markets beyond the top-120 shall submit an original and one paper copy of its application. In addition, each applicant shall submit two microfiche copies of its application using a 4 by 6 positive or negative copy microform, 24x reduction, readably labeled at the top and enclosed in a paper jacket. The two microfiche must be in a clearly labeled envelope accompanying the original application. Applicants for other forms of cellular authorization shall submit an original and two paper copies.

* * * * *

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR Doc. 85–16296 Filed 7–8–85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[Docket No. 20735; RM-1301, et al.; FCC 85-328]

Changes in the Rules Relating To Noncommercial, Educational FM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Through this document, the Commission responds to petitions for reconsideration of the *Third Report and Order* in Docket 20735, which dealt with the problem of interference to TV Channel 6 stations caused by noncommercial educational FM (NCE-FM) stations operating on Channels 201-220 (88-92 MHz). The rules adopted in this Memorandum Opinion and Order establish television Channel 6 protection standards for noncommercial educational FM stations, based on a compromise solution proposed by industry representatives of both sides of the long-standing Channel 6 interference problem. This reconsideration action is necessary to reaching a viable solution to the Channel 6 interference dilemma that promises the support of both the television and educational broadcasting industries. It is expected that this action will encourage growth in the educational FM service, with minimum inconvenience to Channel 6 viewers.

EFFECTIVE DATE: These amendments are effective June 20, 1985, except that § 73.506(a)(3) is effective March 1, 1987 for NCE-FM stations authorized before December 31, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Kathryn Hosford, Mass Media Bureau, (202) 632-9660
Michael Lewis, Mass Media Bureau, (202) 632-9660

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Memorandum Opinion and Order; Proceeding Terminated

In the matter of changes in the rules relating to noncommercial, educational FM broadcast stations; Docket No. 20735, RM-1301, RM-1974 and RM-2055.

Adopted: June 20, 1985.
Released: June 27, 1985.

By the Commission: Commissioner Rivera not participating.

Introduction

1. The Commission has under consideration several petitions for reconsideration of the *Third Report and Order (Third Order)* in the above referenced matter and responsive pleadings. (See 49 FR 45146 (November 15, 1984).) The *Third Order* presented a solution to a long-standing problem of interference caused to reception of television Channel 6 (TV-6) by the presence of noncommercial, educational FM broadcast stations (NCE-FM). Both TV-6 and NCE-FM interests filed petitions for reconsideration. Additionally, a compromise solution was jointly submitted which offered a basis for resolving all of the outstanding issues in this proceeding.

2. The Commission's solution in the *Third Order* was presented as a neutral approach to resolving the problem. However, neither side accepted the new rules in total. In virtually every issue, the Commission conclusion received support from one side and criticism from the other side, depending on whether the decision supported or contradicted the commenter's position. This reaffirms the Commission's belief that the solution adopted in the *Third Order* was indeed a balanced approach to this complex question. Nevertheless, in this Memorandum Opinion and Order, we have carefully reconsidered each issue and adjusted the conclusions contained in the *Third Order* based on the additional filings, especially the joint compromise solution.

Background

3. This proceeding was initiated by a petition for rule making filed in 1972 by the Corporation for Public Broadcasting (CPB), requesting a review of the rules governing the assignment of NCE-FM stations. Although several issues have been considered in the overall proceedings, the *Third Order* focused on the resolution of the interference problem between NCE-FM stations and TV-6 stations. This problem occurs primarily because the two services operate immediately adjacent in frequency. When television receivers are tuned to Channel 6 (82-88 MHz), they may also receive signals in the NCE-FM band (88-92 MHz). Although advancements in the design of television receivers may eventually eliminate the interference problem, this proceeding has attempted to provide an interim solution.

4. The Commission's goals in dealing with this vexing problem were to: (1) Allow for expansion of the NCE-FM Service, (2) have minimal negative impact on the TV-6 viewers, and (3) offer a realistic approach for satisfying the needs of all interested parties. The solution adopted by the Commission in the *Third Order* represented a balanced approach attempting to satisfy these goals. The compatibility criteria adopted allowed new NCE-FM stations to cause objectionable interference to no more than 3 square miles of a TV-6 station's Grade B coverage area. This was accomplished by limiting the power of the NCE-FM station based on frequency of operation and field strengths of the TV-6 stations at the NCE-FM transmitter sites. Flexibility was left to the NCE-FM stations to "engineer-in" stations based on use of several interference remedies. NCE-FM stations were given a choice of how much responsibility they desired to accept based on the power levels of the stations (i.e., increased power required increased responsibilities).

5. Both the NCE-FM and TV-6 interests opposed the solution adopted by the Commission and jointly petitioned for a stay of the new rules. Along with the stay, the Commission had to impose a freeze on NCE-FM and TV-6 applications, as no applications could be granted pending resolution of the interference problem. (See 50 FR 5073 (February 6, 1985).) One outcome of the stay was to delay government funding of NCE-FM- stations as provided by the National Telecommunications Information Administration (NTIA) during this fiscal year.

6. In addition to the timely filed petitions, comments, and replies, the Commission, on May 28, 1985, received a joint proposed solution for the interim period. Both NCE-FM and TV-6 interests participated in drafting the submission.[1] On June 3, 1985, the docket was re-opened to allow all parties to comment on the proposed compromise solution. A complete list of commenting parties and abbreviations for those parties is provided in Appendix A.

Joint Compromise Solution

7. Before discussion of the various issues raised in reconsideration, a brief introduction of the compromise solution is in order. We have weighed heavily that proposal and the comments received in reply in arriving at the reconsideration decision. Although a few groups opposed it, the compromise is a solution that representatives of the major interest groups from both sides believe is workable.

[1] The compromise solution was jointly submitted by representatives of: Association of Maximum Service Telecasters, Inc.; National Association of Broadcasters; Taft Broadcasting Company, McGraw-Hill Broadcasting Company, Inc. and Storer Broadcasting Company; Corporation for Public Broadcasting; National Public Radio; and National Federation of Community Broadcasters.

8. The compromise before us can be considered in two parts: (1) Specific provisions for NCE–FM applicants and TV Channel 6 licensees; and (2) various actions to be taken by the NCE–FM parties, TV–6 parties, and the Commission. First, the solution proposes specific rules outlining a complex method of computing acceptable NCE–FM facilities based on limiting interference to no more than 3,000 persons for new stations or decreasing the predicted amount of interference when modifying existing stations. Various allowances are made for filters, receiver antenna directivity, and vertical polarization. Further adjustments can be made for replacement service from TV translators, satellite stations, and reception of same network affiliates. Considerations for existing interference from co-channel and adjacent channel television stations can also be incorporated in computing acceptable facilities. Both parties clearly indicated that they could not support excising or modifying any portions of the proposal.

9. The Commission continues to believe that the *Third Order* represented a reasonable accommodation of the competing interests of the NCE–FM and TV–6 communities. However, the success of any such solution depends, in large part, on the perception of the parties that it is a fair balancing of their competing interests. It is apparent that the respective camps did not believe that the *Third Order* fairly accommodated their interests. Thus, it is reasonable to assume that our efforts to preserve TV–6 service and provide new NCE–FM service would be marred by extended litigation of parties at odds with each other and the perceived inadequacies of the Commission's solution. In such circumstances, the overall ends of the Commission and the interests of the public would be better served by adoption of the compromise solution. Although that solution does not represent the views of all parties, it is one that major participants believe is fair. As such, it has a greater likelihood of succeeding to the overall benefit of the public by protecting TV–6 service and providing new NCE–FM service without interminable litigation.

Issues

10. There are several issues to be considered in this matter. We have attempted to present these issues in a manner similar to that found in the various filings. The issues to be considered are as follows:

1. Television Receiver Standards
2. Effective Interference Model
3. Engineers in Charge Licensing Discretion
4. Undesired Signal to Desired Signal (U/D) Ratios
5. Population Considerations
6. NCE–FM Basic Power Levels
7. Allowances for Interference Remedies
8. Adjustments for Alternatives and Existing Interference
9. Collocation
10. NCE–FM Grandfathering Rights

Each issue will be developed separately with special reference to the compromise solution.

Issue 1: Television Receiver Standards

11. Several commenters again suggested that the Commission should adopt receiver standards because improvements in television interference immunity criteria would virtually eliminate the interference problem. The basis of this contention, that better rejection of the FM band would ameliorate the problem, is because the interference is caused by deficient television receivers and not by spurious or improper emission broadcast by NCE–FM stations.

12. In lieu of adopting new standards immediately, CPB, NTIA, and MAET urged that receivers be improved through the adoption of incentives by decreasing the protection criteria or by specifying a schedule for implementing voluntary standards. The parties to the compromise solution urged "the Commission to adopt, by October 1, 1987, mandatory television receiver standards to decrease or eliminate the interference which NCE–FM operations can cause to Channel 6 reception." They noted that the need for interim rules should diminish as the potential for interference decreases.

13. The Commssion concurs with the need for receiver improvements. However, even if the Commission were to adopt receiver standards to cope with the problem, that would be a very long-term solution. A recently released report from the Electronic Industries Association/Consumer Electronics Group (EIA) indicates that 50 percent of all color televisions bought 15 years ago are still in service. (*EIA Color Television Replacement Study*, April 1985, by Market Facts, Inc.) The report further states that 4 out of 5 sets are still in service after 10 years. Therefore, even if the sets being produced today had significantly better rejection of the FM band than those produced yesterday, the impact could not be realized for at least a decade or longer. This provides little immediate relief to either the NCE–FM or TV–6 interests.

14. Given the long-term nature of this solution, we feel it is better to allow the television receiver manufacturers additional time to set and implement voluntary criteria. The EIA has established a committee to develop such standards and is in the process of drafting a specific measurement procedure. The Commission will continue to monitor the committee's progress. As pointed out in the *Third Order*, at paragraph 9, the Commission will exercise its statutory authority to set such immunity criteria if the industry fails to do so in a reasonable time. Even the lesser option of establishing incentives, schedules, or "due dates" appears premature unless the receiver industry fails to act positively on its own. From the evidence before us, the industry appears to have every intention of developing improved immunity standards on its own; thus, we decline to establish timetables at this time. Therefore, upon reconsideration, the Commission reaffirms its decision in the *Third Order* by not adopting mandatory television receiver performance criteria at this time.

Issue 2: Effective Interference Model

15. The effective interference model, as devised by the Commission's Office of Science and Technology, was used in developing the acceptable power levels adopted in the *Third Order*. Its use was opposed by TV–6 interests. The FM interests generally supported it. NPR and NFCB supported the model as an improved method of accounting for the probabilities of service and interference, while the TV Petitioners and others such as Channel 6 felt that the effective interference model predicts less interference than actually will occur. In addition to the accuracy argument, CPB in agreement with the TV Petitioners noted that effective interference was of little practical use because the computer program (TVINT) failed to predict where the interference will occur.

16. No new arguments were presented here. Neither the effective interference model nor the conventional method of interference prediction can accurately determine exactly where the interference will occur. Even the parties in the compromise solution acknowledge, "the interference prediction method [conventional] used in this proposal is based on probabilities and therefore all persons within the predicted interference area will not actually receive interference."

17. We continue to believe that the effective interference model provides a good tool for examining the net effect of interference on TV–6 service. Even if its predictions differ from the conventional method (and in many cases the predictions between the two methods

are almost equal), effective interference provides a realistic method upon which to build a protection plan. However, we need not belabor that point here because we agree that the effective interference model in its current form (*i.e.*, the TVINT program) is unable to provide an NCE–FM applicant or the TV–6 licensee with an acceptable means to define the boundaries of an interference area. Athough the effective interference model can display those locations where interference is likely through a graphics enhancement, we will accept the industry's current reluctance to use this approach. The compromise solution is based on the ability of both sides to define where interference is likely to occur. Currently, that can most easily be done by conventional methods.

18. Upon reconsideration, we reject the petitioners' contentions that the effective interference model is fundamentally flawed, but we find its use inappropriate in implementation of the joint compromise.

Issue 3: Engineers in Charge Licensing Discretion

19. Most commenters rejected the idea of the Commission's Engineers in Charge (EIC) involvement in the station licensing procedure. Basically, the Engineer in Charge would have ascertained that the many interference complaints normally received at the outset of NCE–FM operation were resolved before final licensing. Both sides opposed this procedure primarily because no specific guidelines were given to assure a uniform policy nationwide. Although we believe such a policy could be developed and successfully implemented through the Engineers in Charge, the majority of commenters appeared to favor other, more specific, alternatives to resolve this interference question.

20. For the compromise solution to work it will be necessary for the TV–6 licensee to be aware of the number of persons in its audience who are receiving interference from an NCE–FM licensee. To assist with this the Commission will funnel all interference complaints it receives about NCE–FM operation to the TV–6 licensee. Then the TV–6 licensee can pursue resolution of these complaints with the NCE–FM licensee and assure that the required number of filters have been installed. Since the TV–6 licensee will perform the complaint monitoring role originally envisioned for the FCC Engineer in Charge, we will, upon reconsideration, remove the Engineer in Charge from the complaint resolving and licensing procedure.

Issue 4: Undesired Signal to Desired Signal (U/D) Ratios

21. On this issue, both interests were on opposite sides. The NCE–FM commenters supported the Commission's use of a fixed U/D ratio reference; whereas, TV–6 commenters felt that the U/D ratio should vary with the TV–6 signal strength.[3] NPR and NFCB contended that the Commission was correct in using the U/D ratio for −65 dBm received signal strength universally throughout the whole Grade B service area. They claimed that as the TV–6 field strength increases, viewers use lesser quality antennas, causing little improvement in the signal present at the antenna terminals of the television receivers. WJAC–TV, the TV Petitioners, and others believed that the U/D ratio should vary because using the lower U/D ratio uniformly would degrade higher quality pictures more noticeably than lower quality pictures. In addition, the Channel 6 Commenters stated that the Commission erred in its judgement that Channel 6 reception would be most susceptible to interference from educational FM stations closest in frequency to the Channel 6 facility; and thus, the U/D ratios presented in the *Second Further Notice of Proposed Rule Making* (*Second Further Notice*) and used in the *Third Order* were incorrect. EIA noted that it submitted pictorial evidence of the nonlinear nature of the interference which supports the TV Petitioners demonstration that considerable interference would occur.[5]

22. In brief, the NCE–FM interests relied on the concept that the television service contours were defined such that the same "standard criterion of service," (that is, "acceptable quality to a median observer") [4] is available at the Grade A contour as is available at the Grade B contour of the TV station with the probability of receiving that quality decreasing as one moves further from the TV transmitter. Assumptions of receiving antenna installations typical of suburban and near-fringe areas are incorporated in order to achieve the same quality of service at both contours.

23. On the other hand, the TV Petitioners argued that signal levels at television receivers do vary from −65 dBm near the Grade B contour to −15 dBm near the television transmitter and it is inappropriate to equalize the strength of the received television signal based on differing received antenna systems. Thus, it contended that "the only rational basis upon which to base an allocations system which considers signal strength is to equate received signal strength with predicted field strength, which will diminish as one moves away from a television transmitting antenna and increase as one moves closer to it." Several showings, including a tape demonstration, were submitted indicating the effects of using the uniform U/D ratio on picture qualities of differing signal strengths.

24. This difficult subject of relating signal strengths at the television receiver terminals based on the field strength of the transmitted station is further complicated by defining probabilities of service considering "acceptable" quality and varying TASO grades. Additionally, the arguments made by both sides are essentially correct. As the NCE–FM interests contend, the definition of Grade A and Grade B service contour denotes that 70% of the locations at the Grade A contour and 50% of the locations at the Grade B contour receive the *same* quality of service; thus, the same quality of service is received at both locations but more viewers at the Grade A are likely to receive an acceptable picture quality. On the other hand, the TV–6 interests are correct in stating that higher field strengths occur close to the transmitter site and so better service quality is received at some locations of higher field strengths.

25. In this debate over picture quality, there were no new arguments. The Commission in the *Third Order* chose to offer NCE–FM applicants a reasonable expectation of providing service within the television station's service area by allowing more than "just perceptible" degradation of better picture qualities. Our expectation was that television viewers would not experience interference at levels that would cause less than "passable" (or TASO 3)

[3] In the *Second Further Notice of Proposed Rule Making* (47 FR 24144 (June 3, 1982)), the Commission proposed to use the ratios of desired to undesired (U/D) signal strengths which would cause "just perceptible" interference to the TV reception. The desired TV signal strength was held at a constant −65 dBm level to simulate acceptable reception typically found at the Grade B contour.

[5] EIA noted that it was not referenced in the *Third Order* or the list of commenters attached in Appendix B. The Commission acknowledges this oversight and wishes to assure both EIA and Channel 6 Commenters that their views were reviewed and fully considered within the arguments of other parties. We found the arguments presented by Channel 6 Commenters about the data irregularities to be unfounded because its arguments were not supported with actual evidence. Further, the acceptance of the suggested ratios by the other parties minimized its objections.

[4] See *Third Notice of Further Proposed Rule Making*, Docket Nos. 8736, 8975, 8970, 9175; FCC, March 21, 1961; and *Sixth Report and Order*, Docket Nos. 8736, 8975, 8970, 9175; FCC, April 11, 1952.

picture qualities and we noted that no data was presented that convinced us that serious picture degradation would occur.

26. Therefore, it was with considerable concern that the Commission evaluated the showings and viewed the video tape supplied by the TV Petitioners which allegedly showed significant degradation of high quality television pictures applying the U/D ratio selected by the Commission. Upon study, however, we believe theTV Petitioners used an incorrect U/D ratios to produce the tape. In the *Third Order*, we adopted power limits based on a 21 dB U/D reference (26 dB minus 5 dB for required remedies). It appears that the tape presented to the Commission used U/D ratios of 25 dB or 26 dB. Our concerns remained, however, due to the other showing, submitted by Jules Cohen, based on theoretical analysis of perceptible difference between TASO grades which supported the TV Petitioners' contention of resulting in picture qualities of "not usable" (TASO 6).

27. To gain additional insight into the interference results, the Commission's staff from the Mass Media Bureau conducted some non-conclusive but informative tests similar to those conducted by the industry in making the tape demonstration. Four television receivers were examined with desired signal levels of: −65 dBm, −45 dBm, −25dBm, and −15 dBm. These levels generally correspond respectively to picture grades of TASO 3, TASO 2, TASO 1, and TASO 1. [6] For completeness of the record, the results of those tests using a constant 21 dB U/D reference, adjusted for frequency, are included in Appendix B as TASO grade degradations versus undesired signal presence. Except for one receiver, degradation was usually not below TASO 3 (passable) picture quality. This was far less severe than the tape presented by the TV Petitioners.

28. The compromise solution must be considered in light of our investigations and the reply comments. Based on our limited sample, it appears that the use of a fixed U/D reference would not result in excessive interference to many television receivers. However, the use of varying ratios as proposed in the compromise solution would lessen the likelihood that excessive interference would occur. Thus, we find that the use of better than minimum standards offers the viewing public added security that actual interference should always be less than predicted. Thus, upon reconsideration, we will adopt the method employing variable ratios. The Commission recognizes that this decision may be altered based on the data forthcoming from the immunity tests planned by EIA and based on the field survey of actual FM interference to Channel 6 reception that the parties of the joint agreement have pledged funds to a combined total of $250,000. Indeed, MAET in reply to the joint proposal claimed that its field experience indicates that the actual interference experienced is much less than that predicted. The joint agreement requested the Commission to update the performance data on the rejection capabilities of newer television receivers within the next 12 months. In this regard, the Commission will have some data on newer receivers within this time period. Additional information is also anticipated from other sources, such as, the EIA testing and the field survey.

Issue 5: Population Considerations

29. MST, the TV Petitioners, NPR, and NFCB, among others, argued that allowances should be made for population density. The TV Petitioners indicated a willingness to accept a loss of 1,000 to 3,000 viewers (depending on the method used to compute the loss) as a result of a new NCE–FM station. Both sides argued that failure to take population into account results in incorrect power levels. The TV–6 interests favored decreased NCE–FM power levels as a result of higher population density and the NCE–FM interests desired higher power levels in low population density areas. Channel 6 Commenters pointed out that the Commission's use of average households in TV–6 service areas is unrealistic and should be revised.

30. Upon reconsideration, we concur that population density should be taken into account. We originally tried to simplify the power calculation by using average population density. Use of population unfortunately must complicate the process of power determination, especially when attempting to define where the affected population resides and whether any mitigating factors should be taken into account (*e.g.*, same network service). Such issues lead to controversies and require tremendous amounts of time from applicants, TV–6 interests, and Commission staff. The compromise solution offers a procedure that, while complex, is rigidly controlled by specific standards which should avoid most arguments over the population affected. We believe it takes the concerns of both sides into account and provides a reasonable solution.

31. The choice of 3,000 population affected for each new station and a decrease of 2 affected viewers for each 1 newly affected viewer for existing stations making changes was agreed upon as a reasonable compromise. Restrictions based on interference limited to 3,000 people is a factor that has consistently been suggested in comments to this proceeding. For the Commission to make further studies of the effects of these values would delay this proceeding further and possibly undermine the delicate balance that the compromise represents. Therefore, we will accept these standards. Again, we will expect further investigations (the actual interference study) to confirm the continued use of this number.

Issue 6: NCE–FM Basic Power Levels

32. The *Third Order* provided for two basic power levels: Level 1 and Level 2. Level 1 power was meant to allow for a limited amount of interference without placing heavy responsibility on the NCE–FM stations for eliminating interference. Level 2 was a higher power, but NCE–FM Stations were to correct all interference compleints.

33. Again, both sides disagreed on the effects of the levels adopted. TV–6 interests denoted the effects of these new power levels on their service areas. For example, the TV Petitioners presented several maps showing interference at the newly permitted power levels. An analysis of Station WRTV Channel 6 in Indianapolis, Indiana, licensed to McGraw-Hill, indicated that the current authorization of 400 watts would be allowed to increase to 50,000 watts; and thereby, it claimed severe interference would occur. KAUZ, KCEN, WJAC–TV, and several others noted that as many as 40 separate applications were pending that would cause additional interference within their Grade B service area. WPSD, WATE, Chronicle, and others demonstrated through affidavits, letters, news articles, and even pictures that the interference the public has had to contend with over the years is severe.

34. On the other hand, NPR, CPB, NFCB, St. Olaf College, and other NCE–FM interests commented that the power levels are too low. GPTC wrote that such restrictive power levels would make statewide NCE–FM networks difficult. MAET noted that its stations have been operating successfully above those permitted by the *Third Order* and

[6] See Appendix B for the definition of TASO Grades 1 to 6. These grades of picture quality were developed in *Engineering Aspects of Television Allocations*, Report of the Television Allocation Study Organization (TASO) to the Federal Communications Commission, March 16, 1959.

all complaints have been resolved satisfactorily. Family Stations suggested that the NCE-FM levels were unfair because if the restrictions on the NCE-FM stations were extended to the commercial band, the Capital Cities station in Providence, R.I. (Channel 222) would be reduced from 100 kilowatts to 2.9 kilowatts. Further, most NCE-FM commenters did not favor having the upper Level 2 power limited. Rather, they preferred to add remedies to the Level 1 power with no power maximums (other than for the class of station).

35. Upon reconsideration, we note that the compromise solution provides a good balance between these views. Although various applications, such as that noted by Mt. Vernon, may not be acceptable without amendment, we must establish a procedure that is considered a workable solution. The power levels of the facilities are individually computed to cause interference to no more than 3,000 persons (or to decrease the number of viewers affected in the case of existing stations' modifications). Specific standards are used to predict interference areas. This should make it easier for all parties to agree to the predicted effects of new NCE-FM stations, and end the ambiguity over the effects of different power levels and associated remedies.

36. We take this opportunity to reaffirm that power levels less than 100 watts ERP will not be permitted. Nothing in the reconsideration or the comments suggested that this previous decision should be reversed. We wish to clarify that acceptable powers are computed for a minimum center of radiation at 100 feet above average terrain. Adjustments for higher centers of radiation, using the F50/50 charts so that calculated distances to the 1 mV/m contours remain constant, to achieve conformance with other rules (such as these interference standards) that require a reduction in power to less than 100 watts, will not permitted.

37. The Commission acknowledges that FM stations on Channel 220 must consider its effect on Channel 6 televison stations while those seeking to operate on Channel 221 do not. We find the argument by Family Stations, and others about extending the power restrictions to the commercial band to be outside the scope of this proceeding. There is nothing in the record convincing us to extend such restrictions to the commercial band or to arbitrarily alter the prediction criteria.

Issue 7: Allowances for Interference Remedies

38. Almost all commenters favored the Commission taking a stronger position on the remedial value of various options. In the *Third Order*, we declined to assign benefit values for the individual remedies, deferring to the judgments of the individual licensees in their own unique situations. Especially, in the areas of vertical polarization and transmitter placement with regard to TV receiving antenna orientation, there appears to be general agreement among the commenters. Indeed the compromise solution offered values that were agreeable to both sides.

39. *Vertical Polarization.* NTIA, NCE-FM interests, and TV-6 interests generally want or will accept an allowance for vertical polarization of the FM transmitting antenna. The value that appears acceptable to both sides is 10 dB, or 16 dB if the predicted interference is in rural areas. The Commission finds no problem with these values, recognizing that the more densely populated an area, the more the correct value will tend toward 10 dB. The compromise solution also presents a formula for mixed polarity that is based on these figures. No opposing comments were received. Therefore, upon reconsideration, we have no reservation about adopting specific values for vertical polarizations as presented in the compromise solution.

40. We note that, in the case of existing NCE-FM stations, the compromise solution suggests that the value of the vertical adjustment be decreased by 3 dB (or half the power) if an affected TV-6 licensee purchased an applicant's antenna. The provision would require existing NCE-FM stations, which voluntarily wish to operate with vertical polarization with powers above that authorized for new stations, to give affected TV-6 licensees the option of purchasing the applicant's antenna with the incentive of limiting the NCE-FM station to half the vertical power adjustment. If the TV-6 licensee declines, then the NCE-FM applicant purchases its own antenna and receives the full power adjustment. The Commission recognizes that for TV-6 stations experiencing interference, it is desirable for NCE-FM stations to employ vertical polarization. Additionally, for a NCE-FM using vertical polarization, operating at half the normally authorized vertical component of the NCE-FM station's power should further improve the interference situation. Thus, although unusual, this proposal provides an incentive for an existing educational station to replace an otherwise usable horizontally polarized antenna; and consequently, decrease the amount of interference that TV-6 viewers may be experiencing. Therefore, the rules will be amended to encourage both parties to explore this compromise as a means of alleviating existing interference. Family Station requested that the option to offer the purchase be given first to the NCE-FM station. However, the NCE-FM station has other options available for making changes besides the use of vertical polarizations and need not pursue this vertical polarization option. Consequently, we maintain that the NCE-FM applicant does have the first option in deciding whether to operate vertically polarized; and, therefore, the rule will be adopted as proposed.

41. *TV Receive Antenna Directivity.* To account for the directivity of home receiving antennas, the TV Petitioners proposed an allowance of 6 to 16 dB for predicted interference locations depending upon the antenna's distance and azimuth from both the NCE-FM and the TV-6 transmitters. The NCE-FM interests desired at least a 10 dB allowance for the front-to-back ratio of outdoor television antennas outside the Grade B contour. Here, the parties agreed on an adjustment of 6 dB throughout the whole service area with applicability dependent upon the interference location being inside or outside the Grade A contour.

42. This appears to be a reasonable compromise acceptable to both parties. It recognizes the differing signal relationship of the television receiver location with respect to both the NCE-FM and TV-6 transmitters, and, therefore, is adopted.

43. *Filters.* MAET suggested that filters should be able to provide up to 20 dB or more of protection. They based this finding on tests of a new "Pico Filter." Even the TV Petitioners suggested that filters may be a useful solution if the population resorting to their use is kept to a minimum. On page 22 of their petition for reconsideration, they stated, ". . . filters are an arguably practical solution to at least part of the problem."

44. The compromise solution presents a unique proposal regarding this question. Rather than assigning a specific value of effectiveness (a dB level), it suggested a limit to the number of people to be considered part of an effective filter program. It provided that interference to up to 1000 people could be remedied through the use of filter installation.

45. We support this proposal. The Commission encourages filter

installation as a means of alleviating interference. The fact that the NCE–FM stations have to bear the cost of poor television receiver performance is unfortunate, but we recognize the usefulness of filters as an effective remedy. In the case of modifications of existing stations, the proposal requires that 2 filters be installed for every new person that loses predicted service due to the change in facilities. Because filters can improve picture quality, this proposal would be a benefit to the television public and, therefore, is adopted.

46. The Commission recognizes that there may well be some difficulties in equating filter installations (or television sets) to population. There could arise a situation where the NCE–FM applicant is required to install more filters than there are television sets, or to "cure" more interference than exists. We clarify that the requirement is that a certain *number* of filters be effectively installed; and as such, one home may have more than one filter installation and any means may be used to achieve the installation (such as detailed instructions). In addition, the rule requires that the filters be installed only in the predicted interference area. In this regard, we will rely on the arguments made by the NCE–FM applicant and the TV–6 licensee that the obligation has been met. However, all parties should be flexible in this matter because it is most unlikely that any method can predict the exact interference area with precision. Thus, the Commission will use discretionary judgment when evaluating whether this obligation has been met. In addition to the NCE–FM applicant providing "goodwill" services, the TV–6 station is encouraged to accept responsibility for receiver deficiencies especially outside the predicted interference area and pursue a joint cooperative venture in this area of filter installations. As for whether a filter is effective, noninjurious to the television signal, and installed "as a condition of its license," the Commission believes that in general, these are inappropriate terms for rules. Our interpretation is that these factors are implicit in the rule requiring the installation of filters. However, we have retained the requirement that the NCE–FM applicant provide sufficient information for the TV–6 licensee to verify the installation.

47. *Other Remedies.* Although other remedies (such as terrain shielding) may be possible, the record does not support adoption of further "standard" allowances. The compromise solution suggests that a special showing be allowed for exceptional terrain conditions. In this matter, we concur that exceptional circumstances may be taken into account but we expect this to be limited to situations such as an intervening mountain range rather than rugged terrain in general. (See § 73.313(e) for a similar exception when computing antenna heights above average terrain.)

Issue 8: Allowances for Alternatives and Existing Interference

48. Additional allowances for alternatives, such as cable penetration, market share, or translators were suggested. Some commenters proposed that existing interference to TV–6 stations from co-channel and adjacent channel television stations should also be considered when computing the NCE–FM station's power limit. Fortunately, parties on both sides agreed upon how some of these elements can be taken into account. The proposed rules provided specific standards concerning how to account for alternate television service from TV translator, satellite stations, and some network affiliates (ABC, NBC, and CBS), as well as, consideration of existing interference from other co-channel and adjacent channel television stations. We therefore will permit adjustments to the NCE–FM station's power for these situations based on those suggested in the compromise solution.

Issue 9: Collocation

49. Both interests supported collocation (within 400 meters) as a good solution to the interference problem. The TV Petitioners requested that NCE–FM applicants be required to coordinate with the TV Channel 6 station to assure matched attenna patterns. Similarly, the NCE–FM interests asked that TV–6 licensees be required to permit access to their transmitter site. In addition, the compromise solution presents power values that vary from those adopted in the *Third Order*. It also specifies that coordination be required through the use of similar antenna design (either physical structure or vertical pattern matching).

50. Upon reconsideration, we concur that antenna pattern is important to assure uniform U/D ratios throughout the television station's service area. We therefore require that the FM station's predicted antenna pattern be matched to the TV station's predicted antenna pattern as suggested in the compromise solution. While the Commission declines to require the TV–6 licensees to provide space for the NCE–FM transmitters, we do encourage close cooperation and will consider the degree of cooperation (or lack thereof) in deciding disputed cases. In addition, we see no difficulty in adopting the agreed upon power limits of the compromise. (See Table B in Appendix C.)

Issue 10: NCE–FM Grandfathering Rights

51. TV–6 interests generally opposed grandfathering of all existing NCE–FM stations. KOIN–TV suggested that there is no basis for grandfathering and that the Commission failed to comply with the Administrative Procedures Act by not providing sound reasoning for grandfathering. They indicate that grandfathering is not supported by the record, and yet the TV Petitioners, in their comments to the *Second Further Notice* supported grandfathering of existing and operational NCE–FM stations, except in cases subject to litigation. The TV Petitioners would require existing NCE–FM stations desiring to make changes to comply with the new rules. Channel 6 Commenters, and KAUZ–TV opposed grandfathering, noting that existing interference could be reduced because many NCE–FM stations would be authorized much less power under the new rules. KOIN–TV, in reply, concurred with grandfathering of existing stations "except where a change in channel would cure the interference" and opposed grandfathering of any outstanding construction permits or pending applications.

52. The NCE–FM interests desired more relaxed grandfathering provisions. NPR and CPB would allow changes to existing stations, at the grandfathered power levels, if the stations would agree to resolve all new complaints as a result of the changes. St. Olaf College submitted that 53.2 percent of the NPR stations would forfeit their grandfathered powers if they made changes and the St. Olaf station would have to go off the air. The University of Southern California requested that grandfathered stations be allowed to "trade" interference areas. MAET supported easing the grandfathering restrictions.

53. Upon reconsideration, we believe that the compromise solution offers an acceptable resolution by grandfathering stations authorized prior to December 31, 1984, and providing options for existing stations to make changes while limiting their ability to create new expansive areas of interference. For example, stations may change facilities or locations without being subject to the new station rules if the population predicted to gain TV Channel 6 service is twice the population predicted to lose

TV Channel 6 service. Existing licensed stations are grandfathered at their current facilities, however, and can continue to operate as authorized. We cannot justify requiring existing stations to come under the new rules if no changes are made. In fact, we believe such an action would be contrary to the Communications Act of 1934, as amended. Those stations for which a construction permit has been issued, as of December 31, 1984, need not conform to the new station rules and will be considered as existing stations for the purpose of further modifications. However, those applications for license with oppositions, or those still in litigation, where the TV–6 station can definitely show that *actual* interference is excessive, will be decided on a case-by-case basis, possibly invoking some of the solutions adopted by this proceeding.

Implementation

54. Pending applications for construction permits for new stations or modifications of existing stations have until October 1, 1985, to amend their application to comply with the new rules adopted herein or provide a showing that the existing application is in compliance. After this date, all applications that are not in compliance or have not responded may be returned. Those applicants applying for funding from the National Telecommunications and Information Administration (NTIA) must submit to the Commission by June 30, 1985, a letter certifying that their application will be acceptable under these rules either "as is" or "by amending power, height, or site to . . ." as required. Applications will not be returned to the beginning of the processing line due to the filing of these amendments.

Other Matters

55. As the final step in the review process of the NCE–FM rules, the *Third Order* also made some general changes to the processing rules. GPTC noted that the new definition for objectionable interference between FM stations significantly increases the interference area. It stated that waivers based on allowing 5% or less of the proposed service area to receive interference would be vastly more difficult to obtain. One example showed that the area to receive objectionable interference would rise from 640 sq. mi. under the old definition to 1700 sq. mi. under the new. GPTC requested that since the change was made to eliminate an anomaly for second and third adjacent channel requirements, the old definition should be sustained for co-channel and first-adjacent separations.

56. Before discussing the waiver process, the Commission would like to clarify this rule section. Section 73–509 requires that an NCE–FM application not cause "objectionable interference" top existing NCE–FM stations. The procedure for determining objectionable interference is the subject of this amendment. The old rule indicates that certain undesired to desired signal ratios at the 1 mV/m contour cannot be exceeded, while the new rule simply states that an undesired signal level cannot overlap the 1 mV/m (or 60 dBu) desired signal contour. Under normal circumstances, both statements result in the same requirements. It is when waivers are requested that the new definition results in a larger area of consideration. However, it is when the application severely violates the requirement and approaches the existing NCE–FM transmitter site that the first definition of U/D ratios is inappropriate. This occurs because these ratios are not valid at the higher field strengths close to the transmitter, but were developed for interference protection at the 1 mV/m contour. For these reasons, upon reconsideration, the rule as set forth in the *Third Order* is affirmed. To permit waivers along the lines of those contemplated in the Commission's decision (see Public Notice; FCC 81–332, 49 R.R. 2d 1524(1981)), however, the permitted level of received interference will be doubled; resulting in a requirement of 10% or less of the proposed service area.

57. Finally, the establishment of minimum power and antenna heights requires an adjustment of class definition for NCE–FM stations to permit a continuous range of facilities. Thus, § 73.506(a)(3) and 73.511 have been amended to account for this oversight.

Conclusion

58. The solution presented here incorporates many of the elements in the *Second Further Notice*, the *Third Order*, and the comments filed throughout this proceeding. We feel that the joint compromise solution is but a refinement of the procedure to be used based on the record. This solution provides flexibility for growth of the NCE–FM service, minimizes interference, incorporates many of the suggestions from both sides, and encourages cooperation between TV–6 and NCE–FM licensees, permittees, and applicants.[6] With the adoption of rules based on this compromise, we hope to end a long history of inflexibility on both sides. This action removes the freeze on acceptance and processing of applications and the stay on the new rules, as modified. We sincerely hope that all interested parties will give this solution a chance. The proceeding has lasted too long and this reconsideration provides an opportunity for action. We will continue to monitor the situation informally and offer further fine tuning, as necessary.

Regulatory Flexibility Final Analysis

I. Reason for Action

To revise the decision in the *Third Report and Order*. The Commission, in that document, sought to minimize the chance of interference to Television Channel 6 stations caused by new noncommercial educational FM stations operating in the service area. Several commenters filed petitions for reconsideration of that decision and representatives of both the educational FM and the TV Channel 6 parties submitted a joint compromise solution.

II. Objective

To continue the development of noncommercial educational FM service with minimal loss of television Channel 6 service.

III. Legal Basis

Sections 303(r) and 4(i) of the Communications Act of 1934, as amended.

IV. Description, Potential Impact and Number of Small Entities Affected

The rules adopted will provide assignment standards for new noncommercial educational FM stations and clarify the position of existing noncommercial educational FM stations operating within or near the TV Channel 6 service area. The rules are expected to encourage growth in educational broadcasting services, while minimizing interference to present television Channel 6 service. This action results from an agreement approved by representatives of major parties on both sides of this long-standing problem.

Existing NCE–FM stations will not be subject to the adopted rules, unless they request a modification of their facilities.

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[6] KAUZ–TV and KOIN–TV urged that the rules to reduce interference to Channel 6 be applied to FM translators also. However, the FM translator rules (§ 74.1203) require that such stations cannot cause interference " . . . to the direct reception by the public of the off-the-air signal of any authorized broadcast station . . . nor shall an FM translator cause interference to reception by a television broadcast translator station of its input signals." This requirement, therefore, should provide sufficient protection to all television stations operating on Channel 6.

New noncommercial educational FM stations will have clear guidelines for predicting the impact their operation will have on Channel 6 viewers. These rules replace ambiguous requirements with clearly defined procedures.

V. Recording, Record-Keeping and Other Compliance Requirements

Applicants for new or modified NCE-FM stations would have to provide sufficient information to verify that their obligation to effectively install an agreed upon number of filters on television receivers has been met.

VI. Federal Rules Which Overlap, Duplicate or Conflict With This Rule

None.

VII. Any Significant Alternative Minimizing the Impact on Small Entities and Consistent With the Stated Objective

This compromise represents the most practical solution to the Channel 6 interference problem because it has the acceptance and presumed cooperation of both Channel 6 and educational FM interests. The new rules encourage both the TV Channel 6 and educational FM interests to work together, with limited Commission participation to solve any prospective interference problems.

Paperwork Reduction Act Statement

59. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Actions

60. The Secretary shall cause a copy of this Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. *et seq.*).

61. Accordingly, it is ordered, that the subject Joint Motion is granted and, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that Part 73 of the Commission's Rules is amended as set forth in the attached Appendix C, effective up adoption pursuant to section 5 U.S.C. s/s 553(d)(i).

62. It is further ordered, that the petitions for reconsideration listed in Appendix A are granted to the extent indicated and in all other respects are denied.

63. It is further ordered, that the freeze on TV Channel 6 applications and noncommercial educational FM station applications as described in paragraph 5 of this document is lifted.

64. It is further ordered, that the Stay ordered as described in paragraph 5 of this document is dissolved.

65. It is further ordered, that this proceeding is terminated.

66. For further information contact Kathryn Hosford or Michael Lewis at 632-9660.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—Appendices A and B will not be published in the Code of Federal Regulations.

Appendix A—Summary of Commenting Parties

Joint petition for Stay

Association of Maximum Service Telecasters, Inc. (MST)
Corporation for Public Broadcasting (CPB)
McGraw-Hill Broadcasting Company (McGraw-Hill)
National Association of Broadcasters (NAB)
National Federation of Community Broadcasters (NFCB)
National Public Radio (NPR)
Taft Broadcasting Company (Taft)

Petitions for Reconsideration

Adams TV of Wichita Falls, Inc., KAUZ-TV, Wichita Falls, Texas (KAUZ-TV)
Channel 6, Inc., KCEN-TV, Temple-Waco, Texas (KCEN-TV)
Chronicle Broadcasting of Omaha, Inc. WOWT-TV, Omaha, Nebraska (Chronicle)
Georgia Public Telecommunications, Inc. (GPTC)
Informal Comments filed separately by: Deborah S. Proctor, president of Educational Information Corporation/ WCPE; Nationwide Communications Inc.; and David Brown, pastor of the First Assembly of God, Bluefield, Va.
KOIN-TV, Inc., Portland, Oregon (KOIN-TV)
KOTV, Inc., Tulsa, Oklahoma (KOTV)
KTAL-TV, Inc., Texarkana, Texas (KTAL-TV)
Mississippi Authority for Educational Television (MAET)
MST
National Telecommunications and Information Administration (NTIA)
Petition filed jointly by: CPB, NFCB, and NPR. (FM Petitioners)
Petition filed jointly by: Arkansas Educational Television Commission, Central California Educational Television, Cosmos Broadcasting Corporation and Station KRMA-TV. (Channel 6 Commenters)
Petition filed jointly by: Capital Cities Communications, Inc., Chronicle, McGraw-Hill, MST, NAB, Storer Communications, Inc., Taft, and The Outlet Company. (TV Petitioners)
University of Southern California (USC)
WPSD-TV, Paducah, Kentucky (WPSD-TV)

Oppositions

Consumer Electronics Group of the Electronic Industries Association (EIA)
CPB
NPR/NFCB
St. Olaf College, Northfield, Minnesota (St. Olaf College)
TV Petitioners
WJAC, Inc., Johnston, Pennsylvania (WJAC-TV)

Reply Comments

Alaska Public Broadcasting Commission
CPB
Family Stations, Inc., Oakland, California (Family Stations)
MAET
NPR/NFCB
NTIA
TV Petitioners

Compromise Solution

Filed jointly by representatives on behalf of: CPB; McGraw-Hill, Taft, and
Storer; MST; NAB; NFCB; and NPR.

Replies

EIA
Family Stations
KCEN-TV
KOIN-TV
Letter on behalf of parties to Joint Compromise Solution
MAET
Mount Vernon Nazarene College (Mt. Vernon)
NTIA

Appendix B—Informal Study of Interference Effects of the Technical Standards Adopted in the Third Report and Order (Docket No. 20735)

The undesired to desired signal levels were:

Channel	Frequency	U/D desired (dBm)=	Undesired (dBm)			
			−65	−45	−25	−15
201	88.1	1.0	−64.0	−44.0	−24.0	−14.0
203	88.5	6.5	−58.5	−38.5	−18.5	−8.5
205	88.9	12.0	−53.0	−33.0	−13.0	−3.0
207	89.1	21.0	−44.0	−24.0	−4.0	6.0
211	90.1	21.0	−44.0	−24.0	−4.0	9.0

Channel	Frequency	U/D desired (dBm) =	Undesired (dBm)			
			−65	−45	−25	−15
215	90.9	27.0	−38.0	−18.0	0.0	0.0
220	91.9	39.0	−26.0	−6.0	0.0	0.0

(a) Aural TV carriers were 9 dB below peak visual levels.

(b) Video programming was obtained from off-the-air signal, translated to Channel 6.

(c) FM interference was generated by an RF signal generator, modulated to ±75 kHz.

(d) Desired and undesired signals were simply mixed so as to provide the desired levels and ratios at receiver inputs.

The level of picture quality were defined as:

1. EXCELLENT. The picture is of extremely high quality as good as you could desire.

2. FINE. The picture is of high quality providing enjoyable viewing. Interference is perceptible.

3. PASSABLE. The picture is of acceptable quality. Interference is not objectionable.

4. MARGINAL. The picture is poor in quality and you wish you could improve it. Interference is somewhat objectionable.

5. INFERIOR. The picture is very poor but you could watch it. Definitely objectionable interference is present.

6. UNUSABLE. The picture is so bad that you could not watch it.

For the four TV receivers, the results are as follows:

Notes:

2/3 Picture quality is observed as 2 (fine) before FM interference is introduced and 3 (passable) after;

(2) Denotes the amount of attenuation (in dB) needed to restore picture to a 3 (passable) picture:

*Denotes that picture would be 3 (passable) except color was lost.

Channel	Frequency	U/D desired (dBm) =	Picture quality with interference			Off/on −15
			−65	−45	−25	
Receiver No. 100, Date: February 1, 1985						
201	88.1	1.0	3/3	1/1	1/1	1/1
203	88.5	6.5	3/3	2/2	1/2	1/2
205	88.9	12.0	3/3	2/2	1/2	1/2
207	89.1	21.0	3/3	2/2	1/2	1/2
211	90.1	21.0	3/3	2/3	1/3	1/2
215	90.9	27.0	3/3	2/3	1/3	1/2
220	91.9	39.0	3/3	2/4 (2)	1/1	1/1
Receiver No. 102, Date: February 1, 1985						
201	88.1	1.0	3/3	2/3	1/3	1/3
203	88.5	6.5	3/3	2/2	1/2	1/2
205	88.9	12.0	3/3	2/2	1/1	1/2
207	89.1	21.0	3/3	2/2	1/2	1/1
211	90.1	21.0	3/3	2/3	1/3	1/2
215	90.9	27.0	3/3	2/3	1/3	1/2
220	91.9	39.0	3/3	2/5 (1)	1/1	1/1
Receiver No. 29, Date: February 1, 1985						
201	88.1	1.0	3/5* (3)	2/5* (2)	1/5* (3)	1/5* (3)
203	88.5	6.5	3/5* (6)	2/5* (7)	1/5* (6)	1/5* (6)
205	88.9	12.0	3/5* (4)	2/5* (3)	1/5* (2)	1/5* (4)
207	89.1	21.0	3/5* (5)	2/5* (5)	1/5* (5)	1/5 (5)
211	90.1	21.0	3/3	2/4 (4)	1/4 (4)	1/4 (4)
215	90.9	27.0	3/3	2/4 (4)	1/4 (5)	1/3
220	91.9	39.0	3/3	2/3	1/1	1/1
Receiver No. 31, Date: February 1, 1985						
201	88.1	1.0	3/3	2/2	1/2	1/2
203	88.5	6.5	3/3	2/2	1/1	1/1
205	88.9	12.0	3/3	2/3	1/1	1/2
207	89.1	21.0	3/3	2/3	1/2	1/2
211	90.1	21.0	3/3	2/2	1/2	1/2
215	90.9	27.0	3/3	2/2	1/2	1/1
220	91.9	39.0	3/3	2/3	1/1	1/1
Receiver No. 31, (Same receiver without 5 dB allowance), Date: February 1, 1985						
201	88.1	6.0	3/3	2/3	1/2	1/2
203	88.5	12.5	3/3	2/2	1/2	1/2
205	88.9	18.0	3/3	2/2	1/2	1/2
207	89.1	28.0	3/3	2/3	1/2	1/2
211	90.1	28.0	3/3	2/2	1/3	1/2
215	90.9	33.0	3/3	2/3	1/2	1/1
220	91.9	44.0	3/3	2/4 (3)	1/1	1/1

Appendix C

PART 73—[AMENDED]

Title 47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 4 and 303, 48 Stat. as amended, 1066, 1082; (48 Stat. 154, 303).

2. 47 CFR 73.506 paragraph (a)(3) is revised to read as follows:

§ 73.506 Classes of noncommericial educational FM stations and channels.

(a) * * *

(3) Noncommercial educational FM stations (NCE–FM) with more than 0.01 kW transmitter power output are classified Class A, B1, B, C2, C1, or C depending on the effective radiated power, antenna height above terrain, and the zone in which the station's transmitter is located, on the same basis as provided for stations on the the non-reserved FM channels in §§ 73.205 and 73.206, and the location of its 1 mV/m contour based on the maximum facilities listed in § 73.211.

Note.—For NCE–FM stations authorized before December 31, 1984, the provisions of this subparagraph [§ 73.506(a)(3)] become effective March 1, 1987.

* * * * *

3. 47 CFR 73.509 is revised in its entirety to read as follows:

§ 73.509 Prohibited overlap.

(a) An application for a new or modified NCE–FM station other than a Class D (secondary) station will not be accepted if the proposed operation would involve overlap of signal strength contours with any other station whose transmitter is located more the 320 kilometers (199 miles) from the U.S.-Mexican border and operating in the reserved band (Channels 200–220, inclusive) as set forth below:

Frequency separation	Contour of proposed station	Contour of other station
Co-channel	0.1mV/m (40 dBu)	1 mV/m (60 dBu).
	1 mV/m (60 dBu)	0.1 mV/m (40 dBu).
200 kHz	0.5 mV/m (54 dBu)	1 mV/m (60 dBu).
	1 mV/m (60 dBu)	0.5 mV/m (54 dBu).
400 kHz	10 mV/m (80 dBu)	1 mV/m (60 dBu).
	1 mV/m (60 dBu)	10 mV/m (80 dBu).
600 kHz	100 mV/m (100 dBu)	1 mV/m (60 dBu).
	1 mV/m (60 dBu)	100 mV/m (100 dBu).

(b) An application by a Class D (secondary) station, other than an application to change class, will not be accepted if the proposed operation would involve overlap of signal strength contours with any other station as set forth below:

Frequency separation	Contour of proposed station	Contour of any other station
Co-channel	0.1 mV/m (40 dBu)	1 mV/m (60 dBu)
200 kHz	0.5 mV/m (54 dBu)	1 mV/m (60 dBu)
400 kHz	10 mV/m (80 dBu)	1 mV/m (60 dBu)
600 kHz	100 mV/m (100 dBu)	1 mV/m (60 dBu)

(c) The following standards must be used to compute the distances to the pertinent contours:

(1) The distance of the 60 dBu (1 mV/m) contours are to be computed using Figure 1 of § 73.333 [F(50,50) curves] of this Part.

(2) The distance to the other contours are to be computed using Figure 1a of § 73.333 [F(50,10) curves]. In the event that the distance to the contour is below 16 kilometers (approximately 10 miles), and therefore not covered by Figure 1a, curves in Figure 1 must be used.

(3) The effective radiated power (ERP) that is the maximum ERP for any elevation plane on any bearing will be used.

(d) An application for a change (other than a change in channel) in the facilities of a NCE–FM broadcast station will be accepted even though overlap of signal strength contours, as specified in paragraphs (a) and (b) of this section, would occur with another station in an area where such overlap does not already exists, if:

(1) The total area of overlap with that station would not be increased;

(2) The area of overlap with any other station would not increase;

(3) The area of overlap does not move significantly closer to the station receiving the overlap; and,

(4) No area of overlap would be created with any station with which the overlap does not now exist.

(e) The provisions of this section concerning prohibited overlap will not apply where the area of such overlap lies entirely over water.

4. 47 CFR 73.511 is revised in its entirety to read as follows:

§ 73.511 Power and antenna height requirements.

(a) No new noncommercial educational station will be authorized with effective radiated power less than 0.1 kW.

(b) No new noncommercial educational station will be authorized with effective radiated power greater than 50 kW in Zones I and I–A or 100 kW in Zone II.

(c) Stations licensed before December 31, 1984, and operating above 50 kW in Zones I and I–A, and above 100 kW and in Zone II may continue to operate as authorized.

5. A new 47 CFR 73.525 entitled "TV Channel 6 protection" is added to read as follows:

§ 73.525 TV Channel 6 protection.

The provisions of this section apply to all applications for construction permits for new or modified facilities for a NCE–FM station on Channels 200–220 unless the application is accompanied by a written agreement between the NCE–FM applicant and each affected TV Channel 6 broadcast station concurring with the proposed NCE–FM facilities.

(a) *Affected TV Channel 6 Station.*

(1) An affected TV Channel 6 station is a TV broadcast station which is authorized to operate on Channel 6 that is located within the following distances of a NCE–FM station operating on Channels 201–220:

TABLE A

NCE–FM channel	Distance (kilometers)	NCE–FM channel	Distance (kilometers)
201	265	211	196
202	257	212	195
203	248	213	193
204	236	214	187
205	225	215	180
206	211	216	177
207	196	217	174
208	196	218	169
209	196	219	159
210	196	220	154

(2) Where a NCE–FM application has been accepted for filing or granted, the subsequent acceptance of an application filed by a relevant TV Channel 6 station will not require revision of the pending NCE–FM application or the FM station's authorized facilities, unless the provisions of paragraph (e)(3) of this section for TV translator or satellite stations apply.

(b) *Existing NCE–FM Stations.* (1) An NCE–FM station operating on Channels 201–220 with facilities authorized as of December 31, 1984, is not subject to this section if it proposes:

(i) To make changes in operating facilities or location which will maintain or decrease predicted interference as calculated under paragraph (e) of this section to TV Channel 6 reception in all directions; or,

(ii) To decrease its ratio of vertically polarized to horizontally polarized transmissions.

(2) Applicants must comply with the provision of paragraphs (c) or (d) of this section unless the application for modification demonstrates that, for each person predicted to receive new interference as a result of the change, existing predicted interference to two person will be eliminated. Persons predicted to receive new interference are those located outside the area predicted to receive interference from the station's currently authorized facilities ("existing predicted interference area") but within the area predicted to receive interference from the proposed facilities ("proposed predicted interference area"). Persons for whom predicted interference will be eliminated are those located within the existing predicted interference area and outside the proposed predicted interference area.

(i) In making this calculation, the provisions contained at paragraph (e) will be used except as modified by paragraph (b)(3) of this section.

(ii) The following adjustment to the population calculation may be made: up to 1,000 persons may be subtracted from the population predicted to receive new interference if, for each person substracted, the applicant effectively installs two filters within 90 days after commencing program tests with the proposed facilities and, no later than 45 days thereafter, provides the affected TV Channel 6 station (as defined in paragraph (a) of this section) with a certification containing sufficient information to permit verification of such installation. The required number of filters will be installed on television receivers located within the predicted interference area; provided that half of the installations are within the area predicted to receive new interference.

(3) Where an NCE–FM applicant wishes to operate with facilities in excess of that permitted under the provisions of paragraphs (c) or (d) of this section, by proposing to use vertically polarized transmissions only, or to increase its ratio of vertically to horizontally polarized transmissions, the affected TV Channel 6 station must be given an option to pay for the required antenna and, if it takes that option, the NCE–FM vertically polarized component of power will be one half (−3 dB) that which would be allowed by the provisions of paragraph (e)(4) of this section.

(4) Applications for modification will include a certification that the applicant has given early written notice of the proposed modification to all affected TV Channel 6 stations (as defined in paragraph (a) of this section).

(5) Where the NCE–FM station demonstrates in its application that it must make an involuntary modification (*e.g.*, due to loss of its transmitter site) that would not otherwise be permitted under this section, its application will be considered on a case-by-case basis. In such cases, the provisions of paragaph (b)(3) of this section do not apply.

(c) *New NCE–FM Stations.* Except as provided for by paragraph (d) of this

section, applicants for NCE–FM stations proposing to operate on Channels 201–220 must submit a showing indicating that the predicted interference area resulting from the proposed facility contains no more than 3,000 persons.

(1) In making these calculations, the provisions in paragraph (e) of this section will be used.

(2) The following adjustment to population may be made: up to 1,000 persons may be subtracted from the population within the predicted interference area if, for each person substracted, the applicant effectively installs one filer within 90 days after commencing program tests and, no later than 45 days thereafter, provides the affected TV Channel 6 station with a certification containing sufficient information to permit verification of such installation. The required number of filters will be installed on television receivers located within the predicted interference area.

(d) *Collocated Stations.* As an alternative to the provisions contained in paragraphs (b) and (c) of this section, an application for a NCE–FM station operating on Channels 201–220 and located at 0.4 kilometer (approximately 0.25 mile) or less from a TV Channel 6 station will be accepted under the following requirements:

(1) The effective radiated power cannot exceed the following values:

TABLE B

NCE–FM channel	Power (kilowatts)	NCE–FM channel	Power (kilowatts)
201	1.1	211	26.3
202	1.8	212	31.6
203	2.8	213	38.0
204	5.0	214	46.7
205	6.3	215	56.2
206	10.0	216	67.6
207	12.0	217	83.3
208	14.8	218	100.0
209	17.8	219	100.0
210	21.4	220	100.0

(2) The NCE–FM application will include a certification that the applicant has coordinated its antenna with the affected TV station by employing either: the same number of antenna bays with radiation centers separated by no more than 30 meters (approximately 100 feet) vertically; or, the FM vertical pattern not exceeding the TV vertical pattern by more than 2dB.

(e) *Calculation of Predicted Interference Area and Population.* Predictions of interference required under this section and calculations to determine the number of persons within a predicted interference area for NCE–FM operation on Channels 201–220 are made as follows:

(1) The predicted interference area will be calculated as follows:

(i) The distances to the TV Channel 6 field strength contours will be predicted according to the procedures specified in § 73.684, "Prediction of coverage," using the F(50,50) curves in Figure 9, § 73.699.

(ii) For each TV Channel 6 field strength contour, there will be an associated F(50,10) FM interference contour, the value of which (in units of dBu) is defined as the sum of the TV Channel 6 field strength (in dBu) and the appropriate undesired-to-desired (U/D) signal ratio (in dB) obtained from Figures 1 and 2, § 73.599, corresponding to the channel of the NCE–FM applicant and the appropriate F(50,50) field strength contour of the TV Channel 6 station.

(iii) An adjustment of 6 dB for television receiving antenna directivity will be added to each NCE–FM interference contour at all points outside the Grade A field strength contour (§ 73.683) of the TV Channel 6 station and within an arc defined by the range of angles, of which the FM transmitter site is the vertex, from 110° relative to the azimuth from the FM transmitter site to the TV Channel 6 transmitter site, counterclockwise to 250° relative to that azimuth. At all points at and within the Grade A field strength contour of the TV Channel 6 station, the 6 dB adjustment is applicable over the range of angles from 70° clockwise to 110° and from 250° clockwise to 290°.

(iv) The distances to the applicable NCE–FM interference contours will be predicted according to the procedures specified in § 73.313, "Prediction of Coverage," using the proposed antenna height and horizontally polarized, or the horizontal equivalent of the vertically polarized, effective radiated power in the pertinent direction and the F(50,10) field strength curves (Figure 1a, § 73.333).

(v) The predicted interference area will be defined as the area within the TV Channel 6 station's 47 dBu field strength contour that is bounded by the locus of intersections of a series of TV Channel 6 field strength contours and the applicable NCE–FM interference contours.

(vi) In cases where the terrain in one or more directions departs widely from the surrounding terrain average (for example, an intervening mountain), a supplemental showing may be made. Such supplemental showings must describe the procedure used and should include sample calculations. The application must also include maps indicating the predicted interference area for both the regular method and the supplemental method.

(2) The number of persons contained within the predicted interference area will be based on data contained in the most recently published U.S. Census of Population and will be determined by plotting the predicted interference area on a County Subdivision Map of the state published for the Census, and totalling the number of persons in each County Subdivision (such as, Minor Civil Division (MCD), Census County Division (CCD), or equivalent areas) contained within the predicted interference area. Where only a portion of County Subdivision is contained within the interference area:

(i) The population of all incorporated places or Census designated places contained within the predicted interference area will be subtracted from the County Subdivision population;

(ii) Uniform distribution of the remaining population over the remaining area of the County Subdivision will be assumed in determining the number of persons within the predicted interference area in proportion to the share of the remaining area of the County Subdivision that lies within the predicted interference area; and,

(iii) The population of the incorporated places or Census designated places contained within the predicted interference area will then be added to the total, again assuming uniform distribution of the population within the area of each place and adding a share of the population proportional to the share of the area if only a portion of such a place is within the predicted interference area.

(iv) At the option of either the NCE–FM applicant or an affected TV Channel 6 station which provides the appropriate analysis, more detailed population data may be used.

(3) Adjustments to the population calculated pursuant to paragraph (e)(2) of this section may be made as follows:

(i) If any part of the predicted interference area is within the Grade A field strength contour (§ 73.683) of a TV translator station carrying the affected TV Channel 6 station, the number of persons within that overlap area will be subtracted, provided the NCE–FM construction permit and license will contain the following conditions:

(A) When the TV translator station ceases to carry the affected TV Channel 6 station's service and the cessation is not the choice of the affected TV Channel 6 station, the NCE–FM station will modify its facilities, within a reasonable transition period, to meet the requirements of this section which

would have applied if no adjustment to population for translator service had been made in its application.

(B) The transition period may not exceed 1 year from the date the NCE–FM station is notified by the TV Channel 6 station that the translator station will cease to carry the affected TV Channel 6 station's service or 6 months after the translator station ceases to carry the affected TV Channel 6 station's service, whichever is earlier.

(ii) If any part of the interference area is within the Grade B field strength contour (§ 73.683) of a satellite station of the affected TV Channel 6 station, the number of persons within the overlap area will be subtracted, provided the NCE–FM permit and license will contain the following conditions:

(A) If the satellite station ceases to carry the affected TV Channel 6 station's service and the cessation is not the choice of the affected TV Channel 6 station, the NCE–FM station will modify its facilities, within a reasonable transition period, to meet the requirements of this rule which would have applied if no adjustment to population for satellite station service had been made in its application.

(B) The transition period may not exceed 1 year from the date the NCE–FM station is notified by the TV Channel 6 station that the satellite station will cease to carry the affected TV Channel 6 stations's service or 6 months after the satellite station ceases to carry the affected TV Channel 6 station's service, whichever is earlier.

(iii) If any part of the predicted interference area is located outside the affected TV Channel 6 station's Area of Dominant Influence (ADI), outside the Grade A field strength contour (§ 73.683), and within the predicted city grade field strength contour (73.685(a)) of a TV broadcast station whose only network affiliation is the same as the only network affiliation of the affected TV Channel 6 station, the number of persons within that part will be subtracted. (For purposes of this provision, a network is defined as ABC, CBS, NBC, or their successors.) In addition, the ADI of an affected TV Channel 6 station and the program network affiliations of all relevant TV broadcast stations will be assumed to be as they were on the filing date of the NCE–FM application or June 1, 1985, whichever is later.

(iv) In calculating the population within the predicted interference area, an exception will be permitted upon a showing (*e.g.*, as survey of actual television reception) that the number of persons within the predicted interference area should be reduced to account for persons actually experiencing co-channel or adjacent channel interference to reception of the affected TV Channel 6 station. The area within which such a showing may be made will be limited to the area calculated as follows:

(A) The distances to the field strength contours of the affected TV Channel 6 station will be predicted according to the procedures specified in § 73.684, "Prediction of coverage," using the F(50,50) curves in Figure 9, §73.699.

(B) For each field strength contour of the affected TV Channel 6 station, there will be an associated co-channel or adjacent channel TV broadcast station interference contour, the value of which (in units of dBu) is defined as the sum of the affected TV Channel 6 station's field strength (in dBu) and the appropriate undesired-to-desired signal ratio (in dB) as follows:

Co-channel, normal offset, −22 dB
Co-channel, no offset, −39 dB
Adjacent channel, +12 dB

(C) The distances to the associated co-channel or adjacent channel TV broadcast station interference contour will be predicted according to the procedures specified in § 73.684, "Prediction of coverage," using the F(50,10) curves in Figure 9a, § 73.699.

(D) The area within which the showing of actual interference may be made will be the area bounded by the locus of intersections of a series of the affected TV Channel 6 station's field strength contours and the associated interference contours of the co-channel or adjacent channel TV broadcast station.

(4) The maximum permissible effective radiated power (ERP) and antenna height may be adjusted for vertical polarity as follows:

(i) If the applicant chooses to use vertically polarized transmissions only, the maximum permissible vertically polarized ERP will be the maximum horizontally polarized ERP permissible at the same proposed antenna height, calculated without the adjustment for television receiving antenna directivity specified in paragraph (e)(1)(iii) of this section, multiplied by either: 40 if the predicted interference area lies entirely outside the limits of a city of 50,000 persons or more; or 10 if it does not.

(ii) If the applicant chooses to use mixed polarity, the permissible ERP is as follows:

$[H+(V/A)]$ is no greater than P

Where:

H is the horizontally polarized ERP in kilowatts for mixed polarity;
V is the vertically polarized ERP in kilowatts for mixed polarity;
A is 40 dB if the predicted interference area lies entirely outside the limits of a city of 50,000 persons or more, or 10 if it does not; and
P is the maximum permitted horizontally polarized-only power in kilowatts.

(f) *Channel 200 Applications.* No application for use of NCE–FM Channel 200 will be accepted if the requested facility would cause objectionable interference to TV Channel 6 operations. Such objectionable interference will be considered to exist whenever the 15 dBu contour based on the F(50,10) curves in § 73.333 Figure 1a would overlap the 40 dBu contour based on the F(50,50) curves in § 73.699, Figure 9.

6. A new 47 CFR 73.599 entitled "NCE–FM engineering charts," is added to read as follows:

§ 73.599 NCE–FM engineering charts.

This section consists of the following Figures 1 and 2.

BILLING CODE 6712-01-M

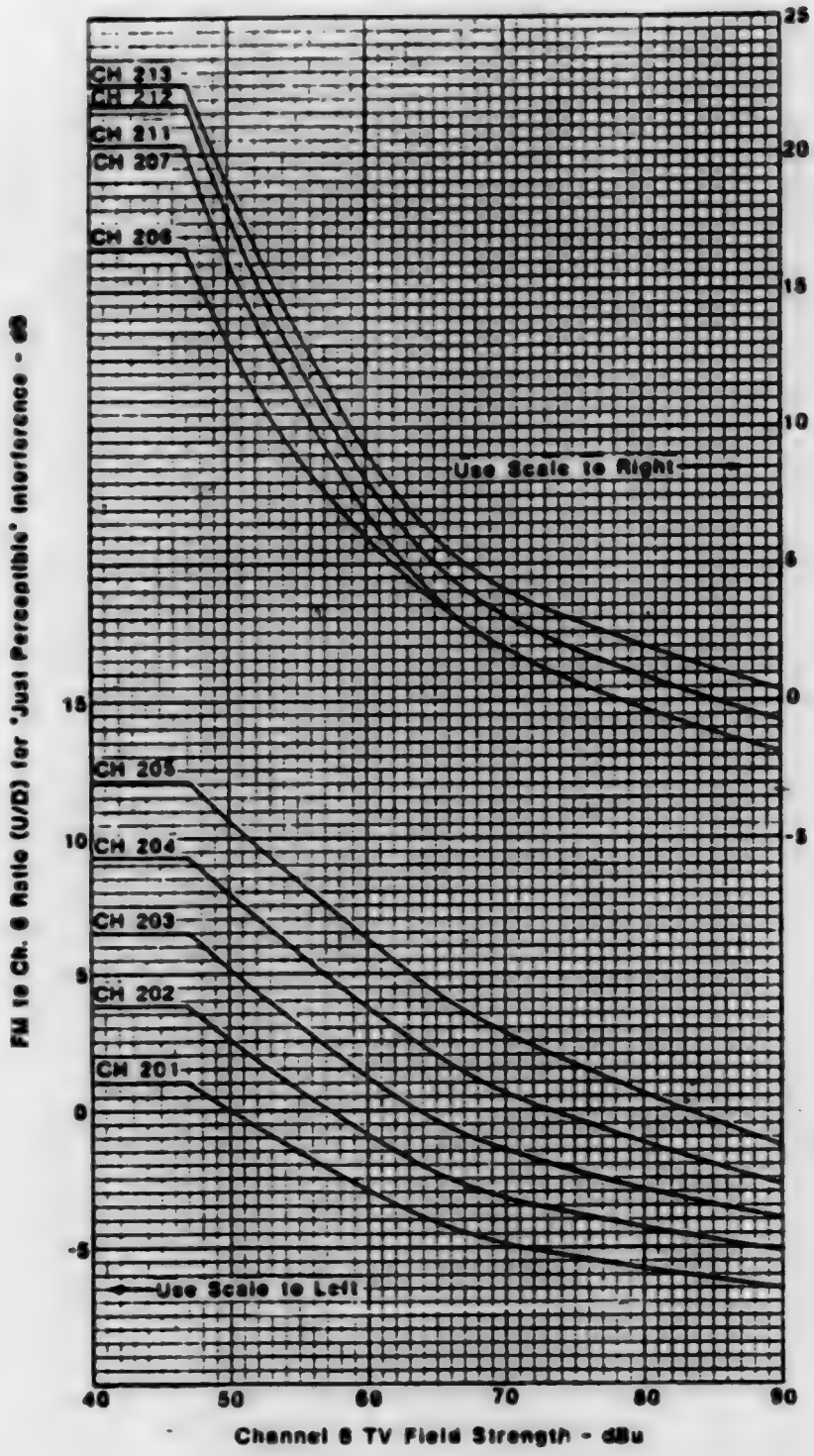


Figure 1

FM/TV 6 PROTECTION RATIOS
BASED ON MEDIAN RECEIVERS
CHANNELS 201-213

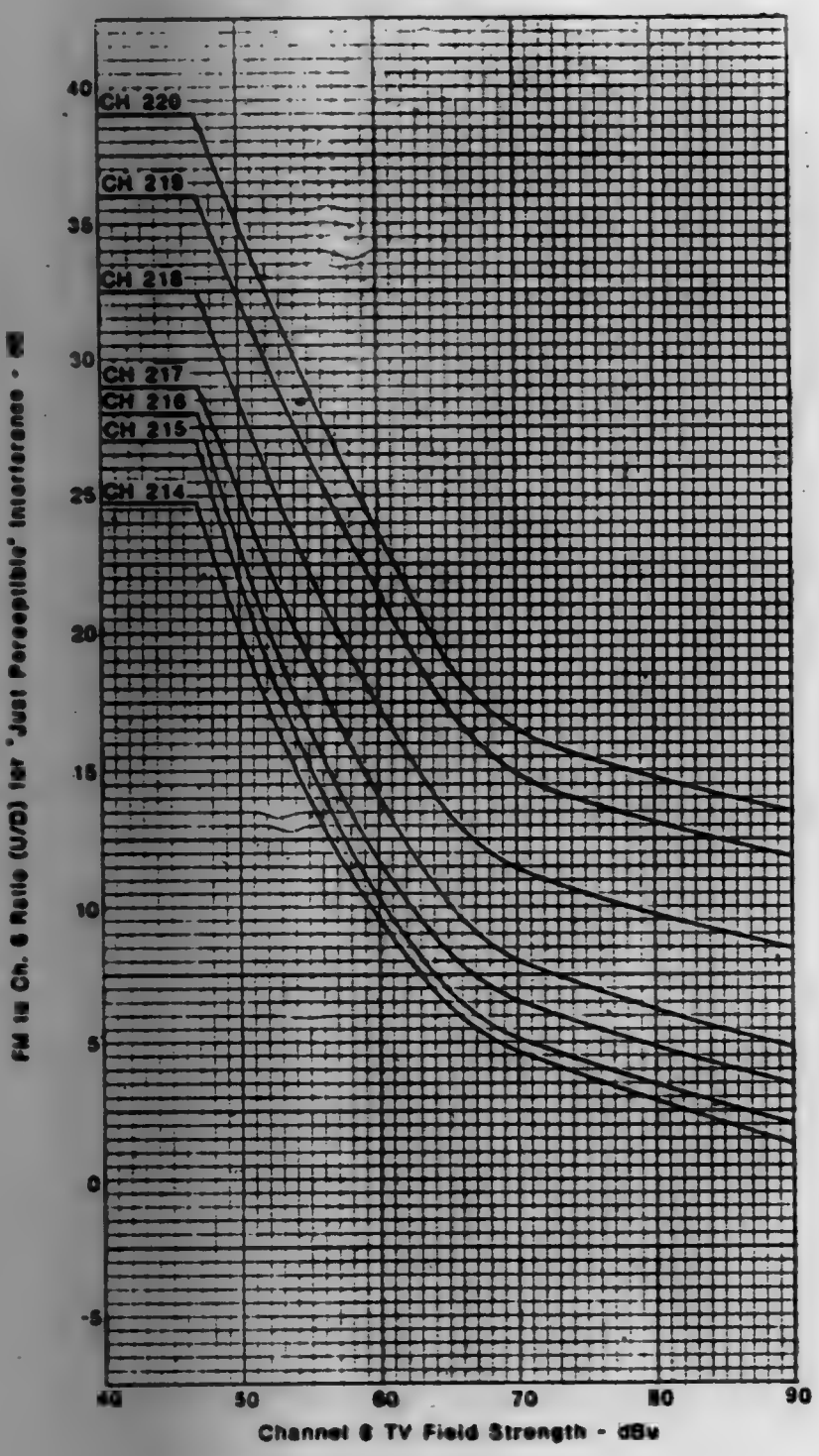


Figure 2

FM/TV 6 PROTECTION RATIOS
BASED ON MEDIAN RECEIVERS
CHANNELS 214-220

[FR Doc. 85-16294 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-C

47 CFR Parts 81 and 83

[PR Docket No. 84-1298; RM-4825; FCC 85-337]

Medical Advisory Communications With Ships at Sea

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allows limited coast stations to use shared frequencies for transmitting medical advice to ships at sea. This action was requested by Medical Advisory Systems, Inc., a limited coast station licensee which provides around-the-clock medical advice on a contractual basis to ships and offshore platforms. The intended effect is to make available to seafarers around-the-clock medical advice regardless of their location at sea.

EFFECTIVE DATE: August 9, 1985.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 81

Coast stations, Radio, Telephone.

47 CFR Part 83

Ship stations, Radio, Telephone, Vessels.

Report and Order (Proceeding Terminated)

In the matter of amendment of Parts 81 and 83 of the rules to provide frequencies for medical advisory communications with ships at sea (PR Docket No. 84-1298, RM-4825).

Adopted: June 27, 1985.
Released: July 3, 1985.

By the Commission.

1. On December 12, 1984, the Commission adopted a *Notice of Proposed Rule Making* (FCC 84-629, 50 FR 132) in the above captioned proceeding. The *Notice* was issued in response to a petition filed by Medical Advisory Systems, Inc. (MAS), requesting that frequencies be made available for worldwide medical assistance to ships and offshore platforms. MAS feels that the availability of medical advisory stations will measurably improve the health and well-being of seafarers. MAS provides medical advice on a contractual basis. MAS has been providing its service to oil companies, governmental entities, foreign fleets, and individuals since 1963, when it obtained a developmental authorization. It currently utilizes eight high frequencies (HF) in the shared Government/non-Government spectrum between 2030 and 27,500 kHz. Because immediate and reliable communications are imperative in a medical emergency, MAS's limited coast station also utilizes VHF frequencies and INMARSAT satellite links with public coast stations.

2. In the *Notice*, we proposed to allow limited coast stations to operate on coordinated frequencies in the shared Government/non-Government bands allocated to the fixed or fixed and mobile services between 2030 and 27,500 kHz for the exclusive purpose of providing ships or platforms at sea with medical advice and information. One comment was filed in this proceeding by Lykes Bros. Steamship, Co. Inc., voicing strong support for this proposal. No opposing comments were filed.

3. As stated in the Notice, MAS's HF traffic averages 300 medical emergencies per year. According to MAS, each initial contact is said to generate an average of 2.3 follow-up calls; between seven and eight cases remain "open" at any one time. Estimating that its case load doubles every six months, MAS argues that the availability of direct communications via its coast station not only saves critical time in an emergency but also reduces costs and avoids tying up maritime working channels for long periods.

4. We believe that this type of communications capability would considerably improve medical assistance to the thousands of individuals employed in the maritime community. Therefore, we are amending the rules as proposed in the Notice. Specific frequencies are not being designated for medical advisory service. We are allowing the use of frequencies in the shared Government/non-Government bands allocated to the fixed or fixed and mobile services between 2030 and 27,500 kHz by entities providing medical services to vessels and platforms at sea. Each applicant will be required to select the appropriate frequency or frequencies and we will coordinate the assignment with the U.S. Government Interdepartment Radio Advisory Committee. Because we expect that very few applicants will be interested in providing such specialized services, this case-by-case approach should allow the greatest flexibility and spectrum efficiency in fulfilling the need for maritime medical services.

5. Additionally, we are correcting § 81.132, which identifies authorized classes of emission. The correction incorporates the new emission designators used as a result of the 1979 World Administrative Radio Conference.

6. Pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), we certify that the new rules will not significantly impact a substantial number of small entities. This action makes available a number of frequencies for medical advisory communications between ship and shore. Since use of the frequencies is voluntary, no new equipment is required and no existing equipment is rendered obsolete.

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

8. Accordingly, it is ordered, that under the authority contained in sections 4(i) and 303(c) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(c) and (r), the Commission's rules are amended as set forth in the attached Appendix, effective August 9, 1985.

9. It is further ordered, that a copy of the Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

10. It is further ordered, that this proceeding is terminated.

11. Regarding questions on matters covered in this document contact Maureen Cesaitis, (202) 632-7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA FIXED SERVICE

1. The authority citation for Part 81 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; unless otherwise noted.

2. Section 81.132(a)(1) is amended in the "Classes of emission" column by adding new language opposite the entry "2035 to 27,500 kHz" to read as follows:

§ 81.132 Authorized classes of emission.

(a) * * *

Frequency band	Classes of emission
• • • • •	
2035 to 27,500 kHz.....	A1A on frequencies listed in § 81.208; A1A or F1B on frequencies listed in § 81.204(c);
• • • • •	

3. New § 81.373 is added to read as follows:

§ 81.373 Medical advisory frequencies.

Frequencies in the shared Government/non-Government bands allocated to the fixed or fixed and mobile services between 2030 kHz and 27,500 kHz may be assigned to limited coast stations for communications related to the provision of medical treatment, medical advice or medical information. The FCC will not accept responsibility for protection of the stations from harmful interference caused by foreign operations. In the event that a complaint of harmful interference resulting from operation of these stations is received from a foreign source, the offending station must cease operation on the particular frequency concerned.

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

4. The authority citation for Part 83 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

5. Section 83.351 is amended by adding a new paragraph (e) to read as follows:

§ 83.351 Frequencies available.

* * * * *

(e) Ship stations may communicate with limited coast stations that provide medical advisory service on the frequencies in the share Government/non-Government bands allocated to the fixed or fixed and mobile services between 2030 kHz and 27,500 kHz assigned to the limited coast station, subject to the conditions specified in § 81.373.

[FR Doc. 85-16293 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 33 and 52

[Federal Acquisition Cir. 84-9]

Federal Acquisition Regulation

Correction

In FR Doc. 85-14972 beginning on page 25680 in the issue of Thursday, June 20, 1985, make the following corrections:

1. On page 25680, in the first column, in the last paragraph, in the first line, "test" should read "text".

33.104 [Corrected]

2. On page 25681, in the first column, in 33.104(b)(3), in the second line, "the" should read "and".

3. On the same page, in the second column, in 33.104(g)(2), in the second line, "of this section" should read "above".

BILLING CODE 1505-01-M

GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS

48 CFR Part 6101

[Amdt. BOCA-1]

Rules of Procedure

Correction

In FR Doc. 85-15351 beginning on page 26764 in the issue of Friday, June 28, 1985, make the following correction:

The first page of "Form 3" was omitted and should appear as follows between pages 26770 and 26771:

BILLING CODE 1505-01-M

Form 3

Board of Contract Appeals

General Services Administration
Washington, DC 20405

SUBPOENA

OMB APPROVAL NO. 3090-0221

Appeal/Protest/Petition of

_____

_____

_____

GSBCA No. _____

Contract/Solicitation No.

_____

TO: _____

_____

_____

YOU ARE HEREBY COMMANDED to appear at _____ (Room Number) _____ (Building)

_____ (Street Number) _____ (City) _____ (State)

at _____ o'clock ___ m., on the _____ day of _____, 19___,

to testify at a (deposition/hearing) in this case; and to bring with you[1] _____

_____

_____

_____

_____

and to stay there until given permission to leave. This subpoena is issued at the request of (Appellant/Petitioner/Protester/Intervenor/Respondent).

Your appearance as ordered by this subpoena will entitle you to receive the fees and mileage provided by 28 U.S.C. § 1821 or other applicable law.

[1] *Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose. If testimony by an organization representative or designee is requested, describe with reasonable particularity the matters on which examination is requested.*

GENERAL SERVICES ADMINISTRATION
BILLING CODE 1505-01-C

GSA FORM 9534 (REV. 6-83)

Proposed Rules

Federal Register
Vol. 50, No. 131
Tuesday, July 9, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE
Federal Crop Insurance Corporation

7 CFR Ch. IV

[Docket No. 25533]

Crop Insurance Regulations—Various

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice for the purpose of withdrawing Notices of Proposed Rulemaking (NPRM) on various crop insurance regulations in Chapter IV of Title 7 of the Code of Federal Regulations updating the Appendix A to such regulations listing those counties where such crop insurance was available. The intended effect of this notice is to withdraw the NPRMs because the information regarding the availability of crop insurance is presently available from the service offices at the local level, thereby making the publication of these lists unnecessary. The authority for the promulgation of this notice is contained in the Federal Crop Insurance Act, amended.

EFFECTIVE DATE: July 9, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review dates established for these regulations are contained in the supplementary material accompanying the last republication of each regulation in the **Federal Register**.

Merritt W. Spraque, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects or competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

It has been the practice of FCIC, when publishing each of its regulations for insuring crops, to include an Appendix listing those counties where such crop insurance is available. The provisions requiring such publication were made part of each regulation in subsection 1 (Example: § 418.1 Availability of wheat crop insurance).

Merritt W. Sprague, Manager, FCIC, has determined that, due to the increasing number of counties where FCIC offers crop insurance on a variety of crops, the costs of printing in the **Federal Register** and subsequent costs involved in codification in the Code of Federal Regulations (CFR), has become excessive and outweigh whatever benefit is derived from codification.

Information regarding the availability of crop insurance in any given county is presently available from FCIC service offices at the local level, making the publication of these lists unnecessary.

Because of the actions taken above, FCIC has determined that the proposed rulemakings published in the **Federal Register** to update county listings are no longer necessary.

Accordingly, FCIC hereby withdraws the notices of proposed rulemakings as follows:

1. 7 CFR Part 411 [Amendment No. 4 to the Grape Regulations], published on Monday, July 9, 1984, at 49 FR 27949.

2. 7 CFR Part 427 [Amendment No. 1 to the Oat Regulations], published on Thursday, June 14, 1984, at 49 FR 24522.

3. 7 CFR Part 430 [Amendment No. 2 to the Sugar Beet Regulations], published on Thursday, June 14, 1984, at 49 FR 24528.

4. 7 CFR Part 434 [Amendment No. 3 to the Tobacco Dollar Regulations], published on Monday, July 2, 1984, at 49 FR 27160.

5. 7 CFR Part 435 [Amendment No. 4 to the Tobacco Quota Regulations], published on Wednesday, June 27, 1984, at 49 FR 26236.

6. 7 CFR Part 436 [Amendment No. 3 to the Tobacco Guaranteed Regulations], published on Monday, July 9, 1984, at 49 FR 27950.

7. 7 CFR Part 437 [Amendment No. 3 to the Canning and Freezing Sweet Corn Regulations], published on Monday, July 9, 1984, at 49 FR 27951.

8. 7 CFR Part 438 [Amendment No. 3 to the Canning and Processing Tomato Regulations], published on Tuesday, June 12, 1984, at 49 FR 24144.

9. 7 CFR Part 446 [Amendment No. 1 to the Walnut Regulations], published on Monday, July 2, 1984, at 49 FR 27162.

10. 7 CFR Part 447 [Amendment No. 1 to the Popcorn Regulations], published on Tuesday, June 12, 1984, at 49 FR 24145.

Done in Washington, D.C., on June 27, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 27, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85–16236 Filed 7–8–85; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 1124

[Docket No. AO-368-A14]

Milk in the Oregon-Washington Marketing Area: Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider proposals by the Oregon Milk Marketing Federation, Darigold, Inc. and Umpqua Dairy Products Company to amend the Oregon-Washington milk marketing order. The Federation's proposal would reduce supply plant shipping standards and the amount of producer milk that must be delivered to pool plants and still be priced under the order. Two of Darigold's proposals also would allow more producer milk to be received directly at nonpool plants without losing pool status. A third Darigold proposal would increase the percentage by which base pounds are computed for a producer who has no earned daily base to 80 percent for every month from a percentage which varies monthly from 45 to 70 percent.

Umpqua Dairy Products has proposed that handlers receiving milk from producers choosing to be paid on the basis of their Federal order base be able to pay such producers directly, and that nonfluid milk receipts used in Class II products be allocated to Class II rather than to Class III.

DATE: The hearing will convene at 9:30 a.m., local time, on July 24, 1985.

ADDRESS: The hearing will be held at Nendel's Motor Inn, 9900 S. W. Canyon Road, Portland, Oregon 97225, in the Oregonian Room–A.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirement of Executive Order 12291.

Notice is hereby given of a public hearing to be held at Nendel's Motor Inn, 9900 S. W. Canyon Road, Portland, Oregon 97225, in the Oregonian Room–A, beginning at 9:30 a.m., local time, on July 24, 1985, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Oregon-Washington marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96–354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1124

Milk marketing orders, Milk, Dairy products.

The authority citation for Part 1124 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

PART 1124—[AMENDED]

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Oregon Milk Marketing Federation (Farmers Cooperative Creamery Association, Oregon Jersey Cooperative, and Tillamook County Creamery Association):

Proposal No. 1

Reduce the percentage of receipts that supply plants must ship to pool distributing plants in order to be included in the marketwide pool. Shipping standards would be reduced from 50 percent in the months of October, November and December, 40 percent in the months of September, January and February, and 30 percent in the months of March through August to 40 percent in the months of September through November and 30 percent in the months of December through August.

Proposal No. 2

Change the present requirement that at least one day's production of each producer's milk must be delivered to a pool plant during each month of September, October and November in order for the producer's milk to be eligible for unlimited diversion to nonpool plants during the months of December through August. The proposed change would require that a producer's milk be received at a pool plant at least once per month for three consecutive months on a one-time basis rather than on an annual basis and that there be no subsequent interruption in the dairy farmer's producer status in order for the producer's milk to be eligible for unlimited diversions in subsequent months to nonpool plants.

Proposal No. 3

Increase the allowable percentage of producer milk which a cooperative association or handler may divert to nonpool plants from 60 percent each month to 70 percent during the months of September through November, January and February and 80 percent during December, March and April. No diversion limits would be effective during the months of May through August.

Proposed by Darigold, Inc.:

Proposal No. 4

In addition to eliminating the annual delivery requirement for each producer's milk (as in Proposal No. 2), delete the second sentence of § 1124.11(a), which requires that a new producer's milk be delivered to a pool plant at least once during each of the two months following the original shipment.

Proposal No. 5

Change the percentages in the table in § 1124.65(b) for determining base pounds for producers who do not have assigned daily bases from rates ranging from 45 to 70 percent per month to a straight 80 percent each month.

Proposal No. 6

Increase the allowable percentage of producer milk which a cooperative association or handler may divert to nonpool plants from 60 percent each month to 80 percent during the months of September through April, with no

diversion limits effective during the months of May through August.

Proposed by Umpqua Dairy Products Company:

Proposal No. 7

Amend the allocation sequence in § 1124.46(a) to provide that the fluid equivalent of nonfluid milk receipts used to produce Class II products be deducted from Class II use rather than from Class III.

Proposal No. 8

Amend § 1124.82(b) to provide that nonmember producers who elect to be paid on the basis of the Federal base plan may be paid directly by their handler rather than by the market administrator.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 9

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, P.O. Box 23606, Portland, Oregon 97223, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Division, Agricultural Marketing Service (Washington Office only)

Office of the Market Administrator, Oregon-Washington Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on: July 3, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-16315 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 85-024]

African Swine Fever

Correction

In FR Doc. 85-15538, beginning on page 26782 in the issue of Friday, June 28, 1985, make the following corrections:

On page 26784, in the third column,

a. In the second line of § 94.8(a)(3)(iv), "(a)(e)(i)(B)" should have read "(a)(3)(i)(B)".

b. In the eighth line of § 94.8(a)(3)(iv)(B), "(a)(3)(i)(c)" should have read "(a)(3)(i)(C).

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33-6590; 34-22173; File No. S7-29-85]

Disclosure Amendments to Regulation S-X Regarding Repurchase and Reverse Repurchase Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rulemaking and Advance Notice of Possible Rulemaking.

SUMMARY: The Commission is today publishing for comment proposed rules amending the disclosure requirements of Regulation S-X. Such amendments would require disclosure regarding the nature and extent of a registrant's repurchase and reverse repurchase transactions and the degree of risk involved in these transactions. In addition the Commission is providing advance notice of possible rulemaking in the area of financial assets and transactions. Finally, the Commission is today authorizing the Chief Accountant to send a letter to the Financial Accounting Standards Board recommending that a project be added to the Board's agenda to deal with the accounting issues involved in financial assets and transactions.

DATE: Comments must be received on or before August 30, 1985.

ADDRESS: Five copies of comments should be submitted to John Wheeler, Secretary, Securities and Exchange Commission 450 Fifth St., NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-29-85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth St., NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Michael P. McLaughlin or Laurel R. Bond, Office of the Chief Accountant (202-272-2130) or Howard P. Hodges Jr., Division of Corporation Finance (202-272-2553), Securities and Exchange Commission 450 Fifth St., NW., Washington D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Commission is proposing to require disclosure in certain circumstances of the nature and extent of a registrant's repurchase and reverse repurchase transactions and the degree of risk involved. The Commission is proposing these amendments to deal with an immediate need to improve disclosure with respect to these transactions. These proposals would call for separate balance sheet classification and footnote disclosure when either the aggregate carrying amount of assets sold under agreement to repurchase chase, or assets purchased under agreement to resell, exceed 10% of total assets. Further, when the risk of loss from these transactions (as defined) exceeds 5% of stockholders' equity, certain information, including the names of the parties to the agreements, woud be called for.

The Commission has monitored through the review process and in its oversight role the growing array of complex financial instruments that have been introduced in the marketplace. Some of these instruments raise accounting and disclosure issues.[1] Because the Commission believes that it is essential to address the broad areas of disclosure and accounting for financial assets and transactions on a comprehensive basis as expeditiously as possible, it has initiated a project to

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[1] The Commission is aware that the American Institute of Certified Public Accountants ("AICPA") recently formed a special task force to monitor developments and to consider accounting issues involved in the broad of financial instruments. The Commission endorses this action as well as the Financial Accounting Standards Board's ("FASB") Emerging Issues Task Force and encourages the development of timely accounting guidance as necessary.

consider the need for additional rulemaking or other guidance in this area to ensure that investors and other users of the Commission's disclosure documents are provided with full and fair disclosure about such transactions. The Commission, therefore, requests specific comments (particularly from users of financial statements) as to the adequacy of accounting and financial reporting in this area. Specific comment is also requested on the various types of financial transactions and instruments that may need to be addressed (e.g., interest rate swaps, securitized assets and sales of assets with "put" arrangements) and suggestions as to how they should be addressed. Further, the Commission's staff is currently studying the need for market value disclosure for certain financial assests including a requirement to make such disclosures on the face of the balance sheet along with an analysis of changes in market value in a footnote, thereto.[2] Commentators are specifically invited to provide information as to which financial assets should be covered as well as the content of footnote disclosure.

Finally, the Commission has determined that there are broad-based accounting measurement and recognition issues involved in repurchase and reverse repurchase and other financial instrument transactions that may best be addressed by the private-sector standard setters. Therefore, in connection with its longer-term project and recognizing that the issues in such a project affect SEC reporting as well as other entities in various industries (including publicly held banks and savings and loans that report to other government agencies), the Commission has today authorized the Chief Accountant to send a letter to the FASB recommending that the FASB add a project to its agenda to deal with the accounting issues involved in the broad area of financial assets and transactions.

II. Background

A. *Repurchase Transactions*—Generally, "selling" owned securities or other assets with an unconditional agreement to repurchase the same securities or other assets at a specific point in time has been considered a collateralized borrowing for accounting purposes. Such transactions are commonly referred to as "repurchase transactions."[3]

Although financing treatment may be both logical and appropriate when an asset is sold under agreement to repurchase, and the same asset is in fact repurchased within a very short period of time, it appears that the borrower/seller generally loses control over and access to the assets sold under the repurchase agreement. This exposes the borrower to a risk of loss (measured by the difference between the carrying value of the assets sold including accrued interest plus any cash or other assets on deposit to secure the repurchase obligation, less the amount borrowed against it) in the event that the other party to the transaction does not fulfill its part of the agreement.

In contrast to the more simple form of transaction described above, the Commission has seen more complicated repurchase transactions where (1) the initial term of the agreement was not for a very short period of time, but rather was for as long as a year (this agreement could also be extended at maturity), (2) the same mortgage-backed securities were not repurchased (dollar repurchase agreements) and (3) the initial purchase of specifically identified mortgage-backed securities was financed by a repurchase transaction (selling the purchased securities to the dealer with a simultaneous agreement to buy them back at a later date). Further, when the agreements involve dollar repurchase transactions of mortgage-backed securities (e.g., GNMAs), the borrower/seller relinguishes the right to receive principal and interest payments on the underlying security because the mortgage pool underlying the security is no longer specifically identified and the security is no longer registered in the borrower/seller's name.

B. *Reverse Repurchase Transactions*—Purchasing securities or other assets with an unconditional agreement to sell the same securities or other assets back to the seller at an agreed upon later date is generally considered to be a short-term investment/lending secured by the underlying assets. These transactions are generally referred to as "reverse repurchase transactions."

The accounting and disclosure questions regarding reverse repurchase transactions center on whether the purchaser/lender's interest in securities or other assets purchased is in fact secured (and if so whether the market value of the underlying assets is sufficient to protect the purchaser/lender) in the event of default by the seller/borrower.

III. Recent Developments

Following certain recent developments in the government securities market, both the accounting profession and the private-sector standard setters initiated various projects relating to repurchase and reverse repurchase transactions. On several occasions the Commission's staff met with representatives of certain specialized industry committees of the AICPA, the FASB, the AICPA's Auditing Standards Board ("ASB") and the Governmental Accounting Standards Board ("GASB") to emphasize the staff's concerns about accounting, auditing and disclosure issues.

The Commission notes that the following initiatives are underway:

- The ASB formed a special task force to look into the *auditing* issues. This task force concluded that while existing auditing standards are adequate, additional educational guidance is needed. The task force also recommended, among other things, that a special task force be formed to monitor developments in the area of financial instruments and that this task force provide timely auditing guidance, as needed, when new financial products are introduced. The ASB is expected to publish its report in the near future.
- The AICPA Savings and Loan Committee is working on the issuance of a Statement of Position concerning *disclosure* issues related to repurchase and reverse repurchase transactions which are prevalent in the thrift industry.[4] The AICPA is attempting to

[2] Under present practice certain financial assets are carried at cost, some at lower of cost or market and others at market value. In addition, practice varies among industries.

[3] Throughout this release, a sale with an agreement to repurchase will be designated as a "repurchase transaction," and a purchase with an agreement to sell back will be designated as a "reverse repurchase transaction." Certain entities (e.g. savings and loans and investment companies) may use different terminology to describe the same transaction. (See Investment Company Act Release No. 10666 [April 18, 1979] 44 FR 25128.)

[4] The Savings and Loan Committee is expected to deal with disclosure in two areas: repurchase and reverse repurchase agreements and mortgage-backed certificates. The Commission staff expects the Committee to recommend disclosure of an institution's activity in repurchase and reverse repurchase agreements (e.g., amounts involved at historical cost and at market) as well as a description of the institution's policies with respect to these transactions (e.g., delivery of collateral and material concentrations).

In addition, the Committee is considering a change in practice regarding balance sheet presentation of an institution's investments in mortgage-backed certificates. Savings and loans have generally included investments in mortgage-backed certificates in their loan portfolios because the instruments were generally supported by first mortgage loans. The Committee is expected to recommend that such certificates be reported separately in the balance sheet in recognition of the

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have a final Statement of Position in place before year end 1985. This document would supplement their recently issued Statement of Position 85–2 "*Accounting for Dollar Repurchase-Dollar Reverse Repurchase Agreements by Sellers-Borrowers*" on *accounting* for certain repurchase transactions.

• The GASB placed the subject of accounting and disclosure for repurchase-reverse repurchase transactions on its agenda and established a special task force to address these issues from the municipalities' viewpoint. The GASB expects to issue an exposure draft of an accounting standard dealing principally with disclosure in the near future.

The Commission will monitor developments in this area and consider the actions of these groups as it pursues its rulemaking initiatives.

IV. Proposed Changes to Regulation S–X

To some extent, existing requirements of Regulation S–X either directly or indirectly deal with disclosures concerning repurchase and reverse repurchase transactions. Articles 4 and 5 (17 CFR 210.4–01 et seq. and 210.5–01 et seq., respectively) in certain instances require cost and market value disclosure of investment securities as well as a description of assets subject to lien. Article 9 (17 CFR 210.9–01 et seq.), which applies to bank holding companies, specifically requires cost and market value of certain obligations of the U.S. Government as well as balance sheet disclosure of repurchase, reverse repurchase and similar transactions. Finally, Schedule 12 to Article 12 (17 CFR 210.12–12) which applies to management investment companies, specifically requires the following information for each agreement under which securities purchased are subject to resale: (1) The name of the party or parties to the agreement, (2) the date of the agreement, (3) the total amount to be received at termination of the agreement, (4) the termination date and (5) a description of the securities subject to the agreement.

In addition, under Item 303 of Regulation S–K (17 CFR 229.303), registrants have an obligation to include in the management's discussion and analysis ("MD&A") appropriate disclosure of any material impact on the registrant's liquidity and operations, or risk to the registrant due to significant exposure as a result of repurchase and reverse repurchase transactions.[5]

The proposed amendments to Regulation S–X are intended to elicit more useful and uniform disclosure by registrants regarding repurchase and reverse repurchase transactions.[6] These proposed amendments would require disclosure of the nature and extent of a registrant's repurchase and reverse repurchase transactions and the degree of risk involved from the borrower's and lender's viewpoint.

Specifically, the Commission believes that where a registrant is engaged in a significant amount of repurchase or reverse repurchase transactions (proposed to be defined as an amount exceeding 10% of total assets) the amounts involved should be disclosed as a separate line item in the balance sheet. Parenthetical disclosure of the market value of assets purchased under agreement to resell would also be called for in the balance sheet, only to the extent such assets are in the possession of the registrant or its third party agent.

Furthermore, the Commission believes there should be additional footnote disclosure. For repurchase transactions, the proposed footnote disclosure would include: (1) Information about the type of assets sold under agreement(s) to repurchase (including carrying value, cost and yield); (2) the term and maturities of the agreement(s); and (3) the party to the agreement(s) when the amount at risk with any one counterparty exceeds 5% of stockholders' equity. For reverse repurchase transactions, the proposed disclosure would include: (1) Information about the term of the agreement(s); (2) the registrant's policies regarding physical possession of the underlying assets and provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty and (3) information, including the name of the party to the agreement(s), about material concentrations (proposed to be defined as an amount in excess of 5% of stockholders' equity) if the registrant is exposed to risk of loss in the event the counterparty fails to fulfill its part of the agreement(s). The Commission requests specific comment on the proposed disclosure thresholds, as well as the content of the footnote disclosure, including additional or alternative disclosure that would be useful and cost effective.

V. Request for Comment

The Commission invites written comments on the proposed amendments to Regulation S–X and the advance notice of possible rulemaking as described, herein. Pursuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these proposals on competition and it is not aware at this time of any burden that such proposals, if adopted, would impose on competition. However, the Commission specifically invites comments as to whether the proposed amendments would have an adverse effect on competition. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under the Act.

List of Subjects in 17 CFR Part 210

Accounting, Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Amended Rules

Pursuant to sections 6, 7, 8, 19 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s(a)) of the Securities Act of 1933; sections 12, 13, 14, 15(d) and 23(a) (15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w(a)) of the Securities Act of 1934; sections 5(b), 14 and 20(a) (15 U.S.C 79e(b), 79n, 79t(a)) of the Public Utility Holding Company Act of 1935; and sections 8, 30, 31, and 38(a) (15 U.S.C. 80a–8, 80a–29, 80a–30, 80a–37(a)) of the Investment Company Act of 1940, the Commission hereby proposes to amend 17 CFR Chapter II as follows:

PART 210—FORM AND CONTENT AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 would continue to read in part as follows:

Authority: Secs. 6, 7, 8, 10, 12, 13, 15, 19, 23, 48 Stat. 78, 79, as amended, 81, as amended, 85, as amended, 892 as amended, 894, 895, as amended, 901, as amended, secs. 5, 14, 20, 49

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fact that they are a more liquid marketable investment than the underlying loans. The Committee is also expected to recommend disclosure of the market value of the mortgaged backed certificates. The Commission's staff strongly supports the Savings and Loan Committee's initiative and expects to recommend a similar approach in a scheduled project regarding market value disclosures for financial assets.

[5] The Commission is aware that because of the nature of these transactions, they can be timed to close at particular points in time. If a registrant engages in transactions which result in amounts which would otherwise be reportable if they existed at reporting dates but closes them before the reporting dates, the Commission believes this should be discussed in the MD&A.

[6] To the extent that the proposal would elicit the same information that is presently required by schedule 12 to Article 12, it is expected that management investment companies would continue to comply with the requirements of that schedule.

Stat. 812, 827, 833, secs. 8, 30, 31, 38, 54 Stat. 803, 836, 838, 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78*l*, 78m, 78o, 78w, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37 * * *

2. By adding paragraph (m) to § 210.4–08 to read as follows:

§ 210. 4–08 General notes to financial statements.

* * * * *

(m) *Repurchase and reverse repurchase transactions.*

(1) *Repurchase transactions ("assets sold under agreements to repurchase").* (i) If, as of the most recent balance sheet date, the carrying amount of securities or other assets sold under agreements to repurchase ("repurchase transactions") exceeds 10% of total assets: (A) Disclose separately in the balance sheet the aggregate amount of liabilities incurred pursuant to repurchase transactions including accrued interest payable thereon; and (B) disclose in an appropriately captioned footnote containing a tabular presentation, segregated as to type of assets sold under agreements to repurchase (e.g., U.S. Treasury obligations, U.S. Government agency obligations and loans), the following information for each transaction or group of transactions maturing (*1*) overnight; (*2*) term up to 30 days; (*3*) term of 30 to 90 days; (*4*) term over 90 days and (*5*) demand:

(*i*) The carrying amount, market value and yield on the assets sold under agreement to repurchase, including accrued interest plus any cash or other assets on deposit under the repurchase transactions as of the balance sheet date; and

(*ii*) The repurchase liability asociated with such transaction or group of transactions and the interest rate(s), thereon.

(ii) Notwithstanding paragraph (m)(1)(i) of this section, if, as of the most recent balance sheet date, the "amount at risk" as a result of repurchase transactions with any one counterparty (or group of related counterparties) exceeds 5% of stockholders' equity (or in the case of investment companies, net asset value), registrants should disclose the same information as that called for by paragraph (m)(1)(i)(B) of this section separately for each such counterparty (or group of related counterparties), including the name of each such entity. The amount at risk is defined as the carrying value of the assets sold under agreement to repurchase including accrued interest plus any cash or other assets on deposit to secure the repurchase obligation less the amount borrowed against it (adjusted for accrued interest). (Cash deposits in connection with repurchase transactions shall not be reported as unrestricted cash pursuant to rule 5–02.1.)

(2) *Reverse repurchase transactions ("assets purchased under agreements to resell").* (i) If, as of the most recent balance sheet date, the aggregate carrying amount of securities or other assets purchased under agreement to resell ("reverse repurchase transactions") exceeds 10% of total assets: (A) Disclose separately such amount in the balance sheet; (B) parenthetically on the face of the balance sheet disclose the aggregate market value of assets held by the registrant or a third party agent that has affirmatively agreed with the registrant to act as custodian for the registrant pursuant to such reverse repurchase transactions; and (C) disclose in an appropriately captioned footnote, (*1*) the registrant's policy with regard to taking possession of securities or other assets purchased under agreement to resell, and (*2*) the terms of reverse repurchase agreements including at a minimum, the maturities, interest rates, and whether or not there are any provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty and if so, the nature of those provisions. (ii) If, as of the most recent balance sheet date, the aggregate amount of reverse repurchase transactions with any one counterparty (or group of related counterparties), exceeds 5% of stockholders' equity (or in the case of investment companies, net asset value) and the assets subject to these agreements are not in the possession of the registrant or a third party agent that has affirmatively agreed with the registrant to act as custodian for the registrant, disclose the amount of such assets purchased under agreement to resell with each such counterparty, naming the entity and describing the terms of the agreement(s).

Regulatory Flexibility Act Analysis

John S.R. Shad, Chairman of the Commission, has certified that the proposed amendment to Regulation S–X will not have a significant economic impact on any entity subject to its provisions, and therefore, will not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to the release.

By the Commission.

John Wheeler,

Secretary.

June 27, 1985.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b) that the proposed amendments to Regulation S–X to require disclosure regarding certain repurchase and reverse repurchase transactions, contained in Securities Act Release No. 6590 will not have a significant economic impact on a substantial number of small entities. The reasons for this certification is that it is anticipated that the effects of the amendments, if adopted, will not be significant for any class of registrants because existing requirements of Regulation S–X either directly or indirectly deal with disclosures concerning repurchase and reverse repurchase transactions and the required information should be readily available from the existing books and records of the reporting entity.

Dated: June 27, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85–16188 Filed 7–8–85; 8:45 am]

BILLING CODE 8010–01–M

17 CFR Part 240

[Release Nos. 33–6595; 34–22198; IC–14511; File No. S7–34–85]

Proposed Amendments to Tender Offer Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendment to rules.

SUMMARY: The Securities and Exchange Commission is publishing for comment a proposed new rule pertaining to third-party tender offers which would codify the Commission's position as to currently applicable requirements under the Williams Act. The proposed rule would make explicit that a bidder's tender offer must be open to all holders of the class of securities subject to the tender offer, and that all security holders must be paid the highest consideration offered to any security holder. The Commission also is proposing to amend an existing rule to provide that a tender offer must remain open for ten business days upon the announcement of an increase in the amount of securities being sought by the bidder.

DATE: Comments should be received on or before September 9, 1985.

ADDRESSES: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7–34–85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Thomas E. Sweeney, Jr., (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment amendments to Regulations 14D and 14E [1] pertaining to tender offers. This release contains an executive summary of the proposed action, a description of the existing Commission interpretive position, and the proposals and a synopsis thereof.

I. Executive Summary

With respect to tender offers, the Williams Act's statutory purpose of investor protection [2] is implemented through disclosure requirements, substantive provisions and antifraud protections. A major aspect of the legislative effort to protect investors was to avoid favoring either management or the takeover bidder.[3] In implementing this policy of neutrality, the Commission has administered the Williams Act in an even-handed fashion favoring neither side in a contest. Also implicit in these provisions, and necessary for the functioning of the Williams Act, are the requirements that a bidder make a tender offer to all security holders of the class of securities which is the subject of the offer and that the offer be made to all holders on the same terms.

The investor protection purposes of the Exchange Act would not be achieved without these requirements because tender offers could be extended to some security holders but not others or to all security holders but on different terms. Accordingly, since the Williams Act was enacted, the Commission, with certain limited exceptions, has taken the position that (i) a tender offer must be extended to all holders of the class of securities which is the subject of the offer (the "all-holders requirement"); and (ii) all such holders must be paid the highest consideration offered under the tender offer (the "best-price rule").[4]

Although the Commission's position concerning the all-holders requirement is a widely known and generally accepted tender offer practice, questions have arisen recently regarding the applicability of the all-holders requirement to issuer tender offers.[5] The Commission believes these questions also may bear on the all-holders requirement with respect to third-party tender offers and on the best-price rule. To provide clarity and certainty, the Commission is proposing a rule to codify these positions.

Specifically, proposed Rule 14d–10 would require a bidder in making a tender offer under section 14(d) of the Exchange Act:

- To extend the offer to all security holders who own shares of the class of securities subject to the offer; and
- To pay every tendering security holder the highest consideration offered to any other security holder at any time during the tender offer and, if more than one type of consideration is offered, that the types be substantially equivalent in value and the highest consideration of any type offered to any security holder is paid to any other security holder accepting that type of consideration.

The proposal would apply to third-party tender offers.[6]

While proposed Rule 14d–10 is not applicable until adoption and effectiveness, the Commission's interpretations of the Williams Act discussed in this release apply until final action is taken on the proposal. To the extent ambiguity may have arisen, the discussion set forth below concerning the all-holders requirement and the best-price rule is intended to resolve questions regarding their applicability.[7] This discussion first addresses the Commission's current interpretive position, and then describes proposed Rule 14d–10, which would codify this position.

The Commission also is proposing to amend Rule 14e–1(b) [8] to require that a tender offer remain open for at least ten business days from the announcement of an increase in the amount of securities being sought by the bidder. The Commission is proposing that such amended offers remain open for the same period of time currently required for increases in the consideration offered or the dealer's soliciting fees to allow time for shareholders to consider the offer as amended.

II. Commission Position

Equal Treatment of Security Holders

As noted above, the Commission interprets the Williams Act as containing an implicit requirement for equal treatment of security holders. This interpretation requires a tender offer subject to section 14(d) to be made to all security holders on the same basis.

The all-holders requirement is a consequence of making such a tender offer and, therefore, is unrelated to the determination of whether or not a tender offer has been made. Thus, the fact that a tender offer is made to less than all the holders of a class of a security, or that different consideration is offered to different holders of the same class of securities, does *not* mean that a tender offer has *not* been made under the Williams Act. Rather, if such a transaction is found to be a tender offer, then the tender offer would *not* have been made in compliance with the all-holders requirement.

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[1] 17 CFR 240.14d–1–101 and 240.14e–1—14e–3.

[2] Sections 13(*d*), 13(e), 14(d), 14(e) and 14(*f*) of the Securities Exchange Act of 1934 (the "Exchange Act"); 15 U.S.C. 78a et seq. (1982). Pub. L. No. 90–439, 82 Stat. 454 (1968). *See* S. Rep. No. 550, 90th Cong., 1st Sess. at 3 ("Senate Report"); H. R. Rep. No. 1711, 90th Cong., 2nd Sess. at 4 ("House Report").

[3] *Edgar* v. *MITE Corp.*, 457 U.S. 624 (1982).

[4] The Commission has considered codifying these requirements in previous rulemaking proposals. *See* Release No. 34–14234 (December 7, 1977) [42 FR 63066 December 14, 1977] and Release No. 34–16112 (August 16, 1979) [44 FR 48625 August 22, 1979] with respect to issuer tender offers regulated under section 13(e); and Release No. 34–16385 (November 29, 1979) [44 FR 70349 December 6, 1979] with respect to issuer and third-party tender offers under section 14(e) of the Exchange Act. This latter release proposed to codify the all-holders and best-price requirements simultaneously with the proposed definition of the term "tender offer" to clarify the distinction between the application of the definition and the regulatory requirements that must be observed once a tender offer is made. The Commission today is publishing a release that withdraws the 1979 proposed Rule 14e–4. *See* Release No. 34–22200 (July 1, 1985).

[5] In *Unocal Corporation* v. *T. Boone Pickens*, Civil Action No. CV 85–2178–AWT (C.D.C. April 29, 1985) defendants' motion to enjoin the Unocal issuer tender offer for violation of sections 13(e) and 14(e) of the Exchange Act because Unocal's issuer tender offer was extended to all of Unocal's security holders except the defendants and their good-faith transferees was denied by the District Court for the Central District of California.

[6] The Commission today also is publishing a release that proposes amending Rule 13e–4 under the Exchange Act, 17 CFR 240.13e–4, to make explicit that an issuer's tender offer also must be open to all holders of the class of securities subject to the tender offer and that all security holders must be paid the highest consideration offered to any security holder. *See* Release No. 34–22199 (July 1, 1985). The proposed codification of these requirements applicable to issuer tender offers under proposed Rule 13e–4(f) contains provisions virtually identical to those applicable to third-party offers.

[7] For this purpose, the discussion in this release concerning these requirements supersedes any views or positions expressed in earlier Commission releases or staff interpretations on the subject.

[8] 17 CFR 240.14e–1(b).

The Commission also has interpreted the Williams Act to require that the amount of consideration a bidder must pay a security holder in a tender offer conducted pursuant to Regulation 14D must be the highest consideration offered [9] to any security holder at any time during such tender offer.[10] This standard has not precluded the offer of alternative types of consideration. This interpretation furthers the purposes of the Williams Act, particularly section 14(d)(7).[11] The expressed legislative intent of the best-price provision is (i) to ensure fair treatment of persons who tender their shares at the beginning of a tender offer, and (ii) to ensure equality of treatment among all security holders who tender their shares.[12] Consistent with these objectives, the Commission interprets the Williams Act to require equal treatment of security holders by ensuring that they all be paid the highest consideration offered.[13]

Application of the best-price rule raises certain interpretive issues. The best-price rule extends to all tendering holders of the class of securities subject to the offer.[14] The consideration to be paid must be equal to the highest amount offered at any time during the tender offer period. Consistent with the Williams Act, the Commission's position has been that the highest consideration offered is determined from the earlier of the date the offer is first published or sent or given to security holders as defined by Rule 14d–2(a) or the date of public announcement as specified in Rule 14d–2(b).[15]

Changes in the consideration offered during the tender offer also raise interpretive issues. The resolution of these issues depends upon whether the value of the consideration is increased or decreased. In the event of a decrease in the consideration offered, security holders are confronted with a new investment decision requiring the commencement of a new offer with the recalculation of all time periods and a new determination of the "highest consideration." [16] All securities tendered into the original offer must be returned to security holders. On the other hand, increases in consideration are specifically addressed in Regulation 14E. Under Rule 14e–1(b), an increase in the consideration requires that the offer remain open for at least ten business days.

III. Synopsis of Proposals

A. Proposed Rule 14d–10

Proposed Rule 14d–10 would make explicit the Commission's position that the Williams Act requires equal treatment of all security holders in a tender offer. The proposal would prohibit third-party tender offers subject to section 14(d) conducted in violation of its provisions. By codifying the all-holders and best-price requirements in paragraph (a) and providing the Commission exemptive authority in paragraph (b), the proposed rule would ensure equal treatment of all holders of a class of securities for which a tender offer is made while facilitating transactions consistent with investor protection.

1. *Offer to All Holders.* The all-holders rule is necessary for the protection of investors and to achieve the purpose of the Williams Act. Proposed Rule 14d–10(a)(1) would provide that third-party tender offers must be open to all security holders of the class of securities subject to the offer.[17] The all-holders requirement does not prohibit tender offers for fewer than all outstanding securities of a class. But in a section 14(d) tender offer all security holders must be able to accept the tender offer if they choose.

The all-holders rule does not affect dissemination of tender offers. While a tender offer subject to section 14(d) of the Williams Act must be held open to all security holders of the subject class of securities, including foreign persons, the proposal would not affect dissemination of Section 14(d) tender offers. Rule 14d–4 [18] deems long-form publication, summary publication and the use of shareholder lists and security position listings to be published or sent or given to security holders within the meaning of section 14(d)(1). Under Rule 14d–4(b) adequate publication may require publication in a newspaper of national circulation. The Commission has not interpreted this provision as requiring dissemination of tender offer materials outside the United States. Similarly, proposed Rule 14d–10 is not intended to affect a foreign bidder making a tender offer solely in foreign jurisdictions [19] and not employing the jurisdictional means enumerated in Section 14(d)(1).

2. *Best-Price Rule.* Paragraph (a)(2) of the proposal would require that the consideration paid to any security holder pursuant to the tender offer be the highest consideration offered to any security holder at any time during such tender offer. If more than one type of consideration is offered pursuant to the tender offer, the types of consideration must be substantially equivalent in value.[20] The date for making the initial

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[9] *See* Release No. 34–16385 in which the Commission requested specific comment on whether the objective of proposed Rule 14e-4(a) should be expressed in terms of the highest consideration standard or one of substantial equivalence.

[10] *See* Rule 14d–2(b)(2)(ii), 17 CFR 240.14–d(2)(b)(2)(ii), which provides that section 14(d)(7) of the Exchange Act shall be deemed to apply to such tender offer from the date of the public announcement.

[11] 15 U.S.C. 78n(d)(7). Section 14(d)(7) provides that where a bidder increases the consideration offered for tendered securities during a tender offer, it also must pay the increased price to security holders who tender their shares prior to announcement of the increase. This right of a shareholder to receive the best price offered in a tender offer exists regardless of whether securities tendered prior to the increase of consideration offered actually were purchased before or after the announcement of such increase. *See* Memorandum of the SEC to the Committee on Banking and Currency, U.S. Senate on S. 2731, 89th Cong., 1st Sess., 111 Cong. Rec. 28256 (1965). 112 Cong. Rec. 19003, 19005 (1966), explaining that one of the purposes of the provision which became section 14(d)(7), was to avoid the discriminatory effect of paying some holders more than others.

[12] *See* Senate Report at 3, 10; House Report at 11.

[13] For example, a bidder amended his tender offer because he was not permitted to make an offer that would have paid a higher consideration to the employees of the target company than to other shareholders. *See also*, Letter to William Gleeson, Esq. from the Division of Corporation Finance re Methode Electronics, Inc. (December 20, 1978).

[14] In the event a person makes a tender offer for both subject securities and securities convertible into the subject securities, the consideration under the offer is permitted to differ between the two classes. The highest consideration offered to any security holder of one class during the tender offer must be paid to any other security holder of the same class. In addition, all bidders in such situations should be mindful of the possible application of Rule 10b–13, 17CFR 240.10b–13.

[15] 15 U.S.C. 78n(d)(2), 17 CFR 240.14d–2(b). In a tender offer where securities and cash are offered the value of the securities may change during the pendency of the tender offer in comparison to the cash value being offered. The Commission believes that a determination by reference to the date of commencement is necessary to provide certainty to persons who make tender offers. If the value of the offered consideration were to be determined on another date, such as the date of termination of the tender offer, a bidder making a tender offer in which cash and securities were offered as alternative types of consideration would not be able to estimate, for disclosure purposes, with any degree of certainty the amount of securities to be registered or the amount of cash needed.

[16] An initial determination that must be made however is whether the terms of the original offer permit the bidder to unilaterally terminate its offer. A decrease in the amount of shares sought also would require commencement of a new offer, recalculation of all time periods and a new determination of the "highest consideration."

[17] The term "security holder" is defined in Rule 14d–1(b)(3), 17 CFR 240.14d–1(b)(3), for the purposes of use in Sections 14(d) and (e) and Regulations 14D and E.

[18] 17 CFR 240.14d–4.

[19] Tender offers by foreign bidders may present issues of compliance with other provisions of the federal securities laws, such as, sections 13 (d) and 14(f) of the Exchange Act; and the Securities Act of 1933 for exchange tender offers involving foreign bidders making offers for target companies with U.S. security holders.

[20] This provision responds to the concerns of a number of commentators on the 1979 rule proposal

Continued

determination as to substantial equivalence in value is the earlier of the date of public announcement as specified in Rule 14d–2(b), or the date of commencement as defined in Rule 14d–2(a). [21] If the bidder increases the consideration offered, an additional determination as to substantial equivalence would be required as of the date the increased consideration is first offered to security holders. The consideration that a bidder ultimately must pay a tendering shareholder, however, must be the highest consideration offered of that type. By requiring that a bidder pay the highest consideration offered, this rule would have the effect of codifying the Commission's position that a bidder may not lower the offering price without commencing a new tender offer. Under the current tender offer rules, the staff takes the position that a decrease in the consideration offered to security holders constitutes a new tender requiring the return of tendered shares and the beginning of new time periods.

3. *Exemptive Authority.* Proposed paragraph (b) would permit the Commission to grant relief from the rule's requirements on a case-by-case basis. Consistent with the Commission's policy of granting limited exceptions to the interpretations discussed above, proposed Rule 14d–10(b) would provide that the Commission, upon written request or upon its own motion, may determine that the rule's provisions, either conditionally or unconditionally, need not apply to a particular transaction.

B. Proposed Amendment to Rule 14e–1(b)

The Commission also is proposing to amend Rule 14e–1(b) which currently provides that a tender offer must remain open for ten business days upon an increase in the offered consideration or the dealer's soliciting fee. The proposed revision would add, as a trigger for the ten business day period, and increase in the number of securities solicited pursuant to a tender offer. [22] This proposal is based on Recommendation 18 of the Commission's Advisory Committee on Tender Offers. [23] The Commission is proposing to retain the current ten business day period under the rule. The Commission believes that investors need that time to evaluate increases in the consideration or the amount of securities sought under the offer. Both types of increases were accorded the same treatment by the Advisory Committee's recommendation. The Commission, however, believes that the ten business day period is more appropriate than the five calendar day extension suggested by the recommendation, because (i) the Commission is retaining the twenty business day minimum offering period and (ii) a five calendar day period is too short, particularly for small investors who must reply on the mails in a tender offer. [24]

C. Relation To State Takeover Statutes

The Commission recognizes that the Supreme Court's decision in *MITE* [25] casts doubt on the ability of a state to regulate a nationwide tender offer. In *MITE*, the Court held that the Illinois Business Takeover Act was an impermissible burden upon interstate commerce in violation of the Commerce Clause. Post-*MITE* takeover statutes have not come under close judicial scrutiny. To the extent that such state statutes unlawfully burden interstate commerce or conflict with federal law, they are invalid. The Commission recognizes its long and beneficial partnership with the states in the regulation of securities transactions but believes that certain state takeover statutes currently in effect frustrate the operation and objectives of the Williams Act. [26] The Commission seeks specific comment on the impact the rule would have on otherwise valid state takeover statutes. If there would be an impact, the Commission seeks comment as to what if any action could be taken to ameliorate this effect consistent with the purposes of the Williams Act.

IV. Regulatory Flexibility Analysis

This initial regulatory flexibility analysis concerns proposed Rule 14d–10 and proposed Rule 14e–1(b) and has been prepared by the Securities and Exchange Commission ("Commission") in accordance with 5 U.S.C. 604.

Reasons for Proposal

The proposed amendment to Rule 14e–1 would implement a recommendation of the Commission's Advisory Committee on Tender Offers. The Commission also has recognized a need to provide clarity and certainty in the regulatory scheme applicable to tender offers with respect to equal treatment of security holders, and accordingly is proposing Rule 14d–10.

Objectives

The Commission proposes amending Rule 14e–1 to add, as trigger of the current rule's additional ten business day period, an increase in the amount of securities sought. Proposed Rule 14d–10 is intended to codify Commission interpretations under the Williams Act Amendments to the Exchange Act [27] that require that a tender offer be made to all holders of the class of security subject to the offer.

Statutory Authority

The Commission is proposing to amend Regulations 14D and 14E pursuant to sections 3(b), 14(d), 14(e) and 23(a) of the Exchange Act.

Small Entities Subject to the Rule

If proposed Rule 14e–1(b) were adopted, certain small entities, including those not subject to Regulation 14D, would become subject to its requirements. It therefore appears likely that a substantial number of small entities would be affected by the proposed Rule 14e–1(b). Those entities not subject to Regulation 14D could include issuers who have publicly trade securities that are not registered with the Commission, issuers who report to the Commission pursuant to 15(d) of the Exchange Act, issuers whose securities are not publicly trade, and state and local governments with debt securities

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who expressed concern over the difficulty of making a tender offer with alternative forms of consideration under a rule requiring payment to every security holder of the highest consideration offered pursuant to the tender offer. Under this provision, alternative types of consideration would be allowed as long as the various types of consideration are substantially equivalent, and all security holders have the same choice among the considerations offered. Although each alternative type of consideration offered generally must be offered to every security holder, the Commission will not object if a bidder offer cash or other qualified securities in a state where there are Blue Sky law problems with the securities offered to other security holders, provided that the consideration of the type paid is substantially equivalent in value to the highest consideration of the type offered to any security holder during the tender offer.

[21] A corresponding revision will be made in Rule 14d–2(b)(2)(ii) at such time as proposed Rule 14d–10 is adopted to replace the reference to section 14(d)(7) with a reference to Rule 14d–10.

[22] Deletion of the proviso in Rule 14e–1(b) is an amendment proposed in the release dealing with proposed changes to Rule 13e–4, issuer tender offers; *See* Release No. 34–22199.

[23] The Advisory Committee recommended that "[t]he minimum offering period and prorationing period should not terminate for five calendar days from the announcement of an increase in price or number of shares sought."

[24] *See* H.R. Rep. No. 142, 99th Cong., 2d Sess. 28–29 (1984).

[25] 457 U.S. 624, *supra* note 3.

[26] *See e.g.*, Release No. 34–16384 (November 29, 1979) [44 FR 70328, 70329–70330 December 6, 1979]; and *Canadian Pacific Enterprises (U.S.) Inc.* v. *Krouse*, 506 F. Supp. 1192, 1202 (S.D. Ohio 1981).

[27] Sections 13(d), 14(d), 14(e) and 14(f) of the Exchange Act, 15 U.S.C. 78m(d), 78n(d), 78n(f). Pub. L. No. 90–439, 82 Stat. 454 (1968), as amended.

outstanding. An unknown portion of these classes of issuers are small entities. At this time the Commission is unable to determine the costs to small entities of compliance with the proposal. With respect to proposed Rule 14d–10, there should be no significant economic impact on small entities, since the proposal: (1) Represents a proposed codification of existing Commission interpretations which currently govern the conduct of tender offers subject to section 14(d) of the Exchange Act; and (ii) no entities not already subject to the Commission's interpretations would be brought within the scope of the proposed rule.

Reporting, Recordkeeping and Other Compliance Requirements

The Commission does not believe the either proposed rule would result in any new reporting or recordkeeping requirements. The proposed amendment to Rule 14e–1(b), however, would require that, in a tender offer involving a small entity, an increase in the number of securities sought would require that the offering period remain open for an additional ten business days.

Overlapping or Conflicting Federal Rules

The Commission does not believe that the proposed rules duplicate or conflict with any existing rule provisions.

Significant Alternatives

The Commission is considering the following significant alternatives to the proposed Rule 14e–1(b) amendments: (i) Exempting from the rule affected small entities, or (ii) limiting the rule's applicability to those tender offers that meet certain standards, such as tender offers for the securities of issuers subject to section 15(d) of the Exchange Act or tender offers made to residents of more than one state. The Commission does not consider the use of performance rather than design standards to be a significant alternative because a performance standard would be inconsistent with the Commission's statutory mandate of investor protection.

V. Request for Comments

Any interested person wishing to submit written comments on the proposals, as well as on other matters that might have an impact on the proposals, are requested to do so.

The Commission also requests comment on whether the proposed rule, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act. [28]

The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed rules are adopted.

Persons wishing to submit written comments should file three copies thereof with John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7–34–85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW. Washington, D.C. 20549.

VI. Statutory Basis and Text of Proposed Amendments

The Commission hereby proposes to amend Regulations 14D and 14E pursuant to sections 3(b), 14(d), 14(e) and 23(a) of the Exchange Act and section 23(c)(3) of the Investment Company Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Tender offers, Issuers.

Statutory Basis and Text of Proposal

(Secs. 3(b), 14(d), 14(e), 23(a), 48 Stat. 882, 880, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155; sec. 202, 91 Stat. 1494; sec. 23(c)(3), 54 Stat. 825; 15 U.S.C. 78c(b), 78n(d), 78n(e), 78w(a), 80a–23(c)(3))

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w, * * *§§ 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C. 78c, 78*l*, 78m, 78o. §§ 240.14c–1 to 240c–101 also issued under secs. 15, 17, 48 Stat. 895, 897, sec. 203, 49 Stat. 1076, sec. 0, 78 Stat. 570; 15 U.S.C. 78o, 78q, 12 U.S.C. 241 nt., * * *.

[28] 15 U.S.C. 78w(a)(2).

2. By adding a new § 240.14d–10 to read as follows:

§ 240.14d–10 Equal treatment of security holders.

(a) No bidder shall make a tender offer unless:

(1) The tender offer is open to all security holders of the class of securities subject to the tender offer; *however*, this section shall not affect: (i) Dissemination under Rule 14d–4 or (ii) tender offers in which the bidder is not a United States resident or citizen and the tender offer does not employ any jurisdictional means enumerated in section 14(d)(1) of the Act, and

(2) In addition to the provisions of section 14(d)(7) of the Act, the consideration paid to any security holder pursuant to the tender offer is the highest consideration offered to any other security holder at any time during such tender offer, determined from the earlier of the date of public announcement as specified in Rule 14d–2(b) or the date of commencement pursuant to Rule 14d–2(a); *provided, however*, in a tender offer in which more than one type of consideration is offered: (i) The types of consideration are substantially equivalent in value on the earlier of the date of public announcement as specified in Rule 14d–2(b) or the date of commencement pursuant to Rule 14d–2(a); (ii) in the event of an increase by the bidder in the consideration offered during the tender offer, the types of consideration are substantially equivalent in value on the date such increase is first offered to security holders; and (iii) the highest consideration of each type offered to any security holder is paid to any other security holder accepting that type of consideration.

(b) This section shall not apply to any tender offer with respect to which the Commission, upon written request or upon its own motion, either unconditionally or on specified terms and conditions, determines that compliance with paragraph (a) is not necessary or appropriate in the public interest or for the protection of investors.

3. By revising paragraph (b) of § 240.14e–1 to read as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(b) Increase the amount of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that

notice of such increase is first published or sent or given to security holders;

* * * * *

By the Commission.

John Wheeler,

Secretary.

July 1, 1985.

[FR Doc. 85-16243 Filed 7-8-85; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 240

[Release Nos. 33-6597; 34-22200; IC-14613]

Withdrawal of Rule Proposal Concerning Tender Offers

AGENCY: Securities and Exchange Commission.

ACTION: Withdrawal of proposal.

SUMMARY: The Securities and Exchange Commission is withdrawing a proposed rule pertaining to tender offers which would have codified the Commission's position that, with limited exceptions, a tender offer must be open to all holders of the security subject to the tender offer and the consideration paid under the tender offer to any security holder must equal the highest consideration offered to any other security holder.

DATE: This withdrawal is effective July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas E. Sweeney, Jr., (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On November 29, 1979, the Commission published for comment certain proposed rules pertaining to tender offers, including proposed Rule 14e-4.[1] Proposed Rule 14e-4 under the Williams Act amendments to the Securities Exchange Act of 1934 ("Exchange Act"),[2] would have made explicit the Commission's position that: (i) Any tender offer must be open to all security holders who are United States residents if the offer is open to any such security holder; and (ii) the consideration paid to any security holder under the offer must be equal to the highest consideration offered to any other security holder at any time during the offer. As proposed in 1979, Rule 14e-4 specifically would have exempted certain issuer odd-lot tender offers and issuer tender offers not made to officers, directors or affiliates of such issuer. The Commission has determined to withdraw proposed Rule 14e-4 and today is publishing for comment proposed Rule 14d-10 and amendments to Rule 13e-4.[3]

By the Commission.

John Wheeler,

Secretary.

July 1, 1985.

[FR Doc. 85-16245 Filed 7-8-85; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Parts 250 and 259

[Release No. 35-23744; File No. S7-28-85]

Requirement That Applications and Declarations Filed Under the Public Utility Holding Company Act of 1935 Contain a Proposed Notice of the Proceeding Initiated Thereby

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form amendment.

SUMMARY: The Commission is publishing for public comment amendments to Rule 22 and Form U-1 under the Public Utility Holding Company Act of 1935 that would require that all applications and declarations filed with the Commission under that Act include, as an exhibit thereto, a proposed notice of the proceeding initiated by such filing. The proposed amendments are intended to expedite the processing of applications and declarations by the Commission's staff.

DATE: Comments must be received on or before August 2, 1985.

ADDRESSES: Send comments in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. (Reference to File No. S7-28-85). All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Brandon (202-272-2676), Attorney, Office of Public Utility Regulation, or Glen A. Payne (202-272-3018), Assistant Director, Office of Investment Company Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Rule 22 (17 CFR 250.22) specifies procedures to be followed by persons filing applications and declarations with the Commission under the Public Utility Holding Company Act of 1935 ("Act"). The Commission proposes to amend this rule by adding a new paragraph which will require applications and declarations filed under the Act to contain proposed notices, which may be used by the Commission in giving public notice of such filings.[1] In order to ensure the proposed notices will be subject to the verification requirements of Rule 22(c) (17 CFR 250.22(c)), where applicable, the Commission proposes to require them as a formal exhibit to the application or declaration. The Commission also proposes to amend General Instruction C of Form U-1 under the Act (17 CFR 259.101) to make filing of proposed notices specifically applicable to persons filing applications or declarations on that form.[2]

The proposed rule and form amendments are designed to expedite the processing of applications and declarations by the staff of the Division of Investment Management. The proposed amendments should reduce significantly the staff time currently spent preparing notices of filing of applications and declarations. The Commission is not proposing these amendments in order to make applicants or declarants furnish additional information not presently required. Patterned after the application or declaration they accompany, the proposed notice would identify the parties involved, *briefly* describe the relevant transactions and why the applicant or declarant believes that it qualifies for the requested Commission order, and summarize the critical representations and undertakings contained in the application or declaration. As stated in Investment Company Act Release No. 14492 (April 30, 1985), the Commission believes it is very important that proposed notices should be brief as well as informative.

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[1] Release No. 34-16385 (November 29, 1979 (44 FR 70349, 70355).

[2] Sections 13(d), 13(e), 14(d), 14(e) and 14(f) of the Exchange Act. Pub. L. No. 90-439, 82 Stat. 454 (1968).

[3] *See* Release No. 34-22198 (July 1, 1985) proposing for comment Rule 14d-10, pertaining to third-party tender offers; and Release No. 34-22199 (July 1, 1985) proposing for comment amendments pertaining to issuer tender offers.

[1] Rule 0-2(g) under the Investment Company Act of 1950 (17 CFR 270.02(g)) and Rule 0-4(g) under the Investment Advisers Act of 1940 (17 CFR 275.04(g)) currently require that applicants for Commission orders under those acts attach proposed notices as exhibits to the applications. This procedure has worked very well in facilitating the processing of such applications.

[2] It is important that the proposed notice requirement be specifically applicable to filings on Form U-1 since 95% of all applications and declarations requesting orders under the Act are made on that form.

List of Subjects in 17 CFR Part 250 and 259

Reporting and recordkeeping requirements, Public utility holding companies.

Text of Proposed Rule and Form Amendment

The Commission proposes to amend Parts 250 and 259 of Chapter II, Title 17 of the Code of Federal Regulations as set forth below:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for Part 250 continues to read in part as follows: Secs. 3, 20, 49 Stat. 810, 833; 15 U.S.C. 79c, 79t * * *.

2. By adding paragraph (f) to § 250.22 as follows:

§ 250.22 Applications and Declarations.

* * * * *

(f) *Proposed notice.* A proposed notice of the proceeding initiated by the filling of an application or a declaration shall accompany each application or declaration as an exhibit thereto and, if necessary, shall be modified to reflect any amendments to such application or declaration.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

§ 259.101 [Amended]

3. By amending General Instruction C of Form U–1 described in § 259.101 to read as follows:

* * * * *

C. Attention is directed to the provisions of Rule 22 for certain additional procedural requirements, including the proposed notice requirement in Rule 22(f).

* * * * *

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the proposed amendments to Rule 22 and Form U–1 will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

Dated: June 27, 1985.

By the Commission.

John Wheeler,

Secretary.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Rule 22(f) and amended Form U–1 under the Public Utility Holding Company Act of 1935 ("Act") will not have a significant economic impact on a substantial number of small entities. The reason for this certification is as follows: Amended Rule 22(f) would require that all applications and declarations filed with the Commission pursuant to the Act include as an exhibit a proposed notice of the proceeding which is being initiated by the filing. Amended Form U–1 would refer persons using that form to the proposed notice requirement of Rule 22(f), and thus make the filing of proposed notices specifically applicable to such filings. The proposed notice would be patterned after the application or declaration being submitted and would require no additional information. Thus, the amendments would not have a significant economic impact upon applicants. Moreover, the definition of a small business as found in Rule 110 under the Act excludes all holding companies currently registered with the Commission.

Dated: June 27, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85–16131 Filed 7–8–85; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Part 270

[Release No. IC–14607; File No. S7–30–85]

Acquisition and Valuation of Certain Portfolio Instruments by Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and rule amendments.

SUMMARY: The Commission is proposing amendments to an existing rule that provides exemptive relief for money market funds to use the amortized cost method of valuing their portfolio securities or the penny-rounding method of computing their price per share. The proposed amendments would permit funds relying on the rule to acquire put options for liquidity purposes and to treat variable rate or floating rate debt securities with periodic demand features as short-term debt securities under certain conditions. The proposed amendments would also reduce the responsibilities which the existing rule assigns to money market fund directors and would allow money market funds to rely a high quality rating only if the rating is assigned by a nationally recognized statistical rating organization that is unaffiliated with the issuer of or with any insurer, guarantor or provider of credit support for the rated securities.

The Commission is also proposing amendments to an existing rule that exempts certain investment company acquisitions of securities issued by persons engaged in securities related businesses. The rule would be amended to permit money market funds to acquire liquidity puts from persons engaged in securities related businesses under certain conditions. Finally, the Commission is proposing a new rule that would provide exemptive relief to allow registered investment companies to assign a fair value of zero to certain types of put options, known as standby commitments, under certain conditions.

DATE: Comments must be received on or before September 9, 1985.

ADDRESS: Send comments in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. (Reference to File No. (S7–30–85)). All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Jack W. Murphy, Staff Attorney or Elizabeth K. Norsworthy, Chief, (202) 272–2048, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commssion, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is asking for public comment on proposed amendments to rules 2a–7 [17 CFR 270.2a–7] and 12d3–1 [17 CFR 270.12d3–1] and on proposed rule 2a41–1 under the Investment Company Act of 1940 [15 U.S.C. 80a–1, *et seq.*] ("Act"). Rule 2a–7 permits, subject to specified conditions, certain open-end investment companies known as "money market funds" to use either (1) the amortized cost method of valuing their portfolio instruments [1] or (2) the penny-rounding

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[1] A money market fund using the amortized cost method of valuation values its portfolio securities and other assets at acquisiton cost. The interest earned on each portfolio debt security (plus any discount received or less any premium paid upon purchase) is then accrued ratably over the remaining maturity of the security. By declaring these accruals to its shareholders as a daily dividend, the money market fund is able to set a fixed price per share, which is usually $1.00.

method of pricing their securities.[2] Rule 2a–7 requires money market funds using one of the above methods to limit their portfolio investments to instruments that are of high quality and that have a remaining maturity of one year or less. Funds relying on the rule must also maintain an average dollar-weighted portfolio maturity of no more then 120 days. Generally, the maturiy of an instrument is considered to be the maturity remaining on the face of the instrument.[3] However, the rule allows certain types of put options, known as "demand features," to be used to shorten the matrity of instruments that have variable or floating interest rates.[4]

The proposed amendments to rule 2a–7 would permit a money market fund relying on the rule to acquire put options for liquidity purposes only ("liquidity puts") under certain conditions. If adopted, the amendments would define "liquidity puts" to include demand features and "standby commitments," another type of put option that has been the subject of a number of prior exemptive orders. The proposed amendments would also permit funds relying on the rule to use periodic demand features to shorten the maturity of variable and floating rate instruments. In addition, the amendments would reduce the responsibilities related to the acquisition and disposition of demand feature instruments that the existing rule explicitly assigns to money market fund directors. The rule would also be amended to allow money market funds to rely on a high quality rating only if the rating is assigned by a nationally recognized statistical rating organization ("NRSRO") that is not affiliated with the issuer of, or with any insurer, guarantor or provider of credit support for the securities.[5]

The Commission is also proposing an amendment to rule 12d3–1 under the Act [17 CFR 270.12d3–1] to provide exemptive relief from section 12(d)(3) of the Act [15 U.S.C. 80a–12(d)(3)] to allow money market funds to acquire liquidity puts from persons engaged in securities related activities, under certain conditions. Finally, the Commission is proposing a rule under section 2(a)(41) of the Act [15 U.S.C. 80a–2(a)(41)] to allow registered investment companies to assign a fair value of zero to standby commitments under certain conditions.

Background

Rule 2a–7 codified prior exemptive orders permitting money market funds to use the amortized cost method of valuation or the penny-rounding method of pricing. At the time that the rule was adopted, the Commission discussed its application and scope in Investment Company Act Release No. 13380 (July 11, 1983) ("Release 13380"), [48 FR 32555]. In that release, the Commission stated that the rule did not address the acquisition or valuation of "puts or standby commitments" but suggested that these issues might be addressed in a future rule making process. The phrase "puts or stand-by commitments" was considered to encompass all agreements by a third party to purchase, at some future date and at a prescribed price, a security issued by another party.[6] For purposes of rule 2a–7, the Commission distinguished between puts running to a third party and demand features running to the issuer of the underlying security. This distinction was drawn due to the limited information regarding demand features that was available to the Commission staff and to the relatively undeveloped market in variable rate and floating rate instruments subject to those features that existed at the time rule 2a–7 was adopted.[7]

A. Market Changes

Since rule 2a–7 was adopted, a number of market changes have occurred that warrant a re-examination of the types of puts that may be used by money market funds to facilitate portfolio liquidity, including both third-party puts and issuer demand features, and the types of demand features that may be used to shorten the maturity of variable and floating rate instruments. The Commission also believes that market changes warrant amendment of rule 2a–7 to reflect industry practices regarding the role of money market fund directors in the making of decisions concerning demand feature instruments, and the circumstances under which a fund may rely on a high quality rating.

As noted above, rule 2a–7 prohibits money market funds relying on the rule from investing in most debt instruments which have a remaining maturity of more than one year or that will not be called for redemption within one year. However, the rule provides an exception for certain variable and floating rate instruments that are subject to demand features, a type of put option that runs to the issuer of the underlying instrument and allows the holder to obtain the principal amount of the instrument at any time upon no more than seven days' notice.[8] At the time that the rule was adopted, this exception provided a fair depiction of the types of variable and floating rate demand instruments that were available in the market and suitable for investment by funds relying on the rule.[9]

Over the past two years, however, new types of demand features have been developed, particularly with respect to variable or floating rate municipal securities. The Commission staff has been advised that these new demand features have been developed in order to avoid "reissuance" problems under the Internal Revenue Code of 1954 ("IRC"). Specifically, the Commission understands that when the holder of a municipal security exercises an issuer demand feature and the security is put back to the issuer or to a direct agent of the issuer, a subsequent remarketing of the security may constitute a reissuance of the security under the IRC.[10] When

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[2] A money market fund using the penny-rounding pricing method values portfolio securities for which market quotations are readily available at current market value, and other securities and assets at fair value as determined in good faith by the board of directors. The current net asset value per share is then rounded to the nearest one percent, allowing the fund to maintain a fixed price per share (usually $1.00). Penny-rounding funds also use the amortized cost valuation method to value portfolio securities having a remaining maturity of sixty days or less. *See* Investment Company Act Release No. 13380 (July 11, 1983), 48 FR 32555, at footnote 44, *citing* Investment Company Act Release No. 9786 (May 31, 1977), 42 FR 28999.

[3] Specifically, the rule provides that the maturity of an instrument shall be deemed to be the period remaining until the date noted on the face of the instrument as the date on which the principal amount owed must be paid, or in the case of an instrument called for redemption, the date on which the redemption payment must be made. *See* rule 2a–7(b)(5).

[4] Rule 2a–7 also allows a shorter maturity to be used in the case of variable interest rate instruments that are issued or guaranteed by the United States government or an agency thereof, or which are scheduled to be repaid in one year or less. *See* rule 2a–7(b)(5)(i) (A) and (C).

[5] The definition of "variable rate instrument" would also be changed to eliminate any confusion that may have arisen from the terminology used in the present definition, and references to the amortized cost and penny-rounding methods modified to describe these methods more precisely. Further, the parenthetical reference in the rule to "trustees" would be eliminated since the definition of "director" in section 2(a)(12) of the Act [15 U.S.C. 80a–2(a)(12)] specifically includes a member of a board of trustees.

[6] *See* footnote 9 of Release 13380 and accompanying text.

[7] The rule's provision that permits a fund to treat variable and floating rate instruments with demand features as short-term debt securities under certain conditions went beyond a codification of exemptive orders previously issued. *See* footnote 16 of Release 13380 and accompanying text.

[8] *See supra* note 4, discussing other exceptions to the one year remaining maturity requirement of present rule 2a–7.

[9] *See* footnote 20 of Release 13380, *citing* letter from Gerald Osheroff, Associate Director, Division of Investment Management to Joel T. Matcovsky, Merrill Lynch Asset Management, Inc., dated December 10, 1981.

[10] Many municipal securities that are subject to demand features have variable interest rates. When

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this occurs, a municipal issuer may be forced to requalify the security as tax-exempt prior to remarketing it. Moreover, under the amended tax code, the remarketed security may no longer qualify as tax-exempt.

The Commission understands that, in order to avoid the possibility of a reissuance, issuers of municipal securities have begun to structure demand features that do not run directly to the issuer or its agent, but run, in the first instance, to a separate entity that is provided with sufficient third-party credit support to honor the demands.[11] The securities that are put to the separate entity are then remarketed without ever having entered into the possession of the issuer or a direct agent of the issuer. By so structuring the demand feature, the issuer is able to make a more convincing argument that the remarketing of the securities is nothing more than a secondary market transaction and not a reissuance of the securities.

Another market development that has been brought to the Commission's attention is the growth of demand features that give the holder of the underlying debt instrument the right to recover the principal amount of the instrument at specified intervals (*i.e.*, quarterly, semi-annually, etc.) ("periodic demand features").[12] As noted above, the rule 2a–7 currently permits funds relying on the rule to treat as short-term debt securities floating rate or variable rate instruments with demand features that give the holder the right to recover the principal amount of the underlying securities upon no more than seven days' notice ("seven-day demand instruments"). The Commission understands that variable and floating rate instruments are now being marketed with periodic demand features because the cost of servicing these features is lower than the cost of servicing seven-day demand features. As is the case with seven-day demand instruments, it appears that the market values instruments with periodic demand features essentially as short-term debt securities having a maturity equal to the time remaining until a demand may be made or the interest rate adjusted.

The Commission also understands that, at least at the present time, it is primarily municipal securities that are being marketed as variable or floating rate instruments with these demand features. The limitations of the present rule are, therefore, felt most acutely by money market funds that limit their investments to municipal securities ("municipal funds"). As the number of municipal funds has increased, [13] and more variable or floating rate instruments are marketed with third party demand features or periodic demand features, the supply of demand feature instruments that satisfy the existing rule has contracted fairly dramatically.[14] Without a rule amendment, municipal funds will be excluded from a significant segment of the municipal securities market and may be forced to accept a lower yield on their investments.

The Commission's staff has been advised that at least 50% of the securities in municipal fund portfolios are variable or floating rate instruments.[15] Yet, under the existing rule, a fund's board of directors is assigned the responsibility of deciding whether the fund may acquire a variable or floating rate instrument with a demand feature and whether the fund may continue to hold that instrument.[16] Release 13380 permits the directors to delegate these responsibilities, and the Commission understands that this is invariably the case, given the degree to which funds are now investing in demand feature instruments. The Commission believes, therefore, that the rule should be amended to remove these director determinations and provide objective standards.

As noted above, rule 2a–7 conditions exemptive relief upon the quality of the debt instruments that are in a fund's portfolio. The rule states that each portfolio security must have a high quality rating from a major rating service or be determined to be of comparable quality by the board of directors. The Commission believes that the rule's references to "major rating service" should be changed to refer to "nationally recognized statistical rating organization" ("NRSRO"), the term that is used elsewhere in rules and regulations under the federal securities laws.[17] The Commission also believes that a fund should rely on a high quality rating only if the NRSRO is unaffiliated with the issuer of the securities and with any insurer, guarantor or provider of credit support for the securities.

B. Acquisition and Valuation of Standby Commitments

When rule 2a–7 was issued, the Commission's experience with puts on debt instruments that ran to third parties was largely limited to a type of put referred to as a "standby commitment." Beginning in 1981, the Commission began to receive and grant applications for exemptive relief from investment companies issuing redeemable securities, (*i.e.*, open-end management companies and unit investment trusts) to allow those companies to acquire standby commitments for municipal securities from brokers, dealers and other financial institutions in order to facilitate portfolio liquidity. The applicants also requested exemptive relief to allow such standby commitments to be assigned a fair value of zero.[18] All of the applicants have been

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the demand is exercised by a holder, the security will often be remarketed by a remarketing entity, which will adjust the interest rate to make the security more attractive to potential buyers. The remarketing entity is generally limited to choosing a new interest rate within a certain number of basis points above or below a stated index. In a tax context, the ability of the remarketing entity to set a new interest rate, coupled with a demand feature that requires the security to be put back to the issuer or to a direct agent of the issuer, could create the appearance that the remarketed security is a fundamentally different instrument from the original security. Under such circumstances, the remarketing of the security could be deemed a reissuance under the tax law. *See generally*, Winterer, *"Reissuance" and Deemed Exchanges Generally*, 37 Tax Lawyer 509 (1984).

[11] Avoiding the appearance of a reissuance has always been a factor in the structuring of municipal debt issues subject to demand features. However, the extensive changes in the tax code in recent years have made it increasingly difficult for a pre-existing municipal issue to requalify as tax-exempt. Therefore, municipal issuers have become even more wary of structuring demand features that would create the appearance that remarketed securities are reissued securities. *Id.*

[12] Tax considerations have also caused periodic demand features on municipal securities to be structured to run to a third party. *See supra* notes 10–11 and accompanying text.

[13] In 1982 there were 37 municipal money market funds. By the end of 1983, the number had increased to 66 funds. As of April 19, 1985, there were 92 municipal money market funds in existence, managing some $34 billion in assets.

[14] The supply of such instruments has been further reduced by the withdrawal from the tax-exempt note market of project notes issued by local housing authorities and marketed by the Department of Housing and Urban Development ("HUD"). In 1983, total borrowings through project notes totalled $18.42 billion. However, the Deficit Reduction Act of 1984 cast doubt on the tax-exempt status of project notes. As a result, new issues of project notes were halted in August, 1984 and the total volume of such borrowings for 1984 totalled only $11.57 billion. This reduction was partially responsible for a reduction in total short-term tax exempt borrowings in 1984 to $30.54 billion, from the 1983 total of $35.85 billion.

[15] As noted *Supra* in footnote 13, as of April 19, 1985, the total assets of municipal money market funds equalled $34 billion. At least $17 billion of those assets are in demand feature instruments.

[16] *See* rule 2(a)(7)(b)(5) (i) and (ii).

[17] *See* discussion *infra* re rating services.

[18] Generally, the applicants have sought exemptive relief from sections 12(d)(3) and 2(a)(41) of the Act and from rules 2a–4 and 22c–1 under the Act.

municipal funds[19] and, with few exceptions, [20] all have been money-market funds that use the amoritized cost valuation method.

In their applications, the municipal funds have represented that they are continually faced with unique liquidity problems. As in the case of other investment companies issuing redeemable securities, municipal funds must maintain a level of portfolio liquidity that is sufficient to meet redemption requests. However, unlike other funds, municipal funds frequently purchase municipal securities pursuant to delayed delivery contracts.[21] When purchasing securities on a delayed delivery basis, a fund is required to maintain, in a segregated account, liquid assets equal to the purchase price due at settlement.[22]

The applicants have also represented that, because municipal securities usually have a limited range of maturity dates, municipal funds have greater difficulty than other types of funds in assembling a portfolio with securities that mature daily. Consequently, a municipal fund is ofter forced to sell a portion of its portfolio in order to meet redemptions, to retain investment flexibility and to maintain adequate coverage in its segregated accounts.

According to the applicants, the secondary market for certain types of municipal securities is more limited than that for other types of debt instruments. Where a fund holds in its portfolio fixed rate short-term municipal paper, the fund may often have problems selling the paper prior to maturity.[23] Applicants have represented that municipal securities dealers generally tender bids on a transactional basis, and do not continually make a market in the securities. Moreover, achieving same-day settlement on a secondary market sale may often entail a fund accepting a less favorable price for the municipal securities being sold.

As a result of the above liquidity problems, the applicants have maintained that when a fund purchases short-term fixed rate municipal securities from a broker, dealer or other financial institution, it is often in the fund's best interest to acquire at the same time a "standby commitment" allowing the fund to put the securities back to the seller at an agreed-upon price or yield prior to maturity. The exercise price of such commitments equals the amortized cost of the underlying securities at the time of exercise, plus accrued interest, if any. The applicants have represented that the standby commitments will not be used to affect the value of the underlying securities.

According to applicants, municipal funds usually pay nothing or only a nominal consideration for standby commitments.[24] The applicants have stated that the commitments will be exercised only as a last resort, because the broker, dealer or other financial institution would suffer a loss on the transaction if the exercise price is greater than the market value of the underlying securities at the time of exercise. According to applicants, if the broker or dealer suffers a loss on the transaction, the fund is unlikely to acquire any standby commitments from that broker or dealer in the future. Since it is difficult to evaluate whether a standby commitment will ever be exercised, or, if it is exercised, whether the fund will benefit from the transaction, applicants have requested exemptive relief to assign a fair value of zero to the commitments, with any consideration paid to be accounted for as unrealized depreciation.

So that municipal funds will no longer have to file applications for exemptive relief in order to acquire standby commitments, in addition to amending rule 2a–7, the Commission is also proposing an amendment to rule 12d3–1. The proposed amendment would allow a money market fund to acquire standby commitments and other liquidity puts for persons engaged in securities related activities, provided that the fund complies with the conditions of rule 2a–7. The Commission is also proposing rule 2a41–1 to give investment companies exemptive relief to assign a fair value of zero to standby commitments under certain conditions that are based on the prior exemptive orders.

Discussion

A. Amendments to rule 2a–7

1. *Liquidity puts.* As noted above, rule 2a–7 presently allows a money market fund to use either the amortized cost valuation method or the penny-rounding pricing method to maintain a fixed price per share, provided that the fund complies with certain conditions. These conditions include (1) limiting portfolio investments to high quality instruments having a remaining maturity, as determined in accordance with the rule, of one year or less; and (2) maintaining a dollar-weighted average portfolio maturity not exceeding 120 days. The quality and maturity requirements of the rule are designed to ensure that the fixed price per share accurately reflects the fund's actual net asset value per share.[25]

As discussed above, since the adoption of rule 2a–7, a number of changes have occurred in the types of short-term money market instruments available for purchase.[26] The proposed

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[19] Since 1981, at least 60 applications have been filed, and the requested relief granted. *See, e.g.*, Cash Accumulation Trust, Investment Company Act Release Nos. 14177 (October 1, 1984) [49 FR 39256] and 14218 (October 30, 1984); Financial Tax-Free Money Fund, Inc., Investment Company Act Release Nos. 13444 (August 18, 1983) [48 FR 38584] and 13503 (September 13, 1983); Tax-Exempt Money Market Fund, Investment Company Act Release Nos. 12508 (June 25, 1982) [47 FR 29041] and 12552 (July 22, 1982) and Municipal Fund for Temporary Investment, Investment Company Act Release Nos. 11822 (June 19, 1981) [46 FR 33151] and 11867 (July 21, 1981).

[20] *See e.g.*, Hutton Municipal Fund, Inc., Investment Company Act Release Nos. 13154 (April 12, 1983) [48 FR 17006] and 13229 (May 10, 1983), and Security Tax-Exempt Fund, Investment Company Act Release Nos. 13656 (December 6, 1983) [48 FR 55377] and 13686 (January 5, 1984).

[21] By the terms of this type of contract, the fund makes a firm commitment to purchase securities that will be delivered at a later date.

[22] *See* Investment Company Act Release No. 10666 (April 18, 1979) [44 FR 25128] in which the staff of the Division of Investment Management took the position that any firm commitment to purchase securities on a delayed delivery basis would be considered a senior security. Although section 18(f) [15 U.S.C. 80a–18(f)] of the Act does not permit an open-end investment company to issue senior securities, the staff stated that it would not recommend enforcement action if a company maintains liquid assets in a segregated account equal in value to the purchase price due on the settlement date.

[23] Many of the applications have involved standby commitments on project notes issued by local housing authorities and marketed through the Department of Housing and Urban Development. As discussed in footnote 13, *supra*, new issues of project notes were discontinued in August, 1984. However, the Commission has continued to receive applications since that date that refer to standby commitments on other types of municipal securities.

[24] Applicants have represented that the total amount of consideration paid for standby commitments will not exceed ½ of 1% of the value of their total assets, as calculated immediately after acquisition.

[25] Fluctuations in the market value of the portfolio of a money market fund utilizing amortized cost or penny-rounding could result in a net asset value per share that is either higher or lower than the fixed price per share. There are basically two types of risk which cause fluctations in the value of money market fund portfolio instruments: the market risk, which primarily results from fluctuations in the prevailing interest rate, and the credit risk. In general, instruments with shorter periods remaining until maturity have reduced market risks and thus tend to fluctuate less in value over time than instruments with longer periods remaining until maturity. Similarly, instruments which are of higher quality have lower credit risks and tend to fluctuate less in value over time than instruments which are of lower quality.

[26] While the market changes that have occurred have primarily involved the short-term municipal securities market, the proposed amendments to rule 2a–7 would be applicable to all money market funds.

amendments would address these market changes by amending the rule to allow money market funds to acquire put options for liquidity purposes ("liquidity puts") and to use periodic demand features to shorten the maturity of variable and floating rate instruments. The proposed amendments would also reduce the responsibilities which the existing rule assigns to money market fund directors and would allow money market funds to rely on a high quality rating only if the rating is assigned by a NRSRO that is unaffiliated with the issuer of or any insurer, guarantor or provider of credit support for the securities.[27]

The proposed amendments would define a "liquidity put" as a right to sell a specified underlying security or securities within a specified period of time at a certain exercise price. This definition would specifically include standby commitments that entitle the holder to achieve same day settlement and that have an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise. The definition would also include demand features that allow the holder to receive the principal amount of the underlying security or securities plus accrued interest, if any, at the time of exercise, either at any time upon no more than seven days' notice or at specified intervals not exceeding one year and upon no more than seven days' notice. To ensure that these options are acquired only to facilitate portfolio liquidity, the proposed definition would state that a liquidity put may be sold, assigned or otherwise transferred only in conjunction with a sale or transfer of the underlying security or securities.

The amended rule would limit the liquidity puts that a fund may acquire from any one institution. The value of the securities underlying all liquidity puts from the same institution would be limited to five percent of the total value of the fund's portfolio. In case of a fund using the amortized cost valuation method, the total value of the fund's assets would be calculated using the amortized cost of the fund's assets portfolio instruments; in the case of a fund using the penny-rounding pricing method, the total value would be calculated using the market or fair value of the fund's portfolio securities. If adopted, this limitation would prevent a money market fund from relying too heavily upon any one institution to maintain the fund's portfolio liquidity and would supercede the conditions of prior exemptive orders.

The amended rule would require that any liquidity put must satisfy the same high quality standard that is applied to other portfolio securities.[28] Therefore, a standby commitment or a demand feature would have to present minimal credit risks as determined by the board of directors and have received a rating of high quality or, if unrated, be of comparable quality as determined by the fund's board of directors or trustees.[29]

2. *Demand features.* The proposed amendments to rule 2a–7 would allow money market funds to uses periodic demand features, as well as seven-day demand features, to shorten the maturity of underlying securities that have variable or floating interest rates. The amendments would also remove the requirement that a demand feature must run to the issuer of the underlying security or securities.[30] By making these changes, the Commission intends to allow the issuers of variable and floating rate demand instruments[31] to market these securities to money market funds, while retaining maximum flexibility in structuring the put mechanism.

The proposed amendments would allow a fund to use a shorter maturity for a variable or floating rate demand instrument.[32] only if both the long-term and short-term credit aspects of the demand instrument are of high quality.[33] In determining the quality of a demand instrument, the fund may rely on a high quality rating assigned by an unaffiliated NRSRO [34] if the rating organization has considered both the long-term and short-term aspects of the instrument.[35] If only one aspect of the instrument has been rated, or where neither aspect has been rated, the board of directors may determine that any unrated aspect of the instrument is of a quality comparable that of similar instruments which have high quality short-term and long-term ratings.[36]

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[27] If the proposed amendments are adopted, the adopting release would serve as the operative interpretive vehicle for those parts of rule 2a–7 that are amended. Release 13380 would continue to serve as the operative interpretive vehicle for the provisions of rule 2a–7 which remain substantively unchanged.

[28] *See* rule 2a–7 (a)(iv) *and* (b)(iii) and discussion *infra*.

[29] In determining whether an unrated standby commitment, demand feature or other liquidity put is of comparable quality, the fund's board of directors should, of course, examine all relevant data. Examples of relevant data would include such factors as the creditworthiness of the party responsible for paying the exercise price when the put is exercised and the credit support (such as a letter of credit, insurance, or other backup arrangements), if any, provided to ensure timely payment on the put.

[30] The Division of Investment Management has interpreted that provision to mean that a demand feature may also run to an agent of the issuer. *See* letter from Gerald Osheroff, Associate Director, to the Honorable Lee Sherman Dreyfus, Governor of Wisconsin, dated October 22, 1982 (publicly available March 3, 1983).

[31] A variable rate instrument would be redefined as one whose terms provide for the adjustment of its interest rate on set dates and which, upon such adjustment, can reasonably be expected to have a market value that approximates its par value. This definition removes the requirement in the present rule that the adjustment of the interest rate be "automatic" (*see* rule 2a–7(b)(3)). The Commission staff has been informed that the "automatic" terminology of the present rule has caused some confusion in the industry. Many variable rate instruments are structured so that on the date when the interest rate is scheduled to be adjusted, the interest rate is usually changed by a remarketing agent to a new rate which reflects current market rates. Since the remarketing agent often has discretion to set the rate within a given number of basis points above or below an appropriate index of current interest rates uncertainty has arisen as to whether the interest rate adjustment is "automatic" within the meaning of the rule. The proposed amendments would eliminate any confusion resulting from the use of the term "automatic" in the present definition, in order to make it explicit that where the interest rate of an instrument is adjusted in a manner similar to that described above, the instrument would still be considered a variable rate instrument under this rule.

[32] The maturity of a variable rate demand instrument would, under the amendments, be determined in the same manner that is currently used to determine the maturity of such an instrument under the rule. Similarly, the maturity of a floating rate demand instrument would be determined in the same manner as currently used to determine the maturity of that type of instrument under the rule.

[33] The quality of a demand instrument depends both upon the ability of the issuer of the underlying security to meet scheduled payments of principal and interest and upon the availablity of sufficient liquidity to allow a holder of the instrument to recover the principal amount upon exercise of the demand feature. Therefore, the demand instrument combines both long-term and short-term credit risk. In recognition of the dual nature of the credit risks pertaining to such instruments, at least two major rating agencies have begun to assign dual ratings to demand instruments.

[34] *See* discussion *infra* regarding rate agencies.

[35] If both the long-term and short-term credit aspects have been considered, the money market fund may rely on a single high quality rating assigned by a NRSRO.

[36] In determining whether an unrated unlerlying security of a demand feature is of comparable quality, it is anticipated that the board would examine the instrument in a manner similar to that used for securities that are not subject to a demand feature. However, if the demand feature runs to the issuer of the underlying security or if the issuer is ultimately responsible for honoring the demand feature, the board should also examine the effect, if any, that the existence of the demand feature would have on the issuer's long-term creditworthiness. Similarly, in examining the demand feature itself, the board should examine typical short-term credit factors including the existence of sufficient liquidity to enable the principal amount to be recovered in a timely fashion once the demand is made. Such liquidity, of course, may depend upon the short-time creditworthiness of the party responsible for honoring the demand or upon third party credit support agreements such as letters of credit or insurance, or upon a combination of these factors.

There may be situations where a security has been rated by a NRSRO that did not consider the existence of an external agreement to provide credit support, such as a letter of credit from a bank or an insurance policy. Under those circumstances, the fund may consider the security to be an unrated security and the board, taking into account the external agreement, may determine that the security is of comparable quality.[37] Where the instrument has received different ratings from different rating organizations, the rule's requirements would be satisfied if a high quality rating for each aspect has been received from at least one NRSRO.[38]

In the event that either the long-term or the short-term rating of the demand instrument were to fall below high quality or comparable quality as determined by the fund's board of directors, the proposed amendments would require the fund to treat the underlying security as having the maturity indicated on the face of the instrument. If the remaining maturity were in excess of one year, the fund would have to dispose of the underlying security within a reasonable time and in a manner best suited to the fund's interests, whether by exercising the demand feature or by selling the instrument on the secondary market.[39]

Under the present rule, if a money market fund intends to use a demand feature to shorten the maturitry of a variable rate instrument, its board of directors must first determine that whenever a new interest rate is established, it is reasonable to expect that the instrument will have a current market value that approximates its par value.[40] A similar determination is required for a floating rate instrument.[41] Under the amended rule, the directors would no longer have to make these determinations. Instead, these standards would be incorporated into the definitions of variable rate and floating rate instruments.[42]

Under the present rule, the directors are also required to make a quarterly determination that the demand feature instrument is still of high quality.[43] The Commission believes that the directors do not need to be involved in routine quality determinations where the demand feature instrument has a dual high quality rating from an unaffiliated NRSRO. Under the amended rule, fund directors would no longer have the day-to-day responsibility of determining whether the fund should acquire and continue to hold a demand feature instrument, unless the short-term or long-term aspects of the instrument are unrated. In that case, as is the case with any unrated debt security under the rule, the directors would have to determine that the instrument is of comparable quality.

3. *Rating services.* As noted above, rule 2a–7 presently requires that a money market fund limit its portfolio investments to instruments that have received a high quality rating from any major rating service or which are of comparable quality as determined by the fund's board of directors. To conform rule 2a–7 to other rules and regulations under the federal securities laws,[44] the proposed amendments would replace references to a "major rating service" with references to a "nationally recognized statistical rating organization (NRSRO")," as that term is used in the Commission's net capital rule.[45] The amended rule would allow money market funds to rely on a high quality rating assigned by a NRSRO only if the rating organization is unaffiliated with the issuer of, and any insurer, guarantor or provider of credit support (e.g. letters of credit) for, the rated securities. Although the concept of independence is implicit in the term NRSRO, the Commission believes that, for the purposes of rule 2a–7, independence should be defined within the context of the Act. Accordingly, the amended rule would require that a NRSRO may not be an "affiliated person"; of the issuer of, or any insurer, guarantor or provider of credit support for, the rated securities. The term "affiliated person" is defined in section 2(a)(3) of the Act [15 U.S.C. 80a–2(a)(3)].

B. Proposed Amendment to Rule 12d3–1

Section 12(d)(3) of the Act [15 U.S.C. 80a–12(d)(3)] prohibits any registered investment company and any company or companies controlled by such registered investment company from purchasing or otherwise acquiring any security issued by or any other interest in the business of any person who is a broker, a dealer, an investment adviser to an investment company, an investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*] or who is engaged in the business of underwriting (collectively "securities related businesses"). The Commission recently adopted revised rule 12d3–1 under section 12(d)(3) to enable registered investment companies to acquire securities issued by persons engaged in securities related businesses under certain conditions.[46] That revised rule provides a blanket exemption for investment company acquisitions of the securities of issuers that derive 15% or less of their gross revenues from securities related activities, and a conditional exemption for the acquisition of securities of issuers deriving more than 15% of their gross revenues from such activities.

As noted above, municipal funds must obtain exemptive relief from section 12(d)(3) to acquire standby commitments from persons engaged in securities related businesses. So that money market funds will no longer have to file applications for exemptive relief to acquire standby commitments or other types of liquidity puts, the Commission is proposing an amendment to rule 12d3–1 that would allow these acquisitions, provided that the acquiring company complies with rule 2a–7 as amended. This would permit a money market fund to acquire standby commitments and demand features from persons engaged in securities related activities, as long as the value of the securities underlying the puts from any one institution does not exceed 5% of the total value of the fund's portfolio and as long as the liquidity puts meet the quality conditions of rule 2a–7. The amended rule would supersede prior exemptive orders.

C. Proposed Rule 2a41–1

As discussed above, since it is difficult to evaluate whether a standby

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[37] *See* Release 13380, footnotes 34–35.

[38] *Id.*

[39] *See* Release 13380, footnote 22. Of course, if the remaining maturity of the underlying security were less than one year, or if the redemption date were within one year, the fund could continue to hold the underlying security and assign a maturity equal to the remaining maturity or the period until the redemption date.

[40] *See* rule 2a–7(b)(5)(i)

[41] In the case of a floating rate instrument, the board must determine that it is reasonable to expect that the floating rate feature will ensure that the market value of the instrument will always approximate its par value. *See* rule 2a–7(b)(5)(ii)(A).

[42] Of course, the amended rule would not alter the responsibility of the board of directors to monitor the performance of the fund's investment adviser. This responsibility would continue to include the duty to review and monitor the appropriateness of the standards used by the adviser in making determinations concerning the purchase, retention and disposition of variable and floating rate demand instruments.

[43] *See* rule 2a–7 (b)(5)(i)(B) *and* (b)(5)(ii)(B).

[44] *See, e.g.*, rule 134 [17 CFR 230.134] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*], the general instructions to regulation S–K under that Act [17 CFR 229.10] and the eligibility requirements for use of form S–3 under that Act [17 CFR 239.13].

[45] *See* rule 15c3–1(c)(2)(vi)(F) [17 CFR 240.15c3–1(c)(2)(iv)(F)] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*]

[46] *See* Investment Company Act Release No. 14036 (July 13, 1984) [49 FR 29362] adopting the revised rule.

commitment will ever be exercised or, if it is exercised, whether the fund will benefit from the transaction, a number of municipal funds have requested and received exemptive relief to assign a fair value or zero to these instruments. Proposed rule 2a41–1 would allow an investment company's board of directors to make this fair value determination as long as the standby commitment is not used to affect the value of the underlying security or securities and as long as any consideration paid for the standby commitment is accounted for as unrealized depreciation. For example, a money market fund relying on the rule could not use the standby commitment to affect the market value of the underlying securities for purposes of monitoring any deviation between the fixed price per share and its current value per share. The rule, if adopted, would supersede prior exemptive order.[47]

Request for Comment

The Commission is requesting general comment on any other issues relating to rule 2a–7 or the acquisition and use of put options by registered investment companies that have not been addressed in this release.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Proposed Rule Amendments

The proposed amendments to rules 2a–7 and 12d3–1 and proposed rule 2a41–1 would be adopted pursuant to the authority granted the Commission in sections 6(c) [15 U.S.C. 80–6(c)], 22(c) [15 U.S.C. 80a–22(c)] and 38(a) [15 U.S.C. 80a–37(a)] of the Act.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown.

1. The authority citation for Part 270 continues to read in part as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a–37 80c–80 * * *

2. By revising paragraphs (a)(1), (a)(2)(i), (ii), and (iv), revising and redesignating (a)(2)(v) as (vi), redesignating (a)(2)(vi) as (vii), adding a new paragraph (a)(2)(v), revising (a)(3)(i) and (iii), adding (a)(3)(iv), revising paragraph (b) and adding paragraph (c) of § 270.2a–7 as follows:

§ 270.2a–7 Use of the amortized cost valuation and penny-rounding pricing methods by certain money market funds.

(a) * * *

(1) The board of directors of the money market fund determines, in good faith based upon a full consideration of all material factors, that it is in the best interest of the fund and its shareholders to maintain a fixed price per share, by using the amortized cost method of valuation or the penny-rounding method of pricing, and that the money market fund will continue to use such method or methods only so long as the board of directors believes that it fairly reflects the market based net asset value per share; and either

(2) * * *

(i) In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market funds's investment adviser, the money market fund's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to assure to the extent reasonably practicable that the fund's price per share, as computed for the purpose of distribution, redemption and repurchase, fairly reflects the market based net asset value per share.

(ii) Included within the procedures to be adopted by the board of directors shall be the following:

(A) Procedures adopted whereby the extent of deviation, if any, of the current net asset value per share calculated using available market quotations (or an appropriate substitute which reflects current market conditions) from the money market fund's amortized cost price per share, will be determined at such intervals as the board of directors deems appropriate and are reasonable in light of current market conditions; periodic review by the board of directors of the amount of the deviation as well as the methods used to calculate the deviation; and maintenance of records of the determination of deviation and the board's review thereof.

(B) In the event such deviation from the money market fund's amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors will promptly consider what action, if any, should be initiated by the board of directors, and

(C) Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

* * * * *

(iv) The money market fund will limit its portfolio investments, including liquidity puts and repurchase agreements, to those United States dollar-denominated instruments which the board of directors determines present minimal credit risks and which are of "high quality" as determined by any unaffiliated nationally recognized statistical rating organization or, in the case of any instrument that is not rated, of comparable quality as determined by the board directors;

(v) Immediately after the acquisition of any liquidity put, the money market fund will not have invested more than 5 percent of the total amortized cost value of its assets in securities underlying liquidity puts from the same institution;

(vi) The money market fund will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (a)(2)(i) of this section and the money market fund will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with section 31(b) of the Act [15 U.S.C. 80a–30(b)] as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act [15 U.S.C. 80a–30(a)];

* * * * *

(3) * * *

(i) In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to assure to the extent

[47] If the proposed rule is adopted, the Commission proposes to give notice to all funds with standby commitment exemptive orders of its intention to amend those orders to bring them into conformity with the rule.

reasonably practicable, taking into account current market conditions affecting the money market fund's investment objectives, that the money market fund's price per share as computed for the purpose of distribution, redemption and repurchase, fairly reflects the market-based net asset value per share.

* * * * *

(iii) The money market fund will limit its portfolio investments, including liquidity puts and repurchase agreements, to those United States dollar-denominated instruments which the board of directors determines present minimal credit risks and which are of "high quality" as determined by any unaffiliated nationally recognized statistical rating organization, or, in the case of an instrument that is not rated, of comparable quality as determined by the board of directors.

(iv) Immediately after the acquisition of any liquidity put, the money market fund will not have invested more than 5 percent of the total market-based value of its assets in securities underlying liquidity puts from the same institution.

(b) For the purposes of this rule, the maturity of a portfolio instrument shall be deemed to be the period remaining until the date noted on the face of the instrument as the date on which the principal amount owed must be paid, or in the case of an instrument called for redemption, the date on which the redemption payment must be made, except that:

(1) An instrument that is issued or guaranteed by the United States government or any agency thereof which has a variable rate of interest readjusted no less frequently than annually may be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate.

(2) A variable rate instrument, the principal amount of which is scheduled on the face of the instrument to be paid in one year or less, may be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate.

(3) A variable rate instrument that is subject to a demand feature may be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand, as long as such demand instrument continues to receive a short-term and a long-term high quality rating from an unaffiliated nationally recognized statistical rating organization or, if not rated, is determined to be of comparable quality by the board of directors.

(4) A floating rate instrument that is subject to a demand feature may be deemed to have a maturity equal to the period remaining until such principal amount can be recovered through demand, as long as such demand instrument continues to receive a short-term and a long-term high quality rating from an unaffiliated nationally recognized statistical rating organization or, if not rated, is determined to be of comparable quality by the board of directors.

(5) A repurchase agreement may be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or where no date is specified, but the agreement is subject to demand, the notice period applicable to a demand for the repurchase of the securities.

(6) A portfolio lending agreement may be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where no date is specified, but the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(c) *Definitions.* (1) The "amortized cost method of valuation" is the method of calculating an investment company's net asset value whereby portfolio securities are valued by reference to the fund's acquisition cost as adjusted for amortization of premium or accumulation of discount rather than by reference to their value based on current market factors.

(2) The "penny-rounding method pricing" is the method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(3) A "liquidity put" is a right to sell a specified underlying security or securities within a specified period of time and at a specified exercise price, that may be sold, transferred or assigned only with the underlying security or securities, and includes:

(i) A standby commitment that entitles the holder to achieve same day settlement and to receive an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise; and

(ii) A demand feature that entitles the holder to receive the principal amount of the underlying security or securities plus accrued interest, if any, at the time of exercise, and which may be exercised either (A) at any time, upon no more than seven days' notice; or (B) at specified intervals not exceeding one year and upon no more than seven days's notice.

(4) A variable rate instrument is one whose terms provide for the adjustment of its interest rate on set dates and which, upon such adjustment, can reasonably be expected to have a market value that approximates its par value.

(5) A floating rate instrument is one whose terms provide for the adjustment of its interest rate whenever a specified interest rate changes and which, at any time, can reasonably be expected to have a market value that approximates its par value.

(6) The term unaffiliated nationally recognized statistical rating organization shall mean any nationally recognized statistical rating organization, as that term is used in rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 [17 CFR 240.15c3–1(c)(2)(vi)(F)], that is not an affiliated person of the issuer of, or any insurer, guarantor or provider of credit support for, the instrument which the money market fund is considering acquiring.

(7) "One year" shall mean 365 days except, in the case of an instrument that was originally issued as a one year instrument, but had up to 375 days until maturity, one year shall mean 375 days.

3. By adding § 270.2a41–1 to read as follows:

§ 270.2a41–1 Valuation of standby commitments by registered investment companies.

A standby commitment as described in rule 2a–7(c)(3)(i) under the Act [17 CFR 270.2a–7(c)(3)(i)] may be assigned a fair value of zero, *Provided,* That:

(a) The standby commitment is not used to affect the company's valuation of the security or securities underlying the standby commitment; and

(b) Any consideration paid by the company for the standby commitment, whether paid in cash or by paying a premium for the underlying security or securities, is accounted for by the company as unrealized depreciation.

4. By amending § 270.12d3–1 by adding new paragraph (d)(8)(v) to read as follows:

§ 270.12d3–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

* * * * *

(d) * * *

(8) * * *

(v) Acquistion of liquidity puts, as defined in rule 2a–7 under the act [17

CFR 270.2a–7] in compliance with the provisions of that rule.

* * * * *

Regulatory Flexibility Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (15 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amendments to rules 2a–7 and 12d3–1 and proposed rule 2a4–1 will not, if adopted, have a significant impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Dated: July 1, 1985.

By the Commission.

John Wheeler,

Secretary.

Regulatory Flexibility Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to rules 2a–7 (17 CFR 270.2a–7) and 12d3–1 (17 CFR 270.12d3–1), and proposed rule 2a41–1 under the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a–1, et. seq.), set forth in Investment Company Act Release No. 14607, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendments to rule 2a–7 would simply allow certain open-end investment companies, known as "money market funds" to acquire put options for the purpose of enhancing the liquidity of their portfolio securities, and would define the circumstances under which such put options could affect the maturity of those securities. While the primary effect of these amendments would be to expand the class of securities in which municipal money market funds could invest, it does not appear that the economic impact of the amendments upon small entities would be significant. The proposed amendments would also redefine the role of the board of directors required by rule 2a–7, thereby clarifying the extent to which such determinations may be delegated to the management of such companies, and incorporating present industry practices into the text of the rule. This change would not appear to have any significant economic impact. The proposed amendments to rule 2a–7 would also allow money market funds to acquire portfolio securities in reliance on a high quality rating only if the rating is assigned by a nationally recognized statistical rating organization that is unaffiliated with the issuer of, or any insurer, guarantor or provider of credit support for the rated securities. It does not appear that any funds that are small entities are purchasing securities in reliance upon ratings that would not qualify under the proposed amendments. Proposed rule 2a41–1 and the proposed amendment to rule 12d3–1 would codify certain prior exemptive orders allowing investment companies to acquire a type of put option known as standby commitments and to assign a fair value of zero to such commitments. While the proposed rule and rule amendments would make it unnecessary for municipal funds to file applications for exemptive relief, it does not appear that a substantial number of small entities would be seeking such relief, since most of the funds seeking to acquire standby commitments and value them at zero have already applied for and received exemptive relief.

Dated: July 1, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85–16246 Filed 7–8–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8–85–12]

Drawbridge Operation Regulation; Bayou Sara, AL

AGENCY: U.S. Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Seaboard System Railroad, the Coast Guard is considering a change in the regulation governing the operation of the swing span railroad bridge over Bayou Sara, mile 0.1, near Saraland, Mobile County, Alabama, by requiring that at least eight hours advance notice be given for an opening of the draw from 6 p.m. to 10 .m. The bridge would open on signal outside these hours. Presently, the draw is required to open on signal from 6 a.m. to 10 p.m. and on four hours advance notice from 10 p.m. to 6 a.m., except that, during periods of severe storms or hurricanes the draw is required to open on signal. This proposal is being made because of infrequent requests to open the draw during the proposed advance notice period. This action should relieve the bridge owner of the burden of having a person available at the bridge between 6 p.m. and 10 a.m., and should still provide the reasonable needs of navigation.

DATE: Comments must be received on or before August 23, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. This proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 3.0 feet above high water and 5.0 feet above low water. There are, on average, twelve (12) trains crossing the bridge daily. Navigation through the bridge consists of tugs with tows and pleasure boats. Data submitted by Seaboard System Railroad for the 12-month period from January 1984 through December 1984 show that this traffic through the bridge is as follows:

(1) During the proposed advance notice period of 6 p.m. to 10 a.m., there were 53 bridge openings—an average of 4.4 openings per month or an average of one opening every seven days.

(2) During the remaining hours between 10 a.m. and 6 p.m. when the draw would continue to open on signal, there were 134 bridge openings—an average of 11.2 openings per month or

an average of two openings every five days.

The advance notice for an opening of the draw would be given to the railroad Chief Dispatcher's office in Mobile, Alabama, by placing a collect call at any time, telephone (205) 432–0725. To provide for leeway in the appointed arrival time, Seaboard System Railroad would have a tender at the bridge at least one-half hour before the appointed time who would remain at least one-half hour after that time for a late arriving vessel.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation Regulatory policies and procedures (44 FR 11034, February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the average number of vessels passing this bridge during the proposed advance notice period, 6 p.m. to 10 a.m., is one vessel every seven days. These vessels can reasonably give advance notice for a bridge opening by placing a collect call to the railroad Chief Dispatcher at any time. The mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrival at the bridge at the appointed time during the proposed advance period should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

2. Section 117.105 is revised to read as follows:

§ 117.105 Bayou Sara.

The draw of the Seaboard System Railroad bridge, mile 0.1 near Saraland, shall open on signal; except that, from 6 p.m. to 10 a.m., the draw shall open on signal if at least eight hours notice is given. During periods of severe storms or hurricanes, from the time the National Weather Service sounds an "alert" for the area until the "all clear" is sounded, the draw shall open on signal.

Dated: June 26, 1985.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 85–16253 Filed 7–8–85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7–85–20]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Manatee County, the Coast Guard is considering a change to the regulations governing the Cortez and Anna Maria drawbridges which would extend the periods during which openings may be limited. This proposal is being made because traffic has increased. This action should accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before August 23, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 S.W. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 S.W. 1st Avenue, Room 816, Miami, Florida 33130. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, (305) 350–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

Both bridges are presently required to open on signal except from 10 a.m. to 5 p.m., Saturdays, Sundays, and holidays when they need open only a quarter-hour intervals. The proposed regulations would lengthen this weekend regulated period by two hours (9 a.m. to 6 p.m.) and, for the Cortez bridge only, apply identical regulations on weekdays December through May. These changes are proposed because data provided by Manatee County shows significant vehicular traffic delays during these periods.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regualtory evaluation is unnecessary. We conclude this because the proposal will exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, to read as follows:

1. The authority citation for Part 119 continues to read as follows:

Authority: 33 U.S.C. 499 CFR 1.46 and 33 CFR 1.05–1(g).

2. It is proposed to revise § 117.287 by revising paragraph (d) and adding a new paragraph (d–1) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.287 Gulf Intracoastal Waterway, Calcoosahatchee River to Perdido River.

* * * * *

(d) The draw of the Cortez (SR 684) bridge, mile 87.4, shall open on signal; except that, from 9 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. From December 1 to May 31, Monday through Friday except federal holidays, from 9 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

(d–1) The draw of the Anna Maria (SR 64) bridge, mile 89.2, shall open on signal except that from 9 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour.

* * * * *

Dated: June 25, 1985.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 85–16254 Filed 7–8–85; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Examination of Postage Meters Not Set During 6 Month Period

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The purpose of this document is to propose changes to the postage meter regulations. These changes propose new follow-up notification procedures for postmasters to take when customers do not submit their postage meters for required six month examinations.

DATE: Comments must be received on or before August 8, 1985.

FOR FURTHER INFORMATION CONTACT: F.E. Gardner, (202) 245–5758.

SUPPLEMENTARY INFORMATION: Present regulations require review of Form 3610, Record of Postage Meter Settings, quarterly. If no settings have been made during the previous six months, meter licensees are advised to bring the meters in for examination.

This change would establish that the first such advisory must be in writing, with a subsequent follow-up in 15 days. The minimum time from when the first written notice is sent until a meter license may be revoked under these procedures would be 40 days. See DMM 144.232. In actual practice, it would average closer to three months after the end of the six month period in which the meter had not been reset.

The present system is not working because the method of original notification is not specified and there are no follow-up procedures. This results in meters not being examined for periods of over a year, which adversely affects protection of postal revenue because of the possible improper use of meters.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

PART 144—POSTAGE METERS AND METER STAMPS

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 CFR Parts 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973cc–13, 1973cc–14.

2. Revise 144.62 to read as follows:

144.62 Examination.

a. Review Forms 3610 quarterly. If no settings have been made during the previous six months, advise the local meter licensees in writing to bring in meters which have not been set in this period for examination, as specified in 144.341. When the meter is set at another office, request the office which sets the meter to have it called in for examination. The office where the meter is set will then advise the office where Form 3610 is maintained of the results of the examination, including register readings at the time of examination, so a suitable entry can be made on Form 3610.

b. Customers who do not bring in their meters after the initial written notification must be approached again within 15 days, preferably by personal contact. If no response is received within another 15 days, the postmaster must notify the meter license holder that the license is to be revoked, following the procedures for revocation in 144.23. A Form 1603, Meter and Verification Card, or similar form must not be used as a method of verification and examination.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85–16274 Filed 7–8–85; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status and Critical Habitat for the Least Bell's Vireo

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that three public hearings will be held on the proposed determination of endangered status and critical habitat for the least Bell's vireo (*Viero bellii pusillus*) and that the comment period on the proposal is reopened. This bird is found in southwestern California and northwestern Baja California. The hearings and the reopening of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The hearings are scheduled as follows:

1. July 30, 1985, 7:00–9:00 p.m., San Diego, California
2. July 31, 1985, 7:00–9:00 p.m., Oxnard, California
3. August 1, 1985, 7:00–9:00 p.m., Anaheim, California

The comment period, which originally closed on July 2, 1985, now closes August 30, 1985.

ADDRESSES: The hearings will be held at the following locations:

1. July 30, 1985—Plaza International Hotel, 1515 Hotel Circle South, San Diego, CA 92108
2. July 31, 1985—Oxnard Hilton Inn, 600 Esplanda Drive, Oxnard, CA 93030
3. August 1, 1985—Inn at the Park, 1855 South Harbor, Anaheim, CA 92802

Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street,

Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: For information on the public hearing contact Gail Kobetich, Project Leader, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/978–4866 or FTS 460–4866).

SUPPLEMENTARY INFORMATION:

Background

The least Bell's vireo is a small, gray, migratory songbird dependent upon thickets along willow-dominated riparian habitats for nesting. The bird is endangered by habitat alteration and nest parasitism by the brownheaded cowbird. A proposal of endangered status with critical habitat for the least Bell's vireo was published in the **Federal Register** (50 FR 18968) on May 3, 1985.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On June 7, 1985, a request for a public hearing on this proposal was received from Mr. Joel D. Kuperberg, Attorney at Law, Costa Mesa, California, representing the Orange County Water District. The Service has scheduled the hearings for: (1) July 30, 1985—Plaza International Hotel, 1515 Hotel Circle South, San Diego, California from 7:00 to 9:00 p.m.; (2) July 31, 1985—Oxnard Hilton Inn, 600 Esplanada Drive, Oxnard, California from 7:00–9:00 p.m.; and (3) August 1, 1985—Inn at the Park, 1855 South Harbor, Anaheim, California from 7:00–9:00 p.m.. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present that evening necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

The comment period on the proposal originally closed on July 2, 1985. In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may now be submitted until August 30, 1985, to the Service office in the Addresses section.

Author

The primary author of this notice is Wayne S. White, Chief, Division of Endangered Species, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: July 2, 1985.

Richard Myshak,

Regional Director.

[FR Doc. 85–16228 Filed 7–8–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 131
Tuesday, July 9, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1985 through June 30, 1986

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals served in centers, the food service payment rates for meals served in day care homes, and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child Care Food Program (CCFP).

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Divisions, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291, and has been classified as not major because it does not meet any of the three criteria identified under the executive Order. The action announced in the notice will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with Foreign-based enterprises in domestic or foreign markets.

This notice has also been reviewed for compliance with the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This notice merely complies with a Congressional mandate to adjust reimbursement rates in the CCFP to allow for changes in the Consumer Price Index, thereby maintaining constancy in the Program.

This notice is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V (48 FR 29112, June 24, 1983)).

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the *Paperwork Reduction Act of 1980* (44 U.S.C. 3587).

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CCFP (7 CFR Part 226).

Background

Pursuant to sections 11 and 17 of the National School Lunch Act, section 4 of the Child Nutrition Act and § 226.4, § 226.12 and § 226.13 of the regulations governing the CCFP (7 CFR Part 226), notice is hereby given of the new payment rates of participating institutions. These rates shall be in effect during the period July 1, 1985-June 30, 1986.

As provided for under the National School Lunch Act and the Child Nutrition Act, all rates in the CCFP must be prescribed annually on July 1 to reflect changes in the Consumer Price Index (CPI) for the most recent 12-month period. In accordance with this mandate, the Department last adjusted the national average payment rates for centers, the food service payment rates for day care homes and the administrative remibursement rates for sponsors of day care homes on July 1, 1984.

All States Except Alaska and Hawaii

Meals Served in Centers—Per Meal Payment Rates in Cents:	
Breakfasts:	
Paid	9.75
Free	68.00
Reduced	38.00
Lunches and Suppers:	
Paid	12.50[1]
Free	117.75 + paid = 130.25[1]
Reduced	130.25 − 40.00 = 90.25[1]
Supplements:	
Paid	3.25
Free	35.75
Reduced	18.00
Meals Served in Day Care Homes—Per Meal Payment Rates in Cents:	
Breakfasts	57.00
Lunches and Suppers.	111.75
Supplements	33.25
Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes— Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes.	50
Next 150 day care homes.	38
Next 800 day care homes.	30
Additional day care homes.	26

[1]These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

Pursuant to section 12(f) of the NSLA, the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

Alaska

Alaska—Meals Served in Centers—Per Meal Payment Rates in Cents:	
Breakfasts:	
Paid	16.00
Free	110.25
Reduced	80.25
Lunches and Suppers:	
Paid	20.25[1]
Free	190.75 + paid = 211.00[1]
Reduced	211.00 − 40.00 = 171.00[1]
Supplements:	
Paid	5.25
Free	58.00
Reduced	29.00

Alaska—Continued

Alaska—Meals Served in Day Care Homes—Per Meal Payment Rates in Cents:	
Breakfasts	92.25
Lunches and Suppers.	181.00
Supplements	54.00
Alaska—Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes.	81
Next 150 day care homes.	62
Next 800 day care homes.	48
Additional day care homes.	43

[1]These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

The new payment rates for Hawaii are as follows:

Hawaii

Hawaii—Meals Served in Centers—Per Meal Payment Rates in Cents:	
Breakfasts:	
Paid	11.50
Free	79.50
Reduced	49.50
Lunches and Suppers:	
Paid	14.75[1]
Free	137.75+paid=152.50[1]
Reduced	152.50−40.00=112.50[1]
Supplements:	
Paid	3.75
Free	41.75
Reduced	21.00
Hawaii—Meals Served in Day Care Homes—Per Meal Payment Rates in Cents:	
Breakfasts	66.50
Lunches and Suppers.	130.75
Supplements	39.00
Hawaii—Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes.	59
Next 150 day care homes.	45
Next 800 day care homes.	35
Additional day care homes.	31

[1]These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published seperately in the Federal Register.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 3.8 percent increase during the 12-month period May 1984 to May 1985 (from 332.6 in May 1984 to 345.1 in May 1985) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 3.7 percent increase during the 12-month period May 1984 to May 1985 (from 309.7 in May 1984 to 321.3 in May 1985) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

AUTHORITY: Secs. 4, 8, 11 and 17 of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759(a), 1766) and sec. 4 of the Child Nutrition Act, as amended, (42 U.S.C. 1773).

(Catalog of Federal Domestic Assistance Program No. 10.558)

Dated: July 3, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-16224 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-30-M

National School Lunch, Special Milk, and School Breakfast Programs;National Average Payments/ Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to the "national average payments," the amount of money the Federal Government provides States for lunches and breakfasts served to children participating in the National School Lunch and School Breakfast Programs. The Department also announces adjustments in the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the school lunch program. Further, this Notice announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in *only* the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the school lunch and school breakfast programs reflect changes in the food away from home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for milk reflects changes in the Producer Price Index for Fresh Processed Milk. These payments and rates are in effect from July 1, 1985 to June 30, 1986.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTAL INFORMATION:

Classification

This Notice has been reviewed under Executive Order 12291 and has not been classified as major because it does not meet any of the three criteria identified under the Executive Order. The action announced in this Notice will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices and will not have a significant impact on competition, employment, investment, productivity, innovation or on the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

This notice is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29112, June 24, 1983).

This Notice has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service has certified that this action will not have a significant adverse economic impact on a substantial number of small entities.

This notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the National School Lunch Program (7 CFR Part 210), the regulations for the Special Milk Program (7 CFR Part 215), the regulations for School Breakfast Program (7 CFR Part 220) and the regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR Part 245).

Background

Special Milk Program for Children.—Pursuant to section 3 of the Child

Nutrition Act, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in *only* the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fresh Processed Milk.

For the period July 1, 1985 to June 30, 1986, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in *only* the Special Milk Program is 9.5 cents. This reflectes an increase of 2.26 percent in the Producer Price Index for Fresh Processed Milk during the period May 1984 to May 1985.

As a reminder, schools or institutions with pricing programs which elect to serve milk to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs.—Pursuant to section 11 of the National School Lunch Act, as amended (42 U.S.C. 1759a), and section 4 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors, and to the maximum Federal reimbursement rates for lunches served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Lunch Payment Factors.—Section 4 of the National School Lunch Act provides general cash for food assistance payments to States to assist shcools in purchasing food. There are two section 4 National Average Payment Factors (NAPFs) for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served in school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served in school food authorities in which 60 percen or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 NAPF for each reduced price lunch served is set at *40* cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the National School Lunch Act, maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates ensure equitable disbursement of Federal funds to school food authorities.

Breakfast Payment Factors.—Section 4 of the Child Nutrition Act of 1966, as amended, establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4 and section 11 National Average Payment Factors and maximum payments are in effect through June 30, 1986. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The Virgin Islands, Puerto Rico and the Pacific Territories use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors.—In school food authorities which served *less than 60 percent* free and reduced price lunches in School Year 1983–84, the payments are: *Contiguous States*—12.50 cents, maximum rate 20.50 cents; *Alaska*—20.25 cents, maximum rate 32 cents; *Hawaii*—14.75 cents, maximum rate 23.75 cents.

In school food authorities which served *60 percent or more* free and reduced price lunches in School Year 1983–84, payments are: *Contiguous States*—14.50 cents; maximum rates 20.50 cents; *Alaska*—22.25 cents, maximum rate 32 cents; *Hawaii*—16.75 cents, maximum rate 23.75 cents.

Section 11 National Average Payment Factors—Contiguous States—free lunch 117.75 cents, reduced price lunch 77.75 cents; *Alaska*—free lunch 190.75 cents, reduced price lunch 150.75 cents; *Hawaii*—free lunch 137.75 cents, reduced price lunch 97.75 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: *Contiguous States*-free breakfast 38 cents, reduced price breakfast 9.75 cents; *Alaska*—free breakfast 110.25 cents, reduced price breakfast 80.25 cents, paid breakfast 16 cents; *Hawaii*—free breakfast 79.50 cents, reduced price breakfast 49.50 cents, paid breakfast 11.50 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast 81.75 cents, reduced price breakfast 51.75 cents, paid breakfast 9.75 cents; *Alaska*—free breakfast 132.50 cents, reduced price breakfast 102.50 cents, paid breakfast 16 cents; *Hawaii*—free breakfast 95.75 cents, reduced price breakfast 65.75 cents, paid breakfast 11.50 cents.

Payment Chart

The following chart illustrates: the lunch National Average Payment Factors with the Sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate.

All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the Virgin Islands, Puerto Rico and the Pacific Territories are those specified for the contiguous States.

SCHOOL PROGRAMS—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

(Expressed in dollars or fractions thereof)

(Effective from July 1, 1985–June 30, 1986)

National school lunch program [1]		Less than 60 percent	60 percent or more	Maximum rate
Contiguous states	Paid	.1550	.1450	.2050
	Reduced price	.9025	.8225	1.0725
	Free	1.3025	1.3225	1.4725
Alaska	Paid	.2025	.2225	.32
	Reduced price	1.71	1.73	1.9725
	Free	2.11	2.13	2.3725
Hawaii	Paid	.1475	.1675	.2375
	Reduced price	1.1250	1.1450	1.32
	Free	1.5250	1.5450	1.72

[1] Payments listed for Free and Reduced Price Lunches include both Section 4 and 11 funds.

School Breakfast program		Non-severe need	Severe need
Contiguous states	Paid	.0975	.0975
	Reduced price	.56	.5175
	Free	.66	.8175
Alaska	Paid	.16	.16
	Reduced price	.8025	1.0250
	Free	1.1025	1.3250
Hawaii	Paid	.1150	.1150
	Reduced price	.4950	.6575
	Free	.7950	.9575

Special milk program	All milk	Fluid milk	Flavored milk
Pricing programs without free option	$0.095	(1)	(1)
Pricing programs with free option	(1)	$0.095	(1)
Nonpricing programs	.095	(1)	(1)

[1] NA.
[2] Average cost ½ pint milk.

(Catalog of Federal Domestic Assistance Nos. 10.553, and 10.555 and 10.556)

Authority: Sections 4, 8, and 11 of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759(a)) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773).

Dated: July 3, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-16225 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Mono Basin National Forest Scenic Area Advisory Board; Meeting

The Mono Basin National Forest Scenic Area Advisory Board will meet at 8:30 a.m. on July 31, 1985, at the Lee Vining Presbyterian Church, Lee Vining, California. The agenda of the meeting will include: Review and recommendation of Private Land Guidelines; Visitor Center Sites; Update by the District Ranger.

The meeting will be open to the public. Persons who wish to attend and make oral presentation should notify Eugene E. Murphy, Forest Supervisor, Inyo National Forest, 873 N. Main Street, Bishop, California, 93514, Telephone: (619) 873-5841. Written statements may be filed with the Committee before or after the meeting.

The Committee has established the following rules for public participation: After the Board has completed discussion of each topic, the public will be allowed time for questions or comment.

Dated: July 1, 1985.

Eugene E. Murphy,

Forest Supervisor and Chairman.

[FR Doc. 85-16316 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-11-M

Montana; Gallatin National Forest Plan Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Extension of public review period for the Gallatin National Forest Plan Draft Environmental Impact Statement and legislative DEIS for the Montana Wilderness Study Act (Pub. L. 95-150) area, Hyalite-Porcupine, Buffalo Horn roadless area.

SUMMARY: The period of public review for the Gallatin National Forest Draft Environmental Impact Statement has been extended until August 15, 1985.

ADDRESSES: Requests for further information should be addressed to: Robert E. Breazeale, Gallatin National Forest, Box 130, Bozeman, Montana 59771-0130.

James E. Reid,

Acting Regional Forester.

[FR Doc. 85-16343 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-11-M

Scientific Advisory Board, Mount St. Helens National Volcanic Monument, Gifford Pinchot National Forest, Clark County, Vancouver, WA; Meeting

The Mount St. Helens Scientific Advisory Board will meet at 9 a.m., August 28, 1985, in room 601 of the office the Regional Forester, 319 SW Pine St., Portland, OR 97208, to receive information on and discuss the following:

1. The status of the National Volcanic Monument (NVM).
2. Management of NVM waters.
3. The future role of the Scientific Advisory Board.
4. Open discussion of topics of interest to the Advisory Board.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 500 West 12th Street, Vancouver, WA 98660, 206-696-7570. Written statements may be filed with the Board before or after the meeting.

Dated: June 28, 1985.

Richard A. Ferraro,

Acting Regional Forester.

[FR Doc. 85-16231 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-11-M

Small Business Timber Set-Aside Program

Correction

In FR Doc. 85-14241 beginning on page 24788 in the issue of Thursday, June 13, 1985, make the following correction on page 24793: In the table "Exhibit 1", in the sixth line of the third column, "surplus" should read "deficit".

BILLING CODE 1505-01-M

Rural Electrification Administration

Intent To Conduct Public Scoping Meeting and Prepare an Environmental Assessment

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to conduct a public scoping meeting and prepare an environmental assessment.

SUMMARY: The Rural Electrification Administration (REA) intends to conduct a public scooping meeting and prepare an Environmental Assessment (EA) in connection with possible REA approvals relating to a project proposed by Arizona Electric Power Cooperative, Inc. (AEPCO), of Benson, Arizona. The project which will be located entirely within Cochise County, consists of the construction and operation of a 230 kV transmission line that would extend approximately 96 km (60 mi) from AEPCO's Apache Generating Station near Wilcox to a new 230 kV substation to be located southeast of Sierra Vista, Arizona.

DATE: REA will conduct a public scoping meeting on August 6, 1985, at the Thunder Mountain Inn, 1631 South Highway 92, Sierra Vista, Arizona, at 7:30 pm.

ADDRESS: All interested parties are invited to submit written comments to REA prior to, at, or within 30 days after the scoping meeting in order for comments to be part of the formal record. Comments should be sent to Mr. Alexander E. Sherman, Chief, Distribution and Transmission Engineering Branch, Southwest Area—Electric, Rural Electrification Administration, Room 0009, South Agriculture Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Alexander E. Sherman, Southwest Area—Electric, above address, telephone: (202) 382-1915 or FTS 382-1915, or Mr. Dirk Minson, Arizona Electric Power Cooperative, Inc., P.O. Box 670, Benson, Arizona 85602, telephone (602) 586-3631.

SUPPLEMENTARY INFORMATION: REA, in order to meet requirements under the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500) and REA Environmental Policies and Procedures (7 CFR Part 1794), intends to conduct a public scoping meeting and prepare an Environmental Assessment. This notice is in connection with possible REA approvals relating to a proposal by AEPCO for the construction and

operation of a 230 kV transmission line and substation in Cochise County, Arizona.

The proposed project will enable AEPCO to deliver additional electric energy to Sulphur Springs Valley Electric Cooperative, Inc. (SSVEC), one of its members.

Alternatives to be considered by REA include, among other options: (1) No action; (2) wheeling agreements; (3) energy conservation and load management; and (4) alternative transmission corridors.

The public scoping meeting, to be conducted by a representative of REA, will be held to solicit public input and comments including but not limited to, the nature of the proposed project, its possible location, alternatives, and any significant issues and environmental concerns that should be addressed in the EA. Requests for additional information concerning the scoping meeting may be directed to either REA or APECO at the addresses shown above. Copies of the Macro-Corridor Study are available for public review at the offices of REA, AEPCO, and SSVEC and at the public libraries in Benson, Sierra Vista and Tombstone, Arizona.

Any REA approval will be subjet to and contingent upon reaching satisfactory conclusions with respect to the environmental effects of the project, and final action will be taken only after compliance with environmental procedures required by NEPA has been satisfied.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: July 5, 1985.

Harold V. Hunter,

Administrator.

[FR Doc. 85-16429 Filed 7-8-85; 10:16 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Central Middle School Land Drainage RC&D Measure, Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Central Middle School Land Drainage RC&D Measure, Accomac County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240, telephone 804-771-2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for grading, shaping, seeding and draining 6.7 acres of school grounds to better utilize the existing facilities in Accomac County, Virginia. The planned work will include the establishment of 5.1 acres of permanent vegetative cover and installing 6,120 feet of tile drainage.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 28, 1985.

Manly S. Wilder,

State Conservationist.

[FR Doc. 85-16324 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-16-M

Looney-Mill Creek Watershed, VA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Looney-Mill Watershed, Botetourt County, Virginia.

FOR FURTHER INFORMATION CONTACT: Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Federal Building, Richmond, Virginia 23240, telephone 804-771-1455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or nation impacts on the environment. As a result of these findings, Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The recommended plan includes soil conservation practices on 7,020 acres of cropland and pastureland. Primary effects of the plan include protection of the soil resource base for substained productivity and decreased erosion and sedimentation damage on agricultural lands.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contracting Gerald P. Bowie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 28, 1985.

Manly S. Wilder,

State Conservationist.

[FR Doc. 85-16322 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-16-M

Rivermont School Flood Prevention RC&D Measure, Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rivermont School Flood Prevention RC&D Measure, Tazewell County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richomond, Virginia 23240, telephone 804-771-2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for flood damage reduction to the Rivermont Elementary School consists of 900 feet of channel work on the school property in Tazewell County, Virginia. The planned work will include 900 feet of rock-lined channel, the planting of trees and shrubs along the south bank, the construction of pools in the bedrock channel bottom, and the seeding of permanent vegetation in distrubed areas.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and the various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 27, 1985.

Manly S. Wilder,

State Conservationist.

[FR Doc. 85-16323 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-16-M

Lick Creek Watershed, TN; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent to Deauthorize Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Lick Creek Watershed Project, Greene County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, Nashville, Tennessee 37203, telephone (615) 251-5471.

SUPPLEMENTARY INFORMATION: A determination has been made by Donald C. Bivens that the proposed works of improvement for the Lick Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Donald C. Bivens, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 28, 1985.

Louis M. Godbey,

Assistant State Conservationist (Water Resources).

[FR Doc. 85-16345 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Rhode Island Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 2:00 p.m. on July 29, 1985, at the Brown University/Science Library, 201 Thayer Street, Room 318, Providence, Rhode Island. The purpose of the meeting is to provide an orientation for new members and discuss current and proposed program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, David H. Sholes or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, July 2, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-16203 Filed 7-8-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; Harvard School of Public Health et al.

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) 3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85-054. Applicant: Harvard School of Public Health, Purchasing Department, Holyoke Center, Cambridge, MA 02138. Instrument: Mass

Spectrometer System, Model MMZAB. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: The instrument is intended to be used to conduct the following research projects:

1. Amino Acid Sequence of Human Platelet-Derived Growth Factor (PDGF);
2. Synthesis and Structural Studies of Cyclic Peptides;
3. Metabolic Profiling: Artificial Substitutes for Blood;
4. Glycoprotein Structural Studies;
5. Metabolism and Function of Membrane Derived Oligosaccharides;
6. Heparin Structure; and;
7. Connective Tissue Glycoproteins.

Application received by Commissioner of Customs: December 12, 1984.

Docket No. 85–193. Applicant: Drexel University, Department of Materials Engineering, 32nd & Chestnut Streets, Philadelphia, PA 19104. Instrument: Molten Metal Spray-deposition System. Manufacturer: Osprey Metals Ltd., United Kingdom. Intended use: Studies of nickel-base superalloys, iron-base alloys and copper-base alloys. Experiments to be conducted will involve a determination of the effect of process parameters in the unit (e.g. superheat, gas pressure, nozzle to substrate distance, substrate material) on the structural and property integrity of the spray formed material (Ni, Fe and Cu-base alloys). In addition, the instrument will be used for educational purposes in the courses Materials Processing II and Structure and Properties of Materials. Application received by Commissioner of Customs: May 14, 1985.

Docket No. 85–207. Applicant: The University of Iowa Hospitals & Clinics, Newton Road, Iowa City, IA 52242. Instrument: Extracorporeal Shock Wave Kidney Lithotripter. Manufacturer: Dornier Systems GmbH, West Germany. Intended use: The instrument will be used to generate shock waves transmitted into the patient's body in the course of kidney or ureter stone therapy. The physiologic effect of these shock waves will then be evaluated. The instrument will become an integral part of the Urology Residency Program during which residents will become familiar with the clinical indications for use of the lithotripter and will become skilled in its use and in establishing appropriate follow-up care for lithotripter patients. Ongoing continuing medical education courses will include programs related to the use of the instrument and the results of the research investigations. Application received by Commissioner of Customs: May 31, 1985.

Docket No. 85–208. Applicant: North Dakota State Soil Conservation Committee, State Highway Building, Capitol Grounds, Room 213, Bismarck, ND 58505. Instrument: Electromagnetic Ground Conductivity Meter, Model EM–38 and Accessories. Manufacturer: Geonics Ltd., Canada. Intended use: The instrument is intended to be used to identify, delineate and map soils affected by salt concentrations to provide soils information in regards to salinity to land users. Application received by Commissioner of Customs: May 31, 1985.

Docket No. 85–210. Applicant: Mayo Foundation, 200 First Street SW., Rochester, MN 55905. Instrument: Kidney Lithotripter. Manufacturer: Dornier Systems GmbH, West Germany. Intended use: The instrument is intended to be used to destroy renal and ureteral stones and study the patients undergoing the routine clinical application of the instrument. In addition, the instrument will be used to train residents and staff in the use of the machine. Information generated by the investigation of the use of the instrument will be written up and disseminated via appropriate medical journals and by presentation of such information at national meetings. Application received by Commissioner of Customs: May 31, 1985.

Docket No. 85–211. Applicant: University of Rochester Medical Center, Purchasing Services, 70 Goler House, Rochester, NY 14620. Instrument: Microscope Photometer, Model MPV 3 with Accessories. Manufacturer: Leitz Wetzlar, West Germany. Intended use: The instrument is intended to be used for studies of oxygen transport and blood flow. Application received by Commissioner of Customs: May 31, 1985.

Docket No. 85–212. Applicant: University of California, Los Angeles, Department of Chemistry and Biochemistry, 405 Hilgard Avenue, Los Angeles, CA 90024. Instrument: NMR Spectrometer, Model AM500. Manufacturer: Bruker Analytik GmbH, West Germany. Intended use: This instrument will be used by a large base of research workers investigating a wide variety of problems in chemistry, biochemistry, and cell biology. Problems being investigated by the prime user group include (1) an investigation of the pathways of ammonia assimilation in *Neurospora crassa*, (2) a study of the pathways of arginine degradation in *Klebsiella aerogenes*, (3) the possible association of vacuolar arginine with polyphosphates in *N. crassa*, (4) studies of complexation phenomena as models of enzymic catalysis, biological control mechanisms, immunological response, processing of genetic information, ionophore transport, and drug action, (5) elucidation of the molecular mechanism of visual transduction, (6) the mechanisms of voltage-dependent conformational transitions in membrane proteins, (7) the total synthesis of complex natural products, (8) determination of the solution conformation of drugs and their interactions with DNA, (9) investigations of the reversible reactions that occur at enzyme catalytic sites, (10) the determination of relatively low energy conformational barriers in solution, (11) characterization of carborane and metallocarborane clusters as catalysts, and (12) characterization of mixed metal cluster complexes and model coal compounds. The instrument will also be used by graduate students with B.S. degrees in their research that is required to obtain the Ph. D. degree. Application received by Commissioner of Customs: May 31, 1985.

Docket No. 85–214. Applicant: University of Pittsburgh, 3700 O'Hara Street, 848 Benedum Hall, Pittsburgh, PA 15261. Instrument: Electron Microscope, Model JEM–200CX with Accessories. Manufacturer: JEOL, Japan. Intended use: The instrument is intended to be used for study of phase transformations in (1) metallic, ceramic and polymeric systems, (2) mechanical properties, (3) high temperature corrosion and oxidation, (4) magnetic materials, (5) phases in glasses and ceramics, (6) morphology of polymer phases and (7) morphology of catalysts. Specific areas of research include the following:

(1) Research on high temperature materials, hot corrosion and oxidation of superalloys.

(2) Physical metallurgy, phase transformations, magnetic materials;

(3) Physical metallurgy, thermomechanical processing, engineering steels;

(4) Polymers, morphology and crystallization;

(5) Ceramics, hot corrosion, electronic ceramics;

(6) Ion implantation, nuclear physics; and

(7) Catalysts, morphology and life.

The instrument will also be used for teaching purposes in such courses as: Electron Microscopy of Materials, Materials Science and Crystallograpy. Application received by Commissioner of Customs: June 3, 1985.

Docket No. 85–218. Applicant: Marine Biological Laboratory, Woods Hole, MA 02543. Instrument: Imaging Photon Detector. Manufacturer: Instrument Technology, Ltd., United Kingdom.

Intended use: The instrument is intended to be used for investigation of chemiluminescent patterns indicating free calcium gradients in Aequorin-loaded eggs. Application received by Commissioner of Customs: June 5, 1985.

Docket No. 85–219. Applicant: Baylor College of Medicine (USDA/ARS) Children's Nutrition Research Center, 6608 Fannin Street, Medical Towers Building, Room 519, Houston, TX 77030. Instrument: Gas-isotope-Ratio Mass Spectrometer, Model Delta-E with Accessories. Manufacturer: Finnigan MAT Corporation, West Germany. Intended use: The instrument is intended to be used for studies of breath water vapor, breath carbon dioxide, urine, plasma, serum, saliva, breast milk, feces, perspiration, tears, urea, amino acids and fatty acids. Experiments to be conducted will include the following:

(1) Natural abundances experiment to determine the partitioning of hydrogen, carbon, oxygen and nitrogen in man. (2) Body composition experiment to validate the feasibility of the isotope dilution technique using ^{2}H and ^{18}O labeled water for total body water determination in differnet populations. (3) Miniature pig experiment to validate the isotope dilution technique using ^{2}H and ^{18}O in miniature pigs against classical desiccation method and to determine the extent of isotope exchange between body water, body fat, and body protein using miniature pigs. (4) Energy expenditure experiment to evaluate the accuracy and precision of the doubly-labeled water technique for energy expenditure measurement in man. Application received by Commissioner of Customs: June 5, 1985.

Docket No. 85–220. Applicant: Woods Hole Oceanographic Institution, Chemistry Department, Woods Hole, MA 02543. Instrument: Mass Spectrometer, Model VG54 with Accessories. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended use: The instrument will be used for measurement of trace element and isotopic variations in continental and oceanic igneous rocks, sediments, and sea water during basic research in earth science and oceanography. The materials to be analyzed will be solid elements that are present in natural rock, mineral or water samples. In addition, the instrument will be used for educational purposes by Ph.D. candidates and students pursuing studies in isotope geochemistry. Application received by Commissioner of Customs: June 5, 1985.

Docket No. 85–221. Applicant: Boston University School of Medicine, School of Public Health, 80 East Concord Street, Boston, MA 02118. Instrument: Electron Microscope, Model JEM–100CXII. Manufacturer: JEOL, Ltd., Japan. Intended use: Studies of pathogenic bacteria, bacterial plasmids and DNA, viruses, proteins to obtain a fundamental understanding of the 'virulence' factors associated with bacterial pathogens with respect to their epidemiology and function in the pathogenic process, and the regulation of their expression and to decipher the basic mechanisms involved in the determination of viral capsid size. The instrument will also be used to teach electron microscopy techniques to graduate and medical students and postdoctoral research fellows. Application received by Commissioner of Customs: June 5, 1985.

Docket No. 85–222. Applicant: Cornell University, Ithaca, NY 14853. Instrument: Laser, Model PLS 20. Manufacturer: Opto-Electronics, Inc., Canada. Intended use: Studies of the picosecond response of optical detectors. Application received by Commissioner of Customs: June 5, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–16310 Filed 7–8–85; 8:45 am]

BILLING CODE 3510-DS-M

Denis J. Fife et al.; Order Modifying Temporary Denial of Export Privileges

In the matter of: Denis J. Fife, individually and doing business as Dimension Systems Ltd., U.K. and Anthony Chan a/k/a Chan Sum-Tai Anthony and WYSH Data Systems, Ltd.

By order of December 6, 1984 (49 FR 48591 (December 13, 1984)), Denis J. Fife, individually and doing business as Dimension Systems Ltd., U.K., Anthony Chan and Wysh Data Systems, Ltd. were temporarily denied all privileges of participating, in any manner or capacity, in transactions involving the export of U.S.-origin commodities or technical data, pursuant to § 388.19 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1985)) (the Regulations) until the final disposition of a criminal indictment against the respondents and any administrative proceedings that might be brought against them. The United States Department of Commerce (Department) and Denis J. Fife have moved to modify that Order by suspending it as regards Denis J. Fife, individually and doing business as Dimension Systems Ltd., U.K., (hereinafter collectively referred to as Fife), until the entry of an Order disposing of any administrative proceeding against Fife or December 6, 1986, whichever occurs first.

On February 20, 1985, Fife pled guilty to one count of a criminal indictment. The plea agreement between Fife and the Department of Justice provides that Fife's export privileges would be denied from December 6, 1984, the date of the temporary denial order, through December 6, 1986. It further stated that the period of denial after June 1, 1985 would be suspended provided the defendant commits no further violations of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1982)) (the Act),[1] during the period of suspension.

Based upon the provisions of the plea agreement, I find that an order modifying the December 6, 1984 Order as it applies to Denis J. Fife, individually and doing business as Dimension Systems Ltd., U.K., as proposed above above is warranted and that so modifying this Order will not jeopardize its purpose.

Accordingly, it is hereby—

Ordered that, effective immediately, the Order of December 6, 1984 is modified by suspending the Order as regards the following respondents:

Denis J. Fife, individually and doing business as Dimension Systems Ltd., U.K., with addresses at both 13 Elm Grove Road, Earling, London, W5 England;

and

The Counting House, 352 Pinner Road North Harrow, Middlesex, England

A copy of this Modification of the Order of December 6, 1984 shall be served upon Denis J. Fife and Dimension Systems Ltd., U.K., and a copy of this Modification shall be published in the Federal Register.

Dated: June 28, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85–16211 Filed 7–8–85; 8:45 am]

BILLING CODE 3510-DT-M

[Case No. 661]

Kurt Behrens; Order Modifying Temporary Denial of Export Privileges

In the matter of: Kurt Behrens, Elisabethbrunnen 5, 5442 Mendig, Federal

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[1] The authority granted by the Act terminated on March 30, 1984. The Regulations have been continued in effect by Executive Order 12470, 49 FR 13099, April 3, 1984, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1982)).

Republic of Germany, and Delta-Avia Fluggerate GMBH, Heliport, D-5405 Ochtendung, Federal Republic of Germany, and Flugplatz, D-5408 Winningen, Federal Republic of Germany.

By Order of February 1, 1985 (50 FR 5288, Febraury 7, 1985) (the "Order"), the above named Respondents and eight related parties were temporarily denied, pursuant to § 386.19 of the Export Administration Regulations (15 CFR Parts 368–399 (1984)), all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The U.S. Department of Commerce (the "Department") has now moved to modify the Order by deleting, from the listing of related parties in Paragraph III, National Helicopter Service and Engineering Company, on the ground that it has no relationship with any respondent or other related party such that it need be named as a related party.

Based on the statement made by the Department, I find that the requested motion is justified, and that granting it will not jeopardize the purpose of the Order.

Accordingly, it is hereby ordered that the Order of February 1, 1985 is modified by deleting, from the listing of related parties in Paragraph III: National Helicopter Service and Engineering Company, 16800 Roscoe Boulevard, Van Nuys, CA 91406.

This Modification of the Order is effective immediately.

Dated: June 28, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-16212 Filed 7-8-85; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Experimental Fishing Permit; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of experimental fishing permit application and request for comments.

SUMMARY: This notice acknowledges receipt of an experimental fishing permit (EFP) application and announces a public comment period. The applicant proposes to delay sorting mid-water trawl catches of Pacific whiting until the catches are landed. The regulations require that catches be sorted at sea and all salmon immediately be returned to the water. An EFP, if granted, would allow a fishing practice which otherwise would be prohibited by Federal regulation.

DATE: Comments on this application must be received by July 11, 1985.

ADDRESS: Send comments to Rolland A. Schmitten, Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations specify that an EFP may be issued to authorize fishing that otherwise would be prohibited.

An EFP application was received which proposes to delay until landing the sorting of salmon taken in a mid-water trawl fishery targeting on Pacific whiting. By delaying sorting until the time of landing the applicant expects to reduce handling and reduce the time before the whiting are placed in the fish hold and preserved with ice. Whiting deteriorate rapidly after death, and reduced handling and prompt preservation is essential to maintain product quality when shoreside processing is involved.

The regulations at § 663.7(i) prohibit the retention of salmon caught in trawl nets, among other types of fishing gear. The normal practice on groundfish trawl vessels is to sort the catch from each tow before storing it in the hold. Species and sizes of fish that are not marketable are discarded during this sorting and salmon also are returned to the sea. Currently, any salmon taken in a trawl and placed in the hold (not returned to the sea immediately) in considered to be retained in violation of § 633.7(i).

The application under consideration is summarized below and is available for public review at the Regional Director's office during the public comment period (see "ADDRESS"). The decision to grant or deny this EFP application will be based on the information in the completed application, willingness of the applicant to comply with the terms and conditions of the EFP, advice from the California Fish and Game Department, the Oregon Department of Fish and Wildlife, the Washington Department of Fisheries, the U.S. Coast Guard, the Pacific Fishery Management Council, and the public.

(1) *Purpose and significance.* The purpose of this experiment is to demonstrate that Pacific whiting catches can be handled in this manner without significant impact on salmon stocks and that the quality of Pacific whiting is maintained at a higher level if it is immediately iced (and sorting is delayed). One impediment to development of a wholly domestic Pacific whiting fishery is that the flesh of whiting deteriorates rapidly after death if not refrigerated promptly. Consequently, it is important for the vessels to make short tows and to preserve the catch without delay. If the catch must be sorted on deck to remove any salmon which may be in the catch, whiting quality will suffer due to excess handling and delayed refrigeration.

(2) *Vessel.* The vessel the applicant proposes to use is 69 feet in length, 100 gross tons, and 75 net tons.

(3) *Species.* The applicant intends to target on Pacific whiting. He also expects incidental catches of rockfish and some salmon. The whiting catch would be sold to a local, shore-based processor. Incidental catches of rockfish would be sold to local processors as well, subject to any existing Federal and State regulations. Incidentally-caught salmon would be sorted from the catch at the processing plant and turned over to the Oregon Department of Fish and Wildlife for disposition.

(4) *Time.* The operation would take place from June through October 1985.

(5) *Place.* Rogue River, Oregon, to Newport, Oregon.

(6) *Gear.* A mid-water 546 Polish rope trawl will be used which is legal gear under the current regulation.

(16 U.S.C. 1801 *et seq.*)

Dated: July 3, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-16219 Filed 7-8-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia; Correction

July 3, 1985.

On July 1, 1985 a notice was published in the Federal Register (50 FR 27040) which established limits for specified categories of cotton and man-made fiber textile products, produced or manufactured in Indonesia. In the penultimate sentence of paragraph 2 of the notice document and in the final sentence of paragraph 1 of the letter to the Commissioner of Customs which followed that notice, the words "exported during" should be changed to read "subject to." Also in paragraph 1 of

the letter to the Commissioner of Customs the previous restraint period indicated for Category 341 should be changed to "July 1, 1984–June 30, 1985."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16304 Filed 7-8-85; 8:45 am]

BILLING CODE 3510-DR-M

Extending Coverage of Export Visa Requirement To Include Certain Man-Made Fiber Textile Produced or Manufactured in Taiwan

July 3, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 22, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

Under the terms of the agreement effected by exchange of notes dated December 1, 1982, the American Institute in Taiwan (AIT) and Coordination Council for North American Affairs (CCNAA) have agreed to further amend the existing export visa requirement to include braided luggage, handbags and flatgoods of man-made fibers in Category 670pt., which will be visaed as follows:

670–U—Braided luggage in TSUSA number 706.3420
670–A—Braided handbags in TSUSA number 706.3410
670–T—Braided flatgoods in TSUSA number 706.3430

This coverage is in addition to the coverage of cotton, wool and man-made fiber textiles and textile products described in the CITA directive of September 27, 1972, as previously amended. The visa stamp is not being changed and the official authorized to issue visas also remains unchanged at this time.

The expanded visa coverage will be effective on July 22, 1985 for the aforementioned products in Category 670pt., produced or manufactured in Taiwan and exported on and after July 22, 1985. Merchandise in this category exported before July 22, 1985 will not denied entry for lack of a visa.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985),

Walter C. Lenahan,

Chairman, Committee for the Implementation on Textile Agreements.

July 3, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of September 27, 1972, as amended, which established an export visa requirement for certain cotton, wool and man-made fiber textile and textile products or manufactured in Taiwan.

Effective on July 22, 1985, the directive of September 27, 1972 is hereby further amended to provide that man-made fiber textile products in parts of Category 670 exported on and after July 22, 1985, will be visaed as followed:

670–U–Only TSUSA number 706.3420
670–A–Only TSUSA number 706.3410
670–T–Only TSUSA number 706.3430

Merchandise in the forgoing parts of Category 670 exported before July 22, 1985 shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16213 Filed 7-8-85; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Chronic Hazard Advisory Panel on Di(2-Ethylhexyl)Phthalate; Availability of Draft Report for Public Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability of draft report and possible meeting.

SUMMARY: A Chronic Hazard Advisory Panel, established by the Commission to provide advice about the potential chronic hazards presented by Di(2-ethylhexyl)phthalate (DEHP) in consumer products, solicits public comment on its draft report to the Commission. If the Panel deems it necessary, it may hold a meeting, which the public may attend, to review the public comments that are submitted in response to its draft report to the Commission.

DATES: The Panel's draft report is expected to be available on July 15, 1985. Written comments on the draft report should be received by the Office of the Secretary, at the address shown below, by August 14, 1985. If the Panel deems it necessary, it will meet to discuss the comments on its draft report on August 23, 1985; the meeting will start at 9:00 am, is expected to conclude by 5:00 pm, and will be open to the public.

ADDRESSES: Comments on the draft report should be mailed to the Chronic Hazard Advisory Panel on DEHP, Office of the Secretary, Consumer Product Safety Commisson, Washington, D.C. 20207, or delivered to the Reading Room, Consumer Product Safety Commission, 8th Floor, 1111 18th Street, NW., Washington, D.C. Copies of the draft report may be obtained from the Office of the Secretary. The meeting of the Panel to discuss comments, if held, will be in room 456, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Sadye Dunn, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 492–6800.

SUPPLEMENTARY INFORMATION: The Chronic Hazard Advisory Panel on DEHP is a seven-member group which the Commission established to advise it concerning the potential chronic hazard of cancer associated with the use of consumer products containing DEHP. The Panel, convened in January, 1985, is addressing the concern that the presence of DEHP as a plasticizer in children's products may result in a substantial exposure of children to a substance that is known to cause cancer in animals. The Panel solicits comment on its known to cause cancer in animals. The Panel solicits comments on its draft report to the Commission, which is expected to be available by July 15, 1985. Copies of the draft report may be obtained from the Office of the Secretary.

Depending on comments received during scientific peer review of the draft Panel report and on written public comments on the report which are received by August 14, 1985, the Panel may decide to hold a meeting to discuss the issues raised by the comments. The meeting, if held, will be on August 23, 1985, and will be open for observation by the public. For further information concerning whether a meeting will be

held, contact Sadye Dunn after August 15, 1985 at the address shown above.

Dated: July 3, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-16311 Filed 7-8-85; 8:45 am]

BILLING CODE 6355-01-M

Notification of Request for Approval of Survey of Residential Users of Gas-Fueled Applicances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a survey of residential users of gas-fueled appliances concerning their experiences relighting pilot lights of those appliances.

Information about fires and explosions associated with water heaters available to the Commission indicates that water heaters which utilize liquid petroleum (LP) gas as the fuel are more frequently involved in such incidents than water heaters which utilize natural gas. The Commission proposes to survey persons living in residences with appliances which utilize LP gas as a fuel and persons living in residences with appliances which utilize natural gas to obtain information about the frequency with which pilot lights of those appliances extinguish; experiences of persons who have relighted pilot lights; and practices of gas suppliers in refilling LP gas cylinders or tanks.

The Commission will use the information from this survey in conjunction with other information and data to determine if redesign of appliance controls and gas valves may result in reduction of fires and explosions associated with gas-fueled appliances, and if residential users need additional information about safe operation of such appliances.

Additional Details About the Requested Approval for Collection of Information

Agency Address: Consumer Product Safety Commission, 1111 18th the Street, N.W., Washington, D.C. 20207.

Title of Information Collection: Consumer Use of Gas-Fired Appliances.

Type of Request: Approval of a new plan.

Frequency of Collection: One time.

General Description of Respondents: Persons who live in residences with appliances which utilize LP gas or natural gas as fuel.

Estimated Number of Respondents: 25,000 for screening questions; 1,400 for telephone interview.

Estimated Number of hours of All Respondents: 307

Comments: Comments on this request for approval of collection information should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone: (202) 395-7340. Copies of the request for approval of collection of information are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: July 3, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-16312 Filed 7-8-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Group on Electron Devices; Closed Meeting

SUMMARY: Working Group D (Production) of the DoD Advisory Group on Electron devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 9:00 a.m., Tuesday, 6 August 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Thomas Henion, AGED Secretrariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Working Group D area includes all production aspects of critical electronic components for the defense electronic supply base; the transition of components from research and development into production, e.g., manufacturing technology; policy and acquisition steps necessary to insure that there is a sufficient domestic supply base for critical electronic components; and steps necessary to insure the continuing availability of skilled people to support the critical electronic component supply base. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: July 2, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-16301 Filed 7-8-85; 8:45 am]

BILLING CODE 3710-01-M

Defense Intelligence Agency Scientific Advisory Committee; Cancellation of Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DoD.

ACTION: Notice of cancellation of closed meeting.

SUMMARY: Notice is hereby given that the closed meeting of the DIA Scientific Advisory Committee Intelligence Communications Architecture (INCA) Panel, scheduled for 3 July 1985, that was announced in the **Federal Register** on Tuesday, 18 June 1985 (Vol. 50, FR 25292) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373-4930).

Dated: July 3, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-16302 Filed 7-8-85; 8:45 am]

BILLING CODE 3810-01-M

Education Benefits Board of Actuaries; Meeting

AGENCY: Department of Defense Education Benefits of Board of Actuaries, DoD.

ACTION: Notice of meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 101, title 10, United States Code (10 U.S.C. 2006(e) et. sep.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the GI Bill. Persons desiring to 1) attend the DoD Education Benefits Board of Actuaries meeting or 2) make an oral presentation or submit a written statement for consideration at the meeting must notify Ms. Kathy Greenstreet at 696–5793 by July 10, 1985. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: July 15, 1985, 9:00 a.m. to 4:00 p.m.

ADDRESS: Room 1E801, the Pentagon (River Entrance).

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, Defense Manpower Data Center, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209, (202) 696–5869.

Dated: July 2, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–16303 Filed 7–8–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thursday & Friday, July 25, & 26 1985.

Times of meeting: 0830–1700 hours both days (Closed).

Places: BMD Program Office, Crystal City, VA on July 25, and Pentagon, Washington, DC on July 26.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense Follow On will meet to discuss Terminal Imaging Radar and Battle Management C ³ of Terminal Defense. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5 U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–16229 Filed 7–8–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Wednesday, July 31, 1985.

Times of meeting: 0800–1700 hours (Closed).

Place: The Pentagon Washington, D.C.

Agenda: The Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for AirLand Battle—Chair and three subpanel Chairs (Active/U.S. Army Reserve, Army National Guard, and Mobilization Base/Industrial Perspective)—will meet to draft a final report. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix I, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–16230 Filed 7–8–85; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command; Military Personal Property Claims Symposium; Open Meeting

Announcement is made of a meeting of the Military Personal Property Claims Symposium. This meeting will be held on 7 August 1985 at the Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia, and will convene at 0930 hours and adjourn at approximately 1500 hours.

Proposed Agenda

The purpose of the Symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation (DoD 4500.34–R), and the handling of other matters of mutual interest relating to claims actions concerning the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT–PPM, at telephone number 756–1600, between 0700–1530 hours. Topics to be discussed should be received on or before 25 July 1985.

Robert F. Waldman,

Deputy Director, Directorate of Personal Property.

[FR Doc. 85–16198 Filed 7–8–85; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

New Awards Under the College Assistance Migrant Program for Fiscal Year 1986; Application Notice

AGENCY: Department of Education.

ACTION: Application Notice for New Awards under the College Assistance Migrant Program for Fiscal Year 1986 (School Year 1986–87).

SUMMARY: Applications are invited for new awards under the College Assistance Migrant Program (CAMP).

The authority for this program is contained in section 418A of Title IV of the Higher Education Act, as amended by Pub. L. 98–374. (20 U.S.C. 1070d–2)

The program provides funds to assist grantees in the design and implementation of projects that address the special educational needs of students who are engaged, or whose families are engaged, in migrant and other seasonal farmwork. The projects may include academic and support services as well as financial assistance to eligible students who are enrolled or admitted for enrollment on a full-time basis in the first academic year at the participating institutions of higher education (IHEs).

Eligible applicants are IHEs and other public or nonprofit private agencies in cooperation with IHEs.

Closing date for transmittal of applications: Applications for new awards must be mailed or hand delivered on or before September 10, 1985.

Applications delivered by mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.149, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Program information: The Secretary awards CAMP grants to IHEs and other agencies, in cooperation with IHEs, for projects of academic and support service and financial assistance to address the special educational needs of migratory and seasonal farmworker students and to enhance the opportunity of these students for success at the postsecondary education level.

The Secretary makes these grants to IHEs and other agencies, in cooperation with IHEs, to assist migratory and seasonal farmworker students who are enrolled or are admitted for enrollment on a full-time basis in the first academic year at an IHE. CAMP provides assistance to help migratory and seasonal farmworker students in—

(1) Making the transition from secondary school to postsecondary school;

(2) Generating the motivation necessary to succeed in postsecondary school; and

(3) Developing the skills necessary to succeed in postsecondary school.

Application forms: Application forms and program information packages are expected to be available by August 1, 1985. These may be obtained by writing to Division of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, Room 3616), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages.

The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1810-0055).

Available funds: The Department of Education has not requested funds for CAMP for Fiscal Year (FY) 1986. However, applications are invited to allow sufficient time to evaluate applications and complete processing prior to the end of the fiscal year in the event that funds are appropriated for the program. Program services are intended to serve eligible participants in the 1986-87 school year.

In FY 1986, it is expected that grant funds will support six (6) projects. With an anticipated appropriation of $1,200,000, most awards will range between $150,000 and $250,000. These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is other wise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing the Migrant Education High School Equivalency Program (HEP) and College Assistance Migrant Program (CAMP) in 34 CFR Part 206.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. McGuinness, Director, Division of Migrant Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW. (Regional Office Building 3, Room 3616), Washington, D.C. 20202. Telephone (202) 245-2722.

(20 U.S.C. 1070d-2)

(Catalog of Federal Domestic Assistance No. 84.149, Migrant Education—College Assistance Migrant Program)

Dated: July 3, 1985.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 85-16279 Filed 7-8-85; 8:45 am]

BILLING CODE 4000-01-M

New Awards Under the High School Equivalency Program for Fiscal Year 1986; Application Notice

AGENCY: Department of Education.

ACTION: Application Notice for New Awards under the High School Equivalency Program for Fiscal Year 1986.

SUMMARY: Applications are invited for new awards under the High School Equivalency Program (HEP).

The authority for this program is contained in section 418A of Title IV of the Higher Education Act, as amended by Pub. L. 98-374. (20 U.S.C. 1070d-2)

The purpose of HEP is to provide grants to institutions of higher education (IHEs) and other agencies, working in cooperation with IHEs, to design and implement projects of academic, support service, and financial assistance to address the special educational needs of migratory and seasonal farmworker students who have not earned a secondary school diploma or its equivalent.

Eligible applicants are IHEs and other public or nonprofit private agencies in cooperation with IHEs.

Closing date for transmittal of applications: Applications for new awards must be mailed or hand delivered on or before September 19, 1985.

Applications delivered by mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.141, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Postal Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant wil be notified that its application will not be considered.

Applications delivered by hand: Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Program information: The Secretary awards HEP grants to IHEs and other agencies, in cooperation with IHEs, for projects of academic and support service and financial assistance to address the special educational needs of migratory and seasonal farmworker students and to enhance the opportunity of these students for success at the secondary education level.

The Secretary makes these grants to IHEs and other agencies, in cooperation with IHEs, to assist migratory and seasonal farmworker "drop-out" students in obtaining the equivalency of a secondary school diploma and subsequently gaining employment or being admitted to an IHE or other postsecondary education or training program.

Application forms: Application forms and program information packages are expected to be available by August 1, 1985. These may be obtained by writing to Division of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, Room 3616), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages.

The Secretary further urges that applications not submit information that is not requested. (Approved by the Office of Management and Budget under control number 1810-0054).

Available funds: The Department of Education has not requested funds for HEP for Fiscal Year (FY) 1986. However, applications are invited to allow sufficient time to evaluate applications and complete processing prior to the end of the fiscal year in the event that funds are appropriated for the program.

In FY 1986, it is expected that grant funds will support 25 projects. With an anticipated appropriation of $6.3 million, most awards will range between $100,000 and $300,000. These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing the Migrant Education High School Equivalency Program (HEP) and College Assistant Migrant Program (CAMP) in 34 CFR Part 206.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Louis J. McGuinness, Director, Division of Migrant Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, S.W. (Regional Office Building 3, Room 3616), Washington, D.C. 20202. Telephone (202) 245-2722.

(20 U.S.C. 1070d-2)

(Catalog of Federal Domestic Assistance No. 84.141, Migrant Education—High School Equivalency Program)

Dated: July 3, 1985.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 16276 Filed 7-8-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Training Personnel for the Education of the Handicapped

Correction

In FR Doc. 85-15155 beginning on page 26029 in the issue of Monday, June 24, 1985, make the following correction:

On page 26031, first column, three lines from the bottom, "March 17, 1985." should have read "March 17, 1986.".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Issuance of Proposed Remedial Order To Apache Oil Co., Inc. and Opportunity for Objection

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of issuance of proposed remedial order to Apache Oil Company, Inc. and notice of opportunity for objection.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Apache Oil Company, Inc. (Apache). This Proposed Remedial Order charges that Apache charged prices in excess of the maximum legal selling price for motor gasoline during the period October 1, 1979 through December 31, 1979. The violation amount totals $164,153 before interest.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from the Freedom of Information Public Reading Room (MA-232.1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6020.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F-055, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193. Failure to file a Notice of Objection shall be deemed to be an admission of the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C. on the 20th day of June, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85-16269 Filed 7-8-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Remedial Order To Erickson Refining Corp. and Opportunity For Objection

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of issuance of proposed remedial order to Erickson Refining Corporation and notice of opportunity for objection.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which issued to Erickson Refining Corporation (Erickson). This Proposed Remedial Order charges that Erickson misreported its crude oil runs to stills by including ineligible products in those runs during the months of November 1978, August 1979 and October 1979 in its Refiners Monthly Reports. The entitlements violation amount totals $218,183.16, before interest. A copy of the Proposed Remedial Order with confidential information deleted, may be obtained from the Freedom of Information Public Reading Room (MA-232.1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6020.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F-055, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193. Failure to file a Notice of Objection shall be deemed to be an admission of the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C. on the 20th day of June, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85-16268 Filed 7-8-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Remedial Order To North American Petroleum Co. and Mellon Energy Products Co. Opportunity for Objection

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of issuance of proposed remedial order to North American Petroleum Company and Mellon Energy Products Company and notice of opportunity for objection.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to North American Petroleum (NAP) and Mellon Energy Products (Mellon). This Proposed Remedial Order charges that NAP, through its subsidiary Lajet, Inc., entered into processing agreement arrangements with Young Refining Corporation for the purpose of lowering its reported crude oil runs to stills so as to qualify for Small Refiner Bias entitlements benefits. NAP's actions were designed to and resulted in the circumvention and contravention of the Entitlements Program. Further, the PRO alleges that NAP misreported its runs to stills, and NAP and Mellon were part of the same firm, and that Mellon received unlawful profits in sales of crude oil and refined petroleum products to other entities in the firm. The violation period covered is from October through December 1975; January through June 1976; March through May 1977 and July through November 1977. NAP's entitlements violations equal $3,356,664, exclusive of interest. Mellon's intra-firm markup violations equal $218,092.15, exclusive of interest.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from the Freedom of Information Public Reading Room, MA-232.1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6020.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F-055, 1000 Independence Avenue SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193. Failure to file a Notice of Objection shall be deemed an admission of the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C. on the 20th day of June, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85-16270 Filed 7-8-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER85-537-000]

American Electric Power Service Corp.; Filing

July 1, 1985.

The filing Company submits the following:

Take notice that on June 24, 1985, the American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Columbus & Southern Ohio Electric Company (C&SOE), which is an AEP affiliated operating subsidiary, Modification No. 1 dated May 15, 1985 to the Agreement dated May 1, 1983 (1983 Agreement) between the City of Westerville, Ohio (Westerville) and C&SOE. The Commission has previously designated this Agreement as C&SOE Rate Schedule FERC No. 12.

Section 1 of Modification No. 1 revises Article 3 of the 1983 Agreement by reducing the Notice period for the reservation of Transmission Service from one year to 60 days. Section 2 of Modification No. 1 increases the transmission demand rate for Transmission Service from $1.50 per kilowatt per month to $2.00 per kilowatt per month when C&SOE is the supplying party. This rate for Transmission Service is the same as the rates for such service presently in effect on the AEP System and accepted for filing by the Commission. Section 3 of Modification No. 1 revises Article 7 of the 1983 Agreement by extending the 1983 Agreement for an additional period of three years, commencing on August 1, 1986, and thereafter on an annual basis unless terminated by written notice given one year in advance.

C&SOE requests an effective date of July 31, 1985, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16333 Filed 7-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-589-000]

Arizona Public Service Co.; Filing

July 1, 1985.

The filing Company submits the following:

Take notice that on June 25, 1985, Arizona Public Service Company (Arizona) tendered for filing an Amendment to the Wholesale Power Supply Agreement (Agreement) between Arizona and Papago Tribal Utility Authority (PTUA). Arizona states that this amendment allows PTU to exercise its right to reduce its maximum demand to 6 MW.

Arizona requests an effective date of October 12, 1985, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.21, 385.214). All such motions or protests should be filed on or before July 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16334 Filed 7-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-527-000]

Bishop Marketing Corp.; Application for Blanket Limited Term Certificate of Public Convenience and Necessity, Limited Partial Abandonment Authorization and Declaration of Limited Jurisdiction

July 2, 1985.

Take notice that on June 26, 1985, Bishop Marketing Corporation ("Bishop"), 711 Louisiana, South Tower, Suite 2870, Houston, Texas 77002, filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c, 717f, and the provisions of 18 CFR Part 157, for a blanket limited-term certificate of public convenience and necessity authorizing Bishop to conduct a short-term spot sales marketing program, hereinafter referred to as Bishop Marketing Program, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval would (1) authorize the sale of natural gas for resale in interstate commerce; (2) permit limited-term, partial abandonment of certain natural gas sales; (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in Bishop Marketing Program; and (5) confer pre-granted abandonment authorization for the transportation service allowed under the requested certificate. Bishop also requests the Commission to declare that, with respect to Bishop and its activities, the Commission will only assert Natural Gas Act jurisdiction over sales for resale and transportation for otherwise exempt from the NGA.

Under Bishop Marketing Program, Bishop proposes to sell natural gas qualifying for the section 102, 103, 107 and 108 rates under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. §§ 3301-3432. Only contractually committed gas will be sold. Bishop and participating producers will seek temporary releases of gas from the purchasers in order to meet market demand for natural gas sales. Releasing purchasers will be absolved from take-or-pay liability for any volumes of gas released and sold under the program. Arrangements for transporting the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 18, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16335 Filed 7-8-85; 8:45 am]

BILLING CODE 6717-01-M

[ST85-901-000 et al.]

Equitable Gas Co. et al.; Self-Implementing Transactions

July 3, 1985.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before July 24, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Producer (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration Date[2]	Transportation Rate (¢/MMBtu)
ST85-901	Equitable Gas Co	PPG Industries,Inc	05-01-85	F(157)		
ST85-902	Channel Industries Gas Co	NorVal Gas Co	05-01-85	803		
ST85-903	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	LTV Steel Co	05-01-85	C	
ST85-904	Delhi Gas Pipeline Corp	Dayton Power and Light Co	05-01-85	C		
ST85-905	Valero Transmission Co	America Distribution Co	05-01-85	C		
ST85-906	Natural Gas Pipeline Co. of America	LTV Steel Co	05-01-85	F(157)		
ST85-907	Columbia Gas Transmission Corp	Anheuser-Busch Cos., Inc	05-02-85	F(157)		
ST85-908	Columbia Gas Transmission Corp	Shenango, Inc	05-02-85	F(157)		
ST85-909	Columbia Gulf Transmission Co	Anheuser-Busch Cos., Inc	05-02-85	F(157)		
ST85-910	Alabama-Tennessee Natural Gas Co	Central Gas Co	05-03-85	B		
ST85-911	Trunkline Gas Co	Colonial NaturalGas Co	05-03-85	B		
ST85-912	Producer's Gas Co	Northern Indian Public Service Co	05-03-85	D		
ST85-913	PGC Pipeline	Consolidated Edison Co. of NY	05-03-85	D		
ST85-914	Producer's Gas Co	Michigan Consolidation Gas Corp	05-03-85	D		
ST85-915	Trunkline Gas Co	Corpus Christi Gas Gathering, Inc	05-03-85	B		
ST85-916	Panhandler Eastern Pipe Line Co	Northern Indiana Public Service Co	05-03-85	B		
ST85-917	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co	05-03-85	B		
ST85-918	Panhandler Eastern Pipe Line Co	Michigan Consolidated Gas Co	05-03-85	B		
ST85-919	Northern Intrastate Pipeline Co	Taft Pipeline Co	05-03-85	C		
ST85-920	Texas Gas Transmission Corp	Diamond Glass Vienna, Inc	05-03-85	F(157)		
ST85-921	ANR Pipeline Co	Reynolds Metals Co	05-03-85	F(157)		
ST85-922	Valero Transmission Co	El Paso Natural Gas Co	05-03-85	C		
ST85-923	Tennessee Gas Pipeline Co	Transco Resources, Inc	05-03-85	B		
ST85-924	United Gas Pipe Line Co	Louisiana State Gas Corp	05-07-85	B		
ST85-925	United Gas Pipe Line Co	Jeannette Sheet Glass Corp	05-07-85	F(157)		
ST85-926	Texas Eastern Transmission Corp	Brooklyn Union Gas Co	05-07-85	B		
ST85-927	Texas Eastern Transmission Corp	Orange and Rockland Utilities, Inc	05-07-85	B		
ST85-928	Panhandle Eastern Pipe Line Co	National Can Corp	05-07-85	F(157)		
ST85-929	Midwestern Gas Transmission Co	Reynolds Metal Co	05-07-85	F(157)		
ST85-930	Consolidated Gas Transmission Corp	Cleveland Clinic Foundation	05-07-85	F(157)		
ST85-931	Panhandle Eastern Pipe Line Co	Rock-Tenn Co	05-06-85	F(157)		
ST85-932	Columbia Gas Transmission Corp	U.S. Reduction Co	05-08-85	F(157)		
ST85-933	Columbia Gas Transmission Corp	U.S. Reduction Co	05-08-85	F(157)		
ST85-934	Columbia Gas Transmission Corp	Ralston Purina Co	05-08-85	F(157)		
ST85-935	Columbia Gas Transmission Corp	International Permalite, Inc	05-08-85	F(157)		
ST85-936	Columbia Gas Transmission Corp	Allied Corp	05-08-85	F(157)		
ST85-937	Columbia Gulf Transmission Co	U.S. Reduction Co	05-08-85	F(157)		
ST85-938	Columbia Gulf Transmission Co	Allied Corp	05-08-85	F(157)		
ST85-939	Columbia Gulf Transmission Co	Columbia Gas of KY, Inc	05-08-85	B		
ST85-940	Columbia Gulf Transmission Co	U.S. Reduction Co	05-08-85	F(157)		
ST85-941	Columbia Gulf Transmission Co	International Permalite, Inc	05-08-85	F(157)		
ST85-942	Transcontinental Gas Pipe Line Corp	Oak Ridge Textiles Corp	05-09-85	F(157)		
ST85-943	Transcontinental Gas Pipe Line Corp	Louisiana State Gas Corp	05-09-85	B		
ST85-944	Transcontinental Gas Pipe Line Corp	Guilford Mills Co	05-09-85	F(157)		
ST85-945	Texas Gas Transmission Corp	QO Chemcals, Inc	05-09-85	F(157)		
ST85-947	Panhandle Gas Co	Philadelphia Electric Co	05-09-85	D		
ST85-948	Transcontinental Gas Pipe Line Corp	General Tire Co	05-09-85	F(157)		
ST85-949	Panhandle Eastern Pipe Line Co	Kerr Glass Manufacturing Corp	05-09-85	F(157)		
ST85-950	Panhandle Eastern Pipe Line Co	Archer Daniels Midland Co	05-09-85	F(157)		
ST85-951	Panhandle Eastern Pipe Line Co	LVT Steel Co., Inc	05-09-85	F(157)		
ST85-952	Panhandle Eastern Pipe Line Co	Archer Daniels Midland Co	05-09-85	F(157)		
ST85-953	Pandhandle Eastern Pipe Line Co	Brockway, Inc	05-09-85	F(157)		
ST85-954	Tennessee Gas Pipe Line Co	Philadelphia Electric Co	05-13-85	B		
ST85-955	Pandhandle Eastern Pipe Line Co	Indiana Glass Co	05-13-85	F(157)		
ST85-956	Acadian Gas Pipeline System	Bridgeline Gas Distribution Co	05-13-85	C		
ST85-957	Mississippi Fuel Co	Koch Hydrocarbons, Inc., et al	05-14-85	C	10-11-85	15.00
ST85-958	Valero Transmission Co	Transcontinental Gas Pipe Line Corp	05-10-85	C		
ST85-959	Consumers Power Co	Kansas Power and Light Co	05-10-85	G(HT)		
ST85-960	Michigan Gas Storage Co	Consumers Power Co	05-10-85	B		
ST85-961	United Gas Pipe Line Co	United Texas Transmission Co	05-10-85	B		
ST85-962	Gas Gathering Corp	Monterey Pipe Line Co	05-10-85	B		
ST85-963	Panhandle Eastern Pipe Line Co	Reilly Tar and Chemical Corp	05-10-85	F(157)		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration Date[2]	Transportation Rate (¢/MMBtu)
ST85-954	Panhandle Eastern Pipe Line Co	Evans Milling Co., Inc	05-10-85	F(157)		
ST85-955	Panhandle Eastern Pipe Line Co	RCA Corp	05-10-85	F(157)		
ST85-956	Panhandle Eastern Pipe Line Co	National Starch and Chemical Corp	05-10-85	F(157)		
ST85-957	Panhandle Eastern Pipe Line Co	Phenix Transmission Co	05-10-85	B		
ST85-958	Trunkline Gas Co	Allied Corp	05-10-85	F(157)		
ST85-959	Gasdel Pipeline System Inc	Public Service Electric and Gas Co	05-14-85	B		
ST85-970	Panhandle Eastern Pipe Line Co	National By-Products Co	05-14-85	F(157)		
ST85-971	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	05-14-85	F(157)		
ST85-972	Mountain Fuel Resources, Inc	Becker Industries Corp	05-16-85	F(157)		
ST85-973	Texas Eastern Transmission Corp	Elizabeth Gas Co	05-16-85	B		
ST85-974	MGTC, Inc	MIGC, Inc	05-16-85	C		
ST85-975	MIGC, Inc	Cominco American, Inc	05-16-85	F(157)		
ST85-976	ARN Pipe Line Co	Commonwealth Gas Pipeline Corp	05-16-85	B		
ST85-977	ANR Pipeline Co	Columbia Gas Distribution Co. of PA	05-16-85	B		
ST85-978	ANR Pipeline Co	Ohio Gas Co	05-16-85	16B		
ST85-979	ANR Pipeline Co	Orange and Rockland Utilities, Inc	05-16-85	B		
ST85-980	Texas Gas Transmission Corp	Louisana Gas System, Inc	05-16-85	B		
ST85-981	Colorado Interstate Gas Co	Cominco American, Inc	05-16-85	F(157)		
ST85-982	ANR Pipeline Co	National Fuel Gas Supply Corp	05-17-85	G		
ST85-983	ANR Pipeline Co	East Tennessee Natural Gas Co	05-17-85	G		
ST85-984	Columbia Gas Transmission Corp	Orange and Rockland Utilities, Inc	05-17-85	B		
ST85-985	Columbia Gulf Transmission Co	Orange and Rockland Utilities, Inc	05-17-85	B		
ST85-986	Columbia Gas Transmission Corp	Central Hudson and Gas and Electric	05-17-85	B		
ST85-988	Columbia Gas Transmission Corp	International Harvester Co	05-17-85	F(157)		
ST85-989	Columbia Gas Transmission Corp	Interstate Container Corp	05-17-85	F(157)		
ST85-990	Texas Eastern Transmission Corp	Brooklyn Union Gas Co	05-17-85	B		
ST85-991	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp	05-17-85	C		
ST85-992	Panhandle Gas Co	Baltimore Gas and Electric Co	05-09-85	D		
ST85-993	Panhandle Gas Co	Pacific Lighting Gas Supply Co	05-09-85	D		
ST85-994	Panhandle Gas Co	Transwestern Pipeline Co	05-09-85	D		
ST85-995	Delhi Gas Pipeline Corp	UGI Corp	05-20-85	C		
ST85-996	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	05-20-85	C		
ST85-997	Delhi Gas Pipeline Corp	Arkansas Oklahoma Gas Co	05-20-85	C		
ST85-998	Delhi Gas Pipeline Corp	Mississippi River Transmission Corp	05-20-85	C		
ST85-999	Transcontinental Gas Pipe Line Corp	Lithium Corp	05-20-85	F(157)		
ST85-1000	Somerset Gas Service	Columbia Gulf Transmission Co	05-20-85	C	[3] 10-28-85	40.00
ST85-1001	Somerset Gas Service	Columbia Gulf Transmission Co	05-20-85	C	[3] 10-28-85	40.00
ST85-1002	Delhi Gas Pipeline Corp	Texas Eastern TransmissionCorp	05-20-85	C		
ST85-1003	Texas Eastern Transmission Corp	American Distribution Co	05-24-85	B		
ST85-1005	Midwestern Gas Transmission Co	Reynolds Metals Co	05-23-85	F(157)		
ST85-1006	Columbia Gulf Transmission Co	Tennessee Gas Pipeline Co	05-21-85	G		
ST85-1007	Louisiana Intrastate Gas Corp	Transcontinental Gas Pipe Line Corp	05-21-85	C	10-18-85	29.80
ST85-1008	Louisana Intrastate Gas Corp	ANR Pipeline Co	05-21-85	C	10-18-85	13.61
ST85-1010	Louisana Intrastate Gas Corp	Mid Louisana Gas Co	05-22-85	C	10-19-85	60.00
ST85-1011	Arkla Energy Resources	Mississippi River Transmission Corp	05-22-85	C	10-19-85	101.42
ST85-1012	Transcontinental Gas Pipe Line Corp	Consolidated Gas Transmission Corp	05-20-85	G		
ST85-1013	Transcontinental Gas Pipe Line Corp	NY State Electric and Gas, et al	05-20-85	B		
ST85-1014	Trunkline Gas Co	THC Pipeline Co	05-22-85	B		
ST85-1015	Northern Natural Gas Co	NorVal Gas Co	05-22-85	B		
ST85-1016	MGTC, Inc	MIGC, Inc	05-22-85	C		
ST85-1017	Texas Eastern Transmission Corp	Valero Transmission Co	05-22-85	B		
ST85-1018	Texas Eastern Transmission Corp	Philadelphia Electric Co	05-22-85	B		
ST85-1020	Algonquin GasTransmission Co	Orange Rockland Utilities, Inc	05-24-85	B		
ST85-1021	Texas Eastern Transmission Corp	Public Service Electric and Gas Co	05-28-85	B		
ST85-1022	Texas Eastern Transmission Corp	Public Electric and Gas Co	05-28-85	B		
ST85-1024	Arkansas Oklahoma Gas Corp	Mississippi River Transmission Co	05-28-85	C		
ST85-1025	Panhandle Eastern Pipe Line Corp	Quaker Oats Co	05-28-85	F(157)		
ST85-1026	Panhandle Eastern Pipe Line Co	Broderick Co	05-28-85	F(157)		
ST85-1027	Panhandle Eastern Pipe Line Co	Reinforced Plastic Div	05-28-85	F(157)		
ST85-1030	Superior Offshore Pipeline Co	LGS Intrastate, Inc	05-28-85	B		
ST85-1031	Louisana Intrastate Gas Corp	Creole Gas Pipeline Corp	05-30-85	C	10/27/85	29.80
ST85-1032	Natural Gas Pipeline Co. of America	Mississippi River Transmission Corp	05-30-85	G		
ST85-1033	Panhandle Eastern Pipe Line Co	Richardson Battery Parts Div	05-28-85	F(157)		
ST85-1034	Panhandle Eastern Pipe Line Co	North America Refractories, Co	05-28-85	F(157)		
ST85-1035	United Gas Pipe Line co	City of Pensacola	05-28-85	B		
ST85-1036	Northern Natural Gas Co	Michigan Consolidated Gas Co	05-28-85	B		
ST85-1037	Panhandle Eastern Pipe Line Co	Quemetco, Inc	05-28-85	F(157)		
ST85-1038	Panhandle Eastern Pipe Line Co	Bronson Methodist Hospital, Inc	05-28-85	F(157)		
ST85-1039	Trunkline Gas Co	Bridgeline Gas Distribution Co	05-28-85	B		
ST85-1040	Florida Gas Transmission Co	HNG Industrial Natural Gas Co	05-30-85	B		
ST85-1041	Natural Gas Pipeline Co. of America	Florida Gas Transmission Co	05-29-85	G		
ST85-1043	United Gas Pipe Line Co	EnTrade Corp	05-29-85	F(157)		
ST85-1044	Natural Gas Pipeline Co. of America	Olin Corp	05-30-85	F(157)		
ST85-1046	Michigan Gas Storage Co	Bronson Methodist Hospital	05-29-85	F(157)		
ST85-1047	Louisana Resources Co	ANR Pipeline Co	05-28-85	C		
ST85-1049	Transcontinental Gas Pipe Line Corp	Carbosire Co., Inc	05-28-85	F(157)		
ST85-1050	Arkla Energy Resources	Derby Refining Co	05-30-85	F(157)		
ST85-1051	Natural Gas Pipeline Co. of America	Wabash Alloys, Inc	05-31-85	F(157)		
ST85-1052	Northwest Pipeline Corp	Baker Industries Corp	05-31-85	F(157)		
ST85-1053	Natural Gas Pipeline Co. of America	Westvaco Corp	05-31-85	F(157)		
ST85-1054	El Paso Natural Gas Co	American Distribution Co	05-30-85	B		
ST85-1055	United Gas Pipe Line Co	Industrial Pipeline Gas Co	05-31-85	B		
ST85-1056	United Gas Pipe Line Co	Babcock and Wilcox Co	05-31-85	F(157)		
ST85-1057	United Gas Pipe Line Co	Mountineer Gas Co., et al	05-31-85	B		
ST85-1058	United Gas Pipe Line Co	United Gas Transmission Co	05-31-85	B		
ST85-1059	United Gas Pipe Line Co	Astex Gas Transmission Co	05-31-85	B		
ST85-1060	United Gas Pipe Line Co	Quivira Gas Co	05-31-85	B		
ST85-1061	Natural Gas Pipeline Co. of America	Archer Daniels Midland Co	05-31-85	F(157)		
5-1062	ANR Pipeline Co	B. F. Goodrich Co	05-31-85	F(157)		
ST85-1063	ANR Pipeline Co	Admiral, Div. of Magic Chef	05-31-85	F(157)		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration Date[2]	Transportation Rate (¢/MMBtu)
ST85-1054	El Paso Natural Gas Co	Southwest Gas Corp	06-31-85	B		

[1] The notice of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.
[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to Section 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.
[3] Somerset Gas Service filed initial reports in docket nos. ST85-100 and ST85-101 on May 20, 1985. They filed their petitions for rate approval in these two docket numbers on May 31, 1985. The expiration dates for review on the rate petitions were calculated using the May 31, 1985, filing date.

[FR Doc. 85-16336 Filed 7-8-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER85-586-000]

Portland General Electric Co.; Filing

July 1, 1985.

The filing Company submits the following:

Take notice that on June 24, 1985, Portland General Electric Company (PGE) tendered for filing a Sales Agreement with the State of California, Department of Water Resources which provides for the sale of 100 MW of firm energy surplus to PGE for a time period of 1 month. The contract rate for energy to be sold is based upon its incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states that the reason for the proposed Sales Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a short period of time when such thermal resources are not required for its system loads.

PGE requests an effective date of April 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the State of California, Department of Water Resources, and the Oregon Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-16337 Filed 7-8-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ER85-456-000, ER85-424-001 and ER85-425-001]

Southwestern Electric Power Co.; Order Accepting for Filing and Suspending Rates, Granting Waiver, Consolidating Dockets and Disapproving Automatic Equity Clause

Issued: June 20, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa and Charles G. Stalon.

On April 29, 1985, Southwestern Electric Power Company (SWEPCO) submitted for filing a Transmission Service Agreement with Oklahoma Municipal Power Authority (OMPA).[1] The agreement provides for the transmission of OMPA's 15 MW and 25 MW entitlements in SWEPCO's Pirkey Unit No. 1 and Dolet Hils Unit No. 1, respectively. The proposed charge consists of a cost of service formula rate which is similar to formula rates presently on file for other SWEPCO customers, except that the proposed formula includes 50% of CWIP in rate base. SWEPCO requests waiver of the notice requirements to permit an effective date of May 1, 1985. Service under the agreement, however, will not begin until the date on which SWEPCO conveys to OMPA an undivided share of Pirkey Unit No. 1, which is expected to occur in late June 1985. SWEPCO states that waiver is necessary since OMPA anticipates a sale of bonds in June and needs a Commission order with an effective date prior to such bond sale. Included in SWEPCO's submittal is a letter from OMPA requesting that the Commission accept the proposed agreement for filing, without suspension or hearing, and grant the requested waiver.

Notice of the filing was published in the Federal Register [2] with comments due on or before May 22, 1985. No interventions have been received.

Discussion

Our review of the company's filing indicates that SWEPCO's rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential. We shall therefore accept the rates for filing and institute proceedings as discussed below.

We disagree with SWEPCO's contention that its rates are initial rates. The term "initial rates" does not appear in the Federal Power Act and, consequently, is not defined therein. The courts have held that what constitutes a changed versus an initial rate:

> is precisely that type of question we leave to the technical expertiese of the Commission. . . .[3]

At least one court has ventured that an initial rate is a "new service rendered to new customers." *Otter Tail Power Co.* v. *FERC*, 583 F.2d 399, 406 (8th Cir. 1978). In this case, the customer is new, but the service is not. SWEPCO already has rates on file, based on the same cost of service formula, for transmission to other customers from the Pirkey and Dolet Hills units.[4] Those rates have been set for hearing, and will be consolidated for hearing with the rates herein in part because the addition of a new transmission customer may affect either the current or future allocation or amount of cost to the other transmission customers. We therefore find that the addition of OMPA as a transmission customer is similar to the addition of a new service agreement to a filed rate schedule and should likewise be treated as a change in rate. *Cf. Municipal Electric Utilities Association of Alabama* v. *FPC*, 485 F.2d 967 (D.C. Cir 1973). The fact that SWEPCO has

[1] The agreement has been designated as Rate Schedule FERC No. 95.

[2] 50 FR 20584 (1985).

[3] *Middle South Energy* v. *FERC*, 747 F.2d 763 (D.C. Cir. 1984) (quoting *Florida Power & Light Co.* v. *FERC*, 617 F.2d 609, 615 (D.C. Cir. 1980)).

[4] Transmission is provided both as part of the requirements service rate (*Cf. Florida Power & Light Co.*, 617 F.2d 609) and separately to another unit owner-participant, NTEC.

chosen to file individual agreements for the same service rather than a standard, generally available rate does not change the underlying fact that the same rate formula [with some minor variations] is being applied in each case to similar transmission service. SWEPCO cannot "secure for itself the benefits of an initial rate simply by how it drafts its filing . . ." *Florida Power & Light, supra,* 617 F.2d 809, 815. Thus, the fact that SWEPCO is providing the same transmission service, under virtually the same formula rate, is not changed simply because SWEPCO has filed a separate rate schedule for such service to each customer.

It would be incongruous indeed, if after the consolidated hearing, the rates paid by some customers for transmission service for the Pirkey and Dolet Hills units were reduced retroactively under the refund provisions, while the rate to OMPA for the same transmission service could only be changed prospectively. We do not believe that this was the result intended by the Congress in enacting the Federal Power Act, which provides in Section 205(b) that:

> No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any under preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. 16 U.S.C. 824d(b)

The opportunities for undue prejudice or disadvantage and unreasonable differences in rates would clearly be numerous if utilities could create a nonsuspendable, nonrefundable "initial" rate simply by filing a new service agreement, with some variations in a standard formula, for the same service.[5] We shall therefore suspend the rate as set forth below and make it effective subject to refund.

In *West Texas Utilities Co.,* 18 FERC ¶ 61,189 (1982), we stated that where our preliminary review indicates that the proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas,* we would generally impose a nominal suspension. Here, our examination suggests that the proposed rates may not yield substantially excessive revenues. Further, as noted, OMPA supports the rates became effective as of May 1, 1985, in order to facilitate the sale of debt securities. For the same reason, OMPA supports the request for waiver of the notice requirements. In light of the affected customer's concurrence in its request, we find good cause to waive the notice requirements and impose only a nominal suspension so that SWEPCO's filing will become effective as modified below as of May 1, 1985, subject to refund.

SWEPCO has included a rate of return formula which is automatically adjusting. For the reasons set forth below, we shall not permit the automatic operation of such a formula. We shall accept for filing a fixed return on common equity of 17.72% (the initial result of the formula), and permit SWEPCO to file an appropriate rate schedule within thirty (30) days of this order. In the event SWEPCO wishes to obtain a return on equity different than 17.72%, it shall file a change in rate pursuant to part 35 of the Commission's regulations.

Further, as we stated today in *New England Power Company,* Docket Nos. ER85-475-000 *et al:*

> [W]e hereby announce our intention to reject all future rate filings which contain a formula rate which automatically adjusts the return on common equity. Automatic adjustment clauses are exceptions to the notice and filing requirements of the Federal Power Act. Even where we have permitted the use of a full cost of service formula, we have not allowed the equity return to be adjusted automatically.
>
> The use of an automatic formula rate for return on equity is inconsistent with our recent generic approach to equity return for electric utilities. In part 37 of our regulations, we have provided for the determination of the average cost of common equity for the jurisdictional operations of electric utilities and a quarterly indexing procedure to update the estimate and establish a benchmark rate of return on common equity for use in individual rate cases. Despite the availability of the quarterly update, the benchmark return on equity used to evaluate a rate is the one which is in effect when a rate filing is made, not a quarterly changing benchmark throughout the duration of the rate. In other words, in RM80-36-000, we thoroughly analyzed our approach to determining rate on equity. In light of the fact that the Commission has so recently visited the question and selected a generic approach which does not include automatically adjusting equity returns, we believe it would be administratively wasteful to continue to consider this issue in case by case adjudications. We shall therefore reject filings containing automatic equity clauses at the threshold as patently deficient. See 18 CFR § 35.5. (Footnotes omitted).

We recognize that the prospective operation of the formula rate of return on equity may have been an issue in the hearing in Docket Nos. ER85-424-000 and ER85-425-000. However, in light of our determination not to accept automatic equity clauses, above, we find that the question of whether the formula should be allowed to operate automatically should no longer be an issue in the consolidated hearing.

Finally, we find that common questions of law and fact may be presented in Docket Nos. ER85-424-000, ER85-425-000 and ER85-468-000. As a result, we shall consolidate these dockets for purposes of hearing and decision.

The Commission orders:

(A) SWEPCO's request for waiver of the notice requirements is hereby granted.

(B) As discussed in the body of this order, SWEPCO is hereby directed to submit within thirty (30) days of the date of this order a revised rate schedule reflecting a 17.72% return on common equity for its rates in Docket No. ER85-468-000.

(C) SWEPCO's submittal is hereby accepted for filing as modified above and suspended to become effective on May 1, 1985, subject to refund.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of SWEPCO's rate.

(E) Docket No. ER85-468-000 is hereby terminated, and the evidentiary hearing established herein is designated as Docket No. ER85-468-001.

(F) Docket No. ER85-468-001 is hereby consolidated with Docket Nos. ER85-424-001 and ER85-425-001 for purposes of hearing and decision.

(G) The presiding administrative law judge designated to preside in Docket Nos. ER85-424-001 and ER85-425-001 shall determine procedures best suited to accommodate consolidation of this docket with the pending proceeding.

(H) The Secretary will promptly publish this order in the Federal Register.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-10338 Filed 7-8-85; 8:45 am]

BILLING CODE 6717-01-M

[5] Indeed, this could result in the employment of a discriminatory rate to create an initial rate. For example, a utility could charge a significantly higher rate to a new customer for the same service being provided to other customers and claim that it was an initial rate because it was different from the other rate.

[Docket No. CI85-470-004 et al.]

Sun Exploration and Production Company et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

July 2, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 18, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Person wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price 1,000 ft³	Pressure base
CI85-470-004, D, June 24, 1985	Sun Exploration and Production Company, P.O. Box 2880, Dallas, Texas 75221-2880.	Arkansas Louisiana Gas Company, Red Oak-Norris Field, LeFlore County, Oklahoma.	(1)	
CI85-470-005, D, June 24, 1985	do	Arkansas Louisiana Gas Company, Red Oak-Norris Field, LeFlore County, Oklahoma.	(2)	
CI85-1027-001, E, June 24, 1985	ENSTAR Corporation (Succ. in Interest to Forest Oil Corporation), P.O. Box 2120, Houston, Texas 77252.	Columbia Gas Transmission Corporation, Vermilion Block 161, Federal Domain, Offshore Louisiana.	(3)	14.73
CI79-600-003, D and C, June 25, 1985	The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.	ANR Pipeline Company, Blocks A-585 and A-586, High Island Area, Offshore Texas and East-Half of Block 382, High Island Area, Offshore Texas.	(4)	14.73
CI85-514-000 (CI80-98), B, June 17, 1985	Geo. Oil and Gas Company of Houston, P.O. Box 2511, Houston, Texas 77001.	El Paso Natural Gas Company, Basin Dakota and Blanco Mesaverde Fields, San Juan County, New Mexico.	(5)	
CI85-523-000 B, June 24, 1985	Peake Operating Company, P.O. Box 1386, Charleston, W. Va. 25325-1386.	City Services Oil and Gas Corporation, Sharp-McMillan Lease, Grant and Jefferson Districts of Nicholas County, W. Va.	(6)	D
CI85-522-000 A, June 24, 1985	Marathon Oil Company (Operator), P.O. Box 3128, Houston, Texas 77253.	Texas Eastern Transmission Corporation, South Marsh Island Area, South Marsh Island Block 141 Field, South Addition, Offshore Louisiana.	(7)	14.73
CI85-524-000 B, June 24, 1985	Glen S. Soderstrom, *et al.*, P.O. Box 9354, Amarillo, Texas 79105.	Northern Natural Gas Company, No. 1 Birdwell-Section 190, Block 45, H&TC RR CO. Survey, Hansford County, Texas.	(8)	
CI85-525-000 B, June 24, 1985	W.G. Darsey, III, P.O. Box 53688, Lafayette, La. 70505.	Transcontinental Gas Pipe Line Corporation, Bear Field, Beauregard Parish, Louisiana.	(9)	
CI85-526-000, B, June 24, 1985	ENI Exploration Company, 110 110th Avenue NE., C-21611, Bellevue, Washington 98009.	Transcontinental Gas Pipe Line Corporation Bear Field, Beauregard Parish, Louisiana.	(10)	

[1] Assignment and Bill of Sale to Joseph F. Mueller of Gunter Unit.
[2] Assignment and Bill of Sale to Samson Resources Company of Robert W. Lowry Property.
[3] Assigned from Forest Oil to ENSTAR Corporation Assignment dated 1-27-83.
[4] By amendments dated May 30 and May 31, 1985, Northwestern Mutual and ANR agreed to amend the 1978 Gas Purchase Contract in two respects. *FIRST*, they agreed to delete from coverage under the contract those portions of Blocks A-585 and A-586 that were committed to the contract. *SECOND*, they agreed to add to the commitment under the contract the East-Half of Block 382. In conjunction with these amendments, Northwestern Mutual and ANR also executed a new Gas Purchase Contract, effective 5-51-85.
[5] Sale of dedicated properties to Quinoco Petroleum, Inc. on 1-1-84.
[6] Uneconomical and insubsential production from old wells in time of abundant gas supply. The gas purchase contract has expired.
[7] Applicant is filing under Gas Purchase Contract dated 4-10-85.
[8] No sales under contract since 8-24-77
[9] Well depleted—Plugged and Abandoned 11-20-81.
[10] Depletion of reservoir.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 85-10339 Filed 7-8-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI85-513-000]

Tenngasco Gas Supply Company, HT Gathering Company, Houston Natural Gas Corporation, and Intratex Gas Company vs. Southland Royalty Company, et al.; Complaint

Issued: July 2, 1985.

On June 17, 1985, Tenngasco Gas Supply Company, HT Gathering Company (HT), Houston Natural Gas Corporation and Intratex Gas Company (Complainants) filed a complaint pursuant to Rule 206 of the Commission's rules of practice and procedure against Southland Royalty Company and other producers of natural gas (Respondents) in the Sand Hills, Dune and Waddell Ranch areas of Crane County, Texas.

Complainants state that Respondents are sellers of natural gas to HT [1] pursuant to various contracts, most of which were dated September 12, 1975, and that it was understood by all parties that the gas to be sold by Respondents to HT was not committed or dedicated to interstate commerce. Complainants state that in January 1985 they reviewed the 1975 contracts and other related documents and concluded that sales to HT from the Waddell Ranch area constituted unlawful diversions of gas from interstate commerce in violation of the Natural Gas Act and that the sales were being made at prices in excess of maximum lawful prices under the Natural Gas Policy Act of 1978 (NGPA).

Complainants state on April 25, 1985, HT notified Respondents that it intended to cease accepting deliveries of gas from them and that the Respondents thereupon applied for and were issued a temporary restraining order by the 109th Judicial District Court of Crane County, Texas. The restraining order enjoined Complainants from refusing to purchase residue gas from wells on the Waddell Ranch properties. HT subsequently filed a removal petition removing the state court action to the United States District

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[1] HT is co-owned by Houston Natural Gas and Tenngasco.

Court for the Western District of Texas, Midland-Odessa Division. HT also filed a motion to dissolve the restraining order.

Complainants allege that at least a portion of the gas being sold by Respondents to HT is subject to a certificate issued by the Commission to Gulf Oil Company on May 28, 1956, in Docket No. G–7156, authorizing the sale of residue casinghead gas from the Waddell Ranch area to El Paso Natural Gas Company. Complainants allege that the sale of such gas by respondents to HT constitutes an unlawful diversion of gas in violation of section 7 of the Natural Gas Act. Complainants request the Commission to find that all casinghead gas produced from the Waddell Ranch area is dedicated to interstate commerce and must be sold, absent proper abandonment authorization, to El Paso at prices not in excess of applicable maximum lawful prices under the NGPA.

Any person desiring to participate in this proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests must be filed not later than 30 days following issuance of this notice by the Commission. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this complaint are on file with the Commission and are available for public inspection. Respondents to the complaint have been served a copy of the complaint by Complainants; answers to the complaint shall be filed on or before August 1, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16340 Filed 7–8–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP85–35–000]

United Gas Pipe Line Co.; Petition

July 2, 1985.

Take notice that on June 18, 1985, United Gas Pipe Line Company (United) filed a petition requesting the Commission to approve a settlement agreement entered into by United, Pennzoil Producting Company (Producing) and Pennzoil Oil & Gas, Inc. (POGI) and to approve the rate treatment proposed by United of payments made by United to Producing and POGI under the Agreement. The Agreement pertains to the payment by United to Producing and POGI of production-related cost allowances authorized by § 271.1104 of the Commission's regulations as promulgated by Order No. 94–A, issued January 23, 1983, 22 FERC ¶ 61,055, and subsequent Order Nos. 94–B, 94–C, 94–D and 94–E, and to the rate treatment to United of these payments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 9, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16341 Filed 7–8–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST81–457–002 et al.]

United Gas Pipe Line Co. et al., Extension Reports

July 3, 1985.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's Regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the names and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations: a "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before July 24, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20406, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules or Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284, subpart	Effective date	Expiration Date [1]
ST81–457–002 [2]	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	Monterey Pipeline Co	06–06–85	B	06–01–85	09–04–85
ST83–536–001 [3]	Florida Gas Transmission Co., P.O. Box 44, Winter Park, FL 32790.	United Gas Pipe Line Co	05–30–85	G	07–07–85	06–28–85
ST83–733–001 [3]	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	Southern Natural Gas Co	06–13–85	G	06–09–85	09–11–85

Docket No.	Transporter/seller	Recipient	Date filed	Part 284, subpart	Effective date	Expiration Date [1]
ST83-755-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202.	Columbia Gulf Transmission Co	06-06-85	G	09-04-85	
ST83-756-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202.	Columbia Gulf Transmission Co	06-06-85	G	09-04-85	
ST84-4-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148.	Southern Natural Gas Co	06-03-85	G	09-04-85	
ST84-27-001 [2]	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77251	Amoco Gas Co	06-03-85	B	07-01-85	09-01-85
ST84-100-001	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	B & A Pipeline Co	06-05-85	B	05-23-85	
ST84-944-001	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Mississippi River Transmission Corp	06-05-85	D	09-06-85	

[1] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.
[2] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
NOTES.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-16342 Filed 7-8-85; 8:45 am]
BILLING CODE 6717-01-M

Office of Energy Research

Availability of Report on Centers for Disease Control Review Panel's Recommendations for Ongoing Savannah River Plant Epidemiological Studies

AGENCY: Office of Energy Research, Energy.

ACTION: Final DOE position and availability of a public comment and meeting report on a Centers for Disease Control Review Panel's recommendations on Health Effects and Epidemiological Studies of Operations at the Savannah River Plant.

SUMMARY: The Department of Energy (DOE) announces the availability of a *Public Comment and Meeting Report: Centers for Disease Control Review Panel's Recommendations on Health Effects and Epidemiological Studies of Operations at the Savannah River Plant* (DOE/ER-0225). The report documents the public comments received by the Department of Energy from December 1, 1984, to January 31, 1985, on a Centers for Disease Control review panel's recommendations on the feasibility and usefulness of conducting further epidemiologic studies. The report also contains the Department of Energy's final position on the review panel's recommendations, and responses to the public comments and questions prepared by the Department of Energy, the Centers for Disease Control, the South Carolina Department of Health and Environmental Control, and the E.I. du Pont de Nemours and Company.

SUPPLEMENTARY INFORMATION: Based on the request of the U.S. Department of Enery, the Centers for Disease Control of the U.S. Department of Health and Human Services organized a panel to review the feasibility and usefulness of conducting further epidemiologic studies of delayed health effects around the Department of Energy's Savannah River Plant. The review and recommendations of the panel were documented in a report entitled *Epidemiologic Projects Considered Possible to Undertake in Populations Around the Savannah River Plant.*

On November 30, 1984, the Department of Energy announced in the **Federal Register** (49 FR 47095) the conduct of a public meeting and a 30-day public comment period between December 1 and December 30, 1984, on the recommendations of the review panel. Based on the requests of individuals and representatives of organizations attending the December 18, 1984, public meeting, the Department of Energy subsequently announced in the **Federal Register** on December 31, 1984 (49 FR 50767) an extension of the public comment period to January 31, 1985.

The Department of Energy received a total of 11 statements on the recommendations of the Centers for Disease Control review panel at the public meeting and during the public comment period. Representatives of organizations participating on a panel at the public meeting—the Department of Energy's Headquarters Office and Savannah River Operations Office, Centers for Disease Control, Oak Ridge Associated Universities, South Carolina Department of Health and Environmental Control, and E. I. du Pont de Nemours and Company—have prepared responses to the comments received. These responses are contained in the public comment and meeting report (DOE/ER-0225).

Availability of Report: Copies of the public comment and meeting report (DOE/ER-0225) have been distributed to each person who has requested a copy of the Centers for Disease Control review panel report entitled *Epidemiologic Projects Considered Possible to Undertake Around the Savannah River Plant,* and those who made a presentation at the December 18, 1984, public meeting or who provided written comments. Copies of the report will also be available for public inspection at the Department of Energy's Public Reading Room at the University of South Carolina, Aiken Campus, University Library, University Parkway, Aiken, South Carolina, and at the Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC.

Additional copies may be obtained by contacting: Mr. C. G. Halsted, Jr., Assistant Manager for Health, Safety, and Environment, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802, (Phone: 803-725-1380).

Final DOE Position: The Centers for Disease Control (CDC) review panel identified three ongoing employee studies which merited high priority. The CDC believes that these studies deserve consideration for extensive protocol development, peer review, and eventual funding. DOE's final position on the CDC recommendations is based on the premise that these three studies shoud provide useful scientific information or radiation epidemiology, and help assure the health and safety of workers and the general public. The CDC recommendations for the three studies are as follows:

- Continued participation in the industry-wide Health and Mortality Study of workers, funded by the DOE.
- Completion and publication of the lung cancer case-control study of Du Pont employees by Du Pont.
- Completion and publication of the leukemia case-control study in Du Pont employees by Du Pont.

Of these three studies, the CDC determined only the industry-wide Health and Mortality Study to have a sufficient number of subjects to provide adequate statistical power to be scientifically valid.

DOE will continue to fund the industry-wide Health and Mortality Study, including investigations of the Savannah River Plant, through Oak Ridge Associated Universities (ORAU) and other contractors. The research organizations participating in DOE epidemiologic research will continue

having periodic technical peer review by their colleagues and will publish their research findings in peer-reviewed scientific journals. Periodic peer-review site visits of DOE-funded research by researchers in non-DOE federal agencies and in academic institutions will occur every three years, and independent advisory committees to each reseach project will review progress annually.

DOE–SR will review results of epidemiologic studies performed by Du Pont, the prime contractor in charge of operations at the SRP. DOE–SR will assure that Du Pont continues to actively participate in the Health and Mortality Study of SRP employees coordinated by ORAU. Since the CDC review panel noted that the other two studies are not expected to have a sufficient number of subjects to provide adequate statistical power to be scientificaily valid, Du Pont has indicated the following proposed actions:

• Because ORAU is already planning nested case-control studies of causes-of-death that appear to be in excess at SRP, Du Pont does not plan to take any action on the CDC recommendation to reanalyze the case-control study of leukemia and does not plan to publish the results in a peer-reviewed journal. Upon completion of the ORAU study, Du Pont will reevaluate to determine whether additional assessments are necessary.

• Since the analysis of mortality at SRP due to lung cancer will be included in the ORAU industry-wide study of health effects and mortality of radiation workers, Du Pont does not plan to publish separately the SRP lung cancer study.

In summary, DOE will continue to fund the industry-wide Health and Mortality Study of workers. This study will continue to receive independent peer review, and, periodically, updated results will be published in a peer-reviewed scientific journal. Du Pont will continue to actively participate in the worker study, but does not plan to published data on lung cancer or leukemia results separately since they will be an integral part of the ORAU study of SRP workers.

Issued in Washington, D.C. on June 24, 1985.

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 85–16347 Filed 7–8–85; 8:45 am]

BILLING CODE 6450–01–M

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board [ERAB].

Date and Time: August 14, 1985 from 8:30 a.m. to 5:00 p.m.; August 15, 1985 from 8:30 a.m. to 5:00 p.m.; August 16, 1985 from 8:30 a.m. to 12:00 Noon

Place: Battelle Memorial Institute, Lecture Hall, 4000 NE. 41st Street, Seattle, WA 98105.

Contact: Sarah Goldman, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, 202/252–8933.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative agenda: The specific agenda items and times are frequently subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the day of the meeting.

August 14

8:30 a.m.—Informal discussion/coffee
9:00 a.m.—Administration Items
—Review of meeting logistics
—Minutes of May meeting
—Progress of completed reports
9:15 a.m.—Welcome from Pacific Northwest Laboratory/Battelle
9:45 a.m.—Activities of Richland Operations Office
10:15 a.m.—Break
10:30 a.m.—Overview of Bonneville Power Administration
11:00 a.m.—Discussion of Summer Study Plan
—Subpanel discussion group assignments
11:30 a.m.—Presentation of strawman vote results
12:00 Noon—Lunch
1:00 p.m.—Discussion groups (separate meetings) of the Long Range R&D Strategy Study subpanels
—Supply
—Demand
—Research
—Infrastructure
3:00 p.m.—Break
3:30 p.m.—Plenary summation of subpanel reports
4:50 p.m.—Public Comment (10 minute rule)
5:00 p.m.—Adjourn

August 15

8:30 a.m.—Informal discussion/coffee
9:00 a.m.—Plenary Session—Long Range R&D Strategy Study
10:15 a.m.—Break
10:30 a.m.—Subpanel sessions
12:00 Noon—Lunch
1:00 p.m.—Subpanel sessions
3:00 p.m.—Break
3:15 p.m.—Plenary Session—Long Range R&D Strategy Study
4:00 p.m.—International R&D Panel report
4:50 p.m.—Public Comment (10 minute rule)
5:00 p.m.—Adjourn

August 16

8:30 a.m.—General Business
—Departure plans
—Review Group on NRC Chemistry Study
—Environmental Impacts of Coal
9:00 a.m.—Long Range R&D Strategy Study Steering Committee
9:00 a.m.—Plenary Session—Long Range R&D Strategy Study
11:50 a.m.—Public Comment (10 minute rule)
12:00 Noon—Adjourn meeting

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sarah Goldman at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on July 3, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85–16348 Filed 7–8–85; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL-2861-4]

Science Advisory Board; Executive Committee; Open Meeting

Under Public Law 92–463, notice is hereby given that a meeting of the Executive Committee of the Science Advisory Board (SAB) will be held at the Environmental Protection Agency, 401 M Street, S.W., Conference Room 1101, West Tower, Washington, D.C. 20460. The meeting will begin at 9:00 a.m. on both days and will adjourn on July 30 at 5:00 p.m. and on July 31 at approximately 12:00 noon.

The major purposes of this meeting are to enable the Committee to review draft SAB reports on: (1) A Probabilistic Methodology for Analyzing Water Quality Effects of Urban Runoff on Rivers and Streams; (2) OPPE Comparison of Risks and Costs of Hazardous Waste Alternatives: Methods Development and Pilot Studies; and (3) the review of EPA's Ground Water Research Program. In addition, the Committee will discuss new issues

submitted by EPA for SAB review, and other issues of member interest.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW., Washington, D.C. 20460 or call (202) 382-4126 before close of business July 23, 1985. The public is advised that seating at the meeting is limited.

Terry F. Yosie,

Director, Science Advisory Board.

July 3, 1985.

[FR Doc. 85-16248 Filed 7-8-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 85-167 et al.]

Aircall Northwest, Inc., and Pacific Paging, Inc.; Hearing Designating Order Applications

In re application of:

Aircall Northwest, Inc. For a Construction Permit in the Public Land Mobile Servcie for a new one-way station to operate on frequency 158.70 MHz in Astoria, Oregon.	CC Docket No. 85-167; File No. 24640-CD-P/L-84.
Pacific Paging, Inc. For a Construction Permit to establish an additional facility for one-way station KSV984 to operate on frequency 158.70 MHz in the Public Land Mobile Service near Astoria, Oregon.	File No. 20755-CD-P/ML-1-85.

Adopted May 16, 1985.
Released July 2, 1985.

By the Common Carrier Bureau.

1. Aircall Northwest, Inc. (Aircall) filed an application for a new one-way station to operate on frequency 158.70 MHz in Astoria, Oregon. Pacific Paging, Inc. (Pacific) timely filed an application for a construction permit to establish an additional one-way facility to operate on frequency 158.70 MHz near Astoria, Oregon, requested a comparative hearing and provided a showing that the public interest would be served by holding a hearing. The applications have not been protested.

2. After careful examination of the applications, we find both applicants to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further fnd that the proposals of Aircall and Pacific to use the same frequency, 158.70 MHz, in the same geographical area are electrically mutually exclusive. Since Pacific has applied for an additional facility on the same frequency, these applications will not be subject to selection by lottery. *Random Selection Lotteries*, Gen Docket No. 81-768, 93 FCC 2d 952 (1983), *recon, granted in part*, FCC 84-506, released December 4, 1984. Therefore, a comparative hearing will be held to determine which applicant would serve the public interest.

3. Accordingly, it is ordered that the applications of Aircall Northwest, Inc. (File No. 24640-CD-P/L-84) and Pacific Paging, Inc. (File No. 20755-CD-P/ML-1-85), are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within 43 dBu contours,[1] based upon the standards set forth in § 22.504(a) of the Commission's Rules [2] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

4. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

5. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the rules within 20 days of the release date hereof, a written notice stating an intention to appear on that date for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

7. This order is issued under § 0.291 of the Commission's Rules and is effective upon its release date. Petitions for reconsideration will not be entertained. See § 1.106(a)(1) of the rules. Applications for review will be entertained pursuant to § 1.115(e)(3).

8. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-16283 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

[1] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

[MM Docket No. 85-170 et al.]

Omaha Channel 54, Inc.; Hearing Designation Order

In re Applications of:

Omaha Channel 54, Inc.	MM Docket No. 85-170; File No. BPCT-840921LG.
Maryland Williams	File No. BPCT-850108KM.
Omaha Telecasters, Inc.	File No. BPCT-850108KQ.
Minority TV of Omaha	File No. BPCT-850108LJ.

For Construction Permit For Television Station Omaha, NE.

Adopted: May 24, 1985.
Released: July 2, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Omaha Channel 54, Inc. (OCI), Maryland Williams (Williams), Omaha Telecasters, Inc. (Telecasters) and Minority TV of Omaha (Minority) for authority to construct a new commercial television station on Channel 54, Omaha, Nebraska; a petition to accept amendment *nunc pro tunc* and an amendment filed by OCI; and a petition for leave to amend and an amendment filed by Telecasters.[1]

[1] The deadline for filing amendments to the above-captioned applications was February 28, 1985 ("B" cut-off date). On that date OCI filed an amendment changing the nature of its application from a corporation to a limited partnership. The amendment did not contain an original signature. At the time of filing the applicant indicated that Mrs.

Continued

2. Section II, question 5(b), FCC Form 301, inquires whether the applicant or any party to the application, owns or has any interest in a daily newspaper or cable television system and, if so, it calls for a full description of the persons involved and the nature, type and location of that media interest. Williams gave a positive answer to question 5(b), but did not include the required exhibit. Williams will be required to submit the appropriate exhibit in response to question 5(b), to the presiding Administrative Law Judge within 20 days after this Order is released.

3. Section 73.2080(c) of the Commission's Rules requires applicants employing at least five persons full-time to file with the Commission a program designed to provide equal employment opportunities. Telecasters submitted the required program in accordance with the Commission's 5-point model EEO program (FCC Form 396A). However, it did not therein identify, by name, the person responsible for implementing that program. Telecasters will be required to submit the appropriate information required by item 2 of the EEO program to the presiding Administrative Law Judge within 20 days after this Order is released.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the areas and populations which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. No determination has been made that the tower heights and locations proposed by OCI and Williams would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.[2]

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Omaha Channel 54, Inc., and Maryland Williams would each constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That Omaha Channel 54, Inc.'s March 5, 1985, petition to accept amendment *nunc pro tunc* is granted and the accompanying amendment is accepted and Omaha Telecasters, Inc.'s March 19, 1985 Petition for Leave to Amend is granted and the accompanying amendment is accepted.

9. It is further ordered, That Maryland Williams shall submit the appropriate exhibit to question 5(b), section II, FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

10. It is further ordered, That Omaha Telecasters, Inc. shall submit the appropriate information required by § 73.2080(c) of the Commission's Rules as discussed in paragraph 3, supra, to the presiding Administrative Law Judge within 20 days after this Order is released.

11. It is further ordered, That Omaha Telecasters, Inc. SHALL AMEND its application to specify tower height above ground level to conform to that approved by the Federal Aviation Administration within 20 days after the release of this Order.

12. It is further ordered, That the Federal Aviation Administration IS MADE A PARTY RESPONDENT to this proceeding with respect to issue 1.

13. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14 It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division Mass Media Bureau.

[FR Doc. 85-16284 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85-169 et al.]

Tulsa Broadcasting Group et al.; Hearing Designation Order

In re application of:

Tulsa Broadcasting Group, a limited partnership.	MM Docket No. 85-169; File No. BPCT-850211LL
EAM Broadcasting	File No. BPCT-850108KL.
Willis Matthews, Jr., Jay Whitecrow and Barbara Johnson d.b.a. Native American Broadcasting Company, a limited partnership.	File No. BPCT-850108KQ.
Tulsa Television, Ltd.	File No. BPCT-850108KU.

For Construction Permit Tulsa, OK.

Adopted: May 24, 1985.

Released: July 2, 1985.

By the Chief, Video Services Division.

William, a general partner, had in fact executed the amendment on or before February 28, 1985, but due to Federal Express's error she had not been able to deliver the amendment to counsel for filing by the cut-off date. The executed amendment was filed on March 5, 1985, accompanied by a petition to accept the amendment *nunc pro tunc*. In view of the fact that all parties were put on timely notice concerning the contents of the amendment, none were prejudiced. The amendment was timely filed; only the signature was missing and that was filed five days later. More importantly, the executed amendment was in existence on the "cut-off" date. Under these circumstances, the unopposed petition to accept the amendment nunc pro tunc will be granted. See *Boonsegra/Gerald Broadcasting Group*, Mimeo No. 1473, released December 23, 1982; *Communications Gaithersburg, Inc.*, 60 FCC 2d 237 (1976). Additionally, on March 19, 1985, Telecasters filed a petition for leave to amend and an amendment to its application. The amendment contains a no-hazard notification from the FAA. The petition and amendment have been reviewed and good cause exists for accepting the amendment. Therefore, the petition will be granted and the amendment accepted for filing.

[2] The Federal Aviation Administration has approved Telecasters' overall height above ground at 1354 feet, but in its application to the FCC, Telecasters specified the overall height AGL as 1394 feet. Therefore, Telecasters must amend its application to conform to the height approved by the FAA.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Tulsa Broadcasting Group, Inc. (TBG) EAM Broadcasting (EAM), Native American Broadcasting Company (Native), and Tulsa Television, Ltd. (TTL) for authority to construct a new commercial television station on Channel 53, Tulsa, Oklahoma, and a petition for leave to amend and an amendment filed by EAM.[1]

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been made that the tower height and location proposed by TBG and EAM would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

4. EAM failed to specify the modal number of the antenna (as modified) to be used, which is required by item 7, section V–C, FCC Form 301. Consequently, EAM will be required to submit an appropriate amendment to the presiding Administrative Law Judge, within 20 days after the release date of this Order, specifying the model number required by item 7, section V–C, FCC Form 301.

5. EAM is a limited partnership comprised of one general partner (Ronald Young) and three limited partners (Stuart W. Epperson, Edward G. Atsinger, III, and Jerrold Miller). Stuart W. Epperson holds a 37.5% equity interest in the applicant and is also 100% owner of KAKC(AM) and KCFO(FM), Tulsa, Oklahoma. Section 73.3555(b)(1) of the Commission's Rules provides that no license for a television station shall be granted to any party if such party directly or indirectly owns, operates, or controls an AM or FM broadcast station and the grant of such license will result in the Grade A contour of the proposed television station encompassing the entire community to which the AM or FM station is licensed. Note 4 to this rule provides, *inter alia*, that applications for UHF television facilities "will be handled on a case-by-case basis in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest." We have recently held, however, that limited partnership interests are nonattributable where the limited partner would not be involved in any material respect in the management or operation of the proposed broadcast station. *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *reconsideration granted in part*, FCC 85–252, adopted May 9, 1985. The Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. In adopting the new attribution standards, the Commission stated that its action did not affect the substantive aspects of the cross-interest policy, which it would continue to administer on a case-by-case basis. EAM has not indicated that Epperson will be insulated from the management or operation of the proposed television station. In the absence of this information regarding Mr. Epperson's involvement in the management and operation of the proposed station, we conclude that the interest is attributable. Accordingly, an appropriate multiple ownership/cross interest issue will be designated.

6. TBG amended its application on February 28, 1985, to change its ownership structure from a corporation to a limited partnership. However, the total equity interests for the respective partners total more than 100% (in fact the equity interests total 102.5%). Accordingly, TBG will be required to submit an amendment to the presiding Administrative Law Judge, within 20 days after the release date of this Order, correcting the equity interests of the parties to its application.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, It is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Tulsa Broadcasting Group, Inc., and EAM Broadcasting would each constitute a hazard to air navigation.

2. To determine, with respect to EAM Broadcasting, whether the interest of Stuart Epperson in radio stations KAKC and KCFO(FM), Tulsa, Oklahoma and his interest in the applicant, is inconsistent with § 73.3555 of the Commission's Rules or the Commission's cross interest policy and, if so, whether common ownership, operation, or control of KAKC and KCFO(FM), Tulsa, Oklahoma and the proposed television station would be consistent with the public interest.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That EAM Broadcasting's March 14, 1985 Petition for Leave to Amend is granted and the accompanying amendment is accepted for filing, for Section 1.65 purposes only.

10. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

11. It is further ordered, That Tulsa Broadcasting Group, A Limited Partnership, shall submit an appropriate amendment to the presiding Administrative Law Judge, within 20 days after the release date of this Order correcting the equity interests of its partners as discussed in paragraph 6, supra.

12. It is further ordered, That EAM Broadcasting shall submit an appropriate amendment to the presiding Administrative Law Judge, within 20 days after the release date of this Order, to specify the model number of its antenna as required by item 7, section V–C, FCC Form 301.

13. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, the triplicate, a written appearance stating an intention to appear on the date fixed for the hearing

[1] The deadline for filing amendments to the above-captioned applications was February 28, 1985. EAM filed a petition for leave to amend and an amendment to its application on March 14, 1985. The amendment corrects an allegedly typographical error in the equity percentages of two of EAM's limited partners. The petition is unopposed and good cause exists for accepting the amendment. The petition will be granted and the amendment accepted for filing for § 1.65 purposes only.

and to present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division Mass Media Bureau.

[FR Doc. 85-16285 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; Elkton Broadcasters, Inc. and Stonewall Broadcasting Co.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Elkton Broadcasters, Inc., Elkton, VA.	BPH-840402IA	[illegible]
B. Ernest P. Evans et al., d.b.a. Stonewall Broadcasting Co., Elkton, VA.	BPH-840607IA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-16287 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; KAYS Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. KAYS Inc., Rock Springs, WY.	BPH-830218AE	85-163
B. Mesa Broadcasting Co., Rock Springs, WY.	BPH-830222AD	
C. Faith Broadcasting, Rock Springs, WY.	BPH-830520AO	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B, C
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division. Mass Media Bureau.

[FR Doc. 85-16289 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 2, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

OMB Number: 3060-0004

Title: Sections 1.1305 & 1.1311, Major actions and environmental information to be submitted with applications for authority to construct major communications facilities

Action: Revision

Respondents: Individuals or households, state or local governments, businesses (including small businesses), and non-profit institutions

Estimated Annual Burden: 545 Responses; 2,725 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-16291 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 85-147 et al.]

Air Beep of Florida, Inc., et al.; Hearing

In re application of:

Air Beep of Florida, Inc. For Construction Permit to establish a new one-way paging facility on frequency 158.70 MHz for Station KUC847 in the Public Land Mobile Service at Tavernier, Florida.	CC Docket No. 85-147; File No. 25578-CD-P-83.
Gabriel Communications Corporation. For Construction Permit to establish additional one-way paging facilities on frequency 158.70 MHz for station KRM983 in the Public Land Mobile Service at Perrine, Florida.	File No. 26374-CD-P-1-83.

Order Designating Applications for Hearing

Adopted May 8, 1985.
Released July 2, 1985.

By the Common Carrier Bureau.

1. On July 27, 1983, Air Beep of Florida, Inc. (Airbeep) filed with the Commission an application for a new one-way paging station at Tavernier Okeechobee, Florida. Within the sixty day cut-off period Gabriel Communications Corporation (Gabriel) filed an application on frequency 158.70 MHz for an additional location for Station KRM963 at Perrine, Florida. The applications have not been protested. Since Gabriel's application is for an additional facility these applications are not subject to decision by lottery.

2. We find both applicants to be legally, technically and otherwise qualified to construct and operate the proposed facilities. We further find that the proposals of Air Beep and Gabriel to use frequency 158.70 MHz in the same geographical area are electrically mutually exclusive; therefore, a comparative hearing will be held to determine which applicant would best serve the public interest.

3. Accordingly, it is ordered pursuant to section 309 of the Communications Act of 1934, as amended, that the applications of Air Beep of Florida, Inc., File No. 25576–CD–P–83 and of Gabriel Communications Corporation, File No. 26374–CD–P–1–83 to operate on frequency 158.70 MHz are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[1] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[2] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

4. It is further ordered, that the hearing shall be held at a time and place before an Administrative Law Judge to be specified in a subsequent Order.

5. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the Commission's Rules within 20 days of the release date hereof a written notice stating an intention to appear on that date for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

7. This order is issued under § 0.291 of the Commission's Rules and is effective on its release date. Applications for review may be filed under § 1.115 of the rules within 30 days of public notice [*see* § 1.4(b)(2)].

8. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85–16288 Filed 7–8–85; 8:45 am]

BILLING CODE 6712–01–M

[1] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R–6404, equation 8.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

[MM Docket No. 85–190, et al.]

James M. Cope et al.; Hearing

In re applications of:

James M. Cope, Dardanelle, Arkansas. Req: 1490 kHz, 0.25 kW 1 kW–LS, U.	MM Docket No. 85–190; File No. BP–840507AA.
Brenda J. Miller, Dardanelle, Arkansas. Req: 1490 kHz, 0.25 kW, 1 kW–LS, U.	File No. BP–841001AJ.
Liz Womack and Teddy Ann Moore d/b/a Ark Valley Broadcasters, Dardanelle, Arkansas. Req: 1490 kHz, 0.25 kW, 1 kW–LS,U.	File No. BP–841001AK.

For Construction Permit

Hearing Designation Order

Adopted: June 4, 1985.
Released: July 3, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications for new AM broadcast stations.

2. All applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

3. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine, which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

4. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

5. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

6. It is further ordered, that pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of the notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85–16290 Filed 7–8–85; 8:45 am]

BILLING CODE 6712–01–M

[CC Docket No. 85–209 et al.]

Digital Paging Systems, Inc. et al.; Hearing

In re applications of:

Digital Paging Systems, Inc...	CC Docket No. 85-238; File No. BXOT-CM-P-74.
Private Networks, Inc.	File No. BPTS-CM-P-74.
Daycom Corporation	File No. BPTS-CM-P-74.
Multipoint Information Systems, Inc. For Construction Permits in the Multipoint Distribution Service for a new station on Channel 2, at Pittsburgh, Pennsylvania.	File No. BXOT-CM-P-74.

Memorandum Opinion and Order

Adopted June 27, 1985.
Released July 2, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Pittsburgh, Pennsylvania. The applications are therefore mutually exclusive and require comparative consideration. These applications have been amended as a result of informal requests by the Commission's staff for additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliabilty of service as set forth in issues (a) and (b).

4. It is further ordered, that Digital Paging Systems, Inc., Private Networks, Inc., DayCom Corporation, Multipoint Information Systems, Inc., and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. ANSWERING Service, Inc., et al,* FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,
Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-16297 Filed 7-8-85; 8:45 am]
BILLING CODE 8712-01-M

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 28 markets, including Pittsburgh, Pennsylvania, where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

[MM Docket No. 85-182]

Great Arizona Broadcasting Co. et al.; Hearing

In re applications of:

Great Arizona Broadcasting Co.	MM Docket No. 85-182; File No. BPCT-841125KE.
Lifestyle Broadcasting Corp ..	File No. BPCT-850212KE.
Doylan Forney	File No. BPCT-850213KF.
Susan Cordova Kelly	File No. BPCT-850214KK.
Marimar Communications Corp.	File No. BPCT-850215KE.
Dorothy O. Schulze and Irene Wagner d/b/a Schulze-Wagner Partnership.	File No. BPCT-850215KF.
Tolleson Broadcasting Corp ..	File No. BPCT-850215KL.
Tolleson-Gomez Communications, Inc.	File No. BPCT-850215KN.
Alden Television, Inc	File No. BPCT-850215LA.
Hector Garcia Salvatierra, Limited Partnership.	File No. BPCT-850215LB.
Madrid Communications Limited Partnership.	File No. BPCT-850215LE.
Aztec Broadcasting Corp	File No. BPCT-850215LG.
Estrella Communications Limited Partnership, an Arizona Limited Partnership.	File No. BPCT-850215LK.
Maricopa Media, Inc	File No. BPCT-850215LL.
T.V. Broadcasters, Inc	File No. BPCT-850215LM.
Li-Com Limited Partnership...	File No. BPCT-850215LN.

For Construction Permit Tolleson, Arizona.

Hearing Designation Order

Adopted: May 31, 1985.
Released: July 2, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 51, Tolleson, Arizona.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been reached that the tower height and location proposed by Estrella Communications Limited Partnership and Susan Cordova Kelly would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. The transmitter site proposed by Great Arizona Broadcasting Company will be located 1.08 miles from AM Station KRDS, Tolleson, Arizona. Because of the proximity of the proposed tower to KRDS, if Great Arizona Broadcasting Company is the successful applicant for Channel 51, the construction permit will be conditioned

to ensure that KRDS's radiation patterns will not be adversely affected.

5. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least ever 10° plus any minima or maxima. Marimar Communications Corporation (Marimar) and T.V. Broadcasters, Inc.[1] have not supplied this data. Accordingly, the applicants will each be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and copies to the Chief, Television Branch and Chief Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

6. Section V–C, item 10(e) requires the applicant to specify the area and population within its proposed Grade B contour. Schulze-Wagner Partnership has not responded to item 10(e). Accordingly, Schulze-Wagner will be required to submit an amendment with its response to item 10(e), to the presiding Administrative Law Judge, within 20 days after this Order is released.

7. Schulze-Wagner has indicated that it believes its transmitter site will be available, but arrangements which would constitute reasonable assurance of the site's availability have not yet been completed. The applicant has not advised us that such arrangements have been finalized. Accordingly, an issue will be specified to determine whether Schulze-Wagner has a transmitter site available.

8. Carlos Jurado, vice-president, director and 15 percent stockholder of Lifestyle Broadcasting Corporation (Lifestyle), is currently employed by Meredith Corporation, the licensee of Station KPHO–TV, Phoenix, Arizona. Mr. Jurado's connection with Meredith may violate the Commission's cross-interest policy. However, we cannot make this determintion because we have no information regarding the nature of Mr. Jurado's position at KPHO–TV. Lifestyle, however, has stated that if it is the successful applicant for Channel 51, Mr. Jurado will terminate his relationship with Meredith Corporation. In light of Lifestyle's representation that Mr. Jurado will sever all connection will Meredith Corporation, rather than to specify a cross-interest issue, we shall condition any grant of a construction permit to Lifestyle upon the severance. Accordingly, if Lifestyle is the successful applicant, the construction permit shall be subject to the condition that, prior to the commencement of operation of the television station, the permittee shall certify to the Commission that Mr. Jurado has severed all connection with the licensee of KPHO–TV.

9. Ira Lavin, a limited partner of LI–COM Limited Partnership (LI–COM), is the honorary president of Camelback Cablevision, Inc. (CCI), Phoenix, Arizona. Mr. Lavin's position with the cable company may violate our cross-interest policy. However, LI–COM has stated that Mr. Lavin will terminate has position at CCI if LI–COM is the successful applicant for Channel 51. Accordingly, based on LI–COM's representation, if it is successful applicant, the construction permit shall be subject to the condition that, prior to the commencement of operation of the television station, the permittee shall certify to the Commission that Mr. Lavin has severed all connection with CCI.

10. Marimar did not certify its financial qualifications, but it did indicate that certification would be forthcoming. Marimar will be given 20 days from the release date of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, FCC Form 301, as to its financial qualifications. If Marimar cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82–378 (released July 15, 1982).

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Estrella Communications Limited Partnership, and Susan Cordova Kelly whether the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine, with respect to Schulze-Wagner Partnership, whether it has reasonable assurance of the availability of its proposed transmitter site.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

14. It is further ordered, that, in the event of a grant of Great Arizona Broadcasting Company's application the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM Station KRDS, Tolleson, Arizona, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

15. It is further ordered, that Marimar Communications Corporation and T.V. Broadcasters, Inc. shall each submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to the Chief, Television Branch and Chief, Hearing Branch, Mass Media Bureau, Within 20 days after the release date of this Order.

16. It is further ordered, that Schulze-Wagner Partnership shall submit an amendment which contains its response to Section V–C, item 10(e), FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

17. It is further ordered, that, in the event of a grant of the application of Lifestyle Broadcasting Corporation, the

[1] T.V. Broadcasters, Inc.'s tabulation should reflect the use of mechanical beam tilt.

construction permit shall be conditioned as follows:

Prior to commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Carlos Jurado has severed all connection with Meredith Corporation, the licensee of Station KPHO–TV, Phoenix, Arizona.

18. It is further ordered, that, in the event of a grant of the application of LI-COM Limited Partnership, the construction permit shall be conditioned as follows:

Prior to commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Ira Lavin has severed all connection with Camelback Cablevision, Inc., Phoenix, Arizona.

19. It is further ordered, that Marimar Communications Corporation shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days after this Order is released.

20. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

21. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 3.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85–16296 Filed 7–8–85; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[No. 85–552]

Criminal Referral Reporting/ Recordkeeping Requirements

Date: July 2, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised information collection request, entitled "Criminal Referral Reporting/Recordkeeping Requirements" (previously entitled "Criminal Activity", OMB No. 3068–0015), to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register**. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: John Downing, Office of General Counsel. Phone: 202–377–6434.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–16258 Filed 7–8–85; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM

One Valley Bancorp of West Virginia, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 29, 1985.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *One Valley Bancorp of West Virginia, Inc.*, Charleston, West Virginia; to acquire 100 percent of the voting shares of Seneca BancShares, Inc., Fairlea, West Virginia, thereby indirectly acquiring Seneca National Bank, Fairlea, West Virginia.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *P.T.C. Bancorp.*, Brookville, Indiana; to acquire 100 percent of the voting shares of The First National Bank of Vevay, Vevay, Indiana.

2. *Republic Bancorp, Inc.*, Flint, Michigan; to become a bank holding company by acquiring 80 percent of the voting shares of Republic Bank, Flint, Michigan.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *West Concord Bancshares, Inc.*, West Concord, Minnesota; to become a bank holding company by acquiring 99.6 percent of the voting shares of Farmers State Bank of West Concord, West Concord, Minnesota.

Board of Governors of the Federal Reserve System, July 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–16222 Filed 7–8–85; 8:45 am]

BILLING CODE 6210–01–M

Ruston Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.

1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in a dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1985.

A. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ruston Bancshares, Inc.*, Ruston, Louisiana; to engage directly in leasing personal and real property.

Board of Governors of the Federal Reserve System, July 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16223 Filed 7-8-85; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0548]

Proposed Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Agency Forms Under Review.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following proposal, which is being handled under this delegated authority and in accordance with 5 CFR 1320.12, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments on the revisions to the FR Y-9 and the FR 2352 must be received by August 7, 1985. The Board will receive comments on the revisions to the FR Y-6, including the nonbank financial data and the Quarterly Report of Bank Holding Company Changes, and the new Combined Financial Statement of Nonbank Subsidiaries for an additional 30 days, until September 5, 1985.

ADDRESSES: Comments should be sent to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m., Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551. Comments should reference both the Docket No. R-0548 and the OMB number of the information collection. Comments received may be inspected in room B-1122 between 8:45 a.m and 5:15 p.m., except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Stephen Lovette, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452-3622), Louella Moreno, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452-2723), or Arleen Lustig, Senior Financial Analyst, Division of Banking Supervision and Regulation (202/452-2987).

A copy of the proposed form, the request for clearance (SF83), supporting statement, transmittal letter, and other documents that will be placed into OMB's public docket files once approved may be requested from the Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829).

Proposal To Approve Under OMB Delegated Authority the Extension With Revision of the Following Reports:

1. Report title: Bank Holding Company Financial Supplement.
Agency form number: FR Y-9
OMB Docket number: 7100-0128
Frequency: quarterly
Reporters: Bank Holding Companies
Small businesses are not affected.

This information collection is mandatory (12 U.S.C. 1844) and is not given confidential treatment.

2. Report title: Banking Holding Company Financial Statements.
Agency form number: FR 2352
OMB Docket number: 7100-0210
Frequency: semiannually
Reporters: Bank Holding Companies
Small businesses are affected.

This information collection is mandatory (12 U.S.C. 1844) and is not given confidential treatment.

3. Report title: Annual Report of Bank Holding Companies.
Agency form number: FR Y-6
OMB Docket number: 7100-0124
Frequency: quarterly, annually
Reporters: Bank Holding Companies
Small businesses are affected.

This information collection is mandatory (12 U.S.C. 1844) and is not given confidential treatment.

General description of reports: The Board of Governors of the Federal Reserve System is submitting for public comment a proposed revision of the reporting requirements for bank holding companies. The existing requirements are contained in the Annual Report of Bank Holding Companies, FR Y-6, (OMB No. 7100-0124), the Bank Holding Company Financial Supplement, FR Y-9,

(OMB No. 7100-0128), and the Bank Holding Company Financial Statements, FR 2352 (OMB No. 7100-0210). The reports are authorized by section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844), and section 225.5(b) of Regulation Y (12 CFR 225.5(b)). The proposed revisions are designed to obtain data crucial for supervisory purposes, to provide the needed information on a more frequent basis and to simplify the reporting structure contained in the existing holding company reports.

SUPPLEMENTARY INFORMATION: Under the Bank Holding Company Act of 1956, as amended, the Federal Reserve is responsible for the supervision and regulation of all bank holding companies. In Regulation Y, the Board has stated that it looks to the holding company to provide financial and managerial strength to its subsidiary bank(s). Bank holding companies are currently required by the Board to submit the Bank Holding Company Financial Supplement (FR Y-9) and the Annual Report for Domestic Bank Holding Companies (FR Y-6) pursuant to Section 5(c) of the Bank Holding Company Act and § 225.5(b) of Regulation Y.

The FR Y-6 is the primary source for much of the financial and structural data on individual bank holding companies, their bank and nonbank subsidiaries, and other regulated investments. The FR Y-6 consists of a number of separate parts satisfying different requirements for financial information on various segments of the bank holding company organization and for other supervisory and regulatory information. The parts of the FR Y-6 include: free-form financial statements for the consolidated company and parent only (Form 10-K filed with the Securities and Exchange Commission satisfies this requirement); free-form financial statements for nonbank subsidiaries; fixed-form data on the structure of the holding companies' investments in bank and nonbank subsidiaries; fixed-form data on selected financial items of the nonbank subsidiaries; and the reporting of the names of officers, directors, and shareholders, and their percentage ownership of the holding company and its subsidiaries. All bank holding companies are required to submit the FR Y-6 report annually. This information assists the Federal Reserve in monitoring the holding company's operations, ensuring that the operations are conducted in a safe and sound manner that protects the depositors of the subsidiary bank(s), and determining holding company compliance with the prohibitions of the Bank Holding Company Act and Regulation Y (12 CFR Part 225).

The FR Y-9 is the primary source of systematic and consistent financial information both on the consolidated holding company and on the parent only. This information is critical for the Federal Reserve System's bank holding company surveillance program which involves the on-going monitoring of the financial condition of holding companies between on-site inspections. The FR Y-9 data provide standardized information for the purpose of generating periodic bank holding company surveillance screens and Bank Holding Company Performance Reports which are similar to the Uniform Bank Performance Reports for insured commercial banks prepared by the Federal Financial Institutions Examination Council. Bank Holding Company Performance Reports are available to holding companies and should assist them in comparing certain aspects of their performance and operations with those of their peers. Bank Holding Company Performance Reports are also available to the public upon request.

Historically, the FR Y-9 report has provided financial information on the consolidated holding company and the parent only similar to that obtained from the Reports of Condition and Income filed by commercial banks. Currently, holding companies with assets of less than $50 million are not required to file the FR Y-9; those with assets between $50 and $100 million file annually the parent only statement; those with assets of between $100 and $300 million file annually both the parent only and the consolidated statements; and those with assets over $300 million file the parent only and the consolidated statements on a semiannual basis.

The financial information from the FR Y-9, as well as ratios developed from it, is used in the detection of emerging financial problems, in the analysis of a bank holding company's financial condition and performance, in the performance of pre-inspection analyses, and in the evaluation of bank holding company mergers and acquisitions.

In addition to the current regular collection of the FR Y-9 data, the Board, on April 26, 1985, approved two bank holding company reports for a onetime collection of information as of June 30, 1985. One of these reports is a supplemental "slip-sheet" to the existing consolidated statements in the FR Y-9 to obtain information required to help assess capital adequacy and provide data on past due, nonaccrual, and renegotiated loans and leases. The other, FR 2352 (OMB No. 7100-0210), Bank Holding Company Financial Statements, Collects parent company only data from bank holding companies that have total consolidated assets of less than $150 million. Previously, these data have not been collected on the FR Y-9 from bank holding companies with less than $50 million in assets.

Proposal

Revision of the FR Y-9

Under the proposal issued for comment by the Board, bank holding companies with total consolidated assets of $150 million or more would file, on a quarterly basis, revised fixed-format reports, presently entitled the FR Y-9, on both a consolidated and parent company only basis. All multibank holding companies (i.e., those owning or controlling more than one bank) regardless of size would also file the FR Y-9 quarterly on a consolidated and parent company only basis. The FR Y-9 would be required to be completed as of the end of March, June, September, and December and the reports would be submitted to the appropriate Federal Reserve Bank within 45 days after the date of the report. It is proposed that the FR Y-9 reports be implemented beginning with the December 31, 1985 report date.

Under the present reporting requirements, three types of bank holding companies are exempted from filing the FR Y-9. These are bank holding companies that are subsidiaries of another bank holding company; bank holding companies which have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by § 211.23(b) of Regulation K, (12 CFR 211.23(b)), for example, foreign banks that own U.S. banks.

Under the proposal, the Board would require all bank holding companies that are subsidiaries of another bank holding company to file the *parent only portion* of the FR Y-9 or the FR 2352, as appropriate. This is proposed because the number of these companies is increasing, and many of these so-called "multitiered" bank holding companies often have significant debt at the various holding company levels or tiers. In addition, many bank holding companies that have made interstate acquisitions have maintained the acquired bank holding company (and its liabilities) as a separate legal entity. Also, in connection with a change in ownership of small bank holding companies, new holding companies

often acquire an existing holding company. The bank holding company that acquires the existing institution often maintains this institution as a separate corporate entity. These transactions can result in acquisition debt outstanding in both the acquiring and acquired holding company. The parent company only statement for all bank holding companies has been modified to obtain specific memoranda items from these "tiered" companies.

The Board proposes that one-bank holding companies with total consolidated assets of less than $150 million would file a fixed-format abbreviated parent company only balance sheet and income statement. This report would use the same report form, FR 2352, as that approved for June 30, 1985 with the exception of the addition of certain memoranda items applicable only to tiered bank holding companies. This report would be required on a *semiannual* basis as of the end of June and December, and would be filed with the appropriate Federal Reserve Bank within 45 days after the date of the report. Bank holding companies with less than $150 million in consolidated assets that own more than one bank would be required, under the proposal, to file quarterly the more comprehensive FR Y–9 report that is filed by companies with assets in excess of $150 million. This latter report contains both consolidated and parent company only financial statements.

In summary, the proposal would revise the existing reporting requirements for the FR Y–9 and the FR 2352 in the following ways:

(1) All bank holding companies, regardless of size, with two or more banks would file quarterly a FR Y–9 including both a consolidated statement and a parent only statement.

(2) One-bank bank holding companies with total assets under $50 million would begin reporting semiannually on an abbreviated parent only basis (the same as the report filed for June 30, 1985).

(3) One-bank bank holding companies with total assets between $50 and $100 million would continue reporting on a parent only basis but semiannually, rather than annually, and on an abbreviated form as compared to their current more extensive form.

(4) One-bank bank holding companies with total assets between $100 and $150 million would continue filing on a parent only basis, but semiannually, rather than annually, and on an abbreviated basis as compared to their current more extensive form. These bank holding companies would be relieved from filing the consolidated statements.

(5) For tiered bank holding companies, each bank holding company that is a subsidiary of another would be required to submit the appropriate *parent company only* statement, either the FR Y–9 or the FR 2352, with additional memoranda items. The present requirement for submission of consolidated data by *only* the *top* tier would be unchanged.

(6) For bank holding companies with total consolidated assets of $150 million or more, the consolidated reporting requirements would be revised to incorporate new information (some of which was collected in June on the "slip sheet" to the FR Y–9) on past due nonaccrual and renegotiated loans, on the components of primary and secondary capital, on off-balance sheet activities, on customer domicile (i.e., foreign or U.S.), and on average balances. The reporting frequency would also be increased to quarterly under the proposal. The reporting requirements for holding companies in excess of $150 million in consolidated assets would also be applied to *multibank* holding companies of all sizes. Currently, bank holding companies with total assets over $300 million file both consolidated and parent only statements semiannually, while bank holding companies with total consolidated assets of between $100 and $300 million file on an annual basis. In addition to these changes, both the reporting format and the instructions for the FR Y–9 consolidated statements would be revised to conform, in general, to those of the new commercial bank call report. In particular, it should be noted that, while bank holding companies are generally required to submit financial statements to the Board in accordance with generally accepted accounting principles (GAAP), in a few specific instances the required reporting treatment for certain transactions would differ from GAAP.

Key points and issues relating to these revised requirements are discussed in more detail in the following sections.

New Data From Large Bank Holding Companies

The revised FR Y–9 consolidated report would require new data from banking holding companies that have consolidated assets of $150 million or more and from all multibank holding companies. These requirements include information on primary and secondary capital; past due, nonaccrual and renegotiated loans; off-balance sheet activities; average balances for certain account categories; interest sensitivity of certain assets and liabilities; certain foreign activities broken down primarily by the domicile of the borrower; and the reconciliation of equity capital accounts. Some of these data are being collected on a slip-sheet to the FR Y–9 for June. All of the new data are consistent with information that is being collected for banks. The proposal does not, however, attempt to collect for holding companies all of the information and detail required of commercial banks such as, for example, Schedule RC–J of the bank call report on interest rate sensitivity.

Information on Capital

The added data on primary and secondary capital, and the information relating to mandatory convertible securities, are essential for permitting the Federal Reserve to monitor the compliance of bank holding companies with its Capital Adequacy Guidelines program set forth in Appendix A to Regulation Y (12 CFR Part 225). The provisions, structure and content of the Board's guidelines program establish the content and format of this information requirement. Recent revisions to the Board's capital guidelines program have considerably reduced the amount of information that would have otherwise have been required in connection with secondary capital components.

Nonperforming Loans

The proposed data on so-called nonperforming loans by type of loan are requested on a consolidated basis. This information is already being collected for banks and is an essential element in determining the condition of the consolidated bank holding company. Collection of this information from bank holding companies will reduce the likelihood that the volume of past due, nonaccrual, and negotiated loans in holding company affiliates other than the bank will escape supervisory review and evaluation.

Off-Balance Sheet Items

There has been an increasing tendency among some bank holding companies, as well as banks, to remove risk-taking activities off the balance sheet. For this reason, the Board is requesting from bank holding companies data on off-balance sheet items that are identical to what is currently being reported by commercial banks. These data are necessary to monitor the consolidated holding company's off-balance sheet activities which can have a significant effect on the organization's performance and overall safety and soundness. While the Board believes information on off-balance sheet activities is critical, it requests specific comments on this aspect of the proposal;

in particular, on how best to obtain adequate and timely information on and assess the risks of off-balance sheet activities.

Average Balances

The proposal includes the requirement of the submission of certain average balances. These average balance data would be used in the calculation of financial ratios for the purpose of measuring yields on assets and investments and the cost of liabilities. Such ratios are essential elements in the evaluation of the operations of bank holding companies. The calculation of these ratios based solely on period-end balances could be distorted due to seasonality, normal growth or shrinkage, or temporary adjustments of "window dressing" of financial statements. By utilizing average balances, financial ratios will be significantly more accurate and analytically meaningful. The Securities and Exchange Commission, under Guide 3, requires bank holding companies to submit average balance sheet data in significant detail, and the commercial bank call report requires average balance sheet data from banks. Only a small number of averages are included in the proposal but there is some interest in expanding the list. With respect to the request for average balance sheet data from bank holding companies, the Board requests comments on the burden of providing the averages, particularly from bank holding companies that are not registered with the Securities and Exchange Commission and those with significant foreign and nonbanking activities.

Information on Customer Domicile (Foreign vs. Domestic)

The revised FR Y–9 would require certain aggregate customer balance information to be broken down by foreign versus domestic domicile in order to determine the extent of foreign activity on a consolidated basis. Because some banking organizations are shifting some of their foreign activities from the bank to the holding company and because of the additional need to measure aggregate foreign exposure of the holding company, it is necessary to collect at least a minimum amount of consolidated and nonbank information on foreign-domiciled customers. The foreign information that is being requested is generally consistent with the domicile information requested in the call report for banks with foreign operations and with SEC reporting requirements.

Information on Interest Sensitivity

The proposal also incorporates requirements for certain limited data on the maturity of variable rate and fixed rate assets and liabilities in order to assess the interest rate sensitivity of the bank holding company. The proposed information of this type is not as detailed as that required from commercial banks. The Board requests comment on this aspect of the proposal.

Deposit Detail

The proposal seeks to obtain deposit liability data from all of the bank holding company's depository subsidiaries. As the types of deposit accounts that these institutions can offer are changing, the Board seeks specific comments on this aspect of the proposal.

Nonbank Activities

The proposed consolidated balance sheet and income statements do not require separate reporting of certain specific asset or liability accounts associated with various types of nonbanking activities, such as account receivables and payable customers of discount brokerage services and other activities that have not been traditionally associated with commercial banking. However, as described below, information on nonbank activities is proposed for separate reports. The Board requests comment on whether any specific nonbank detail should be incorporated into the consolidated financial report of bank holding companies or whether it should be collected in an alternative form.

Departures From GAAP

In general, it is the policy of the Federal Reserve in specifying the details of instructions for reporting requirements to follow generally accepted accounting principles (GAAP) whenever possible and provided there do not exist specific regualtory needs for particular pieces of information on another basis. However, because of the special supervisory, regulatory, and economic policy needs served by these bank holding company reports, the Board is proposing that the reporting treatment to be specified in the instructions depart from GAAP with respect to a very limited number of items. Among such items are the sale of loans with recourse, in-substance defeasance, and risk participations in bankers acceptance.

The Board believes that the manner in which these particular items are reported in the FR Y–9 should be consistent with the risks associated with the underlying transactions and with the essential regulatory and supervisory purposes to be served by the reports. In particular, the reporting treatment of these transactions, and the effect of their treatment on total assets, will have significant implications for the calculations of capital ratios and for monitoring the compliance of bank holding companies with the Federal Reserve's Capital Adequacy Guidelines. The Board believes that these considerations require some specific limited departures from GAAP—departures that parallel the reporting treatment specified by the bank call reports—in order to ensure that the financial statements submitted to the Federal Reserve properly reflect the risk characteristics inherent in a bank holding company's operations. In addition, certain departures from GAAP that some bank holding company submissions to SEC are incorporating (in particular, the netting of cash items in process of collection or of deposit "float") would be explicitly prohibited in the FR Y–9 report.

The changes proposed in the FR Y–9 will conform accounts of the bank holding company's consolidated financial statements and their definitions to those of the consolidated reports (call reports) filed by the subsidiary commercial banks with the bank supervisory agencies. Making the reporting requirements for the consolidated FR Y–9 and for subsidiary banks consistent in this way will obviate the need for holding companies to report subsidiary banks' data on one basis in the comercial bank call report and on another basis in the consolidated FR Y–9.

Abbreviated Parent Company Only Statement for Small Bank Holding Companies

Numerous developments over the last several years have combined to create a need for periodic standardized data on small bank holding companies (i.e., those under $50 million in total consolidated assets), which heretofore have been exempt from filing the FR Y–9 type information (except for the one-time collection of data in June 1985 on Form FR 2352). Many of these holding companies are characterized by high levels of debt that have had, in numerous instances, a significant impact on the condition of their subsidiary banks. The leverage in these companies results, in part, from bank acquisition debt assumed in the formation of the bank holding company. This leverage and the resulting debt service requirements, in combination with the

deterioration in the asset quality and earnings of some bank subsidiaries, underscore the necessity of obtaining additional information from small bank holding companies.

The Board believes that the current absence of standardized data on the financial condition of these companies creates an information gap in the conduct of its supervisory responsibilities. Similarly, the other federal banking regulators have expressed their need for minimal standardized information on these small institutions. The proposed establishment of a minimum level of standardized reporting requirements for bank holding companies with consolidated assets below $50 million would greatly enhance the effectiveness of the Federal Reserve's bank holding company supervision.

The information proposed for semiannual collection is identical to that to be reported for June (FR 2352) except for the addition of certain items to be required of bank holding companies in tiered holding company structures.

Revision to the Existing Requirements Currently Contained in the FR Y–6

The current FR Y–6 is filed annually by most bank holding companies.[1] The FR Y–6 encompasses a combination of many different requirements taking different forms, requiring different processing procedures, and satisfying differing supervisory and regulatory needs. The current FR F–6 requires bank holding companies to submit:

(1) Free-form consolidated and parent only financial statements for the bank holding company. (The required submission in the FR Y–6 of a copy of Form 10–K prepared for the Securities and Exchange Commission satisfies this requirement.) One-bank holding companies that have less than $100 million in assets do not have to submit the consolidated statements.

(2) Free-form financial statements for nonbank subsidiaries. (These statements may consolidate indirect subsidiaries.)

(3) Fixed-loan structural and financial data on the reporting company's investments in bank and nonbank subsidiaries and other regulated investments (on Schedules A, B, C, and D of the current FR Y–6).

(4) The names and percentage ownership of the shareholders, officers, and directors of the bank holding company and the nonbank subsidiaries; and the outside business interests of these individuals.

(5) Details on insider lending by the bank holding company.

Finally under the current requirements, bank holding companies that have consolidated banking assets of $100 million or more are required to have their consolidated financial statements, as submitted in response to item (1) above in the FR Y–6, certified by an independent public accountant.

The revisions to the FR Y–6 proposed by the Board are designed to rationalize the reporting and processing of this information by breaking the combined report down into its separate components. In particular, the proposed revisions to the requirements contained in the current FR Y–6 would divide the existing report into separate reports. These revisions simplify, reduce the burden associated with, and speed the collection of fixed form financial information on nonbank subsidiaries and of data on holding company structure that are presently collected in the FR Y–6.

It is proposed to make the following changes in the current FR Y–6:

(1) Separate into another report, for processing purposes, the *standardized* nonbank financial and structure data from the nonstandardized FR Y–6 information. Under the proposal, bank holding companies would continue to submit selected financial information on each individual nonbank subsidiary that is currently collected on page 3 of Schedule A in the FR Y–6. However, these data would be submitted as a separate report under the proposal. The fixed-form selected financial data on nonbanking subsidiaries would be collected annually as of December 31 and would be submitted to the appropriate Reserve Bank within 45 days after the date of the report. (In addition, the Board proposes to collect combined financial statements on aggregate nonbanking subsidiaries from certain bank holding companies. This proposal is discussed below.)

(2) The current reporting of *complete* structure information for all of the bank holding companies's subsidiaries and other regulated investments each year would be replaced by a separate report to be filed only for those quarterly periods in which the holding company acquired sold, or liquidated its investments or commenced or terminated the conduct of a nonbank activity. Under the proposal, therefore, bank holding companies would submit data quarterly on only those changes in investments or ownership that represent a modification of structure information previously submitted to the Federal Reserve rather than, as at present, reporting the entire holding company structure annually. This information would be collected on a new Bank Holding Company Quarterly Report of Changes. As indicated, this report on changes in the bank holding company's investments and activities would be event-generated—bank holding companies would submit the report to the appropriate Federal Reserve Bank within 30 days after the end of any quarter in which a change occurred. This would significantly reduce the amount of detailed information that is required of all bank holding companies annually in the FR Y–6 concerning the structure of the holding company and its investments in subsidiaries, both bank and nonbank. This change would also represent a significant reduction in burden for those holding companies that own or control a large number of nonbank subsidiaries and/or investments.

(3) The proposed revision would also raise the asset threshold above which holding companies are required by the FR Y–6 to submit financial statements that are certified by an independent public accountant. In addition, the assets criteria would be changed from total banking assets of the subsidiary banks to total consolidated bank holding company assets. Currently, holding companies with consolidated *banking* assets over $100 million must comply with this certification requirement. Under the proposal, however, all bank holding companies having total *bank holding company* consolidated assets exceeding *$150 million* would be required to submit certified financial statements. This revision would eliminate the certification requirement and reduce the burden on bank holding companies that have consolidated assets of between $100 and $150 million. Currently, companies having banking assets of less than $100 million are not required to submit certified statements and, under the proposal, these small companies would continue to be exempted from the certification requirement.

The FR Y–6 as modified would continue to be collected annually as of the end of the bank holding company's fiscal year. This report would be submitted to the appropriate Reserve Bank within 3 months after the date of the report.

Combined Nonbank Subsidiary Financial Statements

The Federal Reserve, as the primary supervisor of bank holding companies

[1] Certain foreign-domiciled bank holding companies and foreign banking organizations that are "qualified foreign banking organization," as defined in § 211.23(b) of Regulation K, file the Annual Report of Foreign Banking Organization, FR Y–7, and the Confidential Report of Operations, Form FR 2068, instead of the FR Y–6.

and their nonbanking subsidiaries, has important responsibilities to monitor the risks of nonbanking activities and the potential effect of new nonbanking activities on the safety and soundness of the financial system. The Board has long held that the condition of bank subsidiaries cannot be totally insulated from the fate of their nonbank affiliates. Moreover, experience has shown that significant funding, earnings or asset problems in the nonbank subsidiaries can adversely affect the consolidated holding company and the affiliated bank(s). Consequently, a principal focus of the holding company supervisory effort is to determine the volume, nature and condition of nonbank activities and their potential impact on affiliated commercial banks. Nonbank activities have grown rapidly over the years, and as banking organizations become involved in a broader range of activities, it is essential that sufficient information be collected to monitor the potential impact of the nonbank activities on the affiliated banks.

In light of these considerations, the Board is proposing to collect from certain bank holding companies a new report in which the bank holding company would report financial information for its nonbank subsidiaries on a combined basis. At the present time, the Board collects a few items on a fixed-format basis from each individual nonbank subsidiary of bank holding companies in the FR Y–6. As discussed in the previous section, the Board proposes to continue to collect this information, although in a report separate from the FR Y–6.

The proposed new nonbank information is needed in order to monitor more effectively the risk assets and profitability of the nonbank subsidiaries and the capitalization and leverage of the nonbank subsidiaries in comparison to industry norms, prudential guidelines or regulatory standards. Data derived exclusively from consolidated and parent holding company financial statements are not sufficient to monitor the nonbank affiliates since the consolidated statements do not address the nonbank affiliates explictly, and the relative size of the banking assets could obscure the operating results of nonbank subsidiaries in the consolidated statements until the problems of the nonbank activities have reached a critical level. The proposed additional information on nonbank affiliates would assist the Federal Reserve in identifying early any problems in the nonbank area before the problems are so large as to have significantly adverse affect on the consolidated organization and the bank affiliate(s). The proposal issued for public comment by the Board, therefore, seeks to collect essential and more timely data on combined nonbank activities to monitor potential risks and their effects on the consolidated holding company.

The Board is proposing to collect quarterly financial data on combined nonbank subsidiaries from bank holding companies with total consolidated assets of $1 billion or more and from those holding companies between $150 million and $1 billion that have material nonbanking activities. All smaller bank holding companies (i.e., those with total consolidated assets of less than $150 million) would be exempted from reporting such information.

The proposal issued for comment by the Board would collect the following financial information on nonbank subsidiaries from bank holding companies:

(1) A quarterly report on the aggregation of nonbank activities within the bank holding company. This report, entitled the Combined Financial Statement of Nonbank Subsidiaries of Bank Holding Companies, would be submitted: (a) by bank holding companies with total consolidated assets of $1 billion or more; (b) by bank holding companies with total consolidated assets of between $150 million and $1 billion that meet one or more of the following conditions: (i) The assets of the holding company's nonbank subsidiaries make up 5 percent or more of total consolidated assets, (ii) net income of the holding company's nonbank subsidiaries make up 5 percent or more of the holding company's total consolidated net income, (iii) the holding company's investments in and/or loans and advances to nonbank subsidiaries exceed 5 percent of the holding company's total consolidated equity capital. The 5 percent materiality criteria are proposed as a level at which the nonbank subsidiaries' operations could have a significant impact on the consolidated holding company's operations.

(2) An annual supplement to the quarterly report, which would break down the aggregate nonbank information by type of nonbank activity. This report would be submitted each December by the same bank holding companies submitting the quarterly report discussed in the previous paragraph. It is proposed that the detail by type of nonbank activity be reported on a functional basis, where the holding company would be required to allocate, for reporting purposes, the nonbank assets, liabilities, income and expenses by certain specified lines of business (e.g., securities brokerage, underwriting and dealing in government obligations and money market instruments, or futures commission merchant) regardless of the corporate structure of the nonbank activities. Alternatively, the detail could be based on the combining of individual nonbank companies classified by the primary business activity of the legal entity. The Board specifically requests public comment on the relative burdens imposed by each of these approaches.

Taken together, the proposed changes in the current FR Y–6 and the FR Y–9 report systems are designed to:

(1) Simplify and reduce, where appropriate, the burden associated with completing the FR Y–6 holding company annual report;

(2) make the FR Y–9 holding company reports conform to the line items of the revised Report of Condition and Income filed by commercial banks, and incorporate the information on capital and nonperforming loans requested on the June slip-sheet into the revised FR Y–9 report;

(3) obtain from bank holding companies that have consolidated assets of $150 million or more certain new information—including data on average balances, customer domicile, off-balance sheet activity, and interest sensitivity—that is essential for supervisory purposes and that has recently been required of commercial banks by the Federal Financial Institutions Examination Council;

(4) increase to quarterly the frequency of reporting on the fixed-format FR Y–9 financial statements for bank holding companies with consolidated assets over $150 million;

(5) institute the semiannual collection of the FR 2352 report for bank holding companies that have total consolidated assets of less than $150 million;

(6) obtain adequate nonbank data from holding companies; and

(7) increase the asset cut-off pertaining to the requirement for the submission of certified financial statements by bank holding companies to $150 million in consolidated holding company assets from $100 million in total banking assets.

Implementation Dates

The Board believes that the implementation of the complete proposal is crucial to strengthening the supervision and regulation of bank holding companies. However, the revisions to the FR Y–9 and the implementation of the FR 2352 on a

regular basis have the highest priority and are proposed for implementation as of December 1985. The simplification of the FR Y–6 would also be implemented for the December 1985 report. The remaining portions of the proposal—the new quarterly structure report and the new combined nonbank financial reports—would be implemented for reporting as of March 1986. Since this latter report constitutes a new reporting requirement, the later implmentation date is intended to provide greater lead time to prospective filers and to avoid undue burden for the December reporting period.

Commenters are asked to address not only the general characteristics of the proposed reports, but also the specific items requested, the treatment of the items, and any reasonable alternatives for obtaining the information in a less burdensome fashion.

Other Issues

In addition, the Board requests comments on the treatment of the reports with respect to requests for confidentiality. Under existing procedures, all the information in the FR Y–6 and the FR Y–9 submitted to the Board is available to the public on request unless the bank holding company has requested confidential treatment and has demonstrated to the Board that disclosure of certain commercial or financial information would likely result in substantial harm to its competitive position or to the competitive position of its subsidiaries, or that disclosure of submitted information is of a personal nature that would result in a clearly unwarranted invasion of personal privacy. The Board has under consideration a proposal to make available to the public, upon request, all submissions of the FR Y–9 *consolidated* statements. The Board would propose to continue the current procedure with respect to the confidentiality of the parent company only and the nonbank financial statements.

The Board also seeks comments on a proposed new requirement to have three directors of the bank holding company attest to the correctness of the proposed reports as submitted to the Board. Currently, the reports require only the signature of a single official of the bank holding company. The Board believes that the proposed new requirement is consistent with the responsibilities of the directors to ensure that supervisory reports are accurate and is consistent with the responsibilities of the directors to be fully informed of the company's financial condition.

Regulatory Flexibility Act

The Board certifies that the proposed revision of the FR Y–6 reporting requirements is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed revision of the FR Y–9 reporting requirements, including the FR 2352, will require small bank holding companies, those with assets of less than $50 million, to provide certain parent company only information on a semiannual basis that was not previously required to be provided. The information that would be collected in the FR Y–9 is essential for the detection of emerging financial problems, the analysis of a bank holding company's financial condition and performance, the performance of pre-inspection analyses and the evaluation of bank holding company mergers and acquisitions. The imposition of these new standardized requirements is essential for the Board to supervise adequately the safety and soundness of small bank holding companies as required by the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, July 3, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–16309 Filed 7–8–85; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Procedures for Ordering FY 1986 Updates to the Looseleaf Edition of the Federal Information Resources Management Regulation (FIRMR)

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of procedures for Federal agencies/departments to order FY 1986 updates to the looseleaf edition of the FIRMR.

SUMMARY: This notice is to advise Federal agencies/departments to submit their FY 1986 copy requirements for the looseleaf edition of the FIRMR to the Government Printing Office (GPO). Individual agency offices are responsible for making their requirements known to their agency GPO Liaison Officers. Agency GPO Liaison Officers are responsible for submitting requirements to GPO through their Printing and Publishing Official. Agencies failing to submit orders will no longer receive FIRMR materials issued in FY 1986.

DATES: Applicable Dates: The looseleaf edition of the FIRMR was distributed to agencies by GPO in March of this year, based on agency-established copy requirements for FY 1985. Agencies must now submit their FY 1986 FIRMR copy requirements to GPO by August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Thomas, Policy Branch (KMPP), Office of Information Resources Management, telephone (202) 566–0194 or, FTS, 566–0194.

SUPPLEMENTARY INFORMATION: (1) The Federal Information Resources Management Regulation (FIRMR) established on April 1, 1984, is located in the Code of Federal Regulation at Title 41, Chapter 201. It provides Governmentwide regulations on the management, acquisition, and use of information resources (including automatic data processing, office automation, records management, and telecommunications).

(2) The basic looseleaf text of the FIRMR was distributed to agencies by the GPO in March of this year, based on agency-established copy requirements for FY 1985. GPO now requires agencies to submit their FY 1986 FIRMR copy requirements by August 15, 1985.

(3) Agency GPO Liaison Officers responsible for managing FIRMR distribution are being reminded to consolidate their agency's FY 1986 FIRMR copy requirements and make those requirements known to GPO through their agency Printing and Publication Official. In GPO Circular Number 201, dated April 25, 1985, GPO advised Federal Printing and Publication Officials to submit their agencies' FY 1986 copy requirements for all open requisitions (including the FIRMR) by June 21, 1985. However, GPO will continue to accept FY 1986 FIRMR copy requirements until August 15, 1985.

(4) FIRMR materials issued in FY 1986 will consist of updates to the basic looseleaf text only. The basic looseleaf text will not be reprinted for distribution in FY 1986. Federal employees unable to obtain the basic looseleaf text through their agency GPO Liaison Officer may subscribe to the FIRMR directly from GPO by following the procedures in paragraph six below.

(5) FIRMR updates in FY 1985 will continue to be issued under Transmittal Circulars (TC's) which will include amendments, temporary regulations, and bulletins and other informational guides. All FY 1986 production costs will be prorated to participating agencies by GPO. Based on estimated FY 1985 FIRMR costs of $20.00 to $25.00, FY 1986

costs are expected to be between $10.00 and $12.00 per user.

(6) Private sector companies, associations, businesses, and other interested parties wishing to receive the basic looseleaf text and all updates may place individual subcription orders directly with GPO by writing or calling, Superintendent of Documents, Government Printing Office, Washington, D.C. 20405, telephone: (202) 783–3238. The price for each subscription order is $66.00 domestic and $82.50 foreign. (GPO requires payment in advance unless charged to MasterCard, Visa, or GPO charge account.) Individuals already having a FIRMR subscription directly with GPO will continue to receive FIRMR updates in FY 1986 and are not required to reorder at this time.

Dated: June 28, 1985.

Larry L. Jackson,

Director, Policy and Regulations Division.

[FR Doc. 85–16325 Filed 7–8–85; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85F–0234]

Angus Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Angus Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-amino-2-methyl-1-propanol as a dispersing agent in pigment suspensions to be applied as coating to paper and paperboard products intended for food-contact use with aqueous foods.

FOR FURTHER INFORMATION CONTACT: Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3851) has been filed by the Angus Chemical Co., 2211 Sanders Rd., Northbrook, IL 60062, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of 2-amino-2-methyl-1-propanol as a dispersing agent in pigment suspersions to be applied as coatings to paper and paperboard intended for food-contact use with aqueous foods.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (April 26, 1985; 50 FR 16636).

Dated: June 28 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–16208 Filed 7–8–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0290]

Bausch & Lomb Inc.; Premarket Approval of Bausch & Lomb ® Sensitive Eyes ™ Daily Cleaner

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Bausch & Lomb Inc., Rochester, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Bausch & Lomb ® Sensitive Eyes ™ Daily Cleaner. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by August 8, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On March 16, 1983, Bausch & Lomb Inc., Rochester, NY 14692, submitted to CDRH an application for premarket approval of the Bausch & Lomb ® Sensitive Eyes ™ Daily Cleaner. The device is indicated for use in cleaning soft (hydrophilic) contact lenses, in conjunction with either thermal or chemical disinfection regimens. This cleaner may be used with extended wear soft (hydrophilic) contact lenses as often as daily or as recommended by the user's eye care practitioner. On November 18, 1983, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On June 5, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Before enactment of the Medical Device Amendments of 19076 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such contact lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D in Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ–460), address above.

The labeling of the Bausch & Lomb ® Sensitive Eyes ™ Daily Cleaner states that the solution is indicated for use in the cleaning of soft (hydrophilic) contact lenses. Manufacturers of any soft (hydrophilic) contact lenses that have been approved for marketing are

advised that whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved sofy contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the manufacturer. A manufacturer who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update the restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)).

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 8, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 1, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–16209 Filed 7–8–85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F–0233]

B.F. Goodrich Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the B.F. Goodrich Co. has filed a petition proposing to amend the food additive regulations to provide for the inclusion of a new use of 3,5–di–*tert*–butyl–4–hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione as a component of olefin and copolymers intended for use as food-contact articles.

FOR FURTHER INFORMATION CONTACT: Lester Borodinsky, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3862) has been filed by B.F. Goodrich Co., Akron, OH 44318, proposing to amend the food additive regulations in 21 CFR 178.2010 to provide for the inclusion of a new use of 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione as a component of olefin copolymers intended for use as food-contact articles.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (April 26, 1985; 50 FR 16636).

Dated: June 29, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–16207 Filed 7–8–85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N–0263]

Neurotoxicity and Behavioral Dysfunction; Announcement of Symposium and Workshop; Request for Data and Information

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Federation of American Societies for Experimental Biology (FAEB), Life Sciences Research Office (LSRO), will conduct a symposium and workshop to examine certain scientific issues related to neurotoxicity and behavioral dysfuction. The symposium will be open to the public. The workshop will be held by invitation only.

DATES: The symposium will be held on Monday, September 30, 1985, at the Bethesda Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD, from 8:30 a.m. to 5 p.m. the workshop will be held on Tuesday October 1, 1985, at FASEB (address below). Relevant data and information may be submitted until September 23, 1985.

ADDRESSES: Relevant data and information should be submitted to both the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Two copies of the relevant data and information should be submitted to both the FDA's Dockets Management Branch and the Life Sciences Research Office. Requests for information about the symposium and workshop should be made to the individuals listed below.

FOR FURTHER INFORMATION CONTACT:

Richard W. Leukroth, Jr., Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030;

or

Thomas J. Sobotka, Center For Food Safety and Applied Nutrition (HFF–162), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1304.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration has a contract (223–83–2020) with FASEB. The objectives of this contract are: (1) To provide expert, objective counsel to the agency on general and specific issues of scientific fact and (2) to explore the effectiveness and efficiency of various review mechanisms. FDA has specifically requested that FASEB address the following scientific questions:

(1) To what extent do the various traditional toxicity tests (particularly reproduction, acute, subacute, and chronic studies), carried out at exposure levels high enough to produce toxic effects, give information about the nature and scope of potential neurotoxicity or behavioral dysfunction? What particular endpoints in these traditional toxicity tests serve to indicate neuronal dysfunction?

(2) To what extent do such traditional toxicity test not give information about the nature and scope of neurotoxicity or behavioral dysfunction? What aspects of neurobehavioral toxicity would or might be missed by relying only on traditional toxicity tests? What type of neurobehavioral test battery would be necessary to complement traditional testing to supply this information?

(3) If neuronal involvement is indicated by traditional toxicity tests, what type of neuro-test battery would be needed to characterize better the nature and extent of the neuronal dysfunction?

In response to FDA's request, FASEB will hold an open symposium, as well as a workshop limited to those invited by FASEB, to address these questions.

Related topical areas that will be discussed during the symposium and workshop include: (1) The use of neurotoxicity and neurobehavioral data derived from present toxicological screening protocols; (2) molecular and cellular mechanisms by which chemicals cause neurotoxicity and behavioral abnormalities; (3) chemically caused central or peripheral neuropathies, including the biological processes whereby these neuropathies are expressed; (4) extrapolation of neurotoxic or behavioral abnormalities from animals to humans; (5) immunologic aspects of the nervous system; (6) the role of genetic factors in neurotoxicity and behavioral abnormalities; (7) anatomical aspects of neurotoxicity and behavioral abnormalities; (8) epidemiology of neurobehavioral abnormalities; and (9) the effects of dietary and environmental chemicals on neurological abnormalities and behavioral aberrations.

A brochure describing the symposium program, invited speakers, and registration procedures is available from the contact individuals listed above. Interested persons are invited to submit scientific data, information, and related reference materials. Proceedings of the symposium and workshop will be published and will be provided to all attendees.

Dated: July 3, 1985.

Marvin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–16242 Filed 7–8–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

District Advisory Councils Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations for District Advisory Councils.

SUMMARY: The purpose of this notice is to solicit public nominations to fill those positions for which terms expire this year on each of the Bureau of Land Management's 52 District Advisory Councils. Each council has four such positions to fill, except the California Desert District Advisory Council, which has five such positions to fill.

Each affected council comprises 10 members, except the California Desert District Advisory Council, which comprises 15 members. Under the staggered-term arrangement instituted by the Secretary of the Interior in 1982, the terms of five members on the California Desert District Advisory Council and the terms of four members on each of the remaining 51 councils will expire on December 31, 1985. Current council members may be reappointed or new members may be appointed. Appointments made by the Secretary pursuant to this call will assure continued representation of specific categories of interest on each council. The new terms will expire December 31, 1988.

To ensure council membership that is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas identified with each council position now up for appointment. Categories for specific councils will be announced through local news releases in the appropriate States and Districts and will include the following:

Elected General Purpose Government
Environmental Protection
Recreation
Renewable Resources (livestock, forestry, agriculture)
Non-Renewable Resources (mining, oil and gas, extractive industries)
Transportation/Rights-of-Way
Wildlife
Public-at-Large.

The purpose of the councils is to provide informed advice to the respective District Managers on the management of the public lands. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Each council normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on a District Advisory Council should contact the appropriate District Manager of the Bureau of Land Management to ascertain which categories of interest are to be represented. They should then provide the District Manager with the names, addresses, professions, and other biographic data of qualified nominees.

DATE: All nominations should be received by August 2, 1985.

ADDRESSES: The mailing address of each Bureau District Manager is as follows:

Alaska

Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska 99507
Fairbanks District Office, 1541 Gaffney Road, Fairbanks, Alaska 99703

Arizona

Arizona Strip District Office, 196 East Tabernacle, St. George, Utah 84770
Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027
Safford District Office, 425 East 4th Street, Safford, Arizona 85546
Yuma District Office, 2450 Fourth Avenue, P.O. Box 5680, Yuma, Arizona 85364

California

Bakersfield District Office, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301
California Desert District Office, 1695 Spruce Street, Riverside, California 92507
Susanville District Office, 705 Hall Street, P.O. Box 1090, Susanville, California 96130

Ukiah District Office, 555 Leslie Street, Ukiah, California 95482

Colorado

Canon City District Office, 3080 East Main Street, P.O. Box 311, Canon City, Colorado 81212
Craig District Office, 455 Emerson Street, Craig, Colorado 81625
Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81506
Montrose District Office, 2465 South Townsend, Montrose, Colorado 81401

Idaho

Boise District Office, 3948 Development Avenue, Boise, Idaho 83705
Burley District Office, Route 3, Box 1, Burley, Idaho 83318
Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814
Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401
Salmon District Office, P.O. Box 430, Salmon, Idaho 83467
Shoshone District Office, 400 West "F" Street, P.O. Box 2B, Shoshone, Idaho 83352

Montana

Butte District Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702
Dickinson District Office, 204 Sims Street, P.O. Box 1229, Dickinson, North Dakota 58602
Lewistown District Office, Airport Road, Lewistown, Montana 59457
Miles City District Office, West of Miles City, P.O. Box 940, Miles City, Montana 59301

Nevada

Battle Mountain District Office, P.O. Box 1420, Battle Mountain, Nevada 89820
Carson City District Office, 1050 East William Street, Suite 335, Carson City, Nevada 89701
Elko District Office, P.O. Box 831, Elko, Nevada 89801
Ely District Office, Star Route 5, Box 1, Ely Nevada 89301
Las Vegas District Office, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126
Winnemucca District Office, 705 East 4th Street, Winnemucca, Nevada 89445

New Mexico

Albuquerque District Office, 505 Marquette Avenue, N.W., P.O. Box 6770, Albuquerque, New Mexico 87197–6770
Las Cruces District Office, 1800 Marquess Street, P.O. Box 1420, Las Cruces, New Mexico 88004
Roswell District Office, 1717 West Second Street, Featherstone Farms Building, P.O. Box 1397, Roswell, New Mexico 88201–1397

Oregon

Burns District Office, 74 South Alvord Street, Burns, Oregon 97720
Coos Bay District Office, 333 South 4th Street, Coos Bay, Oregon 97420
Eugene District Office, 1255 Pearl Street, P.O. Box 10226, Eugene, Oregon 97440
Lakeview District Office, 1000 South 9th, P.O. Box 151, Lakeview, Oregon 97630
Medford District Office, 3040 Biddle Road, Medford, Oregon 97504
Prineville District Office, 185 East 4th Street, P.O. Box 550, Prineville, Oregon 97754
Roseburg District Office, 777 N.W. Garden Valley Boulevard, Roseburg, Oregon 97470
Salem District Office, 1717 Fabry Road, S.E., P.O. Box 3227, Salem, Oregon 97302
Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202
Vale District Office, 100 East Oregon Street, P.O. Box 700, Vale, Oregon 97918

Utah

Cedar City District Office, 1579 North Main Street, P.O. Box 724, Cedar City, Utah 84720
Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532
Richfield District Office, 150 East 900 North, Richfield, Utah 84701
Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119
Vernal District Office, 170 South 500 East, Vernal, Utah 84078

Wyoming

Casper District Office, 951 North Poplar Road, Casper, Wyoming 82601
Rawlins District Office, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301
Rock Springs District Office, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902–1869
Worland District Office, 1700 Robertson Avenue, P.O. Box 119, Worland, Wyoming 82401.

FOR FURTHER INFORMATION CONTACT: The respective District Managers.

Dated: July 3, 1985.

James M. Parker,

Acting Director.

[FR Doc. 85–16257 Filed 7–8–85; 8:45 am]

BILLING CODE 4310-84-M

[W-04223, W-04344]

Washington; Proposed Patent of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Washington State Game Department has submitted applications to patent the following described unsurveyed island in Moses Lake, Grant County, Washington, for protection and perpetuation of wildlife, and for public recreation compatible with wildlife management objectives:

Willamette Meridian, Washington

T. 19 N., R. 28 E.,
Sec. 7, por. SE¼ (Heron Island);
Sec. 33, por. E½SE¼; and
Sec. 34, por. W½SW¼ (Goat Island).
Encompassing 35 acres, more or less.

The islands are primarily valuable for public purposes and recreational uses. They have been leased to the State of Washington for these purposes since 1962.

Patenting of the islands to Washington State will serve important public objectives by providing for protection and perpetuation of wildlife and compatible public recreation by retaining the islands in a natural condition.

DATES: For a period of thirty days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, East 4217 Main Avenue, Spokane, Washington 99202. Additional information concerning this proposal is available for review at the above office.

Any adverse comments will be evaluated by the State Director, who may vacate or modify this action and issue a final determination. In the absence of any action by the State Director, this action will become the final decision of this department.

Joseph K. Buesing,

District Manager.

[FR Doc. 85–16238 Filed 7–8–85; 8:45 am]

BILLING CODE 4310-33-M

Establishment of 14 Day Camping Limit on Public Lands Within the Montrose District, CO

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: In accordance with 43 CFR 8364.1 and 8365.1–2, a maximum camping stay of 14 days per site is established for all public lands within

the Montrose District in Colorado. This restriction applies year-round on all developed, undeveloped, designated, and nondesignated sites used for camping.

EFFECTIVE DATE: July 9, 1985.

SUPPLEMENTARY INFORMATION: This restriction is necessary to prevent excessive impacts to soil, vegetation and other resources caused by long-term camping. The restriction applies to all public land users except those who have obtained prior approval from the authorized officer, and those who are specifically allowed a longer stay under the terms of a Special Recreation Permit.

FOR FURTHER INFORMATION CONTACT: District Manager, Montrose District Office, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401, (303) 249–7791.

Dated: June 25, 1985.

Robert S. Schmidt,

Acting District Manager.

[FR Doc. 85–16234 Filed 7–8–85; 8:45 am]

BILLING CODE 4310–JB–M

Colorado; Filing of Plats of Survey

June 26, 1985.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., June 26, 1985.

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines; the survey of the subdivision of section 6, and the metes-and-bounds survey of Tract 39, T. 1 N., R. 72 W., Sixth Principal Meridian, Colorado, Group No. 432, was accepted June 20, 1985.

The plat representing the dependent resurvey of a portion of the New Mexico Principal Meridian, (east boundary), a portion of the south boundary, the west and north boundaries, and a portion of the subdivisional lines, and the survey of the subdivision of certain sections, T. 46 N., R. 1 W., New Mexico Principal Meridian, Colorado, Group No. 740, was accepted June 20, 1985.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 85–16233 Filed 7–8–85; 8:45 am]

BILLING CODE 4310–84–M

Realty Action; Proposed Leasing of Public Land; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed leasing of public land in Teller and Boulder Counties, Colorado.

SUMMARY: A parcel of land is being considered for lease under section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat 2762; 43 USC 1932). Leasing of the land will authorize existing uses and improvements, and will allow the government to collect fair market rental. The land and the prospective lessee is as follows:

Sixth Principal Meridian, CO

T. 3S., R 73W., Sec. 19, a parcel of land being a part of the unpatented Little Midget claim, containing 3 acres in Clear Creek County. Prospective lessee: Jean V. Nickens.

The parcel would be offered to the present homeowner for direct, noncompetitive lease at no less than fair market rental. The size, configuration and location of the parcel limits other potential uses or users. The general terms and conditions for the lease are found in 43 CFR 2920.7.

The lessee would be required to reimburse the United States for reasonable costs incurred in processing and monitoring the lease, in accordance with 43 CFR 2920.6.

For a period of 30 days from publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 3080 East Main Street, Canon City, Colorado 81212. Any adverse comments will be evaluated and the decision to issue a lease affirmed, modified or rejected.

Clarence Pearson,

Acting District Manager.

[FR Doc. 85–16235 Filed 7–8–85; 8:45 am]

BILLING CODE 4310–JB–M

Vernal District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Vernal District Grazing Advisory Board will be held August 21 and 22, 1985.

The meeting will begin at 8:00 a.m. at the BLM office (at the above noted address).

The agenda for the meeting will include: (1) A tour of Bookcliffs Range Improvement Work, Bookcliffs Resource Management Plan and Range Program Summary Proposals, (2) Progress FY85 Range Improvement (RI) Work, (3) Proposed FY86, 87 RI Work, (4) Allotment Management, Rangeland Monitoring and Allotment Evaluation Program, (5) Predator and Pest Control, (6) Slide Summary Wood Canyon Wood Sales, and (7) Slide Presentation Bookcliffs Ungulate Study.

The meeting is open to the public. Interested persons must furnish their own transportation and camp facilities. Anyone wishing to participate or present a statement should notify the District Manager, BLM, 170 South 500 East, Vernal, Utah by August 20, 1985.

Don Alvord,

Associate District Manager.

[FR Doc. 85–16239 Filed 7–8–85; 8:45 am]

BILLING CODE 4310–DQ–M

[AA–8657–A]

AHTNA, Inc.; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613, will be issued to AHTNA, Incorporated for 130 acres. The lands involved are in the vicinity of Gulkana.

T. 5 N., R. 1 W., Copper River Meridian (Surveyed)
Portions of Secs. 19, 20, and 29.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Copper Valley Views. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until August 8, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E

shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-16259 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-JA-M

[OR 22247]

Notice of Realty Action; Exchange of Lands; Oregon

The following described lands have been determined to be potentially suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

WILLAMETTE MERIDIAN—FEDERAL (SELECTED) LAND

	Acreage
T. 23 S., R. 27 E.:	
Section 32: S½N½ S½	480.00
Section 34: E½E½, NW¼NE¼	200.00
T. 23 S., R. 27 E.:	
Section 2: Lots 1–4 inclusive, S½N½	321.76
Section 4: Lots 1–4 inclusive, S½N½, S½	639.03
Section 6: Lots 6, 7, and 11, SE¼SE¼	98.92
Section 8: All	640.00
Section 10: W½ W½E½	480.00
Section 12: All	640.00
Section 24: N½NE¼, SW¼NE¼, NW¼SE¼	160.00
T. 24 S., R. 28 E.: Section 19: Lot 2	39.95
Approximately	3,699.66

The area described aggregates approximately 3699.66(±) acres in Harney County, Oregon.

In exchange for all or some of these lands the United States will acquire the following described private land from Jim Towery, et. al. (final acreages dependent upon appraisals and environmental assessments):

WILLAMETTE MERIDIAN—PRIVATE (OFFERED) LAND

	Acreage
T. 21 S., R. 29 E.:	
Section 5: SW¼SW¼	40.00
Section 8: W½NW¼, NW¼SW¼	120.00
T. 23 S., R. 25 E.:	
Section 31: SW¼NE¼	40.00
Section 32: NE¼SE¼	40.00
Section 33: N½SW¼, NW¼SE¼	120.00
T. 24 S., R. 24 E.:	
Section 2: W½SE¼, E½SW¼	160.00
Section 11: NE¼, N½SE¼, SE¼SE¼, NE¼NW¼	320.00
Section 15: NW¼NE¼	40.00
Section 24: SE¼NW¼	40.00
T. 24 S., R. 27 E.:	
Section 7: W½ (area west of Hwy 395)	250.00
Section 17: All	640.00
Section 19: Lots 1–4 inclusive, E½W½, E½	637.60
Section 21: All	640.00
Section 25: NE¼, N½NW¼, SW¼	400.00
T. 24 S., R. 28 E.: Section 19: SE¼NW¼	40.00
Approximately	3,507.60

The area described aggregates approximately 3507.60(±) acres in Harney County.

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management, to enhance the range management potential for the area and the exchange would be highly beneficial for recreational use, wildlife habitat, and riparian habitat.

The Federal lands that will be exchanged are hard to manage parcels mostly surrounded by the private lands of the exchange proponent. The Federal lands have not been identified for any higher priority values, their disposal is consistent with other land use objectives, and is not inconsistent with any other resource value allocations.

This proposal is consistent with Bureau planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making this exchange. The comparative values of the lands exchanged will be approximately equal and the acreage will be adjusted and/or mnoney will be used to equalize the values upon completion of the final appraisal of the lands. Any monetary adjustments made will be for no more than 25% of the appraised value of Federal lands involved.

The exchange will be subject to:

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1980.

(2) Valid, exisiting rights including but not limited to any right-of-way, easement, or lease of record.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation, under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Burns District Office of the Bureau of Land Management, 74 South Alvord, Burns, Oregon, 97720.

For a period of 60 days after the date of issuance of this notice, the public and interested parties may submit comments to the Burns District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: June 27, 1985.

Joshua L. Warburton,

District Manager.

[FR Doc. 85-16328 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-33-M

[OR 32760]

Realty Action; Exchange of Lands; Oregon

The following described lands have been determined to be potentially suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

WILLAMETTE MERIDIAN—HARNEY COUNTY TRACTS

	Acreage
T. 30 S., R. 31 E.:	
Section 14: SW¼NW¼, W½SW¼	120.00
Section 15: SE¼NE¼, E½SE¼	120.00
Section 23: W½NE¼, SE¼NE¼, NW¼, E½SW¼, SE¼	520.00
Section 24: SW¼NW¼, N½SW¼, SE¼	280.00
Section 25: SW¼, S½SE¼	240.00
Section 26: NE¼, E½NW¼, E½SW¼, SE¼	480.00
Section 35: NE¼NE¼	40.00
T. 30 S., R. 32 E.:	
Section 19: Lot 4, SE¼SW¼	78.93
Section 28: SW¼NW¼, SW¼, SW¼SE¼	240.00
Section 29: E½, N½SW¼	400.00
Section 30: Lot 4, NW¼NE¼, S½NE¼, NE¼NW¼, SE¼SW¼, NE¼SE¼	280.81
Section 32: W½NE¼, NW¼NE¼	120.00
Section 33: E½NE¼, NW¼, N½SW¼, NW¼SE¼	360.00

The area described aggregates approximately 3280.74(±) acres in Harney County, Oregon.

In exchange for all or some of these lands the United States will acquire the following described private land from Hammond Ranches, Inc. (final acreages dependent upon appraisals and environmental assessments):

WILLAMETTE MERIDIAN

	Acreage
T. 31 S., R. 32½ E.:	
Section 10: NE¼NE¼, NE¼SE¼, S½SE¼	160.00
Section 11: SW¼NE¼, NW¼NW¼, S½NW¼, S½	480.00
Section 12: NW¼SW¼, S½SW¼	120.00
Section 14: NW¼, N½SW¼	240.00
Section 15: NW¼, NE¼SE¼	200.00
Section 21: SW¼NE¼, NE¼SE¼	80.00

The area described aggregates approximately 1280.00 (±) acres in Harney County.

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management, to enhance the range management potential for the area and the exchange would be highly beneficial for recreational use, wildlife habitat, and riparian habitat.

The Federal lands that will be exchanged are hard to manage parcels mostly surrounded by the private lands of the exchange proponent. The Federal lands have not been identified for any higher priority values, their disposal is consistent with other land use objectives, and is not inconsistent with any other resource value allocations.

This proposal is consistent with Bureau planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making this exchange. The comparative values of the lands exchanged will be approximately equal and the acreage will be adjusted and/or money will be used to equalize the values upon completion of the final appraisal of the lands. Any monetary adjustments made will be for no more than 25% of the appraised value of Federal lands involved.

The exchange will be subject to:

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1890.

(2) Valid, existing rights including but not limited to any right-of-way, easement, or lease of record.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation, under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Burns District Office of the Bureau of Land Management, 74 South Alvord, Burns, Oregon, 97720.

For a period of 60 days after the date of issuance of this notice, the public and interested parties may submit comments to the Burns District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: June 18, 1985.

Joshua L. Warburton,

District Manager.

[FR Doc. 85-16329 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-33-M

[OR 24855]

Realty Action; Exchange of Lands; Oregon

The following described lands have been determined to be potentially suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

WILLAMETTE MERIDIAN—HARNEY COUNTY TRACTS

	Acreage
T. 41 S., R. 35 E.:	
Section 20: Lot 1, W½NW¼, NW¼SW¼	143.90
Section 21: Lots 1 and 2, S½NW¼, N½SW¼	193.84

The area described aggregates approximately 337.74(±) acres in Harney County, Oregon.

In exchange for all or some of these lands the United States will acquire the following described private land from Mr. William P. Moser (final acreages dependent upon appraisals and environmental assessments):

WILLAMETTE MERIDIAN

	Acreage
T. 41 S., R. 34 E., W.M.:	
Section 2: SE¼SW¼, SW¼SE¼	80.00
Section 11: NE¼NW¼, NW¼NE¼	80.00
T. 40 S., R. 35 E., W.M.:	
Section 35: SW¼SW¼	40.00
T. 41 S., R. 35 E., W.M.:	
Section 2: Lot 4, SW¼NW¼, NW¼SW¼	119.85

The area described aggregates approximately 319.85 (±) acres in Harney County.

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management, to enhance the range management potential for the area and the exchange would be highly beneficial for recreational use, wildlife habitat, and watershed values.

The Federal lands that will be exchanged are hard to manage parcels mostly surrounded by the private lands of the exchange proponent. The Federal lands have not been identified for any higher priority values, their disposal is consistent with other land use objectives, and is not inconsistent with any other resource value allocations.

This proposal is consistent with Bureau planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making this exchange. The comparative values of the lands exchanged will be approximately equal and the acreage will be adjusted and/or money will be used to equalize the values upon completion of the final appraisal of the lands. Any monetary adjustments made will be for no more than 25% of the appraised value of Federal lands involved.

The exchange will be subject to:

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1890.

(2) Valid, existing rights including but not limited to any right-of-way, easement, or lease of record.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation, under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Burns District Office of the Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720.

For a period of 60 days after the date of issuance of this notice, the public and interested parties may submit comments to the Burns District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: June 18, 1985

Joshua L. Warburton,

District Manager.

[FR Doc. 85-16330 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-33-M

[Nev-044346]

Proposed Partial Modification and Continuation of Withdrawal; Nevada

June 25, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes that 40 acres of a recreation site withdrawal be continued for an additional 20 years. The land will remain closed to surface entry and mining. The land has been and will remain open to mineral leasing.

DATE: Comments must be received by October 7, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Bureau of Land Management, Nevada State Office, (702) 784-5703.

SUPPLEMENTARY INFORMATION: The U.S. Forest Service proposes that 40 acres of an 80-acre recreation site withdrawal established by Public Land Order 1796 of February 19, 1959, be continued for a period of 20 years pursuant to section 204(d) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2753; 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian

T. 36 N., R. 61 E.,
Sec. 4, SE¼SE¼.

The area contains 40 acres in Elko County.

The purpose of the withdrawal is to protect the Angel Lake Recreation Site. The withdrawal segregates the land from operation of the public land laws, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the Nevada State Office.

The authorized officer of the Bureau of Land Management, will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 85-16317 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Issuance of Permit for Marine Mammals; Carle Foundation Hospital

On May 2, 1985, a notice was published in the **Federal Register** (Vol. 50, No. 85) that an application had been filed with the Fish and Wildlife Service by Carle Foundation Hospital (PRT-691972) for a permit to import 300 polar bear blood samples per year for research.

Notice is hereby given that on June 13, 1985, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Endangered Species Act of 1972 (16 U.S.C. 1539), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: July 2, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-16266 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4567, Block 392, Galveston Area, Offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on June 27, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became efective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 27, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-16232 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 29, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20243. Written

comments should be submitted by July 24, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pinal County

Casa Grande, *Casa Grande Union High School and Gymnasium (Casa Grande MRA)*, 420 E. Florence Blvd.
Casa Grande, *Day, Judge William T., House (Casa Grande MRA)*, 310 West 1st St.

CONNECTICUT

Hartford County

Hartford, *West End North Historic District*, Roughly bounded by Farmington Ave., Lorraine, Elizabeth, and Highland Sts.

GEORGIA

Atlanta County

Gainesville, *Chicopee Mill and Village Historic District*, Roughly bounded by Fourth & Fifth Sts., North, K, 8th, H, G & F Aves. on US 23

DeKalb County

Decatur, *Lee, Agnes, Chapter House of the United Daughters of the Confederacy*, 120 Avery St.

Floyd County

Rome, *East Rome Historic District*, Roughly bounded by Walnut Ave., McCall Blvd., E. 9th and 10th Sts.

Oglethorpe County

Vesta, *Smith-Harris House*, CR 207

Randolph County

Shellman, *Shellman Historic District*, Roughly bounded by Dean, Church, Mary Lou, Ward, Pecan and Pine Sts.

MARYLAND

Baltimore County

Woodlawn vicinity, *Lorraine Cemetery Gate Lodge*, 5608 Dogwood Rd.

Carroll County

Houcksville vicinity, *Hoffman, Isaac, House*, 364 Shamer Lane
Westminister vicinity, *Meadow Brook Farm*, 1006 Taneytown Pike

Harford County

Bel Air, *Bel Air Courthouse Historic District*, Office, Courtland and Main Sts.

MISSOURI

Jackson County

Kansas City, *Gloyd Building*, 921 Walnut

NEW JERSEY

Bergen County

Franklin Lakes, *Blauvelt House (Stone House of Bergen County MRA)*, 205 Woodside Ave.

NEW MEXICO

McKinley County

Archeological Site # LA 15278 (Reservoir Site; CM 100) (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,780 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,781 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,782 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,784 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,785 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,786 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,789 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,000 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,001 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,013 (CM 101)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,014 (CM 102)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,015 (CM 102A)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,016 (CM 103)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,017 (CM 104)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,018 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,019 (CM 105)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,020 (CM 106)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,021 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,022 (CM 107)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,023 (CM 118)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,024 (CM 108)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,025 (CM 109)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,026 (CM 110)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,027 (CM 111)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,028 (CM 112)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,030 (CM 114)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,031 (CM 115)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,033 (CM 117)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,034 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,035 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,036 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,037 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,038 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,044 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,071 (CM 148)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,072 (CM 94)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,074 (CM 181)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,077 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,080 (Chaco Mesa Pueblo III TR)

NEW YORK

Schoharie County

Charlotteville vicinity, *Bute-Warner-Truax Farm*, Truax Rd.

OHIO

Muskingum County

Locust Site (33MU160)

PENNSYLVANIA

Delaware County

Wayne, *North Wayne Historic District*, Roughly bounded by Eagle Rd., Woodland Ct., Radnor St., Poplar & N. Wayne Ave.

TENNESSEE

Davidson County

Nashville, *Doctor's Building*, 706 Church St.
Nashville, *Little Sisters of the Poor Home for the Aged*, 1400 18th Ave., South

Sullivan County

Bristol, *First National Bank of Bristol*, 500 State St.

Sumner County

Castalian Springs vicinity, *Brown-Chenault House*, Chenault Lane
Gallatin vicinity, *Oakley, 2243 Nashville Pike*

Washington County

Gray, *Kitzmiller, Martin, House*, US 23, Boon's Creek

TEXAS

Goliad County

Goliad, *Baker, Charles H. and Catherine B., House*, 401 South Commercial St.

WASHINGTON

Spokane County

Upper Kepple Rockshelters (45SP7)

WEST VIRGINIA

Pocahontas County

Mill Point, *McNeel Mill*, US 219

WISCONSIN

Jefferson County

Haight Creek Mound Group (47–Je–38)

Milwaukee County

Milwaukee, *Concordia Historic District (West Side Area MRA)*, Roughly bounded by West State, N. 27th, W. Killbourn Ave. and N. 35th St.
Milwaukee, *Highland Boulevard Historic District (West Side Area MRA)*, W. Highland Blvd. roughly bounded by N. 33rd and N. 29th Sts.
Milwaukee, *McKinley Boulevard Historic District (West Side Area MRA)*, W. McKinley Blvd. between N. 34th & N. 27th Sts.

[FR Doc. 85–16214 Filed 7–8–85; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; Proposed NHL Boundaries

June 25, 1985.

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation, and therefore, are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR Part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, Attention: Chief of Registration (202) 343–9536. Copies of the documentation of the landmarks and their proposed boundaries, including maps may be obtained from that same office.

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

HURLEY VILLAGE NHL

Hurley, Ulster Co, NY

A. Hurley Village District

Beginning at the point where a southward projection of the western property line of Section 55.008, Block 2, Lot 17 in the Town of Hurley, Ulster County, New York intersects the south side of Main Street (Hurley Street); thence proceeding north along this line and the western edge of 55.008/2/17, and northeast, east and southeast around the perimeter of 55.008/2/17 to the northwestern side of U.S. Route 209; thence proceeding southeast across U.S. Route 209 along a continuation of the eastern line of 55.008/2/17 to the northeastern corner of 55.008/3/43; thence proceeding southeast along the northeast (rear) lines of 55.008/3/43 and 55.008/3/42 and southwest along the southeast line of 55.008/3/42 to the northeast corner of 55.008/3/41; thence proceeding southeast along the northeast (rear) lines of 55.008/3/41 and 55.008/3/40 to the northwest corner of 55.008/3/36; thence proceeding east and south along the north and east lines of 55.008/3/36 and south and southeast along the northeast (rear) line of 55.008/3/34; thence proceeding southwest along the southeast line of 55.008/3/34 to the northern corner of 55.008/3/33; thence proceeding southeast along the northeastern (rear) lines of 55.008/3/33, 55.008/3/32 and 55.008/3/30 to the eastern corner of 55.008/3/30, includng a projection of this line across the driveway of 55.008/3/31 thence proceeding southwest, northwest and southwest along the southeastern side of 55.008/3/30 to the northern corner of 55.008/3/14; thence proceeding southeast along the northeastern side of 55.008/3/14 and northeast along the southeastern side of 55.008/3/13 to a point where a northwestward projection of the northeastern property line of 55.008/4/16 intersects the northwestern side of Millbrook Avenue; thence proceeding southeast along this line and the northeastern side of 55.008/4/16, and southwest along the southeasten side of 55.008/4/16 and along a projection of that line to the southwestern side of Zandhoek Road.

Thence proceeding northwest along the northeastern sides of 55.008/4/5 and 55.008/4/4; thence proceeding northwest along a line across Millbrook Avenue from the northern corner of 55.008/4/4 to the eastern corner of 55.008/3/15; thence proceeding northwest along the northeastern side of 55.008/3/15, southwest along the northwestern sides of 55.008/3/15 and 55.008/3/16, and northwest along the southwestern sides of 55.008/3/29, 55.008/3/28 and 55.008/3/27 to the western corner of 55.008/3/27; thence proceeding northeast along the northwestern sides of 55.008/3/27 and 55.008/3/26 (along the southeastern edge of Schoolhouse Road) to the northern corner of 55.008/3/26; thence proceeding northwest along a line across Schoolhouse Road from the northern corner of 55.008/3/26 to the eastern corner of 55.008/2/5; thence proceeding northwest along the northeastern sides of 55.008/2/5, 55.008/2/4, 55.008/2/3, 55.008/2/2 and 55.008/2/1, and along a continuation of this line across Depot Road and U.S. Route 209 to the eastern corner of 55.008/2/15 (along the southwestern edge of Main Street); thence proceeding southwest and northwest along the southeastern and southwestern sides of 55.008/2/15 to the point of beginning.

B. Hardenbergh House

Beginning at the western corner of Section 55.008, Block 2, Lot 9 in the Town of Hurley, Ulster County, New York; thence proceeding northeast and southeast around the perimeter of 55.008/2/9 to a point where a northwestward projection of the 215-foot long northeastern property line of 55.008/2/9 (which corresponds with the southwestern side of Russell Road); thence proceeding southeast along this line and the southwestern side of Russell Road to the eastern corner of 55.008/2/9; thence proceeding southwest, south, southwest and northwest around the perimeter of 55.008/2/9 to the point of beginning.

C. Matthias Ten Eyck House

Beginning at the northern corner of Section 55.002, Block 2, Lot 17 in the Town of Hurley, Ulster County, New York; thence proceeding southeast approximately 600 feet along the northeastern side of 55.002/2/17 to a tributary of the Esopus Creek; thence proceeding west (upstream) along this tributary to a sharp bend to the south near Hurley Mountain Road; thence proceeding west from this bend to the eastern side of Hurley Mountain Road; thence proceeding north and northeast to the point of beginning.

MESILLA PLAZA NHL

Mesilla, Dona Ana Co, NM

The National Historic Landmark boundary has been drawn to include a total area of six acres that contain Mesilla plaza and those historic structures immediately surrounding the plaza.

The boundary begins at the southeast corner of Calle de Principal and Calle de Parian, and runs south along the east curb of Calle de Principal for approximately 200 feet. Then it proceeds east along the south wall of Building 9 to the west curb of Calle de Guadalupe, then north for approximately 50 feet before turning east and crossing Calle de Guadalupe, thence extending along the south wall of Building 10 for a distance of approximately 150 feet. At this point the boundary turns north and follows along the east wall of Building 10, crossing Calle de Parian and runs along the east wall of Building 11. Turning east at the northeastern corner of Building 11 it continues for approximately 50 feet to the west curb of Calle de Albino, and continues north along the west curb of Calle de Albino for approximately 200 feet. The boundary then turns west for approximately 200 feet to the east curb of Calle de Guadalupe, thence north along the east curb of Calle de Guadalupe for approximately 300 feet. It then turns west, crosses Calle de Guadalupe, running approximately 30 feet behind Building 13, and extends to the west curb of Calle de Principal, a

distance of approximately 200 feet. Here the boundary continues sought along the west curb of Calle de Principal for approximately 280 feet. The boundary then turns west for 300 feet, across vacant ground, to the east curb of Calle de Arroyo, thence along the east curb of Calle de Arroyo for approximately 200 feet where the boundary turns due east, across vacant ground, for approximately 150 feet. Here the boundary turns south for approximately 150 feet, across vacant ground, to the south curb of Calle de Parian. It then continues east along the south curb of Calle de Parian for approximately 150 feet to the southeast corner of Calle de Principal and Calle de Parian, and the beginning point of the boundary.

HUGUENOT STREET HISTORIC DISTRICT

New Paltz, Ulster Co. NY

Beginning at the southern corner of Section 86.033, Block 2, Lot 14 in the Village of New Paltz, Ulster County, New York; thence proceeding northwest to the western corner of 86.033/2/14 and northeast along the northwestern edge of 86.033/2/14, 86.033/2/11 and 86.033/2/1 (the southeastern edge of Hugenot Street) to a point where a projection of the southwestern line of 86.033/1/4 intersects with the southeastern edge of Huguenot Street; thence proceeding northwest along the latter line to the western corner of 86.033/1/4; thence proceeding northeast along the western line of 86.033/1/4, north along the western lines of 86.033/1/5 and 86.033/1/6, west and north along the southern and western lines of 86.033/1/6, north along the western lines of 86.033/1/6 and 86.025/1/12.2, and 200 feet north along the western line of 86.025/1/12.1; thence proceeding east along a line of convenience approximately 30 feet north of the Reformed Church of New Paltz to the western edge of 86.025/2/15 (the eastern edge of Huguenot Street); thence proceeding north along the western edge of 86.025/2/15, and north, east, south and west around the perimeter of 86.025/2/1 to the northeastern corner of 86.025/2/15; thence proceeding south along the eastern edge of 86.025/2/15 and along a continuation of that line across the driveway of 86.025/2/9; thence proceeding east, south and west around the perimeter of 86.025/2/14 to a point where a projection of the eastern line of 86.033/1/7 intersects with the southern edge of 86.025/2/14; thence proceeding south along the latter line to the southeastern corner of 86.033/1/7, and east, southwest and northwest around the perimeter of 86.033/1/12 to a point where a projection of the southeastern lines of 86.033/2/1 and 86.033/2/14 intersects with the southwestern edge of 86.033/1/12 (on the northeastern edge of North Front Street); thence proceeding southwest along the latter to the point of beginning.

WINONA VILLAGE NHL

Coconino Co, AZ

The east boundary is formed by a barbed wire fence along the section line between Sections 13 and 14. The south boundary is a straight line, 2330 ft. long, that extends westward from the quarter section corner, approximately the intersection of the fence line with a dirt road, to U.S. Highway 66. This generally follows the dirt road for most of its length. The west boundary is a straight line, 2600 ft. long, that is 330 ft. west of and parallel to the Forest boundary. The north boundary is an east-west line that mostly corresponds to the upper edge of a cinder cone.

RABBIT EARS NHL (CLAYTON COMPLEX)

Clayton, Union Co, NM

The Rabbit Ears (Clayton Complex) National Historic Landmark consists of three camp sites (McNees' Crossing, Turkey Creek Camp and Rabbit Ears Camp) and two natural features (Rabbit Ears Mountains and Round Mound) of the Santa Fe Trail. The campsite are bound together by the remains of the Santa Fe Trail and form one elongated parcel, while the two natural features consist of two separate parcels south of the campsites and trail.

Parcel #1, is shaped like a parallelogram running from the Oklahoma-New Mexico border in a southwesterly direction, across three USGS maps. Within the parallelogram the actual NHL boundary is delineated in blue pen. The three campsites are bound together by a corridor centered on the Santa Fe Trail (as it is indicated on the enclosed USGS maps). The boundaries of the corridor run parallel to the Trail, at a distance of 150' on either side of it. This corridor becomes thicker in the area of the three campsites. In the area of McNees Crossing (Moses Quad) the corridor is expanded to include both segments of the Cimarron Cutoff. In the area of the Turkey Creek Camp, along the Almos Creek (McLaughlin Bridge & Bible Top Butte Quads) the northern part of the boundary runs parallel to the Santa Fe Trail, while the southern part of the boundary follows the creek botton area of Alamos Creek, which served the travelers as a stopping place. An arbitrary line was used for the southern boundary of the Turkey Creek Camp because there was not a convenient contour line to utilize and the on-site inspection selected this area as that area most likely to have served as the camping site. The expanded boundary for the Rabbit Ears Creek Camp has its northern boundary paralleling the Santa Fe Trail, and its southern boundary consisting of the 5600' contour line. These north and south boundaries and the arbitrary west and east lines enclose a broad flat valley which encloses the general camp site area of the Rabbit Ears Creek Camp. (see Mount Dora Quad).

Parcel #2, encloses the prominent double-peaked Rabbit Ear Mesa (Bible Top Butte & Rabbit Ear Mountain Quads). Starting at Point E the Boundary runs southeast to Point F, thence straight south to Point G. From Point G the Boundary goes southwest to Point H, thence straight west to Point I. The Boundary from Point I follows State Highway 370 to Point J. From Point J the boundary runs northeast to Point K and thence due east to Point E. This boundary is to enclose those parts of Rabbit Ear Mesa which are considered significant within the most succinct boundary.

Parcel #3, Mount Clayton (Round Mound), consists of Sections 2 and 3 of T. 26 N., R. 31 E., and Sections 34 and 35 of T. 27 N., R. 31 E.

[FR Doc. 85-16215 Filed 7-8-85; 8:45 am]
BILLING CODE 4310-70-M

Intention To Negotiate Concession Permit; Craftsmen's Guild of Mississippi, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Craftsmen's Guild of Mississippi, Inc., authorizing it to continue to provide sales, exhibits, workshops, and demonstrations of Mississippi crafts facilities and services for the public on the Nathez Trace Parkway, for a period of three (3) years from January 1, 1986, through December 31, 1988.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the

satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixieth (60th) day following pubication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

Dated: June 20, 1985.

Robert L. Deskins,

Acting Regional Director, Southeast Region.

[FR Doc. 85-16350, Filed 7-8-85; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Contract; White Sands Concession Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with White Sands Concession, Inc., authorizing it to continue to provide food and beverage, recreational equipment rental, and merchandising facilities and services for the public at White Sands National Monument, New Mexico, for a period of fifteen (15) years from October 1, 1985, through September 30, 2000.

This proposed contract requires/authorizes a construction and improvement program. The construction and improvement program required/authorized was previously addressed in the National Environmental Policy Act document, Final Environmental Statement, October 14, 1975, that was prepared in conjunction with the Master Plan for White Sands National Monument.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which will expire by limitation of time on September 30, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, White Sands National Monument, P.O. Box 458, Alamogordo, New Mexico, 88310, telephone number (505) 437-1058, for information as to the requirements of the proposed contract.

Donald A. Dayton,

Acting Regional Director, Southwest Region.

[FR Doc. 85-16346 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Pollution Control Consent Judgment; Service Hardware and Drilling Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 24, 1985 a proposed Consent Judgment in *United States* v. *David L. Hamilton, doing business as Service Hardware And Drilling Company*, Civil Action No. 84-244-BLG, was lodged with the United States District Court for the District of Montana. The complaint filed by the United States alleged a violation of the Clean Water Act by the defendant at a facility located in Big Horn County, Montana. The complaint sought injunctive relief to require the defendant to obtain and comply with a Clean Water Act permit and to recover civil penalties for past violations.

The defendant has obtained the required Clean Water Act permit, obviating the need for injunctive relief. The Consent Decree provides that the defendant will pay a civil penalty of $12,500 in settlement of the claims alleged in the complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *David L. Hamilton, doing business as Service Hardware And Drilling Company*, D.J. Ref. 90-5-1-1-2192.

The proposed Consent Judgment may be examined at the office of the United States Attorney, 5043 Federal Building, 26th Street and 3rd Avenue, North, Billings, Montana 59103, and at the Region VIII Office of the Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295. Copies of the Consent Judgment may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-16344 Filed 7-8-85; 8:45 am]

BILLING CODE 4410-01-M

Attorney General's Commission on Pornography; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Department of Justice announces the following meetings and hearings of the Attorney General's Commission on Pornography.

Meeting:

Date and Time: July 23, 1985, 7:30 p.m.—10:30 p.m., C.D.T.

Place: U.S. Courthouse, 219 South Dearborn Street, Room 2502, Chicago, Illinois 60604.

Status: Open to the public.

Matters to be considered: (1) General discussion of issues and methodology to be utilized and (2) Any other relevant matters.

Hearing:

Date and Time: July 24, 1985, 8:30 a.m.—7:30 p.m., C.D.T.

Place: U.S. Courthouse—Ceremonial Courtroom, 219 South Dearborn Street, Room 2444, Chicago, Illinois 60604.

Status: Open to the public.

Matters to be considered: 8:30 a.m., Opening of Second Public Hearing—Welcoming remarks; 8:40 a.m.—12:30 p.m., Testimony of witnesses and examination by Commissioners; 1:30 p.m.—7:30 p.m., Testimony of witnesses and examination by Commissioners.

Meeting:

Date and Time: July 24, 1985, 8:00 p.m.—10:00 p.m., C.D.T.

Place: U.S. Courthouse, 219 South Dearborn Street, Room 2502, Chicago, Illinois 60604.

Status: Open to the public.

Matters to be considered: (1) General discussion of issues and methodology to be utilized and (2) Any other relevant matters.

Hearing:

Date and Time July 25, 1985, 8:30 a.m.—7:30 p.m., C.D.T.

Place: U.S. Courthouse—Ceremonial Courtroom, 219 South Dearborn Street, Room 2444, Chicago, Illinois, 60604.

Status: Open to the public.

Matters to be considered: 8:30 a.m.—12:00 noon, Testimony of witnesses and examination by Commissioners; 1:30 p.m.—7:30 p.m., Testimony of witnesses and examination by Commissioners.

The meetings and hearings will be open to the public, and written comments may be submitted regarding relevant issues. Approximately 30 seats will be available for the public (including media representatives) on a first-come, first-served basis at the meetings on July 23 (7:30 p.m.—10:30 p.m., C.D.T.) and July 24 (8:00 p.m.—10:00 p.m., C.D.T.). Approximately 150 seats will be available for the public (including 40 seats reserved for media representatives) on a first-come, first-served basis at the hearings in the Ceremonial Courtroom on July 24 and July 25, 1985.

Copies of minutes will be available upon request, at the actual cost of duplication, 30 days after the final hearing on July 25, 1985.

Contact person for more information: Alan E. Sears, Executive Director, Attorney General's Commission on Pornography, Room 1018, HOLC Building, Department of Justice, 320 First Street, NW., Washington, D.C. 20530, (202) 724–7837.

Henry Hudson,

Commission Chairman.

July 1, 1985.

[FR Doc. 85–16305 Filed 7–8–85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 83–26]

Hydromorphone; Grant of Registration

On May 10, 1983, Mallinckrodt, Inc., applied to the Drug Enforcement Administration (DEA) for registration pursuant to 21 U.S.C. 823(a) as a bulk manufacturer of hydromorphone, a basic class of Schedule II controlled substance. Pursuant to 21 CFR 1301.43(a), notice of this filing was published in the **Federal Register**, 48 FR 50806, on November 3, 1983. The notice advised that any registered bulk manufacturer of hydromorphone and any other person who then had pending an application for similar registration could file written comments or objections to the granting of Mallinckrodt's application and could request a hearing based on its objections to Mallinckrodt's registration.

Knoll Pharmaceutical Company (Knoll) filed objections to Mallinckrodt's application and requested a hearing. Knoll is a registered bulk manufacturer of hydromorphone and is therefore entitled to object to the granting of Mallinckrodt's application and to request a hearing on its objections. Accordingly, this matter was placed on the docket of Administrative Law Judge Francis L. Young.

There were four participants or parties in this proceeding: The applicant, Mallinckrodt; the objector or opposer, Knoll; the DEA staff; and the Antitrust Division of the Department of Justice. At a preliminary hearing session held on February 9, 1984, procedures were settled on and a schedule was fixed. In a statement filed on February 24, 1984, Knoll set out four objections or issues:

(1) Whether granting Mallinckrodt's application is inconsistent with the public interest in permitting the maintenance of effective controls against diversion of hydromorphone, and any controlled substance compounded therefrom, into other than legitimate channels, because of certain results which allegedly would follow from Mallinckrodt's registration—(the Diversion issue).

(2) Whether granting Mallinckrodt's application is inconsistent with the public interest in maintaining effective controls against diversion of hydromorphone by limiting the number of manufacturers as long as there are adequately competitive conditions—(the Competition issue).

(3) Whether granting Mallinckrodt's application is inconsistent with United States obligations under international treaties, conventions or protocols—(the International issue).

(4) Whether granting Mallinckrodt's application is inconsistent with the public interest in the promotion of technical advances—(the Technical Advances issue).

The testimony of all witnesses on direct examination was prepared and submitted in written narrative form. Thereafter, evidentiary hearing sessions were held before Judge Young on May 1, 2 and 3, 1984, in Washington, D.C. At these three sessions the witnesses were cross-examined and a number of exhibits were put in evidence. Subsequently, each participant submitted proposed findings of fact, conclusions of law and written arguments or briefs in support of their respective positions. In its post-hearing brief, Knoll did not mention its Technical Advances issue, and no argument was submitted in support of it. The Administrative Law Judge accordingly considered it to have been abandoned.

On February 5, 1985, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision in this matter. Knoll filed written exceptions to that document pursuant to 21 CFR 1316.66. Mallinckrodt then filed its response to Knoll's exceptions. These written exceptions and responses were made part of the formal record. The entire record was submitted to the Acting Administrator by the Administrative Law Judge on April 3, 1985, pursuant to 21 CFR 1316.65. The Acting Administrator had considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that hydromorphone is a Schedule II narcotic controlled substance. 21 CFR 1308.12(b)(1). As such, by definition, hydromorphone is a drug which has a currently accepted medical use in treatment in the United States which has a high potential for abuse and which, when abused, produces severe psychological and physical dependence. 21 U.S.C. 812(b)(2). As a Schedule II narcotic controlled substance, hydromorphone is subject to quotas, 21 U.S.C. 826; 21 CFR Part 1303; transfers pursuant to official order forms, 21 U.S.C. 828, 21 CFR Part 1305; non-refillable written prescriptions, 21 U.S.C. 829(a), 21 CFR 1306.11–15; enhanced reporting requirements, 21 CFR 1304.31, 32, 38,39, 40, and 41; enhanced security requirements, 21 CFR 1301.72(a).

Since 1935, Knoll has been the sole manufacturer of bulk hydromorphone in the United States. Knoll is currently the only manufacturer of solid, oral dosage forms of hydromorphone. Knoll sells its hydromorphone formualtions under the trademark "Dilaudid". Dilaudid is the subject of high illicit demand and diversion pressure at all levels of the legitimate distribution chain, diversion of Dilaudid takes place primarily at the retail level through overprescribing by unscrupulour physicians and dispensing pharmacists with similarly unprofessional motives.

Knoll has experience in manufacturing several dosage forms from Schedule II narcotic raw materials, including codeine, hydrocodone, hydromorphone, meperidine, and morphine. From 1978 to 1981 Knoll assisted Roxane Laboratories, Inc. (Roxane) in developing its own generic hydromorphone formulations. Knoll did not raise diversion or other objections at that time. DEA, in 1981, granted Roxane a procurement quota for hydromorphone. Thereafter, Knoll refused to supply hydromorphone to Roxane. Having developed hydromorphone formulations with Knoll's assistance, and having been subsequently denied a supply of bulk hydromorphone by Knoll, Roxane

resorted to Mallinckrodt as a supplier of its future hydromorphone requirements.

Mallinckrodt has experience, spanning several decades, in manufacturing more than 15 Schedule II substances and has an excellent record for cooperating with DEA in prevention diversion. Roxane has experience in manufacturing 38 Schedule II products utilizing five different Schedule II substances and has never had a security violation or diversion. Roxaine intends to formulate and manufacture hydromorphone formulations in the same facilities and using the same security precautions and procedures that it has successfully used in the formulation of the other Schedule II products.

Less than 1% of all Roxane's sales of Schedule II products are directed to retail pharmacies. Instead, Roxane focuses on hospital or hospice pharmacies and to wholesalers who supply hospitals. With respect to hydromorphone, Roxane would target that same market as opposed to retail pharmacies.

Knoll alleges that should Mallinckrodt be granted a registration to manufacture bulk hydromorphone, the result would be increased diversion of that substance. The Administrative Law Judge found that the diversion risk from illicit prescriptions and theft at retail pharmacies involves tablets and bottles of tablets. Tablets cause less suspicion when illicitly prescribed and they are more easily concealed than are injectables and other dosage forms. Roxane's principal hydromorphone products will be an oral solution and tablets contained in a reverse number card. Both of these products are directed at hospitals and at oncologists who are generally on hospital staffs. These products are rarely sold to retail pharmacies.

Judge Young stated that although certain physicians present a high risk of diversion, Knoll did not present any evidence that oncologists on hospital staffs present this same level of risk. Sales to hospitals present much lower diversion concerns than do sales to retail pharmacies.

Knoll contends that this increased supply to hospitals would result in increased internal pilferage. The risk of hospital theft can be minimized with appropriate security and drug accountability procedures within hospitals. Roxane's proposed reverse numbered blister package represents such a drug accountability procedure. Knoll has not shown sufficient evidence that a serious risk of increased hospital diversion would result by virtue of Mallinckrodt's registration.

Knoll alleges that the registration of Mallinckrodt would result in an increase in supply of hydromorphone, thereby causing the risk of diversion to increase. Through the use of quotas, DEA regulates the amount of hydromorphone that can be manufactured and placed on the market. DEA, in setting the aggregate production quota for hydromorphone, must provide for the legitimate medical, scientific, research and industrial needs of the United States. 21 U.S.C. 826, 21 CFR Part 1303. In establishing quotas, DEA's goal is to set a quota that adequately fulfills legitimate demand without either underproduction, which fails to meet legitimate needs, or overproduction, which creates a pool of excess material that may be subject to diversion. Quotas are not fixed, unvarying limits. If legitimate medical demand cannot be met without a change in the aggregate production quota, then DEA increases the aggregate production quota. Where there is no increase in the total legitimate demand but a new firm takes sales from those of an existing manufacturer, then DEA decreases the latter's quota by the amount of such sales.

Additionally, in 1982, DEA placed hydromorphone under disposal quotas which have added to DEA's control over this drug. Disposal quotas, by which DEA limits total disposals by formulators under an established quota, are effective measures to control diversion. Knoll has not shown that these measures would be less effective if Mallinckrodt were registered.

A further argument advanced by Knoll is that the registration of another bulk manufacturer of hydromorphone and the entrance of new formulators of that substance will result in an increased number of shipments of the drug all along the distribution chain and, thus, an increased risk of diversion. In 1981, 65% of all thefts reported by manufacturers and distributors were of drugs "lost-in-transit". Knoll contended that the greater the number of shipments of controlled substances, the greater the potential risk of diversion through in-transit loss. Judge Young reasoned that although there may be some additional risk of in-transit diversion, a certain amount of risk must necessarily be tolerated to get a medically needed drug to the legitimate market.

Knoll's final contention is that there would be increased diversion due to interference with Knoll's existing efforts to control diversion. Knoll has voluntarily undertaken several measures, beyond those required by law, to identify excessive purchases of its hydromorphone and to control diversion once it is identified. These measures include development and utilization of an internal computer system to track excessive purchases by wholesalers, limitation on exports and on sales to certain geographic areas where diversion is suspected, and subscription to the Drug Distribution Data ("DDD") System in order to track excess purchases at the retail level. Registration of Mallinckrodt would not interfere with the comprehensiveness of Knoll's computer tabulations, as long as Roxane supplied DEA with similar tabulations. Knoll currently subscribes to the DDD system which permits it to detect large purchases within certain geographic "cells". Roxane has indicated that it, too, would subscribe to the DDD system if requested to do so by DEA. Judge Young found that while the addition of a new formulator might preclude Knoll itself from tracking all excess purchases of hydromorphone, it would not prevent DEA from aggregating data from Knoll, Roxane and/or the ARCOS system to detect excess purchases.

The burden of proof is on the objecting party, at whose request a hearing is held, to show why the application should not be granted, and to produce such evidence as they may have for consideration by the Administrative Law Judge and the Acting Administrator. *McNeilab, Inc.*, Docket No. 78-13, Opinion at p. 16. It is up to the opposers to show by a preponderance of the evidence that the objections or issues they have raised should preclude the granting of an application. The Administrative Law Judge concluded that Knoll did not show, by a preponderance of the evidence, that the registration of Mallinckrodt as a bulk manufacturer of hydromorphone, under all of the facts and circumstances relevant to this application, would be inconsistent with the public interest, either because Mallinckrodt itself has failed to maintain effective controls against diversion or that the registration of Mallinckrodt would pose an unacceptable increase in the risk of diversion of hydromorphone.

Judge Young next addressed the competition issue. Knol alleged that granting Mallinckrodt's application would not reduce the price of hydromorphone. Judge Young concluded that that argument was irrelevant. The granting of such an application does not require that it result in a lower price for any product. Failure to result in a lower price is not, in and of itself, inconsistent with the public interest.

Finally, the Administrative Law Judge addressed the issue of consistency with United States international obligations. 21 U.S.C. 823(a) provides that the "Attorney General shall register an applicant to manufacture controlled substances in Schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under International treaties, conventions, or protocols in effect on May 1, 1971."

Knoll maintained that the Single Convention on Narcotic Drugs, 1961, requires DEA to deny Mallinckrodt's application since Knoll presently has more capacity than is needed in the United States to produce a total amount of hydromorphone required for this country's legitimate needs. Therefore, Knoll argues that no additional manufacturer of hydromorphone should be registered.

Judge Young concluded that Knoll read more into the provisions of the Convention than is contained therein. Article 29(1), Paragraph 2(b) requires merely that signatory nations "control under license [sic] the establishments and premises in which such manufacture may take place." The commentary to the provision does suggest that the manufacture of drugs should be restricted to as small a number of establishments and premises as is practicable. Comment 6. Judge Young stated however, that what the commentators "suggested" may be one way of accomplishing what the Convention requires. The text of the Convention itself though does not require this course to be taken. The text requires merely that control be exercised by licensing. *See, McNeilab, Inc.*, Docket No. 78–13, Opinion, pp. 29–35.

Based on the foregoing reasons, the Administrative Law Judge recommended that the registration of Mallinckrodt be granted. After reviewing the entire record, including the exceptions filed by Knoll, the Acting Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. The Acting Administrator does not believe that the registration of Mallinckrodt would endanger the public health and safety. The risk of additional diversion is slight given Mallinckrodt's exceptional record against diversion, and given Roxane's intended methods of production and distribution. The Acting Administrator further concludes that registration of Mallinckrodt would be in the public interest since it would increase competition and thereby benefit the consumer.

The objections to the granting of Mallinckrodt's application raised by Knoll, based upon the premise that the application is contrary to the public interest, have been considered by the Acting Administrator and have been rejected. Accordingly, the Acting Administrator of the Drug Enforcement Administration pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) hereby orders that the application of Mallinckrodt, Inc. to be registered as a bulk manufacturer of hydromorphone under the Controlled Substances Act be, and it hereby is, granted.

Dated: July 3, 1985.

John C. Lawn,

Acting Administrator.

[FR Doc. 85–16267 Filed 7–8–85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–15, 892]

Alta Products Corp., Wilkes-Barre, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 10, 1985 in response to a worker petition received on April 1, 1985 which was filed by the United Textile Workers of America Local 998 on behalf of workers at Alta Products Corporation, Wilkes-Barre, Pennsylvania. An active certification covering the petitioning group of workers remains in effect (TA–W–14, 586). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 27th day of June 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 10277 Filed 7–8–85; 8:45 am]

BILLING CODE 4410-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period June 24, 1985–June 28, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,827; Halomet, Inc., Masontown, PA

TA–W–15,816; Jomac Products, Inc., Knox, IN

TA–W–15,834; Tuscarora Yarns, Inc., J.M. Odel Plant, Bynum, NC

TA–W–15,860; Algro Knitting Mills, Inc., Milltown, NJ

TA–W–15,861; Avondale Mills, Sycamore, AL

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–15,863; Code-A-Phone Corp., Louisville, KY

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA–W–15,811; Colt Industries, Inc., Pratt & Whitney Machine Tool Div., West Hartford, CT

In the investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–15,943; Cooperativa Metropolitina de Consumo, Bayamon, PR

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA–W–15,788; World Tableware International, Inc., Wallingford, CT

A certification was issued covering all workers of the firm separated on or after April 1, 1984.

TA–W–15,837; Eaton Corp., Axle Brake Div., Humboldt, TN

A certification was issued covering all workers of the firm separated on or after November 1, 1984.

TA–W–15,865; Miami Footwear Corp., Miami, FL

A certification was issued covering all workers of the firm separated on or after February 1, 1985.

TA–W–15,822; U.S. Steel Corp., Milwaukee Sales Office, Milwaukee, WI

A certification was issued covering all workers of the firm separated on or after February 22, 1984 and before July 1, 1984.

TA–W–15,832; Modern Manufacturing Co., Inc., Timonium, MD

A certification was issued covering all workers of the firm separated on or after February 28, 1984 and before September 1, 1984.

TA–W–15,852; Miniscribe Corp., Longmont, CO

A certification was issued covering all workers of the firm separated on or after July 1, 1984.

TA–W–15,840; Kerr-McGee Corp., Quivira Mining Corp., Ambrosia Lake, NM

A certification was issued covering all workers of the firm separated on or after February 23, 1984.

TA–W–15,829; Kayser Roth Mens Apparel, Inc., Timonium, MD

A certification was issued covering all workers of the firm separated on or after February 28, 1984 and before July 1, 1984.

TA–W–15,958; Code-A-Phone Corp., Clackamas, OR

A certification was issued covering all workers of the firm separated on or after April 22, 1984 and before May 1, 1985.

TA–W–15,845; Sprague Electric Co., Hillsville, VA

A certification was issued covering all workers of the firm separated on or after September 1, 1984.

TA–W–15,839; Freeman Shoe Co., Division of U.S. Shoe Co., Emmitsburg, MD

A certification was issued covering all workers of the firm separated on or after October 1, 1984 and before April 1, 1985.

TA–W–15,842; Mission Furniture Manufacturing Co., Los Angeles, CA

A certification was issued covering all workers of the firm separated on or after July 1, 1984 and before June 15, 1985.

TA–W–15,851; Mad John Sportswear, Inc., Hollidaysburg, PA

A certification was issued covering all workers of the firm separated on or after February 13, 1984 and before July 31, 1984.

I hereby certify that the aforementioned determinations were issued during the period June 24, 1985–June 28, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated: July 2, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–16275 Filed 7–8–85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 28th day of June 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Amax Chemical Corp. (USWA)	Carlsbad, NM	6/20/85	6/17/85	TA–W–16,125	Potash.
Boise Cascade Corp. Plywood & Small Log Div. (Brotherhood of Carpenters).	Kettle Falls, WA	6/25/85	5/16/85	TA–W–16,126	Plywood & Lumber & other wood products.
Champion International Corp. (Brotherhood of Carpenter)	Libby, MT	6/25/85	6/18/85	TA–W–16,127	Lumber Plywood & other wood products.
Chicago Pneumatic Tool Co. (IAMAW)	Utica, NY	6/25/85	6/19/85	TA–W–16,128	Pneumatic & rotary tools.
(The) Great Western Sugar Co. (workers)	Sterling, CO	6/20/85	6/12/85	TA–W–16,129	Process sugar beets.
Hammersley Ceramics, A Div. of Retail Service Inc. (wkrs)	Santa Ana, CA	6/20/85	6/18/85	TA–W–16,130	Kitchen & bath ceramics, housewares.
J.T. Kollis Enterprise (workers)	Bronx, NY	6/20/85	6/17/85	TA–W–16,131	Ladies footwear.
Monsanto Fibers & Intermediates (wkrs)	Pensacola, FL	6/25/85	6/20/85	TA–W–16,132	Research & development project—nylon fibers manufacturing nylon fibers.
Texas Apparel Co. (workers)	El Paso, TX	6/25/85	6/20/85	TA–W–16,133	Office workers.
W.I. Forest Products (Brotherhood of Carpenter)	Thompson Falls, MT	6/25/85	6/18/85	TA–W–16,134	Lumber & other wood products.
West Orange Mfg. Co./Lady Gilda, Inc. (ILGWU)	West Orange, NJ	6/7/85	6/3/85	TA–W–16,135	Lingerie & childrens dresses.

[FR Doc. 85–16276 Filed 7–8–85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Large Optical/Infrared Telescopes.

Date and time: July 25, 9:00 AM–5:00 PM—July 26, 9:00 AM–12:00 Noon.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C.

Type of meeting: Open.

Contact person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, D.C. 20550 202/357–9468.

Summary minutes: May be obtained from the contact person at the above address.

Purpose of subcommittee: In the light of recent technological advances and large telescopes being planned in the U.S. and elsewhere, the subcommittee is asked to examine the scientific rationale and current plans and to advise on appropriate future directions for the Foundation's support of technology development and planning for a large optical/infrared telescope for the remainder of the decade.

Agenda:

Thursday, July 25

9:00 AM–5:00 PM: Discussion of charge to subcommittee, scope of subcommittee activities, and time scale for subcommittee actions.

Friday, July 26

9:00 AM–12:00 Noon: Planning for future meetings, assignment of action items.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 85–16221 Filed 7–8–85; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Panel for the Decontamination of Three Mile Island Unit 2

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI–2) will be meeting on July 18, 1985 from 7:00 p.m. to 10:00 p.m. at the Lancaster Council Chambers, Public Safety Building, 201 N. Duke Street, Lancaster, PA 17603. The meeting will be open to the public.

At this meeting the Panel will receive a general update on the progress of the cleanup from General Public Utilities Nuclear Corporation, the licensee. The licensee will also provide a detailed discussion of the reactor pressure vessel defueling program. The staff of the U.S. Nuclear Regulatory Commission will provide the Panel with the results of a recent staff review of health effects studies conducted in the vicinity of TMI–2 since the March 28, 1979 accident. The U.S. Department of Energy will discuss the shipment of fuel from the TMI–2 site. The Panel will also hold a planning session to identfy and schedule future topics for Panel discussion.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492–7466.

Dated: July 2, 1985.

John C. Hoyle,
Advisory Committee Management Officer.

[FR Doc. 85–16306 Filed 7–8–85; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board Members

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the reconstituted Performance Review Board for OPM.

DATE: July 9, 1985.

FOR FURTHER INFORMATION CONTACT: Jerry Burchard, Administration Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 632–9402.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, United States Code, requires each agency to establish, in accordance with our regulations, one or more Senior Executive Service performance review boards. The board(s) will review and evaluate the initial appraisal of a senior executive's performance by the supervisor and make recommendations to the appointing authority relating to the performance of these executives.

U.S. Office of Personnel Management.

Loretta Cornelius,
Acting Director.

Members of the reconstituted Performance Review Board for OPM are—

1. John W. Fossum [Chairman], Assistant Director for Performance Management, Workforce Effectiveness and Development Group.

2. Steven R. Cohen [Vice-Chairman], Regional Director, Chicago Region.

3. Jean M. Barber, Assistant Director for Pay and Benefits Policy, Compensation Group.

4. Carlos F. Esparza, Assistant Director for Washington Area Examining Operations, Staffing Group.

5. William E. Flynn, III, Regional Director, Atlanta Region.

6. William B. Davidson, Jr., Chairman, Federal Prevailing Rate Advisory Committee.

7. Edward T. Rhodes, Deputy Associate Director, Administration Group.

8. Hohn J. Lafferty, Regional Director, New York Region.

9. William M. Hunt, Associate Director, Administration Group.

10. Claudia Cooley [ad hoc member], Deputy Associate Director, Compensation Group.

11. Raymond J. Sumser ad hoc member], Director of Civilian Personnel, Department of the Army.

[FR Doc. 85–16210 Filed 7–8–85; 8:45 am]
BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Recommendations for Amendment of the Columbia River Basin Fish and Wildlife Program; Opportunity To Comment

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Columbia River Basin Fish and Wildlife Program: Request for Recommendations for Amendment.

SUMMARY: In this notice, the Pacific Northwest Electric Power and Conservation Planning Council ("the Council") requests submission of recommendations for amendment of its Columbia River Basin Fish and Wildlife Program, announces the availability an application form, and seeks comment on amendment processes.

DATES: Comments on amendment processes must be received in the Council's central office by 5 p.m. Tuesday, September 3, 1985. Recommendations for amendment must be received in the Council's central office by 5 p.m. Monday, December 16, 1985. Recommendations not received by that time will not be accepted.

ADDRESS: 850 Southwest Broadway, Suite 1100, Portland, Oregon 97205.

FOR FURTHER INFORMATION CONTACT: Janie Pearcy, for copies of application forms; Janis Chrisman, Director of the Division of Fish and Wildlife with questions; both at 850 Southwest Broadway, Suite 1100, Portland, Oregon 97205, (503) 222–5161.

SUPPLEMENTARY INFORMATION: On November 15, 1982, the Council adopted a program designed to protect, mitigate and enhance fish and wildlife affected by the development and operation of hydroelectric projects in the Columbia River Basin. It adopted the program in accordance with its authority under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839 *et seq.* ("The Northwest Power Act"). The Council amended the Program on October 10, 1984. It has indicated that it would receive applications for further amendment of the program on December 16, 1985, and will act on those applications by December 16, 1986.

The Council hereby requests submission of recommendations for further amendment of the program. Such recommendations must be received in the Council's central office, 850 Southwest Broadway, Suite 1100, Portland, Oregon 97205, by 5 p.m. on Monday, December 16, 1985. The Council will not consider recommendations unless they are received by that date and submitted on the Council's amendment application form.

Recommendations may be submitted by Indian tribes, federal and state fish and wildlife agencies, water and land management agencies, electric power producing agencies and their customers, and members of the public. To be accepted for consideration by the Council, the recommendations must meet the standards established by the Northwest Power Act. Section 4(h)(2) of that Act states that recommendations must be for:

1. Measures which can be expected to be implemented by the Bonneville Power Administration and other Federal agencies to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project on the Columbia River and its tributaries.

2. Objectives for the development and operation of hydroelectric projects on the Columbia River and its tributaries in a manner designed to protect, mitigate and enhance fish and wildlife; and

3. Fish and wildlife management coordination and research and development (including funding) which, among other things, will assist protection, mitigation, and enhancement of anadromous fish at, and between, the Pacific Northwest's hydroelectric dams.

Section 4(h)(3) of the Act further provides that "[a]ll recommendations shall be accompanied by detailed information and data in support of the recommendations."

To be adopted by the Council, the Act requires that recommendations: (1) Protect, mitigate and enhance fish and wildlife affected by the development, operation and management of hydroelectric facilities on the Columbia River and its tributaries, while assuring the Pacific Northwest an adequate, efficient, economical and reliable power supply (section 4(h)(5)); (2) complement the existing and future activities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes (section 4(h)(6)(A); (3) be based on , and supported by, the best available scientific knowledge (section 4(h)(6)(B)); (4) utilize, where equally effective alternative means of achieving the same sound biological objective exist, the alternative with the minimum economic cost (section 4(h)(6)(C)); (5) be consistent with the legal rights of appropriate Indian tribes in the region (section 4(h)(6)(D)); and (6) in the case of anadromous fish—

— Provide for improved survival of such fish at hydroelectric facilities located on the Columbia River system, (Section 4(h)(6)(E)(i)); and

—Provide flows of sufficient quality and quantity between such facilities to improve production, migration, and survival of such fish as necessary to meet sound biological objectives (section 4(h)(6)(E)(ii)).

1. Council Concerns

The Council is concerned that submission of a large number of amendment applications may divert energies away from important implementation and planning activities. The Council's Columbia River Basin Fish and Wildlife Program already contains approximately 150 action items to be implemented by the end of fiscal year 1989. The Program five-year action plan (in effect through the end of 1989) contains a detailed schedule for implementation of top-priority projects, including major capital construction efforts. Moreover, the total program is expected to cost an estimated $650–$740 million over a 20-year period. In addition, the Program has been amended fairly recently. Further, the Council, major fish and wildlife managers and other interested parties currently are involved in several major planning activities related to site ranking, designation of protected areas and development of goals and objectives for anadromous fish mitigation and enhancement. Past experience has shown that the Program amendment process requires an extensive commitment of time and energy, both by the Council and by those proposing amendments.

As a result, the Council prefers that any amendment application focus on refining high-priority measures and action items already in the program rather than development of new projects.

2. Instruction on Applications

To focus the application process, applicants should prepare their amendment applications with the following in mind:

1. The Council's existing program addresses a great variety of fish and wildlife concerns. Applicants should carefully review the program and determine if existing measures address the applicant's concerns. If so, applicants must explain how their proposal would be more effective than existing measures, or why their proposal would not duplicate existing measures.

2. In the past, several applicants have failed to demonstrate that their proposals addressed the effects of hydroelectric development or operations. This requirement is imposed by statute, and applicants must take care to address it expressly, and in detail.

3. Past applications have been rejected because they were not shown to be supported by the best available scientific knowledge. Applicants must take particular care to address this statutory requirement. In doing so, applicants need not submit copies of scientific studies or reports, but should summarize such studies and explain specifically how they support the applicant's proposal. Applicants also should provide appropriate bibliographical references and indicate where copies of such references can be obtained if needed.

4. Applications will be evaluated in part on their potential to complement the Council's ongoing planning and implementation activities. The enclosed form lists materials relating to those activities. Applicants who wish to receive copies of relevant materials should complete and return the enclosed form.

5. Applicants will be considered through a series of consultations, public hearings throughout the region, public comment at Council meetings, written comment, and analysis by the Council and its staff. Applicants should be aware that they will need to invest substantial time and energy to justify applications throughout this process.

Additional instructions are contained in the amendment application form. Amendment application forms and materials described on the enclosed list may be requested by writing to Janie Pearcy at the Council's address provided above or by calling her at 503–222–5161 (toll-free 1–800–222–3355 from Idaho, Montana and Washington; toll-free 1–800–452–2324 from Oregon). Prospective applicants should consult with members of the Council's fish and wildlife staff prior to submitting an application.

3. Amendment Process

Once amendment applications are received, copies of the completed applications will be distributed and public comment will be taken. The Council staff will prepare papers analyzing significant issues raised in the applications, and those "issue papers" will be distributed. The Council will conduct consultations with fish and wildlife agencies, Indian tribes, federal agencies responsible for managing, operating or regulating Columbia River Basin hydroelectric facilities, and customers or other electric utilities that own or operate such facilities. Public hearings will also be conducted. Following these consultations and hearing, the Council will develop and circulate a draft amendment document. Further consultations, public hearings and written comments will occur regarding the draft document. After the close of the comment period, the Council will deliberate in public meetings and make its decisions.

Any comments and suggestions on amendment processes must be submitted to Janis Chrisman, the Council's Fish and Wildlife Director, at the address given above, by no later than 5 p.m. Tuesday, September 3, 1985.

Edward Sheets,

Executive Director.

Order Form for Materials Related to Amendment Process

General

——— Columbia River Fish and Wildlife Program (1984).

——— Appendices to Columbia River Basin Fish and Wildlife Program (1984) (contains explanation of rejections of prior amendment applications and responses to comments on prior draft amendments.)

——— Amendment application form (1985).

Salmon and Steelhead

——— Program Section 201 and Action Item 36, as amended on February 21, 1985.

——— Work Plan for Development of a Program Framework (Losses, Goals, Production Objectives and Measuring Techniques) (April 1985).

——— System Planning Issue Paper. (What kind of goals and production objectives will best ensure a systemwide program? What passage mortality and harvest considerations should be taken into account?)

——— Accounting/Modeling Issue Paper. (Accounting: How should the Council account for the successes and failures in achieving goals and objectives? What accounting principles and techniques should be adopted to help promote fiscal responsibility, locate sources of successes and failures, address biological uncertainty and statistical fluctuations which affect predictive capability and help identify needs for adjustments? Modeling: To what extent could a computer simulation model assist in development, evaluation and refinement of the Council's program? Could such a model also be used to assess losses attributable to hydroelectric development and operations? For what other program purposes might a computer simulation model be useful? What models are being used already to evaluate fishery managaement strategies in the Columbia River Basin? How could a Council modeling effort be integrated with existing planning, harvest and project operation models?)

——— Production Potential Issue Paper. (Which method should be used for estimating production potential for the purpose of ranking sites, designating protected areas, and setting production objectives for the Council's program? What methods are being used by the fishery managers in other settings?) Available in late July 1985.

——— Stock Selection Policy Issue Paper. (What is the status of existing wild, natural and hatchery stocks within the Columbia River Basin? What guidelines should be used for deciding the extent and nature of any hatchery supplementation of wild and natural stocks under the Council's program? How should harvest considerations be taken into account in developing such guidelines? Is it possible for natural and wild production to be a primary goal given the demands of harvest? What gene conservation policies are needed?) Available in August 1985.

——— Resident Fish Substitutions Policy Issue Paper. (To what extent should resident fish production be used to mitigate losses of salmon and steelhead production in the Basin? Where are appropriate "substitution areas" for resident fish production?) Available in August 1985

——— Contributions Issue Paper. (What are the relative contributions of hydropower and nonhydropower factors to salmon and steelhead losses in the Columbia River Basin?) Available in late October 1985.

——— Basis Issue Paper. (What method should be used to set goals? Should hydropower-related losses, current production potential, harvest agreements, a combination of all three, or some other factors form the basis for goals?) Available in November 1985.

——— Terms and Responsibilities Issue Paper. (In what terms should goals be set? For example, how specific should goals be? Should goals be set in terms of species, stocks, or some other measure? In terms of smolts produced, fish harvested, escapement, spawning adults, all of these, or some other? What period of time should be covered? What are the general responsibilities of the hydropower project operators and regulators in relation to those of the resource managers (Indian tribes, fishery agencies, land and water managers) in achieving goals and objectives?) Available in November 1985.

——— Production Objectives Issue Paper. (What process should be used for setting production objectives? How should production objectives set in the Council's program complement production objectives set by the fishery managers in other settings? What production area divisions should be used? What are appropriate components of production objectives?) Available in November 1985.

——— Systemwide Passage and Flows Issue Paper. (What are appropriate systemwide program objectives with respect to mainstem passage and flows?) Available in January 1986.

——— Goals Package Issue Paper. (Given the conclusions reached on the issue papers on system planning, basis, terms and responsibilities, stock selections, and resident fish substitutions, what is an appropriate statement of program goals?) Available in February 1986.

——— Notice of Losses and Goals Advisory Committee meetings.

——— Minutes of Losses and Goals Advisory Committee meetings.
——— Notices of Production Planning Advisory Committee meetings.
——— Minutes of Production Planning Advisory Committee meetings.
——— Notices of Resident Fish Substitutions Advisory Committee meetings.
——— Minutes of Resident Fish Substitution Advisory Committee meeting.
——— Notices of Mainstem Passage Advisory Committee meetings (to be formed in summer 1985).
——— Minutes of Mainstem Passage Advisory Committee meetings (to begin in summer 1985).
Also see Research, below.

Resident Fish

See "Resident Fish Substitutions" Issue Paper and Advisory Committee Notices and Minutes, listed under SALMON AND STEELHEAD, above. Also see Program sections 800–804 and 1503.

Research

——— Issue Paper on Salmon and Steelhead Research Objectives. Available in late 1985 or early 1986.

Wildlife

See Program Sections 1000–1004, 1503, 1504 and (Action Items 40–40.8, explaining mitigation planning processes in existing wildlife program).

New Hydroelectric Development

——— Pacific Northwest Hydro Assessment Study Work Plan. (August 1984.)
——— Issue Paper on Protected Areas. Available in January 1986.
——— Issue Paper on Site Ranking. Available spring 1986.
——— Notices of Hydro Assessment Steering Committee meetings.
——— Minutes of Hydro Assessment Steering Committee meetings.

Hydroelectric Project Operations

See Issue Paper on Systemwide Passage and Flows and Notices and Minutes for Mainstem Passage Advisory Committee, listed under SALMON AND STEELHEAD, above.

Name _____
Organization _____
Address _____

Please mail this order form to Janice Pearcy, Northwest Power Planning Council, Suite 1100, 850 S. W. Broadway, Portland, Oregon 97205.

[FR Doc. 85–16206 Filed 7–8–85; 8:45 am]
BILLING CODE 0000-00-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12373.

SUMMARY: This notice provides for public awareness of SBA's intention to fund for the first time an additional Small Business Development Center (SBDC) in North Dakota during fiscal year 1985. Currently, there are 40 SBDC's in existence. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to the proposal developer for the SBDC to be funded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through September 9, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application for funding of the proposed Small Business Development Center (SBDC). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDC will be funded at the earliest practicable date following the 60-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying this SBDC and providing the mailing address of the proposal developer is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single point of contact and other interested State and local entities are expected to advise the relevant proposal developer of their comments regarding the proposed funding in writing as soon as possible. Copies of such written comments must also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, D.C. 20416. Comments will be accepted by the relevant proposal developer and SBA for a period of two months (60 days) from the date of publication of this notice. The proposal developer will make every effort to accommodate these comments during the 60-day period. If the comments cannot be accommodated by the proposal developer, SBA will, prior to funding the proposed SBDC, either attain accommodation of any comments or furnish an explanation to the commenter of why accommodation cannot be attained prior to funding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose of Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management

improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Fedeal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basis legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations, to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veteran, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Address of Proposed SBDC and Proposal Developer: Dr. Clair Rowe, University of North Dakota, Grand Forks, N.D. 58202.

Dated: July 1, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-16308 Filed 7-8-85; 8:45 am]

BILLING CODE 8025-01-M

Computer Security and Education Advisory Council; Public Meeting

The U.S. Small Business Administration's Computer Security and Education Advisory Council will hold a public meeting at 9:00 a.m. on Thursday, July 18, in the Treasury Room, at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, D.C. 20004, to discuss such matters as may be presented by Members, and to allow three computer research experts in the field of computer security to share their experience and knowledge with the Council, and offer perceptions and recommendations on the extent of these problems in the small business community.

For further information, write or call John J. Sweeney, Deputy Associate Administrator, U.S. Small Business Administration, 1441 L Street, NW., Room 317, Washington, D.C. 20416: (202) 653–6330.

Jean M. Nowak,

Director, Office of Advisory Councils.

July 3, 1985.

[FR Doc. 85–16201 Filed 7–8–85; 8:45 am]

BILLING CODE 8025–01–M

California; Region IX Advisory Council Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 9:00 a.m. on Thursday, August 8, 1985, at the Bank of America Executive Board Room, 555 South Street, Los Angeles, California 90071, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 350 South Figueroa Street, Suite #600, Los Angeles, California 90071, Telephone No. (213) 894–2977.

Jean M. Nowak,

Director, Office of Advisory Councils.

July 3, 1985.

[FR Doc. 85–16200 Filed 7–8–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/04–0225]

Blackburn-Sanford Venture Capital Corp.; License Surrender

Notice is hereby given that Blackburn-Sanford Venture Capital Corp. (BSVCC), Louisville, Kentucky, has surrendered its license and no longer operates as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). BSVCC was licensed by the Small Business Administration on November 30, 1963.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was effective April 22, 1985, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 28, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–16318 Filed 7–8–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 10/10–0176]

Clifton Capital Corp.; Surrender of License

Notice is hereby given that Clifton Capital Corporation, 1408 Washington Building, Tacoma, Washington 98402 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Clifton Capital Corporation was licensed by the Small Business Administration on April 14, 1982.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on May 23, 1985, and accordingly, all rights, priveleges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: June 28, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–16320 Filed 7–8–85; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, California, has changed its public meeting date from Tuesday, July 9, 1985, to Tuesday, July 16, 1985, at 211 Main Street, 5th Floor, Conference Room 543 at 10:00 a.m., to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Lawrence J. Wodarski, District Director, U.S. Small Business Administration, 211 Main Street—4th Floor, San Francisco, California 94105, (415) 974–0642.

June 28, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85–16319 Filed 7–8–85; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirement Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting and Recordkeeping Requirement Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish notice in the Federal Register that the agency has made such a submission.

DATE: Comments must be received on or before July 31, 1985. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible before the comment deadline.

Copies: Copies of the form, request for clearance (S.F. 83), supporting statement, instruction, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Richard Vizachero, Small Business Administration, 1441 L Street, NW., Room 200 Washington, D.C. 20416, Telephone: (202) 653–8538.

OMB Reviewer: David Reed, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3225, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395–7231.

Information Collection Submitted for Review

Title: Measuring the Costs of Producing Bank Services in a Deregulated Environment Questionnaire

Frequency: One time, non-recurring

Description of Respondents: The data is collected from banks in the U.S. to gather cost information on the production of key bank services, including demand deposits, time deposits, and various basic loan categories. This information will be used to test various research hypotheses concerning economies of scale and scope.

Annual Responses: 250

Annual Burden Hours: 250

Type of Request: New

Dated: July 2, 1985.

Elizabeth M. Zaic,

Deputy Director, Office of Administration Services.

[FR Doc. 85-16307 Filed 7-8-85; 8:45 am]

BILLING CODE 9975-01-M

DEPARTMENT OF STATE

[CM-8/865]

National Committee of the U.S. Organization for the International Radio Consultative Committee; Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on July 30, 1985, at 1:30 p.m. in Room 1912, Department of State, 2201 C Street, NW., Washington, D.C.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCIR activities; provides advice on matters of policy and positions in preparation for CCIR Plenary Assemblies and meetings of the international Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCIR which are submitted to the Committee for consideration.

The main purposes of the meeting will be:

1. Review of preparations for final international Study Group meetings;
2. Report of the Interdepartment Radio Advisory Committee (IRAC) Ad Hoc Group on CCIR Matters;
3. Revisions to CCIR National Organization charter;
4. Other business.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Richard Shrum, Department of State, Washington, D.C.; telephone (202) 632-2592. All attendees must use the C Street entrance to the building.

Dated: June 28, 1985.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 85-16282 Filed 7-8-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/866]

Reform Observation Panel for UNESCO; Closed Meeting

The Reform Observation Panel for UNESCO will meet on July 23, 1985 in the Buchanan room of the Department of State, 21st and C Streets, NW., Washington, D.C. The meeting will begin at 12:30 p.m.

The principal agenda item will be:

—Reports from Panel members who have attended UNESCO's 121st Executive Board Session (May 6-June 21)

—Future work program of the Panel

The purpose of the meeting will be to discuss UNESCO reform progress at the 121st Executive Board session, possibilities of continued reform of the Organization, means to encourage reform in UNESCO, and U.S. policy towards UNESCO. At this meeting, there will be a classified briefing by Department of State officials and discussion of documents classified pursuant to Executive Order 12356. Accordingly, a determination has been made that the meeting should be closed to the public pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and (c)(9)(B).

Requests for further information on the meeting should be directed to the Panel's Assistant Executive Secretary: Mr. Charles H. Kuck, Room 4334A, Department of State, 21st and C Streets, NW., Washington, D.C. 20520 (202 632-1534.

Dated: June 27, 1985.

Jean C. Berguast,

Executive Secretary, Reform Observation Panel.

[FR Doc. 85-16285 Filed 7-8-85; 8:45 am]

BILLING CODE 4710-19-M

[CM08/863]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct four open meetings at 0930 a.m., in room 8336 of the Department of Transportation, 400 Seventh Street, SW., Washington, D.C. on July 22, July 31, August 28, and October 2, 1985.

The purpose of these meetings is to prepare position documents for the Thirtieth Session of the Subcommittee on Radiocommunications of the International Maritime Organization to be held 14-18 October 1985. In particular, the working group will discuss the following topics:

—Maritime Distress System

—Digital Selective Calling

—Satellite Emergency Position Indicating Radio Beacons (EPIRBs)

—Preparations for the International Telecommunication Union (ITU) World Administrative Radio Conference (WARC) for Mobil Telecommunications

—Preparations for International Radio Consultative Committee (CCIR) Study Group 8

—Promulgation of Navigational and Meteorological Warnings

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Richard Swanson, U.S. Coast Guard Headquarters (G-TPP-3/63), 2100 2nd Street, SW., Washington, D.C. 20593. Telephone: (202) 426-1231.

Dated: June 19, 1985.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 85-16284 Filed 7-8-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/864]

Study Groups A and B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Groups A and B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on July 25, 1985 at 10:00 a.m. in Room 1406, Department of State, 2201 C Street, NW., Washington, D.C. If an additional meeting is necessary, it will be held on August 1, 1985 at 10:00 a.m. in Room 1207.

Study Group A deals with U.S. Government aspects of international telegram and telephone operations and tariffs; Study Group B deals with international telecommunications terminal equipment.

The Study Groups will discuss international telecommunications questions relating to telephone, telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at the upcoming international meeting of CCITT Study Groups. The July 25 meeting will include a debriefing of the meeting of CCITT Study Group VIII held in June in Kyoto.

Members of the general public may attend the meeting and join in the

discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, D.C.; telephone (202) 632–5632. All attendees must use the C Street entrance to the building.

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

June 25, 1985.

[FR Doc. 85–16203 Filed 7–8–85; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

[Order 85–7–11; Docket 43109]

Application of Calypso Wings, Incorporated for Certificate Authority Under Subpart Q; Order To Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, (Order 85–7–11) Docket 43109.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order finding Calypso Wings fit, awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to file objections shall do so no later than July 24, 1985; answers to objections shall be filed no later than August 5, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 43109 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, S.W., Room 4107, Washington, D.C. 20590, and should be served upon the persons listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Juliana M. Winters, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, S.W., Room 4116, Washington, D.C. 20590, (202) 426–7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–7–11 is available from our Documentary Services Division at the address above. Persons outside the metropolitan area may send a postcard request for Order 85–7–11 to that address.

Dated: July 2, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–16281 Filed 7–8–85; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

[Docket 43065]

Pacific Division Transfer Case; Hearing Postponement

Notice is hereby given that the hearing in the above-entitled proceeding, previously scheduled to commence on July 29, 1985, has been postponed. That hearing is hereby scheduled to be held commencing on August 5, 1985, at 9:30 a.m. (local time) in Room 2230, Nassif Bldg., 400 7th Street SW., Washington, D.C., before the undersigned.

Dated at Washington, D.C., July 3, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85–16282 Filed 7–8–85; 8:45 am]

BILLING CODE 4910–62–M

[Docket 43224; Order 85–7–17]

Texas Air Corporation, and Trans World Airlines, Inc.; Joint Application for Approval of Acquisition of Control

Issued by the Department of Transportation on the 3rd day of July 1985.

Order

On June 28, 1985, Texas Air Corporation and Trans World Airlines, Inc., filed an application for prior approval under section 408 of the Federal Aviation Act, 49 U.S.C. 1378, of Texas Air Corporation's acquisition of control of Trans World Airlines. We have made a preliminary review of the application and its supporting material, and it appears that the applicants have submitted information under each section of the Department's rules governing supporting information for section 408 applications. Sections 30 through 38 of Part 303 of the Department's Procedural Regulations, 50 FR 2373, 2420–21, January 16, 1985.

Since our preliminary review suggests that sufficient information has been submitted to allow the Department to begin processing the application, we have determined that we should not reject the application as incomplete at this time, and that we should set a timetable for public comment on the application.

We have decided to give interested persons fourteen days from the date of issuance of this order to comment on the application. Comments may address the merits of the application, whether additional information should be demanded from the applicants, what procedures should be followed in considering the application, and other matters interested persons wish to raise at this time. Replies to any answers or comments should be submitted seven calendar days after the date for submission of comments. If any person wishes the Department to hold a formal hearing on the application, that person must specify which factual issues should be examined in an oral evidentiary hearing and why those issues cannot be resolved without resort to oral evidentiary procedures.[1]

Part of the supporting information submitted with the application was filed under the cover of a Rule 39 motion requesting that it be treated confidentially. We will grant the motion, subject to reconsideration at any time for good cause shown. In addition, we will allow counsel and experts for other parties to inspect immediately *in camera* the documents for which the applicants request confidential treatment. Counsel and experts for interested parties may inspect the documents at the offices of the Department of Transportation, Room 4107, 400 Seventh Street, SW., Washington, D.C., upon the submission of an affidavit indicating that he or she will preserve the confidentiality of the information contained therein. Any answer or other filing raising matters contained in the confidential documents must be accompanied by a Rule 39 motion requesting confidential treatment.

Finally, we wish to make it clear that we have not ruled here on the adequacy of the information for decisional purposes, nor on any substantive or procedural issues. Rather, we have merely decided not to reject the application at this time and to provide an opportunity for the early submission of comments and replies. As a result, parties should consider the adequacy of the record and point out areas where additional information may be required. We, of course, also retain the discretion to require that additional information be filed.

Accordingly,

1. Answers, comments and other filings relating to this application are due July 17, 1985;

[1] The applicants have proposed an expedited procedural schedule under which the Department would issue its final decision by September 16, 1985. We are not prepared to adopt such an expedited schedule now, particularly since other persons have had no opportunity to comment on the application.

2. Replies are due seven calendar days thereafter;

3. We grant, subject to reconsideration at any time, the Applicants' Motion for Confidential Treatment; and

4. This order will be published in the Federal Register.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-16280 Filed 7-8-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-85-16]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 29, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 1, 1985.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
24659	Reynolds Aluminum	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24660	Oscar Mayer Foods Corp.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24657	Metromedia Flight Dept.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24663	James River Corp. of Virginia	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24422	Emerson Electric Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
23530	Minuteman Aviation, Inc	14 CFR 135.261(b)	To extend exemption 3774; to allow petitioner to continue to operate its helicopter hospital emergency medical evacuation service without complying with the duty time limitations.
24646	Bar Flying Service Inc	14 CFR 141.35(b)(3)	To allow Sam Puma to serve as chief instructor for the Seven Bar Part 141 private course without meeting the regulation's full 500 hour, two-year certification requirements.
15590	Embry-Riddle Aeronautical University	14 CFR Portions of Part 141, Appendices A, C, D, F, and H.	To continue to exempt certain students from the minimum flight time requirements.
24617	Petro Jet Aviation, Inc	14 CFR 43.3(g)	To allow petitioner's pilots to remove and replace the passenger seats and the AVCON Industries ambulatory stretcher and base assembly in Lear 20 series aircraft.
24623	Pacific Coast Airlines	14 CFR 135.89 & 135.157	To allow petitioner to remove the oxygen system in petitioner's Handley Page HP-137 Jetstream Mk. 1 Aircraft and configure the aircraft to comply with 14 CFR Part 121, for turbine aircraft certified up to 25,000 feet.
24605	World Jet Corp.	14 CFR 91.191(a)(4) & 135.165(b)	To allow petitioner to operate certain aircraft in extended overwater operations using one Omega long-range navigation system and one high-frequency communication system.
23216	McMahan Aviation, Inc	14 CFR 93.113	To permit petitioner's pipeline patrol aircraft transit through certain high density control zones under special VFR.
24673	Rynes Aviation, Inc	14 CFR Portions of	To exempt petitioner from airport reservation requirements of FAR Part 93, Subpart K in order to operate its home-based on-demand charter flights into/out of Chicago O'Hare Airport.

Dispositions of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24146-1	South Pacific Island Airways, Inc	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Denied 5/29/85.*
24384-1	Pan Aviation, Inc	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Denied 5/24/85.*
23072	simulator Flight Time, Inc	14 CFR 61.65(c)(4)	To permit petitioner to substitute simulator training for the 250-nautical mile cross country trip. *Denied 5/17/85.*
24221-1	Japan Air Lines	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Denied 6/5/85.*
24239	Skydive, Inc.	14 CFR 105.43(a)	To allow petitioner's employees, representatives and customers under its direction and control to make parachute jumps and for pilots in command of aircraft to allow these persons to make parachute jumps from aircraft while wearing a dual harness, dual parachute pack having at least one main parachute and one appropriately approved auxiliary parachute packed in accordance with § 105.43(a). *Granted 5/30/85.*
24413	Flight Training Int'l	14 CFR 61.63(d) & 61.157(d)	To allow petitioner's trainees to complete the practical test for issuance of a type rating to be added to a pilot certificate, regardless of its grade, in an airplane simulator as set forth in Part 61, Appendix A. *Granted 5/17/85.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23488	American Arabian Oil Company (Aramco)	14 CFR Portions of Part 21	To allow petitioner to operate 21 corporate aircraft using a Federal Aviation Administration (FAA)-approved minimum equipment list (MEL). *Granted 5/29/85.*
24546	United States Parachute Association	14 CFR 91.47	To allow the petitioner to carry up to 40 passengers in its Douglas DC-3/C-47 aircraft during the 1985 United States National Skydiving Championships in Muskogee, Oklahoma during the period of June 20 through July 17, 1985. *Granted 5/24/85.*
24537	Union de Transports Aeriens	14 CFR 145.73(a)	To permit petitioner to perform modifications to a U.S.-registered McDonnell Douglas DC-8-60 aircraft, N2919N, Serial No. 46052, without complying with the requirements for a foreign repair station to work only on U.S.-registered aircraft used in operations conducted wholly or partly outside of the United States. *Granted 5/17/85.*
23978-1	Airmark Corp.	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707-138 until hush kits are installed. *Amended grant 6/20/85.*
24345	Varig, S.A.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended partial grant 6/20/85.*
24351	Sudnam Airways Limited	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended grant 6/20/85.*
24080	Lineas Aereas Del Caribe	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: Caravelle 11R: HK 2850. *Granted 6/12/85.*
24259-1	Buffalo Airways	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Granted 6/11/85.*
24370-1	Hawaiian Airlines, Inc.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date *Denied 6/20/85.*
24277-1	ASCO Leasing	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 aircraft beyond the January 1, 1985, noise level compliance date. *Denied 6/20/85.*
24186-1	Arrow Air, Inc.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Granted 6/20/85.*
24259	Schlumberger Limited	14 CFR 21.181	To permit petitioner to operate its aircraft using a Federal Aviation Administration (FAA)-approved minimum equipment list (MEL). *Granted 6/4/85.*
24388	TransBrasil S.A., Linhas Aereas	14 CFR 21.181	To allow petitioner to operate a B-707 airplane utilizing the provisions of minimum equipment list. *Granted 6/4/85.*
24409	Pellerin Milnor Corp.	14 CFR 21.181	To allow petitioner and Pellerin Laundry Machinery Sales Company to operate a Beech Model 200 aircraft utilizing the provisions of a minimum equipment list. *Granted 6/4/85.*
24535	Lowell D. Wiarks	14 CFR 121.383(c)	To allow petitioner to serve as a pilot in Part 121 operations after reaching his 60th birthday. *Denied 6/7/85.*

[FR Doc. 85-16331 Filed 7-8-85; 8:45 am]
BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) to assist and encourage cultural interchange, and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that the objects in the exhibit "Treasures of the Holy Land: Ancient Art from the Israel Museum" (included in the list[1] filed as part of this determination) imported from abroad for temporary exhibition without profit within the United States are of cultural significance. These objects are to be imported pursuant to a loan agreement between the Israel Museum and the Metropolitan Museum of Art. I also determine that the temporary exhibition or display of the listed cultural artifacts at several museums in the United States, beginning on or about September 1, 1986 to on or about September 1, 1987, is in the national interest. The grant of immunity pursuant to this action does not imply any view of the United States concerning the ownership of the exhibit objects. Further, it is not based upon and does not represent any change in the position of the United States regarding the status of Jerusalem or the territories occupied by Israel since 1967. *See* Letter of September 22, 1978, of President Jimmy Carter, attached to the Camp David Accords, *reprinted in* 78 *Dept. of State Bulletin* 11 (October 1978); Statement of September 1, 1982, of President Ronald Reagan, *reprinted in* 82 *Dept. of State Bulletin* 23 (September 1982).

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 2, 1985.

Charles Z. Wick,

Director.

[FR Doc. 85-16340 Filed 7-8-85; 8:45 am]
BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and the Delegation of Authority from the Director, USIA (47 FR 57600, December 27, 1982), I hereby determine that selected objects in the exhibit "Diego Rivera: A Retrospective" (specified in the list[1] filed as part of this Determination), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement between the Detroit Institute of Arts and a foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Detroit Institute of Arts, Detroit, Michigan, beginning on or about February 10, 1986, to on or about April 27, 1986, and at the Philadelphia Museum of Art, Philadelphia, Pennsylvania, beginning on or about June 9, 1986, to on or about August 17, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 8, 1985.

C. Normand Poirier,

Acting General Counsel and Congressional Liaison.

[FR Doc. 85-16440 Filed 7-8-85; 11:31 am]
BILLING CODE 8230-01-M

[1] An itemized list of imported objects among those included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 50, No. 131
Tuesday, July 9, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Civil Rights Commission	1
Equal Employment Opportunity	2, 3
Federal Deposit Insurance Corporation	4
Federal Reserve System	5–7
Nuclear Regulatory Commission	8

1

COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, D.C.

DATE AND TIME: Thursday, July 11, 1985, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. F.Y. 1987 Program and Budget Package
V. Proposed Section V. (Voting Rights Act) Rules
VI. Civil Rights Developments in the New England Region

FOR FURTHER INFORMATION PLEASE CONTACT: Barbara Brooks, Press and Communications Division, (202) 376–8311.

Lawrence B. Glick,
Solicitor.
July 3, 1985.

[FR Doc. 85–16358 Filed 7–5–85; 9:32 am]
BILLING CODE 6335–01–M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, July 16, 1985, 9:30 a.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Compliance Manual Section 23, Volume I
4. Notice of Proposed Rulemaking: For an Exemption Allowing Waivers Under the ADEA
5. Processing Changes Raising the Issues of Jurisdiction over Licensing Agencies

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Proposed Commission Decisions

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Places telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: July 5, 1985.
Cynthia C. Matthews,
Executive Officer.

This Notice Issued July 5, 1985.

[FR Doc. 85–16384 Filed 7–5–85; 12:28 pm]
BILLING CODE 6750–06–M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PREVIOUSLY ANNOUNCED TIME AND DATE: 2:00 p.m. (eastern time), Monday July 15, 1985.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

CHANGE IN THE MEETING: The following matter was added to the agenda for the closed portion of the meeting: "Proposed Commission Decisions".

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: July 5, 1985.
Cynthia C. Matthews,
Executive Officer, Executive Secretariat.

This Notice Issued July 5, 1985.

[FR Doc. 85–16835 Filed 7–5–85; 12:28 pm]
BILLING CODE 6750–06–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:23 p.m. on Tuesday, July 2, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and assumption of the liability to pay deposits made in Madison Bank, Madison, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Tuesday, July 2, 1985; (2) accept the bid for the transaction submitted by The First National Bank of Madison, Madison, Kansas; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(b)).

Dated: July 3, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85–16375 Filed 7–5–85; 11:40 am]
BILLING CODE 6714–01–M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, July 12, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed Federal Reserve System guidelines regarding acquisitions from small and disadvantaged businesses.

2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16368 Filed 7-5-85; 11:05 am]

BILLING CODE 6210-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Friday, July 12, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16369 Filed 7-5-85; 11:05 am]

BILLING CODE 6210-01-M

7

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 15, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16370 Filed 7-5-85; 11:05 am]

BILLING CODE 6210-01-M

8

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 8, 15, 22, and 29, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 8

Tuesday, July 9

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7) (*postponed* from July 2)

Wednesday, July 10

2:30 p.m.
Discussion/Possible Vote on Full Power Operating License for Fermi-2 (Public Meeting)

Thursday, July 11

9:30 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of July 15—Tentative

Thursday, July 18

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of July 22—Tentative

Tuesday, July 23

2:30 p.m.
Discussion on Threat Level and Physical Security (Closed—Ex. 1)

Wednesday, July 24

10:00 a.m.
Briefing on Accident Source Term Reassessment (Public Meeting)
1:30 p.m.
Briefing on Davis-Besse (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, July 26

10:00 a.m.
Briefing by Georgia Power (Vogtle) on Operational Readiness Review Pilot Program (Public Meeting)
2:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Week of July 29—Tentative

Monday, July 29

2:00 p.m.
Discussion of DOE High Level Waste Management Program (Public Meeting)

Tuesday, July 30

10:00 a.m.
Continuation of 5/15 Briefing on Proposed Revision of Part 20 (Public Meeting)
2:00 p.m.
Dicussion/Possible Vote on Full Power Operating License for Diablo Canyon-2 (Public Meeting)

Wednesday, July 31

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (if needed)
2:00 p.m.
Discussion of Proposed Station Blackout Rule (Public Meeting)

Thursday, August 1

10:00 a.m.
Briefing on Safety Goal Evaluation Plan (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado, (202) 634-1410.

Andrew L. Bates,

Office of the Secretary.

July 3, 1985.

[FR Doc. 85-16405 Filed 7-5-85; 3:52 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
July 9, 1985

Part II

Federal Trade Commission

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices; Staff Compliance Guidelines

VOL 50 ISS 131 JUL 9 1985 UMI

FEDERAL TRADE COMMISSION

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Final Staff Compliance Guidelines.

SUMMARY: The staff of the Federal Trade Commission publishes its staff compliance guidelines for the Funeral Rule to provide assistance to industry members regarding areas in which the staff believes that guidance should prove most helpful. The views expressed in the guidelines are those of the staff only. They have not been approved or adopted by the Commission and are not binding on the Commission. However, the guidelines will serve as enforcement criteria for the staff in assessing compliance with the trade regulations rule.

EFFECTIVE DATE: July 9, 1985.

FOR FURTHER INFORMATION CONTRACT: Lewis Rose, 202-376-2863; Raouf M. Abdullah, 202-376-2891; or Lee J. Plave, 202-376-2805; Attorneys, Federal Trade Commission, Division of Enforcement, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

COMPLIANCE GUIDELINES

I. Introduction

These compliance guidelines describe certain provisions of the Federal Trade Commission's Trade Regulation Rule on Funeral Industry Practices (referred to hereafter as the "Funeral Rule" or "Rule")[1] which was promulgated on September 24, 1982.[2] The Funeral Rule has two different effective dates. Those portions of the Funeral Rule which prohibit certain oral or written misrepresentations became effective on January 1, 1984.[3] Those portions of the Funeral Rule which impose an affirmative obligation upon funeral providers (i.e., price lists, itemization, telephone disclosures, written disclosures) became effective on April 30, 1984.[4]

These compliance guidelines cover the entire Funeral Rule and incorporate the guidelines released on December 30, 1983 for those provisions of the Rule which became effective on January 1, 1984.[5] These guidelines neither amend nor modify the Funeral Rule. The staff is publishing these guidelines to provide assistance to industry members in understanding the Commission's Rule and complying with its obligations.

The views expressed in the guidelines are those of the staff only; they have not been approved or adopted by the Commission and they are not binding on the Commission. However, the guidelines will serve as enforcement criteria for staff in assessing compliance with the Commission's Funeral Rule.

The Funeral Rule requires that funeral providers disclose detailed information about prices and legal requirements to persons arranging funerals. The Rule requires disclosures of itemized price information both over the telephone and in writing. It also prohibits misrepresentations about legal, crematory, and cemetery requirements pertaining to the disposition of human remains. Certain unfair practices are also prohibited, such as embalming for a fee without prior permission; requiring consumers to purchase caskets for direct cremation; or conditioning the purchase of any funeral good or service on the purchase of any other funeral good or service.

These guidelines explain, section by section, the provisions of the Rule which became effective on April 30, 1984 and incorporate the guidelines issued earlier explaining the provisions which became effective on January 1, 1984. Included in the discussion of each Rule provision are illustrations of how the Rule will operate in specific fact situations which may arise in the ordinary course of business of many funeral providers. The guidelines cover those areas on which guidance should prove most helpful to industry members. If you have further questions regarding the Rule, they will be handled informally by the staff, or, if appropriate, by the Commission, as provided for in Sections 1.1 through 1.4 of the Commission's Rules of Practice.

II. Who Must Comply With the Rule?

A. Generally

Anyone who is a "funeral provider" is covered by the Funeral Rule and must comply with all of its requirements. The Rule defines a "funeral provider" as "any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public." Only those who sell or offer to sell *both* funeral goods *and* funeral services are covered.

Funeral goods and funeral services are separately defined by the Rule. Funeral goods consist of all products sold to the public for use in connection with funeral services. Funeral services consist of two types of functions:

1. Those services used to care for and prepare human bodies for burial or other disposition; and

2. Those services used to arrange, supervise or conduct the funeral or disposition.

Both types of services must be offered in order to come within the definition of "funeral services."

Thus, in order to be classified as a funeral provider and therefore covered by the Rule, you must offer to sell or sell funeral goods *and* offer to provide or provide services to care for and prepare remains for disposition *and* offer to provide or provide services to arrange, supervise or conduct the final disposition.

Illustration #1: You operate a traditional funeral home selling various caskets, burial clothes and/or alternative containers. In addition, you consult with the family and clergy, arrange and direct the ceremony, prepare and file required notices, and/or coordinate with the cemetery or crematory. Other services you provide include embalming, facilities for viewing, and/or preparation of the body for disposition. Are you covered by the Rule?

Yes. You are a funeral provider as defined by the Rule. The sale or offering for sale of caskets, burial clothes and/or alternative containers meets the definition of funeral goods. In addition, the professional services you offer include both care for and preparation of human bodies for burial or other disposition, and also arrangement, supervision or conducting of the funeral and/or disposition.

Illustration #2: You have a traditional funeral practice in that you sell various funeral goods, prepare remains and arrange for final dispositions. However, you have separately incorporated the sale of funeral goods from the provision of funeral services. Are you covered by the Rule?

Yes. Under these circumstances, you must comply with the Rule because as a person who sells funeral goods and funeral services you meet the definition of a funeral provider. The structuring or restructuring of a provider's business will not be considered effective to avoid being covered by the Rule.

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[1] 16 CFR Part 453.

[2] 47 FR 42260.

[3] 48 FR 45537 (October 6, 1983). The Rule provisions which became effective on January 1, 1984 are: §§ 453.1, 453.3(a)(1)(i), 453.3(a)(2)(i), 453.3(a)(2)(i), 453.3(b)(1)(i), 453.3(c)(1)(i), 453.3(d)(1)(i), 453.3(e), 453.3(f)(1)(i), 453.8, and 453.9.

[4] The Rule provisions which became effective on April 30, 1984 are: §§ 453.2, 453.3(a)(1)(ii), 453.3(a)(2)(ii), 453.3(b)(1)(ii), 453.3(b)(2), 453.3(c)(1)(ii), 453.3(c)(2), 453.3(d)(2), 453.3(f)(1)(ii), 453.3(f)(2), 453.4, 453.5, 453.6, 453.7, and 453.10.

[5] 49 FR 559 (January 5, 1984).

Illustration #3: You have a traditional funeral practice in that you sell various funeral goods, prepare remains and arrange for final dispositions. A consumer wants you to arrange a funeral but is providing his own casket and does not want to purchase any other funeral goods from you. Is this transaction covered by the Rule even though you are not selling funeral goods to this particular consumer?

Yes. If you sell or offer to sell funeral goods and funeral services you must comply with the Rule's provisions for every consumer, even for those consumers who wish to purchase only goods or only services.

Illustration #4: You have a traditional funeral practice in that you sell various funeral goods, prepare remains and arrange for final dispositions. Rather than maintaining your own casket selection room, you use a manufacturer's showroom to sell caskets. Are you covered by the Rule?

Yes. You are selling or offering to sell funeral goods and funeral services and therefore must comply with the Rule's provisions. This is true even though you are utilizing a manufacturer's showroom to sell caskets. Although the casket manufacturer is not covered by the Rule, as discussed in Illustration No. 5 below, you still meet the definition of a funeral provider and must comply with the Rule.

Illustration #5: You are a casket salesman or a person selling caskets or coffins or kits to make caskets. Are you covered by the Rule?

No. Casket salesmen and others, if they only sell caskets, coffins or casket kits and do not sell or offer to sell services relating to disposition, are not covered under the Rule. They are only selling or offering to sell funeral goods. They must also sell or offer to sell funeral services in order to be covered.

Illustration #6: You operate a cemetery and want to know if you must comply with the Rule. Your cemetery sells outer burial containers and grave liners. Are you covered by the Rule?

No. Under the Rule's definitions, although you sell funeral goods, you would *not* be considered a funeral provider since you only arrange or conduct final dispositions and do not prepare remains for final dispositions. Thus, a cemetery generally only performs one of the functions included in "funeral services." It would have to provide *both* in order to be covered under the Rule.

Illustration #7: Is a cemetery which also operates a funeral home covered under the Rule?

Yes. All funeral providers are covered by the Rule, including those which are operated by a cemetery. As long as you provide funeral goods and services, you must comply with the Rule's requirements. Cemetery/mortuary combinations do not have to comply with the Rule, however, when consumers inquire solely in person about cemetery goods from the cemetery and do not inquire about funeral arrangements or the prices of funeral goods and services.

Illustration #8: You operate a direct disposition company which arranges for direct cremations and sells urns for cremated remains. Are you covered by the Rule?

Yes. In this situation, the Rule would cover the direct disposition company. The company is selling funeral goods (i.e., urns) and provides funeral services in that it cares for and prepares the bodies for the direct cremation *and* arranges the final disposition.

Illustration #9: Same situation as above except that your direct disposition company does not sell urns, alternative containers or any other funeral goods. Are you still covered?

No. In this situation, the direct disposition company would not be covered since it provides *only* mortuary and disposition services. To be covered by the Rule, you must provide both funeral goods *and* funeral services.

Illustration #10: Are crematories which sell urns and provide services to care for and prepare human bodies for final disposition covered by the Rule?

Yes. In this situation the crematory meets the definition of a funeral provider. It sells funeral goods and conducts the disposition, thereby satisfying the supervisory prong of the definition of a funeral provider. In addition, the crematory in this illustration provides those services used to care for and prepare human bodies for final disposition. However, if the crematory did not provide services to care for and prepare human bodies for final disposition, it would not be covered by the Rule. In the case of a crematory, final disposition would be the cremation.

B. Pre-Need Contracts Negotiated After the Effective Date of Rule

The Rule's coverage does extend to funeral providers who sell pre-need contracts after the effective date of the Rule. That means that you must comply with all the relevant portions of the Rule when you discuss pre-need arrangements with consumers.

Illustration #1: You operate a traditional funeral home. After the Rule became effective, a family enters your establishment to pre-plan their funeral arrangements. Does the Rule apply?

Yes. The Rule applies in both pre-need and at-need circumstances. Therefore, you must comply with all of the relevant portions of the Rule when you discuss funeral arrangements.

Illustration #2: Same circumstances as above, but you sell pre-need contracts door to door, rather than solely in your establishment. Does the Rule apply?

Yes. The Rule requires funeral providers to comply whenever consumers inquire about funeral goods and services. Thus, the obligation of a funeral provider to comply with the Rule is not limited to discussions within the funeral home. If you visit a consumer, knowing that you are going to discuss pre-need arrangements, you should be prepared to comply with the Rule.

Illustration #3: You sell pre-need contracts to consumers at their residences on behalf of several funeral homes. You do not yourself, however, operate an establishment that provides funeral goods and services. Does the Rule apply?

Yes. In such a situation, you are an agent of a funeral provider. Therefore, you should be prepared to comply with the Rule.

C. Pre-Need Contracts Negotiated Prior to Effective Date of Rule

The Funeral Rule's coverage does not extend to pre-existing contracts such as pre-need arrangements or burial insurance policies payable in funeral goods and services. Specifically, the portions of the Rule which prohibit certain oral or written misrepresentations do not apply to arrangements made prior to January 1, 1984.[6] In addition, those portions of the Funeral Rule which impose an affirmative obligation upon funeral providers (i.e., price lists, itemization, telephone disclosures, written disclosures) do not apply to arrangements made prior to April 30, 1984.[7]

Illustration #1: Before the Rule became effective, a consumer made a pre-need arrangement with your funeral home for specific funeral goods and services. The consumer dies after the Rule went into effect and the consumer's spouse comes to you to have you provide exactly those goods and services specified in the pre-need

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[6] Sections 453.1, 453.3(a)(1)(i), 453.3(a)(2)(i), 453.3(b)(1)(i), 453.3(c)(1)(i), 453.3(d)(1)(i), 453.3(e), 453.3(f)(1)(i), 453.8 and 453.9.

[7] Sections 453.2, 453.3(a)(1)(i), 453.3(a)(2)(ii), 453.3(b)(1)(ii), 453.3(b)(2), 453.3(c)(1)(ii), 453.3(c)(2), 453.3(d)(2), 453.3(f)(1)(ii), 453.3(f)(2), 453.4, 453.5, 453.6, 453.7, and 453.10.

contract. Under these circumstances, is the transaction covered by the Rule?

No. In this situation, if you are fulfilling the obligations under a pre-existing contract, the provisions of the Rule would not apply.

Illustration #2: Same situation as Illustration #1 except that the spouse wants to change the funeral arrangements specified in the pre-need contract. Does the Rule apply?

Yes. In this situation the spouse has asked about funeral arrangements. Therefore, the provisions of the Rule would apply because the funeral provider is offering funeral goods and services.

III. What Price Disclosures Must Be Made? Section 453.2

A. Generally

The price disclosure provisions of the Rule contain six different parts: (1) Telephone Price Disclosures, (2) Casket Price List, (3) Outer Burial Container Price List, (4) General Price List, (5) Statement of Funeral Goods and Services Selected, and (6) a provision allowing the use of additional methods of pricing.

To assist you in understanding what the Rule requires, these compliance guides will discuss each part of the price disclosure provisions section by section. In addition, sample price lists have been appended to illustrate the Rule provisions. It is not necessary for you to adopt the sample price lists. They are only examples. In addition, the fact that the FTC's staff developed these particular price lists in no way implies that this format is the only appropriate one. In fact, there may be a variety of formats which would meet the Rule's requirements. But the model forms provide guidance on what the Rule requires and may help to answer questions you may have.

This section deals with price disclosures, but other portions of the Rule prohibit misrepresentations and require that you include certain disclosures on the General Price List. While those requirements will be discussed here, other portions of these guides should be consulted for a more extensive discussion of those parts of the Rule.

B. Price Disclosures Over the Telephone: Section 453.2(b)(1)

The Funeral Rule requires that under certain circumstances funeral providers are to make price information available over the telephone. The reason for this requirement is to enable consumers who are under obvious time pressures to do some price comparisons before selecting a funeral home.

This section of the Rule has two steps. First, anyone who calls and asks about the "terms, conditions, or prices" of funeral arrangements must be told that price information is available over the telephone. Second, the Rule requires that you provide two types of information in response to questions about prices or offerings by these callers. First, the caller must be given responsive information about offerings or prices from the Outer Burial Container Price List, Casket Price List and General Price List. Second, any other questions about offerings or prices must be answered with any other information that is readily available.

Illustration #1: You are a funeral provider. At your establishment, you receive a telephone call from someone who wants to know if you sell metal caskets for under $500.00. Do you need to disclose information about prices?

Yes. The caller has asked about the "terms, conditions, or prices" of a funeral good. Therefore, you should tell the caller that price information is available over the phone, and answer the question from the information listed on your Casket Price List. No specific wording is required. You are free to respond in your own language, and can adapt your answer to the needs of each particular conversation.

Illustration #2: You are a funeral provider who receives a telephone call from a consumer who wants to know if you perform funerals for a particular religion. Do you have to inform the caller that price information is available over the telephone?

No. The caller has not asked about the "terms, conditions, or prices" at which funeral goods or funeral services are offered. However, the question must be answered because the caller has asked about your offerings and the information is readily available.

Illustration #3: You are a funeral provider who receives a telephone call from a consumer who wants to know about the business hours of your establishment. Do you have to inform the caller that price information is available over the telephone?

No. Again, the only time funeral providers need to tell callers that price information is available over the telephone is when they ask about "terms, conditions, or prices". Business hours do not trigger the disclosure of price information. Similarly, questions regarding the location of the funeral home, whether a particular person is employed by the provider, or other questions about the operation of the funeral home do not trigger the disclosure of price information.

Illustration #4: Can a telephone answering machine be used to disclose the required information?

Yes. You may use any method you prefer to provide the required disclosures. You may use an answering service to record incoming calls. If you prefer to use a machine which lists the goods and services from the price lists, you may. You will need, though, to have a method to respond to callers' questions on an individual basis. This method may just be notifying consumers that if they need additional information they may call a specified number and the hours available for such information.

Illustration #5: Can a funeral provider require that callers provide their name, address, and/or phone number as a condition of providing the required disclosures?

No. While you may request such information, if the consumer refuses to provide it you must still supply accurate information from the price lists and any other information which reasonably answers the questions and which is readily available.

Illustration #6: You are a funeral provider who receives a phone call asking if you will pick up a body from the place of death and transfer it to your establishment. Do you need to make the required price disclosures?

Yes. The caller has asked about the "terms, conditions, or prices" of a funeral service and, therefore, the telephone price disclosure provisions of the Rule are triggered.

Illustration #7: Does the Rule require specific price information to be disclosed by the first person who answers the phone?

No. While the Rule does cover funeral providers and their employees and agents, if some of your employees do not possess the substantive knowledge to respond to phone inquiries, the uninformed employees could simply refer calls to someone who was familiar with prices. However, because the information would almost always be available on the price lists themselves, part-time or untrained employees should be able to simply tell persons that price information is available over the telephone and answer questions about prices from the preprinted lists. Should you desire, you are free to have these questions referred to a funeral director. However, if no funeral director is available, the person answering should tell callers who ask about the "terms, conditions, or prices" of funeral goods or services that price information is available over the telephone, and

answer questions from information on the price lists. If there are questions which cannnot be properly answered by referring to the price lists, and a funeral director is not available, it is permissible to take a message and have a funeral director call the consumer later. However, calls requesting price information cannot be made wholly subject to the availability of a funeral director.

Illustration #8: You are a funeral provider who does not use a telephone answering service or machine during non-business hours. At midnight, a consumer dials your business phone number and the call is automatically transferred to your residence. The consumer requests price information in order to pre-plan a funeral. Does the Rule require you to provide price information to callers in such a situation?

No. In such a situation, you may inform the caller that you will provide information about the prices of the funeral goods and services you offer during the normal business hours of your establishment. However, if the caller was inquiring about an *at-need* situation and it is your practice to make funeral arrangements during non-business hours then the Rule would require you to make the required price disclosures at that time.

Illustration #9: You are a funeral provider who uses a telephone answering service. Is that service subject to the Rule and therefore required to make price information available to callers?

No. To the extent that a funeral home uses an independent telephone answering service that simply takes messages, that service is not subject to the provisions of the Rule. Therefore, the service would not be required to provide price information.

Illustration #10: You are a funeral provider who is making arrangements for a funeral with a family which is in your establishment. There is no other employee available. A telephone call is received from a person who is requesting price information. Does the Rule require you to disrupt the arrangements conference to make the required price disclosures at that time?

No. In such a situation, you may inform the caller that you will return the call.

c. Price Disclosures for Caskets: Section 453.2(b)(2)

This provision of the Rule requires funeral providers who sell or offer to sell caskets or alternative containers to prepare a Casket Price List. The list is to be shown to persons who inquire in person about caskets or alternative containers. Thus, you should show consumers the casket price information when the subject is raised. You do not have to force consumers to read the information, but you should allow them to read it if they desire. You do not have to give consumers the list to keep, though you can if you wish. The list must disclose at least the following information:

(1) The name of the funeral provider's place of business;

(2) A caption describing the list as a "casket price list;"

(3) The retail prices of all caskets and alternative containers offered which do not require special ordering;

(4) The effective date of the price list; and

(5) Enough information to identify each offering.

Illustration #1: Do funeral providers have to list any descriptive information about the caskets and alternative containers they offer in addition to the price?

Yes. In addition to prices, funeral providers must supply a certain amount of descriptive information about each casket offered, including alternative containers if direct cremations are offered. Enough information should be provided to enable consumers to identify the specific casket or container. Thus, the price list could include a description of the exterior appearance, including the gauge of metal or type of wood, the exterior trimming, and the type of interior fabrics or other material. Any other information you desire can be disclosed as well, such as a photograph or model number. However, a photograph or model number alone would not be sufficient. The descriptions in the model casket price list should prove helpful to you. (See Attachment 1).

Illustration #2: Does the Rule require that caskets be listed in any particular order?

No. Any arrangement of the caskets that you prefer is allowed. There is no requirement that caskets be listed in any particular order, either least to most expensive or vice versa. However, all disclosures must be made in a clear and conspicuous manner.

Illustration #3: Does the Rule require caskets which must be specially ordered to be listed on the casket price list?

No. This provision only applies to caskets that are usually offered for sale and do not require special ordering. Thus, all caskets which are in stock and available need to be on the list. In addition, the alternative containers offered for direct cremation, if that is a service you provide, need to be listed on the casket price list. However, if caskets or alternative containers must be ordered specially you need not include them on your price list. Special ordering means procuring a casket or container that is not in stock and not part of the regular offerings you provide to your customers.

Illustration #4: Are there a variety of formats allowed to provide casket and alternative container price information to consumers?

Yes. Funeral providers may choose among a variety of different disclosure formats: A separate price list for caskets and alternative containers; notebooks, brochures, or charts; inclusion of this information on the General Price List; or any other format desired, as long as the information required by the Rule is disclosed. The first of the methods is to provide a separate price list for caskets and alternative containers. This must be typewritten or printed and must contain all of the disclosures explained above. The second method is to use notebooks, brochures or charts, which may be more convenient for some funeral providers, particularly those with low inventory levels. Using this method, for example, the funeral provider could prepare a three ring binder with inserts for each type of offering. As the supply of a particular item on the list was exhausted, the page would be removed. Similarly, if new stock arrives, the funeral provider would simply add an insert about that product with the required information. Additionally, some funeral providers may prefer to place the required information onto the General Price List. Finally, funeral providers are permitted to use any other format they desire if the information required by the Rule is disclosed.

Illustration #5: You are a funeral provider who does not have caskets on display in your establishment. The consumer purchases the casket from you. However, you use a local manufacturer's casket showroom. Do you need to prepare a casket price list?

Yes. Funeral providers who use a manufacturer's or supplier's casket showroom in lieu of their own casket selection room must still prepare casket price lists. This does not mean that all of the manufacturer's or supplier's caskets have to be listed. Rather, you should list those caskets which are part of the regular offerings you provide to your customers. In the context of a casket manufacturer's or supplier's showroom, the caskets listed would generally be limited to those in the showroom. However, if the funeral provider elects to offer any or all of the caskets in the warehouse for sale, then these caskets

must be listed on the casket price list. The casket price list should be offered by the funeral provider to the consumer upon beginning discussion of, but in any event before the consumer is shown the offerings. Therefore, if the family and funeral provider begin discussion of casket offerings at the funeral home, the funeral provider must offer the casket price list to the family at that time. If the family and funeral provider do not discuss casket offerings until arrival at the manufacturer's or supplier's showroom, then the casket price list is not required to be offered until that time. The obligation to retain records, as required by § 453.6 of the Rule, rests with the funeral provider.

Illustration #6: Does the Rule require you to print a new casket price list each time you sell a casket if the sale means that one of the caskets on the list will not be available for a short period of time?

No. The Rule does not require funeral providers to prepare a new price list each time a casket is sold. If a casket is temporarily out of stock, the funeral provider can simply inform the consumer of this fact when the price list is given to the consumer. In the context of a manufacturer's or supplier's showroom, the funeral provider can notify the consumer of any modifications to the available selections upon arrival at the showroom. This notification can be made by use of a supplemental price list describing the offerings that have been added or deleted. This supplemental price list is not required to have the name of the funeral provider on it or its effective date. However, it might be desirable to have the effective date listed to assist your compliance with the recordkeeping requirements of § 453.6.

Illustration #7: Does the casket price list have to be given to consumers for their retention?

No. The funeral provider merely has to make it available to consumers who inquire in person about the offerings or prices of caskets or alternative containers. You do not have to give a copy of the casket price list to a consumer to keep. The consumer simply must have the opportunity to look at the list before discussing your offerings or seeing the caskets or alternative containers.

Illustration #8: Can a funeral provider put the information required for the casket price list on the General Price List rather than having a separate document, notebook, chart, or brochure?

Yes. Funeral providers do not have to make a casket price list available if they prefer to place the required information on the General Price List. Of course, if this option is chosen, the information must be in a form that consumers can retain after they leave your establishment.

Illustration #9: You are a funeral provider who, in addition to offering the caskets you have on display, also offers "customized" caskets. These caskets may be available in a variety of interior materials and designs, exterior hardware, and/or finishes. Are these "customized" caskets required to be included on your casket price list?

No. Customized caskets are special orders and therefore are not required to be included on the casket price list. In addition, if caskets that you offer for sale are available in a variety of options, it would be sufficient to simply note on the casket price list that the offerings are available in a variety of interior materials and designs, exterior hardware, and finishes. If a consumer orders a casket under those circumstances, the funeral provider would describe the casket and note the price on the statement of goods and services selected.

Illustration #10: A funeral provider carried a casket for several years that was used for pre-need and at-need funerals. The funeral provider no longer wishes to offer the casket for sale as a general offering but keeps it in inventory for the sole purpose of fulfilling previously sold pre-need contracts. Does the Rule require the funeral provider to include the casket on the casket price list?

No. The rule requires only those caskets that are regularly offered for sale to be listed. Under these circumstances, the funeral provider is not currently offering the casket but is only fulfilling a pre-existing contractual obligation. Therefore, the casket need not be included on the casket price list.

Illustration #11: A funeral provider carried a casket for several years that was used for pre-need and at-need funerals. The casket is no longer being manufactured and is therefore not available. The pre-need contract specifies that a funeral provider may substitute merchandise of equal value in the event the contracted-for merchandise is not available. Must the funeral provider present a casket price list to the consumer in such a situation?

No. The selection of the substitute casket is governed by the pre-need contract. In this situation, the funeral provider need not present a casket price list to the consumer. The funeral provider should simply comply with the terms of the contract by supplying a casket of similar quality.

D. Price Disclosures for Outer Burial Containers: Section 453.2(b)(3)

This provision of the Rule requires funeral providers who sell or offer to sell outer burial containers to prepare a price list for these particular funeral goods. The list is to be shown to persons who inquire in person about outer burial container offerings or prices upon beginning discussion of, but in any event before showing the containers. The list must disclose at least the following information:

(1) The name of the funeral provider's place of business;

(2) A caption describing the list as an "outer burial container price list;"

(3) The effective date of the price list;

(4) The retail prices of all outer burial containers offered which do not required special ordering; and

(5) Enough information to identify each container.

In addition, a separate section of the Rule requires the following disclosure to be placed in immediate conjunction with the price disclosures:

> In most areas of the country no state or local law makes you buy a container to surround the casket in the grave. Howeyer, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements.

Illustration #1: You are a funeral provider who does not sell or offer to sell outer burial containers. Do you have to prepare an outer burial container price list?

No. Only those funeral providers who sell or offer to sell outer burial containers need to prepare a price list for these products. Moreover, the Rule does not require these goods to be offered for sale.

Illustration #2: Does the Rule require the containers to be listed in any particular order?

No. Any arrangement of the containers that you prefer is allowed. There is no requirement that containers be listed in any particular order, either least to most expensive, or vice versa. However, all disclosures must be made in a clear and conspicuous manner.

Illustration #3: Does the Rule require containers which must be specially ordered to be listed on the price list?

No. This provision only applies to containers that are usually offered for sale and do not require special ordering. Thus, all containers which you keep in inventory and are available should be listed. However, any containers that need to be ordered specially do not need to appear on the list.

Illustration #4: Are there a variety of formats allowed to provide outer burial container price information to consumers?

Yes. Funeral providers may choose among a variety of different disclosure formats: A separate price list for outer burial containers; notebooks, brochures, or charts; inclusion of this information on the General Price List; or any other format, as long as the information required by the Rule is disclosed. The first of the three methods is to provide a separate price list for outer burial containers. This must be typed or printed and must contain all of the disclosures explained above. The second method, using notebooks, brochures or charts may be more convenient for some funeral providers. Additionally, some funeral providers may prefer to place the required information onto the General Price List. Finally, funeral providers are permitted to use any other format which discloses the required information.

Illustration #5: Does the Outer Burial Container Price List have to be given to the consumer for their retention?

No. Funeral providers who prepare either a separate container price list or who use notebooks, brochures, or charts merely need to show it to consumers who inquire in person about the offering or prices of containers. If these formats are used, you do not have to give a copy to the consumer to keep. However, if the funeral provider decides to place the required disclosures on the General Price List rather than use a separate list, or notebooks, brochures or charts, the list must be given to consumers for their retention, if they desire.

Illustration #6: You are a funeral provider who does not have outer burial containers on display in your establishment. The consumer purchases the outer burial container from you. However, you use a local manufacturer's showroom for outer burial containers. Do you need to prepare an outer burial container price list?

Yes. Funeral providers who use a mnaufacturer's or supplier's showroom in lieu of their own selection room must still prepare outer burial container price lists. This does not mean that all of the manufacturer's or supplier's outer burial containers have to be listed. Rather, you should list those outer burial containers which are part of the regular offerings that you provide to your customers. In the context of a manufacturer's or supplier's showroom, the items listed would generally be limited to those in the showroom. However, if the funeral provider elects to offer any or all of the outer burial containers in the warehouse for sale, then these offerings must be included in the outer burial container price list. The outer burial container price list should be offered by the funeral provider to the consumer upon beginning discussion of, but in any event before the consumer is shown the offerings. Therefore, if the family and funeral provider begin discussion of outer burial container offerings at the funeral home, the funeral provider must offer the outer burial container price list to the family at that time. If the family and funeral provider do not discuss outer burial container offerings until arrival at the manufacturer's or supplier's showroom, then the outer burial container price list is not required to be offered until that time.

E. Price Disclosures for Funeral Goods and Services: Section 453.2(b)(4)

(1) Itemization

The keystone of the Funeral Rule is the General Price List. It requires that you itemize certain prices for the various funeral goods and services that you offer so that consumers who wish to can compare prices or choose those elements of a funeral that they desire. In order to do this the Rule requires that at a minimum you itemize prices for seventeen specified goods and services, if you offer those goods and services. You may also itemize prices for other goods and services you offer. Note that the Rule does not prohibit you from offering package funerals as long as itemization is an option for consumers who arrange funerals at your establishment. (See Part III G of these guidelines for a discussion of package pricing under the Rule).

A separate price should be assigned to each of the funeral goods and services which you regularly offer to your customers.

The Rule requires, for example, that you itemize the price for use of a hearse, if that is a funeral good you offer to customers. That price does not have to be further broken down into separate costs for loading and unloading, gasoline, washing the hearse, paying the driver, etc.

This example applies to other items as well. As long as you provide a separate price for each basic part of the funeral that you offer to consumers, you will be in compliance.

(2) Information on the General Price List

The General Price List must contain a caption at the top of the page calling it a "General Price List." This caption must also contain the date the prices on the General Price List became effective and the funeral provider's name, address and telephone number. The list must be typed or printed and consumers must be given copies to keep.

There are several distinct parts of the General Price List. The rule provides some flexibility in the manner in which you choose to design the General Price List. The following guides point out those areas of the Rule which allow you flexibility in preparing your price lists.

To assist you in understanding what the Rule requires, sample price lists have been appended to illustrate the Rule provisions. These model forms provide guidance on what the Rule requires and may help to answer questions you may have.

a. *Basic Information.* This first section of the General Price List must contain two general disclosures. The first disclosure is a general statement on itemization which must precede the list of prices. The statement must read:

> The goods or services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

If you choose to require a separate charge for your services that a consumer may not decline, an additional sentence must be inserted between the second and third sentences of the above disclosure. That extra sentence reads:

> However, any funeral arrangements you select will include a charge for our services.

A second disclosure that must be included on this part of General Price List deals with cash advance items. The required disclosure must read as follows:

> This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or that statement describing the funeral goods and services you selected.

The Rules does not prohibit you from charging consumers for arranging these items but if you charge consumers more than the actual cost, or "receive and retain a rebate, commission or trade or volume discount" which is not passed on to the consumer, an additonal sentence must be added at the end of the above disclosure, stating: "We charge you for our services in buying these items." The cash advance disclosures must be positioned in immediate conjunction with the main group of price disclosures; that is, it

must precede them, be at the end, or be included among them.

b. *Forwarding and Receiving Remains, Direct Cremations and Immediate Burials: Sections 453.2(b)(4)(ii) (A)-(D).* The Rule requires funeral provider to disclose their prices for forwarding and receiving remains, direct cremations and immediate burials. Unlike the remainder of the goods and services which must be disclosed on the General Price List, any charges for the professional services of the funeral provider should be included in the total price of these four types of services. In addition, a brief description of the professional services provided must also be disclosed.

(i) *Forwarding of Remains to Another Funeral Home.*— If you provide this service for consumers who request it, you must disclose the price you charge. Again, in setting a charge for this you are free to choose any pricing method that suits your needs, so long as a consumer is able to obtain an accurate indication of the price from this segment of the General Price List. The Rule requires that you include any charge for your professional service in the prices for forwarding remains. In addition, you must include a brief list of the services you provide in conjunction with this item. Note that the disclosure required in the section dealing with charges for your services includes a brief notice that your fee for professional services does not apply to the services involved in forwarding remains.

(453.2(b) (4)(ii) (A) and 453.2(b) (4)(iii) (C)(1))

(ii) *Receiving Remains from another Funeral Home.*—This is treated basically the same way as the requirement on forwarding remains. It only needs to be included on your General Price List if you provide it, and you must include a list of the services you provide. The Rule requires that you include any charge for your professional services in the price you charge for receiving remains.

(453.2(b)(4)(ii) (B)).

(iii) *Direct Cremations.*—You only need to include this on your price list if it is a service that you provide. This is another area in which the fee for your professional service must be included in the quoted price.

The Rule requires you to list the price range for direct cremations if you offer more than one basic type of direct cremation.

First, you must give a price for a direct cremation if the consumer provides the container. This, of course, means that you must allow consumers to provide their own container if they desire, as long as the container is suitable in meeting any state or crematory requirement.

Second, you must provide a price for each direct cremation that occurs with an unfinished wood box or alternative container. This means that if you offer direct cremations you must make either an unfinished wood box or alternative container available for consumers who request them. The Rule also requires that you provide a disclosure about unfinished wood boxes or alternative containers. It must be placed in immediate conjunction with the prices for direct cremations and it must read as follows:

If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas.

Finally, you must include a description of the professional services you include in each price and a description of the container, if the consumer does not provide one, for any quoted price. The description of the container need not be extensive. It serves the same purpose as the descriptive provisions for caskets—informing consumers about what they are buying.

(453.2(b)(4)(ii)(C), 453.3(b)(2))

(iv) *Immediate Burial.*—This provision is similar to the one for direct cremations. There is only one difference. You are not required to make an alternative container or unfinished wood box available for immediate burials. Therefore, if you offer immediate burials but not direct cremations, the rule does not require that you make alternative containers available. You may, however, wish to provide such containers, and if you do so you need to quote a price for this and include a list of the basic services that you provide that are included in that fee.

(453.2(b)(4)(ii)(D))

c. *Other Items Which Must Be Itemized If Offered.*—The Rule also requires you to include on your General Price List your charges for several other specific items if offered for sale. The charges for each of these items which are required to be listed separately on the General Price List (i.e. transfer of remains to funeral home, embalming, other preparation, etc.) must include the fees for whatever service your provide in conjunction with the provision of each item. However, you need not include any fee for the services of the funeral director and staff that the Rule allows you to list separately on the General Price List (i.e. conduction the arrangements conference, planning the funeral, obtaining necesseary permits, etc.)

(i) *Transfer of Remains to Funeral Home.*—Your charges for the transfer of the remains to the funeral home must be disclosed. You may choose any pricing method you desire, such as by mileage, an hourly rate or a flat fee. The charges for this item must include the fees for whatever service you provide in conjunction with the provision of this specific item. This holds true for each of the other price disclosure portions of the Rule following in this section.

(§ 453.2(b)(4)(ii) (E))

(ii) *Embalming.*—You must disclose what you charge for embalming on the General Price List. In addition, the Rule requires that you include an affirmative disclosure in this part of your General Price List that must read:

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as direct cremation or immediate burial.

(§§ 453.2(b)(4)(ii) (F), 453.3(a)(2)(ii))

(iii) *Other Preparation of the Body.*—If you perform other preparations of the body you should provide a price for that service. If you wish you may also provide a brief note on what this includes, such as cosmetic touches, clothing, etc. But you do not have to break down the cost for each of these preparation services unless you want to.

(§ 453.2(b)(4)(ii)(G)

(iv) *Use of Facilities for Viewing.*—You may use whatever method you prefer to disclose your charge for this service. For example, one workable method may be to list the different viewing locations within the funeral home and provide charges by day, half day, or hour, depending upon the local customs in your area.

(§ 453.2(b)(4)(ii)(H))

(v) *Use of Facilities for Funeral Ceremony.*—If you provide facilities for the funeral ceremony you must provide a price. Again, the method of doing this is up to each funeral provider.

(§ 453.2(b)(4)(ii)(I))

(vi) *Other Use of Facilities.*—If you offer the use of other facilities in the funeral home you need to list them on the General Price List. Thus if you provide other facilities, such as a tent and chairs for a graveside service, those

prices should be disclosed in this part of your General Price List.

(§ 453.2(b)(4)(ii)(I))

(vii) *Hearse.*—You must disclose the price you charge for use of a hearse. You may use any method of setting the price that you choose.

(§ 453.2(b)(4)(ii)(K))

(viii) *Limousine.*—If you provide the use of a limousine for family, clergy, etc., you must disclose this price on the General Price List.

(§ 453.2(b)(4)(ii)(L))

(ix) *Other Automotive Equipment.*—If you provide other automotive equipment, such as a flower car, family sedan or pallbearers' car, you must disclose the price and include a general description.

(§ 453.2(b)(4)(ii)(M))

(x) *Acknowledgement Cards.*—If you sell those items or if you perform the service of filling out and sending these for consumers you must quote a price on the General Price List.

(§ 453.2(b)(4)(ii)(N))

d. *Casket Prices.* Disclosure of prices for caskets may be handled in one of two ways; on the General Price List or on a separate Casket Price List. If a separate Casket Price List is provided the General Price List must still briefly discuss casket prices. All that is required is that the range of casket prices be disclosed and an accompanying statement be included that says: "A complete price list will be provided at the funeral home."

(§ 453.2(b)(4)(iii)(A)(1))

The second option is to put all casket prices on the General Price List. The explanation for doing this is contained in the section on casket prices dealt with earlier. Basically this simply requires that you provide a description and price for each type of casket you provide.

(§ 453.2(b)(4)(iii)(A)(2))

e. *Outer Burial Container Prices.* The next part of the Rule deals with Outer Burial Container prices on the General Price List. If you offer Outer Burial Containers you can either provide a separate price list or include these prices on the General Price List. If you provide a separate price list the General Price List must contain a brief statement of the price range for Outer Burial Containers and be accompanied by the statement: "A complete price list will be provided at the funeral home." If you choose to put these prices on the General Price List you must comply with the Outer Burial Container price list requirements of describing the types and prices of the Outer Burial Containers you offer.

(§ 453.2(b)(4)(iii)(B))

f. *Charges For Professional Services of the Funeral Director.* The final item that must be discussed on the General Price List is a provision for the cost of the professional services provided by the funeral director and staff. This item is intended to include, for example, the fee for the services you perform in arranging and supervising the funeral, securing necessary permits and notices, and coordination of the cemetery and/or crematory arrangements. It does not include the charges for the services entailed in forwarding and receiving remains, direct cremations and immediate burials and the services associated with the other funeral goods and services specifically enumerated in the Rule that must be listed separately on the General Price List, as discussed above. The Rule requires that the prices for those particular items include the fee for the services you perform in providing those goods and services.

The charges for your professional services, however, can be presented on the General Price List in one of two different ways. The first is to set these out separately and the second is to include your service charges in the price of caskets. Alternative 1 of the appended sample General Price Lists is designed to deal with charges for services set out separately and Alternative 2 of the appended sample General Price Lists includes those charges in casket prices. The choice of method is one that each funeral provider will want to make after considering what will be best for the establishment.

The first method is to disclose these service charges separately. If you price your services in this manner you must include a brief statement of the principal services you provide and the cost. If a charge for your services is something consumers may not decline you must also provide the following disclosure:

> This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)

The statement in parenthesis simply lets consumers know that you are not charging them twice for your services for direct cremations, immediate burials, and forwarding or receiving remains.

The second method you can employ in charging for your services is to include the price of your services in the cost of caskets you offer for sale. If you choose this method of pricing you must include a disclosure stating:

> Please note that a fee for the use of our services is included in the price of our caskets. Our services include (specify).

You should include a brief list of the principal services you provide in this disclosure where it says "specify." You do not have to provide separate prices for these services.

This disclosure must be placed in the part of the General Price List dealing with casket prices. If you have a separate Casket Price List this should be included in conjunction with the statement of casket price ranges on the General Price List. If you include casket prices on the General Price List this disclosure must appear in conjunction with your list of those prices.

(Section 453.2(b)(4)(iii)(C))

(3) Illustrations Regarding the General Price List

The Rule requires the General Price List to be given to consumers who inquire in person about funeral arrangements or the price of funeral goods or services. The list must be offered to consumers upon beginning discussion either of funeral arrangements or of the selection of any funeral goods or funeral services.

Illustration #1: A family enters your establishment to discuss funeral arrangements for a relative. When the subject is raised, you offer them a copy of your General Price List. Are you in compliance with the Rule?

Yes. The family has inquired in person about funeral arrangements. Therefore, the list must be offered to them.

Illustration #2: You are a funeral provider who receives a phone call from a consumer who asks you about the price of a direct cremation. In compliance with the telephone price disclosure provisions of the Rule, you inform them of the price you charge for this service. The caller then asks you to send them a copy of your General Price List. Does the Rule require you to send them a copy?

No. The Rule requires that the General Price List be given only to consumers who inquire in person about funeral arrangements or the prices of funeral goods or services. It does not require funeral providers to send price lists to consumers who telephone and request a copy.

Illustration #3: You are a funeral provider who arranges for tours of your establishment by students. During one such tour, a student asks you about the price of embalming. Does the Rule require you to give the student a copy of your General Price List?

No. Although the student asked about the price of a funeral service, the Rule does not require funeral providers to distribute price lists to persons who are touring the establishments of funeral providers for educational purposes.

Illustration #4: A family enters your establishment to discuss the funeral arrangements for a relative. During the conference, the family asks about the selection of various services such as embalming or refrigeration. At the time the subject is raised, you tell the family that a General Price List of the goods and services you offer is located just inside of the front door of your establishment. Are you in compliance with the Rule?

No. The Rule requires that the list be given to consumers. Merely indicating that the price list is available at some location in your establishment is not enough.

Illustration #5: A family enters your establishment to discuss funeral arrangements for a relative. At that time you offer them your General Price List but the family refuses to accept it. Does the Rule require you to take any further steps to force the family to accept the list?

No. The Rule merely requires that you offer it to consumers. If they do not wish to accept it or look at it, you are not required to take any further action.

Illustration #6: You are a funeral provider who makes funeral arrangements for children or infants available at a different price than your regular offerings. Does the Rule prohibit you from setting a different price for children's and infants' funerals?

No. Funeral providers are free to set their prices in any manner desired so long as they comply with the disclosure requirements of the Rule. Thus, funeral providers may establish a different fee for their professional services for children's or infants' funerals. To comply with the Rule in this situation, the funeral provider may simply place a second disclosure for professional services on the General Price List, indicate that the fee applies only to children's and infants' funerals, and describe the services provided for the fee. Funeral providers who are reluctant to itemize the price of a child's or infant's funeral on their General Price List may prepare a separate General Price List for children's and infants' funerals. This separate price list could be given only to those consumers who want to discuss funeral arrangements for a child or an infant. Persons who call your place of business to inquire about your offerings or prices for the funeral of a child or infant should be provided information from your General Price List or a separate General Price List pertaining to such funerals.

In addition, funeral providers may either disclose the prices of the caskets or outer burial containers they offer for children or infants on either the Casket Price List or Outer Burial Container Price List, or they may prepare a separate price list for these items.

Illustration #7: You are a funeral provider who makes funeral arrangements for indigent persons in your community, pursuant to an agreement between you and a government entity. Must you offer a price list to the government when this agreement is arranged?

Yes. The Rule requires funeral providers to comply with the Rule when they discuss funeral arrangements with governmental entities. However, funeral providers are free to set their prices in any manner desired so long as the disclosure requirements of the Rule are met. To comply with the Rule in this situation, funeral providers may simply add their price for funeral arrangements for indigents to their General Price List, or prepare a separate price list for these arrangements. If a separate list is prepared, it is permissible to make it available to only those persons qualifying for the special funeral arrangements.

Illustration #8: Same situation as in illustration #7, above, except that the government agency requests bids on a package basis only. Can you comply with the request and remain in compliance with the Rule?

Yes. Any person, including government agencies, has the option under the Rule of making funeral arrangements on a package basis. If a government agency requests bids or contracts for funerals on a package basis, the funeral provider may comply with the request in compliance with the Rule. The decision on whether the arrangement will be made on an itemized or package basis rests with the government agency and not with the funeral provider.

Illustration #9: You are a funeral provider who makes funeral arrangements for indigent persons in your community, pursuant to an agreement between you and a government entity. The agreement provides that you will provide a basic package funeral for a set fee but that the family may supplement the package by purchasing additional goods or services directly from you. Is the family entitled to a General Price List under these circumstances?

Yes. Under such circumstances, the family must be given the General Price List if they inquire in person about funeral arrangements.

Illustration #10: You are a funeral provider who is approached by a religious group, burial society, or memorial society who wishes to enter into an agreement with you on behalf of their members. Must you give them a General Price List when they inquire in person about funeral arrangements?

Yes. The Rule defines person to include any individual, partnership, corporation, association, government, or governmental subdivision or agency or other entity. Therefore, any group representing their members must be given a General Price List.

Illustration #11: You are a funeral provider who makes funeral arrangements pursuant to an agreement with a government agency or other group or society. This agreement may or may not include different prices from your normal offerings. Must your offerings for these groups, societies, or agencies be placed on the general price list or be made available to persons not qualifying within that recognizable group?

No. Funeral providers may either establish a separate price list for qualifying persons or simply add their price for funeral arrangements to qualifying members of these groups to their general price list. If a separate list is prepared, it is permissible to make it available only to those persons qualifying for the special funeral arrangements.

Illustration #12: Can a funeral provider charge a fee to persons requesting the forms that the Rule requires be given to the consumer or family?

No. Funeral providers are not permitted to charge a fee to persons requesting the forms that the Rule requires to be given to consumers. The staff will closely scrutinize any attempts to place conditions upon the furnishing of information which is required to be disclosed by the Rule.

Illustration #13: You are a funeral provider who does not own limousines. Rather, you arrange to rent limousines from third parties when needed. Must the limousine fee be listed on the General Price List?

No. In these circumstances, the limousine is a cash advance item because it is an item obtained from a third party and paid for by a funeral provider on the purchaser's behalf. Therefore, in the event you do not own a limousine, you do not have to list it on the General Price List. When a family asks you to arrange for limousine service, the Rule requires that you

disclose the price on the statement of goods and services selected.

Illustration #14: You are a funeral provider who upon occasion at the request of a consumer will provide services away from the premises of your funeral home. Although this is not a service you regularly offer, you wish to list it on the General Price List. Can you list this service on the General Price List even though it is not required by the Rule?

Yes. The Rule does not limit the number of offerings that may be included on the General Price List.

Illustration #15: Can a funeral provider include terms of payment for the services, facilities, and goods on the General Price List?

Yes. Funeral providers may add such information to the General Price List.

Illustration #16: You are a funeral provider who receives a call from a family informing you of a death and desiring to make some funeral arrangements over the phone and other arrangements in person at a later time. For example, the family inquires whether your funeral home is available for viewing at a specified time and informs you that they will visit in person to select a casket shortly. Can the funeral provider make the arrangements despite the fact that the family has not received a General Price List?

Yes. The funeral provider can make the arrangements even though the family has not received a General Price List. Under these circumstances, the family has inquired about the "terms, conditions, or prices" of funeral goods and therefore the funeral provider must inform the family that price information is available over the telephone. In addition, the Rule requires the funeral provider to provide specific price information from the price lists, on request, and to answer any other questions with information that is readily available. The funeral provider can then complete the arrangements when the family visits in person. At that time, the General Price List would be offered to the family because they have inquired in person about funeral arrangements.

Illustration #17: You are a funeral provider who is called to a nursing home for removal of a body. When you arrive the family inquires whether your establishment is available at a specified time. Does the Rule require the funeral provider to present the family with a General Price List at that time?

No. The Rule only requires funeral providers to offer the General Price List when people inquire in person about funeral arrangements. However, if the family wants to reserve your facilities and you are willing to make these arrangements at this time, then the family is entitled to receive a General Price List.

Illustration #18: You are a funeral provider in a state where state law prohibits a funeral provider from making a profit on any cash advance item. Under state law, all such items must be listed on the funeral provider's price list as a good or service. Can you place these items on the General Price List?

Yes. These items may be included on the General Price List.

Illustration #19: A family arrives at the funeral home. The discussion concerns the final illness, information for the death certificate and social security benefits. Must the General Price List be given to the family at this point in the discussions?

No. At this point, the discussion has not concerned funeral arrangements or the prices of any funeral goods or services. Therefore, the requirement to offer the General Price List has not been triggered. However, a General Price List must be offered when the discussion concerns funeral arrangements or the prices of any funeral goods or services.

F. Price Disclosures at the Conclusion of the Arrangements Discussion: Section 453.2(b)(5)

This provision of the Rule requires funeral providers to prepare a document which lists the funeral goods and services selected by the consumer. This document must be given to consumers at the conclusion of the arrangement discussion. The list must disclose at least the following information:

(1) The goods and services selected and the price to be paid for each item;

(2) The price of each cash advance item requested; and

(3) The total cost of the goods and services selected.

In addition, the following disclosure must be placed on the statement:

> Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below.

To comply with this disclosure, you must identify and disclose in writing any legal, cemetery or crematory requirement which mandates that the consumer purchase a specific funeral good or service.

Illustration #1: You are a funeral provider who already includes the information required by the Statement of Funeral Goods and Services Selected on a document that you regularly provide to consumers at the conclusion of the arrangements conference. Does the Rule require you to prepare another document to comply with this provision?

No. Funeral providers who already provide the disclosures required by the Rule on any other statement, contract or other document given to consumers at the conclusion of the arrangements conference need not prepare a second document to comply with the Rule. However, the statement given to consumers at the time must include the required disclosure regarding legal requirements, above, and funeral providers are required to explain any such requirement on the statement.

Illustration #2: Does the statement required by the Rule mean that consumers are to pay in advance?

No. The Rule does not require that consumers pay in advance. It simply means that funeral providers and consumers are to agree on the type of funeral and the costs, in advance of beginning the arrangements.

Illustration #3: You are a funeral provider who purchases cash advance items on behalf of consumers who arrange funerals through your establishment. At the time of the arrangements conference you often do not know the exact price of the cash advance items. Do you have to disclose the exact price of cash advance items on the statement?

No. The prices of cash advance items need only be given to the extent known or reasonably ascertainable at the time of the arrangements conference. If the prices are not known or are not reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.

Illustration #4: Is it permissible to simply lump all of the cash advance items into one general disclosure marked "Cash Advances" with one price?

No. Each cash advance item must be separately itemized. Thus, the Statement of Funeral Goods and Services Selected must have a separate itemized price for each type of cash advance item requested by the consumer.

Illustration #5: You are a funeral provider who wants to use the Statement of Funeral Goods and Services Selected as the final bill. Are there any other disclosures required by the Rule which must appear on the final bill?

Yes. If you use the Statement of Funeral Goods and Services Selected as a final bill, the following disclosures must be added:

> If you selected a funeral which requires embalming, such as a funeral with a viewing, you may have to pay for embalming.

You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial.

If we charged for embalming, we will explain why below.

In accordance with this disclosure, you should explain, in writing, the reason why a fee for embalming has been included on the final bill, if the consumer has been charged for embalming.

Illustration #6: You are a funeral provider who offers package funerals in addition to itemized funerals. A consumer arranges for you to provide a package funeral. Do you still need to prepare a Statement of Funeral Goods and Services Selected?

Yes. If a consumer selects a package funeral, the funeral provider must still prepare a Statement of Funeral Goods and Services Selected. The statement, in such an instance, would simply list the package chosen (with the goods and services comprising the package), the price of any cash advance items requested by the consumer but not included in the package, and the total price of the arrangements requested.

G. Other Pricing Information: Section 453.2(b)(6)

This provision of the Rule allows funeral providers to offer any other pricing information formats to persons arranging funerals, so long as the funeral provider complies with the Rule requirements for price lists and Statement of Funeral Goods and Services Selected. While the Rule must be followed, funeral providers can provide additional information if desired.

Illustration #1: Can a funeral provider offer package pricing?

Yes. Funeral providers may offer package funerals so long as consumers are given the option of making funeral arrangements on an itemized basis. Thus, funeral providers can, in addition to offering funerals on an itemized basis, also provide package prices for various types of funerals, if desired. This option of including package prices does not allow you to disregard the itemized prices and disclosures required by the Rule. Beyond this, however, you may put the package and itemized prices in any order. In addition, the general itemization provisions of the Rule do not require funeral providers to itemize prices within any packages offered. In addition, the Rule does not require that the total price of any package offered be equal to the total cost of the same components offered on an itemized basis on the General Price List.

IV. What Representations are Prohibited? Section 453.3

The requirements of this section fall into two basic categories. The first set of provisions state that you cannot make any misrepresentations to consumers in six specific areas which are described below. The second category of provisions requires you to affirmatively disclose certain information to consumers *in writing*. The Rule also specifies where to put these disclosures. The Rule also requires that the disclosures be clear and conspicuous.

A. Representations Concerning Embalming: Section 453.3(a)

This provision prohibits you from telling consumers that state or local law requires you to embalm the remains whenever that is not true. Consequently, you may not tell a consumer that you are required to embalm under any of the following circumstances, *unless state or local law requires it:*

(1) When the consumer wishes to have a *direct cremation;*

(2) When the consumer wishes to have an *immediate burial;*

(3) When the remains are placed in a *sealed casket;*

(4) If refrigeration is available *and* there is to be a funeral with no viewing or visitation *and* there is to be a closed casket.

This provision also requires you to inform consumers in writing that, except in certain special cases, the law does not require embalming. You must place a disclosure to this effect on your General Price List, *next to the price for embalming.* The precise disclosure that you must make is as follows:

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as direct cremation or immediate burial.

Illustration #1: A family wants you to arrange for a funeral involving an immediate burial, with no viewing. Can you tell the family that embalming is required?

No. Unless there is some state or local law that requires it, you may not make any representation to this family that embalming is required. The Rule also requires you to place the specified written disclosure on your General Price List that embalming is not usually required by law. The precise language of this disclosure appears above.

Illustration #2: Your establishment has refrigeration facilities available. The law in your jurisdiction states that if there is no burial or cremation within two days of the date of death, the remains must be either embalmed or refrigerated. A family comes to your funeral home and wants you to plan a funeral for them. There is to be no viewing, but the burial will not take place until three days after the person died. Can you tell the family that embalming is required?

Yes, but only if you told them that refrigeration is an option. However, if the state law referred to embalming only, and did not list refrigeration as an option, the Rule would not be violated if you told the family that embalming was required by law. Your price list must also make the specified written disclosures regarding embalming.

Illustration #3: A family comes to your funeral home and wants you to plan a funeral for them. The family requests that there be no viewing, that the remains be placed in a sealed casket, and requests two days of visitation. Under the particular circumstances, the law does not require that the body be embalmed. Can you represent to the family that embalming is required?

No. Under these circumstances, you must not represent to the family that embalming is required because the remains have been placed in a sealed casket. Also, you must place the specified written disclosure regarding embalming on your price list.

Illustration #4: Your state law provides that whenever a person has died of certain highly contagious diseases, such as diphtheria, smallpox or malaria, the remains must be embalmed. A family comes to your establishment to arrange a funeral service for someone who died of smallpox. Can you represent to the family that embalming is required?

Yes. In this situation, you may inform the family that because of the precise circumstances, embalming is required by law. However, you must still include the disclosure on your price list that embalming is not *usually* required by law. (*Also* you must put a disclosure on your Statement of Funeral Goods and Services Selected that briefly describes the state law requirement. This provision is discussed earlier in Part IV F.)

Illustration #5: A family enters your establishment and wants to arrange for a funeral with a formal viewing. The funeral is to occur two days after the death has occurred on a hot summer day. In your jurisdiction, there is no law or regulation that requires embalming. You do not have refrigeration facilities

and the family does not want a sealed casket. Can you tell the family that embalming is required?

Yes. In this situation, even though there is no *legal* requirement that the body be embalmed, the Rule allows you to tell the family that embalming is a *practical* necessity to delay decomposition of the remains and to preserve them for viewing. However, you may *not* tell the family that the law requires embalming since that is not the case. In addition, you must include the written disclosure on your General Price List that embalming is not usually required by law.

Illustration #6: A family enters your establishment and wants to arrange an immediate burial with no viewing. However, before burial, a family member wants to look at the body by lifting the lid of the unsealed casket. In your jurisdiction, there is no law or regulation that requires embalming. Can you tell the family that embalming is required?

No. You may not tell the family that the law requires embalming since that is not true. In addition, the fact that a family member wants to look at the remains does not constitute a formal viewing which would enable you to tell the family that embalming is required. Finally, you must include the written disclosure on your General Price List regarding embalming.

Illustration #7: Can a funeral provider choose to orally inform consumers that embalming is not generally required by law and that depending on the funeral chosen, they may not need to have embalming performed rather than placing a written disclosure on the Price List?

No. The Rule requires funeral providers to make the disclosures in writing on the Price List. However, funeral providers may in addition to making the written disclosures inform consumers orally that embalming is not generally required by law.

Cross-Reference: This provision operates in tandem with a related provision that sets forth the guidelines that govern when you may embalm the remains for a fee. We discuss that provision below. (See Part VI.)

B. Representations Concerning Caskets for Cremations: Section 453.3(b)

This provision prohibits you from telling consumers that state or local law requires them to purchase a casket when they wish to arrange for a direct cremation. The Rule defines a "direct cremation" as one that occurs without any formal viewing of the remains or any visitation or ceremony with the body present.

This provision also states that you may not tell a consumer that a casket is required for a direct cremation unless you make clear that you are only referring to an unfinished wood box. The Rule defines "unfinished wood box" as an unornamented casket which is made of wood and which does not have a fixed interior lining.

If you arrange direct cremations for your clients you must disclose certain information to them. You must make the disclosure in writing, and it must appear on your General Price List next to the place where you list the price range for direct cremations. The disclosure is as follows:

> If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas.

Illustration #1: A family enters your establishment and wants to arrange for a funeral involving a direct cremation. This is one of the services that your establishment provides. Can you represent that a casket is required by law?

No. You may not make any representation to the family that either state or local law requires them to purchase a casket. In addition, you may not inform the family that they are required to buy any sort of casket, other than an unfinished wood box, for a direct cremation. Finally, you must place a written disclosure on your General Price List that either unfinished wood boxes or alternative containers are available for direct cremations. The precise language of this disclosure appears above.

Illustration #2: A family wants to arrange for a funeral involving a direct cremation. This is not a service that your establishment provides. Can you tell them that the law requires them to buy a casket in such a circumstance?

No. You may *not* make any statement that caskets are required for direct cremations. However, in this instance, you are required to make any written disclosures about the availability of alternative containers since the Rule requires you to do so only when you offer direct cremations.

Illustration #3: You are a funeral provider who offers both direct cremation and immediate burial. A family requests that you arrange for an immediate burial. Must you tell the family that they have the option of buying an alternative container or unfinished wooden box?

No. In this instance, you are not required to inform the family that they can use an unfinished wood box or an alternative container. Although the General Price List must include the disclosure regarding use of an alternative container or unfinished wood box for direct cremation, the Rule does not require you to make these goods available for sale for immediate burial.

Illustration #4: You are a funeral provider who offers direct cremation and cremation following a service with a viewing. A family enters your establishment and asks you to arrange a funeral involving cremation. However, they also want a service with viewing of the remains and the cremation afterwards. Do have to tell the family that alternative containers or unfinished wooden boxes are available?

Yes. If your establishment offers direct cremations, the Rule requires you to offer a General Price List containing the disclosure informing consumers that an unfinished wood box or alternative container is available for direct cremation. No oral disclosures are required by the Rule. However, you have the option to orally explain to the family that those items apply for *direct* cremations and that you do not provide them for cremations that occur after a viewing. The Rule does not prevent you from selling a casket in this situation.

Illustration #5: You are a funeral provider who offers direct cremation. However, none of the crematories in your area accept pouches. Can you modify the disclosure required by the Rule to delete the reference to "pouches of canvas"?

No. You are required to include the disclosure verbatim. However, you may add information to the disclosure. For example, funeral providers may inform consumers in writing that local crematory requirements prohibit use of non-rigid containers.

Cross Reference:

This provision operates in tandem with a related provision that sets forth the guidelines governing the sale of receptacles for remains that are to be cremated. We discuss that provision below. (See Part V.)

C. Representations Concerning Outer Burial Containers: Section 453.3(c)

This provision states that you may not tell consumers that state or local laws or regulations require the purchase of an outer burial container if that is not true; or that a particular cemetery requires an outer burial container, if that is not true.

The provision also requires you to inform consumers that state law does not require them to purchase an outer burial container. This information must appear on your General Price List next to the prices for outer burial containers or on the separate price list for outer burial containers if you use one. The precise language is as follows:

> In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements.

In essence, therefore, the Rule states that you must make it clear to consumers that the *law* does not require an outer burial container. However, if the *cemetery* imposes such a requirement, you may explain this fact to the family. The written disclosure informs consumers that grave liners are suitable for meeting the cemetery requirement. The Rule does not require you to have extensive legal knowledge. However, if you tell the family that the law requires an outer burial container, you must be prepared to verify that statement. You also need not be aware of the requirements of every cemetery. However, as before, if you make any statement that a cemetery requires an outer burial container, that statement must be accurate.

Illustration #1: A family wants you to arrange a funeral involving a ground burial. No state or local laws or regulations require the purchase of an outer burial container. Moreover, there is no cemetery requirement that an outer burial container be used. Can you represent that an outer burial container is required?

No. In this instance, you may not tell the family that an outer burial container is required by any state or local law or regulation, or by the cemetery in question. In addition, you must place the specified disclosure regarding outer burial containers on your price list. The precise language of this disclosure appears above.

Illustration #2: A family wishes to arrange a funeral with a ground burial. No state or local law or regulation requires outer burial containers. However, the cemetery that the family has chosen requires that the casket be placed in a rigid outer container. Can you represent that an outer burial container is required?

Yes. In this instance, you may tell the family that the cemetery requires the outer burial container. You may not, however, make any statement that the law requires the purchase of an outer burial container since that is not true in this particular case. You must also place the written disclosure on your price list.

Illustration #3: Can you add the specific cemetery requirements for outer burial containers to this price list?

Yes. The Rule does not prohibit funeral providers from adding accurate additional information to the price lists. For example, funeral providers may inform consumers in writing about the requirements imposed by local cemeteries, if any, for outer burial containers.

D. Representations Concerning Legal and Cemetery Requirements: Section 453.3(d)

This provision states that you may not tell consumers that federal, state or local law requires them to buy a particular funeral good or funeral service if that is not true. You also may not tell consumers that a particular crematory or cemetery requires them to buy a particular good or service if in fact there are no such requirements.

If you tell a consumer that he or she must purchase a particular funeral good or funeral service because of any legal, cemetery or crematory requirement, you must do the following:

—Identify the particular requirement in writing on the Statement of Funeral Goods and Services Selected; and
—Briefly describe the requirement in writing on that same document.

The Rule requires you to make this written disclosure *whenever* you tell a family that they must purchase a good or service because of a legal, cemetery or crematory requirement.

Illustration #1: The law in your state requires that if you are going to ship the remains into another state, you must place those remains in a sealed casket. A family asks you to arrange a funeral and requests that you ship the remains to another state for burial. Can you inform them that they must buy a sealed casket under these circumstances?

Yes. In this instance, the law requires you to use a sealed casket. Because of these legal requirements, you may inform the family that there are certain purchases that they must make. You must also disclose the laws that require the purchase of these items on the Statement of Funeral Goods and Services Selected. This means that you should generally indicate that state law requires this purchase and also provide a brief description of the requirement. For example, if you write "state law requires a sealed casket when remains are transported into another state", you would comply with the Rule.

Illustration #2: A family enters your establishment and asks you to arrange a burial in a local cemetery. The cemetery does not require any particular funeral goods for burial. Can you inform the family that the cemetery requires them to buy a specific type of sealed casket under those circumstances?

No. You may not tell a consumer that a particular good or service is required if in fact there are no such requirements.

E. Representations Concerning Preservative and Protective Value Claims: Section 453.3(e)

This provision states that you may not tell consumers that any funeral goods or funeral services will delay the natural decomposition of the deceased for a long-term or indefinite time. You also may not state the funeral goods will protect the deceased from gravesite substances when that is not the case.

While the Rule flatly prohibits the representation that any funeral goods or services will delay the decomposition of the deceased for a long-term or indefinite time, the Commission recognizes that it is possible that some funeral goods or services may delay decomposition for a short period of time. However, a funeral provider cannot say that any goods or services will delay natural decomposition after burial when such is not the case.

Illustration #1: A family asks you to arrange a funeral with a full service and a viewing of the remains. After the service, there is to be a ground burial. Can you tell the family that embalming will temporarily preserve the body to make it suitable for viewing?

Yes. In this situation, you may, if you want, explain to the family that embalming will temporarily preserve the body to make it suitable for viewing. However, you may not make any statement to them that embalming has any preservative effect other than a temporary one.

Illustration #2: Same situation as above, except that the family now wants to discuss the purchase of a casket or outer burial container. Can you tell the family that these goods will delay the natural decomposition of the deceased for a long-term or indefinite time?

No. In explaining the properties of either of these items you may not tell the family that they can delay the natural decomposition of the remains for a long-term or indefinite period of time. You also may not state that either the casket or the vault will protect the body from air, dirt, water or other gravesite substances when that is not true.

Illustration #3: Same situation as above. The manufacturer of the casket or burial vault states in the warranty that it will preserve the body for a

period longer than five years. Must you make the warranty available to the family?

Yes. Existing federal law requires you to make all warranty information available to the consumer. This means that you must allow the family to read any of the manufacturer's warranties. However, you must disclose the warranty information, without adopting as your own any statement that you know to be a violation of the Rule. You may, if you wish, inform the family that while the manufacturer has made certain statements about the product that you are required to disclose, you do not have personal knowledge of the preservative value of the merchandise that enables you to state that it has a preservative effect after burial.

F. Representations Concerning Cash Advances: Section 453.3(f)

This provision states that you may not tell consumers that the price that you charge them for a cash advance item is the same price that you paid for it, when such is not the case. A cash advance item is any item which you describe to purchasers as a cash advance, accommodation, cash disbursement, or any similar terms.

The section also provides that if there is a markup on a cash advance item, you must disclose that fact to consumers in writing. To do so, you must place the following sentence on your General Price List at the end of the cash advance disclosure that is required by a previous section (§ 453.2(b)(4)(i)(D)):

"We charge you for our service in buying these items."

You must make this written disclosure whenever you charge for obtaining cash advance items or receive and retain a rebate, commission or trade or volume discount on them. The Rule does *not* prevent you from adding a service charge nor does it require you to disclose the amount of that charge. Moreover, there is no restriction on how much you may charge. The Rule merely states that if you add a service charge to the cost of a cash advance item, you must disclose this fact to the consumer on your General Price List.

Illustration #1: A family asks you to arrange a funeral and asks for flowers as part of the service. You obtain the flowers from the florist, pay $50.00 for them, and charge the family $75.00. Can you tell the family that the amount you are charging them is the same amount that you paid for the flowers?

No. You may not represent to the family in any way that the cost to you for obtaining the flowers is the same as the amount that you are charging them. In addition, when you bill the family for $75.00, you must disclose that you are adding a service charge to the cost of the flowers. The precise language of this disclosure appears in the earlier discussion of the cash advance provision.

Illustration #2: Same situation as in Illustration #1, above, except that, instead of adding a service charge to the cost of the flowers, you charge the same amount that you paid for them but receive a trade or volume discount at the end of the year. Can you tell the family that the amount you are charging them for the flowers is the same amount that you paid?

No. You may not represent to the family in any way that the cost to you for obtaining the flowers is the same as the amount you are charging them. There is no requirement that you disclose the *amount* of that discount or rebate to the consumer. However, you must inform the consumer of the fact that you receive such a discount. You do this in the same manner as above, by making a disclosure in writing on your General Price List.

V. Can the Sale of Any Funeral Goods or Funeral Services Be Conditioned Upon the Purchase of Any Other Funeral Goods or Services? Section 453.4

This section prohibits funeral providers from requiring consumers to purchase unwanted and unneeded goods and services as a condition of obtaining those goods and services which consumers do want. It provides that consumers be informed of the option to select only those goods or services they want with certain exceptions. The section also indicates situations when certain goods or services may be required by the provider.

A. Casket for Cremation Provisions: Section 453.4(a)

This provision prohibits funeral providers from requiring consumers to purchase a casket, other than an unfinished wood box, for direct cremation. Thus, funeral providers who arrange direct cremations for consumers need to offer consumers something other than a casket, such as an unfinished wood box or alternative container. A direct cremation is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present. An unfinished wood box is an unornamented casket made of wood which does not have a fixed interior lining. An alternative container is a non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed-wood, composition materials (with or without an outside covering) or pouches of canvas or other materials.

Illustration #1: A consumer enters your establishment and wants you to arrange a direct cremation for a deceased relative. For direct cremation you offer, in addition to your regular casket selection, unfinished wood boxes. May the consumer demand that you sell alternative containers when all you offer are unfinished wood boxes?

No. The Rule requires you to make either an unfinished wood box or an alternative container available if you offer direct cremations. The funeral provider can choose to offer either alternative containers or unfinished wood boxes or offer both of them. If you offer unfinished wood boxes for direct cremations you need not offer alternative containers. Similarly, if you offer alternative containers, you need not offer unfinished wood boxes. The choice of offering either an alternative container or unfinished wood box is wholly within the business judgment of the funeral provider.

Illustration #2: A consumer wants to purchase a direct cremation from a provider who does not offer direct cremations. Must the provider offer the service to comply with the Rule?

No. The Rule does not require providers to offer direct cremations. However, once the provider decides to offer direct cremations, the Rule requirements are applicable.

Illustration #3: You are a funeral provider who offers direct cremations. Do you need to stock unfinished wood boxes or alternative containers in inventory to comply with the Rule?

No. The Rule does not require funeral providers to maintain an inventory of unfinished wood boxes or alternative containers. All that is needed is for you to be able to secure such a container, on request, and make it available for use in a direct cremation. If you can obtain the container from a supplier when needed, you will be in compliance with the Rule.

Illustration #4: A consumer enters your establishment and wants to arrange an immediate burial for a deceased relative. You are a funeral provider who also offers direct cremations and who has alternative containers in inventory. May the consumer insist that you sell an alternative container or an unfinished wood box for the immediate burial?

No. The Rule requires the funeral provider to offer unfinished wood boxes or alternative containers for direct cremations only. It does not require

funeral providers to sell unfinished wood boxes or alternative containers to consumers who wish to arrange immediate burials.

B. Other Required Purchase of Funeral Goods or Funeral Services: Section 453.4(b)

This provision prohibits a funeral provider from requiring consumers to buy unwanted goods and services in order to buy other requested goods and services. In addition, the following disclosure must appear on the General Price List before the list of your prices:

[T]he goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

There are three exceptions to the general right to select goods and services. First, the funeral provider has the right to make the charges for the professional services of funeral director and staff non-declinable. If you choose to make your services non-declinable the following disclosure must be added to the above statement, between the second and the third sentence: "[h]owever, any funeral arrangements you select will include a charge for our services". The second exception allows the funeral provider to require consumers to purchase goods or services which are required by law. The third exception allows a funeral provider to refuse a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide. This provision is designed to protect the funeral provider from unreasonable consumer requests. It does not allow the funeral provider to refuse a request simply because the funeral provider does not like it. The request must be impossible, impractical or excessively burdensome to provide in order for the funeral provider to refuse to provide it.

Illustration #1: You are a funeral provider who itemizes the goods and services you offer in compliance with the Rule, but who also offers a range of predetermined package plans. Does this violate the Rule?

No. As long as the consumer may exercise his or her right to choose only the goods and services wanted and as long as the funeral provider complies with the price list requirements of the Rule, funeral providers are not prohibited from, in addition, offering predetermined packages for sale. Thus, you may, in addition to offering funerals on an itemized basis, continue to offer package funerals for sale. Consumers may continue to select these packages if they desire to do so. The Rule simply prohibits the imposition of packages on consumers by funeral providers.

Illustration #2: The funeral provider has elected to add the service charge to the cost of the casket and to make the service charge non-declinable. The consumer lawfully decline to purchase a casket. May the funeral provider charge separately for the service charge?

Yes. Because the funeral provider has made the service charge non-declinable the consumer cannot avoid paying the charge. Therefore, the funeral provider can charge the consumer a fee for the professional services of the funeral director and staff. Under these circumstances, the funeral provider should include a listing for the service charge on the general price list if the consumer provides a casket. The list should indicate that this charge in non-declinable.

Illustration #3: The funeral provider has made the service charge non-declinable. Included in the services are embalming, dressing, cosmetology, restoration, along with consultations, preparation and obituary notices. Can all of these services be declared non-declinable?

No. The Rule does not allow funeral providers to include in the service charge those items which the Rule specifically requires you to list separately on the General Price List. Consequently, embalming, cosmetology and other preparation of the body may *not* be included. Thus, the fee for professional services may not include a charge for the following items: Forwarding of remains to another funeral home, receiving remains from another funeral home, direct cremation, immediate burial, transfer of remains to funeral home, embalming, other preparation of the body, use of facilities for viewing, use of facilities for funeral ceremony, other use of facilities, hearse, limousine, other automotive equipment, or acknowledgment cards. Among the services which may include in the list of services of funeral director and staff are: arranging and supervising a funeral, conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices. Of course, this list is not exhaustive.

Illustration #4: You are a funeral provider who has not included the disclosure on the General Price List informing the consumer that the fee for the professional services of the funeral director and staff in non-declinable. May the consumer decline to purchase that service?

Yes. Unless the consumner requests the service, the consumer may decline to pay the fee, if the funeral provider has not taken the steps outlined in the Rule to make the charge non-declinable.

Illustration #5: The state requires all victims of tuberculosis to be embalmed. May the funeral provider require consumers to purchase embalming for victims of tuberculosis?

Yes. this requirement is imposed by law and thus it is an exception to the general right of consumers to select only those goods and services wanted.

Illustration #6: The consumer selects an arrangement which includes viewing for four days, but the consumer does not want to purchase embalming and no other preservative measures such as refrigeration are available. May the funeral provider require the consumer to purchase embalming?

Yes. The Rule allows a funeral provider to condition the furnishing of funeral goods and services on the purchase of embalming when embalming is a practical necessity. Usually, a funeral with viewing makes embalming a practical necessity if no refrigeration is available.

Illustration #7: A consumer wants to use a viewing room for two hours but does not want to purchase any other services from the funeral provider. May the consumer insist on such a contract?

No. The Rule allows the funeral provider to refuse to offer a combination of goods and services which would be impossible, impractical or excessively burdensome to provide. As a result, the provider may refuse to render the service.

Illustration #8: During a hot summer month, a family requests a funeral to take place 5 days after death. They do not want embalming or a sealed casket and you have no refrigeration facilities. Can you refuse to comply with their wishes unless they purchase a sealed casket or embalming?

Yes. This situation falls into the exception that allows you to refuse requests which are impractical, impossible or unduly burdensome. This type of request could be considered either impractical or burdensome and you can refuse to comply with the request.

Illustration #9: Same situation as in Illustration #8 except that the funeral will take place the next day and there is to be no visitation or viewing. The laws in your state do not require embalming unless the body is not buried for 48 hours or more. You strongly believe, however, that embalming is appropriate for all bodies. Can you require the consumer to purchase embalming?

No. The Rule will not allow you to require consumers to pay for embalming in this instance. There is no reason, from the facts stated, why the arrangements requested would be impractical, impossible, or unduly burdensome to provide. The fact that you believe that embalming is appropriate for all bodies does not mean that you can require the family to purchase embalming.

Illustration #10: You are a funeral provider who receives a request for a service that you do not offer. Must you comply with the request?

No. The Rule does not require you to provide a good or service you do not offer. Therefore, you are not required to comply with the request, although you can if you so desire.

Illustration #11: A family enters your establishment and asks you to arrange a direct cremation. They inform you that they wish to provide their own container. Can you insist that they purchase a container from you?

No. You cannot insist that they purchase a container from you if the family supplies one of their own that satisfies crematory requirements. Moreover, you cannot charge them for a container.

Illustration #12: Can a funeral provider have a fee for use or basic facilities which is non-declinable?

No. Only the professional services of funeral director and staff and items required under state law can be non-declinable charges. However, a funeral provider can recover his or her overhead costs for items such as mortgage or rent, utilities and taxes. For example, funeral directors may allocate a portion of their overhead charges to each item offered or may include these charges in their fee for professional services.

Illustration #13: Can a funeral provider require that a consumer who declines embalming pay for other preparation of the body when the family does not wish to have a public viewing but wishes to see the body prior to disposition?

No. Consumers who do not wish to have a public viewing but who wish to see the body prior to disposition cannot be required to purchase other preparation of the body if they decline embalming. Rather, funeral providers are required to list other preparation as a separate item which may be selected by a consumer, if desired.

Illustration #14: You are a funeral provider who operates a funeral home and crematory. The crematory serves not only the needs of your funeral home but also other funeral providers. Can you have a requirement that consumers use an unfinished wood box if they wish to use the services of your crematory?

Yes. The Rule does not prohibit funeral providers or crematories from requiring that consumers use unfinished wood boxes for direct cremation. However, you cannot require that consumers purchase the unfinished wood box from you in order to purchase the other goods or services you offer.

VI. Can a Fee Be Charged for Services Provided Without Prior Approval? Section 453.5

This provision prohibits you from charging a fee to embalm unless:

(1) State or local law requires embalming; or

(2) The family gives you express permission to embalm prior to embalming; or

(3) You meet the following requirements if there are *exigent circumstances:*

(a) You are unable to contact a family member or other authorized person after exercising due diligence; *and*

(b) You have no reason to believe that the family does not want embalming; *and*

(c) After embalming the body, you contact the family telling them that if they choose a funeral which does not require embalming no fee will be charged, but that a fee will be charged if they select a funeral requiring embalming, and they then approve the embalming, either expressly or impliedly.

The Rule also requires you to place a written disclosure on the final bill or agreement given to customers informing them of their right not to pay for embalming performed without prior approval unless they select a type of funeral which would require embalming. Moreover, the disclosure must state that if a fee is charged for embalming, a written explanation will appear on the final bill or agreement given to the customer.

The exact language of the disclosure is:

> If you selected a funeral which requires embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.

Illustration #1: A family enters your establishment and wants to arrange for a funeral service for someone for whom the cause of death was smallpox. The law in your state provides that whenever the deceased has died of certain highly contagious diseases, such as diphtheria, malaria, or smallpox, the remains must be embalmed. Can you charge a fee for embalming?

Yes. The Rule clearly provides that a fee for embalming may be charged if state or local law requires embalming. In addition, you must explain to the consumer on the final bill or agreement that a charge was made for embalming because of the state law requirement.

Illustration #2: You get a telephone call requesting that you pick up a body and transfer it to your establishment. As soon as the body arrives, you embalm it even though there was no legal requirement to do so. Can you charge a fee for embalming?

No. You may not charge a fee for this service because you did not attempt to obtain the family's permission prior to embalming the body. In addition, state law did not require embalming.

Illustration #3: You get a telephone call requesting that you pick up a body at the deceased's home and transfer it to your establishment. While at the family's home you tell them that "we will proceed immediately with arrangements for the funeral." When the body arrives at the funeral home, you embalm it. There is no state law requiring embalming. Can a fee for embalming be charged to the family in such a circumstance?

No. The family has not given you express permission to embalm prior to embalming in this situation. The same result would be reached if you told the family that you were "taking the body to the funeral home and proceeding with its preparation". In order to charge a fee for embalming when you are able to contact a family prior to embalming you must obtain express permission to do so. The Rule is flexible so that the exact language to be used is up to you. However, the permission must be express; indirect or implied permission is not sufficient. Additionally, because you were able to contact the family prior to embalming, the provisions permitting you to embalm under exigent circumstances are inapplicable.

Illustration #4: A family enters your establishment and wants to arrange for a funeral for their relative. During the arrangements conference, you ask for and receive their consent to embalm the body. Can you charge a fee for embalming?

Yes. The family has given you express permission to embalm prior to embalming. On the final bill or agreement given to the family, you must explain that a fee for embalming was charged because the family approved the service.

Illustration #5: You receive a phone call requesting that you pick up a body and transfer it to your establishment. When the body arrives, you attempt to

contact a family member to make arrangements for disposition but are unable to do so. After exhausting all means known to you and failing to contact the family, you embalm the body. Thereafter, the family comes in to discuss arrangements. During the conference, you explain that if they select a funeral which does not require embalming, such as a direct burial or indirect cremation, no fee will be charged for embalming. You also inform them that a fee will be charged, however, if they select a funeral requiring embalming. The family then decides to select a traditional funeral with three days of viewing. Can you charge a fee for embalming?

Yes. Although you were unable to obtain prior permission to embalm the body, you were able to comply with the exigent circumstances exception to the Rule, enabling you to charge a fee for embalming under these circumstances. On the final bill you give to the family, you must explain that a fee is included for embalming because they chose a funeral which required embalming.

Illustration #8: Same facts as No. 5 above, but after you explain to the family that if they select a funeral which does not require embalming no fee will be charged for embalming, the family selects a direct cremation. Can you charge a fee for embalming?

No. You may not charge a fee for embalming because the family did not approve the embalming. This is true even though you already provided the service of embalming. By selecting a direct cremation, the family has impliedly informed you that they do not wish to pay for embalming. Because the Rule prohibits you from charging consumers for services which are not approved, you may not charge a fee for embalming.

Illustration #7: You are a funeral provider who seeks to obtain permission to embalm by telephone. When you contact the family, they ask you whether embalming is necessary. Does the Rule require you to inform the family or other authorized person that price information is available over the telephone?

Yes. The Rule requires funeral providers to inform consumers that price information is available by telephone when discussing the "terms, conditions, or prices" of funeral goods or services. When a funeral provider discusses whether embalming is necessary, they are discussing a "term, condition, or price" of a funeral service and must inform the person that price information is available. Unless the consumer asks about the price of embalming, the Rule does not require you to disclose the price. However, if the consumer asks about the price, then they are entitled to that information.

Illustration #8: You are a funeral provider who is removing a body from the place of death. At that time, you ask the family for permission to embalm the body. Does the Rule require you to offer a General Price List to the family at that time?

Yes. The Rule requires funeral providers to offer the general price list to consumers who inquire in person about "funeral arrangements". The requirement to comply with the Rule is not limited to arrangements made within the funeral home. If you offer to sell funeral goods or services outside of the funeral home, you must be prepared to comply with the Rule. In requesting permission to embalm, you are offering to sell a funeral service. Thus, a price list would need to be offered to the family.

Illustration #9: A person makes pre-need funeral arrangements in which the contract specifies that embalming is included. Must the family give permission to embalm at the time of death?

No. When a person, prior to death, pre-arranges a funeral including embalming, the funeral provider need not obtain permission from a family member or other authorized person at the time of death. This preauthorization is sufficient for the Commission's Rule. Its validity under state laws requiring authorization for embalming would, of course, be determined under those laws.

VII. Disclosures To Be Clear and Conspicuous: Section 453.7

The Commission has included a requirement in the Rule that the disclosures which funeral providers must furnish to consumers are to be made in a manner which is clear and conspicuous. The goal is to ensure that the information provided under the Rule will be presented in a manner readily discernible by consumers. Although no minimum type size is mandated, the disclosures must be legible, whether typewritten, handwritten, or printed. The standard simply requires that disclosures be made in a reasonably understandable form.

VIII. What Are the State Exemption Provisions of the Rule? Section 453.9

The Rule provides that it will not be in effect in a state to the extent specified by the Commission where:

(1) Application for an exemption is made by a state;

(2) There is a state requirement in effect which applies to any transaction to which the Rule applies; and

(3) The state requirement provides an overall level of protection which is as great as, or greater than, the protection afforded by the Rule.

If an exemption is granted, it shall be in effect only for so long as the state administers and enforces effectively the state requirement. During the exemption proceeding, the FTC Rule will remain in effect.

The Commission's staff has issued guidelines regarding procedures for exemption proceedings (49 FR 9743 (March 15, 1984)). Final guidelines and an Analysis of Public Comment were issued and published (50 FR 12521 (March 29, 1985)). The guidelines became effective on March 29, 1985.

Illustration #1: You are a funeral provider in a state which has a state requirement in effect which applies to the same transactions to which the Rule applies. The state requirement provides an overall level of protection which is as great as, or greater than the protection afforded by the Rule. Can you file a state exemption petition?

No. The Rule provides that applications for exemption be made by state governmental agencies. Therefore, funeral providers or trade associations may not file for statewide exemption.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

Alternative 1

ANY NAME FUNERAL HOME

100 Main Street

Yourtown, USA

(123) 456–7891

GENERAL PRICE LIST

(These Prices are Effective as of Month, Day, Year)

The goods and services shown below are those we can provide to our customers. *You may choose only those items you desire.* [However, any funeral arrangements you select will include a charge for our services.]* If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

* If a consumer may not decline a charge for the services of funeral director and staff this sentence must be included here. Please see the compliance guides for a further explanation.

This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected. [We charge you for our services in buying these items.]**

FORWARDING OF REMAINS TO ANOTHER FUNERAL HOME: $———

This charge includes:
- removal of remains
- services of staff
- necessary authorizations
- embalming
- local transportation (but not shipping charges)

RECEIVING OF REMAINS FROM ANOTHER FUNERAL HOME: $———

This charge includes:
- services of staff
- care of remains
- transportation of remains to cemetery of crematory

DIRECT CREMATIONS: $——— to $———

Our charge for a direct cremation (without ceremony) includes
- removal of remains and transportation to crematory
- cremations
- necessary services of staff and authorizations

If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without outside covering), or pouches of canvas.

1. Direct Cremation with container provided by purchaser. $———
2. Direct Cremation with alternative container. $———
3. Direct Cremation with unfinished pine box. $———

IMMEDIATE BURIALS: $——— to $———

Our charge for an immediate burial (without ceremony) includes:
- removal of body
- local transportation to cemetery
- necessary services of staff and authorizations.

1. Immediate burial with container provide by purchaser. $———
2. Immediate burial with unfinished pine box. $———
3. Immediate burial with beige cloth-covered soft wood casket with beige interior. $———

FUNERAL ARRANGEMENTS: $———

Transfer of Remains to Funeral Home (within 50 mile radius).

Embalming ..... $———

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay it, such as a direct cremation or immediate burial.

Other Preparation of Body .... $———

Use of Facilities for Viewing:
- Main Stateroom (per day). $———
- Smaller Stateroom (per day). $———

Use of Facilities for Funeral Ceremony:
- Chapel ..... $———
- Smaller Stateroom ..... $———

Other Use of Facilities: $———
Tent and chairs for graveside service.

Hearse ..... $———

Limousine ..... $———

Other Automotive Equipment:
- Flower car ..... $———
- Family car ..... $———

Acknowledgement Cards ..... $———

Caskets ..... $——— to $———

(A complete price list will be provided at the funeral home.)

Outer Burial Containers ..... $——— to $———

(A complete price list will be provided at the funeral home.)

Other:
- Pallbearers (6) ..... $———
- Burial clothing ..... $——— to $———

Services of Funeral Director and Staff. $———

Our charge includes arrangement of funeral and consultation with the family and clergy, direction of the visitation and funeral, preparation and filing of necessary notices, and authorizations and consents. This fee for our services will be added to the total cost of the funeral arrangements you select. (Such a fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)

ANY NAME FUNERAL HOME

CASKET PRICE LIST

(These prices are effective as of Month, Day, Year)

Simple Casket or Other Container:
1. Canvas Pouch ..... $———
2. Cardboard Box ..... $———
3. Plywood Box ..... $———
4. Composition Box ..... $———
5. Unfinished Pine Box ..... $———

Caskets:
1. Beige cloth-covered softwood with beige interior. $———
2. Taupe embossed cloth-covered softwood with pleated beige crepe interior. $———
3. 22 gauge bronze colored metal with white interior. $———
4. 22 gauge silver tone metal with blue crepe interior. $———
5. 20 gauge copper toned metal with mauve interior. $———
6. 20 gauge rose colored metal with pleated beige interior. $———
7. Oak stained soft-wood with pleated blue crepe interior. $———
8. Mahogany finished soft-wood with maroon crepe interior. $———
9. Solid white pine with beige crepe interior. $———
10. 20 gauge lead coated steel with bronze tone finish and white crepe interior. $———
11. 20 gauge lead coated steel with bronze tone finish and tan crepe interior. $———
12. 18 gauge steel with pale blue finish and off-white interior. $———
13. 10 gauge steel with bronze highlights and tan crepe interior. $———
14. Solid mahogany with tufted beige velvet interior. $———
15. Hand-finished solid cherry with pale blue velvet interior. $———
16. 18 gauge bronze finished with maroon velvet interior. $———

ANY NAME FUNERAL HOME

OUTER BURIAL CONTAINER PRICE LIST

(These prices are effective as of Month, Day, Year)

In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave

** This sentence should be omitted if the funeral director does not make a service charge or does not receive and retain a rebate, commission or trade or volume discount upon a cash advance item.

will not sink in. Either a burial vault or grave liner will satisfy these requirements.

Concrete Grave Liner..... $——
Standard Concrete Vault..... $——
Deluxe Asphalt Steel-lined Vault... $——
Solid Copper Vault..... $——

ANY NAME FUNERAL HOME
100 Main Street
Anytown, USA
(123) 456–7891

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below.

FUNERAL OF ——————
FORWARDING OF REMAINS TO ANOTHER FUNERAL HOME $——
This charge includes:
- removal of remains
- services of staff
- necessary authorizations
- embalming
- local transportation (but not shipping charges)

RECEIVING OF REMAINS FROM ANOTHER FUNERAL HOME $——
This charge includes:
- services of staff
- care of remains
- transportation of remains to cemetery or crematory.

DIRECT CREMATION (As selected) $——
This charge includes:
- removal of body
- necessary authorizations
- services of staff
- transportation to crematory
- cremation of body

TRANSFER OF REMAINS TO FUNERAL HOME $——
(——) miles transported)

IMMEDIATE BURIAL (As selected) $——
This charge includes:
- removal of body
- services of staff
- necessary authorizations
- local transportation to cemetery

EMBALMING $——
- If you selected a funeral which requires embalming, such as a funeral with viewing, you may have to pay for embalming.*
- You do not have to pay for embalming you did not approve if you selected arrangements such as direct cremation or immediate burial.*
- If we charged for embalming, we will explain why below.*

OTHER PREPARATION OF THE BODY $——
USE OF FACILITIES FOR VIEWING $——
USE OF FACILITIES FOR FUNERAL CEREMONY $——
OTHER USE OF FACILITIES $——
(The following facilities are included:
_____
_____
_____

HEARSE $——
LIMOUSINE(S) $——
——Limousines $——. $——
OTHER AUTOMOTIVE EQUIPMENT $——
(This price includes:
_____
_____
_____

ACKNOWLEDGEMENT CARDS $——
CASKET SELECTED $——
OTHER BURIAL CONTAINER $——
SERVICES OF FUNERAL DIRECTOR AND STAFF $——
Services include the following:
- arrangement of funeral and consultation with the family and clergy
- direction of the visitation and funeral
- preparation and filing of necessary notices, authorizations and consents

OTHER: $——
_____
_____
_____

CASH ADVANCE ITEMS:

- Organist and/or other music.. $——
- Hairdresser or barber..... $——
- Flowers..... $——
- Pallbearers..... $——
- Clergy Honoraria..... $——
- Obituary Notice..... $——
- Death Certificate..... $——
- Gratuities..... $——

Total..... $——
TOTAL COST FOR ARRANGEMENTS SELECTED. $——
FOR FUNERAL HOME:..... Date: ——
ARRANGED BY:..... Date: ——

LEGAL, CEMETERY OR CREMATORY REQUIREMENTS COMPELLING THE PURCHASE OF ANY ITEMS LISTED ABOVE:
1. ——————
2. ——————

*These statements are only required if the funeral provider chooses to use this statement as a contract or final bill.

Alternative 2

ANY NAME FUNERAL HOME
100 Main Street
Yourtown, USA
(123) 456–7891

GENERAL PRICE LIST

(These Prices are Effective as of Month, Day, Year)

The goods and services shown below are those we can provide to our customers. *You may choose only those items you desire.* However, any funeral arrangements you select with include a charge for our services.* If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected.

Forwarding of Remains to Another Funeral Home $——
This charge includes removal of remains, services of staff, necessary authorizations, embalming, and local transportation (but not shipping charges).

Receiving of Remains from Another Funeral Home $——
This charge includes services of staff, care of remains, and transportation of remains to crematory.

DIRECT CREMATIONS: $—— to $——
Our charge for a direct cremation (without ceremony) includes:
- removal of remains and transportation to crematory
- cremations
- necessary services of staff and authorizations

If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without outside covering), or pouches of canvas.

1. Direct Cremation with container provided by purchaser. $——
2. Direct Cremation with alternative container. $——

* If a consumer may not decline a charge for the services of funeral director and staff this sentence must be included here. Please see the compliance guides for a further explanation.

3. Direct Cremation with unfinished pine box. $——

IMMEDIATE BURIALS: $—— to $——

Our charge for an immediate burial (without ceremony) includes:

- removal of body
- local transportation to cemetery
- necessary services of staff and authorizations

1. Immediate burial with container provided by purchaser. $——
2. Immediate burial with unfinished pine box. $——
3. Immediate burial with beige cloth-covered soft wood casket with beige interior. $——

FUNERAL ARRANGEMENTS

Transfer of Remains to Funeral Home (within 50-mile radius). $——

Embalming $——

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as a direct cremation or immediate burial.

Other Preparation of Body $——

Use of Facilities for Viewing:

Main Stateroom (per day). $——
Smaller Stateroom (per day). $——

Use of Facilities for Funeral Ceremony:

Chapel $——
Smaller Stateroom $——

Other Use of Facilities: Tent and chairs for graveside service. $——

Hearse $——

Limousine $——

Other Automotive Equipment:

Flower car $——
Family car $——

Acknowledgement Cards $——

Caskets: Please note that a fee for the use of our services is included in the price of our caskets. Our services include arrangement of funeral and consultation with the family and clergy, direction of the visitation and funeral, preparation and filing of necessary notices, and authorizations and consents.

1. Beige cloth-covered soft-wood with beige interior. $——
2. Taupe embossed cloth-covered soft-wood with pleated beige crepe interior. $——
3. 22 gauge bronze colored metal with white interior. $——
4. 22 gauge silver toned metal with blue crepe interior. $——
5. 20 gauge copper toned metal with mauve interior. $——
6. 20 gauge rose colored metal with beige pleated interior. $——
7. Oak stained soft-wood with pleated blue interior. $——
8. Mahogany finished soft-wood with maroon crepe interior. $——
9. Solid white pine with beige crepe interior. $——
10. 20 gauge lead coated steel with silver tone finish and white crepe interior. $——
11. 20 gauge lead coated steel with bronze tone finish and tan crepe interior. $——
12. 18 gauge steel with pale blue finish and off-white interior. $——
13. 18 gauge steel with bronze highlights and tan crepe interior. $——
14. Solid mahogany with tufted beige velvet interior. $——
15. Hand-finished solid cherry with pale blue velvet interior. $——
16. 16 gauge bronze finished with maroon velvet interior. $——

Outer Burial Containers: In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements.

1. Concrete grave liner $——
2. Standard concrete vault $——
3. Deluxe asphalt steel-lined vault. $——
4. Solid copper vault $——

Other:

Pallbearers (6) $——
Burial clothing $——

[FR Doc. 16151 Filed 7-8-85; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Analysis of Public Comments Received on Staff Compliance Guidelines.

SUMMARY: The staff of the Federal Trade Commission publishes its analysis of the public comments received in response to its request for comment on the staff compliance guidelines for the Funeral Rule. This notice summarizes and analyzes the issues raised by the twenty commenters and notes those parts of the guidelines which have been amended, supplemented, or otherwise changed in response to the comments. The revised compliance guidelines are published in a separate notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lewis Rose, 202–376–2892; Raouf M. Abdullah, 202–376–2891; or Lee J. Plave, 202–376–2805; Attorneys, Federal Trade Commission, Division of Enforcement, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On March 14, 1984, the staff published its compliance guidelines for the entire Funeral Rule in the **Federal Register** for a 30 day public comment period.[1] The guidelines explain how the Rule operates in specific fact situations which may arise in the ordinary course of business for many funeral providers. In addition, the guidelines contain staff's model price lists illustrating the price list requirements of the Rule. The views expressed in the guidelines are those of the staff only. They have not been approved or adopted by the Commission and are not binding on the Commission. However, the guidelines will serve as enforcement criteria for the staff in assessing compliance with the trade regulation rule.

The comment period ended on April 13, 1984. This notice summarizes and analyses the issues raised by the twenty commenters, and notes those parts of the guidelines which have been amended, supplemented or otherwise changed in response to the comments.

Twenty interested parties filed comments.[2] Five of the commentors either addressed issues that are not directly relevant to the request for public comment or suggested substantive amendments or modifications to the Funeral Rule, which go beyond the scope of this inquiry. These comments include opinions regarding the merits of itemized pricing relative to package pricing[3], requests for inclusion of minimum embalming standards in the Rule[4], requests for change in nomenclature used by the Rule[5] and a request to include a disclosure in the Rule about sealed caskets.[6] The remaining fifteen

[1] 49 FR 9666 (March 14, 1984).

[2] The comments have been placed in the public record for this proceeding under Category XXVII (Staff Submissions and Public Comments Filed Regarding Staff Compliance Guidelines) in FTC File No. 215–46. The comments have been labelled Document Nos. XXVII–11 through XXVII–30 respectively.

[3] James H. Pierce, XXII–12 (Funeral directors using itemized pricing could take advantage of consumers under emotional stress and therefore unit pricing is a better system).

[4] Kosol, Kave Koold Kabinet Supply Internationale, XXVII–14 (Bodies being held by embalming process should not be allowed to deteriorate for 30 days).

[5] Baumgardner Products Company, XXVII–13; and The Clark Grave Vault Co., XXVII–16; suggested that the term "outer burial container" be changed to "Outside Enclosure" or "Outer Receptacle".

[6] E.G. McCabe, Jr., XXVII–17 (Rule should be amended to in form consumers that sealed caskets prevent water from the body from leaving the casket).

comments are responsive to the request for public comment. This memorandum will discuss each of the issues raised (by subject matter), present staff's analysis of the issue, and discuss the changes, if any, in the compliance guidelines as a result of the comment.

As discussed below, staff has modified the guidelines in response to the comments. We charged 2 illustrations, supplemented responses to 15 illustrations, added 27 illustrations, and changed words in several additional places to provide further clarification. The headings of the sections of this notice have been numbered to parallel the format of the guidelines.

II. *Who Must Comply With the Rule?*

A. Generally

Four comments concerned the quidelines' discussion of the scope and coverage of the Rule.[7] NFDA suggested that the discussion of the definition of a "funeral provider" should be modified to point out that persons who offer to sell funeral goods and services are funeral providers regardless of whether or not an actual sale is made.[8] Staff agrees. Sections 453.1 (i) and (j) of the Rule include persons who offer to sell goods and services in the definition of funeral provider. The guidelines have been modified accordingly.

Two groups commented on illustration #2. This illustration states that persons who separately incorporate their business of providing funeral goods and their business of providing funeral services are funeral providers and must comply with the Rule. NFDA agreed that such persons are funeral providers. They suggested that the guidelines be changed to explain that a funeral provider is a person who controls either through ownership or management or both, the sale of funeral goods and services.[9] PIAA commented that the guidelines should state that the reason such a person is covered is that the intentional structuring or restructuring or a sales program in order to avoid the Rule will not be considered effective.[10] Both comments request that we state a reason for the staff's position in the guidelines while agreeing that the position is correct. We believe that the intent of the illustration is to inform funeral providers that staff will look beyond the corporate or other form of a potential respondent to determine whether a person is a funeral provider, as defined by the Rule. Therefore, staff has added a sentence to illustration #2 to clarify our intent.

Two parties commented on illustration #7.[11] This illustration states that a cemetery which also operates a funeral home is covered by the Rule. NFDA said that the illustration should be modified to include agents or employees of such combinations when they are selling only cemetery goods to consumers. SCI commented that the Rule does not cover the cemetery operations of a cemetery/mortuary combination. Cemetery/mortuary combinations are covered by the Rule because they offer to sell funeral goods and services. Staff does not believe, however, that the Commission intended the Rule to require such combinations to provide price lists to consumers who only want to purchase cemetery goods, such as headstones, from the cemetery and do not inquire about funeral arrangements or the prices of funeral goods and services. Therefore, staff has supplemented illustration #7 to clarify this issue.

PIAA commented on illustration #9 which discusses the applicability of the Rule to direct disposition companies.[12] PIAA suggested that the illustration use alternative containers as an example of a funeral good. Staff has, therefore, added the term "alternative container" to the illustration.

Two parties commented on the applicability of the Rule to crematories. Specifically, PIAA commented, in response to illustration #10, that crematories do not generally provide services to care for and prepare human bodies for final disposition.[13] According to PIAA, however, the cremation process itself is a service prior to the final disposition of the cremated remains. PIAA concludes, therefore, that crematories are funeral providers. CAFMS stated, in response to illustration #8, that crematories always are funeral providers because they always perform a funeral service when they cremate the body.[14] After careful consideration, staff remains unpersuaded by either comment. Staff believes that the cremation process itself is the final disposition because the definition of "funeral services" in the Rule appears to equate cremation with the final disposition and therefore requires an additional act (to prepare or care for) to satisfy the definition of funeral provider. Thus, PIAA's position that crematories which only perform the final disposition are funeral providers is not supported by the Rule. To be covered by the Rule, the crematory must provide care or preparation of the body before the cremation process. We have therefore decided not to modify the guidelines.

B. Pre-Need Contracts Negotiated After the Effective Date of the Rule.

Three interested parties filed comments regarding the Rule's application to pre-need funeral arrangements. Two commenters argued that the Rule does not apply to the sale of funerals on a pre-need basis.[15] In support of their contention, the commenters argue that: (1) During the rulemaking proceeding, the Presiding Officer and BCP staff acknowledged that the application of the Funeral Rule to pre-need arrangements could be difficult and problems could arise in both interpretation and enforcement; (2) the merchandise selected by the consumer may not be available at the time of use; (3) pre-need offerings are usually sold on a package basis; (4) state laws adequately regulate pre-need funerals; and (5) pre-need arrangements may not constitute a "sale " of funeral goods and services.

Staff notes that similar comments were made during the rulemaking proceeding. In particular, during the initial comment period following the Commission's January 22, 1981, Federal Register notice,[16] it was argued that the Rule should not apply to pre-need purchases.[17] The Commission did not modify the Rule in response to these comments. Therefore, we do not believe that it is appropriate for staff to limit the scope of the Rule's coverage to at-need funeral arrangements in the compliance guidelines. Thus, we have not modified the guidelines in response to these PIAA and FSP comments.

C. Pre-Need Contracts Negotiated Prior to Effective Date of Rule

NFDA commented that the introductory explanation to this section of the guidelines refers to the effective date of the Rule without identifying the specific date.[18] Because the Rule became

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[7] National Funeral Directors Association ("NFDA"), XXVII–28; Pre-Arrangement Interment Association of America ("PIAA"), XXVII–28; Continental Association of Funeral and Memorial Societies ("CAFMS"), XXVII–27; and Funeral Security Plans, XXVII–28.

[8] NFDA, XXVII–29, Comment Nos. 1 and 2.

[9] NFDA, XXVII–29 Comment No. 3.

[10] PIAA, XXVII–25 Point No. 1.

[11] NFDA, XXVII–29, Comment No. 4; SCI, XXVII–30, Comment No. 3.

[12] PIAA, XXVII–25, Point 3.

[13] PIAA, XXVII–25, Point 4.

[14] CAFMS, XXVII–27, p. 5.

[15] PIAA, XXVII–25 Introduction; Funeral Security Plans ("FSP"), XXVII–28.

[16] 46 FR 6676 (Jan. 22, 1981).

[17] *See*, staff memorandum to Commission dated June 26, 1981, at p. 11.

[18] NFDA, XXVII–29, Comment No. 7.

effective on two different dates, staff believes that including the effective dates in the guides at this place may be helpful.

Illustration #2: NFDA commented that the Rule would apply to contracts negotiated prior to the effective date of the Rule if the contract is downgraded or otherwise modified.[19] Because the illustration as published was directed only to those circumstances where the consumer wants to upgrade the arrangements specified in the contract, staff has modified the illustration to point out that the Rule applies when a consumer wants to change the funeral arrangements specified in a pre-need contract.

III. What Price Disclosures Must Be Made? Section 453.2

B. Price Disclosures Over the Telephone: Section 453.2(b)(1)

Three parties filed comments on the guidelines discussion of the telephone price disclosure provisions of the Rule.[20] The comments addressed the following illustrations:

(a) *Illustration #2:* Two commenters addressed the issue of whether telephone inquiries regarding whether a funeral provider performs funerals for a particular religion triggers the requirement of § 453.2(b)(1) to inform the caller that price information is available by telephone. NFDA commented that reference to a funeral of a particular religious denomination is not a "term, condition, or price" of funeral goods or services.[21] Further, NFDA pointed out that the guidelines conflict with comments made by staff at state compliance seminars. CAFMS endorsed staff's position that the price information disclosure is triggered by inquiries about funerals for a particular religion.[22] After careful reconsideration, staff believes that the position set forth in the guidelines should be changed. Staff agrees that inquiries about particular religious funerals do not constitute the "terms, conditions, or prices" at which funeral goods or services are offered. Thus, the funeral provider is not obligated to inform the caller that price information is available. However, because the information requested concerns the funeral provider's *offerings* and would be readily available, the funeral provider is required by § 453.2(b)(1)(ii) of the Rule to answer the specific question. This approach is more consistent with respect to telephone inquiries which do not concern specific funeral goods and services or prices. Under the amended guidelines, such questions do not trigger the disclosure of price information but still are required to be answered because the information is readily available. The guidelines have been modified, accordingly.

(b) *Illustration #3:* NFDA suggested that the answer to this illustration be expanded to inform funeral providers that questions concerning particular employees, the location of the funeral home, or similar questions dealing with the operation of the funeral home do not trigger the requirement to inform callers that price information is available because they are not about the "terms, conditions, or prices" of funeral goods or services.[23] In addition, NFDA commented that the last sentence in illustration #3 which states that questions about business hours should be answered because the information requested is readily available should be deleted because the Rule does not require any affirmative disclosures in the situation presented. Staff agrees. Questions concerning the location of the funeral home or about particular employees do not trigger the requirement to inform callers that price information is available. Similarly, these questions do not concern offerings or prices and therefore, the funeral provider is not required by the Rule to respond to such inquiries. Staff anticipates though that such questions would normally be answered voluntarily. The guidelines have been changed accordingly.

(c) *Illustration #4:* NFDA commented that this illustration should be split into two illustrations because it makes two points—that an answering machine may be used to register incoming calls and that such a machine may also be used to disclose price information.[24] While staff agrees with NFDA's interpretation of this illustration, we do not believe that it is necessary to alter the guidelines.

(d) *Illustration #6:* CAFMS disagrees with the statement in the guidelines that the availability of price information need not be disclosed in response to a telephone request to pick up a body from the place of death and transfer it to the funeral establishment.[25] CAFMS argues that by requesting such a service, the family is discussing a "term or condition" of a funeral, thereby triggering the Rule's requirement to inform callers that price information is available. After careful consideration, staff is persuaded that inquiring whether a funeral establishment will pick up a body is an inquiry regarding a "term" or "condition" of funeral arrangements. First, inquiring whether the funeral provider will pick up a body is an inquiry about a specific funeral service which is required to be itemized on the General Price List by § 453.2(b)(4) of the Rule. In addition, the Commission noted in the Statement of Basis and Purpose ("SBP") that the time constraints in arranging a funeral after a death has occurred make it difficult for consumers to get price information before choosing a funeral home.[26]

Additionally, because the initial inquiry as to whether a funeral provider will pick up the body from the place of death necessarily must occur within several hours after death, the gathering of price information by telephone may often constitute the only practical way in which price information can be obtained before a funeral provider is selected. Furthermore, the Commission noted that § 453.2(b)(1)(i) is intended to inform the large number of consumers who first contact the funeral home by telephone that price information can be obtained before the selection of a funeral home is made.[27] Therefore, staff believes that the caller is entitled to be informed that price information is available. If the family desired, they could then ask for the price of the service. Therefore, staff has changed illustration #6.

(e) *Illustration #7:* NFDA requested that illustration #7 be clarified by adding two sentences stating that when a funeral director is not available, the person answering the phone should be able to answer questions about prices from the three price lists but that desired information not available on the three price lists may be subject to the availability of a funeral director or other person reasonably able to answer other questions.[28] Staff agrees with the suggestion substantively but believes that the points raised by NFDA are clearly discussed in the guidelines and that changing the language might cause confusion. For example, the guides clearly state that if a funeral director is unavailable, part-time or untrained employees should inform the caller that price information is available and answer specific questions about prices from the preprinted lists. The guidelines further state that if there are questions which cannot be properly answered by

[19] NFDA, XXVII–29, Comment No. 8.
[20] PIAA, XXVII–25; CAFMS, XXVII–27; and NFDA, XXVII–29.
[21] NFDA, XXVII–29, Comment No. 10.
[22] CAFMS, XXVII–27, at p. 1.
[23] NFDA, XXVII–29, Comment Nos. 11, and 12.
[24] NFDA, XXVII–29, Comment No. 13.
[25] CAFMS, XXVII–27, at p. 1.
[26] 47 FR 42260, 42288 (Sep. 24, 1982).
[27] SBP, at 42273.
[28] NFDA, XXVII–29, Comment No. 14.

referring to the price lists, it is permissible to take a message and have a funeral director call the consumer later. Therefore, staff has not modified this illustration.

(f) *Illustration #8:* PIAA suggested that the guidelines should be changed to state that while the Rule does not require a funeral provider to provide price information to pre-need shoppers during non-business hours, such information may be disclosed if desired by funeral providers.[30] Staff does not disagree with the comment. However, funeral providers are always free to disclose price information. The issue is whether price disclosure is required by the Rule in specific circumstances. The Rule does not, in staff's opinion, require the disclosure of price information to any shoppers during non-business hours unless it is the policy of the funeral provider to make funeral arrangements during such hours. Therefore, this illustration has not been amended.

(g) *Illustration #9:* NFDA commented on this illustration and suggested that the guidelines be amended to state that telephone answering services which are used during business hours are not required to make price disclosures.[30] Staffs agrees. Many small volume funeral providers use telephone answering services to receive telephone calls and take messages when the funeral provider is unavailable. These answering services generally are independently operated and may serve many varied businesses. Staff does not believe that the Rule was intended to require that such services become experts on the components of a funeral, including prices. Therefore, staff has extended this illustration to exempt independent telephone answering services that simply take messages from complying with the Rule, regardless of whether the service is used during business or nonbusiness hours.

(h) *New Illustration #10:* NFDA requested that an illustration be inserted into the guidelines concerning a funeral provider's responsibility to provide price information over the telephone when the provider is making funeral arrangements with a family and no other employee is available.[31] NFDA suggested that the guidelines distinguish between pre-need and at-need situations, in a manner similar to illustration #8. Thus, in the situation described, a pre-need shopper would be informed that the call would be returned. However, under NFDA's approach, at-need price inquiries would be answered. Staff agrees in part. In staff's opinion, the Rule should not be interpreted to require funeral providers to disrupt arrangement conferences to respond to telephone inquiries, either at-need or pre-need. Therefore, this illustration states that in this situation, funeral providers may simply take a message and return the call.

C. Price Disclosure for Caskets: Section 453.2(b)(2)

Seven parties filed comments regarding the guidelines discussion of the Casket Price List requirements of the Rule.[32]

(a) *Illustration # 1:* Three parties commented regarding staff's opinion that use of a serial number of a casket is sufficient to identify the offering, as required by § 453.2(b)(2) of the Rule. NFDA stated that the use of a manufacturer's name and serial number as the sole description for a casket or container is not sufficient information to satisfy the Rule's requirements.[33] Similarly, NFDA commented that the use of a manufacturer's name and trademark would not suffice. CAFMS noted that allowing a funeral provider to develop a price list that includes no identifying information other than a model number is the equivalent of having no information at all.[34] William C. Klien, a member of the New York State Funeral Service Advisory Board, commented that neither a photograph alone, a model number alone, nor a description alone is enough to permit the consumer to verify that the casket provided is the casket purchased.[35] In light of these comments, staff has revised the illustration.

(b) *Illustration #3:* CAFMS suggested that this illustration be clarified by defining the term "special ordering" and suggested "procuring for a customer a casket not regularly offered by the funeral establishment" as a possible definition.[36] Staff agrees that it would be helpful to funeral providers if the guidelines defined "special ordering". The guidelines incorporate the definition proposed by CAFMS into illustration #3, with the additional factor that the casket must not be in inventory.

(c) *Illustration #5:* Five parties commented on Casket Price Lists for manufacturer's or supplier's casket showrooms.[37] The comments request additional guidance on how casket companies may be affected by the Rule. Several casket companies maintain casket selection rooms for the convenience of their funeral director customers. The inventory in these showrooms is subject to constant change. Funeral directors who, for a variety of reasons, elect not to maintain their own casket selection showrooms use showrooms maintained and stocked by a casket manufacturer or distributor. After the funeral director makes the funeral arrangements with the family, they are transported to the casket showroom. The issues raised concern the particular problems faced by funeral directors who use these showrooms. It is staff's understanding that many casket manufacturers and distributors are preparing a single Casket Price List for all of the funeral providers in their area.[38] Other funeral providers may be preparing their own Casket Price Lists to comply with the Rule. In either case, the comments raised the following issues for discussion in the guidelines.

First, CMAA and the Bridge Casket Company request guidance on when and by whom the Casket Price List should be offered to consumers.[39] CMAA proposes that if a funeral provider accompanies a family to the casket company selection room, the price list should be offered to the family before they enter the selection room. If, however, the funeral provider does not accompany the family, CMAA recommends that the provider make the price lists available to the family upon departure from the funeral provider's establishment to the casket company. Staff agrees with CMAA's recommendations. Casket manufacturers generally do not sell or offer to sell funeral services and therefore are not funeral providers.[40] The obligation to prepare and present a Casket Price List rests with funeral providers. Therefore, in the context of a casket company showroom, the funeral provider must present the Casket Price

[30] PIAA, XXVII–25, Point 6.
[31] NFDA, XXVII–29, Comment No. 15.
[32] NFDA, XXVII–29, Comment No. 16.
[33] Bridge Casket Company, XXVII–13; William C. Klien, XXVII–20; McCullough Funeral Home, XXVII–23; Casket Manufacturers Association of America ("CMAA"), XXVII–24; PIAA, XXVII–25; CAFMS, XXVII–27; and NFDA, XXVII–29.
[34] NFDA, XXVII–29, Comment No. 17.
[35] CAFMS, XXVII–27, at p. 2.
[36] William C. Klein, XXVII–20, at p. 1.
[37] CAFMS, XXVII–27, at p. 2.
[38] Bridge Casket Company, XXVII–13; McCullough Funeral Home, XXVII–23; CMAA, XXVII–24; CAFMS, XXVII–27, at p. 2; and NFDA, XXVII–29, Comment No. 16. NFDA simply noted that the illustration as published was correct, that the casket manufacturer takes the number of caskets on display into consideration when developing a price schedule, and that the casket price list would not be so voluminous that the consumer would not use it.
[39] Because the guidelines are designed only to provide staff's opinion on compliance with the Funeral Rule, we have not expressed any opinion on whether a manufacturer preparing a single price list for all of their funeral provider customers would violate any other law.
[40] CMAA, XXVII–24; and Bridge Casket Company, XXVII–13.
[41] See illustration #5 at Part IIA of the Guidelines.

List upon beginning discussion of, but in any event before the customer is shown the offerings. Thus, if the family and funeral provider begin discussion of casket offerings at the funeral home, the price list must be offered at that time. Otherwise, the funeral provider must offer it at any time prior to the family being shown the offerings. However, funeral providers can make arrangements with casket manufacturers to give out the Casket Price List as long as the consumer is offered the list upon beginning discussion of, but in any event before being shown the offerings. Illustration #5 has been supplemented with this additional guidance.

The second issue raised by CMAA concerns retention of documents.[41] Specifically, CMAA inquires whether casket companies are required to retain price lists for their various funeral director customers who use the casket company selection room. CMAA also asks whether a casket company could be liable in the event that a casket company does not retain price lists and the funeral provider has not offered its clients the Casket Price List, in violation of the Rule. As noted above, casket companies are normally not covered by the Rule because they do not meet the definition of a funeral provider. However, as the Commission stated in the SBP accompanying the Rule, the Rule does cover a funeral provider's employees and agents. In response to CMAA's request, the guidelines note that the general rule is that only funeral providers are required to comply with the Rule. This point is explicitly stated in amended illustration #5. However, it is staff's opinion that either the casket company or the funeral provider could satisfy the Rule's document retention requirements.

Third, CMAA also requests guidance regarding "customized" caskets.[42] For example, the caskets available in the selection room are often available in different interior materials and designs, exterior hardware, and finishes. CMAA notes that it would be impossible to list the hundreds or thousands of potential combinations on any Casket Price List and states that many casket company selection rooms have the ability to meet such consumer requests. CMAA recommends that any consumer request for a customized casket be excluded from any of the price list requirements. Staff agrees that such requests are "special orders" which do not have to be listed. Section 453.2(b)(2) requires the Casket Price List to contain only those caskets which do not require "special ordering". If a funeral provider offers caskets for sale which may be available in a variety of options, staff believes that it would be sufficient to simply note on the price list that the caskets are available in a variety of interior materials and designs, exterior hardware, and finishes. After a customer completed the arrangements, the Statement of Funeral Goods and Services Selected would describe the casket and its price and the intent of the Rule would be satisfied. Accordingly, illustration #9 has been added to the guidelines on this issue.

Finally, CMAA, Bridge Casket Company, and McCullough Funeral Home commented on the number of caskets that need to be listed on the Casket Price List.[43] CMAA and Bridge Casket Company requested guidance on whether caskets stored in the warehouse need to be included on the Casket Price List in addition to the caskets in the selection room. The warehouse inventory may include hundreds of different caskets. The normal practice is for a casket company casket showroom to contain approximately 20 caskets. However, if a consumer could not find the particular casket desired in the showroom, the consumer would be allowed to select a casket that meets the consumer's needs from the warehouse. CMAA proposes that only the caskets available for sale in the casket selection showroom be disclosed on the Casket Price List. Other caskets, available in the warehouse, would be deemed "special orders". While staff recognizes the problem presented, we disagree with CMAA's proposed solution. The Rule requires all caskets offered which do not require special orderings to be included on the Casket Price List. This provision was inserted in the Rule in response to public comments and industry objection to an earlier version of the Rule which required that the three least expensive caskets be shown in the same manner as other caskets offered for sale. This proposed provision was originally included in the Rule in response to reports that funeral providers were discouraging purchase of such merchandise by all but the most persistant customers.[44] However, the Commission concluded that a less intrusive method of informing consumers about these offerings was available by requiring "full information about a funeral provider's offerings and prices to be disclosed on . . . a Casket Price List." [45] The Commission noted that such disclosures would let consumers know what merchandise and services the funeral providers sell, including the three least expensive caskets.[46] Thus, staff is concerned that if CMAA's proposal were adopted, funeral providers may put their less expensive offerings in the warehouse (which in many cases, is through a door in the showroom) and therefore be able to circumvent the intent of this Rule provision. It is staff's opinion that in the context of casket company showrooms, the caskets listed would generally be limited to those in the showroom. However, if a funeral provider elects to offer any or all of the caskets in the warehouse for sale, then these caskets must be listed on the price list. Under this approach, the number of caskets included on the price list, and the corresponding burden imposed, if any, would be controlled by the funeral provider.

(d) *Illustration #6:* CMAA and the Bridge Casket Company request guidance on how the Rule would apply when a casket described on a funeral provider's Casket Price List is temporarily out of stock and another unit, not on the funeral provider's Casket Price List, may have been substituted.[47] This issue is discussed in illustration #6, which states that if a casket is temporarily out of stock, the funeral provider can simply inform the consumer of this fact when the price list is given to the consumer.

In the context of a manufacturer's selection room, the consumer can simply

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[41] CMAA, XXVII–24

[42] *Id.*

[43] CMAA, XXVII–24; Bridge Casket Company XXVII–13; and McCullough Funeral Home, XXVII–23. McCullough Funeral Home commented that his casket supplier has notified him that the casket showroom will be closed due to the Funeral Rule. Specifically, the casket supplier stated his opinion that under the Rule, he can no longer have a showroom unless each unit is itemized on a casket price list, including those units in the warehouse as well as in the showroom. Rather than list the units in the warehouse, the supplier has decided to shut the casket showroom. In staff's opinion, the casket supplier has misunderstood the Rule. As noted above, only funeral providers are obligated to comply with the Rule. Thus, the casket supplier is under no obligation to prepare a casket price list. Under the Rule, however, Mr. McCullough, as a funeral provider, must present his customers with a casket price list when the subject of casket selection is raised. As noted above, it is staff's opinion that in the context of a casket supplier's showroom, the caskets listed need only be those in the showroom. However, if the funeral provider elects to offer the caskets in the warehouse for sale, then he must list them on the price list. Staff has notified the McCullough Funeral Home of our view that they misunderstood this requirement of the Rule.

[44] Statement of Basis and Purpose, (SBP) 47 FR 42260, at 42290 (September 24, 1982).

[45] *Id.*

[46] *Id.*

[47] CMAA, XXVII–24; and Bridge Casket Company, XXVII–13.

be notified upon arrival of the selections that have been changed. Indeed, in its comment CMAA proposes that the guidelines permit casket companies that maintain selection rooms for the use of their funeral director customers to give either the funeral director or the consumer a description of caskets and prices for those units which have been changed. CMAA further recommends that this additional information not be required to have an effective date or the name of the funeral home on it, as required by § 453.2(b)(2) of the Rule, to avoid preparing dozens of such descriptions for a casket company's many different funeral director clients. Finally, CMAA proposes that the Casket Price Lists of these funeral providers include a statement explaining that the provider uses a selection room sponsored by "Any Name" casket company that is used by other funeral providers which may result in some units being temporarily out of stock. The statement would further notify the consumer that a description of the substitute units will be available at the selection room.

After careful consideration, staff believes that the solution proposed by CMAA is appropriate. Accordingly, illustration #6 in this section of the guidelines has been amended to allow the use of a supplemental description of the units that have been either added or deleted. In addition, the guidelines note that this supplemental description need not have the funeral provider's name or effective date on it. However, staff does not believe the disclosure statement recommended by CMAA is required to appear on the Casket Price List since the Rule does not require such a statement.

(c) *Additional illustrations:* NFDA has requested that two additional illustrations be inserted regarding caskets sold in pre-need sales that are unavailable at the time of death.[48] Staff agrees that these suggestions are proper and should be added. Illustration #10 states staff's opinion that caskets maintained as inventory solely to fulfill contractual obligations and not available as a general offering need not be included on the Casket Price List. Illustration #11 states staff's opinion that if a specific casket subject to a pre-need contract is unavailable at time of death, and the contract states that a funeral provider may supply a casket of similar quality, the Rule does not require that the family be presented with a Casket Price List.

[48] NFDA, XXVIII–29, Comment Nos. 5 and 6.

D. Price Disclosures for Outer Burial Containers: Section 453.2(b)(3)

Many of the comments concerning casket prices in the previous section are applicable to outer burial containers also. Thus, where appropriate, the outer burial container price disclosure provisions of the guidelines have been changed to parallel the casket price disclosure provisions. Specifically, illustration #6 has been added to provide guidance to funeral providers who use a manufacturer's or supplier's showroom for outer burial containers. For the reasons discussed in detail above, this illustration states that: (1) Funeral providers are required to prepare price lists for the outer burial container offerings provided to their customers; (2) the items listed would generally be limited to those in the showroom unless the provider elects to offer items in warehouse for sale; and (3) the list should be offered by the funeral provider to the consumer upon beginning discussion of, but in any event before the consumer is shown the offerings.

E. Price Disclosure for Funeral Goods and Services: Section 453.2(b)(4)

Four parties filed comments regarding the General Price List requirements of the Rule.[49]

(1) Itemization

Service Corporation International ("SCI") commented on the general discussion within the guidelines concerning the itemized price lists.[50] SCI's comment was specifically directed at that part of the guidelines which stated that in addition to itemizing the prices for the seventeen items listed in § 453.2(b)(4), funeral providers "must also itemize prices for other goods and services [they] offer."[51] SCI suggests that staff's interpretation of § 453.2(b)(4) is "improper and should be reconsidered."[52] SCI comments that the Rule requires the itemization of *only* the enumerated items listed in § 453.2(b)(4). After careful consideration, staff agrees.

In support of its comment, SCI makes the following arguments. First, SCI states that § 453.2(b)(4)(ii) of the Rule provides that the General Price List must include "retail prices" and "other information . . . for *at least* each of the following items, if offered for sale."[53] The Rule then lists seventeen specific funeral goods and services that are to be included.[54] SCI believes that this provision *requires* price itemization for only the basic goods and services enumerated in the Rule and *permits* the funeral provider to offer additional information about other goods and services at the discretion of the funeral provider.[55] According to SCI, this view is consistent with the plain language of the Rule which mandates a separate listing "for at least each" of the enumerated items. Under this interpretation, the Rule sets a required minimum level of disclosure; funeral providers are free to transcend the "at least" level if they so desire.

Second, SCI argues that several statements in the SBP support their position. According to SCI, the SBP "envisions a scheme under which the primary function of the General Price List is to ensure that funeral consumers receive price information on a set group of basic goods and services."[56] In particular, SCI points to a sentence in the SBP that the list was designed to show consumers "the prices for 1[7] basic goods and services which they might wish to use."[57] In addition, SCI cites footnote 129 in the SBP which states: "[T]he Rule *does not prohibit* listing other items which the funeral provider might offer for sale in addition to those specified."[58]

Finally, SCI argues that requiring funeral providers to list the retail price of every item offered would be enormously burdensome and of questionable benefit to the funeral consumer.[59] In particular, SCI states that listing the prices for these additional goods and services would be impractical because they inherently are not susceptible to informative itemization. For example, SCI points out that many funeral providers regularly offer burial clothing, flowers, and urns. According to SCI, if these were to be listed on an itemized basis on the General Price List, the potential listings would be enormous and subject to continuous change on short notice. This would impose a substantial cost to compile and update these lists. Moreover, according to SCI, a list of floral arrangements or clothing alone would dwarf the remainder of the General Price List, making it likely that fewer customers would read it.

[49] Guardian Funeral Homes, XXVII–11; William C. Klein, XXVII–20; CAFMS, XXVII–27; NFDA, XXVII–28; and SCI, XXVII–30.

[50] SCI, XXVII–30, Comment No. 1, at pp. 2–7.

[51] 49 FR at 9682.

[52] SCI, XXVII–30, at p. 7.

[53] SCI, XXVII–30, at p. 3.

[54] *Id.*

[55] *Id.*

[56] *Id.*, at p. 4.

[57] SBP, at 42272.

[58] Supra, note 56, at p. 4 (emphasis added).

[59] *Id.*, at p. 6.

On the other hand, there are a number of policy arguments to be made in support of the interpretation that the Rule requires itemization of every good or service offered for sale. First, in issuing the Rule, the Commission found that:

> [I]t is an unfair and deceptive act or practice for a funeral provider to fail to furnish price information disclosing the cost to the purchaser for *each* of the specific funeral goods and funeral services used in connection with the disposition of dead human bodies, *including at least* the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations . . . ." [60]

One can argue that this language supports the conclusion that the Commission intended that funeral providers itemize the prices for *all* funeral goods and services offered, not just the specifically noted items.

Second, in the SBP, the Commission stated that the aim of the Rule was "to lower existing barriers to price competition and to facilitate informed consumer choice." [61] The Commission also noted that a specific goal of the Rule was to facilitate comparison shopping by consumers.[62]

The Commission found that the failure of funeral providers to provide price information resulted in unavoidable and substantial economic injury to consumers who paid supracompetitive prices for the items they purchased.[63] The Commission concluded that there existed " 'a striking absence of price competition in the funeral industry' . . . because consumers do not have access to price information." [64] These general policy statements are consistent with the position that the Rule's intent was to require funeral providers to make price information available to consumers so that they could comparison shop for *all* funeral goods and services and make informed choices. Without price information on the General Price List for other items,[65] the same barriers to price competition for these items would exist as before the Rule took effect, and consumers may still have to pay supracompetitive prices for those items.[66]

After careful consideration of the arguments in favor of requiring the itemization of every good and service offered for sale, and the arguments in support of limiting the itemization requirements to the funeral goods and services specifically enumerated in the Rule, staff has concluded that the latter argument is persuasive. In reaching this decision, staff has decided that the words "at least" together with the language in the SBP cited by SCI outweigh the policy arguments requiring itemization of all goods and services offered for sale. Therefore, staff has amended the guidelines to indicate that, at a minimum, funeral providers must itemize the goods and services specifically enumerated in the Rule and are permitted to disclose additional information or itemized prices if desired.

Finally, one party commented that the guidelines should state that funeral providers may not give greater itemization of the specific items than the categories specified by the Rule.[67] For example, the guidelines state that the price for use of a hearse does not have to be broken down into separate prices for loading, unloading, gasoline, etc. The commenter requested that the guidelines be modified to prohibit itemization of component costs. Staff disagrees. Such a position would prohibit the disclosure of detailed price information by funeral providers who desire to provide more information than the Rule requires. The guidelines clearly state what is required to comply with the Rule. Staff does not believe that it is in the public interest to prohibit a more detailed price disclosure.

(2) Information on the General Price List

NFDA requested that the sentence, "The list must be typed or printed and consumers must be given copies to keep," be changed to "The list must be typed or printed and consumers must be *provided* copies to keep" (emphasis added).[68] Staff disagrees. The word "given" is more appropriate because it denotes a physical offer. In addition, it is the word used in the Rule itself. As noted in illustration #4 under the section of the guidelines discussing distribution of the price list, the Rule requires that the funeral provider physically offer the price list to consumers.

b. *Forwarding and Receiving Remains, Direct Cremations and Immediate Burials:* CAFMS commented that the guidelines need to be clarified to ensure that the fee for professional services of funeral director and staff does not become a catch-all for goods and services not selected by a consumer.[69] Accordingly, staff has attempted to clarify that the professional services may not, by definition § 453.1(o)), include the other sixteen items that the Rule requires be separately itemized. In the context of this section of the guidelines, staff has clarified the fact that unlike the remainder of the available goods and services, the professional services charge should be included in those four types of offerings.

c. *Other Items Which Must be Itemized If Offered.*

(i) *Transfer of Remains to Funeral Home:* CAFMS again commented that the guidelines need to be clarified to ensure that the services associated with this item do not get "packaged" into the professional services of staff.[70] Staff agrees that further clarification will assist funeral providers in complying with the Rule. As noted above, § 453.1(o) specifically states that the services associated with each of the separately itemized offerings may not be included in the fee for the professional services of staff. Accordingly, the guidelines discussion of transfer of remains to funeral home has been modified to clarify this point.

f. *Charges For Professional Services of the Funeral Directors:* Again, CAFMS requested that this section of the guidelines be clarified to ensure that this item not include the services associated with the items the Rule requires be listed separately.[71] The guidelines' discussion of the professional services of the funeral director and staff has been modified accordingly.

(3) Illustrations Regarding the General Price List

(a) *Illustrations # 7, # 8, and # 9:* Three parties commented on the guidelines discussion of funerals for indigent persons.[72] These parties requested additional guidance on how a funeral provider can comply with the Rule when a governmental agency

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[60] 16 CFR 453.2(a) (emphasis added).
[61] SBP, 47 FR at 42260.
[62] *Id.* at 42268.
[63] *Id.* at 42268–71.
[64] *Id.* at 42270.
[65] SCI's comment also suggested that price ranges for other items such as urns, flowers, and burial clothing "provide virtually no meaningful price information to the consumer." SCI at 7 n. 1. SCI's conclusion overlooks the fact that there are many "other" items for which detailed price information is necessary in order to facilitate informed choice and price competition.
[66] The Commission noted that price information would likely not be made available to consumers in any form other than the general price list, due to the "unique structural and demand characteristics of this industry . . . ." SBP, 47 FR at 42270.
[67] William C. Klein, XXVII–20.
[68] NFDA, XXVII–29, Comment No. 20.
[69] CAFMS, XXVII–27, at p.4.
[70] *Id.*
[71] *Id.*
[72] Guardian Funeral Homes, XXVII–11; CAFMS, XXVII–27, at p. 4; NFDA, XXVII–29, Comment No. 22.

requests bids for a package of goods and services for a unit price and whether a General Price List or Statement of Funeral Goods and Services Selected must be offered to the family, government, or both parties. In addition, NFDA requested that illustration # 7 make clear that persons not qualified for the special funeral arrangement provided for indigents are not entitled to the General Price List prepared exclusively for indigent persons. Staff agrees that additional guidance would benefit funeral providers in complying with the Rule. Accordingly, staff has clarified illustration # 7, as requested by NFDA. In addition, several new illustrations have been added. Illustration # 8 states that if a government agency requests bids for a package of funeral goods and services at a unit price, funeral providers may comply with the request and need not submit itemized prices. Illustration # 9 states that when both the family and government agency are purchasing funeral goods and services (i.e., the government pays for the basic funeral and the family supplements the arrangements), both are entitled to the price lists required by the Rule.

(b) *Additional Illustrations:* NFDA and CAFMS requested that the guidelines' discussion of the General Price List be expanded to include several additional illustrations. Each suggested illustration will be discussed briefly below.

(1) *Illustration # 10:* CAFMS suggested that an illustration be added making clear that funeral providers are required to make their price list available to citizens groups.[73] Staff agrees. The SBP describes the difficulty that citizens groups, including memorial societies, have had in the past, in obtaining price information. Section 453.2(n) of the Rule clearly defines persons as including associations, individuals, or other entitles. Therefore, staff has added illustration # 10 which states that citizens groups are entitled to the Rule's protection.

(2) *Illustration #11:* NFDA requested an illustration concerning funeral providers who make funeral arrangements pursuant to an agreement with a recognized group or society, such as a memorial society, labor union, or corporation.[74] Often, funeral providers will enter into such agreements by offering a discounted price to members of those groups because of increased volume. NFDA recognizes that funeral providers must comply with the Rule and offer price lists to those persons but requests an illustration stating that other persons not eligible for these rates are not entitled to these "special" General Price Lists. This approach is similar to the one taken by staff in regard to indigent funerals. A funeral director satisfies the Rule's requirement by providing the consumer with the list of prices at which it will sell to that consumer. Therefore, illustration #11 has been added in response to NFDA's request. It should be understood, however, that a funeral director would be required to fully respond to telephone requests for information concerning this information.

(3) *Illustration #12:* NFDA requested that an illustration be added to the guidelines stating that a funeral provider may not charge a fee for the forms given to consumers.[75] Staff agrees and has therefore added illustration #12 to the guidelines regarding this issue.

(4) *Illustration #13:* NFDA requested an illustration regarding funeral providers who do not own limousines but who, rather, rent the limousine from a third party when needed.[76] NFDA suggested that, in such a case, the limousine would be a cash advance item since it is an item obtained from a third party and paid for by the funeral provider on the purchaser's behalf, as required by § 453.1(c) of the Rule. Therefore, NFDA states that the funeral provider need not list the limousine on the General Price List but could treat it as a cash advance item. Staff agrees with NFDA's position and has included illustration #13 on this issue in the guidelines.

(5) *Illustration #14:* NFDA also requested an illustration stating that funeral providers are not limited in the number of offerings that may be listed on the General Price List.[77] Staff agrees. Illustration #14 has been drafted to state that funeral providers may add additional categories and uses the example of off-premises services.

(6) *Illustration #15:* NFDA has also requested an illustration stating that funeral providers may include terms of payment on the General Price List.[78] The Rule does not prohibit funeral providers from adding any additional information on the forms required by the Rule as long as the information is not unfair or deceptive. Staff has added illustration #15 to the guidelines as requested by NFDA.

(7) *Illustration #16:* NFDA has also requested an illustration regarding funeral arrangements made partly over the phone and partly in person.[79] Staff has added illustration #16 to the guidelines using the facts proposed by NFDA.

(8) *Illustration #17:* NFDA requests that an illustration be added to this section of the guidelines concerning whether a funeral provider is required to present a General Price List when going to a nursing home for removal of a body and is asked by the family if the funeral home is available at a specific time and day.[80] NFDA states that the Rule does not require the family to be given a price list in such a situation.

Section 453.2(b)(2)(i) of the Rule states that when people inquire in person about funeral arrangements, the funeral provider must offer the General Price List. In the situation raised by NFDA, the family has only asked the funeral provider in person about the availability of the funeral home, and therefore has not triggered the requirement to be offered a General Price List. However, if the family wants to reserve the funeral home and the funeral provider is willing to make these arrangements while at the nursing home, then the Rule would require that the family be given a General Price List because they inquired about a specific funeral good. Under this approach, funeral providers would not be placed in the uncomfortable position of presenting a price list and appearing concerned about money at an awkward time unless they were willing to make specific arrangements. In addition, consumers would be ensured of receiving a price list before they made any specific arrangements. Accordingly, illustration #17 has been added to the guidelines to clarify this point.

(9) *Illustration #18:* NYSFDA and NFDA requested that the guidelines discuss how funeral providers can comply with the Rule when state law specifies that items considered "cash advances" under the Rule are required to be listed on the price list under state law.[81] For example, NYSFDA and NFDA cite a state law that prohibits charging a fee or retaining a commission, rebate, or discount for cash advances and requires that if a fee is charged or commission, rebate or discount is retained, the item must be listed as a good or service by the funeral provider. Examples of such goods would be flowers, death notices, and monuments. The Funeral Rule does not prohibit such an approach. Staff has

[73] CAFMS, XXVII–27, at p.5.
[74] NFDA, XXVII–29, Comment No. 23(a).
[75] NFDA, XXVII–29, Comment No. 23(b).
[76] NFDA, XXVII–29, Comment No. 23(c).
[77] NFDA, XXVII–29, Comment No. 23(f).
[78] NFDA, XXVII–29, Comment No. 23(g).
[79] NFDA, XXVII–29, Comment No. 23(h).
[80] NFDA, XXVII–29, Comment No. 23(i).
[81] NFDA, XXVII–29, Comment No. 34; NYSFDA, XXVII–28, Comment No. 1.

added illustration #18 to the guidelines on this issue.

(10) *Illustration #19:* Another illustration suggested by NFDA for this section of the guidelines concerns whether a funeral provider is required by the Rule to offer a General Price List to a consumer during an arrangements conference when the discussion concerns the final illness, information for the death certificate, or social security benefits.[82] Staff does not believe that a General Price List would be required to be given to a family at that time because an inquiry has not yet been made about funeral arrangements or the prices of funeral goods or services. Illustration #19 discusses this issue.

(11) *Additional Suggested Illustration:* Finally, NFDA suggested that the guidelines allow funeral providers to allocate the cost of the professional services into each of the goods and services offered, rather than have a separate fee or incorporate the cost into the price of the caskets. In such a case, NFDA suggested that both of the disclosures required by § 453.2(b)(4)(iii)(c) would be misleading. Therefore, NFDA suggested that a substitute disclosure should be used informing the consumer that in purchasing any of the items, the price includes a fee for the use of the professional services. Staff believes that this proposal requests a substantive modification to the Rule and is therefore beyond the scope of the guidelines. Section 453.2(b)(4)(iii)(c) of the Rule clearly provides that the services of funeral director and staff must be disclosed either by a separate listing or by merging it into the price of the casket. The proposal by NFDA requests a third method of disclosure which is not permitted by the Rule. Accordingly, we have not incorporated this proposal into the guidelines.

F. Price Disclosures at the Conclusion of the Arrangements Discussion: Section 453.3(b)(5)

NFDA has commented on illustration #5 in this section of the guidelines which discusses the Rule's requirements when the funeral provider wants to use the Statement of Funeral Goods and Services Selected as a final bill.[83] Staff believes that NFDA's proposed answer is essentially the same as the present text and has decided to leave the answer as originally drafted.

G. Other Pricing Information: Section 453.2(b)(6)

NFDA has requested that an additional illustration be inserted in the guidelines regarding whether package prices need to be listed in writing on the General Price List.[84] NFDA's position is that such information need not be included on the price list. However, NFDA states that the prices must be available in writing at the funeral home. Staff agrees in part. In staff's opinion, package prices are not required to appear in writing at all. Section 453.2(b)(6) of the Rule permits funeral providers to give any other price information, in any other format, in addition to the price list requirements, so long as the Statement of Funeral Goods and Services Selected is given when required by the Rule. The issue raised concerns the interpretation of the phrase "in any other format." Staff believes that this phrase permits other methods of pricing, such as package or functional pricing, to be made orally or in writing. This interpretation is consistent with our position that the Rule requires funeral providers to list only the enumerated goods and services in § 453.2(b)(4) and that other written disclosures are permitted but not required.

IV. What Representations Are Prohibited? Section 453.3

A. Representations Concerning Embalming: Section 453.3(a)

Three parties commented on the Rule provisions prohibiting misrepresentation of embalming requirements.

CAFMS commented that the list of four circumstances in the introductory explanation of § 453.3(b) of the Rule is not complete and should include, for example, bequeathal to medical school.[85] Therefore, CAFMS suggested that the guidelines state that the list is not all inclusive or eliminate the list. Staff disagrees. This portion of the guidelines is designed to explain the provisions of § 453.3(a)(2)(i) of the Rule. The four items listed in the guidelines are the only four representations prohibited by that provision of the Rule. Therefore, staff believes that this portion of the guidelines is accurate and should remain as originally drafted.

CAFMS also commented that illustrations #2, #5, #6 should not discuss whether embalming is required by law or funeral home policy, but rather whether embalming can be recommended or is necessary under the circumstances set forth in the illustrations.[86] Staff disagrees. The relevant Rule provisions prohibit misrepresentations that embalming is required by law or funeral home policy in certain enumerated circumstances. Thus, a funeral provider may recommend embalming in any instance but can not misrepresent that it is required by law or funeral home policy. Therefore, illustrations #2, #5, and #6 should not be changed.

The New York State Funeral Directors Association requested that the guidelines discuss how funeral directors in New York State can comply with the Rule when it may conflict with New York State law.[87] Staff does not believe that this issue should be addressed in the guidelines. Staff is aware that New York State law requires different language from that required by the Funeral Rule. We are working with the New York State Department of Health and the New York State Funeral Directors Association to ensure compliance with both state and federal law. However, because the problem is relevant to only one state, it is not appropriate for discussion in the compliance guidelines.

The New York State Funeral Directors Association also requested staff's opinion regarding whether Jewish funeral homes may delete the embalming disclosures[88] if embalming is not furnished in a particular case.[89] The issue raised in the comment is distinct from the case where the firm does not offer embalming as a service at all. Rather, NYSFDA argues that the embalming disclosure required by the Rule will cause needless concern for families seeking traditional Jewish funeral services, because embalming is not permitted by the Jewish religion. While staff is sensitive to the concerns raised in this comment, it appears to involve a substantive modification of the Rule that is not appropriate for staff guidelines. Such an issue would be best considered in the context of an exemption request pursuant to section 18(g) of the FTC Act.

Finally, NFDA requested that an illustration be added to the guidelines stating that even if state law does not require embalming, a funeral provider may inform a family that embalming is required for funerals with a viewing.[90] Staff believes that this point

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[82] NFDA, XXVII–29, Comment No. 35.
[83] NFDA, XXVII–29, Comment No. 36.
[84] NFDA, XXVII–29, Comment No. 19.
[85] CAFMS, XXVII–27, at p. 5.
[86] *Id.*
[87] NYSFDA, XXVII–28, Comment No. 3.
[88] Sections 453.3(a)(2), 453.5(b)
[89] *Id.*
[90] NFDA, XXVII–29, Comment No. 34.

is already adequately addressed in illustration #5 of this section of the guidelines. Illustration #5 states that in jurisdictions with no state laws requiring embalming, funeral providers may inform families that request funerals with a viewing that embalming is required as a practical necessity. Therefore, staff does not believe that an additional illustration is necessary, as requested by NFDA.

B. Representations Concerning Caskets for Cremations: Section 453.3(b)

NFDA commented on illustration #4 of the guidelines discussion of § 453.3(b) of the Rule.[91] NFDA states that the answer is misleading and suggested language to clarify the issue. The guidelines, as published for comment, state that funeral providers who arrange for cremations after a viewing are required to include the disclosure required by § 453.3(b) of the Rule in conjunction with the price for direct cremation, if they offer direct cremation. The guidelines also note that funeral providers may explain to the family that alternative containers and unfinished wood boxes are not necessarily available for cremations that occur after a viewing. NFDA's proposal takes a different approach. NFDA states that when a receptacle for the body is discussed, the Casket Price List which contains caskets, unfinished wood boxes, and alternative containers must be shown to the family. According to NFDA, no other oral representations are required but the funeral provider may indicate orally that his firm does not offer an unfinished wood box or alternative container in any instance other than direct cremation. After considering NFDA's comment, staff believes that illustration #4 would be clearer if both staff's and NFDA's approach were combined. Accordingly, staff has added the approach suggested by NFDA to this illustration.

Curtis Rostad commented that the disclosure required by § 453.3(b) of the Rule is misleading because the pouches that are common to the industry are made of either rubber or vinyl and not canvas and because the crematories in his region require rigid containers.[92] Therefore, Mr. Rostad states, the Rule requires him to offer merchandise that is either not available or not acceptable. Staff believes that Mr. Rostad's comment reflects a misunderstanding of the Rule. The Rule does not require that a funeral provider offer unfinished wood boxes and every type of alternative container. Rather the Rule simply requires funeral providers to offer either an unfinished wood box or alternative container and include a disclosure on the price list informing consumers that they may buy either an unfinished wood box or an alternative container. Because the term "alternative container" may be unfamiliar to the public, the Rule requires an illustration of the term. The illustration is an example only; funeral providers may substitute vinyl or rubber pouches for the canvas pouches. See § 453.1(b) of the Rule which defines alternative containers as pouches of canvas or other materials. Similarly, funeral providers may inform consumers in writing that crematory requirements prohibit use of non-rigid containers, as long as that is the case. Staff has added illustration #5 to this section of the guidelines to assist funeral providers in complying with this portion of the Rule.

C. Representations Concerning Outer Burial Containers: Section 453.3(c)

Two parties commented on the guidelines discussion of the Rule's provisions regarding representations concerning outer burial containers.

NFDA commented that the introductory explanation to the Rule's provisions on misrepresentation of outer burial container requirements implies that funeral providers are required to make an oral disclosure that grave liners are suitable for meeting a cemetery requirement.[93] Staff agrees that the Rule does not require an oral disclosure. Therefore, we have modified the explanation to make clear that the Rule requires a written disclosure.

Curtis D. Rostad commented that the disclosure required by § 453.3(c) of the Rule states that cemeteries "ask" that an outer burial container be purchased rather than using the term "require", thereby implying that the consumer can ignore what is, in fact, a requirement.[94] In staff's opinion, the comment requests a modification to the Rule which is beyond the scope and purpose of the guidelines. However, it may assist funeral providers if the guidelines note, in this context, that funeral providers may, if desired, place additional information on the Outer Burial Container Price List. For example, funeral providers can list the outer burial container requirements, if any, imposed by the local cemeteries. This additional information might aid consumers and also serve to assist funeral providers by making clear that the cemetery policy requires the purchase. Accordingly, staff has added illustration #3 to this section of the guidelines.

E. Representations Concerning Preservative and Protective Value Claims: Section 453.3(e)

CMAA requested that illustration #3 of this section of the guidelines be revised because CMAA is unaware of any warranty offered by any manufacturer which makes preservative representations.[95] CMAA therefore suggested that the guidelines avoid implying that preservative claims are made by manufacturers of caskets or vaults. While preservative claims may not be being made currently, the rulemaking record indicates that such claims were made in the past,[96] and the Funeral Rule includes a provision that prohibits those claims. Therefore, staff has included an illustration in the guidelines to make clear that preservative claims violate the Rule, to assist funeral providers in this regard should such claims be made in the future.

V. Can the Sale of Any Funeral Goods or Funeral Services Be Conditioned Upon the Purchase of Any Other Funeral Goods or Services? Section 453.4

B. Other Required Purchases of Funeral Goods or Services: Section 453.4(b)

Three parties filed comments on the guidelines discussion of § 453.4 of the Rule.

(a) *Introductory explanation in the guidelines.*—NFDA commented on the guidelines discussion of Section 453.4(b)(2)(ii) which allows funeral providers to refuse to comply with a request for a combination of goods or services which would be impossible, impractical or excessively burdensome to provide.[97] The guidelines state that this provision does not allow a funeral provider to refuse a request simply because the funeral provider does not like it. NFDA requests that this statement be strengthened to make clear that the Rule requires funeral providers to comply with a consumer's demand that they do not approve of "even though the funeral provider may refuse to offer it (the requested goods or services) generally to the public". Staff does not believe that this provision of the Rule was intended to require funeral providers to comply with a consumer's demand for goods or services that the

[91] NFDA, XXVII–29, Comment No. 28.
[92] Curtis Rostad, XXVII–15.
[93] NFDA, XXVII–29, Comment No. 29.
[94] Curtis Rostad, XXVII–15.
[95] CMAA, XXVII–34, at p. 4.
[96] 47 FR 42260, at 42278 (September 24, 1982).
[97] NFDA, XXVII–29, Comment No. 31.

funeral provider does not offer for sale. To clarify this issue, staff has included illustration #10 under subsection B which states that a consumer's request for goods or services not offered for sale would be impractical to comply with.

(b) *Illustration #2:* This illustration states that a funeral provider who elects to make the professional service charge non-declinable and adds it to the cost of the casket may charge a fee for professional services to consumers who provide their own casket. NFDA states, in its comment, that under these circumstances, the funeral provider must include on the General Price List a listing for the service charge when the consumer provides a casket and indicate that in such event the service charge is non-declinable.[98] Staff agrees and has modified the response to illustration #2 in accordance with NFDA's suggestion.

(c) *Illustration #11:* PIAA and CAFMS requested staff's opinion on whether a funeral provider may insist that a consumer purchase funeral goods from the provider as a condition of providing the requested funeral services. For example, PIAA inquired whether it is a violation of the Rule for a funeral provider to indicate to a consumer who has acquired funeral goods elsewhere that the funeral provider will not perform the requested funeral services unless the consumer purchases the goods from them.[99] CAFMS requested an illustration stating that a funeral provider cannot insist that a consumer purchase a container from the provider in order to arrange for a direct cremation.[100] In staff's opinion, both situations raised by the commenters would violate § 453.4(b) of the Rule which prohibits a funeral provider from requiring consumers to buy unwanted goods and services in order to buy other requested goods and services. The situation raised by PIAA is already expressly discussed in the guidelines in illustration #3 in the discussion of who is covered by the Rule. Therefore, an additional illustration is not required in this section. We have, though, added illustration #11 which states that a funeral provider may not insist that a consumer who desires to arrange a direct cremation purchase the container from a funeral provider in order to receive the services.

(d) *Illustration #12:* NFDA has requested that three illustrations be added to the guidelines regarding required purchases. The first illustration would state that funeral providers can not have a basic facility charge that is a nondeclinable item because the Rule provides that only the professional services of staff and items required by state law can be nondeclinable items.[101] Staff agrees. Therefore, we have added illustration #12 to this section of the guidelines.

(e) *Illustration #13:* The second illustration requested by NFDA concerns whether a funeral provider can require a consumer who declines embalming to pay for other preparation of the body.[102] NFDA proposes that if a funeral provider separately lists other preparation of the body and the proposed use of this preparation procedure has been selected by the family, the funeral provider may charge for such services. Staff agrees. Under the Rule, funeral providers are required to list other preparation of the body as a separate item which may be selected by a consumer if desired. However, the consumer may not be required to purchase other preparation as a matter of funeral home policy, if embalming has been declined. Illustration #13 has been added to assist funeral providers in this fact situation.

(f) *Illustration #14:* The third additional illustration requested by NFDA regarding required purchases concerns whether a funeral home which operates a crematory in or about its premises serving a number of funeral providers can require that an unfinished wood box be used for cremations.[103] NFDA answers that such a requirement is not prohibited by the Rule. Staff agrees. A crematory operated either apart from or in conjunction with a funeral home is not prohibited under the Rule from imposing a requirement mandating the use of any container, other than a casket. Therefore, we have added illustration #14 to this section of the guidelines.

VI. Can a Fee Be Charged for Services Provided Without Prior Approval? Section 453.5

(a) *Illustration #7:* Four parties filed comments on the need to provide price information to consumers when requesting permission to embalm. John Henderson Company commented that this is unprofessional, unethical, and a "tacky" procedure[104] and asked that the Rule not require that funeral providers affirmatively quote the price for embalming when seeking permission to embalm but rather allow the price to be discussed during the arrangements conference, or if asked by the family when permission is sought. Don G. Hasson filed two similar comments, as an individual and in his capacity as president of the South Dakota Funeral Directors Association.[105] Mr. Hasson suggests that the proper time to discuss the price for embalming is during the arrangements conference. NFDA commented that funeral providers requesting permission to embalm by telephone are not required to disclose the price of embalming.[106] Staff has heard similar comments from funeral directors during our industry outreach campaign.

Section 453.5 of the Rule requires funeral providers to obtain permission to embalm for a fee unless embalming is required by state law. Section 453.2(b)(1)(b) of the Rule requires funeral providers to inform consumers that price information is available by telephone if the consumer calls and asks about the "terms, conditions, or prices" of funeral goods or services. In staff's opinion, if a funeral provider attempts to obtain permission to embalm by telephone and is asked questions about whether embalming is necessary, a "term, condition, or price" of a funeral service has been raised. During such telephone discussions the provider must inform the consumer that price information is available. If the consumer asks about the price, then the price must be disclosed. Illustration #7 has been added to the guidelines to advise funeral providers of staff's opinion on this point.

(b) *Illustration #8:* Similarly, § 453.2(b)(4) of the Rule requires funeral providers to offer a price list to consumers who inquire in person about "funeral arrangements". As noted earlier, the requirement to comply with the Rule is not limited to arrangements made within the funeral home. If funeral providers offer to sell funeral goods or services outside of the funeral home, they must be prepared to comply with the Rule when consumers inquire about arrangements or prices. In requesting permission to embalm, it is staff's opinion that the funeral provider is offering to sell a funeral service and triggering § 453.2(b)(4) of the Rule. Thus, a price list would need to be offered to the family. Staff has added illustration #8 to the guidelines to clarify this point.

(c) *Illustration #9:* NFDA has requested that an additional illustration be added stating that persons making pre-need contracts which authorize

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[98] NFDA, XXVII–29, Comment No. 32.
[99] PIAA, XXVII–25, Point 8.
[100] CAFMS, XXVII–27, at p. 5.
[101] NFDA, XXVII–29, Comment No. 23(d).
[102] NFDA, XXVII–29, Comment No. 25.
[103] NFDA, XXVII–29, Comment No. 30.
[104] John Henderson Company, XXVII–22.
[105] Don G. Hasson, XXVII–21; South Dakota Funeral Directors Association, XXVII–15.
[106] NFDA, XXVII–29, Comment No. 33B.

embalming have given the funeral provider permission to embalm.[107] Therefore, according to NFDA, the funeral provider does not have to obtain permission to embalm at-need and need not disclose the cost of embalming to the family. We have added illustration #9 to make this point.

Conclusions

The proposed changes suggested by staff are consistent with the Commission's stated intent concerning the need for the Funeral Rule, the Rule, and the Statement of Basis and Purpose. In our opinion, staff's proposals do not cause additional burdens to funeral providers. No protections have been taken away from consumers. Rather the proposals clarify staff's positions on issues that were not discussed in sufficient detail or at all in the guidelines previously published for comment.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By Direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-16150 Filed 7-8-85; 8:45 am]

BILLING CODE 6750-01-M

[107] NFDA, XXVII-29, Comment No. 33A.

VOL 50 ISS 131 JL 9 1985 UMI

Reader Aids

Federal Register

Vol. 50, No. 131

Tuesday, July 9, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
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Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

26961-27212	1
27213-27408	2
27409-27570	3
27571-27812	5
27813-27926	8
27927-28092	9

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
11888 (Amended by EO 12524) 27409
12523 26963
12524 27409

Proclamations:
5356 26961

5 CFR
771 26965

7 CFR
Ch. IV 27927
52 26965
54 27571
226 26972
400 26976
908 ..... 27411, 27928
910 27813
916 27813
917 27813
921 27411
930 27213
979 26976
991 ..... 26977, 27814
1040 27412
1427 26978
1435 27413
1941 27414
1944 27415
1945 ..... 27414, 27416

Proposed Rules:
Ch. IV 27971
Ch. X 27003
29 27288
51 27004
417 27601
920 27288
1124 27972

8 CFR
316a 27816

Proposed Rules:
103 27289

9 CFR
91 27929
92 27928
318 27573

Proposed Rules:
94 27973

10 CFR
9 27214

Proposed Rules:
50 27006

12 CFR
403 27215
611 27930
617 27931
723 27417

Proposed Rules:
561 27290
563 27290
571 27290

13 CFR
121 27418
302 27419

Proposed Rules:
108 27754

14 CFR
39 ..... 26979, 27575, 27576, 27931-27933
71 ..... 26980, 27934
97 27934
108 27924

Proposed Rules:
39 ..... 27009, 27012, 27601, 27602
71 ..... 27013, 27014, 27528
75 27014

15 CFR
19 27577
376 27420
399 27420

16 CFR
13 ..... 26981, 27578
453 ..... 26982, 26981
703 27936

17 CFR
239 27937
240 ..... 27937, 27940
249 27937
270 27937
274 27937
288 ..... 26981, 27947

Proposed Rules:
210 27973
240 ..... 27829, 27976, 27981
250 27981
259 27981
270 27982

18 CFR
157 27816
389 27816

Proposed Rules:
35 27604
290 27604

19 CFR
4 26981
12 27947

142 27816
178 27947
Proposed Rules
162 27829
177 27831

20 CFR
200 27222
626 27818
627 27818
628 27818
629 27818
630 27818
Proposed Rules:
404 27615
416 27615

21 CFR
101 26984
520 27818
558 ..... 27421, 27422
Proposed Rules:
170 27294
201 27016
211 27016
357 27552
514 27016
559 27016
561 27452
1002 27024

22 CFR
501 27422

25 CFR
Proposed Rules:
61 27456

26 CFR
1 ..... 27222, 27231, 27427
602 ..... 27222, 27231
Proposed Rules:
1 ..... 27297, 27456, 27457
51 27621

27 CFR
4 27819

28 CFR
32 27428

29 CFR
1952 27233
Proposed Rules:
33 27298
1910 27307

30 CFR
943 00000
Proposed Rules:
56 27566
57 27566
817 27910
913 27025
936 27461

31 CFR
51 26987
103 27821
500 27435
505 27435
515 27435
520 27435
535 27435
540 27435

32 CFR
Parts 1–39 26987
199 26986

33 CFR
100 27579
110 ..... 26986, 27580
117 ..... 26989, 27582
150 26989
165 27583
166 26989
Proposed Rules:
110 ..... 27622, 27623
117 ..... 27026, 27029, 27624, 27832, 27990, 27991

35 CFR
101 26990
103 26990
121 26990

36 CFR
1200 27196
1202 27196
1228 27951
1250 27196

37 CFR
Proposed Rules:
1 27030

38 CFR
3 27584
21 27825
Proposed Rules:
36 27833

39 CFR
10 27827
Proposed Rules:
111 27992
3001 27308

40 CFR
51 27892
52 ..... 26991, 27244–27247
60 27248
61 27248
86 27250
600 27172
Proposed Rules:
52 ..... 27030, 27462
180 27463
202 27321
205 27321
600 27188

41 CFR
Chs. 1–49 26987
101–40 27951
105–63 26992
201–1 27142
201–2 27142
201–8 27142
201–11 27142
201–16 27142
201–20 27142
201–21 27142
201–23 27142
201–24 27142
201–26 27142
201–30 27142
201–31 27142
201–32 27142
201–38 27142
201–39 27142
201–40 27142
Proposed Rules:
101–41 ..... 27625, 27626

42 CFR
405 27722
412 ..... 27208, 27722
Proposed Rules:
23 27465
405 27469
412 27469

43 CFR
Public Land Orders:
5150 Revoked in part by PLO 6607 27827
5179 Revoked in part by PLO 6607 27827
5180 Revoked in part by PLO 6607 27827
5186 Revoked in part by PLO 6607 27827
6607 27827
Proposed Rules:
2800 27322

44 CFR
64 ..... 26993, 26994
Proposed Rules:
67 27322
302 27627

45 CFR
1180 ..... 27584, 27586
Proposed Rules:
405 27406
412 27406
1620 27926

46 CFR
153 26996
Proposed Rules:
160 27628

47 CFR
0 27952
22 27953
68 27250
73 ..... 27287, 27438, 27954
76 27438
81 27968
83 27968
Proposed Rules:
73 27629

48 CFR
7 27560
12 27969
15 27560
19 27560
33 27969
34 27560
52 ..... 27560, 27969
504 26996
533 26998
552 27589
553 27589
570 27589
6101 27969

49 CFR
571 27451
Proposed Rules:
Ch. X 27031
571 ..... 27032, 27632, 27633
1132 27634

50 CFR
17 26999
215 27914
Proposed Rules:
17 ..... 27637, 27992
20 27638
630 27470
662 27470

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 8, 1985

..27589
..27969

..27451

..27031
, 27633
..27834

..26999
..27914

, 27992
..27638
..27470
..27470

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VOL
50

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VOL
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132
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Vol. 50

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Vol. 50 No. 132

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Wednesday
July 10, 1985

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VOL
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7-10-85
Vol. 50
Pages 28

ANN ARBOR MI 48106

7-10-85
Vol. 50 No. 132
Pages 28093-28190

federal register

Wednesday
July 10, 1985

Selected Subjects

Administrative Practice and Procedure
Federal Grain Inspection Service
Federal Trade Commission
Postal Service

Aviation Safety
Federal Aviation Administration

Classified Information
Education Department

Marketing Agreements
Agricultural Marketing Service

Pesticides and Pests
Environmental Protection Agency

Prescription Drugs
Drug Enforcement Administration

Probation and Parole
Parole Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Con

28105
28111
28124
28103
28113
28113
28098
28114
28101
28113
28108

VOL 50 ISS 132 JL 10 1985 UMI

Contents

Federal Register
Vol. 50, No. 132
Wednesday, July 10, 1985

Agricultural Marketing Service
PROPOSED RULES
28105 Lemons grown in California and Arizona

Agriculture Department
See also Agricultural Marketing Service; Federal Grain Inspection Service.
NOTICES
28111 Agency information collection activities under OMB review

Centers for Disease Control
NOTICES
Meetings:
28124 Medical management of pregnant persons with diabetes treated in maternal and child health programs

Commerce Department
See International Trade Adminstration; National Oceanic and Atmospheric Administration.

Defense Department
RULES
Federal Acquisition Regulation (FAR):
28103 Planning for future competition, integrity of unit prices, etc. (Circular 84–10); interim; correction
NOTICES
Meetings:
28113 Ada Board
28113 Special Operations Policy Advisory Group

Drug Enforcement Administration
RULES
Schedules of controlled substances:
28098 1–Methyl–4–phenyl–4–propionoxypiperidine (MPPP), etc.

Economic Regulatory Administration
NOTICES
Consent orders:
28114 Mobley, O.B., Jr.

Education Department
RULES
28101 National security information program; handling classified information
NOTICES
Education Appeal Board hearings:
28113 Oakland Unified School District; claim compromise

Energy Department
See Economic Regulatory Administration; Federal Energy Regulatory Commission.

Environmental Protection Agency
PROPOSED RULES
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
28108 Croscarmellose sodium
NOTICES
Air quality; prevention of significant deterioration (PSD); permit determinations, etc.:
28121 Region II
Meetings:
28122 Administrator's Pesticide Advisory Committee
Pesticide registration, cancellation, etc.:
28121 Hyponex Co., Inc., et al.

Federal Aviation Administration
RULES
Airworthiness directives:
28093 Aerospatiale
28093 British Aerospace
28094 McDonnell Douglas

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
28120 Public Service Co. of Oklahoma
Hearings, etc.:
28120 Williston Basin Interstate Pipeline Co.
Natural gas certificate filings:
28114 ANR Pipeline Co. et al.

Federal Grain Inspection Service
PROPOSED RULES
Administration:
28104 Fees for supervision of official services

Federal Maritime Commission
NOTICES
28122 Agreements filed, etc.

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
28123 DMB Corp., Inc.
28123 Hongkong & Shanghai Banking Corp. et al.
28124 Independent Banks of Virginia, Inc.; correction
28124 North Community Bancorp, Inc.

Federal Trade Commission
RULES
Procedure and practice rules:
28095 Briefing cross appeals, brief format, and service of process

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
28103 Planning for future competition, integrity of unit prices, etc. (Circular 84–10); interim; correction

Health and Human Services Department
See Centers for Disease Control; Public Health Service.

Interior Department
See National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office.

International Trade Administration
NOTICES
Antidumping:
28111 Nylon impression fabric from Japan

International Trade Commission
NOTICES
28141 Meetings; Sunshine Act

Interstate Commerce Commission
NOTICES
Rail carriers:
28126 Atchison, Topeka & Santa Fe Railway Co.; passenger train operation; correction
Railroad operation, acquisition, construction, etc.:
28125 Lackawanna Valley Railroad Corp. et al.

Justice Department
See Drug Enforcement Administration; Juvenile Justice and Delinquency Prevention Office; Parole Commission; Prisons Bureau.

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements:
28126 Missing children and homeless youth; law enforcement agencies policies and practices, national study; withdrawn

Labor Department
See Occupational Safety and Health Administration.

Libraries and Information Science, National Commission
NOTICES
28141 Meetings; Sunshine Act

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
28103 Planning for future competition, integrity of unit prices, etc. (Circular 84–10); interim; correction

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
28103 Gulf of Mexico shrimp
28103 High seas salmon off Alaska; correction
PROPOSED RULES
Fishery conservation and management:
28109 Atlantic mackerel, squid, and butterfish; hearing
NOTICES
Marine mammals
28112 Fish import certification; United Kingdom
Meetings:
28112 Mid-Atlantic Fishery Management Council
28112 North Pacific Fishery Management Council

National Park Service
NOTICES
Meetings:
28125 Illinois and Michigan Canal National Heritage Corridor Commission

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
28129 Cintichem, Inc.
28129 Commonwealth Edison Co.
28131 Consolidated Edison Co. of New York, Inc.
28129 Long Island Lighting Co.
Environmental statements; availability, etc.:
28130 Union Electric Co.

Occupational Safety and Health Administration
NOTICES
Variance applications, etc.:
28128 St. Joe Lead Co.; extension of time, etc.

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings:
28131 Production Planning Advisory Committee

Parole Commission
RULES
Federal prisoners; paroling and releasing, etc.:
28101 Conditions of release; firearms or other dangerous weapons

Postal Rate Commission
RULES
Practice and procedure:
28144 Domestic Mail Classification Schedule, publication

Prisons Bureau
NOTICES
28126 National Institute of Corrections; bylaws

Public Health Service
NOTICES
Meetings:
28124 National Toxicology Program; Scientific Counselors Board

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
28125 Kesterson Reservoir, CA; scoping sessions

Research and Special Programs Administration
NOTICES
Hazardous materials:
28138, 28139 Applications; exemptions, renewals, etc. (2 documents)
28140 Hazardous waste cargo tanks; exemption requirement

Securities and Exchange Commission
PROPOSED RULES
Securities:
28106 Composite compliance examination information disclosure to Municipal Securities Rulemaking Board; correction
NOTICES
Applications, etc.:
28132 Columbia Gas Transmission Corp. et al.
28131 Jersey Central Power & Light Co.
28133 Middle South Energy, Inc., et al.

28136, 28137 Middle South Utilities, Inc., et al. (2 documents)

Self-regulatory organizations; proposed rule changes:
28134 American Stock Exchange, Inc.
28135 Municipal Securities Rulemaking Board
28136 New York Stock Exchange, Inc.

Surface Mining Reclamation and Enforcement Office
RULES
Permanent and interim regulatory programs:
28186 Coal preparation plants, etc.; performance standards; interim
PROPOSED RULES
Permanent and interim regulatory programs:
28180 Coal preparation plants, etc.; performance standards
Permanent program submission:
28107 Utah

Transportation Department
See Federal Aviation Administration; Research and Special Programs Administration.

United States Information Agency
NOTICES
Art objects, importation for exhibition:
28140 Pebble Beach Concours d'Elegance

Separate Parts in this issue

Part II
28144 Postal Rate Commission

Part III
28180 Department of the Interior, Office of Surface Mining Reclamation and Enforcement

Part IV
28186 Department of the Interior, Office of Surface Mining Reclamation and Enforcement

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
800 28104
910 28105

14 CFR
39 (3 documents) 28093, 28094

15 CFR
3 28095
4 28095

17 CFR
Proposed Rules:
240 28106

21 CFR
1308 28096

28 CFR
2 28101

39 CFR
700 28186
701 28186
785 28186
827 28186
Proposed Rules:
700 28180
701 28180
785 28180
827 28180
944 28107

34 CFR
19 28101

39 CFR
3001 28144

40 CFR
Proposed Rules:
180 28108

46 CFR
15 28103

50 CFR
658 28103
674 28103
Proposed Rules:
655 28109

VOL 50 ISS 132 JUL 10 1985 UMI

Rules and Regulations

Federal Register
Vol. 50, No. 132
Wednesday, July 10, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-06-AD; Amdt. 39-5094]

Airworthiness Directives; Aerospatiale (SUD) Caravelle SE-210 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection of certain Aerospatiale (SUD) Caravelle SE-210 airplanes to detect cracks in the webs and web doubler on wing rib 44, and repair of these components, as necessary. This action was prompted by reports that the webs and doublers of this rib, which supports the main landing gear, have been found cracked. Cracks in the webs and doublers could lead to the separation of the landing gear.

EFFECTIVE DATE: August 16, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Societe National Industrielle Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France, Attention: Mr. Roger Adam. These documents may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction General de l'Aviation Civile (DGAC) has issued Consigne de Navigabilite 84-159-59(B) which requires inspections and repairs, as necessary, to the web and web doubler on wing rib 44 which have not been modified in accordance with Modification 1763, in accordance with SUD Service Bulletin 57-64. Rib 44 supports the main landing gear; if the structural integrity of this rib is compromised, the gear could separate from the airplane.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

A proposal to amend Part 39 of the Federal Aviation Regulations to require the previously mentioned inspections and modifications was published in the **Federal Register** on March 19, 1985 (50 FR 10973). The comment period closed on May 5, 1985, and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the amendment as proposed.

There are nine Caravelle airplanes on the U.S. Register, one of which is currently active. It will take approximately 100 manhours per airplane to accomplish the required actions, and the average labor cost will be $40 per manhour. Based on these figures, the total cost impact per airplane of this AD is estimated to be $4,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any SUD Caravelle Model SE-210 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Aerospatiale (formerly SUD): Applies to all Caravelle SE-210 Models I, III, and VIR airplanes, certificated in any category, which do not embody Modification 1753. Accomplish the following, unless previously accomplished:

A. Prior to the accumulation of 7000 landings or before the next 100 landings after the effective date of the AD, whichever occurs later, inspect the wing rib 44 web and angle doubler in accordance with SUD Service Bulletin 57-64 dated December 12, 1978.

B. Repeat the inspections of paragraph A., above, at intervals not to exceed:

1. Rib 44 lower cap—10,000 landings.
2. Webs and doublers—3,000 landings.

C. Parts found cracked must be repaired prior to further flight.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective August 16, 1985.

Issued in Seattle, Washington, on July 2, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-16354 Filed 7-9-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-05-AD; Amdt. 39-5095]

Airworthiness Directives; British Aerospace (BAe) Viscount Models 700 Series and 800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires that Alternators Part Number N0505 or 0505/1 which are installed, or have been installed, at the No. 2 position on Model 800 series airplanes be overhauled before the accumulation of 1250 flying hours. These alternators are the subject of mandatory actions required by the United Kingdom Civil Aviation Authority (CAA). This action is taken to preclude failure of this alternator and loss of de-icing capability.

EFFECTIVE DATE: August 16, 1985.

ADDRESSES: The service information specified in the AD may be obtained upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a limitation which they have imposed on the alternators installed on Viscount Models 700 and 800 series airplanes operated under registry of the United Kingdom to correct certain unsafe conditions which may exist. This limitation will act to prevent a failure of the alternator, a condition which could cause a fire and loss of de-icing capability.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which prescribed a mandatory overhaul life for the number two position generators on all BAe Viscount Model 700 and 800 airplanes was published in the **Federal Register** on March 1, 1985 (50 FR 8339).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After careful consideration of all available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that one U.S. registered airplane would be affected by this AD. Since this action makes mandatory the time-between-overhaul which is currently recommended by the alternator manufacturer, the cost impact is estimated to be negligible.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model BAe Viscount Model 700 or 800 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

British Aerospace Viscount: Applies to model 700 and 800 series airplanes, certificated in any category. To prevent failure of Alternators Part Number N0505 of 0505/1 which are or have been installed at the Number 2 position on Model 800 Series airplanes accomplish the following, unless already accomplished:

A. Replace with a servicable unit or overhaul in accordance with the Lucas overhaul manual reference 24-20-02 prior to the accumulation of 1250 flying hours or within the next 150 flying hours, whichever occurs later, and thereafter at intervals not to exceed 1250 flying hours.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, Aircraft Certification Division, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective August 16, 1985.

Issued in Seattle, Washington, on July 2, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-16355 Filed 7-9-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-129-AD; Amdt. 39-5096.]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires modification of certain lavatory waste containers to provide improved container sealing capability for enhanced fire containment on McDonnell Douglas DC-10 series airplanes. This AD is needed to assure the fire containment capability of the affected lavatory waste containers.

EFFECTIVE DATE: August 16, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtined from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert L. Thompson, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Regulations to include a new airworthiness directive (AD) requiring modification of certain lavatory waste containers on McDonnell Douglas DC-10 series airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on February 4, 1985 (50 FR 6191). The comment period for the proposal closed on April 5, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to all comments received. Five comments were received. Four comments had no objection to the issuance of the AD.

The fifth commenter felt that the modified waste container would not effectively contain a fire if a waste container is not installed properly or the waste chute door is ajar. In addition, this commenter is presently installing smoke detectors in lavatories and fire extinguishers in the waste chutes and the commenter feels that these devices are more effective in providing the level of safety intended than the proposed modifications.

The FAA acknowledge that recently issued Federal Aviation Regulation (FAR) 121.308, Amendment 121–185, requires installation of lavatory smoke detectors and fire extinguishers in the lavatory waste containers on passenger-carrying transport category airplanes operated under Part 121, such as the DC–10 airplanes. That rule was issued to improve the cabin fire protection of transport category airplanes so operated. As noted in the response to comments on that rule, fire protection consists of fire containment by receptacles, suppression by automatic extinguishers in early stages of the fire, rapid detection by smoke detectors, and use of appropriate hand extinguishers. Further, as stated in Notice of Proposed Rulemaking (NPRM) for that rule Docket No. 24073, Notice No. 84–5, published in the Federal Register on May 17, 1984 (49 FR 21010), the lavatory smoke detectors and automatic fire extinguishers are in addition to the fire containment capability currently required for lavatory waste containers. Therefore, the requirement to improve waste containers fire containment capability is retained because containment capability, degraded or not, delays the propagation of fire and is thus a needed incremental portion of the complete fire protection process.

With regard to the effect of improper installation of the waste container, the FAA has determined that the modifications specified in this AD will aid in assuring that the "rapid service" waste containers are properly installed during servicing thereby retaining the demonstrated fire containment capability.

With regard to the possibility of the waste chute door being ajar, the FAA recognizes that overstuffing of waste receptacles with trash might prevent closure of the receptacle door and reduce the fire safety level of the receptacle. This is one of the conditions FAR 121.308 seeks to counter through the installation of automatic fire extinguishers. However, this possibility does not alleviate the need for waste container fire containment capability as one of the elements of overall fire protection, as outlined above.

It is estimated that 101 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The actual cost of modified parts is estimated to be $1,921 per airplane. Based on these figures, the total cost impact of the AD is estimated to be $224,921.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model DC–10 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–10 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To assure the fire containment capability of the lavatory waste containers, accomplish the following:

A. Within 18 months after the effective date of this airworthiness directive (AD), modify the H/J type lavatory waste containers in accordance with the Accomplishment Instructions of McDonnell Douglas DC–10 Service Bulletin 25–230, January 25, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective August 16, 1985.

Issued in Seattle, Washington, on July 2, 1985.

Charles R. Foster,

Northwest Mountain Region.

[FR Doc. 85–16356 Filed 7–9–85; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Parts 3 and 4

Organization, Procedures and Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Final rules.

SUMMARY: Following the reception of comments, the Commission has amended its Rules of Practice and Procedure governing appeals from initial decisions, the length and format of briefs on appeal, and service of process. The action is intended to streamline the briefing of cases involving cross appeals from an administrative law judge's initial decision and to conform its rules regarding the length and format of briefs and service of process more closely to the Federal Rules of Appellate Procedure.

EFFECTIVE DATE: August 9, 1985 except that 16 CFR 3.52 as amended herein will apply only to appeals from initial decisions issued on or after August 9, 1985. Former 16 CFR 3.52 will apply to appeals from initial decisions issued before that date.

FOR FURTHER INFORMATION CONTACT: Jerome A. Tintle, (202) 523–3521, Office of General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On November 27, 1984, at 49 FR 46554, the Commission published for comment proposed amendments to its Rules of Practice and Procedure to streamline the briefing of cases involving cross appeals from an administrative law judge's initial decision and to conform its rules regarding the length and format of briefs and service of process more closely to the Federal Rules of Appellate Procedure.

Two comments were received. One, submitted by an attorney on behalf of himself and several other attorneys who practice before the Commission, endorsed the proposed rule changes. The other was filed by a Commission Assistant Regional Director, who makes three recommendations.

First, he recommends that the length of briefs on appeal (except where a cross-appeal is involved) remain at 60 pages and that typewritten briefs continue to be accepted single-spaced. Proposed Rule § 3.52 would require double-spacing of typewritten briefs but would compensate for this requirement by allowing approximately 25 percent more pages for typewritten briefs than for printed briefs. According to the commenter, the 25 percent additional allowance of pages for typewritten briefs would not make up for the loss in effective brief length caused by the double-spacing requirement. In his experience, a 75-page typewritten brief, double-spaced, would be equivalent to about a 40 to 45-page typewritten brief, single spaced.

The Commission favors the double-spacing requirement because it will make for easier reading of typewritten briefs. Since any party may submit its brief in typewritten or printed form, however, we see no objection to increasing the page limitations for typewritten briefs. Accordingly, Rule § 3.52 is amended to require that all briefs on appeal that are submitted in typewritten form be double-spaced and to allow for approximately 50 percent more pages for typewritten briefs than for printed briefs. A provision has also been added, which limits the number of characters in both printed and typewritten briefs to 10 characters per inch, including spaces.

The Assistant Regional Director also observes that proposed Rule § 3.52, unlike the current rule, fails to specify that the page limitations on briefs include appendices. Appendices should be included; the rule is amended accordingly.

Finally, he recommends that the Commission not adopt the proposed rule amendments relating to service by first-class mail. Under the proposed amendments to Rule § 4.4, a document served by first-class mail would be deemed served from the day of mailing (as opposed to the day of delivery, under the current rule); and proposed Rule § 4.3(c) would add three days to the time periods prescribed for response to a document served by first-class mail. The Assistant Regional Director's concern is that any delay in mail delivery longer than three days would automatically reduce the amount of time available for response to a document served by mail. Any unfairness caused by a delay in mail delivery can normally be cured by a grant of extension of time for responding, however. Treating service of a document as complete upon mailing will, moreover, better enable the Commission to monitor the due-dates of responses to documents served during adjudicative proceedings. The Commission has determined, however, to amend §§ 4.3(c) and 4.4 to make clear that these special provisions with respect to service apply only to documents served in adjudicative proceedings under Part III of the Commission's Rules of Practice. Section 4.4(c) is also amended to limit the requirement of proof of service to parties in adjudicative proceedings other than complaint counsel; because the Secretary's Office will continue to serve all documents authored by complaint counsel, a certification of service is not required for those documents.

List of Subjects

16 CFR Part 3

Administrative practice and procedure, Claims, Equal access to justice.

16 CFR Part 4

Administrative practice and procedure, Freedom of information, Privacy, Sunshine Act.

For these reasons, Part 3, Subpart F, § 3.52, and Part 4, §§ 4.2, 4.3, and 4.4 of Chapter I of Title 16, Code of Federal Regulations, are amended as follows:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

1. The authority citation for 16 CFR Part 3 continues to read as follows:

Authority: 15 U.S.C. 46(g).

1a. Section 3.52 is revised by redesignating paragraphs (f), (g), and (h) as paragraphs (h), (i), and (j), respectively; by revising paragraphs (a) through (e) and by adding new paragraphs (f) and (g), to read as follows:

§ 3.52 Appeal from initial decision.

(a) *Who may file; notice of intention.*—Any party to a proceeding may appeal an initial decision to the Commission by filing a notice of appeal with the Secretary within 10 days after service of the initial decision. The notice shall specify the party or parties against whom the appeal is taken and shall designate the initial decision and order or part thereof appealed from. If a timely notice of appeal is filed by a party, any other party may thereafter file a notice of appeal within 5 days after service of the first notice, or within 10 days after service of the initial decision, whichever period expires last.

(b) *Appeal brief.*—The appeal shall be in the form of a brief, filed within 30 days after service of the initial decision, and shall contain, in the order indicated, the following:

(1) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(2) A concise statement of the case;

(3) A specification of the questions intended to be urged;

(4) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific page references to the record and the legal or other material relied upon; and

(5) A proposed form of order for the Commission's consideration instead of the order contained in the initial decision.

The brief shall not, without leave of the Commission, exceed 60 pages, if printed, or 90 pages, if typewritten, including any appendices but exclusive of pages containing the table of contents, tables of authorities and any addendum containing statutes, rules and regulations.

(c) *Answering brief.* Within 30 days after service of the appeal brief, the appellee may file an answering brief, which shall contain a subject index, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto, as well as arguments in response to the appellant's appeal brief. However, if the appellee is also cross-appealing, its answering brief shall also contain its

arguments as to any issues the party is raising on cross-appeal, including the points of fact and law relied upon in support of its position on each question, with specific page references to the record and legal or other material on which the party relies in support of its cross-appeal, and a proposed form of order for the Commission's consideration instead of the order contained in the initial decision. If the appellee does not cross-appeal, its answering brief shall not, without leave of the Commission, exceed 60 pages, if printed, or 90 pages, if typewritten. If the appellee cross-appeals, its brief in answer and on cross-appeal shall not, without leave of the Commission, exceed 105 pages, if printed, or 160 pages, if typewritten. The page limitations of this paragraph include any appendices but are exclusive of pages containing the table of contents, tables of authorities, and any addendum containing statutes, rules and regulations.

(d) *Reply brief.* Within 7 days after service of the appellee's answering brief, the appellant may file a reply brief, which shall be limited to rebuttal of matters in the answering brief and shall not, without leave of the Commission, exceed 60 pages, if printed, or 90 pages, if typewritten. However, if the appellee has cross-appealed, any appellant who is the subject of the cross-appeal may, within 30 days after service of such appellee's brief, file a reply brief, which shall be limited to rebuttal of matters in the appellee's brief and shall not, without leave of the Commission, exceed 75 pages, if printed, or 115 pages, if typewritten. If the appellee has cross-appealed, any party who is the subject of the cross-appeal, other than an appellant may, within 30 days after service of the appellee's brief, file a reply brief which shall be limited to rebuttal of matters raised by the appellee's cross-appeal with respect to the party and shall not, without leave of the Commission, exceed 60 pages if printed, or 90 pages, if typewritten. The appellee who has cross-appealed may, within 7 days after service of a reply to its cross-appeal, file an additional brief, which shall be limited to rebuttal of matters in the reply to its cross-appeal and shall not, without leave of the Commission, exceed 30 pages, if printed, or 45 pages, if typewritten. The page limitations of this paragraph include any appendices but are exclusive of pages containing the table of contents, tables of authorities, and any addendum containing statutes, rules, and regulations. No further briefs may be filed except by leave of the Commission.

(e) *Form of briefs.* Briefs may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. All printed matter must appear in the least 11 point type on opaque, unglazed paper. Briefs produced by the standard typographic process shall be bound in volumes having pages 6⅛ by 9¼ inches and type matter 4⅛ by 7⅛ inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8½ by 11 inches and type matter not exceeding 6½ by 9½ inches, with double spacing between each line of text. Footnotes and quoted material within the text may be single-spaced. Both printed and typewritten briefs shall contain no more than 10 characters (including spaces) per inch.

(f) *Signature.* (1) The original of each brief filed shall have a hand-signed signature by an attorney of record for the party, or in the case of parties not represented by counsel, by the party itself, or by a partner if a partnership, or by an officer of the party if it is a corporation or an unincorporated association.

(2) Signing a brief constitutes a representation by the signer that he or she has read it, that to the best of his or her knowledge, information, and belief, the statements made in it are true, and that it is not interposed for delay. If a brief is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may go forward as though the brief has not been filed.

(g) *Designation of appellant and appellee in cases involving cross-appeals.* In a case involving an appeal by complaint counsel and one or more respondents, any respondent who has filed a timely notice of appeal and as to whom the administrative law judge has issued an order to cease and desist shall be deemed an appellant for purposes of paragraphs (b), (c), and (d) of this rule. In a case in which the administrative law judge has dismissed the complaint as to all respondents, complaint counsel shall be deemed the appellant for purposes of paragraphs (b), (c), and (d) of this rule.

PART 4—RULES OF PRACTICE MISCELLANEOUS RULES

2. The authority citation for 16 CFR Part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46, unless otherwise noted.

2a. Section 4.2(d)(2) is revised to read as follows:

§ 4.2 Requirements as to form, and filing of documents.

* * * * *

(d) *Form.* * * *

(2) Briefs filed on an appeal from an initial decision shall be in the form prescribed by § 3.52(e).

3. Section 4.3(c) is added to read as follows:

§ 4.3 Time.

* * * * *

(c) *Additional time after service by mail.* Whenever a party in an adjudicative proceeding under Part III of the rules is required or permitted to do an act within a prescribed period after service of a paper upon it and the paper is served by first-class mail pursuant to § 4.4(a)(3) or § 4.4(b), 3 days shall be added to the prescribed period.

4. Section 4.4 is revised to read as follows:

§ 4.4 Service.

(a) *By the Commission.*

(1) Service of complaints, initial decisions, final orders and other processes of the Commission under 15 U.S.C. 45 may be effected as follows:

(i) *By registered or certified mail.* A copy of the document shall be addressed to the person, partnership, corporation or unincorporated association to be served at his, her or its residence or principal office or place of business, registered or certified, and mailed; service under this provision is complete upon delivery of the document by the Post Office; or

(ii) *By delivery to an individual.* A copy therof may be delivered to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation or unincorporated association to be served; service under this provision is complete upon delivery as specified herein; or

(iii) *By delivery to an address.* A copy thereof may be left at the principal office or place of business of the person, partnership, corporation, or unincorporated association, or it may be left at the residence of the person or of a member of the partnership or of an executive officer or director of the corporation, or unincorporated association to be served; service under this provision is complete upon delivery as specified herein.

(2) All other orders and notices, including subpoenas, orders requiring access, orders to file annual and special reports, and notices of default, may be served by any method reasonably certain to inform the affected person, partnership, corporation or

unincorporated association, including any method specified in paragraph (a)(1), except that civil investigative demands may only be served in the manner provided by section 20(c)(7) of the FTC Act (in the case of service on a partnership, corporation, association, or other legal entity) or section 20(c)(8) of the FTC Act (in the case of a natural person). Service under this provision is complete upon delivery by the Post Office or upon personal delivery.

(3) All documents served in adjudicative proceedings under Part III of the Commission's Rules of Practice other than complaints and initial, interlocutory, and final decisions and orders may be served by personal delivery or by first-class mail and shall be deemed served on the day of personal delivery or the day of mailing.

(4) When a party has appeared in a proceeding by an attorney, service on that individual of any document pertaining to the proceeding other than a complaint shall be deemed service upon the party. However, service of those documents specified in paragraph (a)(1) of this section shall first be attempted in accordance with the provision of paragraphs (a)(1) (i), (ii), and (iii) of this section.

(b) *By other parties.* Service of documents by parties other than the Commission shall be by delivering copies thereof as follows: Upon the Commission, by personal delivery or delivery by first-class mail to the Office of the Secretary of the Commission and, in adjudicative proceedings under Part III of the Commission's Rules of Practice, to the Assistant Director in the Bureau of Competition, the Associate Director in the Bureau of Consumer Protection, or the Director of the Regional Office of complaint counsel. Upon a party other than the Commission or Commission counsel, service shall be by personal delivery or delivery by first-class mail. If the party is an individual or partnership, delivery shall be to such individual or a member of the partnership; if a corporation or unincorporated association, to an officer or agent authorized to accept service of process therefor. Personal service includes handling the document to be served to the individual, partner, officer, or agent; leaving it at his or her office with a person in charge thereof; or, if there is no one in charge or if the office is closed or if the party has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Documents served in adjudicative proceedings under Part III of the Commission's Rules of Practice shall be deemed served on the day of personal service or the day of mailing. All other documents shall be deemed served on the day of personal service or on the day of delivery by the Post Office.

(c) *Proof of service.* In an adjudicative proceeding under Part III of the Commission's Rules of Practice, papers presented for filing by a party respondent or intervenor shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed.

By direction of the Commission, dated July 1, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 85-16149 Filed 7-9-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP) and 1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP) into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration (DEA) is issuing this notice to temporarily place 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP) and 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP) into Schedule I of the Controlled Substances Act (CSA) pursuant to the emergency scheduling provisions of the CSA. This action is based on a finding that the scheduling of MPPP and PEPAP in Schedule I is necessary to avoid an imminent hazard to the public safety and on a recommendation from the Acting Assistant Secretary for Health, Department of Health and Human Services. This action will impose the criminal sanctions and regulatory controls of Schedule I on the manufacture, distribution and possession of MPPP and PEPAP.

EFFECTIVE DATE: On August 12, 1985 MPPP and PEPAP will be subject to Schedule I control.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473) which was signed into law on October 12, 1984, amended section 201 of the CSA (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if he finds that such action is necessary to avoid an imminent hazard to the public safety. A substance may be scheduled under the emergency provisions of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no approval or exemption in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Acting Administrator of the Drug Enforcement Administration (28 CFR 0.100(b)).

As required by section 201(h)(4) of the CSA (21 U.S.C. 811(m)(4)), the Acting Administrator has notified the Secretary of Health and Human Services of his intention to place MPPP and PEPAP into Schedule I pursuant to the emergency scheduling provisions. Such action may not take effect until the expiration of thirty days after DEA notifies the Secretary and after a notification is published by DEA in the **Federal Register.**

In making a finding of an imminent hazard to the public safety, the Attorney General is required to consider only those factors set forth in paragraphs (4) the history and current pattern of abuse, (5) the scope, duration and significance of abuse, and (6) what, if any risk there is to the public health, of section 201(c) of the CSA (21 U.S.C. 811(c)).

House Report 98-835 which accompanied Public Law 98-473 states that "This new procedure [emergency scheduling] is intended by the Committee to apply to what has been called 'designer drugs,' new chemical analogs or variations of existing controlled substances, or other new substances, which have a psychedelic, stimulant or depressant effect and have high potential for abuse." The report specifies that MPPP, which is similar to meperidine (Demerol), is an example of such a substance. This report goes on to

say that "* * * The ability to establish controls on MPPP, if its production for drug abuse were to be encountered more often, would be important to protect the public health and to prosecute those who wantonly risk the public health." Clearly, this situation envisioned by Congress has occurred. Analogs of the synthetic narcotic analgesic, meperidine (Demeral), including MPPP and PEPAP, are examples of the "designer drugs" which Congress intended to subject to the emergency scheduling authority as imminent hazards to the public safety.

1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP) and 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP) are reversed ester analogs of the Schedule II synthetic narcotic analgesic, meperidine (pethidine, Demerol). Analgesic screening tests in rats and mice indicate that MPPP and PEPAP are meperidine-like opiate analgesics. The analgesic potency of MPPP, as measured after intravenous and subcutaneous administration in rats and mice, ranged from 5 to 30 times that of meperidine on a molar basis. Toxicity studies using subcutaneous administration in mice yielded an LD_{50} for MPPP of 40 mg/kg compared to an LD_{50} for meperidine of 196 mg/kg. The analgesic potency of PEPAP, as measured after subcutaneous administration in mice and rats, ranged from 12 to 72 times that of meperidine on a molar basis. DEA is unaware of any legitimate medical use or manufacture of MPPP and PEPAP in the United States.

MPPP and PEPAP can be synthesized via the appropriate piperidional intermediates. These intermediates are very susceptible to dehydration to the corresponding 1-alkyl-4-aryl-1,2,5,6-tetrahydropyridines. In the case of the MPPP synthesis, the by-product, 1-methyl-4-phenyl-1,2,5,6-tetrahydropyridine (MPTP), is also formed unless reaction conditions are carefully controlled; the PEPAP synthesis also yields 1-(2-phenylethyl)-4-phenyl-1,2,5,6-tetrahydropyridine (PEPTP). It has been determined that MPTP is a neurotoxic substance which induces a permanent Parkinsonian syndrome in man and nonhuman primates. This Parkinsonian syndrome has been identified in individuals who were exposed to MPTP as an impurity in the narcotic substance MPPP or accidently in an industrial setting. It is not known at this time whether PEPTP produces a similar neurotoxicity. Although careful synthetic procedures could eliminate the unwanted by-products, MPTP and PEPTP, the samples of clandestinely produced MPPP and PEPAP analyzed by forensic laboratories have invariably contained quantities of MPTP and PEPTP.

The abuse of MPPP was first reported in 1976 in the Washington, D.C. area when a 23 year old male was referred to the National Institute of Mental Health (NIMH) for evaluation after exhibiting symtoms of Parkinson's Disease. He was a known drug abuser and had used the meperidine analog, MPPP. This individual synthesized MPPP and reported that intravenous and intramuscular use of MPPP produced an opiate-like high and other subjective effects similar to those of meperidine. He subsequently produced more MPPP but altered the reaction conditions. Intravenous use of MPPP from these later batches resulted in his hospitalization with Parkinsonian symptoms. Duplication of his synthesis by researchers produced MPPP, MPHP (N-methyl-4-phenyl-4-hydroxy-piperidine) and MPTP (1-methyl-4-phenyl-1,2,5,6-tetrahydropyridine). Subsequent studies showed that MPTP was responsible for the production of the Parkinsonian syndrome.

DEA laboratories analyzed six exhibits of MPPP in 1982 from Monterey and Santa Clara Counties in California. All exhibits were clandestinely produced, contained MPTP and were obtained from individuals who were hospitalized with a Parkinsonian syndrome. By the summer of 1983, neurologists at the Santa Clara Valley Medical Center reported that they were treating seven individuals for a Parkinsonian syndrome after their intravenous use of MPPP contaminated with MPTP. Scientists at the National Institute of Mental Health tested MPTP in monkeys and succeeded in producing Parkinsonism in these animals. MPPP has been sold on the street as synthetic heroin. Interviews with narcotics users indicate that many may have been unknowingly exposed to MPPP/MPTP or other meperidine analogs. Not all of these individuals immediately developed Parkinsonian symptoms. Parkinsonian's Disease is associated with a decrease in the number of dopaminergic neurons in the substantia nigra greater than that accompanying normal aging. Since MPTP also decreases the number of dopaminergic neurons in the substantia nigra, it is unlikely that more MPTP exposed individuals may develop Parkinsonism as their dopaminergic neurons further decrease with age.

Physicians at the University of British Columbia in Vancouver, Canada reported another case of MPIP-induced Parkinsonism after abuse of MPPP. An individual has prepared MPPP and snorted it daily for seven days prior to developing Parkinsonian symptoms. Analysis of the material which he had taken revealed the presence of MPPP, MPTP and the piperidinol intermediate.

Although forensic laboratories have not detected MPPP/MPTP in the illicit drug traffic since 1982, there is considerable evidence that MPPP/MPTP or other meperidine analogs have been available since that time and are currently available. Raids of clandestine laboratories producing methamphetamine near Jamul, California in September, 1984 and April, 1985 by DEA yielded copies of the typewritten synthesis of MPPP, literature references to the synthesis of meperidine analogs and, at the 1985 laboratory, precursors to produce MPPP. Additionally, in October, 1984, DEA seized a large-scale PCP laboratory in Brownsville, Texas which was in the process of making an intermediate which could have been converted into PEPAP. Analysis of the reaction mixture found at the laboratory showed that 1-(2-phenylethyl)-4-phenyl-piperidinol (intermediate in the synthesis of PEPAP) and 1-(2-phenylethyl)-4-phenyl-1,2,5,6-tetrahydropyridine (PEPTP, dehydration by-product) were present. In March, 1985 a DEA laboratory reported the identification of PEPAP and PEPTP in a sample confiscated by the Hayward Police Department in Alameda County, California.

In January, 1985, the Centers for Disease Control (CDC), Department of Health and Human Services, in conjunction with the State of California and the Santa Clara Valley Medical Center in San Jose, California, began an interview program to locate persons who may have used MPPP/MPTP. By letter dated April 12, 1985, DEA Acting Administrator John C. Lawn requested that Dr. James Mason, Acting Assistant Secretary for Health, provide DEA with the results of the CDC study and an evaluation of the study data relevant to a determination of the current or recent availability of MPPP/MPTP. Dr. Mason responded by letter dated May 28, 1985, that the evidence available suggests that meperidine analogs are currently available in California. The CDC found that a number of interviewees reported the use of a substance after 1982 which produced symptoms identical to those produced by acute MPPP/MPTP exposure. Specifically, 24 interviewees reported the use of such a substance in 1983, 31 in 1984 and 9 in 1985. Additionally, the CDC reports that trained staff at drug treatment clinics in Los Angeles, San Diego, and Fresno, California have reported seeing classical

signs and symptoms of meperidine analog use in clients. Narcotic users interviewed in San Francisco, Oakland and Salinas, California also report that meperidine analogs are currently available. In his letter, Dr. Mason stated that "We believe that . . . meperidine analogs are currently available in California. Due to the known severe, irreversible toxic effect of MPTP/MPPP and total lack of any known health benefit associated with these substances, I encourage you to consider exercising whatever authorities are available to you to control these substances, including your Emergency Scheduling authority to place them in Schedule I of the Controlled Substances Act."

The intravenous use of clandestinely produced narcotics in general, and the meperidine analogs, MPPP and PEPAP in particular, pose substantial risks to the public health and safety. The presence of the neurotoxin, MPTP, as a by-product in clandestinely produced MPPP, multiplies the public health and safety hazards attendant to the use of MPPP. The continued availability, use and possible spread of the use of meperidine analogs, particularly MPPP, will undoubtedly result in the development of a chronic irreversible and progressive parkinsonian syndrome in many more individuals either immediately after use or some later time. Although PEPTP, the PEPAP by-product, has a chemical structure similar to that of MPTP, it is not yet known whether PEPTP will produce toxic effects similar to those produced by MPTP. Nevertheless, the current availability and use of PEPAP as a drug of abuse, its lack of any known accepted medical use and its possible toxicity, warrant immediate action to prevent further risk to the public health and safety.

The data described above show that the production, distribution and use of meperidine analogs, specifically MPPP and PEPAP, continue to pose a very serious hazard to the public health and safety. The use of MPPP in Washington, D.C., California and British Columbia, Canada as well as the attempted synthesis of PEPAP in Texas and its identification in California indicates that the use of MPPP and PEPAP is not an isolated phenomenon. There is a potential for the production, distribution and use of these substances along with their attendant health and safety hazards, to spread to other areas of the United States.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Acting Administrator has considered the following factors described in section 201(c) of the CSA (21 U.S.C. 811(c)) relative to making a determination of whether MPPP and PEPAP each pose an imminent hazard to the public safety:

(4) Its history and current pattern of abuse.

(5) The scope, duration and significance of abuse.

(6) What, if any, risk there is to the public health.

Based on a consideration of these factors, the recommendation of the Acting Assistant Secretary for Health, and in light of the current availability and abuse of MPPP, PEPAP and their by-products MPTP and PEPTP, the neurotoxicity of MPTP, and the possible neurotoxicity of PEPTP, the Acting Administrator, pursuant to section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, finds that scheduling MPPP and PEPAP in Schedule I of the CSA, at least on a temporary basis, is necessary to avoid an imminent hazard to the public safety.

The Acting Administrator has transmitted notice of his intention to temporarily place MPPP and PEPAP into Schedule I of the CSA to the Secretary of Health and Human Services. Comments submitted by the Secretary in response to the notification, including whether there is an exemption or approval in effect for MPPP or PEPAP under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration by the Acting Administrator before the notice becomes effective.

Pursuant to the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Acting Administrator hereby orders that on August 12, 1985 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts and salts of isomers, and 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP), its optical isomers, salts and salts of isomers, be placed into Schedule I of the CSA (21 U.S.C. 801 et seq.) unless the Acting Administrator gives notice in the **Federal Register** that this order is rescinded prior to August 12, 1985.

PART 1308—[AMENDED]

List of Subjects in 21 CFR Part 1308

Prescription drugs.

For the reasons set forth above, 21 CFR 1308.11(g) is amended as follows:

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Sections 1308.11(g)(3) and (4) are added to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(3) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts and salts of isomers	9661
(4) 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP), its optical isomers, salts and salts of isomers	9663

* * * * *

The temporary placement of MPPP and PEPAP in Schedule I under section 201(h) of the CSA (21 U.S.C. 811(h)) will expire at the end of one year from the effective date of this order. If a rulemaking proceeding to schedule MPPP or PEPAP under the CSA has been initiated pursuant to section 201(a) of the CSA (21 U.S.C. 811(a)) and is pending, the temporary scheduling of MPPP or PEPAP may be extended for up to six months.

This action is not a formal rulemaking procedure as set forth in the Administrative Procedures Act (5 U.S.C. 551–559) and the opportunity for a hearing on the record is not required. Nevertheless, the Acting Administrator affords the opportunity for comments to be submitted concerning this matter. Comments should be submitted in quintuplicate to the Acting Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C. 20537, Attention: Federal Register Representative.

All regulations and criminal sanctions applicable to Schedule I substances are effective on August 12, 1985 with respect to MPPP and PEPAP. However, individuals registered with DEA in accordance with Part 1301 or 1311 of Title 21 of the Code of Federal Regulations and who currently possess MPPP or PEPAP may continue to do so pending DEA's receipt of an amended registration application no later than September 9, 1985.

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports MPPP or PEPAP, or who engages in research or conducts instructional activities with respect to this substance, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* MPPP and PEPAP must be manufactured, distributed and stored in accordance with §§ 1301.71—1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers

of MPPP and PEPAP must comply with the requirements of §§ 1302.03—1302.05, 1302.07 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for MPPP or PEPAP shall submit applications pursuant to §§ 1302.12 and 1302.22 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of MPPP or PEPAP shall take an inventory pursuant to §§ 1304.11—1304.19 of Title 21 of the Code of Federal Regulations of all stocks of this substance on hand.

6. *Records.* All registrants required to keep records pusuant to §§ 1304.21—1304.27 of Title 21 of the Code of Federal Regulations shall do so regarding MPPP and PEPAP.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.37—1304.41 of Title 21 of the Code of Federal Regulations shall do so regarding MPPP and PEPAP.

8. *Order Forms.* All registrants involved in the distribution of MPPP or PEPAP shall comply with the order form requirements of § 1305.01—1305.16 of Title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of MPPP and PEPAP shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with respect to MPPP or PEPAP not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on or after August 12, 1985 is unlawful.

Pursuant to 5 U.S.C. 605(b), the Acting Administrator certifies that the temporary placement of MPPP and PEPAP into Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the temporary control of substances with no legitimate medical use or manufacture in the United States.

It has been determined that the temporary placement of MPPP and PEPAP in Schedule I of the GSA under the emergency scheduling provisions is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

Date: July 5, 1985.

John C. Lawn,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 85–16491 Filed 7–9–85; 8:45 am]

BILLING CODE 4410–09–M

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is making a change in the wording of one of the conditions contained in 28 CFR 2.40, Conditions of Release. That condition, 28 CFR 2.40(a)(11), prohibits parolees from possessing firearms or other dangerous weapons and also contains language concerning securing permission to possess such items. The Parole Commission has determined that, since general provisions for the modification of parole release conditions are contained already at 28 CFR 2.40 (b) and (e), it would be clearer and would avoid confusion to rewrite the condition to include only the prohibitory language. Details as to modification (or waiver) of this condition can be added, as necessary, to the procedures that accompany the rules on modification.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–4980.

SUPPLEMENTARY INFORMATION: Currently the U.S. Parole Commission imposes several conditions on every grant of parole, conditions deemed necessary to provide adequate supervision and to protect the public welfare. The Commission has amended one of the conditions at 28 CFR 2.40 by changing the language prohibiting a parolee's possessing firearms or other dangerous weapons. The new language maintains the prohibition but removes the discussion of the waiver of this prohibition. Several United States Probation Officers had reported that the former wording of the condition was misleading and confusing, causing some parolees to conclude that permission to carry firearms could be granted by the Parole Commission even in the face of contrary federal, state or local law.

Modification of the release conditions may be made by the Commission, or a member thereof, on its own motion, pursuant to 28 CFR 2.40(b). Requests for modification may be made by the U.S. Probation Officer supervising the parolee, also pursuant to 28 CFR 2.40(b), or by the parolee himself, pursuant to 28 CFR 2.40(e). The Commission has determined that these rules that provide generally for modification are sufficient to govern the exceptional circumstances where a parolee can secure permission to possess a firearm or other dangerous weapon. Any details concerning such a modification can be added, as necessary, to the procedures that accompany the rules.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 is revised to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.40, Conditions of Release, is amended by revising paragraph (a)(11) to read as follows:

§ 2.40 Conditions of release.

(a) * * *

(11) The parolee shall not possess a firearm or other dangerous weapon.

* * * * *

Dated: June 19, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85–16362 Filed 7–9–85; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF EDUCATION

Office of Inspector General

34 CFR Part 19

National Security Information; Handling Classified Information

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the existing regulations in 34 CFR Part 19—National Security Information Procedures to comply with the procedural requirements of Executive

Order 12356, "National Security Information."

The amendments are necessary in order to identify Executive Order 12356 and the Information Security Oversight Office's (ISOO) Directive No. 1 as the basis for these regulations, and to revise and retitle § 19.14, relating to declassification procedures. Section 19.14 informs members of the public of the procedures to be followed in submitting requests for mandatory review for declassification and establishes internal processing and disposition procedures for such requests.

EFFECTIVE DATE: These regulations are effective on July 10, 1985.

FOR FURTHER INFORMATION CONTACT: Joyann B. Koustenis, Security Officer, Room 4124, M.E.S. Bldg., 330 C Street SW., Washington, D.C. 20202, Telephone: (202) 472–2410.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 12356, "National Security Information," effective on April 2, 1982, requires that agencies which handle classified information promulgate regulations identifying the information to be protected, prescribe classification, downgrading, declassification and safeguarding procedures, and establish a monitoring system to ensure compliance. The Executive Order further requires that those portions of the regulations which affect members of the public be published in the **Federal Register**.

The Department of Education's Role With Classified Information

The Department of Education does not have original classification authority; however, it receives information classified by other agencies. These regulations establish procedures for handling such information. The Office of Inspector General is required to develop and direct a Department-wide monitoring system to ensure effective implementation of Executive Order 12356. This includes, but is not limited to: (1) Designating certain Department officials as custodians of all classified information; (2) developing an effective security education program that familiarizes employees with the requirements of the Order; and (3) establishing procedures for mandatory declassification review requests.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations.

However, publication of this document as a proposed rule for public comment is not required under 5 U.S.C. 553(b)(A) since the regulations relate only to agency procedures. Further, since these regulations are not substantive, they do not require a delayed effective date under 5 U.S.C. 553(d).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria established in the Order for major regulations.

List of Subjects in 34 CFR Part 19

Classified information.

(Catalog of Federal Domestic Assistance number not applicable)

Dated: July 5, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 19 as follows:

PART 19—NATIONAL SECURITY INFORMATION PROCEDURES

1. The authority citation for Part 19 is revised to read as follows:

Authority: Executive Order 12356.

2. In §§ 19.1, 19.11, and 19.15, "12065" is removed wherever it appears and "12356" is inserted in its place.

3. In § 19.12, paragraph (a) is revised to read as follows:

§ 19.12 Reproduction controls.

(a) Reproduction of classified material within the Department of Education must be in compliance with Executive Order 12356, Section 4–1.

* * * * *

4. In § 19.13, paragraph (b)(1) is revised to read as follows:

§ 19.13 Storage.

* * * * *

(b) * * *

(1) The combination must be changed as required by the June 25, 1982 Information Security Oversight Office's (ISOO) Directive No. 1, Section 2001.43.

* * * * *

5. Section 19.14 is revised to read as follows:

§ 19.14 Mandatory review for declassification.

(a) *Requests.* Request for mandatory review of national security information must be in writing and addressed to the Assistant Inspector General for Investigation, Office of Inspector General, U.S. Department of Education, L'Enfant Plaza Station, P.O. Box 23458, Washington, D.C. 20026.

(b) *Mandatory review.* Information is subject to mandatory review by the originating agency if—

(1) The request is made by a U.S. citizen or permanent resident alien, a Federal agency, or a State or local government; and

(2) The request describes the document or material containing the information with sufficient specificity to enable the Department to locate it with a reasonable amount of effort.

(c) *Exemptions from mandatory review.* Information originated by a President, the White House staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President, is exempted from mandatory review for declassification.

(d) *Processing requirements.* The Department of Education does not have original classification authority. Any classified information or materials in its custody are classified by another agency. The Department refers copies of the request and the requested documents to the originating agency for processing, and may, after consultation with the originating agency, inform the requester of the referral.

(e) *Fees.* The Department may charge fees for search and review time required to process the request and for reproduction costs. These fees are charged in accordance with 31 U.S.C. 483a.

[FR Doc. 85–16402 Filed 7–9–85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[Federal Acquisition Circular 84-10]

Federal Acquisition Regulation; Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule; correction.

SUMMARY: This document corrects § 15.813–1, Policy, of the interim rule published in the Federal Register on Wednesday, July 3, 1985 (50 FR 27560).

DATES: The period of comment is extended to August 9, 1985.

ADDRESS: Interested parties should submit written comments to: General Services Administration, ATTN: FAR Secretariat (VR), 18th & F Streets, N.W., Room 4041, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523–4755.

In FR Doc. 85–15869 issued Wednesday, July 3, 1985, make the following correction:

1. Section 15.813–1 is corrected to read as follows:

15.813–1 Policy.

The Government should not purchase items of supply offered for sale to the public at a price that exceeds the lowest price at which such items are sold by the contractor unless the price difference is clearly justified by the seller or unless exempt under 15.813–3. To this end, 10 U.S.C. 2323 and 41 U.S.C. 253e require an offeror to certify that the price offered is not more than its lowest commercial price or to submit a written statement specifying the amount of any difference and providing justification for that difference.

Dated: July 3, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 85–16393 Filed 7–9–85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 30519–89]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of adjustment to Texas closure.

SUMMARY: NOAA opens the fishery conservation zone off Texas to trawl fishing for shrimp at 30 minutes after sunset on July 8, 1985, earlier than that scheduled by the Texas closure provisions (May 20, 1985, through July 15, 1985). This action is prescribed by existing regulations, and its intended effect is to allow harvest of brown shrimp at optimal commercial size.

EFFECTIVE DATE: The opening is effective at 30 minutes after sunset on July 8, 1985. Public notice has been issued at least 24 hours prior to the opening as required under 50 CFR 658.24.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, National Marine Fisheries Service, Southeast Regional Office, Fishery Operations Branch, 9450 Koger Boulevard, St. Petersburg, Florida 33702, telephone number: 813–893–3723.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico provides for adjustments to the closing and opening dates for the seasonal closure of the fishery conservation zone off Texas. Implementing rules at 50 CFR 658.24 describe the Texas closure and specify that these adjustments be made by the Regional Director under criteria set out in that section. NOAA adjusted the Texas closure on May 20, 1985 (50 FR 20912), based upon these specified criteria.

Available information and estimates indicate that an early opening is warranted and desirable. Biological data collected by the Texas Parks and Wildlife Department on the size of shrimp indicate that shrimp within the closed area have reached an average size which supports the early opening, and a period of strong tidal activity begins on July 8.

Other Matters

This action is taken under the authority of 50 CFR 658.24, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 658

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: July 5, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–16394 Filed 7–5–85; 2:03 pm]

BILLING CODE 3510-22-M

50 CFR Part 674

[Docket No. 50694–5094]

High Seas Salmon Fishery Off Alaska; Correction

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects two omissions in the regulatory text portion of the final rule for the High Seas Salmon Fishery Off Alaska that was published June 18, 1985, at 50 FR 25247.

FOR FURTHER INFORMATION CONTACT: Aven M. Anderson (Fishery Management Biologist, NMFS), 907–586–7229.

(16 U.S.C. 3631 *et seq;* 16 U.S.C. 1801 *et seq.*)

Dated: July 3, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

§ 674.21 [Corrected]

The correction is made in FR Doc. 85–14611, page 25248, column 3. Paragraph (a)(2)(ii) is corrected to read "All salmon species—0001 hours July 15 until the combined commercial and recreational harvest reaches the harvest limit of chinook salmon," and paragraph (a)(2)(iii) is corrected to read "All salmon species but chinook—from the time the combined commercial and recreational harvest reaches the harvest limit of chinook salmon until 2400 hours September 20."

[FR Doc. 85–16393 Filed 7–9–85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 132
Wednesday, July 10, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Fees for Supervision of Official Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) proposes to reduce fees by approximately 40 percent for the supervision of inspection and weighing services performed by agencies. The proposed fee reduction is intended to reduce the level of applicable operating reserves. FGIS also is proposing to establish fees to recover the costs incurred for supervision of agencies performing Class Y weighing services and to clarify the fee schedule by consolidating the fees for protein and oil analyses under the category "official criteria." These proposed changes would clarify, update, and simplify the fee schedule.

DATES: Comments must be submitted on or before August 9, 1985.

ADDRESSES: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Management Branch, Rm, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above office during regular business hours (7 CFR 1.27(b)). A summary of comments received on this proposal will be published with the final rule.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. FGIS is required by statute to make services available and to cover the estimated costs of providing such services. Moreover, this proposed action, in part, would reduce applicable fees.

Supervision Fees for Official Services

The United States Grain Standards Act, as amended, (7 U.S.C. 71 *et seq.*) requires that delegated States and designated official agencies pay fair and reasonable fees to cover the estimated costs to FGIS to supervise these agencies.

A final rule was made effective August 1, 1984 (49 FR 26560), which, in part, reduced the fees for FGIS supervision of inspection and weighing of delegated States and designated official agencies by approximately 35%. This reduction in fees was intended to bring revenues more in line with FGIS costs while, at the same time, gradually reducing the level of operating reserves for these two programs. Since that time, FGIS has carefully monitored the level of these fees in light of current program costs and revenues, including applicable operating reserves.

The 1984 reduction in fees has slowed the rate of growth in the operating reserves by approximately 64%. However, the operating reserves continue to grow, albeit, at a slower rate. As of April 30, 1985, for both supervision programs, FY 1985 revenues were $1.8 million with costs of $1.2 million. As of that date, the level of the applicable operating reserves was $4.5 million. In the 1984 reduction, some factors used in projections were affected by unanticipated exports of grains in the first few months of fiscal year 1985. Further, FGIS has and continues to adopt cost savings measures to provide the grain trade with the most cost effective programs as practicable. To this end, FGIS continued to implement cost savings measures, including reductions in personnel and overhead cost, for the FGIS supervision programs. Additionally, effective August 1, 1984, FGIS has implemented a new program in which additional supervisory authorities have been delegated to the States of California and Washington in their delegated capacities under the Act. This action has permitted the closing of two field offices. This proposed action in and of itself would not change the level of fees assessed to these delegated States because the fees charged to these States are assessed separately as set forth in the States' delegation of authority documents.

A comparison of FY 1984 actual costs with comparable FY 1985 actual costs indicates that FGIS costs have been reduced by approximately 9%. Presently, grain exports are at levels which are approximately 19% below the first quarter of FY 85 levels. Recent trends indicate that exports are running approximately 4.5% behind comparable 1984 figures. This trend is expected to continue in the immediate future. A comparison of FY 84 actual revenues with comparable FY 85 actual revenues indicates that FGIS revenues have been reduced approximately 41%.

Nevertheless, based upon present operating reserve levels, FGIS is proposing a fee reduction of approximately 40%. Examples of proposed fee reductions include the following: For official inspection or reinspection services and official Class X weighing services, the present supervision fees for trucks, $.50; hopper cars, $1.60; barges, $10.25 and ships $82.00 would be reduced to $.30, $.95, $6.15 and $49.20 respectively.

This reduction is projected to operate the programs at net losses so as to reduce the operating reserves on a planned gradual basis. The proposed reduction in fees would decrease the operating reserves over the next few fiscal years. This action would promote program stability and provide for an orderly reduction of operating reserves, thereby avoiding any potential sharp increase in fees as may be required because of unanticipated or accelerated program losses. If adopted, this reduction when added to the 1984 reduction will have reduced applicable

fees by approximately 61% over early FY 1984 levels.

The possibility of a fee reduction has been discussed with the FGIS Advisory Committee as well as with members of the American Association of Grain Inspection and Weighing Agencies (AAGIWA). All have concurred in the need for appropriate action. FGIS will continue to closely monitor its cost and revenues in this area so that appropriate action may be taken to further revise these fees, if deemed necessary.

FGIS is proposing to establish fees to cover costs incurred for the supervision of agencies performing official Class Y weighing services. The proposal is included in anticipation that agencies may receive more requests from applicants for this type service. FGIS incurs the cost for supervising this service, and as such is proposing to recover the costs. The proposed fees have been set at a level which is anticipated not to increase applicable operating reserves.

The Administrator is authorized to perform permissive inspections under official standards or, upon request, under other approved criteria. Protein testing is one such other criteria and supervision fees for protein analysis performed by agencies are listed separately in the supervision fee schedule. In order to clarify the fee schedule and provide supervision fees for any and all official criteria, FGIS is proposing that the supervision fees for protein, oil or any other analyses be assessed at $.20 under the heading official criteria. A conforming change to footnote 6 is proposed as appropriate.

Miscellaneous nonsubstantive changes, including renumbering and restating footnotes, are being proposed to clarify and facilitate the use of the fee schedule.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Exports, Grain.

PART 800—GENERAL REGULATIONS

Accordingly, 7 CFR part 800 of the regulations is proposed to be amended by revising § 800.71(a), Schedule C, Tables 1 and 2 as follows:

The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

§ 800.71 Fees assessed by the Service.

* * * * *

Schedule C—Fees for FGIS Supervision of Official Inspection and Weighing Services Performed by Delegated States and/or Designated Agencies in the United States [1]

TABLE 1

Inspection services (bulk or sacked grain)	Official inspection or reinspection services
(1) Official sample-lot inspection service (white certificate):	
(i) For official grade and official factor determinations:	
(A) Truck or trailer (per inspection)[2]	$0.30
(B) Boxcar or hopper car (per inspection)[3]	0.95
(C) Barge (per inspection)[3]	6.15
(D) Ship (per ship)[3]	48.20
(E) All other lots (per inspection)[3 4]	0.30
(ii) For official factor or official criteria determinations:	
(A) Factor determination (per inspection) (maximum 2 factors)[5]	0.20
(B) Official criteria [5 6]	0.20
(2) Stowage examination services:	
(i) Ship (per stowage certificate)	3.00
(ii) Other carriers (per stowage certificate)	0.20
(3) Warehousemen's sample-lot inspection service (yellow certificate) or submitted sample inspection service (pink certificate):	
(i) For official grade and official factor determinations (per inspection)	0.30
(ii) For official factor or official criteria determinations:	
(A) Factor determination (per inspection) (maximum 2 factors)[5]	0.20
(B) Official criteria [5 6]	0.20
(4) Reinspection services:	
(i) Truck, boxcar, hopper car, barge, ship, warehouseman's sample-lot, submitted sample, factor determination, and all other lots (per sample inspected)	0.30
(ii) Official criteria [5 6]	0.20

NOTE: The footnotes for Table 1 are shown at the end of Table 2.

TABLE 2

Official services (bulk or sacked grain)	Official weighing services	
	(class X)	(class Y)
(1) Official weighing services:		
(i) Truck or trailer (per carrier)	$0.20	$0.20
(ii) Boxcar or hopper car (per carrier)	0.95	0.25
(iii) Barge (per carrier)	6.15	1.55
(iv) Ship (per carrier)[2]	57.45	N/A
(v) All other lots (per lot or part lot)[4]	0.35	0.20

[1] The fees include the cost of supervision functions performed by the Service for official inspection and weighing services performed by delegated States and/or designated agencies.

[2] A fee shall be assessed for each carrier or sample inspected if a combined lot certificate is issued or a uniform loading plan is used to determine grade.

[3] A fee shall be assessed per ship regardless of the number of lots or sublots loaded at a specific service point. A fee shall not be assessed for divided-lot certificates.

[4] Inspection services for all other lots include, but are not limited to, sampling service, condition examinations, and examination of grain in bins and containers. For weighing services, all other lots include, but are not limited to, seavans and inhouse bin transfers.

[5] Fees shall be assessed for a maximum of two factors. If more than two factors are determined, fees are assessed at rates in Table 1 (1)(i) or (3)(i) above, as applicable, based on carrier or type sample represented.

[6] Official criteria includes, but is not limited to, protein and oil analyses. A fee shall be assessed for each sample tested.

* * * * *

Dated: June 21, 1985.

Kenneth A. Gilles,

Administrator.

[FR Doc. 85-16374 Filed 7-9-85; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of marketing policy.

SUMMARY: This notice sets forth a summary of the preliminary draft of the 1985–86 marketing policy for lemons grown in California and Arizona. The preliminary draft marketing policy was submitted by the Lemon Administrative Committee which administers the marketing order covering California-Arizona lemons. The marketing policy contains information on crop and market prospects for the 1985–86 season.

DATE: Written suggestions, views, or pertinent information relating to the marketing of the 1985–86 California-Arizona lemon crop will be considered if postmarked by July 22, and received by July 26, 1985.

ADDRESS: Interested persons are invited to submit written statements in duplicate to: Docket Clerk, Room 2069-S, F&V, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Such submissions should reference the date and page number of the Federal Register and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447-5975. Growers and handlers of lemons may obtain a copy of the committee's preliminary draft marketing policy directly from the Lemon Administrative Committee. Copies are also available from Mr. Doyle.

SUPPLEMENTARY INFORMATION: Pursuant to § 910.50 of the marketing order covering lemons grown in California and Arizona, the Lemon Administrative Committee, hereinafter referred to as the "committee", is required to hold a marketing policy meeting not later than August 15 of each fiscal year and thereafter submit such marketing policy to the Secretary. The order authorizes volume and size regulations applicable to fresh shipments of lemons to

domestic markets including Canada. Export shipments of lemons and lemons utilized in the production of processed lemon products are not regulated under the order.

The committee has prepared a preliminary draft marketing policy for the 1985–86 marketing season. The marketing policy is intended to inform the Secretary and persons in the industry of the committee's plans for recommending regulation of shipments during the marketing season and the basis therefor. The committee evaluates market conditions and makes recommendations to the Secretary as to the quantity of lemons that can be shipped each week to domestic outlets without disrupting markets. Under certain conditions, the committee may recommend size regulations applicable to fresh domestic shipments.

In its preliminary 1985–86 draft marketing policy, the committee projected the California-Arizona lemon crop at 39,957 cars (1,000 cartons at 37½ pounds net weight each equal one car). Last year's production was recorded at 53,027 cars. The production area is divided into three districts. The current estimates by district (with last year production in parentheses) are as follows: District 1—6,100 cars (6,619); District 2—23,925 cars (27,423); and District 3—8,932 cars (18,985).

It is expected that lemon sizes will be smaller than last year on the average. Fruit quality is expected to be good to excellent.

The committee estimates that shipments to domestic fresh market outlets, including Canada, will account for 14,500 cars. Last year's shipments of fresh lemons to domestic markets were estimated to be 14,000 cars. Fresh export shipments are expected to total 10,000 cars compared to 9,450 cars estimated last year. Processing and other disposition is now forecast at 15,457 car compared to 28,250 cars last year.

Lemons are normally shipped throughout the entire year. The committee has adopted a schedule of estimated weekly shipments for the 1985–86 season.

Fresh lemons face competition from other varieties of citrus fruit, lemon juice, lemonade, and a number of soft drink products. The California-Arizona lemon crop also is in direct competition with Florida and foreign lemons Florida shipments of lemons are estimated at 450 cars for 1985–86, down from the normal 600–700 cars. Imports of lemons vary from year to year, with about 335 cars imported last year, mostly from Spain. Imports are expected to decline this season due to a shortfall in the Spanish crop.

With respect to the use of periods of open movement, the committee, in its preliminary draft of the 1985–86 marketing policy, observed that it is virtually impossible to predict specific periods of open movement in advance due to the myriad of variables which can either positively or adversely affect marketing conditions. Thus, if during the fiscal year supply and demand conditions are such that open movement is the appropriate recommendation, the committee would present such a recommendation to the Secretary.

Section 910.50 of the marketing order reads as follows:

"Each year not later than August 15 of the fiscal year (or such later date as the committee may establish with the approval of the Secretary) the committee shall hold a marketing policy meeting and shall thereafter submit to the Secretary its marketing policy for such fiscal year, to continue in force until revised, or superseded by the adoption of a new marketing policy. The marketing policy shall contain the following information: (a) The available supplies of lemons in each prorate district, including estimated quality and composition of sizes; (b) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and byproduct channels, together with quantities otherwise to be disposed of; (c) a schedule of estimated weekly shipments to be recommended to the Secretary during the fiscal year; (d) level and trend of consumer income; (e) estimated supplies of competitive citrus commodities; and (f) any other pertinent factors bearing on the marketing of lemons. In the event that it becomes advisable to substantially modify the marketing policy the committee shall submit to the Secretary a revised marketing policy or a new marketing policy setting forth the information as required in this section."

Based upon information now available, season average equivalent fresh on-tree grower returns for California-Arizona lemons (under Marketing Order No. 910) are likely to approach but not exceed the projected season average equivalent parity price for such lemons.

As additional information on this price relationship becomes available, it will be reviewed by the Department of Agriculture in the light of program requirements and the provisions of the Agricultural Marketing Agreement Act of 1937, as amended.

In order to provide for public input in regulatory actions, the Department will accept written views and information pertinent to the proposed marketing policy and the need for, or level of, regulation for the 1985–86 season.

Publication of this summary of the marketing policy is to provide information as to potential regulations. This action does not create any legal obligations or rights, either substantive or procedural.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemon.

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: July 8, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–16506 Filed 7–9–85; 8:45 am]

BILLING CODE 3410–02–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–22083A; File No. S7–24–85]

Proposed Rule Amendment to Rule 15Bc7–1 To Make Composite Compliance Examination Information Available to the Municipal Securities Rulemaking Board; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments; correction.

SUMMARY: On May 28, 1985, the Commission issued a release soliciting comment on the proposed amendments (Securities Exchange Act Release No. 22083) governing the availability to the Board of copies of reports of compliance examinations of municipal securities brokers and municipal securities dealers; notice of the release was published in **Federal Register** on June 4, 1985 (50 FR 23443). As a result of an oversight, part of the text of the proposed amendments was missing from the release and did not appear in the **Federal Register.** Accordingly, the Commission is republishing the text of the amendments section to include the full text of the amendments.

DATE: Comments to be received by July 15, 1985.

ADDRESSES: All comments should be submitted in triplicate and addressed to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William W. Uchimoto, Esq., (202) 272-2409, Room 5193, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

Text of the Amendments

Note.—Arrows indicate text proposed to be added. Brackets indicate text proposed to be deleted.

On page 2344, the text of § 240.15Bc7-1 is correctly proposed to be revised as follows:

§ 240.15Bc7-1 Availability of examination reports.

(a) Upon written request, copies of any report of an examination of a municipal securities dealer made by the Commission or furnished to it by an appropriate regulatory agency pursuant to section 17(c)(3) of the Act or by a national securities association pursuant to section 15(B)(c)(7)(B) of the Act shall be made available to the Municipal Securities Rulemaking Board (the "Board") by the Commission [within thirty days after receiving such report,] ►, upon written request,◄ subject to the following limitations:

(1) The Board shall establish by rule and shall maintain adequate procedures for ensuring the confidentiality of any information made available to it by the Commission pursuant to section 15(b)(c)(7)(B) of the Act;

(2) Information made available to the Board shall not identify any municipal securities broker, municipal securities dealer, or associated person which is the subject to [an] ►a non-public◄ examination report;

[(3) * * *]

[(4) * * *]

(b) [* * *] ►If information to be made available to the Board is furnished to the Commission on a separate form prepared by an appropriate regulatory agency other than the Commission or by a national securities association, that form, rather than a copy of any report of an examination, will be made available to the Board, provided that the conditions set forth in this paragraph are satisfied. Within sixty days of every six month period ending May 31 and November 30, each appropriate regulatory agency or national securities association making available information on a separate form shall furnish to the Commission two copies of a form containing the information set forth in paragraphs (b)(1) through (b)(8) of this section. One copy of the form shall be made promptly available to the Board. Copies of any forms furnished pursuant to this paragraph shall not identify and municipal securities broker, municipal securities dealer, or associated person which is the subject of an examination from which information was derived for the form; however, the Commission may obtain for its own use, upon request, the identity of any such examinee or the full examination reports. Furnished forms shall include the following information:◄

(1) [* * *] ►The report period.◄

(2) [* * *] ►(i) With respect to a national securities association, the number of examinations which formed the basis of the report and, of these examinations, the number which were routine, special, and financial/operations. (ii) With respect to an appropriate regulatory agency which is a bank agency, the number of examinations which formed the basis of the report and, of these examinations, the number which were routine, special, and financial/operational. The number of examinations which formed the basis of the report of bank dealers and the number of examinations of separately identifiable departments or divisions of banks effecting municipal securities transactions.◄

(3) [* * *] ►Indications of the violations of each Board rule found in examinations which formed the basis of the report.◄

(4) [* * *] ►Copies of public notices issued during the report period of any formal actions taken on violations of Board rules.◄

(5) [* * *] ►Any comments concerning any questionable practices relating to municipal securities activities, whether or not covered by provisions of the Act and the rules and regulations thereunder, including the rules of the Board.◄

(6) [* * *] ►Descriptions of any significant or recurring customer compliants relating to municipal securities activities received by the appropriate regulatory agency or national securities association during the report period or by municipal securities dealers during the 12 month period preceding the examination.◄

(7) [* * *] ►Description of any novel issues or interpretations arising under the Board's rules.◄

(8) [* * *] ►Description of any changes to existing Board rules or additional rules which would improve the regulatory scheme for municipal securities professionals or assist in the enforcement of the Board's rules.◄

(c) Copies of any report of an examination of a municipal securities broker or municipal securities dealer made by the Commission or furnished to it pursuant to section 15B(c)(7)(B) or section 17(c)(3) of the Act, or separate forms made available to the Commission pursuant to paragraph [(a)(3) or paragraph (a)(4)] ►(b)◄ of this section will be maintained in a non-public file.

By the Commission.

John Wheeler,

Secretary.

June 27, 1985.

[FR Doc. 85-16187 Filed 7-9-85; 8:45am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Permanent State Regulatory Program of Utah

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period to further extend the deadline for Utah to resubmit rules (1) governing a blaster training, examination and certification program as required by the Federal regulations at 30 CFR Part 850, and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation.

On March 20, 1984, Utah requested an extension to develop a blaster certification program. On June 8, 1984, OSM announced its decision to extend Utah's deadline to June 10, 1985 (49 FR 23836). On June 6, 1985 Utah indicated that an additional six-month extension was necessary.

All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. OSM is proposing to again modify the deadline for Utah to develop and adopt its blaster program. This notice sets forth the dates and locations for submission of written comments.

DATES: Comments not received by 4:00 p.m. August 9, 1985 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue NW., Albuquerque, New Mexico 87102; Telephone: (505) 755-1486.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue NW., Albuquerque, New Mexico 87102; Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Utah's program, the applicable date is 12 months after publication date of OSM's rule or March 4, 1984.

On March 20, 1984, the State of Utah submitted to OSM a request for an extension until April 4, 1985, to submit final rules addressing the blaster certification program. In the April 23, 1984 Federal Register (49 FR 17040), OSM proposed a thirteen month extension for Utah to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending May 23, 1984. On June 8, 1984 (49 FR 23836) OSM announced its decision to extend the deadline for Utah to develop a program; giving Utah 12 months additional time to study the rule and statutory changes needed to bring Utah's rules into compliance with the revised Federal rules, and extending the deadline period to June 10, 1985.

The Utah Rules Revision Committee planned on formulating a blaster certification program together with other revisions to the Federal rules. The State indicated that its certification program, which is administered through the Utah Industrial Commission, would provide the necessary protection until the State developed a program under its approved surface mining regulatory program.

In a June 6, 1985 letter to OSM the State of Utah indicated that an additional six-month extension was necessary to review any of OSM's concerns and changes to its proposed program. The State noted that in considering the impact of a six-month extension, OSM should recognize that Utah is predominately an underground coal mining State, and that coal mining currently underway in the State is underground mining. Blasting associated with those operations is under the direction of the Utah Industrial Commission, in coordination with MSHA.

OSM is seeking comment on additional time for Utah to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may provide an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 3, 1985.

Brent W. Blauch,

Acting Director, Office of Surface Mining.

[FR Doc. 85-16378 Filed 7-9-85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300134; FRL-2861-2]

Croscarmellose Sodium; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that croscarmellose sodium be exempted from the requirement of a tolerance when used as an inert ingredient (disintegrant, solid diluent, carrier, and thickener) in pesticide formulations. This proposed regulation was requested by the FMC Corp.

DATE: Written comments, identified by the document control number [OPP-300134], must be received on or before August 9, 1985.

ADDRESS: By mail, submit comments to:

Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to:

Registration Support and Emergency Response Branch, Registration Division (TS-767), Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency

Respose Branch, Environmental Potection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7700).

SUPPLEMENTARY INFORMATION: At the request of FMC Corp., the Administrator proposes to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for croscarmellose sodium when used as a desintegrant, solid diluent, carrier, and thickener in pesticide fomulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Croscarmellose sodium.

Name and address of requestor. FMC Corp., Newark, DE 19711.

Bases for approval. 1. Croscarmellose sodium, as listed in the U.S. National Formulary XVI, is a defined form of a cross-linked polymer of sodium carboxymethylcellulose.

2. Sodium Carboxymethylcellulose is cleared under 40 CFR 180.1001(c) for use as a surfactant, related adjuvants of surfactants.

3. Sodium Carboxymethylcellulose is cleared under 21 CFR 175.105 as an indirect food additive in adhesives and components of coatings; 21 CFR 201.117 as an inert ingredient in prescription drugs; 21 CFR 182.1745 as a multiple purpose GRAS food substance; and 21 CFR 582.1745 as a general purpose food additive.

4. Carboxymethylcellulose is cleared under 21 CFR 175.105 as an indirect food additive in adhesives and components of coatings; 21 CFR 182.70 in substances migrating from cotton and cotton fabrics used in dry food packaging.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP–300134]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 24, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for 40 CFR Part 180 continues to read as set forth below:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * *		
Croscarmellose sodium (CAS Reg. No. 74811–65–7).	.....	Disintegrant, solid diluent carrier, and thickener
* * * * *		

* * * * *

[FR Doc. 85–16250 Filed 7–9–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Atlantic Mackerel, Squid, and Butterfish Fisheries; Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold public hearings to obtain comments on Amendment 2 to the fishery management plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP).

DATES: All hearings will begin at 7:00 p.m., and will be tape recorded with the tapes filed as the official transcript of the hearing. See "**SUPPLEMENTARY INFORMATION**" for dates and locations of the public hearings. Written comments will be accepted until August 2, 1985.

ADDRESS: See "**SUPPLEMENTARY INFORMATION**" for locations of the public hearings. All written comments should

be sent to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: John C. Bryson (Executive Director), 302-674-2331.

SUPPLEMENTARY INFORMATION: The amendment proposes to (1) change the fishing year from April 1 through March 31 to January 1 through December 31; (2) reduce the bycatch TALFFs in the foreign fishery; (3) revise the Atlantic mackerel management regime by replacing the "reserve" with a system using an allowable biological catch and initial optimum yield similar to the system currently in effect for the squids; (4) revise the butterfish management regime by replacing the fixed maximum catch limit with a provision that allows reduction of the maximum catch in response to stock conditions and adding a minimum size limit of 500 butterfish per 100 pounds with a 10 percent tolerance for undersized fish; (5) add a provision that U.S. harvesting vessels with permits in the Atlantic mackerel, squid, or butterfish fisheries may not have mechanical sorters aboard but allow the Regional Director to grant an exemption to this provision if a NMFS observer is aboard the vessel at the expense of the owner or operator of the vessel, or if other provisions for determining presorting catch count sizes are developed; and (6) revise the reporting requirements as follows:

a. The owner or operator of any U.S. catching vessel with a commercial or incidental catch permit in the Atlantic mackerel, squid, or butterfish fisheries is urged to voluntarily maintain on a daily basis an accurate fishing vessel record for each fishing trip. If fishing vessels records are not submitted for a minimum 20 percent of the permitted vessels in each major port of landing (based on permit application data), then the Regional Director will select a sample of 20 percent of the vessels in such port and the owners or operators of the vessels selected will be required to submit fishing vessel records.

b. The owner or operator of any U.S. catching/processing vessel with a commercial or incidental catch permit in the Atlantic mackerel, squid, or butterfish fisheries must maintain on a daily basis an accurate fishing vessel record for each fishing trip.

c. The owner or operator of any vessel with a party/charter boat permit in the Atlantic mackerel, squid, or butterfish fisheries is urged to voluntarily maintain on a daily basis an accurate fishing vessel records for each fishing trip. If fishing vessel records are not submitted for a minimum 20 percent of the permitted vessels in each major port of landing (based on permit application data), the Regional Director will select a sample of 20 percent of the vessels in such port and the owners or operators of the vessels selected will be required to submit fishing vessel records.

d. All persons who buy Atlantic mackerel, squid, or butterfish from owners or operators of vessels with permits in the Atlantic mackerel, squid, or butterfish fisheries must maintain on a daily basis, on forms supplied by NMFS, the total amount in pounds of each species purchased, by market class; date of puchase; price per pound by market class for each species purchased; and name and mailing address of dealer or processor. Additionally, U.S. fish processors must submit annually to the Council, on forms supplied by the Council, the processing capacity intended to be used in the upcoming fishing year, and the actual processing capacity used during the current fishing year. All persons purchasing or receiving any Atlantic mackerel, squid, or butterfish at-sea for transport to any port in the U.S. must maintain and provide to the Regional Director or Council, as appropriate, records identical to those required under the above paragraphs.

The requirement that U.S. vessels have permits for the mackerel, squid, and butterfish fisheries is continued, but permits expire on December 31 of each year. The permits of vessels participating in the fishing vessel record program will be renewed automatically.

Foreign nations fishing for Atlantic mackerel, squid, or butterfish are subject to the time and area restrictions in 50 CFR 611.50 and the fixed gear avoidance regulations in 50 CFR 611.50(d). However, the Regional Director may waive the time and area restrictions with the concurrence of the New England and Mid-Atlantic Fishery Management Councils.

The dates and locations of the public hearings are scheduled as follows:

July 24, 1985—Quality Inn Lake Wright, 6280 Northampton Boulevard, Norfolk, Virginia

July 25, 1985—Cape May County Extension Office, Dennisville Road (Rt. 657), Cape Court House, New Jersey

July 29, 1985—Skipper Motor Inn, Route 6, Fairhaven, Massachusetts

July 30, 1985—Dutch Inn, Great Island Road, Galilee, Rhode Island

July 31, 1985—Holiday Inn, Exit 72, Long Island Expressway and Rt. 25, Riverhead, New York

Dated: July 5, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-16387 Filed 7-5-85; 2:03 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 132
Wednesday, July 10, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 5, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service
- Marketing Agreement for Peanuts—No. 146
- Peanut Administrative Committee Forms
- On occasion, Weekly, Monthly, Annually
- Businesses or other for-profit; 6,927 responses; 1,782 hours; not applicable under 3504(h)
- Frank Grasberger (202) 447-5053

New

- Foreign Agricultural Service
- Contacts and Product Publicity Notice—Buyer Alert Notice FAS 964 and 965
- On occasion
- Farms; Businesses or other for-profit; Small businesses or organizations; 3,000 responses; 510 hours; not applicable under 3504(h)

Mike Dwyer (202) 447-7103

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 85-16373 Filed 7-9-85; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-502]

Nylon Impression Fabric From Japan: Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether nylon impression fabric from Japan, produced by or for the account of Asahi Chemical Industry Company, Ltd. (Asahi) and Shirasaki Tape Co., Ltd., (Shirasaki) is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product, produced by or for the account of Asahi and Shirasaki, are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 25, 1985, and we will make ours on or before November 18, 1985.

EFFECTIVE DATE: July 10, 1985.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On June 10, 1985, we received a petition in proper form filed by Bomont Industries of Totowa, New Jersy, and Burlington Industries, Inc. of Greensboro, North Carolina, filing on behalf of the U.S. industry producing and selling finished uninked impression fabric, whether slit or unslit. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan, produced by or for the account of Asahi and Shirasaki are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. Asahi and Shirasaki presently are excluded from the antidumping duty finding on this merchandise, published in the **Federal Register** on May 25, 1978 (43 FR 22481).

The petitioners based the United States price on ex-factory prices derived from U.S. selling prices. Foreign market value of nylon impression fabric is based on ex-factory prices derived from home market selling prices and, where there were no home market sales, constructed value based upon Japanese raw material and labor costs and general, selling and administrative expenses. To the sum of materials, fabrication and general expenses they added the statutory minimum of 8 percent for profit. The amount of general expenses used was higher than the statutory minimum of 10 percent of the sum of the cost of materials and fabrication.

Petitioners also allege that third country sales to West Germany of nylon impression fabric by Shirasaki are being made at less than the cost of production. Petitioners based this allegation on a comparison of Shirasaki's cost to ex-factory selling prices in West Germany.

Based on the comparison of these values, petitioners alleged dumping margins of from 3.7 to 19.7 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on nylon impression fabric and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether nylon impression fabric from Japan, produced by or for the account of Asahi and Shirasaki, is being or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by November 18, 1985.

Scope of Investigation

The merchandise covered by the investigation consists of nylon impression fabric from Japan woven from continuous filament yarns of nylon; whether texturized or non-texturized; finished; whether slit or uncut; and not inked for use in typewriters and printers; and currently classifiable under item numbers 347.6020, 338.5001 and 338.5002 of the *Tariff Schedules of the United States Annotated*, produced by or for the account of Asahi and Shirasaki.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 25, 1985, whether there is a reasonable indication that the merchandise covered by this investigation is causing material injury, or threatens material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Dated: July 1, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-16386 Filed 7-9-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Fish Import Certification From the United Kingdom

Regulations established in accordance with the Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.* (50 CFR 216.24(e)) provide that a nation may certify that vessels fishing under its flag are (1) fishing in comformance with U.S. regulations, or (2) if not in conformance, are not fishing in a manner prohibited for U.S. fishermen under these regulations. This certification is necessary in order to permit the importation into the United States of certain of its fish and fish products.

The Assistant Administrator for Fisheries, National Marine Fisheries Service, has received and accepted a certification from the Government of the United Kingdom that vessels fishing for salmon and halibut under their flag are fishing in conformance with U.S. regulations in regard to the taking of marine mammals incidental to commercial fishing operations. Therefore, salmon and halibut from Great Britain, Scotland and Wales are hereby exempt from the provisions of 50 CFR 216.24(e)(3) and may be exported to the United States without an accompanying Standard Form 369-1 (Fisheries Certificate of Origin). Copies of the certification are on file and available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

Dated: July 2, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-16359 Filed 7-9-85; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee will convene a public meeting, July 18, 1985, at the Best Western Airport Inn, Philadelphia International Airport, Philadelphia, PA (telephone: 215-365-7000), to formulate a fisheries management primer as well as to discuss other fishery management matters. For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: July 3, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-16391 Filed 7-9-85; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

A subgroup of the North Pacific Fishery Management Council's Gulf of Alaska Groundfish Fishery Management Plan Team will convene a public meeting, July 29-31, 1985, at 9 a.m., in Room 2079, at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, NE., Seattle, WA. The subgroup will discuss ways to revise the groundfish plan to make it more reponsive to the rapidly evolving fisheries in the Gulf of Alaska.

Also, the Council's workgroup on goals and objectives for the Gulf of Alaska groundfish fishery will convene a public meeting, August 1-2, 1985, at 9 a.m., at the same location as indicated above, to discuss specific goals and strategies that will guide management of the groundfish fisheries in the Gulf of Alaska. For further information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Dated: July 3, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-16392 Filed 7-9-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Operations Policy Advisory Group; Meeting

ACTION: Notice of meeting.

The Special Operations Policy Advisory Group (SOPAG) will meet on 23 July 1985 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United Staes Code, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 5, 1985.

[FR Doc. 85-16404 Filed 7-9-85; 8:45 am]

BILLING CODE 3810-01-M

Environments Committee; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Environments Committee of the Ada Board will be held 30 July 1985 from 9:00 A.M. to 5:00 P.M. at the Hyatt Regency Minneapolis Hotel in Minneapolis, Minnesota.

The agenda is as follows: (1) Minutes of previous two meetings; (2) discussion of charter and goals; and (3) Discussion of standardization issues.

FOR FURTHER INFORMATION CONTACT: Dr. Edward Lieblein, Acting Director, Ada Joint Program Office, (202) 694-0209.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Officer, Department of Defense.

July 5, 1985.

[FR Doc. 85-16403 Filed 7-9-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Intent to Compromise Claim

AGENCY: Department of Education.

ACTION: Notice of intent to compromise claim.

SUMMARY: Notice is given that the Secretary intends to compromise a claim of less than $56,000 against the Oakland Unified School District now pending before the Education Appeal Board (EAB), Docket No 3-(113)-83 (31 U.S.C. 3711; 20 U.S.C. 1234a(f)).

DATE: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before August 26, 1985.

ADDRESSES: Comments should be addressed to Ms. Sunny Harris, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4091, FOB-6), Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The claim in question arose from an audit conducted by the Office of Inspector General (OIG) of the U.S. Department of Education (Department). The audit, covering the period of January 1 through November 30, 1980, concerned the Cities in Schools (CIS) program administered by the Oakland Unified School District under Title III of the Elementary and Secondary Education Act, Special Projects. As a result of this audit, the OIG concluded that the School District had improperly transferred grant funds under its CIS program to a CIS program in the Bronx, New York. In a Final Determination Letter (FDL) dated October 30, 1982 the Department's Chief of the Business Management Branch, Assistance Management and Procurement Services, upheld the auditors' finding and determined that the Oakland Unified School District had to refund $4,186 to the Department for the improper transfer of funds to the CIS program in the Bronx, New York, and related indirect costs.

The OIG discovered the improper transfer of funds during a review of an audit performed by the Auditor General of the State of California. The State audit revealed that the Oakland Unified School District had used grant funds under the CIS program to contract with a consultant from the Bronx, but the School District never received the services. According to the School District, this expenditure resulted from a request from a project officer in this Department that the School District transfer $4,000 of its grant funds to the Bronx's CIS program, which was in dire financial straits.

The OIG and the Department's Chief of the Business Management Branch, Assistance Management and Procurement Services, determined that this transfer of funds was an unallowable expenditure. The applicable regulations required that costs charged to a grant program be "necessary and reasonable for proper and efficient administration of the grant program," 45 CFR Part 74, Appendix C, Part I C.1.a. (1979), and that they "not be allocable to or included as a cost of any other federally financed program in either the current or a prior period," 45 CFR Part 74, Appendix C, Part I C.1.f. (1979). According to the FDL, the transfer violated both of these provisions: i.e., it was not a necessary and reasonable cost of the Oakland Unified School District CIS project, and it was a cost of another federally financed program (the CIS project in the Bronx). Furthermore, the transfer was considered by the OIG and the Chief of the Business Management Branch to be tantamount to a donation/contribution, which is unallowable under 45 CFR Part 74, Appendix C, Part II D.3. (1979). The FDL also indicated that if in fact the project officer requested or authorized the transfer of funds, that official had no legal authority to do so and the Department is not bound by that official's behavior. *See* 45 CFR 100a.483 (1979).

The Oakland Unified School District has offered to repay the Department $2,093 in full settlement of the claim. The Secretary proposes to accept the School District's offer and to compromise the claim.

Given the small size of the Department's claim, and the sizeable proportion of recovery (50%) under the intended compromise, the Secretary has determined that it would not be practical or in the public interest to continue this proceeding. In addition, the Secretary has taken into account that the transfer of funds apparently was made at the behest of the Department's project officer and that the costs of litigating this matter through the appeal process are very substantial in relation to the size of the claim.

Because of the specific facts of this case, the proposed compromise will not adversely affect any other audit proceeding currently pending before the EAB.

FOR FURTHER INFORMATION CONTACT: The public is invited to comment on the Secretary's intent to compromise this claim. Additional information may be obtained by writing to Ms. Sunny Harris at the address given at the beginning of this notice.

(31 U.S.C. 3711; 20 U.S.C. 1234a(f)).
(Catalog of Federal Domestic Assistance No. does not apply).

Dated: July 5, 1985.
William J. Bennett,
Secretary of Education.
[FR Doc. 85-16401 Filed 7-9-85; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With O.B. Mobley, Jr.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with O.B. Mobley, Jr. (Mobley) and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATE: Comments by: August 9, 1985.

ADDRESS: Comments should be addressed to: Mobley Consent Order Comments, RG-13, Economic Regulatory Administration, Depart of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Meyer Magence, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Copies of the Consent Order may be obtained free of charge by writing or calling this office (202/252-4945).

SUPPLEMENTARY INFORMATION: On May 22, 1985, the ERA executed a proposed Consent Order with Mobley. Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. The ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

I. Background

Mobley was the operator of the crude oil producing property known as the Lewisville Smackover Lime Unit (Lewisville Unit) in Lafayette County, Arkansas during the period September 1, 1976 through March 16, 1978 (violation period).

For the violation period, Mobley applied 10 CFR 212.75 in calculating the base production control level of the Lewisville Unit. On March 16, 1978, Mobley was issued an Interpretation by DOE's Office of General Counsel, which was affirmed by the DOE's Office of Hearings and Appeals (OHA), stating that Mobley must apply 10 CFR 212.72, and not 10 CFR 212.75, to sales of crude oil produced from the Lewisville Unit. The DOE's interpretation was unheld by the District Court for the Western District of Louisiana, *Mobley* v *DOE*, CI-78-1073 (1982). The effect of the improper application of § 212.75 was that Mobley charged higher than lawful prices for the crude oil produced and sold from that unit.

Although it applied § 212.75, rather than § 212.72, Mobley on its own escrowed, the difference between revenues received according to § 212.75 and those it would have received pursuant to § 212.72. While not conducting a complete audit of Mobley's compliance with the federal petroleum price regulations for the violation period, DOE has verified that Mobley escrowed the amount of the overcharges. These monies were subsequently transferred to the deposit fund escrow account in the Department of Treasury.

II. The Consent Order

The proposed Consent Order resolves Mobley's civil liability for violations of the Mandatory Price Regulations in sales of crude oil from the Lewisville Unit during the period September 1, 1976 through March 6, 1978. DOE believes that this Consent Order satisfactorily resolves the issues in this case and is in the public interest.

III. Refunds

Pursuant to the terms of the proposed Consent Order, Mobley relinquishes its rights and claims to all monies deposited in the escrow account maintained by the Department of Treasury. This amount, $1,095,622.15, which includes interest, will then be available for ultimate disposition by the DOE, pursuant to the procedures established under 10 CFR Part 205, Subpart V.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 p.m., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington D.C., on June 25, 1985.
Milton C. Lorenz,
Special Counsel, Economic Regulatory Administration.
[FR Doc. 85-16397 Filed 7-9-85; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP85-578-000 et al.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.

July 3, 1985.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP85-578-000]

Take notice that on June 5, 1985, ANR Pipeline Company (ANR), 500 Rennaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85-578-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), or, in the alternative, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity, for authorization to transport natural gas for Reynolds Metals Company (Reynolds), all as more fully set forth in the request/application on file with the Commission and open to public inspection.

Pursuant to § 157.209, ANR requests authority to transport up to 3,298 million Btu of gas per day on a best-efforts basis for Reynolds under a transportation agreement among ANR, Reynolds and Hadson Systems, Inc. (Hadson), dated March 25, 1985. ANR states that the gas to be transported would be purchased by Reynolds from Hadson pursuant to a natural gas sale and purchase contract dated March 25, 1985, and which provides that Hadson would sell up to 16,500 Mcf per day at a price of $2.57 per million Btu on a dry basis. ANR indicates that the transportation agreement provides that ANR would receive the gas at the interconnections of the pipeline systems of ANR and Hadson in Caddo, Custer and Washita Counties, Oklahoma. ANR states that it would redeliver the gas to Midwestern Gas Transmission Company which in turn would deliver the gas to Northern Illinois Gas Company for further delivery to Reynolds at its McCook, Illinois, facility. It is stated that ANR would redeliver the gas less 8.5 percent for fuel use and lost and unaccounted-for gas and would charge 30.2 cents per dt equivalent of gas transported and

delivered on behalf of Reynolds and that the rate is based upon ANR's Rate Schedule EUT-1. ANR states that the service would be for a period through December 31, 1985, or such other date as the Commission may determine and that no new facilities are required by ANR to transport gas for Reynolds. It is indicated that Reynolds would use the gas for boiler fuel, a low priority use.

ANR also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Reynolds. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. ANR would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

ANR states that the Commission regulations under Section 157.209 presently provide for low priority end-user transportation service through June 30, 1985, and the Commission has proposed to extend authorization for such services through December 31, 1985. Should such authority fail for any reason, in the alternative to the above request, ANR requests, pursuant to section 7(c) of the regulations, a temporary and permanent certificate of public convenience and necessity authorizing ANR to transport gas for Reynolds under the same terms and conditions as discussed above. ANR states that such authority would ensure Reynolds of the continued transportation of gas acquired by Reynolds to meet its low priority needs.

Comment date: July 24, 1985, in accordance with Standard Paragraph F and August 19, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Co.

[Docket No. CP85-602-000]

Take notice that on June 10, 1985, ANR Pipeline Company (ANR), 500 Rennaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85-602-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), or, in the alternative, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity, for authorization to transport natural gas for B.F. Goodrich Company (Goodrich), all as more fully set forth in the request/application on file with the Commission and open to public inspection.

Pursuant to § 157.209, ANR requests authority to transport up to 3,500 dt equivalent of gas per day on a best-effort basis for Goodrich under a transportation agreement with Goodrich dated April 8, 1985. ANR states that the gas to be transported would be purchased by Goodrich from Hadson Gas Systems, Inc. (Hadson), pursuant to a natural gas sale and purchase contract dated April 23, 1985, and which provides that Hadson would sell up to 3,800 Mcf per day at a price of $2.57 per million Btu on a dry basis. ANR indicates that the transportation agreement provides that ANR would receive the gas at various interconnections of its pipeline system and the gas sellers in Beaver, Beckham, Caddo, Canadian, Custer, Dewey, Ellis, Grady, Harper, Major, Roger Mills, Texas, Washita and Woodward Counties, Oklahoma; Hansford, Roberts and Wheeler Counties, Texas; and Meade, Rice and Seward Counties, Kansas.[1] ANR states that it would redeliver the gas, less 7.5 percent for fuel use and lost and unaccounted-for gas, to Northern Indiana Fuel and Light Company (Northern Indiana) for the account of Goodrich at an interconnection between the pipeline systems of ANR and Northern Indiana in Steuben County, Indiana. Northern Indiana would transport and deliver the gas to Goodrich at its Woodburn, Indiana, facility. It is stated that Goodrich would use the gas for boiler fuel. ANR states that it would charge 33.7 cents per dt equivalent of gas transported and delivered on behalf of Goodrich and that the rate is based upon ANR's Rate Schedule EUT-1. It is stated that the service would be for a period through December 31, 1985, or such other date as the Commission may determine and that no new facilities are required by ANR to transport gas for Goodrich.

ANR also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Goodrich. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. ANR would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

[1] The gas transportation agreement indicates that the receipt points from Hadson are located in Washita, Custer, Caddo, Harper and Roger Mills Counties, Oklahoma.

ANR states that the Commission regulations under § 157.209 presently provide for low priority end-user transportation service through June 30, 1985, and the Commission has proposed to extend authorization for such services through December 31, 1985. Should such authority fail for any reason, in the alternative to the above request, ANR requests, pursuant to section 7(c) of the regulations, a temporary and permanent certificate of public convenience and necessity authorizing ANR to transport gas for Goodrich under the same terms and conditions as discussed above. ANR states that such authority would ensure Goodrich of the continued transportation of gas acquired by Goodrich to meet its low priority needs.

Comment date: July 24, 1985, in accordance with Standard Paragraph F and August 19, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Chandeleur Pipe Line Co.

[Docket No. CP85-635-000]

Take notice that on June 21, 1985, Chandeleur Pipe Line Company (Chandeleur), P.O. Box 7141, San Francisco, California 94120-7141, filed in Docket No. CP85-635-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain offshore pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Chandeleur requests to construct a subsea connection on its existing 12-inch pipeline in Mobile Block 902, offshore Mississippi, approximately 11 miles of 12-inch pipeline extending from the aforementioned tie-in to a production platform in Mobile Block 861, and an appurtenant metering station to be located on the Mobile Block 861 production platform.

Chandeleur states that it would construct the proposed facilities in order to deliver gas from Mobile Block 861 to its parent Chevron U.S.A., Inc. (Chevron), at Chevron's Pascagoula, Mississippi, Refinery-Chemical Plant (Plant). It is asserted that Chevron currently receives gas from Chandeleur for its Plant from production located in the Main Pass 41 field, offshore Louisiana.

Chandeleur states that Chevron owns a 50 percent interest in the Mobile Block 861 field with Pennzoil Company and Union Oil Company of California, each owning a 25 percent interest. It is asserted that due to an emergency situation which has developed at Mobile

Block 861 and in order to provide the most expeditious means possible of marketing Chevron's gas from various wells in Mobile Block 861, which gas would otherwise be flared, Chevron has requested that Chandeleur transport this gas for consumption at the Plant.

It is stated that in order for Chevron to receive the Mobile Block 861 volumes at the Plant, it has advised Chandeleur that it would reduce its takes from Main Pass 41 production.

It is asserted that Mississippi Power Company (MPC) would continue to received its gas supplies (used in turbines at the plant complex) from Main Pass 41, continuing Chandeleur's current transportation service on behalf of MPC.

Chandeleur states that the existing emergency situation was created at Mobile Block 861 on March 23, 1985 when Chevron (the operator) experienced a subsea blowout and gas migrated to a shallow sand interval. To alleviate the pressure which developed, Chevron received permission from the Minerals Management Service to flare gas and such flaring has continued while vent wells are being drilled.

Estimated cost of the proposed facilities would be $5,127,000 which funds would be provided to Chandeleur from Chevron by long-term advance.

Comment date: July 24, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Cranberry Pipeline Corp.

[Docket No. CP85-598-000]

Take notice that on June 4, 1985, Cranberry Pipeline Corporation (Applicant), 1400 Charleston National Plaza, Charleston, West Virginia 25325, filed in Docket No. CP85-598-000 an application pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and § 284.127 of the Commission's Regulations for authorization to transport natural gas for Columbia Gas Transmission Corporation (Columbia) for a period in excess of two years, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to the terms of a gas transportation agreement dated April 9, 1985, it would transport not more than 6 billion Btu of gas per day for Columbia. Applicant states that pursuant to a corporate reorganization and subject to an order of the Commission granting Cabot Corporation (Cabot) authority to abandon a related sale and exchange, it has requested the subject authority to transport gas under section 311 of the NGPA for a period in excess of two years. Applicant further states that the April 9, 1985, transportation agreement replaces Cabot's Rate Schedule No. 8 certificated by the Commission in Docket No. G-5236.

Applicant avers that the proposed service would extend for a primary term ending November 1, 1993, and thereafter until terminated by either party upon twelve months notice. Applicant further avers that it would receive gas from Columbia at Cabot's Big Creek compressor station in McDowell County, West Virginia and that it would redeliver to Columbia at the Bradley compressor station in Wyoming County, West Virginia or the Lanham compressor station in Kanawha County, West Virginia. Applicant asserts that the gas transportation agreement provides for the addition of other points of delivery upon mutual agreement of the parties.

Applicant proposes to charge Columbia an initial rate of 51.0 cents per million Btu. Applicant asserts that such rate is within the settlement rate which it recently had approved in Docket Nos. ST80-94, *et al.*, as a fair and equitable rate for transportation using its West Virginia system.

Comment date: July 24, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. East Tennessee Natural Gas Co.

[Docket No. CP85-591-000]

Take notice that on June 7, 1985, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed in Docket No. CP85-591-000 a request pursuant to § 157.205 of the Regulation under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate new delivery points for the existing customers, Tennessee-Virginia Energy Corporation (Tennessee-Virginia), United Cities Gas Company (United Cities), and Eastman Kodak (Eastman) under the certificate issued in Docket No. CP84-412-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request or file with the Commission and open to public inspection.

East Tennessee proposes to establish new delivery points for its existing customers, Tennessee-Virginia, on East Tennessee's Johnson City Lateral near the I-81-U.S. 23 Highway Interchange, Sullivan County, Tennessee, United Cities near Roads 656 and 657 on East Tennessee's 3300 Line in Washington County, Virginia, and for Eastman on East Tennessee's 3300 Line upstream of the Kingsport lateral line which presently serves Eastman in Sullivan County, Tennessee. East Tennessee states that the new delivery points would enable Tennessee-Virginia to serve the area of the I-81-U.S. 23 Highway Interchange, which presently does not have gas service. It is explained that United Cities delivery point would enable United Cities to better serve its Bristol, Tennessee-Virginia, service area where it has had serious pressure problems, and the Eastman delivery point would serve a laboratory presently being constructed by Eastman on undeveloped land near its existing industrial facilities in Kingsport, Tennessee. The site of the laboratory does not presently have gas service available. It is stated that the estimated cost of all of the proposed facilities is $185,000 and would be paid from funds on hand. All gas to be sold through the proposed facilities would be within existing contract volume and/or curtailment period quantity entitlements, it is asserted.

Comment date: August 19, 1985, in accordance with Standard Paragraph G at the end of the notice.

6. El Paso Natural Gas Co.

[Docket No. CP85-503-000]

Take notice that on May 9, 1985, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP85-503-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon certain existing minor facilities and the related transportation service necessary for the delivery and direct sale of natural gas to America Magnesium Company (American) located in Scurry County, Texas, under the abandonment authorization issued in Docket No. CP82-435-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that it was authorized to construct and operate approximately 1 mile of pipeline and certain measuring, regulating, and appurtenant facilities which were installed under authorization issued in Docket No. CP69-3. Said authorization enabled El Paso to sell and transport up to 1,000 Mcf of natural gas daily to American for use in its plant pursuant to a September 28, 1961, sales agreement between the parties. It is further stated that American claimed bankruptcy in January 1981, stating it would reorganize but wanted to continue receiving natural gas service from El Paso. It is explained that due to American's financial

situation the September 28, 1981, sales agreement was amended to protect El Paso's interest by stating American could not assign said agreement without El Paso's consent.

However, El Paso states that on October 21, 1982, it was informed American sold its plant to MPLC North American Magnesium, Inc. (MPLC), and that MPLC thereafter sold the plant to World Wide Refining and Tank Company (World Wide), but that the present consumer of the gas service proposed to be abandoned is Dixie Petro-Chem, Inc. (Dixie). El Paso further states that it continued to bill American for gas deliveries.

El Paso asserts that it is proposing to abandon the above-mentioned sale, transportation, and related facilities because American violated its contract with El Paso by assigning said agreement without El Paso's consent. El Paso further states it has notified Dixie of its intention and suggested Dixie find a new supplier.

El Paso avers the facilities it proposes to abandon would be returned to stock, if salvable. El Paso estimates it would cost $3,000 to remove said facilities and that they will have a salvage value of $7,165.

Comment date: August 19, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Mountain Fuel Resources, Inc.

[Docket No. CP85-617-000]

Take notice that on June 17, 1985, Mountain Fuel Resources, Inc. (Mountain Fuel), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket NO. CP85-617-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a six-inch sales tap and related metering and regulating facilities for deliveries of natural gas to Mountain Fuel Supply Company (Supply) for resale to Cogeneration Technology and Development Company (CTDC) in Garfield County, Colorado, under the certificate issued in Docket No. CP82-491-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that the tap would be used for deliveries of up to 7,750 Mcf of gas per day to Supply, a distribution company affiliate of Mountain Fuel, for resale to CTDC, which would use the gas to operate three gas turbines at its proposed cogeneration plant in Garfield County. It is explained that the tap and metering facilitels would be installed at a cost of $65,000, to be paid by Mountain Fuel, which would be reimbursed by CTDC. It is asserted that the deliveries by Mountain Fuel to Supply would be within the later's maximum daily entitlement pursuant to Mountain Fuels' Rate Schedules CD-1 and X-33.

Comment date: August 19, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Mountain Fuel Resources, Inc.

[Docket No. CP85-618-000]

Take notice that on June 17, 1985, Mountain Fuel Resources, Inc. (MFR), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP85-618-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate one sales tap and appurtenant facilities to serve as a new delivery point on MFR's transmission pipeline system under the certificate issued in Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The requested tap, it is said, is required to effect the delivery of natural gas to Mountain Fuel Supply Company (MFSC) under Rate Schedules CD-1 and X-33 of MFR's FERC Gas Tariff for ultimate sale to Mid-America Pipeline Company (MAPCO).

MFR proposes to construct and operate one two-inch sales tap and related metering and regulating facilities, at an estimated cost of $22,000, on its Granger Tap Line in Sweetwater County, Wyoming, to effect the delivery of up to approximately 320 Mcf of natural gas per day to MFSC, a local distribution affiliate of MFR, for ultimate sale to MAPCO. It is stated that MAPCO requires these gas supplies to fuel an 1100 horsepower Solar turbine pump drive at its proposed Granger pump station which would pump demethanized natural gas liquids through a segment of MAPCO's Rocky Mountain Pipeline System.

Comment date: August 19, 1985, in accordance with Standard Paragraph G at the end of this notice.

9. Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP85-587-000]

Take notice that on June 7, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-587-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northern to increase the firm entitlement of Western Gas Utilities, Inc. (Western Gas), its utility customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern contends that Western Gas wishes to increase its currently effective contract demand by 288 Mcf per day over a five-year period commencing October 27, 1985. Accordingly, Western Gas would be required to purchase additional firm entitlement sold under Northern's Rate Schedule CD-1, it is asserted. Northern has also stated that the request to increase the firm entitlement currently being sold is due to anticipated expansion of natural gas service in one of Western Gas' market areas.

Northern further states that it can make the additional deliveries of such quantities without constructing additional facilities.

Comment date: July 24, 1985, in accordance with Standard Paragraph F at the end of this notice.

10. Northwest Pipeline Corporation

[Docket No. CP85-118-002]

On June 18, 1985, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP85-118-002 a petition to amend the Commission's order issued May 8, 1985, in Docket Nos. CP85-118-000 and CP85-118-001 pursuant to section 7(c) of the Natural Gas Act so as to authorize Northwest to continue the transportation of natural gas for the account of CPEX-Pacific, Inc. (CPEX), for an additional six-month term extending through December 23, 1985, all as more fully described in the petition to amend which is on file with the Commission and open to public inspection.

It is said that the Commission's May 8, 1985, order authorized Northwest to transport, on a best-efforts basis, up to 10 billion MMBtu's of natural gas per day for the account to Reichhold Chemicals, Inc. (Reichhold), CPEX's predecessor, pursuant to a gas transportation agreement dated October 26, 1984. It is explained that under the transportation agreement, Northwest transports gas for CPEX-Pacific, Inc. (CPEX), successor in interest to Reichhold, from the Canadian border at Sumas, Washington, to the Deer Island meter station in Columbia County, Oregon, where thermally equivalent volumes, less fuel, are redelivered to

Northwest Natural Gas Company for CPEX's account.

Further, Northwest states that it presently is authorized to perform the subject transportation service for a six-month term, extending through June 23, 1985, the initial termination date of the transportation agreement. By amendment dated June 7, 1985, to the transportation agreement, Northwest and CPEX agreed to extend the term of the transportation agreement for an additional six months.

Northwest requests the Commission to amend its May 8, 1985, order to authorize Northwest to continue to transport natural gas for CPEX under the transportation agreement, as amended, for an additional six-month term extending through December 23, 1985.

Other than the extension of term, Northwest proposes no change in the existing transporation service. Northwest states that it would continue to charge its effective tariff rate applicable to incremental on-system transportation services which is currently 20.0 cents per million Btu plus a fuel charge and a GRI charge.

Comment date: July 24, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Texas Gas Transmission Corp.

[Docket No. CP85-588-000]

Take notice that on June 7, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85-588-000 a request pursuant to § 157.205 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Westvaco Corporation (Westvaco) under the certificate issued in Docket No. CP82-407-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport up to 10 billion Btu of gas per day for Westvaco through June 30, 1985, or until the expiration of the term of any extension of the transportation program set up by the Commission in Order No. 234-B. Texas Gas states that the gas to be transported would be purchased from TXO Production Corporation and would be used for pulp and lime drying, flame stabilization, space heating and other miscellaneous uses in Westvaco's Wickliffe, Kentucky, plant.

Texas Gas indicates that it would receive up to 10 billion Btu equivalent of natural gas per day delivered into its pipeline system at an existing interconnection with Natural Gas Pipeline Company of America in Cameron Parish, Louisiana, and would redeliver such gas to Westvaco's Wickliffe, Kentucky, plant.

Texas Gas states that it would charge Westvaco the rate set forth in Texas Gas's Rate Schedule T-SL/Z-2 which is currently 32.91 cents per Mcf. In addition, Texas Gas indicates that it would collect the General R & D Funding Unit of the Gas Research Institute for all quantities transported under the transportation agreement.

Texas Gas also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexibile authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Texas Gas would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: August 19, 1985, in accordance with Standard Paragraph G at the end of this notice.

12. Trunkline Gas Co.

[Docket No. CP85-453-001]

Take notice that on June 19, 1985, Trunkline Gas Company (Trunkline), Post Office Box 1642, Houston, Texas 77001, filed in Docket No. CP85-453-001 an amendment to its pending application filed in Docket No. CP85-453-000 pursuant to section 7(c) of the Natural Gas Act so as to correct certain information included in the pending application, to delete Exhibit E from the pending application, and to note that the pending application provides for an increase in delivery pressure for Union Gas Company from 225 psig to 300 psig, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Trunkline states that its pending application filed in Docket No. CP85-453-000 incorrectly listed the current contract demand for the Village of Greenup as 2,000 Mcf of natural gas per day. Trunkline states that the correct contract demand is 1,430 Mcf and that the proposed increase in contract demand for Greenup should be 2,570 Mcf per day. Trunkline states that the total current contract demands for the SG customers listed in its application is thus 38,752 Mcf per day and that the total proposed increase in demand for these SG customers is 38,695 Mcf per day. Trunkline adds that the corresponding grand total (including the contract demand for the Central Illinois Public Service Company) should reflect current contract demands of 55,541 Mcf per day and an increase of 44,796 Mcf per day.

Trunkline further states that Exhibit E was erroneouly filed in its pending application and therefore requests that it be deleted from the application. Trunkline explains that no other proceeding other than Docket No. RP83-93 is relevant to this application.

Trunkline further requests that the Commission note that the service agreement with Union Gas Company, which is included in its application filed in Docket No. CP85-453-000, provides for an increase in delivery pressure from the currently authorized pressure of 225 psig to 300 psig. Trunkline states that this increase in delivery pressure would have no significant effect on the operations of Trunkline's system.

Trunkline states that, whereas the various service agreements included in Exhibit I to Docket No. CP85-453-000 reflect an effective date prior to the date of this filing, Trunkline will correct the agreements to reflect the effective date authorized by the Commission. Trunkline proposes to make other minor technical corrections (e.g., corrections to mailing addresses) to these agrements prior to execution.

Comment date: July 24, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

13. East Tennessee Natural Gas Co.

[Docket No. CP85-610-000]

Take notice that on June 12, 1985, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed in Docket NO. CP85-610-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the rearrangement of the maximum daily quantities of its customers and to increase and decrease the contract demands of some of its customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection and the appendix to this notice.

Applicant proposes to rearrange the maximum daily quantities (MDQ) of some of its customers within existing contract demand volumes prior to the 1985-86 heating season. Applicant would also increase and decrease contract demands (CD) of certain of its customers prior to the 1985-86 heating season. Applicant states that no

facilities are required to effectuate the proposed MDQ and CD changes.

Applicant further states that it proposes to utilize uncommitted system storage volumes which it presently has under contract with Consolidated Gas Supply Corporation combined with local production from the Early Grove Gas Company to meet the net increase in contract demand of 3,531 Mcf of natural gas.

EAST TENNESSEE NATURAL GAS COMPANY—PRESENT AND PROPOSED CONTRACT AUTHORIZATIONS

[Mcf at 14.73 psia]

Line No.	Col. 1—particulars	Col. 2—CP85—total authorizations	Col. 3—proposed increase (decrease)	Col. 4—total proposed authorization
1	Resale customers:			
2	Zone 1—			
3	Town of Algood	402	48	450
4	City of Athens	4,926		4,926
5	Chattanooga Gas Company.	45,555	[2,555]	47,900
6	Citizens Gas Utility Dist.	2,743		2,743
7	City of Coalmville	5,000		5,000
8	City of Dunlap	1,858	641	2,500
9	Elk River Public Util. Dist.	10,777		10,777
10	Town of Englewood	926		926
11	City of Etowah	2,167		2,167
12	City of Fayetteville	4,189	50	4,239
13	Town of Gainesboro	582		582
14	City of Gallatin	4,409	160	4,569
15	City of Harriman	3,704		3,704
16	City of Jamestown	1,159		1,159
17	City of Knoxville	36,080		36,080
18	City of Lenoir City	3,751	330	4,081
19	City of Lewisburg	4,300		4,300
20	City of Livingston	1,433	280	1,881
21	City of Loudon	3,196	600	3,796
22	Town of Madisonville	913	36	950
23	First Utility District of			
24	Maury County—Mt. Pleasant.	1,171	630	1,801
25	Middle TN Utility Dist.	16,184	1,816	18,000
26	City of Monteagle	349	71	420
27	Oak Ridge Utility Dist.	7,200		7,200
28	Powell Clinch Util. Dist.	4,048	915	4,963
29	City of Rockwood	2,832	269	2,832
30	City of South Pittsburg	3,156		3,156
31	City of Sweetwater	2,439	141	2,580
32	Resale customers: (continued)			
33	United Cities Gas Co.—Zone 1 [1].			
34				
35	Zone 2—			
36	Jefferson-Cocke County			
37	Utility District	8,730		8,730
38	Natural Gas Utility District			
39	of Hawkins County	3,939	236	4,175
40	Sevier County Utility Dist.	3,110	890	4,000
41	United Cities Gas Co.—			
42	Zone II [1]	14,660		14,660
43	Unicoi County Util. Dist.	2,260	240	2,500
44	Tennessee-Virginia Energy			
45	Corporation—Zone 2 [2].	31,395		31,395
46	Zone 3—			
47	Tennessee-Virginia Energy			
48	Corporation—Zone 3 [2].	20,342		20,342
49	Roanoke Gas Company	9,788		9,788
50	Total jurisdictional	294,468	4,131	298,599
51	Total United Cities Gas Co. [1].	39,630		39,630

EAST TENNESSEE NATURAL GAS COMPANY—PRESENT AND PROPOSED CONTRACT AUTHORIZATIONS—Continued

[Mcf at 14.73 psia]

Line No.	Col. 1—particulars	Col. 2—CP85—total authorizations	Col. 3—proposed increase (decrease)	Col. 4—total proposed authorization
52	Total Tennessee-Virginia Energy			
53	Corporation [3]	44,755		44,755
54	(formerly Volunteer Natural Gas			
55	and Colonial Natural Gas).			
56	Direct sales customers: [3]			
57	Zone 1—			
58	Aluminum Co. of America (F)	18,000		18,000
59	Aluminum Co. of America (R)	8,000		8,000
60	Aluminum Co. of America (S)	5,000		5,000
61	Armour and Company (R)	800		800
62	Bowater Southern Paper			
63	Corporation (F)	3,500		3,500
64	Bowater Southern Paper			
65	Corporation (R)	28,500		28,500
66	Greenback Industries, Inc. (F)	500		500
67	Occidental Chemical Corp. (F) [4]	150		150
68	Occidental Chemical Corp. (R) [4]	4,500		4,500
69	Rhone-Poulenc Chemical Co. (F) [5]	300		300
70	Rhone-Poulenc Chemical Co. (R)	1,200		1,200
71	Monsanto Company (F)	750	(600)	150
72	Direct sales customers: (continued)			
73	Zone 1—(continued)			
74	Monsanto Company (R)	6,000		6,000
75	Old Hickory Brick Co. (R)	500		500
76	Olin Corporation (R)	1,200		1,200
77	Sewanee Silica Co. (F)	0		0
78	Stauffer Chemical Company—			
79	Mt. Pleasant (F)	700		700
80	Mt Pleasant (R)	5,000		5,000
81	Tennessee Air Nat'l Guard (F).	550		550
82	Union Carbide Corporation (R).	7,500		7,500
83	Department of Energy (F).	2,400		2,400
84	Department of Energy (R).	7,934		7,934
85	Zone 2—			
86	AFG Industries, Inc (F)	7,300		7,300
87	AFG Industries, Inc. (R)	3,700		3,700
88	General Shale Products			
89	Corporation (R)	4,186		4,186
90	Mead Corporation (F)	200		200
91	Mead Corporation (R)	1,000		1,000
92	Tennessee Eastman Co. (F).	9,600		9,600
93	Tennessee Eastman Co. (R).	1,048		1,048
94	Total nonjurisdictional (F).	43,950	(600)	43,350
95	Total nonjurisdictional (R).	79,779		79,779
96	Total nonjurisdictional (S).	5,000		5,000
97	Total system (F)	328,413	3,531	331,944
98	Total system (R)	79,779		79,779
99	Total system (S)	5,000		5,000
	(F) Firm Service			
	(R) Interruptible Service			

EAST TENNESSEE NATURAL GAS COMPANY—PRESENT AND PROPOSED CONTRACT AUTHORIZATIONS—Continued

[Mcf at 14.73 psia]

Line No.	Col. 1—particulars	Col. 2—CP85—total authorizations	Col. 3—proposed increase (decrease)	Col. 4—total proposed authorization
100	(S) Seasonal Service			

Notes:

[1] Authorized Volumes at 1000 BTU/CF at 14.73 psia.
[2] Formerly Hooker Chemical Corporation.
[3] Formerly Mobil Chemical Company.

Comment date: July 24, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comments date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activitiy shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest if filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16389 Filed 7-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-589-000 et al.]

Public Service Company of Oklahoma et al.; Electric Rate and Corporate Regulation Filings

July 3, 1985.

Take notice that the following filings have been made with the Commision:

1. Public Service Company of Oklahoma

[Docket No. ER85-589-000]

Take notice that on June 26, 1985, Public Service Company of Oklahoma (PSO) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 211. PSO requests an effective date of June 1, 1984.

Copies of the filing have been served on Southwestern Electric Power Company, the Oklahoma Corporation Commission and the Louisiana Public Service Commission.

Comment date: July 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Oklahoma

[Docket No. ER85-590-000]

Take notice that on June 26, 1985, Public Service Company of Oklahoma (PSO) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 210. PSO requests an effect cancellation date of June 1, 1984.

Copies of the filing have been served on Southwestern Electric Power Company, the Oklahoma Corporation Commission and the Louisiana Public Service Commission.

Comment date: July 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Shawmut Engineering, Inc.

[Docket No. EL85-38-000]

Take notice that on July 19, 1985, Shawmut Engineering, Inc. tendered for filing a complaint pursuant to Sections 205, 206, and 306 of the Federal Power Act against Pennsylvania Electric Company.

Comment date: August 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. West Texas Utilities Company

[Docket No. ER85-591-000]

Take notice that on June 26, 1985 West Texas Utilities Company ("WTU") tendered for filing a letter agreement, dated February 18, 1985, between WTU and Texas Electric Service Company ("TESCO") and an Agreement Between Texas Electric Service Company and West Texas Utilities Company for the Construction and Interconnection of Transmission Facilities, dated February 28, 1985. Each of the two agreements submitted provides for an additional point of interconnection between the respective transmission systems of WTU and TESCO. WTU requests that the agreements be made effective as of July 1, 1985, and, accordingly, WTU requests waiver of the notice requirements under the Federal Power Act.

Copies of the filing have been served on TESCO and on the Public Utility Commission of Texas.

Comment date: July 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16390 Filed 7-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC85-17-000]

Williston Basin Interstate Pipeline Co.; Tariff Filing

July 3, 1985.

Take notice that on June 20, 1985, Williston Basin Interstate Pipeline Company (Williston Basin), 304 East Rosser Avenue, Suite 200, Bismarck, North Dakota 58501, tendered for filing in Docket No. TC85-17-000 pursuant to Part 154 of the Commission's Regulations the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective January 1, 1986:

First Revised Sheet No. 162
First Revised Sheet No. 163

Williston Basin proposes to eliminate the continued restriction on the addition of new customers. Williston Basin states that it has lifted curtailment of deliveries on its system and there will be no limitations imposed on Williston Basin's customers during the 1985-86 supply year. It is averred that Williston Basin's FERC Form 15 and FERC Form 16 support its ability to meet its full customer requirements and to meet the requirements of new customers. Williston Basin submits that the existing growth restriction is unnecessary and could result in the potential loss of sales to new customers and a consequent potential loss in fixed cost recovery that would otherwise accure to the benefit of Williston Basin's existing customers.

Williston Basin states that this filing complies with Article II(C) of the "Amendment of Stipulation and Agreement in Settlement of Remaining Issues and Terminating Proceedings" as approved by the Commission in Docket No. RP76-91-000 on February 19, 1982, that requires Williston Basin to file tariff sheets before July 31, 1985, if it is proposing a change in the rule governing new connections to become effective upon the expiration of the amendment.

Any person desiring to be heard or to make any protest with reference to said tariff sheets filing should on or before July 15, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211).

All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16388 Filed 7-9-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66120; FRL-2861-3]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the names of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

EFFECTIVE DATE: August 9, 1985.

ADDRESS: By mail, submit comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20406.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Lela Sykes, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 718C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2126).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
88-12	Bugonex 50% Malathion Bug Killer Liquid, Concentrate, Emulsifiable	The Hyponex Co., Inc., 3489 Sawmill Rd., Box 4300 Copley, OH 44321	Apr. 18, 1961.
239-2232	Ortho Trlox Granular Vegetation Killer	Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804	May 16, 1968.
264-156	Amchem X—All Liquid	Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, T.W. Alexander Dr., Research Triangle Park, NC 27709.	Feb. 20, 1952.
561-3	Pest-X No. 5 Spray	Klein Kleen-All Corp. of Milwaukee, 1125 N. Third St., Milwaukee, WI 53203	June 4, 1964.
655-335	Prentox Sulfoxide 40% Solution	Prentiss Drug and Chemical Co., Inc., C.B. 2000, 21 Vernon St., Floral Park, NY 11001.	Dec. 3, 1968.
655-336	Prentox Sulfoxide	do	Dec. 5, 1968.
655-434	Prentox® Insecti-Sulfex, Emulsifiable, Concentrate	do	Dec. 1, 1972.
655-639	Prentox® Chlorpyrifos DDVP Concentrate	do	July 2, 1981.
1191-346	Flight Brand EPN-Methyl Parathion 3-3 EC	Caroline Chemicals, Inc., 306 Miami St., West Columbia, SC 29169	Sept. 26, 1979
1269-29	De Witt D-3 Super Insecticide	De Witt Chemical Co., P.O. Box 2015 Atlanta, GA 30301	Apr. 3, 1967.
1339-162	Cotton States Vapona-2 OS	Cotton States Chemical Co., 116 Wassen St., P.O. Drawer 157, West Monroe, LA 71291.	Oct. 28, 1991.
1624-29	20 Mule Team® Benzabor Weed Killer Semi-Selective	U.S. Borax and Chemical Corp., 3075 Wilshire Blvd., Los Angeles, CA 90002	July 1, 1958.
2131-19	Flea and Tick Soap for Dogs	The R.T. French Co., One Mustard St., P.O. Box 23450, Rochester, NY 14692	June 26, 1958.
2204-11	Napcocide 140	Diamond Shamrock Chemicals Co., Process Chemicals Division, P.O. Box 2386R, Morristown, NJ 07960.	Aug. 18, 1971.
3500-87	Safe-Way Brand Vapona® Emulsifiable	Safe-Way Farm Products Co., Inc., 2519 East 5th St., Austin, TX 78702	Apr. 9, 1963.
8590-158	Captan-Trithion-G 10-3-3D	Agway, Inc., Box 4933, Syracuse, NY 13221	July 15, 1966.

The Agency has agreed that each cancellation shall be effective August 9, 1985, unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue until the supply in exhausted, or for one year from the effective date of cancellation. Other persons may continue to sell and distribute these products until the supply is exhausted. Continued sale and use of such existing stocks has been determined to be in accordance with the provisions of FIFRA and must be consistent with the label and labeling approved by EPA. Production of these products after the effective date of cancellation is prohibited and would be a violation of FIFRA.

Requests that the registration of these products be continued may be submitted in triplicate to the Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP-66120]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in Rm. 236, CM#2, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: (7 U.S.C. 136d).

Dated: June 24, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 85-16249 Filed 7-9-85; 8:45 am]

BILLING CODE 6560-50-M

[A-2-FRL-2861-7]

Prevention of Significant Deterioration of Air Quality (PSD); Final Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this notice is to announce that between February 1, 1985 and April 30, 1985, the New York State Department of Environmental Conservation (NYSDEC) issued eight final determinations and the New Jersey Department of Environmental Protection (NJDEP) issued one final determination

pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264–4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the NYSDEC and NJDEP have made final determinations relative to the sources listed below:

Name of applicant	Location	Project proposal	Reviewing agency	Final action	Date of final action
Seneca Foods Corp.	Dundee, New York	Conversion of 3 natural gas-fired boilers to burn No. 6 fuel oil as an additional fuel.	NYSDEC	PSD non-applicability determination	Feb. 6, 1985.
Alcan Aluminum Corp. (Sheet & Plate Division).	Scriba, New York	Burning of No. 6 fuel oil in an existing aluminum holding furnace and reduction of No. 6 fuel oil consumption at another existing furnace.	NYSDEC	PSD non-applicability determination	Feb. 20, 1985.
ADM Corn Sweeteners.	Montezuma, New York.	Construction of a starch dryer and storage silos.	NYSDEC	PSD non-applicability determination	Feb. 27, 1985
Dunlop Tire Corp.	Tonawanda, New York.	Replacement of 2 30000 lb/hr boilers with a new 24000 lb/hr No. 6 oil/natural gas-fired boiler.	NYSDEC	PSD non-applicability determination	Feb. 27, 1985.
Eastman Kodak Company.	Rochester, New York.	Construction of a process reactor for production of vitamins.	NYSDEC	PSD non-applicability determination	Mar. 6, 1985.
Eastman Kodak Company.	Rochester, New York.	Construction of a coating machine.	NYSDEC	PSD non-applicability determination	Mar. 13, 1985.
Chert Energy Enterprises Corp.	Atlantic City New Jersey.	Construction of a cogeneration plant.	NJDEP	PSD non-applicability determination	Mar. 20, 1985.
Reynolds Metals Company.	Massena, New York.	Construction of a wood-fired boiler and conversion of 3 existing full time oil-fired boilers to standby natural gas-fired boilers.	NYSDEC	PSD non-applicability determination	Mar. 27, 1985.
New York City Health & Hospitals Corp.	Kings County Hospital Center, Brooklyn, New York.	Replacement of existing coal and oil-fired boilers with new oil and natural gas-fired boilers.	NYSDEC	PSD non-applicability determination	Apr. 17, 1985.

This notice lists only the sources that have received final PSD determinations. Copies of these determinations and related materials may be available for public inspection at the following offices:

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233–0001

NJDEP Actions

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Engineering and Technology, John Fitch Plaza, CN 027, Trenton, New Jersey 08625

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judical review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: June 28, 1985.

Christopher J. Daggett,

Regional Administrator.

[FR Doc. 85–16380 Filed 7–9–85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00209; FRL-2862-7]

Administrator's Pesticide Advisory Committee; Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Administrator's Pesticide Advisory Committee (APAC) Subcommittee on Labeling will hold a meeting to formulate recommendations regarding which pesticide networks the Agency should pursue to encourage the safe use and handling of pesticide products. The meeting will be open to the public.

DATE: The meeting will take place on Wednesday, July 31, 1985, at 9 a.m. and adjourn by 5 p.m.

ADDRESS: The Subcommittee meeting will be held in: Environmental Protection Agency, Room 1112, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Betty Winter, Executive Secretary, Administrator's Pesticide Advisory Committee (TS–768), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E–639, 401 M Street, SW., Washington, DC 20460 (202–382–2916).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, and time will be set aside for public comments concerning the agenda items. Any member of the public wishing to present an oral or written statement relative to the Subcommittee's topics of discussion for this meeting should contact the APAC Executive Secretary at the address or telephone number listed above. A complete agenda will be available at the meeting.

Dated: July 2, 1985.

Marcia E. Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85–16473 Filed 7–9–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement Filed; Asia North America Eastbound Rate Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal

Maritime Commission, Washington, DC 20573, within 15 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010776.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Barber Blue Sea
Evergreen Marine Corp. (Taiwan) Ltd.
Hanjin Container Lines Ltd.
Hapag-Lloyd Trans-Pacific Service.
Hong Kong Islands Line.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Lines.
Mitsu O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.
Zim Israel Navigation Co. Ltd.

Synopsis: The proposed agreement would permit the parties to agree upon rates and conditions of carriage for the transportation of cargo in the trade from ports and points in (1) Hong Kong, Macao, Korea, Taiwan, Siberia U.S.S.R. and the Peoples Republic of China (North Asia Range") and (2) Thailand, Viet Nam, Kampuchea, Laos, Burma, the Philippines, Singapore, Malaysia, Brunei and Indonesia ("South Asia Range") to ports on the Atlantic, Gulf and Pacific coasts of the United States and Atlantic and Pacific Canadian Ports and U.S. and Canadian interior and coastal points via such ports. The scope of the agreement also includes Alaska, Puerto Rico, and the U.S. Virgin Islands, but excludes Hawaii.

Dated: July 5, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–16353 Filed 7–9–85; 8:45: am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

DMB Corporation, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 255.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 31, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *DMB Corporation, Inc.*, De Forest, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of De Forest-Morrisonville Bank, De Forest, Wisconsin.

Board of Governors of the Federal Reserve System, July 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–16364 Filed 7–9–85; 8:45 am]

BILLING CODE 6210–01–M

Hongkong and Shanghai Banking Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Hongkong and Shanghai Banking Corporation*, Hong Kong; *Kellette, N.V.*, Curacao, Netherlands Antilles; *HSBC Holdings, B.V.*, Amsterdam, The Netherlands; and *Marine Midland Banks, Inc.*, Buffalo, New York; to acquire Marine Midland National Finance Corporation, Wilmington, Delaware, which will become a bank holding company by acquiring Marine Midland Bank (Delaware), N.A., Wilmington, Delaware.

Marine Midland Finance Corporation has also applied to engage *de novo* directly in making, acquiring, and

servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts).

Board of Governors of the Federal Reserve System, July 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16365 Filed 7-9-85; 8:45 am]

BILLING CODE 6210-01-M

Independent Banks of Virginia, Inc.; Correction

This notice corrects a previous Federal Register document (FR Doc. 85-15423), published at page 26823 of the issue for Thursday, June 27, 1985. The location of the bank to be acquired, the Princess Anne Commercial Bank, is corrected to read Virginia Beach, Virginia.

Board of Governors of the Federal Reserve System, July 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16366 Filed 7-9-85; 8:45 am]

BILLING CODE 6210-01-M

North Community Bancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1985.

A. Federal Reserve Bank of Chicago (Franklin. D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *North Community Bancorp, Inc.*, Chicago, Illinois; to engage *de novo* through its subsidiary, Community Mortgage Company, Chicago, Illinois, in servicing mortgage loans for others.

Board of Governors of the Federal Reserve System, July 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16367 Filed 7-9-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Medical Management of Pregnant Persons With Diabetes Treated in Maternal and Child Health Programs; Open Meeting

The Centers for Disease Control will convene the following meeting in Philadelphia, Pennsylvania, of a work group to discuss draft public health guidelines and strategies being developed for care of pregnant persons with diabetes in State health department sponsored programs. The meeting will be open to the public, limited only by space available.

Medical Management of Pregnant Persons With Diabetes Treated in Maternal and Child Health Programs

Date: July 17, 1985.

Time: 9:30 a.m.–4:00 p.m.

Place: Airport Hilton Inn, 10th and Packer Avenues, Philadelphia, Pennsylvania 19148.

Additional information may be obtained from: Robert D. Moran, Division of Diabetes Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333 Telephones:

FTS: 236-1844

Commercial: (404) 329-1844.

Dated: July 2, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-16371 Filed 7-9-85; 8:45 am]

BILLING CODE 4160-18-M

Public Health Service

National Toxicology Program, Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting on August 14, 1985 of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina.

The meeting begins at 8:30 a.m. and will be open to the public. The primary agenda topic is the completion of peer review on draft technical reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program. Reviews will be conducted by the Technical Reports Review Subcommittee of the Board in conjunction with the *ad hoc* Panel of Experts.

Draft technical reports of studies on the following chemicals are *tentatively* scheduled to be peer reviewed on August 14. These are listed in order of review with Chemical Abstracts Service registry number, route of administration and species, and NTP chemical manager for each study.

Chemical (CAS registry No.)	Route/species	Chemical manager (phone No.)
Decabromodiphenyl Oxide (1163-19-5).	Feed/mice, rats.	Dr. H.B. Matthews (919-541-3252).
Ephedrine Sulfate (134-72-5).	Feed/mice, rats.	Dr. R.D. Irwin (919-541-3340).
Diesel Fuel Marine/ Navy Fuels JP-5 (8008-20-6).	Dermal/mice.	Dr. M.P. Dieter (919-541-3361).
Chlorinated Paraffins, (C_{12}, 40% Cl) (63449-39-8).	Gavage/mice, rats.	Dr. J.R. Bucher (919-541-4532).
Chlorinated Paraffins, (C_{12}, 58% Cl) (63449-39-8).	Gavage/mice, rats.	Dr. J.R. Bucher (919-541-4532).
Tetrachloroethylene (Perchloroethylene) (127-18-4).	Inhalation/ mice, rats.	Dr. J.H. Mennear (919-541-4178).
Chloroacetic Acid (115-28-6).	Feed/mice, rats.	Dr. J.E. French (919-541-7760).
n-Butyl Chloride (109-69-3).	Gavage/mice, rats.	Dr. J.K. Haseman (919-541-3627).

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919-541-3971), FTS (629-3971), will furnish final agenda,

rosters of subcommittee and panel members, and other program information prior to and at the meeting, and summary minutes subsequent to the meeting.

Dated: July 2, 1985.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 85-16383 Filed 7-9-85; 8:45 am]

BILLING CODE 4110-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

Illinois and Michigan Canal National Heritage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois and Michigan National Heritage Corridor Commission will be held July 17, 1985, beginning at 10 a.m. at the Central Square Building, Ninth and Hamilton Streets, Lockport, Illinois.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michigan Canal National Heritage Corridor Act of 1984, 98 Stat. 1456, 16 U.S.C. 461 to implement and support the conceptual plan.

Matters to be discussed at the meeting will include reports from the finance subcommittee, headquarters subcommittee, and personnel subcommittee. The commission will also be briefed on Federal government contracting procedures and the use of cooperative agreements. This is the second meeting of the commission. Therefore, further organizational structures and means of communicating internally and externally will be discussed.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402-221-3461 (FTS 864-3461). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated June 28, 1985.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 85-16361 Filed 7-9-85; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Kesterson Reservoir Closure and Cleanup; Rescheduling of Scoping Sessions for Draft Environmental Impact Statement

The Bureau of Reclamation has rescheduled the public scoping sessions for the environmental impact statement (EIS) on closing and cleaning up Kesterson Reservoir in Merced County, California. On May 28, 1985, Reclamation published a notice of intent to prepare the EIS in cooperation with the U.S. Fish and Wildlife Service (FWS). Two scoping sessions were originally planned for June 26 and 27 in Mendota and Los Banos, California. Later in June, Reclamation published another notice postponing those sessions until after Reclamation submits the closure and cleanup plan to the California State Water Resources Control Board on July 5, 1985. This notice is to establish a new schedule for conducting the scoping sessions.

Scoping meetings will be conducted at:

July 24, 1985, 7:00 p.m.-10:00 p.m.

Herbert Hoover School, 800 East 26th Street, Merced, California

July 24, 1985, 1:00 p.m.-4:00 p.m.

Fresno Convention Center (Wine Room), 700 M Street, Fresno, California

July 24, 1985, 7:00 p.m.-10:00 p.m.

McCabe School (MU Room), 250 South Derrick Street, Mendota, California

July 25, 1985, 1:00 p.m.-4:00 p.m.

Merced County Fairgounds at Los Banos, Fourth and F Streets, Los Banos, California

July 25, 1985, 7:00 p.m.-10:00 p.m.

Gustine High School, 501 North Avenue, Gustine, California

The scoping meetings, which will be in a workshop format, are intended to obtain information from the public to help determine significant issues, potential environmental effects, and other information related to the proposed action. Anyone wishing to make formal statements should do so, in writing, by August 2, 1985, to Reclamation at the address provided below.

Further information may be obtained from Bob Schroeder (916) 484-4507 and Rod Hall (916) 484-4792, both of the Bureau of Reclamation. Stephen Moore (916) 484-4133 is the contact for the FWS. All are located at 2800 Cottage Way, Sacramento, California 95825-1898.

Dated: July 8, 1985.

James E. Cook,

Acting Commissioner.

[FR Doc. 85-16512 Filed 7-9-85; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30670]

Lackawanna Valley Railroad Corp., Moxahala Valley Railroad Corp., and Panther Valley Railroad Corp.; Exemption From 49 U.S.C. 11343

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343(a)(4) the continuance in control of Lackawanna Valley Railroad Corp., Moxahala Valley Railroad Corp., and Panther Valley Railroad Corporation by Mr. William Powers, subject to protective conditions for rail employees.

DATES: This exemption is effective on August 9, 1985. Petitions to stay must be filed by July 22, 1985, and petitions for reconsideration must be filed by July 30, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30670 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) John D. Heffner, Suite 1100, 8300 Greensboro Drive, McLean, VA 22101

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to: T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Decided: July 2, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-16379 Filed 7-9-85; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. P-84]

Rail Carriers; Atchison, Topeka & Santa Fe Railway Co.; Passenger Train Operation

Correction

In the issue of Wednesday, July 3, 1985, in the document beginning on page 27500, make the following correction:

On page 27501, first column, in the file line, "FR Doc. 85-15876" should have read "FR Doc. 85-15876a".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act; Withdrawal Program Announcement

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Withdrawal of Program Announcement.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is withdrawing the program announcement entitled "National Study of Law Enforcement Agencies' Policies and Practices Regarding Missing Children and Homeless Youth" published in the **Federal Register** on June 14, 1985, 50 FR 24951.

If this program is selected as a priority after review of public comments submitted to OJJDP in response to the proposed Missing Children's Assistance Act Section 406 priorities as published in the **Federal Register** on May 10, 1985, 50 FR 19817, OJJDP will republish the announcement at the same time that the notice of the final program priorities is published in the **Federal Register.**

Comments on the proposed priorities are due by July 9, 1985 and OJJDP anticipates that the notice of final program priorities will be published within 10 days of that date.

Dated: July 3, 1985.

Approved:

James M. Wootton,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 85-16352 Filed 7-9-85; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Prisons

National Institute of Corrections; Bylaws

July 1, 1985.

Article I—Title and Objects

The name of this organization shall be the Advisory Board of the National Institute of Corrections (NIC) hereinafter referred to as the Board of NIC or the Board.

Under the authority of 18 U.S.C. 4351–4353 (1974) as provided for by Pub. L. 93–415, Title V, Part B hereinafter referred to as 18 U.S.C. 4351–4353 (1974), NIC's overall goal is to aid in the development of more effective and humane, constitutional, federal, state and local correctional systems which will contribute to the safety of offenders, staff and the community by:

1. Providing the stimulus for cooperative and consolidated action by all groups affecting corrections.

2. Establishing close working relationships among federal, state and local correctional agencies.

3. Developing a larger sense of professionalism at all levels in corrections.

4. Drawing other professional groups into a closer relationship with correctional planning and practice.

In order to implement these objectives, 18 U.S.C. 4351–4353 (1974) outlines five primary assistance areas that form the core of NIC's activities: training, research and evaluation, policy formulation and implementation, clearinghouse and publication, and technical assistance.

18 U.S.C. 4351–4353 (1974) expressly charges the Board of NIC with both the authority and responsibility to develop and supervise the overall policy of NIC. The primary responsibility of the Board in this regard shall be to review and approve the Annual Program Plan presented by the Director of NIC.

Article II—Organization

Section 1. Membership and terms of office—as required under 18 U.S.C. 4351–4353 (1974), the Board of NIC shall consist of sixteen members:

Six individuals or their respective designees shall serve as ex officio members, these include: The Director of the Federal Bureau of Prisons, the Assistant Attorney General for the Office of Justice Programs, Chairman of the U.S. Parole Commission, the Director of the Federal Judicial Center, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, and the Assistant Secretary for Development of the Department of Health and Human Services. Any ex officio member of the Board who selects a designee to serve in his position shall notify the Board's chairman in writing of such action. This written notification must include the name and position of the designee. Any change in a respective designee must follow the same notification procedure.

Five members of the Board of NIC must qualify as practitioners at the federal, state or local level in the area of corrections. These individuals shall be appointed by the Attorney General for staggered three year terms.

The five remaining members of the Board of NIC shall be selected from the private sector such as business, labor and education and shall have demonstrated an active interest in corrections. These five members shall be appointed by the Attorney General for staggered three year terms.

Upon completion of the term of each of the ten members not serving ex officio, the Attorney General shall appoint successors who will each serve for a term of three years. Terms of appointment of each of the ten members not serving ex officio shall bear the effective date of January 1. In the absence of an appointment of a successor by the Attorney General, the incumbent member shall continue to serve as a Board member until a successor is appointed.

Section 2. General Duties. The Board shall:

A. Review all proposed amendments to these bylaws;

B. Review all legislation affecting NIC;

C. Participate with the Director of NIC in the development of a long-range fiscal plan for Prisons, Jails, Community Corrections, National Academy, and the Clearinghouse/Information Services;

D. Participate with the Director of NIC in the development of annual program plans for NIC; and

E. Review all documents and guidelines dealing with grant and contract funding for NIC.

Section 3. Officers of the Board—The Board annually shall elect a chairman and five vice-chairmen, each of whom shall be the Chairman of one of the standing committees. These officers shall be elected by a majority vote of the Board. The term of the office for the chairman and vice-chairmen shall be one year commencing upon completion of the Board's fall/winter meeting. No chairman or vice-chairman shall serve more than two consecutive one year terms without concurrence of two-thirds's of the members of the Board.

No ex officio member of the Board may serve as chairman of the Board. No

designee may serve as an officer of the Board.

A. The Chairman shall:

1. Preside over all meetings of the Board.

2. Consult with Board members and the Director of NIC and develop an agenda for each meeting. The agenda shall include but not be limited to: a report from each standing and when appropriate from each ad hoc committee or task force, a report from the Director of NIC, and any proposed amendment to these bylaws.

3. Appoint as many ad hoc committees or task forces as are necessary to assist MIC in the accomplishment of its objectives.

4. Appoint each vice-chairman elected by the Board to chair one of the specific standing committees established under these bylaws and appoint members of those committees.

5. Perform such other functions and duties as the Board may lawfully authorize or request.

The Chairman of the Board is a member of all committees and task forces of the Board and shall be entitled to vote on any committee or task force of the Board. The Chairman of the Board shall be counted in the quorum of any committee or task force.

In event of his absence, the chairman shall designate in writing one of the vice-chairmen who will serve in his place. In event of the long term incapacitation or demise of the chairman the following rule of succession shall be applied. If eligible, succession shall occur in descending order:

1. Vice-Chairman, in the sequence, Prisons Committee, Jails Committee, Community Corrections Committee, National Academy Committee, Clearinghouse/Information Services Committee.

B. Each vice-chairman shall:

1. Serve as a chairman of one of the standing committees established under these bylaws. In the event of his/her absence, the chairman of any standing committee of the Board may designate a replacement for the interim. Such designation shall be communicated to the Director or to the Chairman. In the absence of such a designation, the Chairman may appoint a replacement for the interim.

Section 4. Committee Structure.

A. *The Executive Committee* shall consist of the chairman of the Advisory Board and the chairman of each of the standing committees and shall serve as an appellate review board making recommendations to the Director of NIC in cases of appeal by applicants for grants and contracts:

The Executive Committee shall have the authority to:

1. Take appropriate action for the Board when it is not in session and report those actions in writing to the members of the Board.

2. Act as an appellate review Board for hearing the appeals from actions of the standing committees.

B. *Standing Committees*—There shall be five standing Committees as follows: (1) Prisons, (2) Jails, (3) Community Corrections, (4) National Academy of Corrections, and (5) Clearinghouse/Information Services. Each of the standing committees will be composed of no more than five and not less than three members of the Board. Each standing committee shall be balanced as equally as possible with members from each of the three categories of Board members, i.e., ex officio, practitioner, and private sector representatives. At no time shall more than two members from any one category serve on any one standing committee. No individual Board member shall serve on more than two standing committees at any one time. No designee may serve as chairman of the standing committee.

Each of the standing committees through its chairman, shall make its recommendations known to the Board at its regular meetings.

Each standing committee shall:

1. Review grants and contracts relevant to its area of responsibility that are in excess of $300,000 and make recommendations to the Director regarding funding;

2. Work with assigned staff to develop that portion of the annual program plan relevant to its area of responsibility;

3. Review the fiscal allocations within the preceding year's Annual Program Plan and make budget recommendations for the Division with which the committee works;

4. Help develop policy for the Division with which it works; and

5. Review, on a quarterly basis, grant award summaries covering grants made in its respective subject area.

C. *Ad Hoc Committees and Task Forces*—The chairman is empowered to appoint as many ad hoc committees and task forces from the Board's membership as deemed necessary to conduct the business of the Board. As with standing committees, representation on ad hoc committees should reflect, if possible, all three categories of Board membership as outlined in Article II, Section 1 of these bylaws.

Upon the recommendation of the Director, or the Chairman of the *ad hoc* committee or task force, or upon the recommendation of the Board, the Chairman is empowered to appoint, because of their expertise, non-members of the Board to special subcommittees of *ad hoc* committees or task forces.

Any non-member of the Board appointed pursuant to this sub-section may be invited by the Director, the Chairman, or the Chairman of the special sub-committee or task force under whom he serves to participate in the discussion of any agenda item directly relevant to the work of such special sub-committee or task force.

The Chairman shall appoint a nominating committee prior to the last regularly scheduled Board meeting each year. The committee shall nominate candidates for offices authorized by the Board. Upon submission to the Board of its report the committee shall be discharged.

Article III—Director of NIC

As provided for by 18 U.S.C. 4351(h) (1974), the Director of NIC shall be appointed by the Attorney General after consultation with the Board of NIC.

The Institute shall be under the supervision of an officer to be known as the Director, who shall be appointed by the Attorney General after consultation with the Board. The Director shall have authority to supervise the organization, employees, enrollees, financial affairs, and all other operations of the Institute and may employ such staff, faculty, and administrative personnel, subject to the civil service and classification laws, as are necessary to the functioning of the Institute. The Director shall have the power to acquire and hold real and personal property for the Institute and may receive gifts, donations, and trusts on behalf of the Institute. The Director shall also have the power to appoint such technical or other advisory councils comprised of consultants to guide and advise the Board. The Director is authorized to delegate his powers under this title to such persons as he deems appropriate.

In accordance with the policies of the Board of NIC and applicable law, the Board of NIC delegates to the Director the authority to issue procedures, regulations, and guidelines to implement these policies.

It shall be the primary duty of the Director of NIC to present NIC's Annual Program Plan to the Board, and to execute the Annual Program Plan upon Board approval.

The Director of NIC shall also have the following duties as applicable to the Advisory Board: (1) To Provide appropriate staff support to the Board and its committees as may be necessary for the fulfillment of their duties, (2) to

present a report to the Board of NIC at each meeting of the activities of NIC to date, (3) to maintain an up-to-date file of any written authorization which ex officio members of the Board of NIC must file when designating an individual to serve in their place as provided for under 18 U.S.C. 4351–4353 (1974), (4) to provide for the keeping and recording of the minutes of any meeting of the Board of NIC and upon request for any of the Board's committees, (5) to provide all Board members with notice of the upcoming meetings, the agenda for the meeting, the minutes of the last meeting and any other appropriate materials, (6) to provide the Board through such means as it may direct a quarterly report of grant and contract awards.

Article IV—Standard Operating Procedure

The Director of NIC shall promulgate Standard Operating Procedures for the management and control of Institute business and activities. Where such procedures have direct impact on Advisory Board Responsibilities they will be submitted to the Board for review before becoming operational.

Article V—Meetings

The Board shall meet three times annually. However, when deemed necessary, additional meetings may be called by the chairman or by at least two-thirds of the Board.

Written notice of each meeting of the Board of NIC stating the place, date and hour of the meeting, shall be given to each member at least three weeks prior to the date of the meeting.

Notice of any additional meeting of the Board of NIC shall state in writing, by certified mail, the purpose or purposes for which the meeting is being called and shall state whether the meeting is being called by the Chairman or by two-thirds of the Board. The agenda of the meeting shall be limited to the purpose specified. Where notice of any emergency meeting has not been given in writing at least three weeks prior to the date of such a meeting to each Board member, the call of the meeting must be ratified at the meeting by a vote of no less than two-thirds of the full membership of the Board present and working, or voting by mail ballot, for such ratification.

Notice of all meetings of the Board shall be published in the **Federal Register** at least 15 days prior to the meeting, provided that in emergencies, such requirement may be waived. This notice shall contain a statement of the purpose of the meeting, a summary of the agenda, and the time, place, and location of such meeting.

The Director and/or the Chairman may invite on a regular basis such federal officials as might contribute to deliberations of the Institute.

Except for executive sessions, meetings of the Board shall be open to the public for observation. The Chairman may invite more active participation from the public when such action is appropriate and does not interfere with the orderly transaction of the Board's business.

Executive sessions may be called by a majority vote of a quorum of the Board in public. No final action shall be taken at such meetings except upon votes in open session. These sessions shall not be used to obstruct the fullest possible public accessibility to meetings.

Article VI—Voting

All members of the Board of NIC shall each be entitled to a vote on any issue before the Board.

In the event there is a need for the Board to vote on any issue between regularly scheduled meetings, the Chairman, with the consent of the Executive Committee, may conduct a mail ballot. Advisory Board members will be given a minimum of fifteen days within which to respond to a mail ballot.

Under 18 U.S.C. 4351, a member serving ex officio may designate an individual to serve and vote in his/her position at any meeting of the Board or its committees and task forces. Selection of a designee does not preclude an ex officio member from attending and voting at any meeting of the Board, its committees or task forces in place of the respective designee.

No action of the Board of NIC shall be valid and binding without a vote by a quorum of its members. A quorum of the Board shall consist of one-half or more of its members or designees.

Article VII—Compensation of Board Members

Under 18 U.S.C. 4351–4353 (1974), the members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States. Members of the Board who are full-time officers or employees of the United States shall serve without additional compensation, but may be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Board. Other members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Board pursuant to 18 U.S.C. 4351–4353 (1974), be entitled to receive compensation at the rate not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of Title 5, United States Code, including travel-time, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by Section 5703 of Title 5, United States Code for persons in the Government service employed intermittently. Compensation and reimbursement as provided for by this Article shall be made only upon written request.

Article VIII—Parliamentary Authority

Meetings of the Board and its committees shall be conducted in accordance with the rules contained in *Robert's Rules of Order Revised*. These rules shall govern the Board in all cases where applicable and in which they are not inconsistent with these bylaws. Special rules of order preempting those contained in *Robert's Rules of Order Revised* may be adopted by the Board. Any special rules of order are to be incorporated in these bylaws as a separate section under this Article.

Article IX—Amendment of the Bylaws

These bylaws may be amended at any meeting of the Board by a majority vote of a quorum of the Board. Amendments to the bylaws may be proposed by the Executive Committee or by any five members of the Board of NIC. Any proposed amendments must be written, signed and sent to Board members at least 15 days in advance of the meeting at which they will be discussed.

Article X—Notice of the Bylaws

Notice of these bylaws shall be published in the **Federal Register**.

Dated: July 1, 1985.

Raymond C. Brown,

Director.

[FR Doc. 85–16327 Filed 7–9–85; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V–85–4]

Permanent Variance; St. Joe Lead Company

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Modification and Correction of Notice of Application for Permanent Variance.

SUMMARY: This notice is to (1) make a change and (2) correct and error in the

Federal Register publication of the St. Joe Lead Company application for a permanent variance (50 FR 24963–24966, June 14, 1985.

(1) The Occupational Safety and Health Administration has been requested, and has agreed, to extend the time for comments to be accepted for an additional 30 days until August 14, 1985. The comment period and last date for requests for a hearing have been extended by modifying the paragraph entitled "DATE:" in column two on page 24968, as follows:

"The last date for interested persons to submit comments on the variance application is August 14, 1985. The last date for affected employers and employees and appropriate State authority having jurisdiction over employment or places of employment covered in the application to request a hearing on the application is August 14, 1985."

(2) Due to an inadvertent error, Item 1. in column 3, referred to the blood lead level at or above which St. Joe Lead Company proposed to remove an employee as, 10 μg/dl. The correct level is, 60 μg/dl. The change should read as follows:

"1. St. Joe shall remove each employee with a blood lead level at or above 60 μg/dl and return the employee when his or her blood lead level is at or below 50 μg/dl."

Signed at Washington, DC this 3rd day of July, 1985.

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

[FR Doc. 85–16360 Filed 7–9–85; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–295]

Commonwealth Edison Co., Zion Nuclear Power Station, Unit 1; Issuance of Director's Decision Regarding Integrated Containment Leak Rate Testing at Commercial Nuclear Power Facilities

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued, a "Decision Pursuant to 10 CFR 2.206" concerning the letters dated March 6 and March 8, 1985 (Petition) filed by Dr. Zinovy V. Reytblatt requesting an immediate postponement of containment leak rate tests for all light-water reactors and debugging and revalidation of certain computer software used in determining leak rates.

The Petition further alleges that the Zion Unit 1 containment leak rate test performed in July 1984 was in error and, therefore, the Petitioner concludes that the Zion Unit 1 leak rates are in excess of regulatory limits.

The Director, Office of Nuclear Reactor Regulation, has determined to deny Petitioner's request pursuant to 10 CFR 2.206. The reasons for this decision are explained in the "Director's Decision under 10 CFR 2.206" (DD–85–10) which is available for public inspection in the Commission's Public Document Room located at 1717 H Street NW., Washington, DC 20555, and at the local public document room for the Zion Station, located at 2800 Emmaus Avenue, Zion, Illinois 60099.

A copy of the Decision will be filed with the Secretary for Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland this 3rd day of July.

For the Nuclear Regulatory Commission

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85–16409 Filed 7–9–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–45]

Issuance of Amendment To Transfer Facility Operating License From Union Carbide Subsidiary B, Inc., to Cintichem, Inc.

The U.S. Nuclear Regulatory Commission has issued Amendment 23 to Operating License No. R–81 to Cintichem, Inc., for operation of the facilities located at its Sterling Forest facility in Tuxedo, New York. Cintichem, Inc., has acquired all the interests previously held by the Union Carbide Subsidiary B, Inc. This amendment is effective on or after its date of issuance.

The amendment deletes the name Union Carbide Subsidiary B, Inc., and replaces it with the name of Cintichem, Inc., wherever it appears in the license or the amendments thereto.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), section 109 of Pub. L. 98–553, and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR, Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

This amendment changes administrative procedues or requirements only. Accordingly, this amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(10). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see: (1) The application for amendment dated December 28, 1984, (2) Amendment No. 23 to License No. R–81 and (3) the Staff Evaluation. These items are available for public inspection at the Commission's Public Document Room 1717 H Street NW., Washington, D.C. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 2nd day of July 1985.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization & Special Projects Branch Division of Licensing.

[FR Doc. 85–16407 Filed 7–9–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–322]

Long Island Lighting Co.; Shoreham Nuclear Power Station; Issuance of Facility Operating License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF–36 to the Long Island Lighting Company, (the licensee) for the Shoreham Nuclear Power Station (the facility). The license authorizes the operation of the reactor at power levels not in excess of 121.8 megawatts thermal (five percent of rated power).

The Shoreham Nuclear Power Station is a boiling water reactor located in the town of Brookhaven, Suffolk County, New York. The license is effective as of its date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. Issuance of this license has been authorized by an Atomic Safety and Licensing Board by its Partial Initial Decisions dated September 21, 1983, and June 14, 1985; by an Atomic Safety and Licensing

Appeal Board in its Appeal Board Decision dated October 31, 1984; by the Commission in Memorandum and Order CLI-84-21, dated November 21, 1984; and by an Atomic Safety and Licensing Board in its Memorandum and Order Ruling on Remanded Issues dated November 30, 1984. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on March 18, 1976 (41 FR 11357).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluation in the Final Environmental Statement.

For further details in respect to this action, see (1) Facility Operating License NPF-36 complete with Technical Specifications and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated October 14, 1981; (3) the Commission's Safety Evaluation Report, dated April 1981 (NUREG-0420), and Supplements 1 through 8 thereto; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Final Environmental Statement, dated October 1977 (NUREG-0285); (6) the Environmental Report and supplements thereto; (7) the Licensing Board Orders; (8) the Appeal Board Order; and (9) the Commission's Memorandum and Order.

These items are available at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and the Shoreham Wading River Public Library, Route 25A, Shoreham, New York 11786. A copy of Facility Operating License NPF-36 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements (NUREG-0420) and the Final Environmental Statement (NUREG-0285) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders may call (301) 492-9530.

Dated at Bethesda, Maryland, this 3rd day of July 1985.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 85-16406 Filed 7-9-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of Appendix J to 10 CFR Part 50 to the Union Electric Company (the licensee) for the Callaway Generating Station, Unit 1 located at the licensee's site in Callaway County, Missouri.

Environmental Assessment

Identification of Proposed Action

The exemption would allow for a one-time extension for the performance of Type C tests on 59 containment isolation valves until the next cold shutdown. Section III.D.3 of Appendix J requires that Type C tests be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. The current Type C test due dates range from August 11 to December 27, 1985 for the 59 affected valves. The extension would allow these valves to be tested at the next cold shutdown, currently scheduled during April–June, 1986, during Callaway's first refueling outage. The proposed exemption is in accordance with the licensee's request dated May 17, 1985.

The Need for the Proposed Action

The proposed exemption is required to permit the licensee to perform the Type C tests on 59 containment isolation valves during the next cold shutdown.

Environment Impacts of the Proposed Action

The proposed exemption grants a one-time extension for the performance of Type C tests in on 59 containment isolation valves. With respect to this exemption from Appendix J, the increment of environmental impact is related solely to the potential increased probability of containment leakage during an accident. This could lead to higher offsite and control room doses. However, this potential increase is very small, due to the short length of exposure of the subject valves to an operating environment and the fact that the previous tests yielded favorable results.

Alternative to the Proposed Action

Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to these exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operations and would result in increased radiation exposure to plant personnel.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement related to the operation of Callaway Plants Units 1 and 2," dated January 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact:

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for the exemption dated May 17, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Fulton City Library, 709 Market Street, Fulton, Missouri.

Dated at Bethesda, Maryland, this 1st day of July, 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director, for Licensing Division of Licensing.

[FR Doc. 85-16408 Filed 7-9-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Co. of New York, Inc., Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR-26, issued to Consolidated Edison Company of New York, Inc. (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 2 located in Westchester County, New York.

By letter dated February 28, 1985 Consolidated Edison submitted an application to amend the Indian Point Unit No. 2 Technical Specifications to reflect revised heatup, cooldown, hydrostatic test and low temperature overpressure protection through fifteen effective full power years of reactor operation. The current Technical Specifications cover seven effective full power years of reactor operation scheduled to end July 23, 1985. The February 28, 1985 submittal, noticed April 25, 1985 (50 FR 16002), was a supplemental submittal to a February 14, 1983 submittal, noticed August 23, 1983 (49 FR 38395), for the subject of overpressure protection only.

As a result of the Commission's review and discussions with the licensee, it was determined that revision to the application would be required. Once it was realized that a revision was necessary, submission of a supplemental submittal proceeded on a priority basis. The licensee submitted a proposed revison, dated July 5, 1985, to the amendment application. Th licensee's supplemental was not filed earlier because it was only recently discovered that the changes to the application would be significant. This revision revises the heatup and cooldown curves in the conservative direction.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed revision reflects conservative values of the Reference Nil-Ductility Transition Temperature (RT_{NDT}) for the reactor vessel and provides a margin of safety which complies with the fracture toughness requirements of 10 CFR Part 50 Appendix G.

Therefore, as a result of these considerations the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination of no significant hazards considerations.

The Commission has determined that failure to act in a timely way would result in the licensee shutting down the plant on July 23, 1985.

Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public document.

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve significant hazards consideration, a notice of opportunity for a prior hearing will published in the **Federal Register** and, if a hearing is granted it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to Steven A. Varga, Chief of Operating Reactors Branch No. 1, by collect call to 301-492-8035 or submitted in writing to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch. All comments received by July 22, 1985, 5:00 p.m., will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and the White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10601.

Dated: at Bethesda, Maryland, this 5th day of July, 1985.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 85-16496 Filed 7-9-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Production Planning Advisory Committee; Meeting

AGENCY: Production Planning Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Forest management plans;
- Production methods scoping session;
- Stock selection—outplant strategies;
- Other; and
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Production Planning Advisory Committee.

DATE: July 15, 1985; 9:30 a.m.

ADDRESS: The meeting will be held at the Federal Building in room 268, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ron Eggers, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-16351 Filed 7-9-85; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23756; 70-7109]

Jersey Central Power and Light Co.; Proposal To Finance Pollution Control Facilities

July 2, 1985.

Jersey Central Power and Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, a subsidiary of General Public Utilities ("GPU"), a registered holding company, has filed a declaration with the Commission pursuant to sections 6, 7, 9 and 10 of the Public Utility Holding Company Act of 1935

("Act") and Rules 44 and 50(a)(5) thereunder.

JCP&L proposes to issue an aggregate of up to $14,000,000 principal amount of its first mortgage bonds ("New Bonds") to the New Jersey Economic Development Authority ("Authority"). The New Bonds are to be issued under the Mortgage and Deed of Trust of JCP&L. The interest rate, the maturity date, and the redemption or prepayment provisions will correspond to the interest rate, the maturity date, and the redemption or prepayment provisions will respect to pollution control revenue bonds ("Authority Bonds") to be issued by the Authority. The proceeds from the Authority Bonds will finance solid waste control facilities ("Facilities") being constructed in connection with JCP&L's Oyster Creek nuclear generating station.

The maximum principal amount of Authority Bonds is intended to approximate the qualifying cost of the Facilities, (approximately $13,800,000) together with the fees, commission and underwriting expenses.

The proceeds will be borrowed by JCP&L from the Authority pursuant to a Loan Agreement ("Agreement"). The Authority Bonds will be issued under a separate trust indenture ("Indenture") between the Authority and The Chase Manhattan Bank, N.A., as trustee, ("Trustee"), and sold by Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") at interest rates and prices as may be approved by JCP&L.

Principal and interest on the Authority Bonds will be payable under a Letter of Credit ("Letter of Credit"), Standby Bond Purchase Agreement ("Bond Purchase Agreement"), or payments made by JCP&L on the New Bonds. The credit of the Authority will not be pledged. The Authority Bonds will have a term of not less than 5 years and not more than 30 years, but will be subject to earlier redemption, retirement or repurchase upon the occurrence of certain events, and will provide for an adjustable rate of interest ("Adjustable Rate"), a fixed interest rate ("Fixed Rate") on the election of JCP&L for periods beginning after June 30, 1990, and a Bank Rate.

The Adjustable Rate for the initial five year Rate Period will be determined by JCP&L and Merrill Lynch based upon the current tax-exempt market rate for comparable bonds. Thereafter, for each annual Rate Period commencing July 1, 1990, the Adjusted Rate on the Authority Bonds will not exceed 15% per annum, nor will it be less than 80% or more than 120% of the Adjustable Rate Index. The Adjustable Rate Index will be determined by the Indexing Agent to be appointed by JCP&L and will be based upon one-year yield evaluations at par of not less than ten issuers of securities.

The Indenture will provide that on July 1, 1990 (the end of the initial five year Rate Period or any July 1 thereafter) JCP&L may, on a one time basis, fix the interest rate to be borne by the Authority Bonds until their maturity. The Fixed Interest Rate will be determined in a manner similar to determination of the Adjustable Interest Rate, by reference to a fixed rate index furnished by the Indexing Agent and by the results of remarketing the Authority Bonds upon the commencement of the Fixed Interest Rate (the "Fixed Rate Date"). The Fixed Interest Rate will be established at not less than 80% and not more than 120% of the Fixed Rate Index, but will in no event be greater than 15% per annum.

The holders of the Authority Bonds will have the right, from June 1, 1990 to June 15, 1990 and in the corresponding period in each subsequent year until the Fixed Rate Date, to tender their Authority Bond to the Trustee and have them purchased at a price equal to the principal amount. A Remarketing Agent will be appointed by JCP&L to resell the bonds at a price equal to the stated principal amount and bearing an interest rate no greater than 120% and no less than 80% of the Adjustable Rate. If unsuccessful, the Marine Midland Bank, N.A. ("Bank") has agreed to purchase the Authority Bonds and hold them for possible resale for up to two years pursuant to a Standby Bond Purchase Agreement. JCP&L would be obligated to purchase the Authority Bonds at the expiration of the two-year period or earlier upon the occurrence of certain events, at the unpaid principal amount with accrued interest.

In the event the Bank fails to repurchase the Authority Bonds, the Trustee may draw upon an irrevocable Letter of Credit. JCP&L proposes to enter into a Reimbursement Agreement with the Bank which will provide for JCP&L to reimburse the Bank for moneys borrowed under the Letter of Credit with interest at a rate of 108% of the Bank's prime rate.

Since the interest rate on the New Bonds will be determined by the issuance of the Authority Bonds, not subject to the Act, JCP&L requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5).

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 28, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16395 Filed 7-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23759; 70-7106]

Columbia Gas Transmission Corp.; The Columbia Gas System, Inc.; Proposed Issuance and Sale of First Mortgage Bonds by Subsidiary Company to Holding Company and Production Loans by Subsidiary Company From Banks

July 3, 1985.

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and its subsidiary company, Columbia Gas Transmission Corporation ("Transmission"), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) promulgated thereunder.

By order in this proceeding dated June 7, 1985 (HCAR No. 23724), Transmission was authorized to finance its gas inventory up to $450 million through the issuance and sale to Columbia of a secured note and to engage in a prepayment program of its installment notes held by Columbia. Jurisdiction was reserved over further financing as to which the record was incomplete.

Transmission now proposes to issue and sell, and Columbia proposes to acquire, two series of first mortgage bonds aggregating up to $350 million through December 31, 1986. The short-term bonds (Series A) are designed to

replace the short-term borrowings from the Intrasystem Money Pool and open account advances from Columbia. These bonds must be repaid in no more than one year from the date of their issuance and will bear interest which is equivalent to the composite weighted average effective cost incurred by Columbia in its short-term transactions. The initial series of long-term bonds (Series B) now being proposed will provide long-term funding of Transmission's operations. They will be repaid in fifteen equal annual installments on March 31st of each of the next 15 years, and the interest rate will be the actual cost of money to Columbia with respect to the last long-term debt or preferred stock sold prior to the issuance of said bonds. The portion of the $350 million of first mortgage bonds which will be short-term and the portion which will be long-term will be based on the nature of Transmission's needs, but the aggregate will not exceed $350 million at any one time outstanding. The bonds will be secured by a perfected first security interest in all of Transmission's property with certain limited exceptions. The security interest is subject to certain "Permitted Encumbrances."

Transmission also proposes to borrow from a group of banks pursuant to a Limited Resource Loan Agreement. Bankers Trust Company ("BT Co.") will act as agent for the bank group for which BT Co. will receive an arrangement fee. The loans to Transmission will be secured by a first perfected lien and security interest in Transmission's production properties (the "mortgaged properties") and in the proceeds from production of hydrocarbons from the mortgaged properties pursuant to a Mortgage, Deed of Trust, Assignment, Security Agreement and Financing Statement (the "Mortgage"). The loans will be scheduled to mature on the seventh anniversary of the first interest payment date with scheduled amortization payments beginning two years following the closing. The scheduled minimum amortization generally will be based on anticipated cash flow and except for the guarantees by Columbia noted below, the banks will look solely to the mortgaged properties and the proceeds of production (including proceeds released to Transmission) for repayment of the principal of the loan. Transmission will be entitled to obtain a release under bond of the cash proceeds from production during the first two years if certain coverage ratios are met and thereafter as agreed to by the participating banks. The maximum amount of the loans available to Transmission will be redetermined annually based on a formula which takes into account actual cash flows and anticipated cash flows including proceeds from production released to Transmission. If the maximum loan amount available to Transmission exceeds the amount outstanding, the participating banks may, at their option, agree to defer scheduled amortization payments. Thus, the loans may remain outstanding for more than seven years. At any one time, however, the aggregate amount of the loans will not exceed the lesser of $400 million or the maximum redetermined loan amount as described above. The amount available for borrowing may be limited until Transmission is able to reduce its average gas purchase price through Long-Term Producers Settlements. It is stated that the terms of the loans must be negotiated because of their specialized nature, and an exception from Rule 50 is requested. Transmission may negotiate pending a decision on the request.

The interest rate on the productions loans will be either a fixed rate which will be negotiated with the banks subject to a maximum interest rate or a floating rate based on Transmission's choice of (1) the BT Co. prime rate in effect from time to time for domestic commercial loans, (2) the average Certificate of Deposit rates for selected reference banks, and/or (3) the average interbank Eurodollar market rates for selected reference banks. It is stated that the prime rate pricing option would normally be the most expensive of the variable rate pricing options and that, assuming a prime rate of 9½%, the interest rate on the production loans should not exceed 10%. The fixed rate pricing option will not be exercised if the interest rate is more than 300 basis points over the prime rate. The maximum fixed rate and precise floating interest rate formula and other participating bank compensation (i.e. commitment and participation fees and BT Co.'s arrangement fee) will be filed by amendment.

To maximize the size of the Loans to Transmission, Columbia proposes to provide credit support for the Production Loans pursuant to a Guarantee Agreement under which it will guarantee the payment of interest and principal on the Loans. In addition, Columbia will grant certain convenants for the benefit of participating banks.

The amended application-declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 29, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on he applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16410 Filed 7-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23758; 70-7123]

Middle South Energy, Inc., et al.; Proposal to Issue and Sell $300 Million of First Mortgage Bonds

July 3, 1985.

Middle South Energy, Inc. ("MSE"), P.O. Box 61000, New Orleans, Louisiana 70161, Arkansas Power & Light Company ("AP&L"), P.O. Box 551, Little Rock, Arkansas 72203, Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39205, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, New Orleans Public Service Inc., ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, and their parent Middle South Utilities, Inc. ("MSU"), P.O. Box 61005, New Orleans, Louisiana 70161, a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6, 7, and 12 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50(a)(5) thereunder.

The transactions proposed herein relate to the issuance and sale by Middle South Energy, Inc. in one or more series from time to time not later than July 31, 1986 of not to exceed $300 million aggregate principal amount of its First Mortgage Bonds ("Bonds"), by means of negotiated offering. MSE was incorporated under the laws of the State of Arkansas on February 11, 1974 to

construct, finance and own certain base-load generating units for the subsidiaries of Middle South Utilities, Inc. ("Middle South System"). All of MSE's common stock, no par value ("Common Stock"), is owned by Middle South Utilities, Inc. ("MSU").

MSE's only project to date has been the construction and financing of the Grand Gulf Nuclear Electric Generating Station ("Grand Gulf Station"), a two-unit, nuclear-fueled generating station located near Natchez, Mississippi. Unit No. 1 of the Grand Gulf Station ("Grand Gulf was placed in commercial operation on July 1, 1985 at a cost (excluding nuclear fuel) for MSE's 90% interest estimated at $3.2 billion. South Mississippi Electric Power Association, Inc., an association of Mississippi electric power cooperatives, owns the remaining 10%. Construction on Unit No. 2 of the Grand Gulf Station has been reduced to conserve financial resources.

As of May 31, 1985, MSE had $112,198,000 of additional borrowing capacity under its $1.711 billion Second Amended and Restated Bank Loan Agreement, as amended, with Manufacturers Hanover Trust Company and Citibank, N.A., as agents, and a group of domestic banks ("Domestic Bank Loan agreement") and $12,802,000 of additional borrowing capacity under its Loan Agreement, as amended, with Credit Suisse First Boston Limited, as agent, and a group of foreign banks ("Foreign Bank Loan Agreement"). However, the borrowings under the Domestic and Foreign Bank Loan Agreements are required to be repaid or converted to term loans, and no additional borrowings can be made under these agreements after they are converted to term loans. The net proceeds received from the issuance and sale of the Bonds will be used to finance the completion of, and ongoing financing charges incurred in connections with, construction of the Grand Gulf Station and for other corporate purposes.

With the commercial operation of Grand Gulf 1 on July 1, 1985, MSE has begun receiving cash earnings and cash flow from operations. However, MSE will need substantial external financing to refund bank borrowings and meet sinking fund payments on first mortgage bonds issued during the lengthy construction period of the Grand Gulf Station. In addition, MSE anticipates expending significant funds for retrofits of Grand Gulf 1 and for continued, if limited, construction of Unit No. 2 of the Grand Gulf Station in the future. Accordingly, MSE will periodically require authorization to issue and sell a substantial amount of senior debt and, possibly preferred stock over an extended period of time.

The Bonds will be issued and sold under one or more supplemental indentures to MSE's existing Mortgage and Deed Trust, as supplemented. As additional security for its obligations with respect to the Bonds, MSE may be required to enter into one or more assignments, for the benefit of the holders of the Bonds, of its rights under the Availability Agreement, dated as of June 21, 1974, as amended ("Availability Agreement"), pursuant to the terms of an additional Assignment of Availability Agreement, Consent and Agreement ("Assignment"). In such event, AP&L, LP&L, MP&L and NOPSI, parties to the Availability Agreement, will consent to and join in any such Assignment. Furthermore, MSE may be required to enter into one or more assignments, for the benefit of the holders of the Bonds, of its rights under the Capital Funds Agreement, dated as of June 21, 1974 ("Capital Funds Agreement"), pursuant to the terms of an additional Supplementary Capital Funds Agreement and Assignment ("Supplemental Agreement"). In such event, MSU, a party to the Capital Funds Agreement, will consent to and join in the Supplementary Ageement.

For several reasons, MSE does not believe it would be possible to issue and sell the Bonds at competitive bidding as required by Rule 50 under the Act. These include the large size of the issue(s) relative to the market for securities of comparable quality; MSE's lack of an earnings or operating history; the complexity of MSE's present financing arrangements and legal and regulatory proceedings; and the overall risk and uncertainty associated with nuclear plant construction. Any or all of these factors might inhibit, delay or prevent MSE from issuing and selling the Bonds at competitive bidding.

For the foregoing reasons, MSE hereby requests that the Commission grant it an exception from the competitive bidding requirements of Rule 50 under the Act so that MSE may negotiate the terms of the offering(s) of the Bonds. MSE states that such negotiations will provide the flexibility required to determine the appropriate terms for the Bonds in light of MSE's circumstances and the needs of purchasers, and will enhance MSE's ability to obtain operating and construction funds for the Grand Gulf Station in accordance with its financing plans. Subject to obtaining any necessary regulatory approval, MSE will retain an investment banker(s) to assist in structuring the terms of the Bonds, and arranging the sale of the Bonds.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 29, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16411 Filed 7-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22207; File No. SR-AMEX-85-23]

Self-Regulatory Organization's Proposed Rule Change by American Stock Exchange, Inc., Relating to Extension of Trading Privileges of OTP Holders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is extending the trading privileges of Options Trading Permit ("OTP") holders to include options on NASDAQ/NMS stocks.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

On April 12, 1984, the Board approved the Options Trading Permits Plan ("the Plan") and implementing Constitutional amendments so that up to 108 Options Trading Permit holders would be added to the Exchange Floor. Under the Plan, OTP holders initially have the right to trade as principal in all non-stock options for two years, but can expand their OTP privileges on or after March 21, 1985 to include individual stock options by paying the Exchange a $20,000 privilege fee.

Article IV, Section 1(i) of the Amex Constitution provides that the Plan may limit the classes of options in which OTP holders trade, but also that the Board may remove such limitations in accordance with the Plan. The Plan states that the Board may, upon the unanimous recommendation of the Floor Governors, extend trading privileges in individual stock options to all OTP holders, in which case payment of the $200,000 privilege fee would be waived for those who had not previously paid it.

To face the competitive challenges of multiple trading of NASDAQ options, the Exchange is extending OTP trading privileges, without the imposition of a fee, to include options on MASDAQ/NMS stocks. The Floor Governors have unanimously recommended this extension of trading privileges, which will help to ensure that the Exchange has a sufficient body of registered options traders to support the Amex in meeting the expected intense intermarket competition among the exchanges and the NASD in these options.

(2) Basis

The proposed extension of trading privileges is consistent with Section 6(b) of the Securities Exchange Act of 1934 in general and Section 6(b)(5) in particular in that it will broaden access to the Exchange's market in NASDAQ options and help perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange has determined that no burden on competition will be imposed by its extension of trading privileges to include NASDAQ options. On the contrary, the Exchange proposal will enhance competition among registered options traders within its market, and thus increase competition between the Exchange and other markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 31, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 2, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–16413 Filed 7–9–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22182; SR–MSRB–85–13]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board, Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB"), on May 17, 1985, submitted copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to incorporate the provision of rule G–10, requiring a municipal securities broker or dealer to designate one or more persons to be responsible for maintaining required records, into Rule G–27, the MSRB's rule on general supervisory responsibilities.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 22057, published in the Federal Register (50 FR 21677, May 28, 1985). No comments on the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

John Wheeler,

Secretary.

July 1, 1985.

[FR Doc. 85–16412 Filed 7–9–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-22286; File No. SR-NYSE-85-22]

Self-Regulatory Organizations; the New York Stock Exchange Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

The New York Stock Exchange, Inc. ("NYSE") submitted on June 12, 1985, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Commission Act of 1934 ("Act") and Rule 19b-4 thereunder, to adopt a rule relating to the transfer or lease of options trading rights ("OTRs") and update the list of rules applicable to OTRs.

Currently, Article XI of the NYSE Constitution, governing the transfer and lease of memberships, and Article IX, section 2 of the Constitution, also controlling the lease of memberships, do not apply to OTRs except when a 1366 member [1] transfers or leases an OTR as part of a transfer or lease of his 1366 membership. New Exchange Rule 795 provides that the transfer priorities and leasing requirements currently applicable to 1366 memberships will apply to transfers and leases of OTRs which do not involve a transfer or lease of a 1366 membership ("separated OTRs").

The Exchange proposed that, regarding the disposition of proceeds from the transfer of an OTR, claims arising directly from the closing out of (a) off-floor Exchange contracts and (b) contracts for the purchase or sale of securities that are made subject to the rules of other exchanges, will be added to the priority scheme adopted from Article XI of the NYSE Constitution and made applicable to the transfer of separated OTRs. The proposal also specifically provides that upon payment by a clearing member of an OTR holder of any claim that is allowed priority under Rule 795, the clearing member will be subrogated to the rights of the person to whom the payment was made.

The proposed rule change also updates the list of rules applicable to holders of separated OTRs to include proposed Rule 795, Rules 633 and 794 (other options-related or options-relevant rules adopted since the Exchange designated the applicable rules) and Articles X, section 5 of the NYSE Constitution, a provision to which Rule 795 refers.

[1] The term "1366 member" refers to those Exchange members who have the right to share in any distribution of the assets of the Exchange in the event of any liquidation, dissolution, or winding up of the affairs of the Exchange. *See* Article IX, Sec. 1(a), NYSE Constitution.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication of the submission in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-85-22.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the NYSE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization and in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the priority scheme adopted by the Exchange is substantially similar to the priority schemes of the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Stock Exchange, Inc. ("PSE") and the Philadelphia Stock Exchange, Inc. ("Phlx").[2] In addition, the NYSE's proposal to conform its priority scheme to that of the other options exchanges may add to the depth and liquidity of the NYSE's options market and should enable the NYSE to offer traders, and persons with whom they contract, opportunities and benefits comparable to those available on other options exchanges, thereby promoting market competition in option products.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

[2] *See* Article IV, Amex Constitution; CBOE Rule 3.15; Article VII, PSE Constitution; and Article XV, Phlx Constitution.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.
Dated: July 1, 1985.

[FR Doc. 85-16414 Filed 7-9-85; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 35-23757; 70-6965]

Middle South Utilities, Inc., et al.; Proposed Amendments to Domestic and Foreign Bank Loan Agreements

July 3, 1985.

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, its electric generating subsidiary, Middle South Energy, Inc. ("MSE"), P.O. Box 61000, New Orleans, Louisiana 70161, and MSU's electric utility subsidiaries, Arkansas Power & Light Company, P.O. Box 551, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company, P.O. Box 1640, Jackson, Mississippi 39205, and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112, have filed with this Commission further post-effective amendments to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act").

By supplemental order in this proceeding dated June 27, 1985 (HCAR No. 23745), this Commission authorized the interim extension of MSE's revolving credit borrowing under its Domestic Bank Loan Agreement and Foreign Bank Loan Agreement to September 30, 1985, notwithstanding the earlier commercial operation of Grand Gulf Unit No. 1. MSE now proposes to effect the conversion of such borrowings to term loans pursuant to a Third Amended and Restated Bank Loan Agreement among MSE, Manufacturers Hanover Trust Company, and Citibank, N.A., as agents, and the banks listed therein ("U.S. Banks") and a Fourth Amendment to Loan Agreement among MSE, Credit Suisse First Boston Limited, as agent, and the banks listed therein, respectively. As of June 27, 1985, MSE had borrowed $1,711 million and $385 million under the Domestic and Foreign Bank Loan Agreements, respectively.

Among the proposed changes in the Domestic Bank Loan Agreement are the following: The maturity date will be February 5, 1989, and MSE will make semi-annual payments of $125 million in

order to reduce the amount of the loan prior to maturity. MSE will be required to prepay the term loan in full upon the occurrence of certain events, including: At June 30, 1986, the operating company subsidiaries of MSU have not obtained, and shall thereafter fail to maintain, acceptable retail rate relief to enable such companies to recover the costs of their obligations to MSE as approved by the Federal Energy Regulatory Commission. Provisions have been added relating to mandatory semi-annual cash flow prepayments and optional prepayments, and restrictions have been placed on dividends and capital expenditures. MSE will pay each Agent Bank $250,000 as an agency fee on the closing date.

Among the proposed changes in the Foreign Bank Loan Agreement are the following: The maturity date remains February 5, 1989; however, as previously authorized on June 27, 1985, the schedule of payments now provides for semi-annual mandatory prepayments of one-eighth of the principal amount of the loan. Under the proposal, MSE will be required to prepay the term loan in full, if requested by the holders of 60% of the outstanding indebtedness under the Foreign Bank Loan Agreement, upon the occurrence of any of the events listed in the Domestic Bank Loan Agreement. Restrictions on payments of dividends by MSE on its common stock contained in the Domestic Bank Loan Agreement will run to the benefit of the Foreign Banks so long as they remain operative under the Domestic Bank Loan Agreement. MSE will pay the Foreign Bank Loan Agreement Agent $325,000 for its work.

Also, to enable the Domestic Banks ("LOC Banks") who provided a letter of credit in connection with MSE's Series C pollution control revenue bond financing in December 1984 (File No. 70-7026) to maintain their exposures to MSE at the same present relative level as the other banks under the Domestic Bank Loan Agreement, MSE will be required to furnish the LOC Banks with cash collateral for MSE's reimbursement obligations under the December 1, 1984, Reimbursement Agreement after their loans under the Domestic Bank Loan Agreement have been repaid. The cash collateral will equal their relative share of Domestic Bank Loan Agreement payments. If the letter of credit is drawn upon and not repaid during the period ending February 5, 1989, MSE's reimbursement obligation will be satisfied by (i) recourse to the cash collateral and (ii) increasing MSE's obligations under the Domestic Bank Loan Agreement.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 29, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16415 Filed 7-9-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23760; 70-7026]

Middle South Utilities, Inc., et al.; Supplemental Notice To Amend Letter of Credit Agreement

July 3, 1985.

Middle South Utilities, Inc. ("MSU") 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its wholly-owned subsidiaries Middle South Energy, Inc. ("MSE"), P.O. Box 61000, New Orleans, Louisiana 70161, Arkansas Power & Light Company, P.O. Box 551, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company., P.O. Box 1640, Jackson, Mississippi 39205, and New Orleans Public Service Inc., 317 Baronne Street, P.O. Box 60340, New Orleans, Louisiana 70160, have filed a post-effective amendment to their application-declaration subject to Sections 6(a), 7, 9(a), 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 and 50(a)(5) thereunder.

By orders dated November 23, 1984, December 26 and December 28, 1984 (HCAR Nos. 23495, 23545, and 23555 respectively) the Commission authorized MSE to sell up to $250 million of pollution control facilities at the Grand Gulf Nuclear Generating Plant to Claiborne County, Mississippi and to repurchase such facilities by installment sale contract matching the terms of pollution control revenue bonds ("Series C Bonds") to be issued by the county to finance the pollution control facilities. In order to improve the marketability of the Series C Bonds, MSE arranged for five banks ("LOC Banks") to issue a Letter of Credit ("LOC") to secure payments on the Series C Bonds. The LOC Banks were also parties, along with other banks (collectively, "U.S. Banks"), to MSE's Second Amended and Restated Bank Loan Agreement, as amended ("Domestic Revolver"). In order to induce the LOC Banks to issue the LOC, MSE agreed that the proceeds from the sale of the Series C Bonds, which were placed in an escrow account at the closing ("Escrow"), would be used to repay the indebtedness of MSE to the LOC Banks under the Domestic Revolver so that the aggregate extension of credit by the LOC Banks to MSE would, in effect, not be increased by the issuance of the LOC.

Although their exposure would not increase, the exposure of the LOC Banks would remain fixed after their respective remaining loans to the Company under the Domestic Revolver were repaid, while the exposures of the remaining U.S. Banks would lessen as the loans there under were repaid. Ultimately, at February 5, 1989, the Domestic Revolver would be fully repaid while the LOC Banks would continue to have a sizable exposure on the LOC until it expired in December 1989. To ensure that the combined LOC and Domestic Revolver exposures of the LOC Banks at al times until February 5, 1989 remain proportional to their present percentage share of the commitments and loans under the Domestic Revolver ("Sharing Percentage"), the Company proposes to enter into a First Amendment ("First Amendment") to the Letter of Credit and Reimbursement Agreement, dated as of December 1, 1984, between the Company and the LOC Banks ("Reimbursement Agreement") pursuant to which the Company will agree, among other things, to provide cash collateral to the LOC Banks after their loans under the Domestic Revolver have been repaid. An interest in the collateral will be concurrently granted to the holders of the Series C Bonds. Such collateral will be equal in amount to the respective Sharing Percentage of a LOC Bank of any payment to the U.S. Banks under the Domestic Revolver. If the LOC is drawn upon and not repaid prior to February 5, 1989, the Company's reimbursement obligation will be satisfied by (i)

recourse to the cash collateral, and (ii) increasing the Company's obligations under the Domestic Revolver by the remaining balance. The security interest in this cash collateral account would be governed by a Security Agreement.

To compensate the LOC Banks for the difference between their 1.25% per annum commission (provided for in the Reimbursement Agreement) for undrawn amounts under the LOC and what they would have earned for loans of like amount under the Domestic Revolver, the Company will agree, in the First Amendment, to increase the per annum commission under the Reimbursement Agreement. To the extent LOC commitments are not collateralized by cash as described above, the commission will be 3.50% per annum. To the extent they are collateralized, the commission will be ⅛% per annum.

As compensation for obtaining consents from the U.S. Banks to the application of the amounts in Escrow to a reduction of the loan of the LOC Banks under the Domestic Revolver, the Company will agree to pay the LOC Banks ratably ½ of 1% of the aggregate available amount under the LOC ($234,582,500) when funds are released from the Escrow. If any of the LOC Banks agree to dissolve the cash collateral arrangement applicable to it described above, prior to receipt of any cash collateral, it will receive a ratable share of an additional ½ of 1% fee.

The application-declaration and any amendments thereto is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 29, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16416 Filed 7-9-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail Freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes August 12, 1985.

ADDRESSES: Comments to: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the application are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, S.W., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9456-N	Dow Corning Corporation Midland, MI	49 CFR 173.245, 173.280	To authorize shipment of various chlorosilanes and trichlorosilanes classed as corrosive materials in DOT Specification MC-330 and MC-331 cargo tanks. (Mode 1.)
9460-N	Tracor MBA, East Camden, AR	49 CFR 172.101	To authorize shipment of zirconium nickel aicio, an initiating explosive, class A contained in 1 pound velostat sealed bags surrounded by wet sawdust overpacked ten to a 5 gallon metal container. (Mode 1.)
9462-N	Aztec Metal Fabricating, Odessa, TX	49 CFR 178.253.1(b)	To manufacture, mark and sell 60 gallon capacity DOT Specification 57 portable tanks with up to 6 tanks mounted on the chassis of a truck for shipment of certain flammable liquids. (Mode 1.)
9463-N	Guzzler Manufacturing, Inc., Birmingham, AL	49 CFR 173.199(a) (17), 173.245(a) (30), (31), 173.346(a) (12), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for full opening rear head for shipment of flammable, corrosive or poison B waste liquids or semi-solids. (Mode 1.)
9464-N	Broco, Inc., Rialto, CA	49 CFR 173.100(s)	To authorize a Swimmer Recall Device, containing certain hazardous materials to be shipped as an explosive pest control device, class C explosive. (Modes 1, 2, 3, 4.)
9465-N	McDonnell Douglas Corporation, St. Louis, MO	49 CFR 172.202, 172.304, 172.400, 173.87	To authorize certain class B and C explosives in Specification packagings or equivalent, to be shipped over a public road within plant without shipping papers, marking or labeling and in mixed loads (Mode 1.)
9466-N	Union Carbide Corporation Danbury, CT; Union Carbide Agricultural Products Company, Inc., Research Triangle Park, NC.	49 CFR 173.365(a)(6)	To authorize shipment of carbamate pesticide, solid, n.o.s., classed as a poison B in paper bags similar to DOT Specification 2D, overpacked in DOT Specification 12C fiberboard box. (Modes 1, 2, 3.)
9467-N	United	49 CFR 177.834(k)	To authorize flammable solids, oxidizing materials and corrosive liquids to be loaded in up to 66 pounds or 7 gallons capacity excepted from ready access requirement. (Mode 1.)
9468	ABCO Industries, Inc., Roebuck, SC	49 CFR 173.154	To authorize shipment of 50% benzoyl peroxide concentration in water described as organic peroxide solid, n.o.s. classed as organic peroxide packaged in DOT Specification 21P-600 fiber drums. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9469	Mueller Ltd., Packaging Muncheneteln, Switzerland, WJ.	49 CFR 178.116-8	To manufacture, mark and sell non-DOT specification metal drums of all 19 gauge construction for shipment of those flammable, poisons or corrosive materials authorized for shipment in DOT Specification 17E. (Modes 1, 2, 3, 4.)
9474-N	Hamler Industries, Inc., Chicago Heights, IL	49 CFR 173.315	To ship and transport anhydrous ammonia in four non-DOT specification ASME Code cargo tank motor vehicles. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on July 5, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-16399 Filed 7-9-85; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B, notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc. they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes July 26, 1985.

ADDRESSES: Comments to: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2562-X	Ozark-Mahoning Company, Tulsa, OK. (See Footnote 1.).	2562
2913-X	U.S. Department of Energy, Washington, DC.	2913
4354-X	Vanchem, Inc., Lockport, NY	4354
4354-X	Pennwalt Corporation, Buffalo, NY	4354
4717-X	Norchem, Inc., Omaha, NE	4717
5600-X	Ozark-Mahoning Company, Tulsa, OK. (See Footnote 2.).	5600
5778-X	Liquid Air Corporation, Cambridge, MD	5778
6045-X	Union Carbide Corporation, Danbury, CT. (See Footnote 3.).	6045
6614-X	Esbro Chemical, Redwood City, CA	6614
6672-X	Chandler Evans Inc., West Hartford, CT	6672
6825-X	Richmond Lox Equipment Company, Livermore, CA.	6825
6902-X	Great Lakes Chemical Corp., El Dorado, AR.	6902
6946-X	Badger Welding Supplies, Inc., Madison, WI.	6946
7058-X	Diamond Shamrock Corporation, Irving, TX.	7058
7235-X	Luzier U.S.A., Ltd., Riverside, CA. (See Footnote 4.).	7235
7274-X	Union Carbide Corporation, Danbury, CT	7274
7282-X	MarChem Corporation, Maryland Heights, MI.	7282
7605-X	U.S. Department of Defense, Falls Church, VA.	7605
7611-X	Richfood, Inc., Richmond, VA	7611
7835-X	Liquid Air Corporation, San Francisco, CA.	7835
7835-X	Liquid Carbonic Industries Corporation, Chicago, IL.	7835
7835-X	Matheson Gas Products, Inc., Secaucus, NJ.	7835
8239-X	Westinghouse Electric Corporation, Horseheads, NY.	8239
8244-X	Halliburton Services, Inc., Duncan, OK	8244
8248-X	AT&T Technologies, Inc., Greensboro, NC.	8248
8585-X	Thermodynamics Corporation, Broken Arrow, OK.	8585
8606-X	Makhteshim Darom (Ramat Hovav) Ltd., Beer Sheva, Israel.	8606
8650-X	Ethyl Corp., Baton Rouge, LA	8650
8685-X	Hercules Incorporated, Wilmington, DE	8685
8691-X	Aluminum Company of America, Pittsburgh, PA.	8691
8902-X	Mitsubishi International Corp., New York, NY.	8902
8903-X	Matheson Gas Products, Inc., Secaucus, NJ.	8903
8716-X	Foote Mineral Company, Exton, PA	8716
8908-X	Schlumberger Well Services, Houston, TX.	8908
8908-X	Dresser Industries, Inc., Houston, TX	8908
8908-X	Schlumberger Offshore Services, Houston, TX.	8908
9025-X	American Greetings Corporation, Cleveland, OH.	9025
9052-X	Clawson Tank Company, Clarkson, MI	9052
9064-X	Optical Fibres, Deeside, Wales	9064
9067-X	Walco Truck Rigging, Inc., Odessa, TX	9067
9074-X	Reuter-Stokes, Inc., Cleveland, OH	9074
9108-X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	9108
9116-X	Hoover Universal, Inc., Beatrice, NE	9116
9117-X	Flextin Corporation, Houston, TX	9117
9142-X	EVA Eisenbahn-Verkehrsmittel GmbH, Duesseldorf, West Germany.	9142

[1] To renew and to authorize certain oxidizers as additional commodities.
[2] To authorize certain oxidizers as additional commodities.
[3] To authorize shipment of carbon bisulfide in DOT Specification MC-312 cargo tanks by unmanned barge with no water spray system mounted on cargo tanks.
[4] To renew and to eliminate the thermal cycling test and the gunfire test.

Application No.	Applicant	Prior to exemption
2709-P	IRECO Incorporated, Salt Lake City, UT	2709
4453-P	ECONEXPRESS Incorporated, Wheaton, IL.	4453
4884-P	Synthetron Corporation, Parsippany, NJ	4884
5206-P	Nelson Brothers, Inc., Parish, AL	5206
5206-P	Explo-Midwest, Inc., Joplin, MO	5206
6610-P	Phillips Petroleum Company, Bartlesville, OK.	6610
7052-P	Monaco Enterprises, Inc., Spokane, WA	7052
7616-P	Denver and Rio Grande Western Railroad Company, Denver, CO.	7616
8544-P	Munson Sporting Goods, Costa Mesa, CA.	8544
8445-P	Wayne State University, Detroit, MI	8445
8451-P	Atlas Powder Company, Dallas, TX	8451
8453-P	Explo-Midwest, Inc., Joplin, MO	8453
8748-P	U.S. Department of Energy, Washington, DC.	8748
8872-P	CIL Inc., Brampton, Ontario, Canada	8872
9074-P	U.S. Department of Energy, Washington, DC.	9074
9110-P	Alby-olin Chlorates Company Inc., Old Greenwich, CT.	9110

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on July 5, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-16400 Filed 7-9-85; 8:45 am]

BILLING CODE 4910-60-M

Hazardous Waste Cargo Tanks MC 307; 312; Cargo Tanks—85-2

AGENCY: Material Transportation Bureau, Research and Special Programs Administration, Department of Transportation.

ACTION: Exemption related notice.

SUMMARY: The purpose of this notice is to advise interested persons that certain hazardous waste cargo tanks have not been manufactured in accordance with DOT exemption requirements. Specifically, these tanks have not been designed, built, and certified in accordance with section VIII, Division 1 of the American Society of Mechanical Engineers (ASME) Code as required. These hazardous waste tanks may not be used for transportation of any hazardous waste or hazardous material that is required to be carried in specification cargo tanks or cargo tanks used under an exemption.

FOR FURTHER INFORMATION CONTACT: Phillip Olenik, Materials Transportation Bureau, Office of Hazardous Materials Regulation (DMT-22), 400 Seventh Street SW., Washington, D.C. 20590, telephone (202) 755-4906.

SUPPLEMENTARY INFORMATION: Approximately 50 exemptions have been issued by the Office of Hazardous Materials Regulation (OHMR) to allow for the manufacturing of certain non-specification cargo tanks used primarily for the transportation of hazardous waste. These hazardous waste tanks are similar to specification MC-307 and MC-312 cargo tanks with exceptions. Since October, 1981, exemptions issued for manufacture and use of these cargo tanks have contained provisions which have become a minimum standard for this type of unit. Among these provisions is one which specifies:

> The cargo tank must be designed, built, and certified in accordance with Section VIII, Division 1 of the ASME Code* * *

A pressure vessel so constructed will bear the ASME "U" stamp on its manufacturer's plate and an ASME "U-1A" form will have been prepared by the manufacturer and signed by an authorized inspector. The U-1A form provides detailed information about the completed cargo tank.

It has come to our attention that some cargo tanks have not been constructed in accordance with these terms. While a limited number of hazardous waste tanks were "grandfathered" (each exemption will so state if this provision has been made), each tank constructed after October, 1981 must have been designed, built and certified in accordance with the ASME Code.

If cargo tanks are not in conformance with this or any other provision of the exemption or corresponding specification they may not be used to transport hazardous waste or any other hazardous material required to be transported in a specification cargo tank or one which comes under the terms of the exemption. Furthermore, any markings or manufacturer's plates which refer to a DOT exemption or specification number must be removed or obliterated. These tanks may be used to transport non-regulated materials or regulated hazardous materials authorized in non-DOT specification cargo tanks provided they are in conformance with all applicable requirements, including 49 CFR 173.24.

(49 USC 1804(c), 1805(a) and 1808(d)(3))

Issued in Washington, D.C. on July 3, 1985 under authority delegated in 49 CFR Part 106, Appendix A.

Alan L. Roberts

Associate Director for Hazardous Materials Regulation Materials Transportation Bureau.

[FR Doc. 85-16372 Filed 7-9-85; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and the Delegation of Authority from the Director, USIA (USIA Delegation Order No. 85-5, June 27, 1985), I hereby determine that the below listed objects in the exhibit, "Pebble Beach Concours d'Elegance," imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. The objects covered by this determination are:

Object	Lender
(a) 41100—Prototype Bugatti Royale Type 41. Bore and Stroke: 125mm × 150mm. Displacement: 14,725 cc. Wheelbase: 180 in. Completed 1927; Present body: coupe chauffeur dit Napoleon.	Musee National, De L'Automobile, Mulhouse, France
(b) 41131—Bugatti Royale, Type 41. Built in 1933.	Musee National, De L'Automobile, Mulhouse, France.

These objects are imported pursuant to a loan agreement between the Pebble Beach Foundation of Pebble Beach, CA. and the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects on the property of the Pebble Beach Company, Pebble Beach, CA., beginning on or about August 24, 1985, to on or more about August 26, 1985, is in the national interest. Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 3, 1985.

C. Normand Poirier,

Acting General Counsel and Congressional Liaison.

[FR Doc. 85-16357 Filed 7-9-85; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 132
Wednesday, July 10, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
International Trade Commission	1
National Commission on Libraries and Information Science	2

1

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-27]

TIME AND DATE: At 10:00 a.m., Wednesday, July 10, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
5. Investigation 731-TA-201 [Final] (Egg filler flats from Canada)—briefing and vote.
6. Investigation 303-TA-16 [Preliminary] (Lime oil from Peru)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-16446 Filed 7-8-85; 11:41 am]

BILLING CODE 7020-02-M

2

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: August 19 and 20, 1985.

PLACE: Americana Congress Hotel, Chicago, Illinois 60605.

STATUS:

August 19, 9:00 a.m. to 10:00 a.m.—Closed Section 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR Part 1703

August 19, 10:00 a.m. to 5:00 p.m. and August 20, 9:00 a.m. to 5:00 p.m.—Open

MATTERS TO BE DISCUSSED:

Chairman's Report
Approval of April 1985 Minutes
Election, NCLIS Vice Chairman
Executive Director's Report
Progress Report, FY 1985 Programs
Review, FY 1986 Plans
Review, FY 1987 Budget Request
Discussion, NCLIS Information Center
NCLIS Participation in IFLA Plenary Sessions
Tour of IFLA Exhibits
Review, Plans for 1989 National Conference on Library and Information Services
Committee Reports:
- Bicentennial of the Constitution
- Public Affairs
- Personnel
- Program Review

CONTACT: Toni Carbo Bearman, Executive Director, (202) 382-0040.

Toni Carbo Bearman,

Executive Director.

July 1, 1985.

[FR Doc. 85-16430 Filed 7-8-85; 10:25 am]

BILLING CODE 7527-01

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federal register

Wednesday
July 10, 1985

Part II

Postal Rate Commission

39 CFR Part 3001

Publication of Domestic Mail Classification Schedule; Order of Rulemaking; Final Rule

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM85-1; Order No. 514]

Publication of Domestic Mail Classification Schedule; Order of Rulemaking

June 28, 1985.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission has decided to make the Domestic Mail Classification Schedule (DMCS) more readily available to interested persons by publishing it as Appendix A to Subpart C of Part 3001 of the Commission's rules of practice and procedure. An explanatory section (39 CFR 3001.68) will also be added. The DMCS is the basic framework of regulations for the domestic mail services provided by the Postal Service.

EFFECTIVE DATE: This rule will become effective July 10, 1985.

ADDRESSES: Correspondence relating to this Notice of Rulemaking should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., Washington, D.C. 20268 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street, NW., Washington, D.C. 20268 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: On May 28, 1985, the Commission published a Notice of Proposed Rulemaking describing a proposal to publish the text of the DMCS, which is now in effect, in the Federal Register and also having it included in the Code of Federal Regulations. *See* 50 FR 21628-29. The text of the DMCS was available for inspection at the Commission offices. Comments were due by June 27, 1985.

National Newspaper Association (NNA) filed comments on June 21, 1985. NNA expressed its support for the Commission's proposal and said the publication of the DMCS was appropriate and helpful.

The Postal Service filed comments on June 27, 1985. The Postal Service questions whether the "editorial notes" should be added and the rates deleted from "any official publication." The Postal Service points out that the DMCS can be changed only by the Governors of the Postal Service acting on a recommended decision of the Commission. The Postal Service proposes to publish the DMCS itself.

The American Postal Workers Union (APWU) says that the Postal Service, rather than the Commission, should publish the DMCS. APWU objects to the Commission's addition of editor's notes, saying they are inappropriate and misleading.

Having considered the filed comments, the Commission has decided to publish the text of the DMCS as an appendix to its rules of practice and procedure found at Title 39 of the Code of Federal Regulations. We appreciate the Postal Service's proposal to publish the DMCS, but we believe it would be better to move forward at this time, since we are able to do so expeditiously. We will, however, explore with the Postal Service the options for joint action on updating the DMCS in the Code of Federal Regulations.

We have decided to retain the "editor's notes" in the Appendix showing the text of the DMCS. These are only guides to help readers who might otherwise find the text confusing. These editor's notes are not part of the DMCS and their presence should not mislead any reader. Similarly, we have decided that it is best not to publish the rates in the appendix. They are readily available and their absence should not cause any confusion.

Ready access to the DMCS by all interested parties should assist the Commission in its duties with regard to the establishment of a fair and equitable classification schedule.

Impact of Proposed Changes

Pursuant to Executive Order 12291, the Commission finds that the proposed rule changes do not constitute a "major rule." The changes do not impose a burden on any persons; they merely provide interested persons a source for ready reference. Further, the changes will not have any adverse effects on competition, employment or the other factors listed in E.O. 12291. The above analysis—that the proposed rule changes do not constitute a major rule for purposes of E.O. 12291—applies with equal force to the Regulatory Flexibility Act.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

List of Proposed Changes

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 3603, 3622, 3623, 84 Stat. 759-761; (5 U.S.C. 553), 80 Stat. 383, unless otherwise noted.

2. New § 3001.68 is added to subpart C as follows:

§ 3001.68 Text of the Domestic Mail Classification Schedule.

The Domestic Mail Classification Schedule established in accordance with Subchapter II of Chapter 36 of Title 39 of the United States Code appears (with blank rate schedules) as Appendix A to this subpart.

3. The text of the DMCS is contained as Appendix A to Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule, 39 CFR 3001.61 *et seq.*

By the Commission.

Charles L. Clapp,

Secretary.

Appendix A to Subpart C—Postal Service Rates and Charges

Table of Contents

General Definitions—Section 000

Classification Schedule 100—First-Class Mail

Section	
100.01	Definition
100.02	Description of Subclasses
100.03	Physical Limitations
100.04	Preparation of Mail
100.05	Mail Deposit
100.06	Service
100.07	Forwarding and Return
100.08	Ancillary Services
100.09	Rates and Fees
100.10	Authorizations and Licenses

Classification Schedule 200—Second-Class Mail

Section	
200.01	Definition
200.02	Description of Subclasses
200.03	Physical Limitations
200.04	Preparation of Mail
200.05	Mail Deposit
200.06	[Reserved]
200.07	Forwarding and Return
200.08	Ancillary Services
200.09	Rates and Fees
200.10	Authorizations and Licenses

Classification Schedule 300—Third-Class Mail

Section	
300.01	Definition
300.02	Description of Subclasses
300.03	Physical Limitations
300.04	Preparation of Mail
300.05	Mail Deposit
300.06	Service
300.07	Forwarding and Return
300.08	Ancillary Services
300.09	Rates and Fees
300.10	Authorizations and Licenses

Classification Schedule 400—Fourth-Class Mail

Section
400.01 Definition
400.02 Description of Subclasses
400.03 Physical Limitations
400.04 Preparation of Mail
400.05 Deposit of Mail
400.06 Service
400.07 Forwarding and Return
400.08 Ancillary Services
400.09 Rates and Fees
400.10 Authorizations and Licenses

Classification Schedule 500—Express Mail

Section
500.01 Definition
500.02 Description of Subclasses
500.03 Physical Limitations
500.04 Conditions of Service
500.05 Deposit of Mail
500.06 Service
500.07 Forwarding and Return
500.08 Rates and Fees

Classification Schedule SS–1—Address Correction Service

Section
1.01 Definition
1.02 Description of Service
1.03 Requirements of the Mailer
1.04 Fees

Classification Schedule SS–2—Business Reply Mail

Section
2.01 Definition
2.02 Description of Service
2.03 Requirements of the Mailer
2.04 Fees
2.05 Authorizations and Licenses

Classification Schedule SS–3—Caller Service

Section
3.01 Definition
3.02 Description of Service
3.03 Fees

Classification Schedule SS–4—Certificate of Mailing

Section
4.01 Definition
4.02 Description of Service
4.03 Other Services
4.04 Fees

Classification Schedule SS–5—Certified Mail

Section
5.01 Definition
5.02 Description of Service
5.03 Deposit of Mail
5.04 Other Services
5.05 Fees

Classification Schedule SS–6—Collect on Delivery Service

Section
6.01 Definition
6.02 Description of Service
6.03 Requirements of the Mailer
6.04 Deposit of Mail
6.05 Forwarding and Return
6.06 Other Services
6.07 Fees

Classification Schedule SS–7—Dead Mail Return Service

[Section deleted]

Classification Schedule SS–8—Domestic Postal Money Orders

Section
8.01 Definition
8.02 Description of Service
8.03 Fees

Classification Schedule SS–9—Insured Mail

Section
9.01 Definition
9.02 Description of Service
9.03 Deposit of Mail
9.04 Forwarding and Return
9.05 Other Services
9.06 Fees

Classification Schedule SS–10—Lockbox Service

Section
10.01 Definition
10.02 Description of Service
10.03 Fees

Classification Schedule SS–11—Mailing List Services

Section
11.01 Definition
11.02 Description of Service
11.03 Requirements of the Customer
11.04 Fees

Classification Schedule SS–12—On-Site Meter Setting

Section
12.01 Definition
12.02 Description of Service
12.03 Fees

Classification Schedule SS–13—Parcel Airlift (PAL)

Section
13.01 Definition
13.02 Description of Service
13.03 Physical Limitations
13.04 Requirements of the Mailer
13.05 Deposit of Mail
13.06 Forwarding and Return
13.07 Other Services
13.08 Fees

Classification Schedule SS–14—Registered Mail

Section
14.01 Definition
14.02 Description of Service
14.03 Deposit of Mail
14.04 Service
14.05 Forwarding and Return
14.06 Other Services
14.07 Fees

Classification Schedule SS–15—Restricted Delivery

Section
15.01 Definition
15.02 Description of Service
15.03 Fees

Classification Schedule SS–16—Return Receipts

Section
16.01 Definition
16.02 Description of Service
16.03 Fees

Classification Schedule SS–17—Special Delivery

Section
17.01 Definition
17.02 Description of Service
17.03 Requirements of the Mailer
17.04 Deposit of Mail
17.05 Forwarding and Return
17.06 Other Services
17.07 Fees

Classification Schedule SS–18—Special Handling

Section
18.01 Definition
18.02 Description of Service
18.03 Requirements of the Mailer
18.04 Deposit of Mail
18.05 Forwarding and Return
18.06 Other Services
18.07 Fees

Classification Schedule SS–19—Stamped Envelopes

Section
19.01 Definition
19.02 Description of Service
19.03 Fees

Classification Schedule SS–20—Merchandise Return

Section
20.01 Definition
20.02 Description of Service
20.03 Requirements of the Mailer
20.04 Other Services
20.05 Fees
20.06 Authorizations and Licenses

General Terms and Conditions

Section
1000 Delivery of Mail
2000 Preparation of Mail
3000 Postage and Fees
4000 Postal Zones
5000 Privacy of Mail
6000 Mailable Matter

Rate Schedules

GENERAL DEFINITIONS

As used in this Domestic Mail Classification Schedule, the following terms have the meanings set forth below.

.01 Advertising

Advertising includes all material for the publication of which a valuable consideration is paid, accepted, or promised, that calls attention to something for the purpose of getting people to buy it, sell it, seek it, or support it. If an advertising rate is charged for the publication of reading matter or other material, such material shall be deemed to be advertising. Articles, items, and notices in the form of reading matter inserted in accordance with a custom or understanding that textual matter is to be inserted for the advertiser or his products in the publication in which a display advertisement appears are deemed to be advertising. If a publisher advertises his own services or publications, or any other business of the publisher, whether in the form of display advertising or editorial or reading matter, this is deemed to be advertising.

.02 Aspect Ratio

Aspect ratio is the ratio of width to length.

.03 Bills and Statements of Account

Bills and statements of account are defined as follows:

a. A bill is a request for payment of a definite sum of money claimed to be owing by the addressee either to the sender or to a third party. The mere assertion of an indebtedness in a definite sum combined with a demand for payment is sufficient to make the message a bill.

b. A statement of account is the assertion of the existence of a debt in a definite amount but which does not necessarily contain a request or a demand for payment. The amount may be immediately due or may become due after a certain time or upon demand or billing at a later date.

c. A bill or statement of account must present the particulars of an indebtedness with sufficient definiteness to inform the debtor of the amount he is required to pay to acquit himself of the debt. However, neither a bill nor a statement of account need state the precise amount if it contains sufficient information to enable the debtor to determine the exact amount of the claim asserted.

d. A bill or statement of account is not the less a bill or statement of account merely because the amount claimed is not in fact owing or may not be legally collectible.

.04 Full Rates

Full rates are rates approved by the Governors of the Postal Service in accordance with Title 39 U.S.C., which are not reduced rates as set forth in title 39 U.S.C. 3626.

.05 Girth

Girth is the measurement around a piece of mail at its thickest part.

.06 Invoice

An invoice is a writing showing the nature, quantity, and cost or price of items shipped or sent to a purchaser or consignor.

.07 Permit Imprints

Permit imprints are printed indicia indicating postage has been paid by the sender under the permit number shown.

.08 Phased Rates

Phased rates are the reduced rates which increase annually as provided in 39 U.S.C. 3626(a). The sum of the annual increases equals the difference between the rates which were in effect for a class of mail or kind of mailer at the time of the enactment of the Postal Reorganization Act and either—

a. The full rates, or

b. The preferred rates;

for the class of mail or kind of mailer. The phased rates increase on July 6 of each year.

.09 Preferred Rates

Preferred rates are the reduced rates established pursuant to 39 U.S.C. 3626(a)(1).

.10 Territories and Possessions

For purposes of this Domestic Mail Classification Schedule, the terms territories and possessions include:

Baker Island	Navassa Island
Canton Island	Commonwealth of Puerto Rico
Caroline Islands	Saint Croix Island
Enderbury Island	Saint John Island
Guam	Saint Thomas Island
Howland Island	Samoa (American)
Jarvis Island	Sand Island
Johnston Island	Swain's Island
Kingman Reef	Trust Territory of the Pacific
Manua Island	Virgin Islands (U.S.)
Mariana Islands	Wake Island
Marshall Islands	
Midway Islands	

.11 ZIP Code

The ZIP Code is a numeric code that facilitates the sortation, routing, and delivery of mail.

CLASSIFICATION SCHEDULE 100—FIRST-CLASS MAIL

100.01 Definition

100.010 Any matter eligible for mailing may, at the option of the mailer, be mailed as first-class mail.

100.011 The following must be mailed as First-Class Mail, unless mailed as Express Mail or exempt under title 39 United States Code or except as authorized under sections 200.0421, 300.0451 and 400.0441:

a. Mail sealed against postal inspection as set forth in section 5000 of the General Terms and Conditions;

b. Matter wholly or partially in handwriting or typewriting except as specifically permitted by sections 200.013, 300.010, 300.0101, 400.021, 400.022 and 400.043; and,

c. Bills and statements of account.

100.02 Description of Subclasses

100.020 Regular Mail

Regular First-Class Mail consists of mailable matter posted at First-Class regular rates, weighing 12 ounces or less, and not mailed or eligible for mailing under sections 100.0201, 100.021, 100.0211, 100.022, 100.0221, 100.023, or 100.024.

100.0201 ZIP+4 Rate Category Regular Mail

ZIP+4 rate category regular mail consists of pieces which meet the following eligibility requirements and the preparation requirements in section 100.047:

a. Bear a proper ZIP+4 code.

b. Be presented in mailings of 250 or more pieces; or if presorted, in mailings of 500 or more pieces.

c. Meet machinability criteria as prescribed by the Postal Service.

d. Meet address readability specifications for applicable mail processing equipment as prescribed by the Postal Service.

e. Have postage paid in a manner not requiring cancellation.

100.0202 Presorted Mail

Presorted First-Class Mail is First-Class Mail other than zone rated (priority mail) which is presented in a single mailing of 500 or more pieces, properly prepared and presorted.

100.021 Postal and post cards

a. A postal card is a card with postage imprinted or impressed on it supplied by the Postal Service for the transmission of messages. A post card is a privately printed mailing card for the transmission of messages.

b. Double postal or post cards may be mailed as postal or post cards. A double postal or post card consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single postal or post card.

c. To be eligible to be mailed as a first-single post card, a card may not exceed any of the following dimensions.

i. Length not greater than 6 inches;

ii. Width not greater than 4¼ inches; or,

iii. Thickness not greater than 0.0095 inch and uniform.

100.0211 ZIP+4 rate category post cards

A ZIP+4 rate category post card is a privately printed mailing card for the transmission of messages which meets the eligibility and preparation requirements in sections 100.0211b, 100.043, and 100.047.

a. Double post cards may be mailed as ZIP+4 rate category post cards. A double post card consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single post card.

b. ZIP+4 rate category post cards must:

i. Bear a proper ZIP+4 code.

ii. Be presented in mailings of 250 or more pieces; or, if presorted, in mailings of 500 or more pieces.

iii. Meet machinability criteria as prescribed by the Postal Service but may not exceed any of the following dimensions:

(1) Length not greater than 6 inches;

(2) Width not greater than 4¼ inches; or,

(3) Thickness not greater than 0.0095 inch and uniform.

iv. Meet address readability specifications for applicable mail processing equipment as prescribed by the Postal Service.

v. Have postage paid in a manner not requiring cancellation.

100.023 Zone Rated (Priority) Mail

Zone rated (priority) first-class mail consists of (1) first-class mail weighing more than the maximum weight established for first-class regular mail and (2) other mail matter which, at the option of the mailer, is mailed for expeditious mailing and transportation. Priority mail may weigh up to and including 70 pounds.

100.024 Electronic Computer Originated Mail

Electronic Computer Originated Mail (E–COM) is first-class mail entered into the postal system at designated Serving Post Offices (SPOs) by electronic means via authorized communications common carriers whose facilities are connected to the SPOs. Among such authorized carriers may be one or more carriers acting on behalf of the Postal Service, under contract with it entered into on the basis of demonstrated need and in such manner and under such conditions and terms as to preserve free and open competition in the telecommunications sector of E–COM. At the SPOs the messages are checked for errors while in electronic form, printed, inserted into specially marked envelopes provided by the Postal Service, and entered into the first class mailstream.

E–COM may consist of single or multiple text messages of one or two pages. Each E–COM message will identify, in a form intelligible to the recipient, the communications common carrier over whose facilities such message was entered into the SPO. There is a minimum quantity of 200 messages per transmission.

100.03 Physical Limitations

100.030 First-Class Mail may not exceed 70 pounds or 108 inches in length and girth combined.

100.031 Cards exceeding the maximum post card dimensions set forth in section 100.021c or 100.0211b for ZIP+4 rate category cards may be mailed only under sections 100.020, 100.022, 100.201 and 100.0221 as appropriate.

100.032 First-class mail which weighs one ounce or less is nonstandard mail if:

a. Its aspect ratio does not fall between 1 to 1.3 and 1 to 2.5 inclusive, or

b. If it exceeds any of the following dimensions:

i. 11.5 inches in length,

ii. 6.125 inches in width, or

iii. .25 inch in thickness.

100.04 Preparation of Mail

100.040 Postage must be paid as set forth in section 3000 of the General Terms and Conditions.

100.041 First-class mail mailed under section 100.022 must be presorted in accordance with regulations prescribed by the Postal Service.

100.042 First-class mail mailed under section 100.022 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service that preserves the presort and uniform orientation of the pieces.

b. All pieces in a mailing must bear markings identifying them as presorted first-class mail, as required by the Postal Service.

100.0421 Pieces not within the same postage rate increment may be mailed as presorted mail only when specified methods approved by the Postal Service for ascertaining and verifying postage are followed.

100.043 Postal and post cards, including ZIP+4 rate category post cards, with any of the following four characteristics are not mailable unless prepared as prescribed by the Postal Service:

a. Numbers or letters unrelated to postal purposes appearing on the address side of the card;

b. Punched holes;

c. Vertical tearing guide;

d. An address portion which is smaller than the remainder of the card.

100.044 First-class mail entered under Section 100.024 must be prepared in accordance with such reasonable message format requirements as are published by the Postal Service.

100.045 Nothing contained in Section 100.05 shall be construed as authorizing the Postal Service to offer electronic message transmission service to any location other than SPOs.

100.047 Pieces mailed under sections 100.0201, 100.0211 and 100.0221 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service.

b. All pieces in a mailing must bear markings as required by the Postal Service.

c. Pieces not within the same postage increment may be mailed as ZIP+4 rate category mail only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

d. Pieces mailed at presorted ZIP+4 rate category rates must be properly prepared and presorted as prescribed by the Postal Service.

100.05 Mail Deposit

100.050 First-class mail must be deposited at places designated by the Postal Service.

100.051 E–COM will be accepted at the SPOs at times designated by the Postal Service.

100.052 E–COM may be deposited through any communications carrier which conforms to the technical interconnection standards established by the Postal Service.

100.0521 E–COM technical interconnection standards shall not be unduly discriminatory against any carrier able and willing to connect, and shall be designed to permit the simultaneous interfacing of multiple communications carriers with the SPOs. The Postal Service may, to the extent consistent with avoidance of any unreasonable burden upon carriers, require that each carrier employ only one access port as each SPO to which such carrier is connected.

100.0522 The Postal Service may require that each carrier having facilities and authority to render nationwide service and intending to serve under this section connect its facilities to each SPO.

100.06 Service

100.060 First-class mail receives expeditious handling and transportation, except that when first-class mail is attached to or enclosed with mail of another class, the service of that class applies.

100.07 Forwarding and Return

100.070 First-class mail is forwarded without additional charge.

100.071 Zone rated (priority) mail is forwarded without additional charge.

First-class mail that is undeliverable as addressed is returned to the sender, without additional charge.

100.08 Ancillary Services

100.080 First-Class Mail, except E-COM and except as otherwise noted, will receive the following additional services upon payment of the appropriate fees:

	Classification schedule
a. Address correction	SS-1
b. Business reply mail (except ZIP+4 rate category mail)	SS-2
c. Certificates of mailing	SS-4
d. Certified mail	SS-5
e. C.O.D	SS-6
f. Insured mail	SS-9
g. Registered mail (except ZIP+4 rate category mail)	SS-14
h. Special delivery	SS-17
i. Merchandise return	SS-20

100.09 Rates and Fees

100.090 The rates and fees for first-class mail are set forth in the following rate schedules:

	Rate schedule
a. Regular	100
b. Postal and post cards	[1] 101
c. Presorted	[1] 102
d. Zone rated (priority)	103
e. Electronic computer originated mail	104
f. Fees	1000

[1] Editor's Note: These rates can now be found on Rate Schedule 100.

100.091 Postage on first-class mail is computed separately on each piece of mail.

100.10 Authorizations and Licenses

100.100 A presorted mailing fee as set forth in Rate schedule 1000 must be paid once each calendar year at each office of mailing by any person who mails presorted mail, including presorted ZIP+4 rate category mail.

100.101 A permit fee as set forth in Rate schedule 1000 must be paid once each calendar year by any person who mails by electronic computer originated mail.

CLASSIFICATION SCHEDULE 200—SECOND-CLASS MAIL

200.01 Definition

200.010 Second-class mail is mailable matter consisting of newspapers and other periodical publications which meet the qualifications listed in sections 200.0101 through 200.0109, or 200.0110.

200.0101 Second-class matter must be regularly issued at stated intervals at least four times a year, bear a date of issue, and be numbered consecutively.

200.0102 Second-class matter must have a known office of publication. A known office of publication is a public office where business of the publication is transacted during the usual business hours. The office must be maintained where the publication is authorized original second-class entry.

200.0103 Second-class matter must be formed of printed sheets. They may not be reproduced by stencil, mimeograph, or hectograph processes, or reproduced in imitation of typewriting. Reproduction by any other printing process is permissible. Any style of type may be used.

200.0104 Second-class matter must be originated and published for the purpose of disseminating information of a public character, or devoted to literature, the sciences, art, or some special industry.

200.0105 Second-class matter must have a legitimate list of persons who have subscribed by paying or promising to pay at a rate above nominal for copies to be received during a stated time, with such exception, as enumerated in section 200.0110.

a. Nominal rate means:

i. A token subscription price that is so low that it cannot be considered a material consideration;

ii. A reduction to the subscriber, under a premium offer or any other arrangements, of more than 50 percent of the amount charged at the basic annual rate for a subscriber to receive one copy of each issue published during the subscription period. The value of a premium is considered to be its actual cost to the publishers, the recongnized retail value, or the represented value, whichever is highest.

200.0106 Except as provided in section 200.0107, second-class matter containing no advertising other than that of the publisher, is exempt from the requirements of sections 200.0104 and 200.0105 if it is:

a. Published by a regularly incorporated institution of learning;

b. Published by a regularly established state institution of learning supported in whole or in part by public taxation;

c. A bulletin issued by a state board of health or a state industrial development agency;

d. A bulletin issued by a state conservation or fish and game agency or department;

e. A bulletin issued by a state board or department of public charities and corrections;

f. Published by a public or nonprofit private elementary or secondary institution of learning or its administrative or governing body;

g. Program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof, or by a nonprofit educational radio or television station;

h. Published by or under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than 1,000 persons;

i. Published by or under the auspices of a trade(s) union;

j. Published by a strictly professional, literary, historical, or scientific society; or,

k. Published by a church or church organization.

200.0107 Second-class matter published by an institution or society identified in sections 200.0106h through k, may contain advertising of other persons, institutions, or concerns, only under the following conditions:

a. The publication must be originated and published to further the objectives and purposes of the society;

b. Circulation must be limited to:

i. Copies mailed to members who pay either as a part of their dues or assessment or otherwise, not less than 50 percent of the regular subscription price;

ii. Other actual subscribers;

iii. Exchanges; and,

iv. 10 percent of the total above as sample copies.

200.0108 Second-class matter issued by state departments of agriculture may not contain advertising and must be published for the purpose of furthering the objects of the departments.

200.0109 Foreign newspapers and other periodicals of the same general character as domestic publications entered as second-class mail may be accepted on application of the publishers thereof or their agents, for transmission through the mail at the same rates as if published in the United States. This section does not authorize the transmission through the mail of a

publication which violates a copyright granted by the United States.

200.011 The term "periodical publications" includes, but is not limited to:

a. Any catalog or other course listing including mail announcements of legal texts which are part of post-bar admission education issued by any institution of higher education or by a nonprofit organization engaged in continuing legal education.

b. Any looseleaf page or report (including any index, instruction for filing, table, or sectional identifier which is an integral part of such report) which is designed as part of a looseleaf reporting service concerning developments in the law or public policy.

200.0110 Notwithstanding section 200.0101 through 200.0108, publications which meet all the following criteria are second-class mailable matter.

a. Must contain at least 24 pages;

b. Must be issued at regular intervals at least four times a year;

c. Must not be owned or controlled by one or more individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control them;

d. Must devote at least 25 percent of their pages to nonadvertising and not more than 75 percent to advertisements;

e. May be circulated free or mainly free;

f. Must have a legitimate list of persons who request the publication; 50 percent or more of the copies of the publication must be distributed to persons making such requests. Subscription copies paid for or promised to be paid for including those at or below a nominal rate may be included in the determination of whether the 50 percent request requirement is met. Persons will not be deemed to have requested the publication if their request is included by a premium offer or by receipt of material consideration, provided that mere receipt of the publication is not material consideration. This subsection will not be effective prior to March 20, 1982;[1]

g. Must have a known office of publication. A known office of publication is a public office where business of the publication is transacted during the usual business hours. The office must be maintained where the publication is authorized original second-class entry.

200.012 Publications designed primarily for advertising purposes, free circulation, or circulation at nominal rates (see 200.0105) do not qualify for second-class privileges. This section and its subsections shall not apply to publications qualifying for second-class privileges under § 200.0110.

200.0121 Publications "designed primarily for advertising purposes" means publications which:

a. Have advertising in excess of 75 percent in more than one-half of their issues during any 12-month period;

b. Are owned or controlled by individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control them;

c. Consist principally of advertising and editorial write-ups of the advertisers;

d. Consist principally of advertising and that have only a token list of subscribers, the circulation being mainly free;

e. Have only a token list of subscribers and that print advertisements free for advertisers who pay for copies to be sent to a list of persons furnished by the advertisers; or

f. Are published under a license from individuals or institutions and that feature other businesses of the licensor.

200.0122 Designed primarily for free circulation is defined as distribution of 50 percent or more of the copies of a publication for free or at a nominal rate. Copies mailed to persons who are not on a legitimate list of subscribers as set forth in sections 200.0105 and 200.0110 are free copies.

200.013 Second-class mail may contain enclosures and supplements as prescribed by the Postal Service. It may not contain writing, printing or sign thereof or therein, in addition to the original print, except as authorized by the Postal Service, or as authorized under section 200.0421.

200.02 Description of Subclasses

200.0201 Regular

Regular second-class mail is all second-class mail except that to which section 200.021 applies.

a. Regular second-class may be mailed only by publishers or registered news agents.

b. Nonsubscriber and nonrequester copies mailed at any time during the calendar year up to 10 percent of the total weight of copies mailed to subscribers and requesters during the calendar year are regular second-class mail provided that the nonsubscriber and nonrequester copies would have been regular second-class mail if mailed to subscribers or requesters. See Section 200.093 for mailing in excess of the 10 percent limitation.

200.021 Preferred. The preferred subclasses, except Science of Agriculture publications, will receive newspaper treatment under the eligibility conditions established by the Postal Service.

200.0211 Within County

Within-county mail is second-class mail, other than matter mailed under section 200.0110, mailed in, and addressed for, delivery within the county where published and originally entered, from either the office of original entry or additional entry.

200.02111 For the purpose of the application of section 200.0211, when a publication has original entry at an independent incorporated city which is situated entirely within a county or which is contiguous to one or more counties in the same state, such incorporated city shall be considered to be within the county with which it is principally contiguous. Where more than one county is involved, the publisher will select the principal county.

200.0212 Nonprofit

Nonprofit mail is second-class mail, other than matter mailed under section 200.0110, entered by authorized nonprofit organizations or associations of the following types:

a. Religious,
b. Educational,
c. Scientific,
d. Philanthropic,
e. Agricultural,
f. Labor,
g. Veterans,
h. Fraternal,

and

i. Associations of rural electric cooperatives,

j. One publication, which contains no advertising published by the official highway or development agency of a state,

k. Program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof or by a nonprofit educational radio or television station.

l. One conservation publication published by an agency of a state which is responsible for management and conservation of the fish or wildlife resources of such state.

200.02121 Nonprofit organizations or associations are organizations or associations not organized for profit, none of the net income of which benefits any private stockholder or individual,

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[1] Editor's Note: The Postal Service has amended its regulations to include this requirement, effective October 1, 1982. See DMM § 422.8.

and which meet the qualifications set forth below for each type of organization or association. The standard of primary purpose applies to organizations listed under section 200.0212 a through f. The standard of primary purpose requires that each type of organization or association be both organized and operated for the primary purpose.

a. Religious. A nonprofit organization whose primary purpose is one of the following:

i. To conduct religious worship;

ii. To support the religious activities of nonprofit organizations whose primary purpose is to conduct religious worship;

iii. To perform instruction in, to disseminate information about, or otherwise to further the teaching of particular religious faiths or tenets.

b. Educational. A nonprofit organization whose primary purpose is one of the following:

i. The instruction or training of the individual for the purpose of improving or developing his capabilities;

ii. The instruction of the public on subjects beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

c. Scientific. A nonprofit organization whose primary purpose is one of the following:

i. To conduct research in the applied, pure or natural sciences;

ii. To disseminate systematized technical information dealing with applied, pure or natural sciences.

d. Philanthropic. A nonprofit organization primarily organized and operated for purposes beneficial to the public. Philanthropic organizations include, but are not limited to, organizations which are organized for:

i. Relief of the poor and distressed or of the underprivileged;

ii. Advancement of religion;

iii. Advancement of education or science;

iv. Erection or maintenance of public buildings, monuments, or works;

v. Lessening of the burdens of Government;

vi. Promotion of social welfare by organizations designed to accomplish any of the above purposes or;

(a) To lessen neighborhood tensions;

(b) To eliminate prejudice and discrimination;

(c) To defend human and civil rights secured by law; or

(d) To combat community deterioration and juvenile delinquency.

e. Agricultural. A nonprofit organization whose primary purpose is the betterment of the conditions of those engaged in agricultural pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in agriculture. The organization may further and advance agricultural interests through educational activities; the holding of agricultural fairs; the collection and dissemination of information concerning cultivation of the soil and its fruits or the harvesting of marine resources; the rearing, feeding, and management of livestock, poultry, and bees, or other activities relating to agricultural interests. The term agricultural nonprofit organization also includes any nonprofit organization whose primary purpose is the collection and dissemination of information or materials relating to agricultural pursuits.

f. Labor. A nonprofit organization whose primary purpose is the betterment of the conditions of workers. Labor organizations include, but are not limited to, organizations in which employees or workmen participate, whose primary purpose is to deal with employers concerning grievances, labor disputes, wages, hours of employment and working conditions.

g. Veterans'. A nonprofit organization of veterans of the armed services of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization.

h. Fraternal. A nonprofit organization which meets all of the following criteria:

i. Has as its primary purpose the fostering of brotherhood and mutual benefits among its members;

ii. Is organized under a lodge or chapter system with a representative form of government;

iii. Follows a ritualistic format; and

iv. Is comprised of members who are elected to membership by vote of the members.

200.0213 Classroom

Classroom mail is second-class mail, other than matter mailed under section 200.0110, consisting of religious, educational, or scientific publications designed specifically for use in school classrooms or religious instruction classes.

200.0214 Science of Agriculture

Science of agriculture mail is second-class mail, other than matter mailed under section 200.0110, consisting of any publication devoted to the science of agriculture if the total number of copies of the publication furnished during any 12-month period to subscribers residing in rural areas amounts to at least 70 percent of the total number of copies distributed by any means for any purpose.

200.0215 Limited Circulation

Limited Circulation mail is second-class mail, other than matter mailed under sections 200.0212, and 200.0213 or 200.0110, consisting of a mailing of fewer than five thousand copies per issue outside the county of publication.

200.0216 Second-class preferred mail (200.021) may be mailed only by publishers or registered news agents.

200.0217 Nonsubscriber copies mailed at any time during the calendar year up to 10 percent of the total weight of copies mailed to subscribers during the calendar year are preferred mail, provided that the nonsubscriber copies would have been preferred mail if mailed to subscribers. See Section 200.093 for mailings in excess of the 10 percent limitation.

For §§ 200.0211, 200.0212, 200.0213, and 200.0215, expedited second-class mail is available without additional charge, but only to publications that issue weekly, or more frequently, and consist of news of general interest.

200.03 Physical Limitations

200.030 There are no maximum size and weight limits for second-class mail.

200.04 Preparation of Mail

200.040 Postage must be paid as set forth in section 3000 of the General Terms and Conditions.

200.041 Second-class mail must be presorted in accordance with regulations prescribed by the Postal Service.

200.042 First- or third-class mail may be attached to or enclosed with second-class mail if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate first- or third-class rate, the combined piece is subject to the next higher rate which can be applied to the attachment or enclosure. When first- or third-class mail is enclosed with or attached to second-class mail, an appropriate marking must identify the presence and class of the enclosure or attachment.

200.0421 First-Class Mail, as defined in section 100.011 (b) and (c), may be attached to or enclosed with second-class mail, with postage paid on the combined piece at the applicable second-class rate. The attachment or enclosure must be incidental to the

piece to which it is attached or with which it is enclosed.

200.0422 First-Class Mail, which is not included under section 200.0421, or third-class mail may be attached to or enclosed with second-class mail if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate First-Class or third-class rate, the combined piece is subject to the next higher rate which can be applied to the attachment or enclosure. When First-Class or third-class mail is enclosed with or attached to second-class mail under this subsection, an appropriate marking must identify the presence and class of the enclosure or attachment.

200.043 Second class mail must be identified as required by the Postal Service.

200.044 Nonsubscriber and nonrequester copies must be identified as required by the Postal Service.

200.045 Information relating to periodical publications must be filed with the Postal Service in accordance with 39 U.S.C. § 3685.

200.05 Mail Deposit

200.050 Second-class mail must be deposited at places designated by the Postal Service.

200.06 [Reserved]

200.07 Forwarding and Return

200.070 Undeliverable-as-addressed second-class mail will be forwarded or returned to the mailer, as prescribed by the Postal Service. Undeliverable-as-addressed combined First- and second-class pieces will be forwarded or returned, as prescribed by the Postal Service. Additional charges when second-class mail is returned will be based on the applicable third- or fourth-class rate.

200.08 ANCILLARY SERVICES

200.080 Second-class mail will receive the following additional service upon payment of the appropriate fee:

	Classification schedule
Special delivery	SS–17

200.09 Rates and Fees

200.090 The rates and fees for second-class mail are set forth as follows:

	Rate schedule
a. Regular	200
b. Within county	201
c. Nonprofit	202
d. Classroom	203
e. Science of agriculture	204
f. Limited circulation	205
g. Science of agriculture limited circulation	206
h. Commingled non-subscriber and nonrequester	207
i. Fees	1000

200.091 For six months after a subscription has expired, second-class mail may be mailed to a former subscriber at the rates that apply to copies mailed to subscribers, if the publisher has attempted during that six months to obtain payment, or a promise to pay, for renewal.

200.092 A publisher may mail one complete copy of each issue to each advertiser in that issue as an advertiser's proof copy at the rates that apply to subscriber and requester copies, whether the advertiser's proof copy is mailed to the advertiser directly or, instead, to an advertising representative or agent of the publication.

200.093 Nonsubscriber and nonrequester copies of any second-class mail mailed at any time during the calender year, in excess of 10 percent of the total weight of copies mailed to subscribers or requesters during the calendar year which are presorted and commingled with subscriber or requester copies are charged the full rates for regular second-class shown in Rate Schedule 200. The 10 percent limitation for a publication shall be determined on the combined total weight of all copies of that publication mailed to subscribers and requesters during the calendar year, subject to section 200.0217.

200.094 Copies of any second-class mail which are destined for delivery within the sectional center area in which they are entered qualify for the applicable SCF discount as set forth in Rate Schedules 200, 202, 203, 204, 205, 206 and 207. The sectional center areas will be prescribed by the Postal Service.

200.10 Authorizations and Licenses

200.100 Prior to mailing at second-class rates publications must be authorized for entry as second-class mail by the Postal Service. Each authorized publication will be granted one original entry office where the office of publication is maintained. Additional entry offices may be granted by the Postal Service upon application. Application for re-entry shall be made whenever there is a change in the publication's title, frequency of issue or office of original entry.

200.101 News agents must register at all post offices at which they mail second-class mail and pay the applicable fee as set forth in Rate Schedule 1000.

200.1011 A news agent is a person or concern engaged in selling two or more second-class publications published by more than one publisher.

200.102 Publications set forth in sections 200.0212, 200.0213 and 200.0214, must obtain the Postal Service's authorization to mail at the rates for such publications.

CLASSIFICATION SCHEDULE 300—THIRD-CLASS MAIL

300.01 Definition

300.010 Third-class mail is mailable matter weighing less than 16 ounces, except:

a. Matter mailed or required to be mailed as first-class mail;

b. Matter entered as second-class mail, except copies sent by a printer to a publisher, and except copies that would have traveled at the former transient rate;

c. Matter mailed under section 400.021 or section 400.022.

300.0101 Circulars and printed matter weighing less than 16 ounces, including printed letters which according to internal evidence are being sent in identical terms to several persons, but which do not have the character of actual or personal correspondence, are third-class mail. Circulars do not lose their character as third-class mail when the date and name of the addressee and of the sender are written thereon, nor by the correction in writing of mere typographical errors. For the purposes of Classification Schedule 300, "printed" does not include reproduction by handwriting or typewriting.

300.02 Description of Subclasses

300.020 Single Piece

Single-piece mail is third-class mail not eligible for mailing under section 300.021 or 300.022.

300.021 Bulk

Bulk rate third-class mail consists of mailings of properly prepared and presorted separately addressed pieces of identical size and weight (except as provided in § 300.047) of third-class mail, in quantities of not less than 50 pounds or of 200 or more pieces.

300.0211 Regular

Regular rate bulk mail is third-class bulk mail which is not eligible for mailing under section 300.0212.

300.0212 Nonprofit

Nonprofit bulk mail is third-class mail mailed by authorized nonprofit organizations or associations of the following types:

a. Religious,
b. Educational,
c. Scientific,
d. Philanthropic,
e. Agricultural,
f. Labor,
g. Veterans',
h. Fraternal,
i. Qualified political committees.

300.02121 Nonprofit organizations or associations are organizations or associations not organized for profit, none of the net income of which benefits any private stockholder or individual, and which meet the qualifications set forth before for each type of organization or association. The standard of primary purpose applies to each type of organization or association, except veterans and fraternal. The standard or primary purpose requires that each type of organization or association be both organized and operated for the primary purpose.

The following are the types of organizations or associations which may qualify as authorized nonprofit organizations or associations.

a. Religious. A nonprofit organization whose primary purpose is one of the following:

i. To conduct religious worship;

ii. To support the religious activities of nonprofit organizations whose primary purpose is to conduct religious worship;

iii. To perform instruction in, to disseminate information about, or otherwise to further the teaching of particular religious faiths or tenets.

b. Educational. A nonprofit organization whose primary purpose is one of the following:

i. The instruction or training of the individual for the purpose of improving or developing his capabilities;

ii. The instruction of the public on subjects beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individul or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

c. Scientific. A nonprofit organization whose primary purpose is one of the following:

i. To conduct research in the applied, pure or natural sciences;

ii. To disseminate systematized technical information dealing with applied, pure or natural sciences.

d. Philanthropic. A nonprofit organization primarily organized and operated for purposes beneficial to the public. Philanthropic organizations include, but are not limited to, organizations which are organized for:

i. Relief of the poor and distressed or of the underprivileged;

ii. Advancement of religion;

iii. Advancement of education or science;

iv. Erection or maintenance of public buildings, monuments, or works;

v. Lessening of the burdens of Government;

vi. Promotion of social welfare by organizations designed to accomplish any of the above purposes or;

(a) To lessen neighborhood tensions;

(b) To eliminate prejudice and discrimination;

(c) To defend human and civil rights secured by law; or

(d) To combat community deterioration and juvenile delinquency.

e. Agricultural. A nonprofit organization whose primary purpose is the betterment of the conditions of those engaged in agricultural pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in agriculture. The organization may further and advance agricultural interests through educational activities; the holding of agricultural fairs; the collection and dissemination of information concerning cultivation of the soil and its fruits or the harvesting of marine resources; the rearing, feeding, and management of livestock, poultry, and bees, or other activities relating toagricultural interests. The term agricultural nonprofit organization also includes any nonprofit organization whose primary purpose is the collection and dissemination of information or materials relating to agricultural pursuits.

f. Labor. A nonprofit organization whose primary purpose is the betterment of the conditions of workers. Labor organizations include, but are not limited to, organizations in which employees or workmen participate, whose primary purpose is to deal with employers concerning grievances, labor disputes, wages, hours of employment and working conditions.

g. Veterans'. A nonprofit organization of veterans of the armed services of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization.

h. Fraternal. A nonprofit organization which meets all of the following criteria:

i. Has as its primary purpose the fostering of brotherhood and mutual benefits among its members;

ii. Is organized under a lodge or chapter system with a representative form of government;

iii. Follows a ritualistic format; and

iv. Is comprised of members who are elected to membership by vote of the members.

i. Qualified political committees. The term "qualified political committee" means a national or State committee of a political party, the Republican and Democratic Senatorial Campaign Committees, the Democratic National Congressional Committee, and the National Republican Congressional Committee:

(A) The term "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level; and

(B) The term "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level.

300.02122 An organization authorized to mail at the special bulk third-class rates for qualified non-profit organizations may mail only its own matter at these rates. An organization may not delegate or lend the use of its permit to mail at special third-class rates to any other person, organization or association.

300.022 Keys and Identification Devices

Keys and identification devices include keys, identification cards, identification tags, or similar identification devices mailed without cover, and which bear, contain, or have securely attached the name and complete post office address of a person, organization, or concern, with instructions to return to such address and a statement guaranteeing the payment of postage due on delivery.

300.023 Bulk Rate Presort Categories

Bulk rate mail sent under section 300.021 must meet the conditions of sections 300.0231 or 300.0232 to be eligible for the applicable presort level rate.

300.0230 Required Sortation

Mailers must sort third-class bulk mail as prescribed by the Postal Service. The

basic sortation, other than the two described below, pays the "Required Presortation" rate in Rate Schedules 301 and 302.

300.0231 Five Digit Presort Level

Five-digit presort level mailings must contain at least 200 pieces or 50 pounds of five-digit presorted mail prepared in accordance with USPS regulations so as to avoid handling of individual pieces or packages until they reach the five-digit ZIP Code delivery unit.

300.0232 Carrier Route Presort Level

Carrier route presort level mailings must contain at least 200 pieces or 50 pounds of carrier route presorted mail, with at least 10 pieces to each carrier route. The mail must be properly prepared in the manner prescribed by the Postal Service.

300.03—Physical Limitations

300.030

a. There is no maximum size for single-piece third-class mail.

b. Except as provided in § 300.030c, the maximum size for mail qualifying for the carrier route presort level is 13.50 inches in length, 11.50 inches in width, and .75 inch in thickness.

c. Merchandise samples with detached labels may be sent at the carrier route presort rate even though their dimensions may exceed the prescribed maxima, if they meet all other requirements of the carrier route presort level and the detached labels do not exceed those dimensions.

d. For bulk mail not presorted to the carrier route level, there is no size limitation.

300.031 Third-class single-piece mail weighing one ounce or less is nonstandard if:

a. Its aspect ratio does not fall between 1 to 1.3 and 1 to 2.5, inclusive, or

b. It exceeds any of the following:

i. 11.5 inches in length,

ii. 6.125 inches in width, or

iii. .25 inch in thickness.

300.04 Preparation of mail

300.040 Postage must be paid as set forth in section 3000 of the General Terms and Conditions.

300.041 Third-class bulk mail must be presorted as prescribed by the Postal Service.

300.042 Third-class mail must be identifed as required by the Postal Service.

300.043 Third-class mail may have the following written additions placed on the wrapper, on a tag or label attached to the outside of the parcel, or inside the parcel, either attached to the article or loose:

a. Marks, numbers, name, or letters descriptive of contents;

b. *Please Do Not Open Until Christmas*, or words of similar import;

c. Instructions and directions for the use of an article in the package;

d. Manuscript dedication or inscription not in the nature of personal correspondence;

e. Marks to call attention to any word or passage in text;

f. Corrections of typographical errors in:

i. Circulars and printed matter: Handwritten or typewritten changes or additions in the body of a circular are limited to corrections of actual typographical errors.

ii. Proof sheets: Corrections in proof sheets include corrections of typographical and other errors, alterations of text, insertion of new text, marginal instructions to the printer, and rewrites of parts if necessary for correction.

g. Handstamped imprints, except when the added matter is itself personal or converts the original matter to a personal communication;

h. An invoice.

300.044 Third-class mail contain enclosures and attachments as authorized under § 300.0451 or as follows:

a. Books and catalogs mailed at the bulk rates reserved for items in § 300.09bi may have no external attachments. Only the following items may be enclosed loose provided they relate exclusively to the book or catalog they accompany.

i. A single reply envelope or reply post card, or both;

ii. A single order form;

iii. A printed calendar. Circulars fastened securely along the entire bound edge inside the book or catalog by paste, stitches, or staples are not loose enclosures;

iv. If no circular is enclosed, a printed price list listing only articles featured in the catalog and showing only the same prices and discounts as the catalog;

v. An invoice; or

vi. Samples or merchandise attached to pages.

b. Except as provided in § 300.044a, all third-class mail may contain the following enclosures;

i. An invoice;

ii. Manuscripts accompanying related proof sheets.

300.045 First-class mail may be attached to or enclosed in third-class books, catalogs, and merchandise if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate first-class rate, the third-class piece is subject to the higher first-class rate. When first-class mail is enclosed with or attached to third-class mail, an appropriate marking must identify the presence and class of the enclosure or attachment.

300.0451 First-Class Mail, as defined in § 100.011 (b) and (c), may be attached to or enclosed with third-class merchandise, including books but excluding merchandise samples, with postage paid on the combined piece at the applicable third-class rate. The attachment or enclosure must be incidental to the piece to which it is attached or with which it is enclosed.

300.0452 First-Class Mail, which is not included under § 300.0451, may be attached to or enclosed with third-class books, catalogs, and merchandise if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate First-Class rate, the third-class piece is subject to the higher First-Class rate. When First-Class Mail is enclosed with or attached to third-class mail under this subsection, an appropriate marking must identify the presence and class of the enclosure or attachment.

300.046 Mailers of bulk third-class mail must submit appropriate mailing forms.

300.047 Pieces that are not of identical size and weight may be mailed as bulk third-class mail only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

300.048 Two or more third-class bulk mailings may be commingled and mailed as bulk third-class mail only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

300.05 Mail Deposit

300.050 Third-class mail must be deposited at places designated by the Postal Service.

300.06 Service

300.060 Third-class mail may receive deferred service.

300.07 Forwarding and Return

300.070 Undeliverable-as-addressed third-class mail will be returned on request of the mailer, or forwarded and returned on request of the mailer. Undeliverable-as-addressed combined first-class and third-class pieces will be

returned as prescribed by the Postal Service. The single-piece third-class rate is charged for each piece receiving return only service. Charges for forwarding-and-return service are assessed only on those pieces which cannot be forwarded and are returned. The charge for those returned pieces is the appropriate single-piece third-class rate for the piece plus that rate multiplied by a factor equal to the number of third-class pieces nationwide that are successfully forwarded for every one piece that cannot be forwarded and must be returned.

300.08 Ancillary Services

300.080 Third-class single-piece mail will receive the following services upon payment of the appropriate fees:

	Classification schedule
a. Address correction	SS–1
b. Certificates of mailing	SS–4
c. C.O.D	SS–6
d. Insured mail	SS–9
e. Special delivery	SS–17
f. Special handling	SS–18
g. Merchandise return	SS–20

300.081 Third-class bulk mail will receive the following services upon payment of the appropriate fees:

	Classification schedule
a. Address correction	SS–1
b. Certificates of mailing indicating that a specified number of pieces have been mailed. Certificates of mailing are not available for third-class bulk rate mail mailed under permit imprints	SS–4

300.09 Rates and Fees

300.090 The rates for third-class mail are set forth as follows:

	Rate schedule
a. Single piece	300
b. Bulk regular	301
c. Bulk nonprofit	302
d. Keys and identification devices	303
e. Fees	1000

300.10 Authorizations and Licenses

300.100 A mailing fee as set forth in Rate Schedule 1000 must be paid once each calendar year by mailers of third-class bulk mail.

CLASSIFICATION SCHEDULE 400—FOURTH-CLASS MAIL

400.01 Definition

400.010 Fourth-class mail is mailable matter weighing 16 ounces or more, except:

a. Matter mailed or required to be mailed as first-class mail;

b. Matter entered as second-class mail, except copies sent by a printer to a publisher, and except copies that would have traveled at the former transient rate;

c. Matter entered as controlled circulation mail;

d. That the 16-ounce minimum weight does not apply to matter mailed under sections 400.021 or 400.022.

400.02 Description of Subclasses

400.020 Parcel Post

Parcel post is fourth-class mail not mailed or eligible for mailing under sections 400.021, 400.022, 400.023.

400.0201 Single-piece

Single-piece parcel post mail is fourth-class parcel post mail not eligible for mailing under section 400.0202.

400.0202 Bulk

Bulk parcel post mail is fourth-class parcel post mail consisting of properly prepared and separated single mailings of at least 300 pieces or 200 pounds. Pieces weighing less than 15 pounds and measuring over 84 inches in length and girth combined are not mailable as bulk parcel post. Provision for mailing nonidentical pieces is set forth in section 400.046.

400.0203 Intra-BMC Parcel Post Mail

Parcel post mail is eligible for the intra-BMC rate described in rate schedules 400 and 401 if it originates and destinates in the same BMC or ASF service area, Alaska, Hawaii or Puerto Rico.

400.021 Special

Special mail is fourth-class mail consisting of:

a. Books, including books issued to supplement other books, of at least 8 printed pages, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books;

Not more than three of the announcements permitted in this subsection may contain as part of their format a single order form, which may also serve as a post card. The order forms permitted in this subsection are in addition to and not in lieu of order forms which may be enclosed by virtue of any other provision.

b. 16 millimeter or narrower width films which must be positive prints in final form for viewing, and catalogs of such films, of 24 pages or more, at least 22 of which are printed, except when sent to or from commercial theaters;

c. Printed music, whether in bound form or in sheet form;

d. Printed objective test materials and accessories thereto used by or in behalf of educational institutions in the testing of ability, aptitude, achievement, interests and other mental and personal qualities with or without answers, test scores or identifying information recorded thereon in writing or by mark;

e. Sound recordings, including incidental announcements of recordings and guides or scripts prepared solely for use with such recordings;

Not more than three of the announcements permitted in this subsection may contain as part of their format a single order form, which may also serve as a post card. The order forms permitted in this subsection are in addition to and not in lieu of order forms which may be enclosed by virtue of any other provision.

f. Playscripts and manuscripts for books, periodicals and music;

g. Printed educational reference charts, permanently processed for preservation; and

h. Printed educational reference charts, including but not limited to (i) mathematical tables, (ii) botanical tables, (iii) zoological tables, and (iv) maps produced primarily for educational reference purposes. Matter not entitled to be mailed at special fourth-class rates under section 400.021g, shall not be admitted to the special fourth-class category under section 400.021h, until such time as the expiration of rate phasing as now provided pursuant to § 3626 of title 39 United States Codes, for materials enumerated in former § 4554(a) of title 39 United States Code.[2]

i. Looseleaf pages and binders therefor, consisting of medical information for distribution to doctors, hospitals, medical schools, amd medical students.

j. Computer-readable media containing prerecorded information and guides or scripts prepared solely for use with such media.

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[2] Editor's Note: Phasing for these materials ended in 1979.

400.0211 Single-piece

Single-piece special mail is special fourth-class mail not mailed under section 400.0212.

400.0212 Special Mail Presort Categories

Special rate mail sent under section 400.021 must meet the conditions of sections 400.0213 or 400.0214 to be eligible for the applicable presort level rate. Provisions for mailing nonidentical pieces are set forth in section 400.048.

400.0213 Level A Presort

Level A presort mailings must contain at least 500 pieces of identical weight presorted to 5-digit destination ZIP codes. The mail must be properly prepared in a manner prescribed by the Postal Service.

400.0214 Level B Presort

Level B presort mailings must contain at least 500 pieces of identical weight presorted to destination Bulk Mail Centers. The mail must be properly prepared in a manner prescribed by the Postal Service.

400.022 Library

a. Matter designated in subection 400.0222, loaned or exchanged (including cooperative processing by libraries) between:

i. Schools or colleges, or universities;

ii. Public libraries, museums and herbaria, nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations, or between such organizations and their members, readers or borrowers.

b. Matter designated in subsection 400.0223, mailed to or from schools, colleges, universities, public libraries, museums and herbaria and to or from nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations; or

c. Matter designated in subsection 400.0224, mailed from a publisher or a distributor to a school, college, university or public library.

400.0221 Nonprofit organizations or associations are organizations or associations not organized for profit, none of the net income of which benefits any private stockholder or individual, and which meet the qualifications set forth below for each type of organization or association. The standard of primary purpose applies to each type of organization or association, except veterans' and fraternal. The standard of primary purposes requires that each type of organization or association be both organized and operated for the primary purpose.

The following are the types of organizations or associations which may qualify as authorized nonprofit organizations or associations:

a. Religious. A nonprofit organization whose primary purpose is one of the following:

i. To conduct religious worship;

ii. To support the religious activities of nonprofit organizations whose primary purpose is to conduct religious worship;

iii. To perform instruction in, to disseminate information about, or otherwise to further the teaching of particular religious faiths or tenets.

b. Educational. A nonprofit organization whose primary purpose is one of the following:

i. The instruction or training of the individual for the purpose of improving or developing his capabilities;

ii. The instruction of the public on subjects beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

c. Scientific. A nonprofit organization whose primary purpose is one of the following:

i. To conduct research in the applied, pure or natural sciences;

ii. To disseminate systematized technical information dealing with applied, pure or natural sciences.

d. Philanthropic. A nonprofit organization primarily organized and operated for purposes beneficial to the public. Philanthropic organizations include, but are not limited to, organizations which are organized for:

i. Relief of the poor and distressed or of the underprivileged;

ii. Advancement of religion;

iii. Advancement of education or science;

iv. Erection or maintenance of public buildings, monuments, or works;

v. Lessening of the burdens of Government;

vi. Promotion of social welfare by organizations designed to accomplish any of the above purposes or;

(a) To lessen neighborhood tensions;

(b) To eliminate prejudice and discrimination;

(c) To defend human and civil rights secured by law; or

(d) To combat community deterioration and juvenile delinquency.

e. Agricultural. A nonprofit organization whose primary purpose is the betterment of the conditions of those engaged in agricultural pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in agriculture. The organization may further and advance agricultural interests through educational activities; the holding of agricultural fairs; the collection and dissemination of information concerning cultivation of the soil and its fruits or the harvesting of marine resources; the rearing, feeding, and management of livestock, poultry, and bees, or other activities relating to agricultural interests. The term agricultural nonprofit organization also includes any nonprofit organization whose primary purpose is the collection and dissemination of information or materials relating to agricultural pursuits.

f. Labor. A nonprofit organization whose primary purpose is the betterment of the conditions of workers. Labor organizations include, but are not limited to, organizations in which employees or workmen participate, whose primary purpose is to deal with employers concerning grievances, labor disputes, wages, hours of employment and working conditions.

g. Veterans'. A nonprofit organization of veterans of the armed services of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization.

h. Fraternal. A nonprofit organization which meets all of the following criteria:

i. Has as its primary purpose the fostering of brotherhood and mutual benefits among its members;

ii. Is organized under a lodge or chapter system with a representative form of government;

iii. Follows a ritualistic format; and

iv. Is comprised of members who are elected to membership by vote of the members.

400.0222 Library mail defined in section 400.022a consists of:

a. Books consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations and containing no advertising other than incidental announcements of books;

b. Printed music, whether in bound form or in sheet form;

c. Bound volumes of academic theses in typewritten or other duplicated form;

d. Periodicals, whether bound or unbound;

e. Sound recordings;

f. Other library materials in printed, duplicated or photographic form or in

the form of unpublished manuscripts; and,

g. Museum materials, specimens, collections, teaching aids, printed matter and interpretative materials intended to inform and to further the educational work and interest of museums and herbaria.

400.0223 Library mail defined in section 400.022b consists of:

a. 16-millimeter or narrower width films; filmstrips; transparencies; slides; microfilms; all of which must be positive prints in final form for viewing.

b. Sound recordings.

c. Museum materials, specimens, collections, teaching aids, printed matter, and interpretative materials intended to inform and to further the educational work and interests of museums and herbaria.

d. Scientific or mathematical kits, instruments or other devices.

e. Catalogs of the materials in section 400.0223 a through d and guides or scripts prepared solely for use with such materials.

400.0224 Library mail defined in section 400.022c consists of books, including books to supplement other books, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books.

400.023 Bound Printed Matter

Bound printed matter mail is fourth-class mail weighing not more than ten pounds, and which:

a. Consists of advertising, promotional, directory, or editorial material, or any combination thereof;

b. Is securely bound by permanent fastenings including, but not limited to, staples, spiral bindings, glue, and stitching; loose leaf binders and similar fastenings are not considered permanent;

c. Consists of sheets of which at least 90 percent are imprinted with letters, characters, figures or images or any combination of these, by any process other than handwriting or typewriting;

d. Does not have the nature of personal correspondence;

e. Is not a book eligible for mailing as fourth-class special mail;

f. Is not a book which would be eligible for mailing as fourth-class special mail but for the inclusion of advertising matter other than incidental announcements of books that either (i) is not permanently bound in the book itself or (ii) does not form an integral part of the book itself;

g. Is not stationery, such as pads of blank printed forms.

400.0231 Single Piece

Single piece bound printed matter mail is fourth-class bond printed matter which is not mailed or not eligible for mailing under section 400.0232.

400.0232 Bulk

Bulk bound printed matter mail is fourth-class bound printed matter mail consisting of properly prepared and presorted mailings of not less than 300 pieces of identical size and weight, each price of which is addressed to a different addressee.

400.0233 Carrier Route Presort Category

Carrier route presort mailings must contain not less than 300 pieces of carrier route presorted mail. The mail must be properly prepared in the manner prescribed by the Postal Service.

400.03 Physical Limitations

400.030 Fourth-class mail may not exceed 70 pounds or 108 inches in length and girth combined.

400.04 Preparation of Mail

400.040 Postage must be paid as set forth in section 3000 of General Terms and Conditions.

400.041 Fourth-class mail mailed under sections 400.0202, 400.0212, 400.022 or 400.0232 must be separated or presorted in accordance with regulations prescribed by the Postal Service.

400.042 Fourth-class mail must be identified as precribed by the Postal Service.

400.043 Fourth-class mail may contain enclosures and attachments as authorized by the Postal Service or as described in section 400.021 a and e or as authorized under section 400.0441.

400.044 First-class mail or third-class mail other than specified in section 400.043 may be attached to or enclosed in fourth-class parcels if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate first-class or third-class rate, the combined piece is subject to the next higher rate which can be applied to the attachment or enclosure. When first-class or third-class mail is attached to or enclosed with fourth-class mail, an appropriate marking must identify the presence and class of the enclosure or attachment.

400.0441 First-Class Mail, as defined in section 100.011(b) and (c), may be attached to or enclosed with fourth-class mail, with postage paid on the combined piece at the applicable fourth-class rate. The attachment or enclosure must be incidental to the piece to which it is attached or with which it is enclosed.

400.0442 First-Class Mail, which is not included under section 400.0441, or third-class mail other than specified in section 400.043 may be attached to or enclosed with fourth-class mail if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate First-Class or third-class rate, the combined piece is subject to the next higher rate which can be applied to the attachment or enclosure. When First-Class or third-class mail is attached to or enclosed with fourth-class mail under this subsection, an appropriate marking must identify the presence and class of the enclosure or attachment.

400.045 Mailers of bulk fourth-class mail must submit appropriate mailing forms.

400.046 Fourth-class pieces which are not identical in size and weight may be mailed in accordance with sections 400.0202 and 400.0212 only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

400.047 Fourth-class mail must contain the ZIP Code of the addressee when required by regulations prescribed by the Postal Service.

400.05 Deposit of Mail

400.051 Fourth-class mail must be deposited at places designated by the Postal Service.

400.06 Service

400.060 Fourth-class mail may receive deferred service.

400.07 Forwarding and Return

400.070 Undeliverable-as-addressed fourth-class mail will be forwarded on request of the addressee, returned on request of the mailer, or forwarded and returned on request of the mailer; undeliverable-as-addressed combined first-class and fourth-class pieces, or third-class and fourth-class pieces, will be forwarded, and undeliverable combined first-class and fourth-class pieces, or third-class and fourth-class pieces, will be returned as prescribed by the Postal Service. Additional charges when fourth-class mail is forwarded or returned from one post office to another will be based on the appropriate single-piece fourth-class rate.

400.08 Ancillary Services

400.080 Fourth-class mail will receive the following additional services upon payment of the appropriate fees:

	Classification schedule
a. Address correction	[illegible]
b. Certificates of mailing	[illegible]
c. C.O.D.	[illegible]
d. Insured mail	[illegible]
e. Insured delivery	[illegible]
f. Special handling	[illegible]
g. Merchandise return	[illegible]

406.061 Insurance, special delivery, special handling and C.O.D. services may not be used selectively for individual pieces mailed under section 400.020, unless the provisions of section 400.046 apply.

400.09 Rates and Fees

400.090 The rates and fees for fourth-class mail are set forth as follows:

	Rate schedule
a. Single-piece parcel post mail	[illegible]
b. Bulk parcel post mail	[illegible]
c. Single-piece special fourth-class mail	[illegible]
d. Special fourth-class presorted mail:	
i. Level A	[illegible]
ii. Level B	[illegible]
e. Library mail	[illegible]
f. Single-piece bound printed matter	[illegible]
g. Bulk bound printed matter	[illegible]
h. Fees	1000

400.10 Authorizations and Licenses

400.10 A presort mailing fee as set forth in Rate Schedule 1000 must be paid once each calendar year at each office of mailing by or for any person who mails presorted special mail. Any person who engages a business concern or other individuals to mail presorted special mail must pay the fee.

CLASSIFICATION SCHEDULE 500—EXPRESS MAIL

500.01 Definition

500.010 Any matter eligible for mailing may, at the option of the mailer, be mailed as Express Mail.

500.02 Description of Subclasses

500.020 Same Day Airport Service

Same Day Airport service is available between designated airport mail facilities.

500.021 Custom Designed Service

Custom Designed service is available between designated postal facilities or other designated locations for mailable matter tendered in accordance with a service agreement between the Postal Service and the mailer. Service under a service agreement shall be offered in a manner consistent with 39 U.S.C. § 403(c).

500.0211 A service agreement shall set forth the following:

a. The scheduled place for each shipment tendered for service to each specific destination;

b. Scheduled place for claim, or delivery, at destination for each scheduled shipment;

c. Scheduled time of day for tender at origin and for claim or delivery at destination.

500.0212 Pickup at the mailer's premises, and/or delivery at an address other than the destination postal facility is provided only on a scheduled basis pursuant to the terms of a service agreement.

500.022 Next Day Service

Next Day service is available at designated retail postal facilities for overnight service to designated destination facilities or locations for items tendered by the time or times prescribed by the Postal Service.

500.0221 Pickup service is available for Next Day service only on a scheduled basis pursuant to a service agreement between the Postal Service and the mailer. The service agreement shall specify the time, place, day or date, and frequency of such service. Service under a service agreement shall be offered in a manner consistent with 39 U.S.C. 403(c).

500.03 Physical Limitations

500.030 Express Mail may not exceed 70 pounds or 108 inches in length and girth combined.

500.04 Conditions of Service

500.040 Evidence of Mailing

A receipt showing the time and date of mailing will be provided to the mailer upon acceptance of Express Mail by the Postal Service. This receipt serves as evidence of mailing.

500.041 Insurance and Indemnity

Express Mail is insured against loss, damage or rifling at no additional charge. Indemnity will be paid by the Postal Service as follows:

a. For document reconstruction the maximum liability is $50,000 per piece, up to $500,000 per occurrence regardless of the number of claimants, to be paid under terms and conditions prescribed by the Postal Service.

b. For merchandise the maximum liability is $500 to be paid under terms and conditions prescribed by the Postal Service.

c. For mailings valued at $15 or less, for negotiable items, or currency or bullion, the indemnity is $15 to be paid under terms and conditions prescribed by the Postal Service.

500.0411 Indemnity will not be paid by the Postal Service for loss, damage or rifling:

a. Of nonmailable matter;

b. Due to improper packaging;

c. Seizure by any agency of government; or,

d. Due to war, insurrection or civil disturbances.

500.042 Commencement of Service Agreement

Service provided pursuant to a service agreement shall commence not more than 10 days after the signed service agreement is tendered to the Postal Service.

500.043 Termination of Service Agreements

a. Express Mail service provided pursuant to a service agreement may be terminated by the Postal Service upon 10 days prior written notice to the mailer if:

1. Service cannot be provided for reasons beyond the control of the Postal Service or because of changes in Postal Service facilities or operations, or

2. The mailer fails to adhere to the terms of the service agreement or this schedule.

b. The mailer may terminate a service agreement, for any reason, by notice to the Postal Service.

500.044 Insurance Claims and Procedures

Claims for refunds of postage or insurance must be filed within the period of time and under terms and conditions prescribed by the Postal Service.

500.045 The Postal Service will refund the postage for Same Day Airport Express Mail not available for claim by the time specified, unless the delay is caused by:

a. Strikes or work stoppage;

b. Delay or cancellation of flights; or

c. Governmental action beyond the control of Postal Service or air carriers.

500.046 Except where a service agreement provides for claim, or delivery, of Custom Designed Express Mail more than 24 hours after scheduled tender at point of origin, the Postal Service will refund postage for such mail not available for claim, or not delivered, within 24 hours of mailing, unless the item was delayed by strike or work stoppage.

500.047 Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Next Day

Express Mail not available for claim or not delivered:

a. By 10 a.m. of the next delivery day in the case of Post Office-to-Post Office service;

b. By 3 p.m. of the next delivery day in the case of Post Office-to-Addressee service.

500.05 Deposit of Mail

500.050 Express Mail must be deposited at places designated by the Postal Service.

500.06 Service

500.060 Express Mail service provides a high speed, high reliability service.

500.0601 Same Day Airport Express Mail will be dispatched on the next available transportation to the destination airport mail facility.

500.0602 Custom Designed Express Mail will be available for claim or delivery as specified in the service agreement.

500.07 Forwarding and Return

500.070 When Express Mail is returned, or forwarded, as prescribed by the Postal Service, there will be no additional charge.

500.08 Rates and Fees

500.080 The rates for Express Mail are set forth in the following rate schedules:

	Rate schedule
a. Same day airport	500
b. Custom designed	501
c. Next day post office-to-post office	502
d. Next day post office-to-addressee	503

500.081 Except as provided in Rate Schedules 501, 502 and 503, postage on Express Mail is charged on each piece. For shipments tendered in Express Mail pouches under a service agreement, each pouch is a piece.

500.082 Express Mail postage rates are based on zones measured by great circle air miles between the airport serving the origin facility and the airport serving the destination facility, as follows:

Zone	Miles	
	Greater than—	Up to and including—
1 and 2	0	150
3	150	300
4	300	600
5	600	1000
6	1000	1400
7	1400	1800
8	1800	2400
9	2400	

500.090 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

	Classification schedule
a. Address correction	SS-1
b. Return receipts	SS-15

CLASSIFICATION SCHEDULE SS-1—ADDRESS CORRECTION SERVICE

1.01 Definition

1.010 Address correction service is a service which provides the mailer with a method of obtaining the correct address, if available to the Postal Service, of the addressee or the reason for nondelivery.

1.02 Description of Service

1.020 Address correction service is available to mailers of postage prepaid mail of all classes. Second-class and controlled circulation[3] mail will receive address correction service.

1.021 Address correction service is not available for items addressed for delivery by military personnel at any military installation.

1.022 Address correction provides the following service to the mailer:

a. If the correct address is known to the Postal Service, the mailer is notified of both the old and the correct address.

b. If the item mailed cannot be delivered, the mailer will be notified of the reason for nondelivery.

1.03 Requirements of the Mailer

1.030 Mail, other than second class and controlled circulation,[3] sent under this classification schedule, must bear a request for address correction service.

1.04 Fees

1.040 There is no charge for address correction service when the correction is provided incidental to the return of the mail piece to the sender.

1.041 A fee, as set forth in Rate Schedule SS-1, is charged for all other forms of address correction service.

[3] Editor's Note: Controlled circulation was merged into second class in Docket No. R80-1.

CLASSIFICATION SCHEDULE SS-2—BUSINESS REPLY MAIL

2.01 Definition

2.010 Business reply mail is a service whereby business reply cards, envelopes, cartons and labels may be distributed by or for a business reply distributor for use by mailers for sending first-class mail without prepayment of postage to an address chosen by the distributor. A distributor is the holder of a business reply license.

2.02 Description of Service

2.020 The distributor guarantees payment on delivery of postage and fees for all returned business reply mail. Any distributor of business reply cards, envelopes, cartons, and labels under one license, for return to several addresses guarantees to pay postage and fees on any returns refused by any such addressee.

2.03 Requirements of the Mailer

2.030 Business reply cards, envelopes, cartons and labels must be preaddressed and bear business reply markings.

2.0301 Handwriting, typewriting or handstamping are not acceptable methods of preaddressing or marking business reply cards, envelopes, cartons and labels.

2.04 Fees

2.040 The fees for business reply mail are set forth in Rate Schedule SS-2.

2.041 To qualify as an active business reply mail advance deposit trust account, the account must be used solely for business reply mail and contain sufficient postage and fees due for returned business reply mail.

2.042 An accounting fee as set forth in Rate Schedule SS-2 must be paid each calendar year or portion for each advance deposit business reply account at each facility where the mail is to be returned.

2.05 Authorizations and Licenses

2.050 In order to distribute business reply cards, envelopes, cartons or labels, the distributor must obtain a license or licenses from the Postal Service and pay the appropriate fee as set forth in Rate Schedule SS-2.

2.0501 Except as provided in section 2.0502, the license to distribute business reply cards, envelopes, cartons or labels must be obtained at each office from which the mail is offered for delivery.

2.0502 If the business reply mail is to be distributed from a central office to be returned to branches or dealers in other cities, one license obtained from the

post office where the central office is located may be used to cover all business reply mail.

2.051 The license to mail business reply mail may be cancelled for failure to pay business reply postage and fees when due, and for distributing business reply cards or envelopes which do not conform to prescribed form, style or size.

CLASSIFICATION SCHEDULE SS–3—CALLER SERVICE

3.01 Definition

3.010 Caller service is a service which permits a customer to obtain his mail addressed to a box number through a call window or loading dock.

3.02 Description of Service

3.020 Caller service uses post office box numbers as the address medium but does not actually use a lockbox.

3.021 Caller service is not available at certain postal facilities.

3.022 Caller service is provided to customers on the basis of mail volume received, and number of lockboxes rented at any one facility.

3.023 A customer may reserve a caller number.

3.024 Caller service cannot be used when the sole purpose is, by subsequently filing change of address orders, to have mail forwarded or transferred to another address by the Postal Service free of charge.

3.03 Fees

3.030 Fees for caller service are set forth in Rate Schedule SS–3.

CLASSIFICATION SCHEDULE SS–4—CERTIFICATE OF MAILING

4.01 Definition

4.010 Certificate of mailing service is a service which furnishes evidence of mailing.

4.02 Description of Service

4.020 Certificate of mailing service is available to mailers of matter sent under the classification schedule to any class of mail.

4.021 A receipt is not obtained upon delivery of the mail to the addressee. No record of mailing is maintained at the post office.

4.022 Additional copies of certificates of mailing may be obtained by the mailer.

4.03 Other Services

4.030 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Parcel airlift	SS–13
b. Special delivery	SS–17
c. Special handling	SS–18

4.04 Fees

4.040 The fees for certificate of mailing service are set forth in Rate Schedule SS–4.

CLASSIFICATION SCHEDULE SS–5—CERTIFIED MAIL

5.01 Definition

5.010 Certified mail service is a service that provides a mailing receipt to the sender and a record of delivery at the office of address.

5.02 Description of Service

5.020 Certified mail service is provided for matter mailed under Classification Schedule 100.

5.021 If requested by the mailer, the time of acceptance by the Postal Service will be indicated on the receipt.

5.022 A record of delivery is retained at the office of delivery for a specified period of time.

5.023 If the initial attempt to deliver the mail is not successful, a notice of arrival is left at the mailing address.

5.024 A receipt of mailing may be obtained only if the article is mailed at a post office, branch or station, or given to a rural carrier.

5.025 Additional copies of the original mailing receipt may be obtained by the mailer.

5.03 Deposit of Mail

5.030 Certified mail must be deposited in a manner specified by the Postal Service.

5.04 Other Services

5.040 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Restricted delivery	SS–15
b. Return receipt	SS–16
c. Special delivery	SS–17

5.05 Fees

5.050 The fees for certified mail service are set forth in Rate Schedule SS–5.

CLASSIFICATION SCHEDULE SS–6—COLLECT ON DELIVERY SERVICE

6.01 Definition

6.010 Collect on Delivery (C.O.D.) service is a service which allows a mailer to mail an article for which he has not been paid and have the price, the cost of postage and fees, and anticipated or past due charges collected by the Postal Service from the addressee when the article is delivered.

6.02 Description of Service

6.020 C.O.D. service is available for collection of $500 or less upon the delivery of postage prepaid mail sent under the following classification schedules:

	Classification schedule
a. First-class mail	100
b. Third class (single piece only)	300
c. Fourth-class mail	400

6.0201 Service under this schedule is *not* available for:

a. Collection agency purposes;

b. Return of merchandise about which some dissatisfaction has arisen, unless the new addressee has consented in advance to such return;

c. Sending only bills or statements of indebtedness, even though the sender may establish that the addressee has agreed to collection in this manner; however, when the legitimate C.O.D. shipment consisting of merchandise or bill of lading, is being mailed, the balance due on a past or anticipated transaction may be included in the charges on a C.O.D. article, provided the addressee has consented in advance to such action;

d. Parcels containing moving-picture films mailed by exhibitors to moving-picture manufacturers, distributors, or exchanges;

e. Goods which have not been ordered by the addressee.

6.021 C.O.D. service provides the mailer with insurance against loss, rifling and damage to the article as well as failure to receive the amount collected from the addressee.

6.022 A receipt is issued to the mailer for each piece of C.O.D. mail. Additional copies of the original mailing receipt may be obtained by the mailer.

6.023 Delivery of C.O.D. mail will be made in a manner specified by the Postal Service. If a delivery to the mailing address is not attempted or if a delivery attempt is unsuccessful, a notice of arrival will be left at the mailing address.

6.024 The mailer may receive a notice of nondelivery if the piece mailed is endorsed appropriately.

6.025 The mailer may designate a new addressee or alter the C.O.D. charges by submitting the appropriate form and by paying the appropriate fee as set forth in Rate Schedule SS–6.

6.026 A claim for complete loss may be filed by the mailer only. A claim for damage or for partial loss may be filed by either the mailer or addressee.

6.027 C.O.D. indemnity claims must be filed within a specified period of time from the date the article was mailed.

6.03 Requirements of the Mailer

6.030 C.O.D. mail must be identified as C.O.D. mail.

6.04 Deposit of Mail

6.040 C.O.D. mail must be deposited in a manner specified by the Postal Service.

6.05 Forwarding and Return

6.050 A mailer of C.O.D. mail guarantees to pay any return postage, unless otherwise specified on the piece mailed.

6.051 For C.O.D. mail sent as third- or fourth-class mail, postage at the applicable rate will be charged to the addressee:

a. When an addressee, entitled to delivery to the mailing address under Postal Service regulations, requests delivery of C.O.D. mail which was refused when first offered for delivery;

b. For each delivery attempt, to an addressee entitled to delivery to the mailing address under Postal Service regulations, after the second such attempt.

6.06 Other Services

6.060 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fee:

	Classification schedule
a. Registered mail, if sent as first class	SS–14
b. Restricted delivery	SS–15
c. Special delivery	SS–17
d. Special handling	SS–18

6.07 Fees

6.070 Fees for C.O.D. service are set forth in Rate Schedule SS–6.

Editor's Note: Former Classification Schedule SS–7, which provided for a fee for dead mail return service, has been deleted. *See* Docket No. R84–1. For the Postal Service's regulations dealing with dead mail, see DMM § 159.5.

CLASSIFICATION SCHEDULE SS–8—DOMESTIC POSTAL MONEY ORDERS

8.01 Definition

8.010 Money order service is a service that provides the customer with an instrument for payment of a specified sum of money.

8.02 Description of Service

8.020 The maximum value for which a domestic postal money order may be purchased is $500. There is no limit on the number of money orders which may be purchased at one time, except that the Postal Service may impose temporary restrictions.

8.021 A receipt of purchase is provided at no additional cost.

8.022 The Postal Service will replace money orders that are spoiled or incorrectly prepared, regardless of who caused the error, without charge *if replaced on the date originally issued.*

8.0221 If a replacement money order is issued *after the date of original issue* because the original was spoiled or incorrectly prepared, the applicable money order fee may be collected from the customer.

8.023 Inquiries and/or claims may be filed by the purchaser, payee, or endorsee.

8.03 Fees

8.030 The fees for domestic postal money orders are set forth in Rate Schedule SS–8.

CLASSIFICATION SCHEDULE SS–9—INSURED MAIL

9.01 Definition

9.010 Insured mail service is a service that provides the mailer with indemnity for loss of, rifling of, or damage to items sent under this classification schedule.

9.02 Description of Service

9.020 The maximum liability of the Postal Service under this schedule is $500.

9.021 Insured mail service is available for mail sent under the following classification schedules:

	Classification schedule
a. First-class mail, if containing matter which may be mailed as third- or fourth-class mail	100
b. Third class (single piece only)	300
c. Fourth-class	400

9.022 This service is not available for matter offered for sale, addressed to prospective purchasers who have not ordered or authorized their sending. If such matter is received in the mail, payment will not be made for loss, rifling, or damage.

9.023 The mailer is issued a receipt for each item mailed. For items insured for more than $25, a receipt of delivery is obtained by the Postal Service.

9.024 For items insured for more than $25, a notice of arrival is left at the mailing address when the first attempt at delivery is unsuccessful.

9.025 A claim for complete loss may be filed by the mailer only. A claim for damage or for partial loss may be filed by either the mailer or addressee.

9.026 A claim for damage or loss on a parcel sent merchandise return (SS–20) may only be filed by the purchaser of the insurance.

9.027 Indemnity claims for insured mail must be filed within a specified period of time from the date the article was mailed.

9.028 Additional copies of the original mailing receipt may be obtained by the mailer, upon payment of the applicable fee set forth in Rate Schedule SS–9.

9.03 Deposit of Mail.

9.030 Insured mail must be deposited in a manner specified by the Postal Service.

9.04 Forwarding and Return

9.040 By insuring an item, the mailer guarantees forwarding and return postage unless instructions on the piece mailed indicate that it not be forwarded or returned.

9.041 Mail undeliverable as addressed sent under this schedule will be returned to the sender as specified by the sender or by the Postal Service.

9.05 Other Services

9.050 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Parcel Airlift	SS–13
b. Restricted delivery (for items insured for more than $25)	SS–15
c. Return receipt (for items insured for more than $25)	SS–16
d. Special delivery	SS–17
e. Special handling	SS–18
f. Merchandise return (shippers only)	SS–20

9.06 Fees

9.060 The fees for insured mail service are set forth in Rate Schedule SS–9.

CLASSIFICATION SCHEDULE SS–10—LOCKBOX SERVICE

10.01 Definition

10.010 Lockbox service is a service which provides the customer with a private, locked receptacle for the receipt of his mail during the hours when the lobby of a postal facility is open.

10.02 Description of Service

10.020 The Postal Service may limit the number of lockboxes occupied by any one customer.

10.021 A lockbox holder may request the Postal Service to deliver all mail properly addressed to him through the lockbox. If the lockbox is located at the post office indicated on the piece, it will be transferred without additional charge, in accordance with existing regulations.

10.022 Lockbox service cannot be used when the sole purpose is, by subsequently filing change of address orders, to have mail forwarded or transferred to another address by the Postal Service free of charge.

10.03 Fees

10.030 Fees for lockbox service are set forth in Rate Schedule SS–10.

10.031 In postal facilities primarily serving academic institutions or the students of such institutions, periods of rental and fees for lockboxes are:

Period for box rentals	Fee
95 days or less	½ semi-annual fee.
96 to 140 days	¾ semi-annual fee.
141 to 190 days	Full semi-annual fee.
191 to 230 days	1¼ semi-annual fee.
231 to 270 days	1½ semi-annual fee.
272 days to full year	Full annual fee.

10.032 No refunds will be made for boxes rented under section 10.031. For purposes of this classification schedule SS–10, the full annual fee is twice the amount of the semi-annual fee.

CLASSIFICATION SCHEDULE SS–11—MAILING LIST SERVICES

11.01 Definition

11.010 Mailing list services include:

a. Correction of mailing lists;

b. Change of address information for election boards and registration commissions;

c. ZIP coding of mailing lists; and

d. Arrangement of address cards in the sequence of delivery.

11.0101 Correction of mailing list service provides current information concerning name and address mailing lists or correct information concerning occupant mailing lists.

11.0102 ZIP coding of mailing lists services is a service identifying ZIP code addresses in areas served by multi-ZIP coded postal facilities.

11.02 Description of Service

11.020 Corrections of mailing list service is available only to the following owners of name and address or occupant mailing lists:

a. Members of Congress;

b. Federal agencies;

c. State government departments;

d. Municipalities;

e. Religious organizations;

f. Fraternal organizations;

g. Recognized charitable organizations;

h. Concerns or persons who solicit business by mail;

11.0201 The following corrections will be made to *name and address lists:*

a. Names to which mail cannot be delivered or forwarded will be deleted;

b. Incorrect house, rural, or post office box numbers will be corrected;

c. When permanent forwarding orders are on file for customers who have moved, new addresses including ZIP codes will be furnished;

d. New names will not be added to the list.

11.0202 The following corrections will be made to occupant lists:

a. Numbers representing incorrect or non-existent street addresses will be deleted;

b. Business or rural route addresses will be distinguished if known;

c. Corrected cards or sheets will be grouped by route;

d. Street address numbers will not be added or changed.

11.0203 Corrected lists will be returned to customers at no additional charge.

11.021 Residential change-of-address information is available only to election boards or registration commissions for obtaining, if known to the Postal Service, the current address of an addressee.

11.022 ZIP coding of mailing list service provides that addresses will be sorted to the finest possible ZIP code sortation.

11.0221 Gummed labels, wrappers, envelopes or postal or post cards indicative of one-time use will not be accepted as mailing lists.

11.023 Sequencing of address cards service provides for the removal of incorrect addresses, notation of missing addresses and addition of missing addresses.

11.03 Requirements of Customer

11.030 A customer desiring correction of a mailing list or arrangement of address cards in sequence of carrier delivery must submit the list or cards as prescribed by regulation.

11.04 Fees

11.040 The fees for mailing list services are set forth in Rate Schedules SS–11a, SS–11b, SS–11c and SS–11d.

CLASSIFICATION SCHEDULE SS–12—ON-SITE METER SETTING

12.01 Definition

12.010 On-site meter setting service is a service whereby the Postal Service will service a postage meter at the mailer's or meter manufacturer's premises.

12.02 Description of Service

12.020 On-site meter setting service is available on a scheduled basis, except that meter setting may be done on an emergency basis for those customers enrolled in the scheduled on-site meter setting program.

12.03 Fees

12.030 The fees for on-site meter setting service are set forth in Rate Schedule SS–12.

CLASSIFICATION SCHEDULE SS–31—PARCEL AIRLIFT (PAL)

13.01 Definition

13.010 Parcel airlift service is a service that provides for air transportation of parcels on a space available basis to or from military post offices outside the contiguous 48 states.

13.02 Description of Service

13.020 Parcel airlift service is available for mail sent under the following classification schedules:

	Classification schedule
a. Third-class mail	300
b. Fourth-class mail	400

13.03 Physical Limitations

13.030 The minimum physical limitations established for the mail sent under the classification schedule for which postage is paid apply to parcel airlift mail. In no instance may the parcel exceed 38 pounds in weight, or 60 inches in length and girth combined.

13.04 Requirements of the Mailer

13.040 Mail sent under this schedule must be endorsed as prescribed by regulation.

13.05 Deposit of Mail

13.050 PAL mail must be deposited in a manner specified by the Postal Service.

13.06 Forwarding and Return

13.060 PAL mail sent for delivery outside the contiguous 48 states is forwarded as set forth in section 1000.03 of the General Terms and Conditions. PAL mail sent for delivery within the contiguous 48 states is forwarded or returned as set forth in sections 300.07 and 400.07 as appropriate.

13.07 Other Services

13.070 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Certificate of mailing	SS–4
b. Insured mail	SS–9
c. Restricted delivery (if insured for more than $25)	SS–15
d. Return receipt (if insured for more than $25)	SS–16
e. Special delivery (if mailed for delivery within the 48 contiguous states)	SS–17
f. Special handling	SS–18

13.08 Fees

13.080 The fees for parcel airlift service are set forth in Rate Schedule SS–13.

CLASSIFICATION SCHEDULE SS–14—REGISTERED MAIL

14.01 Definition

14.010 Registered mail is a service which provides added protection to mail sent under this Domestic Mail Classification Schedule and optional indemnity in case of loss or damage.

14.02 Description of Service

14.020 Registered mail service is available to mailers of prepaid mail sent under Classification Schedule 100 except that Registered mail must meet the minimum requirements for length and width regardless of thickness.

14.021 Registered mail service provides optional insurance up to a maximum of $25,000.

14.022 There is no limit on the value of articles sent under this classification schedule.

14.023 Registered mail service is not available for:

a. All delivery points because of the high security required for registered mail; in addition, not all delivery points will be available for Registry and liability is limited in some geographic areas.

b. Mail of any class sent in combination with first-class mail;

c. Two or more articles tied or fastened together, unless the envelopes are enclosed in the same envelope or container.

14.024 The following services are provided as part of registered mail service at no additional cost to the mailer:

a. A receipt;

b. A record of delivery, retained by the Postal Service for a specified period of time;

c. A notice of arrival will be left at the mailing address if the initial delivery attempt is unsuccessful;

d. When registered mail is undeliverable-as-addressed and cannot be forwarded, a notice of nondelivery is provided.

14.025 A claim for complete loss of insured articles may be filed by the mailer only. A claim for damage or for partial loss of insured articles may be filed by either the mailer or addressee.

14.026 Indemnity claims for registered mail on which optional insurance has been elected must be filed within a specified period of time from the date the article was mailed.

14.027 No indemnity is paid on any matter registered free.

14.03 Deposit of Mail

14.030 Registered mail must be deposited in a manner specified by the Postal Service.

14.04 Service

14.040 Registered mail is provided maximum security.

14.05 Forwarding and Return

14.050 Registered mail is forwarded and returned without additional registry charge.

14.06 Other Services

14.060 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

	Classification schedule
a. Collect on delivery	SS–6
b. Restricted delivery	SS–15
c. Return receipt	SS–16
d. Special delivery	SS–17

14.07 Fees

14.070 The fees for registered mail and related optional indemnity purchase are set forth in Rate Schedule SS–14.

CLASSIFICATION SCHEDULE SS–15—RESTRICTED DELIVERY

15.01 Definition

15.010 Restricted delivery service is a service that provides a means by which a mailer may direct that delivery will be made only to the addressee or to someone authorized by the addressee to receive his mail.

15.02 Description of Service

15.020 This service is available for mail sent under the following classification schedules:

	Classification schedule
a. Certified mail	SS–5
b. C.O.D. mail	SS–6
c. Insured mail if insured for more than $25	SS–9
d. Registered mail	SS–14

15.021 Restricted delivery service is available to the mailer at the time of mailing or after mailing.

15.022 Restricted delivery service is available only to natural persons specified by name.

15.023 A record of delivery will be retained by the Postal Service for a specified period of time.

15.024 Failure to provide restricted delivery service when requested after mailing, due to prior delivery, is not grounds for refund of the fee or communications charges.

15.03 Fees

15.030 The fees for restricted delivery service are set forth in Rate Schedule SS–15.

CLASSIFICATION SCHEDULE SS-16—RETURN RECEIPTS

16.01 Definition

16.010 Return receipt service is a service which provides evidence to the mailer that an article has been received at the delivery address.

16.02 Description of Service

16.020 Return receipt service is available for mail sent under the following classification schedules:

	Classification schedule
a. Certified mail	SS–5
b. C.O.D. mail	SS–6
c. Insured mail if insured for more than $20	SS–9

	Classification schedule
d. Registered mail	SS–14
e. Express mail	SS–16

16.021 Return receipt service is available at the time of mailing or after mailing.

16.0211 Mailers requesting return receipt service at the time of mailing will be provided, as appropriate:

a. The signature of the addressee or his agent and the date delivered, or

b. The signature of the addressee or his agent, the date delivered and the address of delivery.

16.0212 Mailers requesting return receipt service *after mailing* will be provided the date of delivery and the name of the person who signed for the article.

16.022 If the mailer does not receive a return receipt within a specified period of time from the date of mailing, the mailer may request a duplicate return receipt. No fee is charged for a duplicate return receipt.

16.03 Fees

16.030 The fees for return receipt service are set forth in Rate Schedule SS–16.

CLASSIFICATION SCHEDULE SS–17—SPECIAL DELIVERY

17.01 Definition

17.01 Special delivery service is a service that provides for preferential handling in dispatch and transportation, and delivery of mail as soon as practicable after arrival at the addressee's post office.

17.02 Description of Service

17.020 Special delivery service is available for mail sent under the following classification schedules:

	Classification schedule
a. First-class mail	100
b. Second-class mail	200
c. Third-class mail (single piece only)	300
d. Fourth-class mail	400

17.021 Special delivery is made only to addresses where it is known that such delivery can be made.

17.022 Special delivery mail is delivered during prescribed hours in addition to regular carrier delivery hours.

17.023 If delivery cannot be made a notice of arrival is left at the address.

17.03 Requirements of the Mailer

17.030 Mail sent under this classification schedule must be identified as prescribed by regulation.

17.04 Deposit of Mail

17.040 Special delivery mail must be deposited in a manner prescribed by the Postal Service.

17.05 Forwarding and Return

17.050 Special delivery mail which is forwarded or returned does not receive special delivery service unless the special delivery fee has been guaranteed, or if a forwarding order had been given by the addressee at the office of original address in advance of the arrival of the mail.

17.06 Other Services

17.060 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. Certificate of mailing	SS–4
b. Certified mail	SS–5
c. C.O.D. mail	SS–6
d. Insured mail	SS–9
e. Parcel airlift	SS–13
f. Registered mail	SS–14

17.07 Fees

17.070 The fees for special delivery service are set forth in Rate Schedule SS–17.

CLASSIFICATION SCHEDULE SS–18—SPECIAL HANDLING

18.01 Definition

18.010 Special handling service is a service that provides preferential handling to the extent practicable during dispatch and transportation.

18.02 Description of Service

18.020 Special handling service is available for mail sent under the following classification schedules:

	Classification schedule
a. First-class mail	100
b. Third-class (single piece only)	300
c. Fourth-class mail	400

18.021 Special handling (or special delivery) service is mandatory for matter which requires special attention in handling, transportation and delivery.

18.03 Requirements of the Mailer

18.030 Mail sent under this schedule must be identified as prescribed by regulation.

18.04 Deposit of Mail

18.040 Mail sent under this schedule must be deposited in a manner prescribed by the Postal Service.

18.05 Forwarding and Return

18.050 If undeliverable as addressed, special handling mail that is forwarded to the addressee is given special handling without requiring payment of an additional handling fee. However, additional postage at the regular third- or fourth-class rate is collected on delivery.

18.06 Other Services

18.060 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. C.O.D. mail	SS–6
b. Insured mail	SS–9
c. Parcel airlift	SS–13

18.07 Fees

18.070 The fees for special handling service are set forth in Rate Schedule SS–18.

CLASSIFICATION SCHEDULE SS–19—STAMPED ENVELOPES

19.01 Definition

19.010 Plain stamped envelopes and printed stamped envelopes are envelopes with postage embossed thereon offered for sale by the Postal Service.

19.02 Description of Service

19.020 Stamped envelopes are available for:

a. First-class single-piece mail within the first rate increment.

b. Third-class bulk nonprofit mail mailed at the minimum per-piece rate. Such envelopes may be purchased only by authorized nonprofit organizations or associations.

19.021 Printed stamped envelopes may be obtained by special request.

19.03 Fees

19.030 The fees for stamped envelopes are set forth in Rate Schedule SS–19.

CLASSIFICATION SCHEDULE SS–20—MERCHANDISE RETURN

20.01 Definition

20.010 Merchandise return service provides a method whereby a shipper may authorize its customers to return a parcel with the postage paid by the shipper. A shipper is the holder of a merchandise return permit.

20.02 Description of Service

20.020 Merchandise return service is available to all shippers who obtain the necessary permit and who guarantee payment of postage and fees for all returned parcels.

20.021 Merchandise return service is available for the return of any parcel under the following classification schedules.

	Classification schedule
a. First-class mail	100
b. Third-class mail	300
c. Fourth-class mail	400

20.03 Requirements of the Mailer

20.030 Merchandise return labels must be prepared at the shipper's expense to specifications set forth by the Postal Service.

20.031 The shipper must furnish its customer with an appropriate merchandise return label.

20.04 Other Services

20.040 The following services may be purchased in conjunction with Merchandise Return Service:

	Classification schedule
a. Certificate of mailing	SS–4
b. Insured Mail	SS–9

20.041 Only the shipper may purchase insurance service for the merchandise return parcel by indicating the amount of insurance on the merchandise return label before providing it to the customer. The customer who returns a parcel to the shipper under merchandise return service may not purchase insurance.

20.05 Fees

20.050 The fee for the merchandise return service is set forth in Rate Schedule SS–20. This fee is paid by the shipper.

20.06 Authorizations and Licenses

20.060 A permit fee as set forth in Rate Schedule 1000 must be paid once each calendar year by shippers utilizing merchandise return service.

20.061 The merchandise return permit may be cancelled for failure to maintain sufficient funds in a trust account to cover postage and fees on returned parcels or for distributing merchandise return labels that do not conform to Postal Service specifications.

GENERAL TERMS AND CONDITIONS

1000 Delivery of Mail

1000.01 Delivery Services

1000.010 The Postal Service provides the following modes of delivery:

a. Caller service. The fees for caller service are set forth in Rate Schedule SS–3.[*]

b. Carrier delivery service.

c. General delivery.

d. Lockbox service. The fees for lockbox service are set forth in Rate Schedule SS–10.

1000.02 Conditions of Delivery

1000.020 Except as provided in section 1000.021, mail will be delivered as addressed unless the Postal Service is instructed otherwise by the addressee in writing.

1000.021 The addressee may control delivery of his mail. The addressee may refuse to accept a piece of mail at the time it is offered for delivery or after delivery by returning it unopened to the Postal Service except as provided below. The addressee or his representative may read and copy the name of the sender of registered, insured, certified and C.O.D. mail prior to accepting delivery. Upon signing the delivery receipt the piece may not be returned to the Postal Service without the applicable postage and fees affixed.

1000.022 If a signed receipt is required, mail will be delivered to the addressee (or competent member of his family), to persons who customarily receive his mail or to one authorized in writing to receive the addressee's mail.

1000.023 Mail addressed to several persons may be delivered to any one of them.

1000.0231 When two or more persons make conflicting orders for delivery for the same mail, the mail shall be delivered as determined by the Postal Service.

1000.024 Mail may be delivered to a commercial mail receiving agency on behalf of another person. In consideration of delivery of mail to the commercial agent, the addressee and the agent are considered to agree that:

a. No change of address order will be filed with the post office when the agency relationship is terminated;

b. When remailed by the commercial agency, the mail is subject to payment of new postage.

1000.025 Mail addressed to governmental units, private organizations, corporations, unincorporated firms or partnerships, persons at institutions (including but not limited to hospitals and prisons), or persons in the military is delivered as addressed or to an authorized agent.

1000.026 Mail will be held for a specified period of time at the office of address upon request of the addressee, unless the mail:

a. Has contrary retention instructions;

b. Is perishable; or

c. Is registered, C.O.D., insured, or certified for which the normal retention period expires before the end of the specified holding period.

1000.03 Forwarding and Return

1000.030 Forwarding is the transfer of undeliverable-as-addressed mail to an address other than the one originally placed on the mail piece.

1000.031 Return is the delivery of mail to the sender.

1000.032 The provisions of sections 100.07, 200.07, 250.07, 300.07, 400.07, and 500.07 apply to forwarding and return.

1000.033 All post offices will honor change of address orders for a period of time specified by the Postal Service.

1000.034 When mail is forwarded due to Postal Service adjustments (such as, but not limited to, the discontinuance of the post office of original address, establishment of rural carrier service, conversion to city delivery service from rural, readjustment of delivery districts, or renumbering of houses and renaming of streets), it is forwarded without charge for a period of time specified by the Postal Service.

2000 Preparation of Mail

2000.01 Packaging

2000.010 Mail must be packaged so that:

a. The contents will be protected against deterioration or degradation;

b. The contents will not be likely to damage other mail, Postal Service employees or property, or to become loose in transit;

c. The package surface must be able to retain postage indicia and address markings;

d. It is marked by the mailer with a material which is not readily water soluble nor which can be easily rubbed

[*] Editor's Note: These fees can now be found on Rate Schedule SS–10.

off or smeared, and the marking will be sharp and clear.

2000.011 Paper used in the preparation of envelopes may not be of a brilliant color.

2000.012 Envelopes must be prepared with paper strong enough to withstand normal handling.

3000 Postage and Fees

3000.01 Payment of Postage

3000.010 Postage must be fully prepaid on all mail at the time of mailing, except as authorized by law or this Schedule.

3000.0101 Except as authorized by law or this Schedule, mail deposited without prepayment of sufficient postage shall be delivered to the addressee subject to payment of deficient postage, returned to the sender, or otherwise disposed of. Mail deposited without any postage affixed will be returned to the sender without any attempt at delivery.

3000.02 Methods for Paying Postage and Fees

3000.020 Postage for all mail may be prepaid by postage meter, adhesive stamps, or permit imprint, unless otherwise limited by regulation.

3000.021 The following methods of paying postage and fees required prior authorization from the Postal Service:

a. Permit imprint,

b. Postage meter,

c. Precancelled stamps, precancelled envelopes, and mailer's precancelled postmarks.

3000.0211 Fees for authorization to use a permit imprint are set forth in Rate Schedule 1000.

3000.0212 No fee is charged for authorization to use a postage meter. Fees for setting postage meters are set forth in Rate Schedule SS–12.

3000.0213 No fee is charged for authorization to use precancelled stamps, precancelled envelopes or mailer's precancelled postmark.

3000.022 Matter authorized for mailing without prepayment of postage must bear markings identifying the class of mail service. Matter so marked will be billed at the applicable rate of postage set forth in this Schedule. Matter not so marked will be billed at the applicable first-class rate of postage.

3000.023 Fees for special services may be prepaid in any manner appropriate for the class of mail indicated or as otherwise prescribed by regulation.

3000.03 Refund of Postage

3000.030 When postage and special service fees have been paid on mail for which no service is rendered for the postage or fees paid, or collected in excess of the lawful rate, a refund may be made.

3000.0301 There shall be no refund for registered, C.O.D., and insured fees when the article is later withdrawn by the mailer.

3000.031 In cases involving returned articles improperly accepted because of excess size or weight, a refund may be made.

4000 Postal Zones

4000.010 Except as provided in Classification Schedule 500, in the determination of postal zones, the earth is considered to be divided into units of area thirty minutes square, identical with a quarter of the area formed by the intersecting parallels of latitude and meridians of longitude. The distance between these units of area is the basis of the postal zones which are defined as follows:

The local zone applies to mail mailed at any post office for delivery at that office; at any city letter carrier office or at any point within its delivery limits for delivery by carriers from that office; at any office from which a rural route starts for delivery on the same route; and on a rural route for delivery at the office from which the route starts or on any rural route starting from that office.

The first zone includes all territory within the quadrangle of entry in conjunction with every contiguous quadrangle, representing an area having a mean radial distance of approximately 50 miles from the center of a given unit of area. The first zone also applies to mail between two post offices in the same sectional center.

The second zone includes all units of area outside the first zone lying in whole or in part within a radius of approximately 150 miles from the center of a given unit of area.

The third zone includes all units of area outside the second zone lying in whole or in part within a radius of approximately 300 miles from the center of a given unit of area.

The fourth zone includes all units of area outside the third zone lying in whole or in part within a radius approximately 600 miles from the center of a given unit of area.

The fifth zone includes all units of area outside the fourth zone lying in whole or in part within a radius of approximately 1,000 miles from the center of a given unit of area.

The sixth zone includes all units of area outside the fifth zone lying in whole or in part within a radius of approximately 1,400 miles from the center of a given unit of area.

The seventh zone includes all units of area outside the sixth zone lying in whole or in part within a radius of approximately 1,800 miles from the center of a given unit of area.

The eighth zone includes all units of area outside the seventh zone.

4000.011 The distance upon which zones are based shall be measured from the center of the unit of area containing the dispatching sectional center facility or multi-ZIP coded post office not serviced by a sectional center facility. A post office of mailing and a post office of delivery shall have the same zone relationship as their respective sectional center facilities or multi-ZIP coded post offices, but this shall not cause two post offices to be regarded as within the same local zone.

4000.012 Except as provided below, rates according to zone apply for zone-rated mail sent between Postal Service facilities including armed forces post offices, wherever located.

a. The rates of postage for zone-rated mail transported between the United States, the Canal Zone, Puerto Rico or the possessions or territories of the United States, including the Trust Territory of the Pacific Islands, on the one hand, and Army, Air Force and Fleet Post Offices on the other, or among the latter, shall be applicable zone rates for mail between the place of mailing or delivery and the city of the postmaster serving the Army, Air Force or Fleet Post Office concerned, subject to the following exception:

i. The rates of postage for zone-rated mail which is mailed at or addressed to an armed forces post office and which is transported directly to or from armed forces post offices at the expense of the Department of Defense, without transiting any of the 48 contiguous states (including the District of Columbia), shall be the applicable local zone rate; provided, however, that if the distance from the place of mailing to the embarkation point or the distance from the point of debarkation to the place of delivery is greater than the local zone for such mail, postage shall be assessed on the basis of the distance from the place of mailing to the embarkation point or the distance from the point of debarkation to the place of delivery of such mail, as the case may be.

(a) The word "transiting" does not include enroute transfers at coastal gateway cities which are necessary to transport military mail directly between military post offices.

5000 Privacy of Mail

5000.010 Matter not paid as first-class mail or Express Mail rates must be

wrapped or secured in the manner prescribed by the Postal Service so that the contents may be examined. Mailing of sealed items as other than first-class mail or Express Mail is considered consent by the sender to the postal inspection of the contents.

5000.011 Matter mailed as first-class mail or Express Mail shall be treated as mail which is sealed against postal inspection and shall not be opened except as authorized by law.

[illegible] Mailable Matter

6000.010 Mailable matter is any matter which:

a. Is not mailed in contravention of 39 U.S.C. Chapter 30, or of 17 U.S.C. 109; and

b. While in the custody of the Postal Service is not likely to become damaged itself, to damage other pieces of mail, to cause injury to Postal Service employees or to damage Postal Service property;

c. Is not mailed contrary to any special conditions or limitations placed on transportation or movement of certain articles, when imposed under law by the U.S. Department of the Treasury; U.S. Department of Agriculture; U.S. Department of Commerce; U.S. Department of Health and Human Services, U.S. Department of Transportation; and any other Federal department or agency having legal jurisdiction.

6000.011 Not before November 30, 1978,[5] present regulations on the minimum sizes for mail matter shall be expanded to all classes of mail and types of service, and shall be amended to prohibit (1) all items which are less than .007 inches thick, and (2) all items, other than keys and identification devices, which are .25 inch thick or less and (a) are not rectangular, and/or (b) are less than 3.5 inches in width, and/or (c) are less than 5 inches in length.

RATE SCHEDULES

Calculation of Postage

When a rate schedule contains per piece and per pound rates, the postage shall be the sum of the charges produced by those rates.

When a rate schedule contains a minimum-per-piece rate and a pound rate, the postage shall be the greater of the two.

When the computation of postage yields a fraction of a cent in the charge, the next higher whole cent must be paid.

RATE SCHEDULE 100—FIRST-CLASS MAIL

Mail type	Postage rate unit	Rate—Regular (cents)	Rate—Presorted [1] (cents) 5-digit	Rate—Presorted [1] (cents) Carrier Route
Letters	First ounce			
	Each add'l ounce [2]			
Cards	Piece			
ZIP+4 Mail: [3]				
Letters	First ounce			
	Each add'l ounce [2]			
Cards	Piece			
Nonstandard surcharge [4]				

[1] Presorted First-Class Mail must be presorted in a single mailing of at least 500 pieces properly prepared and presorted. The 5-digit presort rate applies only to each piece of a group of ten or more pieces destined for the same 5-digit ZIP code or each piece of a group of 50 or more pieces destined for the same 3-digit ZIP code. The lower carrier route rate applies only to mail presorted to carrier route, with a minimum of 10 pieces per route. A mailing fee of $50 must be paid once each calendar year at each office of mailing by any person who mails presorted First-Class Mail. The fee for mailers allows usage of either or both of these rates.

[2] Rate applies through 12 ounces. Heavier pieces are subject to priority mail rates.

[3] ZIP+4 mail must be properly prepared and submitted in a single mailing of at least 250 pieces, except where the presort minimum of 500 applies. ZIP+4 rates are not available for carrier route presort mail.

[4] Applies to the first ounce only. Not applicable to ZIP+4 mail.

RATE SCHEDULE 103—PRIORITY MAIL [1]

Weight not exceeding (pounds)	L,1,2,3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
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22						
23						

[1] Editor's Note: The Postal Service has amended the Domestic Mail Manual to include the following provision:

127 Minimum Sizes

The following minimum size standards apply to all mailable matter:

a. All mailing pieces must be at least .007 of an inch thick.

b. All mailing pieces (other than keys and identification devices mailed pursuant to 611.4) which are ¼ of an inch thick or less must be:

(1) Rectangular in shape,
(2) At least 3½ inches high, and
(3) At least 5 inches long.

Note: Mailing pieces which do not meet these minimum size standards are prohibited from the mails.

RATE SCHEDULE 103—PRIORITY MAIL [1]—Continued

Weight not exceeding (pounds)	L.1.2.3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
24						
25						
26						
27						
28						
29						
30						
31						
32						
33						
34						
35						
36						
37						
38						
39						
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[1] Exception: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.

RATE SCHEDULE 104—FIRST CLASS: ELECTRONIC COMPUTER ORIGINATED MAIL

	Cents
First printed page	Through postal fiscal year 1991 [in postal fiscal years 1992, 1993 and 1994].[1]
Second printed page	Through postal fiscal year 1991 [in postal fiscal years 1992, 1993 and 1994].[1]
Mailer must have an advance deposit account.	

[1] The underscored phrases between the brackets have been held invalid. *See Governors v. Postal Rate Commission*, 654 F.2d 108 (D.C. Cir. 1981).

RATE SCHEDULE 200—SECOND-CLASS MAIL: REGULAR RATE PUBLICATIONS, OUTSIDE COUNTY

	Postage rate unit	Full rates [1] (cents)
Per pound:		
Nonadvertising portion	Pound	
Advertising portion, zone:		
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Per piece: Less Editorial factor of content [2]		Per each 1 percent editorial.
A—Prepared [3]	Piece	
B—Presorted to 3-digit city/5-digit	Piece	
C—Carrier route presort	Piece	
SCF discount [4]		

[1] Charges for second-class regular rate mail are computed by adding the appropriate per-piece charge, including editorial factor, to the sum of the nonadvertising portion and the advertising portion charge, as applicable.
[2] For postage calculation, multiply the editorial percent content by and subtract from the applicable piece charge.
[3] Presort to 3-digit (other than 3-digit city), States, Mixed States.
[4] Applies to mail destination in the originating SCF area. The discount is subtracted from the applicable piece charge.

Rate Schedule 201—Second-Class Mail: In-County

	Full rate (cents)
Pound-rate matter:	
Per-pound	
Per-piece:	
Presorted to carrier route	
Not presorted to carrier route	

Rate Schedule 202—Second-Class Mail: Publications of Authorized Nonprofit Organizations, Outside County

	Postage rate unit	Full rate [1] (cents)
Per pound:		
Non-advertising portion	Pound	
Advertising portion,[2] zones:		
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Per piece:		
Category A: Prepared i.e. presorted to 3-digits (except 3-digit city), States, mixed States		
Category B: Presorted to 3-digit city/5-digit		
Category C: Carrier route presort		
SCF discount [3]		

[1] Charges for second-class nonprofit mail are computed by adding the per-piece charge to the sum of the nonadvertising portion charge and the advertising portion charge, as applicable.
[2] Not applicable to publication containing 10 percent or less advertising content.
[3] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece charge.

Rate Schedule 203—Second-Class Mail: Classroom Publications, Outside County

	Postage rate unit	Full rate [1] (cents)
Per pound:		
Non-advertising portion	Pound	
Advertising portion, zone:		
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Per piece	Piece	
SCF discount [2]	Piece	

[1] Charges for classroom publications are computed by adding the per-piece charge to the sum of the nonadvertising portion charge and the advertising portion charge, as applicable.
[2] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece charge.

Rate Schedule 204—Second-Class Mail: Science of Agriculture

	Postage rate unit	Full rates [1] (cents)
Per pound:		
Nonadvertising portion	Pound	
Advertising portion, zone:		
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Per piece: Less editorial factor of content [2]		Per each 1 percent editorial
A—Prepared [3]	Piece	
B—Presorted to 3-digit city/5-digit	Piece	
C—Carrier route presort	Piece	
SCF discount [4]		

[1] Charges for second-class Science of Agriculture copies are computed by adding the appropriate per-piece charge to the sum of the non-advertising portion and the advertising portion charges, as applicable.
[2] For postage calculation, multiply the editorial percent content by and subtract from the applicable piece charge.
[3] Presorted to 3-digits (except 3-digit city), States, Mixed States.
[4] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece charge.

Rate Schedule 205—Second-Class Mail: Limited Circulation Publications [1]

	Postage rate unit	Full rates [2] (cents)
Per pound:		
Nonadvertising portion	Pound	
Advertising portion, zone:		
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	

RATE SCHEDULE 205—SECOND-CLASS MAIL: LIMITED CIRCULATION PUBLICATIONS [1]—Continued

	Postage rate unit	Full rates [2] (cents)
5	Pound	
7	Pound	
8	Pound	
Per piece:		
A—Prepared [3]	Piece	
B—Presorted to 3-digit city/5-digit	Piece	
C—Carrier route presort	Piece	
SCF discount [4]	Piece	

[1] Publication mailing fewer than 5,000 copies per issue outside county of publication.
[2] Charges for second-class Limited Circulation copies are computed by adding the appropriate per-piece charge to the sum of the non-advertising portion and the advertising portion charge, as applicable.
[3] Presorted to 3-digits except 3-digit city, States, Mixed States.
[4] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece charge.

RATE SCHEDULE 206—SECOND-CLASS MAIL: LIMITED CIRCULATION SCIENCE OF AGRICULTURE [1]

	Postage rate unit	Full rates [2] (cents)
Per pound:		
Nonadvertising portion	Pound	
Advertising portion zone:		
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Per piece:		
A—Prepared [3]	Piece	
B—Presorted to 3-digit city/5-digit	Piece	
C—Carrier route presort	Piece	
SCF discount [4]	Piece	

[1] Science of Agriculture publications mailing fewer than 5,000 copies per issue outside county of publication.
[2] Charges for second-class Limited Circulation Science of Agriculture copies are computed by adding the appropriate per-piece charge to the sum of the non-advertising portion and the advertising portion charge, as applicable.
[3] Presorted to 3-digits (except 3-digit city), States, Mixed States.
[4] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece charge.

RATE SCHEDULE 207—SECOND-CLASS MAIL: COMMINGLED NONSUBSCRIBER AND NONREQUESTER [1]

	Postage rate unit	Full rates [2] (cents)
Per pound:		
Nonadvertising portion	Pound	
Advertising portion, zones:		
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Per piece: Less editorial factor of content [3]		Per each 1 percent editorial.
A—Prepared [4]	Piece	
B—Presorted to 3-digit city/5-digit	Piece	
C—Carrier route presort	Piece	
SCF discount [5]	Piece	

[1] Includes sample copies in excess of the 10 percent allowance and complimentary copies.
[2] Charges for second-class Non-subscriber and Non-requestor commingled copies are computed by adding the appropriate per-piece charge to the sum of the non-advertising portion and the advertising portion charge, as applicable.
[3] For postage calculation, multiply the editorial percent content by and subtract from the applicable piece charge.
[4] Presorted to 3-digits (except 3-digit city), States, Mixed States.
[5] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece charge.

RATE SCHEDULE 300—THIRD-CLASS MAIL: SINGLE PIECE

	Full rates [1] (cents)
Single piece:	
One ounce	
Two ounces	
Three ounces	
Four ounces	
Five and six ounces	
Each additional 2 ounces	
Nonstandard surcharge [2]	
Keys and identification devices:	
First 2 ounces	
Each additional 2 ounces	

[1] When the postage rate computed at the single piece third-class rate is higher than the rate prescribed in the corresponding fourth-class category for which the piece qualifies, the applicable lower fourth-class rate is charged.
[2] Applies only to pieces weighing 1 ounce or less.

Rate Schedule 301—Third-Class Mail: Regular Bulk

	Full rates (cents)
Regular bulk: [1]	
Minimum per piece:	
Required presortation	
Presorted to five-digits	
Presorted to carrier route	
Pound rate:	
Carrier route pieces	Per pound.
Required presortation: Per pound plus	Per piece.
Presorted to five-digits: Per pound plus	Per piece.

[1] A fee of . must be paid once such calendar year for each bulk mailing permit.

Rate Schedule 302—Third-Class: Nonprofit-Bulk Mail

	Full rates (cents)
Nonprofit bulk: [1]	
Minimum per piece:	
Required presortation	
Presorted to five-digits	
Presorted to carrier route	
Pound rate:	
Carrier route pieces	Per pound.
Required presortation: Per pound plus	Per piece.
Presorted to five-digits: Per pound plus	Per piece.

[1] A fee of must be paid once each calendar year for each bulk mailing permit.

Rate Schedule 400—Fourth-Class Mail: Parcel Post

Weight in pounds	Local	Zone 1-2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
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56								
57								
58								
59								

RATE SCHEDULE 400—FOURTH-CLASS MAIL: PARCEL POST—Continued

Weight in pounds	Local	Zone 1-2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
60								
61								
62								
63								
64								
65								
66								
67								
68								
69								
70								

For intra-BMC parcels, deduct.
For nonmachinable inter-BMC parcels, add.

RATE SCHEDULE 402—FOURTH-CLASS MAIL: SPECIAL AND LIBRARY RATES

	Full rates (cents)
Special:	
First pound:	
Not presorted	
Presorted to 5-digits [1] [2]	
Presorted to BMC [1] [3]	
Each additional pound through 7 pounds	
Each additional pound over 7 pounds	
Library:	
First pound	
Each additional pound through 7 pounds	
Each additional pound over 7 pounds	

[1] A fee of must be paid once each calendar year for each permit.
[2] For mailings of 500 or more pieces properly prepared and presorted to five-digit destination ZIP Codes. (§ 400.331a(1) of the Classification Schedule effective July 6, 1976).
[3] For mailings of 500 or more pieces properly prepared and presorted to Bulk Mail Centers.

RATE SCHEDULE 405—Fourth-Class Mail: Single Piece Bound Printed Matter [1]

[Dollars]

Rates for Pieces weighing up to (pounds)	Local	Zones 1-2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1.5								
2								
2.5								
3								
3.5								
4								
4.5								
5								
6								
7								
8								
9								
10								
Per piece (dollars)								
Per pound (dollars)								

[1] Includes both catalogs and similar bound printed matter (§ 400.41 of the Classification Schedule effective July 6, 1976).

RATE SCHEDULE 406—FOURTH-CLASS MAIL: BULK BOUND PRINTED MATTER [1]

[Dollars]

Zones	Per-piece	Carrier route [2]	Per pound
Local			
1 and 2			
3			
4			
5			
6			
7			
8			

[1] Includes both catalogs and similar bound printed matter.
[2] Applies to mailings of at least 300 pieces presorted to carrier route as prescribed by the Postal Service.

RATE SCHEDULE 500—EXPRESS MAIL

[Same day airport service]

Pounds	Zones 1 and 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9
1								
2								
3								
4								
5								
6								
7								

RATE SCHEDULE 500—EXPRESS MAIL—Continued

[Same day airport service]

Pounds	Zones 1 and 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
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69								
70								

RATE SCHEDULE 501—EXPRESS MAIL

[Custom designed service]

Pounds	Zone 1-2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
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21								
22								
23								
24								
25								
26								
27								
28								
29								
30								

RATE SCHEDULE 501—EXPRESS MAIL—Continued

[Custom designed service]

	Points	Zone 1-2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									
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65									
66									
67									
68									
69									
70									

Add $ for each custom pickup and delivery stop.

RATE SCHEDULE 502—EXPRESS MAIL

[Next day post office-to-post office service]

	Points	Zones 1-2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									

RATE SCHEDULE 502—EXPRESS MAIL—Continued

[Next day post office-to-post office service]

Pounds	Zones 1–2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9
31								
32								
33								
34								
35								
36								
37								
38								
39								
40								
41								
42								
43								
44								
45								
46								
47								
48								
49								
50								
51								
52								
53								
54								
55								
56								
57								
58								
59								
60								
61								
62								
63								
64								
65								
66								
67								
68								
69								
70								

Add $ for each pickup stop.

RATE SCHEDULE 503—EXPRESS MAIL

[Next day post office-to-addressee service]

Pounds	Zones 1–2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
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21								
22								
23								
24								
25								
26								
27								
28								
29								
30								
31								
32								
33								
34								
35								
36								
37								
38								
39								
40								
41								

RATE SCHEDULE 503—EXPRESS MAIL—Continued

[Next day post office-to-addressee service]

Pounds	Zones 1-2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9
42								
43								
44								
45								
46								
47								
48								
49								
[illegible]								
51								
52								
53								
54								
55								
56								
57								
58								
59								
60								
61								
62								
63								
64								
65								
66								
67								
68								
69								
70								

Add $ for each pickup stop.

SCHEDULE SS-1—SPECIAL SERVICES: ADDRESS CORRECTIONS

Description	Fee
Per correction	

SCHEDULE SS-2—BUSINESS REPLY MAIL

Description	Fee
Active business reply advance deposit account: Per piece	
Payment of postage due charges if active business reply mail advance deposit account not used: Per piece	
License to mail business reply mail: Per calendar year	
Accounting fee for active business reply mail advance deposit account: Per calendar year	

SCHEDULE SS-4—SPECIAL SERVICES: CERTIFICATES OF MAILING

Description	Fee (in addition to postage)
Individual pieces:	
Original or duplicate certificate of mailing for individually listed pieces of all classes of ordinary mail	
Firm mailing books	
Bulk pieces:	
Identical pieces of first- and third-class mail paid with ordinary stamps, precanceled stamps or meter stamps:	
Up to 1,000 pieces (1 certificate for total number)	
Each additional 1,000 pieces or fraction	
Duplicate copy	

SCHEDULE SS-5—SPECIAL SERVICES: CERTIFIED MAIL

Description	Fee (in addition to postage)
Per piece	

SCHEDULE SS-6—SPECIAL SERVICES: COLLECT ON DELIVERY

Amount to be collected, or insurance coverage desired	Fee (in addition to postage)
$0.01 to $25	
$25.01 to $50	
$50.01 to $100	
$100.01 to $200	
$200.01 to $300	
$300.01 to $400	
$400.01 to $500	
Notice of nondelivery of C.O.D.	
Alteration of C.O.D. charges or designation of new address	
Registered C.O.D.	

SCHEDULE SS-7—SPECIAL SERVICES: DEAD LETTER RETURN

Description	Fee
Per piece (First-class letters and parcels only)	Fee eliminated

SCHEDULE SS-8—SPECIAL SERVICES: MONEY ORDERS

Amount	Fee
$0.01 to $25	
$25.01 to $700	
APO-FPO: $0.01 to $700	
Inquiry fee	

SCHEDULE SS-9—SPECIAL SERVICES: INSURED MAIL

Liability	Fee (in addition to postage)
$0.01 to $25	
$25.01 to $50	
$50.01 to $100	
$100.01 to $150	
$150.01 to $200	
$200.01 to $300	
$300.01 to $400	
$400.01 to $500	

SCHEDULES SS-10—SPECIAL SERVICES: LOCKBOX/CALLER SERVICE

[Fee per annual [1] period]

		Cubic inch capacity of lockboxes			
A. Rental rates for lockboxes					
Box size:					
1	To 285	286 [2] to	500 to	1,000 to	2,000 and over
2	do	do	do	do	Do
3	do	do	do	do	Do
4	do	do	do	do	Do
5	do	do	do	do	Do
Group I					
Group II					
Group III					

[1] Fees are paid semi-annually.
[2] Minimum size for the number 2 box is 286 cubic inches.

Description	Fee
B. caller service	
For caller service (semi-annual)	
For each reserved	
Call number (annual)	

SCHEDULE SS-11a—SPECIAL SERVICES: ZIP CODING OF MAILING LISTS

Description	Fee
Per thousand addresses	

SCHEDULE SS-11b—SPECIAL SERVICES: CORRECTION OF MAILING LISTS

Description	Fee
Per submitted address	

SCHEDULE SS-11c—ADDRESS CHANGES FOR ELECTION BOARDS AND REGISTRATION COMMISSIONS

Description	Fee
Per change of address	

SCHEDULE SS-11d—MAILING LIST SERVICES

	Fee (cents)
Corrections associated with arrangement of address cards in sequence of carrier delivery: Per correction	

When rural routes have been consolidated or changed to another post office, no charge will be made for correction if the list contains only names of persons residing on the route or routes involved.

SCHEDULE SS-12—SPECIAL SERVICES: METER SETTING ON SITE

Description	Fee
Meter company adjustments:	
All other meter settings:	
First meter	
By appointment	
Unscheduled request	
Additional meters	

SCHEDULE SS-13—SPECIAL SERVICES: PARCEL AIR LIFT

Description	Fee (in addition to parcel post postage)
Up to 2 pounds	
Over 2 up to 3 pounds	
Over 3 up to 4 pounds	
Over 4 pounds	

SCHEDULE SS-14—SPECIAL SERVICES: REGISTERED MAIL

Value	Fee (in addition to postage)	
	For articles covered by insurance	For articles not covered by insurance
$0.00 to $100		
$100.01 to $500		
$500.01 to $1,000		
$1,000.01 to $2,000		
$2,000.01 to $3,000		
$3,000.01 to $4,000		
$4,000.01 to $5,000		
$5,000.01 to $6,000		
$6,000.01 to $7,000		
$7,000.01 to $8,000		
$8,000.01 to $9,000		
$9,000.01 to $10,000		
$10,000.01 to $11,000		
$11,000.01 to $12,000		
$12,000.01 to $13,000		
$13,000.01 to $14,000		
$14,000.01 to $15,000		
$15,000.01 to $16,000		
$16,000.01 to $17,000		
$17,000.01 to $18,000		
$18,000.01 to $19,000		
$19,000.01 to $20,000		
$20,000.01 to $21,000		
$21,000.01 to $22,000		
$22,000.01 to $23,000		
$23,000.01 to $24,000		
$24,000.01 to $25,000		
$25,000.00 to $1,000,000	$ plus handling charge of $ per $1,000 or fraction over first $25,000.	$ plus handling charge of $ per $1,000 or fraction over first $25,000.
$1,000,000 to $15,000,000	$ plus handling charge of $ per $1,000 or fraction over first $1,000,000.	$ plus handling charge of $ per $1,000 or fraction over first $1,000,000.
Over $15,000,000	Additional charges may be based on consideration of weight, space and value.	

SCHEDULE SS-15—SPECIAL SERVICES: RESTRICTED DELIVERY

Description	Fee (in addition to postage)
Per piece	

SCHEDULE SS-16—SPECIAL SERVICES: RETURN RECEIPTS

Description	Fee (in addition to postage)
Requested at time of mailing:	
Showing to whom (signature) and date delivered	
Showing to whom (signature), date, and address where delivered	
Requested after mailing: Showing to whom and date delivered	

SCHEDULE SS-17—SPECIAL SERVICES: SPECIAL DELIVERY

Class/weight	Fee (in addition to postage)
First-class and priority mail:	
Not more than 2 pounds	
Over 2 but not over 10 pounds	
Over 10 pounds	
All other classes:	
Not more than 2 pounds	
Over 2 but not over 10 pounds	
Over 10 pounds	

SCHEDULE SS-18—SPECIAL SERVICES: SPECIAL HANDLING

Weight	Fee (in addition to postage)
Not more than 10 pounds	
Over 10 pounds	

SCHEDULE SS-19—SPECIAL SERVICES: STAMPED ENVELOPES

Type	Fee
Single sale:	
Regular	
Banded	
Plain:	
No. 6¾ size, box of 500:[1]	
Regular	
Window	
No. 10 size, box of 500:[1]	
Regular	
Window	
Printed:	
No. 6¾ size, box of 500:[1]	
Regular	
Window	
No. 10 size, box of 500:[1]	
Regular	
Window	

[1] Fee for precancelled envelopes is the same.

SCHEDULE SS-20—MERCHANDISE RETURN

Description	Fee
Per transaction	
Shipper must have an advance deposit account	

SCHEDULE 1000—FEES

Description	Dollars
First-class presorted mailing fee	
First-class mailing fee: E-COM annual fee	
Second-class mailing fees:	
A. Original entry	
B. Additional entry (all zones)	
Second-class reentry fee	
Second-class registration for news agents	
Third-class bulk mailing fee	
Fourth-class special mail presorted mailing fee	
Authorization to use permit imprint	
Merchandise return (per facility receiving merchandise return labels)	

[FR Doc. 85-15992 Filed 7-9-85; 8:45 am]

BILLING CODE 7715-01-M

federal register

Wednesday
July 10, 1985

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 785, and 827

Surface Coal Mining and Reclamation Operations: Permanent Regulatory Program; Definitions; Requirements for Permits for Special Categories of Mining; Coal Preparation Plants; Performance Standards; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 785 and 827

Surface Coal Mining and Reclamation Operations: Permanent Regulatory Program; Definitions; Requirements for Permits for Special Categories of Mining; Coal Preparation Plants: Performance Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to amend certain portions of its regulations applicable to coal preparation plants and other surface coal mining operations. This action is being taken as a result of, and in compliance with, the District Court for the District of Columbia's July 6, 1984, ruling in *In Re: Permanent Surface Mining Regulation Litigation II*. The proposed regulations would (1) bring additional coal preparation plants and other surface coal mining operations under the permanent program regulations of the Surface Mining Control and Reclamation Act of 1977 (the Act); (2) allow persons operating coal preparation plants not previously subject to OSM rules a certain period of time to obtain the permit required as a result of the Court ruling; and (3) make certain performance standards immediately applicable to such plants or facilities. These are also being adopted on an interim final basis in this issue of the **Federal Register**.

DATES:

Written Comments

OSM will accept written comments on the proposed rule until 5 p.m. eastern time on September 18, 1985.

Public Hearings

Upon request, OSM will hold public hearings on the proposed rule in Washington, D.C.; Denver, Colorado; and Knoxville, Tennessee at 9:30 a.m. local time on September 11, 1985. Upon request, OSM also will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5:00 p.m. eastern time on August 28, 1985.

ADDRESSES:

Written Comments

Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Avenue NW., Washington, D.C. 20240.

Public Hearings

Department of the Interior Auditorium, 18th and C Street NW., Washington, D.C.; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

Requests for Public Hearings

Submit orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Raymond Aufmuth, Division of Permit and Environmental Analysis, OSM, Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20240; Telephone: (202) 343-1507.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Public Commenting Procedures.
III. Discussion of Proposed Rules.
IV. Procedural Matters.

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act) sets forth general regulatory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSM has by regulation implemented or clarified many of the general requirements of the Act and set performance standards to be achieved by different operations. See 30 CFR Part 700 *et seq.*

On May 5, 1983, OSM promulgated a final rule intended to clarify the coverage under the Act of offsite coal preparation plants and support facilities. 48 FR 20392 (1983). In order to clarify OSM's jurisdiction, OSM adopted definitions of "coal preparation or coal processing," "coal preparation plants," and "support facilities" and discussed these definitions in the preamble to the final rules. In part, the rules adopted in 1983 included a definition of "coal processing or coal preparation" which required that coal be separated from its impurities. The definition of support facilities included proximity as one factor to be considered.

These definitions and their jurisdictional limitations were challenged in Round I of the *In Re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79-1144 (D.D.C. 1984). In a July 6, 1984, opinion in that case, the District Court for the District of Columbia determined that they improperly narrowed the regulatory scope of the Act. Specifically, the Court held that facilities which leach, chemically process, or physically process coal should be regulated as coal preparation plants even if they do not separate coal from its impurities. The Court also held that the Act contemplated a functional test for determining what is a regulated support facility, rather than a limitation which includes an element of proximity. As a result of this ruling, the definitions of "surface coal mining operations," "coal preparation or coal processing," and "coal preparation plant" were remanded to the Secretary. Although the definition of "support facility" was not remanded, the Court's Memorandum Opinion clearly indicated that it also could not stand.

In order to implement the District Court's Order concerning offsite coal preparation plants OSM has decided to adopt an interim final rule, and simultaneously publish the identical rule as a proposal. The interim final rule published in the issue of the **Federal Register** is effective sixty days from today. This notice of proposed rulemaking allows for public comment on the rules before they are adopted in permanent form.

II. Public Commenting Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The times, dates, and addresses for the hearings at

the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Raymond Aufmuth (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5:00 p.m. eastern time on August 28, 1985. If no one has contacted Mr. Aufmuth to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

III. Discussion of Proposed Rules

A. Amendment to Definition of "Surface Coal Mining Operations"

The statutory authority for the regulation of offsite coal preparation plants or facilities originates from the definition of "surface coal mining operations" in section 701(28)(A) of the Act. In relevant part that definition reads as follows:

> "[S]urface coal mining operations" means—
>
> (A) Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and *in situ* distillation or retorting, *leaching or other chemical or physical processing*, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site . . . [emphasis added].

In implementing its May 5, 1983 regulations concerning offsite coal preparation plants, OSM interpreted the above definition to mean that the activities of "leaching" and "other chemical or physical processing" were limited by the phrase "in situ." 48 FR 20395 (1983). In its decision remanding those regulations, the District Court held that such an interpretation was improper. In particular, the court held that the separation of the phrases by commas limited the modification of "in situ" to "distillation or retorting," and that "chemical or physical processing" were not so limited and thus should be considered as surface coal mining operations regardless of being performed in an "in situ" manner.

OSM's 1983 regulatory definition of "surface coal mining operations" at 30 CFR 700.5 tracked its statutory counterpart very closely. In pertinent part it read as follows:

> "[S]urface coal mining operations" means—
>
> (A) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the uses of explosives and blasting;, in situ distillation or retorting, leaching, other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site . . . . 30 CFR 700.5 (1983).

OSM proposes to revise the 1983 definition in accordance with the Court's interpretation of the statutory definition, as discussed in the preceding paragraph. Specifically, the comma between "distillation" and "retorting" would be replaced by an "or" and a semicolon would be placed after the phrase "in situ distillation or retorting." This change would mean that leaching, chemical and physical processing would no longer need to be performed in situ to be within the ambit of the Act. OSM is proposing no other changes to the definition of surface coal mining operations, and solicits no comments on other aspects of the definition.

B. Amendments to Definitions at § 701.5

1. *Coal preparation.* OSM proposes to revise the 1983 definition of the phrase "coal preparation or coal processing" which was formulated on the basis of OSM's previous interpretation of Section 701(28)(A) of the Act. In accordance with the District Court's decision, OSM would adopt a new definition which would include chemical or physical processing or cleaning, concentrating or other processing or preparation of coal. Facilities not involving the separation of coal from its impurities would be included within this definition.

2. *Coal preparation plant.* OSM proposes to revise the definition of the term "coal preparation plant" to track the new definition of "coal preparation" discussed above.

3. *Support facilities.* The Department is proposing to remove the definition of support facilities for several reasons. First, this is being done to implement the July 6, 1984, District Courts decision in *In Re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C. 1984). There the Court ruled that the determination of whether a facility was subject to the Act cannot include an element of proximity. The definition of support facilities adopted in 1983 included an element of proximity. Accordingly, OSM is proposing to remove the definition.

OSM has determined that no definition of support facilities is needed. OSM had none from 1977 to 1983. The 1983 definition was an attempt to more precisely define what things are considered to be "resulting from or incident to" a regulated activity. However, after careful reexamination, and in the light of the Court's opinion the Department has determined that there is no need to amplify the language of the Act with respect to the meaning of activities that are "resulting from or incident to" a regulated activity. Furthermore, since support facilities are subject to the same performance standards as the mine they support, removal of the definition would eliminate possible confusion over whether support facilities are subject to different performance standards.

Removal of the definition of "support facilities" does not mean that OSM will decline to regulate these facilities. All facilities which are resulting from or are incident to a regulated activity are regulated surface coal mining operations under the Act. As such, they are subject to the prohibitions of section 522(e) and applicable performance standards.

C. Amendments to 30 CFR § 785.21; Schedule for Permitting Additional Coal Preparation Plants

Section 785.21 establishes the permitting requirements for coal preparation plants. It requires any person who operates or intends to operate a coal preparation plant outside the permit area for a specific mine, other than those located at the site of use, to obtain a permit. To obtain a permit, an applicant must submit a permit

application which demonstrates that the plant will comply with 30 CFR 827 and must describe the construction, operation, maintenance, and planned removal of such facilities.

The coal preparation plants made subject to OSM's regulations by the District Court's July 6, 1984 opinion and by the amendments proposed herein will be required to obtain a permit. However, OSM recognizes that considerable time may be involved in applying for and obtaining a permit. OSM is therefore proposing to amend Section 785.21 by adding new paragraphs (d) amd (e) to set out a reasonable schedule for the permitting of plants which become subject to the Act by virtue of the District Court for the District of Columbia's July 6, 1984, decision.

New paragraph (d)(1) of § 785.21, would require any person who operates, after eight months from the effective date of the interim final rule published on this date, a coal preparation plant which was not subject to the regulations of 30 CFR Chapter VII prior to July 6, 1984, to apply for a permit no later than two months after the effective date of the interim final rule adopted today.

Proposed paragraph (d)(2) contains an important exception to the requirements of paragraph (d)(1). It would provide that those States with State programs that have statutory or regulatory prohibitions precluding the issuance of permits to facilities covered by paragraph (d)(1) shall notify OSM within 60 days of the effective date of the interim final rule that a program change is necessary. These States must then establish a timetable of the actions to be taken in order to adopt appropriate measures and undertake permitting actions for all of the coal preparation plants located within their jurisdiction. This schedule would be required to be submitted to OSM for approval within 90 days of the effective date of the interim final rule. Operators must apply for permits in accordance with that schedule.

Proposed paragraph (e) of § 785.21 provides that any person operating a coal preparation plant made subject to regulation by the July 6, 1984, decision and not subject to prohibition by 30 CFR § 761.11 would be allowed to continue to operate without a permit until eight months from the effective date of the interim final rule. Such persons will be allowed to operate past the eight month deadline if (1) they have timely filed a permit application pursuant to paragraph (d)(1) or purusant to a State imposed schedule specified in paragraph (d)(2); (2) the regulatory authority has yet to issue or deny the permit, and (3) the person complies with the applicable performance standards of § 827.13 of 30 CFR Chapter VII.

OSM is proposing not to employ the ordinary State program review and notification process of 30 CFR 732.17 to ensure that the changes to the definition of the term "surface coal mining operations" and the permitting schedule in § 785.21 would be implemented. Instead, the requirements of § 785.21(d)(2) would supplant the individual state notification procedure. This is being done because of the ease of notifying all States at once in this notice and to allow States the first opportunity to determine whether their programs already allow for implementation of these rules.

Under the approach adopted, States are required to review their own programs and advise OSM if they need to make program amendments to implement these rules. Because the States are in a better position to interpret their own programs, this will avoid possible misunderstandings and unnecessary interpretative problems.

OSM is not proposing to amend the permitting requirements for coal preparation plants subject to the Act prior to the July 6, 1984 opinion. OSM does not solicit comments on any aspect of the permitting requirement for coal preparation plants except those proposed amendments discussed herein.

D. Amendment to Part 827

Part 827 of 30 CFR sets forth the permanent program performance standards for coal preparation plants not within the permit area for a specific mine. Rather than make the permanent program standards immediately applicable to the coal preparation plants made subject to regulation by the District Court's decision, OSM proposes to amend Part 827 so that interim performance standards will apply to such plants until the permanent program permit for such plant is issued. Such a provision is reasonable because the permanent program performance standards are tied to the issuance of a permit. The interim program performance standards are keyed to direct enforcement not based upon the existence of a permit.

In order to avoid the requirements of § 827.12 which specify the permanent program performance standards applicable to coal preparation plants, OSM proposes to amend that section by placing at its beginning the phrase "Except as provided in § 827.13 of this part." OSM also proposes to adopt new § 827.13(a) which applies performance standards to coal preparation plants not subject to regulation prior to July 6, 1984 on the basis of the regulatory program of the State in which they are located. For example, if such a plant is located in a State in which either interim or permanent program performance standards apply by State statute or regulations, the program standards of that State shall apply, as specified by the terms of the State program, and will be enforced by the State. That is, if the State program applies interim standards until a permit is obtained, interim standards would be used. If the State applies permanent standards to these facilities, those standards would be used. If, however, such a plant is located in a State with a State program which must be amended in order to regulate it, the interim program performance standards in Subchapter B of 30 CFR Chapter VII would apply. Such standards would be enforced by the State unless there was some statutory or regulatory bar to such enforcement in which case OSM would enforce the standards. Although States will apply their interim program performance standards, inspection frequency will be as required under the permanent program. Finally, if such a plant is located in State with a Federal program, it would be subject to the interim performance standards in Subchapter B of 30 CFR which would be enforced by OSM.

Paragraph (b) of new § 827.13 would provide that as soon as persons operating coal preparation plants made subject to regulation as of July 6, 1984 obtain a permit, they would become subject to the permanent program performance standards specified in § 827.12.

OSM proposes no changes to the performance standards for coal preparation plants already subject to the Act, and solicits no comments on those standards.

E. Federal Program Changes

Because the Federal Programs for the States without State programs and the Federal Program for Indian lands operate by cross-referencing the permanent program regulations contained in 30 CFR Chapter VII, the proposed rules discussed herein would also become applicable in the Federal Program States and on Indian lands. The Tennessee Federal program already contains provisions implementing the July 6, 1984, District Court Decision. OSM solicits comments on this proposed amendment to other programs.

IV. Procedural Matters

Federal Paperwork Reduction Act

Information collection requirements in § 785.21 were submitted to the Office of Management and Budget in 1983 under 44 U.S.C. 3507 and assigned clearance number 1029–0040 (§ 785.21). This proposed rule contains no information collection requirements that were not covered by the previous approval.

Executive Order 12291

The Department of the Interior (DOI) has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not a major rule and does not require a regulatory impact analysis. This rule would impose only minor costs to the coal industry since relatively few operations will be affected. Likewise, the impact upon the consumers of coal would be negligible.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* that the proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would impact a relatively small number of coal operators the majority of which would not be small entities.

National Environmental Policy Act

OSM has determined that this proposed rule is covered adequately by the existing environmental impact statement titled "Final Environmental Impact Statement, OSM EIS–1: Supplement," and that the preparation of any additional environmental documents under section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(c), is not required.

List of Subjects

30 CFR Part 700

Coal mining, Environmental protection, Surface coal mining operations.

30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Part 785

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 827

Coal mining, Environmental protection, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 700, 701, 785 and 827 are proposed to be amended as follows:

Dated: June 3, 1985.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Management.

PART 700—GENERAL

1. The authority citation for Part 700 continues to read as follows:

Authority: Secs. 102, 201, 304, 305, 405, 407, 501, 510, 512, 515, 516, 517, 520, 523, 527, 528, 529, 701, 708, 710, 719, Pub. L. 95–87, 91 Stat. 448, 449, 454, 459, 462, 466, 467, 480, 483, 486, 495, 498, 503, 510, 513, 514, 515, 516, 521, 526 (30 U.S.C. 1202, 1211, 1224, 1235, 1237, 1242, 1251, 1260, 1262, 1265, 1266, 1267, 1270, 1273, 1277, 1278, 1279, 1291, 1298, 1309), unless otherwise noted.

2. Section 700.5 is amended by revising paragraph (a) of the definition of "surface coal mining operations" to read as follows:

§ 700.5 Definitions.

* * * * *

Surface coal mining operations means—

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in-situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. *Provided,* these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section 512 of the Act; and, *provided further,* that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

* * * * *

PART 701—PERMANENT REGULATORY PROGRAM

3. The authority citation for Part 701 continues to read as follows:

Authority: Secs. 102, 201, 501–529, 701, 702, 705, 708, 710, 711, 713, 714, 715, 716, 717, 719, Pub. L. 95–87, 91 Stat. 448, 449, 457–515, 516, 519, 520, 521, 523, 524, 525, and 528 (30 U.S.C. 1202, 1211, 1251–1270, 1291, 1295, 1298, 1301, 1304, 1305, 1306, 1307, and 1309), unless otherwise noted.

4. Section 701.5 is amended by removing the definition of "coal preparation or coal processing," by adding a definition of "coal preparation," by revising the defintion of "coal preparation plant" by removing the definition of "support facilities" in alphabetical order as follows:

§ 701.5 Definitions.

* * * * *

Coal preparation means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

Coal preparation plant means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

* * * * *

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

5. The authority citation for Part 785 continues to read as follows:

Authority: Secs. 102, 201, 501(b), 503, 504, 506, 507, 508, 509, 510, 511, 513, 514, 516, 517, 519, 527, 529, 701, and 711, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1256, 1257, 1258, 1259, 1260, 1261, 1263, 1264, 1265, 1266, 1267, 1269, 1277, 1279, 1291, 1301), unless otherwise noted.

6. Section 785.21 is revised by adding paragraphs (d) and (e) to read as follows:

§ 785.21 Coal preparation plants not located within the permit area of a mine.

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this section, any person who operates a coal preparation plant beyond May 10, 1985, that was not subject to this chapter before July 6, 1984 shall apply for a permit no later than November 10, 1985.

(2) (i) States with State programs that have a statutory or regulatory bar precluding issuance of permits to facilities covered by paragraph (d)(1) of

this section shall notify OSM not later than November 7, 1985 and shall establish a schedule for actions necessary to allow the permitting of such facilities as soon as practicable. Not later than December 8, 1985 this schedule shall be submitted to OSM for approval.

(ii) Any person who operates a coal preparation plant that was not subject to this chapter before July 6, 1984, in a State which submits a schedule in accordance with paragraph (d)(2)(i) of this section, shall apply for a permit in accordance with the schedule approved by OSM.

(e) Notwithstanding § 773.11 of this chapter and except as prohibited by § 761.11 of this chapter, any person operating a coal preparation plant that was not subject to this chapter before July 6, 1984, may continue to operate without a permit until May 10, 1985, and may continue to operate beyond that date if (1) a permit application has been timely filed under paragraph (d)(1) of this section or under a State imposed schedule specified in paragraph (d)(2) of this section, (2) the regulatory authority has yet to either issue or deny the permit, and (3) the person complies with the applicable performance standards of § 827.13 of this chapter.

PART 827—PERMANENT PROGRAM PERFORMANCE STANDARDS—COAL PREPARATION PLANTS NOT LOCATED WITHIN THE PERMIT AREA OF A MINE

7. The authority citation for Part 827 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

8. The introductory language of § 827.12 is revised to read as follows:

§ 827.12 Coal preparation plants: Performance standards.

Except is provided in § 827.13 of this part, the construction, operation, maintenance, modification, and removal activities at coal preparation plants shall comply with the following:

* * * * *

9. Section 827.13 is added as follows:

§ 827.13 Coal preparation plants: Interim performance standards.

(a) Persons operating coal preparation plants not subject to this chapter before July 6, 1984, shall comply with the applicable interim or permanent program performance standards of the State in which such plants are located, as follows:

(1) If located in a State in which either interim or permanent program performance standards apply to such plants, the program standards of the State program shall apply;

(2) If located in a State with a State program which must be amended in order to regulate such plants, the interim program performance standards in Subchapter B of this chapter shall apply; and

(3) If located in a State with a Federal program, all such plants shall be subject to the interim program performance standards in Subchapter B of this chapter.

(b) After a person described in paragraph (a) of this section obtains a permit to operate a coal preparation plant, the performance standards specified in § 827.12 shall be applicable to the operation of that plant instead of those specified in paragraph (a) of this section.

[FR Doc. 85–16377 Filed 7–9–85; 8:45 am]
BILLING CODE 4310–05–M

VOL 50 ISS 132 JUL 10 1985 UMI

federal register

Wednesday
July 10, 1985

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 785, and 827

Surface Coal Mining and Reclamation Operations: Permanent Regulatory Programs; Definitions; Requirements for Permits for Special Categories of Mining; Coal Preparation Plants: Performance Standards; Interim Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 785, and 827

Surface Coal Mining and Reclamation Operations: Permanent Regulatory Programs; Definitions; Requirements for Permits for Special Categories of Mining; Coal Preparation Plants: Performance Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Interim final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is amending certain portions of its regulations applicable to coal preparation plants and other offsite facilities. This action is being taken as a result of, and in compliance with, the District Court for the District of Columbia's July 6, 1984, ruling in *In Re: Permanent Surface Mining Regulation Litigation II*. The revised regulations will (1) bring additional coal preparation plants and other surface coal mining operations under the permanent program regulations of the Surface Mining Control and Reclamation Act of 1977 (the Act); (2) allow persons operating coal preparation plants not previously subject to OSM rules a certain period of time to obtain the permit required as a result of the Court ruling; and (3) make certain performance standards immediately applicable to such plants or facilities. The rules adopted on an interim basis by this action are on this same day being proposed by OSM in this issue of the **Federal Register**, so that public comment may be received and considered before OSM promulgates a final rule concerning the regulation of coal preparation plants.

DATES: This rule is effective on September 9, 1985. Public comments on the corresponding proposed rule should be submitted by September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Aufmuth, Division of Permit and Environmental Analysis, OSM, Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; Telephone: (202) 343-1507.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Public Commenting Procedures.
III. Related Issues.
IV. Discussion of Rules Adopted.
V. Procedural Matters.

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act) sets forth general regulatory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSM has by regulation implemented or clarified many of the general requirements of the Act and set performance standards to be achieved by different operations. See 30 CFR Part 700 *et seq.*

On May 5, 1983, OSM promulgated a final rule intended to clarify the coverage under the Act of offsite coal preparation plants and support facilities. 48 FR 20392 (1983). In order to clarify OSM's jurisdiction, OSM adopted new definitions of "coal preparation or coal processing," "coal preparation plant," and "support facilities" and provided new preamble discussions of those rules. In part, the rules adopted in 1983 included a definition of "coal processing or coal preparation" which required that coal be separated from its impurities. The definition of support facilities included proximity as one factor to be considered.

These definitions were challenged in Round I of *In Re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79-1144 (D.D.C. 1984). In a July 6, 1984, opinion in that case, the District Court for the District of Columbia determined that they improperly narrowed the regulatory scope of the Act. Specifically, the Court held that facilities which in any way leach, chemically process, or physically process coal should be regulated as coal preparation plants even if they do not separate coal from its impurities. The Court also held that the Act contemplated a functional test for determining what is a regulated support facility, rather than a limitation which includes an element of proximity. As a result of this ruling, the definitions of "surface coal mining operations," "coal preparation or coal processing," and "coal preparation plant" were remanded to the Secretary. Although the definition of "support facility" was not remanded, the Court's Memorandum Opinion clearly indicated that it also could not stand.

In order to implement the District Court's Order concerning offsite coal preparation plants OSM has decided to adopt an interim final rule, and simultaneously publish the identical rule as a proposal. Adoption of an interim final rule, without notice and comment, is justified in this instance because of the interpretive nature of the rule. The rule clarifies the effects of the July 1984 court ruling on facilities which leach or chemically or physically process coal or which result from or are incident to a regulated facility, and which do not have an element of proximity. Since the court decision, such facilities have been considered surface coal mining operations under the Act. This interim final rule and the accompanying proposal conform OSM's regulations to the Act and explain the applicability of performance standards, enforcement obligations and permitting requirements. This interim final rule is effective sixty days from today. This will ensure that facilities subject to the Act are promptly regulated. The notice of proposed rulemaking allows for public comment on the rules before they are adopted in permanent form.

II. Public Commenting Procedures

These rules are also being proposed today in this issue of the **Federal Register**. OSM welcomes public comments. Comments should be specific where possible and identify problems, if they exist, and offer potential solutions. The rules represent an attempt to formulate a balanced approach to recognizing on-the-ground realities while conforming to the requirements of law. Public participation in this effort is both essential and appreciated. Public commenting procedures are set out in the proposed rule.

III. Related Issues: Application of Prohibitions in Section 522(e)

As a result of the District Court's decision and this rulemaking, additional coal preparation plants and other surface coal mining operations are recognized as coming within the jurisdiction of the Act. Once within the jurisdictional ambit of the Act, such operations that were not in existence August 3, 1977, and that do not have "valid existing rights" are immediately subject to the prohibitions of section 522(e) of the Act. OSM plans to deal with this situation in the following manner. Surface coal mining operations within the areas subject to the § 522(e) prohibitions will be subject to those prohibitions immediately after the effective date of these rules. These facilities will be subject to enforcement actions by the regulatory authority. If OSM receives an inappropriate response to a "Ten Day Notice," OSM intends to issue a Notice of Violation which will provide an abatement period of approximately 30 days. In that time, an operator must obtain necessary waivers, demonstrate valid existing rights, demonstrate that the operation was existing on the date of enactment or

cease operations and initiate reclamation of the site. Any determination of "valid existing rights" made by OSM will be consistent with the March 22, 1985, District Court ruling in *In Re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C. 1985).

IV. Discussion of Rules Adopted

A. Amendment to Definition of "Surface Coal Mining Operations"

The statutory authority for the regulation of offsite coal preparation plants originates from the definition of "surface coal mining operations" in section 701(28)(A) of the Act. In relevant part that definition reads as follows:

> "[S]urface coal mining operations" means—
>
> (A) activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, *leaching or other chemical or physical processing*, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site . . . [emphasis added].

In implementing its May 5, 1983, regulations concerning offsite coal preparation plants, OSM interpreted the above definition to mean that the activities "leaching and other chemical or physical processing" were limited by the phrase "in situ." 48 FR 20395 (1983). In its decision remanding those regulations, the District Court held that such an interpretation was improper. In particular, the Court held that "in situ" modifies only "distillation or retorting," and that "chemical or physical processing" were surface coal mining operations whether performed "in situ" or not.

OSM's 1983 regulatory definition of "surface coal mining operations" at 30 CFR 700.5 tracked its statutory counterpart very closely. In pertinent part it read as follows:

> "[S]urface coal mining operations" means—
>
> (A) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the uses of explosives and blasting; in situ distillation, retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site . . . . 30 CFR 700.5 (1983).

This interim final rule revises the 1983 definition in accordance with the Court's interpretation of the statutory definition, as discussed in the preceding paragraph. Specifically, the comma between distillation and retorting will be replaced by an "or" and a semicolon will be placed after the phase "in situ distillation or retorting." This change will mean that "leaching, chemical or physical processing" will no longer be limited by the phrase "in situ." Thus, these operations will be regulated wherever they occur.

B. Amendments to Definitions at § 701.5

1. *Coal preparation.* This rule will replace the 1983 definition of the phrase "coal preparation or coal processing" which was formulated on the basis of OSM's previous interpretation of section 701(28)(A) of the Act. Under the 1983 rules "coal preparation or coal processing" meant the "cleaning concentrating, or other processing or preparation of coal in order to separate coal from its impurities." In accordance with the District Court's decision, this rule deletes the definition of "coal processing or preparation." In its place, the Department adopts a new definition of the term "coal preparation." Under the new definition "coal preparation" means the chemical or physical processing and the cleaning, concentrating or other processing or preparation of coal. Facilities which do not separate coal from its impurities will be included in this definition.

2. *Coal preparation plant.* The Department is revising the definition of "coal preparation plant" in order to track the revised definition of coal preparation discussed above.

3. *Support facilities.* The Department is suspending the definition of support facilities for several reasons. First, this is being done to implement the July 6, 1984, District Court decision in *In Re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C. 1984). There the Court ruled that the determination of whether a facility was subject to the Act cannot include an element of proximity. The definition of support facilities adopted in 1983 included an element of proximity. Accordingly, OSM is suspending the definition.

OSM has determined that no definition of support facilities is needed. OSM had none from 1977 to 1983. The 1983 definition was an attempt to more precisely define what things are considered to be resulting from or incident to the regulated activity. However, after careful reexamination, and in light of the Courts opinion, the department has determined that there is no need to amplify the language in the Act with respect to the meaning of activities that are "resulting from or incident to" a regulated activity. Furthermore, since support facilities are subject to the same performance standards as the mine they support, deletion of the definition eliminates possible confusion over whether support facilities are subject to different performance standards.

Suspension of the definition of "support facilities" does not mean that OSM will decline to regulate these facilities. All facilities which are resulting from or are incident to a regulated activity are regulated surface coal mining operations under the Act. As such, they are subject to the prohibitions of section 522(e) and applicable performance standards.

C. Amendments to 30 CFR 785.21; Schedule for Permitting Coal Preparation Plants

Section 785.21 establishes the permitting requirements for coal preparation plants. It requires any person who operates or intends to operate a coal preparation plant outside the permit area for a specific mine, other than those located at the site of use, to obtain a permit. To obtain a permit, an applicant must submit a permit application which demonstrates that the plant will comply with 30 CFR Part 827 and must describe the construction, operation, maintenance, and planned removal of such facilities.

The coal preparation plants made subject to OSM's regulations by the District Court's July 6, 1984, opinion and by the amendments contained herein will, of course, be required to obtain a permit. However, OSM recognizes that considerable time may be involved in applying for and obtaining a permit. OSM is therefore amending § 785.21 by adding new paragraphs (d) and (e) to set out a reasonable schedule for the permitting of plants which have only recently become subject to regulation under the Act.

New paragraph (d)(1) of § 785.21, requires any persons who plan to operate, after eight months from the

effective date of this rule, a coal preparation plant which was not subject to the regulations of 30 CFR Chapter VII prior to July 6, 1984, to apply for a permit no later than two months after the effective date of this rule.

New paragraph (d)(2) contains an important exception to the requirements of paragraph (d)(1). It provides that those States with State programs that have statutory or regulatory prohibitions precluding the issuance of permits to facilities covered by paragraph (d)(1) shall notify OSM within 60 days of the effective date of this rule that a program change is necessary. These States must then establish a timetable of the action to be taken in order to adopt appropriate measures and undertake permitting actions for all of the coal preparation plants located within their jurisdiction. The schedule is to be submitted to OSM for approval within 90 days of effective date of this rule. Operators must apply for permits in accordance with that schedule.

New paragraph (e) of § 785.21 provides that any person operating a coal preparation plant made subject to regulation by the July 6, 1984, decision and not subject to prohibition by 30 CFR 761.11 will be allowed to continue to operate without a permit until eight months from the effective date of this rule. Such persons will be allowed to operate past the eighth month deadline if (1) they have timely filed a permit application pursuant to paragraph (d)(1) or pursuant to a State imposed schedule specified in paragraph (d)(2); (2) the regulatory authority has yet to issue or deny the permit, and (3) the person complies with the applicable performance standards of § 827.13 of 30 CFR Chapter VII.

OSM has determined not to employ the ordinary State program review and notification process of 30 CFR 732.17 to ensure that the changes to the definition of the term "surface coal mining operations" and the permitting schedule in § 785.21(d)(2) will be most effectively implemented. This is being done because of the ease of notifying all States at once in this notice and to allow States the first opportunity to determine whether their programs already allow for implementation of these rules.

Under the approach adopted, States are required to review their own programs and advise OSM if they need to make program amendments to implement these rules. Because the States are in a better position to interpret their own programs, this will avoid possible misunderstandings and unnecessary interpretative problems.

D. Amendments to Part 827

Part 827 of 30 CFR sets forth the permanent program performance standards for coal preparation plants not within the permit area for a specific mine. Rather than make the permanent program standards immediately applicable to the coal preparation plants made subject to regulation by the District Court's decision, OSM is amending Part 827 so that interim performance standards will apply to such plants until the permanent program permit for such plant is issued. Such a provision is reasonable because the permanent program performance standards are tied to the issuance of a permit. The interim program performance standards are keyed to direct enforcement not based upon the existence of a permit.

In order to avoid the requirements of § 827.12 which specify the permanent program performance standards applicable to coal preparation plants, OSM is amending that section by placing at its beginning the phrase "Except as provided in § 827.13 of this part." OSM is also adopting new § 827.13(a) which applies performance standards to coal preparation plants not subject to regulation prior to July 6, 1984, on the basis of the regulatory program of the State in which they are located. For example, if such a plant is located in a State in which either interim or permanent program performance standards apply by State statute or regulation, the program standards of that State shall apply, as specified by the terms of the State program, and will be enforced by the State. That is, if the State program applies interim standards until a permit is obtained, interim standards will be used. If the State applies permanent program standards to these facilities, those standards would be used. If, however, such a plant is located in a State with a State program which must be amended in order to regulate it, the interim program performance standards in Subchapter B of 30 CFR Chapter VII will apply. Such standards would be enforced by the State unless there was some statutory or regulatory bar to such enforcement in which case OSM would enforce the standards. Although States will apply this interim program performance standard, inspection frequency will be as required under the permanent program. Finally if such a plant is located in a State with a Federal program, it will be subject to the interim performance standards in Subchapter B of 30 CFR which will be enforced by OSM.

Paragraph (b) of new § 827.13 provides that as soon as persons operating coal preparation plants made subject to regulation as of July 6, 1984, obtain a permit, they will become subject to the permanent program performance standards specified in § 827.12.

IV. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in § 785.21 were submitted to the Office of Management and Budget in 1983 under 44 U.S.C. 3507 and assigned clearance number 1029–0040 (§ 785.21). This interim final rule contains no information collection requirements that were not covered by the previous approval.

Executive Order 12291

The Department of the Interior (DOI) has examined the interim final rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not a major rule and does not require a regulatory impact analysis. This rule will impose only minor costs to the coal industry since relatively few operations will be affected. Likewise, the impact upon the consumers of coal will be negligible.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* that the interim final rule will not have a significant economic impact on a substantial number of small entities. This rule will impact a relatively small number of coal operators the majority of which would not be small entities.

National Enviromental Policy Act

OSM has determined that this interim final rule is covered adequately by the existing environmental impact statement titled "Final Environmental Impact Statement, OSM EIS–1: Supplement," and that the preparation of any additional environmental documents under section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(c), is not required.

List of Subjects

30 CFR Part 700

Coal mining, Environmental protection, Surface coal mining operations.

30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Part 785

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 827

Coal mining, Environmental protection, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 700, 701, 785, and 827 are amended as follows:

Dated: June 3, 1985.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Management.

1. The authority citation for Part 700 continues to read as follows:

Authority: Secs. 102, 201, 304, 405, 407, 412, 501, 510, 512, 515, 516, 517, 520, 523, 527, 528, 529, 701, 708, 710, 719, Pub. L. 95–87, 91 Stat. 448, 449, 454, 462, 466, 467, 480, 483, 486, 495, 498, 503, 510, 513, 514, 515, 516, 521, 526 (30 U.S.C. 1202, 1211, 1224, 1235, 1237, 1242, 1251, 1260, 1262, 1265, 1266, 1267, 1270, 1273, 1278, 1279, 1291, 1298, 1309), unless otherwise noted.

2. Section 700.5 is amended by revising paragraph (a) of the definition of "surface coal mining operations" to read as follows:

§ 700.5 Definitions.

* * * * *

Surface coal mining operations means—

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in-situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. *Provided,* these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section 512 of the act; and *provided further,* that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

* * * * *

PART 701—PERMANENT REGULATORY PROGRAM

3. The authority citation for Part 701 continues to read as follows:

Authority: Secs. 102, 201, 501–529, 701, 705, 708, 710, 711, 713, 714, 715, 716, 717, 719, Pub. L. 95–87, 91 Stat. 448, 449, 467–515, 516, 519, 520, 521, 523, 524, 525, and 526 (30 U.S.C. 1202, 1211, 1251–1279, 1291, 1295, 1298, 1301, 1304, 1305, 1306, 1307, 1309) unless otherwise noted.

4. Section 701.5 is amended by removing the definition of "coal preparation or coal processing," by adding a definition of "coal preparation," by revising the definition of "coal preparation plant" and by suspending the definition of "support facilities", in alphabetical order as follows:

§ 701.5 Definitions.

* * * * *

Coal preparation means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

Coal preparation plant means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds; shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

* * * * *

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

5. The authority citation for Part 785 continues to read as follows:

Authority: Secs. 102, 201, 501(b), 503, 504, 506, 507, 508, 509, 510, 511, 513, 514, 516, 517, 519, 527, 529, 701, 710, and 711, Pub. L. 95–87, 91 Stat. 445, 30 U.S.C. 1202, 1211, 1251, 1253, 1254; 1256, 1257, 1258, 1259, 1260, 1261, 1263, 1264, 1265, 1266, 1267, 1269, 1277, 1279, 1291, 1301), unless otherwise noted.

6. Section 785.21 is revised by adding paragraphs (d) and (e) to read as follows:

§ 785.21 Coal preparation plants not located within the permit area of a mine.

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this section, any person who operates a coal preparation plant beyond May 10, 1985 that was not subject to this chapter before July 6, 1984, shall apply for a permit no later than November 11, 1985.

(2)(i) States with State programs that have a statutory or regulatory bar precluding issuance of permits to facilities covered by paragraph (d)(1) of this section shall notify OSM not later than November 7, 1985 and shall establish a schedule for actions necessary to allow the permitting of such facilities as soon as practicable. Not later than December 9, 1985 this schedule shall be submitted to OSM for approval.

(ii) Any person who operates a coal preparation plant that was not subject to this chapter before July 6, 1984, in a state which submits a schedule in accordance with paragraph (d)(2)(i) of this section shall apply for a permit in accordance with the schedule approved by OSM.

(e) Notwithstanding § 773.11 of this chapter and except as prohibited by § 761.11 of this chapter, any person operating a coal preparation plant that was not subject to this chapter before July 6, 1984, may continue to operate without a permit until May 10, 1985, and may continue to operate beyond that date if (1) a permit application has been timely filed under paragraph (d)(1) of this section or under a State imposed schedule specified in paragraph (d)(2) of this section, (2) the regulatory authority has yet to either issue or deny the permit, and (3) the person complies with the applicable performance standards of Section 827.13 of this chapter.

PART 827—PERMANENT PROGRAM PERFORMANCE STANDARDS—COAL PREPARATION PLANTS NOT LOCATED WITHIN THE PERMIT AREA OF A MINE

7. The authority citation for Part 827 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

8. The introductory language of § 827.12 is revised to read as follows:

§ 827.12 Coal preparation plants: Performance standards.

Except as provided in § 827.13 of this part, the construction, operation, maintenance, modification, reclamation, and removal activities at coal preparation plants shall comply with the following:

* * * * *

9. Section 827.13 is added as follows:

§ 827.13 Coal preparation plants: Interim performance standards.

(a) Persons operating coal preparation plants not subject to this chapter before July 6, 1984, shall comply with the applicable interim or permanent

program performance standards of the State in which such plants are located, as follows:

(1) If located in a State in which either interim or permanent program performance standards apply to such plants, the program standards of the State program shall apply;

(2) If located in a State with a State program which must be amended in order to regulate such plants, the interim program performance standards in Subchapter B of this chapter shall apply; and

(3) If located in a State with a Federal program, all such plants shall be subject to the interim program performance standards in Subchapter B of this chapter.

(b) After a person described in paragraph (a) of this section obtains a permit to operate a coal preparation plant, the performance standards specified in § 827.12 shall be applicable to the operation of that plant instead of those specified in paragraph (a) of this section.

[FR Doc. 85-16370 Filed 7-9-85; 8:45 am]
BILLING CODE 4310-05-M

VOL 50 ISS 132 JL 10 1985 UMI

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Privacy
TDD for
FEDERA
26961-27
27213-27
27409-27
27571-27
27813-27
27927-28
28093-28

Reader Aids

Federal Register

Vol. 50, No. 132

Wednesday, July 10, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
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Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

26961-27212	1
27213-27408	2
27409-27570	3
27571-27812	5
27813-27926	8
27927-28092	9
28093-28190	10

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
11888 (Amended by EO 12524) ... 27409
12523 ... 26963
12524 ... 27409
Proclamations:
5356 ... 26961

5 CFR

771 ... 26965

7 CFR

Ch. IV ... 27927
52 ... 26965
54 ... 27571
226 ... 26972
400 ... 26976
908 ... 27411, 27928
910 ... 27813
916 ... 27813
917 ... 27813
921 ... 27411
930 ... 27213
979 ... 26976
991 ... 26977, 27814
1040 ... 27412
1427 ... 26978
1435 ... 27413
1941 ... 27414
1944 ... 27415
1945 ... 27414, 27416
Proposed Rules:
Ch. IV ... 27971
Ch. X ... 27003
29 ... 27288
51 ... 27004
417 ... 27601
800 ... 28104
910 ... 28105
920 ... 27288
1124 ... 27972

8 CFR

316a ... 27816
Proposed Rules:
103 ... 27289

9 CFR

91 ... 27929
92 ... 27928
318 ... 27573
Proposed Rules:
94 ... 27973

10 CFR

9 ... 27214
Proposed Rules:
50 ... 27006

12 CFR

403 ... 27215
611 ... 27930
617 ... 27931
723 ... 27417
Proposed Rules:
561 ... 27290
563 ... 27290
571 ... 27290

13 CFR

121 ... 27418
302 ... 27419
Proposed Rules:
106 ... 27754

14 CFR

39 ... 26979, 27575, 27576, 27931-27933, 28093, 28094
71 ... 26980, 27934
97 ... 27934
108 ... 27924
Proposed Rules:
39 ... 27009, 27012, 27601, 27602
71 ... 27013, 27014, 27526
75 ... 27014

15 CFR

19 ... 27577
376 ... 27420
399 ... 27420

16 CFR

3 ... 28095
4 ... 28095
13 ... 26981, 27578
453 ... 28062, 28081
703 ... 27936

17 CFR

239 ... 27937
240 ... 27937, 27940
249 ... 27937
270 ... 27937
274 ... 27937
288 ... 26981, 27947
Proposed Rules:
210 ... 27973
240 ... 27829, 27976, 27981, 28106
250 ... 27981
259 ... 27981
270 ... 27982

18 CFR

157 ... 27816
389 ... 27816
Proposed Rules:
35 ... 27604
290 ... 27604

VOL 50 ISS 132 JUL 10 1985 UMI

19 CFR

4 ... 26981
12 ... 27947
142 ... 27816
178 ... 27947

Proposed Rules

162 ... 27829
177 ... 27831

20 CFR

200 ... 27222
626 ... 27818
627 ... 27818
628 ... 27818
629 ... 27818
630 ... 27818

Proposed Rules:

404 ... 27615
416 ... 27615

21 CFR

101 ... 26984
520 ... 27818
558 ... 27421, 27422
1308 ... 28098

Proposal Rules:

170 ... 27294
201 ... 27016
211 ... 27016
357 ... 27552
514 ... 27016
559 ... 27016
561 ... 27452
1002 ... 27024

22 CFR

501 ... 27422

25 CFR

Proposed Rules:

61 ... 27456

26 CFR

1 ... 27222, 27231, 27427
602 ... 27222, 27231

Proposed Rules:

1 ... 27297, 27456, 27457
51 ... 27621

27 CFR

4 ... 27819

28 CFR

2 ... 26101
32 ... 27428

29 CFR

1952 ... 27233

Proposed Rules:

33 ... 27298
1910 ... 27307

30 CFR

700 ... 28186
701 ... 28186
785 ... 28186
827 ... 28186
943 ... 28186

Proposed Rules:

56 ... 27566
57 ... 27566
700 ... 28180
701 ... 28180
785 ... 28180
817 ... 27910
827 ... 28180
913 ... 27025
936 ... 27461
944 ... 28107

31 CFR

51 ... 26987
103 ... 27821
500 ... 27435
505 ... 27435
515 ... 27435
520 ... 27435
535 ... 27435
540 ... 27435

32 CFR

Parts 1-39 ... 26987
199 ... 26988

33 CFR

100 ... 27579
110 ... 26988, 27580
117 ... 26989, 27582
150 ... 26989
165 ... 27583
166 ... 26989

Proposed Rules:

110 ... 27622, 27623
117 ... 27026, 27029, 27624, 27832, 27990, 27991

34 CFR

19 ... 28101

35 CFR

101 ... 26990
103 ... 26990
121 ... 26990

36 CFR

1200 ... 27196
1202 ... 27196
1228 ... 27951
1250 ... 27196

37 CFR

Proposed Rules:

1 ... 27030

38 CFR

3 ... 27584
21 ... 27825

Proposed Rules:

36 ... 27833

39 CFR

10 ... 27827
3001 ... 28144

Proposed Rules:

111 ... 27992
3001 ... 27308

40 CFR

51 ... 27892
52 ... 26991, 27244-27247
60 ... 27248
61 ... 27248
86 ... 27250
600 ... 27172

Proposed Rules:

52 ... 27030, 27462
180 ... 27463, 28108
202 ... 27321
205 ... 27321
600 ... 27188

41 CFR

Chs. 1-49 ... 26987
101-40 ... 27951
105-63 ... 26992
201-1 ... 27142
201-2 ... 27142
201-6 ... 27142
201-11 ... 27142
201-16 ... 27142
201-20 ... 27142
201-21 ... 27142
201-23 ... 27142
201-24 ... 27142
201-26 ... 27142
201-30 ... 27142
201-31 ... 27142
201-32 ... 27142
201-38 ... 27142
201-39 ... 27142
201-40 ... 27142

Proposed Rules:

101-41 ... 27625, 27626

42 CFR

405 ... 27722
412 ... 27208, 27722

Proposed Rules:

23 ... 27465
405 ... 27469
412 ... 27469

43 CFR

Public Land Orders:

5150 Revoked in part by PLO 6607 ... 27827
5179 Revoked in part by PLO 6607 ... 27827
5180 Revoked in part by PLO 6607 ... 27827
5186 Revoked in part by PLO 6607 ... 27827
6607 ... 27827

Proposed Rules:

2800 ... 27322

44 CFR

64 ... 26993, 26994

Proposed Rules:

67 ... 27322
302 ... 27627

45 CFR

1180 ... 27584, 27586

Proposed Rules:

405 ... 27406
412 ... 27406
1620 ... 27326

46 CFR

153 ... 26996

Proposed Rules:

160 ... 27628

47 CFR

0 ... 27952
22 ... 27953
68 ... 27250
73 ... 27287, 27438, 27954
76 ... 27438
81 ... 27968
83 ... 27968

Proposed Rules:

73 ... 27629

48 CFR

7 ... 27560
12 ... 27969
15 ... 27560, 28103
19 ... 27560
33 ... 27969
34 ... 27560
52 ... 27560, 27969
504 ... 26996
533 ... 26996
552 ... 27589
553 ... 27589
570 ... 27589
6101 ... 27969

49 CFR

571 ... 27451

Proposed Rules:

Ch. X ... 27031
571 ... 27032, 27632, 27633
1132 ... 27834

50 CFR

17 ... 26999
215 ... 27914
658 ... 28103
674 ... 28103

Proposed Rules:

17 ... 27637, 27992
20 ... 27638
630 ... 27470
655 ... 28109
662 ... 27470

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 8, 1985

88, 27954
..... 27438
..... 27968
..... 27968

..... 27629

..... 27560
..... 27969
30, 28103
..... 27560
..... 27969
..... 27560
30, 27969
..... 26996
..... 26996
..... 27589
..... 27589
..... 27589
..... 27969

..... 27451

..... 27031
32, 27633
..... 27834

..... 26999
..... 27914
..... 28103
..... 28103

37, 27992
..... 27638
..... 27470
..... 28109
..... 27470

LAWS

which
re
e of the
nclusion
blic

VOL
50

ISS
132

JL
10

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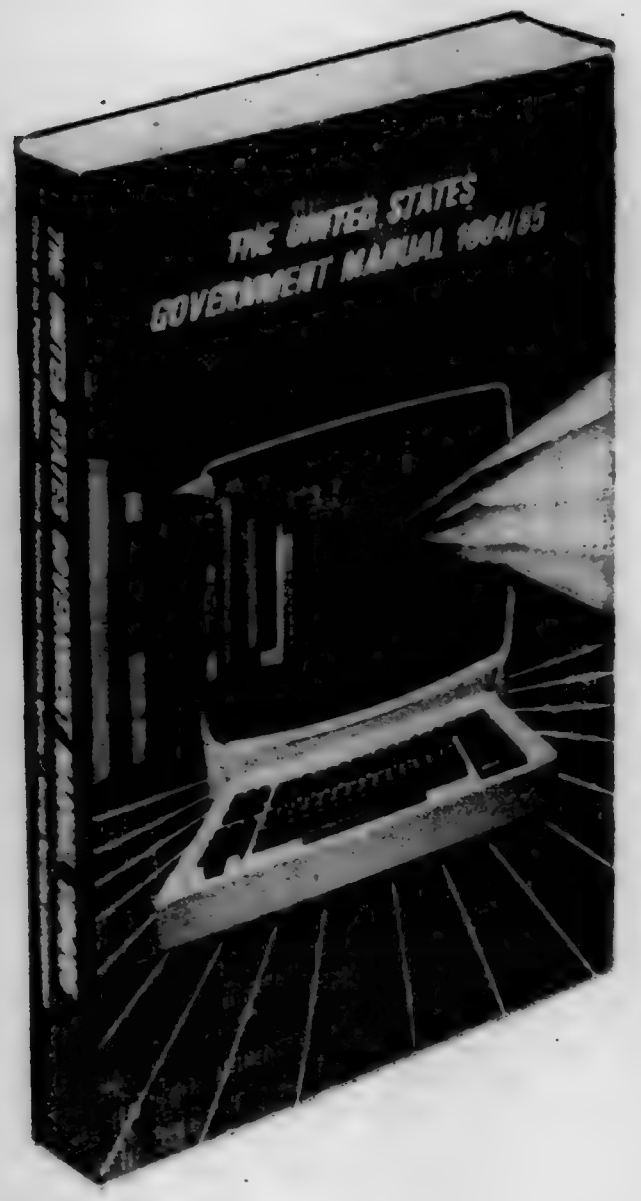
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Vol. 50 No. 133

federal register

Thursday
July 11, 1985

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VOL
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7-11-85
Vol. 50
Pages 2

7-11-85
Vol. 50 No. 133
Pages 28191-28362

federal register

Thursday
July 11, 1985

Selected Subjects

Administrative Practice and Procedure
Justice Department

Advisory Committees
General Services Administration

Air Pollution Control
Environmental Protection Agency

Freedom of Information
Labor Department

Government Procurement
Defense Department

Highway Safety
National Highway Traffic Safety Administration

Low and Moderate Income Housing
Housing and Urban Development Department

Marketing Agreements
Agricultural Marketing Service

Natural Gas
Federal Energy Regulatory Commission

Securities
Securities and Exchange Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

Veterans
Veterans Administration

Water Pollution Control
Environmental Protection Agency

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Con

28210
28244
28260
28247, 28248
28248
28248
.28244
28260
28230
28209
28227
28313

VOL 50 ISS 133 JUL 11 1985 UMI

Contents

Federal Register
Vol. 50, No. 133
Thursday, July 11, 1985

Agricultural Marketing Service
PROPOSED RULES
28210 Celery grown in Florida

Agriculture Department
See Agricultural Marketing Service; Forest Service; Packers and Stockyards Administration; Soil Conservation Service.

Air Force Department
NOTICES
Meetings:
28244 Scientific Advisory Board (2 documents)

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
28260 Peer review appeals system; establishment

Army Department
NOTICES
Meetings:
28247, 28248 Science Board (3 documents)

Military traffic management:
28248 Household goods shipments between selected military installations; allocated traffic testing; inquiry
Senior Executive Service:
28244 Performance Review Boards; membership

Centers for Disease Control
NOTICES
Grants and cooperative agreements:
28260 Toxic waste sites on reproductive outcomes; exposure effects

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service.
NOTICES
28230 Agency information collection activities under OMB review

Defense Department
See also Air Force Department; Army Department; Navy Department.
RULES
Acquisition regulations:
28209 Contractor qualifications; debarment, suspension, and ineligibility
PROPOSED RULES
Acquisition regulations:
28227 Precious metals; two price bidding

Education Department
NOTICES
Grants; availability, etc.:
28313 Rehabilitation long-term training projects; funding priority

Energy Department
See Federal Energy Regulatory Commission.

Environmental Protection Agency
RULES
Water pollution control; national pollutant discharge elimination system State programs:
28202 West Virginia
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
28224 Illinois

Federal Communications Commission
NOTICES
28302 Meetings; Sunshine Act

Federal Deposit Insurance Corporation
NOTICES
28302, 28303 Meetings; Sunshine Act (3 documents)

Federal Election Commission
NOTICES
28303 Meetings; Sunshine Act

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
28249 Illinois

Federal Energy Regulatory Commission
PROPOSED RULES
Natural Gas Policy Act; ceiling prices for high cost natural gas produced from tight formations:
28221 Texas

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
28249 Citicorp.
28249 Claiborne Holding Co., Inc., et al.
Electronic fund transfers:
28250 Book-entry securities transfers; extension of time

Fish and Wildlife Service
NOTICES
Comprehensive conservation plan/environmental statements; availability, etc.:
28289 Tetlin National Wildlife Refuge, AK
28288 Endangered and threatened species permit applications

Food and Drug Administration
NOTICES
Food additive petitions:
28264 Dow Chemical Co.
28265 Rhone-Poulenc, Inc.
Food and human consumption:
28264 Grated cheese; identity standard deviation; market testing permits
Meetings:

28264 Advisory committees, panels, etc.
28267 Multivitamin preparations for parenteral use workshop
Practice and procedure:
28267 Electronic bulletin board; availability for third party redistribution
Radiological health:
28265 Diagnostic nuclear medicine exposure to embryo, fetus, and infant; minimization; availability of draft recommendations

Forest Service
NOTICES
Meetings:
28229 Sawtooth National Forest Grazing Advisory Board

General Services Administration
RULES
28203 Advisory committee management
Federal Information Resources Management Regulation:
28208 Competition in contracting requirements, etc.; implementation; and codification of temporary regulations; correction
28208 Records management programs and management of records; correction
NOTICES
Property management:
28250 Systems furniture acquisition; inquiry

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration; Social Security Administration.

Health Resources and Services Administration
NOTICES
Grants; availability, etc.:
28267 State health planning and development agencies; comprehensive primary care services
Meetings; advisory committees:
28267 August

Housing and Urban Development Department
RULES
Low income housing:
28197 Elderly or handicapped housing; interest rate adjustments
Mortgage and loan insurance programs:
28197 Mortgage insurance endorsement on a proposed or new dwelling in a subdivision or improved area; fee establishment
NOTICES
28270 Agency information collection activities under OMB review
Organization, functions, and authority delegations:
28269 Acting Secretary; order of succession

Indian Affairs Bureau
NOTICES
28271 Agency information collection activities under OMB review

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office.

International Trade Administration
NOTICES
Countervailing duties:
28237 Bottled green olives from Spain
Carbon steel wire rod from—
28232 Portugal
28231 Saudi Arabia
28234 Venezuela
28230 Deformed steel concrete reinforcing bar from Peru

International Trade Commission
NOTICES
28292 Agency information collection activities under OMB review
Import investigations:
28292 Agricultural tillage tools from Brazil
28294 Carbon steel wire rod from East Germany
28294 Double-sided floppy disk drives and components
28293 Forging industry, U.S.; competitive assessment
28295 Hot-rolled carbon steel plate from Romania
28296 Sugar content of articles from Australia

Interstate Commerce Commission
NOTICES
Motor carriers:
28296 Armstrong World Industries, Inc.; declaratory order petition
Railroad services abandonment:
28296 Baltimore & Ohio Railroad Co.

Justice Department
RULES
28199 Justice Programs Office; hearing and appeal procedures

Labor Department
RULES
28306 Freedom of Information Act; implementation

Land Management Bureau
RULES
Public land orders:
28208 Utah, correction
NOTICES
Conveyance and opening of public lands:
28271, 28282 Montana (2 documents)
Exchange of lands:
28273 California
28271 Oregon
Meetings:
28284 Grand Junction District Grazing Advisory Board
28284 Moab District Advisory Council
Oil and gas leases:
28277 New Mexico (2 documents)
Sale and exchange of public lands:
28278 Oregon
Sale of public lands:
28272 Arizona
28285 California

28287 Nevada
28274 New Mexico
28276 North Dakota
28281 Oregon
28277 Utah
28280 Washington
Survey plat filings:
28277 Arizona
28283 Montana
28287 New Mexico
Withdrawal and reservation of lands:
28286 California

Management and Budget Office
NOTICES
28348 Budget rescissions and deferrals; cumulative reports

Mexico and United States, International Boundary and Water Commission
NOTICES
Environmental statements; availability, etc.:
28291 San Diego County, CA; IBWC Interceptors

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
28289 Amoco Production Co.
28290 Kerr-McGee Corp.
28290 ODECO Oil & Gas Co.
28290 TXP Operating Co.

National Credit Union Administration
NOTICES
28303 Meetings; Sunshine Act

National Highway Traffic Safety Administration
RULES
28191 National Driver Register; procedures for transition to new automated system

National Oceanic and Atmospheric Administration
NOTICES
Permits:
28236, 28239 Marine mammals (2 documents)

National Park Service
NOTICES
28291 Columbia Island Marina, George Washington Memorial Parkway; intersection at entrance, proposed changes; meeting and inquiry

National Science Foundation
NOTICES
Committees; establishment, renewals, terminations, etc.:
28296 Oceanographic Facilities Ad Hoc Panel

National Technical Information Service
NOTICES
28239 Inventions, Government-owned; availability for licensing

Navy Department
NOTICES
Environmental statements; availability, etc.:
28248 Port Chicago Highway, Naval Weapons Station, Concord, CA

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
28297 Commonwealth Edison Co.
28299 Consolidated Edison Co. of New York, Inc.
28300 Power Authority of State of New York

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
28303 Meetings; Sunshine Act

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
28229 Western States Auction Sales, Inc., Arizona, et al.

Securities and Exchange Commission
PROPOSED RULES
Securities:
28219 Opinion shopping
28210 Tender offers by issuers

Social Security Administration
NOTICES
Social security; foreign insurance or pension systems:
28269 Dominican Republic
28268 Grenada

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
28229 Lower Bayou Watershed, OK
Watershed projects; deauthorization of funds:
28229 San Felipe Creek Watershed, TX

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission:
28316, 28324 West Virginia (2 documents)
PROPOSED RULES
Permanent program submission:
28222 Kentucky
28343 West Virginia

Synthetic Fuels Corporation
NOTICES
28301 Comprehensive strategy report to Congress; availability

Textile Agreements Implementation Committee
NOTICES
Export visa requirements; certification, etc.:
28240 India
Textile consultation; review of trade:
28242 Malaysia
28243 Portugal

Transportation Department
See also National Highway Traffic Safety Administration.
NOTICES
Aviation proceedings; hearings, etc.:
28301 Arrow Air, Inc.

Veterans Administration
PROPOSED RULES
Adjudication; pensions, compensation dependency, etc.:
28224 Vietnam era veterans; basic eligibility for loan guaranty benefits
NOTICES
28301 Advisory committees, annual reports; availability
Meetings:
28301 Educational Allowances Station Committee

Separate Parts in This Issue

Part II
28306 Department of Labor

Part III
28313 Department of Education

Part IV
28316 Department of the Interior, Office of Surface Mining Reclamation and Enforcement

Part V
28348 Office of Management and Budget

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
967 28210

17 CFR
Proposed Rules:
240 (2 documents) 28210, 28219

18 CFR
Proposed Rules:
271 28221

23 CFR
1325 28191

24 CFR
200 28197
203 28197
885 28197

28 CFR
18 28199

29 CFR
70 28306

30 CFR
948 (2 documents) 28316, 28324
Proposed Rules:
917 28222
948 28343

38 CFR
Proposed Rules:
3 28224

40 CFR
123 28202
Proposed Rules:
52 28224

41 CFR
105-54 28203
201-2 28208
201-22 28208
201-30 28208
201-31 28208
201-32 28208
201-39 28208
201-40 28208
201-45 28208

43 CFR
Public Land Orders:
6389 (Corrected by PLO 6608) 28208
6608 28208

48 CFR
209 28209
Proposed Rules:
208 28227
252 28227

VOL
50
ISS
133
JL
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Rule

This sect
contains
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23 CFR

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AGENCY:
Safety A

ACTION:

SUMMAR
Governm
Driver R
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Rules and Regulations

Federal Register
Vol. 50, No. 133
Thursday, July 11, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1325

[Docket No. 84-02; Notice 2]

Procedures for Transition to New National Driver Register

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: For over 20 years, the Federal Government has operated the National Driver Register (NDR), a voluntary State/Federal cooperative program to assist the States in exchanging information regarding certain driving records. The NDR is designed to address the problem that arises when chronic traffic law violators, after losing their licenses in one State, travel to and receive licenses in another State. The current NDR relies primarily on the U.S. mail to receive information and to respond to inquiries from the States. In 1982, Congress enacted legislation to improve the NDR by converting it to a fully automated system, enabling a State to determine, virtually instantly, whether another State has taken an adverse action against a driver license applicant. This rule establishes the procedures NHTSA will follow for the orderly transition form the current NDR to the new, automated NDR.

EFFECTIVE DATE: This rule becomes effective August 12, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton Hatch, Chief, National Driver Register (NTS–33), 400 Seventh Street SW., Washington, D.C. 20590 or telephone (202) 426–4800.

SUPPLEMENTARY INFORMATION: On October 25, 1982, Congress enacted legislation which called for the establishment of an improved National Driver Register to assist chief driver licensing officials of participating States in exchanging information regarding certain motor vehicle driving records. The current Register was established in 1960 and is now operated by the National Highway Traffic Safety Administration (NHTSA). It is computer assisted, but uses the U.S. mail to send information to and to receive information from State licensing authorities. The October 1982 legislation envisioned a fully-automated system which would provide rapid, computer-processed responses to inquiries. This new system will enable the States to learn more quickly of adverse actions taken by other States and to decide whether to grant a driver's license to an applicant.

On October 1, 1984 (49 FR 38648) NHTSA issued a Notice of Proposed Rulemaking proposing procedures for the orderly transition from the current to the new NDR. The Agency has analyzed the comments received on the proposal and has decided to adopt, with slight modifications, the procedures proposed in the notice. The procedures, as adopted, and the comments on these procedures are discussed below.

Current NDR

States presently participate in the NDR by (1) providing reports of license withdrawals and denials for entry into the NDR file, and (2) submitting names of license applicants to be checked against the NDR file to determine if a report for license withdrawal or denial is in the file from another licensing jurisdiction. State participation is voluntary and currently all States participate in some manner.

Reports of license withdrawals and denials now on file contain descriptive information about the individual (name, date of birth, sex, height, weight, etc.) and details about the adverse action taken (traffic violation for which license was withdrawn or denied, date of action, date of eligibility for license restoration and date restored when applicable).

Transmission of the data on both inquiries and reports is predominantly by mail. State-supplied information is generally processed against the computer based file within 24 hours of receipt. The matching of an inquiry with a record on file produces a "Probable Identification" (no identification is "positive," since the possibility exists that the individual described on the inquiry record may not be the same person identified on the NDR record of withdrawal or denial). The "Probable Identification", which contains the substantive information regarding that individual, is immediately mailed to the inquiring State for appropriate action. This process (from the time of State inquiry to State receipt of a "Probable Identification") generally takes a week to ten days. The response identifies the inquiries for which a match occurred. In addition to allowing inquiries from State licensing agencies, the present NDR accepts requests for driver license checks to be performed for Federal Government agencies. However, any inquiry must, by law, be in connection with the issuance or reissuance of a motor vehicle operator's license.

Need for New NDR

Deficiencies in the current National Driver Register system have been identified over the years by the National Highway Traffic Safety Administration (NHTSA), the States and outside groups. The greatest problem of the current system is the length of time needed to respond to inquiries. Many States now issue a permanent license over-the-counter while the applicant is present. Although these States still send inquiries to the NDR, the results of National Driver Register file checks are received after a license has been issued. Therefore, an applicant can be licensed by one State while his privilege to drive was suspended or revoked in another State. The licensing State does not learn of the adverse driving record for a week or two, at which point it may be difficult to find the licensee to suspend or revoke his license. Additionally, NDR records are not immediately updated by the States and on occasion have contained inaccurate data due to transcription errors.

Aware of these shortcomings, NHTSA conducted a study in 1973 to identify program problems and their extent. The study's primary recommendation was that a rapid response service was needed and that such a capability should be developed. As a result, an effort was undertaken in March 1975, to determine system feasibility and to define and design a rapid response system. A comprehensive survey was made of all licensing jurisdictions which

showed that 41 States desired a rapid response service. Based on the determination that such a system was feasible, a plan was developed in April 1978, for the implementation of a state-of-the-art Federal/State driver record communication system. This system was identified as the "Rapid Response System". This system would have allowed States to obtain information directly from the NDR file in a matter of seconds through use of computer-assisted technology. Although this approach would have solved the response-time problem, it would not have corrected other shortcomings; in particular, data accuracy. A report was submitted to Congress in 1980, pursuant to the Surface Transportation Assistance Act of 1978, which outlined the problems of maintaining current and accurate data in a massive data file. The report recommended a system whereby the NDR serves as a conduit for retrieving information from the State of Record (SOR) and relaying the information immediately, without interception, to the State of Inquiry (SOI). Thus, the NDR would no longer be encumbered with high volume data handling problems, and could rely directly on the State to provide information which would be as accurate and as current as the data in the State file at the time of inquiry. This system would also solve concerns about the privacy implications of the Federal Government retaining detailed records on certain drivers.

New NDR

After consideration of the 1980 study, Congress enacted the NDR Act of 1982 (Pub. L. 97–364) to enhance the accuracy and effectiveness of the NDR.

The system described herein (the Problem Driver Pointer System, or PDPS) complies with the mandates of the NDR Act of 1982 and is similar to the problem driver pointer system which was conceptually defined in the 1980 study.

Briefly stated, the PDPS will operate as follows:

1. A State will ask the NDR to check whether adverse action has been taken in any other State against a driver license applicant.

2. The NDR file will contain identifying information about individuals against whom adverse action has been taken. The information in the NDR on each individual is known as a "record".

3. If the NDR locates a record on the applicant, it will first provide a response to the inquiring State indicating that a record has been found. It will then obtain the adverse action information (Driver History Summary) from the State in which the action occurred and relay it, without interception, to the inquiring State.

4. If the NDR does not locate a record, it will relay a response to the inquiring State that no match was found.

5. States will participate in the new NDR electronically, or until capable of participating electronically, through the U.S. mail.

The implementation of this system, in compliance with the Congressional mandate, will require some significant changes to the NDR. Prior to full implementation, the processes will be pilot-tested among four States (see discussion, *infra*) and changes may be made as a result of what is learned during the test.

A. Electronic Communications

The PDPS will use electronic communication systems (on-line interactive and on-line remote job entry) to replace mail as the principal means of data transmittal. "On-line interactive" means active two-way communication with a computer. It will allow requesters to receive information from the NDR file almost immediately. Remote job entry designates a slower automated response method. Information requests are sent in batches (usually in large numbers and at night). The responses are also assembled in batches. Once the entire group of requests has been acted on, all of the responses are sent back together to the requester.

Interactive service is intended to satisfy the immediate response needs of States which issue permanent licenses over-the-counter and electronically check their own files prior to issuance (20 States currently use this method). The Agency plans to limit interactive service to the processing of non-minimum age applicants requesting licenses for the first time in that jurisdiction. (It is assumed that minimum age applicants are not likely to have records elsewhere and therefore do not justify interactive record checks. Searches of minimum age applicants will be accepted by remote job entry mode during off-peak hours, i.e., at night. If the pilot test demonstrates a need to process these inquiries faster, i.e., interactively, consideration will then be given to that option.)

Remote job entry service is intended to be used (1) by States that do not perform on-line inquiries prior to issuing (either permanent or temporary) licenses while the applicant waits; (2) by States that do not possess the equipment necessary for interactive communications; (3) for those inquiries not needing an immediate response (license renewals and employer requests) and (4) for inquiries regarding minimum age applicants.

B. Shift in Record Custodianship

Under the PDPS, the NDR will no longer contain actual adverse action information. The NDR will contain identifying information (pointer records) to enable it to check *whether* adverse action has been taken against an individual. It will not contain, however, specific information about *why* an individual's name appears in the NDR. Such information will be maintained by the State which instituted the adverse action. When a match occurs with a pointer record on file in the NDR, the NDR will relay the adverse action information from the State of Record to the State of Inquiry. The NDR will not intercept the actual information. This change in record content underlies a shift in record custodianship from the Federal Government to the States and thereby protects individuals' privacy by ensuring that no central location houses all the details about adverse driver license actions taken and recorded in the States.

It was suggested in the comments that the NDR include a mechanism whereby the inquiring State can request a driver license abstract automatically through the NDR. Driver license abstracts contain the *complete* driver history of individuals. Such information goes beyond the scope of the NDR as provided in the Act and, therefore, such a mechanism will not be included.

C. Expanded Categories of Adverse Actions

In accordance with section 205(a) of the Act, the chief driver licensing officials in each participating State shall transmit a report to the NDR regarding any individual:

(1) Who is denied a motor vehicle operator's license by such State for cause;

(2) Whose motor vehicle operator's license is cancelled, revoked, or suspended by such State, for cause; or

(3) Who is convicted under the laws of such State of the following motor vehicle-related offenses or comparable offenses:

(A) Operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance;

(B) A traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways;

(C) Failure to render aid or provide identification when involved in an

accident which results in a fatality or personal injury; or

(D) Perjury or the knowledgeable making of a false affidavit or statement to officials in connection with activities governed by a law or regulation relating to the operation of a motor vehicle.

The NDR Act of 1982, therefore, expands the categories of adverse actions to include convictions for certain traffic offenses even though a license withdrawal or denial did not result. It did not go so far as to authorize the inclusion of an individual's complete driver history.

D. Information Transmitted to NDR File

Any report transmitted to the NDR regarding such individuals shall contain the following data:

(1) The legal name, date of birth (including day, month, and year), sex, (and if the State collects such data) height, weight, color of eyes, and color of hair;

(2) The name of the State transmitting such information;

(3) The social security account number, if used by the reporting State for driver record or motor vehicle license purposes, and the motor vehicle operator's license number of such individual (if that number is different from the operator's social security account number) and

(4) An element which indicates whether the individual currently holds a valid license (license status indicator).

This fourth item, the license status indicator, has been added pursuant to comments received from the National Driver Register Advisory Committee and a number of States.

Inclusion of this element will eliminate needless delays which will otherwise result under the new NDR. For example, in response to a request from a State of Inquiry (SOI), the NDR will, under the new system, indicate within 5–7 seconds whether there is a probable identification (a match).

The SOI will not learn within that time, however, whether this match corresponds to a current denial or withdrawal, a past denial or withdrawal (restored license) or a conviction. While all adverse action records provide useful information for historical purposes, States generally do not refuse to issue a license unless the applicant's license is *currently* denied or withdrawn in another State. The information which will identify the particular adverse action taken against the subject individual in the State of Record (SOR) will be received by the SOI within 5 minutes (if the SOR has interactive communications). Otherwise, receipt will in most cases require one and one half days, and in some instances seven to ten days. Inclusion of a license status indicator will rectify this problem by enabling the SOI to know within 5–7 seconds not only whether there is a match, but also whether the applicant's license is currently denied or withdrawn in another State.

Additionally, a number of States have indicated that, unless the indicator is included as an element to the pointer system, they will take unilateral action to insure that only records concerning individuals currently denied licenses remain in the pointer file by removing all other records from the NDR, thus depriving all users of historical information from these States. The Agency considers this information to be important for it is used by the States in sentencing and licensing decisions regarding individuals who have violated the law.

The indicator will not identify the particular action taken (for example, whether the individual's license has expired, been denied or cancelled, . . .). It will identify only whether the individual has or does not have a current license. By limiting the information in this way, the additional element will not significantly compromise either the accuracy of the NDR or privacy concerns. Detailed records regarding individuals will remain with the States.

In accordance with section 205(c) of the NDR Act of 1982, reports shall be transmitted by the chief driver licensing official to the NDR not later than 31 days after the adverse action information is received by the State motor vehicle department or 6 months after the date on which such State becomes a participating State.

The State of Wyoming suggested in its comments that data should be transmitted within a shorter period of time. These maximum time limits were established in the Act. The Agency will in the pilot test, however, encourage the States to transmit data more promptly and will examine the feasibility of more rapid transmissions.

E. Increased Access to the NDR

The chief driver licensing officials (except for individuals obtaining information on themselves pursuant to the Privacy Act) will be the only persons who have access to the NDR. Other individuals may receive information from the NDR, but requests must be made through these officials. Under the current system, chief driver licensing officials' access is restricted to information to be used for driver licensing purposes only. The NDR Act of 1982 now permits chief driver licensing officials to obtain NDR information for additional purposes and on behalf of other authorized users. The new law provides increased access as follows:

1. For purposes of State driver improvement or highway safety.

The Agency plans to define the specific purposes for which the NDR information may be used under this broadened authority in each pilot State contract (See discussion of pilot test program, *infra*). After completion of the pilot test program, the Agency will evaluate these uses as well as attendant procedures, and will seek comments on final definitions and procedures covering this provision. Until such time, requests pertaining to driver improvement or highway safety will be honored only from pilot States.

2. On behalf of the Chairman of the National Transportation Safety Board (NTSB) and the Administrator of the Federal Highway Administration, for purposes of requesting information regarding any individual who is the subject of any accident investigation conducted by NTSB or the Bureau of Motor Carrier Safety (BMCS).

Procedures have been established under an agreement with District of Columbia driver licensing officials, whereby NTSB and BMCS submit inquiries for transmittal to the District of Columbia for processing.

3. On behalf of a driver or person seeking employment as a driver, with the provision that the information will be transmitted directly to the employer or prospective employer, who shall make that information available to the affected individual. Further, the law stipulates that such information shall not have been entered in the Register more than three years before the date of the request.

Definitions and procedures to be followed by the State licensing officials for transmitting such requests and for sending the NDR responses to the employer, as well as the computer processing steps necessary to ensure compliance with the Act's limitation that the transmitted information be no more than three years old, will be developed and tested as part of the pilot test program. Thus, during the pilot test porgram period, requests pursuant to this section will be accepted only from the pilot States. When these definitions and procedures have been developed, they will be made available to interested parties. After completion of the pilot test program, the Agency will conduct an evaluation and will seek comments on final definitions and procedures covering this provision.

Requests from Federal agencies in connection with the issuance of permits to operate Federally owned vehicles, as are permitted under the current NDR (Pub. L. 89–563, 23 U.S.C. 313, note), will be treated differently under the new NDR. To obtain these records, Federal agencies will be required, like any other employer, to request the employee or prospective employee to arrange to have information provided to them. Until such time as the procedures for this employer access provision have been promulgated, Federal agencies will continue to submit requests directly to the NDR under current arrangement and procedures.

4. On behalf of an individual to:

a. Determine whether the NDR is providing any data regarding the individual or the accuracy of any such data, or

b. Obtain a certified copy of data provided through the NDR regarding the individual.

This information may also be obtained directly by the individual, as it is currently done, through Privacy Act requests sent directly to the NDR.

Procedures to be followed by individuals and State licensing officials pursuant to this provision will be developed and tested as part of the pilot test program. When they have been developed, they will be made available to interested parties. After completion of the pilot test program, the Agency will conduct an evaluation and will seek comments on final definitions and procedures covering this provision.

Pilot Test Program

To evaluate the features that now appear to be essential to the PDPS and to determine the extent to which the PDPS serves the needs of the States, Congress mandated that a pilot test program be conducted, and that, within one year after its conclusion, a report on the program be submitted to Congress. Following an evaluation of the pilot test program, a determination will be made with respect to desirable changes in the system and possible amendments to be sought in the law.

The pilot test program is intended to demonstrate the effectiveness of both aspects of the new NDR: (1) The pointer system and (2) electronic communications. All provisions of the new NDR including broadened uses, increased access and records on conviction data will be incorporated into the pilot test program. The impacts of these provisions including increased demands on State computer systems, State implementation costs and the adequacy of current State licensing procedures will be carefully assessed. The test will, therefore, initiate actual PDPS operations as well as provide a basis for Congressional, State and agency evaluations.

In accordance with section 207 of the Act, four (4) States will be selected to participate in the pilot test program on the following bases:

1. interest in participating in the program;

2. having, at the time of selection, an intrastate, on-line driver licensing system capable of electronic transmissions to the NDR;

3. indication of willingness to participate in a comprehensive mechanical and programmatic evaluation of the system;

4. variance from other selected States with respect to geography and population so that the four pilot States, as a group, will be representative of varying geographical and population characteristics of the Nation;

5. agreement to provide other States with driver record information as required in the system concepts; and

6. variance from other selected States with respect to computer technologies and equipment.

In addition to meeting these statutory bases, to be considered for selection, a State must agree to test all provisions of the new NDR including broadened uses (i.e., driver improvement and highway safety), increased access (i.e., employees, prospective employees, and individuals) and records on conviction data.

The selection of the pilot test program States will be accomplished through a competitive procurement process. A draft Statement of Work, including draft evaluation factors that will be used in the pilot state selection process, was provided to the States for comment. The final Statement of Work and evaluation factors have been included in the Request for Proposals (RFP), and have incorporated, as appropriate, comments received regarding these drafts. The RFP was issued on April 5, 1985.

A number of comments were received in response to the NPRM which relate more directly to the RFP and to aspects of the pilot test program. There were also considered and incorporated, as appropriate, into the pilot test program RFP.

Proposal for Transition Procedures

The transitional period will commence on the effective date of this rule, and will terminate upon the establishment of a fully electronic Register system. The NPRM (49 FR 38648) indicated that the NDR Act of 1982 requires that the transitional period end no later than October 25, 1989. Upon further examination of the relevant sections of the Act and the legislative history, however, the Agency has determined that it was not Congress' intent to end the transitional period by that date. Rather, the Act provides that "the Secretary shall not maintain in the Register any report or information which was compiled under the provisions of Pub. L. 86–660 [substantive records compiled under the current NDR] and was transferred to the Register after . . . the date of establishment of a fully electronic Register system." Section 203(b)(2). In other words, on the date of establishment of a fully electronic Register system, substantive records will no longer be accepted, thus ending the transitional period.

The term "fully electronic Register system" is not defined in either the Act, or the legislative history. It has been defined, in § 1325.3(f) of this Rule, to mean that all States which are participating in the NDR are doing so pursuant to Pub. L. 97–364.

The transitional period will, therefore, include the pilot test program period and the period during which the remaining States are converting to PDPS. During the period, some States will participate under the current NDR (as non-PDPS States) while others will participate under the new NDR (as PDPS States).

As was discussed in detail, *supra*, four (4) States will be selected to participate (as PDPS States) in the pilot test program of the new NDR. These States will be selected through the competitive process, and will participate in both aspects of the new NDR: (1) The pointer system and (2) electronic communications. Both aspects of the new NDR will thereby be initiated.

Once the pilot test program has been assessed, the Agency will promulgate regulations pursuant to section 204(c) of the Act, establishing procedures whereby each remaining State may notify the Agency of its intention to participate in the new NDR. In this way, States may be brought gradually into the PDPS, participating either electronically or, until capable of electronic data transmission, by mail.

During the transitional period, the NDR will continue to provide full service to all States by maintaining a dual system of records.

PDPS States shall transmit to the NDR pointer information pursuant to the new Act. In addition, all States, including PDPS States, shall continue to transmit to the NDR substantive information on adverse actions as described in the current Act. Therefore, for a period of time, PDPS States will transmit both pointer and substantive information.

The Agency does not wish to burden PDPS States with this requirement for an extended period of time. Therefore, after such time as either 40% of the participating States operate under PDPS or the establishment of a fully electronic Register system, whichever occurs first, PDPS States will be required to transmit only pointer records. As a result, when an inquiry from a non-PDPS State matches a record from a PDPS State, the State of Inquiry will be informed merely that an adverse action record exists in a given State. To retrieve the substantive information, the State of Inquiry must request it directly from the State of Record.

At a National Driver Register Advisory Committee (NDRAC) meeting held on November 1 and 2, 1984, the NDRAC indicated that it favored a date-based cutoff. (The transcript of this meeting has been placed in the docket, and may be obtained by interested parties). The Agency considered the Committee's preference. However, it is difficult to predict the number of States that will be participating under PDPS by any given date and either an early or late date would be unfair to the States. If, by a predetermined date, only a few States are under PDPS, the non-PDPS States will be deprived of the full substantive records which would otherwise be provided. Alternatively, if many States have converted to PDPS prior to that date, those States will bear the burden of providing dual records for the benefit of only a few non-PDPS States. The Agency has therefore determined that a percentage-based cutoff is more equitable to all States. No other comments were received regarding this procedure.

The types of records accessible through the new NDR have been broadened to include conviction records. The purposes for which information may be requested and the persons who will have access to such information have also been broadened. These changes will be incorporated into the pilot test program and will be extended to each remaining State when it converts to the new system. In the NPRM, the Agency indicated that conviction records, in pointer format, will be made accessible to all PDPS States of Inquiry, and sought comments regarding the feasibility and desirability of making the conviction records available to all States of Inquiry. Although the comments received generally encouraged the Agency to make these records available to all States, the Agency has decided not to do so. In view of Congress' concerns regarding privacy implications under the current system and since non-PDPS States continue to participate in the NDR under Pub. L. 86-660 which does not authorize the exchange of conviction records, the Agency believes that it would be inappropriate to make conviction records available to such States.

Implementation Schedule

In the National Driver Register Act of 1982, Congress established an implementation schedule for the new NDR. The statutory dates include the following:

1. Design of pilot test program.	Apr. 25, 1984.
2. Implementation of/begin pilot test program.	Oct. 25, 1984.
3. Selection of pilot States	Apr. 25, 1985.
4. Completion of pilot test program.	Oct. 25, 1985.
5. Submit report to Congress:	
a. regarding pilot test of PDPS.	Oct. 25, 1986.
b. regarding level of participation.	Do.

NHTSA requested comments regarding this schedule in the October 1, 1984 Notice of Proposed Rulemaking (NPRM), and a proposed revised schedule was discussed at the November NDRAC meeting.

In response to the NPRM, the State of Washington stated "the implementation schedule identified in the NPRM appears to be overly optimistic". In response to the proposed revised schedule presented at the NDRAC meeting, the Committee recognized difficulties with the statutory schedule, and recommended a revised schedule. (The State of Pennsylvania initially encouraged strict adherence to the statutory schedule but, as a participant on the NDRAC, did not dissent from the Committee's recommendations following the November meeting.)

Based on NDRAC's recommendation, comments from the States and the advice of our technical consultants, NHTSA believes that additional time is needed by the Federal government and the States to bring the pilot test program of the PDPS into full operation. The Agency has initiated contact regarding this issue with appropriate Congressional staff.

The Agency can complete a test program of a portion of the PDPS, called the Rapid Response System (RRS), within the time established for completion of the full PDPS pilot test program. The full PDPS pilot test program will test both aspects of the new NDR: (1) The pointer system, and (2) electronic communications. The RRS will test only the second element: the ability to the NDR, by the use of computer technology, to provide rapid responses to the States.

Upon completion and evaluation of the test program of the RRS, the Agency will consider making this improved service available to all member States. Comments were requested in the NPRM regarding implementation of the RRS. All comments were favorable.

Another interim improvement, which is already in effect, is the Remote Job Entry system (RJE), whereby States can send and receive data over telephone lines. States using this method are able to receive responses to their inquiries in less than 24 hours.

Privacy Considerations

The current NDR (including present and proposed interim improvements such as RJE and RRS) complies with the Federal Privacy Act, as will the PDPS and the transitional NDR.

The PDPS concept presents unique enhancements of data reliability and integrity. The change in custodianship of the data to the States and the use of electronic data transmission is intended to ensure that the NDR data base is more accurate and current. Further, because the size of the (pointer) file is greatly reduced, fewer data will be susceptible to recording errors.

Most NDR data are already in the public domain at the State level, and consequently are not highly sensitive. Therefore, an intensive degree of security is not required to protect individuals' right to privacy. No specialized communication measures appear to be necessary for the on-line portions of the system, particularly since States have strict access controls for their own systems. Nonetheless, a detailed privacy and security plan will be prepared for the electronic NDR and will be implemented as part of the pilot test program. This will include software techniques which will be adapted to maintain security through use of passwords, log-on procedures, etc, with minimal impact on users. Details of this plan appear in the RFP for the pilot test program. Similar system software techniques will be incorporated to safeguard against unauthorized access during the RRS implementation.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive

Order 12291, but is "significant" within the meaning of Department of Transportation regulatory policies and procedures. The Agency is not imposing any mandatory requirements on the States because participation in the NDR will remain voluntary. For States that elect to participate, the Agency anticipates that those States will have to upgrade their computer systems. However, this upgrade may be for purposes broader than their participation in the NDR.

As soon as practicable, the Agency will commence a pilot test program in which: (a) Problems will be identified and corrected, thus enabling the Agency to establish procedures for full implementation of the PDPS, and (b) data and other information will be collected and analyzed for the purpose of assessing various operational and administrative aspects and features of the PDPS. When final decisions concerning the NDR are made by both the Agency and Congress, it will be possible to evaluate adequately the effect which the PDPS system will have upon the States.

Because there will be virtually no economic effect from this rule, a full regulatory evaluation is not necessary. As discussed above, State participation in the NDR is voluntary. Although States choosing to participate may have to expend funds to upgrade their computer systems, the upgrade may be for purposes broader than their participation in the NDR.

In accordance with the Regulatory Flexibility Act, the Agency has evaluated the effects of this rule on small entities. Based on that evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. The procedures set in the rule only affect State computer systems and will not affect small business entities or small governmental units.

The Agency has also analyzed this action for the purpose of the National Environmental Policy Act. The Agency has determined that this action will not have any effect on the human environment.

List of Subjects in 23 CFR Part 1325

Driver licensing, Driver records, Highway safety, National driver register.

In accordance with the foregoing, a new Part 1325 is added to Title 23 of the Code of Federal Regulations as set forth below.

PART 1325—TRANSITION PROCEDURES FROM CURRENT TO NEW NATIONAL DRIVER REGISTER

Sec.
1325.1 Scope.
1325.2 Purpose.
1325.3 Definitions.
1325.4 General transition procedures.

Authority: Pub. L. 97–364, 96 Stat. 1740 (23 U.S.C. 401 note).

§ 1325.1 Scope.

This rule provides procedures, in accordance with Section 203(c)(1) of the National Driver Register Act of 1982 (Pub. L. 97–364), for the orderly transition from the system regarding the motor vehicle driving records of individuals as provided in Pub. L. 86–660 as amended (current NDR), to the system established in Pub. L. 97–364 (new NDR).

§ 1352.2 Purpose.

The purpose of this rule is to provide States with information concerning the procedures which the National Highway Traffic Safety Administration plans to follow to implement the new National Driver Register. This will ensure that participating States understand their rights and obligations during the transitional period which will commence on the effective date of this rule and will terminate upon the establishment of a fully electronic Register system.

§ 1325.3 Definitions.

(a) *Problem Driver Pointer System (PDPS)*—system whereby the NDR serves as a conduit for retrieving information from the State which took adverse action against a driver (State of Record) and relaying that information, without interception, to the State requesting the information (State of Inquiry).

(b) *Pointer Record*—A report containing the following data:

(1) The legal name, date of birth (including day, month, and year), sex, (and if the State collects such data) height, weight, color of eyes, and color of hair;

(2) The name of the State transmitting such information;

(3) The social security account number, if used by the reporting State for driver record or motor vehicle license purposes, and the motor vehicle operator's license number of such individual (if that number is different from the operator's social security account number) and

(4) An element which indicates whether the individual currently holds a valid license (license status indicator).

(c) *PDPS State*—A State which participates in the pilot test program or, upon completion of the pilot test program, in the PDPS, by submitting pointer records for inclusion in the NDR file and by providing information to States of Inquiry as a State of Record.

(d) *Non-PDPS State*—A State which operates under the current NDP by submitting complete substantive adverse driver licensing data to the NDR.

(e) *Match*—When the personal identifying information in an inquiry compares with the personal identifying information on a record in the NDR file such that there is a high probability that the individual identified on both records is the same person.

(f) *Fully Electronic Register System*—NDR system in which all States that are participating, are doing so pursuant to Pub. L. 97–364.

§ 1325.4 General transition procedures.

(a) *Data To Be Transmitted to NDR by PDPS States.* (1) The chief driver licensing official in each PDPS State shall transmit to the NDR a pointer record regarding any individual against whom adverse action, as described in section 205 of Pub. L. 97–364, has been taken.

(2) The chief driver licensing official in each PDPS State shall also transmit to the NDR the full substantive adverse action data on any individual against whom adverse action, as described in Pub. L. 86–660 as amended by Title IV of Pub. L. 89–563, 80 Stat. 730 (23 U.S.C. 313 note), has been taken, until such time as either 40% of the participating States operate under PDPS or the establishment of a fully electronic Register system, whichever occurs first.

(b) *Data to be Transmitted to NDR by Non-PDPS States.* The chief driver licensing official in each non-PDPS State shall transmit to the NDR the full substantive adverse action data on any individual against whom adverse action, as described in Pub. L. 86–660 as amended, has been taken.

(c) *Data to be Received by PDPS States.* (1) When a match occurs with a pointer record on file from a PDPS State, the PDPS State of Inquiry will receive the pointer record response from the NDR and the adverse action information from the State of Record.

(2) When a match occurs with a record on file from a non-PDPS State, the PDPS State of Inquiry will receive the full substantive record from the NDR.

(3) When no match occurs, the PDPS State of Inquiry will receive from the NDR a response that no match was

found to each inquiry that is either transmitted interactively or on behalf of a party other than the State, and no response to other inquiries.

(d) *Data to be Received by Non-PDPS States.* (1) When a match occurs with a record on file from a non-PDPS State, the non-PDPS State of Inquiry will receive the full substantive record from the NDR.

(2) When a match occurs with a record on file from a PDPS State, the non-PDPS State of Inquiry will receive the full substantive record from the NDR until such time as described in § 1325.4(a)(2), after which non-PDPS States of Inquiry will receive from the NDR only pointer records.

(3) When no match occurs, the non-PDPS State of Inquiry will receive from the NDR a response that no match was found to each inquiry that is either transmitted interactively or on behalf of a party other than the State, and no response to other inquiries.

(e) *Accessibility of NDR Information.* (1) All requests for information from the NDR must be made by State chief driver licensing officials or Federal departments or agencies in connection with the issuance of licenses or permits to operate Federally owned vehicles.

(2) All requests for information made by State chief driver licensing officials must pertain to driver licensing, be made on behalf of the Chairman of the National Transportation Safety Board or the Administrator of the Federal Highway Administration for purposes of requesting information regarding an individual who is the subject of an accident investigation conducted by the NTSB or Bureau of Motor Carrier Safety, or be made by a PDPS State. Requests from PDPS States may also be for the purposes of State driver improvement or highway safety, or on behalf of an individual who is employed as a driver of a motor vehicle, who seeks employment as a driver of a motor vehicle, to determine whether the Register is providing any data regarding the individual, to determine the accuracy of an such data or to obtain a certified copy of data provided through the Register regarding the individual.

Issued on: July 8, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-16508 Filed 7-8-85; 4:54 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200 and 203

[Docket No. N-85-1533; FR-2106]

Mutual Mortgage Insurance and Rehabilitation Loans; Mortgage Insurance Endorsement on a Proposed or New Dwelling in a Subdivision or Improved Area

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of the Establishment of the Environmental Review Processing Fee.

SUMMARY: This Notice establishes the application fee to be paid to HUD for processing an Application for Environmental Review. The authority to establish this fee is included in HUD regulations at 24 CFR 203.12(g) published in the **Federal Register** on May 14, 1985.

FOR FURTHER INFORMATION CONTACT: Alan J. Kappeler, Director, Office of Insured Single Family Housing, Department of Housing and Urban Development, Room 9266, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-3046 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 14, 1985, the Department published a final rule (50 FR 20096) which modified its policy on processing requests for subdivision analysis. The rule included a requirement that those seeking HUD analysis of proposed subdivisions will be required to pay an application fee. The fee is a new requirement established by HUD to help defray the cost of conducting the environment assessment.

This notice sets forth the schedule of fees to be paid by builders or developers, and takes effect upon the effective date of the regulations at 24 CFR 203.12 (June 24, 1985). Any revision of this fee schedule will be announced by subsequent notice in the **Federal Register.**

Application Fee: All builders, developers or others seeking subdivision analysis by the HUD field office will be required to submit a non-refundable fee with an Application for Environmental Review, Form HUD-92250. (The OMB approval number for Form HUD-92250 is 2502-0060.) The application is required when the proposed development is to be located in a non-HUD certified area. (A non-HUD certified area is a locale that is *not* within the boundaries of a jurisdiction found, through a HUD study, to have subdivision standards, ordinances, and enforcement policies equal to or exceeding HUD's. A description of the local area certification process is found in HUD Handbook 4135. 1 REV 2. The HUD field offices maintain lists of certified areas.)

An application submitted without the required fee, or with incorrect payment, will be returned. Applications in process on the effective date of this notice are exempt from the fee requirement. New applications received after the effective date, including applications that involve other phases in a subdivision previously processed, are *not* exempt from the fee requirement.

The fee is $11.50 per lot per submission. Checks shall be made payable to the Department of Housing and Urban Development and shall accompany the Application for Environmental Review, Form HUD-92250.

When the results of the Environmental Review indicate that a subdivision proposal is not acceptable, the fee is nevertheless considered earned and is not returnable. However, in the event that the application is incomplete on its fact or is otherwise not acceptable for processing, the fee will be returned with the application.

Authority: Sec. 211, National Housing Act (12 U.S.C. 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 3, 1985.

Janet Hale,

Acting General, Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-16544 Filed 7-10-85; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 885

[Docket No. R-85-1227; FR-2066]

Loans for the Elderly or Handicapped; Interest Rate Adjustments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends 24 CFR 885.410(g), which governs the establishment of the interest rate for

direct loans for housing for the elderly or handicapped under section 202 of the Housing Act of 1959. Under the final rule, the Secretary will set the interest rate for loans at or below a prescribed rate ceiling. The interest rate determination will be announced annually by placing a notice in the **Federal Register**. This notice will include a statement explaining the basis of the interest rate determination, if the interest rate is set below the prescribed rate ceiling.

EFFECTIVE DATE: September 12, 1985.

FOR FURTHER INFORMATION CONTACT: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, 451 Seventh Street SW., Room 6116, Washington, D.C. 20410, Telephone (202) 426-8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 202(a)(3) of the Housing Act of 1959 provides that a loan for housing for the elderly or handicapped shall bear interest at a rate, established by the Secretary of Housing and Urban Development, "which is not more than a rate determined by the Secretary of the Treasury taking into consideration the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding the date on which the loan is made, adjusted to the nearest one-eighth of one percentum, plus an allowance adequate in the judgment of the Secretary [of HUD] to cover administrative costs and probable losses under the program." HUD's current regulation at 24 CFR 885.410(g) states that the Secretary will set the direct loan interest rate at the rate determined by the Secretary of the Treasury, plus an allowance of .25 percent per annum to cover administrative costs and probable losses.

In recent years, the Department has made annual amendments to § 885.410(g) to set a lower interest rate. On March 4, 1982, the Secretary amended the regulation to continue the Fiscal Year 1981 rate (including the allowance for administrative costs and probable losses) at 9.25 percent for Fiscal Year 1982 (47 FR 9207). Similarly, on February 8, 1983 (48 FR 5721), December 23, 1983 (48 FR 56749) and January 22, 1985 (50 FR 2781), the Department amended § 885.410(g) to set the interest rate (and allowance) for section 202 loans at 9.25 percent for Fiscal Years 1983, 1984 and 1985, in accordance with the Further Continuing Appropriations Act, 1983 (Pub. L. 97-377), the Housing and Urban Rural Recovery Act of 1983 (Pub. L. 98-181), and the Housing and Urban Development-Independent Agencies Appropriations Act, 1985 (Pub. L. 98-371).

To avoid the need for annual amendments to Part 885, on March 28, 1985 (50 FR 11803) the Department proposed the revision of § 885.410(g). Under the proposed rule, the interest rate on section 202 loans would not exceed either: (1) The average interest rate on all interest-bearing obligations of the United States, as determined by the Secretary of the Treasury, plus an allowance of .25 percent per annum to cover administrative costs and probable losses; or (2) any applicable statutory ceiling on interest rates or allowances for administrative costs and probable losses established for section 202 loans. The Secretary would annually announce the section 202 interest rate by placing a notice in the **Federal Register**. If the Secretary determines that the interest rate should be set below the rate ceiling, the **Federal Register** notice would explain the Secretary's rationale for the lower rate.

The Department received no public comments to the proposed rule. Accordingly, the final rule will adopt the text of the proposed rule without amendment.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 24 CFR 50.20(1), an environmental finding is not necessary because statutorily required establishment of interest rates is among matters categorically excluded from the environmental requirements of 24 CFR Part 50.

This rule was listed as item 118 in the Department's Semiannual Agenda of Regulations published April 29, 1985 (50 FR 17286, 17316) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program title and number is: Housing for the Elderly and Handicapped, 14.157.

Under section 605(b) of the Regulatory Flexibility Act, the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since the interest rate on section 202 loans will continue to be set at or below the rate that would be established under the existing regulations, and the rate will be established on the same basis as in the past.

List of Subjects in 24 CFR Part 885

Aged, Grant programs—Housing and community development, Handicapped, Loan programs—Housing and community development, Low and moderate income housing.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

For the reasons set out in the preamble, 24 CFR Part 885 is amended as set forth below.

1. The authority citation for 24 CFR Part 885 is revised to read as set forth below and any authority citation following any section in Part 885 is removed:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 885.410(g) is revised to read as follows:

§ 885.410 Amount and terms of financing.

* * * * *

(g) *Loan interest rate.* (1) Loans shall bear interest at a rate established by the Secretary. The interest rate set by the Secretary shall not exceed either:

(i) A rate determined by the Secretary of the Treasury to be the average interest rate on all interest-bearing obligations of the United States then forming a part of the public debt computed at the end of the fiscal year immediately prior to the date on which the loan is made, plus an allowance to cover administrative costs and probable losses under the program. (This allowance has been determined by the Secretary of Housing and Urban Development to be one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods); or

(ii) Any statutory ceiling on interest rates or allowances for administrative costs and probable losses for such loans as may be applicable.

(2) The Secretary of Housing and Urban Development shall annually establish the loan interest rate by publishing a notice of the rate in the **Federal Register**. If the Secretary sets a

loan interest rate below the interest rate ceilings described under paragraph (g)(1), the Federal Register notice will include a statement explaining the basis for the interest rate determination.

* * * * *

Dated: July 3, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-16543 Filed 7-10-85; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 18

Office of Justice Programs Hearing and Appeal Procedures

AGENCY: Office of Justice Programs, Justice.

ACTION: Final regulation.

SUMMARY: The Office of Justice Programs (OJP) is revising the regulation for the hearing and appeal procedures of the Justice Assistance agencies. These include: The Office of Justice Programs (OJP); the National Institute of Justice (NIJ); the Bureau of Justice Statistics (BJS); The Bureau of Justice Assistance (BJA); the Office of Juvenile Justice and Delinquency Prevention (OJJDP); and the Office for Victims of Crime (OVC). The new regulation is necessary to reflect changes made by Congress in the authorizing legislation of these agencies. The proposed regulation will provide guidelines for the hearing and appeal process available to a block grant or formula grant applicant or recipient or a recipient of a categorical grant or cooperative agreement whose grant or cooperative agreement may be terminated.

EFFECTIVE DATE: July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Charles A. Lauer, 202/724-7792.

SUPPLEMENTARY INFORMATION: The changes to Title 28, Part 18 implement three new legislative provisions and otherwise simplify the appeal process.

The Justice Assistance Act of 1984, Title II, Chapter VI, Division I, of Pub. L. 98-473, 98 Stat. 1837 (Oct. 12, 1984) reauthorized and amended Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Crime Control Act). The amendments eliminated the Office of Justice Assistance, Research, and Statistics and the Law Enforcement Assistance Administration and established an Office of Justice Programs (OJP) and a Bureau of Justice Assistance (BJA). BJA will administer a criminal justice block and discretionary grant program. The National Institute of Justice and the Bureau of Justice Statistics (BJS) were reauthorized by the amendments. Section 802 of the Justice Assistance Act contains hearing and appeal provisions applicable to OJP, BJA, NIJ, and BJS under the express terms of the Crime Control Act.

The Juvenile Justice, Runaway Youth, and Missing Children's Act amendments of 1984, Title II, Chapter VI, Division II, of Pub. L. 98-473, supra, reauthorized and amended the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (Juvenile Justice Act). The Juvenile Justice Act is administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), under the administrative authority of the Attorney General and with coordination and staff support services provided by OJP. Sections 223(d), 226, and 228(e) of the Juvenile Justice Act contain hearing and appeal provisions incorporating or comparable to those in Sections 802-804 of the Crime Control Act.

The Victims of Crime Act of 1984, Title II, Chapter XIV of Pub. L. 98-473, supra, established a Crime Victims Fund to be administered by the Attorney General. An Office for Victims of Crime has been established by the Attorney General in the Office of Justice Programs. Section 1407(f) of the Victims of Crime Act contains hearing and appeal provisions comparable to those in Section 802 of the Crime Control Act.

The Justice Assistance Act of 1984 made two substantive changes to existing hearing and appeal provisions which had been implemented by 28 CFR Part 18. Section 802(b) (previously Section 803(b)) was amended to eliminate access to a formal hearing process for applicants for categorical grants. The Juvenile Justice amendments and the Victims of Crime Act provisions are comparable. Access to the statutory hearing process remains available to State block grant applicants for criminal justice block grants, State applicants for Juvenile Justice Act formula grant funds, and Victims of Crime Act State compensation and assistance programs.

The formal hearing process leads to a recommendation by a hearing officer and reconsideration by the responsible agency official, resulting in a "final" agency decision. The termination of any existing block, formula, or categorical grant or cooperative agreement remains an appealable action under all of the above referenced Acts and the revised 28 CFR Part 18. Categorical grant applicants are not provided access to the formal hearing process.

The second substantive change, also provided in section 802(b), provides for the responsible agency official to take "final action without a hearing if, after an administrative review of the denial of such application or termination of such grant, it is determined that the basis for the appeal, if substantiated, would not establish a basis for awarding or continuing of the grant involved." This change is designed to avoid a waste of resources on frivolous or unsubstantiated appeals. Appellate court review is available to avoid abuse of this provision. A direct and informal request for reconsideration of the denial of categorical grant or cooperative agreement applications was deemed to be more appropriate, to take less time, and to be less costly to both the applicant and the agency.

The OJP administrative appeal process also continues to be unavailable to subgrant applicants or recipients of funds from a State agency administering one of the block, formula or victims assistance/compensation programs. These subgrant applicants or recipients must continue to pursue appropriate due process remedies under applicable State law and procedure.

The changes to Title 28, Part 18 implement these new legislative provisions and otherwise simplify the appeal process.

This order is not a rule within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612. This order is not a "major rule" as defined by section 1.b. of Executive Order No. 12291, 3 CFR 127 (1981).

Proposed changes were published for comment on March 26, 1985 (50 FR 11905) No comments were received and no changes have been made.

List of Subjects in 28 CFR Part 18

Administrative practice and procedure; Crime, Grant programs—law Investigations, Law enforcement.

Title 28 of the Code of Federal Regulations is amended by revising Part 18 to read as follows:

PART 18—OFFICE OF JUSTICE PROGRAMS HEARING AND APPEAL PROCEDURES

Sec.

18.1 Purpose.
18.2 Application.
18.3 Definitions.
18.4 Preliminary hearings.
18.5 Hearings.
18.6 Conduct of hearings.
18.7 Discovery.
18.8 Recommended decision.
18.9 Final agency decision.
18.10 Rehearing.

Authority: Secs. 802-804 of the Omnibus Crime Control and Safe Streets Act of 1968,

42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-157, and Pub. L. 96-473).

Sec. 223(d), 226 and 228(e) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, as amended (Pub. L. 93-415, as amended by Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-509, and Pub. L. 96-473).

Sec. 1407(F) of the Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.* Pub. L. 98-473, 98 Stat. 2176.

§ 18.1 Purpose.

The purpose of this regulation is to implement the hearing and appeal procedures available to State block or formula grant applicants or recipients and existing categorical grantees under sections 802 through 804 of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Crime Control Act); sections 223(d), 226 and 228(e) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (Juvenile Justice Act); and section 1407(F) of the Victims of Crime Act of 1984 (Victims of Crime Act).

§ 18.2 Application.

(a) These procedures apply to all appeals and hearings of State formula or block grant applicants or recipients and all existing recipients of categorical grants or cooperative agreements requested under section 802 of the Justice Assistance Act; sections 223(d), 226 and 228(e) of the Juvenile Justice Act; section 1407(F) of the Victims of Crime Act; the nondiscrimination provision of section 809 of the Crime Control Act, or the cross-referenced provisions of the Emergency Federal Law Enforcement Assistance Program. The method of notifying recipients of their non-compliance with section 809 (the nondiscrimination provison of the Crime Control Act and 28 CFR 42.206.

(b) These procedures do not apply to hearings requested under the Public Safety Officers' Benefits Act, 42 U.S.C. 3796, *et seq.* The hearing and appeal procedures available to claimants denied benefits under that Act are set forth in the Appendix to 28 CFR Part 32.

(c) These procedures do not apply to subgrant applicants or to recipients or third party beneficiaries of block or formula grants awarded to a State.

(d) These procedures do not apply to categorical grant applicants.

(e) These procedures do not apply to private sector/prison industry enhancement certification applicants; Regional Information Sharing Systems grant applicants; surplus Federal property certification applicants; or the State reimbursement program for Incarcerated Mariel-Cubans.

§ 18.3 Definitions.

(a) "Block or formula grant applicant or recipient" means an applicant for a grant awarded under the provisions of Part D of the Crime Control Act; Part B, Subpart I of the Juvenile Justice Act; and sections 1403 and 1404 of the Victims of Crime Act.

(b) "Categorical grant recipient" means a public or private agency which has received a research, statistics, discretionary, technical assistance, special emphasis, training, concentration of Federal effort or other direct Federal assistance award of grant funds.

(c) "Categorical grant applicant" means a public or private agency which has applied for a research, statistics, discretionary, technical assistance, special emphasis, training, concentration of Federal effort or other direct Federal assistance award of grant funds.

(d) "Grant" includes cooperative agreements and means a direct award of financial assistance from OJP, BJA, NIJ, OJJDP, BJS or OVC.

(e) "Crime Control Act" means the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended.

(f) "Juvenile Justice Act" means the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, as amended.

(g) "Responsible agency" means the organizational unit whose action is being appealed. This will be OJP, NIJ, BJS, OJJDP, BJA or OVC as appropriate. In hearings requested under the nondiscrimination provisions of the Crime Control Act, the responsible agency is OJP. In hearings requested to contest block or formula grant denials or terminations or categorical grant terminations, the responsible agency is the organizational unit that took the action at issue: OJP, BJA, OJJDP, NIJ, BJS or OVC.

(h) "Responsible agency official" means the Assistant Attorney General, Office of Justice Programs (OJP); the Director, Bureau of Justice Assistance (BJA); the Director, National Institute of Justice (NIJ); the Director, Bureau of Justice Statistics (BJS); the Director, Office for Victims of Crime (OVC); or the Administrator, Office of Juvenile Justice and Delinquency Prevention (OJJDP), as appropriate.

(i) "Sub-grant applicant or recipient" means the State agency, unit of local government or private non-profit organization which applies for, or receives, a grant from a State agency which administers a block or formula grant.

(j) "Victims of Crime Act" means the Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.*

§ 18.4 Preliminary hearings.

(a) A grantee determined to be in noncompliance with the nondiscrimination provisions of the Crime Control Act, the Juvenile Justice Act or the Victims of Crime Act may request a preliminary hearing within 90 days after receipt of the notification of noncompliance.

(b) The preliminary hearing shall be initiated within 30 days of the request.

(c) The sole issue to be adjudicated by the hearing officer is whether the grantee is likely to prevail on the merits of the issue at a full hearing requested under 28 CFR 42.215. The grantee shall have the burden of persuading the hearing officer that the grantee is likely to prevail on the merits.

(d) The hearing officer may permit the parties to argue the issue by briefs, oral argument, or the presentation of testimony and exhibits. The hearing officer shall accept as evidence documents and other exhibits which can reasonably be authenticated and subjected to cross-examination at a full hearing.

(e) The hearing officer shall make the final decision on the issue within 15 days after the conclusion of the preliminary hearing.

§ 18.5 Hearings.

(a) Whenever the responsible agency official finds that there has been a substantial failure to comply with:

(1) The provisions of the Crime Control Act, the Juvenile Justice Act, or the Victims of Crime Act;

(2) Regulations promulgated by the responsible agency pursuant to appropriate statutory authority; or

(3) A plan or application submitted in accordance with the provisions of the Crime Control Act; the Juvenile Justice Act, the Victims of Crime Act, or the provisions of any other applicable Federal act, regulation or guideline;

the responsible agency shall notify the grantee or applicant State that all or part of its grant or subgrant will be terminated or suspended until the responsible agency is satisfied that there is no longer such failure.

(b) The notice shall contain:

(1) A statement of facts sufficient to inform the party of the reasons for the agency's proposed action;

(2) A statement of the nature of the action proposed to be taken; and

(3) A reference of the available appeal rights.

(c) If a block or formula grant applicant or recipient or a categorical grant recipient wishes to appeal any action covered by § 18.5(a) it may request a review of the issues in controversy within 30 days after notice of termination, noncompliance or denial by writing to:

Office of General Counsel, office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue NW., Room 1288, Washington, D.C. 20531.

(d) The request for a review shall contain:

(1) A factual statement sufficient to inform the responsible agency of the nature of the issues involved;

(2) A recital of the relief requested; and

(3) A request for an oral hearing, or in the alternative, an opportunity to submit only written information or argument to a hearing officer.

(e) If the responsible agency official determines that basis for the appeal in § 18.5(c) would not, if substantiated, establish a basis for grant award or continuation, the official may take final agency action on the appeal.

(f) The responsible agency or its representative may attempt to informally resolve a controversy arising under this section prior to initiating a hearing. Unless it is expressly agreed otherwise, an agreement to attempt informal resolution does not waive the right to the formal hearing.

(g) If the responsible agency or its representaive does not receive a request for a review within 30 days after notice has been sent, the opportunity for review is waived.

(h) All oral hearings requested under this section shall be held in Washington, D.C., unless the hearing officer decides that the hearing could be conducted in a more expeditious, fair, or cost effective manner in another location.

(i) The responsible agency may suspend all or part of the grantee's funding pending the completion of the review process. If, at the conclusion of the review process, the responsible agency determines that the grantee is in compliance, it shall restore all previously suspended funding to the grantee.

(j) Any person may request the responsible agency official to determine whether a grantee has failed to comply with the terms of the statute under which the grant was awarded, agency regulations or the terms and conditions of the grant. The responsible agency may, in its discretion, conduct an investigation into the matter and, if warranted, make a determination of noncompliance. Only a grantee determined to be in noncompliance may request a compliance hearing.

§ 18.6 Conduct of hearings.

(a) A hearing officer appointed by the responsible agency official shall preside over the hearing. The hearing officer may be an administrative law judge, or an employee of the Department of Justice who was not involved in the administration, investigation or prosecution of the matter at issue. In hearings held under the nondiscrimination provisions of the Crime Control Act, the Juvenile Justice Act or the Victims of Crime Act, the hearing officer shall be an administrative law judge.

(b) If the hearing officer appointed is unacceptable to the appellant, it shall promptly inform the responsible agency official of the reasons for its position. The responsible agency official may select another hearing officer, or affirm the initial selection. In either case, the official shall inform the appellant of the reasons for the decision.

(c) The hearing officer shall have the following powers and duties:

(1) The power to hold hearings and regulate the course of the hearings and the conduct of the parties and their counsel;

(2) The power to sign and issue subpoenas and other orders requiring access to records;

(3) The power to administer oaths and affirmations;

(4) The power to examine witnesses;

(5) The power to rule on offers of proof and to receive evidence;

(6) The power to take depositions or to cause depositions to be taken;

(7) The power to hold conferences under § 18.6(d) for the settlement or simplification of the issues or for any other proper purpose;

(8) The power to consider and rule upon procedural requests and other motions, including motions for default;

(9) The duty to conduct fair and impartial hearings;

(10) The duty to maintain order;

(11) The duty to avoid unnecessary delay; and

(12) All powers and duties reasonably necessary to perform the functions enumerated in subsections (1)–(11).

(d) The hearing officer may call upon the parties to consider:

(1) Simplification or clarification of the issues;

(2) Stipulations, admissions, agreements on documents, or other understandings which will expedite conduct of the hearing;

(3) Limitation of the number of witnesses and of cumulative evidence;

(4) Settlement of all or part of the issues in dispute;

(5) Such other matters as may aid in the disposition of the case.

(e) All hearings under this part shall be public unless otherwise ordered by the responsible agency official.

(f) The hearing shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, 5 U.S.C. 554–557.

(g) The responsible agency shall have the burden of going forward with the evidence and shall generally present its evidence first.

(h) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules designed to assure production of the most credible evidence available and to subject testimony to cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(i) During the time a proceeding is before a hearing officer, all motions shall be addressed to the hearing officer and, if within his or her delegated authority, shall be ruled upon. Any motion upon which the hearing officer has no authority to rule shall be certified to the responsible agency official with a recommendation. The opposing party may answer within such time as may be designated by the hearing officer. The hearing officer may permit further replies by both parties.

§ 18.7 Discovery.

(a) (1) At any time after the initiation of the proceeding, the hearing officer may order, by subpoena if necessary, the taking of a deposition and the production of relevant documents by the deponent. Such order may be entered upon a showing that the deposition is necessary for discovery purposes, and that such discovery could not be accomplished by voluntary methods. Such an order may also be entered in extraordinary circumstances to preserve relevant evidence upon a showing that there is substantial reason to believe that such evidence could not be presented through a witness at the hearing. The decisive factors for a determination under this subsection, however, shall be fairness to all parties

and the requirements of due process. Depositions may be taken orally or upon written questions before any person who has the power to administer oaths.

(2) Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds upon which objections are made. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate), shall be reduced to writing and certified by the officer before whom the deposition was taken. Thereafter, the officer shall forward the deposition and one (1) copy thereof to the party at whose instance the deposition was taken and shall forward one (1) copy to the representative of the other party.

(3) A deposition may be admitted into evidence as against any party who was present or represented at the taking of the deposition, or who had due notice thereof, if the hearing officer finds that there are sufficient reasons for admission and that the admission of the evidence would be fair to all parties and comport with the requirements of due process.

(b) (1) At any time after the initiation of the appeal, any party may serve upon any other party written interrogatories to be answered by the party served, or by an authorized representative of the party if the party served is a corporate or governmental entity. The party served shall furnish all information which is available to it.

(2) Each interrogatory shall be answered separately and fully in writing under oath by the party addressed or by an authorized representative. The time and manner of returning the interrogatory shall be prescribed by the hearing officer.

§ 18.8 Recommended decision.

Within a reasonable time after the close of the record of the hearings conducted under § 18.6, the hearing officer shall submit findings of fact, conclusions of law, and a recommended order to the responsible agency official, in writing. The hearing officer shall promptly make copies of these documents available to the parties.

§ 18.9 Final agency decision.

(a) In hearings conducted under § 18.6, the responsible agency official shall make the final agency decision, on the basis of the record, findings, conclusions, and recommendations presented by the hearing examiner.

(b) Prior to making a final decision, the responsible agency official shall give the parties an opportunity to submit the following, within thirty (30) days after the submission of the hearing officer's recommendations:

(1) Proposed findings and determinations;

(2) Exceptions to the recommendations of the hearing officer; and

(3) Supporting reasons for the exceptions or proposed findings or determinations; and

(4) Final briefs summarizing the arguments presented at the hearing.

(c) All determinations, findings and conclusions made by the responsible agency official shall be final and conclusive upon the responsible agency and all appellants.

§ 18.10 Rehearing.

(a) Any appellant dissatisfied with a final agency decision under § 18.9 may, within 30 days after the notice of the final agency decision is sent, request the responsible agency official to re-review the record, and present additional evidence which is appropriate and pertinent to support a different decision.

(b) If the responsible agency official finds that the appellant has:

(1) Presented evidence or argument which is sufficiently significant to require the conduct of further proceedings; or

(2) Shown some defect in the conduct of the initial hearing sufficient to cause substantial unfairness or an erroneous finding in that hearing, the responsible agency official may require that another oral hearing be held on one or more of the issues in controversy, or permit the dissatisfied party to present further evidence or argument in writing.

(c) Any rehearing ordered by the responsible agency official shall be conducted pursuant to §§ 18.5–18.8.

Lois Haight Herrington,

Assistant Attorney General.

[FR Doc. 85-16441 Filed 7-10-85; 8:45 am]

BILLING CODE 4410-18-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[OW-FRL-2861-8]

Revision of West Virginia's NPDES Program Transferring Authority Over Coal Mines and Coal Preparation Plants From the West Virginia Department of Natural Resources' Division of Water Resources to Its Division of Reclamation

AGENCY: Environmental Protection Agency.

ACTION: Notice of rulemaking.

SUMMARY: This rule approves the transfer of certain water pollution regulatory authorities and responsibilities under the Clean Water Act, 33 U.S.C. 1251 et seq., from one division of a West Virginia State Agency to another without any significant change in the substance of those State regulatory authorities or responsibilities. Previously, the West Virginia Department of Natural Resources ("DNR"), Division of Water Resources ("DWR") administered the National Pollutant Discharge Elimination System ("NPDES") permit program which regulated all discharges of pollutants to the waters of the State pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1342. This rule approves transfer of these NPDES authorities for regulation of discharges from coal mines and coal preparation plants (and all refuse and waste therefrom) from the Division of Water Resources to the Division of Reclamation ("DR"), still within the Department of Natural Resources. The DR is already charged with other regulatory authority, including permitting authority, over these facilities, and administration of both programs by the same regulatory authority will result in increased efficiencies for both the regulatory authority and the regulated public.

FOR FURTHER INFORMATION CONTACT: Jed Callen at (215) 597–9882.

SUPPLEMENTARY INFORMATION: On May 10, 1982, the State of West Virginia was given approval by EPA to administer, through its Divisioin of Water Resources, the NPDES permit program for regulating discharges of pollutants to waters within its boundaries. The State has also received approval from the Department of Interior to administer the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"), regulating the coal mining industry. This broad regulatory program is administered in West Virginia by the Department of Natural Resources' Division of Reclamation ("DR").

As applied to coal mining and coal preparation plants, the requirements of the NPDES and SMCRA permit programs are overlapping and duplicative. To minimize confusion and inefficient duplication of effort, as well as to provide the coal industry with a one-stop permitting process, West Virginia requested on November 19, 1984 pursuant to 40 CFR 123.62, that EPA approve a modification of its NPDES responsibilities with respect to coal mines and preparation plants that are

currently performed by the Division of Water Resources.

In order to accomplish this shift of regulatory authority, the West Virginia Legislature enacted S.B. 745 (codified as W. Va. Code § 20–6–43) during the 1984 session, and the Department of Natural Resources promulgated regulations codified as West Virginia Administrative Regulations, Chapter 20, Article 6, Series VII, Section 10.

Notices of this proposed program and requests for public comment were published in the **Federal Register** on January 23, 1985, and in the major West Virginia newspapers on February 22, 1985. With only three comments received, public interest was not deemed sufficient to justify holding a public hearing. Based on the comments received, and on the determination that the program revision is consistent with the Clear Water Act and 40 CFR Part 123, the Regional Administrator has approved West Virginia's program revision request.

This Notice of Rulemaking is referenced under the Clean Water Act. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed approval will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians lands, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 28, 1985.

Stanley Laskowski,

Acting Regional Administrator, EPA Region III.

[FR Doc. 85–16472 Filed 7–10–85; 8:45 am]

BILLING CODE [illegible]

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–54

[ADM 5420.40C]

GSA-Sponsored Advisory Committees

AGENCY: Office of the Associate Administrator for Administration, General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation sets forth revisions to policies and procedures in GSA regarding the establishment, renewal, operation, and control of advisory committees under GSA's responsibility. These revisions are necessary to comply with recent guidelines concerning advisory committees. The revisions are intended to provide the most up-to-date procedures needed to effectively carry out the advisory committee function in GSA.

EFFECTIVE DATE: July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth L. George, Office of Organization and Staff Utilization; Office of Civil Rights, Organization, and Training; Office of the Associate Administrator for Administration; General Services Administration; Washington, DC 20405. (202–566–0086).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

List of Subjects in 41 CFR Part 105–54

Advisory committees, Government property management, Reporting requirements.

PART 105–54—ADVISORY COMMITTEE MANAGEMENT

1. The authority citation for Part 105–54 is revised to read as follows:

Authority: Pub. L. 92–463 dated October 6, 1972, as amended; and 5 U.S.C. 552.

2. The table of contents for Part 105–54 is amended by adding the following sections and removing §§ 105–54.301–1 thru 105–54.301–6 as follows:

105–54.304–1 Amendment of advisory committee charters.
105–54.305–1 Added responsibilities of Service and Staff Office Heads and Regional Administrators.
105–54.305–2 Advisory committee duties of the GSA Committee Management Officer.

Subpart 105–54.1—General Provisions

3. Section 105–54.101 is revised as follows:

§105–54.101 Applicability.

This Part 105–54 applies to all advisory committees for which GSA has responsibility. This part also applies to any committee that advises GSA officials even if the committee were not established for that purpose. This applicability, however, is limited to the period of the committee's use as an advisory body. This part does not apply to:

(a) An advisory committee exempted by an Act of Congress;

(b) A local civic group whose primary function is to render a public service in connection with a Federal program;

(c) A State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies;

(d) A meeting initiated by the President or one or more Federal officials for the purpose of obtaining advice or recommendations from one individual;

(e) Certain excepted advisory committees:

(1) A meeting with a group initiated by the President or one or more Federal official(s) for the sole purpose of exchanging facts or information; or

(2) A meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's views, provided that the President or Federal official(s) does not use the group as a preferred source of advice or recommendations;

(f) A committee that is established to perform primarily operational as opposed to advisory functions, except that such committee may be covered by the Act if it becomes primarily advisory in nature;

(g) A meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations; and

(h) A committee composed wholly of full-time officers or employees of the Federal Government.

4. Section 105–54.102 is amended by adding paragraphs (c) through (e) as follows:

§ 105–54.102 Definitions.

* * * * *

(c) "Independent Presidential advisory committee" means any Presidential advisory committee not assigned by the President, or the President's delegate, or by the Congress in law, to an agency for administrative and other support and for which the Administrator of General Services may provide administrative and other support on a reimbursable basis.

(d) "Secretariat" means the General Services Administration's Committee Management Secretariat.

(e) "Utilized" (or used), as stated in the definition of "advisory committee," above, refers to when a committee or other group composed in whole or in part of other than full-time Federal officers or employees with an established existence outside the Federal Government is adopted by the President or agency official(s), such as through institutional arrangements, as a

preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of his/her responsibilities in the same manner as that individual would seek advice or recommendations from an established advisory committee.

5. Section 105–54.104 is amended by revising paragraph (a) to read as follows:

§ 105–54.104 Responsibilities.

(a) Responsibility for coordination and control of committee management in GSA is vested in the Deputy Administrator. The responsibility is exercised through the Associate Administrator for Administration (AA), who serves as the GSA Committee Management Officer (CMO). This Officer, on behalf of the Deputy Administrator, carries out the functions prescribed in section 8(b) of the Federal Advisory Committee Act. The Officer controls and supervises the establishment, procedures, and accomplishments of GSA-sponsored advisory committees. The Office of Civil Rights, Organization, and Training provides staff resources and furnishes the Staff Contact Person (SCP) to the CMO.

* * * * *

Subpart 105–54.2—Establishment of Advisory Committees

6. Section 105–54.201 is revised as follows:

§ 105–54.201 Proposals for establishing advisory committees.

(a) The Administrator approves the establishment of all GSA Federal Advisory Committees.

(b) The Head of a Service or Staff Office (HSSO) proposes establishment of a Central Office or regional advisory committee within the scope of assigned program responsibilities. In doing so, the HSSO assures that advisory committees are established only if they are essential to the conduct of agency business. Advisory committees are established only if there is a compelling need for the committees, the committees have a truly balanced membership, and the committees conduct their buisiness as openly as possible under the law and their mandate. Each proposal is submitted to the GSA Committee Management Officer for review and coordination and includes:

(1) A letter and one copy addressed to the Committee Management Secretariat signed by the HSSO with information copies for the Administrator, Deputy Administrator, the Associate Administrator for Operations, and the Director of Ethics, describing the nature and purpose of the proposed advisory committee; why it is essential to agency business and is in the public interest; why its functions cannot be performed by an existing committee, by the agency, or other means such as a public hearing; and the plans to ensure balanced membership;

(2) A notice for publication in the **Federal Register** containing the Administrator's certification that creation of the advisory committee is in the public interest and describing the nature and purpose of the committee; and

(3) A draft charter and two copies for review by the Committee Management Secretariat, prepared in the format outlined in § 105–54.203.

(c) The requirements of paragraphs (a) and (b) of this section apply for any subcommittee of a chartered committee, whether its members are drawn in whole or in part from a parent advisory committee that functions independently of the parent advisory committee, such as by making recommendations directly to GSA rather than to the advisory committee.

7. Section 105–54.202 is revised as follows:

§ 105–54.202 Review and approval of proposals.

(a) The GSA Committee Management Officer reviews each proposal to make sure it conforms with GSA policies and procedures. The Officer sends the letter of justification, including the draft charter, to the Committee Management Secretariat.

(b) When the Secretariat notifies the Officer that establishing the committee conforms with the Federal Advisory Committee Act, the Officer obtains the Administrator's approval of the charter and the **Federal Register** notice. The notice is published at least 15 calendar days before the filing of the charter under § 105–54.203.

8. Section 105–54.203 is revised as follows:

§ 105–54.203 Advisory committee charters.

No advisory committee meets or takes any action until the Administrator approves its charter and the Deputy Administrator sends a copy of it to the standing committees of the Senate and the House of Representatives that have legislative jurisdiction over GSA. This applies to committees used as advisory committees though not established for that purpose but only to the extent that the group advises a GSA official.

9. Section 105–54.203–1 is revised as follows:

§ 105–54.203–1 Preparation of charters.

Each committee charter contains the following information:

(a) The committee's official designation;

(b) The committee's objectives and the scope of its activities;

(c) The period of time necessary for the committee to carry out its purpose (If the committee is intended to function as a standing advisory committee, this fact should be made clear.);

(d) The official to whom the committee reports, including the official's name, title, and organization;

(e) The agency and office responsible for providing the necessary support for the committee;

(f) A description of the duties for which the committee is responsible (If the duties are not solely advisory, the statutory or Presidential authority for additional duties shall be specified.);

(g) The estimated annual operating costs in dollars and person-years for the committee;

(h) The estimated number and frequency of committee meetings;

(i) The committee's termination date, if it is less than 2 years from the date of its establishment; and

(j) The date the charter is filed. This date is inserted by the GSA Committee Management Officer after the Administrator approves the charter.

10. Section 105–54.203–2 is revised as follows:

§ 105–54.203–2 Active charters file.

The GSA Committee Management Officer retains each original signed charter in a file of active charters.

11. Section 105–54.203–3 is revised as follows:

§ 105–54.203–3 Submission to Library of Congress.

The GSA Committee Management Officer furnishes a copy of each charter to the Library of Congress when or shortly after copies are filed with the requisite committees of the Congress. Copies for the Library are addressed: Library of Congress, Exchange and Gift Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, DC 20540.

12. Section 105–54.204 is revised as follows:

§ 105–54.204 Advisory committee membership.

(a) Advisory committees GSA establishes represent the points of view of the profession, industry, or other group to which it relates, taking into account the size, function, geographical location, affiliation, and other

considerations affecting the character of a committee. To ensure balance, the agency considers for membership a cross-section of interested persons and groups with demonstrated professional or personal qualifications or experience to contribute to the functions and tasks to be performed. This does not limit the participation of any individual if participation is needed to obtain different points of view relevant to committee business. The Administrator designates members, alternates, and observers, as appropriate, of advisory committees. He designates a Federal officer or employee to chair or attend each meeting of each advisory committee. The Administrator also designates GSA employees to serve on advisory committees sponsored by other Government agencies. The HSSO or Regional Administrator submits nominations and letters of designation for the Administrator's signature to the Deputy Administrator (Attn: GSA Committee Management Officer) and to the Director of Ethics for review and forwarding to the Administrator.

(b) Discrimination is prohibited on the basis of race, color, age, national origin, religion, sex, or mental and physical handicap in selecting advisory committee members.

(c) Nominees for membership must submit a Statement of Employment and Financial Interests (provided to the nominee by the HSSO or Regional Administrator) and may not be appointed until cleared by the Designated Agency Ethics Official.

Subpart 105–54.3—Advisory Committee Procedures

13. Section 105–54.301 is revised as follows:

§ 105–54.301 Meetings.

(a) Each GSA advisory committee meeting is open to the public unless the Administrator decides otherwise;

(b) Each meeting is held at a reasonable time and in a place reasonably accessible to the public. Unless otherwise authorized, meetings are held in space under the control of the government;

(c) The meeting room size is sufficient to accommodate committee members, committee or GSA staff, and interested members of the public;

(d) Any private citizen is permitted to file a written statement with the advisory committee;

(e) Any private citizen is permitted to speak at the advisory committee meeting, at the chairperson's discretion;

(f) All persons attending committee meetings at which classified information will be considered are required to have an adequate security clearance;

(g) The Designated Federal Official:

(1) Attends all meetings (no part of a meeting may proceed in the Designated Federal Official's absence);

(2) Adjourns the meeting when he or she determines that adjournment is in the public interest;

(3) Approves or calls the meetings of the advisory committee;

(4) Approves the meeting agenda, which lists the matters to be considered at the meeting and indicates whether any part of the meeting will be closed to the public under the Government in the Sunshine Act (5 U.S.C. 552b(c)). Ordinarily, copies of the agenda are distributed to committee members before the date of the meeting; and

(5) Chairs the meeting when asked to do so; and

(h) The Committee Chairperson makes sure that detailed minutes of each meeting are kept and certifies to their accuracy. The minutes include:

(1) Time, date, and place;

(2) A list of the following persons who were present;

(i) Advisory committee members and staff;

(ii) Agency employees; and

(iii) Private citizens who presented oral or written statements;

(3) The estimated number of private citizens present;

(4) A description of each matter discussed and the resolution of the matter, if any; and

(5) Copies of each report or other document the committee issues.

(i) The responsible HSSO or the Regional Administrator publishes at least 15 calendar days before the meeting a notice in the **Federal Register** that includes:

(1) The name of the advisory committee as chartered;

(2) The time, date, place, and purpose of the meeting;

(3) A summary of the agenda; and

(4) A statement whether all or part of the meeting is open to the public or closed, and if closed, the reasons why, and citing the specific exemptions of the Government in the Sunshine Act (5 U.S.C. 552b) as the basis for closure;

(j) In exceptional circumstances and when approved by the General Counsel or designee, less than 15 calendar days notice may be given, provided the reasons for doing so are included in the committee meeting notice published in the **Federal Register**.

(k) Notices to be published in the **Federal Register** are submitted through the **Federal Register** liaison officer (ATRAI). At least four workdays are needed for printing of the notice;

(l) Meetings may also be announced by press release, direct mail, publication in trade and professional journals, or by notice to special interest and community groups affected by the committee's deliberations. This procedure cannot be a substitute for **Federal Register** publication;

(m) The fact that a meeting may be closed to the public under the exemptions of the Government in the Sunshine Act does not relieve GSA of the requirement to publish a notice of it in the **Federal Register**. The Committee Management Secretariat may authorize an exception to this requirement for reasons of national security if the HSSO requests it at least 30 calendar days before the meeting, with the concurrence of the General Counsel or designee;

(n) An advisory committee is not open to the public, nor is the attendance, appearance, or filing of statements by interested persons permitted, if the Administrator decides that the meeting is exempted under the Government in the Sunshine Act (5 U.S.C. 552b(c)) and there is sufficient reason to invoke the exemption. If only part of the meeting concerns exempted matters, only that part is closed. The HSSO or Regional Administrator submits any decisions concerning the closing of meetings in writing to the Administrator for approval at least 30 calendar days in advance of the meeting. These decisions clearly set forth the reasons for doing so. They are made available to the public on request. The Administrator may waive the 30-day requirement when a lesser period of time is requested and adequately justified;

(o) If any meeting or portion of a meeting is closed to public attendance, the advisory committee issues a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of 5 U.S.C. 552(b). Notice of the availability of the report and instructions on how to gain access to it are published in the **Federal Register** no later than 60 days after its completion. In addition, copies of the report are filed with the Library of Congress according to § 105–54.203–3.;

(p) The General Counsel reviews all requests to close meetings; and

(q) The HSSO or Regional Administrator publishes the meeting notices in the **Federal Register**, including the reasons why all or part of the meeting is closed, citing the specified exemptions used from the Government in the Sunshine Act.

§ 105-54.301-1—105-54.301-6 [Removed]

14. Sections 105-54.301-1 thru 105-54.301-6 are deleted.

15. Section 105-54.302 is revised as follows:

§ 105-54.302 Committee records and reports.

(a) Subject to the Freedom of Information Act (5 U.S.C. 552), the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were available to or prepared for or by a GSA advisory committee are available (until the committee ceases to exist) for public inspection and copying in the office of the Government chairperson or designated Government committee official. Requests to inspect or copy these records are processed under 41 CFR 105-60.4. Except where prohibited by a contract entered into before January 5, 1973, copies or transcripts, if any, of committee meetings are made available by the Government chairperson or designated Government official to any person at the cost of duplication. After the committee's work ends, disposition of the committee documents and the release of information from them are made under Federal records, statutes, and regulations.

(b) Subject to 5 U.S.C. 552(b) and instructions of the Committee Management Secretariat, the Government chairman or Designated Federal Official files at least eight copies of each report an advisory committee makes with the Library of Congress at the time of its issuance. Where appropriate, the chairman also files copies of background papers consultants to the advisory committee prepare with the Library of Congress. The transmittal letter identifies the materials being furnished, with a copy of the transmittal provided to the GSA Committee Management Officer.

16. Section 105-54.303 is revised as follows:

§ 105-54.303 Fiscal and administrative provisions.

(a) Each HSSO and each Regional Administrator ensure that under established GSA procedures, records are kept that fully disclose the disposition of funds at the disposal of an advisory committee and the nature and extent of the committee's activities.

(b) When GSA is assigned to provide administrative support for a Presidential advisory committee, the Agency Liaison Coordinator, Regional Office of Administration, National Capital Region, as a part of its support, arranges with the Office of Finance, Office of the Comptroller, for maintaining all financial records.

(c) Unless otherwise provided in a Presidential order, statute, or other authority, the GSA service or staff office sponsoring an advisory committee provides support services for the committee.

(d) The guidelines in paragraphs (e) thru (m) of this section are established under section 7(d) of the Federal Advisory Committee Act, 86 Stat. 773. They apply to the pay of members, staff, and consultants of an advisory committee, except that nothing in this paragraph will affect a rate of pay or limit a rate of pay that is established by statute or a rate of pay established under the General Schedule classification and pay system in Chapter 51 and Subchapter III of Chapter 53 of Title 5, U.S.C.

(e) Unless required by law, committee members are not compensated for serving on GSA advisory committees. If the agency is unable to meet the need for technical expertise or the requirement for balanced membership by appointing uncompensated members, GSA may contract out for the services of a consultant selected to be a member of the committee. In such a case, GSA follows the procedures in paragraph (f) of this section. These exceptional circumstances permitting compensation do not apply to members of an advisory committee established pursuant to the Administrator's authority under Section 205(g) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(g)), since, by law, members so appointed shall serve without compensation.

(f) Before hiring a consultant, GSA must determine that the expertise or viewpoint offered is not otherwise available without cost to the agency. When the agency hires a consultant, the compensation may not exceed the maximum rate of pay authorized by 5 U.S.C. 3109. Hiring of consultants will conform with OMB Circular A-120 and applicable statutes, regulations, and Executive Orders.

(g) The pay of each staff member of an advisory committee is fixed at a rate of the General Schedule, General Management Schedule, or Senior Executive Service pay rate in which the staff member's position would be placed (5 U.S.C. Chapter 51). GSA cannot fix the pay of a staff member higher than the daily equivalent of the maximum rate for GS-15, unless the Administrator decides that under the General Schedule, General Management Schedule, or Senior Executive Service classification system, the staff member's position should be higher than GS-15. The Administrator must review this decision annually.

(1) In establishing compensation rates, GSA must comply with applicable statutes, regulations, and Executive Orders.

(2) A staff member who is a Federal employee serves with the knowledge of the Designated Federal Official and the approval of the employee's direct supervisor. If it involves a non-Federal employee, the staff member is appointed under agency procedures, after consultation with the advisory committee.

(h) Advisory committees and staff members, while performing their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem instead of subsistence, as authorized by 5 U.S.C. 5703 for persons employed intermittently in the Government service.

(i) Members of an advisory committee and its staff who are blind or deaf or who otherwise qualify as handicapped persons (under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and who do not otherwise qualify for assistance under 5 U.S.C. 3102, as an employee of an agency (under section 3102(a)(1) of Title 5), may be provided the services of a personal assistant.

(j) Under this paragraph, GSA may accept the uncompensated or reimbursed services of a member, consultant, or staff member of an advisory committee.

(k) A person who (without regard to his or her service with an advisory committee) is a full-time Federal employee may receive compensation at the rate at which he or she would otherwise be compensated.

(l) A person who immediately before his or her service with an advisory committee was a full-time Federal employee may receive compensation at the rate at which he or she was compensated as a Federal employee.

(m) This paragraph does not affect the rate of pay or a limit on the rate of pay established by law or established under the General Schedule classification and pay system in 5 U.S.C. Chapters 51 and 53.

17. Section 105-54.304 is revised as follows:

§ 105-54.304 Renewal of advisory committees.

(a) Each advisory committee being continued is renewed for successive 2-year periods beginning with the date when it was established according to the following, except for statutory advisory committees: (For renewal of

statutory advisory committees, see paragraph (b) of this section.)

(1) Advisory committees are not renewed unless there is a compelling need for them, they have balanced membership, and they conduct their business as openly as possible under the law.

(2) The renewal of a committee requires that the responsible HSSO submit to the GSA Committee Management Officer the following:

(i) An updated charter with an explanation of the need for the renewal of the committee. (See § 105–54.203–1 for the contents of the charter. The charter and explanation are furnished 60 calendar days before the 2-year anniversary date of the committee);

(ii) A letter signed by the HSSO to the Director, Committee Management Secretariat (EMC), with information copies to the Administrator and the Deputy Administrator, setting forth:

(A) An explanation of why the committee is essential to the conduct of agency business and is in the public interest;

(B) GSA's plan to attain balanced membership of the committee; and

(C) An explanation of why the committee's functions cannot be performed by GSA, another existing advisory committee, or other means such as a public hearing;

(iii) A notice for publication in the Federal Register describing the nature and purpose of the committee and containing a certification by the Administrator that renewing the advisory committee is in the public interest.

(3) On receiving the above documents, the GSA Committee Management Officer submits the renewal letter to the Committee Management Secretariat not more than 60 calendar days nor less than 30 days before the committee expires. Following receipt of the Committee Management Secretariat concurrence in the committee renewal, the Deputy Administrator publishes notice of the renewal in the Federal Register and files copies of the updated charter as stated in § 105–54.203–1. The 15-day notice requirement does not apply to committee renewals.

(b) Each statutory advisory committee is renewed by the filing of a renewal charter upon the expiration of each successive two-year period following the date of enactment of the statute establishing the committee according to the following:

(1) The procedures in paragraph (a)(2) apply to the renewal of a statutory committee except that neither prior consultation with the Committee Management Secretariat nor a Federal Register notice is required. Accordingly, the letter paragraph (a)(2)(ii) requires is sent to the Administrator rather than the Committee Management Secretariat. Due to the nature of a committee the law established, the explanation of the need to continue the committee's existence is less extensive than the explanation for the continuation of a non-statutory committee; and

(2) The GSA Committee Management Officer provides the Committee Management Secretariat with a copy of the filed charter and the transmittal letters to the Committees of Congress.

(c) An advisory committee required to file a new charter may not take any action other than preparing the charter between the date it is to be filed and the date it is actually filed.

18. Section 105–54.304–1 is added as follows:

§ 105–54.304.1 Amendment of advisory committee charters.

(a) A charter is amended when GSA decides that it is no longer accurate. Changes may be minor, such as revising the name of the committee, or they may be major, dealing with the basic objectives or composition of the committee.

(b) To make a minor amendment, the Administrator approves the amended charter and has it filed according to § 105–54.203–1.

(c) To make a major amendment, the Committee Management Officer submits an amended charter and a letter to the Committee Management Secretariat, signed by the HSSO with the concurrence of the General Counsel or designee, requesting concurrence and explaining why the changes are essential and are in the public interest. The Committee Management Secretariat notifies the Committee Management Officer whether the request was approved or not within 15 calendar days of receiving it, if possible. The Administrator has the charter filed according to § 105–54.203–1.

(d) Amending an existing charter does not constitute renewal of the committee.

19. Section 105–54.305 is revised as follows:

§ 105–54.305 Termination of advisory committees.

(a) The sponsoring HSSO terminates an advisory committee that has fulfilled the purpose stated in its charter. The official takes action to rescind any existing orders relating to the committee and to notify committee members and the GSA Committee Management Officer of the termination.

(b) Failing to continue an advisory committee by the 2-year anniversary date terminates the committee.

20. Section 105–54.305–1 is added as follows:

§ 105–54.305–1 Added responsibilities of Service and Staff Office Heads and Regional Administrators.

(a) No later than the first meeting of an advisory committee, submit to committee members, committee staff, consultants, and appropriate agency management personnel a written statement of the purpose, objectives, and expected accomplishments of the committee;

(b) Solicit in writing or in a formal meeting at least annually the views of committee members on the effectiveness, activities, and management of the committee, including recommendations for improvement. Review comments to determine whether improvements or corrective action is warranted. Retain recommendations until the committee is terminated or renewed.

(c) Involve key management personnel of the agency whose interests are affected by the committee in committee meetings, including reviewing reports and establishing agendas.

(d) Limit membership to 25 members for committees with an agencywide mission and 12 members for those with a narrower function or specialized area of interest. More members may be authorized if they are needed for the committee to function or to achieve balanced membership.

(e) Periodically, but not less than annually, review the level of committee staff support to make sure that expenditures are justified by committee activity and benefit to the Government.

(f) Monitor the attendance and participation of committee members and consider replacing any member who misses a substantial number of scheduled meetings.

(g) Establish meeting dates and distribute agendas and other materials well in advance.

21. Section 105–54.305–2 is added as follows:

§ 105–54.305–2 Advisory committee duties of the GSA Committee Management Officer.

(a) Discharge the responsibilities enumerated in section 8(b) of the Federal Advisory Committee Act;

(b) Maintain in a single location a complete set of the charters and membership lists of each committee;

(c) Maintain information on the nature, functions, and operations of each committee; and

(d) Provide information on how to obtain copies of minutes of meetings and reports of each committee.

22. Section 105–54.306 is revised as follows:

§ 105–54.306 Complaint procedures.

(a) Any person whose request for access to an advisory committee document is denied may seek administrative review under 41 CFR Part 105–60, which implements the Freedom of Information Act. (See GSA Order, GSA regulations under the "Freedom of Information Act" (ADM 7900.3A).)

(b) Aggrieved individuals or organizations may file written complaints on matters not involving access to documents with the General Services Administration (AD), Washington, DC 20405. Complaints must be filed within 90 calendar days from the date the grievance arose. The Deputy Administrator promptly acts on the complaint and notifies the complainant in writing of the decision.

Subpart 105–54.4—Reports

23. Section 105–54.401 is revised as follows:

§ 105–54.401 Reports on GSA Federal Advisory Committees.

(a) The Committee Management Secretariat periodically issues reporting instructions and procedures. The GSA Committee Management Officer files a report each fiscal year providing program, financial, and membership information. The Secretariat uses the information in preparing recommendations and status reports on advisory committee matters and in assisting the President in preparing and submitting a fiscal year report to the Congress. The annual report is due to the Committee Management Secretariat on November 1 for the previous fiscal year. Instructions for preparing GSA's submission are provided by the GSA Committee Management Officer.

(b) The GSA Committee Management Officer updates the membership list for each GSA advisory committee, notifying the Secretariat quarterly of new vacancies and appointments during the period. (No new member may be appointed except by the Administrator after review by the Director of Ethics.)

Dated: June 28, 1985.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85–16517 Filed 7–10–85; 8:45 am]

BILLING CODE 6820–61–M

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41 CFR Parts 201–2, 201–30, 201–31, 201–32, 201–39 and 201–40

[FIRMR Amdt. 4]

Implementation of Public Laws 98–369 and 98–577 Regarding Competition in the Acquisition of Information Resources and Codification of Temporary Regulations

Correction

In FR Doc. 85–15665 beginning on page 27142 in the issue of Monday, July 1, 1985, make the following corrections:

§ 201–2.001 [Corrected]

1. In § 201–2.001, on page 27146, in the second column, the second complete paragraph which is curently designated "(c) Equipment" should read "(b) Equipment".

§ 201–30.007 [Corrected]

2. On page 27158, in the first column, in § 201–30.007(d)(8)(iii), insert "data" before the phrase "base management".

§ 201–31.003 [Corrected]

3. On page 27160, in the second column, in § 201–31.003(a), in the eighth line, "1880" should read "1980".

§ 201–32.206 [Corrected]

4. On page 27162, in the first column, in § 201–32.206(f)(1), in the thirteenth line, "$5,000" should read "$50,000".

§ 201–32.303–2 [Corrected]

5. On page 27164, in the first column, in § 201–32.303–2(d), in the twelfth line, "of" should read "for".

§ 201–39.006–4 [Corrected]

6. On page 27166, in the first column, in § 201–39.006–4(a), in the second line, "of" should read "or".

§ 201–40.008 [Corrected]

7. On page 27168, in the second column, in § 201–40.008(a)(3), in the first line, "of" should read "or".

8. On same page, in the third column, in § 201–40.008(b)(2)(v)(D), add "and" after the semi-colon.

BILLING CODE 1505–01–M

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41 CFR Parts 201–22 and 201–45

[FIRMR Amdt. 3]

Establishing Integrated Records Management Provisions for the Federal Information Resources Management Regulation (FIRMR)

Correction

In FR Doc. 85–15663 beginning on page 26908 in the issue of Friday, June 28, 1985, make the following corrections to the "Derivation Table" on that page:

1. In the third column, under the heading "FIRMR sections", the ninth entry should read "201–45.108–3".

2. In the same column, under the heading "FPMR sources", the forty-sixth entry should read "101–11.805–1".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6608

[U–31071]

Public Land Order No. 6389, Correction; Partial Revocation of Reclamation Withdrawal; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order corrects errors in the land description in Public Land Order No. 6389 of May 16, 1983.

EFFECTIVE DATE: July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, BLM, Utah SO, 324 South State Street, #301, Salt Lake City, Utah 84111–2303, (801) 524–3074.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is hereby ordered as follows:

The land description in Public Land Order No. 6389 of May 16, 1983, in FR Doc. 83–13902 beginning on page 23225, in the issue of Tuesday, May 24, 1983, is hereby corrected as follows:

On page 23229, second column, thirty-eighth line, which reads "Sec. 17, NE¼, E½NW¼, SW¼NW¼;", is corrected to read "Sec. 17, NE¼, E½NE¼, NW¼NW¼;".

On page 23229, third column, fourteenth line from the bottom, which reads "Sec. 17, Part of S½NE¼ and S½;", is corrected to read "Sec. 17, W½, SE¼;".

Dated: July 2, 1985.

Robert N. Broadbent,

Assistant Secretary of the Interior.

[FR Doc. 85–16520 Filed 7–10–85; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF DEFENSE

48 CFR Part 209

Defense Acquisition Regulatory System; Debarment, Suspension and Ineligibility

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The DoD FAR Supplement Part 209 coverage concerning debarment of contractors when the debarment is based on felony criminal conviction has been changed. These changes provide that: (1) The debarment period be commensurate with the seriousness of the crime; and (2) a decision by the debarring official not to debar for a period of one year or less must be approved in writing by the Secretary concerned or, in the case of the Defense Agencies, the Under Secretary of Defense for Research and Engineering.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, OUSDRE(AM)(DARS), (202)697-7267.

SUPPLEMENTARY INFORMATION:

A. Public Comments

The revisions to DoD FAR Supplement Part 209 concerning the debarment of contractors when the debarment is based on felony criminal conviction was publicized in accordance with FAR 1.501-1. Public comments were requested in a notice at 50 FR 8121, February 28, 1985, and were considered in the formulation of the revisions.

B. Regulatory Flexibility Act

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, and, therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require approval of OMB under 44 U.S.C. 3501 et seq.

C. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1984 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84-1 through 84-3.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

List of Subjects in 48 CFR Part 209

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

The interim rule published in 50 FR 8121, February 28, 1985, is adopted as final with the following changes.

1. The authority for 48 CFR Part 209 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 209—CONTRACTOR QUALIFICATIONS

2. Section 209.406-1 is amended by revising paragraph (d) to read as follows:

209.406-1 General.

* * * * *

(d) If the cause for debarment as listed in FAR 9.406-2 is based on a felony criminal conviction, the debarment period should be commensurate with the seriousness of the crime. The period of the debarment should afford adequate time for the contractor to eliminate the circumstances within the contractor's organization that encouraged the belief that the acts or omissions on which the organization's conviction was based would escape accountability or be condoned. Mitigating factors may be considered in making the debarment decision. However, for any decision not to debar or to debar for one year or less, the mitigating factors must demonstrate clearly to the debarring official's complete satisfaction, that the contractor has eliminated such circumstances and has implemented effective remedial measures.

* * * * *

2. Section 209.406-4 is amended by revising paragraphs (a) and (c) to read as follows:

209.406-4 Period of Debarment.

(a) If the debarment is based on a felony criminal conviction, the period shall be commensurate with the seriousness of the crime and will generally be for more than one year but not more than 3 years. A decision by the debarring official not to debar or to debar for one year or less than one year must be approved in writing by the Secretary concerned or, in the case of the Defense Agencies, by the Under Secretary of Defense for Research and Engineering. If the suspension precedes debarment, the suspension period shall be considered in determining the debarment period.

* * * * *

(c) If the debarment is based on a felony criminal conviction, the period or extent of debarment may be only reduced: (1) If the conviction upon which the debarment was based is reversed; or (2) if the contractor demonstrates to the debarring official's complete satisfaction, that the steps taken to eliminate the circumstances within the contractor's organization that encouraged the belief that the acts or omissions on which the organization's conviction was based would escape accountability or be condoned have been effective.

[FR Doc. 85-16486 Filed 7-10-85; 8:45 am]

BILLING CODE 3810-01-M

Proposed Rules

Federal Register
Vol. 50, No. 133
Thursday, July 11, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 967

Celery Grown in Florida; Proposed Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would establish the quantity of Florida celery to be marketed fresh during the 1985–86 season, with the objective of assuring adequate supplies and orderly marketing.

DATE: Comments due August 12, 1985.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–5432.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act.

Information collection requirements contained in this regulation (7 CFR Part 967) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0581–0082.

This proposed rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

Marketing Agreement No. 149 and Order No. 967, both as amended, regulate the handling of celery grown in Florida. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Florida Celery Committee, established under the order, is responsible for local administration.

This notice is based upon the unanimous recommendations made by the committee at its public meeting in Orlando on May 23.

The committee recommended a Marketable Quantity of over 6.9 million crates of fresh celery for the 1985–86 season. This recommendation is based on an appraisal of the expected supply and prospective market demand.

The recommended Marketable Quantity is about 38 percent more than the approximately five million crates expected to be marketed fresh during the current season ending July 31, 1985. Each producer registered pursuant to § 967.37(f) would have an allotment equal to 100 percent of his/her historical marketings. This recommendation provides the industry an opportunity to (1) produce to its fullest capacity for the benefit of the consumer, and (2) determine its actual or potential maximum production capacity.

As required by § 967.37(d)(1) a reserve of six percent of the 1984–85 total Base Quantities is authorized for new producers and for increases by existing producers. One application for a new base of 140,000 crates was received and approved.

On the basis of all considerations it is hereby determined that this proposed regulation would tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 967

Marketing agreements and orders, Celery, Florida.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

PART 967—[AMENDED]

It is proposed that § 967.320 (49 FR 33204, August 22, 1984) be removed and a new § 967.321 be added as follows:

§ 967.321 Handling regulation; marketable quantity; and uniform percentage for the 1985–86 season beginning August 1, 1985.

(a) The Marketable Quantity established under § 967.36(a) is 6,929,738 crates of celery.

(b) As provided in § 967.38(a), the Uniform Percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the Marketable Allotment of a producer who has a Base Quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1) a reserve of six percent of the total Base Quantities is hereby authorized for (1) New producers and (2) increases for existing Base Quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: July 5, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–16463 Filed 7–10–85; 8:45 am]

BILLING CODE 3410–02–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 33–6596; 34–22199; IC–14612 File No. S7–35–85]

Tender Offers by Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing for adoption amendments to Rule 13e–4, which regulates cash tender offers and exchange offers by issuers for their equity securities.

The amendment would require that an issuer tender offer subject to the rule remain open for a minimum period of 20 business days, and that securities be accepted on a pro rata basis throughout the offer if a greater number of securities is tendered than the number the issuer is willing to accept. The amendment would require an initial minimum 15 business day period during which tendered securities could be withdrawn and would require an issuer to extend withdrawal rights on the date, and until the expiration of ten business days following the date, of commencement by a third party of a tender offer for the issuer's securities. In addition, the amendments would require that an issuer tender offer remain open for a minimum period of ten business days from the date of an increase in any of the following: the consideration offered; the price paid to dealers to solicit shareholders to tender their shares to

the issuer; or the number of shares sought in the offer. The amendments would also revise the definition of the term business day, and would specify that the time periods shall run concurrently, not consecutively. Companion amendments are being proposed to Rule 14e–1.

Finally, the amendments would require issuers to extend a tender offer to all security holders of the class of securities subject to the tender offer, and to pay to any security holder who tenders pursuant to the tender offer the highest consideration offered to any other security holder at any time during the tender offer.

The purposes of the amendments are to bring the provisions governing the conduct of issuer tender offers into conformity with those governing third party tender offers, to eliminate the advantages afforded defensive issuer tender offers, and to alleviate the confusion that arises from disparate time periods. The purpose is also to codify the Commission's position that an issuer tender offer must be open to all holders of the class of the securities subject to the tender offer, and that all security holders must be paid the highest consideration offered to any security holder.

DATE: Comments must be received on or before September 9, 1985.

ADDRESSES: Interested persons should submit three copies of their written data, views and arguments to John Wheeler, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 and should refer to file No. S7–35–85. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 1024, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Nancy J. Burke at (202) 272–2880, or Deren E. Manasevit at (202) 272–7494, Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. For information regarding amendments to Rule 14e–1 contact Thomas E. Sweeney at (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background and Need for Amendments

In August 1979, the Commission adopted Rule 13e–4 [1] (the "Rule"), and a related Schedule 13E–4,[2] under the Securities Exchange Act of 1934 ("Exchange Act") [3] regulating cash tender offers and exchange offers by issuers for their equity securities.[4] The Rule and Schedule are patterned substantially on the regulatory scheme established by Sections 14(d) and 14(e) of the Exchange Act [5] and the rules promulgated thereunder relating to tender offers made by third parties for an issuer's equity securities.

A. Amendments to the Time Periods

Currently, paragraph (f)(1) of the Rule requires an issuer tender offer to remain open for at least 15 business days from its commencement.[6] Paragraph (f)(2) of the Rule grants security holders withdrawal rights during the following periods: a minimum period of ten business days from the commencement of the issuer tender offer; [7] if the securities have not yet been accepted for payment, a minimum period of seven business days from the date that a tender offer by a third party for the issuer's securities is first published, sent or given to security holders; [8] and, if the securities have not yet been accepted for payment, after 40 business days from the commencement of the issuer tender offer.[9] The Rule also requires an issuer to accept securities on a pro rata basis from among securities tendered during a minimum period of ten business days from the commencement of the issuer tender offer if the number of securities tendered during that period is greater than the number the issuer is willing to accept.[10]

Issuers often purchase their own securities for a variety of corporate purposes, such as to reduce the number of shares of a class of securities outstanding, to fund employee stock option or stock purchase plans, or to issue stock in a merger with another company. Rather than commence a tender offer under Rule 13e–4, these purchases often are made on a small scale through privately negotiated transactions, or through an open market purchase program as, for example, conducted pursuant to the "safe harbor" provided by Rule 10b–18 under the Exchange Act.[11] Issuers also may make these routine corporate repurchases pursuant to odd-lot tender offers that are exempt from the Rule.[12]

Since the Rule's adoption in 1979, however, the circumstances under which issuers make tender offers for their own securities have changed dramatically. Issuers have used self-tenders more frequently as defenses to hostile third party bidders. In addition, an issuer can make a tender offer in anticipation of possible hostile tender offers, such as in response to persons who file statements under Section 13(d) of the Exchange Act [13] reporting their acquisition of more than five percent of the issuer's securities, or after the announcement of a third party offer under Rule 14d–2(a).[14] but before the commencement of such offer under Rule 14d–2(a).[15] These defensive issuer tender offers are often for a greater percentage of the issuer's outstanding securities than issuer tender offers made in uncontested situations. In addition, defensive issuer tender offers increasingly involve consideration that includes securities whose face amounts, interest rates, and maturity dates vary. Such securities are not easily evaluated, especially if the consideration offered in

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[1] 17 CFR 240.13e–4.

[2] 17 CFR 240.13e–101.

[3] 15 U.S.C. 78a *et seq.*

[4] Securities Exchange Act Release No. 16112 (August 16, 1979), 44 FR 49408 (August 22, 1979). The Rule was proposed for public comment in Securities Exchange Act Release No. 14234 (December 7, 1977), 42 FR 63066 (December 14, 1977).

"Issuer tender offer" is defined in paragraph (a)(2) of the Rule as "a tender offer for, or a request or invitation for tenders of, any class of equity security, made by the issuer of such class of equity security or by an affiliate of such issuer."

[5] 15 U.S.C. 78n(d) and (e).

[6] 17 CFR 240.13e–4(f)(1). Rule 14e–1(a), 17 CFR 240.14e–1(a), requires an issuer tender offer to remain open for a minimum period of 20 business days if the issuer tender offer is made "in anticipation of or in response to" a third party offer.

[7] 17 CFR 240.13e–4(f)(2)(i).

[8] 17 CFR 240.13e–4(f)(2)(ii).

[9] 17 CFR 240.13e–4(f)(2)(iii).

[10] 17 CFR 240.13e–4(f)(3).

[11] 17 CFR 240.10b–18.

[12] An odd-lot tender offer is an offer to purchase securities from security holders who own a specified number of shares that is less than one hundred (an "Odd-lot Offer"). Odd-lot Offers are exempted from the Rule by paragraph (g)(5) of the Rule, 17 CFR 240.13e–4(g)(5). *See* discussion *infra* regarding the application to Odd-lot Offers of the "all-holders" and "best price" provisions proposed to be added to Rule 13e–4.

Where such routine repurchases (*e.g.*, in the open market, or by means of an Odd-lot Offer) are made after the filing of a notice of a third party tender offer for the same class of the issuer's equity securities, the issuer must file with the Commission and disclose to its security holders certain information with respect to such repurchases pursuant to Rule 13e–1 under the Exchange Act, 17 CFR 240.13e–1.

[13] 15 U.S.C. 78m(d).

[14] 17 CFR 240.14d–2(d).

[15] 17 CFR 240.14d–2(a).

Where an issuer commences a tender offer in response to a third party tender offer, the issuer must file with the Commission and disclose to shareholders the information required by Rule 13e–1, *see* n.12 *supra*, in addition to complying with Rule 13e–4. *See Defensive Tactics and the Fiduciary Obligations of the Target Board of Directors*, 7 J. Corp. L. 579, 589 n. 69 (1982); *see also* Nathan & Sobel, *Corporate Stock Repurchases in the Context of Unsolicited Takeover Bids*, 35 Bus. Law. 1545, 1562–63 (1980).

the competing third party offer also includes similar securities.

The Commission believes that, in light of these developments, the minimum offering, withdrawal, and proration periods required by the Rule should be the same as under the third party rules to allow investors to make the kind of well-informed, unpressured investment decision that the Williams Act[16] and the Rule were designed to promote.[17]

The minimum offering, withdrawal, and proration periods required by Rule 13e–4 create other problems in the context of competing tender offers for an issuer's securities. The disparity between those time periods and the time periods specified by Rules 14d–7, 14d–8, and 14e–1[18] for third party offers can create confusion detrimental to security holders who may fail to tender or withdraw their shares during the currently permissible shorter periods in the issuer offer, believing that longer periods apply. In addition, the disparity between issuer and third party rules may give defensive issuer tender offers unfair advantages over competing third party offers.[19]

Finally, when an issuer makes an issuer tender offer "in anticipation of or in response to" a third party offer, several different time periods are triggered that are longer than those specified by Rule 13e–4.[20] These differences require determinations that are inexact and highly fact sensitive as to whether an issuer tender offer was made "in anticipation of or in response to" a third party offer.

In the past, the Commission has recognized the possible need to amend Rule 13e–4 to reduce or eliminate disparities between the Rule and the rules governing third party offers. When the Rule was adopted on August 16, 1979, the Commission had proposed, but not yet adopted, amendments to the rules governing third party tender offers.[21] In adopting Rule 13e–4, the Commission noted that such proposed amendments were pending, and said, "To the extent that certain provisions of Rule 13e–4 differ from the requirements of any of the February Proposals which are adopted, the Commission may consider whether to amend Rule 13e–4 or the February Proposals to conform the requirements of both rules."[22]

The Commission adopted some of the February Proposals shortly after it adopted Rule 13e–4.[23] In addition, in 1982, the Commission amended Rule 14d–8[24] to require that a third party tender offeror accept shares on a pro rata basis throughout the period that the third party offer remains open.[25]

The amendments to the time periods governing third party offers, combined with the developments discussed above, convince the Commission that it is necessary and appropriate to conform the provisions governing issuer tender offers to those governing third party offers.

The Commission's Advisory Committee on Tender Offers (the "Advisory Committee") recommended that:

> Takeover regulation should not favor either the acquiror or the target company, but should aim to achieve a reasonable balance while at the same time protecting the interests of shareholders and the integrity and efficiency of the markets.[26]

Furthermore, the Advisory Committee recommended that, as a general matter, "The takeover process should not be permitted to become so complex that it is understood only by investment professionals."[27]

The Commission believes that the proposed amendments will accomplish both of these goals by simplifying the rules applicable to issuer and third party tender offers while bringing issuers and third party bidders closer to equal footing. The amendments to Rule 13e–4 would bring the minimum offering, withdrawal and proration periods into conformity with those governing third party offers, would alleviate the confusion resulting from varied time periods, would eliminate the advantages that the Rule currently provides issuers over competing third party bidders, and would remove the difficult factual question whether an issuer tender offer was made "in anticipation of or in response to" a third party offer.

B. All-holders and Best Price Provisions

In Securities Act Release No. 33–6595 (July 1, 1985 published at 50 FR 27976, July 9, 1985) ("Release 33–6595"), the Commission proposes Rule 14d–10, which would require third party tender offerors to extend their tender offers to all holders of the class of securities being sought (the "all-holders" requirement), and to pay to any security holder who tenders pursuant to the tender offer the highest consideration offered to any security holder at any time during the tender offer (the "best price" requirement). This proposal codifies existing interpretations by the Commission's staff. Because the Commission believes that the polices underlying proposed Rule 14d–10 are equally applicable to issuer tender offers, it is proposing identical amendments to Rule 13e–4. Persons are directed to Release 33–6595 for a detailed discussion of the background and need for the all-holders and best price amendments, and for a discussion of an interim interpretive position with respect to these matters, which will also be applied in the issuer tender offer context.

II. Discussion and Summary of Amendments

A. Summary of Present and Proposed Time Periods

The following chart summarizes and compares current issuer and third party tender offers and proposed time periods governing issuer tender offers:[28]

	Issuer current	Issuer proposed	Third party
Minimum offering period	15 days, 13e–4(f)(1)	20 days [13e–4(f)(1)(i)]	20 days, 14e–1(a).
Defensive minimum offering period[29]	20 days, 14e–1(a)	20 days [13e–4(f)(1)(i)]	20 days, 14e–1(a).
Minimum offering period after increase in consideration or soliciting dealer fee.	None[30]	10 days [13e–4(f)(1)(ii)]	10 days, 14e–1(b).

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[16] The Williams Act added new Sections 13(d), 13(e), 14(d), 14(e) and 14(f) to the Exchange Act, 15 U.S.C. 78m(d)–(e) and 78n(d)–(f).

[17] *See, e.g.*, Edgar v. MITE Corp., 457 U.S. 624, 633–34 (1982).

[18] 17 CFR 240.14d–7, 240.14d–8, 240.14e–1.

[19] The Supreme Court noted in Edgar v. MITE Corp., *supra*, that a major concern of the Williams Act was to "avoid favoring either management or the takeover bidder." 457 U.S. at 633–34.

[20] *See* Rule 14e–1(a) and (b) under the Exchange Act, 17 CFR 240.14e–1(a) and (b).

[21] *See* Securities Exchange Act Release No. 15548 (February 5, 1979), 44 FR 9956 (February 15, 1979) (the "February Proposals"). Under the February Proposals, Rule 14e–1 would have required tender offers to remain open for 30 business days from the date of commencement, and for ten business days (to run concurrently) from the date of a notice of increase in the consideration offered or the dealer's soliciting fee. The February Proposals would also have required an initial 15 business day withdrawal period, and an additional ten business day withdrawal period (to run concurrently) upon the commencement of a competing offer.

[22] Securities Exchange Act Release No. 16112 (August 16, 1979), 44 FR 49400 (August 22, 1979), at n.5.

[23] Securities Exchange Act Release No. 16384 (November 29, 1979), 44 FR 70326 (December 6, 1979).

[24] 17 CFR 240.14d–8.

[25] Securities Exchange Act Release No. 19336 (December 15, 1982), 47 FR 57079 (December 28, 1982).

[26] SEC Advisory Committee on Tender Offers: Report of Recommendations, Recommendation 3 at 15 (July 8, 1983) (The "Advisory Committee Report").

[27] Advisory Committee Report, Recommendation 32 at 33.

[28] All days referred to are business days unless otherwise indicated.

	Issuer tender	Issuer proposed	Third party
Minimum period after such increase in defensive offer.	10 days, 14e–1(b)	10 days [13e–4(f)(1)(ii)]	10 days, 14e–1(b).
Minimum offering period after increase in the amount of securities sought.	None	10 days [13e–4(f)(1)(ii)]	Proposed 10 days, [14e–1(b)].
Initial withdrawal period	10 days, 13e–4(f)(2)(i)	15 days [13e–4(f)(2)(i)]	15 days, 14d–7(a)(1).
Additional withdrawal upon third party offer.	7 days, 13e–4(f)(2)(ii)	10 days [13e–4(f)(2)(ii)]	10 days, 14d–7(a)(2).
Date after which shares not purchased may be withdrawn.	40 days, 13e–4(f)(2)(iv)	40 days	60 calendar days, section 14(d)(5).
Minimum proration period for partial offer.	10 days, 13e–4(f)(3)	Length of the offer [13e–4(f)(3)].	Length of the offer, 14d–8.
Minimum proration period upon increase in consideration.	10 days, 13e–4(f)(3)	Length of the offer [13e–4(f)(3)].	Length of the offer, 14d–8.

[34] For purposes of this chart, defensive issuer tender offers are those that trigger Rule 14e–1(a) and (b) because they are made "in anticipation of or in response to" third party offers. As discussed *infra*, the Commission proposes to eliminate the provisions of Rule 14e–1(a) and (b) that limit that rule's operation only to defensive issuer tender offers.

[35] Rule 13e–4(f)(3) requires that a partial issuer tender offer must provide for a proration period of at least ten days after an increase in the consideration offered. This would have the effect of requiring the offering period to remain open for the same length of time.

B. Amendments to the Offering and Proration Periods

Rule 14d–8 [31] under the Exchange Act provides that, in an oversubscribed partial tender offer by a third party subject to Section 14(d) of the Exchange Act, purchases must be made on a pro rata basis from among all the securities tendered throughout the period that the offer remains open. In addition, such an offer must remain open for a minimum period of 20 business days from the date the tender offer is first published, sent, or given to security holders.[32] Therefore, in a partial third party tender offer, the third party bidder cannot buy any securities pursuant to its offer until at least 20 business days after the offer commences.

As described above, the proration period in an issuer tender offer is ten business days. Since the minimum withdrawal period in an issuer tender offer is also ten business days, Rule 13e–4 allows an issuer that makes a tender offer for its own securities to buy those securities after ten business days from the commencement of the issuer tender offer, and, if the offer is oversubscribed, to purchase securities on a pro rata basis from among securities tendered during the first ten business days. The ten business day proration period applies even for an issuer tender offer made in anticipation of or in response to a third party offer, and despite the fact that, in such a situation, both the issuer and third party offers must remain open for the same minimum period, 20 business days.[33]

In proposing amendments to Rule 14d–8, the Commission noted that:

> The end of the proration period represents a critical deadline for security holders faced with a partial tender offer. A security holder faced with such an offer must realistically choose and implement one of three investment options before the proration period ends: (1) Tender to the bidder in order to be sure of participating in the tender offer; (2) sell on the open market at prices reflecting the tender offer price, the risks of proration and, in some cases, the likelihood of competing bids (foregoing any possible price increases and avoiding the risk of proration or bid failure) [footnote omitted]; or (3) hold and remain a security holder of the subject company at least for the immediate future. Failure to select one of these three options before the expiration of the proration period is tantamount to choosing the third, because the first and second options can disappear at the end of the proration period if the offer is oversubscribed.[34]

A security holder facing an issuer tender offer must make one of the same three choices before the expiration of the proration period. Therefore, even in an uncontested partial issuer tender offer, security holders have effectively only ten business days to make their investment decision.

In a contested tender offer situation, the timing disparity between the offering and proration periods in Rules 13e–4 and 14d–8 poses three additional problems.

First, the difference can provide competitive advantages to target companies that commence defensive issuer tender offers. For example, a target company that commences a partial issuer tender offer shortly after commencement of a partial third party tender offer can buy securities under its offer before the third party bidder can buy securities under the third party offer, thus placing pressure on security holders to tender quickly into the issuer's offer. The Advisory Committee observed that this timing difference causes target company security holders in a partial issuer tender offer to "lose the protections afforded by the minimum offering period required of third party tender offers." [35] Moreover, the third party bidder has very little time to consider changing its offer in response to the issuer tender offer. The Advisory Committee therefore recommended: "Once a third party tender offer has commenced, the target company should not be permitted to initiate a self-tender with a proration date earlier than that of any tender offer commenced prior to the self-tender." [36] Requiring a partial issuer tender offer to be prorated throughout the offer would remedy this imbalance between Rules 13e–4 and 14d–8.

Second, the longer offering period currently required by Rule 14e–1(a) if an issuer tender offer is made "in anticipation of or in response to" a third party offer raises problematic factual and interpretive questions concerning the relationship between an issuer tender offer and a third party offer.[37] An issuer that initiated a tender offer before a third party offer might claim that it could use the shorter 15 business day period specified by Rule 13e–4(f)(1), rather than the 20 business day period specified by Rule 14e–1(a). Depending on the circumstances and the parties involved, such action by the issuer might result in litigation that would disrupt the tender offer process. To eliminate this problem, the amendments would require an issuer tender offer to remain open for a minimum period of 20 business days whether or not it was made in anticipation of or in response to a third party offer.

Third, and equally important, the disparity in time periods between issuer and third party offers can be confusing and complicated to securitry holders. A security holder may miss the opportunity to participate in the issuer tender offer, believing the longer offering and proration periods apply to both the issuer and the third party offers.

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[31] 17 CFR 240.14d–8.

[32] 17 CFR 240.14e–1(a).

[33] 17 CFR 240.14e–1(a).

[34] Securities Exchange Act Release No. 18761 (May 25, 1982), 47 FR 24338 (June 4, 1982).

[35] Advisory Committee Report at 42. The Advisory Committee Report continued: "Such timing differences provide target companies significant advantages over competing tenders. The target company can create substantial uncertainty with respect to the values that will remain in the target company for security holders who do not tender to the target company. The Committee recommends regulatory revision to limit advantages of a self-tender over a competing third party bid." *Id.*

[36] Advisory Committee Report, Recommendation 39(b) at 42.

[37] *See* Nathan & Sobel, *Corporate Stock Repurchases in the Context of Unsolicited Takeover Bids*, 35 Bus. Law. 1545 (1980). *Cf.* Asarco, Inc., v. MRH Holmes A Court, Civil No. 85–1123 (D.N.J., May 1, 1985) (application of business judgment rule requires a complex analysis of whether the issuer's board of directors is acting in response to a takeover bid or taking precautionary measures because it "perceives a general vulnerability").

The amendments would put issuers and third party bidders on equal footing during competing tender offers by requiring a partial issuer tender offer to be pro rated throughout the offer. Under the proposed amendments, for example, if bidder A commenced a tender offer on day 1 [38] and the issuer commenced a defensive self-tender offer on day 4, the issuer would not be able to buy any securities pursuant to its offer until midnight on day 23. Without the amendment, however, the issuer would be able to purchase securities pursuant to its offer at midnight on day 13, *i.e.*, seven days before bidder A could purchase any securities, and security holders would lose protection of the minimum 20 day proration period in bidder A's offer. Under the proposed amendments, an issuer who commenced an issuer tender offer in anticipation of a third party offer by bidder A would have time period advantages over bidder A, but only those advantages that any preceding third party bidder would have.[39] For example, if the issuer commenced a tender offer on day 1, in anticipation of bidder A's offer, and bidder A commenced a third party offer on day 5, the issuer could buy securities pursuant to its offer on day 20, before bidder A could buy securities pursuant to its offer on day 20, before bidder A could buy securities pursuant to A's offer (*i.e.*, on day 25). But the issuer would have no timing advantage over another third party bidder who also commenced on day 1 in anticipation of bidder A's offer.

Even apart from the difficulties with respect to defensive issuer tender offers under Rule 13e–4 as presently formulated, the Rule also treats different types of nondefensive issuer tender offers differently. Rule 13e–4(f)(3) requires the issuer to afford proration rights for ten business days following an increase in the consideration offered in a nondefensive offer. This requirement has the effect of requiring the offer to remain open for that period. However, the Rule does not require an any-and-all nondefensive issuer tender offer to remain open for a minimum period of time following an increase in the consideration offered. Rule 14e–1(b) requires *defensive* issuer tender offers to remain open for ten business days in *all* cases following an increase in the consideration offered.

Futhermore, although an increase in the dealer's soliciting fee may result in additional pressures on security holders to tender their securities to the issuer, Rule 13e–4 does not require any nondefensive issuer tender offer to be open for any minimum period after such an increase. Rule 14e–1(b), however, requires a defensive issuer tender offer to be open for 10 business days following an increase in the dealer's soliciting fee.

When the Commission adopted Rule 14e–1(b), requiring defensive issuer tender offers and third party offers to remain open for a minimum period of ten business days after an increase in the consideration offered or the dealer's soliciting fee, the Commission said that the provision would "facilitate communication during tender offers and provide a realistic time frame for security holders to evaluate certain increases before making an investment decision. In the Commission's view, Rule 14e–1(b) will alleviate undue pressure on security holders without hindering the person making a tender offer." [40] The Commission believes that the approach in Rule 14e–1(b) with respect to defensive issuer tender offers is equally necessary and appropriate in the nondefensive issuer offer context.

In Release 33–6595, the Commission proposes to amend Rule 14e–1(b) to require that a tender offer be open for a minimum period of ten business days upon an increase in the number of securities sought, in addition to the present requirement that a tender offer remain open for at least ten business days following an increase in the consideration offered or the dealer's soliciting fee. For the reasons set forth for amending Rule 14e–1(b), the Commission is proposing to amend Rule 13e–4 to impose an identical requirement upon an issuer who increases the number of securities sought pursuant to an issuer tender offer.

Accordingly, the Commission proposes to amend Rule 13e–4(f)(1) to require that the offering period of any issuer tender offer that is subject to the Rule be open for a minimum of ten business days from the date that an increase in the consideration offered or the number of securities sought or the dealer's soliciting fee is first published, sent, or given to security holders.

The proposed minimum 20 business day offering period and the proposed minimum ten business day periods after an increase in the consideration offered or the number of securities sought or the dealer's soliciting fee, with prorationing throughout the offer, will bring issuer and third party rules into parity. The Commission believes that the amendments will alleviate confusion over timing in competing issuer and third party offers, eliminate the interpretive problem of whether an issuer tender offer was made "in anticipation of or in response to" a third party offer, and affort security holders the benefits of a longer offering period for all issuer tender offers subject to the Rule.[41]

C. Amendments to the Withdrawal Periods

Currently, paragraph (f)(2) requires that an issuer afford security holders withdrawal rights for a minimum period of ten business days following the commencement of the issuer tender offer and, if securities have not yet been accepted for payment, for a minimum period of seven business days following the commencement of a tender offer by a third party for the same class of securities.

The withdrawal periods required by Rule 13e–4 vary in problematic ways from the withdrawal periods required of third party offers. In contested situations, these differences can complicate the calculation of time periods, can confuse investors, and can disadvantage third party bidders in at least two ways.[42]

First, the minimum ten business day withdrawal period specified by Rule 13e–4(f)(1)(i) is shorter than the minimum 15 business day period specified by Rule 14d–7(a)(2).[43] Security holders who desire to participate in the third party offer may neglect to withdraw their securities from the issuer's tender offer during the first ten business days, believing a longer 15 day business day period is available. Even where security holders realize that only

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[38] For purposes of all examples used in this release, all days referred to are business days.

[39] Currently, the issuer would have an advantage over the preceding third party bidder because the subsequent commencement of bidder A's offer would trigger a minimum ten business day withdrawal period for the earlier third party offer, while triggering only a minimum seven business day withdrawal period in the issuer's offer. *Compare* 17 CFR 240.14d–7(a)(2) *with* 240.13e–4(f)(3)(ii). However, as discussed *infra*, the proposed amendments would eliminate this discrepancy as well.

[40] Securities Exchange Act Release No. 16384 (November 29, 1979), 44 FR 70326 (December 6, 1979).

[41] The additional periods both for the offering period and for the withdrawal periods discussed herein are designed to run concurrently, not consecutively, as reflected in proposed paragraph (f)(7) to the Rule.

[42] The discussion following in the text assumes that the issuer tender offer and the third party tender offer begin on the same day. It should be noted that, even where the issuer commences its offer up to four days after the third party offer, the issuer currently has an advantage since its withdrawal period will terminate prior to the period in the third party offer. *Compare* 17 CFR 240.13e–4(f)(1)(i) *and* 240.14d–7(a)(2).

[43] 17 CFR 240.14d–7(a)(2).

the shorter ten business day period is available, they of course are denied the full benefits of the 15 business day withdrawal period for the third party offer. The third party bidder is disadvantaged because security holders are locked into the issuer's offer before they are locked into the third party's offer.

Second, the commencement of a third party offer by bidder B during competing offers by the issuer and bidder A triggers withdrawal periods of different lengths in the issuer's and bidder A's offers. Rule 14d–7(a)(2) [44] requires bidder A to grant additional withdrawal rights beginning on the date of commencement of bidder B's offer until the expiration of ten business days following that date. Rule 13e–4(f)(2)(ii) requires the issuer, however, to extend withdrawal rights only for an additional seven business days. This disparity disadvantages third party bidders, and can create confusion for security holders.

The amendments would require a minimum 15 business day withdrawal period for all issuer tender offers, and an extension of withdrawal rights on the date of commencement until the expiration of ten business days following the date of commencement of a third party tender offer. The Commission believes the amendments will provide the issuer's security holders with reasonable periods in which to evaluate the consideration offered, will alleviate the confusion presented by the many and varied specified time periods in competing tender offers, and will remedy the unequal treatment of competing offers for the issuer's securities.[45]

D. All-Holders and Best Price Provisions—New Paragraph (f)(8)

The Commission is proposing to amend paragraph (f) of Rule 13e–4 to impose all-holders and best price requirements on issuers who make issuer tender offers subject to Rule 13e–4. As in the third party context, the all-holders and best price requirements would require issuers to extend the tender offer to all security holders[46] of the class of securities subject to the tender offer, and to pay to any security holder who tenders pursuant to the tender offer the highest consideration offered to any other security holder at any time during the tender offer.

In Release 33–6595, proposing the all-holders and best price requirements for third party tender offers, the Commission discusses at length the background and purposes of the all-holders and best price requirements, and preliminarily determines that the proposed requirements are necessary to effectuate the fundamental policies of the Williams Act. The Commission believes that these policies apply equally to issuer tender offers, and therefore proposes to codify its historical position and apply the all-holders and best price provisions to issuer tender offers as well. Commentators are directed to Release 33–6595 in formulating their opinions, arguments, and comments concerning the application of the all-holders and best price requirements to issuer tender offers subject to Rule 13e–4.

In proposing a best price requirement for third party tender offers, the Commission proposes that the best price shall be determined as of the earlier of the date of public announcement meeting the criteria set forth in Rule 14d–2(b)[47] or the date of commencement as described in Rule 14d–2(a).[48] Rule 13e–4 currently does not distinguish between the public announcement and the commencement of an issuer tender offer.[49] As discussed in Release 33–6595, it is important to distinguish between an offer's announcement and its commencement in order to determine the best price that has been offered to any security holder during the tender offer. In proposing a best price amendment to Rule 13e–4, the Commission proposes to distinguish, solely for purposes of the proposed best price provision, between the announcement and commencement of the issuer tender offer. For purposes of the proposed best price provision, the public announcement of the issuer tender offer would be the date upon which the following information is made publicly available: the identity of issuer; the amount and class of securities being sought; and the price or range of prices being offered therefor.[50] Furthermore, as proposed in the third party context, if more than one type of consideration is offered pursuant to the issuer tender offer, the types of consideration must be substantially equivalent determined as of the earlier of the date of public announcement or the date of commencement of the issuer tender offer.[51]

The all-holders and best price provisions proposed to be added to Rule 13e–4 as paragraph (f)(8) will generally be applied and interpreted in the same manner as in the third party context. However, the commission believes that, under certain circumstances as discussed below, issuer repurchases through tender offers may present considerations justifying relief from the strict application of the all-holders and best price provisions.

Paragraph (g)(5) of Rule 13e–4 [52] currently allows an issuer to make a

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[44] *Id.*

[45] There will remain two areas where the provisions governing third party tender offers differ from the rules governing issuer tender offers. Section 14(d)(5) of the Exchange Act requires withdrawal rights in a third party offer to be reopened after 60 calendar days as to any securities not yet purchased. Rule 13e–4(f)(2)(iii) require withdrawal rights in an issuer tender offer to be reopened after 40 business days as to any securities not yet purchased. Since the periods specified by the two provisions are roughly equivalent, and Rule 13e–4 measures all other specified time periods in business days, the Commission does not believe that it is necessary to amend Rule 13e–4 in this regard.

Moreover, Rule 14d–7(a)(2) requires a third party bidder to grant additional withdrawal rights as specified by that rule upon the commencement of another bidder's tender offer. Rule 14d–1(b)(1), 17 CFR 240.18d–1(b)(1), defines "bidder" as not including an issuer who makes a tender offer for its own securities. As a result, the commencement of a defensive issuer tender offer does not trigger the additional withdrawal rights specified by Rule 14d–7(a)(2), but the commencement of a third party offer does trigger the additional withdrawal rights required of issuer tender offers as specified by Rule 13e–4(f)(ii). The proposed amendments will continue this distinction with respect to the effect of competing offers on withdrawal rights, and will only change the additional withdrawal rights period in the issuer offer from seven to ten business days.

The February Proposals, *see* n.21 *Supra*, continued a provision that would have included an issuer tender offer among those that would trigger Rule 14d–7(a)(2). The Commission deleted the provision because of the potential for abuse. The Commission stated that a target company "could obtain an advantage through the extension of the withdrawal period by making a tender offer for a de minimis amount of the securities being sought by the bidder." Securities Exchange Act Release No. 16384 (November 29, 1979), 44 FR 70362 (December 6, 1979). For the same reason, the Commission is not proposing to amend Rule 14d–2(a)(7) at this time.

[46] The term "security holders" is defined in paragraph (a)(6) of Rule 13e–4, 17 CFR 240.13e–4(a)(6) as "holders of record and beneficial owners of securities of the class of equity security which is the subject of an issuer tender offer."

[47] 17 CFR 240.14d–2(b).

[48] 17 CFR 240.14d–2(a).

[49] The prohibitions of Rule 10b–13, 17 CFR 240.10b–13, however, attach when the tender offer is "publicly announced or otherwise made known" to security holders. An issuer tender offer can be "publicly announced or otherwise made known" for purpose of Rule 10b–13 before its actual "commencement" under Rule 13e–4.

[50] This information is similar to the information specified by Rule 14d–2(c) under the Exchange Act, 17 CFR 240.14d–2(c), for third party offers.

[51] As more fully discussed in Release No. 33–6595, under this provision, alternative forms of consideration would be allowed as long as the various forms of consideration are substantially equivalent, and all security holders have the same choice among the considerations offered. Offers that are not so structured would raise questions under Rule 10b–13 under the Exchange Act, 17 CFR 240.10b–13.

[52] 17 CFR 240.13e–4(g)(5).

tender offer, under certain conditions, only to security holders who own an aggregate of not more than a specified number of shares that is less than one hundred (an "Odd-lot Offer"). Generally, the purpose of an Odd-lot Offer is to reduce the high costs to the issuer of servicing large numbers of small security holder accounts, and to enable those security holders to dispose of their shares without incurring the brokerage fees that normally attend odd-lot transactions. Odd-lot Offers were exempted from Rule 13e–4 because they present "minimal potential for fraud and manipulation." [53] The Commission proposes to continue to permit Odd-lot Offers to be made without complying with the general all-holders provision proposed to be incorporated in paragraph (f)(8) of the Rule.

The all-holders and best price provisions, however, would apply within the context of an Odd-lot Offer. An issuer making an Odd-lot Offer would continue to be required to extend the offer to all record and beneficial owners of the specified number of, or fewer, shares. Paragraph (g)(5) would be amended to provide that an Odd-lot Offer must comply with the all-holders requirement of proposed paragraph (f)(8)(i), except that, as currently permitted, an issuer could exclude participants in an issuer's plan as that term is defined in Rule 10b–6(c)(4).[54]

In addition, the best price requirement would apply to require the issuer to pay to all security holders who tender pursuant to the Odd-lot Offer the highest consideration offered to any security holder during the Odd-lot Offer. However, in the special context of issuer Odd-lot Offers, the Commisison believes that an exception is appropriate to allow an issuer to use a formula to determine the amount that will be paid to a particular security holder, as long as that formula is based on the market price for the security and is applied uniformly.[55] Paragraph (g)(5) would be amended to reflect that an issuer Odd-lot Offer must comply with the best price requirement of proposed paragraph (f)(8)(ii) or the issuer must pay an amount of consideration based on a uniformly applied formula based on the market price for the security.

The staff of the Division of Market Regulation has taken no-action positions under Rule 13e–4 to allow issuers to offer to repurchase securities only from certain security holders whose securities may have been issued in violation of state law or the registration provisions of the Securities Act of 1933 [56] (the "Securities Act") at varying prices equal to the price paid by each such security holder plus legal interest, if any ("Rescission Offer").[57] In most cases, issuers would not make Rescission Offers if they were required to extend the offer to all holders of the class of securities that is the subject of the Rescission Offer, or if they were required to pay to every security holder the highest consideration offered to any other security holder pursuant to the Rescission Offer. In proposing all-holders and best price amendments to Rule 13e–4, the Commission also proposes to add paragraph (g)(6)[58] to the Rule exempting from the provisions of the Rule Rescission Offers that are registered under the Securities Act. An issuer seeking to make an unregistered Rescission Offer may request an exemption from the provisions of the Rule pursuant to redesignated paragraph (g)(7).[59]

E. Amendment to Definition of "Business Day"

The Amendments would also revise the definition of the term "business day" in Rule 13e–4(a)(3)[60] to conform it to the definition of that term in Rule 14d–1(b)(6).[61] The Division of market Regulation has interpreted the term "business day" for purposes of Rule 13e–4 to be coextensive with that term as defined by Rule 14d–1(b)(6), and the amendments would reflect this interpretation.

F. New Paragraph (f)(7)

The Commission proposes to add new paragraph (f)(7) to the Rule, which will parallel Rule 14d–7(b) under the Exchange Act [62] and provide that the time periods for the minimum offering periods and withdrawal rights shall be computed on a concurrent, as opposed to a consecutive, basis. The amendment furthers the Rule's objective of providing an adequate period of time for shareholder action following a significant development in an issuer tender offer, but will not necessarily require that the offering period be extended if the additional specified time periods expire on or before the expiration of the original offering and withdrawal rights periods.

G. Amendments to Rule 14e–1

For the reasons discussed above, the proposed amendments would remove the provisos in paragraphs (a) and (b) of Rule 14e–1 that make those paragraphs applicable only to issuer tender offers that are made "in anticipation of or in response to" third party offers. The proposed amendments to Rule 13e–4 would conform the time periods specified in the Rule to those specified by paragraphs (a) and (b) of Rule 14e–1.

Removing the provisos would mean that uncontested issuer tender offers not subject to Rule 13e–4 would be subject to the minimum time periods specified by those paragraphs. The Commission believes that, for all the reasons discussed above relating to both contested and uncontested offers subject to Rule 13e–4, it is appropriate to subject to Rule 14e–1(a) and (b) uncontested issuer offers not subject to Rule 13e–4.

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[53] Securities Exchange Act Release No. 19988 (July 21, 1983), 48 FR 34251 (July 28, 1983).

[54] 17 CFR 240.10b–6(c)(4). Since the term "security holders" is defined in Rule 13e–4(a)(6) to comprise record and beneficial owners of an issuer's securities, *see* n.47 *supra*, the Commission is proposing to delete the present reference in paragraph (g)(5) to "record and beneficial holders" and incorporate proposed paragraph (f)(8)(i), which uses the defined term "security holders," in order to eliminate any possible confusion with respect to the scope of the term in the Rule. This technical amendment does not reflect any change in the Commission's position that the Odd-lot Offer exception from the general requirements of Rule 13e–4 is conditioned upon the offer being made to all security holders (as defined) owning the specified number of shares.

[55] *See, e.g., Great American Industries, Inc.* (April 6, 1983).

[56] 15 U.S.C. 77a *et seq.*

[57] *See, e.g., Micron Technology, Inc.* (June 1, 1984).

[58] Current paragraph (g)(6) would be redesignated as paragraph (g)(7).

[59] The Commission may also use its exemptive authority in certain circumstances to allow issuers to exclude officers and directors on a non-discriminatory basis from the general all-holders requirement in those instances where the exclusion is not contrary to the purposes behind the all-holders provision.

There is at least one other area where exemptive relief from the application of the general best price provision of Rule 13e–4 may be appropriate in the context of issuer tender offers. Under current staff interpretation, issuers have been permitted to make modified "Dutch auction" issuer tender offers, although pure issuer "Dutch auction" tender offers currently are not permitted under Rule 13e–4. (In a pure Dutch auction cash tender offer, the bidder invites security holders to tender securities to it at a price to be specified by the tendering security holder, rather than at a price specified by the bidder. Securities are accepted, beginning with those for which the lowest price has been specified, until the bidder has purchased the desired number of securities.) Modified issuer Dutch auction tender offers have been permitted under Rule 13e–4 subject to several conditions: (i) Disclosure in the tender offer materials of the minimum and maximum consideration to be paid; (ii) pro rata acceptance throughout the offer with all securities purchased participating equally in prorationing; (iii) withdrawal rights throughout the offer; (iv) prompt announcement of the purchase price, if determined prior to the expiration of the offer; and (v) purchase of all accepted securities at the highest price paid to any security holder under the offer. The staff has not addressed defensive modified issuer Dutch auction tender offers.

[60] 17 CFR 240.13e–4(a)(3).

[61] 17 CFR 240.14d–1(b)(6).

[62] 17 CFR 240.14d–7(b).

III. Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis has been prepared in accordance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 603), and concerns the effect of proposed amendments to Rules 13e–4 and 14e–1 under the Exchange Act on small entities. Some or all of the proposed amendments may not have a "significant economic impact on a substantial number of small entities" because few small issuers would appear to be affected by the proposals. However, this analysis was prepared because of the uncertainty concerning the effects of the proposed amendments on small entities.

1. Reasons for Proposed Action

Rule 13e–4 specifies certain minimum time periods applicable to issuer tender offers or exchange offers for their equity securities. These time periods are different from the minimum time periods required of third party tender offers by Regulations 14D and 14E under the Exchange Act. These differences complicate the calculation of time periods in competing tender offers and confuse investors. In addition, the differences give issuers who make defensive issuer tender offers advantages over competing third party bidders. Also, Rule 14e–1 under the Exchange Act specifies certain other time periods for issuer tender offers when made "in anticipation of or in response to" third party offers. The proposed amendments to Rule 14e–1 would eliminate the provisos that make paragraphs (a) and (b) applicable to issuer tender offers only when made "in anticipation of or in response to" third party offers. As a result, the proposed amendments to Rule 14e–1 would eliminate the difficult factual question whether an issuer tender offer was made in anticipation of or in response to a third party offer.

The proposed amendment to Rule 13e–4 will require that an issuer making a tender offer extend the issuer tender offer to all holders of the class of securities being sought (the "all-holders" requirement), and pay to any security holder who tenders pursuant to the tender offer the highest consideration offered to any other security holder during the tender offer (the "best price" requirement). The amendments will make explicit what have heretofore been implicit requirements of Rule 13e–4. It should be noted that the Commission is proposing Rule 14d–10 under the Exchange Act which will impose similar all-holders and best price requirements in third party tender offers.

2. Objectives

The purposes of the proposed timing amendments are to alleviate the confusion to investors that the many and varied time periods present, remedy the imbalances between competing issuer and third party offers, and eliminate the factual question concerning whether an issuer tender offer was made in anticipation of or in response to a third party offer.

The objectives of the all-holders and best price amendments are to make explicit the requuirements that issuers must extend their tender offers to all holders of the class of securities being sought in the issuer tender offer, and must pay to any security holder who tenders pursuant to the issuer tender offer the highest consideration offered to any other security holder during the tender offer. The amendments would also place third party bidders and issuers on equal footing after the adoption of proposed Rule 14d–10 under the Exchange Act.

3. Legal Basis

The proposed amendments would be promulgated pursuant to Sections 3(b), 9(a)(6), 10(b), 13(e), 14(e) and 23(a) of the Exchange Act (15 U.S.C. 78c(b), 78i(a), 78j(b), 78m(e), 78n(e) and 78w(a)), and Section 23(c) of the Investment Company Act of 1940, (15 U.S.C. 80a–23(c)).

4. Small Entities Subject to the Rule

"Issuers" and "persons" are considered small for purposes of Commission rulemaking as defined by Rule 0–10(a) under the Exchange Act if such issuer or person had, on the last day of its most recent fiscal year, total assets of $3,000,000 or less. Rule 13e–4 only applies to issuers that have a class of equity securities registered pursuant to Section 12 of the Exchange Act, or that are required to file periodic reports pursuant to Section 15(d) of the Exchange Act. Under Rule 12g–1 under the Exchange Act, an issuer is exempt from Section 12(g)(1) of the Exchange Act if, on the last day of its last fiscal year, it had total assets of $3.000,000 or less. Most issuers who register pursuant to Section 12(g) of the Exchange Act are required to do so because they have total assets of $3,000,000 or more. Therefore, such issuers would not be considered small for purposes of Rule 0–10(a). As a result, the only small issuers to whom the Rule applies are those who voluntarily register pursuant to Section 12(g), and those who are required to file periodic reports under Section 15(d), of the Exchange Act.

In a review of a random sample of twenty per cent of the Schedule 13E–4s filed pursuant to Rule 13e–4 in fiscal year 1984, every issuer who filed a Schedule 13E–4 had assets of over $3,000,000. Thus, it appears that few (if any) small issuers would be affected by the proposed amendments to Rule 13e–4. The Commission also believes that the proposed amendments would not have a significant economic impact on a substantial number of small entities that might be third party offerors.

Currently, issuer tender offers not subject to Rule 13e–4 are subject to the minimum time periods specified by paragraphs (a) and (b) of Rule 14e–1 only when they are made "in anticipation of or in response to" third party offers. The proposed amendments to Rule 14e–1 would remove the provisos that make paragraphs (a) and (b) applicable to issuer tender offers only when made "in anticipation of or in response to" third party offers. As a result, all issuer tender offers, including non-defensive issuer tender offers not subject to Rule 13e–4, would be subject to the minimum time periods specified by paragraphs (a) and (b) of Rule 14e–1.

Those issuers currently not subject to either Rule 13e–4 or Rule 14e–1 may include a large number of issuers who have publicly traded securities that are not registered with the Commission, issuers whose securities are not publicly traded, and issuers and state and local governments with debt securities outstanding. An unknown portion of these issuers are small entities. At this time the Commission is unable to determine the costs to small entities of complying with the proposed amendments to Rule 14e–1 and whether the proposed amendments to Rule 14e–1 would have a significant economic impact on a substantial number of small entities.

5. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments would not impose any additional reporting, recordkeeping or other compliance requirements.

6. Overlapping or Conflicting Federal Rules

The proposed amendments would eliminate certain disparities between the federal rules governing issuer and third party tender offers.

7. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant

alternatives to the proposal that would accomplish the stated objectives while minimizing any significant adverse economic impact on small issurers. The Commission has considered imposing fewer requirements on tender offers by small issuers, such as making the amendments applicable only to defensive issuer tender offers, or exempting from Rule 13e-4 and 14e-1 affected small entitites, but does not believe that such alternative proposals would be consistent with the Commission's statutory mandate of investor protection.

B. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this Initial Regulatory Flexiblity Analysis. Based upon these preliminary evaluations of the possible compliance costs and effects upon competition and after receipt of any comments from interested persons, it may be appropriate to conclude that the proposal does not have a significant economic impact on a substantial number of small entitites. Comments received will be considered in the preparation, if required, of a Final Regulatory Flexibility Analysis, if the proposed rule amendments are adopted. All submissions on the Initial Regulatory Flexibility Analysis will be placed in File No. S7-35-85 along with comments on the proposed amendments and will be available for public inspection at the Commission's Public Reference Room.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Tender offers, Issuers.

IV. Statutory Basis and Text of Proposed Amendment

Pursuant to Section 3(b), 9(a)(6), 10(b), 13(e), 14(e) and 23(e) of the Act, 15 U.S.C. 78c(b), 78i(a), 78j(b), 78m(e), and 78w(a), and 23(c) of the Investment Company Act of 1940, 15 U.S.C. 80a-23(c), the Commission proposes to amend § 240.13e-4 and § 240.14e-1 of Chapter II of Title 17 of the Code of Federal Regulations to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following cite:

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w, * * * §§ 240.13e-4 to 240.13e-101 also issued under secs. 3(b), 9(a)(6), 10(b), 13(e), 14(e), 15(c)(1), 48 Stat. 882, 888, 891, 894, 895, 901, sec. 8, 49 Stat. 1379, sec. 5, 78 Stat. 569, 570, secs. 2, 3, 82 Stat. 454, 455, secs. 1, 2, 3-5, 84 Stat. 1497, secs. 3, 18, 89 Stat. 97, 155; 15 U.S.C. 78c(b), 78j(b), 78m(e), 78n(e), 78o(c); sec. 23(c) of the Investment Company Act of 1940; 54 Stat. 825; 15 U.S.C. 80a-23(c) * * *.

2. By revising paragraphs (a)(3), (f)(1), introductory text (f)(2)(i), (f)(2)(ii), (f)(3) introductory text and (g)(5), and by adding new paragraphs (f)(7), (f)(8), and (g)(6), and redesignating current paragraph (g)(6) as (g)(7) of § 240.13e-4, to read as follows:

§ 240.13e-4 Tender offers by issuers.

(a) * * *

(3) As used in this section and in Schedule 13E-4 [§ 240.13e-101], the term "business day" means any day, other than Saturday, Sunday or a federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern Time. In computing any time period under this Rule or Schedule 13E-4, the date of the event that begins the running of such time period shall be included *except that* if such event occurs on other than a business day such period shall begin to run on and shall include the first business day thereafter.

* * * * *

(f) * * *

(1) The issuer tender offer, unless withdrawn, shall remain open until the expiration of:

(i) At least twenty business days from its commencement; and

(ii) At least ten business days from the date that notice of an increase in the amount of shares being sought or the consideration offered or the dealer's, soliciting fee to be given is first published or sent or given to security holders.

(2) The issuer of affiliate making the issuer tender offer shall permit securities tendered pursuan to the issuer tender offer to be withdrawn:

(i) At any time until the expiration of fifteen business days from the commencement of the issuer tender offer; and

(ii) If not yet accepted for payment, on the date and until the expiration of ten business days following the date of commencement of another's bidder's tender offer than pursuant to Rule 14d-2(b) [§ 240.14d-2(b)] for securities of the same class;

* * * * *

(3) If the issuer or affiliate makes a tender offer for less than all of the outstanding equity securities of a class, and if a greater number of securities is tendered pursuant thereto than the issuer of affiliate is bound or willing to take and pay for, the securities taken up and paid for shall be taken up and paid for as nearly as may be pro rata, disregarding fractions, according to the number of securities tendered by each security holder during the period such offer remains open; *Provided, however,* That this provision shall not prohibit the issuer or affiliate making the issuer tender offer from:

* * * * *

(7) The time periods for the minimum offering periods and withdrawal rights pursuant to this section shall be computed on a concurrent, as opposed to a consecutive, basis.

(8) No issuer shall make a tender offer unless:

(i) The tender offer is open to all security holders of the class of securities subject to the tender offer; *however,* this section shall not affect: (A) Dissemination under paragraph (e) of this section or (B) a tender offer in which the issuer or affiliate is not a United States resident or citizen and the tender offer does not use the mails or any means or instrumentality of interstate commerce or any facility of a national securities exchange or otherwise; and

(ii) The consideration paid to any security holder pursuant to the tender offer is the highest consideration offered to any other security holder at any time during such tender offer, determined from the earlier of the date of public announcement or the date of commencement; *Provided, however,* That in a tender offer in which more than one type of consideration is offered, (A) the types of consideration are substantially equivalent in value on the earlier of the date of public announcement or the date of commencement, and (B) in the event of an increase by the issuer in the consideration offered during the tender offer, the types of consideration are substantially equivalent in value on the date such increase is first offered to security holders, and (C) the highest consideration of each type offered to any security holder is paid to any other security holder accepting that type of consideration. For purposes of this paragraph, the date of public announcement shall mean announcement of the identity of the issuer and the amount and class of securities being sought and the price or range of prices being offered therefor.

* * * * *

(g) * * *

(5) Offers to purchase from security holders who own an aggregate of not more than a specified number of shares that is less than one hundred: *Provided, however,* That: (1) The offer complies with paragraph (f)(8)(i) of this section

with respect to security holders who own the specified number of shares, except that an issuer can elect to exclude participants in an issuer's plan as that term is defined in Rule 10b–6(c)(4) under the Act [§ 240.10b–6(c)(4)], and (ii) the offer complies with paragraph (f)(8)(ii) of this section or the consideration paid pursuant to the offer is determined on the basis of a uniformly applied formula based on the market price of the subject security.

(6) An issuer tender offer made solely to effect a rescission offer: *Provided, however,* That the offer is registered under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*], and the consideration offered is the price paid by each security holder, plus legal interest if the issuer chooses to or is required to pay legal interest.

* * * * *

3. By revising paragraphs (a) and (b) of § 240.14e–1 as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(a) Hold such tender offer open for less than twenty business days from the date such tender offer is first published or sent or given to security holders;

(b) Increase the amount of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase is first published or sent or given to security holders;

* * * * *

V. Solicitation of Comments

All interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make submissions should submit three copies thereof to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, not later than September 9, 1985. Reference should be made to File No. S7–35–85.

All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 1024, 450 Fifth Street, NW., Washington, D.C. 20549.

Dated: July 1, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85–16244 Filed 7–10–85; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Part 240

[Release No. 33–6594; 34–22197; 35–23753; IC–14610; File No. S7–33–85]

Request for Comments on "Opinion Shopping"

AGENCY: Securities and Exchange Commission.

ACTION: Request for Public Comment.

SUMMARY: The Commission is requesting comments on the practice of registrants who seek an auditor who is willing to support a proposed accounting treatment which is intended to accomplish the registrant's reporting objectives, but which is not necessarily in accordance with generally accepted accounting principles. This practice is commonly referred to as "opinion shopping". The Commission is also requesting comment on the most practical, cost-effective manner of obtaining better public disclosure about "opinion shopping" situations.

DATE: Comments should be received on or before October 9, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7–33–85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Robert E. Burns, (202) 272–2130, Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Registrants may change independent accountants at their discretion. However, if a registrant changes accountants because of a desire to obtain the services of an accountant willing to interpret generally accepted accounting principles ("GAAP") in a manner which frustrates the reporting of the true economic substance of transactions or events, the registrant and the new accountant may be deemed to have participated in "opinion shopping." The new auditor in such a case may place more emphasis on achieving the registrant's desired reporting results than on the objective reporting of the registrant's financial condition and operating results. Even the appearance of such a biased attitude by the new auditor brings both his independence and the accuracy of the registrant's financial statements into question.

In this release, the Commission is requesting comments on possible amendments to its disclosure requirements concerning changes in accountants, and disagreements which accompany or precede such changes, to elicit more meaningful disclosure of opinion shopping situations. This request is in addition to the rule proposals in a companion release, Securities Act Release No. 6592. In that release the Commission is proposing to amend Item 304 of Regulation S–K,[1] Item 9(c) of Schedule 14A[2] and Form S–18[3] to require disclosure of changes in accountants and disagreements with former accountants which may have arisen prior to the registrant becoming subject to the filing requirements of the Securities Exchange Act of 1934.[4]

II. Concerns With Opinion Shopping Relating to Accountant's Independence, Client Pressures Placed Upon Accountants and Public Perceptions of the Professionalism Exhibited by Accountants

As recognized by both the Commission[5] and the courts,[6] not only the fact but also the appearance of independence by the auditor is essential to the integrity of the securities markets. Opinion shopping, at a minimum, impacts the appearance of the accountant's independence. A perceived conflict is created between the auditor accepting an accounting practice which particularly favors its client's reporting objectives and the auditor fulfilling his responsibilities to act as a "watchdog" for the public.[7] This practice therefore

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[1] 17 CFR 229.304.

[2] 17 CFR 240.14a–101.

[3] 17 CFR 239.28.

[4] 15 U.S.C. 78a et seq.

[5] *See In the Matter of Broadview Financial Corporation,* Accounting and Auditing Enforcement Rel. No. 54 (April 17, 1985); *In the Matter of Stephen O. Wade, Ralph H. Hewton, Jr., and Clark C. Burrit, Jr.,* Securities Exchange Act Release No. 21095 (June 25, 1984).

[6] *U.S.* v. *Arthur Young,* ——— U.S. ———, 104 S. Ct. 1495, 1504 n. 15 (1984).

[7] *U.S.* v. *Arthur Young, supra,* in which the Court states:

> By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client. The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as to investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust. *Id.,* at 1503

has an obvious and negative impact on the general public's perception of the professionalism exhibited by accountants and their firms.

In addition to the serious issue of the auditor's independence, accountants and others have identified practical problems inherent in opinion shopping.[8] A major hazard is that the auditor, who believes the registrant may "go shopping" unless he acquiesces to the registrant's views, is subject to increased client pressure for a "desired" answer (even though it may not be the best or even an acceptable answer). Furthermore, a solicited accountant may succumb to the pressure to give an unqualified answer to an abstract question without full access to the surrounding facts and circumstances.[9] Once the opinion is given and the accountant is awarded the engagement, he may be subject to pressures to abide by his original opinion even though additional facts are discovered which indicate a different solution. These pressures impact the auditor's ability to constructively evaluate the registrant's accounting practices and fulfill his responsibilities to act objectively on behalf of the public. Alleged failures to fulfill these responsibilities will be carefully scrutinized by the Commission and, when warranted, result in enforcement action.[10]

Efforts to deter opinion shopping by registrants, including full and accurate disclosure about changes in auditors and any disagreements accompanying or preceding such changes, are therefore in the public interest and necessary for the protection of investors.[11]

III. Proposals for disclosure of "opinion shopping"

The Commission, in a companion release, is presently proposing changes in Item 304 of Regulation S–K, Item 9(c) of Schedule 14A and Form S–18 to require disclosure of changes in accountants and any disagreements with former accounts which may have arisen prior to the registrant becoming subject to the filing requirements for Form 8–K and Form N–SAR. The Commission is proposing that in such cases the disclosure required by Item 4 of Form 8–K, Items 77K and 102J of Form N–SAR, and Item 304 of Regulation S–K be provided. The Commission, however, is also concerned about the adequacy of the disclosures received pursuant to existing Item 4 of Form 8–K and Items 77K and 102J of Form N–SAR.[12] Some companies and accounting firms may be reluctant to candidly report as "disagreements" material disputes on accounting issues.[13] Consideration is therefore being given to amending Form 8–K and Form N–SAR to require more direct disclosure of opinion shopping. For example, without regard to the existence of any "disagreement," disclosure could be required if in connection with a change in accountants: (1) the registrant solicited opinions from other accountants on specific accounting issues concerning existing or contemplated transactions, or (2) the registrant engaged an accountant expressing an opinion which is different from its former accountant's position. Under this approach, the registrant would be required to discuss the issues presented to each accountant and the responses received; and the former auditor would be given the opportunity to express his position on these issues. Another possible approach is to require disclosure regardless of whether a change in accountants occurs. Forms 8–K and N–SAR could be amended to require registrants to disclosure any accounting issue for which they have asked for an opinion from any accountant other than their current accountant, and a summary of the responses received. This disclosure would not only aid in the detection of possible[14] opinion shopping but also alert the Commission and the public to emerging accounting issues. A third possibility may be to tie opinion shopping disclosures to changes in accounting principles. Not only would a preferability letter [15] be required when such a change occurs, but the registrant would be required to disclose the names of any accounting firms consulted prior to making the changes, and provide a summary of the responses received from these firms.

The Commission invites comments on these and other possible approaches to opinion shopping. In addition, the Commission invites specific comment on the following issues related to opinion shopping: the types of accounting issues which might trigger an opinion shopping disclosure requirement; the roles of new, prior and solicited accountants in

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[8] The American Institute of Certified Public Accountants (AICPA), the Auditing Standards Board, and the SEC Practice Section of the AICPA's Division for CPA Firms (SECPS), have developed initiatives and created task forces to review issues relating to professionalism and ethics, including opinion shopping. The Commission supports these efforts.

[9] The AICPA Code of Professional Ethics, ET section 201.04, requires that prior to answering such a question the solicited accountant consult with the registrant's present auditor to ascertain whether he is aware of all the available facts relevant to forming a professional judgment on the appropriate accounting or auditing standard to be applied. The Chairman of the Public Oversight Board (a panel of nonaccountants who oversee the activities of the SECPS and represent the public interest in the SECPS self-regulatory process) has recently recommended that SECPS membership requirements be revised to explicitly require successor accountants to document their consultations with predecessor firms, and that peer reviewers examine such documentation and make appropriate inquiries of the predecessor firms when necessary.

[10] For example, if the registrant's financial statements are materially misleading, the registrant may be in violation of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 ("the Exchange Act"). If fraudulent activity has occurred, the registrant may have violated section 17(a) of the Securities Act of 1933, 15 U.S.C. 77a et seq., or Section 10(b) of the Exchange Act. The accountant may directly violate several sections of the federal securities laws, including section 10(b) above; may aid and abet the registrant's violation of Sections 13(a), 10(b) and other provisions of the federal securities laws; and may be subject to disciplinary action under Rule 2(e) of the Commission's Rules of Practice and Investigations, 17 CFR 201.2(e).

[11] Item 4(d) of Form 8–K currently requires that the registrant request that the former auditor furnish the registrant with a letter addressed to the Commission (which the registrant will file with the Commission as an exhibit to Form 8–K) stating whether it agrees with the statements made by the registrant in response to item 4 of Form 8–K, Changes in Registrant's Certifying Accountant; and, if not, stating the respects in which he does not agree. In response to this request, and as part of their responsibilities to the public, the former auditors should ensure that the registrant has made full disclosure of any material disagreements with the registrant, including those which may have resulted in opinion shopping.

[12] Such disclosures may also be filed under Item 5 of Form 10–Q under certain circumstances. Also, similar disclosure is required under Rule 17a–5(f) when registered broker-dealers change accountants. Instead of using the word "disagreement" however the word "problems" is used. The Commission specifically requests comments on opinion shopping by broker-dealers and possible additional or revised disclosures concerning such shopping.

[13] Registrants, in particular, may be engaging in various schemes to avoid disclosure of "disagreements" while at the same time attempting to find an accountant who will accept their desired treatment. Accountants may be directly or indirectly contributing to such reporting failures either by failing to recognize differing positions to be "disagreements" or to insist that clear and accurate disclosure of the nature and extent of any disagreement be made under Item 4 of Form 8–K. In other words, some accountants may have a tendency to rationalize their loss of a client in an attempt to avoid any ill will or for other reasons. Finally, some accountants may contribute to "shopping," by not effectively fulfilling their responsibilities under the AICPA's Code of Professional Ethics (see Note 8 *supra*).

[14] The Commission is aware that there may be valid reasons for obtaining the views of an independent accountant other than the registrant's current accountant, and that some registrants have a practice of using a separate accounting firm for additional advice on complex issues. The Commission does not wish to detract from such practices. It may be appropriate, however, to require disclosure of communications with such a firm so that investors may assess their impact on the registrant's accounting policies. Alternatively, a disclosure requirement could exclude communications pursuant to such arrangements. Specific comment is requested on this issue.

[15] *See* Rule 10–01(b)(6) of Regulation S–X, 17 CFR 210.10–01(b)(6).

responding to the proposed disclosure by the registrant about opinion shopping; the potential for "shopping" for a different engagement partner within the registrant's current accounting firm; and incentives to overcome a possible reluctance of registrants and accounting firms to report "disagreements" under current Item 4.

By the Commission.

John Wheeler,

Secretary.

July 1, 1985.

[FR Doc. 85-16505 Filed 7-10-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-086 (Texas—15 Amt.)]

High-Cost Gas Produced From Tight Formations; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Amended Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the amended recommendation of the Railroad Commission of Texas that the Deep Vicksburg Formation be designated as a tight formation under § 271.703(d). The original recommendation was noticed in a Notice of Proposed Rulemaking issued October 27, 1981 (46 FR 54384, November 2, 1981).

DATE: Comments on the proposed rule are due on July 22, 1985.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on July 22, 1985.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Walter W. Lawson, (202) 357–8556.

I. Background

On September 21, 1981, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that portions of the Vicksburg Formation located in the eastern part of Starr County, Texas be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, a Notice of Proposed Rulemaking was issued on October 27, 1981 (46 FR 54384, November 2, 1981) to determine whether Texas' recommendation that portions of the Vicksburg Formation be designated a tight formation should be adopted. A portion of Texas' original recommendation was the Lower Vicksburg Formation, located in the El Benadito South Field. The Lower Vicksburg Formation recommendation was approved by the Commission by final rule issued July 6, 1984, in Order No. 387 (Docket No. RM79–76–086; 49 FR 27935, July 9, 1984). On December 14, 1984, Texas submitted an amended recommendation for the Deep Vicksburg Formation portion of the original recommendation. This Notice of Proposed Rulemaking is hereby issued to give notice of the amended recommendation by Texas and to determine if the recommendation as amended should be adopted. Texas' original recommendation, subsequent amendments and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

As originally submitted to the Commission the Deep Vicksburg Formation recommended area consisted of a roughly rectangular area approximately 6.5 miles long and 4.5 miles wide, within Starr County, Texas, near the Hidalgo County line. Vertically, Texas defined the Deep Vicksburg as extending from the top of the "Hard" geopressure marker, at an average depth of approximately 7,835 feet, to the top of the Jackson Shale, generally found below 12,000 feet.

Texas' amended recommendation consists of a roughly rectangular section approximately 2.8 miles long and 1.7 miles wide, located within the area originally recommended by Texas, and covering portions of the Ygnacio Flores A–725 and the Nicolaas Salinas A–411 surveys in eastern Starr County. The vertical interval is redefined as that portion of the Deep Vicksburg sediments occurring between the top of the 9250′ sand, or the unconformity where the 9250′ sand has been eroded, and the base of the V–23 sand.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter demonstrates, for the amended recommended area, that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing state and federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are, or are expected to be, used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs ¶ 30,180 (1980), notice is hereby given of the proposal submitted by Texas that the Deep Vicksburg Formation, as described and delineated in Texas' amended recommendation, as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comments Procedures

To permit an expeditious review of the amended formation recommendation, the Director shortens the comment period, inasmuch as this is the second notice of proposed rulemaking issued in this docket, and no major changes have been made. Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy

Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before July 22, 1985. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-088 (Texas—15 Amendment), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than July 22, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by amending paragraph (d)(171) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(171) *Vicksburg Formation in Texas.* RM79-76-086 (Texas 15).

(i) *The Deep Vicksburg Formation in Starr County, Texas.*

(A) *Delineation of formation.* The Deep Vicksburg formation covers an area of approximately 4.8 square miles in portions of the Ygnacio Flores A-725 and Nicolasa Salinas A-411 surveys located in eastern Starr County, Texas, Railroad Commission District 4.

(B) *Depth.* The top of the Deep Vicksburg formation is defined as the top of the 9250' sand, or the unconformity where the 9250' sand has been eroded. The base of the formation is the base of the V-23 sand.

(ii) *The Lower Vicksburg Formation in Starr County, Texas.*

(A) *Delineation of formation.* The Vicksburg Formation is located in Railroad Commission District 4 in the eastern half of Starr County, Texas.

(B) *Depth.* The top of the Vicksburg formation is defined as the top of the Rincon Sand and the base as the top of the Yegua sand. Specifically, it is defined as that interval on the log of the Corpus Christi Oil and Gas Company, Heard #1 Well that occurs between a measured depth of 8,260 feet to 10,837 feet, which yields a gross thickness of 2,217 feet.

[FR Doc. 85-16436 Filed 7-10-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Public Comment and Opportunity for Public Hearing on a Modification to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky as a modification to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments pertain to: hydrology and geology, including definitions, permitting requirements and surface and ground water monitoring requirements for surface and underground mines; and requirements for disposal of excess spoil for surface and underground mines. The amendments also include Reclamation Advisory Memoranda (RAM) #80, 81 and 82 of surface and ground water monitoring on interim permits.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before August 12, 1985, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on August 5, 1985 beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand delivered to: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

If a public hearing is held its location will be at: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Mining, Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, D.C. 20240.

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

Pursuant to 30 CFR 732.17(h)(2)(ii), each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSM's Lexington Field Office listed under **"ADDRESSES."**

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington, Kentucky Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business ten working days before the date of the hearing. If no one requests to comment at the the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Submission of written statements at the time of the hearing is requested and will greatly assist the transcriber. Submissions of written statements in advance of the hearing will allow OSM officals to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in ADDRESSES by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 Federal Register (47 FR 21404–21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 Federal Register notice.

III. Submission of Program Amendments

On May 20, 1985, Kentucky submitted emergency regulations as program amendments to modify requirements pertaining to hydrology and geology. The program amendments are intended to comply with the Settlement Agreement entered into in Civil Action 84–58 in the U.S. District Court for the Eastern District of Kentucky. Kentucky also submitted proposed amendments to the excess spoil rules as part of its response to a letter from the Director, OSM, which identified areas of the Kentucky program needing revision. Briefly, the proposed modifications and cites are:

1. Kentucky proposes to amend its definition of "aquifer" and to add a definition of "water transmitting zone." 405 KAR 7:020E.

2. Kentucky proposes to amend its permitting requirements for geologic and hydrologic information, ground water information and surface water information to change the designations to *premining* information and to delete current information requirements and add new requirements. 405 KAR 8:030E Section 12, 13, 14 and 15 and 405 KAR 8:040E Sections 12, 13, 14 and 15.

3. Changes are proposed to clarify requirements for alternative water supply information. 405 KAR 8:030E Section 16.

4. Existing requirements for permit information on protection of the hydrologic balance would be deleted and replaced by new requirements. 405 KAR 8:030E Section 32 and 405 KAR 8:040E Section 32.

5. Kentucky is proposing to amend its requirements for surface and ground water monitoring for surface and underground mines. 405 KAR 16:110E and 405 KAR 18:110E.

6. Kentucky is proposing to amend its general requirements for disposal of excess spoil, and its provisions on valley fills and head-of-hollow fills, rock-core chimney drains, end-dumped fills and disposal on existing benches, for surface and underground mines. 405 KAR 16:130 and 405 KAR 18:130. Kentucky is adding a paragraph on disposal of underground development waste to require disposal in accordance with 405 KAR 16:140 and 405 KAR 18:160. 405 KAR 16:130.

7. Kentucky is adding Reclamation Advisory Memoranda #80, 81 and 82 to clarify requirements for surface and ground water monitoring for interim permits.

Therefore, the Director, OSM is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. *Compliance With the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

The authority citation for Part 917 continues to read as follows:

Authority: Sec. 503; Pub. L. 95–87, 91 stat. 470 (30 U.S.C. 1253), unless otherwise noted.

Dated: July 5, 1985.
Jed D. Christiansen,
Acting Director, Office of Surface Mining.
[FR Doc. 85-16471 Filed 7-10-85; 8:45 am]
BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 3

Basic Eligibility for Loan Guaranty Benefits

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration is proposing to amend its adjudication regulations concerning loan guaranty eligibility for Vietnam era veterans. This amendment is necessary because of a 1978 change of law. The effect of this amendment will be to equalize the loan guaranty eligibility of Vietnam era veterans with that of veterans of World War II and the Korean Conflict.

DATES: Comments must be received on or before August 12, 1985. It is proposed to make this amendment effective October 18, 1978, as provided by law.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this regulation to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132 at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until August 26, 1985.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Compensation and Pension Service (211B), Department of Veterans Benefits, (202) 389-3005.

SUPPLEMENTARY INFORMATION: Section 102 of Pub. L. 95-476, Veterans' Housing Benefits Act of 1978, provided Vietnam era veterans with the same loan guaranty eligibility that World War II and Korean Conflict veterans had. The law provided that if a veteran served during the Vietnam era (August 5, 1964, to May 7, 1975) and had less than 90 days of active duty, loan guaranty eligibility required a rating determination that the veteran was or could have been discharged or released because of a service-connected disability. This change was effectively implemented by publications from the Loan Guaranty Service but one adjudication regulation was overlooked. This proposed amendment to § 3.315 corrects that oversight.

The Administrator has certified that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. In accordance with Executive Order 12291, Federal Regulation, we have determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

(Catalog of Federal Domestic Assistance Program number is 64.119)

Approved: June 17, 1985.
By direction of the Administrator.
Everett Alvarez,
Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, COMPENSATION AND PENSION, § 3.315(b) is amended to read as follows:

§ 3.315 Basic eligibility determinations—dependents, loans, education.

* * * * *

(b) *Loans.* If a veteran of World War II, the Korean conflict or the Vietnam era had less than 90 days of service, or if a veteran who served after July 25, 1947, and prior to June 27, 1950, or after January 31, 1955, and prior to August 5, 1964, or after May 7, 1975, has less than 181 days of service on active duty as defined in §§ 36.4301 and 36.4501, eligibility of the veteran for a loan under 38 U.S.C. ch. 37 requires a determination that the veteran was discharged or released because of a service-connected disability or that the official service department records show that he or she had at the time of separation from service a service-connected disability which in medical judgment would have warranted a discharge for disability. These determinations are subject to the presumption of incurrence under § 3.304(b). Determinations based on World War II, Korean conflict and Vietnam era service are also subject to the presumption of aggravation under § 3.306(b) while determination based on service on or after February 1, 1955, and before August 5, 1964, or after May 7, 1975, are subject to the presumption of aggravation under § 3.306 (a) and (c). The provisions of this paragraph are also applicable, regardless of length of service, in determining eligibility to the maximum period of entitlement based on discharge or release for a service-connected disability. (38 U.S.C. 1602(1)(A); 1652(a))

* * * * *

[FR Doc. 85-16488 Filed 7-10-85; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2862-5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking on a revision to the Illinois State Implementation Plan (SIP) for ozone. The revision pertains to rules developed to satisfy the reasonably available control technology (RACT) requirements for sources of volatile organic compounds (VOC) which are covered by USEPA's second set of Control Techniques Guidelines (CTGs). USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act). USEPA is proposing to approve a portion of the Illinois submittal, disapprove a portion, and to disapprove Illinois' Part D stationary source control strategy for ozone due to Illinois' failure to adopt adequate RACT rules for several required source categories.

DATE: Comments on this revision and on the proposed USEPA action must be received by August 12, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Randolph O. Cano, at (312) 886–6035 before visiting the Region V office).

U.S. Environmental Protection Agency, Air and Radiation Branch, Region V (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to:

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano (312) 886–6035.

SUPPLEMENTARY INFORMATION: On January 28, 1983, the State of Illinois submitted a December 30, 1982, Illinois Pollution Control Board (IPCB) Final Order (R80–5) for incorporation into the Illinois SIP. This Final Order was submitted to satisfy the provisions of the Clean Air Act which requires States to revise their SIPs for areas that have not attained the national ambient air quality standards (NAAQS). For States with ozone nonattainment areas, USEPA has stated that the minimum acceptable level of ozone control includes RACT requirements for sources of VOC emissions for which USEPA has published a CTG by January 1978 and additional RACT requirements on an annual basis for VOC sources covered by CTGs published by January of the preceding year. (See 44 FR 20372 (April 4, 1979) as supplemented at 44 FR 38538 (July 2, 1979); 44 FR 50371 (August 28, 1979); 44 FR 53761 (September 17, 1979); and 44 FR 67182 (November 23, 1979). Adoption and submittal of additional RACT regulations for sources covered by CTGs published between January 1978 and January 1979 were due July 1, 1980 (44 FR 50371, August 28, 1979).

Although initially these rules were due to USEPA earlier, because the State regulatory process took longer than anticipated and good faith efforts were made to adopt the necessary regulations, USEPA revised the July 1, 1980, deadline to January 1, 1981 (45 FR 78132 on November 25, 1980.

The State's January 28, 1983, submittal was intended to satisfy the Federal requirements for the adoption of rules concerning the sources covered by Group II of the CTGs.

USEPA published the CTGs in order to assist the States in determining RACT. The CTGs provide information on avaiable air pollution control techniques, their costs and their effectiveness, and provide recommendations on what USEPA calls the "Presumptive Norm" for RACT. Group II CTGs cover the following source categories.

- Factory surface coating of flatwood paneling.
- Petroleum refinery fugitive emissions.
- Pharmaceutical manufacturing.
- Rubber tire manufacturing.
- Surface coating of miscellaneous metal parts and products.
- Graphic Arts (printing).
- Dry cleaning perchloroethylene.
- Leak prevention from gasoline tank trucks and vapor collection systems.
- Petroleum liquid storage in external floating roof tanks.

State Implementation Plans setting emissions limits for sources in Group II of the CTG's are commonly referred to as RACT II rules.

Evaluation of the Illinois RACT II Rules

USEPA has evaluated the State's submittal and the accompanying technical support. This evaluation is based on the technical information contained in USEPA's CTG for each source category. The following discussion summarizes USEPA objections to rules which were found to be inconsistent with the requirements of RACT. A more detailed evaluation of the State's submittal and the deficiencies identified by USEPA is contained in the technical support documents which are available for inspection at the Region V office listed in the front of this **Federal Register** notice.

USEPA has reviewed the State's RACT II submittal and proposes approval of it with the exception of the rules which are summarized below and accompanied by USEPA's analysis and proposed action. The bases for USEPA's actions on the approvable provisions of the Illinois RACT II rules are discussed in detail in the technical support documents referenced above.

1. Rule 205(s)(2) provides an exemption to the limitations of Rule 205(s) for any facility whose aggregate uncontrolled rotogravure and/or flexographic printing press emission of volatile organic material is limited by operating permit conditions to 1000 tons per year or less in the absence of air pollution control equipment or whose actual emissions in the absence of air pollution control equipment would be less than 1000 tons per year when averaged over the preceding three calender years. USEPA proposes disapproval of this provision as it applies to sources which would be subject to the exemption. Illinois provides no technical or cost effectiveness analysis to justify this general exemption. Nor does the State provide an analysis to justify any plant specific exemptions to Rule 205(s). Such analyses could justify exemption to the application of RACT.

Alternatively, the exemption could be justified with a demonstration that the rule provide emission reductions generally equivalent to the level of control contemplated by the CTG. USEPA's equivalency policy allows exemptions that result in allowable emissions under the State's rule which are within 5 percent of the allowable emissions under the CTG. Illinois attempted to document that the exemption was within the 5 percent criterion. Illinois' analysis is not consistent with the 5 percent demonstration requirements and the State did not submit detailed technical data supporting this exemption as RACT.

The regulatory impact of USEPA's disapproval of the 1000 tons exemption is Rule 205(s)(2) is that Rule 205(s) only applies to sources greater than 1000 tons. As a result of USEPA's proposed disapproval, Illinois' rule is deficient with respect to sources less than 1,000 tons. This deficiency could be rectified if the State changed the 1000 tons exemption to a 100 ton exemption.

2. Rule 205(s)(1)(D)(ii) applies to the packaging rotogravure process and provides that a capture system used in conjunction with an emission control system must, in combination, provide an overall reduction in volatile organic emissions of at least 65 percent or the maximum reduction achievable using good engineering design. USEPA notes that the concept "maximum reduction achievable" is vague and cannot be measured by objective criteria. Without a clearly stated overall reduction requirement, there is no assurance that sources, which choose to comply by installing add-on control technology pursuant to section 205(s)(1)(C) of the Rule, will comply with RACT. Rather than resorting to the use of "maximum reduction achievable" the State could relax the 65 percent reduction on a source specific basis where appropriate. Therefore, USEPA proposes to disapprove Rule 205(s)(1) as it applies to packaging rotogravure sources. It should be noted that disapproval of only

section 205(s)(1)(C) would eliminate sources' legal ability to use add-on control technology, and force all such sources to comply through reformulation of coatings pursuant to sections 205(s)(1)(A) or (B) of the Rules. Such a result could place sources which have not been able to reformulate in violation with no available remedy. Therefore, USEPA believes it is necessary to disapprove Rule 205(s)(1) in its entirety, as it applies to packaging rotogravure sources. The remainder of the Rule, and Rule 205(s)(1) as applied to other sources is consistent with RACT guidance and approvable.

3. Rule 205(s)(4) states that compliance with Rule 205(s) is to be demonstrated by methods or procedures approved by the Illinois Environmental Protection Agency. No test methods are specified. USEPA proposes approval of Rule 205(s)(4) but notes that 40 CFR 51.12(c) provides that USEPA test methods specified in 40 CFR 60 shall be used for any SIP provision that does provide a test procedure.

4. Rule 205(n)(1)(K) allows 4.3 lbs. VOC/gallon of coating for an extreme performance topcoat and 4.8 lbs. VOC/gallon of coating for final repair coating. USEPA believes that these emission limitations do not represent RACT for these operations. USEPA has evidence that coatings meeting 3.5 lbs. VOC/gallon are presently in commercial use and reasonably available; therefore, USEPA proposes disapproval of Rule 205(n)(1)(K). However, USEPA will reconsider these exemptions if the allowable emissions for all miscellaneous metal sources (including heavy off-highway vehicles) is within 5 percent of the emissions allowed by the miscellaneous metals CTG presumptive norm.

5. USEPA proposes disapproval of the exemption for marine propulsion equipment and the exteriors of airplanes in the State's definition of "Micellaneous Metal Parts and Product" which is contained in Rule 201: Definitions. The basis of USEPA's disapproval is that the Group II CTG's are intended to apply to marine propulsion equipment and the exteriors of airplanes (if the airplane exteriors are coated as a separate manufacturing operation). However, USEPA will reconsider these exemptions if the allowable emissions for all miscellaneous metal sources (including heavy off-highway vehicles) is within 5 percent of the emissions allowed by the miscellaneous metals CTG presumptive norm.

6. Rule 205(o)(3)(D)(iv) exempts stationary storage tanks equipped with an external floating roof used to store crude oil from Rule 205(o)(3)(C) which requires the use of secondary seals on external floating tanks. USEPA proposes disapproval of Rule 205(o)(3)(D)(iv) because the State has failed to demonstrate that it is unreasonable to require the use of secondary seals in this circumstance. If the State, however, can demonstrate that crude oil other than "waxy, heavy pour crude oil" as defined by USEPA's recommended test method (which is exempted from the secondary requirement to have seals) will damage or interfere with the operation of secondary seals, USEPA will reconsider its position on the approvability of this exemption.

It is USEPA's understanding that the Illinois Environmental Protection Agency (IEPA) intends to propose a rule change to the IPCB which will make this exemption consistent with USEPA's CTG. When such a rule change is made, USEPA will, if requested by the State, consider the approvability of the revised rule.

Alternatively, the exemption could be justified with a demonstration that the rule provides emissions reduction generally equivalent to the level of control contemplated by the CTG. USEPA's equivalency policy allows exemptions that result in allowable emissions under the State's rule which are within five percent of the allowable emission under the CTG.

Further, if the exemption in Rule 205(O)(3)(D)(iv) is finally disapproved, the State could submit to USEPA source specific SIP revisions for sources which cannot meet the requirement for secondary seals on external floating tanks. USEPA will consider the approvability of each source specific revision based on its individual merits and on its conformity with the requirements of the Act.

7. An equation in Rule 205(n)(4) which concerns the internal offset provisions for surface coating contains an error which is being corrected as part of the IPCB's RACT III rulemaking proceeding. USEPA, therefore, proposes to disapprove Rule 205(n)(4).

It should also be noted that, in the portions of Illinois' submittal proposed for approval, there are numerous references to compliance schedules, alternative plans and procedures and other requirements which may be established subseqently by the Illinois Pollution Control Board. Pursuant to section 110 of the Clean Air Act, all such subsequent action must be submitted to USEPA for approval.

Failure of the State to Comply With All Federal Requirements

The Illinois submittal failed to adopt regulations to address the requirements presented by three CTGs issued as part of the RACT II requirements—factory surface coating of flatwood paneling, synthetic pharmaceutical manufacturing, and leak prevention from gasoline tank trucks and vapor collection systems.

The Illinois submittal provided certification that there are no manufacturers of flatwood paneling in the State and adopted no regulations for this sources category. Based on the State's certification, USEPA agrees that no rules need be submitted for this category.

In lieu of adopting regulations for leak prevention from gasoline tank trucks and vapor collection systems the State has proposed to rely on existing State regulations that, in USEPA's judgment, are not adequate to satisfy the requirements of leak tightness for gasoline tank trucks. Rule 205(p)(5) provides that any delivery vessel equipped with a vapor recovery control system must be designed and maintained to be vapor tight during normal operations. This provision is not adequate because it fails to define what is meant by vapor tight.

The State failed to adopt rules which represent RACT for the synthetic pharmaceutical manufacturing industry. The State based its decision not to adopt rules on testimony that indicated that the cost of control in this industry was unreasonable when compared to the cost of other stationary source control measures. USEPA believes that the State has failed to adequately justify exempting this source category from the requirement of RACT. Further, the State's failure to adopt regulations covering the synthetic pharmaceutical manufacturing industry, leaves these sources totally unregulated. USEPA believes that cost can be considered in determining whether or not a regulation should be adopted. The State must, however, better support its decision not to adopt these regulations due to the unreasonably high costs. For example, Illinois could compare the control costs for this industry in other States to costs for this industry in Illinois. USEPA's analyses indicate that RACT exists for the synthetic pharmaceutical manufacturing industry.

In its February 21, 1980 (45 FR 11493), approval of the Illinois plan for the attainment and maintenance of the National Ambient Air Quality Standards under section 110 of the Clean Air Act, it was noted that continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of the RACT requirements for sources covered by CTGs. As stated above, rules for the

RACT II CTGs should have been submitted by January, 1981. The current failure of the State to have adopted rules imposing RACT on all RACT II categories of sources violates the USEPA requirements for the continued satisfaction of the requirements of Part D for the ozone portion of the SIP. Therefore, USEPA is proposing to disapprove the Illinois' Part D stationary source control strategy for failure to meet the RACT II control requirements.

USEPA notes, however, that the State is moving to remedy many of the deficiencies noted above. USEPA specifically requests comments on the State's intentions to remove the deficiencies cited above. USEPA notes that final disapproval of the State's stationary source control strategy as meeting RACT requirements will result in the imposition of an industrial growth prohibition under section 110(a)(2)(I).

All interested persons are invited to submit written comments on the proposed SIP revision. Public comments received by the date indicated above will be considered by USEPA in the development of its final rulemaking.

Under 5 U.S.C. section 605(b) USEPA must determine whether or not this action will have a significant economic impact on a substantial number of small entities. This action, if finally adopted, will not have a significant impact on a substantial number of small entities. USEPA believes the rules proposed for disapproval today would regulate emissions from sources that cannot be properly categorized as small entities. Public comment is solicited on whether or not today's disapprovals impact on a large number of small entities.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V office listed above.

Authority: 42 U.S.C. 7401–7642.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: June 20, 1984.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 85–16462 Filed 7–10–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF DEFENSE

48 CFR Parts 208 and 252

Department of Defense Federal Acquisition Regulation Supplement; Precious Metals

AGENCY: Department of Defense.

ACTION: Proposed rule and request for comment.

SUMMARY: The Defense Acquisition Regulatory Council is considering a change to the DoD FAR Supplement which recognizes the rule of the Defense Department's precious metals recovery program in acquisition and contracting. The proposed change will require bidders to bid items with precious metal content with two prices: "one price with contractor's furnished precious metals and another price without contractor's furnished precious metals."

DATE: Comments on the proposed revisions should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below on or before August 12, 1985 to be considered in the formulation of the final rule. Please cite DAR Case No. 82–69 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles Lloyd, Executive Secretary, OUSDRE(AM) DARS, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act.

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act and, therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 48 CFR Parts 208 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Proposed Amendments to 48 CFR Part 208

1. The authority for 48 CFR Parts 208 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 208—REQUIRED SOURCES OF SUPPLY AND SERVICES

2. Subpart 208.77, consisting of §§ 208.7701 through 208.7703, is added to read as follows:

Subpart 208.77—Utilization of Government-Owned Precious Metals

Sec.
208.7701 Definitions.
208.7702 Policy.
208.7703 Applicable Procedures.

Subpart 208.77—Utilization of Government-Owned Precious Metals

208.7701 Definitions.

"Refined precious metal" means recovered silver, gold, platinum, palladium, iridium, rhodium, or ruthenium in bullion, granulation or sponge form which has been purified to at least .999 percentage of fineness.

"Defense Industrial Supply Center (DISC)" means the Defense Logistics Agency field activity which is the assigned Commodity Integrated Materiel Manager for refined precious metals and is responsible for the storage and issue of such materiel.

208.7702 Policy.

(a) This section establishes uniform policy, guidance, and procedures for implementing requirements of the Department of Defense Precious Metals Recovery Program (PMRP) concerning the utilization of PMRP recovered precious metals as Government-furnished material (GFM) in contracts as provided in DoD Directive 4160.22, "Recovery and Utilization of Precious Metals", December 1, 1976, and the related DoD Instruction 4140.41, "Government-Owned Materiel Assets Utilized as Government-furnished Materiel for Major Acquisition Programs", July 26, 1974.

(b) It is the policy of the Department of Defense that DoD Components participate in the PMRP to the maximum extent and promote optimum economic utilization of available Government-owned precious metals as Government-furnished material in lieu of contractor-furnished precious metals in production contracts.

(c) In order to realize more cost-effective contracting, DoD-refined precious metal assets shall be utilized in lieu of open market contracting in acquisition programs for military-designed or commercial material when

use of Government-furnished material (GFM) is the more cost-effective manner to accomplish the task, or is otherwise in the Government's best interest. The DISC issue price of GFM precious metals is normally significantly lower then the commercial market price.

208.7703 Applicable procedures.

(a) To assure maximum utilization of PMRP recovered precious metals as GFM in contracts for items which require those precious metals cited in (d) below in their manufacture, the provision in 252.208-7004 in shall be inserted in solicitations for items in the Federal Supply Groups listed in (c) below or any subassembly, component, or part thereof except when: using small-purchase procedures; the contracting officer has determined, through the end item inventory manager, in accordance with the procedures in Chapter XVII of the Defense Utilization and Disposal Manual, DoD 4160.21-M, that the required precious metals are not available from DISC; or when the contracting officer knows that the supplies being acquired do not require precious metals in their manufacture.

(b) When an offeror advises of a precious metals requirement in accordance with 252.208-7704, the contracting officer shall have the end item inventory manager contact the DISC Precious Metal Inventory Manager (IM), in accordance with the procedures in Chapter XVII of the Defense Utilization and Disposal Manual, DoD 4160.21-M, to determine availability of required precious metal assets and current GFM unit prices. If the precious metals are available, the contracting officer shall evaluate offers and award the contract on the basis of that offer which is in the best interests of the Government.

(c) *Federal Supply Groups.* Acquisition of items in the following Federal Supply Groups are subject to the above-prescribed policy and procedures:

FS Groups and Description	
12	Fire Control Equipment
14	Guided Missiles
15	Aircraft and Airframe Structural Components
16	Aircraft Components and Accessories
17	Aircraft launching, Landing, and Ground Handling Equipment
18	Space Vehicles
20	Ship and Marine Equipment
28	Engines, Turbines and Components
29	Engine Accessories
31	Bearings
34	Metalworking Machinery
58	Communications, Detection, and Coherent Radiation Equipment
59	Electrical and Electronic Equipement Components
61	Electric Wire and Power and Distribution Equipment
65	Medical, Dental, and Veterinary Equipment and Supplies
66	Instruments and Laboratory Equipments
67	Photographic Equipment
68	Chemicals and Chemical Products
84	Clothing, Individual Equipment, and Insignia
95	Metal Bar, Sheets, and Shapes

(d) *Refined Precious Metals.* The following refined precious metals are currently managed by DISC:

Precious Metal and National Stock Number (NSN)
Silver Bullion/Granules—9660-00—100-9432
Gold Bullion/Granules—9660-00-042-7733
Platinum Granules—9660-00—042-7768
Platinum Sponge—9660-00-151-4050
Palladium Granules—96600-00-042-7765
Rhodium Sponge—96600-01-010-2625
Iridium Sponge—96600-01-011-1937
Ruthenium Sponge—96600-01-030-0313

PART 252—CONTRACT CLAUSES AND SOLICITATION PROVISIONS

3. Section 252.208-7004 is added to read as follows:

252.208-7004 Notice of Intent To Furnish Precious Metals as Government-Furnished Material.

As prescribed at 208.7703(a), insert the following provision.

Notice of Intent to Furnish Precious Metals as Government-Furnished Material (Date)

(a) It is the Government's intent to furnish precious metal(s) required in the manufacture of contractually-deliverable items by the Offeror in performance of any contract resulting from this solicitation pursuant to the clause "Government-Furnished Property" herein (except that use of Government-furnished silver is mandatory only when the quantity required is one hundred (100) troy ounces or more), if such action is determined to be in the Government's best interest.

(b) To facilitate such determination the Offeror shall cite below the type (silver, gold, platinum, palladium, iridium, rhodium, and ruthenium) and quantity (in whole troy ounces) of precious metal(s) required in the performance of this contract (including precious metal required for any first article or production sample), and shall also cite in what contractually-deliverable item the precious metal(s) will be used, specifying National Stock Number and Nomenclature, if known.

Type of precious metal required [1]	Quantity (in whole troy ounces)	Contractually-deliverable item in which precious metals will be used (cite NSN and nomenclature)

[1] If platinum or palladium, specify whether sponge or granules are required.

(c) Offerors shall submit two prices for each contractually-deliverable item containing precious metal: one based on the Government's furnishing precious metals, and one based on the Contractor's furnishing precious metals; and award will be made, considering the Government-furnished material unit price which is in the best interest of the Government.

(d) The contractor agrees to insert this provision, including this paragraph (d), in solicitations for subcontracts and purchase orders issued in performance or any contract resulting from this solicitation unless the Contractor knows that the item being purchased contains no precious metals.

(End of provision)

[FR Doc. 85-16487 Filed 7-10-85; 8:45 am]
BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 50, No. 133
Thursday, July 11, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Sawtooth National Forest Grazing Advisory Board; Meeting

The Sawtooth National Forest Grazing Advisory Board will hold a meeting in Stanley, Idaho, on August 6, 1985, at 1:00 p.m. The meeting will be held in the field and will begin at the Stanley Work Center Forest Office.

The Advisory Board, comprised of eight members, will meet to review and make recommendations to the Sawtooth National Forest Supervisor on a draft allotment management pian.

The meeting is open to the public. Persons who wish to attend should notify the Sawtooth National Forest Supervisor, 1525 Addison Avenue East, Twin Falls, Idaho 83301. Written statements may be filed with the advisory Board after the meeting.

July 23, 1985.

Roland M. Stoleson,

Forest Supervisor, Sawtooth National Forest.

[FR Doc. 85-16466 Filed 7-10-85; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

AZ-113 Western States Auction Sales, Inc., Vail, Arizona
CA-178 Chino Livestock Commission & Yardage Co., Chino, California
CO-152 Garfield Livestock, Inc., Silt, Colorado
ME-105 Clark Livestock Sales, Inc., Skowhegan, Maine
MN-181 Minnesota Feeder Pig Mkt., Dawson, Minnesota
MS-161 Meadows Livestock Auction, Inc., Mize, Mississippi
SC-138 Intercoastal Auction Barn Conway, South Carolina.

Notice is hereby given that pursuant to authority under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed designation, may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, United States Department of Agriculture, Washington, DC 20250, by July 26, 1985.

All written submissions made pursuant to this notice shall be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC, this 5th day of July 1985.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 85-16507 Filed 7-10-85; 8:45 am]

BILLING CODE 3410-KD-M

Soil Conservation Service

San Felipe Creek Watershed, TX.; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the San Felipe Creek Watershed project, Val Verde County, Texas.

FOR FURTHER INFORMATION CONTACT: Billy C. Griffin, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501, telephone 817-774-1214.

SUPPLEMENTARY INFORMATION: A determination has been made by Billy C. Griffin that the proposed works of improvement for the San Felipe Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Billy C. Griffin, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: July 5, 1985.

O'Gene W. Barkemeyer,

Assistant State Conservationist for Water Resources.

[FR Doc. 85-16515 Filed 7-10-85; 8:45 am]

BILLING CODE 3410-16-M

Lower Bayou Watershed, OK; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lower Bayou Watershed, Love, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Roland R. Willis, State Conservationist, Soil Conservation Service, USDA Agricultural Center Building, Stillwater, Oklahoma 74074, telephone (405) 624-4360.

SUPPLEMENTARY INFORMATION: The environmental assessment of this

federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection. The planned works of improvement include five floodwater retarding dams.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Roland R. Willis.

No administrative action in implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: July 3, 1985.

Roland R. Willis.

State Conservationist.

[FR Doc. 85-16539 Filed 7-10-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Forms Under review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: NOAA
Title: Logbook Family of Forms
Form Number: Agency—; OMB—0648-0016
Type of Request: Revision of a current approval collection.
Burden: +100 respondents; +1,316 reporting hours
Needs and Uses: An amendment to the Coastal Migratory Pelagic Resources Fishery Management Plan (FMP) is requested to monitor and evaluate changes in species abundance. These data will be used to distinguish harvest between Gulf and Atlantic migratory groups. A sample of ten percent of the approximately 1,000 boats in the southeast whose captains are licensed to carry passengers for a fee will be required to report all effort and catches of coastal pelagics by species.
Affected Public: Businesses or other for-profit; small businesses or organizations
Frequency: On occasion, quarterly
Respondent's Obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395-3785.

Agency: NOAA
Title: Federal Fisheries Permit—Amendment G
Form Number: Agency—NOAA 88-150; OMB—0648-0007
Type of Request: Revision of a currently approved collection
Burden: +600 respondents; +300 reporting hours
Needs and Uses: Permits are required to identify the universe of commercial vessels engaged in fishing operations on the Gulf of Mexico king mackerel migratory groups due to the overfished conditions. A quota has been set which provides the commercial share of the stock rebuilding burden. Councils and NMFS will use the data monitor catch levels and to trigger closure dates.
Affected Public: Individuals or households, businesses or other for-profit, small businesses or organizations
Frequency: Annual
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395-3785.

Agency: NOAA
Title: Dealer Purchases and Trip Interviews (Amendment 4)
Form Number: Agency—; OMB—0648-0013
Type of Request: Revision of a currently approved collection
Burden: +661 respondents; +159 reporting hours
Needs and Uses: Data on dealer purchases are required in establishing and evaluating fishery management and development activities to prevent overfishing of king mackeral stock and to monitor all stocks at maximum sustainable yield (MSY). All commercial fishing trips made by vessels participating in the coastal pelagics fishery will be reported.
Affected Public: Individuals or households, businesses or other for-profit, small businesses or organizations
Frequency: Weekly, monthly
Respondent's Obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395-3785.

Agency: Minority Business Development Agency
Title: Quarterly Narrative Performance Report
Form Number: Agency—NA; OMB—0040—0007
Type of Request: Extension of a currently approved collection
Burden: 150 respondents; 9,600 reporting hours
Needs and Uses: This information is required to compare the individual organization's accomplishments against its performance goals for the quarter and to evaluate overall results of the agency funded programs.
Affected Public: Individuals or households, state or local governments, businesses or other for-profit institutions, non-profit institutions
Frequency: Quarterly
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Timothy Sprehe, 395-4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Office, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer, Room 3225, New Executive Office Building, Washington, D.C. 20503.

Dated: July 3, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-16438 Filed 7-10-85; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[C-333-502]

Initiation of Countervailing Duty Investigation—Deformed Steel Concrete Reinforcing Bar From Peru

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Peru of deformed steel concrete reinforcing bar (rebar), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the

meaning of the countervailing duty law. Since Peru is not a "country under the Agreement", section 303 of the Tariff Act of 1930, as amended (the Act), applies to this investigation. If this investigation proceeds normally we will make our preliminary determination on or before September 6, 1985.

EFFECTIVE DATE: July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth Haldenstein or Laura Winfrey, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 377–4136 or 377–0160.

SUPPLEMENTARY INFORMATION:

The Petition

On June 13, 1985, we received a petition from the Florida Steel Corporation and Chaparral Steel Company on behalf of the U.S. industry producing rebar. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters of rebar in Peru receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act). Peru is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303(a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on rebar from Peru, and we have found that the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Peru of rebar as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants.

Scope of Investigation

For purposes of this investigation the term deformed concrete reinforcing bar covers hot-rolled steel bars, of solid cross section, having deformation of various patterns on their surfaces which are currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA) under item numbers 606.7900 and 606.8100

Deformed concrete reinforcing bars are hot-rolled bar products, consisting of special deformed sections used to resist tension, compression, temperature and/or shear stresses for reinforcing concrete. The category includes all deformed concrete reinforcing bars rolled from new billet steel, rail steel, or axle steel including straight lengths and coils.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Peru of rebar receive benefits under the following programs which constitute bounties or grants:

- Certificate of Tax Rebate System (CERTEX)
- Nontraditional Export Fund (FENT)
- Law for the Promotion of Exports of Nontraditional Goods (Export Law)
  - —Articles 8 and 9
  - —Article 12
  - —Article 13
  - —Article 14
  - —Article 16
  - —Article 23
  - —Article 31
- Regional Incentives
- Export Promotion Fund (FOPEX) and the Peruvian Export Credit Insurance Company S.A. (SECREX)
- Equity Infusions into SIDERPERU
- Government Loans and Loan Guarantees
- Forgiveness and Capitalization of Debt
- Exemption of Import Duties—We note that we are currently reconsidering the issue of whether exemptions from import duties on raw materials physically incorporated in products sold on the domestic market confer a bounty or grant.
- Reimbursement of Duties.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

July 2, 1985.

[FR Doc. 85–16439 Filed 7–10–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–517–501]

Initiation of Countervailing Duty Investigation; Carbon Steel Wire Rod From Saudi Arabia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod, as described in the "Scope of the Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before September 5, 1985.

EFFECTIVE DATE: July 11, 1985.

FOR FURTHER INFORMATION CONTACT: John Davies or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–1785 or (202) 377–2438.

SUPPLEMENTARY INFORMATION:

Petition

On June 12, 1985, we received a petition in proper form from counsel for Atlantic Steel Co., North Star Steel Texas, Inc., Georgetown Steel Corp. and Raritan River Steel Co. filed on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Saudi Arabia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable, sections 303(a)(1) and (b) apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise from Saudi Arabia materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on carbon steel wire rod from Saudi Arabia, and we have found that the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod, as described in the "Scope of the Investigation" secton of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before September 5, 1985.

Scope of the Investigation

For purposes of this investigation the term carbon steel wire rod covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch in diameter, nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classifiable under items 607.14, 607.17, 607.22 and 607.23 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod receive benefits under the following programs that constitute bounties or grants. We are initiating an investigation on the following allegations:

- Equity investment by the government of Saudi Arabia provided on terms inconsistent with commercial considerations.
- Special benefits, such as import duty exemptions and preferential utility rates, under the Law for the Protection and Encouragement of National Industry in the Kingdom of Saudi Arabia which may be limited to a specific enterprise or industry or group of enterprises or industries (We note that we are currently reconsidering the issue of whether duty exemptions on raw materials and packaging physically incorporated in products sold on the domestic market confer a bounty or grant.)
- Special benefits to enterprises located in Jubail.
- Special benefits to joint ventures under the Foreign Capital Investment Code, and the Saudi Arabian Tenders Regulations and Rules for Implementation.

We are also initiating an investigation on the following program which was not alleged by petitioners, but on which information was included in the petition:

- Loans from the Saudi Industrial Development Fund.

We are not initiating an investigation on the following allegation for the reasons stated below.

- *Equity investments by the Deutsche Entwicklungsgesellschaft (DEG) and Korf-Stahl.*

Petitioners also allege that the equity investments in SISCO made by the German partners were inconsistent with commercial considerations.

We are not initiating on the equity investments in SISCO by the foreign partners. Section 303 of the Act states that "whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise into the United States . . . there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant, however the same be paid or bestowed." Therefore, we do not believe that funds provided by German investors can confer a countervailable benefit on wire rod manufactured in and exported from Saudi Arabia.

Dated: July 2, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-16457 Filed 7-10-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-471-502]

Preliminary Negative Countervailing Duty Determination; Carbon Steel Wire Rod from Portugal

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Portugal of carbon steel wire rod.

We have notified the United States International Trade Commission (ITC) of our determination. If this investigation proceeds normally, we will make our final determination by September 16, 1985.

EFFECTIVE DATE: July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-0167 or 377-3464.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon investigation, we preliminarily determine that there is no reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Portugal of carbon steel wire rod.

Case History

On April 8, 1985, we received a petition filed by Atlantic Steel Co., Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Portugal of carbon steel wire rod directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 29, 1985, we initiated such an investigation (50 FR 19065). We stated that we expected to issue a preliminary determination by July 2, 1985.

Since Portugal is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of carbon steel wire rod from Portugal materially injure, or threaten

material injury to, a U.S. industry. On May 15, 1985, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of carbon steel wire rod from Portugal.

We presented a questionnaire concerning the allegations to the government of Portugal in Washington, D.C., on May 9, 1985. The government of Portugal and Siderurgia Nacional EP (SN) provided responses to our questionnaire on June 17, 1985.

Scope of the Investigation

The merchandise covered by this investigation is carbon steel wire rod, a coiled, semi-finished, hot-rolled carbon steel product or approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound. Wire rod is currently classifiable under item 607.17 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

There is only one known producer in Portugal of carbon steel wire rod, Siderurgia Nacional EP ("SN"). We have received information from the company and the government of Portugal. For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that manufacturers, producers or exporters in Portugal of carbon steel wire rod did not use the following programs:

A. Export Financial at Preferential Rates—The "Export Card"

Petitioners alleged that manufacturers, producers, or exporters of carbon steel wire rod may be benefitting from export financing at preferential rates (the "export card" program.) The government of Portugal stated in its response that the short term export financing formerly provided under the "export card" program was terminated effective December 31, 1983. The response also stated that SN received no benefit from any (1) medium- or long-term financing or (2) foreign importer financing, under this program, during the review period. Therefore, we preliminarily determine that this program was not used.

B. Export Tax Incentives

Petitioners alleged that manufacturers, producers or exporters of carbon steel wire rod may be benefitting from export tax incentives under Decrees 42/77 and 1113/80, Law 4/80, and Decree-Laws 329/80 and 400/80. The government of Portugal stated in its response that SN received no benefits under the export tax incentives legislation. Accordingly, we preliminarily determine that this program was not used.

C. Integrated Investment Incentive System

Petitioners alleged that manufacturers, producers, or exporters in Portugal of carbon steel wire rod may be receiving benefits, which constitute subsidies, under the following regimes of Portugal's Integrated Investment Incentives System:

- General regime;
- Regional/sectoral regime;
- Extraordinary regime of capital donations;
- Contractual regime for projects of high economic and social impact;
- Subsidy regime for research and technical development.

The government of Portugal stated in its response that SN received no benefits under any of the regimes of the Integrated Investment Incentive System by Decree-Law 132/83. Therefore, we preliminarily determine that this program was not used.

D. Domestic Business Incentives

Petitioners alleged that manufacturers, producers, or exporters in Portugal of carbon steel wire rod may be receiving domestic business subsidies under Ruling 316/78 and/or Decrees 353-E/77 and 24/77. The government of Portugal stated in its response that Rulings 316/78, 197/80 and 1/81 provide various employment benefits to small—and medium-sized companies, and that SN received none of these benefits. The response further stated that SN did not take advantage of any benefits available under Decree-Law 353-E/77 or Regulatory Decree 24/77. Accordingly, we preliminarily determine that no domestic business incentives available under the aforementioned legislation were used.

II. Programs for Which Additional Information is Needed

A. Capital Increases

We examined SN's 1984 annual report and noted that the financial statement lists capital increases granted by the government of Portugal in 1983 and 1984. These increases were recorded as "Statutory Capital Increases." During verification, we intend to seek more information concerning these capital increases in order to determine whether the government of Portugal is providing a countervailable benefit to SN through these capital increases.

Preliminary Negative Determination of Critical Circumstances

On July 11, 1985, in a supplement to the petition, petitioners alleged that imports of wire rod from Portugal present "critical circumstances." Under section 703(e)(1) of the Act, critical circumstances exists when the Department has a reasonable basis to believe or suspect that (1) the alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"), and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In our preliminary determination, we have found that no benefits which constitute subsidies within the meaning of the countervailing duty law and the Subsidies Code are being provided to manufacturers, producers, or exports in Portugal of carbon steel wire rod. We, therefore, did not consider whether there have been massive imports over a relatively short period.

For the reasons described above, we preliminarily determine that "critical circumstances" do not exist with respect to carbon steel wire rod from Portugal.

ITC Notification

In accordance with section 703(f) of

the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry 120 days after the Department makes its preliminary determination or 45 days after its final affirmative determination, whichever is latest.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in making our final determination. As previously stated, we will not accept any statement in the response that cannot be verified for our final determination.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. July 31, 1985, at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by July 24, 1985. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: July 1, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-16456 Filed 7-10-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-506]

Preliminary Affirmative Countervailing Duty Determination; Carbon Steel Wire Rod From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Venezuela of carbon steel wire rod. The estimated net subsidy for carbon steel wire rod is 70.98 percent *ad valorem*.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of carbon steel wire rod from Venezuela that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of this product in the amount equal to the estimated net subsidy.

If this investigation proceeds normally, we will make our final determination by September 16, 1985.

EFFECTIVE DATE: July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Terry Link or Barbara Tillman of the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washingon, D.C. 20230; telephone: (202) 377-0189 or 377-2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitue within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Venezuela of carbon steel wire rod. For purposes of this investigation, the following programs are found to confer subsidies:

- Preferential Government Loans.
- Export Certificates for Credit Against Income Taxes.
- Sales Tax Exemption.
- Multiple Exchange Rates.
- Government Equity Infusions.
- Government Payments to Cover Debt Service Costs.

We preliminarily determine the estimated net subsidy for carbon steel wire rod to be 70.98 percent *ad valorem*.

Case History

On April 8, 1985, we received a petition in proper form from Atlantic Steel Co., Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co. filed on behalf of the U.S. industry producting carbon steel wire rod. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26). The petition alleges that manufacturers, producers, or exporters in Venezuela of carbon steel wire rod, directly or indirectly, receive benefits which constitute within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 29, 1985, we initiated such an investigation (50 F.R. 19066). We stated that we expected to issue a preliminary determination by July 2, 1985.

Since Venezuela is a "country under the Agreement" within the meaning of section 701(b)(3) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On May 23, 1985, the ITC determined that there is a reasonable indication that imports of carbon steel wire rod materially injure of threaten material injury to a U.S. industry.

We presented a questionnaire concerning the allegations to the government of Venezuela in Washington, D.C. on May 7, 1985. On June 6, 1985, we received responses to our questionnaire from the government of Venezuela and from C.V.G. Siderurgica Del Orinoco, C.A. (SIDOR), the only known producer and exporter in Venezuela of carbon steel wire rod to the United States.

Scope of the Investigation

The product covered by this investigation is carbon steel wire rod, a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly

manufactured, and valued over 4 cents per pound. Wire rod is currently classifiable under item 607.17 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the Federal Register (49 FR 18006).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is the calendar year 1984.

Petitioners allege that SIDOR is both unequityworthy and uncreditworthy. We have consistently held that government provision of equity does not *per se* confer a subsidy. Government equity purchases bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. We prefer to measure the subsidy by reference to market price. When there is no market-determined price for equity, it is necessary to determine whether equity purchases in the company are reasonable commercial investments. Since SIDOR's shares are not publicly traded and there are no market-determined prices for its shares, we must determine whether SIDOR is "equityworthy" for the period 1971 through 1984.

To make this determination, we reviewed and assessed financial statements from 1969 to 1984. We also examined a World Bank study submitted by the government of Venezuela. In analyzing the financial statements, we considered the information from the viewpoint of an investor. The Department, when considering accounting principles and practices, analyzes the impact of the accounting practices used by the company on its overall financial results. In this review, we analyzed the results of the following ratios:

- Rate of return on sales.
- Rate of return from operations.
- Rate of return on equity.
- Debt to equity.
- Current ratio.

Based on our review of the financial statements and the company and government reponses, we determine that the government's equity infusions into SIDOR were on terms inconsistent with commercial considerations from 1978 through 1984.

SIDOR received a government (FIV) loan in 1975. To determine whether SIDOR was creditworthy when it received this loan, we examined the debt to equity ratio and the ability of the company, through its operations, to meet its interest obligations and principal payments. In addition to the above mentioned ratios, we also reviewed SIDOR's cash flow, debt repayment performance, and interest expense coverage ratio. Our analysis of these factors leads us to conclude that SIDOR was creditworthy for the period 1972 through 1976, the period during which it received the FIV loan.

Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Venezuela of carbon steel wire rod under the following programs:

A. Preferential Government Loans

Petitioners allege that SIDOR receives large low-cost loans directly from the government agencies at preferential interest rates. Furthermore, it is alleged that SIDOR is an uncreditworthy borrower.

1. Ministry of Finance Loan

According to SIDOR's response, it received a 817 million bolivares (Bs.) loan from the Ministry of Finance (MOF) in 1977, which was outstanding during the review period. MOF never established terms for this loan and SIDOR has never made principal or interest payments. In 1981, the MOF indicates to SIDOR that it would convert this loan to equity, but it has not yet done so.

In its response, the government provided no information on the availability of MOF loans. Because respondents provided no information that MOF loans are not limited to a specific enterprise or industry or group of enterprises or industries, and because a loan with zero interest is on terms inconsistent with commercial considerations, we preliminarily determine that this loan is countervailable.

Since SIDOR does not know from year to year if this loan will be converted to equity, we treat this loan as a short-term one-year loan with a zero percent rate of interest. Under our current methodology, it is not necessary to make a creditworthiness determination for a short-term loan. To calculate the benefit from this loan, we compared the zero percent interest rate to the national average short-term rate for commercial loans (the short-term prime rate published by Morgan Guaranty in *World Financial Markets*) and allocated the benefit over total sale value. On this basis, we calculate an estimated net subsidy of 2.06 percent *ad valorem*.

2. Loan through the Venezuelan Investment Fund

Petitioners allege that the Venezuelan Investment Fund (FIV), a government-owned agency, provides large, low-cost loans to Venezuelan steel producers.

According to its response, SIDOR had one loan from the FIV in 1975 that was outstanding during the review period. Because the government of Venezuela has provided no information that FIV loans are not limited to a specific enterprise or industry, we preliminarily determine that these loans are limited to a specific enterprise or industry or group of enterprises or industries. As discussed in the "Analysis of Programs" section, we preliminarily determine that SIDOR was creditworthy during 1975.

As outlined in the Subsidies Appendix, the appropriate benchmark for long-term loans will be company specific, unless the company lacks adequate commercial loan experience. In its response, SIDOR states that it had no other outstanding bolivares loans during the review period. Therefore, for the purposes of this preliminarily determination, we are using a national average long-term rate for our benchmark, which is the yield on long-term corporate bonds, published by Morgan Guaranty in *World Financial Markets*. Using this rate as our benchmark, we find that the interest rate on the FIV loan is preferential, and as such, confers a benefit which constitutes a domestic subsidy.

To calculate the benefit from this loan, we used the methodology described in the Subsidies Appendix for long-term loans to creditworthy

companies. Since we did not have Sidor's marginal cost of debt or the national average rate of return on equity, we used as our discount rate the national average yield on long-term corporate bonds, published by Morgan Guaranty in *World Financial Markets*. We then allocated this benefit over total sales. On this basis, we calculate an estimated net subsidy of 1.04 percent *ad valorem*.

B. Export Certificates for Credit Against Income Taxes

Petitioners allege that Venezuelan steel exporters receive certificates to encourage exports, which may be sold for cash or used to pay income taxes. the value of the certificate is based on a percentage of the f.o.b. value of the exported merchandise.

According to the responses of the government of Venezuela and SIDOR, under this program a certain percentage of the value of an export shipment is paid by the government. The amount paid depends on the proportion of domestic content of the merchandise exported, as well as certain policy objectives of the government, such as maintaining a high rate of employment. Upon export, an exporter receives an export certificate which specifies the amount to be returned to the exporter. This amount is determined by multiplying the exporter's allowable rebate percentage by the f.o.b. value of the export in dollars. This dollar value is then converted to bolivares at a rate of Bs. 7.5 to the dollar. The certificate, along with accompanying shipping and sales documents, must be sent to the Central Bank, which then issues the export bond. This bond may be sold for cash or used to pay taxes. Because this program is limited to exporters and does not operate to rebate any indirect taxes, we preliminarily determine that this program confers an export subsidy.

To calculate the benefit, we allocate the amount received in bolivares during 1984 over total export sales. On this basis, we calculate an estimated net subsidy of 3.68 percent *ad valorem*.

C. Sales Tax Exemption

According to the response of the government of Venezuela, SIDOR has negotiated with the municipal authorities in the Province of Guayana, where SIDOR's steel making facilities are located, for an exemption from the payment of municipal sales taxes. We have no evidence that the municipal authorities have negotiated such an exemption with any other enterprises or industries. Because this tax exemption appears to be limited to a specific enterprise, we preliminarily determine that this exemption constitutes a domestic subsidy.

To calculate the benefit from this tax exemption, we allocated the total amount of sales taxes exempted during the review period over total sales. On this basis, we calculate an estimated net subsidy of 0.21 percent *ad valorem*.

D. Multiple Exchange Rates

On February 22, 1983, the government of Venezuela authorized the establishment of a multiple exchange rate system after more than 19 years at a fixed rate system of Bs. 4.30 to the dollar. In its response the government of Venezuela stated that this change in the exchange rate was made in an attempt to gradually devalue the bolivar while avoiding the inflationary impact of a sudden devaluation.

The Central Bank of Venezuela (CBV) and the Ministry of Finance (MOF) signed an Exchange Agreement on February 20, 1983, establishing a four-tiered exchange rate system. The first exchange rate is a fixed rate of Bs. 4.30 to the dolar. This rate is applied to the sale of foreign exchange by the CBV for payments on foreign-source private and public debt, the importation of essential goods and services, and the sale of foreign exchange from the state-owned oil industries (PDVSA), iron ore industry (FERROMINERA), and the Venezuelan Investment Fund. The second rate is also a fixed rate, but at Bs. 6.00 to the dollar. This rate is applied to the sale of foreign exchange by the CBV for the importation of less essential goods, foreign exchange obtained from the export of goods and services from state-owned enterprises (other than PDVSA and FERROMINERA), and foreign exchange on exports by the private sector when offered to the CBV.

The other two rates established are a foreign exchange free market rate (an average Bs. 12.47 to the dollar during 1984) established for all exchange operations not specifically provided for elsewhere, and a "free-but-official" rate for the purchase and sale of dollars by the CBV in the free market. According to the response from the government of Venezuela, the private sector used the free market exclusively, and did not offer its foreign exchange to the CBV under the second rate described above.

Under this Exchange Agreement, the government also established the Office of Preferential Exchange Regime (RECADI) to administer the multiple exchange rate system. RECADI is responsible for handling applications from importers for merchandise categorized as essential or less essential. To receive the more preferential exchange rate for imports, an importer must submit an application to RECADI identifying the value, quantity and payment terms of the intended purchase. After RECADI reviews the application, it may authorize the use of the more preferential exchange rate to cover the particular purchase.

In May 1983, the government began gradually to allow the public sector companies (other than PDVSA and FERROMINERA) to use the free market rate. Until this time only private companies had access to the free market. In its response, the government stated that it excluded PDVSA and FERROMINERA from the free market during 1983 and 1984, because it recognized that their substantial foreign exchange earnings would have an inflationary impact on the overall economy.

On February 24, 1984, the government of Venezuela signed an Exchange Control Agreement between the MOF and the CBV which increased the exchange rate for importation of less essential goods from Bs. 6.00 to Bs. 7.50 to the dollar. In addition, this Agreement created the "quota share" policy, which required all exporters to sell back to the Central Bank the dollars earned on the imported component of the finished product at the same exchange rate used for the importation. Until the 1984 Agreement was signed, exporters could buy imports at the Bs. 4.30 or the Bs. 7.50 to the dollar rate, and, upon exportation, sell the dollars earned on the imported component at the free market exchange rate. The difference in the exchange rate between the lower rate used to purchase imports and the free market rate for selling dollars provided a benefit to exporters.

To implement the quota share policy, the government published Resolution No. 84-05-01 in May 1984. This resolution required that the value of 50 percent of the import content of the exported product, as calculated in the ICE certificate used for granting export bonds, be sold to the CBV at the lower (the same rate at which they buy foreign exchange for imports) exchange rate of Bs. 7.50 to the dollar. To enforce the quota share program, the CBV requires exporters to sign a contract upon exportation stating that the specified proportion of export earnings will be sold to the CBV at the same rate used for importation of the material inputs.

For SIDOR, the ICE certificate calculation of imported raw material content is 47 percent. SIDOR imports scrap and other items which are classified as less essential items. During the review period, less essential items

were eligible for the Bs. 7.50 exchange rate. Therefore, under this program, SIDOR was required to sell at least 23.5 percent of its dollars earned from exports of wire rod to the CBV at the Bs. 7.50 rate.

Under the multiple exchange rate system, one dollar received for export sales yields more bolivares than SIDOR pays to purchase one dollar for imports. Because receipt of the higher exchange rate is contingent upon selling dollars earned from export sales, we consider the multiple exchange rate to confer an export subsidy. However, since our experience in examining multiple exchange rate systems is limited, we welcome comments on the counteravailbility and the calculation of potential benefits received through multiple exchange rate systems.

To calculate the benefit from this program, we subtracted the exchange rate applicable to SIDOR's purchase of imports from the weighted average exchange rate received by SIDOR when selling dollars from export sales. We multiplied this difference by the total 1984 export value for SIDOR in dollars and allocated the product over SIDOR's total 1984 export sales in bolivares. On this basis, we calculate an estimated net subsidy of 33.63 percent *ad valorem.*

E. Government Equity Infusions

Petitioners allege that equity infusions into SIDOR by the government of Venezuela were on terms inconsistent with commercial considerations.

As discussed in the "Analysis of Programs" section, we preliminarily determine that SIDOR was not a reasonable commercial investment from 1978 through 1984, and, thus the government equity infusions in 1978, 1981, 1982 and 1983 were on terms inconsistent with commercial considerations. Therefore, we preliminarily determine that these equity infusions confer benefits which constitute a subsidy.

To calculate the benefit, we followed the rate of return shortfall methodology outlined in the Subsidies Appendix. We used the commercial bank prime rate (published by Morgan Guaranty in *World Financial Markets*) as the rate from which we subtracted SIDOR's rate of return on equity during the review period, because we were unable to obtain the national average rate of return on equity for 1984. On this basis, the estimated net subsidy is 30.06 percent *ad valorem.*

F. Government Payments To Cover Debt Service Costs

Petitioners allege that SIDOR received "tax contributions" authorized by the Ministry of the Treasury, to meet its interest obligations from 1980 through 1983. According to SIDOR's response, it receives no such tax contributions. However, SIDOR's 1984 Annual Report states that in December 1984, SIDOR received a financial contribution from the National Executive to cover the service cost of the external debt. Because we could not determine from the information provided by respondent that such financial contributions are not limited to a specific enterprise or industry or group of enterprises or industries, we preliminary determine that this contribution confers a subsidy.

To calculate the benefit we allocate this contribution over the average useful life of capital assets in the steel industry (15 years), using the methodology outlined in the Subsidies Appendix. Since we did not have Sidor's marginal cost of debt or the national average rate or return on equity, we used as our discount rate the national average yield on long-term corporate bonds, published by Morgan Guaranty in *World Financial Markets.* We then divided the 1984 benefit by total sales. On this basis, we calculate an estimated net subsidy of 0.28 percent *ad valorem.*

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of carbon steel wire rod from Venezuela which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each such entry in the amount of 70.98 percent *ad valorem.* This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry within 120 days after the Department makes its preliminary affirmative determination or 45 days after its final affirmative determination, whichever is latest.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on August 7, 1985, at the U.S. Department of Commerce, room 5611, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B-099, at the above address within 10 days of the publication of this notice.

Requests for a hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by August 1, 1985. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: July 1, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-16458 Filed 7-10-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-021]

Bottled Green Olives From Spain; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On August 20, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on bottled green olives from Spain. The review covers the period January 1, 1982, through May 2, 1982, and five programs

We gave interested parties an opportunity to comment on the preliminary results. After review of the comment received, the Department has determined the net subsidy during the period of review to be zero.

EFFECTIVE DATE: July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 33040) the preliminary results of its administrative review of the countervailing duty order on bottled green olives from Spain (39 FR 32904, September 12, 1974). The Department has now completed that administrative review, in accordance with section 751 of the Traiff Act of 1930 ("the Tariff Act").

On May 21, 1984, the International Trade Administration ("the ITC") notified the Department of its determination (49 FR 22720) that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of bottled green olives from Spain if the order were revoked. Consequently, the Department published in the **Federal Register** (49 FR 23671, June 7, 1984) a revocation of the order with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after May 3, 1982, the date of the ITC's notification to the Department of the request for an injury determination.

Scope of Review

Imports covered by the review are shipments of Spanish bottled green olives. Such merchandise is currently classifiable under items 148.4420, 148.4440, 148.4800 and 148.5020 through 148.5080 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, through May 2, 1982, and five programs: (1) a rebate of indirect taxes upon exportation, under the Desgravacion Fiscal a La Exportacion; (2) an operating capital loans program; (3) an export investment reserve program; (4) preferential financing for plant expansion; and (5) regional financing through the SODIAN and SODIEX programs.

Analysis of Comment Received

We gave interested parties an opportunity to comment on the preliminary results. We received a written comment from Aceitunas de Mesa, S.A., the Spanish Table Olives Exporters' Association.

Comment

The Exporters' Association maintains that, because we revoked the countervailing duty order on Spanish bottled green olives effective May 3, 1982, our determination of the benefits from the operating capital loans program should be calculated only for shipments exported on or after January 1, 1982, and entered, or withdrawn from warehouse, for consumption on or before May 2, 1982, rather than for calendar year 1982. The Association further maintains that, to be consistent with the methodology adopted in other Spanish countervailing duty cases, and in the most recent notice of final results of administrative review in this case (48 FR 51501, November 9, 1983), we must consider the benefit to have occurred on the date that the loans were received.

Spanish exporters received no new loans during the period January 1, 1982, through May 2, 1982, and therefore there is no benefit from such loans. Further, because the Department used the date of receipt methodology in the last administrative review, of the 1980–1981 period, the benefit from loans granted in 1981, but still outstanding in 1982, was already captured in the last review. Finally, if the Department considers the benefit to occur when loans are received, loans granted on or after the effective date of revocation cannot be attributed to exports made prior to May 3, 1982. Therefore, there is no subsidy resulting from the operating capital loans program.

Department's Position

We agree that there is no countervailable benefit to Spanish exporters resulting from the operating capital loans program for the period of January 1, 1982, through May 2, 1982. We already countervailed the interest benefit from new loans in 1981 in the last review using date of receipt of loans as the best information then available of the timing of the benefit. Further, Spanish exporters did not take out new loans during the January 1, 1982, through May 2, 1982, period. Therefore, no benefit is possible. This change reduces the total benefit during the review period from 1.75 percent *ad valorem* to zero.

Final Results of the Review

After review of the comment received and adjusting for the change described above, we determine the net subsidy to be zero for the period January 1, 1982, through May 2, 1982. The Department will instruct the Customs Service not to assess countervailing duties on any shipments of bottled green olives exported on or after January 1, 1982, and entered, or withdrawn from warehouse, for consumption before May 3, 1982, the effective date of the revocation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 335.41 of the Commerce Regulations (19 CFR 355.41).

Dated: July 3, 1985

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–16504 Filed 7–10–85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Modification No. 3 to Permit No. 413]

Marine Mammals Permit Modification; Southwest Fisheries Center

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR 216), and § 222.25 of the regulations governing endangered species permits (50 CFR 222), Scientific Research Permit No. 413 issued to the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, on April 20, 1983 (48 FR 17638), as modified on July 6, 1983 (48 FR 31062) and May 11, 1984 (49 FR 20047), is further modified as follows:

Section A–7 is added:

"7. Up to seventy (70) seals may be taken by bleach marking on Kure Atoll from April through September 1985. Animals of both sexes and all age groups may be taken, except nursing and pregnant females. Each animal may be re-bleached once following molt."

This modification became effective on July 3, 1985.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species

which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235 and ;
Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: July 3, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–16483 Filed 7–10–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Dr. Louis Rigley

On March 29, 1985, notice was published in the **Federal Register** (50 FR 12603) that an application had been filed by Dr. Louis Rigley, Dickinson State College, Dickinson, North Dakota 58607, for a permit to take Atlantic bottlenose dolphins by inadvertent harassment during the course of scientific research.

Notice is hereby given that on July 8, 1985 and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Mammal Fisheries issued a Permit for the above taking and importing subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E., BIN C15700, Seattle, Washington 98115.

Dated: July 8, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–16546 Filed 7–10–85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–332,906 (4,517,060)
Apparatus for Encapsulating Additives in Resealed Erythrocytes
SN 6–380,374 (4,516,385)
Wrapping Machine
SN 6–738,707
Control of Eastern Black Nightshade with a Fungal Pathogen
SN 6–738,815
Oil-Absorbent Cellulosic Derivatives

Department of Commerce

SN 6–436,124 (4,525,067)
Twin-Etalon Scanning Spectrometer

Department of Health and Human Services

SN 6–553,387 (4,517,665)
Acoustically Transparent Hydrophone Probe
SN 6–706,622
Use of Paramagnetic Metalloporphyrins as Contrast Agents for Tumors in NMR Imaging
SN 6–717,613
Therapeutic and Diagnostic Monoclonal Antibody Specific for Human T-Cell Leukemia Virus Types I Envelopes Protein
SN 6–729,208
Vaccine Against Neisseria Meningitidis Group B Serotype 2 Invasive Disease
SN 6–740,171
Medical Apparatus

Department of the Air Force

SN 6–685,227
Optical Correlator
SN 6–547,610
Anaglyphic Stereoscopic Image Apparatus and Method
SN 6–632,179
Electrochromic Display Device
SN 6–657,092
Transceiver Test Device
SN 6–689,700
Microcomputer Controlled Image Processor
SN 6–690,212
Removable Cleanable Antireflection Shield
SN 6–696,129
Soil Extraction Kit
SN 6–706,205
Process for Improving the Quality of Epitaxial Silicon Films Grown on Insulating Substrates
SN 6–716,863
Method of Characterizing Critical Timing Paths and Analyzing Timing Related Failure Modes in Very Large Scale Integrated Circuits
SN 6–720,126
Robotic Order Picking
SN 6–721,836
Brush and Commutator Segment Torquer Motor
SN 6–721,977
Differentiating Spatial Light Modulator
SN 6–724,714
Wide-Band Phase Locked Loop Amplifier Apparatus
SN 6–724,719
Carbon/Carbon Combustor External Insulation
SN 6–726,558
Low Noise Polycrystalline Semiconductor Resistors by Hydrogen Passivation
SN 6–729,389
Hermetic Chip Carrier
SN 6–731,646
Reducing Grating Lobes Due to Subarray Amplitude Tapering
SN 6–733,991
Maintenance Port System
SN 6–737,377
Rotor Blade Test Apparatus

Department of the Army

SN 6–737,627
Microwave Saw Monochromator

[FR Doc. 85–16537 Filed 7–10–85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending Export Visa Requirement for Certain Cotton, Wool and Man-Made Fiber Apparel Products Produced or Manufactured in India

July 8, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 15, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On November 29, 1979 a letter from the Chairman of CITA to the Commissioner of Customs was published in the **Federal Register** (44 FR 68504), which established an export visa requirement and certification for exemption of certain cotton, wool and man-made fiber textile products, produced or manufactured in India and exported to the United States. The Government of India has notified the United States Government that, effective on July 1, 1985 for goods exported on and after that date, it will visa apparel products in Categories 330–371, 431–459, and 630–671, which are covered under the terms of the bilateral agreement between the two governments, using a printed Special Customs Invoice, issued by the Apparel Export Promotion Council (AEPC). Each such document will include a serial number. A facsimile of the new visa form is published as an enclosure to the letter to the Commissioner of Customs which follows this notice. Apparel products exported before July 1, 1985 will not be denied entry, or withdrawal from warehouse for consumption in the United States until August 31, 1985, for lack of the new visa, provided they are visaed in accordance with previously established visa procedures.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

July 8, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This letter further amends, but does not cancel, the letter of November 26, 1979, as amended, which established an export visa and exempt certification requirement for certain cotton, wool and man-made fiber textile products, produced or manufactured in India.

Effective on July 15, 1985, the letter of November 26, 1979, is hereby further amended to require that apparel products in Categories 330–371, 431–459, and 630–671, as applicable, produced or manufactured in India and exported on and after July 1, 1985, shall be visaed using a printed Special Customs Invoice issued by the Apparel Export Promotion Council (AEPC) of the Government of India. Each document will include a serial number in the lower lefthand corner. A facsimile of the new form is enclosed. Apparel products exported before July 1, 1985 shall not be denied entry, or withdrawal from warehouse, for consumption in the United States until August 31, 1985 for lack of the the new visa, provided they are visaed in accordance with the previously established visa procedures.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-M

DEPARTMENT OF THE TREASURY
United States Customs Service
19 U.S.C. 1481, 1482, 1484

SPECIAL CUSTOMS INVOICE

(Use separate invoice for purchase and non-purchased goods)

Form Approved
O.M.B. No. 48-R0 342

1. SELLER

2. DOCUMENT NO.* 3. INVOICE NO. DATE*

4. REFERENCES

5. CONSIGNEE

6. BUYER (if other than consignee)

7. ORIGIN OF GOODS
INDIAN

8. NOTIFY PARTY*

9. TERMS OF SALE, PAYMENT AND DISCOUNT

10. ADDITIONAL TRANSPORTATION INFORMATION*

11. CURRENCY USED | 12. EXCH. RATE (if fixed or agreed) | 13. DATE ORDER ACCEPTED

14. Marks and Numbers on Shipping Packages	15. Number of Packages	16. Full Description of goods	17. Quantity	Unit Price 18. Marks	Unit Price 19. Invoice	20. Invoice Total

21. ☐ If the production of these goods involved furnishing goods or services to the seller (e.g. assists such as dies, moulds, tools, engineering work) and the value is not included in the invoice price, check box (21) and explain below

22. PACKING COSTS	
23. OCEAN OR INTERNATIONAL FREIGHT	
24. DOMESTIC FREIGHT CHARGES	
25. INSURANCE COSTS	
26. OTHER COSTS (specify below)	

27. DECLARATION OF SELLER / SHIPPER (OR AGENT)

I declare:

(A) ☐ If there are any rebates, drawback, or bounties allowed upon the exportation of goods, I have checked box (A) and itemized separately below.

I further declare that there is no other invoice differing from this one (unless otherwise described below) and that all statements contained in this invoice and declaration are true and correct.

(B) ☐ If the goods were not sold or agreed to be sold I have checked box (B) and have indicated in col. 19 the price I would be willing to receive.

(C) SIGN. OF SELLER/SHIPPER (OR AGENT)

28. THIS SPACE FOR CONTINUING ANSWERS

This form of invoice is required urgently if rate of duty based upon or regulated by value of goods and purchased price or value of shipment exceeds $ 500 otherwise use commercial invoice.

*Not necessary for U.S. Customs purpose.

Custom Form 5515 12 20-76

AEPC/ № 50957

[FR Doc. 85-16443 Filed 7-10-85; 8:45 am]

11 3 702

BILLING CODE 3510-DS-C

Request for Public Comment on Bilateral Textile Consultations With the Government of Malaysia To Review Trade in Category 648 (Women's, Girls' and Infants' Trousers, Slacks, and Shorts)

July 8, 1985.

On May 31, 1985, the Government of the United States requested consultations with the Government of Malaysia with respect to Category 648. This request was made on the basis of the agreement, as amended and extended, between the Governments of the United States and Malaysia relating to trade in Cotton, Wood and Man-Made Fiber Textiles and Textile Products, effected by exchange of notes dated December 5, 1980 and February 27, 1981. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, as amended and extended, may establish a prorated specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 648, produced or manufactured in Malaysia and exported to the United States during the period which began on May 31, 1985 and extends through August 31, 1985. This number will be revised to correspond to the consultation provisions of the new agreement once notes are exchanged. The Government of the United States has decided, pending agreement on a mutually satisfactory solution concerning this category, to control imports during the sixty-day consultation period (May 31, 1985 through July 29, 1985) at a level of 104,949 dozens. In the event the level established for the consultation period is exceeded, such excess amount, if allowed to enter, may be charged to the level established during the subsequent restraint period.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 648 under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of Malaysia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

MALAYSIA—MARKET STATEMENT

Category 648—Man-made Fiber Women's Girls' and Infants' Trousers, Slacks and Shorts (MMF WGI Trousers)

May 1985.

Summary and Conclusions

Category 648 imports—MMF WGI trousers—from Malaysia reached 376,000 dozens during the year-ending March 1985, compared with the 70,000 dozens imported during the previous twelve months. Imports for the 1st three months of 1985 reached 177,000 dozens which, if annualized, would indicate a 1985 import level of over 700,000 dozens. This is twice the total amount of MMF WGI trousers imported from Malaysia during 1981–1984.

This is a sharp and substantial increase in imports which, if continued, creates a real risk of market disruption.

Imports and Import-to-Production Ratio

In the latest five year period, Category 648 imports have increased by 60 percent, from 5,947,000 dozens in 1980 to 9,503,000 dozens in 1984. Coinciding was a rise in the import-to-production ratio, from 32 percent in 1980 to between 45 percent and 46 percent in 1984.

Imports are up an additional 8 percent during the 1st quarter of 1985 to 3,367,000 dozens compared with 3,119,000 dozens in January–March 1984.

U.S. Production

Domestic production was 21,641,000 dozens in 1983. Trade sources estimate that Category 648 production declined between two and four percent in 1984. This contrasts with the one and a half million dozens increase in imports. Other indicators of a decline in domestic output is the cuttings data which shows an eleven percent drop in women's trouser cuttings in 1984.

Further, cuttings, of women's trousers has continued to decline into 1985. During the 1st quarter of this year, cuttings of women's trousers were off by 7 percent, compared with January—March 1984.

U.S. Market Share

Since 1980, the U.S. market for MMF WGI trousers has grown by about 6 million dozens. This market was at least 30,200,000 dozens in 1984, based on current estimates. Despite the growing market, U.S. producers are losing market share as imports increase. The domestic producers' share of the Category 648 market has declined from 76 percent in 1980 to an estimated 69 percent in 1984.

Import Values and Domestic Producer Price

Forty-three percent of the Category 648 imports from Malaysia are entered under TSUSA No. 383.9069—Women's and girls' woven non-ornamented shorts; 26 percent under 383.8164—women's and girls' knit non-ornamented shorts. These imports are entered at landed, duty-paid values below the U.S. producer price for comparable garments.

July 8, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton , Wool and Man-Made Fiber Textile Agreement effected by exchange of notes dated December 5, 1980 and February 27, 1981, as amended and extended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1982, as amended, you are directed to prohibit, effective on July 12, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Category 648 produced or manufactured in Malaysia and exported during the sixty-day period which began on May 31, 1985 and extends through July 29, 1985, in excess of 104,949 dozen.[1]

Textile products in Category 648 which have been exported to the United States prior to May 31, 1985 shall not be subject to this directive.

Textile products in Category 648 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

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[1] The level of restraint has not been adjusted to reflect any imports exported after May 30, 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 26, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16444, Filed 7-10-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With Portugal on Categories 339 and 340

July 8, 1985.

On June 26, 1985, the United States Government, under the agreement with the Government of Portugal, effected by exchange of notes dated August 20, 1975, and Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Government of Portugal to enter into consultations concerning exports to the United States of women's, girls' and infants' cotton knit shirts in Category 339 and men's and boys' cotton shirts in Category 340, produced or manufactured in Portugal.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Portugal, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of such products produced or manufactured in Portugal and exported to the United States during the twelve-month period which began on June 26, 1985 and extends through June 25, 1986 at levels of 257,853 dozen (Category 339) and 133,733 dozen (Category 340).

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of these categories is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, D.C. and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreement considers appropriate for further consideration.

The solicitation of Comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

PORTUGAL—MARKET STATEMENT

Category 339—Women's, Girls' and Infants' Cotton Knit Blouses

June 1985.

Summary and Conclusions

U.S. imports of Category 339 from Portugal were 301,115 dozens during the year-ending April 1985, over ten times the imports of 28,115 dozens of a year earlier. Imports for the first four months of 1985 were in excess of imports for the full calendar year of 1984 and were at an annual rate of 556,000 dozens.

The imports from Portugal are entering a market already disrupted by imports. This rapid growth and substantial volume of imports from Portugal are disrupting the market and continuation of the growth would further disrupt the market.

U.S. Production

Production of Category 339 in 1983 was 8.1 million dozens, down 3.5 percent from the 8.4 million in 1982. Production in 1984 is estimated to have been between 8.0 million and 8.4 million dozens. Cuttings of women's knit blouses during the first quarter declined by 29.1 percent from the first quarter of 1984.

U.S. Imports

Imports of Category 339 from all sources increased from 7.4 million dozens in 1983 to 10.0 million in 1984. Imports during the first four months of 1985 were at an annual rate of 12.8 million dozens.

Import Penetration

The ratio of imports to production in 1984 was at a record level with imports at 10.0 million dozens exceeding production which is estimated to have been between 8.0 and 8.2 million dozen. The ratio for a number of years has been around 100 percent.

The market for domestically produced and imported Category 339 increased sharply in 1984 after several years of relative stability. However, import growth accounted for most if not all the market growth in 1984.

Duty-Paid Values and U.S. Producer Prices

Most of the U.S. imports of Category 339 from Portugal are entered under TSUSA Numbers 383.2706—women's tank tops; 383.2724 women's, girls' and infants' T-shirts; and 383.2730—women's other shirts. These garments are being imported at duty-paid values below the U.S. producer prices for comparable garments.

PORTUGAL—MARKET STATEMENT

Category 340—Men's and Boys' Woven Cotton Shirts

June 1985.

Summary and Conclusion

United States imports of Category 340 from Portugal were 136,000 dozens for the year-ending April 1985. Imports were 58,000 dozens for the same period one year earlier. Imports from Portugal of this category were 36,000 dozens in 1983 and 32,000 dozens in 1982.

Import growth from Portugal of Category 340 has been sharp and substantial, adding to the existing market disruption in this category.

General Imports

Imports of Category 340 from all sources increased 29 percent between 1983 and 1984. In the first four months of 1985 imports of this category increased 27 percent from the same period in 1984. The overall growth rate from 1980 to 1984 was 45 percent; seventy-two percent of this growth occurred in 1984 alone.

U.S. Production and Market Share

U.S. Production of this category has declined over 50 percent since 1973. Between 1980 and 1983 production declined from 5,526,000 dozens to 4,735,000 dozens, a drop of 14 percent. Production in 1984 is estimated to be flat, or just slightly below the 1983 level. Cuttings of all men's and boys' shirts declined 5 percent in the first three months of 1985.

Imports have not only captured all of the growth but have also displaced domestically produced MB cotton woven shirts in the market. The U.S. Category 340 market increased by 2 million dozens during 1980–1984. Imports increased by about 2.8 million dozens while domestic production was reduced by 800,000 dozens. The U.S. producers' market share for Category 340 was 46.7 percent in 1980 and only an estimated 34.0 percent in 1984.

Import Penetration

The import-to-production ratio for this category has increased sharply over the last 5 years. In 1980 the ratio topped 100 percent for the first time, reaching 114 percent. By 1983 the ratio had climbed 36 percentage points to 150 percent. The huge increase in imports in

1984 helped boost the ratio an additional 44 percentage points, nearing 194 percent.

Employment

Employment in the men's and boys' shirt industry was 99,200 workers in 1984.[1] This is approximately the same level as in 1980. In the first four months of 1985 employment was down 3.3 percent from the same period one year earlier.

Import Value vs. Domestic Producer's Price

In the first four months of 1985, seventy-five percent of Category 340 imports from Portugal entered under three TSUSA numbers. These were 379.5530—boys' cotton dress shirts, 379.5545—men's cotton sport shirts, yarn-dyed, and 379.5550—men's other cotton sport shirts. These items entered at duty-paid values below the U.S. producer's price for comparable garments.

[FR Doc. 85-16445, Filed 7-10-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

July 2, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Enhanced Non-nuclear Munition Storage will meet at US Air Forces Europe Headquarters, Ramstein Air Base, Germany, with site visits to Spangdahlem AB, Hahn AB, and Bitburg AB, Germany, August 12 through 16, 1985, to view weapon storage and handling facilities and to discuss munitions maintenance, logistics and operations procedures.

This meeting will concern matters listed in section 552b(c) of Title 5, United State Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-16464 Filed 7-10-85; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

July 14, 1985.

The USAF Scientific Advisory Board C³I Subcommittee of the Ad Hoc Committee on Options for Attack of Strategic Relocatable Targets will meet on July 25, 1985 at The MITRE Corporation, Bedford, Massachusetts, from 9:00 a.m. to 4:00 p.m. The C³I Subcommittee will meet to hold classified discussions on existing and programmed systems which may be effectively applied to attack of mobile ballistic missiles for the purpose of drafting the subcommittee's input to the Ad Hoc Committee report.

This meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, Specifically subparagraph (1) thereof, and will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-16465 Filed 7-10-85; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Performance Review Boards; Names of Members for 1985

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Boards for the Department of the Army for 1985.

EFFECTIVE DATE: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Carol D. Smith, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, Washington, DC 20310-0300, (202) 697-2204.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance wtih regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by the supervisor and make recommendations to the appointing authority or rating official relative to the performance of the senior executives. Each board's review and recommendation will include only those senior executives' appraisals from their respective commands or activities. A consolidated board has been established for those commands who do not have enough senior executives to warrant the establishment of separate boards. Publication of this notice rescinds notice published in 49 FR, No. 132, dated 9 July 1984, to account for additions and deletions to the membership of those boards previously published.

The members of the Performance Review Board for the Office, Secretary of the Army, are:

1. Ms. Susan Crawford, General Counsel, Office, General Counsel, Headquarters, Department of the Army.
2. Mr. Steven Dola, Deputy for Management and Budget, Office, Assistant Secretary of the Army (Civil Works).
3. Mr. Neil R. Ginnetti, Deputy for Planning, Programming, Budgeting and Budget Execution Systems, Office, Assistant Secretary of the Army (Financial Management).
4. Ms. Judy Ann F. Miller, Deputy Assistant Secretary of the Army (Military Personnel, Equal Opportunity and Human Resources), Office, Assistant Secretary of the Army (Manpower and Reserve Affairs).
5. Mr. Jack E. Hobbs, Deputy for Management and Programs, Office, Assistant Secretary of Army (Research, Development and Acquisition).
6. Ms. Eileen Siedman, Technical Advisor to the Inspector General, Department of Commerce.
7. Mr. Peter Stein, Deputy Administrative Assistant, Office of the Administrative Assistant to the Secretary of the Army.
8. Mr. Lewis D. Walker, Deputy for Environment Safety and Occupational Health, Office, Assistant Secretary of the Army (Installations and Logistics).
9. Ms. Juanita P. Watts, Director, Small and Disadvantaged Business Utilization, Office of the Secretary of the Army.
10. Mr. Robert G. Stockton, Operations Research Analyst for Systems, Office, Under Secretary of the Army.
11. Brigadier General Richard B. Griffitts, Deputy Chief of Public Affairs, Office of Public Affairs, Office of the Secretary of the Army.

The members of the Performance Review Board for the U.S. Army Materiel Command are:

1. Major General James G. Boatner, Deputy Chief of Staff for Personnel, Headquarters, U.S. Army Materiel Command.
2. Major General R. D. Hammond, Deputy Chief of Staff, Development, Engineering and Acquisition, Headquarters, U.S. Army Materiel Command.
3. Brigadier General James R. Klugh, Deputy Commanding General, Chemical Matters, U.S. Army Armament, Munitions and Chemical Command.
4. Dr. Herbert C. Puscheck, Director, Program Analysis Evaluation, Headquarters, U.S. Army Materiel Command.
5. Mr. James R. Jury, Assistant Deputy Chief of Staff, Procurement and Policy

[1] SIC 2321, Men's and boys' shirt and nightwear industry.

Evaluation, Headquarters, U.S. Army Materiel Command.

6. Dr. Edward S. Wright, Director, U.S. Army Materiel and Mechanics Research Center.

7. Mr. Donald B. Dinger, Deputy Director, U.S. Army Foreign Science and Technology Center.

8. Mr. Archie D. Grimmett, Assistant Deputy Chief of Staff for Personnel, Headquarters, U.S. Army Materiel Command.

9. Mr. Jack R. Isom, Director, Missile Logistics Center, U.S. Army Missile Command.

10. Major General Arthur Holmes, Jr., Commanding General, U.S. Army Tank-Automotive Command.

11. Brigadier General Michael Pepe, Deputy Commanding General, Research and Development, U.S. Army Aviation Systems Command.

12. Mr. Roy D. Greene, Assistant Deputy Chief of Staff for Program and Management, Headquarters, U.S. Army Materiel Command.

13. Mr. William L. Clemons, Director, Procurement and Production, U.S. Army Missile Command.

14. Mr. Dale F. Kinney, Deputy for Industrial Preparedness and Installations, U.S. Army Armament, Munitions and Chemical Command.

15. Mr. Harry L. Reed, Jr., Chief, Systems Engineering and Concepts Analysis Division, U.S. Army Materiel Systems Analysis Activity.

16. Mr. Walter W. Pattishall, Assistant Technical Director, Electronic Warfare and Intelligence, U.S. Army Electronics Research and Development Command.

17. Mr. Benjamin Halperin, Chief Counsel, U.S. Army Armament, Munitions and Chemical Command.

18. Major General Niles Fulwyler, Deputy Commanding General, U.S. Army Test and Evaluation Command.

19. Brigadier General H.G. Karegeannes, Deputy Commanding General, Procurement and Readiness, U.S. Army Communication-Electronics Command.

20. Mr. Douglas R. Newberry, Comptroller, U.S. Army Tank-Automotive Command.

21. Mr. Donald W. Schmitz, Director, Procurement and Production, U.S. Army Aviation Systems Command.

22. Mr. Truman W. Howard, III, Director, Product Assurance, U.S. Army Missile Command.

23. Dr. Robert J. Byrne, Technical Director, U.S. Army Natick Research and Development Center, U.S. Army Troop Support Command.

24. Dr. Robert E. Singleton, Director, Engineering Sciences Division, U.S. Army Research Office.

25. Mr. James E. Schell, Director, U.S. Army Tactical Computer Systems Center, U.S. Army Communications-Electronics Command.

26. Major General Jimmy D. Ross, Chief of Staff, Headquarter, U.S. Army Materiel Command.

27. Ms. Marie B. Acton, Deputy for Materiel Analysis, Headquarters, U.S. Army Materiel Command.

28. Mr. Robert O. Black, Principal Assistant Deputy for Research, Development and Acquisition, Headquarters, U.S. Army Materiel Command.

29. Dr. Richard L. Haley, Assistant Deputy for Science and Technology, Headquaters, U.S. Army Materiel Command.

30. Mr. Edwin Greiner, Assistant Deputy for Materiel Readiness, Headquarters, U.S. Army Materiel Command.

31. Mr. Burton M. Blair, Command Counsel, Headquarters, U.S. Army Materiel Command.

32. Mr. Seymour J. Lorber, Deputy Chief of Staff for Product Assurance and Test, Headquarters, U.S. Army Materiel Command.

33. Lieutenant General Lawrence F. Skibbie, Deputy Commanding General for Materiel Readiness, Headquarters, U.S. Army Materiel Command.

34. Lieutenant General Robert L. Moore, Deputy Commanding General for Research, Development and Acquisition, Headquarters, U.S. Army Materiel Command.

35. Major General Edward C. O'Connor, Commanding General, U.S. Army Security Assistance Center.

36. Major General Andrew H. Anderson, Commanding General, U.S. Army Test and Evaluation Command.

37. Brigadier General Ronald K. Anderson, Project Manager, Light Helicopter Experimental, U.S. Army Aviation Command.

38. Brigadier General John S. Dresdeck, Jr., Deputy Commanding General, Procurement and Readiness, U.S. Army Materiel Command.

39. Mr. J. Bruce King, Assistant Deputy Chief of Staff for Procurement and Production, Headquarters, U.S. Army Materiel Command.

40. Mr. George A. Hosler, Deputy Chief of Staff for Information Management, Headquarters, U.S. Army Materiel Command.

41. Mr. Marvin L. Hancks, Chief Counsel, U.S. Army Armament, Munitions and Chemical Command.

42. Mr. Lowell H. Barnett, Director, Product Assurance, U.S. Army Tank-Automotive Command.

43. Mr. Grady H. Bannister, Technical Director (EPG), U.S. Army Test and Evaluation Command.

44. Mr. Donald R. Lathrop, Comptroller, U.S. Army Armament, Munitions and Chemical Command.

45. Mr. Robert F. Giordano, Director, Electronics Warfare Laboratory, U.S. Army Electronics Research and Development Command.

46. Dr. John D. Weisz, Director, U.S. Army Human Engineering Laboratory.

The members of the Performance Review Board for the Office of the Chief of Staff, Army are:

1. Mr. Issac E. Barbre, Deputy Auditor General, Office of the Chief of Staff, Headquarters, Department of the Army.

2. Mr. Michael A. Janoski, Director, Acquisition and Systems Audit, Headquarters, U.S. Army Audit Agency.

3. Mr. Thomas A. Grant, Director, Personnel and Force Management Audits, Headquarters, U.S. Army Audit Agency.

4. Mr. Henry J. Fischer, Jr., Director, Audit Policy, Plans, and Resources, Headquarters, U.S. Army Audit Agency.

5. Mr. Michael R. DiFulgo, Director, Logistical and Financial Audits, Headquarters, U.S. Army Audit Agency.

6. Mr. Charles W. Weatherholt, Deputy Director of Civilian Personnel, Office, Deputy Chief of Staff of Personnel, Headquarters, Department of the Army.

7. Mr. Raymond J. Sumser, Director of Civilian Personnel, Office, Deputy Chief of Staff for Personnel, Headquarters, Department of the Army.

8. Ms. Anna Yurkoski, Chief, Staffing, Career Management and Training Office, Directorate of Civilian Personnel, Office, Deputy Chief of Staff for Personnel, Headquarters, Department of the Army.

9. Dr Edgar M. Johnson, Technical Director, Army Research Institute and Chief Psychologist, U.S. Army Research Institute for the Behavorial and Social Sciences.

10. Dr. Harold F. O'Neil, Director, Training Research Laboratory and Associate Director, Army Research Institute.

11. Mr. William M. Frailey, Chief, Civilian Personnel Center, Headquarters, Department of the Army.

12. Major General William G. O'Leksy, Director of Military Personnel Management, Office, Deputy Chief of Staff for Personnel. Headquarters, Department of the Army.

13. Mr. Gary Purdum, Deputy for Manpower, Programs and Budget, Office, Deputy Chief of Staff for Personnel, Headquarters, Department of the Army.

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18. Dr. Frank D. Verderame, Assistant Director for Research Programs, Office, Deputy Chief of Staff for Research, Development and Acquisitions, Headquarters, Department of the Army.

19. Dr. Louis M. Cameron, Director of Army Research and Technology, Office, Deputy Chief of Staff for Research, Development and Acquisition, Headquarters, Department of the Army.

20 Ms. Mary H. Smith, Director, Resource Management Systems Integration Task Force, Office, Comptroller of the Army, Headquarters, Department of the Army.

21. Brigadier General Terrence L. Arndt, Deputy Commanding General, U.S. Army Finance and Accounting Center.

22. Brigadier General Eugene Fox, Ballistic Missile Defense Program Manager, Ballistic Missile Defense Systems Command.

23. Dr. James R. Fisher, Director, Technical Analysis Directorate, Ballistic Missile Defense Advanced Technology Center, Ballistic Missile Defense Systems Command.

24. Mr. Donald S. Russ, Director, Ballistic Missile Defense Advance Technical Center, Ballistic Missile Defense Systems Command.

25. Dr. Charles N. Davidson, Technical Director, U.S. Army Nuclear and Chemical Agency.

26. Major General James H. Johnson, Assistant Deputy Chief of Staff for Operations, Headquarters, Department of the Army.

27. Brigadier General Wayne C. Knudson, Director of Force Requirements, Office, Deputy Chief of Staff for Operations, Headquarters, Department of the Army.

28. Brigadier General Jackson E. Rozier, Jr., Director, Plans and Operations, Office Deputy Chief of Staff for Logistics, Headquarters, Department of the Army.

29. Major General Vincent M. Russo, Assistant Deputy Chief of Staff for Logistics, Headquarters, Department of the Army.

30. Major General Henry G. Skeen, Director, Supply and Maintenance, Office, Deputy Chief of Staff for Logistics, Headquarters, Department of the Army.

31. Mr. William L. Jackson, Chief, Security Assistance Policy Coordination Office, Office of the Deputy Chief of Staff for Logistics, Headquarters, Department of the Army.

32. Ms Mary Ellen Harvey, Assistant Director for Supply Management, Directorate of Supply and Maintenance, Office, Deputy Chief of Staff for Logistics, Headquarters, Department of the Army.

33. Mr. James B. Emahiser, Assistant Director for Maintenance Management, Office, Deputy Chief of Staff for Logistics, Headquarters, Department of the Army.

34. Mr. James T. Brown, Assistant Director for Resource Management, Office, Deputy Chief of Staff for Logistics, Headquarters, Department of the Army.

35. Major General William G. T. Tuttle, Jr., Commanding General, U.S. Army Operational Test and Evaluation Agency.

36. Brigadier General Donald W. Hansen, Assistant Judge Advocate General for Military Law, Office, The Judge Advocate General, Headquarters, Department of the Army.

37. Brigadier General James W. Shufelt, Office, Chief of Staff, Intelligence, Headquarters, Department of the Army.

38. Brigadier General Joseph L. Ecoppi, Deputy Director, U.S. Army Concepts Analysis Agency.

39. Dr. Julius Bellaschi, Deputy Director, Program Analysis Evaluation, Office, Chief of Staff, Headquarters, Department of the Army.

40. Brigadier General Connie L. Slewitzke, Chief, Army Nurse Corps, Office of the Surgeon General, Headquarters, Department of the Army.

41. Ms. Joann H. Langston, Director, Study Program Management Office, Office, Chief of Staff, Headquarters, Department of the Army.

42. Major General Edward Honor, Director, Transportation, Energy, and Troop Support, Office, Deputy Chief of Staff for Logistics, Headquarters, Department of the Army.

43. Dr. Darrell B. Harmon, Jr., Director, Missile Directorate, Ballistic Missile Defense Advance Technology Center.

44. Brigadier General Lynn H. Stevens, Director, Materiel, Plans and Programs, Office, Deputy Chief of Staff for Research, Development and Acquisition.

The members of the Performance Review Board for the Consolidated Commands are:

1. Mr. Larry C. Hanson, Assistant Deputy Chief of Staff for Resource Management, U.S. Army Training and Doctrine Command.

2. Major General Robert H. Forman, Chief of Staff, U.S. Army Training and Doctrine Command.

3. Major General James E. Drummond, Commanding General, Combined Arms Test Activity, U.S. Army Training and Doctrine Command.

4. Lieutenant General Robert L. Bergquist, Commanding General, U.S. Army Logistics Center.

5. Mr. Leon F. Goode, Jr., Director, TRADOC System Analysis Activity, U.S. Army Training and Doctrine Command.

6. Dr. Darrel W. Collier, Scientific Advisor, Combined Arms Test Activity, U.S. Army Training and Doctrine Command.

7. Dr. Wilbur B. Payne, Director, TRADOC Operations Research Activity, U.S. Army Training and Doctrine Command.

8. Mr. Arthur C. Christman, Jr., Sceintific Advisor, Office, Deputy Chief of Staff for Combat Developments, U.S. Army Training and Doctrine Command.

9. Dr. Marion R. Bryson, Director, U.S. Army Combat Development Experimentation Center, Combat Development Experimentation Command.

10. Major General Carl H. McNair, Jr., Deputy Chief of Staff for Combat Developments, U.S. Army Training and Doctrine Command.

11. Brigadier General Robert L. Gordon, Deputy Chief of Staff, Resource Management, U.S. Army Training and Doctrine Command.

12. Mr. James F. Fox, Scientific Advisor, Combined Arms Combat Development Activity, U.S. Army Training and Doctrine Command.

13. Mr. Raymond V. Michael, Assistant Deputy Chief of Staff for Personnel, Administration and Logistics (Civilian Personnel), U.S. Army Training and Doctrine Command.

14. Major General Charles F. Briggs, Deputy Chief of Staff for Personnel, U.S. Army Forces Command.

15. Major General John M. Brown, Deputy Chief of Staff, Comptroller, U.S. Army Forces Command.

16. Mr. William S. Fraim, Civilian Personnel Director, U.S. Army Forces Command.

17. Mr. William M. Wilkinson, Deputy Comptroller, U.S. Army Forces Command.

18. Major General Bruce R. Harris, Deputy Commanding General, U.S. Army Information Systems Command.

19. Brigadier General Alan B. Salisbury, Commanding General, U.S. Army Information Systems Software Support Command.

20. Mr. Leonard J. Mabius, Technical Director/Chief Engineer, U.S. Army Communications Systems Agency, U.S. Army Information Systems Command.

21. Mr. Feliciano Giordano, Technical Director, Electronic Warfare Laboratory, U.S. Army Communications Systems Agency, U.S. Army Information Systems Command.

22. Mr. Frederick Orr, Comptroller, U.S. Army Information Systems Command.

23. Mr. Gale W. Parks, Director, U.S. Army Computer Systems Selection Acquisition Agency, Field Operating Activity, Office, Deputy Chief of Staff for Operations, Headquarters, Department of the Army.

24. Mr. Ralph L. Gunn, Director, U.S. Army Management Systems Support Agency, Headquarters, Department of the Army.

25. Major General Scott B. Smith, Deputy Chief of Staff, Engineers, Headquarters, U.S. Army Europe and Seventh Army.

26. Mr. Andrew F. Foremen, Assistant Deputy Chief of Staff for Personnel, Civilian Personnel, Headquarters, U.S. Army Europe and Seventh Army.

27. Brigadier General John H. Stanford, Commanding General, Western Area, Military Traffic Management Command.

28. Mr. Allen J. Dowd, Special Assistant for Transportation Engineering, Military Traffic Management Command.

29. Dr. Robert G. Priddy, Special Assistant to the Assistant Chief of Staff for Intelligence, Headquarters, Department of the Army.

30. Mr. Issac E. Barbre, Deputy Auditor General, U.S. Army Audit Agency.

31. Mr. James T. Brown, Assistant Director for Resource Management, Office, Deputy Chief of Staff for Logistics, Headquarters, Department of the Army.

The Members of the Performance Review Board for the Office of the Surgeon General are:

1. Major. General Edward J. Huycke, M.D., Deputy Surgeon General, Headquarters, Department of the Army.

2. Major General H. Thomas Chandler, D.D.S., Assistant Surgeon General for Dental Services/Director of Personnel, Headquarters, Department for the Army.

3. Major General Garrison Rapmund, M.D., Commander, U.S. Army Medical Research and Development Command

4. Brigadier General Girard Seitter, III, M.D., Director of Health Care Operations, Office of the Surgeon General, Headquarters, Department of the Army.

5. Brigadier General Thomas M. Geer, M.D., Director of Professional Service, Office of the Surgeon General, Headquarters, Department of the Army.

6. Brigadier General Robert R. Jorgensen, Assistant Surgeon General for Veterinary Services, Office of the Surgeon General, Headquarters, Department of the Army.

7. Gunter F. Bahr, M.D., Chairman, Department of Cellular Pathology, Armed Forces Institute of Pathology.

8. Louis W. Baron, Ph.D., Chief, Department of Bacterial Immunology, Walter Reed Army Institute of Research.

9. William R. Beisel, M.D., Special Assistant for Biotechnology, U.S. Army Research and Development Command.

10. Daniel H. Connor, M.D., Chairman, Department of Infectious and Parasitic Disease Pathology, Armed Forces Institute of Pathology.

11. Bhupendra P. Doctor, Ph.D., Director, Division of Biochemistry, Walter Reed Army Institute of Research.

12. Robert R. Engle, Ph.D., Deputy Director, Division of Experimental Therapeutics, Walter Reed Army Institute of Research.

13. Franz M. Enzinger, M.D., Chairman, Department of Soft Tissue Pathology, Armed Forces Institute of Pathology.

14. Samuel B. Formal, Ph.D., Chief, Department of Bacterial Diseases, Walter Reed Army Institute of Research.

15. Elson D. Helwig, M.D., Chairman, Department of Skin and Gastrointestinal Pathology, Armed Forces Institute of Pathology.

16. Nelson S. Irey, M.D., Chairman, Department of Environmental and Drug Induced Pathology, Armed Forces Institute of Pathology.

17. Kamal G. Ishak, M.D., Chairman, Department of Hepatic Pathology, Armed Forces Institute of Pathology.

18. Frank B. Johnson, M.D., Chairman, Department of Chemical Pathology, Armed Forces Institute of Pathology

19. Arthur D. Mason, Jr., M.D., Chief, Laboratory Division, U.S. Army Institute of Surgical Research.

20. Fathollah K. Mostofi, M.D., Chairman, Center for Advanced Pathology, Armed Forces Institute of Pathology.

21. Henry J. Norris, M.D., Chairman, Department of Gynecologic and Breast Pathology, Armed Forces Institute of Pathology.

22. Howard E. Noyes, Ph.D., Associate Director for Research Management, Walter Reed Army Institute of Research.

23. Donald E. Sweet, M.D., Chairman, Department of Orthopedic Pathology, Armed Forces Institute of Pathology.

24. James A. Vogel, Ph.D., Director, Exercise Physiology Division, U.S. Army Research Institute of Environmental Medicine.

The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. Major General Norman G. Delbridge, Jr., Deputy Commander, Headquarters, U.S. Army Corps of Engineers.

2. Brigadier General Forrest T. Gay III, Commander, U.S. Army Engineer Division, South Atlantic.

3. Brigadier General C.E. Edgar III, Deputy Director of Civil Works, Headquarters, U.S. Army Corps of Engineers.

4. Kisuk Cheung, Chief, Engineering Division, Pacific Ocean Division.

5. Lloyd A. Duscha, Deputy Director, Directorate of Engineering and Construction, Headquarters, U.S. Army Corps of Engineers.

6. Lester Edelman, Chief Counsel, Headquarters, U.S. Army Corps of Engineers.

7. Cecil G. Goad, Chief, Operations and Readiness Division, Directorate of Civil Works, Headquarters, U.S. Army Corps of Engineers.

8. Richard B. Gomez, Physical Scientist (Atmospheric Science), Directorate of Research and Development, Headquarters, U. S. Army Corps of Engineers.

9. John Harrison, Chief, Environmental Laboratory Waterways Experiment Station.

10. Alfred P. Hutchinson, Chief, Construction-Operations Division, Southwestern Division.

11. Bory Steinberg, Chief, Program Division, Directorate of Civil Works, Headquarters, U.S. Army Corps of Engineers.

Peter J. Ladzinski,

Alternate, Department of the Army Liaison with the Federal Register.

[FR Doc. 85-16447 Filed 7-10-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tuesday, July 30, 1985.

Times of meeting: 0800–1700 hours.

Place: Hay Group, Inc., Washington, DC.

Agenda: The Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for AirLand Battle—Chair and three subpanel Chairs (Active/U.S. Army Reserve, Army National Guard, and Mobilization Base/Industrial Perspective)—will meet to draft a final report. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Peter J. Ladzinski,

Alternate, Department of the Army, Liaison with the Federal Register.

[FR Doc. 85–16448 Filed 7–10–85; 8:45 am]

BILLING CODE 3710-01-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: Friday, 9 August 1985.

Time: 1300–1400.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup—TRADOC Operations Research Activity (TORA) will meet to discuss operations research activities. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Peter J. Ladzinski,

Alternate Department of the Army, Liaison With the Federal Register.

[FR Doc. 85–16497 Filed 7–10–85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday and Tuesday, 5 and 6 August 1985.

Time: 0830–1630.

Place: Science Applications International Corporation, McLean, VA.

Agenda: The Army Science Board Ad Hoc Subgroup for the Detection of Soviet Theater Nuclear Forces will meet for briefings by intelligence agencies and government laboratories. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified ;matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039–7046.

Peter J. Ladzinski,

Alternate Department of the Army, Liaison with the Federal Register.

[FR Doc. 85–16498 Filed 7–10–85; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Directorate of Personal Property

AGENCY: Military Traffic Management Command (MTMC), Defense.

ACTION: On behalf of the Department of Defense, MTMC is considering testing an allocated traffic solicitation for household goods shipments between selected military installations. Headquarters, MTMC, MT–PPC, letter of July 1, 1985, specifically addresses the solicitation.

SUMMARY: The Department of Defense's actual requirement for transportation services under this solicitation will be allocated for the 6-month period to the responsive, responsible carrier or carriers whose offer conforms to the solicitation, will be the most advantageous to the Government under terms and conditions contained herein, and consistent with the capacity stated by the carrier in its response. Movements between the identified areas of responsibility will be for the same 6-month period as the solicitation, viz, starting May 1, 1986. The main purpose of this solicitation is to assure that service members receive quality service. Therefore, carriers responding to this solicitation agree that the Government reserves the right to immediately take action for failure to comply with all terms of the tender of service, especially failure to provide ontime pick up and delivery and proper packing.

Specific features included in the solicitation are as follows:

—The alternation clause will be waived for shipments moving under these provisions.

—All carriers must have a Carrier Evaluation Rating Score of 90 or above to participate.

—One rate will apply in both directions.

—Rate Solicitation 4–2 will be used as the rate basis for all submissions.

—All rates will be based on the applicable section 3 Rate Table.

—Carriers may file rates above, equal to, or below the baselines.

—All carriers must have an agent at origin and destination.

—Single percentage will be applied against the total cost of the shipment including storage in transit. This is similar to the program in existence for Volume Moves.

Comments: Written comments concerning this proposal will be considered if received not later than September 3, 1985.

Address Comments To: Commander, Military Traffic Management Command, Attn: Rate Acquisition Division (MT–PPC), Room 408, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

FOR FURTHER INFORMATION CONTACT: LTC Robert P. Coleman or Mr. Jeffry McKenzie, Military Traffic Management Command, Attn: MT–PPC (Room 408), 5611 Columbia Pike, Falls Church, Virginia 22041–5050, (202) 756–2385.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 85–16499 Filed 7–10–85; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

National Environmental Policy Act Record of Decision To Close Port Chicago Highway, Main Street and Waterfront Road, Naval Weapons Station, Concord, Contra Costa County, CA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) (§ 1505.2 of Title 40, Code of Federal Regulations) and the Council on Environmental Quality Regulations (40 CFR Part 1500), the Department of the Navy announces its decision to close the Port Chicago Highway from north of the Town of Clyde at the southern boundary of the Naval Weapons Station, Concord, California for 3.1 miles to just west of the entrance of the chemical plant at Nichols Avenue; the entire 0.5 mile length of Main Street and a 1.75 mile portion of Waterfront Road to the western boundaries of the station. These road closures are required to comply with the directive of the Department of Defense Explosive Safety Board, which states that public roads within the safety arcs of Weapons Station facilities must be closed for reasons of public safety and military security. The Final Environmenal Impact Statement addressing the impacts of this action appeared in the **Federal Register**, Vol. 50, No. 61 of Friday, March 29, 1985.

The primary area of public concern was related to the need for additional mitigation for either motor vehicle or non-motor vehicle traffic due to the proposed roadway closure. The U.S. Navy has dedicated property and funds for the upgrading of State Route Four to a four lane freeway to mitigate traffic effects of the proposed closure. It is the Navy's position that State Route Four as currently constructed, constitutes a reasonable replacement. With the construction of a path for non-motor vehicle travel (such as pedestrians, equestrians, and bicycles) parallel to State Route Four as part of the proposed closure the only remaining impact is avoided. Access would be authorized on Tidal Area roadways for easement holders (such as utilities), farm equipment for Tidal Area uses, emergency services and emergencies resulting from temporary State Route Four closure.

July 3, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85-16435 Filed 7-10-85; 8:45 am]

BILLING CODE 3810-AE-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-735-DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-735-DR), dated March 29, 1985, and related determinations.

DATED: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Illinois, dated March 29, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 29, 1985:

Brown, LaSalle, and Woodford Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-16400 Filed 7-10-85; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Citicorp; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 U.S.C. 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1985.

A. Federal Reserve Bank of New York (A Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to engage directly or indirectly through a subsidiary in making, acquiring, or servicing loans and other extensions of credit, secured or unsecured for consumer or commercial purposes. These activities will be conducted worldwide.

Board of Governors of the Federal Reserve System, July 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16420 Filed 7-10-85; 8:45 am]

BILLING CODE 6210-01-M

Claiborne Holding Co., Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 2, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Claiborne Holding Company, Inc.*, Tazewell, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of Claiborne County Bank, Tazewell, Tennessee.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *National Banking Corp.*, North Little Rock, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of National

Bank of Arkansas in North Little Rock, North Little Rock, Arkansas.

2. *National Commerce Bancorporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares or assets of Knoxville Bank & Trust, Knoxville, Tennessee and Nashville Bank of Commerce, Nashville, Tennessee.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Watford City Bancshares, Inc.*, Watford City, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of First International Bank of Watford City, Watford City, North Dakota.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *IB Bancshares, Inc.*, Plano, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Independence Bank, Plano, Texas.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Zions Utah Bancorporation*, Salt Lake City, Utah; to acquire 100 percent of the voting shares or assets of Nevada State Bank, Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, July 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16419 Filed 7-10-85; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0515A]

Requests for Comments on Proposals Regarding Book-Entry Securities Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Extention of the comment periods.

SUMMARY: On May 17, 1985, the Board requested public comment on proposals regarding book-entry securities transfers (Docket No. R-0515A). These requests are related to the Board's attempts to reduce risks in the payments system that were announced on the same day. 50 FR 21120 *et seq.* Comments were due by August 15, 1985. In response to a request, the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), has extended the comment period for 45 days.

DATE: Comments must be received by September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452-3368); Mr. Elliott C. McEntee, Associate Director (202/452-3928), Ms. Florence Young, Adviser (202/452-3955), Division of Federal Reserve Bank Operations; or Ms. Joy W. O'Connell, Telecommunication Device for the Deaf (TDD) (202/452-3244).

By order of the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), July 8, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-16502 Filed 7-10-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

GSA Bulletin FPMR E-210, Supply and Procurement

June 27, 1985.

To: Heads of Federal agencies.

Subject: Acquisition of systems furniture.

1. *Purpose.* This bulletin is issued in accordance with the requirements of FPMR Temp. Reg. E-81, dated May 2, 1985. It contains detailed information required for compliance with the FPMR and for obtaining GSA authorization to procure systems furniture.

2. *Expiration date.* This bulletin contains information of a continuing nature and will remain in effect until canceled or superseded.

3. *Definitions.* For the purpose of this bulletin:

a. "Systems furniture" consists of interconnecting panel assemblies together with work surfaces, storage units, and other major components which are panel-supported. Systems furniture includes, and is limited to, items covered by GSA contracts under Federal Supply Schedule FSC Group 71, Part II, Section E.

b. "Conventional office furniture" includes all items available through the Federal supply system except for the contract items under the systems furniture schedule. (See subparagraph 3a.) It also includes agency-owned assigned and unassigned conventional furniture and Government excess furniture. Products most commonly used in comparing systems furniture to conventional furniture can be found in the GSA Supply Catalog and Federal Supply Schedules FSC Group 71, Part II, Section B, and Part III, Sections D, M, and N.

c. "Space savings" is the difference between the amount of office space required for systems furniture and conventional furniture based upon the same functional requirements. The use of systems furniture must provide significantly better space utilization than conventional furniture to be cost effective. Also, the saved space must be taken advantage of in a constructive manner to obtain the desired cost benefits; e.g., release to another agency/activity. Space savings also occur whenever available space is substantially less than would be assigned under governing standards and the use of systems furniture alleviates the need to procure additional office space.

d. "FSS" is the GSA Office of Federal Supply and Services.

4. *Program management responsibilities.*

a. *GSA.* Primary responsibility for administering the systems furniture program has been delegated within GSA to the Assistant Administrator for FSS. FSS is responsible for establishing contract coverage for systems furniture, for promoting competitive procurement methods, and for providing agency assistance regarding compliance with the FPMR and procurement approaches. FSS is also responsible for monitoring agency compliance with the FPMR, and for collecting and evaluating data concerning agency demand and procurements.

b. *Agencies.*

(1) *General.* Space management, buildings management, property management, and procurement programs and policies are now more closely interrelated, both at the national and local levels, than in the past. Agency officials are encouraged to familiarize themselves with the dynamic changes taking place with regard to facilities design/management and to establish internal space and property management policies and procedures to ensure proposed furniture procurements, whether for a new facility or for retrofitting existing office space, are subjected to comprehensive planning. In this connection, the Assistant Administrator for FSS has been authorized to grant waivers from the FPMR requirement that agencies obtain GSA authorization prior to initiating procurement action. (See paragraph 5d(1).)

(2) *Approving officials.* This bulletin specifies that agency heads approve requests to procure systems furniture amounting to $500,000 or more prior to submission to FSS for procurement authorization. For lesser amounts, civil agency approval requires the signature

of an Assistant Secretary, or equivalent. For the Department of Defense, approval of amounts of less than $500,000 by commanding officers of major claimant commands is required. These authorities may be redelegated within the agency to the lowest responsible level as determined by the agency head. To facilitate the processing of agency requests, agencies should notify the FSS Furniture Commodity Center, in writing, of any additional delegations.

5. *Request for GSA procurement authorization.*

a. *Applicability.*

(1) *Executive agencies.* The FPMR requirement for obtaining GSA procurement authorization is applicable to all departments and independent establishments, including wholly-owned Government corporations in the executive branch of the Government whether procurement will be performed by an agency contracting officer or by a prime contractor on behalf of an agency.

(2) *Exemptions.* The legislative and judicial branches of the Federal Government, the U.S. Postal Service, and other organizations authorized to use GSA sources of supply are exempt from the requirement for obtaining GSA procurement authorization. They are, however, subject to following the procurement procedures prescribed in the systems furniture schedule.

b. *New projects.* Project proposals should be submitted to the Director, Furniture Commodity Center (FN), Office of Federal Supply and Services, Washington, DC 20406, prior to initiating procurement action. (If an agency has internal processing procedures, requests should be routed to FSS in accordance with agency procedures.)

(1) As a minimum, requests should have the endorsement of the agency approving official and include the following:

(a) Cost comparison analysis (attachment C);

(b) Program management data (attachment D); and

(c) Prototypical work station illustrations and summaries of space requirements and furniture costs. (See attachments E thru I for suggested formats.)

(2) In determining whether to authorize the procurement of systems furniture, FSS will review the submitted information to ensure that it demonstrates:

(a) Recovery of the net difference between the initial cost of systems furniture and other comparable options within at least 8 years of project installation; and

(b) Compliance with property and space management regulations. (See attachment A.)

(3) FSS will respond to agency requests for procurement authorization within 20 days after receipt. If the requested authority cannot be granted, the requesting official will be provided a written explanation of the problem and advised of what additional information is needed. (Prior to rejecting a request, FSS will make every effort to reconcile problems with agency project officers. The name of the agency project officer and their FTS/commercial telephone number should be provided with each request.)

c. *"Add-on" requirements.*

(1) *General.* For the purposes of this paragraph, the term "add-on" applies to requirements for additional products or services required to maintain systems furniture projects which were approved by GSA, or by an agency under written authority provided by FSS in accordance with subparagraph 5d(1). To maximize competition, only minor additions for reconfigurations and replacements should be acquired from the same supplier. For the purposes of the authorities provided in subparagraph 5c(2), "add-ons" are limited to:

(a) Design/layout, installation, and post installation support services associated with relocation, reconfiguration, or general maintenance;

(b) Additional products associated with relocation, reconfiguration, or project maintenance; or

(c) Additional products and/or services associated with assembly of additional adjoining work stations.

(2) *Authorities.* Procurement authorization is not required to meet cumulative requirements of less than $25,000 per fiscal year (products and services inclusive) for projects which were approved for less than $500,000; or, to meet requirements of less than $50,000 for projects which were approved for over $500,000. To facilitate order processing by a GSA contractor, the following statement should appear in the purchase document: "GSA/FSS procurement authorization is not required for this order in accordance with paragraph 5c of GSA Bulletin FPMR E–210. The products and/or services included in this order are required for systems furniture project (*Enter GSA project control number*)."

(3) *Limitations.* Procurement authorization is required for add-ons to projects which were not previously approved by GSA and/or do not meet the definition in subparagraph 5c(1) and, for requirements over the limits established in subparagraph 5c(2). Requests for add-on procurement authority should be submitted by an agency contracting officer to the Director, Furniture Commodity Center (FN), Office of Federal Supply and Services, Washington, DC 20406. 20406. (If an agency has internal processing procedures, requests for add-ons should be routed to FSS in accordance with agency procedures.) Requests should include an itemized listing of desired product and/or related services and an explanation of need. For projects which were approved under the FPMR Temp. Reg. E–76 program, the cost comparison analysis under which the project was originally approved should be amended to reflect the changed furniture costs and space utilization data, and be submitted with the request.

d. *Waivers.*

(1) *General.* FSS will grant a waiver from the requirement for obtaining GSA procurement authorization to any department or agency, or major subdivision thereof, which provides compelling evidence that internal procurement, property management and space management policies and programs have been installed within the agency, or activity, to ensure that systems furniture will be competitively procured and employed cost effectively. Requests should be submitted by the agency head, or a designated official, to the Assistant Administrator (F), Office of Federal Supply and Services, Washington, DC 20406. The Assistant Administrator, upon granting a waiver, will require the agency to provide periodic procurement and program management data reports which are necessary for FSS to fulfill its reponsibilities.

(2) *Special.* Procurement authorization is not required in connection with the procurement of systems furniture (including add-ons) for use in a clinical area of a medical facility operated by either the Veterans Administration or an agency of the Department of Defense. (Contracting officers are, however, subject to following the procurement procedures prescribed in the systems furniture schedule.) Clinical areas are defined as pharmacies, laboratories, combination doctors office/examination rooms, and nursing stations. To facilitate order processing by contractors, the following statement should be included in agency purchase documents: "GSA/FSS procurement authorization is not required for this order in accordance with subparagraph 5d(2) of GSA Bulletin FPMR E–210. The products and/or services included in this order are required for *(Describe*

clinical area) at (*Enter name of medical facility*)."

(3) *Other.*

(a) *Technical considerations.* Agencies may request authority to use the systems furniture schedule for procuring products and services when items provided under other schedules/contracts will not serve their functional requirements and/or when the use of systems furniture is more cost effective than other alternatives. (Example: Cost analysis demonstrates that the costs of carpentry and electrical services required to construct a lobby security desk are higher than the costs of systems furniture products and services.) Requests should be submitted to the Director, Furniture Commodity Center (FN), Office of Federal Supply and Services, Washington, DC 20406, and should include information similar to that required by FPMR 101–26.100–2. (If an agency has internal processing procedures, requests should be routed to FSS in accordance with agency procedures.)

(b) *National security.* Requests for waiver of the requirement for obtaining GSA procurement authorization for national security reasons should be forwarded to the Assistant Administrator (F), Office of Federal Supply and Services, Washington, DC 20406.

6. *Procurement methodology.*

a. *General.* Systems furniture products and related services, described below, are available from the systems furniture schedule. Contractors are prohibited from accepting orders from executive agencies unless accompanied by a GSA letter of procurement authorization. (See subparagraphs 5c, 5d(1), and 5d(2) for exceptions.) The schedule contains four line items:

(1) *Products.* Items covered under GSA contracts meet standards established by the Business and Institutional Furniture Manufacturers Association (BIFMA). Major product components are either fully or partially depenent upon systems partitions for support. Free-standing items such as desks, tables, files, and seating are not covered; they should be procured from other GSA sources/schedules to avoid potential breach of other GSA contracts. In the event agency requirements cannot be satisfied from items included from other GSA sources/schedules, the agency shall submit a waiver request to GSA in accordance with FPMR 101–26.100–2. (See subparagraph 5d(3)(a).)

(2) *Design/layout services.* Contractors are prohibited from accepting orders for design services under contract until furniture is ordered. This limitation is necessary because completion of design services by a contractor, or a business affiliated with a contractor (e.g., a dealership) during the procurement planning phases, can provide an advantage over other contractors (i.e., potential competitors) when they compete for the furniture contract. If design services are not available in-house, agencies housed in GSA-leased space should obtain them from the Public Buildings Service of GSA. For agencies which are housed in other than GSA-leased space, services should be obtained from design firms which do not have an affiliation with a GSA systems furniture contractor. Typical work station drawings and summaries of space requirements and furniture costs which form the basis for completing the required cost analysis justification, as well as any related systems furniture layouts, should be developed only to illustrate functional and design intent; i.e., they should not be brand-name identifiable or so narrowly prescribed as to preclude equitable competition among as many firms as practicable. After award, the successful contractor, under the design/layout services terms of the schedule, will convert drawings to be brand-specific. This prohibition does not apply to requirements for add-ons and/or clinical areas being procured in accordance with subparagraphs 5c and 5d(2).

(3) *Installation services.* Requirements should be formulated to ensure maximum practicable competition for projects. Installation services may be either negotiated on a project-by-project basis or tied into the competitive procurement of products as an agency requirement. Ordering activities should define their requirements, as necessary, for such things as delivery control, warehousing, staging, and professional installation of the product. Professional installation should require: that all panels be straight, plumb, and level; that hang-on components be aligned, adjusted, and tightly secured in position and operating safely; that all electrical/communications be installed according to local code; that damaged components be repaired or replaced; and, that the furniture be clean and all debris removed from the work area prior to move-in. The agency contracting officer, end-user, and contractor representative should conduct a thorough walk-through inspection of the installation to ensure proper installation and receipt of all products included in the order.

(4) *Post-installation services.* Schedule contracts provide for end-user orientation and training in the use of the new product. It also provides for supplemental training and maintenance services which are subject to price negotiation between the requiring activity and contractors. For example, an ordering activity may consider training its in-house labor force in installation procedures or, as an alternative, entering into an appropriate agreement with the contractor to provide reconfiguration services at predetermined times based upon plans for office relocation. Consideration may also be given to establishing a continuing program which provides for the periodic realigning and tightening of partitions and hang-on components, and repair or replacement of soiled or damaged parts to ensure that a functional, safe, and attractive work environment is maintained.

b. *Procurement.* Detailed procurement procedures, and general aids, are included in Federal Supply Schedule FSC Group 71, Part II, Section E.

7. *Agency comments and assistance.* Comments or inquiries concerning the effect and impact of the requirements and guidance contained in this bulletin should be submitted to the Furniture Commodity Center (FNE), Washington, DC 20406, telephone (703) 557–8473. Procurement related questions should be referred to the FSS contracting officer, telephone (703) 557–5949.

By delegation of the Assistant Administrator.

James J. Grady, Jr.,

Director of Policy and Agency Assistance.

Attachment A—Federal Regulations

This attachment lists Federal regulations which should be considered by agency approving officials in connection with reviewing program proposals to procure systems furniture:

1. FPMR Temp. Reg. E–81, Acquisition of systems furniture, dated May 2, 1985.

2. Public Law 98–369, Competition in Contracting Act of 1984, signed July 18, 1984, promotes use of advance procurement planning to obtain full and open competition, and requires the use of functional specifications.

3. FPMR 101–25.302 requires agencies to establish use standards for office furniture.

GSA Bulletin FPMR E–207, dated December 11, 1984, provides general information designed to assist agencies in establishing use standards.

4. FPMR 101–43.3 addresses the utilization of excess property.

5. FPMR 101–25.104–1 addresses the redistribution, repair, or rehabilitation of agency-owned furniture.

6. FPMR 101–25.404 addresses replacement standards for furniture.

7. FPMR 101–25.104 addresses the acquisition of office furniture based upon essentiality and cost.

8. FPMR 101–25.302–2 addresses the utilization and replacement of file cabinets.

9. FPMR Temp. Reg. D–71 provides criteria and guidelines which must be considered in connection with achieving more efficient layouts and better space utilization.

10. FPMR 101–26.408 addresses the procument of lowest price items under multiple-award contracts.

Attachment B—Cost Comparison Analysis

1. *Purpose.* This attachment provides general information and detailed instructions which agencies should follow to conduct comparative cost analyses of systems furniture and conventional office furniture based upon space savings.

2. *Acquisition planning.* Early teamwork and planning between contracting personnel and program personnel who require the furniture are necessary for the proper procurement of systems furniture. It takes at least 10 months for an agency to plan, procure, and install a systems furniture project. Federal managers and contracting officers are required to comply with numerous Federal procurement, property, and space management regulations in exercising their responsibilities. It is essential, therefore, that acquisition planning begin as soon as a need is identified, and that planning groups include agency contracting and budget officials, and agency property and space management specialists as well as the intended end users.

3. *Background.* GSA has determined that systems furniture is a viable solution to some space management problems; however, it is only one option which managers should consider. It is more expensive than conventional office furniture. This fact necessitates the careful review of all options, including optimum utilization of existing space and furniture, to ensure that it is procured only when cost effective for the Government. In most cases, justification for incurring the additional expense of systems furniture can best be quantified based upon space savings.

4. *Development of options.* To conduct a cost analysis between systems furniture and conventional furniture, each option must be carefully developed to provide a realistic and useful comparison. Comprehensive property surveys will usually be required to properly complete this effort. In none of the options should new furniture be acquired if agency-owned or Government excess is available that will adequately satisfy the requirement. To this extent, agency approving officials should review applicable FPMR governing the replacement of Government-owned property to determine if the planned procurement of systems furniture satisfies regulations. (See attachment A.) The number of options will depend largely upon the circumstances confronting the agency; each one should be equally capable of satisfying the functional requirements of the organization being studied. As a minimum, the following options should be developed:

a. Conventional furniture in proposed office space with no wall changes; and

b. Systems furniture in proposed office space with no wall changes.

Full consideration should also be given to the use of systems furniture panels and overhead storage units together with existing furniture.

5. *Space analysis.* A detailed space analysis must be performed for all conventional and systems furniture options. The objectives are to determine the amount and utilization rate of office space required under each furniture option, and to determine the annual cost per-square-foot of the office space in which the furniture will be installed. Design/layout services covered under Federal Supply Schedule FSC Group 71, Part II, Section E, are not available for planning purposes. (See subparagraph 7a(2) of the bulletin.)

a. *First,* develop prototypical work stations. (See attachments E, F, and G for examples.) At least two layouts are required—one using systems furniture and the other using conventional furniture-for each different type of work station required. They must illustrate similar utility to provide a true comparison. The arrangements should be drawn to scale and the furnishings included in each should be selected after review of the functions of the employees. The prototypicals used for systems should be generically illustrated since they will later be used by the agency contracting officer in soliciting competitive offers. (See subparagraph 7a(2) of the bulletin.).

b. *Second,* determine the space requirement for each work station arrangement developed in a, above. Enter the information on the work station drawings and on the "Space Requirements Summary Work Sheet," attachment H;

c. *Third,* determine the number of required units for each work station arrangement developed in a, above. Enter the information on the work station drawings and on the "Space Requirements Summary Work Sheet," attachment H;

d. *Fourth,* on the work sheet (attachment H), total the space requirements for each work station and option and apply a 30 percent weight factor to allow for circulation space and building design constraints.

e. The *final* space related data element which must be determined is the annual cost per-square-foot chargeable to the office space under consideration. The rate should be for the year of installation and should not be inflated for future price increases. This rate should include the costs of rent, utilities, maintenance, and any overhead chargeable to that space. If the space is GSA-controlled, the agency rental cost for the space should be used. If the space is agency-controlled, either the actual annual lease cost per-square-foot, or the fair market rental value per-square-foot for comparable space in the surrounding community should be used. Assistance in determining the appropriate rate may be obtained from the regional GSA Public Buildings Service. Enter the cost-per-square foot rate on line 4a, attachment D, Program Management Data.

6. *Cost analysis.* A detailed cost analysis should be performed for all conventional and systems furniture options. The objective is to develop complete cost estimates for each furniture option, and to develop a record of furniture to be reassigned in the event systems furniture is authorized for procurement. An inventory of existing furniture assigned the organization under study and survey of items available from agency-owned or Government unassigned and excess inventories should be conducted. The furniture assigned the organization under study should also be coded according to condition.

a. *First,* determine the cost for each work station arrangement developed in paragraph 5a and itemize the furniture pieces and costs on the work stations drawing as shown in examples, attachments E, F, and G. Enter the costs in the "Cost Summary Work Sheet," attachment I.

b. *Second,* enter the number of required units for each work station. (Should be the same as entered on the Space Requirements Summary Work Sheet, attachment H.)

c. *Third,* on the work sheet (attachment I), total the costs for each work station and option subtracting the value of existing conventional and/or systems furniture inventory which can, or will be reutilized. In the event any of the furniture can be retained in service if rehabilitated, subtract 60 percent of the "new" value of those pieces.

7. *Cost comparison of furniture options.*

a. Once all furniture options have been identified and projections of office space requirements and furniture costs for each have been completed, it is then appropriate to compare the cost of the available options. The objective of such an analysis is to identify that option which satisfies organizational needs in the most cost effective manner. The format for the analysis of each option will be:

Total Initial Costs plus Annual Costs minus Salvage Value of Equipment equals Total Costs of the Option

b. The following operating assumptions have been made in connection with the cost analysis. They are:

(1) Projected furniture and office space costs are evaluated over an 8-year term.

(2) Future costs will stated in constant dollars; i.e., projections of office space costs will not be adjusted for inflation.

c. A cost comparison analysis for furniture evaluation, attachment C, has been developed based on the above assumptions. Discounting factors have been included so that the results are stated in present value terms. In the following subparagraphs a discussion of the elements involved in the analysis is provided.

(1) *Initial costs.* (Lines 1a and 1b) Transfer the cost estimates itemized in the "Cost Summary Work Sheet," attachment I, to line 1b, Option 1 for systems; and line 1a, Option 2 for conventional.

(2) *Design/layout costs.* (Line 2) The estimated cost for design services for each furniture option should be developed. The sources of this estimate may be the regional GSA Public Buildings Service, private design contractors, or agency experience. Information provided by agencies to GSA indicates that costs average 5 and 3 percent, respectively, for systems and conventional.

(3) *Delivery and installation costs.* (Line 3) The costs of installation of the furniture should be reviewed for each option. Estimates may be obtained from manufacturers' representatives. For conventional and systems furniture ordered from a GSA furniture schedule, there is no

charge for delivery to the building containing the office space under consideration. However, the furniture must be moved from the building loading dock to the office area and be installed. Estimates should be developed for those installation costs based on the number of hours required and cost per hour for such labor. The installation of systems furniture will require specially trained individuals and may be more expensive than conventional furniture. Information provided by agencies to GSA indicate that costs average 9 and 5 percent, respectively, for systems and conventional. (See subparagraph 7a(3) of the bulletin.)

(4) *Post-installation cost.* (Line 4) Enter zero.

(5) *Alteration costs.*

(a) *Alterations to existing space.* The costs will vary between furniture options because some options will include partitions capable of providing electrical and telephone conduits. This difference will result in varying telephone, electrical, and lighting fixture installation costs. Costs associated with the installation/removal of walls shall be included for each option. Planners are advised that wall installation/removal costs may not be used to increase conventional furniture solution costs if not proven cost effective. Therefore, for each option, a schedule of building alteration costs should be prepared. The development of estimates should be coordinated with the building facilities manager and the space manager, and the results retained in the project record.

(b) *New building construction.* (Line 5b) New construction involves higher initial costs than acquisition of leased space or alterations of existing space. Consequently, reducing new construction costs through space-efficient options can result in savings for the Goverment. For projects in new facilities, and for existing facilities which require new construction to accommodate an option, construction costs should be included. The cost should be the current estimated cost-per-square foot for the project multiplied by the space requirement for each option compared.

(6) *Service contract cost.* (Line 6) Service contract costs should be obtained by competitive bid, and occur only in conjunction with systems furniture. In such cases estimates should be obtained from manufacturers and documented in the project record. Such services are optional and should only be included if they will be part of the initial furniture purchase.

(7) *Annual cost of office space.* (Line 8) To determine this cost, the total space requirement of each option itemized in the "Space Requirements Summary Worksheet," attachment H, should be multiplied by the current per-square-foot cost of the office space determined under subparagraph 5e.

(8) Salvage value of equipment. (Lines 10 a and b) Since it is anticipated that office furniture will have an economic life greater than 8 years, it is necessary to account for the equipment salvage value at the end of the evaluation period. For the purposes of this analysis, it will be assumed that all rehabilitated and new furniture will have 27 percent of its original cost remaining at the end of the 8-year period. The original equipment costs (not installation, design, or building preparation costs) for each furniture option should be multiplied by .27; the result is salvage value for the option.

(9) *Feasibility determination.* (Lines 12 thur 15) Once all estimates have been developed and documented, the cost comparison analysis should be completed in accordance with the instructions provided. The option with the lowest present value cost should be selected. If there is less than ⅛ of 1 percent difference of total present value cost between several options, those alternatives should be considered essentially as identical. In all other cases, the option with the lowest present value cost should be selected.

(In rare cases, supplemental potential savings, such as productivity and energy savings, may partially offset the cost difference between the systems furniture option and the conventional office furniture options. Such claims must be fully quantified and documented within the agency cost analysis to be considered by GSA.)

Attachment C—Cost Comparison Analysis

	Options		
	Systems	Conventional	Other
I. Initial Costs			
1. Furniture cost:			
a. Conventional			
b. Systems			
2. Design/layout cost			
3. Installation cost			
4. Post-installation support cost			
5. Alteration cost:			
a. Existing space			
b. New construction			
6. Service contract cost			
7. Total initial costs (Lines 1 thru 6)			
II. Recurring Costs			
8. Annual cost of office space (space requirement times cost-per-square foot)			
9. Total recurring costs			
III. Salvage Value			
10. Salvage value:			
a. Conventional (Line 1a×.27)			
b. Systems (Line 1b×.27)			
11. Total salvage value			
IV. Present Value (PV) Cost of Options			
12. Total initial costs (Enter costs from line 7)			
13. PV of annual costs (Line 9×5.335=)			
14. PV of salvage (Line 11×.4665=)			
15. PV of options (Lines 12+13−14=)			

Select Option With the Lowest Present Value Cost

Prepared by:
(a) Name _____
(b) Date _____
(c) FTS/Comm Tel _____

1. Project organization and location
   a. Office:
   b. Mailing address:
   c. Building, floor, room numbers:
2. Contacts (Name and telephone number)
   a. Agency approving official:.....
   b. Project officer:.....
3. Procurement data
   a. Number of work stations to be procured: .....
   b. Procurement cost estimate: .....
      (1) Furniture..... $.....
      (2) Design/layout service..... $.....
      (3) Installation service.... $.....
4. Space management data
   a. Annual cost-per-square foot of office space: .....
   b. Current space utilization rates:
      (1) Area to receive systems:.....
      (2) Facility (i.e., building).....
   c. Planned space utilization rate: .....
      (1) Area to receive systems:.....
      (2) Facility (i.e., building).....

5. Amount of planned space savings (in square feet): _____
6. Utilization of saved space (Describe how the saved space will be used.):

_____

_____

7. Did an acquisition planning group including agency contracting, budget, space, and property management officials develop this proposal?

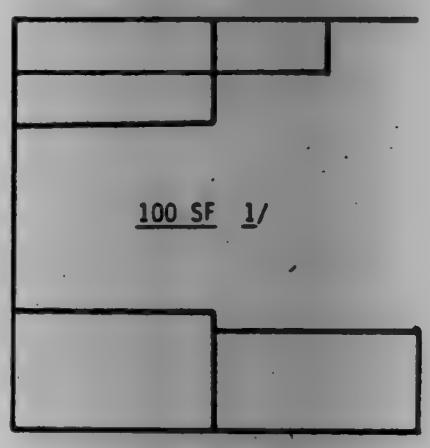
_____YES/NO

BILLING CODE 6820-86-M

GSA Bulletin FPMR E-210
Attachment E

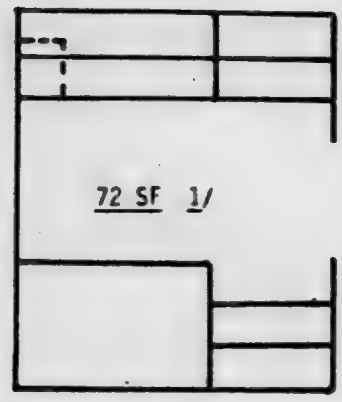
Type of work station: Engineering/Architect 1/

Number required: _____ 1/



CONVENTIONAL

Desk	30 x 60	$ 250
Bookcase	32" w/1 shelf	77
Table	30 x 60	86
Carrell w/light	60"	275
Drafting table	36 x 60	N/C
		($ 688)
Panels: non-power; interconnecting; acoustical		
6 ea - 60 x 62 @ $216		$1,296
Panel sharing		x .625
		($ 810)
TOTAL (EST.) COST		$1,498 2/



SYSTEMS

Work surfaces	11 LF	$ 305
Shelving w/task lights	11 LF	315
Pedestal	2 drwr.	185
Drafting table	35 x 60	N/C
		($ 805)
Panels: non-power; interconnecting; seated-privacy height		
	31 LF	$2,265
Panel sharing		x .625
		($1,415)
		$2,220 2/

1/ Transfer to work sheet, attachment H

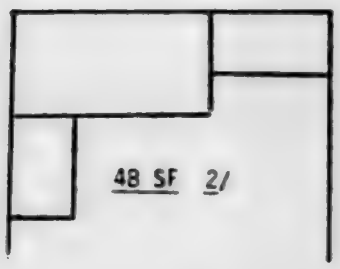
2/ Transfer to work sheet, attachment I

EXAMPLE

GSA Bulletin FPMR E-210
Attachment F

Type of work station: Clerical 1/

Number required: ____ 1/



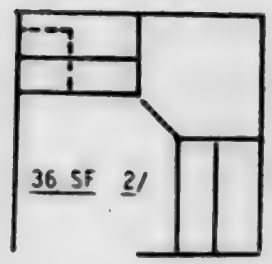
CONVENTIONAL

Desk	30 x 60 w/"L"	$ 250
Lateral file	2 drwr. 36"	128
Terminal stand	30 x 48	260
		($ 638)

Panels: non-power; interconnecting; acoustical

1 ea - 60 x 62	$ 216
1 ea - 36 x 62	158
2 ea - 72 x 62 @ $254	508
	$ 882
Panel sharing	x .625
	($ 551)

TOTAL (EST.) COST $1,189 2/



SYSTEMS

Work surfaces	9 LF	$ 290
Storage cabinet w/task lights	6 LF	295
Pedestal	2 drwr.	185
		($ 760)

Panels: non-power; interconnecting; seated-privacy height

21 LF	$1,635
Panel sharing	x .625
	($1,022)

TOTAL (EST.) COST $1,782 2/

1/ Transfer to work sheet, attachment H

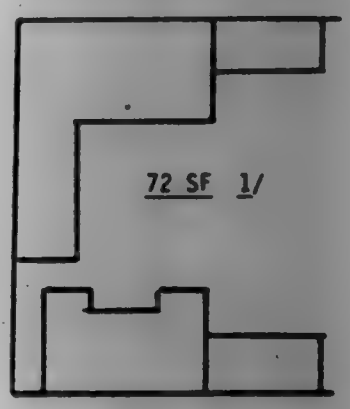
2/ Transfer to work sheet, attachment I

EXAMPLE

GSA Bulletin FPMR E-210
Attachment G

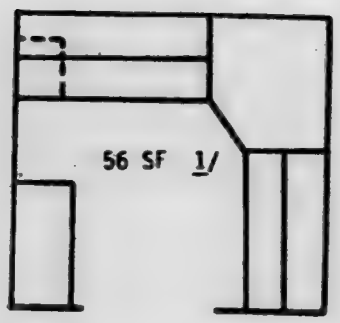
Type of work station: Professional 1/

Number required: _____ 1/



CONVENTIONAL

Desk	30 x 60	$ 370
Lateral file	2 drwr, 36"	128
Bookcase	1 shelf, 32"	77
Terminal stand	30 x 48	260
Table		
Carrell		
		($ 835)
Panels: non-power, interconnecting, acoustical		
5 ea - 48 x 62 @ $185		$ 925
1 ea - 60 x 62		216
		$1,141
Panel sharing		X .625
		($ 713)
TOTAL (EST.) COST		$1,548 2/



SYSTEMS

Work surfaces	13 LF	$ 325
Storage cabinets w/task lights	10 LF	475
Lateral file	3 LF	175
Pedestal	2 drwr.	185
		($1,160)
Panels: non-power, interconnecting, seated-privacy height		
	27 LF	$1,975
Panel sharing		x .625
		($1,234)
		$2,394 2/

1/ Transfer to work sheet, attachment H

2/ Transfer to work sheet, attachment I

EXAMPLE

GSA Bulletin FPMR E-210
Attachment H

SPACE REQUIREMENTS SUMMARY WORK SHEET

WORK STATION TYPE	OPTION 1: SYSTEMS			OPTION 2: CONVENTIONAL			OPTION 3: OTHER		
	SPACE REQUIREMENT	NO. OF WORK STATIONS	TOTAL	SPACE REQUIREMENT	NO. OF WORK STATIONS	TOTAL	SPACE REQUIREMENT	NO. OF WORK STATIONS	TOTAL
SUBTOTAL									
plus									
CIRCULATION (30%)			x 1.30			x 1.30			x 1.30
TOTALS									

GSA Bulletin FPMR E-219
Attachment 1

COST SUMMARY WORK SHEET

WORK STATION TYPE	OPTION 1: SYSTEMS			OPTION 2: CONVENTIONAL			OPTION 3: OTHER		
	UNIT COST	NO. OF WORK STATIONS	TOTAL	UNIT COST	NO. OF WORK STATIONS	TOTAL	UNIT COST	NO. OF WORK STATIONS	TOTAL
SUBTOTAL									
less									
REUTILIZED									
TOTALS									

[FR Doc. 85-16406 Filed 7-10-85; 8:45 am]
BILLING CODE 6820-BB-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

ADAMHA Peer Review Appeals system; Establishment

Background

The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) has initiated an appeals process whereby applicants may request an examination of their concerns about the referral and peer review of their applications for research grants, research training grants and fellowships and cooperative agreements for research.

This process is intended to resolve those concerns which arise from perceived shortcomings or errors in the substance or procedure of peer review—i.e., from receipt and assignment of an application through its review by a National Advisory Council. Such concerns may involve refusal to accept an application; a disputed assignment of the application to an initial review group or to a particular Institute; perceived insufficient expertise on the initial review group or site visit team or conflict of interest on the part of one or more members; apparent factual or scientific errors, oversights, or bias associated with the review of an application at the initial or advisory council review; and perceived inappropriate handling of the review of the application.

However, the appeals process is not intended to resolve purely scientific disputes between peer reviewers and the investigator; to provide a mechanism for allowing investigators to submit information that should have been presented in the original proposal; or to provide a forum for disputing priority score determinations in the absence of specific and substantive evidence pointing to a flawed review.

The appeals process will not supersede or bypass the peer review process, but if serious shortcomings are found to have occurred in the review of an application, they will be rectified by one of the following actions: re-review by the same or another initial review group; special consideration by the advisory council; or administrative action authorized by the Institute Director or designated staff.

As in the past, investigators are urged to communicate and discuss their concerns regarding peer review with appropriate staff. Now, if investigators are still dissatisfied after a response is received to their communications, they may also request a further examination of these concerns.

Under the appeals system, all concerns must first be communicated to the unit which at the time is responsible for the application. Appropriate officials will thoroughly examine the investigator's concerns, frequently with the help of the initial reviewers or other experts, and, if shortcomings are found to have occurred, every effort will be made to rectify them in a timely manner.

If the principal investigator (PI) disagrees with the resolution of his/her concerns by the responsible Institute staff, an appeal, jointly signed by the PI and applicant organization, may be sent to the designated Institute Appeals Officer whose name and address appears below. The appeal must include documentation of the original dispute, previous communications and interactions with staff in relation to the dispute, and a clear statement of the reasons for disagreeing with the resulting decision. To allow for a complete and independent examination of the appeal—which will frequently entail consultation with scientific or other experts—the application will be withdrawn from the regular review process until the appeal is resolved. An amended application submitted during consideration of the appeal will inactivate the original application and the accompanying appeal. The Institute Director will render the final decision on the appeal and communicate it to the applicant.

How to Use the Appeals System

Communications Before the Initial Review

After being notified about the assignment of an application to the initial review group and the awarding Institute, the principal investigator may direct his/her serious concerns about the assignment of the application to the ADAMHA Grants Referral and Review Officer, 5600 Fishers Lane, Room 13–103, Rockville, Maryland 20857. Concerns about the pending review of the application should be directed to the Executive Secretary of the assigned initial review group.

Communications After the Initial Review

After having received the summary statement, the Principal Investigator may direct his/her questions about the review to the Executive Secretary, who will respond or refer the communication to the appropriate person for response. Communications may be submitted at any time, including after National Advisory Council review, but investigators are encouraged to communicate their concerns as early as possible.

Appeals

After having received the reply to a communication, and if the principal investigator disagrees with the decision, he/she *and* the applicant organization may appeal by submitting the necessary documentation to the appropriate Institute Appeals Officer:

NIAAA

Deputy Director, National Institute on Alcohol Abuse and Alcoholism, Room 16–105

NIDA

Executive Officer, National Institute on Drug Abuse, Room 10–15

NIMH

Associate Director for Extramural Programs, National Institute of Mental Health, Room 17C–26.

All of the above are located in the Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Effective Date

This appeals system is effective upon issuance of this notice for applications assigned to September 1985 National Advisory Councils.

Donald Ian Macdonald, M.D.,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–16538 Filed 7–10–85; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Cooperative Agreements; Studies of the Effects of Exposure to Toxic Waste Sites on Reproductive Outcomes; Program Announcement and Availability of Funds; Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1985 for competitive applications for cooperative agreements for collaborative studies of the effects of exposure to toxic waste sites on reproductive outcomes in the following 3 areas: (1) Population-based surveillance programs and surveillance-based etiological research; (2) depressed birth weight and exposure to toxic waste sites; and (3) early pregnancy detection and reproductive loss. Eligibility requirements for a cooperative agreement under (1) above differ from those under (2) and (3).

Specific requirement for each area are described in the section on eligibility of this announcement.

Background

The period from pre-conception through gestation and birth is a period of very high risk for the infant-to-be. It is a period when the developing embryo and fetus are vulnerable to a multitude of infectious, chemical, or physical agents. Potential adverse reproductive outcomes include spontaneous abortion, low birth weight, congenital malformations, developmental disabilities, and infant death. Adverse reproductive outcomes are a major public health problem in the United States.

Adverse outcomes such as congenital malformations, when considered collectively, may occur in 5 percent of all livebirths and are one of the leading causes of infant mortality. The incidence of low birth weight varies by racial group but overall affects 7 percent of all births. The impact of these outcomes on hospital admissions, physician care, and long-term care are enormous. More important are the social and personal impacts of having a child who has a congenital malformation or who is at high risk at birth.

Although there is considerable concern regarding risks of adverse reproductive outcomes due to human exposure to hazardous substances released from toxic waste disposal sites, there is little scientific knowledge regarding such risks. The need is great to develop acceptable epidemiologic and surveillance techniques and to apply the epidemiologic methods necessary to examine these outcomes and exposures and their association. CDC solicits applications for cooperative agreements directed towards surveillance and research of the effects of exposure to toxic wastes on reproductive outcome. Some possible approaches for research that could be supported under this program are described below.

The goal of this effort is to develop and apply appropriate methodology to assess relationships between adverse reproductive outcomes and environmental exposures, thereby leading to eventual prevention of adverse reproductive outcomes related to toxic waste sites.

Authority

Section 104(i) of Pub. L. 96–510, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the Superfund Act).

Areas of Research Interests

A. Population-Based Surveillance Programs and Surveillance-Based Etiological Research

1. Background

Interest in reproductive surveillance in the U.S. began in the 1960's following the thalidomide episode. The need to monitor reproductive outcomes has become more evident in recent years with increased awareness of how little is known about the causes of adverse outcome and with increased public concern about the effects of chemicals to which they are exposed, particularly in toxic wastes.

2. Purpose

The purpose of this cooperative agreement is to support development of surveillance and epidemiologic capabilities at the State and local level. These surveillance systems should be used to help identify unusual rates or trends of selected adverse outcomes (to be identified in a protocol) and evaluate possible association of adverse outcomes with exposures to toxic wastes.

The agrements may also support epidemiologic studies of the association of adverse reproductive outcomes (identified through surveillance systems) and exposures to toxic waste sites.

3. Objectives

a. Develop State and local health department capacity to conduct adverse reproductive health outcome surveillance programs and associated etiologic research.

b. Develop and improve methods of studying the relationship between environmental factors and poor reproductive outcomes.

c. Develop useful epidemiologic data on adverse outcomes and environmental exposures that can be shared among State and Federal health and environmental protection officials. These data will be used to determine possible environmental etiologies.

d. Conduct etiologic research, based on data from surveillance programs, of associations between adverse reproductive outcomes and exposure to toxic wastes.

4. Cooperative Activities

a. *Recipient Activities.* (1) Develop population-based surveillance of adverse reproductive outcomes. By definition, adverse reproductive outcomes include birth defects at a minimum. Applicants are encouraged to develop surveillance of low birth weight, infant mortality, and other adverse outcomes.

(2) Develop surveillance of a population which includes at least 20,000 births per year. The geographical area to be studied may be a metropolitan area or specific area within a State that has unusual exposures or opportunities for exposure. The prime consideration is that it be population-based. Surveillance of an entire State is encouraged.

(3) Develop detailed methods and protocol for the collection of data on adverse reproductive outcomes.

(4) Develop methods for the identification of cases which will be as complete as possible. To accomplish this, intensive case identification will need to be employed. Vital records as the sole source of case identification will not be acceptable. Using multiple existing data systems is encouraged, particularly hospital records.

(5) Develop a method of information collection which will include, at a minimum, zip code and county of mother's residence at time of delivery, date of birth, hospital of birth, sex, race, birth weight, gestational age, and diagnoses, along with parental demographic factors such as age, race, parity, occupation, and education.

(6) Document that the proposed activity includes provision for conducting followup studies of unusual events. This followup includes the ability to conduct interviews with parents.

(7) Place emphasis on the analysis of the data and its relationship to exposure to toxic wastes. Consideration will be given to proposals which specifically develop etiologic research based on surveillance data.

(8) Consult with CDC before releasing the receipient's surveillance information to a third party while the project is in progress.

(9) Prepare, present, and publish reports of project findings, as appropriate.

b. *CDC Activities.* (1) Provide consultation for the development and implementation of the study protocol. This may include provision of background surveillance data generated through the CDC's Birth Defects Monitoring Program.

(2) Assist with the review of the conduct of the study, as outlined in the protocol.

(3) Provide consultation with regard to data collection and management.

(4) Provide technical consultation in the review of the analysis of information gathered.

(5) Consult with the recipient before releasing the recipient's surveillance information to a third party while the project is in progress.

(6) Review reports of research findings being submitted for publication.

(7) Provide technical assistance to project management through evaluations of the quality of performance by various program activity components and staff members.

B. Selected Adverse Reproductive Outcomes and Exposure to Toxic Waste Sites

Each of the areas presented below focuses research on reproductive outcomes potentially influenced by exposure to toxic wastes and includes the integration of outcome and exposure data. Applications for research projects based upon the following will be solicited from applicants that have access to the kinds of reproductive outcome information described in A. above.

1. Depressed Birth Weight and Exposure to Toxic Waste Sites

a. *Background.* Low and very low birth weight infants are common in the United States. Low birth weight (less than 2,500 grams or 5 lbs. 8 oxs.) occurs in approximately 6 percent of white births and 14 percent of black births. Very low birth weight (less than 1,500 grams or 3 lbs. 5 ozs.) occurs in approximately 0.9 percent of white births and 2.5 percent of black births. These rates will produce in a typical year, with approximately 3.5 million births, an expected number of low birth weight infants of well over 200,000.

Low and very low birth weight have concerned health care providers and health scientists for many years. Birth weight was of central interest in the 1980 Surgeon General's Conference on Maternal and Infant Health. Reasons for this concern include the high correlations of birth weight with such problems as infant mortality, congenital malformations, developmental delay, mental retardation, cerebral palsy, and other neuromotor problems. Also, infants suffering from instrauterine growth retardation, as well as infants born early but at the appropriate weight for gestational age, suffer different but significantly elevated rates of morbidity and mortality.

Concern over environmental toxic exposures and their possible relationship to low birth weight has grown. In animals, many substances that cause malformations or kill embryos also cause depressed birth weights These substances include solvents, insecticides, pesticides, fungicides, and metals.

The vulnerable fetus requires the proper environment to grow normally. Toxic agents may affect this environment and interfere with growth, resulting in depression of birth weight. The fetus also depends on the placenta for transport of nutrients, detoxification of fetal waste, and general maintenance of the fetal environment. Thus, the placenta is a possible target for toxins. Animal studies have demonstrated placental injury can result in low birth weight.

The association between adverse reproductive outcomes in humans and environmental contamination seems highly plausible. However, research in this area is relatively new and methodologies are not well formulated. Also, most investigations have been carried out in the wake of a community crisis situation. The many confounding factors such as low socio-economic status, race, maternal age and education, and others have made interpreting the rates of low birth weight difficult, resulting in inconclusive studies and disillusioned communities.

b. *Purpose.* The purpose of this cooperative agreement is to develop and analyze the distribution of birth weight and toxic wastes by utilizing geocoded data sets to be developed by the recipient.

c. *Objective.* The objective of this cooperative agreement is to research the geographic association between birth weight distributions and toxic wastes.

d. *Cooperative Activities.* (1) *Recipient Activities.* (a) Develop a research protocol which may include a scope of work to address the following: (i) Computer files of all births in a State or other geopolitically defined population unit from within a recent 5-year period including birth weight, gestational age, and a selected list of demographic variables, such as maternal age, race, parity, parental occupation, and education; (ii) computer files on toxic wastes sites and quantified potential for toxic waste site exposure for the geopolitical unit from which the births come; and (iii) sufficient geocode information in the birth and exposure files to allow them to be linked by the recipient.

(b) Provide data analysis.

(c) Consult with CDC before releasing any results of the research to a third party while the effort is in progress.

(d) Publish final results of research.

(2) *CDC Activities.* (a) Assist in the development of a research protocol.

(b) Assist in data analyses.

(c) Assist the recipient in the preparation, presentation, and publication of research findings.

(d) Consult with the recipient before releasing any results of research to a third party while the effort is in progress.

(e) Provide technical assistance to project management through evaluations of the quality of performance by various program activity components and staff members.

2. Early Pregnancy Detection and Reproductive Loss

a. *Background.* A persistent problem in the scientific and regulatory world is the rate of early fetal loss and its relationship to toxic substance exposure. In several recent cases, it has not been possible to prove or disprove a suspected toxic substance effect on fertility (the actual production of live offspring) and fecundity (the ability to produce live offspring). Examples include exposure to 2,4,5–T in Alsea, Oregon, and exposure of log cabin dwellers to pentachlorophenol.

The problem of determining the impact of toxic substances on fertility and fecundity is complicated. Approximately 10 percent of married couples are infertile, with the wife and husband contributing about equally to this figure. The female may have anatomical or biochemical abnormalities reducing her ability to conceive or maintain pregnancy, or she may be in post-contraceptive period where hormonal re-equilibration is occurring. Relative infertility or age extremes may also be important even where fecundity is proven. Frequency of intercourse or number of children already born may also change relative fertility.

An important area to explore concerns average fetal loss rate, which is often expressed as losses per month of pregnancy. Fecundity rates rise with increasing age to a peak of 25 percent for women in their mid-twenties and then fall again. With adjustment of this figure for an infertility rate of 10 percent per couple, it has been estimated that 60–65 percent of conceptions fail to proceed to completion. In spite of severe limits on the early detection of pregnancy (before 8 weeks developmental age), life table estimates and later recorded pregnancy losses are consistent with significant early losses.

Small studies such as the classical work of Hertig show that prior to the expected menstrual period as many as 50 percent of fertilized ova are morphologically defective. In spite of the small number of specimens involved in

the Hertig study, both the expected fecundity of 15–25 percent and the morphology of these conceptions are consistent in suggesting that 50 percent or more of the total spontaneous abortions occur before the time of the first missed menstrual period and that 65–85 percent of these are chromposomally abnormal. Later pregnancy losses account for approximately 20 percent of fetal losses.

Some studies using vital statistics and retrospective case control methods have examined the effect on fecundity of factors such as race, time since last pregnancy, prior fetal deaths, smoking, gravidity, and alcohol use.

None of these figures have been precisely determined because of methodological problems in collecting vital statistics and other data on fetal death. Recall biases in case control pregnancy studies are a persistent problem. The most severe problems relate to the earliest phase of pregnancy, when conception and fetal loss may not cause even minimal symptoms in the woman.

The main source of difficulty has been a reliable noninvasive method for uniquely determining a positive pregnancy early in fetal development. A redioimmunassay (RIA) antibody method was developed in 1976 which measures the unique carboxy terminal portion of beta-human chorionic gonadotropin in urinary concentrates. This method has no cross-reactivity with luteinizing hormone. Levels as low as 1 nanogram/ml can be detected. This corresponds to approximately 9 days developmental age, the approximate time of implementation.

Early fetal loss is a public health concern, relative to toxic waste sites, well suited to epidemiologic investigation. There is substantial evidence that early fetal loss is not a rare event and that it affects a large segment of the population. Using the RIA methodology for detecting early pregnancy, it should be possible to determine rates of early fetal loss. The methods developed will make possible prospective studies of rates in populations exposed, and not exposed, to a toxic waste site.

b. *Purpose.* The purpose of this cooperative agreement is to develop the appropriate methodology for research on early reproductive loss and to design and conduct epidemiologic studies of early fetal loss among residents of areas in proximity to toxic waste sites.

c. *Objectives.* (1) Determine the incidence of early fetal loss occurring before the first missed menstrual period in a population of healthy women.

(2) Determine the feasibility of conducting field studies of early fetal loss.

(3) Research the early fetal loss among residents of an area in proximity to a toxic waste site.

(4) Select a priority toxic waste site and conduct a prospective study of early fetal loss.

(5) Measure the association of early fetal loss and exposure to toxic waste sites.

d. *Cooperative Activities.* (1) Recipient Activities. (a) Develop a research protocol for the study of healthy women, including: (i) Methods for identification of study participants, (ii) provisions for recruiting and maintaining study participants, (iii) provisions for training study personnel in collecting and processing specimens and collecting and recording data, and (iv) monitoring data for accuracy and reliability.

(b) Develop laboratory capabilities necessary to conduct the research including: (i) Methods for sample preparation and transportation, (ii) laboratory procedures for determining the presence of a conceptus, (iii) reporting procedures, (iv) interpreting laboratory results and (v) laboratory quality control methods.

(c) Collarborate with CDC in determining the feasibility of conducting a filed study of early reproductive loss using the methodologies developed during the research, which would include developing the field study protocol (if appropriate), identifying the toxic waste site for investigation, and assessing the potential exposure to hazardous chemicals.

(d) Collaborate with CDC in the preparation, presentation, and publication of study findings.

(e) Consult with CDC before releasing research information to a third party while the study is in progress.

(2) *CDC Activities.* (a) Assist in developing the protocol for the study of health women which may include: (i) Sample size determinations, (ii) describing initial data analysis methods, (iii) providing assistance for developing quality control methods and statistical methods for ascertaining the presence of a fetus, and (iv) arranging for the review of the protocol by appropriate consultants.

(b) Assist in data analysis activities related to the design and conduct of the research and interpretation of the results.

(c) Assist in determining the feasibility of conducting a field study of early reproductive loss using the experience and methodologies acquired from the research on healthy women.

(d) Assist the recipient in the design of a field study.

(e) Assist in the preparation, presentation, and publication of study findings.

(f) Consult with the recipient before releasing research information to a third party while the study is in progress.

(g) Provide technical assistance to project management through evaluations of the quality of performance by various program activity components and staff members.

Eligibility

A. Eligible applicants for a cooperative agreement on the surveillance program and surveillance-based etiological research (A. above) are:

1. All duly constituted State and local public health agencies that are officially recognized as such, including State, local, county, city-county, district, and territorial health departments.

2. all universities with formal agreements for working with State or local health departments for carrying out the surveillance and surveillance-based research.

B. Eligible applicants for a cooperative agreement on (a) depressed birth weight and exposure to toxic waste sites and (d) early pregnancy detection and reproductive loss (B. 1. and 2. above) are all public and private non-profit organizations including State, territorial, and local public health agencies, hospitals, universities, and other public and private not-for-profit agencies.

Scheduling and Reporting

Recipients will submit program progress reports on a quarterly basis. Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports and required 90 days after the end of a project period.

Availability of Funds

It is anticipated that approximately $1 million to $1.2 million will be available in Fiscal Year 1985 to fund studies. While the project awards will be funded as outlined in the Methods and Criteria for Review Section, we anticipate funding at least three projects described in "A." above, and at least one project described in "B." above. Individual project awards are expected to range in the first fiscal year as follows:

Population-based Surveillance Programs—$150,000 to $300,000;

Depressed Birth Weight and Exposure to Toxic Waste Sites—$50,000 to $75,000;

Early Pregnancy Detection and Reproductive Loss—$150,000 to $200,000.

Cooperative agreements are usually funded for 12 months. We estimate the project periods to range between 3 to 5 years. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change. Funds will not be awarded for the purchase or lease of land or buildings or for major renovations or the construction of a facility.

Methods and Criteria for Review of the Applications

Review of the applications will be conducted in accordance with PHS Grants Administration Manual Chapter PHS 1–507, Objective Review of Grant Applications. An ad hoc committee will be convened to determine the scientific and program merit of the applications received under the Request for Application. There are three separate areas of research to be evaluated. Each application will be evaluated according to the area under which it is submitted; therefore, each must be complete, since evaluation will be conducted and ranked for funding based upon the following factors:

A. Statement that demonstrates the applicant's understanding of the problem and the purpose of the cooperative agreement.

B. The size, qualifications, and time allocations of the proposed staff, and the approach to be used to carry out their responsibilities. Other resources, such as facilities, office space, necessary equipment, and support staff available for the performance of the project will be considered.

C. Proposed schedule (written time frames) for accomplishing the activities of the proposal, including dates the protocol will be completed and in turn implemented.

D. Details on how the applicant will develop and implement the study. This includes specific measurable and obtainable objectives for major outcomes and activities. Special attention will be given to how the applicant will assess associations between the adverse reproductive outcomes and the toxic waste site(s).

E. A description of how the project will be administered and evaluated.

F. The severity of the problem, estimated number of people affected, originality in approach, and methods to problem resolution.

G. The degree to which the project can be expected to yield or demonstrate results that will be useful and desirable for other locales having similar problems.

H. The plans for publishing results, summary documents, and news releases.

I. Biographical sketches for all key project staff.

Application Information

The original and two copies of the application must be submitted on or before 4:30 p.m. (e.d.t.) on August 15, 1985, to:

Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305

Applications shall be considered as meeting the deadline if they are either:

A. Received at the address on or before the deadline date; or,

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications which do not meet the criteria in A. or B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Information on application procedures, copies of application forms, and other material may be obtained from Mrs. Betty Feeley, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262–6575 or FTS 236–6575. Technical assistance may be obtained from Lowell E. Sever, Deputy Chief, Birth Defects Branch, Chronic Diseases Division, Center for Environmental Health, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 452–4084 or FTS 236–4084.

Applications are not subject to the review requirements of the National Health Planning and Resource Development Act of 1974, as amended, or to Intergovernmental review pursuant to Executive Order 12372.

Dated: July 3, 1985.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85–16541 Filed 7–10–85; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 85F–0302]

The Dow Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyethyloxazoline as a component of adhesives.

FOR FURTHER INFORMATION CONTACT: Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3869) has been filed by The Dow Chemical Co., Midland, MI 48674, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of polyethyloxazoline as a component of adhesives.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: July 5, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–16424 Filed 7–10–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 83P–0430]

Grated Cheese Deviating From Identity Standard; Extension of Temporary Marketing Permit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the expiration date of a temporary permit to market test grated cheeses containing powdered cellulose as an anticaking agent is being extended. This

extension will allow the permit holder to continue experimental market testing of the product while the agency takes action on the permit holder's petition to amend the standard of identity for grated cheeses.

DATE: The new expiration date of the permit will be either the effective date of the final rule for any proposal to amend the standard of identity for grated cheeses which may result from the petition, or 30 days after termination of such proposal.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Center for Food Safety and Applied Nutrition (HFF–215), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–485–0101.

SUPPLEMENTAL INFORMATION: A temporary permit was issued under the provisions of 21 CFR 120.17 to the Kroger Co. doing business as Pace Dairy Foods, 2700 Valley High Drive NW., Rochester, MN 55901, to market test grated cheeses containing powdered cellulose as an anticaking agent. The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Pace Dairy Foods was published in the Federal Register of January 26, 1984 (49 FR 3270). The expiration date of the permit is July 25, 1985.

Pace Dairy Foods requested that the temporary permit be extended so the market test period can continue while agency action on a petition to amend the grated cheeses standard proceeds. Pace Dairy Foods submitted the petition at the same time the application for extension was submitted. FDA concludes that it is in the interest of consumers to issue the extension. FDA is inviting interested persons to participate in the market test under the conditions that apply to Pace Dairy Foods, including the labeling requirements and the amounts of test product to be distributed, except that the designated area of distribution shall not apply.

Any interested person who wishes to participate is the market test must notify, in writing, the Deputy Director, Division of Food Technology (HFF–211), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the area of distribution, and labeling that will be used for the test product.

Therefore, under the provisions of § 120.17(i) (21 CFR 120.17(i)), FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for grated cheeses which may result from the petition, or 30 days after termination of such proposal. All other conditions and terms of this permit remain the same.

Dated: July 3, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–16422 Filed 7–10–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85N–0179]

Recommendations To Minimize Diagnostic Nuclear Medicine Exposure to the Embryo, Fetus, and Infant; Availability of Draft Recommendations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of draft recommendations to minimize diagnostic nuclear medicine exposure to the embryo, fetus, and breastfeeding infant. The draft recommendations, prepare by FDA's Center for Devices and Radiological Health (CDRH), include the agency's rationale for the recommendations as well as the endorsement of the recommendations by several professional organizations. The draft recommendations are being published in a pamphlet that is being made available to interested persons.

DATE: Comments by September 1,1985.

ADDRESS: Requests for single copies of the draft recommendations should be sent to Phyllis Segal, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Phyllis Segal, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2490.

SUPPLEMENTARY INFORMATION: FDA is making available draft recommendations entitled "Embryo, Fetus, Infant * * * Recommendations to Minimize Diagnostic Nuclear Medicine Exposure." These recommendations, prepared by CDRH's Office of Training and Assistance, are directed to nuclear medicine physicians, attending physicians, technologists, patients, nuclear medicine educators, members of professional societies, and other who can influence decisions regarding the performance of nuclear medicine procedures.

The recommendations, when they are made final, will be made part of CDRH's radiation recommendations series. This series was established to provide guidance to those involved in the radiological process on appropriate principles to reduce radiation exposure. To give the public an opportunity to participate in development of these recommendations, FDA is making available the draft recommendations.

FDA invites and encourages interested persons to submit data and comments relating to diagnostic nuclear medicine exposure of the embryo, fetus, and breastfeeding infant. Single copies of the draft recommendations are available from the contact person at the address given above.

Interested persons may, on or before September 9, 1985, submit to the Dockets Management Branch (address above) written comments regarding the draft recommendations. Comments received after September 9, 1985, may be considered, depending on the stage of development of the final recommendations. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The draft recommendations and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday.

Dated: July 3, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–16425 Filed 7–10–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85F–0303]

Rhone-Poulenc, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rhone-Poulenc, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of cerium stearate as a

stabilizer and/or processing aid in polyvinyl chloride homo- and copolymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3872) has been filed by Rhone-Poulenc, Inc., P.O. Box 2009, 120 Jersey Ave., New Brunswick, NJ 08903, proposing that the food additive regulations be amended to provide for the safe use of cerium stearate as a stabilizer and/or processing aid in polyvinyl chloride homo- and copolymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: July 5, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–16423 Filed 7–10–85; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Obstetrics-Gynecology Devices Panel

Date, time, and place. August 19 and 20, 9 a.m., Rm. 703A–727A, 200 Independence Avenue SW., Washington, DC.

Type of meeting and executive secretary. Open public hearing, August 19, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4:30 p.m.; open public hearing, August 20, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4:30 p.m.; Dr. Lillian Yin, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agency—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the executive secretary before August 5, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On August 19, the committee will discuss a premarket approval application for the Dilapan™ Osmotic Cervical Dilator. On August 20, the committee will discuss the September 11, 1984 Citizen's Petition from Woman Health International and the Empire State Consumer Association, Inc., on the safety of menstrual tampons and the association with toxic shock syndrome (TSS). Any comments or questions on the Citizen's Petition should be directed to Les S. Weinstein, 301–443–4674.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. The guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: July 3, 1985.

Marvin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-16426 Filed 7-10-85; 8:45 am]

BILLING CODE 4160-01-M

Availability of Electronic Bulletin Board for Third Party Redistribution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the information contained within the electronic bulletin board is available to any organization, public or private, for redistribution. The text of all documents on the electronic bulletin board is in the public domain and can be read, stored, and redistributed, both electronically and in hard copy.

FOR FURTHER INFORMATION CONTACT: Carolyn Laubach, Office of Public Affairs (HFW-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3285.

SUPPLEMENTARY INFORMATION: The electronic bulletin board is maintained by FDA's Office of Public Affairs and is available by subscription through the computer firm ITT-Dialcom. Started in January 1983, the system enables the public to access up-to-date FDA news via communicating word processor or computer system. Currently available on the electronic bulletin board are news releases (both in English and Spanish), recalls, drug and device approvals, the FDA Drug Bulletin, selected stories from the FDA Consumer, summaries of FDA Federal Register items, speeches delivered by the Commissioner and Deputy Commissioner of Food and Drugs, and congressional testimony delivered by FDA officials. All documents on the electronic bulletin board are also available in hard copy through various FDA offices, but the electronic bulletin board allows subscribers faster access to the information. Items on the electronic bulletin board may be updated or changed as new information becomes available.

For information on subscribing to FDA's electronic bulletin board, contact Linda Reid, ITT-Dialcom, 600 Maryland Avenue, SW., Suite 455, Washington, D.C. 20024, 202-488-0550.

Dated: July 8, 1985.

Marvin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-16428 Filed 7-10-85; 8:45 am]

BILLING CODE 4160-01-M

Public Workshop; Multivitamin Preparations for Parenteral Use

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public workshop to discuss "Multivitamin Preparations for Parenteral Use."

DATE: The workshop will be held on August 21, 8:30 a.m. to 5 p.m.

ADDRESS: The workshop will be held in Conference Room M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: A.T. Gregoire, Center for Drugs and Biologics (HFN-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1869.

SUPPLEMENTARY INFORMATION: FDA's Center for Drugs and Biologics, Division of Metabolism and Endocrine Drug Products, in conjunction with the American Medical Association's Division of Personal and Public Health Policy, will sponsor an invitational workshop on "Multivitamin Preparations for Parenteral Use." The workshop will be open to the public.

Requests for information on the workshop should be directed to A.T. Gregoire (address above).

Dated: July 3, 1985.

Marvin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-16427 Filed 7-10-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

National Advisory Council on Migrant Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1985:

Name: National Advisory Council on Migrant Health.

Date and Time: August 8-10, 1985, 8:30 a.m.

Place: Conference Room B, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

The entire meeting is open.

Purpose: The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: The agenda items include: (1) Review the Council's recommendations of April 1985 and the Secretary's response; (2) Program update of Administration/Clinical Perspectives; (3) Resource allocations; (4) Alternative service model review.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Mr. Billy Sandlin, Executive Secretary, National Advisory Council on Migrant Health, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 7A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1153.

Agenda items are subject to change as priorities dictate.

Dated: July 8, 1985.

Jackie E. Baum,

Advisory Committee Management Officer HRSA.

[FR Doc. 85-16485 Filed 7-10-85; 8:45 am]

BILLING CODE 4160-15-M

Application Announcement for Cooperative Agreements With Statewide Organizations for Development of Programs for Planning and Development of Comprehensive Primary Care Services in Areas That Lack Adequate Health Services and Health Manpower

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: Notice.

The Health Resources and Services Administration announces that applications are being accepted from qualified Statewide organizations for the development of programs for cooperative agreements to provide assistance in the planning and development of comprehensive primary health care services in areas that lack adequate health manpower or have populations lacking access to primary care services. It is expected that

approximately $3 million will be available for these agreements, which will be entered into under the authority of section 333(g) of the Public Health Service Act.

In order to qualify for a cooperative agreement, an applicant must be a State or a State agency or another Statewide public or nonprofit entity that operates solely within one State, and must satisfy the Secretary that it is able to perform each of the following functions:

1. Analyze the use of health services and health professions personnel in defined health service delivery areas;
2. Determine the need for appropriate health resources in such areas; and cooperate with and assist the Federal Government in the recruitment selection and retention of National Health Service Corps and other health professionals to meet identified need;
3. Determine the extent to which such areas will have a financial base to support the provision of services by such providers and personnel, and the extent to which additional financial resources are needed;
4. Determine the types of inpatient and other health services that should be provided to meet the primary care needs of such areas;
5. Based on the determination made under number 4 and approved by the Secretary, assist in the development of health service delivery centers and in the management of service providers;
6. Participate with the Public Health Service in the planning and development of facilities (whether or not Federally funded) for the delivery of primary health care; and
7. Assist in establishing the governing bodies of centers for the delivery of primary health care, and assist such bodies in defining and carrying out their responsibilities.

In carrying out the functions defined above, applicants will be expected to perform at least the following specific activities as part of their responsibilities under a cooperative agreement:

1. Serve as a clearinghouse for persons seeking employment in the health services, and for health service delivery sites seeking such personnel;
2. Monitor the activities of National Health Service Corps scholarship recipients who practice in the State under the Private Practice Option, and make appropriate reports (including recommended actions) to the Public Health Service;
3. Coordinate the development of comprehensive plans for the delivery of health services to medically underserved populations; and
4. Provide technical assistance to health service providers, specifically including Private Practice Option practitioners and community health centers.

Applicants will be evaluated on the basis of their relative ability, as determined by the Secretary, to perform the functions and specific activities listed above.

In conducting this evaluation the Secretary will also consider:

- The experience of the applicant in the delivery of primary health care services or the operation of facilities involved in actual patient care.
- The ability of the applicant to integrate existing State and local resources with Federal assistance programs.
- Evidence that the applicant will be able to enter into a formal Memorandum of Agreement with an organization representing a majority of Federally funded Community Health Centers within the State.

Federal responsibilities under the cooperative agreements, in addition to the usual monitoring and technical assistance provided under grants, will include the following:

1. To the extent possible, exercise responsibility for final authority on the award of Federal grants, Federal health personnel placement, and overall program management of Federal resources in the context of fulfilling the State program as developed under the agreement;
2. The detail or assignment of Federal personnel to the Statewide organization;
3. The recruitment and assignment of National Health Service Corps personnel in accordance with the program developed under the cooperative agreement; and
4. Participation in the development of, and approval of Statewide plans at various stages during their development.

Applications may be made by completing the standard PHS Grant Application (form PHS-5161). This application form calls for a program narrative giving a full description of the proposed cooperative agreement, including current and proposed activities, and a budget justification. A competitive review of applications will be the basis for selecting successful proposals for cooperative agreements with consideration being given to those applicants who indicate that they can achieve the objectives of the cooperative agreement with cost-effective expenditure of funds. Applicants may wish to include in their plans for accomplishing their functions under the cooperative agreement additional information to assist in the review of the application such as qualifications of applicants' personnel, formal agreements between the applicant and State primary care associations, indications of health services management and/or delivery strengths of the applicant including any previous experience of the applicant in these areas, and, if the applicant is not a State or State agency, indications of the ability of the applicant to work with and coordinate the project's activities with State and other public and private entities on a Statewide basis, which could include any past experience or acomplishments in this regard, and letters of support from Statewide or other organizations which attest to the applicant's ability to perform these functions.

Requests for application materials and questions regarding this announcement should be directed to: Mr. Waddel Avery, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 7A-08, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1440.

To receive consideration for financial assistance under these cooperative agreements, applications must be either: (1) Received (if hand-delivered) at the above address on or before July 25, 1985, or (2) post-marked on or before July 25, 1985, and received at the above address in time for processing.

These cooperative agreements are subject to the provisions of Executive Order 12372, as implemented by 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available by DHHS will contain a listing of States which have chosen to set up such a review system and will provide the point of contact in such States for that review. At the latest, States should receive applications at the same time they are due in BHCDA.

The National Health Service Corps program is listed as No. 13.258 in the OMB *Catalog of Federal Domestic Assistance.*

Dated: July 9, 1985.

John Kelso,

Acting Administrator.

[FR Doc. 85-16592 Filed 7-10-85; 8:45 am]

BILLING CODE 4160-15-M

Social Security Administration

Grenada; Finding Regarding Foreign Social Insurance or Pension System

AGENCY: Social Security Administration, HHS.

ACTION: Notice of finding regarding foreign social insurance or pension system—Grenada.

Finding

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through (t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that (subject to certain residency requirements contained in section U.S. 202(t)(2)(11)) the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those beneifts, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Commissioner has redelegated that authority to the Director of the International Policy Staff. Under that authority the Director of the International Policy Staff has approved a finding that Grenada, beginning April 4, 1983, has a social insurance system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of Grenada to receive such benefits, or their actuarial equivalent, at the full rate without qualification or restriction while outside Grenada.

Accordingly, it is hereby determined and found that Grenada has in effect, beginning April 4, 1983, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

FOR FURTHER INFORMATION CONTACT: Joseph J Rausch, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-8123.

(Catalog of Federal Domestic Assistance Programs No. 13.802 Social Security Retirement Insurance; 13.805 Social Security—Survivors Insurance)

Dated: June 17, 1985.

Elizabeth K. Singleton,

Director, International Policy Staff.

[FR Doc. 85-16489 Filed 7-10-85; 8:45 am]

BILLING CODE 4190-11-M

Dominican Republic; Finding Regarding Foreign Social Insurance or Pension System

AGENCY: Social Security Administration, HHS.

ACTION: Notice of finding regarding foreign social insurance or pension system—Dominican Republic.

Finding

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through (t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that (subject to certain residency requirements contained in section 202(t)(11)) the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Commissioner has redelegated that authority to the Director of the International Policy Staff. Under that authority the Director of the International Policy Staff has approved a finding that the Dominican Republic, beginning November 23, 1984, has a social insurance system of general application which:

(a) pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) permits United States citizens who are not citizens of the Dominican Republic to receive such benefits, or their actuarial equivalent, at the full rate without qualification or restriction while outside the Dominican Republic.

Accordingly, it is hereby determined and found that the Dominican Republic has in effect, beginning November 23, 1983, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This revises our previous finding (published May 14, 1969 at 34 FR 7665), that the Dominican Republic does not have in effect a social insurance or pension system which meets the requirements of section 202(t)(2) of the Social Security Act.

FOR FURTHER INFORMATION CONTACT: Roy G. Hatch, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-6122.

(Catalog of Federal Domestic Assistance Programs No. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance)

Dated: June 17, 1985.

Elizabeth K. Singleton,

Director, International Policy Staff.

[FR Doc. 85-16490 Filed 7-10-85; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-85-901]

Designating Order of Succession

AGENCY: Office of the Secretary, HUD.

ACTION: Designation Order of Succession.

SUMMARY: This designation lists the order of officials to serve as Acting Secretary of Housing and Urban Development.

EFFECTIVE DATE: July 2, 1985.

FOR FURTHER INFORMATION CONTACT: David D. White, Assistant General Counsel for Administrative Law, Room 10254, Department of Housing and Urban Development 451 7th Street, SW., Washington, D.C. 20410 (202) 755-7137 (This is not a toll-free number).

Designation: During any period when, by reason of absence, disability, or vacancy in office, the Secretary of Housing and Urban Development is not available to exercise the powers and perform the duties of the Secretary, appointees to the positions listed below are authorized to act as Secretary and exercise all the powers, functions, and duties assigned to or vested in the Secretary. However, no official shall act as Secretary until all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability, or vacancy in office

1. Under Secretary.
2. General Counsel.
3. Assistant Secretary for Housing—Federal Housing Commissioner.
4. Assistant Secretary for Community Planning and Development.
5. Assistant Secretary for Public and Indian Housing.
6. Assistant Secretary for Policy Development and Research.
7. Assistant Secretary for Administration.
8. Assistant Secretary for Legislation and Congressional Relations.
9. Assistant Secretary for Fair Housing and Equal Opportunity.

If a civil defense emergency is declared or proclaimed by the President or by Concurrent Resolution of the Congress in accordance with section 301 of the Federal Civil Defense Act of 1950 (64 Stat. 1251, 12 U.S.C. App. 2291) and none of the officials named above is able to act, appointees to the positions listed below are authorized to act as Secretary, and exercise all powers, functions, and duties assigned to or vested in the Secretary. However, no official shall act as Secretary until all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability, or vacancy in office.

1. President, Government National Mortgage Association.
2. President, Solar Energy and Energy Conservation Bank.
3. Deputy Under Secretary for Field Coordination.
4. Deputy Under Secretary for Intergovernmental Relations.
5. Regional Administrator—Regional Housing Commissioner, Region I (Boston).
6. Regional Administrator—Regional Housing Commissioner, Region II (New York).
7. Regional Administrator—Regional Housing Commissioner, Region III (Philadelphia).
8. Regional Administrator—Regional Housing Commissioner, Region IV (Atlanta).
9. Regional Administrator—Regional Housing Commissioner, Region V (Chicago).
10. Regional Administrator—Regional Housing Commissioner, Region VI (Fort Worth)
11. Regional Administrator—Regional Housing Commissioner, Region VII (Kansas City).
12. Regional Administrator—Regional Housing Commissioner, Region VIII (Denver).
13. Regional Administrator—Regional Housing Commissioner, Region IX (San Francisco).
14. Regional Administrator—Regional Housing Commissioner, Region X (Seattle).

This designation supersedes the designation effective February 18, 1982 (47 FR 8249) published February 25, 1982.

Authority: Executive Order 11274, 31 FR 5243, 3 CFR; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Executive Order 11490, 34 FR 17567.

Effective Date: This order is effective July 2, 1985.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 85-16545 Filed 7-10-85; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. N-85-1541]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to:

Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgagee Questionnaire and Case File Review (Loan Origination Monitoring)
Office: Housing
Form Number: HUD-9060A and 9060B
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 1,400
Status: Extension
Contact: William Heyman, HUD, (202) 755-6830, Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Dated: June 25, 1985.

Proposal: Procurement Policies and Procedures Handbook (2210.3 REV.2)
Office: Administration
Form Number: HUD-441, 441.1, 442, 661, 661.1, 662, 663, and 770
Frequency of Submission: On Occasion, Monthly, and Quarterly
Affected Public: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 148,352
Status: Revision
Contact: Gladys Gines, HUD, (202) 755-5294, Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Dated: June 25, 1985.

Proposal: Report on Tenants Accounts Receivable
Office: Public and Indian Housing
Form Number: HUD–52295
Frequency of Submission: Quarterly
Affected Public: Non-Profit Institutions
Estimated Burden Hours: 2,359
Status: Revision
Contact: Joanne Farmer, HUD (202) 426–1872, Robert Fishman, OMB (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Dated: May 28, 1985.

Proposal: Annual Contributions for Operating Subsidies—Performance Funding System, Determination of Operating Subsidy
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: Annually
Affected Public: State or Local Governments
Estimated Burden Hours: 46,800
Status: Revision
Contact: John Comerford, HUD (202) 426–1872, Robert Fishman, OMB (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Dated: May 28, 1985.

Dennis F. Geer

Director, Office of Information Policies and Systems.

[FR Doc. 85–15542 Filed 7–10–85; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review

June 28, 1985.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget reviewing official at 202–395–7340.

Title: 25 CFR Part 11, Law and Order on Indian Reservations. Domestic Relations—Marriage and Divorce Decrees.

Abstract: Courts of Indian Offenses have jurisdiction over domestic relations, including issuance of marriage licenses and divorce decrees. The general information collected on a marriage license application or a petition for dissolution is essential to enable the court to issue the proper documents. Respondents are persons who are seeking a marriage license or who want to petition for divorce.

Frequency: On occasion.

Description of Respondents: Persons seeking marriage decrees or divorce proceedings.

Annual Responses: 300.

Annual Burden Hours: 125.

Bureau Clearance Officer: Cathie Bacon, (202) 343–3574.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85–16524 Filed 7–10–85; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[M–59847]

Conveyance and Order Providing for Opening of Public Lands; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conveyance and order providing for opening of public lands in Lewis and Clark County, Montana.

SUMMARY: This order will open the lands reconveyed to the United States in an exchange under the Act of October 21, 1976, 43 U.S.C. 1701, *et seq.*, to the operation of the public land laws. All minerals in the offered lands were reserved to the private party in sections 27, 29, 31, 32, 33, and 35, T. 14 N., R. 4 W., PMM. The United States has always owned all of the minerals in section 28 of the offered land. The valuable minerals were reserved to the U.S. on all lands patented to the private parties.

DATE: At 9 a.m. on August 19, 1985, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The segregation of those parcels of public land that were subsequently transferred to private parties terminated on issuance of the patents on April 24, 1984, and February 15, 1985. The two Notices of Realty Action creating the segregation were published in the Federal Register on February 9, 1984 (49 FR 4995) and on December 12, 1984 (49 FR 48391).

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone: (406) 657–6062.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), the following described land, with a reservation to the United States of specified mineral deposits determined to be valuable or prospectively valuable, was conveyed by 42 separate patents to private parties:

Patent serial No.	Land description (Principal Meridian, Montana)
Phase I:	
M–60291	T. 1 S., R. 11 W., sec. 17, lot 5.
M–60292	T. 2 S., R. 16 W., sec. 35, W½SW¼.
M–60293	T. 5 S., R. 9 W., sec. 9, SW¼SE¼.
M–60294	T. 4 S., R. 1 W., sec. 3, lot 1.
M–60295	T. 1 S., R. 11 W., sec. 5, lot 2.
M–60296	T. 11 S., R. 6 W., sec. 35, NW¼NE¼.
M–60297	T. 1 N., R. 14 W., sec. 20, W½W½; sec. 28, N½NE¼, SW¼NE¼, E½NW¼, NE¼SW¼, NW¼SE¼.
M–60298	T. 1 N., R. 14 W., sec. 20, SE¼NW¼, NE¼SW¼.
M–60299	T. 3 S., R. 16 W., sec. 10, NE¼NE¼.
M–60300	T. 13 S., R. 1 W., sec. 5, SW¼SW¼; sec. 6, lot 3.
	T. 13 S., R. 2 W., sec. 2, SE¼SE¼.
M–60301	T. 8 N., R. 9 W., sec. 12, NE¼SE¼.
M–60302	T. 14 S., R. 5 W., sec. 29, lot 6.
	Aggregating 1,005.97 acres.
Phase II:	
M–63886	T. 8 N., R. 3 W., sec. 2, lots 13, 14, 15, 16, N½N½NW¼SE¼.
M–63887	T. 3 N., R. 1 E., sec. 27, SW¼NW¼.
M–63888	T. 1 S., R. 9 E., sec. 8, SE¼SE¼, NW¼SW¼.
	T. 1 S., R. 10 E., sec. 30, N½SE¼, SE¼SE¼.
M–63889	T. 2 N., R. 8 E., sec. 8, NW¼NW¼; sec. 20, SE¼NW¼.
M–63890	T. 3 S., R. 9 E., sec. 30, lots 3, 4, E½SW¼.
M–63891	T. 2 S., R. 8 E., sec. 30, NE¼NW¼.
M–63892	T. 3 S., R. 8 E., sec. 22, W½.
M–63893	T. 4 N., R. 9 E., sec. 6, lot 3.
M–63894	T. 9 N., R. 2 E., sec. 20, SW¼NW¼NE¼, NW¼SW¼NE¼, N½SE¼NW¼, SW¼SE¼NW¼.
M–63895	T. 2 S., R. 7 E., sec. 20, NE¼NE¼.
M–63896	T. 2 S., R. 11 E., sec. 14, W½SE¼.
M–63897	T. 2 S., R. 12 E., sec. 19, SE¼NW¼.
M–63898	T. 2 S., R. 11 E., sec. 21, SW¼SW¼.
M–63899	T. 3 S., R. 11 E., sec. 13, SW¼NW¼.
M–63900	T. 1 N., R. 8 E., sec. 34, SE¼NE¼.
	T. 1 S., R. 10 E., sec. 18, lot 4; sec. 20, S½SE¼.
M–63901	T. 1 S., R. 11 E., sec. 2, lot 1; sec. 22, NW¼NW¼; sec. 24, E½SE¼.
	T. 1 S., R. 12 E., sec. 20, N½N½, SE¼NW¼.
	T. 1 N., R. 12 E., sec. 22, S½SW¼.
M–63902	T. 3 S., R. 8 E., sec. 28, SW¼SW¼.
M–63903	T. 2 S., R. 8 E., sec. 34, SE¼.
M–63904	T. 5 S., R. 9 E., sec. 32, W½NW¼.
M–63905	T. 7 S., R. 7 E., sec. 2, lot 4.
M–63906	T. 2 S., R. 2 E., sec. 17, lot 5; sec. 18, NE¼SE¼; sec. 22, NE¼SE¼.
M–63908	T. 2 N., R. 11 E., sec. 6, lot 4, SE¼SW¼, SW¼SE¼.
M–63909	T. 1 S., R. 9 E., sec. 2, lot 3.
	T. 1 N., R. 10 E., sec. 32, N½SW¼.
M–63910	T. 1 S., R. 9 E., sec. 2, lot 4.
	T. 1 N., R. 10 E., sec. 32, S½SW¼.
M–63911	T. 2 S., R. 11 E., sec. 10, NE¼SW¼.
M–63912	T. 1 S., R. 16 E., sec. 20, N½SE¼.
M–63913	T. 1 N., R. 12 E., sec. 32, SW¼SW¼.
M–63914	T. 1 N., R. 10 E., sec. 28, N½NE¼.
M–63915	T. 4 S., R. 8 E., sec. 28, N½SW¼.
M–63916	T. 4 S., R. 8 E., sec. 28, S½NW¼.

Aggregating 2,974.43 acres.

The names of the patentees are available at the Montana State Office at the above address.

2. In exchange for the above selected land, the United States acquired the surface estate of the following described land in Lewis and Clark County, Montana:

Principal Meridian, Montana

T. 14 N., R. 4 W.,
Sec. 27, All;
Sec. 28, All, except four certain tracts of land totalling 106.36 acres;
Sec. 29, two particular tracts of land lying in the E½SE¼ totalling 6.09 acres;
Sec. 31, lots 1, 2, 3, 4, E½, E½W½;
Sec. 32, N½, SW¼, except a certain tract of land containing 1.96 acres; and
Sec. 33, All, except three certain tracts of land totalling 74.79 acres.
Sec. 35, All.

containing 3,524.22 acres.

At 9 a.m. August 19, 1985, the above described lands that were conveyed to the United States will be open to the operation of the public land laws.

Dated: July 2, 1985.

John A. Kwiatkowski,
Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 85-16530 Filed 7-10-85; 8:45 am]
BILLING CODE 4310-DN-M

[OR-36647]

Realty Action; Exchange of Public Land in Klamath County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange of Public Lands (OR-36647).

On November 15, 1983, Klamath County filed a proposal with the Lakeview District, BLM to exchange 160 acres of county owned land for 110 acres of public land located in Klamath County, Oregon. The proposal has been accepted by the Bureau of Land Management.

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716:)

Willamette Meridian

T. 40S., R.14E.,
Sec. 6: SE¼SE¼.
T.39S., R.11E.,
Sec. 19: lots 6, 9, SE¼SW¼.

Containing 110 acres.

The following described private land has been determined to be suitable for acquisition by the Federal Government:

T.40S., R.10E.,
Sec. 12 E½SW¼,
Sec. 13 E½NW¼.

Containing 160 acres.

The purpose of the exchange is to acquire non-federal land for use in Federal Programs and to dispose of the Lorella and Harpold dumps.

The exchange is consistent with the Bureau planning system, will provide improved and more efficient land management and the public interest will be well served by making the exchange.

The volume of the lands have not been determined, however, upon completion of the final appraisal the acreage will be adjusted or money will be used to equalize the values.

The exchange will include both surface and mineral estates.

The publicationof this notice in the **Federal Register** shall segregate the applied for public lands from all forms of appropriation under the public land laws including the mining laws for a period of two years.

There will be reserved to the United States in the applied for lands a right-of-way for ditches and canals constructed by the authority of the United States (43 U.S.C. 945).

Other terms and conditions of the exchange.

T.40S., R.14E. W.M.,
Sec. 6 SE¼SE¼.

1. A reservation for an existing right-of-way issued to Bureau of Reclamation for an irrigation ditch OR-2085.

2. A permanent exclusive easement to United States for an access road, right of way width being 15 ft. on each side of the centerline.

3. A reservation to the United States for a stock driveway.

T.39S., R.11E. W.M.,
Sec. 19, lots 6, 9, SE¼W¼.

1. A permanent exclusive easement to the United States for an access road, right-of-way width being 15 feet on each side of centerline.

Information concerning the exchange including the environmental analysis is available for review at the Bureau of Land Management Klamath Falls Resource Area Office, 1939 South Sixth Street, Klamath Falls, Oregon 97601.

For a period of 45 days from the date of first publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Lakeview District P.O. Box 151, Lakeview, Or. 97630. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: June 26, 1985.

Jerry Asher,
District Manager.

[FR Doc. 85-16523 Filed 7-10-85; 8:45 am]
BILLING CODE 4310-33-M

[A-20229, A-20630, A-20631, A-20632]

Realty Action; Direct and Competitive Sales of Public Lands in Cochise County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Direct and Competitive Sale of Public Lands in Cochise County, Arizona.

SUMMARY: The following lands have been examined and identified as suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, U.S.C. 1713) at no less than the appraised fair market value.

Parcel	Serial No.	Legal description	Acres	Appraised value
		Gila & Salt River Meridian		
A	A-20630	T. 12 S., R. 23 E., section 8: SW¼SW¼	40	$4,000
B	A-20632	T. 13 S., R. 24 E., section 31: Lots 6,11	81.01	8,900
C	A-20631	T. 13 S., R. 24 E., section 30: Lots 5,6	81.49	9,400
D	A-20229	T. 23 S., R. 20 E., section 1: SW¼SW¼	40	40,000

Parcel A is being offered to Tri-W Ranch by direct sale at the appraised fair market value. No other bids or bidders will be considered. Parcel B is being offered to Marcellus DuBois by direct sale at the appraised fair market value. No other bids or bidders will be considered. Parcels C & D are being offered at competitive sale.

The land has not been used for and is not required for any Federal purpose. The parcels are difficult and uneconomic to manage as public land. Disposal would best serve the public interest. The disposal would be consistent with the Bureau's planning recommendations.

All minerals, except oil and gas will be offered for conveyance. The mineral interests being offered have no known mineral value. A bid on the parcel will also constitute application for conveyance of those mineral interests offered under the authority of Section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)). Purchasers of the affected parcels will be required to submit a non-returnable filing fee in the amount of $50.00 to cover the processing costs of conveying the available mineral interests. Failure to do so will result in disqualification.

The patents issued as the result of the sale will be subject to all valid existing rights and reservations of record and will contain a reservation to the United States for a right-of-way for ditches and canals under the Act of August 30, 1890 [26 Stat. 391, 43 U.S.C. 945], for oil and gas resources, and for oil and gas lease A-11060 affecting parcels B and C. The patents issued for parcels C & D will be subject to continued grazing by the current lessees until February 28, 1990 in accordance with the terms of the existing leases and the fees for this grazing will coincide with the Federal grazing fee.

Publication of this notice in the Federal Register segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

Sale Procedures

The designated bidders on parcels A and B will be required to submit payment of at least 20 percent of the fair market value by cash, certified or cashier check, or money order to the BLM at 425 E. 4th Street, Safford, Arizona 85546 on September 13, 1985.

The balance of the appraised fair market value will be due within 180 days, payable in the same form at the same location. Failure to submit the remainder of the payment within 180 days of receipt of the decision notice accepting the bid deposit will result in cancellation of the sale offering and forfeiture of the deposit.

Parcels C and D will be sold competitively through the acceptance of sealed bids. Sealed bids may be submitted to the Safford District Office, 425 E. 4th Street, Safford, Arizona 85546. Sealed bids sent by mail will only be considered if received prior to 1:00 p.m., Thursday, September 12, 1985. Bids may be made by a principal or duly qualified agent.

Sealed bids, accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than one-fifth (20%) of the amount of the bid must be in a separate sealed envelope, within the transmittal envelope. The sealed envelopes must be marked in the lower lefthand corner, "Sealed Bid, Parcel ___, Public Land Sale A-20631 or A-20228, Sale to be held September 13, 1985." All sealed bids will be opened at 1:00 p.m. on the day of sale.

The remainder due must be paid within 180 days from the date of sale. Failure to submit the full bid price prior to, but not including the 180th day following the day of sale, shall result in cancellation of the sale and forfeiture of the deposit.

If no bids are received on the date of sale, the lands will be available for over-the-counter purchase for the next six months beginning September 16, 1985.

DATE: For a period of 45 days from the date of this notice in the Federal Register, interested parties may submit comments to the District Manager at the above address. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Detailed information concerning reservations, conditions, terms, appraised price, bidding procedures and other items may be obtained from the Safford District Office or by calling (602) 428-4040 during the office hours 7:45 to 4:15 MST.

Dated: July 3, 1985.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 85-16528 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-32-M

Realty Action; Exchange of Public Lands in Mendocino, Sonoma, and Trinity Counties, CA

The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 4 N., R. 3 E., Humboldt Meridian
Sec. 7, lot 2.
T. 3 S., R. 6 E., Humboldt Meridian
Sec. 33 NW¼NW¼.
T. 5 S., R. 2 E., Humboldt Meridian
Sec. 26 SE¼NE¼;
Sec. 27 SW¼SW¼,
Sec. 28 lots 2, 3, 4, 5;
Sec. 34 NW¼NW¼
T. 9 N., R. 13 W., MDM,
Sec. 9 NE¼NE¼.
T. 10 N., R. 10 W., MDM,
Sec. 32 SE¼NE¼, SW¼SE¼, E½SE¼.
T. 13 N., R. 13 W., MDM,
Sec. 2 lot 1, S½NE¼, SE¼NW¼, E½SW¼, NW¼SE¼;
Sec. 13 NE¼SW¼.
T. 13 N., R. 14 W., MDM,
Sec. 28 E½NW¼.
T. 13 N., R. 15 W., MDM
Sec. 10, SW¼SE¼.
T. 13 N., R. 16 W., MDM,
Sec. 9 NE¼SW¼.
T 14 N., R. 13 W., MDM,
Sec. 16 N½SE¼.
T. 14 N., R. 14 W., MDM,
Sec. 3 lot 3, SE¼SW¼;
Sec. 24 N½NE¼.
T. 14 N., R. 16 W., MDM,
Sec. 10 NW¼NE¼;
Sec. 24 N½SW¼,
Sec. 31 NW¼SE¼.
T. 15 N., R. 14 W., MDM,
Sec. 34 S½SW¼.
T. 16 N., R. 12 W., MDM
Sec. 10 lots 1, 2;
Sec. 11 SW¼NE¼.
T. 16 N., R. 13 W., MDM,
Sec. 4 lot 2.
T. 17 N., R. 12 W., MDM,
Sec. 14 NE¼SW¼;
Sec. 15 SE¼SE¼.
T. 17 N., R. 14 W., MDM,
Sec. 10 lots 7, 8; Sec. 11 lot 7.
T. 19 N., R. 14 W., MDM,
Sec. 23 SE¼NW¼.
T. 21 N., R. 14 W., MDM,
Sec. 4 lots 1, 2, S½NE¼, SW¼NW¼, N½SW¼, E½SE¼;
Sec. 5 lot 1, SE¼NE¼;
Sec. 6 lots 2, 3, 4, 5, 6, 7, SE¼NW¼, E½SW¼, SW¼SE¼.
T. 21 N., R. 15 W., MDM,
Sec. 1 E½ lot 2 in the NE¼.
T. 21 N., R. 16 W., MDM,
Sec. 11 lot 3.
T. 22 N., R. 14 W., MDM,
Sec. 5, lot 7, 14, NW¼Sw¼;
Sec. 6 lots 4, 13, 14, 16, 17, NE¼SE¼, SW¼SE¼;
Sec. 17 SW¼NW¼;
Sec. 18 lots 1, 2, 3, 4, 5, 6, 8, SW¼SE¼, S½NE¼;
Sec. 27 S½SW¼;
Sec. 28 S½SE¼;
Sec. 39 NW¼NE¼;
Sec. 34 N½NW¼, SE¼NW¼.
T. 22 N., R. 15 W., MDM,
Sec. 1 lots 5, 7, 8, 9;
Sec. 13 lots 1, 2, 7, 8, 9, 10, 15, 16;
Sec. 24 lots 2, 3, 4.
T. 23 N., R. 14 W.,
Sec. 30 lots 3, N½ lot 5.
T. 23 N., R. 15 W.,
Sec. 3 SW¼SE¼;
Sec. 10 lots 1, 2;
Sec. 21 SE¼Sw¼,
Sec. 28 W½NE¼.
T. 23 N., R. 16 W.,
Sec. 3 lot 4, SW¼NW¼;
Sec. 4 lot 1, 3, 12, SE¼SE¼;

Sec. 9 E½NW¼, NE¼NE¼.
T. 23 N., R. 17 W., MDM,
Sec. 12 NE¼NW¼.
T. 24 N., R. 15 W., MDM,
Sec. 9 SE¼NE¼;
Sec. 10 W½NW¼, NW¼SW¼;
Sec. 30 SE¼SE¼.
T. 24 N., R. 18 W., MDM,
Sec. 2 SW¼SW¼
T. 24 N., R. 19 W., MDM,
Sec. 2 lots 3, 4.

Comprising 5513.22 acres of public land.

In exchange for these lands, the United States will acquire the following described lands in Lake County from Valley Health Care Corporation:

T. 13 N., R. 6 W., MDM,
Sec. 11 SE¼NE¼, E½SW¼, SW¼SW¼, SE¼.
Sec. 12 lots 1, 2, 4, SW¼NE¼, SE¼NE¼, SE¼NW¼, SW¼SW¼, E½SW¼, W½SE¼.
Sec. 13 lots 1, 2, 3, 4, W½E½, E½NW¼, NW¼NW¼;
Sec. 14 N½N½, S½NW¼, N½SW¼, SE¼SW¼;
Sec. 15 S½SE¼NE¼, SW¼NE¼, NW¼NW¼NE¼, NW¼NW¼, S½NW¼, N½S½, SW¼SE¼;
Sec. 16 NE¼, E½NW¼, SW¼NW¼, N½S½;
Sec. 17 E½SE¼.

Comprising 2370.02 acres of private land.

The purpose of the exchange is to acquire the non-Federal Lands along Cache Creek, a highly significant habitat for Bald Eagles and Tule Elk, both sensitive and endangered species. The exchange is consistent with the Bureau's planning recommendations The public interest will be well served by making this exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for a perpetual road right-of-way as have been granted to Coastal Mining Company under Serial CA 10277.

3. Reserving to the United States a road right-of-way 25 feet in width across T. 23 N., R. 16 W., MDM, Sec. 4 lot 3 for the full use as a road by the United States of America, its licensees and permittees, including the right of access and use for and by the people of the United States, generally, to lands owned, administered, or controlled by the United States (CA 8333).

4. Reserving to Wanda Mehtonen, for a two year period following notification, a grazing lease (GL 5606) subject to the same terms and conditions as currently in affect. Lands affected by the lease include: T. 13 N., R. 13 W., MDM, Sec. 2 S½NE¼, SE¼NW¼, E½SW¼, NW¼SE¼, lot 1.

5. Minerals of known value shall be reserved to the United States together with the right to prospect for, mine, and remove the minerals. A more detailed description incorporated in the patent document is available for review in this office.

Publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b) any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Detailed information concerning the exchange is available for review at the Ukiah District, 555 Leslie Street, Ukiah, CA 95482.

For a period of 45 days, interested parties may submit comments to the District Manager, Ukiah District Office, P.O. Box 940, Ukiah, CA 95482.

Any adverse comments will be evaluated by the California State Director, who may vacate or modify this realty action and issue a final determination. In the absence of a vacation or modification, this realty action will become the final determination of the Bureau.

For further information contact: Cathie Dokken, (707) 462–3873.

Dated: July 2, 1985.

Van W. Manning,

District Manager.

[FR Doc. 85–16521 Filed 7–10–85; 8:45 am]

BILLING CODE 4310-84-M

Realty Action; Sale of Public Lands in Socorro County, NM

The following described parcels of land have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) (FLPMA) at no less than the appraised fair market value shown. The parcels are isolated, difficult and uneconomical to manage as part of the public lands, and are not suitable for management by another Federal department or agency. The sale is consistent with the Bureau's planning efforts, and the public interest will be served by offering this land for sale.

Sale Method

Parcels 1 through 7 will be offered for sale using competitive bidding procedures (43 CFR 2711.3–1). On parcels 8 through 12 the bidding will be modified to allow bids from designated bidders only (43 CFR 2711.3–2). Parcels 13 through 31 will be offered as direct sales to the current occupants of the lands (43 CFR 2711.3–3).

Parcel No.	Serial No.	Legal description	Acreage	Appraised value	Method of sale
1	NM 57057	T. 1 S., R. 1 W., Sec. 23, Lot 37	4.57	$4,575	Competitive.
2	NM 58332	T. 2 S., R. 1 W., Sec. 2, Portion of Lot 36	Approx. 9	$1,500 per acre	Do.
3	NM 58333	T. 4 S., R. 1 E., Sec. 32, Portion of Lot 18	Approx. 1	$2,000 per acre	Do.
4	NM 58334	T. 4 S., R. 1 E., Sec. 32, Portion of Lot 18	Approx. 12	$1,240 per acre	Do.
5	NM 58336	T. 4 S., R. 1 E., Sec. 32, Portion of Lot 18	Approx. 6	$1,500 per acre	Do.
6	NM 58347	T. 4 S., R. 1 E., Sec. 32, Portion of Lot 18	Approx. 8	$1,315 per acre	Do.
7	NM 61177	T. 2 S., R. 1 W., Sec. 11, Portion of Lot 25	Approx. 4	$1,500 per acre	Do.
8	NM 58262	T. 1 S., R. 1 W., Sec. 13, Portion of Lot 7 and Lot 8	Approx. 11.18	$1,000 per acre	Modified Competitive.
9	NM 58264	T. 1 S., R. 1 W., Sec. 24, Lot 15	8.49	$1,200 per acre	Do.
10	NM 58265	T. 1S., R. 1 W., Sec. 24, Lot 17	5.03	$1,000 per acre	Do.
11	NM 58263	T. 1 S., R. 1 W., Sec. 24, Lot 19	0.61	$1,000 per acre	Do.
12	NM 57056	T. 1 S., R. 1 W., Sec. 26, Lot 14	0.51	$510	Do.
13	NM 59349	T. 1 S., R. 1 W., Sec. 13 Portion of Lot 7	Approx. 4	$1,000 per acre	Direct.
14	NM 58282	T. 2 S., R. 1 W., Sec. 1, Lot 25 and Portion of Lot 58	Approx. 1	$2.50 per acre	Do.
15	NM 58278	T. 2 S., R. 1 W., Sec. 2, Lot 33	0.25	$50	Do.
16	NM 58329	T. 2 S., R. 1 W., Sec. 2, Portion of Tract 40	Approx. 0.50	$2,000 per acre	Do.
17	NM 57066	T. 2 S., R. 1 W., Sec. 2, Portion of Lot 74	Approx. 0.03	$50	Do.

Parcel No.	Serial No.	Legal description	Acreage	Appraised value	Method of sale
18	NM 57885	T. 2 S., R. 1 W., Sec. 2, Lots 37, 38, 50, 52, 55, 58, 62, Portions of Lot 35, 74 and Tract 40; Sec. 11, Lot 33 and Portion of Lot 46.	Approx. 7	$2.50 per acre	Do.
19	NM 59328	T. 2 S., R. 1 W., Sec. 11, Portion of Lot 41	Approx. 0.03	$50	Do.
20	NM 59323	T. 2 S., R. 1 W., Sec. 11, Portion of Lot 49	Approx. 0.20	$50	Do.
21	NM [illegible]	T. 2 S., R. 1 W., Sec. 12, Portion of Lots 23 and 41	Approx. 0.50	$2.50 per acre	Do.
22	NM [illegible]	T. 2 S., R. 1 W., Sec. 12, Portion of Lots 23, 24, 41, 43	Approx. 2	$2.50 per acre	Do.
23	NM 58269	T. 2 S., R. 1 W., Sec. 12, Portion of Lot 39	Approx. 0.50	$2.50 per acre	Do.
24	NM [illegible]	T. 2 S., R. 1 W., Sec. 13, Portion of Lot 43	Approx. 0.30	$2.50 per acre	Do.
25	NM [illegible]	T. 2 S., R. 1 W., Sec. 13, Lot 49	0.70	$2.50 per acre	Do.
26	NM 58269	T. 2 S., R. 1 W., Sec. 13, Portion of Lot 64	Approx. 0.55	$2.50 per acre	Do.
27	NM 58272	T. 2 S., R. 1 W., Sec. 13, Lot 50 Sec. 24, Lot 12	0.40	$2.50 per acre	Do.
28	NM [illegible]	T. 2 S., R. 1 W., Sec. 1, Portion of Lot 58, Sec. 2, Portion of Lot 74, Sec. 12, Lot 36 and Portion of Lot 84. T. 4 S., R. 1 E., Sec. 32, Portion of Lot 16	Approx. 4	$2.50 per acre	Do.
29	NM [illegible]	T. 2 S., R. 1 W., Sec. 24, Lot 11 and Portion of Lot 17	Approx. 20	$50	Do.
30	NM 58020	T. 4 S., R. 1 E., Sec. 32, Portion of Lot 16	Approx. 1	$2.50 per acre	Do.
31	NM 58031	T. 4 S., R. 1 E., Sec. 32, Portion of Lot 16	Approx. 0.16	$50	Do.

Sale Procedures

All bidders must be 18 years of age or over and U.S. Citizens, and corporations be subject to the laws of any state or of the United States. Bids must be made by the principal or his duly qualified agent.

Sealed bids for parcels 1 through 12 will be considered only if received in the Socorro Resource Area Office, 198 Neel Avenue, SW, Socorro, New Mexico 87801, before 10:00 A.M. on September 13, 1985, the date of the opening. Bids of less than fair market value will be rejected as required by FLPMA.

Each sealed bid must be accompanied by postal money order, bank draft or cashier's check made payable to the Bureau of Land Management, for not less than 10 percent or more than 30 percent of the amount of the bid. The sealed bid envelope must be marked in the lower left-handed corner as follows:

"Public Sale Bid Parcel . _____
Serial No. , _____
Sale Held (date) ". _____

The highest qualifying bid for each parcel will establish the sale price for the parcel. If two or more enevelopes are received containing valid bids of the same amount for the same parcel, the determination of which is to be considered the highest designated bid will be by supplemental biddings. In such a case the hight bidders will be allowed to submit oral or sealed bids as designated by the Authorized Officer.

The successful bidder will be required to pay the remainder of the sale price prior to expiration of 180 days from the date of the sale. Failure to submit the full sale price within the above specified time limit will result in cancellation of the sale of the specific parcel and the deposit will be forfeited and disposed of as other receipts of sale.

All bids will be either returned, accepted, or rejected within 30 days of the sale date. Parcels not sold on the day of the Sale will be offered for sale every first Tuesday of each month, same time and place, on a competitive sealed bid basis until sold, or until January 14, 1986.

Parcels 8 through 12 will be offered as modified competitive sales to the designated bidders who are the known accessible landowners. Only bids from the following designated bidders will be accepted on parcels 8 through 12:

Parcel 8.—L.P. and Doris Williams and Tom and Martha Stribling, c/o Stribling and Associates, 1913 San Mateo, NE., Albuquerque, NM 87110; Tom and Martha Stribling, c/o Stribling and Associates, 1913 San Mateo, NE., Albuquerque, NM 87110; John Harris, P.O. Box 151, Socorro, NM 87801; John L. and Bonnie Harris, P.O. Box 151, Soccorro, NM 87801.

Parcel 9.—Tom and Martha Stribling, c/o Stribling and Associates; T.H. McEvaian, Jr. and Elizabeth McEvaian, P.O. Box 2148, Santa Fe, NM 87501; Romie and Louise Price, General Delivery, Aragon, NM 87820.

Parcel 10.—Tom and Martha Stribling, c/o Stribling and Associates; T.H. McEvaian, Jr. and Elizabeth McEvaian

Parcel 11.—L.P. and Doris Williams and Tom and Martha Stribling, c/o Stribling and Associates; Tom and Martha Stribling, c/o Stribling and Associates; Joseph M. Tafoya, 1421 Adams NE, Albuquerque, NM 87110.

Parcel 12.—Frank and Dorothy Jacobs, P.O. Box 857, Eagar, AZ 85925; Manuel Jaramillo, P.O. Box 16, Polvadera, NM 87828.

Parcels 13 through 31 will be offered directly to the listed occupants not less than 60 days from date of this notice. If unsold, they will be offered for sale by the competitive procedure.

Parcel 13.—John Harris, P.O. Box 151, Socorro, NM 87801.

Parcel 14.—County of Socorro, P.O. Box I, Socorro, NM 87801.

Parcel 15.—Constancio Sanchez, P.O. Box 1791, Socorro, NM 87801.

Parcel 16.—Samuel James Zimmerly, 301 Claifornia St., Socorro, NM 87801.

Parcel 17.—Leonard and Johnie Scarborough, P.O. Box 42, Socorro, NM 87801.

Parcel 18.—County of Socorro. P.O. Box I, Socorro, NM 87801.

Parcel 19.—Levertt Glen and Deltie Colton Gathings, Rt. 1, Box 73, Socorro, NM 87801.

Parcel 20.—Earl and Emerlinda DeBrine, P.O. Box 46, Socorro, NM 87801.

Parcel 21.—Dan Kloss, General Delivery, Lemitar, NM 87823.

Parcel 22.—Middle Rio Grande Conservancy District, P.O. Box 581, Albuquerque, NM 87103.

Parcel 23.—County of Socorro, P.O. Box I, Socorro, NM 87801.

Parcel 24.—County of Socorro, P.O. Box I, Socorro, NM 87801.

Parcel 25.—Mrs. Florence L. Scott, c/o Mr. Earl Downing, 2030 Thomas Drive, Las Cruces, NM 88001.

Parcel 26.—Middle Rio Grande Conservancy District, P.O. Box 581, Albuquerque, NM 87102

Parcel 27.—Howard C. Ehlert, Box 206, Dexter, NM 80230.

Parcel 28.—New Mexico State Highway Department, Box 1149, Santa Fe, NM 87501.

Parcel 29.—Middle Rio Grande Conservancy District, P.O. Box 581, Albuquerque, NM 87103.

Parcel 30.—Atchison, Topeka and Santa Fe Railway Company, 900 Polk St., Amarillo, TX 79171.

Parcel 31.—Archdiocese of Santa Fe, 202 Morningside Dr. SE, Albuquerque, NM 87108.

Terms and Conditions

Terms and conditions applicable to the sale are:

1. The patents, when and if issued, will contain a reservation to the United States for ditches and canals.

2. All minerals will be reserved to the United States together with the right to prospect for, mine and remove the minerals.

3. All patents will be issued subject to valid existing rights.

4. Parcels 8–14, 21–24, and 26–30 lie within a 100-year floodplain and the patents will contain land use restrictions as required by Executive Order 11988.

5. On Parcel 3, the patent will be issued subject to those rights for water facilities as have been granted to San Antonio Mutual Domestic Water Consumers Association by right-of-way New Mexico 52223 under the Act of October 21, 1976 (43 U.S.C. 1761).

Supplementary Information: A field examination has revealed that Parcels 3–6 are encumbered by unauthorized electric power lines. Additional information concerning the land, terms and conditions of sale, and bidding instruction may be obtained from the Socorro Resource Area Office at the above address, or by calling Jon Hertz, Bernie Creager, or Lois Bell, (505)835–0412. For a period of 45 days from date of this notice, interested parties may submit comments regarding the proposed action to the Socorro Resource Area Manager.

Comments must reference specific parcel numbers. Adverse comments received on specific parcels will not affect the sale of any other parcel. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Upon publication in the **Federal Register** the land described above will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The BLM may accept or reject any or all offers, or withdraw any land or interest in land for sale, if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with FLPMA or another applicable law.

Harlen Smith,

Area Manager.

[FR Doc. 85–16531 Filed 7–10–85; 8:45 am]

BILLING CODE 4310–FB–M

[M–65552]

Realty Action; Competitive Sale of Public Land in Bowman County, ND

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Competitive Sale.

SUMMARY: The following described lands have been examined and identified as suitable for sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713); at no less than the appraised fair market value of $3,600.00:

Fifth Principal Meridian, North Dakota

T.130N., R.104W.,
Section 6: Lot 1.
Containing 40.10 acres.

The lands described are hereby segregated from appropriation under public land laws, including mining laws, pending disposition of this action.

This tract is located 8½ air miles southwest of Rhame, North Dakota. There is legal access; however, there is no established road on the legal access route. The land is a small isolated tract and is unusable by the general public. It does not contain significant resource values that would justify retention. It is difficult and uneconomical to manage as part of the public land system and not suitable for management by another federal agency.

The proposed sale is consistent with the Bureau's planning system. Since the land has low resource value, the transfer of the tract into private ownership will benefit the public interest and provide for more efficient land management.

Terms and Conditions

1. Reservation of all minerals to the United States together with the right to explore, prospect for, mine and remove same under applicable law and regulations;

2. Reservation of right-of-way for ditches or canals to the United States pursuant to with 43 U.S.C. 945;

3. All valid and existing rights and reservations of record.

Location, Date and Time

The land will be offered for sale by a combination of sealed and oral bidding. Sale date is August 30, 1985, at 10 a.m. in the Gate City Community Room, 204 Sims Street, Dickinson, North Dakota.

If the parcel is not sold at this sale, it will be offered for sale over the counter until sold or until the sale is cancelled.

Comment Period: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 204 Sims Street, P.O. Box 1229, Dickinson, North Dakota 58602.

Any adverse comments will be evaluated by the BLM Montana State Director, who may vacate or modify this realty action and issue a decision for the Department of Interior. Parties adversely affected by the decision have the right to appeal to the Interior Board of Land Appeals. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

FOR FURTHER INFORMATION: Detailed information concerning this sale, including planning documents, the environmental assessment and land report is available for review at the Dickinson District Office.

SUPPLEMENTARY INFORMATION: Bidder Qualifications: The bidder must be a United States citizen, or in the case of a corporation, subject to the laws of any state or the United States. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands interests therein under the laws of the State of North Dakota.

Bids must be made by the principal or his agent.

Bid Standards: No bid will be accepted for less than the appraised value of $3,600.00.

Method of Bidding: The land will be sold by a combination of sealed and oral bids. Bids delivered or sent by mail will be considered only if received by the Bureau of Land Management, Dickinson District Office, Box 1229, 204 Sims Street, Dickinson, North Dakota 58602 prior to 10 a.m. on August 30, 1985. Each sealed bid must be accompanied by a certified check, postal money order, bank draft, or cashiers check made payable to the Department of Interior, Bureau of Land Management for not less than one-fifth of the amount bid. The sealed bid envelope must be marked in the lower left-hand corner as follows:

Public land sale M–65552.
Date August 30, 1985.

If two or more envelopes contain valid bids of the same amount are received and not subsequently raised by an oral bid, the determination of which is to be considered the highest bid shall be by drawing. The drawing, if required, shall be held immediately following the opening of the sealed bids if no oral bid is received to raise the tie bid. The highest qualifying bid shall then be publicly declared. A sealed bid of at least the fair market value must be

submitted prior to the sale date in order to be considered eligible for oral bidding.

Final Details

Once a high bid is accepted, the successful bidder shall submit the remainder of the full bid price prior to the expiration of 30 days from the date of the sale. Failure to submit the required amount within the allotted time will result in cancellation of the sale and the deposit will be forfeited.

All bids will either be returned, accepted or rejected within 60 days of the sale date.

Dated: June 27, 1985.

William F. Krech,

Acting District Manager.

[FR Doc. 85-16532 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-DN-M

[U-55647]

Realty Action; Sale of Public Lands in Washington County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) public land described as Lot 3, sec. 31, T. 43 S., R. 14 W., SLB&M Utah, containing 44.98 acres is proposed for sale by competitive bidding at no less than the appraised fair market value of $9,000.00. The land described is hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATES: Comments should be submitted to the address listed below by September 3, 1985. The sale will be held on September 18, 1985 at 10:00 a.m.

ADDRESS: Detailed information concerning the sale, including bidding procedures, is available at the Dixie Resource Area Office, 225 North Bluff, St. George, Utah 84770 (801) 673-4654. The sale will be held at the same address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States a right-of-way for ditches or canals constructed by the Authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. The title transfer will be subject to valid existing rights including Oil and Gas Lease No. U-40068 and Pipeline Right-of-Way No. U-37858.

4. Title transfer will be subject to the restriction that no permanent structures (except flood control devices) will be placed in the floodplain.

5. If the tract of public land is not sold pursuant to this notice, it will remain available for sale on a continuing basis until sold or until withdrawn from the market.

Any comments or objections received during the comment period will be evaluated and the District Manager may vacate or modify this realty action. In the absence of any objections, this realty action notice will be the final determination of the Department of the Interior.

Dated: July 3, 1985.

Morgan S. Jenson,

District Manager.

[FR Doc. 85-16529 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-DQ-M

[NM 29247-(OK)]

Proposed Reinstatement of Termination Oil and Gas Lease; New Mexico

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87501. Under the provisions of PL 97-451, Hawkins Oil and Gas, Inc., petitioned for reinstatement of oil and gas lease NM 29247-(Okla.) covering the following described lands located in Dewey County, Oklahoma:

T. 17 N., R. 15 W., I.M., Oklahoma,
Sec. 5: The remaining portion of Lot 5 and riparian rights to the remaining portion of Lot 5, further described by metes and bounds.

Containing 17.60 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rental and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, February 1, 1985.

Dated: July 1, 1985.

Tessie R. Anchondo,

Chief, Adjudication Section.

[FR Doc. 85-16533 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-FB-M

[NM 46287-(OK)]

Proposed Reinstatement of Termination Oil and Gas Lease; New Mexico

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87501. Under the provisions of Pub. L. 97-451, Ratliff Exploration Company and Mustang Production Company, petitioned for reinstatement of oil and gas lease NM 46287-(OK) covering the following described lands located in Major County, Oklahoma:

T. 21 N., R. 14 W., I.M., Oklahoma,
Sec. 3, S½SW¼.

Containing 80.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $10.00 per acre per year and royalties shall be at the rate of 16⅔ percent, computed on a sliding scale 4 percentage points greater than the competitive royalty schedule attached to the lease. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, October 1, 1984.

Dated: July 1, 1985.

Tessie R. Anchondo,

Chief, Adjudication Section.

[FR Doc. 85-16534 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-FB-M

[AZ 950]

Filing of Plats of Survey; Arizona

July 2, 1985.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A supplemental plat, showing amended lottings created by the segregation of Mineral Surveys No. 2597 and No. 4038, in Section 3, T. 4 N., R. 1 E., Gila and Salt River Meridian, Arizona, was accepted May 9, 1985, and was officially filed May 10, 1985.

This supplemental plat was prepared at the request of the Bureau of Land Management, Indian Project Office.

A plat representing a dependent resurvey of the boundaries of Section 28, T. 12 N., R. 24 E., Gila and Salt River Meridian, Arizona, was accepted June 21, 1985, and was officially filed June 24, 1985.

This survey was executed at the request of the Bureau of Land Management, Arizona State Office, Division of Operations.

A supplemental plat, showing a subdivision of original lots 1 and 3, Section 31, T. 19 N., R. 21 W., Gila and Salt River Meridian, Arizona, was accepted April 4, 1985, and was officially filed April 5, 1985.

This supplemental plat was prepared at the request of the Bureau of Land Management, Arizona State Office, Phoenix District Office.

A plat representing a dependent resurvey of the north boundary of the Papago Indian Reservation, a portion of the Santa Cruz Guide Meridian, east boundary, and a portion of the subdivisional lines; and a survey of subdivisions in Sections 22, 23 and 24, T. 15 S., R. 12 E., Gila and Salt River Meridian, Arizona, was accepted May 22, 1985, and was officially filed May 24, 1985.

This survey was executed at the request of the Bureau of Indian Affairs, Phoenix Office.

A plat representing a dependent resurvey of portions of M.S. 1409, DOCO lode and M.S. 1406, GEORGIA lode, and a metes-and-bounds survey of Tract 37, in unsurveyed T. 23 S., R. 16 E., Gila and Salt River Meridian, Arizona, was accepted April 10, 1985, and was officially filed April 10, 1985.

This survey was executed at the request of Region Three, U.S. Forest Service, Coronado National Forest.

A supplemental plat showing new lottings in Sections 32 and 33, T. 5 S., R. 18 E., Gila and Salt River Meridian, Arizona, was accepted June 10, 1985, and was officially filed June 18, 1985.

A supplemental plat showing new lottings in Sections 22, 23, 24 and 27, T. 5 S., R. 18 E., Gila and Salt River Meridian, Arizona, was accepted June 10, 1985, and was officially filed June 18, 1985.

These supplemental plats were prepared at the request of the Bureau of Land Management, Lands and Minerals Operations, and Arizona State Land Department.

A supplemental plat showing new lottings created by the cancellation of unpatented lodes of M.S. 3784 in Sections 19, 29 and 30, T. 16 S., R. 31 E., Gila and Salt River Meridian, Arizona, was accepted May 21, 1985, and was officially filed May 23, 1985.

This supplemental plat was prepared at the request of the Bureau of Land Management, Safford District Office.

2. These plats will immediately become the basic records for describing the lands for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 85-16432 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-32-M

[OR 37643, 37644, 27645, OR 38646 and 37647]

Realty Action; Direct and Modified Competitive Sale of Public Land in Malheur County, OR; and Exchange of Public Land in Malheur County, OR; Sale Procedures

The following lands are suitable for sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, at no less than the appraised fair market value:

Parcel No.	Serial No.	Legal Description—Willamett Meridian	Acreage	Minimum Bid Deposit (percent)	Bidding procedure
1	OR-37643	T. 30 S., R. 45 E., sec. 30: SE¼NE¼ ±	40.00	20	Direct sale.
2	OR-37645	T. 30 S., R. 44 E., sec. 26: S½S½	160.00	20	Modified competitive—three designated bidders.
3	OR-37646	T. 30 S., R. 46 E., sec. 2: Lot 2	39.50	20	Direct sale.
4	OR-37647	T. 30 S., R. 45 E., sec. 2: S½S½ and NE¼SE¼	200.00	20	Do.

The above described land(s) are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale or exchange under the above cited statutes.

The sale will be held on September 18, 1985, at the Bureau of Land Management, Vale District Office, 100 Oregon Street (P.O. Box 700), Vale, Oregon 97918. These parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by offering this land for sale.

Bidder Qualifications

Bidders must be U.S. citizens, 18 years of age or more; a state or state instrumentality authorized to hold property; or a corporation authorized to own real estate in the state in which the land is located.

Direct Sale Procedures

Direct sale procedures are being used for parcels no. 1, 3 and 4, since a competitive sale is not appropriate and the public interest would best be served by the direct sale because this method will recognize the needs and historical uses of the adjoining landowners, who will be able to incorporate the tracts into their ranching operations or county governmental who have met governmental needs.

Parcel no. 1 (OR 37643) is being offered to Mr. Gerald Raburn, parcel no. 3 (OR 37646) is being offered to Malheur County, Oregon, and parcel no. 4 (OR 37647) is being offered to Jeff Anderson Estate c/o Jim Anderson, using direct sale procedures authorized under 43 CFR 2711.3-3. The land will be sold at fair market value to these parties, without competitive bidding. They are required to render a minimum deposit of 20 percent of the purchase price by September 18, 1985, and the balance within 180 days of the sale date. If the deposit is not submitted or the full purchase price not rendered within 180 days of the sale date, the preference right is cancelled, the deposit will be forfeited, and the parcel will be sold through competitive bidding procedures.

Modified Bidding Procedures

Modified bidding procedures are being used for parcel no. 2 (OR 37645) to recognize the needs and historical uses of adjoining landowners. This procedure is authorized under 43 CFR 2711.3–2. Bidding for this parcel will be restricted to the adjoining landowners; Gerald and Judith Raburn, James Matteri, Owen and David Barrett—Barrett Bros. Land and Cattle.

Sale bidding will be limited to sealed bids and must be for at least the appraised fair market value. Sealed written bids, mailed or delivered, must be received by the Bureau of Land Management, at the aforementioned address prior to 10:00 A.M., Wednesday, September 18, 1985.

Each written bid must be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to Department of the Interior—BLM for not less than 20 percent of the amount of the bid. The sealed envelope must be marked in the lower left hand corner, "Bid for Public Land Sale OR 37645, Sale Parcel Number 2, Malheur County, Oregon, September 18, 1985". Bids will be opened and publicly declared at the sale. If two or more envelopes containing valid high bids of the same amount are received, the tied high bidders will be notified through certified mail to submit supplemental sealed bids within 30 days. The balance of the purchase price will be due within 180 days of the sale date. Failure to submit the balance of the sale price will result in forfeiture of the bid deposit, and the sale parcel will be offered to the second highest designated bidder.

Terms and Conditions of the Sale

The terms, conditions, and reservations applicable to the sale are as follows:

1. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, with the exception for geothermal resources on parcels 1, 2, 3, and 4; oil and gas on parcel 3 and rock quarry material, sand and gravel, on parcel 4, which will be reserved to the United States in accordance with section 209 of the Federal Land Policy and Management Act 43 U.S.C. 1719. All qualified bidders must include with their bid deposit a non refundable $50.00 filing fee for the conveyance of the mineral estate.

2. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

3. Patents will be issued subject to all valid existing rights and reservations of records.

4. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

5. The Sale parcels will be subject to:

a. Such rights for public road purposes as Malheur County, or its successors in interest may have pursuant to a road right-of-way R.S. 2477 (43 U.S.C. 932) on parcel 1.

b. Such rights for public road purposes as State of Oregon, or its successors in interest may have pursuant to a highway right-of-way, TD 029016. Title 23 U.S.C. sections 107 and 317.

c. The rights of prior permittees or lessees to use so much of the surface of said land as is required for oil and gas operations, without compensation to the patentee for damages resulting from proper oil and gas operations for the duration of oil and gas lease OR 24818 (parcel 3) and any authorized extension of that lease. Section 29 of the Act of February 24, 1920, 41 Stat. 449, 30 U.S.C. 186 and the Act of March 4, 1933, 47 Stat. 1570, 30 U.S.C. 124.

d. Such rights for electric power transmission line and telephone line purposes as Continental Telephone and Idaho Power, or its successors in interest may have, pursuant to right-of-way OR 14691 (parcels 1 and 4) and OR–01149 (parcel 3) respectively. Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

Unsold Parcels

If any of the parcels identified in this Notice are not sold on September 18, 1985, the parcels will be offered to the public, using competitive sale procedures 43 CFR 2711.3–1, until sold, exchanged, or withdrawn from the market. Sealed bids will be solicited at the BLM, Vale District Office, during regular business hours. All bids received will be opened the first Wednesday of each month, beginning on October 2, 1985. To be considered, bids must be received by 10:00 A.M. on the day of the bid opening.

Exchange Procedures

The following described land has been examined and determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 or by direct sale under sections 206 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, at no less than the appraised fair market value:

Willamette Meridian, Oregon

T. 30 S., R. 45 E.,
Sec. 30: NE¼NE¼.

The area described contains 40 acres of public land.

In exchange for this land, the United States would acquire the following described land from Gerald Raburn:

Willamette Meridian, Oregon

T. 30 S., R. 45 E.,
Sec. 27: NW¼NW¼.

The area described contains 40 acres of private land.

It is intended to consummate land exchange proposal OR 37644 for this land. If, however, the exchange cannot be consummated by September 18, 1985, the authorized officer reserves the option to combine the land, or a portion thereof, with sale parcel no. 1 (OR 37643) identified in the sale procedures above to be sold directly to Gerald Raburn.

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management and to enhance the range management potential for the area. The Federal land to be exchanged is a hard to manage parcel completely surrounded by private lands.

This proposal is consistent with Bureau planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making this exchange. The comparative values of the lands exchanged are approximately equal and the acreage will be adjusted and/or a cash payment to the United States will be used to equalize the values upon completion of the finished appraisal of the lands. Any monetary adjustments made will be for no more than 25% of the appraised value of Federal lands involved.

Publication of this notice segregates the public land from the operation of the public land laws including the mining laws, but not from exchange or sale under the above cited statutes for a period of 2 years from the date of first publication.

Terms and Conditions of the Exchange

The terms, conditions, and reservation applicable to the exchange are as follows:

1. A reservation to the United States of a right-of-way for ditches or canals under 43 U.S.C. 945.

2. Patents will be issued subject to all valid existing rights and reservations of record.

3. All mineral interest will be exchanged.

4. Such rights for public road purposes as Malheur County, or its successors in interest may have pursuant to a road right-of-way R.S. 2477 (43 U.S.C. 932).

5. Such rights for telephone line purposes as Continental Telephone, or its successors in interest may have, pursuant to right-of-way OR–14691. Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

Comments

Further information concerning the sales and the exchange, including the environmental analysis and land report, is available for review at the Vale District Office at the above address. For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the Vale District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of adverse comments this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: July 2, 1985.

David Lodzinski,

District Manager.

[FR Doc. 85–16431 Filed 7–10–85; 8:45 am]

BILLING CODE 4310-33-M

[OR 38262 (WA)]

Realty Action; Direct and Competitive Sale of Public Land in Chelan County, WA

The following lands are suitable for sale under section 203 (and 209) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (and 1719), at no less than the appraised fair market value.

Serial and Parcel No.	Legal description	Acreage	Estimated value	Minimum bid deposit percent	Bidding procedure
OR 38262 (WA) T. 28 N., R. 20 E., W. M., Sec. 29:					
No. 1	Lot 2	4.53	125	100	Competitive.
No. 2	Lot 3	8.04	3,000	30	Direct
No. 3	Lot 5	7.44	125	100	Competitive
No. 4	Lot 6	11.86	500	30	Direct
No. 5	Lot 7	11.85	3,000	30	Do.
No. 6	Lot 8	3.64	2,000	30	Do.

The sale will be held on September 18, 1985, at the Bureau of Land Management, Spokane District Office, E. 4217 Main Avenue, Spokane, WA 99202. These isolated parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by offering this land for sale.

Sale brochures containing pertinent data on the land offered for sale are available upon request from the District Manager at the above address.

The above described land(s) are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute.

Bidder Qualifications

Bidders must be U.S. citizens, 18 years of age or more; a state or state instrumentality authorized to hold property; or a corporation authorized to own real estate in the state in which the land is located.

Competitive Bidding Procedures

Parcels No. 1 and 3 will be offered using competitive bidding procedures (43 CFR 2711.3–1). Sealed written bids, delivered or mailed, must be received by the Bureau of Land Management at the aforementioned address prior to 10:00 a.m., Wednesday, September 18, 1985.

A separate written bid must be submitted for each parcel desired. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior—BLM for at least the percent indicated in the above listing and shall be enclosed in a sealed envelope clearly marked, in the lower left hand corner, "Bid for Public Land Sale OR 38262 (WA), Sale Parcel Number _____, Chelan County, Washington, September 18, 1985." The written sealed bids will be opened and declared at the sale. If two or more envelopes containing valid high bids of the same amount are received, the designated tied high bidders will be notified through certified mail to submit supplemental sealed bids within 30 days. The balance of the purchase price must be paid within 180 days or the deposit will be forfeited and the parcel will be reoffered to the public until sold or withdrawn from the market.

Direct Sale Procedures

Direct sale procedures are being used to resolve long standing title and survey problems of adjacent landowners.

The parcels identified by Nos. 2, 4, 5, & 6 are being offered using direct sale procedures authorized under 43 CFR 2711.3–3. The land will be sold at fair market value without competitive bidding. The prospective purchasers are required to render a minimum deposit of 30 percent of the purchase price by September 18, 1985, and the balance within 180 days of the sale date. If the deposit is not submitted or the full purchase price not rendered within 180 days of the sale date, the preference right is cancelled, the deposit will be forfeited, and the parcel will be sold through competitive bidding procedures.

Terms and Conditions of the Sale

The terms, conditions, and reservations applicable to the sale are as follows:

1. All minerals in the lands will be reserved to the United States in accordance with section 209 of the Federal Land Policy and Management Act of 1976.

2. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

3. Patents will be issued subject to all valid existing rights and reservations of records.

4. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

5. The Sale parcel will be subject to:

a. Such rights for public road purposes as Chelan County, WA, or its sucessors in interest may have pursuant to a road right-of-way R.S. 2477 (43 U.S.C. 932).

Unsold parcels

If any of the parcels identified in this Notice are not sold on September 18, 1985, the parcels will be offered to the public, using competitive sale procedures 43 CFR 2711.3–1, until sold or withdrawn from the market. Sealed bids will be solicited at the BLM, Spokane

District Office, during regular business hours. All bids received will be opened the first Wednesday of each month, beginning on October 2, 1985. To be considered, bids must be received by 10:00 a.m. on the day of the bid opening.

Comments

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the Spokane District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: July 2, 1985.

Joseph K. Buesing,

District Manager.

[FR Doc. 85-16433 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-33-M

[OR 38065]

Realty Action; Modified Competitive Sale of Public Land in Lane County, OR

The following lands are suitable for sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, at no less than the appraised fair market value.

Serial and parcel No.	Legal description	Acreage	Value	Minimum bid deposit (percent)	Bidding procedure
OR 38065:					
A	T. 16 S., R. 3 W., W.M., Sec. 9: Lot 3, 4, 5	11.99	$2,400	30	Modified competitive.
B	T. 21 S., R. 1 W., W.M., Sec. 31: Lot 1 of Tract 38	0.04	100	30	Do.

The above described lands are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute.

The sale will be held on September 18, 1985, at the Bureau of Land Management, Eugene District Office, 1255 Pearl Street (P.O. Box 10226), Eugene, Oregon 97401. These isolated parcels are difficult and uneconomical to manage as part of the public lands and are not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by offering this land for sale.

Sale brochures containing pertinent data on the land offered for sale are available upon request from the District Manager at the above address.

Bidder Qualifications

Bidders must be U.S. citizens, 18 years of age or more; a state or state instrumentality authorized to hold property; or a corporation authorized to own real estate in the state in which the land is located.

Modified Bidding Procedures

Modified bidding procedures are being used to recognize the needs and historical use of the adjoining landowners. Preference to meet the high selling bid is authorized under 43 CFR 2711.3-2.

The parcels are being offered for sale through modified competitive bidding and the following designated bidders have a preference right to meet the high bid for the respective parcel, as follows:

Parcel A: William E. Stevenson and/or Mary Jean Stevenson; Eldon W. Townsend and/or Suzanne Townsend

Parcel B: Bohemia Inc.; Oregon, Pacific and Eastern Railway Co.; Weyerhaeuser Company

Sale bidding will be limited to sealed bids and must be for at least the appraised fair market value. Sealed written bids, mailed or delivered, must be received by the Bureau of Land Management, at the aforementioned address, prior to 10:00 a.m., Wednesday, September 18, 1985.

Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to Department of Interior—BLM for not less than 30 percent of the amount of the bid. The sealed envelope must be marked in the lower left-hand corner "Bid for Public Land Sale OR 38065, Sale Parcel Number ____, Lane County, Oregon, September 18, 1985".

The designated bidder will be notified through certified mail that they have 30 days to meet the high bid. Failure to meet the high bid within the 30 days following the sale, shall constitute a waiver of their preference rights. The balance of the purchase price will be due within 180 days of the sale date. Failure to pay the balance will result in forfeiture of the bid deposit and the parcel will be reoffered.

If the designated bidder fails to submit a bid, the sale parcel will be awarded to the party submitting the high bid.

Terms and Conditions of the Sale

The terms, conditions, and reservations applicable to the sale are as follows:

Parcel A

1a. All minerals in the lands will be reserved to the United States in accordance with section 209 of the Federal Land Policy and Management Act of 1976.

Parcel B

1b. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, *with the exception of the oil and gas resources which will be reserved to the United States*, in accordance with section 209 of the Federal Land Policy and Management Act (43 U.S.C. 1719). All qualified bidders must include with their bid deposit a non-refundable $50.00 filing fee for the conveyance of the mineral estate.

Parcels A and B

2. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

3. Patents will be issued subject to all valid existing rights and reservations of records.

4. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

5. The Sale parcels will be subject to:

a. The rights of prior permittees or lessees to use so much of the surface of said land as is required for oil and gas operations, without compensation to the patentee for damages resulting from proper oil and gas operations for the duration of oil and gas leases OR 13396 (Parcel A) and OR 20748 (Parcel B) and any authorized extension of those leases. Section 29 of the Act of February 25, 1920, 41 Stat. 449, 30 U.S.C. 186 and the Act of March 4, 1933, 47 Stat. 1570, 30 U.S.C. 124.

Unsold Parcels

If any of the parcels identified in this Notice are not sold on September 18, 1985, the parcels will be offered to the public, using competitive sale procedures (43 CFR 2711.3–1), until sold or withdrawn from the market. Sealed bids will be solicited at the BLM, Eugene District Office, during regular business hours. All bids received will be opened the first wednesday of each month, beginning on November 6, 1985. To be considered, bids must be received by 10:00 a.m. on the day of the bid opening.

Comments

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Eugene District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the State Director who may sustain, vacate, or modify this realty action and issue a final determination. In the absense of adverse comments this realty action will become the final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: July 2, 1985.

Melvin D. Clausen,

District Manager.

[FR Doc. 85–16434 Filed 7–10–85; 8:45 am]

BILLING CODE 4310-33-M

[M 60157; M 63953 through M 64004; M 64203 through M 64212; and M 65724]

Conveyance and Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Conveyance and Order Providing for Opening of Public Lands in Beaverhead, Gallatin, Jefferson, Lewis and Clark, Madison and Park Counties, Montana.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, et seq. (FLPMA), to the operation of the public land laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance documents. Except for one 115 acre tract in which the government reserved only oil, gas and geothermal, no minerals were transferred by either party in the exchange.

DATE: At 9 a.m. on August 12, 1985, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law.

ADDRESS: For further information contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657–6082.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716) the following described surface estate was conveyed out of Federal ownership:

Principal Meridian

T. 4 N., R. 6 E.,
Sec. 30, NE¼NE¼.
T. 8 N., R. 3 W.,
Sec. 5, lots 10, 16 and 21.
T. 9 N., R. 3 W.,
Sec. 21, NE¼SE¼.
T. 6 N., R. 4 W.,
Sec. 32, E½SW¼SE¼.
T. 10 N., R. 5 W.,
Sec. 13, lots 19, 20, 21, 22, 23 and 24;
Sec. 24, lots 15 and 16.
T. 11 N., R. 5 W.,
Sec. 2, lot 8;
Sec. 24, lots 15 and 16.
T. 1 N., R. 15 W.,
Sec. 28, N½NW¼, SW¼NW¼ and NW¼SW¼.
T. 3 S., R. 1 W.,
Sec. 19, lots 11, 12, and E½SE¼.
T. 4 S., R. 1 W.,
Sec. 20, N½NE¼ and NE¼NW¼;
Sec. 26, SW¼NE¼ and NE¼NW¼.
T. 6 S., R. 1 W.,
Sec. 12, NE¼SW¼.
T. 7 S., R. 1 W.,
Sec. 18, lots 1, 3, 4 and NE¼NW¼.
T. 2 S., R. 2 W.,
Sec. 19, NE¼NE¼;
Sec. 29, lot 5.
T. 6 S., R. 2 W.,
Sec. 10, E½NE¼ and S½SW¼.
T. 13 S., R. 2 W.,
Sec. 12, lot 10.
T. 14 S., R. 2 W.,
Sec. 18, SE¼NE¼.
T. 6 S., R. 3 W.,
Sec. 1, lots 1 through 4, S½N½, N½SW¼ and SE¼;
Sec. 2, lots 1, 3, 4, S½N½ and S½;
Sec. 14, N½NE¼, NW¼, N½SW¼, W½SW¼SW¼, SE¼SW¼ and SE¼;
Sec. 16, S½SW¼SW¼ and SE¼SE¼SW¼;
Sec. 24, lot 1, W½NE¼, SE¼NE¼ and E½NW¼.
T. 14 S., R. 3 W.,
Sec. 22, SW¼SE¼.
T. 4 S., R. 4 W.,
Sec. 29, lot 2.
T. 5 S., R. 4 W.,
Sec. 5, SE¼NW¼;
Sec. 34, SW¼NW¼.
T. 7 S., R. 4 W.,
Sec. 18, lots 1, 4, E½NW¼ and SE¼SW¼.
T. 9 S., R. 6 W.,
Sec. 12, SW¼NE¼ and NE¼SE¼.
T. 11 S., R. 6 W.,
Sec. 33, NW¼NE¼.
T. 14 S., R. 6 W.,
Sec. 35, NE¼ and S½NW¼.
T. 8 S., R. 7 W.,
Sec. 28, SW¼NE¼, SE¼NW¼, NE¼SW¼ and N½SE¼;
Sec. 29, W½NW¼.
T. 11 S., R. 7 W.,
Sec. 33, SE¼NW¼.
T. 12 S., R. 7 W.,
Sec. 5, SE¼NE¼.
T. 9 S., R. 8 W.,
Sec. 7, SE¼SW¼;
Sec. 18, lot 4.
T. 14 S., R. 8 W.,
Sec. 18, lot 4.
T. 2 S., R. 9 W.,
Sec. 29, SE¼SW¼;
SEc. 32, NE¼NW¼.
T. 7 S., R. 9 W.,
Sec. 17, NW¼SW¼;
Sec. 18, NE¼SE¼;
Sec. 21, NE¼NE¼;
Sec. 22, N½, NE¼SW¼ and NW¼SE¼;
Sec. 23, NW¼NW¼.
T. 9 S., R. 9 W.,
Sec. 34, S½N½.
T. 10 S., R. 9 W.,
Sec. 2, NW¼SW¼;
Sec. 3, lot 1 and SE¼SE¼.
T. 11 S., R. 9 W.,
Sec. 14, S½SE¼.
T. 14 S., R. 9 W.,
Sec. 13, SE¼NW¼ and NE¼SW¼.
T. 6 S., R. 10 W.,
Sec. 29, lot 6.
T. 7 S., R. 10 W.,
Sec. 11, NW¼NE¼, SE¼NW¼, NW¼SE¼ and SE¼SE¼;
Sec. 13, N½SW¼.
T. 6 S., R. 11 W.,
Sec. 19, lot 3;
Sec. 30, SE¼SE¼;
Sec. 31, NE¼NE¼.
T. 9 S., R. 11 W.,
Sec. 32, NE¼SE¼;
Sec. 33, N½SW¼.
T. 10 S., R. 11 W.,
Sec. 2, lot 3, SE¼NW¼ and NE¼SW¼;
Sec. 10, W½NW¼.
T. 14 S., R. 11 W.,
Sec. 7, NE¼SW¼ and NW¼SE¼;
Sec. 30, SE¼NE¼.
T. 6 S., R. 12 W.,
Sec. 25, SE¼SE¼.
T. 7 S., R. 12 W.,
Sec. 5, SW¼.
T. 10 S., R. 12 W.,
Sec. 25, SE¼SE¼.
T. 11 S., R. 12 W.,
Sec. 23, E½NE¼;
Sec. 24, SW¼NW¼ and NW¼SW¼;
Sec. 26, SW¼NW¼;
Sec. 27, SE¼NE¼ and NE¼SE¼.
T. 6 S., R. 13 W.,
Sec. 14, SE¼NE¼.
T. 10 S., R. 14 W.,
Sec. 17, lots 1, 2, S½NE¼, SE¼NW¼, NE¼SW¼ and SW¼SW¼;
Sec. 18, E½NE¼ and NE¼SE¼.
T. 11 S., R. 14 W.,

Sec. 13, SE¼SW¼;
Sec. 24, NW¼NE¼.
T. 6 S., R. 15 W.,
Sec. 29, S½SW¼.
Sec. 10
T. 10 S., R. 15 W.,
Sec. 25, SE¼NE¼ and NE¼SE¼.
T. 1 S., R. 16 W.,
Sec. 1, lot 1.
T. 2 S., R. 16 W.,
Sec. 3, lot 3;
Sec. 24, lot 1.
T. 1 S., R. 1 E.,
Sec. 22, SW¼SW¼.
T. 4 S., R. 1 E.,
Sec. 6, lot 2.
T. 5 S., R. 1 E.,
Sec. 24, NE¼NW¼.
T. 7 S., R. 1 E.,
Sec. 6, NW¼.
T. 8 S., R. 1 E.,
Sec. 8, SW¼SE¼;
Sec. 22, SW¼NE¼.
T. 6 S., R. 6 E.,
Sec. 18, lot 1, NE¼NE¼, and NE¼NW¼.
T. 12 S., R. 2 E.,
Sec. 35, lots 6 and 7.
T. 2 S., R. 8 E.,
Sec. 4, NW¼NW¼ and E½SW¼.

Aggregating 8,179.77 acres.

2. In exchange for the above selected lands, the United States acquired the surface estate only (minerals being reserved by the grantor) in the following described lands in Beaverhead County, Montana:

Principal Meridian

T. 14 S., R. 4 W.,
Sec. 18, lot 4 and SE¼SW¼;
Sec. 19, lots 3 and 4, E½SW¼, W½SE¼ and SE¼SE¼;
Sec. 20, S½SW¼ and SW¼SE¼;
Sec. 28, N½NW¼ and SE¼NW¼;
Sec. 29, lots 1, 2, 3 and 4, S½NW¼ and N½SW¼;
Sec. 30, lot 1;
Sec. 31, SE¼.
T. 14 S., R. 5 W.,
Sec. 11, E½SE¼;
Sec. 12, NW¼SW¼;
Sec. 13, E½NW¼, SW¼NW¼ and S½;
Sec. 14, E½NE¼ and SE¼;
Sec. 22, E½NE¼;
Sec. 23, W½NE¼; SE¼NE¼; NW¼ and E½SE¼;
Sec. 24, N½NE¼; SW¼NE¼; N½SE¼ NE¼, W½, NW¼SE¼ and S½SE¼;
Sec. 25, SW¼NW¼ and NW¼SW¼;
Sec. 26, lots 1 and 2, S½NE¼ and NE¼SE¼;
Sec. 34, NW¼.

3. The United States also acquired the surface estate only (minerals already reserved by the U.S.) in the following described lands in Beaverhead County, Montana:

Principal Meridian

T. 14 S., R. 4 W.,
Sec. 28, lots 1 and 2, SW¼NW¼ and N½SW¼;
Sec. 29, lots 5, 6, and 7, SW¼NE¼ and W½SE¼;
Sec. 30, SE¼NE¼ and SE¼;
Sec. 31, lot 1, NE¼ and E½NW¼;
Sec. 32, all;
Sec. 33, Lot 3, SW¼NW¼ and W½SW¼.
T. 15 S., R. 14 W.,
Sec. 4, NW¼NW¼;
Sec. 5, N½ and N½S½.
T. 14 S., R. 5 W.,
Sec. 12, E½SW¼ and SW¼SE¼;
Sec. 13, NE¼NE¼ and W½NE¼;
Sec. 22, SE¼ excepting therefrom any portion lying northwesterly of the county road;
Sec. 23, SW¼ and W½SE¼;
Sec. 27, lots 1, 6 and 7, SE¼NE¼, E½SW¼ and SE¼;
Sec. 34, E½ and E½SW¼.
T. 15 S., R. 5 W.,
Sec. 4, S½SE¼;
Sec. 9, lot 3 and NE¼;
Sec. 10, lot 1 and NW¼.

The surface acreage of paragraphs 2 and 3 aggregates 7,532.45 acres.

4. The value of the Federal public land was appraised at $1,035,743.20 and the non-Federal land was appraised at $1,031,000. An equalization payment of $4,743.20 was paid to the United States.

5. At 9 a.m. on August 12, 1985, the lands described in paragraphs 2 and 3 above that were conveyed to the United States will be open to the operation of the public land laws. The minerals in paragraph 3 have been and continue to be open to the mineral leasing laws and the mining laws.

Dated: June 28, 1985.

James Binando,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 85-16469 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-DN-M

Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: Plats of survey of the lands described below accepted April 22, 1985, and June 4, 1985, were officially filed in the Montana State Office effective 8 a.m. on June 18, 1985.

Principal Meridian, Montana

T. 23 N., R. 15 E.

This plat representing the dependent resurvey of a portion of the east boundary of Township 23 North, Range 14 East, a portion of the south boundary, and subdivisional lines, and a portion of the adjusted original meanders of the Missouri River, and the survey of the subdivision of sections 30 and 31, Township 23 North, Range 15 East, Principal Meridian, Montana, was accepted April 22, 1985. The area described is in Fergus County.

Principal Meridian, Montana

T. 24 N., R. 13 E.

This plat, in two sheets, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines and a portion of the adjusted original meander lines of the Missouri River, and the survey of the subdivision of sections 2, 10, 13, 15, 22, 24, and 25, Township 24 North, Range 13 East, Principal Meridian, Montana, was accepted April 22, 1985. The area described is in Chouteau County.

Principal Meridian, Montana

T. 24 N., R. 14 E.

This plat representing the dependent resurvey of a portion of the west boundary of Township 24 North, Range 15 East, a portion of the south and east boundaries, and a portion of the subdivisional lines, and the survey of the subdivision of sections 18, 19, 25, 29, 30, 32, 33, 34, and 35, Township 24 North, Range 14 East, Principal Meridian Montana, was accepted April 22, 1985. The area described is in Chouteau County.

Principal Meridian, Montana

T. 25 N., R. 10 E.

This plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines, the survey of the subdivision of Section 18, and the dependent resurvey of a metes and bounds description of a warranty deed (Parcel A), in lots 3, 6, and 9, of section 18, Township 25 North, Range 10 East, Principal Meridian Montana, was accepted April 22, 1985. The area described is in Chouteau County.

Principal Meridian, Montana

T. 25 N., R. 12 E.

This plat representing the dependent resurvey of a portion of the Third Auxiliary Guide Meridian East, and a portion of the subdivisional lines, and the survey of the subdivision of sections 1, 2, 9, 10, 11, and 14, Township 25 North, Range 12 East, Principal Meridian, Montana, was accepted April 22, 1985. The area described is in Chouteau County.

Principal Meridian, Montana

T. 25 N., R. 13 E.

This plat representing the dependent resurvey of a portion of the 6th Standard Parallel North, a portion of the subdivisional lines, and a portion of the adjusted original meander lines of the Missouri River, and the survey of the subdivision of sections 4, 5, 28, 33, and 34, Township 25 North, Range 13 East, Principal Meridian, Montana, was

accepted April 22, 1985. The area described is in Chouteau County.

Principal Meridian, Montana

T. 26 N., R. 12 E.

This plat, in three sheets, representing the dependent resurvey of a portion of the 3rd Auxiliary Guide Meridian East, the south, west, and north boundaries, the subdivisional lines, and the adjusted original meander lines of the Missouri River, the survey of the present meanders of an island in section 3, a portion of the present meanders, the division of accretion line, and an informative traverse of the present shore line of Buck Island in sectaion 5; and the subdivision of sections 1, 3, 4, 5, 6, 11, 12, 13, 25, and 35, Township 26 North, Range 12 East, Principal Meridian, Montana, was accepted April 22, 1985. The area described is in Chouteau County.

Principal Meridian, Montana

T. 26 N., R. 13 E.

This plat, in two sheets, representing the dependent resurvey of a portion of the south and north boundaries, a portion of the subdivisional lines, and a portion of the adjusted original meander lines of the Missouri River, and the survey of the subdivision of sections 5, 8, 17, 18, 29, 30, 31, and 32, Township 26 North, Range 13 East, Principal Meridian, Montana, was accepted April 22, 1985. The area described is in Chouteau County.

Principal Meridian, Montana

T. 30 N., R. 37 E.

This supplemental plat showing the return of the Vandalia Townsite to an aliquot part of section 15, Township 30 North, Range 37 East, Principal Meridian, Montana, was accepted June 4, 1985. The area described is in Valley County.

These surveys were executed at the request of the Lewistown District Office for the administrative needs of the Bureau.

EFFECTIVE DATE: June 18, 1985.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: June 20, 1985.

Peggy J. Davidson,

Chief, Branch of Records.

[FR Doc. 85-16470 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-DN-M

Colorado; Grand Junction District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of Grand Junction District Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Grand Junction District Grazing Advisory Board will be held on Wednesday and Thursday, August 14 and 15, 1985. On August 14 the meeting will convene at 8:30 a.m. at the Bureau of Land Management Office, 50629 Highway 6 and 24, Glenwood Springs, Colorado. Attendees will then tour several prescribed burn sites. On August 15 the meeting will begin at 9:00 a.m. in the conference room of the office mentioned above.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include (1) election of officers, (2) minutes of the previous meeting, (3) status of the Grand Junction Resource Area Resource Management Plan, (4) update on allotment management plans in the Glenwood Springs Resource Area, (5) discussion of the Omnibus Rangelands Legislation, (6) current status of project work, (7) fiscal year 86 range improvement program, (8) proposed new advisory board projects, (9) public presentations, and (10) arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 and 3:30 p.m., on August 15 or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506, by August 12, 1985. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Persons wishing to make the tour on August 14 should furnish their own 4 wheel drive transportation, food, and drink.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address or by calling (303) 243-6552.

Dated: July 2, 1985.

Dick Freel,

Associate District Manager, Grand Junction District.

[FR Doc. 85-16467 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-JB-M

Moab District Advisory Council; Meeting and Field Trip

July 5, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Council will conduct an office meeting on August 14, followed by a field trip on August 15.

SUPPLEMENTARY INFORMATION: The August 14 meeting will begin at 9:00 a.m. at the Moab District Office, 82 East Dogwood, Moab, Utah, according to the following schedule:

August 14, 1985

9:00 a.m. to 12:00 noon—Status Reports: BLM/FS Interchange program; Wilderness Draft EIS; Interim Management Protection actions
12:00 noon to 1:00 p.m.—Lunch
1:00 p.m. to 3:30 p.m.—Status Reports: Grazing fee study; Planning efforts; Hovenweep proposal; Oil and gas update; Law enforcement; Davis Canyon Park expansion; Trough Springs Road; Energy Fuels Exchange; Land sales
3:30 p.m. to 3:45 p.m.—Public comment
3:45 p.m. to 5:00 p.m.—Old or new business; Council Resolutions as appropriate
5:00 p.m.—Adjourn
6:00 p.m.—No-host dinner at Sundowner Restaurant, Moab

The August 15 Field Trip will convene at the Moab District Office, 82 E. Dogwood, Moab at 8:00 a.m., and leave for a field trip to discuss the following: Colorado River Scenicway, Oil and Gas development, Seismic (geophysical) activity, Wilderness Study Areas, Wildlife, Wild and Scenic Rivers, new business.

All Advisory Council meetings are open to interested members of the public. Persons interested in participating in the field trip will be required to furnish their own transportation and lunch.

For a Detailed Agenda and/or Further Information Contact: Mary Plumb, Public Affairs Officer, Bureau of Land Management, 82 East Dogwood (P.O. Box 970), Moab, Utah 84532. Telephone: 801-259-6111.

Kenneth V. Rhea,

Acting Moab District Manager.

[FR Doc. 85-16514 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-84-M

Realty Action; Sale of Public Lands in Lassen County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public land located in Lassen County, California, has been examined, and through the development of land use planning decisions based on public input, resource considerations, regulations, and Bureau policies, it has been determined that the proposed sale of these parcels is consistent with section 203 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976. (43 U.S.C. 1713). The sale land is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal Department or agency. Each parcel will be separately offered for sale at the Bureau of Land Management's Susanville District Office, 705 Hall St., Susanville, California 96130, on September 23, 1985 at no less than the appraised fair market value, through modified competitive bidding. Sale will be by sealed bid only. The Bureau of Land Management solicits and will accept bids on these lands; and may accept or reject any and all bids, or withdraw any land from sale at any time, if in the opinion of the authorized officer, completion of the sale would not be in the best interest of the United States. The authorized officer may withdraw these lands from sale if he determines that they will be needed for an exchange.

The lands will not be offered for sale until 60 days after the date of this notice.

Unsold parcels will be reoffered competitively on February 23, 1986 at the Susanville District Office, by sealed bid.

The lands offered for sale are as follows:

MOUNT DIABLO MERIDIAN, CALIFORNIA

Parcel No.	Case No.	Legal description	Acres	Appraised fair market value
(1)	CA 15806	T.31 N., R. 15 E., Sec. 2, Lots 2 & 3, SW¼NE¼, SE¼NW¼, E½SW¼, SW¼SW¼, SE¼	438.56	$148,480
(2)	CA 15807	T.31 N., R.15 E., Sec. 11, N½, N½SW¼, N½SE¼	480.0	161,600
(3)	CA 15808	T.31 N., R.15E., Sec. 1, SW¼; Sec. 12, NW¼NE¼, NW¼, NW¼SW¼	400.0	140,000
(4)	CA 15856	T.31 N., R.15 E., Sec. 21, NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, SE¼	480.0	168,000
(5)	CA 17107	T.31 N., R.15 E., Sec. 22, N½N½	160.0	54,160
(6)	CA 17108	T.31 N., R.15 E., Sec. 14. NE¼SW¼, S½SW¼; Sec. 23, NW¼	280.0	98,000
(7)	CA 17109	T.31 N., R.15 E., Sec. 29, S½	320.0	112,000
(8)	CA 17110	T.31 N., R.15 E., Sec. 28, SE¼SE¼; Sec. 35, NE¼, SE¼SW¼, NE¼SE¼, S½SE¼	360.0	126,000
(9)	CA 17111	T.30 N., R.15 E., Sec. 4, Lots 1,2,3,4, and 5	117.84	41,175
Total			3,004.30	

Publication of this notice in the Federal Register segregates the public lands from the operation of the public lands laws including the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of publication, whichever occurs first.

Detailed information concerning the sale, including the environmental analysis, mineral report and land report are available for review at the Susanville District Office at the above address.

Bidding Procedures

All parcels will be sold by modified competitive bidding procedures described in this notice. The minimum acceptable bid for any parcel is the appraised fair market value, as shown on the above table. The modified competitive bidding procedures include designation of bidders with preference rights for each parcel. The designated bidders will be (1) any person owning land that is adjacent to (i.e., shares a common boundary with) the parcel, and (2) any individual who had a Desert Lant Entry Application on the lands described herein, and said application was denied by the BLM through an Initial classification Decision dated July 5, 1983. The general public is also invited to bid on these parcels. After bidding has closed on September 23, 1985, the designated bidders described above shall be given the right to meet the highest bid. If no bids are received for a parcel, the designated bidders shall have the right to meet the appraised fair market value. Refusal or failure of a designated bidder to meet the highest bid (or approaised value if no bids are received) within 30 days of the declaration of an apparent high bidder, or of notificaton of a designated bidder, shall constitute a waiver of the designated bidder's preference right. Unsold parcels will be re-offered by competitive sale on February 24, 1986 with no preference rights provided for the designated bidders described above.

Upon disqualification of an apparent high bidder, the next high bid will be declared if it meets or exceeds the minimum high bid. Bids will only be considered if they are made for at least the fair market value of the land, and bids must include all of the land in the parcel.

All bidders must be United States citizens; corporations must be authorized to own real property in the State of California. A State, State instrumentality or political subdivision must be authorized to hold property.

The parcels described in this notice will be offered for sale by sealed bids only. The sealed bids will be opened at 10:00 a.m. on September 24, 1985 at the Bureau of Land Management, Susanville District Office, 705 Hall Street., Susanville, California 96130. Sealed bids will be considered only if received at the above address prior to 4:30 p.m. on September 23, 1985, the closing date of the sale. Each sealed bid must include a certified check, postal money order, bank draft, or cashier's check made payable to the "Department of Interior—BLM", for not less than one-tenth (10%) of the total bid. The sealed bid envelopes must be marked on the front lower left corner, "Sealed Bid, 1985 Land Sale, Parcel Number ——". The sealed bids will be opened and publicly declared on September 24, 1985. If two or more qualified sealed bids for the same amount are received, then the apparent successful bidder will be determined by a drawing.

Designated perference right bidders who wish to meet the high bid on a parcel must submit ten percent (10%) of that high bid within thirty (30) days of the declaration of an apparent high bidder. Failure by a designated bidder to submit ten percent (10%) of the high bid shall constitute a waiver of that designated bidder's preference right. If two or more designated bidders want to meet the high bid on the same parcel, they will be given 15 days to come to a mutual agreement on disposal of the parcel. That agreement must be

submitted in writing to the District Manager, Susanville, for his approval. If no acceptable agreement can be reached within the allowed 15 days time period, the designated preference right bidders shall be allowed to continue bidding to determine the high bidder.

If no adjoining landowners, or former Desert Land Entry applicants exercise their preference right to meet the high bid on a parcel, then the successful high bidder shall be given notice of this fact, and shall be required to submit the remaninder of the full purchase price within 180 days of the date of receipt of notification. Failure to submit the balance of the full bid within the 180 day time limit shall result in cancellation of the sale, and the bidder's deposit will be forfeited. The next high bid will then be declared, if it meets or exceeds the minimum bid.

The mineral estate will also be sold to the successful bidder, under Section 209 of FLPMA (43 U.S.C. 1719). A bid will also constitute an application for conveyance of all the mineral interests on the parcel. These mineral interests have no known mineral value. The declared high bidder will be require to deposit immediately a $50.00 non-refundable filing fee, in accordance with 43 CFR 2720.1–2(c), and the mineral estate will be sold simultaneously with the surface estate. Failure to deposit the $50.00 filing fee, when required, will result in disqualification as the high bidder.

Sale Terms and Conditions Are As Follows

A. *Reservations to the United States*—There will be excepted from these land patents and reserved to the United States the following:

All Parcels—A right-of-way for ditches and canals will be reserved to the United States under the Act of August 30, 1890 (43 U.S.C. 945).

Parcel #1 (CA 15806): Patent for this parcel will contain the following covenant to restrict development in the floodplain: "Pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977, and Section 208 of the Act of October 21, 1976 (43 U.S.C. 1718), this patent is subject to a restriction which constitutes a covenant running with the land, that the portion of the land lying within the 100-year floodplain may be used only for agricultural purposes or for park and nonintensive open space recreation purposes, but not for dwellings or buildings."

Parcel #4 (CA 15809): Patent for this parcel will contain the same floodplain covenant described above, for Parcel #1.

Parcel #5 (CA 17107): Patent for this parcel will contain the same floodplain covenant described above, for Parcel # 1.

Patent for this parcel will also contain the following reservation of a right-of-way for public access and use: "a road right-of-way over and across a 30 foot strip of land measured parallel and adjacent to the south boundary of the N½N½ of Section 22, T. 31 N., R. 15 E., M.D.M., for public access and use of the people of the United States generally, under Section 208 of the Act of October 21, 1976 (43 U.S.C. 1718.)"

Parcel #6 (CA 17106): Patent for this parcel will contain a reservation for road right-of-way over and across a 30 foot strip of land measured parallel and adjacent to the west boundary of the NW¼ of Section 23, T. 31 N., R. 15 E., M.D.M., for public access and use of the people of the United States generally, under Section 208 of the Act of October 21, 1976 (43 U.S.C. 1718).

Parcel #9 (CA 17111): Patent for this parcel will contain a reservation for right-of-way for fence, reserved in perpetuity by the United States Bureau of Land Management, number S–1519, under the authority of 44 L.D. 513.

B. *Rights of Third Parties*—The land patents for these parcels will be subject to all valid existing rights, including the following:

Parcel #1 (CA 15806): A right-of-way for highway purposes granted to the State of California, number S–5035, under the Act of August 27, 1958.

A right-of-way for telephone line purposes granted to Citizens Utilities Co. of California, number S–035335, under the Act of March 4, 1911.

Parcel #2 (CA 15807): A right-of-way for highway purposes granted to the State of California, number S–5035, under the Act of August 27, 1958.

A right-of-way for highway purposes granted to the State of California, number S–4473, under the Act of August 27, 1958.

A right-of-way for telephone line purposes granted to Citizens Utilities Co. of California, number S–035335, under the Act of March 4, 1911.

Parcel #3 (CA 15807): A right-of-way for highway purposes granted to Doyce P. Goodman, number CA 12429, under the Act of October 21, 1976.

Parcel #5 (CA 17107): A right-of-way for highway purposes granted to the State of California, number S–4473, under the Act of August 27, 1958.

A right-of-way for telephone line purposes granted to Citizens Utilities Co. of California, number S–035335, under the Act of March 4, 1911.

A right-of-way for diversion dike and access road purposes granted to James P. Luman, number CA–12388, under the Act of October 21, 1976.

Parcel #8 (CA 17108): A right-of-way for diversion dike and access road purposes granted to James P. Luman, number CA–12388, under the Act of October 21, 1976.

Parcel #9 (CA 17111): A right-of-way for railroad purposes granted to the Nevada-California-Oregon Railway, number S–3361, under the Act of March 3, 1875.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Susanville.

ADDRESS: Comments should be sent to: District Manager, Bureau of Land Management, 705 Hall street, P.O. Box 1090, Susanville, California 96130. Objections will be reviewed by the California State Director of the Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become a final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Peter Humm, Susanville District Office, at (916) 257–5381, or Jacqueline Gratton, Eagle Lake Resource Area Office at (916) 257–5381.

Dated: July 5, 1985.

C. Rex. Cleary,

Susanville District Manager.

[FR Doc. 85–16513 Filed 7–10–85; 8:45 am]

BILLING CODE 4310–40–M

[CA 7562 WR, CA 7565 WR]

California; Proposed Continuation of Withdrawals

July 3, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation, Mid-pacific Region, Proposes that two land withdrawals aggregating approximately 37 acres for the Folsom Dam Unit of the Central Valley Project continue for an additional 50 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments should be received by October 8, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office,

2800 Cottage Way (Room E–2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia I. Santillan, California State Office, (916) 484–4431.

The Bureau of Reclamation proposes that two existing land withdrawals be continued for a period of 50 years, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The withdrawals are described as follows:

Mount Diablo Meridian

CA 7562 WR

Secretarial Order dated November 10, 1932

T. 10 N., R. 8 E.,
Sec. 20 W½SW¼NW¼.

The area described contains approximately 20.00 acres in El Dorado County.

CA 7560 WR

Bureau of land Management Order of March 5, 1952

T. 10 N., R. 7 E.,
Sec. 25, Lot 3;
Sec. 35, Lot 1.

The areas described aggregate approximately 16.5 acres in Sacramento County.

The purpose of the withdrawals is to protect lands around the Folsom Dam Unit of the Central Valley Project. The withdrawals segregate the lands from operation of the public land laws generally, including the mining laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register.

The existing withdrawals will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of lands and Minerals Operations.

[FR Doc. 85–16522 Filed 7–10–85; 8:45 am]

BILLING CODE 4310–84–M

New Mexico; Filing of Plat of Survey

June 27, 1985.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on June 27, 1985.

The dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 10 and 15, and the survey of lots 7 and 8 in section 15, and a portion of the meanders of the San Juan River, in Township 30 North, Range 8 West, New Mexico Principal Meridian, New Mexico.

This survey was requested by District Manager, Albuquerque District, Bureau of Land Management.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 85–16518 Filed 7–10–85; 8:45 am]

BILLING CODE 4310–FB–M

[N–41005]

Non-Competitive Sale of Public Lands in Clark County, NE

Public Law 96–586, enacted December 23, 1980, authorizes and directs the sale of certain public lands in and around Las Vegas, Nevada. The following described lands have been determined to be suitable for sale utilizing non-competitive procedures, at not less than fair market value. The lands will not be offered for sale until 60 days after the date of this notice.

Mount Diablo Meridian

T. 22 S., R. 60 E.,
Section 1, SE¼NW¼SW¼SW¼, SW¼ NE¼SW¼SW¼, E½SW¼SW¼SW¼, W½SE¼SW¼SW¼.

Aggregating 15 acres, more or less.

This parcel of land, situated in the Las Vegas Valley, has potential for urban-suburban, commercial, and industrial development. Transfer of this land from federal ownership will facilitate local land use planning and enhance its compatibility with adjoining private land uses. The parcel herein described will be offered, initially, on a non-competitive, direct sale basis to the Las Vegas Valley Water District. The Water District has requested sale of the land to accommodate a 15 million dollar water reservoir system to service the southern Las Vegas Valley. When considering an investment of this magnitude, sale of the parcel would be more desirous than a right-of-way and would provide better control of the land. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interest will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The Las Vegas Valley Water District will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interest.

If the Water District chooses not to proceed with a non-competitive sale, the land may be sold utilizing competitive bidding procedures. Specific sale information and procedures will be made available to the public prior to the sale.

The patent, when issued, will contain the following reservations to the United States:

1. A right of way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391,43 U.S.C. 945.

2. All oil and gas, sodium and potassium leasable mineral deposits, shall be reserved, together with the right to prospect for, mine and remove the minerals. A more detailed description of the reservation, which will be incorporated in the patent document, is available for review at the Las Vegas District Office, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126.

and will be subject to:

1. An easement for streets, roads and public utilities being 50 feet wide along the south side in favor of Clark County.

2. Any development in the defined area of a 100 year flood plain will be subject to review and regulations by the Clark County Department of Public Works, Flood Control Division for flood control and storm water management.

Upon publication of this notice in the Federal Register, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In

the absence of any objections, this realty action will become the final determination of the Department of Interior. BLM may accept or reject any or all offers, or withdraw any plan or any interest in land from the sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Pub. L. 96–586, Pub. L. 94–579 or other applicable laws.

Dated: July 3, 1985.

William T. Combs,

Acting District Manager, Las Vegas, NV.

[FR Doc. 85–16547 Filed 7–10–85; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

Applicants: County of San Mateo, CA and City of South San Francisco, CA.

The applicants request an amendment to Permit number PRT 2–9818 ("the permit") which authorizes the incidental take of mission blue butterflies (*Plebejus icaridoides missionensis*), San Bruno elfin butterflies (*Callooplhyrs mossii bayensis*) and San Francisco garter snakes (*Thamnophis sirtalis tetrataeni*) on San Bruno Mountain, California, pursuant to a multi-party agreement ("the Agreement") which implements the San Bruno Mountain Area Habitat Conservation Plan ("the HCP"). The permit was issued on March 4, 1983, under the authority of section 10(a)(1)(B) and 10(a)(2) of the Endangered Species Act of 1973 ("the Act"), as amended.

In 1982, Congress amended the Act by enacting the "incidental take" permit exemption stating that the applicant for such a permit must submit a conservation plan that meets certain specific criteria set forth in the Act. Pursuant to that provision, the San Bruno HCP was developed to minimize and mitigate the impact development on San Bruno Mountain would have on the endangered species and 33 other species of concern by permanently preserving the species, habitat through transfer of private lands to the public; providing funding through the limited development which would be allowed; improving existing habitat and reclaiming former habitat; and continually monitoring and researching various aspects of the Mountain's ecology. The HCP was based in part on information generated from a biological study done by Thomas Reid Associates on the mission blue butterfly and the callippe silverspot butterfly (*Speyeria callippe Callippee*).

A basic element of the Permit is the agreement which legally binds all parties to carry out the elements of the HCP. In addition, the Agreement creates a funding mechanism that is able to support the monitoring, research, enhancement and other conservation techniques provided for the HCP for permanent habitat conservation. The Agreement establishes a permanent institutional structure to insure uniform protection and conservation of the habitat throughout the Mountain despite the division of the habitat by the overlapping jurisdictions and the complex pattern of the private and public ownership.

The permittees of Permit PRT 2–9818 are the County of San Mateo, and the cities of Brisbane, Dale City and South San Francisco.

Section IX of the Agreement sets forth the ways in which the Agreement may be amended. In this case, the applicants have requested an amendment pursuant to the provisions of Section IX.B of the Agreement, which allows for amendments;

(a) Upon the prior written agreement of the fee title owners of the land directly affected; (b) after a noticed public hearing held by the local agency having regulatory land use authority (notice to be given pursuant to California Government Code Section 65854 and 65854.5, or any successor statutes), and (c) upon written approval of the jurisdiction with local land use authority, the County of San Mateo (only with respect to impacts on Conserved Habitat) and the U.S. Fish and Wildlife Service, and (d) supported by a biological study demonstrating that the amendment does not conflict with the primary purpose of the HCP to provide for the indefinite, long-term perpetuation of the Mission Blue, Callippee Silverspot and other Species of Concern, and (e) will be considered an amendment to the Section 10(a) Permit, subject to any other procedural requirements of federal law or regulation which may be applicable to amendment of such a permit.

Section IX.B further provides that amendments in planned administrative parcels, which are parcels whose development plans are incorporated into the HCP, may be approved only at three calendar year intervals. Pursuant to this provision, amendments proposed by June 30, 1985, are to be considered and approved or disapproved by December 31, 1985. Approval of such amendments require the consent of only those entities cited in Section IX.B.

The applicants have requested the amendment in order to perform work to remedy landslide hazards and to protect against possible landslides and earth movement above the Terrabay project on the South Slope Development parcel on San Bruno Mountain (Parcel 2–04 in the HCP). This amendment (referred to as the "South Slope Geotechnical" amendment) would allow temporary disturbance to an additional 25 acres of conserved habitat of the mission blue butterfly within the South Slope (Parcel 2–04), County Park (Parcel 2–05), and Juncus Ravine (Parcel 2–08) Parcels. Mitigation for the amendment would include a developer-funded program to control exotic plant species in an area of good quality butterfly habitat located elswhere on San Bruno Mountain.

The County of San Mateo has submitted several documents in support of the application for the amendment, including (1) the January 1985 supplemental Environmental Impact Report/Environmental Assessment (EIR/EA) that analyzes the amendment and supplements the 1982 EIR/EA prepared with respect to the original permit, (2) the June 1985 Addendum to the January 1985 Supplemental EIR/EA that discusses the cumulative impacts of the South Slope Geotechnical amendment and two other proposed amendments concerning Rio Verde Heights and the County Park, and (3) a Biological study of all three amendments. Separate supplements to the original EIR/EA are being prepared for the Rio Verde Heights and County Park amendments.

Copies of the South Slope Geotechnical amendment application are on file at the following locations and are available for inspection by the public during normal business hours: Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201 (703/235–1903); U.S. Fish and Wildlife Service, Region 1, Office of Federal Assistance; Lloyd 500 Building, Suite 550, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231–6134); U.S. Fish and Wildlife Service, Sacramento Office of Endangered Species, 2800 Cottage Way, Room #1823, Sacramento, California 95825 (916/484–4935); and County of San Mateo, Office of the Board of Supervisors, 401 Marshall, San Mateo, California 94003 (415/363–4127). Copies of the January 1985 Supplemental EIR/EA, the Addendum to the Supplemental EIR/EA, and the Biological Study on the three amendments are also available for inspection at the above addresses. In addition, copies of the original HCP, EIR/EA, and Agreement are available.

Interested persons may comment on this application by submitting written data, views or arguments to the Chief, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, VA 22201 within 30 days of the date of this publication. Please refer to the Permit number when submitting comments.

Dated: July 8, 1985.

R. K. Robinson,

Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 85-16501 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-55-M

Tetlin National Wildlife Refuge Draft Comprehensive Conservation Plan, Environmental Impact Statement and Wilderness Review, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared for public review a draft Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Tetlin National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), section 3(d) of the Wilderness Act of 1964, and section 102(2)(C) of the National Environmental Policy Act of 1969. The draft CCP/EIS describes four alternative strategies for long-term management of the 700,000-acre refuge. The plan also reviews these lands as to their suitability under each management alternative for possible addition to the National Wilderness Preservation System.

DATES: Comments on the draft CCP/EIS must be submitted on or before November 5, 1985, to receive consideration by the Regional Director.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3399.

A draft CCP/EIS has been prepared for general distribution. Copies of the draft comprehensive plan will be sent to all persons and organizations on the mailing list and to villages who participated in either the scoping, alternative open houses or workshops, and/or public review process. Copies of the draft CCP/EIS have been sent to all agencies that participated in the public review process and to agencies and persons who have already requested copies. Those wishing to receive a copy of the draft may obtain one by contacting Mr. Knauer. Copies of the draft CCP/EIS are also available for review at the above location, at the Tetlin National Wildlife Refuge Office, Tok, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, 18th and C Streets, NW, Department of the Interior, Washington, D.C. 20240
U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232
U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103
U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111
U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303
U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158
U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Boulevard, Lakewood, CO 80225

SUPPLEMENTARY INFORMATION: The draft CCP/EIS for the Tetlin National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans and the requirements of section 1317(a) of ANILCA and section 3(d) of the Wilderness Act relating to general wilderness suitability review of non-wilderness refuge lands.

Major issues addressed by the plan include fish and wildlife populations and habitats, trapping, recreational use and development, access and transportation, and wilderness management. The draft CCP/EIS addresses four alternatives for long-range management of the refuge including one that would continue current management (the non-action alternative). The other three alternatives cover a broad spectrum of management emphasis ranging from maximum to minimum use of refuge resources. A preferred alternative, representing an intermediate or balanced approach to management of the refuge, is identified.

The plan also addresses the general wilderness suitability of 700,000 acres of non-wilderness refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his recommendations to the President by 1985.

The Notice of Intent to prepare the CCP/EIS and Wilderness Review was published in the October 5, 1982, Federal Register. Other government agencies and the general public contributed to the development of this draft CCP/EIS and wilderness review.

Dated: July 1, 1985.

Robert E. Gilmore,

Regional Director.

[FR Doc. 85-16252 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Documents; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6032, Block 519, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on July 1, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is

considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 2, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-16525 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Louisiana

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 072, Block 12, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cocodrie, Louisiana.

DATE: The subject DOCD was deemed submitted on July 1, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Emile H. Simoneaux; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 2, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-16526 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Texas

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that TXP Operating Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 3484 and 0238, Blocks A-557 and A-558, respectively, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from on onshore base located at Ingleside, Texas.

DATE: The subject DOCD was deemed submitted on June 28, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 2, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-16527 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Kerr-McGee Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document.

SUMMARY: This Notice announces that Kerr-McGee Corporation, Unit Operator of the Ship Shoal Block 32 Federal Unit Agreement No. 14-08-001-2891, submitted on June 28, 1985, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Ship Shoal Block 32 Federal unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd. Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Managment Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: July 5, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-16540 Filed 7-10-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Columbia Island Marina; Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and subject of a forthcoming public meeting to be held by the National Park Service. The meeting will discuss a proposed change to the intersection at the entrance of the Columbia Island Marina on the George Washington Memorial Parkway. The proposal calls for installation of curbs and plantings to close the cross over from the northbound lanes of the parkway and make the existing median strip continuous through this section of the parkway. New signs would direct visitors approaching Columbia Island Marina in the northbound lanes to use I–395 South to Boundary Channel Drive, up that drive to the parkway, and then down the southbound lanes to the existing marina entrance. Visitors leaving the marina to go North would follow a similar route. In 1984 there were 19 accidents in this section of the parkway, and the National Park Service has determined that this intersection should be improved.

DATES: Change proposed to be effective in the fall of 1985; public meeting will be held July 17, 1985; comments must be received on or before August 17, 1985.

ADDRESSES: The public meeting will be held at the Columbia Island Marina on the George Washington Memorial Parkway July 17, 1985 at 7:00 p.m. Send comments to Superintendent, George Washington Memorial Parkway, c/o Turkey Run Park. McLean, Virginia 22101.

FOR FURTHER INFORMATION CONTACT: John F. Byrne (Superintendent) 703–285–2600.

John F. Byrne,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 85–16548 Filed 7–10–85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

IBWC Interceptors: San Diego County, CA; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the United States Section Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083) *to be codified* in 22 CFR Part 1103; the United States Section hereby gives notice that an environmental impact statement will not be prepared for the construction, operation, and maintenance of the IBWC Interceptors adjacent to the international boundary in San Diego County, California.

FOR FURTHER INFORMATION CONTACT: George R. Baumli, Principal Engineer, Investigations and Planning Division; United States Section, International Boundary and Water Commission, United States and Mexico; The Commons, Building C, Suite 310; 4171 North Mesa; El Paso, Texas 79902. Telephone: (915) 541–7304, FTS 572–7304.

Proposed Action

The United States Section, International Boundary and Water Commission (U.S. Section) proposes to construct, operate, and maintain a system to intercept, divert, and dispose of fugitive raw sewage flows originating from Tijuana that enter the United States through Canyon del Sol and two easterly drains. The sewage interceptor system will be designed to intercept fugitive raw sewage flows from Canyon del Sol, Silva Drain, and Stewart's Drain and convey them to Mexico's pumping plant or to the San Diego Metro System (Location map attached).

Alternatives Considered

Three alternatives were considered:

Preferred Alternative: The proposed action, as described hereinbefore, is the U.S. Section's preferred alternative. Needed right-of-way is owned by the U.S. Government.

No Action: The no action alternative will result in continued fugitive flows of raw sewage down Canyon del Sol and two drains to the lower Tijuana River Valley.

Gravity Return of Sewage Flows This alternative requires that right-of-way on privately owned land be acquired to take advantage of the natural contours of the area. An agreement could not be reached with the land owner for the needed right-of-way.

Environmental Assessment

The U.S. Section completed a draft environmental assessment and distributed it for review on June 28, 1985.

Findings of the Environmental Assessment

The tentative finding of the draft environmental assessment is that the proposed action does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment.

The following facts are the basis for this finding:

1. The proposed action would capture and dispose of fugitive sewage flows from Tijuana that enter the United States through Canyon del Sol and two small drains and return them to the Tijuana sewage disposal system or to the San Diego Metro Sewage System thus preventing pollution of the lower Tijuana River valley from that source of pollution.

2. Construction activities would have a minimal impact on the plants and animals in the area which has been highly disturbed due to both natural and human occurrences.

3. The proposed action and alternatives would not affect any endangered species in the area or habitat critical to the continued existence of these species.

4. No properties listed or eligible for listing on the National Register of Historic Places or any known archeological sites would be affected by the proposed action and alternatives.

5. The proposed action and gravity flow alternative would have no adverse effect on listed properties on the National Registry of Natural Landmarks in San Diego County. Continued pollution of the Tijuana River Estuary would continue from Canyon del Sol and two small drains under the no action alternative.

On the basis of the draft environmental assessment, a finding of no significant impact is proposed. An environmental impact statement will not be prepared unless additional information which may afect this decision is brought to our attention within thirty (30) days of the date of this Notice.

The draft Finding of No Significant Impact (FONSI) and draft Environmental Assessment (EA) have been sent to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the draft FONSI and draft EA are available to fill single copy requests at the above address.

Dated: June 28, 1985.
Darcy Alan Frownfelter,
Legal Advisor.
[FR Doc. 85-16536 Filed 7-10-85; 8:45 am]
BILLING CODE 4710-06-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-213, The Competitive Position of U.S. and European Community pork in the U.S. and Third Country Markets, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

Summary of proposal:

(1) Number of forms submitted: one.

(2) Title of form: The competitive Position of U.S. and European Community Pork in the U.S. and Third Country Markets—Questionnaire for U.S. Purchasers.

(3) Type of requests: new.

(4) Frequency of use: nonrecurring.

(5) Description of respondents: Firms in the United States that purchase U.S. and imported pork.

(6) Estimated number of respondents: 50.

(7) Estimated total number of hours to complete the forms: 800.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the proposed form and supporting documents may be obtained from David E. Ludwick (202) 724-1763. Comments about the proposals should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Francine Picoult, Desk Office for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Ms. Picoult's telephone number is (202) 395-7231. Copies of any comments should be provided to Charles Ervin (U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436).

By order of the Commission.
Issued: July 3, 1985.
Kenneth R. Mason,
Secretary.
[FR Doc. 85-16451 Filed 7-10-85; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 701-TA-223 (Final)]

Agricultural Tillage Tools From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-223 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of agricultural tillage tools, provided for in item 666.00 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Brazil. Commerce will make its final subsidy determination in this investigation on or before August 19, 1985, and the Commission will make its final injury determination by October 7, 1985 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen Vastagh (202-523-0283), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 724-0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Brazil of agricultural tillage tools. The investigation was requested in a petition filed on September 28, 1984, by Ingersoll Products Corp. of Chicago, IL, Empire Plow Co. of Cleveland, OH, and Nichols Tillage Tools of Sterling, CO. In response to that petition, the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports of the subject merchandise (FR 49 37858, November 12, 1984).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commision's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on August 26,

1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on September 10, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on August 26, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on August 30, 1985 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is September 5, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on September 17, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before September 17, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirement of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20, as amended by 49 FR 32569, Aug. 15, 1984).

By order of the Commission.

Issued: July 5, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-16454 Filed 7-10-85; 8:45 am]

BILLING CODE 7020-02-M

[332-216]

Competitive Assessment of the U.S. Forging Industry

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation and the scheduling of a hearing.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Rapkins (202-523-0438), Minerals and Metals Division, U.S. International Trade Commission, Washington, D.C. 20436.

Background and scope of investigation: The Commission instituted investigation No. 332-216, following receipt on May 21, 1985, of a letter from the United States Trade Representative (USTR), requesting, at the direction of the President that the Commission conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) concerning the competitive position of the U.S. forging industry in domestic and world markets.

In accordance with the request, the Commission will examine the competitive position of the U.S. forging industry in domestic and world markets. As requested by USTR, the study will include an overview of the U.S. forging industry, together with a detailed analysis of selected key products which are important to the U.S. forging industry and representative of major segments of the entire forging industry in terms of manufacturing process, import competition, marketing, and financial condition.

In conducting its investigation, the Commission, at the request of USTR, will cover the following points: (1) Current profile of the U.S. and foreign forging industries; (2) conditions of competition between U.S. and foreign forgers; (3) factors affecting the future competitive posture of domestic and foreign forging operations; and (4) the implications of the U.S. competitive position on the forging industry itself, related industries, and the U.S. economy as a whole.

Public hearing and prehearing briefs: A public hearing in connection with this investigation will be held in the Commission Hearing Room, 701 E Street, NW, Washington, DC 20436, beginning at 10:00 a.m. on January 20, 1986. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, U.S. International Trade Commission, 701 E Street, NW, Washington, D.C. 20436, not later than noon, January 13, 1986.

Written submissions: In lieu of or in addition to appearance at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest possible date, but no later than January 13, 1986. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

Issued: July 1, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-16449 Filed 7-10-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-265 (Final)]

Carbon Steel Wire Rod From the German Democratic Republic

AGENCY: United States International Trade Commission.

ACTION: Rescheduling of the hearing to be held in connection with the subject investigation.

SUMMARY: The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation from 10:00 a.m. on July 11, 1985, to 10:00 a.m. on August 8, 1985.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August. 15, 1984.)

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Ann Reed (202-523-0255), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1985, the Commission instituted the subject investigation and scheduled a hearing to be held in connection therewith for June 5, 1985 (50 FR 13290, April 3, 1985). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from May 20, 1985, to July 1, 1985. The Commission, therefore, revised its schedule in the investigation to conform with Commerce's new schedule, and rescheduled its hearing for July 11, 1985.

On June 11, 1985, the Department of Commerce again extended the date for its final determination—to July 25, 1985. The Commission, therefore, is again revising its schedule in the investigation to conform with Commerce's new schedule. The Commission's hearing to be held in connection with the subject investigation has been rescheduled to begin at 10:00 a.m. on August 8, 1985. As provided in section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)), the Commission must make its final determination in antidumping investigations within 45 days of Commerce's final determination, or in this case by September 9, 1985.

Staff Report.

A public version of the prehearing staff report in this investigation was placed in the public record on June 28, 1985, pursuant to section 207.21 of the Commission's rules (19 CFR 207.21)

Hearing.

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on August 8, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on July 31, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on August 1, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is August 1, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, August. 15, 1984)).

Written submissions.

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on August 14, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 14, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20, as amended by 49 FR 32569, August 15, 1984).

Issued: July 3, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-16453 Filed 7-10-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-215]

Certain Double-Sided Floppy Disk Drives and Components Thereof; Decision To Review Initial Determination Schedule for Filing of Written Submissions on Violation and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review the administrative law judge's initial determination awarding temporary relief under section 337 of the Tariff Act of 1930 in the above-captioned investigation.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53, 210.54, and 210.56 of the Commission's Rules of Practice and Procedure (49 FR 46123 (Nov. 23, 1984); to be codified at 19 CFR 210.53, 210.54, and 210.56).

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0480.

SUMMARY: On May 30, 1985, the administrative law judge issued an

initial determination (ID) granting complainant's motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 (e) and (f)). Respondents and the Commission investigative attorney filed petitions for review of the ID Pursuant To §210.54(a) of the Commission's rules.

Having examined the record, including the petitions for review and the response thereto, the Commission has concluded that the ID warrants review. Specifically the Commission will review the ID *except* for the issues of: (1) invalidity of U.S. Letters Patent No. 4,151,573 by reason of anticipation under 35 U.S.C. 102(g), obviousness under 35 U.S.C. 103, or misjoinder of inventors; (2) efficient and economic operation, and (3) importation and sale.

The Commission's review will focus particularly on the following issues:

(1) The definition of domestic industry in this investigation in light of, *inter alia*, the decisions in *Certain Personal Computers*, Inv. No. 337–TA–140, 224 U.S.P.Q. 270 (1984) and *Schaper Manufacturing Co. v. U.S. International Trade Commission*, 717 F.2d 1368 (Fed. Cir. 1983).

(2) The reason to believe standard of patent infringement in the temporary relief phase of an investigation.

(3) The appropriateness of temporary relief, including balancing of complainant's probability of success on the merits; immediate and substantial harm to the domestic industry in the absence of temporary relief; harm, if any, to the respondents if temporary relief is awarded; and, the effect, if any, that the issuance of temporary relief would have on the public interest.

SUPPLEMENTARY INFORMATION: If the Commission finds that there is reason to believe that a violation of section 337 has occurred, it may issue (1) an order which could result in the temporary exclusion of the subject articles from entry into the United States and/or (2) temporary cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of temporary relief, if any, which should be ordered.

The Commission must balance the following factors in order to determine if temporary relief should be awarded: (1) Complainant's probability of success on the merits; (2) immediate and substantial harm to the domestic industry in the absence of requested temporary relief; (3) harm, if any, to the respondents if the requested temporary relief is granted; and (4) the effect, if any, that the issuance of the requested temporary relief would have on the public interest. If the Commission concludes that temporary relief is appropriate, it must also consider the effect that a temporary exclusion order would have upon: (1) The public health and welfare; (2) competitive conditions in the U.S. economy; (3) the U.S. production of articles which are like or indirectly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

If the Commission finds that there is a reason to believe that a violation of section 337 has occurred and orders temporary relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written submissions and Commission hearing: The Commission does not intend to hold a public hearing. The parties to the investigation and interested Government agencies are encouraged to file written submissions on the issues under review, and the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed temporary remedial order for the Commission's consideration. Persons other than the parties and Government agencies may file written submission addressing the issues of remedy, the public interest, and bonding.

Written submissions on the issues under review and on remedy, the public interest, and bonding must be filed not later than the close of business on July 17, 1985. Reply submission on the issues under review and on remedy, the public interest, and bonding must be filed not later than July 24, 1985.

ADDITIONAL INFORMATION: Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the administrative law judge. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Notice of this investigation was published in the **Federal Register** of January 30, 1985 (50 FR 4276).

Copies of the nonconfidential version of the administrative law judge's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: July 2, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–16450 Filed 7–10–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–58 (Final)]

Hot-Rolled Carbon Steel Plate From Romania

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On June 21, 1985, and June 27, 1985, respectively, the Commission received letters from the United States Steel Corp. and counsel for Republic Steel Corp., Inland Steel Co., Jones & Laughlin Steel, Inc., National Steel Corp., and Cyclops Corp., the original petitioners in investigation No. 731–TA–58 (Final), which withdrew their petitions in this investigation. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), investigation No. 731–TA–58 (Final) is terminated and the public hearing scheduled for July 30, 1985, is cancelled.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Eninger (202–523–0312), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published

pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

Issued: July 3, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-16452 Filed 7-10-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 104-TAA-26]

Sugar Content of Certain Articles From Australia

AGENCY: United States International Trade Commission.

ACTION: The Commission hereby reschedules the time at which its public hearing in connection with the subject review investigation of an outstanding countervailing duty order is to begin, from 10:00 a.m. to 2:00 p.m. on July 18, 1985.

EFFECTIVE DATE: July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Ilene Hersher (202-523-4616), Office of Investigation, U.S. International Trade Commission, Washington, DC 20436.

SUPPLEMENTARY INFORMATION: The Commission instituted this review investigation of an outstanding countervailing duty order effective May 9, 1985, and scheduled a hearing to be held in connection therewith beginning at 10:00 a.m. on July 18, 1985 (50 FR 23066, May 30, 1985). However, because the hearing on July 17, 1985, in connection with investigation No. 22-48 will extend beyond the one day originally scheduled for that investigation, the Commission is rescheduling the time at which the hearing on investigation No. 104-TAA-26 will begin, from 10:00 a.m. to 2:00 p.m. on July 18, 1985, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW., Washington, DC.

Issued: July 8, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-16455 Filed 7-10-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-106X)]

The Baltimore and Ohio Railroad Co., Abandonment Exemption in Cabell County, WV

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon is .41-mile line of railroad from point of switch 612+98.7 to Valuation Station 591+40.2 near Guyandotte, Cabell County, WV.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective August 10, 1985, (unless stayed pending reconsideration). Petitions to stay must be filed by July 21, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must filed by July 31, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A Copy of any petition filed with the Commission should be sent to applicant's representative:

Lawrence H. Richmond, 100 North Charles St., Baltimore, MD 21201

Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44202

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 28, 1985.

By the Commission, Heber P. Hardy, Director, Officer of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-16462 Filed 7-10-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. MC-C-10963]

Armstrong World Industires, Inc., Transportation Within Texas; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of a petition for declaratory order.

SUMMARY: Armstrong World Industries, Inc., seeks a declaratory order proceeding to determine whether the transportation of carpet from a warehouse at Arlington, TX, to customers at other points in Texas is interstate or intrastate in nature. The carpet is stored temporarily at the warehouse after an initial movement from Dalton, GA.

Any interested party may file a comment in this proceeding.

DATES: Comments are due August 12, 1985.

ADDRESS: Sent an original and 10 copies of comments to: No. MC-C-10963, Room 2203, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to petitioner's representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210.

FOR FURTHER INFORMATION CONTACT:

Paul W. Schach, (202) 275-7885

Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Bldg., Washington, D.C. 20423, or call 289-4357 (D.C. metropoliatan arrea) or toll free (800) 424-5403.

Dated: July 5, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-16461 Filed 7-10-85; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; AD Hoc Panel On Oceanographic Facilities; Establishment

The Ad Hoc Panel on Oceanographic Facilities is being established in accord with the Federal Advisory Committee Act Pub. L. 92-463) and GSA's implementing regulation. Establishment of the Ad Hoc Panel is necessary, and is in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law.

Name of Committee: Ad Hoc Panel on Oceanographic Facilities.

Purpose: To provide advice on the disposition of proposals and recommendations affecting the composition and disposition of the academic research fleet.

Effective Date of Establishment and Duration: This establishment is effective upon filing the charter with the NSF standing committees of Congress. The Panel will operate for four months from the date of establishment.

Membership: The membership of this Panel shall be fairly balanced in terms of the points of view represented and the Panel's function. The panel will consist of about seven persons selected from the ocean sciences community. Due consideration will be given to achieving membership that reasonably represents public, private, and academic communities, women and minority scholars, the handicapped, and different geographical regions of the country.

Operation: The Panel will operate under with provisions of the Federal Advisory Committee Act, Foundation policy and procedures, GSA Interim Regulations on Federal Advisory Committee Management, and other directives and instructions issued in implementation of the Act.

M. Rebecca Winkler,
Committee Management Officer.
July 8, 1985.
[FR Doc. 85-16442 Filed 7-10-85; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Commonwealth Edison Co. (Zion Nuclear Power Station, Unit 1) and all Light-Water Reactors; Director's Decision Under 10 CFR 2.206

[Docket No. 50-295]

Introduction

On March 6, 1985, Zinovy V. Reytblatt (Petitioner) submitted a letter pursuant to 10 CFR 2.206 to the Director of the Office of Nuclear Reactor Regulation seeking an immediate postponement of all containment leak rate tests performed for light-water reactors pursuant to the Commission's regulations in this area, specifically, 10 CFR Part 50, Appendix J. The primary concern raised by the Petitioner was the alleged use of incorrect weighting coefficients in the air mass equation used for determining actual containment leak rates. Specifically, Petitioner alleges that incorrect weighting coefficients were utilized in determining the containment leak rate for the Zion Station, Unit 1.

On March 8, 1985, Petitioner submitted a second letter to the Director of the Office of Nuclear Reactor Regulation alleging that certain computer software developed by Volumetrics, Inc. and utilized at a number of nuclear facilities, including the Zion Unit 1, to determine containment leak rates, does not function correctly and consequently may lead to incorrect determinations of containment leak rates. Petitioner requested that actions be taken to ban the use of the software in question until it has been "debugged" and revalidated.

On April 22, 1985, I acknowledged receipt of both the March 6 and March 8, 1985 letters from the Petitioner and informed the Petitioner that both letters would be considered together as a Petition pursuant to 10 CFR 2.206 and that appropriate action would be taken on the issues raised in the Petition within a reasonable time. I also have considered a subsequent letter from the Petitioner dated April 30, 1985 in reaching my decision. My decision in this matter follows.

Discussion

The Petitioner has been involved in the technical issues associated with containment leak rate testing methodologies for a number of years. Petitioner's activities have been focused upon (1) criticizing the current methods used to assure adequate containment leak rates and (2) suggesting what Petitioner would consider to be improved methods to perform containment leak rate tests. The NRC Staff has also been active in reviewing the adequacy of the Commission's regulations regarding containment leak rate testing. Leak rate testing of light-water reactor containments is a substantial undertaking. While the Commission's present requirements for leak rate testing continue to provide reasonable assurance that the public health and safety is adequately protected, these requirements are now over 11 years old and a substantial base of experience exists to apply in seeking improvements to the regulations. In fact, one modification to 10 CFR Part 50, Appendix J, in the area of Type B tests was made.

See 45 FR 2330 (1980) and 45 FR 62789 (1980). The NRC Staff has underway the review of leak rate testing requirements with a view to see whether other modifications to these requirements are appropriate. Petitioner is well aware of these activities and has participated in them over the years, including participation in the activities of Working Group ANS-56.8 of the Standards Committee of the American Nuclear Society, the entity carrying out a detailed review and examination of methodologies appropriate for adequate containment leak rate testing. The Petitioner has also presented his concerns with respect to containment leak rate testing directly to the NRC Staff on many occasions in the past in both written and oral form. Indeed, I have issued twice before Director's Decisions pursuant to 10 CFR 2.206 dealing with Petitioner's concerns in this area.[1] Consequently, both the nuclear industry and the NRC Staff have long had the benefit of Petitioner's views with respect to containment leak rate testing.[2]

The current Petition raises essentially three issues. First, the Petition alleges that the equation used to calculate containment air mass at any given time is wrong. This issue has been raised by the Petitioner in the past and, in fact, was the subject of an earlier Director's Decision issued by this office.[3] As noted in my earlier Decision, the equation used in the standard of the American Nuclear Society (ANS) and the American National Standards Institute (ANSI) [4] for calculation of containment air mass is not "wrong" as alleged by the Petitioner. The manner in which the mean containment temperature is calculated for use in the equation, however, is important. In this regard, ANSI-ANS 56.8-1981 does not prescribe how to calculate the mean containment temperature. Either a mass-weighted mean temperature or a volume-weighted mean temperature would be acceptable if the leak rate testing is properly conducted to assure stable conditions and the test data are properly evalutated. In essence, the equation is correct, but inadequately defines the temperature term by allowing the assumption of a uniform density throughout the containment. The density may not, however, be uniform because the temperature may not be uniform. Hence it is important to assure that the test is conducted under stable conditions. Within the range of temperature variations experienced at

[1] Commonwealth Edison Company (LaSalle County Station, Units 1 and 2) and All Light-Water Reactors, DD-84-6, 19 NRC 891 (1984); Commonwealth Edison Company (Zion Nuclear Power Station, Unit 1), DD-85-2, 21 NRC 270 (January 23, 1985).

[2] It should be noted that the Commission has placed leak rate testing for water-cooled power reactors on its Regulatory Agenda. *See* 50 FR 16154 et seq. (April 29, 1985).

[3] *See* DD-84-6, *supra*, at 904.

[4] ANSI/ANS 56.8-1981, "Containment System Leakage Testing Requirements".

tests conducted at nuclear facilities, the difference in leak rates using the assumption of uniform density has no safety significance. Consequently, while this is an area where improvement may be made, such an improvement would be more correct technically but would produce no meaningful change in the conduct of containment leak rate tests.

The second issue raised by the Petitioner concerns the use of the so-called weighting coefficients in determining containment leak rates and the allegation that such weighting coefficients may be manipulated to reach an acceptable result. This issue is also the subject of my earlier Decision.[5] As noted in my earlier Decision, a properly conducted leak rate test would not contain the types of deficiencies alleged by the Petitioner such as the use of unjustified weighting coefficients. Such manipulation of data would be a violation of the Commission's regulations and would subject licensees to NRC enforcement action. In addition, to ensure compliance with the Commission's requirements regarding leak rate testing, NRC inspectors regularly observe the tests conducted by licensees and documents the results of their observations in Inspection Reports.

The third issue raised by the Petitioner concerns alleged inadequacies in certain software used to conduct containment leak rate testing. The Petitioner alleges that the Volumetrics computer program for processing leak rate test data does not perform addition and/or division correctly which consequently may lead to underestimating leak rates to the degree that such leak rates would appear to be within normal limits. The Petitioners suggests that such may be the case with respect to Zion Unit 1 leak rate testing, and suggests that other facilities may be employing the same defective software. Petitioner further alleges that the Volumetrics computer program has a "fraudulent" option which permits doubling of the weighting coefficients and that this "fraudulent" option has been used during the November 1983 Zion test and possibly also in the July 1984 Zion test.

The Volumetrics computer program (software) was used in conducting the November/December 1984 containment integrated leak rate test (CILRT) at the Detroit Edison Company's Fermi Unit 2 plant. NRC inspectors, as a matter of course, independently verify CILRT results. In the case of the Fermi Unit 2 test, the NRC inspectors found that the Volumetrics computer program produced acceptable results. There was no evidence of any manipulation of subvolume weighting coefficients to bias the data. Specific data sets from this test have also been checked for alleged inadequacies in the Volumetrics software, and it has been determined that the Volumetrics computer program correctly processes the data. Consequently, the staff has not found it necessary to review the Volumetric software itself. Also, contrary to statements made by the Petitioner, the Volumetrics software has never been used for the integrated leak rate testing of the Zion containments. Again, the staff has independently verified that the computer program used in the Zion tests produced correct results.

While the Petition raises three general concerns. Petitioner makes a number of allegations which are specific to the Zion Unit 1 facility. Particularly, the Petitioner contends that the July 1984 containment leak rate test for Zion Unit 1 was performed in violation of regulatory requirements. The Petitioner argues that the July 1984 containment leak rate test at Zion Unit 1 may have used the Volumetrics software permitting doubling of weighting coefficients and incorrect addition and/or subtraction. Further, the Petitioner argues that meaningless "verification" tests were performed during the Zion Unit 1 test on July 29, 1984. The Petitioner alleges that a verification test failed and that, following the failure, the reasons for the failure were not analyzed. Instead, an "unlawfully short test" with the same incorrect weight coefficients used earlier was performed and "successfully" verified. Petitioner questions this approach as no repair was done between tests and containment conditions for both tests were identical. The Petitioner further argues that, based on his analysis of certain data sets for the Zion Unit 1 test of July 1984, and upon his use of supposedly more realistic weight coefficients, he has concluded that the Zion Unit 1 containment leak rates are in excess of regulatory limits.

As stated above, the Volumetrics software was not used in the Zion tests. Nevertheless, the Petitioner presented a data set of nine temperature readings for a particular subvolume to show that the Volumetrics computer program does not correctly calculate the average containment temperature. The Petitioner, however, mistakenly included the readings of two channels of temperature sensors (numbers 4 and 14) that had been declared "out-of-service" through the course of the test. In fact, the computer program in use (not the Volumetrics program) was averaging, correctly, the readings of the seven "in-service" channels.

With regard to the Petitioner's allegations concerning the validity of the verification test for the July 1984 Zion CILRT test, the Petitioner alleges that no attempt was made to analyze the cause of the inability to initially meet the test acceptance criterion. In fact, after conducting the verification tests, the licensee did speculate on the cause and proceeded to take corrective action. It was thought that the verification test equipment may have been leaking during the CILRT (which would not have occurred during the subsequent verification test with the equipment in use) since the imposed leak rate was almost identical to the measured (composite) leak rate. The licensee made adjustments to the verification test equipment and proceeded to conduct a second CILRT. The test was discontinued after 10 hours since the results were substantially the same as those obtained during the first CILRT. A second verification test was then conducted using a larger imposed leak rate (1.1 L_a versus 0.82 L_a), which is permissible. This resulted in a composite leak rate greater than 0.1 weight percent per day. Since the accuracy of measuring leak rates much less than 0.1 weight percent per day is considered poor, conducting a verification test having a composite leak rate greater than 0.1 weight percent per day improves the accuracy of the test. The NRC's Inspection Report [6] reviewed the circumstances of the verification test related above. The report concludes that the test did confirm the acceptability of the CILRT.

Conclusion

Petitioner sought immediate suspension of all containment leak rate testing and immediate initiation of actions to ban the use of Volumetrics software until it is debugged and revalidated. For the reasons stated in this Decision, the Petitioner's request for relief is denied. As provided by 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary for the Commission's review.

[5] *Ibid*, at 894–895.

[6] Letter to C. Reed, Vice President, Commonwealth Edison Company, from J. Keppler, Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, dated September 7, 1984, transmitting Inspection Report No. 50–295/84–11; 50–304/84–11.

Dated at Bethesda, Maryland, this 3rd day of July 1985.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-16493 Filed 7-10-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Co. of New York, Inc. (Indian Point Nuclear Generating Unit No. 2) Rescission of Order

I

In September of 1979, the Union of Concerned Scientists (UCS) filed a petition with the Commission pursuant to 10 CFR 2.206 requesting, among other things, that Indian Point Units 2 and 3 be shut down. The Director of the Office of Nuclear Reactor Regulation denied that part of the petition relating to the requested shutdown of the two Indian Point units. *Consolidated Edison Company of New York, Inc.* (Indian Point, Units 1 and 2), *Power Authority of the State of New York* (Indian Point, Unit 3), DD-80-5, 11 NRC 351 (1980). However, the Director imposed by Order certain interim requirements upon the Indian Point Units while an NRC Task Force determined what design changes should be made to further reduce the probability and/or consequences of a severe reactor accident. *Id.* at 370.

The Commission decided, in its discretion, to commence a special investigatory proceeding concerning the Indian Point plants in which one of the issues to be addressed was the risk reduction afforded by the requirements imposed by the Director in 1980. *Consolidated Edison Company of New York, Inc.* (Indian Point, Unit No. 2), *Power Authority of the State of New York* (Indian Point, Unit No. 3) CLI-81-1, 13 NRC 1 (1981). After hearing testimony on this issue the Licensing Board designated to preside over the proceeding concluded that the Director's Order resulted in some small positive benefits which was not amenable to quantification. *Consolidated Edison Company of New York, Inc.* (Indian Point, Unit No. 2), *Power Authority of the State of New York* (Indian Point, Unit No. 3), LBP-83-68, 18 NRC 811, 816 (1983).

The Commission, after reviewing the Licensing Board's recommendations, concluded that because the risk reduction effect of these measures is not sufficient to be termed substantial, the Director's measures should be rescinded unless they are required to fulfill generic requirements applicable to similar types of reactors, or are required to meet other license requirements for the Indian Point units. *Consolidated Edison Company of New York* (Indian Point, Unit No. 2), *Power Authority of the State of New York* (Indian Point, Unit No. 3) CLI-85-06—NRC— (1985) slip op at 26. This document implements the Commission's directive that these Orders be rescinded.

II

Some of the requirements in Appendix A of the February 11, 1980 Order can be rescinded in full. Other items have been completed and the action is irreversible. In the case of the completed items, no further action is required. Items in these categories are:

Rescind	Complete
A.1	A.6
A.2	A.7
A.3	B.2
B.1	C.1
B.6	C.2
C.6	C.3
D.1.b	C.4
D.2	C.5
D.3	E.1.a
E.1.c	E.1.b
E.1.d	E.1.f
E.1.e	E.1.g
F.4	E.1.h
	E.1.i
	E.2
	F.1
	F.3
	F.5

Eight of the Order requirements are generic issues. In some cases, the specific Order requirement is rescinded when compliance with the generic issue is confirmed. These eight items and resolutions are:

1. Item A.4: The requirements for shift manning are set forth in 10 CFR 50.54. Therefore, the Order is rescinded for this item.

2. Item A.5: LPI/RHR check valve operability. Valve operability and leakage requirements are set forth in the NRC generic letter dated February 23, 1980. These requirements were imposed on most licensees other than the Indian Point licensees by Orders issued during April 1981. The requirements of the generic letter set forth the staff's final position on this generic matter. Accordingly, the licensee shall follow the Order Item A.5 until Technical Specifications implementing the generic letter have been submitted to and approved by the NRC. Upon such approval the Order is rescinded with respect to this item.

3. Item B.3: Requirements for notification for emergency action levels are set forth in 10 CFR 50.72. Therefore, the Order is rescinded with respect to this item.

4. Item B.4: Requirements for containment purge and vent operations in accordance with the staff's generic position on this matter are set forth in the NRC Safety Evaluation Report dated September 29, 1983. Consistent with the actions taken generically with respect to other licensees, the SER calls for the submission of additional Technical Specifications. The licensee shall follow Order Item B.4 until Technical Specifications implementing the SER requirements have been submitted to and approved by the NRC. Upon such approval the Order is rescinded with respect to this item.

5. Item B.5: Personnel training for the following items shall be in conformance with the requirements in NUREG-0737. The requirements for these items are contained in an Order dated July 10, 1981. Similar Orders were issued generically to other licensees.

- Containment and Degraded Core Sampling
- Degraded Core—Training
- Emergency Power for Pressurizer Heaters and Decay Heat Removal
- Containment Isolation
- Containment Purge/Purge Valve Operation
- Subcooling Meter Operation
- In-plant Area Radioiodine Monitors

Training requirements for the following four items shall conform to the training requirements of 10 CFR 50 Appendix E:

- Technical Support Center
- Onsite Operational Support Center
- Near-Site Emergency Operations Center
- Emergency Preparedness Plan

There are no generic requirements with respect to Surveillance Testing of non-ESF Filtration System Training.

For these reasons the Order is rescinded with respect to the above items.

6. Item B.7: Reactor operator qualifications shall conform to the requirements in NUREG-0737. This item is contained in an Order dated July 10, 1981. Similar Orders were issued generically to other licensees. Accordingly, this item is rescinded.

7. & 8. Item D.1.a: Emergency Preparedness manning levels and Item F.2: Meteorological acceptance criteria shall be in conformance with NUREG-0737, Supplement 1. Items D.1.a and F.2 are contained in an Order dated June 12, 1984, as supplemented March 11, 1985. Similar Orders were issued generically to other licensees. Accordingly, these items are rescinded.

III

Accordingly, pursuant to the Commissioners Decision CLI-85-06 the requirements of the February 11, 1980

Order are rescinded in accordance with the terms set forth herein.

This rescission is effective upon issuance.

Dated in Bethesda, Maryland, this 5th day of July, 1985.

Darrell G. Eisenhut,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-16404 Filed 7-10-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

Power Authority of the State of New York (Indian Point Nuclear Generating Unit No. 3); Rescission of Order

I

In September of 1979, the Union of Concerned Scientists (UCS) filed a petition with the Commission pursuant to 10 CFR 2.206 requesting, among other things, that Indian Point Units 2 and 3 be shut down. The Director of the Office of Nuclear Reactor Regulation denied that part of the petition relating to the requested shutdown of the two Indian Point units. *Consolidated Edison Company of New York, Inc.* (Indian Point, Units 1 and 2), *Power Authority of the State of New York* (Indian Point, Unit 3), DD-80-5, 11 NRC 351 (1980). However, the Director imposed by Order certain interim requirements upon the Indian Point Units while an NRC Task Force determined what design changes should be made to further reduce the probability and/or consequences of a servere reactor accident. Id. at 370.

The Commission decided, in its discretion, to commence a special investigatory proceeding concerning the Indian Point plants in which one of the issues to be addressed was the risk reduction afforded by the requirements imposed by the Director in 1980. *Consolidated Edison Company of New York, Inc.* (Indian Point, Units No. 2), *Power Authority (of the State of New York* (Indian Point, Unit No. 3) CLI-81-1, 13 NRC 1 (1981). After hearing testimony on this issue the Licensing Board designated to preside over the proceeding concluded that the Director's Order resulted in some small positive benefit which was not amenable to quantification. *Consolidated Edison Company of New York, Inc.* (Indian Point, Units No. 2), *Power Authority of the State of New York* (Indian Point, Unit No. 3), LBP-83-68, 18 NRC 811, 816 (1983).

The Commission, after reviewing the Licensing Board's recommendations, concluded that because the risk reduction effect of these measures is not sufficient to be termed substantial, the Director's measures should be rescinded unless they are required to fulfill generic requirements applicable to similar types of reactors, or are required to meet other license requirements for the Indian Point units. *Consolidated Edison Company of New York, Inc.* (Indian Point, Units No. 2), *Power Authority (of the State of New York* (Indian Point, Unit No. 3) CLI-85-06—NRC— (1985) slip op at 26. This document implements the Commission's directive that these Orders be rescinded.

II

Some of the requirements in Appendix A of the February 11, 1980 Order can be rescinded in full. Other items have been completed and the action is irreversible. In the case of the completed items, no further action is required. Items in these categories are:

Rescind	Complete
A.1	A.6
A.2	A.7
A.3	B.2
B.1	C.1
B.6	C.2
C.6	C.3
D.1.b	C.4
D.2	C.5
D.3	E.1.a
E.1.c	E.1.b
E.1.d	E.1.f
E.1.e	E.1.g
F.4	E.1.h
	E.1.i
	E.2
	F.1
	F.3
	F.5

Eight of the Order requirements are generic issues. In some cases, the specific Order requirement is rescinded when compliance with the generic issue is confirmed. These eight items and resolutions are:

1. Item A.4: The requirements for shift manning are set forth in 10 CFR 50.54. Therefore, the Order is rescinded for this item.

2. Item A.5: LPI/RHR check valve operability. Valve operability and leakage requirements are set forth in the NRC generic letter dated February 23, 1980. These requirements were imposed on most licensees other than the Indian Point licensees by Orders issued during April, 1981. The requirements of the generic letter set forth the staff's final position on this generic matter. Accordingly, the licensee shall follow the Order Item A.5 until Technical Specifications implementing the generic letter have been submitted to and approved by the NRC. Upon such approval the Order is rescinded with respect to this item.

3. Item B.3: Requirements for notification for emergency action levels are set forth in 10 CFR 50.72. Therefore, the Order is rescinded with respect to this item.

4. Item B.4: Requirements for containment purge and vent operations in accordance with the staff's generic position on this matter are set forth in the NRC Safety Evaluation Report dated December 17, 1984. Consistent with the actions taken generically with respect to other licensees, the SER calls for the submission of additional Technical Specifications. The licensee shall follow Order Item B.4 until Technical Specifications implementing the SER requirements have been submitted to and approved by the NRC. Upon such approval the Order is rescinded with respect to this item.

5. Item B.5: Personnel training for the following items shall be in conformance with the requirements in NUREG-0737. The requirements for these items are contained in an Order dated July 10, 1981. Similar Orders were issued generically to other licensees.

Containment and Degraded Core Sampling
Degraded Core—Training
Emergency Power for Pressurizer Heaters and Decay Heat Removal
Containment Isolation
Containment Purge/Purge Valve Operation
Subcooling Meter Operation
In-Plant Area Radioiodine Monitors

Training requirements for the following four items shall conform to the training requirements of 10 CFR 50 Appendix E.

Technical Support Center
Onsite Operational Support Center
Near-Site Emergency Operations Center
Emergency Preparedness Plan

There are no generic requirements with respect to Surveillance Testing of non-ESF Filtration System Training. For these reasons the Order is rescinded with respect to the above items.

6. Item B.7: Reactor operator qualifications shall conform to the requirements in NUREG-0737. This item is contained in an Order dated July 10, 1981. Similar Orders were issued generically to other licensees. Accordingly, this item is rescinded.

7. & 8. Item D.1.a: Emergency Preparedness manning levels and Item F.2: Meteorological acceptance criteria shall be in conformance with NUREG-0737, Supplement 1. Items D.1.a and F.2 are contained in an Order dated February 21, 1984. Similar Orders were

issued generically to other licensees. Accordingly, these items are rescinded.

III

Accordingly, pursuant to the Commissioners Decision CLI–85–06 the requirements of the February 11, 1980 Order are rescinded in accordance with the terms set forth herein.

This rescission is effective upon issuance.

Dated in Bethesda, Maryland, this 5th day of July, 1985.

Darrell G. Eisenhut,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85–16495 Filed 7–10–85; 8:45 am]

BILLING CODE 7590–01–M

SYNTHETIC FUELS CORPORATION

Comprehensive Strategy Report

AGENCY: Synthetic Fuels Corporation.

ACTION: Public availability of the Corporation's Comprehensive Strategy Report to the Congress.

SUMMARY: Notice is hereby given of the public availability of the Comprehensive Strategy report submitted by the United States Synthetic Fuels Corporation to the Congress.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: Karen Hutchinson, Director—Media Relations, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822–6455.

FOR COPIES OF THE REPORT CONTACT: Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street NW., Washington, D.C. 20586, (202) 822–6460.

Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel—Corporate & Litigation.

July 8, 1985.

[FR Doc. 85–16484 Filed 7–10–85; 8:45 am]

BILLING CODE 6006–00–M

DEPARTMENT OF TRANSPORTATION

Arrow Air, Inc., Enforcement Proceeding; Assignment of Proceeding

[Docket 43223]

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M–50, Room 9400A, Nassif Bldg., 400 7th Street SW., Washington, D.C. 20590, telephone (202) 426–5560.

Dated Washington, D.C., July 5, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85–16421 Filed 7–10–85; 8:45 am]

BILLING CODE 4910–62–M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Availability of Annual Report

Under section 10(d) of Public Law 92–463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Veterans Administration Wage Committee for calendar year 1984 has been issued.

The report summarizes activities of the Committee on matters related to wage surveys and pay schedules for Federal prevailing rate employees. It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications, Reading Room, LM 133, Madison Building, Washington, DC 20540

and

Veterans Administration, Office of the Committee Secretary, VA Wage Committee, Room 1108, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: July 2, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Managment Officer.

[FR Doc. 85–16437 Filed 7–10–85; 8:45 am]

BILLING CODE 8320–01–M

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant of Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on August 5, 1985, at 10:00 a.m., the St. Louis Veterans Administration Regional Office Station Committee on Educational Allowances shall at Room 4034, 1520 Market Street, St. Louis, Missouri 63103, conduct a hearing to determine whether the approval of Three Way Auto Industries, Inc., 2800 Lucas and Hunt Road, St. Louis, Missouri 63121, under the Emergency Veterans' Job Training Act (PL 98–77) shall be reinstated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: July 3, 1985.

D. R. Ramsey,

Director, VA Regional Office.

[FR Doc. 85–16516 Filed 7–10–85; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 133
Thursday, July 11, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Communications Commission	1
Federal Deposit Insurance Corporation	2, 3, 4
Federal Election Commission	5
National Credit Union Administration	6
Pacific Northwest Electric Power and Conservation Planning Council	7

1

FEDERAL COMMUNICATIONS COMMISSION

July 5, 1985.

The Federal Communications Commission previously announced on July 1, 1985 its intention to hold an open meeting on *Notice of Inquiry on tender offers and proxy contests involving publicly traded corporate licensees* on Monday, July 8, 1985, at 1919 M Street, NW., Washington, D.C.

This open meeting has now been rescheduled for Tuesday, July 9, 1985, at 10:30 A.M., in Room 856, at 1919 M Street, NW., Washington, D.C. This meeting may be continued the following work day to allow the Commission to complete appropriate action. The prompt and orderly conduct of Commission business requires this change and no earlier announcement of the change was possible.

Additional information may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7074.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-16561 Filed 7-9-85; 11:20 am]

BILLING CODE 6712-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, July 15, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda. No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: July 8, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-16573 Filed 7-9-85; 11:38 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, July 15, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities:

Mountain Industrial Bank, Montrose, Colorado, an insured State member industrial bank, for consent to purchase certain assets of and assume the liability to pay deposits made in Mountain Credit, Montrose, Colorado, a noninsured general partnership.

Applications for consent to transfer assets in consideration of the assumption of deposit liabilities:

Northern Michigan Bank, Escanaba, Michigan, Northern Michigan Bank of Marquette, Marquette, Michigan, and Northern Michigan Bank of Kingsford, Kingsford, Michigan, insured State nonmember banks, for consent to transfer certain assets to Northern Michigan Bank F.S.B., Escanaba, Michigan, a non-FDIC-insured institution in organization, in consideration of the assumption of the liability to pay deposits made in Northern Michigan Bank, Northern Michigan Bank of Marquette, and Northern Michigan Bank of Kingsford.

Memorandum and resolution regarding delegations of authority to the General Counsel.

Memorandum re: Revisions to Appendix E of the delegations of authority to the Division of Liquidation.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings, approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution regarding liquidation rights of repurchase agreement participants in bank insolvencies.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: July 8, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–16574 Filed 7–9–85; 11:38 am]

BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:25 a.m. on Saturday, July 6, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The First National Bank of Jacksonville, Jacksonville, Alabama, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Friday, July 5, 1985; (2) accept the bid for the transaction submitted by AmSouth Bank of Jacksonville, Jacksonville, Alabama, a newly-chartered State nonmember bank; (3) approve the applications of AmSouth Bank of Jacksonville, Jacksonville, Alabama, for Federal deposit insurance, for consent to purchase certain assets of and assume the liability to pay deposits made in The First National Bank of Jacksonville, Jacksonville, Alabama, for consent to establish the three branches of The First National Bank of Jacksonville as branches of the resultant bank, and for consent to exercise limited trust powers; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated July 8, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–16575 Filed 7–9–85; 11:31 am]

BILLING CODE 6714–01–M

5

FEDERAL ELECTION COMMISSION

[Federal Register No. 85–16142]

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, July 9, 1985, 10:00 a.m.

THIS MEETING WAS CONTINUED TO: Wednesday, July 10, 1985, at 10:30 a.m., to complete the agenda.

* * * * *

DATE AND TIME: Tuesday, July 16, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85–16595 Filed 7–9–85; 2:39 pm]

BILLING CODE 6715–01–M

6

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Tuesday, July 16, 1985.

PLACE: 1776 G Street, NW., Washington, D.C. 20456, Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Actions Under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
3. Special Assistance Under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Reports to the Board. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Personnel Actions. Closed pursuant to exemptions (2) and (6).
6. Consideration of the Expenditure Budgets for the Operating Fund, Insurance Fund, and the Central Liquidity Facility for FY 1986. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85–16593 Filed 7–9–85; 2:10 pm]

BILLING CODE 7535–01–M

7

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b)

STATUS: Open.

TIME AND DATE: July 17–18, 1985, 9:00 a.m.

PLACE: Council Officer, 850 SW. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

- Continuation of Staff Presentation of the Draft 1985 Power Plan and Council Consideration of Entering Rulemaking on the Draft.
- Adoption of Charter for Mainstem Passage Advisory Committee.
- Council Business.

Public comment will follow each item.

Note.—Depending upon action taken at the Council's July 10–11 meeting in Missoula, Montana, this July 17–18 meeting may be cancelled. If so, the Council will publicly announce such cancellation at the earliest practicable time. In addition, the Council office will be able to indicate the status of the July 17–18 meeting after July 12.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong, (503) 222–5161, or toll-free 1–800–222–3355 (Montana, Idaho or Washington) or 1–800–452–2324.

Rick Applegate,

Executive Assistant.

[FR Doc. 85–16255 Filed 7–8–85; 4:41 pm]

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federal register

Thursday
July 11, 1985

Part II

Department of Labor

Office of the Secretary

29 CFR Part 70

Freedom of Information Act; Technical Amendments; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 70

Freedom of Information Act; Technical Amendments

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of final rulemaking; technical amendments.

SUMMARY: This document amends certain sections of Department of Labor's regulations relating to the Freedom of Information Act in order to update the names of offices, titles and addresses within the regulation and to conform them to a recent reorganization within the Department.

EFFECTIVE DATE: July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Sofia P. Petters, Counsel for Administrative Legal Services, Office of the Solicitor, U.S. Department of Labor, Room N–2428, 200 Constitution Avenue, NW., Washington, D.C. 20210; telephone (202) 523–8188.

SUPPLEMENTARY INFORMATION: The Department of Labor amends its regulations in order to update the names of the offices maintained by the component agencies of the Department, and to update the titles and addresses of the responsible officials at various agencies. These changes appear in the amendments to §§ 70.35(e) and 70.36.

The Department is also amending § 70.75 and adding a new section, to be known as § 70.76. These changes reflect a recent reorganization within the Department. In that reorganization the Secretary of Labor assigned authority for the Employee Retirement Income Security Act of 1974 (ERISA) Program to the Administration of the Office of Pension and Welfare Benefit Programs (OPWBP), making OPWBP a separate agency of the Department of Labor. These changes were effected by the Secretary of Labor's Order 1–84, which was signed on January 20, 1984 and published in the **Federal Register** on February 3, 1984 at 49 FR 4269.

On May 3, 1984, the Secretary of Labor's Order 3–84 (49 FR 20578, May 15, 1984) established in the Department an Office of Labor-Management Standards (OLMS), formerly the Office of Labor-Management Standards Enforcement, under the supervision of the Assistant Secretary for Labor-Management Standards.

Finally, a nomenclature change is being made regarding the United States Government Manual.

Publication in Final

The Department has determined that these amendments need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA, 5 U.S.C. 553) since this rulemaking merely reflects agency organization, procedure, or practice. It is thus exempt from notice and comment by virture of section 553(b)(A) of the APA (5 U.S.C. 553(b)(A)).

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and non-substantive, and merely reflects agency organization, practice and procedure.

Executive Order 12291

This rule is not classified as a "rule" under Executive Order 12291 on Federal Regulation, because it is a regulation relating to agency organization, management or personnel. See section 1(a)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility analysis do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirement.

List of Subjects in 29 CFR Part 70

Freedom of information.

Accordingly, Part 70 of Subtitle A of Title 29 of the *Code of Federal Regulations* is amended as follows:

PART 70—EXAMINATION AND COPYING OF DEPARTMENT OF LABOR RECORDS

1. The authority citation for Part 70 continues to read as follows:

Authority: (5 U.S.C. 301, 552, as amended by Pub. L. 93–502), 88 Stat. 1561; (29 U.S.C. 9 (b)); Reorganization Plan No. 6 of 1950, 64 Stat. 1263 (5 U.S.C. Appendix).

§ 70.5 [Amended]

2. Section 70.5(b) is amended, in two places, by removing the words "Government Organization Manual" and inserting in their place the words "United States Government Manual."

3. In § 70.35, paragraph (e) is revised to read as follows:

§ 70.35 Where information may be obtained.

* * * * *

(e) Offices in Washington D.C., are maintained by the following component agencies of the Department of Labor. Field offices are maintained by some of these, as listed in the United States Government Manual (see § 70.5(b)).

(1) Office of the Secretary of Labor.
(2) Office of the Solicitor of Labor.
(3) Office of the Assistant Secretary for Administration and Management.
(4) Office of Information and Public Affairs.
(5) Office of the Inspector General.
(6) Bureau of International Affairs.
(7) Bureau of Labor Management Relations and Cooperative Programs.
(8) Bureau of Labor Statistics.
(9) Employment Standards Administration.
(10) Employment and Training Administration.
(11) Mine Safety and Health Administration.
(12) Occupational Safety and Health Administration.
(13) Office of Labor Management Standards.
(14) Office of Pension and Welfare Benefit Programs.
(15) Office of Assistant Secretary for Veterans' Employment and Training.
(16) Employees' Compensation Appeals Board.
(17) Wage Appeals Board.
(18) Benefits Review Board.
(19) Board of Contract Appeals.
(20) Office of Administrative Law Judges.

The heads of the foregoing agencies shall make available for inspection and copying in accordance with the provisions of the part, records in their custody or in the custody of component units within their organizations, either directly or through their authorized representative in particular offices and locations.

4. Section 70.36 is revised to read as follows:

§ 70.36 Titles and addresses of the responsible officials of various agencies.

(a)(1) The titles of the responsible officials of the various independent agencies in the Department of Labor are listed below. Unless otherwise specified, the mailing addresses of the officials shall be:

U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210
Secretary of Labor, *Attention:* Assistant Secretary for Administration and Management (OASAM)
Deputy Solicitor, Office of the Solicitor
Assistant Secretary for Administration and Management (OASAM)
Deputy Assistant Secretary for Administration and Management (OASAM)
Director, Office of Personnel Management Services, National Capital Service Center (OASAM)
Director, Office of Procurement Services, National Capital Service Center (OASAM)
Deputy Director, National Capital Service Center (OASAM)
Director, Women's Bureau
Chairperson, Employee Compensation Appeals Board
Deputy Assistant Secretary for Policy
Director, Office of Information and Public Affairs
Director, Information, Privacy and Management Information Systems, Office of the Inspector General
Associate Deputy Under Secretary for International Affairs
Deputy Under Secretary for Labor-Management Relations and Cooperative Programs
Commissioner, Bureau of Labor Statistics
Deputy Under Secretary for Employment Standards
Director, Office of Workers' Compensation Programs, Employment Standards Administration (ESA)
Associate Director for Federal Employees' Compensation, ESA
Associate Director for Longshore and Harbor Workers' Compensation, ESA
Associate Director for Coal Mine Workers' Compensation, ESA
Administrator, Wage and Hour Division, ESA
Director, Office of Federal Contract Compliance Programs, ESA
Director, Office of Management, Administration and Planning, ESA
Director, Division of Personnel and Organization Management, ESA
Director, Office of State Liaison and Legislative Analysis, ESA
Director, Office of Information and Consumer Affairs, ESA
ESA Equal Employment Opportunity Coordinator, ESA
Director, Office of Equal Employment Opportunity, Occupational Safety and Health Administration (OSHA)
Director, Office of Management Accountability and Performance, OSHA
Director, Office of Information and Consumer Affairs, OSHA
Director, Directorate of Federal-State Operations, OSHA
Director, Office of Training and Education, OSHA
Director, Directorate of Policy, OSHA
Director, Directorate of Administrative Programs, OSHA
Director, Office of Personnel Management, OSHA
Director, Office of Administrative Services, OSHA
Director, Office of Management Data Systems, OSHA
Director, Office of Management Systems and Organization, OSHA
Director, Office of Program Budgeting, Planning and Financial Management, OSHA
Director, Directorate of Field Operations, OSHA
Director, Directorate of Technical Support, OSHA
Director, Directorate of Safety Standards Programs, OSHA
Director, Directorate of Health Standards Programs, OSHA
Deputy Assistant Secretary for Labor Management Standards
Assistant Administrator for Program Services, Office of Pension and Welfare Benefit Programs
Director, Office of Veterans' Reemployment Rights
Deputy Assistant Secretary for Veterans' Employment and Training

The mailing address for the responsible officials for the Employment and Training Administration is:

Patrick Henry Building, 601 D Street, NW., Washington, D.C. 20213
Administrator, Office of Financial Control and Management Systems, Room 5000
Director, Office of Acquisition and Assistance, Room 5006 or
Chief, Planning Policy Control and Review Group, Room 5006
Director, Office of Personnel and Administrative Services, Room 5100
Director, Office of Information Resources Management, Room 5000
Administrator, Office of Program and Fiscal Integrity, Room 8400
Administrator, Office of Job Training Programs, Room 6100
Director, Office of Employment and Training Programs, Room 6402
Director, Office of Special Targeted Programs, Room 6122
Director, Office of Job Corps, Room 6414
Director, Bureau of Apprenticeship Training, Room 6308
Administrator, Office of Strategic Planning and Policy Development, Room 8000
Administrator, Office of Regional Management, Room 7000
Administrator, Office of Employment Security, Room 6000
Director, Unemployment Insurance Service, Room 7112
Director, U.S. Employment Service, Room 8100
Director, Office of Trade Adjustment Assistance, Room 6434

The mailing address for responsible officials in the Mine Safety and Health Administration is:

4015 Wilson Boulevard, Arlington, Virginia 22203
Deputy Assistant Secretary
Chief, Office of Congressional and Legislative Affairs
Director, Office of Information and Public Affairs
Administrator for Coal Mine Safety and Health
Chief, Office of Technical Compliance and Investigation
Administrator for Metal and Nonmetal Mine Safety and Health
Director, Office of Assessments
Director, Office of Standards, Regulations and Variances
Director of Program Planning and Evaluation
Director of Administration and Management
Director of Educational Policy and Development

The mailing address for the Office of Administrative Law Judges and the Benefits Review Board is:

1111 20th Street, NW., Washington, D.C. 20036
Chief, Office of Administrative Law Judges, Suite 701
Chair, Benefits Review Board, Suite 757

(2) The titles of the responsible officials in the field offices of the various independent agencies are listed below. Unless otherwise specified, the mailing addresses for these officials by regions, shall be:

Region I: J.F.K. Building, Government Center, Boston, Massachusetts 02203
Region II: 1515 Broadway, New York, New York 10036
Region III: 3535 Market Street, Philadelphia, Pennsylvania 19104
Region IV: 1371 Peachtree Street, NE., Atlanta, Georgia 30367
Region V: 230 South Dearborn Street, Chicago, Illinois 60604
Region VI: 555 Griffin Square Building, Griffin and Young Streets, Dallas, Texas 75202
Region VII: Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106
Region VIII: Federal Office Building, 1961 Stout Street, Denver, Colorado 80294
Region IX: Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102
Region X: 909 First Avenue, Seattle, Washington 98174
Regional Administrator for Administration and Management
Regional Personnel Officer, OASAM
Regional Administrator for Information and Public Affairs
Regional Administrator for Employment Standards Administration
Assistant Regional Administrator for Wage and Hour, ESA
Assistant Regional Administrator for Federal Contract Compliance Programs, ESA
Assistant Regional Administrator for Workers' Compensation Programs, ESA
Executive Assistant to the Regional Administrator, ESA
State Liaison Advisor, ESA

Office of Workers' Compensation Programs, Deputy Commissioner

J.F.K. Building, Government Center, Boston, Massachusetts 02203
1515 Broadway, New York, New York 10036
3535 Market Street, Philadelphia, Pennsylvania 19104
Penn Traffic Building, 319 Washington Street, Johnstown, Pennsylvania 15901 (BLBA only)

South Main Towers, 116 South Main Street, Wilkes-Barre, Pennsylvania 18701 (BLBA only)
218 South Maple Avenue, Greensburg, Pennsylvania 15601 (BLBA only)
31 Hopkins Plaza, Baltimore, Maryland 21201 (LHWCA only)
200 Granby Mall, Norfolk, Virginia 23502 (LHWCA only)
P.O. Box 3686, Charleston, West Virginia 25335 (BLBA only)
800 11th Street N.W., Washington, D.C. 20211 (FECA only)
334 Main Street, Pikeville, Kentucky 41501 (BLBA only)
311 West Monroe, Jacksonville, Florida 32202 (LHWCA only)
400 West Bay Street, Jacksonville, Florida 32202 (FECA only)
230 South Dearborn Street, Chicago, Illinois 60604
1240 East 9th Street, Cleveland, Ohio 44199 (FECA only)
121 East State Street, Columbus, Ohio 43215 (BLBA only)
555 Griffin Square Building, Dallas, Texas 75202
500 Camp Street, New Orleans, Louisiana 70130
2320 LaBranch Street, Houston, Texas 77004 (LHWCA only)
601 Rosenberg Avenue, Galveston, Texas 77553 (LHWCA only)
911 Walnut Street, Kansas City, Missouri 64106 (FECA only)
1961 Stout Street, Denver, Colorado 80294 (FECA only)
P.O. Box 25346, Denver, Colorado 80225 (BLBA only)
450 Golden Gate Avenue, San Francisco, California 94102
P.O. Box 3327, Terminal Island, California 90731 (LHWCA only)
300 Ala Moana Boulevard, Honolulu, Hawaii 96813
909 1st Avenue, Seattle, Washington 98174
Regional Administrator, Employment and Training Administration (ETA)
Regional Director, Job Corps, ETA
Director, Regional Bureau of Apprenticeship and Training, ETA

District Manager for Coal Mine Safety and Health

Penn Place, Room 3128, 20 N. Pennsylvania Avenue, Wilkes-Barre, Pennsylvania 18701
4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213
5012 Mountaineer Mall, Morgantown, West Virginia 26505
P.O. Box 112, Mt. Hope, West Virginia 25880
P.O. Box 560, Norton, Virginia 24273
218 High Street, Pikeville, Kentucky 41501
P.O. Box 572, Barbourville, Kentucky 40906
501 Busseron Street, Vincennes, Indiana 47591
P.O. Box 25367 OFC, Denver, Colorado 80225
P.O. Box 473, Madisonville, Kentucky 42431

District Manager for Metal and Nonmetal Mine Safety and Health

228 Federal Building, Duluth, Minnesota 55802
P.O. Box 927, Vicennes, Indiana 47591
4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213
U.S. Post Office and Courthouse, P.O. Box 1894, Albany, New York 12201–1874
P.O. Box 25367 OFC, Denver, Colorado 80225
307 W. 200 South, Suite 3003, Salt Lake City, Utah 84101
1100 Commerce Street, Room 4C50, Dallas, Texas 75242
P.O. Box 1156, Rolla, Missouri 65401
228 W. Valley Avenue, Room 102, Birmingham, Alabama 35209
301 W. Cumberland Avenue, Room 223, Knoxville, Tennessee 37902
620 Central Avenue, Building 7 APC, Alameda, California 94501–3698
3221 N. 16th Street, Suite 300, Phoenix, Arizona 85016
117–107th Avenue, NE, Room 100, Bellevue, Washington 98004

Regional Administrator, Occupational Safety and Health Administration

Area Director, OSHA

400–2 Totten Pond Road, 2nd Floor, Waltham, Massachusetts 02154
1550 Main Street, Room 532, Springfield, Massachusetts 01103–1493
Federal Building, Room 334, 55 Pleasant Street, Concord, New Hampshire 03301
40 Western Avenue, Room 121, Augusta, Maine 04330
380 Westminster Mall, Room 243, Providence, Rhode Island 02903
450 Main Street, Room 508, Hartford, Connecticut 06103
90 Church Street, Room 1405, New York, New York 10007
100 South Clinton Street, Room 1267, Syracuse, New York 13260
990 Westbury Road, Westbury, New York 11590
220 Delaware Avenue, Suite 509, Buffalo, New York 14202
136–21 Roosevelt Avenue, 3rd Floor, Flushing, New York 11354
U.S. Courthouse & Federal Office Building, Room 555, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918
Leo W. O'Brien Federal Building, Room 132, Clinton Avenue & North Pearl Street, Albany, New York 12207
2101 Ferry Avenue, Room 403, Camden, New Jersey 08104
Teterboro Airport Professional Building, Room 206, 377 Route 17, Hasbrouck Heights, New Jersey 07604
2 East Blackwell Street, Dover, New Jersey 07801
Belle Mead GSA Depot Building T3, Belle Mead, New Jersey 08502
U.S. Custom House, Room 242, Second & Chestnut Street, Philadelphia, Pennsylvania 19106
Federal Office Building, Room 3007, 844 King Street, Wilmington, Delaware 19801
Federal Building, Room 2236, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15522
Rathrock Building, Fourth Floor, 121 West 10th Street, Erie, Pennsylvania 16501
Federal Building, Room 1110, Charles Center, 31 Hopkins Plaza, Baltimore, Maryland 21201
Penn Place, Room 2005, 20 North Pennsylvania Avenue, Wilkes-Barre, Pennsylvania 18701
Federal Building, Room 6226, 400 North 8th Street, P.O. Box 10186, Richmond, Virginia 23240
850 N. 5th Street, Allentown, Pennsylvania 18102
Building 10, Suite 33, LaVista Perimeter Office Park, Tucker, Georgia 30084
550 Eagan Street, Room 206, Charleston, West Virginia 25301
1600 Drayton Street, Savannah, Georgia 31401
Progress Plaza, 49 North Progress Street, Harrisburg, Pennsylvania 17109
Todd Mall, 2047 Canyon Road, Birmingham, Alabama 35216
951 Government Street, Suite 502, Mobile, Alabama 36604
700 Twiggs Street, Room 624, Tampa, Florida 33602
1835 Assembly Street, Room 1468, Columbia, South Carolina 29201
1720 West End Avenue., Suite 302, Nashville, Tennessee 37203
Federal Building, Suite 1445, 100 West Capitol Street, Jackson, Mississippi 39269
Federal Building, Room 127, 330 W. Broadway, Frankfort, Kentucky 40601
Federal Building, Room 302, 299 East Broward Boulevard, Fort Lauderdale, Florida 33301
Federal Office Building, Room 406, 310 New Bern Avenue, Raleigh, North Carolina 27601
Art Museum Plaza, Suite 17, 2747 Art Museum Drive, Jacksonville, Florida 32207
1400 Torrence Avenue, 2nd Floor, Calumet City, Illinois 60409
6000 West Touhy Avenue, Niles, Illinois 60648
United States Post Office & Courthouse, Room 422, 46 East Ohio Street, Indianapolis, Indiana 46204
344 Smoke Tree Business Park, North Aurora, Illinois 60542
2618 North Ballard Road, Appleton, Wisconsin 54915
Federal Office Building, Room 4028, 550 Main Street, Cincinnati, Ohio 45202
Federal Building, U.S. Courthouse, 500 Barstow Street, Room B–9, Eau Claire, Wisconsin 54701
Federal Office Building, Room 899, 1240 East 9th Street, Cleveland, Ohio 44199
Henry S. Reuss Building, 310 West Wisconsin Avenue, Suite 1180, Milwaukee, Wisconsin 53203
Federal Office Building, Room 634, 200 North High Street, Columbus, Ohio 43215
2934 Fish Hatchery Road, Suite 220, Madison, Wisconsin 53713
Federal Office Building, Room 734, 234 North Summit Street, Toledo, Ohio 43604
1425 West Pioneer Drive, Irving, Texas 75061
110 South 4th Street, Minneapolis, Minnesota 55401
Western Bank Building, Room 1407, 505 Marquette Avenue, N.W., Albuquerque, New Mexico 87102
3024 West Lake Street, Peoria, Illinois 61615
Government Plaza, Room 300, 400 Mann Street, Corpus Christi, Texas 78408
218A Main Street, Belleville, Illinois 62220
611 East 6th Street, Room 303, Austin, Texas 78701
231 West LaFayette, Room 628, Detroit, Michigan 48226
Hoover Annex, Suite 200, 2156 Wooddale Boulevard, Baton Rouge, Louisiana 70806
Federal Building, Room 421, 1205 Texas Avenue, Lubbock, Texas 79401

210 Walnut Street, Room 815, Des Moines, Iowa 50309
2320 LaBranch Street, Room 1103, Houston, Texas 77004
Overland-Wolf Building, Room 100, 6910 Pacific Street, Omaha, Nebraska 68106
Savers Building, Suite 828, 320 West Capitol Avenue, Little Rock, Arkansas 72201
4300 Goodfellow Boulevard-Building 105E, St. Louis, Missouri 63120
50 Penn Place, Suite 502, Oklahoma City, Oklahoma 73118
216 North Waco, Suite B, Wichita, Kansas 67202
1150 Grand Avenue, 6th Floor, Room 606, Kansas City, Missouri 64106
Petroleum Building, Suite 210, 2812 1st Avenue North, Billings, Montana 59101
P.O. Box 15200, 1761 South 300 West, Salt Lake City, Utah 84115
1220 Southwest 3rd Street, Room 640, Portland, Oregon 97204
701 C Street, Box 29, Anchorage, Alaska 99513
121–107th Street, N.E., Bellevue, Washington 98004
1315 West Idaho Street, Boise, Idaho 83702
Federal Building, Room 348, P.O. Box 2439, Bismarck, North Dakota 58501
300 Ala Moana Boulevard, Suite 5122, P.O. Box 50072, Honolulu, Hawaii 96850
1960 Addison Street, Suite 290, Berkeley, California 94704
Tremont Center, 1st Floor, 333 West Colfax, Denver, Colorado 80204
400 Oceangate, Suite 530, Long Beach, California 90802
U.S. Post Office Building, Room 505, 350 South Main Street, Salt Lake City, Utah 84101
1050 East William Street, Suite 402, Carson City, Nevada 89701
1555 Times Drive, Des Plaines, Illinois 60018
Amerco Towers, Suite 300, 2721 North Central Avenue, Phoenix, Arizona 85004
U.S. Post Office Building, Room 108, 5th & Walnut Streets, Cincinnati, Ohio 45202

Office of Labor Management Standards, Area Administrator or District Director

Area Administrator, New Studio Building, Room 211, 110 Tremont Street, Boston, Massachusetts 02108
District Director, Federal Building, Room 1310, 111 W. Huron Street, Buffalo, New York 14202
Area Administrator, Room 537, 26 Federal Plaza, New York, New York 10278
District Director, Room 210, 134 Evergreen Place, East Orange, New Jersey 07018
District Director, Federal Office Building, Room 650, Hato Rey, Puerto Rico 00918
Area Administrator, Federal Office Building, Room 804, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222
Area Administrator, Riddell Building, Room 558, 1730 K Street, NW., Washington, D.C. 20006
Area Administrator, James A. Byrne Courthouse, Room 7401, 601 Market Street, Philadelphia, Pennsylvania 19106
Area Administrator, Room 205, 1371 Peachtree Street NE., Atlanta, Georgia 30367
District Director, Washington Square Building, Suite 504, 111 NW 183rd Street, Miami, Florida 33169
District Director, Fort Wright Executive Building, Suite 210, 1885 Dixie Highway, Fort Wright, Kentucky 41011–2664
District Director, Room 716, 1808 West End Building, Nashville, Tennessee 37203
Area Administrator, 175 W. Jackson Boulevard, Suite 1201A, Chicago, Illinois 60604–2773
Area Administrator, Federal Office Building, Room 821, 1240 E. Ninth Street, Cleveland, Ohio 44199
Area Administrator, Federal Building and U.S. Courthouse, Room 630, 231 W. Lafayette Street, Detroit, Michigan 48226
District Director, Butler Square Building, Room 505C, 100 N.Sixth Street, Minneapolis, Minnesota 55403
Area Administrator, 555 Griffin Square Building, Room 707, Griffin and Young Streets, Dallas, Texas 75202
District Director, Federal Office Building, Room 940, 600 South Maestri Place, New Orleans, Louisiana 70130
Area Administrator, Federal Office Building, Room 3000, Kansas City, Missouri 64106
District Director, Room 570, 210 Tucker Boulevard, St. Louis, Missouri 63101
District Director, Federal Office Building, Room 1523, 1961 Stout Street, Denver, Colorado 80294
Area Administrator, 3660 Wilshire Boulevard, 7th Floor, Los Angeles, California 90012
District Director, 300 Ala Moana, Room 5115, P.O. Box 50204, Honolulu, Hawaii 96850
Area Administrator, 211 Main Street, Room 317, San Francisco, California 94105–1977
District Director, Federal Office Building, Room 3135, 909 First Avenue, Seattle, Washington 98174

Office of Pension and Welfare Benefit Programs, Area Administrator

1365 Peachtree Street, NE., Suite 540, Atlanta, Georgia 30367
New Studio Building, Room 211, 110 Tremont Street, Boston, Massachusetts 02108
Federal Building, Room 1310, 111 W. Huron Street, Buffalo, New York 14202
175 W. Jackson Boulevard, Suite 1201A, Chicago, Illinois 60604
Federal Office Building, Room 821, 1240 E. Ninth Street, Cleveland, Ohio 44199
555 Griffin Square Building, Room 707, Griffin & Young Streets, Dallas, Texas 75202
Federal Office Building, Room 1523, 1961 Stout Street, Denver, Colorado 80294
Federal Building & U.S. Courthouse, Room 630, 231 W. Lafayette Street, Detroit, Michigan 48226
134 Evergreen Place, Room 210, East Orange, New Jersey 07018
Ft. Wright Executive Building, Second Floor, 1885 Dixie Highway, Ft. Wright, Kentucky 41011–2664
Federal Office Building, Room 650, Carlos Chardon Street, Hato Rey, Puerto Rico 00918
300 Ala Moana, Room 5115, P.O. Box 50204, Honolulu, Hawaii 96850
Federal Office Building, Room 3000, 911 Walnut Street, Kansas City, Missouri 64106
3660 Wilshire Boulevard, 7th Floor, Los Angeles, California 90010
Washington Square Building, Suite 504, 111 NW 183rd Street, Miami, Florida 33169
Butler Square Building, Room 510 West, 100 N. Sixth Street, Minneapolis, Minnesota 55403
1808 West End Building, Room 716, Nashville, Tennessee 37203
Federal Office Building, Room 940, 600 South Street, New Orleans, Louisiana 70130
26 Federal Plaza, Room 537, New York, New York 10278
James A. Byrne Courthouse, Room 7401, 601 Market Street, Philadelphia, Pennsylvania 19106
Federal Office Building, Room 804, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222
210 Tucker Boulevard, Room 570, St. Louis, Missouri 63101
211 Main Street, Room 317, San Francisco, California 94105–1977
Federal Office Building, Room 3135, 909 First Avenue, Seattle, Washington 98174
Riddell Building, Room 558, 1730 K Street, NW., Washington, D.C. 20006

Regional Directors, Veterans' Employment and Training Service

Region I

506 JFK Federal Building, Government Center, Boston, Massachusetts 02203

Region III

U.S. Customs House, Room 240, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106

Region IV

1371 Peachtree Street, NE., Room 716, Atlanta, Georgia 30367

Region V

230 South Dearborn, Room 1064, Chicago, Illinois 60604

Region VI

525 S. Griffin Federal Building, Room 204, Griffin and Young Streets, Dallas, Texas 75202

Region VII

Federal Building, Room 800, 911 Walnut Street, Kansas City, Missouri 64106

Region IX

450 Golden Gate Avenue, Room 9411, San Francisco, California 94102

§ 70.43 [Amended]

5. Section 70.43(b) is amended by removing the words " 'U.S. Government Organization Manual' " and inserting in their place the words " 'United States Government Manual' ".

6. Section 70.75 is revised to read as follows:

§ 70.75 Office of Labor-Management Standards.

(a) The following documents are in the custody of the Office of Labor-Management Standards at the address indicated below, and the right of inspection and copying provided in this Part 70 may be exercised at such offices:

(1) Data and information contained in any report or other document filed pursuant to Sections 201, 202, 203, 211, and 301 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524–528, 530, 79 Stat. 888; 29 U.S.C. 431–433, 441, 461).

(2) Data and information contained in any report or other document filed pursuant to the reporting requirements of Part 208 of this title, which are the regulations implementing the standards of conduct provisions of the Civil Service Reform Act of 1978, 5 U.S.C. 7120, and the Foreign Service Act of 1980, 22 U.S.C. 4117. The reporting requirements are found in Part 208 of this title, § 208.3.

Address: U.S. Department of Labor, Office of Labor-Management Standards, Public Documents Room N–5626, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(b) Upon request of the Governor of a State for copies of any reports or documents filed pursuant to Sections 201, 202, 203, 211 of the Labor-Management Reporting and Disclosure Act 1959 (73 Stat. 524–528, 79 Stat. 888; 29 U.S.C. 431–441), or for information contained therein, which have been filed by any person whose principal place of business or headquarters is in such State, the Office of Labor-Management Standards shall:

(1) Make available without payment of a charge to the State agency designated by law or by such Governor, such requested copies of information and data, or:

(2) Require the person who filed such reports and documents, to furnish such copies or information and data directly to the state agency thus designated.

7. A new § 70.78, entitled *Pension and welfare benefit programs*, is added to Part 70 to read as follows:

§ 70.78 Pension and welfare benefit programs.

The following documents are in the custody of the Office at the address indicated below, and the right of inspection and copying provided in this Part 70 may be exercised at such offices:

(a) Copies of the description of welfare or pension benefit plans, amendments or modifications thereto and entire or individual pages of annual financial reports thereon, filed pursuant to section 8(b) of the Welfare and Pension Plans Disclosure Act (72 Stat. 1002, 29 U.S.C. 307).

(b) Copies of plan descriptions, annual reports, statements and other documents filed pursuant to the Employment Retirement Income Security Act, Title 1, part 1, except that information described in section 105(a) and 105(c) with respect to a participant may be disclosed only to the extent that information respecting that participants benefits under Title II of the Social Security Act may be disclosed under such Act.

Address: U.S. Department of Labor, Office of Pension and Welfare Benefit Programs, Public Documents Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of July, 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85–16459 Filed 7–10–85; 8:45 am]

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Thursday
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Part III

Department of Education

Rehabilitation Long-Term Training Program; Final Funding Priority for Fiscal Year 1985; Notice

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DEPARTMENT OF EDUCATION

Rehabilitation Long-Term Training Program; Final Funding Priority for Fiscal Year 1985

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary issues a funding priority for long-term training grants in the field of Rehabilitation Counseling in order to ensure effective use of program funds and direct funds to an area of the identified need during Fiscal Year 1985. The Secretary will reserve funds for applications meeting this priority.

EFFECTIVE DATE: This priority will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this final funding priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: James W. Moss, Office of Developmental Programs, Rehabilitation Services Administration. Telephone: (202) 732–1286.

SUPPLEMENTARY INFORMATION: Grants for the Rehabilitation Training Program are authorized by Title III, Section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Rehabilitation Long-Term Training Program are established at 34 CFR Part 386. The purpose of the Rehabilitation Long-Term Training Program is to support projects designed for training personnel to be available for employment in public and private agencies involved in the rehabilitation of physically and mentally handicapped individuals, especially those who are the most severely handicapped. Applicants are notified that the Secretary will be collecting data to enable him, in accordance with the Rehabilitation Amendments of 1984 (Pub. L. 98–221), to target more closely awards made in future years to areas of personnel shortages.

Summary of Comments and Responses

No comments were received in response to the Notice of Proposed Funding Priority published in the **Federal Register** on April 30, 1985 at 50 FR 18388, and no changes to the proposed priority have been made.

Eligible Applicants

Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education.

Final Priority

In accordance with the Education Department General Administrative Regulations (EDGAR) atg 34 CFR 75.105(c)(3)(i), the Secretary will give an absolute preference to applications submitted in the field of rehabilitation counseling in Fiscal Year 1985 in response to the designated priority. An absolute priority is one which permits the Secretary to select only those applications that address the priority.

Applications submitted in the field of rehabilitation counseling must address the master's degree level training of rehabilitation counseling personnel. The proposed training curriculum must include placement content that will expose students to the direct involvement of business and industry in providing rehabilitation services to severely physically and mentally disabled individuals. The placement component should include coursework to enable the student's acquisition of skills and knowledge in the areas of: job development/job analysis/job modification/job restructuring; workmen's compensation; forecasting labor market trends; the applicability of sections 503 and 504 of the Rehabilitation Act and their implications for placement of disabled individuals; and effective consultation with employers and potential employers to identify employment opportunities for disabled individuals, to assist in the removal of barriers to the employment of disabled individuals, and to educate or train about various disabilities and any vocational implications of those disabilities. Practicum training must include placement activities that involve students directly in business and industry settings.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)

Dated: July 8, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–16492 Filed 7–10–85; 8:45 am]

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July 11, 1985

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory and Abandoned Mine Land Reclamation Programs; Final and Proposed Rules

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Amendment to the West Virginia Permanent Regulatory and Abandoned Mine Land Reclamation Programs Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval, with certain exceptions, of a proposed amendment submitted by the State of West Virginia as a modification to its permanent regulatory program, hereinafter referred to as the West Virginia program, which the Secretary of the Interior conditionally approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and its abandoned mine land reclamation program, which the Secretary also approved under SMCRA. The amendment consists of legislation which reconstitutes the Reclamation Division of the Department of Natural Resources as part of the Division of Mines and Minerals in the newly created Department of Energy, and which recodifies Article Six of Chapter 20 of the Code of West Virginia, known as the West Virginia Surface Coal Mining and Reclamation Act (WV SCMRA), as Article Three of Chapter 22A and Article Four of Chapter 22 of the West Virginia Energy Act (WVEA). The legislation also recodifies Article 6C of Chapter 20, known as the Abandoned Mine Lands and Reclamation Act, as Article Three of Chapter 22 of the WVEA.

In addition, the legislation establishes special permitting requirements and reclamation standards for surface mines two acres or smaller in size, requires coordination with the Commissioner of Labor in permit issuance, establishes a pilot program for the cultivation of grapes on reclaimed mine lands, and raises the base salaries of reclamation inspectors and supervisors.

After the Governor of West Virginia submitted the amendment materials on May 20, 1985, OSM published a notice in the May 29, 1985 **Federal Register** announcing receipt of the proposed amendment and inviting public comment on its adequacy (50 FR 21861–21862).

After considering all comments received during the public comment period ending June 28, 1985, and the testimony received at the public hearing held in June 18, 1985, and after conducting a thorough review of the proposed amendment, the Director has determined that, with certain exceptions, the submission meets the requirements of SMCRA and the Federal regulations, and is approving it subject to certain reservations. The Federal rules at 30 CFR Part 948 codifying decisions concerning the West Virginia program are being amended to implement this action.

This final rule is being made effective July 11, 1985, to correspond with the effective date of the WVEA, to expedite the State program amendment process and to encourage States to conform their programs to Federal standards in accordance with SMCRA without undue delay.

EFFECTIVE DATE: July 11, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

On March 3, 1980, West Virginia submitted its proposed permanent regulatory program, which the Secretary of the Interior approved in part and disapproved in part on October 22, 1980, following a review in accordance with 30 CFR Part 732 (45 FR 69249–69271). On December 19, 1980, West Virginia resubmitted its proposed program, which the Secretary conditionally approved on January 21, 1981. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval of the West Virginia program, can be found in the January 21, 1981 **Federal Register** (46 FR 5915–5956).

II. Submission of Amendment

On April 12, 1985, the West Virginia Legislature adopted the Enrolled Committee Substitute for House Bill 1850, known as the West Virginia Energy Act, which provides for the creation of a State Department of Energy. This Act contains three chapters: 22, 22A and 22B. Of the six articles in Chapter 22, Article One (general provisions concerning the Department of Energy), Article Three (the abandoned mine land reclamation program), and Article Four (the Reclamation Board of Review) concern aspects of the West Virginia programs approved under SMCRA. Chapter 22A establishes safety and reclamation standards and other regulations governing mines and the exploration for and extraction of minerals other than oil and gas. Article Three of this chapter incorporates most provisions of the now-repealed WV SCMRA; the other articles affect the West Virginia programs only in an ancillary fashion. Chapter 22B governs the oil and gas industry and does not impact the West Virginia programs.

On April 24, 1985, the Governor notified the Secretary of the proposed reorganization, the basic purpose of which is to consolidate into one department all the administrative, regulatory and other governmental functions relating to exploration for and the extraction, use and conservation of mineral resources within the State. The Reclamation Division of the Department of Natural Resources, the current regulatory authority for the West Virginia programs governing coal exploration, surface coal mining and reclamation operations and abandoned mine land reclamation, will be incorporated into the newly created Department of Energy, which the Act designates as the new regulatory authority. Although the Reclamation Division will become part of the Division of Mines and Minerals and some administrative changes will occur, the Governor has assured the Secretary that the West Virginia program approved on January 21, 1981, will remain functionally unaltered (Administrative Record Nos. WV 640 and WV 641).

On May 3, 1985, the Governor signed the West Virginia Energy Act into law. On May 10, 1985, he informed the Secretary of that action, and requested that the Secretary approve the transfer of the permanent program authority currently vested in the Department of Natural Resources to the Department of Energy as of July 11, 1985. The Governor's letter stated that he would then require the preparation of additional amendments which, if approved by OSM, would change other portions of the West Virginia program as necessary to conform operations under the Department of Energy to Federal requirements (Administrative Record No. WV 641).

On May 20, 1985, the Governor provided OSM with a copy of the West Virginia Energy Act, an indexed listing of the statute sections, a comparison of existing and revised statutory provisions, and a letter stating that the West Virginia Energy Act contains no substantive changes from the WV

SCMRA which would significantly alter the procedures and performance of the approved regulatory program, and that the functions and responsibilities of the reclamation program would remain intact (Administrative Record No. WV 642). On May 28, 1985, West Virginia submitted a letter from the Governor's Legal Counsel to clarify certain provisions of the WVEA (Administrative Record No. WV 643).

The May 29, 1985 **Federal Register** (50 FR 21881–21882) announced receipt of these materials and requested public comment on their adequacy. In response to several requests, OSM held a public hearing on June 18, 1985, and prepared a transcript (Administrative Record No. WV 665). The public comment period closed on June 28, 1985.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.17, the Director finds that, with certain exceptions, the proposed amendment, as submitted by West Virginia on May 20, 1985, and as clarified by other materials, meets the requirements of SMCRA and 30 CFR Chapter VII, as discussed below. The Federal regulations at 30 CFR 732.17(h)(9) provide that the applicable criteria for approval or disapproval of State programs set forth in 30 CFR 732.15 shall be utilized by the Director in approving or disapproving State program amendments. The Federal regulations at 30 CFR 732.15(a) provide that the State's laws and regulations must be in accordance with the provisions of SMCRA and consistent with the requirements of the Secretary's regulations. The Federal regulations at 30 CFR 730.5 define "consistent with" and "in accordance with" to mean, with regard to SMCRA, that the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of SMCRA. With regard to the Secretary's regulations, State laws and regulations must be no less effective than the Federal regulations in meeting the requirements of SMCRA.

The Director's review of the proposed amendment concentrated on those provisions of the WVEA which were substantively modified from the WV SCMRA or which were the subject of prior conditions of program approval or court decisions. The Director may require further changes in the future as a result of his ongoing review of the West Virginia program in light of Federal regulatory changes, court decisions and oversight evaluations.

1. General—Permanent Regulatory Program

After reviewing the WVEA and additional amendment materials, the Director has determined that the reorganization required by the WVEA complies with the requirements of SMCRA and the Federal regulations. The WVEA transfers the Reclamation Division from the Department of Natural Resources to the Department of Energy, abolishes the Reclamation Commission, and assigns the powers, duties, functions and responsibilities formerly vested in the Commission and the Director of the Department of Natural Resources to the Commissioner of the Department of Energy. Section 22–1–16 designates the Department of Energy as the lead regulatory agency for all purposes of Federal legislation. Except as discussed under other findings in this section, the WVEA incorporates all provisions of the current law (WV SCMRA) unchanged, except for certain nonsubstantive wording changes and the nomenclature and codification alterations necessitated by the reorganization. In addition, section 22–1–15 provides that all rules and regulations in effect on the effective date of the WVEA which pertain to provisions of the WVEA will remain in effect until changed or superseded by the Commissioner of the Department of Energy.

WVEA section 22–1–14 provides that all appropriations, funds, supplies, equipment, records and other materials pertaining to duties and functions transferred to the Department of Energy shall also be transferred. Also, section 22–1–21 requires that all Department of Natural Resources and Department of Mines employees whose functions and duties are transferred to the Department of Energy be employed in comparable positions within that department. In addition, the Governor has assured the Secretary that the staffing and funding levels of the West Virginia program will be maintained (Administrative Record Nos. WV 640 and 641). Although the WVEA does not specifically provide that all memoranda of understanding with other agencies involved in the West Virginia program will be transferred, the Director interprets the Governor's statement that all program functions and duties will remain unaltered to mean that all such memoranda will continue in force until renegotiated by the Commissioner and approved by OSM.

Therefore, the Director finds that, except as discussed below, the newly designated regulatory authority has the capability to implement, administer and enforce the approved program as required by the Federal regulations at 30 CFR 732.15(b) and section 503(a) of SMCRA.

2. General—Abandoned Mine Land Reclamation Program

Article Three of Chapter 22 of the WVEA makes no substantive changes in the West Virginia abandoned mine land reclamation program. WVEA section 22–3–2 authorizes the Commissioner to maintain program approval and to receive funds from the U.S. Department of the Interior; section 22–3–6(e) requires that all departments, boards, commissions and agencies of the State cooperate with the Commissioner to implement and administer the program. WVEA section 22–1–14 provides that all appropriations, funds, supplies, equipment, records and other materials pertaining to duties and functions transferred to the Department of Energy shall also be transferred. Also, section 22–1–21 requires that all Department of Natural Resources employees whose functions and duties are transferred to the Department of Energy be employed in comparable positions within that department. The Governor has committed the State to maintain staffing levels and to retain all program functions and duties unaltered except for administrative changes related to the reorganization (Administrative Record Nos. WV 640, 641 and 642).

Therefore, the Director finds that the Department of Energy has the capability and authority to implement the approved abandoned mine land reclamation program as required by section 405(b) of SMCRA and the Federal regulations at 30 CFR 884.13(a).

3. Definition of "Commissioner"/ Delegation of Authority

Sections 517 and 521 of SMCRA provide inspection and enforcement authority to both the Secretary and his authorized representatives, but the WVEA is unclear as to whether the Commissioner's representatives have similar authority.

Both WVEA sections 22–1–3(a)(1) and 22A–3–3(i) define "Commissioner" as "the Commissioner of the Department of Energy," in contrast to the corresponding definition of "Director" in WV SCMRA, which includes authorized inspectors and other personnel in the line of command, and the definition of "Commissioner" in the other minerals section at WVEA sections 22A–4–2(c), which includes authorized agents. Sections 22A–3–16 (a) and (c) of WVEA authorize reclamation inspectors to issue and release imminent harm

cessation orders, but the language of sections 22A–3–18(b) appears to reserve the abatement, modification and vacation of such orders, as well as the imposition of affirmative obligations in such orders, to the Commissioner. Section 22A–3–17(a) provides that the Commissioner "may cause" a notice of violation to be issued, but that he "shall order" the cessation of operations which fail to abate violations, thus indicating some authority to delegate the issuance of notices, but not the issuance of failure-to-abate cessation orders. In addition, section 22A–3–23(b) provides that the Commissioner shall conduct bond release inspections. Also, the language of section 22A–3–17(b) appears to limit the applicability of that subsection to the Commissioner.

On May 28, 1985, West Virginia submitted a legal opinion from the Governor's Legal Counsel stating that WVEA section 22–1–5 grants the Commissioner broad power of substitution and delegation of authority, including the powers to delegate authority granted to him by the WVEA to department personnel who must have such authority. The term "Commissioner" would thus include any agent named by him to act in his place (Administrative Record No. WV 643).

To be no less stringent than sections 517 and 521 of SMCRA, which provide inspection and enforcement authority to both the Secretary and his authorized representatives, the State's inspectors must have similar authority. The WVEA provides that all regulations promulgated under WV SCMRA (which provided inspectors with the requisite authority) remain in effect, and the Governor has assured the Secretary that the program will continue functionally unaltered. The Director interprets the legal opinion, the Governor's letters and the existing regulations as a commitment by the State to fully and immediately delegate all necessary authority, and is approving this amendment on that basis.

4. Definition of "Surface-Mining Operations"

The definition of "surface-mining operations" in WVEA section 22A–3–3(w) is the counterpart to the definition of "surface coal mining operations" in section 701(28) of SMCRA. The definition of "surface-mining operations" reads, in part:

> Such activities include excavation for the purpose of obtaining coal, including, but not limited to, such common methods as contour, strip, auger, mountaintop removal, boxcut, openpit and area mining; the uses of explosives and blasting; reclamation in situ distillation or retorting, leaching or other chemical or physical processing; and the cleaning concentrating, or other processing or preparation, and loading of coal for commercial purposes at or near the mine site; . . .

The definition apparently omits a semicolon needed between the words "reclamation" and "in situ", and a comma needed between the words "cleaning" and "concentrating". According to the legal opinion submitted by West Virginia on May 28, 1985, the two clerical errors were not present in the bill presented to the West Virginia Legislature, but appeared later when the bill was printed. The Governor's Legal Counsel has stated that, because the meaning was so clear in the prior legislation (WV SCMRA) and in the legislative history, the punctuation marks would, without question, be implied by the courts for a clear reading of the subsection. Therefore, the Director finds that the portion of the definition found at WVEA section 22A–3–3(w)(1) is no less stringent than that portion of the definition of "surface coal mining operations" at section 701(28)(A) of SMCRA.

The definition of "surface-mining operations" in WVEA section 22A–3–3(w)(2) provides that permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage or processing of coal shall not be subject to the West Virginia surface mining statute. The definition provides that "such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas." *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144), the U.S. District Court for the District of Columbia ruled on July 6, 1984, that, under the definition of "surface coal mining operations" in section 701(28) of SMCRA, all "support" facilities resulting from or incident to surface coal mining activities, such as offices or storage areas, must be regulated regardless of their proximity to the mine.

Therefore, the Director finds that the proviso of WVEA section 22A–3–3(w)(2) which exempts certain support facilities from regulation is inconsistent with section 701(28)(B) of SMCRA, and, under a separate notice appearing in today's **Federal Register**, he is proposing to preempt and supersede this portion of the statute.

5. Special Requirements for Mines Not Exceeding Two Acres

WVEA Section 22A–3–26 provides that certain operations are not subject to the WVEA, including "the extraction of coal for commercial purposes where the surface mining operation affects two acres or less: Provided, That the entity conducting or planning to conduct said operation complies with the provisions of section ten-a [sic] of this article." The exemption of operations two acres or smaller in size is similar to the exemption found in Section 528(2) of SMCRA, although West Virginia establishes separate requirements for such operations in accordance with the provisions of Section 22A–3–9a rather than exempting them altogether. Under the previously approved State program, including the regulations still in effect, West Virginia did not exempt or provide special treatment for such mines.

The Federal rule of 30 CFR 700.11(b) further defines the exemption provided by SMCRA as applying "where the surface coal mining and reclamation operation, together with any related operations, has or will have an affected area of two acres or less." The Federal rule also prescribes criteria for determining when access or haul roads are to be included in the affected area, and criteria for determining when operations shall be deemed to be "related" for purposes of the exemption. WVEA Section 22A–3–9a(e) contains criteria for determining when operations are to be considered related for purposes of the two-acre provisions. These criteria are similar to those in the Federal regulations at 30 CFR 700.11(b)(2), but the WVEA does not specify if, how or when these criteria are to be used. The West Virginia statute also does not specify that segments of access and haul roads used by more than one operation must be included in the affected area of each operation for purposes of determining the affected area, as is required by 30 CFR 700.11(b)(1). Nor does the State define or explain the phrase "under common ownership or control, directly or indirectly" in a manner no less effective than 30 CFR 700.11(b)(2) (ii) and (iii).

Moreover, since WVEA Section 22–1–15 provides that all rules and regulations in effect on the effective date of the WVEA will continue in effect until changed by the Commissioner, and since these rules contain no provisions exempting or separately regulating such operations, the Director finds that the provisions of WVEA Sections 22A–3–9a and 22A–3–26(d) cannot take effect until the Commissioner develops, obtains OSM approval of, and promulgates regulations which establish an eligibility test and criteria no less effective than the Federal regulations at 30 CFR 700.11(b).

In addition, WVEA Section 22A–3–9a(a)(8) requires a minimum bond of $5,000 per acre to assure regrading and revegetation of all disturbed areas. The bond provision is not, in itself, inconsistent with SMCRA and the Federal regulations. However, this portion of the WVEA specifies that the bond shall be posted for a maximum of two acres, *exclusive of roadways and temporary spoil placement.* To the extent that the language of WVEA Section 22A–3–9a(8) could be interpreted as allowing operatons affecting in excess of two acres to qualify for the special requirements, the Director finds that this provision is inconsistent with Section 528(2) of SMCRA and is less effective than 30 CFR 700.11(b) and the definition of "affected area" at 30 CFR 701.5. Under a separate notice appearing in today's **Federal Register**, he is proposing to preempt and supersede this portion of the statute.

6. Final Bond Release Requirements

Section 519(c)(3) of SMCRA prohibits final release of an operator's performance bond until the period for operator responsibility has expired and all reclamation requirements of SMCRA, including revegetation, are fully met. WVEA Section 22A–3–23(c)(3) similarly provides that the final portion of the bond may be released when the operator has successfully completed all surface mining and reclamation activities and the period of operator responsibility has expired, provided that revegetation has been established on the regraded mined lands in accordance with the approved plan. However, WVEA Section 22A–3–23(c)(3) contains an additional proviso which would authorize final bond release even if revegetation has not been established in accordance with the reclamation plan, if the quality of the untreated postmining water discharges equals or exceeds that of the premining discharges.

Therefore, the Director finds WVEA Section 22A–3–23(c)(3) inconsistent with Section 519(c)(3) of SMCRA. Under a separate notice appearing in today's **Federal Register**, he is proposing to preempt and supersede the proviso that final bond release may be made where the quality of untreated postmining water discharged is better than or equal to that of the premining discharges.

7. Variance from Performance Standards

WVEA Section 22A–3–12 sets forth the general environmental protection performance standards for surface-mining operations. WVEA Section 22A–3–12(e) authorizes the Commissioner to allow variances from the general performance standards. Section 515(e) of SMCRA authorizes the regulatory authority to grant variances from approximate original contour (AOC) requirements for alternative postmining land uses, provided certain conditions are met. Further, SMCRA requires that the regulatory authority promulgate specific regulations and establish procedures to govern the granting of such variances. However, the variance provision in WVEA Section 22A–3–12(e) is a general variance applicable to all performance standards and is not limited to variances from AOC for the purposes set forth in Section 515(e) of SMCRA, nor does it require that the Commissioner promulgate regulations and establish procedures governing the granting of such variances, in accordance with Sections 515 (e)(1) and (e)(5) of SMCRA.

Therefore, the Director finds that WVEA Section 22A–3–12(e) is inconsistent with Section 515(e) of SMCRA, and, under a separate notice in today's **Federal Register**, he proposing to preempt and supersede this subsection.

8. Operator Liability Limits

Section 521(a)(1) of SMCRA provides that a citizen shall be allowed to accompany an inspector during any inspection resulting from a complaint which the citizen filed. On January 12, 1984, the Director set aside that portion of the West Virginia statute which provided that neither the permittee nor his authorized agents or employees could be held civilly liable for any injury sustained by a citizen accompanying an inspector onto the mine site, except for willful and deliberate acts (49 FR 1489–1490). As discussed in Finding 27 of the November 16, 1983 **Federal Register** notice (48 FR 52042–52043) this provision is not in accordance with Section 521(a)(1) of SMCRA in that it could act as a constraint on citizens desiring to exercise their right to enter the mine site. Ordinary tort law principles are sufficient to determine whether a citizen injured on the mine site may hold the operator liable for such injury.

WVEA Section 22A–3–15(g) incorporates language identical to that previously set aside. Accordingly, the Director finds WVEA Section 22A–3–15(g) to be less stringent than Section 521(a)(1) of SMCRA. By a separate notice appearing in today's **Federal Register**, he is proposing to preempt and supersede the language limiting operator liability.

9. Conflict of Interest Requirements

Section 517(g) of SMCRA prohibits any employee of the State regulatory authority performing any function or duty under SMCRA from having a direct or indirect financial interest in any coal mining operation. The Federal regulations at 30 CFR Part 705 implement the financial interest restrictions of Section 517(g) of SMCRA and apply directly to all covered State employees. WVEA Section 22A–3–37(a) prohibits employees of the Reclamation Board of Review and the Division of Mines and Minerals who perform any function or duty under Article Three of Chapter 22A from having a direct or indirect financial interest in any surface-mining operation. This prohibition does not apply to the Commissioner, Deputy Commissioner or other employees of the Department of Energy who perform functions or duties under Article Three, nor would it apply to any employee performing a function or duty under SMCRA not included in Article Three. The conflict-of-interest provisions of the WVEA would thus not apply to employees performing duties exclusively associated with the abandoned mine land reclamation program under Article Three of Chapter 22.

However, because SMCRA Section 517(g) and 30 CFR Part 705 apply directly to employees of the State regulatory authority, the Director finds that these officials and other employees of the Department of Energy not expressly included in the conflict-of-interest provisions of WVEA section 22A–3–37(a) are directly covered by the Federal law and regulations. Furthermore, employees of the Division of Mines and Minerals and the Reclamation Board of Review who perform functions or duties under SMCRA other than those under Article Three of Chapter 22A of the WVEA are also directly covered by the Federal law and regulations. Therefore, the Director finds that the West Virginia statute is not inconsistent with SMCRA. Upon identification of the Department of Energy employees performing functions or duties under SMCRA, the Director will require submission of conflict-of-interest statements from all employees not covered by the State law.

10. Permit Issuance to Persons in Violation of Federal Laws or Environmental Laws in Other States

Section 510(c) of SMCRA prohibits issuance of a permit where the violation schedule submitted by the applicant or other information available to the regulator authority indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of SMCRA or any other Federal or State law or regulation

pertaining to air or water environmental protection, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority, department or agency which has jurisdiction over the violation. Furthermore, Section 510(c) of SMCRA prohibits issuance of a permit to an applicant after a finding by the regulatory authority that the applicant, or the operator, controls or has controlled mining operations with a demonstrated pattern of willful violations of SMCRA of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of SMCRA.

WVEA section 22A–3–18(c) prohibits the issuance of a permit where information available to the Department indicates that any surface-mining operation located in West Virginia, owned or controlled by the applicant, is in violation of Article Three of Chapter 22A of the WVEA or other environmental laws or regulations. Furthermore, under certain conditions, this section prohibits permit issuance to any applicant after a finding by the Commissioner that the applicant or operator controls or has controlled mining operations with a demonstrated pattern of willful violations of Article Three. Section 510(c) of SMCRA does not limit these conditions to violations or patterns of violations of State law, nor does it limit the violations and patterns of violations considered to those occurring at operations located within the State. Therefore, the Director finds that WVEA section 22A–3–18(c) is inconsistent with SMCRA Section 510(c), and he is proposing, under a separate notice appearing in today's **Federal Register**, to preempt and supersede the limiting language.

11. Demonstration Vineyards, Coordination with Commissioner of Labor in Permit Issuance, and Base Salary Increases

WVEA section 22A–3–13 establishes a pilot program for the growing of grapes on reclaimed areas, sections 22A–3–8(g) and 22A–3–20(a) require the Commissioner to coordinate with the Commissioner of Labor in issuing permits, and section 22A–3–5 increases the base salaries of surface-mining reclamation inspectors and supervisors.

These provisions have no Federal counterparts and the Director finds that they are not inconsistent with SMCRA or less effective than the Federal regulations, provided no Federal funds are spent for activities related to the pilot grape-growing program and the Commissioner of Labor coordination process.

12. Technical Amendments Needed

The WVEA contains a number of apparent typographical errors, most of which do not create any ambiguity in meaning. However, the Director finds that, to clarify meanings and avoid misinterpretation, West Virginia must amend its statute to correct the following errors:

a. WVEA section 22A–1–1: The Division of Mines and Minerals is created under §22–1–7, not §22–1–6.

b. WVEA section 22A–3–9a: This section uses the term "director" when "commissioner" is apparently intended.

c. WVEA section 22A–3–9a(a)(6): The reclamation plan requirements are contained in Section 10, not 11.

d. WVEA section 22A–3–9a(a)(7): The insurance requirements are contained in Section 9, not 10.

e. WVEA Section 22A–3–9a(d): This subsection is unclear and must be reworded to clarify its meaning and to be consistent with section 22–1–15, which reserves the authority to promulgate rules and regulations to the Commissioner.

f. WVEA Section 22A–3–26(d): The requirements for operations two acres or smaller in size are contained in Section 9a, not 10a.

g. WVEA Section 22A–3–3(w)(1): The punctuation omissions in the definition of "surface-mining operations," as discussed in Finding 4, need to be corrected.

h. WVEA Section 22A–3–17(d) deals primarily with civil penalty assessment and collection procedures. To avoid confusion and to clarify that the appeal rights and procedures of Section 22A–3–17 (d)(3) apply to all orders of the Commissioner, and that the temporary relief provisions of Section 22A–3–17(d)(4) apply to all enforcement actions but not to civil penalty assessments, West Virginia must recodify both Section 22A–3–17 (d)(3) and (d)(4) as separate subsections.

13. Alternative Bonding System

WVEA Section 22A–3–11(c)(2) provides that the Commissioner may approve an alternative bonding system under certain conditions. Section 509(c) of SMCRA and 30 CFR 800.11(e) provide that the Secretary, acting through OSM, may approve, as part of a State or Federal program, an alternative bonding system if it will achieve certain objectives and purposes. The Secretary has already approved an alternative bonding system as part of the West Virginia program (Finding 18.1, 46 FR 5926, January 21, 1981). Therefore, the Director finds that the Commissioner may not implement any other alternative bonding system or amend the existing system until the proposal has been reviewed and approved by the Director.

WVEA Section 22A–3–11(g) provides that all special reclamation taxes collected as part of West Virginia's alternative bonding system shall be deposited in the special reclamation fund for use in reclaiming bond forfeiture sites where the site-specific bond proves insufficient. However, it also authorizes the Commissioner to "expend such amounts as are reasonably necessary to implement and administer the provisions of this chapter and chapters twenty-two-a and twenty-two-b of this code". This provision would allow expenditures from the fund for general administrative purposes not related to reclamation on forfeited sites, and for expenses associated with noncoal programs. The Secretary originally approved West Virginia's alternative bonding system on the condition that it obtain an actuarial study showing that the bond fund will always contain sufficient money to meet all anticipated needs. On October 29, 1982, West Virginia submitted the required study (Administrative Record No. WV 456), and, after reviewing the study, the Secretary removed this condition of approval on March 1, 1983.

However, this study did not consider the impact on the fund of authorizing expenditures for general administrative purposes or for non-coal programs.

Since WVEA Section 22–3–11(g) expands the range of allowable administrative expenditures, the Director, in accordance with Section 509(c) of SMCRA and 30 CFR 800.11(e), is requiring that West Virginia submit a new analysis demonstrating that the special reclamation fund can withstand all authorized administrative cost withdrawals without hampering the State's ability to reclaim all bond forfeiture sites in accordance with their approved reclamation plans in a timely manner.

14. NPDES Program

WVEA Section 22A–3–40 transfers all permitting, enforcement and rulemaking authority for surface-mining operations under the National Pollutant Discharge Elimination System (NPDES) from the Division of Water Resources within the Department of Natural Resources to the Department of Energy. Approval of this transfer can be granted only by the Administrator of the U.S. Environmental Protection Agency. The Director's approval of the WVEA shall not be

construed as approving the transfer of any NPDES authority or functions.

IV. Public Comment

The Director solicited public comment on the proposed amendment in the May 29, 1985 Federal Register. (50 FR 21661–21662). The Director received eleven written comments prior to the close of the comment period on June 28, 1985. In addition, eleven statements were presented at the public hearing held on June 18, 1985, in Charleston, West Virginia. A complete list of the commenters and a copy of the transcript of the hearing can be found in the West Virginia Administrative Record (Administrative Record Nos. WV 665 and WV 666).

Pursuant to Section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies, with comments received from the Advisory Council on Historic Preservation, the Soil Conservation Service of the U.S. Department of Agriculture, the Corps of Engineers of the U.S. Department of the Army, and the Mine Safety and Health Administration of the U.S. Department of Labor.

The following is a summary of all comments received on the proposed program amendment and the Director's response to those comments.

Federal Agency Comments

1. The Advisory Council on Historic Preservation stated that the likelihood exists that implementation of the State program will result in adverse effects upon properties included in or eligible for the National Register of Historic Places. However, since the Council did not identify any specific provisions of the State program which could create these adverse effects, the Director is unable to address the Council's concerns. The WVEA does not alter any of the previously approved provisions concerning historic and cultural resources.

2. The Soil Conservation Service commented on several provisions pertaining to requirements for oil and gas operations. Since OSM does not regulate the oil and gas industry and is not reviewing or approving those portions of the WVEA concerning oil and gas, the Director cannot address these concerns.

3. The Mine Safety and Health Administration (MSHA) stated that SMCRA section 515(b)(12) requires that all mining activities within 500 feet of an active or abandoned underground mine be "jointly approved by the regulatory authorities concerned with surface mine regulations and the health and safety of mining" and that previous interpretations of this statement included MSHA. However, MSHA noted that WVEA § 22A–3–12(b)(13) requires only that the Commissioner approve such activities.

Although the WVEA requires only the approval of the Commissioner, the State's regulations (§ 6B.07(f)) also require MSHA's approval of surface activities conducted within 500 feet of an underground mine not totally abandoned. This provision is no less stringent than SMCRA § 515(b)(12) and is no less effective than 30 CFR 816.79(b) since the Federal regulations require MSHA approval only of activities conducted within 500 feet of *active* underground mines.

4. MSHA also expressed concern that, contrary to the cited Federal regulations, the WVEA does not require MSHA approval of (a) blasting (30 CFR 780.13(c)), (b) diversion of water into underground mine workings, within 500 feet of active or abandoned underground mines (30 CFR 816.41(i) and 817.41(h)) and (c) disposal of coal mine waste in underground mine workings (30 CFR 816.71(j), 817.71(j), 816.81(f) and 817.81(f)).

All of the required provisions are contained in the approved State regulations in the following sections: (a) 4C.05(f); (b) 6B.04(a)(5), 7B.04(f)(5) and 8B.04(d)(5); and (c) D.05.i. However, the Federal regulations at 30 CFR 780.13(c) do not require MSHA approval blasting within 500 feet of an abandoned underground mine.

Public Comments

1. Several commenters expressed concern that the Commissioner and other individuals who perform functions and duties under SMCRA, would not be subject to the restrictions on financial interests contained in the Federal law and regulations. The Director has determined that all employees of the State regulatory authority performing any function or duty under SMCRA will be subject to the financial interest restrictions of SMCRA section 517(g) and 30 CFR Part 705, as discussed in Finding 9 above.

2. Several commenters addressed the lack of civil service protection for certain employees of the Department. In addition, several commenters stated concern over the removal of the Reclamation Division from the Department of Natural Resources (DNR). They felt that the purpose of DNR traditionally has been the exploration, conservation, development, protection, enjoyment and use of the natural resources of the State. The commenters stated that a program charged with the protection and regulation of these areas was now being placed in an agency charged with the promotion of economic development. Other commenters felt that the transfer of the Reclamation Division to the Department of Energy would weaken protection of environmental resources and fish and wildlife, since the Reclamation Division would no longer be able to obtain comments from the Water Resources and Fish and Wildlife divisions of DNR.

While the Director has reviewed the concerns expressed by the various commenters, the Federal law contains no requirement that civil service protection be provided to employees of the State regulatory authority or that a particular agency be designated as the regulatory authority. Moreover, the West Virginia program does provide for notification of various appropriate Federal and State agencies of an applicant's intent to mine a particular tract of land (WVEA section 22A–3–20). All interested agencies, including the Water Resources and the Fish and Wildlife divisions of DNR, will thus have the opportunity to comment on all mining permit applications.

3. Several commenters stated that provisions of WVEA section 22A–3–8a, establishing special standards for operations two acres or smaller in size, were inconsistent with the requirements of Federal law. Specifically, they expressed concern that the provisions excluded haul roads and spoil storage sites from the calculation of the area of the operation, that they allowed lesser permitting and bonding standards, and that they do not address the potential for several two-acre sites to be mined by the same operator in the same area. The Director has addressed these concerns in Finding 5 above.

4. Several commenters stated that the definition of surface-mining operations as contained in WVEA section 22A–3–3–(w) is inconsistent with Federal law and recent court decisions concerning the phrase "at or near the mine site". The Director has addressed these concerns in Finding 4 above.

5. One commenter stated that the exemption of existing structures and facilities from design criteria if such structures meet the performance standards is contrary to the Federal regulations which provide this exemption only for structures existing on the date of approval of the State program. The commenter suggested that the language of WVEA section 22A–3–29(b) seems to exempt structures constructed between the date of approval of the State program (January 21, 1981) and the effective date of the

WVEA (July 11, 1985). The Director finds that this situation will not exist, since section 2.44 of the West Virginia regulations defines "existing structure" as "a structure or facility . . . for which construction began prior to January 18, 1981," a definition which the Secretary has found to be no less effective than the corresponding Federal definition.

6. One commenter stated that under the WV SCMRA, the Director, as head of the DNR, had powers delegated to him by provisions of State law other than those contained in the surface mining law. The Director was thus empowered to take certain actions which the Commissioner could not require under the authority provided him by the WVEA.

While it may be true that the Director of DNR has broader powers than those provided to the Commissioner by the WVEA, the approval of the West Virginia program was not based upon the authority to require actions which are over and above those required by SMCRA. The approval of the West Virginia program on January 21, 1981, was based upon the authority provided by WV SCMRA, which authority was found to be no less stringent than that required by SMCRA. Similarly, the WVEA provides the Commissioner with the authority needed to implement and enforce the provisions of the West Virginia program.

7. Several commenters stated that, if the Director conditionally approved the amendment, he should require correction of all deficiencies prior to July 11, 1985, the effective date of the WVEA. The commenters stated that the West Virginia Legislature can be called into special session on three days notice and that this would allow sufficient time for correction of all deficiencies prior to the effective WVEA's date. The commenters also requested that, if the Director does not require that all corrections be made prior to the effective date, he should do so as soon after that date as possible.

As discussed in the "Director's Findings" section above, the Director is proposing to preempt and supersede certain provisions found inconsistent with the Federal law and less effective than the Federal regulations, and he is requiring additional amendments to other issues.

8. Several commenters expressed concern with WVEA section 22–1–19, which, in effect, repeals existing law effective July 11, 1985, and section 22–1–20 which provides that the reorganization shall take effect upon issuance of a proclamation by the Governor that the necessary Federal approvals have been received. The commenters stated that OSM may not grant approval of the amendment prior to July 11, and that a period of time would thus exist during which the State would not have a legally effective surface mining law. The Director's approval of this amendment will prevent this situation from occurring.

9. One commenter expressed concern with the number of typographical, technical and clerical errors and inconsistencies contained in the WVEA. The commenter provided only one specific example of these errors, dealing with provisions concerning the salary levels of reclamation inspectors and supervisors. The Director has attempted to identify all such errors in his review, requiring correction of those which appear to create ambiguities in meaning, as discussed in Finding 12 above.

10. One commenter objected to the concentration of authority in the Commissioner, a concern relating to the difference between the definition of "Commissioner" contained in the WVEA and the corresponding definition of "Director" contained in the now repealed WV SCMRA. The Director has addressed this concern in Finding 3 above.

11. One commenter stated that WVEA section 22A–1A–6 provides that the Director of the Division of Mines and Minerals shall take an oath of office prescribed by Section Five, Article Twelve of the West Virginia Constitution, although the correct citation is Section Five, Article Four. The Director's review found that WVEA section 22–1–9 contains a similar requirement with the correct citation.

V. Director's Decision

The Director, based on the above findings, is approving the May 20, 1985 amendment to the West Virginia program, with the exception of those provisions which he has determined to be inconsistent with SMCRA or the Federal regulations. In addition, as indicated in the findings, a number of program amendments will be required. The Director has notified West Virginia, pursuant to 30 CFR 732.17, that certain required program amendments will be necessary. The Federal rules at 30 CFR Part 948 are being amended to implement this decision. The Director is also reorganizing 30 CFR Part 948 for purposes of clarity and administrative convenience.

Further, for those provisions which the Director has determined to be inconsistent with SMCRA or the Federal regulations, OSM is giving notice, under Section 505 to SMCRA and 30 CFR 730.11(a), of that determination and is proposing to preempt and supersede those specific provisions. A separate notice to that effect is being published in the **Federal Register** today; it provides a 30-day period for public comment.

Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) clearly prohibit any unilateral changes to approved State programs. In his oversight of the State program, the Director will recognize only the statutes and regulations approved by him, and will require the enforcement by the State of only such provisions. Therefore, the provisions that the Director is approving today will take effect on the specified date for purposes of the West Virginia program. Those provisions the Director has not approved today may not be implemented in any manner until such time as the Director approves them.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* The rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 8, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 948—WEST VIRGINIA

30 CFR Part 948 is amended as follows:

1. The authority citation for Part 948 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 948.10 is revised to read as follows:

§ 948.10 State regulatory program approval.

The West Virginia State program, as submitted on March 3, 1980, as clarified on July 16, 1980, and as resubmitted on December 19, 1980, is conditionally approved, effective January 21, 1981. Beginning on that date and continuing until July 11, 1985, the Department of Natural Resources was deemed the regulatory authority in West Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Beginning on July 11, 1985, the Department of Energy shall be deemed the regulatory authority, pursuant to the program transfer provisions of the Enrolled Committee Substitute for House Bill 1850 as signed by the Governor of West Virginia on May 3, 1985.

Copies of the conditionally approved program, as amended, are available at:

(a) Office of Surface Mining, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

(b) Office of Surface Mining, 1100 "L" Street NW., Room 5124, Washington, D.C. 20240. Telephone: (202) 343–4855.

(c) West Virginia Department of Energy, Division of Mines and Minerals, 1615 Washington Street, East Charleston, West Virginia 25305. Telephone: (304) 348–3257.

3. 30 CFR 948.12 is amended by revising the section heading and paragraph (a) and by adding paragraphs (c), (d), (e), (f) and (g) to read as follows:

§ 948.12 State program provisions found inconsistent with Federal law and less effective than Federal regulations.

(a) Section 22A–3–15(g) of the Code of West Virginia is found inconsistent with Section 521(a)(1) of SMCRA to the extent that it states: *"Provided,* That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip."

* * * * *

(c) Section 22A–3–3(w)(2) of the Code of West Virginia is found inconsistent with Section 701(28) of SMCRA to the extent that it states: *"Provided, however,* That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage, or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas."

(d) Section 22A–3–9a(a)(8) of the Code of West Virginia is found less effective than 30 CFR 700.11(b) and the definition of "affected area" at 30 CFR 701.5 to the extent that the phrase "exclusive of roadways and temporary spoil placement" could be interpreted as excluding such areas when determining the size of the affected area.

(e) Section 22A–3–23(c)(3) of the Code of West Virginia is found inconsistent with Section 519(c)(3) of SMCRA to the extent that it states: *"Provided, however,* That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site."

(f) Section 22A–3–12(e) of the Code of West Virginia is found inconsistent with Section 515(e) of SMCRA.

(g) Section 22A–3–18(c) is found inconsistent with Section 510(c) of SMCRA to the extent that it limits its applicability to surface-mining operations "located in the State of West Virginia" and to patterns of willful violations "of this article."

4. 30 CFR 948.15 is amended by redesignating existing paragraphs (a) and (b) as (e) and (f), respectively, adding paragraphs (a) through (d), which were previously summarized in 30 CFR 948.10, and adding paragraph (g) to read as follows:

§ 948.15 Approval of regulatory program amendments.

(a) West Virginia's coal refuse disposal regulations, as submitted to OSM on October 29, 1981, are approved effective May 11, 1982, subject to the conditions set forth in § 948.11. The revised regulations replace Section 10 of West Virginia's surface mining reclamation regulations contained in the State's conditionally approved program of January 21, 1981.

(b) The amendment to Section E.03 of the State's coal refuse disposal regulations, which was submitted to OSM on June 17, 1982, is approved effective September 10, 1982.

(c) The following amendments, as submitted to OSM on September 14, 1982, and October 29, 1982, are approved in part effective March 1, 1983: West Virginia's revised surface mining reclamation regulations promulgated on October 28, 1982, and an actuarial study regarding West Virginia's alternative bonding system.

(d) The following regulatory and statutory amendments submitted to OSM on February 16, April 29, June 15 and September 13, 1983, which were intended to satisfy the remaining conditions of approval on the West Virginia program, are approved effective July 15, 1983, to coincide with the date of expiration of the State's emergency regulations and are subject to the conditions set forth in § 948.11: West Virginia's revised surface mining reclamation regulations as filed with the West Virginia Secretary of State on February 3, 1983, and submitted on February 14, 1983, along with the notice that the Department of Natural Resources Technical Handbook of Standards and Specifications for Mining Operations will now serve as a technical guideline, rather than regulation; amendments to the West Virginia Surface Coal Mining and Reclamation Act as submitted on April 29, 1983; revisions to the West Virginia surface mining reclamation regulations as submitted on June 13, 1983; and further revisions to the State's surface mining reclamation regulations dated July 15, 1983, and submitted on September 13, 1983, concerning applicability, the inclusion of new bond release procedures for interim program permits, the deletion of the incidental mining requirements at Section 9 of its regulations and the correction of typographical and punctuation errors in its regulations.

(e) The following amendment submitted to OSM on January 12, 1984, as modified on June 18, 1984, is approved effective September 20, 1984: West Virginia's blaster certification program, as contained in the proposed West Virginia Administrative Regulations, Department of Mines, Chapter 22–4 Series ———, submitted to OSM on June 18, 1984, and all other items as submitted by West Virginia on January 12, 1984, and modified on June 18, 1984. This approval is contingent on promulgation of the above referenced proposed regulations.

(f) The following amendment submitted to OSM on November 20, 1984, is approved effective April 23, 1985: Amendments to West Virginia's blaster certification program, as contained in the proposed West Virginia Administrative Regulations, Department of Mines, Chapter 22–4 Series ————, Section 6.01(B) and Section 9, submitted to OSM on November 20, 1984. This approval is contingent upon the State's promulgation of the proposed regulations in the identical form submitted for OSM's review and approval.

(g) The following amendment, as submitted to OSM on May 20, 1985, and clarified on April 24, May 10, May 20, and May 28, 1985, is approved, with the exceptions listed in 30 CFR 948.12 (a), (c), (d), (e), (f), and (g), effective July 11, 1985: The Enrolled Committee Substitute for House Bill 1850, which revises the Code of West Virginia to provide for creation of a Department of Energy and the transfer of program authority from the Department of Natural Resources to the Department of Energy.

5. 30 CFR 948.16 is amended by adding paragraphs (b) and (c) to read as follows:

§ 948.16 Required program amendments.

* * * * *

(b) By October 11, 1985, West Virginia must submit an actuarial study or other comprehensive analysis demonstrating that sufficient money will be available in the special reclamation fund both to complete the approved reclamation plans for any areas which may be in default at any time and to cover all administrative costs allowed under section 22A–3–11(g) of the Code of West Virginia.

(c) By March 15, 1986, West Virginia must submit copies of statutory revisions to correct or otherwise eliminate certain errors in Chapter 22A of the Code of West Virginia as follows:

(1) Section 22A–1–1 must be revised to state that the Division of Mines and Minerals is created under section 22–1–7, not section 22–1–6.

(2) Section 22A–3–3(w)(1) must be revised to insert a semicolon between "reclamation" and "in situ" and a comma between "cleaning" and "concentrating".

(3) Section 22A–3–9a must be revised throughout to replace "director" with "commissioner" to maintain consistency with the West Virginia Energy Act as a whole and section 22–1–15 in particular.

(4) Section 22A–3–9a(a)(6) must be revised to state that the reclamation plan requirements are contained in Section 10, not Section 11.

(5) Section 22A–3–9a(a)(7) must be revised to state that the insurance requirements are contained in Section 9, not Section 10.

(6) Section 22A–3–9a(d) must be reworded to clarify its meaning.

(7) Section 22A–3–26(d) must be revised to state that the requirements for operations two acres or smaller in size are contained in Section 9a, not 10a.

(8) Section 22A–3–17(d)(3) must be recodified as a separate subsection to clarify that appeal rights and procedures apply to all notices, orders and decisions of the Commissioner, not just those relating to civil penalty assessments.

(9) Section 22A–3–17(d)(4) must be recodified as a separate subsection to clarify that temporary relief provisions apply to all enforcement actions and orders, but not to civil penalty assessments.

6. 30 CFR 948.20 is revised to read as follows:

§ 948.20 Approval of State abandoned mine land reclamation plan.

The West Virginia Abandoned Mine Reclamation Plan as submitted on October 29, 1980, and as amended December 12, 1980, is approved effective February 23, 1981. Copies of the approved plan are available at the following locations:

(a) West Virginia Department of Energy, Division of Mines and Minerals, 1615 Washington Street, East, Charleston, West Virginia 25305. Telephone (304) 348–3267.

(b) Office of Surface Mining, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

(c) Office of Surface Mining, 1100 L Street, NW., Room 5124, Washington, D.C. 20240. Telephone: (202) 343–4655.

7. 30 CFR 948.25 is added as follows:

§ 948.25 Approval of abandoned mine land reclamation plan amendments.

(a) The following amendment as submitted to OSM on May 20, 1985, and clarified on April 24, May 10, and May 20 and May 28, 1985, is approved: The Enrolled Committee Substitute for House Bill 1850, which revised the Code of West Virginia to provide for the creation of a Department of Energy and the transfer of program authority from the Department of Natural Resources to the Department of Energy.

[FR Doc. 85–16510 filed 7–10–85; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 948

Approval of Amendments and Removal of Conditions; West Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Secretary is announcing the approval in part and disapproval in part of certain amendments to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the removal or modification of some of the conditions placed on his approval of the State's program. On March 30, 1984, October 30, 1984, and June 14, 1985, West Virginia submitted modifications to its surface mining reclamation and coal refuse disposal regulations. The amendments are intended to satisfy the remaining fifteen conditions of approval concerning auger mining, coal refuse disposal, blasting, transfer of wells, permit approval, revegetation, suspension or revocation of permits, stabilization of rills and gullies, subsidence, Mine Safety and Health Administration (MSHA) approval of permit applications and the exemption for coal extraction incident to government-financed highway or other construction. Also, the October 30th amendment contains revised civil penalty assessment procedures developed by the State to identify assessable and non-assessable violations and to satisfy concerns raised by OSM regarding the State's implementation of its approved civil penalty system.

After providing opportunity for public comment and conducting a thorough review of the program amendments in accordance with 30 CFR 732.17, the Secretary has decided to approve certain modifications contained in the amendments and to remove some of the conditions of approval. This decision is being made retroactive to August 27, 1984, to coincide with the promulgation of the State's surface mining reclamation and coal refuse disposal regulations.

EFFECTIVE DATE: August 27, 1984.

ADDRESSES: Copies of the amendments to the West Virginia program and all written comments received on the proposed amendments are available for public review and copying at the OSM Headquarters Office, the OSM Charleston Field Office and the office of the State regulatory authority at the

addresses listed below, Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5124, Washington, D.C. 20240. Telephone: (202) 343–4855.

West Virginia Department of Energy, Division of Mines and Minerals, 1615 Washington Street, East, Charleston, West Virginia 25305. Telephone: (304) 348–3267.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1980, the Secretary of the Interior received a proposed regulatory program from the State of West Virginia. On October 22, 1980, following a review of the proposed program in accordance with 30 CFR Part 732, the Secretary approved in part and disapproved in part the proposed program (45 FR 69249–69271).

West Virginia submitted a revised program proposal on December 19, 1980, and after a subsequent review, the Secretary conditionally approved the program on the correction of thirty-five minor deficiencies on January 21, 1981. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval of the West Virginia program can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956).

On October 29, 1981, West Virginia submitted revised coal refuse regulations to OSM as an amendment to its permanent regulatory program. The amendment was conditionally approved on May 11, 1982 (47 FR 20119–20122).

At West Virginia's request, on October 31, 1981, the Secretary extended the deadlines for meeting certain conditions of approval to November 1, 1982 (46 FR 54070–54071). Also, on May 27, 1982, the Secretary extended the deadline for meeting the conditions requiring legislative approval to May 1, 1983, and the deadline for the remaining conditions requiring regulatory changes to November 1, 1982 (47 FR 23156–23157).

On September 10, 1982, OSM determined that a modification submitted by West Virginia on June 17, 1982, concerning coal refuse disposal satisfied a portion of the condition imposed by the Secretary on May 11, 1982 (47 FR 39821–39822).

On September 14, 1982, and October 29, 1982, West Virginia submitted modifications to satisfy certain other conditions of its program. On March 1, 1983, the Secretary announced in the **Federal Register** that the modifications submitted by West Virginia satisfied eight of the conditions of approval, and the deadline for meeting all of the remaining conditions requiring regulatory changes was extended to May 1, 1983 (48 FR 8447–8451).

On February 16, April 29, June 15, and September 13, 1983, West Virginia submitted statutory and regulatory modifications to satisfy the remaining conditions of approval. On November 16, 1983, the Secretary approved some of these modifications removing twenty-three conditions, revising five existing conditions, disapproving two permanent program provisions and imposing ten new conditions (48 FR 52034–52054). West Virginia had until March 30, 1984, to submit modifications to resolve all of the remaining conditions of approval.

On January 12, 1984, the Secretary preempted and superseded that portion of West Virginia's surface mining law which provided that a permittee and his authorized agents and employees are not liable for any inquiry substained by a citizen accompanying the inspector onto a mine site (49 FR 1489–1490).

As set forth at 30 CFR 948.11(a), the West Virginia program currently contains the following deficiencies. All Federal regulatory citations throughout this notice reflect the most recent regulatory revisions, not those in effect at the time 30 CFR 948.11 was promulgated and amended. Citations of the State law do not reflect the recodification effected by enactment of the West Virginia Energy Act.

1. The program does not include provisions for augering on previously mined areas which are no less effective than 30 CFR 819.19(b) and in accordance with sections 102 and 515(b)(3) of SMCRA [Condition (1)];

2. The program contains coal refuse disposal regulations which require compliance with interim program regulations rather than with permanent program regulations [Condition (8)]; the State's coal refuse disposal regulations provide a waiver from stability requirements if site conditions indicate that failure will not occur [Condition (8)(ii)]; and the State's coal refuse disposal regulations fail to (A) require covering of coal mining waste banks with non-toxic and non-combustible material as required by 30 CFR 816.83(c)(4) and 817.83(c)(4), (B) specify construction criteria for subdrainage systems as required by §§ 816.83(d) and 817.83(d), (C) prohibit the use of impoundments on constructed fills as required by 30 CFR 816.83(c)(3) and 817.83(c)(3), and (iv) require the inspection of coal refuse piles as required by 30 CFR 816.83(d) and 817.83(d) [Condition (8)(iv)];

3. The State program does not provide that the maximum peak particle velocity shall not be exceeded at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area as required by 30 CFR 816.67(d)(2) and 817.67(d)(2) [Condition (14)];

4. The program does not include criteria for the transfer of wells as required by 30 CFR 816.41(g) and 817.41(g) [Condition (16)];

5. The program does not require that the permit applicant list any and all notices of violations of all State environmental protection laws and regulations during the three-year period prior to the date of application in accordance with section 510(c) of SMCRA [Condition (19)];

6. The State program does not provide a definition for the term "substantial legal and financial commitments in a surface coal mining operation" which is no less effective than 30 CFR 762.5 [Condition (36)];

7. The State program does not provide standards for permit approval or denial which are no less effective than 30 CFR 773.15 and in accordance with sections 510 (b), (c) and 522(e) of SMCRA, and it does not require certain permit conditions which are no less effective than those contained in 30 CFR 773.17 and in accordance with section 510 of SMCRA [Condition (37)];

8. The program does not include provisions to require that coal exploration applications contain a description of the important habitats of any threatened or endangered species and a description of cultural or historical resources listed or eligible for listing on the National Register of Historic Places which are no less effective than 30 CFR 772.12(b) and in accordance with section 512 of SMCRA, and it does not provide standards for the approval or disapproval of coal exploration applications which are no less effective than 30 CFR 772.12 and in accordance with section 512 (a) and (d) of SMCRA [Condition (38)];

9. The program does not provide for statistical sampling techniques for measuring the success of revegetation which are no less effective than 30 CFR 816.116(a) and 817.116(a) and in accordance with sections 508, 515 and 516 of SMCRA [Condition (39)];

10. The State program does not include provisions for the identification of renewable resource lands which are no less effective than 30 CFR 784.20 and in accordance with section 516(b) of SMCRA [Condition (40)];

11. The program does not include provisions for the suspension or revocation of permits which are the same or similar to 30 CFR 843.13(a)(3) and in accordance with section 521(a)(4) of SMCRA [Condition (41)];

12. The program does not include provisions for the stabilization of rills and gullies which are no less effective than 30 CFR 816.95(b) and 817.95(b) and in accordance with sections 515 and 516 of SMCRA [Condition (42)];

13. The State program does not include provisions to prohibit mining activities beneath or adjacent to bodies of water with a volume of 20 acre-feet or more which are no less effective than 30 CFR 817.121(d) and in accordance with sections 516 (b) and (c) and SMCRA [Condition (43)];

14. The program does not include provisions for MSHA approval of permit applications involving discharging of water into underground mines, mining within five hundred feet of an underground mine and blasting within five hundred feet of an underground mine which are no less effective than 30 CFR 816.41(i), 817.41(h), 816.79 and 780.13(c) [Condition (44)]; and

15. The State program does not include minimum criteria for the exemption of government-financed highway and other construction which are no less effective than 30 CFR Part 707 and in accordance with section 528(3) of SMCRA [Condition (45)].

Submission of Program Amendments

On March 30, 1984, West Virginia submitted an amendment to OSM which was intended to satisfy the remaining fifteen conditions of approval concerning auger mining, coal refuse disposal, blasting, transfer of wells, permit approval, revegetation, suspension or revocation of permits, stabilization of rills and gullies, subsidence, MSHA approval of permit applications, and the exemption for coal extraction incident to government-financed highway or other construction (Administrative Record No. WV 567).

On May 8, 1984, OSM announced in the **Federal Register** receipt of the amendment, and provided procedures for public comment and an opportunity for a public hearing (49 FR 19525–19527). The public hearing scheduled for May 28, 1984, was not held because no one requested it. The public comment period closed on June 7, 1984 (Administrative Record No. WV 570).

Following its review and opportunity for public comment, on August 21, 1984, OSM provided the State with a list of deficiencies found in the amendment. West Virginia was given an opportunity to submit proposed emergency rule changes, policy statements, clarifying legal opinions or other evidence providing that the State's proposed modifications were no less effective than the Federal requirements (Administrative Record No. WV 593).

On October 30, 1984, West Virginia submitted modifications to its initial amendment of March 30, 1984. The proposed amendment consists of revisions to the State's surface mining and coal refuse disposal regulations and modifications to its permit addendum form and its approval letter for coal exploration involving the removal of more than 250 tons. In addition, the State provided OSM with a copy of its revised civil penalty procedures which included a Code of Violations for use in determining assessable and non-assessable violations (Administrative Record No. WV 601).

West Virginia has not fully implemented the civil penalty system approved by the Secretary on November 16, 1983 (47 FR 52034–52054). As a result, the State has not conducted civil penalty assessment reviews of approximately 4,200 violations as of June 30, 1984. On June 7, 1984, OSM notified West Virginia of its concern regarding the State's failure to implement its approved civil penalty system. A meeting was held on June 29, 1984, to discuss the concerns raised in the June 7th letter and several meetings were held subsequent to the initial meeting which resulted in the State's submission of its revised civil penalty procedures (Administrative Record Nos. WV 588, 589, 590, 602, 603, and 604).

On November 23, 1984, OSM reopened the comment period to provide the public sufficient time to consider and comment on the modifications submitted by the State of West Virginia on October 30, 1984 (49 FR 46166–46169). The public hearing scheduled for December 17, 1984, was not held because no one requested one. The public comment period closed on December 24, 1984 (Administrative Record No. WV 609).

On June 14, 1985, West Virginia submitted final surface mining reclamation and coal refuse disposal regulations that were approved by the State Legislature on April 13, 1985, and signed by the Governor on May 2, 1985 (Administrative Record No. WV 647). According to the State, the proposed regulations were not significantly different from those submitted to OSM for review and approval on October 30, 1984. OSM has identified two differences between the proposed final regulations and the emergency regulations submitted to OSM on October 30, 1984. At Section 4C.05(f) of the final surface mining reclamation regulations, MSHA's approval is required prior to blasting within 500 feet of an underground mine not totally abandoned, whereas before the opportunity for denial by MSHA was limited to thirty days. Also, the proposed amendment contains final National Pollutant Discharge Elimination System (NPDES) requirements with revisions at section 10 of the surface mining reclamation regulations, which were recently approved by the U.S. Environmental Protection Agency (EPA). OSM did not solicit comments on Section 10 of the final surface mining reclamation regulations, because EPA has already provided the public an opportunity to comment on the State's NPDES requirements.

On June 19, 1985, OSM reopened the comment period to provide the public sufficient time to comment on the revised regulations submitted by the State on June 14, 1985 (50 FR 25428–25430). Also, the public was invited to comment on the proposal to make the decision on the proposed program amendments retroactive to August 27, 1984, to coincide with the promulgation of the State's surface mining reclamation and coal refuse disposal regulations. The public comment period closed on July 5, 1985 (Administrative Record No. WV 675).

Secretary's Findings

Set forth below, pursuant to 30 CFR 732.15 and 732.17 and SMCRA, are the Secretary's findings concerning recent modifications submitted by West Virginia to satisfy conditions and to amend its permanent regulatory program.

1. As discussed in Finding 22 of the November 16, 1983 **Federal Register** notice, section 6B.09(d)(2) of the State's regulations was found to be less effective than 30 CFR 819.19(b) and not in accordance with sections 102 and 515 of SMCRA. The State's rule, unlike 30 CFR 819.19(b), did not require that the applicant demonstrate in writing to the regulatory authority that (1) the volume

of all reasonably available spoil is insufficient to eliminate the highwall, (2) any remnants of the highwall remaining after the highwall has been reclaimed to the maximum extent technically practical shall be stable and shall not pose a hazard to the public health and safety or the environment, and (3) spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazards to the public health and safety or to the environment. Also, West Virginia needed to define the term "substantially reaffect" in order to ensure that the State's definition is no less effective than the Federal definition of "adverse physical impact" at 30 CFR 701.5, as amended on September 16, 1983 (48 FR 41720–41735).

On January 3, 1985, OSM suspended its definition of adverse physical impact at 30 CFR 701.5. This action was taken as a result of an agreement by the parties approved in a December 3, 1984, District Court Order withdrawing certain issues from consideration in Round III of the present litigation on OSM's permanent program regulations (50 FR 257–258). Pending further action by OSM, no further action is required by the State to amend its definition of "substantially reaffect."

On March 30, 1984, the State submitted an amendment to section 6B.09(d)(2) of its regulations. The amendment satisfied most of OSM's initial concerns; however, it does not require the backfill to be designed by a qualified registered professional engineer nor does it require the backfill to be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability as required by 30 CFR 819.19(b)(1) and (3), as amended on April 28, 1983. On August 21, 1984, the State was advised of the deficiencies (Administrative Record No. WV 593).

On October 30, 1984, the State submitted a narrative showing that stable fills may be constructed by the haulback method on various slopes found within the State. However, the State did not address the requirement that the backfill be designed by a qualified registered professional engineer or that the backfill be graded to a slope which is compatible with the approved postmining land use. The State did not amend section 6B.09(d)(2) of its regulations submitted on June 14, 1985. Therefore, the Secretary finds that section 6B.09(d)(2) of the State's regulations is less effective than 30 CFR 819.09(b)(1) and (3), and that the adoption of the amendment by the State has failed to fully satisfy condition (1) of his approval of the West Virginia program at 30 CFR 948.11(a)(1).

2. As discussed in Finding 28 of the November 16, 1983 **Federal Register** notice, West Virginia's coal refuse regulations, as amended, were found to be inconsistent with several Federal coal refuse requirements. Specifically, the State provisions did not require (a) compliance with permanent program regulations rather than interim regulations; (b) compliance with stability standards even if site condition indicated that failure would not occur; and (c)(i) covering of coal mining waste banks with non-toxic and non-combustible material as required by 30 CFR 816.83(c)(4) and 817.83(c)(4), (ii) specific construction criteria for subdrainage systems as required by 30 CFR 816.83(a)(3) and 817.83(a)(3), (iii) the prohibition of the placement of permanent impoundments on constructed fills as required by 30 CFR 816.83(c)(3) and 817.83(c)(3), and (iv) the inspection of coal refuse piles as required by 30 CFR 816.83(d) and 817.83(d).

(a) As discussed in the November 16, 1983 **Federal Register** notice, section D.05(a)(1), D.06(1)(f), E.03(b)(1), E.07 and E.09(b)(5) of the State's coal refuse disposal regulations contained references to the State's interim regulations which had expired. The Secretary found that all references in the State's coal refuse disposal regulations must address applicable requirements of the State's permanent program regulations. On March 30, 1984, October 30, 1984, and June 14, 1985, the State submitted amendments to its coal refuse disposal regulations at section B.57, C.01(b)(3), D.05(a)(1)(a), D.05(a)(1)(e), D.05(a)(3), D.06(b)(1)(a), D.06(b)(1)(f), D.07(b), E.03(b)(1), E.04, E.05(a)(3), E.07, E.09(a) and E.09(b)(5). Since all references found in the State's coal refuse disposal regulations now cite permanent program requirements, the Secretary finds that the adoption of the amendment will satisfy this portion of condition (8) of his approval of the West Virginia program at 30 CFR 948.11(a)(8).

(b) Section D.05(f) of the State's coal refuse disposal regulations was found to be inconsistent with the Federal regulations. Section D.05(f) allowed the director to waiver the stability requirements if site conditions indicate that failure will not occur. The Federal regulations at 30 CFR 816.83 do not permit a waiver of the basic stability requirements. On March 30, 1984, the State submitted an amendment to its regulations at section D.05(f) which provides that where obvious site conditions indicate that failure will not occur, the director may waive the requirement for a stability analysis on non-impounding structures so long as the design requirements of section D.05(f)(2) are met. OSM advised the State that section D.05(f) needed to be clarified because if the design requirements of section D.05(f)(2) are to be met as indicated in section D.05(f), a stability analysis will be required to prove that the minimum static safety factor of 1.5 and the minimum seismic safety factor of 1.2 are met as required by section D.05(f)(2)(b). On October 30, 1984, and June 14, 1985, West Virginia submitted an amendment to its coal refuse disposal regulations. Section D.05(f) was amended to read, "Where obvious site conditions indicate that failure will not occur, the director may waive the requirement for a stability analysis on non-impounding structures so long as all other design requirements of section D.05(f)(2) are met." The State clarified that the words "all other" were added to ensure that all design requirements would be met with the exception of stability analysis. Since West Virginia provides for a waiver of stability analysis for non-impounding coal waste piles, the Secretary finds that section D.05(f) of the State's coal refuse disposal regulations is still less effective than the current Federal requirements at 30 CFR 816.83 and 817.83. Accordingly, the State has failed to satisfy condition (8)(ii) of the Secretary's approval of the West Virginia program at 30 CFR 948.11(a)(8)(ii).

(c)(i) Section D.07(f) of the State's coal refuse disposal regulations was found to be inconsistent with 30 CFR 816.83(c)(4) and 817.83(c)(4). Section D.07(f) only required a minimum cover of three feet of coarse refuse on coal refuse disposal areas prior to final soil covering, unless otherwise approved by the director. The Federal regulations at 30 CFR 816.83(c)(4) and 817.83(c)(4), however, require that coal refuse must be covered with four feet of non-toxic and non-combustible material, unless a lesser amount of cover material is allowed by the regulatory authority based on physical and chemical analysis. On March 30, 1984, October 30, 1984, and June 14, 1985, the State submitted revisions to its coal refuse dipoal regulations. The State amended section D.07(f) to require the covering of fine refuse disposal areas with a minimum three-foot layer of coarse refuse prior to final covering in accordance with section D.07(g) of the "surface mining" regulations, unless otherwise approved

by the director. Since section D.07(g) is a requirement of the State's coal refuse disposal regulations, the State should delete the reference to its "surface mining" regulations the next time it amends its regulations. Also, the State added a new section D.07(g) which provides that at abandonment all coal refuse must be covered with a minimum of four feet of the best available non-toxic and noncombustible material in a manner that does not impede flow from subdrainage systems. The director may allow less than four feet of cover material where it can be demonstrated that the requirements of section 4F of the State's surface mining regulations can be met. Therefore, the Secretary finds that section D.07 (f) and (g) are no less effective than the current Federal requirements at 30 CFR 816.83(c)(4) and 817.83(c)(4), and that the adoption of the amendment will satisfy condition (8)(iv)(A) of his approval of the West Virginia program at 30 CFR 948.11(a)(8)(iv)(A).

(c)(ii) Section D.05(e) of the State's coal refuse disposal regulations was found to be inconsistent with 30 CFR 816.83(a)(3) and 817.83(a)(3). Section D.05(e) did not specify that underdrains must be constructed of nondegradable, non-acid or non-toxic forming rock such as gravel, limestone, sandstone, or other durable rock that will not slake in water and will be free of coal, clay or shale as required by 30 CFR 816.83(a)(3) and 817.83(a)(3) by reference to 30 CFR 816.71(f)(3) and 817.71(f)(3). The State submitted revisions to its coal refuse disposal regulations on March 30, 1984, October 30, 1984, and June 14, 1985. The State revised section D.05(e)(2) to require that subdrainage systems be constructed of durable rock consisting of non-degradable, non-acid or non-toxic forming rock such as natural sand or gravel, sandstone, or other durable rock that will not slake in water and will be free of coal, clay or shale. Therefore, the Secretary finds that section D.05(e)(2) of the State's coal refuse disposal regulations is no less effective than the current Federal requirements at 30 CFR 816.83(a)(3) and 817.83(a)(3), and that the adoption of the amendment will satisfy condition (8)(iv)(B) of his approval of the West Virginia program at 30 CFR 948.11(a)(8)(iv)(B).

(c)(iii) Section E.08(c)(3) of the State's coal refuse disposal regulations was found to be inconsistent with 30 CFR 816.71(c)(3) and 817.71(c)(3) in that section E.08(c)(3) of the State's regulations provided that the director could authorize the impoundment of water on fills. On March 30, 1984, October 30, 1984, and June 14, 1985, the State submitted revisions to its coal refuse disposal regulations. The State amended section D.07(a) of its regulations to provide that no impoundment exceeding 10,000 cubic feet of water shall remain upon constructed fills upon abandonment. Impoundments remaining upon abandonment must meet the requirements of section 4B.05(e) of the surface mining regulations. Since West Virginia limits the size of impoundments that can remain on constructed fills to 10,000 cubic feet and because such impoundments must comply with the requirements of section 4B.05(e) of the State's surface mining regulations, the Secretary finds that section D.07(a) of the State's coal refuse disposal regulations is no less effective than 30 CFR 816.83(c)(3) and 817.83(c)(3). Accordingly, the adoption of the amendment will satisfy condition (8)(iv)(C) of the Secretary's approval of the West Virginia program at 30 CFR 948.11(a)(8)(iv)(C).

(c)(iv) The Secretary found that section E.08(d) of the State's coal refuse disposal regulations did not require inspection of coal refuse areas as required by 30 CFR 816.83(d) and 817.83(d). On March 30, 1984, West Virginia submitted a revision to section E.08(d)(2) of its coal refuse disposal regulations. Section E.08(d) was amended to state that inspections may include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, to ensure that all organic material and topsoil have been removed and that proper construction and maintenance are occurring in accordance with the approved plans and specifications. Also, inspections may cease when the coal refuse disposal area has been properly abandoned in accordance with section D.07, or at such later time as the director may require.

OSM notified the State on August 21, 1984, that section E.08(d)(2), unlike 30 CFR 816.83, provides that a person certified by the U.S. Mine Safety and Health Administration (MSHA) and designated by the operator could inspect both impounding and non-impounding coal refuse piles. The Federal requirements at 30 CFR 816.49(a)(10) and 816.83(d) provide that a qualified registered professional engineer or other qualified specialist under the direction of the professional engineer shall inspect impounding and non-impounding refuse piles. On October 30, 1984, and June 14, 1985, the State submitted revisions to its definition of "qualified person" at section B.53 to clarify that the coal refuse embankment and impoundment inspector certified by MSHA would inspect both impounding and non-impounding structures under the supervision of the operator's engineer. The Secretary finds that the revision to the definition of qualified person at section B.53 is no less effective than 30 CFR 816.49(a)(10) and 816.83(d).

In response to other OSM concerns, West Virginia stated in its submittal of October 30, 1984, that OSM requires inspections to be made during placement and compaction of mine waste materials. The State requires that inspections be held every seven days for impoundments and quarterly for non-impounding areas. MSHA regulations at 30 CFR 77.216–3 also require inspections every seven days for impounding structures. The recent amendments to section E.08(d)(2) of the coal refuse disposal regulations require that, "Inspections may include such observations and tests necessary to ensure . . . that proper construction and maintenance are occurring in accordance with the approved plans and specifications." In the State's opinion, this covers the Federal requirement because it provides the engineer with inspection options. His observations and tests must provide him enough basis to certify construction and may or may not include inspection of refuse placement. The Federal regulations at 30 CFR 816.83(d) and 817.83(d) require quarterly inspection of non-impounding coal refuse piles throughout construction and during critical construction periods. Also, regular inspections by the engineer or specialist must be conducted during the placement and compaction of mine waste materials. Although neither section E.08(d)(2) nor section E.08(d)(3)(c) define the critical construction periods, the State's regulations at sections E.08(a), E.08(c)(1), E.09(b)(5) and E.09(b)(6) require inspections during each major portion of the construction sequence and are thus no less effective than the Federal requirements. However, the Federal rules do not provide the engineer or specialist with inspection options. The Federal regulations at 30 CFR 816.83(d)(1) and 817.83(d)(1) require that regular inspections be conducted during the placement and compaction of coal mine waste materials. The inspector's construction certification must include inspection of coal refuse placement and compaction. Therefore, the Secretary finds that section E.08(d)(2) of the State's coal refuse disposal regulations is less effective than 30 CFR 816.83(d)(1) and 817.83(d)(1).

Section E.08(d)(2) of the State's coal refuse disposal regulations requires

weekly inspections of coal refuse impoundments by a qualified person until construction has been completed and certified. Section E.08(d)(3)(c) also requires that an engineer certify coal refuse impoundments and non-impounding coal refuse areas during construction, upon construction and annually thereafter until final bond release. The Federal regulations at 30 CFR 816.84(b)(1), 817.84(b)(1), 816.49(a)(10) and 817.49(a)(10) require that inspections of coal refuse impoundments be made regularly during construction, upon construction and at least annually thereafter until removal of the structure or release of the performance bond. In addition to the Federal inspection requirements, coal refuse impoundments subject to 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216–3, and all other coal refuse impoundments must be examined at least quarterly by a qualified person as required by 30 CFR 816.49(a)(11) and 817.49(a)(11). Although sections E.08(d)(2) and E.08(d)(3)(c) of the State's coal refuse disposal regulations do not provide for the examination of coal refuse impoundments and disposal areas after construction, section E.08(d)(2) does provide that inspections may terminate when the coal refuse disposal area has been properly abandoned or at such later time as the director may require. West Virginia clarified that the term coal refuse disposal area, as used in this context, includes both coal refuse impoundments and non-impounding coal refuse areas (Administrative Record No. WV 630). Therefore, the Secretary interprets the State's regulations as requiring weekly inspections of all coal refuse impoundments and quarterly inspections of non-impounding coal refuse areas by a qualified person until abandonment. In addition, section E.08(d)(3)(c) requires that an engineer certify all coal refuse impoundments and non-impounding coal refuse areas during construction and annually thereafter until final bond release. Therefore, the Secretary finds that, except as discussed above, the State inspection frequently requirements for coal refuse impoundments and non-impounding coal refuse areas at sections E.08(d)(2) and E.08(d)(3)(c) are no less effective than the Federal inspections and examination requirements at 30 CFR 816.83(d), 817.83(d), 816.84(b)(1), 817.84(b)(1), 816.49(a) (10) and (11) and 817.49(a) (10) and (11).

Section E.08(d)(1) provides that inspection reports shall be maintained at or near the mine office nearest the minesite. The Federal requirements at 30 CFR 816.83(d)(4), 817.83(d)(4), 816.49(a)(10) and 817.49(a)(10) require that each inspection report be maintained at or near the minesite, and 30 CFR 77.216–3 requires that the report be available at the mine. Since the mine office is generally at or near the minesite and the Secretary is not aware of any problems experienced by interested persons during oversight in reviewing inspection reports, the Secretary finds that section E.08(d)(1) of the State's coal refuse disposal regulations is no less effective than 30 CFR 816.83(d)(4), 817.83(d)(4), 816.49(a)(10) and 817.49(a)(10).

On August 21, 1984, OSM notified the State that neither section E.08(d)(3)(a) nor section E.08(d)(3)(c) requires the registered professional engineer to provide promptly after each inspection a certified report to the regulatory authority which includes appearances of instability, structural weakness and other hazardous conditions as required by 30 CFR 816.83(d)(2) and 817.83 (d)(2). On October 30, 1984, the State responded to OSM's concern by stating that, "Nowhere does 30 CFR 816.83(d) nor 816.83(d)(2) state specifically that a report shall be required after each appearance of instability, just that instability be documented in each inspection report. If the instability constitutes a condition dangerous to human life, property or the environment, section E.08(d) requires that the director be informed immediately." The Secretary wishes to clarify that the Federal provisions require the submission of a certified report promptly after each inspection, not after each appearance of instability. Section E.08(d)(3)(a) does require that a report must be submitted every thirty days for coal refuse structures if requested by the director. Also, section E.08(d)(3)(c) requires the submission of an engineer's certification for each major portion of the construction sequence. However, that requirement does not consider the possibility that two or more inspections might be required during any single "major portion of the construction sequence." Since the State's coal refuse disposal regulations also require weekly inspections of all coal refuse impoundments and quarterly inspections of all non-impounding coal refuse areas until abandonment, certified reports must be filed promptly after each of these inspections in order to satisfy the Federal requirements. Therefore, the Secretary finds that section E.08(d)(3)(a) and section E.08(d)(3)(c) of the State's coal refuse disposal regulations are less effective than 30 CFR 816.49(a)(10), 817.49(a)(10), 816.83(d)(2) and 817.83 (d)(2) in that the engineer is not required to provide the regulatory authority with a certified report promptly after each inspection of coal refuse impoundments or non-impounding coal refuse areas.

On August 21, 1984, OSM informed West Virginia that section E.08(d) of the State's coal refuse disposal regulations does not require the certified report on the drainage systems and protective filters to include color photographs as provided by 30 CFR 816.83(d)(3) and 817.83(d)(3). The State subsequently amended its regulations at section E.08(d)(3)(a) to require that the underdrains and protective filters must be supported by color photographs. Therefore, the Secretary finds that section E.08(d)(3)(a) of the State's coal refuse disposal regulations is no less effective than 30 CFR 816.83(d)(3) and 817.83(d)(3) with respect to the requirement that the reports include photographs.

As discussed above, the Secretary finds that the adoption of the amendments by the State to its coal refuse disposal regulatons has failed to fully satisfy condition (8)(iv)(iv) at 30 CFR 948.11(a)(8) (iv)(iv) concerning the inspection of coal refuse areas and impoundments.

(d) In summary, the Secretary finds that the adoption of amendments to the State's coal refuse disposal regulations has satisfied conditions (8), (8)(iv)(A), (8)(iv)(B), (8)(iv)(C) and portions of (8))(iv)(iv), but it has failed to satisfy condition (8)(ii) concerning the waiver of stability requirements and that part of (8)(iv)(iv) regarding the inspection of coal refuse placement and compaction, and the filing of certified reports promptly after each inspection of coal refuse impoundments or non-impounding coal refuse areas.

3. As discussed in Finding 23 of the November 16, 1983 **Federal Register** notice, the Secretary found section 4C.05(h) of the State's regulations to be less effective than 30 CFR 816.67(d)(2) and 817.(d)(2).

Section 4C.05(h) of the State's regulations provided that the peak particle velocity shall not be exceeded at the "nearest" protected structure, while 30 CFR 816.67(d)(2) requires that the maximum peak particle velocity shall not be exceeded at the location of "any" dwelling, public building, etc., outside the permit area. The Secretary was concerned that ground motion resulting from a blast, depending on topography, location and other factors, might be in compliance at the nearest protected structures but be excessive at a more distant structure. Also, the State

needed to define or otherwise explain the meaning of the term "protected structure" in order to ensure the protection of structures listed in 30 CFR 816.67(d)(2) and 817.67(d)(2).

On March 30, 1984, October 30, 1984, and June 14, 1985, the State submitted revisions to its surface mining regulations at sections 4C.05(h) and 4C.05(j). Section 4C.05(h) was revised to identify the maximum peak particle velocities allowable at "any" protected structure. The State also added section 4C.05(j) to clarify that protected structures include any dwellings, public buildings, schools, churches, or community or institutional buildings outside the permit area in addition to those identified in § 2.105, unless they are owned by the permittee. Therefore, the Secretary finds that sections 4C.05(h) and 4C.05(j) of the State's regulations are no less effective than 30 CFR 816.67(d)(2) and 817.67(d)(2) in that they provide that the maximum peak particle velocity shall not be exceeded at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area. Accordingly, the adoption of the amendments by the State will satisfy condition (16) of the Secretary's approval of the West Virginia program at 30 CFR 948.11(a)(16).

4. As discussed in Finding 24 of the November 16, 1983 **Federal Register** notice, sections 6B.02, 7B.02, and 8B.02 of the State's regulations were found to be less effective than 30 CFR 816.41(g) and 817.41(g). Although the State regulations provided that wells could be transferred to another party for further use, the regulations did not establish the criteria needed to approve such transfers.

On March 30, 1984, the State submitted an amendment to section 6B.02 of its surface mining reclamation regulations. Revised section 6B.02 provided that a well may be transferred to another party for further use after it has fulfilled its intended purpose if approved by the director. OSM notified the State that section 20-6-13(b)(10)(A) of the West Virginia Surface Coal Mining and Reclamation Act (WV SCMRA) and sections 6B.02, 7B.02 and 8B.02 of the State's regulations still did not require that all monitoring and exploratory wells be sealed prior to bond release if not being transferred for further use, that well transfers comply with all State and local laws, and that the permittee remain responsible for the proper management of the well until bond release as provided by 30 CFR 816.41(g) and 817.41(g).

On October 30, 1984, and June 14, 1985, the State resubmitted revisions to sections 6B.02, 7B.02 and 8B.02 of its regulations. The revised regulations provide that, prior to sealing, all drilled holes shall be managed to ensure the safety of people, livestock and wildlife; however, before final bond release, exploratory or monitoring wells must either be sealed in a safe and environmentally sound manner or, with the prior approval of the director, be transferred to another party for further use. The conditions of the transfer must comply with State and local laws, regulations, and other requirements. The revised provisions incorporate the three criteria of 30 CFR 816.41(g) and 817.41(g) governing the transfer of wells. Although not specifically stated, since a permittee cannot transfer or seal exploratory or monitoring wells until the time of final bond release, the State provisions effectively require that the permittee remain responsible for the proper management of the well until bond release. Therefore, the Secretary finds that sections 6B.02, 7B.02 and 8B.02 of the State's regulations are no less effective than 30 CFR 816.41(g) and 817.41(g), and that the adoption of the amendments by the State will satisfy condition (16) of his approval of the West Virginia program at 30 CFR 948.11(a)(16).

5. As discussed in Finding 25 of the November 16, 1983 **Federal Register** notice, the Secretary found that section 3F.01 was less effective than 30 CFR 778.14(c) and not in accordance with section 510(c) of SMCRA. Section 3F.01 required a listing of each violation received by the applicant for any West Virginia environmental protection law or regulation or for those of any other State if the applicant had not operated in West Virginia for the past three years. Applicants with a history of operating in West Virginia for more than three years would only be required to provide information regarding violations of West Virginia and Federal laws and regulations. Since violations of other State laws and regulations would not be listed by applicants who have operated in the State for more than three years, the Secretary found that the director would not have all the information needed to make the decision concerning permit issuance required by section 3F.02 of the State's regulations.

The State submitted revisions to its regulations at section 3F.01 on March 30, 1984, October 30, 1984, and June 14, 1985. Section 3F.01, as amended, requires that the applicant list each violation notice received in connection with any surface coal mining operation during the three-year period before the application date for violations of any environmental law, rule or regulation of any State and of regulations enacted pursuant to Federal law pertaining to air or water environmental protection. On September 28, 1983, OSM revised 30 CFR 778.14(c) to require that an applicant list all notices of violations and bond forfeitures issued to a subsidiary, affiliate, or person controlled by or under common control with the applicant. Although the applicant is required to list any and all notices of violations of all State and Federal environmental protection laws and regulations during the three-year period prior to the date of application, section 3F.01 does not require this information for subsidiaries, affiliates, and persons controlled or under common control with the applicant as required by revised 30 CFR 778.14(c). Therefore, the Secretary finds that revised section 3F.01 of the State's regulations is less effective than 30 CFR 778.14(c) and is less stringent than section 510(c) of SMCRA. Accordingly, the adoption of this amendment by the State will fail to fully satisfy condition (19) of the Secretary's approval of the West Virginia program at 30 CFR 948.11(a)(19).

6. As discussed in Finding 29 of the November 16, 1983 **Federal Register** notice, the Secretary found that section 2.109 of the State's regulations was less effective than 30 CFR 762.5. Section 2.109 defined substantial legal and financial commitments in a surface coal mining operation to mean that significant investments and legal commitments had been made in activities and facilities such as power plants, railroads, coal handling, preparation, extraction or storage facilities and other capital-intensive activities. However, the Federal regulations at 30 CFR 762.5 provide that substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term contract in power plants, railroads, coal handling, preparation, extraction or storage facilities and other capital-intensive activities. West Virginia did not require that significant investments be based on long-term coal contracts.

On March 30, 1984, October 30, 1984, and June 14, 1985, West Virginia submitted revisions to its regulations at section 2.109. The revised provisions require that significant investments and legal commitments be made on the basis of a long-term coal contract. Therefore, the Secretary finds that section 2.109 of the State's regulations is no less effective than 30 CFR 762.5, and that the adoption of this amendment by the State will satisfy condition (36) of his

approval of the West Virginia program at 30 CFR 948.11(a)(36).

7. As discussed in Finding 30 of the November 16, 1983 **Federal Register** notice, the Secretary found that the West Virginia program did not provide standards for permit approval or denial which are no less effective than 30 CFR 773.15 and in accordance with sections 510 (b), (c) and 522(e) of SMCRA, and which require certain permit conditions which are no less effective than those contained in 30 CFR 773.17 and in accordance with section 510 of SMCRA.

On March 30, 1984, the State submitted revisions to its program which included the "Addendum to Permit" form. The addendum contained standards for permit approval and established permit conditions to be met by the applicant. OSM notified the State on August 21, 1984, that the proposed permit addendum still did not contain the findings concerning existing structures, experimental practices, mountaintop removal, steep slope mining and prime farmland required by 30 CFR 773.15(c) (6) and (8), nor did it contain conditions regarding compliance with applicable performance standards, right of entry, inspection of alleged violations reported by a private person, and compliance, modification or abandonment of existing structures as required by 30 CFR 773.17 (b), (c), (d) and (f). Also, the State did not require written findings for significant revisions to permits.

On October 30, 1984, the State submitted revisions to the permit addendum dated September 1984 to satisfy the deficiencies mentioned above. Provided that this form is used as an integral part of the permit approval process, the Secretary finds that the proposed addendum provides standards for permit approval or denial which are no less effective than those in revised 30 CFR 773.15(c). The Secretary also finds that the proposed addendum contains permit conditions which are no less effective than those contained in 30 CFR 773.17. Accordingly, the adoption of the amendment by the State and the submission of a legal opinion to OSM stating that the substantive requirements which are set forth only in the proposed permit addendum are legally enforceable under State law will satisfy condition (37) of the Secretary's approval of the West Virginia program at 30 CFR 948.11(a)(37).

8. As discussed in Finding 31 of the November 16, 1983 **Federal Register** notice, the Secretary found that the West Virginia program did not require coal exploration applications to contain a description of the important habitats of any threatened or endangered species and a description of cultural or historical resources listed or eligible for listing on the National Register of Historic Places as required by 30 CFR 772.12(b) (8), (9) and (12) and section 512 of SMCRA, nor did it provide standards for the approval of coal exploration applications as required by 30 CFR 772.12(d) and sections 512 (a) and (d) of SMCRA.

On March 30, 1984, the State submitted revisions to its coal exploration regulations at sections 5A.02 and 5A.03 which would require coal exploration applications to contain descriptions of cultural or historical resources, threatened or endangered species and archeological sites. The Federal regulations were amended at 30 CFR 772.12(b)(9) to only require that coal exploration applications contain a description of threatened or endangered species. However, 30 CFR 772.12(b)(12) requires the submission of a map showing the location of critical habitats of any endangered or threatened species. The State's mapping requirements at section 5A.02 do not contain a similar provision and will have to be amended.

On August 27, 1984, OSM notified the State that revised section 5A.03 does not require, prior to approval of a notice of intent to prospect, the director to find in writing that the applicant has demonstrated that the exploration and reclamation described in the application (1) will not jeopardize the continued existence of an endangered or threatened species listed pursuant to section 4 of the Endangered Species Act of 1973 or result in the adverse modification of the critical habitats of those species, and (2) will not adversely affect any cultural or historic resources listed on the National Register of Historic Places, pursuant to the National Historic Preservation Act, unless the proposed exploration has been approved by both the regulatory authority and the agency with jurisdiction over such matters, as required by 30 CFR 772.12(d)(2) (ii) and (iii). Also, section 5A.03 does not require that each approval issued by the regulatory authority contain the terms and conditions necessary to ensure that exploration and reclamation activities will be conducted in compliance with WV SCMRA and section 5 of the regulations as provided by 30 CFR 772.12(d)(3). The terms and conditions of approval should at least contain the three conditions set forth at 30 CFR 772.12(d)(2).

On October 30, 1984, the State submitted an approval document for all notices of intent to prospect for more than 250 tons of coal. The State intends to use this document whenever it approves exploration activities involving the removal of more than 250 tons of coal. The Secretary finds that the "Notice of Intent to Prospect Approval Greater than 250 Tons" document contains provisions requiring adherence to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the National Register of Historic Places, pursuant to the National Historic Preservation Act, as amended (16 U.S.C. 470 *et seq.*, 1976 Supp. V) which are no less effective than 30 CFR 772.12(d)(2) and which are in accordance with section 512 of SMCRA. This document also provides standards for the approval or disapproval of coal exploration applications which are no less effective than 30 CFR 772.12(d)(3) and which are in accordance with sections 512 (a) and (d) of SMCRA. However, prior to adoption, the State must provide OSM a legal opinion stating that the substantive requirements which the State intends to set forth in its approval document are legally enforceable under State law. As discussed above, although section 5A.02 of the State's regulations is no less effective than existing 30 CFR 772.12(b) in that coal exploration applications must contain descriptions of endangered or threatened species, cultural or historical resources and known archeological resources within the proposed exploration area, section 5A.02 does not require the submission of a map showing the location of critical habitats of any endangered or threatened species as required by 30 CFR 772.12(b)(12). Accordingly, the adoption of the amendments by the State will not fully satisfy condition (38) of the Secretary's approval of the West Virginia program at 30 CFR 948.11(a)(38).

9. As discussed in Finding 32 of the November 16, 1983 **Federal Register** notice, the Secretary found that Section 4F.08 of the State's regulations did not require evaluating the success of revegetation on the basis of statistically valid sampling techniques, as required by 30 CFR 816.116(a) and 817.116(a). On March 30, 1984, the State submitted a revision to section 4F.08(g) of its regulations which provided that standards for success must be based on statistically valid sampling techniques to evaluate ground cover and stocking. The State also submitted a revised chapter to its Technical Handbook concerning revegetation. On August 21, 1984, OSM identified several areas of concern regarding revegetation to which the State responded on October 30, 1984.

In regard to OSM's concern that the valid sampling techniques mentioned in section 4F.08(g) must be those contained

in Chapter 20 of the Technical Handbook, the State amended section 4F.08(g) to require that standards for success be based on statistically valid sampling techniques found in the Handbook. However, the Handbook provides that, if through field observations (ocular estimate) it is determined that the site has adequate vegetation (more than 70 percent cover) or has less than adequate vegetation (less than 70 percent cover), no statistically valid sampling technique need be used. Only in those instances where the ground cover appears questionable or where the site contains areas of questionable cover is the determination of success to be based on quantitative data that is collected in a statistically sound manner. The Federal regulations at 30 CFR 816.116 and 817.116 require the collection of objective data that can, when necessary, be analyzed statistically. As proposed, West Virginia plans to continue to use the ocular method for determining success rates, even though the State has established numerical ground cover standards based on specific postmining land uses. The State informed OSM that the seventy (70) percent cover requirement found in the Handbook will be changed to ninety (90) percent. Once the Handbook is revised, the State will still only require the use of a valid statistical sampling method when ground cover is 90 percent. When the cover is less or more than 90 percent, the State will determine the success rate through field observations. Therefore, the Secretary finds that the portion of the State's Technical Handbook which allows the use of the ocular method for determining success is less effective than 30 CFR 816.116 and 817.116 which only allow valid statistical sampling techniques for this purpose. Furthermore, if the State intends to impose requirements by referencing the Technical Handbook in its regulations, the State must provide OSM with a legal opinion stating that the revegetation requirements contained in the Technical Handbook are legally enforceable under State law.

OSM notified the State that while sections 4F.06(d) and 4F.08(g) require the evaluation of ground cover and stocking, they do not require productivity measurement when determining success, as is required by 30 CFR 816/817.116 (a)(2), (b)(1) and (b)(2). The State responded that past experience with the soils and climate of the State indicate that the standard which is set forth by regulations will be met at the end of the five-year responsibility period, and that that is productivity. The Federal regulations at 30 CFR 816/817.116(b) (1) and (2) require that the success standards and measurement of revegetation for sites with grazing or pasture postmining land uses include both ground cover and productivity (production), and that those sites with a cropland postmining land use include crop production. The State's comment equates ground cover with production. However, the State has failed to submit quantitative data, research reports or other documents that support the contention that production standards, as required by the Federal rules, will in all instances be attained at the end of the responsibility period. To be no less effective than the Federal rules, the State's rules must require a production determination for those land uses where a production success standard is required by the Federal regulations. Therefore, the Secretary finds that section 4F.08(d) and 4F.08(g) of the State's regulations are less effective than 30 CFR 816/817.116 (a)(2), (b)(1) and (b)(2) in that they do not establish productivity success standards or productivity measurements when determining the success of revegetation efforts.

Section 4F.08(g) of the State's regulations inaccurately states that "standards for success shall be based on statistically valid sampling techniques" and that "the success standard is ninety percent (90%) statistical confidence." Success standards are independent of sampling techniques and statistical theory. Statistics and sampling techniques apply only to the data collection and analysis methods used to determine whether the success standards have been met. The 90% statistical confidence interval is the level of probability that the vegetation has achieved the success standard. Statistical confidence intervals are not success standards. In addition, the State fails to require that data be analyzed using a one-sided test with a 0.10 alpha error. It is thus less effective than 30 CFR 816/817.116(a)(2) in that the State rule would permit use of a two-sided test. Therefore, for the reasons discussed above, the Secretary finds that section 4F.08(g) of the State's regulations is less effective than 30 CFR 816/817.116 (a) and (b).

OSM advised the State that the Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success include criteria representative of unmined lands in the area being reclaimed. Since revegetation must equal the ground cover prior to mining, West Virginia must provide OSM data and other information which support the standards for perennials, forest land and/or wildlife and commercial woodland as set forth in sections 4F.06 (d), (e) and (f). The State standards appear to be based on previous Federal standards which only establish minimum requirements. The States were to consider these minimum requirements in developing their own standards which were to be based on local climatological, geographic and soil conditions. OSM requested that West Virginia verify that the success standards set forth in sections 4F.06 (d), (e) and (f) are representative of premining conditions and are based on local agricultural or reforestation practices. The State provided OSM letters from the Wildlife Resources and Forestry Divisions of the Department of Natural Resources and the U.S. Soil Conservation Service. These agencies endorsed the proposed success standards for perennials, forest land and/or wildlife and commercial woodland on a statewide basis. OSM recognizes the technical expertise of these agencies; however, there is some concern that a statewide standard may not be appropriate for all sites and species in the State. Section 515(b)(19) of SMCRA requires the establishment of a vegetative cover at least equal in extent of cover of the natural vegetation of unmined lands in the area. Standards for success should be equal to the ground cover, production or stocking of the natural vegetation of the area prior to mining. OSM will monitor the use of the Statewide standards during oversight to determine if more site-specific standards will need to be developed by the State.

In summary, the Secretary finds that section 4F.06 of the State's regulations, as amended on June 14, 1985, is less effective than 30 CFR 816/817.116 in that it does not (a) require the use of a statistically valid sampling technique to evaluate the success of revegetation in all instances, (b) establish productivity standards for grazing land, pasture land or crop land and require productivity measurements on such sites, and (c) require the use of a 90 percent statistical confidence interval (i.e., a one-sided test with a 0.10 alpha error) in data analysis and in the design of sampling techniques. Therefore, the adoption of the proposed amendment by the State will not fully satisfy condition (39) of the Secretary's approval at 30 CFR 948.11(a)(39).

10. As discussed in Finding 33 of the November 16, 1983 **Federal Register** notice, the Secretary found that section 7C.03(a)(1) of the State's regulations did not provide for the identification of the

existence of renewable resource lands as required by 30 CFR 784.20.

The State submitted revisions to its regulations at section 7C.03(a)(1) on March 30, 1984, October 30, 1984, and June 14, 1985. Revised section 7C.03(a)(1) requires the submission of a subsidence control plan which includes a survey that identifies structures and renewable-resource lands and an evaluation of whether subsidence could cause material damage or diminution of value or use of such structures or renewable resource lands. Therefore, the Secretary finds that section 7C.03(a)(1) of the State's regulations is no less effective than 30 CFR 784.20 and is in accordance with section 516(b) of SMCRA. Accordingly, the adoption of the amendment by the State will satisfy condition (40) of the Secretary's approval of the West Virginia program at 30 CFR 948.11(a)(40).

11. As discussed in Finding 34 of the November 16, 1983 **Federal Register** notice, the Secretary found that section 14A.03(a)(3) of the State's regulations did not contain provisions for the suspension or revocation of permits which are the same as or similar to those found at 30 CFR 843.13(a)(3).

On March 30, 1984, the State submitted an amendment to section 14A.03(a)(3). Revised section 14A.03(a)(3) provides that the director shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the law, the regulations or the permit during three or more inspections of the permit area within any 12-month period. After such review, the director shall determine whether or not a pattern of violations exists. Although the provisions of section 14A.03(a)(3) are no less effective than those of 30 CFR 843.13(a)(3), section 14A.03(b) provides in part that, taking into account exceptional factors present in a case, the director may decline to issue a show cause order or may vacate an outstanding show cause order. On August 21, 1984, OSM notified the State that it must explain what exceptional factors the director may consider which would allow him to decline to issue or vacate a show cause order as provided by section 14A.03(b). OSM stated that West Virginia must at least clarify by policy that the director will not decline to issue or vacate a show cause order once a pattern of violations occurs and the violations are caused willfully or through unwarranted failure to comply.

On October 30, 1984, West Virginia informed OSM that it will adopt a policy clarifying what exceptional factors may cause the director to decline to issue or vacate a show cause order. According to the State, the director may vacate a show cause order if one or more of the following exceptional factors can be adequately demonstrated: (1) Acts of God (to include strike-related situations), (2) administrative error, such as improperly issued notices of violation or cessation orders, or improperly issued show cause orders, and (3) circumstances deemed beyond the operator's control so long as adequate remedial efforts are diligently underway. Along with the previously mentioned factors, the director may decline to issue a show cause order if, after a documented investigation, the nature of the violations and the rapidity of abatement is such that adequate compliance is being essentially maintained.

The Federal regulation at 30 CFR 843.13(a)(1) requires that the director issue an order to a permittee requiring him or her to show cause why his or her permit and right to mine under the Act should not be suspended or revoked, if the director determines that a pattern of violations exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply. Furthermore, 30 CFR 843.5 defines "unwarranted failure to comply" as the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care. "Willful violation" means an intentional act or omission which violates the Act, the regulations, the applicable program, or any permit condition required by the Act. Section 14A.03(a)(3), like 30 CFR 843.13, requires that the director promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the law, the regulations or the permit during three or more inspections of the permit area within any 12-month period. If, after such review, the director determines that a pattern of violations exists or has existed and that the violations were caused by the permittee willfully or through unwarranted failure to comply with the Act, the regulations or the permit conditions, the director must issue a show cause order as provided by section 14A.03(a)(1).

Given the State's existing show cause requirements, it appears that the provisions for vacating or terminating show cause orders are unnecessary. The exceptional factors involving acts of God and administrative error should be given adequate consideration during the show cause proceedings themselves. Most likely, violations such as those mentioned above will not be committed willfully or through unwarranted failure to comply with the law, the regulations or permit conditions. Therefore, under the State's existing requirements, those types of violations would not be counted toward a pattern of violations. The other exceptional factors, involving circumstances beyond the operator's control and violations with such rapid abatement that adequate compliance is being maintained, are inconsistent with both the Federal requirements and the West Virginia program. On considering these factors, the State would only be concerned with the speed at which an operator abates a violation and not with whether the violation was caused willfully or through unwarranted failure to comply. Therefore, the Secretary finds that the provisions of section 14A.03(b) of the State's regulations, as amended on June 14, 1985, and the proposed policy statement of October 30, 1984, particularly exceptional factors involving circumstances beyond the operator's control and rapid abatement of violations that ensure adequate compliance, are less effective than those of 30 CFR 843.13 and are less stringent than those of section 521(a)(4) of SMCRA. Accordingly, the adoption of the amendment by West Virginia has failed to fully satisfy condition (41) of the Secretary's approval of the State's program at 30 CFR 948.11(a)(41).

12. As discussed in Finding 35 of the November 16, 1983 **Federal Register** notice, the Secretary found that the State's regulations at sections 6B.09(c), 7B.11(e) and 8B.09(d) did not contain provisions concerning the stabilization of rills and gullies, as required by 30 CFR 816/817.95(b).

On March 30, 1984, October 30, 1984, and June 14, 1985, the State submitted revisions to its regulations at section 4F.01(g) which include provisions for rill and gully stabilization. The Secretary finds that section 4F.01(g) of the State's regulations is no less effective than 30 CFR 816.95(b) and 817.95(b) and is in accordance with sections 515 and 516 of SMCRA. Accordingly, the adoption of the amendment by the State will satisfy condition (42) of the Secretary's approval of the West Virginia program at 30 CFR 948.11(a)(42).

13. As discussed in Finding 36 of the November 16, 1983 **Federal Register** notice, the Secretary found that section 7C.02(d) of the State's regulations did not prohibit underground mining activities beneath bodies of water with

a volume of 20 acre-feet or larger as required by 30 CFR 817.121(d).

On March 30, 1984, the State submitted revisions to its regulations at section 7C.02(d) which provide that, "underground mining activities shall not be conducted beneath or adjacent to public buildings and facilities, churches, schools, hospitals, or impoundments with a storage capacity of, or bodies of water containing, twenty (20) acre-feet or more, unless the director finds that material damage will not occur. The director may, if necessary to minimize the potential for damage, limit the percent of coal extraction underneath or adjacent to such features or facilities. If subsidence causes material damage to such features or facilities, the director may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified." On August 21, 1984, OSM notified the State that section 7C.02(d), as amended, still does not require operators to demonstrate that mining activities underneath or adjacent to certain areas will not "reduce the reasonably foreseeable use of those features or facilities" as provided by 30 CFR 817.121(d).

On October 30, 1984, and June 14, 1985, West Virginia submitted an amendment to section 7C.02(d) which provides that underground mining activities shall not be conducted beneath or adjacent to public buildings and facilities . . ., unless the director finds that mining will not cause material damage or reduce the foreseeable use. Therefore, the Secretary finds that section 7C.02(d) of the State's regulations is no less effective than 30 CFR 817.121(d) and is in accordance with sections 516 (b) and (c) of SMCRA. Accordingly, the adoption of the amendment by the State will satisfy condition (43) of the Secretary's approval of the West Virginia program at 30 CFR 948.11(a)(43).

14. As discussed in Finding 38 of the November 16, 1983 Federal Register notice, the Secretary found that sections 6B.04(e)(5), 6B.04(d)(5), 7B.04(f)(5), 6B.07(f), and 4C.05(f) of the State's regulations were less effective than 30 CFR 816.41(i), 817.41(h), 816.79, and 780.13(c) because they only gave the Mine Safety and Health Administration (MSHA) thirty days to review permit applications for discharging water into underground mines, mining within five hundred feet of an underground mine, and blasting within five hundred feet of an underground mine. The State considered a failure by MSHA to disapprove an application within thirty days as meaning that MSHA approved the proposed mining activity.

On March 30, 1984, West Virginia advised OSM that it was not planning to amend its regulations, but that it was seeking a memorandum of understanding with MSHA to correct the problem to both the State's and MSHA's satisfaction. The State described the proposed procedures that it was negotiating with MSHA concerning approval/denial of permit applications. Also, the State explained that its regulations do not mean automatic approval within 30 days of notification to MSHA, but that MSHA must respond within 30 days of notification. Corrections within that timeframe would allow for a resubmission of the revised plan with 30 days for review. On May 30, 1984, MSHA notified OSM that it did not concur with the proposed modifications to the West Virginia program. MSHA's primary concern was that the proposed regulations only gave them a 30-day time limit for review. As an organization dealing with safety, MSHA felt that a thorough review was much more important than a timely one (Administrative Record No. WV 574).

On July 10, 1984, officials from the West Virginia Department of Natural Resources, the West Virginia Department of Mines, MSHA and OSM met to discuss the West Virginia program amendment. At that meeting, West Virginia agreed to amend its regulations so as not to limit MSHA's review of permit applications to 30 days (Administrative Record No. WV 580). On August 21, 1984, OSM notified West Virginia that sections 6B.04(e)(5), 8B.04(d)(5), 7B.04(f)(5), 6B.07(f) and 4C.05(f) of the State's regulations were less effective than 30 CFR 816.41(i), 817.41(h), 816.79 and 780.13(c), respectively, in regard to MSHA approval of blasting or mining within 500 feet of an active underground mine and of allowing discharges into an underground mine.

On October 30, 1984, West Virginia submitted revisions to its regulations. Section 6B.07(f), as amended, prohibits mining within five hundred (500) feet of an underground mine not totally abandoned without the approval MSHA. Section 6B.04(e)(5), 8B.04(d)(5) and 7B.04(f)(5) were revised to prohibit discharging surface water into underground mine workings without MSHA approval. The Secretary finds that sections 6B.04(e)(5), 6B.04(d)(5), 7B.04(f)(5) and 6B.07(f) of the State's regulations are no less effective than 30 CFR 816.41(i), 817.41(h) and 816.79, respectively. However, West Virginia failed to amend section 4C.05(f) of its surface mining regulations, which provides that "No blasting within five hundred (500) feet of an underground mine not totally abandoned shall be permitted except with the concurrence of the West Virginia Department of Mines, the operator of the underground mine, and notification of MSHA with opportunity for denial within thirty (30) days."

On June 14, 1985, the State submitted revisions to its surface mining reclamation regulations at section 4C.05(f). Although the State's emergency regulations put a 30-day limit of MSHA's concurrence, the State's final regulations as approved by the State Legislature on April 13, 1985, and filed with the Secretary of State on June 13, 1985, specifically require prior concurrence of MSHA before blasting can be conducted within 500 feet of an underground mine not totally abandoned. Furthermore, the State advised OSM that it has been requiring MSHA approval prior to allowing blasting within 500 feet of an underground mine not totally abandoned (Administrative Record No. WV 634). Therefore, because section 4C.05(f) of the State's final regulations does not limit MSHA's concurrence to 30 days, the Secretary finds that section 4C.05(f) is no less effective then existing 30 CFR 780.13(c). Accordingly, the adoption of the amendment by the State will fully satisfy condition (44) of the Secretary's approval of the West Virginia program at 30 CFR 948.11(a)(44).

15. As discussed in Finding 39 of the November 16, 1983 Federal Register notice, the Secretary found that the State regulations governing government-financed construction were less effective than those of 30 CFR Part 707. West Virginia eliminated provisions for incidental mining from its regulations at section 9, and, in so doing, deleted standards for coal extraction incident to government-financed highway or other construction.

On March 30, 1984, October 30, 1984, and June 14, 1985, West Virginia submitted revisions to its regulations at section 9C. The Secretary finds that section 9C of the State's regulations is no less effective than 30 CFR Part 707 and is in accordance with section 528(3) of SMCRA. Therefore, the adoption of the amendment by the State will satisfy condition (45) of the Secretary's approval of the West Virginia program at 30 CFR 948.11(a)(45).

16. As discussed in Finding 26 of the November 16, 1983 Federal Register notice, the Secretary found that the State's incidental mining requirements at section 9 of the State's regulations and section 20-6-31 of WV SCMRA

were inadequate. Because West Virginia deleted section 9 from its regulations, the State deleted the means for implementing section 20–6–31 of WV SCMRA. The Secretary found that condition (20) of the State's program could be removed because West Virginia no longer allowed incidental coal mining.

On March 30, 1984, October 30, 1984, and June 14, 1985, West Virginia submitted revisions to its regulations at section 9. Section 9, as amended, contains special permitting requirements and performance standards for incidental coal mining operations in the State. The introduction to section 9 clarifies that the requirements apply to all incidental operations in accordance with section 20–6–31 of WV SCMRA which are less than two acres in size. Projects with incidental coal removal affecting more than two acres must comply with sections 3, 4 and 6 of the State's surface mining regulations. Since incidental mining operations affecting between two and five acres must comply with the State's permanent program requirements, the Secretary finds that section 9 of the State's regulations and section 20–6–31 of WV SCMRA are no less stringent than subsections 528 (2) and (3) of SMCRA.

17. On March 30, 1984, October 30, 1984, and June 14, 1985, West Virginia submitted revisions to its requirements for an approved person at section 3E of its surface mining reclamation regulations. On August 10, 1983, the West Virginia Association of Land Surveyors obtained an injunction preventing the State from enforcing section 3E.01 of the State's regulations, which limits the persons who may be approved to perform the functions set out in Chapter 20, Article 6, sections, 10(a)(13) and 13(b)(10) of the Code of West Virginia, as amended, to registered professional engineers. The preliminary injunction was scheduled to expire on October 9, 1983; however, on October 7, 1983, Judge Herman Canady extended the expiration date to March 15, 1984. The West Virginia Legislature approved amendments to section 3E effective March 10, 1984, which allow licensed land surveyors to achieve approved person status. On March 12, 1984, OSM advised the State that section 507(b)(14) of SMCRA was amended to give licensed land surveyors the authority to prepare and certify cross sections, maps or plans. The final Federal rule implementing the amendment was published in the Federal Register on April 24, 1985, and authorizes qualified registered professional land surveyors to prepare and certify the cross sections, maps and plans required in applications for surface coal mining and reclamation permission any State which authorizes land surveyors to prepare and certify such documents (50 FR 16194–16200). Although the amendment and the revised rule provide that licensed land surveyors can prepare and certify maps, plans and cross sections for sedimentation ponds and impoundments that do not meet the size criteria of 30 CFR 77.216(a), the construction of sedimentation ponds and impoundments, regardless of size, still has to be certified by a registered professional engineer as required by 30 CFR 816.46(b)(3) and 817.46(b)(3) and section 515(b)(10)(B)(ii) of SMCRA.

On March 30, 1984, West Virginia advised OSM that, in the State's opinion, the amendment to section 507(b)(14) of SMCRA allows licensed land surveyors/approved persons to certify the construction of sediment control structures, not just the designs. On August 21, 1984, OSM notified the State that section 3E.01 is deficient in that it does not require sedimentation ponds and impoundments to be certified upon construction by a registered professional engineer as provided by 30 CFR 816/817.46(b)(3) and section 515(b)(10)(B)(ii) of SMCRA. The State did not submit any revisions to its regulations at section 3E.01 on October 30, 1984, or June 14, 1985. Since section 3E.01 provides that for the purposes of section 13(b)(10) of the Act, an approved person shall be a licensed land surveyor, the Secretary finds that section 3E.01 is less effective than 30 CFR 816/817.46(b)(3) and is less stringent than section 515(b)(10)(B)(ii) of SMCRA. Accordingly, the Secretary is disapproving that portion of section 3E.01 of the State's surface mining reclamation regulations which provides for the certification of siltation structures upon construction by persons other than a qualified registered professional engineer.

18. On December 13, 1984, OSM sought further clarification from the West Virginia Department of Natural Resources concerning revisions to section 4B.05(c) of the State's surface mining reclamation regulations that were submitted on October 30, 1984. Revised section 4B.05(c) provided for quarterly examinations of impoundments, but it did not require annual inspections of impoundments by a registered professional engineer as provided by 30 CFR 816/817.49(a)(10) (Administrative Record No. WV 617). Earlier discussions with the State indicated that the State would amend former section 4B.05(c) to require the inspection of an approved structure by a registered professional engineer at least annually. In addition, the amendment would require quarterly examinations of non-MSHA type impoundments by a qualified person designated by the director. This person was to be a State inspector (Administrative Record No. WV 594). On December 19, 1984, the State informed OSM that a subsequent review of section 4B.05(c) indicates that this particular rule is intended to cover all forms of mandated inspections concerning drainage systems, including impoundments. On January 21, 1985, West Virginia issued a policy statement providing that "Where impoundments are involved, at least one quarterly inspection per year as mandated by section 4B.05(c) must be conducted by a person approved under the provisions of section 3E of the regulations." Section 2.59 of the State's regulations defines an impoundment to mean a closed basin constructed for the retention of water, sediment or waste (Administrative Record Nos. WV 617 and WV 633). Therefore, the Secretary finds that, except as discussed in Finding 17 above, sections 2.59 and 4B.05(c) of the State's regulations, as clarified by the policy statement of January 21, 1985, are no less effective than 30 CFR 816.49(a) (10) and (11) and 817.49(a) (10) and (11).

19. Sections 1.02 (a) and (c) of the State's surface mining reclamation regulations are less effective than the Federal regulations at 30 CFR 784.20 in that they do not require the submission of subsidence control plans with all permanent program permit applications for existing underground mining operations. Such operators need only submit an acknowledgement letter to make the permit application or permit complete. West Virginia explained that because existing operators acknowledged the applicability of the permanent program performance standards to their operations, it was not necessary to require the submission of subsidence control plans, especially since the State lacked criteria to evaluate the viability of such plans. OSM informed the State that sections 1.02 (a) and (c) are less effective than the Federal requirements, and the approval of the State's regulations on November 16, 1983, was made without any knowledge of the fact that those provisions supposedly waived the requirement for the submission of subsidence control plans by existing operations. The State has assured OSM that all applications filed after August 15, 1983, contain subsidence control plans as required by section 7C.03 of the State's regulations.

On January 11, 1985, the State published an interpretive rule in the *West Virginia Register* to clarify the requirements of section 7C.03. The rule is intended to provide the operator more guidance as to what the subsidence control plan must include in order to comply with the requirements of section 7C.03. The interpretive rule took effect on May 19, 1985 (Administrative Record Nos. WV 629 and 635). In addition, the State plans to review all outstanding underground coal mining permits. Those permits which are determined by the State to have inadequate subsidence control plans will be revised according to a schedule developed by the State. OSM will assist the State to ensure that this problem is resolved as expeditiously as possible. However, because sections 1.02 (a) and (c) of the State's proposed surface mining regulations do not require the submission of subsidence control plans, the Secretary finds that portions of sections 1.02 (a) and (c) are less effective than 30 CFR 784.20. Accordingly, the Secretary is disapproving section 1.02(a) of West Virginia's regulations to the extent that it provides,

Such acknowledgement shall be deemed sufficient to make the permit or application complete for any new permit requirements contained in these regulations and shall become a part of the permit;

and section 1.02(c) of West Virginia's regulations to the extent that it provides,

Such acknowledgement shall be deemed sufficient to make the application complete for any new permit requirements contained in these regulations and shall become a part of the permit.

20. On June 7, 1984, OSM notified the State of its concern regarding the State's problems in implementing its approved civil penalty system. Review of State records indicated that only a few notices of violations (DR–15) were considered for civil penalty assessment, and that no violations cited on inspection reports (DR–6) were considered for civil penalty purposes since the system was approved on November 10, 1983. On June 29, 1984, OSM and State officials met to discuss the State's problems in implementing its civil penalty system (Administrative Record No. WV 588). At that meeting, the State agreed to review all enforcement actions taken between November 10, 1983, and June 29, 1984. The violations would be reviewed using a Code of Violations that the State was developing. The Code, which was to list the 236 most commonly cited violations, would be revised to determine assessable and non-assessable violations and to account for repetitive violations. Several meetings were held subsequently between OSM and the State to discuss proposed revisions to the Code of Violations (Administrative Record Nos. WV 589, 602, 603 and 604).

On October 30, 1984, the State submitted revisions to its civil penalty program. The revisions include the Code of Violations, a description of the proposed tracking system for enforcement actions, a revised surface mine inspection report (DR–6) and inspector civil penalty worksheet (DR–24A) which is to be completed by the inspector for every violation cited. The DR–6, in addition to reporting routine inspection activities, will be used for reporting enforcement actions (non-assessable violations). It will allow enforcement actions to be tracked and documented in the same manner as a DR–15 notice of violation. The DR–24A will indicate whether a violation is assessable or non-assessable. If the violation is assessable, the DR–24A will assist the assessment officer in determining the civil penalty amount to be assessed.

As previously discussed, the Code of Violations sets forth the most commonly cited violations and differentiates between assessable and non-assessable violations. The assessable violations are to be reported as notices of violations or cessation orders on the DR–15 and the non-assessable violations will be reported as enforcement actions on the DR–6. To be classified as non-assessable (a) the violation cannot cause or have the potential to cause adverse environmental impact or pose a threat to public health or safety, (b) there can be no history of repeat violations (i.e., two enforcement actions or notices of violation indicating noncompliance with the same performance standard during the preceding twelve months) of the same standard and no pattern of violations (i.e., three same or similar notices of violation within the preceding twelve months) of any type, and (c) only violations designated in the Code of Violations as non-assessable may be reported in this way. If a violation is not designated non-assessable in the Code, an inspector will not be able to consider it as non-assessable even if it otherwise meets the criteria set forth in the Code. OSM has advised the State that the State may amend the Code to include additional non-assessable violations, but only with OSM's approval. The proposed Code of Violations contains 89 non-assessable and 147 assessable violations. Because some non-assessable violations could have the potential to cause adverse environmental impacts under certain circumstances, the Code contains provisions allowing the State to assess any of the 89 non-assessable violations should be circumstances require an assessment.

Under the proposed program, the maximum abatement time allowed to complete remedial measures for non-assessable enforcement actions is fifteen days. If an enforcement action cannot be abated within fifteen days, the Code requires that it must be modified to either a notice of violation (upon demonstration of good faith by the operator) or a cessation order. Abatement periods specified in notices of violation issued to extend enforcement actions cannot exceed 75 days, hence the maximum abatement period for each violation will not exceed 90 days. The State will include all DR–6's (enforcement actions) and DR–15's (notices of violations) in an operator's history of violations, even if the DR–15 is issued to extend a DR–6 enforcement action. Because DR–6 enforcement actions cannot cause or have the potential to cause adverse environmental impact or threaten public health or safety, and because they must be abated within fifteen days, these violations are classified as non-assessable and will not be considered in determining a pattern of violations. Only three same or similar violations which result in notices of violation within the preceding twelve months will be considered in determining whether a pattern of violations exists for a particular operation. Although enforcement actions are not considered in determining patterns of violations, this difference does not render the proposed State system less effective than the Federal requirements. Since enforcement actions must either be abated within fifteen days or modified to a notice of violation or a cessation order, any enforcement action that is not abated will be included in a pattern of violations determination. Under the proposed system, an enforcement action cannot be issued when there is a history of repeat violations which, as defined by the State, is two enforcement actions or notices of violation indicating noncompliance with the same performance standard during the preceding twelve months. Failure of an operator to abate two enforcement actions of the same performance standard within a twelve-month period will require the State to issue notices of violation during the remainder of the twelve-month period for those same types of violations which would otherwise be considered non-assessable

enforcement actions. All such notices of violation issued in lieu of enforcement actions will be included in a pattern of violations determination. Once the State determines that an operation has a pattern of violations of any kind, the proposed amendment prohibits the State inspector from issuing enforcement actions for any violations that may be committed while the pattern of violations exists. Violations which occur under these circumstances will be cited on DR–15's as notices of violation and will be considered in pattern of violations determinations.

The State also submitted a revision to section 14B.01(b) of its regulations which provides for discretionary waivers of civil penalties if the proposed assessment is less than one thousand dollars. State inspectors have been advised that in the event that he or she feels that a penalty of less than $1,000 should be assessed, justification for such action must be included in the DR–24A for consideration by the assessment officer. In addition, the State also developed a policy, to be implemented upon the Secretary's approval, which will further clarify section 14B.01(b) of the State's regulations. The policy provides that any proposed civil penalty assessment which is less than $1,000 and has an operator negligence rating of three or above as indicated in section 5 of Form DR–24A must be assessed. These provisions are no less effective than 30 CFR 845.12(c).

Therefore, the Secretary finds that the proposed State enforcement and civil penalty procedures are no less effective than the Federal requirements at 30 CFR 843.12, 843.13, 845.11 and 845.12 and are the same as or similar to those of sections 518 and 521(a) of SMCRA.

Disposition of Public Comments

Public comments on the revised West Virginia program were solicited by OSM on three different occasions. Comments were requested by publication of notices in the **Federal Register** on May 8, 1984, November 23, 1984, and June 19, 1985 (49 FR 19535–19537, 49 FR [illegible] and 50 FR 25428–25430). The following is a summary of comments received on the proposed program amendments and the Secretary's response to those comments.

All comments on the regulations are addressed using the revised State regulations submitted on June 14, 1985 (Administrative Record No. WV 647) as the basis for the comparative analysis with the Federal requirements.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were solicited from various Federal agencies on the proposed amendments to the State permanent program. Of those agencies invited to comment, comments were received from the following Federal agencies: U.S. Department of Agriculture, Soil Conservation Service, Forest Service; U.S. Department of the Army, Corps of Engineers; U.S. Department of Labor, Mine Safety and Health Administration; U.S. Environmental Protection Agency; U.S. Department of the Interior, National Park Service, Fish and Wildlife Service; and the Advisory Council on Historic Preservation.

1. In response to section 30.01 of the State's regulations, which requires that the director transmit a copy of the complete permit application to the Federal, State or local agencies with jurisdiction over the potentially affected park or historic place so that the agency may approve or disapprove the proposed operations, the National Park Service (NPS) wanted OSM and the State of West Virginia to know that all future correspondence regarding the State's permanent program and its interaction with units of the national park system should be sent to its Denver office. The Secretary has provided this information to the State.

2. On April 25, 1984, OSM reinitiated formal consultation with the U.S. Fish and Wildlife Service (FWS) concerning the proposed amendments to the West Virginia program to satisfy the remaining fifteen conditions of approval. On June 4, 1984, the FWS stated that the proposed modifications of March 30, 1984, by West Virginia do not affect the biological opinions of January 5, 1981, and April 4, 1983, concerning the State's regulatory program (Administrative Record No. WV 577). The FWS also stated that all of the comments made in its April 4, 1983, letter appear to remain valid, as none of the recommended changes were made by OSM.

On November 9, 1984, OSM requested that the FWS reconsider its biological opinion issued under Section 7 of the Endangered Species Act in view of the proposed modifications submitted by the State on October 30, 1984. Also, OSM provided the FWS a copy of the Secretary's response to their comments of April 4, 1983, which appeared in the **Federal Register** on November 16, 1983 (48 FR 52046–52050), and requested that they reconsider their comments in view of the Secretary's response (Administrative Record No. WV 606). On December 20, 1984, the FWS notified OSM that based on their review, it remains their biological opinion that the granting of primacy to West Virginia under its amended regulatory program is not likely to jeopardize the continued existence of endangered or threatened species or adversely modify their critical habitats. The opinion was rendered with the understanding that OSM would continue its oversight program to ensure that West Virginia's program adequately protects endangered and threatened species. The FWS also reviewed the responses to their earlier comments as discussed in the **Federal Register** of November 16, 1983. The FWS concluded that, "although not all of our recommended changes were made in the State program, it is clear that OSM gave our recommendations careful consideration" (Administrative Record No. WV 625).

Since the revised regulations submitted by the State on June 14, 1985, did not contain any changes to the provisions for threatened or endangered species, it was not necessary to request a biological opinion on those modifications.

3. On May 4, 1984, the Secretary requested the concurrence of the U.S. Environmental Protection Agency (EPA) on the West Virginia program amendment of March 30, 1984. On July 2, 1984, EPA concurred with the proposed modifications to the West Virginia program (Administrative Record No. WV 586).

On December 4, 1984, OSM requested that EPA reconsider its decision of July 2, 1984, because of the revisions submitted by the State on October 30, 1984, to its initial amendment of March 30, 1984. On January 25, EPA concurred with the modifications submitted by West Virginia on October 30, 1984. EPA concluded that the West Virginia program demonstrates the legal authority, administrative capability, and technical conformity to the Federal regulations necessary to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) and the Clean Air Act, as amended (42 U.S.C. 1837 *et seq.*) EPA's concurrence was given in fulfillment of the requirements of section 503(b)(1) and (2) of SMCRA (Administrative Record No. WV 632).

4. EPA stated that minesoil classifications required by the State should be in keeping with traditional soil classification systems and methods. The Secretary concurs with this comment. Nothing in Sections 4F.02 and 4F.06 of the State's surface mining reclamation regulation indicates that the State will accept anything less than traditional soil classification systems and methods.

5. EPA stated that reference is made in Sections 4F.02 and 4F.06 of the State's regulations to the EPA manual used for minesoil and overburden analysis. EPA stated that some procedures in the

reference manual are better than others and refinements are continually under development. EPA feels that West Virginia should continue to revise and update such methodology. The EPA Manual 600/2–78–054, Field and Laboratory Methods Applicable to Overburdens and Minesoils, was one of several technical publications relied upon by OSM for developing the Federal requirements at 30 CFR 780/784.22, geologic information. West Virginia requires that sample collection, preparation and analyses by the applicant be conducted in accordance with standard procedures outlined in the EPA Manual or other methods approved by the director. The Secretary agrees with EPA that the methodology cited in the regulations regarding overburden analysis should be continually reviewed and updated by the State as the procedures are revised. To OSM's knowlege, the State is using the most current procedures for overburden analysis. If advised by EPA, OSM will provide the State additional information to update its existing methodology and clarify which procedures in the referenced manual EPA feels are better than others.

6. EPA stated that section 4F.10 should specify years rather than growing seasons. Section 4F.10 provides that upon expiration of five (5) growing seasons following the date of the last augmented seeding or planting and upon request by the operator for final release, a final vegetation evaluation shall be made by the inspector. Since section 2.51 of the State's regulations defines growing season to mean one (1) year, it is unnecessary to specify years rather than growing seasons in section 4F.10.

7. EPA stated that section 4H.07(a)(1) is actually not a sentence, and because it is ambiguous, it may be open to several interpretations. EPA also stated that incremental bonding is acceptable when the full bond for any parcel is escrowed and not applied to any other parcel to be subsequently opened. According to EPA, section 4H.07(a)(2) does not seem to say this. Furthermore, each parcel should be fully bonded and that bond not released or applied elsewhere until all the conditions of reclamation are met. On October 1, 1984, Judge Flannery remanded the Federal incremental bonding requirements at 30 CFR 800.11(b). Judge Flannery found that the Federal rule contradicts the statute and the legislative history to the extent that it allows the bond to be posted for an area less than the entire area to be mined within the initial permit term [See *In Re: Permanent Surface Mining Regulation Litigation (II),* Civil Action No. 79–1144 (D.D.C. 1984)]. On February 21, 1985, OSM suspended its incremental bonding requirements at 30 CFR 800.11(b) to comply with the court order. For this reason, the Secretary cannot approve specific incremental bonding standards, and as a part of regulatory reform, the States are being asked to amend their programs to delete incremental bonding requirements.

8. The Advisory Council on Historic Preservation (ACHP) stated that the likelihood exists that implementation of the State program will result in adverse effects upon properties included in or eligible for the National Register of Historic Places. The ACHP went on to say that before approving this undertaking, OSM is required to take into account its effects on historic properties and to afford the ACHP a reasonable opportunity to comment in accordance with the National Historic Preservation Act (16 U.S.C. Sec. 470). In order to comply with section 106 of the National Historic Preservation Act, OSM, in its program approval process, must obtain State assurance that any authorization of surface mining reclamation and exploration activities will take into account effects on historic properties listed or eligible for listing on the National Register of Historic Places. Sections 20–6–18(b) (4), 19, 20 and 22(d)(2) of WV SCMRA and sections 3H.01, 3M.02, 30.01, 30.05 and 5A.02(h) of the State's regulations provide protection for historic properties listed or eligible for listing on the National Register of Historic Places from the effects of coal exploration and surface coal mining reclamation activities. Furthermore, as discussed in Findings 7 and 8, the use of the proposed permit addendum and the coal exploration approval document to allow for the removal of more than 250 tons of coal will ensure the protection of cultural or historical resources and known archeological sites in the State, provided that they are demonstrated to be legally enforceable under State law. OSM will continue to monitor the State's enforcement of these provisions to ensure the protection of historic, cultural and archeological resources in the State.

9. The West Virginia Highlands Conservancy (WVHC) stated that the provisions of the West Virginia regulations at section 14A.03(b) which allows the Director to vacate a show cause order for "exceptional factors" is inconsisent with 30 CFR 843.13. The WVHC also stated that the proposed policy submitted by the State in response to condition 41 does not adequately clarify when special dispensation is available, and is not necessary since West Virginia authorities already have the necessary flexibility to deal with exceptional circumstances during the show cause proceedings. The Secretary concurs with these comments. See Finding 11 for futher discussion of this issue.

10. In regard to the State's submittal letter of October 29, 1984, the U.S. Forest Service (USFS) inquired what rating is above three—a two or a four. The Secretary assumes that the comment is in regard to the State's proposed policy that will provide that any proposed civil penalty assessment which is less than $1,000 and has an operator negligence rating of three or above must be assessed. The rating factors for negligence are contained in Section 14B.02 of the State's regulations. The proposed penalty rating for negligence is 0–8. The rating above three would be four.

11. The USFS stated the State's response to condition 1 does not address appropriate handling of "deep soil swale" situations or the handling of situations where anticipated "rock bench" actually is a soft disaggregating shale or fire clay. The USFS concluded that either provides a more unstable situations than that which is directly addressed in the discussion. As discussed in Finding 1, the Secretary concluded that the proposed narrative does not satisfy the initial condition, and the State must amend its program to require that the backfill of auger mining operations involving remined areas be designed by a qualified registered professional engineer.

12. The USFS stated that section E.05(a)(3)(b) of the State's coal refuse regulations is ambiguous in that placement of layers for compaction shall be approximately parallel with the proposed finish grade and shall be deposited in uniform horizontal layers. According to the USFS, construction cannot abide by both stipulations. The requirement concerns the downslope placement of fill material when used in the construction of diversion ditches. The Secretary agrees that depending on the grade not all material may be deposited in true horizontal layers, but the proposed language is necessary and does not render the requirement meaningless.

13. The USFS commented that section E.08(d)(3)(a) should be rephrased to read, "color photos will not provide support for structures of any type." Section E.08(d)(3)(a) currently provides that the underdrains and protective filters must be supported by color photographs. Section E.08(d)(3)(a) is no less effective than 30 CFR 816/

817.83(d)(3) which require the certified report on the drainage system and protective filters to include color photographs. However, the State will have to provide OSM further clarification later regarding the size, number and when such photographs should be taken of the underdrains and protective filters. A discussion of this issue is contained in Finding 2(c)(iv).

14. The USFS stated that the reporting requirements at section E.08(d)(3)(c) should also include a statement of maximum depth and concurrent relevant elevations of any impounded waters over the past year. The reporting requirements of section E.08(d)(3)(c) for impounding and non-impounding coal refuse piles are no less effective than the Federal requirements at 30 CFR 816/817.49(a)(10) and 816/817.83(d)(2).

15. The USFS stated that the inspection of sediment control structures or diversions constructed prior to the construction of an embankment foundation cannot be inspected at the same time as construction of an embankment foundation. According to the USFS, the only appropriate time to inspect the construction of any structure is during its construction—not during the later work on some other items. At issue was whether or not the State's coal refuse regulations require inspections at each critical construction period. As discussed in Finding 2(c)(iv), the State's regulations require inspections at each major portion of the construction sequence, but they do not require inspection during the placement and compaction of coal waste materials.

16. The USFS stated that neither the Federal nor the State regulations address the question of where the records will be kept between the time when the operation ceases and final bond release. As discussed in Finding 2(c)(iv), the Secretary concluded that section E.08(d)(1) is no less effective than 30 CFR 816/817.83(d)(4) and 816/817.49(a)(10) since the inspection reports will be maintained at or near the mine office nearest the minesite. Under the State's requirements, the inspection reports will be kept at or near the mine office nearest the minesite until final bond release.

17. The USFS stated that section 4F.08(g) only addresses valid sampling techniques directed toward cover and stocking. Productivity, unless specifically redefined for the limited case, involves more than cover or stocking whether taken separately or in combination. As discussed in Finding 9, the Secretary concurs with this comment.

18. The USFS stated that neither the OSM comment of August 21, 1984, concerning section 4F.08(d), the State's reply, nor section 4F.08(e) and (f) make it clear as to what standards are desired or required for legumes or perennial grasses. OSM's comment, which was primarily editorial, sought clarification from the State regarding Section 4F.08(d). OSM simply felt that section 4F.08(d) should be retitled "Standards for Grazing Lands or Pasture Lands" so that the standards for legumes and perennial grasses required in section 4F.08(d) would not appear to conflict with the standards for legumes and perennial grasses required in sections 4F.08(e) and (f). The State chose not to retitle this section. As discussed in Finding 9, section 4F.08(d) is less effective than 30 CFR 816/817.116(b)(1).

19. The USFS stated that the State indicated that section 7A.03(b) was revised, but the revision discussed in the August 1984 errata sheet does not conform with the current language of that section. The State has made changes to its regulations at sections 7A.03(a) and 7A.03(b). The State replaced the commas which separated the two sections with periods.

20. The USFS stated that the State did not reply to OSM's proposed condition comment of August 21, 1984. According to the USFS, since section 10 of the State's regulations is still reserved, OSM's comment is still valid. When initially proposed, section 10 of the State's regulations contained the coal refuse disposal requirements. The State later promulgated its coal refuse standards as separate regulations. Section 10 of the State's surface mining reclamation regulations, as submitted on June 14, 1985, contains NPDES requirements. The OSM comment that the USFS mentions concerns the certification of impoundments by a registered professional engineer. See Finding 17 for a discussion of this issue.

21. The USFS stated that under types of enforcement actions, there is ambiguity between Item 1d and Item 3a concerning what is to be done when a DR–6 enforcement action is not corrected within the specified 15-day period. Item 1d provides that DR–6 enforcement actions not remedied within 15 days must be modified to either a cessation order or a notice of violation upon demonstration of good faith by the operator. Item 3a merely reconfirms that a cessation order will be issued for failure of an operator to abate a DR–6 enforcement action within 15 days unless extended. See Finding 20 for further discussion of this issue.

22. The Federal Mine Safety and Health Administration (MSHA) objected to the State's requirements at sections 4C.05(f), 6B.04(e), 6B.07(f), 7B.04(f)(5) and 8B.04(d)(5) which only allow MSHA 30 days to review permit applications for discharging water into underground mines, mining within five hundred feet of an underground mine and blasting within five hundred feet of an underground mine. As explained in Finding 14, West Virginia revised its regulations on October 30, 1984, and June 14, 1985, so as not to limit MSHA's review of permit applications to 30 days.

23. MSHA stated that, while section 7C.02(d) provides that underground mining activities shall not be conducted beneath or adjacent to impoundments with a storage capacity of 20 acre feet or more unless the director finds that material damage will not occur, the operator should be aware that MSHA also has regulations concerning this subject at 30 CFR 75.1716. OSM has advised the State of MSHA's requirement. The State is aware that there are other State and Federal requirements which must be complied with before mining can be conducted beneath or adjacent to impoundments. The State revised section 7C.02(d) to be no less effective than OSM's requirements at 30 CFR 817.121(d). See Finding 13 for a discussion of this issue.

24. MSHA stated that the State's coal refuse disposal regulations only mention MSHA approval under Section E.11, Burning Refuse Piles. MSHA concluded that this could be misleading to the operator because MSHA also has requirements governing coal refuse disposal at 30 CFR 77.214 through 77.217. Section E.11 requires the approval of MSHA and the director before extinguishing coal refuse fires. The State is not trying to mislead the operator. The State requires MSHA's approval for extinguishing coal refuse fires because OSM's regulations at 30 CFR 817.87 contain a similar requirement. The State's regulations do not have to contain or reference all Federal regulations governing coal refuse disposal. The State regulations contain OSM's requirements because, with program approval, the Department of Natural Resources was designated as the primary regulatory authority in West Virginia.

25. MSHA stated that the West Virginia regulations at section D.05(d)(a)(1) provide that precipitation values may be obtained from Technical Paper 40, U.S. National Weather Service. MSHA recommends the use of the probable maximum precipitation (PMP) values contained in Hydrometeorological Report No. 51, U.S. Department of Commerce. PMP is defined as the theoretically greatest amount of precipitation for a given

duration that is physically possible over a particular drainage basin at a certain time of year. According to MSHA, PMP values are somewhat higher in the Hydrometeorological Report No. 51.

OSM's requirements at 30 CFR 816/817.49(a)(2) provide that the design of impoundments must be certified by a qualified registered professional engineer using current, prudent engineering practices and any design criteria established by the regulatory authority. OSM's regulations do not specify what technical publication must be used to obtain PMP values. Since current engineering practices must be used in designing impoundments, it is intended that the most current PMP values should also be used. The Secretary agrees that the State should use the most current technical publications to obtain PMP estimates.

According to the National Weather Service, the most current PMP estimates are contained in Hydrometeorological Report No. 51, which contains all seasonal PMP values for 6-hour to 72-hour durations, Hydrometeorological Report No. 52, which instructs the user on how to apply the PMP data, and Hydrometeorological Report No. 53, which contains seasonal variations of PMP estimates for ten-square-mile areas of the United States east of the 105th meridian. According to the National Weather Service, the PMP estimates contained in Hydrometeorological Report No. 51 are precise for only the western third of the State that parallels the Ohio River. Due to orographic effects, the PMP values for the remaining two-thirds of the State are not exact and should be further refined by the user when applied.

28. MSHA stated that its guidelines are more stringent than West Virginia's design requirements at section D.05(d)(a)(1). MSHA recommends more severe design storms in the following cases:

	MSHA recommends	WV regulations
I. "Large" Low Hazard Impoundments (i.e. >40' deep or >1000 A.F.	½ PMP	$P_{100}+.40$ (PMP$-P_{100}$)
II. "Small" Moderate Hazard (i.e. <40' or <1000 A.F.	½ PMP	$P_{100}+.40$ (PMP$-P_{100}$)
III. "Large" Moderate Hazard (i.e. >40 ft. or >1000 A.F.	PMP	$P_{100}+.40$ (PMP$-P_{100}$)

MSHA concluded that in West Virginia, the quantity $P_{100}+.40$ (PMP$-P_{100}$) is generally a little less than 0.5 PMP. The only significant difference is Case III in which MSHA's criteria are more stringent, West Virginia's design requirements for impoundments incorporate most of the standards set forth in Technical Release No. 60 published by the U.S. Soil Conservation Service. As explained in the State's coal refuse disposal regulations at section D.05(b), West Virginia classifies impoundments on the basis of the potential loss that would result due to a failure. Class A impoundments are located in rural or agricultural areas where failure may damage farm buildings, agricultural land or secondary highways. Failure of the structure would cause only loss of the structure and loss of property use, such as related roads, but with little damage to adjacent property. Any impoundments exceeding 25 feet in height measured at the downstream toe or with a 200 acre-feet or larger storage volume or having a watershed exceeding 500 acres cannot be a Class A structure. Class B impoundments are located in predominately rural agricultural areas where failure may damage isolated homes, primary highways or minor railroads or cause interruption of relatively important public utilities. Failure of the structure may cause great damage to property and project operations. Class C impoundments are located where failure may cause loss of life, serious damage to homes, industrial and commercial buildings, important public utilities, primary highways, or main railroads. This classification must be used if a failure might cause loss of human life. Section D.05(d)(a)(1) requires that Class A impoundments be designed for a minimum of $P_{100}+0.12$ (PMP$-P_{100}$) inches of rainfall in six hours plus three feet of freeboard, Class B impoundments be designed for a minimum of $P_{100}+0.40$ (PMP$-P_{100}$) inches of rainfall in six hours plus three feet of freeboard and Class C impoundments be designed for the probable maximum precipitation of the appropriate duration. Case I appears to describe a Class A structure. However, in West Virginia, no impoundment exceeding twenty-five feet in height or 200 acre-feet of storage volume or having a watershed that exceeds 500 acres can be classified as a Class A structure. Therefore, all three examples are representative of Class B structures.

As explained by MSHA, the State's design requirements for Class B structures are fairly consistent with theirs for large low hazard impoundments (Case I) and small, moderate hazard impoundments (Case II). However, their criteria for large moderate hazard impoundments (Case III) are more stringent than the State's standards. MSHA requires such structures to be designed for the probable maximum precipitation event of the appropriate duration, whereas the State requires them to be designed for a minimum of $P_{100}+0.40$ (PMP$-P_{100}$) inches of rainfall in six hours plus three feet of freeboard. The Federal regulations at 30 CFR 77.216 require MSHA's approval when the proposed structure can impound water, sediment, or slurry to an elevation of five feet or more above the upstream toe of the structure and can have a storage volume of twenty-acre feet or more; or impound water, sediment or slurry to an elevation of twenty feet or more above the upstream toe of the structure; or present a hazard to coal miners as determined by MSHA. Since the large, moderate hazard impoundments described in Case III would impound water to an elevation greater than or equal to forty feet or have a storage volume greater than or equal to 1,000 acre-feet, the operator would have to submit the plans for the design and construction of such structures to MSHA for approval as required by 30 CFR 77.216(b).

Furthermore, section 4B.05(a)(8) of the State's surface mining reclamation regulations requires that any sediment control structure which impounds water to an elevation of five feet or more above the upstream toe of the structure and can have a storage volume of twenty acre-feet or more, or which impounds water to an elevation of twenty feet or more above the upstream toe of the structure, must be constructed, inspected and abandoned in accordance with 30 CFR 77.216. Coal refuse impoundments, however, are not required to comply with 30 CFR 77.216. Although the State's design requirements for large moderate hazard coal refuse impoundments, i.e. >40 feet or >1,000 acre-feet, are less stringent than MSHA's requirements, plans for a structure of that size would have to be reviewed and approved by MSHA, and it would have to be designed and constructed in accordance with MSHA standards regardless of the State's requirements at section D.05(d)(a)(1). Also, section D.05(b)(1)(c) provides that an impoundment must be classified as a Class C impoundment if failure would cause possible loss of life. As mentioned, Class C impoundments must be designed for the probable maximum precipitation of the appropriate duration. Most likely a coal refuse impoundment of the size described above would cause probable loss of life and would, by the State's own requirements, have to be designed for

the probable maximum precipitation event.

Secretary's Decision

The West Virginia permanent regulatory program is hereby amended to indicate: the approval, with certain exceptions, of the March 30, 1984, October 30, 1984, and June 14, 1985, amendments as set forth herein, the disapproval of portions of sections 1.02 (a) and (c) and 3E.01 of West Virginia's surface mining reclamation regulations as set forth in 30 CFR 948.12, and the removal of the conditions of approval placed on the West Virginia program as set forth at 30 CFR 948.11(a)(8), (8)(iv)(A), (8)(iv)(B), (8)(iv)(C), (14), (16), (36), (37), (40), (42), (43), (44) and (45). The Secretary will take appropriate steps under 30 CFR Part 733 to terminate the State program if provisions correcting the deficiencies are not made by the date specified in 30 CFR Part 948. The approval of the amendments, the disapprovals and the removal of conditions are being made retroactive to August 27, 1984, to concide with West Virginia's adoption of its surface mining reclamation and coal refuse disposal regulations. Retroactive approval is necessary to ensure no adverse effect on State enforcement actions taken since that date, and to ensure that no one will be unreasonably injured as a result of detrimental reliance on a later effective date because the State has been enforcing these regulations since August 27, 1984.

Additional Information

1. Compliance With the National Environmental Policy Act

The Secretary has determined that pursuant to the section 702(d) of SMCRA, 30 U.S.C 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

4. Environmental Protection Agency (EPA) Concurrence

On July 2, 1984, and January 25, 1985, the EPA transmitted its written concurrence on the West Virginia program amendments submitted on March 30, and October 30, 1984, as they related to air or water quality standards under the authority of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*) and the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) (Administrative Record Nos. WV 586 and WV 632). Since the revised regulations submitted by West Virginia on June 14, 1985, did not involve changes to proposed air and water quality standards that EPA had not already reviewed, it was not necessary to obtain EPA concurrence on those revisions.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 948 is amended as set forth herein.

Dated: July 8, 1985.

Leona A. Power,

Acting Assistant Secretary, Land and Minerals Management.

PART 948—WEST VIRGINIA

30 CFR Part 948 is amended as follows:

1. The authority citation for Part 948 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 948.11 is amended by removing and reserving paragraphs (a)(14), (16), (36), (37), (40), (42), (43), (44) and (45) and by revising paragraphs (a)(1), (8), (19), (38), (39) and (41) to read as follows:

§ 948.11 Conditions of State regulatory program approval.

(a) * * *

(1) Steps will be taken to terminate the approval found in § 948.10 unless West Virginia submits to the Secretary, by January 11, 1986, copies of regulations or other program amendments which include provisions for augering on previously mined areas which are no less effective than 30 CFR 819.19(b) (1) and (3) and which are no less stringent than sections 102 and 515 SMCRA.

* * * * *

(8) Steps will be taken to terminate the approval found in § 948.10 unless West Virginia submits to the Secretary, by January 11, 1986, copies of promulgated regulations or other program amendments which eliminate the waiver of stability analyses for non-impounding coal waste piles where site conditions indicate that failure will not occur, which require that regular inspections be conducted during the placement and compaction of coal mine waste materials as required by 30 CFR 816.83(d)(1) and 817.83(d)(1), and which require that the engineer provide the regulatory authority with a certified report promptly after each inspection of coal refuse impoundments and non-impounding coal refuse areas as required by 30 CFR 816.49(a)(10), 817.49(a)(10), 816.83(d)(2) and 817.83(d)(2).

* * * * *

(19) Steps will be taken to terminate the approval found in § 948.10 unless West Virginia submits to the Secretary, by January 11, 1986, copies of promulgated regulations or other program amendments which require that the applicant list in the permit application all violation notices received by that person, or by any subsidiary, affiliate or persons controlled by or under common control with the applicant, in connection with any surface coal mining and reclamation operation during the three-year period preceding the date of application as required by 30 CFR 778.14(c).

* * * * *

(38) Steps will be taken to terminate the approval found in § 948.10 unless West Virginia submits to the Secretary, by January 11, 1986, copies of promulgated regulations or other program amendments which require that coal exploration applications contain a map showing the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as required by 30 CFR 772.12(b)(12).

* * * * *

(39) Steps will be taken to terminate the approval found in § 948.10 unless West Virginia submits to the Secretary, by January 11, 1986, copies of promulgated regulations or other program amendments which (i) require the use of a statistically valid sampling technique to evaluate the success of

revegetation in all instances as required, (ii) establish productivity success standards and require productivity measurements when determining the success of revegetation efforts on grazing land, pasture land and crop land, and (iii) require the use of the 90 percent statistical confidence interval and a one-sided test with a 0.10 alpha error in data analysis and in the design of sampling techniques, all in a manner no less effective than 30 CFR 816.116 and 817.116.

* * * * *

(41) Steps will be taken to terminate the approval found in § 948.10 unless West Virginia submits to the Secretary, by January 11, 1986, copies of promulgated regulations or other program amendments which eliminate those provisions allowing the Director to decline to issue a show cause order or to vacate an outstanding show cause order due to exceptional factors beyond the operator's control.

3. 30 CFR 948.12 is amended by adding new paragraphs (h) and (i) to read as follows:

§ 948.12 State program provisions found inconsistent with Federal law or less effective than Federal regulations.

* * * * *

(h) Section 1.02(a) of West Virginia's surface mining reclamation regulations is found less effective than the Federal regulations at 30 CFR 784.20 to the extent that it provides that "Such acknowledgement shall be deemed complete for any new permit requirements contained in these regulations and shall become a part of the permit;" and section 1.02(c) of the West Virginia regulations is found less effective than the Federal regulations at 30 CFR 784.20 to the extent that it provides that "Such acknowledgement shall be deemed sufficient to make the application complete for any new permit requirements contained in these regulations and shall become a part of the permit."

(i) Section 3E.01 of West Virginia's surface mining reclamation regulations is found inconsistent with section 515(b)(10(B)(ii) of SMCRA and less effective than the Federal regulations to the extent that it provides that for the purposes of section 13(b)(10) of the Act (now § 22A–3–12(b)(10) of the West Virginia Energy Act) an approved person shall be a "licensed land surveyor."

4. 30 CFR 948.15 is amended by adding new paragraph (h) to read as follows:

§ 948.15 Approval of regulatory program amendments.

* * * * *

(h) The following amendments submitted to OSM on March 30, 1984, October 30, 1984, and June 14, 1985, are approved effective August 27, 1984, subject to the remaining conditions set forth in § 948.11: West Virginia's revised surface mining reclamation and coal refuse disposal regulations dated July 15, 1983, and July 22, 1981, respectively; the permit addendum and Chapter 20, Revegetation, of the Technical Handbook for Surface Mining; West Virginia's revised surface mining reclamation and coal refuse disposal regulations dated August 27, 1984; the addendum to a permit or significant revision to a permit; the coal exploration approval document; the State's revised civil penalty procedures, which include a Code of Violations for determining assessable and non-assessable violations; and West Virginia's final surface mining reclamation and coal refuse disposal regulations, which were approved by the West Virginia Legislature on April 13, 1985, and which took effect on June 13, 1985.

[FR Doc. 85–16609 Filed 7–10–84; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR

30 CFR Part 948

West Virginia Permanent Regulatory Program; Proposal To Supersede Provisions of State Law

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: This document announces and seeks public comment on a proposed action by OSM to preempt and supersede certain provisions of Article Three of Chapter 22A of the Code of West Virginia, which article is part of the West Virginia Energy Act (WVEA). The provisions proposed for preemption and supersession involve the exclusion of support facilities from the definition of surface-mining operations, the establishment of special requirements for surface-mining operations two acres or smaller in size, final bond release requirements, the Commissioner's authority to grant variances from performance standards, limits on an operator's liability for injuries sustained by citizens accompanying inspectors, and the Commissioner's authority to issue permits to applicants in violation of Federal laws or the environmental laws of other States.

This action is being taken because the Director has initially determined that these provisions are inconsistent with the requirements of SMCRA. The Director's determination is based on the reasons cited in Findings 4, 5, 6, 7, 8 and 10 of the section entitled "Director's Findings" in a separate notice of final rulemaking pertaining to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program), which is also appearing in today's Federal Register.

DATES: Written comments or other information relevant to these actions not received by 4:00 p.m. on August 12, 1985 will not necessarily be considered in the decision process.

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining, Charleston Field Office, Attn: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301.

Copies of the West Virginia program, proposed modifications, and the administrative record on the West Virginia program are available for public review and copying at the OSM offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, telephone: (304) 347–7158

Office of Surface Mining, 1100 "L" Street NW., Room 5124, Washington, D.C. 20240, telephone: (202) 343–4855

West Virginia Department of Energy, 1615 Washington Street, East Charleston, West Virginia 25305, telephone: (304) 348–3267

In addition, copies of the West Virginia program and proposed modifications are available for inspection and copying during regular business hours at the following locations:

Office of Surface Mining, Morgantown Area Office, 75 High Street, Room 229, Morgantown, West Virginia 26505, telephone: (304) 291–4001

Office of Surface Mining, Beckley Area Office, 119 Appalachian Drive, Beckley, West Virginia 25801, telephone: (304) 255–5265

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301, telephone: (304) 347–7158

SUPPLEMENTARY INFORMATION:

I. Background

Detailed background on the actions proposed in this document can be found in a notice of final rulemaking pertaining to the West Virginia program which also appears in today's Federal Register.

II. Director's Findings and Proposed Actions

1. Support Facilities

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director proposes to preempt and supersede specific wording in WVEA section 22A–3–3(w)(2), which is part of the definition of "surface-mining operations." The complete text reads as follows:

(2) The areas upon which the above activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities: Provided, That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting subject to section seven of this article: Provided, however, That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage, or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas.

The specific wording proposed for preemption and supersession is:

Provided, however, That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage, or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas.

The Director proposes to take this action because he has initially determined that this provision is inconsistent with section 701(28)(B) of SMCRA, based on the reasons cited in Finding 4 of the section entitled "Director's Findings" in a separate notice of final rulemaking pertaining to the West Virginia program, which is also being published in today's Federal Register.

2. Special Requirements for Mines Not Exceeding Two Acres

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director proposes to preempt and supersede, in part, specific wording in WVEA section 22A–3–9a(a)(8), which sets bonding requirements for surface-mining operations affecting two acres or less. The complete text of WVEA section 22A–3–9a(a)(8), reads as follows:

(8) A bond, or cash or collateral securities or certificates of the same type, in the form as prescribed by the director and in the minimum amount of five thousand dollars per acre, for a maximum disturbance of two acres, exclusive of roadways and temporary spoil placement. The bond shall be payable to the state of West Virginia and conditioned that the applicant shall complete regarding to approximate

original contour and revegetation of all disturbed areas; and

The specific wording proposed for preemption and supersession is the phrase "exclusive of roadways and temporary spoil placement."

The Director proposes to take this action because, to the extent that this language could be interpreted as allowing operations affecting in excess of two acres to qualify for the special requirements, this provision is inconsistent with section 528(2) of SMCRA and is less effective than the definition of "affected area" at 30 CFR 701.5. The Director's determination is based on the reasons cited in Finding 5 of the section entitled "Director's Findings" in a separate notice of final rulemaking pertaining to the West Virginia program also appearing in today's **Federal Register**. The Director recognizes West Virginia's authority to establish whatever bonding requirements it chooses for operations affecting two acres or less; the proposed preemption and supersession would only prohibit the use of bonded area criteria to define the size of the affected area as well.

3. Final Bond Release Requirements

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director proposes to preempt and supersede specific wording in WVEA section 22A–3–23(c)(3), which in certain circumstances would permit final bond release prior to attainment of revegetation in accordance with the approved reclamation plan. The complete text of WVEA section 22A–3–23(c)(3) reads as follows:

(3) When the operator has completed successfully all surface mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified in subdivision (20), subsection (b), section twelve of this article: Provided, That the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan: Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

The specific wording proposed for preemption and supersession is:

Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

The Director is proposing to take this action because he has initially determined that this provision is inconsistent with section 519(c)(3) of SMCRA, based on the reasons cited in Finding 6 of the section entitled "Director's Findings" in a separate notice of final rulemaking pertaining to the West Virginia program also appearing in today's **Federal Register**.

4. Variances From Performance Standards

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director proposes to preempt and supersede WVEA section 22A–3–12(e), which grants the Commissioner authority to allow variances from performance standards, in its entirety. The complete text proposed for preemption and supersession reads as follows:

(e) The commissioner may permit variances from the requirements of this section: Provided, That the watershed control of the area is improved: Provided, however, That complete backfilling with spoil material shall be required to completely cover the highwall, which material will maintain stability following mining and reclamation.

The Director is proposing to take this action because he has initially determined that this provision is inconsistent with section 515(e)(3) of SMCRA, based on the reasons cited in Finding 7 of the section entitled "Director's Findings" in a separate notice of final rulemaking pertaining to the West Virginia program also appearing to today's **Federal Register**.

5. Operator Liability Limits

Pursuant to Section 505(b) of SMCRA and 30 CFR 730.11(a), the Director proposes to preempt and supersede specific wording in WVEA section 22A–3–15(g), which limits operator liability for injuries suffered by citizens accompanying inspectors on inspections. The complete text of WVEA section 22A–3–15(g) reads as follows:

(g) Whenever on the basis of available information, including reliable information from any person, the commissioner has cause to believe that any person is in violation of this article, any permit condition or any regulation promulgated under this article, the commissioner shall immediately order state inspection of the surface-mining operation at which the alleged violation is occurring unless the information is available as a result of a prior State inspection. The commissioner shall notify any person who supplied such reliable information when the state inspection will be carried out. Such person may accompany the inspector during the inspection: Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip. Any such person accompanying an inspector on an inspection shall be responsible for supplying any safety equipment required for his use.

The specific wording proposed for preemption and supersession is:

Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the insepction trip.

The Director is proposing to take this action because he has initially determined that this provision is inconsistent with section 521(a)(1) of SMCRA, based on the reasons cited in Finding 8 of the section entitled "Director's Findings" in a separate notice of final rulemaking pertaining to the West Virginia program also appearing in today's **Federal Register**. The Director previously set aside an identical provision in section 20–6–15(g) of the now-repealed WV SCMRA as being inconsistent with Section 521(a)(1) of SMCRA (49 FR 1489–1490 January 12, 1984).

6. Permit Issuance to Persons in Violation of Federal Laws or Environmental Laws in Other States

Pursuant to Section 505(b) of SMCRA and 30 CFR 730.11(a) the Director proposes to preempt and supersede specific wording in WVEA section 22A–3–18(c), which governs permit issuance to persons with violations. The complete text of WVEA section 22A–3–18(c) reads as follows:

(c) Where information available to the department indicates that any surface-mining operation located in the state of West Virginia, owned or controlled by the applicant, is currently in violation of this article or other environmental laws or regulations, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the commissioner or the department or agency which has jurisdiction over the violation, and no permit may be issued to any applicant after a finding by the commissioner, after an opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of this article of such nature and duration with

such irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article: Provided, That if the commissioner finds that the applicant is or has been affiliated with, or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who has had a surface-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the law of this State, he shall not issue a permit to the applicant: Provided, however, That subject to the discretion of the commissioner and based upon a petition for reinstatement, permits may be issued to any applicant if, after the revocation or forfeiture, the operator whose permit has been revoked or bond forfeited shall have paid into the special reclamation fund any additional sum of money determined by the commissioner to be adequate to reclaim the disturbed area, and the commissioner is satisfied that the petitioner will comply with this article.

The specific wording proposed for preemption and supersession is the phrase "located in the state of West Virginia" in the first clause, and the phrase "of this article" following "demonstrated pattern of willful violations".

The Director is proposing to take this action because he has initially determined that these phrases render the State law inconsistent with section 510(c) of SMCRA, based on the reasons cited in Finding 10 of the section entitled "Director's Findings" in a separate notice of final rulemaking pertaining to the West Virginia program also appearing in today's **Federal Register**.

The Director is now soliciting public comment on his proposal to preempt and supersede those portions of the WVEA which he has found to be inconsistent with SMCRA and less effective than the Federal regulations in a separate notice of final rulemaking also appearing in today's **Federal Register**. If no evidence is received demonstrating why these provisions should not be preempted and superseded, a final notice will be published to effect the supersession of these provisions of the WVEA by Federal law. This action, if taken, will require the State to operate and enforce the approved program as if the preempted and superseded provisions did not exist.

III. Procedural Requirements

1. *Compliance With the National Environmental Policy Act:* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* The rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: July 8, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85–16511 Filed 7–10–85; 8:45 am]

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Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

July 1, 1985.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of July 1, 1985, of 244 rescission proposals and 74 deferrals contained in the first ten special messages of FY 1985. These messages were transmitted to the Congress on October 1, October 31, and November 29, 1984; and January 4, February 6 (two special messages), March 1, March 22, May 16, and June 20, 1985.

Rescissions (Table A and Attachment A)

As of July 1, 1985, there were two rescission proposals pending before the Congress. Attachment A shows the history and status of the 244 rescissions proposed by the President in 1985.

Deferrals (Table B and Attachment B)

As of July 1, 1985, $4,569.2 million in 1985 budget authority was being deferred from obligation and $8.4 million in 1985 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1985.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the Federal Register listed below:

Vol. 49, FR p. 39464, Friday, October 5, 1984
Vol. 49, FR p. 44870, Friday, November 9, 1984
Vol. 49, FR p. 47804, Thursday, December 6, 1984
Vol. 50, FR p. 1420, Thursday, January 10, 1985
Vol. 50, FR p. 6582, Friday, February 15, 1985
Vol. 50, FR p. 6648, Friday, February 15, 1985
Vol. 50, FR p. 9410, Thursday, March 7, 1985
Vol. 50, FR p. 12504, Thursday, March 28, 1985
Vol. 50, FR p. 21014, Tuesday, May 21, 1985
Vol. 50, FR p. 26510, Wednesday, June 28, 1985

David A. Stockman,
Director, Office of Management and Budget.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1985 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$1,843.3
Accepted by the Congress	0
Rejected by the Congress	1,805.9 a/
Pending before the Congress	37.4

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TABLE B

STATUS OF 1985 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$15,323.3 b/
Routine Executive releases through July 1, 1985 (OMB/ Agency Releases of $11,047.1 million and cumulative adjustments of $301.5 million)	-10,745.6
Overturned by the Congress	0
Currently before the Congress	$ 4,577.6 c/

a/ Rescission proposals transmitted with the FY 1986 Budget were released immediately following expiration of the 45-day clock on rescissions under the Impoundment Control Act. However, the proposals continue to be subject to Congressional action.

b/ This amount includes $170.0 million transmitted by the Comptroller General on June 24, 1985, for the General Services Administration.

c/ This amount includes $8.4 million in outlays for a Department of the Treasury deferral (D85-13).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1985

As of July 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
Appalachian Regional Development Programs	R85-1	99,000		2-6-85		99,000	4-25-85	
International Development Assistance Functional development assistance program	R85-2	5,168		2-6-85		5,168	4-25-85	
Peace Corps Peace Corps operating expenses	R85-3	1,231		2-6-85		1,231	4-25-85	
Overseas Private Investment Corporation Overseas Private Investment Corporation	R85-4	838		2-6-85		838	4-25-85	
DEPARTMENT OF AGRICULTURE								
Office of the Secretary Office of the Secretary	R85-5	114		2-6-85		114	4-25-85	
Departmental Administration Departmental Administration	R85-6	149		2-6-85		149	4-25-85	
Office of Governmental and Public Affairs Office of Governmental and Public Affairs	R85-7	497		2-6-85		497	4-25-85	
Office of the Inspector General Office of the Inspector General	R85-8	41		2-6-85		41	4-25-85	
Office of the General Counsel Office of the General Counsel	R85-9	24		2-6-85		24	4-25-85	
Agricultural Research Service Agricultural Research Service	R85-10	1,313		2-6-85		1,313	4-25-85	
Buildings and facilities	R85-11 R85-12	18,950 20,950		2-6-85 2-6-85		18,950 20,950	4-25-85 4-25-85	
Cooperative State Research Service Cooperative State Research Service	R85-13	151		2-6-85		151	4-25-85	
Extension Service Extension Service	R85-14	310		2-6-85		310	4-25-85	
National Agricultural Library National Agricultural Library	R85-15	11		2-6-85		11	4-25-85	
Statistical Reporting Service Salaries and expenses	R85-16	206		2-6-85		206	4-25-85	
Economic Research Service Salaries and expenses	R85-17	132		2-6-85		132	4-25-85	
World Agricultural Outlook Board World Agricultural Outlook Board	R85-18	32		2-6-85		32	4-25-85	
Foreign Agricultural Service Foreign Agricultural Service	R85-19	424		2-6-85		424	4-25-85	
Office of International Cooperation and Development Salaries and expenses	R85-20	52		2-6-85		52	4-25-85	
Scientific activities overseas (special foreign currency program)	R85-21	9		2-6-85		9	4-25-85	
Agricultural Stabilization and Conservation Service Salaries and expenses	R85-22	100		2-6-85		100	4-25-85	
Dairy indemnity program	R85-23	80		2-6-85		80	4-25-85	
Federal Crop Insurance Corporation Administrative and operating expenses	R85-24	1,906		2-6-85		1,906	4-25-85	
Commodity Credit Corporation Commodity Credit Corporation fund	R85-25	31		2-6-85		31	4-25-85	
Office of Rural Development Policy Salaries and expenses	R85-26	36		2-6-85		36	4-25-85	
Rural Electrification Administration Salaries and expenses	R85-27	288		2-6-85		288	4-25-85	
Reimbursement to the Rural Electrification and Telephone revolving fund	R85-28	215,964		2-6-85		215,964	4-25-85	
Purchase of Rural Telephone Bank capital stock	R85-29	30,000		2-6-85		30,000	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of July 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Farmers Home Administration								
Salaries and expenses	RES-30	1,315		2-6-85		1,315	4-25-85	
Soil Conservation Service								
Conservation operations	RES-31	5,174		2-6-85		5,174	4-25-85	
River basin surveys and investigations	RES-32	235		2-6-85		235	4-25-85	
Watershed planning	RES-33	133		2-6-85		133	4-25-85	
Watershed and flood prevention operations	RES-34	918		2-6-85		918	4-25-85	
Great plains conservation program	RES-35	126		2-6-85		126	4-25-85	
Resource conservation and development	RES-36	164		2-6-85		164	4-25-85	
Animal and Plant Health Inspection Service								
Salaries and expenses	RES-37	1,464		2-6-85		1,464	4-25-85	
Federal Grain Inspection Service								
Salaries and expenses	RES-38	94		2-6-85		94	4-25-85	
Agricultural Marketing Service								
Marketing services	RES-39	150		2-6-85		150	4-25-85	
Office of Transportation								
Office of Transportation	RES-40	18		2-6-85		18	4-25-85	
Food Safety and Inspection Service								
Salaries and expenses	RES-41	2,473		2-6-85		2,473	4-25-85	
Food and Nutrition Service								
Food stamp administration	RES-42	684		2-6-85		684	4-25-85	
Food stamp program	RES-43	8,762		2-6-85		8,762	4-25-85	
Human Nutrition Information Service								
Human Nutrition Information Service	RES-44	34		2-6-85		34	4-25-85	
Packers and Stockyards Administration								
Packers and Stockyards Administration	RES-45	117		2-6-85		117	4-25-85	
Agricultural Cooperative Service								
Salaries and expenses	RES-46	50		2-6-85		50	4-25-85	
Forest Service								
Forest research	RES-47	923		2-6-85		923	4-25-85	
State and private forestry	RES-48	463		2-6-85		463	4-25-85	
National forest system	RES-49	12,134		2-6-85		12,134	4-25-85	
Construction	RES-50	1,922		2-6-85		1,922	4-25-85	
Land acquisition	RES-51	68		2-6-85		68	4-25-85	
DEPARTMENT OF COMMERCE								
General Administration								
Salaries and expenses	RES-52	3,700		2-6-85		3,700	4-25-85	
	RES-53	499		2-6-85		499	4-25-85	
Economic Development Administration								
Salaries and expenses	RES-54	120		2-6-85		120	4-25-85	
Economic development assistance programs	RES-55	24,000		2-6-85		24,000	4-25-85	
	RES-56	179,000		2-6-85		179,000	4-25-85	
Bureau of the Census								
Salaries and expenses	RES-57	241		2-6-85		241	4-25-85	
Periodic censuses and programs	RES-58	791		2-6-85		791	4-25-85	
Economic and Statistical Analysis								
Salaries and expenses	RES-59	433		2-6-85		433	4-25-85	
International Trade Administration								
Operations and administration	RES-60	2,783		2-6-85		2,783	4-25-85	
	RES-60A	18,750		2-6-85		18,750	4-25-85	
Participation in United States expositions	RES-61	6		2-6-85		6	4-25-85	
Minority Business Development Agency								
Minority business development	RES-62	305		2-6-85		305	4-25-85	
United States Travel and Tourism Administration								
Salaries and expenses	RES-63	468		2-6-85		468	4-25-85	
	RES-63A	3,417		2-6-85		3,417	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of July 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
National Oceanic and Atmospheric Administration								
Operations, research, and facilities....	R85-64	4,140		2-6-85		4,140	4-25-85	
	R85-64A	100,200		2-6-85		100,200	4-25-85	
Fisheries loan fund.....	R85-65	1,550		2-6-85		1,550	4-25-85	
Patent and Trademark Office								
Salaries and expenses.....	R85-66	1,472		2-6-85		1,472	4-25-85	
National Bureau of Standards								
Scientific and technical research and services.....	R85-67	1,019		2-6-85		1,019	4-25-85	
National Telecommunications and Information Administration								
Salaries and expenses.....	R85-68	183		2-6-85		183	4-25-85	
Public telecommunications facilities, planning and construction.....	R85-69	32		2-6-85		32	4-25-85	
	R85-69A	9,968		2-6-85		9,968	4-25-85	
DEPARTMENT OF DEFENSE - CIVIL								
Corps of Engineers - Civil								
General investigations.....	R85-70	2,000		2-6-85		2,000	4-25-85	
Construction, general.....	R85-71	4,000		2-6-85		4,000	4-25-85	
Operation and maintenance, general.....	R85-72	8,000		2-6-85		8,000	4-25-85	
General expenses.....	R85-73	1,200		2-6-85		1,200	4-25-85	
Flood control, Mississippi River and tributaries.....	R85-74	1,000		2-6-85		1,000	4-25-85	
Revolving fund.....	R85-75	3,900		2-6-85		3,900	4-25-85	
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Special programs.....R85-76		80,000		2-6-85		80,000	4-24-85	
Office of Bilingual Education and Minority Languages Affairs								
Grants to schools with substantial numbers of immigrants.....	R85-77	30,000		2-6-85		30,000	4-24-85	
Office of Postsecondary Education								
Higher education.....	R85-78	59,750		2-6-85		59,750	4-24-85	
Departmental Management								
Salaries and expenses.....	R85-79	4,189		2-6-85		4,189	4-24-85	
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities								
Atomic energy defense activities.....	R85-80	8,280		2-6-85		8,280	4-25-85	
Energy Programs								
General science and research activities.	R85-81	38		2-6-85		38	4-25-85	
Energy supply, research and development activities.....	R85-82	2,676		2-6-85		2,676	4-25-85	
Uranium supply and enrichment activities	R85-83	968		2-6-85		968	4-25-85	
Fossil energy research and development..	R85-84	3,276		2-6-85		3,276	4-25-85	
	R85-85	860		2-6-85		860	4-25-85	
Naval petroleum and oil shale reserves..	R85-86	181		2-6-85		181	4-25-85	
Energy conservation.....	R85-87	931		2-6-85		931	4-25-85	
Strategic petroleum reserve.....	R85-88	156		2-6-85		156	4-25-85	
Energy Information Administration.....	R85-89	846		2-6-85		846	4-25-85	
Emergency preparedness.....	R85-90	51		2-6-85		51	4-25-85	
Economic regulation.....	R85-91	156		2-6-85		156	4-25-85	
Federal Energy Regulatory Commission....	R85-92	204		2-6-85		204	4-25-85	
Alternate fuels production.....	R85-93	23		2-6-85		23	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of July 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Power Marketing Administration								
Operation and maintenance, Alaska Power Administration	RDS-94	29		2-6-85		29	4-25-85	
Operation and maintenance, Southeastern Power Administration	RDS-95 [illegible]-241	15	23,402	2-6-85 5-16-86		15	4-25-85	
Operation and maintenance, Southwestern Power Administration	RDS-96	243		2-6-85		243	4-25-85	
Construction, rehabilitation, operation and maintenance, Western Area Power Administration	RDS-97	432		2-6-85		432	4-25-85	
Departmental Administration								
Departmental administration	RDS-98	2,706		2-6-85		2,706	4-25-85	
DEPARTMENT OF HEALTH AND [illegible] SERVICES								
Food and Drug Administration								
Salaries and expenses	RDS-99	2,194		2-6-85		2,194	4-25-85	
Health Resources and Services Administration								
Health resources and services	RDS-100	2,263		2-6-85		2,263	4-25-85	
Indian health	RDS-101	161		2-6-85		161	4-25-85	
Centers for Disease Control								
Disease control	RDS-102	2,261		2-6-85		2,261	4-25-85	
National Institutes of Health								
National Cancer Institute	RDS-103	4,362		2-6-85		4,362	4-25-85	
National Heart, Lung and Blood Institute	RDS-104	1,401		2-6-85		1,401	4-25-85	
National Institute of Dental Research	RDS-105	166		2-6-85		166	4-25-85	
National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases	RDS-106	1,171		2-6-85		1,171	4-25-85	
National Institute of Neurological and Communicative Disorders	RDS-107	462		2-6-85		462	4-25-85	
National Institute of Allergy and Infectious Diseases	RDS-108	428		2-6-85		428	4-25-85	
National Institute of General Medical Sciences	RDS-109	231		2-6-85		231	4-25-85	
National Institute of Child Welfare and Human Development	RDS-110	309		2-6-85		309	4-25-85	
National Eye Institute	RDS-111	173		2-6-85		173	4-25-85	
National Institute of Environmental Health Sciences	RDS-112	542		2-6-85		542	4-25-85	
National Institute on Aging	RDS-113	196		2-6-85		196	4-25-85	
Research resources	RDS-114	250		2-6-85		250	4-25-85	
John E. Fogarty International Center	RDS-115	201		2-6-85		201	4-25-85	
National Library of Medicine	RDS-116	354		2-6-85		354	4-25-85	
Office of the Director	RDS-117	182		2-6-85		182	4-25-85	
Alcohol, Drug Abuse, and Mental Health Administration								
Alcohol, drug abuse, and mental health	RDS-118	3,972		2-6-85		3,972	4-25-85	
Office of Assistant Secretary for Health								
Public health service management	RDS-119	493		2-6-85		493	4-25-85	
Health Care Financing Administration								
Program management	RDS-120	1,540		2-6-85		1,540	4-25-85	
Human Development Services								
Human development services	RDS-121	1,334		2-6-85		1,334	4-25-85	
Family social services	RDS-122	396		2-6-85		396	4-25-85	
Community services block grant	RDS-123	34		2-6-85		34	4-25-85	
Departmental Management								
General departmental management	RDS-124	1,246		2-6-85		1,246	4-25-85	
Office of the Inspector General	RDS-125	496		2-6-85		496	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of July 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs Payments for operation of low income housing projects	RRS-126	253,138		2-6-85		253,138	4-25-85	
Management and Administration Salaries and expenses	RRS-127	6,919		2-6-85		6,919	4-25-85	
DEPARTMENT OF INTERIOR								
Bureau of Land Management Management of lands and resources	RRS-128	5,778		2-6-85		5,778	4-25-85	
Oregon and California grant lands	RRS-129	679		2-6-85		679	4-25-85	
Working capital fund	RRS-130	2,951		2-6-85		2,951	4-25-85	
Minerals Management Service Minerals and royalty management	RRS-131	1,764		2-6-85		1,764	4-25-85	
Office of Surface Mining Reclamation and Enforcement Regulation and technology	RRS-132	546		2-6-85		546	4-25-85	
Abandoned mine reclamation fund	RRS-133 RRS-133A	333 2,900		2-6-85 2-6-85		333 2,900	4-25-85 4-25-85	
Bureau of Reclamation Construction program	RRS-134	2,571		2-6-85		2,571	4-25-85	
General investigations	RRS-135	209		2-6-85		209	4-25-85	
Operation and maintenance	RRS-136	1,540		2-6-85		1,540	4-25-85	
General administrative expenses	RRS-137	1,468		2-6-85		1,468	4-25-85	
Geological Survey Surveys, investigations and research	RRS-138	4,519		2-6-85		4,519	4-25-85	
Bureau of Mines Mines and minerals	RRS-139	1,355		2-6-85		1,355	4-25-85	
United States Fish and Wildlife Service Resource management	RRS-140	3,869		2-6-85		3,869	4-25-85	
Construction	RRS-141	48		2-6-85		48	4-25-85	
National Park Service Operation of the national park system	RRS-142	8,598		2-6-85		8,598	4-25-85	
National recreation and preservation	RRS-143	94		2-6-85		94	4-25-85	
Construction	RRS-144	397		2-6-85		397	4-25-85	
Land acquisition and state assistance	RRS-145 RRS-146	52 30,000		2-6-85 2-6-85		52 30,000	4-25-85 4-25-85	
Bureau of Indian Affairs Operation of Indian programs	RRS-147	5,570		2-6-85		5,570	4-25-85	
Office of Territorial Affairs Administration of territories	RRS-148	107		2-6-85		107	4-25-85	
DEPARTMENT OF JUSTICE								
General Administration Salaries and expenses	RRS-149	166		2-6-85		166	4-25-85	
Working capital fund	RRS-150	3,000		2-6-85		3,000	4-25-85	
Legal Activities Salaries and expenses, General Legal Activities	RRS-151	470		2-6-85		470	4-25-85	
Salaries and expenses, Antitrust Division	RRS-152	65		2-6-85		65	4-25-85	
Salaries and expenses, United States Attorneys and Marshals	RRS-153	889		2-6-85		889	4-25-85	
Fees and expenses of witnesses	RRS-154	309		2-6-85		309	4-25-85	
Salaries and expenses, Community Relations Service	RRS-155	43		2-6-85		43	4-25-85	
Federal Bureau of Investigation Salaries and expenses	RRS-156	3,505		2-6-85		3,505	4-25-85	

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As of July 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Drug Enforcement Administration								
Salaries and expenses	RBS-157		876	2-6-85		876	4-25-85	
Immigration and Naturalization Service								
Salaries and expenses	RBS-158		947	2-6-85		947	4-25-85	
Federal Prison System								
Salaries and expenses	RBS-159		451	2-6-85		451	4-25-85	
National Institute of Corrections	RBS-160		894	2-6-85		894	4-25-85	
Buildings and facilities	RBS-161		13	2-6-85		13	4-25-85	
Office of Justice Programs								
Justice assistance	RBS-162		2,031	2-6-85		2,031	4-25-85	
DEPARTMENT OF LABOR								
Employment and Training Administration								
Program administration	RBS-163		218	2-6-85		218	4-25-85	
	RBS-163A		1,703	2-6-85		1,703	4-25-85	
Training and employment services	RBS-164		11,447	2-6-85		11,447	4-24-85	
	RBS-164A		244,291	2-6-85		244,291	4-24-85	
Labor-Management Services Administration								
Salaries and expenses	RBS-165		1,670	2-6-85		1,670	4-25-85	
Employment Standards Administration								
Salaries and expenses	RBS-167		1,635	2-6-85		1,635	4-24-85	
	RBS-167A		600	2-6-85		600	4-24-85	
Occupational Safety and Health Administration								
Salaries and expenses	RBS-168		1,694	2-6-85		1,694	4-24-85	
Mine Safety and Health Administration								
Salaries and expenses	RBS-169		1,776	2-6-85		1,776	4-24-85	
Bureau of Labor Statistics								
Salaries and expenses	RBS-170		765	2-6-85		765	4-25-85	
	RBS-170A		5,000	2-6-85		5,000	4-25-85	
Departmental Management								
Salaries and expenses	RBS-171		728	2-6-85		728	4-24-85	
Inspector General salaries and expenses	RBS-172		3,766	2-6-85		3,766	4-24-85	
Special foreign currency program	RBS-173		20	2-6-85		20	4-24-85	
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	RBS-174		2,432	2-6-85		2,432	4-25-85	
DEPARTMENT OF TRANSPORTATION								
Federal Highway Administration								
Motor carrier safety	RBS-175		164	2-6-85		164	4-25-85	
National Highway Traffic Safety Administration								
Operations and research	RBS-176		767	2-6-85		767	4-25-85	
Trust fund share of operations and research	RBS-177		408	2-6-85		408	4-25-85	
Highway traffic safety grants	RBS-178		250	2-6-85		250	4-25-85	
Federal Railroad Administration								
Office of the Administrator	RBS-179		100	2-6-85		100	4-25-85	
Railroad research and development	RBS-180		170	2-6-85		170	4-25-85	
Rail service assistance	RBS-181		90	2-6-85		90	4-25-85	
Railroad safety	RBS-182		140	2-6-85		140	4-25-85	
Northeast corridor improvement program	RBS-183		200	2-6-85		200	4-25-85	
Urban Mass Transportation Administration								
Urban mass transportation fund, administrative expenses	RBS-184		265	2-6-85		265	4-25-85	
Federal Aviation Administration								
Operations	RBS-185		18,000	2-6-85		18,000	4-25-85	
Headquarters administration	RBS-186		1,065	2-6-85		1,065	4-25-85	
Operation and maintenance, Washington metropolitan airports	RBS-187		17	2-6-85		17	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of July 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Facilities and equipment (Airport and airway trust fund)	R85-188	18,000		2-6-85		18,000	4-25-85	
Coast Guard								
Operating expenses	R85-189	14,724		2-6-85		14,724	4-25-85	
Acquisition, construction and improvements	R85-190	500		2-6-85		500	4-25-85	
Reserve training	R85-191	441		2-6-85		441	4-25-85	
Research, development, test, and evaluation	R85-192	135		2-6-85		135	4-25-85	
Maritime Administration								
Operations and training	R85-193	888		2-6-85		888	4-25-85	
Office of the Inspector General								
Salaries and expenses	R85-194	300		2-6-85		300	4-25-85	
Office of the Secretary								
Salaries and expenses	R85-195	435		2-6-85		435	4-25-85	
Transportation planning, research and development	R85-196	65		2-6-85		65	4-25-85	
DEPARTMENT OF THE TREASURY								
Office of the Secretary								
Salaries and expenses	R85-197	969		2-6-85		969	4-25-85	
Office of Revenue Sharing								
Salaries and expenses	R85-198	90		2-6-85		90	4-25-85	
Federal Law Enforcement Training Center								
Salaries and expenses	R85-199	75		2-6-85		75	4-25-85	
Financial Management Service								
Salaries and expenses	R85-200	972		2-6-85		972	4-25-85	
Bureau of Alcohol, Tobacco and Firearms								
Salaries and expenses	R85-201	397		2-6-85		397	4-25-85	
United States Customs Service								
Salaries and expenses	R85-202	1,223		2-6-85		1,223	4-25-85	
Bureau of the Mint								
Salaries and expenses	R85-203	87		2-6-85		87	4-25-85	
Bureau of the Public Debt								
Administering the public debt	R85-204	52		2-6-85		52	4-25-85	
Internal Revenue Service								
Salaries and expenses	R85-205	198		2-6-85		198	4-25-85	
Processing tax returns and executive direction	R85-206	781		2-6-85		781	4-25-85	
Examinations and appeals	R85-207	1,588		2-6-85		1,588	4-25-85	
Investigation, collection, and taxpayer service	R85-208	1,633		2-6-85		1,633	4-25-85	
United States Secret Service								
Salaries and expenses	R85-209	1,465		2-6-85		1,465	4-25-85	
ENVIRONMENTAL PROTECTION AGENCY								
Salaries and expenses	R85-210	1,863		2-6-85		1,863	4-26-85	
Research and development	R85-211	4,125		2-6-85		4,125	4-26-85	
Abatement, control, and compliance	R85-212	7,413		2-6-85		7,413	4-26-85	
GENERAL SERVICES ADMINISTRATION								
Real Property Activities								
Federal buildings fund	R85-213	3,204		2-6-85		3,204	4-25-85	
Personal Property Activities								
Operating expenses	R85-214	388		2-6-85		388	4-25-85	
General supply fund	R85-215	30,848		2-6-85		30,848	4-25-85	
Office of Information Resources Management								
Operating expenses	R85-216	45		2-6-85		45	4-25-85	
Consumer information center fund	R85-217	63		2-6-85		63	4-25-85	

Attachment A - Status of Rescissions - Fiscal Year 1985

As of July 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Federal telecommunications fund.....	R85-218	415		2-6-85		415	4-25-85	
Automatic data processing fund.....	R85-219	145		2-6-85		145	4-25-85	
Federal Property Resources Activities Operating expenses.....	R85-220	207		2-6-85		207	4-25-85	
Expenses, disposal of surplus real and related personal property.....	R85-221	1,832		2-6-85		1,832	4-25-85	
General Activities General management and administration, salaries and expenses.....	R85-222	403		2-6-85		403	4-25-85	
Office of the Inspector General.....	R85-223	35		2-6-85		35	4-25-85	
Allowances and staff for former Presidents.....	R85-224	19		2-6-85		19	4-25-85	
Working capital fund.....	R85-225	8		2-6-85		8	4-25-85	
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and program management.....	R85-226	4,000		2-6-85		4,000	4-25-85	
OFFICE OF PERSONNEL MANAGEMENT								
Salaries and expenses.....	R85-227	1,161		2-6-85		1,161	4-25-85	
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses.....	R85-228	3,781		2-6-85		3,781	4-25-85	
VETERANS ADMINISTRATION								
Medical care.....	R85-229	10,261		2-6-85		10,261	4-25-85	
Medical and prosthetic research.....	R85-230	323		2-6-85		323	4-25-85	
Medical administration and miscellaneous operating expenses.....	R85-231	2,109		2-6-85		2,109	4-25-85	
General operating expenses.....	R85-232	4,334		2-6-85		4,334	4-25-85	
Construction, minor projects.....	R85-233	377		2-6-85		377	4-25-85	
OTHER INDEPENDENT AGENCIES								
ACTION Operating expenses.....	R85-234	1,139		2-6-85		1,139	4-24-85	
Corporation for Public Broadcasting Public broadcasting fund.....	R85-244		14,000	5-16-85				
Federal Emergency Management Agency Salaries and expenses.....	R85-235	706		2-6-85		706	4-25-85	
Emergency management planning and assistance.....	R85-236	1,287		2-6-85		1,287	4-25-85	
National Archives and Records Administration Operating expenses.....	R85-237	166		2-6-85		166	4-25-85	
National Labor Relations Board Salaries and expenses.....	R85-238	1,070		2-6-85		1,070	4-24-85	
National Science Foundation Research and related activities.....	R85-239	2,002		2-6-85		2,002	4-25-85	
Nuclear Regulatory Commission Salaries and expenses.....	R85-240	4,329		2-6-85		4,329	4-25-85	
Tennessee Valley Authority Tennessee Valley Authority fund.....	R85-241	1,538		2-6-85		1,538	4-25-85	
United States Information Agency Salaries and expenses.....	R85-242	433		2-6-85		433	4-25-85	
Subtotal, rescissions.....		1,885,913	37,402			1,885,913		

Note: Rescission proposals transmitted with the FY 1986 Budget were released immediately following expiration of the 45 day clock on rescissions under the Impoundment Control Act. However, the proposals continue to be subject to Congressional action.

Attachment B - Status of Deferrals - Fiscal Year 1985

As of July 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 7-1-85
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D85-1	10,000		10-1-84					10,000
International Security Assistance									
Foreign military sales credit.....	D85-24	4,939,500		11-29-84	4,929,500				10,000
Economic support fund.....	D85-2	280,500		10-1-84					
	D85-2A		3,826,000	11-29-84					
	D85-2B		73,233	1-4-85	3,874,233				306,500
Military assistance.....	D85-3	10,500		10-1-84					
	D85-3A		782,770	11-29-84	770,950				22,320
International military education and training.....	D85-25	55,521		11-29-84	55,521				0
Peacekeeping operations.....	D85-38	7,000		1-4-85	7,000				0
Agency for International Development									
International disaster assistance.....	D85-73	110,000		6-20-85	35,000				75,000
Operating expenses, Agency for International Development.....	D85-74	1,300		6-20-85					1,300
African Development Foundation									
African Development Foundation.....	D85-40	2,287		2-6-85					2,287
DEPARTMENT OF AGRICULTURE									
Forest Service									
Timber salvage sales.....	D85-4	9,704		10-1-84					
	D85-4A		3,471	3-1-85	5,000			5,000	13,175
Expenses, brush disposal.....	D85-5	55,850		10-1-84					
	D85-5A		22,063	3-1-85					77,913
Foreign Assistance Programs									
Expenses, Public Law 480, Foreign Assistance Programs, Agriculture.....	D85-72	167,200		6-20-85	20,000				147,200
Soil Conservation Service									
Watershed and flood prevention operations.....	D85-59	8,365		3-1-85					8,365
DEPARTMENT OF COMMERCE									
Patent and Trademark Office									
Salaries and expenses.....	D85-41	15,993		2-6-85					15,993
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services.....	D85-6	380,000		10-1-84					
	D85-6A		906,322	11-29-84	914,695			81,898	373,533
Family Housing									
Family housing, all services.....	D85-26	230,790		11-29-84	120,390				110,400
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	D85-7	1,127		10-1-84					
	D85-7A		64	1-4-85	190			135	1,137
DEPARTMENT OF ENERGY									
Energy Programs									
Energy supply research and development.....	D85-70	15,000		5-16-85					15,000
Uranium Supply and Enrichment Activities...	D85-65	90,000		3-22-85					90,000
Fossil energy research and development.....	D85-27	4,871		11-29-84					
	D85-27A		43,525	2-6-85	13,696				34,700
Fossil energy construction.....	D85-28	2,165		11-29-84					
	D85-28A		2,973	2-6-85					5,137

Attachment B - Status of Deferrals - Fiscal Year 1985

As of July 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 7-1-85
Naval petroleum and oil shale reserves.....	DOE-29	23		11-29-84					
	DOE-29A		155,644	2-6-85					
	DOE-29B		1	3-22-85					155,668
Energy conservation.....	DOE-30	3,398		11-29-84					
	DOE-30A		2,374	3-22-85					
	DOE-30B		552	6-20-85					6,324
Strategic petroleum reserve.....	DOE-31	601		11-29-84					
	DOE-31A		270,337	2-6-85					270,738
SPR petroleum account.....	DOE-42	827,828		2-6-85					827,828
Energy security reserve and alternative production.....	DOE-32	852		11-29-84					
	DOE-32A		297	2-6-85					
	DOE-32B		89	3-22-85					1,238
Power Marketing Administration Southeastern Power Administration, Operation and maintenance.....	DOE-16	12,467		10-31-84					
	DOE-16A		3,494	2-6-85	1,216				14,745
Southwestern Power Administration, Operation and maintenance.....	DOE-17	7,260		10-31-84					
	DOE-17A		1,514	2-6-85					8,774
Western Area Power Administration, Construction, rehabilitation, operation and maintenance.....	DOE-18	3,000		10-31-84					
	DOE-18A		27,300	2-6-85					
	DOE-18B		2,000	5-16-85					32,300
Departmental Administration Departmental administration.....	DOE-43	8,601		2-6-85					8,601
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program).....	DHS-8	424		10-1-84					
	DHS-8A		598	1-4-85					1,813
Health Care Financing Administration Program management.....	DHS-66	4,271		3-22-85					4,271
Social Security Administration Limitation on administrative expenses (construction).....	DHS-9	15,488		10-1-84					
	DHS-9A		224	3-1-85					15,712
Limitation on administrative expenses (information technology systems).....	DHS-64	81,925		2-6-85					81,925
Limitation on administrative expenses.....	DHS-67	9,176		3-22-85					9,176
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management Payments for proceeds, sale of water, Mineral Leasing Act of 1920, sec. 40 (d)..	DOI-10	49		10-1-84					49
National Park Service Construction (trust fund).....	DOI-65	38,172		2-6-85	38,172				0
Land Acquisition.....	DOI-68	3,356		3-22-85					3,356
Bureau of Indian Affairs Construction.....	DOI-33	8,918		11-29-84	893				8,025
DEPARTMENT OF JUSTICE									
General Administration Salaries and expenses.....	DOJ-46	3,890		2-6-85					3,890
Legal Activities Support of United States prisoners.....	DOJ-47	5,319		2-6-85					5,319
Federal Prison System Buildings and facilities.....	DOJ-19	44,534		10-31-84					44,534
Office of Justice Programs Justice assistance.....	DOJ-50	13,026		3-1-85					13,026

Attachment B - Status of Deferrals - Fiscal Year 1985

As of July 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 7-1-85
DEPARTMENT OF LABOR									
Employment and Training Administration									
Program administration	D85-61	162		3-1-85					162
State unemployment insurance and employment service operations	D85-34	3,767		11-29-84					
	D85-34A			3-1-85					3,767
	D85-62	37,000		3-1-85					37,000
Unemployment trust fund (veterans employment and training)	D85-63	119		3-1-85					119
Pension Benefit Guaranty Corporation									
Pension Benefit Guaranty Corporation	D85-64	228		3-1-85					228
Bureau of Labor Statistics 1)									
Salaries and expenses	D85-36	5,000		11-29-84	5,000				0
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D85-20	32,928		10-31-84					
	D85-20A		153	1-4-85	24,905			20,000	28,175
DEPARTMENT OF TRANSPORTATION									
Federal Highway Administration									
Limitation on general operating expenses	D85-48	2,155		2-6-85					2,155
Federal Railroad Administration									
Rail service assistance	D85-49	413		2-6-85					413
Northeast corridor improvement program	D85-50	30,000		2-6-85					30,000
Railroad rehabilitation and improvement financing funds	D85-51	7,200		2-6-85					7,200
Urban Mass Transportation Administration									
Research, training and human resources	D85-52	25,206		2-6-85					25,206
Federal Aviation Administration									
Construction, metropolitan Washington airports	D85-53	910		2-6-85					910
Facilities and equipment (airport and airway trust)	D85-11	537,206		10-1-84					
	D85-11A		652,957	1-4-85					
	D85-11B		93,731	2-6-85	163,000			163,000	1,283,894
Maritime Administration									
Operations and training	D85-54	8,500		2-6-85					8,500
Office of the Secretary									
Salaries and expenses	D85-56	800		2-6-85					800
Payments to air carriers	D85-69	14,741		3-22-85					14,741
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D85-12	55,400		10-1-84	32,658			31,395	64,337
	D85-13	19,900		10-1-84	11,536			33	8,397
GENERAL SERVICES ADMINISTRATION									
Federal Property Resources Activities									
National defense stockpile transaction fund	2)	170,000		6-24-85					170,000
OTHER INDEPENDENT AGENCIES									
Board for International Broadcasting									
Grants and expenses	D85-21	4,400		10-1-84	4,400				0
National Archives and Records Service									
Operating expenses	D85-35	4,700		11-29-84					4,700

Attachment B - Status of Deferrals - Fiscal Year 1985

As of July 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases*	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 7-1-85
National Science Foundation									
Science and engineering education activities	D85-56	31,450		2-6-85					31,450
Panama Canal Commission									
Operating expenses	D85-37	6,346		11-29-84	6,346				0
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund	D85-14	14,300		10-1-84	5,000				9,300
Railroad Retirement Board									
Milwaukee railroad restructuring, administration	D85-15	108		10-1-84					
	D85-15A		7	2-6-85					115
Limitation on administration	D85-57	3,098		2-6-85					3,098
Limitation on Railroad Unemployment Insurance Administration fund	D85-58	502		2-6-85					502
Tennessee Valley Authority									
Tennessee Valley Authority fund	D85-71	9,000		5-16-85					9,000
U. S. Information Agency									
Salaries and expenses	D85-22	2,433		10-31-84					2,433
Salaries and expenses, special foreign currency program	D85-23	852		10-31-84					
	D85-23A		1,617	4-26-85					2,469
U.S. Institute of Peace									
U.S. Institute of Peace	D85-30	4,000		1-4-85					4,000
TOTAL, DEFERRALS		8,449,989	6,873,302		11,047,109	0		301,061	4,577,643

Notes: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D85-13) of outlays only.

1) The Bureau of Labor Statistics deferral of $5.0 million (D85-36) was released and the funds were proposed for rescission as part of R85-1986.
2) The General Services Administration deferral of $170.0 million was transmitted to Congress by the Comptroller General on June 24, 1985, under section 1015 (a) of the Impoundment Control Act.

[FR Doc. 85-16646 Filed 7-10-85; 8:45 am]

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50
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26961-2721
27213-2740
27409-2757
27571-2781
27813-2792
27927-2806
28093-2819
28191-2836

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Federal Register

Vol. 50, No. 133

Thursday, July 11, 1985

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	523-5266

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United States Government Manual 523-5230

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Library	523-4986
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TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

26961-27212	1
27213-27408	2
27409-27570	3
27571-27812	5
27813-27926	8
27927-28092	9
28093-28190	10
28191-28362	11

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
11888 (Amended by EO 12524) ... 27409
12523 ... 26963
12524 ... 27409
Proclamations:
5356 ... 26961

5 CFR

771 ... 26965

7 CFR

Ch. IV ... 27927
52 ... 26965
54 ... 27571
226 ... 26972
400 ... 26976
908 ... 27411, 27928
910 ... 27813
916 ... 27813
917 ... 27813
921 ... 27411
930 ... 27213
979 ... 26976
991 ... 26977, 27814
1040 ... 27412
1427 ... 26978
1435 ... 27413
1941 ... 27414
1944 ... 27415
1945 ... 27414, 27416
Proposed Rules:
Ch. IV ... 27971
Ch. X ... 27003
29 ... 27288
51 ... 27004
417 ... 27601
800 ... 28104
910 ... 28105
920 ... 27288
967 ... 28210
1124 ... 27972

8 CFR

316a ... 27816
Proposed Rules:
103 ... 27289

9 CFR

91 ... 27929
92 ... 27928
318 ... 27573
Proposed Rules:
94 ... 27973

10 CFR

9 ... 27214
Proposed Rules:
50 ... 27006

12 CFR

403 ... 27215
611 ... 27930
617 ... 27931
723 ... 27417
Proposed Rules:
561 ... 27290
563 ... 27290
571 ... 27290

13 CFR

121 ... 27418
302 ... 27419
Proposed Rules:
106 ... 27754

14 CFR

39 ... 26979, 27575, 27576, 27931-27933, 28093, 28094
71 ... 26980, 27934
97 ... 27934
108 ... 27924
Proposed Rules:
39 ... 27009, 27012, 27601, 27602
71 ... 27013, 27014, 27528
75 ... 27014

15 CFR

19 ... 27577
376 ... 27420
399 ... 27420

16 CFR

3 ... 28095
4 ... 28095
13 ... 26981, 27578
453 ... 28062, 28081
703 ... 27936

17 CFR

239 ... 27937
240 ... 27937, 27940
249 ... 27937
270 ... 27937
274 ... 27937
288 ... 26981, 27947
Proposed Rules:
210 ... 27973
240 ... 27829, 27976, 27981, 28106, 28210, 28219
250 ... 27981
259 ... 27981
270 ... 27982

18 CFR

157 ... 27816
389 ... 27816
Proposed Rules:
35 ... 27604

271 28221
290 27604

19 CFR

4 26981
12 27947
142 27816
178 27947

Proposed Rules

162 27829
177 27831

20 CFR

200 27222
626 27818
627 27818
628 27818
629 27818
630 27818

Proposed Rules:

404 27615
416 27615

21 CFR

101 26984
520 27818
558 ..... 27421, 27422
1308 28098

Proposed Rules:

170 27294
201 27016
211 27016
357 27552
514 27016
559 27016
561 27452
1002 27024

22 CFR

501 27422

23 CFR

1325 28191

24 CFR

200 28197
203 28197
885 28197

25 CFR

Proposed Rules:

61 27456

26 CFR

1 ..... 27222, 27231, 27427
602 ..... 27222, 27231

Proposed Rules:

1 ..... 27297, 27456, 27457
51 27621

27 CFR

4 27819

28 CFR

2 28101
18 28199
32 27428

29 CFR

70 28306
1952 27233

Proposed Rules:

33 27298
1910 27307

30 CFR

700 28186
701 28186
785 28186
827 28186
943 28186
948 ..... 28316, 28324

Proposed Rules:

56 27566
57 27566
700 28180
701 28180
785 28180
817 27910
827 28180
913 27025
917 28222
936 27461
944 28107
948 28343

31 CFR

51 26987
103 27821
500 27435
505 27435
515 27435
520 27435
535 27435
540 27435

32 CFR

Parts 1-39 26987
199 26988

33 CFR

100 27579
110 ..... 26988, 27560
117 ..... 26989, 27562
150 26989
165 27563
166 26989

Proposed Rules:

110 ..... 27622, 27623
117 ..... 27026, 27029, 27624, 27632, 27990, 27991

34 CFR

19 28101

35 CFR

101 26990
103 26990
121 26990

36 CFR

1200 27196
1202 27196
1228 27951
1250 27196

37 CFR

Proposed Rules:

1 27030

38 CFR

3 27584
21 27825

Proposed Rules:

3 28224
36 27833

39 CFR

10 27827
3001 28144

Proposed Rules:

111 27992
3001 27308

40 CFR

51 27892
52 ..... 26991, 27244-27247
60 27248
61 27248
86 27250
123 28202
600 27172

Proposed Rules:

52 ..... 27030, 27462, 28224
180 ..... 27463, 28108
202 27321
205 27321
600 27188

41 CFR

Chs. 1-49 26987
101-40 27951
105-54 28203
105-63 26992
201-1 27142
201-2 ..... 27142, 28208
201-8 27142
201-11 27142
201-16 27142
201-20 27142
201-21 27142
201-22 28208
201-23 27142
201-24 27142
201-26 27142
201-30 ..... 27142, 28208
201-31 ..... 27142, 28208
201-32 ..... 27142, 28208
201-38 27142
201-39 ..... 27142, 28208
201-40 ..... 27142, 28208
201-45 28208

Proposed Rules:

101-41 ..... 27625, 27626

42 CFR

405 27722
412 ..... 27208, 27722

Proposed Rules:

23 27465
405 27469
412 27469

43 CFR

Public Land Orders:

5150 (Revoked in part by PLO 6607) 27827
5179 (Revoked in part by PLO 6607) 27827
5180 (Revoked in part by PLO 6607) 27827
5186 (Revoked in part by PLO 6607) 27827
6389 (Corrected by PLO 6608) 28208
6607 27827
6608 28208

Proposed Rules:

2800 27322

44 CFR

64 ..... 26993, 26994

Proposed Rules:

67 27322
302 27627

45 CFR

1180 ..... 27584, 27586

Proposed Rules:

405 27406
412 27406
1620 27326

46 CFR

153 26996

Proposed Rules:

160 27629

47 CFR

0 27952
22 27953
68 27250
73 ..... 27287, 27438, 27954
76 27438
81 27968
83 27968

Proposed Rules:

73 27629

48 CFR

7 27560
12 27969
15 ..... 27560, 28103
19 27560
33 27969
34 27560
52 ..... 27560, 27969
209 28209
504 26996
533 26996
552 27589
553 27589
570 27589
6101 27969

Proposed Rules:

206 28227
252 28227

49 CFR

571 27451

Proposed Rules:

Ch. X 27031
571 ..... 27032, 27632, 27633
1132 27834

50 CFR

17 26999
215 27914
658 28103
674 28103

Proposed Rules:

17 ..... 27637, 27992
20 27636
630 27470
655 28109
662 27470

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 8, 1985

84, 27586

..... 27406
..... 27406
..... 27326

..... 26996

..... 27629

..... 27952
..... 27953
..... 27250
38, 27954
..... 27438
..... 27968
..... 27966

..... 27629

..... 27560
..... 27969
30, 28103
..... 27560
..... 27969
..... 27560
30, 27969
..... 28209
..... 26996
..... 26996
..... 27569
..... 27569
..... 27569
..... 27569
..... 27969

..... 28227
..... 28227

..... 27451

..... 27031
32, 27633
..... 27834

..... 26999
..... 27914
..... 28103
..... 28103

17, 27992
..... 27638
..... 27470
..... 28109
..... 27470

LAWS

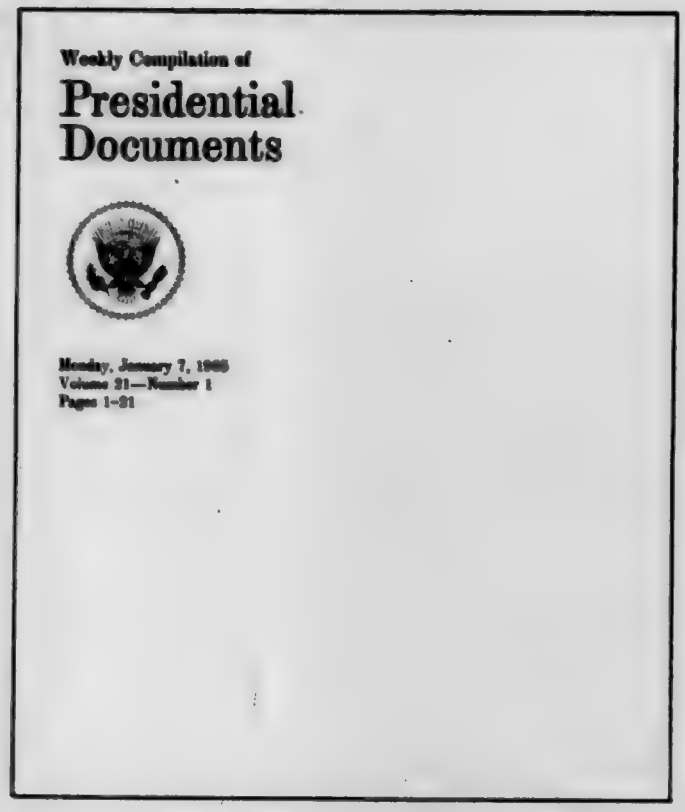
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VOL
50
ISS
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882

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VOL
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Vol. 50

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Friday
July 12, 1985

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7-12-85
Vol. 50
Pages 28

7-12-85
Vol. 50 No. 134
Pages 28363-28554

Federal Register

Friday
July 12, 1985

Selected Subjects

Administrative Practice and Procedure
Administrative Conference of United States

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Asbestos
Environmental Protection Agency

Crop Insurance
Federal Crop Insurance Corporation

Government Property Management
General Services Administration

Inventions and Patents
General Services Administration

Manufactured Homes
Housing and Urban Development Department

Marketing Agreements
Agricultural Marketing Service

Motor Vehicle Safety
National Highway Traffic Safety Administration

Navigation (Water)
Navy Department

Organization and Functions (Government Agencies)
Securities and Exchange Commission

CONTINUED INSIDE

VOL
50
ISS
134
JL
12
1985
UMI

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Selected Subjects

Quarantine
Animal and Plant Health Inspection Service

Securities
Securities and Exchange Commission 28363

Trade Practices
Federal Trade Commission

Water Pollution Control
Environmental Protection Agency 28372 28373

Wine
Alcohol, Tobacco and Firearms Bureau 28404 28430 28409 28366 28442 28474 28440 28440 28440 28440 28395

Contents

Federal Register
Vol. 50, No. 134
Friday, July 12, 1985

Administrative Conference of United States
RULES
Recommendations:
28363 Administrative practice and procedure

Agricultural Marketing Service
RULES
28372 Lemons grown in California and Arizona
28373 Marketing orders; expenses and rates of assessments
PROPOSED RULES
28404 Honey research, promotion, and consumer information order; correction
NOTICES
28430 Peanuts, 1985 crop year; quality regulations and indemnification

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation; Food Safety and Inspection Service; Forest Service.

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcohol; viticultural area designations:
28409 Lodi, CA

Animal and Plant Health Inspection Service
RULES
Plant quarantine, domestic:
28366 Oriental fruit fly; interim rule affirmed

Army Department
NOTICES
Meetings:
28442 Science Board (2 documents)

Centers for Disease Control
NOTICES
Grants and cooperative agreements:
28474 Sexually transmitted diseases; professional education project

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
28440 Alaska
28440 Nebraska
28440 Oregon

Consumer Product Safety Commission
NOTICES
Meetings:
28440 All terrain vehicles hazards

Defense Department
See Army Department; Navy Department.

Drug Enforcement Administration
RULES
Schedules of controlled substances:
28395 3,4-Methylenedioxymethamphetamine; correction
NOTICES
Registration applications, etc.; controlled substances:
28483 Ganes Chemicals, Inc.

Education Department
PROPOSED RULES
Special education and rehabilitative services:
28412 Special projects and demonstrations providing transitional services for handicapped youth

Employment and Training Administration
NOTICES
Adjustment assistance:
28484 Hilo Coast Processing Co.; termination

Employment Standards Administration
NOTICES
Meetings:
28483 Sheltered Workshops Advisory Committee
28502 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (FL, IA, MN, NJ, NY, PA)

Energy Department
See also Energy Research Office; Federal Energy Regulatory Commission.
NOTICES
International energy program:
28454 Allocation systems test; training session
Nuclear Waste Policy Act:
28446 Civilian radioactive waste management; mission plan publication

Energy Research Office
NOTICES
Meetings:
28454 Magnetic Fusion Advisory Committee

Environmental Protection Agency
RULES
Air quality implementation plans:
28544 Visability new source review and monitoring strategy
Toxic substances:
28530 Asbestos abatement projects
Water pollution; effluent guidelines for point source categories:
28516 Petroleum refining
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
28415 Colorado
NOTICES
28541 Agency information collection activities under OMB review
Environmental statements; availability, etc.:
28469 Agency statements; comment availability
28468, 28469 Agency statements; weekly receipts (2 documents)

28468 Onion Creek, TX; wastewater management
Toxic and hazardous substances control:
28467 Premanufacture exemption applications
28464, 28467 Premanufacture notices receipts (2 documents)

Equal Employment Opportunity Commission
NOTICES
28490 Meetings; Sunshine Act (2 documents)

Federal Communications Commission
PROPOSED RULES
Common carrier services:
28418 Uniform settlements policy for parallel international communications routes; implementation and scope
NOTICES
28470 Agency information collection activities under OMB review
Meetings:
28470 National Industry Advisory Committee

Federal Crop Insurance Corporation
RULES
Crop insurance; various commodities:
28367 Raisin; interim

Federal Deposit Insurance Corporation
NOTICES
28490 Meetings; Sunshine Act

Federal Emergency Management Agency
NOTICES
Radiological emergency; State plans:
28471 Kansas

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
28455 Alamito Co.
Hearings, etc.:
28456, 28457 Algonquin Gas Transmission Co. (3 documents)
28457 Bayou Interstate Pipeline System
28457 Consolidated Gas Transmission Corp.
28458 Distrigas of Massachusetts Corp. (4 documents)
28459 Donley, Edward
28459 East Tennessee Natural Gas Co.
28459 El Paso Natural Gas Co. (2 documents)
28460 Kentucky Hydro Associates, et al.
28460 Lawrenceburg Gas Transmission Corp.
28461 Mid Louisiana Gas Co.
28461 Mountaineer Gas Co.
28462 National Fuel Gas Supply Corp.
28462 Sea Robin Pipeline Co.
28462 Texas Gas Transmission Corp.
28462 Transcontinental Gas Pipe Line Corp.
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
28463 Downtown Athletic Club, et al.

Federal Maritime Commission
NOTICES
28471 Agreements filed, etc.

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
28472 Associated Bank Shares Corp. et al.
28472 Chase County Bankshares, Inc., et al.
28472 First NH Banks, Inc.
28473 North Community Bancorp, Inc., et al.; correction
28490 Meetings; Sunshine Act

Federal Trade Commission
RULES
Prohibited trade practices:
28374 Allied Corp. et al.
28374 Middle Atlantic Conference
NOTICES
28473 Premerger notification waiting periods; early terminations

Fish and Wildlife Service
NOTICES
28480 Agency information collection activities under OMB review (2 documents)

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
28395 AMI, Inc.; sponsor address change
28395 Bristol Laboratories; sponsor address change
NOTICES
Color additive petitions:
28477 Optacryl, Inc.
Medical devices; premarket approval:
28477 Hoffman-La Roche, Inc.; correction
Meetings:
28477 Serologic test for antibody to human T-lymphotropic virus type III, workshop

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
28374 Pump-cured bacon, alpha-tocopherol as N-nitrosamine inhibitor; and lecithin as emulsifier in meat food products; correction

Forest Service
NOTICES
Environmental statements; availability, etc.:
28439 Bitterroot National Forest, MT
28440 Clearwater National Forest, ID
28440 Idaho Panhandle National Forest, ID

General Services Administration
RULES
Property management:
28402 Patents CFR Part removed
28402 Utilization and disposal; holding agency

Health and Human Services Department
See also Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health.
NOTICES
28474 Agency information collection activities under OMB review

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
28477 August

Housing and Urban Development Department
RULES
Manufactured home procedural and enforcement regulations:
28398 Monitoring inspection fee (2 documents)
NOTICES
Grants; availability, etc.:
28479 Multifamily urban homesteading demonstration program; extension of time

Interior Department
See Fish and Wildlife Service.; Land Management Bureau; National Park Service.

Internal Revenue Service
PROPOSED RULES
Income taxes:
28409 Foreign deferred compensation plans; deductions and adjustments to earnings and profits; requirements; hearing
NOTICES
Meetings:
28488 Form 990 Advisory Committee
Senior Executive Service:
28489 Performance Review Board; membership

International Trade Commission
NOTICES
28491 Meetings; Sunshine Act

Justice Department
See Drug Enforcement Administration.

Labor Department
See also Employment and Training Administration; Employment Standards Administration.

Land Management Bureau
NOTICES
Alaska native claims selection:
28481 Gwitchyaazhee Corp.
Meetings:
28481 Carson City and Winnemucca District Advisory Councils
Withdrawal and reservation of lands:
28481, 28482 Alaska (2 documents)
28482 California

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
28426 Tires, new pneumatic for passenger cars
NOTICES
Motor vehicle safety standards; exemption petition, etc.:
28488 Firestone Tire & Rubber Co.

National Institutes of Health
NOTICES
Meetings:
28478 Biometry and Epidemiology Contract Review Committee
28478 Biotechnology Resources Review Committee
28478 Cancer Preclinical Program Project Review Committee
28478, 28479 Developmental Therapeutics Contracts Review Committee (2 documents)

National Park Service
NOTICES
Environmental statements; availability, etc.:
28483 Chaco Culture National Historical Park, NM

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
28398 USS Alaska and USS Nevada
28399 USS Conolly
28400 USS Providence
28400 USS Valley Forge
Personnel:
28401 Payments of amounts due mentally incompetent members of the naval service
NOTICES
Environmental statements; availability, etc.:
28444 Naval Air Station, NV
Meetings:
28444 Chief of Naval Operations Executive Panel Advisory Committee
28442 Privacy Act: systems of records
Procurement:
28445 Commercial activities, performance; program cost studies (OMB A–76 implementation)

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
28484 Boston Edison Co.
28484 Commonwealth Edison Co.
28484 General Public Utilities Nuclear Corp.
Environmental statements; availability, etc.:
28485 Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.

Overseas Private Investment Corporation
NOTICES
28491 Meetings; Sunshine Act

Personnel Management Office
NOTICES
Meetings:
28486 Federal Prevailing Rate Advisory Committee

Securities and Exchange Commission
RULES
Organization, functions, and authority delegations:
28385 Market Regulation Division, Director
Securities:
28385 Broker-dealer registration; applicability to banks
PROPOSED RULES
Securities:
28404 Tender offers, mergers, and similar transactions; filing fees
NOTICES
28486 Agency information collection activities under OMB review
Applications, etc.:
28487 Sun Life of Canada (U.S.) Variable Account D
28487 Variable Investment Products Series Fund, Inc.

State Department
NOTICES
Authority delegations:
28487 Oceans and International Environmental and Scientific Affairs Assistant Secretary

Synthetic Fuels Corporation
NOTICES
28491 Meetings; Sunshine Act

Transportation Department
See also National Highway Traffic Safety Administration.
NOTICES
Aviation proceedings:
28488 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications

Treasury Department
See Alcohol, Tobacco and Firearms Bureau; Internal Revenue Service.

United States Information Agency
NOTICES
Grants; availability, etc.:
28489 Fulbright teacher exchange program

Veterans Administration
NOTICES
Committees; establishment, renewals, terminations, etc.:
28489 Health-Related effects of Herbicides Advisory Committee

Separate Parts in This Issue

Part II
28502 Department of Labor, Employment Standards Administration, Wage and Hour Division

Part III
28516 Environmental Protection Agency

Part IV
28530 Environmental Protection Agency

Part V
28544 Environmental Protection Agency

Reader Aids
Additional information, including a list of public laws, telephone numbers and finding aids, appears in the Reader Aids section at the end of this issue

VOL 50 ISS 134 JL 12 1985 UMI

CFR PART

A cumulativ
the Reader

1 CFR
305.....
7 CFR
301.....
402.....
910.....
911.....
915.....
916.....
917.....
918.....
921.....
922.....
923.....
924.....
930.....
967.....
985.....
Proposed R
1240.....
9 CFR
318.....
16 CFR
13 (2 docu
17 CFR
200.....
240.....
Proposed R
230.....
240.....
21 CFR
510 (2 doc
1308.....
24 CFR
3282 (2 do
26 CFR
Proposed R
1.....
27 CFR
Proposed R
9.....
32 CFR
706 (4 doc
726.....
34 CFR
Proposed R
369.....
376.....
40 CFR
52.....
419.....
763.....
Proposed R
52.....
41 CFR
101-4.....
101-47.....
47 CFR
Proposed R
Ch. I.....
49 CFR
Proposed R
571.....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

1 CFR
305 28353

7 CFR
301 28366
402 28367
910 28372
911 28373
915 28373
916 28373
917 28373
918 28373
921 28373
922 28373
923 28373
924 28373
930 28373
967 28373
985 28373

Proposed Rules:
1240 28404

9 CFR
318 28374

16 CFR
13 (2 documents) 28374

17 CFR
200 28385
240 28385

Proposed Rules:
230 28404
240 28404

21 CFR
510 (2 documents) 28395
1308 28395

24 CFR
3282 (2 documents) 28396

26 CFR

Proposed Rules:
1 28409

27 CFR

Proposed Rules:
9 28409

32 CFR
706 (4 documents) 28398–28400
726 28401

34 CFR

Proposed Rules:
369 28412
376 28412

40 CFR
52 28544
419 28516
763 28530

Proposed Rules:
52 28415

41 CFR
101–4 28402
101–47 28402

47 CFR

Proposed Rules:
Ch. I 28418

49 CFR

Proposed Rules:
571 28426

VOL
50
ISS
134
JL
12
1985
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Rules

This section
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Rules and Regulations

Federal Register
Vol. 50, No. 134
Friday, July 12, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States, at its Thirtieth Plenary Session, adopted three recommendations. A proposed recommendation regarding legislation providing for the establishment of a corps of administrative law judges was recommitted to the Conference's Committee on Adjudication.

Recommendation 85–1, Legislative Preclusion of Cost/Benefit Analysis, urges that Congress state explicitly in regulatory legislation whether it intends to prohibit the administering agency from applying cost/benefit analysis in adopting regulations. Recommendation 85–2, Agency Procedures for Performing Regulatory Analysis of Rules, contains advice to agencies on ways to integrate regulatory analysis into the rulemaking process and on the use and limits of regulatory analysis. Recommendation 85–3, Coordination of Public and Private Enforcement of Environmental Laws, proposes certain administrative steps that the Environmental Protection Agency (EPA) can take to achieve better coordination between its enforcement process and so-called "citizen suits" that are authorized under various environmental statutes.

Recommendations of the Administrative Conference are published in full text in the Federal Register upon adoption. Complete lists of recommendations and statements, together with the texts of those deemed to be of continuing general interest, are published in the code of Federal Regulations (1 CFR Parts 305 and 310).

DATES: These recommendations were adopted June 13–14, 1985 and issued July 5, 1985.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, General Counsel (202–254–7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States. (5 U.S.C. 574(1).)

At its Thirtieth Plenary Session, held June 13–14, 1985, the Assembly of the Administrative Conference of the United States adopted three recommendations.

In Recommendation 85–1 the Conference addressed the situation in which Congress precludes an agency's use of cost/benefit analysis to consider the potential costs, benefits, or risks associated with a contemplated regulatory action. The Conference recommended that legislation containing such a preclusion use specific language to make clear Congress' intent.

Recommendation 85–2 suggests in Parts 1 and 2 ways agencies can more effectively integrate regulatory analysis into their decisionmaking process, including ways to use effectively regulatory analysis for identifying regulatory options. Part 3 of the Recommendation addresses the use of regulatory analysis where it is not required or where certain options are foreclosed by the limits of the agency's statutory authority. Other topics addressed by the Recommendation are, in Part 4, information that should be routinely included in regulatory analysis documents; in Part 5, procedures for obtaining and using information in regulatory analysis; in Part 6, use of consultants in performing regulatory analysis; and finally, in Part 7, observations on the scope and limits of regulatory analysis.

Recommendation 85–3 proposes certain administrative steps that the Environmental Protection Agency (EPA) can take to achieve better coordination between its enforcement process and so-called "citizen suits" that are authorized under various environmental statutes. The Conference suggests that EPA, as feasible, indicate its views on enforcement criteria, calculation of penalties, and settlement of contested cases. EPA is also advised to consider improving the quality of information available about the compliance status of regulated persons and firms and the outcome of environmental actions. Finally, the Conference recommends that when EPA receives notice from a private party of an alleged violation, the agency should ask that party to keep EPA informed about any related action in which EPA is not itself a party.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 L Street, NW., Washington, D.C.

Lists of Subjects in 1 CFR Part 305

Administrative practice and procedure, Regulatory analysis, Citizens suits.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 305 continues to read as follows:

Authority: 5 U.S.C. 571–576.

2. The table of contents to Part 305 of Title 1 CFR is amended to add the following new sections:

Sec.
305.85–1 Legislative preclusion of cost/benefit analysis (Recommendation No. 85–1).
305.85–2 Agency procedures for performing regulatory analysis of rules (Recommendation No. 85–2).
305.85–3 Coordination of public and private enforcement of environmental laws (Recommendation No. 85–3).

3. Section 305.85–1 is added to read as follows:

§ 305.85–1 Legislative preclusion of cost/benefit analysis (Recommendation No. 85–1).

Cost/benefit analysis [1] may ordinarily be applied by an agency to a regulatory action,

[1] The term "cost/benefit analysis" is used here to include all forms of analysis (cost/benefit, cost effectiveness, risk/benefit, etc.) in which the

Continued

except when Congress has forbidden its use or has specified, in the authorizing legislation, the precise regulatory outcome Congress desired. Any legislative directive short of complete specificity, however, can lead to disputes as to whether Congress intended—or even contemplated—the application of cost/benefit analysis by the agency in the agency's adoption of legislative rules to carry out the program. Disputes about the agency's authority can undermine the regulatory program, and may last for decades, only to be resolved, and then perhaps only temporarily, in a judicial—rather than a legislative—forum. Protracted disputes over an agency's authority to apply cost/benefit analysis can be largely avoided by direct congressional attention to the matter.

Recommendation

When enacting regulatory legislation, if Congress intends to prohibit the application of cost/benefit analysis by the agency charged with administering the regulatory program, Congress should explicitly so state.

4. Section 305.85–2 is added to read as follows:

§ 305.85–2 Agency procedures for performing regulatory analysis of rules (Recommendation No. 85–2).

Since 1974 executive branch agencies have been subject to a series of Presidential executive orders that required agencies to prepare comprehensive impact analyses for major rulemaking proposals. Variously termed "inflation impact statements," "regulatory analyses," and "regulatory impact analyses," these analyses were all designed to identify or measure the costs and benefits of rulemaking options being considered by Federal administrative agencies. Congress also has imposed impact analysis requirements on administrative agencies through the National Environmental Policy Act of 1969, the Regulatory Flexibility Act of 1980, and by amendments to authorizing statutes for particular agencies.

The regulatory analysis function has become increasingly formalized within agencies as a result of the proliferation and durability of these requirements. This Recommendation is based on a Conference study of the ways agencies have incorporated the regulatory analysis function into their decisionmaking process. A general conclusion from this study is that regulatory analysis can be a useful device in rulemaking if it is taken seriously by upper level agency decisionmakers; the regulatory analysis function is effectively integrated into the rulemaking process, and the limitations of regulatory analysis are recognized by those who rely upon it.

The Recommendation contains specific advice on the use and limits of regulatory analysis and on integration of regulatory analysis into the agency rulemaking process. Unless expressly so stated, the Recommendation is not intended to address application of the Freedom of Information Act to agency records used in regulatory analysis. In particular, it is not intended to expand or decrease the statutory protections afforded trade secrets and commercial or financial information obtained for use in regulatory analysis.

Recommendation

1. The Use of Regulatory Analysis to Identify Options

Regulatory analysis[1] can be most useful to agency decisionmakers in identifying regulatory options if the regulatory analysis function is an integral part of the agency decisionmaking process. To make regulatory analysis a more effective device for identifying options, agencies should adopt the following practices:

a. When an agency begins intensive information-gathering and other analytical efforts on a rule, the agency's technical staff and regulatory analysts should attempt, at an early stage, to identify a broad range of regulatory options.

b. Agencies should experiment with a phase system of reducing options. Under a phased system, the agency initially should identify as large a number of options as it can for brief study. As options are considered and rejected, the remaining options should be analyzed with increasing thoroughness. As resource constraints preclude further consideration of an option, the agency should list the option in its regulatory analysis document and explain briefly why the option did not warrant further study.

c. Although the extent to which options are identified and analyzed in regulatory analysis documents is largely a matter for individual agency management, regulatory analysis documents normally should attempt to identify and analyze several realistic regulatory options.

2. Integrating Regulatory Analysis Into the Decisionmaking Process

a. *Timing of Analytical Input.* If regulatory analysis is to be used in a rulemaking, the agency decisionmaking process should be structured to involve agency regulatory analysts early in the evolution of the rule, before alternatives have been eliminated. Regulatory analysis should not be used to produce post hoc rationalizations for decisions already made, nor should it be allowed to unduly delay rulemaking proceedings.

b. *Communicating Policy to Regulatory Analysts.* Regulatory analysis can be a valuable tool for communicating policy within regulatory agencies because a primary function of regulatory analysis is to measure regulatory options against agency policy goals. Upper level policymakers in agencies should provide clear guidance to subordinate decisionmaking units (such as steering committees and working groups) on the policies that should guide the agency in choosing among options in individual rulemaking proceedings.

c. *High Level Involvement at Important Decisionmaking Junctures.* Because of the different prespectives of an agency's regulatory analysts and its technical staff, disagreements over appropriate agency policy will often result when both staffs are relied upon in the decisionmaking process. The agency should adopt procedures that will encourage resolution of such disagreements at important decisionmaking junctures at a high policy level.

d. *Regulatory Analyst's Role in Responding to Comments.* When an agency solicits public comment on a regulatory analysis document or on provisions of a proposed rule that are supported by the regulatory analysis document, the agency should structure its decisionmaking process to ensure that the agency's regulatory analysts participate in developing the agency's response to the public comments.

e. *Intragovernmental Comments.* Agencies should palce in the public file

potential costs, benefits, and risks of a proposed action, along with possible alternative courses of action, are quantified if feasible and appraised in relation to one another. See Recommendation 79–4.

[1] The following definitions are used in this recommendation:

"Regulatory analysis" is a comprehensive analysis of the economic, social, and environmental impacts of one or more alternatives for addressing a problem undertaken in connection with an agency rulemaking effort. A regulatory analysis may include or be separate from an environmental impact assessment of a rule prepared in compliance with the National Environmental Policy Act of 1969.

A "regulatory analysis document" is a written regulatory analysis, whether drafted to comply with Executive Order 12,291, the Regulatory Flexibility Act, or other statutes and executive orders. Regulatory analysis documents also may include similar documents which, though not required by statute or executive order, are prepared to comply with agency regulations or directives stating that the agency intends to treat the documents as regulatory analyses. The term "regulatory analysis document" is intended to include only final analyses prepared in connection with a proposed or a final rule.

A "regulatory analyst" is an agency employee who prepares the whole or part of a regulatory analysis. Regulatory analysts often are economists or policy analysts by training, and they often are assigned to a separate institutional unit within an agency.

The "technical staff" is composed of agency employees within a program office who conduct investigations, prepare technical support documents, and often draft preambles and recommended language for proposed and final agency rules. When a member of the technical staff is assigned to perform a regulatory analysis, he or she then is both a regulatory analyst and a member of the technical staff.

of the rulemaking proceeding any material factual information (as distinct from indications of governmental policy) from other agencies that is directed to the contents of regulatory analysis documents. See ACUS Recommendation 80–6 (1 CFR 305.80–6).

f. *Public Availability of Regulatory Analysis Documents.* Agencies should make regulatory analysis documents available to the public when they publish proposed and final rules in the Federal Register, even if the Freedom of Information Act's exemption for intra-agency memoranda, 5 U.S.C. § 552(b)(5), might apply to portions of the documents. As appropriate, agencies also should prepare brief summaries of regulatory analysis documents and make them available to the public and appropriate congressional committees. The summaries should contain tables, charts, and other devices, as needed, to make the information contained in the regulatory analysis documents understandable.

3. Use of Regulatory Analysis Where Not Required or Where Options Are Foreclosed

a. Regulatory analysis documents should identify the costs and benefits of reasonable options, even if the agency may lack the statutory authority to implement some of the options. If the agency determines that the best options cannot be implemented under its statutory authority, the agency should so inform the institutions with power to implement them, such as Congress and other agencies.

b. Agencies should consider using regulatory analysis when undertaking significant rulemaking proceedings with projected impacts falling below the established thresholds for requiring formal regulatory analyses.

4. Information in Regulatory Analysis Documents

This part of the Recommendation addresses the information that should be included in regulatory analysis documents for use by the public and agency decisionmakers.[3]

a. When agencies use quantitative models to quantify important variables in regulatory analysis documents, the known limitations of those models should be clearly stated.

b. To prevent quantitative models from oversimplifying complex decisionmaking factors, agencies should require regulatory analysis documents to (1) state clearly the major assumptions that undergird the models relied upon in the regulatory analysis, and (2) describe important decisionmaking variables that are not subject to quantitative analysis.

c. Agencies should require that regulatory analysis documents attempt to characterize the uncertainties that are included in quantitative predictions by using tools such as confidence intervals, multiple assessment models, sensitivity analysis, and worst case analysis.

d. Agencies should require that regulatory analysis documents address explicitly the distributional impacts of rulemaking options and the methods used for discounting future costs and benefits. Agencies should consider using more than one discount rate to clarify the sensitivity of the analytical projections to the discount rate.

e. Agency regulatory analysis documents should make explicit reference to any agency policies that motivate the agency to choose one set of assumptions over another, draw one inference rather than another, or choose one quantitative model over another.

5. Informational Needs for Regulatory Analysis

a. *Agency Access to Information.* Adequate information on the costs and economic impacts of proposed rules is essential to the regulatory process, and often the most important source of this information is a regulated party. Therefore, in exercising its authority under the Paperwork Reduction Act, the Office of Management and Budget should allow agencies to address reasonable requests for cost and economic impact information to regulated parties when the information is needed for regulatory analysis. The Office of Management and Budget should continue to coordinate its regulatory analysis review function with its paperwork reduction function to ensure that it approves information-gathering activities that are designed to yield information that it is likely to require later in the rulemaking review process.

b. *Coordination of Information Gathering Activities.* Agencies should coordinate their sponsored research activities with their regulatory analysis initiatives. More specifically, agencies should include regulatory analysts in their process for setting long-term research priorities. In addition, agencies should encourage the participation of representatives from the office responsible for agency-sponsored research in the rulemaking process at the very early stages when informational needs are defined.

c. *Cooperative Regulatory Analysis.* Agencies should consider whether the techniques suggested for negotiation of proposed regulations in ACUS Recommendation 82–4 (1 CFR 305.82–4) might be useful in undertaking, in specific proceedings, "cooperative regulatory analysis." This would consist of bringing representatives of all affected parties together, consistent with the Federal Advisory Committee Act where applicable, to assess the validity of particular studies prior to relying upon those studies in regulatory analysis documents.

d. *Reducing Potential Bias.* Agencies should attempt to reduce the impact of bias in the sources of the information that they use in preparing regulatory analysis documents. Though agencies should consider the source of information in giving it weight, this does not mean that they should automatically attach less value to information simply because it comes from a source with an interest in the outcome of the rulemaking. Agencies should reduce the impact of bias by:

(i) Consulting, whenever possible, multiple sources of information in preparing regulatory analysis documents;

(ii) Carefully citing in regulatory analysis documents all information upon which the analysis draws, and making the information available for public scrutiny at convenient times and places;

(iii) Actively soliciting comment and criticism from acknowledged experts in the fields that the documents address.

e. *Retrospective Assessments of Previous Analyses.* Agencies should regularly perform retrospective assessments of the predictions made previously in regulatory analysis documents. Retrospective analysis can provide information on the accuracy of past agency predictions and thereby enable an agency to increase the accuracy of future predictions or make judgments about the value of regulatory analysis to its regulatory effort.

6. Use of Consultants in Preparing Regulatory Analysis Documents

Agencies can benefit from entering into consulting contracts with qualified experts to aid in gathering and analyzing information for regulatory analysis documents. However, agency personnel should retain the ultimate responsibility for the contents of regulatory analysis documents and guard against consultant conflict of interest. To these ends, agencies should ensure that: (1) Agency employees, not

[3] The Conference has previously recommended that agencies using cost-benefit and similar analyses include in notices of particular proceedings certain information about the analytical methods and assumptions used in conducting the analyses. See ACUS Recommendation 79–4 (1 CFR 305.79–4).

consultants, draft regulatory analysis documents, and (2) when a regulatory analysis document relies upon consultant reports, the reports are placed in the public file of the rulemaking proceeding, even if the Freedom of Information Act's exemption for intra-agency memoranda, 5 U.S.C. 552(b)(5), might apply to portions of the reports.

7. The Scope and Limits of Regulatory Analysis

a. Cost-benefit analysis is an effective tool for marshalling and analyzing information and for establishing regulatory priorities.

b. Other analytical techniques, such as cost-effective analysis and multi-objective analysis, are also useful for rulemaking that involves health, environmental, historical, artistic, and aesthetic considerations for which markets do not exist.

c. Agency rulemaking decisions must take into account the limits of the agency's statutory authority and its overall policy goals, as well as the limits of the methods and data used in the regulatory analysis.

d. The same criteria should be used in granting exemptions from regulatory analysis requirements, irrespective of whether the proceeding has been commenced to formulate new rules or to amend or repeal existing rules.

5. Section 305.85–3 is added to read as follows:

§ 305.85–3 Coordination of public and private enforcement of environmental laws (Recommendation No. 85–3).

Congress has incorporated into the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and other Federal environmental statutes provisions authorizing private parties to bring enforcement actions in the federal courts. These "citizen suit" provisions generally permit any person or organization to seek injunctions abating activities that violate agency rules, standards, or permits. In addition, the Clean Water Act and the Hazardous and Solid Waste Amendments of 1984 permit plaintiffs to seek civil penalties in private enforcement actions.

As use of private enforcement actions has grown, issues related to coordinating public and private enforcement activities have arisen. Coordination in the development and use of criteria regarding the bringing of cases and maintaining basic consistency in the imposition of penalties is important for several reasons. Notwithstanding the different enforcement perspectives and goals of public and private plaintiffs, inconsistencies in case selection or penalty policy may create actual and perceived unfairness to regulated entities, as similarly situated parties receive varying treatment. Uncertainties about the likelihood or outcome of enforcement actions may increase litigation and decrease voluntary compliance. Lack of coordination may also make it difficult for the Environmental Protection Agency and cooperating state agencies to deploy their limited enforcement resources in the most efficient and effective manner. The recommendation that follows proposes administrative steps which the Environmental Protection Agency can take to provide better guidance to those involved in the enforcement process, and to achieve better coordination between public and private enforcement.

Recommendation

1. Articulation of Enforcement Policy

In order to achieve better coordination between public and private enforcement efforts, the Environmental Protection Agency should, as feasible, enunciate its views concerning enforcement criteria, calculating penalties, and settling contested cases. When enunciated, the agency's views, or an announcement of their availability, should be published in the **Federal Register**.[1] Public knowledge of the means by which the EPA calculates penalties will be particularly helpful to courts performing similar calculations in private enforcement actions, and the agency should consider whether more detailed specification of its policies in this respect is feasible. EPA should offer opportunities, consistent with Recommendation 76–5, for public comment on statements of policy regarding calculation of penalties.[2]

2. Improvement of Information Systems

The availability of accurate, complete, and current information about (a) the compliance status of regulated persons and firms, and (b) the outcome of public and private enforcement actions, is essential both for the formulation and implementation of agency enforcement strategies and for the effective use of private enforcement actions. When designing management information systems and reporting requirements, the Environmental Protection Agency should consider improving the quality of such information and its availability for private enforcement, subject to statutory limitations on disclosure of confidential information. The Office of Management and Budget should give similar consideration to the role of compliance information when reviewing EPA data-gathering proposals.

3. Notice of Private Actions

When the Environmental Protection Agency receives from a private party notice of an alleged violation, the EPA should request from that party copies of all complaints[3] and other significant pleadings, settlement agreements, and judicial decrees in any action relating to the alleged violation, in which the EPA is not a party.[4]

Dated: July 8, 1985.

Richard K. Berg,

General Counsel.

[FR Doc. 85–16503 Filed 7–11–85; 8:45 am]

BILLING CODE 6110–01–M

[1] In administering the Clean Water Act, for example, the EPA has begun this process by issuing a proposed rule to revise program reporting requirements for the assessment of permit noncompliance. See, e.g., 49 FR 29720 (July 23, 1984).

[2] See Recommendation 76–5, *Interpretive Rules of General Applicability and Statements of General Policy*, 4 ACUS Recommendations and Reports 62 (1979), 1 CFR 305.76–5. The Administrative Conference recommended that agencies adopting significant interpretive rules or policy statements normally should provide an opportunity for public comment.

[3] The Hazardous and Solid Waste Amendments of 1984, Pub. L. 98–616, section 401 (to be codified at 42 U.S.C. 6972 (b)(2)(F)), provide that a plaintiff bringing an action under the citizen suit provision of the Resource Conservation and Recovery Act must serve a copy of the complaint on the Attorney General and the Administrator of the EPA.

[4] Nothing in this recommendation is intended to suggest that a request for or receipt of any such notice or other information or document has or should have any preclusive effect upon the federal government's ability to take enforcement action against the alleged violator.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85–333]

Oriental Fruit Fly; Removal of Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on April 9, 1985, which amended the Domestic Quarantine Notices by removing "Subpart—Oriental Fruit Fly". Subpart—Oriental Fruit Fly had quarantined California and had imposed restrictions on the interstate movement of regulated articles from a regulated area in Los Angeles County, California. Subpart—Oriental Fruit Fly was removed from the Domestic Quarantine Notices because it was determined that all infestations of Oriental Fruit Fly in California have been eradicated and that Oriental Fruit Fly does not exist anywhere else in the United States. The effect of removing Subpart—Oriental Fruit Fly is to delete unnecessary

restrictions on the interstate movement of previously regulated articles from the previously regulated area in Los Angeles County, California.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: Robert G. Spaide, Assistant Staff Officer, National Program Planning Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 863, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301), 436–8295.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on April 9, 1985 (50 FR 13965–13966) set forth an interim rule amending the Domestic Quarantine Notices (7 CFR Part 301) by removing "Subpart—Oriental Fruit Fly" (7 CFR 301.93 *et seq.*).

Subpart—Oriental Fruit Fly had quarantined the State of California and had established regulations restricting the interstate movement of regulated articles from a regulated area in Los Angeles County, California, in order to prevent the artifical spread interstate of Oriental Fruit Fly. The document published on April 9, 1985, stated that the quarantine and regulations were being removed from the Domestic Quarantine Notices because trapping and sampling surveys conducted by inspectors of the U.S. Department of Agriculture and State agencies of California, had indicated that all infestations of Oriental Fruit Fly in California had been eradicated, and that Oriental Fruit Fly did not exist anywhere else in the United States. Therefore, there was no longer a basis for imposing restrictions on the interstate movement of regulated articles from any area in California, or from any other area in the United States because of the Oriental Fruit Fly.

The amendment became effective on the date of publication in order to relieve unncessary restrictions on the interstate movement of certain articles.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of April 9, 1985, still provides a basis for the amendment. Accordingly, it has been determined that the amendment should remain effective as published in the **Federal Register** on April 9, 1985.

Executive Order 12291 and Regulatory Flexibility Act

This amendment has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that the amendment will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This amendment removes restrictions on the interstate movement of certain articles from portion of Los Angeles County in California which is approximately 108 square miles in size. It appears that very little or no commercial activity occurs in this area because it is an urban area comprised primarily of private residences. The only commercial activity stems from local street vendors, ten local nurseries, and activity at the Los Angeles International Airport. The street vendors and nurseries sell articles that were designated as regulated articles primarily for intrastate not interstate movement. Further, the only commercial activity at the Los Angeles International Airport that had been affected by Subpart—Oriental Fruit Fly were approximately 100 entities that shipped such articles, originating outside the regulated area, to the Los Angeles International Airport for movement interstate or internationally. None of these entities are small entities within the meaning of the Regulatory Flexibility Act. Further, the deletion of the quarantine and regulations had very little or no impact on these entities because the procedures normally followed by these entities (e.g., packing, marking and transporting) for transporting such articles are procedures that were consistent with and in compliance with the requirements that had been imposed by Subpart—Oriental Fruit Fly.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Oriental Fruit Fly, Plant diseases, Plant pests, Plant (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 50 FR 13965–13966 on April 9, 1985, is adopted as a final rule.

Authority: 7 U.S.C. 150dd, 150ee, 161, 162; 7 CFR 2.17, 2.51 and 371.2(c).

Done at Washington, D.C., this 9th day of July 1985.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–16584 Filed 7–11–85; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 402

[Docket No. 2450S]

Raisin Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 and succeeding crop years. The intended effect of this rule is to: (1) Remove the Premium Adjustment Table; (2) insure raisins from vineyards operated to produce table grapes by separate agreement; (3) clarify the procedures used to arrive at the insured tonnage; (4) eliminate the experience table; (5) limit the reconditioning allowance to wash and dry reconditioning; (6) shorten the length of time an insured has to give notice of loss from 7 days to 72 hours; (7) change the end of the insurance period from October 25 to October 20; (8) add definition for the terms "loss ratio", "raisins", "net ton", "USDA inspection", and "table grapes"; and (9) redefine "unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: *Effective Date:* July 12, 1985.

Comments: Written comments, data, and opinions on this interim rule must

be submitted not later than September 10, 1985, to be sure of consideration.

ADDRESS: Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action: (1) Is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this interim rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On April 24, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 16090 to revise and reissue the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 and succeeding crop years. After publication of the proposed rule it was determined that the date by which changes in the raisin insurance policy were to be filed in the service offices could not be changed from May 15, the date required by the policy for the 1985 crop year, to June 30 as had been intended in order to give sufficient time to consider comments on the proposed rule, publish the final rule and file changes in the service offices by the required date.

All existing polices for insurance for the 1985 crop year have been cancelled. Insurance will be made available under the new policy contained herein to persons who had such insurance, who will receive a letter explaining this and advising them that they must sign a new application for insurance before the sales closing date, July 31, 1985. As with any new policy issued, the provision for non-cancellation is in effect for the first year. Any good insurance experience discount may be carried over into the new policy without penalty. In addition, the letter will advise that if the policyholder's 1984 premium reduction exceeded 5 percent, that reduction will be retained through the 1989 crop year or until the policyholder's loss ratio reaches .81, whichever occurs first.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which precludes notice and other public procedure because the current policy for insuring raisins does not provide coverage on an actuarially sound basis. The intention of FCIC in publishing a notice of proposed rulemaking on April 24, 1985, was to correct this situation and protect the integrity of the raisin insurance program.

One comment was received relative to the notice of proposed rulemaking (50 FR 16090, April 24, 1985) from the Office of Inspector General—Audit, USDA (OIG), making suggestions for change in three places in the policy provisions, as follows:

1. *Section 4(d).2.*—This section states in the determination of insured tonnage, that "Tray weights will be used to establish tons only if some raisins are not removed from the vineyard." OIG states that reliance on verifiable measures needs to be emphasized to the maximum extent possible. The existence of "some" raisins which cannot be removed from the vineyard does not necessarily mean damage is so severe as to preclude the use of delivered weights for the majority of the crop, or that the raisins left in the vineyard cannot be measured by verifiable means. OIG suggests that the language in that section specify the use of tray weights on tonnage not removed from the vineyard to ensure that tray weights are used on that portion too severely damaged to measure any other way. FCIS agrees with this.

Further, OIG suggests that the provision to reduce raisin tonnage damaged by rain should apply to any raisins with moisture in excess of 16 percent which are being valued for insurance purposes. The current wording precludes calculating this reduction on raisin tonnage which is reconditioned and passes; and, therefore, creates the potential to pay producers for water lost in the reconditioning process. FCIC agrees with this suggestion. The language in this sentence will be changed accordingly.

2. *Section 9.f.*—OIG recommends that courtesy inspections not be accepted unless the results are fully documented and the sample selected by the USDA Inspector. OIG also states that micro-analysis is a process used to detect microorganisms, not a condition subject to RAC tolerances, as implied in the present language. FCIC agrees with this and has changed the language. FCIC allows for reconditioning when the raisins are in excess of 18 percent moisture. OIG believes that the previous language of the policy implies that we determine moisture. This language is clarified in this new policy.

We will retain the 18 percent moisture determination in order to prevent the insured from obtaining a USDA inspection then contacting FCIC to request reconditioning for non-storable raisins. FCIC will determine by USDA inspection, and other factors such as weather conditions and the date, whether reconditioning will be authorized. OIG also suggested that FCIC allow for dry reconditioning in those cases where such reconditioning would be sufficient. Wash and dry reconditioning is the accepted and primary reconditioning process. Dry reconditioning is not generally available and our past experience with dry reconditioning has not been favorable. We purpose to monitor this condition for possible future change but are not now adopting the suggestion to allow dry reconditioning.

3. *Section 14.* Finally, OIG suggests that producers be required to maintain tray count records which are verifiable and segregated by farm unit. FCIC concurs with this and Section 14 now reflects this policy.

The principal changes in this raisin policy from the previous policy are:

1. *Section 2.f.*—Not insure table grapes placed on trays in some cases.

2. *Section 4.d.(2)*—Determine the insured tonnage by delivered tonnage, plus verifiable loss of production. Tray weights will be used to establish raisin tonnage not removed from the vineyard.

3. *Section 5.*—Remove the Premium Adjustment Table. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier. Since those insureds with good loss ratios and premium reductions stayed in the program while those with premium increases because of poor loss ratio tended to drop out, the premium structure under the premium adjustment table made actuarial projection difficult.

Remove the provisions for transfer of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

4. *Section 7.a.*—Change the insurance ending date from October 25 to October 20.

5. *Section 8.*—Shorten from 7 days to 72 hours the length of time the insured has to give notice of loss to better enable FCIC to adjust the loss.

6. *Section 9.f.*—Provide a reconditioning allowance when raisins are high moisture due to rain.

7. *Section 18.o.*—Deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

8. *Section 18.*—Define "loss ratio", "raisins", "net ton", "USDA inspection", and "table grapes."

Written comments on this interim rule are solicited by FCIC for 60 days after publication in the **Federal Register** and any written comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday. This rule will be scheduled for review so that any amendment made necessary by comments received may be published as quickly as possible.

List of Subjects in 7 CFR Part 402

Crop insurance, Raisins.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 and succeeding crop years, to read as follows:

PART 402—RAISIN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

402.1 Availability of raisin crop insurance.
402.2 Premium rates and amounts of insurance.
402.3 OMB control numbers.
402.4 Creditors.
402.5 Good faith reliance on misrepresentation.
402.6 The contract.
402.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for 1985 and Succeeding Crop Years

§ 402.1 Availability of raisin crop insurance.

Insurance shall be offered under the provisions of this subpart on raisins in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 402.2 Premium rates and amounts of insurance.

(a) The Manager shall establish premium rates and amounts of insurance per ton for raisins which will be included in the actuarial table on file in applicable service offices and which may be changed from year to year.

(b) At the time application for insurance is made, the applicant will elect an amount of insurance per ton from among those amounts contained in the actuarial table for the crop year.

§ 402.3 OMB control numbers.

OMB control numbers are contained in Subpart H to Part 400 to Title 7 CFR.

§ 402.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 402.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the raisin insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 402.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the raisin crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 402.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the raisin crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county.

by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a raisin contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Raisin Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Raisin—Crop Insurance Policy

(This is a continuous contract. Refer to Section 16.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against the unavoidable loss of production resulting from rain, occurring within the insurance period, to raisins while in the vineyard, on trays or in rolls, for drying unless limited by the actuarial table.

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good raisin management practices;

(3) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(4) Any cause other than rain.

2. Tonnage and Share insured.

a. The crop insured for each crop year will be raisins of the grape varieties for which an amount of insurance and premium rate are provided by the actuarial table.

b. The tonnage insured for each crop year will be the tonnage in which you have a share, as reported by you or as determined by us, whichever we elect.

c. Raisins laid on trays after September 20 or the date specified by the actuarial table for such purpose will not be insured.

d. The insured share will be your share as landlord, owner-operator, or tenant in the insured raisins at the time insurance attaches.

e. We do not insure any raisins from table grapes or any raisins from vines that have had manual, mechanical, or chemical treatment to produce table grape sizing, unless we agree in writing to insure such raisins.

3. Report of tray count, tonnage, and share.

You must report on our form:

a. For *all* raisins which are not damaged, the net tons of insured raisins produced in the county in which you have a share and your share as soon as delivery records are available but in any event no later than March 1 following the crop year;

b. For insured raisins which are damaged:

(1) The variety;

(2) The location of the vineyard;

(3) The number of trays upon which the raisins have been placed for drying; and

(4) Your share.

You must report separately any tonnage that is not insurable. You must report if you do not have a share in any insurable tonnage in the county. This report must be submitted annually on or before March 1 of the year following the crop year. Indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may determine by unit the insured tonnage and share or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of insurance and coverage levels.

a. The amounts of insurance and coverage levels are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the amount of insurance and coverage level on or before the closing date for submitting applications for the crop year as established by the actuarial table.

d. The amount of insurance for the unit will be determined by multiplying the insured tonnage times the amount of insurance per ton, times your share. Insured tonnage is determined:

(1) For raisins not damaged by rain, by the delivered tonnage: or

(2) For raisins damaged by rain, by adding delivered tonnage, if any, to any verifiable loss of production due to rain damage in the vineyard. Tray weights will be used to establish raisin tonnage not removed from the vineyard.

Raisin tonnage damaged by rain will be reduced .12 percent for each .1 percent moisture in excess of 16 percent.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance times the premium rate, times the insured tonnage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premimum reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the raisin policy in effect for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches at the time the raisins are placed on the trays for drying and ends the earlier of:

a. October 20; or

b. The date the raisins are boxed or removed from the vineyard.

8. Notice of damage or loss.

a. If you are going to claim an indemnity on any unit, we must be given notice within 72 hours from the time the rain fell on the raisins.

b. We may reject any claim for indemnity if such damage is not reported within 72 hours or if you fail to comply with any of the requirements of section 9.

9. Claim for indemnity.

a. Any claim for indemnity must be submitted to us on our form not later than March 31 after the calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of raisins on the unit and that any loss of production was directly caused by rain during the insurance period;

(2) Authorize us in writing to examine and obtain any records pertaining to the production and marketing of any raisins in which you have a share from the raisin packer, raisin reconditioner, Raisin Administrative Committee established under order of the United States Department of Agriculture or any other party who may have such records; and

(3) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured tonnage of raisins by the amount of insurance per ton;

(2) Subtracting therefrom the total value of all insured damaged and undamaged raisins; and

(3) Multiplying this result by your share.

d. Undamaged raisins or raisins damaged solely by uninsured causes will be valued at 100 percent of the field price or the amount of insurance, whichever is higher.

e. Raisins damaged partially by rain and partially by uninsured causes will be valued at the highest prices obtainable, subject to an adjustment for any reduction in value due to uninsured causes.

f. Raisins damaged by rain, but which are reconditioned and meet Raisin Administrative Committee (RAC) standards for raisins, will be valued at 100 percent of the field price or the amount of insurance, whichever is higher. An allowance for reconditioning will be deducted from that value only if you obtained our prior written consent to reconditioning. The allowance for reconditioning will be made only when the raisins have been inspected by the USDA and, due to rain damage while on the tray are found to contain mold, embedded sand, excessive moisture, or micro-organisms in excess of RAC tolerances. Additionally, when raisins contain excessive moisture due to rain, the reconditioning allowance will be made only when the moisture is determined to be in excess of 18.0 percent and the raisins are wash and dry reconditioned. The maximum allowance for reconditioning is contained in the actuarial table, but the total reconditioning allowance will not exceed the value of the raisins after reconditioning. We may require you to recondition a representative sample of not more than 10 tons of raisins to determine if they meet RAC standards for marketable raisins. On the basis of determinations made after such sampling, we may require you to recondition all raisins, or we may value such raisins at 100 percent of the field price or the amount of insurance, whichever is higher. If the representative sample does not meet RAC standards for marketable raisins, the cost of reconditioning the sample will be deducted from the total value of the raisins for the unit.

g. The value to count for any raisins produced on the unit and not removed from the vineyard will be the larger of the appraised salvage value or $35.00 per ton. You must box and deliver any raisins that can be removed from the vineyard.

h. We may acquire all of the right and title to your share of any raisins damaged by rain. In such event, the raisins will be valued at "zero" in determining the amount of loss and we will have the right of ingress or egress to the extent necessary to take possession of, care for, and remove such raisins.

i. Raisins destroyed without inspection or put to another use without consent will be valued at the amount of insurance.

j. You must not abandon any tonnage to us.

k. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

l. We have a policy for paying your indemnity within 30 days of our approval of your claim or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

m. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date insurance attaches for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to vineyard.

You must keep, for 2 years after the time of loss, records of tray counts, the insured, uninsured, and planted acreage and production information from your vineyard operation. Any person designated by us will have access to such records and the vineyard for purposes related to the contract.

15. Other insurance.

If in any crop year, you obtain any other insurance on any unit against rain damage or loss, and such insurance is obtained before insurance attaches under the contract this contract will be voided for that crop year on such unit.

16. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim will be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date such other payment was approved.

d. The cancellation and termination dates are July 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. *However*, if such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

17. Contract changes.

We may change any terms and provisions of the contract from year to year. If the amount of insurance you selected is no longer offered, the actuarial table will provide the amount of insurance which you will be deemed to have elected. All contract changes will be available at your service office by the April 30 preceding the cancellation date for succeeding crop years. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

18. Meaning of terms.

For the purposes of raisin crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amounts of insurance, coverage levels, premium rates, varieties, reconditioning allowances, and related information regarding raisin insurance in the county.

b. "Contiguous land" means land which is touching at any point except that land which is separated by only a public or private right-of-way will be considered contiguous.

c. "County" means the county shown on the application and any additional land

located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the calendar year in which the raisins are placed on trays for drying.

e. "Insured" means the person who submitted the application accepted by us.

f. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

g. "Net ton" means a ton of raisins delivered to and paid for by the processor.

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of the State, or any agency thereof.

i. "Raisins" means specific varieties of grapes as established by the actuarial table laid on trays or rolls in the vineyard to dry.

j. "Raisin tonnage report" means a form prescribed by us for annually reporting all your share and tonnage of raisins in the county.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Table grapes" means grapes which are grown for commercial sales as fresh grapes on acreage on which the cultural practices to produce fresh marketable grapes were carried out.

m. "Tenant" means a person who rents land from another person for a share of the raisins or a share of the proceeds therefrom.

n. "Ton" means 2,000 pounds. Raisin tonnage may be computed on the basis of one ton of raisins insured for every four and one half tons of fresh grapes when first placed on trays for drying.

o. "Unit" means all insurable acreage of the same grape variety, located on contiguous land, on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the raisins on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

p. "USDA inspection" means the actual determination by a USDA inspector of all defects. Limited inspections or inspections on submitted samples are not considerd inspections.

19. Descriptive headings.

The descriptive heading of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

20. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

21. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on June 5, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: July 9, 1985.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 85-16560 Filed 7-11-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 524 Lemon Reg. 523, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 330,000 cartons during the period July 14–20, 1985, and increases the quantity of lemons that may be shipped to 350,000 cartons during the period July 7–13, 1985. Such action is needed to provide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation (§ 910.824) becomes effective July 14, 1985, and the amendment (§ 910.823) is effective for the period July 7–13, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on July 9, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is good on all sizes except larger sized second grade fruit.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 910.824 is added to read as follows:

§ 910.824 Lemon Regulation 524.

The quantity of lemons grown in California and Arizona which may be handled during the period July 14, 1985, through July 20, 1985, is established at 330,000 cartons.

3. § 910.823 Lemon Regulation 523 is revised to read as follows:

§ 910.823 Lemon Regulation 523.

The quantity of lemons grown in California and Arizona which may be handled during the period July 7, 1985, through July 13, 1985, is established at 350,000 cartons.

Dated: July 10, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-16792 Filed 7-11-85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 911, 915, 916, 917, 918, 921, 922, 923, 924, 930, 967, and 985

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 911, 915, 916, 917, 918, 921, 922, 923, 924, 930, 967 and 985 for the respective 1985–86 fiscal year for each order. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1985—March 31, 1986 (§§ 911.224, 915.224, 921.224, 922.225, 923.225, and 924.225); March 1, 1985—February 28, 1986 (§§ 916.224, 917.241, 917.242, and 918.222); May 1, 1985—April 30, 1986 (§ 930.215); June 1, 1985—May 31, 1986 (§ 985.305); August 1, 1985—July 31, 1986 (§ 967.221).

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities.

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions are based upon the recommendations and information submitted by each committee, established under the respective marketing orders, and upon other information.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective dates until 30 days after publication in the Federal Register (5 U.S.C. 553). Each order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. To enable the committtees to meet current fiscal obligations, approval of the expenses is necessary without delay. Handlers have been apprised of the provisions and effective dates specified in this final rule. It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Parts 911, 915, 916, 917, 918, 921, 922, 923, 924, 930, 967, and 985

Marketing Agreements and Orders, Limes (Florida), Avocados (Florida), Nectarines (California), Peaches and Plums (California), Peaches (Georgia), Peaches (Washington), Apricots (Washington), Cherries (Washington), Prunes (Washington-Oregon), Cherries, Celery (Florida), and Spearmint Oil.

1. The authority citation for 7 CFR Parts 911, 915, 916, 917, 918, 921, 922, 923, 924, 930, 967, and 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

New §§ 911.224, 915.224, 916.224, 917.241, 917.242, 918.222, 921.224, 922.225, 923.225, 924.225, 930.215, 967.221, and 985.305 are added to read as follows (the following sections prescribe the annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 911—LIMES GROWN IN FLORIDA

§ 911.224 Expenses and assessment rate.

Expenses of $217,000 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.15 per bushel of limes is established for the fiscal year ending March 31, 1986.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.224 Expenses and assessment rate.

Expenses of $173,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.11 per bushel of avocados is established for the fiscal year ending March 31, 1986.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.224 Expenses and assessment rate.

Expenses of $2,687,576 by the Nectarine Administrative Committee are authorized, and an assessment rate of $0.14 per No. 22D standard lug box of nectarines is established for the fiscal year ending February 28, 1986. Unexpended funds from the 1984–85 fiscal year may be carried over as a reserve.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

§ 917.241 Expenses and assessment rate.

Expenses of $2,651,280 by the Plum Commodity Committee are authorized, and an assessment rate of $0.18 per No. 22D standard lug box of plums is established for the fiscal year ending February 28, 1986. Unexpended funds from the 1984–85 fiscal year may be carried over as a reserve.

§ 917.242 Expenses and assessment rate.

Expenses of $2,346,448 by the Peach Commodity Committee are authorized, and an assessment rate of $0.14 per No. 22D standard lug box of peaches is established for the fiscal year ending February 28, 1986.

PART 918—FRESH PEACHES GROWN IN GEORGIA

§ 918.222 Expenses and assessment rate.

Expenses of $11,610 by the Industry Committee are authorized, and an assessment of $0.01 per bushel of peaches is established for the fiscal year ending February 28, 1986.

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 921.224 Expenses and assessment rate.

Expenses of $21,556 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of $1.50 per ton of peaches is established for the fiscal year ending March 31, 1986. Unexpended funds from the 1984–85 fiscal year may be carried over as a reserve.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 922.225 Expenses and assessment rate.

Expenses of $5,220 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $1.50 per ton of apricots is established for the fiscal year ending March 31, 1986.

Unexpended funds from the 1984–85 fiscal year may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 923.225 Expenses and assessment rate.

Expenses of $60,209 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $1.00 per ton of cherries is established for the fiscal year ending March 31, 1986.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

§ 924.225 Expenses and assessment rate.

Expenses of $28,985 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $2.00 per ton of prunes is established for the fiscal year ending March 31, 1986.

PART 930—CHERRIES GROWN IN MICHIGAN, NEW YORK, WISCONSIN, PENNSYLVANIA, OHIO, VIRGINIA, WEST VIRGINIA, AND MARYLAND

§ 930.216 Expenses and assessment rate.

Expenses of $144,780 by the Cherry Administrative Board are authorized, and an assessment rate of $1.20 per ton of cherries delivered for processing is established for the fiscal year ending April 30, 1986. Unexpended funds from the 1984–85 fiscal year may be carried over as a reserve.

PART 967—CELERY GROWN IN FLORIDA

§ 967.221 Expenses and assessment rate.

Expenses of $120,000 by the Florida Celery Committee are authorized, and an assessment rate of $0.02 per crate of celery is established for the fiscal year ending July 31, 1986. Unexpended funds may be carried over as a reserve.

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

§ 985.306 Expenses assessment rate, and operating reserve.

Expenses of $135,000 by the Spearmint Oil Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 985.41 is fixed at 9 cents per pound for salable spearmint oil for the 1985–86 marketing year ending May 31, 1986. Unexpended funds may be carried over as a reserve in the maximum amount permitted pursuant to § 985.42.

Dated: July 8, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–16585 Filed 7–11–85; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 84–024–F]

Alpha-Tocopherol as an N-nitrosamine Inhibitor in Pump-Cured Bacon; Lecithin as an Emulsifier in Meat Food Products

Correction

In FR Doc. 85–16066, beginning on page 27573 in the issue of Friday, July, 5, 1985, on page 27574, at the top of the first column, insert "**EFFECTIVE DATE:** September 3, 1985."

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9185]

Middle Atlantic Conference; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Dismissal Order.

SUMMARY: The Federal Trade Commission has dismissed the complaint in this matter since the collective ratemaking activities of respondent are immunized by the state action doctrine. The Commission has found that "further prosecution of this matter does not appear to be in the public interest".

DATES: Complaint issued Sept. 18, 1984. Order Dismissing Complaint issued June 27, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Berry E. Barnes, Boston Regional Office, Federal Trade Commission, 150 Causeway St., Room 1301, Boston, MA 02114. (617) 223–6621.

SUPPLEMENTARY INFORMATION: In the Matter of Middle Atlantic, Conference, a corporation.

List of Subjects in 16 CFR Part 13

Intrastate carriers, Collective ratemaking, Trade practices.

[1] Copies of the Complaint are filed with the original document.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

[Docket No. 9185]

Order Dismissing Complaint

In the Matter of Middle Atlantic Conference, a corporation.

The Commission has considered this matter on complaint counsel's unopposed motion that the complaint be withdrawn.

In this case respondent has argued that its collective ratemaking activities are immunized by the state action doctrine. Complaint counsel now represents that all the elements of a state action defense as articulated by the Supreme Court in *Southern Motor Carriers Rate Conference* v. *United States*, 105 S. Ct. 1721 (1985), are available to the respondent. Accordingly, further prosecution of this matter does not appear to be in the public interest. The complaint is therefore dismissed.

By direction of the Commission.

Issued: June 27, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 85–16604 Filed 7–11–85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C–3157]

Allied Corp. et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: The Federal Trade Commission has accepted a consent order with Allied Corporation and King Radio Corporation in settlement of alleged violations of section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The order requires Allied to divest the King Weather Radar Line to Narco Avionics, Inc., or another Commission-approved purchaser. With certain exceptions, the order also prohibits Allied, for a period of ten (10) years, from acquiring, without the Commission's prior approval, any interest in any company that manufactures or sells general aviation weather detection systems in the United States.

DATE: Complaint and Order issued June 17, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Stephen W. Riddell, FTC/L–501–10, Washington, D.C. 20580. (202) 254–8577.

SUPPLEMENTARY INFORMATION: On Thursday, March 28, 1985, there was published in the **Federal Register**, 50 FR 12314, a proposed consent agreement with analysis In the Matter of Allied Corporation, a corporation, and King Radio Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order. The material for which confidential treatment was requested was provisionally deleted from the March 28, 1985 proposed consent agreement, pending the Commission's action on the confidentiality request. The consent order published below contains the deletion of the material for which the Commission has actually granted confidential treatment. The deleted material has been replaced in the text with the symbol [* * *].

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth below, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: S 13.5 Acquiring corporate stock or assets; 13.5–20 Federal Trade Commission Act.

List of Subjects in 16 CFR Part 13

Aviation weather detection systems, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Before Federal Trade Commission

[Docket No. C–3157]

Decision and Order

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry C. Calvani, Mary L. Azcuenaga.

In the Matter of Allied Corporation, a corporation, and King Radio Corporation, a corporation.

The Federal Trade Commission, having initiated an investigation of the acquisition of King Radio Corporation ("King") by the Allied Corporation ("Allied"), and Allied and King having been furnished thereafter with a copy of a draft complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Allied and King with violations of the Clayton Act and Federal Trade Commission Act; and

Allied, King, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Allied and King of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Allied and King that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Allied and King have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings an enters the following Order:

1. Allied is a corporation organized, existing and doing business under and by virtue of the laws of New York with its executive offices at Columbia Road and Park Avenue, Morris Township, New Jersey 07960.

2. King is a corporation organized, existing and doing business under and by virtue of the laws of Kansas with its executive offices at 400 North Rogers Road, Olathe, Kansas 66062.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Allied and King, and the proceeding is in the public interest.

Order

For purposes of this Order, the following definitions shall apply:

(A) "Allied means Allied Corporation, its predecessors, divisions, subsidiaries, groups and affiliates controlled by Allied and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(B) "King Radio" means King Radio Corporation, its predecessors, divisions, subsidiaries, groups and affiliates controlled by King Radio and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(C) "King WeatherRadar Line" means all airborne weather detection systems currently manufactured, sold or owned by King Radio, including but not limited to the KWX 565 and the KWX 58 weatherradar systems; all airborne weather detection systems that King Radio has under development, including but not limited to the KWX 57, the KWX 460, and improvements or modifications to the KWX 56 or KWX 58 systems; and any other plans or research related to airborne weather detection systems. The KWX 56 and the KWX 58 weatherradar systems shall be construed to include, respectively, the KI 244 and the KI 248 control/indicators, the KA 126 and the KA 128 combined antenna/receiver/transmitter units and the KGR 356 and the KGR 538 graphics interface units.

(D) "Airborne weather detection system" means (1) a product, consisting of a display, a sensor device and an antenna, that uses radio waves to detect and display weather conditions and is designed to enable a pilot to evaluate and avoid adverse weather conditions and is designed for use in aircraft; or (2) a receiver system designed for use in aircraft that detects lightning and is designed to enable a pilot to evaluate and avoid adverse weather conditions. "Airborne weather detection system" shall also include any device that performs the same function in the same manner as the King Radio products designated KGR 356 and KGR 358 for display on the products, defined in D(1) and D(2) above.

(E) "Piece Parts" are components and raw materials purchased or made by King Radio for use in manufacturing, producing or repairing the King Weather Radar Line or spare parts. "Kits" are all Piece Parts required to assemble a specific quantity of the King Weather Radar Line.

I

It is Ordered that: (A) Within eight (8) months from the date this Order becomes final, Allied shall divest, absolutely and in good faith all of the assets described below, so as to transfer the King Weather Radar Line as a viable product line such that a purchaser could compete as a manufacturer and seller or airborne weather detection systems:

(1) All inventories, including Piece Parts, Work-In-Process, finished goods and kits solely dedicated to the King Weather Radar Line, as determined pursuant to a physical inventory to be taken approximately seven (7) days in advance of the closing of the sale, except that Allied may retain, at its

[1] Copies of the Complaint are filed with the original document.

discretion, sufficient quantities of Finished Goods and spare parts as to be able to service, maintain and repair its products in the field and fulfill those contracts not assignable to the purchaser.

(2) All tooling, whether or not in the custody of vendors, and test equipment, including fixtures thereof, solely dedicated to the King Weather Radar Line.

(3) All know-how, and trade secrets, if any, solely dedicated to the King Weather Radar Line, including one patent (no. 3973145) and one patent application (no. 412913).

(4) All engineering and design drawings, including but not limited to all documentation for software contained in or used in the manufacture of the King Weather Radar Line; all documentation related to a new weather radar antenna/receiver/transmitter unit that is in the early development stage; all documentation related to a design for a test adapter to enable the testing of the KGR 356 and KGR 358 graphics interface units utilizing an Apple Computer; and all other documentation, design and development studies, inventory, models and all other data related to the King Weather Radar Line.

(5) All processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and brochures solely dedicated to the King Weather Radar Line; vendor and distribution lists; and documentation related to a sales history and marketing of the King Weather Radar Line to the extent that such documentation is separable from other confidential information not related to the King Weather Radar Line.

(6) All purchase orders for Piece Parts on order to the extent that they are assignable and solely dedicated to the King Weather Radar Line, all customer lists for King Weather Radar Line products and all contracts for the sale of King Weather Radar Line to the extent that they are assignable.

(B) Divestiture of the King Weather Radar Line shall be made to Narco Avionics, Inc. pursuant to the terms of the Agreement of Purchase and Sale attached hereto as Exhibit A, or to such other purchaser or purchasers that receive(s) the prior approval of the Commission and only in a manner that receives prior approval of the Commissions.

(C) For a period of ninety (90) days following the divestiture of the King Weather Radar Line, or such longer period (not to exceed six (6) months) as agreed between the purchaser and Allied, Allied shall assist the purchaser in the start-up and manufacturing process of the King Weather Radar Line by making personnel available to train and educate employees of the purchaser selected by it in all facets of the start-up, manufacture, production and repaid of the King Weather Radar Line. Allied shall name a single technical coordinator to serve as the focal point for such technical assistance. For such technical assistance, Allied may assess the purchaser an amount in accord with the terms of the Agreement of Purchase and Sale attached hereto as Exhibit A, or may charge the purchaser an amount not to exceed its cost for the time and materials (plus a reasonable material burden rate) involved, plus its reasonable travel, lodging and subsistence costs, if any.

(D) Pending the divestiture of the King Weather Radar Line required by this Order, Allied shall use its best efforts to advertise, promote, manufacture and sell the King Weather Radar Line at substantial present levels. Allied shall also continue to fund all ongoing research and development projects with regard to the King Weather Radar Line at 1984 levels. Allied shall be required to designate an appropriate King Radio employee to be responsible for managing the King Weather Radar Line pending its divestiture.

(E) Pending the divestiture of the King Weather Radar Line required by this Order, Allied and King shall maintain the viability, integrity and marketability of the properties described in Paragraph I (A) and shall not use or permit the destruction, removal or impairment of any assets to be divested except in the ordinary course of business and except for ordinary wear and tear.

II

It is further Ordered, that, for a period of ten (10) years from the date this Order becomes final, Allied shall not, without the prior approval of the Commission, directly or indirectly, acquire any stock, share capital or equity interest in any concern engaged in, or any assets used in the manufacture and sale in or to the United States, of airborne weather detection systems designed for use in general aviation aircraft; provided, however, that nothing in this Order shall prohibit Allied from (i) acquiring, for investment purposes only, an interest of not more than one (1) percent of the stock, share capital or equity of any such concern; or (ii) making purchases, in the ordinary course of business, of components and equipment used to manufacture airborne weather detection systems (*e.g.*, tools, test equipment and components). For the purposes of this Paragraph, the term "general aviation aircraft" means those aircraft predominantly used for private purposes rather than (i) for military purchases or (ii) for the transport of people or cargo for a fee.

III

It is further Ordered, that if Allied has not accomplished the divestiture required by Paragraph I of this Order within the eight-month period, Allied shall consent to the appointment of a trustee who shall have the power and authority to accomplish the divestiture at the most favorable price and terms available consistent with this Order's unconditional obligation to divest. The trustee shall be a person with experience and expertise in acquisitions and divestitures and shall be selected by the Commission subject to Allied's consent, which shall not be unreasonably withheld. The trustee shall serve at the cost and expense of Allied based on reasonable and customary terms. The trustee's compensation shall be based on reasonable and customary terms. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the trust assets. The trustee shall have the cooperation of Allied in accomplishing the divestiture within a reasonable period not to exceed ten (10) months and subject to the prior approval of the Federal Trade Commission. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Allied to comply with Paragraphs I through VI of this Order.

IV

It is further Ordered, that within sixty (60) days from the date on which this Order becomes final and the first two sixty (60) day periods thereafter and every ninety (90) days thereafter until Allied has fully complied with the provisions of Paragraph I of this Order, Allied shall submit in writing to the Commission a verified report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision of this Order. All such compliance reports shall include a summary of all discussions and negotiations with any persons who are potential purchasers of the assets to be divested as specified in Paragraph I of this Order, including the identity of all such persons, copies of all written communications to and from such persons, and all internal memoranda, reports and recommendations concerning divestiture.

V

It is further Ordered, that for a period of ten (10) years from the date on which this Order becomes final, Allied shall notify the Commission at least thirty (30) days prior to any proposed corporate changes that may affect compliance obligations arising out of this Order, such as dissolution, assignment or sale resulting in the emergence of successor corporations and the creation or dissolution of subsidiaries.

VI

On the first anniversary of the date this Order becomes final and on every anniversary date thereafter for the following nine (9) years, Allied shall submit to the Commission a verified written report setting forth the manner and form in which it has complied or is complying with this Order.

Issued: June 17, 1985.

By the Commission.

Agreement of Purchase and Sale

This Agreement made and entered on this 23d day of January, 1985 (the "Agreement") by and between Narco Avionics, Inc., a Delaware corporation, with its principal offices at 270 Commerce Drive, Fort Washington, Pennsylvania 19034 ("Buyer") and King Radio Corporation, a Kansas corporation, with its principal offices at 400 North Rodgers Road, Olathe, Kansas 66062 ("Seller").

Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, on the terms and conditions set forth herein, a portion of the assets used in the business and operations of Seller set forth in paragraph 1 below, which has been generally identified by Seller as its Weather Radar Product Line and Graphics Interface Product Line, more particularly described as:

(a) All Airborne Weather Detection Systems currently manufactured, sold or owned by Seller, including but not limited to:

(1) The KWX 56 Weather Radar System consisting of the KA 126 Antenna/Receiver/Transmitter and the KI 244 Control/Indicator;

(2) The KWX 58 Weather Radar System consisting of the KA 128 Antenna/Receiver/Transmitter and the KI 248 Control/Indicator;

(3) The KGR 356 Graphics Interface Unit; and

(4) The KGR 358 Graphics Interface Unit;

(b) All Airborne Weather Detection Systems that Seller has under development, including but not limited to the KWX 57 and KWX 480, and improvements or modifications to the KWX 56 or KWX 58 sytems; and

(c) Any other plans or research related to Airborne Weather Detection Systems.

All of which to be sometimes hereinafter referred to individually as the "Products", and collectively (including the items set forth in paragraph 1) as the "Product Lines".

In consideration of the mutual covenants, agreements, representations and warranties hereinafter contained, the parties agree as follows:

1. Purchase and Sale

At the closing (the "Closing") as hereinafter defined in paragraph 3.1(a), Seller shall sell, transfer and convey to Buyer, and Buyer shall purchase and accept:

(a) *Inventories.* All inventories, including Piece Parts, Work-In-Process, Finished Goods and Kits solely dedicated to the Product Lines subject to the provisions of paragraph 1.1 and 1.2.

(b) *Tooling and Test Equipment.* All tooling, whether or not in the custody of vendors and test equipment including fixtures thereof, solely dedicated to the Product Lines, as set forth in *Exhibit 1(b).*

(c) *Industrial Property Rights.* All know-how, and trade secrets, if any, solely dedicated to the Product Lines, one patent (no. 3973145), one patent application (no. 412913). Copies of the assignment of the patent and patent application are annexed to this Agreement as *Exhibit 1(c).*

(d) *Documents, Lists and Design Data.* All engineering and design drawings including but not limited to processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and brochures solely dedicated to the Product Lines; vendor and distribution lists; all documentation for software contained in or used in the manufacture of the Products; all documentation related to a new weather radar antenna/receiver/ transmitter unit that is in the [* * *] developmental stage; all documentation related to a design for a test adapter to enable testing of the KGR 356 and KGR 358 graphics interface units utilizing [designated equipment]; all other documentation, design and development studies, inventory, models and other data related to the Products; and documentation related to a sales history and marketing of the Product Lines to the extent that such documentation is separable from other confidential information not related to the Product Lines.

(e) *Purchase Orders and Contracts.* All purchase orders for Piece Parts on order to the extent that they are assignable and solely dedicated to the Product Lines, all customer lists for the Product Lines and all contracts for the sale of Products to the extent that they are assignable, as set forth in *Exhibit 1(e)* to be provided at the Closing.

1.1 *Limitation on Inventory.*— Anything to the contrary notwithstanding, Buyer, at its election, shall not be obligated to purchase, accept and pay for Piece Parts in excess of those necessary to manufacture more than a cumulative total of [* * *] Weather Radar Products and, in addition thereto, a cumulative total of [* * *] Graphics Interface Products.

1.2 *Retention by Seller.*— (a) Anything to the contrary notwithstanding, Seller shall retain and not convey to Buyer all Piece Parts, purchase orders for Piece Parts not solely dedicated to the Product Lines, and purchase orders for Piece Parts solely dedicated to the Product Lines that are not assignable after efforts are made to request such vendors to permit such assignment from Seller to Buyer. Seller shall also retain and not convey to Buyer contracts for the sale of spare parts, and for Products that are not assignable after efforts are made to request such vendors to permit such assignment from Seller to Buyer.

Seller shall also retain the right to continue to conduct business with vendors and distributors set forth on the vendor and distributor lists. Seller shall also retain and not convey to Buyer a sufficient quantity of Finished Goods and spare parts, in Seller's discretion, as to be able to service, maintain and repair its Products in the field and fulfill any contracts not assignable to Buyer.

(b) Buyer shall grant to Seller a nonexclusive, irrevocable, royalty free license (including the right to grant sublicenses) (i) under the patent and patent application to be conveyed herein, to make, have made, use, and sell Piece Parts and (ii) to utilize the tooling (in the custody of vendors) to be conveyed herein, only as necessary for Seller to service, maintain and repair the Products sold by Seller to third parties prior to the Closing. Such license shall be for the duration of any patents that are in existence or may be issued that are conveyed herein, and for the life of the tooling. The license to be used is set forth as *Exhibit 1(c),* annexed to this Agreement.

1.3 *Definitions.*—As used herein the following terms apply:

(a) "Finished Goods" shall mean each completed Product.

(b) "Piece Parts" shall mean components and raw material

purchased or made by Seller for use in manufacturing, producing, maintaining or repairing the Products or spare parts.

(c) "Kits" shall mean all required Piece Parts to assemble a specific quantity of the Products.

(d) "Work-In-Process" shall mean Products in various stages of manufacture or production.

(e) The phrase "solely dedicated to the Product Lines" in connection with assets to be conveyed herein, shall mean those assets which have no use or value to Seller in connection with its business other than for the Product Lines.

(f) "Weather Radar Products" shall mean the KWX 56 and KWX 58 weather radar systems.

(g) "Graphics Interface Products" shall mean the KGR 356 and KGR 358 Graphics Interface units.

(h) "Airborne Weather Detection System" shall mean (1) a product, consisting of a display, a sensor device and an antenna, that uses radio waves to detect and display weather conditions and is designed to enable a pilot to evaluate and avoid adverse weather conditions and is designed for use in aircraft; or (2) a receiver system designed for use in aircraft that detects lightening and is designed to enable a pilot to evaluate and avoid adverse weather conditions. "Airborne Weather Detection System" shall also include any device that performs the same function in the same manner as the Seller's products designated KGR 356 and KGR 358 for display on the products defined in (h)(1) and (h)(2) above.

2. Purchase Price

The purchase price shall consist of a payment made at the Closing as set forth in paragraph 2.1 below, payments or credits as set forth in paragraph 2.2 below, and payments made over a period of seven years as set forth in paragraph 2.3 below.

2.1 *Current Payment.*—At the Closing, Buyer shall pay to Seller as part of the puchase price, [* * *]. Such payment shall be made by certified check or wire transfer at the election of the Seller.

2.2 *Payments and Credits.*—(a) Buyer shall also pay to Seller, as part of the purchase price, a sum [* * *] for Finished Goods on hand at the Closing (and in the production process) to be conveyed to Buyer, plus [* * *] of such costs for variance factors, and a sum [* * *] for its Kits, Piece Parts and Work-In-Process on hand at the Closing (and in the production process) to be conveyed to Buyer, plus [* * *] of such costs as a material burden rate.

(b) The Buyer shall receive a credit of [* * *] which credit shall be deducted from sums due Seller under paragraph 2.2(a). The net amount due Seller after deduction of the credit shall be payable in accordance with the terms of paragraph 2.2(c).

(c) Such sums due Seller pursuant to paragraph 2.2(b) shall be payable in principal increments of [* * *] ninetieth (90th) day following the Closing Date, and on each ninetieth (90th) day thereafter, until fully paid, in accordance with a promissory note bearing a rate of interest of [* * *] per annum in the form set forth as *Exhibit 2.2(c)* annexed to this Agreement. If less than [* * *] is due Seller, the full sum shall be paid to Seller on the ninetieth (90th) day following the Closing Date, plus interest due. In the event an adjustment in the cost of inventory that was in production is necessary, such an adjustment shall be made pursuant to paragraph 4.7.

2.3 *Additional Payments.*—(a) In addition, Buyer will pay, as part of the purchase price, the sum of [* * *] with interest at [* * *] per annum, payable in 27 equal installments of [* * *] and a final installment of [* * *] in accordance with an unsecured promissory note set forth in *Exhibit 2.3(a)*. Payments shall commence on the ninetieth (90th) day following the final payment due under the promissory note set forth in *Exhibit 2.2(c)*, and shall continue on each ninetieth (90th) day thereafter, until fully paid.

3. The Closing

3.1 *Closing.*—The purchase and sale of the Product Lines contemplated by this Agreement and the assignment, conveyance and transfer thereof by Seller to Buyer, and payment, delivery of a promissory note, execution of a license agreement, guarantees, security interests, and performance of other obligations as set forth in this Agreement, which are considered conditions of Closing, shall take place at: The offices of Allied Bendix Aerospace, 1000 Wilson Boulevard, Arlington, Virgina 22209, at such time and date to be mutually agreed upon after appropriate approvals are obtained from the FTC pursuant to the FTC investigation, or at such other time and place as the parties may agree to in writing ("Closing Date").

3.2 *Instruments of Transfer.*—At the Closing, Seller will deliver to Buyer an Assignment and Bill of Sale, passing all right, title and interest in and to the Product Lines free and clear of all liens, security interests and other encumbrances in the form set forth in *Exhibit 3.2*, annexed to this Agreement.

4. Standard Costs, Physical Inventory Count and Transfer of Inventory

4.1 The inventories, including Finished Goods, Kits, Piece Parts and Work-In-Process have been valued at [* * *] in accordance with Seller's accounting practices.

4.2 Within approximately seven days prior to the Closing, Seller and Buyer together, will count the inventory on hand, not committed to production, (including test counts and sample counts, where total counting is impractical), and establish an agreed upon quantity which will be valued at Seller's cost plus [* * *]. Seller and Buyer will supervise the packaging and sealing of the cartons of such inventory. The quantities as established will not be subject to adjustment, since Buyer will have partaken in the inventories count and sealing of such cartons.

4.3 Seller will continue production until approximately one day prior to Closing. An estimated amount of inventory in production will be established and valued at Seller's cost plus [* * *].

4.4 At the Closing, the cost of inventory on hand (plus [* * *]) and the cost of the estimated inventory in production (plus [* * *]) will serve as the basis of payment pursuant to the promissory note described in paragraph *2.2(c)*.

4.5 As soon as practicable after the Closing Date, per agreement of the parties, the inventory on hand (not in production) will be shipped to Buyer on a carrier designated by Buyer, f.o.b. Seller's plant.

4.6 Within thirty (30) days after the Closing, as soon as practicable, Seller will gather up the inventory that was in production (possibly in three plants) and place it in a central location at Seller's plant. Seller and Buyer will count the inventory that was in production and will supervise the packaging and sealing of the cartons of such inventory, which will be valued at Seller's cost (plus [* * *]). The quantities established will not be subject to adjustment.

4.7 An adjustment between the estimated quantity of inventory that was in production given at the Closing by Seller, and the actual quantity of such inventory will be made, if required, and such adjustment in terms of costs will be reflected in a new promissory note to be executed by Buyer containing the same terms as set forth in *Exhibit 2.2(c)* (except for the adjustment in principal), which new promissory note shall bear interest at [* * *] from the Closing Date, and the original note will be destroyed.

4.8 The inventory in production will be shipped to Buyer as soon as practicable after packaging it, on a common carrier designated by Buyer, f.o.b. Seller's plant.

4.9 Buyer will, in its discretion, within forty-five days from the Closing Date, examine the valuation of the inventory at Seller's cost (plus [* * *]) to determine whether Seller accurately and consistently applied its standard costs to the inventory. Adjustments, if necessary, in terms of costs will be reflected in the new promissory note. The new promissory note will be substituted for the original promissory note as set forth in *Exhibit 2.2(c)* and delivered to Seller within sixty days after the Closing Date.

4.10 Seller will take reasonable steps to secure the inventory while it is in Seller's custody. The risk of loss shall pass from Seller to Buyer in accordance with the terms set forth in paragraph 11.14.

4.11 In the event Buyer and Seller do not agree on the quantity of the inventories or the consistency or accuracy of the application of the valuation of such inventories, then the issues involved in the dispute shall be referred to an auditor to be mutually agreed upon, and such auditor shall perform an independent review of the facts in order to resolve specific issues. The determination of such auditor shall be final with respect to the matters in dispute. All costs associated with such auditor shall be shared equally by Buyer and Seller.

4.12 Any payments received by Seller in error for pruchases made from Buyer by Buyer's customers after the Closing Date, will be endorsed over to Buyer or remitted to Buyer.

5. Representations and Warranties of Seller

5.1 *Organization.*—Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Kansas and has all necessary corporate power and authority to own, lease and operate its properties and to carry on its business and the business of the Product Lines as now being conducted. No party, other than Seller, has any right, title or interest, or to the knowledge of Seller, has asserted any such right, title, or interest, in and to the Product Lines.

5.2 *Authority.*—(a) At the Closing Seller will have the full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, and all proceedings required to be taken by Seller to authorize the execution, delivery and performance of this Agreement have been properly taken and this Agreement constitutes a valid and binding obligation of Seller enforceable in accordance with its terms. Other than an investigation of the Federal Trade Commission ("FTC") regarding the acquisition by The Bendix Corporation ("Bendix") of Seller's voting stock, which investigation may determine that Seller be required to dispose of the Product Lines that are the subject of this Agreement to a Buyer to be approved by the FTC (hereinafter referred to as the "FTC Investigation"), there is no litigation, proceeding, or investigation pending, or to the best of Seller's knowledge threatened, which questions the validity or enforceability of this Agreement or seeks to enjoin the consummation of any of the transactions contemplated hereby.

(b) Other than the FTC Investigation and agreements between the FTC, Bendix and/or Seller that may have been entered into pursuant to such investigation, neither the execution and delivery hereof, nor the consummation of the transactions contemplated hereby, nor compliance by Seller with any of the provisions hereof will (1) conflict with or result in a breach of or default under any of the terms, conditions or provisions of any agreement, instrument or obligation to which Seller is a party, related to the Product Lines, or by which it or its properties and assets may be bound or affected or (2) result in violation of any order, writ, injunction, decree, statute, rule or regulation applicable to Seller or the Product Lines.

5.3 *Inventories, etc.*—The inventories of Seller regarding the Product Lines on the Closing Date will consist of items of a quality and quantity usable and salable in the ordinary course of business as it was conducted by Seller during the past year. Such inventories have been valued at [* * *] in accordance with the normal inventory valuation practices of the Seller for the Product Lines. The market value of the tooling and test equipment, cumulatively to be conveyed herein equals or exceeds [* * *]. The value of the inventories to be conveyed to Buyer will exceed [* * *].

5.4 *Brokers and Finders.*—Seller has not retained any broker or finder or paid or agreed to pay any broker's or finder's fee or commission for or on account of the transactions contemplated by this Agreement.

5.5 *Manufacturing Capability.*—The assets of the Product Lines conveyed by Seller herein contain sufficient information, data and other assets for Seller to be able to manufacture the Products. Seller does not guarantee that Piece Parts conveyed herein (exclusive of the Kits) are sufficient to allow full assembly of individual Products.

5.6 *Gross Margin.*—The Gross Margin on Weather Radar Products, in accordance with Seller's standard accounting practices over the past year, on average, has not been less than [* * *], as reported in Seller's monthly Cost of Sales Reports.

5.7 *Product Values.*—Except as stated in this subparagraph Seller has no knowledge of any circumstances which would make the Product Lines obsolete or diminish the market for the Product Lines taken as a whole. The parties understand, however, that the KWX 56 Product may diminish the sales of the KWX 56 Product and the KGR 356 Product may diminish the sales of the KGR 356 Product, and the parties further understand that the markets may naturally diminish by virtue of Buyer being a new entrant into the marketplace.

5.8 *Disclosure.*—No representation or warranty by Seller in this Agreement, and no statement, certificate or other document furnished, or to be furnished, by or on behalf of Seller under this Agreement, and the Exhibits hereto, contains or will contain any untrue statement of material fact or intentionally omits any material fact necessary to make the statements contained herein or therein not misleading.

6. Representations and Warranties of Buyer

Buyer represents and warrants to Seller as follows:

6.1 *Organization.*—Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and has all necessary corporate power and authority to conduct its business as such business is now being conducted, and to own its property and the Product Lines.

6.2 *Authority.*—At the Closing Buyer will have full corporate power and authority to enter into this Agreement and carry out the transactions contemplated hereby; all proceedings required to be taken by it to authorize the execution, delivery and performance of this Agreement have been properly taken; and this Agreement constitutes a valid and binding obligation of Buyer enforceable in accordance with its terms.

6.3 *Brokers and Finders.*—Buyer has not retained any broker or finder or paid or agreed to pay any broker's or finder's fee or commission for or on account of the transactions contemplated by this Agreement.

6.4 *Litigation or Proceedings.*—(a) Other than the FTC investigation, there is no litigation, proceedings, or investigation pending, or to the best of Buyer's knowledge threatened, which questions the validity or endorsement of this Agreement or seeks to enjoin the consummation of any of the transactions contemplated hereby.

(b) Neither the execution and delivery hereof, nor the consummation of the transactions contemplated hereby, nor compliance by Buyer with any of the provisions hereof, will result in violation of any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer.

6.5 *Collateral.*—The collateral given to secure payment of sums due under paragraph 2.2 herein is valued at approximately $1,200,000.00, and other than Seller's lien to be placed thereon, is and will contain only one prior lien, to wit, a first mortgage held by The Crocker Bank in a sum not to exceed $650,000.00, there being sufficient remaining equity to secure payments under paragraph 2.2 herein. Buyer will offer to Seller a second mortgage on the collateral set forth in paragraph 11.3 to secure such payments.

6.6 *Disclosure.*—No representation or warranty by Buyer in this Agreement, and no statement, certificate or other document furnished or to be furnished by or on behalf of Buyer under this Agreement, and the Exhibits hereto, contains or will contain any untrue statement of material fact or intentionally omits any material fact necessary to make the statements contained herein or therein not misleading.

7. Conditions Precedent to Buyer's Performance

All obligations of Buyer to consummate the transactions as contemplated by this Agreement are subject to the fulfillment of each of the following conditions at or prior to Closing (unless waived in writing by Buyer):

7.1 All representations and warranties of Seller contained herein, and in any document delivered pursuant hereto, shall be true and correct in all material respects when made and as of the Closing.

7.2 All obligations required by the terms of this Agreement to be performed by Seller shall have been duly and properly performed in all material respects and Buyer shall have received a certificate, dated the Closing Date, signed by an officer of Seller to such effect.

7.3 Seller shall have delivered to Buyer a certified copy of a resolution adopted by the Board of Directors of Seller authorizing the execution, delivery and performance of this Agreement.

7.4 There shall have been no change in the Product Lines, except changes in the ordinary course of business none of which shall have been materially adverse to any Product.

7.5 There shall not have been any legal action or other proceedings brought by third parties to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or to obtain other relief in connection with this Agreement, or the transactions contemplated hereby, nor shall any such actions be pending or threatened.

7.6 The FTC shall have approved this transaction in a final order of a consent decree and shall have permitted the acquisition by Bendix of Seller's voting stock, or in the alternative, the FTC shall have affirmatively indicated that no consent decree is required.

7.7 The FTC shall have approved Buyer as a party to this transaction.

7.8 Buyer shall have received from counsel for Seller a written opinion dated as of the Closing Date, addressed to Buyer, in a form and substance to be mutually agreed upon by Buyer's and Seller's counsel.

8. Conditions Precedent to Seller's Performance

All obligations of Seller to consummate the transactions as contemplated by this Agreement are subject to the fulfillment of each of the following conditions at or prior to the Closing (unless waived in writing by Seller):

8.1 All representations and warranties of Buyer contained herein, and in any document delivered pursuant hereto, shall be true and correct in all material respects when made and as of the Closing.

8.2 All obligations required by the terms of this Agreement to be performed by Buyer shall have been duly and properly performed in all material respects and Seller shall have received a certificate, dated the Closing Date, signed by an officer of Buyer to such effect.

8.3 Buyer shall have delivered to Seller a certified copy of the resolution adopted by the Board of Directors of Buyer authorizing the execution, delivery and performance of this Agreement.

8.4 There shall not have been any legal action or other proceedings brought by third parties to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or to obtain other relief in connection with this Agreement, or the transactions contemplated hereby, nor shall any such actions be pending or threatened.

8.5 The FTC shall have approved this transaction in a final order of a consent decree and shall have permitted the acquisition by Bendix of Seller's voting stock, or in the alternative, the FTC shall have affirmatively indicated that no consent decree is required.

8.6 The FTC shall have approved Buyer as a party to this transaction.

8.7 Seller shall have received from counsel for Buyer a written opinion dated as of the Closing Date, addressed to Seller, in a form and substance to be mutually agreed upon by Buyer's and Seller's counsel.

9. Indemnification

9.1 *Seller's Indemnity.*—(a) Seller shall indemnify and hold harmless Buyer, for a period of one year from the Closing Date, against any damage, loss, cost, liability or expense (including reasonable attorneys' fees), which arise out of or result from (a) the incorrectness or breach of any of the representations or warranties of Seller contained in this Agreement, or given in writing on the Closing Date, and (b) the failure on the part of Seller to perform any covenants or agreements on its part to be performed.

(b) Buyer shall give Seller prompt written notice of any matter which may give rise to Buyer's right to indemnity hereunder. Such notice shall identify the nature of the matter and, if appropriate, the persons making the claim from which Buyer's rights to indemnity may arise. Prior to the settlement of any claim, or the defense of any litigation with a third party which may give rise to indemnity hereunder, Seller shall be given the opportunity to participate in negotiation and settlement discussions or assume the defense of such litigation, as the case may be. Any claim of indemnification made hereunder shall include a statement specifying the nature and amount of the damages, losses, costs, liabilities and expenses incurred by Buyer, for which indemnification is claimed hereunder.

9.2 *Buyer's Indemnity.*—(a) Buyer shall indemnify and hold harmless Seller, for a period of one year (except for the payments due under this Agreement, which period of indemnification shall be seven years) from the Closing Date, against any damage, loss, cost, liability or expense (including reasonable attorneys' fees), which arise out of or results from (a) the incorrectness or breach of any of the

representations or warranties of Buyer contained in this Agreement, or given in writing on the Closing Date, and (b) the failure on the part of the Buyer to perform any covenants or agreements on its part to be performed.

(b) Seller shall give Buyer prompt written notice of any matter which may give rise to Seller's right to indemnity hereunder. Such notice shall identify the nature of the matter and, if appropriate, the persons making the claim from which Seller's rights to indemnity may arise. Prior to the settlement of any claim or the defense of any litigation with a third party which may give rise to indemnity hereunder, Buyer shall be given the opportunity to participate in negotiation and settlement discussions or assume the defense of such litigation, as the case may be. Any claim of indemnification made hereunder shall include a statement specifying the nature and amount of the damages, losses, costs, liabilities and expenses incurred by Seller, its successors or assigns, for which indemnification is claimed hereunder.

10. Nature and Survival of Representations and Warranties

All statements contained in this Agreement and in any certificate, instrument, or document delivered by or on behalf of either of the parties pursuant hereto shall be deemed representations and warranties by the respective parties hereunder. All representations and warranties made hereunder shall survive the Closing for a period of one year from the Closing Date.

11. General Provisions

11.1 *Guarantees.*—At the Closing, Buyer shall have obtained and delivered to Seller, a Guarantee by Edward M. Zimmer, Jr., in his personal capacity, and not as an officer of Narco, that Edward M. Zimmer, Jr. shall be and remain primarily liable as a guarantor of any payments due Seller under this Agreement. Such Guarantee shall be in the form annexed to the promissory notes.

11.2 *Accelerated Schedule.*—On a best efforts basis, Seller, on the signing of this Agreement up to the Closing Date, shall accelerate its schedule of manufacturing Products and Kits to a reasonable rate as determined by Seller in excess of its current rate of production.

11.3 *Collateral.*—Buyer shall offer the following collateral as security to secure all sums due Seller under the promissory note set forth in paragraph 2.2(c), and shall execute at the Closing all documents reasonably required by Seller to enable Seller to perfect its security interest in the collateral.

Collateral: A commercial building owned by Edward M. Zimmer, Jr., Trust, located on Monroe Avenue, Houston, Texas valued at approximately $1.2 million, the appraisal to be supplied at Closing.

11.4 *Allocation of Payments.*—Seller and Buyer agree that the purchase price shall be allocated in accordance with *Exhibit 11.4.*

11.5 *Product Support, Product Liability.*—(a) Buyer shall be responsible for supporting all Products and spare parts sold by it to Buyer's customers, including repairs to Products and spare parts, whether or not under warranty, and shall be responsible for and, upon the Closing, automatically assume the costs and expenses, including expenses affiliated with the defense of lawsuits and claims, that arise in connection with Products and spare parts sold by Buyer to its customers.

(b) Seller shall be responsible for supporting all Products and spare parts sold by it to Seller's customers, including repairs to Products and spare parts, whether or not under warranty, and shall be responsible for and, upon the Closing, automatically assume the costs and expenses, including expenses affiliated with the defense of lawsuits and claims, that arise in connection with Products and spare parts sold by Seller to its customers. Sales of Products and spare parts by Seller to Buyer, in connection with this transaction shall not be deemed a sale to Seller's "customer", and accordingly, Buyer and not Seller shall be responsible for and, upon the Closing, shall automatically assume the Product support, repairs, costs, and expenses, including the expenses affiliated with lawsuits and claims, that arise in connection with Products and spare parts, if any, sold by Seller to Buyer as part of this transaction. Sales of Products from Seller to Buyer as part of this transaction shall be serialized and identified at the Closing in *Exhibit 11.5(b).* Anything to the contrary notwithstanding, after consummation of this transaction, in the event Seller purchases Products or spare parts from Buyer to support Seller's Products in the field, or for systems installations, Buyer shall extend to Seller the same warranty it offers to its other customers.

11.7 *Technical Assistance.*—Seller shall assist Buyer in the start-up and manufacturing process of the Product Lines by making personnel available to train and educate employees of Buyer in all facets of the start-up, manufacture, production and repair of the Products and the transfer of Seller's research and development concerning the Products. The individual employees of Seller and the number of such employees made available for such technical assistance shall be determined by the Seller. A single technical coordinator shall be named by Seller to serve as the focal point for such technical assistance. Such technical assistance shall be made available, as may be required by Buyer, for a period of [* * *] following the Closing (but may be extended by mutual consent of the parties). Such technical assistance for [* * *] following the Closing shall be made available as part of the purchase price and is valued by the parties at [* * *]. Any technical assistance rendered by Seller to Buyer, per agreement of the parties, after such [* * *] period shall be paid for by Buyer on a time and material basis, for the costs incurred by Seller, [* * *] for each labor hour expended by Seller's personnel in rendering technical assistance. In addition, for technical assistance rendered after the [* * *] the Buyer shall pay to Seller the cost of material paid for or expended by Seller [* * *] related to the technical assistance. Such technical assistance may be rendered at Seller's or Buyer's plant or at other places to be mutually agreed upon. Buyer shall pay all reasonable costs expended for transportation, lodging and subsistence of Buyer's and Seller's personnel involved in the technical assistance program when travel away from home is required. Seller shall invoice Buyer for such technical assistance, costs and expenses and such invoices shall be due and payable within thirty days after receipt thereof.

11.8 [* * *]

11.9 *Sale Made "As Is, Where Is".*—The sale of the Product Lines is made on an "as is, where is" basis which shall be reflected in the Assignment and Bill of Sale.

11.10 *"King" Name.*—(a) The Buyer shall not utilize the "King" name and logo in the manufacture, marketing, distribution and sale of products, except to indicate in its advertising literature and brochures, for a period not to exceed three years from the Closing Date, that the Products were "formerly manufactured by King Radio Corporation". Buyer shall have the exclusive use of the nomenclature KWX 56, KWX 58, KGR 356, KGR 358, KA 126, KI 244 and KI 248 for the Product Lines acquired hereunder. All tooling shall be modified by Buyer to remove the King name and logo, and such name and logo shall be removed by Buyer from all Products and Piece Parts manufactured

by Buyer. With respect to Products manufactured by Seller and sold to Buyer, as part of this transaction for subsequent resale to Buyer's customers, Buyer shall place a permanently affixed label on such products indicating that they were sold by Buyer.

(b) The "King" name and logo shall not be placed on the front panel of Airborne Weather Detection Systems for a period of seven years from the Closing Date. Anything to the contrary notwithstanding, Seller will be permitted to advertise "Bendix" weather radar equipment together and in connection with Seller's non-weather radar equipment, provided further that Seller will not identify "King" as the source of manufacture of any weather radar except as required by law.

11.11 *Further Assurances and Cooperation.*—In connection with the transactions contemplated by this Agreement, the parties agree to execute such additional documents and papers, and perform and do such additional acts and things as may be reasonably necessary or proper to effectuate and carry out all of the provisions and the intent of this Agreement.

11.12 *Notices.*—All notices to be given by either party to this Agreement to the other party hereto shall be in writing and shall be given in person or by depositing such notice in the United States mail, registered or certified, postage prepaid addressed as follows (unless either party designates a different address in writing to the other party for communicating notices):

To Buyer: Narco Avionics, Inc., 270 Commerce Drive, Fort Washington, PA 19304, Attention: President

With a carbon copy to: Edward M. Zimmer, Jr., Post Office Box 277, Laguna Beach, CA 92652

To Seller: King Radio Corporation, 400 North Rodgers Road, Olathe, KS 66062, Attention: President

With a carbon copy to: Allied Bendix Aerospace, 1000 Wilson Boulevard, Arlington, VA 22209, Attention: General Counsel.

11.13 *Payment of Expenses, Taxes and Closing Costs.*—Each of the parties shall pay all costs and expenses incurred or to be incurred by it in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated hereby. All sales taxes and like taxes payable in connection with the sale, conveyances, assignments, transfers and deliveries to be made to Buyer hereunder, shall be borne by the Buyer.

11.14 *Deliveries and Risk of Loss.*—The Product Lines to be conveyed by Seller to Buyer pursuant to the Agreement shall be delivered f.o.b. Seller's factory, 400 North Rodgers Road, Olathe, Kansas to Buyer, or to a private or common carrier acceptable to Buyer, for delivery to premises designated by Buyer, as soon after the Closing as practicable. Irrespective of the date upon which such Product Lines are delivered to Buyer, or to a private or common carrier, and notwithstanding any agreement, express or implied, that Seller and Buyer may enter into for Seller to hold or store such Product Lines on a temporary basis for Buyer after the Closing, the risk of loss, damage or destruction of such Product Lines shall pass from Seller to Buyer on the Closing Date, immediately after consummation of such Closing.

11.15 *Announcements.*—No public or other announcement, including any press releases regarding this Agreement, or the transactions contemplated hereby, shall be made by either Seller or Buyer without advance notice to and prior approval by the other party which notice shall include the text of such announcement or release.

11.16 *Entire Agreement.*—This writing constitutes the entire Agreement of the parties with respect to the subject matter hereof and may not be modified, amended or terminated except by a written agreement specifically referring to this Agreement and signed by the parties hereto.

11.17 *Waiver.*—No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

11.18 *Successors and Assigns.*—This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and their successors and assigns.

11.19 *Severability.*—If any clause or provision of this Agreement shall be held invalid or unenforceable by the final determination of a court of competent jurisdiction, and all appeals therefrom shall have failed or the time for such appeals shall have expired, such clause or provisions shall be deemed eliminated from this Agreement but the remaining provisions shall nevertheless be given full force and effect.

11.20 *Captions.*—The paragraph headings contained herein are for the purpose of convenience and are not intended to define or limit the contents of said paragraphs.

11.21 *Choice of Law.*—This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Kansas.

In witness whereof, the parties have duly executed this Agreement as of the day, month and year first above written.

King Radio Corporation.
Louis J. Giuliano,
Vice President & Group Exe. Bendix Aerospace Sector.

Narco Avionics, Inc.
Edward M. Zimmer, Jr.,
President.

Radar Tooling

[This is confidential material]

Exhibit 1(b)

Assignment

Exhibit 1(c)

Whereas, King Radio Corporation, a Kansas corporation, located at 400 North Rodgers Road, Olathe, Kansas, hereinafter "Assignor," is sole owner of and desires to formally assign to Assignee the U.S. Letters Patent and Patent Application listed below; and having conveyed certain tooling in an Assignment and Bill of Sale dated, ————, to Assignee; and

Whereas, Narco Avionics, Inc., a Delaware corporation located at 270 Commerce Drive, Fort Washington, Pennsylvania 19034, hereinafter "Assignee", desires to acquire the entire right, title and interest in and to said U.S. Letters Patent and Patent Application, subject to the grant to the Assignor of certain license rights therein; and desires to acquire the right, title and interest to tooling set forth in an Assignment and Bill of Sale dated ———— from Assignor to Assignee, subject to the grant, to the Assignor of certain license rights in such tooling;

UNITED STATES PATENT

Patent No.	Issue date	Title	Inventor
3973145	Aug. 3, 1976	Weather Radar Transistorized Pulse Modulator	Jerry C. Schmitt, Terry K. Michie.

UNITED STATES PATENT APPLICATION

Serial No.	Filing date	Title	Inventor
412910	Aug. 30, 1982	Apparatus and Method for the Correction of Attenuation Induced Errors in a Weather Radar Receiver.	James Lyall.

Now, therefore, this deed witnesseth: that for and in consideration of One Dollar ($1.00) to Assignor in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, that Assignor has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over unto the said Assignee, the entire right, title and interest in and to said U.S. Letters Patent and Patent Application, and any reissues or extensions thereof, together with all rights to recover for past infringements thereof, subject to the grant to the Assignor of a non-exclusive, irrevocable, royalty-free, license, with rights to sublicense, to make, have made, use and sell Piece Parts under said U.S. Letters Patent and Patent Application and any reissues or extensions thereof, for the life of the patent and any patent issued under the Patent Application listed herein, the same to be held and enjoyed by Assignee, for its own use and benefit and for the use and benefit of its successors, assigns and legal representatives, subject to the license granted herein.

Furthermore, Assignee grants to Assignor the license and right to use tooling in the custody of vendors to make, have made, use and sell for itself and its successors and assigns, certain Piece Parts from said tooling in the custody of vendors, for the life of such tooling, which tooling was conveyed to Assignee pursuant to an Assignment and Bill of Sale dated ————, from Assignor to Assignee.

In witness whereof, the Assignor and Assignee hereunto set their respective hands and affixed their respective seals, this ——— day of ———, 1985, by their duly authorized representatives.

Attest:

———

Title:

(Seal)

King Radio Corporation, Assignor

By: ———

Title: ———

Attest:

———

Title:

(Seal)

Narco Avionics, Inc., Assignee

By: ———

Title: ———

Attestation for Assignor

County of ———

State of ———

On this ——— day of ———, 1985, before me personally appeared ————, to me personally known, who being by me duly sworn, did say that he is ———— of King Radio Corporation, the Assignor above-named and acknowledged that he executed the foregoing instrument on behalf of said Assignor and pursuant to authority duly received.

———

Notary Public

My Commission Expires: ———

(Seal)

Attestation for Assignee

County of ———

State of ———

On this ——— day of ———, 1985, before me personally appeared ————, to me personally known, who being by me duly sworn, did say that he is ———— of Narco Avionics, Inc., the Assignee above-named and acknowledged that he executed the foregoing instrument on behalf of said Assignee and pursuant to authority duly received.

———

Notary Public

My Commission Expires: ———

(Seal)

Promissory Note

Exhibit 2.2(c)

$ ———

Date: ————

For value received, the undersigned, Narco Avionics, Inc., a Delaware corporation, ("Narco") promises to pay to the order of King Radio Corporation, a Kansas corporation, ("King") the principal sum of $——— payable with interest as hereinafter provided at the offices of King Radio Corporation, 400 North Rodgers Road, Olathe, Kansas 66062, Attention: Chief Financial Officer, or at such other place as the holder may designate in writing. The principal of this Note is payable in ——— equal installments of [* * *] and one final installment of the principal balance due, with such installment payments commencing on the ninetieth (90th) day from the date hereof, and each following installment due ninety (90) days following the previous payment date, until fully paid.

Interest on the unpaid principal balance of this Note shall accrue from the date hereof at the rate of [* * *] percent per annum. Accrued interest shall be payable from time to time on the dates for payments of installments of principal as herein provided. The undersigned shall have the right to prepay all or any part of this Note without penalty.

Any amounts not paid as herein provided shall bear interest at the rate of [* * *] percent per annum. Default in the payment of any part of the principal or interest, when due, shall, at the option of the holder hereof, at once mature the whole of the principal and interest due under this Note, without notice to the maker, endorsors, or guarantors, if any.

It is expressly agreed that if suit is brought on this Note, or if collected through bankruptcy, insolvency, or other judicial proceedings, the holder hereof shall be entitled to recover all reasonable expenses incurred in connection with such collection, suit or proceedings, including reasonable attorney's fees and legal expenses.

The undersigned and all endorsers and guarantors hereby waive presentation for payments, notice of payment extensions, protest, notice of protest, and diligence in bringing suit against any maker, endorser or guarantor, hereof. The endorsers shall also waive notice of default and nonpayment, but Narco and any guarantors shall be entitled to a notice of default and nonpayment, in writing, and shall have ten (10) days from the receipt of such notice to cure the default and nonpayment.

Narco Avionics, Inc.

By ———

Authorized Officer.

Guarantee

The undersigned, Edward M. Zimmer, Jr., in his personal capacity, and not as an officer of the maker of the above Note, shall be primarily liable for payments due under the above Note, and hereby guarantees to the holder of the above Note, prompt payment of all sums which shall become due to the holder pursuant to the foregoing Promissory Note whether or not extended by the parties to the above Note, and hereby waives, with respect to the above Note, notice of payment extensions, protest, notice of protest, and diligence in bringing any suit against any maker, endorser or guarantor of the above Note, and further

agrees to remain primarily liable in the event the terms of payment of principal or interest are extended under the Note. Edward M. Zimmer, Jr. shall be entitled to notice of default and nonpayment in writing and shall have ten (10) days from receipt of such notice to cure such default and nonpoyment.

Edward M. Zimmer, Jr.,
Individually.

Promissory Note

Exhibit 2.3(a)

[* * *]
Date: ————

For value received, the undersigned, Narco Avionics, Inc., a Delaware corporation, ("Narco") promises to pay to the order of King Radio Corporation, a Kansas corporation, ("King") the principal sum of [* * *] payable with interest as hereinafter provided at the offices of King Radio Corporation, 400 North Rodgers Road, Olathe, Kansas 66062, Attention: Chief Financial Officer, or at such other place as the holder may designate in writing. The principal of this Note is payable in 27 equal installments of [* * *] each, and one final installment of [* * *] with such installment payments commencing on the ninetieth (90th) day from the date following the final payment due under a promissory note of same date as herein from Narco to King given pursuant to an Agreement of Purchase and Sale dated ————, and each following installment due ninety (90) days following the previous payment date, until fully paid.

Interest on the unpaid principal balance of this Note shall accrue from the date hereof at the rate of [* * *] percent per annum. Accrued interest shall be payable from time to time on the dates for payments of installments of principal as herein provided. The undersigned shall have no right to prepay all or any part of this Note without the written consent of King.

Any amounts not paid as herein provided shall bear interest at the rate of [* * *] percent per annum.

It is expressly agreed that if suit is brought on this Note, or if collected through bankruptcy, insolvency, or other judicial proceedings, the holder hereof shall be entitled to recover all reasonable expenses incurred in connection with such collection, suit or proceedings, including reasonable attorney's fees and legal expenses.

The undersigned and all endorsers and guarantors hereby waive presentation for payments, notice of payment extensions, protest, notice of protest, and diligence in bringing suit against any maker, endorser or guarantor, hereof. The endorsers shall also waive notice of default and nonpayment, but Narco and any guarantors shall be entitled to a notice of default and nonpayment, in writing, and shall have ten (10) days from the receipt of such notice to cure the default and nonpayment.

Narco Avionics, Inc.

By ————————————
Authorized Officer.

Guarantee

The undersigned, Edward M. Zimmer, Jr., in his personal capacity, and not as an officer of the maker of the above Note, shall be primarily liable for payments due under the above Note, and hereby guarantees to the holder of the above Note, prompt payment of all sums which shall become due to the holder pursuant to the foregoing Promissory Note whether or not extended by the parties to the above Note, and hereby waives, with respect to the above Note, notice of payment extensions, protest, notice of protest, and diligence in bringing any suit against any maker, endorser or guarantor of the above Note, and further agrees to remain primarily liable in the event the terms of payment of principal or interest are extended under the Note. Edward M. Zimmer, Jr., shall be entitled to notice of default and nonpayment in writing and shall have ten (10) days from receipt of such notice to cure such default and nonpayment.

Edward M. Zimmer, Jr.,
Individually.

Assignment and Bill of Sale

Exhibit 3.2

Know All Men by these Presents:

That, King Radio Corporation, a Kansas corporation ("Transferor"), for good and valuable consideration paid to Transferor by Narco Avionics, Inc., a Delaware corporation ("Transferee"), receipt of which is hereby acknowledged, and in accordance with the terms of an Agreement of Purchase and Sale, dated as of ————, 1985 between Transferor and Transferee (the "Purchase Agreement"), by these presents does hereby sell, convey, transfer and assign unto Transferee, its successors and assigns, the following assets of Transferor on an "as is, where is" basis:

(a) *Inventories.* Inventories, including Piece Parts, Work-In-Process, Finished Goods and Kits set forth in an inventory list annexed hereto, subject to adjustment within thirty (30) days after the Closing Date in accordance with an Agreement of Purchase and Sale dated ————, between Transferor and Transferee.

(b) *Tooling and Test Equipment.* Tooling, and test equipment including fixtures thereof, as set forth in *Exhibit 1(b)* annexed hereto, subject to a license and right by Transferor to make, use and have made Piece Parts utilizing the tooling in the custody of vendors, for the life of such tooling.

(c) *Industrial Property Rights.* All know-how, and trade secrets, if any, solely dedicated to the Product Lines, and one patent (no. 3973145), one patent application (no. 412913) pursuant to an Assignment of such patent and patent application (subject to a license to Seller) set forth in *Exhibit 1(c)* annexed hereto.

(d) *Documents, Lists and Design Data.* All engineering and design drawings in reproducible form, including processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and borchures solely dedicated to the Product Lines; vendor and distribution lists; applicable documentation for software contained or related to the manufacture of the Weather Radar Products; documentation as it exists related to a new antenna/receiver/transmitter unit that is in the [* * *] developmental stage; documentation related to a design for a test adapter to enable testing the Graphics Interface Products utilizing [designated equipment], other design and development studies and documentation related to the Products; studies, documentation, inventory, models and all other data related to weather radar units under development if any, including but not limited to the KWX 57 and KWX 460 projects; and documentation related to a sales history and marketing of the Product Lines to the extent that such documentation is separable from other confidential information not related to the Product Lines.

(e) *Purchase Orders and Contracts.* All purchase orders for Piece Parts and all contracts for the sale of Products as set forth in *Exhibit 1(e)* annexed hereto.

To have and to hold the same to Transferee, its successors and assigns, forever.

1. Transferor does for itself and for its successors and assigns, convenant to Transferee, its successors and assigns that Transferor is the sole owner of all of the assets which are to be sold and conveyed to Transferee hereunder and Transferor has all necessary power and authority to sell and convey such assets to Transferee, and that such assets are free and clear of all mortgages, liens,

and encumbrances of any nature which are not of record.

2. Transferor agrees that, at any time and from time to time after the date hereof, it will, upon the request of Transferee, execute and deliver all such further documents and take all such further action as may be required for the better conveyance, transfer and assignment of the assets, properties and rights intended to be conveyed, transferred and assigned hereby.

3. This instrument and the covenants and agreements contained herein shall be binding upon Transferor, its successors and assigns and shall inure to the benefit of Transferee, its successors and assigns.

In witness whereof, King Radio Corporation has executed this instrument in its corporate name by its duly authorized officer as of ————————, 1985.

Seal.

King Radio Corporation.

By ————————————

Purchase Price Allocation [This is Confidential Material]

Exhibit 11.4

Emily H. Rock,
Secretary.

[FR Doc. 85-16605 Filed 7-11-85; 8:45 am]
BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-22209]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its Rules of Practice to delegate authority to the Director of the Division of Market Regulation to grant exemptions from Rule 3b-9 under the Securities Exchange Act of 1934 pursuant to paragraph (c) of that Rule.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: Edward L. Pittman, Esq., (202-272-2848), Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced an amendment to its Rules of Practice governing delegation of authority to the Director of the Division of Market Regulation (17 CFR 200.30-3). The amendment authorizes the Director of the Division of Market Regulation to grant exemptions where appropriate pursuant to new Rule 3b-9(c) under the Securities Exchange Act of 1934, which the Commission adopted on July 1, 1985.[1]

Rule 3b-9, which will become effective on January 1, 1986, requires banks that engage in certain securities activities to conduct these activities through registered broker-dealers. Paragraph (c) of the Rule provides that the Commission, upon written request or on its own motion, may exempt banks either unconditionally or on specific terms and conditions where the Commission determines that the bank's activities are not within the intended meaning and purpose of the Rule. The Commission believes that it would facilitate the timely and efficient review of many exemptive requests if the authority to grant exemptions from Rule 3b-9 were delegated to the Director of the Division of Market Regulation.[2] Moreover, the Commission finds that there will be no burden on competition imposed by the amendment not necessary or appropriate in furtherance of the Act. The Commission also finds that the foregoing action relates solely to agency management and personnel, and accordingly, that notice and prior publication for comment under the Administrative Procedure Act (5 U.S.C. 553) are not necessary. This action, taken pursuant to 15 U.S.C. 78d-1, as amended, becomes effective on publication in the **Federal Register.**

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

The Securities and Exchange Commission, pursuant to the Act, and particularly sections 2, 3, 15 and 23 thereof (15 U.S.C. 78b, 78c, 78o and 78w), and the Delegation of Functions Act, 15 U.S.C. 78d-1, hereby adopts an amendment to § 200.30-3(a).

Text of Amendment

The Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

[1] Securities Exchange Act Release No. 34-22205 (July 1, 1985).

[2] The staff will process requests for exemptive relief before the effective date of the Rule.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read in part as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11 * * *.

2. By adding paragraph (a)(45) to § 200.30-3 to read as follows:

§ 200.30-3 Delegation of Authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(45) To grant exemptions from Rule 3b-9 under the Act. (§ 240.3b-9(c) of this chapter).

By the Commission.

Dated: July 2, 1985.

John Wheeler,
Secretary.

[FR Doc. 85-16396 Filed 7-11-85; 8:45 am]
BILLING CODE 8010-01-M

17 CFR Part 240

[Release No. 34-22205; File No. S7-1000]

Applicability of Broker-Dealer Registration to Banks

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting Rule 3b-9 under the Securities Exchange Act of 1934 ("Exchange Act"). The Rule requires a bank to conduct certain securities activities through a broker-dealer registered under the Exchange Act. These activities are (1) public solicitation of brokerage business for transaction-related compensation, (2) receipt of transaction-related compensation for providing brokerage services for trust, managing agency or other accounts to which the bank provides advice or (3) dealing in or underwriting securities. The Rule also contains several exceptions for banks that conduct only limited securities activities. The Commission believes that Rule 3b-9 is necessary to assure investor protection and to satisfy other regulatory concerns raised by the recent expansion of bank securities activities.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Chamberlin, Esq., Chief Counsel, (202) 272-2844; Colleen Curran Harvey, Esq., Deputy Chief Counsel, (202) 272-2848; or Amy Natterson Kroll, Esq.,

Attorney-Advisor, (202) 272-2048, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission today announced the adoption of Rule 3b-9 (17 CFR 240.3b-9) under the Exchange Act.[1] The Rule was published for comment in November, 1983.[2] In some respects, the Rule has been adopted substantially as proposed. In response to comments received on the proposal, however, several new exceptions and additional modifications have been included in the final Rule.

As adopted, the Rule provides that the term "bank" as used in the definitions of "broker" and "dealer" in sections 3(a)(4) and 3(a)(5) of the Exchange Act does not include a bank which (1) publicly solicits brokerage business for transaction-related compensation, (2) received transaction-related compensation for providing brokerage services for trust, managing agency or other accounts to which the bank provides advices, or (3) deals in or underwrites securities.[3] A major exception to Rule 3b-9 will be for a bank which enters into arrangements with a registered broker-dealer pursuant to which the broker-dealer will provide brokerage services. As discussed more fully below, the Rule will permit banks to engage in so-called "networking" arrangements with a registered broker-dealers without themselves registering as broker-dealers (or registering an affiliate or subsidiary). The permissible scope of such arrangements has been the subject of numerous no-action letters issued to various savings and loan associations by the staff of the Commission's Division of Market Regulation.[4]

The other exceptions to the Rule are for banks that (1) effect transactions in exempted securities or municipal securities as defined in the Act or in commercial paper, bankers' acceptances or commercial bills, (2) effect no more than 1,000 transactions each year in securities other than exempted or municipal securities or commercial paper, bankers' acceptances or commercial bills, (3) effect transactions for the investment portfolio of affiliated companies, (4) effect transactions as part of a program for the investment or reinvestment of bank deposit account funds into certain investment companies registered pursuant to the Investment Company Act of 1940, (5) effect transactions as part of a variety of employee and shareholder plans, (6) effect transactions pursuant to sections 3(b), 4(2) or 4(6) of the Securities Act of 1933 and rules and regulations thereunder, or (7) are subject to Section 15(e) of the Exchange Act. In addition, the Rule provides that the Commission may exempt a bank, either unconditionally or on specific terms and conditions, if the Commission determines that the bank's activities are not within the intended meaning and purpose of the Rule.

II. Background

In 1977, the Commission submitted its reports on bank securities activities to Congress.[5] In those reports, the Commission recognized that banks were providing brokerage services and engaging in other securities activities. The Commission refrained, however, from taking the position at that time that banks should be required to register as broker-dealers, but explicitly stated that changes in the markets might affect the conclusions expressed in the Bank Study.[6] The Commission noted in the Bank Study that banks handled a relatively low average number of orders and that banks did not engage in any substantial advertising effort to solicit customers from the general public.[7]

Bank brokerage activites and related promotional efforts have changed substantially since 1977. Orders are taken and forwarded by bank employees to clearing brokers for execution in exchange for part of the commission paid by the customer. Members of the public are solicited through extensive and aggressive advertising campaigns to become "brokerage" customers of the bank. Rather than merely providing accommodation services to existing customers, the services now promoted by banks, particularly those for which banks receive transaction-related compensation, are functionally indistinguishable from those offered by registered broker-dealers. Moreover, the number of banks engaging in these securities activities has increased substantially. Sixty-one of the hundred and eighty-six banks commenting on proposed Rule 3b-9 indicated that they engaged in securities brokerage to some extent. Moreover, the American Bankers Association estimated in excess of 1,000 banks were engaged in securities activities.[8]

Over the past few years, the banking regulators have approved proposals permitting banks to engage in securities activities through registered broker-dealer affiliates or subsidiaries. For example, 1983, the Board of Governors of the Federal Reserve System ("Board") amended its Regulation Y to include discount securities brokerage and securities credit lending as permissible nonbank activities for bank holding companies.[9] This action followed its approval of the application of BankAmerica Corporation to acquire Charles Schwab Corporation.[10] The Commission did not object to either of these actions by the Board to the extent they permitted a bank holding company or its nonbank subsidiary to engage in discount brokerage activities as a broker-dealer registered with the Commission fully subject to the federal securities laws.[11]

The Office of the Comptroller of the Currency ("OCC") has also approved the creation of registered broker-dealer subsidiaries of national banks.[12] In addition, the OCC proposed a rule in April 1984 that would require national banks to place certain securities brokerage activities in subsidiaries.[13]

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[1] 15 U.S.C. 78 *et seq.*

[2] Securities Exchange Act Release No. 20357 (November 8, 1983) 48 FR 51630 (November 15, 1983).

[3] The Commission expresses no opinion as to the legality of these activities under the Glass-Steagall Act or other banking laws. *See, e.g.*, 12 U.S.C. 24, 78, 377, and 378.

[4] See text and nn. 32-38, *infra*.

[5] Reports on Bank Securities Activities (1977) ("Bank Study"). The Commission submitted an Initial Report on January 3, 1977, a Second Report on February 3, 1977, and a Final Report on June 30, 1977.

[6] Bank Study, Final Report at 43.

[7] *Id.* at 21.

[8] *See* comment letter of the American Bankers Association (December 19, 1983).

[9] 12 CFR 225.25(b)(15) (1984).

[10] *Order of the Federal Reserve System Approving the Acquisition of Charles Schwab & Co., Inc., by BankAmerica Corporation*, 69 Fed. Res. Bull. 105 (1983). The Board's action was challenged by the Securities Industry Association and was ultimately upheld under banking law by the Supreme Court. *Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 104 S. Ct. 3003 (1984).

[11] Letters dated May 13, 1982 and April 11, 1983 from George A. Fitzsimmons, Secretary, Securities and Exchange Commission, to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System.

[12] *See, e.g., Decision of the Comptroller of the Currency Establishing an Operating Subsidiary to be Known as Security Pacific Discount Brokerage Services, Inc.* [1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶99,284 (August 26, 1982). The Comptroller's decision was upheld by the District Court for the District of Columbia. *Securities Industry Association* v. *Comptroller of the Currency*, 577 F. Supp. 252 (D.D.C. 1983).

[13] Notice of Proposed Rulemaking, 49 FR 15,089 (April 17, 1984) (to be codified at 12 CFR 5.52 and 12.6). The OCC's proposal generally would require securities brokerage activities to be conducted in a subsidiary if the bank publicly solicits such

Continued

The subsidiaries would have to register with the Commission as broker-dealers. The OCC's proposal is similar to, but narrower than, Rule 3b–9. In its comment letter, the Commission was generally supportive of the OCC's proposal, but stated that it did not go far enough to achieve the goal of functional regulations because, among other things, it would permit substantial brokerage activities to be conducted from within the bank.[14]

In addition, the FDIC has announced that insured, nonmember banks may acquire or establish securities subsidiaries to engage in the underwriting of and dealing in certain securities.[15] The FDIC has adopted a rule which limits, however, certain aspects of permissible underwriting and dealing activities.[16] In addition, the FDIC has condoned internal brokerage activity in insured, nonmember banks.[17]

III. Determination to Adopt Rule 3b–9

The Commission received 272 comment letters on proposed Rule 3b–9. Over 200 of those letters were submitted by members of the banking industry who, quite uniformly, were critical of the Rule for a variety of reasons. The Rule generally was supported by members of the securities industry. The commentators who opposed the Rule argued that it is unnecessary in light of the lack of demonstrated abuses in the area of bank securities activities, overly broad, and would duplicate regulation by the banking authorities. Many of these commentators questioned the Commission's legal authority to adopt the Rule.[18]

The Commission believes that, consistent with the statutory objective of ensuring fair competition among securities participants, all institutions providing brokerage services should be subject to the same regulatory scheme that the Congress set up for broker-dealers and charged the Commission with administering.[19] The Commission also believes that without Rule 3b–9, the increase in bank securities activities raises substantial investor protection concerns.

The federal securities laws as administered by the Commission provide for a comprehensive and coordinated system of regulation of securities activities specifically and uniquely designed to assure the protection fo investors through full disclosure concerning securities sold and the prevention of unfair and inequitable practices in the securities markets. The securities laws are also designed to assure fair competition among all participants in the securities markets. Broker-dealer registration is an important element of this regulatory system. Absent broker-dealer registration, bank securities activities are regulated under federal banking law, which has as its primary purposes the protection of depositors and the preservation of the financial soundness of the banks. Thus, such bank regulation would take place outside of the coordinated system of securities regulation and lead to regulatory disparities.

In its Bank Study, the Commission identified a number of areas where bank regulation of securities activities differed from regulation of the same activities performed by registered broker-dealers. Although the federal banking agencies adopted some of the Commission's recommendations to address these differences, there continues to exist a disparity in the regulation of functionally equivalent activities performed by banks and broker-dealers.

For example, all persons associated with a broker-dealer (other than employees with purely clerical and ministerial duties) are required to pass a qualifications examination covering substantive aspects of the securities business in order to become licensed to sell securities.[20] The self-regulatory organizations also require that persons involved in the management of the broker-dealer pass additional examinations relating to supervisory

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activities and either made margin loans or held customer securities, or received a transaction-related fee for brokerage activities conducted on behalf of any trust, managing agency or other accounts to which the bank provides investment advice.

[14] *See* letter dated December 20, 1984, from John Wheeler, Secretary, Securities and Exchange Commission, to Ms. Lynnette Carey, Office of the Comptroller of the Currency.

[15] *See* Statement of Policy on Applicability of Glass-Steagall Act to Securities Activities of Subsidiaries of Insured Nonmember Banks, 47 FR 38984 (September 3, 1982).

[16] *See* Unsafe and Unsound Banking Practices, 49 FR 46709 (to be codified at 12 CFR Part 337) (1984). This rule permits acquisition or establishment of a bona fide securities subsidiary, but limits the securities in which the subsidiary may do business. A bona fide subsidiary could underwrite any security in the top four rating categories including debt and equity (both common and marketable preferred), and investment companies meeting certain conditions. The rule places several restrictions on the relationship between the bank, the issuer and the bona fide subsidiary. For example, the rule limits extensions of credit by the bank to its securities subsidiary. The rule also prohibits the insured nonmember bank from purchasing in a fiduciary capacity any security currently distributed, underwritten or issued by the subsidiary unless expressly authorized to do so by the trust documents, court order, local law or all beneficiaries, the purchase is consistent with the fiduciary obligation, or the purchase is permissible under state or federal statute or regulation. The rule also prohibits business transactions between the insured nonmember bank's trust department and its subsidiary unless the transactions are on terms comparable to transactions with an unaffiliated securities company. The rule does allow an insured nonmember bank to affiliate with a securities company which deals in or underwrites securities as long as the bank's operations are physically separate from the affiliate's, there is no overlap of officers, name or logo, no joint employee of the bank and affiliate conducts securities activities on the bank's premises which involve customer contact, customers are informed of the separateness of the affiliate, and investments the affiliate recommends, offers or sells are not FDIC or bank guaranteed nor are they obligations of the bank. The rule was recently upheld in *Investment Company Institute* v. *Federal Deposit Insurance Corporation* [Current Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 92,066 (April 29, 1985).

[17] *See* General Counsel's Opinion No. 6—The Legality of Discount Brokerage Services When Offered By Insured Nonmember Banks, 48 FR 22950 (May 23, 1983). *See also* Notice of Proposed Rulemaking, Powers Inconsistent with the Purposes of Federal Deposit Insurance Law, 49 FR 48552 (to be codified at 12 CFR Part 332) (December 13, 1984), which would generally have restricted the manner in which an insured, nonmember bank could provide brokerage services in four ways. First, the bank would only have been permitted to extend credit for securities purchases if the terms and conditions of the extension of credit were consistent with safe and sound banking practice. Second, any compensation received by bank directors, officers or employees acting as broker would have to have been remitted to the bank. Third, the bank would have been required to make customers availing themselves of the brokerage services fully aware that the bank and its representatives were acting in a brokerage capacity and the extension of credit or other financial service provided by the bank would not have been tied to the utilization of the brokerage services. Fourth, the bank would have been expected to comply with any applicable state or federal statute or regulation and meet any applicable state or federal training, education, or other requirements. *But see* Notice of Proposed Rulemaking, Powers Inconsistent with the Purposes of Federal Deposit Insurance Law, 50 FR 23984 (to be codified at 12 CFR Part 332 (June 7, 1985) in which the FDIC has eliminated from its proposed rule all reference to restrictions on brokerage activities (including securities by implication) and has also concluded that, presently, "these activities pose only minimal safety and soundness concerns and that these concerns may be adequately addressed during the examination process or otherwise where the need arises." 50 FR 23988.

[18] *See* Section V, *infra*.

[19] Section 11A(a)(1)(C)(ii). The Commission believes that its statutory mandate to ensure "fair competition among brokers and dealers" should be read broadly to encompass all securities participants engaged in a broker or dealer function. Regulation by function, rather than by outmoded industry classifications, has been endorsed most recently by the Task Group on Regulation of Financial Services. *See Blue Print for Reform: Report of the Task Group on Regulation of Financial Services* at 12, 91 (1984) ("Bush Report"). *See also* Securities Activities of Depository Institutions: Hearings on S. 1220 Before the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs, 97th Cong., 2nd Sess. 25 (1982) (Statement of John S.R. Shad, Chairman, Securities and Exchange Commission).

[20] *See, e.g.*, NASD By-Laws, Schedule C, NASD Manual (CCH) ¶ 1102A (1983).

procedures and requirements. These qualifications requirements are supplemented by the broker-dealer's affirmative duty to adequately supervise its employees in order to prevent violations of the federal securities laws,[21] and the specific supervisory procedures imposed by the SROs.[22] The Commission's recent case involving Charles Schwab & Company demonstrates the need for adequate supervisory systems even with respect to the limited securities activities of a discount broker.[23] In addition, the Commission's rules and those of the SROs specifically address potential sales practice abuses.[24] By contrast, bank personnel generally are not subject to any licensing or other regulations designed to test their knowledge of the securities business.

Another area where banking and securities regulation are different is advertising. Broker-dealers must comply with specific guidelines concerning the content and review of advertisements.[25] With certain limited exceptions,[26] there are no equivalent rules governing the advertisement of bank securities activities.

Finally, broker-dealers are subject to examinations by the securities self-regulatory organizations with Commission oversight. These examinations are designed to ensure compliance with the federal securities laws, in particular sales practices and financial responsibility regulations.[27] Banks are subject to examinations by the banking agencies.[28] However, while bank examiners may review for violations of the banking agencies' securities regulations, the primary focus is ensuring the safety and soundness of the bank.

Rule 3b–9 will bring banks within the structure of rules and regulations designed by the Commission and self-regulatory organizations to assure investor protection, as well as reasonably complete and effective regulation of the securities markets, and the maintenance of fair and orderly markets.[29] While the Commission continues to support Congressional review of the financial regulatory system, it remains responsible for assuring that the public policy purposes of the federal securities laws are satisfied. The Commission believes that adoption of Rule 3b–9 is consistent with that responsibility.

IV. Scope of Rule 3b–9

A. General

This section of the release discusses the activities which would render the bank exclusion from broker-dealer registration unavailable and the various exceptions to Rule 34b–9. The Rule as adopted is significantly narrower than the Rule as proposed. The vast majority of the commentators that addressed the scope of Rule 3b–9 focused on the first two prongs: the public solicitation of brokerage business and the receipt of transaction-related compensation for providing brokerage services for trust and other accounts to which the bank provides investment advice. The Commission believes that, as redrafted, the Rule should meet substantially all of the commentators' specific concerns. For the most part, the Rule will not disturb existing arrangements between banks and broker-dealers whereby the bank advertises the broker's services, the broker-dealer performs all brokerage functions, and the bank and broker-dealer share the customer's commissions.[30] In that context, the Commission agrees that the presence of the registered broker-dealer, fully subject to the securities laws, adequately addresses any regulatory concerns. The Commission continues to believe, however, that substantial regulatory concerns are raised where the bank has, in effect, "internalized" the brokerage service function and its employees take orders from customers and handle customer funds and securities. Most bank securities activities requiring broker-dealer registration under Rule 3b–9 would appear to fall within one of the three distinct types of activities identified in the Rule. Nevertheless, there may be some bank securities activities which may arguably fall within more than one of the three categories. For this reason, bank securities activities should be analyzed under all parts of Rule 3b–9 in order to determine whether they are required to be conducted through registered broker-dealers.

B. Public Solicitation of Brokerage Business

The first activity that is covered by Rule 3b–9 is the public solicitation of brokerage business. Under the public solicitation standard, a bank that publicly promotes the availability of internalized brokerage services and receives transaction-related compensation for brokerage trades effected as a result of that promotion would be required either to register as a broker-dealer, or to conduct that activity through a subsidiary or an affiliate registered with the Commission as a registered broker-dealer.[31]

Many of the commentators on the proposed Rule suggested that the Commission define the term "public solicitation." As discussed below, this prong of the Rule has been narrowed substantially to except most banks that enter into contractual or other arrangements with registered broker-dealers which contemplate that the bank will mail out literature promoting the availability of brokerage services.

Under those circumstances, the Commission has determined not to define the term "public solicitation." The Commission believes that it is relatively clear that a bank which does not fit within the "networking" exception, and which sends out literature to its customers promoting the availability of its brokerage services or otherwise advertises those services through newspaper or magazine advertisements, would be publicly soliciting brokerage business. In addition, a bank that actively solicits customers to participate in self-directed IRA accounts or other accounts maintained at the bank over which the bank does not exercise investment discretion or to which it does not render investment advice, and receives transaction-related

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[21] Exchange Act section 15(b)(4)(E).

[22] *See, e.g.*, NASD Rules of Fair Practice, Art. III, Section 27, NASD Manual (CCH) ¶ 2177 (1983); NYSE Rules 342.18, 405(2), 2 NYSE Guide (CCH) ¶¶ 2342.18, 2405(2) [1983].

[23] *In re Charles Schwab & Co. Inc.*, Admin Pro. File 3–6222 (Dec. 28, 1983), Fed. Sec. L. Rep. [1983–84] (CCH) ¶ 83,468; Notice that Initial Decision has become Final: Securities Exchange Act Release No. 20595 (Jan. 28, 1984). In this case Charles Schwab was found to have inadequately supervised an assistant branch manager who, in clear view of other employees, including supervisory personnel, openly conducted a fraudulent securities business, inducing clients to pay cash for allegedly "discount" securities which, in fact, did not exist. The assistant branch manager deposited the funds he collected in hiw own account, and used Schwab stationery and checks to carry out the scheme, without the Charles Schwab organization noticing any suspicious activity.

[24] *See* text and nn. 43–44, *infra*.

[25] *See e.g.*, NASD Rules of Fair Practice, Art. III, Section 35, NASD Manual (CCH) ¶ 2195 (1983).

[26] 12 CFR 9.18(b)(5) (1983) (Comptroller: Advertising of Common Trust Funds); 12 CFR 225.125(1) (1983) (Federal Reserve Board Advisory Services for Investment Companies).

[27] *See* Sections 6(b)(1) and 15A(b)(2) of the Exchange Act.

[28] *See, e.g.*, 12 U.S.C. 481, 12 CFR 4.11, 5.34.

[29] *See* Section 2 of the Exchange Act.

[30] These arrangements often resemble networking arrangements which the Commission has approved for savings and loan institutions. *See* text and nn. 32–39, *infra*.

[31] As discussed at text and nn. 46–47, *infra*, the Commission has defined "transaction-related compensation" in paragraph (d) of the Rule as "monetary profit above cost recovery for brokerage execution services."

compensation for the trades it executed where the bank as a matter of course provides execution as well as custodial services, would be engaged in the public solicitation of brokerage business. However, the Commission would consider exercising its exemptive authority if customers are permitted to independently choose the entity, either a broker-dealer or the bank's internal trading facility, through which the self-directed trades are executed.

As adopted, paragraph (a)(1) of the Rule would not require registration if the bank enters into a contractual or other arrangement with a registered broker-dealer pursuant to which the broker-dealer will offer brokerage services on or off the premises of the bank, provided that (i) the broker-dealer is clearly identified as the person performing the brokerage services; (ii) bank employees perform only clerical and ministerial functions in connection with brokerage transactions unless they are qualified as registered representatives pursuant to the requirements of the securities self-regulatory organizations, ("SROs"), such as the National Association of Securities Dealers, Inc.; (iii) banks employees do not receive compensation either directly or indirectly related to the volume of securities transactions they effect, unless they are qualified as registered representatives pursuant to the SRO's requirements,[32] and (iv) the broker-dealer performs clearing services for the bank on a fully disclosed basis.[33]

In general, this proviso to the Rule is intended to permit banks to continue to engage in so-called "networking" arrangements with registered broker-dealers. These arrangements have been the subject of numerous no-action letters issued to savings and loan associations proposing to engage in brokerage activities.[34] In addition, the OCC has recently expressed the view that national banks may engage in the so-called "INVEST" program, whereby brokerage services provided by a registered broker-dealer would be offered on the bank's premises.[35]

Under the Rule, the arrangements between the bank and the broker-dealer (which can be an independent broker-dealer, or a subsidiary or affiliate of the bank) may contemplate that the brokerage services will be offered on or off the premises of the bank. For example, a bank may contract to advertise the availability of the registered broker-dealer services through promotional literature that provides a toll-free or other telephone number for the placement of orders by customers directly with the broker. Similarly, a bank might provide space in one or more of its offices for registered representatives of a registered broker-dealer to accept orders.[36] If the requirements of paragraphs (a)(1) (i)–(iv) are met, no separate broker-dealer registration requirement would apply.

Under paragraph (a)(1)(i), the bank may work with the broker-dealer in developing the advertisements and other literature promoting the brokerage services, but such literature must be approved by the broker-dealer. For purposes of the advertising and promotional provisions of the NASD's Rules of Fair Practice, the literature will be viewed as that of the broker-dealer.[37] The sales literature should clearly inform prospective customers that the registered broker-dealer rather than the bank will be performing the brokerage function.

Under paragraph (a)(1)(ii), bank employees may perform only clerical and ministerial functions in connection with brokerage transactions, unless they are qualified as registered representatives.[38] For example, bank employees may hand out advertising material to prospective customers and assist them in filling out basic information on account opening forms (*e.g.*, name, address, social security number). In general, the Commission would not consider the handling of customer funds or securities to be clerical or ministerial in nature.[39] The Commission would also take the position that the bank employee's handling of customer orders, even if the orders are immediately forwarded to a broker-dealer for execution, is not clerical or ministerial. The staff of the Commission's Division of Market Regulation will provide interpretive assistance in particular situations concerning whether a bank employee's activities should be considered to be clerical and ministerial in nature.

Under paragraph (a)(1)(iii), bank employees may not receive compensation for brokerage related activities unless such employees are qualified as registered representatives. Thus, if the bank chooses to have its employees perform activities that are more than clerical and ministerial in nature in connection with brokerage transactions, or permits them to receive compensation related directly or indirectly to the volume of securities transactions, such employees must be qualified as registered representatives pursuant to the SRO's requirements. These persons would be duly employees of the broker-dealer and bank, supervised by the broker-dealer in connection with their brokerage activities as "associated persons" of the broker-dealer within the meaning of Section 3(a)(18) of the Exchange Act. A bank involved in a "networking" arrangement would be an associated person of the broker-dealer.

Paragraph (a)(1)(iv) will require the broker-dealer to perform services on a basis in which all customers are fully disclosed. This will ensure that the Commission has access to all customer records to facilitate its ability to examine the broker-dealer and detect any potential violations of the securities laws regarding bank-related accounts.

Increasingly, banks are making available, or selling, to their customers shares of bank sponsored or independent registered investment companies. In this regard, some banks have entered into agreements with fund principal underwriters to split the sales load on the sale of fund shares to bank customers, while others receive fees for a variety of services under Rule 12b–1 distribution plans adopted by registered investment companies.[40]

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[32] A portion of the commissions generated by brokerage transactions of the bank's customers could, however, be paid to the bank.

[33] In a "fully disclosed" arrangement, the clearing broker-dealer holds all accounts in the individual customer's name. In an "omnibus" arrangement, the clearing broker-dealer would hold the account in the name of the bank, which would, in turn, hold the individual customers' accounts.

[34] The Commission has taken the position that savings and loan associations are not "banks" within the definition contained in Section 3(a)(6) and therefore cannot rely on the bank exclusion from broker-dealer registration. *Cf.* letter to Thomas A. Russo, Esq. [1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶77,228.

[35] *See* letter to Thomas A. Russo, Esq. (June 4, 1985) (from Richard V. Fitzgerald, Chief Counsel, Office of the Comptroller of the Currency).

[36] In this situation, the registered representaitves of the registered broker-dealer could also be employees of the bank.

[37] *See* NASD Rules of Fair Practice, Article III, Section 35, NASD Manual (CCH) ¶2195 (1983)

[38] *See* NASD Certificate of Incorporation and By-laws, Article I, Schedule C, NASD Manual (CCH) ¶1102A (1983).

[39] Bank employees could, however, debit and credit bank customers' accounts through electronic transfer systems, unless the customer directs otherwise. *See, e.g.*, letters to Michael L. Seabolt, Esq., (November 15, 1983), Edward J. McAniff, Esq., (April 27, 1983), Evelyn N. Howard-Hand (February 28, 1983), Robert C. Pozen, Esq. (December 1, 1982).

[40] Rule 12b–1 under the Investment Company Act of 1940 permits open-end investment companies which distribute their own securities other than through an underwriter to compensate investment advisers or others for assisting in the distribution of the company's securities, so long as each company's board of directors approves a written plan describing the financing of the distribution.

Where fees paid under 12b–1 plans are used for the payment of bona fide administrative services[41], such activities would generally appear unlikely to be considered either transaction-related charges[42] or underwriting under the federal securities laws. Nevertheless, a bank that publicly solicits the purchase of fund shares and receives Rule 12b–1 plan fees in the form of transaction-related compensation would be engaged in the kind of activity covered under the first prong of the Rule. Similarly, if the bank receives transaction-related compensation from transactions for advised acounts, the activity would be covered under the second prong of Rule 3b–9. In addition, the nature and extent of the bank's promotion of fund shares and the fees received may suggest that the bank is acting as an underwriter and that the activity is covered by the third prong of the Rule.

Of course, the networking exception to paragraph (a)(1) would be available to the extent these arrangements would otherwise be covered by paragraph (a)(1). In addition, as discussed in Section IV.E., the Commission has adopted a specific exception for transactions in connection with so-called "sweep" arrangements with no-load funds that attempt to maintain a constant net asset value which might be applicable.

Finally, to the extent that the Commission determines that these arrangements are not within the intended meaning and purpose of the Rule, it may grant exemptions from the Rule. Banks involved in selling shares of investment companies to their customers should analyze the applicability of the Rule to their specific arrangements. The Commission's staff will provide interpretive advice where necessary.

C. Receipt of Transaction-Related Compensation in Connection with Execution for Advised Accounts

Paragraph (a)(2) of Rule 3b–9 would cause the bank exclusion in Sections 3(a)(4) and 3(a)(5) to be unavailable to a bank that receives transaction-related compensation for providing brokerage services for trust, managing agency or other accounts to which the bank provides investment advice ("covered accounts"). For the purposes of this provision, the Commission interprets "investment advice" to include individualized advice as well as investment seminars and research on particular securities or groups of securities that is disseminated generally to covered accounts. The Commission received a substantial number of comments on this provision of the Rule. The primary concerns of the commentators were that the Rule should not interfere with traditional bank trust department activities, and that the Commission should define what would constitute "transaction-related compensation."

Banks that exercise investment discretion or provide investment advice to accounts from which the bank also generates profits from the execution of transactions are performing activities that are not any different from those of full-service broker-dealers.

The Commission's experience in administering the federal securities laws has been that such transaction-related compensation can provide the inducement for a variety of illegal conduct, including churning [43] and unsuitable recommendations.[44] The Commission believes that its rules and those of the self-regulatory organizations will meaningfully supplement banking regulation in the context of these transactions. For example, it is well-recognized that the antifraud provisions of the Exchange Act prohibit broker-dealers from engaging in a variety of illegal practices in the securities industry, including churning customer accounts, and recommending securities transactions that are not suitable for the customer.

The Commission does not believe that paragraph (a)(2) of the Rule will significantly affect traditional bank trust department activity. The Commission understands that the receipt of transaction-related compensation from covered accounts presently occurs on a limited basis because of applicable fiduciary standards. These standards generally prevent a bank from profiting on a transaction entered into on behalf of a trust account apart from the fees it receives for discharging its fiduciary responsibilities. The staff of the Board of Governors of the Federal Reserve System has expressed the view that:

> the receipt of commission income for securities brokerage transactions entered into on behalf of a trust account, in addition to the fee received for account administration, raises conflict of interest considerations to which traditional prohibitions of fiduciary law are directed.[45]

Under the standards articulated by the Board's staff, in the absence of authorization under state law, the bank would be required to obtain clearly expressed written consent from the account's beneficiaries after disclosure of the fee arrangement before imposing such fees.[46] Depending on the type of account, such consent may be difficult to obtain. Nevertheless, where that consent is obtained, or is not required, applicability of the broker-dealer regulatory requirements is appropriate.

In response to the concerns raised by the commentators, the Commission has defined the term "transaction-related compensation" in paragraph (d) of the Rule as "monetary profit above cost recovery for brokerage execution services." Thus, assuming that the other requirements of paragraph (a)(2) applied, broker-dealer registration would be required if a bank executed trades through a registered broker-dealer which received commissions from the covered account and then shared a percentage of the commissions with the bank, or if a bank executing transactions internally required that covered accounts pay brokerage fees which exceeded the cost of execution.[47]

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[41] *See, e.g.*, Banks May Execute Customers' Instructions to Buy and Sell Shares in Tax-Exempt Mutual Funds, (letter from Peter Liebesman, Legal Advisory Services Division, Office of the Comptroller of the Currency) (March 8, 1985), [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,502.

[42] The registration statements filed with the Commission by those banks which are currently offering pooled IRA funds to their IRA trust customers show that such banks currently receive fees covering, *inter alia*, investment advisory, transfer agent, custodial and administrative costs. Accordingly, receipt of such fees would not appear to constitute transaction-related compensation.

[43] The term "churning" in the context of the securities laws "denotes a course of excessive trading through which a broker advances his own interests (*e.g.*, commission based on volume) over those of his customer." *Costello* v. *Oppenheimer & Co., Inc.*, [1982–83 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 99,254 (7th Cir. 1983).

[44] *See Clark* v. *John Lamula Investors, Inc.*, 583 F.2d 594 (2d Cir. 1978); *In the Matter of Michael Batterman, et al.*, 46 SEC 304 (1976). *See generally, L. Loss, Fundamentals of Securities Regulation* 956–77 (1983). *See also* NASD Rules of Fair Practice, Art. III, Section 2, NASD Manual (CCH) ¶ 2152, NYSE Rule 405.

[45] Banking Practices-Trust Departments' Use of Discount Brokerage Services, Staff Opinion, Federal Reserve Regulatory Service, § 347.11 (September 19, 1983), and authorities cited therein. *See also* OCC, Trust Banking Circular 23 (October 4, 1983). The OCC stated that banks must be able to demonstrate that their charges are limited to an amount necessary to recover transaction costs. While both of these opinions chiefly are addressed to the propriety of banks' executing transactions for covered accounts through an affiliated broker-dealer, the Commission understands that the same fiduciary principles would apply in the context of transactions effected through an unaffiliated broker.

[46] *Id.*

[47] The Commission preliminarily believes that cost recovery for brokerage execution services should be limited to the incremental costs directly attributable to providing that service. The Division of Market Regulation will respond to interpretive questions relative to cost recovery.

The Commission recognizes, however, that it may be appropriate for banks to impose management or administrative fees on covered accounts based, at least in part, on the anticipated volume of securities trading the bank engages in on behalf of the account. The Commission believes that accounts which are more active may require more attention from managers, and that the bank may be compensated accordingly without such compensation being considered "transaction-related" and therefore requiring registration as a broker-dealer. The Commission is concerned, however, that these administrative fees not be used to circumvent the Rule. Therefore, a bank must demonstrate that any such differential administrative fee is reasonably related to the increased costs of handling a high volume account.[48]

If the bank does receive transaction-related compensation, directly or indirectly, for providing brokerage services to covered accounts, and none of the exceptions to the Rule are available,[49] it will be required to either register as a broker-dealer, or to place the investment advice and execution function in a registered broker-dealer affiliate or subsidiary. The Commission believes that where a bank has linked investment advice and execution services both functions must be carried out in a registered broker-dealer in order to meet the purposes of the Exchange Act.[50] While some commentators suggested that it would be appropriate to leave the investment advisory service in the bank, the Commission believes that advisory activities when combined with transaction-related compensation raise many of the churning, customer suitability and other sales practice concerns addressed by the Exchange Act and the rules of the SROs.

At the same time the Commission does not wish to unnecessarily impinge on traditional trust activity. In this connection, the Commission recognizes that rather than inextricably linking these two services, some banks may permit their covered accounts to independently choose the broker-dealer through whom the bank would execute transactions. Paragraph (a)(2) of Rule 3b-9 will not apply to any bank which permits such choice under certain circumstances. Specifically, paragraph (a)(2) will not apply if: (1) The customer is free to choose the executing broker-dealer and such choice is affirmative, with no provision that sends trades automatically to the bank's affiliate or subsidiary broker-dealer if a customer makes no choice; (2) the bank's personnel do not receive any transaction-related compensation for the trades executed for covered accounts or compensation related to the number of accounts choosing to use the broker/dealer[51] and (3) the executing broker-dealer carries the accounts on a fully disclosed basis.

The Commission also recognizes that there may be instances where the bank receives transaction-related compensation from a small number of covered accounts and that it would be an inefficient division of the bank's business to require those accounts to be placed in a broker-dealer. The Commission expects to employ the general exemptive authority provided in the Rule, however, to give relief in such cases where the costs of registration outweigh any potential investor protection concerns.

D. Dealing in and Underwriting of Securities.

Paragraph (a)(3) of Rule 3b-9 provides that the bank exclusions in Sections 3(a)(4) and 3(a)(5) are unavailable to a bank that deals in or underwrites securities.[52] For purposes of the Rule, the Commission interprets "underwrite" consistent with the definition of the term "underwriter" in Section 2(11) of the Securities Act of 1933.[53] Accordingly, a bank would be required to conduct both "best efforts" and "firm commitment" underwriting in a registered broker-dealer subsidiary of affiliate.[54]

E. Exceptions and Exemptions

Paragraph (b) of Rule 3b-9 excepts from its scope banks which effect transactions in certain securities or under certain circumstances. In addition, in paragraph (c) of the Rule the Commission has reserved authority to exempt from Rule 3b-9, when necessary, other bank securities activities which the Commission deems not within the intended meaning and purpose of Rule 3b-9. These paragraphs will permit banks to continue certain present securities activities without registering as broker-dealers.

Under paragraph (b)(1), a bank may effect transactions in exempted securities, as defined in the Exchange Act, or in commercial paper, bankers' acceptances, or commercial bills only, without broker-dealer registration. Section 15(a) of the Exchange Act explicitly exempts brokers and dealers of these securities from the registration requirement. Paragraph (b)(1) also excepts from broker-dealer registration banks effecting transactions in municipal securities. This exception reflects the Commission's intent to avoid any disruption of the existing statutory scheme. Presently, banks that deal in municipal securities are required to register as municipal securities dealers.[55] Because the municipal securities regulatory scheme enacted by Congress in 1975 requires only municipal securities dealers to register, the Commission does not intend to impose registration on bank municipal

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[48] In the OCC Trust Banking Circular, *supra*, n. 45, the OCC stated that if a fee were imposed to cover the cost of execution, the bank would be expected to include in its records a justification demonstrating through a detailed cost analysis that the amount of fee charged was justified by the cost. The OCC emphasized that such transactions should under no circumstances result in a profit for the bank or a bank's broker-dealer affiliate or subsidiary.

[49] As discussed *infra* at Part IV.E., the Rule contains seven exceptions, including an exception for banks that effect no more than 1,000 transaction per year.

[50] The Commission has revised paragraph (a)(2) of the Rule to provide that banks engaging "directly or indirectly" in any of the activities in subparagraphs (i)–(iii) will not be included in the statutory exception in order to clarify that a bank cannot create a subsidiary or affiliate for only its execution services if it links those services with its investment advisory services.

[51] Personnel of affiliates or subsidiaries of the bank involved in the execution of transactions in covered accounts would not be prohibited from receiving transaction-related compensation.

[52] In determining whether particular bank securities activities would constitute "underwriting" for purposes of Rule 3b-9, the Commission is not expressing any view on whether those activities would constitute "underwriting" for purposes of the Glass-Steagall Act.

[53] Section 2(11) provides that "underwriter": means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

[54] In a firm commitment underwriting, one or more investment banking firms agree to purchase the securities from the issuer for resale at a specified offering price. In a best efforts underwriting, broker-dealers do not purchase the securities from the issuer but instead agree for an agent's commission to use their best efforts to sell the securities on behalf of the issuer at the offering price.

[55] A municipal securities dealer is defined in section 3(a)(30) of the Exchange Act as: any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account . . . but does not include— (B) a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity . . . *Provided, however,* that if the bank is engaged in such business through a separately identifiable department or division . . ., the department or division and not the bank itself shall be deemed to be the municipal securities dealer.

securities brokers[56] and therefore this exception has been included in the Rule.

Paragraph (b)(2) incorporates a *de minimis* exception into the Rule. The exception permits banks to engage in 1,000 securities transactions each year without registering as a broker-dealer. Many commentators suggested that such an exception is essential in order to permit banks to continue providing traditional accommodation services to their banking customers. In addition, the *de minimis* exception may be available to small or rural banks that engage in limited securities activities. This exception will allow banks to effect an average of five trades per business day, regardless of the size of the trade. A bank may exclude exempted and municipal securities in calculating the 1,000 transactions. In order to prevent abuse of this exception, however, banks will not be able to carry unused trades into the next year's permissible number.

Under paragraph (b)(3), banks which effect transactions for the investment portfolio of affiliated *companies* only would be excepted from the registration requirement of Rule 3b–9. These transactions are a logical outgrowth of the investment purchases a bank is permitted to make for its own investment portfolio and therefore the Commission believes that this exception is appropriate.

Paragraph (b)(4) provides an exception for banks that operate certain sweep accounts. Specifically, the exception permits a bank to direct its customers' deposit funds into investment companies registered pursuant to the Investment Company Act of 1940 which do not charge a sales load and attempt to maintain a constant net asset value. Given the automatic nature of these transactions, the constant net asset value of the shares, and the absence of a sales load, the Commission does not believe that there is any serious risk of abuse in this area.

Under paragraph (b)(5), the Commission provides an exception from broker-dealer registration for banks that effect transactions as part of a variety of shareholder and employee plans.[57] This exception recognizes that banks have been engaging in such securities activities for many years without raising significant investor protection concerns.

In response to comments received, the Commission has also excepted in paragraph (b)(6) transactions effected in reliance upon sections 3(b), 4(2) and 4(6) of the Securities Act of 1933 and the rules and regulations thereunder.[58]

Paragraph (b)(7) provides an exemption for banks which are subject to Section 15(c) of the Exchange Act.[59] This exception, like paragraph (b)(1), reflects the Commission's intent to avoid disruption of the existing statutory scheme which permits persons that are not brokers or dealers to retain membership on a national securities exchange if such persons were members or member firms of a national securities exchange on the date of enactment of the Securities Act Amendments of 1975, and permits natural persons who become associated persons of the members or member firms to obtain membership on a national securities exchange.[60]

Under paragraph (c), the Commission has reserved exemptive authority in order to insure that Rule 3b–9 is not applied inappropriately to banks that provide services that appear to come within the letter of the Rule, but are not within the intended meaning and purpose of Rule 3b–9. The Commission will evaluate written requests for exemptive relief on a case-by-case basis. The Commission may grant an exemption unconditionally or with specific conditions designed to further the purposes of the Rule.

V. Statutory Authority

Section 15 of the Exchage Act requires all brokers and dealers to register with the Commission unless an exemption is available. As defined in section 3(a)(4) and 3(a)(5), the terms "broker" and "dealer" exclude a "bank" as defined in section 3(a)(6). All of the Exchange Act definitions, however, are preceded by the phrase "unless the context otherwise requires." In addition, under section 3(b) of the Exchange Act, the Commission has the authority to define terms.[61] Rule 3b–9 defines activities that the Commission believes to be outside the bank exclusion.

The context in which the bank exclusion was enacted in 1934 has changed significantly. Although the legislative history of the bank exclusion is not extensive, the hearings on the predecessor bills to the Exchange Act contain references to the limited nature of bank securities activities permitted at that time.[62] Testimony during hearings on predecessor bills to the Exchange Act presumed that banks were limited to accommodation transactions as a convenience to customers.[63]

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[56] Section 15B(a)(1) makes it ulawful for any municipal securities dealer (other than one registered as a broker-dealer under section 15) to effect transactions in municipal securities without registering as a municipal securities dealer.

[57] See text at n. 67, *infra*.

[58] The Commission wishes to emphasize, however, that the determination of those transactions which do not involve a public offering in which banks may participate must be made by reference to the federal securities laws. On June 4, 1985 the Federal Reserve Board issued a statement concerning the commercial paper activities of Bankers Trust Company of New York which the Supreme Court considered in *Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 104 S.CT. 2979 (1984). Statement Concerning Applicability of the Glass-Steagall Act to the Commercial Paper Placement Activities of Bankers Trust Company ("Statement"). The Board concluded that Bankers Trust's activities as agent in placing commercial paper with institutional investors constituted a private offering, and hence, were not "underwriting" or "distributing" for purposes of the Glass-Steagall Act. It is the Commission's view, however, that the fact that an offering is exempt from registration pursuant to one of the exemptions specified in paragraph (b)(6) does not necessarily mean that no "distribution" has occurred, as that term is used in the definition of "underwriter" in section 2(11) of the Securities Act of 1933. In addition, as the Federal Reserve Board recognized, the factors that are relevant to a determination of what constitutes a private offering for purposes of the federal securities laws are not necessarily the same factors as those that are relevant for the purposes of determining whether there has been an underwriting or distribution under the Glass-Steagall Act. For example, the Federal Reserve Board noted that a bank may publicize its status as agent-adviser for commercial paper issues in business publications without violating the Glass-Steagall Act's prohibition against underwriting based on the assumption that such statements may not constitute offers since that do not promote the securities of a particular issuer. *See* Statement at 29 n.31. By contrast, the exception contained in paragraph (b)(6) might not be available under such circumstances, if the business publication or other communications to potential purchasers constituted a general solicitation.

[59] Section 15(c) of the Exchange Act authorizes the Commission to require any member of a national securities exchange not required to register under section 15, and its associated persons, to comply with any provision of the Exchange Act, except section 15(a) or the rules and regulations thereunder, which regulates or prohibits acts, practices or courses of business by borkers, dealers, registered brokers or dealers, or associated persons of brokers and dealers.

[60] *See* Securities Exchange Act of 1934 Section 6(c)(4), 15 U.S.C. 78f(c)(4); Securities Acts Amendments of 1975, section 31(a).

[61] Section 3(b) of the Exchange Act, in relevant part, provides that "The Commission shall have the power by rules and regulations to define technical, trade, accounting, and other terms used in this [Act], consistently with the provisions and purposes of the [Act]." The Commission disagrees with the suggestions of some commentators that this section should be read narrowly. The language of this section explicitly includes "other terms" as a catch all for any needed definitions. By the addition of "other terms" Congress intended "to broaden the authority of the Commission . . . to make clear that [it] may define any terms used in the Exchange Act, whether or not it is already defined in the title." S. Rep. No. 70, 94th Cong., 1st Sess. 94 (1975).

[62] National Securities Exchange Act of 1934: Hearing on H.R. 7852 and H.R. 8720 Before the House Committee on Interstate and Foreign Commerce, 73rd Cong., 2d Sess. 85–86, 666–67 (1934); Hearings on Stock Exchange Practices Before the Senate Committee on Banking and Currency, Pts. 15–17, 73rd Cong., 1st Sess. 6470–71 (1933).

[63] *See, e.g.*, Stock Exchange Practices: Hearings before the Senate Committee on Banking and Currency on S. R. 84, 56, 97, Pts. 15–17, 73rd Cong., 1st Sess. 6470 (1933) (Testimony of Thomas G. Corcoran, Counsel with the Reconstruction Finance

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Many of the commentators that addressed the Commission's authority to adopt Rule 3b–9 suggested that the "context" language contained in the Exchange Act was unavailable because recent bank regulatory decisions under the Glass-Steagall Act permit banks to engage in substantial securities activities. The Commission believes that any analysis of whether bank securities activities have materially changed must initially focus on the environment in 1934.

Congress granted the national banking regulators the authority to set guidelines as to permissible bank securities activities under the Glass-Steagall Act.[64] It appears, however, that at the time the Congress enacted sections 3(a)(4) and 3(a)(5), banks were limited almost exclusively to accommodate services. For example, in 1934 and 1935, both the OCC and the Federal Reserve Board issued interpretations as to whether the Glass-Steagall Act permitted national banks and state member banks to "purchase corporate stock solely upon the order and for the account of others."[65] Both the OCC and the Board held that such purchases were permissible. The OCC specifically stated that:

> national banks have the right to purchase and sell stocks solely upon the order and for the account of customers. *This does not mean that national banks may do a brokerage business and any charge must not exceed the actual cost of servicing.* [emphasis supplied][66]

In its Bank Study, the Commission found that, with the exception of their presence in the administration of dividend reinvestment plans, banks provided limited brokerage services to customers.[67] Even in the case of accommodation trading for customers (referred to in the Bank Study as "customer transaction service"), the Commission found that:

> the service is a distinctly informal service provided as an accommodation to bank customers. As an accommodation, it is not marketed to bank customers, is rarely mentioned in bank literature, and, viewed separately, is uniformly unprofitable to the bank.[68]

In fact, the Bank Study cited only one bank that was providing a formalized customer transaction service which it advertised and for which it charged brokerage fees.[69]

In its Final Report on bank securities activities, the Commission concluded that it was not necessary to require bank officers and employees to pass special qualifications examinations in connection with their occasional contact with investors in accommodation trades.[70] The Commission stated that this conclusion should be understood to be applicable only to the traditional informal accommodation service provided by banks to their customers. The Commission indicated that experience with the mass merchandising of such services was scant, and that:

> in terms of the need for personnel competency standards, as well as for other aspects of broker-dealer regulation, the possibility that banks may begin offering services of that type presents public policy considerations that may differ significantly from those presented by customer transaction service.[71]

By contrast, the Commission believes that a thousand or more banks are now actively promoting brokerage services to the public. In exchange for promotional and order-handling services, the banks receive a portion of the customer's commissions paid to the entity that executes the securities transactions. These activities substantially change the nature of brokerage services offered by banks. Rather than merely providing accommodation services to existing customers, services are provided that are functionally the same as those offered by registered broker-dealers. While the Commission is not aware of any comprehensive statistical studies in this area, a representative study was conducted by the Office of the Comptroller of the Currency, the result of which it published in its proposal in April 1984.[72] The OCC surveyed 500 national banks and found that 55 percent were offering discount brokerage services. For the reasons discussed above, the Commission believes these profound developments cause Rule 3b–9 to be consistent with the statutory goals of ensuring the protection of investors and fair competition among brokers and dealers. The Commission also believes that those public policy concerns expressed in the Bank Study have indeed changed, and that it is appropriate for the Commission to adopt Rule 3b–9 to address them.

Use of the context analysis to reach judgments as to the scope of definitions in the securities laws is not without precedent. In *Marine Bank* v. *Weaver*,[73] the Supreme Court decided that the introductory language in Section 3(a) of the Exchange Act mandates an analysis of the context of a securities transaction in order to determine whether a certificate of deposit falls within the definition of a "security" under the antifraud provisions of the federal securities laws. A similar approach was used by Justice Brennan in his concurring opinion in *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Company of America*.[74] Justice Brennan concluded that the scope of the exclusions in the federal securities laws must be examined in view of their regulatory purposes.[75]

VI. Coordinated Regulatory Action

Several commentators expressed concern about the possibility of duplicative regulation of banks by the federal banking regulators and the Commission. The Commission expects to work closely with the federal banking regulators in all areas of mutual concern to eliminate duplicative regulation to the greatest extent possible. The Commission and the federal banking regulators presently cooperate with considerable success with respect to

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Corporation). *See also*, National Securities Exchange Act of 1934: Hearing on H.R. 7852 and H.R. 8720 Before the House Committee on Interstate and Foreign Commerce, 73rd Cong., 2nd Sess. 86; *Bank Allowed to Continue Stock Service*, The Bankers Magazine 699 (June 1934).

[64] *See* Section 16 of the Glass-Steagall Act (12 U.S.C. Section 24 (Seventh)) which directs the OCC to determine securities that a bank may own and handle.

[65] *See, e.g.*, 20 Fed. Res. Bull. 609 (1934); 1 *Bulletin of the Comptroller of the Currency*, No. 2, October 28, 1935, at 2–3, *cited in New York Stock Exchange* v. *Smith*, 404 F.Supp. 1091, 1097 (D.D.C. 1975); *Banks Allowed to Continue Stock Service, supra*.

[66] 1 *Bulletin of the Comptroller of the Currency*, No. 2, October 28, 1935 at 2–3, *cited in New York Stock Exchange* v. *Smith*, 404 F. Supp. 1091, 1097 (D.D.C. 1975).

[67] Bank Study, Initial Report at 11.

[68] *Id.* at 78.

[69] *Id.* at 89. The data relief upon by the Commission consisted of responses to a questionnaire mailed to: (1) The largest 100 commercial banks ranked by market value of trust assets as of year-end 1974; (2) the eight largest non-depository trust companies; (3) every 15th bank from 101 through 1,000 ranked by total assets; (4) every 200th bank from 1,001 through the remainder of insured banks ranked by total bank assets; and (5) all other banks known to offer a dividend reinvestment plan or automatic investment service. *Id.* at Appendix B.

[70] Bank Study, Final Report at 22.

[71] *Id. See also* Securities Act Release No. 5491 (April 30, 1974) announcing the Commission's inquiry concerning bank securities activities in which the Commission stated that: the . . . definition of the terms . . . broker, dealer, and bank are not, however, to be construed in an inflexible or rigid manner. As is made clear in the definitional section of the federal securities laws, the foregoing definitions may be modified, altered, or even inapplicable "if the context otherwise requires."

[72] See text and nn. 13–14, *supra*.

[73] 455 U.S. 551 (1982).

[74] 359 U.S. 65 (1959). *See also Gary Plastic Packaging, Inc.* v. *Merrill Lynch, Pierce, Fenner and Smith* [Current Transfer Binder] Fed. Sec. L. Rep. (CCH ¶91,951 (2d Cir. 1985); *Prudential Insurance Co. of America* v. *Securities and Exchange Commission*, 326 F.2d 383 (3d Cir. 1964).

[75] *Id.*

regulation of municipal securities dealers[76] and transfer agents and clearing agencies.[77] Such continued coordinated regulation is essential for successful functional regulation. The Commission therefore intends to consult and coordinate with the federal banking regulators, particularly regarding examinations and inspections, where there is shared jurisdiction over a registered broker-dealer subsidiary or affiliate of a bank.[78] The Commission anticipates that close inter-agency coordination will be an effective method of regulation of bank securities activities.

VII. Certain Findings, Effective Date and Statutory Basis

Section 23(a)(2) of the Exchange Act[79] requires the Commission, in adopting rules under that Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered proposed Rule 3b–9 in light of the standards cited in Section 23(a)(2) and believes that adoption of the amendments will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), interested persons were given an opportunity to submit written views on proposed Rule 3b–9. After consideration of the relevant matters presented, the Rule is adopted substantially as proposed with certain exceptions added as suggested by the commentators. In response to commentators' suggestions, the Rule has been amended to not require banks to register as broker-dealers if they engage in certain "networking" activities. In addition, the Rule has been amended pursuant to commentators' suggestions to include a *de minimis* exception as well as several other exceptions.

The effective date for Rule 3b–9 is January 1, 1986.

VIII. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding Rule 3b–9. The Analysis notes that Rule 3b–9 is necessary to protect investors, to maintain fair and orderly markets, and to assure reasonably complete and effective regulation of the securities markets. The Analysis states that only two commentators referred to the Initial Regulatory Flexibility Analysis in discussing the additional regulatory and recordkeeping requirements which Rule 3b–9 would impose on banks. The Analysis points out that in response to commentators' concerns about the costs involved in compliance with Rule 3b–9, the Commission adopted exceptions which should eliminate the cost burden on most small banks.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Amy Natterson Kroll, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, (202) 272–2848.

IX. Statutory Basis

The Securities and Exchange Commission, acting pursuant to the Exchange Act, particularly sections 2, 3, 15, and 23(a) (15 U.S.C. 78b, 78c, 78*o*, 78w(a)), hereby amends Chapter II, Title 17 of the Code of Federal Regulations by adding § 240.3b–9 thereto.

Lists of Subjects in 17 CFR Part 240

Securities, Banks, Brokers.

Text of Rule 3b–9

Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following cite:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * * Section 240.3b–9 also issued under secs. 2, 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121, as amended (15 U.S.C. 78b, 78c, 78o) * * *.

2. In Part 240, § 240.3b–9 is added to read as follows:

§ 240.3b–9 Definition of "bank" for purposes of sections 3(a) (4) and (5) of the Act.

(a) The term "bank" as used in the definition of "broker" and "dealer" in sections 3(a) (4) and (5) of the Act does not include a bank that:

(1) Publicly solicits brokerage business for which it receives transaction-related compensation, unless the bank enters into a contractual or other arrangement with a broker-dealer registered under the Act pursuant to which the broker-dealer will offer brokerage services on or off the premises of the bank, provided that:

(i) Such broker-dealer is clearly identified as the person performing the brokerage services;

(ii) Bank employees perform only clerical and ministerial functions in connection with brokerage transactions unless such employees are qualified as registered representatives pursuant to the requirements of the self-regulatory organizations;

(iii) Bank employees do not receive, directly or indirectly, compensation for any brokerage activities unless such employees are qualified as registered representatives pursuant to the requirements of the self-regulatory organizations; and

(iv) Such services are provided by the broker-dealer on a basis in which all customers are fully disclosed.

(2) Directly or indirectly receives transaction-related compensation for providing brokerage services for trust, managing agency or other accounts to which the bank provides advice, provided, however, that this subsection shall not apply if the bank executes transactions through a registered broker-dealer and:

(i) Each account independently chooses the broker-dealer through which execution is effected;

(ii) The bank's personnel do not receive, directly or indirectly, transaction-related compensation or compensation based upon the number of accounts choosing to use the registered broker-dealer; and

(iii) The brokerage services are provided by the broker-dealer on a basis in which all customers are fully disclosed; or

(3) Deals in or underwrites securities.

(b) This rule shall not apply to any bank that engages in one or more of the following activities only:

(1) Effects transactions in exempted or municipal securities as defined in the Act or in commercial paper, bankers' acceptances or commercial bills;

(2) Effects no more than 1,000 transactions each year in securities

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[76] *See* section 15B of the Exchange Act.

[77] *See* section 17A of the Exchange Act.

[78] For example, pursuant to 12 CFR 5.34(d)(3), operating subsidiaries of national banks are within the OCC's jurisdiction. A number of commentators also raised concerns regarding potential conflicts between the Commission's financial responsibility requirements and those requirements presently imposed by bank regulators. The Commission anticipates that most banks engaging in activities covered by Rule 3b–9 will choose to place those activities in a subsidiary or a subsidiary of their bank holding company. Should some banks determine to directly register as broker-dealers, the Commission would anticipate using its exemptive authority under the financial responsibility rules to address any resulting conflict between bank and securities regulation. (*See e.g.*, Rule 15c3–1(b)(3) and Rule 15c3–3(k).)

[79] 15 U.S.C. 78w(a)(2).

other than exempted or municipal securities as defined in the Act or in commercial paper, bankers' acceptances or commercial bills;

(3) Effects transactions for the investment portfolio of affiliated companies;

(4) Effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load open-end investment company registered pursuant to the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less;

(5) Effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for employees or shareholders of an issuer or its subsidiaries;

(6) Effects transactions pursuant to sections 3(b), 4(2) and 4(6) of the Securities Act of 1933 and the rules and regulations thereunder; or

(7) Is subject to section 15(e) of the Act.

(c) The Commission, upon written request, or upon its own motion, may exempt a bank, either unconditionally or on specific terms and conditions, where the Commission determines that the bank's activities are not within the intended meaning and purpose of this rule.

(d) For purposes of this section, the term "transaction-related compensation" shall mean monetary profit to the bank in excess of cost recovery for providing brokerage execution services.

By the Commission.

John Wheeler,

Secretary.

July 1, 1985.

[FR Doc. 85-16417 Filed 7-11-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address; AMI, Inc.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for AMI, Inc.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: AMI, Inc., 2667 West Dual, Baton Rouge, LA 70814, has advised the Center for Veterinary Medicine of a change in sponsor address. The address change is an administrative action which does not otherwise affect current manufacturing procedures, controls or personnel. The NADA's and files affected are amended to reflect the new address. The regulations are amended in 21 CFR 510.600 accordingly.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) for the entry "AMI, Inc." and in paragraph (c)(2) for the entry "015563" by revising the sponsor's address to read "2667 West Dual, Baton Rouge, LA 70814."

Dated: July 3, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-16553 Filed 7-11-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address; Bristol Laboratories

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the current mailing address of Bristol Laboratories, Division of Bristol-Myers Co.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Bristol Laboratories, Division of Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221-4755, has informed FDA of its new mailing address. The agency is amending the files and the animal drug regulations to reflect the change of address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Bristol Laboratories" and in paragraph (c)(2) in the entry "000015" by revising the sponsor's address to read "P.O. Box 4755, Syracuse, NY 13221-4755."

Dated: July 3, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-16554 Filed 7-11-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of 3, 4-Methylenedioxymethamphetamine (MDMA) into Schedule I

Correction

In FR Doc. 85-13171 beginning on page

23118 in the issue of Friday, May 31, 1985, make the following correction:

§ 1306.11 [Corrected]

On page 23119, third column, § 1306.11 (g)(2), first line, "3,4-methylenedioxyethamphetamine" should read "3,4-methylenedioxymethamphetamine".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3282

[Docket No. N-85-1542; FR-1767]

Manufactured Home Procedural and Enforcement Regulations

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of manufactured homes inspection fee amount.

SUMMARY: This Notice announces that the monitoring inspection fee for each transportable section of each manufactured housing unit shall be $16 as of September 12, 1985.

FOR FURTHER INFORMATION CONTACT: James C. McCollom, Director, Manufactured Housing Standards Division, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6920. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 24 CFR 3282.454, the Secretary is authorized to establish by notice in the **Federal Register** a monitoring inspection fee for each manufactured home manufactured in nonapproved and conditionally approved States as described in § 3282.210. The fee amount is established in accordance with the criteria set out in § 3282.454, and is currently $19 per manufactured home.

The Department has adopted a final rule, published elsewhere in today's issue of the **Federal Register** amending § 3282.454 so that the monitoring inspection fee shall be paid for each transportable section of each manufactured home. That final rule will become effective on September 12, 1985. As of that same date, and until further notice, the monitoring inspection fee shall be $16 per transportable section of each manufactured home.

Authority: National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 3419); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: July 3, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-16600 Filed 7-11-85; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Part 3282

[Docket No. R-85-1147; FR-1767]

Manufactured Home Procedural and Enforcement Regulations; Monitoring Inspection Fees

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the manner in which HUD assesses fees for inspections of manufactured homes. Under the rule, a fee will be charged for each section of a manufactured home inspected, rather than on a complete unit basis. Elsewhere in today's issue of the **Federal Register**, the Department has published a notice announcing a new fee amount that will apply to transportable sections of homes once this final rule becomes effective.

EFFECTIVE DATE: September 12, 1985.

FOR FURTHER INFORMATION CONTACT: James C. McCollom, Director, Manufactured Housing Standards Division, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-6920. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

A. Background

HUD published a proposed rule on August 23, 1984 that would revise the way in which it imposes monitoring inspection fees on manufacturers of manufactured homes (49 FR 33456). The Department's existing rule, at 24 CFR 3282.454, requires a manufacturer to pay an inspection fee for each complete unit manufactured, regardless of how many sections comprise the unit. Under the Department's proposal, an inspection fee would be assessed for each transportable section of a home, because each section is sufficiently complex in design to warrant its own thorough inspection. HUD also indicated in the proposed rule preamble that the rule revision would result in reduced costs and recordkeeping for manufacturers, and would assure fairness in assessing fees on manufacturers.

B. Comments and Discussion

In response to the notice of proposed rule making, comments were submitted to HUD by the California Department of Housing and Community Development (California), the National Manufactured Housing Federation (NMHF), and the Manufactured Housing Institute (MHI).

California agrees with the Department's determination that multiple section homes are more complex than single section homes, and that inspection fees should be assessed for each transportable section. However, it recommends that § 3282.307(b) be amended so that the Secretary would also adopt the practice of distributing inspection monitoring fee collections to the States based on the number of transportable sections manufactured, rather than on complete units. California's argument appears to be based on its statement that consumer complaints involving multiple section homes are generally more difficult to investigate and resolve. (About three-fourths of the manufactured homes manufactured in California are multiple section homes.)

The Department did not propose to revise § 3282.307(b) because States respond to complaints only after the purchase of a complete unit. The proposed rule relates to HUD's method for assessing fees for inspections performed in advance of unit sales. Thus, California's recommendation goes beyond the scope of this particular rule making. The Department believes that California's comment warrants further consideration and, accordingly, is treating the comment as a petition for rule making under 24 CFR 10.20. In the future, it is possible that HUD will seek public comment on a proposed revision to § 3282.307(b).

NMHF opposes adoption of the proposed rule on grounds that HUD has not demonstrated a need for increased funding under the inspection program. NMHF argues that the proposed rule would result in an overall increase in the amount of fees paid by manufacturers of multiple section homes and a decrease for manufacturers of

single section homes. It also points out geographical variations in consumer demand for single- and multi-section units, with the latter units most popular in the Pacific States region.

The rule revision is not intended to benefit or penalize manufacturers at different locations, or on the basis that they manufacture different kinds of homes. The rule stems strictly from HUD's determination that each section of a home is sufficiently complex to warrant a thorough inspection, and, accordingly, that inspection costs should be allocated on a per-section rather than a per-unit basis. NMHF does not argue that this constitutes a faulty premise for revising the current rule. Similarly, NMHF's contention that the rule would result in unwarranted increased amounts being collected by HUD is without merit. At issue here is how fees should be assessed among transportable units, and not what the amount of the fee should be in light of HUD's inspection costs. HUD has already stated, in the proposed rule preamble, that the amount of the inspection fee will correspond to the Department's costs associated with the performance of inspections. Essentially, the fee is arrived at by dividing the Department's estimated aggregate costs for conducting the inspection program by the total number of sections inspected. Accordingly, the fee charged reflects the Department's costs and industry production figures. See 49 FR 26576 (June 24, 1984). The Department's aggregate costs will not change as a result of this rule revision, nor will its fee collections increase. What changes are the proportions of costs that each manufacturer bears. The rule revision assures equity, in that manufacturers will be required to pay fees that better reflect the expenses of the Department related to individual inspections of their single- or multi-section units. Thus, if HUD's expenses remain constant, a manufacturer of a single-section unit would pay a lower fee than that assessed under the current system, whereas the manufacturer of a multi-section unit would pay more. This is appropriate, since the inspection of the latter manufacturer's unit involves more sections, more work and more expense.

MHI also opposes the proposed rule change. Initially, it reiterates its opposition of HUD's recently published final rule that allows the Secretary to establish new inspection fees by notice in the Federal Register, without employing public notice and comment procedures. It challenges that final rule, as well as this rule making, on grounds that in each case the Department has failed to provide adequate documentation to justify revising the fee level.

MHI also recommends that inspection fee payments allocated by HUD to States should reflect individual State needs. For example, States with very large production figures for manufactured homes, particularly multiple-section units, might be authorized a lower percentage of the monitoring inspection fee per unit or per section than States with limited production or primarily single-section production.

This proceeding is not the appropriate forum for addressing the Department's rule that allows the Secretary to establish new fee amounts by Notice in the Federal Register (49 FR 26576, published on June 28, 1984 and effective on September 17, 1984). That rule revision involved a separate and distinct issue and was the subject of notice and comment rule making (and comments reviewed by HUD included one submitted by MHI).

MHI's comments related to fee levels are, in our view, without merit for the reasons stated in response to NMHF's similar allegation.

Finally, MHI has commented, as did California, on how fees collected might be allocated among States. For the same reasons discussed in response to California's comment, we will defer any action to a future date.

C. Other Matters

The fee amount for each transportable section of a manufactured home is being revised in light of this final rule. The new fee amount is announced elsewhere in today's edition of the Federal Register and will take effect on the same date that this rule becomes effective.

An incorrect reference to § 3282.362(c) in § 3282.210(b) has been changed to § 3282.365.

Finally, the Department is making a technical amendment to the rule at § 3282.454 to note that in calculating the fee amount it will estimate its inspection-related costs and home productivity for a forseeable future time period. The time period selected will not necessarily be the same each time the fee is revised. This is because time periods for which the Department may be capable of obtaining reliable underlying data may vary. However, any projected time period selected will be of reasonable duration and (as is the case with projected expenses and unit productivity data) will be subject to public scrutiny, upon request under the Freedom of Information Act. (See 49 FR 26578.) Also, the reference in the fee amount formula to HUD's maintenance of a "reserve fund" is being revised and clarified to indicate that the use of such funds is limited to offsetting short-term fluctuations in costs that do not warrant revisions in the fee amount.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 of Federal Regulation issued February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million of more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been certified that a regulatory flexibility analysis is not required because reductions in administrative costs and recordkeeping requirements resulting from the rule are not of such economic significance as to warrant an analysis.

This rule was listed as item number 141 in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17286) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.804.

List of Subjects in 24 CFR Part 3282

Administrative practice and procedures, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Mobile homes.

Accordingly, the Department amends 24 CFR Part 3282 as follows:

PART 3282—MOBILE HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

1. The authority citation for 24 CFR Part 3282 is revised to read as set forth below, and any authority citation following any section in Part 3282 is removed:

Authority: Sec. 620, National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. Section 3282.210 is revised to read as follows:

§ 3282.210 Payment of monitoring fee.

(a) Each manufacturer shall pay the monitoring fee established under §§ 3282.307 and 3282.454 for each transportable section of each manufactured housing unit that it manufactures under the Federal standards.

(b) The monitoring fee shall be paid in the form of a check made payable to the Secretary or the Secretary's agent. The manufacturer shall give to the IPIA (or to any other person or agency designated in writing by the Secretary) the required check in the amount of the number of labels, as required by § 3282.365, multiplied by the amount of the fee per transportable section of each manufactured housing unit.

3. Section 3282.307 is revised to read as follows:

§ 3282.307 Monitoring inspection fee-establishment and distribution.

(a) Each approved State shall establish a monitoring inspection fee in an amount required by the Secretary. This fee shall be an amount paid by each manufactured home manufacturer in the State for each transportable section of each manufactured housing unit produced by the manufacturer in that State. In non-approved and conditionally-approved States, the fee shall be set by the Secretary.

(b) The monitoring inspection fee shall be paid by the manufacturer to the Secretary or the Secretary's agent, who shall distribute the fees collected from all manufactured home manufacturers among the approved and conditionally-approved States based on the number of new manufactured housing units whose first location after leaving the manufacturing plant is on the premises of a distributor, dealer, or purchaser in that State, and the extent of participation of the State in the joint team monitoring program set out in § 3282.305.

4. Section 3282.454 is revised to read as follows:

§ 3282.454 Monitoring inspection fee.

(a) The Secretary may establish by notice in the **Federal Register** a monitoring inspection fee which is to be paid by manufacturers for each transportable section of each manufactured housing unit manufactured in nonapproved and conditionally approved States as described in § 3282.210. To determine the amount of the inspection fee to be paid for each transportable section of each manufactured home, the Secretary shall divide the (estimated) number of transportable sections of manufactured homes (based on recent industry production figures) into the anticipated aggregate cost of conducting the inspection program in the foreseeable feature. The time period selected for projecting the Department's inspection-related costs and number of transportable sections need not always be the same, but must be for a period of sufficient duration to provide for access to reasonable underlying data. To determine the aggregate cost of conducting the inspection program, the Secretary shall calculate the sum necessary to support (1) inspection-related activities of State Administrative Agencies; (2) inspection-related activities performed by the Department of Housing and Urban Development; (3) inspection-related activities performed by monitoring inspection contractors; (4) miscellaneous activities involving the performance of inspection-related activities by the Department, including on-site inspections on an ad hoc basis; and (5) maintenance of adequate funds to offset short-term fluctuations in costs that do not warrant revising the fee under the authority of this section.

(b) The monitoring inspection fee to be established by approved States under § 3282.307(a) shall be in an amount required by the Secretary.

(c) The Secretary may at any time revise the amount of the fees established under paragraph (a) or (b) of this section by placing a notice of the amount of the revised fee in the **Federal Register**.

Dated: July 3, 1985.

Janet Hale,

Acting General Deputy, Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-16599 Filed 7-11-85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS ALASKA (SSBN 732) and USS NEVADA (SSBN 733) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as naval submarines. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS ALASKA (SSBN 732) and USS NEVADA (SSBN 733) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), requiring that the stern light show an unbroken light over an arc of the horizon of 135 degrees and be so fixed as to show the light 67.5 degrees from right aft on each side of the vessel; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the locations of the side lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of these ships. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS ALASKA (SSBN 732) and USS NEVADA (SSBN 733) are members of the SSN 726 class of ships for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS ALASKA (SSBN 732) and USS NEVADA (SSBN 733).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ships' abilities to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: Executive Order 11964; 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following naval ships to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Sec. 2(a)(i), Annex I
USS ALASKA	SSBN 732	3.70
USS NEVADA	SSBN 733	3.70

3. Table Three of § 706.2 is amended by adding the following naval ships to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Masthead light, arc of visibility; rule 21(a)	Side lights, arc of visibility; rule 21(b)	Stern light, arc of visibility; rule 21(c)	Side light, distance inboard of ship's sides in meters; section 3(b), Annex I	Side light distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; sec. 2(b), Annex I	Anchor lights relationship of aft light to forward light in meters; sec. 2(b), Annex I
USS ALASKA	SSBN 732			209'	5.3	9.0	3.8	4.0 below.
USS NEVADA	SSBN 733			209'	5.3	9.0	3.8	4.0 below.

Dated: June 20, 1985.

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85-16617 Filed 7-11-85; 8:45 am]

BILLING CODE 3810-AE-M

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS CONOLLY (DD 979) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS CONOLLY (DD 979) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the placement of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval destroyer. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 is revised to read:

Authority: Executive Order 11964; 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS CONOLLY	DD 979						X	X	46.4

Dated: June 20, 1985.

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85-16618 Filed 7-11-85; 8:45 am]

BILLING CODE 3810-AE-M

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendement

AGENCY: Deparment of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS VALLEY FORGE (CG 50) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. This intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandiria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS VALLEY FORGE (CG 50) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendement for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for Part 706 is revised to read as follows:

Authority: Executive Order 11964 and 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above the hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS VALLEY FORGE	CG 50						X	X	36

Dated: June 20, 1985.

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85-16620 Filed 7-11-85; 8:45 am]

BILLING CODE 3810-AE-M

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS PROVIDENCE (SSN 719) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS

without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in water where 72 COLREGS apply.

EFFECTIVE DATE: June 21, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS PROVIDENCE (SSN 719) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), requiring that the stern light show an unbroken light over an arc of the a horizon of 135 degrees and be so fixed as to show the light 67.5 degrees from right aft on each side of the vessel; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the locations of the side lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS PROVIDENCE (SSN 719) is a member of the SSN 688 class of ships for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3, are equally applicable to USS PROVIDENCE (SSN 719).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for Part 706 is revised to read as follows:

Authority: Executive Order 11964 and 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the cetifications issued by the Secretary of the Navy:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Sec. 2(a)(i), Annex I
USS PROVIDENCE	SSN 719	3.5

3. Table Three of § 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the certification issued by the Secretary of the Navy:

Vessel	Number	Masthead light, arc of visibility; rule 21(a)	Side lights, arc of visibility; rule 21(b)	Stern light, arc of visibility; rule 21(c)	Side lights, distance inboard of ship's sides in meters; sec. 3(b), Annex I	Stern light distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; sec. 2(k), Annex I	Anchor lights relationship of aft light to forward light in meters; sec. 2(k), Annex I
USS PROVIDENCE	SSN719			20°	4.2	6.1	3.4	1.7 below.

Dated: June 21, 1985.

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85–16619 Filed 7–11–85; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 726

Payments of Amounts Due Mentally Incompetent Members of the Naval Service

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its regulations concerning the payment of moneys due to mentally incompetent members of the naval service to reflect changes to Chapter XV of the Manual of the Judge Advocate General.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mrs. Valeria Childress, Civil Affairs Division, Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332–2400, Telephone number: (202) 325–9752.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 726, which is derived from Chapter XV of the Manual of the Judge Advocate General, to reflect changes in that regulation. The amendment relates to internal naval management and personnel practices, and is being published by the Department of the Navy solely for the guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on this amendment prior to adoption would be impracticable and is not required under the public rulemaking provisions of 32 CFR Parts 296 and 701. It has also been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive Order 12291, and does not have substantial impact on the public.

List of Subjects in 32 CFR Part 726

Mental health programs, Military personnel, Administrative practice and procedure, Reporting and recordkeeping requirements, Trusts and trustees.

Accordingly, 32 CFR Part 726 is amended as follows:

1. The authority citation for Part 726 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 37 U.S.C. 601–604, and 1001; 32 CFR 700.206 and 700.1202.

2. Section 728.10 is revised to read as follows:

§ 728.10 Reports and Supervision of Trustees

(a) *Annual accounting report.* The trustee designated under this chapter shall submit accounting reports annually or at such times as the Judge Advocate General or DAJAG(CA) directs. The report shall account for all funds received from the Navy or Marine Corps on behalf of the servicemember. NAVJAG Forms 5800/13 (Rev. 8–76) and 5800/13A (Rev. 8–78) will be provided for these reports. When requested by the Judge Advocate General or DAJAG(CA), bank records, receipts, canceled checks, or vouchers shall be attached to the report. Report Control Symbols JAG 5800–5 and 5800–5A have been assigned to the reports.

(b) *Failure to submit a report.* If an accounting is not received by the date designated by the Judge Advocate General or DAJAG(CA), or an accounting is forwarded which is unsatisfactory, the Judge Advocate General or DAJAG(CA) shall notify the trustee in writing. The notice shall inform the trustee that he or she is in violation of the regulations concerning trustees promulgated pursuant to 37 U.S.C 601–604. The notice shall further state that if a satisfactory accounting is not received by the Judge Advocate General or DAJAG(CA) within an appropriate number of days from the date of receipt of the notification, the trustee will be declared in default of the trustee agreement and shall become liable for any unaccounted for monies.

(c) *Declaration in default.* If the trustee fails to submit a satisfactory accounting within the time designated by the JAG or DAJAG(CA), the trustee shall be declared by the JAG or DAJAG(CA) to be in default of the trustee agreement.

(d) *Termination of payments.* If a trustee is declared to be in default of the trustee agreement, the Judge Advocate General or DAJAG(CA) shall request the appropriate Finance Center to terminate payments to the trustee and if necessary appoint a successor trustee.

(e) *Demand for payment.* At the time of the declaration of such default, the Judge Advocate General of DAJAG(CA) shall notify the defaulting trustee that he or she is in default of the trustee agreement. The surety for the trustee shall also be notified at this time concerning the account. The notifications to the trustee and surety shall state the reasons for default, the amount of indebtedness to the Government and shall demand payment. The notifications shall also state that if payment, in full, of the monies due the Government is not received by the Office of the Judge Advocate General, or satisfactory arrangements for repayment have not been made with an appropriate number of days from the date of receipt of the notifications, the account may be forwarded, as the Judge Advocate General or DAJAG(CA) may direct, to the Department of Justice for recovery of the monies through appropriate civil action.

(f) *Final accounting.* When payments under this chapter are terminated due to the death of the member, his or her restoration to capacity, the replacement of the trustee, or for any other reason, other than default of the trustee agreement, the trustee shall submit a final accounting to the Judge Advocate General or DAJAG(CA), as appropriate. Upon approval of the report, the trustee and the surety will be discharged from liability. In the event of death or disability of a trustee, the final accounting shall be filed by the legal representative of the trustee.

(g) *Finance Centers.* The Commanding Officer, Navy Finance Center, Commanding officer, Marine Corps Finance Center, or the cognizant disbursing officer shall notify the Judge Advocate General or DAJAG(CA) of any fact affecting the pay of a member who is not mentally capable of managing his/her affairs. This includes waiver of retired pay in favor of Veterans Administration compensation; death of the member; death of the trustee; or notice of appointment of a legal representative by the court of competent jurisdiction. At the request of the Judge Advocate General or DAJAG(CA), the cognizant disbursing officer shall report all disbursements from the service member's account.

Dated: July 9, 1985.

William F. Ross, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–16622 Filed 7–11–85; 8:45 am]

BILLING CODE 3810-AE-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–4

[FPRM Amdt. A–38]

Patents

AGENCY: Office of Acquisitions Policy, GSA.

ACTION: Final rule.

SUMMARY: This regulation removes from 41 CFR Part 101–4 provisions concerning the licensing of Government-owned inventions which were superseded by regulations at 37 CFR Part 404.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: Emily C. Karam, Office of Federal Acquisition and Regulatory Policy (VR), Office of Acquisition Policy, telephone (202) 566–1177 or FTS 566–1177.

SUPPLEMENTARY INFORMATION: Pub. L. 96–620 amended 35 U.S.C. 208 to shift authority to promulgate regulations concerning the licensing of Government-owned inventions from the Administrator of General Services to the Secretary of Commerce. The Secretary of Commerce issued regulations at 37 CFR Part 404 (50 FR 9801, March 12, 1985), which were identical in substance to and which superseded GSA regulations at 41 CFR Part 101–4.

List of Subjects in 41 CFR Part 101–4

Inventions and patents.

PART 101–4—[REMOVED]

In 41 CFR Chapter 101, Subchapter A—General, Part 101–4 is removed and reserved.

(35 U.S.C. 208)

Dated: June 10, 1985.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85–16644 Filed 7–11–85; 8:45 am]

BILLING CODE 6820–61–M

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41 CFR Part 101–47

[FPMR Amdt. H–154]

Holding Agency

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: This rule amends the regulation covering property for which the holding agency is designated the disposal agency. The list is amended to include underground water.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: James H. Pitts, Office of Real Property (202–535–7067).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or

others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–47

Surplus Government property, Government property management.

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for Part 101–47 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101–47.3—Surplus Real Property Disposal

2. Section 101–47.302–2 is amended by revising paragraph (a)(3) to read as follows:

§ 101–47.302–2 Holding agency.

(a) * * *

* * * * *

(3) Standing timber and embedded gravel, sand, stone, and underground water to be disposed of without the underlying land.

* * * * *

Dated: June 19, 1985.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85–16045 Filed 7–11–85; 8:45 am]

BILLING CODE 6820–26–M

Proposed Rules

Federal Register
Vol. 50, No. 134
Friday, July 12, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[Docket No. F&V HRPCIA-1]

Honey Research, Promotion, and Consumer Information Act; Hearing on Proposed Order

Correction

In FR Doc. 85-15654 beginning on page 26942 in the issue of Friday, June 28, 1985, the docket number in the heading should have appeared as it does above.

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-6593; 34-22196; IC-14609; File No. S7-32-85]

Filing Fees for Tender Offers, Mergers and Similar Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("the Commission") is publishing for comment proposed amendments to its rules relating to the imposition and collection of filing fees for certain Exchange Act acquisition and business combination transactions. The proposals relate to legislation that requires payment to the Commission of a filing fee calculated on a percentage basis of the transaction's value for tender offers, proxy and information statements involving an acquisition, merger, consolidation or sale or other disposition of substantially all the assets of a company and certain other filings.

DATE: Comments should be received on or before September 10, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters should refer to File No. S7-32-85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Sarah A. Miller or JoAnn L. Zuercher, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment new Rule 0-11 [1] under the Securities Exchange Act of 1934 ("Exchange Act")[2]. The Commission also is proposing for comment corresponding amendments to Rule 457 [3] under the Securities Act of 1933 ("Securities Act")[4] and Rules 0-9 [5] and 13e [6] and Schedules 13E-3 [7], 13E-4 [8], and 14D-1 [9] under the Exchange Act. These proposals are intended to provide guidance to persons now required, as a result of amendments to the Exchange Act, to pay statutory filing fees incurred in connection with certain acquisition and business combination transactions.

I. Executive Summary

In June 1983, Congress amended the Exchange Act to require transaction-related filing fees for the filing of documents in connection with certain acquisitions, dispositions, business combinations and consolidations.[10] That legislation added Sections 13(e)(3)[11] and 14(g)[12] to require persons filing specified documents [13] to pay, at the time of filing with the Commission, a fee of one-fiftieth of one percent of the value of the transaction. The amendments were intended to equalize the fees assessed for various types of equivalent business transactions involving tender offers, mergers and consolidations, whether the transaction involves a filing under the Securities Act or the Exchange Act.[14]

Having gained experience in administering the new Exchange Act fee provisions, the Commission has determined to propose rule provisions which would codify the administrative practice under the statute. That practice generally has been to apply the interpretations concerning Securities Act fee determinations to the Exchange Act business combination context. The proposed amendments would codify and clarify the administrative practice and provide additional guidance on the method of valuation of the securities sought, depending on whether the securities are to be purchased for cash or other consideration. The amendments also would specify: (1) That the fee is to be paid by the person making the filing, except that in the case of proxy or information statements involving two or more companies subject to the Commission's proxy or information statement rules, each person shall pay a proportionate share of such fee; (2) that where a transaction involves more than one filing requirement or the registration provisions of the Securities Act, the payment of the fee with the initial filing

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[1] 17 CFR 240.0-11.

[2] 15 U.S.C. 78a-78kk (1982), *as amended by* Act of June 6, 1983, Pub. L. No., 98-38, 97 Stat. 205 (1983).

[3] 17 CFR 230.457.

[4] 15 U.S.C. 77a-77aa (1982).

[5] 17 CFR 240.0-9.

[6] 17 CFR 240.13e-1.

[7] 17 CFR 240.13e-100.

[8] 17 CFR 240.13e.101.

[9] 17 CFR 240.14d-100.

[10] Act of June 6, 1983, Pub. L. 98-38, 97 Stat. 205 (1983). The Commission announced the enactment and effectiveness of this legislation in Rel. No. 34-19870 (June 13, 1983) (48 FR 27524).

[11] 15 U.S.C. 78m(e)(3).

[12] 15 U.S.C. 78n(g).

[13] The filings subject to the new filing fee are: (a) Schedule 13E-4 filed pursuant to Rule 13e-4 (17 CFR 240.13e-4); (b) Schedule 14D-1 filed pursuant to Rule 14d-3 (17 CFR 240.14d-3); (c) preliminary proxy material filed pursuant to Rule 14a-6 (17 CFR 240.14a-6) relating to a proposed acquisition, merger, consolidation or sale or other disposition of substantially all the assets of the issuer; (d) preliminary information statements filed pursuant to Rule 14c-5 (17 CFR 240.14c-5) relating to such transactions; (e) Schedule 13E-3 filed pursuant to Rule 13e-3 (17 CFR 240.13e-3 in connection with the acquisition of securities; and (f) a disclosure statement filed pursuant to Rule 13e-1.

[14] H. Rep. No. 98-106, 98th Cong., 1st Sess. 1-2, 5-6 (1983) (hereinafter H. Rep. No. 98-106). Under the Securities Act, a fee of one-fiftieth of one percent is required to be paid in connection with exchange offers and proxy solicitations for mergers with securities offered as consideration. Under the Exchange Act prior to the amendments, no fees were required in connection with cash tender offers and fees of $1.25 and $1,000 were assessed in connection with proxies for the sale of assets and cash merger proxies, respectively. H. Rep. No. 98-106, *supra* at 5.

will offset any subsequent filing fee obligation; and (3) that any increase in consideration offered will require an additional fee to be paid.

Since the proposals are generally similar to the present method of administering the new fee provisions, parties filing Exchange Act documents subject to these fees may look to the rule proposals for guidance until final action is taken on the proposals.

II. Discussion of Proposals

A. Proposed Exchange Act Rule for Filing Fees for Certain Acquisitions, Dispositions and Similar Transactions

Proposed Rule 0–11 sets forth the basic requirements with respect to fees for all Exchange Act filings subject to the new filing fee. The proposed rule is divided into four paragraphs. Proposed Rule 0–11(a) conntains the general requirements for every transaction subject to the rule. Paragraph (a)(1) sets forth the general fee requirement. Paragraph (a)(2) would specify that only one fee per transaction is required and would make explicit that: (1) Any required fee is to be reduced in an amount equal to any fee paid under section 6(b) of the Securities Act [15] or any other provision of the proposed rule; and (2) fees required to be paid under section 6(b) of the Securities Act shall be reduced by the amount already paid under this rule. Thus, in a multi-step transaction, the fee would be calculated with respect to each step. Where, however, any or all of the fee in connection with a step has already been paid in connection with the filing for a prior step, there is an offset provision. For example, a tender offer for any and all shares of a target company would necessitate a fee related to the price of acquiring 100% of the target; if less than all shares are tendered and a subsequent merger occurs, the fee paid in connection with the initial tender offer would be applied against the fee required in connection with the merger. The offset provision generally would not come into play in the case of a tender offer for less than all of the shares of the target followed by a merger, since the fee paid for the first step of the transaction would cover only a portion of the target's outstanding shares.

Paragraph (a)(3) of proposed Rule 0–11 would provide that increases in the aggregate consideration offered would trigger an additional filing fee based upon the amount of the increased consideration. This additional fee would be applicable whether the increased consideration is the result of increasing the amount of securities sought or of raising the per share consideration. [16]

Paragraph (a)(4) of proposed Rule 0–11 would indicate the method of determining the value of the securities upon which to base the filing fee. The proposed rule provides a valuation method that generally parallels the provisions of existing Rule 457(e) under the Securities Act relating to the computation of the filing fee for registered exchange offers. In general, where securities are to be acquired in exchange for securities or other non-cash consideration, the value of the securities proposed to be purchased for such consideration would be based upon the market value of the securities to be acquired by the filing person. In determining the market value of the securities, the valuation would be based upon the average bid asked or high and low price of such securities as of a specified date within 5 business days prior to filing. [17] In view of the rapid pace of current securities markets, the 5 business day period provides the appropriate measure for the fee calculation by more closely matching the fee calculation to market conditions. Where there is no market for the securities being acquired by the filing person, then the book value of the securities computed as of the latest practicable date prior to the date of filing would be used to value the securities. If, however, the acquired person is in bankruptcy or receivership or has an accumulated capital deficit, the filing fee would be one-third of the principal amount, par value or stated value of the securities.

Finally, paragraph (a)(5) would require that filings subject to the rule which are not required to contain a table showing the calculation of the filing fee be accompanied by a transmittal letter giving the equivalent information. As noted in Part B and footnote 27 below, amendments are being proposed to add a fee calculation table to the facing pages of Schedules 13E–3, 13E–4, and 14D–1. The transmittal letter requirement thus would apply only to other filings.

Paragraphs (b) through (d) of proposed Rule 0–11 would relate to specific Exchange Act filings and would carry over the valuation method and other relevant fee provisions contained in Rule 457 under the Securities Act. Under proposed Rule 0–11(b), a fee of one-fiftieth of one percent of the value of the securities proposed to be acquired is to be paid when a statement required by section 13(e)(1) of the Exchange Act is filed. [18] Proposed paragraphs (b) (1) and (2) would specify the method of valuation of the securities sought. Where the securities are to be purchased for cash, the securities are to be valued at the cash price to be paid for the securities. Where the payment for the securitries includes consideration other than cash, the proposed rules provides that the value of the securities to be received by the acquiring person, determined in accordance with paragraph (a)(4) of the proposed rule, would be used as the basis for calculating the fee.

Proposed Rule 0–11(c) would govern the calculation of the fee required when a preliminary proxy statement pursuant to Rule 14a–6 or preliminary information statement pursuant to Rule 14c–5 is filed concerning an acquisition, merger, consolidation or proposed sale or other disposition of substantially all the assets of the company. [19] As required by the legislation, the calculation of the fee would vary depending upon the nature of the transaction. In the case of an acquisition, merger or consolidation, the

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[15] Section 6(b) of the Securities Act requires at the time of filing the registration statement a fee of one-fiftieth of one percent of the maximum aggregate offering price but in no case a fee of less than $100. The Commission is also proposing a corresponding amendment to Rule 457 under the Securities Act to add proposed paragraph (b) to provide that any required fee is to be reduced in an amount equal to any fee paid under sections 13(e) and 14(g) of the Exchange Act. Thus, if the entire fee is paid pursuant to section 13(e) or 14(g) of the Exchange Act, no fee, including the $100 minimum fee under section 6(b) of the Securities Act, need be paid with the Securities Act registration statement.

[16] This provision would be consistent with existing interpretations of Rule 457(a) and (c), whereby an increase in the consideration offered by means of an increase in the exchange ratio and therefore the number of securities to be offered would necessitate an additional filing fee. If the increase in consideration involves cash rather than additional securities, however, the proposed Exchange Act fee treatment would differ from that of the Securities Act because section 6(b) of the Securities Act ties the fee to the securities, not to the value of the cash portion of an offer.

[17] At present, Rule 457 requires that the market price be determined within fifteen days prior to filing. A corresponding amendment is being proposed to update Rule 457 and to provide that market price determinations would be made within 5 business days prior to filing regardless of which Act required the fee payment. In addition, Rule 457 would be amended to include the same language as proposed Rule 0–11(a)(4) concerning the method of determining the market value of securities.

[18] These statements include a statement concerning the purchase of securities by the issuer required by Rule 13e–1, a Rule 13e–3 transaction statement (Schedule 13E–3) and a Rule 13e–4 issuer tender offer statement (Schedule 13E–4).

[19] The Commission today also is proposing comprehensive proxy rule revisions which include amendments to Rules 14a–6 and 14c–5 to refer specifically to proposed Rule 0–11. *See* Release No. 33–6582 (July 1, 1985) [50 FR]. In this connection, the word "registrant" is used in paragraph (c) of the rule to have the same meaning it would have if the proxy rule proposals are adopted, i.e., the issuer of the securities in respect of which proxies are to be solicited (or an information statement furnished).

fee payable would be one-fiftieth of one percent of any proposed cash payment, or the value of securities or other property proposed to be transferred to security holders.[20] In the case of a filing relating to a proposed sale or other disposition of substantially all the assets of an issuer, the proposed rule would provide that the one-fiftieth of one percent fee be based upon the aggregate of any proposed cash payment and the value of the securities or other property proposed to be received by the issuer upon such sale or disposition. Where the issuer is not to receive consideration for such disposition, *e.g.* in a spin-off or liquidation, the fee would be based on the value of the securities and other property distributed to security holders.

It should be noted that proposed Rule 0–11(c)(1) and (2) would apply to proxy or information statements involving a vote on certain matters, including proxy or information statements involving a vote which indirectly serves as the equivalent of a vote on one of the matters specified. For example, if a proxy statement is filed with respect to as vote to approve the authorization of additional securities which are to be used to acquire another specified company, and the registrant's shareholders will not have a separate opportunity to vote upon the transaction, the vote to authorize the securities is also a vote with respect to the acquisition. The fee called for by Rule 0–11 therefore would be required.[21]

An exception from the fee equalization requirements of proposed Rule 0–11(c) pertains to mergers, consolidations or similar transactions where the sole purpose of the transaction is to change the company's domicile.[22] The fee applicable to these filings would be $125. This provision is based on the conclusion that such transactions are not the type intended to be subject to fee equalization. The Commission specifically requests comment as to whether there are other transactions that should be expected as not comparable to the business combinations, exchange offers, acquisitions of securities and dispositions which the fee equalization legislation was designed to address.

The last section of proposed Rule 0–11(c) exempts from the fee requirement any proxy statement filed by a company registered under the Investment Company Act of 1940,[23] as provided by section 14(g) of the Exchange Act. Investment companies filing proxy statements which would otherwise come within this rule should continue to pay the fee currently required.[24]

Proposed Rule 0–11(d) relates to tender offer filings on Schedule 14D–1. A filing fee of one-fiftieth of one percent of the amount of cash or the value of securities or other property proposed to be offered by the bidder must accompany the initial Schedule 14D–1 filing. The same calculation methodology and valuation criteria as proposed to be used in proposed Rule 0–11(b) and (c) generally would apply to Schedule 14D–1 filings.[25]

B. Corresponding Amendments

In addition to proposing Rule 0–11 relating to the Exchange Act fee requirement for cash tender offers and the proxy and information statements involving certain business combinations, the Commission is proposing corresponding amendments: (1) To amend Rule 0–9[26] to require that the fee called for by Rule 0–11 be paid by cash, a certified check or the equivalent;[27] (2) to reflect proposed Rule 0–11 in Rule 13e–1;[28] (3) to add to the facing pages of Schedules 13E–3, 13E–4 and 14D–1 a table showing the calculation of the filing fee similar to that required on Securities Act registration statement form;[29] (4) to reflect in instruction number 2 of the Special Instuctions for Complying with Schedule 14D–1 that a filing fee is required to be filed in accordance with proposed Rule 0–11; and (5) to amended Rule 457, as noted above, to be consistent with the new fee structure and to update the language on calculating the market value of securities to be consistent with that in proposed Rule 0–11.

III. Request for Comment

Any interested persons wishing to submit written comments on the proposed revisions to the rules, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so.

The commission also requests comment on whether the proposed revisions, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[30]

IV. Statutory Basis and Text of Proposed Amendments Authority

The amendments to the Commission's rules and forms are being proposed by the Commission pursuant to sections 6, 7 and 19(a) of the Securities Act of 1933 and sections 12, 13, 14 and 23(a) of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

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[20] When the consideration does not consist entirely of cash, its value would be determined by reference to the value of the securities or property being received by the acquiring person.

[21] This is consistent with the Commission's position on disclosure in such proxy statements, which is reflected in Note A to Schedule 14A, 17 CFR 240.14a–101, as proposed to be amended (Release No. 33–6582).

[22] In determining whether a merger, consolidation or other transaction falls within this exception, the Commission would apply the same interpretation of such provision as to a similar provision in Rule 145 (a)(2) under the Securities Act, 17 CFR 230.145(a)(2).

[23] 15 U.S.C. 80a–1—80a–64, *as amended by* Act of October 21, 1980, Pub. L. No. 96–477, 94 Stat. 2275 (1980).

[24] *See* Rule 20a–1 (17 CFR 270.20a–1).

[25] When the transaction is an unsolicited exchange offer for securities for which there is no market, and the fee therefore is to be based upon the book value of the securities to be received by the bidder, the bidder may not be in a position to require the target to compute its book value as of the latest practicable date. In this event, the staff will not object if the bidder calculates the fee based upon the book value of the securities as of the most recent date for which such information is publicly available.

[26] This rule specifies the method of payment of Exchange Act fees, and states that all such fees should be paid in accordance with 17 CFR 202.3a, which permits payment directly to the Commission or to a U.S. Treasury designated lockbox.

[27] This would be consistent with the treatment of such fees under the Securities Act, which are not permitted to be paid by personal check.

[28] Proposed new paragraph (b) to Rule 13e–1 would provide that the initial statement is to be accompained by a fee payable to the Commission in accordance with Rule 0–11. This proposed addition requires a redesignation of the remaining paragraph.

[29] The proposed table calls for the amount of the fee and the value of the securities used in its computation. Where a filing fee is not required to accompany the Schedule being filed, the table would require the identification of the document with which the fee has been filed and the date of its filing. This information is necessary to assist the Commission's Office of Applications and Report Services in processing the filing. In this regard, proposed Rule 0–11(a)(5) requires that a filing not calling for a fee calculation table (i.e., a Rule 13e–1 disclosure statement or a proxy or information statement) be accompanied by a letter of transmittal with the equivalent information.

[30] 15 U.S.C. 78w(a)(2).

Authority: General * * * Sec. 230.100 to 230.174 issued under sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s * * *

2. By redesignating paragraphs (b)–(m) as paragraphs (c)–(n); by redesignating the reference to "(e)(1) or (2)" in redesignated paragraph (f)(3) to read "paragraph (f)(1) or (2)"; and by adding a new paragraph (b) to § 230.457 and revising the paragraphs redesignated (c), (f)(1), (g)(3) (in the second sentence of paragraph (g)), and (h) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(b) A required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to sections 13(e) and 14(g) of the Securities Exchange Act of 1934 or any applicable provision of this section; the fee requirements under sections 13(e) and 14(g) shall be reduced in an amount equal to the fee paid the Commission with respect to a transaction under this section. No part of a filing fee is refundable.

(c) Where securities are to be offered at prices computed upon the basis of fluctuating market prices, the registration fee is to be calculated upon the basis of the price of securities of the same class, as follows: either the average of the high and low last sale reported price (for exchange traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of filing the registration statement.

* * * * *

(f) * * *

(1) Upon the basis of the market value of the securities to be received by the registrant or cancelled in the exchange or transaction as established by the price of securities of the same class, as determined in accordance with paragraph (c) of this section.

* * * * *

(g) * * * (3) the price of securities of the same class, as determined in accordance with paragraph (c) of this section. * * *

(h) Where securities are to be offered to employees pursuant to an employee stock purchase, savings, or similar plan, the aggregate offering price and the amount of the registration fee shall be computed only with respect to the aggregate contributions of employees, except that if employees may choose the medium in which the employer's contributions are to be invested the aggregate offering price shall include the employer's contributions. Where stock is to be offered to employees pursuant to an employee stock option plan, the aggregate offering price and the amount of the fee shall be computed upon the basis of the price at which the option may be exercised or, if such price is not known, upon the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. Where securities are to be offered to employees pursuant to a bonus plan or similar noncontributory plan, the aggregate offering price and amount of the fee shall be computed on the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. If there is no market for the securities to be offered, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w unless otherwise noted. §§ 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended; 894, 895, as amended; 15 U.S.C. 78c, 78*l*, 78m, 78*o*. §§ 240.14c–1 to 240.14c–101 also issued under sec. 14, 48 Stat. 895; 15 U.S.C. 78n. §§ 240.15b10–1 to 240.15b10–9 also issued under secs. 15, 17, 48 Stat. 895, 897, sec. 203, 49 Stat. 704 secs. 4, 8, 49 Stat. 1379, sec. 5, 52 Stat. 1076, sec. 6, 78 Stat. 570; 15 U.S.C. 78p, 78q, 12 U.S.C. 241 nt., * * *

4. By revising § 240.0–9 to read as follows:

§ 240.0–9 Payment of fees.

All payment of fees except those required by § 240.0–11 of this chapter shall be made in cash, certified check, personal check, or by United States postal money order, bank cashier's check or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by § 240.0–11 shall be made in the same manner except that payment by personal check shall not be permitted. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

5. By adding § 240.0–11 to read as follows:

§ 240.0–11 Filing fees for certain acquisitions, dispositions and similar transactions.

(a) *General.* (1) At the time of filing a disclosure document described in paragraphs (b) through (d) of this section relating to certain acquisitions, dispositions, business combinations, consolidations or similar transactions, the person filing the specified document shall pay a fee payable to the Commission to be calculated as set forth in paragraphs (b) through (d) of this Section.

(2) Only one fee per transaction is required to be paid. A required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to either Section 6(b) of the Securities Act of 1933 or any applicable provision of this rule; The fee requirements under Section 6(b) shall be reduced in an amount equal to the fee paid the Commission with respect to transaction under this regulation. No part of a filing fee is refundable.

(3) If at any time after the initial payment the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amending filing.

(4) When the fee is based upon the market value of securities, such market value shall be established by either the average of the high and low last sale reported price (for exchange traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of the filing. If there is no market for the securities, the value shall be based upon the book value of the securities computed as of the latest practicable date prior to the date of the filing, unless the issuer of the securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of the securities shall be used.

(5) If the filing requiring the payment of the fees does not require a facing sheet showing the calculation of the fee, the filing shall be accompanied by the latter of transmittal stating the amount of the filing fee and how it was determined, as well as the amount offset by a previous filing and the identification of such filing, if applicable.

(b) *Section 13(e)(1) Filings.* At the time of filing such statement as the Commission may require pursuant to section 13(e)(1) of the Exchange Act, a fee of one-fiftieth of one percent of the value of the securities proposed to be

acquired by the acquiring person. The value of the securities proposed to be acquired shall be determined as follows:

(1) The value of the securities to be acquired solely for cash shall be the amount of cash to be paid for them;

(2) The value of the securities to be acquired with securities or other non-cash consideration, whether or not in combination with a cash payment for the same securities, shall be based upon the market value of the securities to be received by the acquiring person as established in accordance with paragraph (a)(4) of this section.

(c) *Proxy and information statement filings.* At the time of filing a preliminary proxy statement pursuant to Rule 14a–6(a) or preliminary information statement pursuant to Rule 14c–5(a) that concerns a merger, consolidation, acquisition of a company, or proposed sale or other disposition of substantially all the assets of the registrant (including a liquidation), the following fee:

(1) For preliminary or acquisition of a company, a fee of one-fiftieth of one percent of the proposed cash payment or of the value of the securities and other property to be transferred to security holders in the transaction. The fee is payable whether the registrant is acquiring another company or being acquired.

(i) The value of securities or other property to be transferred to security holders, whether or not in combination with a cash payment for the same securities, shall be based upon the market value of the securities to be received by the acquiring person as established in accordance with paragraph (a)(4) of this section.

(ii) Notwithstanding the above, where the acquisition, merger or consolidation is for the sole purpose of changing the registrant's domicile, the filing fee shall be $125.

(2) For preliminary material involving a vote upon a proposed sale or other disposition of substantially all the assets of the registrant, a fee of one-fiftieth of one percent of the aggregate of the cash and the value of the securities (other than its own) and other property to be received by the registrant. In the case of a disposition in which the registrant will not receive any property, such as a liquidation or spin-off, the fee shall be one-fiftieth of one percent of the aggregate of the cash and the value of the securities and other property to be distributed to security holders.

(i) The value of the securities to be received (or distributed in the case of a spin-off or liquidation) shall be based upon the market value of such securities as established in accordance with paragraph (a)(4) of this section.

(ii) The value of other property shall be a bona fide estimate of the fair market value of such property.

(3) Where two or more companies are involved in the transaction, each shall pay a proportionate share of such fee, determined by the persons involved.

(4) Notwithstanding the above, the fee required by this paragraph (c) shall not be payable for a proxy statement filed by a company registered under the Investment Company Act of 1940.

(d) *Schedule 14D–1 filings.* At the time of filing a Schedule 14D–1, a fee of one-fiftieth of one percent of the aggregate of the cash or of the value of the securities or other property offered by the bidder. Where the bidder is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration to be offered for such securities shall be based upon the market value of the securities to be received by the bidder as established in accordance with paragraph (a)(4) of this section.

6. By redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to § 240.13e–1 to read as follows:

§ 240.13e–1 Purchase of securities by issuer thereof.

* * * * *

(b) The initial statement shall be accompanied by a fee payable to the Commission as required by § 240.0–11.

* * * * *

7. By adding the "Calculation of Filing Fee" schedule to § 240.13e–100 to read as follows:

§ 240.13e–100 Schedule 13E–3 [§ 240.13e–3], Rule 13e–3 transaction statement pursuant to section 13(e) of the Securities Exchange Act of 1934 and rule 13e–3 [§ 240.13e–3] thereunder.

* * * * *

Check the following box if the soliciting materials or information statement referred to in checking box (a) are preliminary copies: ☐

Calculation of Filing Fee

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check box if any part of the fee is offset as provided by Rule 0–11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: ———
Form or Registration No.: ———
Filing Party: ———
Date Filed: ———

* * * * *

8. By adding the "Calculation of Filing Fee" schedule to § 240.13e–101 to read as follows:

§ 240.13e–101 Schedule 13E–4. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e–4 thereunder.

Securities and Exchange Commission
Washington, D.C.

Issuer Tender Offer Statement

Pursuant to Section 13(e)(1) of the Securities Exchange Act of 1934

(Amendment No. ———)

Name of Issuer ———
Name of person(s) filing statement ———
Title of class of securities ———
CUSIP number of class of securities ———
Name, address and telephone number of person authorized to receive notices and communications on behalf of the person(s) filing statement ———
Date tender offer first published, sent or given to security holders ———

Calculation of Filing Fee

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check box if any part of the fee is offset as provided by Rule 0–11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: ———
Form or Registration No.: ———
Filing Party: ———
Date Filed: ———

* * * * *

9. By inserting a line, adding the "Calculation of Filing Fee" schedule and revising Instruction 2 to the Special Instruction for complying with Schedule 14D–1 of § 240.14d–100 to read as follows:

§ 240.14d-100 Schedule 14D-1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-1

* * * * *

(CUSIP Number of Class of Securities)

(Name, Address, and Telephone Numbers of Person Authorized to Receive Notices and Communications on Behalf of Bidder)

Calculation of Filing Fee

Transaction valuation*	Amount of filing fee

* Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Part: _____
Date Filed: _____

* * * * *

Special Instructions for Complying with Schedule 14D-1

* * * * *

Instructions. 1. * * *

2. This statement shall be accompanied by a fee payable to the Commission as required by § 240.0-11.

* * * * *

By the Commission.

John Wheeler,

Secretary.

July 1, 1985.

[FR Doc. 85-16578 Filed 7-11-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-14-81]

Deduction for Certain Foreign Deferred Compensation Plans; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the limitations on deductions and adjustments to earnings and profits (or accumulated profits) with respect to certain foreign deferred compensation plans.

DATES: The public hearing will be held on Friday, September 20, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Friday, September 6, 1985.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (EE-14-81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 404A of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Monday, April 8, 1985 (50 FR 13821).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, September 6, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By the direction of the Commissioner of Internal Revenue.

Jonathan P. Marget,

Assistant Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 85-16661 Filed 7-11-85; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 567]

Lodi Viticultural Area; Proposed Establishment

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in California, in the counties of Sacramento and San Joaquin, to be known as "Lodi." This proposal is the result of a petition submitted by a representative of the Lodi District Vintners Association. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to better designate the specific grape-growing area where their wines come from and will enable consumers to better identify wines they purchase.

DATE: Written comments must be received by August 26, 1985.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044-0385, (Notice No. 567)

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Roger Arnold, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved

American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF has received a petition submitted by a representative of the Lodi District Vintners Association, proposing an area in Sacramento and San Joaquin Counties, California, as a viticultural area to be known as "Lodi." The proposed Lodi viticultural area is bounded on the east by the Sacramento and San Joaquin County lines, on the south by the Calaveras River and Eightmile Road, and on the west by Interstate Highway 5, Hood-Franklin Road, and Franklin Boulevard. The northern boundary includes the section line running due east from Franklin Boulevard and connecting to the western end of Sheldon Road, Sheldon Road, the Central California Traction Co. Railroad, Grant Line Road, California State Highway 16, and Deer Creek. The proposed area of close to 458,000 acres includes approximately 39,900 acres of vineyards and 15 bonded wine cellars.

Viticultural Area Name

The petitioner submitted many newspaper articles dating from 1956 which show that this proposed area has been known as Lodi for many years. Wine writers such as Leon D. Adams, in his definitive book, *The Wines of America*, (McGraw-Hill Book Company, New York, NY, 1978, Second Edition) describe the wines and climate of the Lodi region. The equally authoritative Hugh Johnson, *The World Atlas of Wine*, (Simon and Schuster, New York, 1971), refers to Lodi as the heart of the northern Central Valley vineyards benefiting from the cooling effects of air from San Francisco Bay. Alexis Lichine, in his *New Encyclopedia of Wines and Spirits* (Alfered A. Knopf, New York, NY, 1978), described the Sacramento Valley as a region somewhat affected by the moderating influence of San Francisco Bay air, with the Lodi-Sacramento district as the dominate wine-growing area. All these authors, plus many more in various other books, wine-related magazines, and news columns have long recognized the Lodi wine district.

Historical/Current Boundaries

The petitioner believes that there is good evidence that the proposed boundaries are well defined and geographically distinctive from surrounding areas.

(a) The eastern terminus of the currently proposed southern boundary is its point of intersection with the eastern boundary of San Joaquin County.

A small segment of southwestern Calaveras County has been omitted from the proposed viticultural area in consideration of the total absence of current viticultural activity, and in the belief any future viticulturalists in the segment would not desire to be identified with Lodi.

(b) The petitioner has used part of Interstate Highway 5, which is roughly parallel to Thornton Road, and runs from one-quarter to, at most, two miles west of Thornton Road as the western boundary. The petitioner believes that this is a well defined border. At the intersection of Interstate Highway 5 and Hood-Franklin Road the boundary jogs to the east approximately one-half mile to the intersection with Franklin Boulevard which it follows northeast to the meeting point with the section line running east which extends to Sheldon Road.

(c) The northern boundary starts from the point where Franklin Boulevard meets the section line extending due east to the western end of Sheldon Road, then continuing east along Sheldon Road to its intersection with the Central California Traction Co. Railroad, then southeast along the Central California Traction Co. Railroad to its intersection with Grant Line Road, and then extending northeast along Grant Line Road parallel to the Cosumnes River.

At the point where Grant Line Road intersects California State Highway 16 the boundary follows Highway 16 southeast to Deer Creek, where it proceeds east along Deer Creek until it intersects the eastern boundary of Sacramento County.

(d) The eastern boundary excluded a small area of southwest Calaveras County including the principal community, Valley Springs. The proposed boundary will follow the eastern boundaries for Sacramento and San Joaquin Counties from Deer Creek in the north to the Calaveras River in the south.

Geographical/Viticultural Features

The petitioner claims the proposed viticultural area is distinguished from the surrounding areas by climatic variances and by soil differences. The petitioner bases these claims on the following:

(a) The proposed Lodi viticultural area is an inland area that is comprised mainly of alluvial fan, flood plain lands, and lower and higher terrace lands.

(b) Although the land both north and south of the area has some similar soil structures, it is the combination of these soils with the climatically moderating effect of air from San Francisco Bay that makes this area distinctive. Any northern boundary proposed for the Lodi viticultural area located significantly closer to Sacrameto, and any other southern boundary located significantly closer to Stockton, would include land which experiences annual degree days more comparable to Sacremento and Stockton than to Lodi. To quote the United States Department of Agriculture (USDA) 1937 Soil Survey of the Lodi Area, "Owing to its location opposite the wind gap leading inland from the Golden Gate, the range in temperature is narrower than in more northerly and southerly parts of the great valley. Summer fogs are more common." Temperature data covering the period 1973 through 1982 compiled by the University of California Agricultural Extension Station at Sacramento, and the United States Department of Interior, Stockton, show a mean of 3570 degree days for Lodi, 4185 for Sacramento, and 4386 for Stockton.

(c) The primary difference on the eastern boundary is the change into the Sierra-Nevada foothills and the more upland soils. Also, an increase of rainfall is associated with an increase in elevation. To quote the same USDA 1937 Soil Survey, "Lodi, representative of valley plain, has 18.26 inches (of annual

rainfall); and Valley Springs, about eight miles east of the area, and more or less representative of the foothill country, has 24.03 inches."

(d) The area west of Interstate Highway 5 and Franklin Boulevard is flood-prone, poorly drained, delta land consisting of Ryde soils and peat. The segment of Highway 5 proposed as the western boundary of the Lodi viticultural area is primarily located on the first firm soil east of the Sacramento River system.

(e) Soils in the proposed Lodi viticultural area are primarily Hanford, Delhi, or Dinuba in the alluvial fan soils; or San Joaquin, Madera, Ramona, or Redding in the lower and upper terrace soils as shown in, "Soils of San Joaquin County, California" and "Soils of Sacramento County, California," University of California, Berkley, California, 1952 and 1954.

Proposed Boundaries

The boundaries of the proposed Lodi viticultural area may be found on 16 U.S.G.S. 7.5 minute series maps. The names of the maps and the specific description of the boundaries of the proposed viticultural area can be found in the proposed regulations which immediately follow the preamble to this notice of proposed rulemaking.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Within the context of the identifying designation, Lodi, there may be geographical features which more accurately distinguish the boundaries of the proposed viticultural area. Therefore, alternative boundary proposals for defining a Lodi viticultural area are solicited. Comments received before the closing date will be carefully considered. Comments received after the closing date, and too late for consideration, will be treated as possible suggestions for future ATF action. ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in the light of all circumstances, whether a public hearing will be held.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is Roger A. Arnold, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administration practice and procedure, Consumer protection, Viticultural area, and Wine.

Authority and Issuance

27 CFR Part 9—American Viticultural Areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: August 29, 1935, Chapter 814, sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205), unless otherwise noted.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.107 as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.107 Lodi.

Par. 3. Subpart C is amended to add § 9.107 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.107 Lodi.

(a) *Name.* The name of the viticultural area described in this section is "Lodi."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Lodi viticultural area are 16 U.S.G.S. 7.5 minute series maps. The maps are listed in the order in which the boundaries are described and are titled as follows:

(1) "Valley Springs SW Quadrangle, California—San Joaquin Co." (1962, photoinspected 1973);

(2) "Linden Quadrangle, California—San Joaquin Co." (1968);

(3) "Waterloo Quadrangle, California—San Joaquin Co." (1968, photoinspected 1978);

(4) "Lodi South Quadrangle, California—San Joaquin Co." (1968, photorevised 1976);

(5) "Terminous Quadrangle, California—San Joaquin Co." (1978);

(6) "Thornton Quadrangle, California" (1978);

(7) "Bruceville Quadrangle, California" (1968), photorevised 1980);

(8) "Florin Quadrangle, California" (1968, photorevised 1980);

(9) "Elk Grove Quadrangle, California—Sacramento Co." (1968, photorevised 1979);

(10) "Sloughouse Quadrangle, California—Sacramento Co." (1968, photorevised 1980);

(11) "Buffalo Creek Quadrangle, California" (1967, photorevised 1980);

(12) "Folsom SE Quadrangle, California" (1954, photorevised 1980);

(13) "Carbondale Quadrangle, California" (1968, photorevised 1980);

(14) "Goose Creek Quadrangle, California" (1968, photorevised 1980);

(15) "Clements Quadrangle, California" (1968); and

(16) "Wallace Quadrangle, California" (1962).

(c) *Boundaries.* The Lodi viticultural area is located in California in the counties of Sacramento and San Joaquin. The beginning point is located in the southeast corner of the viticultural area where the Calaveras River intersects the eastern boundary of San Joaquin County.

(1) The Boundary proceeds west along the Calaveras River to the point of intersection with Eightmile Road;

(2) Thence west along Eightmile Road to the point of intersection with Interstate Highway 5;

(3) Thence north and then northwest along Interstate Highway 5 to its intersection with Hood-Franklin Road;

(4) Thence east along Hood-Franklin Road to its intersection with Franklin Boulevard;

(5) Thence northeast along Franklin Boulevard to its meeting point with the section line running due east and connecting to the western end of Sheldon Road;

(6) Thence due east along the section line connecting to the western end of Sheldon Road;

(7) Thence east along Sheldon Road to its intersection with the Central California Traction Co. Railroad;

(8) Thence southeast along the Central California Traction Co. Railroad to its point of intersection with Grant Line Road;

(9) Thence northeast along Grant Line Road to the point of intersection with California State Highway 16;

(10) Thence southeast along California State Highway 16 to the point of intersection with Deer Creek;

(11) Thence northeast along Deer Creek to the point of intersection with the eastern boundary of Sacramento County;

(12) Thence southeast along the eastern boundary of Sacramento County and then along the eastern boundary of San Joaquin County to the point of intersection with the Calaveras River, the point of beginning.

Signed: June 20, 1985.

Stephen E. Higgins,

Director.

[FR Doc. 85-16550 Filed 7-11-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 369 and 376

Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to issue regulations for the program under section 311(c) of the Rehabilitation Act of 1973, as amended. This program provides grants to State and other public and nonprofit agencies and organizations for transitional rehabilitation service projects that provide job training for handicapped youths and prepare them for entry into the labor force, including competitive or supported employment. No funds are available for this program in FY 85.

These proposed regulations include information about the kinds of projects supported under this program, the application requirements, and the selection criteria for evaluating applications.

DATE: Comments must be received on or before September 10, 1985.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Albert Rotundo, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3038), Washington, D.C. 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Albert Rotundo, Telephone: (202) 732-1299.

SUPPLEMENTARY INFORMATION: The Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth is authorized by section 311(c) of the Rehabilitation Act of 1973. Section 311(c) was added to the Act by the Rehabilitation Amendments of 1984, Pub. L. 98-221, enacted on February 22, 1984. This program supports special projects and demonstrations to provide job training for handicapped youths and prepare them for entry into the labor force. A summary of the proposed regulations follows:

Part 369—Vocational Rehabilitation Service Projects

Part 369 is amended to include appropriate references to the new Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth under 34 CFR Part 376.

Part 376—Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth

Subpart A—General

Section 376.1 describes the purpose of the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth

Section 376.2 identifies the parties that are eligible to receive grants under this program.

Section 376.3 identifies the regulations that apply to this program, including the Education Department General Administrative Regulations.

Section 376.4 provides definitions of terms applicable to this program. Section 376.4(b)(1) and (2) sets out the same definitions of "handicapped youth" and "supported employment" that are included in final regulations for the Secondary Education and Transitional Services for Handicapped Youth Program under Section 626 of the Education of the Handicapped Act published in the **Federal Register** on July 11, 1984 at 49 FR 28380.

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

Section 376.10 identifies various types of activities that may be supported under this program.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

Section 376.30 authorizes the Secretary, for any fiscal year, to give priority to one or more areas of project activity. This provision is necessary to ensure that the Secretary can meet program needs as they change from year to year. The proposed funding priorities for this program include the following: (1) Community-Based Transitional Rehabilitation Service Delivery; (2) Statewide Transitional Rehabilitation Service Delivery; (3) Transitional Rehabilitation Services for Handicapped Youth with Special Needs; (4) Transitional Rehabilitation Services for Institutionalized Persons; (5) Transitional Rehabilitation Services for

Unemployed Handicapped Youth; and (6) Home-Based Transitional Rehabilitation Services.

Section 376.31 contains the selection criteria that the Secretary proposes to use to evaluate applications and award new grants under this program. The Secretary proposes weighted criteria that reflect the relative importance of the elements of an application in order to ensure that the most promising projects are selected.

Subpart E—What Conditions Must Be Met by a Grantee?

Section 376.40 establishes matching requirements for grantees.

Section 376.41 reflects a statutory requirements for cooperation between grantees and other agencies and organizations.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

States and State agencies are not regarded as small entities under the Act. In addition, the application procedures and matching requirements in the proposed regulations are not burdensome and should not have a significant economic impact on small entities submitting applications and participating in this program.

Paperwork Reduction Act of 1980

Section 376.31 contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Joseph F. Lackey, Jr.

Invitation To Comment

Interested persons are invited to submit comments and recommendations rgarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3315, Switzer Building, 330 C Street, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 369

Grant programs—Social programs, Vocational rehabilitation.

34 CFR Part 376

Vocational rehabilitation, Grant programs-education, Grant programs-social programs, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. 84.128, Vocational Rehabilitation Service Projects)

Dated: July 9, 1985.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by amending Part 369 and adding a new Part 376 as follows:

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

1. In § 369.1, a new paragraph (b)(7) is added to read as follows and the current paragraphs (b)(7) and (b)(8) are redesignated as (b)(8) and (b)(9) respectively:

§ 369.1 What are the Vocational Rehabilitation Service Projects?

* * * * *

(b) * * *

(7) Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth (34 CFR Part 376).

* * * * *

2. In § 369.2, a new paragraph (i) is added to read as follows:

§ 369.2 Who is eligible for assistance under these programs?

* * * * *

(i) *Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth.* State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Sec. 311(c) of the Act; 29 U.S.C. 777a(c)).

3. Section 369.3 is revised to read as follows:

§ 369.3 What regulations apply to these programs?

The following regulations apply to the programs listed in § 369.1(b):

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 369.

(c) The regulations in 34 CFR Parts 370, 371, 372, 373, 374, 375, 376, 378, and 379, as appropriate.

(Sec. 12(c) of the Act; 29 U.S.C. 711(c))

4. In § 369.30, paragraph (a) is revised to read as follows:

§ 369.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of general selection criteria in § 369.31 and specific selection criteria in 34 CFR Parts 370, 371, 372, 373, 374, 375, 376, 378, and 379. The maximum possible score for each complete criterion under each Vocational Rehabilitation Service Project category is stated in parentheses in §§ 370.30, 371.30, 372.30, 373.30, 374.30, 375.30, 376.31, 378.30, and 379.30. The number of points awarded under each criterion depends on how well the application meets all the elements under that criterion.

* * * * *

5. In § 369.32, the introductory paragraph is revised to read as follows:

§ 369.32 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in § 369.31 and 34 CFR Parts 370, 371; 372, 373, 374, 375, 376, 378, and 379,

the Secretary, in making awards under these programs, considers such factors as—

* * * * *

6. A new Part 376 is added to read as follows:

PART 376—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING TRANSITIONAL REHABILITATION SERVICES TO HANDICAPPED YOUTH

Subpart A—General

Sec.

376.1 What is the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth?
376.2 Who is eligible for assistance under this program?
376.3 What regulations apply to this program?
376.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

376.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How does the Secretary Make a Grant?

376.30 What priorities are considered for support by the Secretary under this part?
376.31 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

376.40 What are the matching requirements?
376.41 What are the requirements for cooperation between grantees and other agencies and organizations?

Authority: Sec. 311(c) of the Rehabilitation Act of 1973, Pub. L. 93-112, as added by sec. 136(c) of Pub. L. 98-221, 98 Stat. 20 (29 U.S.C. 777a(c)), unless otherwise noted.

Subpart A—General

§ 376.1 What is the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth?

This program is designed to provide job training for handicapped youths to prepare them for entry into the labor force, including competitive or supported employment.

(Sec. 311(c); 29 U.S.C., 777a(c))

§ 376.2 Who is eligible for assistance under this program?

State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Sec. 311(c); 29 U.S.C., 777a(c))

§ 376.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 369.

(b) The regulations in this Part 376.

(Sec. 12(c) and 311(c); 29 U.S.C. 711(c) and 777a(c))

§ 376.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply to this program:

(1) "Handicapped youth" means any handicapped child who is between the ages of twelve and 26.

(2) "Supported employment" means paid work in a variety of settings, particularly regular work sites, especially designed for handicapped persons—

(i) For whom competitive employment at or above the minimum wage is not immediately obtainable; and

(ii) Who, because of their disability, need intensive ongoing support to perform in a work setting.

(3) "Transitional rehabilitation services" means any vocational rehabilitation services available under the State plan for vocational rehabilitation services under 34 CFR Part 361 or the State plan for independent living services under 34 CFR Part 365 and may also include—

(i) Jobs search assistance;

(ii) On-the-job training;

(iii) Job development, including worksite modification and use of advanced learning technology for skills training; and

(iv) Follow-up services for individuals placed in employment.

(Sec. 12(c) and 311(c), 29 U.S.C. 711a(c) and 777(c))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 376.10 What types of projects are authorized under this program?

(a) This program supports special projects and demonstrations, including research and evaluation, for the following purposes:

(1) To demonstrate effective ways in which to provide job training, placement, and other transitional rehabilitation services to handicapped youth to prepare them for entry in the labor force, including competitive or supported employment.

(2) To demonstrate service programs for handicapped youth reflecting cooperative efforts between local educational agencies, business and industry, vocational rehabilitation agencies, facilities, parent groups, public or other nonprofit developmental disabilities agencies, and organizations responsible for promoting or assisting in local economic development.

(3) To develop and implement new patterns or practices of transitional rehabilitation service delivery and to conduct the field-testing and evaluation of these patterns or practices to determine the efficacy of their being replicated in other settings.

(b) Research and evaluation activities carried out under this program must be specifically related to a transitional rehabilitation service model under which direct services are provided.

(c) Projects funded under this part must serve handicapped youths.

(d) A project funded under this part may include dissemination of information on project activities to business and industry.

(Sec. 12(c) and 311(c), 29 U.S.C. 711a(c) and 777(c))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 376.30 What priorities are considered for support by the Secretary under this part?

The Secretary may select annually in a Notice published in the **Federal Register**, one or more of the following priority areas for funding under this program:

(a) *Community-based transitional rehabilitation service delivery.* This priority supports projects that demonstrate exemplary models for developing and establishing community-based transitional rehabilitation service programs that result directly in competitive or supported employment for handicapped youth within the labor force.

(b) *Statewide transitional rehabilitation service delivery.* This priority supports projects that demonsrtate effective Statewide approaches to transitional rehabilitation service delivery for handicapped youth and demonstrate cooperative efforts between State agencies responsible for service to handicapped youth, including but not limited to, special education, vocational rehabilitation, and day services for adults with developmental disabilities.

(c) *Transitional rehabilitation services for handicapped youth with special needs.* This priority supports projects that demonstrate transitional rehabilitation service programs focused

on meeting the special job training and placement needs of one or more groups of individuals with physical or mental disabilities which present unusual and difficult rehabilitation problems including, but not limited to, blindness, cerebral palsy, deafness, epilepsy, mental illness, mental retardation, and learning disability.

(d) *Transitional rehabilitation services for institutionalized persons.* This priority supports projects that demonstrate effective ways to assist youths and young adults who are institutionalized, including those residing in skilled nursing or intermediate care facilities, to return to community living and competitive or supported employment.

(e) *Transitional rehabilitation services for unemployed handicapped youth.* This priority supports projects that demonstrate ways to train and place in competitive or supported employment handicapped youth who were unable to participate in special education programs or who recently graduated from those programs but have been unable to secure and maintain employment.

(f) *Home-based transitional rehabilitation services.* This priority supports projects that demonstrate ways in which handicapped youth, particularly those residing in rural areas, who because of the severity of their disabilities are precluded from employment in the community, could be gainfully employed in home settings.

(Sec. 311(c); 29 U.S.C. 777(a), (c))

§ 378.31 What selection criteria does the Secretary use under this program?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Plan of operation* (20 points). The Secretary reviews each application in accordance with the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 points). The Secretary reviews each application in accordance with the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(c).

(d) *Evaluation plan* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(d).

(e) *Adequacy of resources* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(e).

(f) *Impact* (20 points).

(1) The Secretary reviews each application for information that describes the probable impact of the proposed project on rehabilitation programs for handicapped youth.

(2) The Secretary looks for information that shows—

(i) The contribution that the project findings will make to current rehabilitation practice; and

(ii) The extent to which findings and products can be used for the benefit of other groups of handicapped youth.

(g) *Innovativeness* (20 points).

(1) The Secretary reviews each application for information that shows the innovativeness of the proposed project.

(2) The Secretary looks for information that shows—

(i) The approach to be used in the proposed project in providing transitional rehabilitation services is innovative and appropriate to the special needs of the groups of handicapped youth being served; and

(ii) The approach can be replicated in other service settings.

(h) *Likelihood of sustaining the program* (15 points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows—

(i) The applicant agency intends to continue to operate the service program after the termination of the project;

(ii) There is a sufficient base of service programs and work opportunities to ensure a lasting change in the way transitional rehabilitation services are provided to handicapped youths in the project area; and

(iii) Agencies in the project area with responsibilities which relate to the purpose of the project are actively collaborating in service delivery and project management.

(Sec. 311(c); 29 U.S.C. 777a(c))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 378.40 What are the matching requirements?

The Secretary may pay all or part of the costs of activities funded under this program. Where part of the costs is to be borne by a grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total cost of the project.

(Sec. 12(c) and 311(c); 29 U.S.C. 711(c) and 777a(c))

§ 378.41 What are the requirements for cooperation between grantees and other agencies and organizations?

Each project must be designed to demonstrate a cooperative effort between local educational agencies, business and industry, vocational rehabilitation programs, organizations representing labor, and organizations responsible for promoting or assisting in local economic development.

(Sec. 311(c); 29 U.S.C. 777a(c))

[FR Doc. 85-16597 Filed 7-11-85; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-8-FRL-2862-6]

Approval and Promulgation of State Implementation Plans; Revisions to Colorado Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: On April 18, 1983, Colorado submitted its newly promulgated Prevention of Significant Deterioration (PSD) regulation. The regulation was developed to meet the requirements in 40 CFR 51.24, as published on August 7, 1980. EPA today is proposing to approve this PSD revision to the Colorado State Implementation Plan with some exceptions. These disapprovals should not affect the ability of Colorado to assume the major portion of the PSD permitting responsibility. If any source is not required to obtain a PSD permit from the State because of these differences in the State regulation and the approved SIP, the source will be required to obtain a permit from EPA in accordance with EPA's PSD regulations. EPA's PSD regulations will also remain in effect for sources locating on Indian Reservations and for sources that have received PSD permits from EPA.

EPA is proposing disapproval for the sources because the state program was found to be less stringent than required by 40 CFR Part 51.24 for those sources. EPA is delaying action on the stack height guidelines because EPA's guidelines have been remanded by the Court of Appeals for the District of Columbia.

DATES: Comments due August 12, 1985.

ADDRESSES: Written comments should be addressed to: Robert R. DeSpain, Chief, Air Programs Branch,

Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices: Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT: Steven Frey, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 293-1753 or FTS-564-1753.

SUPPLEMENTARY INFORMATION: On August 7, 1980, EPA revised 40 CFR 51.24 which contains requirements States must follow in submitting a plan to Prevent Significant Deterioration of air quality (PSD). States were given nine months to revise their State Implementation Plans (SIP). Colorado undertook a rulemaking effort of more than two years and conducted an extensive public hearing in developing this regulation. The regulation reflects the involvement of many groups, including industry, environmental groups, regional councils of government and local governments. The State has gone beyond the federal regulation in some areas to address some of the special concerns in Colorado. Colorado has 12 Class I areas and the State is especially concerned that the Air Quality Related Values (AQRV) are protected in these pristine areas. They have established a procedure to require an applicant to conduct pre-construction and post-construction monitoring of up to three AQRV in an impacted Class I area. During the State PSD hearings, extensive interest was expressed in protecting the State's water resources from acid rain. This was addressed in the PSD regulation by requiring an applicant to include an evaluation of the proposed source's air emission impact on water resources in an additional impact analysis.

Summary of PSD Requirements

Section 110(a)(2)(D) and Part C, Subpart 1, of the Clean Air Act (Act) establish specific requirements for the prevention of significant deterioration of air quality in areas where ambient concentrations of sulfur dioxide and particulate matter are less than the national standards. The Act defines the amount of deterioration that can be authorized in an area in terms of maximum allowable increases in ambient air quality concentrations (increments). These increments vary and are a function of the classification of an area. There are three applicable classifications under this program: (a) Class I where the increments are very stringent and practically no deterioration is allowed, (b) Class II where moderate, well-controlled growth is allowed, and (c) Class III where a considerable amount of growth is allowed. While the Act established several mandatory Class I areas, most of the nation is now Class II. The Act gives redesignation authority to State Governors and to the governing bodies of Indian tribes.

The principal means of protecting the increments are the review and regulation of major new stationary sources and modifications, the tracking of minor source growth and the periodic review of increment consumption. At present, EPA is administring the PSD program in Colorado in accordance with 40 CFR Part 52.21. In that program, operators of major new sources and major modifications must obtain a permit before commencing construction. A permit is granted only if, among other things: (a) The increments for the area are protected, and (b) best available control technology will be employed.

Summarized Submittal

The State submitted their regulation for Prevention of Significant Deterioration to EPA on April 18, 1983. The submittal included the revised Regulation 3 and a revised Common Provisions Regulation. The Colorado Regulation included some differences in wording and organization and other deviations from 40 CFR 51.24. On July 8, 1983, EPA requested clarification from the State on many of the above differences. In a response, dated July 29, 1983, the Colorado Air Pollution Control Division satisfactorily addressed EPA's concerns and provided assurance that the State intended to interpret and apply the PSD regulation consistently with the federal requirements and that the State program would be at least equivalent to, and in places, more stringent than the federal program. EPA subsequently requested the State to clarify their intent on a number of additional issues and they did so by a letter dated December 29, 1983. EPA's review and analysis of all the information results in this proposal to approve most of the State program. EPA's letter and the State letters, which are a part of the SIP submittal, are available for public review at the addresses listed above.

There are two issues in the State regulation that appear to make the State program somewhat inconsistent with the EPA requirements. The Agency has evaluated these items and does not believe that they will adversely affect the PSD program, if handled as recommended.

The first issue relates to the State's inclusion of only 11 source categories for which fugitive emissions are included in determining whether or not a source is a major source or major modification. EPA regulations include 26 source categories. During the development of their PSD regulation, the State concurred with the industry petitioners' arguments which formed the basis for part of the settlement agreement between EPA and industry petitioners in a challenge to the 1980 PSD regulations (i.e., that case-by-case rulemaking procedures should be used to identify each source category for which fugitive emissions are a significant contributor to overall emissions and, therefore, would be quantified and included in determining if a source is a major). The State opted to undergo its own rulemaking for 11 source categories for which they found fugitive emissions were significant and quantifiable.

The Agency is proposing to approve the State PSD regulation except for the 15 categories that the State regulation has omitted from their PSD regulation. At this time, only one of these categories, sulfur recovery plants, exists in the State. The sulfur plants in Colorado are generally associated with refineries and, therefore, are likely to be included in that category for purposes of fugitive emissions. The Agency recognizes this dual responsibility for the program has the potential to confuse the regulated industries. However, the Agency does not believe that it is likely that any of the 15 exempted source categories would locate in Colorado and that even if they do, it should be easy to identify the source and direct them to the proper agency (EPA) for the PSD permit. The following is the list of source categories for which the Agency is proposing to disapprove the Colorado PSD regulation, and for which 40 CFR 52.21 and 52.343 will remain in effect:

Kraft Pulp Mills
Primary Zinc Smelters
Primary Aluminum Ore Reduction Plants
Primary Copper Smelters
Municipal Incinerators (capable of charging more than 250 tons of refuse per day)
Hydrofluoric, Sulfuric and Nitric Acid Plants
Phosphate Rock Processing Plants
Sulfur Recovery Plants
Carbon Black Plants (furnace process)
Primary Lead Smelters
Secondary Metal Production Plants
Chemical Process Plants
Taconite Ore Processing Plants
Glass Fiber Processing Plants
Charcoal Production Plants

The second major issue is the State's treatment of "fugitive dust." The Agency's PSD regulation contains no exemption for "fugitive dust" but, there

are numerous places throughout the State regulation where "fugitive dust" is exempt from a number of different requirements. The major inconsistency appears to be in Regulation 3, Section XI.A.4., which exempts "fugitive dust" from increment consumption. The reason the State exempts "fugitive dust" in the PSD regulations is that the authorizing legislation (C.R.S. 1973, 25–7–202(4), –202(5), –204(1)(b) and –204(2)(c) prohibits them from regulating "fugitive dust." The definition for "fugitive dust" in the State regulation is as follows:

> For purposes of Regulation No. 3 and the definitions of "Major Stationary Source" and "Major Modification," "fugitive dust " means soil or other airborne particulate matter (excluding particulates produced directly during combustion) resulting from natural forces or form surface use or disturbance, including but not limited to, all dust from agriculture, construction, forestry, unpaved roads, mining, exploration, or similar activities in which earth is either moved, stored, transported, or redistributed; except that fugitive dust shall not include any fraction of such soil or other airborne particulate matter which is of a size or substance to adversely affect public health or welfare.

Whether or not any particulate matter may be excluded because it is fugitive dust would be dependent on that particulate not having an adverse effect on health or welfare. The State expands on this in the "Statement of Basis and Purpose" which is incorporated into the PSD regulation. In this section the State explains that the information they have leads them to find that all size fractions of suspended particulate matter can adversely affect welfare through impacts of soiling and nuisance. The statement also explains that the State would only determine, on a case specific basis, if some of a proposed source's particulate matter was fugitive dust. The source would need "clear and convincing evidence" to show that some of their suspended particulate matter qualified as "fugitive dust." The Agency believes that the combination of the presumption that no fraction of particulate matter is "fugitive dust" and that "clear and convincing evidence" must be supplied by the source to back a claim that a fraction of their particulate matter is "fugitive dust" will lead to very few, if any, exemptions of suspended particulate matter from the requirements of this regulation. However, the Agency also believes that the use of the "fugitive dust" clause to exempt a source from PSD review would be inconsistent with the Agency's PSD regulations. Consequently, EPA proposes to disapprove the State's program for sources that would avoid any of its requirements based upon the "fugitive dust" exemptions wherever they appear throughout the regulation. These sources would have to obtain a permit from EPA. This disapproval should not significantly disrupt the State's program, since as discussed above the exemptions will rarely be used.

EPA is also proposing to disapprove the state program for sources qualifying for several other minor exemption provisions. These sources would also have to obtain permits from EPA. Again, these disapprovals should not significantly disrupt the state program because it is not anticipated that many sources would qualify for these exemptions.

Under this program, Colorado will be issuing permits and establishing emission limitations that may be affected by required revisions to the stack height regulations. For this reason, EPA has requested that the State include the following caveat in all potentially affected permit approvals until the stack height regulations are revised by EPA:

> In approving this permit, the Colorado Air Quality Control Commission has determined that the application complies with EPA's proposed amended stack height regulations published on November 9, 1984 (49 FR 44878). Once EPA promulgates final amended stack height regulations pursuant to the court remand in Sierra Club v. EPA, 719 F.2d 436 (D.C. Cir., 1983), this permit may be subject to modification. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

Colorado made a commitment to include this type of caveat in all affected permits by letter dated August 8, 1984. This letter is part of the SIP EPA is proposing to approve today.

Proposed Action

EPA is proposing to approve Regulation 3 and the Common Provision Regulations as amended for the PSD program, except as follows:

1. This plan is disapproved for the following industrial source categories:

Kraft Pulp Mills
Primary Zinc Smelters
Primary Aluminum Ore Reduction Plants
Primary Copper Smelters
Municipal Incinerators (capable of charging more than 250 tons of refuse per day)
Hydrofluoric, Sulfuric and Nitric Acid Plants
Phosphate Rock Processing Plants
Sulfur Recovery Plants
Carbon Black Plants (furnace process)
Primary Lead Smelters
Secondary Metal Production Plants
Chemical Process Plants
Taconite Ore Processing Plants
Glass Fiber Processing Plants
Charcoal Production Plants

2. The plan is disapproved for sources that would avoid any requirements of the Colorado program based upon any regulatory exemptions to the extent that they apply on the basis of fugitive dust.

3. The plan is disapproved for sources that would not need a Colorado permit due to the exemption listed in Regulation 3.I.B.2.c.viii.

4. The plan is disapproved for sources that would not need a Colorado permit due to the following portion of the definition of Stationary Source (Common Provisions) . . ." except that properties which are or will be used only for right-of-way, transmissions, gathering, transportation, communication, pipeline, or similar purposes shall not be considered contiguous or adjacent."

5. The plan is disapproved for sources that would avoid compliance with their permits due to that portion of the regulation found in Regulation 3.IV.H.4 which allows an administrative waiver of up to six months to a new source which violates a term of its permit.

6. The plan is disapproved for sources that would receive a Colorado permit based upon the provision covering Time Constraints on Division Action found in Regulation 3.IV.F.

7. EPA proposes to delay action on Regulation 3.XII.D pertaining to stack heights until EPA promulgates new stack height regulations.

The Federal PSD regulation will remain in effect for the following sources.

Under 5 U.S.C. 605b, the Administrator has certified that SIP approvals/redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under Executive Order 12291, this action is not Major. It has been submitted to the Office of Management and Budget for review. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the Public Information Reference Unit.

Dated: July 5, 1985.

John G. Welles,

Regional Administrator.

[FR Doc. 85–16481 Filed 7–11–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 85-204; RM-4796; FCC 85-332]

Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition from RCA Global Communications and Western Union International, the Commission issues a Notice of Proposed Rulemaking to consider the implementation and scope of the uniform settlements policy for parallel routes in international telecommunications. The Commission tentatively concludes that the policy will apply to voice as well as to record services and that it will apply to transit routing under certain limited circumstances. The Commission also tentatively concludes that the policy should not apply to enhanced services. The Commission suggests that the policy does apply to the conversion of financial terms of operating agreements from Gold Francs, dollars, or other currencies into special drawing rights (SDRs), and that such conversion is to be encouraged. Finally, the Commission suggests a modified, streamlined review process designed to increase the efficiency and usefulness of the uniform settlements policy. The Commission expects that its proposed modifications will result in increased competition and the lowering of the rates charged to customers for international telecommunications services.

DATES: Comments must be received on or before August 30, 1985, and Reply Comments must be received on or before September 20, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jacqueline Spindler, International Policy Division, Common Carrier Bureau—Room 534, Federal Communications Commission, Washington, D.C. 20554, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

In the Matter of Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes; CC Docket No. 85-204, Rm-4796.

Adopted: June 21, 1985.
Released: July 3, 1985.

By the Commission.

I. Introduction

1. RCA Global Communications, Inc. (RCAGC) and Western Union International, Inc. (WUI)[1] have jointly filed a petition for rulemaking requesting that the Commission consider strengthening its policy regarding uniform settlement rates on parallel international communications routes. This policy, which developed in the 1930's and has its roots in antitrust law, has evolved through case law and Commission policy statements. Upon review of the filings and the history of accounting rate trends, we believe that the commencement of a rulemaking to review the uniform settlements policy and to determine the means of its future implementation would be in the public interest. In this Notice of Proposed Rulemaking (Notice) we examine the arguments raised, along with related issues and items, and tentatively conclude that the policy should be affirmed and that some modification of procedure in its implementation is required.

2. The policy of uniform settlement rates arose in response to the unique situation in the international telecommunications arena which places single governmental or quasi-governmental entities from other nations in direct negotiation with multiple private American entities for the formation or operating agreements to arrange international services.[2] The uniform settlements policy requires all carriers providing the same service to the same foreign point to have the same accounting, settlement and division of tolls arrangements with the foreign administration. Specifically, the operating agreements must stipulate: (a) Uniform accounting rates (a negotiated rate of reimbursement for service, which is then shared by the initiating and terminating entities); (b) the sharing of tolls (the percentage of the accounting rate to be allowed each entity, generally 50-50); and (c) uniform settlement rates (the currency conversion rate used to arrive at the currency stipulated in the operating agreement, usually Gold Francs (GF), U.S. dollars, or special drawing rights (SDRs)). We emphasize that the policy does not require or encourage uniform collection (tariff) rates for international services.

3. These requirements of uniformity are meant to assure that the operating agreements achieve their purpose of allowing both service providers fair compensation for the costs of service. Because the American carriers are private and competitive, the foreign telecommunications entities (hereinafter PTTs, for postal, telegraph and telephone administrations), which are monopolistic, enjoy an advantageous bargaining position. The result of this situation is that the monopolist PTT has the ability, as well as the incentive, to manipulate the multiple U.S. entities by playing them against one another in order to gain favorable terms and conditions. This manipulation is referred to as "whipsawing." The most frequent concession sought is a modification of the accounting rate in such a manner as to decrease the revenues paid by the PTT to the U.S. carrier for effectuating delivery in the United States or to increase the revenues paid by U.S. carriers to the PTT to effectuate delivery in the foreign country. While traditionally tied to costs, accounting rates now also reflect the relative negotiating positions of the carriers and administrations.

4. We have previously found that whipsawing is harmful to the U.S. public interest because, in allowing the PTTs to dictate the terms of international services, whipsawing reduces the total revenues of U.S. carriers, and, most importantly, decreases the ability of U.S. carriers to lower the collection rates they charge their customers. The seriousness of the problem is compounded by the fact that the terms favorable to the PTT and agreed to by one U.S. carrier, insofar as they differ from terms in effect for other carriers, create substantial pressure on the other U.S. carriers to make identical concessions in order to retain or expand their business.[3] Thus, the foreign PTT, through negotiation with a single U.S. entity and control over the routing of return flow traffic, may succeed in dictating terms to all U.S. carriers. Further, the development of consortia of

[1] The petition was filed on April 24, 1984. Comments were filed by The Western Union Telegraph Company, the American Telephone and Telegraph Company and ITT World Communications Inc. Reply Comments were filed by RCAGC.

[2] The operating agreement provides the technical details of interconnection as well as the terms for the settlement of accounts between the U.S. carrier and the foreign administration. All U.S. carriers use the same generic settlements procedure for switched services. When a U.S. carrier transmits a message to a foreign country, the U.S. carrier pays the foreign correspondent for terminating/delivering the message. Similarly, if a foreign correspondent transmits a message to the U.S., the U.S. carrier will receive payment to compensate it for effectuating delivery.

[3] We emphasize that control by a PTT over the routing of traffic destined for the United States gives the PTT significant leverage in acounting rate negotiations. Promises of greater or lesser traffic (and therefore greater or lesser revenue) may induce one or more carriers to file waiver petitions or acquiesce to accounting rate modifications.

foreign PTTs, such as CEPT and COMTELCA,[4] only increases the negotiating strength of the PTTs in their negotiations with U.S. carriers.[5] This situation is frequently exacerbated by the fact that for some services, like telex, the PTT is in the payor position and has the ability to effect lower accounting rates unilaterally.[6] In an attempt to approach parity in the positions of U.S. carriers vis-a-vis the PTTs, and to prevent whipsawing, the Commission has developed requirements of uniform terms and conditions in international operating agreements.

5. As we have frequently stated, our primary responsibility is to U.S. users, not U.S. carriers. Thus, while we prefer to see U.S. carriers rather than foreign administrations maximize their revenues through accounting rate actions, our goal is to facilitate the development of a competitive marketplace characterized by lower rates and greater service/carrier options for users. Our existing policy explicitly recognizes that nonuniformity can be in the public interest as it may increase competition, lead to lower rates or result in improved services.[7] In particular, nonuniformity may increase a U.S. carrier's flexibility in negotiating with a foreign administration and thus provide that administration with a greater incentive to enter into an operating agreement. That is, in response to PTT arguments that interconnection with an additional U.S. carrier increases costs but not revenues and that demand is generally inelastic, a U.S. carrier may offer more favorable accounting rate terms to offset these costs in order to obtain an operating agreement.

6. In recent years, accounting rates have increasingly become the target of the PTTs's goal of minimizing costs and maximizing revenues. For example, between 1955 (the inception of telex service between the U.S. and the U.K.) and July of 1977, there was only one telex accounting rate change.[8] In July 1977, the accounting rate dropped from $2.55 to $1.85 per minute; in January 1980, it dropped to $1.20 per minute, the current rate. This represented a decline of 46.7% in two and a half years. FTOC recently proposed a decrease in accounting rates to .76 SDRs ($.77). We rejected this decrease, which would have represented a 33.3% reduction from the current rate, and a 64.4% reduction from the 1977 rate. Rates to CEPT countries have shown a similar, though less extreme, pattern. These rates were initially set at $3.00, declined in 1970 to $2.25, and have been in more rapid decline since 1977.[9] U.S. carriers receive more telex traffic than they originate with the U.K. and CEPT, and are thus in a payee position for this service. The PTTs, as payors, seek decreases in the accounting rates in order to reduce their payments. The reductions in accounting rates with CEPT and the U.K. have had a substantial negative impact on U.S. carriers' revenues, specifically those of the international record carriers (IRCs), curtailing the IRCs' ability to lower collection rates to U.S. users. That is, if the U.S. carriers' revenues are adversely affected by changes in accounting rates, U.S. users are less likely to pay lower rates.[10]

7. The situation in international telephone service (Message Telecommunications Service, or MTS) is quite dissimilar. First, the U.S. originates more traffic than it terminates. U.S. carriers are thus the debtor in U.S.-U.K. and U.S.-CEPT MTS traffic. Second, until very recently, AT&T was, for all practical purposes, the sole U.S. provider of international MTS. It may very well be that these two factors—outbound balance of traffic and sole service provider—enabled the U.S. service carrier for international switched voice service, AT&T, to negotiate with a PTT from a position at least of equality, if not of strength.[11] In fact, because there were never before competitors to AT&T in the market, we have never actually had a case presented to us which required a clear statement of whether our uniform settlement policy applies to voice services.[12]

8. Below we review the development of the uniform settlements policy, describe the manner by which it is now implemented, summarize the rulemaking petition filed by RCAGC and WUI, and identify accounting rate issues now pending before (or recently resolved by) the Commission. We then analyze the uniform settlement policy and reach certain tentative conclusions as to its future implementation.

II. Background

9. One of the first decisions taken by this Commission involved the uniform settlement policy.[13] In a 1936 decision we denied the Mackay Radio and Telegraph Company authorization under Section 214 of the Communications Act for a radio circuit to Oslo, Norway because we objected to the settlement terms in Mackay's proposed operating agreement with the Norwegian PTT. We found the agreement objectionable because it would have permitted the Norwegian PTT to play two U.S. entities against each other, manipulate traffic flows and retain a greater percentage of the accounting rate at the expense of a U.S. carrier. We stated that this attempt by the PTT to maximize its revenues by whipsawing the American companies was the normal consequence of the

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[4] For example, CEPT is a consortium of 26 European PTTs and COMTELCA includes five Central American PTTs.

[5] The applicable share of the accounting rate negotiated between the originating and terminating countries is paid by the originating (collecting) entity to the terminating entity. For those services where the PTT is more often the originating entity than the terminating entity, such as telex, the PTT is in a payor position, and seeks to keep accounting rates low. For services where the flow is in the opposite direction and the PTT is the terminating entity/payee, such as telegram service, the PTT seeks to raise the accounting rate.

[6] Such a unilateral departure from the agreed accounting rate may be effected simply upon notice to the carriers that, as of a given date, a given rate will be paid. Any carrier unwilling to accept that rate receives no (or less traffic. *See* discussion of COMTELCA telegram infra. Approach parity in the positions of U.S. carriers vis-a-vis the PTTs, and to prevent whipsawing, the Commission has developed requirements of unform terms and conditions in international operating agreements.

[7] Uniform Settlement Rates, 84 FCC 2d 121 (1980).

[8] The accounting rate dropped from $2.70 to $2.25 in 1970; both rates applied a 50–50 divisions.

[9] The January 1977 CEPT accounting rate was 5.70 GF, which translated then to $2.24, almost precisely the contemporary $2.25 U.K. accounting rate. The CEPT rate then declined as follows: July 1977, 5.35 GF ($2.10); July 1978, 5.00 GF ($1.97); January 1981 3.50 GF ($1.38). FTC Communications, Inc. applied for a waiver of the Commission's uniform settlements policy in order to establish a new telex accounting rate of .76 SDR with the U.K. and CEPT. This request was denied by the Commission in a Memorandum Opinion and Order, FCC 85–249, released May 14, 1985. Approval of the reduction requested by FTCC would have resulted in a projected revenue loss to the IRCs of over $21 million.

[10] In a simplified fashion, the "profitability" of any country-by-country route depends on collection rates, payments from the PTT for effectuating domestic delivery, expenses and costs, and payments to the PTT for effectuating foreign delivery. Thus, while accounting rate calculations directly affect net revenues, they are only one of several factors which affect a carrier's ability to reduce a collection rate. The exact impact of a particular accounting rate on net revenues and "profitability" would depend on the actual accounting rate, the division of the accounting rate, the currency used for settlements, and the size and direction (inbound or outbound) of the balance of traffic.

[11] We note that there have been relatively few changes in international MTS accounting rates.

[12] The issues was raised in MCI Telecommunications Corporation, *et al.*, CC Mimeo No. 3874, released April 10, 1985, discussed *infra*.

[13] *Mackay Radio and Telegraph Co.*, 2 FCC 592 (Telegraph Committee 1936), *Aff'd by the Commission en banc*, 4 FCC 150 (1937), *aff'd sub nom, Mackay v. FCC*, 97 F. 2d 641 (D.C. Cir. 1938).

situation, [14] and that the protection of American non-monopolist entities therefore rests with the Commission, falling within its general powers mandate to protect the public convenience and necessity.

10. Further development and application of the uniform settlements policy again involved the Mackay Radio and Telegraph Company. [15] In this decision we expressed concern about the whipsawing of U.S. carriers by foreign PTTs (the application was to add a fifth carrier providing service to Portugal and the Netherlands), but because the terms of the proposed operating agreement were identical to the terms of the agreements already in effect, our concern was assuaged and the application to place another competitor into the market was granted. The policy was applied again in *TRT Telecommunications Corporation*, 46 FCC 2d 1042 (1974), when TRT applied to provide service to the U.K. upon terms more favorable to the British entity than the terms then in effect between the U.K. and other U.S. carriers. The Commission granted TRT's application contingent upon the operating agreement being brought into conformity with existing agreements.

11. The uniform settlements policy was again considered in a 1980 Commission policy statement which resulted from a request by TRT to decrease its U.S.-U.K. accounting rate. [16] In that statement we reaffirmed the need for and viability of the uniformity policy, but announced also that we would entertain requests for waivers of the policy in appropriate cases. We found that the public interest requires a uniform settlements policy and that:

> Absent our policy of uniformity it would be less difficult for a foreign correspondent to negotiate a more advantageous settlement. . . . In such instances more money would flow to the foreign correspondent. In some cases this could lead U.S. carriers to raise the collection rate at the expense of the U.S. ratepayers.

84 FCC 2d at 123. We also noted, however, that situations might occasionally arise in which "public interest benefits would warrant grant of a waiver of the policy . . . ." *Id.* While citing factors to be considered in the analysis of waiver requests, [17] we declined to specify rules or a *prima facie* test to govern the grant of waivers. We also declined to establish a particular procedure or timetable for waiver applications.

12. The trend of accounting rate changes contrary to U.S. carrier interests also prompted the Commission in early 1981 to review a number of accounting rate changes which had occurred in the late 1970's. In view of the possibility of PTT whipsawing, and the potential for substantial revenue diversion from U.S. carriers, we established a process by which Commission staff and the carriers would periodically meet to consider accounting rate requests. This atypical process of closed meetings between the staff and business competitors was viewed as a reasonable response to the unique realities of the international marketplace. It was intended to provide a method for the carriers to develop a "unified front" to respond to the PTTs' monopoly status in their negotiations with competitive U.S. carriers. The carriers have since met with the staff in closed sessions on a regular basis. The meetings have proved somewhat effective in offsetting PTT pressures. As questions of confidentiality, scope and unanimity have arisen, the ability of the carriers, with their differing business interests, to reach consensus on accounting rate changes has decreased.

13. Under the present process, a U.S. carrier wishing to change the accounting rate, settlement rate or division of tolls of a particular service to a particular overseas jurisdiction must apply to the Commission for a waiver of the uniform settlements policy to allow it to operate under conditions departing from the established terms employed by other U.S. carriers providing the same service to the same overseas jurisdiction. [18] Although a single waiver application will be evaluated on an *ad hoc* basis to determine whether its grant would serve the public interest, in practice a single waiver request is frequently followed virtually immediately by identical waiver requests from each of the other U.S. carriers serving the same point. [19] At that juncture uniformity, the ostensible end of the policy, is achieved. [20] Because a PTT will typically discuss proposed accounting rate and return flow modifications with the affected carriers, any whipsawing involved takes place prior to (or sometimes shortly after) the submission of waiver requests, and is never fully addressed by the Commission. This approach to waiver requests has also resulted in a lack of clarity regarding certain other issues which arise, such as the definition of parallel routes (to which the policy applies), and the determination of which services are, and which are not, covered by this policy. It is this situation which has given rise to not only a number of waiver applications, but also the present petition for rulemaking and comments.

III. Petition for Rulemaking

14. Petitioners RCAGC and WUI, citing various waiver applications and complaints pending before the Commission, state that various issues demand resolution. These are as follows:

(a) Does the definition of parallel routes include those which traverse the telecommunications system of a third State en route to their destination?

(b) If (a) is answered negatively, should the rule still be applied if a carrier arranges rates different from those applying to direct service to the same point?

(c) If (a) is answered negatively, should routes on which the third State is a member of the same geographic group (*e.g.*, CEPT or COMTELCA) be considered direct, and therefore parallel, for purposes of the uniformity policy?

(d) Should calls *to* the U.S. via a third country be treated differently than such calls *from* the U.S.?

15. Petitioners also raise procedural issues such as unanimity, Commission prescriptive authority, and confidentiality. They also seek clarification on the placement of the burden of proof for waiver applications and of the standard of proof required.

16. Comments submitted by other carriers in response to the joint petition suggest that the petition may be too broad in some respects, [21] too narrow in

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[14] We said in that Order: To expect the telegraph administration to play the competing companies against each other is simply to expect that the administration will be headed by good businessmen, loyal to their national interests. To rely upon companies which are bitter competitors not to make concessions to the administration which controls all outgoing radio-telegraph traffic is to provide an exceedingly tenuous basis upon which to rest the public interest. 2 FCC 599.

[15] *Mackay Radio and Telegraph Co.*, 25 FCC 690 (1951), *rev'd on other grounds sub nom. RCA Communications, Inc., v. FCC*, 201 F. 2d 694 (D.C. Cir. 1950), *vacated and remanded*, 346 U.S. 86 (1953).

[16] *Uniform Settlement Rates*, 84 FCC 2d 121 (1980).

[17] The factors include lower collection rates, improved services, and increased competition.

[18] Of course, if only one carrier is providing a particular service with a PTT, then no waiver petition is filed.

[19] *See Uniform Settlement Rates, supra;* the policy statement stipulates *ad hoc* review and some factors to be considered. *See also* FTCC Waiver Application, *infra*.

[20] In some instances the U.S. carriers (the IRCs) submit joint notification of an accounting rate change. No waiver petition is filed, no Commission review is initiated, and the change goes into effect.

[21] It is suggested, for example, that the issue of the application of the policy of uniformity to transit routes be constrained to a prescriptive statement only.

others,[22] and that the further major issue of what services are susceptible to regulation under the uniformity policy ought to be added.[23]

IV. Relevant Items Presently Pending or Recently Resolved

17. The Commission has pending before it, or has recently acted upon, a number of petitions, complaints and applications which concern various aspects of the uniform settlements policy. Briefly, these items are: (a) Requests by a number of IRCs for waiver of the uniform settlements policy with respect to an increase in the accounting rate for public message telegraph service (PMS) between the United States and the Central American countries comprising COMTELCA, and a joint IRC telex announcing their agreement to the increased rate; (b) similar requests for increases in the PMS accounting rate to 13 CEPT countries; (c) a letter from ITT noting the renegotiations of FTCC and The Western Union Telegraph Company (Western Union) with West Germany to allow accounting and settlement in SDRs; (d) a complaint by RCAGC against Western Union alleging that Western Union's arrangements with Costa Rica and Guatemala to transit telex traffic destined to El Salvador, Honduras and Nicaragua, constitute a violation of the uniform policy;[24] (e) a Bureau order in which the applicants for authority to provide international MTS to Canada (MCI, GTE Sprint and SBS), AT&T and other filers raised the issue as to whether the uniform settlements policy applies to international MTS; and (f) a waiver request by FTC Communications to decrease from $1.20 to .76 SDRs (77 cents) per minute the accounting rate for telex service between the United States and the CEPT nations.[25] All of these matters raise serious questions regarding the implementation and scope of our policy.

A. COMTELCA Telegram

18. A recent case involving accounting rates for PMS service with Central American nations provides an example of whipsawing and of the inadequacy of our present procedures to combat it. The foreign correspondents had apparently been negotiating for higher accounting rates with the U.S. carriers for some time without success. Finally, the foreign administrations announced that on a given date they would put the new, higher rates into effect, and would thereafter deal only with those carriers who agreed to this new term. On September 9, 1983, WUI filed a petition for waiver of the uniform settlements policy to increase the accounting rate applicable to PMS service between the United States and the COMTELCA countries.[26] Similar waiver requests were immediatey filed by Western Union and FTCC. Subsequently, FTCC, ITTWC, MCII, RCAGC, TRT and WUI sent the COMTELCA administrations a joint telex informing them that the signatories had agreed to the changed accounting rate effective November 1, 1983.[27] The signatories, all the carriers providing telegram service to and from the COMTELCA countries, notified the Commission of their action solely by filing with it a copy of the joint telex. None of the parties filed either in support of or against the waiver requests.[28]

19. The COMTELCA telegram case indicates that the Commission's existing review process is easily circumvented. Commission review was curtailed, and neither a formal indication of the carrier-COMTELCA agreement nor requests for dismissals of the petitions were ever filed. This matter also is an example of the whipsawing that the uniform settlements policy was intended to prevent. Because of different commercial interests among the carriers, the IRC/FCC meeting mechanism was inadequate to formulate a response to the COMTELCA proposal. The result was that one after another of the IRCs agreed to the increased divisions and sought a waiver of the uniform settlements policy.[29]

B. CEPT Telegram

20. On August 19, 1983, RCAGC filed a request for waiver of the uniform settlements policy in order to raise the accounting rate for PMS traffic between the United States and 13 CEPT countries from .90 to 1.20 Gold France (GF) per word, to be divided 50/50.[30] (The current accounting rate is .90 GF or $.3547 per word, which is divided approximately 55/45 in favor of the U.S carrier, and requires the U.S carrier to pay out approximately $.1586 per word. The proposed arrangement would require the U.S carrier to pay out $.2365 per word). PMS traffic between the U.S. and these CEPT administrations is predominantly outbound from the U.S., putting U.S PMS carriers in a net debtor (payment) position at settlement. Again, a higher PMS accounting rate and a 50–50 division increase CEPT revenues and decrease the revenues retained by U.S. carriers. Other IRCs filed comments and similar waiver requests.[31] While

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[22] Questions regarding attendance at and notice of the industry group meetings mentioned above, and of the scope of subject matter of those meetings, are raised in the comments.

[23] Switched voice services and enhanced services are specifically suggested. The addition of this issue is firmly opposed by another commenter.

[24] The agreements maintained the established accounting rate, but changed the division of tolls to result in the PTT's retaining more money on transiting traffic than they did from direct circuit traffic.

[25] Items (d) and (f) (RCAGC's complaint and the FTCC waiver request) have been recently considered and acted upon by the Commission, as discussed *infra*.

[26] COMTELCA is an association of the telecommunications administrations of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. Although it is not a member of COMTELCA, Panama will also assume the accounting rate discussed here. The waiver request specified a new accounting rate of 1.2 Gold France (GF) per word, divided 50/50 ($.2365 per word). Under the prior arrangements, U.S. carriers received .60 GF per word for northbound (to the USA) traffic and paid to COMTELCA .45 GF per word for southbound traffic. Since the balance of telegram traffic between the United States and the COMTELCA nations is southbound, an increased accounting rate increases revenues flowing to COMTELCA and decreases revenues retained by U.S. carriers.

[27] In support of the change, the petitioners noted that COMTELCA had requested the change since 1981, but that the IRCs could not reach agreement. The petitioners state that COMTELCA claimed it needed the increase because of rising costs in delivery of telegrams in the various member countries (they effect hand delivery rather than the telephone delivery generally used in the United States) and that the claim was meritorious. WUI noted in its petition that its *average* (emphasis in WUI's petition) per-word revenue share will increase notwithstanding the increased payout to COMTELCA. FTCC noted that the change would bring COMTELCA's arrangements with the United States into agreement with their arrangements with other countries in the Caribbean basin.

[28] The Chief, Common Carrier Bureau, sent the signatories of the joint telex a letter acknowledging their action and allowing the change to become effective without Commission action. The letter also notified the signatories that the Commission does not view the telex as disposing of the waiver requests or as official notification to the Commission of their agreement. It directed the filing carriers to file for dismissal of their waiver requests and to file a formal notification of the new rate. No carrier has filed a dismissal or formal notification.

[29] The carriers who formally sought waiver, FTCC, Western Union and WUI, are either the carriers with the smallest volumes of traffic or those seeking to enter the COMTELCA sevice for the first time. The applicants, in other words, were those carriers who had little or nothing to lose from agreement to the increased divisions, and much to gain if they could pick up the traffic formerly carried by the larger carriers. While it is certainly not our policy to assure or protect market shares, the circumvention of our policy obviated any opportunity for an analysis of whether the proposed change would be in the public interest.

[30] The countries in question are Austria, Belgium, Finland, France, Germany, Ireland, Luxembourg, Netherlands, Norway, Spain, Sweden, Switzerland and Yugoslavia.

[31] FTCC filed comments supporting RCAGC's proposal to raise the accounting rate, but recommended that settlement be made in SDRs. (SDR accounting rates, converted to dollars, would result in an increase from $.3547 to $.4700). TRT filed comments supporting RCAGC proposal to increase the CEPT/U.S. accounting rate, but proposing that the rate be set at .382 SDR (or about $.4729) per word. Subsequently, WUI, FTCC and

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proponents of the change argued that the question had been pending for some time, that no whipsawing was involved, and that the current rate was agreed upon only as an interim standard, they also noted that CEPT has threatened to "reconsider" the operating agreements of any U.S carrier which did not agree to the proposed increase.[32] The carriers agreed to let the increased rate go into effect on January 1, 1984. The carriers have not withdrawn their requests, nor have they filed any "joint telex" or other indication of their willingness to acquiesce in the increase.[33]

21. The size of the CEPT market increases the harmful impact of this whipsawing maneuver. Furthermore, the consequences of such an arrangement go far beyond these thirteen PTTs, as it is all but inevitable that other CEPT administrations and the U.K. will follow this initiative.[34] As with the COMTELCA example discussed above, the problem has two parts: the inability of the established process to permit Commission review and the continued efforts by PTTs maximize revenues by whipsawing U.S. carriers.

C. Conversion to SDRs

22. The U.S., along with several other ITU member nations, agreed in 1979 to establish SDRs as the monetary unit for all international telecommunications operating agreements by 1988. The proposed conversion has been a point of discussion among the IRCs for several years, but little or no agreement has emerged. The underlying problem is that the costs and revenues of the IRCs and the PTTs will be affected by the currency exchange rate at the time of conversion. Conversion from Gold Francs or dollars to SDRs will affect debtor carriers in one way, and creditor carriers in the opposite way. Thus, although various methods of conversion have been suggested, the IRCs cannot agree among themselves or with the PTTs to adopt any one methodology.

23. A second issue involving conversion to SDRs is raised by a February 13, 1985 letter from ITT to this Commission. ITT states that FTCC and Western Union modified their operating agreements with the West German PTT to use SDRs rather than Gold Francs, the standard for U.S.-CEPT traffic. ITT states that this change is a modification of a basic term of the operating agreement and is thus prohibited by the uniform settlements policy. FTCC responds that the actual terms of the agreement are still in Gold Francs, and that the accounting and billing are being expressed in SRSs simply for convenience.[35] FTCC also notes that the conversion results in no change in the actual amount paid.

D. RCAGC Complaint Against Western Union

24. In complaint filed in September 1983, RCAGC charged Western Union with an attempted "end run" around the uniform settlements policy in that Western Union established indirect telex routes to various COMTELCA destinations (by transiting via Costa Rica's or Guatemala's communications facilities) solely to avoid the Commission's requirements of uniformity. RCAGC contended in its complaint that these routes were parallel to the direct routes for which they shared origination and termination points, and that the policy should therefore apply to those new routes. Western Union argued in its answer that the policy does not apply to transit traffic. (Even if the policy did apply, Western Union stated, the uniformity required would be among indirect arrangements, not between indirect and direct arrangements.) Upon consideration, we determined that where transit routing is clearly designed, as evidenced by the accounting rate arrangements, to circumvent our uniform settlements policy the route will be considered parallel to direct routes and therefore subject to the policy. We therefore ordered Western Union to bring its accounting rate divisions into conformity.[36]

E. Telephone Service to Canada

25. In April 1985, the Bureau granted the applications of MCI, GTE Sprint and SBS to provide telephone service between the U.S. and Canada.[37] AT&T filed comments noting that the terms of MCI's agreement with the TransCanada Telecommunications System (TCTS) were different from its own. Other filings by MCI, SBS and other indicated that there was no unanimity as to whether the uniform settlements policy applied or should apply to voice services. The Bureau declined to resolve that question, relying instead on the use of waivers "as necessary." It noted that:

> [t]here may be no distinction between telegram, telex or switched voice services in considering the scope of the Commission's uniform settlements policy; in this view, more than one U.S. carrier is providing a particular service to an overseas point, the potential for whipsawing exists, and therefore, the policy applies.

Id. at para. 12, footnotes omitted. The Bureau also pointed out, however, that an argument could be made rejecting the application of the policy to voice services. It then indicated that the issue would be more appropriately clarified in a general proceeding.

F. FTCC Telex Accounting Rate Waiver Request

26. We have recently considered a request by FTCC for a waiver of the uniform settlements policy to allow a decrease in telex accounting rates between the U.S. and the U.K., and between the U.S. and CEPT. We denied FTCC's request on the basis that the situation represented an examle of whipsawing and that the proposed decrease in the accounting rates would have disserved the public interest.[38] Lowered collection rates is one of the factors we agreed might justify waiver; FTCC's proposal appeared to offer a direct benefit to the public. Because a reduction of accounting rates by one IRC creates pressures for identical reductions by the others,[39] and because the balance of telex traffic between Europe and the U.S. is so heavily westbound, the overall effect of FTCC's proposal would have been a loss to the industry of over twenty million dollars. This substantial loss would have been reflected in the decreased ability of the carriers to lower their customer charges. We concluded that the waiver request, if

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Western Union filed for similar waivers. Finally, RCAGC filed comments on TRT's proposal to switch to SDR accounting, in which it did not oppose TRT's preference for SDR settlements, but did note that the benefits TRT claims for such accounting are overstated.

[32] The pertinent language, in a message from the President of the Telegraph and Telematics Group of CEPT, is as follows: If . . . your agreement cannot be obtained, we will be forced . . . to reconsider the agreement reached by us up to the present time and we will take measures for a new breakdown of the traffic and therefore a radical change in the infrastructure. Those filing waiver requests made it clear that it was the prospect of loss of traffic which prompted their decision.

[33] The carriers stated at one of the IRC meetings that they had reached accord on the matter, and that the waiver requests could therefore be withdrawn.

[34] Based on figures in the IRCs' Section 43.61 Reports for 1982, the countries covered by the CEPT request represent 50.3 per cent of the carriers' total European PMS traffic and 12.8 per cent of their total world PMS traffic.

[35] Western Union did not respond to ITT's letter.

[36] RCA Global Communications, Inc. v. The Western Union Telegraph Company, File No. E–83–24, FCC 85–286, released June 28, 1985.

[37] MCI Telecommunications Corporation, *et al.*, CC Mimeo No. 3874, released April 16, 1985.

[38] Because FTCC's balance of telex traffic is eastbound, it is in a payor position, in contrast to the industry as a whole, and would therefore profit from a reduction in the accounting rate.

[39] The foreign correspondent, seeking the best deal for itself, would be expected to shift traffic to the IRS offering the accounting rate most favorable to the PTT. In order to retain their own traffic shares, and revenues, then, the other IRCs would be under pressure to accede to the new rate.

granted, would likely lead to a lower accounting rate for all carriers, to the benefit of the PTT and to the detriment of the U.S. public. We emphasized that the IRCs' ability to lower collection rates would be adversely affected as their payments from the PTTs declined. We therefore denied FTCC's request.

V. Discussion

27. The policy of maintaining uniform accounting and settlement rates and a 50–50 division of accounting rates exists to protect the U.S. public interest by "protect[ing] U.S. carriers from making concessions which may ultimately be detrimental to U.S. ratepayers." [40] The uniform settlements policy does not hamper domestic rate and service competition. Rather, the application of the policy is designed to make it difficult for a foreign correspondent to negotiate or impose a more advantageous settlement arrangement. Absent this policy, settlement arrangements would more accurately reflect the advantageous negotiating positions of the PTTs, and the result would be a loss of revenues to the U.S. industry. The consequence of this revenue loss is a diminished ability on the part of the carriers to decrease the collection rates they charge their customers. To allow whipsawing by the foreign PTTs would be to allow those entities to claim for themselves and their customers, to the detriment of the U.S. public, the benefits of the competition among U.S. carriers.

28. On the other hand, we are aware that a rigid application of the policy would not serve the public interest. The waiver policy that we enunciated in 1980 recognizes that nonuniformity may further the interests of U.S. users by resulting in additional carrier entry, lower prices and improved services. As we indicated in paragraph 5, *supra*, our policy of considering waiver requests allows us to make the balanced and informed determinations which will assure that the public interest is served. As the Common Carrier Bureau recently stated:

> The uniform settlement rates policy represents the Commission's attempt to strike a balance between its interest in fostering international competition and its desire to counteract pressure from foreign administrations to obtain more favorable accounting rates in negotiations with competing U.S. carriers, which could ultimately increase the flow of U.S. revenues abroad and raise domestic costs to the detriment of the U.S. customer. [41]

Because of the need to offset the negotiating power of the foreign administrations, we tentatively conclude that the uniform settlements policy and the existing waiver policy should be continued. [42] We solicit comments, however, on the possible negative effects of our policy on competition, and on the desirable balance between competition and uniformity in furtherance of the public interest.

29. While we have tentatively concluded that the continuation of the uniform settlements policy will serve the public interest, we are mindful that a new environment in the provision of international services may be fast approaching. We therefore believe it appropriate here to solicit comments on other approaches to this situation, particularly those that might resolve the problems which underlie the need for our policy. While it may be that adherence to the existing policy, with the clarifications and modifications we propose here, is the best current course, it may be that other policies would serve the public interest. [43] Several possibilities exist which might encourage the efficient operation of facilities, lead to lower rates for users, and encourage the development of new services. First, the policy could simply end. Perhaps competition among PTTs for refiled or transiting traffic, and competition for traffic by carriers within some countries, would best accomplish our goals. Second a sender-keep-all methodology in which the originating carrier keeps whatever it collects from its customers could be adopted. [44] This method could be expected to encourage carriers to operate with greater efficiency and to more effectively market their products, and could perhaps lead to lower rates. This method might be opposed by those entities (U.S. carriers or foreign administrations) which terminate more traffic than they originate. In cases where an inbalance was great, a sender-keep-all methodology could also impose substantial hardships. Depending on the cause of the imbalance, policy adjustments might be warranted. Third, if accounting rates could be tied directly to costs (rather than to relative negotiating positions), efficient operation would be rewarded by greater net revenues (profits), and rates could be lowered. Under such an approach the determination of an entity's costs would have to be determined or assigned in a manner which did not reward an entity with obsolete (high cost) equipment or penalize an entity with new (lost cost) equipment. This methodology would also require costs to be assigned without whipsawing. Fourth, if accounting rates were to be maintained substantially as they exist today, perhaps greater oversight or responsibility for negotiating the terms should be vested in the Commission.

30. We solicit comments regarding our tentative conclusion and other alternatives, asking that commenters suggest modes by which we can safeguard the public interest while pursuing our goals of encouraging competition, minimizing regulation, and benefiting users.

31. While we thus affirm the validity of and need for the uniform settlements policy, we also recognize that its current implementation does not totally preclude the whipsawing of U.S. carriers by foreign entities, and that "[i]ncreased competition among U.S. suppliers of international telecommunications services [may] result in a reduction in the U.S.'s share of the benefits from such services unless the U.S. government takes appropriate countermeasures." [45] We are therefore proposing a procedural modification designed to insure full and complete examination by the Commission of all proposed changes of the terms of operating agreements that are subject to our policy. We also propose to clarify the scope of the policy in terms of routing, currency changes and services. We believe that these changes will strengthen the policy so that the benefits of our pro-competitive policies accrue to U.S. users rather than to foreign PTTs. At the same time, we recognize that the implementation of the policy will require a careful analysis of benefits and detriments to users.

32. The issues presently before us, then, are as follows: (a) Under what circumstances will transiting arrangements be subject to the uniform settlements policy? (b) how broadly (i.e., to what services) does the policy apply? (c) does a change from dollars or other national currency to SDRs invoke the uniform settlements policy? How can this change to SDRs be most smoothly and efficiently managed? (d) does the

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[40] Uniform Settlement Rates, 84 FCC 2d 121, 128 (1980).

[41] MCI Telecommunications Corporation *et al.*, *supra*, at 8.

[42] In addition to finding that the policy and waiver procedures continue to serve the public interest, we note that no entity has argued for its termination.

[43] Because the provision of international service involves bilateral agreement and cannot be accomplished by unilateral fiat, the initiation of any new method would require negotiation with the PTTs. This does not mean that new approaches should not be pursued, but only that they cannot be unilaterally implemented.

[44] We note that this approach was the original agreed accounting method for telex service with Canada.

[45] Kwerel, "Promoting Competition Piecemeal in International Telecommunications," OPP Working Paper No. 13, December 1984 (OPP WP 13).

meaningful enforcement of the uniform settlements policy require new or additional procedures or participation on the part of the Commission?

A. Parallel Routes

33. We recently acted on a complaint filed by RCAGA against Western Union[46] in which we stated that our anti-whipsawing policy would be extended to transiting routes under certain circumstances. We stated in that decision that:

> [w]hen * * * a carrier enters into a transiting arrangement which results in a terminating/originating administration's receiving greater revenues than it would under a direct service arrangement, a legitimate question arises as to the consistency of such an arrangement with our anti-whipsawing policy. The fact that a line of communications makes use of third-party facilities en route to a given destination cannot excuse that line from conforming with the Commission's anti-whipsawing policy if abuses can be demonstrated. If * * * the intent of the contract is to accomplish indirectly what the carrier could not do directly (that is, establish nonuniform rates), than the distinction between transit and direct traffic is an insignificant technicality, and cannot be the basis of exclusion from our established policy against whipsawing.

Id., footnotes omited. We held that the purpose of the uniform settlements policy, the discouraging of whipsawing, would be served by requiring Western Union to bring its operating agreement into conformance. While direct routes involve only the terminating and originating countries, transiting routes traverse the telecommunications system of at least one additional state en route to their destination. On a direct route, applicability of and compliance with the uniform settlements policy is relatively clear. However, for transiting routes, the situation is much more complex. Transit routes are frequently used as a means of offering service where direct routes are not yet available, and as a means of entry by a new or not-yet-established carrier. They may also be used during the period of negotiations to establish direct routes. Several transiting routes may be used by the originating and terminating administrations, different facilities may be employed by the intermediary state for similar traffic between the same originating and terminating states, and compensation may be made pursuant to contract or tariff. Therefore, settlement rates for transiting traffic are not ordinarily required to conform with the settlement rates for direct traffic routes in all respects. However, where a transiting arrangement has no real purpose other than to enrich a PTT or group of PTTs at the expense of a U.S. carrier and U.S. ratepayers, we shall stike down that arrangement as contrary to our uniformity policy. Thus, while we recognize the uniqueness of transiting arrangements and the settlements therefore, our action on the RCAGC complaint should make it clear that we will, under our existing policy, monitor such arrangements, on an *ad hoc* basis, for consistency with similar arrangements and indications of whipsawing. Our action on the complaint did not necessitate an exact definition of transiting routes. If a party believes that the development or implementation of the uniform settlements policy would be enhanced thereby, it may propose definitions of direct and transiting traffic routes.

B. Services Covered by the Uniform Settlement Policy

34. As noted above, the Bureau recently acted on several applications in which the question arose as to whether the uniform settlements policy applies to the provision of voice services. [47] In that case, the Bureau noted the pros and cons of applying the policy but declined to resolve the issue, stating that the question was more appropriately reserved for a more general proceeding, and that in view of the facts and circumstances presented, it would grant waivers *sua sponte* as necessary.

35. Until recently there was only one international voice carrier (AT&T) and there was no reason to consider whether the policy should apply to voice services. Certainly our attention has been on the IRCs and the provision of international telex service. However, the focus of the uniform settlements policy has been not on a specific service but rather on the assurance of bargaining parity and fairness as well as the protection of U.S. ratepayers. We believe that the conditions considered in formulating the policy (*i.e.*, conditions conducive to whipsawing) may be present in the voice as well as record services markets: multiple service carriers in the U.S. negotiate with single PTT entities overseas who can be expected to attempt to maximize their revenues via accounting rate manipulation. [48] With the entry of additional carriers into the MTS market and the development of parallel routes, there may be a need to protect domestic ratepayers from the long-term effects of pro-PTT accounting rates. [49] We note that commenters in the *MCI* case were split on the question. [50]

36. One persuasive factor supporting the extension of the uniform settlements policy to MTS is that AT&T's existing agreements with foreign entities would ordinarily become the standard for entering carriers. [51] Because AT&T negotiated these agreements as a monopolist, holding a market position virtually identical to that of the PTTs with which it bargained, the agreements are presumably equitable. By applying the uniform settlements policy to applications for markets already served by AT&T, we would permit new competitors to operate on terms similar to those established by AT&T in the absence of whipsawing, thus arguably benefiting the American ratepayer. We believe that as competition develops in the provision of voice services the potential for whipsawing will increase. Therefore, we tentatively conclude that the uniform settlements policy should be extended to include international voice services, [52] and we solicit comments on this issue. [53]

37. The question arises whether enhanced services come within the ambit of the uniform settlements policy.[54] We first note that as a matter of law our formulation of the uniform settlements policy is grounded in Title I

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[46] *Supra*, note 38.

[47] *Supra*, note 37.

[48] In the international MTS market, where traffic is heavily outbound from the U.S., PTTs have an incentive to maintain high accounting rates in order to maximize revenues.

[49] Operating agreements in the MTS market generally provide for the same accounting/settlement rate system used in the record market.

[50] The International Communications Association and Satellite Business Systems suggested that the policy does apply, while MCI and AT&T suggested that it does not.

[51] Under the uniform settlements policy, a new entrant conforms to the terms of the operating agreement of an established service provider, or applies for a waiver allowing departure from those terms.

[52] To the extent that competition develops in the provision of international services in foreign markets (*e.g.*, the entry of Mercury as an international switched service provider in the U.K.), it may be appropriate to relax the application of our policy to those markets. However, this relaxation or liberal granting of waivers would be considered on a case-by-case approach, taking into account all relevant factors and conditions.

[53] As the Bureau noted in the *MCI* case, "[a] narrow view of the definition of a service could negate our policy by encouraging a PTT to manipulate a service's characteristics." *MCI, supra*, at n. 8. We would therefore propose generally to take a broad view as to what services are the same.

[54] Second Computer Inquiry, 77 FCC 2d 384 (1979) (Final Decision), *aff'd sub nom.* CCIA v. FCC, 693 F. 2d 198 (D.C. Cir. 1982), *cert. den. sub. nom.* Louisana v. United States, 103 S. Ct. 2100 (1983) (hereinafter *Computer II*).

and Title III as well as in Title II of the Communications Act.[56] Thus, we have the ability, under certain circumstances, to bring these services under the protection of the policy.[56] Although it may be argued that, in view of the conclusions drawn in *Computer II*, we ought not apply the policy to enhanced services, it is also true that to leave enhanced services outside of the policy could invite PTTs to pressure U.S. carriers to add the necessary computer processing functions to a service to transform a basic service into an enhanced service. Thereafter, the PTTs could play one enhanced service provider off against another and perhaps even off against a basic service carrier. Although we tentatively propose not to apply the uniform settlements policy to enhanced services internationally, we do solicit comments, especially from providers of enhanced services, on which policy option would best serve the public interest,[57] and the appropriate jurisdictional basis for any option we may adopt.

C. Conversion to SDRs

38. Two sub-issues arise with regard to the conversion from national-based monetary units such as the dollar or the Gold Franc to special drawing rights (SDRs), the monetary unit adopted by the International Monetary Fund (IMF) and by the ITU Plenipotentiary Conference. First, how can the conversion best be accomplished? And second, is the conversion to SDRs by one carrier a changing of terms such as is prohibited (absent waiver) by the uniform settlements policy?

(1) *Conversion to Uniform Use of SDRs.* The ITU's recommendation [58] is that account balances in Gold Francs be converted to SDRs using a linking coefficient of 3.061 GF=1 SDR.[59] Account balances in dollars or currencies other than Gold Francs would be converted to SDRs at whatever rates exist at the time of carrier agreements. Because of currency fluctuations, this method of conversion creates strong disagreement among U.S. carriers. Those in a net-debtor position feel they would pay out less using the linking coefficient, and so support this method, while those in a net-creditor position reject it as causing a decline in their revenues. The issue hinges on the value of the dollar vis-a-vis the Gold Franc and SDR at the time of conversion. Not only will the immediate loss or gain to each carrier be determined by the rate at the time of conversion; revenue gains and losses will continue to reflect this. We need not reach any tentative conclusion on this issue. Our obligation is to employ SDRs by 1988. We trust that our carriers can successfully negotiate with their foreign correspondents the SDR changeover in a timely fashion.

(2) *Conversion and the Uniform Settlements Policy.* Because the uniform settlements policy requires uniformity of terms, rates, and toll divisions between and among carriers offering like services between the same points, it seems clear that a unilateral conversion by one carrier of the monetary unit is a change in terms and rates such as the policy prohibits. We are particularly sensitive to changes which have the potential of being employed by a PTT to whipsaw U.S. carriers. Thus, while we are committed to conversion to SDRs, we tentatively conclude that all carriers must convert at the same time for a particular service to a particular country. Any carrier desiring to change at a different time or to employ a different linking coefficient or exchange rate would be required to file a waiver petition.

D. Implementation of the Uniform Settlements Policy

39. The history of accounting rate changes, the limited success of the staff/carrier meetings, and pleadings in this proceeding lead us tentatively to conclude that the Commission must more thoroughly review accounting rate modifications in order to assure that our carriers and service providers are not whipsawed and that the benefits of competition accrue to U.S. ratepayers rather than to the PTTs.[60] The changes to existing accounting rates for telex and telegram services agreed to by U.S. carriers indicate that whipsawing continues to occur and that PTT whipsawing tactics have become more sophisticated. The strategy of holding monthly meetings of representatives of the IRCs together with representatives from the FCC was an attempt to balance the bargaining positions of the parties in negotiations regarding international service agreements. It was hoped that by increasing coordination and cooperation among the IRCs, we could avoid or at least minimize their whipsawing by the foreign entities. However, the IRCs do not all have the same commercial interests, and thus positions on accounting rate proposals are usually not unanimous.

40. In order to further the goals of the uniform settlements policy, we propose to assure early, complete and informed Commission review of any request for waiver of the policy. We propose that each and every proposed modification of the terms, rates, or toll divisions of operating agreements for services where more than one carrier or service provider provides a particular service to a particular foreign jurisdiction be reviewed. We therefore proposed the following procedural requirements, which we believe will not be burdensome or impose delay. We propose that each waiver petition submitted to this Commission be initially placed on a sixty-day timetable. Specifically, waiver applications will be placed on Public Notice when filed. This notice will start a twenty-one day filing period for objections or comments. Thereafter, reply comments may be filed within ten days. In the remaining twenty-nine day period to staff shall review the waiver application.[61] The staff may raise objections or questions either *sua sponte* or in response to the submitted filings. This initial review of each application for waiver on its merits may result in: (a) no formal staff action, in wihch case the petition will be deemed granted on the sixtieth day;[62] (b) a staff letter requiring additional information;[63] or (c) a staff letter indicating that the waiver petition raises complex issues or is opposed, and thus must await Commission action. In the last situation the automatic grant provision does not operate. We are confident that this new procedure will provide for more complete Commission review and help assure that U.S. entities

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[55] *See e.g.*, Sections 1 and 2, 313 and 314.

[56] In formulating our *Computer II* requirements, we left unresolved the extent of our jurisdiction over enhanced services provided by firms not affiliated with common carriers. *See Computer II Reconsideration*, 84 FCC 2d at 92.

[57] Of course, in many instances an enhanced service provider may employ the facilities of another (underlying) carrier which are the subject of an operating agreement within the ambit of our policy. In such circumstances there may not be a separate and distinct accounting rate negotiated by the enhanced service provider and the PTT. In these cases, the policy does not apply.

[58] CCITT Recommendation D. 111.

[59] A linking coefficient is a conversion rate. A different linking coefficient can be used if all concerned entities agree.

[60] *See generally* OPP WO 13, *supra*.

[61] The Commission will delegate authority for this procedure to its Common Carrier Bureau.

[62] We note that this procedural device of automatic grants of authority is already successfully used in the consideration of applications to extend facilities under § 63.03(d) of our Rules.

[63] The staff may extend the review period in order to analyze a carrier's response or other interested parties' comments.

negotiate on as nearly equal a footing as possible with foreign entities. Where this can be accomplished by careful review alone, that approach will be preferred. Where a more active role is required, however, the Commission will act to safeguard the public interest. We propose, for example, that if the accounting rates for one or more services with one foreign PTT or group of PTTs have been unilaterally imposed, then we may, after appropriated review, consultation and analysis, prescribe similar unilateral action by our carriers.

41. We do not intend by these proposals to modify the waiver standards we enunciated in 1980. A carrier requesting a waiver would file a petition and would have the burden of proof to support its request.[84] Additionally, we do not propose to end the staff/carrier meetings. While the usefulness of these meetings may be questioned by some, it is clear that they do permit an exchange of views and provide the staff with relevent information.

VI. Conclusion

42. The Commission's concern in this proceeding is to assure that the public interest is served through our procedures regarding the provision of international telecomunications services. In order to do this, we propose to modify the manner by which the uniform settlements policy is implemented as well as the scope of the policy. These changes will fully complement our pro-competitive policies by maximizing the revenues retained or received by U.S. carriers and augmenting their ability to lower collection rates. The information and comments solicited in this proceeding will be analyzed and incorporated in our final determinations, and we encourage interested parties to submit comments on all the above proposals.[85]

43. Accordingly it is ordered that pursuant to the provisions of 47 U.S.C. sections 154(j), 303, 307 and 403, this Notice of Proposed Rulemaking is adopted.

44. It is further ordered that the petition of RCA Global Communications and Western Union International for a rulemaking on the implementation and scope of the uniform settlements policy is granted.

45. It is further ordered that interested persons may file comments on matters raised herein on or before August 30, 1985, and reply comments on or before September 20, 1985.

46. It is further ordered that, in accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419 (1984), all participants in the proceeding ordered herein shall file with the Commission an original and five (5) copies of all comments and reply comments. In reaching a decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. Copies of comments and reply comments filed in this proceeding shall be available for public inspection during regulatory business hours in the Commission's reference room at its headquarters at 1919 M Street, NW., Washington, D.C.

47. For purposes of this non-restricted, informal inquiry and rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of inquiry and proposed rulemaking until the time a draft order proposing a substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex parte* presentation is any written or oral communication (other then formal written comments/pleadings and oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceedings. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public filed. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

48. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354), it is certified, that section 603 and 604 of the Act do not apply because this proposed rule or policy will not, if promulgated, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 503, 604(b) (1984).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-16292 Filed 7-11-85; 8:45 am]

BILLING CODE 6712-01-M

[84] Uniform Settlement Rates, *supra*, para. 14.

[85] It is foreseeable that the anticipation of retaliation by foreign correspondents may prompt some commenters to request confidential treatment for their filings. Such requests will be honored. Comments so treated will be considered in the formation of a final determination in this matter only to the extent that their subetance, separated from any identifying characteristics, can be revealed and discussed.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Dockat No. 85-09; Notice 1]

Federal Motor Vehicle Safety Standards; New Pneumatic Tires—Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Grant of petition and notice of proposed rulemaking.

SUMMARY: This notice grants a petition for rulemaking submitted by the European Tyre and Rim Technical Organisation (ETRTO), requesting that Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires—Passenger Cars*, be amended to delete or revise paragraph S4.2.2.2(b) of that standard. Paragraph S4.2.2.2(b) imposes a size factor dimensional requirement on tires. The agency has tentatively determined that the size factor requirement provides no safety benefits, and is therefore proposing to delete those requirements.

DATES: Comments must be received by August 26, 1985. If adopted, the proposed amendments would become effective upon publication of the final rule in the **Federal Register**.

ADDRESS: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket Room hours are 8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Arturo Casanova, Office of Vehicle Safety Standards, National Highway

Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, Telephone (202) 426–1714.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) No. 109, *New Pneumatic Tires—Passenger Cars*, 49 CFR 571.109, specifies the requirements for all tires manufactured for use on passenger cars manufactured after 1948. This standard requires that the tires meet specified dimensional, strength, resistance to bead unseating, endurance, and high speed requirements, and be labeled with certain safety information.

The European Tyre and Rim Technical Organisation (ETRTO) petitioned this agency to amend No. 109 to delete the size factor requirement found in paragraph S4.2.2.2(b). The basis for this request was that size factor provides no safety benefits and should be deleted for the same reasons that minimum size factor was deleted. The agency has tentatively determined that ETRTO's petition has merit. The petition is therefore granted.

On December 17, 1981, the agency published a final rule, effective June 15, 1982, which amended FMVSS No. 109 to delete Table I from Appendix A of the standard (46 FR 61473). Standard No. 109 had required that before introducing and selling a new tire size, a manufacturer had to submit load and dimensional information to NHTSA and await the inclusion of the tire size in Table I. NHTSA determined that Table I should be deleted from the standard because this procedure was an unnecessary burden on the tire manufacturers for several reasons.

The agency believed that submission to NHTSA of the load and dimensional data, which is needed for conducting compliance tests, was unnecessary because no safety-related justifications for retaining Table I were found to exist. First, the specifications could be determined from the information labeled on the sidewall of the tires. Alternatively, the data could be obtained directly from various tire standardization organizations. The agency's procedure was simply to check the submitted data against that published for the tire size in a standardization organization yearbook. There was no independent validation by NHTSA of the submitted data. Second, Table I was deleted because the agency had determined that the administrative process of incorporating the variable factors in the table had, on occasion, created significant delays in the introduction and sale of new tire sizes. Third, NHTSA had determined that tire tables appeared to be dispensable since Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars*, has functioned well without tire tables since its issuance in 1973. A fourth reason was that the table had served the purpose for which it was originally created, i.e., standardization of the tire load ratings.

Table I had included a category specifying minimum size factor for all tires. "Minimum size factor" specified the smallest physical dimensions a tire could have and still be designated as a particular tire size. The "size factor" for a particular tire is calculated by adding the section width and the tire's diameter. The size factor for a tire size listed in the standardization organization yearbooks is actually the design goal, which makes no allowance for manufacturing variations.

Each tire size had a calculated minimum size factor, and a tire could meet the minimum size factor dimensional requirement of Standard No. 109 when its size factor was equal to or greater than the minimum size factor specified for that size designation. Minimum size factor thus functioned to provide tolerances in the manufacture of tire sizes. The minimum size factor for a particular tire size was always less than the size factor of that tire. (For example, according to data from the 1982 Tire and Rim Association Yearbook, the size factor for the tire listed as P195/75R14 is 33.23 inches, while its minimum size factor is calculated as 32.64 inches.) Those tolerances did not pose a safety problem and tire sizes falling within those ranges were wholly acceptable.

Minimum size factor was included in Standard No. 109 to ensure that tires would not be undersized and therefore unable to carry safely the assigned maximum load labeled on the tire. Undersized tires on cars are considered a serious safety problem, because undersizing increases the chances of tire failure. However, the endurance test procedures in S5.4 of Standard No. 109 require tire manufacturers to certify that their tire can carry 100 percent of its maximum load at a speed of 50 miles per hour for 24 hours. This test requirement would alert both tire manufacturers and NHTSA to any undersized tires, because those undersized tires would be overloaded and predictably have a high failure rate during this test. Therefore, even without a minimum size factor requirement, Standard No. 109 effectively precludes tire manufacturers from producing undersized tires.

When Table I was deleted from the standard, reference from that table was transferred to the standardization organization's yearbooks. The final rule which deleted Table I specified that the maximum load rating, section width, overall width, and size factor of a tire can be specified in a submission made by an individual manufacturer to the agency pursuant to S4.4.1(a) of Standard No. 109, or in one of the standardization organization's publications described in S4.4.1(b). By providing that a tire's size factor can be determined by reference to those yearbooks, a table specifying the minimum size factor was no longer required. Accordingly, the minimum size factor requirement was removed.

NHTSA justified its deletion of the minimum size factor requirement on the ground that the requirement no longer provided any safety benefits (47 FR 361880). In their petitions for reconsideration of the final rule, several commenters objected to the removal of the minimum size factor requirement. The essence of these objections was that absent a minimum size factor, it would be possible for manufacturers to undersize their tire, and that this undersizing could lead to increased incidents of tire failure.

NHTSA did not agreed that manufacurers will undersize their tires absent a minimum size factor requirement. The agency explained its decision in the following manner:

> The size factor of a tire cannot change after the mold is set up to begin producing that size of tire. With all of the engineering and quality control effort involved in designing and producing new tire sizes it is simply implausible that a tire manufacturer would either intentionally or inadvertently undersize the molds. The undersized tires that would be produced might save the manufacturers a few dollars per tire, but the savings would be more than offset by product liability awards and negative publicity generated. Since automobile manufacturers design cars to a tire's rated load, undersized tires would be overloaded on those cars, and would predictably exhibit higher failure rates than properly sized tires made by other manufacturers. This appears to be a very compelling disincentive to undersizing tires. Hence, the agency concludes that the minimm size factor is not needed in Standard No. 109. 47 FR at 36181; August 19, 1982.

When Table I was deleted from Standard No. 109, the minimum size factor requirement was removed, and the agency referenced size factor in its place. At the time the final rule was issued, the agency did not properly distinguish between the terms "minimum size factor" and "size factor." As explained below, this oversight resulted in an unintended revision to the requirements of FMVSS No. 109 which NHTSA believes can be corrected by the changes proposed by this notice.

Size Factor

Paragraph S4.2.2.2(b) of FMVSS No. 109 specifies the size factor requirement. "Size factor" is defined in FMVSS No. 109 as the sum of the section width and outer diameter of a tire determined on the test rim. After Table I was removed from Standard No. 109, paragraph S4.2.2.2(b) specified that size factor shall be "at least as large" as that specified in the manner described above (i.e., in a submission made by an individual manufacturer to NHTSA (pursuant to S4.4.1(a) of the standard), or in one of the standardization organization publications described in S4.4.1(b) for its size designation and type).

Since size factor is simply the sum of a tire's section width and outer diameter, the effect of substituting "size factor" for "minimum size factor" was to remove the dimensional tolerances permitted by the latter term. (As stated above, minimum size factor is a calculated value which takes into account acceptable variations in tire manufacture.) Standard No. 109 was thus made more stringent. The agency did not intend this result.

NHTSA tentatively agrees with ETRTO's suggestion that size factor should be deleted for the same reasons that minimum size factor was removed. Additionally, the agency is unaware of any safety benefits provided by the size factor requirement. The size factor of a tire cannot be changed after the mold is set up to produce that tire size. Because of engineering and quality control efforts involved in designing and producing new tire sizes, the agency believes it is implausible that a tire manufacturer would intentionally or inadvertently undersize its molds.

Accordingly, this notice proposes that the requirement be deleted. Removing size factor would not only relieve an unnecessary restriction on tire manufacturers but also recognize that mass-produced products have some minor product-to-product variations, and that these variations can be perfectly acceptable.

Proposed Effective Date.

It is proposed that the changes to S4.2.2.2, if adopted, be effective upon publication of the final rule in the **Federal Register**.

The changes proposed by this notice relieve a restriction on tire manufacture which the agency has tenatively determined to be unnecesary. They do not specify different test procedures or additional requirements, nor do they require any leadtime for preparation by tire or vehicle manufacturers. Therefore, the agency believes that good cause exists for making these changes, if adopted, effective upon publication of the final rule.

Analyses of Regulatory Impacts

The agency believes that the changes proposed by this notice would remove an unnecessary requirement from Standard No. 109. The elimination of unnecessary regulation is a useful step for the industry, the general public, and this agency.

NHTSA has examined the effect of this rulemaking action and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

The agency has also determined that the economic and other impacts of this rulemaking action are so minimal that a full regulatory evaluation is not required. NHTSA believes that the implementation of this proposal would not increase the costs or burdens for any party.

Regulatory Flexibility Act

NHTSA has also considered the economic impacts of this rulemaking action under the Regulatory Flexibility Act. The agency believes that few of the tire manufacturers would qualify as small businesses. Any tire manufacturers that do qualify as small businesses might benefit to a small extent by the changes proposed in this notice since removing size factor allows manufacturers the leeway to produce tires of sizes which are within acceptable industry standards.

Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new motor vehicles and new motor vehicle equipment. However, these entities will not be affected by the proposed changes since the changes will not significantly affect the price of tires. For the reasons stated above, I hereby certify that it will not have a significant economic impact on a substantial number of small entities, and that a regulatory flexibility analysis is, therefore, not required.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act of 1969. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.109 Standard No. 109, New Pneumatic Tires—Passenger Cars. [Amended]

2. Section S3 would be amended by removing the following paragraph:

"Size Factor" means the sum of the section width and the outer diameter of a tire determined on the test rim.

3. Section S4.2.2.2 would be revised to read as follows:

S4.2.2.2 *Physical Dimensions.* The actual section width and overall width for each tire measured in accordance with S5.1, shall not exceed the section width specified in a submission made by an individual manufacturer, pursuant to S4.4.1(a) or in one of the publications described in S4.4.1(b) for its size designation and type by more than:

(1) (For tires with a maximum permissible inflation pressure of 32, 36, or 40 psi) 7 percent, or

(2) (For tires with a maximum permissible inflation pressure of 60 psi or 240, 280, or 300 kPa) 7 percent or 0.4 inch, whichever is larger.

Issued on July 8, 1985

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-16583 Filed 7-9-85; 2:18 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 50, No. 134
Friday, July 12, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Marketing Agreement 146]

Peanuts; 1985 Crop; Incoming and Outgoing Quality Regulations and Indemnification

Pursuant to the provisions of sections 5, 31, 32, 34 and 36 of the marketing agreement regulating the quality of domestically produced peanuts heretofore entered into between the Secretary of Agriculture and various handlers of peanuts (30 FR 9402) and upon recommendation of the Peanut Administrative Committee established pursuant to such agreement and other information, it is hereby found that the appended "Incoming Quality Regulation—1985 Crop Peanuts," "Outgoing Quality Regulation—1985 Crop Peanuts," and the "Terms and Conditions of Indemnification—1985 Crop Peanuts," which modify or are in addition to the provisions of sections 5, 31, 32 and 36 of said agreement will tend to effectuate the objectives of the Agricultural Marketing Agreement Act of 1937, as amended, and of such agreement and should be issued.

The Peanut Administrative Committee has recommended that the appended regulations and the Terms and Conditions of Indemnification be issued to implement and effectuate the provisions of the aforementioned sections of the marketing agreement. The peanut crop year begins July 1 and procedures and regulations for operations under the agreement should be established thereby affording handlers maximum time to plan their operations accordingly. The handlers of peanuts who will be affected hereby have signed the marketing agreement authorizing the issuance hereof, they are represented on the Committee which has prepared and recommended these quality regulations and terms and conditions of indemnification for approval.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Information collection requirements contained in these regulations and terms and conditions of indemnification have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581-0067.

The 1985 Incoming Quality Regulation differs in two ways from the 1984 regulation. Paragraph (d)(1) is modified to increase the size of the screens used by handlers in differentiating those loose shelled kernels which may be milled for human consumption from those which must be disposed of for inedible use. The change is intended to improve the quality of lots of peanuts milled for human consumption by decreasing the quantity of loose shelled kernels in such lots. Research data indicates that there is a higher incidence of aflatoxin in loose shelled kernels than in other components of farmers stock peanuts.

The second change in the 1985 Incoming Quality Regulation modifies paragraph (h) to require handlers to correct to the satisfaction of the Committee any conditions conducive to the growth of *Aspergillus flavus* mold found in equipment which they use to transport farmers stock peanuts. This change is intended to ensure that such equipment is properly ventilated.

The 1985 Outgoing Quality Regulation is the same as last year except that the screen sizes in paragraph (g)(1) for determining loose shelled kernels which must be disposed of for inedible use are changed to conform with the Incoming Quality Regulation.

Two changes are made in the Terms and Conditions of Indemnification for 1985 crop peanuts. The indemnification payment on any lot of "quota peanuts" which is wholly indemnified is changed from three to five cents per pound less than the applicable indemnification value for the lot. This change is intended to encourage handlers to remill or blanch lots of peanuts with excessive aflatoxin rather than have such lots crushed for oil. It costs the Committee less to indemnify lots which are remilled or blanched rather than crushed.

The second change in the 1985 Terms and Conditions of Indemnification provides an exception to the current provision that lots of custom blanched peanuts will not be indemnified if they are sold at a price lower than the indemnification value on the original red skin lot at the time the indemnification claim was filed with the Committee. This exception allows indemnification payments on lots of peanuts that are originally reported as "quota peanuts" but are subsequently substituted to "additional" status upon blanching.

Agricultural Stabilization and Conservation Service (ASCS) provisions allow lots of peanuts to be switched from "quota" status to "additional" status under certain circumstances, and the Committee does not want to penalize handlers who utilize those provisions even though "additional peanuts" are normally sold at prices considerably below corresponding indemnification values for "quota peanuts." However, ASCS does not permit peanuts with excessive aflatoxin to be substituted. Therefore, under the change, reject peanuts removed when a lot is blanched will retain their "quota" status and will be indemnified based on the applicable indemnification value for "quota peanuts."

Upon consideration of the Committee recommendation and other available information, the appended "Incoming Quality Regulation—1985 Crop Peanuts," "Outgoing Quality Regulation—1985 Crop Peanuts," and the "Terms and Conditions of Indemnification—1985 Crop Peanuts," are hereby approved.

Dated: July 8, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

Incoming Quality Regulation—1985 Crop Peanuts

The following modify section 5 of the peanut marketing agreement and modify or are in addition to the restrictions of section 31 on handler receipts or acquisitions of peanuts:

a. *Modification of section 5, paragraphs (b), (c), and (d).* Paragraphs (b), (c), and (d) of section 5 of the peanut marketing agreement are modified as to farmers stock peanuts to read respectively as follows:

(b) *Segregation 1.* "Segregation 1 peanuts" means farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

(c) *Segregation 2.* "Segregation 2 peanuts" means farmers stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

(d) *Segregation 3.* "Segregation 3 peanuts" means farmers stock peanuts with visible *Aspergullus flavus*.

b. *Moisture.* Except as provided under paragraph (e) *Seed peanuts*, no handler shall receive or acquire peanuts containing more than 10 percent moisture: *Provided*, That peanuts of a higher moisture content may be received and dried to not more than 10 percent moisture prior to storing or milling. On farmers stock, such moisture determinations shall be rounded to the nearest whole number; on shelled peanuts, the determinations shall be carried to the hundreds place and shall not be rounded to the nearest whole number.

c. *Damage.* For the purpose of determining damage, other than concealed damage, on farmers stock peanuts, all percentage determination shall be rounded to the nearest whole number.

d. *Loose shelled kernels.*

(1) Handlers may separate from the loose shelled kernels received with farmers stock peanuts those sizes of kernels which ride screens with the following or larger slot openings: Runner—$^{13}/_{64} \times ^{3}/_{4}$ inch; Spanish and Valencia—$^{13}/_{64} \times ^{3}/_{4}$ inch; Virginia—$^{13}/_{64} \times 1$ inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption: *Provided*, That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in paragraph (g) of the Outgoing Quality Regulation. If the kernels which ride the prescribed screen are not separated from the kernels which do not ride the prescribed screen, the entire amount of loose shelled kernels shall be removed from farmers stock peanuts and shall be sold so held and so delivered or disposed of. For the purpose of this regulation, the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers stock peanuts.

(2) Each handler shall be required to submit to the Committee a flow chart for each plant operation diagraming the procedures and equipment used in the removal of loose shelled kernels and in the processing of splits. Upon any subsequent changes in such flow, procedures, or equipment, the handler shall submit to the Committee a revised flow chart reflecting those changes.

e. *Seed peanuts.* a hander may acquire and deliver for seed purposes farmers stock peanuts which meet the requirements of Segregation 1 peanuts. If the peanuts are produced under the auspices of a State agency which regulates or controls the production of seed peanuts, they may contain up to 3 percent damaged kernels and have visible *Aspergillus flavus*, and, in addition, the following moisture content, as applicable:

(1) for seed peanuts produced in the Southeastern and Virginia-Carolina areas, they may contain up to 11 percent moisture except Virginia type peanuts which are not stacked at harvest time may contain up to 12 percent moisture; and (2) for seed peanuts produced in the Southwestern area, they may contain up to 10 percent moisture.

However, any such seed peanuts with visible *Aspergillus flavus* shall be stored and shelled separate from other peanuts, and any residual not used for seed shall not be used or disposed of for human consumption unless it is determined to be wholesome by chemical assay for aflatoxin. A handler whose operations include custom seed shelling may receive, custom shell, and deliver for seed purposes farmers stock peanuts, and such peanuts shall be exempt from the Incoming Quality Regulation requirements and, therefore, shall not be required to be inspected and certified as meeting the Incoming Quality Regulation requirements, and the handler shall report to the Committee as requested the weight of each lot of farmers stock peanuts received on such basis on a form furnished by the Committee. However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers stock) seed peanuts or from another sheller or produced who has or has not signed the marketing agreement shall hold and/or mill such residuals separate and apart from other receipts or acquisitions of the handler, and such residuals which meet Outgoing Quality Regulation requirements may be disposed of by sale to human consumption outlets, and any portion not meeting human consumption requirements pursuant to paragraph (i) of the Outgoing Quality Regulation.

f. *Oilstock.* Handlers may acquire for disposition to domestic crushing or export to countries other than Canada and Mexico farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. The provision of section 31 of the marketing agreement restricting acquisitions of such peanuts to handlers who are crushers is hereby modified to authorize all handlers to act as accumulators and acquire, from other handlers or non-handlers, Segregation 2 or 3 farmers stock peanuts. Handlers may also acquire from other handlers shelled or fragmented peanuts originating from Segregation 2 or 3 farmers stock or the entire mill production of shelled or fragmented peanuts from Segregation 1 farmers stock or lots of shelled peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in paragraph (d) of the Outgoing Quality Regulation which failed to meet the requirements for human consumption pursuant to paragraph (a) of the Outgoing Quality Regulation: *Provided*, That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart as provided in paragraph (j) of the Outgoing Quality Regulation. Further disposition or commingling of such peanuts shall be only as provided in paragraph (l) of the Outgoing Quality Regulation. Handlers who acquire farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions as prescribed by the Committee. To be eligible to receive or acquire Segregation 2 and 3 farmers stock peanuts and shelled or "fragmented" peanuts originating therefrom, a handler shall pay to the Area Association a fee for the purpose of covering cost of supervision of the disposition of such peanuts.

g. *Segregation 2 and 3 control.* To assure the removal from edible outlets of any lot of peanuts determined by Federal or Federal-State Inspection Service to be Segregation 2 or Segregation 3, each handler shall inform

each employee, country buyer, commission buyer, or like person through whom he receives peanuts of the need to receive and withhold all lots of Segregation 2 and Segregation 3 peanuts from milling for edible use. If any lot of Segregation 2 or Segregation 3 farmers stock peanuts is not withheld but returned to the producer, the handler shall cause the Inspection Service to forward immediately a copy of the inspection certificate on the lot to the designated office of the handler and a copy to the Committee which shall be used only for information purposes.

h. *Farmers stock storage and handling facilities.* Handlers shall report to the Committee, on a form furnished by the Committee, all storage facilities or contract storage facilities which they will use to store acquisitions of current crop Segregation 1 farmers stock peanuts, and all such storage facilities must be reported prior to storing of any such handler acquisitions. Handlers shall also report to the Committee the locations at which they will receive or acquire current crop farmers stock peanuts. All such storage facilities shall have reasonable and safe access to allow for inspection of the facility and its contents. All such storage facilities must be of sound construction, in good repair, and built and equipped so as to provide suitable storage and sufficient safeguards to prevent moisture condensation and provide adequate protection for farmers stock peanuts. All breaks or openings in the walls, floors, or roofs of the facilities shall have been repaired so as to keep out moisture. Elevator pits and wells must be kept dry and free of moisture at all times. Insect control procedures must be carried out in such a manner as to prevent undesirable moisture in the storage facilities. Any conditions in warehouses, elevators, pits, transportation equipment, including trucks and hopper cars, and other farmers stock handling equipment conducive to the growth or spread of *Aspergillus flavus* mold shall be corrected to the satisfaction of the Committee. The Committee may make periodic inspections of farmers stock storage and handling facilities and farmers stock peanuts stored in such facilities to determine if handlers are adhering to these requirements.

i. *Shelled peanuts.* Handlers may acquire from other handlers for remilling and subsequent disposition to human consumption outlets, shelled peanuts (which originated from "Segregation 1 peanuts") that fail to meet the requirements specified for human consumption in paragraph (a) of the Outgoing Quality Regulation. Any lot of such peanuts must be accompanied by a valid inspection certificate for grade factors, an aflatoxin assay certificate, and must be positive lot indentified. Transactions made in this manner shall be reported to the Committee by both the buyer and seller on a form provided by the Committee. Peanuts acquired pursuant to this paragraph shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler, and further disposition shall be regulated by paragraph (h)(1) of the Outgoing Quality Regulation.

Outgoing Quality Regulation—1985 Crop Peanuts

The following modify or are in addition to the peanut marketing agreement restrictions of section 32 on handler disposition of peanuts:

(a) *Shelled peanuts.* No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless appropriate samples for pretesting have been drawn in accordance with paragraph (c) of this regulation, or which if of a category not eligible for indemnification are not certified "negative" as to aflatoxin, or which contain more than (1) a total of 1.50 percent unshelled peanuts and damaged kernels; (2) a total of 3.00 percent unshelled peanuts and damaged kernels and minor defects; (3) 9.00 percent moisture; or (4) 0.10 percent foreign material in peanuts "with splits" and peanuts of U.S. grade, other than U.S. splits, or 0.20 percent foreign material in U.S. splits and other edible quality peanuts not of U.S. grade. The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds. Fall through in such peanuts shall not exceed 4 percent except that in peanuts other than "No. Two Virginia" fall through consisting of either split and broken kernels or whole kernels shall not exceed 3 percent and fall through of whole kernels in Runners or Virginias "with splits" shall not exceed 3 percent or 2 percent on Spanish "with splits". The term "fall through" as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Screens used for determining fall through in peanuts covered by this paragraph (a) shall be as follows:

Type	Screen openings	
	Split and broken kernels	Whole kernels
Runners	1 13/64 inch round	1 13/64 x 9/16 inch slot.
Spanish and Valencia	1 13/64 inch round	1 13/64 x 9/16 inch slot.
Virginia except "No. 2 Virginia"	1 13/64 inch round	1 13/64 x 1 inch slot.
"No. 2 Virginia"	1 13/64 inch round only for split, broken and whole kernels.	

("No. Two Virginia" means Virginia type peanuts that meet requirements of U.S. No. 2 Virginia grade peanuts except for tolerances for: (1) damage or unshelled peanuts and minor defects; and (2) sound peanuts and portions of peanuts which pass through the prescribed screen. Such tolerances shall be the same as those listed heretofore in this paragraph. Runners, Spanish or Virginia "with splits" means shelled peanuts which do not contain more than (a) 15 percent splits; (b) Spanish, 2.00 percent whole kernels which will pass through 1 13/64 x 9/16 slot screen; for Runners, 3.00 percent whole kernels which will pass through 1 13/64 x 9/16 inch slot screen; and for Virginias, 3.00 percent whole kernels which will pass through 1 13/64 x 1 inch slot screen; and (c) otherwise meet specification of U.S. No. 1 grade).

(b) *Cleaned inshell peanuts.* No handler shall ship or otherwise dispose of cleaned inshell peanuts for human consumption: (1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by laboratories approved by the Committee or by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") and found to be wholesome relative to aflatoxin; (2) with more than 2.00 percent peanuts with damaged kernels; (3) with more than 10.00 percent moisture; or (4) with more than 0.50 percent foreign material. The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Pretesting shelled peanuts.* Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection

Service as "Sample #1", "Sample #2", and "Sample #3" and each sample shall be placed in a suitable container and "positive lot identified" by means acceptable to the Inspection Service and the Committee. Sample #1 may be prepared for immediate testing or Sample #1, Sample #2, and Sample #3 may be returned to the handler for testing at a later date. However, before shipment of the lot to the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service or a USDA or designated laboratory in a "subsampling mill" approved by the Committee. The resultant ground subsample from Sample #1 shall be of a size specified by the Committee and be designated as "Subsample 1–AB" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1. It shall be designated as "Subsample 1–CD". Subsample 1–CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a laboratory listed on the most recent Committee list of approved laboratories that can provide analyses results on such samples in 36 hours. Subsample 1–AB shall be analyzed only in USDA or designated laboratories. Both Subsamples 1–AB and 1–CD shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Committee office.

The samples designated as Sample #2 and Sample #3 shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1 are known. Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #2 to be ground by the Inspection Service in a "subsampling mill". The resultant ground Subsample from Sample #2 shall be of the size specified by the Committee and it shall be designated as "Subsample 2–AB". Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #3 to be ground by the Inspection Service in a "subsampling mill". The resultant ground subsample from Sample #3 shall be of the size specified by the Committee and it shall be designated as "Subsample 3–AB". Subsamples 2–AB and 3–AB shall be analyzed only in USDA or designated laboratories and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Committee office and the cost of delivery of Subsamples 2–AB and 3–AB to the laboratory and the cost of assay on them shall be at the Committee's expense.

All costs involved in sampling and testing Subsample 1–CD shall be for the account of the buyer of the lot and at his expense. The cost of assay on Subsample 1–AB and a portion of the cost (specified by the Committee) of drawing the three 48-pound samples, grinding of Sample #1 and preparation and delivery of Subsample 1–AB to the laboratory shall be for the account of the buyer. However, if the handler elects to pay for these costs, he shall charge the buyer the amount specified by the Committee when he invoices the peanuts and, if more than one buyer, on a pro rata basis. Any remaining costs of drawing the three 48-pound samples, grinding of Sample #1 and preparation and delivery of Subsample 1–AB shall be for the account of the handler and shall be shown on the grade analysis certificate covering the lot. When any of the samples or subsamples have been lost, misplaced, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the handler who shall promptly cause notice to be given to the buyer, of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts shipped or otherwise disposed of for human consumption shall be identified by positive lot identification procedures. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot covered so that there can be no doubt that the peanuts delivered are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

(e) *Reinspection.* Whenever the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Committee may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Inter-plant transfer.* Any handler may transfer peanuts from one plant owned by him to another of his plants or to commercial storage, without having such peanuts positive lot identified and certified as meeting quality requirements, but such transfer shall be only to points within the same production area and ownership shall have been retained by the handler. Upon any transferred peanuts being disposed of for human consumption, they shall meet all the requirements applicable to such peanuts.

(g) *Loose shelled kernels, fall through and pickouts.*

(1) Loose shelled kernels which do not ride screens with the following slot openings: Runner—$^{18}/_{64}$ x $^{3}/_{4}$ inch; Spanish and Valencia–$^{18}/_{64}$ x $^{3}/_{4}$ inch; Virginia—$^{18}/_{64}$ x $^{3}/_{4}$ 1 inch; and fall through and pickouts shall be disposed of only by sale as domestic oil stock, by crushing, or as specified in paragraph (g)(3) hereinafter. For the purpose of this regulation: the term "non-edible quality peanuts" described in this paragraph means loose shelled kernels, fall through, and pickouts; the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls, either as found in deliveries of farmers stock peanuts or those which fail to ride the screens prescribed in paragraph (d)(1) of the Incoming Quality Regulation; the term "fall through" has the same meaning as in paragraph (a) of this regulation; and the term "pickouts" means those peanuts removed during the final milling process at the picking table, by electronic equipment, or otherwise during the milling process.

(2) All loose shelled kernels, fall through, and pickouts shall be kept separate and apart from other milled

peanuts that are to be shipped into edible channels. Such categories may be kept separate or be commingled in the same lot and shall be bagged in suitable new bags or clean, used bags or placed in bulk containers acceptable to the Committee. Such peanuts shall be identified by positive lot identification procedures set forth in paragraph (d) but using a red tag, and such peanuts shall be inspected by the Federal or Federal-State Inspection Service and a certification made on each lot as to moisture and foreign material content. Such lot size, whether in bags or bulk, shall not exceed 200,000 pounds.

(3) In addition to disposition outlets specified in paragraph (g)(1), fall through that has been sampled and determined negative as to aflatoxin content may be disposed of for use as wild-life feed or bait for rodents in labeled containers approved by the Committee. Each category of non-edible quality peanuts described in paragraph (g)(1) and identified as prescribed in paragraph (g)(2) may be exported in bulk or bags to countries other than Mexico or Canada pursuant to the provisions prescribed for such disposition in paragraph (l)(1) or (l)(2) of this regulation or they may be moved to another handler for such disposition. Sales or transfer of such peanuts, to exporters who are not handlers under the marketing agreement, shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Such peanuts may be disposed of to domestic crushing as "unrestricted" if they are certified negative as to aflatoxin content and may be commingled at the crusher with any other category of peanuts determined by paragraph (l)(1) of this regulation to be eligible for such "unrestricted" crushing. Non-edible quality peanuts described in paragraph (g)(1) which have not been certified negative as to aflatoxin are not eligible for "unrestricted" crushing but may be disposed of to domestic crushing as "restricted" and may be commingled at the crusher with any other category of peanuts described in paragraph (l)(2). Such non-edible quality peanuts may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and apart from peanuts on which supervision is required. However, if non-edible quality peanuts described in paragraph (g)(1) are exported or crushed in commingle with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing of all categories of peanuts included in the commingling. All movement and disposition of such inedible quality peanuts shall be reported by the handler as prescribed by the Committee.

Meal produced from peanuts which are disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use. To prevent use of restricted meal for feed, handlers shall either denature it or restrict its sale to licensed or registered U.S. fertilizer manufacturers or firms engaged in exporting who will export such meal for non-feed use or sell it to the aforesaid fertilizer manufacturers. Such meal may also be used for research purposes, subject to the approval of the Executive Subcommittee. However, loose shelled kernels, fall through and pickouts and meal from such peanuts, in specifically identified lots not exceeding 200,000 pounds may be sampled by the Federal or Federal-State Inspection Service or by the Area Association if authorized by the Committee, and tested for aflatoxin in laboratories approved by the Committee or by a USDA laboratory, at handler's or crusher's expense, and if such meet Committee standards, the meal may be disposed of for feed use.

(4) Notwithstanding any other provisions of this regulation or of the Incoming Quality Regulation, a handler may transfer non-edible quality peanuts described in paragraph (g)(1) to another plant within his own organization or transfer or sell such peanuts to a crusher for crushing. Sales or transfer of restricted peanuts to domestic crushers who are not handlers under the agreement shall be made only on the condition that they agree to comply with the terms of this paragraph (g) and all other applicable requirements of this regulation, including the reporting requirements.

(h) *Peanuts failing quality requirements.*

(1) Handlers may sell to or contract with other handlers, for further handling, shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a). Lots of peanuts disposed of in this manner must be accompanied by a valid grade inspection certificate, an aflatoxin assay certificate and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the seller and buyer on a form provided by the Committee. Any such peanuts acquired by handlers pursuant to paragraph (i) of the Incoming Quality Regulation shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler and further disposition shall be regulated by the requirements specified heretofore or pursuant to paragraph (h)(3) hereinafter.

(2) Handlers may blanch or cause to have blanched positive identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of paragraph (a) of this regulation because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin: *Provided,* That such lots of peanuts contain not in excess of 8 percent damage and minor defects combined or 2 percent foreign material. Handlers who move such peanuts to a blancher shall report, to the Committee on a form furnished by the Committee, movement of each such lot and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for shelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this regulation and be accompanied by an aflatoxin certificate determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation; *OR,* in the alternative, if such residuals are positive lot identified by a Federal or Federal-State Inspection Service, they may be disposed of by the blancher to domestic crushing or a Committee approved exporter. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(3) Handlers may dispose of positive identified shelled peanuts (which originated from "Segregation 1 peanuts") which fail to meet the requirements of paragraph (a) of the Outgoing Quality Regulation: (a) To domestic crushing, (b) to export to countries other than Canada and Mexico, provided they meet fragmented requirements, (c) to crushers who are

not handlers but are approved by the Committee, or (d) to other handlers for crushing or fragmenting and exportation. Sales or transfers of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Each lot of such peanuts shall have been positive lot identified as prescribed in paragraph (d). Handlers may dispose of such peanuts as "unrestricted": *Provided,* That each lot has been sampled and assayed for aflatoxin by the Committee. Handlers who have acquired any such unrestricted peanuts from another handler or from their own operations may commingle such peanuts with those from their own operations at the crusher, or during the fragmenting operation or after fragmenting for further disposition as "unrestricted" pursuant to the provisions of paragraph (l)(1) of this regulation. Lots of peanuts covered by the provisions of this paragraph (h)(3), which have not been assayed for aflatoxin content or which have been assayed and determined to be unwholesome as to aflatoxin by the Committee, are not eligible for disposition as "unrestricted." Therefore, the disposition of such peanuts to export or domestic crushing shall be as "restricted." However, handlers who have acquired such restricted peanuts from another handler may commingle such peanuts with those from his own operations at the crusher, or during the fragmenting operation, or after fragmenting for further disposition as restricted pursuant to the provisions of paragraph (l)(2). Peanuts regulated by this paragraph (h)(3) may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and a part from peanuts of which supervision is required. However, if any such peanuts are commingled with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of peanuts covered by the provisions of this paragraph shall be reported by the handler as prescribed by the Committee.

(4) Handlers may contract with the Committee approved remillers for remilling shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation: *Provided,* That such lots of peanuts contained not in excess of 8 percent damage and minor defects combined or 10 percent fall through or 2 percent foreign material. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and an aflatoxin assay certificate and must be positive lot identified. Handlers who move such peanuts to an approved remiller shall report to the Committee, on a form furnished by the Committee, the movement of each such lot. The title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a), and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled sperate and apart from all other peanuts. The residual peanuts resultings from remilling under these provisions shall be bagged and red-tagged and disposed of to domestic crushing by the approved remiller or they may be returned to the handler for disposition under the provisons of paragraphy (g)(3) of the Outgoing Quality Regulation. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(i) *Residuals from seed peanuts.* Handlers who receive and custom shell for seed purposes farmers stock peanuts (which have not been inspected and certified as meeting the Incoming Quality Regulation) shall hold and mill peanuts acquired as residuals from such operations separate and apart from peanuts acquired as Segregation 1 farmers Stock. Likewise, any such residuals received or acquired from a handler or non-handler, shall be held and milled separate and part in the same manner. Residuals that meet requirements of the Outgoing Quality Regulation may be disposed of by sale to human comsumption outlets or to another handler and any portion in positive identified lots not meeting such requirements: (1) May be handled and disposed of pursuant to the provisions of paragraph (h) of this regulation; or (2) shall be disposed of to domestic crushing or export pursuant to the provisions of paragraph (g).

(j) *Segregation 2 and 3 farmers stock disposition.*

(1) Handlers who have acquired Segregation 2 and 3 farmers stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation may commingle such peanuts or keep them separate and apart. The Segregation 3 farmers stock peanuts or commingled Segregation 2 and 3 farmers stock peanuts may be moved or disposed of in bags or bulk: (a) To other handlers for shelling, fragmenting, or crushing, or (b) to crushers who are not handlers but are approved by the Committee. Handlers may shall such peanuts and move or dispose of the shelled peanuts in bulk or bags: (a) To other handlers for fragmenting or crushing, or (b) to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided hereinafter in paragraph (l)(2) for "restricted" export to countries other than Canada and Mexico, or for "restricted" domestic crushing. Prior to exportation, the shelled peanuts shall be certified by a Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts in paragraph (l)(1) and shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. Shelling, fragmenting, and crushing of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts shall be done only under the supervision of the Area Association and any such peanuts may be commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting for disposition to export or the further commingling and domestic crushing. All movement and disposition of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts and shelled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(2) Handlers who have acquired Segregation 2 farmers stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers stock with Segregation 1 farmers stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers stock peanuts or commingled Segregation 1 and 2 farmers stock peanuts may be moved or disposed of in

bulk or bags: (a) To other handlers for shelling, fragmenting, or crushing, or (b) to crushers who are not handlers but are approved by the Committee. Handlers may shell the Segregation 2 or commingled Segregation 1 and 2 peanuts and move or dispose of the shelled peanuts: (a) To another handler for fragmenting or crushing; or (b) to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided in paragraph (l)(1) of this regulation. Prior to exportation the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts also in paragraph (l)(1). If the shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts are held separate and apart from Segregation 3 peanuts and any restricted categories of shelled peanuts, no aflatoxin assay shall be required. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association. The shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts may be further commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting. All movement and disposition of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts and shelled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(k) *Segregation 1 farmers stock disposition.*

(1) In addition to milling (shelling, cleaning, etc.) Segregation 1 farmers stock peanuts for disposition to human consumption or seed outlets, handlers may dispose of Segregation 1 farmers stock peanuts to export or to other handlers for such disposition. All such dispositions to export shall be reported by the handler as requested by the Committee.

(2) In addition to the disposition outlets specified in paragraph (k)(1), handlers may dispose of Segregation 1 farmers stock peanuts in bags or bulk to other handlers for shelling, fragmenting, or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. Handlers may commingle Segregation 1 farmers stock peanuts with Segregation 2 farmers stock peanuts or keep them separate and apart, and may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags to other handlers for fragmenting or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. However, the shelling, fragmenting, and disposition of such Segregation 1 farmers stock peanuts shall be done only under the supervision of the Committee and the Area Association and all peanuts handled under the provisions of this paragraph (k)(2), for disposition to export or domestic crushing, shall be milled and disposed of pursuant to paragraph (j)(2) in lieu of the provisions specified in paragraph (a), (b), (c), (d), (g), (h), and (i) of this regulation. The movement and disposition of all peanuts handled under the provisions of this paragraph (k)(2), shall be reported by the handler as precribed by the Committee.

(l) *Handling, commingling, and disposition of shelled peanuts not meeting quality requirements for human consumption.* (1) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "unrestricted";

(a) The entire mill production of shelled peanuts from Segregation 1 farmers stock pursuant to paragraph (k)(2).

(b) The entire mill production of shelled peanuts from Segregation 2, or commingled Segregation 1 and 2 farmers stock pursuant to paragraph (j)(2).

(c) Positive Lot Identified lots of shelled "peanuts failing quality requirements" determined negative as to aflatoxin pursuant to paragraph (h)(3).

(d) Positive Lot Identified lots of loose shelled kernels, fall through, or pickouts determined negative as to aflatoxin pursuant to paragraphs (g)(1), (2), and (3).

(e) Positive Lot Identified lots of loose shelled kernels, fall through, and pickouts commingled and determined negative as to aflatoxin pursuant to paragraphs (g)(2), and (3).

(f) Positive Lot Identified lots of seed peanut residuals determined negative as to aflatoxin pursuant to paragraph (i).

Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts while fragmenting them or after they have been fragmented: (1) With any other category of peanuts described in this paragraph, and (2) with any category of "unrestricted" shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for disposition to export to countries other than Canada and Mexico. However, such peanuts, prior to exportation, shall be certified as meeting fragmented requirements. For the purpose of this regulation, the term "fragmented" means that not more than 30 percent of the peanuts shall be whole kernels that ride the following screens, by type: Spanish $^{15}/_{64}$ x $^{3}/_{4}$ inch slot; Runner $^{15}/_{64}$ x $^{3}/_{4}$ inch slot; and Virginia $^{15}/_{64}$ x 1 inch slot. Sales or transfer of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher: (1) With any other category of peanuts described in this paragraph, and (2) with any category of unrestricted shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling and the resultant meal may be disposed of without restriction. To be eligible for such unrestricted disposition (crushing or export), such peanuts, before commingling and after commingling shall be kept separate and apart from all "restricted" peanuts. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association and if any shelled peanuts originating therefrom are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting and the commingling and crushing on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts describe heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

(2) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "restricted":

(a) The entire mill production of shelled peanuts from Segregation 1 farmers stock pursuant to paragraph (k)(2) of the Outgoing Quality Regulation.

(b) The entire mill production of shelled peanuts from Segregation 2 or commingled Segregation 1 and 2 farmers stock pursuant to paragraph (j)(2).

(c) The entire mill production of shelled peanuts from Segregation 3 or

commingled Segregation 2 and 3 farmers stock pursuant to paragraph (j)(1).

(d) Positive Lot Identified lots of shelled "peanuts failing quality requirements" pursuant to paragraph (h)(3).

(e) Positive Lot Identified lots of loose shelled kernels, fall through, or pickouts pursuant to paragraphs (g) (1), (2), and (3).

(f) Positive Lot Identified lots of loose shelled kernels, fall through and pickouts commingled pursuant to paragraphs (g) (2), and (3).

(g) Positive Lot Identified lots of seed peanut residuals pursuant to paragraph (i).

Handlers who acquire, from other handlers, or from their own operations, any of the categories of shelled peanuts decribed heretofore in this paragraph (l)(2) may commingle such peanuts while fragmenting them or after they have been fragmented with any other category of peanuts described in this paragraph and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling with disposition to export to countries other than Canada and Mexico as "restricted". Prior to such exportation, the peanuts shall be certified as meeting the fragmented requirements and shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. The handler's "in-land" bill of lading and his invoice covering the shipment shall include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain aflatoxin". Sales or transfer of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Handlers who acquire, from other handlers or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher with any other category of peanuts described in this paragraph (l)(2) and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for "restricted" domestic crushing. Meal produced from peanuts disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use, pursuant to the provisions of paragraph (g)(3). Shelling, fragmenting, and crushing of Segregation 2 peanuts, Segregation 3 peanuts and the entire mill production of Segregation 1 peanuts handled pursuant to paragraph (k), shall be done only under supervision of the Area Association and if any of such categories of peanuts are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

Terms and Conditions of Indemnification—1985 Crop Peanuts

For the purpose of paying indemnities on a uniform basis pursuant to section 36 of the peanut marketing agreement effective July 12, 1965, each handler shall promptly notify or arrange for the buyer to notify the Manager, Peanut Administrative Committee, of any lot of cleaned inshell or shelled peanuts, milled to the outgoing quality requirements and into one of the categories listed in the final paragraph of these terms and conditions, on which the handler has withheld shipment or storage or the buyer, including the user division of a handler, has withheld usage due to a finding as to aflatoxin content as shown by the results of chemical assay.

If the chemical assay results on samples drawn prior to shipment pursuant to paragraph (c) of the Outgoing Quality Regulation are so high in aflatoxin content that a lot of peanuts should be handled pursuant to these Terms and Conditions, the handler shall certify to the Committee within ten (10) days of the date shown on the aflatoxin certificate whether the milling of the peanuts in the lot was supervised by the Area Association as "additional peanuts". For the purposes herein, the term "additional peanuts" means any peanuts other than "quota peanuts" which are milled under the supervision of the Area Association.

To be eligible for indeminification, such a lot of peanuts shall have been inspected and certified as meeting the quality requirements of the agreement, shall have met all other applicable regulations issued pursuant thereto, including the pretesting requirements in paragraphs (a) and (c) of the Outgoing Quality Regulation and the lot identification shall have been maintained. If the Committee concludes, based on assays to date or further assays, that the lot is so high in aflatoxin that it should be handled pursuant to these Terms and Conditions, and such is concurred in by the Agricultural Marketing Service, the lot shall be accepted for indentification. If the lot is covered by a sales contract, the lot may be rejected to the handler.

In an effort to make such eligible peanuts suitable for human consumption, and to minimize indemnification costs, the Committee and the Agricultural Marketing Service shall, prior to disposition for crushing cause all suitable lots to be remilled or custom blanched or both.

"Custom blanching" means the process which involves blanching peanuts, and the subsequent removal of damaged peanuts for the purpose of eliminating aflatoxin from the lot. The process may be applied to either an original lot or the new lot which results from remilling. Custom blanching shall be performed only by those firms determined by the Committee to have the capability to remove the aflatoxin and who agree to such terms, conditions, and rates of payment as the Committee may find to be acceptable.

If the Committee and the Agricultural Marketing Service conclude that such lot is not suitable for remilling or custom blancing, the lot shall be declared to crushing and shall be disposed of by delivery to the Committee at such point as it may designate. The indemnification payment for peanuts in such a lot shall be the indemnification value of the peanuts, as hereinafter provided, less five cents per pound if the lot is "quota peanuts" and less three cents per pound it the lot is "additional peanuts." Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection ocurred and from such point to a delivery point specified by the Committee shall be included in the indemnification paymet if the lot is found by the Committee to be unwholesome as to aflotoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the Outgoing Quality Regulation. Payment shall be made to the handler as soon as practicable after delivery of the peanuts to the Committee. The salvage value for peanuts declared for crushing shall be paid to, and retained by, the Committee to offset indemnification expenses.

If it is concluded that the lot should be remilled or custom blanched, expenses shall be paid by the Committee on those lots which, on the basis of the inspection

occurring prior to shipment, contained not more than 1.00 percent damaged kernels other than minor defects. Lots with damage in excess of 1.00 percent on such inspection shall be remilled without reimbursement from the Committee for milling or freight, but otherwise shall be indemnifiable the same as lots with not more than 1.00 percent damage.

The indemnification value of peanuts delivered to the Committee for indemnification shall be as listed in the third from the last paragraph of these terms and conditions.

The indemnification payment on peanuts declared for remilling, and which contain not more than 1.00 percent damaged kernels other than minor defects, shall be the indeminification value referable to the weights of peanuts lost in the remilling process and not cleared for human consumption, plus an allowance for remilling of two and one-half cents per pound on the original weight. Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be included in the indeminification payment if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the Outgoing Quality Regulation. On lots on which the remilling is not successful in making the lot wholesome as to aflatoxin and such lots of peanuts are declared for custom blanching after remilling, the indemnification payment shall be the blanching cost, plus the transportation costs from origin (whether handler or buyer premises) to point of blanching and on unsold lots from point of blanching to handler's premises and the applicable indemnification value of the weight of reject peanuts removed from the lot. On lots which are custom blanched without remilling, the indemnification payment shall be determined in the same manner. However, no indemnification payments shall be paid on any lot of peanuts where the Committee determines that the custom blanched peanuts from such a lot have been sold at a price lower than the applicable indemnification value on the original red skin lot at the time the indemnification claim was filed with the Committee: *Provided*, That this condition shall not prohibit indemnification payments on lots of peanuts that were originally reported as "quota peanuts" but are subsequently substituted to "additional" status upon blanching. In this case, the indemnification payment on the weight of reject peanuts removed shall be based on the applicable indemnification value for "quota peanuts."

Claims for indemnification on current crop year peanuts may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay, to the extent of the raw peanut equivalent value of the peanuts used in the product so withheld, such claims as it determines to be valid.

Payment shall be made to the handler claiming indemnification or receiving the rejected lot as soon as practicable after receipt by the Committee of such evidence of remilling or custom blanching and clearance of the lot for human consumption as the Committee may require and the delivery of the peanuts not cleared for human consumption to the delivery point designated by the Committee. If a suitable reduction in the aflatoxin content is not achieved on any lot which is remilled or custom blanched or both, the Committee shall declare the entire lot for indemnification, and the indemnification payment on such lot shall be the indemnification value of the peanuts in the original lot, less five cents per pound if the lot is "quota peanuts" or less three cents per pound if the lot is "additional peanuts", plus other applicable costs authorized heretofore. However, the Committee shall refuse to pay indemnification on any lot(s) where it has reason to believe that the rejection of the peanuts arises from failure of the handler to use reasonable measures to receive and withhold from milling for edible use those Segregation 3 peanuts tendered to him either directly by a producer or by a country buyer, commission buyer or other like person. Furthermore, any misrepresentation by a handler in reporting acquisition, composition or disposition of any lot or lots of peanuts by such handler shall cause indemnification payments with respect to any such claim filed with the Committee by the handler on current crop year peanuts to be withheld unless the Committee finds that such action was inadvertent.

Remilling may occur on the premises of any handler signatory to the marketing agreement or at such other plant as the Committee may determine. However, if the Committee orders remilling of a lot which has been found to contain aflatoxin prior to shipment from the locality of orignial milling, the Committee shall not pay freight costs should the handler move said lot to another locality for remilling.

Notice of claims for indemnification on peanuts of the current crop year shall be received by the Committee no later than November 1, following the end of the current crop year.

Each handler shall include, directly or by reference, in his sales contract the following provisions:

Buyer shall give the Peanut Administrative Committee (Committee) office notice of any request made to the Federal or Federal-State Inspection Service for an "appeal" inspection for aflatoxin. Results of the "appeal" inspection will be reported by the Federal or Federal-State Inspection Service or other designated lab to Committee management. If the Committee management determines that the test results of the "appeal" sample show the lot to be high in aflatoxin, Committee management shall inform the buyer and handler of the results. In this case, the buyer may apply to reject the lot and return it to the handler by filing a rejection letter with Committee management. Upon a determination of the Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller, and such peanuts shall be reoffered to the buyer to satisfy the covering contract, pending successful remilling and/or blanching. Alternatively, seller may replace any rejected lot of peanuts with another lot if he elects to do so. Buyer must return the rejected lot to the seller within 45 days of the date of which Committee management informs buyer of the "appeal" sample test results, otherwise the buyer agrees that he forfeits the right to reject the lot and return it to the seller.

If the buyer's or receiver's name is shown on the certificates covering a lot which, upon the pretesting sampling procedure prescribed in paragraph (c) of the Outgoing Quality Regulation, exceeds Committee requirements for wholesomeness as to aflatoxin, such peanuts shall be offered to the buyer to satisfy the existing applicable contract, pending successful remilling and/or blanching. Alternatively, seller may replace any rejected lot of peanuts with another lot, if he elects to do so.

Seller shall, prior to shipment of a lot of shelled peanuts covered by this sales contract, cause appropriate samples to be drawn by the Federal or Federal-State Inspection Service from such lot, shall cause the sample(s) to be sent to a USDA laboratory or if designated by the buyer, a laboratory listed on the most recent Committee list of approved laboratories to conduct such assay, for an aflatoxin assay and cause the laboratory, if other than the buyer's to send one copy of the results of the

assay to the buyer. The laboratory costs shall be for the account of the buyer and buyer agrees to pay them when invoiced by the laboratory or, in the event the seller has paid them, by the seller.

Any handler who fails to include such provisions in his sales contract shall be ineligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts covered by the sales contract.

In addition, should any handler enter into any oral or written sales contract which fixes the level of aflatoxin at which rejection may be made and hence conflicts with these terms and conditions, the handler doing so will not be eligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts on or after the filing date of a claim under such contract, except upon the Committee's finding that acceptance of such contract was inadvertent; and for purposes of this provision a claim shall be deemed to be filed when notice of possible rejection is first given to the Committee.

Any handler who fails to conform to the requirements of paragraph (h) of the Incoming Quality Regulation shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee.

Any handler who fails to cause positive lot identification on any lot of peanuts to accurately reflect the crop year in which such peanuts were produced, pursuant (d) of the Outgoing Quality Regulation, shall be ineligible for any indemification payments until such violation is corected to the satisfaction of the Committee.

Any handler who fails to remove, hold, or dispose of loose shelled kernels pursuant to paragraph (d)(1) of the 1985 Incoming Quality Regulation or paragraph (g) of the 1985 Outgoing Quality Regulation shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee and/or any complaints of violations made by the Committee to the Secretary are resolved.

Categories eligible for indemnification are as follows:

Cleaned inshell peanuts—

(1) U.S. Jumbos.

(2) U.S. Fancy Handpicks.

(3) Valencia—Roasting Stock.[1]

U.S. Grade shelled peanuts—

(1) U.S. No. 1.

(2) U.S. Splits.

(3) U.S. Virginia Extra-Large.

(4) U.S. Virginia Medium.

Shelled peanuts "with splits"—

(1) Runners with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through a 15/64 x 3/4 slot screen.

(2) Spanish with splits which do not contain more than 15 percent splits or 2 perent whole kernels which will pass through a 15/64 x 3/4 slot screen.

(3) Virginias with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through a 15/64 x 1 slot screen.

Shelled Spanish jumbos—Spanish having not more than 5 percent kernels which fall through an 15/64 × 3/4 slot screen and which otherwise meet the grade requirements of U.S. No. 1 Spanish.

However, peanuts in any of the above categories shall not be eligible for indemnification if such peanuts: (1) Were milled from seed peanut residuals as referred to in the last sentence of paragraph (e) of the Incoming Quality Regulation and paragraph (i) of the Outgoing Quality Regulation; (2) failed the Outgoing Quality Regulation due to excessive damage and minor defects and such peanuts were subsequently blanched to remove such excess damage and minor defects pursuant to paragraph (h) of such regulation; (3) when shipped for human consumption outlets contained more than a total of 1.25 percent unshelled peanuts and damaged kernels or a total of 2.00 percent unshelled peanuts, damaged kernels and minor defects; and (4) were received or acquired from another handler pursuant to paragraph (i) of the Incoming Quality Regulation and were milled to meet requirements of the Outgoing Quality Regulation pursuant to paragraph (h) of such regulation.

For the purpose of paying indemnification beginning August 1, of the current crop year, the domestic market price for each category of peanuts shall be determined by averaging the price(s) listed in the Peanut Market News, per category, during the most recent four week period. Such weekly price calculations shall extend to May 31, of the current crop year and the average price per category as of May 31, 1986, shall be applied during the remainder of the crop year.

For the purpose of determining indemnification values, the term "quota peanuts" means peanuts marketed, or considered marketed, for domestic edible use, as defined by USDA–ASCS; and the term "additional peanuts" means any peanuts other than "quota peanuts" which are milled under the supervision of the Area Association.

The indemnification value for each category of "quota peanuts" eligible for indemnification, expect U.S Splits of all types, shall be the domestic market price established during hte averaging period less two cents per pound (on the pounds indemnified) of the most recent price category listed in the Peanut Markets News, whichever is lower. The indemnification values of U.S. Splits categories shall be the domestic market price established during the averaging period less three cents per pound.

The indemnification value for "additional peanuts" shall be equal to 60 percent of the established indemnification value, per category, of "quota peanuts".

The grade categories to which the indemnification values shall be applied are as follows:

Runners[1]	Virginias	Spanish
Jumbo	U.S. Extra Large	Spanish Jumbo.
Medium	U.S. Medium	U.S. No. 1.
Select	U.S. No. 1	Spanish with splits.
No. 1 (−18+16 screens).	Virginias with splits.	U.S. Splits.
Mill run with or without Splits.	U.S. Splits	
U.S. Splits		

[1] Southeastern Peanut Association grades.

[FR Doc. 85–16586 Filed 7–11–85; 8:45 am]

BILLING CODE 3410-02-M

[1] Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

Forest Service

Montana: Bitterroot National Forest Plan Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Extension of public review period for the Bitterroot National Forest Plan Draft Environmental Impact Statement and legislative report and DEIS for two Montana Wilderness Study Act (Pub L. 95–150) areas, the Blue Joint and Sapphire roadless areas.

SUMMARY: The period of public review for the Bitterroot National Forest Plan Draft Environmental Impact Statement has been extended until August 15, 1985.

ADDRESSES: Requests for further information should be addressed to: Robert S. Morgan; Bitterroot National Forest; 316 North 3rd Street; Hamilton, MT 59840

James E. Reid,

Acting Regional Forester.

[FR Doc. 85–16052 Filed 7–11–85; 8:45 am]

BILLING CODE 3410-11-M

Idaho; Clearwater National Forest Plan Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Extension of public review period for the Clearwater National Forest Plan Draft Environmental Impact Statement.

SUMMARY: The period of public review for the Clearwater National Forest Plan Draft Environmental Impact Statement has been extended until September 15, 1985.

ADDRESSES: Requests for further information should be addressed to: Jim Bates, Supervisor; Clearwater National Forest; 12730 Highway 12; Orofino, ID 83544

James E. Reid,

Acting Regional Forester.

[FR Doc. 85-15979 Filed 7-11-85; 8:45 am]

BILLING CODE 3410-11-M

Idaho; Idaho Panhandle National Forest Plan Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Extension of public review period for the Idaho Panhandle National Forest plan draft environmental impact statement.

SUMMARY: The period of public review for the Idaho Panhandle National Forest draft environmental impact statement has been extended until September 1, 1985.

ADDRESSES: Requests for further information should be addressed to: Bill Morden, Supervisor; Idaho Panhandle National Forest; 1201 Ironwood Drive; Coeur d'Alene, ID 83814

James E. Reid,

Acting Regional Forester.

[FR Doc. 85-15975 Filed 7-11-85; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Alaska Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on August 12, 1985, at the Federal Building, 701 C Street, Room C-114, Anchorage, Alaska. The purpose of the meeting is to provide an orientation for new members and plan programs for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Daniel Alex or Susan McDuffie, Director of the Northwestern Regional Office at (206) 442-1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-16550 Filed 7-11-85; 8:45 am]

BILLING CODE 6335-01-M

Nebraska Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:30 p.m. on August 8, 1985, at the University of Nebraska, College of Law, Room 122, Lincoln, Nebraska. The purpose of the meeting is to continue program planning for projects in FY 85-86, including a community forum to be held in Lincoln.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard Duncan or Melvin Jenkins, Director of the Central States Regional Office, at (816) 374-5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-16551 Filed 7-11-85; 8:45 am]

BILLING CODE 6335-01-M

Oregon Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Oregon Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on August 2, 1985, at the Portland Building, 1120 SW. Fifth Avenue, Room A, Portland, Oregon. The purpose of the meeting is to provide orientation for new members and plan programs for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Huffman or Susan McDuffie, Director of the Northwestern Regional Office at (206) 442-1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-16549 Filed 7-11-85; 8:45 am]

BILLING CODE 6335-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Public Hearing Concerning Hazards Associated With All Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Consumer Product Safety Commission will hold a public hearing in Concord, New Hampshire, on July 25, 1985, to obtain safety related information on All Terrain Vehicles (ATVs). This will be the third of five hearings on the hazards associated with ATVs the Commission plans to hold across the United States. Hearings were held in Jackson, Mississippi, on May 30, 1985 and in Dallas, Texas on June 17, 1985. The Commission also plans to hold hearings in Milwaukee, Wisconsin and Los Angeles, California during the next several months.

The Commission is aware of at least 161 deaths associated with ATVs occurring between January, 1982 through April, 1985. Estimates on the number of hospital emergency room treated injuries associated with ATVs in 1984 were 66,956. This is almost two and one half times the number of injuries in 1983 and more than seven times the number in 1982. The Commission also estimates that 28,000 ATV related injuries were treated in hospital emergency rooms in the first four months of 1985. This is approximately 80 percent higher than the estimated injuries treated during the same time period in 1984. The Commission is primarily concerned about accidents which result from : (1) Loss of control of the ATV; (2) the ATV overturning by flipping over backward, tipping over forward, or rolling over sideways; and (3) the rider being thrown from the vehicle.

The Commission requests members of the public to participate in this hearing. The Commission is particularly interested in participation from owners

and users of ATVs; persons who have been involved in accidents or who have been injured while riding an ATV; state and local government officials or organizations involved with ATV safety and training or state legislation or local ordinances; persons or organizations involved in the testing and evaluation of ATVs; and manufacturers, distributors, importers and retailers of ATVs. The hearing will specifically focus on the hazards associated with ATVs and ways the industry, the Commission, state and local governments or voluntary standards organizations can address these hazards.

DATE AND ADDRESS: The hearing will be held on Thursday, July 25, 1985, beginning at 8:30 a.m. at the House Chamber, Second Floor, State House, Concord, New Hampshire. Requests from persons who wish to make presentations must be received by the Office of the Secretary no later than July 19, 1985. Persons who wish to testify must submit a written copy or summary of their testimony to the Office of the Secretary not later than July 23, 1985. Presentations at the hearing should be limited to approximately 5 minutes.

FOR FURTHER INFORMATION CONTACT: For information about the hearing or to request an opportunity to make a presentation at the hearing, contact Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; or call Mr. Butts on the Commission's toll free hotline number at 800–638–2772 or the Commission's commercial number at 301–492–6800.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission is holding a series of five public hearings across the United States to assist it in obtaining safety-related information on ATVs and in deciding what, if any, regulatory or voluntary action is warranted. The Consumer Product Safety Commission is concerned about whether the performance characteristics of ATVs, including dynamic stability and handling, are adequately safe. To address this concern, the Commission has issued an advance notice of proposed rulemaking (ANPR), which formally commences a rulemaking proceeding. 50 **Federal Register** 23139 (May 31, 1985). In the ANPR, the Commission discusses methods by which any unreasonable risks of injury which might be associated with ATVs could be adequately reduced or eliminated. These methods include the promulgation of a performance standard, a labeling or warning standard, a ban of ATVs, the development of a voluntary standard, an adminstrative recall proceeding under section 15 of the CPSA, an imminent hazard action under section 12 of the CPSA or the dissemination of safety related information.

An ATV is a motorized machine intended to be ridden by one person and designed for off-road use. The majority of ATVs have three wheels in a tricycle configuration, although there has been a large increase in the available number of ATVs with four wheels. (The Commission's inquiry at this time is focused only on three and four wheel ATVs.) ATVs typically have gasoline-powered engines of between 50 and 250 cubic centimeters displacement. Currently, ATVs use large, soft, low pressure tires. Most ATVs have no rear axle differential and limited suspension systems.

Sales of all terrain vehicles have increased substantially since the mid-1970s. From 1980 to 1983 sales more than tripled with an average rate of growth over this period of 55% per year. While the number of sales increased sharply in 1984, the percentage rate of growth slowed somewhat to 24%.

The Commission staff estimates that by the end of 1985, 2,480,000 to 2,540,000 ATVs will be available for use, based on an average product life expectancy of 7 to 8 years and on a normally distributed rate of product survival.

The Commission's National Electronic Injury Surveillance System (NEISS) estimates that the number of hospital emergency room treated injuries associated with ATVs in 1984 was 66,956. This is almost two and one half times the number of injuries in the previous year and more than seven times the number in 1982. The Commission estimates that the number of ATV related injuries treated in hospital emergency rooms during the first four months of 1985 was 28,000. This is approximately 80 percent higher than the estimated injuries treated during the same time period in 1984.

At least 161 ATV associated fatalities are known to the Commission to have occurred from January, 1982 through April, 1985. Reports of deaths for 1983, 1984, and 1985 are still being received. The Commission staff review of these 161 reported deaths revealed that 73 victims were under 16 years of age and 39 were under 12 years of age. Almost three-fourths of the victims of ATV-related injuries were between the ages of 5 and 24 years.

The Commission staff believes that the basic configuration of ATVs, and their unique performance characteristics including dynamic stability and handling, appear to play a major role in accidents involving ATVs. Many serious injuries and deaths reported in in-depth investigations conducted by the Commission staff resulted from loss of control of the ATV following an abrupt change in the equilibrium of the vehicle. A number of different factors, such as a change in terrain, or a sudden change in direction can contribute to the change in equilibrium. The subsequent loss of control follows a pattern in which the machine overturns or the rider is thrown off. In many of these accidents, other factors such as drinking, riding with passengers, or operating the vehicle illegally on paved roads, may obscure the pattern of loss of control as the critical element in the incident.

B. Request for Public Participation At Hearing

The Commission requests the public to provide it with information on ATVs and on what action, if any, it should take to adequately reduce or eliminate hazards associated with ATVs. The Commission is particularly interested in the views of persons who own or use ATVs in recreational and occupational applications and who have specific observations about ATV handling characteristics; persons who belong to ATV clubs and/or racing associations; persons who have been involved in accidents or who have been injured while riding an ATV; state and local government officials such as police officers, health and safety officials and legislators who are involved with ATV safety, training or legislation concerning ATVs; persons or organizations involved in the testing and evaluation of ATVs; and manufacturers, distributors, importers and retailers of ATVs.

The hearing will focus on the following areas:

(1) Information which identifies the degree, if any, to which the general design of ATVs as well as specific design and operational features of individual models of ATVs influence the performance characteristics of ATVs and contribute to the risk of injury;

(2) Information identifying any changes in general or specific design characteristics of ATVs, including the costs of these changes, that would reduce or eliminate the risks of injury;

(3) Information concerning the handling characteristics of ATVs and the ability of users at various ages and levels of experience to maintain control of ATVs under various conditions of terrain and speed;

(4) Information relating to techniques of evaluating and testing the performance of ATVs;

(5) Information on current activities to educate or train users of ATVs, including children, in the proper method of operation and ways these efforts could be improved;

(6) Information on any accidents involving ATVs, including information on specific injuries sustained in ATV accidents and the nature, degree, duration, treatment and outcome of such injuries. Copies of physicians' and hospital records are sought;

(7) Information identifying any voluntary standard applicable or adaptable to ATVs which could reduce or eliminate the risk of injury;

(8) Information concerning any state or local licensing requirement, restriction or legislation involving ATVs;

(9) Information concerning the development of the three and four wheel ATVs including information relating to design features which take into account the hazards of overturning, and loss of control and

(10) Information on the sale, marketing and distribution of ATVs, particularly for use by children.

Presentations should be limited to approximately 5 minutes. The Commission reserves the right to impose further time limitations on all presentations and to impose further restrictions to avoid duplication of presentations.

Persons unable to attend the hearing may submit their comments in writing, for the record. Written comments for the record must be received in the Office of the Secretary no later than July 25, 1985. Also, persons who cannot attend the hearing or make a presentation should be aware that they can submit written comments in response to the ANPR.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 85-16086 Filed 7-11-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: Friday, 9 August 1985.

Time: 1300-1400.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup—TRADOC Operations Research Activity (TORA) will meet to discuss operations research activities. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-16576 Filed 7-11-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday and Tuesday, 5 and 6 August 1985.

Time: 0830-1630.

Place: Science Applications International Corporation, McLean, VA.

Agenda: The Army Science Board Ad Hoc Subgroup for the Detection of Soviet Theater Nuclear Forces will meet for briefings by intelligence agencies and government laboratories. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-16577 Filed 7-11-85; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Privacy Act of 1974; Amended System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of Amendment to Systems of Records.

SUMMARY: The Department of the Navy proposes to amend four systems of records in its inventory of systems of records subject to the Privacy Act of 1974.

DATE: The proposed action will be effective without further notice August 12, 1985, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000. Telephone: (202) 694-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93-579 were published in the Federal Register as follows: FR Doc. 85-10237 (50 FR 22735) May 29, 1985.

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o) which requires the submission of an altered system report.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 9, 1985.

N01754-1

System name:

Navy Family Support Program (50 FR 22768) May 29, 1985.

Changes:

Categories of records in the system:

In line two, delete the phrase "* * * social security number * * *" and insert "* * * case number * * *"

System manager(s) and address:

Delete the entire entry and substitute with the following: "Head, Family Support Program Division (NMPC-66), Human Resources Management Department, Naval Military Personnel Command, Washington, DC 20370."

N01754-1

SYSTEM NAME:

Navy Family Support Program.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

File could contain personal information such as name, case number, home address, telephone number, marriage counseling information, parent-child relationship information, family relations, financial data, developmental disability information.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Head, Family Support Program Division (NMPC-66), Human Resources Management Department, Naval

Military Personnel Command, Washington, DC 20370.

* * * * *

N04385–1

System name:

Investigatory (Fraud) System (48 FR 6967) February 24, 1984.

Changes:

System name:

Change the title to read: "IG Investigatory System".

Categories of records in the system:

At the end of the entry, add the following: "* * * 5. Synopsis of the allegation of wrongdoing."

Authority for maintenance of the system:

Add the following paragraph at the end of the entry: "10 U.S.C. 5088, Naval Inspector General: Detail; duties; Department of Defense directive 5106.1 of March 14, 1983, entitled, "Inspector General of the Department of Defense; "Secretary of the Navy Instruction 5430.57D of December 9, 1980, entitled, "The Naval Inspector General; mission and functions of; Secretary of the Navy Instruction 5430.92, April 17, 1981, entitled, "Assignment of Responsibilities to Counteract Fraud, Waste and Related Improprieties within the Department of the Navy."

Purpose:

After line 7, add the following sentence: "* * * To monitor the progress of criminal or administrative actions taken regarding naval active duty officers in pay grade 0–5 or higher and civil service employees (GS–13 or GM–13 and above), and any other DOD individual (military or civilian) who have been named in allegations of wrongdoing which apparently warrant criminal prosecution or adverse personnel actions* * *"

System manager(s) and address:

At the end of the entry, add a new paragraph: "* * * For tracking systems, the Head, Investigations Division, Naval Inspector General (Code 81), Office of the Naval Inspector General, Bldg 200, Washington Navy Yard, Washington, DC 20374–20001."

N04385–1

SYSTEM NAME:

IG Investigatory System.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Administrative memoranda.
2. Investigative reports and other investigative/intelligence information.
3. Reports of disciplinary action taken.
4. Public court records.
5. Synopsis of the allegation of wrongdoing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (10 U.S.C. 967 app. (1982)), 10 U.S.C. 5088, Naval Inspector General: Detail; duties; Department of Defense directive 5106.1 of March 14, 1983, entitled, "Inspector General of the Department of Defense; "Secretary of the Navy Instruction 5430.57D of December 9, 1980, entitled, "The Naval Inspector General; mission and functions of; Secretary of the Navy Instruction 5430.92, April 17, 1981, entitled, "Assignment of Responsibilities to Counteract Fraud, Waste and Related Improprieties within the Department of the Navy.

PURPOSE(S):

To conduct and to coordinate official investigations and inquiries of audits and to monitor final actions taken thereon. To disseminate information on misconduct, procurement fraud and related matters to other components within the Department of Defense. To monitor the progress of criminal or administrative actions taken regarding naval active duty officers in pay grade 0–5 or higher and civil service employees (GS–13 or GM–13 and above), and any other DOD individuals (military and civilian) who have been named in allegations of wrongdoing which apparently warrant criminal prosecution or adverse personnel actions. Internal users are Department of the Navy and Department of Defense component officials engaged in audit, investigative, inspection and management functions.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

The Inspector General of the command in question. See the director of Navy activities mailing addresses.

For tracking system, the Head, Investigations Division, Naval Inspector General (Code 81), Office of the Naval Inspector General, Bldg 200, Washington Navy Yard, Washington, DC 20374–2001.

* * * * *

N05521–1

System Name:

Access Control System (48 FR 26099) June 6, 1983.

Changes:

Categories of individuals covered by the system:

At the end of the entry, add the phrase: "* * * or contractor facility."

Categories of records in the system:

In line four, after the phrase "* * * naval base/activity * * *", add the words: "* * * or contractor facility, * * *"

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

At the beginning of the entry, add the following: "To designated contractors when Navy member is visiting that contractor's facility."

N05521–1

SYSTEM NAME:

Access Control System.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals considered or seeking consideration for access to space under the control of the Department of the Navy and any visitor (military, civilian, contractor) requiring access to a naval base/activity or contractor facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visit requests for permission to transact commercial business, visitor clearance data for individuals to visit a naval base/activity or contractor facility; barring lists and letters of exclusion, and badge/pass issuance records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To designated contractors when Navy member is visiting that contractor's facility.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

* * * * *

N12930–1

System name:

Industrial Relations Personnel Records (50 FR 22862) May 29, 1985.

Changes:

Routine uses of records maintained in the system, including categories of users and the pruposes of such uses:

Delete the second paragraph in its entirety.

N12930-1

SYSTEM NAME:

Industrial Relations Personnel Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To appeals officers and complaints examiners of the Equal Employment Opportunity Commission for the purpose of conducting hearings in connection with employees' appeals from adverse actions and formal discrimination complaints.

To a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary.

To the National Archives and Records Service (GSA) in records management inspection conducted under authority of 5 U.S.C. 2904 and 2906.

In response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in the pending judicial or administrative proceeding.

To officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

* * * * *

[FR Doc. 85-16564 Filed 7-11-85; 8:45 am]

BILLING CODE 3810-01-M

Chief of Naval Operations Executive Panel Advisory Committee National Energy Security Policy Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee National Energy Security Policy Task Force will meet July 30-31, 1985, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to clearly understand the policy implications of the energy security problem facing the United States. The entire agenda for the meeting will consist of discussions of key issues regarding the parameters of national energy security policy, their implications for U.S. Navy operations, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 756-1205.

Dated: July 9, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-16623 Filed 7-11-85; 8:45 am]

BILLING CODE 3810-AE-M

National Environmental Policy Act; Record of Decision To Designate a Supersonic Operations Area (SOA) and Implement Other Actions at Naval Air Station, Fallon, NV

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR Part 1500), the U.S. Navy announces its decision to designate a Supersonic Operations Area (SOA) over land which lies beneath portions of several existing Military Operations Areas (MOAs) near Naval Air Station (NAS) Fallon, Nevada. This designation will supplement existing training operations and allow aircraft to fly at supersonic speeds (greater than the speed of sound). The Navy will also establish a Strike Warfare Center (SWC) and implement other actions which are intended to support various aspects of its existing and planned aircrew training mission.

All of the actions are directly related to the Navy's overall objective of providing specialized training to achieve and maintain the highest degree of combat readiness for its forces, including tactical aircraft and associated aircrews.

NAS Fallon is an air warfare training complex which serves all Navy and Marine Corps air bases in the western United States and provides training for carrier airwings. A broad spectrum of training operations are conducted on the station and in conjunction with the various nearby aerial weapons ranges. These activities include real and simulated air-to-ground attacks, and simulated ground-to-air and air-to-air attacks. Most training activity at NAS Fallon occurs when aviation squadrons or carrier airwings visit the station for intensive training and practice, usually just prior to deployment at sea.

The airspace above NAS Fallon, its associated ranges, and the surrounding area is controlled in accordance with Federal Aviation Administration (FAA) designations. These designations are for Military Operations Areas (MOAs) and restricted airspace areas. NAS Fallon has air access control of the restricted airspace and accordingly deploys a variety of aircraft on a daily basis. Private and commercial aircraft are allowed to fly through the area but are encouraged to contact NAS Fallon to avoid potential conflict. Airspace above the weapons ranges have been designated restricted areas.

The SOA will use an area of airspace within which airwings and squadrons can train at subsonic and supersonic speeds to simulate realistic combat conditions. The SOA is to be located east of NAS Fallon, over lands which already lie beneath existing MOAs and restricted airspace. The SOA will overlie about 5,500 square miles and have a lower boundary, or floor, at an elevation of 11,000 feet above mean sea level (MSL) and extend to an upper boundary, or ceiling, of 58,000 feet MSL. Supersonic operations will not begin until completion of the installation of three optimumly placed noise monitors, on or about August 1985. Additional monitoring sites will be established and instrumented as equipment becomes available.

The Navy will purchase up to 12,100± acres of land and improvements in Dixie and Fairview valleys subject to Congressional authorization and appropriations. This land will primarily include residential and potentially residential property.

If an individual decides not to sell his property he will not be forced to sell. This individual will be required to sign appropriate hold harmless and release documents. If within a reasonable period of time this individual determines it is not possible to live under the SOA, the Navy will purchase his property and improvements.

The Navy will not fly supersonic over the Dixie Valley for a period of one year.

Additionally, concerning the establishment of the SOA, the Navy will also undertake some other actions to mitigate the expected impact. Specifically, the Navy will cooperate with the State of Nevada to develop means to mitigate the presumed airspace accessibility problem. The Navy will work with the Nevada State Department of Highways to develop criteria for a meaningful study of the timing of supersonic operations as affecting local traffic patterns. The Navy will cooperate with the State of Nevada on various wildlife preservation programs as applicable to the range-lands in question and specifically as related to the Stillwater Wildlife Refuge and possible impacts on nearby Carson Lake. Finally the Navy will request the Office of Economic Adjustment, Department of Defense, to conduct a fiscal impact analysis of the Navy establishment of the SOA and other actions at NAS Fallon.

The Navy will operate a Strike Warfare Center (SWC) and conduct an associated training program. The program will involve the administration of courses of study and require the permanent assignment of about 100 military personnel. Transient students will complete several courses per year. Due to the operation of the SWC, air operations are expected to increase about four percent over present activity.

The Navy will assign about 16 F/A–18 and several additional subsonic support aircraft to NAS Fallon. This action will cause the temporary build-up of about 100 military personnel during the transition period while the F/A–18 squadron replaces an existing A–7 squadron currently detached to NAS Fallon.

The Navy will permanently assign a 12 aircraft adversary squadron to NAS Fallon. This will result in about 175 additional military personnel. An adversary squadron is already flying on a periodic basis at Fallon so no net change in the number of air operations is anticipated.

As the result of additional personnel assignment, the Navy will conduct a market analysis on available housing in the Fallon area.

Finally, various station improvements are required, primarily to correct existing deficiencies and to modernize basic facilities, and they will be implemented. Also Range improvements to complement and upgrade existing systems as well as support the proposed SOA will be accomplished. None of these latter actions are expected to have a significant impact on the environment.

The Draft and Final Environmental Impact Statements addressing the Navy actions described were filed with the Environmental Protection Agency (EPA) and the public in December 1984 and May 1985 respectively. Comments were received over a 90 day period and public hearings were held on the issues.

Key issues included noise, human health and safety, and possible impacts on civil aviation. Impacts were identified, especially the production of sonic booms as the expected result of SOA designation, and noted as to their adverse effects on people and animals residing and occurring beneath and adjacent to the area described.

A detailed analysis of the alternative assessment process for the SOA and the SWC was conducted in the environmental documentation previously identified. Candidate sites, other than NAS Fallon were evaluated with regard to operational criteria, availability of support facilities and services and environmental considerations. Results of this analysis identified NAS Fallon as the only suitable site for the proposed SOA and SWC.

John Lehman,

Secretary of the Navy.

June 24, 1985.

[FR Doc. 85–16621 Filed 7–11–85; 8:45 am]

BILLING CODE 3810-01-M

Performance of Commercial Activities: Announcement of Program Cost Studies

The Department of the Navy intends to conduct OMB Circular A–76 (48 FR 37110, August 16, 1983) cost studies of various functions at the listed activities commencing August 19, 1985. The cost study process is a rigorous, time-consuming procedure and, depending upon the size of the functions involved, can take several months to several years to complete. Since the studies have not yet begun, specifications have not yet been prepared. When bids/proposals are desired, appropriate advertisements will be placed. No consolidated bidders' list is being maintained since the solicitations will be processed by various contracting offices throughout the U.S.

Naval Hospital, Camp Pendleton, CA
Other Health Services

Naval Hospital Branch, Twentynine Palms, CA
Other Health Services

Naval Weapons Station, Concord, CA
Storage and Warehousing

Naval Clinic Branch, Naval Hospital, Oakland, CA
Dispensaries

Naval Clinic Branch, Naval Support Activity, Mare Island, Vallejo, CA
Dispensaries

Naval Hospital, San Diego, CA
Other Health Services

Fleet Anti-Submarine Warfare Training Center, Pacific, San Diego, CA
Administrative Support Services

Naval Technical Training Center, Treasure Island, San Francisco, CA
Storage and Warehousing
Training Development and Support (Administrative)
Administrative Support Services

Naval Weapons Station, Seal Beach, CA
Storage and Warehousing

Naval Submarine Medical Research Laboratory, Naval Submarine Base, New London, Groton, CT
Medical and Dental Equipment

Naval Hospital, Jacksonville, FL
Alcohol Rehabilitation

Naval Administrative Command, Orlando, FL
Grounds and Surfaced Areas

Naval Technical Training Center, Corry Station, Pensacola, FL
Logistics/Supply
Electronic Maintenance

Navy Public Works Center, Pearl Harbor, HI
Electrical Plants and Systems

Naval Data Automation Facility, Pearl Harbor, HI
Central Administrative Support Services
Systems Software Development and Maintenance
Applications Software New Development
Applications Software Maintenance

Naval Shipyard, Pearl Harbor, HI
Central Mail/File Services

Naval Hospital, Great Lakes, IL
Alcohol Rehabilitation

Naval Dental Clinic Branch, Naval Air Station, Brunswick, ME
Medical and Dental Equipment

Naval Air Station, Meridian, MS
Aircraft Engines
Other Test, Measurement and Diagnostic Equipment
Aeronautical Equipment
Audiovisual Services

Training Squadron SEVEN, Naval Air Station, Meridian, MS
Organizational Level Maintenance

Philadelphia Naval Shipyard, Philadelphia, PA
ADP Tape Library

Charleston Naval Shipyard, Charleston, SC
Central Reference Library
Waterways and Waterfront Facilities
Naval Air Station, Chase Field, Beeville, TX
Aeronautical Support Equipment
Flight Training/Academic Instruction
Aircraft
Aircraft Engines
Training Squadron TWENTY-FOUR, Naval Air Station, Chase Field, Beeville, TX
Training Support (Aircraft Maintenance)
Training Squadron TWENTY-FIVE, Naval Air Station, Chase Field, Beeville, TX
Training Support (Aircraft Maintenance)
Naval Air Station, Corpus Christi, TX
Other Test, Measurement and Diagnostic Equipment
Aeronautical Support Equipment
Training Squadron TWENTY-ONE, Naval Air Station, Kingsville, TX
Training Development and Support
Training Squadron TWENTY-TWO, Naval Air Station, Kingsville, TX
Training Development and Support
Naval Air Station, Kingsville, TX
Aircraft
Undergraduate Pilot Training, Naval Air Station, Kingsville, TX
Aircraft
Aircraft Engines
Armament
Aeronautical Support Equipment
Aircraft Squadron Operational Detachment, Naval Air Station, Kingsville, TX
Aircraft Engines
Naval Surface Weapons Center, Dahlgren, VA
Air Transportation Services
Naval Medical Clinic, Norfolk, VA
Alcohol Rehabilitation
Naval Opthalmic Support and Training Activity, Yorktown, VA
Medical and Dental Equipment
Naval Hospital, Bremerton, WA
Dispensaries

Dated: July 5, 1985.

T.H. Upton,

Capt., SC, USN, Head, Commercial/Retail Activities Branch, Chief of Naval Operations.

[FR Doc. 85-16616 Filed 7-11-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Mission Plan for the Civilian Radioactive Waste Management Program

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of Availability of the Mission Plan and Response to Government Agency Objections.

SUMMARY: The purpose of this notice is to announce that the *Mission Plan for the Civilian Radioactive Waste Management Program* required by the Nuclear Waste Policy Act of 1982 (Act), Pub. L. 97-425, has been published by the Office of Civilian Radioactive Waste Management in the Department of Energy and transmitted to Congress. The Mission Plan will be forwarded to Congress on July 9, 1985.

Copies of the Mission Plan are also being mailed directly to program participants including Federal agencies, States, Indian Tribes, industry representatives, public interest groups, the media, and members of the public.

Compliance With the Act

As required by the Act, the Department submitted a draft of the Mission Plan to the States, the affected Indian Tribes, the Nuclear Regulatory Commission (NRC), other Government agencies and the public for their comments. The availability of the draft Mission Plan was announced in the **Federal Register** (49 FR 19696) on May 9, 1984. The Department received 102 sets of comments, containing approximately 2500 individual comments. As required by the Act, the Department announced the availability of the comments for public inspection in the **Federal Register** (49 FR 35038) on September 5, 1984.

The Act required that Federal Government agencies "shall specify with precision any objections that they may have" on the draft Mission Plan. The Act further stated that "if the Secretary does not revise the Mission Plan to meet objections specified in such comments, the Secretary shall publish in the **Federal Register** a detailed statement for not so revising the Mission Plan."

Responses were received from the following Government agencies: Department of the Treasury, Environmental Protection Agency, Nuclear Regulatory Commission, Department of the Interior, and Department of Transportation. The Nuclear Regulatory Commission was the only Government agency to specify objections in their comments to the draft Mission Plan. The Department's response to all the NRC objections and the corresponding changes made in the Mission Plan are included below in this **Federal Register** notice. DOE did not revise the Mission Plan to meet the NRC objection concerning the timing of the preliminary determination, objection number five. A detailed statement for not so revising the Mission Plan is included below in the response to that objection.

The Department took the significant additional step of responding to all comments received (approximately 2500) on the draft Mission Plan as well as modifying the Mission Plan as appropriate. The responses to all these comments are documented in the companion volume to the Mission Plan entitled "Record of Responses to Public Comments on the Draft Mission Plan for the Civilian Radioactive Waste Management Program," which also includes an index to indicate where each comment is answered. A third volume in this set contains a reprint of all incoming comments. This volume is entitled "Public Comments on the Draft Mission Plan for the Civilian Radioactive Waste Management Program."

Copies Of The Mission Plan

Copies of the Mission Plan are available for inspection at most Department of Energy Facilities including the: Public Reading Room, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585.

Copies of the Mission Plan can be obtained by writing: Mission Plan, Request Services, Technical Information Center, P.O. Box 62, Oak Ridge, Tennessee 37831.

Issued in Washington, DC, July 8, 1985.

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Management.

Federal Agency Objections

Section 301(b)(2) of the Nuclear Waste Policy Act of 1982 (the Act) provides the following direction for handling comments from the Nuclear Regulatory Commission (NRC) and other Federal Government agencies on the draft Mission Plan:

"In preparing any comments on the mission plan, such agencies shall specify with precision any objections that they may have. Upon submission of the mission plan to such agencies, the Secretary shall publish a notice in the Federal Register of the submission of the mission plan and of its availability for public inspection, and, upon receipt of any comments of such agencies respecting the mission plan, the Secretary shall publish a

notice in the Federal Register of the receipt of comments and of the availability of the comments for public inspection. If the Secretary does not revise the mission plan to meet objections specified in such comments, the Secretary shall publish in the Federal Register a detailed statement for not so revising the mission plan."

The NRC was the only Federal agency to submit objections to the draft Mission Plan. Each of its 22 objections are quoted below, followed by the DOE response.

NRC Objection 1

Statement of Objection

"There is a need for the Mission Plan to demonstrate that all aspects of the geologic repository program and other activities that might be referenced in licensing are covered by an acceptable quality assurance program. It is important to include early NRC involvement in the quality assurance development.

"NRC staff comments provided to DOE in February noted that the preliminary draft of the Mission Plan did not address a quality assurance program for either DOE's internal needs or the requirements in support of the adjudicatory hearings at the time of license application or waste emplacement. We remain concerned that unless the necessary QA is demonstrably factored into the program plans early, the necessary pedigree will not be available to support regulatory decisions.

"The Mission Plan discussion of quality assurance states (p. 3–A–19) that the description of the QA program for design will not be furnished until the license application. Because design activities, including performance assessment and computer modeling, will be performed during the site characterization phase, it is important that a description of the overall QA program, including that for design, be provided well before licensing. Not obtaining early resolution of quality assurance program issues that would arise under Subpart G of 10 CFR Part 60 risks repeating problems associated with reactor licensing; i.e., developing information for licensing without sufficient assurance that it will be acceptable for use in licensing. In addition to information on the application of QA programs to data collection, which 10 CFR 60.11 requires be provided in the Site Characterization Plans, we believe the application of QA to the related programs of design development also needs to be addressed. The Mission Plan should identify specifically where this information will be provided if not in the Site Characterization Plan.

"Regarding application of the QA program to site characterization activities, DOE states that QA to be applied to data collection will be described in the SCP. The scope of the QA program for the Waste Management Program needs to encompass all activities and issues which may be referenced in licensing. Historical site characterization data, for example, which have already been collected will have to be qualified and demonstrated to be of adequate quality for their intended use.

"The NRC staff recently published a major study for Congress of quality-related problems in nuclear power plants. The results are published in a report entitled 'Improving Quality and the Assurance of Quality in the Design and Construction of Nuclear Power Plants' (NUREG–1055). This information may be useful to DOE in developing and implementing a QA program. This report will be forwarded to the DOE under separate covers."

Response

A formal quality-assurance program that addresses the 18 criteria of the NRC's regulations in Appendix B to 10 CFR Part 50 and the national consensus standard developed by the American National Standards Institute and the American Society of Mechanical Engineers (ANSI/ASME NQA–1) has been implemented by the DOE and its contractors. It will be used throughout site characterization to provide assurance that the data collected for siting decisions and the license application are accurate, verifiable, and retrievable.

A quality-assurance plan for siting and site characterization was issued by the Office of Geologic Repositories (OGR) of the DOE's Office of Civilian Radioactive Waste Management (OCRWM) in September 1984. The OCRWM program-wide quality assurance management policies and requirements will be issued in the Spring of 1985. Quality-assurance plans and implementing procedures are under development by the Project Offices and are scheduled to be in place before the submittal of each Project Office's site-characterization plan (SCP). Similar quality-assurance plans and procedures are under development for storage and transportation systems and will be issued consistent with the DOE schedules for these systems.

The quality-assurance program that was applied during site exploration and that will be applied during the site-characterization program, including design activities, will be described in the site-characterization plan for each site to be characterized, as required by 10 CFR Part 60. The DOE will provide appropriate qualification of historical data if they are used to establish site suitability or licensability.

As a part of the license application, the DOE will submit to the NRC a detailed description of the quality-assurance program for the design, fabrication, inspection, construction, testing, and operation of the repository systems, structures, and components important to safety and the barriers important to waste isolation (Q-list). An initial Q-list will be provided in the site-characterization plan.

The section in the Mission Plan on the DOE's quality-assurance program (Section 5.6 in Part I of Volume I) has been expanded to describe in greater detail ongoing and future activities.

NRC objection 2

Statement of Objection

"The repository design process described in the Mission Plan does not provide assurance that an adequate level of information will be available to support each stage of the repository development and licensing process.

"In our February 8, 1984, comments on the preliminary draft of the Mission Plan, we noted that the sequence for developing repository design information did not appear to be consistent with what will be needed to make findings under 10 CFR Part 60. Although some language has been changed, there is still some ambiguity on this point.

"Sufficient repository design information is needed to demonstrate compliance with 10 CFR Part 60 performance objectives and requirements at the time of submittal of a license application. See in particular 10 CFR 60.12(c) (2) and (3) concerning design information which must be included in the safety analysis report, and 10 CFR 60.31(a) on the findings that must be made prior to construction authorization. The Mission Plan (3–A–22) states that a repository construction authorization application will be submitted to NRC 'based on Title I design of the repository and on the preliminary (Title I) waste package design.' Title I is equated with a 'preliminary' level of design information both here and in Vol. II (2–26). Furthermore, the Mission Plan states that '[t]he repository design (Title II) will be finalized during the Nuclear Regulatory Commission's review of the construction authorization application' (3–A–23). Title I/Title II design information may or may not be sufficient for licensing purposes; however, based on the discussion presented in the draft Mission Plan, NRC is not in a position to conclude that the content of Title I/Title II would satisfy 10 CFR Part 60 requirements.

"We recognize that even after the license application is submitted, refinements on design in some areas will continue to be developed. However, all design information that is necessary to make findings on compliance with 10 CFR Part 60 performance objectives and requirements must be provided at the time of submittal of a license application. We note that the Congressionally-mandated evaluation by NCR of recent reactor construction and licensing experience (*Improving Quality and the Assurance of Quality in the Design and Construction of Nuclear Power Plants*, NUREG–1055) points to incomplete design at the construction permit stage as an important root cause of the serious problems and delays which have been encountered. We are concerned that use of 'preliminary designs' of the repository and waste package for licensing reviews would result in similar problems.

"The Mission Plan should state that sufficient design information will be provided

in the license application to make the full set of findings required by 10 CFR 60.31 as stated in our February comments, so that the necessary information will be available to support licensing decisions. As indicated in the meeting among NRC and DOE staff on the preliminary draft of the Mission Plan on April 11, 1984, given the complexity of repository facilities, resolution of exactly what types, amounts, and levels of detail on design are required at each stage must be worked out through consideration of each aspect of design. As in the past, the NRC staff stands ready to consult with the DOE staff through the various available prelicensing consultation mechanisms to address and resolve this matter.

"We also recommend that at the earliest possible time during site characterization and design development, DOE implement a configuration control program, which as a minimum meets the requirements in Appendix B, 10 CFR Part 50, to assure that designs are approved prior to issuance and changes to design are systematically controlled."

Response

The DOE has reassessed the repository-design approach, taking into consideration programmatic needs (e.g., its statutory obligations and ensuring a cost-effective program) and the NRC's NUREG–1055 *(Improving Quality and the Assurance of Quality in the Design and Construction of Nuclear Power Plants).* On the basis of this reassessment, the DOE has decided that the design of the systems, components, excavations, structures, and bariers that are necessary for compliance with the performance objectives of 10 CFR Part 60 should be substantially completed at the time the license application is submitted to the NRC. To achieve this, the DOE plans to carry out the design process in the following steps:

1. *Conceptual design phase.* This phase includes the SCP conceptual design and an advanced conceptual design. The SCP conceptual design will result in a design report for each of the three sites approved for site characterization and will satisfy the requirements of the Act and 10 CFR Part 60. This design phase will concentrate on the underground system and the design of those structures, emplacement, and components that are required to identify needed site-characterization data and to provide the information needed to ensure that data-gathering plans relative to design will be adequately included in the site-characterization plan. Known site-specific data will be incorporated to assist in the identification of additional data needs, and sufficient design detail will be developed to ensure that all site data needs are identified. In addition, data requirements will be established, and site-specific licensing issues related to site characterization will be identified.

The advanced conceptual design, which will continue the design process, will be used to explore design alternatives and will firmly fix and refine design criteria and concepts to be finalized in later design efforts. The feasibility of the project will be demonstrated, the life-cycle cost estimated, preliminary drawings prepared, and construction schedule developed, as required by DOE Order 6410.1. During the advanced conceptual design, the DOE's objective is to develop appropriate solutions to all identified design-related licensing issues through consultation with the NRC as established by a procedural agreement between the DOE and the NRC. Site-characterization data and their impact on the design process will be reported in semiannual SCP reports, as required by the Act and 10 CFR Part 60.

2. *License-application design.* The license-application-design phase will complete the resolution of the design and licensing issues identified and assessed in earlier phases and will develop the design of the items that are necessary to demostrate compliance with the requirements and performance objectives of 10 CFR Part 60 to a level commensurate with the final design (i.e., through Title I and II). Design requirements resulting from detailed safety and reliability analyses will be fully integrated into the license-application design and will form the basis for the information required in the safety analysis report.

3. *Final procurement and construction design.* This portion of the Title I and II phase will be initiated for the one site selected from the three characterized candidate sites. Its objective will be to develop the final (working) drawings and specifications for procurement and construction. The completion of this design phase matches the completion of the Title II design effort for the entire repository. Although this design phase will occur after the submittal of the license application, and refinements of design will continue, little disruption of the NRC's review of the license application is expected because the level of design detail provided in the license application for the design of safety-related systems will minimize changes during the detailed-design phase.

The DOE is in the process of developing a statement of work for each of the phases of design. The above approach is oriented toward satisfying the information needs of the prelicensing documents (e.g., the site-characterization plans) and the license application, while also enabling the program to meet fiscal and schedule constraints. At the appropriate time, a joint NRC/DOE discussion of the current design approach will be scheduled to ensure that the NRC understands the design process.

Section 2.4 of Part H of the Mission Plan has been revised to include the new design approach.

NRC Objection 3

Statement of Objection

"*The Mission Plan should specifically recognize the necessity of including a conceptual design in the SCP that meets the requirements of the NWPA and 10 CFR Part 60.*

"10 CFR Part 60.11(a)(6)(ii) and NWPA (Section 113(b)(1)(c)) require that a conceptual design be developed *before* site characterization so that data gathering plans relative to design may be included in the SCP. However, the Mission Plan (Vol. I, 3–A–16) states that '[t]hese site-specific conceptual designs will be completed in the 1985–86 time frame to support the site characterization plans.' Inasmuch as the reference schedule for the first repository (3–A–38) shows the last SCP being issued by 9/85 and repository conceptual design studies continuing until 1/87, it is not clear whether or not a conceptual design of sufficient scope and level of detail will be completed as required by NWPA and 10 CFR Part 60.

"It is recognized that conceptual design may evolve as data are gathered at each site. Also, some of the logic diagrams (e.g., Fig. 2–1) show that conceptual design information will be available for the SCP's. However, given the importance of having complete information, the Mission Plan should specifically recognize requirements of the NWPA and 10 CFR Part 60. It should recognize that a conceptual design must be included in the SCP with scope and level of detail sufficient to permit determining whether or not (a) the quantity and type of tests and anaylses to be performed during site characterization will be adequate and (b) suitability of the site will be compromised by the components of the system that will be constructed for site characterization and later used in repository operation (e.g., exploratory shafts and test facilities)."

Response

The DOE recognizes that a respository design must be provided before proceeding to sink shafts at any candidate site to meet the requirements of the Act (section 113(b)(1)(c)) and 10 CFR Part 60.11(a)(6)(ii). Specifically, section 113(b)(1)(c) requires a conceptual repository design that takes into account likely site-specific requirements. As discussed in the response to objection 2, an SCP conceptual design meeting the above requirements and reflecting expected site conditions is being prepared for

each of the three sites recommended for detailed site characterization. Each design will be separately documented in an SCP conceptual design report. The site-characterization plan for each site will include, in Chapter 6, a summary of the basis and the design described in the SCP conceptual design report and a discussion of the information needs identified to support design. These information needs will form the basis for the site-characterization test plans discussed in Chapter 8 of the site-characterization plan.

The SCP conceptual design for each site will have a scope and details sufficient to provide the basis in the site-characterization plan to identify the quantity and type of tests and analyses to be performed during site characterization. The design will also reflect the integration of the site-characterization (exploratory-shaft) facilities with the repository in terms of design, construction, and performance, so that their impacts with respect to the suitability of the site can be assessed in the site-characterization plan. The DOE is in the process of detailing the exact information needs of this report The DOE is planning, at an appropriate point, to discuss this topic with the NRC.

Section 2.4 of Part II of the Mission Plan has been revised to include information on the SCP conceptual design report.

NRC Objection 4

Statement of Objection

"The Mission Plan does not identify how the performance goals for the various repository system components will be identified and controlled to ensure that necessary information will be available to meet the DOE schedule for submittal of a license application.

"NRC staff has previously identified to DOE the need to establish, as soon as possible, the intended performance goals for repository system components on a site specific basis. This was also noted in NRC comments on the preliminary draft of the Mission Plan. 10 CFR 60.113(b) giver DOE flexibility, on a case-by-case basis, to propose tradeoffs among system components (natural and engineered). At least tentative identification of component performance goals by DOE is a necessary prerequisite to establishing what is a necessary and sufficient level of testing during site characterization and engineered component design phases. This could have a major impact on the DOE schedule. For example, whether site characterization can be completed within the 49 months assumed in the reference schedule (Case 2–B) or the 133 months described in alternate scenarios (Case 2–D) depends primarily upon how these performance goals are established and what is needed in terms of testing to demonstrate that these performance goals are being met (see, for example, Enclosure 2, Comment No. 3).

"In both volumes (Volume I, page 3–A–15; Volume II, pages 2–38 and 2–39) the Mission Plan generally addresses this matter. In Volume II, Section 2.6, the systems engineering and performance assessment components of the DOE technology development activity are described. The description of the systems engineering task (2.6.1) states that top-level program documents on the mined geologic disposal system (MGDS) will be prepared for use in controlling technical requirements and in assuring uniformity of design efforts. Generic MGDS documents are to be issued in Fiscal Year 1984 and site specific MGDS documents will be issued during Fiscal Year 1984 and 1985. The description of these documents suggests that they will be used to determine 'whether the individual parts of the system will successfully work together' and to assure the system is optimized in terms of 'technical and cost performance.' These are necessary goals. However, the discussion of these documents does not indicate that specific performance goals for each repository system component will be established for the purpose of establishing test needs, in Site Characterization Plans or other DOE program documents referenced therein.

"The performance assessment task description indicates that preliminary assessments of site performance will be performed to determine what the subsystem performance objectives will be (Figure 2–6), and that the preliminary assessments will be used to evaluate data needs (Section 2.6.2). On its face, this appears to be logical. Early and ongoing performance assessment is needed to help identify data needs as indicated in the Mission Plan. However, we believe that assessments of site performance at the present stage of the repository program are likely to be premature for this purpose, given the uncertainties that exist before site characterization.

"Hence, we believe it would be prudent to make an early technical management decision guided by the performance criteria of 10 CFR Part 60 as to what the performance goals for individual components should be, and how much redundancy among system components will be included. As indicated previously, the earlier these goals are set the better, because of the long lead times involved in repository design, development, and testing. Failure to do so could preclude the collection of necessary information in time for licensing and delay the program, as well as hinder NRC's ability to give timely guidance to DOE on licensing needs. Until at least tentative decisions have been made about intended component performance goals by DOE, the repository investigation programs may be misdirected. As discussed in Enclosure 2, Comment No. 3, the practical consequence of not having such goals is to preclude resolution of uncertainties in the duration of in-situ testing.

"The initial setting of component performance goals must, of course, be tentative. An appropriate level of conservatism and redundancy among system components must be incorporated into the initial set of requirements owing to the uncertainties existing before site characterization. As site characterization proceeds, however, and uncertainties are reduced, it may be possible to relax some initial component requirements if site features can be demonstrated through actual testing to support these performance assessments. Based on ongoing, quality-assured data collection and site-specific testing, performance assessment should be used to refine the initial component performance goals as well as to evaluate additional data needs and design requirements as stated in Section 2.6.2. However, until initial requirements are set, major questions about the necessary scope of DOE programs and schedules cannot be answered.

"DOE must take the lead on this because deciding on initial performance targets will require consideration of many internal DOE budgetary, programmatic, and scheduling factors in addition to the overall performance objectives of 10 CFR Part 60. The NRC staff, however, stands ready to consult with DOE as these performance targets are established to help assure that ultimate licensing information needs are met."

Response

The site-characterization plans will describe how site-specific performance goals for the various components of the repository system will be identified and controlled. Site-specific performance goals for the repository system fall into two major categories: goals for the engineered-barrier system and goals for the natural-barrier system. Goals for the engineered barrier system can be achieved through a variety of designs, whereas the goals for the natural-barrier system must be achieved through the characteristics of the selected site.

Determining whether the performance goals for the engineered-barrier system will be met is a process of iteration between design and performance assessment. The process involves setting tentative design goals and then collecting data, developing models, identifying failure scenarios, and assessing whether the preliminary design will achieve the performance goals specified for the engineered-barrier system. This iterative process will ultimately result in the final allocations of performance to the individual components of the engineered-barrier system.

The process of determining site suitability requires that extensive site-characterization investigations be conducted to ascertain that the DOE siting guidelines (10 CFR Part 960) and the NRC technical criteria (10 CFR Part 60) will be met. The determination of the natural-barrier system contribution of individual characteristics of the overall repository performance also involves iteration between performance-

assessment and site-characterization activities. The process involves a determination of baseline conditions and conditions since the Quaternary Period, the development of scenarios, the development of conceptual and numerical models, sensitivity analyses, assessment of results through expert judgment, and a finding of site suitability.

Section 2.6 of Part II of the Mission Plan has been revised to describe how performance goals for the various components of the repository system will be identified and controlled in the site-characterization plans.

NRC Objection 5

Statement of Objection

"The Mission Plan should be revised to reflect the recent agreement between DOE and the Commission on the timing of the preliminary determination under Section 114(f) of NWPA.

"At the June 22, 1984 Commission meeting on the Commission's concurrence decision on the DOE siting guidelines, the Commission and DOE agreed that the preliminary decision required by Section 114(f) of the NWPA should be made after the completion of site characterization and not at the time of site recommendation for characterization. The Mission Plan should be revised accordingly to reflect this agreement."

Response

Section 114(f) of the Act provides that the environmental impact statement (EIS) for the first repository is to consider as alternative sites those sites with respect to which "(1) site characterization has been completed under section 113; and (2) the Secretary has made a preliminary determination, that such sites are suitable for development as repositories consistent with the guidelines promulgated under section 112(a)." The Act does not specify when in the siting process the "preliminary determination" is to be made, but by specifying that this determination by the Secretary was to be preliminary the Act recognized the possiblity of a site's subsequently being found by the Secretary to be unsuitable.

At the June 22, 1984, Commission meeting on the Commission's concurrence decision on the DOE siting guidelines, the DOE agreed to delete language from Section 960.3–2–3 of the guidelines related to the timing of the preliminary determination required under section 114(f) of the Act and instead to specify that timing in the Mission Plan. Therefore, in accordance with that agreement, section 3.1 of Part I in the Mission Plan specifies the timing of the preliminary determination. It says that the preliminary determination is to be made at the time the Secretary recommends three sites to the President for site characterization.

While discussions in that meeting may have indicated a further agreement relative to the timing of the preliminary determination, the DOE has concluded that a preliminary determination made after site characterization, as suggested in the Commission's objection, would have the effect of requiring that three sites be found suitable at the end of site characterization. At the June 22 meeting the DOE made clear its understanding that three suitable sites were not required at the end of site characterization. Requiring three suitable sites at the end of site characterization would necessitate the DOE's characterizing more than three sites or accepting the risk of large schedule and cost uncertainties should one of the initial three sites be found unsuitable. The Act does not require that more than three sites be characterized, but rather anticipates that the repository site would be selected from among the three characterized and that the repository would be developed in a timely fashion.

The purpose of the preliminary determination is to ensure the reasonableness of the alternative sites considered. Although other points in the siting process were considered, the DOE has concluded that the above purpose is served by having the preliminary determination made at the time of recommendation. This timing is both reasonable and in compliance with the Act.

The Secretary will have at that time the evaluation to support a preliminary determination for each of the three recommended sites. Under Section 112(b)(1)(E), the environmental assessments that accompany site nominations are to include, among other things, both (1) an evaluation as to whether the site is suitable for site characterization and (2) an evaluation as to whether the site is suitable for development as a repository. Each of these evaluations is to be based on the guidelines promulgated under Section 112(a). At the time of nomination, the Secretary will use the first evaluation to support the required finding that the nominated sites are suitable for characterization. Subsequently, at the time of recommendation, he will be able to use the second evaluation and any other available information to make the "preliminary determination" referred to in Section 114(f) that the sites are suitable for development as repositories.

NRC Objection 6

Statement of Objection

"The Mission Plan should provide additional information to justify the large diameter of the second exploratory shaft.

"Pages 3–A–20 and 3–A–21 of the Draft Mission Plan contain a discussion of DOE's intent to 'sink two exploratory shafts at each candidate site where they are required.' The second shaft will be sunk to support safe operation of the underground testing program and will have a larger diameter than the first shaft. This large diameter shaft will be approximately the same diameter as that indicated in the conceptual designs for repository access shafts (V. II, 7–15). The primary objective of the larger diameter shaft would be to '. . . provide flexibility in the scope and duration of in-situ testing' and to provide '. . . a demonstration of the ability to sink shafts of a size comparable to that needed for a repository' (3–A–21). DOE also notes that '. . . a large shaft could be utilized to facilitate subsurface construction if that site were selected as the repository site.'

"The Commission's regulations prohibit commencement of construction of the repository until a construction authorization has been issued. 10 CFR 60.3(b). Under the definition of 'commencement of construction' in 10 CFR Part 60, DOE would be permitted to pursue activities related to site characterization and other preconstruction monitoring and investigation necessary to establish background information related to the suitability of the site. However, any construction that occurs during site characterization must be reasoanbly and functionally related to the objectives of site characterization. The Mission Plan should spell out the advantages of a large diameter second shaft in terms of this crtierion, including what additional site characterization data could be obtained.

"To enable the Commission to review the justification of the larger second shaft during site characterization, the following information should also be provided: (1) The costs of site characterization activities with two large diameter shafts at each site compared with having a smaller second ventilation shaft; (2) the effort of the large diameter second shaft on site integrity and the ability to seal the repository; (3) the effect of the larger shafts on environmental mitigation concerns for sites which do not become repositories; and (4) the anticipated effect of constructing two large shafts during site characterization on subsequent repository construction schedules.

"The rationale for the large diameter second shaft may well meet the criterion of being related to the objectives of site characterization. However, we must stress the limited extent to which construction may take place prior to the issuance of a construction authorization under our current rules."

Response

The DOE plans in the draft Mission Plan were based on the premise that the sizes of the exploratory shafts could be

influenced by program-schedule considerations, but the schedule was not the sole criterion influencing the selection of larger shaft sizes. Since the draft Mission Plan was issued, the DOE has selected not to include program-schedule considerations in setting the size of the exploratory shafts and has established and implemented the following objectives for the exploratory-shaft configurations:

1. Ensure compliance with the intent of sections 113(a) and 113(c)(1) of the Act.
2. Provide adequate margin for compliance with all established safety criteria.
3. Provide adequate flexibility both in the construction and operation of the exploratory-shaft facility in terms of site characterization and potential follow-up in-situ work.
4. Ensure institutional acceptability.
5. Provide cost effectiveness, with emphasis on near-term expenditures.
6. Meet site-characterization schedule requirement (e.g., start of in-situ testing).

The policy noted above has led the DOE to select the following shaft configurations at the proposed candidate sites:

Host rock	First shaft	Second shaft
Basalt	6-foot finished [illegible], drilled	[illegible]
Salt	12-foot finished diameter, conventionally mined	12-foot finished diameter, conventionally mined
Tuff	[illegible]	6-foot finished [illegible]

This policy is consistent with the NRC regulations restricting the commencement of construction until the contruction authorization has been issued, and the construction of these exploratory shafts during site characterization will comply with the requirement that construction be reasonably and functionally related to the objectives of site characterization.

If significant modifications are required to the in-situ test programs currently envisioned for the exploratory-shaft facilities, further modifications in the configurations may be necessary, including enlargement of one or both shafts.

Furthermore, the DOE intends to use the exploratory shafts, as required, to ensure that the construction of the repository can be completed in time to meet the Act mandated repository-startup date of January 31, 1998, and it will continue to evaluate the most cost-effective use of the exploratory shafts in the operating repository.

Part I and Sections 2 and 7 of Part II of the Mission Plan have been revised to reflect the current DOE plans and rationale for the size of the exploratory shafts.

NRC Objection 7

Statement of Objection

"The Mission Plan does not provide sufficient discussion of the information necessary to permit decisions to be made concerning the primary scientific, engineering, and technical information needed, including systems integration, to support a license application. The Mission Plan should explicitly recognize this and state where and when such information will be provided.

"In response to sections 301(a)(1) and (2) of the NWPA, the Mission Plan identifies in a general way technical issues and information needs, and summarizes the plans and schedules for research and technical development programs which are intended to satisfy these needs. The discussion is not complete enough, however, to determine whether information necessary to support licensing review and findings will be available by licensing time. Chapters 1 and 2 of Volume II, which are intended to address these sections of the Act constitute only a summary of information needs and plans and should indicate where and when required additional information will be provided (e.g., in the EAs or SCPs).

"Presumably, for those programs to be carried out during site characterization, needed information will be contained in the site Characterization Plans (SCPs) or in planning documents provided in connection with it (in a manner described in NUREG-0960 pp. xx,xxi, 10–1 and 10–2). For investigations currently under way or due to be completed prior to submission of the SCPs, consultation on test plans before actual testing is necessary if unnecessary delays in programs are to be avoided. The principle of 'prior consultation' is established in the NRC/DOE Procedural agreement on Repository Site Investigations, which also establishes the mechanisms for carrying out such consultation.

"Given the requirements of NWPA section 301(a)(1) and (2), which appear to call for more information than is presented, the limitation of the Mission Plan in this area should clearly be stated and the Plan should specify where and when this information will be provided."

Response

The DOE believes that Part II of the Mission Plan addresses the requirements of section 301(a)(1) and (2) of the Act in as much detail as is required for this document. More information on needed data can be found in the draft environmental assessments; detailed discussions of this topic will be incuded in the site-characterization plans and the EIS implementation plan.

NRC Objection 8

Statement of Objection

"Page 1–1, second paragraph

"It is stated that the NWPA requires DOE to '. . . site, *license*, and operate repositories . . .' (emphasis added). In addition, on the same page, DOE states as a program objective, '. . . to site, *license*, construct . . .geologic repositories . . .' (emphasis added). These statements require revisions to eliminate any implication that DOE has licensing authority for the repository. We note, however, that DOE has primary responsibility for obtaining a repository license, which entails providing the information required for a license application under 10 CFR 60.21, and in general providing all information necessary to support a license application and carrying the burden of proof in the licensing proceeding. We suggest using the phrase 'obtain a license for' in the appropriate places."

Response

The DOE agrees that it is responsible for *obtaining* a repository license. The wording has been changed appropriately throughout the Mission Plan.

NRC Objection 9

Statement of Objection

"Page 2–3, second paragraph

"On page 2–3, the Mission Plan states that '[a]ny defense wastes disposed of in a commercial repository will be required to meet standards necessary to be compatible with licensing of the repository by the Nuclear Regulatory Commission.' This statement incorrectly suggests that something less than formal NRC licensing of defense waste disposal at comercial repositories would be permissible. The Plan should clearly state that a commercial repository licensed by the NRC could only accept defense high-level waste if such waste met the license specifications of 10 CFR Part 60.

"Furthermore, if a decision is made by the President to develop a repository exclusively for the disposal of high-level waste from atomic energy defense activities, this repository shall '(A) be subject to licensing under section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842); and (B) comply with all requirements of the [Nuclear Regulatory] Commission for the siting, development, construction, and operation of a repository.' (Nuclear Waste Policy Act, Section 8(b)(3).)"

Response

The DOE agrees that a commercial repository licensed by the NRC could only accept defense high-level waste if such waste met the license specifications of 10 CFR Part 60. The statement about defense waste has been changed to avoid any misinterpretation.

NRC Objection 10

Statement of Objection

"Page 3–A–18, last paragraph
"Release rate requirements are on the engineered barrier system, not exclusively on the waste package."

Response

The DOE agrees that the radionuclide-release requirements are on the entire engineered-barrier system, not on just the waste package.

The sentence has been changed to read "(2) contribute to the performance of the total engineered-barrier system in limiting radionuclide releases to the host rock in accordance with. . . ."

NRC Objection 11

Statement of Objection

"Page 3–A–19, Section III.A.6.a
In describing the QA program for the license application, the terms 'safety-related structures, system, and components' are utilized. This is inconsistent with the terms in Subpart G of 10 CFR Part 60, which are 'systems, structures, and components important to safety' and 'barriers important to waste isolation.'
"Also, a distinction is made in the Mission Plan between the QA program description for design and that for site characterization (for the former, the adjective 'detailed' is utilized). A description of the program as it applies to all areas should be furnished in the Site Characterization Plan. Both of these items should be revised in the final Mission Plan."

Response

The DOE agrees with the suggested change in terms and request for additional detail. The quality-assurance section in the Mission Plan (Section 5.6 of Part I) has been revised and expanded in response to the suggestions.

NRC Objection 12

Statement of Objection

"Page 3–A–23, first complete paragraph
"It is stated that the repository design will be finalized during the Commission's review of the 'construction authorization application' and that the 'application for the license to receive and possess radioactive waste will be submitted to the Nuclear Regulatory Commission while construction is proceeding.' These statements indicate that DOE may not completely understand the nature of the Commission's licensing process. As we pointed out in our comments on the preliminary draft of the Mission Plan on the use of the term 'construction authorization application,' the process established by 10 CFR Part 60 involves an application for a *license* to receive or possess source, special nuclear, or byproduct material at a geologic repository operations area. 10 CFR 60.3(a). As an initial step in its review of the license application, the Commission may issue a *construction authorization* for the repository if the requisite standards are met. 10 CFR 60.31. Under 10 CFR 60.32(d), DOE is required to *update* its original license application as specified in 10 CFR 60.24 before the Commission will issue a license to receive radioactive waste at the repository. Although we have no objecton to the use of the term 'construction authorization application' as a convenient way to describe that portion of the repository siting process (particularly in view of the fact that this term appears in several sections of the NWPA), the use of this terminology should be within a context that clearly and accurately describes the Commission's licensing process."

Response

In referring to an application for construction authorization, the DOE consistently used the terms used in the Act (section 114). However, to avoid any further confusion, the Mission Plan has been revised to be consistent with the terms used in 10 CFR Part 60 to describe the licensing process.

NRC Objection 13

Statement of Objection

"Page 3–A–23, second complete paragraph
"DOE states the repository will be designed to allow waste retrieval up to 50 years after initiating waste emplacement operations. This is different from the Commission's requirements on retrievability in 10 CFR 60.111(b).
"This provision requires repository design ". . . so that any or all of the emplaced waste could be retrieved on a *reasonable schedule starting* at any time up to 50 years after waste emplacement operations are initiated . . .

Response

The DOE sees the statement in 10 CFR 60.111(b) as approval of the 50-year period. Because the NRC could lengthen the time period in a future action and because a scheduled withdrawal of emplaced waste could require more time, the design of the repository and the choice of its maintenance procedures and equipment must provide access to the waste for a number of years beyond 50.

The DOE's recently published *Generic Requirements for a Mined Geololgic Disposal System* (DOE/NE/44–301–1, September 1984) shows a total preclosure time of 90 years for the repository. As shown in the time line below, 6 years of this 90-year period will be used for construction and 28 years for repository operation. Beginning at the same time as repository operation (i.e., the emplacement of the first wastes) is a 50–year period of waste retrievability. The remainder, 34 years, is the length of time assumed to be necessary for waste retrieval if waste retrieval proved to be necessary at the end of the 50–year period of retrievability. It is assumed that the retrieval would take as long as waste emplacement (28 years) and repository construction (6 years). The 90–year requirement for repository maintainability in either a dormant or an active mode is based on the NRC's 10 CFR 60.111(b).

Section 3 of Part I of the Mission Plan has been revised to include this information.

NCR Objection 14

Statement of Objection

"Page 3–A–32, Case 2–A
"Under this alternative, in-situ test data would not be available to support the site selection decision. DOE should note in the Mission Plan that under 10 CFR § 60.10(b), it would have to obtain Commission approval in order to exclude in-situ exploration and testing from the site characterization program."

Response

The DOE based the site-characterization schedule on its current understanding of regulatory requirements. The DOE is planning to include in-situ testing in its site-characterization program. Two shafts will be used in the testing program. Schedule case 2–A, which is not part of the reference case, describes a possible scenario where no in-situ testing would be available to support the selection of the site for the first repository. The DOE agrees that, under 10 CFR Part 60, NRC approval is required to exclude in-situ testing from the site-characterization program.

The discussion of schedule case 2–A in section 3.1.7.1 of Part I was revised to note that NRC approval is required to exclude in-situ testing from the site-characterization program.

NCR Objection 15

Statement of Objection

"Page 3–A–43, Alternative Schedule 4
"In our comments on the preliminary draft of the Mission Plan, we indicated that the Commission regulations do not provide for a limited work authorization for a geologic repository; the Commission does not consider it appropriate to proceed without a comprehensive review of the license application for such a first-of-a-kind facility. The draft Mission Plan includes alternative schedule 4 (3–A–43; Figure A–4) which is based upon DOE's coming to NRC with a 'construction authorization application' for the work handling facilities on the surface 18 months prior to site description and the 'CAA' for the full underground repository. The NRC would therefore be asked to approve construction of the surface facilities prior to the decision on suitability of the site for a repository. The means that a massive monetary commitment would be made to the as-yet-unapproved site for activities that

would provided no additional data relating to site suitability. Furthermore, such a premature commitment of funds could be perceived as biasing NRC's review of the site's suitability.

"Should the NRC be asked to consider the two-step approach, it is clear that 10 CFR Part 60 would have to be modified to allow for a lesser determination of suitability inasmuch as when the first CAA is submitted, all the information needed to establish the site suitability against the performance objectives of 10 CFR Part 60 would be available. Both legal and policy concerns could present obstacles to this course."

Response

The two-step construction approach discussed in the draft Mission Plan in alternative schedule 4 was not selected by the DOE and was recognized in the draft Mission Plan as a concept that would require revision of 10 CFR Part 60. The DOE recognizes that the NRC is not presently in favor of such changes. However, it is procedurally possible to make such changes, and it follows that it is appropriate to consider the benefits that could accrue from such changes. This was the intent of alternative schedule 4.

The two-step construction approach was dropped from construction as an alternative schedule.

NRC Objection 16

Statement of Objection

"Page 3–C–8, first full sentence

"It is stated that 'a major activity for the Department would be to work with the Nuclear Regulatory Commission (in accordance with 10 CFR Part 71) to develop and maintain technical data bases to establish a consistent set of certification criteria for use in evaluation and acceptance of the system.' The statement should be revised to eliminate any possible implication that the Department will develop certification criteria for the NRC to use in accepting the Department's system."

Response

The DOE agrees that it will not develop certification criteria for the NRC. The statement was changed to avoid any misinterpretation.

NRC Objection 17

Statement of Objection

"Page 3–D–1

"DOE describes the NWPA's provisions on the Federal Interim Storage Program. The statement on the Commission's responsibilities should be revised to clearly express the criteria contained in Section 135(b) of the NWPA."

Response

The DOE agrees to the addition. Section 3.2.2 of Part I of the Mission Plan was revised to include the criteria contained in Section 135(b) of the Act.

NRC Objection 18

Statement of Objection

"Vol. II, page 1–5, Issue 1.1

"It is not an accurate paraphrasing of 60.113(a)(1)(ii) to say that 'for the site to be compatible with waste containment, it must be possible to design and build a waste package that will survive intact in the geohydrologic setting for the duration of the containment period (300 to 1000 years).' 10 CFR 60.113(a)(1) (ii) (A) requires that the containment be *'substantially complete.'* Furthermore, the post-containment performance objective of 10 CFR 60.113(1)(ii)(B) needs to be addressed under Issue 1.1. A suitable revision would state, 'For the site to be compatible with the achievement of waste containment and isolation objections, it must be possible to design and build a waste package compatible with the requirements of 10 CFR 60.113(a)(1)(ii) on the engineered barrier system.' For further clarification, the language of 10 CFR 60.113(a)(1)(ii) could be provided."

Response

The DOE agrees that the paraphrasing of the NRC's 10 CFR 60.113(a)(1)(ii) was no accurate. The Mission Plan was corrected as suggested.

NRC Objection 19

Statement of Objection

"Vol. II, Issue 1–3, page 1–7

"There is an apparent contradiction between lines 3–5 of the issue statement and lines 4–6 of the first subsequent paragraph. The statement of the issue suggests that DOE intends to rely on the waste package alone to meet the release-rate requirement 60.113(a)(1)(ii)(B). On the other hand, the performance of the waste package is to *contribute* to controlled release in the subsequent paragraph. This underscores the importance of explicitly specifying the level of component performance.

"In addition, 'Issue 1.3 . . .' refers to 'performance objectives for waste packages beginning after 'emplacement.' According to 10 CFR 60.113(a)(1)(ii)(A) containment performance begins at '*permanent closure*' not 'waste emplacement.'

"Such a misconception could affect waste package design, and the analysis of containment, release, and migration of radionuclides."

Response

The DOE agrees that issue 1.3 in Chapter 1 of Volume II (now Part II) contained imprecise statements regarding waste-package performance. The Mission Plan was revised to agree with 10 CFR 60.113.

NRC Objection 20

Statement of Objection

"Vol. II, Key Issue 2, page 1–13.

"The issues which address information needs with respect to operational safety do not include the need to determine the structures, systems and components that are important to safety 10 CFR 60.113(b). This discussion should be included."

Response

The DOE agrees that the information should be included. Additional information was added as issue 2.4.5.

NRC Objection 21

Statement of Objection

"Vol. II (Section 2.2.1.6 pages 2–11 and 12)

"The term 'natural resources' includes all types of resources, including oil and gas, metallic and non-metallic minerals, and groundwater.

"We believe the Mission Plan activities, as stated, would lead to an incomplete study of (1) the identification and evaluation of natural resources, especially of undiscovered resources, and (2) the possibility of their extraction as a potentially adverse condition. The specific requirements of 10 CFR 60.21 and 10 CFR 60.122 are as follows. There is no indication in the Mission Plan that the requirements *underlined below* will be investigated.

"10 CFR 60.21(c)(13) requires:

" 'An identification and evaluation of the natural resources of the geologic setting, including *estimates as to undiscovered deposits*, the exploitation of which could affect the ability of the geologic repository to isolate radioactive wastes. Undiscovered deposits of resources characteristic of the area shall be estimated by reasonable inference based on geological and geophysical evidence. The *evaluation of resources, including undiscovered deposits, shall be conducted for the site and for areas of similar size that are representative of and are within the geologic setting. For natural resources with current markets the resources shall be assessed, with estimates provided of both gross and net value.* The estimate of net value shall take into account current development, extraction, and marketing costs. *For natural resources without current markets, but which would be marketable given credible project changes in economic or technologic factors, the resources shall be described by physical factors such as tonnage or other amount, grade, and quality.*'

"The presence of natural resources is a potential adverse condition under 10 CFR 60.122 if: '(i) Economic extraction is currently feasible or potentially feasible during the foreseeable future; or (ii) *Such materials have greater gross value or net value than the average for other areas of similiar size that are representative of and located within the geologic setting.*' Potentially adverse condtions must be evaluate if they are characteristic of the controlled area or may affect isolation within the controlled area."

Response

Measurements taken during the site-characterization program will allow the DOE to estimate upper limits on the quantities of undiscovered resources. Also, the detailed familiarity with the geology of the site obtained during

characterization will permit the DOE to reasonably exclude the possibility of certain types of resources. Using the knowledge gained during characterization, it will be possible to estimate upper bounds and likely magnitudes of the gross and net values of undiscovered resources at the site. These can then be compared with the values of the same resources known or suspected to exist in areas of similar size in the same geologic setting.

Section 2.2 of Part II was expanded to include reference to evaluations of undiscovered deposits of natural resources at the repository site.

NRC Objection 22

Statement of Objection

"Vol. II, page 3–14, fourth paragraph, last sentence

"This sentence implies that NRC could change its regulatory requirements based on informal communications with DOE and without making formalized changes to 10 CFR Part 60. This is not the case. NRC cannot change its requirements without undertaking the proper rulemaking procedures."

Response

The DOE is aware that the NRC cannot change its requirements without undertaking the proper rulemaking procedures.

No changes were made, as the subject sentence was part of a section that was deleted from Chapter 3 of Part II of the Mission plan.

[FR Doc. 85–16552 Filed 7–11–85; 8:45 am]
BILLING CODE 6450–01–M

International Energy Agency Allocation Systems Test; Training Session

AGENCY: Department of Energy.

ACTION: Notice of Training Session.

SUMMARY: The U.S. Department of Energy is planning to conduct a training session in Washington, D.C. on the Department's plans for U.S. participation in the International Energy Agency's (IEA's) Fifth Allocation Systems Test (AST–5), which is to be held September 20 through November 16, 1985. The training session is for representatives of U.S. companies that are members or affiliates of members of the IEA Group of Reporting Companies; representatives of Non-Reporting Companies (i.e., other U.S. firms which in an actual supply disruption may have the ability to rearrange petroleum supplies in connection with the IEA's emergency oil sharing system); and representatives of the States. The Department's training session is tentatively scheduled for July 30, 1985; however, the Department will notify attendees of the specific date of the training session in the event a change in the schedule is necessary to accommodate attendees.

The training session will be open to representatives of U.S. oil companies that are members or affiliates of members of the IEA Group of Reporting Companies (including U.S. affiliates of foreign-based IEA Reporting Companies); representatives of "Non-Reporting Companies" and the States who have notified the Department of their interest in participating in AST–5; representatives of the Departments of Energy, Justice, and State, and the Federal Trade Commission; and representatives of the General Accounting Office and the committees of Congress. The training session will not be a meeting to carry out the Voluntary Agreement and Plan of Action to Implement the International Energy Program.

DATE: Date, time, location: July 30, 1985 (tentative) in Washington, D.C.; deadline for expressions of interest in the training session to be submitted by July 23, 1985.

FOR FURTHER INFORMATION CONTACT: Romulo L. Diaz, Jr., Room GH–060 (IE–231), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–4000. Yvonne Allen (States Only), Room 8H–032B (IE–241), Department of Energy, 1000 Independence Avenue, SW., (202) 252–5155.

SUPPLEMENTARY INFORMATION: The IEA's approved objective for AST–5 is to provide training for the IEA Secretariat, IEA Member governments, and IEA Reporting Companies with respect to the essential procedures and mechanics of the IEA's emergency oil sharing system, including:

- Compiling, handling and verifying emergency data for the IEA emergency information system;
- Determining communication requirements for data transmission;
- Calculating supply rights and allocation rights and obligations; and
- Transmitting and matching voluntary offers of oil.

The training session will focus on the essential procedures and mechanics of the IEA's emergency oil sharing system and the Department's operational plans for implementing the special assumptions and rules set forth in AST–5 Test Guide, including demand restraint guidance, use of stocks, and simulation of the activities of Non-Reporting Companies. The IEA Test Guide for AST–5 provides that the test will not attempt to simulate emergency market conditions, government policies or programs, or the actual redirection of any oil.

For those Reporting Companies and their affiliates who choose to attend, the Department will also provide training in their specific responsibilities with respect to data submission, communications and voluntary offers in light of the Department's operational plans for the test. Training session attendees who express a continuing interest in AST–5 will receive weekly status reports during the test on test events and activities. Following the completion of the test, there will be a "wrap-up" meeting to review the test.

Issued in Washington, D.C., on July 5, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85–16678 Filed 7–11–85; 8:45 am]
BILLING CODE 6450–01–M

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee.

Date and time: Wednesday, August 14, 1985—9:00 a.m. to 5:00 p.m.

Thursday, August 15, 1985—9:00 a.m. to 5:00 p.m.

Location: Massachusetts Institute of Technology, Plasma Fusion Center, 175 Albany Street, Room NW17–218 (2nd Floor), Cambridge, Massachusetts.

Contact: Richard E. Nygren, Office of Fusion Energy (ER–50.1), U.S. Department of Energy, Mail Stop G–226, Washington, D.C. 20545, Phone: (301)–353–4941.

Purpose of the Committee

To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Agenda outline

Briefing and discussion of:

Wednesday, August 14, 1985

I. Systems Studies Panel (Charge 13)
II. Toroidal Program Review
III. RFP/OHTE Reviews
IV. Status of Technical Planning Activity
V. MFAC Discussion and Comments
VI. Public Comment (10 minute rule)

Thursday, August 15, 1985

I. U.S. Ignition Studies in FY 1985
II. Recent Meetings on International Collaboration
A. International Workshop (June)
B. Technical Working Party Meeting (July)
III. Preliminary Plans for U.S. Ignition Studies in FY 1986
IV. MFAC Discussion and Comments
V. New Charge—Ignition Physics
VI. Public Comment (10 minute rule)

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Rosalie Weller at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on July 10, 1985.

K. Dean Helms,

Advisory Committee Management Officer.

[FR Doc. 85-16702 Filed 7-11-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER79-97-001, and ER85-408-000]

Alamito Co., Order Accepting Rates for Filing, Granting Intervention, Granting Waiver of Notice Requirements, and Establishing Hearing Procedures

Issued: July 5, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, and Charles G. Stalon.

On April 1, 1985, as completed on May 16, 1985,[1] Alamito Company (Alamito, or the company) tendered for filing in Docket No. ER85-408-000 an amendment to its power sale agreement with San Diego Gas & Electric Company (SDG&E)[2] setting forth new capitalization ratios and contract demand capacity related to its Springerville Unit 1 for the Phase Four period proposed to commence on June 1, 1985 under the power sale agreement.[3] At the time of Alamito's filing, the unit was expected to go into service on June 1, 1985. Attached to this amendment was an executed agreement regarding inspection of facilities, fuel costs and capacity factor. Alamito also tendered for filing, in Docket No. ER79-97-001, a compliance report containing justification for the cost of service for the Phase Four period including rate of return (as proposed in Docket No. ER85-408-000) and fuel cost data. This report was intended to comply with the Commission's order in Docket No. ER79-97-000 approving the formula rates in the power sale agreement on the conditions that Alamito file cost of service data with its notification of the commencement of Phases Three, Four and Five, and that revenues collected, including those based on costs incurred from purchases from an affiliated supplier, will be subject to refund should the Commission order an investigation.[4]

Notice of the filing in Docket No. ER79-97-001 was published in the **Federal Register** [5] with comments due on or before May 14, 1985. Notice of the filing in Docket No. ER85-408-000 was published in the **Federal Register** [6] with comments due on or before April 23, 1985.

On April 29, 1985, SDG&E filed a concurrence in the filing of the amendment to the power sale agreement in Docket No. ER85-408-000. On May 23, 1985, SDG&E filed, in Docket No. ER79-97-001, a motion to intervene out of time, a request for suspension and hearing and an alternative request for initiation of a complaint proceeding. SDG&E requests a one day suspension and consents to a waiver of the Commission's sixty day notice period so that Phase Four can commence on June 1, 1985. SDG&E questions the justness and reasonableness of fuel costs incurred from purchases made under a contract that was executed at a time when the supplier was affiliated with Alamito. SDG&E states that it was unable to complete its evaluation of fuel cost data by May 14, 1985.

On May 28, 1985, Alamito filed an answer to SDG&E's pleading in Docket No. ER79-97-001 opposing its requests, claiming that the pleading violates the agreement between the parties that was filed with the amendment to the power sale agreement in Docket No. ER85-408-000, disputing SDG&E's complaints about the fuel costs, and contending that Alamito's filing is a compliance report and not a rate change subject to section 205 of the Federal Power Act, that SDG&E failed to adequately explain why its pleading was filed late, and that any dispute should be resolved by arbitration procedures specified in the power sale agreement.[7]

Discussion

Notwithstanding the company's opposition to SDG&E's intervention in Docket No. ER79-97-001, we find that good cause exists to grant its motion. We are satisfied that SDG&E has expressed an interest in the outcome of this proceeding that is not represented by another party and that their participation may be in the public interest. Furthermore, given the early stage of this proceeding, SDG&E's intervention should result in no undue prejudice or delay. Accordingly, we shall grant the motion to intervene.

Based on our review of the company's filings in Docket Nos. ER79-97-001) and ER85-408-000, we find that the proposed rates in Docket No. ER84-408-000 will not produce excessive revenues. Accordingly, we shall accept the submittal in Docket No. ER85-408-000 for filing without suspension as ordered below. We shall grant waiver of the Commission's notice requirement in order to permit the Phase Four rates to take effect on June 1, 1985, or the commercial operation date of the Springerville Unit No. 1, whichever is later.

Our review of the company's filing and the pleadings in Docket No. ER79-

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[1] The company submitted data to complete its filing pursuant to an inquiry from the Commission's Office of Electric Power Regulation.

[2] *See* Attachment for rate schedule designations. On November 1, 1984, Alamito assumed the rights and obligations of the power sale agreement between Tucson Gas and Electric Company (now Tucson Electric Power Company) and SDG&E which was conditionally approved by the Commission in Docket No. ER79-97-000 by order dated June 25, 1979. 7 FERC ¶ 61,298. Tucson's assignment of the contract to Alamito was accepted by the Commission on October 1, 1984 and designated Alamito Company Rate Schedule No. 1.

[3] The agreement established formula rates to be implemented in five phases over a ten year period.

[4] 7 FERC ¶ 61,298 (1979).

[5] 50 FR 19705 (1985).

[6] 50 FR 14747 (1985).

[7] SDG&E filed a motion for leave to respond to Alamito's response on May 28, 1985. Our rules do not provide for the filing of responses to responses; we therefore deny the motion to respond.

97-001 indicates that the coal costs have not been shown to be just and reasonable and that the cost of service effects on the rates may therefore be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall order an investigation into the justness and reasonableness of the cost of service effects of the fuel costs. Alamito will collect all revenues derived from these fuel costs subject to refund: upon the issuance of a Commission order determining the related just and reasonable rate determinants, it will make refunds in accordance with the Commission's regulations. Alamito's claim that the filing is not a change in rates subject to suspension, refund and hearing procedures under section 205 of the FPA is irrelevant in light of the conditions we imposed in accepting the power sale agreement for filing in our June 25, 1979 order [8] and our regulations requiring fuel costs recovered in formula rates to be just and reasonable.[9] Alamito's request that we require SDG&E to comply with the arbitration provisions of the power sale agreement is also irrelevant. Section 20.1 of the Ten Year Power Sale and Interconnection Agreement provides that:

> Disputes remaining unresolved within thirty (30) days by the Parties' respective Chief Executive Officers *may* be submitted to arbitration in accordance with the procedures in effect in this Section 20. [Emphasis added.]

Accordingly, neither party was obligated to submit the dispute to arbitration; such procedures are discretionary. Alamito has not claimed that such procedures have been initiated.

The Commission orders:

(A) SDG&E's untimely motion to intervene in Docket No. ER79-97-001 is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Waiver of the notice requirements is hereby granted for good cause shown.

(C) Alamito's Phase Four rates in Docket No. ER85-408-000 are hereby accepted for filing to become effective on June 1, 1985, or the commercial operation date of the Springerville Unit No. 1, whichever date is later, without suspension or hearing.

(D) Alamito's Phase Four shall commence on June 1, 1985, or the commercial operation date of the Springerville Unit No. 1, whichever date is later. Revenues derived from fuel costs in Docket No. ER79-97-001 shall be collected subject to refund.

(E) Docket No. ER85-408-000 is hereby terminated.

(F) Docket No. ER79-97-001 is hereby terminated; the evidentiary proceeding ordered herein is hereby designated Docket No. ER79-97-002.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the fuel costs to be recovered in the rates.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

ALAMITO CO., RATE SCHEDULE DESIGNATIONS

[Docket No. ER85-408-000]

Designation	Description
(1) Supplement No. 1 to Rate Schedule FERC No. 1.	Amendment No. 4 Change in Rate for Unit Sale.
(2) Supplement No. 1 to Rate Schedule FERC No. 1.	Agreement with Provisions for Operation of Springerville Unit No. 4.

[FR Doc. 85-16625 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-10-10-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 5, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on June 28, 1985, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Alternate Fifth Revised Sheet No. 211
Alternate Fourteenth Revised Sheet No. 213
Alternate Third Revised Sheet No. 405
Alternate Third Revised Sheet No. 425

Algonquin Gas states that such tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedules STB and S-IS the effect of Texas Eastern Transmission Corporation's ("Texas Eastern") motion to withdraw proposed tariff revisions, which Algonquin Gas had previously tracked in its filing of May 24, 1985.

Algonquin Gas requests that the Commission grant such special permission as may be necessary to allow Algonquin Gas to provide an adjustment on the next month's billing subsequent to Commission approval to effectuate the rate change filed herein to be effective June 3, 1985.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before July 12, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16626 Filed 7-11-85 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-11-20-000 and 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 5, 1985.

Take notice that Algonquin Gas Transmission company ("Algonquin Gas") on June 28, 1985 tendered for filing Seventh Revised Sheet No. 201, Fifteenth Revised Sheet No. 213 and Second Revised Sheet No. 241 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Seventh Revised Sheet No. 201 and Second Revised Sheet No. 241 are being filed

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[8] 7 FERC ¶ 61,288 (1979).

[9] *See, Public Service Company of New Hampshire*, Opinion No. 37, 6 FERC ¶ 61,209 (1979).

pursuant to Algonquin Gas' Purchased Gas Cost Adjustment as set forth in Section 17 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Fifteenth Revised Sheet No. 213 is being filed pursuant to the provisions of Section 11 of its Rate Schedule S–IS. Such tariff sheets reflect revised rates filed by its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"). Second Revised Sheet No. 241 identifies the pruchased gas cost included in the sales rates shown on Seventh Revised Sheet No. 201.

Algonquin Gas proposes the effective date of Seventh Revised Sheet No. 201, Fifteenth Revised Sheet No. 213 and Second Revised Sheet No. 241 to be July 1, 1985, to coincide with the proposed effective date of Texas Eastern's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file amotion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before July 12, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party file must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16627 Filed 7–11–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85–12–20–000 and 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 5, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on July 1, 1985, tendered for filing Fifth Revised Sheet No. 203, Substitute Fifteenth Revised Sheet No. 213 and Alternate Fifteenth Revised Sheet No. 213 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that the above-mentioned tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedule F–2 and Rate Schedule S–IS decreases in Consolidated Gas Transmission Corporation's ("Consolidated") underlying Rate Schedule RQ and Rate Schedule E.

Algonquin Gas requests that the Commission accept Fifth Revised Sheet No. 203, effective July 1, 1985 to coincide with the proposed effective date of Consolidated's rate change.

Algonquin Gas also requests that the Commission accept either Substitute Fifteenth or Alternate Fifteenth Revised Sheet No. 213, whichever the Commission deems appropriate to be effective July 1, 1985.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before July 12, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16628 Filed 7–11–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85–2–61–000, 001]

Bayou Interstate Pipeline System; Proposed Changes in FERC Gas Tariff

July 5, 1985.

Take notice that Bayou Interstate Pipeline System (Bayou), on July 1, 1985 tendered for filing Second Revised Sheet No. 4A and First Revised Sheet No. 5 of its FERC Gas Tariff, Original Volume No. 1. The tariff sheets were filed pursuant to the Purchased Gas Cost Adjustment and Incremental Pricing Adjustment provisions contained in Sections 15 and 16 of Bayou's tariff. Copies of the filing were served upon Bayou's jurisdictional customer and interested state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16629 Filed 7–11–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85–169–000]

Consolidated Gas Transmission Corp.; Proposed Changes in Rates and Charges

July 5, 1985.

Take notice that on July 1, 1985, Consolidated Gas Transmission Corporation (Consolidated), pursuant to section 4 of the Natural Gas Act and § 154.63 of the Commission's regulations, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1 to become effective on August 1, 1985. Consolidated requests that the rates become effective, after five-month suspension, on January 1, 1986, in accordance with a rate moratorium agreed to in a rate settlement agreement in Docket No. RP82–115.

The proposed rate changes would increase Consolidated's revenues from jurisdictional sales and services by $82.9 million based on the twelve months ended March 31, 1985, adjusted for known and measurable changes through December 31, 1985.

Consolidated states that increased rates are necessary to reflect decreased sales and other billing determinants and to recover increased operation and maintenance expenses, increased taxes, and the increased cost of money. The rate of return is based on the capital structure agreed to for filing purposes in Docket No. RP82–115 with an equity return of 17 percent.

Consolidated states that the cost of gas, including pipeline production, was computed using the base costs of gas per unit of sales reflected on Consolidated's Substitute Second Revised Sheet No. 31.

Consolidated represents that Statement P will be filed within fifteen days of its filing. It states that it served copies of its filing upon its jurisdictional

customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16630 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP79-23-024 and RP79-24-016]

Distrigas of Massachusetts Corp.; Compliance Filing

July 9, 1985.

Take notice that on June 28, 1985, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing the following substitute tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Fourth Substitute Forth Revised Sheet No. 17.

The proposed effective date for this sheet is July 5, 1979.

DOMAC states that this filing is made pursuant to the Commission's "Order on Remand" issued June 4, 1985, in *Distrigas of Massachusetts Corp.*, Docket Nos. RP79-23, *et al.* and that the tariff sheet reflects the effect of restoration of $4,634,441 to DOMAC's rate base in compliance with the Court's mandate in *Distrigas of Massachusetts Corp.* v. *FERC*, 737 F.2d 1208 (1st Cir. 1984).

DOMAC has mailed a copy of this filing to each of its customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16609 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-34-011]

Distrigas of Massachusetts Corp.; Compliance filing

July 9, 1985.

Take notice that on June 28, 1985, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing the following substitute tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Third Substitute Sixth Revised Sheet No. 17

The proposed effective date for this sheet is August 2, 1981.

DOMAC states that this tariff sheet is submitted pursuant to the Court's mandate in *Distrigas of Massachusetts Corp. v. FERC*, 737 F.2d 1208 (1st Cir. 1984) and the Commission's "Order on Remand" issued June 4, 1985, in DOMAC, Docket Nos. RP79-23, *et. al.* which effectuated the Court's mandate.

DOMAC has mailed a copy of this filing to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16610 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-136-004]

Distrigas of Massachusetts Corp.; Compliance Filing

July 9, 1985.

Take notice that on June 28, 1985, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing the following substitute tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Second Substitute Seventh Revised Sheet No. 17
Substitute Original Sheet No. 23

The proposed effective date for these sheets is April 1, 1984.

DOMAC states that these tariff sheets are submitted pursuant to the Court's mandate in *Distrigas of Massachusetts Corp.* v. *FERC*, 737 F.2d 1208 (1st Cir. 1984) and the Commission's "Order on Remand" issued June 4, 1985, in *Distrigas of Massachusetts Corp.*, Docket Nos. RP79-23, *et al.* which effectuated the Court's mandate.

DOMAC has mailed a copy of this filing to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16610 Filed 7-11-85 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-125-002]

Distrigas of Massachusetts Corp.; Compliance Filing

July 9, 1985.

Take notice that on June 28, 1985, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing the following substitute tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Eighth Revised Sheet No. 17
Second Revised Sheet No. 17A

First Revised Sheet No. 23.

The proposed effective date for these sheets is October 1, 1985.

DOMAC states that these tariff sheets are submitted pursuant to the Court's mandate in *Distrigas of Massachusetts Corp. v. FERC*, 737 F.2d 1208 (1st Cir. 1984) and the Commission's "Order on Remand" issued June 4, 1985, in Distrigas of Massachusetts Corp., Docket Nos. RP79–23, *et al.* which effectuated the Court's mandate.

DOMAC has mailed a copy of this filing to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16611 Filed 7–11–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–2184–001]

Edward Donley; Application

July 8, 1985.

Take notice that on May 22, 1985, Edward Donley (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—Pennsylvania Power & Light Company
Director—Mellon Bank Corporation
Director—Mellon Bank, N.A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 22, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16613 Filed 7–11–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–47–004]

East Tennessee Natural Gas Co.; Motion To Place Tariff Sheets Into Effect

July 9, 1985.

Take notice that on June 28, 1985, East Tennessee Natural Gas Company (East Tennessee) filed a motion to place the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1 into effect:

Second Revised Sheet No. 23
Second Revised Sheet No. 31
Second Revised Sheet No. 35
Substitute First Revised Sheet No. 119
Substitute Second Revised Sheet No. 121
Substitute Third Revised Sheet No. 122
Substitute Second Revised Sheet No. 124

East Tennessee requests that these tariff sheets be made effective on July 1, 1985, pursuant to the Commission's January 10, 1985 order (30 FERC ¶ 61,008). Copies of the filing have been mailed to each affected customer and state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16612 Filed 7–11–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–58–005]

El Paso Natural Gas Co.; Motion To Place Tariff Sheets Into Effect

July 9, 1985.

Take notice that on June 28, 1985, El Paso Natural Gas Company (El Paso) filed a motion to place the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 into effect:

Alternate Fourth Revised Sheet No. 100
Alternate Substitute Second Revised Sheet No. 211
Alternate Substitute Second Revised Sheet No. 212
Second Revised Sheet No. 213
First Revised Sheet No. 220
Third Revised Sheet No. 221
Second Revised Sheet No. 222
Second Revised Sheet No. 223
Second Revised Sheet No. 224
First Revised Sheet No. 231
Alternate Twenty-ninth Revised Sheet No. 1–D
Substitute Fourteenth Revised Sheet No. 1–D.2
Alternate Thirtieth Revised Sheet No. 1–C

El Paso requests that these tariff sheets appended under Tab A of the filing be made effective on July 1, 1985, as permitted by the Commission's January 31, 1985 and March 5, 1985 orders and section 4(e) of the National Gas Act.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions of protests should be filed on or before July 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16614 Filed 7–11–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–3–33–000,001]

El Paso Natural Gas Co.; Proposed Out-of-Period Change In Rates Pursuant to Purchased Gas Cost Adjustment

July 5, 1985.

Take notice that on June 28, 1985, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to Section 4 of the Natural Gas Act, and Part 154 of the Regulations issued thereunder by the Federal Energy Regulatory Commission ("Commission") and Paragraph 2.6 of Article II of El Paso's Stipulation and Agreement in Settlement of Rate Proceedings ("Stipulation and

Agreement") filed on June 25, 1985 at Docket No. RP85–58–000, et al., a notice of an out-of-period change in rates. The change in rates relates to jurisdictional gas service rendered to customers served by its interstate gas transmission system under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision ("PGA"), contained in the General Terms and Conditions of El Paso's FERC Gas Tariff, First Revised Volume No. 1, which Section 19 also applies to certain special rate schedules contained in El Paso's FERC Gas Tariff, Third Revised Volume No. 2 and Original Volume No. 2A.

The filing reflects that the proposed total net change in El Paso's currently effective rates attributable to the cost of purchased gas component of the PGA is a decrease of $.0546 per dth. Such proposed change in rates is to be effective for the three-month period July through September, 1985. El Paso states that the surcharge components of the rates effective April 1, 1985 are not affected by the proposed out-of-period change in rates.

To implement the instant notice of change in rates, El Paso tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First Revised Volume No. 1	Fifth Revised Sheet No. 100. Fourth Revised Sheet No. 540.
Third Revised Volume No. 2	Thirtieth Revised Sheet No. 1–D.
Original Volume No. 2A	Thirty-first Revised Sheet No. 1–C.

Paragraph 2.6 of Article II of El Paso's Stipulation and Agreement at Docket No. RP85–58–000 *et al.*, provides that the approval of such Stipulation and Agreement, among other things, constitutes waiver of El Paso's Volume No. 1 Tariff and of the Commission's Regulations sufficient to permit the instant filing to go into effect July 1, 1985. The Stipulation and Agreement makes clear, moreover, that the instant filing will be effective only upon the effectiveness of the Stipulation and Agreement. With that limitation, El Paso requests the tendered revised tariff sheets to be effective on July 1, 1985.

El Paso further states that it is tendering First Revised Sheet No. 24 of its FERC Gas Tariff, Original Volume No. 1–A to be effective July 1, 1985 in order to reflect the rate of $2.6741 per dth to be utilized to determine the fuel reimbursement charge payable under Section 6 of Rate Schedule T–1 or T–2 of said Tariff by shippers electing to reimburse El Paso for fuel usage in monthly payments rather than in-kind, as included in the Stipulation and Agreement.

El Paso states that the filing has been served upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commisson in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16631 Filed 7–11–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. P–7499–001 et al.]

Kentucky Hydro Associates et al.; Surrender of Preliminary Permits

July 5, 1985.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Kentucky Hydro Associates

[Project No. 7499–001]

Take notice that Kentucky Hydro Associates, Permittee for the proposed Kentucky River Lock and Dam No. 3 Water Power Project No. 7499, requested by letter dated May 27, 1985, that their preliminary permit be terminated. The preliminary permit was issued on June 27, 1984, and would have expired on May 31, 1988. The project would have been located on the Kentucky River in Owen County, Kentucky.

The Permittee filed the request on June 3, 1985.

2. Kentucky Hydro Associates

[Project No. 7504–001]

Take notice that Kentucky Hydro Associates, Permittee for the proposed Kentucky River Lock and Dam No. 2 Project No. 7504, requested by letter dated May 27, 1985, that their preliminary permit be terminated. The preliminary permit was issued on June 27, 1984, and would have expired on May 31, 1988. The project would have been located on the Kentucky River in Owen County, Kentucky.

The Permittee filed the request on June 3, 1985.

3. Kentucky Hydro Associates

[Project No. 7501–001]

Take notice that Kentucky Hydro Associates, Permittee for the proposed Green River Lock and Dam No. 2 Project No. 7501, requested by letter dated May 27, 1985, that their preliminary permit be terminated. The preliminary permit was issued on June 27, 1984, and would have expired on May 31, 1988. The project would have been located on the Green River in McLean County, Kentucky.

The Permittee filed the request on June 3, 1985.

4. Kentucky Hydro Associates

[Project No. 7502–001]

Take notice that Kentucky Hydro Associates, Permittee for the proposed Green River Lock and Dam No. 3 Water Power Project No. 7502, requested by letter dated May 27, 1985, that their preliminary permit be terminated. The preliminary permit was issued on June 27, 1984, and would have expired on May 31, 1988. The project would have been located on the Green River in Muhlenberg County, Kentucky.

The Permittee filed the request on June 3, 1985.

Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16615 Filed 7–11–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–2–14–000, 001]

Lawrenceburg Gas Transmission Corp.; Proposed Change in FERC Gas Tariff

July 5, 1985.

Take notice that on July 1, 1985 Lawrenceburg Gas Transmission Corporation (Lawrenceburg) tendered for filing three (3) revised gas tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, all of which are dated as issued on June 28, 1985

proposed to become effective August 1, 1985 and, identified as follows:

Thirty-sixth Revised Sheet No. 4
Twelfth Revised Sheet No. 4-E
Thirty-second Revised Sheet No. 18

Lawrenceburg states that its revised tariff sheets were filed under its Purchased Gas Adjustment (PGA) Provision and Incremental Pricing Surcharge Provision.

Copies of this filing were served upon Lawrenceburg's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16632 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-15-000, 001]

Mid Louisiana Gas Co.; Proposed Change in Rates

July 5, 1985.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on July 1, 1985, tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff, Fifty-Second Revised Sheet No. 3a and Twelfth Revised Sheet No. 3c to become effective August 1, 1985.

Mid Louisiana states that the purpose of the filing of Fifty-Second Revised Sheet No. 3a is to reflect a Purchased Gas Cost Current Adjustment and a Purchased Gas Cost Surcharge resulting in a rate after current adjustment of 357.18¢. The filing is being made in accordance with section 19 of Mid Louisiana's FERC Gas Tariff, and the Purchased Gas Cost Current Adjustment reflects rates payable to Mid Louisiana's suppliers during the period August 1, 1985 through January 31, 1986.

Copies of the filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16633 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-32-000]

Mountaineer Gas Co.; Petition for Declaratory Order

Issued: July 3, 1985.

On June 4, 1985, Mountaineer Gas Company (Mountaineer) filed with the Commission, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, a petition for a declaratory order confirming that Mountaineer's obligations to Columbia Gas Transmission Corporation (Columbia) under service agreements dated October 28, 1982 and August 3, 1981, are unenforceable on the basis of the *force majeure* clause of those agreements and section 24-2-4c of the West Virginia code, which requires Mountaineer to follow a least-cost gas acquisition policy. Mountaineer states that the basic issue is whether changed circumstances beyond Mountaineer's control and the mandate of state law constitute *force majeure* events sufficient to render Mountaineer's agreements with Columbia unenforceable.

Mountaineer alleges the following facts. Mountaineer, formerly Columbia Gas of West Virginia (CWV), is a local distribution company operating in West Virginia.[1] Service agreements entered into by Columbia and CWV were inherited by Mountaineer. The Contract demand levels for gas in these contracts were established in 1971 and Mountaineer argues that they do not accurately reflect current market conditions for gas in West Virginia. Mountaineer further states that, as a result of the high cost of Columbia's gas supplies and the economic recession that continues in West Virginia, its market is severely depressed and that its total demand for gas is now substantially less than one-half of the demand of CWV in 1971 when the contract demand levels were established.

Mountaineer states that, as a result of the least-cost gas acquisition policy mandated by West Virginia law, it has secured other sources of gas more economic than that of Columbia. Mountaineer states that it will soon conclude other more economic supply arrangements, with the result that its reliance on Columbia as a supplier and transporter of gas will be minimal. Mountaineer states that the substantial changes in its degree of reliance on Columbia have been caused by circumstances beyond its control and which constitute *force majeure* under the general terms and conditions of Columbia's tariff. Mountaineer states it has notified Columbia of its unwillingness to continue to pay demand charges premised on the level of CWV's prior pruchases from Columbia under totally different circumstances.

Mountaineer requests that the Commission issue a declaratory order confirming that Mountaineer's obligations to Columbia under its service agreements are of no further force and effect as a result of circumstances constituting *force majeure*.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 214 or 211 of the Commission rules of practice and procedures. All such petitions or protests should be filed on or before July 26, 1985. Protests will be the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16634 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[1] In June 1984 the Columbia Gas System sold Columbia Gas to West Virginia to Allegheny & Western Energy Corporation which renamed it Mountaineer Gas Company.

[Docket No. TA85-2-16-000, 001]

National Fuel Gas Supply Corp.; Proposed Tariff Changes

July 5, 1985.

Take notice that on June 28, 1985, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 4 to be effective August 1, 1985.

National states that the purpose of this revised tariff sheet is to reflect a net decrease of 21.96¢ per Dth. This change consists of a decrease in current purchase gas cost of 24.88¢ per Dth, offset by an increase in the purchase gas cost surcharge adjustment of 2.90¢ per Dth.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16635 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-167-000]

Sea Robin Pipeline Co.; Proposed Changes in FERC Gas Tariff

Take notice that Sea Robin Pipeline Company (Sea Robin), on June 28, 1985, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 2. The proposed changes are based on the twelve-month period ending February 28, 1985, as adjusted, for changes known and measurable through November 30, 1985 and would reduce overall revenues by approximately $1,200,000. Sea Robin requests an effective date of July 1, 1985.

Sea Robin states that the cost of service reflects $9,186,000 of one-time nonrecoupable payments to producer/suppliers in settlement of take-or-pay liabilities and that these payments are of the type covered by the statement of policy issued by the Commission on April 10, 1985 in Docket No. PL 85-1. Sea Robin has reflected the settlement amounts in the demand portion of the proposed sales rates to assure that the costs will be borne equally by Sea Robin's two sales customers.

The costs have been classified and allocated and rates have been designed in accordance with the fixed-variable rate design currently in effect on Sea Robin's system. The transportation volumes include volumes for all currently effective transportation under Part 284 and thus reflect representative volume levels for Part 284 transportation. Revenues attributable to transportation for Gulf Oil Corporation under Rate Schedule X-5 have been credited to the cost of service at the contract rate as in prior rate cases. Opinion 227-A issued May 21, 1985 ordered a change in that procedure, however that Opinion is subject to rehearing and appellate review.

Sea Robin proposes to utilize the current filing as compliance with requirements of § 154.38(d)(4)(vi).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or portests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

Proposed Tariff Sheets

Original Volume No. 1

Seventh Revised Sheet No. 3
Fortieth Revised Sheet No. 4
Twentieth Revised Sheet No. 4-A

Original Volume No. 2

Twenty-Third Revised Sheet No. 127-D
Twenty-Third Revised Sheet No. 135-C

[FR Doc. 85-16636 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-3-18-000 and TA85-3-18-001]

Texas Gas Transmission Corp.; Proposed Changes in FPC Gas Tariff

July 5, 1985.

Take notice that Texas Gas Transmission Corporation, on June 28, 1985 tendered for filing Fiftieth Revised Sheet No. 7 to its FPC Gas Tariff, Third Revised Volume No. 1. This sheet is being issued to reflect changes in the surcharge for deferred purchased gas costs pursuant to Texas Gas's Purchased Gas Adjustment Clause.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16637 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-17-000]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

July 5, 1985.

Take notice that on June 27, 1985, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Tariff Sheet and Proposed Effective Date

Cover Sheet—August 1, 1985
Title Page—August 1, 1985
Ninth Revised Sheet No. 1—August 1, 1985
Third Revised Sheet No. 1-A—August 1, 1985
Original Sheet No. 1-A.1—August 1, 1985
Original Sheet No. 1-A.2—August 1, 1985

Original Sheet No. 1–A.3—August 1, 1985
Original Sheet No. 1–B—August 1, 1985

The purpose of this filing is to update Transco's Volume No. 2 Tariff by revising the Cover Page, Title page (designating a new person to whom correspondence in regard to the tariff should be directed) and Table of Contents. The Statement of Applicability of Curtailment Rules has been updated and renumbered in order to accommodate the multi-page Table of Contents.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85–16638 Filed 7–11–85; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. QF85–540–000 et al.]

Downtown Athletic Club et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Downtown Athletic Club

[Docket No. QF85–540–000]

June 20, 1985.

On June 17, 1985, Downtown Athletic Club, (Applicant) of 19 West Street, New York, New York 10004 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the applicant's address in New York, New York. The facility will contain two Tecogen Model No. CM60 modules, each consisting of a natural gas-fired engine, an induction generator and a heat exchanger. The exhaust heat will be used to heat the water for the Athletic Club. The primary energy source will be natural gas. The net electrical power production capacity of the facility will be 120 kW. The installation of the facility is scheduled to begin on September 15, 1985.

2. Beowawe Geothermal Power Company

[Docket No. QF85–527–000]

July 5, 1985.

On June 10, 1985, Beowawe Geothermal Power Company (Applicant) of 2244 Walnut Grove Avenue, Rosemead, California 91770 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near Elko, Nevada. It will consist of geothermal well field facilities, power plant facilities, which include a dual-entry steam turbine and directly coupled generator, and electric interconnection facilities with the Sierra Pacific Power Company. The primary energy source will be the natural geothermal water, steam, or brine obtained from the site. The electric power production capacity will be about 15.1 megawatts.

3. First Energy Associates

[Docket No. QF85–536–000]

July 5, 1985.

On June 18, 1985, First Energy Associates (Applicant) of 71 Spit Brook Road, Nashua, New Hampshire 03060 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Concord, New Hampshire. The facility will consist of an LPG and/or natural gas fired gas turbine generator exhausting to a heat recovery steam generator supplying steam to a partial extraction steam turbine generator. The extracted steam will be used for heating and absorption chilling service. The primary energy source will be LPG, with natural gas as a supplemental fuel. The electric power production capacity will be 41.1 megawatts. Installation of the facility will begin about October 1985.

4. NRG/Recovery Group, Inc.

[Docket No. QF85–553–000]

July 5, 1985.

On June 17, 1985, NRG/Recovery Group, Inc., (Applicant) of 1616 Athens Street, Lakeland, Florida 33803 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the West Central section of Manatee County, Florida. The net electric power production capacity of the facility will be 18 megawatts. The primary energy source will be municipal solid wastes. The facility is designed to use natural gas for ignition, start-up and emergency use, but such natural gas useage will not exceed 25% of the annual energy source.

5. W&F Manufacturing, Inc.

[Docket No. QF85–530–000]

July 5, 1985.

On June 13, 1985, W&F Manufacturing, Inc. (Applicant) of 2299 Kenmore Avenue, Tonawanda, New York 14207 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Tonawanda, New York. The facility will consist of three natural gas fired engine generators with low pressure steam recovery. The steam will be used for wax manufacturing. The primary energy source will be natural gas. The electric power production capacity of the facility will be 1.42 megawatts. Installation of the facility will begin about December 1985.

6. American Alternate Energy, Ltd. (Pontiac Avenue)

[Docket No. QF85–546–000]

July 8, 1985.

On June 19, 1985, American Alternate Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Pontiac Avenue,

Providence County, Cranston, Rhode Island. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

7. American Alternate Energy, Ltd. (Sixth Avenue Extension)

[Docket No. QF85-554-000]

July 8, 1985.

On June 19, 1985, American Alternate Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Sixth Avenue, Extension, Blair County, East Altoona, Pennsylvania. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

8. American Alternate Energy, Ltd. (Jake Sears Road)

[Docket No. QF85-556-000]

July 8, 1985.

On June 20, 1985, American Alternate Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Jake Sears Road, City of Virginia Beach, Virginia Beach, Virginia. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

Standard Paragraph

E. Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions of protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriation action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16624 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51579; FRL 2863]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-five PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-1137, 85-1138, 85-1139 and 85-1140; September 25, 1985.

P 85-1141, 85-1142, 85-1143, 85-1144 and 85-1145; September 28, 1985.

P 85-1146, 85-1147, 85-1148, 85-1149, 85-1150, 85-1151, 85-1152, 85-1153, 85-1154, 85-1155, 85-1156, 85-1157, 85-1158, 85-1159, 85-1160, 85-1161, 85-1162 and 85-1163; September 29, 1985.

P 85-1164, 85-1165, 85-1166, 85-1167, 85-1168, 85-1169, 85-1170 and 85-1171; September 30, 1985.

Written comments by:

P 85-1137, 85-1138, 85-1139 and 85-1140; August 26, 1985.

P 85-1141, 85-1142, 85-1143 and 85-1144 and 85-1145; August 29, 1985.

P 85-1146, 85-1147, 85-1148, 85-1149, 85-1150, 85-1151, 85-1152, 85-1153, 85-1154, 85-1155, 85-1156, 85-1157, 85-1158, 85-1159, 85-1160, 85-1161, 85-1162 and 85-1163; August 30, 1985.

P 85-1164, 85-1165, 85-1166, 85-1167, 85-1168, 85-1169, 85-1170 and 85-1171; August 31, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51579]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202)-382-3725).

SUPPLEMENTARY INFORMATION: The follwing notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85 1137

Manufacturer. Confidential.

Chemical. (G) Hydroxyl-terminated polyurethane.

Use/Production. (S) Laminating adhesive as aqueous emulsion. Prod. Range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 1 worker.

Environmental Release/Disposal. 5 kg/batch released to land. Disposal by landfill.

P 85-1138

Importer. Confidential.

Chemical. (G) Medium-oil alkyd based on linseed oil.

Use/Import. (S) Industrial and commercial film forming resin component in air-drying automotive refinish coatings. Import range: 2,750-11,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import, processing and use: dermal, a total of 5 workers at one industrial site.

Environmental Release/Disposal. No release.

P 85-1139

Importer. Confidential.

Chemical. (G) Isocyanate-modified alkyd resin.

Use/Import. (S) Industrial, commercial and consummer film forming resin component in uralkyd wood coatings; and an industrial and commercial film forming resin component in high-build

industrial primers. Import range: 1,100–4,125 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import, processing and use: dermal, a total of 20 workers at four industrial sites.

Environmental Release/Disposal. No release.

P 85–1140

Importer. Confidential.

Chemical. (G) Alkyd resin additive.

Use/Import. (S) Commercial and consumer thixotropic agent for an alkyd resin for exterior alkyd coatings and industrial and commercial anti-rust primers. Import range: 765–1, 785 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import, processing and use: dermal, a total of 10 workers at one industrial site.

Environmental Release/Disposal. No release.

P 85–1141

Manufacturer. Confidential.

Chemical. (S) 4-(Acetylamino)-5-hydroxy-2,7-naphthalenedi-sulfonic acid, dipyridinium salt.

Use/Production. (G) Chemical intermediate. Prod. range: 2,000–2,500 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: dermal and inhalation, a total of 8 workers, up to 1.0 hr/da, up to 16 da/yr.

Environmental Release/Disposal. No release. Less than 3 to 11 kg/batch incinerated.

P 85–1142

Manufacturer. Confidential.

Chemical. (S) 4-amino-5-hydroxy-2,7-naphthalenedisulfonic acid, monopyridinium salt.

Use/Production. (G) Chemical intermediate. Prod. range: 2,000–2,500 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: dermal and inhalation, a total of 8 workers, up to 1.0 hr/da, up to 7 da/yr.

Environmental Release/Disposal. No release. Less than 2 kg/batch incinerated.

P 85–1143

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (S) Industrial, commercial and consumer wire insulation and transportation. Prod. range: 55,000–300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 60 workers, up to 8 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. Trace to 5 kg/batch released to land. Disposal by publicly owned treatment works (POTW), Resource Conservation Recovery Act (RCRA) approved incineration and disposal firm and navigable waterway.

P 85–1144

Importer. Confidential.

Chemical. (G) Thiotriazine.

Use/Import. (G) Rubber additive. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 85–1145

Importer. Confidential.

Chemical. (G) Alkoxylated alkyl amine.

Use/Import. (G) Complexing agent amine. Prod. range: Confidential.

Toxicity Data. Acute oral (rat): 3,000 mg/kg, Acute oral (mouse): 4.5 g/kg; Acute dermal: 10 g/kg; Irritation: Skin—Slight, Eye—Practically non-irritant; Ames Test: Not mutagenic; Skin sensitization: Not a cutaneous sensitizer.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1146

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Aliphatic aromatic co-polyester.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to land. Disposal by incineration and approved landfill.

P 85–1147

Manufacturer. Monsanto Company.

Chemical. (G) Polymer of modified polyolefin and modified elastomers.

Use/Production. (G) Reactive polymeric polymer additive, destructive use. Prod. range: Confidential.

Toxicity Data. LC_{50} 96 hr (Rainbow trout): > 1,000 mg/1; LC_{50} 48 hr (Daphnia magna): > 1,000 mg/1.

Exposure. Manufacture: dermal and inhalation, a total of 14 workers, up to 8 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. Release to water. Disposal by POTW and landfill.

P 85–1148

Manufacturer. Confidential.

Chemical. (G) Phenolic modified epoxy.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 4 workers, up to 1 hr/da, up to 50 da/yr.

Environmental Release/Disposal. 1 to 10 kg/batch released to land. Disposal by incineration and landfill.

P 85–1149

Manufacturer. Confidential.

Chemical. (G) Hydroxylated aromatic epoxy acrylate ester.

Use/Production. (S) Industrial coating, ink and binder component. Prod. range: 24,000–30,000 kg/yr.

Toxicity Data. Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and processing: dermal, a total of 20 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. 2 to 10 kg/batch released to control technology. Disposal by incineration.

P 85–1150

Manufacturer. Confidential.

Chemical. (G) Benzothiazolylidenealkenylbenzothiazolium salt.

Use/Production. Chemical intermediate. Prod. range: 0.4-1.2 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 4 workers, up to 0.1 hr/da, up to 3 da/yr.

Environmental Release. No release.

P 85–1151

Manufacturer. Confidential.

Chemical. (G) Benzothiazolylidenealkenylbenzothiazolium salt.

Use/Production. (G) Contained use in an article. Prod. range: 0.5-1.0 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 5 workers, up to 0.4 hr/da, up to 5 da/yr.

Environmental Release. Less than 0.012 to 0.035 kg/batch incinerated.

P 85–1152

Manufacturer. Shell Oil Company.

Chemical. (S) Benzene, methyl-, mono-C_{14-28}-alkyl derivatives.

Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1153

Manufacturer. Shell Oil Company.
Chemical. (S) Benzene, methyl-, mono-C_{14-18}-alkyl derivatives.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1154

Manufacturer. Shell Oil Company.
Chemical. (S) Benzene, methyl-, mono-C_{16-18}-alkyl derivatives.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1155

Manufacturer. Shell Oil Company.
Chemical. (S) Benzene, methyl-, mono-C_{18}-alkyl derivatives.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1156

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{14-20}-alkyl derivatives.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1157

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{14-18}-alkyl derivatives.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1158

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{16-18}-alkyl derivative.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1159

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{18} alkyl derivative.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1160

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{14-20}-alkyl derivatives, sodium salts.
Use/Production. (G) Semi-contained. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1161

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono- C_{14-18}- alkyl derivatives, sodium salts.
Use/Production. (G) Semi-contained. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1162

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{16-18}-alkyl derivatives, sodium salts.
Use/Production. (G) Semi-contained. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1163

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{18} alkyl derivatives, sodium salts.
Use/Production. (G) Semi-contained. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1164

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (S) Electric potting compound. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1165

Manufacturer. Confidential.
Chemical. (G) Fatty acrylate polymer.
Use/Production. (G) Oil additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1166

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Acrylic resin converted into paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1167

Manufacturer. The Dow Chemical Company.
Chemical. (G) Dichloropropene.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: derm[illegible] and inhalation.
Environmental Release/Disposal. No release. Disposal by incineration.

P 85–1168

Manufacturer. Celanese Specialty Resins.
Chemical. (G) Epoxy acrylate.
Use/Production. (G) Coating resin. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 18 workers, up to 8 hrs/da, up to 12 da/yr.
Environmental Release/Disposal. Less than 10 to 10 kg/batch released. Disposed of according to RCRA.

P 85–1169

Manufacturer. Celanese Specialty Resins.
Chemical. (G) Acid modified acrylated epoxide.
Use/Production. (G) Coating resin. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 18 workers, up to 8 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. Less than 16 kg/batch released. Disposed of according to RCRA.

P 85-1170

Manufacturer. Celanese Specialty Resins.

Chemical. (G) Acid modified acrylated epoxide.

Use/Production. (G) Coating resin. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 18 workers, up to 8 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 16 kg/batch released. Disposed of according to RCRA.

P 85-1171

Manufacturer. Celanese Specialty Resins.

Chemical. (G) Polymer modified acrylated epoxide.

Use/Production. (G) Coating resin. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 18 workers, up to 8 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. 16 kb/batch released. Disposed of according to RCRA.

Dated: July 8, 1985.

Linda K. Smith,

Acting Director, Information Management Division.

[FR Doc. 85-16476 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59200; FRL-2863-8]

Certain Chemicals Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: July 29, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59200]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. 3-201, 401 M Street, SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-57

Close of Review Period. August 14, 1985.

Manufacturer. Confidential.

Chemical. (G) Urethane compound.

Use/Production. (G) Destructive use in industry. Prod. range: 215 kg/6 mos.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 16 workers, up to 4 hrs/da, up to 1 da/yr.

Environmental Release/Disposal. Very small amounts to 1 kg/batch released to land. Disposal by incineration.

T 85-58

Close of Review Period. August 15, 1985.

Manufacturer. Confidential.

Chemical. (G) Complex epoxy resin adduct.

Use/Production. (G) Performance additive for an industrial coating. Prod. range: 1,030 kg/6 mos.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 23 workers, up to 4 hrs/da, up to 13 da/yr.

Environmental Release/Disposal. 0.3 to 3 kg/batch released to land. Disposal by incineration and landfill.

T 85-59

Close of Review Period. August 15, 1985.

Manufacturer. Confidential.

Chemical. Urethane compound.

Use/Production. (G) Destructive use. Prod. range: 420 kg/6 mos.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 22 workers, up to 4 hrs/da, up to 2 da/yr.

Environmental Release/Disposal. Very small amounts to 1 kg/batch released to land. Disposal by incineration and landfill.

Dated: July 8, 1985.

Linda K. Smith,

Acting Director, Information Management Division.

[FR Doc. 85-16475 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59722; FRL-2863-8]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seven such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 85-100; July 18, 1985.

Y 85-101, 85-102, 85-103 and 85-104; July 22, 1985.

Y 85-105 and 85-106; July 23, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-

confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-100

Import. Confidential.
Chemical. (G) Polymer of an aromatic diisocyanate, alkane polyols, alkanolamine, alkanedioic acid, alkane alcohol.
Use/Import. (G) Coating for textile fabrics. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Use: inhalation.
Environmental Release/Disposal. Disposal by incineration.

Y 85-101

Manufacturer. The Upjohn Company.
Chemical. (S) Acid terminated prepolymer polyester.
Use/Production. (S) Industrial intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Trace released to air and 351 kg to water. Disposal by publicly owned treatment works (POTW).

Y 85-102

Import. Mitsubishi International Corporation.
Chemical. (S) Ethylene-propylene-styrene copolymer.
Use/Import. (S) Commercial and consumer food and medical packaging, master batch resin of blowing agent and colorant for polystryrene, etc., and adhesive for coextruded multi-laminar sheet (polypropylene/polystyrene. Import range: 9,200-90,900 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-103

Import. Mitsubishi International Corporation.
Chemical. (S) Ethylene-styrene copolymer.
User Import. (S) Commercial and consumer food and medical packaging and master batch resin of blowing agent and colorant for polystyrene, etc. Import range: 16,800-60,800 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-104

Import. Mitsubishi International Corporation.
Chemical. (S) Propylene-styrene copolymer.
Use/Import. (S) Commercial and consumer food and medical packaging, master batch resin of blowing agent and colorant for polyestyrene, etc., and an adhesive for coextruded multilaminar sheet (polypropylene/polystyrene). Import range: 3,000-30,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-105

Manufacturer. Confidential.
Chemical. (G) Polyether polyurethane polymer.
Use/Production. (G) Paint additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-106

Manufacturer. Confidential.
Chemical. (G) Polyether polyurethane polymer.
Use/Production. (G) Paint additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: July 8, 1985.

Linda K. Smith,

Acting Director, Information Management Division.

[FR Doc. 85-16474 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2851-3]

Environmental Impact Statements; Availability

Correction

In FR Doc. 85-14410 appearing on page 24943 in the issue of Friday, June 14, 1985, make the following corrections: In the second column, fourth complete paragraph, EIS No.850242, fourth and fifth lines, the telephone number should read "(702) 784-5331".

BILLING CODE 1505-01-M

[ER-FRL-2854-1]

Onion Creek Wastewater Treatment Facility, Revision of Special Conditions; Intent To Prepare an Environmental Impact Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) on the revision of special conditions associated with the City of Austin's Onion Creek Wastewater Treatment Facility Construction Grant.

SUMMARY: Purpose: In accordance with section 511(c) of the Clean Water Act (CWA) and section 102(2)(c) of the National Environmental Policy (NEPA) EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1507.7.

For further information and to be placed on the project mailing list contact: Mr. Clinton B. Spotts, Regional EIS Coordinator, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270, Telephone: (Commercial) 214-767-2716 or (FTS) 729-2716.

Description of Proposed Action

Need for Action: On June 15, 1984, EPA, through the Texas Department of Water Resources (TDWR), awarded a grant of $9,482,169 to the City of Austin for construction of the Onion Creek Wastewater Treatment Plant (WTP) located in Travis County, Texas. The environmental review process resulted in a condition (condition No. 16) being placed on that grant which stated: "Future sewer tie-ons to the proposed project downstream of the Williamson Creek Wastewater Treatment Plant will be limited to those serving development in existence on November 28, 1980." The City of Austin has now proposed this condition be removed from the grant because the City of Austin has changed its policies on growth in the area between the existing Williamson Creek WTP and the proposed Onion Creek WTP. The City of Austin now desires to meet the service needs of the present and projected population growth in the area with the Onion Creek WTP and a redesigned interceptor.

Alternatives

- EPA eliminates condition No. 16 and includes no additional conditions.
- EPA eliminates condition No. 16 but includes additional conditions.
- EPA does not change the present grant conditions.

Scoping

The Environmental Protection Agency (EPA), Region 6, will hold a public scoping meeting on Wednesday, August 14, 1985 at 7:00 p.m. at the City of Austin Electric Department Auditorium, 301 West Avenue, Austin, Texas. Details of the history of the project and proposed changes will be presented. The public is invited to attend and identify issues that should be addressed in the EIS.

Responsible Official: Dick Whittington, P.E. Regional Administrator.

Dated: July 9, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-16650 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-01-M

[ER-FRL-2863-7]

Environmental Impact Statements; Notice of Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements filed July 1, 1985 Through July 5, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850260, Final, FHW, MT, Reserve Street Reconstruction, US 93 to South Third Street, Right-of-Way Acquisition and Improvement, Missoula County, Due: August 12, 1985, Contact: William Dunbar (406) 449-5310.

EIS No. 850261, DSuppl, FHW, NH, NH-101 Improvements, Chesham Road to Bonds Corner, Right-of-Way Acquisition and Construction, Modified Reconstruction Alternative, Cheshire County, Due: August 26, 1985, Contact: William O'Donnell (603) 224-3385.

EIS No. 850282, Final, SCS, IL, Lower Des Plaines Tributaries Watershed Multipurpose Plan, Improvements, Cook, Dupage and Lake Counties, Due: August 12, 1985, Contact: John Eckes (217) 398-5267.

EIS No. 850283, DRevised, AFS, NM AZ, Coronado National Forest, Land and Resource Management Plan, Due: October 11, 1985, Contact: R. B. Tippeconnic (602) 629-6805.

EIS No. 850284, Final, COE, MS, Pascagoula Harbor and Bayou Casotte Navigation Channels Improvements, Deepening, Jackson County, Due: August 12, 1985, Contact: Susan Ivester Rees (205) 690-2724.

EIS No. 850285, Draft, FHW, OR, 185th Avenue Improvements, Rock Creek Boulevard to Tualatin Valley Highway, Washington County, Due: August 29, 1985, Contact: Dale Wilken (503) 399-5749.

Amended Notices

EIS No. 850146, Draft, AFS, ID, WA, MI, Idaho Panhandle National Forest, Land and Resource Management Plan, Due: September 1, 1985, Published FR 4-19-85—Review period extended.

EIS No. 850273, Draft, 104H, MA Tent City Development, Parcells 11A and 11B, South End Urban Renewal Area, UDAG, Suffolk County, Published FR 7-5-85—OFFICIALLY WITHDRAWN.

EIS No. 850188, Draft, AFS, ID, Clearwater National Forest, Land and Resource Management Plan, Due: September 15, 1985, Published FR 5-20-85—Review period extended.

EIS No. 850267, FSuppl, COE, NC, Manteo (Shallowbag) Bay Project, Dredging, Design, Oregon Inlet, Dare County, Due: August 12, 1985, Published FR 7-05-85—Review period extended.

Dated: July 9, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-16651 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2863-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 24, 1985 through June 28, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5975/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-BLM-G61031-NM, Rating L0, New Mexico Statewide Wilderness Study Areas, Wilderness Designation, NM. **SUMMARY:** EPA has not identified any potential environmental impacts requiring substantive changes to the proposal.

ERP No. D-BLM-G70001-NM, Rating L0, Rio Puerco Resource Area, Land and Resource Mgmt. Plan, NM. **SUMMARY:** EPA has not identified any potential environmental impacts requiring substantive changes to the proposal.

ERP No. D-BLM-K61079-00, Rating EC2, Eagle Lake—Cedarville Resource Area, Wilderness Study Area, Designation, CA, NV. **SUMMARY:** Due to the insufficient information present, EPA is concerned that potential adverse impacts to water quality could result from any site-specific actions.

ERP No. D-BLM-L70002-OR, Rating EC2, Two Rivers Planning Area, Resource Mgmt. Plan, John Day and Deschutes Rivers, OR. **SUMMARY:** EPA requested that the FEIS present additional data and discussion of ecological conditions so that the potential impacts could be better assessed and mitigation provided. In particular, more information is needed on existing water quality in the planning area, discussion of measures to protect riparian areas, and threatened and endangered plant species to activities such as livestock grazing and prescribed burning.

ERP No. D-COE-L36099-ID, Rating EO2, Salmon River Flood Damage Reduction Study, Construction, ID. **SUMMARY:** EPA identified two of the action alternatives (permanently evacuate the floodplain or enhance the existing levee system) as environmentally acceptable. One alternative (channelization of a portion of the Salmon River) would be environmentally unacceptable. It would take place in a designated Wild and Scenic portion of the Salmon River and would dewater a wetland on the EPA Priority Wetland list. EPA also noted that the existing background studies and information are inadequate for the channelization alternative, and that selection of that alternative as it is presented in the DEIS would necessitate referral to CEQ.

ERP No. D-FAA-K51031-CA, Rating EU3, Fremont General Aviation Reliever Airport Development Approval, CA. **SUMMARY:** EPA determined that the proposed project is environmentally unsatisfactory and the EIS is inadequate due to: (1) Project compliance with CWA Sect. 404(b)(1) guidelines; (2) lack of information to evaluate CWA Sect. 404 jurisdiction and compliance; (3) significant adverse project inpacts to on-site wetlands and a national wildlife refuge; (4) incompatibility of siting an airport adjacent to a wildlife refuge and two sanitary landfills; (5) lack of information on industrial development; and (6) need for more information on cumulative impacts.

Final EISs

ERP No. F-AFS-J61042-CO, Oh-Be-Joyful Wilderness Study Area, Grand Mesa, Uncompahgre, and Gunnison NF's, CO. **SUMMARY:** EPA made no formal comments. The FEIS adequately responded to EPA's earlier concerns.

ERP No. F-BLM-J65114-WY, Buffalo Resource Area, Resource Mgmt. Plan, WY. **SUMMARY:** The FEIS partially responded to EPA's concerns for protection of water quality in the Buffalo Resource Area. EPA continues to recommend that an alternative be selected which places greater emphasis on the improvement and protection of

water quality, range improvement and other environmental values.

ERP No. F-COE-E30006-FL, Amelia Island Beach Erosion Control, FL. SUMMARY: EPA's review concluded that the environmental impacts of this action are within acceptable limits.

ERP No. F-COE-H36079-KS, Arkansas City, Flood Control Plan, Arkansas and Walnut Rivers, KS. SUMMARY: EPA expressed concern about the potential downstream water quality impacts and requested that the results of the sediment sampling program be made available prior to the initiation of channel modifications to the Walnut River.

ERP No. F-FHW-K40116-HI, Huleia Bridge Replacement and Approaches, Kaumualii Highway (FAP 50) Construction, HI. SUMMARY: The FEIS adequately addressed the concerns EDP had raised on the DEIS.

ERP No. F-SCS-E36153-MS, Tallahaga Creek Watershed Flood Protection Plan, MS. SUMMARY: EPA concluded that no significant, long-term, adverse impacts should occur from implementation of this project as proposed.

ERP No. F-USN-K10008-NV, Fallon Naval Air Station Supersonic Operations Area, Designation and Strike Warfare Center, Establishment, NV. SUMMARY: EPA had several remaining concerns with the proposal, including availability of safe drinking water for existing and new base personnel and the adequacy of noise mitigation measures.

ERP No. F-USN-K11028-AZ, Joint Guayule Rubber Program, Agricultural Operations, Gila R. Indian Reservation, AZ. SUMMARY: EPA expressed remaining concerns about proper registration of pesticides proposed for use under FIFRA and the RCRA permits needed for the project's processing phase.

Dated: July 7, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-16552 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection for OMB Review

The following information collection requirements have been approved by the Office of Management and Budget. For further information contact Doris Peacock, FCC, (202) 632-7513.

OMB No.: 3060-0012

Title: Application for Extension of Construction Permit or to Replace Expired Construction Permit

Form No.: FCC 701

A revised application form FCC 701 has been approved for use through 3/31/88. The current edition of the form is dated April 1985. All previous editions are obsolete.

OMB No.: 3060-0027

Title: Applicaton for Construction Permit for Commercial Broadcast Station

Form No.: FCC 301

A revised application form FCC 301 has been approved for use through 5/31/88. The April 1985 edition with an expiration date of 12/31/87 will remain in use until revised forms are available.

OMB No.: 3060-0049

Title: Restricted Radiotelephone Operator Permit Application and Temporary Permit

Form No.: FCC 753

A revised application form FCC 753 has been approved for use through 5/31/88. The December 1982 edition with an expiration date of 11/30/85 will remain in use until revised forms are available.

OMB No.: 3060-0061

Title: Annual Report of Cable Television Systems

Form No.: FCC 325

The approval on report form FCC 325 has been extended through 4/30/88. The updated forms will be provided for the next report.

OMB No.: 3060-0062

Title: Application for Authority to Constuct or Make Changes in an Instructional Television Fixed and/or Response Station(s) and Low Power Relay Station(s)

Form No.: FCC 330-P

A revised application form FCC 330-P has been approved for use through 4/30/88. The October 1982 edition with the previous expiration date of 4/30/85 will remain in use until revised forms are available.

OMB No.: 3060-0064

Title: Application for Station Authorization in the Private Operational Fixed Microwave Radio Service

Form No.: FCC 402

A revised application form FCC 402 has been approved for use through 4/30/88. The June 1982 edition with an expiration date of 9/30/85 will remain in use until revised forms are available.

OMB No.: 3060-0066

Title: Application for Renewal of Instuctional Television Fixed and/or Response Station(s) and Low Power Relay Station(s)

Form No.: FCC 330-R

A revised application form FCC 330-R has been approved for use through 4/30/88. The January 1983 edition with the previous expiration date of 4/30/85 will remain in use until revised forms are available.

OMB No.: 3060-0079

Title: Application to Renew or Modify an Amateur Club, RACES or Military Recreation Station License

Form No.: FCC 610-B/BL.

A revised application for FCC 610-B/BL has been approved for use through 4/30/88. The November 1981 edition with an extended approval through 9/30/86 will remain in use until revised forms are available.

OMB No.: 3060-0107

Title: Application for Renewal of Radio Station License and/or Notification of Change to License Information

Form No.: FCC 405-A

A revised application form FCC 405-A has been approved for use through 4/30/88. The July 1982 edition with an extended approval through 12/31/87 will remain in use until revised forms are available.

OMB No.: 3060-0134

Title: Application for Renewal of Radio Station License

Form No.: FCC 574-R

The approval on applciation form FCC 574-R has been extended through 4/30/88. The November 1983 edition with an expiration date of 4/30/86 will remain in use until supplies are exhausted and the updated forms are available.

William J. Tricarico,

Secretary, Federal Communications Commission.

July 3, 1985.

[FR Doc. 85-16562 Filed 7-11-85; 8:45 am]

BILLING CODE 6712-01-M

National Industry Advisory Committee, Common Carrier Communications Subcommittee; Meeting

Pursuant to the provisions of Pub. L. 92-463, announcement is made of a public meeting of the Common Carrier Communications Subcommittee of the National Industry Advisory Committee (NIAC) to be held Tuesday, July 30, 1985. The Subcommittee will meet at 9:30 a.m. at AT&T Communications, 1120—20th Street, NW., Washington, D.C. 20036, North Tower.

Purpose: To obtain advice concerning proposed National Security Emergency Preparedness (NSEP) Telecommunications Procedures.

Agenda

1. Opening remarks—Subcommittee Chairman John Boning and FCC Officials.
2. Review of proposed manual, "National Security Emergency Preparedness Telecommunications Procedures"—J. Randolph MacPherson, National Communications System.
3. Discussion.
4. Recommendations—Members.
5. Other business.
6. Adjournment.

Any member of the public may attend or file a written statement with the Subcommittee either before or after the meeting. Any member of the public wishing to make an oral statement must consult with the Subcommittee prior to the meeting. Those desiring more specific information about the meeting may telephone the NIAC Executive Secretary in the FCC Emergency Communications Division at (202) 634-1549.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-16569 Filed 7-11-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-REP-7-KS-1]

Kansas Radiological Emergency Response Plans/Wolf Creek Generating Station

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of Receipt of Plans.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and state and local governments' radiological emergency response plans. Since FEMA has a responsibility for reviewing the state and local government plans, the State of Kansas has submitted its radiological emergency plans to the FEMA Regional Office. These plans support nuclear power plants which impact on Kansas, and include those local governments near the Wolf Creek Generating Station located in Coffey County, Kansas.

DATE: Plans Received: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick J. Breheny, Regional Director, FEMA Region VII, 911 Walnut Street, Kansas City, Missouri 64106, (816) 374-5192.

In support of the Federal requirement for emergency response plans, FEMA has a Rule describing its procedures for review and approval of state and local governments' radiological emergency response plans. Pursuant to this FEMA Rule (44 CFR 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness," the "State of Kansas, Annex A, Nuclear Facilities Incidents Response Plan to Assistance R, Nuclear Emergencies of the State Disaster Emergency plan" was received by the Federal Emergency Management Agency, Region VII Office. Included in this submission is the "Coffey County Contingency Plan for Incidents Involving Commercial Nuclear Power." The emergency planning zone for the Wolf Creek Generating Station is located entirely within Coffey County.

Copies of these plans are available for review at the FEMA Region VII Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in 44 CFR 5.46. There are 714 pages in the documents; reproduction fees are $.10 per page, payable with the request for copy.

Comments on these plans may be submitted in writing to Mr. Patrick J. Breheny, Regional Director, at the above address within thirty days of this Federal Register notice.

Patrick J. Breheny,

Regional Director, FEMA, Region VII.

[FR Doc. 85-16559 Filed 7-11-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007590-043.

Title: United States-Colombia Conference.

Parties:

Coordinated Caribbean Transport, Inc.

Flota Mercante Grancolombia, S.A.

Lykes Bros. Steamship Co., Inc.

United States Lines (S.A.)

Synopsis: The proposed amendment would reduce the required security deposit from $50,000 to $25,000 and would increase from three days to five days the time for members to respond to telephone polls with respect to northbound cargo. The parties have requested a shortened review period.

Agreement No.: 202-007680-057.

Title: American-West African Freight Conference.

Parties:

America-Africa Line, Ltd.

Barber West Africa Line

Companhia Nacional de Navegacao

Farrell Lines, Inc.

Maersk Line

Societe Ivoirienne de Transport Maritime

Torm West Africa Line

Westwind Africa Line, Ltd.

Associate Party: Cameroon Shipping Lines.

Synopsis: The proposed amendment would restate the agreement to conform with the Commission's regulations concerning form and format.

Agreement No.: 202-010380-008.

Title: United States Atlantic and Gulf/Ecuador Freight Association.

Parties:

Coordinated Caribbean Transport, Inc.

Ecuadorian Line, Inc.

Lykes Bros. Steamship Co., Inc.

Transportes Navieros Equatorianos

United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would increase from two days to three days the time for members to respond to telephone polls and would count a member's failure to vote as a vote for the majority rather than an affirmative vote. Additionally, it would substitute United States Lines (S.A.) for United States Lines, Inc. as a party to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: July 9, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-16541 Filed 7-11-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Associated Bank Shares Corporation et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 2, 1985.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Associated Bank Shares Corporation,* Colorado Springs, Colorado; to become a bank holding company by acquiring 97.60 percent of the voting shares of First Bank, Colorado Springs, Colorado.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Crosby Bancshares, Inc.,* Crosby, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Crosby State Bank, Crosby, Texas.

2. *First American Bancshares, Inc.,* Baytown, Texas; to acquire 100 percent of the voting shares of First American Bank and Trust of Friendswood, Friendswood, Texas, a *de novo* bank.

3. *Pilot Point Bancorp, Inc.,* Pilot Point, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Pilot Point Bancshares, Inc., Pilot Point, Texas, thereby indirectly acquiring The Pilot Point National Bank, Pilot Point, Texas.

4. *USA Bancshares, Inc.,* Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Anna Bancshares, Inc., Anna, Texas and Howe Financial Corporation, Howe, Texas, thereby indirectly acquiring The First National Bank of Anna, Anna, Texas, Howe State Bank, Howe, Texas, and Plano East National Bank, Plano, Texas.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Republic National Bancorp, Inc.,* Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Republic National Bank, Phoenix, Arizona (in organization).

Board of Governors of the Federal Reserve System, July 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16570 Filed 7-11-85; 8:45 am]

BILLING CODE 6210-01-M

Chase County Bankshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 1, 1985.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Chase County Bankshares, Inc.,* Strong City, Kansas; to engage directly in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to section 4(C)(8)(C)(i) of the Act. These activities would be conducted in Chase County, Kansas.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCorp,* Dallas, Texas; and *MCorp Financial, Inc.,* Wilmington, Delaware; to acquire General Electric Services Company, Rockville, Maryland, thereby engaging in the provision of data processing and data transmission services consisting of wire transfer and cash management services; transmitting of other economic and financial information; and certain consulting and software maintenance services.

2. *MCorp,* Dallas, Texas and *MCorp Financial, Inc.,* Wilmington, Delaware; to acquire First Chicago Data Corporation, Chicago, Illinois, thereby engaging in the provision of data processing and data transmission services to financial institutions.

Board of Governors of the Federal Reserve System, July 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16571 Filed 7-11-85; 8:45 am]

BILLING CODE 6210-01-M

First NH Banks, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval

under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 31, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First NH Banks, Inc.*, Manchester, New Hampshire; to engage *de novo* through its subsidiary, First NH Resources, Inc., Manchester, New Hampshire, in the leasing of personal property and acting as an agent, broker and advisor in leasing such property.

Board of Governors of the Federal Reserve System, July 8, 1985.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 85-16572 Filed 7-11-85; 8:45 am]

BILLING CODE 6210-01-M

North Community Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

Correction

In FR Doc. 85-15798 beginning on page 27359 in the issue of Tuesday, July 2, 1985, make the following correction:

On page 27360, first column, first complete paragraph, fifth line, "January 22, 1985" should read "July 22, 1985".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notificaton rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 85-0587—Sterling Software Inc.'s proposed acquisition of voting securities of Informatics General Corp.	June 17, 1985.
(2) 85-0681—Matthew G. Norton's proposed acquisition of voting securities of McDonald Industries, Inc.	Do.
(3) 85-0691—Transco Energy Company's proposed acquisition of voting securities of 15 subsidiaries (Kaneb Services, Inc., UPE).	June 18, 1985.
(4) 85-0696—The Brokin Hill Proprietary Company Limited's proposed acquisition of voting securities of General Electric Minerals Inc. (General Electric Company, UPE).	Do.
(5) 85-0647—Harcourt Brace Jovanovich, Inc.'s proposed acquisition of voting securities of Federal Home Life Insurance Company, and PHF Life Insurance Company (City Investing Company, UPE).	June 20, 1985.
(6) 85-0709—Allegheny Power System, Inc.'s proposed acquisition of assets of Virginia Electric and Power Company, (Dominion Resources, Inc., UPE).	Do.
(7) 85-0719—Belmco Corporation's proposed acquisition of assets of The Franklin Company and voting securities of Diemen-Misco held by Diamond F.	Do.
(8) 85-0652—Meriden Bancorp, Inc.'s proposed acquisition of voting securities of American Title Insurance Company (The Continental Corporation, UPE).	June 21, 1985
(9) 85-0705—General Host Corporation's proposed acquisition of voting securities of Scott's Seaboard Corporation.	Do.
(10) 85-0706—General Host Corporation's proposed acquisition of voting securities of Scott's Seaboard Corporation.	Do.
(11) 85-0728—Royal Dutch Petroleum Company's proposed acquisition of voting securities of Colombia-Cities Service Petroleum Corporation (Occidental Petroleum Corporation, UPE).	Do.
(12) 85-0730—Conquest Exploration Company's proposed acquisition of assets of Royal Dutch Petroleum Company.	Do.
(13) 85-0720—Leon Hess' proposed acquisition of voting securities of Amerada Hess Corporation.	June 24, 1985
(14) 85-0733—The Northwestern Mutual Life Insurance Company's proposed acquisition of assets of Royal Dutch Petroleum Company.	Do.
(15) 85-0670—Temple-Inland, Inc.'s proposed acquisition of voting securities of National Fidelity Life Insurance Company (General Electric Company, UPE).	June 25, 1985.
(16) 85-0697—Revco D. S., Inc.—proposed acquisition of Carls Drug Co., Inc. (I C Industries, Inc., UPE).	Do.
(17) 85-0708—Chrysler Corporation's proposed acquisition of voting securities of Mitsubishi Motors Corporation (Mitsubishi Heavy Industries, Ltd., UPE).	Do.
(18) 85-0712—Xerox Corporation's proposed acquisition of voting securities of Assurance Life Company (Business Men's Assurance Company of America, UPE).	Do.
(19) 85-0713—Consolidated Oil & Gas Inc.'s proposed acquisition of assets of Petro Lewis Corporation.	Do.
(20) 85-0722—The Union Corporation's proposed acquisition of voting securities of Transworld Systems, Inc. (Floyd Watkins, UPE).	Do.
(21) 85-0737—Oy W. Rosenlew Ab. (W. Rosenlew, Ltd.) proposed acquisition of voting securities of Poly-Pac Incorporated (Harold M. Shapiro, UPE).	Do.
(22) 85-0648—Heritage Communications, Inc.'s proposed acquisition of assets of Dakota Broadcasting Co. and Dakotaland Broadcasting Co. (Sherwood L. Corner, UPE).	June 25, 1985.
(23) 85-0662—Heritage Communications, Inc.'s proposed acquisition of assets of Dakota Broadcasting Co. and Dakotaland Broadcasting Co. (Gilbert D. Moyle, UPE).	Do.
(24) 85-0682—Cargill, Inc.'s proposed acquisition of Wrightco, Inc. (James Ridgeway, UPE).	Do.
(25) 85-0683—American Family Corporation's proposed acquisition of voting securities of WITN-TV, Inc.	Do.
(26) 85-0695—British Petroleum Company, p.l.c.'s proposed acquisition of assets of the Polystelin and Vinyl Material Division (Reichhold Chemicals, Inc., UPE).	June 27, 1985.
(27) 85-0715—Washington National Corporation's proposed acquisition of voting securities of United Presidential Corp.	Do.

Transaction	Waiting period terminated effective
(29) 85-0727—Zenith National Insurance Corporation's proposed acquisition of assets of Cal-Farm Insurance Company and voting securities of Cal-Farm Life Insurance Company (California Farm Bureau Federation, UPE).	Do.
(29) 85-0735—Delgety PLC's proposed acquisition of voting securities of Gill & Duffus Group PLC.	Do.
(30) 85-0736—Flying J. Corporation (Osborne Jay Call's proposed acquisition of voting securities of RMT Properties, Inc. and Husky Pipeline Company (Nova and Alberta Corporation, UPE).	Do.
(31) 85-0760—First Federal Saving and Loan Association of Austin, of assets of certain branches of University Savings Association (Entex, Inc., UPE).	Do.
(32) 85-0701—Transco Energy Company's proposed acquisition of assets of Paramont Coal Company.	June 25, 1985.
(33) 85-0703—Commonwealth Savings Association's proposed acquisition of voting securities of General Electric Mortgage Company (General Electric Company, UPE).	June 26, 1985.
(34) 85-0724—Elsevier—NDV N.V.'s proposed acquisition of voting securities of Gordon Publications, Inc. (Theodore E. Gordon, UPE).	Do.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-16587 Filed 7-11-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 5, 1985.

Social Security Administration

Subject: Beneficiary Information Report—SSA-0585—Extension (0960-0111)
Respondents: State mental institutions which serve as representative payees
Subject: Application for Lump-Sum Death Payment—SSA-8—Revision (0960-0013)
Respondents: Individuals
Subject: Health Insurance Information Request—SSA-8019-U2—Revision (0960-0323)
Respondents: Individuals
OMB Desk Officer: Judy A. McIntosh

Public Health Service

Food and Drug Administration

Subject: Administrative Detention Recordkeeping Requirements—Revision (0910-0114)
Respondents: Businesses
Subject: Hearing Aid Devices, Professional and Patient Labeling and Conditions for Sale—Revision (0910-0171)
Respondents: Businesses or other for-profit institutions, small businesses or organizations
OMB Desk Officer: Bruce Artim

Health Resources and Services Administration

Subject: Application for Assignment of Health Manpower by the National Health Service Corps—Reinstatement (0915-0010)
Respondents: State/local governments, non-proift institutions

Alcohol, Drug Abuse and Mental Health Administration

Subject: Annual Census of Patient Characteristics in State and County Mental Hospital Inpatient Services—1985—Reinstatement (0930-0093)
Respondents: State/local governments
Subject: Costs Outcome Research Methodology for the Chronically Mentally Ill—New
Respondents: State/local governments

Centers for Disease Control

Subject: Dioxin Morbidity and Reproductive Study of U.S. Chemical Workers—New
Respondents: Individuals or households
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: Claims Processing Assessment System Plan—HCFA-495—New
Respondents: State/local governments
Subject: Report on Provider Participation in the Medicaid Program—HCFA-350—Reinstatement (0938-0262)
Respondents: State/local governments
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-0511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: (name of OMB Desk Officer).

Dated: July 8, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-16500 Filed 7-11-85; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Project Grants for Preventive Health Services; Sexually Transmitted Diseases Professional Education; Availability of Funds for Fiscal Year 1986

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1986 for a Project Grant for Sexually Transmitted Diseases (STD) Professional Education to be funded under the Sexually Transmitted Diseases Research, Demonstrations, and Public and Professional Education Grant Program. The Catalog of Federal Domestic Assistance Number is 13.978. This program is authorized by section 318(b) of the Public Health Service Act, as amended (42 U.S.C. 247c(b)). Regulations governing Grants for Sexually Transmitted Diseases Research, Demonstration, and Public and Professional Education (formerly Venereal Disease Research, Demonstrations, and Public Information and Education) are codified in Part 51b at Subparts A and F of Title 42, Code of Federal Regulations.

Purpose

The objectives of the program of grants under section 318(b) of the Public Health Service Act are to develop, improve, and evaluate methods for the prevention and control of STD through demonstrations and applied research; to develop, improve, apply, and evaluate methods and strategies for public information and education about STD; and to support particularly deserving STD public and professional education programs. The professional education objective is the purpose of this announcement. It is designed to meet the 1990 Objective for the Nation which states that 95 percent of health providers seeing suspected cases of STD will be capable of diagnosing and treating all diseases and syndromes that fall within that definition. This will be accomplished primarily by training health department STD clinicians, but

also by updating the STD knowledge of private sector practitioners, by educating physicians-in-training to whatever extent their curricula permit, and by demonstrating quality standards for the care of patients with STD. The achievement of the 1990 objective to improve clinical capability and the other objectives to reduce STD cases and complications are mutually dependent and are national in scope. Therefore, it is necessary to assure that this training initiative is coordinated effectively with the basic control components of the local STD program. It must also be coordinated with CDC to assure that the total training environment represents a national model, that training is consistent with guidelines and is uniform nationwide, and that course offerings can be broadly publicized by CDC. The objective of this specific grant offering is to establish a comprehensive STD Prevention/Training (P/T) Center to serve the clinical training needs primarily of STD clinicians from the East Central part of the United States.

Eligible Applicants

Eligible applicants are the official State or local health agencies in Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. Awards will be limited to applicants who meet the following minimum requirements:

1. Plan to locate the P/T Center in a health department clinic that:

a. Is dedicated to the diagnosis and treatment of STD patients,

b. Serves an average of at least 300 patients per 40 weekly service hours, and

c. Serves patients of sufficient demographic variety and morbidity to support and stimulate the learning process.

2. Have at least one university school of medicine in the vicinity and provide evidence of support, experience, and a firm interest in participating from such a local institution.

3. Provide assurance that a full schedule of training activities will continue without interruption if the award is made to an existing P/T Center, or if a new P/T Center is created as a result of this announcement, training will begin within 180 days of the date of grant award.

4. Provide evidence of their capability of adhering to the CDC document entitled "Quality Assurance Guidelines for STD Clinics, 1982" (Clinic QAG) in providing diagnostic and treatment services, and to applicable portions of the CDC document entitled "STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training" (P/T Center Guidelines) in the training of health personnel prior to beginning any training activities.

Availability of funds

Approxmately $220,000 will be available for Fiscal Year 1986 to fund one new grant award. It is expected that the initial grant will begin on or about November 1, 1985, and will be funded for 12 months in a 2- to 5-yea project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives, compliance with the P/T Center Guidelines and the Clinic QAG, or future updates thereof, and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

Use of Funds

Funds will not be awarded for the purchase or lease of land or buildings or for the construction of a facility. Except where another agency normally houses the public STD clinic, the P/T Center should be located in the health department facility. funds will not be awarded to renovate existing space, without adequate justification, including appropriate detailed diagrams, reliable estimates of cost, and a realistic projection of the time required for completion.

Reporting Requirements

Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Guidelines for Application Narrative

Applications must include a narrative which, in addition to the minimum requirements for an eligible application as stated above, details the following: (1) Evidence that the State/local health department is willing to work toward meeting STD 1990 Objectives for the Nation; (2) evidence that the training component of this project will function in concert with the operating STD clinic and STD intervention outreach components of the local control program; (3) long- and short-term objectives of the proposed training which address the applicant's expected role over the project period in meeting the 1990 Objectives for the Nation and which establish the applicant's anticipated training accomplishments for the initial budget period; (4) the activities and methods which will be employed to accomplish the objectives, (including relationships, responsibilities, and procedures that ensure the P/T Center functions according to the Clinic QAG and the P/T Center Guidelines); (5) a description of the existing medical school-health department liaison activities needed to develop and implement clinical training; (6) an evaluation plan which will help determine if the methods are effective and the objectives are being achieved; (7) a budget with justification; and (8) any other information which will support the request for assistance.

Review and Evaluation Criteria

Grant applications will be reviewed and evaluated based on the evidence submitted which specifically describes (with documentation and attachments) the applicant's ability to meet the following criteria:

1. The applicant conveys a satisfactory commitment from the State/local health department administration toward meeting STD 1990 Objectives for the Nation, and specifically, that objective related to the preparation of STD clinicians to adequately diagnose and treat STD, and to conduct such noninvasive STD research that may be feasible and which will not conflict with other program priorities.

2. The applicant satisfactorily describes how the P/T Center corresponds to the needs, plans, and objectives of the State/local STD Program; how the P/T Center activities will be effectively coordinated with the basic control components of the local STD program; and how both will be coordinated with CDC to assure that the total training environment represents a national model.

3. The applicant's expected role over the projec period in meeting STD 1990 Objectives for the Nation and anticipated training accomplishments for the initial budget period are satisfactorily addressed in the long- and short-term objectives.

4. The applicant adequately assures that STD diagnostic and treatment services will be provided principally in accordance with the Clinic QAG, in particular:

a. There will be adequate space and staff to accommodate patient volume.

b. There will be at least 5 days of full clinical services provided (a minimum of 35 registration hours during a minimum of 40 patient service hours, including at least one evening or Saturday session each week) with no interim daily shutdowns.

c. Clinic management responsibility will be assigned to one person with clinical and/or administrative skills and experience.

d. Diagnosis and treatment will be provided for most STD and their syndromes (e.g., syphilis, gonorrhea, nongonococcal urethritis, pelvic inflammatory disease, herpes, trichomoniasis, human papilloma virus, scabies, etc.).

e. A nurse clinician or nurse clinician and physician assistant model of care will be used with a physician available on-site for consultation.

f. An integrated flow will be used which minimizes the number of patient stops and the amount of patient waiting time.

g. Patients will be seen, regardless of sex, by the next available clinician.

h. Confidentiality will be observed during both patient registration and patient care service delivery.

i. A standardized (e.g., "checkoff"), fully auditable, STD medical record will be employed.

j. There will be an on-site laboratory facility which offers a range of immediately available (stat) tests for commonly seen STD.

k. There will be quality assurance procedures through which clinical care is audited systematically and the proficiency of laboratory activities are assessed periodically through smear/culture and serologic test correlations.

l. CDC diagnostic guidelines will be used (e.g., bimanual examinations for women, complete genital examinations for males).

m. The policies and procedures of the STD clinic will harmoniously complement the activities of the disease intervention outreach component of the program.

n. CDC recommended treatment schedules will be used.

5. The applicant adequately assures that the development and operation of the clinical training component of the proposed P/T Center will be according to the P/T Center Guidelines, in particular:

a. There will be adequate training space for clinical courses and assurances that it will be available for all scheduled courses.

b. Classroom space will be adequately furnished and equipped.

c. A P/T Center Coordinator will be identified or provided for through a proposal to create and fill such a position.

d. A clerical resource will be identified and available on-site to assist the P/T Center Training coordinator or will be provided for through a proposal to create and fill such a position.

e. The curricula will be developed according to P/T Center Guidelines.

f. The clinic and stat laboratory practicum will be structured such that participants are provided an opportunity to demonstrate their clinical skills under the supervision of P/T Center personnel by performing STD examinations on patients and practicing STD stat laboratory procedures.

g. There will be an evaluation of student and medical school teaching faculty performance.

h. A minimum of 400 hours of instruction will be provided annually to P/T Center students which consists of at least six "core" courses (two of which are "Comprehensive"), and two different types of course offerings, as described by the P/T Center Guidelines.

i. The medical school personnel will play a dominant role in classroom training.

6. There is a commitment in principle from a local university medical school to participate with the applicant in the establishment of a P/T Center which addresses the following:

a. Part of the time of a liaison/coordinating person (a physician, preferably a physician in the second or third year of a fellowship) with the expense of medical school faculty instructional services being covered by the most cost-effective mechanism possible.

b. The medical school's participation in the development of curriculum that is governed by the P/T Center Guidelines.

c. A minimum of 400 hours of instruction that will be provided annually which consists of at least six "core" courses (two of which are "Comprehensive"), and two different types of course offerings, as described in the P/T Center Guidelines.

d. Faculty assistance from the medical school in clinic practicum through the use of residents or fellows.

e. The medical school's reinforcement of the provisions of the Clinic QAG during curriculum development, instruction, and precepting clinic practicum.

f. The medical school's arrangement for medical students, accompanied by faculty preceptors, to rotate through the center for training and clinic practicum.

7. The applicant provides a satisfactory evaluation plan which will help determine if the methods are effective and the objectives are being achieved.

8. The budget request is clearly explained, adequately justified, reasonable, cost-effective, and consistent with the intended use of grant funds.

9. The site of the proposed P/T Center is sufficiently near to major highways that accessibility by car is a reasonable option (since driving has been the common mode of travel used by people in the area to attend these courses).

10. The location of the proposed P/T Center is convenient to restaurants and reasonable hotel/motel accommodations and accessible through a local ground transportation system from an airport.

Site visits may also be made in connection with the review of applications.

Application Information

The original and two copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, on or before 4:30 p.m. (e.d.t.) on August 23, 1985.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date; or,

2. Sent on or before 4:30 p.m. (e.d.t.) on August 23, 1985, and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. *Late Applications:* Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

C. *Review Requirements:* Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resources Development Act of 1974.

D. *Where to Obtain Additional Information:* Information on application procedures, copies of application forms, and other material may be obtained from Betty Feeley, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575. Technical assistance may be obtained from Cheryl A. Blackmore, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333,

telephone (404) 329-2558 or FTS 236-2558.

Dated: July 8, 1985.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85-16556 Filed 7-11-85; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 85C-0253]

Optacryl, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Optacryl, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of D&C Violet No. 2 as a color additive in contact lenses.

FOR FURTHER INFORMATION CONTACT: Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 5C0190) has been filed by Optacryl, Inc., 2890 South Tejon, Englewood, CO 80110, proposing that Part 74 (21 CFR Part 74) be amended to provide for the safe use of D&C Violet No. 2. as a color additive in contact lenses.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 3, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-16555 Filed 7-11-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85M-0253]

Hoffman-La Roche, Inc.; Premarket Approval of the CEA-Roche® EIA

Correction

In FR Doc. 85-14073 beginning on page 24704 in the issue of Wednesday, June 12, 1985, make the following correction:

On page 24705, first column, **DATE**, "June 12, 1985" should read "July 12, 1985".

BILLING CODE 1505-01-M

Public Workshop; Serologic Test for Antibody to Human T-Lymphotropic Virus Type III (HTLV-III)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public workshop to discuss the data available from blood banks voluntarily testing donor blood using the recently licensed serologic test for antibody to human T-lymphotropic virus type III (HTLV-III). New developments in performing the antibody to HTLV-III test and viral detection tests also will be discussed. HTLV-III is believed to be the etiologic agent of acquired immunodeficiency syndrome (AIDS).

DATE: The Workshop will be held on July 31, 8:30 a.m. to 5 p.m.

ADDRESS: The workshop will be held at the Jack Masur Auditorium, Warren Grant Magnuson Clinical Center, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Isaac F. Roubein, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4696.

SUPPLEMENTARY INFORMATION: The Centers for Disease Control, the National Institutes of Health, and FDA will sponsor the workshop to discuss (1) experience gained by blood and plasma collection establishments from voluntary use of the serologic test for antibody to HTLV-III, (2) correlation between laboratory and epidemiological findings, (3) new developments in HTLV-III testing, and (4) issues concerning donor notification of test results. Presentations will be made by invited research scientists and by representatives of blood and plasma collecting groups, the sponsoring organizations, and industry. The workshop will be open to the public.

Requests for information on the workshop should be directed to Isaac F. Roubein (address above).

Dated: July 10, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-16675 Filed 7-10-85; 10:00 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following national advisory body scheduled to meet during the month of August 1985:

Name: Task Force On Organ Transplantation

Date and Time: August 6, 1985, 8:30 a.m.

Place: Shoreham Hotel, 2500 Calvert Street & Connecticut Avenue, NW., Washington, DC 20008.

The entire meeting is open to the public.

Purpose: The Task Force on Organ Transplantation is required to conduct comprehensive examinations of the medical, legal, ethical economic, and social issues presented by human organ procurement and transplantation; including an assessment of immunosuppressive medications used to prevent organ rejection in transplant patients. Reports on these issues are required to be submitted to the Department of Health and Human Services and the Congress later this year.

Agenda: Discussion and adoption of the Task Force report on immunosuppressive therapies; status reports on activities of the Task Force relating to issues such as organ donation/procurement/education and networking; and a discussion of advantages and disadvantages of designating centers that can perform transplants.

Public comment will begin at 3:30 p.m. Anyone wishing to make a statement, please notify Linda D. Sheaffer, Executive Director, so that these may be scheduled.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Ms. Linda D. Sheaffer, Executive Director, Office of Organ Procurement and Transplantation, Office of the Administrator, Health Resources and Services Administration, Room 17-60, Parklawn Building, 5600 Fishers Lane.

Rockville, MD 20857, telephone (301) 443–5911.

Agenda items are subject to change as priorities dictate.

Dated: July 9, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85–16591 Filed 7–11–85; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health Division of Research Resources; Biotechnology Resources Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biotechnology Resources Review Committee (BRRC), Division of Research Resources (DRR), July 17, 1985, Conference Room 6, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

This meeting will be open to the public on July 17 from 9:00 a.m. to approximately 12:15 p.m. for comments from the Director, DRR, and the Director, Biomedical Research Technology Program (BRTP), and an update on activities in the Program. There will also be presentations on the results of a series of workshops on Biological Models, and on a recent report on instrument needs in the biological sciences. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1:00 p.m. to adjournment on July 17 for the review, discussion, and evaluation of individual research grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B–10, National Institutes of Health, Bethesda, MD 20205, (301) 496–5545, will provide a summary of the meeting and a roster of committee members. Dr. Charles L. Coulter, Executive Secretary, Biotechnology Resources Review Committee, Division of Research Resources, Bldg. 31, Rm. 5B–41, National Institutes of Health, Bethesda, MD 20205, (301) 496–5411, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.371, Biotechnology Research, National Institutes of Health)

Dated: July 1, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–16505 Filed 7–11–85; 8:45 am]

BILLING CODE 4140–01

National Cancer Institute; Biometry and Epidemiology Contract Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, July 18–19, 1985, Building 31C, Conference Room 9, Bethesda, Maryland 20205. This meeting will be open to the public on July 18, from 8:30 a.m. to 9:00 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on July 18, from approximately 9:00 a.m. until recess, and July 19, from 8:30 a.m. to adjournment for the review, discussion and evaluation of contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Wilna A. Woods, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 807, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7153) will furnish substantive program information.

Dated: July 1, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–16500 Filed 7–11–85; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Cancer Preclinical Program Project Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Preclinical Program Project Review Committee, National Cancer Institute, National Institutes of Health, July 30–31, 1985, Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814. This meeting will be open to the public on July 30, from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on July 30 from approximately 9:30 a.m. to recess; and on July 31 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Edwin M. Bartos, Executive Secretary, Cancer Preclinical Program Project Review Committee, National Cancer Institute, Westwood Building, Room 836, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7565) will furnish substantive program information.

Dated: July 1, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–16567 Filed 7–11–85; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Developmental Therapeutics Contracts Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, August 16, Building 31, Conference Room 7, Bethesda, Maryland 20205. This

meeting will be open to the public on August 16, from 8:30 A.M. to 9:00 A.M. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on August 16 from 9:00 A.M. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7575) will provide program information.

Dated: July 1, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–16568 Filed 7–11–85; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Developmental Therapeutics Contracts Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, September 13, Building 31, Conference Room 9, Bethesda, Maryland 20205. This meeting will be open to the public on September 13, from 8:30 A.M. to 9:00 A.M. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 13 from 9:00 A.M. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, diclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7575) will provide program information.

Dated: July 1, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–16569 Filed 7–11–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–85–1519; FR–1959]

Extension of Time for Applications To Participate in the HUD Multifamily Urban Homesteading Demonstration Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Solicitation of Proposals from Eligible Applicants to Participate in a Multifamily Urban Homesteading Demonstration Program.

SUMMARY: HUD solicited Letters-of-Intent from localities for participation in a Multifamily Urban Homesteading Demonstration Program by Notice published in the **Federal Register** of April 16, 1985 (50 FR 14987). Because the Department received fewer Letters-of-Intent than expected in reponse to the April 16, 1985 Notice, this Notice is being published to inform prospective applicants that the solicitation period has been extended until July 26, 1985.

DATE: Letter-of-Intent due date—Two copies of the Letter of Intent to participate in the Multifamily Urban Homesteading Demonstration Program must be received or postmarked by 5:00 p.m., July 26, 1985.

ADDRESSES: One copy of the Letter of Intent shall be submitted to the Director, Office of Community Planning and Development (CPD), in the Field Office having jurisdiction over the applicant. A second copy shall be addressed to HUD Headquarters, at the address listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Richard R. Burk, Director, Urban Homesteading Program, Room 7168, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone number (202) 755–5324. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information supplied here is a brief recapitulation of the "Supplementary Information" printed in the April 16, 1985 Notice, which describes the Multifamily Urban Homesteading Demonstration Program in greater detail. Readers are therefore reminded that this summary is only provided as a quick reference souce and that they should consult the April 16, 1985 "Supplementary Information" for a full description of the program.

Summary of April 16, 1985 Notice

Under the Multifamily Urban Homesteading Demonstration Program, HUD will award up to $3 million of section 810 Urban Homesteading funds to approximately 10 localities to purchase HUD-owned (formerly FHA-insured) multifamily projects. Other multifamily projects purchased or already owned by localities are eligible for the Demonstration; however, section 810 funds cannot be used to reimburse localities for purchasing such properties. The program is intended to demonstrate the feasibility of local government's assisting lower income tenants in acquiring and rehabilitating multifamily projects for homeownership. It is also hoped that the success of this program will create a body of experienced local administrators and be an incentive for other local governments to develop similar programs.

As the April 16, 1985 Notice explained, a prototype Multifamily Urban Homesteading program was federally funded in 1977 in New York City. The lessons learned from the New York model were applied to a similar program that was extended the following year to several other cities. In 1979, the section 510 program, which created homeownership opportunities for lower income families by rehabilitating and converting multifamily properties to cooperatives and condominiums, was begun in New

York City and later expanded to other cities.

With the experience gained from these programs, HUD would like to test other approaches to multifamily homeownership, while giving local governments a further opportunity to acquire knowledge about these programs. In this regard, HUD will use this program to test the feasibility of a variety of homeownership options such as cooperatives (including Limited Equity Cooperatives, Leased Cooperatives and Syndicated Cooperatives), condominiums, and mutual housing associations. Three types of financing models—the split subsidy or tenant-based subsidy model, the internal subsidy model, and the project-based subsidy model—will also be tested in this Demonstration.

Any unit of general local government, as defined in 24 CFR part 590, is eligible to participate in the Multifamily Urban Homesteading Program. Interested localities may obtain lists of HUD-owned multifamily projects from the property disposition staff of the HUD Field Office having jurisdiction over the locality.

For further information, readers are again encouraged to consult the April 16, 1985 Notice which sets out, among other things, program provisions relating to eligible occupants, funding allocation, mandatory criteria for program acceptability, and compliance with statutory requirements and with other HUD housing assistance programs. That Notice also details the requisite contents of a Letter of Intent submitted by a locality to signify its intention to participate in the Demonstration program. Also set forth in detail in that Notice are the requirements that a selected applicant's program application must meet to be funded under the Demonstration program.

Other Matters

Under 5 U.S.C. 605(b) of the Regulatory Flexibility Act, the Undersigned hereby certifies that this Notice does not have a significant economic impact on a substantial number of small entities because of the limited funding level of the Demonstration and the anticipated selection of only approximately 10 applicants.

Paperwork Reduction Act

The information collection requirement contained in this Notice was submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and has been assigned OMB Control Number 2506–0083. Approval for this information collection will expire on April 30, 1988.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50. A copy of this Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

The Catalog of Federal Domestic Assistance program number and title are 14.222, Urban Homesteading.

Authority: Sec. 810(h) of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e); section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 3, 1985.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 85–16598 Filed 7–11–85; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, D.C. 20503, telephone 202–395–7313.

Title: 1985 Survey of Fishing, Hunting, and Wildlife-Associated Recreation.

Abstract: The Census Bureau will gather information for the U.S. Fish and Wildlife Service about fishing, hunting, and wildlife related activities in the United States, which will be used by Federal, State and Service administrators to formulate resource management plans.

Form Number(s): FH–2, FH–3, FH–4, FH–1(L), and FH–5(L).

Frequency: Once every five years.

Description of Respondents: Anglers, hunters, and nonconsumptive wildlife users over age 16.

Annual Responses: 158,200.

Annual Burden Hours: 48,485.

Service Clearance Officer: Arthur J. Ferguson, telephone 202–653–7499, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

Dated: June 28, 1985.

James C. Leupold,

Acting Assistant Director—Planning and Budget.

[FR Doc. 85–16642 Filed 7–11–85; 8:45 am]

BILLING CODE 4310–55–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, D.C. 20503, telephone 202–395–7313.

Title: Application for Economic and Public Use Permit and Surveys.

Abstract: Economic and public use of the natural resources of wildlife areas is allowed by permit only. Application data enables the Service to establish applicant's eligibility, priority, and terms necessary for resource protection. Survey data is used to manage wildlife populations, assess visitor use and trends for management and planning purposes.

Form Number: 3–2001 (Refuge Fur Trapping Permit Application). No specific form is required for other applications.

Frequency: Annually.

Description of Respondents: Individuals and households, small business or organizations and farms.

Annual Responses: 256,842.

Annual Burden Hours: 20,446.

Serivce Clearance Officer: Arthur J. Ferguson, 202–653–7499, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

Dated: June 28, 1985.

Walter R. McAllester,

Acting Associate Director—Wildlife Resources.

[FR Doc. 85-16643 Filed 7-11-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[F-14857-A2, F-14857-B2]

Alaska Native Claims Selection; Gwitchyaazhee Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of secs. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611 (1976), will be issued to Gwitchyaazhee Corporation for approximately 41,288 acres. The lands involved are within T. 22 N., R. 11 E. and T. 22 N., R. 13 E., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the TUNDRA TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until August 12, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Earlsom,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-16647 Filed 7-11-85; 8:45 am]

BILLING CODE 4310-JA-M

[F-84742]

Proposed Withdrawal and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Air Force proposes to withdraw approximately 3,630 acres of public land necessary for military purposes at Beaver Creek Research Site. This notice closes the land for up to 2 years from appropriation under the public land laws including mining and mineral leasing.

DATE: Comments must be received on or before October 10, 1985.

ADDRESS: Comments and meeting requests should be sent to: Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, BLM Alaska State Office, 701 C Street, Box 13, (907) 271-5080.

On February 27, 1985, the U.S. Army Corps of Engineers filed an application for the Department of the Air Force to amend Public Land Order (PLO) 5164 of February 28, 1972, and withdraw the following described lands from all forms of appropriation under the public land laws, including the mining and mineral leasing laws.

Copper River Meridian (Surveyed)

T. 15 N., R. 19 E.,
- Sec. 14, W½E½, W½, excluding PLO 5164;
- Sec. 15, E½;
- Sec. 20, E½SE¼;
- Sec. 21, S½N½NE¼ and S½N½ and S½, excluding PLO 5164;
- Sec. 22, excluding PLO 5164;
- Sec. 23, S½NE¼, NW¼ and S½, excluding PLO 5164;
- Sec. 24, W½SW¼;
- Sec. 25, NW¼NW¼;
- Sec. 26, NE¼, E½NW¼, NW¼NW¼;
- Sec. 27, N½N½NE¼, NE¼NE¼NW¼, SW¼, excluding PLO 5164, W½W½SE¼;
- Sec. 28, N½NE¼, excluding PLO 5164, E½W½E½SW¼NE¼, E½E½SW¼NE¼, excluding PLO 5164, SE¼NE¼, N½NW¼, excluding PLO 5164, N½SW¼NW¼, NW¼SE¼NW¼, W½W½NE¼SE¼NW¼, NE¼SE¼ and E½NW¼SE¼, excluding PLO 5164, E½W½NW¼SE¼, E½W½W½NW¼SE¼, SE¼SE¼, excluding PLO 5164;
- Sec. 29, NE¼NE¼;
- Sec. 33, N½NE¼, N½SW¼NE¼, SE¼SW¼NE¼, SE¼NE¼, N½NE¼SE¼;
- Sec. 34, W½W½NE¼, NW¼, excluding PLO 5164, N½N½SW¼.

The area described contains approximately 3,630 acres.

The purpose of the withdrawal is to add approximately 3,630 acres to approximately 425 acres previously withdrawn as Beaver Creek Air Force Research Site under PLO 5164, for an aggregate of 4,055 acres.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are licenses, permits, cooperative agreements, or other discretionary land use authorizations of a temporary nature.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the applicant agency.

Mary Jane Clawson,

Chief, Branch of Lands.

[FR Doc. 85-16557 Filed 7-11-85; 8:45 am]

BILLING CODE 4310-JA-M

Joint Winnemucca/Carson City District Advisory Council; Meeting and Tour

Notice is hereby given in accordance with Pub. L. 92-463 that a joint meeting and tour of the Winnemucca and Carson City District Advisory Councils will be held on September 3 and 4, 1985. The meeting will be from 3:00 p.m. to 5:30 p.m. on September 3, 1985 in the Banquet Room of the Windmill Cafe, 915 Cornell Avenue, Lovelock, Nevada, 89419. The tour will be conducted on Pershing County, Winnemucca District, on September 4, 1985, commencing at the Windmill Cafe in Lovelock at 7:30 a.m. and ending at the Windmill Cafe at 3:00 p.m.

The agenda for the meeting on September 3 will include:

(1) Update—Winnemucca and Carson City Districts.

(2) Election of officers—Winnemucca and Carson City Districts.

(3) Mining and mineral development in Pershing County.

The meeting and tour is open to the public. Interested persons may make oral statements to the Councils at 4:00 p.m. on September 3, 1985 or file written statements for the Councils' consideration. Anyone wishing to make an oral statement must notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada, 89445 by August 20, 1985. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the respective District Offices and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: July 5, 1985.

Frank C. Shields,

District Manager.

[FR Doc. 85-16648 Filed 7-11-85; 8:45 am]

BILLING CODE 4310-HC-M

[AA-5964]

Termination of Proposed Withdrawal and Reservation of Lands; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of lands requested by the United States Forest Service, Department of Agriculture, for the recreational and scenic enjoyment of the traveling public, near Sunrise, Alaska.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, 701 C Street, Box 13, Anchorage, Alaska 99513. Phone (907) 271-3240.

Notice of a proposed withdrawal and reservation of lands for the United States Forest Service, Department of Agriculture, was published in the **Federal Register** on March 25, 1971, Volume 36, No. 58, Page 5624, Document No. 71-4033 and republished on November 16, 1979, Volume 44, No. 223, Page 66078, Document 79-35306. The purpose of the application, serial number AA-5964, was for protection of the recreational and scenic values along a portion of the Hope Highway within the Chugach National Forest.

On July 2, 1984, the Forest Service requested that a portion of its original application be deleted and the segregation order be terminated.

Therefore, the segregative effect of the proposed withdrawal on the following described lands is hereby terminated:

Beginning at the boundary of the Sunrise Townsite Elimination at approximately mile 7.0 of the Hope Highway thence south along Sixmile Creek to the section line between Secs. 15 and 22, T. 9 N., R. 1 W., Seward Meridian; said withdrawal being a strip of land lying between the east bank of Sixmile Creek and 200 feet west of the canterline of the Hope Highway, containing approximately 105 acres more or less.

This order does not otherwise affect the status of the lands, and they remain subject to other withdrawals of record.

Mary Jane Clawson,

Chief, Branch of Lands.

[FR Doc. 85-16654 Filed 7-11-85; 8:45 am]

BILLING CODE 4310-JA-M

[CA 7075 WR, CA 7575 WR, SAC 067221 WR]

California; Proposed Continuation of Withdrawals

July 3, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation, Mid-Pacific Region, proposes that three land withdrawals, aggregating approximately 1,031 acres for the Solano Project continue for an additional 50 years. The land will remain closed to surface entry and mining, but have been and will remain open to mineral leasing.

DATE: Comments should be received by October 10, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: A. Pack-Lovelace, California State Office, (916) 484-4431.

The Bureau of Reclamation proposes to continue three existing withdrawals of land for a period of 50 years pursuant to the provisions of section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The withdrawals are described as follows:

Mount Diablo Meridian

CA 7075 WR

Bureau of Land Management Order of February 27, 1952

T. 7 N., R. 3 W.,
Sec. 2, SE¼NE¼;
T. 8 N., R. 3 W.,
Sec. 35, NE¼NE¼;
T. 8 N., R. 4 W.,
Sec. 1, fractional portion SE¼NE¼;
T. 9 N., R. 4 W.,
Sec. 4, Lots 8, 9, 10, and 13 to 16 inclusive;
Sec. 20, SE¼NE¼.

The areas described aggregate 390.94 acres in Napa County.

CA 7575 WR

Bureau of Land Management Order of October 2, 1947

T. 9 N., R. 4 W.,
Sec. 3, Lots 2, 3, S½NW¼, and SW¼;
Sec. 4, Lots 5, 6, 7, 11, 12, 17 and 18.

The areas described aggregate 509.75 acres in Napa County.

SAC 067221 WR

Public Land Order 2706 of June 15, 1962

T. 8 N., R. 3 W.,
Sec. 28, SE¼NE¼.

The area described contains 40.00 acres in Napa County.

The purpose of the withdrawals is to protect lands for the Solano Project. The withdrawals segregate the lands from operation of the public land laws generally, including the mining laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-16653 Filed 7-11-85; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Availability; Finding of No Significant Impact for the Draft General Management Plan/Development Concept Plan and Environmental Assessment, and Draft Land Protection Plan; Chaco Culture National Historical Park, New Mexico

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, Chapter 1 of Title 36 of the Code of Federal Regulations, the final interpretive rule for Preparation of Land Protection Plans printed in the Federal Register on May 11, 1983 (48 FR 21121), and section 506 of Pub. L. 96–550, the National Park Service has prepared a Finding of No Significant Impact for the Draft General Management Plan/ Development Concept Plan and Environmental Assessment, and the Draft Land Protection Plan, for Chaco Culture National Historical Park, McKinley and San Juan Counties, New Mexico.

The Draft General Management Plan/ Development Concept Plan and Environmental Assessment, and the Draft Land Protection Plan, were placed on public review from the publication date of a Notice of Availability in the Federal Register, on October 5, 1984, through November 29, 1984, and a Public Meeting was held on November 1, 1984, in Albuquerque, New Mexico. Based on public review comments received and on management decisions, a Finding of No Significant Impact has now been completed. The National Park Service is adopting the proposals described in the draft plans, to expand visitor services and programs at Chaco Culture National Historical Park to meet the needs of increasing visitation for the next 10-year period, and to provide for protection and management of 13,205 acres added to the park by Pub. L. 96–550 in December 1980.

It is the conclusion of the National Park Service that the proposals are not a major Federal action that will significantly affect the human environment. Therefore, an environmental impact statement will not be prepared. The National Park Service will proceed with Development of the final General Management Plan/ Development Concept Plan and Land Protection Plan for implementation.

Copies of the Finding of No Significant Impact are available from Chaco Culture National Historical Park, Star Route 4, Box 6500, Bloomfield, New Mexico 87413; and the National Park Service, Southwest region, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Dated: July 2, 1985.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 85–16602 Filed 7–11–85; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Application; Ganes Chemicals, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 21, 1985, Ganes Chemicals Inc., Lessee of Siegfried Chemical, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-Diphenyl butane (9254)	II
Dextropropoxyphene (9273)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than August 12, 1985.

Dated: July 3, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85–16594 Filed 7–11–85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration

Advisory Committee on Sheltered Workshops; Meeting

A meeting of the Advisory Committee on Sheltered Workshops will be held in the Frances Perkins Building, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. on August 15 and 16 starting at 8:30 a.m. in room S4215. Various subcommittees will meet on August 14 starting at 8:30 a.m. in room N3437.

The mission of the Advisory Committee is to provide guidance to the Department regarding the administration and enforcement of the Fair Labor Standards Act and other Federal minimum wage laws as they relate to the employment of handicapped individuals with impaired productivity at special lower minimum wages in sheltered workshops, hospitals, or institutions.

The following subcommittees are tentatively scheduled to meet on August 14:

8:30 a.m.

Education and Training (N3437A)
Prevailing Wages (N3437B)
Patient Worker (N3437C)

10:30 a.m.

Piece Rates and Standard Productivity Schedules (Na3437A)
Application Forms (N3437B)

1:15 p.m.

State Liaison (N3437A)
Compliance Activities (N3437B)

The agenda items to be considered by the Advisory Committee include the following:

—Reports of the various subcommittees listed above;
—The Washington State Pilot Project which provides for on-the-job evaluation of handicapped individuals in competitive industry;
—The impact of the Supreme Court's decision in *Garcia* v. *San Antonio Metropolitan Transit Authority et al.* 105 S. Ct. 1005 on State and local government-operated sheltered workshops;
—Determining prevailing wages under Regulation, 29 CFR Part 525;
—Determining the existence of an employment relationship for patients or residents volunteering their services in homes for the aging under Regulation, 29 CFR Part 529;
—Determining compensable time for handicapped workers engaged in work simulation;

—Eliminating out-moded terminology;
—Discussion of supported work by Madeline Will, Assistant Secretary, Office of Special Education and Rehabilitation Services.

Other items may be included on the agenda or introduced during the meeting.

The public is invited to attend all meetings, including those of the subcommittees. Written data, views, or arguments pertaining to the business before the Committee are invited. Such data, views or arguments may be forwarded to the Committee Secretariat prior to the meeting or presented at the meeting.

Any inquiries concerning the meeting or the Committee may be directed to: Mr. Arthur H. Korn, Secretariat for the Advisory Committee on Sheltered Workshops, Room C4316, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone number (202) 523-8727. This is not a toll free telephone number.

Signed in Washington, D.C., this 9th day of July 1985.

Herbert J. Cohen,

Deputy Administrator.

[FR Doc. 85-16607 Filed 7-11-85; 8:45 am]

BILLING CODE 4510-37-M

Employment and Training Administration

[TA-W-16,010]

Hilo Coast Processing Co., Pepeekeo, HI; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 20, 1985 in response to a worker petition received on May 13, 1985 which was filed on behalf of workers at the Hilo Coast Processing Company, Pepeekeo, Hawaii.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C., this 2nd day of July 1985.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-16606 Filed 7-11-85; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293-OLA; ASLBP No. 85-510-01 LA]

Boston Edison Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Boston Edison Company
Pilgrim Nuclear Power Station
Facility Operating License No. DPR-35

This Board is being established pursuant to a notice published by the Commission on May 21, 1985, in the **Federal Register** (50 FR 20969-20971) entitled, "Monthly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations." The proposed amendment would, among other things, change the Technical Specifications by raising the K-effective limit of the fuel storage pool from 0.90 to 0.95 for normal conditions.

The Board is comprised of the following administrative judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Mr. Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Jerry Harbour, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Issued at Bethesda, Maryland, this 8th day of July, 1985.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 85-16657 Filed 7-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-456 & 50-457]

Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this operating license proceeding: Gary J. Edles, Chairman, Thomas S. Moore, Dr. Reginald L. Gotchy.

Dated: July 8, 1985.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85-16656 Filed 7-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 2); Amendment of Order

I

GPU Nuclear Corporation, Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (collectively, the licensee) are the holders of Facility Operating License No. DPR-73, which had authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

II

By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292).

Although these requirements were imposed on the licensee by an Order of the Director of Nuclear Reactor

Regulation, dated February 11, 1980, the TMI–2 license has not been formally amended. The requirements are reflected in the Recovery Mode Proposed Technical Specifications (PTS) presently pending before the Atomic Safety and Licensing Board. The revisions that are the subject of this order do not give the licensee authorizations that may be needed to undertake specific cleanup activities. Hereafter in this Amendment of Order, the requirements in question are identified by the applicable Proposed. Technical Specification.

III

By letter dated October 31, 1984, GPU Nuclear Corporation (GPUNC) informed the NRC that certain containment penetration valve configurations presently in use at the Three Mile Island, Unit 2 (TMI–2) do not conform to the July 17, 1984 Amendment of Order which modified the PTS definition of containment integrity. In addition, these configurations do not conform to the staff's Approval of Alternate Design relative to 10 CFR 50, Appendix A, Criteria 55 and 56 also issued on July 17, 1984.

After reviewing the licensee's discussion in the subject letter and performing a safety evaluation addressing the containment isolation configurations, the staff has modified Section 1.7 of the PTS and added Table 3.6–2 which lists exceptions to containment penetration valve configurations.

The staff review concluded that: (1) The subject penetration valve configurations were previously concurred with by the NRC in NUREG–0107, (2) Many of the systems affected are not in use during the recovery period and are therefore depressurized, and (3) Those systems still in use are primarily used under emergency conditions and will not experience transients as extreme as those previously analyzed in NUREG–0107 for emergency or non-emergency use.

Based on the above, the addition of certain exceptions to the two valve isolation requirements of the PTS are warranted and will not have an adverse impact on the health and safety of the public. The staff's safety assessment of this matter as discussed above is set forth in the concurrently issued Safety Evaluation.

Since the February 11, 1980 Order imposing the Proposed Technical Specifications is currently pending before the Atomic Safety and Licensing Board, the staff will be advising the Licensing Board of this Amendment of Order through a Notice of Issuance of Amendment of Order and a Motion to Conform Proposed Technical Specifications in Accordance Herewith.

It is further determined that the modification does not authorize a change in effluent types or total amounts nor an increase in power level and will not result in any significant environmental impact. The staff has determined that this action is insignificant from the standpoint of environmental impact and neither an environmental impact statement nor an environmental assessment need be prepared.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Director's Order of February 11, 1980, is hereby revised to incorporate the deletions, additions, and modifications set forth in Enclosure 3 hereto. This Amendment of Order shall be effective on August 12, 1985.

For further details with respect to this action, see (1) Letter to B. J. Snyder, USNRC, from F. R. Standerfer, GPUNC, Containment Isolation Valves, and (2) the Director's Order of February 11, 1980.

All the above documents are available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Effective Date: August 12, 1985.

Dated at Bethesda, Maryland.

Issuance Date: July 8, 1985.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85–16855 Filed 7–11–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co., Wolverine Power Supply Cooperative, Inc. FERMI–2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the granting of an exemption from a portion of the requirements of 10 CFR Part 50, Appendix E to Detroit Edison Company and Wolverine Power Supply Cooperative, Incorporated (the licensees) for Fermi-2, located at the licensees' site in Frenchtown Township, Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The Exemption from Section IV.F of 10 CFR Part 50, Apendix E would delay the conduct of a full participation offsite emergency planning exercise. Section IV.F of Appendix E requires that this exercise be conducted within one year before issuance of the first operating license at the site for full power and prior to operation above 5% of rated power. The last full participation emergency preparedness exercise for Fermi-2 was conducted on June 26–27, 1984.

Need for Proposed Action

The proposed Exemption is required because Section IV.F of Appendix E would require that a full participation offsite emergency planning exercise be conducted within one year prior to exceeding five percent power. A license authorizing operation of Fermi-2 up to five percent of rated power was issued on March 20, 1985, but the licensees have not yet been issued a license authorizing operation above five percent of rated power. In a letter dated June 14, 1985, supplemented July 3, 1985, the licensees provided justification for delaying this exercise beyond the date of authorization of operation above five percent of rated power. The NRC staff has reviewed the licensees' request for exemption and considered the following factors.

1. Prior to licensing, two full participation emergency preparedness exercises were conducted with favorable findings; the latest of these was conducted on June 26–27, 1984.

2. Various drills were conducted in 1984 and 1985 which tested those elements of the Fermi emergency plan which involve offsite response agencies.

3. The State of Michigan participated in two partial participation emergency preparedness exercises at other sites in 1985.

4. A Fermi exercise is scheduled for October 1985 which will include voluntary local offsite participation.

These factors indicate that the emergency plans for the Fermi–2 facility have been subjected to substantial testing within the last several years, that further exercise of the plans would be delayed only briefly, and that granting the proposed Exemption would not significantly affect the level of emergency preparedness for Fermi–2.

Environmental Impacts of Proposed Action

The proposed Exemption would not affect the environmental impact of the

facility because the level of emergency preparedeness is not being degraded. The probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined due to the proposed Exemption, nor does the proposed Exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Liewise the proposed Exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed Exemption.

Alternative to the Proposed Action

Because we have concluded that there is no measurable environmental impact associated with the proposed Exemption, any alternatives to the relief will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested Exemption. Such action would not reduce environmental impacts of Fermi-2 operations and would result in an unwarranted burden to the licensees and the State and local governments.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Enrico Fermi Atomic Power Plant, Unit No. 2" dated August 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request that supports the proposed Exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed Exemption.

For further details with respect to this action, see the licensees' request for the Exemption dated June 14, 1985, and supplemented July 3, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Monroe County Library Systems, Reference Department, 3700 Custer Road, Monroe, Michigan 48161.

Dated at Bethesda, Maryland, this 10th day of July 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-16746 Filed 7-11-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, August 1, 1985
Thursday, August 8, 1985
Thursday, August 15, 1985
Thursday, August 22, 1985
Thursday, August 29, 1985

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW, Washington, D.C. 20415 (202) 632-9710.

July 12, 1985.

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 85-16560 Filed 7-11-85; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review By Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street NW., Washington, D.C. 20549.

Revised

Regulation 14A (No. 270-56)
Regulation 14C (No. 270-57)

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission has submitted for clearance proposed revisions to Regulations 14A and 14C under the Securities Act of 1933 to be used in the solicitation of proxies and distribution of information statements respectively.

Submit comments to OMB Desk Officer, Ms. Katie Lewin (202) 395-7231, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

By the Commission.
John Wheeler,
Secretary.
July 8, 1985.
[FR Doc. 85-16660 Filed 7-11-85; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC-14621; 811-3745]

Application and Opportunity for Hearing; Sun Life of Canada (U.S.) Variable Account D

July 8, 1985.

Notice is hereby given that Sun Life of Canada (U.S.) Variable Account D ("Applicant"), One Sun Life Executive Park, Wellesley Hills, Massachusetts 02181, an insurance company separate account registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on June 21, 1985, pursuant to section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the applicable provisions.

On May 24, 1983, Applicant filed a notification of registration on Form N-8A and a registration statement on Form S-6. The registration statement was amended on March 7, 1984, but was never declared effective.

Applicant states that it has never made a public offering on any of its securities, which would have been flexible payment deferred combination variable and fixed annuity contracts ("contracts"), and that it has no contractholders. Applicant further states that it never made any sales of contracts or of any other securities. Applicant represents that it has no assets, debts or other liabilities, and that it is not a party to any litigation or administrative proceedings.

Applicant maintains that it is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. On June 18, 1985, the Secretary of the Depositor, Sun Life Assurance Company of Canada (U.S.), acting on behalf of the Depositor, authorized the termination of the Applicant.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 1, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.
John Wheeler,
Secretary.
[FR Doc. 85-16659 Filed 7-11-85; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC-14622; 811-4059]

Application and Opportunity for Hearing; Variable Investment Products Series Fund, Inc.

July 8, 1985.

Notice is hereby given that Variable Investment Products Series Fund, Inc. ("Applicant"), 501 Boylston Street, Boston, Massachusetts 02117, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on June 20, 1985, pursuant to section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the applicable provisions.

On June 27, 1984, Applicant filed a notification of registration on Form N-8A and a registration statement on Form N-1A. The registration statement was never declared effective, and was withdrawn on April 24, 1985.

Applicant states that it has never made a public offering of any of its securities, which would have been shares of beneficial interest funding insurance company contracts ("contracts"), and that it has no shareholders. Other than the shares issued to New England Mutual Life Insurance Company on February 7, 1985, upon receipt of $100,000 seed money, which was repaid on May 10, 1985, Applicant states that it has never made any sales of its securities. Applicant represents that it has no assets, debts or other liabilities, and that it is not a party to any litigation or administrative proceedings.

Applicant maintains that it is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up its affairs. On May 8, 1985, the Board of Directors voted to dissolve the Applicant and authorized the termination of the Applicant.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 1, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.
John Wheeler,
Secretary.
[FR Doc. 85-16658 Filed 7-11-85; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 942]

Delegation of Authority No. 158; Assistant Secretary for Oceans and International Environmental and Scientific Affairs

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949 (63 Stat. 111; 22 U.S.C. sec. 2658), as amended, I hereby delegate to the Assistant Secretary for Oceans and International Environmental and Scientific Affairs the functions vested in the Secretary of State by sections 3(b), (f) and (g)(7), (4)(a) and (b) and (13) of the Pacific Salmon Treaty Act of 1985.

Dated: June 25, 1985.
George P. Shultz,
Secretary of State.
[FR Doc. 85-16649 Filed 7-11-85; 8:45 am]
BILLING CODE 4710-65-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits filed; Week Ended July 5, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further procedings.

Date filed	Docket No.	Description
7-3-85	43234	Galena Air Service, Inc., c/o Bill Miller, Bill Miller Associates, Suite 301, 1341 G Street, N.W., Washington D.C. 20005. Application of Galena Air Service, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations requests authority to engage in interstate air transportation of persons, property and mail: Between any point in any state in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States. Conforming Applications, Motions to Modify Scope and Answers may be filed by July 31, 1985.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 85-16603 Filed 7-11-85; 8:45 am]
BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP85-10; Notice 1]

Firestone Tire & Rubber Company; Receipt of Petition for Determination of Inconsequential Noncompliance

Firestone Tire & Rubber Company, of Akron, Ohio, has petitioned to be exempt from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires—Passenger Cars." The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition for a determination of inconsequentiality is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S 4.3 of Standard No. 109 requires each tire to be labeled with seven items of information to be molded into or onto both sidewalls. These are size designation, the maximum permissible inflation pressure, the maximum load rating, the generic name of the cord material used in the plies, the actual number of plies in the sidewall (and the actual number of plies in the tread area if different) the words "tubeless" or "tube type" as applicable, and the word "radial" if the tire is a radial ply tire. Firestone produced approximately 106,311 various brand-named passenger car tires where the word 'tubeless" does not appear on the serial side of these white side-walled tires. Firestone has impounded 12,565 tires in its possession and all recovered tires will be branded with the word "Tubeless" on the serial side to conform to Standard No. 109. Therefore, this petition affects 93,746 passenger car tires manufacturered during 1983, 1984 and through June 1, 1985.

The petitioner believes that the noncompliance is inconsequential as it relates to motor vehicle safety as (1) all tires affected are white sidewalled and the word "tubeless" appears on the whitewall side and most, if not all tires would be mounted with the correct information facing the outside of the vehicle; (2) Firestone does not manufacture any affected size and type combinations that are tube type and, therefore, they could only be sold as tubeless; and (3) if the consumer used the tire as a tube type, and mounted the tire using a tube, the tire would perform satisfactorily.

Interested persons are invited to submit written data, views and arguments on the petition of Firestone Tire & Rubber Company described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney primarily responsible for this notice are Art Casanova and Taylor Vinson, respectively.

Comment closing date: August 12, 1985.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 8, 1985.

Barry Felrice,
Associate Administrator for Rulemaking.
o[FR Doc. 85-16582 Filed 7-11-85; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Form 990 Advisory Committee; Meeting

The Form 990 Advisory Committee will meet from 1:00 p.m. to 5:30 p.m. on Monday, July 29, 1985, and from 9:00 a.m. to 12:00 p.m. on Tuesday, July 30, 1985. The meeting will be held in Room 3313 of the Internal Revenue Service Building at the address shown below.

At this meeting the Committee will review and evaluate proposed changes to IRS Forms 990 and 990-PF and the instructions to those forms for 1985. These forms are annual information returns required to be filed by various types of organizations exempt from federal income tax and by nonexempt charitable trusts.

The meeting on both days will be open to the public. Time for oral comments from the public will be provided on the second day of the meeting. Anyone wishing to submit written comments to the Committee should address them to the Chairman, Form 990 Advisory Committee, Room 3408, Internal Revenue Service, 1111

Constitution Avenue, NW, Washington, DC 20224.

Because it is necessary for the Committee to complete its consideration of the 1985 forms and instructions at this time, not other meetings of the Committee are planned for this year.

For futher information contact: Robert W. Gardiner, Employee Plans and Exempt Organizations Operations Division, 202–566–9239.

Dated: July 8, 1985.

S. Allen Winborne,

Assistant Commissioner (Employee Plans and Exempt Organizations).

[FR Doc. 85–16535 Filed 7–11–85; 8:45 am]

BILLING CODE 4830-01-M

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service Panel

July 5, 1985.

As Chief Counsel of the Internal Revenue Service, under the authority delegated to me by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Vernon Jean Owens, Deputy Chief Counsel;

2. Margery Waxman, Deputy General Counsel;

3. James J. Keightley, Associate Chief Counsel (Litigation);

4. Clarence E. Barnes, Jr., Regional Counsel, Central Region;

5. James J. McGovern, Director, Employee Plans & Exempt Organizations Division;

6. Kenneth A. Little, District Counsel, Dallas, Texas.

This publication is required by section 4314(c)(4) of 5 United States Code.

Fred T. Goldberg, Jr.,

Chief Counsel.

[FR Doc. 85–16662 Filed 7–11–85; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Fulbright Teacher Exchange Program

The United States Information Agency announces the 1986–87 Fulbright Teacher Exchange Program. Applications are invited from elementary and secondary school teachers and administrators and college faculty to teach in schools or attend seminars abroad under the Mutual Educational and Cultural (Fulbright) Act of 1961. Eligibility requirements include: (1) U.S. citizenship; (2) bachelor's degree; (3) three years of full-time teaching experience for teaching positions; two years full-time teaching experience for teachers applying to seminar positions; (4) current full-time employment in appropriate subject areas; and (5) fluency in foreign languages for certain non-English speaking countries. Participating countries are announced on a tentative basis: Belgium/Luxembourg, Canada, Colombia, Denmark, Federal Republic of Germany, France, Italy, The Netherlands, Norway, Switzerland, and the United Kingdom. Usually, U.S. and foreign teachers exchange teaching positions for one academic year. U.S. and foreign teachers continue to receive a salary from their home institutions. A limited number of one-way assignments are also available. Seminars are presently planned in Italy and The Netherlands. Participants in seminars may be provided with transportation, room, board, and/or tuition, depending on the program. Applications must be submitted by October 15 for the following summer or academic year programs. The application packet is disseminated in late August. Further information should be requested from the: Fulbright Teacher Exchange Program, E/ASX, United States Information Agency, 301 4th St., SW., Washington, D.C. 20547, (202) 485–2555.

Dated: July 9, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 85–16601 Filed 7–11–85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effects of Herbicides; Reestablishment

Notice is hereby given of a determination by the Administrator of Veterans Affairs to reestablish the Advisory Committee on Health-Related Effects of Herbicides which expired on June 20, 1985. This determination follows consultation with the Committee Management Secretariat, General Services Administration, as required by Pub. L. 92–463.

The committee will (1) review and make appropriate recommendations relative to the Veterans Administration's programs to assist Vietnam veterans who were exposed to herbicides; such recommendations may concern the information delivery system and outreach efforts, scheduling of Agent Orange-related examinations, essential follow-up activities, and other related matters; (2) advise the Administrator on VA Agent Orange-related programs, programs of the Federal Government, and State programs which are designed to assist veterans exposed to herbicides, and simultaneously, will minimize duplication of VA and other federal programs concerned with the Agent Orange issue; (3) receive and review information from veterans service organizations regarding services provided by the Veterans Administration to Vietnam veterans concerned about the possible adverse health effects of exposure to herbicides; (4) review and comment on proposals for research on the possible health effects of exposure to herbicides; and (5) serve as a forum for individual veterans to inform the Veterans Administration of their views on policy issues and on the operation of Agency programs designed to assist veterans exposed to herbicides and dioxins in Vietnam.

Interested persons may submit comments regarding the reestablishment of the Advisory Committee on Health-Related Effects of Herbicides to Barclay M. Shepard, M.D., Director, Agent Orange Projects Office (10X2), Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 376–7528.

Dated: July 8, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Office.

[FR Doc. 85–16590 Filed 7–11–85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 134
Friday, July 12, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Equal Employment Opportunity Commission	1, 2
Federal Deposit Insurance Corporation	3
Federal Reserve System	4
International Trade Commission	5
Overseas Private Investment Corporation	6
Synthetic Fuels Corporation	7

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m. (eastern time), Tuesday July 16, 1985.

CHANGES IN THE MEETING:

The following matter was inadvertently scheduled for this meeting. It is expected to be scheduled at a later date. "Compliance Manual Section 23, Volume I"

The following matter was incorrectly posted and should read as: "Processing Charges Raising the Issue of Jurisdiction over Licensing Agencies"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: July 8, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued July 8, 1985.

[FR Doc. 85-10723 Filed 7-10-85; 2:11 pm]

BILLING CODE 6750-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, July 22, 1985, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Proposed Commission Decisions

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: July 10, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued July 10, 1985.

[FR Doc. 85-10736 Filed 7-10-85; 3:10 pm]

BILLING CODE 6750-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, July 8, 1985, the Corporation's Board of Directors determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Citizens First National Bank of New Jersey, Ridgewood, New Jersey, for consent to purchase certain assets of and assume the liability to pay deposits made in the Barnegat Branch, Forked River Branch, Manahawkin Branch, Ship Bottom Branch, Tuckerton Branch, and Crestwood Branch of Jersey Shore Savings and Loan Association, Toms River, New Jersey, a non-FDIC-insured institution.

Memorandum re: Revisions to Appendix E of the delegations of authority to the Division of Liquidation.

By the same majority vote, the Board further determined that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Bank One of Eastern Ohio, National Association, Youngstown, Ohio, for consent to acquire certain assets of and assume the liability to pay deposits made in the Flushing, Ohio, branch of Buckeye Savings and Loan Company, Bellaire, Ohio, a non-federally-insured institution.

Application of The Fifth Third Bank of Columbus, Columbus, Ohio, a proposed State member bank, for consent to purchase certain assets of and assume the liability to pay deposits made in three Franklin County, Ohio, branches of Hunter Savings Association, Cincinnati, Ohio, a non-FDIC-insured institution.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: July 9, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-10705 Filed 7-10-85; 11:56 am]

BILLING CODE 6714-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, July 17, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 9, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10694 Filed 7-10-85; 10:43 am]

BILLING CODE 6210-01-M

5

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-28]

TIME AND DATE: 4:00 p.m., Tuesday, July 16, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Emergency meeting—less than ten days' prior notice. Open to the Public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Investigation 731-TA-266/268 [Preliminary] (Certain steel wire nails from the Peoples' Republic of China, Poland, and Yugoslavia)—briefing and vote.
5. Investigation 337-TA-185 (Rotary wheel printing systems)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-16751 Filed 7-10-85; 3:57 pm]

BILLING CODE 7020-02-M

6

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of the Directors

TIME AND DATE: 9:00 a.m. (closed portion). 10:00 a.m. (open portion), Tuesday, July 23, 1985.

PLACE: Offices of the Corporation, seventh floor Board Room 1129 20th Street NW., Washington, DC

STATUS: The first part of the meeting from 9:00 a.m. to 10:00 a.m. will be closed to the public. The open portion of the meeting will start at 10:00 a.m.

MATTERS TO BE CONSIDERED: (Closed to the public 9:00 a.m. to 10:00 a.m.):

1. Finance Project in East Asian Country.
2. Finance and Insurance Project in Caribbean Country.
3. Insurance Project in African Country.
4. Proposed OPIC Budget for FY 1987 and Proposed Amendments to OPIC Budget for FY 1986.
5. Hickenlooper and Gonzalez Amendments Effect on OPIC Underwriting Activities and OPIC Participation in the Interagency Staff Coordinating Group on Expropriations.
6. Claims Report.
7. Information Report: Finance Projects.
8. Information Report: General.
9. China Projects: Status Report.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 10:00 a.m.):

1. Approval of the Minutes of the Previous Meeting.
2. Confirmation of Scheduled Board Meetings.
3. Personal Actions.
4. Financial Statements.
5. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 653-2925.

Elizabeth A. Burton,

Corporate Secretary.

July 10, 1985.

[FR Doc. 85-16752 Filed 7-10-85; 3:57 pm]

BILLING CODE 3210-01-M

7

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

SUMMARY: Interested members of the public are advised that a meeting of the Board of Directors of the United States Synthetic Fuels Corporation will be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C 8701, 8712(f)(1)) and Section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close the meeting pursuant to Article II, section 4 of the Corporation's By-laws, section 116(f) of the said Act and Sections 4 and 5 of the said policy.

MATTERS TO BE CONSIDER:

Open Session

I. Call to Order
II. Board Minutes
III. Fourth General Solicitation Projects—Equity Milestone Review
  A. Keystone
  B. Utah Methanol
  C. ASC/Indiana
IV. Eastern Coal Solicitation—Report on Preliminary Qualification Proposals
V. Consideration of Status of Coal-Water Fuels Solicitation—Private Sector Coal-Water Fuels Activity
VI. Impacts of Proposed Tax Changes on Project Financing
VII. Approval of Appendices to Comprehensive Strategy Report
VIII. Financial Interests of Directors Related to Projects Considered at Meeting
IX. Consideration of Financial Assistance Award for the Great Plains Project
X. Resolution to Close Meeting

Closed Session

XI. Consideration of Financial Assistance Award for the Great Plains Project
XII. Consideration of Dow Syngas Proposal for Project Modification

TIME AND DATE: 9:30 a.m., July 16, 1985.

PLACE: 2121 K Street, NW., Room 503, Washington, D.C. 20566.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Ms. Karen Hutchison, Director, Media Relations, at (202) 822-6455.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel—Corporate & Litigation.

July 9, 1985.

[FR Doc. 85-16063 Filed 7-9-85; 5:02 pm]

BILLING CODE 6460-01-M

VOL
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federal register

Friday
July 12, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Iowa:	
IA84–4043	June 15, 1984.
IA84–4042	Do.
New York:	
NY84–3018	July 6, 1984.
NY83–3027	July 22, 1983.
NY84–3036	Sept. 14, 1984.
Pennsylvania:	
PA85–3012	Mar. 8, 1985.
PA85–3029	June 21, 1985.

Cancellation of General Wage Determination Decision

General Wage Decision number MN82–2010—Aitkin, Crow Wing, Itasca, Kanabec, Koochiching, Mille Lacs, & Morrison Counties, Minnesota is canceled. Agencies with construction projects pending to which the canceled decision would have been applicable should utilize the project determination procedure by submitting form SF–308. See Regulations Part 1, 29 CFR 1.5.

Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 6.6(c)(3)(i), the incorporation of the canceled decision in contract specifications, the opening of bids for which is within ten (10) days of the notice, need not be affected.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Florida: FL83-1016 (FL85-3033). June 25, 1982.

New Jersey: NJ84-3021 [NJ85-3033]. July 6, 1984.

Pennsylvania: PA84-3012 (PA85-3035). May 11, 1984.

Signed at Washington, D.C., this 5th day of July 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION #IA84-4043-MOD.#8 (49 FR 24856-June 15, 1984)	Basic Hourly Rates	Fringe Benefits
Black Hawk, Cerro Gordo, Clinton, Des Moines, Dubuque, Johnson, Linn, & Polk Counties, Iowa		
CHANGE:		
Bricklayers & Stonemasons:		
Zone 1	$12.83	$2.62
Zone 8	14.44	2.82
Carpenters(all other const.):		
Zone 8		
Carpenters	13.15	2.59
Millwrights	13.50	2.59
Floor Coverers	12.90	2.59
Electricians:		
Zone 1	10.60	1.25+ 3.75%
Zone 8	13.97	1.72+ 3.75%
Ironworkers:		
Zone 2 & 8	13.52	3.01
Plumbers & Pipefitters:		
Zone 2	14.29	1.65
Zone 5	14.92	2.63
Zones 6 & 7	15.05	2.27
Zone 8	15.99	3.15
Sheet Metal Workers:		
Zone 1	12.91	2.71

DECISION #IA84-4042-MOD.#3 (49 FR 24855-June 15, 1984)		
WOODBURY COUNTY, IOWA		
CHANGE:		
Plumbers & Pipefitters	$13.59	$2.25

DECISION NO. NY83-3027 - MOD. 10 (48 FR 33622 - July 22, 1983) NASSAU, SUFFOLK COUNTIES, NEW YORK	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Building	20.85	.37+ 41.5%
Wiring of single or multiple family dwellings and apartments up to and including 2 stories	13.00	35.7%
Installation of television receivers, radio receivers, record players and associated apparatus and antenna and home appliances and closed circuit TV and multiple outlet distribution systems, sound and intercommunication systems and commercial electromechanical devices and appliances where such is not part of an electrical contract	11.075	a

DECISION NO. NY84-3036 - MOD. 86 (49 FR 36230 - Sept. 14, 1984) ONONDAGA COUNTY, NEW YORK		
CHANGE:		
TRUCK DRIVERS:		
Heavy & Highway (Except Ready-mix):		
Class 1	14.04	2.50+b
Class 2	14.09	2.50+b
Class 3	14.14	2.50+b
Class 4	14.29	2.50+b
Class 5	14.44	2.50+b

DECISION NO. NY84-3018 - MOD. #2 (49 FR 27899 - July 6, 1984) CATTARAUGUS, CHATAUQUA & ERIE COUNTIES, NEW YORK	Basic Hourly Rates	Fringe Benefits
ADD:		
TRUCK DRIVERS:		
Area 1:		
Dump trucks	9.25	1.05

DECISION NO. PA85-3029 MOD. NO. 1 (50 FR 25850 - June 21, 1985) Erie County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS:		
Common Laborers	$13.40	.08+ 22%
Mason Tenders	13.90	.08+ 22%
Marble Finishers, Tile Finishers & Terrazzo Finishers	13.90	.08+ 22%

DECISION NO. PA85-3012 - MOD. #4
(50 FR 9568 - March 8, 1985)
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits
CEMENT MASONS:		
Zone 1	14.25	6.79
ELECTRICIANS:		
Zone 1		
Commercial	19.34	28%
ELEVATOR CONSTRUCTORS:		
Elevator Constructors	20.07	3.58+ c+d
Elevator Constructors Helpers	70%JR	3.58+ c+d
Elevator Constructors Helpers (Prob.)	50%JR	
IRONWORKERS:		
Zone 3		
Structural & Ornamental	17.25	7.30
Reinforcing Steel Mesh Rehab work	17.77	6.80
Rigger, Machinery Moving	16.20	6.70
LABORERS:		
All Other Work		
Class 1	13.70	3.70
Class 2	13.80	3.70
Class 3	13.85	3.70
Class 4	14.00	3.70
Class 5	14.10	3.70
Class 6	13.64	3.70
LINE CONSTRUCTION		
Zone 1		
Linemen	21.27	.80+6%
Groundman	12.76	.80+6%
Winch truck operator	14.89	.80+6%
MARBLE SETTERS	16.24	4.39
PAINTERS:		
Zone 4		
Brush	15.76	4.48
Steel	16.31	4.48
PLASTERERS:		
Zone 1	20.74	1.53
PILEDRIVERMEN	15.97	7.76+g
ROOFERS:		
Shingle, state, and tile Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools & equipment; clean-up debris	14.15	2.42
	6.25	2.42
TERRAZZO WORKERS	15.38	4.39
POWER EQUIPMENT OPERATORS		
Group 1	17.82	26.6%+ .75+j
Group 2	17.56	26.6%+ .75+j
Group 3	16.10	26.6%+ .75+j
Group 4	15.79	26.6%+ .75+j
Group 5	14.02	26.6%+ .75+j
Group 6	13.51	26.6%+ .75+j
BUILDING CONSTRUCTION TRUCK DRIVERS		
Class I	13.05	3.3225 +k+1
Class II	13.15	3.3225 +k+1
Class III	13.35	3.3225 +k+1
TRUCK DRIVERS: HEAVY & HIGHWAY INCLUDING SITE PREPARATION, PAVING & UTILITIES ON BUILDING CONSTRUCTION		
Class 1	12.90	3.3225 +o+p
Class 2	13.00	3.3225 +o+p
Class 3	13.20	3.3225 +o+p

STATE: FLORIDA COUNTY: DADE
DECISION NUMBER: FL85-3038 DATE: DATE OF PUBLICATION
Supersedes Decision Number FL83-1016, dated June 25, 1982, in 48 FR 14307.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS (Heat & Frost Insulators)	$15.73	3.11
BOILERMAKERS	17.20	3.875
BRICKLAYERS, CEMENT MASONS, MARBLE SETTERS, PLASTERERS, STONE MASONS TILE SETTERS, & TERRAZZO WORKERS	16.25	1.97
CARPENTERS, DRYWALL HANGERS, LATHERS, SOFT FLOOR LAYERS & CARPET LAYERS	12.40	1.73
DRYWALL FINISHERS & TAPERS	14.75	1.87
ELECTRICIANS:		
Wiremen & Technicians	18.55	1.55 + 8%
Cable splicers	19.05	1.55 + 8%
Sound & Communication (Installation, operation, inspection, & repair of radio, television, recording-voice-sound-vision production and reproduction apparatus, equipment and appliance used for domestic, commercial, education entertainment purposes)		
Communication technicians	9.00	2.31
Installers	8.18	2.26
ELEVATOR CONSTRUCTORS:		
Mechanics	17.105	3.29 + a
Helpers	11.97	3.29 + a
Probationary Helpers	8.55	
GLAZIERS	15.77	2.70
IRONWORKERS	15.15	3.03
LABORERS - GENERAL	8.50	1.33
LINE CONSTRUCTION:		
Class 1 - Linemen;		
Class 2 - Cable splicers;		
Class 3 - Heavy Equipment Operators: Hole digger, Bucket truck, Crane, Cat, 5th wheel truck, Two-axle pole trailer, Cleveland or Barber-Greene trenches, Digger (similar to No. 1 Cleveland digger) Backhoe tractor, Gradall digger;		
Class 4 - Winch truck operator;		
Class 5 - Groundmen		
Underground, Direct Burial Cable, & Duct Work:		
Class 1	14.00	2.48
Class 2	-----	----
Class 3	10.50	2.18
Class 4	11.20	2.23
Class 5	8.12	1.96
All Other Line Construction:		
Class 1	17.13	2.75
Class 2	17.43	2.77
Class 3	17.13	2.75
Class 4	13.70	2.45
Class 5	9.94	2.13
MARBLE, TILE, & TERRAZZO FINISHERS	14.35	3.20
MILLWRIGHTS	15.35	2.63
PAINTERS:		
Brush & Roller	14.10	1.97
Paperhangers	14.35	1.97
Spray, Sandblast, & Scaffold	14.60	1.97
PILEDRIVERMEN	14.80	2.63

DECISION NO. FL85-3038 (Page 2)

	Basic Hourly Rates	Fringe Benefits
PIPEFITTERS & STEAMFITTERS:		
Air conditioning systems up to 5 tons;	$10.00	.20
Air conditioning systems up to 10 tons; refrigeration self-contained or split systems under 1 HP and all ice machines;	13.75	2.58
Air conditioning systems up to 100 tons; refrigeration systems 1 HP and over;	16.75	2.58
Air conditioning systems over 100 tons; refrigeration systems (non-retail such as ice or freezer plants); industrial piping (such as power house, airports, fuel lines, manufacturer of a product).	17.75	2.58
PLUMBERS:		
Commercial Buildings of five stories or less, except hospitals, manufacturing plants, Miami International Airport;	11.94	20%
All Other Work	17.06	20%

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Group 1	$16.75	1.25
Group 2	15.58	1.25
Group 3	14.46	1.25
Group 4	13.29	1.25
Group 5	12.06	1.25
ROOFERS:		
Composition, Damp & Waterproof	13.88	1.45
Slate & Tile	14.13	1.45
Kettlemen & Mortarmen	10.68	1.45
SHEET METAL WORKERS	18.51	1.78
SPRINKLER FITTERS	16.00	3.48
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added only after award as provided in the labor standards contract clauses (29 CFR Part 5, 5.5 (a) (1) (ii).

FOOTNOTE 'a' - Seven Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, & Christmas Day; Vacation Pay Credit: Employer contributes 8% of the regular hourly rate for employees with 5 years or more of service, and 6% for those employees with 6 months to 5 years of service.

POWER EQUIPMENT OPERATORS' CLASSIFICATION DEFINITIONS:
Group 1 - Crane, Derrick, Hoist, Field Batch Plant Operator, Inside Elevator Operator;
Group 2 - Backhoe, Dragline, Finishing Grader Operator, Fireman, Forklift, Pumps (3 inches or larger) or combination of 5 or less pumps and air compressors (over 125 CFM) or other equipment;
Group 3 - Bulldozer, Distributor, Front End Loader, Motor Grader, Trenching Machine, Scraper, Welding Machines (Only when 3 or more are being used), Winch Truck Operator, Air Compressor (above 125 CFM);
Group 4 - Finishing Machine, Mixer, Oiler Driver, Roller, Tractor;
Group 5 - Oiler on Crawler Crane, Driver.

(7)

SUPERSEDEAS DECISION

STATE: New Jersey COUNTIES: Bergen, Essex, Hudson and Passaic

DECISION NO.: NJ85-3033 DATE: Date of Publication

Supersedes Decision No. NJ84-3021, dated July 6, 1984 in 49 FR 27894.

DESCRIPTION OF WORK: Residential Construction Projects consisting of Single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING & REFRIGERATION MECHANICS:		
Group 1	15.40	1.48+a
ASBESTOS WORKERS	18.30	6.825
BOILERMAKERS	18.27	.29+38%
BRICKLAYERS, CEMENT MASONS, PLASTERERS & STONEMASONS:		
Zone 1	16.57	5.70
Zone 2	18.00	5.57
Zone 3	19.03	4.83
Zone 4:		
Bricklayers & Stonemasons	16.80	5.05
Cement Masons & Plasterers	18.15	3.80
CARPENTERS, INSULATORS AND MILLWRIGHTS:		
Zone 1:		
Carpenters & Insulators	19.26	23½%
Millwrights	19.76	23½%
Zone 2:		
Carpenters & Insulators	18.51	20.5%
Millwrights	19.01	20.5%
Zone 3	18.35	5.38
Zone 4:		
Carpenters & Insulators	19.75	20.5%
Millwrights	20.75	20.5%
DIVERS & DIVER TENDERS:		
Divers	20.87	6.83
Diver Tenders	16.27	6.83
DOCK BUILDERS AND PILE-DRIVERMEN	17.66	6.75
DRYWALL TAPERS & FINISHERS	10.60	2.10
ELECTRICIANS & CABLE SPLICERS:		
Family residence construction not to exceed 4 unit apartments (Note: Firewalls alone are not a determinative criterion.)	11.73	10%+2%
Other residential construction:		
Bergen & Hudson Cos.	20.82	28.5%+1.00
Essex County	19.40	39.25%
Passaic County		
Wiremen	21.10	2.00+10%
Cable Splicers	22.60	2.00+10%

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTION:		
New Construction:		
Mechanics	18.80	3.69+b+c+d
Helpers	14.10	3.69+b+c+d
Probationary Helpers	9.40	
Modernization:		
Mechanics	15.96	3.69+b+c+d
Helpers	11.95	3.69+b+c+d
Probationary Helpers	9.40	
Contract Repairs:		
Mechanics	15.96	3.69+b+c+d
Helpers	11.95	3.69+b+c+d
Probationary Helpers	9.40	
GLAZIERS:		
Bergen & Passaic Cos.	16.14	7.33
Essex & Hudson Cos.	18.95	6.05
IRONWORKERS - ORNAMENTAL, REINFORCING & STRUCTURAL	18.65	6.11
LABORERS:		
Zone 1:		
Group 1	12.55	3.10
Zone 2:		
Group 1	13.40	4.25
Zone 3:		
Group 1	12.55	3.25
Group 2	12.80	3.25
Zone 4:		
Laborers	13.50	2.15
Zone 5:		
Laborers	12.25	3.40
Zone 6:		
Group 1	11.65	4.00
Zone 7:		
Laborers	11.85	3.80
LINE CONSTRUCTION:		
Zone 1:		
Linemen, Cable Splicers, Line Equipment Operators, Line Truck Operators, Groundman and Welders	19.40	39.75%

(8)

DECISION NO. NJ85-3033 LINE CONSTRUCTION CONT'D	Basic Hourly Rates	Fringe Benefits
Zone 2:		
Linemen and Equipment Operators	21.10	2.00+ 17%+ 100.00 P/YR.
Cable Splicers	22.50	2.00+ 17%+ 100.00 P/YR.
Groundmen	70%JR	
Zone 3:		
Linemen, Cable Splicers, Equipment Operators and Groundmen	20.02	1.00+ 28%
MARBLE SETTERS; TERRAZZO WORKERS & TILE SETTERS:		
cutters & Setters	13.93	4.19+e
Carbers	14.48	4.19+e
Polishers	14.89	2.19+e
Crane Op.: Derrickman	12.91	4.34+e
Marble Finisher (Helpers)	12.91	2.19+e
Terrazzo Workers & Mosaic Finishers	15.28	3.71
Tile Setters	15.28	4.335
Tile Setters Finishers	13.84	3.17
MARBLE SETTERS, TILE SETTERS AND TERRAZZO WORKER FINISHERS:		
Marble Setters' Finishers	8.28	2.32+e
Terrazzo Workers' Finishers	9.84	2.71
PAINTERS:		
Zone 1:		
Uncontrollable & Repaint Work	12.60	5.01
Other Residential Construction:		
Painters & Tapers	14.60	5.01
Steel Outside & Spray	14.60	5.01
Zone 2:		
(West half of County)		
Counties:		
Group 1	13.80	2.55
Group 2	12.70	2.55
Group 3	13.30	2.55
Group 4	13.95	2.55
Group 5	12.85	2.55
Group 6	14.40	2.55
Zone 3:		
Group 1	14.25	4.83
Group 2	14.55	4.83
Group 3	15.05	4.83
Group 4	12.30	4.83
Group 5	12.65	4.83
PIPEFITTERS:		
Zone 1	18.25	6.93
Zone 2	18.12	7.05
PLUMBERS:		
Zone 1	19.33	5.85
Zone 2	18.58	6.55
ROOFERS:		
Zone 1:		
Composition	18.05	4.59
Zone 2:		
Composition, Damp, Waterproofing, Slate & Tile	18.72	3.00
Zone 3:		
Slate & Tile	16.70	4.75
Slate & Tile Helpers	8.85	4.75
Zone 4:		
Composition, Damp and Waterproofing	17.00	8.19
SHEET METAL WORKERS:		
Zone 1	12.89	3.56
Zone 2	14.20	1.63+ 16%
SOFT FLOOR LAYERS	17.23	1.50+ 13%
SPRINKLER FITTERS	18.28	5.37
POWER EQUIPMENT OPERATORS:		
Construction, repairs and alterations of dwellings such as a home, duplex, town house or walk-up apartment, 3 stories or less (including clearing and grading, excavation for foundations, back filling, storm and sanitary sewers, sidewalks, street excavation and paving, curbing and landscaping water and gas supply lines)	12.19	5.80+a
Other Residential Construction (up to and including 4 stories):		
Group 1	21.92	5.80+a

(9)

DECISION NO. NJ85-3033	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (CONT'D)		
Group 2	20.33	5.80+a
Group 3	18.42	5.80+a
Group 4	16.79	5.80+a
Group 5	15.08	5.80+a
Group 6	23.74	5.80+a
TRUCK DRIVERS:		
Zone 1:		
Group 1	7.27	1.43+ h+i
Group 2	7.50	1.43+ h+i
Group 3	7.55	1.43+ h+i
Group 4	7.65	1.43+ h+i
Group 5	7.76	1.43+ h+i
Zone 2:		
Group 1	14.97	2.00+ h+i+j
Group 2	15.20	2.00+ h+i+j
Group 3	15.25	2.00+ h+i+j
Group 4	15.35	2.00+ h+i+j
Group 5	15.45	2.00+ h+i+j

(10)

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental

PAID HOLIDAYS:
A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Christmas Day

FOOTNOTES:
a. Holidays: A through F, plus Armistic Day and Washington's Birthday Presidential Election Day and Veterans Day, provided the employee works any of the 3-days in the 5-day workweek preceeding the holiday and the first day work after the holiday.
b. Employer contributes $8.00 per day per employee to an Annuity Fund
c. Holiday: A through F, Plus Lincoln's Birthday, Washington's Birthday, Columbus Day, Election Day, and Armistic Day
d. Employees with 6 months of service but less than 5 years of service receive 2 weeks vacation; 5 or more years of service receive 3 weeks vacation
e. Holiday: A half day's pay for Labor Day
f. Holidays: A through F, plus Washington's Birthday, Veterans' Day and Presidential Election Day providing the employee works on 3 days for the same employer within a period of 10 working days, consisting of 5 working days before and 5 working days after the day upon which the holiday falls or is observed as such
g. Holidays: A through F, plus Washington's Birthday, Presidential Election Day and Veterans' Day providing the employee works any of the 3 days in the 5 days preceeding the holiday and the first work day after the recognized holiday
h. All Employees who are assigned to work on Sundays or the following holidays: New Year's Day, Martin Luther King's Birthday, Lincoln's Birthday, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, General Election Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any new holiday proclaimed by the Federal Government (not days of mourning), shall be paid two and one half times the rates listed for all hours worked which includes the holiday pay
i. Employees working or receiving pay for 80 days within a year receive one week's vacation (40 hours); 125 days receive two weeks vacation (96 hours); 145 days receive 15 days (120 hours); 15 years seniority and 145 days receive 4 weeks vacation (160 hours)
j. Employer contribution of $170.00 per month per employee to Health and Welfare Funds

AREA, GROUP and ZONE DESCRIPTIONS

AIR CONDITION and REFRIGERATION MECHANIC:
Group 1: Installation of refrigeration equipment for any type of building where the combined compressor tonage does not exceed 5 tons; installation of water-cooled air conditioning that does not exceed 10 tons (includes the piping of component system and the erection of the water tower); Installation of air-cooled air conditioning that does not exceed 15 tons

BRICKLAYERS; STONEMASONS, CEMENT MASONS; and PLASTERERS:
Zone 1: Bergen (North Arlington, Lyndhurst - east of Ridge Road and north to Rutherford Avenue and Barry's Creek, west to the Hackensack River); Essex (except Millburn Township); Judson that portion west of the Jackensack River
Zone 2: Bergen (Wallington, part of East Patterson, Garfield, Lodi, North Arlington and part of Lyndhurst); Morris (Ponpton Plains, Pequannock, Lincoln Part, Kinnelon, Butler and Riverdale); Passaic and Sussex (that portion north of a line along Route #521 from Dingmans Ferry to Tuttles Corner, Along Route #206 to Lafayette, then along North Church Road to Route #23 to Passaic County Line) Counties
Zone 3: Bergen (Remainder of County)
Zone 4: Hudson (Remainder of County)
Zone 5: Essex (Millburn Township), Morris (Gillette and Sterling, Shore Hills Townships), Union (New Providence Springfield Summit and Union Townships

CARPENTERS, INSULATORS and MILLWRIGHTS:
Zone 1: Essex County and that part of Hudson County west of the Hackensack River
Zone 2: Passaic County and the City of Garfield and Borough of Lodi and Wallington in Bergen County
Zone 3: Bergen County (east of the Hackensack River including but not limited to Cliffside, Fort Lee, Grant Wood, Palisades Part, Ridgefield, Edgewater, Fairview, Leonia and Coytesville) and that part of Hudson County east of the Hackensack River
Zone 4: Bergen (Remainder of County)

LABORERS BUILDING CONSTRUCTION:
Zone 1: Passaic County (Townships of Boroughs Passaic, Delavanna, Allwood, Athenia and Clifton to Piaget Avenue; Paterson, and the Boroughs and Townships of Albion Place, Little Fall, Totowa Borough, West Paterson, Wayne, Hawthorne, Pompton, Haledon, Clifton to Piaget Avenue, West Millford, Ringwood, Bloomingdale, New Jersey and East Paterson to the Garfield boundary line) Bergen County (Townships of Garfield, Lodi and Wallington):
Group 1: Laborers; Air Tool Operators (Jackhammers, Vibrators); Mason Tenders; Mortar Mixers; Pipelayers (concrete and clay); and Plasterer Tenders

ZONE and GROUP DESCRIPTIONS (Cont'd)

LABORERS BUILDING CONSTRUCTION (Cont'd):
Zone 2: Bergen County (Cliffside: Borough of Cliffside Park: Borough of Fort Lee, south of Central Boulevard; Borough of Palisades Part, south of Central Boulevard; Borough of Ridgefield; Borough of Edgewater, and Borough of Fairview; Hackensack: City of Hackensack; Hasbrouck Heights; Little Ferry; South Jackensack; Ridgefield Park; Bogota; Teaneck Township, west of Teaneck Road and South of Fort Lee Road; Maywood; Saddle Brook Township; Borough of Paramus, east of Sprout Brook; and the Borough of River Edge; New Milford;Teterboro; Bendix; and Tochell Park; Englewood: City of Englewood; Borough of Dumont; Borough of Bergenfield; Borough of Palisades Park, north of Central Boulevard to Edgewater; Fort Lee, to the Hudson River; Borough of Fort Lee, north of Central Boulevard; Township of Teaneck, east of Teaneck Road and north of Fort Lee Road; Borough of Leonia; Borough of Englewood Cliffs; Borough of Tenafly; Borough of Cresskill; Borough of Demarest; Borough of Closter; Borough of Oradell; Borough of Montvale; Borough of Woodcliff Lake; Borough of Park Ridge; Borough of Hillsdale; Township of Washington; Borough of Westwood; Borough of Emerson; Borough of Haworth; Borough of alpine; Borough of Rockleigh; Borough of Norwood; Borough of Harrington Park; Borough of Old Tappan; Borough of Northvale; and Township of Rivervale; Lyndhurst: Rutherford; East Rutherford; Wood-Ridge; Carlton; Carlstadt; North Arlington and Moonachie; Ridgewood: Village of Ridgewood; Borough of Fair Lawn; Borough of Glen Rock; Borough of HoHoKus; Borough of Saddle River; Borough of Upper Saddle River; Borough of Allendale; Borough of Ramsey; Borough of Waldwick; Borough of Midland Park; Borough of Oakland; Borough of Franklin Lakes; Township of Wykoof; Township of HoHoKus; and Borough of Paramus with the exception of portion of Paramus, east of Sprout Brook and Borough of Mahwah):
  Group 1: Laborers; Air Tool Operator (Jackhammers, Vibrators); Mason Tenders; Mortar Mixers; Pipelayers (concrete and clay); Plasterer Tenders; Wrecking and Excavation
Zone 3: Essex County (City of East Orange, Townships of South Orange and Maplewood):
  Group 1: Laborers
  Group 2: Mortar Mixers; Scaffold Men; Pneumatic Hammer Operators; Bell Men and Carpenter Tenders
Zone 4: Essex County (Orange and Montclair)
Zone 5: Essex (Millburn) and Union (Springfield and Union Townships) Counties
Zone 6: Essex (Remainder of County) and Hudson (Kearny, East of Newark and Harrison) Counties:
  Group 1: Laborers; Air Tool Operators; Mason Tenders; Mortar Mixers and Pipelayers (concrete and clay)
Zone 7: Remainder of Hudson County

AREA, GROUP, and ZONE DESCRIPTIONS (Cont'd)

PAINTERS:
Zone 1: Bergen, Passaic Counties
Zone 2: Essex, Hudson (west half of County) Counties:
  Group 1: Painters on New Construction and Major Alterations
  Group 2: Painters on REpaint Work
  Group 3: Spraying or Application of hazardous or dangerous materials on Repaint Work
  Group 4: Exterior Work exceeding 3 stories in height for painting of Open Structural Steel and Tanks under 3 stories in height except Flat Tanks on the ground and on interior work which requires painting higher than 20' above the ground or floor (this shall not be applicable to Machinery or Equipment located therein)
  Group 5: Repaint Work as described in Group 4
  Group 6: On Bridges, Television and Radio Towers, Structural Steel and Tanks above 3 stories in height (30' or over), Smoke Stacks, Water Towers, Sandblasting, Steam Cleaning, Spraying or application of Hazardous materials
Zone 1: Hudson (Remainder of County):
  Group 1: Interior of apartment houses; Paperhangers
  Group 2: All extension Ladder work, 36 feet high and over, on all scaffold work except one and two family homes and all boatswains chair work; Structural Steel, Tanks, Bridges, Towers, Smokestacks, Radio Towers, Television Towers, Flag Poles (steel or wood construction), Fire Escapes from top to bottom, Cable Work, Hazardous Work
  Group 3: Sandblasting; Spraying
  Group 4: Repainting high rises and old warehouses with Scaffold or extension Ladders
  Group 5: Rehab. Work - all closets below street level, basements, sub-basements, Boiler Rooms and Stairways, may be sprayed

PIPEFITTERS:
Zone 1: Bergen, Hudson and Passaic Counties

PLUMBERS:
Zone 1: Bergen, Hudson (excluding East Newark, Harrison, and Kearney), and Passaic Counties
Zone 1: Bergen, Hudson (excluding East Newark, Harrison and Kearney), and Passaic County

Zone 2: Hudson (East Newark, Harrison, and Kearney only) and Essex Counties

AREA, GROUP AND ZONE DESCRIPTION (Cont'd)

ROOFERS:
Zone 1: Bergen and Passaic Counties
Zone 2: Essex, Hudson (West of the Hackensack River) Counties
Zone 3: Bergen, Passaic Counties
Zone 4: Hudson (East of Hackensack River) County
SHEET METAL WORKERS:
Zone 1: Bergen and Hudson Counties
Zone 2: Essex and Passaic Counties
LINE CONSTRUCTION:
Zone 1: Essex County
Zone 2: Passaic County
Zone 3: Bergen and Hudson Counties

POWER EQUIPMENT OPERATORS

Class 1: Autograde - Combination Subgrader; Base Metal Spreader and 7 Base Trimmer (CMI and similar types); Autograde Placer, Trimmer, Spreader Combination (CMI and similar types); Autograde Slipform Paver (CMI and similar types); Backhoe; Central Power Plants (all types); Concrete Paving Machines; Cranes (all types, including Overhead and Straddle Travelling type); Cranes; Gantry; Derricks (Land or Floating); Drillmaster, Quarrymaster (down the Hole Drill) Rotary Drill; Self Propelled Hydraulic Drill; Self-powered Drill; Dragline; Elevator Graders; Front End Loaders (5 yds. and over); Gradalls; Grader; Raygo; Locomotive (large); Mucking Machines; Pavement and Concrete Breaker, i.e.; Superhammer and Hoe Ram; Pile Driver; Length of Boom including Length of Leads, shall determine premium rate applicable; Roadway Surface Grinder; Scooper (Loader and Shovel); Shovels; Tree Chopper with Boom; Trench Machines

Class 2: "A" Frame; Backhoe (combination); Boom Attachment on Loaders (rate based on size of Bucket) not applicable to Pipehook, Boring and Drilling Machines; Brush Chopper; Shredder and Tree Shredder; Tree shearer; Cableways; Carryalls; Concrete Pump; Concrete Pumping System; Pumpcrete and similar types; Conveyors, 125 ft. and over; Drill Doctor including Dust Collector, Maintenance); Front End Loaders (2 yds. but less than 5 yds.); Graders (Finisher); Groove Cutting Machine (ride on type); Header Planer; Hoists: (all types hoists, shall also include Steam, Gas, Diesel, Electric, Air Hydraulic, Single and Double Drum, Concrete Brick Shaft Caisson, Snorkel Roof, and/or any other similar type Hoisting Machines, portable or stationary, except Chicago Boom type); Hoists (Chicago Boom type); Hydraulic Cranes, 10 tons and under; Hydro-axle; Jacks Screw Air Hydraulic power operated unit or Console type (not Hand Jack or Pile Load Test type); Log Skidder; Pans; Pavers (all Concrete; Pumpcrete Machines; Squeezecrete and Concrete Pumping (regardless of size); Scrapers; Side Booms; Straddle Carrier; Ross and similar types; Winch Truck (hoisting)

POWER EQUIPMENT OPERATORS (Cont'd)

Class C: Asphalt Curbing Machine; Asphalt Plant Engineer; Asphalt Spreader; Autograde Tube Finisher and Texturing Machine (CMI and similar types); Autograde Curercrete Machine (CMI and similar types); Autograde Curb Trimmer and Sidewalk; Shoulder; Slipform (CMI and similar types); Bar Bending Machines (power); Batchers; Batching Plant and Crusher on Site; Belt Conveyor Systems; Boom type Skimmer Machines, Bridge Deck Finisher; Bulldozers (all); Car Dumpers (railroad); Compressor and Blower type units (used independently or mounted on Dual Purposes Trucks, on job site or in conjuction with job site, in loading and unloading of Concrete, Cement, Fly Ash, Instancrete, or similar type materials); Compressor (2 or 3)(Battery); Concrete Finishing Machines; Concrete Saws and Cutters (ride on type); Concrete Spreaders; Hetzel; Rexomatic and similar types; Concrete Vibrators; Conveyors; under 125 ft.; Crushing Machines; Ditching Machine; Small (Ditchwitch or similar type); Dope Pots (Mechanical with or without Pump); Dumpsters; Elevator; Fireman; Fork Lifts (Economobile; Lull and similar types of equipment); Front End Loaders (1 yd. and over but less than 2 yds.); Generators (2 or 3) in Battery; Giraffe Grinders; Graders and Motor Patrols; Gunnite Machines (excluding Nozzle); Hammer Vibratory (in conjunction with Generator); Hoist (Roof, Tugger, Aerial Platform Hoist and House Cars); Hoppers; Hopper Doors (power operated); Ladders (motorized); Laddervator; Locomotive; Dinky type; Maintenance; Utility Man; Mechanics; Mixers (except Paving Mixers); Motor Patrols and Graders; Pavement Breakers, small; Self-propelled Ride on type (also maintaining Compressor or Hydraulic unit); Pavement Breaker; Truck mounted; Pipe Bending Machine (power); Pitch Pump; Plaster Pump (regardless of size); Post Hole Digger (Post Pounder and Auger); Rod Bending Machines (power); Roller; Black Top; Scales; Power; Seaman Pulverizing Mixer; Shoulder Widener; Silos; Skimmer Machines (boom type); Steel Cutting Machine; Services and Maintaning; Tractors; Tug Captain; Vibrating Plants (used in conjunction with unloading); Welder and Repair Mechanics

Class D: Brooms and Sweepers, Chippers, Compressor (single), Concrete Spreaders (small type), Conveyor Loaders (not including Elevator Graders), Engines, Large Diesel (1620 H.P.) and Staging Pump, Farm Tractors; Fertilizing Equipment (operation and maintenance) Fine Grade Machine (small type); Form Line Graders (small type); Front Loader (under 1 yd.); Generator (single); Grease, Gas, Fuel and Oil Supply Trucks; Heaters (Nelson or other type including Propane, Natural Gas or Flow-type units); Lights; Portable Generating Light Plants; Mixers; Concrete small; Mulching Equipment (operation and maintenance) Pumps (4 inch suction and over including Sumbersible Pumps); Pumps (2 or less than 4" suction and over including submersible pumps); Pumps (Diesel engine and Hydraulic) immaterial of power Road Finishing Machines (small type); Rollers; Grade; Fill or Stone Base; Seeding Equipment (operation and maintenance of); Sprinkler and Water Pump Trucks Steam Jennies and Boilers, Stone Spreader; Tamping Machines Vibrating Ride-on; Temporary Heating Plant (Nelson or other type, including Propane, Natrual Gas or Flow type units); Water and Sprinkler Trucks; Welding Machines (gas, diesel, and/or electric Converters of any type, single, two or three in a Battery); Welding System, Multiple (Rectifier Transformer type); Wellpoint Systems.

Class E: Oiler

Class F: Helicopter Pilot

TRUCK DRIVERS ZONES:
Zone 1: Bergen, Hudson and Passaic Counties.
Zone 2: Essex County

TRUCK DRIVERS:
Group 1: Mechanic Helper
Group 2: Drivers on the following type vehicles: straight Dumps Flats, Floats, Pickups, Container Haulers, Fuel, Water Sprinkler, road Oil, Stringer, Bead, Hot Pass, Bus Dumpcrete, Transit Mixers, Agitator Mixer, Half Truck, Winch Truch, Side-O-Matic, Dynamite, Powder, X-ray, Welding, Skid, Jeep, Station Wagon, Stringer, A-frame, All Dual Purpose Trucks, Trucks with mechanical tailgates, Asphalt Distributer, Batch Trucks, Seeding, Mulching, Fertilizer, Air Compressor Trucks (intransit), Parts Chaser, Escort, Scissor, Hi-lift, Telescope, Concrete Breaker, Gin Pole, Stone, Sand, Asphalt Distributor and Spreader, Nipper, Fuel Trucks (drivers on Fuel Trucks including handling of hose and nozzle-entire unit), Team Drivers, Vacuum or Vac-all Trucks (entire unit), Skid Truck (debris container - entire unit), Concrete Mobile Trucks (entire unit), Expediter (parts chaser), Beltcrete Trucks, Pumpcrete trucks, Line truck, Reel Truck, Wreckers, Utility Trucks, Tack Trucks, Warehousemen, Warehouse Parts-men, Hardmen, Lift Truck in Warehouse, Helper when required on Lift Truck in Warehouse, Warehouse Clerk, Parts Man, MaterialChecker, Receivers, Shippers, Binning Men (materials), Cardex Man, Helper when required on Broyhill Coat Tar Epoxy Truck and Asphalt and Bituminous Distributor Truck, Drivers on the following type vehicles: Broyhill Coat Tar Epoxy Trucks, Little Ford Bituminous Distributor, Slurry Seal Truck or vehicle, Thiokol Track Master Pickup (Swamp Cat Pickup); Bucket Loader Dump Truck and any rubbertired Tractor used in pulling and towing Farm Wagons and Trailers of any discription, similar type vehicles, Off-site and On-site Repair Shop
Group 3: Drivers on straight 3-axle materials: Trucks and Floats
Group 4: Drivers on all Euclid type vehicles: Euclids, International Harvesters, Wabcos, Caterpillar, Koehring, Tractors and Wagons, Dumpsters, Straight, Bottom, Rear and Side Dumps, Carry-alls and Scarpers (not self loading, loading over the top); Water Sprinkler Trailers; Water Pulls and similar types of vehicles; Drivers on Tractors and Trailer type vehicles: Flat, Floats, I-Beams, Low Beds, Water Sprinkler, Bituminous Transit Mix, Road Oil, Fuel, Bottom Dump Hopper, Rear Dump, Office,Shanty, Epoxy, Asphalt, Agitator Mixer Distributor, Water Pulls (entire unit) (Tractor Trailer), Reel Trailer, and similar types of vehicles
Group 5: Winch Trailers Drivers

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Pennsylvania
COUNTIES: BUCKS, CHESTER, DELWARE, MONTGOMERY & PHILADELPHIA
DECISION NO.: PA85-3035
DATE: Date of Publication
Supersedes Decision No.: PA84-3012 dated May 11, 1984, in 49 FR 20229.
DESCRIPTION OF WORK: Heavy and Highway Construction.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	15.97	6.11+a
CEMENT MASONS	14.25	6.79
ELECTRICIANS:		
Philadelphia (only)	19.14	28%
IRONWORKERS:		
Structural & Ornamental Philadelphia (only)	17.25	7.30
Rigger, machinery mover Philadelphia (only)	18.20	4.70
Reinforcing	17.77	6.80
LABORERS:		
Group 1	13.95	3.75
Group 2	13.75	3.75
Group 3	13.65	3.75
Group 4	13.80	3.75
Group 5	13.55	3.75
Group 6	14.20	3.75
Group 7	14.05	3.75
Group 8	13.90	3.75
Tunnel Compressed Air:		
Laborers:		
Blasters, shield drivers	19.375	1.80
Miners, miner's bore driver	20.00	1.80
Brakemen, trackmen, miners, helpers, groutmen, iron men, maintenance man, pump men, electricians, cement finisher, carpenters, hydraulic men, monorail men, conveyor men, power carriers, pan men, powder carriers, pan men, riggers, lock tenders' helpers, nippers, derailed men, cablemen, hosemen, gravel men	17.955	1.80
Mucking machine operators	20.665	1.80
Laborers (Surface) per hour	9.75	1.80
Between Locks		
Lock tenders, motor men	18.80	1.80
All other men	17.955	1.80
Outside of Locks		
Outside lock tenders, gauge tenders	19.955	1.80
Outside lock tenders' helpers	17.11	1.80

AMOUNT IN ADDITION TO BASE RATE (NOT CUMULATIVE)

Air Pressure	
15 lb. up to but less than 26 lb.	1.50
26 lb. up to but less than 31 lb.	2.00
31 lb. up to but less than 36 lb.	2.50
36 lb. up to but less than 41 lb.	3.00
41 lb. or more	3.50

	Basic Hourly Rates	Fringe Benefits
LANDSCAPING:		
Landscape Laborers	8.30	1.80+b
Farm Tractor Driver	8.80	1.80+b
Hydroseeder Nozzlemen	8.80	1.80+b
Mulcher Nozzlemen	8.80	1.80+b
LINE CONSTRUCTION		
ZONE 1		
Linemen	21.27	.80+6%
Groundmen	12.76	.80+6%
Winch truck operator	14.89	.80+6%
ZONE 2		
Linemen, cable splicers, heavy equipment operator, truck driver	15.27	.80+10 3/4%
Groundman, winch operator	12.22	.80+10 3/4%
LINE CONSTRUCTION (RAILROAD ONLY)		
Linemen		
"A" equipment operator	13.28	.60+3 3/4%+c
"B" equipment operator	11.61	.60+3 3/4%+c
MILLWRIGHTS:		
Philadelphia (only)	16.32	5.51
PILEDRIVERMEN	15.97	7.76+d
POWER EQUIPMENT OPERATORS:		
Heavy Construction Wage Group 1	17.82	26.6% +.75+e

DECISION NO. PA85-3035

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS: CONTINUED		
Wage Group 2	17.56	26.6% + .75 +e
Wage Group 3	16.10	26.6% + .75 +e
Wage Group 4	15.79	26.6% + .75 +e
Wage Group 5	14.02	26.6% + .75 +e
Wage Group 6	13.51	26.6% + .75 +e
Highway Construction, and Water Lines Construction (Off Plant Site)		
GROUP 1	17.57	26.6% + .75+e
GROUP 2	17.35	26.6% + .75 +e
GROUP 3	15.83	26.6% + .75 +e
GROUP 4	15.46	26.6% + .75 +e
GROUP 5	13.87	26.6% + .75 +e
GROUP 6	13.52	26.6% + .75 +e
HEAVY & HIGHWAY TRUCK DRIVERS: Including Site Preparation, Paving and Utilities on Building Construction		
Class 1	12.90	3.3225 +f+g
Class 2	13.00	3.3225 +f+g
Class 3	13.20	3.3225 +f+g

WELDERS - Rate for craft to which the welding is incidential.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, §.5(a)(1)(ii))."

DECISION NO. PA85-3035

AREA COVERED BY LINE CONSTRUCTION

ZONE 1 - Chester, Delaware, Montgomery, Philadelphia Counties; Remainder of Bucks County.

ZONE 2 - Buck county: That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152, north along Route 152 to the Hulmeville Rd., east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 and Route 09028, west on 09028 to Route 152, north on 152 to Tr 532, north on Tr 532 to Tr 11w, north on Tr 113 to Tr 232 at Anchor Inn, northeast on Tr 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough Line at the Southwest corner of the Borough of New Hope. The Boroughs of New Hope and Bristol are included

CLASSIFICTIONS DEFINITIONS FOR LINE CONSTRUCTION (RAILROAD ONLY)

"A" Equipment Operators:

1. Hoisting equipment - when erecting complete towers, erecting framed structures, erecting steel transmission poles, erecting railroad pole extensions and crossbeams and when operating personnel lift baskets.

2. Tension pulling equipment under energized conditions - parallel with other energized circuits or above energized circuits on the same structure, not to include crossovers. Bundled conductor stringing, including static conductors on bundled conductor lines.

3. Excavating augurs 36" inches in diameter or larger, 5/8 cubic yard backhoe and larger, trencher over four feet in depth, bulldozer D-6 (caterpillar) or larger, and blade on finish grade work

"B" Equipment Operators:

Operators of all other equipment

LABORERS CLASSFICATIONS OTHER THAN TUNNEL COMPRESSED AIR & LANDSCAPING

Group 1 - Powderman, multiple wagon drill op. under pinning excavation, bottom men

Group 2 - Finished surface asphalt rakers ops., pipelayers, or caulkers conduit and duct layers, jackhammer operator, paving

DECISION NO. PA85-3035

LABORERS CLASSIFICATIONS (CONTINUED)

Group 3 - Other pneumatic tools ops., labor stripping concrete forms, carrying or handling lumber, steel & steel mesh and other concrete materials, form pinners, tool room men, mortar mixers, concrete pitman & spaders, grademen, asphalt shovelers, men working in shoring, men working in lagging, laborers assistance in the setting of cut stone, granite or artifical stone, hod carriers, scaffold builders, all other laborers on construction with the exception of workers in compressed air, releif joints and approach slab, men working in sheeting

Group 4 - Wagon drill operators

Group 5 - Yard workers: Laborers, scale mixemen, burnermen dustmen, feeder

Group 6 - Free Air Tunnel: Miner bore driver, blasters, drillers, pneumatic shield op., welders & burners, miners

Group 7 - Miners' Helper, form setters, circular caisson excavation bottom men underpinning excavation bottom men, welders, burners and air tugger

Group 8 - Trackmen, brakemen, groutmen, bottom shaft men, all others in free air tunnels

POWER EQUIPMENT OPERATORS
(HEAVY CONSTRUCTION CLASSIFICATION DEFINITIONS)

Wage Group 1 - Handling steel and stone in connection with erection, cranes doing hook work, any machines handling machinery, cable spinning machine, helicopters, and machines similar to above.

Wage Group 2 - All types of cranes, all types of backhoes, cableways, drag lines, keystones, all types of shovels, derricks, trench shovels, trenching machines, pippin type backhoes, hoist with two towers, pavers 21E and over, all types overhead cranes, building hoist - double drum, (unless used as single drum), mucking machines in tunnel, gradalls, front end loaders, boat captain, tandem scrapers, towers type crane opertion, erecting, dismantling, jumping or jacking, drill self contained (drillmaster type), fork lift (20 ft. and over), motor patrols (fine grade), batch mixer, scrapers & tournapulls, rollers (high grade finishing), mechanic-welder, spreaders, bulldozers and tractors, and machines similar to the above.

DECISION NO. PA85-3035

POWER EQUIPMENT (CONTINUED)

Wage Group 3 - Conveyors (except building converyors), building hoists (single drum), asphalt plant engineers, high or low pressure boilers, concrete pumps, well drillers, fork lift trucks of all types, ditch witch type trencher, motor patrol, concrete breaking machines, rollers, and machines similar to the above.

Wage Group 4 - Seaman pulverizing mixer, tireman on power equipment, maintenance engineer (power boat), farm tractors, fine grade machines, form line graders, road finishing machines, power broom (self-contained), seed spreader, grease truck, and machines similar to the above.

Wage Group 5 - Coveyors (building), welding machines, heaters, wellpoints, compressors, pumps, and machines similar to the above.

Wage Group 6 - Fireman, oilers and deckhands (personnel boats), grease truck helper.

HIGHWAY CONSTRUCTION CLASSIFICATIONS

Wage Group 1 - handling steel and stone in connection with erection, cranes, doing work any machine handling machinery, helicopters, machines similar to the above.

Wage Group 2 - All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, pavers 21E and over, trenching machines, graddalls, front-end loaders, boat captain, pippin type backhoes, tandems scrapers, towers type crane operation erecting, dismantling, jumping, or jacking, drills self-contained, (drillmaster type) forklift (20 ft. and over, motor patrols (fine grade), batch plant with mixer, carryalls, scraper, tournapulls, roller (High Grade Finishing), spreaders (Asphalt), bulldozers and tractors, mechanic-welder, and machines similar to the above.

Wage Group 3 - Asphalt plant engineers, concrete pumps, well drillers, ditch witch (small trencher), motor patrols, conveyors, ten-ton roller (grade fill stone base), concrete breaking machines, and machines similar to the above.

Wage Group 4 - Seaman pulverizer, form line grader, fine grade machines, farm tractors, road finishing, concrete spreaders, power broom self contained, seed spreader, grease truck, and machines similar to the above.

Wage Group 5 - Compressors, pumps, well point pumps, welding machines tireman, power equipment, maintenance engineers (Power Boats), and machines similar to the above.

Wage Group 6 - Fireman, oilers and deck Hands (Personnel Boats), grease truck helpers.

DECISION NO. PA85-3035

HEAVY AND HIGHWAY TRUCK DRIVERS INCLUDING
SITE PREPARATION, PAVING AND UTILITIES
ON BUILDING CONSTRUCTION CLASSIFICATIONS

Class 1 - Helpers, stake body truck (single axle, dumpster)

Class 2 - Dump trucks, tandem & batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

Class 3 - Euclid type, off-highway equipment or belly dump trucks and double hitched equipment, staddle (ross) carrier, low-bed trailers

FOOTNOTES:

a. Paid Holiday: Labor Day.

b. Paid Holidays: July 4th, Labor Day, and Thanksgiving Day.

c. Paid Holidays: New Year's Day; Decoration Day; Indendence Day; Labor Day; Thanksgiving Day; Christmas Day and Good Friday.

d. Paid Holidays: Washington's Birthday; Good Friday; Memorial Day; Labor Day; Presidential Election Day; Veteran's Day; Thanksgiving Day and Christmas.

e. Paid Holidays: New Yer's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day, providing the employee works the day before and after the holiday.

f. Employee will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days per calendar year. During each two (2) consecutive months period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all days of vacation.

g. Paid Holidays: Memorial Day; Independence Day; Labor Day and Veterans Day and five (5) personal holidays provided such employee work the scheduled work days before and after said holiday; and employee gives employer one (1) week's notice requesting a personal holiday. The eligibility for personal holiday every two (2) months up to a maximum of five (5) consecutive month period, emplyee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all personal holidays.

(23)

[FR Doc. 85-16418 Filed 7-11-85; 8:45 am]
BILLING CODE 4510-30-C

federal register

Friday
July 12, 1985

Part III

Environmental Protection Agency

40 CFR Part 419

Petroleum Refining Point Source Category; Effluent Limitations Guidelines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 419

[OW-FRL-2815-5]

Petroleum Refining Point Source Category; Effluent Limitations Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the regulation which limits effluent discharges to waters of the United States from facilities engaged in the refining and processing of petroleum. EPA proposed these modifications on August 28, 1984, (49 FR 34152) in accordance with a settlement agreement which resolved a lawsuit brought against EPA by the Natural Resources Defense Council, Inc. The lawsuit challenged the final petroleum refining regulation promulgated on October 18, 1982 (47 FR 46434).

Today's final rule incorporates the proposed amendments which are: (1) Modifications to the "best available technology economically achievable" (BAT) effluent limitations for process wastewater for the pollutants phenolic compounds, total chromium, and hexavalent chromium; (2) "best conventional pollutant control technology" (BCT) effluent limitations for process wastewater; and (3) "best practicable control technology currently available" (BPT), BCT, and BAT effluent limitations for contaminated storm water runoff. Amendments are also made in this final rule, which will correct errors identified in the October 26, 1984 rule, the August 28, 1984 Proposed Rule, as well as errors contained in 40 CFR Part 419, revised as of July 1, 1984.

DATES: In accordance with 40 CFR 100.01, the regulations developed in this rulemaking shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on July 29, 1985. These regulations shall become effective August 26, 1985.

Under Section 509(b)(1) of the Clean Water Act, judicial review of these regulations is available only by filing a petition for review in the United States Court of Appeals within ninety days after these regulations are considered issued for purpose of judicial review. Under section 509(b)(2) of the Clean Water Act, these requirements of the regulations may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Those portions of the existing petroleum refining effluent limitations guidelines and standards that are not substantively amended by this notice are not subject to judicial review nor is their effectiveness altered by this notice.

ADDRESSES: The record for this rulemaking will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, SW., Washington, D.C. The EPA information regulation provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Ruddy, Industrial Technology Division, at (202) 382-7131.

SUPPLEMENTARY INFORMATION:

I. Legal Authority
II. Background
  A. Prior Regulation
  B. Challenges to the Prior Regulation
  C. Settlement Agreement
III. Changes from Proposal
IV. Amendments to the Petroleum Refining Point Source Category Regulation
  A. Best Available Technology Effluent Limitations Guidelines
  B. Best Conventional Pollutant Technology Effluent Limitations Guidelines
  C. Effluent Limitations Guidelines for Contaminated Storm Water Runoff
V. Environmental Impact of the Amendments
VI. Responses to Major Comments
VII. Executive Order 12291
VIII. Regulatory Flexibility Analysis
IX. OMB Review
X. List of Subjects: 40 CFR Part 419

I. Legal Authority

The amendments to the regulation described in this notice are promulgated under the authority of sections 301, 304, 307, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251, et seq., as amended by the Clean Water Act of 1977, Pub. L. 92-517). These changes are also promulgated in response to the Settlement Agreement in *Natural Resources Defense Council, Inc.* v. *Environmental Protection Agency*, No. 83-1122 (D.C. Cir.).

II. Background

A. Prior Regulation

On October 18, 1982, EPA published final effluent limitations guidelines and standards for the petroleum refining point source category. That regulation provided final effluent limitations for "best available technology economically achievable" (BAT) and established final pretreatment standards for existing sources (PSES) and for new sources (PSNS). The Agency retained its previously promulgated "new source performance standards" (NSPS) and also did not modify its effluent limitations guidelines for "best practicable control technology currently available" (BPT). The Agency reserved coverage of "best conventional pollutant control technology" (BCT) effluent limitations guidelines. The preamble of the 1982 final regulations describes the history of the rulemaking. (47 FR 46343)

B. Challenges to the Prior Regulation

On January 27, 1983, the Natural Resources Defense Council, Inc. ("NRDC") filed a petition to review the final petroleum refining regulation. *Natural Resources Defense Council, Inc.* v. *Environmental Protection Agency*, No. 83-1122 (D.C. Cir.). The American Petroleum Institute ("API") and seven individual oil companies intervened in the litigation.

C. Settlement Agreement

On April 17, 1984, EPA, NRDC, API and all other interveners to the litigation entered into a comprehensive Settlement Agreement. In the Settlement Agreement, EPA agreed to publish a notice of proposed rulemaking and to solicit comments regarding certain modifications to the 1982 final petroleum refining BAT effluent limitations guidelines. In addition, EPA agreed to propose BCT effluent limitations guidelines for four conventional pollutants and BPT, BAT and BCT effluent limitations guidelines for contaminated storm water runoff. Petitioner NRDC agreed that if EPA took final action pursuant to and consistent with the Settlement Agreement that it will dismiss its lawsuit challenging the 1982 final petroleum refining regulation.

As part of the Settlement Agreement, the parties agreed to seek a judicial stay of the regulatory provisions to be modified. On July 24, 1984, the Court entered a stay of the effluent limitations for phenolic compounds, total chromium and hexavalent chromium for the following portions of the regulation pending the rulemaking: 40 CFR 419.13(a), 419.23(a), 419.33(a), 419.43(a), and 419.53(a). On August 28, 1984, EPA published the proposed amendments to the 1982 effluent limitations guidelines in accordance with the Settlement Agreement (49 FR 34152). Public comments were received and considered in issuing this final rule.

III. Changes From Proposal

Today's final rule amends the effluent limitations guidelines for the petroleum refining point source category; it is the same as the August 28, 1984 proposed amendments. However, certain cost determinations used to develop the BCT

effluent limitations guidelines have been revised since the proposal but do not affect the Agency's original conclusion that BCT should be set equal to BPT for this industry.

EPA published a proposed BCT methodology (47 FR 49176) which set forth a procedure for evaluating the cost reasonableness of BCT effluent limitations guidelines. The proposed BCT limitations for the petroleum refining industry were based upon that published methodology, which includes the "POTW test" and the "industry cost test." The Agency selected and evaluated two levels of technology for the control of conventional pollutants from petroleum refineries (i.e., recycle/reuse and recycle/reuse plus granular media filtration following BPT). Incremental (beyond BPT) conventional pollutant removals and costs associated with the candidate BCT technologies were calculated for model plants representative of each of the five petroleum refining subcategories. The resulting "cost per pound removed" ratios failed the BCT cost test. The Agency therefore proposed that BCT be set equal to BPT for all five petroleum refining subcategories.

Subsequently, EPA published a notice of data availability concerning the BCT methodology on September 20, 1984 (49 FR 37046). The Agency has revised its BCT cost evaluation for petroleum refining to incorporate the updated information referenced in the notice of data availability. The revised cost ratios for the recycle/reuse technology options with 20 to 40 percent reductions in discharge flow range from $50.48 to $1.36 (1977 dollars). The revised cost ratios for the recycle/reuse plus filtrations options range from $27.05 to $1.11 (1977 dollars). The benchmark in 1977 dollars for the POTW cost test based on the Agency's reproposed BCT methodology is approximately $.76 per pound of pollutant removed. The Agency is presently revising the BCT methodology and expects the benchmark to change. Based on preliminary analysis, the Agency expects that the candidate technologies will fail under future BCT cost tests. Thus, the Agency has decided to establish BCT effluent limitations guidelines equal to BPT effluent limitations guidelines for the Petroleum Refining Industry in this rulemaking.

Several typographical and transcription errors appeared in 419.43(c)(2), 419.14(a), 419.34(b)(1) and in Appendix A, in the proposed rule published on August 28, 1984, 49 FR 34152. Those errors have been corrected in the amendments set forth below.

In addition, today's notice amends the BPT effluent limitations guidelines for sulfide in Subparts A and C and for hexavalent chromium in Subpart A, which appeared in the Federal Register notice of October 18, 1982 (47 FR 46434) and were reprinted in 40 CFR Part 419 dated July 1, 1984 to correct typographical errors. Because these limitations appeared in both metric and English units, the typographical errors have been obvious. Also, amendments are made to correct typographical errors in a paragraph reference that appeared in Subparts D and E for NSPS, and in a refinery capacity range in a size factor table that appeared in Subpart E for BPT. These amendments appear in the amended regulation that follows this preamble.

IV. Amendments to the Petroleum Refining Point Source Category Regulation

The following are the changes to the petroleum industry regulation that EPA proposed on August 28, 1984:

A. Best Available Technology Effluent Limitations Guidelines

On October 18, 1982 EPA published final effluent limitations guidelines for best available technology economically achievable (BAT) and final pretreatment standards for existing sources (PSES) and for new sources (PSNS) for the petroleum refining industry. 47 FR 46434. The Natural Resources Defense Council ("NRDC") filed a petition to review the October 18, 1982 regulation in the United States Court of Appeals for the District of Columbia Circuit. The American Petroleum Institute (API) and seven companies which own and operate petroleum refineries intervened in that proceeding. A number of issues were raised in settlement discussions among the parties in the lawsuit pertaining to the BAT effluent limitations guidelines. After extensive discussions, the petitioner, intervenors and EPA entered a Settlement Agreement, which provides for specified revisions to the BAT effluent limitations guidelines. Those revisions are set forth in today's amended regulation.

In October 1982 EPA promulgated BAT effluent limitations for the following pollutants: (1) Nonconventional pollutants: chemical oxygen demand (COD), phenolic compounds (4AAP), ammonia (as N) and sulfide; and (2) toxic pollutants: total chromium and hexavalent chromium. The model technology for these regulations was flow equalization, initial oil and solids removal, advanced oil and solids removal, biological treatment and filtration or other final "polishing steps."

The Agency is now amending the BAT effluent limitations guidelines for total chromium, hexavalent chromium and phenolic compounds (4AAP). EPA is adding flow reduction to the model treatment technology for the BAT effluent limitations guidelines and is basing the effluent limitations for each of these three pollutants on a more recent data base, rather than the one it relied upon in the October 18, 1982 BAT promulgation. That rulemaking utilized the same data based used by the Agency when it established best practicable control technology currently available (BPT) effluent limitations guidelines for the petroleum refining point source category. The BPT level of control for this industry was promulgated on May 9, 1974 (39 FR 16560) and subsequently amended on May 20, 1975 (40 FR 21836). The BAT effluent limitations guidelines for other pollutants remain unchanged.

The BAT effluent limitations guidelines for total chromium being promulgated today are based upon the revised 1979 flow model developed by the Agency to predict refinery flows, rather than the BPT 1974 flow model used in the October 1982 BAT promulgation. The effluent limitations for total chromium being promulgated today were derived by applying this updated flow model to concentrations for total chromium observed from plant sampling in 1976–1977.

BAT effluent limitations guidelines for hexavalent chromium and phenolic compounds being promulgated today were derived using the 1982 Development Document concentrations and the revised 1979 flow model to more accurately represent effluent reductions for these pollutants which the industry was generally achieving in 1979 or could technologically achieve by the final BAT compliance date. BAT for hexavalent chromium being promulgated today is based upon option 7 (discharge flow reduction of 37.5 percent from the revised 1979 model flow). BAT for phenolic compounds (4AAP) being promulgated today is based upon option 8 (a reduction of 20 percent from the revised 1979 model flow).

Under today's rulemaking, the BAT effluent limitations guidelines for each of these three pollutants are substantially more stringent than the BAT effluent limitations guidelines promulgated in 1982. The total allowable discharge of total chromium to the nation's navigable waters is reduced by approximately 280,000 pounds per year, a 66 percent annual reduction beyond discharge levels allowable under the existing BAT effluent limitations guidelines; the total allowable discharge of hexavalent chromium is reduced by

approximately 19,300 pounds per year, a 56 percent annual reduction beyond discharge levels allowable under existing BAT; the total allowable discharge of phenolic compounds (4AAP), is reduced by approximately 75,000 pounds per year, a 43 percent annual reduction beyond discharge levels allowable under existing BAT. These reductions are based on data in the Agency's refined BAT flow model. The refined flow model is included in the record for this rulemaking in a report entitled "Petroleum Refining Industry, Refinements to 1979 Proposed Flow Model."

EPA believes that approximately one half of the refineries which directly discharge pollutants to navigable waters already are complying with the effluent limitations being promulgated today. Further, EPA believes that the effluent limitations are economically achievable for the industry.

In the preamble to the October 18, 1982 promulgated regulations for this industry, EPA estimated that capital costs of $112 million and $37 million (1979 dollars) in annualized costs would be required in order for petroleum refiners to comply with option 7, one of the BAT control treatment options considered by the Agency (47 FR 46438). Likewise, EPA estimated that capital costs of $77 million and annualized costs of $25 million (1979 dollars) would be required in order for petroleum refiners to comply with option 8, another of the BAT control treatment options considered by the Agency (47 FR 46438).

The revised limitations being promulgated today for phenolic compounds, hexavalent chromium and total chromium are not based on either option 7 or option 8 alone. The effluent limitations for phenolic compounds are based upon option 8. The effluent limitations for hexavalent chromium are based upon option 8. The effluent limitations for hexavalent chromium are based upon option 7. The effluent limitations for total chromium, while somewhat more stringent than the BAT effluent limitations for total chromium, are less stringent than those based upon option 8.

The Agency has reevaluated the costs of compliance for today's changes to the BAT effluent limitations and estimates that the total industry costs of compliance would not exceed those previously calculated for option 8. EPA estimates that no more than 61 petroleum refineries will have to incur aggregate capital costs no greater than $77 million and annualized costs no greater than $25 million (1979 dollars). These costs translate to an average increase of no greater than one half cent per gallon of refinery product. No refinery closures are anticipated by the Agency. Refinery capacity and consumption would remain unaffected. Given these factors, the Agency believes that its earlier heavy reliance on costs as the basis for rejecting more stringent effluent controls in this industry was inappropriate, and that the effluent limitations guidelines for total chromium, hexavalent chromium and phenolic compounds (4AAP) being promulgated today, rather than the effluent limitations guidelines promulgated in 1982, are appropriate for this industry as the BAT level of control. The revised Bat numerical limitations and contained in the final regulation.

B. Best Conventional Pollutant Control Technology Effluent Limitations Guidelines

As part of the Settlement Agreement EPA agreed to propose best conventional pollutant control technology ("BCT") effluent limitations guidelines for the petroleum refining industry. The 1977 Amendments to the Clear Water Act ("CWA") added section 301(b)(2)(E) of the Act establishing BCT for discharge of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in section 304(a)(4) [biochemical oxygen demanding pollutants (BOD_5), total suspended solids (TSS), fecal coliform and pH], and any additional pollutants defined by the Administrator as "conventional". The Administrator designated oil and grease as a conventional pollutant on July 30, 1979, 44 FR 44501.

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other specified in Section 304(b)(4)(B) the Act requires the BCT limitations be assessed in light of a two-part "cost reasonableness" test. *American Paper Institute* v. *EPA*, 660 F2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond best practicable control technology currently available (BPT). EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published a proposed BCT methodology on October 29, 1982. (47 FR 49176). This proposed BCT methodology explains the details of the two part cost-reasonableness test, i.e., the "POTW test" and the "industry cost test." In addition, the Agency published a "notice of data availability" concerning the proposed BCT methodology on September 20, 1984 (49 FR 37046).

Today's promulgated BCT effluent limitations guidelines for the petroleum refining industry are based on the proposed BCT methodology. Today's final regulations establish BCT equal to BPT for the petroleum refining industry.

EPA considered two levels of technology for increnmental control beyond BPT of total suspended solids (TSS) and oil and grease. These technology levels are recycle/reuse and recycle/reuse followed by granular media filtration. These technologies are already in use at certain sites in the petroleum refining industry. These technologies were selected as candidate BCT technonogies because the Agency believes they represent the first levels of control beyond BPT which could effect reduction in conventional pollutant loadings in this industry. Filtration alone was not selected as a candidate BCT technology because it is one of the existing BPT treatment technologies. However, the Agency decided to consider the combination of recycly/reuse plus filtration as a candidate BCT technology. This is because the decreased hydraulic loading resulting from recycle/reuse results in the need for smaller and less costly filtration equipment than that included in the BPT treatment model. The BCT cost test was then performed on the combination of recycle/reuse and filtration as a double-check on the effects of the less costly filtration step.

In order to determine whether these candidate technologies are "cost-reasonable", EPA developed one model plant representative of a typical plant in each of the five BPT subcategories. The five BPT subcategories are:

A—Topping
B—Cracking
C—Petrochemical
D—Lube
E—Integrated

Then EPA calculated the incremental (beyond BPT) conventional pollutant removals and the incremental costs associated with these technologies for each model plant. Based on this information, cost-per-pound ratios were calcualted for each of the five BPT subcategories.

EPA evaluated reductions in total suspended solids (TSS), biochemical oxygen demand (BOD_5), and oil and grease for each of these technology levels. However, oil and grease was not considered for the BCT calculations for

recycle/reuse for this industry. Additionally, BOD_5 was not considered for the BCT calculations for filtration for this industry. This is in accordance with the proposed BCT methodology in order to avoid "double counting" of the amount of pollutants removed by a candidate BCT technology.

The recycle/reuse technology option identified for BCT was evaluated in the range of from 20 to 40 percent reduction in discharge flow. The cost per pound ranges from $41.00 to $0.77 (1977 dollars) [$50.48 to $1.36 (1977 dollars) based upon the September 20, 1984 notice of data availability] in the first part of the proposed BCT cost reasonableness test (the "POTW test"). Accordingly, the Agency found that the addition of recycle/reuse technology fails the first part of the proposed BCT cost reasonableness test in all five subcategories ($0.30 per pound in 1977 dollars) [approximately $0.76 per pound in 1977 dollars based upon the September 20, 1984 notice of data availability.]

The Agency also found that the addition of recycle/reuse plus filtration fails the first part of the proposed BCT cost reasonableness test in all five subcategories. The recycle/reuse portion of this option was evaluated in the range of from 20 to 40 percent reduction in discharge flow. The cost per pound (1977 dollars) ranges from $21.00 to $0.58, compared to the benchmark of $0.30 per pound (1977 dollars) [$27.05 to $1.11, compared to the benchmark of approximately $0.76 per pound (1977 dollars) based upon the September 20, 1984 notice of data availability].

Therefore, the Agency is promulgating BCT equal to BPT for the five subcategories in this industry.

A more complete discussion of the selection of the candidate BCT technologies, the details of the first part of the proposed BCT cost reasonableness test ("POTW test"), and the basis for decision are contained in the administrative record of this rulemaking.

C. Effluent Limitations Guidelines for Contaminated Storm Water Runoff

In the October 18, 1982 rulemaking the Agency withdrew storm water effluent limitations guidelines for BPT, BAT and NSPS, because they were remanded by the U.S. Court of Appeals in *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976).

Since that remand there has been some confusion on the part of permit writers and others as to whether storm water runoff ("runoff") effluent limitations should be contained in permits. There are two kinds of such runoff, i.e., contaminated and uncontaminated.

The purpose of this rulemaking is to establish BPT, BCT and BAT effluent limitations guidelines for contaminated storm water runoff. Today's promulgated contaminated runoff effluent limitations are to be included in petroleum refinery permits in addition to process wastewater effluent limitations. NSPS for contaminated runoff is being reserved for future rulemaking.

In today's final regulations EPA is defining contaminated runoff, for purposes of these regulations only, to be runoff which comes into contact with any raw material, intermediate product, finished product, by-product or waste product located on petroleum refinery property. Any other storm water runoff at a refinery is considered uncontaminated. Today's final regulations also amend the definition of the term "runoff" currently found in 40 CFR 419.11(b) to clarify that it means the flow of storm water resulting from precipitation coming into contact with petroleum refinery property. Contaminated runoff constitutes an additional source of pollution which must be managed during periods of precipitation along with process wastewater from refinery operations. Today's final regulations do not establish numerical effluent limitations for uncontaminated runoff. Effluent limitations, including but not limited to allocations for uncontaminated runoff may be established by the permit writer based on his/her best professional judgment.

The Agency believes that the best practicable control technology currently available, the best conventional pollutant control technology and the best available technology economically achievable for treatment of contaminated runoff are the same as the technologies identified for treatment of process wastewater. The Agency has not identified any feasible technologies capable of achieving pollutant reductions for contaminated runoff from refineries to any greater degree than those which are achievable by the process wastewater treatment facility.

The Agency believes that the conventional pollutant oil and grease and the nonconventional pollutant parameter total organic carbon (TOC) are appropriate measures to determine whether pollutant loadings in contaminated runoff would be measurably reduced by the model treatment technologies used to develop these final regulations. Under today's final regulations for BPT, wastewater consisting solely of contaminated runoff may be discharged directly without treatment if it does not exceed 15 mg/l oil and grease and 110 mg/l TOC, based upon an analysis of any single grab or composite sample. Under today's final regulations for BCT, wastewater consisting solely of contaminated runoff may be discharged directly without treatment, if it does not exceed 15 mg/l oil and grease and under the final regulations for BAT, wastewater consisting solely of contaminated runoff may be discharged directly without treatment if it does not exceed 110 mg/l TOC. If contaminated runoff (whether or not it exceeds 15 mg/l oil and grease or 110 mg/l TOC) is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease or 110 mg/l TOC is not commingled or treated with any other type of wastewater, then such runoff would be subject to the alternative BPT/BCT/BAT effluent limitations guidelines for contaminated runoff being promulgated today, as appropriate. These oil and grease and TOC numerical effluent limitations are based on the concentrations expected from the properly designed and operated model treatment facilities.

The effluent limitations guidelines in today's BPT regulation for contaminated runoff are based on the same concentrations and variability factors used to develop the Agency's existing BPT process wastewater effluent limitations guidelines.

Today's BAT regulation for contaminated runoff is based upon the same concentrations and variability factors used to develop the Agency's existing BAT process wastewater effluent limitations guidelines, except those for total chromium, which are based upon the same concentrations and variability factors used for today's promulgated BAT effluent limitations guidelines for process wastewater.

Today's promulgated BAT effluent guidelines for phenolic compounds (4AAP) for contaminated runoff are based on the same concentrations used for the existing BAT effluent limitations guidelines for process wastewater and the same variability factors used for the Agency's existing BAT effluent limitations guidelines. EPA has determined that this approach is appropriate because of the specifics of each data base available to the Agency. If EPA used the variability factors from today's promulgated BAT effluent limitations guidelines, less stringent BAT contaminated runoff numerical effluent limitations for phenolic compounds (4AAP) would be derived than under today's promulgated BPT

contaminated runoff numerical effluent limitations for phenolic compounds (4AAP). The more stringent effluent limitations clearly are achievable and as a matter of law BAT cannot be less stringent than BPT.

Today's BCT regulation for contaminated runoff is based on the same concentrations and variability factors used for today's promulgated BCT process wastewater effluent limitations guidelines.

The Agency believes that the costs attributable to today's regulations will be minimal, while providing for reductions in refinery pollutant discharges. This is because the Agency believes the industry as a whole already is (a) treating contaminated runoff with process wastewater or (b) is discharging contaminated runoff below today's promulgated threshold for treatment. Today's final regulations do not cover contaminated runoff which is commingled with nonprocess wastewater streams. EPA believes that such instances are infrequent, and accordingly, they are left to the permit writer's discretion.

Unlike the effluent limitations guidelines for process wastewater for this industry which are mass-based, today's promulgated effluent limitations guidelines for contaminated runoff are concentration-based. This is because storm water volumes are not related to any measurement of refinery production. However, under today's regulations permit effluent limitations for contaminated runoff are to be established on a mass basis. The mass-based effluent limitations for each regulated pollutant for contaminated runoff in a petroleum refining permit are the product of (1) the respective effluent guideline concentration for that pollutant; and (2) the measured or calculated contaminated runoff volume.

Under today's regulations permit writers are given flexibility in determining refinery storm water volumes on a case-by-case basis. The following factors are among those appropriate for permit writers to consider in determining what contaminated runoff volume to use in calculating mass-based effluent limitations for refinery permits: (a) Measured difference between dry weather and wet weather discharge flow from the treatment facility where contaminated runoff is the only runoff present in the treatment facility; and (b) volume of contaminated runoff water calculated from the product of (1) measurement of land area where precipitation would become contaminated, and (2) an historical measure of precipitation for the particular refinery location.

Once the mass based effluent limitation is derived, it may be incorporated into a refinery permit in one of three ways. The proper choice depends on site-specific factors, such as local rainfall patterns and the design of runoff holding facilities.

The first method is a continuous allocation. This presents the problem of providing an allocation when no runoff is present and is appropriate only where precipitation patterns are relatively constant through the year or when holding facilities are used to bleed runoff into the treatment facility over most or all of the year. The second method is a variable allocation based on measurement or calculation of actual contaminated runoff volume. While this is the most ideal method, it may present compliance measurement and enforcement complexities. The third method is dual wet weather/dry weather limitations triggered by either time of year, precipitation events, or actual contaminated runoff volume. The method of determining contaminated runoff volume used to calculate the effluent limitations will vary depending on the method used and the design of any runoff holding facilities. Therefore, it is left to the permit writer to select an appropriate method under today's rulemaking.

These regulations do not address uncontaminated runoff which is discharged through the process wastewater treatment facility. This is because the Agency believes that introducing uncontaminated runoff to the process wastewater treatment system may result in the discharge of an increased mass of pollutants to the environment compared to the mass of pollutants discharged if no uncontaminated runoff were present in the process wastewater treatment system. Therefore, the Agency does not want to encourage this practice on a national basis.

In the case of BPT, the effluent limitations guidelines promulgated today are for the following pollutants (1) conventional pollutants: total suspended solids (TSS), oil and grease, five-day biochemical oxygen demand (BOD_5) and pH; (2) nonconventional pollutants: phenolic compounds (4AAP), chemical oxygen demand (COD) and total organic carbon (TOC); and (3) toxic pollutants: total chromium and hexavalent chromium. In the case of BAT, the effluent limitations guidelines being promulgated today are for (1) nonconventional pollutants: Phenolic compounds (4AAP), chemical oxygen demand (COD) and total organic carbon (TOC); and (2) toxic pollutants: total chromium and hexavalent chromium. In the case of BCT, the effluent limitations guidelines being promulgated today are for the conventional pollutants TSS, oil and grease, BOD_5 and pH. In the case of COD, there may be instances where extremely high chloride levels (greater than 1,000 mg/l) will interfere with the COD analytical method. In this event, the Agency believes that TOC is an acceptable substitute parameter for COD. A TOC limitation shall be based upon effluent data from the particular refinery which correlated TOC to BOD_5. Where adequate correlation data are not available, the permitting authority may establish a TOC limitation on a ratio of 2.2 to 1 to the applicable BPT/BCT effluent limitations for BOD_5. This ratio is based upon effluent data analyzed by the Agency.

No effluent limitations guidelines for contaminated runoff are being promulgated for the nonconventional pollutants ammonia (as N) and sulfide regulated under existing BPT and BAT levels of control.

V. Environmental Impact of the Amendments

EPA's estimates of the reduction in industry-wide direct discharges of phenolic compounds, hexavalent chromium, and total chromium for process wastewater from those allowed under the 1982 final petroleum industry regulation to those allowed by today's amendments are presented below.

REDUCTIONS IN ALLOWABLE DISCHARGE

(Pounds per year)

Pollutant	Reduction
Total chromium	290,000
Hexavalent chromium	19,300
Phenolic compounds	75,000

VI. Responses to Major Comments

The Agency encourages public participation in the rulemaking process and solicited comments on the proposed amendments. Public comments were received and considered in issuing this final rule. A summary of all the comments received and the Agency's responses to those comments are included in a report titled, "Responses to Public Comments on the Proposed Amendments to the Effluent Limitations Guidelines for the Petroleum Refining Point Source Category", which is included in the public record for this regulation.

Most of the commenters expressed full support for the promulgation of the

amended regulations as proposed. Although none of the commenters disagreed with the Agency's action, some believed it necessary to comment on the background and development of the proposal and to seek clarification on the Agency's intended procedures for applying the effluent limitations guidelines. The major comments are addressed below.

A. Best Available Technology Effluent Limitations Guidelines (BAT)

Some of the commenters argued that wastewater flow reduction is not an appropriate basis upon which to base effluent limitations guidelines for this industry. It was claimed that other pollutant specific control techniques will be used, if necessary, to achieve the proposed discharge limits for process wastewater.

The Agency has documentation that flow reduction is an achievable technology for this industry. Industry and Agency studies that confirm this fact are included in the rulemaking record for this regulation. These investigations conclusively demonstrated that refineries have numerous methods available to reduce process wastewater generation or discharge volumes. These studies also demonstrated that the costs and specific methods available are heavily dependent on site-specific factors at each individual refinery. The Agency has also noted that there is a substantial downward trend in historical water usage/discharge rates industry-wide regardless of environmental regulatory requirements.

There may be some refineries which have already achieved a low flow condition or cannot implement flow reduction due to site-specific factors. In these cases, improvements to the existing treatment system design or operation, or in refinery operating practices, may be necessary to meet today's amended BAT effluent limitations. It should be further clarified that the regulation does not preclude the implementation of other control options such as pollutant specific control techniques or other techniques which a refinery considers the most cost-effective method to achieve its permit conditions.

Clarification was sought by commenters on the method that should be followed to determine the appropriate refinery production rates for calculating mass effluent limits. Questions were also raised about the possibility of BAT pollutant limits being less stringent than BPT levels due to differences in the procedures for calculating BAT and BPT permit limits.

The effluent limitations guidelines developed for the petroleum refining industry are production based. Although previous permits may have been issued on the basis of process capacities, permit limits based on the revised BAT regulations should be calculated on the basis of actual production rates. For this reason, the permit writer should undertake a thorough review of a refinery's historical process utilization rates and process groupings to determine a reasonable measure of actual production projected for the period the permit would be in effect. This method of determining appropriate process feedstock rates for use in calculating mass effluent limits is in accordance with 40 CFR 122.45(b). The individual process feedstock rates established should be based on data from the same time period, i.e., all production data for the same time period. Generally, this time period (e.g., calendar year) could be that for which the sum of the crude process feedstock rates is the greatest, but is still representative of anticipated feedstock rates for the duration of the NPDES permit.

The next step in this method is to calculate a daily average feedstock rate for each refinery process included in the determination of effluent limitations. These values may be calculated by dividing an historical annual feedstock rate for each process by the number of days the process was in operation. These same average daily process feedstock rates should be used in the calculation of both daily maximum and 30-day average BAT effluent limitations. This method is consistent with the procedure the Agency used to develop the effluent limitation factors for the amended regulations and with 40 CFR 122.45. Additionally, the daily maximum and 30-day average variability factors, which are components of the effluent limitation factors used to derive permit effluent limitations, reflect short-term (i.e., monthly and daily) deviations from long-term (annual average) performance.

The amended BAT limits for phenolic compounds, total chromium and hexavalent chromium are based on a flow model and daily maximum variability factors which are different than those used to establish the BPT regulations. Some BAT permit limitations could be less stringent than the BPT limitations for a given refinery, even though the BAT and BPT limitations are calculated using the same process feedstock rates determined in accordance with the provisions of 40 CFR 122.45. These occurrences can be caused by the inclusion of additional processes and a new process grouping in the BAT flow model. In such instances, the resultant permit limitations would be the more stringent of either the calculated BPT limitations or calculated BAT limitations. This is because BAT permit limitations may not be less stringent than BPT. In order to make a proper comparison, the BPT limitations should be recalculated using: (1) Production data from the same time period that are used to calculate the BAT limitations; and (2) the BPT process groupings and subcategorization.

In an effort to provide guidance on the application of the proposed amendments to the BAT effluent limitations guidelines, the Agency held workshops in San Francisco and Dallas for permit writers during November and December 1984.

B. Best Conventional Pollutant Control Technology Effluent Limitations Guidelines (BCT)

Commenters agreed with the approach that was followed by the Agency in its BCT cost evaluation and that the two candidate technologies selected are the most cost effective beyond BPT. Even though the Agency found that none of the four regulatory options that were considered passed the BCT cost test for any of the five subcategories, commenters argued that the actual cost per pound of pollutant removed would be greater than those estimated by EPA. It was argued that the removal cost ratios presented in the Agency's original BCT cost evaluation report were underestimated because filtration costs were understated and removal efficiencies were overstated. It was also pointed out that the BCT evaluation should incorporate available updated information.

As discussed in Section III of this preamble, the Agency has revised its BCT cost evaluation to incorporate the updated information referenced in the notice of data availability published on September 20, 1984 (49 FR 37046). The Agency also believes that the filtration costs and removal efficiencies used in tis original evaluation are realistic. Nonetheless, if costs were understated and pollutant removals were overstated as argued, then removal cost ratios would fail the BCT cost test by an even wider margin, which would not change the Agency's original conclusion that BCT should be set equal to BPT for this industry.

C. Effluent Limitations Guidelines for Contaminated Storm Water Runoff

Commenters supported the reinstitution of allocations for the

discharge of contaminated storm water runoff commingled with process wastewater and treated in a refiner's effluent treatment system. Commenters recognized that storm water runoff can have a significant impact on a wastewater treatment system and argued that allocations are appropriate for both contaminated and uncontaminated runoff. In addition, clarifications were requested on the Agency's definition of contaminated runoff and its intentions to include only water which comes into direct contact with raw materials or petroleum products (i.e., exposed or spilled oil) or to extend its coverage to runoff from storage areas or tank farms where, ideally, no direct contact occurs.

The Agency's intent in promulgating storm water runoff limitations is to provide a mechanism for the control of storm water when this waste stream is, or is very likely to be, contaminated by direct contact with raw, intermediate or final products. The collection and treatment of storm water runoff that is uncontaminated can be costly and burden the refinery's wastewater treatment system. For this reason, the Agency wishes to encourage refineries which segregate uncontaminated storm water runoff from contaminated wastewater streams to continue this practice. The regulation, however, does not require such segregation.

One commenter argued that the total organic carbon (TOC) and oil and grease discharge criteria for the control of contaminated runoff effectively sets storm water runoff limitations.

The 110 mg/l TOC and 15 mg/l oil and grease applicability criteria for BAT/BCT effluent limitations apply only to contaminated runoff as defined at § 419.11(g). These values are intended to serve as threshold criteria for including contaminated runoff effluent limitations (e.g., phenolic compounds, total chromium, total suspended solids) in NPDES permits. These criteria or other limitations may be applied to such discharges on a case-by-case basis at the permitting authority's discretion. For example, a particular stormwater runoff discharge that normally meets the threshold criteria may be of a nature where it could become very contaminated by an accidental spill. In such situations it may be appropriate to impose the TOC, oil and grease and/or other values as effluent limitations or to at least require periodic sampling and analysis for such pollutants to monitor the nature of such discharges.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it does not fall within the criteria for major regulations established in Excutive Order 12291.

VIII. Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a Regulatory Flexibility Analysis for all regulations that have a significant impact on a substantial number of small entities. The Agency does not believe that today's rulemaking will have a significant impact on any segment of the petroleum refining industry, large or small. The Agency has not, therefore, prepared a formal analysis for this regulation.

IX. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street, SW., Washington, D.C. from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

X. List of Subjects in 40 CFR Part 419

Petroleum, water pollution control, Wastewater treatment and disposal.

Dated: July 1, 1985.

A. James Barnes,
Acting Administrator.

For the reasons set out in the preamble, EPA is amending 40 CFR Part 419 as follow:

PART 419—PETROLEUM REFINING POINT SOURCE CATEGORY

1. The authority citation for Part 419 continues to read as follows:

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501, Federal Water Pollution Control Act as amended (the Act); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 419.11 is amended by revising paragraph (b) and adding paragraph (g) to read as follows:

§ 419.11 Specialized definitions.

* * * * *

(b) The term "runoff" shall mean the flow of storm water resulting from precipitation coming into contact with petroleum refinery property.

* * * * *

(g) The term "contaminated runoff" shall mean runoff which comes into contact with any raw material, intermediate product, finished product, by-product or waste product located on petroleum refinery property.

§ 419.12 [Amended]

3. In § 419.12(a), the table is amended as follows:

A. Under the heading "English units (pounds per 1,000 bbl of feedstock)", in the first column opposite "sulfide", "0.53" is revised to read "0.053".

B. Under the heading "English units (pounds per 1,000 bbl of feedstock)", opposite "sulfide" in the second column, "0.24" is revised to read "0.024".

C. Under the heading "English units (pounds per 1,000 bbl of feedstock)", opposite "hexavalent chromium", in the first column "0.10" is revised to read "0.01".

§ 419.22 [Amended]

4–6. In § 419.32(a), in the second column of the table, under "Metric units (Kilograms per 1,000m^3 of feedstock)", opposite "sulfide", "0.52" is revised to read "0.22".

§ 419.52 [Amended]

7. The table in § 419.52(b)(1), under the column "1,000 barrels of feedstock per stream day," the figures "125.0 to 124.9" and "200 to 244.9" are revised to read "125.0 to 149.9" and "200.0 to 224.9," respectively.

§§ 419.12, 419.22, 419.32, 419.42, and 419.52 [Amended]

8. Sections 419.12(e), 419.22(e), 419.32(e), 419.42(e), and 419.52(e) are amended by removing the paragraph heading and the word "reserved" and by adding the following text:

§ 419 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(e) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff, which may be discharged after the application of the best practicable control technology currently available by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process

wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease and 110 mg/l total organic carbon (TOC) based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease or 110 mg/l TOC is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BPT effluent limitations for contaminated runoff	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m^3 of flow)		
BOD$_5$	46.	26.
TSS	33.	21.
COD [1]	360.	180.
Oil and grease	15.	8.
Phenolic compounds (4AAP)	0.35	0.17
Total chromium	0.79	0.43
Hexavalent chromium	0.082	0.028
pH	(*)	(*)
English units (pounds per 1,000 gallons of flow)		
BOD$_5$	0.40	0.22
TSS	0.28	0.18
COD [1]	3.0	1.5
Oil and grease	0.13	0.067
Phenolic compounds (4AAP)	0.0029	0.0014
Total chromium	0.0066	0.0036
Hexavalent chromium	0.00052	0.00023
pH	(*)	(*)

[1] In any case in which the applicant can demonstrate that the chloride ion concentration in the effluent exceeds 1,000 mg/l (1,000 ppm), the permitting authority may substitute TOC as a parameter in lieu of COD. A TOC effluent limitation shall be based on effluent data from the particular refinery which correlates TOC to BOD$_5$. If in the judgment of the permitting authority, adequate correlation data are not available, the effluent limitations for TOC shall be established at a ratio of 2.2 to 1 to the applicable effluent limitations for BOD$_5$.

[*] Within the range of 6.0 to 9.0.

§§ 419.13, 419.23, 419.33, 419.43, and 419.53 [Amended]

9. Sections 419.13, 419.23, 419.33, 419.43, and 419.53 are amended by removing the entries and effluent limitations for phenolic compounds, total chromium, and hexavalent chromium from the tables in paragraph (a).

10. Sections 419.13, 419.23, 419.33, 419.43, and 419.53 are further amended by redesignating paragraph (e) as (f), redesignating paragraph (d) as (e), redesignating paragraph (c) as (d), and revising the redesignated paragraph (f) to read as follows:

§ 419.—Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(f) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff, which may be discharged after the application of the best available technology economically achievable by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 110 mg/l total organic carbon (TOC) based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 110 mg/l TOC is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BAT effluent limitations for contaminated runoff	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m^3 of flow)		
Phenolic compounds (4AAP) [1]	0.35	0.17
Total chromium	0.80	0.21
Hexavalent chromium	0.082	0.028
COD [1]	360.	180.
English units (pounds per 1,000 gallons of flow)		
Phenolic compounds (4AAP)	0.0029	0.0014
Total chromium	0.0050	0.0018
Hexavalent chromium	0.00052	0.00023
COD [1]	3.0	1.5

[1] In any case in which the applicant can demonstrate that the chloride ion concentration in the effluent exceeds 1,000 mg/l (1,000 ppm), the permitting authority may substitute TOC as a parameter in lieu of COD. A TOC effluent limitation shall be based on effluent data from the particular refinery which correlates TOC to BOD$_5$. If in the judgement of the permitting authority, adequate correlation data are not available, the effluent limitations for TOC shall be established at a ratio of 2.2 to 1 to the applicable effluent limitations for BOD$_5$.

11. Sections 419.23, 419.33, 419.43, and 419.53 are amended in newly designated paragraph (d) by changing "419.13(c)" to read "419.13(d)".

12. Sections 419.12 (a) and (c), 419.13 (a), 419.16 (a) and (c), 419.22(a), 419.23(a), 419.26(a), 419.32(a), 419.33(a), 419.36(a); 419.42(a), 419.43(a), 419.46(a), 419.52(a), 419.53(a), and 419.56(a) are amended by revising footnote (1) to the table to read "[1] See footnote following table in § 419.13(b)".

§§ 419.13, 419.23, 419.33, and 419.53 [Amended]

13. Sections 419.13, 419.23, 419.33, and 419.53 are amended by adding a new paragraph (c) to read as follows:

§ 419.—Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(c)(1) In addition to the provisions contained above pertaining to COD, ammonia and sulfide, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(i) For each of the regulated pollutant parameters listed below, the effluent limitation for a given refinery is the sum of the products of each effluent limitation factor times the applicable process feedstock rate, calculated as provided in 40 CFR 122.45(b). Applicable production processes are presented in Appendix A, by process type. The process identification numbers presented in this Appendix A are for the convenience of the reader. They can be cross-referenced in the *Development Document for Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Petroleum Refining Point Source Category* (EPA 440/1–82/014), Table III–7, pp. 49–54.

Pollutant or pollutant property and process type	BAT effluent limitation factor	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 cubic meters of feedstock)	
Phenolic compounds (4AAP):		
Crude	0.037	0.009
Cracking and coking	0.419	0.102
Asphalt	0.226	0.055
Lube	1.055	0.257
Reforming and alkylation	0.377	0.092
Total chromium:		
Crude	0.030	0.011
Cracking and coking	0.340	0.118
Asphalt	0.183	0.064
Lube	0.856	0.297
Reforming and alkylation	0.305	0.106
Hexavalent chromium:		
Crude	0.0019	0.0009
Cracking and coking	0.0218	0.0095

Pollutant or pollutant property and process type	BAT effluent limitation factor: Maximum for any 1 day	BAT effluent limitation factor: Average of daily values for 30 consecutive days shall not exceed
Asphalt	0.0117	0.0063
Lube	0.0549	0.0248
Reforming and alkylation	0.0198	0.0089
English units (pounds per 1,000 bbl of feedstock)		
Phenolic compounds (4AAP):		
Crude	0.013	0.009
Cracking and coking	0.147	0.036
Asphalt	0.079	0.019
Lube	0.369	0.090
Reforming and alkylation	0.132	0.032
Total chromium:		
Crude	0.011	0.004
Cracking and coking	0.119	0.041
Asphalt	0.064	0.022
Lube	0.299	0.104
Reforming and alkylation	0.107	0.037
Hexavalent chromium:		
Crude	0.0007	0.0003
Cracking and coking	0.0076	0.0034
Asphalt	0.0041	0.0019
Lube	0.0192	0.0087
Reforming and alkylation	0.0069	0.0031

(2) See the comprehensive example in Subpart D, § 419.43(c)(2).

14. Section 419.43 is amended by adding a new paragraph (c) to read as follows:

§ 419.43 Effluent limitation guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(c)(1) In addition to the provisions contained above pertaining to COD, ammonia and sulfide, any existing point source subject to this subpart must achieve the following effluent limitations representing the degrees of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(i) For each of the regulated pollutant parameters listed below, the effluent limitation for a given refinery is the sum of the products of each effluent limitation factor times the applicable process feedstock rate, calculated as provided in 40 CFR 122.45(b). Applicable production processes are presented in Appendix A, by process type. The process identification numbers presented in this Appendix A are for the convenience of the reader. They can be cross-referenced in the *Development Document for Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Petroleum Refining Point Source Category* (EPA 440/1–82/014), Table III–7, pp. 49–54.

Pollutant or pollutant property and process type	BAT effluent limitation factor: Maximum for any 1 day	BAT effluent limitation factor: Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m³ of feedstock)		
Phenolic compounds (4AAP):		
Crude	0.037	0.009
Cracking and coking	0.419	0.102
Asphalt	0.226	0.055
Lube	1.056	0.257
Reforming and alkylation	0.377	0.092
Total chromium:		
Crude	0.030	0.011
Cracking and coking	0.340	0.118
Asphalt	0.183	0.064
Lube	0.855	0.297
Reforming and alkylation	0.306	0.106
Hexavalent chromium:		
Crude	0.0019	0.0009
Cracking and coking	0.0218	0.0098
Asphalt	0.0117	0.0053
Lube	0.0549	0.0248
Reforming and alkylation	0.0198	0.0089
English units (pounds per 1,000 bbl of feedstock)		
Phenolic compounds (4AAP):		
Crude	0.013	0.003
Cracking and coking	0.147	0.036
Asphalt	0.079	0.019
Lube	0.369	0.090
Reforming and alkylation	0.132	0.032
Total chromium:		
Crude	0.011	0.004
Cracking and coking	0.119	0.041
Asphalt	0.064	0.022
Lube	0.299	0.104
Reforming and alkylation	0.107	0.037
Hexavalent chromium:		
Crude	0.0007	0.0003
Cracking and coking	0.0076	0.0034
Asphalt	0.0041	0.0019
Lube	0.0192	0.0087
Reforming and alkylation	0.0069	0.0031

(2) Example Application of Effluent Limitations Guidelines as Applicable to Phenolic Compounds, Hexavalent Chromium, and Total Chromium.

The following example presents the derivation of a BAT phenolic compound (4AAP) effluent limitation (30-day average) for a petroleum refinery permit. The methodology is also applicable to hexavalent chromium and total chromium.

Refinery process	Process feedstock rate, 1,000 bbl/day
1. Atmospheric crude distillation	100
2. Crude desalting	50
3. Vacuum crude distillation	75
Total crude processes (C)	225
6. Fluid catalytic cracking	25
10. Hydrocracking	20
Total cracking and coking processes (K)	45
18. Asphalt production	5
Total asphalt processes (A)	5
21. Hydrofining	3
Total lube processes (L)	3
8. Catalytic reforming	10
Total reforming and alkylation processes (R)	10

Note: 30 day average effluent limitation for phenolic compounds (4AAP), lb/day = (0.003) (225) + (0.036) (45) + (0.019) (5) + (0.090) (3) + (0.032) (10) = 2.96 lb/day

* * * * *

15. Section 419.14 is revised to read as follows:

§ 419.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Pollutant or pollutant property	BCT effluent limitations: Maximum for any 1 day	BCT effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m³ of feedstock)		
BOD_5	22.7	12.0
TSS	15.8	10.1
Oil and Grease	8.9	3.7
pH	(1)	(1)
English units (pounds per 1,000 bbl of feedstock)		
BOD_5	8.0	4.25
TSS	5.6	3.6
Oil and Grease	2.5	1.3
pH	(1)	(1)

(1) Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day	Size factor
Less than 34.9	1.02
25.0 to 49.9	1.08
50.0 to 74.9	1.16
75.0 to 99.9	1.26
100 to 124.9	1.38
125.0 to 149.9	1.50
150.0 or greater	1.57

(2) Process factor.

Process configuration	Process factor
Less than 2.49	0.02
2.5 to 3.49	0.07

Process configuration	Process factor
3.5 to 4.49	0.80
4.5 to 5.49	0.95
5.5 to 5.99	1.07
6.0 to 6.49	1.17
6.5 to 6.99	1.27
7.0 to 7.49	1.39
7.5 to 7.99	1.51
8.0 to 8.49	1.64
8.5 to 8.99	1.78
9.0 to 9.49	1.95
9.5 to 9.99	2.13
10.0 to 10.49	2.31
10.5 to 10.99	2.51
11.0 to 11.49	2.73
11.5 to 11.99	2.96
12.0 to 12.49	3.24
12.5 to 12.99	3.53
13.0 to 13.49	3.84
13.5 to 13.99	4.18
14.0 or greater	4.56

(3) See the comprehensive example in Subpart D, § 419.42(b)(3).

(c) The following allocations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to ballast, which may be discharged after the application of best conventional pollutant control technology by a point source subject to this subpart, in addition to the discharge allowed by paragraph (b) of this section. The allocation allowed for ballast water flow, as kg/cu m (lb/1000 gal), shall be based on those ballast waters treated at the refinery.

Pollutant or pollutant property	BCT effluent limitations for ballast water	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per m^3 of flow)	
BOD_5	0.042	0.025
TSS	0.033	0.021
Oil and grease	0.015	0.008
pH	(1)	(1)
	English units (pounds per 1,000 gallons of flow)	
BOD_5	0.35	0.21
TSS	0.28	0.17
Oil and grease	0.130	0.067
pH	(1)	(1)

(1) Within the range of 6.0 to 9.0.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be discharged after the application of the best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations for contaminated runoff	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 (m^3 of flow)	
BOD_5	48.	29.
TSS	33.	21.
Oil and grease	15.	8.
pH	(1)	(1)
	English units (pounds per 1,000 gallons of flow)	
BOD_5	0.40	0.22
TSS	0.28	0.18
Oil and grease	0.13	0.067
pH	(1)	(1)

(1) Within the range of 6.0 to 9.0.

16. Section 419.24 is revised to read as follows:

§ 419.24 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BTC):

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 (m^3 of feedstock)	
BOD_5	28.2	15.6
TSS	19.3	12.6
Oil and grease	8.4	4.5
pH	(1)	(1)
	English units (pounds per 1,000 bbl of feedstock)	
BOD_5	9.9	5.5
TSS	6.8	4.4
Oil and grease	3.0	1.6
pH	(1)	(1)

(1) Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day	Size factor
Less than 24.9	0.81
25.0 to 49.9	0.85
50.0 to 74.9	1.04
75.0 to 99.9	1.12
100.0 to 124.9	1.23
125.0 to 149.9	1.35
150.0 or greater	1.41

(2) Process factor.

Process configuration	Process factor
Less than 2.49	0.58
2.5 to 3.49	0.62
3.5 to 4.49	0.74
4.5 to 5.49	0.88
5.5 to 5.99	1.00
6.0 to 6.49	1.08
6.5 to 6.99	1.19
7.0 to 7.49	1.29
7.5 to 7.99	1.41
8.0 to 8.49	1.53
8.5 to 8.99	1.67
9.0 to 9.49	1.82
9.5 or greater	1.99

(3) See the comprehensive example in Subpart D, § 419.42(b)(3).

(c) The provisions of § 419.14(c) apply to discharge of process wastewater pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be discharged after the application of the

best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations for contaminated runoff	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 m^3 of flow)	
BOD_5	46	26
TSS	33	21
Oil and grease	15	8
pH	(1)	(1)
	English units (pounds per 1,000 gallons of flow)	
BOD_5	0.40	0.22
TSS	0.28	0.18
Oil and grease	0.13	0.067
pH	(1)	(1)

(1) Within the range of 6.0 to 9.0.

17. Section 419.34 is revised to read as follows:

§ 419.34 Effluent Limitations Guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 m^3 of feedstock)	
BOD_5	24.6	18.4
TSS	23.4	14.8
Oil and grease	11.1	5.9
pH	(1)	(1)
	English units (pounds per 1,000 bbl of feedstock)	
BOD_5	12.1	6.5
TSS	8.3	5.25
Oil and grease	3.9	2.1
pH	(1)	(1)

(1) Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day	Size factor
Less than 24.9	0.73
25.0 to 49.9	0.76
50.0 to 74.9	0.88
75.0 to 99.9	0.91
100.0 to 124.9	0.96
125.0 to 149.9	1.00
150.0 or greater	1.13

(2) Process factor.

Process configuration	Process factor
Less than 4.49	0.73
4.5 to 5.49	0.80
5.5 to 5.99	0.91
6.0 to 6.49	0.96
6.5 to 6.99	1.06
7.0 to 7.49	1.17
7.5 to 7.99	1.26
8.0 to 8.49	1.36
8.5 to 8.99	1.51
9.0 to 9.49	1.65
9.5 or greater	1.72

(3) See the comprehensive example in Subpart D, § 419.42(b)(3).

(c) The provisions of § 419.14(c) apply to discharges of process wastewater pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be discharged after the application of the best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations for contaminated runoff	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 m^3 of flow)	
BOD_5	46	26
TSS	33	21
Oil and grease	15	8
pH	(1)	(1)
	English units (pounds per 1,000 gallons of flow)	
BOD_5	0.40	0.22
TSS	0.28	0.18
Oil and grease	0.13	0.067
pH	(1)	(1)

(1) Within the range of 6.0 to 9.0.

18. Section 419.44 is revised to read as follows:

§ 419.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 m^3 of feedstock	
BOD_5	80.6	25.8
TSS	36.6	22.7

Pollutant or pollutant property	BCT effluent limitations: Maximum for any 1 day	BCT effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Oil and Grease	16.2	6.5
pH	(1)	(1)
English units (pounds per 1,000 bbl of feedstock)		
BOD_5	17.9	9.1
TSS	12.5	6.0
Oil and Grease	5.7	3.0
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day	Size factor
Less than 49.9	0.71
50.0 to 74.9	0.74
75.0 to 99.9	0.81
100.0 to 124.9	0.88
125.0 to 149.9	0.97
150.0 to 174.9	1.08
175.0 to 199.9	1.14
200.0 or greater	1.19

(2) Process factor.

Process configuration	Process factor
Less than 6.49	0.81
6.5 to 7.49	0.88
7.5 to 7.99	1.00
8.0 to 8.49	1.09
8.5 to 8.99	1.19
9.0 to 9.49	1.29
9.5 to 9.99	1.41
10.0 to 10.49	1.53
10.5 to 10.99	1.67
11.0 to 11.49	1.82
11.5 to 11.99	1.98
12.0 to 12.49	2.16
12.5 to 12.99	2.34
13.0 or greater	2.44

(c) The provisions of § 419.14(c) apply to discharges of process wastewater pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be discharged after the application of the best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations for contaminated runoff: Maximum for any 1 day	BCT effluent limitations for contaminated runoff: Average of daily values for 30 consecutive days shall not exceed
Metric unit (kilograms per 1,000 m^3 of flow)		
BOD_5	48.	28.
TSS	33.	21.
Oil and grease	15.	8.
pH	(1)	(1)
English units (pounds per 1,000 gallons of flow)		
BOD_5	0.40	0.22
TSS	0.28	0.18
Oil and grease	0.13	0.067
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

19. Section 419.54 is revised to read as follows:

§ 419.54 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Any existing point subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Pollutant or pollutant property	BCT effluent limitations: Maximum for any 1 day	BCT effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m^3 of feedstock)		
BOD_5	54.4	29.9
TSS	37.3	23.7

Pollutant or pollutant property	BCT effluent limitations: Maximum for any 1 day	BCT effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Oil and grease	17.1	9.1
pH	(1)	(1)
English units (pounds per 1,000 bbl of feedstock)		
BOD_5	19.2	10.2
TSS	13.2	6.4
Oil and grease	6.0	3.2
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day	Size factor
Less than 124.9	0.73
125.0 to 149.9	0.78
150.0 to 174.9	0.83
175. to 199.9	0.91
200.0 to 224.9	0.99
225.0 or greater	1.04

(2) Process factor.

Process configuration	Process factor
Less than 6.49	0.75
6.5 to 7.49	0.82
7.5 to 7.99	0.92
8.0 to 8.49	1.00
8.5 to 8.99	1.10
9.0 to 9.49	1.20
9.5 to 9.99	1.30
10.0 to 10.49	1.42
10.5 to 10.99	1.54
11.0 to 11.49	1.69
11.5 to 11.99	1.83
12.0 to 12.49	1.99
12.5 to 12.99	2.17
13.0 or greater	2.25

(3) See the comprehensive example in Subpart D, § 419.42(b)(3).

(c) The provisions of § 419.14(c) apply to discharges of process wastewater pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be

discharged after the application of the best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations for contaminated runoff	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 m^3 of feedstock)	
BOD_5	48.	26.
TSS	33.	21.
Oil and grease	15.	8.
pH	(1)	(1)
	English units (pounds per 1,000 gallons of feed)	
BOD_5	0.40	0.22
TSS	0.28	0.18
Oil and grease	0.13	0.067
pH	(1)	(1)

(1) Within the range of 6.0 to 9.0.

§ 419.46 and 419.56 [Amended]

20. In §§ 419.46(c) and 419.56(c), "419.15(c)", is revised to read "419.16(c)."

21. 40 CFR Part 419 is amended by adding the following Appendix A:

Appendix A.—Processes Included in the Determination of BAT Effluent Limitations for Total Chromium, Hexavalent Chromium, and Phenolic Compounds (4AAP)

Crude Processes

1. Atmospheric Crude Distillation
2. Crude Desalting
3. Vacuum Crude Distillation

Cracking and Coking Processes

4. Visbreaking
5. Thermal Cracking
6. Fluid Catalytic Cracking
7. Moving Bed Catalytic Cracking
10. Hydrocracking
15. Delayed Coking
16. Fluid Coking
54. Hydrotreating

Asphalt Processes

18. Asphalt Production
32. 200°F Softening Point Unfluxed Asphalt
43. Asphalt Oxidizing
89. Asphalt Emulsifying

Lube Processes

21. Hydrofining, Hydrofinishing, Lube Hydrofining
22. White Oil Manufacture
23. Propane Dewaxing, Propane Deasphalting, Propane Fractioning, Propane Deresining
24. Duo Sol, Solvent Treating, Solvent Extraction, Duotreating, Solvent Dewaxing, Solvent Deasphalting
25. Lube Vac Twr, Oil Fractionation, Batch Still (Naphtha Strip), Bright Stock Treating
26. Centrifuge and Chilling
27. MEK Dewaxing, Ketone Dewaxing, MEK-Toluene Dewaxing
28. Deoiling (wax)
29. Naphthenic Lubes Production
30. SO_2 Extraction
34. Wax Pressing
35. Wax Plant (with Neutral Separation)
36. Furfural Extraction
37. Clay Contacting—Percolation
38. Wax Sweating
39. Acid Treating
40. Phenol Extraction

Reforming and Alkylation Processes

8. H_2SO_4 Alkylation
12. Catalytic Reforming

[FR Doc. 85-16363 Filed 7-11-85; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
July 12, 1985

Part IV

Environmental Protection Agency

40 CFR Part 763

Asbestos Abatement Projects; Immediately Effective Proposed Rule

Agency Paperwork Reduction Act Clearance Request Completed by the Office of Management and Budget

VOL 50 ISS 134 JUL 12 1985 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62044; FRL 2848-9]

Asbestos Abatement Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediately effective proposed rule.

SUMMARY: EPA is proposing a rule under section 6(a) of the Toxic Substances Control Act (TSCA), which is effective immediately under section 6(d) of TSCA. The proposed rule will remain in effect until EPA promulgates a final rule. The rule would apply to asbestos abatement projects using employees not protected by regulations of the Occupational Safety and Health Administration (OSHA) or by regulations of State plans adopted under the Occupational Safety and Health Act (OSHA). The rule is similar to the current OSHA Asbestos Standard.

DATE: This rule is effective July 12, 1985. Comments must be submitted by September 10, 1985. A public hearing, if requested, will be held beginning on September 24, 1985.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-209, 401 M St., SW., Washington, D.C. 20460.

Comments should include the docket control number OPTS-62044. Nonconfidential comments and nonconfidential versions of confidential comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107, at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, Office of TSCA Assistance (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

OMB Control No. 2070-0072.

I. Authority

Section 6(a) of TSCA authorizes EPA to impose a number of regulatory requirements concerning a chemical substance or mixture if EPA finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance, or any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment. Among the requirements that EPA may impose are those listed in sections 6(a)(5) and 6(a)(6). Section 6(a)(5) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of commercial use of a chemical substance or mixture. Section 6(a)(6) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of disposal of a chemical substance or mixture or any article containing that substance or mixture, by any person who uses or disposes of it for commercial purposes.

These sections provide authority for EPA to issue this rule, which establishes requirements to protect State and local public employees conducting asbestos abatement activities. The asbestos in buildings where State and local public employees may be involved in abatement has been sold as a commercial product. Therefore, regulation of abatement activities affecting its use in these buildings, such as encapsulation or enclosure, is considered regulation of commercial use. The removal of asbestos, a disposal activity, will affect a number of commercial activities that take place in the public buildings and, therefore, is considered disposal for commercial purposes.

Under section 6(d) of TSCA, EPA may declare a proposed rule under section 6(a) to be effective upon its publication in the **Federal Register** and until the effective date of final action taken if (1) EPA determines that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture subject to the proposed rule, or any combination of such activities, is likely to result in an unreasonable risk of serious or widespread injury to health or the environment before the effective date of final action by EPA and (2) EPA determines that making the proposed rule effective upon its publication in the **Federal Register** is necessary to protect the public interest.

II. Background

On November 13, 1983, the Service Employees International Union (SEIU) petitioned EPA under section 21 of TSCA to:

1. Establish standards for the performance of asbestos abatement activities, including standards for the protection of persons performing such activities.

2. Establish standards for determining when friable asbestos-containing materials in schools are hazardous.

3. Establish requirements for corrective action in schools when friable asbestos-containing materials are determined to be hazardous.

4. Establish requirements for inspection and abatement of friable asbestos-containing materials in public and commercial buildings.

EPA granted the petition by a notice in the **Federal Register** of March 7, 1984 (49 FR 8450), and a May 7, 1984, letter to the SEIU in which EPA ageed to commence an appropriate proceeding within the meaning of section 21 of TSCA. The May 7, 1984, letter was published in the **Federal Register** of June 14, 1984 (49 FR 24552). EPA promptly commenced an appropriate proceeding by holding four public hearings between May 7, 1984, and June 28, 1984. EPA received oral and written testimony on each point in the petition from many groups interested in reducing the risks associated with asbestos in schools and other public and commercial buildings.

EPA analyzed the hearing record and all other data available to EPA and announced its plans in a November 30, 1984, letter to the SEIU. In that letter, EPA stated, among other things, that there may be merit to the concept of establishing requirements to protect public employees not protected by OSHA requirements who perform asbestos abatement work. EPA announced that it intended either to propose a rule in June 1985 to establish requirements to protect those public employees or to explain the reasons that have made rulemaking inappropriate. EPA also announced in the letter that it would take appropriate action if EPA determined that a more expedited proceeding, such as the issuance of an immediately effective rule, is necessary. EPA has determined that the issuance of a rule to protect public employees from asbestos released to the air during asbestos abatement work is necessary to reduce the unreasonable risk associated with that activity and that the rule should be immediately effective. Therefore, EPA is proposing such a rule. This rule is part of an integrated EPA program to address the risks associated with asbestos in schools and other public and commercial buildings. As part of that program, EPA is establishing three pilot information centers at the regional level to provide information concerning the identification and abatement of asbestos hazards and to train people in proper abatement techniques. To ensure that asbestos abatement is performed safely and

correctly. EPA is helping States establish certification programs for asbestos abatement contractors. EPA is giving some States grants to help them set up contractor certification programs and is suggesting to States ways to implement such programs. EPA is also expanding its technical assistance program to provide guidance on asbestos matters to public and commercial building owners and managers as well as school officials. Finally, EPA is updating existing guidance material and preparing new material.

III. Provisions of the Rule

Sections 763.120 of the rule states the rule's scope. The rule applies to asbestos abatement projects, which include any activity involving the removal, enclosure, or encapsulation of friable asbestos material. EPA considers any material containing more than 1 percent asbestos by weight, which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure to be friable asbestos material. The rule covers all employees of State and local governments not covered by either the OSHA Asbestos Standard or an asbestos standard adopted by a State as part of a State plan approved by OSHA under section 18 of the OSHA Act. The rule would be enforced against the employers of those employees. Currently, State and local employees in 27 States are not protected by the OSHA Asbestos Standard. In addition, public employees in some other possessions of the United States are not protected by the OSHA Asbestos Standard. This rule would cover those persons not currently protected. EPA notes that many asbestos abatement projects subject to this rule are also covered under the Clean Air Act by the National Emission Standard for Asbestos, and are obligated to follow that rule also.

Section 763.121 of the rule sets forth the main regulatory requirements. Section 763.121 is almost identical to the current OSHA Asbestos Standard found in 29 CFR 1910.1001. A major substantive change in § 763.121 is in the definition of asbestos. OSHA now defines asbestos as "chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite." OSHA has recognized that its current definition is inconsistent with those of other agencies because the OSHA definition includes non-asbestiform tremolite. In this rule, EPA defines asbestos as "the asbestiform varieties of chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite, anthophyllite, and actinolite." EPA specifically requests comment on the appropriated definition of asbestos.

This rule does not include the part of the current OSHA Asbestos Standard which states that personnel rotation is preferred over use of respirators to meet the permissible exposure requirements. OSHA has announced its intention to revoke that provision (Ref. 12). EPA agrees with OSHA's statement that personnel rotation merely increases the population at risk and would not reduce the absolute number of excess deaths attributable to asbestos according to mathematical models.

This rule, following the current OSHA Asbestos Standard, requires that employers collect samples of air levels "of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees."

EPA adopts and will follow OSHA's administrative interpretations of identical provisions in the Asbestos Standard, including the interpretation that the medical surveillance requirements are triggered by an action level of 0.1 fiber per cubic centimeter (f/cc). Employers would be required to conduct personal and environmental monitoring as required by the rule to see if that level is exceeded.

Section 763.124 of this rule requires State and local employers to report to EPA at least 10 days before they begin an asbestos abatement project using public employees covered by this rule. EPA needs this information to enforce the rule. EPA can inspect asbestos abatement projects covered by this rule only if EPA knows where those projects are located. The report would be sent to the Regional Asbestos Coordinator for the EPA region in which the project is located. Employers who give EPA 10 days advance notice of asbestos abatement projects under the National Emission Standard for Asbestos under 40 CFR 61.146 and clearly indicate that employees covered by this rule will perform asbestos abatement activities, are exempt from reporting under this rule. The latter provision will avoid unnecessary duplicative reporting. Section 763.125 of the rule states EPA enforcement authority, and § 763.123 states EPA inspection authority.

While EPA is adopting the provisions of the current OSHA Asbestos Standard in this rule, EPA encourages persons to provide even greater protection to abatement workers and building occupants who may be exposed to asbestos. OSHA has recognized that employees exposed to asbestos at levels permitted by the current standard face a significant risk to health and OSHA has proposed amending the current standard (Ref. 12). To ensure adequate protection, EPA strongly encourages all employers covered by this rule and other persons to follow EPA guidance materials and take additional steps to control exposure to asbestos. EPA encourages employers covered by this rule to contact a Regional Asbestos Coordinator or the TSCA Assistance Office to obtain EPA guidance documents and other technical assistance information. In addition, OSHA has proposed changes in its Asbestos Standard and EPA is considering adopting the provisions of the revised OSHA Asbestos Standard when that rule is finalized. EPA is considering the permissible exposure limits of 0.5 and 0.2 f/cc proposed by OSHA. EPA is also considering the other issues discussed by OSHA in the preamble to the proposed revised Asbestos Standard. Those issues included the definition of asbestos; a ceiling limit for exposure; and action level to trigger requirements such as exposure monitoring, regulated areas, hygiene facilities, protective clothing, and medical surveillance; exposure monitoring; regulated areas; methods of compliance with the permissible exposure limits; respirator requirements; medical surveillance; signs and labels; and issues concerning the construction industry. EPA may include such provisions in a final rule. EPA expects to adopt a rule very similar to the final OSHA Asbestos Standard.

EPA also specifically requests comments on whether this rule should apply in States that do not have an OSHA-approved State plan but have regulations protecting public employees who perform asbestos abatement work. EPA encourages any State with an existing relevant regulation to inform EPA of the existence of the regulation during the comment period. EPA will consider exempting States from this rule when it is promulgated if they have regulations that are comparable or more stringent than this rule. States which adopt regulations protecting public employees who perform asbestos abatement work after this rule is promulgated should contact EPA at that time. EPA will consider amending this rule to exclude those States from coverage if their regulations provide comparable or greater protection than this rule.

IV. Regulatory Assessment

Under section 6(c)(1) of TSCA, EPA must consider the following factors when determining whether a chemical substance or mixture presents an unreasonable risk:

1. The effects of such substance or mixture on health and the magnitude of the exposure of human beings to such a substance or mixture.

2. The effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture.

3. The benefits of such substance or mixture for various uses and the availablity of substitutes for such uses.

4. The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

After considering the above factors, EPA proposes the following findings concerning the unregulated removal, enclosure, or encapsulation of friable asbestos material.

A. Health Effects and Magnitude of Exposure to Asbestos

1. Health Effects

The following summarizes the health effects of asbestos. Detailed discussion and assessment of the health effects of asbestos may be found in the "Report to the United States Consumer Product Safety Commission (CPSC), by the Chronic Hazard Advisory Panel on Asbestos" (CHAP), "Health Effects and Magnitude of Exposure" in EPA's "Support Document for Final Rule on Friable Asbestos-Containing Materials in School Buildings," and the "Report of the (National Research Council) Committee on Nonoccupational Health Risks of Asbestiform Fibers" (Refs. 1 and 4).

Asbestos has been thoroughly examined in numerous epidemiology studies. The life-threatening diseases that have been repeatedly identified are asbestosis, lung cancer, and mesothelioma. Also associated with asbestos exposure in some studies are cancers of the larynx, pharynx, gastrointestinal tract, kidney, and ovary. Major health effects are discussed below.

Asbestosis is a serious chronic disease involving fibrosis of lung and pleural tissues. There is no effective treatment for asbestosis and it is often disabling or fatal. Asbestosis is diagnosed from findings which may include radiographic changes, breathlessness, and abnormal lung function. Since some clinical symptoms of asbestosis are similar to those of other fibrosing lung diseases, a history of occupational exposure to asbestos is often a key feature of its diagnosis. Asbestosis can appear and progress decades after exposure to asbestos fibers. This is partly true because some inhaled asbestos fibers remain in the body for the lifetime of a victim. Under working conditions where average fiber concentrations in the air were high (more than 10 fibers per cubic centimeter) asbestosis has accounted for more than 17 percent of observed deaths (Ref. 11). It is apparently less common than lung cancer or mesothelioma at exposures lower than the current OSHA workplace standard of 2.0 f/cc. (According to the method developed by OSHA and the National Institute for Occupational Safety and Health (NIOSH), 2.0 f/cc means that 2.0 fibers longer than 5 microns are present in each milliliter of air. As many as 98 percent of airborne asbestos fibers are less than 5 microns and thus are not counted by the OSHA/NIOSH method.) Some recent data on the incidence of asbestosis appear compatible with a linear exposure-response relationship with no threshold (Ref. 12). Whether asbestosis is likely from the low doses characteristic of the nonoccupational environment is considered to be uncertain.

Lung cancer is responsible for the largest number of deaths from exposure to asbestos. Lung cancer has been associated with exposure to all the principal commercial asbestos fiber types. Excess lung cancer has been documented in asbestos mining, milling, manufacture, and use. Studies in which the extent of exposure can be approximated provide evidence that lung cancer increases linearly with both level and duration of exposure. Cigarette smoking and asbestos have a strong synergistic interaction in development of lung cancer. Asbestos exposure appears to multiply the underlying risk of lung cancer. Consequently, when exposed to asbestos, the risk of lung cancer for smokers (for whom the risk of lung cancer is already high) is much higher than that for nonsmokers exposed to asbestos. The CHAP estimated that the absolute increase in lung cancers in nonsmokers is about 1/10 of that in smokers exposed to asbestos.

Mesotheliomas are cancers that occur as thick diffuse masses in the serous membranes (mesothelia) that line body cavities. Many human studies have shown that exposures to asbestos produce mesotheliomas in the pleura (the membrane that surrounds the lungs and lines the lung cavity) and the peritoneum (which surrounds the abdominal organs and lines the abdominal cavity). Neither form of mesothelioma can be treated effectively, and both forms are nearly always fatal within the first 2 years after diagnosis. Epidemiology studies suggest that the incidence of mesothelioma is related to dose and time from first exposure. Association of mesothelioma with smoking is weak or nonexistent. Asbestos fibers appear, by far, to be the most common cause of mesotheliomas.

In occupational studies where the primary route of exposure is through inhalation, lung cancer and mesotheliomas usually account for about 90 percent of the excess cancers seen among workers. However, as noted in the CHAP report (Ref. 1), a number of other cancers, principally of the gastrointestinal tract, have been associated with asbestos exposure. These are cancers of the larynx, pharynx, oral cavity, esophagus, stomach, colon, and rectum. Statistically significant excesses of cancers of the kidney and ovary have also been shown. In addition, the excess of cancers at all other sites combined is statistically significant in some studies.

The conclusions from epidemiology studies concerning the health effects of asbestos are also supported by results of laboratory studies. Animals treated with asbestos have shown increased incidence of fibrosis, lung cancer, and mesotheliomas. All commercial forms and several other types of asbestos are implicated from a variety of modes of exposure. Animal studies, however, have not shown an increased incidence of gastrointestinal or other cancers.

Most occupational studies have been conducted on populations exposed to high airborne concentrations of asbestos for long periods of time. Short-term occupational exposures, however, have also been shown to increase the risk of lung cancer and mesothelioma (Ref. 9). In addition, there are many documented cases of mesothelioma linked to extremely brief exposure to high concentrations of asbestos or long-term exposure to low concentrations (Ref. 4).

Direct evidence of adverse health effects from nonoccupational asbestos exposure also exists. Persons who lived in the household of asbestos workers have developed pleural mesothelioma and signs of asbestosis (Ref. 10). A number of mesotheliomas have also been documented among populations whose only identified exposure was from living near asbestos mining areas, asbestos product factories, or shipyards where asbestos use had been very heavy.

In addition to exposure to asbestos fibers in the air, the general population is also exposed through various oral sources, including drinking water containing asbestos. Because of the

potential for oral exposure as well as the excess of gastrointestinal tract cancers that has frequently been found in occupational groups exposed to asbestos in the air, there has been much study of the possible health effects of ingestion of asbestos fibers. Despite those efforts, evidence showing health effects from ingestion is still ambiguous (Ref. 5).

2. Cancer Risk Extrapolation

As discussed above, numerous human studies have demonstrated that exposure to asbestos has increased the risk of cancer and asbestosis. This unit presents EPA's approach in estimating the cancer risk attributable to exposures during the removal, enclosure, or encapsulation of friable asbestos.

Since a number of epidemiology studies indicate a positive relationship between asbestos exposure and the risk of lung cancer, several models may be used to extrapolate from risk at high exposure to risk at lower exposure. The model that EPA believes is most consistent with available human and animal data is the linear nonthreshold dose/response model. This model assumes that (1) any exposure increases risk, and (2) the increase in risk is proportional to the background risk in the nonexposed population and to the level of exposure, defined as duration of exposure times concentration of asbestos fibers to which populations may be exposed.

The choice of the linear model appears reasonable since there is no evidence for a threshold level of asbestos exposure below which there is no increased risk. It is further supported by evidence of cancers among populations whose asbestos exposure is believed to have been lower than levels reported in the epidemiology studies of asbestos workers mentioned above.

The model adopted by EPA to estimate excess mesothelioma incidence due to asbestos exposure relates disease incidence to dose and the time from first exposure (minus 10 years) raised to the third power. This model reflects a delay (or minimum latency period) of 10 years between first exposure and the likely earliest possible appearance of the disease. Both the lung cancer and mesothelioma models have also been adopted by OSHA (Ref. 12). The derivation and validation of the models is discussed in detail in the CHAP report (Ref. 1) and in EPA's "Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products" (Ref. 3).

Although EPA believes that excess mortality from asbestosis and cancers other than lung cancer and mesothelioma could occur from exposure to asbestos released during asbestos abatement operations, EPA has not attempted to quantify that excess mortality since lung cancer and mesothelioma appear to present the greatest threats to human health at current exposure levels.

The risk of asbestos-induced disease may be modified by several factors. As mentioned in the earlier discussion on lung cancer, smoking drastically increases the risk of developing lung cancer from exposure to asbestos. Because of their lower underlying risk, the absolute increase of incidence of lung cancer in nonsmokers is about one-tenth of that in smokers. However, complete control of the smoking factor (if possible) would not in itself reduce the overall risk of asbestos health effects to acceptable levels since the risk of mesothelioma (which is apparently unaffected by smoking) and the risk of lung cancer to nonsmokers would still remain.

Another factor that may affect the risk of asbestos-induced disease is the possible difference in biological potency among the different fiber types. Epidemiology studies suggest that chrysotile may have a lower potential for producing peritoneal mesotheliomas than crocidolite or amosite. However, this has not been supported by laboratory studies. There is less evidence of marked differences between fiber types in their potential to produce pleural mesothelioma and lung cancer. Since all major fiber types (chrysotile, crocidolite, and amosite) are capable of causing lung cancer and pleural mesothelioma, and since the observed differences in potency are ambiguous, EPA has concluded that it is prudent to treat all asbestos fiber types as having equivalent biological activity.

Fiber dimension has also been suggested as a factor that may affect incidence of asbestos-induced disease. Animal studies in which asbestos fibers were applied by injection or implantation suggest that longer and finer fibers are more carcinogenic than shorter and coarser fibers. This has not, however, been confirmed by inhalation studies. EPA has not differentiated among fiber sizes in its assessment of the potential risk of asbestos. First, asbestos fibers released during asbestos abatement projects consist of a great range of dimensions, including those suggested as most dangerous. Second, it has not been clearly shown that short fibers pose a significantly lesser risk. No dimensional threshold for potency has been established.

3. Magnitude of Human Exposure

Persons can be exposed to high levels of airborne asbestos in or near the work area during asbestos abatement projects. Peak exposure during the removal of asbestos insulation have been measured at levels ranging from 4.5 f/cc to 82.2 f/cc. Mean exposure levels during the dry removal of an asbestos-containing ceiling have been measured at 42.2 f/cc. Mean exposure levels during the wet removal of an asbestos-containing ceiling have been measured at 23.1 f/cc. Mean exposure levels during removal of an asbestos-containing ceiling using water and a surfactant have been measured at 8.1 f/cc (Refs. 2 and 13). OSHA has estimated that average airborne concentrations in the dry wall removal, renovation, and demolition industry are 20 f/cc. (Ref. 12).

There may also be much exposure to asbestos during the encapsulation and enclosure of friable asbestos material. Using an electron microscope, levels of 40, 380, 390, and 8,740 nanograms per cubic meter were found in samples taken in the work area with a mobile pump during painting with an encapsulant. Samples taken by personal pumps worn by two painters during encapsulation showed very low levels in one case and levels of 1,000, 1,700, 2,300, and 13,000 nanograms per cubic meter in the other case (Ref. 14). EPA has received anecdotal evidence that there may be much exposure to asbestos during enclosure of friable asbestos material.

Based on available exposure information, EPA estimates that unregulated dry removal of asbestos results in exposure levels of 24.0 f/cc in the work area during abatement, 1.6 f/cc outside the work area during abatement and 0.8 f/cc outside work area post abatement. EPA estimates that unregulated wet removal of asbestos results in exposure levels of 18.0 f/cc in the work area during abatement, 0.9 f/cc outside the work area during abatement, and 0.5 f/cc in the building post abatement (Ref. 13). Many of the estimates are based on data reported in studies, while others are essentially assumed due to a lack of data (Ref. 13).

EPA estimates that this rule would reduce the concentrations of airborne asbestos to 11.9 f/cc in the work area during abatement, 0.3 f/cc outside the work area during abatement, and 0.05 f/cc in the building post abatement (Ref. 13).

EPA estimates that about 450 abatement workers per year would be covered by this rule. This is based on an estimate of the number of abatement projects each year and an estimate of the percentage of those projects in which State and local employees are used. EPA estimates that these asbestos abatement workers would be exposed to asbestos during abatement for 3 to 6 days a year. In addition, other persons would be exposed to asbestos as a result of asbestos abatement activities. EPA estimates that about 1,250 other States and local public employees, such as public school teachers, other public school personnel, public hospital staff, and State and local government office workers, would be exposed during abatement and about 3,700 employees would be exposed post abatement. EPA also estimates that about 400 other building occupants such as school children and hospital patients and visitors would be exposed during abatement and about 38,600 other occupants and visitors would be exposed post abatement (Ref. 13). EPA expects that this rule will reduce the level of asbestos exposure to all of these groups.

B. Environmental Effects

Section 6(c) of TSCA requires that EPA state the relevant environmental factors and key considerations which form the basis for regulatory action under section 6(a). The unreasonable risk finding of this rule is based solely on risks to human health since these risks are by far the most serious consequence of unregulated removal, enclosure, or encapsulation of friable asbestos material and are sufficient to support this rule.

C. Benefits of Asbestos Products and Availability of Substitutes

EPA finds that the benefits of the asbestos-containing products affected by this rule are minimal. This rule applies only when persons have already decided to remove, enclose, or encapsulate friable asbestos material. These people presumably will have already determined that there are no benefits in using the asbestos-containing material in its present condition. In addition, there are adequate substitutes for the asbestos products that are being removed from buildings.

D. Economic Effects of the Rule

This portion of the preamble presents EPA's determination of the "reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health" as required by section 6(c)(1)(D) of TSCA.

EPA estimates that this rule would increase the cost of asbestos abatement to some extent. EPA estimates that the rule would increase the cost of typical abatements as follows:

Project	Without rule	With rule	Increase	Percent increase
School	$12,900	$15,300	$2,400	18
Office Building	18,800	22,000	3,200	17
Hospital	58,500	65,800	7,300	12
Boiler room	3,700	4,900	1,200	32
Boiler pipes	1,700	2,600	900	54

EPA estimates that this rule would increase the costs of asbestos abatement a total of about $730,000. This figure is the present value of cost incurred over the next 15 years, assuming that all friable asbestos is abated. EPA also estimates that this rule would avoid about 200 cancer cases. This is about $3,650 per cancer case avoided.

This rule would not have a direct impact on small business since it applies only to those public employees not covered by the OSHA Asbestos Standard. However, by establishing regulatory requirements for public employees similar to those of private employees under OSHA jurisdiction, the rule would eliminate cost advantages that may encourage the use of public employees rather than private contractors for asbestos abatement. This rule may, therefore, bring about increased use of private contractors, some of which are small businesses. This rule could have an impact on small government entities because it would increase the cost of performing asbestos abatement activities using public employees. However, the rules would not increase the cost of using contractors to perform asbestos abatement and would not require any government entity to undertake asbestos abatement activities.

EPA does not believe that this rule will restrict technological innovation. The rule allows sufficient flexibility for the development of new technology concerning asbestos abatement.

E. Other EPA Statutes

Section 6(c) of TSCA requires that if EPA determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA, EPA may not promulgate a rule under section 6(a) of TSCA unless EPA finds it is in the public interest to protect against the risk by action under TSCA. EPA finds that no other law administered by EPA will eliminate or reduce the risks to the workers associated with the removal, renovation, or encapsulation of asbestos to a sufficient extent.

Several EPA statutes have been used to limit asbestos exposure. In 1973, EPA used the authority of the Clean Air Act (CAA) to list asbestos as a hazardous air pollutant, establish a "no visible" emission standard for manufacturers, and ban the use of spray-applied asbestos-containing material as insulation in buildings. The regulation was published in the **Federal Register** of April 6, 1973 (38 FR 8826). EPA amended this regulation in 1975 to ban asbestos-containing pipe lagging, by a rule published in the **Federal Register** of October 12, 1975 (40 FR 48292); and in 1978 extended the ban to all uses of sprayed-on asbestos by a rule published in the **Federal Register** of June 19, 1978 (43 FR 26372). The CAA rule also regulates operations involving the demolition or renovation of buildings containing friable asbestos and the disposal of wastes generated by such operations.

However, the CAA has limitations. The CAA does not apply directly to the protection of workers exposed to indoor air. Consequently, any possible additional use of that statute could leave many workers exposed to situations of inadequate protection.

An additional EPA statute that could be used to limit asbestos exposure is the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA could list asbestos as a hazardous waste and subject asbestos waste to general RCRA requirements designed to reduce exposure. However, such action under RCRA would reduce exposure only when the wastes from asbestos removal are ultimately placed in disposal facilities. It would not reduce exposure during the actual removal, enclosure, or encapsulation of asbestos products. Therefore, EPA finds it is in the public interest to take action under TSCA rather than under another statute administered by EPA.

F. Other Options Considered

Section 6 of TSCA requires that EPA apply the least burdensome requirements to reduce an unreasonable risk. EPA considered the following options for reducing the risks associated with the removal, enclosure, or encapsulation of asbestos without any regulatory controls beyond those

required by the National Emission Standard for Asbestos.

1. *Take no regulatory action under TSCA; instead provide the public with information and technical assistance.* Under this option, EPA would take no regulatory action, beyond that already taken as part of the National Emission Standard for Asbestos; but would instead provide the public with information and technical assistance. EPA is already increasing the information and technical assistance it provides the public. Persons could use that information to reduce the risk to public employees who perform asbestos abatement work during the removal, enclosure, or encapsulation of asbestos.

This approach would minimize the burden caused by regulatory action. However, this option is an adequate response given the high risk to abatement workers associated with the removal, enclosure, or encapsulation of asbestos following only the requirements of the National Emission Standard for Asbestos. The National Emission Standard for Asbestos was designed to limit the release of asbestos to the ambient air and only incidentally protects abatement workers inside a building.

2. *Take no regulatory action under TSCA; instead defer to the States.* Under this option, EPA would take no regulatory action beyond that already taken as part of the National Emission Standard for Asbestos but would instead provide the States with information and technical assistance so that States can adopt regulations to protect public employees who perform asbestos abatement work.

This approach would minimize the burden caused by Federal regulatory action. However, this option is an inadequate response since a number of States have not taken action in this area in the past and may not take action in the future. Still, EPA encourages States to take action to protect such public employees with requirements more stringent than those in this rule. As stated earlier, employees exposed to asbestos at the level permitted by this rule still face a risk to health.

3. *Propose a rule which provides greater protection than the current OSHA Asbestos Standard.* OSHA has recognized that its current Asbestos Standard is inadequate and has begun rulemaking to adopt a new standard. EPA could propose a rule closer to the proposed OSHA standard or closer to the recommendations for worker protection in EPA's technical guidance documents. Because this proposed rule is immediately effective, EPA decided to follow the current OSHA Asbestos Standard closely to maintain consistency among Federal agencies. However, EPA is considering adopting one of the proposed OSHA permissible exposure levels of 0.5 and 0.2 f/cc in a final EPA rule. In addition, EPA is considering the other issues discussed by OSHA in the preamble to its proposed amendments to the Asbestos Standard. EPA may adopt some or all of these provisions in a final rule. EPA expects to adopt a rule very similar to the revised OSHA Asbestos Standard.

G. Analysis Under Section 9(a) of TSCA

Section 9(a) of TSCA requires EPA to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or reduce to a sufficient extent such risks. EPA has reviewed other Federal authorities. The only statute not administered by EPA that could reduce such risks in the OSHAct. However, this rule covers only persons not covered by the OSHA Asbestos Standard. OSHA currently has no statutory authority to cover public employees in a State without an OSHA-approved State plan and 27 States do not have an approved plan. Thus, EPA cannot determine that there is a statute administered by another Federal agency that can prevent or reduce the risk presented to persons not covered by the OSHA Asbestos Standard during the removal, enclosure, or encapsulation of friable asbestos.

V. Finding of Unreasonable Risk

EPA has weighed the health risks from unregulated asbestos abatement against the costs attributable to the proposed regulation. EPA estimates that this rule would avoid 200 cancer cases, among abatement workers, other employees in buildings where abatement occurs, and visitors to such buildings while costing about $730,000 over 15 years. This is about $3,650 per cancer case avoided. EPA has concluded that the avoidance of these premature deaths substantially outweighs the costs of the control measures required.

Therefore, EPA finds that unregulated removal, enclosure, or encapsulation of friable asbestos material presents an unreasonable risk to human health and proposes to require that certain measures be taken to reduce the risk faced by asbestos abatement workers and persons using and visiting buildings during and after asbestos abatement activities. The finding is based on the following points:

1. The health effects from asbestos exposure are very serious. Asbestos is a demonstrated human carcinogen. The cancers caused by asbestos are usually fatal and cause much pain and suffering.

2. Available evidence supports the conclusion that there is no safe level of exposure to asbestos. This conclusion is consistent with present theory of cancer etiology and is further supported by the many documented cases where low or short-term exposure has been shown to cause asbestos-related disease.

3. Models developed to estimate the relative risk of developing cancer from exposure to asbestos show a linear dose-response relationship. Based on data from epidemiology studies, these models predict that humans exposed to even very low levels of asbestos incur some risk.

4. A substantial number of persons are involved in asbestos abatement activities, but are not protected by the OSHA Asbestos Standard.

5. Persons can be exposed to high levels of airborne asbestos if they conduct asbestos abatement without any exposure controls.

6. The estimated incremental economic costs of this rule are minimal in view of the number of cancers that may be avoided by the rule.

EPA also finds that such unregulated removal, enclosure, or encapsulation of friable asbestos is likely to result in an unreasonable risk of serious or widespread injury to human health before the effective date of final action by EPA and that making the proposed rule effective upon its publication in the Federal Register is necessary to protect the public interest. Asbestos is a known human carcinogen. If persons attempt to abate asbestos hazards, but do so incorrectly, there may be very high levels of exposure to asbestos on the part of abatement workers, other employees who work in the building, and visitors to the building. These levels may far exceed the levels of exposure permitted by the current OSHA Asbestos Standard. For example, in schools that incorrectly abate asbestos hazards, school teachers and other school employees and school children could be exposed as well as abatement workers. State and local public employees could potentially take part in asbestos abatement activities in all State and local public buildings in the States not covered by OSHA State plans. Thus, many persons could be exposed to high concentrations of asbestos before the effective date of this rule. Because of increased public concern about asbestos in buildings and increased abatement activity during the summer months, EPA expects that much asbestos abatement would take place

during the period normally allowed for comment on this proposed rule.

VI. Enforcement

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under section 6 of TSCA. Therefore, failure to comply with this rule would be a violation of section 15 of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to (1) fail or refuse to establish and maintain records as required by this rule; (2) fail or refuse to permit access to or copying of records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation of this rule could constitute a separate violation. Knowing or willful violations of this rule could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of this rule.

VII. Rulemaking Process

Under section 6(d) of TSCA, after making the statutory findings discussed in Unit V of this preamble, EPA may issue a proposed rule under section 6(a). Such a proposed rule is effective upon publication in the Federal Register.

Section 6(d)(2)(E) of TSCA provides that EPA must give interested persons prompt notice of the action, provide a reasonable opportunity for a hearing in accordance with section 6(c)(2) and (3), and either promulgate the rule as proposed, or with modifications, or revoke it. However, unlike an ordinary section 6(c) rulemaking in which EPA would schedule the hearing after allowing written comment, section 6(d)(2)(B) provides that, if a person requests a hearing, EPA must begin the hearing within 5 days of the request, unless EPA and the person making the request agree upon a later date. Section 6(d)(2)(B) further provides that EPA promulgate a final rule, or revoke the proposed rule, within 10 days of the conclusion of the hearing.

For this rulemaking, EPA has established the following schedule in accordance with the requirements of 40 CFR Part 750: To provide a reasonable opportunity for comment by all interested persons, EPA will accept written comments for 60 days from the date of publication of this proposed rule in the Federal Register. A legislative hearing is scheduled to begin 14 days after the end of the 60-day comment period. The hearing will be held only if EPA receives a formal request from an interested person by the end of the 60-day comment period. If a hearing is requested, interested persons will be given an opportunity to present information. Fourteen days after the conclusion of the initial hearing, EPA may hold a cross-examination hearing. Participants in the initial hearing may request an opportunity for cross-examination within 7 days of the time the full transcript of the initial hearing becomes available. EPA will grant the request for cross-examination if there is a disputed issue of material fact. Within 14 days of the close of the initial hearing, or within 14 days of the close of the cross-examination hearing if such a hearing is held, reply comments may be submitted. After that 14-day period, the hearing is officially concluded, and EPA will promulgate the final rule or revoke it within 10 days.

EPA requests that persons adhere to this schedule to allow all persons an adequate opportunity to comment on the rule. However, if a person requests an immediate hearing during the 60-day comment period, EPA is required to begin the hearing within 5 days of the request. If so, EPA will be forced to cut short the written comment period and proceed with the hearing. EPA will give as much notice as possible of any such hearing request and any change in the rulemaking schedule.

VIII. Confidentiality

A person may assert a claim of confidentiality for any information, including public comments, submitted to EPA in connection with this proposed rule. Any person who submits a confidential public comment must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons would claim information confidential by circling, bracketing, or underlining it and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR Part 2, Subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-62044). A public version of the record, without any confidential business information, is available to the public in the Office of Toxic Substances Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. E-107, 401 M St., SW., Washington, D.C.

The record includes information considered by EPA in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information:

1. Federal Register notices.
2. Support documents.
3. Reports.
4. Memoranda and letters.

EPA will include by reference the rulemaking record compiled by OSHA as part of the revision of the OSHA Asbestos Standard. Therefore, persons should not send EPA copies of their comments to OSHA. EPA will identify the complete rulemaking record by date of promulgation. EPA will accept additional material for inclusion in the record at any time between this notice and designation of the complete record. The final rule will also permit persons to point out any errors or omissions in the record.

X. References

(1) USCPSC. Report to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory Panel on Asbestos. July 1983.

(2) USEPA, OPTS, OTS. Exposure Assessment for Asbestos. Draft January 9, 1984.

(3) USEPA, OPTS, OTS. Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products. Draft March 1985.

(4) USEPA, OPTS, OTS. Support Document for Final Rule on Friable Asbestos-Containing Materials in School Buildings: Health Effects and Magnitude of Exposure. January, 1982.

(5) National Research Council. "Asbestos" In: *Drinking Water and Health.* Vol. 3. National Academy Press. Washington, D.C. (1982): 223–353.

(6) National Research Council. "Nonoccupational Health Risks of Asbestiform Fibers." National Academy Press. Washington, D.C. 1984.

(7) NIOSH–OSHA Asbestos Work Group. Workplace Exposure to Asbestos: "Review and Recommendations." DHHS (NIOSH) Publication No. 81–103. U.S. Government Printing Office, Washington, D.C. 20402. (1980).

(8) OSHA. "Quantitative Risk Analysis for Asbestos-Related Cancers: A Preliminary Report." (1983).

(9) Seidman, H., Selikoff, I.J., Hammond, E.C., "Short-Term Observation." In: "Annals of the New York Academy of Science," 330 (1979): 61–89.
(10) Selikoff, I.J., Anderson, H.A., Seidman, H. "Asbestos Disease Among Household Contacts of Asbestos Workers" In: "Disability Compensation for Asbestos-Associated Disease in the U.S.," edited by I.J. Selikoff. Environmental Sciences Laboratory, Mount Sinai School of Medicine of the City University of New York. (1982): 73–76.
(11) Selikoff, I.J., Hammond, E.C., Seidman H., "Mortality Experience of Insulation Workers in the U.S. and Canada, 1943–1976. In: *Annals of the New York Academy of Science*, 330 (1979): 91–116.
(12) USDOL, OSHA. "Occupational Exposure to Asbestos; Proposed Rule and Notice of Hearing. (April 10, 1984; 49 FR 14116).
(13) USEPA, OPTS, OTS. Asbestos Abatement Rules: A Preliminary Cost-Effectiveness Analysis. Revised Draft Report May, 1985.
(14) USEPA, OPTS, OTS, Evaluation of Asbestos Techniques: Encapsulation. Draft report April 1985.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA has prepared a Cost-Effectiveness Analysis. The Analysis estimates that this rule would cost about $730,000 over 15 years, while avoiding about 200 fatal cancer cases. This is a cost of about $3,650 per cancer case avoided. As shown in Unit V above, EPA believes that these costs are reasonable. Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

EPA has analyzed the economic impact of this proposed rule on small businesses. A summary of EPA's analysis appears in Unit IV.D.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (Control No. 2070–0072). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB and marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 763

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Asbestos.

Dated: June 22, 1985.

Lee M. Thomas,
Administrator.

PART 763—[AMENDED]

Therefore, 40 CFR Part 763 is amended as follows:

1. The authority citation for Part 763 is revised to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

2. Subpart G is added to read as follows:

Subpart G—Asbestos Abatement Projects

Sec.
763.120 Scope.
763.121 Regulatory requirements.
763.124 Reporting.
763.125 Enforcement.
763.126 Inspections.

Authority: 15 U.S.C. 2605.

Subpart G—Asbestos Abatement Projects

§ 763.120 Scope.

(a) This part establishes requirements which must be followed during asbestos abatement projects, which include any activity involving the removal, enclosure, or encapsulation of any material containing more than 1 percent asbestos by weight which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure.

(b) This part applies to all employers of State and local government employees not covered by the Asbestos Standard of the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1001, or an Asbestos Standard adopted by a State as part of a State plan approved by OSHA under section 18 of the Occupational Safety and Health Act. The rule covers the employees of those employers. The employer is the public department, agency, or entity which hires the employee. This includes, but is not limited to the following examples of public entities: any State, County, City or other local governmental entity which operates or administers schools, a department of health or human services, a library, a police department, a fire department, or similar public service agencies or offices.

§ 763.121 Regulatory requirements.

(a) *Definitions.* For the purpose of this section:

(1) "Asbestos" means "the asbestiform varieties of chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite, and actinolite."

(2) "Asbestos fibers" means asbestos fibers longer than 5 micrometers.

(b) *Permissible exposure to airborne concentrations of asbestos fibers.*

(1) [Reserved]

(2) *Standard effective July 12, 1985.* The 8-hour time-weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed two fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(3) *Ceiling concentration.* No employee shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(c) *Methods of compliance*—(1) *Engineering methods.* (i) *engineering controls.* Engineering controls, such as, but not limited to, isolation, enclosure, exhaust ventilation, and dust collection, shall be used to meet the exposure limits prescribed in paragraph (b) of this section.

(ii) *Local exhaust ventilation.* (A) Local exhaust ventilation and dust collection systems shall be designed, constructed, installed, and maintained in accordance with the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2–1979, (Revision of ANSI Z9.2–1971) which is incorporated by reference herein.

(B) ANSI Z9.2–1979 is available for inspection at the Office of the Federal Register Information Center, Rm. 8301, 1100 L St., NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register**. Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American National Standards Institute, 1430 Broadway, New York, NY, 10018 (212–354–3473).

(iii) *Particular tools.* All hand-operated and power-operated tools which may produce or release asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, such as, but not limited to, saws, scorers, abrasive wheels, and drills, shall be provided with local exhaust ventilation systems in accordance with paragraph (c)(1)(ii) of this section.

(2) *Work practices*—(i) *Wet methods.* Insofar as practicable, asbestos shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborne fibers in excess of the exposure limits prescribed in paragraph (b) of this section, unless the usefulness of the product would be diminished thereby.

(ii) *Particular products and operations.* No asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos shall be removed from bags, cartons, or other containers in which they are shipped, without being either wetted, or enclosed, or ventilated so as to prevent effectively the release of airborne asbestos fibers in excess of the limits prescribed in paragraph (b) of this section.

(iii) *Spraying, demolition, or removal.* Employees engaged in the spraying of asbestos, the removal, or demolition of pipes, structures, or equipment covered or insulated with asbestos, and in the removal or demolition of asbestos insulation or coverings shall be provided with respiratory equipment in accordance with paragraph (d)(2)(iii) of this section and with special clothing in accordance with paragraph (d)(3) of this section.

(d) *Personal protective equipment.* (1) Compliance with the exposure limits prescribed by paragraph (b) of this section may not be achieved by the use of respirators or shift rotation of employees, except:

(i) During the time period necessary to install the engineering controls and to institute the work practices required by paragraph (c) of this section;

(ii) In work situations in which the methods prescribed in paragraph (c) of this section are either technically not feasible or feasible to an extent insufficient to reduce the airborne concentrations of asbestos fibers below the limits prescribed by paragraph (b) of this section; or

(iii) In emergencies.

(2) Where a respirator is permitted by paragraph (d)(1) of this section, it shall be selected from among those approved by the Bureau of Mines, Department of the Interior, or the National Institute for Occupational Safety and Health, Department of Health, Education, and Welfare, under the provisions of 30 CFR Part 11 (37 FR 6244, Mar. 25, 1972), and shall be used in accordance with paragraph (d)(2) (i), (ii), (iii), and (iv) of this section.

(i) *Air purifying respirators.* A reusable or single use air purifying respirator, or a respirator described in paragraph (d)(2) (ii) or (iii) of this section, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed no more than 10 times those limits.

(ii) *Powered air purifying respirators.* A full facepiece powered air purifying respirator, or a powered air purifying respirator, or a respirator described in paragraph (d)(2) (iii) of this section, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average concentrations of asbestos fibers are reasonably expected to exceed 10 times, but not 100 times, those limits.

(iii) *Type "C" supplied-air respirators, continuous flow or pressure-demand class.* A type "C" continuous flow or pressure-demand, supplied-air respirator shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed 100 times those limits.

(iv) *Establishment of a respirator program.* (A) The employer shall establish a respirator program in accordance with the requirements of the American National Standard Practices for Respiratory Protection, ANSI Z88.2-1980 (Revision of ANSI Z88.2-1969), which is incorporated by reference herein.

(B) ANSI Z88.2-1980 is available for inspection at the Office of the Federal Register Information Center, Rm. 8301, 1100 L St., NW., Washington, DC 20400. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the Federal Register. Copies of the incorporated material may be obtained from the Document Control Officer (TS-793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American National Standards Institute, 1430 Broadway, New York, NY 10018, (212-354-3473).

(C) No employee shall be assigned to tasks requiring the use of respirators if, based upon his most recent examination, an examining physician determines that the employee will be unable to function normally wearing a respirator, or that the safety or health of the employee or other employees will be impaired by his use of a respirator. Such employee shall be rotated to another job or given the opportunity to transfer to a different position whose duties he is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay he had just prior to such transfer, if such a different position is available.

(3) *Special clothing.* The employer shall provide, and require the use of, special clothing, such as coveralls or similar whole body clothing, head coverings, gloves and foot coverings for any employee exposed to airborne concentrations of asbestos fibers, which exceed the ceiling level prescribed in paragraph (b) of this section.

(4) *Change rooms.* (i) At any fixed place of employment exposed to airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, the employer shall provide change rooms for employees working regularly at the place.

(ii) *Clothes lockers.* The employee shall provide two separate lockers or containers for each employee, so separated or isolated as to prevent contamination of the employee's street clothes from his work clothes.

(iii) *Laundering.* (A) Laundering of asbestos contaminated clothing shall be done so as to prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section.

(B) Any employer who gives asbestos contaminated clothing to another person for laundering shall inform such person of the requirement in paragraph (d)(4)(iii) (A) of this section to effectively prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section.

(C) Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable bags, or other closed, impermeable containers, and labeled in accordance with paragraph (g) of this section.

(e) *Method of measurement.* All determinations of airborne concentrations of asbestos fibers shall be made by the membrane filter method at 400–450 x (magnification) (4 millimeter objective) with phase contrast illumination.

(f) *Monitoring*—(1) *Initial determinations.* Every employer shall cause every place of employment where asbestos fibers are released to be monitored in such a way as to determine whether every employee's exposure to asbestos fibers is below the limits prescribed in paragraph (b) of this section. If the limits are exceeded, the employer shall immediately undertake a compliance program in accordance with paragraph (c) of this section.

(2) *Personal monitoring.* (i) Samples shall be collected from within the breathing zone of the employees, on membrane filters of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(ii) *Sampling frequency and patterns.* After the initial determinations required by paragraph (f)(1) of this section, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees.

(3) *Environmental monitoring.* (i) Samples shall be collected from areas of a work environment which are representative of the airborne concentrations of asbestos fibers which may reach the breathing zone of employees. Samples shall be collected on a membrane filter of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(ii) *Sampling frequency and patterns.* After the initial determinations required by paragraph (f)(1) of this section, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees.

(4) *Employee observation of monitoring.* Affected employees, or their representatives, shall be given a reasonable opportunity to observe any monitoring required by this paragraph and shall have access to the records thereof.

(g) *Caution signs and labels*—(1) *Caution signs.* (i) *Posting.* Caution signs shall be provided and displayed at each location where airborne concentrations of asbestos fibers may be in excess of the exposure limits prescribed in paragraph (b) of this section. Signs shall be posted at such a distance from such a location so that an employee may read the signs and take necessary protective steps before entering the area marked by the signs. Signs shall be posted at all approaches to areas containing excessive concentrations of airborne asbestos fibers.

(ii) *Sign specifications.* The warning signs required by paragraph (g)(1)(i) of this section shall conform to the requirements of 20" x 14" vertical format signs specified in 29 CFR 1910.145(d)(4), and to this paragraph (g)(1)(ii). The signs shall display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to that specified in this paragraph (g)(1)(ii).

Legend	*Notation*
Asbestos	1" Sans serif, gothic or block.
Dust Hazard	¾" San serif, gothic or block.
Avoid Breathing Dust	⅛" gothic.
Wear Assigned Protective Equipment.	⅛" gothic
Do Not Remain in Area Unless Your Work Requires it.	¼" gothic.
Breathing Asbestos Dust May be Hazardous To Your Health.	14 point gothic.

Spacing between lines shall be at least equal to the height of the upper of any two lines.

(2) *Caution labels*—(i) *Labeling.* Caution labels shall be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers, except that no label is required where asbestos fibers have been modified by a bonding agent, coating, binder, or other material so that during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section will be released.

(ii) *Label specifications.* The caution labels required by paragraph (g)(2)(i) of this section shall be printed in letters of sufficient size and contrast to be readily visible and legible. The label shall state:

CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
BREATHING ASBESTOS DUST MAY CAUSE SERIOUS BODILY HARM

(h) *Housekeeping*—(1) *Cleaning.* All external surfaces in any place of employment shall be maintained free of accumulations of asbestos fibers if, with their dispersion, there would be an excessive concentration.

(2) *Waste disposal.* Asbestos waste, scrap, debris, bags, containers, equipment, and asbestos-contaminated clothing, consigned for disposal, which may produce in any reasonably foreseeable use, handling, storage, processing, disposal, or transportation airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section shall be collected and dispose of in sealed impermeable bags, or other closed, impermeable containers.

(i) *Recordkeeping*—(1) *Exposure records.* Every employer shall maintain records of any personal or environmental monitoring required by this section. Records shall be maintained for a period of at least 20 years and shall be made available upon request to the Environmental Protection Agency, the Assistant Secretary of Labor for Occupational Safety and Health, the Director of the National Institute for Occupational Safety and Health, and to authorized representatives of either.

(2) *Employee access.* Every employee and former employee shall have reasonable access to any record required to be maintained by paragraph (i)(1) of this section, which indicates the employee's own exposure to asbestos fibers.

(3) *Employee notification.* Any employee found to have been exposed at any time to airborne concentrations of asbestos fibers in excess of the limits prescribed in paragraph (b) of this section shall be notifed in writing of the exposure as soon as practicable but not later than 5 days of the finding. The employee shall also be timely notified of the corrective action being taken.

(j) *Medical examinations*—(1) *General.* The employer shall provide or make available at his cost, medical examinations relative to exposure to asbestos required by this paragraph.

(2) *Preplacement.* The employer shall provide or make available to each of his employees, within 30 calendar days following his first employment in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination, which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(3) *Annual examinations.* On or before July 14, 1986, and at least annually thereafter, every employer shall provide,

or make available, comprehensive medical examinations to each of his employees engaged in occupations exposed to airborne concentrations of asbestos fibers. Such annual examination shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(4) *Termination of employment.* The employer shall provide, or make available, within 30 calendar days before or after the termination of employment of any employee engaged in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(5) *Recent examinations.* No medical examination is required of any employee, if adequate records show that the employee has been examined in accordance with this paragraph within the past 1-year period.

(6) *Medical records*—(i) *Maintenance.* Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be retained by employers for at least 20 years.

(ii) *Access.* The contents of the records of the medical examinations required by this paragraph shall be made available, for inspection and copying, to the Environmental Protection Agency, the Assistant Secretary of Labor for Occupational Safety and Health, the Director of NIOSH, to authorized physicians and medical consultants of either of them, and, upon the request of an employee or former employee, to his physician. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer of the examined employee all the information specifically required by this paragraph, and any other medical information related to occupational exposure to asbestos fibers.

§ 763.124 Reporting.

(a) Employers subject to this rule must report to the Regional Asbestos Coordinator for the EPA Region in which the asbestos abatement project is located at least 10 days before they begin an asbestos standard or an Asbestos Standard adopted by a State as part of a State plan approved by OSHA. A list of the EPA Regional Office is given under 40 CFR 1.7(b).

(b) The report must include:

(1) The employer's name and address.

(2) The location, including street address, of the asbestos abatement project.

(3) The scheduled starting and completion dates for the asbestos abatement project.

(c) If a report is mailed to EPA, the report must be postmarked at least 10 days before the asbestos abatement project begins.

(d) Employers do not have to report under this section if they submit a notice to EPA under the National Emission Standard for Asbestos, 40 CFR 61.146, at least 10 days before they begin the asbestos abatement project and that notice clearly indicates that employers not covered by the OSHA Asbestos Standard or an Asbestos Standard adopted by a State as part of a State plan approved by OSHA will perform some or all of the asbestos abatement work.

(Approved by the Office of Management and Budget under the control number 2070-0072)

§ 763.125 Enforcement.

(a) Failure to comply with any provisions of this part is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(d) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(e) EPA may seek to enjoin an asbestos abatement project in violation of this Part, or take other actions under the authority of sections 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

§ 763.126 Inspections.

EPA will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this part.

[FR Doc. 85-16089 Filed 7-11-85; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL 2859-4]

Agency Paperwork Reduction Act Clearance Request Completed by the Office of Management and Budget

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) has approved the following Information Collection Request (ICR).

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM–223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW., Washington, D.C. 20460; telephone (202) 382–2742 or FTS 382–2742.

SUPPLEMENTARY INFORMATION: EPA #1246; Asbestos Abatement Worker Protection Rule, was approved (OMB #2070–0072; expires 6/30/88).

This information collection request was submitted in conjunction with an immediately effective proposed rule, which appears in this issue of the **Federal Register**. Because this rule is immediately effective, OMB has waived a public comment period at this time. As stated in the rule, OMB will, however, consider public comments in its review of the final version of the rule. Submit comments on the information collection requirements contained in this rule to: Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Rm 3228), Washington, D.C. 20503.

Dated: July 1, 1985.

Howard A. Howell,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85–16068 Filed 7–11–85; 8:45 am]

BILLING CODE 6560–50–M

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federal register

Friday
July 12, 1985

Part V

Environmental Protection Agency

40 CFR Part 52

State Implementation Plans for Visibility; New Source Review and Monitoring Strategy; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-2847-8]

State Implementation Plans for Visibility New Source Review and Monitoring Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In this action, EPA is promulating Federal regulations for visibility new source review for 16 States and a visibility monitoring strategy for 19 States that have failed to submit revised State implementation plans (SIP's). The regulations were proposed at 49 FR 42670 on October 23, 1984. This action completes the first part of a settlement agreement with the Environmental Defense Fund, et al. (EDF), described at 49 FR 20647 on May 16, 1984.

The EPA is also taking a direct final action in this notice for four States that EPA has determined do not require the visibility new source review provisions for nonattainment areas. The ERA believes that this action sastisfies the requirements for a direct final action.

DATES: The visibility new source review provisions and the monitoring strategies will become effective August 12, 1985. The direct final action for the four States will become effective on September 10, 1985 unless notice is received within 30 days that critical or adverse comments will be submitted. Such notice should be submitted to Bruce V. Polkowsky at the address given in FOR FURTHER INFORMATION CONTACT.

ADDRESSES: Docket A–49–32 was established for this rulemaking and is located in the Central Docket Section, West Tower Lobby, U.S. EPA, 401 M Street SW., Washington, D.C. 20460. The docket can be inspected between 8 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Bruce V. Polkowsky, Control Programs Development Division (MD–15), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–5540.

SUPPLEMENTARY INFORMATION:

Background

Section 169A of the Clean Air Act (Act), 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. "Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a) (40 CFR 81.400–437). Section 169A specifically requires EPA to promulgate regulations requiring certain States to amend their SIP's to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 et. seq. The visibility regulations required 36 States to submit revised SIP's satisfying these provisions by September 2, 1981. Numerous parties sought judicial review of the visibility regulations in the United States Court of Appeals for the District of Columbia Circuit. The D.C. Circuit Court stayed the litigation in March 1981, pending EPA action on related administrative petitions for reconsideration. Because of the litigation and petitions, few States initiated work on revised visibility SIP's.

In December 1982, EDF filed a citizen suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under Section 110(c) of the Act (42 U.S.C. 7410(c)) to promulgate visibility SIP's for 35 States that had failed to submit such SIP revisions to EPA (*EDF* v. *Gorsuch*, Number C82–0650 RPA). The State of Alaska had submitted a SIP which was approved on July 5, 1983, at 48 FR 30623. The EPA and EDF negotiated settlement agreement for the remaining States which the court approved by order on April 20, 1984.

The settlement agreement requires EPA to promulgate visibility SIP's on a specified schedule for those States that have not submitted visibility SIP revisions to EPA. In the first part of the settlement, EPA is to promulgate Federal plans for those States whose SIP's were found to be deficient for a monitoring strategy (§ 51.305) and visibility new source review (§ 51.307). The details and schedule for the remainder of the settlement agreement are described at 49 FR 20647 (May 16, 1984).

On October 23, 1984, at 49 FR 42670, EPA proposed disapproval of, and Federal plans for, 34 States whose SIP's were preliminarily determined to be inadequate. (The EPA had proposed approval of a SIP submittal for the State of Louisiana on May 15, 1984, at 49 FR 20519.) The States were given an opportunity to avoid Federal promulgation of these regulations if they submitted SiP revisions to EPA that satisfy the requirements in §§ 51.305 and 51.307 by May 6, 1985. In today's notice, EPA is disapproving the SIP's of, and promulgating Federal regulations for, those States that failed to act by the May deadline.

The EPA took public comment and held two public hearings on the proposed disapprovals and Federal regulations. Over 80 comments were received and 12 persons spoke at the public hearings. All the major issues are identified and discussed in today's notice.

SIP Disapprovals

Several commenters stated that EPA should not disapprove the SIP's for the 34 States because (1) EPA did not provide evidence that the SIP's were "substantially inadequate," and (2) EPA was unnecessarily interfering in State programs for rather minor deficiencies.

The EPA did provide evidence that the SIP's were inadequate. The EPA Regional Officers reviewed each of the 34 SIP's and compared them to the requirements of §51.305 and § 51.307. Each Regional Office prepared a summary chart detailing the deficiencies in each SIP. The charts show that each SIP contained certain deficiencies with respect to both § 51.305 and § 51.307. This information was placed in Docket A–84–32, items II–B–8, in October 1984. The information was available for public review and comment during the public comment period. The EPA did not include the actual summaries in the October **Federal Register** notice due to their detailed nature and volume.

The EPA realizes that the deficiencies in question are relatively small, but they are nevertheless significant in relation to the Part 51 visibility regulations. The EPA, moreover, plainly has the power under section 110, 169A, and 301 to disapprove SIP's because of the deficiencies. Thus, the disapprovals are neither unwarranted nor unauthorized. Beyond that, the settlement agreement calls for them.

It should be noted that EPA is only disapproving the States' SIP's with respect to visibility protection; all other previously approved SIP programs remain valid. The EPA has also specifically designed the Federal programs to minimize interference in ongoing State programs.

In today's action, EPA is disapproving the SIP's of, and promulgating Federal regulations for, States that have failed to submit plans by the May deadline. The EPA is reviewing the SIP revisions submitted to EPA by May 6, 1985, and will take appropriate action on them by January 6, 1986. In the event that a submittal is found to be inadequate, EPA will disapprove the submittal and simultaneously promulgate today's requirements for these States. The EPA recognizes that several States are developing plans to meet the visibility

requirements but could not submit them before the May 6 deadline. These States should be aware that EPA will revoke this promulgation as soon as it approves any future SIP submittal.

The following State SIP's are disapproved for failing to meet the requirements in § 51.305 (monitoring strategy):

Arizona	New Hampshire
California	North Dakota
Colorado	South Carolina
Florida	South Dakota
Hawaii	Texas
Idaho	Vermont
Maine	Virginia
Michigan	Virgin Islands
Minnesota	West Virginia
Nevada	

The following State SIP's are disapproved for failing to meet the requirements in § 51.307 (visibility new source review):

Arizona	New Hampshire
California	New Jersey
Colorado	North Dakota
Hawaii	South Dakota
Maine	Vermont
Michigan	Virginia
Minnesota	Virgin Islands
Nevada	West Virginia

The EPA has determined that four States are not required to include the new source review provisions for nonattainment areas, § 51.307(b)(2), in their SIP's. This action is explained later in this notice.

Visibility Monitoring Strategy

Proposal

The visibility monitoring strategy (§ 51.305) in the existing visibility regulations required the States to develop a "strategy for evaluating visibility in the mandatory Class I areas" and to provide a mechanism for using any available data in decisions required by the visibility protection program. Visibility data are needed in assessing visibility, evaluating the progress toward the national visibility goal, determining the potential impact of new stationary sources and major modifications, determining sources to which any identified impairment can be reasonably attributed, and developing control measures for such sources. The EPA proposed that these needs could be met by gathering data on prevailing background visibility conditions in and around the visibility protection areas and on existing impairment from a source or small group of sources.

The EPA proposed two options for collecting background data: (1) a cooperative EPA/Federal land manager (FLM) monitoring network, or (2) a requirement for permit applicants to monitor visibility as part of required preapplication monitoring. The EPA prepared a draft monitoring plan to accompany the first option. The EPA stated that visibility need not be monitored at every visibility protection area. As few as 25 sites may be appropriate to represent background visibility conditions for all areas. The EPA proposed short term validation studies in all protection areas to verify that the number of stations and choices for monitoring sites were indeed representative. The draft monitoring plan described the regions, data collection methods, implementation schedule, and administrative responsibilities for implementing the program.

For attributing impairment to sources, EPA proposed a program that would consist of case-by-case studies of identified visibility impairment. The goal of the program was to attempt to trace the impairment to a given source. Although several techniques were suggested to accomplish this goal, no specific studies or examples were given in the monitoring plan. This program was not to be affected by the option chosen for background data collection.

General Comments

One commenter stated that EPA was using an inappropriate mechanism by implementing a visibility monitoring network. According to this commenter, § 51.305 only requires States to have a mechanism for visibility evaluation and for consideration of existing visibility data. This commenter contended that the preamble of the visibility regulations also frees the States from monitoring visibility. The commenter contended that EPA could establish a network for visibility monitoring, but it is not required by § 51.305 to do so and therefore EPA mischaracterized the requirements of the visibility regulations.

The EPA recognizes that the language in the preamble and rule is not specific as to exactly what the States, and therefore EPA in lieu of States, is required to do. Section 51.305 specifically states that each State plan must include a strategy for evaluating visibility "by visual observation or other appropriate monitoring techniques." The EPA interprets this section, in light of the structure and purposes of the regulations as a whole, to call for a strategy which will generate visibility data that will reasonably, if roughly, serve the needs of the overall State program. One of the clear needs of a program is to have a sound measure of background visibility. The most cost-effective and efficient way for EPA to obtain such a measure is through a national monitoring network inasmuch as EPA, by default, must now establish and implement a multi-State visibility program. Therefore EPA, in lieu of States, will collect monitoring data on a national scale. The EPA specifically realizes that States need not necessarily implement similar networks when developing their own strategies. However, EPA's policy is to require States to provide a mechanism in their SIP's to collect adequate visibility data where none exist. Section 51.305 clearly contemplates such data collection as a component of the strategy to evaluate visibility.

Reference Methods

Many commenters felt that EPA was being premature to even propose to monitor visibility without first approving a reference method for visibility. These commenters stated that a number of technical questions remain unanswered with each of the available visibility monitoring techniques. It would be foolish and costly, they contended, to collect data now that may not be useful once a reference method is available. Also, before a monitoring program is established, commenters suggested that EPA must establish exactly what visibility impairment is.

The EPA recognizes these concerns and is planning a program to develop a visibility monitoring reference method beginning in 1986. However, § 51.305 requires State plans to include a visibility monitoring strategy now, without regard to the existence of a reference method. States that do not wish to invest in monitoring equipment prior to establishment of a reference method may submit SIP's containing other methods of visibility data collection.

The EPA concludes that given its needs for a national data collection system, the proposed network will be the most cost effective and efficient means of gathering useful data despite the absence of a reference method. The EPA believes that any data collected before a reference method is promulgated will be useful, although these data may not be completely compatible with the reference method data.

The EPA established a definition of visibility impairment in § 51.301. The monitoring strategy merely implements the existing regulations and appropriate definitions. The EPA believes the existing definition of visibility impairment is adequate for these purposes. Should future visibility research lead EPA to believe that this

definition is not adequate, EPA will take appropriate action at that time.

Options for Background Data

The commenters almost unanimously supported EPA's first option of a cooperative EPA/FLM background monitoring network. The reasons given were similar to those given by EPA in the proposal—the cost effectiveness of operation, uniformity of data collection, the ability to determine long term trends, and the cooperation of the FLM's.

The reasons given by commenters for not favoring the alternative of requiring permit applicants to monitor visibility were the extra cost and time constraints put on the applicant, the inability to determine long term trends, and the difficulty applicants may have in acquiring access to the visibility protection areas. Some commenters felt that some permit applicant monitoring should also be required. The one commenter who favored the second option did so because he felt monitoring programs sponsored by industry would provide more meaningful data.

Although there was substantial support for the cooperative background network, there were also substantial criticisms of the details in the monitoring plan. Commenters felt that although a regional network approach might be justified, the number of proposed visibility regions would need to be increased dramatically. Others felt that the regions as drawn in the monitoring plan were not representative, and they gave specific examples of selected areas that could not be adequately represented by the data from a given region. Many citizens felt that every Class I area should have at least one monitor. Several commenters were concerned that the presumption that visibility was consistent throughout one of the regions was tantamount to protecting visibility in the whole region, not just the protection areas. They argued that visibility protection is afforded to each mandatory Class I area based on the conditions at the Class I area only.

Commenters also had concerns about the validation studies. Many felt that short term studies were not sufficient and would not detect seasonal variations. The validation study techniques were also criticized. Even when identical techniques are used, one commenter suggested, the data could not be reliably compared.

The EPA recognizes that many of these comments are valid criticisms of the proposed network. A 23-station network would provide data that could be used for trend analysis at more than the 23 areas. However, the sites may not be representative of all of the areas, and the data collected may not be sufficiently detailed for modeling potential impacts of new sources.[1] On the other hand, if EPA were to promulgate the permit applicant monitoring option, the data collected would be useful only for the specific area monitoring for the purposes of modeling potential impacts. The results from the modeling would be open to question as to whether the input data were representative over time. The EPA would also have no mechanism for trend assessment.

Therefore, EPA has decided to promulgate a combination of the two options for collecting background data in States that have disapproved visibility monitoring strategies. The EPA would establish a cooperative background network to develop data that can be used for trend analysis and where appropriate, support modeling of new source impacts. The EPA would also require permit applicants to monitor visibility in or near those protection areas that may not be adequately represented by the network sites and/or to collect additional site-specific data necessary for the impact analysis. In this manner, both spatial and temporal visibility data will be available for regulatory purposes, and the applicants would be subject to less time-consuming monitoring.

The EPA is planning to select site locations that are representative of the greatest number of visibility protection areas by using all available visibility data, such as from the National Park Service or from industrial research-sponsored studies. The EPA will carefully consider the specific comments submitted on the importance to collect data at particular areas; and EPA recognizes that the number of stations may not completely represent all areas. The priority for establishing background network sites should be determined by 1) the lack of available data for regulatory purposes, and 2) the potential for growth near protection areas where permitting activities are expected. This priority system is described in more detail in the revised monitoring plan. In the future, EPA may want to expand the cooperative network to encompass sites at all areas. However it is premature to establish stations in all areas until some of the outstanding technical questions have been answered and a reference method is available.

[1] AeroVironment, "Critical Assessment of the Visibility Monitoring For Class I Areas," prepared for Utility Air Regulatory Group. Available through Docket A-84-32, IV-D-83.

The EPA did not intend to imply that use of background data collected at one area and deemed representative of background conditions at another area in any way extended the visibility protection requirements to non-Class I areas not otherwise covered by the visibility regulations. The visibility regulations provide only for protection of the visibility values of Class I areas and related integral vistas, and do not apply to any other lands located outside the boundaries of such Class I areas.

The EPA has revised the monitoring plan to describe the monitoring program and to answer some of the questions about the monitoring methods for data collection and validation raised in the public comment period. This document can be obtained through the Central Docket Section at the address given in the beginning of this notice. The EPA also realizes that there are technical questions that remain unresolved in visibility monitoring. These questions can only be resolved from experience with, and review of, many visibility monitoring programs. This regulatory network is not the only visibility monitoring work that will be conducted by EPA, States, or industry. The EPA will use the results from these other research programs, where appropriate, in making assessments required by the visibility regulations. In addition, EPA is planning to develop reference systems for visibility monitoring.

Attribution Program

Many commenters stated that the techniques described in the draft monitoring plan were not appropriate for source-specific studies. Also, concern was expressed over the proposed priorities for these studies. One commenter felt EPA would waste time and resources on rather minor sources before attempting to identify and control large contributors.

The EPA did not mean to imply that the data collection techniques for the background network were to be used in the source-specific studies. The proposed background instrumentation will be used only as appropriate for these studies. The attribution program will be implemented on a case-by-case basis with regard to both siting and equipment. The EPA has requested that the FLM's identify impairment in each of their areas. From this identification, appropriate studies will be designed which will be unique to each identified problem. Priorities for implementation will be based on availability of existing data, the severity of the suspected impairment, and the probability of an effective control strategy.

Administration

Many of the industrial commenters requested that they be included on the Technical Steering Committee because they have been active in monitoring programs and have expertise that EPA could use. Commenters also stressed the importance of a quality assurance plan for the background network, validation studies, and attribution program. They felt EPA had not placed sufficient emphasis on this aspect of the monitoring program. Commenters also suggested that the proposed level of funding was insufficient to meet the goals of the program.

The EPA has established a Technical Steering Committee consisting of representatives of the FLM's, contributing States, and EPA. If EPA were to invite representatives of industry to join the Committee, it would feel compelled, on general fairness grounds, to also invite other members of the general public to join the Committee. If EPA opened membership on the Technical Steering Committee to the general public, the Committee would become too unwieldy to manage the visibility monitoring program effectively. Consequently, EPA will hold periodic public meetings to obtain input from the general public and industry. At these meetings visibility monitoring issues will be discussed, including, but not limited to, the regulatory program. The EPA recognizes that many industries have expertise that can be helpful to EPA, and the Technical Steering Committee will be responsible for keeping abreast of current visibility research programs, including those of industry. The public and environmental groups are also interested in ensuring that EPA recognizes the priorities for monitoring. The public meetings will be a forum for discussions on various aspects of visibility monitoring programs.

The EPA also recognizes the importance of an effective quality assurance program and intends to implement one. This becomes essential as EPA will be using data from other sources, as well as its own network, and must have some criteria on which to judge the quality of various monitoring programs. Much of the first year of the network will be spent in developing procedures as outlined in the revised monitoring plan.

As a cooperative network, EPA is negotiating with the FLM's to provide comparable support for the monitoring program. States are also encouraged to participate in the network to maximize the effectiveness of the program.

Regulatory Language

Few comments were received on the proposed regulatory language, § 52.28, of the Federal monitoring strategy. One commenter stated that before EPA could promulgate a requirement for permit applicant monitoring, specific regulatory language must be proposed and subject to public comment. This language was proposed in the new source review provisions, § 52.21, §52.27, and § 52.28, which gave EPA the authority to require permit applicants to monitor.

In today's action, EPA is promulgating § 52.28 (visibility monitoring strategy), as proposed, for the States that have failed to submit SIP revisions. These States are:

Arizona	New Hampshire
California	North Dakota
Colorado	South Carolina
Florida	South Dakota
Hawaii	Texas
Idaho	Vermont
Maine	Virginia
Michigan	Virgin Islands
Minnesota	West Virginia
Nevada	

New Source Review

States are required by § 51.307 and § 51.24 to review new major stationary sources and major modifications, prior to construction, to assess potential impacts on visibility in any protection area, regardless of the air quality status of the area in which the source is locating. The requirements in § 51.307 ensure that (1) the FLM is notified of permit applications in a timely and consistent manner, (2) the reviewing authority considers the FLM's recommendation on adverse impact determinations, (3) applications from sources locating in nonattainment areas are reviewed similarly to sources locating in attainment areas; and (4) the reviewing authority has the ability to require permit applicants to monitor visibility as a pre- or post-construction condition.

In October 1984, EPA proposed three separate programs to implement § 51.307, each to be applicable in separate circumstances. The first program, revised § 52.21, would be applicable in States where the prevention of significant deterioration program (PSD) was operated by EPA or by the State through delegation of the Federal program. The second program, new § 52.27, would be applicable in States with approved State PSD programs. The third program, new § 52.28, would be applicable in States with nonattainment areas. The EPA chose this approach to minimize Federal interference in ongoing State-operated programs.

General Comments

Many commenters stated that EPA is implementing requirements without issuing adequate guidance. The commenters suggested that the definition of "adverse impact on visibility" was too vague and allowed the FLM's too much discretionary authority in permitting decisions. This lack of guidance, they asserted, makes it difficult for industries to make siting decisions, States to make permit decisions, and the FLM's to make adverse impairment determinations. The commenters recommended that EPA issue new or revised definitions of "adverse impact on visibility," "near" or "nearby," and "impairment." States also requested that EPA issue definitions or guidance on "may impact a Class I Federal area" and "advance notification." Commenters recommended that EPA revise "The Workbook for Estimating Visibility Impairment" (EPA 450/4–80–031) as this document does not include the substantial research that has been done since 1980. The commenters felt this was imperative for an effective program. One commenter recommended EPA use improved assessment techniques.

Comments were also received discussing the FLM's consultation requirements in the rules. Several comments suggested that the FLM's would be unable to conduct an adequate assessment of a permit application in 30 days. On the other hand, one commenter stated that 30 days was indeed sufficient. Two FLM's stressed the importance of being involved early in the permitting process, and would very much like to be involved in any preapplication meetings between States and sources. Many citizens stressed the importance of public participation in permits that affect the Class I area.

The EPA recognizes all of these concerns. However, EPA's proposal and promulgation are meant to implement the existing new source review and consultation requirements in § 51.307. This rulemaking was not intended to modify these requirements or the definitions in § 51.301 associated with them. The EPA believes that the existing definitions are adequate for implementation of the existing regulations. The EPA also recognizes that the guidance documents issued with the visibility regulations may require updating, and is therefore reviewing these documents to determine what, if any, future guidance is necessary. The EPA will also evaluate any techniques for estimating visibility impacts that are

developed by industry and submitted to EPA.

Environmental groups and private citizens expressed the need for a policy on reviewing cumulative impacts from new sources. Rapid industrial growth is expected near some of the Class I areas. These commenters are concerned that any one source would not cause significant impairment, but the combination of sources may adversely affect air quality related values (including visibility). This would occur if the permitting authority only reviews the potential impacts of a new source on prevailing visibility conditions without regard to the impacts of permitted sources not yet completed. One commenter rebutted these comments, stating that Section 165 of the Act only requires the State to consider the merits of one application, and cumulative impacts are to be considered in Section 169A of the Act for existing sources.

In assessing a proposed source's impact on visibility, the reviewing authority must necessarily review that impact in the context of existing background visibility. This point does not seem debatable. The question raised by the commenters focuses on whether previously permitted sources that have not yet been constructed are part of the existing background. The EPA concludes that such sources are part of existing background. In other situations, EPA has always regarded permitted sources as part of existing background. For instance, in assessing impacts on the national ambient air quality standards, permit applicants must account for the air quality impacts of permitted, as well as constructed, sources. This treatment should be the same for visibility assessment. The EPA does not believe that a change in the proposed language for new source review is necessary to effect this implementation. The EPA concludes that the proposed language on assessing whether a proposed source will cause an adverse impact on visibility requires the reviewing authority to review the new source's impact in the context of background visibility impacts caused by both existing and previously permitted sources.

Several industrial commenters and States questioned whether the requirement for preapplication monitoring is necessary in this rulemaking, stating that the Federal monitoring program could be improved to fulfill any data requirements for the applicants. Several States felt that they already had the authority to require monitoring and did not need to revise their SIP's for visibility preapplication monitoring.

The EPA's review of the SIP's indicates that they do not contain adequate authority to require visibility monitoring and consequently need to be revised to include that authority. As stated earlier in this notice, the Federal monitoring program is unlikely to fulfill all data requirements for new source impact analyses in the near future. Therefore, EPA or a State may need to require a permit applicant to monitor. This requirement would be used sparingly and could be tied to the potential of the new source to impair visibility. For example, a source that would not cause impairment based on a Level 1 analysis from the Workbook would probably not be required to monitor. A source that would require a Level 3 analysis, or modeling analysis, to determine its potential impact would likely be required to monitor. States are encouraged to include the FLM's in preapplication meetings with permit applicants so exact monitoring requirements and impact analyses for the air quality related values can be determined prior to the application review.

Federal PSD Program

The EPA proposed revising the Federal PSD program, § 52.21, to include the requirements of § 51.307. Revised § 52.21 was to be applicable in those States where EPA was operating the PSD program or had delegated its authority to the State. One commenter stated that EPA had incorrectly referenced paragraph (r) of § 52.21 in the proposed amendment to § 52.21(p)(1) when the citation should have been to § 52.21(q).

The commenter is correct—§ 52.21(r) was redesignated paragraph (q) in 45 FR 52735 on August 7, 1980. Since EPA has not made technical or conforming amendments to § 52.21 since then, the citation in § 52.21(p)(1) has remained incorrect. The EPA has now changed the citation in § 52.21(p)(1) to refer to paragraph (q) of § 52.21 and is thereby correcting the inaccuracy with this action.

Revised § 52.21 is applicable in the following States:

California (except for Mendocino County, Monterey County, North Coast Unified Region, Northern Sonoma County, and Sacramento County)
Michigan
Minnesota
Nevada
New Hampshire
New Jersey
South Dakota
Virginia
Virgin Islands
West Virginia

State PSD Program

The EPA proposed new § 52.27 to be applicable in States with approved PSD programs. This section allows an interested party to petition EPA to take authority for issuing a visibility permit in cases where the State had failed to follow the procedures of § 51.307. The EPA would only take authority in cases where the State had failed to act consistently with § 51.307, and would not try to reexamine a State's reasoning in issuing a permit where the appropriate procedures were followed.

Many commenters felt that this requirement would lead to confusion and unnecessary delays in permit decisions. The EPA recognizes that this provision could cause confusion and delays in permit processing. It is for these very reasons that EPA anticipates that the States will act as required by § 51.307 and not give an interested party reason to petition EPA. The EPA will have no cause to interfere or delay permits if the States provide the appropriate notification procedures. The EPA believes permitting decisions are best handled by the State and does not wish to issue permits. However, § 51.307 requires certain notification procedures that are not contained in the existing SIP's. The alternative for this petition mechanism would be a separate Federal visibility permit program for these States, which is far less desirable.

An environmental group commented that § 52.27(d)(2) usurps the FLM's exclusive authority to make adverse impact determinations. One commenter stated that the EPA does not have the authority to use this mechanism.

The EPA believes that § 52.27, including paragraph (d)(2), is an appropriate mechanism for implementing § 51.307, and therefore EPA has the authority under section 110 and 301 of the Clean Air Act (42 U.S.C. 7410 and 7601) to promulgate it. Section 165 (d)(2)(B) gives the FLM's the affirmative responsibility to protect air quality related values (including visibility) in the Class I areas and to consider, *in consultation* with the Administrator, whether a proposed facility will have an adverse impact on such values (emphasis added). Section 51.307(a)(3) and § 52.21(p)(3) require the permitting authority to consider any analysis, provided by the FLM's, showing that a proposed source would have an adverse impact on visibility in a Class I area. However, the FLM's must demonstrate, to the satisfaction of the permitting authority, that such an adverse impact will result—before the permitting authority is constrained to

deny a permit application. (See Clean Air Act section 165(d)(2)(C)(ii) and § 52.21(p)(4).) The reviewing authority is required by § 51.307 and § 52.27(d)(2) only to notify the public if the FLM's analysis does not demonstrate to its satisfaction that adverse impact will result from the proposed facility and to make available its explanation of that decision. If the permitting authority concludes, after considering the FLM's analysis, public comment, and its own analysis, that adverse impact will result, the permit shall be denied. Thus, the statute and the regulations do not give FLM's the sole authority to determine whether an adverse impact will result from a proposed facility. The FLM's and reviewing authority share this responsibility, and the final decision rests with the reviewing authority. Of course the reviewing authority must have a rational basis for concluding the FLMs' analysis is incorrect, given the FLMs' affirmative responsibility and expertise regarding the Class I areas within their jurisdiction.

The EPA is promulgating § 52.27 for the following States:

Arizona	Northern Sonoma County, California
Hawaii	North Dakota
Maine	Sacramento County, California
Mendocino County, California	Vermont
Monterey County, California	
North Coast Unified Region, California	

Nonattainment Program

The EPA proposed a new Federal permit requirement (§ 52.28) for new sources or major modifications to sources which may impact a visibility protection area and may locate or are located in a nonattainment area. These requirements are similar to those for PSD sources. The reviewing authority, however, can take into account the progress toward the national goal of preventing future impairment and remedying existing impairment in making permit decisions.

The EPA reviewed the requirements in response to a comment from the Bay Area Air Quality Management District of California and realized that a provision for allowing the Administrator to delegate the authority of this section to the States had not been included. As stated earlier, EPA does wish to delegate permitting authority, where possible, to the States. Therefore, a new paragraph, § 52.28(i), has been included to give the Administrator this ability.

The EPA is promulgating § 52.28 for the following States:

Arizona	Minnesota
California (except for Monterey County, and Sacramento County)	Nevada
	New Hampshire
Colorado	New Jersey
Hawaii	South Dakota
Michigan	West Virginia

Exemptions From Nonattainment Program

The States of Arkansas, New Jersey, and Texas commented that they had been incorrectly listed in the nonattainment section of the proposal. Arkansas' one nonattainment area was reclassified attainment on September 28, 1984, at 49 FR 37753. Texas claimed that sources locating in the nonattainment areas within Texas do not have the potential to impact the visibility protection areas because of the distance between the nonattainment areas and the visibility protection areas.

New Jersey contains nonattainment areas for carbon monoxide, ozone, and total suspended particulate matter. New Jersey claimed that carbon monoxide does not impair visibility. Consequently, any impact assessment required by § 52.28 would show no adverse impact on visibility from this pollutant in any visibility protection area. New Jersey stated that control strategies for attaining the ozone standard are based on reductions in emissions of precursor volatile organic hydrocarbons. Furthermore, New Jersey stated, these precursor compounds do not by themselves cause a visible plume that would adversely impact a visibility protection area. Ozone can contribute to visibility impairment from urban plumes or regional haze, but since these are not to be addressed in this program, New Jersey claimed that ozone assessments under § 52.28 should not be required at this time.

New Jersey also stated that the State contains three nonattainment areas for total suspended particulate matter. New Jersey stated that under the current regulations, any emission increase of 50 tons per year or more would need to be offset. Therefore New Jersey claimed that an impact assessment required by 52.28 would show no adverse impact on visibility.

The EPA accepts New Jersey's claim that carbon monoxide and ozone should not be considered for visibility impact assessments in this program. However, New Jersey has two nonattainment areas for total suspended particulate matter that are within a distance to the visibility protection areas that such new sources or major modifications may impact the protection area. The EPA concludes that New Jersey must still have the ability to require a visibility impact assessment for sources emitting total suspended particulates and locating in Bridgeton or Camden. The EPA, therefore, has promulgated § 52.28 for New Jersey in the previous section of today's notice. The EPA is willing to delegate this authority to the State to minimize Federal interference in this program. The State may then balance any offsets with the assessment of visibility impact from the permit applicant to ensure progress toward the national visibility goal on a case-by-case basis.

The EPA, in response to New Jersey's comment, reviewed the nonattainment areas in all States required to develop visibility protection programs. The States of Georgia and Virginia have only carbon monoxide and ozone nonattainment areas.[3]

In today's action, EPA is exempting Arkansas, Georgia, Texas, and Virginia from the requirements in § 551.307(b)(2) and 52.28. The EPA is allowing for public comment as required by paragraph (3) of the settlement agreement. The EPA does not expect critical or adverse comments on this action. If a request for public comment on this action is received, EPA will withdraw this final exemption and will propose the action, thereby establishing a comment period.

Classification

The Administrator certifies pursuant to the provisions of 5 U.S.C. 605(b) that the attached rule will not have a significant economic impact on a substantial number of small entities. Only a few sources, that are not already required to do so under the existing PSD program, will be required to evaluate the potential impact on visibility.

The rules promulgated today do not contain any information collection requirements subject to the Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.*

Today's action implements part of Subpart P (40 CFR 51.300–51.307) which was promulgated on December 2, 1980. An economic impact assessment was done for that rulemaking, pursuant to section 317 of the Clean Air Act. An economic assessment for these revisions is not required because these revisions are not substantial.

The rules have been submitted to OMB for review under Executive Order 12291. Any written comments from that

[3] "Maps Depicting Nonattainment Areas Pursuant to Section 107 of the Clean Air Act–1984," EPA–450/2–84–036, available through Docket A–84–32, Item IV–B–1, or National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia, 22161, Number PB 85–140590.

office have been placed in the Docket A–84–32. These rules are not major within the meaning of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate district by September 10, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide, Incorporation by reference.

Dated: July 3, 1985.

A. [illegible] Barnes,

Acting Administrator.

PART 52—[AMENDED]

Part 52, Chapter 1 of Title 40, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.21 is amended by adding paragraphs (b)(29), (o)(3), and (p)(3); revising paragraph (p)(1) to read as follows; and redesignating the existing paragraphs (p)(3) as (p)(4), (p)(4) as (p)(5), (p)(5) as (p)(6), (p)(6) as (p)(7), and (p)(7) as (p)(8):

§ 52.21 Prevention of significant deterioration of air quality.

(b) * * *

(29) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

* * * * *

(o) * * *

(3) *Visibility monitoring.* The Administrator may require monitoring of visibility in any Federal class I area near the proposed new stationary source for major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(p) *Sources Impacting Federal Class I Areas—Additional Requirements*—(1) *Notice to Federal Land Managers.* The Administrator shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal land manager and the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The Administrator shall also provide the Federal land manager and such Federal officials with a copy of the preliminary determination required under paragraph (q) of this section, and shall make available to them any materials used in making that determination, promptly after the Administrator makes such determination. Finally, the Administrator shall also notify all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

* * * * *

(3) *Visibility analysis.* The Administrator shall consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (p)(1) of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the Administrator finds that such an analysis does not demonstrate to the satisfaction of the Administrator that an adverse impact on visibility will result in the Federal Class I area, the Administrator must, in the notice of public hearing on the permit application, either explain his decision or give notice as to where the explanation can be obtained.

* * * * *

3. Section 52.26 is added to read as follows:

§ 52.26 Visibility monitoring strategy.

(a) *Plan Disapprovals.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to visibility monitoring. Specific disapprovals are listed where applicable in Subparts B through DD of this part. The provisions of this section have been incorporated by reference into the applicable implementation plan for various States, as provided in Subparts B through DDD of this part.

(b) *Definitions.* For the purposes of this section:

(1) "Visibility protection area" means any area listed in 40 CFR 81.401–81.436 (1984).

(2) All other terms shall have the meaning ascribed to them in the Clean Air Act, or in the protection of visibility program (40 CFR 51.301), all as in effect on July 12, 1985.

(c) *Monitoring Requirements.* (1) The Administrator, in cooperation with the appropriate Federal land manager, shall monitor visibility within each visibility protection area in any State whose State implementation plan is subject to a disapproval for failure to satisfy 40 CFR 51.305 (1984).

(2) The Administrator, in monitoring visibility within each such area, shall determine both background visibility conditions and reasonably attributable visibility impairment caused by a source or small group of sources for that area. The extent and the form of monitoring shall be sufficient for use in determining the potential effects of a new stationary source on visibility in the area, the stationary source or sources that are causing any visibility impairment, and progress toward remedying that impairment.

(3) The Administrator shall use the following as appropriate to monitor visibility within each such area: (i) photographic cameras, (ii) fine particulate matter samplers, (iii) teleradiometers (iv) nephelometers, (v) human observation, or (vi) other appropriate technology.

(4) The Administrator, in cooperation with the Federal land managers, shall prepare monitoring plans that describe, to the maximum extent practicable, the methods and instruments of data collection, the monitoring locations and frequencies, the implementation schedule, the quality assurance procedures, and the methods of data reporting that the Administrator will use for each area. The Administrator shall make these plans available to the public.

(5) The Administrator shall establish a central repository of monitoring data that includes any data on background visibility conditions and reasonably attributable impairment that the Administrator collects under this section and that the Federal land manager may collect or may have collected independently. These data shall be available to any person, subject to reasonable charges for copying.

(d) *Monitoring Plan Revision.* (1) The Administrator shall review the monitoring plan annually for each visibility protection area, revise it as necessary, and include an assessment of changes to visibility conditions since the last review. The Administrator shall make all plan revisions available to the public.

(2) Any person may make a request to the Administrator, at any time, for a revision to a monitoring plan. The Administrator shall respond to any such request within one year.

(e) *Delegation.* The Administrator may delegate, with respect to a particular visibility protection area, any of his functions under this section to any State or local air pollution control agency of any State whose boundaries encompass that area or to any Federal land manager with jurisdiction over the area.

4. Section 52.27 is added to read as follows:

§ 52.27 Protection of visibility from sources in attainment areas.

(a) *Plan Disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to protection of visibility, in mandatory Class I Federal areas, from sources emitting pollutants in any portion of any State where the existing air quality is better than the national ambient air quality standards for such pollutants, and where a State PSD program has been approved as part of the applicable SIP pursuant to 40 CFR 51.24. Specific disapprovals are listed where applicable in Subparts B through DDD of this part. The provisions of this section have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part.

(b) *Definitions.* For purposes of this section, all terms shall have the meaning ascribed to them in the Clean Air Act, in the prevention of significant deterioration (PSD) program approved as part of the applicable SIP pursuant to 40 CFR 51.24 for the State, or in the protection of visibility program (40 CFR 51.301), all as in effect on July 12, 1985.

(c) *Federal Visibility Analysis.* Any person shall have the right, in connection with any application for a permit to construct a major stationary source or major modification, to request that the administrator take responsibility from the State for conducting the required review of a proposed source's impact on visibility in any Fedral Class I area. If requested, the Administrator shall take such responsibility and conduct such review pursuant to paragraphs (e), (f) and (g) of this section in any case where the State fails to provide all of the procedural steps listed in paragraph (d) of this section. A request pursuant to this paragraph must be made within 60 days of the notice soliciting public comment on a permit, unless such notice is not properly given. The Administrator will not entertain requests challenging the substance of any State action concerning visibility where the State has provided all of the procedural steps listed in paragraph (d) of this section.

(d) *Procedural Steps in Visibility Review.* (1) The reviewing authority must provide written notification to all affected Federal land managers of any permit application for any proposed new major stationary source or major modification that may affect visibility in any Federal Class I area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include the proposed source's anticipated impacts on visibility in any Federal Class I area as provided by the applicant. Notification must also be given to all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

(2) The reviewing authority must consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (d)(1) of this section, that shows that such proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the reviewing authority finds that such an analysis does not demonstrate to the satisfaction of the reviewing authority that an adverse impact on visibility will result in the Federal Class I area, either an explanation of its decision or notification as to where the explanation can be obtained must be included in the notice of public hearing. Where the reviewing authority finds that adverse impact on visibility will result, a permit shall not be issued.

(e) *Federal Land Manager Notification.* The Administrator shall provide all of the procedural steps listed in paragraph (d) of this section in conducting reviews pursuant to this section.

(f) *Monitoring.* The Administrator may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(g) *Public Participation.* The Administrator shall follow the applicable procedures at 40 CFR Part 124 in conducting reviews under this section. The Administrator shall follow the procedures at 40 CFR 52.21(q) as in effect on August 7, 1980, to the extent that the procedures of 40 CFR Part 124 do not apply.

(h) *Federal Permit.* In any case where the Administrator has made a finding that a State consistently fails or is unable to provide the procedural steps listed in paragraph (d) of this section, the Administrator shall require all prospective permit applicants in such State to apply directly to the Administrator, and the Administrator shall conduct a visibility review pursuant to this section for all permit applications.

5. Section 52.28 is added to read as follows:

§ 52.28 Protection of visibility from sources in nonattainment areas.

(a) *Plan Disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to protection of visibility, in mandatory Class I Federal areas where visibility is considered an important value, from sources emitting pollutants in any portion of any State where the existing air quality is not in compliance with the national ambient air quality standards for such pollutants. Specific disapprovals are listed where applicable in Subparts B through DDD of this part. The provisions of this section have been incorporated into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part.

(b) *Definitons.* For the purposes of this section:

(1) "Visibility protection area" means any area listed in 40 CFR 81.401–81.436 [1984].

(2) All other terms shall have the meaning ascribed to them in the protection of visibility program (40 CFR 51.301) or the prevention of significant deterioration (PSD) program either approved as part of the applicable SIP pursuant to 40 CFR 51.24 or in effect for the applicable SIP pursuant to 40 CFR 52.21, all as in effect on July 12, 1985.

(c) *Review of Major Stationary Sources and Major Modifications—Source Applicability and Exemptions.* (1) No stationary source or modification to which the requirements of this section apply shall begin actual construction without a permit which states that the

stationary source or modification would meet those requirements. The Administrator has sole authority to issue any such permit unless the authority has been delegated pursuant to paragraph (i) of this section.

(2) The requirements of this section shall apply to construction of any new major stationary source or major modification that would both be constructed in an area classified as nonattainment under section 107(d)(1)(A), (B) or (C) of the Clean Air Act and potentially have an impact on visibility in any visibility proctection area.

(3) The requirements of this section shall apply to any such major stationary source and any such major modification with respect to each pollutant subject to regulation under the Clean Air Act that it would emit, except as this section otherwise provides.

(4) The requirements of this section shall not apply to a particular major stationary source or major modification, if:

(i) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor of the State in which the source or modification would be located requests that it be exempt from those requirements; or

(ii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(A) Coal cleaning plants (with thermal dryers);
(B) Kraft pulp mills;
(C) Portland cement plants;
(D) Primary zinc smelters;
(E) Iron and steel mills;
(F) Primary aluminum ore reduction plants;
(G) Primary copper smelters;
(H) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(I) Hydrofluoric, sulfuric, or nitric acid plants;
(J) Petroleum refineries;
(K) Lime plants;
(L) Phosphate rock processing plants;
(M) Coke oven batteries;
(N) Sulfur recovery plants;
(O) Carbon black plants (furnace process);
(P) Primary lead smelters;
(Q) Fuel conversion plants;
(R) Sintering plants;
(S) Secondary metal production plants;
(T) Chemical process plants;
(U) Fossil-fuel boiler (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(W) Taconite ore processing plants;
(X) Glass fiber processing plants;
(Y) Charcoal production plants;
(Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act; or

(iii) The source is a portable stationary source which has previously received a permit under this section, and

(A) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(B) The emissions from the source would not exceed its allowable emissions; and

(C) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(D) Reasonable notice is given to the Administrator, prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Administrator not less than 10 days in advance of the proposed relocation, unless a different time duration is previously approved by the Administrator.

(5) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as attainment under section 107 of the Clean Air Act.

(6) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(i) Would impact no Class I area and no area where an applicable increment is known to be violated, and

(ii) Would be temporary.

(d) *Visibility Impact Analyses.* The owner or operator of a source shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification.

(e) *Federal Land Manager Notification.* (1) The Federal land manager and the Federal official charged with direct responsibility for management of Federal Class I areas have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Administrator, whether a proposed source or modification will have an adverse impact on such values.

(2) The Administrator shall provide written notification to all affected Federal land managers of any permit application for any proposed new major stationary source or major modification that may affect visibility in any visibility protection area. The Administrator shall also provide for such notification to the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in any visibility protection area. The Administrator shall also notify all affected FLM's within 30 days of receipt of any advance notification of any such permit application.

(3) The Administrator shall consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (e)(2) of this section, that such proposed new major stationary source or major modification may have an adverse impact on visibility in any visibility protection area. Where the Administrator finds that such an analysis does not demonstrate to the satisfaction of the Administrator that an adverse impact on visibility will result in the visibility protection area, the Administrator must, in the notice of public hearing, either explain his decision or give notice as to where the explanation can be obtained.

(f) *Public Participation.* The Administrator shall follow the applicable procedures of 40 CFR Part 124 in processing applications under this section. The Administrator shall follow the procedures at 40 CFR 52.21(q) as in effect on August 7, 1980, to the extent that the procedures of 40 CFR Part 124 do not apply.

(g) *National Visibility Goal.* The Administrator shall only issue permits to those sources whose emissions will be consistent with making reasonable progress toward the national goal of preventing any future, and remedying any existing, impairment of visibility in visibility protection areas which impairment results from man-made air pollution. In making the decision to issue a permit, the Administrator may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(h) *Monitoring.* The Administrator may require monitoring of visibility in any visibility protection area near the proposed new stationary source or major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(i) *Delegation of Authority.* (1) The Administrator shall have the authority to delegate the responsibility for conducting source review pursuant to this section to any agency in accordance with subparagraphs (i)(2) and (3) of this section.

(2) Where the Administrator delegates the responsibility for conducting source review under this section to any agency other than a Regional Office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the delegate agency is not an air pollution control agency it shall consult with the appropriate State and local air pollution control agency prior to making any determination under this section. Similarly, where the delegate agency does not have continuing responsibility for managing land use, it shall consult with the appropriate State and local agency primarily responsible for managing land use prior to making any determination under this section.

(ii) The delegate agency shall submit a copy of any public comment notice required under paragraph (f) of this section to the Administrator through the appropriate Regional Office.

(3) The Administrator's authority for reviewing a source or modification located on an Indian Reservation shall not be redelegated other than to a Regional Office of the Environmental Protection Agency, except where the State has assumed jurisdiction over such land under other laws. Where the State has assumed such jurisdiction, the Administrator may delegate his authority to the States in accordance with paragraph (i)(2) of this section.

6. Sections 52.145(AZ), 52.281(CA), 52.344(CO), 52.534(FL), 52.633(HI), 52.689(ID), 52.1031(ME), 52.1183(MI), 52.1236(MN), 52.1488(NV), 52.1531(NH), 52.1605(NJ), 52.1831(ND), 52.2132(SC), 52.2179(SD), 52.2304(TX), 52.2383(VT), 52.2452(VA), 52.2533(WV), and 52.2781(VI) are added to read as follows:

§ 52.—— Visibility protection.

(a) The requirements of Section 169A of the Clean Air Act are not met, because the plan does not include approvable procedures for protection of visibility in mandatory Class I Federal areas.

7. Sections 52.145(AZ), and 52.633(HI) are amended by adding paragraph (b) to read as follows:

§ 52.—— Visibility protection.

* * * * *

(b) *Regulations for visibility monitoring and new source review.* The provisions of Sections 52.26, 52.27 and 52.28, are hereby incorporated and made part of the applicable plan for the State of ————.

8. Sections 52.344(CO), 52.1183(MI), 52.1236(MN), 52.1488(NV), 52.1531(NH), 52.2179(SD), and 52.2533(WV) are amended by adding paragraph (b) to read as follows:

§ 52.—— Visibility protection.

* * * * *

(b) *Regulation for visibility monitoring and new source review.* The provisions of §§ 52.26 and 52.28 are hereby incorporated and made a part of the applicable plan for the State of ————.

9. Sections 52.1031(ME), 52.1881(ND), 52.2382(VT), are amended by adding paragraph (b) to read as follows:

§ 52.—— Visibility protection.

* * * * *

(b) *Regulation for visibility monitoring and new source review.* The provisions of Sections 52.26 and 52.27 are hereby incorporated and made a part of the applicable plan for the State of ————.

10. Section 52.281 is amended by adding paragraphs (b), (c), and (d) to read as follows:

§ 52.281 Visibility protection.

* * * * *

(b) *Regulations for visibility monitoring.* The provisions of Section 52.26 are hereby incorporated and made part of the applicable plan for the State of California.

(c) *Regulations for visibility new source review.* The provisions of § 52.27 are hereby incorporated and made part of the applicable plan for the State of California only with respect to:

(1) Mendocino County air pollution control district,

(2) Monterey County air pollution control district,

(3) North Coast Unified air quality management district,

(4) Northern Sonoma County air pollution control district, and

(5) Sacramento County air pollution control district.

(d) The provisions of § 52.28 are hereby incorporated and made part of the applicable plan for the State of California, except for:

(1) Monterey County air pollution control district, and

(2) Sacramento County air pollution control district.

11. Sections 52.534(FL), 52.689(ID), 52.2132(SC), 52.2304(TX), 52.2452(VA), and 52.2781(VI) are amended by adding paragraph (b) as follows:

§ 52.—— Visibility protection.

* * * * *

(b) *Regulation for visibility monitoring.* The provisions of § 52.26 are hereby incorporated and made a part of the applicable plan for the State of ————.

12. Section 52.1605(NJ) is amended by adding paragraph (b) to read as follows:

§ 52.1605 Visibility protection.

* * * * *

(b) *Regulations for visibility new source review.* The provisions of § 52.28 are hereby incorporated and made part of the applicable plan for the State of New Jersey.

[FR Doc. 85-16596 Filed 7-11-85; 8:45 am]
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VOL
50
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134
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26961-27
27213-27
27409-27
27571-27
27813-27
27927-28
28093-28
28191-28
28363-28

Reader Aids

Federal Register
Vol. 50, No. 134
Friday, July 12, 1985

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PUBLICATIONS AND SERVICES

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Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

26961-27212	1
27213-27408	2
27409-27570	3
27571-27812	5
27813-27926	8
27927-28092	9
28093-28190	10
28191-28362	11
28363-28554	12

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

305 ... 26363

3 CFR

Executive Orders:
11888 (Amended by EO 12524) ... 27409
12523 ... 26963
12524 ... 27409
Proclamations:
5356 ... 26961

5 CFR

771 ... 26965

7 CFR

Ch. IV ... 27827
52 ... 26965
54 ... 27571
220 ... 26972
301 ... 26366
400 ... 26976
402 ... 26367
906 ... 27411, 27928
910 ... 27813, 28372
911 ... 26373
915 ... 26373
916 ... 27813, 26373
917 ... 27813, 26373
918 ... 26373
921 ... 27411, 26373
922 ... 26373
923 ... 26373
924 ... 26373
930 ... 27213, 26373
967 ... 26373
979 ... 26976
985 ... 26373
991 ... 26977, 27814
1040 ... 27412
1427 ... 26978
1435 ... 27413
1941 ... 27414
1944 ... 27415
1945 ... 27414, 27416
Proposed Rules:
Ch. IV ... 27971
Ch. X ... 27003
29 ... 27268
51 ... 27004
417 ... 27601
800 ... 28104
910 ... 28105
920 ... 27268
967 ... 28210
1124 ... 27972
1240 ... 28404

8 CFR

316a ... 27816
Proposed Rules:
103 ... 27269

9 CFR

91 ... 27929
92 ... 27928
318 ... 27573, 28374
Proposed Rules:
94 ... 27973

10 CFR

9 ... 27214
Proposed Rules:
50 ... 27006

12 CFR

403 ... 27215
611 ... 27930
617 ... 27931
723 ... 27417
Proposed Rules:
561 ... 27290
563 ... 27290
571 ... 27290

13 CFR

121 ... 27418
302 ... 27419
Proposed Rules:
106 ... 27754

14 CFR

39 ... 26979, 27575, 27576, 27931-27933, 28093, 28094
71 ... 26980, 27934
97 ... 27934
108 ... 27924
Proposed Rules:
39 ... 27009, 27012, 27601, 27602
71 ... 27013, 27014, 27528
75 ... 27014

15 CFR

19 ... 27577
376 ... 27420
399 ... 27420

16 CFR

3 ... 28095
4 ... 28095
13 ... 26981, 27578, 28374
453 ... 28062, 28081
703 ... 27936

17 CFR

200 ... 28385
239 ... 27937
240 ... 27937, 27940, 28385
249 ... 27937
270 ... 27937
274 ... 27937
286 ... 26981, 27947

Proposed Rules:
210.....27973
230.....28404
240.....27829, 27976, 27981, 28106, 28210, 28219, 28404
250.....27981
259.....27981
270.....27982

16 CFR
157.....27816
389.....27816

Proposed Rules:
35.....27604
271.....28221
290.....27604

19 CFR
4.....26981
12.....27947
142.....27816
178.....27947

Proposed Rules
162.....27829
177.....27831

20 CFR
200.....27222
626.....27818
627.....27818
628.....27818
629.....27818
630.....27818

Proposed Rules:
404.....27615
416.....27615

21 CFR
101.....26984
510.....28395
520.....27818
558.....27421, 27422
1306.....28098, 28395

Proposed Rules:
170.....27294
201.....27016
211.....27016
357.....27552
514.....27016
559.....27016
561.....27452
1002.....27024

22 CFR
501.....27422

23 CFR
1325.....28191

24 CFR
200.....28197
203.....28197
885.....28197
3282.....28396

25 CFR

Proposed Rules:
61.....27456

26 CFR
1.....27222, 27231, 27427
602.....27222, 27231

Proposed Rules:
1.....27297, 27456, 27457, 28409
51.....27621

27 CFR
4.....27819

Proposed Rules:
9.....28409

28 CFR
2.....28101
16.....28199
32.....27428

29 CFR
70.....28306
1952.....27233

Proposed Rules:
33.....27298
1910.....27307

30 CFR
700.....28186
701.....28186
785.....28186
827.....28186
943.....28186
948.....28316, 28324

Proposed Rules:
56.....27566
57.....27566
700.....28180
701.....28180
785.....28180
817.....27910
827.....28180
913.....27025
917.....28222
936.....27461
944.....28107
948.....28343

31 CFR
51.....26987
103.....27821
500.....27435
505.....27435
515.....27435
520.....27435
535.....27435
540.....27435

32 CFR
Parts 1–39.....26987
199.....26988
706.....28398–28400
726.....28401

33 CFR
100.....27579
110.....26988, 27580
117.....26989, 27582
150.....26989
165.....27583
166.....26989

Proposed Rules:
110.....27622, 27623
117.....27026, 27029, 27624, 27832, 27990, 27991

34 CFR
19.....28101

Proposed Rules:
369.....28412
376.....28412

35 CFR
101.....26990
103.....26990
121.....26990

36 CFR
1200.....27196
1202.....27196
1228.....27951
1250.....27196

37 CFR

Proposed Rules:
1.....27030

38 CFR
3.....27584
21.....27825

Proposed Rules:
3.....28224
36.....27833

39 CFR
10.....27827
3001.....28144

Proposed Rules:
111.....27992
3001.....27308

40 CFR
51.....27892
52.....26991, 27244–27247, 28544
60.....27248
61.....27248
86.....27250
123.....28202
419.....28516
600.....27172
763.....28530

Proposed Rules:
52.....27030, 27462, 28224, 28415
180.....27463, 28108
202.....27321
205.....27321
600.....27188

41 CFR
Chs. 1–49.....26987
101–4.....28402
101–40.....27951
101–47.....28402
105–54.....28203
105–63.....26992
201–1.....27142
201–2.....27142, 28208
201–8.....27142
201–11.....27142
201–16.....27142
201–20.....27142
201–21.....27142
201–22.....28208
201–23.....27142
201–24.....27142
201–26.....27142
201–30.....27142, 28208
201–31.....27142, 28208
201–32.....27142, 28208
201–38.....27142
201–39.....27142, 28208
201–40.....27142, 28208
201–45.....28208

Proposed Rules:
101–41.....27625, 27626

42 CFR
405.....27722
412.....27208, 27722

Proposed Rules:
23.....27465
405.....27469
412.....27469

43 CFR

Public Land Orders:
5150 (Revoked in part by PLO 6607).....27827
5179 (Revoked in part by PLO 6607).....27827
5180 (Revoked in part by PLO 6607).....27827
5186 (Revoked in part by PLO 6607).....27827
6389 (Corrected by PLO 6608).....28208
6607.....27827
6608.....28208

Proposed Rules:
2800.....27322

44 CFR
64.....26993, 26994

Proposed Rules:
67.....27322
302.....27627

45 CFR
1180.....27584, 27586

Proposed Rules:
405.....27406
412.....27406
1620.....27326

46 CFR
153.....26996

Proposed Rules:
160.....27628

47 CFR
0.....27952
22.....27953
68.....27250
73.....27287, 27438, 27954
76.....27438
81.....27968
83.....27968

Proposed Rules:
Ch. I.....28418
73.....27629

48 CFR
7.....27560
12.....27969
15.....27560, 28103
19.....27560
33.....27969
34.....27560
52.....27560, 27969
209.....28209
504.....26996
533.....26996
552.....27589
553.....27589
570.....27589
6101.....27969

Proposed Rules:
206.....28227
252.....28227

40 CFR

571.....27451

Proposed Rules:

Ch. X.....27031

571.....27032, 27632, 27633, 28426

1132.....27834

50 CFR

17.....26999

215.....27914

658.....28103

674.....28103

Proposed Rules:

17.....27637, 27992

20.....27638

630.....27470

655.....28109

662.....27470

LIST OF PUBLIC LAWS

Last List July 8, 1985

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VOL
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VOL
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7-15-85
Vol. 50
Pages 2

7-15-85
Vol. 50 No. 135
Pages 28555-28756

federal register

Monday
July 15, 1985

Selected Subjects

Administrative Practice and Procedure
Social Security Administration

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Citizenship and Naturalization
Immigration and Naturalization Service

Fisheries
National Oceanic and Atmospheric Administration

Government Employees
Personnel Management Office

Government Procurement
General Services Administration

Hazardous Waste
Environmental Protection Agency

Imports
Agricultural Marketing Service
Animal and Plant Health Inspection Service

Marine Safety
Coast Guard

Marketing Agreements
Agricultural Marketing Service

Reporting and Recordkeeping Requirements
Health Care Financing Administration

CONTINUED INSIDE

VOL 50 ISS 135 JUL 15 1985 UMI

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Selected Subjects

Surface Mining
Surface Mining Reclamation and Enforcement Office

Trade Practices
Federal Trade Commission

Cont

28601
28556
28555
28585
28601
28601
28572
28560
28557
28573
28669
28573
28596

Contents

Federal Register
Vol. 50, No. 135
Monday, July 15, 1985

Administrative Conference of United States
NOTICES
28601 Federal Administrative Procedure Sourcebook; publication

Agricultural Marketing Service
RULES
28556 Avocados grown in Florida, and imported; interim rule affirmed, etc.
28555 Lemons grown in California and Arizona; interim
PROPOSED RULES
28585 Raisins, imported

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service.
NOTICES
Meetings:
28601 Agricultural Research and Extension Users National Advisory Board
Senior Executive Service:
28601 Performance Review Board; membership

Alcohol, Tobacco and Firearms Bureau
RULES
Alcoholic beverages:
28572 Still manufacturers; occupational and commodity taxes; correction

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
28560 Carcasses of birds and poultry, etc., imported from Great Britain; interim rule affirmed
28557 Reservation of space for animal and bird quarantine

Army Department
RULES
28573 Facilities engineering, natural resources—land, forest and wildlife management and facilities engineering, pest management program; CFR Parts removed

Arts and Humanities, National Foundation
NOTICES
28669 Agency information collection activities under OMB review

Coast Guard
RULES
Regattas and marine parades:
28573 New Jersey Offshore Grand Prix
PROPOSED RULES
Anchorage regulations:
28596 New York; correction

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office.

Defense Department
See also Army Department.
NOTICES
Meetings:
28606 Armed Forces Epidemiological Board
28606 Education Benefits Board of Actuaries

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation petitions:
28607 Dome Petroleum Corp.
28608 U.S. Natural Gas Clearinghouse, Ltd.

Energy Department
See also Economic Regulatory Administration; Energy Information Administration; Energy Research Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration
NOTICES
Conflict of interests:
28606 Post-employment restriction waivers
Grant awards:
28606 Cornell University

Energy Information Administration
NOTICES
28611 Agency information collection activities under OMB review

Energy Research Office
NOTICES
Grant awards:
28612 Ohio State University et al.

Environmental Protection Agency
RULES
Air quality planning purposes; designation of areas:
28574 Michigan
Hazardous waste:
28702 Codification rule (statutory provision) and underground storage tanks, etc.
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
28596 Ohio
28598 Washington

Equal Employment Opportunity Commission
NOTICES
28650 Agency information collection activities under OMB review

Federal Aviation Administration
RULES
Airworthiness directives:
28561 Aerospatiale
28563 British Aerospace
28562 Short Brothers Ltd.
28561 Societe Nationale Industrielle Aerospatiale
28564 Control zones and transition areas
28565 Transition areas

PROPOSED RULES
28591 Control zones
28589 Control zones and transition areas
28588, 28590 Transition areas (2 documents)

Federal Communications Commission
NOTICES
28650 Agency information collection activities under OMB review
Hearings, etc.:
28650 American Communications & Television, Inc., et al.
28652 Focus Broadcast Communications, Inc., et al.
28653 Gardner, Roni Denn, et al.
28653 Radio Page Communications et al.
28655 Tel-Dodge Broadcasting Co., Inc., et al.
28656 Rulemaking proceedings; petitions filed, granted, denied, etc.

Federal Election Commission
NOTICES
Special elections; filing dates:
28656 Texas

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
28623 Kansas Gas & Electric et al.
28512 Hydroelectric applications (Batten Kill Hydro Associates et al.)
28682 Meetings; Sunshine Act
Natural gas certificate filings:
28624 ANR Pipeline Co. et al.
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
28620 Kuyper, Diane L., et al.
28621 Power Dam Corp., et al.

Federal Home Loan Bank Board
PROPOSED RULES
Federal Savings and Loan Insurance Corporation:
28588 Classification of assets; correction
NOTICES
28685 Meetings; Sunshine Act (2 documents)

Federal Maritime Commission
NOTICES
28656 Agreements filed, etc.

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
28657 BC Corp. of Detroit et al.
28657 Equitable Bancorporation

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
28592 Buckingham Productions, Inc., et al.

Food and Drug Administration
PROPOSED RULES
Biological products:
28595 Reagent red blood cells; additional standards; correction
Human drugs:
28595 Deodorant products, internal use (OTC); tentative final monograph; correction
28595 Fever blisters treatment, orally administered (OTC); tentative final monograph; correction
28594 Parenteral drug products containing benzyl alcohol or other antimicrobial preservatives; extension of time
NOTICES
Human drugs:
28658 Coactin sterile; regulatory review period determination; correction
Medical devices; premarket approval:
28658 Vision Tech, Inc.; correction
Meetings:
28658 Consumer information exchange
28658 Consumer information exchange; correction

General Services Administration
RULES
Acquisition regulations (GSAR):
28578 Contracts with options; application of thresholds
Property management:
28577 Work space management reform implementation
NOTICES
Procurement:
28656 FSG 66—Federal supply schedule improvement

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; Social Security Administration.

Health Care Financing Administration
RULES
Medicare and medicaid:
28577 Reporting and recordkeeping requirements

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
28627, 28628 Cases filed (2 documents)
28629, 28630, 28632 Decisions and orders (3 documents)
Remedial orders:
28632 Objections filed
28633, 28636, 28642, 28645 Special refund procedures; implementation and inquiry (4 documents)

Immigration and Naturalization Service
PROPOSED RULES
28586 Citizenship certificate applicants; interview and application requirements
28587 Naturalization and citizenship papers replacement; mandated interview eliminated

Interior Department
See also Land Management Bureau; Mines Bureau; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office.
NOTICES
28658 Coastal Barrier Resources System; recommendations; availability and inquiry; extension of time

International Development Cooperation Agency
See Overseas Private Investment Corporation.

International Trade Administration
NOTICES
Antidumping:
28602 Rock salt from Canada
Export privileges, actions affecting:
28603 Piher Semiconductores, S.A.
Scientific articles; duty free entry:
28602 University of California et al.

International Trade Commission
NOTICES
28685 Meetings; Sunshine Act

Justice Department
See also Immigration and Naturalization Service; Parole Commission.
NOTICES
Pollution control; consent judgments:
28660 Interstate Transformer, Inc., et al.
28661 R.C.A. Rubber Co.

Labor Department
See Pension and Welfare Benefit Programs Office.

Land Management Bureau
NOTICES
Coal management program:
28659 Powder River Coal Region, WY; leasing interest inquiry
Conveyance and opening of public lands:
28659 Oregon; correction
Survey plat filings:
28659 Utah

Merit Systems Protection Board
NOTICES
28668 Digest availability; call for riders to printing requisition

Mines Bureau
NOTICES
Meetings:
28660 Mining and Mineral Research Advisory Committee

National Archives and Records Administration
NOTICES
28668 Records schedules; availability and inquiry

National Highway Traffic Safety administration
PROPOSED RULES
Motor vehicle safety standards:
28599 Vehicle corrosion; petition denied
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
28678 Volkswagen of America, Inc.

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
28581 Gulf of Alaska groundfish
28580 Gulf of Alaska groundfish; interim
NOTICES
Meetings:
28604 North Pacific Fishery Management Council
28604 Regional Fishery Management Councils
Permits:
28604, 28605 Marine mammals (3 documents)

National Science Foundation
NOTICES
28670 Antarctic Conservation Act of 1978; permit applications, etc.

National Transportation Safety Board
NOTICES
28671 Accident reports, safety recommendations, and responses, etc.; availability

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
28673 Consolidated Edison Co. of New York, Inc.
28674 Long Island Lighting Co.
28674 Wisconsin Electric Power Co.
Environmental statements; availability, etc.:
28674 Exxon Nuclear Co., Inc.

Oversees Private Investment Corporation
NOTICES
28675 Agency information collection activities under OMB review

Parole Commission
NOTICES
28685, 28686 Meetings; Sunshine Act (3 documents)

Patent and Trademark Office
PROPOSED RULES
Patent cases:
28596 Fees; revision; correction

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
28661 Alaska Hotel & Restaurant Employees Pension Trust et al.

Personnel Management Office
PROPOSED RULES
Pay administration:
28583 Prevailing rate systems; Federal Wage System employees in foreign areas
28584 Prevailing rate systems; Federal Wage System employees in foreign areas and U.S. possessions

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
28660 Kesterson Reservoir, CA; scoping sessions; correction

Securities and Exchange Commission
NOTICES
Applications, etc.:
28675 Southern Appalachian Coal Co.
Self-regulatory organizations; proposed rule changes:
28676 Chicago Board Options Exchange, Inc. (2 documents)
28676 National Association of Securities Dealers, Inc.

Small Business Administration
NOTICES
28677 Intergovernmental review of agency programs and activities

Social Security Administration
RULES
Organization and procedures:
28565 Information and records availability; procedures and appeals

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission:
28572 Alaska
PROPOSED RULES
Permanent program submission; various States:
28595 Wyoming; comment period reopened

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
28605 Korea
Export visa requirements; certification, etc.:
28606 Maldives

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration.

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; United States Mint.
NOTICES
28679 Agency information collection activities under OMB review

United States Mint
NOTICES
28679 Metal tokens; policy statement

Western Area Power Administration
NOTICES
Environmental statements; availability, etc.:
28649 Blue River-Gore Pass; Hayden-Blue River transmission line project, CO

Separate Parts in This Issue

Part II
28702 Environmental Protection Agency

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
Proposed Rules:
532 (2 documents) 28583, 28584

7 CFR
910 28555
915 28556
944 28556
Proposed Rules:
999 28585

8 CFR
Proposed Rules:
341 28586
343a 28587

9 CFR
92 28557
94 28560

12 CFR
Proposed Rules:
561 28588
563 28588
571 28588

14 CFR
39 (4 documents) 28561–28563
71 (2 documents) 28564, 28565
Proposed Rules:
71 (4 documents) 28588–28591

16 CFR
Proposed Rules:
13 28592

20 CFR
401 28565
422 28565

21 CFR
Proposed Rules:
Ch. 1, Subchapter C 28594
357 (2 documents) 28595
610 28595
660 28595

27 CFR
170 28572

30 CFR
902 28572
Proposed Rules:
950 28595

32 CFR
642 28573
657 28573

33 CFR
1100 28573
Proposed Rules:
110 28596

37 CFR
Proposed Rules:
1 28596

40 CFR
61 28574
260 28702
261 28702
262 28702
264 28702
265 28702
266 28702
270 28702
271 28702
280 28702
Proposed Rules:
52 (2 documents) 28596, 28598

41 CFR
101–17 28577

42 CFR
400 28577
416 28577
435 28577

46 CFR
515 28578
522 28578

49 CFR
Proposed Rules:
571 28599

50 CFR
672 (2 documents) 28580, 28581

Rules and Regulations

Federal Register
Vol. 50, No. 135
Monday, July 15, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This amendment to rules and regulations of the marketing order allows handlers of organic lemons to ship 250 cartons per week of such lemons without regard to volume and size regulations under the order; permits the optional use of upward adjustment by handlers in Districts 1 and 3 up to 100 percent of their average weekly pick and; changes from eight to four the minimum number of successive weeks during which picks are interrupted by District 2 handlers before they may apply for a new prorate base. These actions provide lemon handlers with additional flexibilities to enable them to market their lemons more advantageously.

DATES: Effective August 1, 1985 through July 31, 1986. Comments due by August 14, 1985.

ADDRESS: Send two copies to: Docket Clerk, F&V, AMS, Room 2069–S, U.S. Department of Agriculture, Washington, D.C., 20250. Two copies of all written material shall be submitted and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This interim final rule is issued under marketing order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The rule is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this rule will tend to effectuate the delcared policy of the Act.

Section 910.180(d) of the rules and regulations established under the order prescribes procedures governing the exemption from order regulations of lemons handled in minimum quantities and certain types of shipments. This action would allow the handling of organic lemons without regard to volume and size requirements that may be issued under the order if certain safeguards are met. Under the amendment, each handler of organic lemons would be required to apply to the committee for exemption from such regulations and furnish necessary information to the committee. The amendment would allow handlers to ship up to 250 cartons of organic lemons each week to designated market outlets, e.g. health food stores. This action is designed to facilitate the marketing of organic lemons. A similar exemption for the handling of organic lemons has been in effect for the past two marketing seasons.

The marketing order provides that the prorate base of each handler be based upon the handler's average weekly pick (the average weekly amount of lemons harvested and delivered to such handler's packinghouse during a specified number of weeks preceding the computation date). In recognition of the fewer number of weeks during which lemons are harvested in Districts 1 and 3, the order provides that handlers in such districts may request and be granted an upward adjustment in their average weekly pick to accelerate their receipt of allotment during the first half of their season, subject to payback during the last half of their season of the extra allotment received.

Marketing order 910 provides in § 910.53(h) that the percentage of adjustment specified in §§ 910.53(f)(1) and 910.153(e)(3), may be changed through informal rulemaking. Provision for 100 percent upward adjustment of average weekly pick of handlers in Districts 1 and 3 is currently in effect and such provision has been in effect since 1980. Continuance of such a provision would allow District 1 and 3 handlers the option of receiving a larger proportion of their allotment earlier in the season, and enable them to use their proportionate share of the marketing opportunity more advantageously.

This interim rule also changes from eight to four the minimum number of successive weeks during which picks are interrupted by District 2 handlers, before they may apply for a new prorate base. Under provisions of the marketing order, District 2 handlers who become eligible for a new prorate base may also apply for accelerated averaging of weekly picks and upward adjustments to receive additional allotment. Section 910.53(h) provides that the number of weeks specified in § 910.53(f)(2) may be changed through informal rulemaking. Such an amendment would afford District 2 handlers the opportunity to receive adjusted allotment to handle lemons on an accelerated basis. A similar rule has been authorized in past seasons.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in other public procedures, and postpone the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared policy of the Act. This interim final rule relieves regulations on the handling of lemons and handlers have been apprised of such provisions and the effective date. Interested persons were given an opportunity to submit information and views on these amendments at public meetings of the committee, at which the committee without opposition recommended

implementation of such requirements. This rule provides for a 30 day comment period. Any comments received will be considered prior to finalization of the rule.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, Lemons, California, Arizona.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.153 is amended by adding the following language at the end of the last sentence in paragraph (a)(2) and revising the first sentence of paragraph (e)(3) to read as follows (this final rule expires July 31, 1986, and will not be published in the Annual Code of Federal Regulations):

§ 910.153 Prorate Bases and Allotments.

* * * * *

(e)(2) * * * Notwithstanding the provisions of this section any District 2 handler whose picks are interrupted for 4 successive weeks or more, during the period August 1, 1985 through July 31, 1986, may apply for a new prorate base, for accelerated averaging of weekly picks, and for upward adjustment as provided herein.

(3) *Granting of upward adjustment for District 1 and 3 applicants.*

Upon receiving a duly filed application for an upward adjustment by a District 1 or 3 handler pursuant to § 910.53(f)(1) the committee shall adjust the average weekly pick of such handler by increasing such picks in the amount requested, but not in excess of 50 percent of such handler's average weekly pick: *Provided,* That, during the period August 1, 1985 through July 31, 1986, upon request of any such handler, the committee shall adjust such handler's average weekly pick in the amount requested but not to exceed 100 percent. * * *

3. Section 910.180 is amended by adding a new paragraph (d)(3) to read as follows (this final rule expires July 31, 1986, and will not be published in the Annual Code of Federal Regulations):

§ 910.180 Lemons not subject to regulation.

* * * * *

(d) Minimum quantities and types of shipments. * * *

(3) During the period August 1, 1985 through July 31, 1986, any person may be granted an exemption of up to 250 cartons per week, or an equivalent amount thereof, to market or distribute organic lemons to organic or health food wholesalers or retailers. Such lemons shall be exempt from volume and size requirements issued under this part. Persons shall file with the committee an application for exemption as described in paragraph (d)(1) of this section. Such persons shall also file weekly reports (LAC form 8) during each week in which such organic lemons are shipped. For purposes of this section, "organic lemons" means lemons which are produced, harvested, distributed, stored, processed and packaged without application of synthetically compounded fertilizers, pesticides or growth regulators. In addition, no synthetically compounded fertilizers, pesticides, or growth regulators shall be applied by the grower to the field or area in which the lemons are grown for 12 months prior to the appearance of flower buds and throughout the entire growing and harvest season for lemons.

Dated: July 10, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–16702 Filed 7–12–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 915 and 944

Avocados Grown in South Florida and Imported Avocados; Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Finalization of interim final rule with corrections.

SUMMARY: The Department of Agriculture (USDA) has decided to leave in effect an interim final rule which established maturity requirements for Florida avocados and imported avocados. Also, 2 clerical errors in the rule are being corrected. The rule is necessary to assure the shipment of ample supplies of mature avocados in the interest of producers and consumers.

EFFECTIVE DATE: August 14, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The interim final rule was issued on May 17, 1985, and published in the **Federal Register** (50 FR 21033) on May 22, 1985. The rule added § 915.330 (Florida Avocado Maturity Regulation) under Marketing Order 915 establishing maturity requirements for Florida avocados effective May 22, 1985, and § 944.29 (Avocado Import Maturity Regulation) under Part 944 establishing maturity requirements for avocados imported into the United States effective May 28, 1985. Both §§ 915.330 and 944.29 are to remain in effect through April 30, 1986. The rule provided that interested persons could file public comments through June 21, 1985, none of which were received. The rule contained 2 clerical errors in Table 1 of § 915.330, and this action corrects such errors. The errors were made in the effective periods specifying the minimum weights and diameters for shipments of the Gorham and Tonnage varieties of avocados.

The Florida avocado regulation was based upon the recommendation of the Avocado Administrative Committee comprised of Florida avocado producers and handlers, and a public representative, and was issued under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The avocado import regulation (7 CFR Part 944) was issued under § 8e (7 U.S.C. 608e–1) of the act. It is found that this action will tend to effectuate the declared policy of the act.

List of Subjects

7 CFR Part 915

Marketing agreements and orders, Avocados, Florida.

7 CFR Part 944

Food grades and standards, Imports, Avocados.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR Parts 915 and 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 915.330 [Corrected]

2. Section 915.330 is corrected by revising in Table 1, the effective period specified for the Gorham variety of 07–08–85 through 09–21–85, to read 07–08–85 through 07–21–85, and for the Tonnage variety of 08–19–85 through 09–25–85, to read 08–19–85 through 08–25–85.

3. The interim final rule published in the Federal Register (50 FR 21033) adding §§ 915.330 and 944.29 is adopted as a final rule, with the specified corrections incorporated therein.

Dated: July 10, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–16606 Filed 7–12–85; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85–063]

Reservation of Space for Quarantine of Animals and Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations for obtaining and cancelling reservations for space in quarantine facilities maintained by Veterinary Services (VS) (1) by providing a mechanism for raising the amount of the reservation fees for certain animals and birds, (2) by revising the provisions for forfeitures of reservation fees, (3) by specifying the place and time for acceptance of reservation cancellation notices, and (4) by providing for cancellation fees under certain circumstances. This action is necessary to more fully utilize the space at quarantine facilities maintained by VS and to reduce losses incurred as a result of the failure to utilize space which has been reserved.

EFFECTIVE DATE: August 14, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) contain, among other things, provisions concerning the importation of certain animals and birds (the term animals is defined in the regulations to include poultry but not birds). These provisions include the requirements in § 92.4 that in order to import certain animals or birds into the United States, an importer or an importer's agent ("agent") must quarantine the animals or birds in a quarantine facility for a specified period of time. Section 92.4 also contains provisions for obtaining and cancelling reservations for space in quarantine facilities maintained by Veterinary Services (VS).

In a document published in the Federal Register on December 4, 1984 (49 FR 47402–47405), the Department proposed to amend the regulations for obtaining and cancelling reservations for space in quarantine facilities maintained by VS (1) by providing a mechanism for raising the amount of the reservation fees for certain animals and birds, (2) by revising the provisions for forfeitures of reservation fees, (3) by specifying the place and time for acceptance of reservation cancellation notices, and (4) by providing for cancellation fees under certain circumstances.

Comments were solicited in response to the proposal for a 30-day period ending January 3, 1985. Six comments were received. These comments were from importers, brokers, and a public interest group. Three commenters supported the proposal in its entirety. A fourth commenter supported the proposal with one exception. The other two commenters objected to several provisions of the proposal. The comments submitted have been carefully considered and are discussed below. Based on the reasons set forth in the proposal and this document, the provisions of the proposal have been adopted in the final rule except as explained below.

Amount of Reservation Fee

Prior to the effective date of this document, § 92.4(a)(4) of the regulations provided, among other things, that, in order to reserve space at a quarantine facility maintained by VS, the importer or agent must, at the time a request to reserve space is made, pay (a) $80.00 for each lot of poultry or birds; (b) $130.00 for each horse; and (c) $240.00 for each lot of any other animals.

It was proposed to amend § 92.4 to require that an importer or agent pay a reservation fee for each lot of animals or birds to be quarantined in a quarantine facility maintained by Veterinary Services, in an amount estimated by the veterinarian in charge to be 25 percent of the cost of providing care, feed, and handling during quarantine; except that the reservation fee would be no less than $80.00 for each lot of birds or poultry, no less than $130.00 for each horse, and no less than $240.00 for each lot of any other animals.

None of the commenters objected to the provisions requiring that the reservation fee be no less than $80.00 for each lot of birds or poultry, no less than $130.00 for each horse, and no less than $240.00 for each lot of any other animals. However, two commenters objected to the proposed change to require that the reservation fee be no less than 25 percent of the cost of providing care, feed, and handling during quarantine. In support of the objection, it was asserted that a minimum of 25 percent of the cost of providing care, feed, and handling during quarantine could be too high, that it could tie up working capital for extended periods of time without expense on the part of USDA, and that it could create a hardship on persons importing large numbers of animals. It was suggested that the minimum of 25 percent be amended to reflect a smaller percentage for larger shipments. One commenter suggested the following graduated schedule:

Estimated cost of care, feed, and handling of animals	Reservation fee (percent)
$10,000 or less	25
$10,001 to $100,000	20
$100,001 to $300,000	12
$300,001 to $500,000	8
$500,001 to $1,000,000	6
Over $1,000,000	4

The purposes of the reservation fees and forfeiture provisions, as indicated in the proposed rule at 49 FR 47403, are to:

> • • • discourage importers or their agents from making frivolous reservations, encouraging importers and their agents to present animals for entry into the quarantine facility on time, defray some of the costs incurred by Veterinary Services when personnel and materials are allocated to a quarantine facility because space has been reserved and the reserved space is not used, and recover some of the revenue lost when space at a quarantine facility is reserved and the reserved space is not used and other potential users of the facility are denied the opportunity to use the space.

After a review of the comments, it has been determined that the minimum amount of 25 percent of the cost of feed, care, and handling could be more than is necessary to accomplish these purposes. Further, it has been determined that a maximum amount of $2,500 would be sufficient to be used in lieu of the 25 percent figure to accomplish the purposes set forth above in the quoted materials (with the exception that the reservation fee shall be no less than

$80.00 for each lot of birds or poultry, no less than $130.00 for each horse, and no less than $240.00 for each lot of any other animals). Therefore, § 92.4(a)(4)(i) is amended to read as follows:

(4) (i) For each lot of animals or birds to be quarantined in a quarantine facility maintained by Veterinary Services, the importer or the importer's agent shall pay or ensure payment of a reservation fee of $2,500 or the amount estimated by the veterinarian in charge of the quarantine facility to be 25 percent of the cost of providing care, feed, and handling during quarantine, whichever is less; *Except* that the reservation fee shall be no less than $80.00 for each lot of birds or poultry, no less than $130.00 for each horse, and no less than $240.00 for each lot of any other animals.

Letter of Credit

One commenter suggested that reservation fees in excess of $2,000 be allowed to be made by "bank letter of credit." It has been determined that the use of a letter of credit from a commercial bank could adequately accomplish the purpose of the reservation fee if the letter of credit were an irrevocable letter of credit, regardless of whether the reservation fee exceeds $2,000. Allowing the use of an irrevocable letter of credit from a commercial bank would allow an importer to make arrangements with a commercial bank which would assure the Department of payment of the reservation fee. Therefore, § 92.4(a)(4)(ii) of the final rule provides, in part, that any importer or importer's agent shall pay the reservation fee by check or U.S. money order, or shall ensure payment of the reservation fee by irrevocable letter of credit from a commercial bank.

The regulations also provide that any reservation fee shall be applied against the expenses incurred for services received by the importer or the importer's agent in connection with the quarantine for which the reservation fee was paid. Consistent with these provisions, the final rule provides further that if an irrevocable letter of credit from a commercial bank is utilized, the effective date on such letter of credit shall run to 30 days after the date the animals or birds are scheduled to be released from quarantine. This is necessary in order to allow time for determining the total cost of providing care, feed, and handling during quarantine and allow the Department to draw against the letter of credit if necessary.

The final rule also contains provisions for collecting expenses incurred for services received, a forfeited reservation fee, or a cancellation fee if a letter of credit is used.

Cancellation of Reservations

Prior to the effective date of this document, § 92.4(a)(4)(vi) provided:

Any reservation fee shall be forfeited if the importer or the importer's agent fails to present for entry the lot of animals, the lot of poultry or birds or the horse for which the reservation fee was paid; except that if the importer or the importer's agent cancels the reservation by notifying the veterinarian in charge of the quarantine facility at least 72 hours prior to the beginning of the time for importation as prescribed in the permit or as arranged with the veterinarian in charge of the quarantine facility if no permit is required, the reservation fee shall be returned to the individual who paid the reservation fee.

It was proposed to amend the regulations to provide for forfeiture of the reservation fee if the animals or birds are not presented for quarantine within 24 hours after the designated time of arrival unless: (i) Written notice of cancellation from the importer or agent is received by the office of the veterinarian in charge of the quarantine facility (the addresses of the quarantine facilities may be found in telephone books applicable to the locations of the facilities or by contacting Import-Export Animals and Products Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782) during regular business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays) no later than 5 days for horses or 15 days for other animals and birds prior to the beginning of the time of importation as specified in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required (the 5 or 15 day period shall not include Saturdays, Sundays, or holidays), or (ii) services, other than provided by carriers, necessary for the importation of the animals or birds within the requisite period are unavailable because of unforeseen circumstances as determined by the Deputy Administrator, Veterinary Services (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

One commenter objected to the proposed "5 day cancellation period" for horses. The commenter disagreed with the Department's assertion that five days would allow more time for a rebooking. He asserted that agents almost always can quickly arrange for a substitution in the event of a last minute cancellation. No changes are made based on this comment. Based on experince, it has been determined that a 72 hour period is often not long enough to allow importers to respond to opportunities to fill cancelled space. Further, it appears that requiring 5 days advance notice of cancellation for horses is necessary to discourage importers or agents from making frivolous reservations, and to allow a sufficient amount of time for the Department to make reasonable efforts to allow other importers an opportunity to use the cancelled space.

Cancellation Fee

It was further proposed to amend § 92.4 to provide that in situations in which a reservation fee is to be returned (other than certain situations explained below), a $40.00 cancellation fee shall be deducted from the reservation fee. It had been determined that a cancellation fee of $40.00 is necessary in order to allow the Government to recover administrative costs incurred in refunding a reservation fee.

The proposal also contained provisions for cancellation without forfeiture of the reservation fee or without deduction of a cancellation fee if the Deputy Administrator determines that services, other than provided by carriers, necessary for the importation of the animals or birds within the requisite period are unavailable because of unforeseen circumstances as determined by the Deputy Administrator, Veterinary Services (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

Two commenters objected to the proposed cancellation fee. The objections were based on the assertion that the amounts that the Government collects as a result of forfeitures more than compensate for administrative costs incurred in refunding a reservation fee. It was asserted further that the bulk of the paperwork is done by the importers' agents and that an additional fee would be difficult to justify to their clients. No changes are made based on these comments. The cancellation fee represents administrative costs incurred in refunding a reservation fee and does not include costs for any activities performed by brokers. All of the monies collected for feed, care, and handling plus any forfeitures of the reservation fees do not provide any excess funds to cover the administrative costs incurred in refunding a reservation fee.

Miscellaneous

Also, nonsubstantive changes are made for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in conformance with Executive Order 12291 and has been classified as not a "major rule." Based on information compiled by the Department, it has been determined that this action will not result in a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action will, in some cases, increase the fee required to be paid by an importer or agent in order to reserve quarantine space for animals and birds in a quarantine facility maintained by Veterinary Services. The fee paid for such space will be applied against the expenses incurred for services received by the importer or agent in connection with the quarantine for which the fee to reserve space was paid. Also, any part of the reservation fee which remains unused after being applied against the expenses incurred for services received by the importer or the importer's agent in connection with the quarantine for which the reservation fee was paid, will be returned to the individual who paid the reservation fee. Therefore, the only cost which importers or agents who actually use the reserved space will incur as a result of the adoption of this rule will be an increase in the opportunity cost on the prepayment of the reservation fee. In this case, the importer or agent could have invested the amount of the increase in the fee. However, in most instances, this opportunity cost is negligible.

An importer or agent would only incur more than an opportunity cost (1) when a reservation fee is forfeited because of a failure to present for entry the animals or birds for which the fee to reserve space was paid, or (2) when a $40.00 cancellation fee is deducted from the payment of a reservation fee to cover administrative costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, Part 92, Title 9, Code of Federal Regulations, is amended as follows:

1. The authority for Part 92 is revised to read as set forth below and the authority citations following all the sections in Part 92 are removed:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. Footnote 2 in § 92.4(d)(1)(iv) is redesignated footnote 3.

3. In § 92.4, paragraph (a)(4) is revised to read as follows:

§ 92.4 Import permits for ruminants, swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds and for animal specimens for diagnostic purposes;[1] and reservation fees for space at quarantine facilities maintained by Veterinary Services.

(a) * * *

(4)(i) For each lot of animals or birds to be quarantined in a quarantine facility maintained by Veterinary Services, the importer or the importer's agent shall pay or ensure payment of a reservation fee of $2,500 or the amount estimated by the veterinarian in charge of the quarantine facility to be 25 percent of the cost of providing care, feed, and handling during quarantine, whichever is less; *Except* that the reservation fee shall be no less than $80.00 for each lot of birds or poultry, no less than $130.00 for each horse, and no less than $240.00 for each lot of any other animals.

(ii) At the time the importer or the importer's agent requests a reservation of quarantine space, the importer or importer's agent shall pay the reservation fee by check or U.S. money order or ensure payment of the reservation fee by an irrevocable letter of credit from a commercial bank (the effective date on such letter of credit shall run to 30 days after the date the animals or birds are scheduled to be released from quarantine); except that anyone who issues a check to the Department for a reservation fee which is returned because of insufficient funds shall be denied any further request for reservation of a quarantine space until the outstanding amount is paid.

(iii) Any reservation fee paid by check or U.S. money order shall be applied against the expenses incurred for services received by the importer or importer's agent in connection with the quarantine for which the reservation was made. Any part of the reservation fee which remains unused after being applied against the expenses incurred for services received by the importer or the importer's agent in connection with the quarantine for which the reservation was made, shall be returned to the individual who paid the reservation fee. If the reservation fee is ensured by a letter of credit, the Department will draw against the letter of credit unless payment for services received by the importer or importer's agent in connection with the quarantine is otherwise made at least 3 days prior to the expiration date of the letter of credit.

(iv) Any reservation fee shall be forfeited if the importer or the importer's agent fails to present for entry, within 24 hours following the designated time of arrival, the horse, the lot of birds, or the lot of other animals for which the reservation was made: *Except* that a reservation fee shall not be forfeited if:

(A) Written notice of cancellation from the importer or the importer's agent is received by the office of the veterinarian in charge of the quarantine facility [2] during regular business hours (8:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays) no later than 5 days for horses or 15 days for other animals or birds prior to the beginning of the time of importation as specified in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required (the 5 or 15 day period shall not include Saturdays, Sundays, or holidays), or

(B) The Deputy Administrator, Veterinary Services, determines that services, other than provided by carriers, necessary for the importation of the animals or birds within the requested period are unavailable because of unforeseen circumstances as determined by the Deputy Administrator, Veterinary Services, (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

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[2] The addresses of USDA quarantine facilities may be found in telephone directories listing the facilities or by contacting Import-Export Animals and Products Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782.

(v) If the reservation fee was ensured by a letter of credit and the fee is to be forfeited under paragraph (a)(4)(iv) of this section, the Department will draw against the letter of credit unless the reservation fee is otherwise paid at least 3 days prior to the expiration date of the letter of credit.

(vi) When a reservation is cancelled in accordance with paragraph (a)(4)(iv)(A) of this section and the provisions of paragraph (a)(4)(iv)(B) of this section do not apply, a $40.00 cancellation fee shall be charged. If a reservation fee was paid, the cancellation fee shall be deducted from any reservation fee returned to the importer or the importer's agent. If the reservation fee was ensured by a letter of credit, the Department will draw the amount of the cancellation fee against the letter of credit unless the cancellation fee is otherwise paid at least 3 days prior to the expiration date of the letter of credit.

* * * * *

Done at Washington, D.C., this 9th day of July 1985.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-16759 Filed 7-12-85; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 94

[Docket No. 85-057]

Change in Disease Status of Great Britain; Because of Viscerotropic Velogenic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations concerning the importation into the United States of carcasses of certain birds and poultry, and parts or products thereof, and of certain eggs by adding Great Britain (England, Scotland, Wales, and the Isle of Man) to the list of countries declared to be free of viscerotropic velogenic Newcastle disease (VVND). It has been determined that VVND has been eradicated from Great Britain. The effect of this action is to relieve certain restrictions on the importation into the United States from Great Britain of carcasses of certain birds and poultry, and parts or products thereof, and of certain eggs.

EFFECTIVE DATE: July 15, 1985.

FOR FURTHER INFORMATION CONTACT:

Dr. Samuel S. Richeson, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8172.

SUPPLEMENTARY INFORMATION:

Background

On February 22, 1985, an interim rule was published in the **Federal Register** (50 FR 7327) which amended the regulations in 9 CFR Part 94 by adding Great Britain (England, Scotland, Wales, and the Isle of Man) to the list of countries considered to be free of viscerotropic velogenic Newcastle disease (VVND). The interim rule became effective on the date it was signed, February 19, 1985.

Comments were solicited for 60 days following publication. Four comments were received. They were from representatives of the United States poultry industry. Two of the commenters favored the adoption of the interim rule. The other two commenters objected to the addition of Great Britain to the list of VVND-free countries based on the assertion that the change would result in allowing Great Britain to move hatching eggs and poultry to the United States under conditions less stringent than those imposed by Great Britain on the movement of such articles from the United States to Great Britain. No changes are made based on these comments.

The sole criteria under § 94.6 of the regulations concerning whether to include a country in the list is whether or not the country is considered to be free of VVND. As indicated in the interim rule at 50 FR 7327:

> Based on extensive surveys conducted by the government of Great Britain, it has been determined that VVND has been eradicated from Great Britain, and that there is no reason to believe that VVND exists in Great Britain. Further, Great Britain has an effective program (including ongoing surveys, and quarantine requirements on the importation of birds and poultry) for helping to ensure that VVND does not become established in Great Britain.

The issue raised by the commenters in opposition to the interim rule is irrelevant to the determination as to whether Great Britain should be listed in § 94.6 as a country considered to be free of VVND.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that the amounts of carcasses of poultry and birds, or parts or products thereof, or eggs that will be imported into the United States from Great Britain as a result of this action will be less than one percent of the amounts of these items utilized in the United States annually. Further, the importation of any of these items from Great Britain is not the primary activity of any business in the United States.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Exotic Newcastle disease, Imports, Livestock & livestock products, Meat & meat products, Milk, Poultry & poultry products.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, the interim rule amending § 94.6 of 9 CFR Part 94 which was published at 50 FR 7327 on February 22, 1985, is adopted as a final rule.

Authority: 19 U.S.C. 1306; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 9th day of July 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-16758 Filed 7-12-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 85-NM-13-AD; Amdt. 39-5089]

Airworthiness Directives; Aerospatiale (SUD NORD) Nord 262A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires certain modifications to correct unsafe conditions in the windshield and engine anti-icing control circuits on certain Nord Model 262A airplanes. The modifications will ensure that warning is displayed for the inoperative windshield deicing system and will prevent a single fault from affecting both engine anti-icing systems.

DATE: Effective August 22, 1985.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to Aerospatiale, Service Commercial N282, Boite Postale 159, 36003 Chateauroux, France, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The French Civil Aviation Authority (DGAC) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of possible unsafe conditions in the operation of the original windshield and turbine engine anti-icing control circuitry of the Nord Model 262 series airplane. Instances have occurred where the windshield heating system's transfer relay coil circuit has shorted and caused unannounced failure of the windshield heating system failure warning light. Additionally, single failures of the engine anti-icing control circuitry have resulted in the deicing system of both engines not operating. Aerospatiale issued Nord Service Bulletin Nos. 30-14 and 30-15, which provide corrective measures for the conditions.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires compliance with the Nord service bulletins was published in the Federal Register on March 1, 1985 (50 FR 8337).

Interested parties have been afforded an opportunity to participate in the making of this amendment. The one comment received was from an operator who supported the NPRM, but noted that airplanes modified in accordance with Supplemental Type Certificate (STC) SA2369SW incorporate a different windshield and engine anti-ice system, and are equipped with Pratt and Whitney PT6-45 engines. Since the modifications required by the proposal do not apply to airplanes incorporating this STC, the commenter suggested that the final rule reflect correct applicability. The FAA acknowledges this comment and has revised the applicability statement of the final rule to exempt those airplanes which have incorporated the STC.

After careful consideration of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously noted.

It is estimated that 4 airplanes will be affected by this AD, that it will take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Material cost is estimated to be $2,064 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $24,256.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model Nord 262A series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale (SUD NORD): Applies to the Nord Model 262A series airplanes which have not incorporated STC SA2369SW, certificated in any category. Compliance required within 90 days after the effective date of this airworthiness directive (AD), unless already accomplished.

To prevent undected system failures or malfunctions in the windshield and turbine engine anti-icing systems, accomplish the following:

A. Install additional fuses in the windshield anti-icing control circuitry for all windshield panels in accordance with Nord Service Bulletin No. 30-14, dated September 29, 1971 (which constitutes Nord modification No. 733), on Nord Model 262A series airplanes having serial numbers 8 through 20, 22 through 27, 29 through 35, 37 through 42, 47 through 50, 54, 56, 60, 74, and 84.

B. Accomplish modifications to the turbine engine anti-icing control circuitry described in the planning section, paragraph I.C. of Nord Service Bulletin No. 30-15, dated October 29, 1971, as revised August 27, 1974 (which constitutes Nord modification No. 669). Accomplish the modifications in accordance with the Section II, Accomplishment Instructions, of the service bulletin on Nord Model 262A series airplanes having serial numbers 4 through 27, 29 through 35, 37 through 42, 47 through 50, 54, 56, 57, 69, and 84.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, Aircraft Certification Division, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective August 22, 1985.

Issued in Seattle, Washington, on July 8, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-16068 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ASW-15; Amdt. 39-5088]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS 350 and AS 355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive inspection and repair or replacement, as necessary, of the fuselage frame at the fuselage tailboom interface on Aerospatiale Model AS 350 and AS 355 series helicopters. The AD is prompted by reports of fuselage frame cracks at the fuselage tailboom interface which could cause tailboom failure and consequent loss of control of the helicopter.

EFFECTIVE DATE: July 26, 1985.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

A copy of Service Document 53-10-45, page 2, is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone number 513.38.30; or R.T. Weaver, Helicopter Policy and Procedures Staff, ASW-110, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2540.

SUPPLEMENTARY INFORMATION: The FAA has determined that there have been reports of fatigue cracks up to 2 inches long in the fuselage frame at the intersection with the tailboom on certain Aerospatiale Model AS 350 and AS 355 helicopters which could result in tailboom failure and loss of the helicopter. Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires inspection of the fuselage frame at the fuselage tailboom intersection for cracks and replacement, as necessary, on Aerospatiale Model AS 350 and AS 355 series helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation involves a cost per inspection of $280 with 141 rotorcraft affected for a total cost of $39,480 per year. Therefore I certify that this action: (1) Is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to all Aerospatiale Model AS 350 and AS 355 series helicopters certificated in all categories. Compliance is required as indicated (unless already accomplished).

To prevent possible failure of the fuselage to tailboom interface frame, accomplish the following:

(a) For helicopters which have 1,150 hours' or more total time in service on the effective date of this AD, inspect in accordance with paragraph (c) within the next 50 hours' time in service.

(b) For those helicopters which have less than 1,150 hours' total time in service on the effective date of this AD, inspect in accordance with paragraph (c) before reaching 1,200 hours' time in service.

(c) Remove the tailboom from the fuselage in accordance with the Model AS 350 and AS 355 maintenance manual, or FAA-approved equivalent, as appropriate.

(1) Visually inspect the aft fuselage frame at the fuselage tailboom interface for cracks. Conduct the visual inspection on all accessible frame areas with special emphasis in frame flange radii and at bolt holes.

(2) Conduct dye penetrant inspections of areas of suspected cracks that cannot be verified by a visual inspection.

(d) Replace any cracked frames.

(e) Reinstall the tailboom in accordance with the appropriate Model AS 350 or AS 355 maintenance manual, or FAA-approved equivalent, after completion of the inspection and rework of paragraph (c) and (d).

(f) Repeat the inspections required in paragraph (c) at intervals not to exceed 1,200 hours' time in service from the last inspection.

(g) An alternate method of compliance with this AD and adjustment of repetitive compliance times may be approved by the Manager, Aircraft Certification Division, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106 or by the Manager, Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium. Adjustments in Compliance time may be approved upon recommendations of the FAA aviation safety inspector.

(h) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the inspections required by this AD may be accomplished.

This amendment becomes effective July 26, 1985.

Issued in Fort Worth, Texas, on June 28, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85-16667 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-10-AD; Amdt. 39-5101]

Airworthiness Directives; Short Brothers Ltd. Model SD3-60 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires the replacement of rivets in the bottom section of fuselage frame 475 on certain Short Brothers Ltd. Model SD3-60 airplanes. This action is necessary to ensure that adequate strength capability exists to satisfy the loads imposed by ditching.

DATE: Effective August 22, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the replacement of rivets in the bottom section of frame 475 on certain SD3-60 airplanes was published in the **Federal Register** on March 19, 1985 (50 FR 10978).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated to be nominal. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $7,920.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model SD3-60 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Short Brothers Ltd: Applies to Model SD3-60 airplanes as listed in Short Brothers Ltd. Service Bulletin SD360-53-11, Revision 1, dated November 1984, certificated in any category. Compliance is required within twelve months after the effective date of this AD, unless previously accomplished. To prevent structural failure under ditching conditions, accomplish the following:

A. Install Cherrymax rivets in the bottom section of fuselage frame 475 in accordance with Short Brothers Ltd. Service Bulletin SD360-53-11, Revision 1, dated November 1984.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective August 22, 1985.

Issued in Seattle, Washington, on July 8, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-16674 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-15-AD; Amdt. 39-5100]

Airworthiness Directives; British Aerospace Model BAe 146 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires inspection, modification, and repair, if necessary, of the fuselage skin under the wing-to-fuselage fairings on certain BAe Model 146 airplanes. This action is necessary because chafing of the fuselage skin resulting from metal-to-metal contact of the fairing has been reported. Chafing reduces the structural integrity of the fuselage skin and may result in failure and subsequent airplane depressurization.

DATES: Effective August 22, 1985. Compliance required within the next 100 landings after the effective date of this AD (unless already accomplished).

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Standardization Branch, ANM-113; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition that may exist on certain BAe 146 airplanes.

Chafing of the fuselage skin resulting from metal-to-metal contact of the fairings has been reported between frames 23 and 25 under the front wing-to-fuselage fairings, on post-Modification HCM00301A and B airplanes. Chafing reduces the structural integrity of the fuselage skin and may result in failure and subsequent airplane depressurization.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive that requires inspection; repair, if necessary; and application of anti-chafe tape on certain BAe Model 146 airplanes was published in the **Federal Register** March 27, 1985 (50 FR 12035).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received: one from the manufacturer and one from an operator. Both commenters addressed an error concerning the modification numbers listed in the AD. The commenters noted that the suffix letters, "A" and "B," identify the modification alternatives, not separate modifications. It was suggested that the AD specify Modification "HCM00301A *or* HCM00301B," not "HCM00301A *and* HCM00301B." The same is true with Modification HCM00432A and HCM00432B. The manufacturer has issued a revision to the service bulletin to clarify this point. The FAA acknowledges the error and the final rule has been revised accordingly. Revision 1 to the service bulletin has also been included in the final rule.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately two manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $640.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any,

Model 146 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAe 146 airplanes certificated in any category on which Modification HCM00301A or B has been accomplished, and on which Modification HCM00432A or B has not been accomplished. Compliance is required within the next 100 landings after the effective date of this airworthiness directive (AD). To detect and prevent chafing of the fuselage skin, accomplish the following, unless previously accomplished:

1. Inspect the fuselage skin beneath the wing-to-fuselage fairings for chafing, repair if necessary, and apply anti-chafe tape in accordance with British Aerospace Service Bulletin 53-5 dated August 15, 1984, or Service Bulletin 53-5, Revision 1, dated April 19, 1985.

2. Repeat the inspection required by paragraph 1., above, at intervals not to exceed 1000 landings until Modification HCM00432A or B is incorporated.

3. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

4. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective August 22, 1985.

Issued in Seattle, Washington, on July 8, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-16673 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ANM-2]

Alteration of Glasgow, MT, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the control zone and transition area at Glasgow, Montana, to enlarge the control zone extensions and reduce the size of the 700' transition area. This action is necessary to ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 GMT, September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM-535, Federal Aviation Administration, Docket No. 85-ANM-2, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to enlarge the control zone extensions and reduce the size of the 700' transition area of Glasgow, Montana (50 FR 15577).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations enlarges the control zone extensions and reduces the size of the 700' transition area at Glasgow, Montana. The control extensions are required due to recent amendments to instrument approach procedures at Glasgow International Airport. The reduction of the 700' transition area is permitted due to cancellation of instrument approach procedures at Valley Industrial Park Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones/Transition areas/ Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

2. By amending §§ 71.171 and 71.181 as follows:

Glasgow, Montana Control Zone—(Revised)

"Within a 5-mile radius of the Glasgow International Airport (lat. 48°12'48" N, long. 106°37'06" W); within 3 miles each side of the Glasgow VOR/DME 327° radial, extending from the 5-mile radius zone to 8.5 miles northwest of the VOR/DME; and within 3 miles each side of the Glasgow VOR/DME 127° radial, extending from the 5-mile radius zone to 8.5 miles southeast of the VOR/DME; and within 3 miles each side of the Milk River NDB 106° bearing, extending from the 5-mile radius zone to 8.5 miles east of the NDB".

Glasgow, Montana, Transition Area—(Revised)

"That airspace extending upward from 700 feet above the surface within an 11-mile radius of the Glasgow VOR/DME; and that airspace extending upward from 1,200 feet above the surface starting at lat. 48°40'00" N, long.106°00'00" W; to lat. 48°32'00" N, long.105°50'00" W; to lat. 48°03'00" N, long.105°50'00" W; to lat. 48°03'00" N, long. 106°10'00" W; to lat. 47°53'00" N, long. 108°22'30" W; to lat. 48°15'00" N, long. 107°07'00" W; to lat. 48°40'00" N, long. 107°07'00" W; thence to point of beginning, excluding that area designated as the Wolf Point, Montana, 1,200 foot transition area".

Issued in Seattle, Washington, on June 21, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-16871 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-10]

Establish Transition Area, Quincy, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action provides controlled airspace from 700 feet above the surface for aircraft executing a new instrument approach procedure at Quincy Municipal Airport. The area will be shown on aeronautical charts enabling pilots to circumnavigate the area or, otherwise, comply with instrument flight rules (IFR) during instrument flight conditions.

EFFECTIVE DATE: 0901 GMT, September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace & Procedures Specialist, ANM-533, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2533.

SUPPLEMENTARY INFORMATION:

History

On May 3, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Quincy, Washington, 700 foot transition area (50 FR 18877).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. During the comment period more accurate geographical coordinates for the airport location were published. The change is not considered significant and, therefore, except for the geographical coordinate changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a 700 foot transition area to provide controlled airspace for aircraft executing a new instrument approach procedure to Quincy Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

2. By amending § 71.181 as follows:

Quincy, Washington Transition Area—(New)

"That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Quincy Airport (lat. 47°12'34.8" N long. 119°50'19" W), excluding the Moses Lake, Washington, transition area."

Issued in Seattle, Washington, on July 2, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-16872 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 401 and 422

Availability of Information and Records to the Public; Fees for Providing Information and Records; Procedures and Appeals

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) announces changes in the fees it charges for providing records from its files and record related services. These changes conform SSA's fee schedule to that of the Department of Health and Human Services (HHS). The rules also implement the discretion given the Secretary of Health and Human Services by section 2207 of the Omnibus Budget Reconciliation Act of 1981 to change the full cost of providing certain information and records. The rules do not change SSA's longstanding policy of generally not charging an individual for information needed to assure that our records concerning her or him are correct. In preparing these amendments, we deleted from SSA's rules several provisions concerning Medicare information. The Health Care Financing Administration (HCFA) has published separate regulations governing the availability of Medicare information and records.

We have also clarified the rules for handling requests for information about individuals under the Privacy Act and the Freedom of Information Act (FOIA) and incorporated HHS' rules on who has authority to release or deny records in this revised material.

EFFECTIVE DATE: These revised regulations are effective beginning July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Cliff Terry, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7519.

SUPPLEMENTARY INFORMATION:

Introduction

These regulations were published as proposed rules September 20, 1983, at 48 FR 42830. They revise SSA's rules in 20 CFR Part 422, Subpart E, on the availability of records and information to the public under the FOIA. These changes are needed to remove material made obsolete by the creation of HCFA, to clarify the rules for handling requests for records under the FOIA, to conform SSA's fee schedule for providing records and record related services under the FOIA to the revised HHS fee schedule, to announce a fee schedule under which we will charge the full cost of providing certain records, and to revise SSA's rules on who can release or deny a record. These provisions affect the fees for and the routing of requests for information covered by 20 CFR Part 401, the rules on the availability of personal information contained in program records. The substantive disclosure rules for such information have not been

changed. The new rules also do not change SSA's longstanding policy of generally not charging an individual for information needed to assure that our records concerning her or him are correct (see Subpart D of Part 401, and see §§ 422.125 and 422.440 as amended by these regulations).

These rules revise Subpart E of 20 CFR part 401, Appeals, to clarify the procedures on how an individual can appeal, under the Privacy Act, a decision denying that individual access to her or his own records.

Health Care Finapcing Administration

In March, 1977, SSA's Bureau of Health Insurance became part of a new agency, the Health Care Financing Administration (HCFA). As a result SSA is no longer responsible for the Medicare information and reports described in 20 CFR 422.426(b) (1) and (2) and 422.433 through 422.435. HCFA published final regulations which govern the availability of its Medicare (title XVIII) information and records on November 12, 1981 at 46 FR 55995. The HCFA regulations supersede the former §§ 422.426(b) (1) and (2) and 422.433 through 422.435. The remaining material in former § 422.426 is incorporated in the revision to § 422.416. Therefore, we have removed those sections.

Freedom of Information Act

The Freedom of Information Act (FOIA) permits any person to see and get a copy of any Federal agency's records unless the material is within a category of records which the FOIA exempts. Under the FOIA, we are generally required to let members of the public see and get a copy of instructional manuals issued to our employees, general statements of policy, and other materials, such as Social Security Rulings, which are used in processing claims but which are not published in the **Federal Register**. We have rewritten sections of the regulations on how we comply with the FOIA to reflect several significant conforming changes. In final rules published on May 12, 1982, at 47 FR 20309, HHS limited the authority to release or deny SSA records to the Director, Office of Information (SSA), her or his designee, or as otherwise provided by regulations. In §§ 422.428 and 422.444 we set out this internal delegation of authority.

In addition, we have reorganized the material on processing requests for records and on administrative appeals.

Conforming Changes to Fee Schedule for Providing Records for Program Purposes

Section 422.440 incorporates the fee provisions of 45 CFR Part 5, which sets out the fees we will charge for providing records under the FOIA for program purposes. Program related requests would include requests for records which must be disclosed under the Social Security Act (the Act) and requests for records which will be used for a purpose directly related to the administration of a program under the Act. We have established four broad criteria we will consider in deciding whether a proposed use is so related:

(a) Whether the record will be used to pursue some benefit under the Act;

(b) Whether the record is needed solely to verify the accuracy of information obtained in connection with a program administered under the Act;

(c) Whether the record is needed in connection with an activity which has been authorized under the Act; and

(d) Whether the record is needed by an employer to carry out her or his taxpaying responsibilities under the Federal Insurance Contributions Act or under the provisions of section 218 of the Act.

Our experience is that most program related requests will fall within one of these criteria. However, we will also consider, on a case by case basis, those requests which do not meet these criteria but whose purposes are claimed to be program related.

For furnishing records under the FOIA for program purposes, we are providing that our fee schedule is the schedule in the HHS FOIA regulations, 45 CFR Part 5, which we are already required to follow. The current HHS fee schedule was published as a final rule on September 22, 1982, at 47 FR 41751. Briefly, the fees are as follows:

Manual searches for records increased from $3 to $10 per hour;

Photocopying standard size pages remains at 10 cents per page;

Photocopying odd-size pages, etc., remains at actual cost except that the charge for an employee's time is now limited to no more than $10 per hour;

Certification or authentication of a record increased from $3 to $10 for each service; and

Forwarding materials to destination increased from no charge for postage to actual cost for postage.

The minimum billing amount is changed from five dollars to the cost of sending a bill, i.e., if the bill is less than it would cost us to prepare and send the bill and to set up controls on the amount due, we would not bill the requester. However, where a requester makes multiple separate requests, we will usually add the costs incurred and periodically bill the requester an aggregate amount for the total services rendered to date.

Changes in the HHS FOIA fee schedule are currently under consideration. Any future changes in the HHS FOIA fee schedule will automatically apply to SSA records requested for program purposes, unless HHS provides otherwise. In the final rule we have made references to the HHS fee schedule less specific ("45 CFR Part 5" instead of "45 CFR 5.61(a) (1) through (8) and (b)") so that our reference will not be outdated by future revisions of the HHS regulation. We have also deleted Exception 2 from § 422.441(b), because that exception was based on 45 CFR 5.61(a)(9) and is covered by our broadened reference to 45 CFR Part 5. It is still true, as Exception 2 stated in the proposed rule, that we will use the fee schedule in 45 CFR 5.61(a) (1) through (8) and (b) whenever disclosing, under the FOIA, information other than records of Social Security number holders, wage earners, employers, or claimants.

Charging Full Cost for Information To Be Used for a Non-Program Purpose

On August 13, 1981, section 2207 of the "Omnibus Budget Reconciliation Act of 1981" became effective. That provision added section 1106(c) to the Act, which permits the Secretary to charge requesters the full cost of supplying information requested to comply with the Employee Retirement Income Security Act of 1974, or ". . . for any other purpose not directly related to the administration of the program or programs under . . . [the Social Security] Act", notwithstanding the fee limitations under the Privacy Act, FOIA, or "any other provision of law". In new § 422.441 we describe how we will implement this provision.

We will consider as non-program related all requests not found to be program related, such as (but not limited to) requests for earnings information for use in computing private pension benefits, or for use in establishing the existence and duration of an employment relationship.

For requests categorized as non-program related we will charge the full cost (direct and indirect) of providing the requested information as allowed by law. The fee schedule for non-program related requests is set forth in § 422.441.

We have revised § 422.125(e) to conform to §§ 422.440 and 422.441.

Setting Limit on Fee

We have added a new § 422.442, similar to HHS section 45 CFR 5.83, stating that when someone sends us a request we assume the requester agrees to pay for the services needed to locate and send a record to the requester. However, the requester will be able to put a limit on the amount she or he is willing to spend. We will notify the requester if it appears the costs will exceed that limit and give the requester the opportunity to decide if she or he wants us to continue searching for the requested record. Also, before we start work on a request under § 422.441 we will generally notify the requester of our exact or estimated charge for the information, unless it is clear that the requester has a reasonable idea of the cost (the proposed rule did not mention this fact).

Section 422.442 also states that if the fee will be unusually large or if the requester has failed to pay a previous bill we may ask the requester to pay the estimated fee, or a deposit, before continuing to search for the requested record or before we send it to the requester. In those instances we will notify the requester shortly after receiving the request that an advance payment or deposit is needed. This will apply to any request for a record.

Waiver or Reduction of Fees in the Public Interest

New § 422.443 describes our policy on waiving or reducing a fee in the public interest. We will follow the HHS criteria in section 45 CFR 5.83 when making such determinations.

Effect of HHS Delegations and Fee Schedule

The HHS regulations on fees are binding on SSA under 45 CFR 5.11. We are using them to establish SSA's fees for providing any records requested under the FOIA. These are the same fees described in section 422.440. We are also following the HHS rules published on May 12, 1982, regarding who has authority to release or deny a record. These officials are listed in §§ 422.428 and 422.444.

Changes to 20 CFR Part 401

We have changed several cross-references in 20 CFR Part 401 and removed a sentence from § 401.125 to reflect the changes to Subpart E of Part 422. We have also revised Subpart E of Part 401. The revisions limit Subpart E to describing how an individual can appeal under the Privacy Act a decision denying that individual access to her or his own records, those of the individual's minor child, or those of a person for whom the individual is legal guardian. This subpart formerly included procedures for appealing decisions denying requests for disclosure of information about other persons, which we process under the FOIA. The changes reflect that policy.

Comments Received on Proposed Rules

We received one letter of comments, which recommended five changes in the proposed rules. A summary of the comments follows, with our responses.

Comment: Proposed § 422.416(b)(3) (§ 422.416(b)(1)(iii) in the final regulations) goes beyond what the FOIA allows us to exempt from disclosure, and should be deleted. The commenter does not give a reason for this opinion.

Response: We agree that § 422.416(b)(1)(iii) may overstate exemption (b)(5) of the FOIA in one respect. Our proposed rule could be read to indicate incorrectly that we will withhold predecisional memoranda in their entirety, despite the presence of separable factual portions. We have added a phrase to indicate that we will not withhold separable factual portions.

Comment: Section 422.428, which provides that generally only SSA's Freedom of Information Officer may determine under the FOIA whether to release any record in SSA's control and possession, is too restrictive. We should allow individual components of SSA to release "routine" documents.

Response: That is our policy. Any material listed specifically in regulations or in the Index of Administrative Manuals and Instructions to Staff (FOIA Index) as disclosable may be disclosed by any office that has a copy of the material. We have added a sentence to § 422.428 cross-referring to §§ 422.410, 422.430, and 422.432, where some of these materials are listed.

Comment: Section 422.429, which says we will determine whether to provide a requested record within 10 working days after the appropriate official receives the request, is contrary to the FOIA, which requires us to count those 10 days from receipt by the agency.

Response: Section 422.428 clearly spells out where and to whom FOIA requests should be sent. A request made in accordance with that section has the best assurance we can give of prompt and proper handling. Other employees who may receive a request for a record and cannot fill the request have instructions to forward it immediately to an appropriate official, but handling these requests is not their primary job. We believe, therefore, that it is reasonable for SSA to treat misdirected requests as received by the agency, within the meaning of the FOIA, at the time the request has been received by an appropriate official identified in § 422.428. This interpretation of the FOIA's 10 day rule has been in HHS and SSA regulations for several years. Similar interpretations also appear in the FOIA implementing regulations of several other Federal agencies.

Comment: The regulations should tell the reader what to do if we fail to act on his or her FOIA request for a record.

Response: We agree and have added a sentence to § 422.449 explaining that, for purposes of that section, our failure to act within the time limits in § 422.429(a) or in § 422.447(b) is equivalent to denial of the request by the Commissioner or a designee. The section explains that the requester may ask a U.S. district court to review that denial.

Comment: The HHS fee schedule for providing records under the FOIA, adopted by SSA in § 422.440(b), is too high; SSA should not adopt it. The commenter does not give a reason for this opinion.

Response: The HHS fee schedule is binding on SSA under 45 CFR 5.11. The rationale for the increases made in the HHS fee schedule on September 22, 1982, is discussed in the preamble to the final regulation changing the fee schedule (47 FR 41751).

Regulatory Procedures

Executive Order 12291—We have determined that these regulations do not meet any of the criteria specified in E.O. 12291 for a major regulation. The only costs involved are the fees which will be charged for supplying the requested information or materials. These fees will not have an annual effect on the economy of $100 million or more or otherwise meet the threshold of the Executive Order. We estimate the total increase in our fees charged per year to be about $3 million, spread over about 175,000 requests, almost all non-program. The only large definable category of requesters is pension funds, for whom, under our current estimates, the average increase in our charges will be, at most, between $33 and $46 per pension applicant. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980—These regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that these regulations will not have a significant economic impact on a substantial number of small businesses or small entities because they impose

fees only on those requesting information and materials. In view of the figures cited under *Executive Order 12291*, above, we do not expect enough information requests by small businesses or small entities for the fees to have a significant economic impact on those requesters. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.802-13.814, Social Security Programs)

List of Subjects

20 CFR Part 401

Administrative practice and procedure, Aid to families with dependent children, Black lung benefits, Freedom of information, Medicare, Old-age, survivors and disability insurance, Privacy, Supplemental security income (SSI).

20 CFR Part 422

Administrative practice and procedure, Freedom of information, Organization and functions (Government agencies), Social security.

Dated: March 1, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: May 21, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 401—[AMENDED]

The authority citation for 20 CFR Part 401 continues to read as follows:

Authority: Secs. 205, 1102, and 1106 of the Social Security Act; 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 53 Stat. 1398, as amended, sec. 290, 66 Stat. 234; (42 U.S.C. 405, 1302, 1306; 8 U.S.C. 1360); sec. 413(b) of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 794; 30 U.S.C. 923, 5 U.S.C. 552a (Privacy Act); 5 U.S.C. 552 (Freedom of Information Act), as amended by Pub. L. 94-409; 90 Stat. 1241; 26 U.S.C. 6103, as amended by Pub. L. 94-455, 90 Stat. 1667 (Tax Reform Act of 1976), unless otherwise noted.

§ 401.100 [Amended]

1. In 20 CFR Part 401, § 401.100 is amended by revising the cross-reference from "§§ 422.428 and 422.436 of this chapter and 45 CFR Parts 5 and 5b" to "§§ 422.428 and 422.428 of this chapter and 45 CFR Parts 5 and 5b".

§ 401.125 [Amended]

2. In 20 CFR Part 401, §401.125 is amended by revising the cross-reference from "§422.440" to "§§ 422.440 and 422.441" and by deleting the last sentence.

3. In 20 CFR Part 401, §§ 401.500 and 401.510 are revised to read as follows:

§ 401.500 Which decisions are covered.

This subpart describes how to appeal a decision made under the Privacy Act concerning your request for correction of a record or for access to your records, those of your minor child, or those of a person for whom you are the legal guardian. We generally handle a denial of your request for information about another person under the provisions of the FOIA (see Part 422, Subpart E of this chapter). This subpart applies only to written requests.

§ 401.501 Appeals after denial of access.

If, under the Privacy Act, we deny your request for access to your own record, those of your minor child, or those of a person for whom you are the legal guardian, we will advise you in writing of the reason for that denial, the name and title or position of the person responsible for the decision, and your right to appeal that decision. You may appeal the denial decision to the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, Maryland 21235, within 30 days after you receive the notice denying all or part of your request, or, if later, within 30 days after you receive materials in partial compliance with your request. If we refuse to release a medical record because you did not designate a representative (§ 401.410) to receive the material, that refusal is not a formal denial of access and, therefore, may not be appealed to the Commissioner. If you file an appeal, either the Commissioner or a designee will review your request and any supporting information submitted and then send you a notice explaining the decision on your appeal. The decision must be made within 20 working days after your appeal is received. The Commissioner or a designee may extend this time limit up to 10 additional working days if one of the circumstances in § 422.429 is met. You will be notified in writing of any extension, the reason for the extension, and the date by which your appeal will be decided. The notice of the decision on your appeal will explain your right to have the matter reviewed in a Federal district court if you disagree with all or part of the decision.

PART 422—[AMENDED]

4. The authority citation for 20 CFR Part 422 continues to read as follows:

Authority: Secs. 205, 218, 221, 1102, 1869, and 1871, 53 Stat. 1368, as amended, 64 Stat. 514, as amended, 68 Stat. 1081, as amended, 49 Stat. 647, as amended, 79 Stat. 330, 331; sec. 8 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 405, 418, 421, 1302, 1395ff, and 1395hh, unless otherwise noted.

In 20 CFR Part 422, paragraph (e) of § 422.125 is revised to read as follows:

§ 422.125 Statement of earnings; resolving earnings discrepancies.

* * * * *

(e) *Detailed earnings statements.* (1) A more detailed statement of earnings will be furnished upon request, generally without charge, where the request is program related under § 422.440(a). See § 422.440 for possible fees.

(2) If the request for a more detailed statement of earnings is not program related under § 422.440(a), a charge will be imposed according to the schedule of fees set out in § 422.441.

* * * * *

5. In 20 CFR Part 422, the Table of Contents for Subpart E is revised as follows:

Subpart E—Availability of Information and Records to the Public

Sec.

422.401 Scope and purpose.
422.402 Record defined.
422.406 Publication.
422.408 Statements of policy and interpretations not published in the Federal Register.
422.410 Publications for sale.
422.412 Availability of administrative staff manuals.
422.416 Availability of records.
422.418 Deletion of identifying details.
422.420 Creation of records.
422.426 Who may release a record.
422.427 How to request a record.
422.428 Where to send a request.
422.429 How a request for a record is processed.
422.430 Materials available at district offices and branch offices.
422.432 Materials in field offices of the Office of Hearings and Appeals.
422.433 Health care information.
422.440 Fees for providing records and related services for program purposes.
422.441 Fees for providing information and related services for non-program purposes.
422.442 Procedure on assessing and collecting fees for providing records.
422.443 Waiver or reduction of fees in the public interest.
422.444 Officials who may deny a request.
422.445 How a request is denied.
422.447 How to appeal a decision denying all or part of a request.
422.449 U.S. district court action.

Authority: Secs. 205, 1102, and 1106 of the Social Security Act, 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 53, Stat. 1398, as amended, 42 U.S.C. 405, 1302, and 1306; section 413(b) of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 749, 30

U.S.C. 823, 5 U.S.C. 552 (Freedom of Information Act); 5 U.S.C. 552a (Privacy Act).

6. Section 422.416 and its heading are revised to read as follows:

§ 422.416 Availability of records.

(a) *What records are available.* Section 552 of 5 U.S.C. also known as the Freedom of Information Act (FOIA), permits any person to see, and get a copy of, any Federal agency's records unless the material is exempt from mandatory disclosure as described in paragraph (b) of this section. Under the FOIA, we are also required to make available to the public the instructional manuals issued to our employees, general statements of policy, other materials, such as Social Security Rulings, which are used in processing claims and which are not published in the Federal Register, and an index of these manuals and materials.

(b) *What records are not available.* (1) The FOIA exempts certain classes of records from disclosure. Most of these are described at 45 CFR Part 5, Subpart F, in the regulations of the Department of Health and Human Services (HHS, formerly the Department of Health, Education, and Welfare). Those most likely to apply to information in the Social Security Administration's (SSA's) records are:

(i) Records specifically exempted from disclosure by statute;

(ii) All or part of SSA's investigative manuals or other materials the disclosure of which could materially assist in the violation of any law or regulation;

(iii) Deliberative material (and factual material which would tend to reveal such deliberative material) contained in SSA's inter-agency or intra-agency predecisional memoranda or letters the disclosure of which could adversely affect free and candid discussion within HHS or with another agency or otherwise harm the decision-making process of HHS or another agency; and

(iv) Requested information concerning a person other than the requester, the disclosure of which would not benefit the public to a degree which outweighs that person's right of privacy.

(2) However, unless a statute prohibits disclosure, we will generally supply material which is exempt from mandatory disclosure if we determine that disclosure is in the public interest and is not inconsistent with our obligations of confidentiality and the efficient administration of our programs.

7. Section 422.420 is revised to read as follows:

§ 422.420 Creation of records.

We are not required to create new records merely to satisfy a request. For example, we are not required to program computers to provide data in a particular form or to compile selected items from records, provide statistical data, ratios, proportions, percentages, etc. If these data have already been compiled and are available, we will supply the record when appropriate fees are paid, as provided in § 422.440 and 422.441. This does not mean that we will never help you get information that does not already exist in our records. However, diverting staff and equipment from other responsibilities may not always be possible.

§ 422.426 [Removed]

8. Section 422.426 is removed.

9. A new § 422.426 is added which reads as follows:

§ 422.426 Who may release a record.

Except as otherwise provided by regulation, only the Director, Office of Information, SSA, or her or his designee may determine whether to release any record in SSA's control and possession. This official is SSA's Freedom of Information Officer. Sections 422.410, 422.430, and 422.432 list some of the materials for which a determination to release has been made.

10. A new § 422.427 is added to read as follows:

§ 422.427 How to request a record.

You may request a record in person, by telephone, or by mail. (However, see §§ 422.444 through 422.449 for an explanation of your appeal rights.) Any request should reasonably describe the record you want. If you have detailed information which would assist us in identifying that record, please submit it with your request. You should mark the outside of any envelope used to submit your request as a "Freedom of Information Request", no matter how your request may be categorized for fee purposes. (Sections 422.440–422.443 explain our fees.) The staff at any Social Security office can help you prepare this request.

11. Section 422.428 is revised to read as follows:

§ 422.428 Where to send a request.

(a) You may send your request for a record to: (1) The Director, Office of Information, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, or (2) the Public Affairs Director of the appropriate HHS Regional Office. The locations and service areas of these offices are as follows:

Region I—John F. Kennedy Federal Building, Government Center, Boston, MA 02203. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Region II—26 Federal Plaza, Federal Building, New York, NY 10007. New York, New Jersey, Puerto Rico, Virgin Islands.

Region III—3535 Market St., Philadelphia, PA 19101. Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia.

Region IV—101 Marietta Tower, Atlanta, GA 30323. Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Region V—300 South Wacker Drive, Chicago, IL 60606. Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region VI—1200 Main Tower, Dallas, TX 75202. Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Region VII—601 East 12th Street, Kansas City, MO 64106. Iowa, Kansas, Missouri, Nebraska.

Region VIII—19th and Stout Streets, Denver, CO 80294. Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Region IX—Federal Office Building, 50 United Nations Plaza, San Francisco, CA 94102. Arizona, California, Hawaii, Nevada, Guam, Trust Territory of Pacific Islands, American Samoa.

Region X—2901 3rd Avenue, Seattle, WA 98121. Alaska, Idaho, Oregon, Washington.

(b) If you send your request to one of the offices described in paragraph (a) of this section and the record you are requesting is elsewhere, that office will forward your written request to the proper office. If you send your request to any other office and the record you are requesting is elsewhere, that office may send your request to the Director, Office of Information, a Public Affairs Director, or the proper office.

§ 422.432 [Amended]

12. In § 422.432 the word "Bureau" wherever it appears is changed to "Office".

§§ 422.433, 422.434 and 422.435 [Removed]

13. Sections 422.433, 422.434, and 422.435 are removed.

14. A new § 422.433 is added which reads as follows:

§ 422.433 Health care information.

We have some information about health care programs under titles XVIII and XIX (Medicare and Medicaid) of the Social Security Act. We follow the rules in 42 CFR Part 401 in determining whether to provide any portion of it to a requester.

15. Section 422.436 is redesignated as § 422.429 and revised to read as follows:

§ 422.429 How a request for a record is processed.

(a) Within 10 working days from the date a request is received by the appropriate official (see § 422.428(a)), we will make a determination as to whether the requested record will be provided. This 10-day period may be extended by written notice up to 10 additional working days when one or more of the following situations exist:

(1) The office processing the request needs to locate and then obtain the record from another facility;

(2) We need to locate, obtain, and appropriately examine a large number of records which are requested in a single request; or

(3) The office processing the request needs to consult with another agency or HHS office which has a substantial interest in the subject matter of the request. This consultation shall be conducted with all practicable speed.

(b) If an extension is made, we will notify you, explain why the additional time is needed, and tell you the date by which we expect to make a decision on your request.

16. Section 422.440 is revised to read as follows:

§ 422.440 Fees for providing records and related services for program purposes.

(a) *Program purposes described.* (1) We consider a request to be program related if the information must be disclosed under the Social Security Act. For example, section 205(c)(2)(A) of the Act (42 U.S.C. 405(c)(2)(A)) requires that we provide certain information upon request to a worker, her or his legal representative, her or his survivor, or the legal representative of the worker's estate. That information is the amounts of the worker's wages and self-employment income and the periods during which they were paid or derived, as shown by our records.

(2) We also consider a request to be program related if the requester indicates the needed information will be used for a purpose which is directly related to the administration of a program under the Social Security Act.

(i) The major criteria we consider in deciding whether a proposed use is so related are:

(A) Is the information needed to pursue some benefit under the Act?

(B) Is the information needed solely to verify the accuracy of information obtained in connection with a program administered under the Act?

(C) Is the information needed in connection with an activity which has been authorized under the Act?

(D) Is the information needed by an employer to carry out her or his taxpaying responsibilities under the Federal Insurance Contributions Act or section 218 of the Act?

(ii) We will consider on a case by case basis those requests which do not meet these criteria but are claimed to be program related.

(b) *When we charge.*—If we determine the request for information is program related, we may or may not charge for the information. For example, as stated in § 422.125, we generally will not charge you for information needed to assure the accuracy of our records on which your present or future Social Security benefits depend. In addition, we generally will not charge for furnishing information under section 205(c)(2)(A) of the Act. However, if we do charge for a program related request (for example, if more detailed information or special services are requested) we will use the fee schedule in 45 CFR Part 5 if information is being disclosed under the FOIA and the fee schedule in 45 CFR 5b.13 if access to the information is being granted under the Privacy Act. (Exception: If the request is for purposes of administering employee benefits covered by the Employee Retirement Income Security Act of 1974 (ERISA), even if the request is covered by section 205(c)(2)(A) of the Act, we will charge under § 422.441.)

(c) *Fee schedule.* Our fee schedule for providing records and related services for program purposes under the FOIA is the same as that in 45 CFR Part 5.

(d) *If billing would cost more than the service.* Generally we will not charge you a fee when the cost of the service is less than the cost of sending you a bill. However, where an individual, organization, or governmental unit makes multiple separate requests, we will total the costs incurred and periodically bill the requester for the services rendered.

(e) *Fee for copies of printed materials.* When extra copies of printed material are available, the charge is generally 1 cent per page. If the material may be purchased from the Superintendent of Documents, the charge is that set by the Superintendent. The Superintendent's address is in § 422.410.

17. New §§ 422.441 through 422.443 are added to read as follows:

§ 422.441 Fees for providing information and related services for non-program purposes.

(a) *General.* Section 1106(c) of the Social Security Act permits the Secretary to require requesters of information to pay the full cost of supplying the information where the information is requested to comply with the Employee Retirement Income Security Act of 1974 (ERISA), or ". . . for any other purpose not directly related to the administration of the program or programs under . . ." the Social Security Act. This may be done notwithstanding the fee provisions of the FOIA and the Privacy Act or any other provision of law. As used in this section—

(1) Full cost includes the direct and indirect costs to SSA (including costs of duplication) of providing information and related services under section 1106(c) of the Act; and

(2) Full cost of an employee's time includes fringe benefits and overhead costs such as rent and utilities.

(b) *Non-program related requests.* We consider a request for information which does not meet or equal any of the criteria in § 422.440 to be non-program related. (Whether a request for information about an individual is made by that individual or by someone else is not a factor.) In responding to these requests, or requests for ERISA purposes, we will charge the full cost of our services as described in paragraph (c) of this section.

(c) *Fee schedule.* Our fee schedule for non-program related requests is:

(1) *Manual searching for records.* Full cost of the employee's time.

(2) *Photocopying, or reproducing records such as magnetic tapes or punch cards.* Full cost of the operator's time plus the full cost of the machine time and the materials used.

(3) *Use of electronic data processing equipment to obtain records.* Our full cost for the service, including computer search time, computer runs and printouts, and the time of computer programmers and operators and other employees.

(4) *Certification or authentication of records.* Full cost of certification or authentication.

(5) *Forwarding materials to destination.* If you request special arrangements for forwarding the material, we will charge you the full cost of this service (e.g., you request express mail or a commercial delivery service). If no special forwarding arrangements are requested, we will charge you the full cost of the service including the U.S. Postal Service cost.

(6) *Performing other special services.* If we agree to provide any special services you request, we will charge you the full cost of the time of the employee who performs the service, plus the full cost of any machine time and materials that the employee uses.

(7) *If billing would cost more than the service.* Generally we will not charge you a fee when the cost of the service is

less than the cost of sending you a bill. However, where an individual, organization, or governmental unit makes multiple separate requests, we will total the costs incurred and bill the requester for the services rendered.

(d) *Fee for copies of printed materials.* When extra copies of printed material are available, the charge is generally 1 cent per page. If the material may be purchased from the Superintendent of Documents, the charge is that set by the Superintendent. The Superintendent's address is in § 422.410.

(e) *Charging when requested record not found.* We may charge you for search time, even though we fail to find the records, if you request that we continue the search after we have informed you that it is unlikely to be productive. We may also charge you for search time if the records we locate are exempt from disclosure.

§ 422.442 Procedure on assessing and collecting fees for providing records.

(a) We will generally assume that when you send us a request, you agree to pay for the services needed to locate and send that record to you. You may specify in your request a limit on the amount you are willing to spend. If you do that or include with your request a payment that does not cover our fee, we will notify you if it appears that the fee will exceed that amount and ask whether you want us to continue to process your request. Also, before we start work on your request under § 422.441 we will generally notify you of our exact or estimated charge for the information, unless it is clear that you have a reasonable idea of the cost.

(b) In most cases, where we charge you a fee under § 422.440, we will send your bill along with or following release of the requested records.

(c) If the fee will be unusually large, if you have failed to pay previous bills, or if we are charging you a fee under § 422.441, we may ask you to pay the estimated fee, or a deposit, before we continue searching for the requested records or before we send them to you. If so, we will notify you shortly after receiving your request. In such cases the administrative time limits in §§ 422.429 and 422.447 will begin only after we have reached an agreement over payment of the fee.

(d) Payment of fees will be made by check or money order payable to "Social Security Administration".

§ 422.443 Waiver or reduction of fees in the public interest.

We may waive or reduce the fees provided for by §§ 422.440 and 422.441 if we determine it is in the public interest to do so. This will generally be done if furnishing the record can be considered as primarily benefiting the general public. This determination may be made only by one of the officials described in §§ 422.444 and 422.447(b). If we deny all or part of your request for a fee waiver or reduction, you may appeal that decision under § 422.447. When appealing a decision, you should specify the manner in which release of the record will benefit the general public.

H 422.444, 422.448, and 422.452 [Removed]

18. Sections 422.444, 422.448, and 422.452 are removed.

19. New §§ 422.444, 422.445, 422.447, and 422.449 are added to read as follows:

§ 422.444 Officials who may deny a request.

Except as provided by regulation, only the Director, Office of Information, SSA, or her or his designee is authorized to deny a written request to obtain, inspect, or copy any Social Security record. However, for instances in which the request may involve records of SSA and another part of HHS the determination is made by the HHS FOIA Officer.

§ 422.445 How a request is denied.

(a) *Oral requests.* If we cannot comply with your oral request because the Director of the Office of Information (or designee) has not previously made a determination to release the record you want, we will tell you that fact. If you still wish to pursue your request, you must put your request in writing.

(b) *Written requests.* If you make a written request and the information or record you requested will not be released, you will receive an official denial in writing. The denial notice will explain why the request was denied (for example, the reasons why the requested document is subject to one or more clearly described exemptions), will include the name and title or position of the person who made the decision, and will explain your appeal rights.

§ 422.447 How to appeal a decision denying all or part of a request.

(a) *How to appeal.* If all or part of your written request was denied, you may request that the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, Maryland 21235 review that determination. Your request for review:

(1) Must be in writing;

(2) Must be mailed within 30 days after you received notification that all or part of your request was denied or, if later, 30 days after you received materials in partial compliance with your request; and

(3) May include additional information or evidence to support your request.

(b) *How the review is made.* After reviewing the prior decision and considering anything else submitted, the Commissioner or designee will affirm or revise all or part of that decision. The Commissioner (or a designee) will affirm a denial only after consulting with the appropriate SSA official(s) and the Office of the General Counsel and obtaining the approval of the Assistant Secretary for Public Affairs, HHS, or a designee. The decision must be made within 20 working days after your appeal is received. The Commissioner or a designee may extend this time limit up to 10 additional working days if one of the situations in § 422.429(a) exists, provided that, if a prior extension was used to process this request, the sum of the extensions may not exceed 10 working days. You will be notified in writing of any extension, the reason for the extension, and the date by which your appeal will be decided.

(c) *How you are notified of the Commissioner's decision.* The Commissioner or a designee will send you a written notice of the decision explaining the basis of the decision (e.g., the reasons why an exemption applies) and including the name and title or position of the person who made the decision. If any part of your request remains unsatified the notice will also advise you of your right to seek court review.

§ 422.449 U.S. district court action.

If the Commissioner or a designee, upon review, affirms the denial of your request for records, in whole or in part, you may ask a U.S. district court to review that denial. See 5 U.S.C. 552(a)(4)(B). If we fail to act on your request for a record or for review of a denial of such a request within the time limits in § 422.429(a) or in § 422.447(b), that is equivalent to denial of your request by the Commissioner or a designee for purposes of this section.

[FR Doc. 85-16639 Filed 7-12-85; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 170

[T.D. ATF-207; correction]

Stills; Miscellaneous Provisions; Correction

AGENCY: The Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision); correction.

SUMMARY: This document corrects errors made in FR Doc. 85-13421, published in the **Federal Register** on June 5, 1985, at 50 FR 23680, which implemented section 451 of the Deficit Reduction Act of 1984, Pub. L. 98-369, 98 Stat. 818.

FOR FURTHER INFORMATION CONTACT: J.R. Whitley, ATF Tax Specialist, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7531).

SUPPLEMENTARY INFORMATION:

§ 170.43 [Corrected]

Paragraph 1. In the right-hand column of page 23682 in § 170.43 in the last sentence of paragraph (a) remove the word "part" and insert, in its place, the word "subpart".

§ 170.45 [Corrected]

Par. 2. In the righ-hand column on page 23682 in § 170.45 in the definition *"Distilling"* in the last line of the column remove the word "operation" and insert, in its place, the word "operations".

§ 170.47 [Corrected]

Par. 3. In the left-hand column of page 23683 in the heading of § 170.47 in the fourth line from the bottom of the column remove the word "requirements" and insert, in its place, the word "requirement".

§ 170.55 [Corrected]

Par. 4. In the right-hand column of page 23683, paragraph (a) of § 170.55 is corrected and an OMB control number is added to the end of the section to read as follows:

§ 170.55 Registry of stills and distilling apparatus.

(a) *General.* Every person having possession, custody, or control of any still or distilling apparatus set up shall, immediately on its being set up, register the still or distilling apparatus, except that a still or distilling apparatus not used or intended for use in the distillation, redistillation, or recovery of distilled spirits is not required to be registered. Registration may be accomplished by describing the still or distilling apparatus on the registration or permit application prescribed in this chapter for qualification under 26 U.S.C. Chapter 51 or, if qualification is not required under 26 U.S.C. Chapter 51, on a letter application, and filing the application with the regional director (compliance) of the region in which the still or distilling apparatus is located. Approval of the application by the regional director (compliance) will constitute registration of the still or distilling apparatus.

* * * * *

(Reporting and recordkeeping requirements in paragraph (a) approved by the Office of Management and Budget under control number 1512-0341)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1355, as amended (26 U.S.C. 5179))

Signed: July 3, 1985.

Stephen E. Higgins,

Director.

[FR Doc. 85-16774 Filed 7-12-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Extension of Deadline for Submission of Program Amendments to the Alaska Permanent Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for Alaska to (1) promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On April 29, 1985, Alaska requested an additional extension of time, until August 2, 1985, to submit a blaster training program.

All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program within twelve months after program approval or within twelve months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an extension of time, until August 2, 1985, to submit a proposed blaster certification program.

EFFECTIVE DATE: July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644; Telephone: (307) 261-5824.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Alaska's program, the applicable date is 12 months after approval of the State program, or May 2, 1984.

On February 29, 1984, Alaska advised OSM that it would be unable to meet the May 2, 1984 deadline and requested an additional twelve months to develop and adopt a blaster certification program. On May 14, 1984, the Director announced his decision to extend Alaska's deadline until May 2, 1985 (49 FR 20284).

On April 29, 1985, the State advised OSM that it had developed draft regulations, identified training options, prepared two blaster certification examinations, and drafted an application form. However, the State indicated that additional time would be needed to review the program materials and to refine the identification of training options. Thus, the State requested an extension of the deadline for submission until August 2, 1985.

In the May 28, 1985, **Federal Register** (50 FR 21625), OSM proposed an extension until August 2, 1985 for Alaska to submit a proposed blaster certification program. Public comment was sought on the proposal for 30 days ending June 27, 1985. No comments were submitted to OSM during the comment period.

Director's Decision

In accordance with the State's request, the Director has decided to extend the deadline for Alaska to submit a proposed blaster training program until August 2, 1985. This extension will allow the Alaska Department of Natural Resources, Division of Mining, to refine its draft blaster training and certification program.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* The rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 902

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 9, 1985.

Jed D. Christensen,

Director, Office of Surface Mining.

PART 902—ALASKA

1. The authority citation for Part 902 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR Part 902 is amended by revising § 902.16 to read as follows:

§ 902.16 Required program amendments.

Pursuant to 30 CFR 732.17, Alaska is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By August 2, 1985, Alaska shall submit for OSM's approval

(1) Rules governing the training, examination and certification of blasters and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

(b) Reserved.

[FR Doc. 85–16711 Filed 7–12–85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Parts 642 and 657

Facilities Engineering; Removal of Regulations

AGENCY: Department of the Army, DoD.

ACTION: Removal of regulations.

SUMMARY: Army regulations AR 420–74, Facilities Engineering, Natural Resources—Land, Forest and Wildlife Management (32 CFR Part 642) and AR 420–76, Facilities Engineering, Pest Management Program (32 CFR Part 657) are rescinded from the Code of Federal Regulations because they do not directly affect the public.

EFFECTIVE DATE: July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Donald M. Bandel, Office of the Assistant Chief of Engineers, Facilities Engineering Division, Buildings and Grounds Branch, (DAEN-ZCF-B), Washington, DC 20314. (202) 272–0593.

SUPPLEMENTARY INFORMATION: The Department of the Army has determined that AR 420–74 and AR 420–76 do not directly affect the public. These regulations provide internal operating policy guidance for the operation and maintenance of Army installations and implement directives issued by higher headquarters.

List of Subjects

32 CFR Part 642

Environmental protection, Federal buildings and facilities, Natural resources.

32 CFR Part 657

Federal buildings and facilities, Pesticides and pests.

PARTS 642 AND 657—[REMOVED]

Accordingly, 32 CFR Part 642 and 32 CFR Part 657 are hereby removed.

Paul W. Taylor

Colonel, Corps of Engineers Executive Director, Engineer Staff.

[FR Doc. 85–16773 Filed 7–12–85; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85–19]

Regatta; New Jersey Offshore Grand Prix

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being established for the annual New Jersey Offshore Grand Prix Regatta being sponsored by the New Jersey Offshore Powerboat Racing Association. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during the event.

EFFECTIVE DATE: This regulation is effective on July 17, 1985.

FOR FURTHER INFORMATION CONTACT: Lt. D.R. Cilley, (212) 668–7974.

SUPPLEMENTARY INFORMATION: On May 28, 1985, the Coast Guard published a Notice of Proposed Rulemaking in the Federal Register for this regulation (50 FR 21625). Interested persons were requested to submit comments, and no comments were received. This regulation is being made effective in less than 30 days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Lt. D.R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The annual New Jersey Offshore Grand Prix is a powerboat race held off the New Jersey coastline between Asbury Park and Seaside Park. This event is sponsored by the New Jersey Offshore Powerboat Racing Association and is well known to the boaters and residents of this area. This event is traditionally held each year on the third

Wednesday in July. Because of the annual nature of this event the Coast Guard has decided to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations. Thereafter, the Coast Guard will provide the public with full and adequate notice of this annual powerboat race by publication in the Third District Local Notice to Mariners. The event is sanctioned by the American Powerboat Association and the Union of International Motorboating. Approximately 80 powerboats ranging from 18–45 feet in length will race in various classes at distances from 60 to 156 nautical miles. Race headquarters will be located at Jenkinson's Pavilion, in Point Pleasant. Race participants will exit Manasquan Inlet between 9:00–9:30 a.m. on race day escorted by race committee patrol vessels. An extensive Regatta Patrol under the control of the Coast Guard Patrol Commander will supervise this event in conjunction with vessels provided by the race sponsor and other local government agencies. A Safety Voice Broadcast will be issued by the Coast Guard to properly notify boaters of this event and the regulations issued for its control. In order to provide for the safety of life and property, the Coast Guard will regulate the movement of vessels and establish anchorages for spectator vessels prior to and during this event.

Discussion of Comments

No comments were received.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulation

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 133 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding § 100.306 to read as follows:

§ 100.305 New Jersey Offshore Grand Prix.

(a) *Regulated Area:* The Manasquan River from the New York and Long Branch Railroad to Manasquan Inlet, together with all of the navigable waters of the United States from Asbury Park, New Jersey, latitude 40 degrees, 14 minutes north; southward to Seaside Park, New Jersey latitude 39 degrees, 55 minutes north, from the New Jersey shoreline seaward to the limits of the Territorial Sea. The race course area extends from Asbury Park to Seaside Park from the shoreline, seaward to a distance of 8.4 nautical miles.

(b) *Effective Period:* This regulation will be effective from 8:00 a.m. to 5:00 p.m. on July 17, 1985 and thereafter annually on the third Wednesday in July unless otherwise specified in the Third District Local Notice to Mariners and in a **Federal Register** Notice. The approved rain dates for the 1985 event are July 18 or 19, 1985.

(c) *Special Local Regulations:*

(1) The regulated area shall be closed intermittently to general navigation during the effective period. No person or vessel may enter or remain in the regulated area while it is closed unless participating in the event or authorized by the sponsor or regatta patrol personnel.

(2) All persons or vessels not registered with sponsor as participants or not part of the regatta patrol are considered spectators.

(3) The spectator fleet shall be held in spectator anchorage areas marked by patrol vessels. The sponsor provided boats shall fly colored pennants to aid in their identification. Spectator anchorages areas are established as follows:

(i) *Asbury Park, NJ south to Manasquan Inlet, NJ.* The spectator fleet will be held behind (west of) a line running north to south from the Asbury Park Convention Center to the north jetty at Manasquan Inlet. At the Asbury Park Convention Center the spectator fleet shall be held behind a line north of the Convention Center Pier. These lines will be set up by the Coast Guard Patrol Commander on the day of the race.

(ii) *Seaside Heights.* The spectator fleet shall be held behind a line south of the Seaside Funtown Pier. This line shall be set by the Coast Guard Patrol Commander on the day of the race.

(4) No spectator, press or commercial fishing boats shall cross the race course without the permission of the Patrol Commander. Those vessels wishing to cross the race course shall obtain permission to do so by contacting the nearest Coast Guard patrol vessel.

(5) No vessel shall proceed at a speed greater than six (6) knots while in Manasquan Inlet during the effective period.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol pesonnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: July 3, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc 85–16771 Filed 7–12–85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-FRL-2859-7]

Designation of Areas of Air Quality Planning Purposes; Attainment Status Designations; Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is approving the State of Michigan's request to redesignate to attainment the portion of the Wayne County secondary nonattainment area

outside the current primary TSP nonattainment boundaries (excluding Trenton) and the Monroe County secondary TSP nonattainment area. This approval is based on sufficient representative monitoring data which show that the NAAQS have been attained.

USEPA is disapproving the State of Michigan's request to: (1) Reduce the size of the primary Total Suspended Particulate (TSP) nonattainment area in Wayne County; (2) change portions of the secondary nonattainment area within the current primary nonattainment boundaries to attainment; and (3) change the Trenton area from secondary nonattainment to attainment. These final disapprovals are based on a lack of sufficient information to show: (1) That an implemented control strategy which USEPA has fully approved is responsible for the air quality improvement; (2) that the monitors are representative of all high concentration areas; and (3) that the NAAQS will be maintained.

EFFECTIVE DATE: The action is effective September 13, 1985.

Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 S. Dearborn Street, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48821

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 886–6037.

SUPPLEMENTARY INFORMATION: On March 14, 1983, the Michigan Department of Natural Resources (MDNR) submitted a request pursuant to Section 107 of the Clean Air Act to redesignate certain portions of Wayne and Monroe Counties for TSP. The request seeks a substantial reduction in size of the current primary and secondary nonattainment areas in Wayne County and a redesignation of the secondary nonattainment area in Monroe County to attainment. In response to comments provided by USEPA in a letter dated July 25, 1983, MDNR submitted additional information on December 1, 1983. MDNR provided technical support materials prepared primarily by the Wayne County Department of Health which include eight quarters of TSP monitor data (1981 and 1982) for all sites in Wayne County.

On August 3, 1984 (49 FR 31091), USEPA published a notice of proposed rulemaking which provided a 30-day comment period. On October 16, 1984, USEPA announced an extension of the public comment period for an additional 45 days. Only the National Steel Group submitted public comments (dated August 27, 1984 and September 14, 1984).

The National Steel Group's comments pertain to USEPA's proposed disapproval of the redesignation from primary nonattainment to secondary nonattainment for the area surrounding their Ecorse steel-making plant. USEPA's technical support document of December 31, 1984, contains a detailed summary of National Steel's comments and USEPA's responses. USEPA's responses to National Steel's comments are summarized below:

Comment: The Clean Air Act requires USEPA to take final action on a redesignation proposal within 60 days of the State's submission. In this case, over 500 days elasped between the original submission and USEPA's proposed action. "Athough the legal consequences of such unreasonable delay is not the subject of these comments, it is fundamentally unfair and extremely prejudicial to the affected regulatory community for USEPA to frustrate a State's action by simply sitting on the proposal," particularly where air quality data show that a redesignation is appropriate.

Response: USEPA responded to the original request (dated March 14, 1983) with a letter requesting additional information on July 25, 1983. Prior to the USEPA response, USEPA had informed the commentor, during a meeting on April 18, 1983, and by a letter dated May 19, 1983, that additional information was needed to support the proposed redesignation for the area surrounding their Ecorse facility. MDNR responded to USEPA's July 1983 letter on December 1, 1983. Neither MDNR nor Great Lakes Steel (National Steel Group) provided additional information for the area around the Ecorse plant. Therefore, USEPA's position with respect to the proposed redesignation was stated soon after submittal of the original request, and any delay in proposing rulemaking action should not have adversely affected the regulated community.

In addition, the commentor lists several objections to the statement in the proposed rulemaking action that USEPA "does not believe that there is sufficient information available to show that a federally enforceable control strategy is responsible for the air quality improvement, that the monitors are representative of all high concentration areas, or that the NAAQS will be maintained."

Comment: Permanent closing of major emitting sources and the implementation of Wayne County fugitive dust control programs can have the practical impact of an USEPA approved strategy and, therefore, justify the State's redesignation. This is particular true in light of the economic recovery in the Wayne County area and the continued monitored compliance with the TSP NAAQS near the Ecorse plant during this period.

Response: USEPA did not receive either specific information on permanent source shutdowns in this area or a demonstration that such closings and/or the County fugitive dust control programs were responsible for the observed air quality improvement at the Ecorse monitor site.

Also, the Wayne County fugitive dust control programs are not incorporated into the Michigan TSP SIP and are not federally enforceable. However, the programs are enforceable by the State. USEPA does not have a factual basis to conclude that previous violations will not reoccur.

Comment: There are at least 10 quarters of ambient data supporting the State's action. In fact, the original request was overly conservative. The data support redesignation for a much broader area. Concerning the representativeness of the existing monitor data, USEPA should not now be questioning the adequacy of the existing TSP networks. It is arbitrary and capricious to question the representative nature of the air quality data. Unless USEPA has monitor or modeling data that show a violation of the TSP primary NAAQ, the area in Wayne County does not meet the definition of a nonattainment area set forth in the Clean Air Act.

Response: It is unusual to rely on a single monitor for supporting a redesignation of a multiple source area. USEPA needs evidence that this monitor adequately portrays the air quality for the entire area and is representative of worst-case impacts and conditions. USEPA has not received such information from the commentor or MDNR. With respect to boundaries of the proposed nonattainment area, the usual practice is to define a multiple source problem area, as one area, because attainment throughout the area is dependent on the interaction of all the sources. USEPA has not received a demonstration that existing sources in the area to be redesignated are an

independent problem, and do not significantly contribute to violations elsewhere in the general area. USEPA has evidence of primary nonattainment (based on current monitoring data) within Wayne County, and has not received evidence that past monitored violations will not reoccur. Therefore, the Wayne County primary nonattainment area meets the definition of nonattainment area as defined in section 171 of the Clean Air Act.

Comment: The Scheme of section 107 of the Clean Air Act is one of cooperative State and Federal action. Because USEPA does not have a substantive basis to reject the State proposal, USEPA should defer to the State's determination. Therefore, USEPA should approve the State's proposal that is supported by more than ample air monitoring data.

Response: As noted in previous responses, USEPA believes that portions of the proposed redesignation do not conform with USEPA's policy on section 107 redesignations. Therefore, USEPA has a substantive basis for disapproving portions of the State's request.

USEPA has reviewed Michigan's requested redesignations of Wayne and Monroe Counties and prepared comments on these requests. (USEPA Technical Support Document, December 31, 1984.) In summary, USEPA is today taking the following rulemaking actions:

Approval

USEPA is approving the State of Michigan's request to redesignate to attainment the portion of the Wayne County secondary nonattainment area outside the current primary TSP nonattainment boundaries (excluding Trenton) and the Monroe County secondary TSP nonattainment area. In accordance with USEPA's rural fugitive dust policy, the secondary nonattainment areas is southwestern Wayne County and Monroe County (near site 82-949) can be redesignated to attainment, based on data from other monitors in the area which are representative of this non-industrial area. In addition, USEPA has determined that emissions from this area do not contribute to nonattainment elsewhere.

Disapproval

USEPA is disapproving the State of Michigan's request to reduce the size of the primary TSP nonattainment area. USEPA does not believe that there is sufficient information available to show that a federally enforceable control strategy is responsible for the air quality improvement, that the monitors are representative of all high concentration areas, or that the NAAQS will be maintained.

USEPA is disapproving the State of Michigan's request to change portions of the secondary nonattainment area (those portions lying within the current primary boundaries) and the Trenton area to attainment, because there is not sufficient monitoring data or other information available to show that the standards are attained, and will be maintained in this area. USEPA notes that the proposed attainment area contains major TSP industrial sources. USEPA did not receive specific information on the ambient impact of these sources on the attainment status of this area.

Under section 107(d), the Administrator has promulgated the NAAQS attainment status of each area of every State. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These areas designations may be revised whenever the data warrant.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7404))

Dated: June 25, 1985.

Lee M. Thomas,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7404.

§ 81.323 [Amended]

2. Section 81.323 is amended in the table for "Michigan—TSP". The entry for Wayne County (AQCR 123) and Monroe County (AQCR 124) are revised to read as follows:

MICHIGAN—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 123: Except subareas defined				X
St. Clair County: R17E, T6N, Sections 2-4, 9-11, 14-16, 21, 22 and 28		X		
Wayne County:				
a. Area included within: Lake St. Clair to 8 Mile Road to Schaefer Road to McNichols Road to Greenfield Avenue to Schoolcraft Avenue to Evergreen Road to Joy Road to Telegraph Road to Ford Road to Beech-Daly Road to Cherry Hill Road to Inkster Road to Carlysle Street to Middle Belt Road to Van Born Road to Wayne Road to Ecorse Road to Haggerty Highway to Tyler Road to Belleville Road to I-94 to Rawsonville Road to Caldwell-Waltz Road to Will-Carlton Road to west Road to Allen Road to Gibraltor Road east (extended to Trenton Channel)		X		
b. Area included within: Lake St. Clair Moross Road to 7 Mile Road to Van Dyke Road to 8 Mile Road to Wyoming Road to 7 Mile Road to Schaefer Road to Fenkell Road to Greenfield Avenue to Joy Road to Southfield Expressway to Ford Road to Telegraph Road to Cherry Hill Road to Beech-Daly Road extended to Michigan Avenue to Inkster Road to Carlysle Street to Middle Belt Road to Van Born Road to Wayne Road to Pennsylvania Road to Middle Belt Road to Silbley Road to Telegraph Road to King Road to Grange Road to Silbley Road to Jefferson Avenue to Bridge Street (Gross Ile) extended to Detroit River	X			
AQCR 124: (Michigan Portion) Except subareas defined by following townships				X
Monroe County: a. Starting where Sandy Creek empties into Lake Erie, northwest to Maple Avenue (extended NNE), southwest to Elm Avenue, west to Herr Road, south to Dunbar Road, and east to Plum Creek (which empties into Lake Erie)	X			

[FR Doc. 85-16732 Filed 7-12-85; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–17

[FPMR Bulletin D–206]

Work Space Management Reform Implementation

AGENCY: Public Buildings Service, GSA.
ACTION: Final rule.

SUMMARY: This Bulletin provides information on implementation of the new FPMR Temporary Regulation on Work Space Management Reform, especially those sections of the Temporary Regulation which establish a supplemental space policy.

DATES:

Effective date: This Bulletin is effective July 15, 1985.

Expiration date: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Philip Kogan, (202) 566–1875, or Gary A. Knoke, (202) 535–8474, of the Space Management Division.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this Bulletin will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purpose of Executive Order 12044.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, this Bulletin is added to the Appendix at the end of Subchapter D.

July 3, 1985.

GSA Bulletin FPMR D–206—Public Buildings and Space

TO: Heads of Federal Agencies.
SUBJECT: Work Space Management Reform Implementation.

1. *Purpose:* This bulletin provides information on implementation of the new FPMR Temporary Regulation especially those sections of the Temporary Regulation which establish a supplemental space policy.

2. *Expiration date.* This bulletin expires December 31, 1985.

3. *Background.* The new Temporary Regulation implements elements of Executive Order 12411, Government Work Space Management Reform, and Executive Order 12512, Federal Real Property Management. Under the new Regulation, each Federal agency is required to achieve an average office space utilization rate of 135 square feet per person by 1990 and to prepare an annual work space management plan which will be reviewed by the GSA and the Office of Management and Budget (OMB).

The regulation recognizes agency differences by establishing a supplemental space policy wherein agencies may deduct certain non-workstation office space when calculating office utilization rates. The amount of supplemental space for a given agency/bureau will be developed by the agency and a GSA contractor.

4. *Scope.* GSA plans to implement the supplemental space policy by issuing a contract under which the contractor will conduct policy workshops for client agencies, process supplemental space cases, and coordinate the overall project. GSA will perform all data entry into GSA information systems and provide formal issuances to agencies. Client agencies must supply the narrative justification and space data from which the supplemental space factors are developed. This process is estimated to require three months for contract award from the date of publication of the Temporary Regulation in the **Federal Register** and an additional 6 months for contract completion.

William F. Sullivan,
Commissioner, Public Buildings Service.

[FR Doc. 85–16708 Filed 7–12–85; 8:45 am]
BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 416, and 435

[OMB–006–F]

Medicare and Medicaid Programs; OMB Control Numbers for Collections of Information Contained in HCFA Regulations

AGENCY: Health Care Financing Administration (HCFA), HHS.
ACTION: Final rule.

SUMMARY: In accordance with regulations published by the Office of Management and Budget (OMB) on March 31, 1983, implementing the provisions of the Paperwork Reduction Act (PRA) of 1980, this final rule adds additional OMB control numbers to the display in 42 CFR Chapter IV of currently valid OMB control numbers for approved "collections of information" contained in HCFA regulations.

This regulation also informs the public of the removal of several incorrect effective date notes in the Code of Federal Regulations (CFR) that reporting and recordkeeping requirements identified in certain previously published regulations required OMB's approval under the PRA before implementation.

EFFECTIVE DATE: July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Matt Plonski, (301) 594–9710.

SUPPLEMENTARY INFORMATION:

I. Control Numbers

Background

On March 31, 1983, to implement the provisions of the Paperwork Reduction Act of 1980 (title 44, U.S.C. Chapter 35), OMB published final rules in the **Federal Register** (48 FR 13666) which added to title 5 of the CFR a new Part 1320, Controlling Paperwork Burdens on the Public. Under those rules, agencies are required, in the case of "collections of information" published in regulations, to publish the OMB control number in the **Federal Register**. The control number provides a way for the public to know whether a paperwork burden an agency seeks to impose has been approved by OMB.

On February 7, 1984, we established at 42 CFR 400.310, a display of currently valid OMB control numbers (49 FR 4476).

Provisions of This Regulation

This regulation updates the display of control numbers in 42 CFR 400.310 by adding recently approved items.

We will periodically update the list of sections of HCFA regulations that contain collections of information and their assigned control numbers as we receive notices of approval from OMB.

Waiver of Proposed Rulemaking and of Delay in Effective Date

This regulation is intended merely to add to the display in 42 CFR Chapter IV, additional OMB control numbers for approved information collection requirements contained in HCFA regulations. This regulation is technical in nature and to publish it in proposed form or to delay the effective date is unnecessary and would serve no useful purpose. We, therefore, find good cause to waive notice of proposed rulemaking and the usual 30-day delay in effective date.

II. Withdrawal of Recordkeeping Requirements

Under the provisions of the PRA, we are required to state in the preamble to final rules whether regulations contain reporting and recordkeeping requirements and whether these

requirements have been approved by OMB for implementation.

In documents published in the Federal Register on August 5, 1982 (47 FR 34096) and October 1, 1982 (47 FR 43648), we indicated that regulations at 42 CFR 416.43 (Conditions for coverage), 435.113 (Individuals ineligible for AFDC) and 435.122 (Individuals ineligible for SSI) contained reporting and recordkeeping requirements and that a separate notice would be published when OMB approved these requirements.

As a result of these statements, the Office of the Federal Register added effective date notes at the end of these sections of the CFR to the effect that the public is not required to comply with these requirements until OMB approval is received and notices are published in the Federal Register.

We have reviewed these requirements and find that they are not subject to approval by OMB using criteria contained in their final rule of March 31, 1983. Therefore, we are removing the effective date notes.

III. Impact Analyses

As noted above, this regulation is technical in nature and merely adds to the display in 42 CFR Chapter IV, additional OMB control numbers for approved information collection requirements contained in HCFA regulations, and removes editorial notices that are not applicable. Therefore, the Secretary has determined that this document does not meet the criteria for a major rule as defined in section 1(b) of Executive Order 12291. In addition, the Secretary certifies under 5 U.S.C. 605(b) as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this document would not have a significant economic impact on a substantial number of small entities.

IV. List of Subjects

42 CFR Part 400

Definitions, OMB control numbers, Reporting and recordkeeping requirements.

42 CFR Part 416

Ambulatory surgical centers, Assignment, Contracts (agreements), Medicare, Physicians, Reporting requirements, Surgical procedures.

42 CFR Part 435

Aid to Families with Dependent Children, Aliens, Categorically needy, Contracts (agreements—State plan), Eligibility, Grant-in-Aid program—health, Health facilities, Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental security income (SSI).

42 CFR Chapter IV is amended as follows:

PART 400—INTRODUCTION; DEFINITIONS

The authority citation for Part 400 reads as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

Section 400.310 is amended by adding in numerical order by CFR section, the following additional sections that contain collections of information and their OMB control numbers.

§ 400.310 Display of Currently Valid OMB Control Numbers

Sections in 42 CFR that contain collections of information	Current OMB control No.
405.1121, 405.1122, 405.1123, 405.1124, 405.1125, 405.1126, 405.1127, 405.1128, 405.1136, 405.1137	0938-0364
405.1202, 405.1221, 405.1223, 405.1228, 405.1229	0938-0365
405.1315, 405.1316, 405.1317	0938-0368
405.1716, 405.1717, 405.1720, 405.1721, 405.1722, 405.1736	0938-0338
442.307, 442.308, 442.309, 442.311, 442.313, 442.314, 442.316, 442.319, 442.320	0938-0370

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation for Part 416 reads as follows:

Authority: Secs. 1102, 1832(a)(2), 1833, 1869, and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 1395l, 1395aa).

2. The reporting and recordkeeping requirement in § 416.43 is confirmed as effective July 15, 1985, and therefore the effective date note following the section will be removed.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

1. The authority citation for Part 435 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The reporting and recordkeeping requirement in § 435.113 is confirmed as effective July 15, 1985, and therefore the effective date note following the section will be removed.

3. The reporting and recordkeeping requirement in § 435.122 is confirmed as effective July 15, 1985, and therefore the effective date note following the section will be removed.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; 13.774, Medicare—Supplementary Medical Insurance)

Dated: January 12, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: February 22, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-16640 Filed 7-12-85; 8:45 am]

BILLING CODE 4120-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 515 and 522

[APD 2800.12 CHGE14]

General Services Administration Acquisition Regulation; Application of Thresholds to Contracts With Options

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to add section 515.804-2 and to revise section 515.805-5 and 522.805 in order to provide clarification on determining the contract value when applying the thresholds for cost and pricing data, field pricing support, and equal opportunity preaward clearance to contracts with options. Miscellaneous editorial changes are made in various sections in Subparts 515.8 and 522.8. The intended effect is to improve the regulatory coverage.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Shirley Scott, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-3782.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1985, the General Services Administration published in the Federal Register (50 FR 15463), GSAR Notice No. 5-88 inviting comments from interested parties on these proposed changes to the regulations and provided a 30-day comment period. No public comments were received. Comments received from various elements within GSA have been analyzed, reconciled, and incorporated, when applicable, into the final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The

General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Flexibility Act (5 U.S.C. 601 et. seq.). The regulation only clarifies the application of an existing requirement of the Federal Acquisition Regulation. Accordingly, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 515 and 522

Government procurement.

1. The authority citation for Parts 515 and 522 reads as follows:

Authority: 40 U.S.C. 486(c).

2. The table of contents for Part 515 is amended by adding new Section 515.804–2 and 515.804–6, and by removing Section 515.804–70 as follows:

PART 515—CONTRACTING BY NEGOTIATION

Subpart 515.8—Price Negotiation

* * * * *

Sec.

515.804–2 Requiring certified cost or pricing data.

* * * * *

515.804–6 Procedural requirements.

* * * * *

3. Section 515.803–70 is amended by revising the introductory text and paragraphs (f) and (g) to read as follows:

515.803–70 Cost-reimbursement contracts (construction contracts).

The consideration and discussions during negotiations of construction contracts shall include, to the extent necessary to resolve uncertainties, such matters as—

* * * * *

(f) The time for completion, liquidated damages (if specified), insurance, and bonds; and

(g) The fixed fee and the basis upon which its amount was predicated. Factors (a) through (f) affect the amount of the fee.

4. Section 515.804–2 is added to read as follows:

515.804–2 Requiring certified cost or pricing data.

When determining the contract amount for purposes of applying the threshold at FAR 15.804–2 for requesting certified cost and pricing data, the value of the contract plus any priced options shall be considered. Exercise of a priced option is not considered a price adjustment and does not require submission of cost and pricing data.

5. Section 515.804–3 is revised to read as follows:

515.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) Pursuant to FAR 15.804–3(i), the head of the contracting activity, as defined in GSAR 502.1, is authorized to waive the statutory requirement for the submission of certified cost or pricing data.

(b) Requests for waiver will be submitted by the contracting director to the head of the contracting activity. Before submitting a waiver request, action will be taken at levels above the contracting officer to negotiate for the submission of the required cost or pricing data, or a formal determination made by the contracting director documenting the contract file with the reasons for not undertaking such higher level negotiations.

(c) The request for waiver will include a draft determination and finding that addresses: (1) Pertinent circumstances of the procurement necessitating the waiver of the requirement for certified cost or pricing data, (2) the price analysis techniques to be used if the award cannot be foregone, (3) the steps taken by higher authority to obtain the essential cost or pricing data, and (4) the practicability of obtaining the Government's requirements from other sources.

6. Section 515.804–6 is added to read as follows:

515.804–6 Procedural requirements.

Whenever an offeror refuses to provide the required cost or pricing data, the contracting officer shall refer the matter to the contracting director for resolution (see FAR 15.804–6(e)). Upon referral by the contracting officer, action will be taken by the contracting director to negotiate for the submission of the required cost or pricing data, unless the head of the contracting activity determines, in writing, not to undertake such higher level negotiations and the determination is documented in the contract file.

515.804–70 [Removed]

7. Section 515.804–70 is removed.

8. Section 515.805–5 is revised to read as follows:

515.805–5 Field pricing support.

(a) Contracting officers may request field pricing support on a case-by-case basis whenever assistance is required to evaluate price reasonableness. Within GSA, "field pricing support" is provided by the Assistant Inspector General-Auditing, or the Regional Inspector General-Auditing, as appropriate.

(b) When determining the contract amount for purposes of applying the threshold at FAR 15.805–5 for requesting field pricing support, the value of the contract plus any priced options shall be considered.

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

9. Section 522.803 is revised to read as follows:

522.803 Responsibilities.

The contracting officer shall submit any questions under FAR 22.803(d) to assigned legal counsel for resolution. Questions that cannot be resolved by counsel will be referred to the head of the contracting activity for resolution.

10. Section 522.804–1 is revised to read as follows:

522.804–1 Nonconstruction.

In addition to the requirements of FAR 22.804, each contractor and subcontractor who serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, shall develop a written affirmative action compliance program for each of its establishments within 120 days from the start of its first such Government contract or subcontract.

11. Section 522.804–70 is revised to read as follows:

522.804–70 Reports and other required information.

Nonexempt contractors shall submit information reports in accordance with the Equal Opportunity clause on Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1, to the Joint Reporting Committee with an information copy to the contracting officer within 30 days after award of a contract unless a report has been submitted within the 12 months preceding the award date. Subsequent reports will be submitted annually on or before March 31 (see 41 CFR 60–1.7). If additional information is required regarding the submission of the EEO–1 report, contact the Office of Federal Contract Compliance Programs (OFCCP) regional office.

12. Section 522.805 is revised to read as follows:

522.805 Procedures.

(a) When determining the contract amount for purposes of applying the threshold at FAR 22.805(a) for requesting

preaward EEO reviews, the value of the contract plus any priced option shall be considered. A contract modification exercising an option is not considered new effort and does not require a preaward clearance.

(b) Requests for preaward reviews under FAR 22.805(a)(5) shall be made by the contracting officer directly to the Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor, for the region in which the contract is to be performed.

Dated: July 1, 1985.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 85-16709 Filed 7-12-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 50713-5113]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the groundfish fishery of the Gulf of Alaska. Information has just come to light that noncompliance by certain fishermen with previous closures by the Secretary of the sablefish fishery in the Gulf of Alaska has occurred, and that further such noncompliance may be imminent. This new information has made it critical that doubts about the legal validity of these closures be resolved immediately, in order to ensure that the closures can be enforced, thereby preventing serious harm to the sablefish resources of the Gulf of Alaska. This action specifically authorizes the Secretary to close fishing for single species of groundfish, thus resolving this legal issue and assuring the enforceability of these closures.

EFFECTIVE DATE: This rule is effective from July 10, 1985.

ADDRESS: The environmental assessment prepared for this action may be obtained from Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Chief, Fishery Management Operations Division, Alaska Region, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the fishery conservation zone (3-200 miles offshore) of the Gulf of Alaska is managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and was implemented December 1, 1978 (43 FR 52709, November 14, 1978). It has been amended twelve times. The Council has adopted an amendment (Amendment 14), which is currently under consideraton by NMFS for implementation by the Secretary.

The rules that implement the FMP for fishing by vessels of the United States appear in 50 CFR Part 672. Section 672.20(b) provides as follows:

(1) If the Regional Director [for the Alaska Region, NFMS[determines that the OY [optimum yield] for any [groundfish] species in any regulatory area or district [of the Gulf of Alaska] will be reached, the Secretary shall issue a field order pursuant to § 672.22(a) prohibiting fishing for all species in that fishing area, except that the Secretary shall not prohibit, under this section, fishing for sablefish by fishing vessels using longline gear unless the Regional Director determines that the OY for sablefish in that fishing area will be reached.

(2) Fishing for species of groundfish by vessels of the United States in the applicable regulatory area contrary to any field order issued under this paragraph is prohibited from the effective date of such field order except that fishing for sablefish with longline gear is not prohibited until the effective date of a field order prohibiting longline fishing for sablefish in that fishing area.

Section 672.22(a) prescribes the procedures for issuance of field orders by the Secretary.

Under these provisions, the Regional Director has found that the 1985 OY for sablefish in the Southeast Outside, East Yakutat, and West Yakutat districts, the Central Area, and the Western Area of the Gulf of Alaska has been reached. Accordingly, acting under authority delegated by the Secretary, the Regional Director published field orders (notices) closing these districts and areas to sablefish fishing for the remainder of 1985 on March 18 (Southeast Outside and East Yakutat districts, 50 FR 11368, March 21, 1985), May 15 (West Yakutat District, 50 FR 20795, May 20, 1985), May 23 (Central Area, 50 FR 21852, May 29, 1985), and June 25 (Western Area, 50 FR 26774, June 28, 1985). The argument can be made, however, that § 672.20(b), quoted above, requires closure of all fishing for groundfish in an area or district when the sablefish OY for that area or district has been reached.

During the past two weeks, NMFS has discovered that several significant violations of the 1985 closures may already have taken place. The ability of NOAA to take appropriate enforcement action has been inhibited by the concern that the arguable inconsistency of the closures with § 672.20(b) would be raised as a defense. The same concern threatens to affect the Agency's response to a number of other apparent violations of the closures that have been detected. More significantly, word of the Agency's difficulty in these cases has reached fishermen who have been complying with the closure notices. These fishermen now perceive themselves to be in a situation in which their competitors who have not complied may benefit from such noncompliance, to the detriment of those who have complied. Representatives of these fishermen have informed NMFS that, unless the validity of these closure notices is clarified promptly, they will consider themselves to be under no obligation to continue their compliance with them, and will resume fishing for sablefish in the areas and districts closed by the notices.

The difficulties now being encountered by the Agency in enforcing these closures, together with the threat of additional noncompliance with them unless these difficulties are resolved, raises the immediate danger of serious harm to sablefish resources in the Gulf of Alaska. These sablefish stocks are currently depressed to levels that are insufficient to produce maximum sustainable yield (MSY). This is reflected in the OYs that have been prescribed for these stocks in the FMP, which are low enough to allow rebuilding of the stocks to levels that will produce MSY. The additional mortality that would be inflicted on these stocks by noncompliance with the closures of the magnitude that has been threatened could seriously reduce the capacity of these resources to sustain viable commercial fisheries for years to come. The Magnuson Act thus requires the Secretary to take prompt action to eliminate this threat by resolving immediately all uncertainty about the validity of these closures.

One way in which to accomplish this would be to close all groundfish fishing

in the areas and districts that they cover. While this would eliminate uncertainty about the closures' validity, it would also lead to the serious economic harm to the U.S. fishing industry that led the Secretary to limit the scope of the closures in the first place. This harm would be especially great in the Central Area of the Gulf of Alaska. In this area, various U.S. groundfish trawl fisheries have been developing and expanding rapidly in recent years. Closure of these fisheries at this developmental stage before the OYs of their target species are reached would cause severe financial loss to those already engaged in harvesting, processing, and supporting these fisheries and would discourage future investment in them. As was noted above, this result would be contrary to the Magnuson Act, which specifically includes as one of its purposes the encouragement of development by the U.S. fishing industry.

Thus, the only acceptable way to resolve the question of the validity of the closures is to amend § 672.20(b) to authorize such closures specifically. Under this amendment, when the Regional Director finds that the OY for groundfish species in a district or area has been reached, the Secretary will normally be required to close fishing for only that particular species in that district area. The Secretary would be required to close or limit fishing for other species as well only when this would be necessary to comply with the requirement of Magnuson Act section 301(a)(1) that fishery conservation and management measures prevent overfishing. This would be necessary, for example, when, in fishing for other groundfish species, the expected incidental catch of the species for which OY has been attained would reduce the long-term capacity of the fully-harvested species to produce MSY. This does not currently appear to be the case for sablefish in the Gulf of Alaska, although the abundance of these sablefish stocks is sufficiently low that special care will have to be taken to prevent covert targeting on sablefish in continued fishing for other groundfish species.

This action amends § 672.20(b) in the manner just described. Because of the imminence of harm to Gulf of Alaska sablefish resources unless it takes effect immediately, the amendment is being promulgated as an emergency regulation under section 305(e) of the Magnuson Act. It will thus be in effect for 90 days, with the possibility of renewal for an additional 90 days with the concurrence of the Council. During this period, the Secretary will undertake a separate rulemaking proceeding, allowing full opportunity for prior public comment, to establish a long-term resolution of the problems that have made this emergency rule necessary.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that the reasons described above justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of section 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

The Assistant Administrator prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the address listed above.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: July 10, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, Part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.20, paragraph (b) is revised, effective from July 10, 1985 until October 8, 1985, to read as follows:

§ 672.20 Optimum yield.

* * * * *

(b) Notices of closure.

(1) If the Regional Director determines that the OY for any species in any regulatory area or district in Table 1 of paragraph (a) of this section has been or will be reached, the Secretary will issue a notice under § 672.22(a) closing fishing for that species in that area or district, and declaring that species in that area or district to be a prohibited species as defined in paragraph (d) of this section. During the time that such a closure is in effect, the operator of every vessel regulated by this Part will minimize the catch of that species in the applicable area or district.

(2) If, in making a determination under paragraph (b)(1) of this section, the Regional Director also determines that continued fishing for other groundfish species in the area or district concerned may lead to overfishing of the species for which the OY has been or will be reached, the Secretary will, in the notice required by that paragraph, also prohibit or limit such fishing for other groundfish species in a manner that will prevent overfishing of the species for which the OY is taken.

* * * * *

[FR Doc. 85-16749 Filed 7-10-85; 4:03 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 50713-5113]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region,

NMFS (Regional Director), confirms his previous determinations that the optimum yield (OY) for sablefish in all regulatory areas and districts of the Gulf of Alaska for 1985 has been harvested. Under a new emergency regulation specifically authorizing such closures, the Secretary of Commerce (Secretary) therefore closes fishing for sablefish in the Gulf of Alaska for the rest of 1985. This notice is necessary to resolve doubts about the validity of previous closures of this fishery that predate the emergency rule. These doubts have caused difficulty in enforcement of those previous closures, and have raised the likelihood of widespread noncompliance with them by sablefish fishermen. This action is intended to prevent the harm to sablefish stocks that could result from these problems with the previous closures.

DATES: This notice is effective from noon, Alaska Daylight Time, July 12, 1985, until midnight, Alaska Standard Time, December 31, 1985.

ADDRESS: The data upon which this notice is based are available for public inspection during business hours (8:00 a.m. to 4:30 p.m. weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Chief, Fishery Management Operations Division, Alaska Region, NMFS), 907–586–7230; or Patrick J. Travers (Alaska Regional Counsel, NOAA), 907–586–7414.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) governs that fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations governing U.S. fishing vessels under the FMP appear at 50 CFR Part 672. The FMP specifies the OYs for individual groundfish species and species groups on an annual basis, as required under the Magnuson Act. In the case of sablefish, a separate OY is specified for each of the regulatory areas and districts of the Gulf of Alaska, which are defined at § 672.2.

Until now, § 672.20(b) has required that, when the Regional Director determines that the OY for sablefish in a regulatory area or district is harvested, the Secretary must close fishing for all groundfish species in that area or district for the rest of the year. In a series of notices effective on March 18 (50 FR 11368, March 21, 1985), May 15 (50 FR 20795, May 20, 1985), May 23 (50 FR 21852, May 29, 1985), and June 25 (50 FR 26774, June 28, 1985) of this year, the Regional Director announced that the OY for sablefish in the areas and districts of the Gulf of Alaska for 1985 had been harvested. Based upon his findings, the Secretary in the same notices closed fishing for sablefish in these areas and districts, ultimately closing fishing for this species in the entire Gulf of Alaska. At the time these notices were issued, NMFS was aware of a legal question concerning their validity. This question arose because the notices closed only fishing for sablefish, while § 672.20(b), under which the notices were issued, arguably authorized only closure of fishing for all groundfish species in the affected areas and districts. The Secretary declined to follow this interpretation of § 672.20(b), because to do so would have caused serious economic harm to fisheries for Gulf of Alaska groundfish other than sablefish, frustrating their development, contrary to the Magnuson Act.

During June 1985, a trawl vessel was apprehended in Sitka, Alaska, having on board 36 tons of sablefish that were admittedly caught in violation of these closures. There was also evidence that several other significant violations of the closures had taken place. In attempting to take appropriate enforcement action in response to these violations, NOAA has been seriously inhibited by the concern that inconsistency of the closures with § 672.20(b) would be raised as an effective defense to such action. More significantly, fishermen who were complying with the closures, upon learning that their competitors who violated them might not be subject to effective sanctions, began to threaten to resume fishing for sablefish in the Gulf of Alaska themselves. Such massive noncompliance with the closures would raise the danger of serious harm to Gulf of Alaska sablefish stocks, which are currently depressed at levels that are insufficient to produce maximum sustainable yield.

In response to this problem, the Secretary has today published an emergency regulation under section 305(e) of the Magnuson Act. This emergency rule changes § 672.20(b) to authorize specifically the closure by the Secretary of fishing for a single species of groundfish in an area or district when the OY for that species in that area or district has been harvested. Closure or limitation of fishing, through incidental catches, for other groundfish species in that area or district would be required only when necessary to prevent overfishing of the fully harvested species.

Under the emergency rule, the Regional Director hereby confirms his findings in the earlier notices cited above that the OY for sablefish for 1985 in all regulatory areas and districts of the Gulf of Alaska has been harvested. He also finds that continued fishing for other groundfish species in these areas and districts will not lead to overfishing of sablefish. The OY for sablefish throughout the Gulf of Alaska was specified at levels well below those at which overfishing would occur. It is not expected that the additional sablefish mortality that will occur through incidental catches in fisheries for other groundfish species during the rest of 1985 will cause the total harvest of sablefish for the year to approach overfishing levels.

Based upon the Regional Director's findings, the Secretary closes fishing for sablefish under the emergency rule in all regulatory areas and districts of the Gulf of Alaska until midnight, Alaska Standard Time, December 31, 1985. During the time this closure is in effect, sablefish will be a prohibited species for purposes of § 672.20(d), and the operator of each U.S. vessel fishing for groundfish in any area or district of the Gulf of Alaska must minimize its catch of sablefish.

This closure will become effective when this notice is filed for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

This action is required by § 672.20(b) and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: July 10, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Se[illegible]

[FR Doc. 85-167[illegible]10-85; 4:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 135
Monday, July 15, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to govern the establishment of regular nonappropriated fund wage schedules for U.S. citizens who are Federal Wage System employees in foreign areas. Wage schedules established under this methodology will provide rates of pay representative of the entire geographic area from which the employees are recruited.

DATE: Comments on the proposed methodology and resulting rates must be submitted on or before August 14, 1985.

ADDRESS: Send or deliver written comments to Reginald M. Jones, Jr., Assistant Director for Pay Programs, Compensation Group, OPM, Room 3353, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Allan Summers, (202) 632–7830.

SUPPLEMENTARY INFORMATION: OPM establishes regular nonappropriated fund wage schedules and rates for U.S. citizens who are wage employees in foreign areas. The methodology and instructions for the nonappropriated fund schedules have been published in subchapter S–11 in Federal Personnel Manual Supplement 532–2, and cover subjects such as the effective date of annual schedule adjustments, area of application and agency coverage.

No changes are being made in the longstanding practices followed in constructing and issuing the nonappropriated fund foreign area wage schedules. Regulatory language previously published in FPM Supplement 532–2 will be incorporated into Part 532 of Title 5, Code of Federal Regulations.

The 1985 nonappropriated fund foreign area schedules will be issued as soon as final regulations are published and will be effective retroactive to the first day of the first pay period beginning on or after April 6, 1985. Application of the prescribed methodology would result in scheduled rates for calendar year 1985 as follows:

NA grades	NA rates				
	1	2	3	4	5
1	3.86	3.91	3.96	4.11	4.27
2	4.03	4.20	4.37	4.54	4.70
3	4.42	4.60	4.78	4.97	5.15
4	4.77	4.97	5.17	5.37	5.57
5	5.13	5.33	5.53	5.76	5.98
6	5.45	5.68	5.89	6.12	6.35
7	5.75	6.00	6.25	6.48	6.73
8	6.10	6.36	6.62	6.88	7.13
9	6.47	6.74	7.01	7.28	7.55
10	6.82	7.11	7.38	7.67	7.96
11	7.16	7.46	7.76	8.07	8.37
12	7.50	7.84	8.15	8.48	8.78
13	7.87	8.19	8.51	8.84	9.18
14	8.20	8.54	8.90	9.24	9.58
15	8.53	8.90	9.28	9.61	9.97

NL grades	NL rates				
	1	2	3	4	5
1	4.02	4.19	4.36	4.53	4.69
2	4.44	4.62	4.80	4.99	5.17
3	4.86	5.06	5.26	5.46	5.67
4	5.25	5.47	5.69	5.91	6.13
5	5.55	5.79	6.03	6.27	6.51
6	5.96	6.21	6.45	6.68	6.94
7	6.32	6.60	6.87	7.13	7.40
8	6.73	7.01	7.29	7.56	7.86
9	7.13	7.42	7.71	8.01	8.31
10	7.49	7.83	8.14	8.44	8.75
11	7.89	8.21	8.54	8.86	9.20
12	8.26	8.62	8.96	9.31	9.64
13	8.65	9.01	9.36	9.72	10.10
14	9.03	9.41	9.80	10.16	10.54
15	9.39	9.80	10.18	10.57	10.97

NS grades	NS rates				
	1	2	3	4	5
1	4.89	5.09	5.29	5.50	5.70
2	5.26	5.48	5.70	5.92	6.14
3	5.64	5.88	6.12	6.35	6.59
4	6.00	6.25	6.50	6.75	7.00
5	6.29	6.55	6.81	7.08	7.34
6	6.61	6.89	7.17	7.44	7.72
7	6.96	7.27	7.57	7.86	8.15
8	7.33	7.63	7.93	8.23	8.54
9	7.75	8.09	8.42	8.73	9.06
10	8.15	8.51	8.85	9.20	9.55
11	8.61	8.97	9.33	9.66	10.04
12	9.02	9.39	9.79	10.15	10.53
13	9.43	9.84	10.23	10.62	11.02
14	9.85	10.26	10.68	11.08	11.49
15	10.25	10.66	11.10	11.52	11.96

NS grades	NS rates				
	1	2	3	4	5
16	10.66	11.12	11.58	12.02	12.48
17	11.11	11.58	12.03	12.50	12.96
18	11.54	12.02	12.50	12.98	13.47
19	11.95	12.46	12.96	13.46	13.95

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.
Loretta Cornelius,
Acting Director.

Accordingly, OPM is proposing to amend 5 CFR Part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority for Part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346.

2. Section 532.235 is added to read as follows:

§ 532.235 Regular nonappropriated fund wage schedules in foreign areas.

(a) The Office of Personnel Management shall issue regular nonappropriated fund wage schedules for U.S. citizens who are wage employees in foreign areas. These schedules shall provide rates of pay for nonsupervisory, leader, and supervisory employees.

(b) Schedules shall be—

(1) Computed on the basis of a simple average of all regular nonappropriated fund wage area schedules defined for the 48 contiguous states and the District of Columbia in effect on the first Sunday in January; and

(2) Effective on the first Sunday in January of each year.

(c) Payline rates for each nonsupervisory grade shall be derived by computing a simple average of each

payline rate for each of the 15 grades of all nonsupervisory wage rate schedules designated in paragraph (b) of this section.

(d) Through the use of the payline rates derived under the schedule averaging process, the step rates for each of the 15 grades of the nonsupervisory schedule and all scheduled pay rates for leaders and supervisors shall be developed by using the standard formulas established in 5 CFR 532.203, Structure of regular wage schedules.

(e) Notice of final rates will be published in the **Federal Register.** Due to yearly adjustments these rates will not be codified in this subsection since the rates would be obsolete by the time they are published.

[FR Doc. 85-16747 Filed 7-12-85; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to govern the establishment of regular appropriated fund wage schedules for U.S. citizens who are Federal Wage System employees in foreign areas and certain U.S. possessions. Wage schedules established under this methodology will provide rates of pay representative of the entire geographic area from which the employees are recruited.

DATE: Comments on the proposed methodology and resulting rates must be submitted on or before August 14, 1985.

ADDRESS: Send or deliver written comments to Reginald M. Jones, Jr., Assistant Director for Pay Programs, Compensation Group, OPM, Room 3353, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Allan Summers, (202) 632-7830.

SUPPLEMENTARY INFORMATION: OPM establishes regular appropriated fund wage schedules and rates for U.S. citizens who are wage employees in foreign areas. The methodology for establishing foreign area schedules was initially approved on May 23, 1974, in consultation with the Federal Prevailing Rate Advisory Committee (FPRAC). Using identical methodology approved by OPM, the Department of Defense establishes wage schedules for Guam and Midway and the Department of Transportation establishes wage schedules for American Samoa. The methodology and instructions have been published in subchapter S-11 in Federal Personnel Manual Supplement 532-1, and cover subjects such as the effective date of annual schedule adjustments, area of application and agency coverage.

These proposed regulations implement the procedure, initiated in 1984, under which the foreign area appropriated fund schedules and the schedules for Guam, Midway and American Samoa were computed on the average of all 135 appropriated fund regular schedules rather than on the average of 23 schedules as obsolete material in Federal Personnel Manual Supplement 532-1 currently provides. The proposed regulations will ensure that the foreign area wage schedules are more representative of the actual area of recruitment since a review showed that only 4 percent of the wage grade employees in foreign locations were recruited from the areas represented by the 23-area schedules. No other changes are made in the longstanding practices followed in constructing and issuing foreign area wage schedules. Regulatory language previously published in FPM Supplement 532-1 will be incorporated into Part 532 of Title 5, Code of Federal Regulations. The 1985 appropriated fund foreign area schedules will be issued as soon as final regulations are published and will be effective retroactive to the first day of the first pay period beginning on or after April 1, 1985. Application of the 135 area methodology would result in scheduled rates for calendar year 1985 as follows:

WG grade	WG				
	1	2	3	4	5
1	6.49	6.76	7.03	7.30	7.57
2	6.92	7.21	7.50	7.79	8.08
3	7.34	7.65	7.96	8.26	8.57
4	7.77	8.09	8.41	8.74	9.06
5	8.16	8.50	8.84	9.18	9.52
6	8.58	8.94	9.30	9.66	10.01
7	9.00	9.38	9.76	10.13	10.51
8	9.43	9.82	10.21	10.61	11.00
9	9.84	10.25	10.66	11.07	11.48
10	10.26	10.69	11.12	11.55	11.97
11	10.68	11.12	11.56	12.01	12.45
12	11.08	11.54	12.00	12.46	12.92
13	11.49	11.97	12.45	12.93	13.41
14	11.90	12.40	12.90	13.38	13.89
15	12.31	12.82	13.33	13.85	14.36

WL grade	WL				
	1	2	3	4	5
1	7.14	7.44	7.74	8.04	8.33
2	7.61	7.93	8.25	8.56	8.88
3	8.08	8.42	8.76	9.09	9.43
4	8.54	8.90	9.26	9.61	9.97
5	8.96	9.35	9.72	10.10	10.47

WL grade	WL				
	1	2	3	4	5
6	9.44	9.83	10.22	10.62	11.01
7	9.91	10.32	10.73	11.15	11.56
8	10.37	10.80	11.23	11.66	12.10
9	10.83	11.26	11.73	12.19	12.63
10	11.29	11.76	12.23	12.70	13.17
11	11.74	12.23	12.72	13.21	13.70
12	12.18	12.69	13.20	13.71	14.21
13	12.64	13.17	13.70	14.23	14.75
14	13.09	13.64	14.19	14.73	15.28
15	13.54	14.10	14.66	15.23	15.79

WS grade	WD-WN pay level	WS				
		1	2	3	4	5
1		9.57	9.97	10.37	10.77	11.77
2		10.00	10.42	10.84	11.25	11.67
3	1	10.43	10.86	11.29	11.73	12.16
4	2	10.85	11.30	11.75	12.20	12.66
5	3	11.24	11.71	12.18	12.65	13.12
6	4	11.66	12.15	12.64	13.12	13.61
7	5 1	12.09	12.59	13.09	13.60	14.10
8	6 2	12.51	13.03	13.55	14.07	14.59
9	7 3	12.92	13.46	14.00	14.54	15.08
10	8 4	13.34	13.90	14.46	15.01	15.57
11	9 5	13.77	14.34	14.91	15.48	16.06
12	10 6	14.21	14.81	15.51	16.10	16.70
13	11 7	15.00	16.03	16.25	16.88	17.51
14	8	15.81	16.47	17.13	17.79	18.45
15	9	16.78	17.45	18.15	18.86	19.54
16		17.82	18.56	19.30	20.04	20.79
17		19.02	19.81	20.60	21.39	22.19
18		20.34	21.18	22.04	22.89	23.73
19		21.80	22.71	23.62	24.53	25.44

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

Accordingly, OPM proposing to amend 5 CFR Part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority for Part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346.

2. Section 532.233 is added to read as follows:

§ 532.233 Regular appropriated fund wage schedules in foreign areas and certain U.S. possessions.

(a) The Office of Personnel Management will issue regular appropriated fund wage schedules for U.S. citizens who are wage employees in foreign areas. The Department of Defense will issue wage schedules for employees in Guam and Midway and the Department of Transportation will issue wage schedules for employees in American Samoa. These schedules shall provide rates of pay for nonsupervisory, leader, supervisory and production facilitating employees.

(b) Schedules shall be—

(1) Computed on the basis of a simple average of all regular appropriated fund wage area schedules in effect on December 31; and

(2) Effective on the first day of the first pay period that begins on or after January 1 of the succeeding year.

(c) Payline rates for each nonsupervisory grade shall be derived by computing a simple average of each payline rate for each of the 15 grades of all nonsupervisory wage rate schedules designated in paragraph (b) of this section.

(d) Through the use of the payline rates derived under the schedule averaging process, the step rates for each of the 15 grades of the nonsupervisory schedule and all scheduled pay rates for leaders and supervisors shall be developed by using the standard formulas established in 5 CFR 532.203, Structure of regular wage schedules.

(e) The rates of pay for production facilitating employees shall be set identical to that of regular supervisory grades as established in the table below.

WG nonsupervisory level	WN supervisory level	=	Second rate of WS grade
1		=	3
2		=	4
3		=	5
4		=	6
5	1	=	7
6	2	=	8
7	3	=	9
8	4	=	10
9	5	=	11
10	6	=	12
11	7	=	13
	8	=	14
	9	=	15

(f) Notice of final rates will be published in the **Federal Register**. Due to yearly adjustments these rates will not be codified in this subsection since the rates would be obsolete by the time they are published.

[FR Doc. 85-16748 Filed 7-12-85; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 999

Specialty Crops—Import Regulations; Proposed Changes in Raisin Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This is a proposal to change grade requirements for imported Thompson Seedless and Monukka raisins, and to include grade requirements for Golden Seedless raisins in the import regulation. This proposal is pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, which requires raisins offered for importation into the United States to meet the same or comparable requirements applied to domestic raisins under a Federal marketing order. Changes in the domestic grade requirements for packed seedless raisins under the Federal marketing agreement and order program for California raisins, and other factors, necessitate changes in the requirements for imported Thompson Seedless and Monukka raisins pursuant to that act.

DATE: Comments must be received by August 26, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Telephone Number (202) 447-5053.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposal will not have a significant economic impact on a substantial number of small entities.

The raisin import regulation (7 CFR 999.300) is effective pursuant to the requirements of section 8e of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674). That section requires the Secretary of Agriculture to issue, after reasonable notice, grade requirements on imported raisins which are the same as, or comparable to, those applied to domestic raisins under the marketing agreement and Order No. 989, both as amended (50 FR 1830). The marketing agreement and order regulate the handling of raisins produced from grapes grown in California and also are effective under the same act.

Changes in the domestic requirements for packed seedless raisins under the marketing agreement and order became effective November 15, 1984 (49 FR 33992), and pertain to tolerances for maturity, pieces of stem, and substandard and undeveloped raisins prescribed in the effective U.S. Standards For Grades of Processed Raisins (7 CFR 52.1841-52.1858). At that time, the minimum percent of well-matured or reasonably well-matured raisins was increased from 55 percent to 62.5 percent. On November 15, 1985, that percentage will increase from 62.5 percent to 70 percent. Also, effective November 15, 1984, the tolerances for pieces of stem, and undeveloped and substandard raisins, in U.S. Grade B, in lieu of U.S. Grade C tolerances, became effective for select and mixed-sized packed raisins. The tolerances for those factors for midget-sized raisins remained at the U.S. Grade C level. The changes were effectuated to improve the quality of those raisins and improve their competitiveness in domestic and foreign markets.

During the development of the raisin import regulation in 1972 the Department found that foreign drying and processing techniques differed from those used in California, and that the resulting foreign produced Thompson Seedless raisins were lighter in color and softer than domestically produced raisins. Because of these variations, it was determined that the application of the requirements for color, stems, and capstems under the marketing order for California Thompson Seedless raisins to foreign produced Thompson Seedless raisins was not practicable and that a comparable standard was necessary.

Therefore, a finding was made under the act that there were variations in the characteristics between the domestic and imported commodity warranting establishment of different standards for imported raisins based on comparability. The requirements on imported raisins: (1) Exempted those

raisins from color requirements; (2) permitted not more than two pieces of stem per 2.2 pounds in lieu of the marketing order requirements of not more than 4 pieces of stem per 6 pounds; and (3) permitted not more than 50 capstems for 1.1 pounds in lieu of 35 capstems per pound.

The color requirements in effect under the U.S. Standards for Grades of Processed Raisins (7 CFR 52.1841–52.1858) when the import regulation was issued in 1972 were not as flexible as the color requirements currently in effect. The standards then in effect did not permit inspectors to recognize color variations in domestic and imported Thompson Seedless raisins, and in the absence of the color exemption, the lighter colored Thompson Seedless raisins offered for importation would not have met the same requirements as those imposed on domestic raisins under the marketing order. The current standards for both domestic and imported raisins offer inspectors a greater degree of flexibility in recognizing color variations, and the color exemption no longer is necessary and is proposed to be deleted.

With regard to capstems and pieces of stem, very few lots of imported raisins have failed solely because of excessive pieces of stem and/or capstems. Moreover, imported raisins can be and often are processed to the same extent as California raisins against the tighter domestic tolerances for pieces of stem and capstems, and the reasons originally justifying the different tolerances for pieces of stem and capstems because of the tenderness of the imported product no longer seem to exist. The proposals hereinafter set forth prescribe tolerances for those factors which are the same as those applied to domestic raisins under the marketing order.

The raisin import regulation currently prescribes requirements for Thompson Seedless raisins, Muscat raisins, Layer Muscat raisins, Monukka raisins, and Currant raisins. In recent years, however, increasing quantities of Golden Seedless raisins similar to those produced in California have been imported. Therefore, import requirements for this varietal type of raisin are proposed to be added to the import regulation. The proposed requirements are the same as those applied under the marketing order.

List of Subjects in 7 CFR Part 999

Food grades and standards, Imports, Dates, Walnuts, Prunes, Raisins, and Filberts/Hazelnuts.

PART 999—[AMENDED]

1. The authority citation for 7 CFR 999.300 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 999.300 is amended by revising paragraph (a)(2) and paragraph (b) to read as follows:

§ 999.300 Regulation governing importation of raisins.

(a) * * *

(2) "Varietal type" means the applicable one of the following: Thompson Seedless raisins, Muscat raisins, Layer Muscat raisins, Currant raisins, Monukka raisins, and Golden Seedless raisins.

* * * * *

(b) *Grade and size requirements.* The importation of raisins into the United States is prohibited unless the raisins are inspected and certified as provided in this section. Except as provided in paragraph (e)(2) of this section, no person may import raisins into the United States unless such raisins have been inspected and certified by a USDA inspector as to whether or not the raisins are of a varietal type, and if a varietal type, as at least meeting the following applicable grade and size requirements, which requirements are the same as those imposed upon domestic raisins handled pursuant to Order No. 980, as amended (Part 989 of this chapter):

(1) With respect to Thompson Seedless raisins—the requirements of U.S. Grade C as defined in the effective United States Standards of Grades of Processed Raisins (§§ 52.1841–52.1858 of this title): *Provided,* That at least 70 percent, by weight, of the raisins shall be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized raisin lots, the raisins shall at least meet the U.S. Grade B tolerances for pieces of stem, and undeveloped and substandard raisins, and small (midget) sized raisins shall meet the U.S. Grade C tolerances for those factors;

(2) With respect to Muscat raisins—the requirements of U.S. Grade C as defined in said standards;

(3) With respect to Layer Muscat raisins—the requirements of U.S. Grade B as defined for "Layer or Cluster Raisins with Seeds" in said standards, except for the provisions therein relating to moisture content;

(4) With respect to Currant raisins—the requirements of U.S. Grade B as defined in said standards;

(5) With respect to Monukka raisins—the requirements for Thompson Seedless Raisins prescribed in paragraph (b)(1) of this section, except that the tolerance for moisture shall be 19 percent rather than 18 percent;

(6) With respect to Golden Seedless raisins—the requirements prescribed in paragraph (b)(1) of this section for Thompson Seedless raisins and the color requirements for "colored" as defined in said standards.

Dated: July 10, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 85–16897 Filed 7–12–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 341

Certificates of Citizenship

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The Immigration and Naturalization Service is experiencing backlogs in the processing of applications for certificates of citizenship and feels that the present regulation mandating an interview in all cases has created some of the burden. This proposed revision would not require an interview in certain cases and would allow the application to be remoted for processing.

DATE: Comments must be received on or before September 13, 1985.

ADDRESS: Please submit written comments in duplicate to the Director of Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

For Specific Information: Raymond R. Jaroneski, Jr., Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633–5014.

SUPPLEMENTARY INFORMATION: The current regulation at 8 CFR 341.2(a) provides for each applicant for citizenship to be interviewed even though the application is approvable based on its supporting documents. The Service feels that this is a major

delaying factor in the adjudication of these applications. One of the goals in the Commissioner's FY '85 Priorities Management System is to eliminate the naturalization backlogs and streamline adjudication of applications by revising regulations that will allow the remoting of certain applications.

This regulation change would allow those applications submitted by applicants living in the United States that are accompanied by either the Department of State Form FS240 (Report of Birth Abroad of A Citizen of the United States); an unexpired United States passport issued initially for a full five/ten year period to the applicant as a citizen of the United States; or by verification of the applicant's parents' naturalization, to be remoted for processing. In all other instances, the applications would be processed by the Service office having jurisdiction over the application and interviews would continue to be conducted.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, will not have a sufficient economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 341

Administrative practice and procedure, Citizenship and naturalization.

PART 341—CERTIFICATES OF CITIZENSHIP

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for section 341 continues to read as follows:

Authority: Secs. 103 and 341 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1452).

2. Section 341.2 would be amended by revising paragraph (a) to read as follows:

§ 341.2 Examination upon application.

(a) *Personal appearance of claimant and parent or guardian.*

(1) *Testimony not required.* An application received at a Service office having jurisdiction over the applicant's residence will be processed without the need for interview if accompanied by one or more of the following:

(i) A State Department Form FS–240 (Report of Birth Abroad of a Citizen of the United States);

(ii) An unexpired United States passport issued initially for a full five/ten year period to the applicant as a citizen of the United States;

(iii) Or the applicant's parents' naturalization records.

In these cases, a preponderance of the evidence will be considered to have been met and the application will be processed on such evidence. This does not preclude a supervisory officer from requiring an interview, described in paragraph (a)(2) of this section if there is a question of reliable evidence.

(2) *Testimony required.* Each claimant, when notified to do so, shall appear in person before an assigned officer for examination under oath or affirmation upon the application. A person under 18 years of age must have a parent or guardian apply, appear, and testify for the applicant unless one is unavailable and the district director is satisfied that the claimant is old enough to provide reliable testimony. The same rule will apply for incompetent applicants. In all cases reliable testimony should be obtained. At the examination the claimant and the acting parent or guardian, if necessary, shall present testimony and evidence pertinent to the claim to citizenship and shall have the right to meet any evidence adverse thereto and to cross-examine witnesses called by the Government.

* * * * *

Dated: June 27, 1985.

Harriet B. Marple,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85–16775 Filed 7–12–85; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 343a

Naturalization and Citizenship Papers Lost, Mutilated, or Destroyed; New Certificate in Changed Name, Certified Copy of Repatriation Proceedings

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule would eliminate a mandated interview in the processing of applications for the replacement of naturalization and citizenship papers that have been lost, mutilated or destroyed or where a name change has occurred. An interview would only be required when the reviewing officer determines it advisable. This change will decrease backlogs in the adjudications program and provide better service to the public by permitting the remoting of these applications.

DATE: Comments must be received on or before September 13, 1985.

ADDRESS: Please submit written comments in duplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633–3048.

For Specific Information: Raymond R. Jaroneski, Jr., Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633–5014.

SUPPLEMENTARY INFORMATION: The Commissioner of the Immigration and Naturalization Service has determined and directed in his FY '85 Priorities the elimination of backlogs in the Examination units by focusing on those applications now requiring an interview, regardless of the apparent bona fides of the case. This rule would permit those readily approvable cases to be sent to the remote site to be processed without an inteview.

This will alleviate some of the burden placed upon the field offices by ensuring that resources are applied in the most efficient manner to those cases requiring a more intensive examination.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This order would not be a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 343a

Citizenship and naturalization.

Accordingly, it is proposed to amend Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

1. The authority for 8 CFR Part 343a continues to read as follows:

Authority: Secs. 103 and 343 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1454).

2. Section 343a.1 would be amended by revising paragraph (c) to read as follows:

§ 343a.1 Application for replacement of or for new naturalization or citizenship paper.

* * * * *

(c) *Disposition.* The applicant shall only be required to appear in person before an assigned officer for interrogation under oath or affirmation in those cases that require such an interrogation as determined by the reviewing officer. If an application for a new certificate of naturalization, citizenship, or repatriation is approved, the new certificate shall be issued and delivered in person upon the applicant's signed receipt therefor. When an application for a new declaration of intention is approved, the new declaration of intention shall be issued and the original delivered to the applicat upon signed receipt therefor. If an application for a new certified copy of the proceedings under the Act of June 25, 1936, as amended or under section 317(b) of the Nationality Act of 1940, or under section 324(c) of the Immigration and Nationality Act, or under the provisions of any private law is approved, there shall be issued a certified positive photocopy of the record of the proceedings filed with the Service. When subsequent to the naturalization or repatriation the applicant's name has been changed by marriage, the certification of the positive photocopy shall show both the name in which the proceedings were had and the changed name. The new certified copy shall be personally delivered to the applicant, upon his or her signed receipt therefor. If the application is denied, the applicant shall be notified of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

3. Section 343a.2 would be amended to read as follows:

§ 343a.2 Return or replacement of surrendered certificate of naturalization or citizenship.

A certificate of naturalization or citizenship in a Service file which was surrendered on a finding that a loss of United States nationality had occurred directly or through a parent by reason of section 404 (b) or (c) of the Nationality Act of 1940 or section 352 of the Immigration and Nationality Act and which finding is no longer valid in view of *Schneider* v. *Rusk*, 377 U.S. 163, or a certificate of naturalization or citizenship in a Service file which was surrendered on a finding that loss of United States nationality had occurred pursuant to section 401(e) of the Nationality Act of 1940 or section 349(a)(5) of the Immigration and Nationality Act and which finding is no longer valid in view of *Afroyim* v. *Rusk*, 387 U.S. 253, or a certificate of citizenship in a Service file which was surrendered on a finding that loss of United States nationality had occurred pursuant to section 301(b) of the Immigration and Nationality Act, the provisions of which were extended by section 301(c) of the same Act to persons born after May 24, 1934, and which finding is no longer valid in view of the amendment of section 301(b) on October 27, 1972, Public Law 92–584, may be returned to the person to whom it was issued, notwithstanding the fact that he or she has since been naturalized or repatriated in the United States or abroad. If, after having been surrendered to the Department of State or to this Service, the certificate has been lost, mutilated, or destroyed as a result of either Service action or the action of that Department, a replacement certificate may be issued in the name shown in the surrendered certificate without fee and without requiring the submission of Form N–565. A surrendered certificate shall not be regarded as mutilated and a replacement shall not be issued solely because of holes made in it to accommodate an Acco fastener, unless the citizen declines to accept the return of the surrendered certificate in that condition and insists upon issuance of a replacement. When it is desired that the replacement certificate be furnished in a name other than the one shown in the surrendered certificate, the regular application procedure with payment of fee must be followed. The naturalized person shall be required to appear in person, if within the United States, before a Service representative for the return of the certificate.

Dated: June 27, 1985.

Harriet B. Marple,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85–16770 Filed 7–12–85; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561, 563, and 571

[No. 85–504]

Classification of Assets

Correction

In FR Doc. 85–15838, beginning on page 27290 in the issue of Tuesday, July 2, 1985, make the following corrections:

1. On page 27291, in the second column, in the second complete paragraph, twenty-first line, "Controller" should read "Comptroller".

2. On page 27293, in the first column, in paragraph 3 of the amendatory language, "§ 561.16C" should have read "§ 561.16c".

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AWP–17]

Proposed Alteration and Redefinition of the Bakersfield, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter and redefine the transition area at Bakersfield, California, as a result of the required name and identification change of the Bakersfield Very High Frequency Omni-directional Radio Range and Tactical Air Navigational Aid (VORTAC) facility to the Shafter VORTAC. The name and identification change was initiated in connection with the general policy to change the name of navigational aids bearing the same name as the airports which they serve if the aid is not located on the airport. This action will provide the change in the definition of the existing Bakersfield, California, Transition Area.

DATES: Comments must be received on or before August 31, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, AWP–530, P.O Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

The official docket may be examined in the Office of the Western-Pacific, Regional Counsel, Room 6W14, at 15000 Aviation Boulevard, Hawthorne, California.

An informal docket may be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Thomas H. Schmidt, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536–6855.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to the Airspace Docket No. 85-AWP-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above, both before and after closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, 15000 Aviation Boulevard, Hawthorne, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide alteration and redefinition of the Bakersfield, California, Transition Area to accommodate the name and identification change of the Bakersfield VORTAC to Shafter VORTAC. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will not affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the FAR as follows:

1. The authority citation for Part 71 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Bakersfield, California, Transition Area—[Revised]

"That airspace extending upward from 700 feet above the surface beginning at lat. 35°20'00" N., long. 118°49'45" W.; direct to lat. 35°48'30" N., long. 119°12'00" W.; direct to lat. 35°46'00" N., long. 119°18'30" W.; direct to lat. 35°35'50" N., long. 119°15'00" N.; direct to lat. 35°32'30" N., long. 119°16'50" W.; direct to lat. 35°13'50" N., long. 118°58'45" W.; thence to the point of beginning; that airspace extending upward from 1200 feet above the surface beginning at lat. 36°00'00" N., long. 118°45'00" W.; direct to lat. 35°05'00" N., long. 118°45'00" W.; direct to lat. 35°05'00" N., long. 120°05'00" W.; direct to lat. 35°43'50" N., long. 120°05'00" W.; direct to lat. 35°43'50" N., long. 119°30'00" W.; direct to lat. 36°00'00" N., long. 119°30'00" W.; thence to the point of beginning."

Issued in Los Angeles, California, on July 1, 1985.

H.C. McClure,

Director, Western-Pacific Region.

[FR Doc. 85-16665 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWP-19]

Proposed Alteration and Redefinition of the Fresno, CA, Transition Area and Fresno Air Terminal Control Zone, Fresno, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter and redefine the transition area at Fresno, California, as a result of the required name and identification change of the Fresno Very High Frequency Omni-directional Radio Range and Tactical Air Navigational Aid (VORTAC) facility to the Pinedale VORTAC. The name and identification change was initiated in connection with the general policy to change the name of navigational aids bearing the same name as the airports which they serve, if the aid is not located on the airport. This action will provide the change in the definition of the existing Fresno, California, Transition Area and Fresno Air Terminal, Fresno, California, Control Zone.

DATE: Comments must be received on or before August 31, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

The official docket may be examined in the Office of the Western-Pacific Regional Counsel, Room 6W14, at 15000 Aviation Boulevard, Hawthorne, California.

An informal docket may be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Thomas H. Schmidt, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536-6655.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to the Airspace Docket No. 85-AWP-19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above, both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, 15000 Aviation Boulevard, Hawthorne, California 90261. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide alteration and redefinition of the Fresno Air Terminal, Fresno, California, Control Zone and Fresno, California, Transition Area to accommodate the name and identification change of the Fresno VORTAC to Pinedale VORTAC. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the FAR as follows:

1. The authority citation for Part 71 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Fresno Air Terminal, Fresno, California, Control Zone—[Revised]

"Beginning at lat. 36°45'30" N., long. 119°37'30" W.; to lat. 36°44'00" N., long. 119°36'30" W.; to lat. 36°42'10" N., long. 119°39'20" W.; to lat. 36°43'20" N., long. 119°40'30" W.; thence clockwise via the 5-mile radius circle of the Fresno Air Terminal (lat. 36°46'36" N., long. 119°43'03" W.) to lat. 36°49'40" N., long. 119°47'30" W.; to lat. 36°52'20" N., long. 119°49'30" W.; to lat. 36°54'00" N., long. 119°48'20" W.; to lat. 36°51'30" N., long. 119°44'30" W.; thence clockwise via the 5-mile radius circle to the point of beginning."

3. Section 71.181 is amended as follows:

Fresno, California, Transition Area—[Revised]

"That airspace extending upward from 700 feet above the surface beginning at lat. 36°39'00" N., long. 119°25'00" W.; direct to lat. 36°36'00" N., long. 119°27'40" W.; direct to lat. 36°41'30" N., long. 119°38'00" W.; direct to lat. 36°40'00" N., long. 119°43'40" W.; direct to lat. 36°39'30" N., long. 119°52'30" W.; direct to lat. 36°37'50" N., long. 119°55'25" W.; direct to lat. 36°40'45" N., long. 119°58'00" W.; direct to lat. 36°50'30" N., long. 119°50'55" W.; direct to lat. 36°54'00" N., long. 119°50'25" W.; direct to lat. 36°54'45" N., long. 119°46'30" W.; direct to lat. 36°51'30" N., long. 119°44'30" W.; thence clockwise via the 5-mile radius circle centered on the Fresno Air Terminal (lat. 36°46'36" N., long. 119°43'03" W.); to lat. 36°45'30" N., long. 119°37'30" W.; to the point of beginning. That airspace extending upward from 1200 feet above the surface beginning at lat. 37°29'00" N., long. 119°15'00" W.; to lat. 36°49'00" N., long. 118°46'00" W.; to lat. 36°39'00" N., long. 118°46'00" W.; to lat. 36°39'00" N., long. 119°09'00" W.; to lat. 36°00'00" N., long. 118°45'00" W.; to lat. 36°00'00" N., long. 119°30'00" W; to lat. 37°02'00" N., long. 120°18'00" W.; to the point of beginning."

Issued in Los Angeles, California, on July 5, 1985.

H.C. McClure,

Director, Western-Pacific Region.

[FR Doc. 85-16666 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-5]

Proposed Amendment to Douglas, WY, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the 700' transition area at Douglas, Wyoming. This is necessary due to the relocation of the Converse County Airport, Douglas, Wyoming. This action will ensure segregation of aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions. The area will be depicted on aeronautical charts enabling pilots to circumnavigate the area or otherwise comply with instrument flight rules.

DATE: Comments must be received on or before September 13, 1985.

ADDRESSES: Send comments on the proposal to: Manager, Airspace and Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-5, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Art Corwin, Airspace and Procedures Specialist, ANM-532, Federal Aviation Administration, Docket No. 85-ANM-5, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–ANM–5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule.

The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the 700' transition area at Douglas, Wyoming, due to the relocation of Converse County Airport, Douglas, Wyoming. The intended effect of this action is to ensure segregation of aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions. There will be no change to the overlying 1200' transition area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendment are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition area, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); [14 CFR 11.69].

2. By amending § 71.181 as follows.

Douglas, Wyoming, Transition Area—[Amended]

That airspace extending upward from 700' above the surface within a 10.5-mile radius of the Converse County Airport, Douglas, Wyoming, (Lat. 42° 47' 46" N/Long. 105° 23' 06" W); and that airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at a point at lat. 43° 14' 00" N/long. 105°28'01"W., east along the south edge of V–26 to lat. 43° 28' 30" N/long. 104° 30' 00" W., to lat. 43° 00' 00" N/long. 104° 30' 00" W., east to the Wyoming-Nebraska State boundary, south to the north edge of V–100, west to the west edge of V–19, northwest to lat. 42° 27' 30" N/long. 105° 52' 05" W; thence to point of beginning, excluding the Casper, Wyoming, and Cheyenne, Wyoming, transition areas.

Issued in Seattle, Washington, on July 2, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–16670 Filed 7–12–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–ANM–3]

Proposed Alteration of Control Zone, Troutdale, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the description of the Troutdale, Oregon (Portland-Troutdale Airport), control zone by deleting reference to the 154 degree radial of the Portland VORTAC. Due to recent change to the Portland, Oregon, control zone description (84–ANM–16), action is necessary to redescribe that portion of the Troutdale control zone which abuts the Portland control zone. This proposed action provides the revised description.

DATE: Comments must be received on or before August 26, 1985.

ADDRESS: Send comments on the proposal to: Airspace & Procedures Branch, ANM–530, Federal Aviation Administration, Docket No. 85–ANM–3, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's Office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Airspace & Procedures Specialist, ANM–534, Federal Aviation Administration, Docket No. 85–ANM–3, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The telephone number is (206) 431–2534.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which

the following statement is made: "Comments to Airspace Docket No. 85–ANM–3." the postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date will be considered before taking action on the proposed rule. The proposal contained in this notice may be change in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, 17900 Pacific Highway South, Seattle, Washington 98168, both before and after the closing date of comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & Procedures Branch, ANM–530, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to redefine the west boundary of the Troutdale control zone. A recent amendment to the Portland control zone which reduced the size of the control zone extension east of Portland International Airport caused loss of needed controlled airspace west of the Portland-Troutdale Airport at the point these control zones abut. This proposed action provides the revised description by deleting reference to the 154 degree radial of the Portland VORTAC as the western boundary of the Troutdale control zone. This proposed action also changes the name of the LAKE LOM to the LAKER LOM.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); [14 CFR 11.65]; 49 CFR 1.47.

2. By amending § 71.171 as follows:

Troutdale, Oregon, Control Zone—(Revised)

That airspace bounded on the north and west by a 5-mile radius area centered on the Portland-Troudale Airport (lat. 54° 33'30"N/ long. 122° 23' 49"W), on the south and east by a line parallel to and 3 miles southwest and northeast of the 119 degree bearing from the LAKER LOM (lat. 45°32'36" N/long. 122°27'49" W) extending from the LOM to 8 miles southeast. This control zone is effective during the specific dates and times established in advance by a Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on June 12, 1985.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–16669 Filed 7–12–85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9194]

Buckingham Productions, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require Dr. Barry Bricklin, among other things, to cease representing that he used his expertise as a psychologist and expert in the psychological aspects of dieting to test and evaluate weight control programs and products in the same way similarly qualified experts normally would. Also, respondent would be prohibited from representing that consumers can eat as much food as they want and still lose weight without also giving specified disclosures about weight reduction; and from making claims about "usual" or "average" weight loss, or the efficacy or performance of weight reduction or weight control products or programs without competent and reliable survey or other scientific evidence that substantiates the representation. Further, respondent would be required to maintain records of substantiation for three years; file compliance reports with the Commission at specified times; and notify the Commission of the discontinuance of his present employment and any future employment in similar areas.

DATE: Comments must be received on or before Sept. 9, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/B–407, Washington, D.C. 20580 (202) 376–8720.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record, as of July 9, 1985, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Weight control products and programs, Trade practices.

Before Federal Trade Commission

[Docket No. 9194]

Agreement Containing Consent Order to Cease and Desist

In the Matter of Buckingham Productions, Inc., a corporation, trading and doing business as Rotation Diet Center; Furlong-Elliot Corp., a corporation; Freedom Center, Inc., a corporation; Plaza Business Services, Inc., a corporation; N.F. Rotation, Inc., a corporation; Rotation-Freedom Diet, Inc., a corporation; Howard Elliot, individually and as an officer of said corporations; Gail Elliot, individually; Judy Ruthrauff, individually and as an office of said corporations; Dorothy Woolslager, individually and as an officer of said corporations; Benito Ventresca, individually and as an officer of said corporations; Dr. Barry Bricklin, individually.

The agreement herein, by and between Dr. Barry Bricklin, individually, hereafter sometimes referred to as respondent and counsel for the Federal Trade Commission, is entered in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Dr. Barry Bricklin is an individual whose address is 470 General Washington Road, Wayne, Pennsylvania 19087.

Respondent Dr. Barry Bricklin possesses an expertise in psychology, and in the physiological and phychological aspects of dieting, superior to that generally acquired by ordinary individuals. For his part, Dr. Barry Bricklin aided in the promotion and sale of respondents' weight reduction and/or weight control programs and products by providing as an expert in the field endorsements of the efficacy of the products and programs that appear in respondents' advertisements.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging him with violations of sections 5 and 12 of the Federal Trade Commission Act.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of §3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right he might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

It is ordered that expert respondent Dr. Barry Bricklin, individually and through any corporate entity over which he now or hereafter exercises control, and his corporate successors and assigns, in connection with the endorsing, advertising, offering for sale, sale, or distribution of any weight reduction or weight control product, program or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, does forthwith cease and desist from:

(A) Representing in advertising, directly or by implication, that any consumer can eat any quantity of food and still lose weight or maintain that weight loss, without an accompanying and proximate, clear and prominent disclosure that the consumer's weight loss or ability to maintain that weight loss depends on a reduction in caloric intake in the short term and an overall reduction in caloric intake over the long term.

(B) Representing in advertising, directly or by implication, the usual or average weight loss, or range of weight loss, obtained or obtainable from any such weight reduction or weight control product, program or service, unless at the time of making such representation expert respondent Dr. Barry Bricklin prossesses and relies upon competent and reliable survey or other scientific evidence that substantiates the representation.

(C) Making any representation in advertising, directly or by implication, regarding the efficacy or performance of any weight reduction or weight control product, program or service, the content or mode of action of any weight reduction or weight control product, program or service, unless at the time of making such representation expert respondent Dr. Barry Bricklin possesses and relies upon competent and reliable survey or other scientific evidence that substantiates the representation.

For purposes of Part I of this Order, "competent and reliable" evidence shall mean an actual exercise of expert respondent Dr. Barry Bricklin's expertise in evaluating weight reduction and/or weight control programs and products with respect to which he is expert, in the form of an examination or testing of the programs and products at least as extensive as someone with a similar degree of expertise would normally conduct in order to support the conclusions presented in the representation.

II

It is further ordered that for three years from the date that the representations to which they pertain are last disseminated, expert respondent Dr. Barry Bricklin shall maintain and

upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon to substantiate any such representation.

2. All test reports, studies, surveys, or other materials in his possession or control that contradict, qualify, or call into question such representation.

III

It is further ordered that expert respondent Dr. Barry Bricklin shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and that, for a period of 10 years from the date of service of this Order, expert respondent Dr. Barry Bricklin shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the advertising, endorsing, promotion, offering for sale, sale, or distribution of any weight reduction or weight control product, program, or service, and of his affiliation with a new business or employment in which his own duties and responsibilities involve the advertising, endorsing, promotion, offering for sale, sale, or distribution of any weight reduction or weight control product, program or service, with each such notice to include expert respondent Dr. Barry Bricklin's new business address and a statement of the nature of the business or employment in which expert respondent Dr. Barry Bricklin is newly engaged as well as a description of expert respondent Bricklin's duties and responsibilities in connection with the business or employment.

IV

It is further ordered that expert respondent Dr. Barry Bricklin, and his corporate successors or assigns, shall, within sixty (60) days after service of this Order, and also one (1) year thereafter, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

Analysis Of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Dr. Barry Bricklin.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charges that Dr. Barry Bricklin, a clinical psychologist, developed some of the basic principles upon which the Rotation diets were offered by others for sale to the public. Dr. Bricklin possesses an expertise in psychology, and in the psychological aspects of dieting, superior to that generally acquired by ordinary individuals. Dr. Bricklin had a continuing role in the marketing of the Rotation diets by providing advice and serving as the Director of the programs' Professional Advisory Board. He also endorsed the diets in advertisements in which he was depicted as an expert in dieting.

The complaint alleges that Dr. Bricklin authorized endorsements for which he was compensated that were false, misleading and unsubstantiated. He implied that consumers can eat unlimited quantities of food four days a week and, regardless of how much they eat on those four days, still lose substantial amounts of weight on the Rotation diets. Based on his expertise, Dr. Bricklin knew or should have known that such representations were false and misleading. He also made "usual" weight loss claims for the diets which implied that he had actually exercised his expertise in evaluating the diets by examining or testing the diets as someone else with a similar degree of expertise would do in order to support such weight loss claims. Dr. Bricklin is charged with failing to exercise his expertise by not possessing and relying on a reasonable basis for such weight loss claims.

The consent order contains various provisions designed to remedy the alleged advertising violations.

Part I of the order prohibits Dr. Bricklin from representing that consumers could eat as much food as they wanted and still lose weight without also disclosing that weight loss or maintenance of weight loss depends on a reduction of caloric intake over the long and short term. He is also prohibited from making claims about "usual" or "average" weight loss, or about the efficacy or performance of any weight reduction or weight control product or program without first relying on competent and reliable evidence as substantiation. This provision requires Dr. Bricklin to evaluate the product or program by examining or testing them at least as extensively as a similarly qualified expert would normally do to support conclusions presented in advertising.

Part II of the order requires Dr. Bricklin to maintain records of all substantiation related to the requirements of the order for three (3) years after the dissemination of any advertisements. These records may be inspected by Commission staff upon request.

Part III requires Dr. Bricklin to notify the Commission of the discontinuance of his present employment and of his affiliation with a new business or employment. It also requires that for a period of ten (10) years, he notify the Commission of each affiliation with a new business or employment whose activities, or his own duties include advertising, endorsing, promoting or selling any weight reduction or weight control product or program.

Part IV requires Dr. Bricklin to file a compliance report with the Commission sixty (60) days after the Order is served, and also one (1) year thereafter.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-16787 Filed 7-12-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. 1, Subchapter C

[Docket No. 85N-0042]

Parenteral Drug Products Containing Benzyl Alcohol or Other Antimicrobial Preservatives; Intent and Request for Information; Extension of Time for Comments

AGENCY: Food and Drug Administration.

ACTION: Extension of time for comments.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for comments to September 1, 1985, for the notice of intent and request for information published in the Federal Register of May 15, 1985 (50 FR 20233) concerning parenteral drug products containing benzyl alcohol or other antimicrobial preservatives. This action responds to a request from the Parenteral Drug Association (PDA) to permit sufficient time for interested parties to fully develop their comments on this matter. This notice lets interested persons know that there has been an extension of time for submitting comments.

DATE: Comments by September 1, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard L. Arkin, Center for Drugs and Biologics (HFN–364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6480.

SUPPLEMENTARY INFORMATION: On May 15, 1985, FDA published a notice of intent in the **Federal Register** (50 FR 20233) which announced that the agency is considering proposing a rule that would (1) prohibit the use of any antimicrobial preservative or, alternatively, certain specific antimicrobial preservatives in single-dose parenteral drug products for human use; and (2) require the labeling of multiple-dose parenteral drug products for human use which contain any antimicrobial preservative or certain specific antimicrobial preservatives to bear a caution about use in newborn infants. The notice stated that FDA is considering this action because of reports linking the use of parenteral drug products containing an antimicrobial preservative, particularly bacteriostatic water for injection and bacteriostatic sodium chloride injection preserved with benzyl alcohol, to morbidity and mortality among low-weight newborn infants. The notice also stated that its purpose is to (1) give interested persons an opportunity to submit comments on these possible actions; (2) request information and data on related issues and problems; and (3) discuss the agency's policy regarding required labeling warnings for bacteriostatic water for injection and bacteriostatic sodium chloride injection.

The agency has received a request from PDA to extend the comment period to September 1, 1985. This extension was requested to permit PDA sufficient time to develop their comments on this matter.

Because the May 15 notice was a request for comments on possible agency action as well as a request for information on the subject matter of the notice, the agency concludes that it is in the public interest to extend the comment period to permit full development of comprehensive comments as requested by PDA.

Accordingly, the date of receipt of comments concerning the notice of intent discussed above is extended to September 1, 1985.

Interested persons may, on or before September 1, 1985, submit to the Dockets Management Branch (address above) written comments concerning the notice of intent. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 10, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–16677 Filed 7–10–85; 10:31 am]

BILLING CODE 4160–01–M

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21 CFR Part 357

[Docket No. 81N–0060]

Orally Administered Drug Products for the Treatment of Fever Blisters for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In FR Doc. 85–14440 beginning on page 25156 in the issue of Monday, June 17, 1985, make the following correction:

1. On page 25158, in the third column, in the first complete paragraph, in the second line, "1985" should read "1986".

BILLING CODE 1505–01–M

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21 CFR Part 357

[Docket No. 81N–0064]

Deodorant Drug Products for Internal Use for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In FR Doc. 85–14439 beginning on page 25162 in the issue of Monday, June 17, 1985, make the following correction:

1. On page 25164, in the second column, under **References**, in reference (2), in the second line, "Tables" should read "Tablets".

BILLING CODE 1505–01–M

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21 CFR Parts 610 and 660

[Docket No. 84N–0205]

Additional Standards for Diagnostic Substances for Laboratory Tests; Proposed Amendment of Additional Standards for Reagent Red Blood Cells

Correction

In the issue of Monday, June 24, 1985, on page 25995 in the second column, a correction to FR Doc. 85–13979 appeared. The first correction was inaccurate and should have appeared as follows:

1. On page 24545, in the first column, in § 660.33, in the second line from the bottom, "$\bar{K}$, k" should read "K, $\bar{k}$".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Proposed Modifications to the Wyoming Permanent Regulatory Program; Extension of Comments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening of public comment period.

SUMMARY: OSM is reopening the period for review and comment on modified portions of the Wyoming permanent regulatory program. On October 23, 1984 (49 FR 42579), OSM announced a public comment period and procedures for requesting a public hearing on the substantive adequacy of proposed amendments to the Wyoming permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) submitted by Wyoming on September 21, 1984. The amendments submitted by Wyoming are modifications to several definitions and to procedures applicable to surface coal mining operations concerning the areas of alluvial valley floors, valid existing rights, liability insurance and bonding. OSM is reopening the comment period to allow the public an opportunity to comment on supplemental material relating to the proposed amendment submitted by Wyoming on June 10, 1985.

DATE: Written comments not received on or before 4:00 p.m. on July 30, 1985 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

Copies of the supplemental material submitted by Wyoming and other relevant documents are available for review at the Casper Field Office and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one single copy of the

proposed amendment by contacting the OSM Casper Field Office listed above or one of the following:

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240

Wyoming Department of Environmental Quality, Land Quality Division, Herschler Office Building, 122 W. 25th Street, Cheyenne, Wyoming 82002

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644, Telephone: (307) 261–5824.

SUPPLEMENTARY INFORMATION: The general background on the permanent regulatory program, the State program approval process, the Wyoming program, and the conditional approval can be found in the Secretary's Findings and conditional approval published in the November 26, 1980 **Federal Register** (45 FR 78637–78634).

On September 21, 1984, the State of Wyoming submitted to OSM amendments to its approved permanent regulatory program. The first amendment proposed by the Wyoming Department of Environmental Quality revises the following definitions found at Chapter I of the Wyoming regulations: bond, essential hydrologic functions, material damage to the quantity or quality of water, subirrigation or flood irrigation agricultural activities, unconsolidated streamlaid deposits, undeveloped rangeland, substantially disturb and valid existing rights.

The second amendment proposed revisions to procedures applicable to surface coal mining operations. The State has proposed revisions to Chapter XIII of the Wyoming rules addressing: revised pre-application determinations relating to alluvial valley floors, bonding provisions, liability insurance requirements and evaluation criteria for valid existing rights determinations.

The October 23, 1984 **Federal Register** announced receipt of the modification by OSM as well as a public comment period. In that same notice, OSM announced that a public hearing would be held only if requested. No requests were received and no hearing was held.

On May 10, 1985, the State of Wyoming was notified of four issues that were identified as a result of OSM's review of the September 21, 1984 submission. The four deficiencies were as follows: Chapter I, inadequate definition on bond; Chapter I, incomplete definitions of individual soil horizons; Chapter I, inclusion of a definition of valid existing rights which has been remanded by the U.S. District Court; and Chapter XIII, use of an inappropriate bonding scheme.

On June 10, 1985, Wyoming submitted additional material in response to OSM's concerns of May 10, 1985, and to further clarify the proposed amendment submitted on September 21, 1984. Copies of the additional material are available in the OSM Administrative Record. OSM is reopening the comment period in order to allow the public an opportunity to review and comment on the additional material submitted to OSM by the State on June 10, 1985.

Specifically, OSM is seeking comment on whether the material submitted by Wyoming on June 10, 1985, together with the proposed amendment, satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17 and are no less effective than the Federal regulations.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 3, 1985.

Arthur W. Abbs,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 85–16712 Filed 7–12–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD9–85–10]

Special Anchorage Area; Niagara River, Youngstown, NY

Correction

In FR Doc. 85–16023 beginning on page 27623 in the issue of Friday, July 5, 1985, make the following correction:

§ 110.85 [Corrected]

On page 27624, in the second column, in §110.85(a), in the eleventh line, "43°4'15.5" should read "43°14'15.5".

BILLING CODE 1505–01–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

Revision of Patent Fees; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule on the revision of patent fees that appears at page 25896 in the **Federal Register** of Friday, June 21, 1985 (50 FR 25896). This action is necessary to correct a typographical error.

DATES: Comments on the proposed rule must be submitted on or before July 18, 1985; a public hearing will be held on July 18, 1985, at 9:00 a.m. Requests to present oral testimony should be received on or before July 15, 1985.

ADDRESS: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Frances Michalkewicz, Room CP3 11D27. The hearing will be held in Room 328, on the 3rd floor of Building 2, Crystal Mall, located at 1921 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz at (703) 557–1610.

The following correction is made in FR Doc. 85–15156 appearing on 25896 in the issue of June 21, 1985:

1. On page 25896, in the first column, in the first complete paragraph, in the third line from the end of the paragraph, "the estimated cost" should read, "the estimated average cost."

Dated: July 10, 1985.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 85–16807 Filed 7–12–85; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–2858–4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the Ohio State Implementation Plan (SIP) for ozone for the Monarch Marking Systems plant in Montgomery County, Ohio. This proposed revision consists of an emission reduction plan (bubble) which will result in a decrease in both the annual and daily allowable volatile organic compound (VOC) emissions at this facility.

USEPA's proposed action is based upon a revision request and technical

support documentation which was submitted by the State.

DATE: Comments on this revision and on the proposed USEPA action must be received by August 14, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Debra Marcantonio, at (312) 886–6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On September 25, 1984, the Ohio Environmental Protection Agency (OEPA), submitted a revision to its ozone SIP for the Monarch Marking Systems plant. This facility is located in Montgomery County, an urban nonattainment area for ozone. Ohio's ozone SIP for this county was approved on October 31, 1980 (45 FR 72122), and on June 29, 1982 (47 FR 28097).

The SIP revision includes an alternative emission reduction plan (bubble) for three adhesive coater/laminators at the Monarch Marking Systems plant. USEPA compared the revision with USEPA's Proposed Emissions Trading Policy Statement, which was published in the **Federal Register** on April 7, 1982 (47 FR 15076). This policy statement sets forth general principles for creation, banking, and use of emission reduction credits and encourages the use of emission trading to achieve more flexible, rapid, and efficient attainment of the NAAQS. The April 7, 1982, statement noted that, until USEPA takes final action on its policy statement, State actions involving emission trades would be evaluated under the provisions set forth in the proposed statement.

Under the 1982 statement, the appropriate trading baseline for nonattainment areas having an adequate attainment demonstration is the amount of emissions allowed by the USEPA-approved SIP, provided the use of that baseline does not undermine the demonstration of attainment that USEPA approved for the area in question. Montgomery County is such an area for ozone.

The Monarch bubble used the applicable SIP limit as the trading baseline. The plant is currently involved in the manufacturing of pressure sensitive labels and labeling machines. The coating operations associated with this emission reduction program are currently subject to Ohio Administrative Code (OAC) Rule 3745–21–09(F) [2.9 pounds volatile organic compounds (VOC) per gallon of coating excluding water], which USEPA approved into the SIP on October 31, 1984 (45 FR 72122).

Based on extensive research, Monarch has replaced several solvent-based adhesives used at P009 with 100% solid hot melt adhesives now used at K002 and K003. These two hot melt laminators now emit zero VOC emissions. However, Monarch was unsuccessful in converting all of the solvent-based adhesives used at laminator K001 to high solid and/or water-borne adhesives. Therefore, Ohio requested that this bubble revision be approved. This revision will allow the plant to use the emission reductions (beyond the SIP limit) obtained from the replacement of P009 with the two hot melt laminators to offset increased emissions (above the SIP allowable) at laminator K001.

As shown by the table below, the difference between the current SIP (RACT) allowable emissions and the proposed allowable emissions from K001 and P009 (or K002 and K003 after the replacement) represents a decrease in annual allowable VOC emissions of 79.7 tons per year. These emission reductions from P009 (100 tons/yr) represents over three times the emission reduction credits needed to allow K001 to operate at its current level above the SIP limit.

As noted earlier, for USEPA to allow use of the applicable SIP limit as the trading baseline, that baseline must not undermine the USEPA-approved attainment demonstration. In the demonstration that USEPA approved for Montgomery County, Ohio, the State assumed that the total VOC emissions from Monarch would be reduced to 5 tons per year (TPY). This is approximately 39 TPY lower than the emissions required of K001 under the SIP limit and 68 TPY lower than the emissions permitted for the affected lines under the bubble. Thus, without some adjustment to the demonstration, the use of the SIP limit as the baseline would permit greater emissions than assumed in the demonstration.

However, the demonstration also assumed that these and other reductions would produce a margin of reductions that could accommodate emissions from several new sources and thereby remove the need to offset such new emissions. The State has agreed to reduce this growth margin by the difference between the 5 TPY that the State assumed would be emitted and the 73 TPY that the bubble will allow from K001 and P009's replacements, K002 and K003 (i.e., by 68 TPY).

With this reduction in the area's growth margin, the total emissions assumed in the demonstration to occur in Montgomery County will remain the same and the bubble's reliance on the applicable SIP limit as the trading baseline will not undermine the demonstration. For this reason, USEPA believes that, with this adjustment to the demonstration, the Monarch bubble will not interfere with timely attainment and maintenance of the ozone standard in Montgomery County.

MONARCH MARKING SYSTEMS

Laminators OEPA source number	Current SIP limitation lbs of VOC per gallon/lbs per day/tons per yr.	Bubble Allowable lbs of VOC per day/tons per year	Emission reductions or emissions in excess of the SIP lbs per day/ton per year
K001	[1] 2.9/395/43.7	[2] 550/73	+355/+29.3
P009 (now replaced with K002 and K003)	[3] 2.9/838/100	[4]	−838/−100
Total	2.9/1,233/152.7	550/73	[5] −573/−79.7

[1] The 1977 RACT allowable was 80 tons per year. 43.7 tons per year represents the current RACT allowable based on current production rates 395 lbs/day is based upon maximum daily production.
[2] In addition, the source cannot exceed 3.83 pounds of VOC per gallon of coating employed, excluding water, as calculated on a yearly volume-weighted average.
[3] These limits are no longer applicable since the source was shutdown.
[4] No limit but the technology produces zero VOC emission.
[5] This bubble will result in a decrease in the SIP allowable emissions of 79.7 tons of VOC per year. In addition, the actual emissions have been reduced from 640 tons of VOC per year in 1979 to 73 tons per year in 1983.

The State of Ohio has issued a variance for source K001 and permits for sources K002 and K003. These variances and permits contain the emission limits proposed as part of this bubble. In addition, they outline daily recordkeeping requirements and quarterly reporting requirements.

Although the variances and permits each expire three years after final approval by USEPA, the emission limitations and other requirements contained therein will, through renewal of the variances and permits, remain the enforceable SIP beyond the expiration dates under State law. USEPA is specifically proposing to approve not only the permits and variances but also the emission limitations and other permit requirements mentioned above, in advance of their inclusion in renewal permits and variances.

USEPA is proposing to approve this revision to the ozone SIP for the Monarch Marking Systems plant because this revision reduces the total pounds of allowable VOC for the paper coating lines on a daily basis. The annual emission limitation adopted by Ohio represents additional limitations on source operation consistent with the technical basis of the attainment demonstration for the Dayton urbanized area.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management of Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Ozone, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: March 28, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–16734 Filed 7–12–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–10–FRL–2859–8]

Approval and Promulgation of State Implementation Plan; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking addresses the State Implementation Plan (SIP) revision submitted on September 27, 1984, by the State of Washington Department of Ecology (WDOE) pursuant to the requirements of Part D of the 1977 Clean Air Act (hereinafter referred to as the Act). In today's action EPA is proposing to approve the addition of an inspection and maintenance (I/M) program to the existing plan because this addition will strengthen the control requirement contained in the SIP. The program is scheduled is to start on July 1, 1985, and will be tied to vehicle registration. Upon final approval by EPA, the Spokane I/M program will become a federally enforceable part of the SIP as required by the Act.

DATE: Comments must be postmarked on or before August 14, 1985.

Comments should be addressed to: Laurie M. Karl, Air Programs Branch M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A–85–9), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101

State of Washington, Department of Ecology, 4224 6th Avenue, SE., Rowe Six, Building # 4, Lacey, Washington 98504

State of Washington, Department of Ecology, North 4601 Monroe, Suite 100, Spokane, Washington 99205

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442–4233, (FTS) 399–4233.

SUPPLEMENTARY INFORMATION:

I. Background

In 1979 the Spokane Regional Planning Conference prepared a carbon monoxide (CO) attainment strategy for the greater Spokane area as required by the Act. That plan was approved by EPA on March 22, 1982 (47 FR 12166). Basically, the plan required the expeditious implementation of several measures including transit improvements and a parking ban. These measures were projected to bring the Spokane area into attainment prior to December 31, 1982. The plan also included a provision for the implementation of an I/M program contingent upon attainment of the CO standard by the end of 1982.

Air quality monitoring data collected in 1983 and 1984 clearly demonstrated that, in spite of the implementation of the adopted control strategies, the Spokane area did not attain the CO standards as projected. According to State of Washington legislation, the state rules and regulations for I/M, and the contingency provision contained in the original SIP, an I/M program is now required in the Spokane area. After conducting a series of public hearings, WDOE proposed and adopted the specific language necessary to implement an I/M program in Spokane in order to fulfill these requirements.

II. I/M Program Description

The I/M program in Spokane will be identical to the one in Seattle. Vehicles that are registered in the identified zip codes will have to successfully pass an emission test or receive a waiver in order to be registered by the State.

The mandatory I/M program will start on July 1, 1985, and will be run by a local contractor. WDOE will be responsible for the quality assurance aspects of the program. The program design meets the EPA requirements for program effectiveness and will be enforced through vehicle registration. EPA is taking this action because it strengthens the control requirements contained in the SIP. A detailed program description is contained in the SIP and can be reviewed at the locations mentioned in the "**ADDRESSES**" section.

III. Proposed Rulemaking Action

EPA is proposing to approve the addition of a mandatory vehicular inspection and maintenance program to the current CO plan for the Spokane area. This proposed approval is based on review of the SIP revision submitted by WDOE to EPA on September 27, 1984, and the technical support document submitted to EPA by WDOE on January 11, 1985, and a technical support document created by EPA on April 4, 1985.

Interested parties are invited to comment on all aspects of this proposed approval of the Washington SIP revision. Comments should be submitted, preferably in triplicate, to the address listed in the front of this notice. Public comments postmarked by August 14, 1985 will be considered in any final action EPA takes on this proposal.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals under sections 110 and 172 of the Act will not have significant impact on a substantial number of small entities (46 FR 8709, January 27, 1981).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Dated: May 17, 1985.

Ernesta B. Barnes,

Regional Administrator.

[FR Doc 85–16773 Filed 7–12–85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Rulemaking Petition

AGENCY: National Highway Traffic Safety Administration, (NHTSA), Department of Transportation.

ACTION: Denial of rulemaking petition.

SUMMARY: This notice denies a petition filed by Mr. Michael R. Morrison to establish a Federal motor vehicle safety standard requiring vehicles to maintain structural integrity of the frame and to remain free of corrosion for at least 12 years after the first sale. The petition relates the history of Mr. Morrison's corrosion problems with his 1978 Datsun 280Z, but contains no information indicating an industry-wide problem relating to motor vehicle safety. In 1980, the agency denied a similar rulemaking petition by Fiat Motors of North America, Inc., because vehicle corrosion did not appear to be a significant safety problem for the automobile industry as a whole. Current data available to the agency still indicate that vehicle corrosion is not a significant safety problem for the automobile industry.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–2720).

SUPPLEMENTARY INFORMATION: Mr. Morrison filed a petition on January 30, 1985, requesting the agency to establish a Federal motor vehicle safety standard requiring motor vehicles to maintain structural integrity and to remain free from corrosion for at least 12 years after the first sale. The petitioner related the history of corrosion problems with his own automobile, a 1978 Datsun 280Z, and stated that rust is evident on the frame and undercarriage. He also said that automobile repair shops have told him that corrosion is a recognized problem with his year, make, and model of vehicle, as well as with earlier model years. No supporting data were submitted to show that an industry-wide problem with vehicle corrosion exists which could affect motor vehicle safety and could provide the basis for proposing a safety standard.

This rulemaking petition was submitted in conjunction with a petition to conduct an investigation of corrosion and, if justified, to order the recall and remedy of all 1978 Datsun 280Z automobiles. NHTSA has denied this petition. First, no data were submitted to support the finding that a defect related to motor vehicle safety existed. Second, NHTSA has investigated similar models of 1971–73 and 1974–75 Datsun automobiles for alleged front undercarriage rust. This investigation was closed in September 1983 with the following conclusion: "There is no engineering defect with safety implications associated with corrosion of the front undercarriage present in the subject vehicles." Third, a review of the consumer complaint files revealed only three reports of undercarriage corrosion in Datsun 280Z vehicles, two 1977 models and one 1978 model. Neither report involved a front suspension collapse or separation and neither referred to an accident.

In 1980, the agency denied a similar rulemaking petition by Fiat Motors of North America, Inc., because vehicle corrosion did not appear to be a significant safety problem for the automobile industry as a whole (45 FR 13248). The agency treated the Fiat petition as seeking rulemaking to cover structural rust in vehicles generally. Structural rust refers to rust of unibody undercarriages, vehicle chassis, and floor pans in the area of seat belt mountings and driver's seats. The Morrison petition also requests rulemaking concerning general structural rust.

Before deciding to deny Fiat's petition, the agency consulted a wide range of sources to gather information on the safety effects of rust and corrosion. NHTSA requested Indiana University to search its accident files collected as part of a study into the causes of accidents. The analysis showed that rust and corrosion may have caused three out of 2,258 accidents. However, corrosion was considered a certain cause of an accient in only one case which involved corrosion of the electrical system. The University of North Carolina, at NHTSA's request, searched police reports of all accidents in North Carolina for a part of 1971 and all of 1973 through 1978. A total of 772,816 police reports were examined. Rust or corrosion was listed as a possible cause of the accident in only two cases.

Finally, before issuing a decision on the Fiat petition, NHTSA's Office of Defect Investigations searched its files for all consumer letters received by this agency that pertain to rust or corrosion problems. A total of 2,726 such letters were found and reviewed. Of this total, there were 338 complaints of structural rust. Based on an average population of about 100 million cars at any given time, these 338 complaints represent approximately one complaint for every 300,000 cars sold. Stated another way, owners complained about structural rust in 0.0003 percent of the vehicles.

Upon receiving the Morrison petition, the Office of Defect Investigations prepared a list of consumer complaints received after the agency denied the Fiat petition in 1980. The list showed that 2,214 complaints concern some type of rust or corrosion. Of this total, 91 complaints appear to indicate some degree of structural rust. Using an average vehicle population of 100 million cars, these 91 complaints represent approximately one complaint for every one million vehicles sold. The agency recognizes the limitations inherent in using raw consumer complaint data. However, the agency believes that these data indicate that structural rust may be less of a problem now than it was prior to 1980. There is no evidence to suggest that the problem has increased. The agency's examination of the data suggests again that structural rust is not a widespread problem, but, instead, occurs very infrequently.

In addition, most domestic and foreign manufacturers of automobiles currently sold in the United States cover vehicle corrosion in their warranties for a period ranging from two years up to five or more years. Given the minimal safety problem shown in current data and the

corrosion resistance warranties offered by automobile manufacturers, this appears to be an appropriate area in which to allow the marketplace to function without governmental intervention. If later data suggest that the problem has become widespread, the government could then take appropriate regulatory steps.

Based on the foregoing, Mr. Morrison's petition for initiation of a rulemaking proceeding to promulgate a safety standard regarding automobile corrosion is denied.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on July 9, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-16724 Filed 7-10-85; 3:00 pm]

BILLING CODE 4910-59-M

VOL 50 ISS 135 JUL 15 1985 UMI

Notices

Federal Register
Vol. 50, No. 135
Monday, July 15, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Federal Administrative Procedure Sourcebook

The Office of Chairman of the Administrative Conference of the United States announces the publication of its *Federal Administrative Procedure Sourcebook*. The *Sourcebook* in intended to serve as a basic introduction and reference book for agency personnel (lawyers and nonlawyers), practicing attorneys, researchers in administrative law or public administration, and anyone else who needs to know about most important procedural statutes affecting federal agencies. It discusses briefly each stutute's purpose, operation, legislative history, relevant case law, implementing regulations and bibliographical resources. The 900-page *Sourcebook* contains the full text of each law, citations, relevant executive orders and interpretive materials.

The fifteen statutes covered include the Administrative Procedure Act, Freedom of Information Act, Ethics in Government Act, Federal Tort Claims Act, Government in the Sunshine Act, Claims and Debt Collection Acts, Equal Access to Justice Act, Privacy Act, Contract Disputes Act, and National Environmental Policy Act. Among its interpretive materials are the *Attorney General's Manual on the Administrative Procedure Act*, the Department of Justice's *Short Guide to the Freedom of Information Act*, and numerous model rules from Justice, OMB, GAO, and other lead agencies.

The Office of the Chairman has a limited supply of copies for distribution to federal agencies and others who have a special need or interest. To request a coopy, write or telephone the Administrative Conference, 2120 L Street, NW., Suite 500, Washington, D.C. 20037, (202) 254–7065. Additional copies may be purchased from the Government Printing Office.

Richard K. Berg,
General Counsel.
July 10, 1985.

[FR Doc. 85–16716 Filed 7–12–85; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of the Performance Review Board; Addition

AGENCY: U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: This document amends the list of Performance Review Board members published June 18, 1984, 49 FR 24910, as amended November 21, 1984, 49 FR 45889, and March 14, 1983, 50 FR 10292.

EFFECTIVE DATE: July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Fran Lopes, Chief, Employment and Executive Resources Staff, Office of Personnel, U.S. Department of Agriculture, 14th Street & Independence Avenue, SW., Washington, DC 20250 (202–447–6805).

The membership of the U.S. Department of Agriculture's Performance Review Board is amended by adding the name of Robert L. Thompson and Wilson Scaling.

John R. Block,*
Secretary.
July 9, 1985.

[FR Doc. 85–16699 Filed 7–12–85; 8:45 am]
BILLING CODE 3410–01–M

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: August 8–9, 1985

Time: 8:15 a.m.-4:30 p.m., August 8, 1985, 8:30 a.m.-10:00 p.m., August 9, 1985

Place: The Governors Court Hotel, 1776 Grant Street Denver, Colorado

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will meet with the Joint Council on Food and Agricultural Sciences to examine issues associated with increasing public/private sector interaction and discuss system responses to Science and Education priorities.

Contact person for agenda and more information: Marshall Tarkington, National Agricultural Research and Extension Users Advisory Board; Room 316–A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250; telephone (202) 447–3684.

Done in Washigton, D.C., this 8th day of July 1985.

Marshall Tarkington,
Executive Secretary.

[FR Doc. 85–16761 Filed 7–12–85; 8:45 am]
BILLING CODE 3410–MT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; Regents of the University of California et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be reviewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No. 84-293. Applicant: Regents of the University of California, Riverside, CA 92521. Instrument: Electromagnetic Soil Conduct Meter, Model EM 38. Date of Denial Without Prejudice To Resubmission: February 28, 1985.

Docket No. 85-010. Applicant: University of Rochester, Rochester, NY 14627. Instrument: Carbon Dioxide Laser with Power Supply, Model GN-802-GP/GE. Date of Denial Without Prejudice to Resubmission: April 18, 1985.

Docket No. 85-029. Applicant: University of Minnesota, Minneapolis, MN 55414-2196. Instrument: Anemometer. Date of Denial Without Prejudice to Resubmission: February 28, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-16729 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-501]

Rock Salt From Canada: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that rock salt from Canada is being, or is likely to be, sold in the United States at less tha fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by September 20, 1985.

EFFECTIVE DATE: July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mary J. Jenkins, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-176.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminary determined that rock salt from Canada, except that sold by Potash Company of America, Inc., is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) (19 U.S.C. 1673b(b)) of the Tariff Act of 1930, as amended (the Act). The margins preliminarily found for the companies investigated are listed in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by September 20, 1985.

Case History

On January 28, 1985, we received a petition filed by the International Salt Company, on behalf of the U.S. industry producing rock salt. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of rock salt from Canada are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on February 19, 1985 (50 FR 7008). On March 20, 1985 (50 FR 11257), the ITC found that there is a reasonable indication that imports of rock salt from Canada are materially injuring, or are threatening material injury to, a United States industry.

The petition alleged that several Canadian companies produced rock salt for export to the United States. We found that Domtar, Inc. and Morton Thiokol, Inc. (Morton) accounted for more than 70 percent of imports to the United States during the period of investigation. Questionnaires were presented to counsel representating both companies on March 12, 1985. We received responses from Domtar, Inc. and Morton on April 30, 1985, and supplemental responses on various dates. On May 15, 1985, we received a voluntary response from counsel representing the Potash Company of America, Inc. (PCA).

Scope of Investigation

The product under investigation is rock salt, in bulk and packaged form, as currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 420.9400 and 420.9600, respectively.

Since the respondents produced and exported more than 70 percent of the rock salt from Canada during the period of investigation, we limited our investigation to them.

We investigated sales of rock salt from Canada during the period from August 1, 1984, to January 31, 1985.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of rock salt from Canada to represent the United States price for sales by Morton and PCA for the merchandise sold to unrelated purchasers prior to its importation into the United States. We calculated purchase price based on f.o.b. mine prices. For Morton, we made deductions where appropriate for freight and handling charges of rock salt after sale was made to customers. We did not deduct freight, maintenance and handling charges which were incurred prior to sale of the merchandise.

Exporter's sale price (ESP) was used to represent the United States price for Domtar and Morton's sales of rock salt to unrelated purchasers after importation of rock salt into the United States. We calculated ESP based on f.o.b. stockpile, and f.o.b. delivered sales prices. We made deductions where appropriate, for freight, U.S. duty and handling charges. For Morton and Domtar, we made deductions for credit cost and indirect selling expenses in the United States.

Both Domtar and Morton requested that we used weighted averages to compute United States price. We have computed determine United States price on a sale by sale basis. We preliminarily that neither the variation in the prices nor the number of price adjustments is sufficient to warrant the use of sampling or a weighted average to compute United States price.

Foreign Market Value

As provided in section 773(a)(1) of the Act, we used f.o.b. mine, f.o.b. stockpile, and f.o.b. delivered home market prices to unrelated home market purchasers by Domtar, Morton and PCA to determine foreign market value. In calculating foreign market value we made currency conversions from Canadian dollars to U.S. dollars using the certified quarterly exchange rate, in accordance with § 353.56(a)(1)(2) of the Commerce Regulations. For Domtar and Morton we made deductions where appropriate for

freight and handling charges. In accordance with § 353.15(b) of the Commerce Regulations we made a circumstances of sale adjustment for differences in credit in the two markets for comparisons involving purchase price calculations. For ESP comparisons we deducted home market credit, and we made an offset to Domtar's indirect selling expenses up to the amount of indirect selling expenses in the United States. We did not offset indirect selling expenses for Morton because Morton submitted approximations of the indirect selling expenses and not actual expenses. Comparisons were made at the same level of trade in the United States and the home market. Domtar and Morton's charges for freight and handling of merchandise from their mine to their depot or stockpiles and maintenance expenses of the rock salt at their stockpile locations were not deducted where these charges were incurred prior to the sale of the merchandise.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of rock salt from Canada, except that sold by PCA, which are entered, or withdrawn from warehouse, for consumption, on or after the date of the publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturers	Dumping margins (percent)
Domtar, Inc	27.22
Morton Thiokol, Inc	7.97
Potash Co. of America	[1] 0.00
All other manufacturers/producers and exporters	17.65

[1] Excluded.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on August 23, 1985, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by August 16, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

July 8, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–16726 Filed 7–12–85; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. 525]

Piher Semiconductores, S.A.; Order Amending Temporary Denial of Export Privileges

In the matter of Piher Semiconductores, S.A., Avda San Julian, s/n Apartado Correos 177, Granallers (Barcelona), Spain.

As an amendment of the Order of February 25, 1982, 47 FR 9044 (March 3, 1982) Temporarily Denying Export Privileges, Piher International Corp. has been authorized to make certain exports to Canada, Singapore, and Hong Kong. Such authorization for Canada and Singapore was issued first in the Order of April 9, 1982, 47 FR 16819 (April 20, 1982), and has been extended without interruption at several-month intervals, most recently by the Order of April 3, 1985, 50 FR 14002 (April 9, 1985). An authorization for certain exports to Hong Kong was added by the Order of June 19, 1985, 50 FR 26242 (June 25, 1985).

At the same time that Piher International Corp. first applied for its authorization for Canada and Singapore, it also moved that it be deleted from the list of related parties named in Paragraph III of the Order of February 25, 1982. Consideration of that motion is still continuing. Each authorization for certain exports to Canada, Singapore, and Hong Kong provided that Piher International Corp. could apply for an extension thereof if serous economic hardship would be caused by a failure of such extension coupled with a continuing consideration of its motion for its deletion from the list of related parties.

Piher International Corp. has now applied for an extension of its authorization to make certain exports to Canada, Singapore, and Hong Kong, asserting that failure to obtain the extension will entail serious economic hardship.

Based on the representations made by Piher International Corp., I find that its application for an extension of its authorization to make certain exports is justified, and that granting this extension will not jeopardize the purpose of the Order of February 25, 1982.

Accordingly, it is hereby ordered that the Order of February 25, 1982 is further amended by excepting, from its denial of export privileges, Piher International Corp., with addresses at 903 Feehanville Drive, Mt. Prospect, Illinois 60056, and at Post Office Box 91969, Chicago, Illinois 60680, insofar as Piher International Corp. exports variable resistors and potentiometers to its customers in Canada, Singapore, and Hong Kong in fulfillment of shipments scheduled through September 1985 in the documents filed by Piher International Corp. in support of its Application for this extension and in support of its Application for the Order of June 19, 1985, provided all such exports are G–DEST under the Export Administration Regulations (15 CFR Parts 368–399

(1984)). Piber International Corp. may apply for an extension of this Amendment to shipments scheduled after September 1985 should a continuing consideration of its aforesaid motion for its deletion from the list of related parties entail serious economic hardship if such an extension is not issued.

This Amendment of the Order is effective July 1, 1985.

Dated: July 8, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-16725 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Stephen W. Mitchell a.k.a. Lee Stevens (P384)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Stephen W. Mitchell, AKA Lee Stevens.

b. Address 15 Amity Place, Staten Island, New York 10303.

2. Type of Permit: Public Display/ Traveling Show.

3. Name and Number of Marine Mammals: California Sea Lion (*Zalophus californianus*) 3.

4. Type of Take: Captive Maintenance

5. Location of Activity: Present Stock of Beached/Stranded Rehabilitated

6. Period of Activity: one (1) year

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region 14 Elm Street, Federal Building, Gloucester, Massachusetts.

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida.

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California.

Dated: July 8, 1985

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-16216 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

The North Pacific Fishery Management Council will convene a public meeting, August 12-14, 1985, at the Alyeska Resort in Girdwood, South of Anchorage, at 2 p.m. The Council will discuss how to revise the Gulf of Alaska Groundfish Fishery Management Plan to increase the Council's management flexibility and responsiveness to the rapidly evolving fisheries in the Gulf. Also the Council will discuss specific objectives and strategies for the Gulf groundfish fisheries.

The Council's Permit Review Committee will meet August 15-16, at Alyeska, to review public comments to the Council's proposed policy on the review of joint ventures and allocations and the conditioning of permits. For further information, contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Dated: July 8, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-16720 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-22-M

Regional Fishery Management Councils; Public Meeting

The Chairpersons and Executive Directors of the eight Regional Fishery Management Councils (Councils) and representatives of the National Marine Fisheries Service (NMFS) will convene a public meeting at the Alderbrook Inn, Union, WA; July 29-31, 1985. The Councils will consider draft issues and discussion papers prepared by the Council/NOAA Task Group as part of its evaluation of the effectiveness of the present fishery management process in achieving the goals of the Magnuson Act. Other matters to be considered include adequacy of NMFS resource assessment and data acquisition activities in support of Council planning and management responsibilities, Magnuson Act amendments, Council and NMFS FY86 budgets, and other matters.

For further information, contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201; telephone: (503) 221-6352.

Dated: July 10, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-16721 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Thomas F. Albert

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: Dr. Thomas F. Albert (P282A), Senior Scientist.

b. Address: Department of Conservation & Environmental Protection, North Slope Borough, Box 69, Barrow, Alaska 99723.

2. Type of Permit: Scientific Research and Scientific Purposes.

3. Name and Number of Marine Mammals: bowhead whale (*Balaena mysticetus*) 60; gray whale (*Eschrichtius robustus*) 15; beluga whale (*Delphinapterus leucas*) 30; bearded seal

(*Erignathus barbatus*) 30; ringed seal (*Phoca hispida*) 100.

4. Type of Take: Specimen materials will be collected from dead stranded or subsistence harvested animals.

5. Location of Activity: Alaska.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: July 8, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation.

[FR Doc. 85-16766 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; NMFS, Northeast Fisheries Center (P77#14)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name, NMFS, Northeast Fisheries Center.

b. Address, Woods Hole, Massachusetts 02543.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Unspecified Marine Mammals.

4. Type of Take: To collect specimen materials from, and to tag unspecified Marine Mammals taken incidentally in legal fishing operations and in joint venture fisheries within the Fishery Conservation Zone.

5. Location of Activity: Atlantic Ocean and Gulf of Mexico.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, Southeast Region National Marine Fisheries Service, Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930–3799.

Dated: July 8, 1985.

Richard B. Roe, *Director, Office of Protected Species and Habitat Conservation.*

[FR Doc. 85-16769 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Charges for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

July 9, 1985.

The Chairman of the Committee for the Implementation of textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued a directive to the Commissioner of Customs implementing the terms of an amendment to the bilateral agreement between the Governments of the United States and the Republic of Korea, described below. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, notes have been exchanged further amending the bilateral agreement to charge an overshipment of man-made fiber luggage in Category 670pt. (only T.S.U.S.A. numbers 706.4144 and 706.4152), which occurred during the 1984 agreement year, over a period of three years in increments of 256,990 pounds per year during the 1985, 1986 and 1987 agreement years. With the application of 3.5 percent swing, the 1984 luggage limit is 26,496,000 pounds.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1985).*

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16727 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-DR-M

Names of Officials Authorized To Issue Export Visas for Certain Cotton, Wool, and Man-made Fiber Textile Products Produced or Manufactured in the Republic of Maldives

July 9, 1985.

Under the terms of the cotton, wool, and man-made fiber apparel export visa arrangement of December 29, 1981 and March 22, 1982, between the Governments of the United States and the Republic of Maldives, the Government of the Republic of Maldives has notified the United States Government that six officials are authorized to issue export visas for the textile and apparel products subject to the terms of the bilateral agreement. The purpose of this notice is to advise the public of the names of such officials. The following is a complete list of officials of the Government of the Republic of Maldives who are currently authorized to issue export visas:

Mohamed Zahir
Mohamed Shareef
Hassan Adam
Ali Ibrahim
Ahmed Firaq
Raziyya Mohamed

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16728 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Education Benefits Board of Actuaries; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 101, title 10, United States Code (10 U.S.C. 2006(e) et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the GI Bill. Persons desiring to (1) attend the DoD Education Benefits Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Ms. Kathy Greenstreet at 696-5793 by August 5, 1985. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 12, 1985, 9:00 a.m. to 4:00 p.m.

ADDRESS: Room 1E801, the Pentagon (River Entrance).

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, Defense Manpower Data Center, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209 (202) 696-5860.

Dated: July 10, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-16701 Filed 7-12-85; 8:45 am]

BILLING CODE 3810-01-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 19(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board Subcommittee on Disease Control.

Date of Meeting: 9 August 1985.

Time: 0900-1600 hours.

Place: Conference Room 3092, Walter Reed Army Institute of Research, Walter Reed Army Medical Center, Washington, DC.

Proposed Agenda: To review policies relative to HTLV-III antibody positivity.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 2D455, Pentagon, Washington, DC 20310-2300, (202)695-0115.

Dated: July 8, 1985.

Robert F. Nikolewski,

Col, USAF, BSC, Executive Secretary.

[FR Doc. 85-16772 Filed 7-12-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Conduct of Employees

Section 207(f), title 18, United States Code, authorizes the Secretary of Energy to waive the post-employment restrictions of subsection (a) of section 207, title 18, United States Code, to permit a former employee with outstanding qualifications in a scientific, technological, or other technical discipline to make appearances before or communications to the Government in connection with a particular matter which requires such qualifications where it has been determined that such a waiver would serve the national interest.

It has been established to my satisfaction that Donald M. Kerr, Jr., former Deputy Assistant Secretary for Energy Technology and Deputy Assistant Secretary for Defense Programs, has an outstanding and unique combination of a wide range of knowledge of both theoretical and applied physics and broad experience in management and administraiton of complex technological programs. I am further satisfied that it serves the national interest to permit him, in his capacity as Director of Los Alamos National Scientific Laboratory, to appear before and communicate with officials of the Department of Energy and other Government agencies with respect to administration of the Laboratory pursuant to contractual arrangements for its operation by the University of California, Dr. Kerr's current employer. I am satisfied that these activities are in a scientific or technological field and require the qualifications stated.

I have, therefore, waived the post-employment prohibitions of subsection (a) of section 207, title 18, United States Code (in consultation with the Director of the Office of Government Ethics), with respect to contact by Dr. Kerr with employees of the Department of Energy or other Government agencies to permit him, in his capacity as Director of Los Alamos National Scientific Laboratory, to undertake the stated activities on behalf of his current employer, the University of California.

Dated: June 25, 1985.

John S. Herrington,

Secretary of Energy.

[FR Doc. 85-16781 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (Grant); Restriction of Eligibility

AGENCY: U.S. Department of Energy, San Francisco Operations Office.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: DOE announces that it plans to award a Grant to Cornell University, School of Electrical Engineering in the amount of $99,000. The Statutory Authority authorizing the use of a grant award is Pub. L. 95-91, DOE Organization Act, and Pub. L. 93-577, Federal Non-Nuclear Energy Research and Development Act.

[Grant No. DE-FG03-85SF15784]

Scope of Project

Cornell University proposes to develop "A Posture Coordinating Strategy for Electrical Utility Systems".

A posture coordination strategy is the maneuvering of system control variables in a coordinated manner to achieve a desirable operating condition. System posture refers to the system generator/load set-point values, and the grid network configuration. There is no current research addressing the topic of a-priori maneuvering of system-set points for the purpose of achieving an optimal posture in anticipation of expected contingencies or threats to system integrity. As utility grid systems become more tightly interconnected, as transmission levels are stressed, there is a need for policy with respect to emergency operations. With the complexities that interconnected grid systems entail, it is imperative that strategies for coping with unforeseen demands upon systems be developed. The DOE is vitally interested in the methodology for coping with stresses on the system and the need to establish an equilibrium for utility load management and has determined that this award to Cornell University, School of Electrical Engineering on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT:
Aundra Richards, U.S. Department of Energy, San Francisco Operations Office, Contracts Management Division, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, California, July 1, 1985.

Donald W. Pearman, Jr.,
Acting Manager.

[FR Doc. 85-16704 Filed 7-12-85; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 85-11-NG]

Dome Petroleum Corp.; Order Granting Blanket Authorization To Import Natural Gas for Spot or Short-Term Sales

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Issuance of Opinion and Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on July 2, 1985, the ERA Administrator issued an opinion and order authorizing Dome Petroleum Corporation (DOME) to import up to 50 Bcf of Canadian natural gas per year for short-term or spot market sales without separate ERA proceedings on individual transactions. The gas will be imported over a two-year term beginning on the date of first delivery. Quarterly reports on all short-term or spot sales are to be filed with the ERA.

The text of the opinion and order follows.

FOR FURTHER INFORMATION CONTACT:
Stanley C. Vass (Natural Gas, Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9402.
Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-0007.

Issued in Washington, D.C. on July 3, 1985.

James W. Workman,
Director, Office of Fuels Programs, Economic Regulatory Administration.

SUPPLEMENTARY INFORMATION:

[ERA Docket No. 85-11-NG; DOE/ERA Opinion and Order No. 85]

Dome Petroleum Corp.; Order Granting Blanket Authorization to Import Natural Gas From Canada

July 2, 1985.

I. Background

On May 1, 1985, Dome Petroleum Corporation (Dome) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, for blanket authorization to import Canadian natural gas for short-term or spot market sales. The applicant requested blanket authority to import up to 50 Bcf per year of Canadian natural gas for a two-year period beginning on the date of first delivery. Dome is a North Dakota corporation and a wholly-owned subsidiary of Dome Petroleum Limited, a Canadian corporation.

Dome proposes to import the natural gas as a broker for U.S. purhasers and Canadian suppliers or as an importer on its own behalf for sale to U.S. purchasers. The imported gas would be supplied by various Canadian suppliers and sold on a short-term or spot market basis to U.S. purchasers, including industrial or agricultural users, electric utilities, pipelines, and distribution companies. Dome states that it intends to use existing facilities to transport the gas and expects that the majority of the short-term or spot market sales made to U.S. purchasers will be used to displace higher-priced energy supplies.

Under the blanket authority requested, Dome wants to be able to import the gas pursuant to individual spot sales contracts without a specific ERA regulatory proceeding and approval prior to execution of each spot sale contract. Dome proposes to report the details of each short-term or spot market sale made during each calendar quarter within 40 days following the close of the calendar quarter. The report would include import and sale prices, volumes, duration of the agreements, contract adjustment and take provisions, the Canadian suppliers, the U.S. purchasers, and a description of the markets served.

Dome maintains that the proposed import is in the public interest since the specific terms of each short-term or spot market sale will be freely negotiated and responsive to current market conditions for natural gas, and that efficient allocation of natural gas in the marketplace is thereby ensured.

II. Interventions and Comments

A notice of Dome's application was issued on May 10, 1985, inviting protests and motions to intervene to be filed by June 20, 1985.[1] Five motions to intervene were filed. Motions to intervene without comment were filed by the following companies: Northwest Pipeline Corporation, a potential transporter of Dome's spot market gas; Consolidated Gas Transmission Corporation, a potential competitor in markets that may be supplied with the spot market gas; Michigan Consolidated Gas Company, a potential customer for the spot market gas; and Northern Natural Gas Company, Division of InterNorth, Inc., a potential competitor and transporter of the gas.

While not opposing Dome's application, Pacific Gas Transmission Company (PGT), a potential competitor and transporter of the gas, urged in its motion to intervene that the ERA consider implementing some safeguards, beyond the proposed, periodic after-the-fact reporting system, to ensure that the interests of all gas consumers in the markets affected are protected. PGT expressed concern that without additional safeguards, market-oriented terms for long-term supplies favorable to gas consumers may be adversely affected. PGT stated that Dome's "blanket proposal," like those made in previous blanket authorization cases, did not provide specific information, such as contract terms, identity of buyers, and markets served, upon which its competitiveness could be judged.

There was no opposition to any of the motions to intervene, and no requests

[1] 50 FR 20923, May 21, 1985.

for further proceedings. This order grants intervention to all movants.

III. Decision

Dome's application has been reviewed to determine if it conforms with Section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there has been a finding that the import "will not be consistent with the public interest." [2] In making this finding, the ERA Administrator is guided by the statement of policy issued by the DOE relating to the regulation of natural gas imports.[3] Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

In its motion to intervene, PGT expressed concern that Dome's proposed after-the-fact periodic reporting of individual sales under the blanket authorization may not be an adequate safeguard to protect the interests of consumers in the markets affected. In particular, PGT wanted to assure that market-response terms for long-term supplies of natural gas are not adversely affected. PGT requested additional safeguards to protect the interests of gas consumers because the details of each spot market sale would be known until after the sale was consummated.

The ERA believes that the competitiveness of an import is of prime concern. The policy of this agency is to promote competition, and to foster the new and positive competitive forces which the applicant's import would bring to its marketplace. The ERA made a decision on PGT's concerns when it authorized the blanket import arrangements requested by Cabot Energy Supply Corporation, Northwest Alaskan Pipline Company, and Tenngasco Exchange Corporation and LHC Pipeline Company.[4] In those orders, we found that there was no need for the government to protect long-term, firm imports against competition from short-term spot imports. Long-term suppliers have options available to meet such competition which they can exercise without government assistance or interference.

The ERA also noted in its prior orders in blanket import authorization cases that the nature of spot sales arrangements—as quick, short-term spot transactions—necessitates that if they are to be approved at all, they must be reviewed as a group on a blanket basis using information presented about the type of transaction and the circumstances under which such transactions would be undertaken.[5] The ERA determined in those cases that limiting the term of the authorization to two years, coupled with a requirement to report quarterly the details of each spot market sale consummated, would provide adequate and timely opportunity to review the impact of a blanket authorization for protection of the public interest. PGT has not presented any new evidence or arguments in this case to change that position. Therefore the ERA concludes that such safeguards will provide adequate protection in this case against unintended and unanticipated effects that might be inconsistent with the public interest.

The fact that each spot sale will be voluntarily negotiated, short-term and market responsive, as asserted in Dome's application, provides assurance that the transactions will be competitive, and in the public interest. Spot sales are designed to respond to a changing market and would not take place at all if the gas was not marketable, not competitive, and not needed.

As set forth in the gas import policy guidelines, the need for an import is recognized to be a function of its competitiveness. Under Dome's import proposal, the gas would not be sold on the spot market if it was not needed. No intervenor has challenged the need for the gas.

In evaluating short-term, spot arrangements in previous cases, the ERA has taken the position that security of supply is not an issue of significance.[6] Since Dome's imported gas would be sold to U.S. purchasers under the same type of short-term, spot arrangements, the ERA concludes that security of supply is not a significant issue in this case.

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by Dome is not inconsistent with the public interest and should be granted.[7]

Order

For the reasons set forth above, pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. Dome Petroleum Corporation (Dome) is authorized to import up to 50 Bcf per year for a term of two years beginning on the date of first delivery.

B. Dome shall notify the ERA in writing of the date of the first delivery of gas authorized in Ordering Paragraph A within two weeks after deliveries begin.

C. Dome shall file with the ERA in the month following each calendar quarter, quarterly reports indicating, by month, whether sales have been made, and if so, giving the details of each transaction. The report shall include the purchase and sales prices, volumes, any special contract price adjustments, take or make-up provisions, duration of the agreements, ultimate sellers and purchasers, transporters, points of entry, and markets served.

D. The motions to intervene as set forth in this Opinion and Order, are hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenors shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., July 2, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-16779 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

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[2] 15 U.S.C. 717b.

[3] 49 FR 6684, February 22, 1984.

[4] *See Cabot Energy Supply Corporation*, DOE/ERA Opinion and Order No. 72, issued February 28, 1985 (1 ERA ¶ 70,124); *Northwest Alaskan Pipeline Company*, DOE/ERA Opinion and Order No. 73, issued February 28, 1985 (1 ERA ¶ 70,565); and *Tenngasco Exchange Corporation and LHC Pipeline Company*, DOE/ERA Opinion and Order No. 80, issued May 8, 1985 (1 ERA ¶ 70,598).

[5] *Supra*, note 4.

[6] *Supra*, note 4.

[7] Because the proposed importation of natural gas will use existing facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

[ERA Docket No. 85-06-NG]

The U.S. Natural Gas Clearinghouse, Ltd.; Final Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Issuance of Opinion and Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on July 5, 1985, the ERA Administrator issued an opinion and order granting The U.S. Natural Gas Clearinghouse,

Ltd. (Clearinghouse) a blanket authorization to import natural gas from Canada for short-term or spot-market sales without separate ERA proceedings on individual transactions. The order authorizes Clearinghouse to import up to 1 Bcf of natural gas per day for a term of two years (up to 730 Bcf) beginning on the date of first delivery either as a broker for Canadian suppliers and U.S. purchasers or as an importer on its own behalf. The ERA is to be notified of the date of first delivery within two weeks after the occurrence. To facilitate evaluation of individual transactions, the order also requires Clearinghouse to file with the ERA quarterly reports of the details of each sale of the gas imported under this authorization.

The text of the opinion and order follows.

FOR FURTHER INFORMATION CONTACT:
Robert J. Groner (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9482
Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing) U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6667.

Issued in Washington, D.C., on July 5, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

SUPPLEMENTARY INFORMATION:

[ERA Docket No. 85–06–NG; DOE/ERA Opinion and Order No. 86]

The U.S. Natural Gas Clearinghouse, Ltd.; Order Granting Authorization to Import Canadian Natural Gas for Short-Term and Spot Markets.

July 5, 1985.

I. Background

On February 27, 1985, The U.S. Natural Gas Clearinghouse, Ltd. (Clearinghouse) filed with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, an application for blanket authorization to import Canadian natural gas for short-term, spot sales.[1] The applicant requested blanket authority to import up to 1 Bcf of natural gas per day (up to a total of 1.46 Tcf over the entire term) for a term of four years beginning on the date of approval of its application. The applicant proposes to import gas from reliable Canadian producers pursuant to subsequently negotiated, individual short-term sales contracts without each being subjected to a specific ERA regulatory proceeding. The applicant requests authority to import for its own account as well as for the accounts of its Canadian producer/marketer clients and U. S. purchaser clients, acting as agent for sellers and purchasers.

II. Procedural History

On March 11, 1985, the ERA issued a notice of the application, inviting protests, motions to intervene and written comments by April 15, 1985.[2] Seventeen motions and notices to intervene were received by the ERA.[3] Three parties, ANR Pipeline Company (ANR), Mesa Petroleum Co. (Mesa), and Railroad Commission of Texas (RCT), protested the application. Four parties, ANR, Mesa, RCT, and Panhandle Eastern Pipe Line Company (Panhandle), requested additional procedures. Seven parties, ANR, Mesa, RCT, Niagara Mohawk Power Corporation (Niagara Mohawk), Pacific Gas Transmission Company (PGT), Panhandle, and Transcontinental Gas Pipe Line Corporation (Transco), made substantive comments.

ANR proposed that the ERA deny Clearinghouse's blanket authorization and require Clearinghouse to apply for specific authority for each proposed transaction. ANR requested full evidentiary hearings if the application is not denied. In addition, ANR suggested that if broad range, blanket or generic authorizations of spot imports are to be considered, a general rulemaking proceeding should be utilized.

Mesa protested the application because its approval would confer upon Clearinghouse the right to sell its Section 3 authorization. Mesa contended that such a brokering of Section 3 entitlements is impermissible under the statute and such fees paid in the brokering should not be a legitimate utility expense collectible in the cost of service of the purchasing customers. In the event that the ERA determines not to reject the Clearinghouse application, Mesa also requested that the ERA hold an evidentiary hearing.

The RCT protested the application and requested further procedures because it believed the Clearinghouse application provided insufficient information to enable it to be determined to be in the public interest, as required by section 3 of the Natural Gas Act.

Niagara Mohawk expressed concern that the information provided in the Clearinghouse application was too vague to support an evaluation. Niagara Mohawk also noted the substantial quantity of gas Clearinghouse sought to import and suggested that the ERA should consider the current excess deliverability of domestic gas which is causing market disorders.

PGT was concerned that the proposed after-the-fact periodic reporting to the ERA of individual transactions by Clearinghouse was not, by itself, an appropriate safeguard to assure protection of the interests of all gas consumers in the markets affected, particularly to ensure that such blanket imports do not adversely affect long-term gas supplies. PGT, noting the volume and term restrictions of the Canadian policy on spot market sales,[4] asked that the ERA consider limiting the term of the proposed project to two years and authorizing lessor volumes.

Panhandle stated that the Clearinghouse application does not present any of the concrete details or facts necessary for proper evaluation by participants or the ERA, and sought prior notice requirements for each particular transaction under any blanket authorization. Panhandle requested additional procedures to determine the details of potential Clearinghouse transactions, the compliance of such transactions with the DOE's policy guidelines, the impact of such transactions on existing long-term projects for importation of Canadian gas, and the procedural requirements necessary to make spot market imports consistent with the Natural Gas Act.

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[1] Clearinghouse is a Houston, Texas-based, limited partnership. The Gas Clearinghouse Operating Company is the general partner and the six limited partners are subsidiary corporations of the following natural gas pipelines: Colorado Interstate Gas Company, The Columbia Gas System, Inc., El Paso Natural Gas Company, Houston Natural Gas Corporation, Transco Energy Company, and United Energy Resources, Inc.

[2] 50 FR 10533, March 15, 1985.

[3] Intervenors are: Algonquin Gas Transmission Company; ANR Pipeline Company; CNG Development Company; CNG Producing Company; Consolidated Gas Transmission Corporation; El Paso Natural Gas Company; Mesa Petroleum Company; Niagara Mohawk Power Corporation; Northern Natural Gas Company, Division of InterNorth, Inc.; Northwest Pipeline Corportion; Pacific Gas Transmission Company; Pacific Interstate Transmission Company; Panhandle Eastern Pipe Line Company; Public Service Electric and Gas Company; Railroad Commission of Texas; Texas Eastern Transmission Corporation; and Transcontinental Gas Pipe Line Corporation.

[4] National Energy Board (NEB) Regulatory Procedures and Informa-Gas Export Orders (NEB File: 1537–1, dated October 2, 1984). NEB Part VI Regulations permit the Board to issue short-term orders for the export of natural gas up to a total of 106 Bcf for such orders in any 12-month period and a maximum term for any such order not to exceed 24 months commencing on November 1 of any year.

Transco expressed concern that the points of entry for requested imports were not identified in the application. To prevent the possibility that volumes of gas imported under the requested authorization would compete for available pipeline capacity, Transco suggested that any order issued in this docket be conditioned by assigning a lower priority for the transportation of short-term, interruptible imports than for firm import volumes through any point of entry facilities. Transco offered as an alternative to the Clearinghouse application a proposal for a generic blanket import program available to all that desire to import Canadian natural gas on a short-term or spot basis.

On May 13, 1985, after a review of the information in the record, the ERA issued a procedural order to all parties providing opportunity for comments on its proposal to limit approval of the applicant's blanket authorization to a term of two years and to a maximum volume of 730 Bcf during the two-year term, consistent with recent orders granting other blanket authorizations.[5] The order required comments to be filed and served on all parties by June 10, 1985, and responses to be filed and served by June 25, 1985. The order requested that the parties review the proposed restrictions on the term and volumes to be imported under this blanket arrangement and their earlier comments on the application. If any opposition to the restricted proposal continued, the order required the parties to restate that opposition in order for it to be taken into consideration in the final decision. The order provided that previously filed comments could be incorporated by reference and thus restated in any additional comments.

Only the applicant and four intervenors, RCT, Mesa, Panhandle, and Niagara Mohawk, submitted additional comments. No new issues were raised by the intervenors in their comments to the procedural order, nor did the intervenors making additional comments change their position from their previous comments on the application. The four intervenors stated that the modification of the import proposed by the ERA does not cure the lack of specific information needed to fully evaluate the application.

In its response, Clearinghouse stated that it did not oppose the ERA's decision to limit its blanket authorization to a period of two years. Clearinghouse requested that the ERA grant the authorization on the grounds that the proposed imports will clearly be competitive—asserting that if a particular spot sale of Canadian gas is priced too high, the markets will either continue buying from their current supplier or will buy from a Clearinghouse competitor offering lower-priced gas. Clearinghouse also responded that the intervenors' comments provided no basis for distinguishing its proposed import arrangement from the import arrangement approved by the ERA in *Tenngasco*,[6] in terms of flexibility granted and the ability to act as agent or principal in a particular situation.

III. Decision

The application filed by Clearinghouse has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest."[7] The Administrator is guided by the DOE's natural gas import policy guidelines.[8] Under these guidelines, the competitiveness of an import arrangement in the market served is the primary consideration for meeting the public interest test.

The parties intervening in this case raised a number of issues related to the competitiveness of the proposed import. However, most of those issues relate to concerns that imports made under the blanket authorization will be too competitive rather than not competitive in the markets served.

Niagara Mohawk, both in its original intervention and, by reference, in its comments in response to the procedural order, expressed concern that the ERA should evaluate whether the requested import authorization can be justified given the current excess of domestic deliverability of gas and the present market disorder. Niagara Mohawk contended that the ERA must consider the prevention of further market disruptions potentially caused by short-term, interruptible sales skimming the large industrial customers from present suppliers.

Niagara Mohawk's concern over justification for the new import authorization in a time of excess domestic deliverability gives the impression it wants to insulate its market from potential competition. Such concern may be normal for a supplier faced with the loss of customers. However, the DOE strongly supports the establishment of a spot market, and the competition such short-term, spot sales bring to the marketplace.[9] The addition of spot sales to a surplus market places downward pressure on prices and encourages pipelines and distributors to continue to renegotiate their arrangements to make them more competitive and market-responsive.

Mesa contended that the proposed import would give Clearinghouse the right to sell its section 3 authorization and that such a brokering of section 3 entitlements is impermissible under the Natural Gas Act. Mesa argues that approval of the proposed import would be an impermissible delegation of authority to Clearinghouse, which, acting as an agent, would determine which transactions meet the public interest standard of section 3.

The ERA, in granting authorizations which permit importers to act as agents, has not delegated any section 3 authority. Rather, the ERA has determined that a finding of public interest does not rely on whether title to the gas has been taken. The nature of the proposed transaction must be evaluated. Here, as in *Tenngasco*, the nature of spot sales arrangements—that each spot sale is voluntarily negotiated, short-term, and generally executed on an interruptible, best-efforts basis—provides assurance that such transactions will be consistent with the policy guidelines and in the public interest. Whether Clearinghouse takes title to the imported gas in a contract term not material to this consideration. As stated in the policy guidelines, "[t]he market, not government, should determine the price and other contract terms of imported gas."[10]

Niagara Mohawk, Mesa, RCT, and Panhandle expressed concern that there is not sufficient information on individual transactions in the application to ascertain that they are not inconsistent with the public interest. Spot market sales are quick, short-term

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[5] *See Cabot Energy Supply Corporation*, DOE/ERA Opinion and Order No. 72, issued February 20, 1985 (1 ERA ¶ 70,124); *Northwest Alaskan Pipeline Company*, DOE/ERA Opinion and Order No. 73, issued February 20, 1985 (1 ERA ¶ 70,565); *Tenngasco Exchange Corporation and LHC Pipeline Company*, DOE/ERA Opinion and Order No. 80, issued May 8, 1985.

[6] *See supra* note 5.

[7] 15 U.S.C. 717b.

[8] 49 FR 6684, February 22, 1984.

[9] In *Increasing Competition in the Natural Gas Market; Second Report Required by Section 123 of the Natural Gas Policy Act of 1978*, submitted in January 1985, the DOE observed that an active spot market will allow the natural gas market to allocate risks efficiently and will help minimize price and supply fluctuations as the market moves from a tightly regulated environment toward fully competitive market conditions. *See* Summary, pp. S-1 and S-5, and Chapter 6, p. 75.

[10] 49 FR 6685, February 22, 1984.

transactions designed to adapt gas sales to changing market conditions. The series of spot sales transactions proposed by Clearinghouse can be evaluated and found to be in the public interest without knowing the precise terms of each sale, inasmuch as each sale is freely negotiated and would take place if the gas was marketable, competitively priced, and needed. It is not essential to know in advance the terms of each sale as long as the parameters of each sale are known. Establishment of a quarterly reporting requirement and limitation of the authorization to two years provide sufficient safeguards of the public interest in this type of arrangement.

Accordingly, the motions for further proceedings, including evidentiary hearings, to determine the details of specific proposed transactions in this proposed import are denied.

Panhandle and PGT, in its initial comments, expressed similar concerns. Both requested the ERA to consider what impacts short-term proposals have on the maintenance of competitive terms for long-term, firm supplies of Canadian gas in the markets which would be affected. Both requested the ERA to provide safeguards to assure protection of the interests of all gas consumers in the markets affected and not just the interests of a particular short-term buyer. Finally, both expressed concerns that the proposed quarterly report to be submitted by the applicants does not reserve to the ERA the ability to determine that the import policy guidelines will be satisfied in each import transaction.

The ERA made a decision on the concerns raised by Panhandle and PGT when it authorized the blanket import arrangements requested by Cabot Energy Supply Corporation, Northwest Alaskan Pipeline Company, Tenngasco Exchange Corporation and LHC Pipeline Company,[11] and Dome Petroleum Corporation.[12] In those orders we found there was no need to protect long-term, firm imports against competition from short-term, spot imports. Panhandle and PGT have not submitted any additional evidence or arguments which cause us to change this position. We continue to believe that such arrangements enhance competition in the marketplace and that quarterly reporting requirements adequately safeguard the public interest.

In sum, the ERA find that the parties opposing the import have failed to raise issues or present evidence which would support finding that the proposed or modified import arrangement is not competitive, or that would support disapproval of the authorization on other grounds. This modified version of the applicant's request for authorization represents an opportunity to test the use of imported natural gas for short-term, spot imports as a supplemental supply for the domestic spot market. Under this blanket import authority, Clearinghouse will be able to import, within fixed parameters, Canadian natural gas for subsequently executed individual short-term sales contracts negotiated in the competitive atmosphere of the domestic spot market. The ERA, through review of the contract sales information submitted by Clearinghouse in its required quarterly reports, will be able to evaluate the impact of the individual transactions on the markets served.

Moreover, the policy guidelines recognize that the need for an import is a function of competitiveness. Under the proposed import, Clearinghouse customers will only purchase gas to the extent they need such volumes. The security of the import supply is not a major issue because the gas is to be purchased on a short-term, interruptible basis.

After taking into consideration all the information in the record of this proceeding, I find that granting the blanket authorization to import up to 730 Bcf of Canadian gas over a term of two years for sale in the domestic short-term, spot market is not inconsistent with the public interest.[13]

Order

For reasons set forth above, pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. The U.S. Natural Gas Clearinghouse, Ltd. (Clearinghouse) is authorized to import up to 730 Bcf of natural gas from Canada for a term of two years beginning on the date of first delivery.

B. Clearinghouse shall notify the ERA in writing of the date of first delivery of natural gas imported under Ordering Paragraph A above within two weeks after the date of such delivery.

C. With respect to the imports authorized by this Order, Clearinghouse shall file with the ERA in the month following each calendar quarter, quarterly reports indicating, by month, whether sales have been made, and if so, giving the details of each transaction. The report shall include the purchase and sales prices, volumes, any special contract price adjustments, take or make-up provisions, duration of the agreements, ultimate sellers and purchasers, transporters, points of entry, and markets served.

Issued in Washington, D.C., on July 5, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-16780 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

[11] *See supra* note 5.

[12] DOE/ERA Opinion and Order No. 86, issued July 2, 1985.

[13] Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the following collections to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Tuesday, May 28, 1985 (50 FR 21648).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Data Collection Services Division (DCSD), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW. Washington, DC 20585, (202) 252-2308.

Vartkes Broussalian, Department of Energy Desk Officer, Office of

Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7313.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., July 10, 1985.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE Forms Under Review by OMB

Form number (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
ERA-166	Public Utility Regulatory Policies Act Annual Report on Electric and Gas Utilities.	Extension	Annually	Mandatory	State Regulatory Authorities.	130	1,300	ERA-166 collects data on the progress of State regulatory authorities and certain non-regulated electric and gas utilities in considering and making determinations with respect to the standards established by PURPA. Data are published by the ERA in an annual report to the President and Congress.
ERA-718R	Annual Report of International Electric Export/Import Data.	Extension	Annually	Mandatory	Public utilities and other entities holders of Export Authorization and Presidential Permits.	34	340	ERA-718R collects electrical import/export data from entities authorized to export electric energy, to construct, connect, operate, or maintain facilities for the transmission of electric energy at an international boundary as required by 10 CFR 205.308 and 205.325. The data are also used by EIA for publications.
FERC-515	Hydropower Licenses—Declaration of Intention; FERC 515.	Extension	On occasion.	Mandatory	Natural gas end users	3	240	To carry out the requirements of Part I, Section 23(b) of the Federal Power Act, the Declaration of Intention is filed by a prospective hydropower developer on a stream other than defined as U.S. jurisdictional waters, thereby causing the Commission to establish whether or not it has jurisdiction over the proposed projects.

[FR Doc. 85-16778 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Restriction of Eligibility for Grant Award

AGENCY: Energy Research Office, DOE.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), it is restricting eligibility for grant awards to two universities for the upgrading and the refueling of a critical facility and the upgrading of a nuclear reactor laboratory, respectively.

FOR FURTHER INFORMATION CONTACT: Harold H. Young, ER-44, U.S. Department of Energy, Washington, D.C. 20545, 301/353-3005.

SUPPLEMENTARY INFORMATION: Over the past years DOE has used grants to provide funding to universities with reactor and nuclear facilities utilized for research and training purposes. Upgrading these facilities is part of DOE's effort to support nuclear science and engineering development and education. The program also assists in defraying operating costs associated with making the universities' facilities and equipment more modern and productive for research and training and for making such facilities available to other educational institutions without these facilities. DOE will award grants to the following institutions:

Ohio State University (OSU)—Nuclear Reactor Laboratory Upgrade

Rensselaer Polytechnic Institute (RPI)—Critical Facility Upgrade and Refuel

Eligibility for grant awards is being restricted to the above universities since it would be impractical to seek other submissions for this work since it is being done by and for the universities with their financial support. These grants will cover an approximate two year period beginning July 1985 and will provide OSU $125,000 and RPI $233,938.

Issued in Chicago, Illinois on June 28, 1985.

Neil W. Fraser,

Assistant Manager for Acquisition and Assistance.

[FR Doc. 85-16777 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-19-M

Federal Energy Regulatory Commission

[Project Nos. 6903-001 et al.]

Hydroelectric Applications (Batten Kill Hydro Associates et al.), Applications Field With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1. a. Type of Application: Minor License.

b. Project No.: 6903-001.

c. Date Filed: October 31, 1984.

d. Applicant: Batten Kill Hydro Associates.

e. Name of Project: Middle Greenwich.

f. Location: Batten Kill River in Washington County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert E. Hedden, Synergics, Inc. 410, Severn Avenue, Suite 409, Annapolis, MD 21403.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed would consist of: (1) An existing 10-foot-high, 235-foot-long, concrete gravity spillway dam; (2) a 9-acre reservoir with

no usable storage at elevation 320.0 feet M.S.L.; (3) an existing 150-foot-long, 20-foot-wide, 10-foot-deep power canal; (4) an existing powerhouse to be rehabilitated and to contain one turbine-generator with a rated capacity of 400 kW; (5) a tailrace channel; (6) a 150-foot-long transmission line; and (7) appurtenant facilities. The project would produce up to 2,300,000 kWh annually. The project dam and facilities are currently owned by the Village of Greenwich and Karlson Glass Works. This license application was filed pursuant to a preliminary permit, Project No. 6903-000, held by the Applicant.

k. Purpose of Project: Energy produced at the project would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

2. a. Type of Application: Preliminary Permit.

b. Project No.: 9106-000.

c. Date Filed: April 12, 1985.

d. Applicant: City of Tacoma.

e. Name of Project: A. J. Wiley.

f. Location: On land administered by the Bureau of Land Management on the Snake River, near the town of Bliss, in Gooding and Twin Falls Counties, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Paul Nolan, City of Tacoma, Department of Public Utilities, P.O. Box 11007, Tacoma, WA 98411.

i. Comment Date: August 12, 1985.

j. Competing Application: Project No. 8807, Date Filed: December 19, 1984.

k. Description of Project: The proposed project would consist of: (1) A 100-foot-high earthfill embankment dam creating a reservoir with a surface area of 625 acres and a storage capacity of 24,000 acre-feet at elevation 2,735 feet; (2) a powerhouse containing three generating units with a combined capacity of 86 MW and an average annual generation of 485 GWh; and (3) a 3-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $1,500,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Power would be used by the City of Tacoma's Light Division.

m. This notice also consists of the following standard paragraphs: A8, B, C, D2.

3. a. Type of Application: Preliminary Permit.

b. Project No.: 9153-000.

c. Date Filed: May 1, 1985.

d. Applicant: Alternative Energy Management, Inc.

e. Name of Project: Perry Project.

f. Location: On the Delaware River near Perry, Jefferson County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. L. Joe Hamman, P.O. Box 67151, Topeka, KS 66667.

i. Comment Date: August 12, 1985.

j. Competing Application: Project No. 9148-000, Date Filed: May 1, 1985, Comment Due Date: August 5, 1985.

k. Description of Project: The proposed project would utilize the U.S. Corps of Engineers' Perry Dam and Lake, and consist of: (1) A new 325-foot-long steel penstock approximately 22.5 feet in diameter; (2) a new powerhouse located on the south side of an existing stilling basin with an installed capacity of 5 MW; (3) a proposed 34.5-kV transmission line approximately 8 miles long; and (4) appurtenant facilities. Applicant estimates the average annual generation to be 14,500 MWh. All energy will be sold to a local utility company.

l. This notice also consist of the following standard paragraphs: A8, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

4a. Type of Application: Exemption from Licensing (5MW).

b. Project No.: 7452-001.

c. Date Filed: October 2, 1984.

d. Applicant: Resources I, Inc.

e. Name of Project: Clear Creek Power.

f. Location: On Clear Creek in Baker County, Oregon, within Wallowa-Whitman National Forest, near the town of Halfway.

g. Filed Pursuant to: Energy Security Act of 1980 (16 U.S.C. 2705 and 2708).

h. Contact Person: Mr. Jack Crocker, Rt. 1, Box 144, Halfway, Oregon 97834.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed project would consist of: (1) An 18-inch-diameter, 40-foot-long perforated pipe buried in the streambed at an elevation of 4,351 feet; (2) an 18-inch-diameter, 18,000-foot-long buried penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 522 kW operating under a head of 909 feet; and (4) a 500-foot-long, 12.5-kV transmission line tying into an Idaho Power Company line. The estimated average annual energy output would be 4,018 MWh.

This application has been accepted for filing as of September 21, 1983, the submittal date of the Applicant's originally accepted exemption application pursuant to Eagle Power Co. et al., 28 FERC ¶ 61,061, issued July 18, 1984.

Purpose of Exemption—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Project power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A9, B, C and D3a.

5a. Type of Application: Preliminary Permit.

b. Project No.: 9058-000.

c. Date Filed: March 27, 1985.

d. Applicant: Cogeneration and Electric, Inc.

e. Name of Project: Green Point Hydroelectric.

f. Location: On Green Point Creek within the Mount Hood National Forest in Hood River County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Ms. Maxine Smith, Cogeneration and Electric, Inc., 1450 S.E. Orient Drive, Gresham, OR 97030.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 30-foot-long diversion dam at an elevation of 1,430 feet; (2) a 50-inch-diameter, 10,375-foot-long pipeline; (3) a powerhouse containing one or more generating units with a total rated capacity of 5,200 kW; and (4) two 1,500-foot-long transmission lines. Applicant estimates the average annual energy production to be 24,808 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $77,000. A 500-foot-long road would be constructed during the feasibility study.

k. Purpose of Project: The proposed power is to be sold to Pacific Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

6 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 9079–000.

c. Date Filed: April 1, 1985.

d. Applicant: Mark A. Vaughn.

e. Name of Project: Upper Spears Stream.

f. Location: On Spears Stream in the Town of Peru, in Oxford County, Maine.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Mr. Mark A. Vaughn, Worthley Pond Road, West Peru, ME 04290.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed project would consist of: (1) A proposed 4-foot-wide by 8-foot-long by 8-foot-high diversionary structure; (2) a proposed two-foot-high by 3-foot-wide steel intake grate; (3) a proposed 600-foot-long, 15-inch-diameter PVC penstock; (4) a proposed 10-foot-wide by 14-foot-long powerhouse to contain an installed generating capacty of 50 kW; (5) a proposed 750-foot-long, 7,200 volt overhead transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy generation will be 144,277 kWh.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

l. Purpose of Project: An exemption , if issued, gives the Exemptee priority of Control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

7a. Type of Application: Amendment of Small Conduit Exemption.

b. Project No.: 6812–001.

c. Date Filed: March 8, 1985.

d. Applicant: Sheep Creek Irrigation Company.

e. Name of Project: Sheep Creek Hydro Project.

f. Location: On Sheep Creek in Daggett County, Utah.

g. Filed Pursuant to: Section 30 of the Federal Power Act.

h. Contact Person: Mr. Albert H. Neff, Executive Secretary, Sheep Creek Irrigation Company, Manila, Utah 84046.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed Project No. 6812–001 would supersede Projects Nos. 6812–000, 6813–000, and 6914–002; would utilize a new intake structure and pipeline penstock, 54 inches in diameter and 3,920 feet long, with a branch leading to the Antelope Powerhouse, and a new continuing pipeline penstock, 48 inches in diameter and 6,860 feet long, leading to the South Valley Powerhouse; and would consist of: (1) The new Antelope Powerhouse to contain a turbine-generator unit rated at 1,000 kW; (2) the new South Valley Powerhouse to contain a turbine-generator unit rated at 3,610 KW; and (3) appurtenant facilities. Antelope Powerhouse would discharge into the Antelope Irrigation Canal and South valley Powerhouse would discharge into the South Valley Irrigation Canal. The Applicant estimates that the total average annual energy output would be 10,341,000 KWh.

k. Purpose of Project: Project energy would be sold to the Bridger Valley Electric Association.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 9112–000.

c. Date Filed: April 18, 1985.

d. Applicant: Bellows-Tower Hydro, Inc.

e. Name of Project: Whittelsey.

f. Location: Salmon River in Franklin County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Howard R. Doud, President, Bellows-Tower Hydro, Inc., Box 131, Dickinson Center, NY 12930.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 20-foot-high, 120-foot-long concrete gravity dam with; (2) new 1.83-foot-high wood flashboards; (3) a reservoir with a surface area of 2 acres, a storage capacity of 14 acre-feet, and a normal water surface elevation of 664 feet m.s.l.; (4) an existing intake structure; (5) a new 7-foot-diameter, 20-foot-long steel penstock; (6) a new powerhouse containing one generating unit with a capacity of 245 kW; (7) a new transmission line, 85 feet long; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 1,700,000 kWh. The existing dam is owned by the Village of Malone, New York.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Departing upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $12,000.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9154–000.

c. Date Filed: May 1, 1985.

d. Applicant: Alternative Energy Management, Inc.

e. Name of Project: Milford Project.

f. Location: On the Republican River near Junction City, Geary County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. L. Joe Hamman, P.O. Box 67151, Topeka, KS 66667.

i. Comment Date: August 12, 1985.

j. Competing Application: Project No. 9149–000, Date Filed: May 1, 1985, Comment Due Date: August 5, 1985.

k. Description of Project: The proposed project would utilize the U.S. Corps of Engineers' Milford Dam and Reservoir, and consist of: (1) A new 320-foot-long steel penstock approximately 14.5 feet in diameter; (2) a new powerhouse located on the north edge of an existing stilling basin with an installed capacity of 10 MW; (3) a proposed 34.5-kV transmission line approximately 4-miles long; and (4) appurtenant facilities. Applicant estimates the average annual generation to be 14,920 MWh. All energy will be sold to a local utility company.

l. This notice also consists of the following standard paragraphs: A8, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

10 a. Type of Application: Preliminary Permit.

B. Project No.: 9209–000.

c. Date Filed: May 21, 1985.
d. Applicant: Aero Construction, Inc.
e. Name of Project: Canal Section Lock D Hydro Project.
f. Location: On the Tennessee-Tombigbee Waterway Canal Section near Fulton, Itawamba County, Mississippi.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Ralph L. Laukhuff, Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70896.
i. Comment Date: September 3, 1985.
j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Tennessee-Tombigbee Waterway Canal Section at Lock D; a 650-foot-long and 20-foot-wide diversion channel; and would consist of: (1) A new powerhouse located on the east side of the lock in the diversion channel housing two 900-kW generators for a total installed capacity of 1,800 kW; (2) a proposed 12.47-kV transmission line approximately 100 feet long; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 13.2 GWh. All project energy would be sold to a local utility company.
k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.
11 a. Type of Application: Preliminary Permit.
b. Project No.: 9210–000.
c. Date Filed: May 21, 1985.
d. Applicant: Aero Construction, Inc.
e. Name of Project: Canal Section Lock E Hydro Project.
f. Location: On the Tennessee-Tombigbee Waterway Canal Section near Fulton, Itawamba County, Mississippi.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Ralph L Laukhuff, Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70896.
i. Comment Date: September 3, 1985.
j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Tennessee-Tombigbee Waterway Canal Section at Lock E; a 550-foot-long and 20-foot-wide diversion channel; and would consist of: (1) A new powerhouse located on the east side of the lock in the diversion channel housing two 900-kW generators for a total installed capacity of 1,800 kW; (2) a proposed 12.47-kV transmission line approximately 200 feet long; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 13.2 GWh. All project energy would be sold to a local utility company.
k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.
12 a. Type of Application: Preliminary Permit.
b. Project No.: 9211–000.
c. Date Filed: May 21, 1985.
d. Applicant: Aero Construction, Inc.
e. Name of Project: Canal Section Lock C Hydro Project.
f. Location: On the Tennessee-Tombigbee Waterway Canal Section near Fulton, Itawamba County, Mississippi.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Ralph L. Laukhuff, Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70896.
i. Comment Date: September 3, 1985.
j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Tennessee-Tombigbee Waterway Canal Section at Lock C; a 1450-foot-long and 20-foot-wide diversion channel; and would consist of: (1) A new powerhouse located on the west side of the lock in the diversion channel housing two 750-kW generators for a total installed capacity of 1,500 kW; (2) a proposed 12.47-kV transmission line approximately 4500 feet long; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 11.2 GWh. All project energy would be sold to a local utility company.
k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.
13 a. Type of Application: Preliminary Permit.
b. Project No.: 9212–000.
c. Date Filed: May 21, 1985.
d. Applicant: Aero Construction, Inc.
e. Name of Project: Canal Section Lock B Hydro Project.
f. Location: On the Tennessee-Tombigbee Waterway Canal Section near Smithville, Itawamba County, Mississippi.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Ralph L. Laukhuff, Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70896.
i. Comment Date: September 3, 1985.
j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Tennessee-Tombigbee Waterway Canal Section at Lock B; a 1900-foot-long and 20-foot-wide diversion channel located west of the lock; a 1500-foot-long and 20-foot-wide diversion channel located east of the lock; and involves two developments, sites A and B. The proposed two developments would consist of:

(A) Site A which would be located in the west diversion channel, and which would have: (1) A new powerhouse housing two 750-kW generators for a total installed capacity of 1500 kW; (2) a proposed 12.47-kV transmission line approximately 3000 feet long; and (3) appurtenant facilities.

(B) Site B which would be located in the east diversion channel, and which would have: (1) A new powerhouse housing a 750-kW generator; (2) a proposed 12.47-kV transmission line approximately 800 feet long; and (3) appurtenant facilities.

The Applicant estimates the total installed capacity of the two developments would be 2.25 MW and the average annual generation would be 18 GWH.

k. Purpose of Project: All project energy would be sold to a local utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.

14 a. Type of Application: Minor License.

b. Project No.: 8405–002.

c. Date Filed: April 29, 1985.

d. Applicant: Glen Hydro, Inc.

e. Name of Project: Glen Hydro.

f. Location: On the Mascoma River in Grafton County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Thomas B. Cronmiller, Sulloway Hollis & Soden, 9 Capitol Street, Concord, New Hampshire 03301.

i. Comment Date: September 6, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 175-foot-long and 14-foot-high concrete gravity dam with a spillway crest elevation of 410.2 feet mean sea level, owned by the city of Lebanon; (2) new 3-foot-high flashboards; (3) an impoundment with a surface area of 7 acres; (4) an existing intake structure at the north abutment; (5) a new 8-foot-diameter and 3,100-foot-long steel penstock; (6) a new powerhouse with 3 turbine-generator units with a total installed capacity of 1,485 kW; (7) a new 13.2-kV and 300-foot-long underground transmission line; and (8) other appurtenances. Applicant estimates an average annual generation of 6,000,000 kWh. This application was filed within the preliminary permit term for the Lower Mascoma Project No. 8405.

k. Purpose of Project: Project energy would be sold to Granite State Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

15 a. Type of Application: Conduit Exemption.

b. Project No.: 8864–001.

c. Date Filed: March 11, 1985.

d. Applicant: Cleto McPherson.

e. Name of Project: George Creeks.

f. Location: At existing irrigation diversions on George Creek and North McDonald Creek in Park County, Montana.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Roger Kirk, Hydrodynamics, Inc., P.O. Box 413, Red Lodge, MT 59068.

i. Comment Date: August 14, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5,500-foot-long 8-inch-diameter pipe from the existing irrigation diversion on George Creek; (2) a 6,000-foot-long, 8-inch-diameter pipe from the existing irrigation diversion on North McDonald Creek; (3) a powerhouse containing one generating unit with a capacity of 100kW and an average annual generation of 440 MWh; and (4) a 100-foot-long trnasmission line.

Purpose of Exemption—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Project Power would be sold to the Montana Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

16 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 8989–000.

c. Date Filed: February 22, 1985.

d. Applicant: Islandia, Inc.

e. Name of Project: Crocker Pond.

f. Location: Crocker Pond in Somerset County, Maine.

g. Filed Pursuant to: Section: 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Mr. Andrew D. Friedman, Islandia, Inc., P.O. Box 607, Jackman, Maine 04945.

i. Comment Date: August 14, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 8-foot-high, 250-foot-long concrete gravity dam; (2) a reservior with a surface area of 227 acres, a net storage capacity of 360 acre-feet, and a normal water surface elevation of 1,488.5 feet m.s.l.; (3) a new intake structure; (4) a new PVC penstock with a diameter of 1.0 foot, and a length of 2,500 feet; (5) a new concrete and wood powerhouse containing one generating unit with a capacity of 50 kW; (6) a new underground transmission line 1,000 feet long, and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 311,835 kWh. The existing dam is owned by Islandia, Inc.

k. Purpose of Project: Project power would be sold to the Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of the control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

17 a. Type of Application: Minor License.

b. Project No.: P–8033–000.

c. Date Filed: March 19, 1985.

d. Applicant: Fallon Hydro Inc.

e. Name of Project: Erie Canal Lock 32.

f. Location: On the Erie Canal in the Town of Pittsfield, Monroe County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Timothy R. Fallon, Fallon Hydro Inc., 3 Maplewood Point, Ithaca, NY 14850.

i. Comment Date: September 4, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 206-foot-long, 31-foot-high integrated concrete gravity and uncontrolled ogee center spillway lock and dam structure; (2) a reservoir having a surface area of 37 acres, a storage capacity of 592 acre-feet, and a normal water surface elevation of 587.5 feet m.s.l.; (3) a proposed intake structure; (4) a proposed 55-foot-long, 6.5-foot-diameter steel penstock; (5) a proposed powerhouse containing 1 generating unit with an installed capacity of 530 kW; (6) a proposed 150-foot-long tailrace; (7) a proposed 550-foot-long, 15-kV transmission line; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 1,900,000 kWh. The existing lock and dam and project facilities are owned by the State of New York, Department of Transportation.

k. Purpose of Project: All project energy would be sold to the Rochester Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

18 a. Type of Application: Minor License.

b. Project No.: 9035–000.

c. Dated Filed: March 11, 1985.

d. Applicant: Mountain West Hydro, Inc.

e. Name of Project: Clarence Creek.
f. Location: On Clarence Creek in Tillamook County, Oregon within the Siuslaw National Forest, near the town of Blaine.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791–821(r).
h. Contact Person: Mr. David L. Browning, President, Mountain West Hydro, Inc., 2155 Christina NW., Salem, OR 97304.
i. Comment Date: September 4, 1985.
j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 24-foot-wide reinforced concrete diversion dam at elevation 8,340 feet; (2) an intake structure consisting of a .25-inch-fish screen and trashracks; (3) a 30-inch diameter, 1,280-foot-long partially buried steel penstock; (4) a 24-foot-long, 12-foot-wide powerhouse containing two generating units with a total rated capacity of 550 kW operating under a head of 250 feet; (5) a 4,760-foot-long buried transmission line, along Clarence Creek Road, tying into a Tillamook County Public Utility District line; and (6) a concrete tailrace discharging flows back into Clarence Creek. The estimated annual generation is 2,264 MWh. The estimated cost of the project is $586,500.
k. Purpose of Project: Project power would be sold to a local utility.
l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.
19 a. Type of Application: Preliminary Permit.
b. Project No.: 9056–000.
c. Dated Filed: March 27, 1985.
d. Applicant: Congeneration and Electric, Inc.
e. Name of Project: White River.
f. Location: On the White River within the Mount Hood National Forest in Wasco County, Oregon.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Ms. Maxine Smith, Cogeneration and Electric, Inc., 1450 S.E. Orient Drive, Gresham, OR 97030.
i. Comment Date: September 4, 1985.
j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 40-foot-long diversion dam at an elevation of 2260 feet; (2) a 108-inch-diameter, 120,770-foot-long pipeline; (3) a powerhouse containing one or more generating units with a total rated capacity of 4,650 kW; and (4) two 17,800-foot-long transmission lines. Applicant estimates the average annual energy production ot be 21,786 MWh.
A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $77,000. No new roads would be constructed or drilling conducted during the feasibility study.
k. Purpose of Project: The proposed power is to be sold to Portland General Electric Company.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.
20 a. Type of Application: Preliminary Permit.
b. Project No.: 9057–000.
c. Date Filed: March 27, 1985.
d. Applicant: Cogeneration and Electric, Inc.
e. Name of Project: Middle Fork Willamette River.
f. Location: On the Middle Fork Willamette River, near the town of Oakridge in Lane County, Oregon.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Contact Person: Ms. Maxine Smith, Cogeneration and Electric, Inc., 1450 S.E. Orient Dr., Gresham, OR 97030.
i. Comment Date: September 4, 1985.
j. Description of Project: The proposed project would consist of: (1) An 11-foot-high, 60-foot-long divrsion dam at an elevation of 1,680 feet; (2) a 10-foot-deep, 40-foot-diameter, 11,000-foot-long canal; (3) two 875-foot-long, 108-inch-diameter pipelines; (4) a powerhouse containing one or more generating units with a total rated capacity of 10,990 kW; and (5) three 43,000-foot-long transmission lines. Applicant estimates the average annual energy production to be 60,645 MWh.
A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $77,000. No new roads would be constructed or drilling conducted during the feasibility study.
k. Purpose of Project: The proposed power is to be sold to Pacific Power and Light Co.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
21 a. Type of Application: Preliminary Permit.
b. Project No.: 9152–000.
c. Date Filed: March May 1, 1985.
d. Applicant: Alternative Energy Management, Inc.
e. Name of Project: Tuttle Creek Project.
f. Location: On the Big Blue River near Manhattan, Riley County, Kansas.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. L. Joe Hamman, P.O. box 67151, Topeka, KS 66667.
i. Comment Date: August 14, 1985.
j. Competing Application: Project No. 9155–000. Date Filed: May 1, 1985. Comment Due Date: August 5, 1985.
k. Description of Project: The proposed project would utilize the U.S. Corps and Engineers' Tuttle Creek Dam and Reservoir, and consist of: (1) A new 800-foot-long steel penstock approximately 16 feet in diameter; (2) a new powerhouse located on the south side of an existing stilling basin with an installed capacity of 14.75 MW; (3) a proposed 34.5–kV transmission line approximately 1 mile long; and (4) appurtenant facilities. Applicant estimates the average annual generation to be 56,690 MWh. All energy will be sold to a local utility company.
l. This notice also consists of the following standard paragraphs: A8, B, C, and D2.
m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.
22 a. Type of Application: Preliminary Permit.
b. Project No.: 9139–000.
c. Date Filed: April 29, 1985.
d. Applicant: Burlington Energy Development Associates.
e. Name of Project: Manhan River Dam.
f. Location: Manhan River in Hampshire County, Massachusetts.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. John R. Anderson, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, MA 01803.
i. Comment Date: September 4, 1985.
j. Description of Project: The proposed project would consist of: (1) An existing 8-foot-high, 100-foot-long concrete gravity dam; (2) a reservoir with a surface area of 100,000 square feet, a storage capacity of 500,000 cubic feet, and a normal water surface elevation of 125 feet USGS; (3) an existing concrete intake structure; (4) a new powerhouse containing two generating units with a capacity of 65 kW each for a total installed capacity of 130 kW; (5) a new transmission line, 200 feet long; and (6)

appurtenant facilities. The Applicant estimates the average annual generation would be 570,000 kWh. The existing dam is owned by the Town of Easthampton, Massachusetts.

k. Purpose of Project: Project power would be sold to the Western Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $8,500.

23 a. Type of Application: Amendment of License.

b. Project No.: 1517–000.

c. Date Filed: October 19, 1984.

d. Applicant: Monroe City Corporation.

e. Name of Project: Upper Monroe Hydro Project.

f. Location: On Monroe Creek in Sevier County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mayor Myron Madsen, Monroe City, Monroe, UT 84754.

i. Comment Date: August 16, 1985.

j. Description of Project: The project as licensed on July 1, 1940, consisted of (Subparagraph C):

C. All project works, consisting principally of 3,500 feet of 6-inch steel pipe line receiving water from Shingle Creek; 11,200 feet of 8-inch steel pipe line receiving water from First Left Hand Fork of Monroe Creek and the water diverted from Shingle Creek; a concrete and stone power house 17 by 22 feet (inside measurement) containing a Pelton water wheel directly connected to a 150-kva generator with overhung exciter, a switchboard and appurtenant apparatus; and a transmission line about 0.92 mile long, connecting the plant with the existing plant of Project No. 632.

An Order Amending License was issued on December 19, 1962, and states:

(B) The license for Project No. 1517 is hereby amended, effective as of October 1, 1961, as follows:

Paragraph I. Subparagraph C of Article 2 of the license is amended by adding thereto the following language after the words "Shingle Creek" appearing in line 4 therein.

12,980 feet of 8-inch diameter pipeline extending from the First Left Hand Power Plant up the main canyon of Monroe Creek to Service Berry Creek and thence up Service Berry Creek to an elevation comparable with the intakes on First Left Hand Fork and Shingle Creek;

The proposed amendment would consist of: (1) increasing the maximum flow rate from 1.7 cfs to 2.7 cfs since records show the additional 1.0 cfs is available more than 50% of the time; (2) replacing damaged pelton wheel and generator with new equipment having a rated capacity of 250 kW; and (3) providing appurtenant new facilities. The Applicant estimates that the average annual energy output would be 987,252 kWh.

k. Purpose of Project: Project energy would be utilized by the Applicant.

l. This notice also consists of the following standard paragraphs: B and C

m. *Agency Comments*—Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of an amendment to a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

24 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 8364–000.

c. Date Filed: June 14, 1984.

d. Applicant: Iowa Electric Light and Power Company.

e. Name of Project: Anamosa Dam.

f. Location: On the Wapsipinicon River in Jones County, Iowa

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Ms. Eva Cram Iowa Electric Light and Power Company, P.O. Box 351, Cedar Rapids, Iowa 52406..

i. Comment Date: August 16, 1985.

j. Competing Application: Project No. 7842, Date Filed November 14, 1983.

k. Description of Project: The proposed project would consist of: (1) An existing 140.33-foot-long and 10.2-foot-high concrete dam surmounted with 1.83-foot-high flashboards; (2) an existing reservoir with a surface area of 120 acres and a storage capacity of 650 acre-feet at power pool elevation of 79.1 feet m.s.l.; (3) an exisiting forebay; (4) an existing powerhouse containing one proposed generating unit rated at 235 kW; (5) an existing tailrace; (6) an existing 200-foot-long transmission line, which extends from the existing powerhouse to the existing substation; and (7) appurtenant facilities. The estimated average energy output for the project is 1,330, 000-kWh.

l. Purpose of Project: Iowa Electric Light and Power Company would utilize the power generated in the service area.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

25 a. Type of Application: Major License.

b. Project No.: 8419–000.

c. Date Filed: July 9, 1984.

d. Applicant: City of Tacoma, Washington.

e. Name of Project: Howard Hanson Power.

f. Location: On Green River, within Mt. Baker-Snoqualmie National Forest lands, near Kanaskat, in King County, Washington.

g. filed Pursuant to: Federal Power Act, 16 U.S.C. §791(a)–825(r).

h. Contact Person: Mr. Paul J. Nolan, Director, City of Tacoma, Department of Public Utilities, Tacoma, WA 98411.

i. Comment Date: September 6, 1985.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers 980-foot-long, 235-foot-high Howard Hanson Dam and would consist of: (1) A new tower-type concrete intake structure located at the right abutment of the existing dam and connected to a new tunnel through a 30-foot-high shaft, (2) an 800-foot-long, 9.5-foot-diameter steel-lined concrete power tunnel; (3) a 400-square-foot inclined fish screen; (4) a 55-foot-long, 34-foot-wide powerhouse containing a single generating unit with an installed capacity of 10.5 MW at a head of 110 feet; (4) a tailrace; (5) a switch yard located adjacent to the powerhouse; and (6) a 950-foot-long, 230-kV transmission line connecting to an existing Puget Sound Power and Light Company transmission line.

The Applicant estimates that the average annual energy production would be 34.8 million kWh. The cost to construct the project would be $14.66 million in 1984 dollars..

k. Purpose of Project: The project power would be utilized by the City of Tacoma customers.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C.

26 a. Type of Application: Preliminary Permit.

b. Project No.: 9147–000.

c. Date Filed: May 1, 1985.

d. Applicant: Baltic Associates.

e. Name of Project: Baltic Mills.

f. Location: On the Shetucket River in New London County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Thomas Forbes, P.O. Box 421, Mercer Island, Washington 98040.

i. Comment Date: September 6, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) The existing 30-foot-high and 500-foot-long stone Baltic Mill Dam owned by the Baltic Mill; (2) a reservoir with a surface area of 500 acres and storage capacity of 2,000 acre-feet at normal maximum surface elevation of 100 feet mean sea level; (3) an existing 100-foot-wide and 1,000-foot-long power channel; (4) a new 10-foot-diameter and 25-foot-long penstock; (5) an existing powerhouse with a new 2,500-kW turbine-generator unit; (6) an existing 12.5-kV and 500-foot-long transmission line; and (7) other appurtenances. Applicant estimates an average annual generation of 9,200,000 kWh.

k. Purpose of Project: Project energy would be sold to the Town of Baltic.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

27 a. Type of Application: Preliminary Permit.

b. Project No.: 9170–000.

c. Date Filed: May 6, 1985.

d. Applicant: Great Western Power and Light, Inc.

e. Name of Project: G.W.P. #13 & Associates.

f. Location: On Boise River at the Bureau of Reclamation's Boise River Diversion Dam near the town of Boise, in Ada County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jordan R. Walker, Great Western Power and Light, Inc., 484 East 300 North, Manti, UT 84642.

i. Comment Date: September 5, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 66-foot-high diversion dam; (2) a 500-foot-long penstock; (3) a powerhouse containing three generating units with a total rated capacity of 1500 kW; and (4) a 2,000-foot-long transmission line. Applicant estimates the average annual energy production to be 8,936 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $23,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices on intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later then 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing to file a competing development application must submit to the Commission, or or before the specified comment date for the particular application, either a competing develoment application or notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants representative.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 9, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16581 Filed 7–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF85–558–000 et al.]

Diane L. Kuyper et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

July 9, 1985.

Take notice that the following filings have been made with the Commission.

1. Diane K. Kuyper

[Docket No. QF85–558–000]

On June 17, 1985, Diane L. Kuyper, Box 246, Stickney, South Dakota 57375 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The wind powered unit is located in Stickney, South Dakota. The electric power production capacity of the facility is 35 kilowatts.

2. Zond Pacific Inc.

[Docket No. QF85–559–000]

On June 21, 1985, Zond Pacific Inc. (Applicant), of P.O. Box 12186, Lahaina, Maui, HI 96761 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 10 megawatt wind facility is located near the Honokahua and Honolua Valleys on the North point of the Island of Maui.

3. O'Brien Energy Systems Inc.

[Docket No. QF85–563–000]

On June 24, 1985, O'Brien Energy Systems Inc. (Applicant), Green and Washington Streets, Downingtown, Pennsylvania, 19335 submitted for filing an application for certification of a cogeneration facility as a qualifying

facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a gas turbine-steam turbine combined cycle cogeneration plant. The primary energy source for the cogeneration facility will be natural gas. The power production capacity of the facility will be approximately 28 MW electrical, with average thermal output of 30,380 lbs/hr steam. The facility will be located at the manufacturing site of California Milk Producers, 11709 E. Artesia Boulevard, Artesia, California, 90701. Installation will begin in June 1986 with commencement of operation planned for June 1987.

4. American Alternate Energy, Ltd. (Portage County)

[Docket No. QF85-544-000]

On June 24, 1984, American Alternate Energy, Ltd. (Applicant), of 1000 Maplewood Drive, Maple Shade, New Jersey, 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Route 225, Portage County, Atwater Township, Ohio. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to becomes a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16783 Filed 7-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-557-000 et al.]

Power Dam Corp. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

July 8, 1985.

Take notice that the following filings have been made with the Commission.

1. Power Dam Corp.

[Docket No. QF85-557-000]

On June 20, 1985, Power Dam Corp. (Applicant), of 2200 Fort Wayne National Bank Building, Fort Wayne, Indiana 46802, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in Defiance County, south of Defiance, Ohio. The hydroelectric facility is located on the Auglaize River and consists, in part, of five hydroelectric turbine/generators pits,into which two 650 kW turbine/generators will be installed. The electric power production capacity of the facility is estimated to be in excess of 1300 kW. The primary energy source is water.

A separte application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. American Alternate Energy, Ltd. (Lick Run Lyra Road)

[Docket No. QF85-543-000]

On June 19, 1985, American Alternate Energy, LTD. (Applicant) of 1000 Mapelwood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Lick Run Lyra Road, Scioto County, Vernon Township, Ohio. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

3. American Alternate Energy, Ltd. (School Road)

[Docket No. QF85-544-000]

On June 19, 1985, American Alternate Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on School Road, Oakland County, Rochester Hills, Michigan. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

4. American Alternative Energy, Ltd. (Jackson Pike)

[Docket No. QF85-545-000]

On June 19, 1985, American Alternative Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Jackson Pike, Franklin County, Township, Ohio. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

5. American Alternative Energy, Ltd. (Pontiac Avenue)

[Docket No. QF85-546-000]

On June 19, 1985, American Alternative Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Pontiac Avenue, Providence County, Cranston, Rhode Island. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

6. American Alternative Energy, Ltd. (Hill Road)

[Docket No. QF85-547-000]

On June 19, 1985, American Alternative Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Hill Road, Allegheny County, South Park, Township Pennsylvania. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

7. American Alternative Energy, Ltd. (K L Avenue)

[Docket No. QF85-548-000]

On June 19, 1985, American Alternative Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on K L Avenue, Kalamazoo County, Kalamazoo, Michigan. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

8. American Alternative Energy, Ltd. (Auten Road)

[Docket No. QF85-549-000]

On June 19, 1985, American Alternative Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Auten Road, Gaston County, Gastonia, North Carolina. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

9. American Alternative Energy, Ltd. (New Burn Avenue)

[Docket No. QF85-552-000]

On June 19, 1985, American Alternative Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on New Burn Avenue, Wake County, Raleigh, North Carolina. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

10. American Alternate Energy, Ltd. (Sixth Avenue Extension)

[Docket No. QF85-554-000]

On June 20, 1985, American Alternate Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Sixth Avenue Extension, Blair County, East Altoona, Pennsylvania. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

11. American Alternate Energy, Ltd. (Suzerne County)

[Docket No. QF85-555-000]

On June 20, 1985, American Alternate Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Route #315, Suzerne County, Pittstown, Pennsylvania. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

12. American Alternate Energy, Ltd. (Jake Sears Road)

[Docket No. QF85-556-000]

On June 20, 1985, American Alternate Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Jake Sears Road, City of Virginia Beach, Virginia Beach, Virginia. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

13. Dorchester Lumber Company, Inc.)

[Docket No. QF85-551-000]

On June 19, 1985, Dorchester Lumber Company, Inc., (Applicant) of Linkwood, Maryland 21835 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at Linkwood, Maryland. The facility has one boiler to produce both heat and mechanical energy for utilization within plant processes such as kiln heating. Excess steam produced from the facility will be utilized to drive a condensing turbine-generating unit. The electric power production capacity of the facility will be 650 kW. The primary energy source is biomass, being produced from 100% production scrap, sawmill refuse, and combinations of dust and shavings. The installation of this system will begin in September, 1985.

14. General Conservation Company)

[Docket No. QF85-536-000]

On June 18, 1985, General Conservation Company (Applicant) of 396 Ferry Point Road, Pasadena, Maryland 21122 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The bottoming-cycle cogeneration facility will be located east of the No. 7 Sinter Plant at the Sparrows Point, Maryland plant of Bethleham Steel Corporation. It will consist of an economizer placed in a hot air duct of the sinter cooler to preheat feedwater being supplied to deaerator heaters, thereby releasing steam previously used for this purpose to generate electricity. The primary energy source will be heated air. Construction of the facility took place in 1984.

15. Signal Environmental Systems, Inc.

[Docket No QF85-537-000]

On June 18, 1985, Signal Environmental Systems, Inc., (Applicant) of Liberty Lane, Hampton, New Hampshire 03842 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the City of Bridgeport, Connecticut. The net electric power production capacity of the facility will be 62 MW. The primary energy source will be biomass in the form of municipal solid waste.

16. The City of New Martinsville, West Virginia

[Docket No. QF85-541-000]

On June 18, 1985, the City of New Martinsville (Applicant), of 203 Main Street, New Martinsville, West Virginia 26155 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the city of New Martinsville, West Virginia on the Ohio River approximately 50 miles downstream from Wheeling, West Virginia. The facility will be constructed at the Hannibal Locks and Dam and will consist of two horizontal Kaplan bulb hydroelectric turbine generators. The electric power production capacity of the facility will be 34 megawatts electric and will yield approximately 200,000,000 kilowatt-hours per year.

A separate application is required for a hydroelectric project license, preliminary permit or exemption for licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 29426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commisson and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16782 Filed 7-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER80-259-008 et al.]

Kansas Gas and Electric et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Kansas Gas and Electric

[Docket No. ER80-259-008]

July 9, 1985.

Take notice that on June 17, 1985, Kansas Gas and Electirc tendered for filing a refund report submitted on February 1, 1985.

Comment date: July 22, 1985, in accordance with Standard Paragraph H at the end of this notice.

2. Maine Yankee Atomic Power Company

[Docket No. ES85-46-000]

July 9, 1985.

Take notice that on June 28, 1985, Maine Yankee Atomic Power Company, (the "Company") tendered for filing an application, pursuant to section 204 of the Federal Power Act, seeking authority to issue on or before August 1, 1986, Bank Notes and Commercial Paper maturing one year or less after the date of issuance in an aggregate principal amount not exceeding $10,400,000 outstanding at any time.

Comment date: July 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Maine Electric Power Company, Inc.

[Docket No. ES85-47-000]

July 9, 1985.

Take notice that on June 28, 1985, Maine Electric Power Company Inc. (the "Company") tendered for filing an application, pursuant to section 204 of the Federal Power Act, seeking authority to issue on or before August 1, 1986, Bank Notes and Commercial Paper maturing one year or less after the date of issuance in an aggregate principal amount not exceeding $10,400,000 outstanding at any time.

Comment date: July 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Citizens Utilities Company

[Docket No. ES85-48-000]

July 5, 1985.

Take notice that on July 1, 1985, Citizens Utilities Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act, in connection with provision of funds for the contruction, extension and improvement of public utility facilities through the issuance of approximately $14,000,000 in principal amount of industrial revenue bonds by the Tolleson Municipal Property Corporation, and requesting an order disclaiming jurisdiction with respect to, or alternatively authorizing the execution by the Company of a guarantee of certain obligations of its wholly-owned subsidiary Sun City Sewer Company under a Sewage Treatment and Transportation Services Agreement with the City of Tolleson, Arizona.

Comment date: July 18, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. The Detroit Edison Company

[Docket No. ES85-49-000]

July 9, 1985.

Take notice that on June 28, 1985, The Detroit Edison Company filed an application, pursuant to section 204 of the Federal Power Act, seeking authorization to issue short-term debt in the amount of $309 million and to assume obligations in the amount of $320 million to be issued pursuant to loan agreements and nuclear fuel purchase contract.

Comment date: July 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ES85-400-002]

July 8, 1985.

Take notice that on June 21, 1985, Virginia Electric and Power Company (VEPCO) tendered for filing six (6) copies of its revised rates and supporting costs data in Docket No. ER85-400-000 in compliance with the Commission's order dated May 23, 1985. In preparing this filing, the following in-service dates for the Bath County Pumped Storage Project were used: The first unit October 15, 1985, the second unit November 1, 1985, the third and fourth units November 15, 1985, the fifth unit December 1, 1985, and the sixth unit December 15, 1985.

In addition, VEPCO submits for filing four (4) copies of Schedule RC, two (2) copies of Schedule NC-RC, twenty (20) copies of Schedule RS, and two (2) copies each of revised Appendix E-Charges for Purchases and Appendix G-Charges for Reserve Capacity for Old Dominion Electric Cooperative.

This filing supports a revised total increase of $1.06 million for the Municipalities and $0.12 million for all Cooperatives other than Old Dominion Electric Cooperative as compared to the settlement rates in the Partial Settlement Agreement pending in Docket No. ER84-355-000. A $4.16 million increase is proposed for Old Dominion Electric Cooperative (ODEC) over the settlement revenue level proposed in Docket No. ER84-355-000, which was subsequently rejected by the Commission on April 16, 1985. However, since there is no proposed settlement with ODEC, this filing represents a $0.46 million increase in revenues based on the ODEC rates filed in Docket No. ER84-355-000 made effective June 1, 1984, subject to refund.

The Phase 1 level of this filing represents a $0.10 million increase for the Municipalities. For ODEC, revised Phase 1 rates indicate an increase of $1.30 million over the now rejected settlement rate level and a $(2.41) million decrease from the June 1, 1984 effective rates. All Cooperatives other than ODEC are unphased.

Comment date: July 19, 1985, in accordance with Standard Paragraph H at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16784 Filed 7-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-748-002 et al.]

ANR Pipeline Company et al.; Natural Gas Certificate Filings

July 9, 1985.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP 84-748-002]

Take notice that on June 21, 1985, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-748-002 a petition to amend the order issued April 19, 1985, in Docket No. CP 84-748-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize ANR to transport natural gas for Shepherd Oil, Inc. (Shepherd), for an extended term to expire December 31, 1986, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

ANR states that its current authorization to transport up to 5,040 dt equivalent of natural gas per day to Shepherd's Geismar plant in Jefferson Davis Parish, Louisiana expires on June 30, 1985. It is stated that Shepherd has advised ANR that in order to avoid interruption of service to Shepherd's industral facilities and the resultant economic disruptions, the transportation service must continue beyond June 30, 1985. Therefore, ANR and Shepherd have executed an amendment to the transportation agreement which extends the term of the transportation service until December 31, 1986, it is stated. ANR states that all other terms and conditions of the transportation remain the same.

Comment date: July 30, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP85-381-001]

Take notice that on June 20, 1985, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-381-001 an amendment to its pending application filed in Docket No. CP85-381-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing increases and decreases in peak day and annual entitlements, among other things, all as more fully set forth in the amendment which is on file with the commission and open for public inspection.

By the instant amendment CIG requests authority to add an 8-inch turbine meter run, at an estimated cost of $62,000, at the East Quincy meter station an existing delivery location to Public Service Company of Colorado (PSCo). CIG states that the additional facilities are necessary to accomodate PSCo's requested increase in the maximum daily volume obligation at East Quincy.

Common date: July 30, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice

3. Florida Gas Transmission Company

[Docket No. CP85-619-000]

Take notice that on June 17, 1985, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188, Houston, Texas 77001, Filed in Docket No. CP85-619-000 a request pursuant to § 157.212 of the Regulations under the Natural

Gas Act (18 CFR 157.212) for authorization to add an additional delivery point to Florida Public Utilities (FPU) in Sanford, Seminole County, Florida, under the certificate issued in Docket No. CP82–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Florida Gas states that the maximum deliveries at the proposed point would be 2,340 therms per hour and 39,000 therms per day. Also, Florida Gas explains that FPU's gas entitlement will not be increased in order to make deliveries at the additional point.

Florida Gas further states that the estimated $116,000 cost to construct the proposed facilities would be 100% reimbursed by FPU.

Comment date: August 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85–615–000]

Take notice than on June 14, 1985, Northern Natural Gas Company, Division of InterNorth,. Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP 85–615–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to transport, on a firm basis for the account of Tennessee, a maximum daily quantity of 20,000 Mcf of gas produced from Matagorda Island Blocks (MAT) 711 and 712, offshore Texas. It is stated that Northern would accept such volumes for Tennessee's account at the interconnection in MAT 713 of the jointly-owned lateral pipeline facilities of Northern and Tennessee, which connect the MAT 712 production platform and the joinity owned pipeline facilities of Northern, Southern Natural Gas Company, Natural Gas Pipeline Company of America, Florida Gas Transmission Company and Transcontinental Gas Pipe Line Corporation known as the 758 Lateral. It is further stated that Northern would redeliver thermally equivalent volumes for Tennessee's account to Houston Pipe Line Company (HPL) in Refugio County, Texas, for further transportation. Additionally, it is asserted that Northern would transport on a best-efforts basis volumes in excess of the maximum daily quantity (MDQ) that are delivered by Tennessee in MAT 713.

Northern proposes to charge Tennessee a cost of service based monthly transportation charge (MTC). It is explained that the agreement provides for an MTC of $132,240 for the firm service and 21.75 cents per Mcf of gas delivered in excess of the MDQ. It is further explained that since the agreement was executed, compression was installed on Matagarda offshore Pipeline System (MOPS) pursuant to Commission order issued in Docket No. CP83–186–002 and Northern has filed, in Docket No. CP85–247–000 for authorization to acquire Transco's ownership interest in the 758 Lateral. Northern proposes to charge Tennessee an MTC, based on an expanded MOPS, of $76,548 per month for the firm service and 12.59 cents per Mcf for overrun service. The proposed service, which it is indicated commenced August 31, 1984, on a best efforts basis pursuant to Part 284 of the Commission's Regulations, would continue for a primary term of eight years and from year to year thereafter.

Comment date: July 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Northwest Central Pipeline Corporation

[Docket No. CP85–620–000]

Take notice that on June 17, 1985, Northwest Central Pipeline Corproation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85–620–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales tap for the direct interruptible sale of natural gas to Kleysteuber & Gillen, Inc., in Finney County, Kansas, for use in irrigation operations under the certificate issued in Docket No. CP82–479–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central States that such sale would not significantly affect its overall gas supply or have any detrimental effect on existing customers.

Northwest Central states that the projected volume of delivery through this point is approximately 8,800 Mcf per year and 53 Mcf on a peak day. Northwest Central estimates the cost of these facilities to be $5,080, which would be paid from available cash.

Comment date: August 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP85–625–000]

Take notice that on June 19, 1985, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP85–625–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for various heavy oil producers (Shippers), along with the construction and operation of certain facilities necessary therefore, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to transport, on a firm basis, up to 350,000 Mcf per day of natural gas which would be tendered by the Shippers to Northwest at an existing point of interconnection between the facilities of Westcoast Transmission Company Limited (Westcoast) and Northwest, located at the Canadian and U.S. international border near Sumas, Washington. Northwest would transport such gas through its existing mainline facilities and redeliver thermally equivalent volumes, less any gas retained as compensation for mainline fuel usage, to the proposed point of interconnection with Kern River Gas Transmission Company (Kern River) near Northwest's existing Muddy Creek compressor station in Lincoln County, Wyoming.

Northwest states that it anticipates that Shippers will enter into service agreements under Northwest's existing Rate Schedule T–3 to cover the proposed service. Since the distance from the receipt point at Sumas, Washington, to the redelivery point in Lincoln County, Wyoming, is approximately 1,049 miles, pursuant to the terms of Rate Schedule T–3, Northwest proposes that the Shippers would be charged the maximum commodity charge, currently 10.36 cents per MMBtu. The Rate Schedule T–3 demand charge is currently $3.7536 cents per month per MMBtu of contract demand. Northwest states that all Shippers must reimburse Northwest for its then effective fuel use requirements, including line loss and shrinkage associated with the transportation of the Shipper's gas on Northwest's mainline facilities. The currently effective mainline fuel reimbursement rate is 1.1 percent of the volumes tendered for transportation.

Northwest proposes to construct and operate two 22-inch mainline taps and

one meter station with two 16-inch pipeline meter runs. Northwest states that the taps and meter station will be constructed within the station yard of Northwest's existing Muddy Creek compressor station in Lincoln County, Wyoming, and will connect Northwest's transmission facilities with Kern River at a point immediately adjacent to the Muddy Creek station yard. Northwest's estimated cost of facilities if $1,327,000.

Kern River, applicant in pending Docket No. CP85-552-000, is a newly formed company proposing to construct an 837-mile pipeline from Northwest's proposed interconnection to Kern County, California. Northwest's Shippers would be the same as Kern River's shippers.

Northwest states that as its customers have indicated they are willing to release 2,676,763 therms per day of firm contract demand, equal to approximately 257,000 Mcf a day in pipeline capacity. Northwest states that if Kern River and Northwest receive certificates and signed transportation agreements, Northwest will file an application requesting authorization for abandonment of portions of the firm service presently provided to its existing customers. Revenues from the proposed transportation service estimated to be $28,297,365 annually, would redound to the benefit of its other customers, according to Northwest.

Comment date: July 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Pontchartrain Natural Gas System

[Docket No. CP85-599-000]

Take notice that on June 10, 1985, Pontchartrain Natural Gas System (Applicant), First City Center, 1700 Pacific Avenue, LB10, Dallas, Texas 75201-4666, filed in Docket No. CP85-599-000 an application pursuant to Section 7(c) of the Natural Gas Act and Section 284.222 of the Commission's Regulations (18 CFR 284.222) for a blanket certificate of public convenience and necessity for authorization to transport, sell and assign volumes of natural gas in interstate commerce as if Applicant were an intrastate pipeline as defined in Subparts C,D, and E and § 284.203 of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that during the 12-month period ending March 31, 1985, it received within or at the state boundaries of Louisiana 1,925,194 million Btu of gas which was exempt from Commission jurisdiction by virtue of section 1(c) of the Natural Gas Act. During this same period, Applicant states that it received approximately 26,387,496 million Btu of gas from all sources of supply.

Applicant requests blanket authorization to make sales, pursuant to Subpart D of Part 284, and to enter into zero fee, mutually beneficial transportation/exchange arrangements pursuant to Subpart C of Part 284.

Applicant has not set forth any rate methodology for approval under § 284.222(e)(2) of the Commission's Regulation, but states that, in the future, if it elects to charge a transportation rate for services under the requested blanket certificate, it will file an application under § 284.222(e)(2) for approval of a rate methodology.

Comment date: July 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Texoma Interstate Pipeline Company

[Docket No. CP85-601-000]

Take notice that on June 10, 1985, Texoma Interstate Pipeline Company (Texoma), 3050 Post Oak Boulevard, Houston, Texas 77001, filed in Docket No. CP85-601-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to acquire, construct, and operate facilities for the transportation of natural gas in interstate commerce, to perform related transportation services, and to add and delete transportation receipt and delivery points, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texoma states that it is a general partnership formed for the purpose of acquiring, constructing, and operating interstate natural gas pipeline facilities and that it has three equal partners: HNG Texoma Gas Company, a subsidiary of Houston Natural Gas Corporation; Transok, Inc. (Transok), and NGPL-TIPCO, Inc., a subsidiary of Natural Gas Pipeline Company of America (Natural).

Texoma requests authority to acquire and operate as a new interstate pipeline a 212-mile portion of the former oil pipeline facilities of Texoma Pipeline Company that have been converted to gas service and are presently owned in separate segments by Natural, Transok, and Houston Pipe Line Company (HPL). Specifically, Texoma seeks to acquire (1) the 39-mile segment of 30-inch pipeline between Bryan County, Oklahoma, and Lamar County, Texas, owned by Natural and authorized for interstate service in Docket No. CP84-433-000, 29 FERC ¶ 61,073 (1984); (2) a 100-mile segment of 16 and 30-inch pipeline in Okalahoma, now part of Transok's intrastate system; and (3) a 73-mile segment of 30-inch pipeline in Texas, now part of HPL's intrastate system.

Texoma further requests authority to construct and operate 2,400 horsepower compression facilities at Allen, Oklahoma, and 2,600 horsepower compression facilities at Perryville, Texas, which, it is stated, would provide for an initial operating canacity of 370,000 Mcf per day for the new interstate pipeline.

Texoma also requests authority to construct and operate additional compression facilities, as needed, to expand its pipeline's capacity to 650,000 Mcf per day. These facilities would include 2,400 additional horsepower at Allen, Oklahoma, 11,400 additional horsepower at Perryville, Texas, and 15,200 horsepower at a new compression station at Paris, Texas.

Texoma estimates that the net cost for the acquisition of the pipeline facilities would be $74,870,847; that the cost of the construction of the facilities for initial operation of the pipeline would be $11,040,000; and that the cost of the construction of the additional facilities for full capacity operation of the pipeline would be $35,315,000. Texoma estimates that the cost of non-jurisdictional facilities that it intends to construct under § 2.55(a) of the Commission's regulations would be $3,951,000. Texoma states that the acquisition and construction of these facilities would be initially financed by capital contributions by the partners or their affiliates.

Texoma proposes to provide firm transportation service for various shippers with which it is negotiating. It asserts that Natural is seeking transportation for up to 170,000 Mcf of natural gas per day and that HNG Industrial Natrual Gas Company is seeking transportation for up to 100,000 Mcf per day. Texoma proposes a two-part, demand-commodity rate, and estimates an initial monthly demand rate of $2.81 per million Btu of contract demand and a commodity and overrun rate of 13.72 cents per million Btu, based on a contract demand of 370,000 Mcf per day. Texoma requests blanket authority to add and delete receipt and delivery points for its transportation services and states that it would file annual revisions to its transportation agreements to reflect changes in receipt and delivery points which occurred during the previous calendar year.

Comment date: July 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Trunkline Gas Company

[Docket No. CP85–563–000]

Take notice that on June 4, 1985, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP85–563–000 an application pursuant to section 7(c) of the Natural Gas Act and the regulations thereunder for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement between Applicant and Southern dated January 23, 1985, Applicant has agreed to transport up to 2,000 Mcf of gas per day on behalf of Southern. Applicant states that it would receive gas for Southern's account at existing points of interconnection with Texas Eastern Gas Pipeline Company (Texas Eastern) in Allen and Beauregard Parishes, Louisiana. It is indicated that Texas Eastern is presently transporting gas for Southern pursuant to Part 284 of the Commission's Regulations under Docket No. ST85–666 from West Cameron Block 250, offshore Louisiana, to receipt points mentioned. Applicant explains that it would redeliver gas to Southern at a point of interconnection with Southern in St. Mary Parish, Louisiana and that Southern would pay a monthly demand charge of $2,400.

Comment date: July 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16785 Filed 7–12–85; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed; Week of May 24 Through May 31, 1985

During the Week of May 24 through May 31, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submission inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

July 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 24 through May 31, 1985]

Date	Name and location of applicant	Case No.	Type of Submission
April 19, 1985	Economic Regulatory Administration, Houston, TX	HRZ–0254	Interlocutory. If granted: Carl L. Counts would be joined as a respondent in the proceeding involving a Proposed Remedial Order issued to Brazoria Energy, Inc. and Gerald W. Collum on October 5, 1984.
May 28, 1985	Ashland Oil, Inc., Pittsburgh, PA	HEE–0150	Exception from the Entitlements program. If granted: Ashland Oil, Inc. would receive an exception from the provisions of 10 CFR 211.67, which would modify its entitlements purchase obligations for the January 1981 Entitlements Notice.
Do	C. W. Carey Oil Co., Kinston, NC	HEE–0151	Exception to the Reporting Requirements. If granted: C. W. Carey Oil Company would not be required to file form EIA–782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report".
Do	Natural Resources Defense Council, Inc., Washington, D.C.	HFA–0290	Appeal of an Information Request Denial. If granted: The May 8, 1985 Freedom of Information Request Denial issued by the Office of Military Applications would be rescinded, and Natural Resources Defense Council, Inc. would receive access to "Abstracts of Weapons Data Reports, Volume 11, No. 6".

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 24 through May 31, 1985]

Date	Name and location of applicant	Case No.	Type of Submission
Do.	Wellen Oil, Inc., Washington, D.C.	HEF-0584	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with a June 25, 1984 Consent Order entered into with Wellen Oil, Inc.
May 29, 1985	University of California at Santa Cruz, CA	HFA-0291	Appeal of an Information Request Denial. If granted: The April 24, 1985 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded, and the University of California at Santa Cruz would receive a waiver of fees.
May 31, 1985	Amoco Energy Corp., Washington, DC	HEF-0585	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 204, Subpart V, in connection with a September 24, 1984 Consent Order entered into with Amoco Energy Corporation.
May 31, 1985	Deiter Brothers Fuel Co., Inc., Bethlehem, PA	HEE-0152	Exception to the Reporting Requirements. If granted: Deiter Brothers Fuel Company, Inc. would not be required to file form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Do.	J. D. Street & Company, Inc., Hazelwood, MO	HRZ-0255	Interlocutory. If granted: The Proposed Remedial Order issued to J. D. Street & Company, Inc. (Case No. HRO-0064) on May 21, 1982, would be dismissed.

REFUND APPLICATIONS RECEIVED

[Week of May 24 to May 31, 1985]

Date received	Name of refund proceeding/ name of refund applicant	Case number
5/30/85	LARCO/Pioneer Petroleum	RF112-33
5/29/85	Point Landing/Kristensons-Petro-Tech, Inc.	RF112-8
5/30/85	McCarty/Dayton South Truck Plaza	RF143-7
5/29/85	Arkla Chemical/A. Tenenbaum Company, Inc.	RF153-1
5/28/85	LARCO/Utah Package Xpress, Inc.	RF112-28
5/31/85	Arkla Chemical/Stephens, Inc.	RF153-2
5/31/85	LARCO/Salt River Project	RF112-36
5/31/85	Northwest Pipeline/Thriftway Company.	RF116-2
5/31/85	Sinnes Interoil/Apex Oil Co.	RF125-4
5/31/85	LARCO/US Oil Company, Inc.	RF112-35
5/31/85	Arkla Chemical/Scott Plumbing Company, Inc.	RF153-3
5/31/85	LARCO/Solo Oil	RF112-34
5/29/85	National Helium/Missouri	RQ3-197
5/28/85	Webster/Missouri	RQ48-188
5/28/85	Vickers/Missouri	RQ1-199
5/29/85	Gulf/Rex Paugh	RF40-3035
5/24/85	Seminole/Columbia Paving, Inc.	RF111-12
5/24/85	LARCO/Big 8 Full Service Tire Center.	RF112-26
5/24/85	LARCO/Town Pump	RF112-27
5/24/85	Amoco/Amoco Bay Harbor	RF21-12564
5/29/85	LARCO/Shytine Self Service	RF112-29

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 24 to May 31, 1985]

Date received	Name of refund proceeding/ name of refund applicant	Case number
5/29/85	LARCO/Redwood Self Service	RF112-30
5/29/85	LARCO/A&A Oil Company	RF112-32
5/29/85	Wilco Chemical/Consolidated Oil Company.	RF115-3
5/29/85	LARCO/Century Petroleum Corporation.	RF112-31
5/28/85	Hertz/TRW, Inc	RF76-157
5/28/85	Hertz/Ford Motor Company	RF76-158
5/28/85	Kiesel/Biebel Brothers	RF126-14
5/30/85	Sinnes Interoil/Texaco Refining & Marketing, Inc.	RF125-3
5/10/85	J.A.L./Sidney Glittz	RF71-6

[FR Doc. 85-16088 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of June 7 Through June 14, 1985

During the Week of June 7 through June 14, 1985, the appeals and applications for exception of other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any persons who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occur first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

July 2, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 7 through June 14, 1985]

Date	Name and location of applicant	Case No.	Type of submission
June 10, 1985	American Federation of Government Employees, Lakewood, Colorado.	HFA-0295	Appeal of an information request denial. If granted: The May 8, 1985, Freedom of Information Request Denial issued by the Inspector General would be rescinded, and the American Federation of Government Employees would receive acess to a copy of an investigative report on Jim Sullivan.
Do	Fred K. Kleinbeck & Son,Inc., Green Lane, Pennsylvania	HEE-0154	Exception to a reporting requirement. If granted: Fred K. Kleinbeck & Son, Inc., would no longer be required to file form EIA-782B "Resellers/Retailers' Monthly Petroleum Productu Sales Report."
Do	Government Sales Consultants, Annandale, Virginia	HFA-0296	Appeal of an information request denial. If granted: The May 16, 1985, Freedomn of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and Government Sales Consultants would receive access to all losing proposals submitted for solicitation No. DE-AC79-85BP29346, Project Management System.
June 12, 1985	Millard A. Peake, Washington, D.C	HEE-0155	Exception to a reporting requirement. If granted: Millard A. Peake would not be required to file form EIA-782B "Reseller/Retailers' Monthly Petroleum Product, Sales Report."
June 13, 1985	Natural Resources Defense Council, Inc., Washington,D.C.	HFA-0297	Appeal of an information request denial. If granted: The June 6, 1985 Freedom of Information Request Denial issued by the Office of Intelligence Resources and Analysis would be rescinded, and an additional search for document pertaining to locations of nuclear reactors in the Soviet Union would be undertaken.

Refund Applications Received

(Week of June 7 to June 14, 1985)

Date received	Name of refund proceeding name of refund applicant	Case number
6/4/85	Hertz/General Electric Corp	RF75-150
6/5/85	Gas Systems/Odessa LPG Transport.	RF185-1
6/7/85	Allen/Adams/Defense Logistics Agency.	RF8-74
6/7/85	LARCO/Rollins Oil Company	RF118-188
6/10/85	Amoco/Middlebrook Oil Co	RF21-12000
6/10/85	Amoco/Bennett Corners Amoco	RF21-12001
6/10/85	Aminoil/A-C Gas Service	RF139-0
6/10/85	ARKLA Chemical/Pickens-Bond Construction Co.	RF155-0
6/10/85	Arkansas Louisiana/Albert Harper.	RF154-2
6/10/85	Arkansas Louisiana/Stephens Production Co.	RF154-1
6/10/85	Armour-Powerine Oil Co	RF157-1
6/10/85	Crose/Leible Auto Repair	RF147-2
6/10/85	J.A.L./Father & Son Auto Corp	RF21-2
6/11/85	Husky/Coors Road Husky	RF161-2
6/11/85	LARCO/Consolidated Freightways.	RF118-189
6/11/85	Shelter Creek Chevron/U.S. Postal Service.	RF183-1
6/11/85	Betts, Ken/U.S. Postal Service	RF184-1
6/11/85	Hal's Abel Chevron/U.S. Postal Service.	RF182-1
6/11/85	Pacifica Shell/U.S. Postal Service.	RF186-1
6/12/85	Arkla Chemical/DLM, Inc	RF155-10
6/13/85	APCO/Brooks APCO	RF63-134
6/13/85	Arkla Chemical/Chandler Trail Convoy.	RF155-11
6/13/85	LARCO/Towne Pump Stations	RF112-160
6/13/85	C.C. Dillon/Watkins 66 Service	RF146-3
6/13/85	C.C. Dillon/F.L. Thomas Enterprises.	RF146-4

Notice of Objection Received

(Week of June 7 through June 14, 1985)

Date	Name and location of applicant	Case No.
6/12/85	Keystone Fuel Oil Company Washington, DC.	HEE-0118

[FR Doc. 85-16689 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of May 27 Through May 31, 1985

During the week of May 27 through May 31, 1985, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Tampimex Oil International, Ltd., 5/28/85; HRO-0284, HRD-0074

The Office of Hearings and Appeals (OHA) issued a Decision and Order which dismissed, without prejudice, a Proposed Remedial Order (PRO) issued to Tampimex Oil International, Ltd. The PRO had alleged that Tampimex overcharged its customers by $14.3 million as the result of its failure to calculate correctly its maximum lawful selling price (MLSP) for gasoline.

Tampimex has based its imputed May 15, 1973 selling price (under the new item/new market rule) on the market prices for gasoline reported by *Platt's Oilgram Price Service*. The PRO noted that this method was not prescribed by the pricing regulations and substituted Tampimex own first sale price in calculating the firm's MLSP. The OHA found that Tampimex and the ERA had both used methodologies other than that established by the regulations and held that the ERA must either accept Tampimex's May 15, 1973 price calculation or determine that price in accordance with the DOE regulations. In the case of the Tampimex audit, that would have required the ERA to determine the price charged at Tampimex's nearest comparable outlet. Since the ERA did not follow either acceptable course of action, the PRO was dismissed without prejudice. Accordingly, Tampimex's Statement of Objections and Motion for Discovery were dismissed as well.

Requests for Exception

Formby Oil Company, 5/30/85; HEE-0123

Formby Oil Company filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm would not suffer an inordinate burden by fulfilling its reporting responsibility. Accordingly, exception relief was denied.

Franklin Oil Company, 5/30/85; HEE-0121

Franklin Oil Company filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm would not suffer an inordinate burden by fulfilling its reporting responsibility. Accordingly, exception relief was denied.

Petro Products, Inc., 5/30/85; HEE-0125

Petro Products filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Reseller-Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm would not suffer an inordinate burden by fulfilling its reporting responsibility. Accordingly, exception relief was denied.

Motions for Discovery

Marathon Oil Company; Economic Regulatory Administration, 5/29/85; HRD-0035, HRD-0046

Marathon Oil Company and the Economic Regulatory Administration (ERA) each filed a Motion for Discovery in connection with a pending enforcement proceeding, *Marathon Oil Company*, No. HRO-0025 (Statement of Objections filed March 8, 1982). The enforcement proceeding concerns a Proposed Remedial Order issued to Marathon by ERA on October 26, 1981, in which ERA alleges that Marathon violated the regulations by (i) failing to compute its costs of crude oil for May 1973 and the months of measurement as the costs of its purchases in a given month (the methodology issue), (ii) including its June and July 1973 increased costs of crude oil in its base prices (the June/July 1973 crude oil cost issue), and (iii) including the imputed interest portion of its lease payments for equity status vessels in its marine transportation costs (the marine transportation issue).

In its Motion for Discovery, Marathon requested discovery with respect to each of the three alleged violations. With respect to the methodology issue, Marathon's request concerned the remedial action proposed by ERA, *i.e.*, that Marathon be required to make an adjustment to its May 1973 costs rather than recompute its costs for all months in the manner that ERA alleges is required by the regulations. In considering the request, the DOE determined that, if ERA were correct that a firm was required to compute its costs as the cost of its purchases in a given month, the most appropriate remedy is to require the firm to recompute its costs for each month on that basis. Accordingly, the DOE concluded that discovery related to the remedial action proposed by ERA was not relevant to the proceeding. In considering Marathon's request for discovery relating to the June/July 1973 crude oil cost issue, the DOE determined that the regulations clearly did not permit the inclusion of such costs in base prices and for that reason alone contemporaneous construction discovery was inappropriate. In considering Marathon's request for discovery with respect to the marine transportation issue, the DOE determined that the regulations clearly did not permit the inclusion of the cost of vessel financing in a refiner's marine transportation costs and for that reason alone contemporaneous construction discovery was inappropriate. In considering various other requests with respect to these issues, the DOE determined that discovery was not "necessary in order to obtain relevant and material evidence." Accordingly, Marathon's Motion for Discovery was denied. With respect to ERA's Motion for Discovery, ERA sought discovery regarding Marathon's accounting practices and Marathon's understanding of the regulations. In considering these requests, the DOE determined that the requested discovery would not produce evidence related to relevant issues of disputed fact. Accordingly, ERA's Motion for Discovery was also denied.

Telum, Inc., 5/30/85; BRD-1244

On September 30, 1980, Telum, Inc. (Telum) filed a Motion for Discovery with the Office of Hearings and Appeals (OHA). In its Motion, Telum requests administrative record and contemporaneous construction discovery regarding the meaning and application of both the "new item and new market rule" and the DOE regulatory term "firm".

In considering Telum's Motion, the OHA found that discovery concerning the term "firm" was both unnecessary and inappropriate, since the information sought was essentially of a legal nature. For similar reasons, much of the discovery request for materials regarding the new item and new market rule was denied. However, with respect to the term "service organization" contained within the rule, the OHA determined that Telum had established the

requisite showing of ambiguity and inconsistent application sufficient to warrant granting contemporaneous construction discovery. Accordingly, contemporaneous construction discovery was granted concerning the term "service organization." In addition, the Economic Regulatory Administration was ordered to produce the administrative record for the term "firm" and for the "new item and new market rule."

Gordon Walz, John Cross, et al., Revere Petroleum, Richard Dobyns, 5/30/85; HRD-0275, HRD-0278

In connection with a Proposed Remedial Order (PRO) proceeding (Case No. HRO-0125), a Motion for Discovery was filed with the Office of Hearings and Appeals (OHA) by Gordon Walz, John Cross, *et al.* (joined parties). Subsequently, Revere Petroleum and Richard Dobyns (original parties) also filed a Motion for Discovery. In their Motions, the joined and original parties seek cross-discovery from each other regarding the relationship between themselves as well as information concerning the crude oil transactions which form the basis for the alleged PRO regulatory violations. In considering these Motions, the OHA determined that the joined parties' submission clearly demonstrated that production and examination of the requested documents would lead to relevant and material evidence, and the Motion was granted in its entirety. Similarly, several of the original parties' requests appeared to be designed to produce evidence relevant and material to the issues in the proceeding, and their requests were granted in part.

Interlocutory Order

Texaco Inc., 5/30/85; HRZ-0249, HRZ-0250

Texaco Inc. filed two motions in connection with its objections to a Proposed Remedial Order (PRO) that the Economic Regulatory Administration issued to it on May 1, 1979. The first motion sought dismissal of the overcharge claims in the PRO for a portion of the audit period, September through December 1976. OHA denied the motion, noting that in a 1981 decision it had rejected Texaco's arguments that the PRO did not make a *prima facie* case of a regulatory violation for that period. OHA also held that, even if the PRO were defective, the issues pertaining to the September through December 1976 period had been substantially developed in an earlier enforcement proceeding before OHA and that dismissal therefore would be inappropriate. The second motion sought reconsideration of two interlocutory orders issued in the Texaco proceeding that addressed the very large tract exception to the regulatory definition of property. The motion also sought an evidentiary hearing regarding that exception. OHA denied the motion, holding that Texaco had shown no basis for reconsideration of OHA's prior orders and that its evidentiary hearing request was untimely and did not meet the requirements of 10 CFR 205.199.

Implementation of Special Refund Procedures

Buck's Butane and Propane Service, Inc., 5/31/85; HEF-0043

On May 31, 1985, the Office of Hearings and Appeals of the Department of Energy (DOE) issued a final Decision and Order establishing procedures for the disbursement of $29,200 (plus accrued interest) obtained as a result of a Consent Order entered into by the DOE and Buck's Butane and Propane Service, Inc. (Buck's). The funds will be available to customers who purchased propane from Buck's during the period March 1974 through January 28, 1982. Successful applicants will receive refunds proportionate to the volume of propane they purchased from Buck's during the consent order period.

Refund Applications

Gulf Energy & Development Corp./Tesoro Petroleum Corp., 5/31/85; RF51-1

Tesoro Petroleum Corporation filed an Application for Refund based on the principles and procedures set forth in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). In seeking a portion of the funds remitted by Gulf Energy & Development Corporation (GEDC) and obtained as a result of a Consent Order between GEDC and the DOE, Tesoro limited its claim to the threshold refund level of $5,000. Accordingly, the DOE applied the presumption of injury methodology to the applicant's claim, and therefore granted Tesoro a refund of $5,000 plus accrued interest.

Seminole Refining, Inc./Haugabook Oil Company, 5/31/85; RF111-3

Haugabook Oil Company filed an Application for Refund for a portion of the monies obtained by the DOE through a consent order with Seminole Refining, Inc. (Seminole). In considering the request, the DOE found that Haugabook Oil Company had purchased a relatively small volume of No. 2 Fuel Oil from Seminole. Using a volumetric allocation methodology, the DOE determined that Haugabook's allocable share of the consent order fund was below the presumption of injury level of $5,000. The DOE decided, therefore, that Haugabook Oil Company would receive a refund equal to its allocable share, *i.e.*, $805, plus accrued interest in the amount of $594.

Texas Oil & Gas Corporation/Excel Corporation, 5/31/85; RF42-9

Excel Corporation filed an Application for Refund based on the principles and procedures set forth in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). In seeking a portion of funds remitted by Texas Oil & Gas Corporation (TOGCO) and obtained as a result of a Consent Order between TOGCO and the DOE, Excel limited its claim to the threshold refund level of $5,000. Accordingly, the DOE applied the presumption of injury methodology to the applicant's claim, and granted Excel a refund of $5,000 plus accrued interest.

Dismissals

The following submissions were dismissed:

Name and Case No.

Bob Malone's Gulf—RF40-2300
Billy's Gulf Service—RF40-2318
Jackson Gulf—RF40-2896
Don Anderson Oil Co.—HEE-0138
Howell Oil Company—RF40-3027
Northeast Utilities—RF76-0003

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

July 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-16679 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of June 3 Through June 7, 1985

During the week of June 3 through June 7, 1985, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Orders

Glen A. Martin, June 3, 1985, *BRO-1466*

Glen A. Martin objected to a Proposed Remedial Order (PRO) which was issued to him on July 28, 1981. In the PRO, the Economic Regulatory Administration found that he had sold crude oil from two producing tracts at prices in excess of those permitted by 10 CFR Part 212, Subpart D. The PRO alleged that each of the tracts constituted a single property, while Martin maintained that each tract constituted two separate properties. Martin had argued that because of continuous drilling clauses in the leases at issue, he held a right to produce in 1972 only for the developed portions of each tract. He therefore contended that each of the tracts were two properties based upon the portions that were developed before and after 1972. The DOE found no merit to these arguments, and held that each tract constituted a single property. The DOE also found that payments received by Martin pursuant to two crude oil option contracts violated the normal business practices rule, 10 CFR 212.62(c), and resulted in him receiving prices for crude oil that were in excess of those permitted by the regulations. The DOE also found that the remedial provisions of the PRO should be modified to provide that all monies remitted by Martin be distributed pursuant to the provisions of 10 CFR Part 205, Subpart V. The PRO, as modified, was issued as a final Remedial Order.

Strasburger Enterprises, Inc., June 4, 1985, *HRO-0139*

Strasburger Enterprises, Inc. objected to a Proposed Remedial Order (PRO) which was

issued to it on March 4, 1985. In the PRO, the Economic Regulatory Administration (ERA) found that Strasburger had sold motor gasoline at prices in excess of those permitted by 10 CFR 212.93. The primary objections raised by Strasburger were that (i) the equal application rule applicable to reseller-retailers is procedurally invalid, (ii) there was no regulation covering sales of unleaded gasoline during the audit period, and (iii) the sequence of recovery of current increased product costs, banked increased product costs, and non-product costs used in the audit was improper. The DOE granted in part the firm's objection to the method ERA used to calculate the firm's bank of unrecouped increased product costs. The DOE found that while the ERA was correct that all current increased product costs must be recovered before any increased non-product costs, the regulations did not require firms to recover their banked product costs prior to recovering their non-product costs. Strasburger's other objections to the PRO were denied. Accordingly, the PRO was remanded to the ERA for recalculation of the overcharge amount in a manner consistent with the Decision and Order.

Interlocutory Order

Houston Oil and Refining, Inc.; ERA, June 4, 1985, HRZ-0253; HRZ-0252

On December 21, 1985, Houston Oil and Refining, Inc. (HOR) filed a motion to dismiss the Proposed Remedial Order (PRO) issued to the firm by the Houston Office of the the Economic Regulatory Administration (ERA). On February 28, 1985, the ERA filed a motion to join Joseph A. Imparato as a party to the enforcement proceeding originally initiated against HOR. In denying HOR's motion to dismiss, the Office of Hearings and Appeals (OHA) found that the PRO established a *prima facie* case of a regulatory violation, as required by 10 CFR 205.192(d), and that substantial factual and legal disputes existed which made dismissal at this time totally inappropriate. The OHA also found that the ERA, by asserting a *prima facie* case of liability against Imparato that arose out of the same regulatory violations alleged in the original PRO, had met the applicable standards for joinder. Finding that the record contained sufficient evidence of Imparato's active participation in and knowledge of the transactions which were the subject of the HOR PRO, the OHA granted the ERA's motion to join Imparato as a party to the enforcement proceeding.

Implementation of Special Refund Procedures

Warren Holding Company, June 4, 1985, HEF-0102

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund from the settlement funds obtained by the DOE as a result of a consent order entered into with Warren Holding Company. The funds will be available to customers who purchased No. 2 heating oil and motor gasoline during the period November 1, 1973 through April 30, 1974, from several companies controlled by Warren Holding Company. Applications for refund must be postmarked within 90 days of the publication of the decision in the **Federal Register**. Specific information to be included in refund applications is discussed in the decision.

Refund Applications

The Hertz Corporation/Aluminum Company of America, et al., June 4, 1985, RF76-004 et al.

The DOE issued a Decision and Order concerning 83 Applications for Refund filed by firms who rented motor vehicles from The Hertz Corporation and incurred refueling charges as the result of returning the vehicles with less motor gasoline than when rented. Each of the firms elected to apply for a refund based on the formulae outlined in *The Hertz Corp.*, 12 DOE ¶ 85,113 (1984). In considering these applications, the DOE concluded that the applicants should receive a refund based upon the total volume of their motor gasoline purchased from Hertz in the form of refueling charges. The refunds granted in this proceeding total $177,919.

The Hertz Corporation HBE Corporation, et al., June 4, 1985, RF76-002 et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed by firms who rented motor vehicles from The Hertz Corporation and incurred refueling charges as the result of returning the vehicles with less motor gasoline than when rented. Each of the firms elected to apply for a refund based on the formulae outlined in *The Hertz Corp.*, 12 DOE ¶ 85,113 (1984). In considering these applications, the DOE concluded that the applicants should receive a refund based upon the total volume of their motor gasoline purchased from Hertz in the form of refueling charges. The refunds granted in this proceeding total $37,691.

Mountain Fuel Supply Company/Petrolane, Inc., June 5, 1985, RF118-1

Petrolane filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Mountain Fuel Supply Company. The DOE found that Petrolane paid above-market average costs during several months of the Mountain Fuel consent order period and, using a three-step competitive disadvantage methodology, the DOE calculated a range of Petrolane's competitive disadvantage. A refund of $10,616, was found to equitably compensate Petrolane for the harm it suffered as a result of Mountain Fuel's alleged overcharges. In addition, the firm received accrued interest which brought the total refund granted in this proceeding to $14,925.

Richards Oil Company/Defense Logistics Agency; Cargill, Inc., June 7, 1985, RF70-27; RF70-28

The DOE issued a Decision and Order concerning two Applications for Refund filed by firms who purchased fuel oil from Richards Oil Company. In considering these applications, the DOE concluded that the applicants should receive a refund in this proceeding of $70,858.71.

Seminole Refining, Inc./Baxter's Asphalt & Concrete, Inc., June 5, 1985, RF111-2

Baxter's Asphalt & Concrete, Inc. filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. The DOE found that the firm purchased a relatively small amount of No. 5 fuel oil and, using the volumetric allocation methodology, determined that the firm's allocable share was below the presumption of injury level of $5,000. The DOE decided, therefore, that Baxter's Asphalt & Concrete, Inc. would receive a refund amount of $1,705 plus accrued interest.

Seminole Refining, Inc./Dixie Oil Company, Inc., June 7, 1985, RF111-5

Dixie Oil Co. Inc., filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. The firm claimed a refund on the basis of its purchases of 296,231 gallons of refined products from Seminole during the consent order period. The DOE determined that Dixie's claim was below the presumption of injury level of $5,000. The DOE therefore granted Dixie a refund of $1,854.41 plus accrued interest.

Seminole Refining, Inc./The Milwhite Company, Inc., June 7, 1985, RF111-6

The Milwhite Co., Inc. filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. The firm claimed a refund on the basis of its purchases of 393,923 gallons of refined products from Seminole during the consent order period. The DOE determined that, as an end-user of the products involved, Milwhite was not required to make a detailed showing of injury. The DOE therefore granted Milwhite a refund of $2,465.96 plus accrued interest.

Standard Oil Company (Indiana)/Amcorp Oil Company, June 4, 1985, RF21-8174; RF21-8175; RF21-12378; RF21-12380

The DOE issued a Decision and Order concerning Applications for Refund filed in the Amoco refund proceeding by the current and the prior owners of Amcorp Oil Company. *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). The refund applications pertain to purchases of Amoco motor gasoline made before Amcorp was sold to the current owners. In considering the applications, the DOE determined that the purchase agreement that transferred Amcorp to the current owners did not also transfer the prior owners' claim to a refund and that, in view of the restitutionary goals of Subpart V proceedings, the prior owner of Amcorp, rather than the current owner, should be granted a refund. The refund granted in this proceeding totalled $3,366.

Standard Oil Company (Indiana)/Amoco Bay Harbor, June 4, 1985, RF21-12394

The DOE issued a Decision and Order concerning duplicate refunds received by a retailer of Amoco motor gasoline who applied twice for refunds in the Amoco refund proceeding. The DOE directed that Amoco Bay Harbor return the second refund it received, together with a written explanation as to why it had not notified the DOE of the error. The DOE further provided that failure

to file this additional information within 30 days would result in the rescission of the original refund.

Standard Oil Company (Indiana)/State of Maryland et al., June 4, 1985, RQ21–152 et al.

The States of Maryland, Utah and Indiana, and the Oglala Sioux Tribe (Sioux) of the Pine Ridge Reservation, South Dakota, filed proposed second-stage refund plans for the funds remaining in the DOE escrow accounts pursuant to consent orders with Standard Oil Company (Indiana) (Amoco) and Belridge Oil Company (Belridge). The OHA partially approved Maryland's proposed plan to use $449,024 ($446,223 from Amoco and $2,801 from Belridge) to fund traffic signal coordination, low-income residential weatherization, vanpool and furnace replacement programs. Funding for Maryland's proposed emergency medical services program was not approved. Utah's proposed plan to use $211,198 plus interest to conduct a canyon transportation study of the Wasatch Mountain range was rejected. A portion of Indiana's plan for $125,000 from Amoco to fund fuel saver van and low-income alternative home heating programs was approved. The OHA did not approve Indiana's request to use over $1 million to fund drunk driving and low-income assistance programs. Finally, the OHA disapproved a proposed plan by the Sioux Tribe to use $9,377 for administrative expenditures.

Dismissal

The following submission was dismissed:

Company Name and Case No.

Holden Oil Company, RF7–125

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

July 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85–16690 Filed 7–12–85; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decision and Order; Week of June 3 Through June 7, 1985

During the week of June 3 through June 7, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order is available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 24, 1985.

Keystone Fuel Oil Company, Washington, D.C.; HEE-0104, Crude Oil

Keystone Fuel Oil Company filed an Application for Exception from the provisions of 10 CFR Part 212. The exception request, if granted, would relieve Keystone of its obligation to remit to the DOE $2.7 million plus interest, pursuant to a Remedial Order issued to Keystone on July 13, 1984. On June 5, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85–16685 Filed 7–12–85; 8:45 am]

BILLING CODE 6450–01–M

Objection to Proposed Remedial Orders Filed; Week of April 15 Through April 19, 1985

During the week of April 15 through April 19, 1985, the notices of objection to proposed remedial orders listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

June 20, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Cities Service Co., Tulsa, Oklahoma, HRO–0285, Crude Oil

On April 15, 1985, Cities Service Company, 110 West Seventh Street, Tulsa, Oklahoma 74119 filed a Notice of Objection to a Proposed Remedial Order which the DOE Office of Enforcement Programs issued to the firm on March 5, 1985. In the PRO the Office of Enforcement Programs found that during the period October 1, 1979 to January 27, 1981, Cities charged prices in sales of price-controlled crude oil that were in excess of the levels permitted under 10 CFR Part 212, Subpart D. According to the PRO the violation resulted in $257,530,553 of overcharges plus interest of $251,791,646 accrued through March 31, 1985.

Elk Trading Co., Inc. & Neal Davis Dallas, Texas, HRO–0286 Crude Oil

On April 17, 1985, Elk Trading Co., Inc. & Neal Davis (Elk) (Elk Trading Co., Inc. & Neal Davis) Suite 300 Bedford Office Park, Tuscaloosa, Alabama 35406, and the State of Texas (State of Texas) P.O. Box 12548, Capitol Station, Austin, Texas 78711, filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas District Office of Enforcement issued to the firm on March 11, 1985. In the PRO the Dallas District found that during the period May 1978 to December 1980, Elk charged prices for crude oil in excess of those permitted under 10 CFR Part 212. According to the PRO the layering violation resulted in $15,897,743 of overcharges.

Goldsberry Operating Co., Shreveport, Louisiana, HRO–0287, Crude Oil

On April 17 and 22, 1985, respectively, the State of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711, and Goldsberry Operating Co., 1200 American Tower, Shreveport, Louisiana 71101, filed Notices of Objection to a Proposed Remedial Order which the DOE Houston, Texas District Office of Enforcement issued to the firm on March 12, 1985. In the PRO the Economic Regulatory Administration found that during December 1973 through September 1980

Goldsberry charged prices in excess of ceiling prices in first sales of domestic crude oil in violation of 10 CFR 212.32, 212.54, 212.73 and 212.74. According to the PRO the violation resulted in $300,549 of overcharges.

[FR Doc. 85-16686 Filed 7-12-85; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $172,193.63 (plus accrued interest) in consent order funds to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving the DOE and Elm City Filling Stations, Inc. of New Haven, Connecticut.

DATE AND ADDRESS: Comments must be filed within 30 days of the publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case Number HEF-0067.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by the DOE and Elm City Filling Stations, Inc. (Elm) of New Haven, Connecticut. This Consent Order settled possible pricing violations in Elm's sales of No. 6 residual fuel oil to its customers during the period November 1, 1973 through December 31, 1973.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the Elm escrow account. The DOE has tentatively established a presumption that none of Elm's direct customers were injured by the firm's pricing practices, and has therefore tentatively decided that no Elm first purchaser customers will be eligible for refunds in this proceeding. The DOE proposes that the Elm escrow funds be distributed to those downstream customers who purchased the Elm residual fuel oil from Elm's direct customers and who can establish that they were injured by Elm's alleged overcharges. Such customers will receive refunds based on the amount Elm allegedly overcharged its direct customers, according to DOE audit files. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: July 8, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Elm City Filling Stations, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0067.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the affects of alleged or adjudicated violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that the OHA implement a special refund proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Elm City Filling Stations, Inc. (Elm) of New Haven, Connecticut.

I. Background

Elm is a "reseller" of "No. 6 residual fuel oil" as these terms were defined in 10 CFR 212.31. A Proposed Remedial Order (PRO) was issued to Elm on January 2, 1979. Subsequently, the OHA issued a Remedial Order (RO) to Elm which found violations of the Mandatory Petroleum Price Regulations in the amount of $219,797.00 with respect to the firm's sales of No. 6 residual fuel oil during the period November 1, 1973 through December 31, 1973 (the audit period). *See Elm City Filling Stations*, 8 DOE ¶ 83,031 (1981). In order to settle all claims and disputes between Elm and the DOE regarding these sales, Elm and the DOE entered into a Consent Order on September 1, 1981, in which Elm agreed to remit $141,454 to the DOE. Elm's payments, which total $172,193.63 ($141,454 in principal and $30,739.63 in interest accrued prior to the completion of payments), are currently being held in an interest-bearing escrow account pending distribution by the DOE.

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who were injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settelement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*).

II. Proposed Refund Procedures

We have considered the ERA petition to implement a Subpart V proceeding with respect to the Elm Consent order fund and have determined that it is appropriate to establish such a proceeding. Insofar as possible, this fund should be distributed to those purchasers of Elm No. 6 residual fuel oil who were injured by the firm's alleged price violations. We therefore propose to accept applications from parties that can show that they were adversely affected by Elm's pricing practices during the consent order period.[1]

To this end, we plan to use information in the ERA audit file to help construct a refund mechanism. We recognize that this audit file does not provide conclusive evidence as to the

[1] In the present case, the consent order period is the same as the audit period, November 1, 1973 through December 31, 1973.

identity of all possible refund recipients or the amount of money they might be eligible for in a Subpart V proceeding. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). Nevertheless, the information it contains can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries experienced than would a distribution plan based solely on a volumetric approach. *See Marion Corp.*, 12 DOE ¶ 85,104 (1983). This approach is especially appropriate in the present case because the Elm Consent Order is limited to the same product and time period as the audit, the ERA audit was very narrow in scope, and Elm had very few customers during this period. Therefore, as in previous cases of this type, we propose that the alleged overcharge figures listed in the audit file be used in reaching a determination of how the funds in the escrow account should be distributed. *See Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Brown Oil Co.*, 12 DOE ¶ 85,028 (1984).

The ERA audit files indicate that there were only three direct purchasers of No. 6 residual fuel oil from Elm during the consent order period, each of which resold the fuel oil to the other petroleum marketers and to end-users: Amerada Hess Corporation (Hess), Metropolitan Petroleum, Inc. (Metropolitan), and JOC Oil Company (JOC)., According to the RO And other documents in the audit file, JOC and Metropolitan were allegedly overcharged $7,339 and $217,577 respectively, but Hess was not overcharged. We therefore propose to adopt a rebuttable assumption that Hess was not injured by Elm's pricing practices during the consent order period. Hess would then be ineligible for a refund in this proceeding, unless it demonstrates that the audit findings were incorrect and that it was injured by Elm's pricing practices during the consent order period.[2]

We further propose to establish a rebuttable presumption that JOC and Metropolitan were not injured by Elm's pricing practices since they were spot purchasers of the Elm No. 6 residual fuel oil. During the period July 18, 1973 through December 31, 1973, JOC and Metropolitan made only four purchases of No. 6 residual fuel oil from Elm. This suggests that these firms were not regular customers of Elm. Also, the PRO describes the two purchases JOC and Metropolitan each made during the two month consent order period as "spot purchase and sales transactions." *See* PRO at 6. We therefore, tentatively find that JOC and Metropolitan were spot purchasers of the No. 6 residual fuel oil they brought from Elm during the consent order period.

As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97; *see also Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, JOC and Metropolitan must submit evidence to establish that they were unable to exercise considerable discretion as to where and when they made the purchase(s) on which their refund claim is based.[3] In the event that JOC or Metropolitan makes this showing, they would also have to make the showing required of resellers (as outlined below) in order to be eligible for a refund in this proceeding.

As indicated above, it is likely that JOC and Metropolitan passed on the Elm alleged overcharges to their respective customers. Consequently, these downstream customers may have been injured by Elm's pricing practices during the consent order period, and therefore may be eligible for a refund in this proceeding. Any such applicants must show that they were adversely affected by Elm's alleged overcharges, as outlined below.

We propose that any claimant who resold the Elm No. 6 residual fuel oil purchased from JOC or Metropolitan be required to demonstrate that it did not pass on to its customers price increases implemented by Elm. *See, e.g., Vickers.* In order to qualify for a refund, a reseller of Elm No. 6 residual fuel oil purchased from JOC or Metropolitan must show that when it sold this product it would have maintained its prices at the same level had Elm's alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased No. 6 residual fuel oil from JOC or Metropolitan, market conditions would not permit it to increase its prices to pass through the additional costs associated with Elm's alleged overcharges to its customers. In addition, the reseller must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

As in many prior special refund cases, we will adopt a presumption of injury with respect to small claims. The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). In the present case, we are proposing to adopt a presumption that reseller claimants seeking small refunds were injured by the pricing practices settled in the Elm Consent Order. This presumption is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many

[2] It would not further the purpose of this Subpart V proceeding and it would be contrary to the terms of the Elm Consent Order for us to attempt to adjudicate whether there has been an actual violation of the price regulations by Elm in its sales to Hess. *See, e.g., Kern Oil & Refining Co. v. Tenneco Oil Co.*, Fed. Energy Guidelines, Court Decisions, 1981–1984, ¶ 26,489 (Temp. Emer. Ct. App. 1983). However, in order for Hess to overcome the presumption we propose to establish, it will have to make a reasonable showing of the amount by which it was allegedly overcharged and that it absorbed the alleged overcharge. *See Standard Oil (Indiana)/ Army & Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

[3] The ERA files also indicate that Hess was a spot purchaser of Elm No. 6 residual fuel oil. Accordingly, in order to be eligible for a refund, in addition to the showing previously outlined for Hess (t3see footnote 2), the firm must also rebut the presumption applicable to spot purchasers to be eligible for a refund.

times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of this presumption is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly, and use its limited resources more efficiently.

Under the presumption we are proposing to adopt, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes of No. 6 residual fuel that can be traced to Elm if its refund claim is based on purchases below a threshold level.[4] Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose to follow the same approach in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In the present case, where the time period of the consent order is quite distant and refund amounts are likely to be fairly low, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable. *See id.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to this presumption we are adopting, we are making a finding that downstream end-users or ultimate consumers (as defined in 10 CFR 211.51) of Elm No. 6 residual fuel oil purchased from JOC or Metropolitan, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the Elm Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that end-users of No. 6 residual fuel oil need only document their purchase volumes from JOC or Metropolitan that can be traced to Elm in order to make a sufficient showing that they were injured by the Elm alleged overcharges.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweight the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

III. Calculation of Refund Amounts

We propose that the Elm consent order fund be divided between successful applicants as follows: First, the fund will be divided into two pools, one for JOC's customers and one for Metropolitan's, in proportion to the amount JOC and Metropolitan were allegedly overcharged by Elm. To calculate the size of these pools, the amount of alleged overcharges made to each of the two direct customers (JOC and Metropolitan) is divided by the total alleged overcharges made by Elm ($219,797). This fraction is then multiplied by the amount of funds remitted by Elm to the DOE ($172,193.63). The share of the Elm consent order fund initially attributable to each of the two direct customers is then $5,749 for JOC ([$7,339÷$219,797)×$172,193.63) and $166,444 for Metropolitan ([$212,458÷$219,797]×$172,193.63).

If JOC and Metropolitan fail to establish eligibility for a refund, these funds will then be distributed to JOC's and Metropolitan's customer in proportion to the amount they purchased from JOC or Metropolitan. *Cf. Office of Special Counsel*, 11 DOE ¶ 85,226 (1984). This distribution scheme presumes that the alleged overcharges by Elm that were passed on by JOC and Metropolitan were dispersed equally in those firms' sales. The OHA has referred to this presumption in the past as a volumetric refund amount. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

To determine the volumetric factors for JOC's and Metropolitan's customers, the share of the Elm consent order attributable to each of the two direct customers is divided by the total amount on No. 6 residual fuel oil sold by that firm during the Elm consent order period. *See Conoco Inc./Banco Properties, Inc.*, 12 DOE ¶ 85,117 at 88,362 (1984). This results in a refund amount for each gallon of No. 6 residual fuel oil purchased from JOC or Metropolitan during the consent order period.[5] The interest which has accrued on the money in the Elm escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the **Federal Register**, copies will be provided to JOC, Metropolitan and Hess, and JOC and Metropolitan will be requested to assist us in identifying their customers who may have purchased the Elm No. 6 residual fuel oil. If appropriate, we also intend to publicize this proceeding in local newspapers in the areas where JOC and Metropolitan conducted business.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Elm City Filling Stations, Inc. pursuant to the Consent Order executed on September

[4] We propose that any downstream retailer or reseller (including refiners acting in the capacity of resellers) who made only spot purchases from JOC or Metropolitan be presumed to have suffered no injury. In order to overcome this presumption, it will have to make the showing described in the discussion above.

[5] In the event that a downstream customer is able to document that the No. 6 residual fuel oil it purchased from JOC or Metropolitan was supplied entirely by Elm, its per gallon volumetric refund amount will be based on the amount that the applicable direct customer purchased from Elm. These volumetric amounts are equal to $0.005595 for JOC's customers ($5,749 divided by 1,027,459 gallons) and $0.18578 for Metropolitan's customers ($166,444 divided by 895,900 gallons).

1, 1961 will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-16669 Filed 7-12-85; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties: $10,000 obtained as a result of a consent order into which the DOE entered with L & L Oil Company, a reseller of petroleum products located in Belle Chasse, Louisiana; $52,347.47 obtained as a result of a consent order into which the DOE entered with Lowe Oil Company, a reseller of petroleum products based in Clinton, Missouri; and $12,173.48 obtained as a result of a consent order into which the DOE entered with Moyle Petroleum Company, a reseller of petroleum products headquartered in Rapid City, South Dakota. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0111 (L&L), HEF-0118 (Lowe), of HEF-0133 (Moyle).

FOR FURTHER INFORMATION CONTACT: Douglas Friedman, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties: $10,000 obtained by the DOE under the terms of a consent order entered into with L & L Oil Company, plus accured interest; $52,347.47 obtained by the DOE under the terms of a consent order entered into with Lowe Oil Company, plus accured interest; and $12,173.48 obtained by the DOE under the terms of a consent order entered into with Moyle Petroleum Corporation, plus accured interest. The funds are being provided to the DOE by L & L, Lowe, and Moyle to settle all claims and disputes between the firms and the DOE regarding the manner in which the firms applied the federal price regulations with respect to their sales of refined petroleum products during the respective consent order periods—November 1, 1973, through April 30, 1974, for L & L and Lowe, and March 1, 1979, thorugh June 30, 1979 for Moyle.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to 46 of L & L's customers, 3 of Lowe's and 22 of Moyle's, all of whom may have been overcharged. In order to obtain a refund, each claimant will be required to submit either a schedule of its monthly purchases from on of the three companies or a statement verifying that it purchased petroleum products from the appropriate company and is willing to rely on the data in the audit files. Certain firms will also be required to make specific demonstrations of injury. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. These purchasers will be required to provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims in authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: June 28, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: L & L Oil Company, Inc.; Lowe Oil Company; and Moyle Petroleum Company.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0111; HEF-0118; and HEF-0133.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders entered into with L&L Oil Company, Inc. (L&L), Lowe Oil Company (Lowe), and Moyle Petroleum Company (Moyle) (collectively referred to as the consent order firms).

I. Background

L&L, Lowe, and Moyle are all "reseller-retailers" of refined petroleum products as that term was defined in 10 CFR 212.31. L&L is located in Belle Chasse, Louisiana. Lowe's main office is in Clinton, Missouri. Moyle's headquarters are in Rapid City, South Dakota. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a separate consent order with the DOE. The consent orders refer to ERA's allegations of overcharges, but note that there were no findings that violations occurred. Additionally, the consent orders state that the consenting firms do not admit that they committed violations. A brief discussion of the pertinent matters covered by each consent order follows.

The L&L consent order covers the period November 1, 1973, through April 30, 1974. In a Notice of Probable Violation (NOPV) issued to the firm, ERA alleged that during that period, L&L committed possible pricing violations amounting to $95,299.15, with respect to

its sales of No. 2 diesel fuel. In order to settle all claims and disputes between L&L and the DOE regarding the company's sales of No. 2 diesel fuel during the period covered by the NOPV, L&L and the DOE entered into a consent order on September 20, 1979. Under the terms of the consent order, L&L was to deposit $10,000 into an interest-bearing escrow account for ultimate distribution by the DOE. L&L remitted this sum on November 1, 1979.[1]

The Lowe consent order likewise covers the period November 1, 1973, through April 30, 1974. ERA issued a Proposed Remedial Order (PRO) to Lowe, in which the agency alleged that the company had committed possible pricing violations amounting to $81,943.09 on its sales of motor gasoline and motor oils between November 1973 and April 1974. In order to settle all claims and disputes between them regarding Lowe's sales of motor gasoline and motor oils during the period covered by the PRO, Lowe and the DOE entered into a consent order on September 1, 1981. The consent order required Lowe to deposit $52,347.57 into an interest-bearing escrow account for ultimate distribution by the DOE. The company fulfilled this requirement on September 14, 1981.[2]

The period covered by the Moyle consent order runs from March 1, 1979, through June 30, 1979. A DOE audit alleged that during the period, Moyle had committed possible pricing violations amounting to $24,346.98 on its sales of motor gasoline. To settle all claims and disputes between them concerning Moyle's sales of motor gasoline during the audit period, Moyle and the DOE entered into a consent order on December 31, 1980. The terms of the consent order required Moyle to deposit $12,173.48 into an interest-bearing escrow account for ultimate distribution by the DOE. The DOE received Moyle's check for the amount on January 15, 1981.[3]

This decison concerns the distribution of the funds in the three escrow accounts, including the accrued interest.

II Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (Vickers).

Our experience with subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by L&L's or Lowe's pricing practices between November 1, 1973 and April 30, 1974, or by Moyle's pricing practices between March 1 and June 30, 1979. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified Purchasers

The basic purpose of a special refund proceeding is to recompense parties who were injured as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have decided to rely in part on the information contained in the DOE's audit files. Our experience with similar cases supports the use of this approach in Subpart V cases where many of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination can be made regarding the identity of the allegedly overcharged parties and the amount of alleged overcharges each party suffered.

During the DOE's audit of L&L, 46 first purchasers were identified as having allegedly been overcharged. During the audit of Lowe, 3 first purchasers were similarly identified. In the audit of Moyle 22 first purchasers were identified as having allegedly been overcharged. In all three cases, ERA also alleged overcharges to customers who were not identified. We recognize that the DOE audit files do not necessarily provide conclusive evidence regarding the identity of all possible refund recipients or the appropriate refund for a particular firm. However, the information contained in those audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit, other customers who can show injury, and downstream customers of either type of firm. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, with the share of the settlement allotted to each by ERA, are listed in Appendices B-1, B-3, B-4, C, and D.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. Besides considering the information which the audit file provides, we also propose the adoption of presumptions to be used in determining the level of a purchaser's injury. We propose to use these two methods to distribute the funds in the three escrow accounts. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we intend to adopt a presumption that claimants seeking small refunds were injured by the pricing practices of the company from which they purchased products. We also intend to adopt a rebuttable presumption that customers which made only spot purchases were not injured. In

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[1] As of May 31, 1985, the L&L escrow account contained $17,788.98, including accrued interest.

[2] Including accrued interest, the Lowe escrow account contained $58,727.01 as of May 31, 1985.

[3] The Moyle escrow account contained $16,513.76 as of May 31, 1985, including accrued interest.

addition, we are making a proposed finding that end users suffered injury.

There are a variety of reasons for adopting the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happended downstream of the initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Other refund decisions have expressed this threshold in terms of either purchase volumes or refund dollar amounts. In *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach.

Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.; Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein. The record indicates that all the firms identified in the L&L and Moyle proceedings are eligible for small refunds, as are two of those identified in the Lowe proceeding. The one Lowe customer whose potential refund falls above the threshold purchased products in quantities that suggest that it is significantly larger than the other potential refund recipients.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[4]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. The record in this proceeding reveals that those firms listed in Appendix B–4 made only spot purchases from L&L. We propose that firms on this list not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of No. 2 diesel fuel from L&L during the consent order period.

As noted above, we are making a proposed finding that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We therefore propose that end users of petroleum products sold by one of the consent order firms be required to document only their purchase volumes from the applicable firm to make a sufficient showing that they were injured by the alleged overcharges.[5]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of L&L's, Lowe's, or Moyle's alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,539 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 plus interest will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for small amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR § 205.286(b). The same principle applies here.

On the basis of the information in the record at this time, we propose to

[4] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to prove their injury. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

[5] If a firm is both a spot purchaser and an end user, it will be treated as an end user and not be required to make any showing of injury beyond that required by other end users.

distribute a portion of the escrow funds to those firms listed in Appendices B–1, B–2, C, and D. Refunds will be authorized for those firms in the amounts indicated, plus accrued interest to the date they receive refunds, provided they make any necessary showing of injury.[6] However, no addresses are available for the firms listed in Appendix B–2 and we therefore are unable to contact these firms directly. In an attempt to locate these firms, we will provide L&L and various petroleum dealers' and other trade associations with copies of this Proposed Decision and will publish a notice in the Federal Register. Information regarding the identity and location of each of these firms will be accepted for a period of 90 days following the date of publication of notice of a final Decision and Order in this proceeding in the Federal Register.[7] In addition, firms listed in Appendix B–4 may receive refunds if they can rebut the spot purchaser presumption.[8]

B. Refunds to Other Purchasers

In all three of the cases affected by this decision there were some first purchasers who were not identified by the ERA audit.[9] These firms, and downstream purchasers, may have been injured as a result of the consent order firms' pricing practices. If so, they would be entitled to a portion of the consent order funds provided by the company from which they made purchases. To help potential claimants not identified by ERA decide whether to apply for a refund, we propose to use a volumetric procedure. Under this procedure, a successful claimant's refund is determined by multiplying a factor, known as the volumetric refund amount, by the number of gallons of fuel[10] purchased by the claimant.[11] The volumetric refund amount is the average per gallon refund. Appendix A lists the volumetric amount relevant to each of the three proceedings. Potential applicants who were not identified by the ERA audit may use the listed figure to estimate the refunds to which they may be entitled. The volumetric presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. The presumptions and finding noted in Section A above apply also to applications submitted by claimants not identified by ERA. If valid claims exceed the funds available in a particular escrow account, all refunds will be reduced by a pro rata amount. Actual refunds will be determined after analyzing all appropriate claims.

C. Applications for Refund

In order to receive a refund, each claimant identified by ERA will be required to submit either a schedule of its monthly purchases of petroleum products from the appropriate consent order firm or a statement verifying that it purchased petroleum products from that firm and is willing to rely on the data in the audit file. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audits underlying these proceedings. Purchasers not identified by the ERA audit will be required to provide schedules of their monthly purchases of petroleum products from the applicable consent order firm. If they claim injury at a level greater than the volumetric level, they must document this injury. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

D. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in subsequent proceedings. However, we will not be in a position to decide what should be done with any funds remaining in a particular escrow account until the initial stage of the applicable refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by L&L Oil Company, Inc. pursuant to the consent order executed on September 20, 1979, by Lowe Oil Company pursuant to the consent order executed on September 1, 1981, and by Moyle Petroleum Company pursuant to the consent order executed on December 31, 1980, will be distributed in accordance with the foregoing decision.

APPENDIX A

Consent order firm	Consent order period	Product	Amount available[1]	Volume sold (gallons)	Volumetric refund (per gal.)	Minimum[2] purchase (gallons)
L & L	11/73–4/74	No. 2 diesel fuel	$303.53	218,770	$0.001387	10,512
Lowe	11/73–4/74	Motor oil	32,775.22	[3] 77,223	[3] 0.4244	[3] 36

[1] The share of the L&L escrow fund allocated to each firm listed in Appendices B–1, B–2, B–3, and B–4 represents 10.69 percent of the amount each was allegedly overcharged. Firms listed in Appendix C have been allocated shares of the Lowe escrow fund equal to 63.55 percent of the amount they were allegedly overcharged. In Appendix D, firms have been allotted shares of the Moyle consent order equal to 50 percent of the amount they were allegedly overcharged. These figures are consistent with the terms of the L&L, Lowe, and Moyle consent orders, which settled for 10.69 percent, 63.55 percent, and 50 percent, respectively, of the total amount of alleged overcharges.

[2] If we are unable to locate any firm listed in Appendix B–2, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

[3] Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive refunds larger than those indicated.

[4] Appendix E contains a list of 300 Lowe customers. We will contact directly those for whom we can obtain addresses. We would appreciate assistance in locating the others.

[10] With Lowe, the volumetric system applies to sales of motor oil. Refunds will be based on the number of cases of motor oil purchased. Lowe customers should therefore substitute the word "case" for the word "gallon" and the term "motor oil" for the word "fuel."

[11] A purely volumetric approach is particularly appropriate in special refund proceedings where the DOE is unable to identify readily those persons who may be eligible to receive refunds. It has proved to be an administratively efficient method for determining what proportion of the available settlement funds should be awarded to each successful claimant. It also serves as a useful approximation of injury in the treatment of overcharged claimants who are unable to quantify their alleged injury, thereby allowing applicants to recover a meaningful refund for the volumes of product they have purchased.

APPENDIX A—Continued

Consent order firm	Consent order period	Product	Amount available[1]	Volume sold (gallons)	Volumetric refund (per gal.)	Minimum[2] purchase (gallons)
Moyle	2/79-6/79	Motor gasoline	4,389.92	1,229,205	0.003571	4,200

[1] This figure represents the amount of the settlement available for purchasers not identified by the ERA audit (excluding interest).
[2] The figure listed shows the purchase volume required for a claimant to receive a $15 refund.
[3] The numbers for Lowe represent cases, not gallons.

Appendix B-1.—*L & L Oil Company, Inc.*

First purchasers	Share of settlement[1]
A.W.I. Inc., 1229 Peters Road, Harvey, Louisiana 70058	$333.23
Atlantic & Pacific Marine Corp., 210 Veterans Memorial Boulevard, Metairie, Louisiana 70005	176.79
B.J., Inc., 3525 N. Causeway Boulevard, Metairie, Louisiana 70002	35.16
Diamond M. Drilling, P[illegible]road Avenue, Morgan City, Louisiana 70380	1,374.50
Halliburton Services, 1010 Common Street, New Orleans, Louisiana 70112	544.53
Harvey Workover, Weeks Island Road, New Iberia, Louisiana 70560	78.75
Lee & Leon, Venice, Louisiana 70091	1,185.86
Louisiana Land & Exploration, 225 Baronne Street, New Orleans, Louisiana 70112	101.79
Mallard Well Service, 5918 Fairfield Avenue, Shreveport, Louisiana 71108	27.57
The Mayronne Corporation, 3624 Peters Road, Harvey, Louisiana 70058	128.51
Noble Drilling Company, 144 Canal Street, New Orleans, Louisiana 70130	848.65
Texaco, Inc., Texaco Building, New Orleans, Louisiana 70112	153.28
Westside Oil, 527 Destrahan Avenue, Harvey, Louisiana 70058	2,104.10

[1] Not including accrued interest.

Appendix B-2.—*L&L Oil Company, Inc., No Address Available*

First purchasers	Share of settlement[1]
Atchafalaya Workover	$77.70
B.R. Dredging	161.08
Centerville Petroleum Co	158.50
Dredge Manchac	802.35
Fritz Jahncke Services	518.50
P&A Well Service	18.55

[1] Not including accrued interest.

Appendix B-3.—*L&L Oil Company, Inc., Unmeritorious Distributions*

First purchasers	Share of settlement[1]
Couenous & Sons	$13.49
Creppel Towing	1.57
James Dean Marine Division	.32
Dowell Chemical, 1010 Common Street, New Orleans, Louisiana 70112	11.49
Getty Oil Company, 225 Baronne Street, New Orleans, Louisiana 70112	3.36
Labor Services, Inc., 2332 Pailet Street, Harvey, Louisiana 70058	7.89
Lafitte Welding Works, Lafitte, Louisiana 70067	1.45
Lane Towing	7.72
Local Tugs, Inc	3.11
John Moterio	2.43
New Orleans Prestressed Co., Inc	9.52
Pertint Brothers	6.28
Talor Plumbing & Heating	.59
Total Services, Inc., 2605 Concord Road, Belle Chasse, Louisiana 70037	13.08
Ward Rig No. 16	10.37

[1] Not including accrued interest.

Appendix B-4.—*L & L Oil Company, Inc.*

Spot purchasers	Share of settlement[1]
Ayers Material, Inc	$186.74
C.F. Bean, Inc., 1 Shell Square, New Orleans, Louisiana 70112	54.57
Brown & Root, Belle Chasse, Louisiana 70037	304.38
Great Lakes Dredge & Dock Co., 2475 Canal Street, New Orleans, Louisiana 70119	29.38
Gulf South Dredging	52.59
Sala Dredging	20.25
Salathe Oil, 2228 Peters Road, Harvey, Louisiana 70058	43.72
John W. Smith Well Service	19.68
Jules Shebert's Marina Supply	41.65
Southern Pacific Railroad, 185 Spring Street, SW., Atlanta, Georgia 30303	67.34
Wheeler Dredging	156.13

[1] Not including accrued interest.

Appendix C.—*Lowe Oil Company*

First purchasers	Share of settlement[1]
Don's Texaco, Clinton, Missouri 64735	$589.60

Appendix C.—*Lowe Oil Company*—Continued

First purchasers	Share of settlement[1]
Gibson Products, 3605 North Oak Trafficway, Kansas City, Missouri 64116	18,720.63
Jones Texaco, Warsaw, Missouri 65355	262.02

[1] Not including accrued interest.

Appendix D.—*Moyle Petroleum Company*

First purchasers	Share of settlement[1]
Black Hills Propane, Post Office Box 2860, Rapid City, South Dakota 57709	$16.36
Budget Rent-A-Car, Post Office Box 2950, Rapid City, South Dakota 57709	84.84
Bargain Barn, Piedmont, South Dakota 57769	1,220.46
Custer 66, 844 Rushmore Road, Custer, South Dakota 57730	167.35
Dale's 66, 1112 Fourth Street, Belle Fourche, South Dakota 57717	547.16
Hill City Super G, Post Office Box 365, Hill City, South Dakota 57745	486.47
Horse Thief Campground & Resort, Post Office Box 282, Hill City, South Dakota 57745	73.17
I-90 Super G, Sturgis, South Dakota 57785	[3]10.12
Jim's One Stop, 29 Main Street, Rapid City, South Dakota 57701	166.80
Kelly Company, South Boulevard, Wall, South Dakota 57790	58.38
Long's Resort, Hot Springs, South Dakota 57747	36.58
National Car Rental, Rapid City Regional Airport, Rapid City, South Dakota 57701	180.58
Norton's 66, Hot Springs, South Dakota 57747	286.20
Pactola Pines, Keystone Route, Post Office Box 3125, Rapid City, South Dakota 57701	75.50
Philtown 66, Post Office Box 777, Sturgis, South Dakota 57785	3,743.11
Rapid City Rent-A-Car, Route 2, Post Office Box 631, Rapid City, South Dakota 57701	189.14
Red Arrow Safari Camping, Route 9, Post Office Box 657, Rapid City, South Dakota 57701	32.69
Restway Travel Park, Rural Route 1, Post Office Box 39, Hermosa, South Dakota 57744	80.17
Rockerville Trading Post, Rockerville, South Dakota 57701	132.32
Somer Sun Resort, Post Office Box 185, Hot Springs, South Dakota 57747	93.40
Three Forks Inn, Keystone Route, Post Office Box 418, Rapid City, South Dakota 57701	83.28

Appendix D.—*Moyle Petroleum Company*—Continued

First purchasers	Share of settlement [1]
Trout Haven Campground, Nemo Route, Deadwood, South Dakota 57732	13.65

[1] Not including accrued interest.
[2] As noted in the body of the Proposed Decision, we do not intend to grant claims for less than $15.

Appendix E.—*Lowe Oil Company*

Customer Name	City and State
Walmart Discount Ctr.	Bentonville, AR.
Miska Supply Company.	Cedar Rapids, IA.
Farm & Home Supply	Centerville, IA.
Ross & Sons Repair	Columbus Junction, IA.
Strum Auto Supply	Davenport, IA.
Fleetway Stores	Iowa City, IA.
Hanoco Oil	Leon, IA.
Quality Discount	Do.
McCarty Oil	Do.
Fleetway Stores	Muscatine, IA.
Dixon #1 Discount	Oskaloosa, IA.
Elliott Oil	Ottumwa, IA.
Perry Discount	Perry, IA.
Farm King Supply	Macomb, IL.
Goodyear Service Store.	Quincy, IL.
Illinois Oil Products	Rock Island, IL.
A.E. West Petroleum	Kansas City, KS.
Homelite Company	Lenexa, KS.
Neil's Garage	Louisburg, KS.
Quality Discount	Neodesha, KS.
C & C Inc.	Olathe, KS.
Willard IGA	Osawatomie, KS.
Caylor Bros	Do.
OK Bargain Store	Paola, KS.
Southerland Ben Franklin.	Do.
G&T Service	Pleasanton, KS.
Henkle Egg Company	Do.
Laughlin Bros	Stanley, KS.
Bob's Kwik Shop	Kearney, NE.
May Oil Company	Cowetta, OK.
Hill's Truck Service	Adrian, MO.
Mac's Discount	Do.
Gragg's Skelly	Appleton City, MO.
Fenimore Motors	Appleton, MO.
Warner Oil	Archio, MO.
Taylor's DX Service	Barnett, MO.
Riggert Tire Company	Belton, MO.
Compton Auto Parts	Do.
K.L. Brown Implement	Do.
Western Auto Store	Do.
Everetts DX Service	Bevier, MO.
O.K. Tire Company	Blue Springs, MO.
Four Trees Skelly	Boonville, MO.
Windmill Shell Service.	Do.
Mike's Sinclair	Do.
Herigon's Fina	Do.
Simmons & Sons Garage.	Do.
Lindsey Sinclair Service.	Burnswick, MO.
Bucklin Farm Supply	Bucklin, MO
Carl's Skelly Service	Butler, MO.
Billingsley DX	Do.
Matco Discount Center #109.	Do.

Appendix E.—*Lowe Oil Company*—Continued

Customer Name	City and State
Jensen Farm Store	Do.
Don Apco	Do.
Oklahoma Tire & Supply.	Do.
Bitner-Stark Pontiac	Do.
Bill's Champlin	Do.
Harry Cherry Service	Do.
Peabody Coal	Calhoun, MO.
Putnam Chevrolet	California, MO.
Norris MFA Service	Camdenton, MO.
Palace Standard	Do.
Camden Oil Company	Do.
Greenview Garage	Do.
Kinniston Hardware	Do.
Quality Discount	Carmeron, MO.
Ayers Oil Company	Canton, MO.
Auto Tire & Parts Company.	Cape Girardeau, MO.
Carroll's Vicker	Carrollton, MO.
Matco Discount	Do.
Rays Apco	Cedar City, MO.
North Star Service	Do.
Oliver Oil Company	Centerview, MO.
Airways Vickers	Do.
Bob Station Service	Chillicothe, MO.
Rupp Oil Company	Do.
LeRoy's Apco	Climax Springs, MO.
Wilkerson Garage	Do.
Brigg's & Tillman	Clinton, MO.
James Brown	Do.
Bill's Apco	Do.
Hinken Apco	Do.
Clinton Chrysler Plymouth.	Do.
Jim's Saw Shop	Do.
Ray Odom	Do.
Ron's Auto Parts	Do.
Jay's Service Center	Do.
Keck Oil Company	Do.
Stewart Nattinger	Do.
Paul's Derby	Cole Camp, MO.
Bob's MFA	Do.
W&K Chevrolet	Do.
Cleo's Package Store	Do.
Marvins 66 Service	Do.
Weinberg's Conoco	Do.
Veals Skelly Service	Do.
Rogers Garage	Do.
Arnold's Auto Repair	Do.
Bud's Place	Do.
Help Apco Service	Columbia, MO.
Coleman's Apco	Do.
Skaggs Drug Company.	Do.
MFA Oil Company	Do.
Beary, Conner & Hawkins Distributors.	Do.
Creighton Oil Company.	Creighton, MO.
Hart's Sinclair	Edwards, MO.
Harbison Apco	Eldon, MO.
Miller's Auto Supply	Do.
Ivey Oil	Do.
Bob's Service	Do.
Ernie Jones Motor Company.	Do.
Allison Oil Company	Eldorado Springs, MO.
Interstate Apco	Emma, MO.
Opies Discount	Eugene, MO.

Appendix E.—*Lowe Oil Company*—Continued

Customer Name	City and State
Bill's Mobil Service	Do.
Doerhoff's Garage	Do.
Excelsior Springs Apco.	Excelsior Springs, MO.
Collier Store	Foster, MO.
Phil Fina	Fristoe, MO.
Pardue Apco	Fulton, MO.
Zook DX	Garden City, MO.
Mel's Apco	Do.
Yoder Oil Company	Do.
Ament's #3	Do.
Gilliam Trucking	Gilliam, MO.
Granby Auto Supply	Grandby, MO.
Hawks Standard Service.	Hamilton, MO.
L&L Champlin Service	Do.
Hannibal Farm Supply.	Hannibal, MO.
Bo's Oil Company	Harrisonville, MO.
Bill's Skelly	Do.
Bridges Chevrolet	Do.
Wingert Oil	Do.
McHenry Pontiac	Do.
Harvey Buick	Do.
Ament's #1	Do.
Ament's #2	Do.
Don's Truck Stop	Do.
Harold Cherry	Do.
Tractor Parts & Supply.	Do.
Frank & Ida's Coop	Henrietta, MO.
Higginsville Auto Supply.	Higginsville, MO.
Opfer & Deke	Do.
R&S Bargain	Do.
MFA Service	Do.
Brown & Eissler Implement.	Holden, MO.
Earl's Garage	Do.
Wee Discount	Do.
Lawler Oil Company	Do.
S & H Vickers	Do.
B & H Service	Houstonia, MO.
McGees Oil	Hume, MO.
Independence Auto Supply.	Independence, MO.
Mid States Oil	Jefferson City, MO.
Schanzmeyer Ford	Do.
Racker's 66	Do.
Gerbes Super Market #1.	Do.
Apache Flat	Do.
House of Bargains	Do.
Charlies North Star	Do.
Normans Auto Supply	Do.
Pike Oil Company	Do.
Jefferson Street Apco	Do.
Stan's Market	Kansas City, MO.
King Gas & Oil Company.	Do.
Ament's #5	Do.
A & M Auto Parts	Do.
Safeway Stores	Do.
McWilliams Liquidators.	Do.
Main Wholesale (Bargain City).	Do.
Skaggs Drug	Do.
Harry's Factory Outlet.	Do.
Skaggs Drug #169	Do.

Appendix E.—*Lowe Oil Company*—Continued

Customer Name	City and State
Coast to Coast Stores	Do.
Keytesville Itco	Keytesville, MO.
Ferguson Implement	Kingsville, MO.
Farm & Home Supply	Kirksville, MO.
Hilltop Fina Service	Knob Noster, MO.
Porters Service	Do.
Smiley's Mobil	Do.
King Oil (Mini Mart)	Lamonte MO.
Faulconer's Garage	Do.
Matco Discount Center.	Lees Summit, MO.
Tire City Discount	Do.
Glens Apco	Do.
G&W Sales	Do.
Junction Service	Leeton, MO.
Dicks Standard	Lexington, MO.
Matco Discount Center.	Do.
Mattingly Bros	Do.
Chuck's Standard	Do.
Pat's Quick Stop	Do.
Davis Oil Company (MFA).	Lincoln, MO.
Palo Store	Do.
Hurley's Skelly Service.	Livonia, MO.
Smith's Auto Parts	Louisiana, MO.
Troost Auto Parts	Do.
Save Way Oil	Lowry City, MO.
Oakley Johnson	Lucerne, MO.
Curt's Deeprock Service.	Macon, MO.
Brigg's & Cupp Chevrolet.	Marcelino, MO.
Dillion DX	Marshall, MO.
Earl Kays Motor	Do.
Owen Coop	Mayview, MO.
Franklin Garage	Do.
Sechrest Service	Medford, MO.
Farm & Home Supply	Memphis, MO.
Sherrell's Fina	Meta, MO.
Oasis Sales	Mobery, MO.
Rotart Bros. Service	Montrose, MO.
Robert Brothers	Do.
Lynn Meredith	Do.
Skagg's Auto Supply	Neosho, MO.
Wysong Motors Inc	Nevada, MO.
Ziajor Auto Supply	Osceola, MO.
Naus DX	Otterville, MO.
Gerbes Super Market	Pleasent Hill, MO.
Perry Service	Do.
D&S Apco	Do.
Central Coop Service	Do.
Bob's Apco	Do.
Hammons DX	Do.
Meyer's Service	Polo, MO.
Sell's Standard	Prairie Home, MO.
Raymore Service Center.	Raymore, MO.
Skaggs Drug #183	Raytown, MO.
Sam's Bargain City	Do.
Western Auto Store	Rich Hill, MO.
C.R. Morgan Oil	Do.
Red Star Oil Company.	Do.
Steuke Oil Company	Do.
L.W. McElroy	Do.
Carmichael Vickers	Richmond, MO.
J&7 Service	Roach, MO.
Jakes Skelly	Rockville, MO.

Appendix E.—*Lowe Oil Company*—Continued

Customer Name	City and State
North Shore Shopping Center.	Rocky Mount, MO.
Campbell's Garage	Russellville, MO.
Ed's Garage	Do.
Skaggs Drug	Sedalia, MO.
Consumers Market	Do.
DLC Petroleum	Do.
W.T. Grant Store	Do.
Broadway Apco	Do.
Chamberlin Champlin	Do.
Kenney Dobson	Do.
Midwest Auto Stores	Do.
B&B Transmission	Do.
Sunrise DX	Do.
Routzong & Malmo	Do.
Kast MFA	Do.
Seneca Auto Supply	Seneca, MO.
Dennis Oil	Springfield, MO.
Keltner Enterprises	Do.
Missouri White Trucks.	Do.
Blocks Super Discount	St. Joseph, MO.
Viebrocks Auto Repair.	Stover, MO.
M&M Oil Company	Do.
Davis EZ Wash	Do.
Sousley's DX	Do.
Tim's Skelly	Do.
Lakeland Sinclair	Sunrise Beach, MO.
Powell Service	Do.
Lakeland Discount	Do.
J&B Service	Sweet Springs, MO.
Frazier Ford	Do.
Green's Skelly	Tipton, Mo.
Wolf's Repair Service	Do.
Irvin Oil Company	Trenton, MO.
Martin's Town & Country.	Do.
Barreth Oil	Union, MO
B&R Bargain Spot	Unionville, MO.
Urich Oil Company	Urich, MO.
Vogt Skelly	Do.
E.O. Graham	Do.
Kelsay Elevator	Do.
5 & 52 Apco	Versailles, MO.
Kenny's Apco	Do.
Orbit Car Wash	Do.
Gabriel Skelly	Do.
Clark's Apco	Do.
West Vue Service	Do.
Gerbes Support Market.	Do.
Clark's Retreading	Do.
Salzman's Fina	Do.
Yarnell's DX	Do.
Avey's Shell	Do.
Warrensburg Fina	Warrensburg, MO.
TG&Y Stores #475	Do.
Owings Sinclair	Do.
George Rusch Motors	Do.
Denny Gulf Service	Do.
B&B Motor Supply Inc..	Do.
Warrensburg Deeprock.	Do.
Steven's Sinclair	Do.
Hunts MFA	Do.
Paul Shinn Oil Company.	Warsaw, MO.
Jack's Apco	Do.
Smith's Center	Do.

Appendix E.—*Lowe Oil Company*—Continued

Customer Name	City and State
Oklahoma Tire & Supply.	Do.
Webb City Auto Supply.	Webb City, MO.
Western Farm & Home.	West Plains, MO.
Ferguson Chevrolet	Windsor, MO.
Suhr Standard	Do.
Baskins Conoco	Do.
Sim's Apco	Do.
Ellis DX	Do.

[FR Doc. 85-16681 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a consent order fund of $30,000 to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Leese Oil Company of Pocatello, Idaho.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case Number HEF-0583.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Indepedence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by Leese Oil Company (Leese) of Pocatello, Idaho. The Consent Order involves a particular audit period and a distinct consent order fund as set forth in the Proposed Decision. The Consent Order settled possible pricing violations in Leese's sales of motor

gasoline to customers during the audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Leese pursuant to the Consent Order. The DOE has tentatively decided that the consent order fund should be distributed to those customers of Leese who establish that they were injured by Leese's alleged overcharges. Such customers will receive refunds proportionate to the volume of motor gasoline they purchased from Leese. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in the proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, inthe Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: July 2, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Leese Oil Company.

Date of filing: May 17, 1985.

Case Number: HEF–0583.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged or adjudicated violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on May 17, 1985, requesting that the OHA implement a proceeding to distribute the funds received pursuant to a Consent Order entered into by the DOE and Leese Oil Company (Leese) of Pocatello, Idaho.

I. Background

Leese is a "reseller-retailer" of "motor gasoline," as these terms were defined in 10 CFR 212.31. An ERA audit of Leese's operations during the period August 1, 1979 through September 30, 1979 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations.[1] In order to settle all claims and disputes between Leese and the DOE regarding sales of motor gasoline during the period August 1, 1979 through April 30, 1980 (the consent order period), the firm entered into a Consent Order with the DOE on October 20, 1983. Under the terms of the Consent Order, the firm agreed to deposit $30,000 in an interest-bearing escrow account pending distribution by the DOE. The Consent Order refers to the ERA allegations of overcharges, but notes that Leese does not admit that it committed any such violations.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have determined that a Subpart V proceeding is an appropriate mechanism for distributing the consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

Insofar as possible, the consent order fund should be distributed to those customers who were injured by Leese's alleged price violations. We therefore propose to establish a claim procedure in which we will accept applications for refund from customers who can demonstrate that they were injured as a result of any overcharges made by Leese during the consent order period.

Several of Leese's customers are likely to be petroleum product resellers, i.e., retailers and wholesalers. We propose that these firms (including refiners acting as resellers) be required to demonstrate that they did not pass on to their customers the price increases implemented by Leese, *See, e.g., Vickers*. In order to qualify for a refund, resellers of Leese motor gasoline must show that during the consent order period they would have maintained their prices for the motor gasoline at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased motor gasoline from Leese, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, the reseller must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.[2] The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co. (Indiana)*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of motor gasoline made by Leese during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

In establishing standards and procedures for implementing refund distributions, the

[1] On November 12, 1982, Leese was issued a Remedial Order (RO) by the DOE, in which the firm was alleged to have overcharged its motor gasoline customers by $13,445.19 during the period August 1, 1979 though September 30, 1979. *Leese Oil Co.*, 10 DOE ¶ 83,015 (1982). In the RO, the DOE ordered Leese to pay the alleged overcharge amount, plus interest, and to conduct a self-audit for the period October 1, 1979 through April 30, 1980.

[2] All of the motor gasoline sales covered by the Consent Order occurred subsequent to the amendment of the retailer price rule that eliminated the bank requirement for retailers. *See* 10 CFR 212.93(a)(2), 44 FR 42542 (July 19, 1979) (effective July 15, 1979). Accordingly, retailers of Leese motor gasoline will not be required to submit bank information.

Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable tthe OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.[3] In the present case, the audit records identify only those customers who purchased motor gasoline from Leese during the period August 1, 1979 through September 30, 1979, and do not list alleged overcharge amounts for each customer. Consequently, the available information is insufficient to base refunds on the amount each individual applicant was allegedly overcharged during the consent order period. We therefore propose to use the volumetric method to allocate the consent order fund. To determine the volumetric factor, the consent order fund ($30,000) will be divided by the estimated total volume of motor gasoline sold by Leese during the audit period (3,870,194.85 gallons), resulting in a per gallon refund amount of $0.007752.[4] The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Consent Order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions for small claims is also desirable from an administrative standpoint because it allows the OHA to process a large number of refund claims quickly and use its limited resources more efficiently. Finally, we know that these smaller claimants purchased motor gasoline from Leese and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claims presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[5] Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose that the same approach be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. Since the per gallon refund amount in the present case is fairly low, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable. *See id.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the volumetric and small claims presumptions, we are making a finding that end-users or ultimate consumers were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, members of this group, including businesses that are unrelated to the petroleum industry, generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) and cases cited therein. We have therefore concluded that end-users of motor gasoline purchased from Leese need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased motor gasoline consumed as fuel will not be considered as consumers for purposes of the showing of injury. *See Seminole Refining, Inc.*, 12 DOE ¶ 85,168 (1985).

[3] We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will therefore be allowed to file a refund application based on a claim that the impact of the alleged overcharges on that purchaser was greater than the pro rata amount determined by the volumetric presumption. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co./Siouxland Propane Co.*,12 DOE ¶ 85,064 at 88,164 (1984).

[4] Because the available ERA audit files do not list the volumes of motor gasoline sold by Leese during the entire consent order period, we have extrapolated sales figures from the available audit data.

[5] We propose that resellers who made only spot purchases from Leese be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, any reseller claimants who were spot purchasers must submit additional evidence to establish that they were unable to exercise considerable discretion as to where and when they made the purchase(s) on which their refund claims are based.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations.[6] *See, e.g., Amoco; Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. We will publish copies of the proposed and final Decisions in the Federal Register. If appropriate, we also intend to publicize this proceeding in local newspapers in the areas where Leese conducted business.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is therefore ordered that: The refund amount remitted to the Department of Energy by Leese Oil Company pursuant to a Consent Order executed on October 20, 1983 will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-16887 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds of $1,550,000 obtained from Good Hope Refineries and its subsidiary Gasland, Inc. in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by October 15, 1985, should conspicuously display a reference to case number HEF-0211 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of two consent orders between Good Hope Refineries and the DOE. The consent orders settled all disputes between DOE and Good Hope and its subsidiaries concerning possible violations of DOE price regulations with respect to the firm's sales of covered petroleum products during the period August 1973 through July 1976.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by October 15, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: July 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Good Hope Refineries.
Date of Filing: October 13, 1983.
Case Number: HEF-0211.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement a specially designed process to distribute funds obtained at the resolution of an enforcement proceeding in order to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order that it had entered into with Good Hope Refineries (hereinafter referred to as Good Hope).

On April 18, 1985, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by Good Hope's alleged violations. In the proposed decision we described a two-stage process for the distribution of the funds made available by the Good Hope consent order. In the first stage, we would refund money to identifiable purchasers of covered products who may have been injured by pricing practices during the period August 19, 1973 through July 31, 1976. This decision describes the information that a purchaser of Good Hope petroleum products should submit in order to demonstrate eligibility to receive a portion of the consent order funds. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Good Hope consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement, Economic Regulatory Administration: In re Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553 (1982). We have received no comments challenging our jurisdiction in this case. We will grant ERA's petition and assume jurisdiction over the distribution of the Good Hope consent order funds.

II. Background

From August 19, 1973 through July 31, 1976, Good Hope Industries, Inc. owned Good Hope Refineries, a crude oil refiner located in Metairie, Louisiana, and Gasland, Inc., a chain of motor gasoline stations operating in New England and the State of New York. The consent order covers all petroleum-related aspects of Good Hope Industries' operations. Several DOE audits of Good Hope's records revealed possible

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[6] Under the volumetric refund level we propose to establish in this proceeding, an applicant must have purchased at least 1,825 gallons of motor gasoline from Leese during the consent order period in order to qualify for the minimum refund.

regulatory violations by the firm. In order to settle all claims and disputes between Good Hope and the DOE regarding the firm's compliance with DOE regulations during the period August 19, 1973 through July 31, 1976, Good Hope and the DOE entered into a consent order on July 31, 1979. Under the terms of the consent order, Good Hope was required to provide $15,000,000 in restitution, through: (i) Price rollbacks, (ii) reductions in its banks of unrecouped costs, and (iii) direct cash payments to the DOE. At the time it entered into the consent order, Good Hope was involved in bankruptcy proceedings. Since then Good Hope has fallen into arrears on its payments to the DOE. Enforcement of the Consent Order has been referred to the Department of Justice, and it is uncertain whether further payments will be received. To date, the DOE has received $1,550,000. This sum is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution, and as of May 31, 1985, the Good Hope escrow account held $2,281,788 including interest. This Decision concerns the distribution of the funds in the escrow account, plus accrued interest.

III. Comments On Proposed Decision

GHR Companies, Inc., formerly Gasland, Inc., filed comments concerning the proposed decision issued in this case. The comments concerned the necessity of demonstrating the existence of cost banks in order to receive a refund. GHR asserts that the existence of banks was not a prerequisite to receiving a refund in a past OHA refund proceeding, *Palo Pinto Oil and Gas/Gulf Oil Corporation*, 10 DOE ¶ 85,049 (1983), and therefore should not be required in this case. This position is incorrect. In *Palo Pinto*, Gulf was denied a full refund despite the existence of very large cost banks, because many of Gulf's purchases were not made at above average market prices. Thus, this decision provides an instance in which cost banks standing alone were insufficient to prove injury. Contrary to the position of GHR, it does not stand for the proposition that cost banks are irrelevant to the question of injury. In fact, that decision states, "The absence of sufficient banks of unrecouped cost increases indicates that a firm was able to pass through increased product costs to its customers." *Palo Pinto* at 88,240. GHR's contention is therefore without merit. Lack of cost banks, or negative cost banks, has always been grounds for denying in full any refund. *Standard Oil Company (Indiana)/Suburban Propane Gas Corporation*, 13 DOE ¶ 85,030 (1985), *and cases cited therein.*[1]

Comments were also filed by Apex Oil Company, by several state governments, and by the National Council of Farmer Cooperatives. The states requested that any money remaining after the completion of first-stage refund proceeding be distributed to state governments. These comments will be considered at a later date.[2] The National Council of Farmer Cooperatives requested that we recognize the special status of cooperatives, which have in the past been deemed to be end-users rather than resellers in refund proceedings. We shall continue this treatment of cooperatives in the present refund proceeding.

IV. Refunds to Refined Product Purchasers

Insofar as possible, the consent order funds should be distributed to those customers of the consent order firms who were injured by the alleged price violations. In this case, the ERA audit file pertaining to the Consent Order lists the names of the customers who purchased refined products from the consent order firm, along with the pro rata amounts the ERA calculated the customers should be eligible to receive in a refund proceeding. This information is listed in the Appendix to this Decision and Order. However, we recognize that there may be other purchasers of petroleum products from these firms who were not listed in the ERA audit files and who may have been injured by the pricing practices of Good Hope during the relevant time period. We shall therefore accept applications from any party that can show injury resulting from the alleged overcharges.

Most of the identified customers of the consent order firms are resellers, i.e., retailers and wholesalers of refined petroleum products. Any claimants who resold petroleum products purchased from one of the consent order firms will be required to demonstrate that they did not pass on to their customers price increases implemented by the consent order firm. *See, e.g., Vickers.* In addition, the reseller must show that it maintained a "bank" of unrecovered increased costs.

As in many prior special refund cases, we will adopt a presumption of injury with respect to small claims. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Good Hope consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumption is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Good Hope and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged

[1] In addition, according to the audit file and the proposed decision, Gasland was a subsidiary of Good Hope during the consent order period. The allocated amount listed in the Appendix as relating to Gasland retail sales may belong not to Gasland, but to Gasland's customers. GHR will have to demonstrate that it is eligible to receive a refund despite its relation with the consent order firm.

[2] In its comments the State of Texas also objected to some aspects of the use of presumptions in awarding refunds. Because we have frequently considered, and ultimately rejected, identically worded comments in the past, we will not discuss them now.

overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed here. In this case, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable.[3] *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited herein.

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry membes of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,208 and cases cited therein. We have therefore concluded that end-users of Good Hope petroleum products need only document their purchase volumes from Good Hope to make a sufficient showing that they were injured by the alleged overcharges.[4]

We note that if a reseller or retailer made only spot purchases from Good Hope, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–07. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit specific and detailed evidence to establish that it was unable to recover the increased prices it paid for Good Hope petroleum products. *See Amoco* at 88,200.

IV. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order fund among successful applicants. Although we recognize that the ERA audit files do not provide conclusive evidence as to the identity of all injured parties or the amount of money they should receive in a Subpart V proceeding, we believe that this information can be useful in fashioning a refund which will correspond closely to the injuries experienced. *Marion Corp.*, 12 DOE ¶ 85,014 (1984). Specifically, we note that the ERA attempted to ascertain the identities of the injured parties and the precise amount of injury after the completion of all of the audits covered by the consent order. The ERA found that Good Hope's alleged overcharges affected some customers more than others who purchased comparable volumes. In view of the others who purchased comparable volumes. In view of the record established by the ERA, refunds for the firms listed in the Appendix, who make the requisite showing set forth in Part III of this Decision, will equal the refund amounts calculated by the ERA. These refund amounts, which are listed in the Appendix represent a proprated portion of the alleged overcharges by Good Hope. Successful applicants will also receive a pro rata share of the interest which has accrued since the deposit of the funds into escrow accounts.

A refund applicant who is not listed in the Appendix to this decision may receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by our estimate of the total gallonage of products covered by the consent order. An applicant who wishes to apply for a refund of greater than the threshold amount according to the volumetric method will also be required to provide evidence of injury. In the present case, the volumetric refund amount is $.000912 per gallon,[5] exclusive of interest. As of May 31, 1985, accumulated interest increased the volumetric refund amount to $.001342. Any applicant who establishes that it would receive a greater refund under the volumetric method than under the percentage method shall be entitled to the larger refund. *Marion Corp., supra.* In addition, as noted earlier, a customer who can show that it bore a disproportionate share of the impact of Good Hope's alleged overcharges may receive a refund larger than the volumetric level. *Standard Oil Co. (Indian)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984). Finally, if additional payments are received from Good Hope, the volumetric amount will be increased. Additional payments will be distributed to successful refund applicants when they are received. It will not be necessary to submit an additional application at that time.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refund are sought for amount less than $15.00 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

V. Applications for Refund

After considering all of the comments received concerning the first stage proceedings tentatively adopted in our April 18, 1985 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased Good Hope petroleum products. An application must be in writing, signed by the applicant, and specify that it pertains to the Good Hope Refund Proceeding, Case Number HEF–0111.

An applicant should indicate from whom the covered product was purchased and, if the applicant is not a direct purchaser from Good Hope it should also indicate the basis for its belief that the petroleum product

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[3] Any claimant whose potential refund exceeds the threshold amount may elect to apply for a refund based on the threshold level.

[4] Agricultural cooperatives and public utilities are considered to be end-users for the purpose of refund applications. Utilities, however, must pass along any refund received to their customers through fuel adjustment clauses. Cooperatives are required to inform their members of any refunds received.

[5] According to the audit file, during the audit period Good Hope sold 1,666,975,030 gallons of covered petroleum products. $1,550,000 divided by 1,666,975,030 gallons equals $.000912/gallon.

purchased originated from Good Hope. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. [6] Each applicant should specify how it used the Good Hope petroleum product, such as whether it was a reseller or ultimate consumer. Applicants listed in the Appendix of this section decision should specify whether they wish to apply for refunds based on the volumetric or the percentage method.

If the applicant is a reseller applying for a refund of greater than $5,000, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish the OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1973 through January 27, 1981. If the applicant is a reseller, it must submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm, may submit market surveys, or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible.

All applicants should report any past or present involvement as parties in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its application for refund is being considered. *See* 10 CFR 205.9(d).

Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, located in the Forrestal Building Room 1E-234, 100 Independence Avenue, SW., Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Good Hope Refineries Refund Proceeding, Office of Hearing, and Appeals, U.S. Department of Energy, 100 Independence Avenue, SW., Washington, D.C. 20585. Applications for refund of a portion of the Good Hope consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR § 205.284.

VI. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedures is completed.

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by Good Hope Refineries pursuant to the consent order executed on July 31, 1979 may now be filed.

(2) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: July 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix

Customer listed in audit file	*Percentage*[1]
Standard Oil Company (Ohio), 20600 Chagrin Blvd., Cleveland, OH 44122	4.6370
Coastal States Marketing, Inc., 9 Greenway Plaza, Houston, TX 77046	0.1555
Stillings Petroleum Corporation, P.O. Box 700328, Tulsa, OK 74170	0.2923
Continental Oil Company, P.O. Box 2197, Houston, TX 77252	5.2440
Allied Oil, P.O. Box 6479, Cleveland, OH 44101	3.2721
Texaco, Incorporated, 2000 Westchester Ave., White Plains, NY 10650	4.0074

Appendix—Continued

Customer listed in audit file	*Percentage*[1]
Wanda Petroleum, P.O. Box 53120, Houston, TX 77052	0.0560
Charter International Oil Co., P.O. Box 5008, Houston, TX 77012	1.3055
Consolidated Edison, 4 Irving Place, New York, NY 10003	6.9986
Cities Service Oil Company, P.O. Box 300, Tulsa, OK 74102	1.3287
Union Oil of California, 461 S. Boylston St., Los Angeles, CA 90017	0.8182
Texas Olefins, 2 Park West Plaza, Baytown, TX 77520	1.0336
Coral Petro, P.O. Box 19666, Houston, TX 77224	3.0205
Exxon Corporation, P.O. Box 2180, Houston, TX 77001	2.0854
Saber Petroleum, 1400 Smith Street, Suite 1700, Houston, TX 77002	3.8686
Apex Oil Company, 7930 Clayton Rd., St. Louis, MO 63117	6.0581
Thomas Reidy, 1100 Milam St., Suite 2170, Houston, TX 77002	2.0221
Systems Fuels, P.O. Box 61532, New Orleans, LA 70161	4.1186
Tauber Oil Company, P.O. Box 4645, Houston, TX 77210	3.8785
Amoco, 200 E. Randolph Drive, Chicago, IL 60601	17.8650
L&L Oil Company, Rt. 1, Box 367, Crown Point, LA 70072	0.0162
Ashland Petroleum, P.O. Box 391, Ashland, KY 41114	2.6550
Amerada Hess, 1185 Avenue of the Americas, New York, NY 10036	0.2965
Union Texas Petroleum, P.O. Box 2120, Houston, TX 77252	0.0839
Sun Oil, 100 Matonsford Road, Radnor, PA 19087	0.4633
Don Love, P.O. Box 262507, Houston, TX 77207	0.0108
Marathon Oil, 539 S. Main Street, Findlay, OH 45840	2.0872
Gulf Oil, P.O. Box 3725, Houston, TX 77001	3.2329
Allied Chemical, P.O. Box 2120, Houston, TX 77252	0.0778
Bulk Oil, USA, Inc., 425 Park Avenue, New York, NY 10025	1.5209
Agway, 333 Butternut Drive, DeWitt, NY 03214	0.3691
Triangle Refining Company, P.O. Box 3367, Houston, TX 77253	0.0662
Northwell Industries Corporation, 35 Pine Lawn Rd., Melville, NY 11747	0.4221
Kerr McGee, Kerr-McGee Center, Oklahoma City, OK 73125	0.0417
Tenneco Oil, P.O. Box 2157, Houston, TX 77002	0.0823
Bray Terminals, P.O. Box 174, Marcy, NY 13403	0.1592
Toro Petroleum Corporation, Houston, TX	0.1065
Howard Oil, Maspeth, New York	1.9837
Texas City Refineries, New York, NY	1.0336
Franks Fuel	0.5504
Petroleum Heat and Power	2.0776

[6] An applicant named in the Appendix to this decision applying for a refund of less than $5,000 may instead submit a statement verifying that it purchased Good Hope products, and is willing to rely on the data in the audit file. *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). A $5,000 refund is equivalent to 0.322 percent share.

Appendix—Continued

Customer listed in audit file	Percentage[1]
International Trading Limited, New Orleans, LA	0.3609
Patchogue Oil, Brooklyn, NY	0.2416
Bayselt Transportation, Birmingham, Alabama	0.0000
Hol Petroleum, New York, NY	0.0018
Point Landing Fuel, Harahan, LA	0.2034
Val Cap, Incorporated, Alice, TX	0.1456
HiOctane Terminal Company, Panama City, Fl	0.1543
Gulf Coast Service Station, Westwego, LA	0.0568
Texas Star Oil Company, Corpus Christi, TX	0.0398
Pel-State Oil	0.0380
Koziol, Ware, MA	0.0013
Stafford	0.0032
Autotronic Systems, Houston, TX	0.2550
Timbros Service Stations, Middletown, CT	0.0127
Gasland, Inc., retail sales	0.0089
Total	100.0000

[1] Basis of alleged overcharges.

[FR Doc. 85-16691 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Draft Supplemental Environmental Impact Statement Availability and Public Hearings; Blue River-Gore Pass Portion of the Hayden-Blue River Transmission Line Project, CO

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Notice of Availability and Public Hearings for Draft Supplemental Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Western Area Power Administration (Western) U.S. Department of Energy (DOE), has issued for review and comment a draft supplemental environmental impact statement (EIS) for the proposed Blue River-Gore Pass Portion of the Hayden-Blue River Transmission Line Project, Colorado, DOE/EIS 0116-DS. The draft supplemental EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA); Council on Environmental Quality regulations, 40 CFR 1500-1508; and DOE guidelines for compliance with NEPA, 45 FR 20694, and as amended.

DATES: Written comments on the draft supplemental EIS are due no later than August 19, 1985.

FOR FURTHER INFORMATION CONTACT: For further information or copies of the draft supplemental EIS contact:

Mr. William C. Melander, Loveland-Fort Collins Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 224-7231 or FTS 330-7231

Mr. Gary W. Frey, Director of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1527 or FTS 327-1527

Mr. Michael Kleinrock Office of Environmental Compliance, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6374 or FTS 252-6374

SUPPLEMENTARY INFORMATION:

Background Information

Western, in cooperation with the U.S. Forest Service, Bureau of Land Management, and Rural Electrification Administration (REA), has developed a draft supplemental EIS to assess the environmental effects of constructing, operating, and maintaining approximately 30 miles of 230/345-kV transmission line between the existing Gore Pass Substation northwest of Kremmling, Colorado, and a proposed new substation (not part of this action) near the Ute Pass Road. The project is part of the Hayden-Blue River 345-kV Transmission Line Project, the subject of a final EIS issued by the U.S. Department of Agriculture, REA, in July 1982. The action includes minor work at the Gore Pass Substation and at two taps, and also the removal of two existing transmission lines: A 69-kV line between Gore Pass Substation and Green Mountain Powerplant and a 115-kV between Green Mountain Powerplant and Blue River Tap. The purposes of the project are to provide additional transmission capacity into the areas of Gore Pass, Granby, Green Mountain, Dillon, Climax, Oak Creek, and Keystone, Colorado; and between the generation plants in western Colorado and the major load areas in eastern Colorado. Alternatives assessed include routing and design alternatives plus the alternatives addressed in the Hayden-Blue River final EIS, issued by the REA.

Copies of this statement have been provided to public and private agencies, organizations, and individuals which have expressed an interest in the project area. Copies of the draft supplemental EIS and the final EIS for the Hayden-Blue River Transmission Line Project are also available for public inspection at Western's Loveland-Fort Collins Area Office, 5555 East County Road 20, Loveland, Colorado; Western's Headquarters Office, Room 304, 1627 Cole Boulevard, Golden, Colorado; the Department of Energy's Office of Environmental Compliance, Room 3G-069, 1000 Independence Avenue, SW., Washington, DC; the Bureau of Land Management's Kremmling Resource Area Office, 1116 Park Avenue, Kremmling, Colorado; and the Forest Service's Dillon District Ranger's Office, 135 Colorado Highway 9, Silverthorne, Colorado.

Agencies and individuals are encouraged to review the draft supplemental EIS and comment on its adequacy, completeness, and accuracy. Comments received after the comment closing date may not be considered in the decisionmaking process. The draft supplemental EIS should be retained for possible use as part of the final supplemental EIS. If the public review requires only minor changes to the draft, then the final supplemental EIS will comprise: (1) The draft, (2) a record of public comments on the draft and the responses to the comments, and (3) necessary changes and corrections.

Public Hearings will be held and written as well as oral comments will be accepted. The public hearings will be held as follows:

Date	Location
Aug. 6, 1985	Community Building, Grand County Fairgrounds, Kremmling, Colorado.
Aug. 8, 1985	Silverthorne Lodge (northwest of the Interstate of Interstate 70 and Colorado Highway 9), Silverthorne, Colorado.

Informational exhibits about the project will be on display, and Western personnel will be available to answer questions from 6-7 p.m. at each of the locations prior to the start of the hearings. The public comment hearings will begin at 7 p.m. A certified court reporter will record the proceedings of each hearing. Copies of the hearings transcripts will be available for inspection at the Loveland-Fort Collins Area Office 2 weeks following the hearing.

Written comments on the draft supplemental EIS not presented at the hearings should be sent to: Mark N. Silverman, Area Manager, Loveland-Fort Collins Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, Colorado 80539, (303) 224-7201 or FTS 330-7201.

Issued at Golden, Colorado, July 3, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85-16703 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before August 29, 1985. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Liaison Officer. Comments on the item listed should be submitted to the Agency Liaison Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Liaison Officer: Margaret P. Ulmer, Financial Management Services, Room 386, 2401 E Street, NW. Washington, D.C. 20507; Telephone (202) 634–1947

OMB Reviewer: James Mason, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395–6880.

Type of Request—Extension (No Change)

Title: Recordkeeping Requirements of Uniform Guidelines on Employee Selection Procedures.

Form Number: None.

Frequency of Report: None required.

Type of Respondent: Businesses/other institutions, State or local governments, farms.

Standard Industrial Classification (SIC) Code: Multiple.

Description of Affected Public: Any employer, labor organization, employment agency, covered by Federal equal employment opportunity laws.

Responses: 666,000.

Reporting Hours: 1,910,000.

Applicable under Section 3504(h) of Pub. L. 96–511: Not applicable.

Number of Forms: None.

Abstract—Needs/Uses: Data used by the EEOC and the co-signatories in investigating, conciliating, and litigating charges of employment discrimination, by complainants in establishing violations of Federal equal employment laws, and by respondents in defending against allegations of employment discrimination.

Dated: June 28, 1985.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 85–16707 Filed 7–12–85; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 9, 1985

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of this submission are available from the Commission by calling Doris R. Peacock, (202) 632–7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–7231.

Title: Survey of Radio Deregulation
Action: New
Estimated Annual Burden: 1,200 Responses; 7,200 Hours.

The Commission will randomly select 1,200 licensees to answer a survey questionnaire on a comparison of programming in 1980 and 1984.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–16736 Filed 7–12–85; 8:45 am]

BILLING CODE 6712-01-M

American Communications and Television, Inc. et al.; Hearing Designation Order

In re Applications of:

	MM Docket No. 85–183
American Communications and Televisinn, Inc.	File No. BPCT–841015KQ.
Cozzin Communication Corporation.	File No. BPCT–841004KG.
Gainesville Televisan Group, Inc.	File No. BPCT–841005KT.
Gator Broadcasting Limited Partnership.	File No. BPCT–841005KV.
Central Florida Broadcasting Corporation.	File No. BPCT–841006KW.
Benjamin T. Perry and Poplar Apartments, Inc. d.b.a. Gainesville Telecasters, Ltd.	File No. BPCT–841006KZ

For Construction Permit, Gainesville, Florida.

Adopted: May 31, 1985.

Released: July 3, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of American Communications and Television, Inc. (American), Cozzin Communication Corporation (Cozzin), Gainesville Television Group, Inc. (GTGI), Gator Broadcasting Limited Partnership (Gator), Central Florida Broadcasting Corporation (Central), and Benjamin T. Perry and Poplar Apartments, Inc. d/b/a Gainesville Telecasters, Ltd. (GTL) for authority to construct a new commercial television station on Channel 61, Gainesville, Florida.[1]

2. Section 76.501(a)(2) of the Commission's Rules prohibits direct or indirect ownership of both a cable television system and a television broadcast station if the station would place a Grade B contour over any part of the service area of the cable television system. American has subsidiaries which have cable television franchises in McIntosh, Hawthorne, Reddick and Alachua, Florida. All of the above cities would be within the predicted Grade B contour of the proposed station. Consequently, American's application is inconsistent with the rule. American states that it will divest itself of any broadcast and/or cable facilities deemed necessary by the Commission in the event of grant of this application. This statement is not, on its face, the kind of unconditional pledge to divest that is normally filed under similar

[1] The deadline for filing amendments to the above-captioned applications was November 23, 1984. Cozzin Communication Corporation filed a petition for leave to amend and an amendment to its application on March 14, 1985. The amendment changes the ownership of non-voting stock. The petition and the amendment have been reviewed and good cause exists for accepting the amendment. The petition will be granted and the amendment accepted for filing for § 1.65 purposes only. On March 27, 1985, Gator also filed a petition for leave to amend accompanied by an amendment to its application. The amendment proposed a new transmitter site because of FAA rejection of its original site. Accordingly for good cause, the petition for leave to amend will be granted and the amendment accepted for § 1.65 purposes. Further, GTGI filed an amendment on January 7, 1985, updating its application and correcting some items in its application. GTGI did not request leave to amend. However, since applicants are required to keep their application accurate and current, the amendment will be accepted for § 1.65 purposes only. In the future, GTGI will be expected to follow carefully all procedural requirements.

circumstances. However, the applicant has not requested a waiver and the rule, on its face, proscribes the common ownership of the interests identified above. Under the circumstances, we will construe American's statement as a pledge to divest its cable interests in those communities receiving Grade B coverage from the proposed station. Accordingly, any grant of a construction permit to American will be appropriately conditioned.[2]

3. Section II, Item 10, FCC Form 301, inquires whether documents, instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of stockholder rights by the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310(d)) will be obtained. GTGI gave a negative answer to question 10, but did not include the required exhibit. Accordingly, GTGI will be required to file an amendment explaining the negative response to question 10, Section II, FCC Form 301, with the presiding Administrative Law Judge within 20 days after the release of this Order.

4. The effective radiated power, antenna heights above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within each predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. No determination has been reached that the tower heights and locations proposed by American, Cozzin, Gator and Central would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

6. GTGI intends to mount its antenna on the existing tower of TV station WBSP, Ocala, Florida. The Commission's records show the height of that tower as 889 feet AGL (1049 feet AMSL), but the applicant specifies the tower height AGL as 932 feet (1049 feet AMSL). The Commission cannot determine whether the discrepancy is an error by the applicant or whether the applicant proposes to increase the tower height. If it is an error, the applicant must file an appropriate amendment to the presiding Administrative Law Judge within 20 days after the release of this Order; if the applicant proposes to increase the tower height, the presiding officer will specify an appropriate air hazard issue.[3]

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by American Communications and Television, Inc., Cozzin Communication Corporation, Gator Broadcasting Limited Partnership, and Central Florida Broadcasting Corporation would each constitute a hazard to air naviagtion.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, that the petitions for leave to amend filed by Cozzin Communications Corporation and Gator Broadcasting Limited Partnership on March 14, 1985 and March 27, 1985 respectively, are granted and the accompanying amendments are accepted for filing for § 1.65 purposes.

10. It is further ordered, that the amendment filed by Gainesville Television Group, Inc., on January 7, 1985, is accepted for filing for § 1.65 purposes.

11. It is further ordered, that, in event of a grant of American Communications and Television, Inc.'s application, the construction permit will be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that it has divested itself of all interest in, and connection with the cable television systems in McIntosh, Hawthorne, Reddick, and Alachua, Florida.

12. It is futher ordered, that Gainesville Television Group, Inc. shall submit an appropriate amendment explaining its negative answer to question 10, Section II, FCC Form 301, to the presiding Administrative Law Judge within 20 days after the release of this Order.

13. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

14. It is futher ordered, that Gainesville Television Group, Inc., shall submit an appropriate amendment with respect to its proposed tower as noted in paragraph 6, to the presiding Administrative Law Judge within 20 days after the release of this Order.

15. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

16. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-16740 Filed 7-12-85; 8:45 am]

BILLING CODE 6712-01-M

[2] American stated in its application that its wholly-owned subsidiary, Micanopy Broadcasting Co., Inc., is an applicant for a new FM station in Micanopy, Florida. GTGI also indicates that one of its principals, Robert A. Bednarek has a limited partnership interest in Henweigh Partners, Ltd., an applicant for an FM station in the same proceeding for Micanopy, Floride. Micanopy would be within the Grade A contour of the proposed television stations. The Commission's records, however, show that both applications were dismissed on January 30, 1986, pursuant to a settlement agreement among the various competing applicants.

[3] GTGI would have to file FAA Form 7460-1 with the Federal Aviation Administration.

Focus Broadcast Communications, Inc., et al.; Hearing Designation Order

In re Applications of:

	MM Docket No. 85-184.
Focus Broadcast Communications, Inc.	File No. BPCT-841205KE.
Channel 60, Inc.	File No. BPCT-850107KE.
Hunt Partnership	File No. BPCT-850108LA.
Ridge Broadcasting Company, Inc.	File No. BPCT-850108LC.

For Construction Permit for New Television Station, Sebring, Florida.

Adopted: May 31, 1985.
Released: July 9, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it: (a) The above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 60, Sebring, Florida; (b) a petition for leave to amend filed by Focus Broadcast Communications, Inc.; and (c) related pleadings.

2. On February 28, 1985, the "B" cut-off date in this proceeding, Focus Broadcast Communications, Inc. (Focus), filed an amendment to its application containing the following statement:

> Focus Broadcast Communications, Inc. intends to operate its television station with an ERP of 5,000 kW visual and 500 kW aural from its present site. The revised contour maps, areas and population, will be forthcoming soon.

The actual Section V-C containing all the required exhibits and contour maps was filed, accompanied by a petition for leave to amend, on March 20, 1985. The latter filing proposed a new antenna system and substantially increased the area and population to be served by Focus. Ridge Broadcasting Company, Inc. (Ridge) and Channel 60, Inc. (Channel 60) filed oppositions to the petition for leave to amend. Both objectors essentially argue that Focus should not be allowed to enhance its comparative position after the cut-off date. Applicants may file amendments after the "B" cut-off date only upon a showing that good cause exists for the late filing. The test for good cause includes a showing that the amendment was prepared with due diligence, was not caused by a voluntary act of the applicant, and would not enable the applicant to gain a comparative advantage. See *Erwin O'Connor Broadcasting Co.*, 22 FCC 2d 140 (Rev. Bd. 1970). Focus' good cause showing is limited to a self-serving statement that "good cause exists" because the amendment reflected its intentions as of the "B" cut-off date. Clearly Focus' statement falls short of the good cause requirement. The mere filing of a statement of its intent to amend its application did not change the technical parameters of Focus' original proposal. Without such essential information as the type of antenna system, radiation patterns and coverage area, neither the Commission's technical staff nor the other applicants could examine Focus' compliance with the Commission's Rules. Thus, while Focus' amendment will be accepted for informational purposes, Focus will not be allowed any comparative advantage that may accrue from its new engineering proposal.

3. Channel 60, Inc. filed amendments on March 20 and 27, 1985, after the "B" cut-off date.[1] Ridge filed an amendment on March 26, 1985. The three amendments supplied information required to be reported pursuant to Section 1.65 of the Commission's Rules. Accordingly, the amendments will be accepted for Section 1.65 purposes only.

4. No determination has been made that the tower heights and locations proposed by Channel 60, Inc., Hunt Partnership (Hunt) and Ridge [2] would not each constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

5. The effective radiated visual power, antenna heights above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Section 73.3555(b) of the Commission's Rules states that no license for a television station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more AM broadcast stations and the grant of such license will result in the Grade A contour of the proposed television station encompassing the entire community of license of the AM broadcast station. Note 4 to this rule provides, *inter alia*, that applications for UHF television facilities ". . . will be handled on a case-by-case basis in order to determine whether common ownership operation or control of the stations in question would be in the public interest." David Eakin is President and owns 25% of the voting stock of Focus. He is also the station manager of Station WJCM(AM) Sebring, Florida. However, Mr. Eakin states that he will resign as manager of WJCM(AM), Sebring, Florida, prior to the commencement of operation of the television station if Focus is the successful applicant. Accordingly, any grant of a construction permit to Focus will be conditioned upon Mr. Eakin's severance of his connection with the licensee of the radio station.

7. Hunt stated, in its environmental narrative statement, that it believes that its proposed site is available, but that it has not made the necessary arrangements to provide reasonable assurance that the site is available. Under those circumstances, an issue will be required to determine whether the applicant has reasonable assurance that its proposed site will be available.

8. Section V–C, Item 10, FCC Form 301, requires an applicant to submit the area and population within its predicted Grade B contour. Hunt has not done so. Hunt, therefore, will be required to submit an amendment showing the required information, within 20 days of the release of this Order, to the presiding Administrative Law Judge.

9. Section II, Item 6(b), FCC Form 301, asks whether the applicant or any party to the application has any interest in or connection with an application for a broadcast station pending with the Commission. An affirmative response requires an explanation in the form of an exhibit. Hunt responded affirmatively and indicated that the required explanation was furnished in its Exhibit II–1, but no such exhibit was filed with the application. Hunt will, therefore, be required to submit an amendment to the presiding Administrative Law Judge, within 20 days after the release of this Order, providing all required broadcast interest information.

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, it is ordered, that pursuant to section 309(e) of the

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[1] Channel 60, Inc. indicates that it expects to have non-voting stockholders at some time in the future. When this occurs, Channel 60, Inc. will be expected to provide all relevant information respecting any such stockholders who may have media interests in the area subject to the Commission's cross-interests policy.

[2] If it has not already done so, Ridge must file an FAA Form 7460-1 with the Federal Aviation Administration.

Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Channel 60, Inc., Hunt Partnership and Ridge Broadcasting Company, Inc. whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to Hunt Partnership, whether the applicant has reasonable assurance that its proposed transmitter site will be available.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. It is further ordered, That the oppositions filed by Ridge Broadcasting Company, Inc. and Channel 60, Inc., on March 28, 1985 and April 2, 1985, respectively, are granted to the extent indicated herein and Are DENIED in all other respects.

13. It is further ordered, that the petition for leave to amend filed by Focus Broadcast Communications, Inc., on March 20, 1985, is granted and the amendment filed on the same date is accepted for filing for § 1.65 purposes only.

14. It is further ordered, that in the event of a grant of Focus Broadcast Communications, Inc.'s application, it will be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that David Eakin has severed all connection with the licensee of Station WJCM(AM), Sebring, Florida.

15. It is further ordered, that the amendments filed by Channel 60, Inc. on March 20 and 27, 1985 and Ridge Broadcasting Company, Inc. on March 26, 1985 are accepted for filing for § 1.65 purposes only.

16. It is further ordered, that Hunt Partnership shall submit an amendment stating the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days of the release of this Order.

17. It is further ordered, that Hunt Partnership shall, within 20 days of the date of release of this Order, file with the presiding Administrative Law Judge an amendment containing the broadcast interest information required by Section II, Item 6(b), FCC Form 301.

18. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

19. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

20. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-16742 Filed 7-12-85; 8:45 am]

BILLING CODE 6712-01-M

Lawton Communications Co., et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Roni DeAnn Gardner; Lawton, OK.	BPH-831215AA	85-193
B. Lawton Communications Co., a limited partnership; Lawton, OK.	BPH-840719IA	
C. T. Kent Atkins d.b.a. Atkins Broadcasting; Lawton, OK.	BPH-840719IC	
D. Delbert Francis Ault; Lawton, OK.	BPH-840719ID	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), A, C
2. City Coverage, B, C
3. Comparative, A, B, C, D
4. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Additional Issue Paragraph

1. If a final environmental impact statement is issued with respect to A (Gardner) and/or C (Atkins) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301-1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 85-16743 Filed 7-12-85; 8:45 am]

BILLING CODE 6712-01-M

Radio Page Communications, et al.; Memorandum Opinion and Order Designating Applications for Hearing

In re Applications of:

CC Docket No. 85-217.

J.M. Blodgett d.b.a. Radio Page Communications. File No. 21012-CD-P-78.
For authority to modify the authorization of Station KWT 885 operating on frequency 35.58 MHz in the Public Land Mobile Service at Atlantic City, NJ.

Answering Service of Trenton, Inc.. File No. 21284-CD-P-78.
For authority to construct an additional facility for Station KED 382 to operate on frequency 35.58 MHz in the Public Land Mobile Service at Stafford Township, NJ.

J.M. Blodgett d.b.a. Radio Page Communications. File No. 21325-CD-P-78.

For authority to construct an additional facility for Station KWT 885 to operate on frequency 35.58 MHz in the Public Land Mobile Service at Forked River, NJ.

Adopted: June 28, 1985.
Released: July 8, 1985.

By the Commission Carrier Bureau.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned applications of J.M. Blodgett d/b/a/ Radio Page Communications (Radio Page) and Answering Service of Trenton, Inc. (ASOT). Also pending is the letter request of ASOT to vacate the grant of Radio Page's Atlantic City application, File No. 21012–CD–P–78, Radio Page's informal application for interim operating authority and related pleadings, and Radio Page's Petition for Expedited Issuance of a Hearing Designation Order and for Other Relief and responsive pleadings.

Background

2. Radio Page's Atlantic City antenna modification application, File No. 21012–CD–P–78, was filed on March 13, 1978 and was accepted for filing by Public Notice on March 20, 1978. ASOT's Stafford Township application was filed on April 19, 1978 and was accepted for filing in a Public Notice on May 1, 1978. Radio Page's Forked River application was filed on April 25, 1978 and was accepted for filing by Public Notice on May 8, 1978. On July 14, 1980, the Commission granted Radio Page's Atlantic City application without a hearing. Radio Page thereafter constructed its facility and filed for a covering license on February 24, 1981. Radio Page then commenced operations.

3. On January 11, 1983, counsel for ASOT filed a letter informing the Commission that Radio Page's Atlantic City application was mutually exclusive with ASOT's Stafford Township application. ASOT argued that the Commission's July 14, 1980 grant of Radio Page's Atlantic City application without a hearing was *ultra vires* and requested that the grant be vacated. As the result of a subsequent meeting of counsel and Commission staff, Radio Page voluntarily pulled back its Atlantic City service contour, on January 17, 1983, to the directional antenna contour that had been previously authorized in File No. 22064–CD–P/ML–04–77.

4. By letter dated April 25, 1984, Radio Page responded to an April 6, 1984 Commission inquiry respecting the operating parameters of the Atlantic City Station, stating: "Given that the 21012 authority was not revoked and operations thereunder were and would continue to be on a non-interference basis pending final disposition of the ASOT application, Radio Page believes it should be able to operate under the 21012 authority, pending resolution of the mutual exclusivity between Radio Page application 21012 and ASOT application 21284."

5. By letter dated May 24, 1984, ASOT opposed Radio Page's interim authority request as "entirely unprecedented and highly prejudicial to ASOT." By letter dated May 31, 1984, Radio Page asserted that its earlier letter had "sought confirmation of Radio Page's right to operate under its 21012 authority, unless and until it is rescinded by the Commission * * * and only secondarily to request, in the alternative, a grant of interim authority." Radio Page also requested that the applications be set for comparative hearing as soon as possible.

6. On February 25, 1985, Radio Page filed a Petition for Expedited Issuance of a Hearing Designation Order and for Other Relief. The Petition was filed in the instant proceeding and in a separate mutually exclusive proceeding involving Radio Page and ASOT applications.[1] Radio Page has requested that these three applications be consolidated with the two Penns Grove applications because of the "identity of parties and issues." Radio Page also requested that the consolidated applications be immediately designated for comparative hearing, and that Radio Page be authorized "to operate on an interim basis under the parameters of its Atlantic City application pending the outcome of the comparative hearing."

7. On March 12, 1985, ASOT filed its Opposition to Radio Page's Petition supporting the request for comparative hearing designation but opposing Radio Page's request for any interim authorization. Radio Page filed a Reply on March 22, 1985.

Discussion

8. As a preliminary matter, Radio Page's request for consolidation of these applications with the Penns Grove applications will be denied. The two proceedings do not have complete identity of parties, as the application of Radio Broadcasting Company, File No. 20582–CD–P–79, is mutually exclusive with the two Penns Grove applications. Public Notice, No. PMS–85–15, issued May 8, 1985. Since Radio Broadcasting is not a party to the instant proceeding, consolidation would serve to add to the complexity of this dispute and would be contrary to the public interest.

9. We also conclude that ASOT's January 11, 1983 request to vacate the improper grant of Radio Page's Atlantic City application should be granted. Radio Page's Atlantic City application was mutually exclusive with ASOT's Stafford Township application. Pursuant to §§ 22.31 and 22.32 of the Commission's Rules, a mutually exclusive application filed prior to August of 1981 may not be granted without a formal hearing. ASOT has not waived its right to a comparative hearing. The Commission's July 14, 1980 grant, without formal hearing, of Radio Page's Atlantic City application was *ultra vires* and was void *ab initio*. The grant will be formally vacated and Radio Page's previous authority, issued in Filed No. 22064–CD–P/ML–04–77, will be reinstated.[2]

10. Radio Page's request for interim authority to operate under the parameters of its Atlantic City application will be denied. Radio Page cited § 22.25(b)(3) as authority for the interim authorization sought.[3] Radio Page has cited no precedent where § 22.25(b)(3) authority has been granted under the circumstances present here, and we conclude that the cited Rule Section is inapposite. First, since Radio Page's Atlantic City construction permit has been vacated, there is no authorized construction to facilitate. Second, since the mistaken grant was void *ab initio*, Radio Page's proposed antenna modification was never legally previously authorized. Third, Radio Page has failed to demonstrate that either the unspecified cost of the equipment it had obtained or the service requirements of its subscribers[4] warrant a finding that

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[1] File No. 20100–CD–P–79, a Radio Page application to construct an additional facility for Station KWT 885 on frequency 35.58 MHz at Penns Grove, NJ, and File No. 20540–CD–P–79, an ASOT application to construct an additional facility for Station KED 352 on frequency 35.58 at Penns Grove, NJ (Penns Grove applications).

[2] This action will moot Radio Page's February 24, 1981 application for a covering license which was held in pending status.

[3] Section 22.25(b)(3) provides that special temporary authorizations may be granted when the authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized."

[4] Both before the erroneous grant and since January 17, 1983, Radio Page's Atlantic City subscribers have been served throughout the area legally licensed to Radio Page in File No. 22064–CD–P/ML–77. There is no evidence that the continuation of such service pending final disposition of a comparative hearing of the mutually exclusive applications would harm Radio Page's subscribers.

the public interest requires a grant of interim authority. Finally, § 22.32(g) of the Commission's Rules, which expressly covers the conditional granting of a mutually exclusive application pending the outcome of a formal hearing, is inapplicable as none of the four specified situations justifying such relief is apparent in this proceeding.

11. The involved applications of Radio Page and ASOT are electrically mutually exclusive. Public Notice, No. PMS–85–15, released May 8, 1985. After careful consideration, we find the applicants to be legally, technically and otherwise qualified to construct and operate the proposed facilities. Since the applications were filed prior to August 1981, these applications are not subject to the lottery selection; [5] therefore, a comparative hearing will be held to determine which applicant would best serve the public interest.

12. Accordingly, it is ordered, that the consolidation request of J.M. Blodgett d/b/a Radio Page Communications is denied.

13. It is further ordered, that the request of Answering Service of Trenton, Inc. to vacate the July 14, 1980 grant of File No. 21012–CD–P–78 is granted, and that such grant is vacated and the authority granted in File No. 22064–CD–P/ML–04–77 is reinstated.

14. It is further ordered, that the informal application of J.M. Blodgett> d/b/a Radio Page Communications for a grant of interim authority under § 22.25(b)(3) of the Commission's Rules is denied.

15. It is further ordered, pursuant to section 309 of the Communications Act of 1934, as amended, that the applications of J.M. Blodgett d/b/a Radio Page Communications, File Nos. 21012–CD–P–78 and 21325–CD–P–78, and the application of Answering Service of Trenton, Inc., File No. 21284–CD–P–78, are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[6] based upon the standards set forth in § 22.504(a) of the Commission's Rules [7] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

16. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

17. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

18. It is further ordered, that the applicants shall file written notices of appearance under § 1.221 of the Commission's Rules within 20 days of release date of this Order.

19. This Order is issued under § 0.291 of Commission's Rules and is effective upon its release date. Petitions for reconsideration will not be entertained. See § 1.106(a)(1) of the Rules. Applications for review will be entertained pursuant to § 1.115(e)(3). See also § 1.4(b)(2).

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85–16741 Filed 7–12–85; 8:45 am]

BILLING CODE 6712–01–M

[5] *See*, Second Report and Order, Gen. Docket 81–768, released May 27, 1983, 91 FCC 2d 911, para. 120.

[6] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R–6406, equation 8.

[7] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

Tel-Dodge Broadcast Company, Inc., et al.; Hearing Designation Order.

In re Applications of:

MM Docket No. 85–191

Tel-Dodge Broadcasting Co, Inc., Milan, GA. Req: 1100 kHz, 0.5 kW, D.	File No. BP–840202AC.
Joann S. Miller, Woodbine, GA. Req: 1100 kHz, 10 kW, D.	File No. BP–840314AA.

For Construction Permit.

Adopted: June 4, 1985.

Released: July 9, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications for new AM broadcast stations.

2. The proposed location of Tel-Dodge Broadcasting Company Inc's main studio is unclear. In response to Question seven of Section V–A of the application form, which requests a justification pursuant to Section 73.1125 of the Commission's Rules for studio locations not within the principal community or at the transmitter site, the applicant makes reference to Exhibit E. However, Exhibit E fails to mention the main studio. We cannot determine from the record under these circumstances if the applicant complies with § 73.1125 of the Commission's Rules. Therefore, an appropriate issue will be specified.

3. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

4. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine whether the proposal of Tel-Dodge Broadcasting Company, Inc. is in compliance with § 73.1125 of the Commission's Rules with respect to the location of its main studio.

2. To determine: (a) The areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio services.

3. To determine, in the event it be concluded that a choice between the

applicants should not be based solely on considerations relating to section 307(b), which of the proposals would on a comparative basis better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

6. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall, within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the dates fixed for the hearing and to present evidence on the issues specified in this Order.

7. It is further ordered, that pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed by the Rule, and shall advise the Commission of the publication of such as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-16744 Filed 7-12-85; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1525]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

July 5, 1985.

The following listings of petitions for reconsideration and clarification filed in Commssion rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules to Allow the Selection From Among Mutually Exclusive Competiting Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings. (CC Docket No. 83-1098).

Filed by:

Gerard J. Duffy, Attorney for Cellular Technology, Inc., on 6-3-85.

Ben C. Fisher, John Q. Hearne & Eliot J. Greenwald, Attorneys for Cell Pro on 6-3-85.

Theodore D. Frank & Marilyn D. Sonn, Attorneys for Centel Corporation on 6-19-85.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-16739 Filed 7-12-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

[Notice 1985-9]

Filing Dates for Texas Special Runoff Election

AGENCY: Federal Election Commission.

ACTION: Notice of Filing Dates for Texas Special Runoff Election.

SUMMARY: Committees required to file reports in connection with the special election to be held on August 3, 1985, must file a 12-day pre-election report due on July 22, 1985, and a 30-day post-election report due on September 2, 1985. The semiannual report due on July 31, 1985, has been waived for those committees required to file the 12-day pre-election report. After filing these reports, committees should resume filing reports on a semi-annual basis.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Chief, Information Services Division, 1325 K Street, NW., Washington, D.C. 20463, Telephone: (202) 523-4068, Toll free; (800) 242-9530.

Notice of Filing Dates for Special Election, 1st Congressional District, Texas

All principal campaign committees of candidates in the special election and all other political committees not filing monthly, which support candidates in the special election shall file a 12-day pre-election report due on July 22, 1985, with coverage dates from date of last report filed, or if filing first report from date of registration, through July 14, 1985, and a 30-day post-election report due on September 2, 1985, with coverage dates from July 15, 1985, though August 23, 1985. The semiannual report due on July 31, 1985, has been waived for those committees required to file the 12-day pre-election report. After filing these reports, committees should resume filing on a semiannual basis.

Dated: July 10, 1985.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 85-16693 Filed 7-12-85; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this seciton before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-001875-002.

Title: Tacoma Terminal Agreement.

Parties:

Port of Tacoma (Port)

Kaiser Aluminum & Chemical Corporation (Kaiser)

Synopsis: Agreement No. 224-001875-002 modifies the basic agreement which provides for the preferential berthing of Kaiser's alumina vessels at Berth C of Pier 7, Tacoma, Washington, as well as crane operators provided by the Port. The second amended agreement deletes the wharfage, service and facilitites charges and crane rental from the first amendment to the agreement, and substitutes different charges therefore. Agreement No. 224-001875 will become effective upon the date determined by the Federal Maritime Commission.

Agreement No.: 212-010382-007.

Title: Argentina/U.S. Gulf Ports Agreement.

Parties:

A. Bottacchi S.A. De Navegacion C.F.I.I.

Companhia De Navegacao Lloyd Brasileiro

Companhia Maritima Nacional

Cylanco S.A.

Empresa Lineas Maritimas Argentinas S.A.

Reefer Express Lines Pty., Ltd.

Transportacion Maritima Mexicana S.A.

United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would restate the agreement to conform with the Commission's format, organization and content requirements.

Agreement No.: 224–010777.

Title: San Pedro Terminal Agreement

Parties:

Metropolitan Stevedore Company (Metropolitan)

L.A. Cruise Ship Terminals, Inc. (LACST)

Synopsis: Agreement No. 224–010777 provides that Metropolitan will provide passenger terminal services for LACST at facilities located at Berths 90–93, San Pedro, California, pursuant to a permit issued by the City of Los Angeles, and as per FMC agreement No. 224–010730. The term of the agreement shall be for one year. Metropolitan will be compensated pursuant to schedule C of the agreement. The parties have requested a shortened Review period for the agreement.

Agreement No.: 224–010778.

Title: Burns International Harbor Terminal Agreement.

Parties:

Indiana Port Commission (Commission)

Donald J. Mitrazyk dba Paul Dee Co. (PDC)

Synopsis: Agreement No. 224–010778 provides for the lease of 1.190 acres by the Commission to PDC situated at the Burns Waterway Harbor. The premises will be used for the installation and operation of a storage, processing and distribution facility for oyster shells and other non-hazardous dry bulk commodities, and the transportation of the material necessary and incidental to such activity. The term of the agreement shall run through June 30, 1993, with renewal options of four consecutive five year periods. PDC guarantees to the Commission minimum amounts of wharfage as provided for in the agreement.

Agreement No.: 226–010779.

Title: Carriers' Container Interchange Agreement.

Parties:

Atlantic Container Line, G.I.E.

Compagnie General Maritime

The Cunard Steam-Ship Company, plc

East Asiatic Co. Ltd. A/S

Intercontinental Transport (ICT) B.V.

Johnson Line AB

Rederiaktiebolaget Soya

Rederiaktiebolaget Transatlantic

Wilhelm Wilhelmsen Ltd.

Synopsis: The proposed agreement would permit the parties to establish an organization to be known as Container Equipment Management to provide for interchange among the parties of empty equipment designated by them to be interchangeable, and for its coordinated positioning, transport, acquisition, repair and the sharing of costs associated with such agreement activities.

Agreement No.: 224–010781.

Title: Burns International Harbor Terminal Agreement.

Parties:

Indiana Port Commission (Commission)

Brown, Inc. (Brown)

Synopsis: Agreement No. 224–010781 provides that the Commission will lease to Brown 1 acre at the Burns Waterway Harbor. The premises will be used for the installation and operation of a storage, processing and distribution facility for non-hazardous dry bulk commodities, and for the transportation of the material necessary and incidental to such activity. The term of the agreement shall run through July, 1989, with renewal options of three consecutive 5 year periods. Brown will guarantee to the Commission wharfage amounts as provided for in the agreement.

Dated: July 10, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–16707 Filed 7–12–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

BC Corp. of Detroit et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any question of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 5, 1985.

A Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *BC Corp. of Detroit*, Hamtramck, Michigan; to become a holding company by acquiring 100 percent of the voting shares of Commerce Bancorp, Inc., Hamtramck, Michigan, thereby indirectly acquiring The State Bank of Fraser, Fraser, Michigan, and Bank of Commerce, Hamtramck, Michigan.

In this regard, Security Bancorp, Inc., Southgate, Michigan, has applied to acquire 100 percent of the voting shares of BC Corp. of Detroit.

2. *Central Wisconsin Bankshares, Inc.*, Wausau, Wisconsin; to acquire 80 percent of the voting shares of Central National Bank of Wausau, Wausau, Wisconsin.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Indiana Bancshares, Inc.*, Charlestown, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Clark County, Charlestown, Indiana, and to acquire at least 52.33 percent of the voting shares of The First National Bank of Scottsburg, Scottsburg, Indiana.

Board of Governors of the Federal Reserve System, July 9, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–16096 Filed 7–12–85; 8:45 am]

BILLING CODE 6210–01–M

Equitable Bancorp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 1985.

A Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Equitable Bancorporation,* Baltimore, Maryland; to acquire First American Limited Partnership, thereby indirectly acquiring certain assets from First American Group, and engaging in mortgage banking, including originating, selling, and servicing loans to third parties, secured by real estate.

Board of Governors of the Federal Reserve System, July 9, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16605 Filed 7-12-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

FSG 66—Federal Supply Schedule Improvement

The GSA, FSS, General Products Commodity Center, Engineering and Commodity Management Division and Scientific Equipment Division, is contemplating establishing a voluntary collaborative effort to review the FSG 66 Federal Supply Schedules Solicitations for appropriateness of coverage. The review will cover technical analysis only. Any industry association or firm interested in participating in this effort should respond to this notice by C.O.B. August 15, 1985, to General Services Administration, FSS, General Products Commodity Center, Engineering and Commodity Management Division, CMBG #4, Room 832, Washington, DC 20406.

For information call John Miller (703) 557-9440.

Dated: July 3, 1985.

Larry E. Schroyer,

Director, Scientific Equipment Division, General Products Commodity Center.

[FR Doc. 85-16170 Filed 7-12-85; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following District Consumer Exchange Meeting:

New Orleans District Office, chaired by Robert O. Bartz, District Director. The topic to be discussed is Health Issues of Older Women.

DATE: Tuesday, July 30, 1985, 10 a.m. to 11:30 a.m.

ADDRESS: Shady Oaks Senior Center, Terrebone Parish Council on Aging, 876 Verret St., Houma, LA 70363.

FOR FURTHER INFORMATION CONTACT: Frances Bryson, Consumer Affairs Officer, Food and Drug Administration, 4298 Elysian Fields Ave., New Orleans, LA 70122, 504-589-2420.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships betwen local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 10, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-16676 Filed 7-10-85; 10:31 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

Correction

In FR Doc. 85-15377, appearing on page 26627, in the issue of Thursday, June 27, 1985, in the third column, in the seventh and twentieth lines, "Thereas" should read "Theresa".

BILLING CODE 1505-01-M

[Docket No. 85E-0162]

Determination on Regulatory Review Period for Purposes of Patent Extension; Coactin® Sterile

Correction

In FR Doc. 85-14940, beginning on page 25786 in the issue of Friday, June 21, 1985, make the following correction:

On page 25786, in the third column, in the fifth complete paragraph, third line, "April 15, 1984" should read "April 15, 1982".

BILLING CODE 1505-01-M

[Docket No. 85M-0224]

Vision Tech, Inc.; Premarket Approval of Sauflon PW (Lidoflicon B) and Sauflon 70 (Lidoflicon A) Soft Contact Lenses

Correction

In FR Doc. 85-14720 beginning on page 25468 in the issue of Wednesday, June 19, 1985, make the following correction:

On page 25468, in the third column, in the first complete paragraph, in the sixth line, "polymehtylmethacrylate" should read "polymethylmethacrylate".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Coastal Barrier Resources System; Inquiry

AGENCY: Office of the Secretary, Interior.

ACTION: Notice. Coastal Barrier Resources Act; Section 10—Report to Congress (16 U.S.C. 3509).

SUMMARY: In order to allow more time for the public, States and local governments, members of Congress and other Federal agencies to comment on the Draft Report to Congress on the Coastal Barrier Resources System, the public comment period previously scheduled to close on July 15, 1985, is hereby extended until close of business September 30, 1985. Following that time, the Department shall develop recommendations regarding the System as directed by Section 10. Early in 1986, the revised report, including recommendations, shall be issued for public comment prior to transmittal in final form to Congress.

DATE: Comments on the report and maps that are a component of this effort will be accepted through September 30, 1985.

ADDRESS: Comments should be directed to: The Coastal Barriers Study Group, Department of Interior, National Park Service—498, P.O. BOX 37127, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Lanzone, Coastal Barriers Study Manager, National Park Service—783, Department of the Interior, Washington, D.C. 20013–7127, (202) 343–5625.

Dated: July 9, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 85–16735 Filed 7–12–85; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Land Management

[OR-19343]

Oregon; Conveyance of Public Lands; Order Providing for Opening of Lands

Correction

In FR Doc. 85–15461 appearing on page 26631 in the issue of Thursday, June 27, 1985, make the following corrections:

1. In the second column, land description beginning T. 16 S., R. 13 E., "S½NW¼" should have read "S½ NE¼".

2. In the land description beginning T. 1 S., R. 18E., "S½SW¼" should have read "S½SW¼". In T. 5 S., R. 18 E., "E¼NE½." should have read "E½NE¼."

3. In the third column, in T. 21 S., R. 22 E., first line, "21" should have read "22".

BILLING CODE 1505-01-M

Filing of Plat of Survey; Utah

AGENCY: Bureau of Land Management, Utah, Interior.

ACTION: Notice.

SUMMARY: These Plats of Survey of the following described land will be filed in the Utah State Office, Salt Lake City, Utah immediately:

Salt Lake Meridian, Utah

T. 35 S., R. 2 E.

This plat represents the dependent resurvey of the Seventh Standard Parallel South, through a portion of Range 2 East, a portion of the north and west boundaries, and a portion of the subdivisional lines, and the survey of a portion of the subdivisional lines, and the survey of the subdivision of sections 1, 11, 12, 15, 17, 20, 21, 29, and 30 of T. 35 S., R. 2 E., Salt Lake Meridian, Utah for group 616, was accepted March 22, 1985.

Salt Lake Meridian, Utah

T. 22 S., R. 6 E.

This plat represents the dependent resurvey of a portion of the north boundary, and a portion of the subdivisional lines, and a partial subdivisional survey of sections 3 and 4 of T. 22 S., R. 6 E., Salt Lake Meridian, Utah for group 651 was accepted April 25, 1985.

Salt Lake Meridian Utah

T. 13 S., R. 16 E.
T. 13 S., R. 17 E.
T. 14 S., R. 14 E.

These plats, in three (3) sheets representing: (1) The dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and the survey of a portion of the subdivisional lines of T. 13 S., R. 16 E., Salt Lake Meridian, Utah; (2) the dependent resurvey of a portion of the south boundary of T. 12 S., R. 17 E., and a portion of the subdivisional lines, and the survey of a portion of the subdivisional lines, and the survey of the subdivision of section 19 of Utah; (3) the dependent resurvey of a portion of the west boundary of T. 14 S., R. 15 E., and a portion of the subdivisional lines, and a survey of a portion of the subdivisional lines of T. 14 S., R. 14 E., Salt Lake Meridian, Utah for group 630, were accepted May 3, 1985.

Salt Lake Meridian, Utah

T. 16 S., R. 7 E.

This supplemental plat of Section 5, T. 16 S., R. 7 E., Salt Lake Meridian, Utah, was prepared to show the subdivision of original lot 7, and is based upon the plat approved March 10, 1981, was accepted March 15, 1985.

These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries relating to this land should be sent to the Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah 84111.

Orval Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–16692 Filed 7–12–85; 8:45 am]

BILLING CODE 4310-DQ-M

Public Information Request for the Powder River Coal Region

AGENCY: Bureau of Land Mangement, Department of the Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management wishes to determine leasing interest in all areas available for further leasing consideration within the Powder River Coal Region. Public input is requested. However, the use of this information is dependent upon a Secretarial decision to continue coal activity planning.

DATE: Public input is welcome through October 31, 1985.

ADDRESS: Public input should be submitted to the Chief, Branch of Solid Minerals, Bureau of Land Management (Wyoming State Office 924), 1828 P.O. Box, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Don Brabson, Branch of Solid Minerals, Bureau of Land Management (Wyoming State Office 924), 1828 P.O. Box, Cheyenne, WY 82003; telephone (307) 772–2571.

SUPPLEMENTARY INFORMATION: By Federal Register notice on May 6, 1985, the Bureau of Land Management requested re-expressions of coal leasing interest on the 22 tracts under leasing consideration in the *Draft Environmental Impact Statement of Round II Coal Lease Sale in the Powder River Region*, January 1984. In response, the Bureau received re-expressions of interest for some of the tracts and unsolicited expressions on interest for additional tracts. In order to fully comprehend the leasing interest throughout the region, the Bureau would like to know the degree to which additional leasing interest exists beyond the above-referenced 22 tracts. To this end the public is invited to indicate regional leasing interest where areas are available for leasing considerations. Those parties that submitted letters in response to the May 6, 1985, notice do not need to provide additional input, unless their interest changes.

The areas available for leasing consideration are set out in Bureau land use plans. The Bureau's Casper District Office and Miles City District Office can supply these plans for Wyoming and Montana portions of the region, respectively. The addresses and telephone numbers for these offices are Casper District Office, 951 North Poplar, Casper, Wyoming 82601, (307) 261–5101 and Miles City District Office, P.O. Box 950, Miles City, Montana 59301, (406) 232–4331.

Information received in response to this notice will be furnished to the Powder River Regional Coal Team. This team is expected to use this information in the development of Federal coal leasing recommendations for the Secretary of the Interior, provided that the Secretary decides to continue coal activity planning under the Federal Coal Management Program.

Hillary A. Oden,

State Director, Wyoming.

[FR Doc. 85-16710 Filed 7-12-85; 8:45 am]

BILLING CODE 4310-22-M

Bureau of Mines

Advisory Committee on Mining and Mineral Research; Meeting

This notice is issued in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App.I) and Office of Management and Budget Circular No. A63, Revised.

The Advisory Committee on Mining and Mineral Research will meet from 8:30 a.m. to 5:00 p.m. (or completion of business), on Friday, August 16, 1985, for the primary purpose of completing work on its National Plan for Research in Mining and Mineral Resources.

The Committee meeting will be held in: Bureau of Mines Room D-2004,2006, Building 20, Denver Federal Center, 6th Avenue and Kipling Street, Denver, Colorado 80225.

The meeting will deal with the following subjects:

1. Review of minutes of meeting of May 16, 1985.
2. Revision and approval of draft plan for research in mining and mineral resources.
3. Status of 1985 grant awards program.
4. Status of congressional action on mineral institute 1986 budget.
5. New business.

This meeting is open to the public. Approximately 20 visitors can be accommodated on a first-come, first-served basis. Written statements concerning the subjects are welcome.

Visitors who expect to attend should inform Dr. Ronald A. Munson, Chief, Office of Mineral Institutes, Bureau of Mines, MS 1020, 2401 E Street, NW., Washington, D.C. 20241, phone (202) 634-1328, no later than Monday, August 12.

Dated: July 10, 1985.

Robert C. Horton,

Director.

[FR Doc. 85-16683 Filed 7-12-85; 8:45 am]

BILLING CODE 4310-53-M

Bureau of Reclamation

Kesterson Reservoir Closure and Cleanup; Rescheduling of Scoping Sessions for Draft Environmental Impact Statement; Correction

This document corrects a notice on the closure and cleanup of Kesterson Reservoir that appeared on page 28125 in the **Federal Register** of Wednesday, July 10, 1985, (50 FR 28124). This action is necessary to correct the date of the meeting in Merced, California, and the telephone numbers of Reclamation and Fish and Wildlife Service contacts.

Meeting date: Notice of the meeting scheduled for July 24, 1985, at Herbert Hoover School, Merced, California, will actually take place on July 23, 1985, 7:00 p.m.-10:00 p.m.

Telephone numbers: The telephone number for Mr. Bob Schroeder should be changed to (916) 978-4923, the telephone number for Mr. Rod Hall should be changed to (916) 978-5130, and the telephone number for Mr. Stephen Moore should be changed to (916) 978-4978.

Dated: July 11, 1985.

William C. Klostermeyer,

Acting Commissioner.

[FR Doc. 85-16854 Filed 7-12-85; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF JUSTICE

Lodging of a Stipulation and Order Regarding Violations of a Consent Decree Under the Toxic Substances Control Act; Interstate Transformer, Inc., and H.G. Snyder

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 28, 1985, a proposed Stipulation and Order in *United States* v. *Interstate Transformer, Inc. and H.G. Snyder,* Civil Action No. 79-734-C (W.D. Pa.) was lodged with the United States District Court for the Western District of Pennsylvania. Under the Stipulation and Order, defendants are held in civil contempt for their failure to comply with a Consent Decree, entered October 24, 1980. The Consent Decree requires, among other things, that defendants comply with PCB disposal and recordkeeping requirements found in 40 CFR Part 761, which was promulgated pursuant to section 6(e) of the Toxic Substances Control Act, 15 U.S.C. 2605(e).

The Stipulation and Order require defendants to purge themselves of contempt by:

1. Constructing additional containment areas, meeting the requirements of 40 CFR 761.65, so that all PCBs at the site are within such areas;

2. Providing to EPA all documents in their possession regarding PCBs at the site; and,

3. Conducting monthly inspections of PCB containers and PCB articles at the site, in accordance with 40 CFR 761.65(c)(5). Such inspections will include visual inspections of the fence which secures the property.

Mr. Snyder is personally responsible for the above inspections, but if he cannot perform them he may designate someone acceptable to EPA to conduct them on his behalf. Written reports of the inspection must be submitted to EPA in a format acceptable to the Agency. Mr. Snyder is personally responsible for cleaning up any PCB leaks, of which EPA must immediately be notified. These inspection and reporting requirements shall terminate when the PCBs are disposed of in accordance with 40 CFR 761.65(a).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Stipulation and Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Interstate Transformer, Inc., et al.,* DOJ Ref. 90-5-1-1-1219A.

The proposed Stipulation and Order may be examined at the Office of the United States Attorney, Western District of Pennsylvania, Room 633, United States Post Office and Courthouse, 7th and Grant Streets, Pittsburgh, Pennsylvania 15219, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; and, at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Stipulation and Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-16706 Filed 7-12-85; 8:45 am]

BILLING CODE 4410-01-M

The R.C.A. Rubber Co.; Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 27, 1985, a proposed consent decree in *United States* v. *The R.C.A. Rubber Company*, was lodged with the United States District Court for the Northern District of Ohio. This agreement resolves a judicial enforcement action brought by the United States against the R.C.A. Rubber Company which alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for Asbestos at the Company's facility in Akron, Ohio.

The consent decree provides for the installation of a new baghouse to control dust emissions from sanding operations, modifications to an existing baghouse which is used to control emissions from two mixers and compliance with waste disposal standards through specific disposal procedures outlined in the decree. The agreement provides for stipulated penalties for failure to comply with the provisions of the decree and the payment of a civil penalty of $150,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to: *United States* v. *The R.C.A. Rubber Company*, D.J. Ref. 90–5–2–1–716.

The proposed consent decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney
U.S. Attorney, Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114

EPA
Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check payable to Treasurer of the United States in the amount of $1.90.

Myles E. Flint,
Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–16714 Filed 7–12–85; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D–3397 et al.]

Proposed Exemptions; Alaska Hotel and Restaurant Employees Pension Trust et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Alaska Hotel and Restaurant Employees Pension Trust (Hotel Fund) and the Alaska Electrical Pension Trust (Electrical Fund, Collectively, the Funds) Located in Anchorage, Alaska

[Application Nos. D–3397 and D–3442]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 406(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, effective February 3, 1975, to the purchase by the Funds of participation interests in certain multi-family residential and commercial mortgage loans from the First National Bank of Anchorage (the Bank), a party in interest with respect to the Funds, provided that the terms of the transactions were not less favorable to the Funds than the terms generally available in arm's-length transactions between unrelated parties.

Effective Date: If granted, this exemption will be effective February 3, 1975.

Summary of Facts and Representations

1. The Funds are multiemployer plans located in Anchorage, Alaska. As of April 30, 1982, the Hotel Fund had total assets of approximately $50 million and the Electrical Fund, as of December 31, 1982, had total assets of approximately $150 million. The Bank is a national bank with principal offices located in Anchorage, Alaska. The Bank is primarily regulated by the Comptroller of the Currency and the Federal Reserve Board.

2. The applicant seeks an exemption for the past purchase by the Funds of participation interests in certain multi-family residential and commercial mortgage loans from the Bank. The Bank served as a custodian for each Fund at the time of the purchases and was therefore a party in interest with respect to the Funds. The specific transactions were as follows:

The Electrical Fund purchased on February 3, 1975, a $392,000 participation in a multi-family residential mortgage loan originated by the Bank. The borrower was an unrelated party with regard to the Electrical Fund. An independent investment adviser, Kennedy Boston Associates, Inc. [now known as Kennedy Associates, Inc. (Kennedy)] represented the Electrical Fund in the transaction. The Bank serviced the loan for a fee of ¼ of 1% of the loan amount. The loan was repaid in full on February 18, 1980. The applicant represents that the terms of the loan were not less favorable to the Fund than terms available in an arm's-length transaction.

The Hotel Fund purchased from the Bank the 90% guaranteed portion of 14 Small Business Administration (SBA) guaranteed loans. The loans were made to unrelated parties with regard to the Hotel Fund. The Fund confirmed its agreement to purchase the participations on December 11, 1975. The loans were thereafter acquired from the Bank from December 18, 1975 through January 13, 1976 after SBA approval was received and funds became available for the purchase. The participations were purchased at par (plus accrued interest) for a total purchase price of $2,014,772. this amount represented approximately 6% of the Hotel Fund's assets at the time of purchase. The loans were sold as a group and marked to return to the Hotel Fund an average yield of not less than 9½%. The Hotel Fund paid a ¾ of 1% servicing fee to the Bank which thereby provided the Hotel Fund a net return of 8.87%. (¼ of 1% of the servicing fees were applied to reimburse the Bank for SBA guaranty fees).

Mr. Samuel Noel (Mr. Noel), an officer of the Norwest Corporation (Norwest), a nationally known mortgage company, represents that the return to the Hotel Fund from the SBA guaranteed participations was at or above market rate returns at the time of purchase. Mr. Noel states that in 1975 and 1976 he was an officer of the Seattle-First National Bank (SeaFirst) and that he committed SeaFirst to buy similar participations at similar guaranteed returns during the time period the Hotel Fund purchased the participations. In this regard, Mr. Noel committed SeaFirst on March 30, 1976 to purchase $2 million of SBA guaranteed participations at an average net yield of 8.75%.

3. At the time of the purchase by the Hotel Fund the Bank was a custodian of the Hotel Fund and was therefore a party in interest. The Bank represents that it offered the participations to the Hotel Fund but did not have any fiduciary authority or responsibility with regard to the Hotel Fund's decision to purchase the participations. In this regard, the trustees of the Hotel Fund made the decision to purchase the participations. The trustees represent that they did not examine individual loan files because the participations were guaranteed by both the Federal government and the Bank. In this regard, the purchase of a SBA-guaranteed porton of a loan provides that if a borrower defaults, the purchaser (the Hotel Fund) may demand that the originator (the Bank) repurchase the participation interest without recourse. If the originator does not repurchase within the stated time period, the SBA will repurchase the holder's participation interest upon written notice. The applicant represents there have been no defaults to date with regard to the participation interests. The Bank represents that it received no compensation from the Funds other than the servicing fees regarding the loan participations.[1]

4. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because a) the decision to purchase the participation interests were made by fiduciaries of the Funds who are independent of the Bank; and b) the terms of the transactions were not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-0661. (That is not a toll-free number.)

[1] No exemption from section 406 of the Act is proposed herein for the servicing of the participations beyond that provided by section 408(b)(2) of the Act.

California Brewing Industry Employment Security Trust Fund (the SUB Fund) and California Brewing Industry Vacation Trust Fund (the Vacation Fund; Together the Funds) Located in San Francisco, California

[Application Nos. D-5361 and D-5362]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the transactions necessary to effect the consolidation of the SUB Fund and the Vacation Fund.[2]

Summary of Facts and Representations

1. The Funds are welfare benefit plans which were established pursuant to the 1964 Collective Bargaining Agreement between the Teamster, Brewery and Soft Drink Workers Joint Board of California and the California Brewers Association. The Board of Trustees of each Fund has eight members, four from the participating local union and four from the participating employers. The Funds have a common Board of Trustees (the Trustees). As of January 6, 1984, the Funds each had approximately 1,500 participants.

2. The Trustees for the Funds propose to consolidate the two Funds in an effort to resolve a problem of chronic overfunding of the SUB Fund. Almost since its inception, SUB Fund income from employer contributions and investment earnings has exceeded benefit claims. As a result SUB Fund assets have steadily grown to an amount in excess of $700,000, notwithstanding that pursuant to the 1973-1976 collective bargaining agreements and all such agreements thereafter, no employer contributions to the SUB Fund have been made since 1973.

3. The Vacation Fund was created to amelioriate problems arising out of seniority provisions in the collective bargaining agreements which allow

[2] The applicants have also requested relief from the restrictions of section 406(a) of the Act. However, the applicants have represented that the Funds are not parties in interest with respect to one another, and have not demonstrated in their application that such relief is necessary. Accordingly, the Department is not herein providing any relief from the restrictions of section 406(a) of the Act.

employees to move from one company to another without loss of accrued vacation benefits but without assured funding of those benefits. However, the original projections of intercompany movements resulting in vacation claims proved grossly under-estimated. As a result, the Vacation Fund has suffered periodic deficits which threatened its ability to support vacation payments. The Vacation Fund is now adequately funded (see rep. 7, below).

4. The Trustees propose that the Vacation Fund be merged into the SUB Fund. Such merger will be effected pursuant to authorization in applicable collective bargaining agreements, and pursuant to resolutions of the Trustees. The applicants represent that employers contributing to the Funds will not be relieved of any obligation to contribute to the Funds (or the results consolidated Fund) by reason of such consolidation. The proposed amended SUB Fund Trust Agreement will neither reduce benefits payable to participants under the prior separate agreements nor diminish funding of those benefits. Moreover, the Trustees propose that the consolidation be conditioned on maintenance of a minimum reserve level in the new Fund to assure adequate support of unemployment benefits under the amended Trust Agreement. Further, employees have agreed, through collective bargaining, that in the event the assets of the combined Fund fall below $700,000, contributions will be made by wage reduction (at the rate of $.10 per hour worked or paid) until the combined Fund increases to a level of $1,200,000.

5. The Trustees propose to consolidate the Funds, rather than merely link them through an amendment providing for periodic automatic transfers of assets, to achieve substantial administrative savings. Because the Funds have a common funding source and cover the same set of participants, there is no reasons to maintain separate administrative procedures. The mechanics of the merger will involve the combining of the two Funds in one account under a new Trust Agreement. In effect the two old trust funds will disappear into a new trust. The new Trust Agreement will cover the same set of participants as the prior Trust Agreements. In addition, the new Trust Agreement will provide for full protection of benefits payable under the two prior Trust Agreements.

6. The intent of the Funds' consolidation is to insure that the original purposes of the Funds can be carried out by realignment of the funding of the benefits. Through collective bargaining, the participating employers and the local union have expressed their assent to the proposed consolidation.

7. In the subject case, both welfare Funds currently have assets substantially in excess of accrued benefits. Although the Vacation Fund has on occasion lacked funds to pay benefits (see rep. 3, above), it is now adequately funded. Thus, the applicants represent that a merger at this time will not impair the SUB Fund whatsoever. As an additional protection to the interests of Fund participants, the Trustees have proposed to include in the amended Trust Agreement a provisio to the effect that reserve levels cannot fall below a statistically determined minimum.

8. In summary, the applicants represent that the proposed transaction meets the criteria contained in section 408(a) of the Act because: (1) Consolidation of the two Funds will reduce administrative costs and thereby increase assets available to pay benefits under the consolidated Fund; (2) consolidation of the two Funds will remove from consideration the possibility of termination or curtailment of benefits under either Fund; and (3) future employer contributions will not be reduced as a result of the merger.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Health Systems Group Retirement Plan and Trust (the Plan) Located in Vancouver, Washington

[Application No. D–5692]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the prior sale for cash of an undivided one-half interest in certain real property (the Property) by the Plan to the Seattle-First National Bank (the Bank), a party in interest with respect to the Plan, provided that the price received was no less than the fair market value of the Property at the time the transaction was consummated.

Effective Date: The effective date of the proposed exemption, if granted, will be December 12, 1983.

Summary of Facts and Representations

1. The Plan (formerly known as the Retirement Plan of Southwest Washington Hospital Services and also the Retirement Trust of St. Joseph's Community Hospital) is a tax-exempt pension trust sponsored by Health Systems Group and its subsidiary, Southwest Washington Hospital Services (collectively the Plan Sponsor), both incorporated in the State of Washington and headquartered in Vancouver, Washington. As of January 1, 1984, the Plan had 1,216 participants and total assets of $5,236,428 of which $4,167,522 was held by the Bank as custodian. At the time of the sale (December 12, 1983) for which the exemption is requested, John D. Ritchie, Richard Fauble, and Robert G. Kendall, Jr. were the trustees of the Plan (the Trustees). Mr. Ritchie, who is Vice-President Investments/Institutional for Prudential-Bache Securities in Portland, Oregon, is currently Chairman of the Board for the Plan Sponsor and has served on boards of its predecessors. He is also Chairman of the Board of Trustees for the Plan and has served as trustee for approximately ten years. Mr. Fauble, who was an Assistant Vice-President for the Bank's Vancouver branch office as manager of its Installment Credit Department for ten years prior to his retirement on January 1, 1980, has served as trustee of the Plan since 1979. He was also a non-voting advisory director of the Plan Sponsor's subsidiary. Mr. Kendall was a member of the Board of Directors of the subsidiary of the Plan Sponsor.

2. On December 12, 1979, the Bank, as investment manager for the Plan, in an arm's length transaction with an unrelated party, invested $90,250 of Plan assets in a one-half interest of a $238,966.27 principal amount promissory note (the Note), paying 9 percent per annum in interest and secured by a Deed of Trust on the Property. The other one-half interest in the Note was purchased by the Bank as investment manager for a certain endowment fund (not subject to the Act) of the Seattle University (the University). The Property is located in rural southwest Oregon some 300 miles from Vancouver, Washington at 4411 Holland Loop Road near Cave Junction, Oregon and consists of 160.35 acres of meadows and woodland with an 8-room house and attached garage. On December 1, 1980, the Note was defaulted by non-payment. Early in 1981, foreclosure on the Note and Deed of Trust was initiated by the Bank for the Plan and the University. Extensive litigation delayed the

foreclosure sale until August 1, 1983. At the foreclosure sale the Plan and the University each acquired an undivided one-half interest in the Property by each bidding an amount equal to one-half the outstanding principal balance and one-half the accrued interest owed on the Note ($118,065.98 and $27,916.27, respectively). As of September 17, 1983, the Property was appraised by Russell O. Butler, Cave junction, Oregon and determined to have a fair market value of $303,600. Subsequently, as of June 4, 1984, Raymond Richard, Rogue River, Oregon, an appraiser, estimated the fair market value of the Property to be $300,000. Later on September 27, 1984, Mr. Richard qualified his estimate and stated that the Property, in a cash sale, would have an estimated value between $255,000 and $270,000.

3. After the foreclosure and acquisition of the Property, the Trustees and the University informed the Bank of their disapproval of the investment in the Note and their acquisition of the Property in the foreclosure. The Bank was then dismissed as investment manager for the Plan and the University. Options were explored by the Trustees and the University with various realtors for disposing of the Property. If the Property could be sold, it was concluded that owner-financing would be necessary with the sale price considerably less than the appraised value. Neither the Plan nor the University were interested in financing a third-party's purchase of the Property. Confronted with being unable to sell the Property and the probability of a lengthy litigation with the Bank regarding the prudence of the investment in the Note, the Plan and the University with their respective legal counsel undertook negotiations to compel the Bank to purchase the Property. They sought to recoup their investments and expenses, plus a reasonable return. The negotiations resulted in a settlement agreement between the Bank and the Plan and the University under which the Bank acquired the Property on December 12, 1983, for a cash consideration. The Plan received a total of $130,604.24, which enabled the Plan to recoup all its expenses and its investment, plus a reasonable return.

4. The Bank and the Trustees seek an exemption for the prior cash sale for $130,604.24, on December 12, 1983, by the Plan of its undivided one-half interest in the Property to the Bank. The Trustees represent that the sale was made only after they had explored all alternative options available to the Plan, including, in November 1983, listing for sale the Property with Century 21 Allstar Realty of Cave Junction, Oregon. Furthermore, the Trustees, who represent themselves as having extensive experience with investments of real property and securities and being aware of the appraisal, expressed a strong conviction that the sale of the undivided one-half interest in the Property to the Bank was made at the fair market value and was the most prudent action to be taken at the time and under the circumstances.

5. The Trustees represent that they made their determination to sell the Property to the Bank on Decemer 12, 1983, for the following reasons: (a) The lack of prospective tennants or buyers since the December 1, 1980, default on the Note; (b) the Property was producing no income and was incurring expenses for maintenance, insurance and taxes; (c) depressed economic conditions and a recession in forest-products industry plus deflated real estate values in farm property; (d) denial of zoning for ground and surface water for a fish hatchery deprived the Property its principal source of funds for debt servicing; (e) difficulty in obtaining a sale without a discount from the appraised value and providing financing for a prospective purchaser; and (f) no real estate commissions in sale to the Bank.

6. In summary, the applicant represents that the sale met the statutory criteria of section 408(a) of the Act because (a) the sale of the Property to the Bank permitted the Plan to dispose of a non-income producing asset, at no expense, which had been incurring a drain on other assets; (b) the sale permitted the Plan to recover its investment in the Note and all expenses, plus realize a fair rate of return; (c) the sale of an undivided one-half interest in the Property on the open market would not have been economically feasible for the Plan; and (d) the Plan was represented by independent Trustees, with legal counsel, who were joined in the sale by the University, with legal counsel, which owned the other undivided one-half interest in the Property.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-7901, (This is not a toll-free number.)

Byung Soon Lee, M.D., P.C., Employees' Profit Sharing Plan (the Plan) Located in Mount Clemens, Michigan

[Application No. D-5886]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective September 1, 1981, to the purchase by Dr. and Mrs. Byung Soon Lee of certain improved real property (the Property) from the Plan for $184,126, provided that the sale price of the Property was not less than fair market value on the date of sale.

Effective Date: If the exemption is granted, the effective date will be September 1, 1981.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan with three participants and assets of approximately $74,077 as of June 5, 1985. The Employer is a Michigan professional service corporation specializing in gastroenterology, and its principal place of business is Mount Clemens, Michigan. Byung Soon Lee, M.D. owns 100% of the Employer, and he is the trustee and administrator of the Plan.

2. The Property is a farm located in Ray Township, Macomb County, Michigan. The Plan purchased the Property on November 7, 1979, from Thomas E. and LaDonna K. Wheeler, who are unrelated to the Plan and the Employer. The purchase price of the Property was $158,000, which included a downpayment of $38,265 in cash and an assumption of a land contract payable to Frank and Madeline Douglas and Shirley Olszak, who are also unrelated to the Plan and the Employer, with an outstanding balance of $119,735. At that time, the Plan had assets of approximately $29,649.[3] When the Property was purchased, it was anticipated that the Property could be sold within a short period of time for development into housing subdivisions. However, real estate values declined sharply in the metropolitan Detroit area due to the recession, high interest rates, and the decline in the automobile industry. Therefore, Dr. Lee determined that the Property was no longer a suitable investment for the Plan. The Property was listed with Ms. Joan Park, a real estate agent, for approximately sixteen months in 1980 and 1981, with an

[3] The remaining $8,616 required for the cash downpayment was loaned to the Plan by the Employer's Money Purchased Pension Plan. The Department is expressing no opinion as to whether the original acquisition of the Property by the Plan was in violation of any provision of the Act.

asking price of $180,000. No written or verbal offers were received during that time at that or any price. Ms. Park represents that she believes the Property had a fair market value of $160,000 at that time.

3. Dr. and Mrs. Lee purchased the Property from the Plan on September 1, 1981. The sale price to the Lees was determined by adding the expenses incurred by the Plan for maintenance of the Property, the original downpayment, and the payments made by the Plan under the land contract. The total sale price was $184,126, which included a cash downpayment of $65,000 and the assumption by the Lees of the land contract which then had a balance of $119,126.

4. Barbara Ragnon of Barbara & Associates located in Romeo, Michigan has been retained to appraise the fair market value of the Property as of the second half of 1981. Ms. Ragnon has been a real estate broker for over ten years. She has determined that the Property had a fair market value between $152,000 and $162,000 in 1981, although she notes that the real estate market at that time was slow and that it is difficult to locate comparable sales in the area. Subsequent to their purchase of the Property, the Lees listed the Property with Hewitt Realty and have not received any offers for the purchase of the Property.

5. In summary, the applicant represents that the transaction satisified the administrative requirements of section 408(a) of the Act because (a) the Property represented a continuing loss to the Plan, which loss has been eliminated as a result of the Lees' purchase of the Property in which all Plan payments have been reimbursed; (b) the Plan was unable to locate another purchaser; and (c) the purchase price paid by the Lees was at or above fair market value.

For Further Information Contact: Ms Linda Shore of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Everett & Hurite Opthalmic Association Money Purchase Pension Plan and Trust (the Money Purchase Plan) and Everett & Hurite Opthalmic Association Defined Benefit Pension Plan and Trust (the Defined Benefit Plan, Collectively, the Plans) Located in Pittsburgh, Pennsylvania

[Application Nos. D–6003 and D–6004]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(A) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past sale by the Defined Benefit Plan of a painting (the Painting) to the Money Purchase Plan for $225,000 in cash, provided that the sales price was the fair market value of the Painting on the date of sale.

Effective Date: The effective date of this proposed exemption, if granted, is July 18, 1984.

Summary of Facts and Representations

1. The Defined Benefit Plan had 30 participants as of October 31, 1983 and net assets of $2,762,797. The Money Purchase Plan had 40 participants as of November 1, 1983 and net assets of $1,278,940. The trustees of both Plans (the Trustees) are Drs. William Everett and Francis Hurite.

2. In 1981, the Trustees of the Defined Benefit Plan hired Leon Arkus, an independent art consultant, to advise them with respect to the desirability of investing in art. Mr. Arkus advised the Trustees that contemporary art would be a desirable investment. With the assistance of Mr. Arkus, the Trustees purchased the Painting through the Xavier Fourcade, Inc. art dealership, an unrelated party with respect to the Plan. The Plan paid $180,000 in cash for the Painting, which is an oil on canvas painting by Willem de Kooning, entitled, "Untitled XVII, 1976."

3. The Painting has been held by the Defined Benefit Plan since its acquisition and was on display in the offices of Everett & Hurite Opthalmic Association (the Employer) through April 26, 1984. On April 26, 1984, the Painting was placed in storage to be held until such time as an independent third party, such as a museum, can be found to accept the Painting on loan for safekeeping and display. The Employer recognized that the display of the Painting constituted a prohibited transaction and on June 8, 1984, the Employer filed Form 5330 with the Internal Revenue Service and paid the excise taxes arising from the prohibited transaction. In addition, the Employer has paid back rent to the Plan for the period May 1, 1981 through April 26, 1984, when the Painting was removed from display.

4. On September 7, 1983, Recco Luppino, a Fellow of the American Society of Appraisers and of the Incorporated Society of Valuers and Auctioneers of the United Kingdom appraised the painting and determined that it had a fair market value of $225,000 as of that day. Mr. Luppino states that he has been a ful time fine arts appraiser for over 40 years. Mr. Luppino further states that the American Society of Appraisers certifies appraisers on the basis of both examination and experiences on four levels, of which the highest level is that of Fellow. In additon, Mr. Luppino states that there are only 30 Fellows of the American Society of Appraisers and only three of these, including himself, are Fellows in fine arts appraisal.

5. In a an affidavit accompanying his appraisal, Mr. Luppino stated that he advised the Trustees that in his judgment, although it might be possible to find a buyer for the Painting at the appraised price, a sale of the Painting on the open market at that time would be inappropriate. Mr. Luppino stated that several factors led to this decision, including: (a) The decided increase in the value of de Kooning's paintings over the previous 20 years and particularly over the last 3 or 4 years; (b) the age of de Kooning (79) and the likelihood that his works will appreciate substantially in value after his death; and (c) the fact that auctioneers usually charge a commission of at least 10% to sell paintings and the commission charged may even be greater if the Painting was sold through a private gallery.

6. On October 26, 1983, the Defined Benefit Plan was amended to provide for its termination effective October 31, 1983. Form 5310, Application for Determination upon Termination was filed with the Internal Revenue Service and the Pension Benefit Guaranty Corporation (PBGC) on November 18, 1983. On May 3, 1984, the PBGC issued a Notice of Sufficiency providing for a termination date of November 28, 1983, and requiring that all assets be distributed within 90 days of the date of the Notice of Sufficiency.

7. In conjunction with the termination of the Defined Benefit Plan and the distribution of its assets to the participants, the Trustees proposed to sell the Painting to the Money Purchase Plan. Such sale was proposed because, upon termination, the participants were to receive a lump-sum distribution of their accrued benefits under the Defined Benefit Plan. The Trustees determined that an in-kind distribution of title to the Painting was not feasible because (a) a pro rata distribution of the Painting would require the creation of 30 undivided interests which would not be desirable as investments and might not be marketable; (b) creation of fewer

than 39 undivided interests would require the Trustees to make subjective judgments as to how many interests to distribute and which participants were to receive such interests, opening any distribution to challenge by the participants; (c) distributed interests could not be rolled over into an IRA or other self-directed accounts, due to the prohibitions of section 408(m) of the Code regarding the holding of artwork and other collectibles in such accounts; and (d) the participants would bear all expenses of storage, insurance, etc.

8. Prior to the sale of the Painting, Bennett J. Cooper was hired as independent trustee for the purpose of reviewing the transaction. Mr. Cooper represents that he is a tax attorney and president of Coordinated Consulting Services, a firm which specialies in benefit counseling and income and estate tax counseling. Mr. Cooper further represents that he acted as a consultant for the Employer in 1982 but he received no payments from the Employer in either 1983 or 1984. Mr. Cooper states that upon review of the transaction, he advised the Trustees that the sale of the Painting between the two Plans would be proper. He further advised the Trustees that based on Mr. Luppino's appraisal, it would be inappropriate to sell the Painting and more prudent to continue holding it in order that the participants in the Money Purchase Plan, who are essentially the same as those in the Defined Benefit Plan, could receive the gains projected in Mr. Luppino's appraisal. In addition, he advised the Trustees that a distribution in kind would be inappropriate because of its lack of flexibility for the participants.

9. The sale of the Painting from the Defined Benefit Plan to the Money Purchase Plan was consummated on July 18, 1984 with the Money Purchase Plan paying $225,000 for the Painting. The Trustees now seek an exemption from sections 406(a) and 406 (b)(1) and (b)(2) of the Act with respect to the sale. The applicant represents that at the time of the sale, the Trustees were entitled to more than 50% of the benefits in both Plans and therefore the Plans may have been parties in interest with respect to each other under section 3(14)(G) of the Act.

10. In summary, the applicant represents that the sale of the Painting met the requirements of section 408(a) of the Act because: (a) It was a one-time transaction for cash; (b) the transaction was approved by an independent trustee; (c) it allowed the participants of the Defined Benefit Plan to receive an all cash distribution of their accrued benefits; and (d) it will allow the participants in the Money Purchase Plan, essentially the same as those in the Defined Benefit Plan, to receive the gains projected in the appraisal of the Painting by Mr. Luppino, an independent, qualified art appraiser.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Buffalo Laborers Pension Fund (the Plan) Located in Buffalo, New York

[Application No. D-6096]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, (1) the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase by the Plan of certain improved real property (the Property) from Local 210, Inc. (the Union Corporation), a party in interest with respect to the Plan and the subsequent leasing by the Plan of space in the Property to the Laborer's International Union of North America, Local 210 (the Union), the Union Corporation (collectively, the Union Tenants) and the Buffalo Laborers Welfare Plan (the Welfare Plan); and (2) section 406(b)(2) of the Act shall not apply to the subsequent leasing by the Plan of space in the Property to the Buffalo Laborers Training Fund (the Training Fund) and the Buffalo Laborers Supplemental Unemployment Benefit Fund (the SUB Fund, collectively with the Welfare Plan, the Related Plans),[4] provided that the terms and conditions of the transactions are at least as favorable to the Plan as those obtainable by the Plan in arm's length transactions with unrelated parties.

Summary of Facts and Representations

1. The Plan is a multiemployer pension plan which had approximately 2,450 participants on January 1, 1984 and net assets of approximately $51,031,606 as of October 13, 1983. The Plan is administered by six trustees (the Trustees), three of whom are selected by contributing employers and three of whom are selected by the Union. The Trustees are also the trustees of each of the Related Plans. The Plan's contributing employers are those having a collective bargaining agreement with the Union. The Union Corporation is a New York not-for-profit corporation, wholly owned by the Union, which was established for the purpose of holding title to real property for the benefit of the Union.

2. The Property is located at 481 Franklin Street, Buffalo, New York, and consists of a parcel of land approximately 190 feet by 126 feet in size, improved by a two-story concrete and steel office building with a finished basement area and a paved parking lot. The building is approximately seventeen years old and contains a net leaseable office area of approximately 9,600 square feet. The first floor is occupied by the Union and the Training Fund, with the Union occupying 4,500 square feet and the Training Fund occupying 300 square feet. Office space on the second floor of the building is shared between the Plan, the SUB Fund and the Welfare Plan. There is no geographic separation between the plans and the SUB Fund on the second floor since one staff handles the business affairs of all of them, and rent for the second floor is presently shared and assessed on a percentage of activity basis.[5]

3. The Trustees propose to purchase the Property on behalf of the Plan from the Union Corporation and to continue leasing the Property to the present occupants. The Union Corporation has determined that the Property should be sold, primarily for financial reasons, and the Trustees state that it is highly probable that a buyer other than the

[4] The applicant represents that of the Related Plans, only the Welfare Plan, which provides services to the Plan, is a party in interest with respect to the Plan. Therefore, the Department is proposing relief only from section 406(b)(2) of the Act with respect to the proposed leasing by the Plan to the Training Fund and the SUB Fund.

The Welfare Plan provides administrative services to the Plan, the Training Fund and the SUB Fund, and is paid for these services on a percentage of usage basis by them. The applicant represents that the furnishing of these services is exempt from the prohibitions of section 406(a) and section 406(b)(2) of the Act by virtue of the exemptions provided in Prohibited Transaction Exemption 76-1 (41 FR 12740) and Prohibited Transaction Exemption 77-10 (42 FR 33918), respectively. The Department expresses no opinion as to the applicability of these class exemptions to the furnishing of these services.

[5] The applicant represents that the present leasing of office space by the Union to the Plan, the Training Fund, the Welfare Plan and the SUB Fund is exempt from the prohibited transaction provisions of the Act by virtue of the relief provided by section 408(b)(2) of the Act. The Department expresses no opinion as to the applicability of section 408(b)(2) of the Act to these leasing arrangements.

Plan would require the current tenants to relocate. The applicant states that the Plan would incur substantial relocation expenses if such a move was required and would also be likely to incur much greater rental expenses. The applicant represents also that it is extremely advantageous for the Plan and the Related Plans to occupy the same building as the Union in order to provide for better facilitation of services for the plans' participants.

4. The proposed purchase price of the Property is $807,000, representing approximately 1.19% of the Plan's current net assets. The purchase price will be paid in cash. The Property was appraised on March 16, 1983, by Mr. Thomas R. Donovan, president of T.R. Donovan Appraisals, Inc., 983 Kenmore Ave., Kenmore, New York, who determined the fair market value of the Property as of March 1, 1983 to be $620,000. Mr. Donovan updated his 1983 appraisal on April 27, 1984 to indicate that $620,000 still represented the fair market value of the Property on that date, adding however, that property values in the immediate area were starting to increase due to the near completion of redevelopment and of a rapid transit system in the downtown area of Buffalo. Mr. Donovan is independent of the Union.

5. Prior to the date of closing, the fair market value of the Property will be re-evaluated, but the purchase price will in no event by higher than $807,000. No commissions or fees will be incurred by the Plan with respect to the sale. Subsequent to the sale, the Plan will continue to occupy 1,632 square feet, or approximately 17% of the building and will lease allocated portions of the remaining office space in the building to the Union and the Related Plans in the following proportions:

	Square feet leased	Percentage of net leaseable area
The Union Tenants	[illegible]	47
The SUB Fund	1,[illegible]	16
The Welfare Plan	1,[illegible]	17
The Training Plan	300	3

6. An appraisal of the fair market rental value of the building was made on November 21, 1984 by Mr. Charles R. Anderson of Charles R. Anderson Auctioneers and Appraisers, Buffalo, New York. Mr. Anderson determined the fair market rental value, on a triple net basis, to be $8.00 per square foot per annum for the first floor of the building and $7.25 per square foot per annum for the second floor of the building. Mr. Anderson, who based his appraisal upon comparable rental properties in the area where the Property is located, represents that he has been actively involved as a liquidator and appraiser for residential and commercial real estate since 1971. The applicant represents Mr. Anderson is completely independent of all parties to the proposed transactions.

7. The leases (the Leases) will each be for a ten year term with an option to renew for an additional ten year period. The initial annual rental under the Leases will be $8.00 per square foot with respect to the leases to the Union and the Training Plan, which occupy the first floor of the building, and $7.25 per square foot with respect to the leases to the SUB Fund and the Welfare Plan, which together with the Plan, occupy the second floor of the building. The Leases are triple net, with each tenant of the building paying its proportionate percentage of all operating expenses with respect to the Property, including all taxes, maintenance and repair costs, insurance and utilities. All occupants of the building will be entitled to use of the adjacent parking lot and to use of the basement area for meetings. Rental is payable in equal monthly installments and will be adjusted every two years during the Lease terms and any renewals thereof to an amount not less than the then-current fair market rental value as determined by a qualified and independent appraiser selected by the independent fiduciary for the Plan (see below). Any renewals of the Leases must be approved as being appropriate for and in the best interest of the Plan by the independent fiduciary for the Plan. Similarly, the Trustees, who are also the trustees of the Related Plans, must determine on behalf of each of the Related Plans whether such renewal is appropriate for and in the best interest of each of those plans.

8. The Lease to the Union Tenants contains certain additional provisions not contained in the other Leases. These include an agreement that the Union Tenants will pay over to the Plan the sum of $36,000 at the commencement of the Lease term as a security deposit against a default in rent by the Union Tenants occurring at any time during the Lease term or any renewal thereof. The independent fiduciary for the Plan is to deposit that sum in an insured, interest-bearing escrow account, such account to be charged with all unpaid rent during the Lease term or renewal, all loss by reasons of vacancy or reletting at a lesser rent after eviction or abandonment, and all costs and expenses, including, but not limited to, reasonable attorney fees related to collection, eviction or reletting. To the extent not so charged, the balance will be paid over to the Union Tenants at the end of the Lease or renewal term, unless at such time the premises are vacant or rented at a rate less than $3,000 per month, in which case the security deposit will be charged further with the difference until such time as the monthly rental meets or exceeds $3,000 per month.

9. Mr. William C. Klager has been appointed to act as the independent fiduciary for the Plan with respect to the proposed purchase of the Property by the Plan from the Union Corporation and with respect to the Leases by the Plan to the Union Tenants and the Related Plans. Mr. Klager represents that he is completely independent of the Union, the Union Corporation and the Related Plans, and that he has consulted with an attorney regarding his duties, responsibilities and liabilities as a fiduciary under the Act. Mr. Klager states that he has over twenty years of experience in investment and estate planning and that he is currently employed as a broker with the offices of First Albany Corporation, located in Buffalo, New York.

Mr. Klager has reviewed the appraisals, all terms and conditions of the proposed transactions, the investment portfolio and needs of the Plan, including its needs for liquidity, diversification and a favorable rate of return, and has determined that the purchase of the Property and the subsequent Leases are in the best interest of the Plan for the following reasons: (a) The purchase price of the Property, which is less than the appraised fair market value of the Property, represents less than 2% of the Plan's current assets and will enable the Plan to better diversify its investment portfolio; (b) the expected rate of return of approximately 12.2% per annum is in excess of the yield expected from other Plan investments and does not even take into consideration the appreciation potential of the Property; (c) recent developments in the immediate vicinity of the Property indicate that its market value has increased since the appraisal was made; (d) the fair market rental value of the Property will be re-appraised every two years over the terms of the Leases by a qualified, independent appraiser and the rental rates will be adjusted accordingly; (e) a security deposit has been negotiated

with the Union Tenants to guarantee the Plan's stream of income from the Lease to the Union Tenants; and (f) the Plan will be able to continue to occupy a convenient building and will be able to avoid the disruption and expenses of relocation.

Mr. Klager represents that he will monitor the Leases and select appraisers on the Plan's behalf, will determine whether any renewals of the Leases are appropriate for and in the best interest of the Plan, and will ensure that the Plan receives at least the fair market rental value for the Property, as determined every two years by a qualified, independent appraiser. Mr. Klager will also take any enforcement actions necessary to protect the rights and interests of the Plan with respect to the Leases, including the bringing of a lawsuit if appropriate.

10. The Trustees, who are also the trustees and fiduciaries of each of the Related Plans, represent that they have reviewed the needs of each of the Related Plans, the terms and conditions of the Leases, including the ten-year lease term, the initial rental rates of $8.00 or $7.25 per square foot per annum, depending upon which floor is occupied, and the appraisal of the fair market rental value of the Property made by Mr. Anderson, and have determined that the proposed Leases are appropriate for and in the best interest of each of the Related Plans. The Trustees represent, in addition, that the amount of space in the building being leased by each of the Related Plans is appropriate and necessary for the needs of each of those plans.

11. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (a) The Plan will be able to continue to occupy a building which is convenient for Plan participants and will avoid the expenses and disruption of relocation; (b) the fair market value and fair market rental value of the Property have been determined by independent appraisers; (c) the fair market rental value will be re-appraised every two years over the terms of the Leases, at which time the rental rates will be adjusted accordingly; and (d) the purchase of the Property and the terms and conditions of the Leases have been approved as being appropriate for, protective of and in the best interest of the Plan and will be monitored and enforced by Mr. Klager, as an independent fiduciary for the Plan.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 9th day of July, 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-16745 Filed 7-12-85; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for the Digest

AGENCY: Merit Systems Protection Board.

ACTION: Notice of call for riders for *The Digest* for fiscal year 1986.

SUMMARY: The purpose of this notice is to inform Federal agencies that the Merit Systems Protection Board publication, *The Digest*, will be available for fiscal year 1986 on riders to the Government Printing Office. Departments and agencies may order this monthly publication by riding the Merit Systems Protection Board's printing requisition #6-00043.

DATE: Agency requisitions (Standard Form 1) must be submitted no later than August 31, 1985.

ADDRESS: Interested departments and agencies should send requisitions through their Washington, D.C. headquarters offices authorized to procure printing—to the Government Printing Office, Requisitions Section, Room 836, Washington, D.C. 20401. Agencies may estimate cost by using the current Government Printing Office price list of printing services.

FOR FURTHER INFORMATION CONTACT: Ada R. Kimsey, Information Services Division, Office of the Clerk of the Board, 1120 Vermont Avenue, Washington, D.C. 20419, 202-653-7200.

SUPPLEMENTARY INFORMATION: *The Digest* is a monthly publication containing summaries of selected Board orders and a list of all other Board orders issued each month. *The Digest* also lists decisions made in the Board's regional offices under the voluntary expedited appeals procedure, summarizes selected court cases, and reprints the Board's **Federal Register** issuances.

Dated: July 11, 1985.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 85-16798 Filed 7-12-85; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) which includes records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorizes agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposal as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before September 13, 1985.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, D.C. 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L St. NW, Washington, D.C.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedule Pending Approval

1. Department of Agriculture, Agricultural Research Service (NC1–310–85–1). Records, chiefly preminimary raw data, relating to USDA research on rat breeding, 1939–68; household use and discard of edible foods, 1958–60; rural household economics, 1958–59; and rural household food consumption, 1967.

2. Administrative Office of the United States Courts, Administrative Services Division (NC1–116–85–2). Records concerning the establishment of health units in courts and the disposal of surplus real and related personal property.

3. Administrative Office of the U.S. Courts, Office of Court Reporting and Interpreting Services (NC1–116–84–4). Records relating to management of court reporting and interpreting services.

4. Central Intelligence Agency (NC1–263–84–5). This CIA schedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

5. Environmental Protection Agency, Office of Federal Activities (NC1–412–84–1). Records relating to the development of environmental policies and the review of routine environmental impact statements.

6. Federal Deposit Insurance Corporation, Division of Accounting and Corporate Services (NC1–34–85–2). Routine reports of condition and income, and supervisory data reports, submitted by banking institutions regulated by the FDIC.

7. Department of the Interior, Bureau of Land Management (NC1–49–85–3). Letters of application and recommendation concerning permission to practice as an attorney before the U.S. Land Office at Los Angeles.

8. Department of the Interior, Bureau of Land Management (NC1–49–85–4). Diaries of daily activities of grazing service supervisors and other employees from the Arizona Strip District in St. George, Utah.

9. Department of the Navy, Military Sea Transportation Service (NC1–313–85–1). Administrative and other correspondence, sailing orders, repairs to vessels, and similar documents relating to routine operations in Bremerhaven, Balboa, and Mediterranean ports, 1950–63.

10. U.S. Nuclear Regulatory Commission, Office of Investigations (NC1–431–83–6). Records relating to investigations of allegations involving private companies and persons in the nuclear industry.

11. Pension Benefit Guaranty Corporation (NC1–465–85–2). Records dealing with assets liquidation, money management, investment policy, training, standing committees, and internal management.

12. Department of State, Office of Refugee Programs, Kampuchean Working Group (NC1–59–82–12). Press relations files, the substantive documentation from which is maintained in other records of the State Department.

13. Department of State, Bureau of International Organization Affairs, Policy Management Staff (NC1–59–85–1). General correspondence, reports, reviews, questionnaires, and administrative files relating to management support activities.

14. Tennessee Valley Authority, Division of Personnel (NC1–142–84–9). Comprehensive schedule, including records in paper, microform and machine-readable form, covering all aspects of personnel administration.

15. Department of the Treasury, Financial Management Service (NC1–425–85–1). Paid and reconciled U.S. Government checks, pertaining to closed claims cases, June 1978–June 1979.

Dated: July 11, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85–16883 Filed 7–12–85; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted 30 days after the date of notice.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, (202) 786–0233 or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson

Place, NW., Room 3208, Washington, D.C. 20503 (202) 395-7316.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506 (202) 786-0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill our the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: New
Title: Instructions for Applicants with Projects Requiring the Use of Automation Technology
Form Number: Not applicable
Frequency of Collection: Collections occur once or twice yearly, according to individual program application deadlines. (Once per application)
Respondents: Humanities researchers and institutions applying for funding whose projects require the use of automation technology

Use: To justify the use and cost of equipment and the methodology involving automation technology that will be employed on proposed projects so that competing applications for funding can be evaluated in the peer review process.

Estimated Number of Respondents: 685.
Estimated Hours for Respondents to Provide Information: 8.

Susan Metts,
Acting Director of Administration.

[FR Doc. 85-16788 Filed 7-12-85; 8:45 am]
BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Permit Applications Received Under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by August 16, 1985. Permit applications may be inspected by interested parties at the Permit Office address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain mammals and certain geographic areas as requiring special protection. The regulations establish such a permit system and designate Specially Protected Areas and Sites of Special Scientific Interest. The regulations may be found at Title 45, Part 670 of the Code of Federal Regulations. Copies are available from the National Science Foundation.

The purpose of the regulations is to conserve and protect the mammals, birds, and plants of Antarctica and ecosystem upon which they depend. To that end, unless the following activities are specifically authorized by permit, it is unlawful:

- To take any mammal or bird native to Antarctica (note that "take" means "to remove, harass, molest, harm, pursue, hunt, shoot, wound, kill, trap, capture, restrain, or tag" any native mammal or bird or to attempt to engage in such conduct)
- To collect any plant native to Antarctica in specially protected areas
- To enter any Specially Protected Area or certain Sites of Special Scientific Interest
- To import from the United States any mammal or bird native to Antarctica or any plant collected in a Specially Protected Area
- To introduce to Antarctica any nonindigenous plant or animal.

The Antarctic Conservation Act of 1978 mandates civil and criminal penalties for noncompliance with the regulations.

All mammals and birds normally found in Antarctica, excluding whales regulated by the International Whaling Commission, are designated as native mammals or native birds. Activities involving these mammals or birds require a permit. Areas of outstanding ecological interest are designated as Specially Protected Areas. No one may enter these areas or collect any native plants in these areas without a permit. Areas of unique scientific value that need protection from interference are designated as Sites of Special Scientific Interest. Entry into certain of these areas without a permit is prohibited.

The permit system is described in the regulations. To obtain a permit, each applicant must provide the scientific names and numbers of native mammals or birds to be taken, including age, size, sex, and condition (e.g., pregnant or nursing) or the scientific names and numbers of native plants to be collected in a Specially Protected Area. Each applicant must include a complete description of the location, the time period, and the manner of taking or collecting specimens. If the specimens are to be imported into the United States, the applicant must also indicate the ultimate disposition of the materials.

Permits for taking or collecting mammals, birds, or plants will be issued by the Director of the National Science Foundation or his designated representative. Each permit will be evaluated in terms of the objectives of the Antarctic Conservation Act, that is, the conservation and protection of antarctic flora and fauna and the antarctic ecosystem. Permits issued under these regulations (or copies of them) must be held in the possession of those authorized to engage in a permitted action. The permits must be displayed upon request to any person responsible for enforcing the regulations.

Anyone who knowingly commits an act prohibited by the Antarctic Conservation Act of 1978 is liable to a civil penalty of up to $10,000 for each violation. If the violation was committed without knowledge of the regulations, the fine will not exceed $5,000. Criminal penalties for willful violation of the

regulations may involve a fine of up to $10,000 and/or imprisonment for not more than 1 year.

The Antarctica Conservation Act of 1978 does not supersede the Marine Mammal Protection Act, the Endangered Species Act, or the Migratory Bird Treaty Act. Permit applications involving native mammals or native birds covered by these acts will be forwarded by NSF to the agencies that administer them. If a proposed activity involves approval under more than one law, then the activity must satisify the conditions of all applicable laws or a permit cannot be granted. Even if a permit is approved by other appropriate agencies, the Director of the National Science Foundation still must decide whether to issue a permit according to the requirements of the Antarctica Conservation Act of 1978.

The regulations amend Title 45 of the Code of Federal Regulations by adding Part 670.

The applications received by the National Science Foundation are as follows:

1. Applicant

Arthur L. DeVries, 524 Burrill Hall, University of Illinois, Urbana, Illinios 61801

A. Activity for Which Permit Requested

Introduction of a non-indigenous species into Antarctica.

The applicant proposes to introduce specimens of the New Zealand black cod, *Notothenia angustata,* into a laboratory environment in Antarctica for a study of the role of blood glycopeptide antifreeze compounds. All specimens will be kept in a closed sea water aquarium. The specimens will not be released into the Antarctic environment.

B. Location

McMurdo Station, Antarctica

C. Dates

October, 1985–May, 1986

2. Applicant

Wayne Z. Trivelpiece, Point Reyes Bird Observatory, Stinson Beach, California 94970.

A. Activity for Which Permit Requested

Taking, enter Site of Special Scientific Interest.

The applicant proposes to conduct a population study of the pygoscelid penguins: the Adelie, Gentoo, and Chinstrap. Permission is requested to band up to 1,500 chicks of each species. Additionally, the applicant requests permission to band locally found Brown Skua, South Polar Skua, S. Giant Fulmar and S. Black-backed Gull adults and chicks. The applicant also requests permission to enter and conduct research in the Point Thomas Site of Special Scientific Interest No. 8.

B. Location

King George Island, Antarctica

C. Dates

October, 1985–March, 1986

3. Applicant

Philip R. Kyle, New Mexico Institute of Mining and Technology, Socorro, New Mexico 87801

A. Activity for Which Permit Requested

Enter Site of Special Scientific Interest.

The applicant proposes to collect rock samples in Site of Special Scientific Interest No. 4, Cape Crozier. The areas of collection are well removed from any penguin rookery.

B. Location

Cape Crozier, Antarctica

C. Dates

November, 1985–January, 1986

4. Applicant

Donald B. Siniff, University of Minnesota, Minneapolis, Minnesota 55455

A. Activity for Which Permit Requested

Taking, Import into U.S.A.

The applicant proposes to take seals as part of a study of the reproductive cycle and food habits of these seals. Tissue and blood samples will also be collected for gentic comparisons. The species to be taken are:

Species	Number, capture/ tag/ release	Number sacri-ficed
Lobodon carcinophagus	500	360
Hydrurga leptonyx	400	84
Leptonychotes weddelli	200	20
Ommatophoca rossi	200	10
Mirounga leonien	200	20
Arctocephalus gazella	200	20

B. Location

Antarctic Peninsula and South Shetland Islands

C. Dates

August–December, 1985

5. Applicant

James T. Staley, University of Washington, Seattle, Washington 98195

A. Activity for Which Permit Requested

Taking, Import into U.S.A.

The applicant proposes to collect specimens of adelie and chinstrap penguins, crabeater and weddell seals in the vicinity of Palmer Station. A small number of these animals will be sacrificed so that (1) tissue from various internal organs may be removed and examined for the presence of chitinase and (2) the rate of chitin degradation may be determined.

Species	Number
Pygoscelis adeliae	10
Pygoscelis Antarctica	10
Lobodon carcinophagus	5
Leptonychotes weddelli	5

B. Location

Palmer Station, antarctica

C. Dates

November, 1985–March, 1987

Authority to take Action under the Antarctic Conservation act of 1978 including publication of this notice, has been delegated by the Director of the National Science Foundation.

A. N. Fowler,

Acting Director, Division of Polar Programs.

[FR Doc. 85-16716 Filed 7-12-85; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Safety Recommendations Issued; Availability

Recommendation No.	Issued to	Date	Subject
Aviation			
H-85-34	Federal Aviation Administration	June 3, 1985	Left-side cooling air tube.
Highway			
H-85-8	Governors of Alabama, Alaska, Colorado, Georgia, Tennessee, and West Virginia.	do	Annual inspections of privately-owned pupil transportation vehicles.

Recommendation No.	Issued to	Date	Subject
H-85-9through -11	Florida Department of Highway Safety and Motor Vehicles.	....do	Do.
H-85-12	Governors of all States and the District of Columbia.	....do	Instruction programs for drivers of privately-owned and-operated pupil transportation vehicles.
H-85-13	Directors of Pupil Transportation of all States and the District of Columbia.	....do	Standards for schoolbus drivers comparable to those applicable to publicly-owned and operated schoolbuses.
H-85-14 and -15	National Parent-Teacher Association	....do	Surveys to identify drivers of public and private school buses who engage in unsafe driving practices, and informing parents about State safety requirements for schoolbus drivers and inspections.
Railroad			
R-85-24	Department of Transportation	June 3, 1985	Postmortem generation of alcohol levels due to microbial action; postaccident toxicological testing requirements.
R-85-43 through -46	Burlington Northern Railroad Co.	....do	Training for individuals employed in safety-critical positions.
R-85-47	Federal Railroad Administration	....do	Do.
R-85-48	Association of American Railroads	....do	Do.
R-85-61	Research and Special Programs Administration.	June 24, 1985	Protection of DOT specification aluminum tank car ends from puncture.
R-85-62 and-63	Association of American Railroads	....do	Do.
R-85-64	Federal Railroad Administration	....do	Do.
R-85-73	State of Louisiana	June 17, 1985	Administration of safety regulations in petrochemical plants.
R-85-71 and -72	Occupational Safety and Health Administration	....do	Inspections of petrochemical plant loading facilities.
R-85-70	Research and Sapcial Programs Administration.	....do	Safety standards and inspection procedures for loading facilities at petrochemical plants.
R-85-66 and -69	Federal Railroad Administration	....do	Inspection of rail loading facilities at petrochemical plants.
R-85-65 through -67	Formosa Plastics Corp	....do	Training program for employees assigned to load hazardous materials; safety inspection program; emergency preparedness plan.
R-85-54	Federal Railroad Administration	June 6, 1985	Criteria for emergency planning and response for operators of railroad yards that handle bulk shipments of hazardous materials.
R-85-55 and -56	Federal Emergency Management Agency	....do	Do.
R-85-53	Railroad Managers	....do	Do.
R-85-73	State of Louisiana	June 17, 1985	Evaluation of State agencies' ability to administer safety regulations in petrochemical plants.
R-85-22	Seaboard System Railroad	May 24, 1985	Programs requiring trainerew members to be monitored on applicable operational tests.
R-85-23	Association of American Railroads	....do	Bottom discontinuities on stub-sill tank cars.
R-85-57 and -58	New York City Transit Authority	May 20, 1985	Restricted speeds, discrepancies in track conditions.
M-85-39 through -41	Scandinavian World Cruises	May 24, 1985	Availability of ship's interior plans for emergency use; development of port contingency plans; extra air-pacs utilizing bottles for use during drills and demonstrations.
M-85-38 through -38	Canaveral Port Authority	....do	Port contingency plan; ship's plans showing interior arrangements; temporary electrical power sources at berths.
M-85-42 through -44	U.S. Coast Guard	....do	Standardized vocabulary for vessel operators; standard whistle procedure; formal procedure to transmit over vessel bridge-to-bridge radiotelephone.
M-85-29 through -35	....do	....do	Port contingency plan for Port Canaveral; firefighting in U.S. ports and waterways; examinations of fire/emergency equipment; modification of fire standards; hose ports in fire doors; sprinkler systems.
Intermodal			
I-85-12	National Solid Waste management Association.	May 16, 1985	Procedures for safe transportation of hazardous waste.
Pipeline			
P-85-6	Texas Eastern Corp	June 10, 1985	Cathodic protection test station readings
P-85-7	American Gas Association/Interstate Natural Gas Association of America/American Petroleum Institute.	....do	Review of cathodic portection test station readings.
P-85-8 through -15	Southwest Gas Corp.	July 1, 1985	Effects of liquid accumulation at low spots in gas distribution system on ABS or other types of plastic pipe.
P-85-16 and -17	Phoenix Fire Department	....do	Leaking gas; combustible gas indicators
P-85-18 and -19	Research and Sapcial Programs Administration.	....do	Chemically induced ABS plastic pipe failure.
P-85-20	National Association of Regulatory	....do	Programs to educate the public about hazards of natural gas; gas emergency procedures.
P-85-21	American Gas Association	....do	ABS pipe material failures.
P-85-22	Plastic Pipe Institute	....do	ABS Plastic pipe.
Aviation			
A-85-35 through -49	Federal Avation Administration	July 2, 1985	Requirement for life vests/flotation seat cushions on any aircraft conducting overwater operations.
A-85-50 through -52	....do	July 8, 1985	Fairchild Swearingen models SA-226 and SA-227 ignition switches.
Highway			
H-85-16	National Safety Council	....do	State Operation Lifesaver Councils.
Marine			
M-85-45 and -46	U.S. Coast Guard	July 2, 1985	Vessel stability criteria.
M-85-47	State of Alabama	....do	Alabama Water Safety Act; amendment of.
M-85-48	National Association of State Boating Law Administrators	....do	U.S. Coast Guard stability requirements for recreational vessels.
M-85-49	Boat Owners Association of the United States	....do	Vessel stability.
M-85-50	U.S. Power Squadrons	....do	Do.
Railroad			
R-85-74	Florida East Coast Railway Co.	July 8, 1985....do	Railroad/highway grade crossing safety training.
R-85-75	Chicago, South Shore and South Bend Railroad.	June 28, 1985	Switch-point locks on hand-operated Switches over which passenger trains make facing-point movements.

Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include addressee's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed

at a cost of 14 cents per page ($1 minimum charge).

Catherine T. Kaputa,

Federal Register Liaison Officer.

July 9, 1985.

[FR Doc. 85-16882 Filed 7-12-85; 8:45 am]

BILLING CODE 7525-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-247]

Consolidated Edison Company of New York (Indian Point Nuclear Generating Unit No. 2); Order Modifying License Confirming Additional Licensee Commitments on Emergency Response Capability

I

Consolidated Edison Company of New York (the licensee) is the holder of Facility Operating License No. DPR-26 which authorizes the operation of the Indian Point Nuclear Generating Unit No. 2 (the facility) at steady-state power levels not in excess of 2758 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Westchester County, New York.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modification, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82-33 by letter dated April 15, 1983, as supplemented August 31, 1983, November 18, 1983, February 14, 1984 and March 12, 1984. In these submittals, the licensee made commitments to complete the basic requirements. The licensee's commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. The staff found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On June 12, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed the licensee's commitments. By letter dated March 11, 1985, the NRC corrected an error in the original order concerning the implementation date of Regulatory Guide 1.97 with respect to Emergency Response facilities.

IV

The June 12, 1984, Order stated that for those requirements for which the licensee committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the June 12, 1984 Order, the licensee's letter dated July 31, 1984, provided a completion schedule for the following requirement:

2. Detailed Control Room Design Review (DCRDR).

2b. Submit a summary report to the NRC including a proposed schedule for implementation.

The attached Table summarizing the licensee's schedular commitment for the above item was developed by the NRC staff from the information provided by the licensee. The staff reviewed the licensee's July 31, 1984 letter and discussed the date with the licensee.

The NRC staff finds that this date is a reasonable and an achievable date for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments are required in the interest of the public health and safety and should, therfore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 50, it is hereby ordered, effective immediately, that license DPR-26 is modified to provide that the licensee shall:

Implement the specific items described in the Attachment to this ORDER in the manner described in the licensee's submittals noted in Section IV herein no later than the dates in the Attachment.

Extension of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

The licensee or any other person who has an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Executive Legal Director at the same address. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section V of this Order.

This Order is effective upon issuance.

Dated in Bethesda, Maryland this 8th day of July, 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing Office of Nuclear Reactor Regulation.

INDIAN POINT UNIT 2.—LICENSEE'S ADDITIONAL COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirements	Licensee's completion schedule (or status)
2. Detailed Control Room Design Review (DCRDR).	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	June 1985.

[FR Doc. 85-16756 Filed 7-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-3 (Emergency Planning)]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Oral Argument Before the Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the Appeal Board's order of May 20, 1985, oral argument of the appeal of the Long Island Lighting Company (LILCO) from the Licensing Board's April 17, 1985 partial initial decision will be heard at *2:00 p.m. on Monday, August 12, 1985, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: July 9, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85-16755 Filed 7-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co.; Granting of Exemption From Appendix R to 10 CFR Part 50 Fire Protection Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted an Exemption from certain requirements of Appendix R to 10 CFR Part 50 to Wisconsin Electric Power Company (the licensee). The Exemption relates to the fire protection program for the Point Beach Nuclear Plant, Unit Nos. 1 and 2 (the facilities) located in Manitowoc County, Wisconsin. The Exemption is effective as of July 3, 1985.

The Exemption allows alternative fire protection features to certain requirements of Subsection III.G of Appendix R to 10 CFR Part 50 as follows:

(1) To the 20-foot horizontal separation and full coverage, automatic fire suppression system requirements of Section III.G.2.b for the Unit 1 Motor Control Center Room (fire zone 1), the Component Cooling Water Pump Room (fire zone 3), the Unit 2 Motor Control Center Room (fire zone 4).

(2) To the fixed fire suppression system requirements of Section III.G.3.b for the Containment Spray Additive and Monitor Tank Room (fire zone 7) and from the full coverage automatic fire suppression requirements of Section III.G.2.b for the Safety Injection and Containment Spray Pump Room (fire zone 2).

(3) To the 20-foot horizontal separation requirement of Section III.G.2.b for the Auxiliary Feedwater Pump Room (fire area 5) and the Cable Spreading Room (fire area 8).

The Exemption is granted on the basis that the proposed alternative existing and additional fire protection features provide equivalent protection to the requirements of Appendix R. Requiring literal compliance to Appendix R would not enhance the fire protection safety in the facilities. Details are provided in the Exemption.

The requests for the Exemption comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations which are set forth in the Exemption.

The requests for the Exemption comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations which are set forth in the Exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (50 FR 20663).

For further details with respect to this action, see (1) the application for exemptions dated June 30, 1982 as supplemented by letters dated September 29 and October 11, 1982, February 7 and 25, April 28, May 31, July 20 and October 26, 1983, April 4 and 27, 1984, and January 3 and 9, 1985, (2) the Commission's letter dated July 3, 1985, and (3) the Exemption dated July 3, 1985. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 3rd day of July 1985.

For the Nuclear Regulatory Commission.

Hugh Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-16757 Filed 7-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-1257]

Finding of No Significant Impact; Amendment of Special Nuclear Material License No. SNM-1227; Exxon Nuclear Company, Inc., Richland, WA

The U.S. Nuclear Regulatory Commission (the Commission) is considering an amendment to Special Nuclear Material License No. SNM-1227 to permit the construction and operation of a uranium recovery facility. This facility is designed to recover uranium from chemical process waste solutions for recycle to the fuel conversion process.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM-1227. On the basis of this assessment, the Commission has concluded that the environmental impacts created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland this 8th day of July 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-16784 Filed 7-12-85; 8:45 am]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

L. Jacqueline Brent, Office of Personal and Administration, Overseas Private Investment Corporation, Suite 405, 1129 Twentieth Street, NW., Washington, D.C. 20527; Telephone (202) 653-2818.

OMB Reviewer

Francine Picoult, Office of Information and Regulatory Affairs, Office of Mangement and Budget, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395-7231.

Summary of Form Under Review

Type of Request: Revision
Title: OPIC Reconnaissance Survey/ Feasibility Study Application form
Form Number: OPIC-84
Frequency of Use: On occasion
Type of Respondent: Individuals; businesses or other for-profit; small businesses
Standard Industrial Classifcation Codes: All
Description of Affected Public: Same as types of respondents
Number of Responses: 130
Reporting Hours: 130
Federal Cost: $8,466
Authority for Information Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): Information will be collected to determine the eligibility of applicants for financial assistance from OPIC to conduct reconnaissance surveys or feasibility studies on proposed business projects in developing countries.

Dated: July 1, 1985.

Leo H. Phillips,

Office of the General Counsel.

[FR Doc. 85-16717 Filed 7-12-85; 8:45 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23762; 70-7124]

Southern Appalachian Coal Co.; Proposal To Pay Up to $22 Million Common Stock Dividend

July 9, 1985.

Southern Appalachian Coal Company ("Company"), 40 Franklin Road, P.O. Box 2021, Roanoke, Virginia 24022, a subsidiary of Appalachian Power Company ("Appalachian"), a subsidiary of American Electric Power Company, Inc., 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed a declaration with this Commission pursuant to section 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 46 thereunder.

The Company has disposed of substantially all of its mining assets, is no longer engaged in coal mining operations, and now only leases its remaining mining operations and receives royalties. At December 31, 1984, the Company had retained earnings in the amount of $9,483,000 and capital surplus in the amount of $49,093,000, consisting of $13,893,000 of premium on common stock and $35,200,000 of other paid-in capital. Since these amounts were far in excess of any foreseeable capital needs of the Company, it was determined that funds which were not needed by the Company should be distributed to Appalachian. Accordingly, the Company on March 21, 1985 declared and paid to Appalachian a dividend of $9,382,500, representing 99% of retained earnings.

The Company now seeks permission from this Commission to declare and pay to Appalachian an additional dividend of up to $22,000,000 but not less than $20,000,000 from capital surplus. The amount of funds available to be distributed by the Company to Appalachian, as of April 30, 1985, amounted to approximately $21.7 millions.

Pursuant to West Virginia law, a West Virginia corporation is permitted to make a distribution to its shareholders out of capital surplus if the articles of incorporation so provide or if such distribution is authorized by the affirmative vote of the holders of a majority of the outstanding shares of each class. Since the Articles of Incorporation of the Company contain no such provision, it is proposed that the distribution will be authorized by the affirmative vote of Appalachian, which is the sole holder of the issued and outstanding shares of common stock of the Company, which is the only class of securities of the Company outstanding. Immediately after the vote of Appalachian, it is proposed that the Board of Directors of the Company will declare a distribution on its common stock in an aggregate amount of up to $22,000,000 but not less than $20,000,00.

The declaration and any amendment thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 5, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16763 Filed 7-12-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22215; File No. SR-CBOE-85-13]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE") submitted on April 23, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to describe the opening rotation procedures for the Standard & Poor 100 Index ("OEX") options. The proposed rule change provides that rotations for third and fourth month options will be held in the southwest corner of the OEX pit, beginning with the fourth month and proceeding to third month options. Rotations will start at the lowest call strike price and alternate between calls and puts. First and second month OEX options will be opened simultaneously with the back month options, opening the second month first, starting at the lowest call strike price, and alternating between calls and puts. The proposed rule change has been in effect at the CBOE on a pilot basis since December 24, 1984. Under the pilot, the average time for opening rotations in OEX has been reduced from twenty to thirteen minutes, approximately. CBOE indicates that "virtually" no complaints were received by the exchange regarding the pilot.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22066, May 22, 1985) and by publication in the **Federal Register** (50 FR 23218, May 31, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the CBOE's proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 5, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–16765 Filed 7–12–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22216; File No. SR-CBOE-85-21]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted on May 10, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, for approval to list five-year Treasury note option contracts. The Exchange states that this new contract fulfills the demand for a hedging vehicle for corporate bonds having a maturity of ten years or less.

Chapter XXI of the Exchange's Rules will apply to Treasury note options, with the following amendments: (1) Rule 21.8(b) is amended to provide that Treasury note options shall have four expiration months available: The two near-term months with two further out months on the March cycle; and (2) Rule 21.8(c) is amended to provide that the exercise price for Treasury securities with a remaining term to maturity of six years or less shall be fixed at a percentage of principal amount which is an integral multiple of 1%; or 2% for Treasury securities having a remaining term to maturity of more than six years.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 22059, May 21, 1985) and by publication in the **Federal Register** (50 FR 23217, May 31, 1985). No comments were received with respect to the proposed rule filing.

The Exchange indicates that 60% of all corporate bonds issued in 1984 were ten-year maturities or less, and there is a natural demand for hedging these short maturities using a five-year note. In addition, the CBOE believes that liquidity in CBOE's Treasury bond option contracts should be enhanced as a result of listing Treasury note options.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization and, in particular, the requirements of Section 6 and the rules and regulations thereunder. The CBOE states that the proposed rule change, together with the rules in Chapter XXI, is consistent with section 6(b)(5), in particular, because it is designed to prevent fraudulent and manipulative acts and in general to protect investors and the public interest in connection with options covering undelrying Treasury notes.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the CBOE's proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 5, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–16766 Filed 7–12–85; 8:45 am]

BILLING CODE 8010-01-M

[1] CBOE presently trades thirty-year Treasury bond options.

[Release No. 22217; File No. SR-NASD-85-12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD"), submitted on May 24, 1985, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend Schedule D of the NASD By-Laws to permit the NASD to require any market maker, whose quotations appear to be no longer reasonably related to the prevailing market in a NASDAQ security, to re-enter its quotation.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22100, May 31, 1985) and by publication in the **Federal Register** (50 FR 24074, June 7, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: July 9, 1985.
John Wheeler,
Secretary.

[FR Doc. 85-16764 Filed 7-12-85; 8:45 am]
BILLING CODE 8025-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to fund for the first time one additional Small Business Development Center (SBDC) in New York (Downstate) during fiscal year 1985. This proposed SBDC would cover the following counties: Nassau, Suffolk, Bronx, Queens, Kings, New York, Richmond, Westchester, Rockland, Putman, Sullivan, Ulster, Dutchess and Orange. Currently, there are 39 SBDC's in existence. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to the proposal developer for the SBDC to be funded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through September 13, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application for funding of the proposed Small Business Development Center (SBDC). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDC will be funded at the earliest practicable date following the 60-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying this proposed SBDC and providing the mailing address of the proposal developer is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single point of contact and other interested State and local entities are expected to advise the relevant proposal developer of their comments regarding the proposed funding in writing as soon as possible. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Comments will be accepted by the proposal developer and SBA for a period of two months (60 days) from the date of publication of this notice. The proposal developer will make every effort to accomodate these comments during the 60-day period. If the comments cannot be accomodated by the proposal developer, SBA will, prior to funding the proposed SBDC, either attain accommodation of any comments or furnish an explanation to the commenter of why accommodation cannot be attained to the commentor prior to funding the proposed SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting

volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree of which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualifed small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other group designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: July 1, 1985.

James C. Sanders,

Administrator.

Address of Proposed SBDC and Proposal Developer

Mr. James L. King, State University of New York, State University Plaza, Albany, New York 12246, (518) 473-5398

[FR Doc. 85-16753 Filed 7-12-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP85-1; Notice 2]

Volkswagen of America Inc.; Denial of Petition; for Inconsequential Noncompliance

This notice denies the petition by Volkswagen of America, Inc. of Troy, Michigan, ("VWoA") to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act for noncompliances with 49 CFR 571.101 Motor Vehicles Safety Standard No. 101, *Controls and Displays*, with 49 CFR 571.105, Motor Vehicles Safety Standard No. 105, *Hydraulic Brake Systems*. The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on January 14, 1985 and an opportunity afforded for comment (50 FR 1971).

The noncompliance affects 78,000 1984 and 1985 Audi 5000S and 5000S Turbo passenger cars ("Audi 5000s" herein) and 1985 Audi 4000S and 4000S Quattro, Coupe GT, and Quattro passenger cars ("Audi 4000s" herein).

According to paragraph S5 and Table 2 of Standard No. 101 the brake system display telltale shall be identified with the word "Brake". To the same effect is paragraph S5.3.5(b) of Standard No. 105 which requires failure indicator lamps serving as a common indicator to bear the word "brake". VWoA has labelled the brake telltale lens of Audi 4000s with the International Standards Organization (ISO) symbol for brake failure warning, instead of the requisite word. Similarly, the Audi 5000S shows the ISO symbol rather than the word "Brake" on its informational readout display. NHISA has proposed use of the ISO symbol on November 4, 1982 (47 FR 49993) with several other symbols, but chose not to adopt them in the final rule published on July 27, 1984 (49 FR 30191). Audi's design engineers apparently did not realize that the ISO symbol was only a proposal and not a requirement, nor permitted, when they engineered the Audi 4000s and 5000s concerned.

VWoA argued that the noncompliance is inconsequential for several reasons. It is aware of no compliants or injuries to customers in the U.S. or anywhere in the world. The symbol is explained in the Operator's Manual furnished with each vehicle. The indicator lamps meet other requirements for such lamps. In the Audi 4000s they light up when the brake fluid is below a predetermined level, and

when the parking brake is applied. In the Audi 5000s, the indicator lamp flashes and chimes whenever a predetermined level is reached by brake fluid, by the hydraulic pressure in the brake power assist system, and by the fluid in the power steering/brake power assist unit. The application of the parking brake is indicated by a separate lamp labelled "Brake" meeting the requirements of Standard Nos. 101 and 105. VWoA believes that its noncompliance is technical only.

One comment was received on the petition; Mercedes-Benz of North America supported it and recommended that the ISO symbol be adopted, as originally proposed in 1982.

The agency has decided to deny the petition. Symbols are intended to convey information faster and more efficiently than words. Unlike other symbols such as those for headlamp or windshield wipers, the brake failure warning symbol is not easily identified. It consists of an exclamation point enclosed in a circle bracketed by two parentheses (representing brake shoes). Representatives of BMW conducted a test on symbol and word recognition, and presented that results in a 1978 SAE paper. Test subjects were asked to identify a series of words or symbols that BMW was considering for use. The subjects were to indicate that function they generally associated with the symbol and then give a more precise technical definition of that function. The word "brake" was correctly identified by 87% of the test group, and its function correctly defined by 52%. The symbol and its specific function, however, were identified by only 26% and 21% respectively. The word in this case proved far superior to the symbol.

Although the meaning of the symbol is referenced in the vehicle's owner manual, many operators do not refer to the manual, which may not even be available in older or rented vehicles. The Audi brake failure indicators may be a sufficient alert that *some* type of vehicle system is experiencing a problem but given the critical nature of the braking system a message of failure must be understood immediately. That message will not be clear when imparted by the ISO symbol.

Accordingly petitioners has failed to sustain its burden that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby denied.

(Sec. 103, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on July 10, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–16770 Filed 7–10–85; 4:37 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted To OMB for Review

July 10, 1985.

The Department of Treasury has submitted the following public information collection requirements(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0191
Form Number: ATF Form 5100.16
Type of Review: Revision
Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond
Clearance Officer: Howard Hood (202) 566–7077, Bureau of Alcohol, Tabacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

OMB Number: 1545–0166
Form Number: IRS Form 4255
Type of Review: Revision
Title: Recapture of Investment Credit

OMB Number: 1545–0214
Form Number: IRS Form 5695
Type of Review: Revision
Title: Residential Energy Credit
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,

Departmental Reports, Management Office.

[FR Doc. 85–16719 Filed 7–12–85; 8:45 am]

BILLING CODE 4810-25

United States Mint

Use of Metal Tokens; Final Statement of Policy

AGENCY: United States Mint, Treasury.

ACTION: Final Statement of Treasury Policy Regarding the Use of Metal Tokens.

SUMMARY: The United States Mint, Department of Treasury announces its final statement of policy regarding the use of metal tokens. The Mint has historically been opposed to the production and use of metal tokens because of its concern that widespread use of tokens would lead to their circulation in the community as coinage in violation of the criminal code. Exceptions to this opposition have been granted by the Mint for the use of tokens by gambling casinos on a case-by-case basis.

On September 2, 1983, the Mint notified the public that it was proposing to change its policy of opposition to metal tokens provided that certain enumerated criteria were met. *See* 48 FR 40054. Public comment was invited and received. The commenters endorsed the concept of the restrictions and advocated expanding them to insure against the unlawful use of tokens in vending machines and other coin operated devices.

On June 21, 1984, the Mint published revised token restrictions which generally adopted the increased restrictions advocated by the commenters. *See* 49 FR 2556. Public comment was again invited and received. Having analyzed these comments the Department now issues its final policy statement on the use of metal tokens. The present policy statement retains certain of the restrictions while deleting others. The final statement is aimed at providing the necessary guidance to the public to insure the protection of U.S. coinage while minimizing the adverse impact of the restrictions on legitimate users of tokens.

EFFECTIVE DATE. This policy will be effective on July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth B. Gubin, Legal Counsel, United

States Mint, Room 1032 Warner Building, 501 13th St. NW., Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Before discussing the specific comments to the previous notice, a preliminary point must be clarified. The policy which is reflected in the notice which is published today is intended for the advice and guidance of token manufacturers and users as well as the public generally. It represents the views of the Department of Treasury concerning measures which, if implemented, should minimize the possibility of a violation of the counterfeiting provisions of title 18, United States Code. This statement of policy does not prescribe mandatory specifications concerning the size, composition or other requirements for metal tokens. These matters may be the subject of state or local regulation. Rather, this notice simply informs the public, especially those who are in the business of manufacturing or using tokens, that as a general rule, the Department does not object to tokens which meet the restrictions which are set forth out in this notice. The prosecution of violations of the counterfeiting statutes is vested with the Department of Justice which will assess each claimed violation on the particular facts presented.

Summary of Comments

Approximately 36 comments were received. Commenters expressed strong opposition to several of the restrictions. First, a number of commenters were opposed to the requirements that tokens contain (1) The name and location of the establishment from which they originate on at least one side and (2) language limiting redemption of the tokens to the issuing establishment. Commenters pointed out that requiring this information adds significantly to the costs of the tokens. While large business concerns are able to absorb these costs, it is asserted that smaller business establishments which have been using a generic token without this identifying information will be unable to afford the increased costs. It is emphatically urged that these requirements be abandoned.

The Department recognizes that the identification requirements may impose significant costs upon the token user. These requirements derive from conditions that were originally placed upon casinos which were more able to absorb the costs. Their purpose is to facilitate the determination of the source of a potential violation so that appropriate remedial action may be taken. The Department believes that this goal will be attained provided that tokens contain some mark which clearly identifies the manufacturer. Accordingly, we have modified the restrictions to allow for the use of manufacturer's identifying mark or logo in place of the name of the originating establishment.

By far the most vehement opposition to the restrictions was concerned with the prohibition of certain diameter ranges for metal tokens. It was pointed out that under the most recently proposed restrictions, one of the most commonly used tokens, which is .900 inch in diameter, would be prohibited. In addition, other size tokens would be likewise not in compliance with the diameter specifications. It was pointed out that there are millions of such tokens in use throughout the United States. Commenters urged that the increased restrictions on token size were simply not necessary to achieve the Department's purpose of safeguarding against the slugging of vending machines. Moreover, commenters wished to know what mechanism would be specified for the replacement of these tokens.

The restriction on the diameter of metal tokens is the most essential means of minimizing the possibility that tokens will be unlawfully used to slug vending and other gaming machines. In view of the impact that the prohibition of a .900 inch token would have on token users throughout the United States, however, the Department has carefully reexamined its restrictions and has determined that its policy goals will be met by narrowing the prohibited ranges for these "quarter-sized" tokens to .910–.980. This range is large enough to exclude most tokens which could find their way into vending machines without excluding the popular .900 token.

Other diameter ranges have been likewise modified to allow for the continued existence of tokens which have not posed significant problems under the slugging statute.

Commenters objected to the minimum weight and thickness restrictions embodied in our previous policy statement. It is asserted that there is no reason for such restrictions since a lighter weight and thinner tokens will more easily be rejected by the coin mechanisms.

The Department has determined that the restrictions on minimum weight and thickness for tokens are not necessary in view of the protection afforded by the restrictions on token diameters. Accordingly, these restrictions have been eliminated.

A number of commenters objected to the requirements concerning the composition of the tokens, especially to the requirement that tokens which are composed of a copper based material contain more than twenty-five percent of alloying materials. In addition, commenters object to the requirement that tokens not be composed of a ferromagnetic material.

The Department has determined that the restrictions on the amount of alloying material for copper based tokens serves the purpose of providing added assurance that such tokens will not be unlawfully used instead of U.S. coinage in vending machines. Accordingly the restriction has been retained. The restriction has been modified, however, to require that the amount of alloying material be *at least 20 percent* of the token's weight. The Department believes that this modification will provide the necessary protection against slugging while minimizing its adverse impact on legitimate taken users. With regard to the prohibition against ferromagnetic material, this provision has been modified to require only that tokens not be composed of material the magnetic properties of which will result in their being accepted by vending machines. This change will not restrict tokens whose magnetic properties are so slight that they should not be accepted by the coin mechanism.

Conditions for Department Approval

The Department does not oppose the production or use of tokens which meet the following conditions:

1. Tokens should be clearly identified with the name and location of the establishment from which they originate on at least one side. Alternatively, tokens should contain an identifying mark or logo which clearly indicates the identity of the manufacturer.

2. Tokens should not be within the following diameter ranges (inches):

0.680–0.775
0.810–0.860
0.910–0.980
1.018–1.068
1.180–1.230
1.475–1.525

3. Tokens shall not be manufactured from a three layered material consisting of a copper nickel alloy clad on both sides of a pure core, nor from a copper based material except if the total of zinc, nickel, aluminum, magnesium and other alloying materials is at least 20 percent of the token's weight. In addition, tokens shall not be manufactured from material which possesses sufficient magnetic properties

so as to be accepted by a coin mechanism.

4. Establishments using these tokens shall prominently and conspicuously post signs on their premises notifying patrons that federal law prohibits the use of such tokens outside the premises for any monetary purpose whatever.

5. The issuing establishments shall not accept tokens as payment for any goods or services offered by such establishment with the exception of the specific use for which the tokens were designed.

6. The design on the token shall not resemble any current or past foreign or U.S. coinage.

The Department of Treasury believes that the observance of these restrictions will minimize the possibility of a violation of the counterfeiting statutes. The prosecution of violations of these statutes is vested with the Department of Justice which must evaluate any claimed violation on the particular facts presented.

Katherine D. Ortega,

Treasurer of the United States.

[FR Doc. 85-16519 Filed 7-12-85; 8:45 am]

BILLING CODE 4810-37-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 135
Monday, July 15, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Energy Regulatory Commission	1
Federal Home Loan Bank Board	2, 3
International Trade Commission	4
Parole Commission	5, 6, 7

1

FEDERAL ENERGY REGULATORY COMMISSION

July 10, 1985.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: 10:00 a.m., July 17, 1985.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of public information.

Consent Power Agenda, 817th Meeting—July 17, 1985, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 8843-001, Lawrence J. McMurtrey
CAP-2.
Project No. 8390-001, City of Ellensburg, Washington
CAP-3.
Project No. 7885-003, Fisheries Development Company
CAP-4.
Project No. 2266-006, Nevada Irrigation District
Project No. 8640-001, Northwest Power Company, Inc.
CAP-5.
Project No. 8644-002, Pacific Hydropower Company
CAP-6.
Project Nos. 8802-001 and 002, Birch Power Company
CAP-7.
Project No. 4939-002, Brownville Power Company
CAP-8.
Project No. 7046-001, Jamaica Waterpower Company
CAP-9.
Project No. 5927-002, Goose Creek Hydro Associates
CAP-10.
Project No. 4313-000, Forrest E. Speck, et al.
Project No. 5196-000, Essex Development Associates, Inc. and Village of Newport, New York
Project No. 4247-001, Long Lake Energy Corporation
CAP-11.
Project No. 2611-001, Scott Paper Company
CAP-12.
Project No. 7585-000, Gentry Resources Corporation
CAP-13.
Project No. 8749-000, Clearwater Hydro Company
CAP-14.
Project No. 8052-000, the Town of Jackson, Wyoming
CAP-15.
Project No. 4620-001, Carrasan Power Company
CAP-16.
Project No. 8136-001, Friends of Keeseville, Inc.
CAP-17.
Project No. 2548-002, Georgia-Pacific Corporation
CAP-18.
Docket Nos. ER85-521-000 and ER85-522-000, Kansas Gas and Electric Company
CAP-19.
Docket No. ER85-538-000, Gulf States Utilities Company
CAP-20.
Docket No. ER85-545-000, Boston Edison Company
CAP-21.
Docket No. ER85-458-000, Iowa Electric Light and Power Company
CAP-22.
Docket No. ER85-380-002, Florida Power & Light Company
CAP-23.
Docket No. ER84-604-005, Southwestern Public Service Company
CAP-24.
Docket No. ER85-375-002, Centel Corporation—Kansas
CAP-25.
Docket No. ER85-404-002, Commonwealth Edison Company
CAP-26.
Docket Nos. ER82-703-002 and ER82-703-003, New England Power Company
CAP-27.
Docket No. ER84-579-001, AEP Generating Company
CAP-28.
Docket No. ER84-348-000, American Electric Power Service Corporation
CAP-29.
Docket Nos. ER84-504-001, ER84-504-002, and ER84-504-003, Allegheny Generating Company
CAP-30.
Docket Nos. ER83-110-000 and ER84-55-000, Montaup Electric Company
CAP-31.
Docket No. ER84-654-001, Yankee Atomic Electric Company
CAP-32.
Docket No. ER84-705-002, Boston Edison Company
CAP-33.
Docket No. ER84-572-001, Utah Power & Light Company
CAP-34.
Docket No. EL84-3-001, Clifton Power Corporation

Consent Miscellaneous Agenda

CAM-1.
Docket Nos. RM84-15-001, 002, 003, and 004, generic determination of rate of return on common equity for electric utilities
CAM-2.
Docket No. RM83-53-001, obligations of sellers and purchasers of first-sale natural gas for refunds owed for collections in excess of maximum lawful prices under the Natural Gas Policy Act of 1978
CAM-3.
Docket No. RM85-7-000, revised procedures for stripper gas well category determinations under the NGPA
CAM-4.
Docket No. RM79-76-221 (Louisiana 5—addition), high-cost gas produced from tight formations
CAM-5.
Docket No. GP84-59-000, Department of Natural Resources of Louisiana, Energy Reserves Group, Inc., section 107(c)(5) NGPA determination, John Wilfert No. 1 Well, FERC JD No. 84-25246
CAM-6.
Docket No. GP84-28-000, Worldwide Energy Corporation, W.K. Hoffman B-9 Well
CAM-7.
Docket No. GP83-16-000, Phillips Petroleum Company, West B #1 Well
CAM-8.
Docket No. GP85-26-000, Philadelphia Oil Company, Rainwater Ramsey Well No. P-15, Larkin Stanley Well No. P-32, Steinman Development Well No. P-39 and Thomas Bise Well No. P-55
CAM-9.
Docket Nos. SA84-8-001, SA84-9-001, and SA84-10-001, Phillips Petroleum Company
Docket Nos. SA84-11-001 and SA84-12-001, Phillips Oil Company
CAM-10.
Docket No. RO85-5-000, Shell Oil Company

CAM–11.
Docket No. RA84–6–000, Big Muddy Oil Processors, Inc.
CAM–12.
Docket No. RA85–6–000, Utex Oil Company
CAM–13.
Docket No. RM85–19–000, generic determination of rate of return on common equity for public utilities
CAM–14.
Docket No. GP84–20–001, city of Farmington v. Amoco Gas and Amoco Production Company

Consent Gas Agenda

CAG–1.
Docket No. RP82–10–012, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CAG–2.
Docket No. RP85–165–000, Distrigas of Massachusetts Corporation
CAG–3.
Docket Nos. TA85–1–28–000 and TA85–1–28–005, Natural Gas Pipeline Company of America
CAG–4.
Docket No. RP80–72–013, Algonquin Gas Transmission Company
CAG–5.
Docket Nos. RP80–55–010, RP80–115–012, RP81–73–004, and RP82–32–005, Sea Robin Pipeline Company
CAG–6.
Docket No. RP85–141–001, Texas Gas Transmission Corporation
CAG–7.
Docket No. TA85–2–48–002, ANR Pipeline Company
CAG–8.
Docket No. TA85–1–53–006, KN Energy, Inc.
CAG–9.
Docket No. TA85–2–42–002, Transwestern Pipeline Company
CAG–10.
Docket Nos. TA82–2–33–027, RP82–33–008, and TA85–1–33–003, El Paso Natural Gas Company
CAG–11.
Docket Nos. RP85–143–001 and RP85–145–001, Texas Eastern Transmission Corporation
CAG–12.
Docket No. RP85–117–000, Alabama-Tennessee Natural Gas Company
Docket No. RP85–88–000, ANR Pipeline Company
Docket No. RP85–105–000, Arkansas-Oklahoma Gas Corporation
Docket No. RP85–119–000, Arkla, Inc.
Docket No. RP85–109–000, Caprock Pipeline Company
Docket No. RP85–100–000, Cimarron Transmission Company
Docket Nos. RP85–95–000 and 001, Colorado Interstate Gas Company
Docket Nos. RP85–91–000 and 001, Columbia Gas Transmission Corporation
Docket No. RP85–87–000, Consolidated Gas Supply Corporation
Docket No. RP85–92–000, El Paso Natural Gas Company
Docket No. RP85–75–000, Florida Gas Transmission Company
Docket No. RP85–115–000, Gas Gathering Corporation
Docket No. RP85–120–000, Kentucky-West Virginia Gas Company
Docket No. RP85–98–000, KN Energy, Inc.
Docket Nos. RP85–76–000 and 001, Lone Star Gas Company
Docket No. RP85–116–000, Louisiana-Nevada Transit Company
Docket No. RP85–82–000, Mid-Louisiana Gas Company
Docket No. RP85–80–000, Mississippi River Transmission Corporation
Docket No. RP85–137–000, MIGC, Inc.
Docket No. RP85–97–000, Montana-Dakota Utilities Company
Docket No. RP85–73–000, Mountain Fuel Resources, Inc.
Docket No. RP85–93–000, National Fuel Gas Supply Corporation
Docket Nos. RP85–90–000 and 001, Natural Gas Pipeline Company of America
Docket No. RP85–121–000, North Penn Gas Company
Docket No. RP85–113–000, Northern Natural Gas Company, division of Internorth, Inc.
Docket No. RP85–81–000, Northwest Central Pipeline Corporation
Docket No. RP85–83–000, Northwest Pipeline Corporation
Docket Nos. RP85–96–000, 001, and 002, Panhandle Eastern Pipe Line Company
Docket No. RP85–89–000, Sea Robin Pipeline Company
Docket No. RP85–94–000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. RP85–85–000, Texas Eastern Transmission Corporation
Docket No. RP85–79–000, Texas Gas Pipe Line Corporation
Docket No. RP85–79–000, Texas Gas Pipe Line Corporation
Docket No. RP85–84–000, Texas Gas Transmission Corporation
Docket No. RP85–78–000, Transcontinental Gas Pipe Line Corporation
Docket No. RP85–88–000, Transwestern Pipeline Company
Docket Nos. RP85–77–000 and 001, Trunkline Gas Company
Docket No. RP85–90–000, United Gas Pipe Line Company
Docket No. RP85–86–000, Valero Interstate Transmission Company
Docket No. RP85–104–000, Valley Gas Transmission Company
Docket No. RP85–74–000, West Lake Arthur Corporation
Docket No. RP85–108–000, West Texas Gathering Company
Docket No. RP85–127–000, Western Gas Interstate Company
CAG–13.
Docket No. RP85–113–001, Northern Natural Gas Company, division of Internorth, Inc.
CAG–14.
Docket Nos. TA85–2–42–003 and RP84–77–004, Western Gas Interstate Company
CAG–15.
Docket No. TA85–2–52–003, Transwestern Pipeline Company
CAG–16.
Docket No. TA85–3–34–000, Florida Gas Transmission Corporation
CAG–17.
Docket Nos. TA82–1–33–003, TA82–2–33–018, TA83–1–33–010, TA83–2–33–002, and TA84–1–33–001, El Paso Natural Gas Company
CAG–18.
Docket No. RP85–37–000, High Island Offshore System
CAG–19.
Docket No. RP84–18–000, South Georgia Natural Gas Company
CAG–20.
Docket No. RP84–141–000, Midwestern Gas Transmission Company
CAG–21.
Docket No. ST83–442–002, Acadian Gas Pipeline System
CAG–22.
Docket Nos. ST79–23–004 and ST81–256–003, Louisiana Intrastate Gas, a division of Celeron Corporation
Docket No. CP84–378–000, ANR Pipeline Company
Docket No. CP81–400–000, Arkla Energy Resources, a division of Arkla, Inc.
Docket No. ST84–294–000, the Town of Colfax
Docket No. CP81–416–000, Columbia Gas Transmission Corporation
Docket No. ST81–165–002, Columbia Gas Transmission Corporation
Docket No. ST84–996–000, Faustina Pipe Line Company
Docket No. ST84–441–000, Florida Gas Transmission Company
Docket No. ST82–229–001, Mid-Louisiana Gas Company
Docket No. CP84–360–000, Mid-Louisiana Gas Company
Docket No. ST79–023–003, Mid-Louisiana Gas Company
Docket No. ST81–381–000, Southern Natural Gas Company
Docket No. ST81–256–001, Southern Natural Gas Company
Docket No. ST82–479–000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. ST84–053–000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. ST81–240–002, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. ST82–433–002, Texas Eastern Transmission Corporation
Docket No. ST83–57–001, Texas Eastern Transmission Corporation
Docket No. ST83–242–001, Texas Eastern Transmission Corporation
Docket No. ST80–273–001, Texas Eastern Transmission Corporation
Docket No. ST84–824–000, Texas Gas Transmission Corporation
Docket No. CP81–333–000, Texas Gas Transmission Corporation
Docket No. ST79–25–002, Texas Gas Transmission Corporation
Docket No. ST82–24–001, United Gas Pipe Line Company
Docket No. ST79–24–001, United Gas Pipe Line Company
CAG–23.
Docket No. ST85–07–000, Phanix Transmission Company
CAG–24.
Docket Nos. ST81–258–002, ST81–437–001, ST82–127–000, ST82–127–001, ST83–134–

001, ST84-81-000, and ST84-431-000, Liberty Natural Gas Company

CAG-25.
Docket No. ST83-273-001, Delhi Gas Pipeline Corporation

CAG-26.
Docket Nos. ST84-54-000 and 001, ST83-257-000 and 001, ST84-630-000 and 001, Delhi Gas Pipeline Corporation

CAG-27.
Docket Nos. ST81-181-002, ST81-201-002, ST81-181-001, ST84-671-000, ST82-323-001, ST81-201-001, ST80-350-002, and ST80-186-002, Transok, Inc.

CAG-28.
Docket No. CI85-181-002, McMoran Offshore Exploration Company

CAG-29.
Docket No. CI64-26-013, Gulf Oil Corporation

CAG-30.
Docket No. CI85-462-000, Northern Oil & Gas, Inc.

CAG-31.
Docket No. CI85-168-000, Aceite Energy Corporation

CAG-32.
Docket Nos. G-17136-000 and RI80-234-000, Trice Production Company
Docket No. G-18516-000, Oleum Incorporated

CAG-33.
Docket No. G-10138-002, Canadianoxy Offshore Production Company

Docket Nos. G-2712-004, G-4579-027, CI60-418-000, CI61-1332-000, CI65-561-000, CI67-804-001, CI68-311-001, CI71-207-001, CI73-845-000, CI77-403-001, CI83-168-002, and CI68-1323-002, Cities Service Oil and Gas Corporation
Docket Nos. CI67-861-002, CI60-345-001, CI68-1302-002, and CI76-629-005, Conoco Inc.
Docket Nos. CI67-862-000, CI68-1308-003, and CI77-384-002, Getty Oil Company

CAG-34.
Docket Nos. RI74-186-055 and RI75-21-050, Independent Oil & Gas Association of West Virginia

CAG-35.
Docket Nos. RI74-186-056 and RI75-21-051, Independent Oil & Gas Association of West Virginia

CAG-36.
Docket Nos. RI74-186-057 and RI75-21-052, Independent Oil & Gas Association of West Virginia

CAG-37.
Docket No. CP85-16-001, Point Arguello Natural Gas Line Company

CAG-38.
Docket No. CP77-410-009, Sea Robin Pipeline Company

CAG-39.
Docket No. CP77-410-008, Sea Robin Pipeline Company

CAG-40.
Docket Nos. CP84-659-001, CP83-156-007, and 004, Transcontinental Gas Pipe Line Corporation

CAG-41.
Docket Nos. CP84-28-000 and 002, Mantaray Pipeline Company and Texas Eastern Transmission Corporation

CAG-42.
Docket Nos. CP84-21-001 and 002, Steve Bowman, et al. v. Columbia Gas Transmission Corporation, et al.
Docket Nos. CP84-69-001 and 002, Columbia Gas Transmission Corporation

CAG-43.
Docket Nos. CP84-539-001 and 002, El Paso Natural Gas Company and Producer-Suppliers of El Paso Natural Gas Company

CAG-44.
Docket No. CI85-417-000, Entrade Corporation

CAG-45.
Docket No. CI85-503-000, Pennzoil Company, Pennzoil Producing Company and Pennzoil Oil & Gas, Inc.

CAG-46.
Docket No. CI85-477-000, Consolidated Fuel Supply, Inc.

CAG-47.
Docket No. CI85-504-000, Hadson Gas Systems, Inc.

CAG-48.
Docket No. CI85-467-000, Park-Ohio Energy, Inc.

CAG-49.
Docket No. CP85-385-000, Mountain Fuel Resources, Inc.

CAG-50.
Docket No. CP85-333-000, Great Lakes Gas Transmission Company

CAG-51.
Docket Nos. CP85-89-000 and 001, Eastern Shore Natural Gas Company
Docket Nos. CP85-94-000 and 001, Columbia Gas Transmission Corporation

CAG-52
Docket Nos. CP84-630-000 and CP84-631-000 and 001, Lawrenceburg Gas Transmission Corporation

CAG-53.
Docket No. CP85-102-000, Tennessee Gas Pipe Line Company, a division of Tenneco Inc.

CAG-54.
Docket Nos. CP84-293-000 and 001 and CP84-425-000 and 001, Michigan Consolidated Gas Company and Interstate Storage Division
Docket Nos. CP77-253-016 and 018, Panhandle Eastern Pipeline Company

CAG-55.
Docket Nos. CP85-370-000 and 001, Colorado Interstate Gas Company

CAG-56.
Docket No. CP85-31-000, United Gas Pipe Line Company

CAG-57.
Docket No. CP85-358-000, Northern Natural Gas Company, division of Internorth, Inc.

CAG-58.
Docket No. CP85-55-000, National Fuel Gas Supply Corporation

CAG-59.
Docket No. CP85-49-000, Sea Robin Pipeline Company

CAG-60.
Docket No. CP85-296-000, Florida Cities v. Florida Gas Transmission Company and Houston Natural Gas Corporation

CAG-61.
Docket No. CP84-209-013, Lawrenceburg Gas Transmission Corporation

CAG-62.
Docket No. TA85-1-16-005, National Fuel Gas Supply Corporation

CAG-63.
Docket Nos. RP83-70-000 and RP85-38-000, U-T Offshore System

CAG-64.
Docket Nos. TA82-1-52-002, TA82-2-52-003, TA83-1-52-001, TA84-1-52-000, and TA84-2-52-000, Western Gas Interstate Company

I. Licensed Project Matters

P-1.
Project Nos. 5-004 and 2776-000, the Montana Power Company and Confederated Salish and Kootenai Tribes of the Flathead Reservation
Project No. 5-003, the Montana Power Company
Docket No. EL84-12-000, Confederated Salish and Kootenai Tribes of the Flathead Reservation v. the Montana Power Company

P-2.
(A) Docket Nos. EL80-19-000, 004, 005, 006, 007, 008, 009, 011, 012, 013, 014, 015, and 016, Massachusetts Municipal Wholesale Electric Company v. Power Authority of the State of New York
Docket Nos. EL80-24-000, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, and 014, Connecticut Municipal Electric Energy Cooperative v. Power Authority of the State of New York
Docket Nos. EL78-24-029, 032, 033, 034, 035, 036, 038, 039, 040, 041, and 042, Municipal Electric Utilities Association of New York State v. Power Authority of the State of New York
(B) Project No. 2216-003, Power Authority of the State of New York

II. Electric Rate Matters

ER-1.
Docket Nos. ER85-534-000, ER85-424-001, ER85-425-001, and ER85-466-001, Southwestern Electric Power Company

ER-2.
Docket No. QF85-172-000, Power Developers, Inc.

ER-3.
Docket No. QF83-425-003, Electrodyne Research Corporation (Gilberton, Pennsylvania)

ER-4.
Omitted

ER-5.
Docket No. RE81-55-000, Oglethorpe Power Corporation; Altamaha EMC; Amicalola EMC; Canoochee EMC; Carroll EMC; Central Georgia EMC; Coastal EMC; Cobb EMC; Colquitt EMC; Coweta Fayette EMC; Douglas County EMC; Excelsior EMC; Flint EMC; Grady County EMC; Habersham EMC; Hart County EMC; Irwin County EMC; Jackson EMC; Jefferson EMC; Lamar EMC; Little Ocmulgee EMC; Middle Georgia EMC; Mitchell EMC; Ocmulgee EMC; Oconee EMC; Okefenoke Rural EMC; Pataula EMC; Planters EMC; Rayle EMC; Satilla Rural EMC; Sawnee EMC; Slash Pine EMC; Snapping Shoals EMC; Sumter EMC; Three Notch EMC; Tri-County EMC; Troup County EMC; Upson County

EMC; Walton EMC; and Washington EMC

Miscellaneous Agenda

M–1.
Omitted
M–2.
Docket No. RM85–6–000, waiver of the water quality certification requirement of section 401(a) of the Clean Water Act
M–3.
Reserved
M–4.
Reserved
M–5.
Omitted
M–6.
Docket No. GP84–23–000, Stowers Oil & Gas Company, et al.
M–7.
Docket No. GP83–47–000, Oklahoma Corporation Commission, Phillips Petroleum Company, section 103 NGPA determination, Crose A No. 1 well, FERC No. JD80–59073
M–8.
Docket No. GP83–61–000, Texas Railroad Commission, Sun Exploration and Production Company, section 108 NGPA determination, Frost National Bank -C- No. 2N Well, FERC No.JD 82–39865
Docket No. GP84–36–000, Oklahoma Corporation Commission, Getty Oil Company, section 108 NGPA determination, J.E. Wise No. 2 well, FERC No. JD 84–05177
Docket No. GP84–42–000, Texas RAilroad Commission, El Paso Natural Gas Company, section 108 NGPA determination, Yoes A No. 1 Well, FERC JD No. 84–33180
Docket No. GP84–48–000, New Mexico Oil Conservation Division, Arco Oil and Gas Company, section 108 NGPA determination, J.R. Phillips "A" No. 8 Well, FERC No. JD 84–14328
Docket No. GP84–52–000, Oklahoma Corporation Commission, TXO Production Corporation, section 108 NGPA determination, State 16–1 Well, FERC No. JD80–20899
M–9.
Docket No. GP84–40–000, Mineral Resources Incorporated and Natural Gas Pipeline Company of America
M–10.
Docket No. GP85–9–000, Texas Gas Transmission Corporation
M–11.
Omitted
M–12.
Docket No. RO83–8–000, Ven-Fuel, Inc.

I. Pipeline Rate Matters

RP–1.
Docket Nos. TA85–2–18–000, 001 and 002 and TA85–1–18–003, Texas Gas Transmission Corporation
RP–2.
Docket Nos. TA85–4–17–000 and 001, Texas Eastern Transmission Corporation
RP–3.
Docket Nos. TA85–2–28–000 and 001, Natural Gas Pipeline Company of America
RP–4.
Docket No. RP79–23–023, Distrigas of Massachusetts Corporation
Docket No. RP79–24–015, Distrigas Corporation
RP–5.
Docket No. RP84–15–000, MIGC, Inc.
Docket No. RP84–7–000, Colorado Interstate Gas Company
Docket Nos. TA83–2–47–000, TA84–1–47–000, and TA84–2–47–000, MIGC, Inc.
RP–6.
Omitted
RP–7.
Docket Nos. RP80–97–000, RP81–54–000, RP81–56–000, RP82–12–000, and RP82–10–000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

II. Producer Matters

CI–1.
Docket No. CI85–135–000, Pennzoil Oil & Gas, Inc. and Pennzoil Producing Company
CI–2.
Docket No. CI78–704–002, Mitchell Energy Corporation

III. Pipeline Certificate Matters

CP–1.
Docket No. RP74–50–001, Florida Gas Transmission Company (Basic Magnesia, Inc.)
Docket No. RP74–50–002, Florida Gas Transmission Company (Wenczel Tile Company of Florida, Inc.)
Docket No. RP74–50–003, Florida Gas Transmission Company (Borden, Inc.)
Docket No. RP74–50–004, Florida Gas Transmission Company (Gardinier, Inc.)
CP–2.
Docket No. CP85–185–000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CP–3.
Docket No. CP85–364–000, Northern Natural Gas Company, division of Internorth, Inc.
CP–4.
Docket No. CP85–422–000, Northern Natural Gas Company, division of Internorth, Inc.
Docket No. CP85–478–000, Louisiana Resources Company
CP–5.
Docket No. CP85–117–000, Northwest Pipeline corporation
CP–6.
Docket No. CP68–75–012, Northern Natural Gas Company, division of Internorth, Inc.
Docket No. CI68–816–004, Phillips Petroleum Company

Kenneth F. Plumb,
Secretary.
[FR Doc. 85–16852, Filed 7–11–85; 1:52 pm]
BILLING CODE 6717–01–M

2

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: At 10:00 a.m., Thursday, July 18, 1985.
PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.
STATUS: Open Meeting.
CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).
MATTERS TO BE CONSIDERED:

Insurance Premiums
Net-Worth Requirements of Insured Institutions

Jeff Sconyers,
Secretary.
[FR Doc. 85–16789 Filed 7–11–85; 3:25 pm]
BILLING CODE 6720–01–M

3

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: Friday, July 19, 1985, at 10:30 a.m.
PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.
STATUS: Open Meeting.
CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).
MATTERS TO BE CONSIDERED:

Securities Offerings
Finance Subsidiaries
D.C. Branching

Jeff Sconyers,
Secretary.
[FR Doc. 85–16790 Filed 7–11–85; 3:25 pm]
BILLING CODE 6720–01–M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE–85–29]

TIME AND DATE: At 11:00 a.m., Friday, July 19, 1985.
PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.
STATUS: Open to the public.
MATTERS TO BE CONSIDERED:

1. Petitions and Complaints:
   a. Cellulose acetate hollow fiber artificial kidneys (Docket No. 1213)—briefing and vote.
2. Investigation 731–TA–269 [Preliminary] (Nylon impression fabric from Japan)—briefing and vote.
3. Any item left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,
Secretary.
[FR Doc. 85–16788 Filed 7–10–85; 4:48 pm]
BILLING CODE 7020–02–M

5

UNITED STATES PAROLE COMMISSION

DATE AND TIME: Monday July 22, 1985—2:00 p.m.–5:00 p.m.

PLACE: 525 Griffin Square, Suite 820, Dallas, Texas.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of information of a personal nature regarding certain inmates, parolees, investigative, enforcement or administrative personnel or others, the disclosure of which would constitute a clearly unwarranted invasion of their personal privacy. Consideration of information containing investigative techniques and procedures.

2. Consideration of revision of the agency's personnel rules and/or practices, and related personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Ms. Mary Armstrong, Chairman's Office, (301) 492–5990.

Dated: July 8, 1985.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 85–16825 Filed 7–11–85; 11:38 am]

BILLING CODE 4410–01–M

6

UNITED STATES PAROLE COMMISSION

DATE AND TIME: Monday, July 22, 1985, 9:00 a.m. to 1:00 p.m.

PLACE: 525 Griffin Square, Suite 820, Dallas, Texas 75202.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 25 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases orginally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Analyst, National Appeals Board United Parole Commission, (301) 492–5987.

Dated: July 10, 1985.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 85–16826 Filed 7–11–85; 11:38 am]

BILLING CODE 4410–01–M

7

UNITED STATES PAROLE COMMISSION

PLACE: 525 Griffin Square, Suite 820, Dallas, Texas 75202.

DATE AND TIME:

Tuesday, July 23, 1985—9:00 a.m. to 5:30 p.m.
Wednesday, July 24, 1985—9:00 a.m. to 5:30 p.m.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of open business meeting of April 22–24, 1985 and open conference call meeting of June 26, 1985.

2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Research, Case Operations, and the Administrative Sections.

3. Petitions for rulemaking concerning disclosure of presentence reports.

4. Cross training of professional staff through part-time work in different regions.

5. Waiver of parole dates resulting in new hearing on next available docket.

6. Check list for rewarding inmate assistance under 28 CFR 2.63.

7. Warrant applications and rewording of F–2 Forms.

8. Parolees as informants.

9. Travel request forms.

10. Inter-regional warrant requests.

11. Limitation on written material at hearings.

12. Dispositional revocation hearings—proposed modification of 28 CFR 2.47.

13. Deletion of rule at 28 CFR 2.62 regarding minimum sentence reduction.

14. Amendment of rule at 28 CFR 2.40(13) to require satisfaction of certain court ordered obligations as conditions of release.

Consent Agenda

The following Consent Agenda Items shall be deemed adopted by consent and will not be discussed at the meeting unless a request to discuss a particular item has been received by July 18, 1985.

15. Technical revisions to disclosure rules and procedures under 28 CFR 2.55 and 2.56.

16. Obsolete rules and procedures.

17. Good time credit—inapplicability to violator terms.

CONTACT PERSON FOR MORE INFORMATION: Peter B. Hoffman, Director of Research, United States Parole Commission, (301) 492–5980.

Dated: July 10, 1985.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 85–16827 Filed 7–11–85; 11:38 am]

BILLING CODE 4410–01–M

federal register

Monday
July 15, 1985

Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 264, 265, 266, 270, 271, and 280

Hazardous Waste Management System; Final Rule

VOL 50 ISS 135 JUL 15 1985 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 266, 270, 271, and 280

[SWH-FRL 2724-6]

Hazardous Waste Management System; Final Codification Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984 (HSWA). This new statute makes many changes to EPA's existing hazardous waste management program. The purpose of this rule is to amend EPA's existing hazardous waste regulations to reflect those statutory provisions that have immediate or short-term effects on the regulated community. This rule also adds Part 280 to the EPA regulations to incorporate the interim prohibition of new section 9003(g), added by the 1984 Amendments. This section prohibits the installation of any new underground storage tank for regulated substances unless the tank is protected against corrosion and structural failure and is compatible with the substance to be stored.

EFFECTIVE DATE: These rules become effective July 15, 1985.

ADDRESSES: The official record for this rulemaking is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Holidays.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Jim O'Leary, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Toll free: RCRA Hotline (800-424-9346). In Washington, D.C.: (202-382-3000).

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
III. Purpose of Today's Rule
IV. Other Elements of EPA's Strategy for Implementing Amendments
V. Section by Section Analysis of Regulatory Changes
A. Land Disposal Amendments
1. Liquids in landfills
2. Minimum technological requirements
3. Corrective action
4. Ground-water monitoring variances
5. Salt dome formations, salt bed formations, underground mines, and caves
6. Dust suppression
7. Underground injection
B. Small Quantity Generators
C. Permits and Interim Status
1. Preconstruction ban/TSCA Exception
2. Permit life
3. Authority to add conditions
4. Expansion of interim status for newly regulated units
5. Loss of interim status for failure to submit Part B
D. Burning and Blending of Hazardous Waste
1. Ban on hazardous waste in certain cement kilns
2. Labeling of hazardous waste fuels
3. Exception to labeling requirement
4. Household waste
5. Minimum technological requirements for incinerators
E. Exposure Information and Health Assessments
F. Delisting Procedures
G. Research, Development, and Demonstration Permits
H. State Authorization
1. Applicability of today's rule in authorized States
2. Public availability of information
3. Extension of Interim Authorization expiration date
4. Authorization under the HSWA: application and revision requirements
I. Hazardous Waste Exports
J. Waste Minimization
K. Financial Responsibility
L. Underground Storage Tanks
VI. Regulatory Analysis
A. Executive Order 12291: Regulatory Impact Analysis
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Estimated Cost of the Final Rule

I. Authority

These regulations are issued under authority of sections 2002(a), 3001, 3002, 3004, 3005, 3006, 3010, 3015, 3017, 3019, 9001, and 9003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922, 6924, 6925, 6926, 6930, 6935, 6937, 6939, 6991, and 6993.

II. Background

On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984 (HSWA), a major new statute that will require profound changes in the way that this country manages hazardous wastes. A brief summary of the new law's major provisions indicates the magnitude of the changes:

1. A new program for banning wastes from land disposal.

2. Prohibitions against certain land disposal practices (e.g., placement of liquids in landfills; placement of waste in salt bed formations, mines, and caves; use of hazardous waste as a dust suppressant; and certain types of underground injection).

3. Minimum technological measures for landfills, surface impoundments, and incinerators.

4. Expanded requirements for ground-water monitoring and cleanup at permitted facilities.

5. Requirements for retrofitting certain existing surface impoundments with liners.

6. Authority to expedite permits for new and innovative treatment technologies to foster research and development.

7. Authority to require permit conditions beyond the scope of EPA's existing regulations.

8. Tighter controls on small quantity generators of hazardous waste.

9. Requirements to identify additional hazardous wastes.

10. A full assessment of the hazards posed by a waste before EPA may delist it.

11. Requirements for thorough inspections of State and Federal facilities.

12. Enhanced Federal enforcement authorities (including the ability to issue "corrective action orders" to interim status facilities).

13. Specific controls on the burning and blending of hazardous wastes as fuels.

14. Specific requirements for the regulation of used oil.

15. Tighter controls on the export of hazardous wastes.

16. A new program for identifying the health risks presented by surface impoundment and landfill facilities.

17. An expanded program for the regulation of solid waste management facilities.

18. Greater citizen involvement in "imminent and substantial hazard" cases under section 7003.

19. A major new program for regulating underground storage tanks.

20. The establishment of a National Ground Water Commission.

These comprehensive amendments are all the more significant because of the ambitious schedules the Congress has established for the imposition of these requirements. Many of the provisions are already in effect; others go into effect within very short time frames. Other sections of the statute establish "hammer" provisions (i.e., requirements that go into effect by statute if EPA fails to issue regulations by certain dates).

These new amendments present serious new challenges to EPA, the regulated community, and the public at large. The first of these challenges is the

task of developing a working understanding of the new statute's provisions. To fully appreciate the changes to EPA's hazardous waste program that have been made by this statute, one must not only become familiar with the specifics of individual provisions but also must understand the interrelationships that exist among the various sections of the law.

As will be described in more detail in the next section, today's rule is EPA's effort to facilitate such an understanding of the new amendments to RCRA. In EPA's view, an early, clear articulation of the regulated community's new responsibilities is an essential step in any strategy for the effective implementation of the Congress' will.

III. Purpose of Today's Rule

The purpose of today's rule is to incorporate into the existing Subtitle C regulations a set of requirements from the new RCRA amendments that become effective as a matter of statute in the short term. EPA is making these modifications to the existing rules through a final rule that will be immediately effective. In addition, EPA is adding a new interim prohibition on the installation of certain new underground storage tanks. In light of the fact that this rule is being issued before there has been an opportunity for public comment, EPA has, for the most part, simply codified into the regulations the statutory language associated with each provision.

Specifically, today's rule addresses the following provisions of the RCRA amendments:

1. The ban on placement of bulk liquid hazardous waste and nonhazardous liquids in landfills.
2. The permitting and interim status requirements for double liners and leachate collection systems at surface impoundments and landfills.
3. The redefinition of "regulated unit" for purposes of the ground-water monitoring and response program.
4. The obligation to institute corrective action for solid waste management units at permitted facilities.
5. The elimination of the double liner variance from the ground-water monitoring and response program allowed for landfills, surface impoundments, and waste piles.
6. The variance from ground-water monitoring allowed for certain engineered structures.
7. The ban on disposal in certain salt dome formations, caves, and underground mines.
8. The ban on use of materials mixed with dioxins or other hazardous waste for dust suppression.
9. The interim measures (i.e., manifest and destination requirements) for small quantity generators producing between 100 and 1000 kilograms of waste per month.
10. The preconstruction ban with the variance for PCB facilities having EPA approvals under TSCA.
11. The restrictions on a facility's permit life.
12. The authority to add conditions to a permit beyond those provided for in regulations.
13. The extension of interim status to facilities that become subject to permitting requirements because of new regulatory requirements.
14. The loss of interim status for facilities failing to submit Part B applications within specific deadlines and for failure to self-certify compliance with ground-water monitoring and financial responsibility requirements.
15. The ban on the burning of hazardous wastes in certain cement kilns.
16. The requirement to label hazardous waste fuels.
17. The exclusion for certain wastes burned at resource recovery facilities.
18. The additional criteria (i.e., other constituents or factors) that must be evaluated before a waste can be delisted.
19. The authority to foster innovative research and development by the issuance of special treatment permits.
20. Extending the life of interim authorization for State programs by one year.
21. The requirement that State programs assure the public availability of information.
22. The identification of the new requirements that will go into effect in authorized States prior to State authorization.
23. The requirements concerning recordkeeping for hazardous waste exports.
24. The requirements for generators and owners or operators of treatment, storage, and disposal facilities to certify that they have instituted a waste minimization program.
25. The interim prohibition on the installation of any new underground storage tank for regulated substances unless the tank is protected against corrosion and structural failure and is compatible with the substance to be stored.

EPA recognizes that many of these provisions raise interpretive questions. For the most part, EPA has avoided adding regulatory language to resolve interpretive questions. This is in keeping with EPA's view that the principal purpose of today's rule is to codify the new statutory requirements. EPA has articulated in the preamble, however, its view of what Congress intended these new requirements to be. Such statements of statutory interpretation are derived from the legislative history and EPA's view of Congressional purposes for the new requirements.

In addition, EPA intends to prepare a companion proposed rule to today's final rule that proposes modifications to the existing regulations to assist in implementing the new statutory provisions. This proposal will deal with issues that are logical outgrowths of the new provisions rather than matters addressed directly by the statutory language.

While it recognizes the importance of public comment in its rulemaking activity, EPA believes that the circumstances presented by the new RCRA amendments create a need for swift administrative action before public comment can be obtained. The Administrative Procedures Act, 5 U.S.C. 551, *et seq.*, specifically recognizes that there will be situations where an administrative agency need not go through a round of public comment before issuing a substantive rule. Under 5 U.S.C. § 553(b)(3)(B), a rule is exempt from notice and public comment requirements "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedures thereon are impractical, unnecessary, or contrary to the public interest."

The Administrative Conference of the United States has recently summarized the case law that has developed on the use of the "good cause" exemption by offering the following guidance to administrative agencies:

> Examples of the types of situations requiring use of the exemption are those in which (1) advance notice of rulemaking will defeat the regulatory objective, (2) immediate action is necessary to reduce or avoid health hazards of imminent harm to persons or property, (3) immediate action is required to prevent serious dislocation in the marketplace, and (4) delay in promulgation will cause an injurious inconsistency between an agency rule and a newly enacted statute or judicial decision. ACUS Recc. 83–2: *The "Good Cause" Exemption from APA Rulemaking Requirements*, 1 CFR Part 305.83–2 (1984).

An examination of the circumstances presented by the new amendments and the limited objectives of this rule indicates that EPA may properly invoke

the good cause exemption from the notice and comment requirements of the APA. First of all, the Congress has specifically indicated that it expects EPA to make use of the good cause exemption in the early stages of its implementation program. The Conference Report on the statute [H.R. Report No. 1133, 98th Cong., 2d Sess., 112 (1984)] states:

> For those provisions of this Act which are immediately effective, it would be contrary to the public interest and impractical for EPA to engage in the time-consuming rulemaking procedures required by Section A of the APA, 5 U.S.C. Section 553, to carry out swiftly its statutory mandate. Therefore, for such immediately effective provisions, EPA appropriately may invoke the "good cause" exemption of 5 U.S.C. Section 553(b)(B) and (d)(3), in issuing final substantive or interpretative rules to implement those provisions. This will enable the Agency to put into place swiftly the enacted requirements.

Second, immediate action serves important public policy objectives. The Congress has clearly indicated in the new statute that many of its provisions are to go into effect immediately or within a very short period of time. If that objective is to be met, it is vital that the regulated community become aware of the new requirements and fully understand how their operations must change. EPA's regulations provide the most effective vehicle for officially communicating the will of Congress. The regulated community has been working with EPA's regulations for several years now. Those regulations have become the touchstone for the hazardous waste program, defining the basic requirements that must be met. Many permits that have been issued to owners and operators of treatment, storage, and disposal facilities reference specific sections of the regulations. Many State regulatory programs are modeled after EPA's regulations; some States even incorporate EPA's regulations by reference.

Thus, by modifying the current EPA regulations to reflect the new statutory amendments, EPA is translating those requirements into the regulatory parlance with which the interested public is most familiar. This step should help to eliminate much of the confusion that would result if individual members of the regulated community had to struggle on their own to understand the effect of the new amendments on their responsibilities. They certainly would have difficulty understanding which parts of the existing regulations had been superseded by new requirements and which had not.

This effort to bring EPA's regulations into line with the new statutory provisions also has important benefits for the Agency's enforcement efforts. An important aspect of any effective enforcement program is an effort to put regulated parties on notice of what the law says so that they cannot claim that they were confused about their responsibilities.

By reducing confusion about the program and clarifying responsibilities for enforcement purposes, EPA is ultimately serving the basic purposes of the statute—the protection of human health and the environment. An atmosphere of confusion about the content of a new environmental law can only paralyze efforts by responsible segments of the regulated community to move ahead to meet their responsibilities and can only provide another excuse for those segments of the regulated community that are not inclined to comply with the law. Neither result advances the Congress' objective of promptly reducing the threats to human health and the environment posed by hazardous waste management. Thus, EPA's efforts to codify the new amendments into its regulations should provide important immediate benefits for protecting human health and the environment.

A third consideration is that EPA has tried to minimize the need for public comment on the final rule by codifying the exact statutory language for most of the provisions. Given this approach, the need for public comment on the final rule is much reduced.

For the reasons described above, EPA has concluded that there is good cause to issue today's rule prior to receiving public comment because, under the circumstances, notice and comment procedures would be impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B). For the same reasons, EPA believes that it has good cause to make today's rule immediately effective, instead of effective within 30 days, as provided for in 5 U.S.C. 553(d)(3). EPA also believes it has a sound basis for suspending the statutory six-month effective date for regulations under RCRA provided by section 3010(b). The Hazardous and Solid Waste Amendments of 1984 amended section 3010(b) to provide that EPA may shorten or provide for an immediate effective date where (1) the regulated community does not need six months to come into compliance, (2) the regulation responds to an emergency situation, or (3) there is other good cause. For the reasons described above, EPA believes there is a good cause to make today's rule immediately effective.

IV. Other Elements of EPA's Strategy for Implementing Amendments

EPA's effort to communicate with the public about these new requirements has not and will not be limited to the promulgation of today's rule. A variety of activities have already taken place or are planned to ensure that EPA receives the feedback from Regions and States and from other interested parties necessary for intelligent implementation of the new RCRA program. These activities include:

1. A working conference held on October 24 and 25, 1984, to discuss with the Regions and States options for implementing the early enactment provisions.
2. A December 11, 1984, teleconference held on the new amendments with all ten Regions, and anyone else with a satellite hook-up.
3. A series of informal meetings with State interests and with industrial and environmental groups to further explore major implementation decisions.
4. Mailing of draft guidance to the Regions, States, and outside interests for review prior to publication.
5. A series of regional and public meetings (scheduled for April 1985) to describe implementation plans.
6. Date of Enactment Alert (RSI #1) mailed November 9, 1984, to the Regions and States to inform them of the immediate impact of new provisions on permitting.
7. A series of pamphlets, brochures, and papers to further describe new provisions to affected interests.
8. Direct mailing to treatment, storage, and disposal facilities informing them of the new requirements for which they will be responsible.
9. Direct mailing to small quantity generators informing them of the manner in which they will be affected by new provisions of law.

V. Section by Section Analysis of Regulatory Changes

In this section, EPA discusses in more detail the specific changes being made to the existing regulations by today's rule.

A. Land Disposal Amendments

1. Liquids in Landfills

a. Ban on bulk or non-containerized liquid hazardous waste. The Hazardous and Solid Waste Amendments of 1984 (HSWA) amend section 3004 of RCRA by adding paragraph (c) dealing with the placement of liquids in landfills. Section 3004(c)(1) calls for an absolute ban on the placement of bulk or non-containerized liquid hazardous waste or

hazardous waste containing free liquids in any landfill after May 8, 1985.[1] The statute makes it clear that the ban encompasses hazardous waste containing free liquids even if absorbents have been added to such waste. Until this ban takes effect on May 8, 1985, the requirements set forth in EPA's existing regulations, as promulgated on July 26, 1982, remain applicable.

The rule promulgated today amends EPA's existing regulations for permitted and interim status landfills to implement this new statutory provision. Section 264.314(a) (setting forth standards for permitted landfills) and § 265.314(a) (setting forth standards for interim status landfills) have been changed to reflect the fact that the standards contained therein remain applicable only until May 8, 1985, at which point the absolute ban on the placement in landfills of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids takes effect. This absolute ban is now codified in a new paragraph (b) which has been added both to § 264.314 and to § 265.314.

The Agency interprets the ban on "placement" to include, but not be limited to: (1) Placing bulk liquids into a landfill cell where the liquids are solidified and then transferred to another landfill cell, and (2) placing treated bulk liquids still in liquid form into a landfill cell prior to solidification. The term "placement" is sufficiently broad to encompass treatment, storage, or disposal. The legislative history of a related provision, section 3004(b) (banning the placement of liquid hazardous waste in salt domes, underground mines, or caves) confirms that Congress intended the ban on "placement" to be construed broadly to prohibit even storage of material while awaiting further treatment or disposal, and to preclude use of such locations as treatment chambers. *See* 129 Cong. Rec. H8141 (daily ed. Oct. 6, 1983). Thus, it is evident that the ban is effective regardless of the purpose of placing the liquids into a landfill.

b. Ban on non-hazardous liquids. HSWA also adds new section 3004(c)(3), which imposes a ban on the placement of non-hazardous liquids in permitted or interim status landfills after November 8, 1985. This provision provides an exemption from the prohibition, however, if the owner or operator of such a landfill demonstrates to EPA's satisfaction[2] that: (1) The only reasonably available alternative for these non-hazardous liquids is a landfill or unlined surface impoundment (including units not operating pursuant to a permit or interim status) which already contains, or may reasonably be anticipated to contain, hazardous waste, and (2) the disposal of the non-hazardous liquids in the owner or operator's landfill will not present a risk of contamination to any underground source of drinking water. This exception is designed to prevent the shifting of non-hazardous liquid waste from Subtitle C landfills to muncipal landfills and unlined surface impoundments that contain or might contain hazardous wastes due to prior disposal practices. 129 Cong. Rec. H8138 (daily ed. Oct. 6, 1983). As used in this provision, the term "unlined" surface impoundment means a surface impoundment that does not meet the requirements of 40 CFR Part 264, Subpart K, as promulgated on July 26, 1982. 129 Cong. Rec. H8141 (daily ed. Oct. 6, 1983). Section 3004(c)(3) specifies that the term "underground source of drinking water" has the same meaning as provided in regulations promulgated under the Safe Drinking Water Act (*see* 40 CFR 144.3).

To implement this provision, paragraph (e) has been added to §§ 264.314 and 265.314 (f) banning the placement of a liquid which is not a hazardous waste in permitted or interim status landfills after November 8, 1985. These paragraphs essentially repeat the prohibition and exemption found in section 3004(c)(3). In addition, the permit application requirement pertaining to landfills receiving bulk or non-containerized liquid waste (§ 270.21(h)) is amended to reflect the fact that such waste may continue to be received at landfills only until May 8, 1985.

2. Minimum Technological Requirements

HSWA amends section 3004 of RCRA by adding a new paragraph (o) imposing minimum technological requirements on the owners or operators of certain landfills and surface impoundments seeking permits. HSWA also adds a new section 3015 to RCRA imposing similar requirements on certain interim status waste piles, landfills, and surface impoundments.

Specifically, section 3004(o)(1)(A) provides that a permit for a new landfill or surface impoundment, a new landfill or surface impoundment unit at an existing facility, or a replacement or lateral expansion of an existing landfill or surface impoundment unit, must require the installation of two or more liners, a leachate collection system above (in the case of a landfill) and between the liners, and ground-water monitoring. Section 3004(o)(5)(B) allows the use of a particular type of liner design pending the issuance of EPA regulations or guidance implementing the double-liner requirement in section 3004(o)(1). In today's rule, this provision appears in § 264.221(c) (for surface impoundments) and § 264.301(c) (for landfills).

Section 3004(o)(2), codified in today's rule at §§ 264.221(d) and 264.301(d), provides an exemption from the section 3004(o)(1)(A) standards for liners and leachate collection systems if alternative design and operating practices, together with location characteristics, will prevent the migration of hazardous constituents into the ground water or surface water at least as effectively as the liners and leachate collection systems. Section 3004(o)(3) exempts certain monofills from the double liner requirements. The monofill exemption is added in §§ 264.221(e) and 264.301(e).

Section 3015(b)(1) establishes standards for interim status surface impoundments and landfills. Any new unit, or replacement or lateral expansion of an existing unit, is subject to the requirements of section 3004(o) (relating to minimum technological requirements), with respect to waste received beginning May 8, 1985. According to section 3015(b)(2), the owner or operator of any unit subject to section 3015(b) must notify EPA as least sixty days prior to receiving waste and must file a Part B application within six months of the receipt of the notice. Today's rule adds new § 265.221 to codify the requirements for interim status surface impoundments. New § 265.301 contains the requirements for interim status landfills.

Section 3015(b)(3) provides that the owner or operator of a surface impoundment or landfill who installs liners and a leachate collection system in good faith compliance with EPA regulations and guidance documents, may not be required to install a different liner or leachate collection system at the time that the facility receives its first permit. Notwithstanding this provision, the Administrator may require installation of a new liner at permitting if the Administrator has reason to believe that the liner installed during interim status is leaking. The language

[1] "Free liquids" are liquids which readily separate from the solid portion of a waste under ambient temperature and pressure. 40 CFR 260.10.

[2] The language of section (c)(3) requires a determination by the "Administrator." In codifying this and other statutory provisions which use the term "Administrator," EPA has substituted the term "Regional Administrator" where this usage would be consistent with EPA's current regulations.

of this provision appears in §§ 265.221(e) and 265.301(e).

Section 3015(a) sets out standards for interim status waste piles. Any new waste pile unit, or replacement or lateral expansion of an existing unit, must comply with requirements for liners and leachate collection provided in current regulations or in revised regulations under section 3004(o). The new standards are applicable to any new waste pile unit, or replacement or lateral expansion of an existing unit, with respect to waste received beginning May 8, 1985. Today's rule has added these requirements in new § 265.254.

The following discussion explains in more detail the intended applicability and content of the minimum technological requirements.

a. Who is affected by the statutory amendments. Section 3004(o)(1)(A) specifies which facilities, units, and lateral expansions will have to comply with the new minimum technological requirements at the time of permitting. Section 3015 specifies which units and lateral expansions are subject to the new standards during interim status. This section of the preamble compares the scope of the two provisions and explains who must comply with the new requirements.

Under section 3004(o)(1)(A), a permit issued after November 8, 1984 must require liners, leachate collection, and ground-water monitoring for each new landfill or surface impoundment, each new landfill or surface impoundment unit at an existing facility, and each replacement or lateral expansion of an existing landfill or surface impoundment unit. The requirements apply with respect to waste received after the issuance of the permit.

Section 3015, which subjects the owner or operator of a waste pile, landfill, or surface impoundment operating under interim status to minimum technological requirements, uses language similar to that used in section 3004: units subject to section 3015 include any new unit, any replacement of an existing unit, and any lateral expansion of an existing unit. The provision applies with respect to waste received beginning May 8, 1985.

Currently, EPA defines "unit" in the preamble to the July 26, 1982, regulations as a continguous area of land on or in which waste is placed, or the largest area in which there is a significant likelihood of mixing waste constituents in the same area. *See* 47 FR 32289. This definition envisions a unit as a defined or bounded area designed to contain waste, with either natural or artificial boundaries. The legislative history to HSWA confirms that Congress intended "unit" to be defined as in the preamble to the EPA regulation published on July 26, 1982, and as further defined by EPA. *See* H.R. Rep. No. 198, 98th Cong., 1st Sess. part 1, at 60 (1983).

Consistent with this definition, EPA considers that the available physical evidence (e.g., berms, excavation, or other construction) offers the best indication of where the boundaries of a unit are located. Other objective information, such as operating records or the Part A permit application, also may be used to identify the boundaries of a unit.

Surface impoundments will generally be either excavated or bounded by dikes. Similarly, most landfill trenches or cells are excavated and the boundaries of the unit will be readily recognizable. For certain areafills and waste piles, where no defined boundaries exist and no construction or excavation is necessary or planned (because waste is placed on the unprepared land surface), the boundaries of the unit will be determined based on various objective factors, such as evidence in the facility operating record or the Part A permit application, which would indicate whether a particular area was intended to be an individual unit (i.e., a bounded area where waste will be placed).

Neither the statutory language nor the legislative history specifically provides an interpretation of the term "lateral expansion." A lateral expansion would be defined as an expansion of the boundaries of the existing unit. Hence, if an existing interim status surface impoundment or landfill unit expands after November 8, 1984 to cover new land area, the expanded area must comply with the double liner and leachate collection requirements if that area is still receiving waste on May 8, 1985. Expansion is usually accomplished in a surface impoundment by moving dikes to create additional capacity, or in a landfill by excavating additional areas to enlarge an existing trench.

For interim status purposes, section 3015 specifies that the new requirements apply to a lateral expansion of an existing unit that is within the "waste management area" identified in the Part A permit application.[3] In codifying the new interim status requirements in §§ 265.221(a), 265.254, and 265.301(a), EPA has used the term "area," rather than the term "waste management area" used in the statute. EPA believes Congress intended the term "waste management area" to refer to the area identified in the original or amended Part A. The term "waste management area" as used in EPA regulations has a precise meaning: it designates the area on which waste will be placed during the active life of a *regulated unit. See* 40 CFR 264.95(b). Because "regulated unit" is a term of art under the ground-water monitoring and response program, the use of the term "waste management area" will not always be appropriate in the context of the provision dealing with double-liner requirements. It is reasonable to assume that Congress, in using the term, intended to refer to the area designated in the Part A permit application, not "waste management area" as the term is used in § 264.95(b).

A "replacement" waste pile or surface impoundment unit is a unit that is taken out of service and emptied by removing all or substantially all waste from it. The unit must be brought into compliance with the minimum technological requirements before it can be reused. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 24 (1983).

In codifying sections 3004(o)(1)(A) and 3015, EPA had to determine what the terms "new" and "existing" should mean in this context. The statutory scheme, the legislative history, and the existing regulatory system support the conclusion that the terms "new" and "existing" must have different meanings for the purposes of interim status (section 3015) and of permitting (section 3004(o)(1)).[4]

The language of section 3015, and the relationship of this provision to section 3004(o), dictate that the applicability of the minimum technological requirements to interim status units be determined with reference to the date of enactment of HSWA, November 8, 1984. For

[3] The language of section 3015 refers to a lateral expansion of an existing unit that is "within the waste management area identified in the permit application submitted under Section 3005." EPA has interpreted the phrase "permit application submitted under section 3005" to mean the Part A permit application. *See* S. Rep. No. 284, 98th Cong., 1st Sess., 24 (1983).

[4] The definitions of "new facility" and "existing facility" set out in EPA's current regulations at 40 CFR § 260.10 (October 21, 1976 for "new" facilities, and November 19, 1980 for "existing" facilities), cannot be used for the new regulations, because the applicable dates do not relate to the purposes of the liner amendments in HSWA.

New section 3004(o)(4) (requiring EPA to promulgate standards on leak detection systems within thirty months) does provide a definition of "new unit" as a unit on which construction commences after the promulgation of regulations under section 3004(o)(4). However, the statute expressly restricts the use of that definition to the purposes of section 3004(o)(4). Such a definition would not be appropriate for section 3004(o)(1), which goes into effect on the date of enactment of HSWA.

purposes of section 3015, a new unit, replacement of an existing unit, or lateral expansion of an existing unit is defined as a unit, replacement, or lateral expansion that first receives waste after November 8, 1984. Such a unit or expansion must comply with the minimum technological requirements with respect to waste received beginning May 8, 1985.[5]

This interpretation of section 3015 tracks the unambiguous legislative history to this provision. The legislative history defines new units, replacements, and lateral expansions for the purposes of section 3015 as those units or lateral expansions that first receive waste after the date of enactment of HSWA (November 8, 1984). The legislative history specifies that any such unit or expansion must comply with the minimum technological requirements if it continues to receive hazardous waste six months after enactment (May 8, 1985). *See* S. Rep. No. 284, 98th Cong., 1st Sess. 24 (1983).

Thus, any new unit, replacement, or lateral expansion of an existing unit that first receives waste after November 8, 1984 is subject to the new requirements. *If* such a unit is still receiving waste on May 8, 1985, the minimum technological requirements must be in place on that date. In effect, the statute allows such a unit or lateral expansion a six-month period from the date of enactment of HSWA to come into compliance with the new standards.

Moreover, the entire unit or lateral expansion is subject to the new standards if the unit continues to receive waste after May 8, 1985. This means that if waste has been placed in a new unit or lateral expansion prior to May 8, 1985, the owner or operator must still bring the *entire* unit into compliance with the new liner and leachate collection standards in order to continue using the unit after May 8, 1985. The language and legislative history of section 3015 both require that "new units" have the required liners and leachate collection systems in order to receive waste after May 8, 1985. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 24 (1983). The provision acts to give owners and operators the option of either closing new units or bringing the units into compliance with the double liner and leachate collection requirements.

Under section 3015, then, several options are available for a new unit or lateral expansion:

(1) If the unit continues to operate on May 8, 1985, an owner or operator who wishes to continue using the whole unit must line the entire unit in accordance with the new requirements. If the unit has received waste between November 8, 1984, and May 8, 1985, the owner or operator will have to retrofit.

(2) An owner or operator may be able to restructure a unit that has received waste between November 8, 1984, and May 8, 1985, by creating a barrier between the area that contains waste and any empty area (e.g., a berm within a landfill trench). The empty area would then constitute a new unit which can receive waste after May 8, 1985, if it complies with the new statutory requirements. To avoid retrofitting in this situation, the owner or operator would have to cease placing waste into the portion of the old unit that had received waste between November 8, 1984, and May 8, 1985.

(3) If a new unit or a replacement or lateral expansion of an existing unit operating under interim status stops receiving hazardous waste before May 8, 1985, the unit need not comply with the minimum technological requirements. In other words, section 3015 does not impose any new requirements on an interim status unit or lateral expansion that first receives waste after November 8, 1984, but ceases receiving waste before May 8, 1985.

The above analysis suggests that if a unit had received waste prior to the date of enactment of HSWA, it would automatically be exempt from the minimum technological requirements. However, the legislative history accompanying section 3015 indicates that in addition to having already received waste by the date of enactment, a unit must also be "operational" by that date in order to be exempt from the new requirements. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 24 (1983). EPA believes that in order to be "operational" as of November 8, 1984, a unit must have been constructed to comply with all Federal, State and local requirements, including licenses and permits, in effect prior to the enactment of HSWA, so that as of November 8 there was no legal impediment to the operation of the unit. EPA believes that Congress would not have viewed a unit as being operational unless it was authorized to receive waste and had the legal right to operate.

If, for some reason, the entire unit was not operational on November 8 (for example, a liner or leachate collection system required by a State permit was not in place), only the part of the unit which was ready to receive waste in accordance with existing requirements in effect on November 8, 1984, will be exempt from the new requirements. EPA believes that this is the only area that can qualify as an "existing unit" under section 3004(o) given this legislative history. An owner or operator who has installed liners or leachate collection systems which exceed the applicable Federal, State or local requirements in effect on November 8, 1984, need not have completed such installation by November 8 in order for the unit to be exempt from the new double liner provisions (as long as the applicable legal requirements have already been complied with). It should be emphasized that in order to be exempted from the new minimum technology requirements, the unit must satisfy both criteria enumerated in the legislative history of the bill from which this provision was drawn: the unit must already have begun receiving waste by the date of enactment of HSWA, and it must have been fully operational by that date.

Section 3015 does not expressly identify the type of waste a unit must contain in order to qualify as an existing unit. Based on the purposes of HSWA and on current regulatory practice, a unit should qualify as an existing unit if it has received hazardous wastes or solid wastes (as defined in 40 CFR 261.2) or both before November 8, 1984. This characterization is appropriate for the purposes of HSWA because it exempts from the new requirements those units for which retrofitting would most likely be impracticable or dangerous. Retrofitting may be burdensome not only for wastes identified or listed as hazardous, but also for many non-hazardous solid wastes as well. This rationale is also consistent with the provision in current regulations exempting from the single liner requirements those units for which retrofitting would be impracticable or burdensome. *See* 47 FR 32290, 32315.

As noted above, while section 3015 defines the applicability of the minimum technological requirements to interim status units, section 3004(o)(1)(A) applies the requirements to permitted

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[5] The applicability provisions for interim status facilities are the same for waste piles, landfills, and surface impoundments. Although section 3015 deals separately with waste piles (section 3015(a)) and with surface impoundments and landfills (section 3015(b)), the two sections use identical language: both 3015(a) and 3015(b) refer to new units, replacements and lateral expansions of existing units.

Section 3015(a) differs from section 3015(b) in that the technical requirements imposed on waste piles (a single-liner system) are not the same as the technical requirements imposed on landfills and surface impoundments (a double liner system). These technical requirements are further explained in Sections b. and d. below.

landfills and surface impoundments.[6] In the context of the permit program, new facilities, new units, and replacements or lateral expansions of existing units refer to those units or lateral expansions that first receive waste after the date of permit issuance. Such facilities, units, replacements, or lateral expansions must comply with the minimum technological requirements under section 3004(o)(1)(A).

Today's regulations interpret section 3004(o)(1)(A) to apply to all facilities that receive a permit after the date of enactment of HSWA. The language of section 3004(o)(1)(A) could be read to impose the minimum technological requirements only on those facilities for which a Part B application is received after the date of enactment.[7] Such a limitation, however, would be inconsistent with the new standards established in section 3015, requiring interim status units that first receive waste after the enactment of HSWA to comply with the minimum technological requirements of section 3004(o). If applied literally, the statutory language could be read to require that a facility comply with minimum technological requirements during interim status but be relieved from these same requirements after permitting if the permit application was received prior to November 8, 1984.

For example, an interim status landfill for which a Part B application was submitted prior to November 8, 1984, would still be subject to new section 3015 during interim status. (The timing of the submission of the Part B application does not affect the applicability of the minimum technological requirements during interim status, because section 3015 applies to all new interim status units and expansions.) If several trenches were planned at the landfill, any new interim status trench that began receiving waste after November 8, 1984 and continued to receive waste after May 8, 1985, would have to comply with the new double liner requirements. After the facility received its permit, it would be subject to the requirements of section 3004(o). Applied literally, the language of section 3004(o) could exempt from the double liner requirements any trenches which first received waste after permit issuance, if the facility's Part B application was submitted before November 8, 1984. In consequence, the minimum technological requirements would apply to new units at such a facility only until the facility received its permit, at which time any new units at the same facility would be exempted from the requirements.

Such a result cannot be reconciled with the structure of the treatment, storage, and disposal standards that EPA has pursued since the inception of the hazardous waste program. EPA has operated on the assumption that shifting a facility from interim status to permitting results in stricter controls, or at least no less stringent requirements, on the facility. The original theory behind the interim status standards was that they constituted a subset of the standards EPA planned to impose during permitting. *See* 45 FR 33159. EPA does not believe that Congress intended to reverse that basic principle of the RCRA program with this amendment. No such intent can be drawn from the statutory language or legislative history. Certainly it cannot be concluded that Congress intended to have EPA downgrade environmental controls when it issued a permit.

Therefore, today's rule interprets section 3004(o)(1)(A) to apply to all facilities receiving a permit after November 8, 1984, regardless of when the Part B was submitted. However, neither the statutory language nor the legislative history mandates the minimum technological requirements of section 3004(o)(1)(A) for facilities that received permits on or before November 8, 1984. Accordingly, today's regulation does not impose the requirements on facilities that received permits by that date.

An additional provision, paragraph (b)(3) of section 3015, outlines EPA's authority during the permitting process to require the retrofitting of liners and leachate collection systems installed in interim status landfills and surface impoundments. (This provision does not apply to waste piles.) Section 3015(b)(3) provides that if the interim status liners and leachate collection systems have been installed in good faith, EPA may not require the unit to retrofit at the time the facility receives its first permit.

Section 3015(b)(3) also provides an exception to the good faith provision. The Administrator is authorized to require installation of a new liner when the Administrator has reason to believe that the liner installed during interim status is leaking.

EPA has construed its authority to require retrofitting under section 3015(b)(3) as being limited to the time of permitting. Neither the statutory language nor the legislative history suggests that Congress intended to give EPA a broader authority under section 3015(b)(3) to require interim status units to retrofit prior to issuance of a permit.[8] (For a discussion of the technical requirements associated with the good faith provision, see Section c. below.)

Existing units, as noted above, are not affected by the new law. A landfill or surface impoundment unit that already contained waste and was operational on November 8, 1984, qualifies as an existing unit under the new law: it is an existing unit under section 3015 (interim status) because it received waste and was operational before the date of enactment of HSWA, and it is also an existing unit under section 3004(o)(1) (permitting) because it received waste before permit issuance. Therefore, the entire unit is exempt from the new minimum technological requirements. However, EPA's current regulations do require the lining of partial units at the time of permit issuance: Section 264.221(a) (for surface impoundments) and § 264.301(a) (for landfills) require the portions of units not covered with waste at permit issuance to install a single liner (with a leachate collection system above the liner, in the case of a landfill). This means that even if a unit is exempt from the new double liner standards, it is still subject to EPA's current single liner standards at permitting. Nothing in HSWA suggests that Congress intended entirely to invalidate these regulations; rather, the regulations are superseded in part by the standards in new sections 3015 and 3004(o)(1)(A). Today's rule amends existing §§ 264.221(a) and 264.301(a) to limit the applicability of those provisions to units which are exempt from the new double liner standards.

In summary, the combined effect of sections 3004(o)(1)(A) and 3015 is to require any unit, replacement, or lateral expansion that first receives waste after November 8, 1984 to comply with the minimum technological requirements on May 8, 1985 (if such unit, replacement, or lateral expansion is still receiving waste on that date), or at permitting, whichever occurs first. Landfill and surface impoundment units that install

[6] Section 3004(o)(1)(A) applies only to permitted landfills and surface impoundments and does not impose any new requirements on permitted waste piles. All permitted waste piles will continue to be subject to the current regulation, § 264.251(a)(1), which requires the portions of units not covered with waste at permit issuance to have a single liner and leachate collection system.

[7] Section 3004(o)(1)(A) refers to facilities "for which an application for a final determination regarding issuance of a permit under section 3004(c)" is received. Today's rule interprets this phrase to mean a Part B application.

[8] This is not the only authority, however, under which a retrofit requirement might be imposed. As discussed in Section V.A.3. of this preamble, EPA has authority under setion 3008(h) to issue orders requiring corrective action at interim status facilities, which may include source control measures such as retrofitting of liners.

double liners and leachate collections systems in good faith during interim status cannot be required to retrofit at the time of first permitting unless the liner is leaking. Any landfill or surface impoundment unit that received waste and was operational before November 8, 1984, is exempt from the statutory minimum technological requirements but must comply with the Agency's current single liner regulations at permitting.

b. Technical requirements: Liners and leachate collection systems. New section 3004(o)(1)(A)(i) adds a provision requiring new units and lateral expansions and replacements of existing landfills and surface impoundments that receive permits after November 8, 1984, to have two or more liners. Surface impoundments must have a leachate collection system between the liners, while landfills must have a leachate collection system above and between the liners. These new requirements are codified in §§ 264.221(c) (setting out design and operating requirements for permitted surface impoundments) and 264.301(c) (setting out design and operating requirements for permitted landfills). Every landfill or surface impoundment subject to the new law must meet the statutorily mandated minimum technological requirements for two or more liners and a leachate collection system above and between the liners (for landfills) and two or more liners with a leachate collection system between the liners (for surface impoundments), unless the conditions for a statutory variance are met. (See Section e. below for a discussion of variances.)

The Agency interprets section 3004(o)(1)(A)(i) to require that the liner and the leachate collection system between the liners extend to any area of the unit that is in contact with the waste. This interpretation of the statutory requirement is consistent with the Agency's current regulatory practice regarding the design of liners and leachate collection systems. Congress intended that the Agency's existing design standards provide the basis for interpreting the new minimum technological requirements. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 27 (1983); H.R. Rep. No. 198, 98th Cong., 1st Sess. part 1, at 63 (1983). In addition, the legislative history suggests that the leachate collection system should act both as a leachate collection and removal system and a leak detection system. These purposes can be achieved only if the liners and the leachate collection system between the liners cover all surfaces of the unit that are in contact with the wastes. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 28 (1983); H.R. Rep. No. 198, 98th Cong., 1st Sess. part 1, at 62, 63 (1983).

Sections 264.221(c) and 264.301(c) provide a broad narrative standard for the new liner requirement: the statutorily mandated double liners and leachate collection systems shall "protect human health and the environment." This broad standard is drawn directly from the statutory language in section 3004(a). While section 3004(o)(1) does not specifically set forth a standard, that section is ultimately designed to implement the mandate of section 3005(a).[9] It must be assumed that Congress wanted EPA to issue double liner standards "as necessary to protect human health and the environment" when enacting section 3004(o).

Under section 3015(b)(1), landfills and surface impoundments operating under interim status must comply with the minimum technological requirements set out in section 3004(o). To implement this statutory requirement, today's rule requires interim status landfill and surface impoundment units to comply with the liner and leachate collection requirements set out in the new Part 264 regulations described above. Specifically, new § 265.221(a) requires interim status surface impoundments to install liners and leachate collection systems in compliance with § 264.221(c). Similarly, new § 265.301(a) requires interim status landfills to install liners and leachate collection systems in compliance with § 264.301(c).

Section 3004(o)(5)(A) requires EPA to promulgate regulations or issue guidance documents implementing the requirements of section 3004(o)(1) within two years after the enactment of HSWA. Until the effective date of such regulations or guidance documents, section 3004(o)(5)(B) provides that the requirement for the installation of two or more liners may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period the facility remains in operation (including any post-closure monitoring period) and a lower liner designed, operated and constructed to prevent the migration of any constituent through the lower liner during such period. The statute further provides that a lower liner shall be deemed to satisfy this requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second. This interim liner standard is codified in §§ 264.221(c) and 264.301(c). The statute makes it clear that the standard set out in section 3004(o)(5)(B) will be superseded by EPA regulations or guidance documents implementing the statutory requirement contained in section 3004(o)(1). The Congress viewed this interim design as a measure intended to fill the gap before EPA acted. *See* 130 Cong. Rec. S9182 (daily ed. July 25, 1984).

The statute does not mandate the use of the liner standard set out in section 3004(o)(5)(B) during the period prior to the issuance of implementing regulations or guidance; rather, the statute provides that the requirement for two or more liners "may" be satisfied by following section 3004(o)(5)(B). The Agency believes that, during this interim period, an owner or operator who wishes to install a liner system other than the one described in section 3004(o)(5)(B) must meet the broad narrative standard of protection of human health and the environment.

c. Requirements under the good faith provision. As noted in Section a. above, section 3015(b)(3) provides that if the owner or operator has installed liners and a leachate collection system pursuant to the requirements of section 3015 and in good faith compliance with regulations and guidance documents governing liners and leachate collection systems, the Administrator shall not require the owner or operator to install a different liner or leachate collection system for the unit when issuing the first permit, except that a new liner may be required if the Administrator has reason to believe that a liner installed during interim status is leaking.

The intent of this provision was to provide that anyone who followed EPA guidance documents would be presumed to have acted in good faith. Retrofitting would be required in cases involving fraud or gross noncompliance, including failure to install a liner or leachate collection system, installation of a liner or leachate collection system not in compliance with EPA guidance documents, or inadequate documentation of any major design feature or construction activity. In addition, failure to submit the required notice prior to receipt of waste (see Section g. below) would result in the elimination of the "good faith" protections of this provision. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 24–25 (1983).

In order to determine whether a liner system has been installed in good faith,

[9] Section 3004(o) begins with the phrase "The regulations under subsection (a) of this section shall * * *."

the Agency will need to have information showing that all appropriate units have been lined in accordance with EPA regulations and guidance documents. The owner or operator should provide the Agency with sufficient information to allow the Agency to determine what areas at any interim status facility are new units, or replacements or lateral expansions of existing units, as of November 8, 1984. EPA intends to issue guidance documents on the installation of liners and leachate collection systems and on recordkeeping. EPA anticipates that the owner or operator will be keeping information showing that he complied with EPA guidance in the facility operating records described in § 265.73. The Agency's upcoming liner guidance will also discuss a construction quality assurance (CQA) plan. Such a plan would document the liner design, materials, and installation procedures. The Agency will review the operating records and other documents at permitting to assist in its determination of good faith.

d. Waste piles. As discussed in Section a. above, section 3004(o), which establishes new double liner requirements for permitted landfills and surface impoundments, does not apply to waste piles. The existing requirements for a single liner and leachate collection system, as set out in § 264.251, remain in effect for permitted waste piles.

HSWA does impose new requirements on interim status waste piles. Section 3015(a) subjects the owner or operator of a waste pile operating under interim status to the requirements for liners and leachate collection systems or equivalent protection, as set out in EPA regulations or as revised under section 3004(o) (relating to minimum technological requirements). Essentially, the language in section 3015(a) provides that interim status waste piles must comply either with standards established under section 3004(o), or with standards in current regulations. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 24 (1983). EPA has not issued new standards for waste piles under the authority of section 3004(o). Therefore, section 3015(a) requires interim status waste piles to comply with requirements for a single liner and leachate collection system, as set out in existing § 264.251(a) (dealing with permitting standards for waste piles). Today's rule adds new § 265.254 to codify that provision.

The reference in section 3015(a) to "equivalent protection" is intended to authorize waste piles to use the variances to the liner and leachate collection system requirements in current regulations. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 25 (1983). EPA construes this provision to mean that owners and operators of interim status waste piles are eligible for the exemptions from the single liner requirement set out in § 264.250(c) (exempting from regulation under § 264.251 any waste pile that is inside or under a structure) and § 264.251(b) (providing a variance if the owner or operator demonstrates that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constitutents into the ground water or surface water at any future time).

e. Variances. Section 3004(o)(2), codified in §§ 264.221(d) and 264.301(d), allows the owner or operator of a landfill or surface impoundment to obtain an exemption from the requirements for liners and leachate collections systems set out in section 3004(o)(1)(A). The owner or operator must demonstrate that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liners and leachate collection systems.

Section 3004(o)(3), codified in §§ 264.221(e) and 264.301(e), authorizes an exemption from the requirements of section 3004(o)(1)(A) for a monofill containing only hazardous wastes from foundry furnace emission controls or metal casting molding sand, as long as the wastes do not contain constituents which would render them hazardous for reasons other than the Extraction Procedure (EP) toxicity characteristics set out in EPA regulations.[10] The EP toxicity characteristics are set out in 40 CFR 261.24.

To obtain the exemption, the monofill must also meet one of two additional requirements set out in new sections 3005(j)(2) and 3005(j)(4). (Sections 3005(j)(2) and 3005(j)(4), which deal with existing surface impoundments, have not been codified elsewhere in today's rule because these two sections do not go into effect immediately.)

To comply with paragraph (j)(2), the monofill must meet three conditions. First, it must have at least one liner which is not leaking. Section 3005(j)(12)(A) defines "liner" for the purposes of section 3005(j)(2) as either a synthetic liner or a clay liner, as long as at closure the clay liner, waste materials, and contaminated soils are removed or decontaminated to the extent practicable. Today's regulations incorporate this definition of "liner" into the monofill variance for surface impoundments. EPA believes that it is appropriate to incorporate this definition into the monofill variance for surface impoundments because section 3005(j) itself deals with requirements for surface impoundments and because giving a removal option to surface impoundments is consistent with EPA's current regulations. The definition of "liner" in section 3005(j)(12)(A) has not been included in the variance for landfills because existing EPA regulations do not allow such a removal option for landfills. *See* 40 CFR 264.310, 265.310.[11] Nothing in the language or legislative history of section 3004(o)(3) suggests that Congress, in establishing the exemption for monofills, intended to alter the closure requirements of the existing regulations by giving landfills a closure option which the regulations currently prohibit.

Second, the statute requires that the monofill be in compliance with generally applicable ground-water monitoring requirements for facilities with RCRA permits. The requirements for facilities with RCRA permits may be found in Subpart F of Part 264. Finally, the monofill must be more than one-fourth mile from an underground source of drinking water, as defined in the Safe Drinking Water Act regulations.

Alternatively, the monofill may meet the requirements of section 3004(j)(4), which requires the owner or operator to demonstrate that the monofill is located, designed, and operated to assure no migration of any hazardous constituent into ground water or surface water at any future time.

Under section 3004(o)(6), which is codified in new § 264.301(k), any permit for a landfill located within the State of Alabama must require the installation of two or more liners and a leachate collection system above and between the liners, notwithstanding any other provision of RCRA. The intent of section 3004(o)(6) is to provide that Alabama

[10] Section 3004(o)(3) refers to a variance from the "double-liner requirements set forth in section 3004(o)(1)(A)." EPA construes this language to mean a variance from the liner *and* leachate collection requirements in 3004(o)(1)(A).

[11] Current regulations allow the owner or operator of a surface impoundment (*see* 40 CFR 264.228, 265.228) or waste pile (*see* 40 CFR 264.258, 265.258) to remove or decontaminate all waste residues and other contaminated materials at closure. The regulations establish specific closure and post-closure requirements for facilities which remove these materials at closure. In contrast, the landfill regulations establish closure requirements only for facilities that close with wastes in place.

landfills are not eligible for the variances set out in section 3004(o). *See* H.R. Rep. No. 1133, 98th Cong., 2d Sess. 90 (1984); 129 Cong. Rec. S12819 (daily ed. Oct. 5, 1983) (statement of Sen. Chafee).

Section 3015 subjects interim status facilities to the minimum technological requirements of section 3004(o) but does not make clear whether interim status facilities are eligibile for the variances from the liners and leachate collection system in sections 3004(o)(2) and (o)(3). The Agency has interpreted section 3015 to allow interim status units to apply for these variances. For interim status surface impoundments, § 265.221 allows the owner or operator to obtain the variances provided in § 264.221(b) (for alternate designs) and § 264.221(e) (for monofills). Similarily, § 265.301 makes the variances in § 264.301(b) (for alternate designs) and § 264.301(h) (for monofills) available to the owner or operator of a landfill operating under interim status.

The Agency has construed the statute in this way because a contrary approach could subject interim status facilities to technological requirements which are potentially more stringent than those applicable to permitted facilities. As discussed earlier, such a result is inconsistent with the general structure of the Subtitle C regulations.

f. Ground-water monitoring. Section 3004(o)(1)(A)(ii) requires new permitted landfills and surface impoundments, new units, and replacements and lateral expansions of existing units to have ground-water monitoring. The Agency has construed this provision to refer to the ground-water monitoring requirements of Subpart F of Part 264 of the regulations.

Section 3015 requires interim status units to comply with the minimum technological requirements for permitted units as set out in section 3004(o). This reference to section 3004(o) includes the ground-water monitoring requirement.

Section 3015 is ambiguous, however, because it does not specify which ground-water monitoring requirements apply to interim status units. On the one hand, the reference in section 3015 to the ground-water monitoring requirements set out in section 3004(o) could be construed to require interim status units to comply with the same ground-water monitoring requirements which apply to permitted units.

On this reading, interim status units would be subject to the requirements of Subpart F of Part 264 of the regulations. Alternatively, the provision could be construed merely to require ground-water monitoring for all interim status units as specified in existing Part 265 regulations.

EPA has interpreted the ground-water monitoring requirement for interim status units to refer to existing Part 265 requirements. Congress' intent in requiring ground-water monitoring in section 3004(o) was to eliminate the provision in current regulations allowing double liners and ground-water monitoring to be alternatives. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 26 (1983); H. R. Rep. No. 198, 98th Cong., 1st Sess. part 1, at 63 (1983). There is no indication that Congress sought to change the existing ground-water monitoring requirements for interim status facilities with this provision. Therefore, interim status surface impoundment and landfill units, replacements, and expansions will continue to be subject to the ground-water monitoring requirements of Subpart F of Part 265.

g. Notification. Section 3015(b)(2), codified in today's rule at §§ 265.221(e) and 265.301(e), calls for the owner or operator of an interim status landfill or surface impoundment unit subject to the minimum technological requirements of section 3015(b)(1) to notify the Administrator at least sixty days prior to receiving waste at that unit. Section 3015(b)(1) applies to units that first receive waste after November 8, 1984. Owners or operators of these units must comply with the notice requirement if such units are still receiving waste on May 8, 1985.

Section 3015(b)(2) also provides that within six months of receipt of notice, EPA (or an authorized State) shall require the owner or operator to file a Part B application.[12] EPA does not read this provision to require a formal request for a Part B permit application by EPA or the State as now provided for in EPA's permitting regulations. It is clear that the Congress wanted the duty to send in an application to become automatic once the sixty-day notification has been given. Therefore, EPA is simply incorporating the duty to submit an application directly into the regulations.[13]

[12] The statute uses the phrase "application for a final determination regarding issuance of a permit," which EPA has construed to mean a Part B application and applicable post-closure permit application.

[13] Section 3005(e) provides that interim status for owners and operators of land disposal facilities will terminate on November 8, 1985, unless the owner or operator submits a Part B application before that date. (See Section C.5. of this preamble.) Thus, most facilities will have submtted a Part B by November 8, 1985, if not before that time. EPA thus construes section 3015(b)(2) to require an owner or operator to submit a Part B six months after the receipt of notice if the Part B has not previously been submitted.

3. Corrective Action

a. Redefinition of Regulated Unit. The Act introduces a new subsection (i) to section 3005 which provides that the ground-water monitoring, unsaturated zone monitoring and corrective action requirements applicable to new land disposal units (i.e., those requirements set forth in Part 264) are applicable to landfills, surface impoundments, waste piles or land treatment units that received hazardous waste after July 26, 1982. The legislative histories of the House and Senate bills from which this provision has been drawn reveal that the intent of the provision is to override the existing EPA regulations which subject such units to ground-water monitoring and corrective action requirements at the time of permitting only if they receive hazardous waste after January 26, 1983. S. Rep. No. 284, 98th Cong., 1st Sess. 25–26 (1983); H.R. Rep. No. 198, 98th Cong., 1st Sess., Part 1, 44–5 (1983); 130 Cong. Rec. S13818 (daily ed. Oct. 5, 1984).

Accordingly, today's rule amends § 264.90(a) to provide that the general ground-water monitoring and corrective action requirements of Subpart F of Part 264 apply to landfills, surface impoundments, waste piles and land treatment units that receive hazardous waste after July 26, 1982. Since the unsaturated zone monitoring requirements of § 264.278 were never subject to the January 26, 1983 cut-off, this section has not been amended. Active land treatment units continue to be subject to unsaturated zone monitoring requirements regardless of the date on which hazardous wastes were received at such units.

b. Cleanup of Continuing Releases. Section 3004 of RCRA is amended by adding paragraph (u) governing releases at facilities seeking a permit under Subtitle C. This new subsection provides that any permit issued after November 8, 1984, must require corrective action for all releases of hazardous waste or constituents from any solid waste management unit regardless of when waste was placed at such unit. It further requires financial assurance for the completion of such corrective action. The provision applies to any solid waste management unit, including inactive units, at any treatment, storage, or disposal facility seeking a permit under section 3005(c) of RCRA. 130 Cong. Rec. H11129 (daily ed. October 3, 1984).

The Agency's jurisdiction under this new provision is defined by a number of key terms. First, as noted above, this new corrective action authority applies to facilities seeking a permit under

Subtitle C. Congress is silent as to whether the permits referred to in this section include post-closure permits as well as operating permits. EPA sees no legal basis for departing from a literal reading of the statute, which appears to encompass *any* Section 3005(c) permit within its mandate. Accordingly, any solid waste management unit located at a facility required to obtain a post-closure permit (i.e., units that close after January 26, 1983 (§ 270.1(c)) or an operating permit will be subject to corrective action for continuing releases.

Section 3004(u) does not appear to contemplate that its terms apply to solid waste management units located at facilities that are not required by regulation to obtain a Subtitle C permit. Accordingly, solid waste management units located at interim status facilities that closed before January 26, 1983, will not be subject to section 3004(u) since these facilities are not required to obtain permits under the existing regulations. Similarly, regulated units (now defined as any waste pile, landfill, surface impoundment, or land treatment unit that received waste after July 26, 1982) located at facilities which closed before January 26, 1983, are not required to obtain post-closure permits.[14] Releases from such units may be addressed by the interim status corrective action orders authorized by section 3008(h) of the new law. (See section f, *infra*.)

EPA must assume that in using the term "facility," Congress intended, in the absence of contrary statutory language or legislative history, to adopt the definition of this term traditionally employed by the Agency. The preamble to the July 26, 1982, regulation elaborates on the definition of this term. Specifically, the preamble notes that "[w]hen using the term 'facility', EPA is referring to the broadest extent of EPA's area jurisdiction under Section 3004 of RCRA . . . [meaning] the entire site that is under the control of the owner or operator engaged in hazardous waste management." 47 FR 32288–9 (July 26, 1982). The legislative history of the conference bill makes it clear that Congress was aware of the Agency's definition. In discussing new section 3004(v) (see subsection e, *infra*), the Congress noted EPA's position limiting the scope of its remedial authorities to the property of the polluting facility. 130 Cong. Rec. H11129 (daily ed. Oct. 3, 1984). Accordingly, for purposes of section 3004(a), the term "facility" is not limited to those portions of the owner's property at which units for the management of solid or hazardous waste are located, but rather extends to all contiguous property under the owner or operator's control.

The extent to which the above interpretation applies to Federal facilities raises legal and policy issues that the agency has not yet resolved. To address these issues, it is necessary to examine the objectives of Section 3004(u), the purposes of HSWA, and the relationship of RCRA to other Federal laws. Permit applications for Federal facilities will continue to be processed, but recognizing that final Federal facility permits may not be issued where these unresolved issues exist, EPA will make its best efforts to reach a resolution in the next 60 days.

The Agency's cleanup authority under section 3004(u) extends to all "solid waste management units" at a facility seeking a permit under section 3005(c). The term "solid waste management unit" includes any unit at the facility "from which hazardous constituents might migrate, irrespective of whether the units were intended for the management of solid and/or hazardous wastes." H.R. Rep. No. 198, 98th Cong., 1st Sess., Part 1, 60 (1983). It is generally not intended to encompass areas where wastes were not placed in such units. The legislative history notes that "[t]he term 'unit' is intended to be defined as in the preamble [sic] to EPA regulations published on July 26, 1982 and as further defined by EPA in the future." *Id.* Consistent with that concept, EPA believes that the term "unit" at least encompasses the units identified in that preamble, which refers to "containers, tanks, surface impoundments, waste piles, land treatment units, landfills, incinerators, and underground injection wells." 47 FR 32281 (July 26, 1982).

In understanding the scope of the term solid waste management unit, several points need to be made. First, units falling into the above categories are subject to section 3004(u) regardless of their purposes. EPA has in the past considered developing special standards for certain types of units and has temporarily exempted classes of units from the substantive standards applicable generally to hazardous waste management units. For example, there are such exemptions for recycling units (§ 261.6) and for tanks qualifying as "wastewater treatment units" (§ 264.1(g)(6) and § 265.1(c)(10)). Such units are solid waste management units under RCRA and thus are subject to Section 3004(u).

EPA expects that implementation of corrective action requirements for wastewater treatment tanks would be limited to submission of descriptive information with the permit application and a preliminary assessment by EPA that did not include sampling and analysis. EPA will impose additional requirements where this first phase turns up evidence of releases of hazardous waste or constituents from the tanks. EPA estimates that the costs per facility for the initial phase would result in an annualized cost of less than $3,000. In addition, it may make sense, based on the same considerations that motivated EPA's earlier examination of special standards for these units, to develop remedial investigation requirements implementing section 3004(u) for these units that differ from requirements applicable to other solid waste management units.

Second, in considering injection wells as units, it should be recognized that for a "Class I injection well" (as that term is used in the Underground Injection Control (UIC) regulations under the Safe Drinking Water Act), the injection zone into which the well discharges is essentially part of the waste management unit. Thus the emplacement of liquids into an injection zone through a Class I well does not constitute a release from a solid waste management unit but rather constitutes migration within the solid waste management unit.

Third, the legislative history indicates that the term "solid waste management unit" is intended to limit EPA's jurisdiction under section 3004(u) to *discernible units*. One of the questions raised by this definition is whether an area on which a spill occurs is intended to be viewed as a solid waste management unit. Clearly, a spill of hazardous waste or hazardous constituents from a discernible unit would constitute a "release" from a solid waste management unit under the definition of this term adopted by the Agency (see below). Similarly, any subsequent contamination resulting from this spill (e.g. subsequent releases to air, ground water or surface water) would also be considered a release from the original solid waste management unit and would thus be subject to EPA's jurisdiction.

EPA does not, however, believe that section 3004(u) applies to spills that cannot be linked to solid waste management units. For example, a spill from a truck traveling through a facility would not constitute a release from a

[14] It should be noted that "closure" in this context does not mean simply ceasing to place waste in a unit. Closure, as a regulatory concept under these rules, is a proceeding during which EPA determines, after public review, that the facility has an adequate closure plan and that the facility implements that plan. Thus, closure is not complete under the hazardous waste regulations until a certification of closure has been given under 40 CFR 265.115.

solid waste management unit. It should be recognized, however, that such a spill, if it occurs after November 19, 1980, is nonetheless actionable because it constitutes illegal disposal (i.e., disposal that does not occur in an authorized unit).

The Agency's authority under section 3004(u) encompasses "all releases of hazardous waste or constituents" from any solid waste management unit. Section 3004(u) contemplates that EPA will issue standards addressing corrective action for such releases. Once EPA establishes such standards they will guide the Agency's decisions about appropriate corrective action. Section 3004(u) also indicates, however, that permits issued after November 8, 1984, must implement the corrective action requirement. Therefore, until EPA establishes specific standards under section 3004(u) it is reasonable for EPA to make case-by-case decisions on the appropriate corrective action, guided by the general regulation being codified today.

EPA believes that this language contemplates coverage of any release of hazardous constituents from a solid waste management unit. The term "hazardous constituent" as used in this section is intended to mean those constituents listed in Appendix VIII to 40 CFR Part 261 [H.R. Rep. No. 198, 98th Cong., 1st Sess., part 1, 60–61 (1983)] and includes hazardous constituents released from solid waste and hazardous constituents that are reaction byproducts. S. Rep. No. 98–284, 98th Cong., 1st Sess. 32 (1983).

While the statute does not explicitly define the term "release," EPA believes that the purposes behind the provision indicate that the term should be at least as broad as the definition of release under CERCLA. *See* CERCLA § 101(22); 42 U.S.C. 9601. The legislative history of Section 3004(u) clearly indicates that one of its purposes was to prevent RCRA sites from becoming future burdens on the Superfund program. H.R. Rep. No. 198, 98th Cong., 1st Sess., part 1, 61 (1983). The Congress has, however, placed constraints on the scope of Section 3004(u) (*i.e.*, "solid waste management unit", "hazardous constituents" discussed above) that may result in cleanups at RCRA facilities that do not have the same breadth as CERCLA cleanups. Within these constraints, it is nonetheless logical to use a definition of release that is at least as broad as the definition under CERCLA. Moreover, such an integration with the CERCLA definition of release is consistent with the spirit of section 1006 of RCRA, which calls for integration of RCRA provisions with those of other statutes administered by EPA.

Section 1006 also provides, however, that EPA's integration of RCRA with other statutes should be accomplished "only to the extent that it can be done in a manner consistent with the goals and policies expressed in [RCRA] and in the other acts." Thus certain elements of the CERCLA definition are not, in EPA's view, part of the RCRA definition of release. Certain CERCLA exemptions are simply inapplicable, such as those for emissions from certain engine exhausts and for fertilizer applications. Other exemptions are inappropriate. The CERCLA exemption for releases subject to the Atomic Energy Act and the Uranium Mill Tailings Radiation Control Act (UMTRCA) are not needed because RCRA includes a specific statutory scheme for how overlaps between those statutes and RCRA are to be addressed. See section 1004(27), section 1006 of RCRA. (Section 703 of HSWA also specifically indicates that nothing in the new amendments, including section 3004(u), should be construed to modify or amend UMTRCA.) EPA also does not see anything in the legislative history of RCRA indicating an intent to ignore releases to the workplace at the facility.

Accordingly, EPA believes that the term "release" under section 3004(u) means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment. The Congress is currently considering amendments to CERCLA that could alter the scope of that program. If the scope of CERCLA is altered, EPA will, consistent with Section 1006 of RCRA, decide whether modifications are needed in the scope of the releases covered by Section 3004(u).

It is clear that Congress intended the term "release" to encompass at least releases to ground water. The Senate legislative history notes that in order "[to] assure corrective action is taken in response to releases . . . the Administrator will need to revise *groundwater* [sic] monitoring requirements . . . (emphasis added) S. Rep. No. 284, 98th Cong., 1st Sess. 32 (1983).

Similarly, the House legislative history notes that the corrective action required for a release "must be accomplished in the manner currently prescribed in [§ 264.100]." H.R. Rep. No. 98th Cong., 1st Sess. Part 1, 60 (1983). The requirements of § 264.100 pertain only to cleanup of ground water. Accordingly, corrective action instituted under the regulations promulgated today must, at a minimum, address any release to ground water from a solid waste management unit.

However, there is nothing in the Act or legislative history to suggest that Congress explicitly intended to limit this provision to releases to ground water. As discussed previously, section 3004(u) requires corrective action for *all* releases of hazardous wastes or constituents. EPA believes use of the term "all releases" indicates Congress' intent that section 3004(u) governs releases to all media, including ground water.

The HSWA provides other evidence of such an intent as well. As will be discussed in more detail later, new section 3008(h) authorizes EPA to issue administrative orders requiring corrective action at interim status facilities as necessary to protect human health and the environment. That authority can clearly reach media other than ground water.[15] See H.R. Rep. No. 1133, 112 (1984). It is reasonable to assume that Congress intended EPA's powers to require cleanup at the time of permitting to be at least as broad as its power to do so under interim status. Accordingly EPA believes that it is authorized to address releases to air, surface water, ground water, and soils under section 3004(u).

Although the scope of section 3004(u)'s jurisdiction appears broad given the definition of release and its multimedia jurisdiction, the Agency has limited the application of this provision by mandating corrective action only *where necessary to protect human health and the environment.* This interpretation is consistent with the legislative history of section 3004(u) which provides that the "new subsection [is] intended to assure that appropriate corrective action is taken to protect human health and the environment from any past, present or future release of hazardous waste from a permitted hazardous waste facility." S. Rep. No. 284, 98th Cong. 1st Sess., 31 (1983).

Under this legal interpretation, the Agency would not mandate corrective action for all releases into the environment. For example, with respect to ground-water releases to the uppermost aquifer only, the Agency would only apply corrective action to those releases which exceeded the 40 CFR Part 264 Subpart F Ground-Water Protection Standards. The ground-water

[15] By way of analogy it is also worth noting that the term "environment" when defined in Federal environmental statutes has generally included all media. See CERCLA 101(8) and FIFRA 2(j).

protection standard is defined by the Subpart F regulations to be either the background concentration of the constituent at issue or the maximum contaminant level for that constituent established by the National Interim Primary Drinking Water Regulations, unless the owner or operator demonstrates that an alternate concentration limit is warranted.

It should be noted that, consistent with Section 1006 of RCRA, EPA will implement Section 3004(u) in a manner consistent with other EPA programs. For example, where a release from a solid waste management unit is otherwise subject to regulation under Section 402 of the Clean Water Act, EPA will use the NPDES program to address such a discharge.

Section 3004(u) requires corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a facility seeking a RCRA permit *regardless of the time at which such waste was placed in such unit.* This clear statutory directive precludes a reading of the statute which would limit an owner's or operator's responsibilities to waste placed in units during his or her tenure. Accordingly, the owner or operator of a solid waste management unit containing only waste placed there by a previous owner would be fully responsible for corrective action for any release from such unit. This interpretation would not, of course, preclude such owner or operator from bringing any action otherwise allowed by law against the previous owner seeking remuneration for the costs of corrective action.

New section 3004(u) further provides that permits issued to facilities containing solid waste management units shall include schedules of compliance and financial assurance for completing any necessary corrective action. The legislative history explains that where insufficient information exists at the time of permitting to specify in the schedule of compliance the corrective action required (if any) and the financial assurance needed to ensure its completion, the schedule of compliance included in the permit may establish a time frame by which the information necessary to determine the extent and cost of corrective action will be obtained and financial assurance demonstrated. 130 Cong. Rec. H11129 (daily ed. Oct. 3, 1984). Once the necessary information has been acquired, the permit is amended [through the major modification process, 40 CFR 270.41(a)(2)], to incorporate financial assurance and to institute the appropriate corrective action.

Today's rule adds a new section to Subpart F, § 264.101, to codify these new standards for permitted facilities containing solid waste management units. New section 264.101(a) provides that all section 3005(c) permits issued after November 8, 1984, shall require the owner or operator of a treatment, storage or disposal facility to institute corrective action where necessary to protect human health and the environment whenever EPA determines that there has been a release of hazardous waste or constituents from any solid waste management unit, regardless of the time at which waste was placed in such unit.

Paragraph (b) of § 264.101 codifies the statutory requirement that all permits issued after November 8, 1984, to facilities containing solid waste management units incorporate either a schedule of compliance for completing any necessary corrective action (for all solid waste management units, and except as discussed further in section c, *infra,* regulated units with releases to ground water in the uppermost aquifer) or a schedule for gathering information to determine the extent of corrective action required (if any) and assurances of financial responsibility for completing such corrective action. Any permit issued with a schedule of compliance directing the owner or operator to gather information necessary to determine the extent and cost of corrective action needed (if any) must include either financial assurances for completing any corrective action deemed necessary (where this can be determined at the time of permit issuance) or a schedule of compliance for obtaining the information necessary to determine the cost of corrective action and demonstrating financial assurances.

In order to implement the provision of new section 3004(u), the owner or operator of any facility seeking a 3005(c) permit to be issued after November 8, 1984, must submit with the permit application sufficient information to enable EPA to assess the applicability of section 3004(u) to the owner's or operator's facility. EPA is not authorized to issue a permit absent a determination that the facility is in compliance with the requirements of section 3004 [*see* 3005(c), 42 U.S.C. § 6925(c).]

c. Relationship between sections 3004(u) and 3005(i). As noted earlier, new subsection (i) of section 3005 provides that the ground-water monitoring, unsaturated zone monitoring, and corrective action standards applicable under section 3004 to new units will apply to units receiving waste after July 26, 1982. The purpose of this amendment, as explained in the pertinent legislative history, is to revise EPA's existing Part 264 standards so that a regulated unit is defined as a landfill, surface impoundment, waste pile, or land treatment unit that receives hazardous waste after July 26, 1982 (rather than after January 26, 1983, as is provided in EPA's existing regulations). New subsection (u) of section 3004, on the other hand, deals with a broader class of units: that is, all solid waste management units that have received solid waste (including hazardous waste) at any time. Thus, regulated units, as defined by 3005(i), are clearly a subset of solid waste management units. In assessing the effect of the Hazardous and Solid Waste Amendments of 1984, one of the major legal questions has been how Congress intended to reconcile these provisions. The legislative history sheds some light upon the intended relationship between these provisions.

As noted above, the legislative history of section 3005(i) suggests that the major purpose of this provision is to ensure that landfills, waste piles, surface impoundments and land treatment units that receive waste after July 26, 1982, are subject to the ground-water monitoring and corrective action requirements contained in existing Subpart F of Part 264. Subpart F deals exclusively with releases to ground water in the uppermost aquifer. It provides explicit measures to be followed in detecting a release to ground water and instituting corrective action for any such release. Section 3004(u), on the other hand, does not limit corrective action to ground-water releases. Moreover, it does not prescribe specific measures to be taken in detecting and correcting a release.

To the extent that section 3004(u) could be read to impose on solid waste management units different standards for detection and correction of ground-water releases than would be required for regulated units under existing Subpart F, it would appear to be consistent with Congressional intent to let the more explicit provision of section 3005(i) govern. On the other hand, to the extent that section 3004(u) imposes obligations that are not addressed by section 3005(i) (such as the requirements to correct releases to media other than ground water and to demonstrate financial assurance for corrective action) there would appear to be little basis for excluding a regulated unit from such obligations.

Accordingly, the Agency has interpreted these sections to provide that regulated units, as newly defined by section 3005(i), shall be subject to

existing standards under Subpart F of Part 264 in detecting and correcting any release to ground water in the uppermost aquifer. For all other releases, regulated units shall be subject to the detection and corrective action standards implemented under section 3004(u). Similarly, the existing exemptions from Subpart F requirements for ground water protection apply only to regulated units with releases to ground water in the uppermost aquifer, not to *all* solid waste management units.

By that same logic, regulated units are treated somewhat differently for purposes of the special financial assurance and schedule of compliance provisions in this section. Section 3004(u) authorizes EPA to incorporate into a permit issued after November 8, 1984, to the owner or operator of a solid waste management unit, a schedule of compliance allowing the owner or operator to gather information to establish the extent of any necessary corrective action. Subpart F of Part 264 already establishes specific requirements for gathering such information for releases to ground water in the uppermost aquifer at regulated units. Since those units, defined as "regulated units", generally are required to gather sufficient ground-water data during interim status to determine whether a release has occurred, it would not be appropriate to afford such units an additional opportunity to gather such information at the time of permit issuance.[16]

Since the "information collection" type of schedule of compliance is not available to regulated units with releases to the uppermost aquifer, the financial assurance requirements in section 3004(u) cannot be deferred through a schedule of compliance for such releases. Once the owner or operator of a regulated unit has identified the releases to the uppermost aquifer, pursuant to existing Subpart F regulations, and developed a cost estimate of the necessary corrective action, he becomes responsible for establishing financial assurance for completion of the corrective action.

[16] It may be argued that this rationale does not apply to certain waste piles. Waste piles are not subject to ground-water monitoring during interim status. Accordingly, some may assert that the owner or operator of a waste pile will not have determined whether a release has occurred by the time of permit issuance. However, since waste piles have always been subject to ground-water monitoring requirements under Part 264 and the attendant Part 270 application standards, the Agency believes that many owners or operators of waste piles have determined at the time of permit issuance whether corrective action is required.

The foregoing distinctions are reflected in today's amendments. Section 264.90(a)(1) provides that solid waste management units are subject to the new detection, corrective action, financial assurance, and schedule of compliance authorities contained in § 264.101. Section 264.90(a)(2) also makes it clear that the requirements imposed by new § 264.101 do not apply to regulated units for purposes of detecting, characterizing and responding to releases into the uppermost aquifer. The financial responsibility requirements of § 264.101 apply to regulated units.

d. Corrective Action for Programs Covered Under RCRA Permits by Rule. Certain facilities specifically included under the RCRA permitting requirements by regulation (§ 270.1(c)(1)) are currently deemed to have a RCRA permit if they have permits under other programs and comply with the special requirements under the permit-by-rule provision (§ 270.60). The addition of the new requirements under section 3004(u) for RCRA-permitted facilities requires conforming changes to RCRA permits by rule for UIC facilities and for municipal facilities with National Pollutant Discharge Elimination (NPDES) permits under the Clean Water Act. Corrective action requirements for vessels and barges permitted by the Marine Protection, Research, and Sanctuaries Act (MPRSA) do not require a conforming change for the reasons explained below.

(1) Permit by rule for underground injection wells—Section 270.60(b) provides a permit by rule to underground injection wells if they have a permit issued by EPA or the State under the UIC program and if they meet other specified RCRA requirements. With the addition of the new requirements for solid waste management units at RCRA permitted facilities, there is a need to incorporate additional requirements into the UIC permit by rule to reflect those changes. Accordingly, § 270.60 has been modified to provide that all solid waste management units at UIC facilities must meet the requirements in § 264.101 in order for the facility to qualify for a permit by rule.

(2) Permit by rule for municipal NPDES facilities—Section 270.60(c) provides a permit by rule to publicly owned treatment works (POTWs) that have an NPDES permit, receive hazardous waste by rail, truck, or by a pipe that did not carry sewage, comply with specified RCRA requirements, and meet all Federal, State, and local pretreatment requirements under the Clean Water Act. The corrective action requirement of section 3004(u) of RCRA, however, requires permits issued after November 8, 1984 to contain the corrective action requirements. The regulations under § 270.60(c) have been modified to add this new permit-by-rule requirement. The corrective action requirement will be implemented through the NPDES permitting process.

It should be noted that the overlap between the requirements of section 3005(i) and section 3004(u) discussed in part c above does not exist for POTWs. Section 3005(i) applies to regulated units at interim status facilities that receive hazardous waste after July 26, 1982. POTW facilities, however, have a RCRA permit by rule and, therefore, are not covered by interim status. Thus, section 3005(i) does not apply to POTW facilities with a RCRA permit by rule. Since section 3005(i) does not operate to supersede section 3004(u) for any units at POTW facilities, all such units at the facility are covered by the requirements of § 264.101. This includes releases from regulated units to the uppermost aquifer. In fashioning such requirements at a municipal NPDES facility for solid waste management wastes, including regulated units, a compliance schedule may be used. EPA intends to propose a rulemaking package which will discuss how the corrective action requirement will be implemented for POTWs with RCRA permits by rule.

(3) Permit by rule for vessels and barges permitted under MPRSA—Section 270.60(a) provides a permit by rule for any vessel that obtains a permit for the disposal of hazardous waste in ocean waters under the Marine Protection, Research, and Sanctuaries Act (MPRSA) and complies with specified RCRA requirements. Any onshore storage or treatment facility that may be associated with the ocean disposal operation, however, must obtain a RCRA permit. EPA regards the vessels and the onshore operations as separate facilities rather than units belonging to the same facility. Since the vessel and any onshore operation are separate facilities, no applicant for a permit for ocean disposal under the MPRSA is required to undertake corrective action for releases at any onshore facility. EPA will discuss the issues raised by applying corrective action requirements to permitted vessels in a future proposal.

EPA is not making any conforming change to the permit-by-rule provisions for ocean dumping vessels. The conforming changes for the UIC and NPDES programs insure that corrective

action requirements apply to releases from *all* solid waste management units at UIC or NPDES facilities, including units not regulated by the UIC or NPDES programs. MPRSA permits, however, cover all portions of ocean dumping vessels. Hence, there are no unregulated "units" within an ocean dumping "facility", and no conforming change is necessary.

e. Cleanup beyond the property boundary. New subsection (v) of section 3004 requires EPA to amend its regulations to impose upon owners and operators of hazardous waste treatment, storage, and disposal facilities the obligation to clean up any contamination that has migrated beyond the facility boundary. Specifically, this provision requires that the owner or operator institute corrective action beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator demonstrates to EPA that, despite the owner's or operator's best efforts, he is unable to obtain the necessary permission to undertake such action. This provision applies to all permitted facilities, including facilities containing landfills, surface impoundments and waste piles that are embraced by the new definition of "regulated unit" (i.e., units receiving waste after July 26, 1982).

In the future, EPA intends to propose regulations which impose upon owners and operators of hazardous waste management facilities the obligation to clean up contamination that has migrated beyond the facility boundary as necessary to protect human health and the environment. Pending promulgation of these regulations, EPA intends, as required by the statute, to issue orders to implement section 3004(v)'s directives on a case-by-case basis.

f. Interim status corrective action authority. In addition to introducting the foregoing new statutory provisions dealing with corrective acton, the HSWA vests EPA with authority to issue corrective action orders to interim status facilities. The new provision, section 3008(h), authorizes EPA to issue such an order whenever it determines, on the basis of any information, that there is, or has been, a release of hazardous waste into the environment from an interim status facility.

The authority conferred upon the Agency by this provision is a broad one. The legislative history makes it clear that the term "release" as it is used in this section is not limited to releases to ground water. 130 Cong. Rec. H11135 (daily ed. October 3, 1984). Indeed, Congress specifically noted that interim status corrective action orders could be used to control air emissions. *Id.* The order may require corrective action or any other response measure that EPA determines is necessary to protect human health and the environment.

"The amendment is a supplement to EPA's power to impose corrective action through permits." *Id.* EPA is authorized to exercise this order authority to apply to interim status facilities those "environmental standards promulgated under section 3004." *Id.* Since section 3004 has been amended to extend corrective action requirements to all solid waste management units at facilities seeking a RCRA permit, the Agency interprets this mandate to authorize the issuance of corrective action orders to any interim status facility containing solid waste management units, including regulated units, from which there has been a release to the environment. Similarly, by virtue of section 3004(v), the requirement to institute corrective action beyond the facility boundary becomes an applicable section 3004 standard and may be enforced through the section 3008(h) order authority at interim status facilities.

Congress has made it clear that the interim status corrective action order is meant to be a flexible mechanism. The legislative history notes, for example, that this provision authorizes EPA to issue an order which, as a first step, requires the owner or operator to characterize the extent of ground-water contamination and to submit to EPA a proposed corrective action plan. *Id.* The Agency and the owner could then confer on the corrective action plan and incorporate any modifications to the plan in an amendment to the order.

According to the new statutory provision, any order issued pursuant to this section may include a suspension or revocation of a facility's authority to operate under interim status. If anyone named in an interim status corrective action order fails to comply with the order, EPA may assess a civil penalty of up to $25,000 for each day of noncompliance. In additon to the authority to issue corrective action orders, this provision confers upon EPA the authority to commence a civil action for appropriate relief, including a temporary or permanent injunction.

4. Ground-Water Monitoring Variances

Section 3004(p) of the HWSA introduces a new provision governing variances from general ground-water monitoring requirements. Specifically, paragraph (p) provides that ground-water monitoring requirements applicable to surface impoundments, waste piles, landfills and land treatment units shall apply whether or not such units are located above the seasonal high water table, have two liners and a leachate collection system, or have liners that are periodically inspected. The effect of this provision is to render invalid several of the ground-water monitoring waivers incorporated in EPA's existing standards.

Sections 264.222, 264.252 and 264.302 of the existing regulations allow surface impoundments, waste piles and landfills to waive Subpart F ground-water monitoring requirements if such units are fitted with a double liner, leak detection system, leachate collection system (in the case of landfills and waste piles), and are located entirely above the seasonal high water table. In light of the above provision calling for ground-water monitoring notwithstanding the presence of double liners or location above the seasonal high water table, these variances cannot stand. Accordingly, today's final rule deletes §§ 264.222, 264.252 and 264.302.

Today's rule also deletes § 264.253. This section exempts any lined waste pile from ground-water monitoring requirements if such a pile is located entirely above the seasonal high water table and the waste is removed periodically so that the liner can be examined. Again, the plain language of section 3004(p) would subject such a pile to ground-water monitoring requirements notwithstanding its location above the seasonal high water table and the periodic liner inspection. Accordingly, the regulations have been amended to reflect this change.

Section 3004(p) also introduces a new variance from ground-water monitoring requirements for engineered structures that meet certain requirements. Specifically, this variance is applicable on a case-by-case basis, only to an engineered structure that (1) does not receive or contain liquid waste (or waste containing free liquids), (2) is designed and operated to exclude liquid from precipitation or other runoff, (3) has multiple leak detection systems within the outer layer of containment which are operated and maintained throughout the life of the unit, including the closure and post-closure care periods, and (4) prevents the migration of hazardous constituents beyond the outer layer of containment prior to the end of the post-closure care period. Section 264.90(b) of the existing regulations has been amended to incorporate this new ground-water monitoring waiver.

The regulatory requirements set forth in § 264.90(b)(2) repeat the statutory

language with one exception. The statute provides that in order to be eligible for this new exemption an engineered structure must utilize "multiple leak detection systems within the outer layer of containment." EPA has interpreted this reference to an "outer" layer of containment to imply that there must be at least one "inner" layer as well. This interpretation is supported by the legislative history which provides that "[a] qualifying structure would also have to be engineered to have inner and outer layers of containment enclosing the waste." 130 Cong. Rec. S9179 (daily ed. July 25, 1984). Accordingly, § 264.90(b)(2)(iv) calls for both inner and outer layers of containment. EPA has also interpreted the reference to "multiple leak detection systems within the outer layer" to mean that a leak detection system must be built into each layer of containment. Again, this interpretation is expressly sanctioned by the legislative history, which provides that a leak detection system must "be built into the structure at each internal containment layer." *Id.* Today's rule codifies this requirement at § 264.90(b)(2)(v).

Section 3004(p) expressly states that its provisions shall not be construed to affect other regulatory exemptions or waivers from ground-water monitoring requirements to the extent that such exemptions are consistent with the new provisions. EPA interprets this provision to mean that section 3004(p) does not affect the ground-water monitoring waiver contained in § 264.90(b)(4) which exempts units at which "there is no potential for migration" of liquid to the uppermost aquifer during the operating, closure and post-closure periods. This interpretation finds support in the legislative history which expressly provides that the § 264.90(b)(4) waiver is not nullified by § 3004(p). S. Rep. No. 284, 98th Cong., 1st Sess. 64 (1983). The Agency also believes that the ground-water waiver set forth in § 264.280(e), which exempts land treatment units from ground-water monitoring if it is demonstrated that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit, is unaffected by the new statutory provision.[17]

One of the questions emerging from a review of the new statute is the relationship between section 3004(o) and (p). Section 3004(o) provides that certain landfills and surface impoundments must be double lined (with appropriate leachate collection systems) and must comply with ground-water monitoring. The Agency has interpreted this reference to ground-water monitoring to mean that the units governed by section 3004(o) must comply with applicable ground-water monitoring requirements unless exempted from such requirements in accordance with paragraph (p). As noted previously, paragraph (p) allows for an exemption from ground-water monitoring only if a unit meets the new engineered structure exemption, or complies with § 264.90(b)(4) or, in the case of land treatment units, § 264.280(e).

5. Salt Dome Formations, Salt Bed Formations, Underground Mines and Caves.

Under new section 3004(b), the Congress has placed strict controls, effective on the date of enactment, on the placement of hazardous wastes in salt dome formations, salt bed formations, underground mines and caves. The applicable requirements will depend on whether a hazardous waste falls into one of the two categories.

For all noncontainerized (or bulk) liquid hazardous waste, the placement of waste in the four settings identified above is prohibited until:

(1) EPA has determined, after notice and opportunity for hearings on the record in the affected areas, that such placement is protective of human health and the environment;

(2) EPA has promulgated performance and permitting standards for such facilities under Subtitle C; *and*

(3) a permit has been issued for the facility.

For containerized liquid hazardous waste and all other non-liquid hazardous waste, the placement of such waste in the four enumerated settings is prohibited until a permit has been issued for the facility.

The new provision also provides that EPA's decisions on banning land disposal of certain hazardous wastes under section 3004 (d), (e) and (g) cannot negate the prohibitions explicitly stated in this provision. In other words, EPA must take action under section 3004(b) in order to lift the prohibitions stated therein. In addition, the Congress makes it clear that the prohibitions provided in section 3004(b) do not apply to the Department of Energy Waste Isolation Pilot Project in New Mexico.

In integrating this provision into the current regulations, EPA believes that this provision is best viewed as a location standard that applies to all treatment, storage, and disposal facilities. The statutory language refers to any "placement" of hazardous wastes in the four types of settings. This language would appear to include treatment, storage, and disposal activities because each involves placement of waste in the enumerated settings.

Accordingly, EPA has included this provision as a location standard in § 264.18 and § 265.18. In Part 265, the ban applies absolutely to all hazardous wastes because no wastes may be placed in the enumerated settings until an individual permit has been issued under Part 264.

In Part 264, the ban only applies to noncontainerized or bulk liquid hazardous waste. For other hazardous waste the issuance of a permit relieves an owner or operator from the ban. The statute appears to contemplate, however, that EPA must take additional steps beyond issuing a Part 264 permit for noncontainerized hazardous waste before EPA may relieve an owner or operator from the ban. For example, the statute states that EPA must conduct some kind of hearing in an "affected area" before a ban may be lifted. It is unclear what this requirement necessarily entails and how that process might be integrated with EPA's existing permit program. Since EPA is not prepared at this time to define what steps must be taken to lift the ban on placement of noncontainerized liquid hazardous waste in the enumerated settings, it has simply incorporated the ban into the Part 264 provisions. Based on further review, EPA may clarify when the ban on noncontainerized liquid hazardous waste can be lifted. EPA intends in the future to propose regulations which would specifically solicit comments on this issue.

The ban in new section 3004(b) applies to *underground* mines. EPA believes that by using that term the Congress did not intend to apply the ban to strip mines. Operations at strip mines involve removal of mineral deposits located near the surface of the ground by excavation of large surface areas. This is in contrast to operations at shaft mines. Strip mines will typically create a large depression in the ground that would be regulated as a surface impoundment or a landfill under RCRA if it was used to manage hazardous wastes. EPA does not believe that the Congress meant, in section 3004(b), to modify how EPA generally regulates surface impoundments and landfills. Accordingly EPA believes that only

[17] This interpretation is in accordance with the legislative history which notes that apart from the exemptions specified in §§ 264.222, 264.252, 264.302 and 264.253, this amendment does not affect other exemptions from the ground-water monitoring standards. *Id.*

underground mines rather than strip mines were meant to be covered by section 3004(b).

6. Dust Suppression

New section 3004(1) prohibits use of hazardous waste (except hazardous wastes exhibiting the characteristic of ignitability and not hazardous for any other reason) mixed with waste oil, used oil, or other material for dust suppression or for road treatment. The provision is codified in a new Subpart C to Part 266, a subpart reserved for regulation of hazardous waste uses constituting disposal.

The statutory language raises a number of issues. The first pertains to the reference of dioxin: "[t]he use of waste oil or used oil or other material which is contaminated with dioxin or any other hazardous waste. * * *" The issue is whether dioxin must be present as a result of being added as hazardous waste, or if the language refers to dioxin contamination from any source. The Agency believes that the ban applies only when the dioxin is present as a result of being added as a constituent in a hazardous waste. This is indicated by the fact that Congress placed the provision in section 3004—where regulatory jurisdiction is generally limited to hazardous wastes identified or listed in section 3001—and also by the explanation in the legislative history that the ban is for "hazardous waste contaminated materials * * *" S. Rep. No. 284, 98th Cong., 1st. Sess. 23.

A second issue is the reference to "waste oil or used oil." Waste oil is virgin oil that has been discarded before use. The Agency believes the term was used purposely (since the phrase is otherwise redundant), so that if virgin oil is mixed with hazardous waste, it cannot be used legally as a dust suppressant or for treatment.

The prohibition applies on its face to hazardous wastes that are mixed with other materials, but does not explicitly ban the use of *unmixed* hazardous wastes (i.e., hazardous wastes applied directly as dust suppressants). The Agency believes the provision should be read as banning this type of direct application. This appears to be the only sensible reading because an unmixed waste is likely to be more hazardous than a mixed, diluted one. Moreover, the Conference Report states that the provision "bans the use of * * * any * * * hazardous waste as a dust suppressant." H.R. Rep. No. 1133, 98th Cong., 2nd Sess. 88 (1984).

A final issue is the question of what is used oil and what is hazardous waste. The bill's prohibition applies on its face only to used oil that is contaminated with hazardous waste, not to used oil applied directly, even if the used oil is contaminated through use. At this time, determining whether used oil is contaminated by use or through adulteration with a hazardous waste is a question of fact to be decided on a case-by-case basis. EPA plans to address this issue in future rulemakings, including those dealing with hazardous waste fuels and with standards for recycled oil.

7. Underground Injection

The HSWA introduces a new section to RCRA governing the underground injection of hazardous waste.[18] Section 7010 bans the injection of hazardous waste into or above any underground formation which contains, within one-quarter mile of the injection well, an underground source of drinking water. This statutory ban on so-called "Class IV" wells is effective automatically, six months from the date of enactment, in any State which does not have identical or more stringent prohibitions in effect under an "applicable undergound injection control program" ("UIC" program) (defined at 42 U.S.C. 300h–1(d)) which has been approved or prescribed by EPA under the Safe Drinking Water Act ("SDWA"). 42 U.S.C. 300f *et seq.* In any State in which the "applicable underground injection control program" *does* include an identical or more stringent prohibition, no new notice to the public or six-month phase-in period is necessary, and the ban may be enforced immediately.

In May 1984, EPA adopted a regulatory ban upon all hazardous and radioactive waste injection into or above a USDW, effective six months after the date the applicable underground injection control program becomes effective. *See* 49 FR 20138, 20181 (May 11, 1984) (codified at 40 CFR 144.13 (1984). Because this regulatory ban was adopted pursuant to both the SDWA and Subtitle C of RCRA, *see* 49 FR 20138, at 20138 (May 11, 1984); 40 CFR 144.1(a) (1984), the regulatory ban may be enforced pursuant to both SDWA 1423, 42 U.S.C. 300h–2, and RCRA 3008, 42 U.S.C. 6928. Furthermore, as provided in HSWA 7010(c), the *statutory* prohibition on hazardous waste injection into such wells may be enforced pursuant to RCRA sections 7002 (citizen suits) and 7003 (imminent and substantial endangerment) as well as the SDWA, in States in which the applicable UIC program includes the same ban or a ban which is more stringent. Finally, in States in which no identical or more stringent prohibition exists under the applicable UIC program, and in which the Administrator has not prescribed a UIC program, the statutory ban imposed by § 7010(a) may be enforced immediately under sections 7002 or 7003 of RCRA, and may later be enforced under the SDWA when the applicable underground injection control program includes the ban.

Although EPA may invoke RCRA 3008 compliance order authority to enforce the *regulatory* ban on these "Class IV" wells in States where EPA implements the UIC program, it appears that such compliance order authority is not available to the Agency to enforce the statutory ban in States which have UIC primary enforcement responsibility and which have not yet adopted the full Class IV ban now required by 40 CFR 144.13. This is because section 3008(a) orders may be used only to enforce the provisions of subtitle C of RCRA, whereas Congress included section 7010 in subtitle G of the Act. EPA does not believe that by referencing the enforcement authority contained in sections 7002 and 7003, Congress has precluded the Agency from enforcing the *regulatory* ban on Class IV wells under RCRA § 3008, or from initiating an action in equity to enjoin a violation of the prohibition contained in section 7010(a).

Section 7010(b) provides an exception to the ban provision. The ban does not apply to the injection of contaminated ground water into the aquifer from which it was withdrawn if

(1) The injection is part of a federally-supervised cleanup action under RCRA (e.g., corrective action requirements of § 264.100, 101), or section 104 or 106 of CERCLA;

(2) Contaminated ground water is treated to substantially reduce hazardous constituents prior to injection; and

(3) Such cleanup, when completed, will be sufficient to protect human health and the environment. The legislative history elaborates on the intent of this exception, noting that since "[t]he pumping, treatment and reinjection of already contaminated ground water may be the preferred removal or remedial technique" at some site, such injections are not to be

[18] In 40 CFR 144.13, as amended on May 11, 1984 at 49 FR 20138 et seq., EPA promulgated a ban on hazardous and radioactive waste injection into or above "underground sources of drinking water." (This phrase, often referred to as "USDW," is broadly defined in 40 CFR 144.3.) Congress ratified that definition in § 7010(d). The ban includes an exception, similar to that in the statute, for reinjection of treated, contaminated ground water during an EPA-approved cleanup action under RCRA or CERCLA.

banned. 130 Cong. Rec. S9179 (daily ed. July 25, 1984).

A question of interpretation arises with respect to section 7010(b)(3), which requires that any response action or corrective action involving reinjection of contaminated ground water be sufficient to protect human health and the environment. Section 300.68(j) of the CERCLA regulations provides that a remedial action must effectively mitigate and minimize damage to and provide adequate protection of public health, welfare, and the environment. Similarly, §§ 264.100 and 264.101 of the RCRA regulations provide that any corrective action program must protect human health and the environment by meeting the standards specified therein. Finally, the EPA regulations at 40 CFR 144.13(c) provide that EPA must specifically approve of any such reinjection. EPA believes that any response or corrective action carried out in conformance with these provisions should be deemed to satisfy the standard set forth in section 7010(b)(3).

B. Small Quantity Generators

The HSWA adds a new subsection (d) to section 3001 of RCRA designed to modify EPA's current regulatory exemption (40 CFR 261.5) of wastes generated by small quantity generators from full Subtitle C regulation.[19] The principal focus of section 3001(d) is a comprehensive set of standards specifically tailored to wastes produced by small quantity generators of between 100 kilograms and 1000 kilograms per calendar month which EPA must promulgate by March 31, 1986 pursuant to sections 3001(d)(1), 3001(d)(2), and 3001(d)(6). If EPA fails to promulgate these small quantity generator standards by March 31, 1986, the requirements set forth in section 3001(d)(8) automatically go into effect.

Section 3001(d) makes certain minimum requirements applicable to small quantity generators of between 100 kilograms and 1000 kilograms per calendar month effective before March 31, 1986. Effective immediately, section 3001(d)(5) provides that all hazardous waste from generators producing greater than 100 kilograms but less than 1000 kilograms of hazardous waste per calendar month must be either treated, stored, or disposed of at a facility having a permit under section 3005 of RCRA or disposed of at a facility authorized by a State to manage municipal or industrial solid waste. Section 3001(d)(3) provides that, no later than 270 days after enactment, hazardous waste shipped off-site by a generator producing greater than 100 kilograms but less than 1000 kilograms during one calendar month must be accompanied by a copy of the EPA Uniform Hazardous Waste Manifest form signed by the generator and containing certain specified information.

EPA is publishing today regulatory amendments necessary to codify requirements dictated by the statutory amendments effective until March 31, 1986. These regulatory amendments will remain in effect until standards are promulgated pursuant to section 3001(d)(1) or until March 31, 1986, whichever occurs first. The Agency has already initiated a study of small quantity generators and will continue this study consistent with the mandates of Section 221(c). On the basis of this study, EPA intends to propose and promulgate a comprehensive set of small quantity generator standards in accordance with sections 3001(d)(1), 3001(d)(2), and 3001(d)(6) of RCRA. In the event the Agency finds it is unable to promulgate these standards by March 31, 1986, it may publish further regulatory amendments to codify additional requirements of section 3001(d)(8) that are applicable to small quantity generators on March 31, 1986.

The statutory provisions codified today affect only those generators generating between 100 kilograms and 1000 kilograms of non-acutely hazardous waste per calendar month. Section 3001(d)(7) of RCRA expressly provides that existing EPA regulations pertaining to acutely hazardous waste are not affected by the statutory amendments. Thus, these amendments, together with existing regulations, distinguish three classes of small quantity generators for regulatory purposes:

(1) Those generating between 100 kilograms and 1000 kilograms of non-acutely hazardous waste per calendar month;

(2) Those generating up to 100 kilograms of non-acutely hazardous waste per calendar month; and

(3) Those generating acutely hazardous waste in those quantities currently set forth in paragraphs (e)(1) and (e)(2) of § 261.5.

EPA is amending § 261.5 to reorganize existing provisions and to codify new statutory requirements to provide a separate paragraph for each class of small quantity generators listed above. Today's regulatory amendments add three new paragraphs to § 261.5 designated as paragraphs (f), (g), and (h); existing paragraphs (f) and (g) are stricken; and existing paragraphs (h) and (j) are redesignated as (i) and (k), respectively.

New paragraph (f) of § 261.5 recodifies all existing requirements applicable to small quantity generators of acutely hazardous waste in quantities set forth in paragraph (e). It provides that the generator must comply with § 262.11 to determine whether his waste is hazardous (recodified from existing paragraph (g)(1) of this section); conditionally allows for on-site accumulation (recodified from existing paragraph (f) of this section); and sets out treatment, storage, and disposal requirements (recodified from existing paragraph (g)(3) of this section).

New paragraph (g) of § 261.5 recodifies existing requirements applicable to small quantity generators generating less than 100 kilograms of non-acutely hazardous waste in one calendar month.[20] It requires that generators comply with § 262.11 (recodified from existing paragraph (g)(1) of this section); conditionally allows for on-site accumulation (recodified from existing paragraph (f) of this section); and provides for treatment, storage, and disposal practices (recodified from existing paragraph (g)(3) of this section).

New paragraph (h) recodifies one existing requirement and incorporates new requirements pursuant to Sections 3001(d)(3) and 3001(d)(5) of RCRA, applicable to generators generating between 100 kilograms and 1000 kilograms of non-acutely hazardous waste during one calendar month. The existing provision requiring the generator to comply with § 262.11 is recodified from existing paragraph (g)(1) of this section and is now found at paragraph (h)(1).

New paragraph (h)(3) codifies section 3001(d)(3) of RCRA requiring, effective August 5, 1985, any hazardous waste shipped off-site by a generator of

[19] Enactment of section 3001(d) eliminates the issue, initially raised with respect to EPA's regulatory exemption of small quantity generators in 1980, as to whether EPA has legal authority to conditionally exempt small quantity generators from full Subtitle C regulation. Section 3001(d)(1) directs EPA to promulgate standards applicable to wastes generated by generators of between 100 kilograms and 1000 kilograms per calendar month, which may, pursuant to section 3001(d)(2), differ from existing subtitle C regulations applicable to wastes from larger quantity generators. Section 3001(d)(4) further provides that EPA may establish standards for generators of less than 100 kilograms per month if such standards are required to protect human health and the environment.

[20] Section 3001(d)(4) of RCRA provides that EPA may establish standards applicable to small quantity generators of less than 100 kilograms hazardous waste per calendar month, if the Administrator finds such standards necessary to protect human health and the environment. EPA is not publishing, at this time, any requirements applicable to these generators beyond those currently required by existing § 261.5.

between 100 kilograms and 1000 kilograms per month to be accompanied by a copy of EPA's Uniform Hazardous Waste Manifest form signed by the generator. This form must contain the following information:

(1) The name and address of the generator;

(2) The U.S. Department of Transportation description of the waste including the proper shipping name, hazard class, and identification number; [21]

(3) The number and type of containers;

(4) The quantity of waste being transported; and

(5) The name and address of the designated facility.

This information corresponds to items 3, 9, 11, 12, 13, 14, and 16 of EPA's Uniform Hazardous Waste Manifest, form 8700–22 and accompanying instructions, promulgated by EPA on March 20, 1984 (40 CFR Part 262, Appendix; 49 FR 10490). Although use of the form is mandatory after August 5, 1985, small quantity generators are not required by Federal law to complete the entire form or to comply with the full manifest system established by 40 CFR Part 262 applicable to generators of greater than 1000 kilograms of hazardous waste per month. However, States operating approved hazardous waste programs in lieu of the Federal program pursuant to section 3006 of RCRA may have additional manifest requirements applicable to small quantity generators. Generators in States having their own hazardous waste program are strongly advised to contact the appropriate State agency when completing this form to ensure compliance with State law.

New paragraph (h)(4) of § 261.5 sets forth requirements for the treatment, storage, or disposal of wastes produced by generators of between 100 kilograms and 1000 kilograms of nonacutely hazardous wastes per month. These requirements allow a generator to either treat or dispose of his hazardous waste on-site or ensure delivery to an off-site storage, treatment, or disposal facility providing that the on-site or off-site facility is either:

(1) Permitted by EPA pursuant to section 3005 or by a State having an authorized permit program pursuant to Part 271 of this chapter;

(2) In interim status under Parts 270 and 265 of this chapter;

(3) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(4) A facility which beneficially uses or reuses, or legitimately recycles or reclaims its waste; or treats its waste prior to reuse, recycling or reclamation.

These are the same requirements currently applicable to small quantity generators, recodified from § 261.5(g)(3). In retaining these requirements, EPA is relying on the only reading of section 3001(d)(5) that is consistent with Congress' overall scheme of small quantity generator waste regulation and the legislative history.

Section 3001(d)(5) governs the destination of hazardous waste from generators of between 100 kilograms and 1000 kilograms from the date of enactment until promulgation of the full set of small quantity generator standards or until March 31, 1986 (when the alternative provisions of section 3001(d)(8) become effective). It provides that:

> . . . any hazardous waste . . . which is not treated, stored, or disposed of at a hazardous waste treatment, storage, or disosal facility with a permit under section 3005, shall be disposed of only in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

Section 3001(d)(5) explicitly allows for treatment, storage, or disposal at a facility with a permit under section 3005. In addition, since a permit issued by a State having an approved hazardous waste permit program pursuant to section 3006 generally has the same force and effect as a permit issued by EPA under section 3005, section 3001(d)(5) also allows for small quantity generator waste management at a hazardous waste facility permitted by a State. (See section 3006(d) of RCRA). To implement this provision, today's rule recodifies existing regulations (§§ 261.5(g)(3) (i) and (iii)) to allow small quantity generators of between 100 kilograms and 1000 kilograms of hazardous waste to continue to treat, store, or dispose of such waste at a facility having either an EPA- or State-issued hazardous waste permit.

The plain language of section 3001(d)(5) does not expressly provide for treatment, storage, or disposal of small quantity generator waste at a facility in interim status. Section 3001(d)(5) refers only to a facility "having a permit under Section 3005." EPA has consistently interpreted this language as meaning only a facility actually having obtained a permit pursuant to Parts 270 and 264 of this chapter (see, *Hempstead County and Nevada County Project, et al.* v. *U.S. EPA*, 700 F. 2d 459 (8th Cir. 1983)). Since section 3001(d)(5) does not expressly provide for treatment, storage, or disposal of small quantity generator waste at a facility in interim status, a strict reading of this section, apart from other statutory provisions governing small quantity generator waste, would effectively rule out treatment, storage, or disposal at a facility in interim status. As discussed below, EPA is rejecting such a restrictive reading of section 3001(d)(5) because it does not fit within the statutory scheme chosen by Congress for small quantity generator waste and is not consistent with the legislative history accompanying this section.

EPA believes that implementation of section 3001(d)(5) must be consistent with the nature and structure of section 3001(d) governing small quantity generator waste as a whole. The overall statutory scheme chosen by Congress in section 3001(d) provides that, from the date of enactment, progressively more stringent requirements are to be applied to small quantity generator waste. This phase-in of regulatory requirements begins with the partial manifest requirement of section 3001(d)(3) applicable to only generators of between 100 kilograms and 1000 kilograms of hazardous waste per month which remains in effect only until EPA promulgates the full set of small quantity generator standards. If EPA fails to promulgate a full set of standards by March 31, 1986, additional requirements will be applied to generators of between 100 kilograms and 1000 kilograms of hazardous waste per month pursuant to section 3001(d)(8). Both the minimum requirements of section 3001(d)(6) for the full set of standards and the alternative provisions of section 3001(d)(8) allow treatment, storage, or disposal of small quantity generator waste at a facility in interim status. Implementation of section 3001(d)(5) based on a strict interpretation would prohibit treatment, storage, or disposal of small quantity generator waste at a facility in interim

[21] Section 3001(d)(3) provides that if the Department of Transportation ("DOT") description is "not applicable" the manifest form shall contain the EPA identification number, or a generic description of the waste, or a description of the waste by hazardous waste charcteristic. Today's rule does not include a provision allowing use of these descriptions in lieu of DOT's description because DOT's description will always be applicable. DOT's regulations implementing the Hazardous Materials Transportation Act require all shipments of hazardous materials (a universe which includes all RCRA hazardous wastes) to be accompanied by a shipping paper including DOT's descriptive information. For shipments of hazardous waste, the completed manifest serves the dual purpose of satisfying both DOT's shipping paper requirements and EPA's manifest requirements. Thus, in order to conform with DOT's shipping paper requirements, the manifest must contain DOT descriptive information including the proper shipping name, hazard class, and identification number (UN/NA).

status and thus would produce the anomalous and inconsistent result of making interim requirements more stringent than the full set of small quantity generator standards or alternative requirements of section 3001(d)(8), since either set of requirements allows management of small quantity generator waste at an interim status facility. EPA does not believe that such a result can be reconciled with the Congressional objective of imposing progressively more stringent regulatory requirements on small quantity generator waste.

This conclusion is bolstered by the legislative history accompanying section 3001(d)(5). Both the conference report for HSWA and the Senate report accompanying the Solid Waste Disposal Act Amendments of 1983, S. 757 (from which this provision was taken) indicate that Congress intended section 3001(d)(5) to allow treatment, storage, or disposal of small quantity generator waste at facilities having interim status. The conference report explains that section 3001(d)(5) requires that small quantity generator waste, "shall go to Subtitle C facilities or facilities licensed by a State to manage municipal or industrial wastes." H.R. Rep. No. 1133, 98th Cong., 2nd Sess. 103 (1984). Subtitle C of RCRA authorizes management of hazardous waste at either a facility with a permit under sections 3004 and 3005 or at a facility having interim status pursuant to section 3005. Accordingly, reference to "Subtitle C facilities" includes facilities in interim status. The Senate report on section 3001(d) (originally reported as section 3002(b)) explains that the language "having a permit under section 3005" includes "both facilities that have a Subtitle C permit issued by either EPA or an authorized State or *facilities with interim status, since interim status facilities are deemed to have a permit under the language of section 3005.*" [Emphasis added.] S. Rep. No. 284, 98th Cong., 1st Sess. 12 (1983). These discussions relative to section 3001(d)(5) clearly evidence Congress' intent to allow management of small quantity generator waste at interim status facilities.

Similarly, EPA has retained the existing provision allowing treatment or storage as well as disposal of small quantity generator waste at facilities permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Although section 3001(d)(5) refers only to *disposal* of small quantity generator waste at a State-approved municipal or industrial solid waste facility, the legislative history indicates that Congress did not intend to restrict use of State-authorized municipal or industrial solid waste facilities to disposal only. The conference report states that small quantity generator waste "shall go" to municipal or industrial waste facilities, not limiting such destination to disposal. H. Rep. No. 1133, 98th Cong., 2nd Sess. 103 (1984). The Senate report on S. 757 from which section 3001(d)(5) was taken, explains that this section was meant to codify existing small quantity generator regulatory requirements relative to State-approved solid waste facilities. S. Rep. No. 284, 98th Cong., 1st Sess. 9 (1983). Inasmuch as existing requirements allow treatment and storage of small quantity generator waste at a State-approved solid waste facility, Congress thus intended to continue these requirements. Moreover, allowing treatment and storage as well as disposal of small quantity generator waste in a State-approved solid waste facility is consistent with the general objective in section 3001(d) of ensuring sound management of small quantity generator waste; arguably, treatment or storage of hazardous waste at a State-approved solid waste facility is less environmentally threatening than disposal of waste at such a facility.

Thus, State-approved industrial or municipal solid waste facilities that choose to accept hazardous wastes from small quantity generators during the interim before the effective date of the standards or March 31, 1986, whichever comes first, do not have to have either interim status or a permit. However, if these facilities intend to continue accepting hazardous wastes after the effective date of the standards or March 31, 1986, they must have either interim status or a permit since both the full set of standards and the alternate provisions effective March 31, 1986 restrict treatment, storage, and disposal of small quantity generator waste to Subtitle C facilities.[22]

New paragraph (h)(2) recodifies the existing requirement (§ 261.5(f)) allowing small quantity generators to accumulate on-site up to 1000 kilograms of hazardous waste, provided that if the accumulation limit of 1000 kilograms is exceeded, all of the accumulated wastes are subject to full Subtitle C regulation.

[22] Section 3005(e)(1)(A)(ii) provides that facilities in existence on the effective date of statutory or regulatory changes that render the facility subject to permit requirements may qualify for interim status. Since State-approved industrial and municipal solid waste facilities choosing to accept hazardous waste after promulgation of the full set of standards or March 31, 1986 will be subject to permitting requirements, they will be eligible for interim status pursuant to section 3005(e)(1)(A)(ii).

The HSWA does not explicitly address on-site storage of small quantity generator hazardous waste during the period between enactment and the effective date of the full set of small quantity generator standards. If the full set of standards is not promulgated by March 31, 1986, the alternative requirements of section 3001(d)(8) apply. As discussed earlier, EPA does not believe that Congress intended to place more stringent requirements on small quantity generator waste during the interim before promulgation of the set of small quantity generator standards, but rather intended to maintain the status quo with respect to the destination of small quantity generator wastes. Accordingly, EPA has retained the existing regulatory scheme for on-site accumulation for up to 1000 kilograms of hazardous waste.

C. Permits/Interim Status

1. Preconstruction Ban/TSCA Exception

On May 19, 1980 EPA promulgated regulations prohibiting the construction of new hazardous waste management facilities without a finally effective RCRA permit (40 CFR 270.10(f)(1)). In the HSWA, Congress adopted these regulations by amending section 3005(a) of RCRA to clarify the Administrator's authority to require a RCRA permit to construct a hazardous waste treatment, storage, or disposal facility. The preconstruction ban in section 3005(a) is, however, qualified. The statute exempts facilities constructed pursuant to an approval issued by the Administrator under section 6(e) of the Toxic Substances Control Act (TSCA), for the incineration of polychlorinated biphenyls (PCBs), from the requirement to have a RCRA permit prior to construction. Any person owning or operating such a facility may file an application for a RCRA permit to incinerate hazardous wastes at any time after construction or operation of such a facility.

The purpose of the TSCA exemption from the preconstruction ban is to remove an inconsistency between the RCRA and TSCA regulations affecting incinerators. As discussed previously, under current RCRA regulations no construction may occur prior to receipt of a final permit. However, under TSCA, construction may occur prior to final approval (the analogue of a RCRA permit).

The Congressional intent underlying the TSCA exemption is as follows:

[w]here an incinerator has been constructed and approved pursuant to TSCA for the burning of PCBs, the owner or operator shall

not be precluded from applying for a RCRA permit solely because a RCRA permit was not obtained prior to construction. The EPA regulation being codified by this amendment was designed to assure that when it has been unable to influence the location, design, and construction chosen by the applicant, the permitting agency would not face a choice between approving an incinerator or "forcing the abandonment or devaluation of the premature investment." Here, however, if a company proceeded with construction, obtained TSCA approval, and then sought a RCRA permit, the company would not have to abandon or suffer a devaluation of its investment if it was ultimately denied a RCRA permit for the incinerator. The company would still have a PCB incinerator. 130 Cong. Rec. S.9175, (daily ed. July 25, 1984).

In order to codify the TSCA exemption, the Agency is today amending § 270.10(f)(3). That provision currently allows a person to begin physical construction of a new hazardous waste management facility subsequent to November 19, 1980, but prior to the effective date of the unit-specific Part 264 standards (i.e., Subpart I et seq.) in limited circumstances. The Agency believes that this provision is legally inconsistent with the general preconstruction ban and is, accordingly, deleting that provision in today's rule. The Agency is instead codifying the section 3005(a) TSCA exemption in § 270.10(f)(3).

Congress did not specifically address whether the TSCA exemption from the preconstruction ban is applicable to units that store PCBs prior to incineration at a TSCA-approved incineration facility. Under the TSCA regulation, any PCB articles or PCB containers may be stored for disposal for up to one year (40 CFR 761.65). The facility need not obtain a permit for construction of the storage unit but must ensure that the unit meets the criteria specified in § 761.65. The Agency believes that, as a legal matter, the TSCA exemption to the preconstruction ban for facilities constructed pursuant to approval under TSCA is applicable to storage units at these facilities in compliance with § 761.65. To hold otherwise would eviscerate the statutory exemption since it is common practice for facilities to store PCBs prior to incineration.

2. Permit Life

On May 19, 1980, EPA promulgated a regulation providing that RCRA permits shall be effective for a fixed term not to exceed 10 years. 40 CFR 122.9(a) (now codified as 40 CFR 270.50(a)). On February 8, 1983, EPA proposed to amend that regulation to issue permits for the life of the facility (48 FR 5872). In response to that proposal, Congress, in HSWA, amended section 3005(c) to provide that any permit for a treatment, storage, or disposal facility shall be for a fixed term, not to exceed 10 years.

In enacting this provision, Congress stated that "with the advancing state of technology and the long projected useful life of many of these facilities, it is preferable to limit permit life to the minimum period consistent with the cost and administrative burden of issuing a permit. * * * Limited permit duration will assure that facilities are periodically reviewed and requirements for them upgraded to reflect the current state of the art." S. Rep. No. 284, 98th Cong., 1st Sess. 30 (1983).

The Agency believes that § 270.50(a)–(c), as currently drafted, is consistent with the statutory amendment to section 3005(c). Therefore, the Agency is not amending those regulations today.

The HSWA also amends section 3005(c) to provide that each permit for a land disposal facility shall be reviewed 5 years after the date of issuance or reissuance and shall be modified as necessary to assure that the facility complies with the currently applicable requirements in sections 3004 and 3005. Since section 3005 provides that the Agency has the authority to issue permits encompassing conditions necessary to protect human health and the environment, the Agency may modify land disposal permits to include these conditions.

In order to codify the amendment to section 3005(c), the Agency is today amending § 270.50 by adding a new subsection, § 270.50(d). That subsection requires the Director to review the permit for a land disposal facility 5 years after the date of permit issuance or reissuance and to modify the permit in accordance with § 270.41.

The Agency is also amending § 270.41(a) in order to implement the amendment to section 3005(c). Section 270.41(a)(3) as currently drafted, provides that permits may be modified because of regulatory amendments only if the permittee requests such a modification. That provision conflicts with the statutory requirement that the Agency modify land disposal permits to assure continued compliance with applicable regulations. Accordingly, the Agency is today amending § 270.41(a) by adding a new cause for modification, § 270.41(a)(6). Section 270.41(a)(6) provides that notwithstanding any other provision in § 270.41(a), when a permit for a land disposal facility is reviewed under § 270.50(d), the Director shall modify the permit to assure that the facility continues to comply with the currently applicable requirements in Parts 264, 266, and 270. Since, as discussed below, EPA has the authority under Part 270 to issue permit conditions beyond those specified in the regulations, the Agency may, where appropriate, modify land disposal permits to reflect conditions beyond those specifically set forth in the regulations under the authority of Part 270.

Pursuant to today's rule, the Agency may modify permits to incorporate new regulatory requirements without the request of the permittee in the context of land disposal permit reviews. Such permit modifications would constitute major modifications and would, accordingly, be subject to the procedural rights of notice and comment under 40 CFR Part 124 accorded permittees undergoing major permit modifications.

3. Authority To Add Conditions

In enacting HSWA, Congress amended § 3005(c) to provide that each RCRA permit issued shall contain such terms as the Administrator (or the State) determines necessary to protect human health and the environment. The accompanying legislative history indicates a Congressional intent to authorize the Administrator to add permit conditions beyond those specified in the regulations. S. Rep. No. 284, 98th Cong., 1st Sess. 31 (1983). The Agency is today implementing this amendment by adding a new subsection to the RCRA regulations, concerning the establishment of permit conditions, § 270.32(b)(2).

Since the Administrator has the authority to review land disposal facility permits every five years to assure that the facility operates in a manner which protects human health and the environment, the Administrator has the authority to add permit conditions where necessary to protect human health and the environment when conducting such reviews of land disposal facility permits under § 270.50(d). The Administrator also has the authority to add conditions necessary to protect human health and the environment when reviewing an application for permit renewal. Such an interpretation is in accordance with the amendment to section 3005(c) which specifically requires the permitting authority, in any permit renewal, to consider among other things improvements in the state of control and measurement technology as well as changes in applicable regulations. Such improvements and changes must be incorporated in the renewed permit. S. Rep. No. 284, 98th Cong., 1st Sess. 30–31 (1983). Improvements and changes in control and measurement technology are

factors that Congress intended the Administrator to take into account when adding permit terms and conditions as necessary to protect human health and the environment. *Id.* Accordingly, the Administrator has the authority under section 3005 to add conditions necessary to protect human health and the environment when reviewing an application for permit renewal. In addition, the Administrator shall consider any changes that may have occurred in operation of the facility since the permit was issued, and other information concerning the impact of the facility on human health and the environment.

Section 3005(c) provides that each RCRA permit *issued* under section 3005 shall contain such terms as the Administrator deems necessary to protect human health and the environment (emphasis added). The Congressional intent underlying this amendment is to authorize the Agency to impose permit conditions beyond those mandated by the regulations, such as new or better technologies or other new requirements. S. Rep. No. 284, 98th Cong., 1st Sess. 31 (1983). The purpose of this amendment is to upgrade facility requirements in order to protect human health and the environment. The Agency believes that the authority to *issue* permits containing conditions deemed necessary to protect human health and the environment must encompass the authority to *deny* permits where necessary to afford such protection. To hold otherwise would deprive this statutory amendment of its intended effect.

4. Expansion of Interim Status for Newly Regulated Units

Section 3005(e) of RCRA previously restricted interim status to owners or operators of "existing HWM facilities" or facilities in operation or for which construction commenced on or before November 19, 1980. In HSWA, Congress amended section 3005(e) by providing that facilities in existence on the effective date of statutory or regulatory changes under the Act that render the facility subject to the requirement to have a permit, qualify for interim status if they make an application for a permit and comply with the section 3010 notification requirements. Facilities which have been previously denied a RCRA permit or for which authority to operate the facility under RCRA has been previously terminated may not, however, qualify for interim status pursuant to the amendment to section 3005(e).

In the legislative history accompanying this provision, Congress indicated that the amendment to section 3005(e) would apply to facilities in existence which treat, store, or dispose of newly listed hazardous wastes. The legislative history also noted that facilities which were previously exempted from certain RCRA requirements but subsequently became subject to those requirements (e.g., small quantity generators) would also be eligible for interim status as a result of this amendment. 130 Cong. Rec. S9170 (daily ed. July 25, 1984).

If a unit at a facility has been previously denied a RCRA permit or had its interim status terminated, the owner or operator of the facility may not qualify for interim status for any unit at the facility in existence on the effective date of statutory or regulatory changes that render the facility subject to the requirement to have a permit. This interpretation is in accordance with the legislative history which notes that *facilities* for which RCRA permits have been previously denied or for which interim status has been previously terminated would be unable to qualify for interim status pursuant to this amendment *under any circumstances. Id.*

As discussed previously, facilities must submit a permit application in order to qualify for interim status. In order to implement the statutory amendment to section 3005(e), the Agency is today amending 40 CFR 270.70(a). Section 270.70(a), as amended, provides that owners and operators of facilities in existence on the effective date of changes under the Act that require the facility to have a permit, qualify for interim status if they comply with the requirements of 40 CFR 270.10 governing submission of Part A permit applications. Since § 270.10 does not currently provide Part A application requirements for owners and operators of these facilities, the Agency is today amending the application requirements in § 270.10(e) to reflect the new § 270.70(a). Today's rule provides that owners and operators of HWM facilities in existence on the effective date of statutory or regulatory amendments under RCRA that render the facility subject to permit requirements must submit Part A of their permit application by the dates specified in § 270.10(e)(1) in order to qualify for interim status. The Agency is also adding a new provision, § 270.70(c), in order to implement the amendment to section 3005(e). Section 270.70(c) provides that a person shall not qualify for interim status if he owns or operates a facility which has been previously denied a RCRA permit or if authority to operate the facility has been previously terminated.

5. Loss of Interim Status for Failure To Submit Part B

The HSWA amends section 3005(e) by providing that interim status for owners and operators of land disposal facilities terminates within a 12-month period unless the owner or operator submits a Part B prior to that date and certifies compliance with the applicable ground-water monitoring and financial responsibility requirements. Congress also amended section 3005(c) to provide that interim status for owners and operators of incinerators terminates by November 8, 1989 unless a Part B application is submitted by November 8, 1986. For all other facilities, interim status terminates by November 8, 1992, unless an application is submitted by November 8, 1988. The Agency is today amending the regulation concerning termination of interim status, 40 CFR 270.73, to reflect these grounds for termination of interim status.

In addition to amending § 270.73, the Agency is also amending 40 CFR 270.10(e)(4) which specifies the application requirements for HWM facilities. Section 270.10(e)(4) now provides that an owner or operator shall submit his Part B voluntarily or in response to a request from the State or EPA. Section 270.10(e)(4), as amended today, provides that owners or operators of HWM facilities must submit their Part B application in accordance with the dates specified in § 270.73. This regulatory amendment conforms with the statutory requirement that the owner's or operator's duty to submit a Part B application is mandatory. The Agency or the State need not first request the Part B application. It is the Agency's intention, however, to continue, as a matter of policy, to request Part B applications from owners and operators of hazardous waste management facilities, consistent with the deadlines now specified in § 270.73. It should also be noted that submission of a UIC permit application would meet the requirement to submit the Part B application for facilities covered by the UIC permit by rule (See § 270.60(b)).

If at the expiration of the specified statutory time periods, the owner or operator of the facility fails to submit his Part B application or applicable certifications of compliance, interim status will terminate immediately under section 3005. EPA need not take any specific action to terminate the facility's interim status. Requiring specific Agency action prior to termination of interim status would delay the

termination of interim status which would, in turn, conflict with the statutory requirement that interim status terminates on the expiration of the statutory time period.

As discussed previously, the applicant must certify compliance with applicable ground-water monitoring and financial responsibility requirements. The statute is silent as to whether the applicable requirements are found in Part 264 or Part 265. However, the legislative history indicates that the applicable ground-water monitoring requirements are found in Part 265. In discussing the amendment, Congress asserted that since EPA's ground-water monitoring requirements have been in effect since November 1981, there is no excuse for noncompliance at this late date. 129 Cong. Rec. H8142 (October 6, 1983). The ground-water monitoring requirements in effect since November 1981 are those found in Part 265, Subpart F. See § 265.90. Accordingly, certification with the Part 265 ground-water monitoring standards or the State analogue to the Part 265 requirements will satisfy section 3005(e)(3). In order to be internally consistent with respect to certifications of compliance under section 3005(e)(3), the owner or operator must certify compliance with the financial responsibility requirements found in Part 265 or the State analogue to the Part 265 requirements rather than Part 264.

If the owner or operator of a facility fails to submit the application or the applicable certifications of compliance for such facility, the statute provides that interim status shall terminate for such facility. The Agency believes that the termination of interim status only affects the unit or units at the hazardous waste management facility for which the required information is not submitted. For example, if a hazardous waste management facility had both an incinerator and a land disposal unit, and the owner or operator of the facility submitted the Part B for the incinerator by the specified date but *not* for the land disposal unit, interim status would terminate for the land disposal unit and *not* for the incinerator.

EPA believes this interpretation is reasonable for several reasons. First, EPA sees no evidence in the legislative history to suggest that Congress meant to stop all operations at a large, multiple-unit facility simply because one unit has not properly submitted its Part B application or applicable certifications. Terminating waste management at these units that are not covered by the owner's or operator's application or certification would seem an adequate sanction to achieve the Congressional purpose. Moreover, allowing loss of interim status for a subset of units at a facility is consistent with EPA's regulatory authority to divide its consideration of units for permitting purposes. See § 270.1(c)(4). Under its current regulations EPA may grant or deny a permit to a set of units at a facility without disturbing the facility's interim status for other units at the facility.

D. Burning and Blending of Hazardous Waste

1. Ban on Hazardous Waste in Certain Cement Kilns

Section 204 of the Hazardous and Solid Waste Amendments of 1984 amends section 3004 of RCRA to prohibit cement kilns located in incorporated cities with populations greater than 500,000 from burning hazardous waste, or any fuel containing a hazardous waste, unless they comply with the regulations applicable to hazardous waste incinerators. This prohibition, contained in section 3004(8)(2)(C), remains in effect until the Agency develops substantive standards for cement kilns burning hazardous waste. As discussed more fully below, the prohibition would not apply to cement kilns burning petroleum coke containing hazardous waste indigenous to petroleum refining, unless the petroleum coke exhibited a characteristic of hazardous waste. *See* RCRA amended sections 3004(q)(2)(C)(i) and 3004(q)(2)(A), respectively.

The "hazardous wastes" covered by this prohibition are any hazardous wastes identified or listed in regulations implementing section 3001, and explicitly include commercial chemical products that are burned in lieu of their original intended use. *See* RCRA amended section 3004(g)(1).[23] The statute supersedes the exemption for the actual act of recycling (in this case, burning in a cement kiln) found in existing § 261.6(b), and also in EPA's recently published amendment, found in amended § 266.30, 50 FR at 667.

We have codified the statutory language in a new Subpart D to Part 266 of the regulations. This Subpart is reserved for rules dealing with burning hazardous wastes in thermal combustion devices other than incinerators, namely boilers and industrial furnaces. We also have made conforming changes to §§ 261.6(a) and 261.33.

The statutory prohibition applies to "fuels" containing hazardous wastes. The provision thus does not appear to apply to cement kilns burning hazardous wastes for material recovery. This is consistent with legislative history distinguishing between cement kilns burning for energy and material recovery. See H.R. Rep. No. 198, 98th Cong., 1st Sess. 40 (1983). An issue not specifically addressed is the status of a cement kiln burning hazardous waste for the dual purposes of energy and material recovery. In light of the remedial purpose of the provision, and the broad reach of section 204 in general, the Agency believes that cement kilns burning for a dual purpose are covered by the prohibition. See also 50 FR at 630–31 (January 4, 1985).

2. Labeling of Hazardous Waste Fuels

The new statutory amendments also require that any person who produces, distributes, or markets a fuel containing a hazardous waste, or a hazardous waste burned directly as a fuel, must include a warning label in the invoice or bill of sale for the fuel. The warning label must state that the fuel contains hazardous wastes, and must list the hazardous wastes contained therein. *See* RCRA Section 3004(r)(1). The legislative history indicates that this latter requirement is satisfied by identifying wastes by generic classes (such as "chlorinated solvent") rather than by precise chemical name. H.R. Rep. No. 198, 98th Cong., 1st Sess. 42 (1983). The warning label must be located conspicuously, and be printed in conspicuous, legible, and contrasting type. This requirement took effect on February 6, 1985. The warning label requirement applies to fuels containing *any* hazardous waste (with three exceptions described below), and so supersedes provisions in §§ 261.6(a) and 261.33 of EPA's existing regulations [as well as provisions in EPA's recent January 4 amendment to § 261.6(a)].

An issue arises as to precisely who is to prepare a warning label, particularly with reference to intra-company shipments of hazardous waste fuels. The labeling requirement applies to any person required to notify under paragraphs (1) and (3) of section 204, namely persons who produce, market, or distribute hazardous waste fuel. The

[23] For this prohibition to apply, a commercial chemical product must be burned in lieu of its normal use, or added to a fuel in lieu of its normal use. A fuel merely containing a chemical on the § 261.33 list is *not* automatically a hazardous waste. For the fuel to be a waste, the chemical must have been a commercial product (or off-specification variant or spill residue thereof) when it was added, and the commercial chemical must not be a fuel itself. See H.R. Rep. No. 570, 97th Cong., 2d Sess. 18–19 (1982). EPA has recently amended § 261.33 in a manner virtually identical to the statute. See 50 FR at 665 (January 4, 1985).

legislative history indicates that the purpose of the provision is to put users and transporters on notice that they are handling a fuel potentially more dangerous than a virgin fuel. H.R. Rep. No. 198 at 42; S. Rep. No. 284 at 40. The Agency thus is of the view that this requirement should apply whenever a hazardous waste fuel is sent off-site, even if the ultimate user is the same company that produced the fuel.

We note that the labeling requirement may be superseded by EPA regulations. RCRA section 3004(r)(1). EPA believes that a hazardous waste manifest serves the same function as the warning label, and is far more efficient to administer. EPA thus proposed requiring a manifest rather than a warning label. 50 FR at 1704 (January 11, 1985).

3. Exception to Labeling Requirement

The statute contains three exceptions to the labeling requirement: for hazardous waste-derived petroleum coke, and for two types of hazardous waste-derived fuels from petroleum refining operations. These are discussed below in turn.

The exception for petroleum coke applies to petroleum coke which contains as ingredients oil-bearing hazardous wastes from petroleum refining operations, for those wastes that are indigenous to the refining operations. Thus, if a refinery added spent solvents to the coke, the coke would not be exempt. *See* S. Rep. No. 284 at 39. Hazardous waste-derived petroleum coke exhibiting a characteristic of hazardous waste is not exempt. In addition, the legislative history is clear that only the petroleum coke is exempt: "the exemption for hazardous waste to be converted to coke begins only with the introduction to the conversion process." *Id.* The hazardous refinery wastes are subject to regulation up until that point.

The second statutory exemption from the labeling requirement is for hazardous waste-derived fuels from petroleum refining operations (defined as refining operations within SIC Code 2911). There are three conditions precedent to this exemption: the wastes must contain oil, they must be generated and reinserted on-site into the refining process at a point where contaminants are removed, and they must be converted into product along with normal process streams. As with the previous exemption, this exemption applies only to fuel containing wastes that are indigenous to the petroleum refining process. H.R. Rep. No. 198 at 43.

The legislation does not state precisely what is meant by the requirement that "contaminants (be) removed" by reinsertion into the process. The Agency does not read this as a requirement that all contaminants be removed. This is shown by the legislative history, which states that this standard was adopted by analogy to the definition of rerefined oil in section 104(39) of RCRA. S. Rep. No. 284 at 41. Rerefining is a process that removes some but not all contaminants.

The Agency believes that the requirement that wastes be inserted into a part of the refining process where contaminants are removed means that wastes must be inserted at or before a point in the process designed to remove toxic metal and organic contaminants in the normal operation of the refining process. The requirement does not mean, however, that all contaminants in the waste be removed. Examples of parts of the refining process designed to remove contaminants are atmospheric distillation towers, vacuum distillation towers, fluid cokers, and catalytic cracking operations.

Fuels resulting from refining operations where hazardous wastes are added at or before these points would not be automatically subject to the warning label requirement. Conversely, certain downstream refining operations (e.g., product finishing, blending, and packaging operations) are not designed to remove contaminants in the sense required by the bill. These operations are designed primarily to improve product saleability; removal of toxic metals and organics is incidental to this purpose. Fuels containing hazardous wastes added at these points in the process would have to have a warning label.

The final exemption from labelling is for oily wastes from petroleum refining and transportation practices that are inserted into the petroleum refining process as in the previous exemption. RCRA section 3004(r)(3). This exemption is to a large degree coextensive with the previous one, but it differs in three respects: it applies to "oily materials" as well as to petroleum refining wastes; it applies to wastes generated from petroleum transportation practices (as well as production and refining practices), and the wastes need not be generated and inserted on-site.

The Agency reads section 3004(r)(3) as applying only to wastes not already covered by section 3004(r)(2). Any other reading would render section 3004(r)(2) surplusage, violating standard tenets of statutory construction. The legislative history in fact indicates that paragraph (r)(3) was intended to apply to used oil that is hazardous. *See* S. Rep. No. 284 at 40.

4. Household Waste

New section 3001(g) adds a clarification to the household waste exclusion contained in § 261.4(b)(1). That regulation states that household wastes are not hazardous wastes. The preamble accompanying that regulation states that residues remaining after treating household wastes also are not hazardous wastes. 45 FR 33099 (May 19, 1980).

The legislative clarification is that a resource recovery facility recovering energy from burning municipal waste is not considered to be managing hazardous waste, provided the facility meets two conditions:

(a) the facility receives and burns only household waste, and solid waste from other sources that contains no hazardous wastes; and

(b) the facility cannot accept hazardous wastes from any non-household sources, and must adopt precautionary measures—such as contractual arrangements of other notification procedures—to assure that hazardous wastes are not received or burned.

EPA has codified this provision in § 261.4(b), repeating the statutory language. The statutory provision appears to raise two principal issues:

(1) The status of facilities that, in spite of good faith efforts, receive and burn hazardous wastes; and

(2) The status of residues from burning household waste and non-hazardous solid waste if the residue exhibits a characteristic of hazardous waste.

As to the first issue, the statutory language contains no exception for facilities that, in spite of their best efforts, receive hazardous wastes. The legislative history indicates, however, that if good faith precautionary measures are in place and a resource recovery facility still receives and burns a hazardous waste, that the "facility * * * should not be penalized for the occasional, inadvertent receipt of hazardous waste * * *" S. Rep. No. 284 at 61. Thus EPA believes that resource recovery facilities do not become Subtitle C facilities when they inadvertently burn hazardous waste if they have taken good faith measures to avoid burning such waste.

The statute is silent as to whether hazardous residues from burning combined household and non-household, non-hazardous waste are hazardous waste. These residues would be hazardous wastes under present EPA regulations if they exhibited a characteristic. The legislative history does not directly address this question,

although the Senate report can be read as enunicating a general policy of non-regulation of these resource recovery facilities if they carefully scrutinize their incoming wastes. On the other hand, residues from burning could, in theory, exhibit a characteristic of hazardous waste even if no hazardous wastes are burned, for example, if toxic metals become concentrated in the ash. Thus, the requirement of scrutiny of incoming wastes would not assure non-hazardousness of the residue. EPA believes that the principal purpose of section 3001(g) was to prevent resource recovery facilities that may inadvertently burn hazardous waste, despite good faith efforts to avoid such a result, from becoming subject to the Subtitle C regulations. EPA does not see in this provision an intent to exempt the regulation of incinerator ash from the burning of non-hazardous waste in resource recovery facilities if the ash routinely exhibits a characteristic of hazardous waste. However, EPA has no evidence to indicate that these ash residues are hazardous under existing rules. EPA does not believe the HSWA impose new regulatory burdens on resource recovery facilities that burn household and other non-hazardous waste, and the Agency has no plans to impose additional responsibilities on these facilities. Given the highly beneficial nature of resource recovery facilities, any future additional regulation of their residues would have to await consideration of the important technical and policy issues that would be posed in the event serious questions arise about the residues.

5. Minimum Technological Requirements for Incinerators

Section 202(a) of the Amendments adds a section 3004(o)(1)(B) to RCRA which states that incinerators which receive permits after enactment of the Amendments must meet the minimum destruction and removal requirements contained in § 264.343(a) of EPA's regulations. That regulatory provision states that principal organic hazardous constitutents (POHC's) in the waste feed must be destroyed and removed to a minimum efficiency of 99.99%

It is unnecessary to include any new provisions in EPA's regulations because the statute simply codifies the existing rules. We also note that the provision does not preclude the Agency from adopting a more stringent destruction and removal requirement (the statute refers to "attainment of a *minimum* destruction and removal efficiency"). Nor does it prohibit changes (either more or less stringent) in other performance standards for incinerators, including those for control of hydrogen chloride emissions or total particulates.

Finally, the requirement applies only to incinerators, and so does not mandate minimum technological requirements for other combustion units burning hazardous waste, such as boilers and industrial furnaces. *See* H.R. Rep. No. 198 at 42. (Boilers and industrial furnaces are subject to the same ultimate standard as incinerators, but need not meet the same technological requirements.)

E. Exposure Information and Health Assessments

In enacting the HSWA, Congress amended Subtitle C of RCRA by adding a new section concerning exposure information and health assessments, section 3019. Under section 3019, RCRA permit applications for landfills and surface impoundments must be accompanied by information on the potential for the public to be exposed to hazardous wastes through releases related to the unit. The Administrator will then make that information available to the Agency for Toxic Substances and Disease Registry (ATSDR) established under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Whenever the Administrator or a State judges that the release poses a substantial potential risk to human health, the Administrator may request the ATSDR to perform a health assessment and take appropriate action under CERCLA.

In order to codify section 3019, the Agency is today adding a new regulatory provision, 40 CFR 270.10(j). Section 270.10(j)(1) provides that Part B applications for landfills or surface impoundments submitted after August 8, 1985, must be accompanied by certain exposure information. Section 270.10(j)(2) provides that by August 8, 1985, owners and operators of a landfill or surface impoundment who have already submitted their Part B application are also required to submit exposure information.

40 CFR 270.10(j) is applicable to both operating permits and post-closure permits because in both types of permits the owner or operator is required to submit a Part B application. The submittal of the Part B triggers the duty to submit the exposure information. Owners or operators of closed units or active solid waste units for which a post-closure permit is not required would not be required to submit a Part B. Therefore, owners and operators of such units would not have to submit exposure information.

At a minimum, the exposure information must address reasonably foreseeable potential releases from normal operations and accidents, the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases, and the potential magnitude and nature of the human exposure resulting from the releases.

Section 3019 provides that exposure information must *accompany* the permit application; the information is not part of the permit application. In enacting this provision, Congress intended that the exposure information should not delay the permitting process. Submission of exposure information is not a condition for permit issuance. 130 Cong. Rec. S9187 (daily ed. July 25, 1984). Accordingly, the Agency is today amending 40 CFR 270.10(c) to provide that an application which is not accompanied by exposure information will not be deemed incomplete for purposes of permitting a facility. This interpretation is in accordance with the legislative history which notes that noncompliance with section 3019 is a separate violation of RCRA and should not be considered when determining the completeness or adequacy of Part B permit applications. 130 Cong. Rec. S13822 (daily ed. October 5, 1984).

Neither the statutory amendments nor the legislative history defines the term "release." The statute does, however, provide that in conducting health assessments, the potential pathways of human exposure must be evaluated. These pathways include ground or surface water contamination, air emissions, and food chain contamination. Given the multi-media nature of the health assessment pathways, and for the reasons previously discussed in connection with section 3004(u), it is appropriate to model the definition of release after section 101(22) of CERCLA. Pursuant to section 101 of CERCLA, "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, with certain exclusions. Since the CERCLA exclusions are not generally appropriate for this section, the Agency will not adopt these exclusions when defining a "release".

Section 3019(a) provides that owners and operators who submitted Part B applications prior to the date of enactment of the HSWA must submit exposure information by August 8, 1985. Section 3019(a) also provides that after August 8, 1985 each Part B application shall be accompanied by exposure

information. The Agency intends that owners and operators who submitted Part B applications subsequent to the date of enactment but prior to August 8, 1985 must also submit exposure information because section 3019(a) requires that beginning on August 8, 1985, *each* Part B application shall be accompanied by exposure information. A contrary interpretation would create a gap in the implementation of section 3019 by not requiring exposure information from owners and operators who submitted Part B's between the date of enactment and August 8, 1985. Such an interpretation would not be justifiable in light of the fact that all owners and operators who submitted Part B's prior to the date of enactment must submit exposure information by August 8, 1985.

F. Delisting Procedures

The new amendments add a paragraph (f) to section 3001, establishing specific criteria and procedures for delisting petitions. This subsection requires EPA to consider additional factors, such as constituents other than those for which the waste was listed, if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste.

This provision is intended to eliminate what both Houses of Congress perceived as a defect in the standards used by EPA to evaluate delisting petitions. The Senate noted that, "[t]he Agency's practice has been to consider only the constituents given as the original justification for the Agency's decision to list a waste." S. Rep. No. 284, 98th Cong., 1st Sess. 33 (1983). This practice, however, does not ensure that wastes which are delisted are not hazardous. EPA often could have listed wastes for other constituents than those used as the basis for the listing and cited in Appendix VII of Part 261. A petitioner's waste could be non-hazardous with respect to the listed constituents, and exempted from regulation under recent EPA practices, yet still be hazardous due to constituents not considered. *Id.* (To the same effect, see H.R. Rep. No. 198, 98th Cong., 1st Sess. 57–58 (1983).) The amendments also require the Administrator to provide notice and an opportunity for comment on the additional factors considered before granting or denying a petition.

The statute forbids the granting of any new temporary exclusions without notice and comment as is currently permitted by § 260.22(m) of EPA's regulations, since the statute calls for notice and comments on all petitions evaluated after enactment of the amendments.[24] A provision in an earlier version of the House bill permitting the continued issuance to temporary exclusions, if notice and comment was provided, was eliminated from the final legislation. See H.R. Rep. No. 198, at 13, 58.

The amendments further set deadlines for Agency action on all future petitions received. To the maximum extent practicable, the Agency must propose a decision within twelve months of receiving a complete application[25] and grant or deny a petition within twenty-four months. Unlike the self-executing elimination of previously granted temporary exclusions noted below, this provision does not mean that the petitions are granted by operation of the statute if the Agency has not acted within the time limits specified.

The statute also places a time limit on the effectiveness of any temporary exclusions granted before its enactment. Beginning 24 months after enactment, wastes covered by a petition granted such a temporary exclusion no longer will be exempted from RCRA regulations, unless a final decision granting or denying the petition, after notice and comment, has been issued. This provision reflects the desire of Congress to eliminate the possibility that a delisting petition will be temporarily granted, without notice or an opportunity for comment, and then not reviewed for a final determination within a reasonable time. See, e.g., S. Rep., *supra*, at 33.

The new delisting standard and the need for notice and comment require a number of regulatory changes. The Agency has changed the substantive standard on which delisting petitions are reviewed to conform to the statutory mandate. In addition, today's regulation eliminates the temporary exclusion provision in the Agency's regulations.

[24] The Agency believes that the statute prohibits temporary exclusions as previously granted by EPA (i.e., exclusions, without notice and comment, based on a substantial likelihood that a petition eventually would be granted). Exclusions still may be granted, however, without notice and comment if the requirements of the good cause exception, 5 U.S.C. § 553(b)(3)(B), are met.

[25] A complete application includes both the original submission by the petitioner and any subsequent information requested by EPA in order to determine whether the waste contains any additional constituents which could cause it to be a hazardous waste. Congress required the Agency to consider, under certain circumstances, factors other than those for which the waste was listed. EPA does not believe that Congress would have expected the Agency to make this determination without adequate information. EPA therefore concludes that the time limits incorporated in the amendment begin to run only after the Agency has received all information necessary to determine whether the waste is hazardous.

1. The New Substantive Standard

The primary change in 40 CFR 260.22 made in this regulation is to modify the substantive standard on which delisting petitions are evaluated, in accordance with the statute. The current regulation requires that the petitioner demonstrate to the satisfaction of the Administrator that the waste produced does not meet any of the criteria under which the waste was listed and notes that a waste so excluded still may be a hazardous waste if it fails any of the characteristics in Subpart C of Part 261 (40 CFR 260.22(a)). Today's regulation retains these provisions, but requires in addition that, before a waste may be excluded, the Administrator determine that the waste does not satisfy any factors other than those for which the waste was listed or that there is no reasonable basis to believe that such additional factors could cause the waste to be hazardous. This provision codifies the two-prong test mandated by the amendments, i.e., the Agency must consider both the factors for which the waste was listed (in all cases) and the factors and constituents other than those for which the waste was listed (in cases where the Administrator has a reasonable basis to believe that these additional factors could cause the waste to be hazardous).

2. No New Temporary Exclusions

The regulation eliminates the provision authorizing temporary exclusions, which were issued without prior notice and comment when the Administrator found that there was a substantial likelihood that an exclusion would be granted. 40 CFR 260.22(m). Dissatisfaction with the lack of notice and comment was a major impetus for the revision of the delisting procedures. *See*, e.q., S. Rep., *supra*, at 33.

Today's regulation require notice and an opportunity for comment before a delisting may be granted.[26] The statute mandates notice and an opportunity for comment on the additional factors (including additional constituents) which the Agency now must consider, before granting or denying a petition. EPA regulations already require notice and comment for petitions, other than temporary exclusions. *See* 40 CFR 260.20. These provisions applied to petitions which addressed only the

[26] The Agency believes that the statute does not prohibit use of the APA provision permitting final agency action without notice and comment if there is good cause. See 5 U.S.C. 553(b)(3)(B). There is no suggestion in the language of the amendment or the legislative history that Congress meant to overrule the APA. These regulations also permit the Agency to use the good cause exception.

constituents for which the waste was listed. Congress wanted to ensure that notice and comment would continue to be required for the expanded petitions, addressing not only the listed constituents, but any additional constituents as well. The Agency concludes that the Act mandates notice and comment for all petitions, and for the entire petition, and the regulation so provides.

G. Research, Development, and Demonstration Permits

The HSWA adds section 3005(g) which provides EPA with authority to issue permits for research, development, and demonstration treatment activities. The amendment grants EPA authority to issue permits independent of existing regulations relating to hazardous waste treatment processes. EPA is directed to include certain provisions in each permit as well as any other requirements deemed necessary to protect human health and the environment. With several exceptions, the amendment also allows waiver or modification of the permit application and permit issuance requirements of the general permit regulations.

EPA has codified this new authority in § 270.65 of its regulations. This regulation has four basic provisions.

Paragraph (a) of the regulation authorizes the Administrator to issue RD&D permits for innovative and experimental treatment technologies or processes for which permit standards have not been established under Part 264 or 266. The regulation authorizes the Administrator to establish permit terms and conditions for the RD&D activities as necessary to protect human health and the environment. The statutory amendment allows the Administrator to select the appropriate technical standards for each RD&D activity to be permitted. EPA is required to address construction (if appropriate), limit operation for not longer than one year, and place limitations on the waste that may be received to those types and quantities of wastes deemed necessary to conduct the RD&D activities. The permit must include the financial responsibility requirements currently in EPA's regulations and other such requirements as necessary to protect health and environment. Other possible requirements include, but are not limited to, provisions regarding monitoring, operation, closure, remedial action, and testing and providing information. EPA may decide not to permit an RD&D project if it determines that the project, even with restrictive permit terms and conditions, may threaten human health and environment.

Paragraph (b) provides that the Agency will generally follow the permitting procedures of Parts 124 and 270. As authorized, EPA reserves the right to waive or modify these procedures to expedite permitting as long as human health and the environment are protected. However, EPA will not waive the public participation procedures of Part 124 established under § 7004(b)(2) of RCRA, nor will EPA waive the financial responsibility requirements currently in EPA regulations.

Paragraph (c) implements the statutory provision that authorizes the Administrator to order an immediate cessation of any operations at the facility if necessary to protect human health or the environment.

Under paragraph (a) and the statutory amendment, permits are initially to be issued for a maximum period of one year of operation. The legislative history provides that the permit is to be issued for a maximum of 360 days of operation. The 360-day time period does not refer to calendar days, to periods of construction, or to operation using materials other than hazardous waste. (*See* 129 Cong. Rec. H8160 (daily ed. October 6, 1983.) The permit may be renewed up to three times for periods of not more than one year of operating days as provided in paragraph (d). EPA has also amended § 270.10(a) to provide that procedures for issuing and administering RD&D permits are governed exclusively by § 270.65.

Congress made clear that RD&D permits could cover a variety of experimental activities, but suggested several limitations on EPA authority. The legislative history provides three examples of the types of RD&D activities which may be covered by this section. [*See* 129 Cong. Rec. H88160 (daily ed. October 6, 1983)]. First, a common experiment involves an individual or company who has designed on paper or in the laboratory an innovative treatment system for hazardous waste. In order to determine whether this new technology is technically feasible, a small pilot-scale unit may be constructed and operated for purposes of evaluation. If this is successful, a larger but still pilot-scale, experimental unit may be constructed to demonstrate the reliability, economic feasibility, and environmental impacts of the process.

A second type of hazardous waste management experiment involves an equipment vendor and a waste-generating or processing customer. Vendors often custom prepare storage and processing equipment, that is, tanks, incinerators, etc., based on a customer's individual needs, and this may require one or more tests with a pilot facility using samples of the customer's waste. And third, a manufacturer or user of a particular commercial treatment process may want to improve its efficiency or effectiveness or reduce environmental impacts. This may involve the construction of a pilot-scale treatment unit that will be operated in an experimental mode to test new wastes or alternate operating conditions. This list of examples is not an exclusive list of the activities that may be permitted.

Congress also explained how it expected EPA to operate in issuing RD&D permits. Under this section, EPA may permit (1) treatment technologies, processes, methods, or devices that are innovative and experimental (2) for the sole purpose of gathering information to evaluate their technical or economic feasibility. These factors are discussed below.

First, innovative and experimental treatment technologies or processes intended to be covered by this section at a minimum include experimentation and demonstration with technologies that have never been utilized in commercial application, as well as further refinement and development or performance testing of technologies that, in some form, have been operated in a commercial capacity.

Second, under a permit, EPA may allow the experimental treatment activities and associated storage. Such permits will not authorize disposal of hazardous waste. The disposal of hazardous waste must occur at a facility which has received a RCRA permit under Part 264 or which has interim status. RD&D permits may only be issued for the purpose of demonstration or evaluation of the economic or technical feasibility of a particular treatment technology, process, method, or device and associated storage. If the waste management activity related to the technology, unit, process, or device is used at any time to store or treat waste for any reasons other than the conduct of a treatment experiment, it must be permitted and operated in accordance with all applicable sections of 40 CFR Parts 264 and 266. *Id.*

H. State Authorization

HSWA made several significant changes regarding the authorization and implementation of State hazardous waste programs. Part 1 of this section discusses the new, dual State-Federal regulatory program in authorized States and some conforming changes to the State authorization regulations in Part

271 necessitated by the HSWA. Part 2 discusses section 3006(f), a new provision requiring authorized States to make information about hazardous waste facilities available to the public to the same extent that EPA would make the same information publicly available. Part 3 discusses the extension of the expiration date for interim authorization under the 1976 RCRA. Prior to the HSWA, responsibility for the RCRA program in a State with interim authorization would have reverted to EPA on or before January 26, 1985 if the State had not yet obtained final authorization. Part 4 discusses the new type of interim authorization under the HSWA and the requirements States must meet to obtain and retain final authorization ("moving target" and program revisions).

The preamble to the proposed rule to be published as a companion to this rule addresses additional issues pertaining to State authorization under the HSWA. Both preambles should be read together.

1. Applicability of Today's Rule in Authorized States

New section 3006(g) of RCRA provides that any requirement or prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed under the 1984 Amendments shall take effect in each authorized State on the same date as such requirement or prohibition takes effect in non-authorized States. The Administrator is directed to carry out such requirements or prohibitions directly in an authorized State until the State is granted authorization to do so. This includes the authority to issue or deny permits or portions of permits where the State is not yet authorized to implement the requirements and prohibitions established by the amendments. (Section 227.)

These amendments dramatically alter the existing Federal-State relationship under section 3006 of RCRA. Before the amendments, pursuant to sections 3006(b) or 3006(c), States with final authorization or all phases of interim authorization administered their hazardous waste program entirely in lieu of EPA. Changes to the Federal Subtitle C program did not take effect automatically in such States; States needed to revise their programs to include those changes and receive EPA's approval. Further, EPA could not issue permits for any facilities covered by the State permitting program which EPA had approved. *See* 40 CFR 264.1(f), 271.1(f), 271.121(f).

In contrast, the new amendments create a dual regulatory system in authorized States. Because of new section 3006(g), the requirements and prohibitions stemming from the amendments take effect immediately in all States, regardless of any less stringent State statute, regulation, or permit. For example, even though a facility may now hold a State RCRA permit allowing it to dispose of bulk liquid waste in a lined landfill, RCRA prohibits it from doing so after May 8, 1985. (See section V.A.1. of preamble.) And, even though authorized States have previously promulgated their permit application requirements, facilities in all States will have to comply with new Federal permit application requirements in Part 270.

EPA reviewed today's rule to determine which provisions in it are "requirements or prohibitions" that are applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste. EPA concluded that all of the provisions in the rule are requirements or prohibitions. They therefore take effect in authorized States and are Federally enforceable.

The Agency started its analysis with the Conference Report which specified that certain requirements and prohibitions should take effect immediately in all States. (130 Cong. Rec. H11134 (daily ed. Oct. 3, 1984).) With the exception of the "liquids in landfills" provision, these provisions were in the Senate version of the HSWA and appear in 3001(d)(3), (5), 3004(c), (1), (o), (r), (u), 3005(c)(3), 3007(e)(1), 3015, and 7010, as enacted. In addition, EPA concluded that the household waste exclusion in section 3001(i), the delisting procedures in section 3001(f), the requirements concerning corrective action and ground-water monitoring in sections 3004(p), (v), 3005(i), the prohibition concerning salt domes in section 3004(b), the ban on hazardous waste in cement kilns in section 3004(q)(2)(C), the requirement for health assessments in section 3019, the preconstruction ban in section 3005(a), the termination of interim status and extension of interim status requirements in section 3005(e), and the waste minimization requirements in section 3002(a)(6), (b) and 3005(h) are requirements and prohibitions. EPA also concluded that the requirements concerning hazardous waste exports in section 3017(g) were requirements concerning the generation and transportation of hazardous waste.

Finally, the Agency analyzed the statute to determine whether EPA's authority to issue research and development permits under section 3005(g) is a requirement concerning the treatment of hazardous waste. In doing so, EPA considered whether section 3005(g) is the type of provision that Congress would have wanted EPA to be able to implement directly in authorized States pursuant to section 3006(g). EPA concluded that section 3005(g) was intended to be implemented by EPA in the case of an authorized State which does not have State legal authority to issue permits to these types of facilities. While the language in section 3005(g) is discretionary ("The Administrator may issue a research, development, and demonstration permit * * *"), EPA does not believe that Congress, in amending the statute to encourage new and innovative technologies and to allow permitting before section 3004 standards are developed, intended to preclude the issuance of permits to research and development facilities in authorized States.

Thus, pursuant to 3005(g) and 3006(g), EPA is able to issue a research and development permit, in consultation with the State, to encourage development of the innovative technology. However, as discussed next, an EPA permit could not override more stringent State requirements governing the facility or precluding its construction or operation without a State permit.

Some of these new requirements and prohibitions provide for variances and exclusions. For example, exemptions from liner and ground-water monitoring requirements are available under certain conditions. *See*, e.g., § 264.90(b)(2), § 264.221(d). In addition, facilities constructed to incinerate PCBs pursuant to EPA's approval under section 6(e) of the Toxic Substances Control Act are exempted from the preconstruction ban in new 40 CFR 270.10(f)(1). See section 3005(a) of RCRA, as amended.

The Agency considered whether a variance or exclusion from such a requirement was itself a "requirement" or "prohibition" of the Act. EPA concluded that the entire provision on a subject matter—such as minimum technological requirements—should be treated as the "requirement" or "prohibition" since all the subparts are related. However, section 3009 of RCRA and existing 40 CFR 271.1(i) and 271.121 provide that nothing in RCRA prohibits States, political subdivisions, or localities from imposing more stringent requirements than those in EPA's RCRA regulations. Thus, any State or local requirement that is more stringent than a requirement or prohibition in today's rule remains in effect under State or local law.

As a practical matter, this means that facilities in authorized States may not

be able to benefit from the Federal exclusions and variances as would facilities in non-authorized States unless and until the authorized State amends its more stringent regulations or enabling authority. That result is compelled by the Act; nothing in the amendments or legislative history suggests any Congressional intent to override section 3009 or preempt more stringent State requirements. Thus, the universe of the more stringent provisions in the authorized State program and today's rule defines the applicable requirements. Each member of the regulated community must familiarize himself with both the State and Federal regulations to be assured that he is in compliance with all applicable requirements. EPA may enforce any violation of the authorized State program, the HSWA, or today's rule; a State may, of course, enforce violations of its requirements regardless of authorization status.

The Agency also wishes to emphasize that future regulations implementing the requirements and prohibitions in the HSWA will take effect in authorized States at the same time that they take effect in non-authorized States. For example, EPA may publish additional regulations further defining the double liner requirement in today's rule. Even though a State may receive authorization for today's double liner requirements, any new EPA regulation on double liners will be applicable in that State until the State receives authorization for the newly-amended double liner requirement. Thus, a State's authorization status may change in response to further implementation of the HSWA. The **Federal Register** notices promulgating new requirements will explain their applicability in authorized States.

EPA has made various changes to Part 271 to reflect EPA's new authority in authorized States. In § 271.1(a), a reference to section 3006(f) of RCRA has been added since a new State authorization requirement appears in section 3006(f). Sections 271.1(f), 271.19, 271.121(f), and 271.134 have been amended to reflect the Administrator's new authority under sections 3006(c) and (g) to issue permits in authorized States. Without these changes the regulations would continue to prohibit EPA from permitting facilities in authorized States.

A new section, 271.1(j), has been added to identify the Federal program requirements and prohibitions that are promulgated or take effect pursuant to HSWA. The Agency determined that it was extremely important to clearly specify which EPA regulations implement HSWA since these requirements are immediately effective in authorized States. These HWSA provisions also impact whether interim or final authorization is available to States as discussed in detail in following sections of this preamble. Therefore, the Agency is creating a table in § 271.1(j) that lists the HSWA regulations promulgated to date (specifically, the January 1985 dioxin waste listing and today's final codification rule). Future regulations promulgated under the authority of the HSWA will be added to the table in § 271.1(j).

Sections 271.3(a) and 271.121(c)(3) have been amended to reflect section 3006, as amended by the HSWA, and section 3009. They now describe the respective Federal and State roles in administering Subtitle C and indicate that all of the HSWA requirements identified in § 271.1(j) take immediate effect in authorized States. In addition, § 271.24 and § 271.136 have been added, and § 271.21(e)(1)(i) and § 271.121(a) amended, to refer to the availability of interim authorization under the HSWA.

EPA also amended §§ 264.1(f) and 265.1(c)(4) to clarify that the regulatory modifications to Parts 264 and 265 made by today's rule apply to the regulated community in authorized States until a State receives authorization to carry out the new requirements. This change is necessary to reflect section 3006, as amended, and is consistent with the other amendments to Part 271.

2. Public Availability of Information

Section 3006(f) provides that information obtained by authorized States regarding facilities and sites for the treatment, storage, and disposal of hazardous waste must be made available to the public in substantially the same manner, and to the same degree, as would be the case if EPA were carrying out the RCRA program in the State. Previous to the HSWA, the only EPA requirement in this area was that the name and address of a permit applicant could not be withheld from the public. *See* 40 CFR 270.12(b); 271.14(f).

Initially, EPA has interpreted "in substantially the same manner" in section 3006(f) to refer to the procedures EPA employs in deciding how and when to release information under the Freedom of Information Act (FOIA), 5 U.S.C. 552. EPA has interpreted "to the same degree" to refer to the type and quantity of information that is released under EPA's FOIA regulations. Further, the Agency has concluded that information regarding facilities and sites would at least cover information relating to permitting, compliance, and enforcement, and include information gathered under section 3007 of RCRA (or a State analogue). Section 271.17(c) has been amended to address section 3006(f).

EPA's procedural and substantive regulations implementing FOIA and governing the treatment of confidential business information are set forth in 40 CFR Part 2. Any State requirements which are equivalent to those regulations will satisfy section 3006(f). While the use of "substantially the same manner" in section 3006(f) seems to offer the opportunity for greater flexibility than an equivalent standard, EPA has not had the opportunity to identify whether different standards are feasible. Thus, today's final rule does not go beyond the statutory language, thereby allowing case-by-case judgments about whether a State has satisfied section 3006(f).

Another issue concerns the effective date of the section 3006(f) requirements. The HSWA does not clearly indicate whether a State may receive final authorization after the date of enactment if its application does not demonstrate equivalence to section 3006(f). Section 3006(f) could be read as requiring any State which did not receive final authorization by the date of enactment to demonstrate compliance with the new requirement in order to be authorized. EPA rejects that reading because the Agency believes it is inconsistent with the statute as a whole and the legislative intent.

Section 225 of the amendments specifically amended section 3006(b) to allow the Administrator to authorize a State program that is not fully equivalent to the Federal program. That amendment was intended to assure that last minute changes to the Federal program which the State did not have time to adopt would not prevent an otherwise qualified State from obtaining final authorization. Further, the Conference Report, while ambiguous, does stress the need to allow States sufficient time to amend their programs to implement section 3006(f). 130 Cong. Rec. H11134 (daily ed. Oct. 3, 1984). The Report, in fact, specifically refers to EPA's regulations in 40 CFR 271.21(e) concerning the phase-in of new Federal requirements.

Accordingly, EPA concludes that States now applying for final authorization are not legally required to have an analogue to section 3006(f)(1). Such States, and States which have already received final authorization without demonstrating compliance with section 3006(f), are required to revise their programs to demonstrate

compliance pursuant to the time schedules in § 271.21(e). [See part 4 of this preamble which summarizes § 271.21(e). The Agency intends to propose a rule which describes § 271.21(e) in depth.]

EPA notes that interim authorization, as described in sections 227 and 228 of the 1984 amendments, is not available for this new requirement. Congress made section 3006(f) an independent requirement that is subject to the standard in that provision, and not to a test of "equivalency" or "substantial equivalency." Thus, any State with final authorization or applying for final authorization to carry out the RCRA program must demonstrate full compliance with section 3006(f) within the timeframes specified in § 271.21(e). States applying for interim authorization need not address this provision.

3. Extension of Interim Authorization Expiration Date

Section 3006(c) of RCRA, as enacted in 1976, allowed EPA to grant "interim authorization" to a State program that EPA determined was "substantially equivalent" to the Federal program. EPA established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260–263 and 265 (universe of hazardous wastes, generator standards, transporter standards, and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covered general permitting procedures and technical standards for containers, tanks, surface impoundments, and waste piles. Phase IIB covered incinerator facilities, and Phase IIC addressed landfills and land treatment facilities. Some States were authorized only for Phase I; others received interim authorization for all Phase I and II components.

By statute Phase I and II interim authorization were to expire after the twenty-four month period beginning on the date six months after the date of promulgation of regulations under section 3002 through 3005. (That expiration date was January 26, 1985.) However, Congress amended section 3006(c) to provide that interim authorization under the 1976 Act ends "no later than January 31, 1986."

EPA has amended § 271.122(b)(1) to reflect the new statutory date. The Regional Administrator's existing authority in § 271.137(a) to extend the deadlines in section 271.137(a) to January 31, 1986 may be used if the "good cause" finding in that provision can be made.

Under § 271.137(a), State programs which received interim authorization for only part of the RCRA program were supposed to revert to EPA by a certain date if the State failed to apply for interim authorization for all components of the interim authorization program or for final authorization. However, the Regional Administrator was allowed to extend this deadline for "good cause," thereby avoiding reversion.

When EPA promulgated § 271.137(a), the Agency did not anticipate that this deadline could extend to January 31, 1986. However, EPA believes it is appropriate for the Regional Administrator to use § 271.137(a) for that purpose if "good cause" exists. Otherwise, States which are diligently proceeding toward final authorization would lose their interim authorization because of their inability to obtain final authorization before the January 1986 statutory deadline.

4. Authorization Under the HSWA: Application and Revision Requirements

Congress provided in section 3006(g)(2) that any State which has been granted interim or final authorization before the enactment of the HSWA may apply for interim authorization to carry out any requirement of the HSWA which takes effect in authorized States (i.e., today's rule and subsequent rules implementing the HSWA). If the Administrator finds that the State requirement is substantially equivalent to the Federal requirement, he is directed to grant the State interim authorization to carry out the requirement in lieu of EPA. Thus, as in the 1976 RCRA, States have an opportunity for a developmental period of interim authorization before they are required to be equivalent to and no less stringent than the HSWA program. Several significant issues have arisen concerning implementation of section 3006(g) and its relationship to the deadlines States must meet to obtain and maintain final authorization. Some of these issues are discussed here and others are discussed in the preamble to the proposed rule to be published in the near future.

To minimize confusion, EPA has used "1976 interim authorization" to refer to Phase I and Phase II interim authorization under RCRA as enacted in 1976, and "1984 interim authorization" to refer to the new type of interim authorization under the HSWA. Occasionally, "HSWA interim authorization" is substituted for 1984 interim authorization.

a. Impact of HSWA on Existing Authorized State Programs. One issue concerns the impact of the amendments on authorized States which have requirements that are more stringent or broader in scope than those required by Part 271 before the HSWA. At the time some States received 1976 interim authorization or final authorization, the State program may have included provisions the State believes are substantially equivalent (or equivalent) to some of the requirements in today's rule. The question has arisen about whether such States automatically have 1984 interim authorization for those requirements. EPA does not believe the statute allows this result.

Section 3006(g)(2) specifically allows an authorized State to submit an application demonstrating that its "existing program contains (or has been amended to include)" substantially equivalent requirements. If States were already authorized with respect to those requirements, there would have been no need for the reference to existing programs in the above provision. Thus, the statute contemplates that any State seeking authority to administer the 1984 amendments in lieu of EPA must submit an application for EPA's approval. Until the application is approved, EPA would enforce the Federal requirement.

It could be argued that this aspect of the amendments imposes an unnecessary burden on the States. In fact, submission of a new application serves several important functions. When the State submitted its original application for 1976 interim authorization or final authorization, the State's Attorney General would not have been able to certify substantial equivalence (or equivalence) to the new amendments since the amendments had not yet been passed. For the same reason, EPA could not have determined whether the State's regulations properly implemented the amendments. Finally, the public would not have had the opportunity to comment on whether the State's requirements were substantially equivalent (or equivalent).

In sum, major elements of the authorization process have not been satisfied for those States. Accordingly, they must still submit an application to receive 1984 interim authorization. However, the application need not be lengthy or complicated. While an Attorney General's statement will always be required, little explanation will be required where the State's authority is clear. Further, all revisions will not require addenda to the program description or a memorandum of

agreement. EPA will issue further guidance in this area.

b. Applications and program revisions: deadlines and requirements. The relationship of 1984 interm authorization to final authorization raises several issues relating to § 271.21(e). Section 271.21(e) (as amended, 49 FR 21678, May 22, 1984) specifies which regulations a State must adopt to receive final authorization ("moving target") and contains deadlines by which States with final authorization must modify their programs to adopt new Federal requirements.

In summary, any State applying for final authorization for the pre-HSWA RCRA program after November 8, 1985 must have authority for those HSWA statutory provisions taking effect on November 8, 1984, and any State applying for final authorization after July 15, 1986 must also have authority for the final rule appearing today. However, a State program applying for final authorization before those dates need not have the authority described above.

Any State with final authorization, regardless of the date it received or will receive final authorization, must modify its program by November 8, 1985, to reflect the HSWA provisions taking effect on November 8, 1984 if only regulatory changes are necessary to change the State program, or by November 8, 1986 if statutory changes are needed. Similarly, such States must modify their programs to reflect today's final rule by July 15, 1986 or July 15, 1987 depending on whether regulatory or statutory changes are necessary. Extensions of up to six months for these deadlines are available in certain circumstances.

The above interpretation reflects EPA's legal construction of § 271.21(e) as revised today to reflect HSWA. In addition, the Agency is proposing some major changes to § 271.21(e) which will be discussed at length in the preamble to the proposed rule to be published in the near future. If adopted, many of the deadlines presented here will change.

b.1. States Applying for Final Authorization. Section 3006(b) of RCRA was amended by HSWA to provide more specificity with regard to the requirements that apply to a State submitting an application for final authorization. It allows EPA to grant final authorization to a State program which is not equivalent to the Federal program in effect at the time of authorization, provided that the State program is equivalent to the Federal program in effect one year prior to submission of the State's application for final authorization.

Section 271.21(e) currently requires a State application to be reviewed based on the Federal program existing 12 months prior to application submission unless the State has made a good faith effort to meet the 12 month deadline and applies for an extension. Because the opportunity for an extension in current § 271.21(e)(1)(ii) would allow the State program more time than provided in Section 3006(b) to adopt changes to the Federal program we are deleting that provision.

EPA is today adding a new § 271.24 to make clear that States which apply for authorization after November 8, 1984, may apply for interim authorization for the HSWA provisions. Section 3006(b)(1) of RCRA, like existing § 271.21(e)(1), uses equivalence as the legal standard for final authorization, suggesting that a State applying for final authorization after November 8, 1984, would have to apply for final authorization for both the pre-HSWA RCRA program and post-HSWA requirements. However, section 3006(g) offers States the opportunity to apply first for interim authorization for the new amendments. The 1984 interim authorization, like 1976 interim authorization, allows a State to demonstrate that its program is "substantially equivalent" to EPA's, rather than "equivalent to and no less stringent than" EPA's.

EPA reads the two statutory provisions together to offer States applying for final authorization for the pre-HSWA program the opportunity to qualify for either 1984 interim authorization or final authorization to carry out the new amendments. A contrary reading requiring States to be equivalent to the new amendments would effectively deny them any opportunity to receive 1984 interim authorization—a result EPA has no reason to believe Congress intended.

A State which does choose to meet the "moving target" deadline by seeking 1984 interim authorization for portions of its program will have to obtain final authorization for those portions at a later date. That date has not been determined yet because, under the statute, it will be the same date that HSWA interim authorization expires. That is, if HSWA interim authorization were to expire, for example, on February 1, 1990, States with HSWA interim authorization would have to obtain final authorization by that date. In the proposed rule that will appear in the Federal Register, EPA discusses various options for the expiration date of interim authorization under HSWA.

Section 271.21(e) is not expected to affect the application process for States which do not yet have final authorization for the pre-HSWA RCRA program. In order for States to receive final authorization before the expiration of interim authorization under the 1976 RCRA, they will have to submit their applications to EPA by this summer—several months before the time they would be required to adopt requirements based on the HSWA provisions that took effect upon enactment of today's rule. Thus, the HSWA should not delay the authorization of any State which planned to receive final authorization by January 31, 1986.

States applying for final authorization are not, however, relieved of the obligation to adopt regulations based on today's rule. To the contrary, those States must also proceed to adopt State analogues to the HSWA provisions that took effect on November 8, 1984 and today's rule. States must read § 271.21(e) carefully; because of the deadlines discussed there, it is possible that a State will be required to have completed its program revisions by about the same time it expects to receive final authorization. It should be noted, however, that EPA will propose major changes to § 271.21(e) that would change or suspend many of the deadlines discussed above. The preamble of the proposed rule will describe the proposed amendments in detail.

b. 2. States with Final Authorization. An analogous change has been made to § 271.21(e)(2) that provides for interim authorization for States that have final authorization for the pre-HSWA RCRA program. As previously written, these provisions would have required States which already have final authorization, or which will receive final authorization before expiration of the § 271.21(e)(1) deadline for making changes, to modify their programs within one or two years of this rule to become equivalent to the Federal program. Since Congress has now provided the opportunity for interim authorization for new requirements under the HSWA, the Agency has concluded it is also necessary to allow States the option of complying with those deadlines by modifying their programs to become substantially equivalent to the Federal HSWA program (the test for interim authorization). Retaining the former provisions would have diminished the utility of 1984 interim authorization to such an extent that the statutory purpose would not have been achieved. As explained before, however, States which obtain 1984 interim authorization will be required to obtain final authorization subsequently.

b. 3. All States. Whether a State is applying for final authorization or is already authorized, it is, of course, allowed to submit program revisions prior to the applicable § 271.21(e) deadline. A State need not seek authorization for all provisions at once. Indeed, States should apply now for interim or final authorization for any major portions of today's rule for which they already have legal authority. However, for those areas in which a State needs to amend its regulations or statute, EPA strongly encourages the State to submit one program revision application and not several piece-meal applications. This consolidation of State program revisions would minimize repetitive State and EPA involvement in the approval process.

States should note that they may not apply for final authorization to implement requirements of the HSWA if they have only interim authorization for the pre-HSWA RCRA program. States with interim authorization for all components of pre-HSWA program may apply for and be granted interim authorization for the new requirements. However, § 271.138(b) specifies that if the State fails to receive final authorization for the pre-HSWA program by January 31, 1986, its program (both pre-HSWA and HSWA) will revert to EPA on that date.

Finally, States should be aware that the deadlines for obtaining final authorization in § 271.21(e) have not changed regarding regulatory amendments unrelated to implementation of HSWA. For example, States must adopt regulations equivalent to the recently promulgated redefinition of solid waste (50 FR 614, January 4, 1985) within the one- or two-year deadline specified in § 271.21(e); interim authorization is not available. When EPA promulgates new RCRA regulations, the Agency will distinguish between those that implement HSWA requirements and those that do not.

I. Hazardous Waste Exports

1. Today's Amendments

As part of the HSWA, Congress enacted section 3017 governing the export of hazardous waste. Generally, section 3017 prohibits the export of hazardous waste unless the person exporting such waste: (1) Provides notification to the Administrator; (2) the government of the receiving country has consented to accept the waste; (3) a copy of the receiving country's written consent is attached to the manifest which accompanies the shipment; and (4) the shipment conforms to the terms of the consent.

In lieu of meeting the above requirements, a person may export hazardous waste if the United States and the government of the receiving country have entered into an agreement and the shipment conforms to the terms of the agreement. Section 3017(a). Subsections (d) and (e) establish procedures involving the Administrator and the Secretary of State for obtaining the consent of the receiving country, while subsection (f) discusses procedures for international agreements. Subsection (c) requires any person intending to export hazardous waste to notify the Administrator before the shipment leaves the United States and specifies the information to be included in such notification. Pursuant to subsection (b), the Administrator is required to promulgate regulations necessary to implement this section by November 8, 1985. Finally, Congress amended section 3008 of RCRA to provide criminal penalties for knowingly exporting hazardous waste without the consent of the receiving country or in violation of an existing international agreement between the United States and the receiving country.

Section 3017 of the HSWA contains one additional requirement with which exporters must comply immediately: section 3017(g) requires any person exporting hazardous waste to submit annually a report containing information relative to the wastes exported during that previous calendar year. EPA has today codified this requirement in the regulations by the addition of a new paragraph (d) to § 262.50 which provides that any person who exports hazardous waste must file with the Administrator, no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous year.

EPA is not publishing, at this time, amendments to codify the new notification requirement of section 3017(c) because it is a key element of the full section 3017 exportation scheme and, in the context of that scheme, presents several interpretive issues best resolved as part of the full set of regulations required by section 3017(b) to implement the entire section. Section 3017(c) requires notification "before such waste is scheduled to leave the country" without specifying whether or not separate notification is required for each shipment of hazardous waste, and without specifying the timing of such notification. Since the notification is a critical part of the section 3017(d) scheme for obtaining the consent of the receiving country, these issues should be addressed in the full set of regulations after opportunity for notice and comment. Accordingly, until November 8, 1985, or until EPA promulgates new requirements, persons exporting hazardous waste should comply with existing notification requirements of 40 CFR 262.50(b).

J. Waste Minimization

As part of the HSWA, Congress amended section 3002 of RCRA to add a new subsection (b) requiring that, effective September 1, 1985, the manifest required by subsection (a)(5) must contain a certification by the generator regarding efforts taken by him to minimize the amount and toxicity of wastes generated. Section 3002(b) provides that a generator must certify that he has a program in place to reduce the volume or quantity and toxicity of waste generated, to the degree determined by him to be economically practicable, and that the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

EPA is today publishing a revised Uniform Hazardous Waste Manifest Form (EPA Form 8700–22), the Appendix to Part 262, that includes a supplemental statement in Item 16 containing the certification required by the statutory amendment. This revised form, containing the supplemental statement, must be used after September 1, 1985. In addition, EPA is amending the instructions to the Appendix to Part 262 to include instructions for the waste minimization certification, Item 16. The instructions explain that any generator generating greater than 1000 kilograms of hazardous waste in any calendar month must sign (by hand) the certification. The instructions also make it clear that certain small quantity generators of less than 1000 kilograms of hazardous waste per month are exempt from the waste minimization manifest certification requirement. Specifically, generators of acutely hazardous waste in quantities below those specified in § 261.5(c) and generators of non-acutely hazardous waste in quantities below 1000 kg per month are exempt from the certification requirement, except that if they accumulate on-site more than the above threshold amounts they become subject to the full Subtitle C program (including the waste minimization requirements) for the increment of waste that exceeds these. *See* recodified § 261.5(f)(2), § 261.5(g)(2), and § 261.5(h)(2). Small quantity generators

are exempt from this requirement since section 3002(b) refers to "the manifest required by [section 3002] subsection (a)(5)" and the special manifest provisions for small quantity generators are imposed by section 3001(d), not section 3002(a)(5). *See* S. Rep. No. 284, 98th Cong., 1st Sess. 67 (1983).

The legislative history to section 3002(b) makes clear that Congress' objective in enacting this section was to encourage generators of hazardous waste to voluntarily reduce the quantity and toxicity of waste generated. S. Rep. No. 284, 98th Cong., 1st Sess. 66 (1983). The amendment does not authorize EPA to interfere with or to intrude into the production process by requiring standards for waste minimization; rather it specifically provides that the substantive determinations of "economically practicable" and "practicable method currently available" are to be made by the generator in light of his own particular circumstances. Thus, from an enforcement perspective, the Agency will be concerned primarily with compliance with the certification signatory requirement. Each generator subject to the waste minimization requirement should make a good faith effort to minimize the amount and toxicity of waste generated and to select a means of treatment, storage, or disposal most likely to minimize the present and future threat to human health and the environment.

Section 3002 was further amended to include a new requirement that generators submit, at least once every two years, a report describing their efforts to minimize waste generation. EPA is thus amending § 262.41, which currently requires submission of a biennial report, to add two additional waste minimization information items required by the recently enacted section 3002(a)(6).

Congress also amended section 3005 of RCRA to provide that, effective September 1, 1985, RCRA permits for the treatment, storage, or disposal of hazardous waste on the premises where the waste was generated must contain a certification by the permittee regarding efforts taken to minimize the amount and toxicity of the generated wastes. In order to implement this amendment, EPA is today adding a new provision § 264.73(b)(9) which provides that the permittee record the waste minimization certification in the written operating record kept at the facility. The Agency is also amending § 264.70 to provide that § 264.73(b)(9) is only applicable to permittees who treat, store, or dispose of hazardous waste on the site where such waste was generated. In order to make it clear that this certification is applicable to permits, the Agency is today amending § 270.30(j)(2) to provide that the requirement to retain the operating record is a RCRA permit condition.

K. Financial Responsibility

Section 205 of the HSWA modifies section 3004 of RCRA by adding subsection (t) with respect to financial responsibility requirements. EPA does not believe that any new regulations are required to implement section 3004(t).

Section 3004(t)(1) affirms the action already taken by EPA in establishing financial responsibility requirements in 40 CFR Parts 264 and 265, Subparts H. While the trust fund and State-required mechanisms are not mentioned in the statute as a means of providing financial assurance for closure and post-closure care or corrective action, there is no evidence that Congress intended to eliminate either approach as a permissible mechanism; EPA believes that the trust fund is a viable instrument for the assurance of closure and post-closure care or corrective action and that the trust fund is particularly well-suited for small firms. The Agency uses standby trust funds to collect money from surety bonds and letters of credit. Without the standby trust funds, all monies collected from the instruments would revert to the U.S. Treasury and the Agency would not be able to draw on those funds directly for closure and post-closure activities. Accordingly, the Agency will continue to allow the trust fund to be used for financial assurance under Subpart H.

Section 3004(t)(2) provides for the assertion of a claim directly against the guarantor providing evidence of financial responsibility in cases where the owner or operator is in bankruptcy, reorganization or arrangement pursuant to the Federal Bankruptcy Code, or where judicial jurisdiction cannot be obtained over an owner or operator likely to be solvent at the time of judgment.

EPA interprets this provision to allow for "direct action" against persons providing insurance to owners or operators under 40 CFR §§ 264.147 and 265.147. While the working of the statute allows direct action against "guarantors," defined in section 3004(t)(4) to include persons who provide evidence of financial responsibility under that section, the remarks of Senator Moynihan, who introduced the direct action amendment, indicate only an intention to allow injured parties to assert claims directly against insurers where action against the owner or operator would be fruitless. 130 Cong. Rec. S9176 (daily ed. July 25, 1984).

The liability insurance requirements in §§ 264.147 and 265.147 are designed to provide assurance for injuries caused to persons and property by hazardous waste disposal facilities. However, there is no "injured party" *per se* when an owner or operator fails to comply with applicable closure and post-closure requirements. Only EPA can require that such obligations be performed. Moreover, the mechanisms allowed by EPA to provide closure and post-closure assurance were crafted to ensure that EPA could direct that the monies assured by the mechanisms be applied to closure and post-closure costs, whether or not the owner or operator was available or solvent. For these reasons, the Agency does not believe that the direct action amendment has any applicability to the mechanisms required for financial assurance of closure or post-closure care.

L. Underground Storage Tanks

The HSWA adds Subtitle I to RCRA to govern the regulation of underground storage tanks that are not subject to regulation under Subtitle C. Section 9001 of Subtitle I defines "underground storage tanks" as any one or combination of tanks (including any connected underground piping) which has ten percent or more of its volume beneath the surface of the ground (including the volume of connected pipes) and which is used to store "regulated substances." Regulated substances include (1) any substances defined as "hazardous substances" in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) that are not regulated as "hazardous wastes" under Subtitle C, and (2) petroleum, including crude oil or any fraction thereof. Expressly excluded from the definition of underground storage tanks are:

(1) Farm or residential tanks with a capacity of 1,100 gallons or less used to store motor fuels for noncommercial use.

(2) Tanks used for storing heating oil for consumptive use on the premises where stored.

(3) Septic tanks.

(4) Pipelines regulated under other acts.

(5) Surface impoundments, pits, ponds, or lagoons.

(6) Storm water and waste water collection systems.

(7) Flow-through process tanks.

(8) Liquid traps or associated gathering lines related to oil or gas production and gathering operations.

(9) Storage tanks located in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.

Subtitle I establishes a comprehensive scheme for the regulation of underground storage tanks. Some of its provisions require EPA to promulgate requirements. Others go into effect without action on the part of EPA. The major provisions of Subtitle I include:

(1) A notification provision requiring that all owners of currently-used tanks and non-operational tanks taken out of service after January 1, 1974, notify designated State and local agencies of the existence of their tanks (section 9002).

(2) A requirement that EPA promulgate regulations governing petroleum tanks within 27 months, regulations governing new tanks containing hazardous substances within 33 months, and regulations governing existing tanks containing hazardous substances within 45 months (section 9003).

(3) A prohibition against the installation of new tanks that do not satisfy enumerated statutory requirements (section 9003(g)).

(4) A provision for the approval of State underground storage tank programs that are no less stringent than Federal regulations promulgated under section 9003 (section 9004).

(5) A provision providing EPA authority to inspect facilities, conduct monitoring and testing at facilities, or to require tank owners to conduct monitoring and testing and to provide information pertaining to their tanks to EPA (section 9005).

(6) A provision providing EPA authority to enforce the requirements of Subtitle I through the use of administrative orders, injunctions, or civil penalties (section 9006).

(7) A provision making tanks within the control of Federal government subject to Subtitle I requirements (section 9007).

(8) A requirement that EPA conduct the following studies: (i) a study concerning petroleum tanks within 12 months; (ii) a study concerning tanks containing hazardous substances within 36 months; and (iii) a study concerning exempted farm and heating oil tanks within 36 months (section 9009).

Of the requirements established by Subtitle I, the interim prohibition of section 9003(g) will go into effect automatically on May 7, 1985, without prior EPA rulemaking proceedings. That section prohibits the installation of any new underground storage tank for the purpose of storing regulated substances unless (A) the tank will prevent releases due to corrosion or structural failure for the operational life of the tank; (B) the tank is cathodically protected against corrosion, constructed of noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and (c) the material used in the construction or lining of the tank is compatible with the substance to be stored. Notwithstanding the above requirements, section 9003(g)(2) permits the installation of tanks without corrosion protection in soil with a resistivity of 12,000 ohm-cm or more. Today EPA is adding Part 280 to its regulations to incorporate the interim prohibition of section 9003(g). New

VI. Regulatory Analysis

A. Executive Order 12291: Regulatory Impact Analysis

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the Order and "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. OMB has indicated that the regulation promulgated today is a major rule; however, OMB has also concluded that this rule is exempt from the RIA requirement. The exemption is based on Section 8 of the Executive Order, *Exemptions,* which states that

> procedures prescribed by this order shall not apply to: * * * (2) Any regulation for which consideration or reconsideration under the terms of the order would conflict with deadlines imposed by statute or by judicial order.

EPA has prepared preliminary estimates for the range of costs which the final rule may impose on hazardous and solid waste management units of various kinds and sizes, and for the total costs of the regulations. EPA estimated lower bound, upper bound, and most likely estimates for each of the provisions in the final rule that impose costs. The costs of the individual provisions were then aggregated to develop total cost estimates. EPA's general approach for estimating the costs, as well as the detailed assumptions underlying the estimates for each of the provisions, are described in Section D. In addition, EPA has begun analyzing the impacts of the costs of these requirements on particular waste-generating industries and expects to complete its analysis later this year.

This regulation was submitted to OMB for review under E.O. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each Federal agency to prepare a Regulatory Flexibility Analysis (RFA) when it promulgates a final rule. (5 U.S.C. 604). The purpose of the RFA is to describe the effects the regulations will have on small entities and examine alternatives that may reduce these effects. An agency head may delay completing the analysis for up to 180 days after publishing the rule in the Federal Register, if he publishes a finding that the final rule is being promulgated in response to an emergency that makes timely compliance impracticable. (5 U.S.C. 608).

EPA intends to examine the impact of today's regulations on waste-generating industries and will report results for those industries where the regulations have a substantial impact on a significant number of small entities.

Regulatory Flexibility Analysis

As indicted earlier in the preamble, the purpose of this rule is to promptly and effectively notify the regulated community of their responsibility under this new law. EPA believes this is a valid argument for evoking the regulatory flexibility emergency provisions.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control numbers: Notification 2050–0028; Manifest 2050–0039; Generators 2050–0035; Permittees 2050–0037; Biennial Report 2050–0024; Blending and Burning Fuels 2050–0047; and Exposure Assessments and Loss of Interim Status 2050–0007.

D. Estimated Cost of the Final Rule

1. General Approach

EPA estimated costs for each provision of the final rule which has compliance activities associated with the provision. EPA developed estimates of the affected population, the unit costs of compliance, and the aggregate costs of compliance for each provision. EPA developed likely lower- and upper-bound estimates of costs as well as a most likely estimate. In some cases, differences in assumptions about the affected population determine the lower

and upper bounds; in others, the range reflects differences in assumptions about the unit costs of compliance with the provision. Moreover, the upper- and lower-bound estimates do not represent the worst or lowest case costs, but, rather, EPA's estimate of the *most reasonable* upper and lower bounds. The most likely estimate represents either EPA's best estimate, or, in some cases, the midpoint of the upper and lower bounds. Estimates are presented as the aggregate costs for the provision for all affected facilities.

EPA developed its estimates of affected populations largely on the basis of EPA's "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981" (hereafter referred to as the "1981 RCRA Survey").

EPA developed two different types of unit costs and applied these costs to the affected population to estimate provision-specific costs: (1) Costs that vary significantly with the size and type of unit; and (2) costs that are the same, regardless of the size or type of units at the facility. Costs that vary with the size and type of unit were used to estimate the costs of the minimum technological requirements. Other requirements of this final rule impose unit costs that are the same, regardless of the size or type of units at the facility. For example, the cost to complete an exposure assessment depends on the level of detail required in the assessment rather than the size or type of unit.

The costs are presented in two ways: First-year costs and annualized-present-value (APV) costs, and where appropriate, are presented as low, most likely, and upper bound estimates for each. First-year costs represent the initial capital/startup costs plus first-year operating costs (if applicable) that the provision imposes. If the first-year costs are the same as those in succeeding years, the first-year cost will equal the annualized present value.

Because the stream of costs over time may be uneven, EPA converted this stream to its equivalent annual cost over the life of the facility using discounted cash flow analysis. First, EPA calculated the total present value (TPV) which is the sum of costs incurred in each year divided by a discount factor, as follows:

$$PV = \sum_{n=0}^{n} \frac{[costs]_n}{[1+r]^n}$$

where the real rate of return (r) equals 3 percent and n is the number of periods in which costs are incurred. The cash flows do not include inflation, taxes, or depreciation. As such, the resulting present value cost reports the full social cost in real terms.

In order to spread the costs evenly over the life of the facility, EPA annualized the total present value by multiplying it by a capital recovery factor (CRF):

$$CRF = \frac{r^*(1+r)^{OL}}{(r+1)^{OL}-1}$$

where OL is the operating life. Unless otherwise specified, EPA assumed a 20 year operating life. The 3 percent real rate of return and the 20-year operating life assumptions lead to a CRF of .0672. The annualized present value represents the annual revenue required to cover the costs imposed by the provision. This value provides a consistent basis for presenting and comparing costs of different provisions. However, it implicitly assumes that facilities can predict future costs and can recover them at a steady rate over the life of the facility.

2. Ban on Hazardous Liquids In Landfills Provision

Effective May 8, 1985, this provision of the final rule bans the placement of bulk or noncontainerized liquid hazardous waste in landfills. Under current Part 264 regulations, liquids are permitted in lined landfills or in any landfill if the liquids have been treated or stabilized.

Affected Population—Based on the 1981 RCRA Survey, EPA identified seven landfills which accept hazardous liquids; five of these, accounting for approximately 57,000 metric tons (MT) per year, solidify the liquids in the landfill, while the other two, accounting for 11,000 MT per year, place liquids directly in their landfills. These seven facilities represent the lower bound estimate of the affected population.

To calculate an upper bound on the number of affected landfills, EPA assumed that the seven landfills represented only one-half of firms actually disposing of bulk liquids. Further, EPA assumes that the seven additional landfills, for which there is no information on the quantity managed, handle the same amount as those surveyed.

Unit Costs—In order to treat the liquids so that their placement in landfills is acceptable, EPA assumes that the wastes must be solidified outside of the unit and then placed in the landfill. In order to solidify wastes so that liquids are permanently fixed, EPA assumes that the liquids will be mixed with cement. The unit costs are based on engineering cost estimates developed for four model sizes of solidification plants. Plant sizes are based on MT per year of waste input. These plants would be built on site and would be replaced once over the 20-year expected lifetime of the facility. Over the relevant range, the larger the solidification plant, the smaller the per-ton cost of solidifying the liquids. The size of the solidification plant at each of the affected landfills was adjusted to match the needs of the facility.[27] The cost per ton solidified ranged from $235 for the smallest to $68 for the largest facility.

Total Costs—The total cost of the provision was determined by multiplying the quantity of bulk liquids handled at each landfill by the appropriate unit cost of constructing a solidification plant with sufficient capacity to meet current needs. The lower-bound first-year costs are estimated to be $7.4 million. The annualized present value is $5.1 million. The upper bound first-year costs are $14.8 million; annualized costs are $10.2 million. The most likely costs represent the average of the lower and upper bound estimates: $11.1 million in the first year, with an annualized cost of $7.7 million.

3. Minimum Technological Requirements

Provisions—The final rule requirements apply to each new landfill or surface impoundment and to replacements or lateral expansions of existing landfills or surface impoundments. The rule requires that these units must have two or more liners and a leachate collection system; the leachate collection system must be between the top and bottom liners for surface impoundments and above the top liner and between the top and bottom liners for landfills. The 1984 HSWA does not require existing surface impoundments to immediately install new liner and leachate collection systems.

Affected Population: Landfills—Based on the 1981 RCRA Survey, EPA estimates that there are 199 active landfills that handle hazardous waste. EPA assumes that these landfills operate for 20 years, with a new cell opening and closing each year. As each landfill opens a new cell, the rule will

[27] Unit costs were defined using ordinary least squares regression of the cost for the model plants. The cost functions were of the form $C=aQ^b$ where C is the cost, Q is quantity in metric tons, a is a constant and b is the "scale" coefficient.

require that the cell be lined in accordance with the double liner standard. Therefore, all 199 landfills will be affected annually by the final rule because, as they open a new cell, they will incur the additional cost imposed by the double liner requirement.

Because the engineering costs for the affected population are specific to unit size, EPA could generate engineering costs for virtually any unit size. To limit the number of unit cost estimates and to simplify the analysis, EPA developed size categories based on the actual size distribution of landfill units from the 1981 RCRA Survey. Each landfill is placed into one of eight size classes ranging from 500 MT per year to 123,000 MT per year.

Affected Population: Surface Impoundments—EPA estimates that there are 758 hazardous waste facilities with surface impoundments and that, on average, each facility has 2.3 surface impoundments, for a potentially affected total population of 1,743 impoundments. As detailed below, approximately 33 percent of these existing surface impoundments are expected to incur costs associated with this regulation within the next four years, when other provisions of the amendments will require the remaining surface impoundments to retrofit.

In the near term this provision will affect only that portion of surface impoundments which are laterally expanded or replaced. Since lateral expansion is an unlikely engineering option for surface impoundments, EPA estimated only the number of impoundments that are likely to be replaced in the next four years. EPA defines replacement as "a unit taken out of service and emptied by removing all or substantially all waste from it." Therefore, EPA regards dredging of a surface impoundment as constituting replacement. Dredging is a normal part of the operation of a surface impoundment and EPA assumed that impoundments are normally dredged when the depth of settled sludge is equal to one-half of the operating depth. The time to dredging varies from 7 to over 13 years, depending on the size of the impoundment. Therefore the potentially affected population of 1,743 surface impoundments has been reduced to reflect the normal dredging schedules for units of six different model sizes. Accordingly, EPA estimates that 194 surface impoundments would normally be dredged in each of the next four years. Finally, EPA assumes that the facilities that would normally have dredged in each of the next four years will postpone dredging one year (see *Unit Costs: Surface Impoundments* below).

Unit Costs: Landfills—Because EPA assumes that landfills are filled one cell at a time and that one cell is filled each year, the cost of the final rule is estimated as the incremental cost of opening and closing a new cell using the design specified in the final rule. Under the final rule, the new cell must comply with a double liner and leachate collection system requirement and must be closed with an equivalent cap. Instead of placing a single liner under the new cell (as required under current Part 264 regulations), the owner or operator must use a double liner. EPA has defined an interim statutory, synthetic/clay liner to conform with the double liner requirement for the purpose of meeting the final rule requirements.

The cost attributable to the final rule is the incremantal cost of opening and closing new cells with as synthetic/clay liner and two leachate collection systems instead of the single liner and single leachate collection system currently required. The cost estimate assume that the clay for the liner is available on-site. If this were not the case, the costs would be larger, ranging from 12 to 53 percent more than those calculated, depending on facility size. EPA assumed that it is unlikely that facilities would need to bring clay from off-site.

The first-year costs range from $8,200 for the smallest landfills to $285,000 for the largest. On a per-ton basis, the incremental first-year cost is $12/MT for the smallest landfills and under $2/MT for the largest landfills.

Total Costs: Landfills—The initial capital cost for all 199 landfills is $9.68 million; the estimate is the same for the lower and upper bounds. The annualized costs are $10.2 million.

Unit Costs: Surface Impoundments—Surface impoundment unit costs rely on two major assumptions about compliance with the final rule. The first is that, rather than retrofit existing impoundments in accordance with the regulation, operators will instead choose the less costly option of closing the existing unit as a land disposal facility and constructing a new surface impoundment. The second assumption is that due to the high cost of managing hazardous waste in surface impoundments there will be additional incentive for operators to minimize the quantity of hazardous waste they place in them, such that operators will separate hazardous from non-hazardous waste sources to decrease the volume of hazardous waste that must be managed.

In order to model this expected behavior on the part of operators, EPA assumes first, that operators will extend the time until dredging by one year because of the reduced flow of hazardous waste into the impoundment. The estimated 194 surface impoundments that would normally dredge in 1985 will delay their dredging until 1986, and so on. Moreover, once the unit is ready for dredging (i.e. closure and replacement), EPA further assumes that the replacement impoundment will be only approximately half as large as the original impoundment. In terms of the model sizes used to calculate costs, the new unit will be one model size smaller than the impoundment it replaces. The full cost to surface impoundment facilities includes the cost of both the new surface impoundment and the cost of a new surface impoundment to handle the non-hazardous liquids. The cost of the latter impoundment is not included in these estimates of the cost of the minimum technological requirements for land disposal facilities.

Given these assumptions, the new unit costs of complying with the final rule include the incremental costs of:

(1) Closing the old surface impoundment as a land disposal facility in the next few years instead of 20 years from now;

(2) Constructing a new, smaller impoundment within the next few years with the interim statutory double liner and leachate collection system instead of the current Part 264 single liner and leachate collection system; and

(3) Closing the new surface impoundment with a cap equivalent to the interim statutory liner, rather than the cap specified in the existing Part 264 regulations.

The unit costs are dominated by closure costs for all model sizes: Moving closure costs approximately 20 years forward means that the present value practically doubles (an outlay of $100 today has a value of $181 in 20 years assuming a 3 percent discount rate). The initial year costs for closure of the old unit accounts for between 46 and 79 percent of total initial year costs; the balance is attributable to the cost of land and constructing the new unit.

The annualized costs of compliance with this rule vary from $55,000 per facility for the smallest new impoundments, to over $1.5 million for the largest. The annualized cost per ton managed in the newly constructed units ranges from approximately $18 for the smallest impoundments down to less than $1 per metric ton for the largest impoundments.

Total Costs: Surface Impoundments—The total annualized cost of the surface impoundment provision in the final rule is $53.2 million and is the same for the lower and upper bounds.

Total Costs: Minimum Technological Requirements—The first year costs are all from landfill compliance with the final rule and equal $9.88 million in both the lower and upper bound estimates. The total annualized cost of the provision is $63.5 million.

4. Corrective Action

Provisions—The final rule requires that any Subtitle C permit issued to a RCRA facility after the date of enactment must require corrective action for all releases of hazardous wastes or constituents from solid waste management units as well as hazardous waste management units at the facility. The final rule grants EPA the authority to issue corrective action orders to interim status facilities to clean up releases from both solid and hazardous waste management units on a site-specific basis. This analysis only addresses releases to ground water. It does not estimate the costs of corrective action for releases to other media.

Owners or operators of hazardous waste management facilities must also assure EPA that they can meet a financial responsibility test for the required expenditures. The costs of this provision are treated later in this section.

EPA developed estimates of corrective action costs for releases from solid waste management units (SWMU) at RCRA facilities. Corrective action for releases from active land disposal units is already required under existing Part 264, Subpart F regulations. This provision of the final rule imposes no incremental costs on these units. The costs for SWMUs are based on corrective action for releases only up to the facility boundary; the costs include the cost of counterpumping and treating contaminated ground water and, in some cases, the cost of controlling the source of contamination.

Affected Population: Solid Waste Management Units—The final rule requires owners or operators to take corrective action for releases from solid waste management units (SWMUs) at facilities seeking Subtitle C (RCRA) permits. The 1981 RCRA Survey estimated that there are 1,049 hazardous waste land disposal facilities and 3,769 hazardous waste treatment and storage facilities. Many of these facilities also have solid waste management units. The size of the affected population, therefore, depends on the number of these facilities with SWMUs and the number of leaking SWMUs at each of these facilities. To account for this uncertainty, EPA developed low, high and most likely population estimates.

The lower bound estimate assumes that there are no leaking SWMUs at the 1,049 hazardous waste land disposal facilities, and that one-fourth (942) of the 3,769 treatment and storage facilities have one leaking SWMU on-site. EPA further assumed no releases from facilities in arid climates and that those facilities granted ACLs under § 264.94 are exempt from the requirements. EPA assumes that 10 percent of the facilities are in arid climates and 10 percent will receive ACLs. Thus, the lower bound estimate assumes that corrective action begins immediately for these 754 SWMUs.

The upper bound assumes that 25 percent of all land disposal facilities have a SWMU on site that is leaking. In addition, each of the 3,769 treatment and storage facilities has one leaking SWMU. Thus the upper bound estimate assumes that corrective action begins immediately for all 4,031 facilities.

EPA's most likely estimate assumes that 12.5 percent of facilities with land disposal units, the midpoint of the upper and lower bound, also have a SWMU. Also, one-fourth of the remaining treatment and storage facilities have a single leaking solid waste management unit on site. Thus the best estimate assumes that corrective action begins immediately for 1,073 facilities.

Unit Costs: Corrective Action for Solid Waste Management Units—The unit costs of corrective action at SWMUs include the cost of containing or counterpumping the part of the plume that extends to the facility boundary and then treating the contaminated ground water. EPA used its Stochastic Model of Corrective Action Costs to estimate the costs of counterpumping and treatment. The model estimates these costs based on various inputs about the hydrogeology of sites, plume characteristics, and treatment options. Costs were adjusted to account for replacement of capital over the term of the corrective action. The mean length of time for completing the corrective action is 48 years. EPA assumes that the mean distance from the disposal unit to the facility boundary is 500 feet and that the cost model can be used to extrapolate costs for clean-up of plumes of this length.[28] The first year cost for cleaning up a 500 foot plume is $622,000 per unit if the clean-up begins immediately. The annualized present value is $249,000.

Total Costs: Corrective Action for Solid Waste Management Units—The estimates for first year corrective action costs at facilities with SWMUs range from $469 million to $2.5 billion. The annualized costs range from $188 million to $1.0 billion.

Unit Costs: Source Control for Solid Waste Management Units—In order to protect human health and the environment, it may be necessary to do more than contain or remove and treat the contaminated ground water. One additional component of the cost of corrective action would be the cost to remove or isolate the source of the plume from ground water. EPA assumed that source control requirements would only apply to SWMUs that have releases requiring corrective action (because active land disposal units at RCRA facilities are already subject to these requirements under the current regulations).

As noted above in the general approach, EPA generated upper and lower bound cost estimates which should not be regarded strictly as upper and lower limits on total costs. This point is important in light of the sensitivity of source control cost estimates to the assumptions about the affected population. The first assumption is that half of the facilities with SWMUs are required to perform corrective action involving source control. The second assumption involves the distribution of three alternative source control methods across affected facilities. The three methods are: controlling the source by removing it, building slurry walls, and capping the unit.

- Source removal option: Source removal, which requires both source removal and solidification, is the most expensive source control option. The lowest excavation and solidification costs per unit are $450,000 in the first year for a ¼ acre surface impoundment. The annualized cost is $30,000. The highest unit costs are for a 123,000 MT per year landfill. The first year cost is $63 million, 87 percent of which is the cost of solidification. The annualized cost is $4.2 million.
- Slurry wall option: A less expensive solution is to supplement the counterpumping with a slurry wall, constructed around the unit, down to the top of the saturated zone. The wall will divert upgradient flow around the unit and contain leakage from the unit itself. First year costs for slurry walls range

[28] EPA reviewed model sensitivity analysis of plume length and assumed that the cost functions display constant elasticity with respect to plume length ($C = a(\text{length})^b$).

from $10,000 for the ¼ acre impoundment to $513,000 for the 123,000 MT per year landfill; annualized costs range from $672 to $34,000.

• Capping the unit: The third option is to solidify the waste in the unit and place an impermeable cap on the unit. Because the waste must be solidified in order to support the cover, this option can be nearly as expensive as source removal, especially for large units. First year costs per facility range from $142,900 for ¼ acre impoundments ($9,600 annualized) to $62 million for the 123,000 MT per year landfill ($4.2 million annualized).

The choice of specific source control measures can have a significant effect on the costs. The most expensive option may be as little as 11 times more expensive than the least cost option for a given unit size, or as much as 120 times more expensive. As a result, EPA made several assumptions about the source control option applicable to the population.

For the lower bound, EPA assumed a uniform distribution among the three options: One-third of the affected facilities capped the unit, one-third excavated and solidified the waste, and one-third constructed slurry walls.

For the upper bound and best estimate, EPA selected the source control option on the basis of depth to the ground water at each site. If the ground water is within 10 feet of the bottom of the unit, source removal is necessary. (Based on information from the 1981 RCRA Survey, 67 percent of the landfills and 63 percent of the surface impoundments met this criterion.) Where the ground water is between 10 and 50 feet from the bottom of the unit, the operator would construct a slurry wall. (Twenty percent of the landfills and the rest of the surface impoundments (37 percent) included in the 1981 RCRA Survey met this criterion.) Finally, all other SWMUs (i.e., those situated more than 50 feet above the ground water) solidify the waste in the unit and then cap it.

Total Costs: Source Control for Solid Waste Management Units—The lower bound estimates for first year costs of source control at SWMUs is $1.4 billion or $92 million annualized. The upper bound costs are $11.7 billion for the first year or $784 million annualized. The most likely first year costs are $3.1 billion. The most likely estimate of annualized costs is $208 million.

Total Costs: Solid Waste Management Units (Corrective Action and Source Control)—Table VI–1 describes the individual components of the costs of corrective action and source control at solid waste management units. Source control costs dominate the first year costs because all of the source control options require a one-time investment. On an annualized basis, counterpumping costs that continue for many years are more important.

TABLE VI–1.—SUMMARY OF FINAL RULE CORRECTIVE ACTION COSTS AT FACILITIES WITH SOLID WASTE MANAGEMENT UNITS

	Lower bound		Upper bound		Most likely	
	First year costs	Annualized PV	First year costs	Annualized PV	First year costs	Annualized PV
Solid waste management units:						
Counterpumping	$468,864,000	$187,931,000	$2,507,438,000	$1,005,039,000	$667,640,000	$267,605,600
Source control:						
Land disposal facilities	0	0	721,439,375	48,480,725	369,719,688	24,240,363
Treatment and storage facilities	1,362,727,141	91,575,264	10,950,519,248	735,874,893	2,737,629,812	183,968,723
Source control total	1,362,727,141	91,575,264	11,671,958,623	784,355,619	3,099,349,500	208,209,086
Total	1,831,591,141	279,506,264	14,179,396,623	1,789,394,619	3,765,989,500	475,814,086

Total Costs of the Provision—The total costs of the provision include the cost to clean up plumes from SWMUs to the property boundary and the cost to remove the source of contamination at these units. When corrective action and source control are considered, the lower bound cost of the corrective action provision is $280 million annually and $1.8 billion the first year. The upper bound annualized cost is $1.8 billion or $14 billion the first year. The most likely annualized costs are $476 million with a first year cost of $3.8 billion.

The cost estimates for the provision are very sensitive to the assumption that RCRA treatment, storage, and disposal facilities have only one SWMU. If facilities have more than one SWMU, the costs could increase dramatically.

5. Dust Suppression

Provision—The final rule prohibits the use of used oil, mixed with hazardous waste, as a dust suppressant.

Affected Population—The provision affects two distinct groups: first, firms that generate the used oil and second, firms that buy the oil for re-use and recycling. The highest value use of the oil is as a dust suppressant applied to roads. EPA estimates that approximately 68.5 million gallons of this type of used oil are applied to roads each year. Under the final rule, generators will no longer be able to sell the oil for use as a dust suppressant. Firms that apply oil to roads will have to find an alternative to used oil and pay the additional cost of the alternative.

Unit Costs—The cost to generators depends on the number and type of alternate uses for the oil. For the lower bound, EPA estimates that generators can simply sell the oil to other users at no loss of revenue. The upper bound is that the oil has no resale value and the generators lose the revenue they earned on the sale of the oil to road oilers. The most likely estimate reflects the fact that the oil has some value, at least for its BTU content, but no higher value than it had as a dust suppressant (or the generators would have sought out the higher value use).

For road oilers, the lower bound cost assumes that they will switch to calcium chloride. This means a higher cost per gallon and a higher application rate. The upper bound cost includes the same assumptions plus a 50 percent higher application frequency.

Total Costs—The lower bound cost is $16 million and is the same each year. The upper bound is $35 million and the most likely cost is the average of the two, approximately $26 million.

6. Small Quantity Generators

Provision—The final rule imposes interim requirements for small quantity generators (SQGs) of hazardous waste. The final rule only requires SQGs to fill out portions of the Uniform Hazardous Waste Manifest for shipments of their waste.

Affected Population—EPA estimates that between 100,000 and 175,000 generators produce between 100 and 1,000 kg. of hazardous waste per month. Based on changes in the amount of time that generators may store waste on-site without a storage permit, EPA estimates

that, on average, these generators will send between 1.33 and 2 shipments off-site per year. If the generator stores waste for 270 days (the most allowed under the new rules), he would send 1.33 shipments off-site each year. If the generator does not qualify for the 270 day storage period, he can store wastes for 180 days and would therefore ship 2 loads off-site each year on average.

Even if the generator stores for 270 days, the most waste he could accumulate is 9,000 kg. (9 MT), far less than a full load for either tank trucks or flatbeds (assumed to be roughly 23 MT and 18 MT respectively). The effect of this is that in the lower bound, 100,000 generators will each have 1.33 shipments per year, while in the upper bound, 175,000 generators will each have 2 shipments per year. The best estimate assumes 100,000 generators, each with 1.67 shipment per year.

Unit Costs—The generators are only required to fill out a small part of the Uniform National Manifest. Based on EPA estimates of the time required, the cost per manifest varies between $2.50 and $4.00 per manifest.

Total Costs—The lower bound cost is $332,500 per year; the upper bound is $1,400,000 and the most likely estimate is $542,750.

7. Burning and Blending

Provision—The final rule includes a provision banning the burning of hazardous waste in cement kilns which are located in cities with populations greater than 500,000.

Affected Population—EPA has information on several cement kilns that may currently burn or are considering burning hazardous waste, but it is difficult to estimate the actual population affected by this provision. For a lower bound estimate, EPA assumes that the provision is merely precautionary, and is designed to preclude this activity until EPA develops standards for these kilns. The upper bound and most likely estimate is that one kiln currently burns hazardous waste.

Generators of the solvents burned in the kiln will also be affected by the ban. They will lose the revenue they would now earn on the sale of the waste to the kiln operator and they may have to pay to dispose of the waste.

Unit Costs—In the upper bound and most likely scenarios, the owner of the kiln will lose the cost advantage he enjoyed by burning cheaper solvents in place of some other fuel. One facility reported savings of $.29 per gallon on the solvents burned; this is the difference between burning hazardous waste and number 6 fuel oil.

For the upper bound, EPA assumes that generators of the solvents will lose the revenue from the sale of the solvent to the kiln operator and will now have to pay to dispose of the solvents. The most likely estimate assumes that they will pay only a moderate fee to dispose of the solvents because of their BTU content.

Total Costs—The lower bound costs are zero. The upper bound cost is $167,000 per year and the most likely estimate is $108,000.

8. Exposure Assessments

Provision—The final rule requires all owners and operators of landfills and surface impoundments to supplement their RCRA permit applications with information on the potential for public exposure to releases from the unit. This should include information on potential releases, pathways of exposure, and the magnitude of possible exposures. In general, owners and operators are not expected to collect additional data; they can submit existing information.

Affected Population—The number of applicants is expected to match the current estimates for facilities with landfills (199) and surface impoundments (758) from the 1981 RCRA Survey. EPA also assumes that there will be approximately 20 new applicants each year.

Unit Costs—The costs of the final rule are based on estimates of the paperwork burden required of applicants to assemble and transmit the required information to EPA. Based on an estimate of 120 hours per respondent and an average cost of $16 per hour, the cost per facility is estimated at $1,920.

Total Costs—Most of the costs are incurred in the first year. After that, only new facilities need to submit the information. The upper and lower bound first year costs are $1.9 million; annualized costs are $176,000.

9. Delisting

Provision—The final rule requires that generators petitioning to exclude a waste generated at their facility from regulation must submit information beyond what is currently required. EPA is required to consider factors other than those for which the waste was originally listed if those factors might cause EPA to continue to regard the substance as a hazardous waste, i.e., to not delist.

Affected Population—To date, EPA has processed 369 petitions under the existing delisting provision. These petitions will be reexamined in light of this new regulation. In addition, based on the past number of petitions per year, EPA estimates that new petitions will arrive at the rate of approximately 136 per year.

Unit Costs—EPA assumes that an additional constituent analysis of the waste in question will be required in order to comply with the final rule. The expected cost for these analyses plus other petition costs is $3,000 per petition.

Total Costs—Most of the costs occur in the first year because of the need to reexamine old petitions. The first year upper and lower bound costs are estimated at $1.5 million and the annualized cost is $480,000.

10. Hazardous Waste Exports

Provision—The final rule requires exporters of hazardous waste to submit an annual report on their export activity. The report may be submitted as part of the biennial report or separately.

Affected Population—EPA assumes that between 150 and 200 generators export hazardous waste each year. The lower bound estimate is 150, 200 is the upper bound and 175 is the most likely.

Unit Costs—When the information is part of a biennial report, the cost of supplying additional information regarding exports is slight. EPA assumes that the additional cost ranges from a lower bound of $10 to an upper bound of $20. If the export report is not part of a biennial report, the costs will be higher. EPA assumes the costs range from $20 to $100.

Total Costs—EPA estimates first year and annualized costs of $2,250 for the lower bound, $12,000 for the upper bound, and $6,600 for the most likely.

11. Waste Minimization

Provision—The final rule requires that generators filling out hazardous waste manifests and TSDFs managing waste generated on-site must certify that they have taken economically practicable steps to minimize wastes generated. All generators must report on these efforts in their biennial reports.

Affected Population—Generators shipping waste off-site must sign a compliance statement on the manifest; the incremental cost is negligible. The number of TSDFs that must certify compliance is based on the total number of TSDFs reported by the RIA Survey, 4,818. The affected population is 90 percent of the TSDF population based on EPA assumptions that 90 percent of all TSDFs generate waste on-site.

All generators must submit a report on waste minimization in their biennial report. The number of generators is 14,098 according to the 1981 RCRA Survey; this is both the lower bound and the most likely. The upper bound is that all generators who notified must submit

these reports. EPA estimates that 48,791 biennial reports would be required if all notifiers were active.

Unit Costs—The certification costs for generators are negligible and are excluded here. For TSDFs, the costs are estimated at less than $10. The cost of a biennial report will increase between $10 and $50. According to EPA paperwork burden estimates, the preparation of a biennial report will take 10 percent more time. This yields a most likely estimated cost of $13 per facility.

Total Costs—Lower bound first year and annualized costs are $141,000. EPA estimates the upper bound costs at $2.5 million with a most likely estimate of $205,000.

12. Financial Responsibility

Provision—The final rule requires facilities to perform corrective action as specified under §§ 206 and 207 of the amendments. In addition, facilities must provide financial assurance for that corrective action.

Affected Population—The same population estimates derived for the corrective action provision apply here. In summary, the lower bound population consists of 25 percent of the 3,769 treatment and storage facilities with leaking solid waste management units; 10 percent of these are assumed to be located in arid climates and another 10 percent are granted ACLs for constituents found in the ground water near the site, reducing the affected population to 754 facilities.

The upper bound population estimate assumes that 25 percent of the 1,049 land disposal facilities have one leaking SWMU. Each remaining treatment and storage facility (3,769) has one leaking SWMU.

The most likely population estimate is an average of the upper and lower bound for land disposal facilities. For treatment and storage facilities, 25 percent are assumed to have one leaking SWMU.

The final assumption about the population involves the difference between the number of facilities and the number of firms that own them. Only firms are responsible for showing financial responsibility, not individual facilities. EPA estimates that the average number of facilities per firm is three.

Unit Costs—EPA assumes four possible mechanisms for firms to demonstrate financial responsibility for corrective action. The least expensive mechanism is the financial test or guarantee. This may be provided to a firm based on certain information about its financial condition for $400.

The other options all depend in some way on the expected cost of the corrective action that will be required. A letter of credit involves a $420 fee plus .7 percent of the undiscounted cost of the corrective action; a surety bond costs the same fixed fee plus 1 percent of the undiscounted costs; and a trust fund includes a $400 fee plus .9 percent of the undiscounted cost.

The undiscounted cost of the corrective action is simply the sum of the costs incurred cleaning up a plume as far as the facility boundary over the average length of time that pumping is required (48 years). The cost estimate reflects the cost of cleaning up a 500 foot plume. The undiscounted total cost for a 500 foot plume is $6.6 million.

The lower bound cost estimate assumes that all affected firms can satisfy the financial responsibility requirement with a financial test or guarantee. That means that the cost to each firm will be $400.

For the upper bound, EPA assumes that each firm must establish a trust fund to prove it can meet the corrective action costs. The cost of a trust fund to meet these corrective action costs is $59,930 per facility or $179,000 per firm.

The most likely estimate assumes that 83 percent of the firms use a financial test or guarantee, 9 percent use a letter of credit, 4 percent use surety bonds, and 4 percent a trust fund. This is based on the current distribution of allowable demonstrations for closure and post-closure care. Letters of credit will cost firms $139,000 for corrective action to the facility boundary. The corresponding cost for firms using surety bonds is $199,000.

Total Costs—The lower bound estimate is $100,400 for both the first year and the annualized costs. The upper bound is $241 million and the most likely is $9.8 million.

13. Underground Storage Tanks

Provision—The final rule bans the placement of new, unprotected steel tanks in "corrosive" soils. The ban is effective until EPA promulgates new regulations in 2 years.

Affected Population—EPA assumes that 100,000 tanks are replaced each year. Approximately 60,000 are for farm and home use and are not subject to these requirements. The remaining 40,000 tanks are for commercial/industrial use. Approximately 28,000 of these are metal tanks of which roughly 13,000 are unprotected carbon steel and are subject to these requirements. Most of those tanks (75 percent) are probably placed in noncorrosive soils, defined as soils with resistivity higher than 12,000 ohm-cms.

The owners or operators of all these tanks will need to perform a soil resistivity test. EPA assumes that two-thirds will install cathodically protected tanks instead of bare steel, and the rest will install externally coated tanks.

Unit Costs—The costs represent the increment required by the final rule and include the cost of a soil resistivity test ($36), and installing a protected tank that is either cathodically protected (an incremental cost above bare steel ranging from $2,367 to $4,340 per tank depending on the size of the tank), or externally coated (incremental cost from $632 to $1,774, depending on size).

The lower bound unit cost includes these incremental costs in the first year, and replacement costs in year 14. EPA assumes that unprotected steel tanks that would have been placed in corrosive soil without the regulation, would fail in an average of 14 years. At this time, the tank would have to be replaced. The regulation forces the owner to install a tank with a longer expected lifetime (20 years), so the owner pays more the first year, but saves money over the 20 year horizon because the tank lasts longer. This conclusion is dependent on the assumption that an owner would put an unprotected steel tank in corrosive soil, as well as an assumed life of 14 years for an unprotected tank, and the 3 percent discount rate.

The upper bound unit costs includes the same incremental cost, but assumes that even a bare steel tank would last the full 20 year period, so there is no replacement cost in year 14.

The most likely estimate of the unit cost is zero. EPA believes that owners operate to maximize net present value (and therefore minimize the present value of costs) and would therefore not install a tank that was expected to fail so quickly. Given EPA's assumptions, an owner would pursue the course of action that minimized the present value of costs. He would compare the incremental cost of protecting the tank now, to the discounted cost of replacing a failed tank in 14 years. If protecting the bare tank were cheaper in present value terms (which it is under these assumptions) the owner would opt to invest in a protected tank now. In short, the owner already optimizes, so there is no need to "force" him to comply with regulations.

Total Costs—Under the lower bound assumptions, the first year cost of the regulation is $6.2 million, but the annualized "cost" is a net savings per year of $870,000, because the owner will not have to replace a failed tank. The upper bound only includes the costs of

installing protected tanks for two years, at which time the ban is replaced by new regulations. The first year cost is $6.2 million and the annualized present value over 20 years is $1.1 million. The most likely estimate is zero.

14. Total Cost of the Final Rule

The sum of all the annualized costs ranges from a lower bound of $365 million to $2.1 billion. Table VI–2 shows these annualized costs as well as the first year costs, which range between $1.9 billion and $14.5 billion. Corrective action costs dominate both first year and annualized costs in each scenario. The Agency is soliciting comments on these cost estimates.

TABLE VI–2.—COSTS OF FINAL RULE

Provisions	Lower bound		Upper bound		Most likely	
	First year costs	Annualized FY	First year costs	Annualized FY	First year costs	Annualized FY
Liquids in landfills	$7,419,100	$5,100,663	$14,838,200	$10,213,326	$11,128,650	$7,659,995
Minimum technological requirements	9,675,600	63,473,700	9,675,600	63,473,700	9,675,600	63,473,700
Corrective action [1]	1,831,591,141	279,508,264	14,179,396,523	1,769,394,619	3,760,999,600	479,814,086
Dust suppression	16,440,000	16,440,000	34,930,000	34,930,000	25,685,000	25,685,000
Small quantity generators	332,500	332,500	1,400,000	1,400,000	542,750	542,750
Burning and blending	0	0	186,920	186,920	107,640	107,640
Exposure assessments	1,906,560	176,213	1,906,560	176,213	1,906,560	176,213
Delisting procedures	1,515,000	482,295	1,515,000	482,295	1,515,000	482,295
Hazardous waste exports	2,250	2,250	12,000	12,000	6,563	6,563
Waste minimization	140,580	140,580	2,482,910	2,482,910	204,954	204,954
Financial responsibility	100,400	100,400	240,560,947	240,560,947	9,803,280	9,803,280
Underground storage tanks	6,215,000	(671,076)	6,215,000	1,113,446	0	0
Grand total	1,875,338,531	364,690,189	14,493,099,760	2,144,406,376	3,826,565,497	583,956,476

[1] Cost of corrective action includes the cost of source control for certain facilities.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste, Liquids in landfills.

40 CFR Part 261

Hazardous waste, Small quantity generators, Recycling, Delisting.

40 CFR Part 262

Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste minimization.

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Exposure assessments, Corrective action, Security measures, Surety bonds, Liner requirements.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Corrective action, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Burning and blending.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply, Permit application requirements.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 280

Underground storage tanks.

Dated: July 8, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 is revised as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939 and 6974).

2. 40 CFR Part 260 is amended by revising § 260.22(a), (c)–(e) to read as follows:

§ 260.22 Petition to amend Part 261 to exclude a waste produced at a particular facility.

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in Subpart D of Part 261 may petition for a regulatory amendment under this section and § 260.20. To be successful:

(1) The petitioner must demonstrate to the satisfaction of the Administrator that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an actutely hazardous waste; and

(2) Based on a complete application, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

* * * * *

(c) If the waste is listed with codes "I", "C", "R", or "E", in Subpart D,

(1) The petitioner must show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in § 261.21, § 261.22, § 261.23, or § 261.24 using any applicable methods prescribed therein. The petitioner also must show that the waste does not exhibit any of the other characteristics defined in § 261.21, § 261.22, § 261.23, or § 261.24 using any applicable methods prescribed therein;

(2) Based on a complete application, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such

factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

(d) If the waste is listed with code "T" in Subpart D,

(1) The petitioner must demonstrate that the waste:

(i) Does not contain the constituent or constituents (as defined in Appendix VII of Part 261) that caused the Administrator to list the waste, using the appropriate test methods prescribed in Appendix III; or

(ii) Although containing one or more of the hazrdous constituents (as defined in Appendix VII of Part 261) that caused the Administrator to list the waste, does not meet the criterion of § 261.11(a)(3) when considering the factors used by the Administrator in § 261.11(a)(3) (i) through (xi) under which the waste was listed as hazardous; and

(2) Based on a complete application, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in § 261.21, § 261.22, § 261.23, and § 261.24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

(e) If the waste is listed with the code "H" in Subpart D,

(1) The petitioner must demonstrate that the waste does not meet the criterion of § 261.11(a)(2); and

(2) Based on a complete application, the Administrator must determine, where he has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in § 261.21, § 261.22, § 261.23, and § 261.24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

* * * * *

§ 260.22 [Amended]

3. Section 260.22(m) is hereby removed.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

4. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

5. Section 261.4(b)(1) is revised to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility—

(i) Receives and burns only

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources) and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

* * * * *

§ 261.5 [Amended]

6. Section 261.5 is amended by redesignating paragraphs (h) and (i) as (i) and (j) respectively.

7. 40 CFR Part 261 is amended by revising § 261.5(b), (f) and (g) and adding (h) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by small quantity generators.

* * * * *

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (h) of this section, a small quantity generator's hazardous wastes are not subject to regulation under Parts 262 through 265 and Parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA, provided the generator complies with the requirements of paragraphs (f), (g) and (h) of this section.

* * * * *

(f) In order for hazardous wastes generated by a small quantity generator of acutely hazardous wastes in quantities equal to or less than those set forth in paragraph (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) Section 261.11 of this chapter;

(2) The small quantity generator may accumulate acutely hazardous waste on-site. If he accumulates at any time acutely hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2) of this section, all those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under Parts 262 through 265 and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34 for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit;

(3) A small quantity generator may either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

(i) Permitted under Part 270 of this chapter;

(ii) In interim status under Parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(g) In order for hazardous waste generated by a small quantity generator in quantities of less than 100 kilograms hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) Section 261.11 of this chapter;

(2) The small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of this hazardous waste, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under Parts 262 through 265 and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34 for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed 1000 kilograms;

(3) A small quantity generator may either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment, or disposal facility, either of which is:

(i) Permitted under Part 270 of this chapter;

(ii) In interim status under Parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(h) In order for hazardous waste generated by a small quantity generator in a quantity greater than 100 kilograms but less than 1000 kilograms during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) Section 262.11 of this chapter;

(2) A small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, all those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under Parts 262 through 265 and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34 for accumulation of hazardous waste on-site begins for a small quantity generator when the accumulated wastes exceed 1000 kilograms;

(3) Beginning August 5, 1985, for any hazardous waste shipped off-site, the generator must ensure that such waste is accompanied by a copy of the manifest (EPA form 8700-22) signed by him and containing the following information:

(i) The name and address of the generator of the waste;

(ii) The United States Department of Transportation description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA);

(iii) The number and type of containers;

(iv) The quantity of waste being transported; and

(v) The name and address of the facility designated to receive the waste.

(4) A small quantity generator may either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

(i) Permitted under Part 270 of this chapter;

(ii) In interim status under Parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

* * * * *

8. 40 CFR Part 261 is amended by revising the introductory text and adding an OMB control number to the end of the section of § 261.33 to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues and spill residues thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded, when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

* * * * *

(The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050-0047.)

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

9. The authority citation for Part 262 is revised as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004, 3005, and 3017, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937).

Appendix—[Amended]

10. The Uniform Hazardous Waste Manifest form in the Appendix to Part 262 is revised as follows:

BILLING CODE 6560-50-M

APPENDIX

Please print or type. *(Form designed for use on elite (12-pitch) typewriter.)*

Form Approved. OMB No. 2000-0404. Expires 7-31-86

UNIFORM HAZARDOUS WASTE MANIFEST

1. Generator's US EPA ID No. | Manifest Document No.

2. Page 1 of

Information in the shaded areas is not required by Federal law.

3. Generator's Name and Mailing Address

4. Generator's Phone ( )

5. Transporter 1 Company Name | 6. US EPA ID Number

7. Transporter 2 Company Name | 8. US EPA ID Number

9. Designated Facility Name and Site Address | 10. US EPA ID Number

A. State Manifest Document Number

B. State Generator's ID

C. State Transporter's ID

D. Transporter's Phone

E. State Transporter's ID

F. Transporter's Phone

G. State Facility's ID

H. Facility's Phone

11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)	12. Containers No.	Type	13. Total Quantity	14. Unit Wt./Vol.	I. Waste No.
a.					
b.					
c.					
d.					

J. Additional Descriptions for Materials Listed Above

15. Special Handling Instructions and Additional Information

16. **GENERATOR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.

Unless I am a small quantity generator who has been exempted by statute or regulation from the duty to make a waste minimization certification under Section 3002(b) of RCRA, I also certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment.

Printed/Typed Name | Signature | Month Day Year

TRANSPORTER

17. Transporter 1 Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | Month Day Year

18. Transporter 2 Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | Month Day Year

FACILITY

19. Discrepancy Indication Space

20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.

Printed/Typed Name | Signature | Month Day Year

EPA Form 8700-22 (Rev. 4-85) Previous edition is obsolete.

BILLING CODE 6560-50-C

11. The Appendix to Part 262 is further amended by adding the following sentence to Item 16 of the instructions two spaces below the last sentence, and preceeding the Note.

* * * * *

Item 16. Generator's Certification

* * * * *

In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements.

* * * * *

12. Section 262.41(a) is amended by revising (a)(6) and adding (a) (7) and (8) to read as follows:

§ 262.41 Biennial report.

(a) * * *

(6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.

(7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(8) The certification signed by the generator or authorized representative.

* * * * *

§ 262.50 [Amended]

13. In Section 262.50, existing paragraphs (d) and (e) are redesignated as paragraphs (e) and (f).

14. Section 262.50 is amended by adding a new paragraph (d) and the OMB control number to the end of the section to read as follows:

§ 262.50 International shipments.

* * * * *

(d) Any person exporting hazardous waste identified or listed under this chapter shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

* * * * *

[The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050-0024.]

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

15. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

16. 40 CFR Part 264 is amended by adding a new paragraph § 264.1(f)(3) to read as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(f) * * *

(3) To a person who treats, stores, or disposes of hazardous waste in a State which is authorized under Subpart A or B of Part 271 of this chapter if the State has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at his facility which are imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. The requirements and prohibitions that are applicable until a State receives authorization to carry them out include all Federal program requirements identified in § 271.1(j).

* * * * *

17. In § 264.18, new paragraph (c) is added to read as follows:

§ 264.18 Location standards.

* * * * *

(c) *Salt dome formations, salt bed formations, underground mines and caves.* The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave is prohibited, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.

18. 40 CFR Part 264 is amended by revising § 264.70 as follows:

§ 264.70 Applicability.

The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 264.1 provides otherwise. Sections 264.71, 264.72, and 264.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources. Section 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

19. In § 264.73, new paragraph (b)(9) and an OMB control number are added to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(9) A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment.

(The reporting and recordkeeping requirements contained in paragraph (b)(9) were approved by OMB under control number 2050-0037.)

20. In 40 CFR Part 264, the heading for Subpart F is revised to read as follows:

Subpart F—Releases From Solid Waste Management Units

21. In 40 CFR Part 264, § 264.90 is amended by revising paragraphs (a) and (b) to read as follows:

§ 264.90 Applicability.

(a)(1) Except as provided in paragraph (b) of this section, the regulations in this subpart apply to owners or operators of facilities that treat, store or dispose of hazardous waste. The owner or operator must satisfy the requirements identified in paragraph (a)(2) of this section for all wastes (or constituents thereof) contained in solid waste management units at the facility, regardless of the time at which waste was placed in such units.

(2) All solid waste management units must comply with the requirements in § 264.101. A surface impoundment, waste pile, and land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a "regulated unit") must comply with the requirements of §§ 264.91–264.100 in lieu of § 264.101 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The finanical responsibility requirements of § 264.101 apply to regulated units.

(b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this subpart if:

(1) The owner or operator is exempted under § 264.1; or

(2) He operates a unit which the Regional Administrator finds:

(i) Is an engineered structure,

(ii) Does not receive or contain liquid waste or waste containing free liquids,

(iii) Is designed and operated to exclude liquid, precipitation, and other run-on and run-off,

(iv) Has both inner and outer layers of containment enclosing the waste,

(v) Has a leak detection system built into each containment layer,

(vi) The owner or operator will provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and post-closure care periods, and

(vii) To a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the the post-closure care period.

(3) The Regional Administrator finds, pursuant to § 264.280(d), that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of § 264.278 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this paragraph can only relieve an owner or operator of responsibility to meet the requirements of this subpart during the post-closure care period; or

(4) The Regional Administrator finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the port-closure care period specified under § 264.117. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any predictions made under this paragraph on assumptions that maximize the rate of liquid migration.

(5) He designs and operates a pile in compliance with § 264.250(c).

* * * * *

22. A new § 264.101 is added to Part 264, Subpart F to read as follows:

§ 264.101 Corrective action for solid waste management units.

(a) The owner or operator of a facility seeking a permit for the treatment, storage or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) Corrective action will be specified in the permit. The permit will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

§ 264.221 [Amended]

23. In § 264.221, paragraphs (c), (d), and (e) are redesignated as paragraphs (f), (g), and (h), respectively.

24. In § 264.221, the introductory text of paragraph (a) is revised to read as follows:

§ 264.221 Design and operating requirements.

(a) Any surface impoundment that is not covered by paragraph (c) of this section or § 265.221 of this chapter must have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or ground water or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with § 264.228(a)(1). For impoundments that will be closed in accordance with § 264.228(a)(2), the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be: * * *

* * * * *

25. Section 264.221 is amended by adding paragraphs (c), (d), and (e) to read as follows:

§ 264.221 Design and operating requirements.

* * * * *

(c) The owner or operator of each new surface impoundment, each new surface impoundment unit at an existing facility, each replacement of an existing surface impoundment unit, and each lateral expansion of an existing surface impoundment unit, must install two or more liners and a leachate collection system between such liners. The liners and leachate collection system must protect human health and the environment. The requirements of this paragraph shall apply with respect to all waste received after the issuance of the permit. The requirement for the installation of two or more liners in this paragraph may be satisfied by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

(d) Paragraph (c) of this section will not apply if the owner or operator demonstrates to the Regional Administrator, and the Regional Administrator finds for such surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(e) The double liner requirement set forth in paragraph (c) of this section may be waived by the Regional Administrator for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in § 261.24 of this chapter; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this paragraph, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of paragraph (c) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such

impoundment will comply with appropriate post-closure requirements, including but not limited to ground-water monitoring and corrective action:

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in § 144.3 of this chapter); and

(C) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits under RCRA § 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

§ 264.222 [Removed]

28. Section 264.222 is removed.

§ 264.228 [Amended]

27. Section 264.226(b)(3) is removed, and paragraph (b)(4) is redesignated as (b)(3).

§ 264.227 [Amended]

28. Section 264.227(d)(2)(i) is amended by removing the phrase "or § 264.228(b)(2)."

§ 264.228 [Amended]

29. Section 264.228(b)(2) is removed and paragraphs (b)(3) and (b)(4) are redesignated as (b)(2) and (b)(3), respectively.

30. Section 264.228(d) is removed.

§ 264.252 [Removed]

31. Section 264.252 is removed.

§ 264.253 [Removed]

32. Section 264.253 is removed.

§ 264.254 [Amended]

33. Section 264.254(b)(2) is removed, and paragraphs (b)(3) and (b)(4) are redesignated as (b)(2) and (b)(3), respectively.

§ 264.301 [Amended]

34. Section 264.301 is amended by redesignating paragraphs (c), (d), (e), (f), and (g) as paragraphs (f), (g), (h), (i), and (j), respectively.

35. Section 264.301 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 264.301 Design and operating requirements.

(a) Any landfill that is not covered by paragraph (c) of this section or § 265.301(a) of this chapter must have a liner system for all portions of the landfill (except for existing portions of such landfill). The liner system must have: * * *

* * * * *

36. Section 264.301 is amended by adding new paragraphs (c), (d), (e), and (k), to read as follows:

§ 264.301 Design and operating requirements.

* * * * *

(c) The owner or operator of each new landfill, each new landfill unit at an existing facility, each replacement of an existing landfill unit, and each lateral expansion of an existing landfill unit, must install two or more liners and a leachate collection system above and between the liners. The liners and leachate collection systems must protect human health and the environment. The requirement for the installation of two or more liners in this paragraph may be satisfied by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

(d) Paragraph (c) of this section will not apply if the owner or operator demonstrates to the Regional Administrator, and the Regional Administrator finds for such landfill, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(e) The double liner requirement set forth in paragraph (c) of this section may be waived by the Regional Administrator for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in § 261.24 of this chapter; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in § 144.3 of this chapter); and

(C) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits under RCRA 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

* * * * *

(k) Any permit under RCRA 3005(c) which is issued for a landfill located within the State of Alabama shall require the installation of two or more liners and a leachate collection system above and between such liners, notwithstanding any other provision of RCRA.

§ 264.302 [Removed]

37. Section 264.302 is removed.

§ 264.303 [Amended]

38. Section 264.303(b)(2) is removed, and paragraphs (b)(3), and (b)(4) are redesignated (b)(2) and (b)(3), respectively.

§ 264.310 [Amended]

39. Section 264.310(b)(2) is removed, and paragraphs (b)(3) and (b)(4), (b)(5) and (b)(6) are redesignated (b)(2), and (b)(3), (b)(4) and (b)(5), respectively.

40. Section 264.310(c) is removed.

41. Section 264.314 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 264.314 Special requirements for bulk and containerized waste.

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985 only if:

* * * * *

42. Paragraph (b) of § 264.314 is redesignated paragraph (d), and a new paragraph (b) is added to read as follows:

§ 264.314 Special requirements for bulk and containerized waste.

* * * * *

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not absorbents have been added) in any landfill is prohibited.

* * * * *

43. Section 264.314 is amended by adding paragraph (e) and an OMB control number to read as follows:

§ 264.314 Special requirements for bulk and containerized waste.

* * * * *

(e) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines, that:

(1) The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) Placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in § 144.3 of this chapter.)

(The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050-0037.)

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

44. The authority citation for Part 265 is revised to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005 and 3015, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935).

45. Section 265.1 is amended by revising paragraph (c)(4) to read as follows:

§ 265.1 [Amended]

* * * * *

(c) * * *

(4) A person who treats, stores, or disposes of hazardous waste in a State with a RCRA hazardous waste program authorized under Subparts A or B of Part 271 of this chapter, except that the requirements of this part will continue to apply:

(i) As stated in paragraph (c)(2) of this section, if the authorized State RCRA program does not cover disposal of hazardous waste by means of underground injection; or

(ii) To a person who treats, stores, or disposes of hazardous waste in a State authorized under Subpart A or B of Part 271 of this chapter if the State has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at his facility which are imposed pursuant to the Hazardous and Solid Waste Act Amendments of 1984. The requirements and prohibitions that are applicable until a State receives authorization to carry them out include all Federal program requirements identified in § 271.1(j).

* * * * *

46. In Part 265, Subpart B, a new § 265.18 is added to read as follows:

§ 265.18 Location standards.

The placement of any hazardous waste in a salt dome, salt bed formation, underground mine or cave is prohibited, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.

47. Part 265, Subpart B, is amended by adding a new § 265.221 to read as follows:

§ 265.221 Design requirements.

(a) The owner or operator of a surface impoundment must install two or more liners and leachate collection system in accordance with § 264.221(c) of this chapter, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

(b) The owner or operator of each unit referred to in paragraph (a) of this section must notify the Regional Administrator at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months of the receipt of such notice.

(c) Paragraph (a) of this section will not apply if the owner or operator demonstrates to the Regional Administrator, and the Regional Administrator finds for such surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(d) The double liner requirement set forth in paragraph (a) of this section may be waived by the Regional Administrator for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in § 261.24 of this chapter; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner in leaking. For the purposes of this paragraph the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of paragraph (a) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil it is not removed or decontaminated, the owner of operator of such impoundment must comply with appropriate post-closure requirements, including but not limited to ground-water monitoring and corrective action;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in § 144.3 of this chapter); and

(C) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits under RCRA § 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of paragraph (a) of this section and in good faith compliance with paragraph (a) of this section and with guidance documents governing liners and leachate collection systems under paragraph (a) of this section, no liner or leachate collection system which is different from that which was so installed pursuant to paragraph (a) of this section will be required for such unit by the Regional Administrator when issuing the first permit to such facility, except that the Regional Administrator will not be precluded from requiring installation of a new liner when the Regional Administrator has reason to believe that any liner installed pursuant to the requirements of paragraph (a) of this section is leaking.

48. Part 265 is amended by adding a new § 265.254 to read as follows:

§ 265.254 Design requirements.

The owner or operator of a waste pile is subject to the requirements for liners and leachate collection systems or equivalent protection provided in § 264.251 of this chapter, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area indentified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

49. Part 265 is amended by adding a new § 265.301 to read as follows:

§ 265.301 Design requirements.

(a) The owner or operator of a landfill must install two or more liners and leachate collection systems above and between such liners in accordance with § 264.301(c) of this chapter, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

(b) The owner or operator of each unit referred to in paragraph (a) of this section must notify the Regional Administrator at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months of the receipt of such notice.

(c) Paragraph (a) of this section will not apply if the owner or operator demonstrates to the Regional Administrator, and the Regional Administrator finds for such landfill, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(d) The double liner requirement set forth in paragraph (a) of this section may be waived by the Regional Administrator for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in § 261.24 of this chapter; and

(2)(i) (A) The monofill has at least one liner for which there is no evidence that such liner is leaking;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in § 144.3 of this chapter); and

(C) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits under RCRA § 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of paragraph (a) of this section and in good faith compliance with paragraph (a) of this section and with guidance documents governing liners and leachate collection systems under paragraph (a) of this section, no liner or leachate collection system which is different from that which was so installed pursuant to paragraph (a) of this section will be required for such unit by the Regional Administrator when issuing the first permit to such facility, except that the Regional Administrator will not be precluded from requiring installation of a new liner when the Regional Administrator has reason to believe that any liner installed pursuant to the requirements of paragraph (a) of this section is leaking.

§ 265.314 [Amended]

50. Paragraphs (b) and (c) of § 265.314 are redesignated as paragraphs (c) and (e), respectively, and paragraph (d) is reserved.

51. Section 265.314 is amended by revising the introductory text of paragraph (a), and by adding new paragraph (b) to read as follows:

§ 265.314 Special requirements for liquid bulk and containerized waste.

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985 only if:

* * * * *

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not absorbents have been added) in any landfill is prohibited.

* * * * *

52. Section 265.314 is amended by revising newly designated paragraph (e), adding a new paragraph (f), and adding an OMB control number to the end of the section to read as follows:

§ 265.314 Special requirements for bulk and containerized waste.

* * * * *

(e) The date for compliance with paragraph (a) of this section is November 19, 1981. The date for compliance with paragraph (c) of this section is March 22, 1982.

(f) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines, that:

(1) The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) Placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in § 144.3 of this chapter).

[The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050-0037]

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

53. The authority citation for Part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3004, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

54. In Part 266, Subpart C, the text of 266.23 is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 266.23 Standards applicable to users of materials that are used in a manner that constitutes disposal.

* * * * *

(b) The use of waste or used oil or other material, which is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

55. In Part 266, Subpart D is amended by adding § 266.31 as set forth below.

§ 266.31 Prohibitions.

(a) [Reserved]

(b)(1) Except as provided in paragraph (b)(2) of this section, no fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than 500,000 (based on the most recent census statistics)

unless such kiln fully complies with regulations under this chapter that are applicable to incinerators.

(2) This requirement does not apply to petroleum refinery hazardous wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more of the characteristics of hazardous waste in Part 261, Subpart C.

56. In Part 266, Subpart D, § 266.34 is amended by adding paragraph (d) and adding an OMB control number to the end of the section.

§ 266.34 [Amended]

* * * * *

(d) Labelling. (1) Except as provided in paragraphs (d)(2)–(4) of this section, after February 6, 1985, it shall be unlawful for any person who produces, distributes, or markets any fuel that contains a hazardous waste to distribute or market such fuel if the invoice or the bill of sale fails:

(i) To bear the following statement: "WARNING: THIS FUEL CONTAINS HAZARDOUS WASTE", and

(ii) To list the hazardous wastes contained therein. Such statement must be located in a conspicuous place on every such invoice or bill of sale and must appear in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the invoice or bill of sale.

(2) This requirement does not apply to fuels produced from petroleum refining hazardous waste containing oil if

(i) Such materials are generated and reinserted on-site into the refining process;

(ii) Contaminants are removed; and

(iii) Such refining waste containing oil is converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(3) This requirement does not apply to fuels produced from oily materials resulting from normal petroleum refining production and transportation practices; if

(i) Contaminants are removed; and

(ii) Such oily materials are converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(4) This requirement does not apply to petroleum refinery hazardous wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more of the characteristics of hazardous waste in Part 261, Subpart C.

[The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2060-0047]

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

57. The authority citation for Part 270 is revised to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974).

58. In Part 270, § 270.10 is amended by revising paragraphs (a) and (c), the paragraph heading of (e), paragraphs (e)(1), (f)(1), (f)(3), adding (j), amending paragraph (e)(4) by adding two sentences to the end and by adding an OMB control number to the end of the section to read as follows:

§ 270.10 General application requirements.

(a) *Permit application.* Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the Director as described in this section and §§ 270.70 through 270.73. Persons currently authorized with interim status shall apply for permits when required by the Director. Persons covered by RCRA permits by rule (§ 270.60), need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in § 270.61. Procedures for application, issuance and administration of research, development, and demonstration permits are found exclusively in § 270.65.

* * * * *

(c) *Completeness.* The Director shall not issue a permit before receiving a complete application for a permit except for permits by rule, or emergency permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his satisfaction. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in paragraph (j) of this section.

* * * * *

(e) *Existing HWM facilities and interim status qualifications.* (1) Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under the act that render the facility subject to the requirement to have a RCRA permit must submit Part A of their permit application no later than —

(i) Six months after the date of publication of regulations which first require them to comply with the standards set forth in 40 CFR Parts 265 or 266, or

(ii) Thirty days after the date they first become subject to the standards set forth in 40 CFR Part 265 or 266, whichever first occurs.

* * * * *

(4) * * * Notwithstanding the above, any owner or operator of an existing HWM facility must submit a Part B permit application in accordance with the dates specified in § 270.73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under this Act that render the facility subject to the requirement to have a RCRA permit must submit a Part B application in accordance with the dates specified in § 270.73.

* * * * *

(f) *New HWM facilities.* (1) Except as provided in paragraph (f)(3) of this section, no person shall begin physical construction of a new HWM facility without having submitted Part A and Part B of the permit application and having received a finally effective RCRA permit.

* * * * *

(3) Notwithstanding paragraph (f)(1) of this section, a person may construct a facility for the incineration of polychlorinated biphenyls pursuant to an approval issued by the Administrator under section (6)(e) of the Toxic Substances Control Act and any person owning or operating such a facility may, at any time after construction or operation of such facility has begun, file an application for a RCRA permit to incinerate hazardous waste authorizing such facility to incinerate waste identified or listed under Subtitle C of RCRA.

* * * * *

(j) *Exposure information.* (1) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, treats,

or dispose of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

(i) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(ii) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (i); and

(iii) The potential magnitude and nature of the human exposure resulting from such releases.

(2) By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required in paragraph (j)(1) of this section.

(Reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050-0007.)

§ 270.17 [Amended]

59. Section 270.17 is amended by removing paragraph (c), redesignating paragraphs (d), (e), (f), (g), (h), (i) and (j) as (c), (d), (e), (f), (g), (h), and (i) respectively.

60. Section 270.18 is amended by revising paragraph (b) to read as follows:

§ 270.18 Specific Part B information requirements for waste piles.

* * * * *

(b) If an exemption is sought to § 264.251 and Subpart F of Part 264 as provided by § 264.250(c) or § 264.90(2), an explanation of how the standards of § 264.250(c) will be complied with or detailed plans and an engineering report describing how the requirements of § 264.90(b)(2) will be met.

* * * * *

61. Section 270.18 is amended by removing paragraph (d), redesignating paragraphs (e), (f), (g), (h), (i) and (j) as (d), (e), (f), (g), (h) and (i) respectively.

62. Section 270.18 is amended by revising newly designated paragraph (d) to read as follows:

* * * * *

(d) A description of how each waste pile, including the liner and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.254(a) and (b). This information should be included in the inspection plan submitted under § 270.14(b)(5).

* * * * *

63. Section 270.21 is amended by revising paragraph (h) to read as follows:

§ 270.21 Specific Part B information requirements for landfills.

* * * * *

(h) If bulk or non-containerized liquid waste or wastes containing free liquids is to be landfilled prior to May 8, 1985, an explanation of how the requirements of § 264.314(a) will be complied with;

* * * * *

64. Section 270.30 is amended by revising the first sentence of paragraph (j)(2) to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(j) * * *

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by § 264.73(b)(9) of this chapter, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, certification, or application. * * *

* * * * *

65. Section 270.32 is amended by revising paragraph (b) to read as follows:

§ 270.32 Establishing permit conditions.

* * * * *

(b) (1) Each RCRA permit shall include permit conditions necessary to achieve compliance with the Act and regulations, including each of the applicable requirements specified in 40 CFR Parts 264, 266, and 267. In satisfying this provision, the Director may incorporate applicable requirements of 40 CFR Parts 264, 266, and 267 directly into the permit or establish other permit conditions that are based on these parts.

(2) Each permit issued under section 3005 of this act shall contain terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment.

* * * * *

66. Section 270.41 is amended by adding a new paragraph (a)(6) to read as follows:

§ 270.41 Major modification or revocation and reissuance of permits.

* * * * *

(a) * * *

(6) Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the Director under § 270.50(d), the Director shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in Parts 124, 260–266, and 270.

* * * * *

67. Section 270.50 is amended by adding a new paragraph (d) to read as follows:

§ 270.50 Duration of permits.

* * * * *

(d) Each permit for a land disposal facility shall be reviewed by the Director five years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in § 270.41.

68. Section 270.60 is amended by adding new paragraphs (b)(3) and (c)(3)(vii) to read as follows:

§ 270.60 Permits by rule.

* * * * *

(b) * * *

(3) For UIC permits issued after November 8, 1984, complies with 40 CFR 264.101.

(c) * * *

(3) * * *

(vii) for NPDES permits issued after November 8, 1984, 40 CFR 264.101.

* * * * *

69. In Part 270, Subpart F, a new § 270.65 is added to read as follows:

§ 270.65 Research, development, and demonstration permits.

(a) The Administrator may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under Part 264 or 266. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

(1) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in paragraph (d) of this section, and

(2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Administrator deems necessary for purposes of determining the efficacy and performance

capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(3) Shall include such requirements as the Administrator deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure, and remedial action), and such requirements as the Administrator deems necessary regarding testing and providing of information to the Administrator with respect to the operation of the facility.

(b) For the purpose of expediting review and issuance of permits under this section, the Administrator may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Parts 124 and 270 except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

(c) The Administrator may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(d) Any permit issued under this section may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

70. Section 270.70 is amended by revising the introductory text of paragraph (a) and by adding paragraph (c) to read as follows:

§ 270.70 Qualifying for interim status.

(a) Any person who owns or operates an "existing HWM facility" or a facility in existence on the effective date of statutory or regulatory amendments under the Act that render the facility subject to the requirement to have an RCRA permit shall have interim status and shall be treated as having been issued a permit to the extent he or she has: * * *

* * * * *

(c) Paragraph (a) of this section shall not apply to any facility which has been previously denied a RCRA permit or if authority to operate the facility under RCRA has been previously terminated.

71. Section 270.73 is amended by adding paragraphs (c), (d), (e), and (f) and by adding an OMB control number to the end of the section to read as follows:

§ 270.73 Termination of interim status.

* * * * *

(c) For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless:

(1) The owner or operator submits a Part B application for a permit for such facility prior to that date; and

(2) Th.. owner or operator certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(d) For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under the Act that render the facility subject to the requirement to have a RCRA permit and which is granted interim status, twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:

(1) Submits a Part B application for a RCRA permit for such facility before the date 12 months after the date on which the facility first becomes subject to such permit requirement; and

(2) Certifies that such facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

(e) For owners or operators of each incinerator facility on November 8, 1989, unless the owner or operator of the facility submits a Part B application for a RCRA permit for an incinerator facility by November 8, 1986.

(f) For owners or operators of any facility (other than a land disposal or an incinerator facility) on November 8, 1992, unless the owner or operator of the facility submits a Part B application for a RCRA permit for the facility by November 8, 1988.

(The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050–0037.)

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

72. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

73. Section 271.1 is amended by revising paragraphs (a) and (f) and adding paragraph (j) to read as follows:

§ 271.1 Purpose and scope.

(a) This subpart specifies the procedures EPA will follow in approving, revising, and withdrawing approval of State programs and the requirements State programs must meet to be approved by the Administrator under Sections 3006 (b) and (f) of RCRA.

* * * * *

(f) Except as provided in § 271.3(a)(3), upon approval of a State permitting program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program.

* * * * *

(j) Requirements and prohibitions which are applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which are imposed pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) include:

(1) Any requirement or prohibition which has taken effect under HSWA, and

(2) All regulations specified in Table 1.

Note.—See §§ 264.1(f)(3), 265.1(c)(4)(ii), 271.3(a), 271.21(e), and 271.121(c)(3) for applicability.

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation	Federal Register reference
1–14–85	Dioxin-Containing Wastes.	50 FR 1978–2006.
July 15, 1985	Codification Rule	50 FR [insert Federal Register, page numbers].

74. Section 271.3 is amended by revising paragraph (a) to read as follows:

§ 271.3 Availability of final authorization.

(a) States approved under this subpart are authorized to administer and enforce their hazardous waste program in lieu of the Federal program, except as provided below:

(1) Any requirement or prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed pursuant to the Hazardous and Solid Waste Amendments of 1984 takes effect in each State having a finally authorized State program on the same date as such requirement takes effect in other States. These requirements and prohibitions are identified in § 271.1(j).

(2) The requirements and prohibitions in § 271.1(j) supersede any less stringent provision of a State program. The Administrator is authorized to carry out each such Federal requirement and prohibition in an authorized State

except where, pursuant to Sections 3006(b) or 3006(g)(2) of RCRA, the State has received final or interim authorization to carry out the particular requirement or prohibition. Violations of Federal requirements and prohibitions effective in authorized States are enforceable under Sections 3008, 3013 and 7003 of RCRA.

(3) Until an authorized State program is revised to reflect the amendments made by the Hazardous and Solid Waste Amendments of 1984 and such program revisions receive final or interim authorization pursuant to sections 3006(b) or 3006(g)(2) of RCRA, the Administrator shall have the authority in such State to issue or deny permits or those portions of permits affected by the requirements and prohibitions established by the Hazardous and Solid Waste Amendments of 1984.

* * * * *

75. Section 271.17 is amended by adding a new paragraph (c) to read as follows:

§ 271.17 Sharing of information.

* * * * *

(c) The State program must provide for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste. Such information must be made available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator was carrying out the provisions of Subtitle C of RCRA in the State. Interim authorization under § 271.24 is not available to demonstrate compliance with this section.

76. Section 271.19 is amended by adding a new paragraph (f) to read as follows:

§ 271.19 EPA review of State permits.

* * * * *

(f) Notwithstanding the above provisions, EPA shall issue permits, or portions of permits, to facilities in authorized States as necessary to implement the Hazardous and Solid Waste Amendments of 1984.

77. Section 271.21(e)(1)(ii) is removed, paragraph (e)(1)(iii) is redesignated as (e)(1)(ii), and paragraphs (e)(1)(i) and (e)(2) are revised to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

(e)(1)(i) Official State applications for final authorization shall be reviewed on the bases of Federal self-implementing statutory provisions that were in effect 12 months prior to the State's submission of its official application and the regulations in 40 CFR Parts 124, 260–266, 270 and 271 that were promulgated 12 months prior to the State's submission of its official application. Where a State program meets the requirements of section 3006(b) of RCRA and this subpart it may receive final authorization for any provision of its program corresponding to a Federal provision in effect on the date of the State's authorization. For purposes of the Federal requirements identified in § 271.1(j), a State may seek interim authorization under § 271.21 in lieu of final authorization.

* * * * *

(2) Any authorized State program which requires revision because of a Federal program change to this Part or 40 CFR Parts 124, 260–266, or 270 shall be modifed within one year (or two years if a State statutory amendment is required) of the date of promulgation of the Federal regulation. Authorized States shall have one year (two years if a statutory amendment is required) from the effective date of self-implementing RCRA statutory amendments to modify their programs. For purposes of the Federal requirements identified in § 271.1(j), a State may satisfy this requirement for modification by applying for interim authorization under § 271.24 or by revising its program as provided in this section.

* * * * *

78. Part 271 is amended by adding a new § 271.24 to Subpart A to read as follows:

§ 271.24 Interim authorization under section 3006(g) of RCRA.

Any State which is applying for or has been granted final authorization pursuant to Section 3006(b) of RCRA may submit to the Administrator evidence that its program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement identified § 271.1(j). Such States may request interim authorization under Section 3006(g) of RCRA to carry out the State requirement in lieu of the Administrator carrying out the Federal requirement in the State.

79. Section 271.121 is amended by revising paragraphs (a), (c)(3) and (f) as follows:

§ 271.121 Purpose and scope.

(a) This subpart specifies requirements a State program must meet in order to obtain interim authorization under Section 3006(c) of RCRA. A State must meet all the requirements of this Subpart in order to qualify for interim authorization. The requirements a State program must meet in order to obtain final authorization under Section 3006(b) of RCRA are specified in Subpart A. In addition, § 271.138 addresses the availability of interim authorization under Section 3006(g)(2) of RCRA for States with interim authorization under Section 3006(c) of RCRA.

* * * * *

(c) * * *

(3) States meeting the requirements of this Subpart will be allowed to administer a permit program in lieu of the corresponding Federal hazardous waste permit program for each component for which they have received interim authorization, except as provided below:

(i) Any requirement of prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed pursuant to the amendments made by the Hazardous and Solid Waste Amendments of 1984 takes effect in each State having an interim authorized State program on the same date as such requirement takes effect in other States. These requirements and prohibitions are identified in § 271.1(j).

(ii) The requirements and prohibitions in § 271.1(j) supersede any less stringent provision of the State program. The Administrator is authorized to carry out each Federal requirement and prohibition identified in § 271.1(j) in an authorized State except where the State has received interim authorization under Section 3006(g)(2) of RCRA to carry out the particular requirement or prohibition. Violations of Federal requirements and prohibitions effective in authorized States are enforceable under Sections 3008, 3013, and 7003 of RCRA.

(iii) Until an authorized State program is revised to reflect the amendments made by the Hazardous and Solid Waste Amendments of 1984 and such program revisions receive interim authorization under Section 3006(g)(2) of RCRA, the Administrator shall have the authority in such State to issue or deny permits or those portions of permits affected by the requirements and prohibitions established by the Hazardous and Solid Waste Amendments of 1984.

* * * * *

(f) Except as provided in paragraph (c)(3) of this section, upon approval of a State program for a component of Phase II, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program.

* * * * *

80. Section 271.122 is amended by revising paragraph (b)(1) to read as follows and by removing the note which follows (b)(1):

§ 271.122 Schedule.

* * * * *

(b)(1) Interim authorization for Phase I and Phase II expires on January 31, 1986.

* * * * *

81. Section 271.134 is amended by adding a new paragraph (f) to read as follows:

§ 271.134 EPA review of State permits.

* * * * *

(f) Notwithstanding the above provisions, EPA shall issue permits, or portions of permits, to facilities in authorized States as necessary to implement the Hazardous and Solid Waste Amendments of 1984.

82. Part 271 is amended by adding a new § 271.138 to read as follows:

§ 271.138 Interim authorization under section 3006(g) of RCRA.

(a) Any State which, before the date of enactment of the Hazardous and Solid Waste Amendments of 1984, has an existing hazardous waste program which has been granted interim authorization for all components of Phase II may submit to the Administrator evidence that such existing program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement referred to in § 271.1(j) of this chapter. Such States may request interim authorization under section 3006(g) of RCRA to carry out such requirement in lieu of the Administrator carrying out the Federal requirement in the State.

(b) Any such interim authorization under section 3006(g) expires on January 31, 1986, if a State program with interim authorization under section 3006(c) reverts to EPA on that date. See § 271.122(b)(2) of this chapter.

(The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050–0037.)

83. 40 CFR Part 280 is added as follows:

PART 280—UNDERGROUND STORAGE TANKS

Sec.
280.1 Definition and exemptions.
280.2 Interim prohibition.

Authority: Secs. 9001 and 9003(g) of the Solid Waste Disposal Act, as revised by the Resource Conservation and Recovery Act, as amended [42 U.S.C. 6991 and 6993(g)].

§ 280.1 Definitions and exemptions.

"Person" has the same meaning as provided in Section 1004(15) of the Resource Conservation and Recovery Act, as amended, except that such term includes a consortium, a joint venture, a commercial entity, and the United States Government.

"Regulated substance" means

(a) Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act, as amended), and

(b) Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.

"Underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(b) Tank used for storing heating oil for consumptive use on the premises where stored,

(c) Septic tank,

(d) Pipeline facility (including gathering lines):

(e) Regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et. seq.), or

(f) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, *et. seq.*), or

(g) Which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (e) and (f) of this definition,

(h) Surface impoundment, pit, pond, or lagoon,

(i) Storm water or waste water collection system,

(j) Flow-through process tank,

(k) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(l) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the undesignated floor.

(m) Any pipes connected to any tank which is described in paragraphs (a) through (l) of this section.

§ 280.2 Interim prohibition.

(a) Between May 7, 1985 and the effective date of the standards promulgated by the Administrator under section 9003(e) of the Hazardous and Solid Waste Amendments of 1984, no person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction):

(1) Will prevent releases due to corrosion or structural failure for the operational life of the tank;

(2) Is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) The material used in the construction or lining of the tank is compatible with the substance to be stored.

(b) Notwithstanding paragraph (a) of this section, if soil tests conducted in accordance with ASTM Standard G57–78, or another standard approved by the Administrator, show that soil resistivity in an installation location is 12,000 ohm-cm or more (unless a more stringent standard is prescribed by the Administrator by rule), a storage tank without corrosion protection may be installed in that location during the period referred to in paragraph (a) of this section.

[FR Doc. 85–13094 Filed 7–12–85; 8:45 am]
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Library
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TDD fo

FEDER

26961-2
27213-2
27409-2
27571-2
27813-2
27927-2
28093-2
28191-2
28363-2
28555-2

Reader Aids

Federal Register

Vol. 50, No. 135

Monday, July 15, 1985

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Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

26961-27212	1
27213-27408	2
27409-27570	3
27571-27812	5
27813-27926	8
27927-28092	9
28093-28190	10
28191-28362	11
28363-28554	12
28555-28756	15

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

305 28363

3 CFR

Executive Orders:

11888 (Amended by EO 12524) 27409
12523 26963
12524 27409

Proclamations:

5356 26961

5 CFR

771 26965

Proposed Rules:

532 ..... 28583, 28584

7 CFR

Ch. IV 27927
52 26965
54 27571
226 26972
301 28366
400 26976
402 28367
908 ..... 27411, 27928
910 ..... 27813, 28372, 28555
911 28373
915 ..... 28373, 28556
916 ..... 27813, 28373
917 ..... 27813, 28373
918 28373
921 ..... 27411, 28373
922 28373
923 28373
924 28373
930 ..... 27213, 28373
944 28556
967 28373
979 26976
985 28373
991 ..... 26977, 27814
1040 27412
1427 26978
1435 27413
1941 27414
1944 27415
1945 ..... 27414, 27416

Proposed Rules:

Ch. IV 27971
Ch. X 27003
29 27288
51 27004
417 27601
800 28104
910 28105
920 27288
967 28210
999 28585
1124 27972
1240 28404

8 CFR

316a 27816

Proposed Rules:

103 27289
341 28586
343a 28587

9 CFR

91 27929
92 ..... 27928, 28557
94 28560
318 ..... 27573, 28374

Proposed Rules:

94 27973

10 CFR

9 27214

Proposed Rules:

50 27006

12 CFR

403 27215
611 27930
617 27931
723 27417

Proposed Rules:

561 ..... 27290, 28588
563 ..... 27290, 28588
571 ..... 27290, 28588

13 CFR

121 27418
302 27419

Proposed Rules:

108 27754

14 CFR

39 ..... 26979, 27575, 27576, 27931-27933, 28093, 28094, 28561-28563
71 ..... 26980, 27934, 28564, 28565
97 27934
108 27924

Proposed Rules:

39 ..... 27009, 27012, 27601, 27602
71 ..... 27013, 27014, 27528, 28589-28591
75 27014

15 CFR

19 27577
376 27420
399 27420

16 CFR

3 28095
4 28095
13 ..... 26981, 27578, 28374
453 ..... 28002, 28081

703 27936
Proposed Rules:
13 28592

17 CFR
200 28365
239 27937
240 ..... 27937, 27940, 28365
249 27937
270 27937
274 27937
288 ..... 26981, 27947
Proposed Rules:
210 27973
230 28404
240 ..... 27829, 27976, 27981, 28106, 28210, 28219, 28404
250 27981
259 27981
270 27982

18 CFR
157 27816
389 27816
Proposed Rules:
35 27604
271 28221
290 27604

19 CFR
4 26981
12 27947
142 27816
178 27947
Proposed Rules
162 27829
177 27831

20 CFR
200 27222
401 28565
422 28565
626 27818
627 27818
628 27818
629 27818
630 27818
Proposed Rules:
404 27615
416 27615

21 CFR
101 26984
510 28395
520 27818
558 ..... 27421, 27422
1308 ..... 28098, 28395
Proposal Rules:
Ch. 1, Subchapter C 28594
170 27294
201 27016
211 27016
357 ..... 27552, 28595
514 27016
559 27016
561 27452
610 28595
660 28595
1002 27024

22 CFR
501 27422

23 CFR
1325 28191

24 CFR
200 28197
203 28197
885 28197
3282 28396

25 CFR
Proposed Rules:
61 27456

26 CFR
1 ..... 27222, 27231, 27427
602 ..... 27222, 27231
Proposed Rules:
1 ..... 27297, 27456, 27457, 28409
51 27621

27 CFR
4 27819
170 28572
Proposed Rules:
9 28409

28 CFR
2 28101
16 28199
32 27428

29 CFR
70 28306
1952 27233
Proposed Rules:
33 27298
1910 27307

30 CFR
700 28186
701 28186
785 28186
827 28186
902 28592
943 28186
948 ..... 28316, 28324
Proposed Rules:
56 27566
57 27566
700 28180
701 28180
785 28180
817 27910
827 28180
913 27025
917 28222
936 27461
944 28107
948 28343
950 28595

31 CFR
51 26987
103 27821
500 27435
505 27435
515 27435
520 27435
535 27435
540 27435

32 CFR
Parts 1–39 26987
199 26988
642 28573
657 28573
706 28398–28400
726 28401

33 CFR
100 ..... 27579, 28573
110 ..... 26988, 27580
117 ..... 26989, 27582
150 26989
165 27583
166 26989
Proposed Rules:
110 ..... 27622, 27623, 28596
117 ..... 27026, 27029, 27624, 27832, 27990, 27991

34 CFR
19 28101
Proposed Rules:
369 28412
376 28412

35 CFR
101 26990
103 26990
121 26990

36 CFR
1200 27196
1202 27196
1228 27951
1250 27196

37 CFR
Proposed Rules:
1 ..... 27030, 28596

38 CFR
3 27584
21 27825
Proposed Rules:
3 26224
36 27833

39 CFR
10 27827
3001 28144
Proposed Rules:
111 27992
3001 27308

40 CFR
51 27892
52 ..... 26991, 27244–27247, 28544
60 27248
61 27248
81 28574
86 27250
123 28202
260 28702
261 28702
262 28702
264 28702
265 28702
266 28702
270 28702
271 28702
280 28702
419 28516
600 27172
763 28530
Proposed Rules:
52 ..... 27030, 27462, 28224, 28415, 28596, 28598
180 ..... 27463, 28108
202 27321
205 27321
600 27188

41 CFR
Chs. 1–49 26987
101–4 28402
101–17 28577
101–40 27951
101–47 28402
105–54 28203
105–63 26992
201–1 27142
201–2 ..... 27142, 28206
201–8 27142
201–11 27142
201–16 27142
201–20 27142
201–21 27142
201–22 28206
201–23 27142
201–24 27142
201–26 27142
201–30 ..... 27142, 28206
201–31 ..... 27142, 28206
201–32 ..... 27142, 28206
201–38 27142
201–39 ..... 27142, 28206
201–40 ..... 27142, 28206
201–45 28206
Proposed Rules:
101–41 ..... 27625, 27626

42 CFR
400 28577
405 27722
412 ..... 27208, 27722
416 28577
435 28577
Proposed Rules:
23 27465
405 27469
412 27469

43 CFR
Public Land Orders:
5150 (Revoked in part by PLO 6607) 27827
5179 (Revoked in part by PLO 6607) 27827
5180 (Revoked in part by PLO 6607) 27827
5186 (Revoked in part by PLO 6607) 27827
6389 (Corrected by PLO 6606) 28206
6607 27827
6606 28206
Proposed Rules:
2800 27322

44 CFR
64 ..... 26993, 26994
Proposed Rules:
67 27322
302 27627

45 CFR
1180 ..... 27584, 27586
Proposed Rules:
405 27406
412 27406
1620 27326

46 CFR
153 26996

Proposed Rules:
160.....27626

47 CFR
0.....27952
22.....27953
68.....27250
73.....27267, 27438, 27954
76.....27438
81.....27968
83.....27968

Proposed Rules:
Ch. I.....28418
73.....27629

48 CFR
7.....27560
12.....27969
15.....27560, 28103
19.....27560
33.....27969
34.....27560
52.....27560, 27969
209.....28209
504.....26996
515.....28578
522.....28578
533.....26996
552.....27589
553.....27589
570.....27589
6101.....27969

Proposed Rules:
208.....28227
252.....28227

49 CFR
571.....27451

Proposed Rules:
Ch. X.....27031
571.....27032, 27632, 27633, 28428, 28599
1132.....27834

50 CFR
17.....26999
215.....27914
658.....28103
672.....28580, 28581
674.....28103

Proposed Rules:
17.....27637, 27992
20.....27638
630.....27470
655.....28109
662.....27470

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 12, 1985

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This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

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4	12.00	Jan. 1, 1985
5 Parts:		
1–1199	13.00	Jan. 1, 1984
1–1199 (Special Supplement)	None	Jan. 1, 1984
1200–End, 6 (6 Reserved)	7.50	Jan. 1, 1985
7 Parts:		
0–45	14.00	Jan. 1, 1985
46–51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1985
53–209	14.00	Jan. 1, 1985
210–299	13.00	Jan. 1, 1985
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400–699	12.00	Jan. 1, 1985
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1000–1059	12.00	Jan. 1, 1985
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1200–1499	13.00	Jan. 1, 1985
1500–1899	7.50	Jan. 1, 1985
1900–1944	12.00	Jan. 1, 1985
1945–End	13.00	Jan. 1, 1985
8	7.50	Jan. 1, 1985
9 Parts:		
1–199	13.00	Jan. 1, 1985
200–End	9.50	Jan. 1, 1985
10 Parts:		
0–199	17.00	Jan. 1, 1985
200–399	9.50	Jan. 1, 1985
400–499	12.00	Jan. 1, 1985
500–End	14.00	Jan. 1, 1985
11	7.50	Jan. 1, 1985
12 Parts:		
1–199	8.00	Jan. 1, 1985
200–299	14.00	Jan. 1, 1985
300–499	9.50	Jan. 1, 1985
500–End	14.00	Jan. 1, 1985
13	13.00	Jan. 1, 1985
14 Parts:		
1–59	16.00	Jan. 1, 1985
60–139	13.00	Jan. 1, 1985
140–199	7.50	Jan. 1, 1985
200–1199	15.00	Jan. 1, 1985
1200–End	8.00	Jan. 1, 1985
15 Parts:		
0–299	6.50	Jan. 1, 1985
300–399	13.00	Jan. 1, 1985
400–End	12.00	Jan. 1, 1985
16 Parts:		
0–149	9.00	Jan. 1, 1985
150–999	10.00	Jan. 1, 1985
1000–End	13.00	Jan. 1, 1985
17 Parts:		
1–239	20.00	Apr. 1, 1985
240–End	13.00	Apr. 1, 1984
18 Parts:		
1–149	12.00	Apr. 1, 1984
150–399	15.00	Apr. 1, 1984
400–End	7.00	Apr. 1, 1985
19	21.00	Apr. 1, 1985
20 Parts:		
1–399	8.00	Apr. 1, 1985
400–499	16.00	Apr. 1, 1985
*500–End	18.00	Apr. 1, 1985
21 Parts:		
1–99	9.00	Apr. 1, 1985
100–169	11.00	Apr. 1, 1985
170–199	13.00	Apr. 1, 1985
200–299	4.25	Apr. 1, 1985
300–499	14.00	Apr. 1, 1984
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800–1299	10.00	Apr. 1, 1985
1300–End	5.50	Apr. 1, 1985
22	21.00	Apr. 1, 1985
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24 Parts:		
0–199	11.00	Apr. 1, 1985
200–499	19.00	Apr. 1, 1985
500–699	6.50	Apr. 1, 1985
700–1699	12.00	Apr. 1, 1984
1700–End	9.00	Apr. 1, 1985
25	18.00	Apr. 1, 1985
26 Parts:		
§§ 1.0–1.169	21.00	Apr. 1, 1985
§§ 1.170–1.300	12.00	Apr. 1, 1985
§§ 1.301–1.400	7.50	Apr. 1, 1985
§§ 1.401–1.500	15.00	Apr. 1, 1985
§§ 1.501–1.640	12.00	[3] Apr. 1, 1984
§§ 1.641–1.850	11.00	Apr. 1, 1985
§§ 1.851–1.1200	14.00	Apr. 1, 1984
§§ 1.1201–End	17.00	Apr. 1, 1984
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30–39	9.50	Apr. 1, 1985
40–299	18.00	Apr. 1, 1985
300–499	11.00	Apr. 1, 1985
500–599	8.00	[1] Apr. 1, 1980
600–End	4.75	Apr. 1, 1985
27 Parts:		
*1–199	18.00	Apr. 1, 1985
200–End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
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1920–End	14.00	July 1, 1984
30 Parts:		
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200–699	5.50	July 1, 1984
700–End	13.00	July 1, 1984
31 Parts:		
0–199	8.00	July 1, 1984
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34 Parts:		
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400–End	14.00	July 1, 1984
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40 Parts:		
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400–End	18.00	Oct. 1, 1984

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44	13.00	Oct. 1, 1984
45 Parts:		
1–199	9.50	Oct. 1, 1984
200–499	6.50	Oct. 1, 1984
500–1199	13.00	Oct. 1, 1984
1200–End	9.50	Oct. 1, 1984
46 Parts:		
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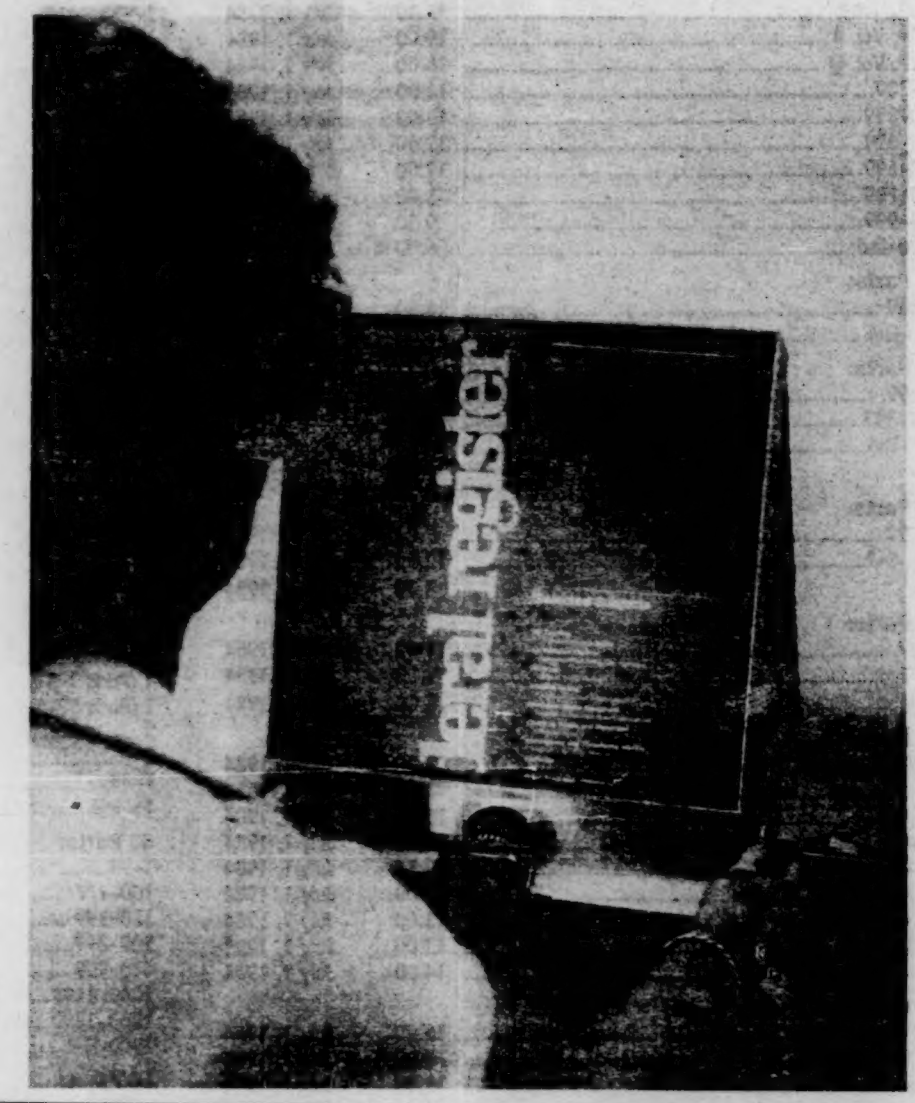
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